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In the

Court of Appeals for the State of Washington

Division Two

In Re the Personal Restraint of:

JAMES MITCHELL,

Petitioner.

PERSONAL RESTRAINT PETITION WITH LEGAL ARGUMENT AND AUTHORITIES

Pierce County Superior Court No. 14-1-02979-1

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I. STATUS OF PETITIONER

James Mitchell ("Mr. Mitchell") is currently in the custody of the Department of Corrections, serving an effective life sentence of 450 months (37.5 years) for one count of premeditated first degree murder. ***See Appendix, Attachment "A," Felony Judgment and Sentence***.

II. GROUNDS FOR RELIEF

Mr. Mitchell's continued restraint is unlawful because his convictions and sentence violate the Constitutions of the United States and Washington and the laws of the State of Washington. RAP 16.4(c)(2). Mr. Mitchell seeks relief from his restraint on the basis of the following legal claims:

GROUND ONE: Mr. Mitchell's conviction and sentence is unlawful and unconstitutional because he was deprived of his right to present a defense when the trial court precluded him from introducing "other suspect" evidence.

GROUND TWO: Mr. Mitchell's conviction and sentence is unlawful and unconstitutional because the prosecutor engaged in prejudicial misconduct by (1) improperly advising the jury that the blood from Mr. Mitchell and that from the victim were deposited at the same time, despite no supporting evidence for that proposition, and (2) improperly commenting on Mr. Mitchell's credibility during closing arguments, and

GROUND THREE: Mr. Mitchell's conviction and sentence is unlawful and unconstitutional because he was deprived of his right to confront the witnesses against him when the trial court allowed the State's witnesses to read directly from their 23 year-old police reports of which they had no independent recollection.

GROUND FOUR: Mr. Mitchell's conviction and sentence is unlawful and unconstitutional because he was deprived of his right to effective assistance of trial counsel when counsel (1) failed to renew her efforts to present "other suspect" evidence after a foundation for such evidence was laid at trial, (2) failed to object to the prosecutor's improper statements in closing arguments, and (3) failed to request a jury instruction regarding the State's spoliation of evidence.

GROUND FIVE: Mr. Mitchell's conviction and sentence is unlawful and unconstitutional because the cumulative effect of the errors raised herein deprived him of his rights to due process and a fair trial.

GROUND SIX: Mr. Mitchell's conviction and sentence is unlawful and unconstitutional because his appellate counsel was ineffective for failing to appeal the issues set forth herein.

III. STATEMENT OF THE CASE

1. The offense.

This case arises from the February 6, 1993 murder of Linda Robinson, who was stabbed to death at night in the kitchen of her apartment. ***See Appendix, Attachment "B," Trial Transcript,***[1] 01.25.16 RP 248. At the time of her murder, two young nieces and a nephew were asleep in the living room and her daughter was out with friends at a roller-skating rink. 01.25.16 RP 250, 272, 291; 01.26.16 RP 313, 314-15. There were no witnesses to the murder, and no one, including the occupants of the other three units in the apartment complex, observed or heard the

[1] References to the trial transcript are hereinafter referred to as "RP," preceded by date and anteceded by page number.

murderer enter or leave the apartment. 01.26.16 RP 324, 377; 02.04.16 RP 636.

There was no sign of forced entry into the apartment. Id. To the contrary, shortly before her death, Ms. Robinson was talking on the telephone with George Caldwell somewhere around 10:30 or 11:00 that night. 2.04.16 RP 650-53. As they were talking, Ms. Robinson said "[h]old on, somebody's at the door." 2.04.16 654. Ms. Robinson then opened the door and spoke with the visitor while Mr. Caldwell remained on the line. 02.04.16 RP 655, 658. Mr. Caldwell testified that he could hear Ms. Robinson speaking, but could not hear the visitor's voice. Id. Mr. Caldwell recalled Ms. Robinson saying "Okay, Okay" repeatedly to the visitor and testified that she testified that she sounded "submissive." 02.04.16 RP 655. Then the phone call was suddenly disconnected. Id. Mr. Caldwell did not suspect that Ms. Robinson was in any danger because, while the call was still connected, Ms. Robinson did not ask for assistance or "yell out anything that was threatening in nature," so it appeared to Mr. Caldwell that the visitor was "non-threatening". 02.04.16 RP 654-55. The evidence, however, suggested that the call was cut off because the visitor severed the telephone cord. 01.25.16 RP 197-98, 200; 01.27.16 RP 427; 02.08.16 RP 811.

Shortly after the murder, Ms. Robinson's seven-year-old niece was awakened by the sounds of the nephew crying and the smoke alarm, as Ms. Robinson had apparently been cooking ramen when the murderer entered the apartment and the stove was left on. 01.26.16 RP 316. Upon discovering the burning soup and her aunt's body, the niece knocked on a neighbor's door to ask for help. 01.26.16 RP 320-22, 353-54. Upon investigating the scene, the neighbor, Mr. Alvernaz, turned off the stove, walked through the apartment, rounded up the children, returned to his own apartment, and called 911. 01.26.16 RP 321-22, 353-54, 362.

2. The initial crime scene investigation.

In response to Mr. Alvernaz's report, medics arrived promptly on the scene, followed thereafter by several police officers and forensic investigators. 01.26.16 RP 407-08; 01.27.16 441, 455, 458, 475. The forensic investigators, Hilding "Skip" Johnson and Ted Schlosser, took photographs from the scene and gathered evidence and blood samples. 01.25.16 RP 199-200; 02.03.16 RP 525; 02.08.16 RP 814, 817. Ms. Robinson was found on the floor in a pool of blood with her pants pockets turned inside out and a key, a receipt, and a coin on the floor next to her leg. 01.25.16 RP 194-95, 197; 02.08.16 RP 805. It was unclear, however, when and in what way exactly Ms. Robinson's body was moved and otherwise handled after her murder by her niece, her neighbor, and/or the

medics, before the forensic investigators were able to begin assessing and photographing the scene. 02.08.16 RP 846-49.

During their investigation, officers Schlosser and Johnson took samples of blood from various locations around the apartment, both in the immediate vicinity of where Ms. Robinson's body was found and in other areas of the unit. 01.25.16 RP 199-200; 02.03.16 RP 525; 02.08.16 RP 814, 817. They collected the telephone with the severed cord, and a jacket in the bedroom that appeared to have blood on it. 01.25.16 RP 197- 98, 200; 01.27.16 427; 02.08.16 RP 811. They also collected latent fingerprints from around the crime scene, including the top of the refrigerator and on an inside door, but these fingerprints were never processed. 1.25.16 RP 231; 02.03.16 RP 588-89. Aside from the evidence collected by the forensic investigators, the medical examiners also collected evidence, including Ms. Robinson's jeans and vials of Ms. Robinson's blood. ***See Appendix, Attachment "C," Court's Findings and Conclusions on Admissibility of Evidence Re: Defendant's Motion to Suppress Evidence for Lack of Chain of Custody***.

Because DNA analysis of blood evidence was not yet available as a forensic tool, officers Johnson and Schlosser did not employ modern procedures used to preserve the integrity of DNA evidence, such as

wearing booties and facemasks and minimizing and monitoring the traffic in and out of the crime scene. 2.3.16 RP 563-71; 2.4.16 RP 681-83.

After gathering evidence on February 7, 1993, there is no documentation establishing the items' whereabouts until they were logged in to the property room on April 12, 1993, 65 or 66 days later. 02.03.16 RP 561, 594. Additionally, neither of the forensic investigators possessed independent recollection of the case. 02.03.16 RP 519; 02.08.16 RP 737. Thus, Ofc. Johnson could testify only that the evidence was "probably" in the forensic lab during this gap, on the basis that the forensic lab is where evidence was usually placed after it was collected and before it was logged in to the property room. 02.03.16 RP 594.

3. Detective O'Hern's investigation.

Detective James O'Hern was in charge of investigating the case. His objective at the outset of the investigation was to find out as much as possible about Ms. Robinson's lifestyle and social circle in order to uncover possible suspects. 02.08.16 RP 822-23. To accomplish this goal, he set out to speak with a number of Ms. Robinson's family members and acquaintances. Id. During this process, Det. O'Hern learned that Ms. Robinson had several "gentlemen friends" and was also involved in recreational drug use. 02.08.16 RP 885.

Det. O'Hern's attention ultimately turned to a Lee Chandler, who became Det. O'Hern's leading suspect. In his investigation notes, Det. O'Hern wrote that Mr. Chandler advised him that he had a relationship with Ms. Robinson that involved smoking crack-cocaine together and occasional sex during a period of time in the months prior to her death when Mr. Chandler was separated from his wife. ***See Appendix, Attachment "D," O'Hern Investigation Notes*** at 7. Based on his conversations with other witnesses, Det. O'Hern noted in his report:

> Lee Chandler, that's C-H-A-N-D-L-E-R, dope connection. 6844 South Lawrence. Used Linda as a runner. She was smoking rock. 471, 1-0163, 931-2069, underline biz, B-U-S. Chandler, known to be violent when it came to dealing with his dealers.

Attach. D at 7. His notes also stated that another witness, Mark McGruder, "[i]ndicated that Chandler has pressured Linda and approached her with offers of money for sex." Attach. D at 10.

On February 26, 20 days following Ms. Robinson's murder, Mr. Chandler submitted to a polygraph examination. ***See Appendix, Attachment "E," Chandler Polygraph Report***. During preliminary questioning, Mr. Chandler admitted to a domestic assault against his wife, for which he was convicted. Id. He also volunteered that he recently assaulted William Patrick, Ms. Robinson's ex-brother-in-law, over a dispute regarding an electric bill. Id. When asked by the polygraph

examiner whether he was involved in or present for the stabbing death of Ms. Robinson, Mr. Chandler asserted he was not. Id. However, based on the polygraph test, the examiner concluded "that the subject is attempting deception in his answers to the above-listed questions [regarding his involvement in Ms. Robinson's murder]." Id.

Based on these facts, Det. O'Hern testified in a pretrial interview that Mr. Chandler "was our focus of attention" at the time of the investigation, and that "he was the person that I believed probably … of the people we talked to … uh, most likely had something to do with her death, but…" ***See Appendix, Attachment "F," O'Hern Interview Tr.*** at 16. He stated further that Mr. Chandler was "a person of interest" and "suspect number one in my mind" because "he was supplying dope to her", he "could be violent to his suppliers if they didn't […] pay him on time", he "was the one guy that was involved in unlawful activity with her … prior to her death", and he "failed the polygraph". Attach. F at 17.

Mark McGruder, a mutual acquaintance of Mr. Chandler and Ms. Robinson, added further support to Det. O'Hern's theory that Mr. Chandler was the murderer. ***See Appendix, Attachment "G," Mark McGruder Interview Tr***. Mr. McGruder told Det. O'Hern that Ms. Robinson and Mr. Chandler had a "smoking relationship" and that Mr. Chandler used Ms. Robinson as a drug "runner." Attach. G at 5. Mr.

McGruder described Mr. Chandler as "[k]inda scary," adding that he would have "paranoia" and "get scary" when he smoked crack-cocaine. Attach. G at 6. McGruder also told Det. O'Hern that Mr. Chandler talked about wanting to have sexual intercourse with Ms. Robinson, and that Mr. Chandler would get violent towards Mr. McGruder when Mr. McGruder was living with Mr. Chandler because Mr. McGruder "was just an interference," presumably with respect to being alone with Ms. Robinson. Attach. G at 7. Mr. McGruder also described being intimidated by Mr. Chandler when Mr. Chandler became paranoid after smoking crack-cocaine, including describing an incident where Mr. Chandler "tussled" with Mr. McGruder. Attach. G at 9.

Mr. McGruder stated he was aware that Mr. Chandler and Ms. Robinson would borrow money from each other to purchase drugs. Attach. G at 12-13. He also stated that George Caldwell, Billy Miller, and Mr. Chandler were the only men he was aware of spending time with Ms. Robinson around the time of her death. Attach. G at 15-16. Mr. McGruder agreed with Det. O'Hern's suspicions that Mr. Chandler was the most likely suspect, advising further that Mr. Chandler knew where Ms. Robinson's new apartment was located, and that they had recently been spending time (and money, presumably on drugs) together at the apartment. Id.

Despite this focus on Mr. Chandler, due to court restrictions on "other suspect" evidence discussed below, the full extent of testimony regarding investigation of Mr. Chandler consisted of Det. O'Hern's statements that he interviewed Mr. Chandler several times, that he interviewed Mr. Chandler's wife, that he arrested Mr. Chandler on an unrelated outstanding municipal court warrant and then released him, and that he kept a copy of Mr. Chandler's driver's license on the top of his case file. 02.09.16 RP 886-87.

There was also testimony at trial that Billy Miller had threatened Ms. Robinson within 24-48 hours of her death. 01.25.16 RP 260, 281-82; 02.08.16 RP 859-61. Two of Ms. Robinson's sisters told Det. O'Hern that Ms. Robinson advised that Billy Miller had called at 4:00 in the morning talking "really stupid" or "real crazy" and demanding to be let into her apartment, though the sisters could not recall those conversation as of the trial. 01.25.16 RP 260, 281-82; 02.08.16 RP 859-61. Ms. Robinson was also supposed to meet a man named Frederick Ross on the night she died, but those plans fell through prior to her death. 02.18.16 RP 1033-34.

Throughout Det. O'Hern's investigation, Mr. Mitchell's name never once surfaced and did not appear anywhere in Det. O'Hern's file. 02.08.16 RP 827; Attach. D. No murder weapon was ever logged into evidence in this case. However, Det. O'Hern's notes reflect that a

"[b]loody knife" and "sawed-sawed off shotgun" were found by an apartment manager between February 6th and 7th at a location along a route from Ms. Robinson's apartment to a military reservation, but those items were not preserved and were not available at the time of trial. 02.08.16 RP 834-35, 866-71; Attach. D. Det. O'Hern had no recollection of conducting any follow up investigation regarding these items and there is no report of follow-up, though a request was made to have the items fingerprinted. 02.08.16 RP 834-35, 866-71, Attach. D. Ultimately, Det. O'Hern was unable to procure enough evidence for an arrest, and the case went "cold."

4. The "cold case" investigation.

In 2013, upon being contacted by Ms. Robinson's relatives, Pierce County Sheriff Detective Tim Kobel reviewed Ms. Robinson's file and submitted a request to the Washington State Crime Lab to have several blood items tested for DNA profiles. 01.25.16 RP 184, 206; 02.10.16 RP 34; ***Appendix, Attachment "H," Crime Lab Request Form and Report***. Det. Kobel's request form listed Mr. Chandler as the suspect in the murder. Attach. H.

In response to the request, Chris Sewell, a forensic scientist with the crime lab, first developed a DNA profile for Ms. Robinson based on the blood vials collected by the medical examiners. 02.10.16 RP 34, 38.

He then tested blood samples taken from the bathroom, from the bedroom dresser, from the child's jacket, from the back of Robinson' s jeans, and from the phone cord. 02.10.16 RP 44-45, 47-48, 51- 52, 53, 56, 58, 60-61. Several items contained mixed DNA, with Robinson as one donor and an "Individual A" as a second donor. 02.10.16 RP 47-48, 56, 59, 62-63. The blood drops on the bedroom dresser produced a single profile matching "Individual A." 02.10.16 RP 44-46. The DNA profile for "Individual A" was run through a DNA database (CODIS), and matched the profile for James Mitchell. 02.10.16 RP 50, 63-64. Detective Kobel then located Mitchell in Florida. 02.10.16 RP 103.

Several other items in evidence that were found at the scene, such as a McDonald's cup with a straw, and car keys and a nickel found on or next to Ms. Robinson's body, were not tested. 2.10.16 RP 90-92. Additionally, no testing for a match to any person was performed on female DNA after the creation of the profile for "Individual A," which was a male. 2.10.16 RP 92. Finally, no testing was performed on the bloody knife and sawed-off shotgun that were located around the night of the murder, as those items were not retained in evidence. 02.08.16 RP 834-35.

5. Pretrial proceedings.

Prior to the commencement of trial, the parties litigated multiple evidentiary issues, the most significant of which were Mr. Mitchell's motion to exclude the State's DNA evidence due to deficient chain of custody evidence, the State's motion to preclude Mr. Mitchell from introducing "other suspect" evidence, and the State's motion to allow the forensic investigators to read from their reports and the property log at trial. See Attach. C; ***Appendix, Attachment "I," Orders Re: Motions to Suppress [ER 803(a)(5); Other Suspect Evidence; Found Weapons]; Appendix, Attachment "J," Defense Memorandum in Support of Motion Allowing Other Suspect Evidence***.

With respect to the chain of custody issue, which centered on the lack of documentation memorializing the location of the evidence for a 65 day period following collection, the trial court ruled that the faulty documentation was an issue that went to the weight of the evidence, rather than its admissibility. Attach. C. With respect to the "other suspect" evidence issue, the court ruled that Mr. Mitchell failed to produce sufficient "evidence of a connection between the crime and the other suspects." Attach. I at 2; Attach. J. However, the court also held that the Mr. Mitchell "may re-litigate the issue of other suspect evidence based on evidence produced or proffered at trial." Attach. I at 2.

With respect to the State's motion to allow the forensic investigators to read from their reports, the trial court determined that such testimony would be permitted under ER 803(a)(5) as prior recollections recorded. Attach I. The court also ruled that the fact of Det. O'Hern's discovery of the bloody knife and shotgun around the night of the murder would be admissible. Id.

6. Mr. Mitchell's testimony and closing arguments.

During trial, Mr. Mitchell took the witness stand in his defense. Mitchell testified that he knew Robinson and had seen her a few times in the month before her death. 02.18.16 RP 991- 93. He testified further that he could not remember the date, but he remembers stopping by her apartment to visit her in the late evening sometime around the night she was killed. 02.18.16 RP 992- 93. After being let into the apartment, another visitor knocked on the door and Ms. Robinson let him in. 02.18.16 RP 994. This second visitor was acting agitated and immediately tried to hit both Ms. Robinson and Mr. Mitchell. 02.18.16 RP 995. Ms. Robinson repeatedly said to the man something like "[w]hy are you tripping? I' m tired of this shit. I' m going to call the police," but the man was undeterred and continued his assault. 02.18.16 RP 996-97.

Mr. Mitchell exchanged blows with the man, and the man finally left the apartment unit, though he stated that he would return. 02.18.16 RP

997. Following the man's departure, Mr. Mitchell assessed his wounds. He thought at first he was bleeding from the head, but upon looking at a mirror in Ms. Robinson's bedroom, he observed that he was merely sweating. 02.18.16 RP 997- 98. Later, however, he noticed that he had an open wound on his hand that was bleeding. 02.18.16 RP 999. He decided to leave the apartment, and he never contacted Ms. Robinson again "[b]ecause there's too much baggage, and I didn't want to have anything to do with that." 02.18.16 RP 1000, 1024- 35. Mr. Mitchell adamantly denied stabbing and killing Robinson. 02.18.16 RP 991, 1029-30.

During closing argument, the prosecutor challenged the credibility of Mr. Mitchell's testimony, telling the jury multiple times that Mr. Mitchell's testimony was not believable or credible, adding that Mr. Mitchell's testimony "simply isn't believable, and ***you shouldn't believe it, and the reason you shouldn't believe it is because it's not true***." 02.22.16 RP 1094-97 (emphasis added). In rebuttal, the prosecutor again told the jury that "What Mr. Mitchell told you was not what actually happened." 02.22.16 RP 1142.

The prosecutor also told the jury that forensic science precluded Mr. Mitchell's account of events because "his blood was mixed with [Ms. Robinson's] ***which means they bled at the same time***." 02.22.16 RP 1081. The prosecutor went on to advise the jury that:

> it's significant that the blood on the jacket is both transfer blood and mixed blood because it shows not only did Mr. Mitchell bleed there that night, he bled at the same time as Linda; and the reason that he bled at the same time as Linda is that he murdered Linda with a knife.

02.22.16 RP 1088. He repeated this point multiple times throughout closing, telling the jury that "he bled at the exact same time that she did", "[h]e bled at the same time [as Ms. Robinson] because he was the murderer", and "Mr. Mitchell's blood mixed with hers because he's the one who murdered her". 02.22.16 RP 1100, 1144. No witness testified that the pattern of blood or mixtures of blood established simultaneous bleeding.

7. Verdict, sentencing, and appeal.

Two days following closing arguments, on February 24, 2016, the jury returned a verdict of guilty of premeditated first-degree murder. 02.24.16 RP 1182. On March 25, 2016, Mr. Mitchell was sentenced to a 450 months in prison, a sentence in the middle of the Sentencing Reform Act standard range. 03.25.16 RP 1189-1210.

Mr. Mitchell timely appealed his conviction and sentence, asserting that his conviction and/or sentence were in error on the grounds that (1) the court erred in allowing the State to introduce DNA evidence, despite insufficient proof of chain of custody, (2) the State failed to present sufficient evidence of premeditation, and (3) the court erred in

relying on a 1983 armed robbery conviction in Florida in calculating Mr. Mitchell's offender score because the Florida statute under which he was convicted was not comparable to any Washington criminal statute. ***See Appendix, Attachment K, Order on Mandate on Appeal***.

On August 29, 2017, the Court of Appeals entered an opinion denying Mr. Mitchell's direct appeal as to each ground raised. Attach. K. The appellate court mandate disposing of Mr. Mitchell's direct appeal was then issued on February 16, 2018, stating that the August 29, 2017 opinion became the decision terminating review of the case on February 7, 2018. Attach. K. Mr. Mitchell now submits this first timely personal restraint petition, seeking relief from his unlawful and unconstitutional sentence based on the grounds raised herein.

IV. STANDARD OF REVIEW

"A petitioner may request relief through a PRP when he is under an unlawful restraint." In re Monschke, 160 Wn. App. 479, 488, 251 P.3d 884, 890 (2010) (citing RAP 16.4(a)-(c)). "Generally, in a PRP, the petitioner must demonstrate by a preponderance of the evidence that a constitutional error resulted in actual and substantial prejudice or a nonconstitutional error resulted in a complete miscarriage of justice." Id. (citing In re Pers. Restraint of Davis, 152 Wash.2d 647, 672, 101 P.3d 1 (2004)). "But when a petition 'raises issues that were afforded no previous

opportunity for judicial review, ... the petitioner need not make the threshold showing of actual prejudice or complete miscarriage of justice." In re Pierce, 173 Wn.2d 372, 377, 268 P.3d 907, 909 (2011) (quoting In re Pers. Restraint of Gentry, 170 Wash.2d 711, 714-15, 245 P.3d 766 (2010)). "It is enough if the petitioner can demonstrate unlawful restraint under RAP 16.4." Id. (citing In re Pers. Restraint of Gentry, 170 Wash.2d at 715).

"'Unlawful restraint' includes restraint accomplished in violation of state laws or administrative regulations." In re Turner, 74 Wn. App. 596, 598, 875 P.2d 1219, 1221 (1994) (citing In re Cashaw, 123 Wash.2d 138, 148-49, 866 P.2d 8 (1994) (internal citation omitted). In re Monschke, 160 Wn. App. at 488 (citing RAP 16.7(a)(2)(i)). "[A] hearing is appropriate where the petitioner makes the required prima facie showing 'but the merits of the contentions cannot be determined solely on the record.'" In re Yates, 177 Wn.2d 1, 18, 296 P.3d 872, 880-81 (2013) (quoting Hews v. Evans, 99 Wn.2d 80, 88, 660 P.2d 263, 268 (1983) and citing RAP 16.11(b)). "Granting the petition is appropriate if the petitioner has proved actual prejudice [from a constitutional violation] or a fundamental defect resulting in a complete miscarriage of justice." In re Yates, 177 Wn.2d 1 at 18.

V. ARGUMENTS AND AUTHORITY

A. Mr. Mitchell was Deprived of his Right to Present a Defense by the Trial Court's Rulings Excluding "Other Suspect" Evidence.

1. Standard of Review

Appellate courts review a trial court's decision to admit or exclude evidence for abuse of discretion. State v. Franklin, 180 Wn.2d 371, 377 n. 2, 325 P. 3d 159 (2014). Appellate courts review a denial of the Sixth Amendment right to present a defense de novo. State v. Jones, 168 Wn.2d 713, 719, 230 P. 3d 576 (2010). An erroneous evidentiary ruling that violates the defendant's constitutional rights is presumed prejudicial unless the state can show the error was harmless beyond a reasonable doubt. Franklin, 180 Wn.2 377 n. 2; State v. Dye, 178 Wn. 2d 541, 548, 309 P. 3d 1192 (2013).

2. Mr. Mitchell was denied his right to present a defense.

Mr. Mitchell was deprived of his right to present evidence in defense to the charges against him when the trial court precluded him from introducing evidence implicating the lead investigator's primary suspect. A criminal defendant has a right to present evidence in defense of the charged crimes pursuant to the Sixth Amendment of the United States Constitution and Article I, § 22 of the Washington Constitution. U.S. Const. Amend. VI; Wash. Const. art. 1 §22; State v. Maupin, 128 Wn.2d 918, 924, 913 P.2d 808 (1996). "The right of an accused in a criminal trial

to due process is, in essence, the right to a fair opportunity to defend against the State's accusations." Chambers v. Mississippi, 410 U.S. 284, 294, 93 S.Ct. 1038, 35 L.Ed.2d 297 (1973). Thus, absent a compelling justification, excluding exculpatory evidence deprives a defendant of "the basic right to have the prosecutor's case encounter and 'survive to the crucible of meaningful adversarial testing.'" Crane v. Kentucky, 476 U.S. 683, 689- 690, 106 S. Ct. 2142, 90 L. Ed. 2d 636 (1986) (quoting United States v. Cronic, 466 U.S. 648, 656, 104 S. Ct. 2039, 80 L. Ed. 2d 657 (1984)).

The U.S. Supreme Court has held that when the defense proffers evidence that someone other than the defendant committed the offense, a trial court may only exclude that evidence if it is repetitive or poses an undue risk of prejudice or confusion. Holmes v. South Carolina, 547 U.S. 319, 325-26, 126 S. Ct. 1727, 164 L. Ed. 2d 503 (2006) (citing Crane, 476 U.S. at 326-27). The Ninth Circuit has similarly recognized that there is a broad due process right to present all evidence tending to implicate another suspect:

> Even if the defense theory is purely speculative . . . the evidence would be relevant. In the past, our decisions have been guided by the words of Professor Wigmore: 'If the evidence [that someone else committed the crime] is in truth calculated to cause the jury to doubt, the court should not attempt to decide for the jury that this doubt is purely speculative and fantastic but should afford the accused every opportunity to create that doubt.'

Thomas v. Hubbard, 273 F.3d 1164, 1177 (9th Cir. 2001) (quoting United States v. Vallejo, 237 F.3d 1008, 1023 (9th Cir. 2001) (quoting 1A John Henry Wigmore, Evidence in Trials at Common Law § 139 (Tillers rev. ed. 1983))), overruled on other grounds, Payton v. Woodford, 299 F.3d 815, 829 n. 11 (9th Cir. 2002).

The standard for the admissibility of "other suspect" evidence in Washington is whether it tends to connect someone other than the defendant with the crime. Franklin, 180 Wn.2d at 381; State v. Downs, 168 Wn. 664, 667, 13 P. 2d 1 (1932). Before the trial court admits "other suspect" evidence, the defendant must present a combination of facts or circumstances pointing to something more than a purely speculative link between the other suspect and the crime. Franklin, 180 Wn. 2d at 381. The inquiry focuses on whether the evidence tends to create a reasonable doubt as to the defendant's guilt, and not on whether it establishes the third party's guilt beyond a reasonable doubt. Id. If there is an adequate nexus between the alleged other suspect and the crime, such evidence should be admitted. State v. Giles, 196 Wn.App. 745, 755, 385 P.3d 204 (2016).

In Franklin, the trial court excluded the defendant's proffered evidence that someone else committed the cyberstalking crimes with which he was charged. Franklin, 180 Wn.2d at 372. Specifically, the court excluded evidence that the defendant's live-in girlfriend had sent

threatening e-mails to his other girlfriend despite the existence of a motive (jealousy), opportunity (access to the computer and e-mail accounts at issue), and prior history (of sending threatening e-mails). Id. In excluding the evidence, the trial court reasoned, "[t]he other suspects bar, quite frankly, is high" and that it required more than showing mere motive and opportunity. Id. at 376-77.

The Supreme Court held the trial court's decision was an incorrect interpretation of the standard for admission of "other suspect" evidence, stating:

> We have never adopted a per se rule against admitting circumstantial evidence of another person's motive, ability or opportunity. Instead, our cases hold that if there is an adequate nexus between the alleged other suspect and the crime, such evidence should be admitted.

Franklin, 180 Wn.2d at 373. The Court emphasized that a defendant need not provide direct evidence in order to introduce "other suspect" evidence. Prior to Franklin, some courts, like the trial court in Franklin, wrongly believed that existing case law required a showing of direct evidence as a prerequisite to introduction of other suspect evidence. In Maupin, testimony that a kidnapping victim was seen with a person other than the defendant was adequate to support the defendant's proffer of other suspect evidence. Maupin, 128 Wn.2d at 928. However, the Court in Franklin emphasized that Maupin did not require foundation direct evidence as a

prerequisite to the admission of other suspect evidence. Franklin, 180 Wn.2d at 380-81. Rather, the standard is whether the evidence offered tends to create a reasonable doubt as to the defendant's guilt, or "whether there is evidence 'tending to connect' someone other than the defendant with the crime." Id. (citing Maupin, 128 Wn.2d at 925; Downs, 168 Wash. at 667; 16 C.J. Criminal Law § 1085, at 560 (1918)).

In Franklin, because evidence of the girlfriend's motive, ability, opportunity and character to commit the crime created a chain of circumstances that tended to create a reasonable doubt as to the defendant's guilt, the trial court erred in excluding the other suspect evidence. Id. at 382. Additionally, the constitutional error was deemed not harmless, even though some of the facts suggesting the girlfriend's motive and opportunity were admitted. Id. Because the defendant was prohibited from arguing that the girlfriend was the culprit, he was entitled to a new trial. Id. at 383.

The trial court in Mr. Mitchell's case made the same error as the trial court in Franklin, improperly imposing a high bar so as to preclude the defense from preventing its theory of the case. As with the girlfriend in Franklin, Mr. Chandler had motive, ability, and opportunity to commit the murder of Ms. Robinson. Indeed, these factors made Mr. Chandler the investigating officer's main suspect. See Attach. D, F. As uncovered by

Det. O'Hern, Mr. Chandler had a relationship with Ms. Robinson involving sex, drugs, and money, each providing a potential motive for homicide. See Attach. D, F, G. Additionally, he had a history of acting out violently over drugs and money, and acting "scary" and paranoid when smoking crack-cocaine, which he did on a regular basis. See Attach. G.

Mr. Chandler also had opportunity, as Mr. McGruder advised that Mr. Chandler was one of the few people who knew the location of Ms. Robinson's new apartment and was also one of the few people for whom Ms. Robinson would have voluntarily opened the door in the late-night hours. Attach. G. Finally, although the results themselves would not have been admissible at trial, it is highly relevant for purposes of determining admissibility that Mr. Chandler failed a polygraph test when asked whether he killed Ms. Robinson. See Attach. E; ER 104(a) ("Preliminary questions concerning […] the admissibility of evidence shall be determined by the court […]. In making its determination it is not bound by the Rules of Evidence except those with respect to privileges"). This evidence meets, if not exceeds, the evidence deemed to meet the "other suspect" threshold in Franklin. The evidence that made Mr. Chandler Det. O'Hern's primary suspect, at a minimum, "tends to connect" Mr. Chandler to the crime. See Franklin, 180 Wn.2d at 380-81.

On top of this circumstantial evidence, Mr. Mitchell's own testimony provides direct evidence of Mr. Chandler's involvement. See 02.18.16 RP 991- 1000. Mr. Mitchell testified that another person assaulted him and Ms. Robinson and threatened to come back. Id. Although Mr. Mitchell did not recognize the individual, his testimony that he saw someone else act violently towards Ms. Robinson shortly before her death, and that the man threatened to return, weighs heavily in favor of allowing the excluded "other suspect" evidence.[2]

Mr. Mitchell had a constitutional right to present his defense. U.S. Const. Amend. VI; Wash. Const. art. 1 §22; Maupin, 128 Wn.2d at 924; see also Chambers, 410 U.S. at 294. The State's own investigation focused on Mr. Chandler as its prime suspect, gathering considerable circumstantial evidence of Mr. Chandler's guilt. Mr. Mitchell then added direct evidence of another suspect's responsibility for the crime. Under these circumstances, denying Mr. Mitchell the opportunity to present other suspect evidence implicating Mr. Chandler wrongfully deprived him of "the basic right to have the prosecutor's case encounter and 'survive to the

[2] Additionally, a semen sample was obtained from the victim's body but was never tested. In a new trial on remand, if Mr. Mitchell is permitted to pursue his "other suspect" defense, this semen could be analyzed and could provide corroborating evidence supporting this defense.

crucible of meaningful adversarial testing.'" Crane, 476 U.S. at 689- 690; see also U.S. Const. Amend. VI; Wash. Const. art. I, § 22.

The trial court's constitutional error was not harmless. Mr. Mitchell's defense relied heavily on his credibility as a witness. The "other suspect" evidence implicating Mr. Chandler provided corroboration for Mr. Mitchell's testimony. Denying him the opportunity to present this corroborating testimony caused actual and substantial prejudice to his defense, depriving the jury of complete information needed to assess Mr. Mitchell's veracity. Because Mr. Mitchell was denied his rights to due process and a fair trial by the court's exclusion of "other suspect" evidence implicating Mr. Chandler, Mr. Mitchell is entitled to remand for a new trial.

B. The Prosecution Engaged in Prejudicial Misconduct by Unfairly Commenting on Mr. Mitchell's Credibility and Asserting Forensic Facts Not in Evidence.

Mr. Mitchell was denied a fair trial by the prosecution's improper comments on Mr. Mitchell's testimony and improper assertion of facts not supported by the record. The right to a fair trial is a fundamental liberty secured by the Sixth and Fourteenth Amendments to the United States Constitution and Article I, § 22 of the Washington State Constitution. Estelle v. Williams, 425 U.S. 501, 503, 96 S.Ct. 1691, 48 L.Ed.2d 126 (1976); State v. Finch, 137 Wn.2d 792, 843, 975 P.2d 967 (1999). "A

'[f]air trial' certainly implies a trial in which the attorney representing the state does not throw the prestige of his public office ... and the expression of his own belief of guilt into the scales against the accused." State v. Monday, 171 Wn.2d 667, 677, 257 P. 3d 551 (2011) (quoting State v. Case, 49 Wn.2d 66, 71, 298 P. 2d 500 (1956); State v. Reed, 102 Wn.2d 140, 145-47, 684 P. 2d 699 (1984)). Thus, prosecutorial misconduct can deprive an accused person of this fundamental right. State v. Davenport, 100 Wn.2d 757, 762, 675 P.2d 1213 (1984).

Moreover, "[a]s a quasi-judicial officer representing the people of the State, a prosecutor has a duty to act impartially in the interest only of justice." State v. Warren, 165 Wn.2d 17, 27, 195 P.3d 940 (2008). It is the prosecutor's duty to "seek a verdict free of prejudice and based on reason." State v. Huson, 73 Wn.2d 660, 663, 440 P.2d 192 (1968), cert. den'd, 393 U.S. 1096, 89 S.Ct. 886, 21 L.Ed.2d 787 (1969).

To establish that the prosecuting attorney committed misconduct during closing argument, Mr. Mitchell must prove that the prosecuting attorney's remarks were both improper and prejudicial. State v. Thorgerson, 172 Wn.2d 438, 443, 258 P.3d 43 (2011). "Although prosecuting attorneys have some latitude to argue facts and inferences from the evidence, they are not permitted to make prejudicial statements

unsupported by the record." State v. Jones, 144 Wn. App. 284, 293, 183 P.3d 307 (2008).

Once the Court finds that a prosecuting attorney's statements were improper, the Court must then determine whether the defendant was prejudiced under one of two standards of review. State v. Emery, 174 Wn.2d 741, 760, 278 P.3d 653 (2012). "If the defendant objected at trial, the defendant must show that the prosecutor's misconduct resulted in prejudice that had a substantial likelihood of affecting the jury's verdict." Id. However, if the defendant failed to object, "the defendant is deemed to have waived any error, unless the prosecutor's misconduct was so flagrant and ill-intentioned that an instruction could not have cured the resulting prejudice." Id. at 760-61. Prejudice is established where "there is a substantial likelihood the instances of misconduct affected the jury's verdict." State v. Dhaliwal, 150 Wn.2d 559, 578, 79 P. 3d 432 (2003) (quoting State v. Pirtle, 127 Wn.2d 628, 672, 904 P. 2d 245 (1995)); State v. Ish, 170 Wn. 2d 189, 195, 241 P. 3d 389 (2010)).

1. The prosecution engaged in misconduct by telling the jury that Mr. Mitchell and Ms. Robinson bled at the same time.

The prosecutor engaged in misconduct by asserting scientific facts not in evidence, namely, that the physical evidence proves Mr. Mitchell and Ms. Robinson bled at the same time. It is improper and misconduct for a prosecutor to "make prejudicial statements that are not sustained by the

record." Dhaliwal, 150 Wn. 2d at 577; see also State v. Belgarde, 110 Wn. 2d 504, 516-17, 755 P. 2d 174 (1988). Although a prosecutor has wide latitude to argue reasonable inferences from the evidence, Thorgerson, 172 Wn.2d 448, a prosecutor must "seek convictions based only on probative evidence and sound reason." State v. Casteneda-Perez, 61 Wash.App. 354, 363, 810 P.2d 74 (1991). "'A person being tried on a criminal charge can be convicted only by evidence, not innuendo.'" State v. Miles, 139 Wn. App. 879, 886, 162 P.3d 1169 (2007) (quoting State v. Yoakum, 37 Wn.2d 137, 144, 222 P.2d 181 (1950)). "A prosecutor improperly comments when he or she encourages a jury to render a verdict on facts not in evidence." State v. O'Neal, 126 Wn. App. 395, 421, 109 P.3d 429 (2005), aff'd, 159 Wn.2d 500 (2007); see also Miles, 139 Wn. App. at 886 ("[A] prosecutor who asks questions that imply the existence of a prejudicial fact must be prepared to prove that fact.")

Here, the prosecutor not only encouraged the jury to render a verdict on facts not in evidence, but went so far as to tell them, without support, that forensic science required that they disbelieve the defendant and enter a verdict of guilty. Mr. Mitchell's defense hinged, in large part, on his testimony that, although he bled in Ms. Robinson's apartment slightly earlier in the evening before her death, he was not present when Ms. Robinson was murdered.

In closing, however, the prosecutor told the jury that Mr. Mitchell's account of events was impossible because the forensics prove that Mr. Mitchell and Ms. Robinson "bled at the same time" given the mixture of their blood in the samples tested. 02.22.16 RP 1081, 1088. He then repeated this assertion multiple times throughout closing, telling the jury "he bled at the exact same time that she did", "[h]e bled at the same time [as Ms. Robinson] because he was the murderer", and "Mr. Mitchell's blood mixed with hers because he's the one who murdered her". 02.22.16 RP 1100, 1144. These comments had no support in the record. No witness testified that a mixture of blood proves that the two donors bled at the same time. There is nothing in the record establishing that recently dried blood cannot mix with fresh blood once the entirety of the mixture has been dried.

Not only did the prosecutor's comments misstate the record, but they were further improper because they violated Mr. Mitchell's confrontation clause rights under Article I, § 22 of Washington's Constitution and the Sixth Amendment, as he was denied the opportunity to cross-examine and present evidence to rebut the State's theory that mixed blood proved simultaneous bleeding. See State v. Martin, 171 Wash. 2d 521, 536, 252 P.3d 872, 879 (2011) (recognizing the potential confrontation clause violations that could occur when the prosecution

mounts a new attack on the defendant's credibility in closing arguments, as opposed to during cross-examination). These confrontation clause concerns are magnified greatly where, as here, the prosecutor effectively holds himself out as an expert, introducing new purported scientific fact for the first time during closing when the defense has limited opportunity to respond.[3]

What the blood samples have to say about when blood was deposited, if anything, is the province of experts. Without expert testimony providing a scientific basis for the notion that a mixed blood sample proves contemporaneous bleeding by both donors, it is highly inappropriate for the prosecutor to make this assertion in closing, and, in fact, constitutes serious and flagrant prosecutorial misconduct. Dhaliwal, 150 Wn. 2d at 577.

2. The prosecution committed misconduct by expressing a personal opinion on Mr. Mitchell's credibility.

The prosecutor in Mr. Mitchell's case committed clear prejudicial misconduct when he spent a considerable portion of his closing argument telling the jury that he believed Mr. Mitchell's testimony was a lie. See

[3] Defense counsel did note in her closing that the prosecutor's mixed blood comments were unsupported by the evidence, it is submitted that this was insufficient to undo the harm caused by the prosecutor's misconduct, particularly given that the prosecutor repeated this unsupported assertion in rebuttal. See 02.22.16 RP 1127-28.

02.22.16 RP 1094-98, 1142. "It is impermissible for a prosecutor to express a personal opinion as to the credibility of a witness or the guilt of a defendant." State v. Lindsay, 180 Wash. 2d 423, 437, 326 P.3d 125, 132-33 (2014) (citing Reed, 102 Wn.2d at 145; Am. Bar Ass'n, Model Code of Professional Responsibility and Code of Judicial Conduct § DR 7-106(C)(4) (1980)). Such argument constitutes misconduct because "[w]hether a witness has testified truthfully is entirely for the jury to determine." Ish, 170 Wn.2d at 196. Expressing personal opinions on credibility also violates the advocate-witness rule, which "prohibits an attorney from appearing as both a witness and an advocate in the same litigation." Id. (quoting United States v. Prantil, 764 F.2d 548, 552-53 (9th Cir. 1985)).

Applying these principles in Lindsay, the Supreme Court held that a prosecutor engaged in prejudicial misconduct by referring to the defendant's testimony as "the most ridiculous thing I've ever heard" and a "crock". Id. Because these statements constituted expressions of personal opinions about the defendant's credibility by the prosecutor, the defendant was denied his due process rights, necessitating remand for a new trial. Id.

Similarly, in this case, the prosecutor told the jury multiple times that Mr. Mitchell's testimony was not believable or credible, adding that Mr. Mitchell's testimony "simply isn't believable, and ***you shouldn't***

believe it, and the reason you shouldn't believe it is because it's not true." 02.22.16 RP 1094-97. In rebuttal, the prosecutor again told the jury that "[w]hat Mr. Mitchell told you was not what actually happened." 02.22.16 RP 1142. These improper comments on Mr. Mitchell's credibility directly invaded the province of the jury, telling the jury what they should and should not believe. The comment that Mr. Mitchell's testimony is "not true" and "not what actually happened" also constitutes a manifest personal expression of opinion on Mr. Mitchell's credibility, and thus his guilt.

The misconduct here was highly prejudicial because the case turned on the jury's assessment of the State's improperly stored and documented physical evidence and the credibility of Mr. Mitchell's testimony. The prosecutor's admonition to the jury that they should not believe Mr. Mitchell because his testimony was untrue unfairly undermined the core of the defense theory of the case, particularly given that the court had already deprived Mr. Mitchell of the right to proffer corroborating evidence implicating Mr. Chandler. These comments were not isolated, but rather repeated multiple times during an extended discussion of Mr. Mitchell's testimony. See In re Pers. Restraint of Glasmann, 175 Wn.2d 696, 707, 286 P.3d 673 (2012) ("'[t]he cumulative effect of repetitive prejudicial prosecutorial misconduct may be so flagrant

that no instruction or series of instructions can erase their combined prejudicial effect.'" (quoting State v. Walker, 164 Wn. App. 724, 737, 265 P.3d 191 (2011))); State v. Henderson, 100 Wn. App. 794, 805, 998 P. 2d 907 (2000) (holding that the cumulative effect of repeated instances of misconduct may be so flagrant that no instruction can erase the error)).

Additionally, the prejudice was exacerbated by the prosecutor's repetition of his personal opinion of Mr. Mitchell's testimony during rebuttal closing. See Lindsay, 180 Wash. 2d 423 (citing United States v. Sanchez, 659 F.3d 1252, 1259 (9th Cir. 2011) (finding it significant that prosecutor made improper statement "at the end of his closing rebuttal argument, after which the jury commenced its deliberations"); United States v. Carter, 236 F.3d 777, 788 (6th Cir. 2001) (finding it significant that "prosecutor's improper comments occurred during his rebuttal argument and therefore were the last words from an attorney that were heard by the jury before deliberations")). The sustained expressions of personal opinion regarding the credibility of Mr. Mitchell's testimony during closing and rebuttal were sufficiently pervasive to require reversal, even under the higher standard applied when trial counsel fails to make a contemporaneous objection.

3. The prosecutor's misconduct was so flagrant or ill-intentioned that no curative instruction could have cured the resulting prejudice.

Even though defense counsel failed to object to the prosecutor's repeated misconduct in closing argument, the misconduct was so flagrant or ill-intentioned that no curative instruction could have cured the resulting prejudice. See Emery, 174 Wn.2d at 760. The prosecutor put the full weight of his office behind the improper statements that Mr. Mitchell's testimony was a lie and that forensic science disproves his account of events. These flagrantly improper statements, repeated throughout his closing and rebuttal arguments, went to the core of Mr. Mitchell's defense and wrongly invaded the province of the jury. Consequently, the higher prejudice threshold is met and Mr. Mitchell is entitled to remand for a new trial.

C. Mr. Mitchell was Deprived of His Right to Confront the Witnesses Against Him When the Trial Court Allowed Officers to Read from their Reports.

Mr. Mitchell has a right to confront the witnesses against him, as guaranteed by both the Sixth Amendment to the U.S. Constitution and Article I, § 22 of the Washington State Constitution. Crawford v. Washington, 541 U.S. 36, 124 S.Ct. 1354, 158 L.Ed.2d 177 (2004); Chambers, 410 U.S. 284; State v. Monson, 113 Wn.2d 833, 840, 784 P.2d 485 (1989); State v. Hudlow, 99 Wn.2d 1, 14-15, 659 P.2d 514 (1983). He

was denied that right at trial when the trial court allowed the forensic investigators to read from their narrative reports and the property log at trial.

The opportunity to cross-examine witnesses is key to the confrontation right. Monson, 113 Wn.2d at 840. The United States Supreme Court has called cross-examination the "greatest legal engine ever invented for the discovery of truth." Kentucky v. Stincer, 82 U.S. 730, 736, 107 S.Ct. 2658, 96 L.Ed.2d 631 (1987). To enforce this right, testimonial evidence may not be admitted at trial absent proof of the declarant's unavailability and prior opportunity for cross-examination of the declarant by the accused. Crawford, 541 U.S. at 68. "Testimonial evidence", in turn, is defined to include "affidavits ... or similar pre-trial statements that declarants would reasonably expect to be used prosecutorially [and] extrajudicial statements contained in formalized testimonial statements such as affidavits ..." Melendez-Diaz v. Massachusetts, 557 U.S. 305, 309, 129 S. Ct. 2527, 2531 (2009).

At trial, pursuant to the trial court's erroneous ruling, Ofc. Johnson was permitted to testify by reading directly from his report. 02.03.16 RP 525. He advised the jury, without any independent recollection, that he collected blood from various areas of the residence and took photographs of items of evidence gathered from the scene. Id. Officer Schlosser was

likewise permitted to read directly from portions of his reports. 02.08.16 RP 739-41. He told the jury, with no independent recollection, that he took videos of the exterior and interior of the apartment, including vehicles parked nearby, blood spatter in the apartment, and the victim's body. Id. He also advised that he processed the residence for latent fingerprints in various locations and took measurements of the victim. Id.

Both officers were further allowed to read from and rely extensively on the property log setting forth the evidence collected in this matter. The trial court erred in concluding that this evidence was not testimonial, and accordingly erred in allowing this testimony pursuant to ER 803(a)(5). As established by U.S. Supreme Court precedent, testimony of this nature is testimonial, and thus runs afoul of the confrontation clause when admitted at trial without opportunity for cross-examination.

In 2009, the U.S. Supreme Court applied the analysis of Crawford to a laboratory scientist's certification regarding the nature of a controlled substance and held that such a statement was testimonial. Melendez-Diaz, 557 U.S. 305. Specifically, the State laboratory analysts submitted affidavits at trial asserting that a substance seized was cocaine. Melendez-Diaz, 557 U.S. at 320. The Supreme Court held that the documents were clearly testimonial under Crawford because they contained the exact testimony the witness would provide at trial, the statements were clearly

intended to be used at trial and they were created solely for use at trial. Id. at 320-1. Therefore, the documents were inadmissible under the confrontation clause unless the witness was unavailable for trial and the defense had a prior opportunity to cross-examine the witness. Id. at 322.

In reaching this holding, the Melendez-Diaz Court rejected the argument that laboratory analysts are not "accusatory" or "conventional" witnesses. Id. at 313-314. The Court further rejected the notion that forensic analyst's statements were nontestimonial because their statements purportedly related to "neutral, scientific testing" that is not 'prone to distortion or manipulation." Id. at 317-18. Instead, Melendez-Diaz held that statements in forensic reports are testimonial when they are "made for the purpose of establishing or proving some fact" and "under circumstances that would lead an objective witness to believe that the statement would be available for use at a later trial." Id. at 310-11.

Similarly, in State v. Jasper, the Supreme Court of Washington evaluated whether certified driving records from the Department of Licensing could be admitted in a trial for driving while license suspended., 158 Wn. App. 518, 526, 245 P.3d 228 (2010), aff'd, 174 Wn.2d 96, 271 P.3d 876 (2012). On appeal, the King County Superior Court held that the entire driving record was inadmissible under the confrontation clause, noting "[u]nder the Court's analysis in Melendez-Diaz, the [driving

record] is a testimonial affidavit, and the DOL official is a "witness" for purposes of the Sixth Amendment ... [e]ven particularized guarantees of trustworthiness do not get the [driving record] past the Sixth Amendment."' Id. at 104-105, 271 P.3d 876. The Supreme Court affirmed the ruling, holding that the entirety of the driving record was a testimonial affidavit falling within the "core class of testimonial statements" described in Crawford and Melendez-Diaz. Jasper, 174 Wn.2d at 115.

The admission of Ofc. Johnson and Ofc. Schlosser's narrative reports was unconstitutional for the same reasons as the lab report in Melendez-Diaz and the certified driving record in Jasper. The property reports and investigation reports in this case are also the kinds of documents specifically created with an eye toward trial, because they contain information for use by law enforcement and prosecutors for the specific purpose of prosecuting defendants for violations of State criminal laws and are routinely used in trial. Because property reports and law enforcement narratives are essential to establish the chain of custody for admitting evidence against an accused, the primary purpose for creating documents by law enforcement agents investigating a crime is for the use in a prosecution of an individual. Because the reports are testimonial, allowing the forensic investigators to read directly from their reports,

without any independent recollection, deprived Mr. Mitchell of the right to confront the witnesses against him.

This denial of one's confrontation clause rights is particularly dangerous where, as here, the witness sought to be cross-examined is the State's witness providing an essential link in the prosecutor's case. Haber v. Wainwright, 756 F.2d 1520, 1522 (11th Cir. 1985). Indeed, the right to confront specifically arises out of the extreme importance of conducting a thorough examination of witnesses who may have a substantial incentive to cooperate with the prosecution. United States v. Laniford, 955 F.2d 1545, 1548 (11th Cir. 1992); see Kyles v. Whitley, 514 U.S. 419, 436; 115 S.Ct. 1555, 1568, 131 L.Ed.2d 490 (2002) (law enforcement part of prosecution team); United States v. Antone, 603 F.2d 566, 569 (5th Cir. 1979) (prosecution team includes both investigative and prosecutorial personnel).

Mr. Mitchell was also actually and substantially prejudiced by the denial of his confrontation clause rights because, without the improperly admitted reports, the State would have been unable to establish any chain of custody linking the evidence used against Mr. Mitchell to the crime scene. Due to the court's evidentiary ruling, the State was permitted to establish a key element of its case with no opportunity for Mr. Mitchell to challenge the veracity of the testimony against him.

D. Mr. Mitchell was Deprived of Effective Assistance of Trial counsel.

Mr. Mitchell was denied his right to effective assistance of trial counsel when trial counsel (1) failed to relitigate the exclusion of "other suspect" testimony once Mr. Mitchell provided further support through his testimony at trial, (2) failed to object to the prosecutor's improper comments on Mr. Mitchell's credibility and assertions of facts not in evidence, and (3) failed to seek a jury instruction regarding the State's spoliation of evidence.

"Under the sixth amendment to the United States Constitution and article I, section 22 of the Washington State Constitution, a defendant is guaranteed the right to effective assistance of counsel in criminal proceedings." In re Pers. Restraint of Davis, 152 Wash. 2d at 672. To successfully challenge the effective assistance of counsel:

> Petitioner must show that '(1) defense counsel's representation was deficient, i.e., it fell below an objective standard of reasonableness based on consideration of all the circumstances; and (2) defense counsel's deficient representation prejudiced the defendant, i.e., there is a reasonable probability that, except for counsel's unprofessional errors, the result of the proceeding would have been different.

Id. at 672-73. "A reasonable probability is a probability sufficient to undermine confidence in the outcome.'" In re Crace, 174 Wn.2d 835,

840, 280 P.3d 1102, 1105 (2012) (quoting Strickland v. Washington, 466 U.S. 668, 694, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)).

The prejudice prong of the Strickland test is met if "there is a reasonable probability that, except for counsel's unprofessional errors, the result of the proceeding would have been different." In re Pers. Restraint of Davis, 152 Wash. 2d at 672-73. "A reasonable probability is a probability sufficient to undermine confidence in the outcome.'" In re Crace, 174 Wn.2d 835, 840, 280 P.3d 1102, 1105 (2012) (quoting Strickland, 466 U.S. at 694 (1984)). Claims of ineffective assistance of counsel can prevail on the basis of a single prejudicial error, or the cumulative effect of multiple errors. See State v. Coe, 101 Wn.2d 772, 789, 684 P.2d 668 (1984); State v. Hodges, 118 Wn. App. 668, 673, 77 P.3d 375 (2003), review denied, 151 Wn.2d 1031 (2004).

"Appellate review of counsel's performance starts from a strong presumption of reasonableness." State v. Brown, 159 Wn. App. 366, 371, 245 P.3d 776, 777 (2011) (citing State v. Bowerman, 115 Wash.2d 794, 808, 802 P.2d 116 (1990)). An appellant can "rebut this presumption by proving that his attorney's representation was unreasonable under prevailing professional norms and that the challenged action was not sound strategy." In re Pers. Restraint of Davis, 152 Wn.2d 647, 673, 101 P.3d 1, 16 (2004) (citing Kimmelman v. Morrison, 477 U.S. 365, 384, 106

S. Ct. 2574, 91 L. Ed. 2d 305 (1986) (citing Strickland, 466 U.S. at 688-89). "The reasonableness of counsel's performance is to be evaluated from counsel's perspective at the time of the alleged error and in light of all the circumstances." Id.

1. Trial counsel was ineffective for failing to renew efforts to introduce "other suspect" evidence following Mr. Mitchell's testimony.

As set forth hereinabove, Mr. Mitchell was denied his right to present a defense by the trial court's order precluding him from presenting "other suspect" evidence, in particular that implicating Mr. Chandler. In its order granting the State's motion to exclude "other suspect" evidence, the trial court stated that the Mr. Mitchell "may re-litigate the issue of other suspect evidence based on evidence produced or proffered at trial." Attach. I at 2. It is submitted that, applying the standard set forth in Franklin, the facts presented in Mr. Mitchell's pretrial brief provided a sufficient foundation for the presentation of "other suspect" evidence, and the trial court erred in concluding otherwise. See Attach. J.

However, in the alternative, to the extent the facts available at the pretrial stage were insufficient to meet the defense's burden, that burden was easily met by Mr. Mitchell's testimony at trial, which provided direct evidence of "other suspect" responsibility for the crime. See, e.g., Maupin, 128 Wn.2d at 928. Once Mr. Mitchell testified that he saw another man

attack Ms. Robinson presumably on the night of the murder, failing to re-litigate the issue of other suspect evidence fell below an objective standard of reasonableness, particularly given the trial court's express invitation to do so. Had trial counsel re-raised the issue after Mr. Mitchell's testimony, the trial court would have had to allow the introduction of the corroborating "other suspect" evidence implicating Mr. Chandler.

Trial counsel's failure to re-litigate this issue after Mr. Mitchell's testimony further caused actual and substantial prejudice because the jury would have been far more likely to find reasonable doubt if there was corroborating evidence supporting the testimony that another man, known to Ms. Robinson but unknown to Mr. Mitchell, assaulted both of them in Ms. Robinson's apartment shortly before her murder. Accordingly, both prongs of the Strickland test are met with respect to trial counsel's failure to re-litigate the admissibility of other suspect evidence.

2. Trial counsel was ineffective for failing to object to the prosecutor's improper comments during closing arguments.

Trial counsel was further ineffective for failing to object to the prosecutor's improper comments on Mr. Mitchell's credibility and improper assertion of scientific facts not in evidence during closing argument and rebuttal. Once the Court finds that a prosecuting attorney's statements were improper, the defendant must meet a higher standard on appeal to obtain relief if trial counsel failed to object.

Emery, 174 Wn.2d at 760. Specifically, if trial counsel failed to object, "the defendant is deemed to have waived any error, unless the prosecutor's misconduct was so flagrant and ill-intentioned that an instruction could not have cured the resulting prejudice." Id. at 760-61.

By failing to object, Mr. Mitchell's trial counsel failed to contemporaneously and clearly correct the record to avoid planting improper seeds in the minds of the jurors. She also placed on her client a higher burden for establishing reversible error on appeal based on the prosecution's blatant misconduct. There can be no conceivable tactical reason for allowing the State to improperly comment on Mr. Mitchell's credibility and misrepresent the forensic evidence in the record. Trial counsel's conduct was therefore deficient in this respect as well, and Mr. Mitchell was prejudiced thereby.

3. Trial counsel was ineffective for failing to seek a jury instruction regarding the State's spoliation of evidence.

Det. O'Hern discovered the likely murder weapon, a bloody knife, which was discovered on or immediately following the night of Ms. Robinson's death. 02.08.16 RP 834-35, Attach. D. Remarkably, the State failed to analyze or preserve this crucial evidence. 02.08.16 RP 834-35. The proper remedy for such a failure to preserve critical evidence is an instruction advising the jury that it may infer the evidence would have been unfavorable to the party that failed to preserve it.

"When a party fails to produce relevant evidence within its control, without satisfactory explanation, the inference is that such evidence would be unfavorable to the nonproducing party." Lynott v. National Union Fire Ins. Co. of Pittsburgh, Pa., 123 Wn.2d 678, 689, 871 P.2d 146 (1994) (citing Pier 67, Inc. v. King County, 89 Wn.2d 379, 385-86, 573 P.2d 2 (1977)). In deciding whether to apply a spoliation inference, the following two factors are considered: (1) the potential importance or relevance of the missing evidence and (2) the culpability or fault of the adverse party. Tavai v. Walmart Stores, Inc., 176 Wn. App. 122, 135, 307 P.3d 811 (2013) (citing Henderson v. Tyrrell, 80 Wn. App. 592, 607, 910 P.2d 522 (1996)). "In weighing the importance of the evidence, we consider whether the adverse party was given an adequate opportunity to examine it." Tavai, 176 Wn. App. at 135.

In Mr. Mitchell's case, the potential importance or relevance of the missing evidence cannot be overstated. Few categories of evidence are more important than murder weapons in homicide cases. Mr. Mitchell was given no opportunity to examine this critical evidence and had no independent means of obtaining this evidence. Someone else's DNA on the murder weapon would have corroborated Mr. Mitchell's testimony and proven his innocence. The first factor thus weighs in favor of an inference instruction.

"As for culpability, we examine whether the party acted in bad faith or conscious disregard of the importance of the evidence or whether there was some innocent explanation for the destruction." Tavai, 176 Wn. App. at 135. In this regard, consideration is also given to whether the party violated a duty to preserve the evidence and whether the party knew the evidence was important to the pending litigation. Id.; Homeworks Const., Inc. v. Wells, 133 Wn. App. 892, 900, 138 P.3d 654 (2006).

Although the record is silent as to bad faith, there is no innocent explanation for the destruction of this evidence. The only conclusion that can be drawn is that, by failing to preserve the murder weapon, law enforcement acted with conscious disregard for its importance. See Homeworks, 133 Wn. App. at 900 (spoliation "encompasses a broad range of acts beyond those that are purely intentional or done in bad faith.") (citing Henderson, 80 Wn. App. at 605). This conclusion is supported by the fact that the State had a duty to preserve the evidence and failed to comply with that duty.

Under these circumstances, defense counsel's performance was deficient for failing to seek to instruct the jury to infer that the murder weapon evidence would be unfavorable to the nonproducing party in the event they found the State's explanation for the failure to preserve the evidence unsatisfactory. Mr. Mitchell was clearly prejudiced by this

deficient performance because, had the jury been so instructed, Mr. Mitchell's testimony would have been strongly corroborated by the inference. See Strickland, 466 U.S. at 688-89.

E. The Cumulative Errors Deprived Mr. Mitchell of His Right to a Fair Trial.

"Cumulative error may warrant reversal, even if each error standing alone would otherwise be considered harmless." State v. Weber, 159 Wn.2d 252, 279, 149 P.3d 646 (2006). In this case, most of the errors described above would, individually, warrant reversal. The accumulation of error, however, was all the more prejudicial. Mr. Mitchell was denied his right to a fair trial and this Court should reverse his conviction and remand for a new trial.

F. Mr. Mitchell Received Ineffective Assistance of Appellate Counsel

Mr. Mitchell also received ineffective assistance at the appellate stage following remand. Article 1, § 22 (amend. 10) states, in pertinent part: "In criminal prosecutions the accused shall have ... the right to appeal in all cases." In Evitts v. Lucey, the United States Supreme Court held that a defendant is entitled to effective assistance of counsel in an "appeal as of right." Evitts v. Lucey, 469 U.S. 387, 397, 105 S.Ct. 830, 83 L.Ed.2d 821, reh'g denied, 470 U.S. 1065, 105 S.Ct. 1783, 84 L.Ed.2d 841 (1985).

Thus, on appeal Mr. Mitchell also had a Sixth Amendment right to the effective assistance of counsel.

To demonstrate ineffective assistance of appellate counsel, a petitioner must show that counsel's representation fell below an objective standard of reasonableness, and that there is a reasonable probability that but for counsel's unprofessional errors, appellant would have prevailed on appeal. See In re Brown, 143 Wn.2d 431, 452, 21 P.3d 687 (2001) ("[T]o prevail on the appellate ineffectiveness claim, [Petitioner] must show the merit of the underlying legal issues his appellate counsel failed to raise"). Appellate counsel's failures to raise meritorious issues, each of which would have resulted in a lesser sentence for Mr. Mitchell, constitutes deficient performance. In re Morris, 176 Wn.2d 157, 288 P.3d 1140 (2012).

Specifically, appellate counsel following remand failed to raise the issues of (1) the trial court's erroneous decision to exclude "other suspect" evidence; (2) the prosecutor's misconduct during closing arguments; (3) the trial court's improper evidentiary ruling allowing the forensic officers to read from their reports; (4) ineffective assistance of counsel; and (5) cumulative error based on the foregoing errors. As set forth hereinabove, each of these issues has merit, and entitle Mr. Mitchell to relief. Because each of these issues have merit, failing to raise them on appeal falls below

an objective standard of reasonableness. Mr. Mitchell was prejudiced by this deficient performance to the extent Mr. Mitchell is denied relief as to any of these issues on the grounds that the issue should have been raised in the direct appeal, or on the grounds that Mr. Mitchell has failed to meet the higher standards imposed on personal restraint petitioners as compared to the prevailing standards on direct appeal.

V. CONCLUSION

For the foregoing reasons, it is respectfully requested that the Court grant the PRP, vacate Mr. Mitchell's conviction and sentence, and remand for further proceedings. Alternatively, Mr. Mitchell requests remand for a hearing on any factual issues the Court may believe require further development through an evidentiary hearing.

Respectfully submitted this 6th day of November, 2018.

LAW OFFICE OF COREY EVAN PARKER

Corey Evan Parker, WSBA #40006
Attorney for Petitioner, James Mitchell

OATH

I declare under penalty of perjury under the laws of the State of Washington that I am the attorney for the petitioner, that I have read the petition, know its contents, and I believe the petition is true.

Respectfully submitted this 6th day of November, 2018.

LAW OFFICE OF COREY EVAN PARKER

By Corey Evan Parker
Corey Evan Parker, WSBA #40006
Attorney for Petitioner

CERTIFICATE OF SERVICE

I, Corey Parker, certify under penalty of perjury under the laws of the United States and of the State of Washington that on November 6, 2018, I caused to be served the document to which this is attached to the parties listed below in the manner shown next to their names:

Attorney for Respondent:

Pierce County Appellate Unit
PCpatcecf@co.pierce.wa.us

- ☐ By First Class Mail
- ☐ By Fed Express
- ☐ By Facsimile
- ☐ By Hand Delivery
- ☐ By Messenger
- ☒ By Email

Appellant:

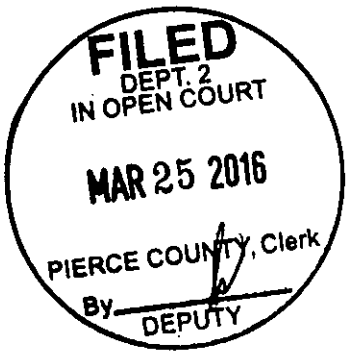
VIA LEGAL MAIL
James Mitchell - DOC #731240
Monroe Correctional Complex – WSR
PO Box 777
Monroe, WA 98272

Corey Evan Parker

Corey Evan Parker

APPENDIX

Attachment “A”



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON, Plaintiff, vs. JAMES EDWARD MITCHELL Defendant. SID: 15497498 DOB: 08-06-1963	CAUSE NO. 14-1-02979-1 MAR 2 8 2016 JUDGMENT AND SENTENCE (FJS) [X] Prison [ ] RCW 9.94A.712\9.94A.507 Prison Confinement [ ] Jail One Year or Less [ ] First-Time Offender [ ] Special Sexual Offender Sentencing Alternative [ ] Special Drug Offender Sentencing Alternative [ ] Alternative to Confinement (ATC) **[ ] Clerk's Action Required, para 4.5 (SDOSA), 4.7 and 4.8 (SSOSA) 4.15.2, 5.3, 5.6 and 5.8** **[ ]Juvenile Decline [ ]Mandatory [ ]Discretionary**

I. HEARING

1.1 A sentencing hearing was held and the defendant, the defendant's lawyer and the (deputy) prosecuting attorney were present.

II. FINDINGS

There being no reason why judgment should not be pronounced, the court FINDS:

2.1 **CURRENT OFFENSE(S)**: The defendant was found guilty on 02-24-2016 by [ ] plea [X] jury-verdict [ ] bench trial of:

COUNT	CRIME	RCW	ENHANCEMENT TYPE*	DATE OF CRIME	INCIDENT NO.
I	MURDER 1 (D1)	9A.32.030	None (N/A)	02-06-1993	930371041 PCSD

* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom, See RCW 46.61.520, (JP) Juvenile present, (SM) Sexual Motivation, (SCF) Sexual Conduct with a Child for a Fee. See RCW 9.94A.533(8). (If the crime is a drug offense, include the type of drug in the second column.)

as charged in the Amended Information

[ ] Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.589):

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930 Tacoma Avenue S. Room 946
Tacoma, Washington 98402-2171
Telephone: (253) 798-7400

16-9-02589-8

[ ] Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

2.2 **CRIMINAL HISTORY (RCW 9.94A.525):**

	CRIME	DATE OF SENTENCE	SENTENCING COURT	DATE OF CRIME	A or J ADULT JUV	TYPE OF CRIME
1	ARMED ROBBERY	07-02-84	ORANGE CO, FL	10-06-82	A	V
2	ATTEMPT UPCS	01-13-95	PIERCE CO, WA	05-16-94	A	NV
3	UPCS	12-12-96	PIERCE CO, WA	10-24-96	A	NV
4	CONSP UDCS	03-25-99	PIERCE CO, WA	01-05-99	A	NV
5	CONSP UDCS	07-09-99	PIERCE CO, WA	04-20-99	A	NV
6	COSNP UDCS	08-09-00	PIERCE CO, WA	06-12-00	A	NV
7	UDCS	11-14-02	PIERCE CO, WA	05-21-02	A	NV

[ ] The court finds that the following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.525):

2.3 **SENTENCING DATA:**

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
I	8	XIV	370 - 493 mos	(none)	370 - 493 mos	Life

2.4 [ ] **EXCEPTIONAL SENTENCE.** Substantial and compelling reasons exist which justify an exceptional sentence:

[ ] within [ ] below the standard range for Count(s) _____.

[ ] above the standard range for Count(s) _____.

[ ] The defendant and state stipulate that justice is best served by imposition of the exceptional sentence above the standard range and the court finds the exceptional sentence furthers and is consistent with the interests of justice and the purposes of the sentencing reform act.

[ ] Aggravating factors were [ ] stipulated by the defendant, [ ] found by the court after the defendant waived jury trial, [ ] found by jury by special interrogatory.

Findings of fact and conclusions of law are attached in Appendix 2.4. [ ] Jury's special interrogatory is attached. The Prosecuting Attorney [ ] did [ ] did not recommend a similar sentence.

2.5 **ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS.** The court has considered the total amount owing, the defendant's past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.753.

[ ] The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.753):

_____

[ ] The following extraordinary circumstances exist that make payment of nonmandatory legal financial obligations inappropriate:

_____

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2.6 [ ] **FELONY FIREARM OFFENDER REGISTRATION.** The defendant committed a felony firearm offense as defined in RCW 9.41.010.

[ ] The court considered the following factors:

[ ] the defendant's criminal history.

[ ] whether the defendant has previously been found not guilty by reason of insanity of any offense in this state or elsewhere.

[ ] evidence of the defendant's propensity for violence that would likely endanger persons.

[ ] other: _____

[ ] The court decided the defendant [ ] should [ ] should not register as a felony firearm offender.

III. JUDGMENT

3.1 The defendant is GUILTY of the Counts and Charges listed in Paragraph 2.1.

3.2 [ ] The court DISMISSES Counts _____ [ ] The defendant is found NOT GUILTY of Counts

_____

IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of this Court: (Pierce County Clerk, 930 Tacoma Ave #110, Tacoma WA 98402)

JASS CODE

RTN/RJN $ TBD Restitution to: LOC/TBD

$ _____ Restitution to: _____

(Name and Address--address may be withheld and provided confidentially to Clerk's Office).

PCV $ 500.00 Crime Victim assessment

DNA $ 100.00 DNA Database Fee

PUB $ _____ Court-Appointed Attorney Fees and Defense Costs

FRC $ 200.00 Criminal Filing Fee

FCM $ _____ Fine

OTHER LEGAL FINANCIAL OBLIGATIONS (specify below)

$_____ Other Costs for: _____

$_____ Other Costs for: _____

$ 800.00 TOTAL.

X The above total does not include all restitution which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.753. A restitution hearing:

X shall be set by the prosecutor.

[ ] is scheduled for _____

[ ] **RESTITUTION.** Order Attached

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[ ] The Department of Corrections (DOC) or clerk of the court shall immediately issue a Notice of Payroll Deduction. RCW 9.94A.7602, RCW 9.94A.760(8).

[X] All payments shall be made in accordance with the policies of the clerk, commencing immediately, unless the court specifically sets forth the rate herein: Not less than $_____ per month commencing . _____. RCW 9.94.760. If the court does not set the rate herein, the defendant shall report to the clerk's office within 24 hours of the entry of the judgment and sentence to set up a payment plan.

The defendant shall report to the clerk of the court or as directed by the clerk of the court to provide financial and other information as requested. RCW 9.94A.760(7)(b)

[ ] **COSTS OF INCARCERATION.** In addition to other costs imposed herein, the court finds that the defendant has or is likely to have the means to pay the costs of incarceration, and the defendant is ordered to pay such costs at the statutory rate. RCW 10.01.160.

COLLECTION COSTS The defendant shall pay the costs of services to collect unpaid legal financial obligations per contract or statute. RCW 36.18.190, 9.94A.780 and 19.16.500.

INTEREST The financial obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090

COSTS ON APPEAL An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW. 10.73.160.

4.1b **ELECTRONIC MONITORING REIMBURSEMENT.** The defendant is ordered to reimburse _____ (name of electronic monitoring agency) at _____, for the cost of pretrial electronic monitoring in the amount of $_____.

4.2 [X] **DNA TESTING.** The defendant shall have a blood/biological sample drawn for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency, the county or DOC, shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754.

[ ] **HIV TESTING.** The Health Department or designee shall test and counsel the defendant for HIV as soon as possible and the defendant shall fully cooperate in the testing. RCW 70.24.340.

4.3 **NO CONTACT**

The defendant shall not have contact with family of Linda Robinson including, but not limited to, personal, verbal, telephonic, written or contact through a third party for life (not to exceed the maximum statutory sentence).

[ ] Domestic Violence No-Contact Order, Antiharassment No-Contact Order, or Sexual Assault Protection Order is filed with this Judgment and Sentence.

4.4 **OTHER:** Property may have been taken into custody in conjunction with this case. Property may be returned to the rightful owner. Any claim for return of such property must be made within 90 days. After 90 days, if you do not make a claim, property may be disposed of according to law.

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4.4a Property may have been taken into custody in conjunction with this case. Property may be returned to the rightful owner. Any claim for return of such property must be made within 90 days unless forfeited by agreement in which case no claim may be made. After 90 days, if you do not make a claim, property may be disposed of according to law.

4.4b **BOND IS HEREBY EXONERATED**

4.5 **CONFINEMENT OVER ONE YEAR.** The defendant is sentenced as follows:

(a) **CONFINEMENT.** RCW 9.94A.589. Defendant is sentenced to the following term of total confinement in the custody of the Department of Corrections (DOC):

450 months on Count I

Actual number of months of total confinement ordered is: 450 MONTHS

(Add mandatory firearm, deadly weapons, and sexual motivation enhancement time to run consecutively to other counts, see Section 2.3, Sentencing Data, above).

[ ] The confinement time on Count(s) _____ contain(s) a mandatory minimum term of _____.

CONSECUTIVE/CONCURRENT SENTENCES. RCW 9.94A.589. All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of a firearm, other deadly weapon, sexual motivation, VUCSA in a protected zone, or manufacture of methamphetamine with juvenile present as set forth above at Section 2.3, and except for the following counts which shall be served consecutively: _____

The sentence herein shall run consecutively to all felony sentences in other cause numbers imposed prior to the commission of the crime(s) being sentenced. The sentence herein shall run concurrently with felony sentences in other cause numbers imposed after the commission of the crime(s) being sentenced except for the following cause numbers. RCW 9.94A.589: _____

Confinement shall commence immediately unless otherwise set forth here: _____

(c) The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.505. The time served shall be computed by the jail unless the credit for time served prior to sentencing is specifically set forth by the court: 530 DAYS.

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4.6 [X] **COMMUNITY PLACEMENT** (pre 7/1/00 offenses) is ordered as follows:

Count I for 24 months;

Count _____ for _____ months;

Count _____ for _____ months;

[ ] **COMMUNITY CUSTODY** (To determine which offenses are eligible for or required for community custody see RCW 9.94A.701)

The defendant shall be on community custody for:

Count(s) _____ 36 months for Serious Violent Offenses

Count(s) _____ 18 months for Violent Offenses

Count(s) _____ 12 months (for crimes against a person, drug offenses, or offenses involving the unlawful possession of a firearm by a street gang member or associate)

Note: combined term of confinement and community custody for any particular offense cannot exceed the statutory maximum. RCW 9.94A.701.

(B) While on community placement or community custody, the defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at DOC-approved education, employment and/or community restitution (service); (3) notify DOC of any change in defendant's address or employment; (4) not consume controlled substances except pursuant to lawfully issued prescriptions; (5) not unlawfully possess controlled substances while in community custody; (6) not own, use, or possess firearms or ammunition; (7) pay supervision fees as determined by DOC; (8) perform affirmative acts as required by DOC to confirm compliance with the orders of the court; (9) abide by any additional conditions imposed by DOC under RCW 9.94A.704 and .706 and (10) for sex offenses, submit to electronic monitoring if imposed by DOC. The defendant's residence location and living arrangements are subject to the prior approval of DOC while in community placement or community custody. Community custody for sex offenders not sentenced under RCW 9.94A.712 may be extended for up to the statutory maximum term of the sentence. Violation of community custody imposed for a sex offense may result in additional confinement.

The court orders that during the period of supervision the defendant shall:

[ ] consume no alcohol.

[ ] have no contact with: _____

[ ] remain [ ] within [ ] outside of a specified geographical boundary, to wit: _____

_____

[ ] not serve in any paid or volunteer capacity where he or she has control or supervision of minors under 13 years of age

[ ] participate in the following crime-related treatment or counseling services: _____

_____

[ ] undergo an evaluation for treatment for [ ] domestic violence [ ] substance abuse [ ] mental health [ ] anger management and fully comply with all recommended treatment.

[ ] comply with the following crime-related prohibitions: _____

_____

[ ] Other conditions:

_____

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[ ] For sentences imposed under RCW 9.94A.702, other conditions, including electronic monitoring, may be imposed during community custody by the Indeterminate Sentence Review Board, or in an emergency by DOC. Emergency conditions imposed by DOC shall not remain in effect longer than seven working days.

Court Ordered Treatment: If any court orders mental health or chemical dependency treatment, the defendant must notify DOC and the defendant must release treatment information to DOC for the duration of incarceration and supervision. RCW 9.94A.562.

PROVIDED: That under no circumstances shall the total term of confinement plus the term of community custody actually served exceed the statutory maximum for each offense

4.7 [ ] **WORK ETHIC CAMP**. RCW 9.94A.690, RCW 72.09.410. The court finds that the defendant is eligible and is likely to qualify for work ethic camp and the court recommends that the defendant serve the sentence at a work ethic camp. Upon completion of work ethic camp, the defendant shall be released on community custody for any remaining time of total confinement, subject to the conditions below. Violation of the conditions of community custody may result in a return to total confinement for the balance of the defendant's remaining time of total confinement. The conditions of community custody are stated above in Section 4.6.

4.8 **OFF LIMITS ORDER** (known drug trafficker) RCW 10.66.020. The following areas are off limits to the defendant while under the supervision of the County Jail or Department of Corrections: _____

V. NOTICES AND SIGNATURES

5.1 **COLLATERAL ATTACK ON JUDGMENT**. Any petition or motion for collateral attack on this Judgment and Sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090.

5.2 **LENGTH OF SUPERVISION**. For an offense committed prior to July 1, 2000, the defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for the purpose of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505. The clerk of the court is authorized to collect unpaid legal financial obligations at any time the offender remains under the jurisdiction of the court for purposes of his or her legal financial obligations. RCW 9.94A.760(4) and RCW 9.94A.753(4).

5.3 **NOTICE OF INCOME-WITHHOLDING ACTION**. If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections or the clerk of the court may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW

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9.94A.7602. Other income-withholding action under RCW 9.94A may be taken without further notice. RCW 9.94A.760 may be taken without further notice. RCW 9.94A.7606.

5.4 **RESTITUTION HEARING.**

[X] Defendant waives any right to be present at any restitution hearing (sign initials): SM

5.5 **CRIMINAL ENFORCEMENT AND CIVIL COLLECTION.** Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. Per section 2.5 of this document, legal financial obligations are collectible by civil means. RCW 9.94A.634.

5.6 **FIREARMS. You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a court of record.** (The court clerk shall forward a copy of the defendant's driver's license, identicard, or comparable identification to the Department of Licensing along with the date of conviction or commitment.) RCW 9.41.040, 9.41.047.

5.7 **SEX AND KIDNAPPING OFFENDER REGISTRATION.** RCW 9A.44.130, 10.01.200.

N/A

5.8 [ ] The court finds that Count _____ is a felony in the commission of which a motor vehicle was used. The clerk of the court is directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke the defendant's driver's license. RCW 46.20.285.

5.9 If the defendant is or becomes subject to court-ordered mental health or chemical dependency treatment, the defendant must notify DOC and the defendant's treatment information must be shared with DOC for the duration of the defendant's incarceration and supervision. RCW 9.94A.562.

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5.10 OTHER: _____

DONE in Open Court and in the presence of the defendant this date: 3-25-2016

JUDGE: _____
Print name KATHERINE M. STOLZ

Deputy Prosecuting Attorney
Print name: _____
WSB # 25470

Attorney for Defendant
Print name: Mark Hugh
WSB # 20123

Defendant
Print name: James Mitchell

Voting Rights Statement: I acknowledge that I have lost my right to vote because of this felony conviction. If I am registered to vote, my voter registration will be cancelled.

My right to vote is provisionally restored as long as I am not under the authority of DOC (not serving a sentence of confinement in the custody of DOC and not subject to community custody as defined in RCW 9.94A.030). I must re-register before voting. The provisional right to vote may be revoked if I fail to comply with all the terms of my legal financial obligations or an agreement for the payment of legal financial obligations.

My right to vote may be permanently restored by one of the following for each felony conviction: a) a certificate of discharge issued by the sentencing court, RCW 9.94A.637; b) a court order issued by the sentencing court restoring the right, RCW 9.92.066; c) a final order of discharge issued by the indeterminate sentence review board, RCW 9.96.050; or d) a certificate of restoration issued by the governor, RCW 9.96.020. Voting before the right is restored is a class C felony, RCW 29A.84.660. Registering to vote before the right is restored is a class C felony, RCW 29A.84.140.

Defendant's signature: _____

FILED
DEPT. 2
IN OPEN COURT
MAR 25 2016
PIERCE COUNTY, Clerk
By _____
DEPUTY

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Tacoma, Washington 98402-2171
Telephone: (253) 798-7400

CERTIFICATE OF CLERK

CAUSE NUMBER of this case: 14-1-02979-1

I, KEVIN STOCK Clerk of this Court, certify that the foregoing is a full, true and correct copy of the Judgment and Sentence in the above-entitled action now on record in this office.

WITNESS my hand and seal of the said Superior Court affixed this date:

_____

Clerk of said County and State, by: _____, Deputy Clerk

IDENTIFICATION OF COURT REPORTER

KIMBERLY A. O'NEILL

_____

Court Reporter

Office of Prosecuting Attorney
930 Tacoma Avenue S. Room 946
Tacoma, Washington 98402-2171
Telephone: (253) 798-7400

APPENDIX "F"

The defendant having been sentenced to the Department of Corrections for a:

_____ sex offense
___✓___ serious violent offense
_____ assault in the second degree
_____ any crime where the defendant or an accomplice was armed with a deadly weapon
_____ any felony under 69.50 and 69.52

The offender shall report to and be available for contact with the assigned community corrections officer as directed:

The offender shall work at Department of Corrections approved education, employment, and/or community service;

The offender shall not consume controlled substances except pursuant to lawfully issued prescriptions:

An offender in community custody shall not unlawfully possess controlled substances;

The offender shall pay community placement fees as determined by DOC:

The residence location and living arrangements are subject to the prior approval of the department of corrections during the period of community placement.

The offender shall submit to affirmative acts necessary to monitor compliance with court orders as required by DOC.

The Court may also order any of the following special conditions:

_____ (I) The offender shall remain within, or outside of, a specified geographical boundary: _____

_____

_____ (II) The offender shall not have direct or indirect contact with the victim of the crime or a specified class of individuals: _____

_____

_____ (III) The offender shall participate in crime-related treatment or counseling services;

_____ (IV) The offender shall not consume alcohol; _____

_____ (V) The residence location and living arrangements of a sex offender shall be subject to the prior approval of the department of corrections; or

_____ (VI) The offender shall comply with any crime-related prohibitions.

_____ (VII) Other: _____

_____

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Telephone: (253) 798-7400

IDENTIFICATION OF DEFENDANT

FILED
DEPT. 2
IN OPEN COURT
MAR 25 2016
PIERCE COUNTY, Clerk
By _____ DEPUTY

SID No. 15497498 Date of Birth 08-06-1963
(If no SID take fingerprint card for State Patrol)

FBI No. UNKNOWN Local ID No. UNKNOWN

PCN No. UNKNOWN Other

Alias name, SSN, DOB: _____

Race:						Ethnicity:		Sex:	
[ ]	Asian/Pacific Islander	[X]	Black/African-American	[ ]	Caucasian	[ ]	Hispanic	[X]	Male
[ ]	Native American	[ ]	Other: :			[ ]	Non-Hispanic	[ ]	Female

FINGERPRINTS

Left four fingers taken simultaneously

Left Thumb

Right Thumb

Right four fingers taken simultaneously

I attest that I saw the same defendant who appeared in court on this document affix his or her fingerprints and signature thereto. Clerk of the Court, Deputy Clerk, L. Gripman

Dated: 3/25/2016

DEFENDANT'S SIGNATURE:

DEFENDANT'S ADDRESS:
c/o Dept. of Corrections

Office of Prosecuting Attorney
930 Tacoma Avenue S. Room 946
Tacoma, Washington 98402-2171
Telephone: (253) 798-7400

Attachment “B”

1
2
3
4
5 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE
6

STATE OF WASHINGTON,	)	
	)	Superior Court
Plaintiff,	)	No. 14-1-02979-1
	)	
vs.	)	Court of Appeals
	)	No. 48810-8-II
JAMES EDWARD MITCHELL,	)	
	)	
Defendant.	)	

VERBATIM REPORT OF PROCEEDINGS

Monday, January 25, 2016
Pierce County Courthouse
Before The Honorable Katherine M. Stolz
Tacoma, Washington

<<<<<< >>>>>>

A P P E A R A N C E S

For the Plaintiff: STEPHEN M. PENNER
Deputy Prosecuting Attorney

For the Defendant: MARY K. HIGH
Attorney at Law

Kimberly A. O'Neill, CCR #1954
Official Court Reporter
Department 2, Room 214A
(253) 798-7281

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No. 48810-8-II

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1 BE IT REMEMBERED that on Monday, the 25th
2 day of January, 2016, the above-captioned cause came on duly
3 for hearing before THE HONORABLE KATHERINE M. STOLZ, Judge
4 of the Superior Court in and for the county of Pierce, state
5 of Washington; the following proceedings were had, to wit:
6
7 <<<<<< >>>>>>
8
9 (The defendant was present.)
10 (The jury was not present.)
11 THE COURT: All right. I understand we
12 have one emergency to deal with.
13 MR. PENNER: Yes, Your Honor.
14 THE COURT: Apparently, Juror No. 7's
15 husband died over the weekend.
16 THE JUDICIAL ASSISTANT: Ex-husband.
17 THE COURT: Ex-husband. Her ex-husband,
18 and her children's father, died Saturday, and she had taken
19 him to the hospital on Friday; so she's asking to be excused
20 from jury service. I assume neither of you have a problem
21 with that.
22 MR. PENNER: No, Your Honor.
23 MS. HIGH: No, Your Honor.
24 THE COURT: All right. Okay. Then we'll
25 excuse No. 7 for cause.

1 MR. PENNER: Should we -- Your Honor, I
2 don't know if we ever --
3 THE COURT: I think we'll move 13 over to
4 7 --
5 MR. PENNER: Okay.
6 THE COURT: -- and then the other two can
7 move over.
8 MR. PENNER: Okay.
9 THE COURT: All right. Anything else?
10 MR. PENNER: Not from the State, Your
11 Honor.
12 MS. HIGH: No. Thank you, Your Honor.
13 THE COURT: All right. Then we'll bring
14 the jury in.
15 MR. PENNER: Well, actually, I guess
16 there's one thing, Your Honor, from a scheduling standpoint.
17 It's always hard to predict how long witnesses will take, so
18 I have two scheduled for this morning and two scheduled for
19 this afternoon.
20 THE COURT: We'll see how it goes.
21 MR. PENNER: Yeah, if we get done early, I
22 may ask the Court to adjourn before noon.
23 THE COURT: Well, yeah, if we get done
24 early, I'm always pleased.
25 MR. PENNER: Okay.

1 THE COURT: And I'm sure the jury would be
2 pleased, and we'll basically deal with it.
3 MR. PENNER: Okay. Thank you.
4 THE COURT: And, Ms. Shipman, would you
5 instruct No. 13 that he is to take Seat No. 7.
6 THE JUDICIAL ASSISTANT: Yes.
7 THE COURT: Okay. Thank you.
8 MR. PENNER: Your Honor, should we do that
9 kind of publicly to the whole jury and let them know Juror 7
10 has been excused?
11 THE COURT: Well, once we bring them in,
12 we'll tell them why.
13 MR. PENNER: Okay.
14 THE COURT: But it's on the record at this
15 point.
16 THE JUDICIAL ASSISTANT: Your Honor, am I
17 telling Juror No. 13 to sit in No. 7's spot?
18 THE COURT: Yes. 13 moves up to 7. All
19 right. This isn't the first trial that we've had where
20 we've lost jurors before we even started testimony.
21 (The jury was present.)
22 THE COURT: All right. If you'll be
23 seated. We've excused Juror No. 7 for cause, so that's why
24 13 has moved up. All right. Now, at this time, we'll
25 commence testimony. Mr. Penner, you may call your first

1 witness.
2 MR. PENNER: Thank you, Your Honor. The
3 State will call Tim Kobel.
4 TIM KOBEL, witness herein, having been sworn
5 under oath, was examined and
6 testified as follows:
7 THE COURT: All right. If you'll have a
8 seat, sir. There's water and Kleenex to your right. You
9 can pull the mic towards yourself. Please keep your voice
10 up; and when answering, answer yes or no; don't just nod or
11 shake your head.
12 THE WITNESS: Thank you.
13 THE COURT: All right. Mr. Penner, your
14 witness.
15 MR. PENNER: Thank you, Your Honor.
16 DIRECT EXAMINATION
17 BY MR. PENNER:
18 Q. Could you please state your name for the record and spell it
19 for the court reporter.
20 A. My name is Tim Kobel, last name is spelled K-O-B-E-L.
21 Q. And how are you employed, sir?
22 A. I'm employed with the Pierce County Sheriff's Department.
23 THE COURT: Can everybody hear him?
24 THE JURORS: (Nod heads.)
25 THE COURT: Okay.

1 Q. (By Mr. Penner) In what capacity?
2 A. I'm a detective sergeant in the Homicide Unit.
3 Q. How long have you been with the Pierce County Sheriff's
4 Department?
5 A. Over 35 years.
6 Q. And how long have you been a detective sergeant?
7 A. Hmm, I believe about 23 years.
8 Q. Prior to being a detective sergeant, what were some of the
9 roles or assignments that you've had?
10 A. I was a bomb technician, obviously a deputy on patrol. I
11 was a K-9 handler. I worked in the Vice Drug Unit before I
12 became a detective.
13 Q. What's the difference between a detective and a detective
14 sergeant?
15 A. Well, back in the old days, when -- and with the "old days,"
16 I'm talking about back in '92 -- when you promoted to
17 detective, you were equal rank. You were considered a
18 detective sergeant. As time progresses and unions progress
19 and everything else progresses, they decided to change the
20 classification; so now when the deputies test for detective,
21 they take a test. When they test up the ranks, whether to a
22 patrol sergeant or a detective sergeant, they test again.
23 Q. Okay. So were you a detective first, or have you been a
24 detective sergeant since you made detective?
25 A. I've been a detective sergeant since I got promoted.

1 Q. All right. What kind of assignments have you had as a
2 detective sergeant?
3 A. Generally, I started out in general assignment, anything
4 that came down the pike, you know, burglaries, thefts, minor
5 assaults. Then I went into the Special Assault Unit which
6 is, basically, sexual assault. I also supervise the
7 Property Crimes Unit and the Juvenile Investigation
8 Division. I then went into homicide. I spent, I think,
9 seven-and-a-half years in Internal Affairs which is,
10 basically, investigating complaints against police officers.
11 Q. Okay. Now, you mentioned homicides. Does the Sheriff's
12 Department have a specific homicide division?
13 A. They do.
14 Q. Okay. And where are you currently assigned?
15 A. I'm within the Homicide Unit, but I specifically, now, just
16 work cold case homicides.
17 Q. Okay. How long have you been doing homicides?
18 A. Well, my first homicide was assigned to me back in 1992, so
19 basically my whole detective career.
20 Q. All right. Do you investigate other types of crimes?
21 A. I do. I investigate officer-involved shootings; and in some
22 cases, I go into other departments and other counties to
23 assist and consult with other types of high-profile cases.
24 Q. If there's a homicide call-out, you know, this past weekend
25 or recently, are you on the rotation to go out to those

1 anymore?
2 A. Not anymore. I was up until, oh, probably about four or
3 five months ago; but I'm getting ready to retire.
4 Q. Okay. So do you have an estimate of the number of homicide
5 investigations you've been involved in?
6 A. I've worked over 200.
7 Q. All right. What are some typical steps in a homicide
8 investigation?
9 A. Well, I don't know if there's anything typical, but
10 everybody starts off at the crime scene. That's where you
11 get briefed by the first responders, whether it's
12 firefighters, whether it's deputies on the scene.
13 Generally, by the time we arrive, they identify witnesses.
14 Hopefully, they've cordoned off the crime scene and
15 preserved the evidence within. Then we started making job
16 assignments, depending upon who the lead detective is. He
17 generally assigns who gets the crime scene, who gets to
18 interview witnesses, who gets to canvas neighborhoods,
19 apartment complexes, who gets to crawl in and out of
20 dumpsters looking for evidence; and it just progresses.
21 Q. And let me follow up on that so that -- the detective
22 doesn't do all those things himself or herself?
23 A. No. A lead detective usually has a team of officers or
24 detectives that are called out to the scene.
25 Q. Okay. So what is the role of a detective, I guess,

1 generally, or more specifically in a homicide investigation
2 as compared to patrol officers, sergeants, other detectives?
3 A. Well, generally, their responsibility is to freeze
4 everything as they found it. They don't really do the
5 canvassing unless it's a very unique situation.
6 Sometimes --
7 Q. Let me interrupt, and let the jury know what you mean by
8 canvassing.
9 A. Canvassing is going door to door, house to house, attempting
10 to locate witnesses and/or find out what people have heard
11 or seen during the time that this crime was being committed.
12 Q. Okay. What about decisions about evidence collection or
13 testing of evidence? What's the role of the detective in
14 that?
15 A. Well, it's -- it's -- actually, it's kind of teamwork.
16 Basically, you -- you have a detective that's assigned to
17 the crime scene. He's responsible for the conduct and the
18 work that's done inside the scene. He generally works as a
19 team member with forensic investigators that come out to
20 photograph the scene and to collect the physical evidence.
21 They can discuss the evidence within the crime scene, what
22 needs to be collected, what doesn't need to be, what needs
23 to be photographed, what doesn't need to be; and then later
24 down the road, there are some things that are automatically
25 done by the forensic investigators, stuff that they know

1 that's going to need lab work; and then there's other stuff,
2 that the crime scene detective or the lead homicide
3 detective will look at the evidence and start making some
4 determination on the foundation he wants to lay for this
5 investigation and whether it goes to the lab or not.
6 Q. Have you ever been to a crime scene where you went through
7 it with the forensics officers to determine what should be
8 photographed and picked up?
9 A. Yes, I have.
10 Q. All right. Have you ever done a crime scene where you let
11 the forensic investigators do that themselves?
12 A. Not completely by themselves; but, you know, I've worked
13 with some that have been doing the job for years. They know
14 what needs to be done and how it's to be done; and, you
15 know, I don't need to dictate to them how to do it.
16 Q. I want to talk to you about the concept of a cold case; but
17 to do that, let's back up a little bit. Once you've
18 investigated a case, is there a point where a case can be
19 considered closed by the law enforcement agency?
20 A. Yes, there is.
21 Q. All right. And how do you get to that? What are some ways
22 that a case becomes closed as far as you're concerned?
23 A. Well, the only way a case gets closed is when a suspect has
24 been identified and the case has been produced to the
25 Prosecutor's Office; and they believe that there's enough

1 probable cause to charge this individual for the crime.
2 Q. Okay. And are there -- have you had cases where that's a
3 relatively quick process?
4 A. Yes.
5 Q. Okay. Have you had cases where it's a little bit longer?
6 A. Years, yes.
7 Q. Can a case ever be considered closed if a suspect isn't
8 identified?
9 A. No. They're always considered active. They're never
10 closed.
11 Q. Let's talk about the concept of "active" then. We've all
12 heard the term "cold case." I think there's a TV show, and
13 you said you're now doing just cold cases; so can you
14 explain to the jury what makes a case a cold case?
15 A. Well, cases are usually worked. We have kind of a rule of
16 thumb that, generally, if a suspect is not identified in the
17 first 72 hours, the case kind of generally goes cold but
18 that's not always the rule of thumb.
19 Q. Well, I'm going to interrupt right now. Why such a short
20 period of time? Why the 72 hours?
21 A. Well, there's -- resources is huge. When I go out to a
22 homicide scene, I usually have six detectives working for
23 me. Those detectives are drawn from other units, special
24 assault units, robbery, assault, other homicide detectives.
25 As time moves by, they're still working a caseload; and it's

1 still piling up.
2 Q. Let me interrupt you again. How many detectives do you
3 currently have at the Sheriff's Department?
4 A. I think we have 43.
5 Q. Okay. All right. So go ahead. I'm sorry.
6 A. So obviously, as you move forward, time and space becomes
7 your enemy. Those detectives have to return to their
8 respective units and start working their own caseloads.
9 Also, you know, generally, there's time and space when you
10 submit evidence to the labs, Washington State Crime
11 Laboratory. There's a time period before it comes back to
12 you. If there's a suspect readily identified, they get on
13 it a little bit sooner because it becomes more of a
14 priority. If there's no suspect identified, it lingers
15 longer in lieu of working other cases that are higher
16 priority.
17 And as you move along, if you don't develop either from
18 witness interviews or from other evidence that's produced,
19 whether it's from the crime scene or other forensic evidence
20 that's produced through the investigation, the case can
21 become cold; but you also have to remember that new cases
22 keep coming in and sometimes you can work twelve murders a
23 year, and so you've got to hit these things fast, hit them
24 hard before you're assigned the next one.
25 Q. All right. And if you've got three cases on your desk, two

1 have an identified suspect and one doesn't, how do you --
2 does that impact the way that you use your resources for
3 those cases?
4 A. Certainly. If you haven't identified a suspect, that's
5 always your primary focus and that becomes your priority.
6 Q. So what happens, then, to the case file after 72 hours?
7 Does it sit on your desk for a while, I assume?
8 A. Most detectives, they -- they keep their cases. Sometimes
9 they hold onto them until they retire. Some detectives
10 promote out of the Homicide Unit and become lieutenants.
11 They leave their cases behind. Generally, those, then, end
12 up in my office.
13 Q. All right. And is it a formal cold case unit, or is it just
14 something that you've taken on as part of your duties?
15 A. Well, that's -- that's kind of a tough definition. The
16 sheriff likes to promote. We have a full-time cold case
17 unit; but up until just a few months ago, I was still
18 working officer-involved shootings. I was still working new
19 homicides, so I was working the cold cases in between
20 everything else that I was doing.
21 Q. Does anybody else work cold cases right now?
22 A. No.
23 Q. Okay. Now, if a case can go cold after just 72 hours, are
24 some cases colder than others?
25 A. Oh, yes.

1 Q. All right. Can you explain to the jury the difference
2 between maybe a case that's just a few weeks old and a case
3 that's, maybe, ten years or more in terms of the amount of
4 attention it might be given by the Sheriff's Department?
5 A. Well, realistically, anything that's very high profile
6 always keeps on the front burner. That's something that is
7 motivated by whatever is driving it, whether it's the press,
8 whether it's society, whether it's something political. An
9 older case, the evidence is much older. Technology at the
10 time of the old case has advanced. A lot of that old
11 evidence doesn't get looked at again. The newer stuff, you
12 know, we have opportunities to use new technology to develop
13 suspects off that evidence.
14 Q. All right. And are you familiar with the investigation
15 under Sheriff's Department No. 930371041?
16 A. I am.
17 Q. All right. And how did you become aware of that
18 investigation?
19 A. Well --
20 Q. Actually, I'm going to change the question. Was that one of
21 the cold cases that you looked into?
22 A. It was.
23 Q. All right. How was it that you became aware of the case to
24 even go look at it?
25 A. Well, I was always aware -- when I started working the cold

1 cases, I had 101 of them on my shelf; and so I was aware
2 that it was up there. But it was in May of 2013, a niece to
3 the victim in this case called me on the phone to inquire.
4 The cold cases had gotten some press, that we'd been solving
5 some of them.
6 Q. And just kind of generally, there had been press about cold
7 cases?
8 A. Well, yeah. And some of the ones that we had -- we had
9 solved within the Pierce County --
10 MS. HIGH: I'm going to move to strike,
11 Your Honor. That is not responsive and is not appropriate
12 or pertinent to this case.
13 THE COURT: I'll sustain the objection.
14 Q. (By Mr. Penner) Okay. So, again, how did you get -- how
15 did it come, if there were 101 cases on your shelf, that you
16 started to look at this case?
17 A. In May of 2013, Shawonika Elliott called me on the phone and
18 asked me if I'd looked at the case.
19 Q. Okay. And do you recall whether you had looked at it at
20 that point?
21 A. I hadn't looked at it, and I told her I might be able to get
22 to it.
23 Q. Okay. So what happened after that phone call?
24 A. Well, it was either four or five weeks later, I got another
25 phone call, and this came from the victim's father, Les

1 Robinson.
2 Q. Okay.
3 A. And he respectfully pressed me to please take a look at it,
4 and I told him I'd do that.
5 Q. All right. And how much longer -- how much time elapsed
6 until you finally did look at it?
7 A. I looked at it that afternoon.
8 Q. All right. Let's step back a little bit. You said there's
9 101 cases on your -- on your bookshelf, I guess. Are all of
10 them the kind of cases that you're going to be able to
11 resurrect and solve?
12 A. No.
13 Q. Are there certain things that you look for when you look at
14 a cold case that might give you more hope than other things?
15 A. Yeah. I always look for solveability factors.
16 Q. All right. What are some of those solveability factors,
17 just generally speaking?
18 A. Well, generally speaking, you look at what the detectives
19 that were assigned the case in the beginning saw, what they
20 did or didn't do; and then you go back over their reports,
21 you go back over the evidence sheets and, in this particular
22 case, crime scene photographs.
23 Q. And is that what you did in this particular case?
24 A. I did.
25 Q. And after reviewing that evidence, did it seem to you as a

1 case that you might be able to do some work on?
2 A. Yes. I believe there was some solveability factors.
3 Q. All right. And specifically what were those?
4 A. The solveability factors that I saw in this particular case
5 was some blood patterns. It was a -- it was a bloody scene,
6 but I saw some unique patterns in one of the photographs
7 that led me to believe that what I was seeing could belong
8 to the assailant in the -- in the homicide.
9 Q. Now, did you go first to the property room to look at
10 evidence; or did you go to the photographs to see the crime
11 scene?
12 A. I go to the crime scene photographs first.
13 Q. Okay. Is there any reason for that?
14 A. Well, I have to orientate myself with the homicide. It's
15 obvious this one, I didn't work. I -- I kind of need to
16 know what the scene looked like. I needed to correlate
17 supplementary reports by other officers to see what it was
18 that they did within the scene, what they were talking about
19 as far as the physical evidence they were looking at, and,
20 yeah, that's -- that's what I did.
21 Q. Would you be able to explain to the jury some of the things
22 that you saw in the photographs that made you think this
23 might be a solvable case?
24 A. Yes.
25 Q. All right. And would it help you to look at the photographs

1 while you testify?
2 A. Yes.
3 Q. All right. And prior to taking the stand this morning, did
4 you have a chance to go through some photographs and select
5 a few you thought would be helpful?
6 A. Yes.
7 MR. PENNER: All right. If I could have a
8 moment, Your Honor.
9 Q. (By Mr. Penner) I'm going to hand you a series of exhibits,
10 and what I'm going to ask you to do is -- let's go through
11 them one at a time, if you could first tell me the exhibit
12 number; and you can move those to your right, if that's --
13 THE COURT: There is a shelf that pulls
14 out too.
15 A. The first one is Exhibit No. 2.
16 Q. (By Mr. Penner) Okay.
17 THE COURT: What was that?
18 THE WITNESS: The first exhibit is No. 2.
19 THE COURT: No. 2. Okay. We got a little
20 static from the mic.
21 Q. (By Mr. Penner) And generally speaking, what does it
22 depict?
23 A. This depicts the central crime scene, I would call it the
24 kitchen/hallway of the apartment.
25 Q. Okay. And do you recognize that as one of the photographs

1 that you reviewed in this case?
2 A. I do.
3 Q. And it is No. 18; is that right?
4 A. It says No. 2.
5 MR. PENNER: No. 2. Your Honor, the State
6 moves to admit Exhibit No. 2.
7 THE COURT: Any objections?
8 MS. HIGH: No objection.
9 THE COURT: No. 2 will be admitted.
10 (Plaintiff's Exhibit No. 2 was admitted.)
11 Q. (By Mr. Penner) All right. Let's set that aside, and let's
12 go through the next one. What's the next exhibit?
13 A. The next exhibit is No. 3.
14 Q. And what does that depict, generally?
15 A. And this is more of a shot of the kitchen area with the
16 victim in it on the kitchen floor.
17 Q. Okay. And do you recognize that as a photograph from this
18 investigation?
19 A. Yes.
20 MR. PENNER: The State moves to admit
21 Exhibit 3.
22 THE COURT: Any objections?
23 MS. HIGH: No, Your Honor.
24 THE COURT: No. 3 is admitted.
25 (Plaintiff's Exhibit No. 3 was admitted.)

1 Q. (By Mr. Penner) What's the next exhibit?
2 A. The next exhibit is No. 11.
3 Q. And what does that generally depict?
4 A. This depicts the -- what's been labeled as the master
5 bedroom of the victim's residence.
6 Q. Okay. And do you recognize that photograph as coming from
7 this investigation?
8 A. I do.
9 MR. PENNER: Your Honor, the State moves
10 to admit Exhibit 11.
11 THE COURT: Any objections?
12 MS. HIGH: No.
13 THE COURT: No. 11 is admitted.
14 (Plaintiff's Exhibit No. 11 was admitted.)
15 Q. (By Mr. Penner) What's the next photograph? What's the
16 number?
17 A. The next one is 12.
18 Q. And do you recognize what's depicted in 12 -- well, let me
19 ask a different way: What is depicted in 12?
20 A. Well, this is another angle of the master bedroom. This
21 depicts, in here, some blood droplets.
22 Q. All right. And do you recognize that photograph as
23 belonging to this investigation?
24 A. I do.
25 MR. PENNER: The State moves to admit

1 Exhibit 12.
2 THE COURT: Any objections?
3 MS. HIGH: No, Your Honor.
4 THE COURT: No. 12 is admitted.
5 (Plaintiff's Exhibit No. 12 was admitted.)
6 Q. (By Mr. Penner) What's the next exhibit number?
7 A. This one is No. 13.
8 Q. Okay. And generally speaking, what does it depict?
9 A. It's a close-up of a Styrofoam container for a trash can.
10 It's got envelopes in it, and it has some blood droplets on
11 the envelopes.
12 Q. Do you recognize that as a photograph from this
13 investigation?
14 A. I do.
15 MR. PENNER: Your Honor, the State moves
16 to admit Exhibit -- I think it's 13.
17 THE COURT: Any objection?
18 MS. HIGH: No.
19 THE COURT: No. 13 is admitted.
20 (Plaintiff's Exhibit No. 13 was admitted.)
21 Q. (By Mr. Penner) The next photograph?
22 A. The next one is Exhibit No. 14.
23 Q. And generally speaking, what does it depict?
24 A. This is the inside of the master bedroom, and it has a
25 multicolored -- what was classified as a child's jacket

1 hanging on a doorknob.
2 Q. And do you recognize that as belonging to this
3 investigation?
4 A. I do.
5 MR. PENNER: All right. Your Honor, the
6 State moves to admit Exhibit 14.
7 THE COURT: Any objections?
8 MS. HIGH: No, Your Honor.
9 THE COURT: No. 14 is admitted.
10 (Plaintiff's Exhibit No. 14 was admitted.)
11 Q. (By Mr. Penner) Next?
12 A. (No audible response.)
13 Q. What's the number for the next exhibit?
14 A. The next exhibit is No. 15.
15 Q. And generally speaking, what does it depict?
16 A. This is a shot from the hallway into a doorway leading into
17 the master bedroom.
18 Q. And do you recognize it as belonging to this investigation?
19 A. I do.
20 MR. PENNER: The State moves to admit
21 Exhibit 15.
22 THE COURT: Any objections?
23 MS. HIGH: No, Your Honor.
24 THE COURT: No. 15 will be admitted.
25 (Plaintiff's Exhibit No. 15 was admitted.)

1 Q. (By Mr. Penner) And the next exhibit, what's the number?
2 A. It's No. 17.
3 Q. And what does it depict, generally?
4 A. This is another shot in the master bedroom. It shows a
5 dresser, a garbage can, tennis shoes and in it is some
6 droplets of blood.
7 Q. And do you recognize it as belonging to this investigation?
8 A. I do.
9 MR. PENNER: Your Honor, the State moves
10 to admit Exhibit 17.
11 THE COURT: Any objections?
12 MS. HIGH: No, Your Honor.
13 THE COURT: No. 17 is admitted.
14 (Plaintiff's Exhibit No. 17 was admitted.)
15 Q. (By Mr. Penner) And finally, the last exhibit you have
16 there?
17 A. This is No. 18; and again, this is an interior shot of the
18 master bedroom. And in the photograph is the multicolored
19 jacket on the doorknob and some blood droplets on the wall,
20 the tennis shoe, trash can, envelopes containing some blood
21 droplets, and a portion of the dresser.
22 Q. Do you recognize it as belonging to this investigation?
23 A. I do.
24 MR. PENNER: The State moves to admit
25 Exhibit 18.

1 THE COURT: Any objections?
2 MS. HIGH: No, Your Honor.
3 THE COURT: No. 18 is admitted.
4 (Plaintiff's Exhibit No. 18 was admitted.)
5 Q. (By Mr. Penner) Now, before we look at these, you said that
6 you thought that there was some information in those
7 photographs that was important to you; correct?
8 A. Correct.
9 Q. And in addition to reviewing the photographs, were there any
10 other documents that you reviewed to help inform you as you
11 looked at the photographs?
12 A. Well, I looked at -- obviously, I looked at the
13 supplementary reports that were generated by the officers
14 and the detectives that were investigating this homicide
15 case.
16 Q. Were there any forensic reports regarding the victim that
17 you reviewed?
18 A. There was.
19 Q. And what would that be?
20 A. Well, there were -- hang on. [Coughs.] Excuse me. The
21 forensic investigators documented the fact that they took
22 photographs of the crime scene. They took swabs of various
23 blood patterns. They did measurements on some of the blood
24 spatter found within the crime scene.
25 Q. And had you reviewed those in addition to the photographs?

1 A. I did.
2 Q. All right. Did you review anything from the Medical
3 Examiner's Office in addition?
4 A. I did.
5 Q. Okay. And what did you review from them?
6 A. They did a report of the autopsy that was completed on the
7 victim.
8 Q. Okay. And were you familiar with the injuries that the
9 victim sustained?
10 A. Fairly familiar, yes.
11 Q. Okay. All right. What I'd like to do is go through the
12 photographs, and you can let the jury know what it was that
13 you found of significance in the photographs. Which
14 photograph would you like to testify about first -- which --
15 MR. PENNER: And if I could approach the
16 witness, Your Honor?
17 THE COURT: You may. You can approach
18 without asking me every time, Counsel.
19 MR. PENNER: Thank you very much, Your
20 Honor.
21 THE WITNESS: Let's start with Exhibit
22 No. 2.
23 MR. PENNER: Thank you. Your Honor, move
24 to publish Exhibit 2.
25 THE COURT: Any objections?

1 MS. HIGH: No, Your Honor.
2 THE COURT: No. 2 will be published. Do
3 you want us to turn the lights down?
4 MR. PENNER: I think that would be
5 helpful, Your Honor.
6 THE COURT: All right. Ms. Shipman, if
7 you would oblige us. Is that enough, Counsel?
8 MR. PENNER: I think so. Thank you, Your
9 Honor.
10 Q. (By Mr. Penner) Detective, I'm going to hand you this
11 device. The yellow button here creates a red pointer, so --
12 THE COURT: Avoid anybody's eyes, please.
13 MR. PENNER: Yes.
14 Q. (By Mr. Penner) Could you let the jury know what it was
15 about this photograph that you found of interest from an
16 evidentiary standpoint, from a solveability standpoint?
17 A. Well, this is -- this is a photograph that I started my
18 initial review of. This is where I would call the "core" of
19 the assault occurred. The things that were particularly
20 interesting, to me, is: The victim, Linda Robinson, is
21 laying face down; right here is a receipt; down here is a
22 coin and some keys that were laying between her legs.
23 Q. Why was that significant to you?
24 A. Well, obviously, Linda Robinson died in this position; and
25 when she went down onto the floor, obviously the keys, the

1 receipt, and the coin was not there.
2 Q. Now, why do you say that?
3 A. Well, Linda Robinson had defensive wounds; so obviously, the
4 attack did not occur while she was standing up. She had
5 defensive wounds on her hands and her arms and her chest;
6 although, most of the -- all of the fatal wounds came from
7 the back. She died in that position; so, the fact that the
8 keys and the receipt and the coins ended up between her legs
9 like that, they were deposited there after her death.
10 Q. Okay. Is there anything else significant from this
11 photograph?
12 A. Well, it's not real clear to see; it's not real great. But
13 right in this area here, Linda Robinson's pant's pockets are
14 turned inside out.
15 Q. All right. What's the next photograph that you can talk
16 about solveability.
17 A. The next one would be No. 3.
18 MR. PENNER: Your Honor, the State moves
19 to publish Exhibit 3.
20 THE COURT: Any objections?
21 MS. HIGH: No, Your Honor.
22 THE COURT: No. 3 will be published.
23 Q. (By Mr. Penner) Detective, could you let the jury know what
24 it was about this photograph that you found interesting.
25 A. Well, I was still exploring the keys, the receipt, and the

1 coin that I -- that I observed in the photographs between
2 Linda Robinson's legs. If you look right here on this area
3 here --
4 THE WITNESS: And I can't hold this
5 pointer any steadier than that.
6 MR. PENNER: Your Honor --
7 THE JUDICIAL ASSISTANT: We've got a hand
8 up.
9 MR. PENNER: Your Honor, if we could --
10 THE COURT: Sir?
11 JUROR NO. 6: I can't see the pointer.
12 THE COURT: Oh, you mean the red dot?
13 THE WITNESS: Okay.
14 JUROR NO. 6: I'm red/green color blind.
15 THE COURT: Why don't we go ahead and try
16 this the old-fashioned way.
17 MR. PENNER: Right.
18 THE COURT: We've got the stick.
19 Q. (By Mr. Penner) Detective Kobel, could you step down.
20 A. Okay.
21 Q. And hanging from the wall is a stick and if you could point
22 directly for us.
23 THE JUDICIAL ASSISTANT: I have a pointer,
24 as well.
25 MR. PENNER: The judicial assistant has a

1 pointer. Thank you.
2 THE COURT: That would be easier to see.
3 Q. (By Mr. Penner) Actually, Detective, I'll take those other
4 photographs while you do this. So again, what was it of
5 interest in this photograph?
6 A. Well, I was still exploring the keys, the receipt, and the
7 coin that was laying between her legs; and it became obvious
8 to me those were deposited after her death. And this is
9 another shot of the kitchen from the dining room area. Her
10 legs are going out into the hallway. The coin, the receipt,
11 and keys were down in this area here. If you'll notice
12 right here, right here is her pocket. Unfortunately, it's
13 not easy to see, but the one on the other side was turned
14 out, as well; and that was pretty indicative to me that
15 after she'd succumbed to the attack that the assailant went
16 through the pockets of her pants.
17 Q. All right. Thank you. All right. Why don't you stay
18 there. What's the next photograph that would be helpful?
19 What's the next exhibit that would be helpful?
20 MR. PENNER: Exhibit 11 -- Your Honor, the
21 State moves to publish Exhibit 11.
22 THE COURT: Any objections?
23 MS. HIGH: No, Your Honor.
24 THE COURT: No. 11 will be published.
25 Q. (By Mr. Penner) All right. I'll step out of the way again.

1 Could you let us know what was significant in this
2 photograph?
3 A. What was significant in this photograph here -- first of
4 all, this is -- this is the master bedroom. Here is the
5 door that leads into the master bedroom. This is a
6 multicolored jacket. It was identified as a child's jacket;
7 and on this jacket was blood that we would call, or I would
8 call, "transfer."
9 Q. And what does that mean, and what does it -- how do you tell
10 transfer blood from other blood?
11 A. Okay. Transfer blood -- probably one of the easiest ways to
12 demonstrate transfer blood is if I put my hand down in a
13 pool of blood or if my hand is bleeding and then I come over
14 and I lean against the wall, or I rub my sleeve or my elbow
15 on some blood and then I brush up against the wall, I brush
16 up against a coat that is on a doorknob, that blood will
17 transfer; and we call that "transfer."
18 Q. Okay. All right. And so you said there was some on the
19 jacket?
20 A. That's correct.
21 Q. Okay. Is there anything else in this photograph that is of
22 significance?
23 A. Well, there is. Earlier when I talked about Linda
24 Robinson's pants having been turned inside out, it was
25 indicative to me that somebody had gone through her pants,

1 thus, the keys, the receipt, and the coin thrown down on the
2 back of her; but I also noticed in this photograph here that
3 this dresser drawer was pulled open, and I found things of
4 evidentiary value in other photographs from this drawer.
5 Q. Okay. So maybe let's move to those photographs.
6 MR. PENNER: So, Your Honor, the State
7 would move to publish Exhibit 17.
8 THE COURT: Any objections?
9 MS. HIGH: No, Your Honor.
10 THE COURT: No. 17 will be published.
11 Q. (By Mr. Penner) All right. Can you let the jury know what
12 we're looking at there and what it was of significance to
13 you.
14 A. This is -- this is another shot of the master bedroom.
15 What -- what you notice, here, are items that have been
16 marked by forensics investigators, and those are marking
17 items of evidentiary value; and what they had found inside
18 that crime scene, and marked, is what we would call "passive
19 blood evidence."
20 Q. What's passive blood evidence?
21 A. Basically, passive blood evidence is -- is stuff that's -- a
22 blood that's acted upon by gravity. In other words, I have
23 an object in my hand, and it's got blood on it; gravity is
24 going to pull it down. If I've cut myself, and I'm standing
25 still, the gravity is going to pull my -- my blood down to

1 the ground, and it's going to hit as droplets.
2 Q. Okay. And were there droplets located anywhere, depicted by
3 this photograph?
4 A. There is; specifically, what I was really interested in was
5 7 and 8. And, of course, these, here, were passive or blood
6 droplets as well.
7 MR. PENNER: All right. Your Honor, the
8 State would move to publish Exhibit 18.
9 THE COURT: Any objections?
10 MS. HIGH: No objection.
11 THE COURT: No. 18 will be published.
12 Q. (By Mr. Penner) So what are we looking at here?
13 A. Here, we have another angle within the master bedroom.
14 Obviously, we talked earlier about the multicolored child's
15 jacket. In this photograph here, we have blood droplets on
16 the wall that appear passive to me. Here, we have some mail
17 envelopes. Again, they have blood droplets on it that are
18 passive; and this is the open drawer where there was
19 actually blood droplets inside the drawer.
20 Q. Now, let me interrupt for a second.
21 A. Sure.
22 Q. You've used the terms "transfer" and "passive?" Is there
23 any type of "active" blood drop?
24 A. Yeah, there is.
25 Q. What does that mean?

1 A. We, usually -- I refer to it as "impact." It's generally
2 caused by some type of force. If I hit somebody in the head
3 with a bat, there's going to be blood spatter; and that is
4 from the force or the velocity of being struck with the bat.
5 If I stab somebody with a knife and I pull that knife out
6 and I fling it back and lock and load for another, if the
7 knife has blood on it, that it will be "cast off"; and
8 there's a force of putting it up against the wall.
9 Q. And that's active?
10 A. That's -- that's active or impact.
11 Q. Okay. All right. Thank you. So what else in this
12 photograph was important to you from a solveability
13 standpoint?
14 A. Well, obviously, I'm beginning to see these, what I call,
15 "passive blood droplets." I began to put together that
16 these bloodlets -- droplets are not likely from our victim.
17 Q. Why?
18 A. Well, first of all, this room lacked any impact evidence, no
19 castoff, no dispersion of blood spatter from force; and
20 it's -- it's just dropped along in a progression that looked
21 like somebody was back there looking for something and
22 looking --
23 MS. HIGH: Your Honor, I'm going to
24 object. It calls for speculation/opinion.
25 THE COURT: I'll sustain the objection.

1 MS. HIGH: And move to strike that.
2 THE COURT: I'll strike it.
3 Q. (By Mr. Penner) The fact that there was passive blood here
4 was significant for you in terms of your investigation?
5 A. Yes.
6 Q. All right.
7 A. I didn't believe that the assault occurred in that bedroom.
8 Q. All right. And just -- and I know we know this, but let's
9 just go ahead and say it out loud: Where was Linda Robinson
10 found? Where was her body found?
11 A. Her body was found down the hall and laying in the kitchen
12 with her feet extending into the hallway.
13 Q. Okay. And I think we saw in one of the photographs, she
14 actually had a receipt resting on top of her body; correct?
15 A. That is correct.
16 Q. All right. So what was the significance of there being
17 passive blood droplets in a room other than where Linda
18 Robinson was found? Why was that significant to you in
19 terms of your investigation?
20 A. Well, it's pretty clear to me that the assailant --
21 MS. HIGH: And I'll object to the word
22 "assailant."
23 THE COURT: I'll overrule the objection.
24 Q. (By Mr. Penner) You can answer.
25 A. It would appear to me that the assailant, during this

1 violent attack on Linda Robinson, had inflicted a cut or a
2 wound on himself.
3 Q. And the dresser that we see in the far right of the
4 photograph, is that the same dresser we saw on the previous
5 photograph?
6 A. It is.
7 MR. PENNER: Your Honor, the State moves
8 to publish Exhibit 12.
9 THE COURT: Any objection?
10 MS. HIGH: No objection.
11 THE COURT: All right. No. 12 will be
12 published.
13 Q. (By Mr. Penner) All right. What are we looking at here,
14 Detective?
15 A. This is a different angle, master bedroom. This, here, is
16 the dresser, open dresser drawer. This is the Styrofoam
17 container with the mail objects in it. You can see some of
18 the blood staining here, garbage can, tennis shoes, and up
19 here; and once again, we see the passive blood droplets on
20 the wall.
21 MR. PENNER: All right. I think that's
22 all the photographs; right? Okay.
23 THE WITNESS: That might be a little more
24 clear.
25 MR. PENNER: The State moves to publish

1 Exhibit 13.
2 THE COURT: Any objections?
3 MS. HIGH: I'm sorry, which exhibit?
4 THE COURT: No. 13.
5 MS. HIGH: No objection.
6 THE COURT: All right. No. 13 will be
7 published.
8 Q. (By Mr. Penner) Okay. Can you let us know what we're
9 looking at here.
10 A. This is still in the master bedroom. Again, it's just a
11 little bit closer shots of the evidence items that I was
12 speaking about earlier. This is the Styrofoam container.
13 These are the mail envelopes with your passive blood
14 droplets on them.
15 MR. PENNER: Okay. And then the State
16 moves to publish Exhibit 14.
17 THE WITNESS: It seems to me you missed
18 one.
19 THE COURT: Yeah.
20 MR. PENNER: Yeah, I've got 15 and 14, so
21 let's do 14.
22 THE WITNESS: Okay.
23 MR. PENNER: Move to publish Exhibit 14.
24 THE COURT: Any objections?
25 MS. HIGH: No objection.

1 THE COURT: No. 14 will be published.
2 Q. (By Mr. Penner) And what are we looking at here?
3 A. This is the same child's multicolored jacket we've talked
4 about earlier that's hanging on the master bedroom door on
5 the interior doorknob.
6 Q. Okay. And is that the one that you mentioned had transfer
7 blood on it?
8 A. Yes.
9 MR. PENNER: All right. And then finally,
10 Your Honor, I move to publish Exhibit 15.
11 THE COURT: Any objections?
12 MS. HIGH: No objection.
13 THE COURT: No. 15 will be published.
14 Q. (By Mr. Penner) Okay. What are we -- what are we looking
15 at here?
16 A. Okay. This -- this, here, was marked by the forensic
17 officer. Maybe this isn't the best photograph to show, but
18 these are marking blood droplets that are found on the
19 master bedroom -- correction -- master bathroom floor. This
20 bathroom is located between the master bedroom and then the
21 kitchen area where Linda Robinson was found.
22 Q. Okay. Thank you. Thank you, Detective. I think you can
23 retake the witness stand.
24 (The witness returned to the stand.)
25 Q. (By Mr. Penner) Now, Detective, what did you do -- having

1 identified in the photographs some blood that you thought
2 was of interest, what was -- what was your plan then?
3 A. [Coughs.]
4 Q. And let me ask a different question: Have you been feeling
5 sick lately?
6 A. Yes. I came down with pneumonia about two weeks ago; and
7 I'm kind of, sort of, on the tail end of it.
8 Q. So what steps did you take next? So you've looked at the
9 photographs. You've identified passive blood droplets away
10 from Ms. Robinson's body. What did you do next?
11 A. I collected those -- correction. I didn't collect those.
12 I've completed a Washington State Crime Lab evidence request
13 for particular items that were collected in that master
14 bedroom and sent it off for DNA analysis.
15 Q. Okay. And did you write a report about that?
16 A. I did.
17 Q. All right. And as you sit here right now with nothing in
18 front of you, can you remember exactly which items you sent
19 first and what their numbers were?
20 A. I believe I sent --
21 Q. Well, first, it's a yes-or-no question.
22 A. Yes, I believe I can.
23 Q. All right. Would it help refresh your recollection if you
24 could refer to your report?
25 A. Well, obviously, we then make sure that I got it absolutely

1 correct.
2 Q. All right. I'm going to hand you what have been previously
3 marked as Exhibits 56 and 57, and I'll ask you to take a
4 look at those; and let me know if those are the reports
5 regarding sending evidence off to the Crime Lab.
6 A. The first report is a .4, and this has my electronic
7 signature on it.
8 THE COURT: And when you say "first
9 report," what is the exhibit number on that one?
10 THE WITNESS: This is Exhibit No. 56.
11 THE COURT: Okay. Thank you.
12 A. The .4 documents the initial evidence items that I sent to
13 the Washington State Crime Lab.
14 Q. (By Mr. Penner) Okay. And can you let the jury know which
15 items of evidence were sent to the Crime Lab by you on that
16 first request.
17 A. Master Case Item No. 2330363738.
18 Q. All right. And what was item 23?
19 A. Without looking at the property sheet, I would just --
20 Q. Well, don't guess.
21 A. That's -- that's exactly what it would be; it's been a
22 while.
23 Q. Would it help refresh your recollection if you could look at
24 the property sheets?
25 A. Yes.

1 MR. PENNER: Okay. If I could have a
2 moment, Your Honor.
3 THE COURT: Yes.
4 THE WITNESS: [Coughs.]
5 THE COURT: We have cough drops. Would
6 you like to have one?
7 THE WITNESS: I don't think it'll help me
8 much, and I've got some in my inside pocket.
9 THE COURT: Okay.
10 Q. (By Mr. Penner) I'm going to hand you what's been marked as
11 Exhibit 79. Do you recognize that?
12 A. (Reviewing.) Yes. This is the master property sheet for
13 all of the evidence that was collected in this case.
14 Q. Okay. And let's take a moment here just to go through the
15 number system. Back in 1993, how are evidence items
16 numbered? What was the procedure?
17 A. Well, back in '93, first of all, they weren't using
18 computers to log in the evidence. They used hard copy
19 property forms; and they'd start out one, two, three, four,
20 five, six, and so on. Then later down the road, if the
21 crime scene expanded or there was evidence collected outside
22 of the crime scene, say, interviews being conducted,
23 recorded interviews, rights forms and stuff, and that got
24 submitted, it would be one, two, three, four. When we went
25 to the master property --

1 Q. I'm going to interrupt you for a second.
2 A. Okay.
3 Q. So if you're inside the crime scene and I'm outside, and I'm
4 numbering one, two, three, four, and you're inside numbering
5 one, two, three, four, how are they kept straight by the
6 property room when we turn the items in?
7 A. Well, the property room -- obviously, the first one that
8 came in would be A. The second one would be B, C, D, all
9 the way down the line.
10 Q. So my one would turn into A-1, and your 1 would turn into
11 B-1?
12 A. Correct.
13 Q. All right. Later on, then, what happened in terms of the
14 numbering system?
15 A. They went to a new computer system. They took those
16 property items. A-1s would be Master Property Item
17 No. MC-1, MC-2, MC-3; then B, then, would follow. Let's say
18 the last number was, say, 23; then B would be 24, 25, 26,
19 and so on.
20 Q. Okay. And the report, does it still denote or keep track of
21 the original A, B, C number?
22 A. Yes.
23 Q. Okay. All right. So when you say you sent off items 23,
24 30, 36, 37, 38, we're talking about the new master case
25 number; right?

1 A. That is correct.
2 Q. All right. So Master Case No. 23, what was that item?
3 A. Those were vials of blood that came from the Medical
4 Examiner's Office.
5 Q. Okay. And reported to be whose blood?
6 A. Those were Linda Robinson's blood.
7 Q. All right. What was No. 30?
8 A. No. 30 is a control sample from the bathroom floor.
9 Q. Okay. And we saw the photograph of that?
10 A. That's correct.
11 Q. Okay. What was 36?
12 A. 36 is a control sample, again, and here, it says "unknown
13 sample," same thing; it was the bottom of the drawer. They
14 referred to it here as a vanity which I earlier described as
15 a dresser.
16 Q. Okay. And again, we saw a photograph of that dresser;
17 right?
18 A. That is correct.
19 Q. What was 37?
20 A. 37 is another sample from the vanity or the dresser in the
21 master bedroom.
22 Q. Okay. And 38?
23 A. And 38 is papers listed as an unknown stain, and that came
24 from the master bedroom.
25 Q. And were those the papers we saw in the photograph and the

1 Styrofoam container?
2 A. That is correct.
3 Q. Okay. So those were sent off to the Crime Lab for DNA
4 analysis; correct?
5 A. That is correct.
6 Q. All right. I don't want to have any names or anything, but
7 were you -- did you get a report back from the Crime Lab?
8 Were they able to develop a DNA profile?
9 A. Yes.
10 Q. Okay. And was it someone other than -- or any of these
11 items someone other than Linda Robinson?
12 A. That is correct. There was what they titled as an "A" --
13 Q. Individual A?
14 A. -- single source male contributor.
15 Q. Okay. With that, did you send any additional items to the
16 Crime Lab for further analysis?
17 A. Later down the road, yes.
18 Q. All right. And is that documented in your other report that
19 you have in front of you?
20 A. The other one is Item No. 57. It's a .5. It bears my
21 electronic signature, yes.
22 Q. And does that indicate that you sent additional items off to
23 the Crime Lab?
24 A. That is correct.
25 Q. What were the MCs, master case numbers, for those evidence

1 items?
2 A. Item Nos. 40, 45, 44 and sometimes we resubmit, or evidence
3 is held over; and you'll also see No. 10.
4 Q. I'm sorry. What was the last one?
5 A. No. 10.
6 Q. Okay. And what were those items? You'd have to look at the
7 property sheets.
8 A. Yeah.
9 Q. What was Item No. 10, the master case number?
10 A. Just a second. (Reviewing.) Okay. Could you ask me that
11 again?
12 Q. Sure. Item No. 10, what was that?
13 A. Item No. 10 is a -- is a bag with jeans. Those were Linda
14 Robinson's jeans.
15 Q. Okay. And Item No. 40?
16 A. It's the child's coat. It's the multicolored coat on the
17 doorknob, master bedroom, and with some stains on it.
18 Q. And item 44, what was that?
19 A. It was a control sample entryway in the hallway near the
20 kitchen.
21 Q. Okay. So blood drops?
22 A. Actually, it was on the wall hallway. I would interpret
23 that as "impact" or "castoff."
24 Q. Okay. And 45?
25 A. And 45 is a Radio Shack phone with a cut cord with some

1 staining on it.
2 Q. Okay. And again, don't get me a name yet, but was the Crime
3 Lab able to develop a DNA profile on any of these items?
4 MS. HIGH: And, Your Honor, I'm going to
5 object to him going any further. That's going to be
6 hearsay, what the results were.
7 THE COURT: Well, he's already asked him
8 not to go any further, so --
9 MR. PENNER: It's a yes-or-no question at
10 this point, Your Honor.
11 THE COURT: Yes, I understand; so I'm
12 overruling your objection because we hadn't got to something
13 to object to.
14 MR. PENNER: All right.
15 THE COURT: All right.
16 Q. (By Mr. Penner) So yes or no, were they able to develop a
17 DNA profile from these items?
18 A. Yes.
19 Q. And yes or no, were any of them someone other than Linda
20 Robinson?
21 A. Yes.
22 Q. And did any of them match the previously identified
23 individual A?
24 MS. HIGH: And again, I object to: That
25 is not proper hearsay; that's for the DNA analyst.

1 THE COURT: I'll sustain the objection
2 there.
3 MR. PENNER: All right.
4 Q. (By Mr. Penner) Okay. So you get the results back from the
5 Crime Lab; and again, don't tell me any more than that.
6 Based on that, were you able to convert this from a cold
7 case to a closed case?
8 A. Yes.
9 MR. PENNER: Thank you, Your Honor.
10 Nothing else, Your Honor.
11 THE COURT: All right. Why don't we go
12 ahead and take the morning recess. It's five to 11:00.
13 Then we'll come back and start cross-examination.
14 All right. My instructions: No discussion, no
15 investigation, notepads face down on your chairs. Please
16 remain in the jury room until Ms. Shipman comes to release
17 you. All right?
18 (The jury was not present.)
19 THE COURT: Anything, Counsel?
20 MR. PENNER: Just confirming, fifteen
21 minutes?
22 THE COURT: Fifteen minutes or however
23 long it takes us.
24 MR. PENNER: Thank you, Your Honor.
25 (A recess was taken.)

1 (The defendant was present.)
2 (The jury was not present.)
3 THE COURT: Some of the jurors were
4 wondering what happened to Juror No. 7, and we hadn't
5 actually mentioned it to them. I would just propose to tell
6 them that she was excused because of a death in the family.
7 MS. HIGH: I don't have any problem with
8 that.
9 MR. PENNER: That's fine with the State,
10 Your Honor. Thank you.
11 THE COURT: All right. Anything before we
12 bring the jury in?
13 MR. PENNER: No. I'm just going to let
14 the family in.
15 THE COURT: Get your witness.
16 MR. PENNER: Thank you, Your Honor.
17 THE COURT: I don't think we're going to
18 get through two witnesses this morning.
19 MR. PENNER: I've already excused her
20 until 1:30, Your Honor.
21 (The jury was present.)
22 THE COURT: You may be seated. I
23 understand some of you were worrying about -- or wondering
24 why Juror No. 7 is no longer here. She apparently had a
25 death of a close family member over the weekend; and,

1 therefore, we excused her from further attendance in this
2 case.
3 All right. Cross-examination, Counsel.
4 MS. HIGH: Yes. Thank you. I just need a
5 witness.
6 THE COURT: Oh, we need the witness,
7 yes --
8 MR. PENNER: I'm sorry.
9 THE COURT: -- somewhat essential.
10 (The witness returned to the stand.)
11 THE COURT: All right. Ms. High?
12 MS. HIGH: Thank you.
13 CROSS-EXAMINATION
14 BY MS. HIGH:
15 Q. Detective Kobel, when did you start working on cold cases?
16 What year was that?
17 A. About 2010.
18 Q. Okay. And in this case, you made some initial contacts, is
19 that correct, with the lead detective who'd worked on the
20 case in 1993?
21 A. I did.
22 Q. And when you contacted him, you actually had to acquire some
23 items that he had taken home; is that correct?
24 A. I don't know if he had taken them home. I -- I knew that he
25 had them in his possession.

1 Q. Okay. Well, they weren't in the Pierce County Sheriff's
2 Department's files?
3 A. Not that I know of.
4 Q. Okay. And you certainly, being the detective in charge of
5 the cold cases, would know if there was a box within Pierce
6 County that contained some items?
7 A. Well, those items can go anywhere from archives to LESA
8 records, which stands for Law Enforcement Support Agency,
9 that maintains our records to individual detective offices.
10 Q. Well, in this case, you knew that LESA records didn't have
11 them?
12 A. I believe they didn't.
13 Q. Right. And it wasn't a box that was in a room that you
14 could find; is that right?
15 A. That's correct.
16 Q. And I think you reported that sometimes detectives may keep
17 cases with them; right?
18 A. They do.
19 Q. And in your report, you talk about a case file recovered
20 from Detective Sergeant O'Hern; you call them his "archived
21 files"?
22 A. They were in archived boxes.
23 Q. Okay.
24 A. So whether they were, actually, quote, "archived files," I
25 don't know.

1 Q. But you didn't ask him, "Where have these things been?"
2 A. No, I didn't.
3 Q. You didn't. Okay. But what you recovered or you received
4 from Detective O'Hern, that you didn't ask where he gathered
5 them, were a number of original items that had never been
6 either booked into property or booked into the LESA records;
7 is that correct?
8 A. That is correct.
9 Q. And do you remember when you first obtained those items?
10 A. I'm thinking it's some time in 2010. I can't be absolutely
11 positive, but I think it was 2010, early 2011; but I'm
12 thinking '10.
13 Q. Okay. And you first booked these original documentary items
14 into the property room on October 12, 2011?
15 A. If that's what my report documents, that would be accurate.
16 Q. Sure. And I'm going to hand you, if this would help, what's
17 been marked just for identification as Plaintiff's Exhibit
18 80.
19 A. Okay.
20 Q. Okay. And the date at the bottom of that, I think, shows
21 the October 12, 2011, date?
22 A. That is correct.
23 Q. Okay. And you would have worked to be accurate in putting
24 the date at the bottom of that?
25 A. I would be.

1 Q. Okay. And I think we just talked for a moment. Back in the
2 old days, there would be, like, property sheet A, B, C, D,
3 E, F, you know, G, H, I, J, K, whatever it took; is that
4 right?
5 A. That is correct.
6 Q. And then each person starting those would start with, you
7 know, like, A-1, 2, 3, 4; B-1, 2, 3, 4, that kind of
8 numbering system?
9 A. Sometimes, yes.
10 Q. So sometimes B might pick up where A left off?
11 A. Correct.
12 Q. Okay. Now, everything, when it goes into the property room,
13 it's logged in, it's barcoded, and it's given a number
14 sequentially; correct?
15 A. Now, it is.
16 Q. Exactly, not in '93?
17 A. No.
18 Q. But it is now?
19 A. Correct.
20 Q. And so when we talk about master number, that's the number
21 now that's been generated through the computer system in the
22 property room?
23 A. Correct.
24 Q. Okay. So we don't have multiple number 1s, 2s, 3s, and 4s;
25 correct?

1 A. Yes.
2 Q. Okay. And I know you've been doing this quite some time,
3 and --
4 A. A bit.
5 Q. A bit. And that you strive to be accurate in creating your
6 reports; correct?
7 A. Correct.
8 Q. Every once in a while, there's -- like everyone, there's a
9 little mistake here and there?
10 A. That is correct.
11 Q. Okay. And your .3 report, you noted that you had made a
12 mistake with the name of an individual whose document you
13 had booked into evidence?
14 THE COURT: Counsel, what's the exhibit
15 number on that one?
16 MS. HIGH: Exhibit 55.
17 THE COURT: Thank you.
18 MR. PENNER: I'd ask the witness be
19 allowed to see the exhibit while being asked about it.
20 MS. HIGH: Sure, if you prefer.
21 THE COURT: I think that's only fair,
22 so --
23 MS. HIGH: Sure.
24 THE COURT: Just for the record, it helps
25 if we reference everything by the number.

1 MS. HIGH: Certainly.
2 MR. PENNER: Counsel, what was the number
3 again?
4 MS. HIGH: It's dot report 3, Exhibit 55.
5 MR. PENNER: Thank you.
6 A. (Reviewing.) Okay.
7 Q. (By Ms. High) All right. And so this report, you noticed
8 that in July of 2013 that there had been a mistake in
9 labeling an item, and you reopened or relabeled it?
10 A. That's correct.
11 Q. And that's one of the items that you booked into property in
12 2011?
13 A. That is correct.
14 Q. Okay. I'm also going to hand you Plaintiff Exhibit 59, your
15 dot report 7; and that's another report where you found that
16 you'd made a mistake in your dot report 6 and you corrected
17 in dot -- and you corrected it; is that right?
18 A. That's what my supplementary report documents.
19 Q. Sure. And the date on Exhibit 55, that supplementary
20 report?
21 THE COURT: Are we referencing the one he
22 had or the original?
23 MS. HIGH: It's the one he has in his
24 hand. It should be --
25 Q. (By Ms. High) What is it, .7?

1 A. I have 59, and it's a .7.
2 Q. Okay. And what's the date on the .7 on 59?
3 A. It's July 30, 2014.
4 Q. Okay. Thank you. Okay. Now, one of the other things, as
5 well, you document interviews with witnesses and a family
6 but not every interview; is that correct?
7 A. Every conversation, no; every interview, yes.
8 Q. Okay. And do you remember meeting with Shawonika Elliott in
9 March of 2015?
10 A. I did.
11 Q. Okay. And that was not documented in a report?
12 A. No, it wasn't.
13 Q. And it was at that meeting that you provided her with a
14 report of an interview that she had given as a child in
15 1993?
16 A. I don't recall giving her a report.
17 Q. Okay. You don't recall giving her the report to review?
18 A. No.
19 Q. Okay.
20 A. I remember meeting in my office. I remember we had talked.
21 Q. Okay. And that child interview report was one of the
22 original items that you booked into evidence in 2011; is
23 that correct?
24 A. Let me take a look.
25 Q. Mm-hmm.

1 A. (Reviewing.) It is.
2 Q. Okay. Now, to switch gears here for a moment, I'm going to
3 ask you to take a look at a couple of the other photographs
4 that have been marked as Plaintiff's -- let me get them in
5 order -- 4, 5, 10, and 24.
6 A. [Coughs.]
7 Q. And if at any time you need a break, please let me know.
8 A. Thank you.
9 Q. I think you testified, as you were going over the case to
10 make an assessment, you looked at photographs that had been
11 taken of Ms. Robinson's apartment?
12 A. That is correct.
13 Q. Okay. And could I have you take a look -- I think -- what's
14 the top one there, No. 4?
15 A. The first one is No. 4.
16 Q. Okay. And do you recognize that as one of the photographs
17 you took a look at?
18 A. Yes, it is.
19 Q. And just generally, what does that depict?
20 A. It's got some slippers in it. It looks like maybe a water
21 juice container laying over on its side, a phone with a cut
22 cord, pieces of paper that looks like it may have came from
23 paramedics; and there's some blood transfer.
24 Q. Sure, and that is the kitchen?
25 A. The kitchen and a portion of the dining room.

1 MS. HIGH: I would offer for admission
2 Exhibit 4.
3 MR. PENNER: No objection, Your Honor.
4 THE COURT: No. 4 will be admitted.
5 (Defendant's Exhibit No. 4 was admitted.)
6 Q. (By Ms. High) Can I have you take a look at the next
7 photograph, and is that No. 5?
8 A. It is.
9 Q. Okay. Is that one of the photographs that you had for your
10 review?
11 A. It is.
12 Q. And just generally, can you tell me what that depicts?
13 A. That's the back legs of Linda Robinson. There's a coin, a
14 set of keys. In the upper part of the photograph, it looks
15 like it's a portion of the receipt.
16 Q. Okay. And it's just a bit of a close-up of one of the
17 photographs we looked at earlier; is that correct?
18 A. That is -- that is correct.
19 MS. HIGH: Your Honor, I would offer for
20 admission Exhibit 5.
21 MR. PENNER: No objection.
22 THE COURT: No. 5 will be admitted.
23 MS. HIGH: Thank you.
24 (Defendant's Exhibit No. 5 was admitted.)
25 Q. (By Ms. High) And the next one, could you give me the -- I

1 think that's -- what's that?
2 A. No. 10.
3 Q. No. 10, and is that one of the photographs that you
4 reviewed?
5 A. I did.
6 Q. And generally, could you tell us what's depicted in No. 10?
7 A. That's the master bedroom showing the bed, dresser,
8 nightstand, lantern, Styrofoam cooler -- I guess we could
9 call it a cooler -- some mail items, and -- yeah.
10 Q. Okay.
11 A. There's a lot of stuff in there.
12 Q. There is.
13 MS. HIGH: Your Honor, I'd offer for
14 admission Exhibit 10.
15 THE COURT: Any objections?
16 MR. PENNER: No, Your Honor.
17 THE COURT: No. 10 will be admitted.
18 (Defendant's Exhibit No. 10 was admitted.)
19 Q. (By Ms. High) And then the last one, can you give me the
20 number on the back there. Is that --
21 A. That's No. 24.
22 Q. No. 24. Okay. And can you tell me what -- is that one of
23 the photographs that you looked at?
24 A. Yes.
25 Q. And what's depicted in that photograph?

1 A. It's a -- for lack of a better -- maybe a nightstand with a
2 clear glass top; and it looks like it has a plant, a clock,
3 a remote on it, magazines, and what looks to be like a
4 McDonald's cup on it.
5 MS. HIGH: Okay. And I'd offer for
6 admission Exhibit 24.
7 THE COURT: Any objections?
8 MR. PENNER: No, Your Honor.
9 THE COURT: No. 24 will be admitted into
10 evidence.
11 (Defendant's Exhibit No. 24 was admitted.)
12 MS. HIGH: Okay. I'm going to attempt to
13 work this device here for us.
14 THE COURT: Are we going to need to turn
15 the lights out, you think?
16 MR. PENNER: It will help.
17 THE COURT: Moving to publish, Counsel?
18 MS. HIGH: Yes. Thank you, Your Honor.
19 THE COURT: Any objections?
20 MR. PENNER: No, Your Honor. And I
21 believe this is 24.
22 MS. HIGH: It is Exhibit 24.
23 MR. PENNER: No objection.
24 THE COURT: All right. No. 24 will be
25 published.

1 MS. HIGH: I think, perhaps we could dim
2 the lights just a tad. Thank you.
3 Q. (By Ms. High) Now, when you were looking for items to send
4 to the Crime Lab, you were looking for items that
5 potentially --
6 THE COURT: Okay. There's something
7 blocking part of the photo.
8 MS. HIGH: Okay.
9 Q. (By Ms. High) You were looking for items that potentially
10 you could recover DNA from; is that correct?
11 A. That's correct.
12 Q. Okay. And what we have, here, is a cup with a straw; is
13 that right?
14 A. I'm sorry?
15 Q. A McDonald's cup with a straw?
16 A. Yes.
17 Q. And, you know, you've done this a long time, DNA can
18 potentially be recovered from saliva; is that correct?
19 A. That is correct.
20 Q. Okay. But that item was not submitted; is that right?
21 A. That is correct.
22 MS. HIGH: May I publish Exhibit 10?
23 THE COURT: Any objections, Counsel?
24 MR. PENNER: No, Your Honor.
25 THE COURT: All right. No. 10 will be

1 published.
2 Q. (By Ms. High) Now, I'm not sure if you can see that, but in
3 this exhibit --
4 MS. HIGH: Where is the pointer? Thank
5 you.
6 Q. (By Ms. High) I'll save you from -- to siphon over here to
7 point it out. Again, can you tell us what this item up here
8 is? And I realize it's, kind of, difficult from that spot.
9 A. I think I identified that as a cup as well.
10 Q. Another McDonald's cup?
11 A. I believe so, yes.
12 Q. And again, that item was not submitted?
13 A. That's correct.
14 Q. Okay. And we have Plaintiff's Exhibit 5 which was admitted.
15 MS. HIGH: May I publish?
16 MR. PENNER: No objection.
17 THE COURT: You may publish that one to
18 the jurors.
19 Q. (By Ms. High) And again, like you said, this was a close-up
20 of -- between Ms. Robinson's legs in the kitchen, and I
21 think you testified that it was your assumption or belief
22 that some of these items had been removed from her pockets?
23 A. Correct.
24 Q. Okay. And that would include the keys there; correct?
25 A. Yes.

1 Q. And those were not submitted for DNA?
2 A. Correct.
3 Q. There was a coin?
4 A. That's correct.
5 Q. And between her legs, there seems to be what you've
6 identified as a "passive blood drop"?
7 A. Correct.
8 Q. Okay. And that was -- that was not in any -- well, no
9 analysis was done on that blood drop?
10 A. I'm sorry?
11 Q. No analysis, to your knowledge, was done on that blood drop?
12 A. I don't think it was collected.
13 Q. Right. And you know what? This is a good point here. You
14 were not -- you were not on the scene in 1993; is that
15 right?
16 A. Absolutely not.
17 Q. And so you didn't have any input back then or at that time
18 of what to collect?
19 A. That is correct.
20 Q. And you've had a lot of experience, and you know that
21 sometimes when you come upon an incident or a scene that
22 you're not -- you're not sure what's going to be important
23 down the road?
24 A. That is true.
25 Q. Okay. But if it's not collected, then it's gone?

A. That's true.

MS. HIGH: Okay. Exhibit 4, may I publish?

THE COURT: Any objections to No. 4 being published?

MR. PENNER: No, Your Honor.

THE COURT: No. 4 may be published.

THE WITNESS: [Coughs.] Excuse me.

THE COURT: I've had the same ailment, and I understand.

Q. (By Ms. High) Now, Exhibit 4 up here on the screen, it just shows a little corner of her elbow, maybe her sleeve, there. Can you see that?

A. Yeah. I -- I see what you're talking about.

Q. Okay. And did you notice or see this area here where it looked perhaps as if the arm had been moved?

A. Yes.

Q. Okay. And that's something you could see in the other photographs as well?

A. I believe so.

Q. Okay. Now, I know that you took a look at the reports that had been generated back in 1993 by the investigating officers at that time; is that right?

A. That is correct.

Q. And by the forensic technicians that processed the scene?

1 A. Yes.
2 THE COURT: Could we put the lights back
3 on, Counsel?
4 MS. HIGH: Sure.
5 Q. (By Ms. High) And in one of those reports, do you recall a
6 report prepared by a forensic technician called Ted
7 Schlosser?
8 A. I know who he is, and I remember reading his report.
9 Q. Okay. And do you remember reading -- him reporting that he
10 processed latent fingerprints from the refrigerator and from
11 the front door?
12 A. I don't specifically recall that. If you have his report, I
13 could read it.
14 Q. Sure. But in your review of the case file, you did not
15 find --
16 A. [Coughs.] Sorry. Sorry.
17 Q. Take your time. You didn't find a fingerprint report, say,
18 per se, standing alone; is that correct?
19 A. I'm -- I'm not sure whether my recall is correct or not, but
20 I -- there may have been a property report at the -- at the
21 bottom where they did, back in the early 90s, document
22 whether latent prints were recovered that were of any value
23 or they were looked at.
24 Q. I'm going to hand you what's been marked for identification
25 as Plaintiff's Exhibit 46, and perhaps turn your attention

1 to the second page.
2 A. (Witness complies.) Okay.
3 Q. Okay. And I think it indicates that he did process the
4 interior of the home, is that correct, for fingerprints?
5 A. Portions of it, yes.
6 Q. All right. And reports recovering some fingerprints; is
7 that correct?
8 A. That is correct.
9 Q. But in your review, as now the lead detective on this, you
10 haven't come across or found the fingerprints reflecting
11 what is recovered from the refrigerator?
12 A. I don't recall seeing the recovered fingerprints.
13 Q. And that's the kind of thing that you would have been
14 interested in?
15 A. To a degree, yes.
16 Q. Well, sure. If someone's fingerprints were there that were
17 not Ms. Robinson's or whatever, that would have been
18 something you would have noticed?
19 A. I would -- I would hope so.
20 Q. Okay. And also, in the --
21 THE WITNESS: We're getting a lot of this
22 stuff piled up.
23 MS. HIGH: Yeah, feel free to -- I'll take
24 some of those back.
25 THE COURT: I was going to say, if you're

1 done with some of this --
2 MS. HIGH: Sure.
3 THE COURT: -- you might want to turn it
4 back over to where it's supposed to be so Ms. Shipman can --
5 MS. HIGH: Absolutely. I'll gather them
6 all up.
7 Q. (By Ms. High) And you also were in contact with the DNA
8 analyst at the Washington State Patrol Crime Lab; is that
9 right?
10 A. That's correct.
11 Q. And some of those contacts would be memorialized; right?
12 A. What do you mean, memorialized?
13 Q. Well, in an e-mail or a report or a letter.
14 A. I believe my contact -- and then I know that you're talking
15 about Chris Sewell. I believe those were phone calls.
16 Q. Okay. And so some of them might not end up in a report or
17 somehow documented; is that right?
18 A. Well, actually -- well, it depends upon how you look at it.
19 The work that he did for me, he authored a report on it.
20 Q. Correct. And I'm just saying, not every phone call you had
21 with him would end up in a report generated by you?
22 A. That is correct.
23 Q. Okay. But some things, you did document; is that right?
24 A. Yes.
25 Q. And as a matter of fact, you wrote him two letters about

1 doing full consumption of some items to be tested?
2 A. Correct.
3 Q. Okay. And the reason you wrote that is: When an item might
4 be fully consumed and running a test, there's nothing left
5 for a future test; is that right?
6 A. That is correct.
7 Q. I'm going to hand you what's been marked for identification
8 as Defendant's Exhibit 221, and is that a letter that you
9 authored to him?
10 A. Yes. It has my signature on it.
11 Q. And so you recognize that?
12 A. That's correct.
13 MS. HIGH: And, Your Honor, I would move
14 to offer for admission Exhibit 221.
15 THE COURT: Any objections?
16 MR. PENNER: May I review it briefly, Your
17 Honor?
18 THE COURT: You may.
19 MS. HIGH: Sure. And, Mr. Penner, it's
20 also at Bates 331.
21 MR. PENNER: Your Honor, given the hour,
22 I'd like to hear a little bit more about why the thing
23 should be admitted. I don't really have an objection; but
24 I'd ask the Court to, maybe, reserve ruling right now.
25 THE COURT: All right. Well, lay a

1 foundation. All right?
2 MS. HIGH: Okay. And I think there is a
3 concern with perhaps one line in here.
4 Q. (By Ms. High) Do you recall the date that you -- let me
5 hand you back Defendant's Exhibit 221. Do you recall the
6 date that you wrote this one?
7 A. It says April 30, 2014.
8 Q. Okay. And then I'm going to hand you, also, what has been
9 marked for identification as Defendant's Exhibit 222; and
10 that's, also, a letter that you authored?
11 A. That is correct.
12 Q. And it has your signature on it?
13 A. It does.
14 Q. And it's dated?
15 A. January 15, 2015.
16 Q. And again, it was just memorializing that you were
17 authorizing, if need be, for him to do a full consumption on
18 another item to be tested?
19 A. If it was necessary.
20 Q. Got it. And again, the point of that is: If something is
21 fully consumed, there's not the opportunity to do
22 re-testing; is that right?
23 A. That is correct.
24 MS. HIGH: Okay. And, Your Honor, I'm not
25 going to offer these at this time subject to us perhaps

1 having a discussion with the Court --
2 THE COURT: All right.
3 MS. HIGH: -- outside the presence of the
4 jury.
5 Q. (By Ms. High) I think you testified you've seen or
6 investigated 200 homicides or so in the course of your
7 30-plus years?
8 A. That is correct.
9 Q. Okay. And do you recall in 1993, was that a time where
10 there were quite a few homicides being investigated at any
11 one time?
12 A. Well, I can't specifically recall; but we average -- we --
13 we go anywhere from 12 and we've had as high as 26 in a
14 year.
15 Q. Okay. Looking back, were the early 90s years where there
16 was, kind of, a spike in some serious crime?
17 A. I -- I can't give any specific recall of '93.
18 Q. Okay.
19 A. I mean, I'm in a violent kind of business, and every year is
20 violent; and -- and true, some years are more busy than
21 others.
22 Q. Sure. But just sitting here today being asked off the cuff,
23 you're not -- you don't recall if that seemed to be a year
24 where you -- officers were more overworked perhaps than
25 other years?

1 A. I don't know what the homicide guys were doing. I was -- at
2 that time, I was in the Sexual Assault Unit; and I was
3 pretty overwhelmed, so --
4 Q. Okay. Well, and also, I think you've seen a lot of scenes;
5 and it was -- I think we heard, you know, your opinion that
6 Ms. Robinson was killed pretty much right there in the
7 kitchen; is that correct?
8 A. Well, let's -- let's be a little more technical; she died
9 right there.
10 Q. Okay.
11 A. At some point, she was erect.
12 Q. Mm-hmm.
13 A. And -- but I believe that's the area where the initial
14 assault started, and I believe that's the area where it
15 ended.
16 Q. Okay. Fair enough and that this was an assault that had the
17 earmarks of being a frenzied attack?
18 A. I'd say -- I would say it was.
19 Q. Okay. Did you work with Mr. Schlosser on some of your
20 cases?
21 A. I have.
22 Q. And were you aware of his performance deficits?
23 A. Could I ask you for a definition?
24 Q. Well, being officially reprimanded for not properly doing
25 your job?

A. I -- I don't know about the reprimand part.
Q. Mm-hmm.
A. He wasn't what I would describe as the sharpest tool in the shed, but he did satisfactory work when he was around me.
Q. Okay. And you were pretty diligent always and working with and overseeing the collection of evidence on your cases; is that correct?
A. Well, it's a -- it's a two-prong issue. When I'm the lead detective, sometimes I do the crime scenes myself. Other times, I -- I delegate it to another detective.
Q. Mm-hmm.
A. So sometimes, yes, not always.
Q. But when you delegate, it's someone you have a lot of confidence in?
A. Generally, yes.

MS. HIGH: All right. Thank you. That's all I have.

THE COURT: Any redirect?

MR. PENNER: Briefly, Your Honor. Thank you.

THE COURT: It's ten minutes until the noon hour.

MR. PENNER: Okay.

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1 REDIRECT EXAMINATION
2 BY MR. PENNER:
3 Q. All right. So just to go through a few things, you
4 indicated that you got some archive boxes from Detective
5 O'Hern.
6 A. That -- that is correct.
7 Q. All right. And he was the original lead detective; correct?
8 A. Yes.
9 Q. And you also testified that there were items of evidence in
10 those boxes?
11 A. That's correct.
12 Q. I just want to clarify, the items that you're talking about,
13 they were all documents; right?
14 A. That is correct.
15 Q. Okay. No physical evidence, no blood evidence?
16 A. No blood evidence.
17 Q. And evidence that you testified earlier, the blood and the
18 other samples that we saw in the photographs, were any of
19 those in the boxes you got from Detective O'Hern?
20 A. No.
21 Q. Where were those items of evidence?
22 A. They were found in the Pierce County property room.
23 Q. Okay. Thank you. You talked a little bit about the .3
24 report, the .7 report, the .6 report. Can you explain to
25 the jury this dot report system.

A. Well, yes. There was a time when all your reports were done by hand. [Coughs.] Excuse me. They were -- they were either printed out, or they were typed out. We went to a computer system that all your reports are done online, and under a particular case number -- and let's say you were the first officer on the scene and you did the general report, your report would be called the .1; and that would be reflected on the report. The next person that submitted a supplementary report would be .2 and so on and so forth.

Q. Okay. Do you have in front of you Exhibits 55 or 59?

THE COURT: I think they came back.

A. No. The only one I have, here, is 222.

THE COURT: They should be back up here.

MR. PENNER: Oh, here we go.

Q. (By Mr. Penner) All right. So you testified on cross that in Exhibit 55, which is your .3, that you -- this was a -- you documenting a correction. Can you just let the jury know what that correction was that you made.

A. (Reviewing.) Well, it appears that one of the documents was placed into property as a Howard Lee Smith; and it was actually that of Howard Lee Chandler.

Q. Okay. So it was just a name correction?

A. It was a name correction, yes.

Q. All right. I'm going to hand you Exhibit 59. Does that document a correction that you made?

1 A. (Reviewing.)
2 THE COURT: Okay. What is 59, Counsel?
3 MR. PENNER: I'm sorry. It's Exhibit 59,
4 which is the .7.
5 A. It is a correction, yes.
6 Q. (By Mr. Penner) And again, does it go to just names and
7 labeling?
8 A. Yeah. I -- I -- one of the evidence items, or documents,
9 was listed as Linda Robinson; and it should have read her
10 sister, Stephanie Robinson.
11 Q. Okay. But you caught it, and you corrected it; and you
12 documented the correction?
13 A. That's correct.
14 Q. Okay. Thank you. On the photographs, I wanted to --
15 MR. PENNER: Your Honor, can I publish,
16 again, Exhibit No. 4?
17 THE COURT: Any objections?
18 MS. HIGH: No. Thank you.
19 THE COURT: No. 4 may be published again.
20 Q. (By Mr. Penner) And I don't think we need to dim the
21 lights, but this shows the phone; correct?
22 A. It does.
23 Q. All right. And is that the phone that was submitted to the
24 Crime Lab that you testified about earlier?
25 A. I believe it is.

1 Q. And Counsel asked you about -- it looked like her arm had
2 been moved, maybe?
3 A. She did.
4 Q. Okay. You said you've done 200 homicide investigations?
5 A. That is correct.
6 Q. All right. At the point that these photographs were taken,
7 the paramedics, have they already come?
8 A. They have.
9 Q. All right. Is it possible for you to determine whether her
10 arm was moved by the assailant or the paramedic or some
11 other person?
12 A. No. In fact, she may have been alive for a few moments
13 herself and moved her own arm.
14 MR. PENNER: All right. No other
15 questions, Your Honor. Thank you.
16 THE COURT: Any additional cross,
17 Ms. High?
18 MS. HIGH: Just briefly.
19 THE COURT: You have five minutes.
20 MS. HIGH: Yeah, just a question or two.
21 RECROSS-EXAMINATION
22 BY MS. HIGH:
23 Q. And as you say, you're not able to tell who is responsible
24 for what appeared to be that movement there; is that right?
25 A. That is correct.

1 Q. And I assume with the drawers in her bedroom, you're not
2 able to say who left the drawers open, whether it was
3 Ms. Robinson, the assailant, or somebody else?
4 A. That is correct.
5 MS. HIGH: Okay. That's all I have.
6 Thank you.
7 THE COURT: Anything else, Mr. Penner?
8 MR. PENNER: No, Your Honor. Thank you.
9 THE COURT: May the witness be excused,
10 subject, of course, to recall?
11 MR. PENNER: Subject to recall, yes.
12 (The witness was excused.)
13 THE COURT: All right. Mr. Penner, if you
14 will get the additional documents, I'll charge you with
15 returning those.
16 All right. We're going to go ahead and recess for lunch.
17 It's five till, no discussion, no investigation, notepads
18 face down on your chairs. Please remain in the jury room
19 until Ms. Shipman comes to release you. Have a nice lunch.
20 It's supposed to be sunny today. The last person gets to be
21 the designated door-shutter; that is, usually, No. 1.
22 (The jury was not present.)
23 THE COURT: How long is it going to take
24 to address the issue of the letters, Exhibits 221 and 222?
25 MS. HIGH: You know what, I read them.

1 The only thing I was concerned about is: It did reference
2 Mr. Penner as being in consultation with the decision to
3 write the letter to allow a full consumption of his DNA and
4 then that --
5 MR. PENNER: Your Honor, that's my
6 concern.
7 MS. HIGH: Right.
8 MR. PENNER: I'm not sure what the value
9 is. He's testifying as to what was in it, the purpose for
10 them and that it was for full consumption and that he
11 authorized that. To the extent that these are admissible --
12 they're hearsay, I think, and cumulative; and they do
13 reference a conversation that he had with me in consultation
14 as we moved forward in the investigation of the case. I'm
15 not sure there's value in that.
16 THE COURT: Ms. High?
17 MS. HIGH: Well, he did say he authored
18 them; so in that sense, I think there is a foundation.
19 However, I am sensitive to the fact that it does reference a
20 conversation with Mr. Penner; and I think at the very least
21 that that would need to be redacted. At this point, I'll
22 withdraw my request that they be admitted --
23 THE COURT: All right.
24 MS. HIGH: -- subject to me perhaps having
25 another brainstorm on it, but I do -- I do think it probably

1 is not appropriate to have the reference to Mr. Penner part
2 of the exhibit.
3 THE COURT: All right. I think the
4 important thing is the full consumption.
5 MS. HIGH: Right.
6 THE COURT: That's the issue. He's
7 testified about that. The jury now knows that whatever else
8 may have been going on at the time is not really relevant --
9 MS. HIGH: Right.
10 THE COURT: -- to the issue of: Was it
11 fully consumed, or was there anything left for further
12 testing?
13 MR. PENNER: And again --
14 THE COURT: So she's withdrawn her --
15 MR. PENNER: Thank you.
16 THE COURT: She's withdrawn her motion to
17 admit these, so --
18 MR. PENNER: Thank you, Your Honor.
19 THE COURT: All right. We'll reconvene at
20 1:30.
21 MR. PENNER: Thank you.
22 (A recess was taken.)
23 (The defendant was present.)
24 (The jury was not present.)
25 THE COURT: Anything before we bring the

1 jury in?
2 MS. HIGH: No. I don't think so, Your
3 Honor.
4 MR. PENNER: No, Your Honor, not from the
5 State. Thank you.
6 THE COURT: All right.
7 (The jury was present.)
8 THE COURT: All right. You may be seated.
9 You may call your next witness, Counsel.
10 MR. PENNER: Thank you, Your Honor. The
11 State will call Stephanie Robinson-Stewart.
12 THE COURT: Watch the ramp.
13 STEPHANIE ROBINSON-STEWART, witness herein, having been
14 sworn under oath, was
15 examined and testified as
16 follows:
17 THE COURT: All right. If you'll have a
18 seat. There's water and Kleenex to your right, and you can
19 adjust the mic by pulling it forward. When you're
20 answering, make sure you answer yes or no; don't go uh-huh
21 or nod or shake your head. Okay? My court reporter is
22 taking everything down.
23 THE WITNESS: All right.
24 THE COURT: All right. Your witness,
25 Counsel?

1 MR. PENNER: Thank you.
2 DIRECT EXAMINATION
3 BY MR. PENNER:
4 Q. Could you please state your name for the record and also
5 spell it, the last name, for the court reporter.
6 A. My name is Stephanie Robinson, hyphen, Stewart. Robinson is
7 R-O-B-I-N-S-O-N, hyphen, Stewart, S-T-E-W-A-R-T.
8 Q. Okay. And how are you employed, ma'am?
9 A. I am employed by Department of Corrections.
10 Q. Okay. And are you familiar or were you familiar with
11 someone by the name of Linda Robinson?
12 A. Yes. Linda was my sister.
13 Q. Okay. Do you also know someone named Gloria Elliott?
14 A. Yes. That's also my sister.
15 Q. Okay. How about Tarica Dudley?
16 A. That is my niece.
17 Q. Okay. And who is Tarica's mom?
18 A. Tarica's mom is Linda Robinson.
19 Q. Okay. And Shawonika Elliott, do you know that person?
20 A. Yes.
21 Q. And who is Shawonika's mom?
22 A. Shawonika's mom is Gloria Elliott-Harris.
23 Q. Okay. All right. I'd like to ask you to step back to
24 February of 1993; and so the jury knows, that was a
25 significant month in your life, I assume?

1 A. Yes.
2 Q. All right. And generally, what was it that happened on
3 February 6, 1993?
4 A. My sister Linda was murdered.
5 Q. Okay. I'm going to show you what's been marked as Exhibit
6 90, and I'm going to ask if you recognize the person
7 depicted in that photograph?
8 A. Yes. This is my sister, Linda.
9 Q. Okay. And is that a -- well, don't show it to the jury just
10 yet.
11 A. Oh, sorry.
12 Q. That's okay. Is that an accurate depiction of what Linda
13 looked like near the time of her murder?
14 A. Yes.
15 MR. PENNER: Your Honor, the State moves
16 to admit Exhibit 90.
17 THE COURT: Any objections?
18 MS. HIGH: Just as to my pretrial
19 objection, Your Honor.
20 THE COURT: The Court will admit No. 90.
21 (Plaintiff's Exhibit No. 90 was admitted.)
22 MR. PENNER: And, Your Honor, move to
23 publish.
24 THE COURT: Any objection?
25 MS. HIGH: No.

1 THE COURT: All right. It will be
2 published.
3 MR. PENNER: Can we maybe dim the lights
4 just a little.
5 Q. (By Mr. Penner) So that's Linda?
6 A. Yes.
7 Q. Okay. And was that taken in the apartment that she was
8 murdered in, can you tell?
9 A. I can't tell if that's the apartment or not.
10 Q. All right. But again, that's what Linda looked like shortly
11 before her murder?
12 A. Yes.
13 Q. Thank you. I'll leave that up for just a second. And
14 again, so the jury understands, you and Gloria and Linda are
15 all sisters?
16 A. Correct.
17 Q. All right. And Linda's daughter is Tarica?
18 A. Yes.
19 Q. Gloria's daughter is Shawonika?
20 A. Correct.
21 Q. Did you have a young child back in 1993?
22 A. Yes, I did.
23 Q. And what was that child's name?
24 A. His name was Terrence Lesley, Junior.
25 Q. Okay. And did you guys sometimes give child care to each

1 other?
2 A. Yes.
3 Q. All right. Watch each other's kids?
4 A. Yes.
5 Q. All right. On February 6, 1993, was that one of those
6 nights when one of you was watching the other one's kids?
7 A. Yes. Linda was, actually, watching my child.
8 Q. Okay. And again, for the record and for the jury, your
9 child's name?
10 A. Terrence Lesley, Junior.
11 Q. And how old was he that day?
12 A. At that particular time, he was 18 months old.
13 Q. Okay. Thank you. What was --
14 THE COURT: Do you want to make sure that
15 it gets back to Ms. Shipman to be stamped.
16 MR. PENNER: I will, Your Honor. Thank
17 you.
18 Q. (By Mr. Penner) What was the plan that day -- if things had
19 gone the way they were supposed to go, what was the plan
20 with the kids and the baby-sitting-in-the-evening thing?
21 A. Linda had left my house that evening, and I had asked her --
22 I was in school at the time, and I had asked Linda -- or
23 actually, Linda had volunteered to keep my son Monday
24 through Friday while I went to school; and then I would have
25 him on the weekends.

1 Q. Okay. And so had you seen Linda earlier that day?
2 A. Yes.
3 Q. All right. And what was the context of that interaction?
4 A. Linda came over. We had a few people over at the house. We
5 were barbecuing, and Linda came over to pick up my son.
6 Q. Okay. And again, if things had gone just the normal way,
7 what would have happened the next day or the day after?
8 A. I can't remember what day of the week that is. I'm sorry.
9 Q. I think it was a Saturday.
10 A. A Saturday.
11 Q. Yeah.
12 A. Probably would have brought him home, yeah.
13 Q. That was just the plan; right?
14 A. Yeah, that was just the plan.
15 Q. But it didn't go the way it was supposed to, did it?
16 A. No, it didn't.
17 Q. When did you learn that something had happened?
18 A. My dad called me that night and told me that Linda had been
19 murdered.
20 Q. Okay. And were you at home when you got that call?
21 A. Yes.
22 Q. So what did you do?
23 A. I was pretty frantic because my --
24 Q. Did your dad give you any details as to what had happened?
25 A. No, he did not.

1 Q. Okay. And so what did you do?
2 A. I immediately got in my car and went to my sister's house.
3 Q. When you got there, what did you see?
4 A. I saw the crime tape/caution tape. There were police
5 officers there and a few of my brothers outside of her
6 apartment.
7 Q. Okay. Did you ever go inside the apartment that night?
8 A. No. The police would not let me.
9 Q. All right. Were you able to retrieve your son?
10 A. Yes.
11 Q. Okay. How long did you stay at the scene there at the
12 apartment or outside the apartment?
13 A. Quite a while, I mean, quite a while. I don't know exactly
14 how long, but it was quite a while.
15 Q. And either there or later on, were you contacted by the
16 police and just asked questions?
17 A. Later that night, yes.
18 Q. Okay. And do you remember the nature of the questions at
19 all?
20 A. I would just say general questions that they would ask.
21 Q. Okay. Do you remember them asking about any friends or
22 other people who may have been there that night with her,
23 any friends, like, a boyfriend or anything like that?
24 A. I can't recall.
25 Q. Okay. I'm going to just ask if you remember a couple of

1 names; and if you don't or even if you do, let me know. Do
2 you remember them asking about a man named George Caldwell?
3 A. No.
4 Q. Do you remember them asking about somebody named Bill
5 Miller?
6 A. No, not that I remember.
7 Q. Do you remember anybody asking about James Mitchell?
8 A. No.
9 Q. Setting aside that night, do you know James Mitchell?
10 A. I believe -- I don't know him personally.
11 Q. Okay. Are you familiar with him or his family?
12 A. No.
13 Q. Okay. You said you don't know him personally?
14 A. Correct.
15 Q. Prior to this case, did you ever have any interactions with
16 him?
17 A. Not specifically. I think I remember Mr. Mitchell from -- I
18 believe we went to junior high school together, just seeing
19 him and passing in the hallway.
20 MR. PENNER: Okay. All right. Thank you.
21 THE WITNESS: You're welcome.
22 MR. PENNER: Nothing else, Your Honor.
23 THE COURT: Cross-examination, Counsel?
24 / / /
25 / / /

1 CROSS-EXAMINATION
2 BY MS. HIGH:
3 Q. Ms. Robinson-Stewart, you said you were in school back in
4 1993?
5 A. No. I graduated in -- you said '93?
6 Q. Yes.
7 A. No.
8 Q. Okay. Well --
9 A. Oh, you mean in school, yeah. Yes.
10 Q. Okay. I was going to say, I think you just said you were in
11 school.
12 A. Yes. I'm sorry.
13 Q. Okay. I know.
14 A. We were talking about two different schools.
15 Q. Right. I'm not talking about junior high school.
16 A. No.
17 Q. Yeah, I'm talking, you were a young woman with a toddler at
18 the time; right?
19 A. Yes. Correct.
20 Q. And so I'm going to ask you a few questions about your
21 sister, Linda. At that time, she was older than you were?
22 A. Yes.
23 Q. And how much older?
24 A. Oh, gosh, I don't know exactly. I would say about eight
25 years older than myself.

1 Q. Okay. And she had a daughter, Tarica; is that right?
2 A. Yes.
3 Q. And she was about 15?
4 A. Yes.
5 Q. And I think you said that she came over to your house that
6 day; is that right?
7 A. Yes.
8 Q. Now, how did she get there?
9 A. She drove.
10 Q. And what did she drive?
11 A. I don't remember the kind of car.
12 Q. Okay. Did she own a car?
13 A. Yes.
14 Q. Okay. What kind of car did she own?
15 A. I don't remember what it was.
16 Q. What kind of car did you have?
17 A. I believe I had two cars.
18 Q. Okay.
19 A. I had a Buick of some sort and a Pinto.
20 Q. Okay. Okay. Well, that evening, you get a call from your
21 dad; is that right?
22 A. Yes.
23 Q. And so do you remember about what time you got that phone
24 call?
25 A. I'm going to guesstimate about 10:30ish.

1 Q. Okay. All right. And I know it's been a really long time.
2 A. (Nods head.)
3 Q. And do you -- you do remember talking to a couple of
4 officers; is that right?
5 A. After everything was done?
6 Q. Right, very early morning hours, maybe somewhere around
7 2:30, three o'clock in the morning?
8 A. I remember talking to one officer.
9 Q. Okay. And, you know, at that time, certainly what was going
10 on was a lot fresher in your mind; is that right?
11 A. Correct.
12 Q. I'm going to hand you what's been marked for identification
13 as Plaintiff's Exhibit 47.
14 THE COURT: 47 or 37?
15 MS. HIGH: 47.
16 THE COURT: 47.
17 Q. (By Ms. High) And I'm going to direct your attention to
18 page --
19 A. I don't have my glasses.
20 Q. -- page six. Do you need your glasses?
21 A. I think I'll be okay without them.
22 Q. Okay. So back when you gave this statement, events were
23 closer in time, certainly, and clearer in your mind; is that
24 right?
25 A. Correct.

1 Q. And that's a report that was prepared by Law Enforcement
2 Officer/Detective Minturn, and he says that he's --
3 MR. PENNER: Your Honor, I'm going to ask,
4 rather than reading from it, there should be a procedure to
5 see if it refreshes the witness's memory first.
6 MS. HIGH: Well, I'm impeaching rather
7 than refreshing; but certainly, we'll do that.
8 Q. (By Ms. High) Would you take a few moments and read where
9 it says "0250 hours."
10 A. Okay. (Witness complies.) Okay.
11 Q. Okay. So you remember, at this time in your life, you lived
12 on Hannah Pierce Road. Do you remember that?
13 A. Yes.
14 Q. Okay. And your sister, Gloria, lived at another address; is
15 that right?
16 A. That's correct.
17 Q. Okay. And do you recall her living -- let me get this
18 address correct -- on 10th Avenue East? Do you remember her
19 living over there?
20 A. Yes.
21 Q. Okay. And that after you left the apartments where Linda
22 was murdered, you went to your sister's house; is that
23 right?
24 A. Correct.
25 Q. And so you and some other family members went over to

1 Gloria's house on 10th Avenue?
2 A. Correct.
3 Q. Okay. And while there, you were asked if you had spoken
4 with Linda that evening?
5 A. Okay.
6 Q. And do you remember telling them that you spoke with her
7 about 10 p.m.?
8 A. I don't remember.
9 Q. Okay. And do you remember telling them that you had --
10 Linda had told you that someone named Billy had called her?
11 A. I don't remember that, no.
12 Q. And that you'd spoken with her about 2 p.m. that previous
13 day when she told you that Billy had called?
14 A. I don't remember that conversation.
15 Q. So -- okay. And it's your recollection that she owned a car
16 at that time?
17 A. Yes.
18 Q. Okay. And that she did not borrow a car from you?
19 A. No.
20 Q. Okay. And do you recall what kind of car you believed that
21 she owned?
22 A. Again, I don't remember.
23 Q. Okay. I'm also going to hand you what's been marked for
24 identification as Plaintiff's Exhibit 48. Now, this is a
25 report that was prepared by another officer, an Officer

1 Page; and I know you said you only remember one individual,
2 but if I could have you maybe take a moment and read -- I
3 think I've opened to page five of eight -- that last
4 paragraph.
5 A. (The witness complies.)
6 Q. Okay. And so speaking with Officer Page -- and I think you
7 told Mr. Penner a moment ago that you had some family
8 members over that day for a get-together?
9 A. Correct.
10 Q. And so Linda was at your house for a little barbecue-type
11 get-together; is that right?
12 A. I don't remember if Linda was, actually, at the barbecue.
13 Q. Okay. And when you told Officer Page that she had been
14 there and left about 8:00, would that have been correct?
15 A. I don't remember what time she left.
16 Q. Okay. And as you told him here in this report, you would
17 have tried to be accurate?
18 A. I'm sorry. I don't understand the question.
19 Q. Well, you wouldn't have just made up a time when you talked
20 to Lieutenant Page; you would have been accurate; correct?
21 A. More than likely.
22 Q. Okay. So if you told him that she had been over and left
23 about 8 p.m., you certainly would have given him your best
24 answer?
25 A. Yes.

1 Q. You knew it was important; right?
2 A. Right. Yeah.
3 Q. Yeah, I mean, you loved your sister?
4 A. Of course.
5 Q. And you wanted to help; right?
6 A. Yes.
7 Q. And you told him that you'd spoken to her actually even
8 earlier in the day?
9 A. Yes.
10 Q. And that she had mentioned the old boyfriend, Billy, calling
11 about 4:00 in the morning?
12 A. According to this report.
13 Q. And that he had been talking "really stupid" and arguing
14 with her?
15 A. I don't remember that actual conversation, but --
16 Q. And again, you would have been giving him the best
17 information you had?
18 A. Correct.
19 Q. Okay. And so as you sit here today, though, you don't
20 recall whether Tarica was with Linda over at your house --
21 A. Tarica was --
22 Q. -- for the get-together?
23 A. Tarica was not with me. Tarica was at the roller rink.
24 Q. No, I mean, for the barbecue or the get-together?
25 A. No, I don't remember.

1 Q. Okay. And you don't recall whether the arrangement had been
2 for Tarica to baby-sit your son that night?
3 A. No. It was for Linda to baby-sit.
4 Q. Okay. And did you know that Shawonika was going to be
5 there?
6 A. I don't remember if I knew she was going to be there or not.
7 Q. Or that other children would be at the house being baby-sat?
8 A. I did know other people were going to be there, yes.
9 Q. Okay. And you said that Linda was watching your son pretty
10 much Monday through Friday while you were attending school;
11 is that right?
12 A. That was the arrangement we had.
13 Q. And did she watch your son at her home or at Gloria's
14 daycare?
15 A. No. She watched my son at her house.
16 Q. Okay. And do you know, was she watching any other children,
17 too, providing daycare for them?
18 A. Linda watched children off and on throughout her life.
19 Q. Okay. Was it -- but it was an informal kind of arrangement?
20 A. Yes.
21 Q. Yeah. I mean, it was --
22 A. We just made that arrangement that -- that day.
23 Q. Oh, you had just made that arrangement?
24 A. Yes.
25 Q. So she hadn't been watching him prior to --

1 A. She hadn't been watching him Monday through Friday, no, not
2 as of yet.
3 Q. Okay.
4 A. But she had watched him in the past.
5 Q. Sure, as family members, especially with small children,
6 help each other out?
7 A. Yeah.
8 Q. Okay.
9 A. Mm-hmm.
10 Q. And before Linda decided that she was going to be helping
11 you out by watching him, was your son getting daycare from
12 your other sister, from Gloria?
13 A. No.
14 Q. Okay. Linda had only been at that apartment for about two
15 months; is that right?
16 A. Approximately.
17 Q. Okay. And had you been over there?
18 A. Yes.
19 Q. Okay. So you were a frequent visitor?
20 A. Yes.
21 Q. And you also talked to her a lot on the phone?
22 A. Yes, every day.
23 Q. And it sounds to me, just from what I've reviewed, that she
24 actually was a pretty active telephone talker. Is that fair
25 to say?

1 A. Yes.
2 Q. She talked to you every day?
3 A. Yes.
4 Q. And probably, to the best of your knowledge, other family
5 members as well?
6 A. Yes.
7 Q. And her friends?
8 A. Sure.
9 Q. Sure. And was she employed outside the house besides
10 watching children at that time, do you recall?
11 A. I don't recall if she was employed at that time.
12 Q. Okay.
13 THE COURT: You might want to keep your
14 voice up just a little more. Okay?
15 THE WITNESS: Okay.
16 Q. (By Ms. High) And do you remember her having a friend named
17 Jackie?
18 A. Yes.
19 Q. And I've seen her last name several different ways in the
20 reports, maybe Jackie Fields?
21 A. Correct.
22 Q. Okay. And that was one of her close friends?
23 A. Yes.
24 Q. Okay. And had you met George Caldwell? Does that name ring
25 a bell?

1 A. It does not ring a bell.
2 Q. A military fellow that had a band, does that ring a bell?
3 A. No.
4 Q. Okay. A couple of kids that were being baby-sat by your
5 sister, Gloria?
6 A. (Shakes head.)
7 Q. No?
8 A. No.
9 Q. Okay. When you got to Linda's apartment that evening after
10 your dad had called you, what family members were there, do
11 you remember?
12 A. I know my brother, Curtis, was there. I can't recall who
13 else was there.
14 Q. Okay. And do you recall if your sister, Gloria, was there?
15 A. I don't believe Gloria was there.
16 Q. You don't believe so?
17 A. No.
18 Q. And you said you were able to pick up your son; that's
19 right?
20 A. Yes.
21 Q. And do you remember where your son was?
22 A. I do not. I was pretty hysterical, and I remember someone
23 handing him to me.
24 Q. Okay.
25 A. I don't know where he came from.

1 Q. Okay. And was he walking at that point?
2 A. I can't recall exactly.
3 Q. No problem. And do you remember talking at all with your
4 little niece, Ms. Elliott, who's now, I guess, a TSA agent?
5 A. That night?
6 Q. Yes.
7 A. No.
8 Q. Okay. And when you were interviewed by the officers back at
9 Gloria's house --
10 A. Mm-hmm.
11 Q. -- in the really early morning --
12 A. Yes.
13 Q. -- do you remember where you were physically located when
14 you were interviewed?
15 A. Downstairs, I remember.
16 Q. Like, in a kitchen? In the living room? Do you recall?
17 A. I think it was downstairs, one of her bedrooms downstairs.
18 Q. Okay. And were you alone with the officer while you were
19 being interviewed, or were other family members present?
20 A. Alone with the officer.
21 Q. Okay. And then he would, maybe, take you out and have the
22 next person come in, that kind of thing?
23 A. Yes.
24 Q. Okay. And you said finally that you believed that you might
25 have been in junior high school, the same junior high school

1 at the same time as Mr. Mitchell; is that right?
2 A. Correct.
3 Q. What high school -- junior high was that?
4 A. That was Jason Lee junior high school.
5 Q. Okay. And what grade would you have been in when you were
6 in school together with him?
7 A. It would have -- it had to have been in seventh or ninth.
8 Q. Okay. Is that the range there?
9 A. That's the range of the junior high school, yes.
10 Q. And I know this is a terrible thing to ask a woman, but
11 what's your birthday?
12 A. August 15, 1964.
13 Q. 1964?
14 A. Yes.
15 MS. HIGH: Okay. So thank you so much.
16 That's all I have.
17 THE WITNESS: You're welcome.
18 THE COURT: Redirect?
19 MR. PENNER: Thank you, Your Honor, just a
20 few questions.
21 REDIRECT EXAMINATION
22 BY MR. PENNER:
23 Q. This was a really long time ago; right?
24 A. Correct.
25 Q. Okay. And I think you described yourself -- what was your

1 mindset when you found out your sister had been murdered?
2 A. Well, I was hysterical.
3 Q. Did the police tell you how she'd been murdered? Did you
4 find that out that night?
5 A. I don't remember if I found that out that particular night,
6 no.
7 Q. Okay. But you found out later?
8 A. I did.
9 Q. Okay. When you were interviewed by the police, to clarify,
10 that was not outside the apartment -- outside Linda's
11 apartment; right?
12 A. Correct.
13 Q. Where did that take place again?
14 A. That was at Gloria's house.
15 Q. Okay. And was Gloria's house kind of where the family all
16 got together to try to process what had happened?
17 A. Yes.
18 Q. All right. Do you remember who all was there, like, how
19 many people were there?
20 A. No.
21 Q. Okay. Do you have a big family?
22 A. Yes.
23 Q. All right. And were the kids there, too, all the kids?
24 A. I don't remember.
25 Q. Again, it was a long time ago?

1 A. It was.
2 MR. PENNER: I think that's all I have.
3 Thank you, Ms. Robinson.
4 THE WITNESS: You're welcome.
5 MR. PENNER: Thank you, Your Honor.
6 THE COURT: Anything else, Ms. High?
7 MS. HIGH: No, not based on that. Thank
8 you.
9 THE COURT: All right. May the witness be
10 excused, subject, of course, to recall?
11 MR. PENNER: Your Honor, we'd ask that she
12 be excused and not subject to recall.
13 THE COURT: All right.
14 MS. HIGH: And no objection, Your Honor.
15 THE COURT: All right. You are excused at
16 this time. There's no plans to recall you; so at this
17 point, you will not be excluded from the courtroom. All
18 right?
19 THE WITNESS: Thank you.
20 THE COURT: You may step down. Thank you.
21 (The witness was excused.)
22 MR. PENNER: Thank you, Your Honor.
23 THE COURT: The next witness?
24 MR. PENNER: Thank you. The State will
25 call Gloria Elliott-Harris.

1 THE COURT: There's a ramp leading up, so
2 be careful of the ramp; raise your right hand.
3 GLORIA ELLIOTT-HARRIS, witness herein, having been sworn
4 under oath, was examined and
5 testified as follows:
6 THE COURT: All right. If you'll have a
7 seat. There's water and Kleenex to your right, ma'am.
8 THE WITNESS: Okay.
9 THE COURT: You can pull the chair forward
10 and adjust the mic. When answering, please answer yes or
11 no; don't just nod or shake your head or go uh-huh. The
12 court reporter is taking everything down and needs to
13 understand. Okay?
14 THE WITNESS: Thank you.
15 THE COURT: Your witness, Counsel.
16 MR. PENNER: Thank you.
17 DIRECT EXAMINATION
18 BY MR. PENNER:
19 Q. Could you state your name for the record, and spell your
20 last name for the court reporter.
21 A. My name is Gloria Elliott-Harris, H-A-R-R-I-S.
22 Q. And, Ms. Elliott-Harris, do you know someone by the name of
23 Linda Robinson?
24 A. I do.
25 MR. PENNER: Your Honor, may I publish

1 Exhibit 90?
2 THE COURT: Any objections? It's been
3 published already.
4 MS. HIGH: No objections.
5 THE COURT: All right. It will be
6 published again.
7 Q. (By Mr. Penner) And who is the photograph of?
8 A. That's my sister.
9 Q. Okay. Is that Linda?
10 A. That's Linda.
11 Q. Okay. And when was the last time you saw Linda?
12 A. The day before she died.
13 Q. Okay. And --
14 THE COURT: Okay. You need to speak up.
15 All right? It's hard to hear you.
16 THE WITNESS: Okay.
17 THE COURT: If I'm having trouble hearing
18 you, I'm sure the jury is --
19 THE WITNESS: Okay.
20 THE COURT: -- so if you can speak into
21 the mic. All right?
22 Q. (By Mr. Penner) Do you also know someone named Stephanie
23 Robinson?
24 A. I do.
25 Q. All right. And how are you related to Stephanie?

1 A. She's also my sister.
2 Q. Okay. And back in February of 1993, did the three of you
3 live close -- near each other?
4 A. Yes.
5 Q. All right. And did you watch each other's kids ever?
6 A. Yes.
7 Q. At that time -- well, do you know someone by the name of
8 Shawonika Elliott?
9 A. That's my daughter.
10 Q. Okay. Do you know someone named Tarica Dudley?
11 A. That's my niece.
12 Q. Okay. And who is Tarica's mom?
13 A. Linda.
14 Q. And you said the last time you saw Linda was the day before
15 she died?
16 A. Yes.
17 Q. Okay. Is this an accurate picture of what she looked like
18 shortly before she died?
19 A. Yes.
20 Q. And what's your understanding of how she died?
21 A. She was stabbed.
22 Q. When did you learn that your sister, Linda, had been stabbed
23 to death?
24 A. The night that she was stabbed.
25 Q. Okay. Let's back up a little bit. Do you remember what you

1 were doing that day?
2 A. Yes, I do.
3 Q. Okay. What were you doing that day?
4 A. Actually, I had went to Linda's house; and she wanted to
5 borrow my car, and I loaned her my car. And I went to
6 Seattle that day.
7 Q. Okay.
8 A. And I returned from Seattle, and I was at McChord NCO Club;
9 and I got a phone call from there.
10 Q. Okay. What about your daughter? What was she doing that
11 day or that night?
12 A. Linda was baby-sitting my daughter.
13 Q. Okay. All right. Who did you get a call from?
14 A. Actually, I was paged; and I didn't hear the page. And my
15 boyfriend at the time, they paged him; and the page came
16 from my brother, Curtis Robinson.
17 Q. Did you call Curtis back?
18 A. No. Doug came and told me we had to leave, so I asked him
19 why; and he wouldn't tell me why.
20 Q. Let me interrupt, was Doug your boyfriend at the time?
21 A. Yes.
22 Q. Okay. So he gets a page from Curtis?
23 A. Yes.
24 Q. Does he go call Curtis?
25 A. He went to answer the page.

1 Q. He comes back and says we have to go?
2 A. Yes.
3 Q. He didn't tell you why?
4 A. No.
5 Q. So what happened?
6 A. So I didn't want to go. I -- I didn't want to leave. And
7 he says, "We've got to go; We've got to go." And I said,
8 "Why?" And he said, "Just come on, I'll tell you in the
9 car."
10 Q. Okay. And the reason you didn't want to go was why?
11 A. I was having a good time.
12 Q. So then what happened?
13 A. So we left, and we got in the car; and we left. And I asked
14 him why we were leaving, and where were we going? And he
15 said, "Just -- just I'll tell you when we get there; I'll
16 tell you when we get there." So we proceeded, and we got to
17 Linda's apartment; and as we were pulling up, I -- I don't
18 think that the car even stopped, and I jumped out because --
19 Q. And why did you jump out of a moving car?
20 A. Because I saw a paramedic vehicle. I saw fire trucks. I
21 saw police.
22 Q. Okay. And what time of day was this, I mean, roughly?
23 A. It was at night, and I want to say, I'm -- I really can't
24 say what time it was.
25 Q. But it wasn't daytime?

1 A. No.
2 Q. Okay. So there's lights lighting up the whole time?
3 A. Yes.
4 Q. Did you actually go up to the apartment?
5 A. I did. I got out, and I ran to the steps; but they had the
6 yellow caution tape in front of the steps.
7 Q. Did you go past the tape?
8 A. I did. I raised it up to go up the steps, and two
9 detectives grabbed me and said I couldn't go up.
10 Q. How far did you get?
11 A. Oh, maybe about three steps or so.
12 Q. Okay. Did you ever actually go inside the apartment that
13 night?
14 A. Linda's apartment?
15 Q. Yeah.
16 A. No.
17 Q. Okay. So what happened next?
18 A. When they pulled me back down the steps, they said, "You
19 can't go up." And I said, "My baby's up there; My baby's up
20 there."
21 Q. Okay. And who were you referring to when you said that?
22 A. Shawonika.
23 Q. Okay. So now what?
24 A. And they said, "Your baby? Who's your baby?" And I said,
25 "My sister lives up there. I need to go up there. She has

1 my daughter." And so they said, "Wait right here." And two
2 of them went over and talked to each other. And then they
3 came back, and they said, "Come with us." And they let me
4 come up the steps, and we went to the neighbor's across the
5 hall.
6 Q. And were you able to get your daughter there?
7 A. She was there. She was on the couch wrapped in a blanket.
8 Q. Okay. So what did you do? What happened next?
9 A. Well, I went -- went over to my daughter. And I said,
10 "What's wrong? Why are you here? Shawonika, why are you
11 here?" And she goes -- she just said, "Mommy, she is going
12 to be okay. She's just going to go to the hospital; She's
13 going to be okay."
14 Q. And she was talking about Linda?
15 A. Yeah.
16 Q. At that point, did you know that Shawonika was the one that
17 found her?
18 A. No. I didn't -- I didn't know. I didn't know what was --
19 what was wrong.
20 Q. So what happened next?
21 A. And then I was, like, "What do you mean she's going to be
22 okay?" And then at that time, one of the detectives came
23 over and said, "Can I talk to you in the kitchen?"
24 Q. Okay. And so did you go in the kitchen with --
25 A. I did.

1 Q. And what did you learn?
2 A. And he goes -- he said, "Who is Linda Robinson?" And I
3 said, "That's my sister." And he said, "Your sister is
4 dead." And that was it.
5 Q. Did they ever let you go into the apartment?
6 A. No.
7 Q. So what did you do at that point?
8 A. I don't know. At that point, I just, kind of like, lost it.
9 Q. All right. Did you stay there, or did you go someplace else
10 with your daughter?
11 A. We left.
12 Q. Okay. And this is a long time ago; a lot was going on. Do
13 you remember how long you stayed at the scene there at
14 Linda's place before you went to your place?
15 A. We left right after -- when I composed myself and got my
16 daughter, we left.
17 Q. Okay. Did anybody else go back to your house?
18 A. No. Not at that time --
19 Q. Okay.
20 A. -- just my boyfriend, my daughter, and I.
21 Q. All right. Did the police ever come over?
22 A. Yes.
23 Q. All right. And to talk to you?
24 A. Yes.
25 Q. And did they talk to you?

A. Yes.
Q. Okay. Do you remember anything about that conversation?
A. They just asked a bunch of questions about, you know, who was Linda with, who -- you know, her friends, that sort of stuff.
Q. And were you able to give them information?
A. At the time, who I knew, who I -- why was, you know, Shawonika there, what happened before we left, what was said between us before I left, and stuff like that.
Q. All right. And did you know some of Linda's friends?
A. I did.
Q. Did you know all of her friends?
A. No. No.
Q. And then how long do you think the police stayed talking to people?
A. I -- I couldn't tell you.
Q. Okay. After they left, did you ever have occasion to go back to that apartment?
A. No. We -- we had to go and clean her apartment up, but I couldn't do it; I couldn't do it.
MR. PENNER: Okay. Thank you. No other questions, Your Honor.
THE COURT: Cross-examination?
MS. HIGH: Thank you.
/ / /

1 CROSS-EXAMINATION
2 BY MS. HIGH:
3 Q. You were close to Linda, weren't you?
4 A. Very.
5 Q. You guys talked four or five times a day; is that right?
6 A. All the time.
7 Q. And she'd help you out at your daycare occasionally?
8 A. Yes.
9 Q. She didn't have a car at that time, did she?
10 A. No, she didn't.
11 Q. And you loaned her your car that night?
12 A. I did.
13 Q. What kind of car was that?
14 A. It was a Datsun B-210.
15 Q. Okay. So was it a two-door?
16 A. It was a four-door.
17 Q. Four-door. And how did she get the car from you that day?
18 A. I took it to her house.
19 Q. All right. And do you remember about what time you took it
20 over there?
21 A. It was early afternoon. I would say around, maybe, 1:00ish.
22 It was early afternoon.
23 Q. So you take your car over, and did Douglas Glover follow
24 you --
25 A. Yes.

1 Q. -- so you had a ride, and you two went up to Seattle?
2 A. Yes.
3 Q. Okay. And dropped your daughter off?
4 A. Yes.
5 Q. Okay. Were any other children there at the time?
6 A. I didn't go up to her apartment.
7 Q. Okay. She came on down and got the keys from you?
8 A. Yes.
9 Q. All right. Like you said, she sometimes would help you out
10 at your daycare?
11 A. Yes.
12 Q. And you were providing daycare for a gentleman named George
13 Caldwell at the time?
14 A. I was.
15 Q. And he was a fellow that was in the Army and was in the
16 military here?
17 A. Yes.
18 Q. And he had two little kids?
19 A. Yes.
20 Q. Okay. And you knew that sometimes he and Linda would get
21 together?
22 A. Yeah. They'd go to a movie or dinner or something.
23 Q. Okay. And then I think you said that you and Mr. Glover --
24 it's Douglas Glover; is that right --
25 A. Yes.

1 Q. -- went up to Seattle, came back, and went over to the NCO
2 Club?
3 A. Yes.
4 Q. Did Linda sometimes go to the NCO Club as well?
5 A. Maybe -- yeah, she did; she did.
6 Q. Let me just get the page here. Now, you remember talking to
7 the police officers that night or early morning, I guess?
8 A. Yeah. Vaguely, yes.
9 Q. Yeah, and it was at your house?
10 A. Yes.
11 Q. Okay. And do you remember telling them that Linda had told
12 you about getting that phone call from a person named Billy?
13 A. No.
14 Q. I'm going to hand you what's been marked for identification
15 as Plaintiff's Exhibit 48, and I've opened it to page six of
16 eight; and there's a couple of paragraphs starting about the
17 second line down. Maybe you'll take a moment just to take a
18 look at that.
19 A. (Witness complies.)
20 Q. Okay. Did you have a chance to read that?
21 A. Mm-hmm.
22 Q. Okay. Do you remember, when you were talking to him -- I
23 realize you were upset -- but you wanted to give him the
24 best information that you possibly could; is that fair to
25 say?

1 A. Yes.
2 Q. Okay. And you told him that you had talked to Linda earlier
3 in the day?
4 A. Mm-hmm. Yes.
5 Q. Thanks. And that she told you how an ex-boyfriend, Billy,
6 had called early that morning "talking real crazy"?
7 A. I really don't remember this conversation.
8 Q. Okay. And telling him that he was going to come over and
9 tap on the door three times, and she'd better let him in?
10 A. That's what I read, but I don't remember that conversation.
11 Q. Okay. And your sister told him that --
12 MR. PENNER: Your Honor, I'll object at
13 this point. The witness doesn't remember the conversation.
14 THE COURT: I'll sustain the objection.
15 MS. HIGH: Okay.
16 Q. (By Ms. High) So you don't remember anything about telling
17 the officers about Billy Miller coming over -- threatening
18 to come over to the house?
19 A. No.
20 Q. Okay. Do you remember telling them anything about her
21 having a friend named George?
22 A. Yes.
23 Q. Okay. Do you remember anything about telling them about her
24 having a friend named Fred?
25 A. I don't know Fred.

1 Q. Okay. So you don't remember telling them that either?
2 A. No.
3 Q. Okay. Do you remember telling them anything about a friend
4 named Earl?
5 A. No.
6 Q. Now, you remember telling them that they -- that Linda
7 Robinson was watching your daughter and two other kids?
8 A. Yes.
9 Q. Okay. Did you know who the two other children were?
10 A. One was my nephew.
11 Q. And do you know who the other child was?
12 A. I don't -- I don't know -- I don't know whose child it was
13 because she was going to go pick up another friend's kid to
14 spend the night.
15 Q. Okay.
16 A. I just really don't remember who it was.
17 Q. Okay. And you remember that you were interviewed by these
18 officers in your own home, though?
19 A. Yes.
20 Q. Okay. And do you remember who else was there?
21 A. No, I don't.
22 Q. Okay. Do you remember talking with -- I want to say --
23 Detective Kobel in, like, July of 2014?
24 A. Yes.
25 Q. Okay. And telling him at the time that your sister used

1 recreational drugs?
2 A. I don't think I told Detective Kobel that because I don't
3 think he asked me that.
4 Q. I'm going to hand you what's been marked for identification
5 as Plaintiff's Exhibit 58; and I'd direct your attention to
6 page five, the second paragraph there. Thanks. I'll swap
7 with you.
8 A. (Reviewing.) Okay.
9 Q. Okay. Do you recall speaking with Detective Kobel?
10 A. I did.
11 Q. Okay. And telling him that she would, occasionally,
12 recreationally use crack cocaine?
13 A. I don't know what drugs my sister used. I couldn't -- I
14 couldn't have told him because I don't know.
15 Q. Okay. So you don't remember telling him that?
16 A. No.
17 Q. And so you're saying you don't remember what drugs she might
18 have been using in '93?
19 A. No.
20 Q. Okay. Now, switching gears a little bit, how old was your
21 daughter in '93?
22 A. Seven.
23 Q. And was she a pretty sound sleeper?
24 A. Yes.
25 Q. Okay. You know, you ran a daycare. Was she able to sleep

1 through commotion and those kinds of things at the house?
2 A. A lot of times, yes.
3 Q. Okay.
4 A. Yeah.
5 Q. All right. This is probably also an unfair question to ask,
6 but were you the oldest sister?
7 A. I am.
8 Q. Okay. And how much older than Linda are you?
9 A. Hmm, let's see, quite a few years older, about ten, fifteen
10 years older.
11 Q. Okay. And so what year were you born?
12 A. '50.
13 Q. 1950?
14 A. (Nods head.)
15 Q. Thanks. You were at -- you were not at the get-together at
16 Stephanie's that afternoon; is that right?
17 A. I am not aware of any get-together.
18 Q. Okay. So you drop your daughter off about one o'clock?
19 A. Yes.
20 Q. And you head up to Seattle; is that right?
21 A. Yes.
22 Q. All right. You don't go to a little barbecue or
23 get-together at Stephanie's that afternoon?
24 A. No.
25 MS. HIGH: Okay. Thank you. That's all I

1 have.
2 THE COURT: Redirect, Counsel?
3 MR. PENNER: Thank you, Your Honor.
4 REDIRECT EXAMINATION
5 BY MR. PENNER:
6 Q. So you said you're the oldest sister?
7 A. I am.
8 Q. How many kids, total?
9 A. Nine.
10 Q. Okay. And could you, I guess, help the jury understand. If
11 you're the oldest, where does Stephanie fit in? Where does
12 Linda fit in?
13 A. Stephanie is the youngest. There is one, two -- three
14 brothers in between Linda and I.
15 Q. All right. So it goes you, three brothers, Linda?
16 A. Yes.
17 Q. Some more brothers?
18 A. Yes.
19 Q. And then Stephanie?
20 A. Yes.
21 Q. Okay. And the night of the murder, your daughter and
22 Stephanie's son and Linda's daughter were all together over
23 at Linda's?
24 A. Linda's daughter was not there.
25 Q. Right. Sorry. Linda's daughter was at the roller rink?

A. Yes.
Q. But, I mean, eventually she's going to be back home?
A. Yeah.
Q. Okay. But your daughter was there, and Stephanie's son was there?
A. Yes.
Q. And then another child friend too?
A. Yes.
MR. PENNER: Okay. I think that's all that I've got for her, Your Honor. Thank you very much.
THE COURT: Anything else?
MS. HIGH: I'm sorry. I did think of something I meant to ask.
THE COURT: All right.
RECROSS-EXAMINATION
BY MS. HIGH:
Q. Your Datsun B-210, was it a little sedan or a hatchback; do you remember?
A. Sedan.
Q. And did you get it back?
A. Yes, I did. Yes.
Q. Okay. And did you get your keys back?
A. No.
MS. HIGH: Okay. Thank you. That's all I have.

1 MR. PENNER: Actually, Your Honor, if I
2 could?
3 THE COURT: All right.
4 FURTHER REDIRECT EXAMINATION
5 BY MR. PENNER:
6 Q. So you knew George Caldwell?
7 A. Yes, I did.
8 Q. Okay. And you knew some of Linda's friends, I assume?
9 A. Yes.
10 Q. You didn't know all of her friends, though?
11 A. No.
12 Q. Did you ever know James Mitchell back then?
13 A. No.
14 MR. PENNER: Okay. Thank you.
15 THE COURT: Anything else, Ms. High?
16 MS. HIGH: Excuse me?
17 THE COURT: Anything else?
18 MS. HIGH: No. Thank you very much.
19 THE COURT: All right. May the witness be
20 excused?
21 MR. PENNER: Yes, Your Honor. We'd ask
22 that she be excused, not subject to recall.
23 THE COURT: All right. Counsel?
24 MS. HIGH: We agree.
25 THE COURT: All right. You are excused at

1 this time which means that you may stay in the courtroom.
2 THE WITNESS: Okay.
3 THE COURT: You will not be called again
4 as a witness.
5 THE WITNESS: Okay. Thank you.
6 THE COURT: All right. It's a half past
7 2:00.
8 MR. PENNER: I think this might be a good
9 time for the afternoon break, Your Honor.
10 THE COURT: All right. Then we'll take
11 your next witness after that. All right. No discussion, no
12 investigation, notepads face down on your chairs; please
13 stay in the jury room until Ms. Shipman comes to get you.
14 All right? Afternoon recess.
15 (The jury was not present.)
16 THE COURT: Anything, Counsel?
17 MR. PENNER: No, Your Honor.
18 THE COURT: All right.
19 MS. HIGH: Thank you.
20 (A recess was taken.)
21 (The defendant was present.)
22 (The jury was not present.)
23 THE COURT: Anything before we bring the
24 jury in?
25 MR. PENNER: Maybe if I can just confirm,

1 my witnesses are in the hallway -- my witness.
2 THE COURT: All right.
3 MR. PENNER: And, Your Honor, this is the
4 last witness I have ready for today.
5 MS. HIGH: So I'll take my time on cross.
6 (Pause.)
7 MR. PENNER: I'm ready, Your Honor. Thank
8 you.
9 THE COURT: All right.
10 (The jury was present.)
11 THE COURT: You may be seated. Thank you.
12 All right. You may call your next witness, Counsel.
13 MR. PENNER: Thank you, Your Honor. The
14 State would call Tarica Dudley.
15 TARICA DUDLEY, witness herein, having been sworn
16 under oath, was examined and
17 testified as follows:
18 THE COURT: All right. If you'll have a
19 seat. There's water and Kleenex to your right. You can
20 pull your chair forward and adjust the mic; so when you're
21 answering, please answer yes or no; don't just nod or shake
22 your head or go uh-huh. The court reporter needs to
23 understand what you're saying. Okay?
24 THE WITNESS: Okay.
25 THE COURT: Thank you. All right. Your

1 witness, Counsel.
2 MR. PENNER: Thank you.
3 DIRECT EXAMINATION
4 BY MR. PENNER:
5 Q. Could you state your name for the record, and spell both
6 your first and last name for the court reporter.
7 A. Tarica Dudley, T-A-R-I-C-A, D-U-D-L-E-Y.
8 Q. And, Ms. Dudley, how old are you?
9 A. 38.
10 Q. All right. Sorry I have to ask that.
11 A. (Nods head.)
12 Q. Who was Linda Robinson?
13 A. She's my mother.
14 Q. Okay. And when was the last time you saw your mother?
15 A. At the age of 15.
16 Q. And do you know what happened to your mom?
17 A. Yes.
18 Q. What happened?
19 A. My mother was murdered.
20 Q. I'm going to show you what's previously been admitted as
21 Exhibit 90. Is that your mom?
22 A. Yes.
23 Q. Do you remember that night pretty well still?
24 A. Yes, somewhat.
25 Q. If things had gone the way they were supposed to, what were

1 your plans that night?
2 A. I was going -- or I went to the skating rink, and my mother
3 dropped me off; and she was going to pick me and two other
4 people up.
5 Q. All right. And I guess let's back up a little bit. Who
6 were you living with back then?
7 A. I lived with my mother.
8 Q. All right. And where did you guys live? I don't need an
9 address but, I mean, just generally.
10 A. In Spanaway.
11 Q. Okay. Here in Pierce County?
12 A. Yes.
13 Q. All right. And was it just the two of you living in the
14 apartment together?
15 A. Yes.
16 Q. Did you ever watch other kids, though?
17 A. Yes.
18 Q. All right. Do you know who Stephanie Robinson is?
19 A. Yes.
20 Q. Who's that?
21 A. She's my aunt.
22 Q. And how about Gloria Elliott?
23 A. Yes.
24 Q. Who's she?
25 A. She's also my aunt.

1 Q. Okay. And back in 1993, did you know a little girl named
2 Shawonika Elliott?
3 A. Yes.
4 Q. Who is that?
5 A. She's my cousin.
6 Q. And what about T.J.?
7 A. Yes, he is my cousin.
8 Q. All right. And it sounds like you guys all kind of lived
9 nearby each other and saw each other a lot?
10 A. Correct. Yes.
11 Q. And did you ever watch the younger kids sometimes?
12 A. Yes.
13 Q. All right. So that night, do you remember -- how far away
14 was the roller rink?
15 A. About twenty minutes, maybe.
16 Q. Okay. And you weren't driving yet, it doesn't sound like
17 it?
18 A. No.
19 Q. So did your mom, in fact, drop you and two friends off
20 there?
21 A. Yes.
22 Q. And I know it's been a long time, but do you remember about
23 what time of day that was?
24 A. I believe it started at 8 p.m.
25 Q. And what time was she supposed to pick you up?

1 A. Like, 12:00, I think, 12:00.
2 Q. Do you remember what the plans were, then, when you got back
3 home? Was your mom going to stay in, or was she going to go
4 out, do you know?
5 A. She was going to go out, and I was going to baby-sit.
6 Q. Okay. But your mom didn't pick you up; right?
7 A. No.
8 Q. Who picked you up?
9 A. A detective.
10 Q. Okay. Do you recall about what time it was when that
11 happened?
12 A. I don't know. I think it was after 12:00.
13 Q. Okay. Do you remember waiting for your mom or, kind of,
14 thinking she's going to be here soon?
15 A. Yes.
16 Q. The detective, do you remember anything about him?
17 A. I only remember what he told me and that was that my mother
18 would not be picking me up because she was dead.
19 Q. Did he transport you back someplace?
20 A. Yes.
21 Q. Where did he take you?
22 A. He took me home.
23 Q. Back to the apartment complex?
24 A. Yes.
25 Q. What did you see when you got back there?

1 A. I just seen my family and police cars.
2 Q. All right. Did you go back up to the apartment that night?
3 A. No.
4 Q. All right. Where did you go?
5 A. I went back to my Aunt Gloria's house.
6 Q. Okay. Did the police talk to you that night?
7 A. Yes.
8 Q. Okay. And did you tell them what you knew?
9 A. Yes.
10 Q. Did you ever go back to the apartment?
11 A. No.
12 Q. And don't tell me what she said, but did you ever talk to
13 Shawonika later about what had happened?
14 A. Hmm, no.
15 Q. Again, you weren't there for when it took place; right?
16 A. No.
17 MR. PENNER: That's all I have, Your
18 Honor. Thank you.
19 THE COURT: Cross-examination, Counsel?
20 MS. HIGH: Thank you, Your Honor.
21 CROSS-EXAMINATION
22 BY MS. HIGH:
23 Q. Ms. Dudley, I'm going to ask you some questions to try and
24 back up that day just a little bit. Do you remember what
25 you did earlier in the afternoon with your mom?

1 A. No.
2 Q. Do you remember going over to your aunt's house for a
3 get-together?
4 A. No.
5 Q. Do you remember your mom borrowing a car from your Aunt
6 Gloria?
7 A. I don't remember.
8 Q. Okay. Do you remember what time your little cousin,
9 Shawonika, came over?
10 A. I don't remember.
11 Q. Okay. And do you remember any other little children being
12 at the house at the time you were going to the roller rink?
13 A. Yes.
14 Q. Okay. So who else was at the house at the time you were all
15 going to head over to the roller skating rink?
16 A. T.J., my cousin T.J., and Tanasia.
17 Q. Okay. And so T.J., he's just a little baby?
18 A. An infant.
19 Q. An infant. And Tanasia is --
20 A. I think she may have been four, maybe. I don't remember.
21 Q. Also, a toddler; is that right?
22 A. (Nods head.)
23 Q. And whose child is Tanasia?
24 A. Annie Atkinson's.
25 Q. Okay. And is that your Godmother?

A. No.
Q. I'm sorry?
A. No.
Q. No? A family friend?
A. Yes.
THE COURT: You might want to lean into the mic just a little. Okay?
THE WITNESS: (Nods head.)
Q. (By Ms. High) Okay. And so when you're getting ready to go to the roller rink, your mom is going to drive you there. Do you remember it being a little Toyota car that you were going to ride in?
A. I don't remember.
Q. Okay. Well, did your mom have her own car at that time?
A. I can't remember. I know she had a vehicle, but I can't remember if it was still working at the time, so I --
Q. Okay.
A. -- can't remember.
Q. And at times when her car wouldn't work, she would rely on borrowing cars from family or friends; is that right?
A. I don't know.
Q. Okay. So -- anyway, so there's your mom, right, in the car; she's going to drive you. Did the little kids come along in the car as well?
A. I can't remember.

1 Q. And I guess, theoretically, they wouldn't have been left
2 home alone?
3 A. Correct.
4 Q. I'm just thinking. And do you think that you had a couple
5 of your friends, as well, with you that went to the roller
6 rink that your mom drove?
7 A. I don't -- I don't remember.
8 Q. Okay. But you were at the roller rink with some friends?
9 A. Yes.
10 Q. Okay. Do you remember your mom ever borrowing a van from
11 George Caldwell, a minivan?
12 A. No.
13 Q. Okay. How long had you been at that apartment?
14 A. Maybe two or three months, three months at the most.
15 Q. Okay. And was your mom working outside the home at that
16 time?
17 A. I don't remember.
18 Q. Okay. Do you remember your neighbor on the upper floor
19 across from you, a Mr. Alvernaz?
20 A. No.
21 Q. Do you remember any of your neighbors?
22 A. No. I -- I remember, I think, downstairs, there were two
23 people, I think; but I -- I'm not a hundred percent. We had
24 just moved there.
25 Q. Okay. Downstairs neighbors, maybe a couple of young women,

1 do you remember them?
2 A. I -- yes.
3 (Interruption.)
4 THE COURT: Somebody's cell phone is on
5 and needs to be off.
6 MS. HIGH: That's okay. It will give me a
7 moment here to think.
8 THE COURT: Somebody always forgets when
9 you're in the courtroom to turn it off.
10 MS. HIGH: Yeah.
11 Q. (By Ms. High) So you think you headed to the roller rink
12 around 8:00. Could it have been later? Could it have been
13 more like 9:30?
14 A. I don't -- I -- I don't know.
15 Q. Okay. So if you had talked to one of the officers that
16 night and told him 9:30, do you think that might have been a
17 little more accurate?
18 A. I -- I don't know. I think the -- the session was an eight
19 o'clock session, so I think that's around the time that
20 I got there.
21 (Interruption.)
22 THE COURT: Okay. We need to get the
23 phones off.
24 Q. (By Ms. High) I'm going to hand you what's been marked as
25 Plaintiff's Exhibit 47. Okay? And I'm going to turn to

1 page four for you; and kind of in the middle of this
2 paragraph here, go ahead and take a look at that and see if
3 that helps with your memory.
4 A. (Witness complies.)
5 Q. Okay. Does it refresh your recollection that you told them
6 it would be at 9:30 rather than eight o'clock?
7 A. No.
8 Q. Okay. Do you remember telling him about your mom getting a
9 call about 1 a.m. from a man named Billy?
10 A. Hmm, no.
11 Q. You and your mom were close; right?
12 A. Yes.
13 Q. I mean, it was just the two of you?
14 A. Yes.
15 Q. All right. And it had pretty much been the two of you your
16 whole life?
17 A. Yes.
18 Q. Okay. And, you know, you were -- you were in high school at
19 the time; right?
20 A. Yes.
21 Q. And you knew that your mom would, occasionally, use drugs
22 but never around you; is that right?
23 A. Yes.
24 Q. Okay. And you knew that that night when you were going to
25 be picked up and come home at midnight, she had some plans

1 to head out?
2 A. Yes.
3 Q. And did you remember where she was going?
4 A. No.
5 Q. Okay. You don't remember George?
6 A. I don't know where she was going.
7 Q. Okay. Your mom liked to talk on the telephone; is that
8 right?
9 A. Yes.
10 Q. And she talked with friends and family a lot; is that right?
11 A. Yes.
12 Q. And at your house, she also had a telephone answering
13 machine; is that right?
14 A. I'm sorry?
15 Q. You had an answering machine? Remember, back in the day
16 those answering machines with the little cassette tapes?
17 A. I do not remember, but it's a possibility; but I do not
18 remember.
19 Q. Okay. Well, I know it's been a long time --
20 A. (Nods head.)
21 Q. -- and so you don't really remember much about, you know,
22 what you did earlier in the day, right --
23 A. Yes. Correct.
24 Q. -- or who all was in the car when you went roller skating?
25 A. Yes. Correct.

1 Q. Or who you were actually at the roller skating rink with;
2 right?
3 A. Correct. Well, I mean, it's public; so I was there with a
4 lot of people.
5 Q. You know, often when we go places, we're with a couple of
6 friends in addition to everybody else; right?
7 A. Yes. There were two other friends.
8 Q. Okay. And do you remember who they were?
9 A. Yes.
10 Q. Okay. And who were you with?
11 A. Sabrina Atkinson --
12 Q. Okay.
13 A. -- and I don't recall the other girl's name.
14 Q. Okay. And is that Annie Atkinson's daughter?
15 A. Her sister.
16 Q. Her sister. After your mom died, did she raise you?
17 A. No.
18 Q. Who did?
19 A. Betty Newborn.
20 Q. Okay. And is that a relative of yours?
21 A. Yes. You could say yes. She's my mother's foster mother.
22 Q. Okay. And in Alabama; is that right?
23 A. No.
24 Q. Where?
25 A. In Washington State.

1 Q. Okay. So you live in Alabama now?
2 A. No. I live in Georgia.
3 Q. Okay. Well, that shows you how good my intel is here. And
4 how long have you lived there?
5 A. Fifteen years.
6 Q. And have you met and talked with Detective Kobel?
7 A. Yes.
8 Q. Okay. And how many times?
9 A. Twice.
10 Q. Do you remember when?
11 A. Once when the case was solved, and I introduced myself to
12 him Tuesday -- Wednesday.
13 Q. Okay. Now, on that same document you have there, if you'd
14 turn to page five of six.
15 A. (Witness complies.)
16 Q. In the very -- very, very last entry at, like, 2:33 in the
17 morning, would you read that to yourself.
18 A. Okay. (Witness complies.)
19 Q. Does that refresh your recollection as to your mom's friend,
20 George?
21 A. Yes.
22 Q. Okay. And so you do remember her having a friend,
23 Mr. Caldwell, who was in the military?
24 A. Yes.
25 Q. And he had a minivan?

1 A. I don't recall.
2 Q. Okay. Okay. One other question: Do you remember making
3 any stops on the way to the roller rink?
4 A. No.
5 MS. HIGH: Okay. That's all I have.
6 Thank you.
7 THE COURT: Any redirect?
8 MR. PENNER: Just briefly, Your Honor.
9 REDIRECT EXAMINATION
10 BY MR. PENNER:
11 Q. So as she just mentioned, you were close with your mom;
12 right?
13 A. Yes.
14 Q. That night, on your way to the roller rink or before that,
15 did your mom appear upset in any way?
16 A. Not that I remember, no.
17 Q. Do you remember her being nervous or anxious about anything?
18 A. No.
19 Q. As far as you knew, she was going to come pick you up at
20 midnight; right?
21 A. Yes.
22 MR. PENNER: All right. Thank you.
23 Nothing else, Your Honor.
24 THE COURT: Anything else, Ms. High?
25 MS. HIGH: No. Thank you.

1 THE COURT: All right. May the witness be
2 excused?
3 MR. PENNER: We'd ask that she be excused
4 and not subject to recall.
5 THE COURT: All right. Counsel?
6 MS. HIGH: I don't have any objection to
7 that.
8 THE COURT: All right. At this time,
9 we're going to excuse you as a witness; and we're not going
10 to be recalling you as a witness so that you're free to stay
11 in the courtroom, if you'll set that down at the end of the
12 desk.
13 And, Mr. Penner, I'll charge you with getting those back
14 to Ms. Shipman.
15 MR. PENNER: Will do. Thank you, Your
16 Honor. Thank you very much.
17 THE WITNESS: Mm-hmm.
18 (The witness was excused.)
19 MR. PENNER: Your Honor, that's all the
20 witnesses the State has scheduled for today. I'd ask that
21 we adjourn until the morning.
22 THE COURT: All right. We're going to be
23 recessing at this time. Things went much faster this
24 afternoon -- slower this morning and faster this afternoon;
25 that's part of a trial. All right. So we'll reconvene

1 tomorrow morning at 9:30.
2 My usual instructions: No discussion, no investigation,
3 notepads on chairs, face down. Please stay in the jury room
4 until Ms. Shipman comes to release you, and we'll see you
5 all in the morning; and No. 1 knows he's the designated
6 door-shutter.
7 JUROR NO. 1: Yes, ma'am.
8 (The jury was not present.)
9 THE COURT: All right. You may be seated.
10 Anything, Counsel, before we recess for the day?
11 MR. PENNER: I don't believe so, Your
12 Honor. We'll stick around and make sure the exhibits are
13 all here.
14 MS. HIGH: Right.
15 THE COURT: Yes, please.
16 MS. HIGH: And that might be a good time,
17 too -- I have some exhibits and things to get marked, Your
18 Honor.
19 MR. PENNER: All right. Thank you, Your
20 Honor.
21 THE COURT: All right, then. Court will
22 be at recess. We'll reconvene tomorrow morning at 9:30.
23 (Court adjourned for the day.)
24 / / /
25 / / /

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,	)	
	)	Superior Court
Plaintiff,	)	No. 14-1-02979-1
	)	
vs.	)	Court of Appeals
	)	No. 48810-8-II
JAMES EDWARD MITCHELL,	)	
	)	
Defendant.	)	

REPORTER'S CERTIFICATE

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

I, Kimberly A. O'Neill, Court Reporter in the state of Washington, county of Pierce, do hereby certify that the foregoing transcript is a full, true, and accurate transcript of the proceedings and testimony taken in the matter of the above-entitled cause.

DATED this 4th day of August, 2016.

_____
KIMBERLY A. O'NEILL, CCR
License No. 1954

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2
3
4
5 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE
6

STATE OF WASHINGTON,	)	
	)	Superior Court
Plaintiff,	)	No. 14-1-02979-1
	)	
vs.	)	Court of Appeals
	)	No. 48810-8-II
JAMES EDWARD MITCHELL,	)	
	)	
Defendant.	)	

VERBATIM REPORT OF PROCEEDINGS

01/26/16 and 01/27/16
Pierce County Courthouse
Before The Honorable Katherine M. Stolz
Tacoma, Washington

<<<<<< >>>>>>

A P P E A R A N C E S

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No. 48810-8-II

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1 BE IT REMEMBERED that on Tuesday, the 26th
2 day of January, 2016, the above-captioned cause came on duly
3 for hearing before THE HONORABLE KATHERINE M. STOLZ, Judge
4 of the Superior Court in and for the county of Pierce, state
5 of Washington; the following proceedings were had, to wit:
6
7 <<<<<< >>>>>>
8
9 (The defendant was present.)
10 (The jury was not present.)
11 THE COURT: All right. More difficulties.
12 MR. PENNER: Yes, Your Honor.
13 THE COURT: I take it, you have seen the
14 e-mail from Juror No. 4?
15 MR. PENNER: Yes, Your Honor.
16 MS. HIGH: Yes, Your Honor.
17 THE COURT: Any reason we should not
18 excuse him for cause?
19 MR. PENNER: No, Your Honor. I don't know
20 if the Court wanted to talk to him more fully. His e-mail
21 is fairly --
22 THE COURT: He's not here.
23 MR. PENNER: He didn't even come in?
24 THE COURT: Yeah, he tried to get them to
25 change the interview.

1 MR. PENNER: All right. So he's currently
2 at a job interview right now?
3 THE COURT: I think he tried to get them
4 to move it to Thursday or Friday because he knew we weren't
5 in session those days, but they couldn't do it because they
6 want to fill this position apparently within the next few
7 weeks; and it's his second interview. I mean, he could come
8 in, if needed, you know, but that's going to delay things;
9 and by the sounds of it, I mean, he obviously really wants
10 this job due to financial considerations.
11 MR. PENNER: Yes, Your Honor. He also
12 indicated that he was going to try to do some part-time work
13 in the mornings, and that hasn't been working.
14 THE COURT: Yeah.
15 MR. PENNER: So even if he weren't to get
16 the job --
17 THE COURT: Yeah, he's been doing some
18 trading in the morning.
19 MR. PENNER: The State's concern is just
20 that that leaves us with one alternate; we've lost two in
21 two days.
22 THE COURT: I realize that.
23 MR. PENNER: Thank you, Your Honor.
24 THE COURT: Ms. High?
25 MS. HIGH: Your Honor, it looks like it is

1 a financial necessity for him, so no objection to him being
2 released. I just wanted to say on the record, I'm grateful
3 the Court sat three alternates.
4 THE COURT: Maybe I should have sat four.
5 All right. The next murder trial, I will. All right. Then
6 we'll go ahead and bring the jury out, move 13 into 4's
7 position; and I'll explain to them that No. 4 had a job
8 interview he could not get moved, and it's been a financial
9 hardship. All right.
10 (The jury was present.)
11 THE COURT: All right. You may be seated.
12 All right. Juror No. 4 has been attempting to work in the
13 mornings; and unfortunately, he's not generating the revenue
14 he needs to; plus, he has the really good possibility of a
15 job and tried to get them to move the interview to Thursday
16 or Friday because he knew we weren't in session, but they
17 declined to do so; so he has been excused for cause.
18 All right. The first witness, Counsel.
19 MR. PENNER: Thank you, Your Honor. The
20 State would call Shawonika Elliott.
21 THE COURT: If you'll raise your right
22 hand.
23 SHAWONIKA ELLIOTT, witness herein, having been sworn
24 under oath, was examined and
25 testified as follows:

1 THE COURT: If you'll have a seat, ma'am.
2 There's water and Kleenex to your right. You can pull the
3 chair forward and adjust the mic. Please keep your voice
4 up. And when answering, answer "yes" or "no"; don't nod or
5 shake your head. It makes my court reporter's life a lot
6 easier. Okay?
7 THE WITNESS: Okay.
8 THE COURT: Thank you. All right.
9 Counsel?
10 MR. PENNER: Thank you.
11 DIRECT EXAMINATION
12 BY MR. PENNER:
13 Q. Could you state your name for the record, and spell it for
14 the court reporter.
15 A. Shawonika Elliott, S-H-A-W-O-N-I-K-A, last name
16 E-L-L-I-O-T-T.
17 Q. All right. Thank you. And I'm going to ask you a series of
18 names and if you could just let us know how you know that
19 person. Okay?
20 A. Okay.
21 Q. Who is Gloria Elliott?
22 A. My mother.
23 Q. And who is Stephanie Robinson?
24 A. My mother's sister.
25 Q. And who is Linda Robinson?

1 A. That's my aunt, my mother's sister.
2 Q. Okay. And are Stephanie and Gloria -- or Stephanie and
3 Linda and your mom, Gloria, they were all sisters to each
4 other?
5 A. Yes.
6 Q. All right. How old are you today?
7 A. 30.
8 Q. All right. I'd like you to think back to 1993 when you were
9 seven years old.
10 A. Okay.
11 Q. Back then, who were you living with and where were you
12 living?
13 A. I lived in Spanaway with my mother.
14 Q. And do you remember ever visiting or spending any time with
15 your Aunt Linda?
16 A. Yes.
17 Q. All right. Can you let the jury know, to the extent that
18 you can remember, how often you might see your aunts or
19 uncles?
20 A. I saw them all the time.
21 Q. Did you all live close by each other?
22 A. Yeah. I'd say close, like, ten miles.
23 Q. All right. Was it normal for you to spend the night at
24 either your Aunt Linda's or Aunt Stephanie's or one of your
25 uncles?

1 A. Yes.
2 Q. I'd like you to -- if we can, let's go ahead and talk about
3 the day of February 6, 1993. Do you remember that day?
4 A. Some of it.
5 Q. All right. And I assume you remember maybe the later
6 portion of that night; correct?
7 A. Yes.
8 Q. All right. What about the day? I mean, you were seven
9 years old. Do you have any recollection of what you did
10 that day?
11 A. No.
12 Q. Okay.
13 THE COURT: Okay. Keep your voice up just
14 a bit; you might pull the mic a little closer. All right?
15 THE WITNESS: Mm-hmm.
16 THE COURT: Thank you. Because if I'm
17 having trouble hearing you, they, down in the audience, are
18 having more trouble.
19 THE WITNESS: Okay.
20 Q. (By Mr. Penner) But eventually that evening, you ended up
21 over at your Aunt Linda's; is that right?
22 A. Yes.
23 Q. All right. Were you the only kid there that night?
24 A. No.
25 Q. Who else was there in terms of children?

1 A. My two cousins, T.J. and Nasia.
2 Q. Okay. And who is Tarica Dudley or Tarica Carter?
3 A. My cousin.
4 Q. All right. And who is Tarica's mom?
5 A. Linda.
6 Q. Okay. Do you remember seeing Tarica that night?
7 A. No.
8 Q. Okay. So what do you remember about that evening before you
9 fell asleep?
10 A. Um, she was making us Top Ramen.
11 Q. Okay.
12 A. And I was watching *Nickelodeon*, *Are You Afraid of the Dark;*
13 and my cousin was crawling around, and Nasia was on the
14 couch.
15 Q. And do you remember going to bed that night, falling -- or
16 did you get tucked in? Do you remember any of that?
17 A. No. I folded a blanket that she had out for us and put it
18 over me.
19 Q. While you were watching TV?
20 A. (Nods head.)
21 Q. And I'll need you to answer -- I'm sorry -- out loud for the
22 court reporter. Is that while you were watching TV?
23 A. Yes.
24 Q. And did you doze off, falling asleep?
25 A. Yes.

1 Q. Do you remember whether the little kids -- first of all, I
2 guess, how old were the other kids, roughly?
3 A. Maybe, like, two, and T.J. was one.
4 Q. Okay. Do you remember, had they already fallen asleep
5 before you; or were they still crawling around?
6 A. No. They were awake.
7 Q. So you doze off?
8 A. Mm-hmm.
9 Q. What's the next thing you remember?
10 A. I woke up to my little cousin -- T.J. was crying, and the
11 smoke detector was going off.
12 Q. Okay. And I guess so the jury can understand, in terms of
13 the layout of the apartment, do you remember how the
14 apartment was laid out?
15 A. Yes.
16 Q. Would you be able to draw that for the jury a little bit?
17 A. Yes.
18 Q. Okay. What I'll ask you to do, then, is: If you could step
19 down from the witness stand, there are some markers here.
20 (The witness left the stand.)
21 Q. (By Mr. Penner) On that piece of paper right behind you,
22 nice and big, if you could draw --
23 THE COURT: We're going to need to put an
24 identification number on it.
25 MR. PENNER: Right.

A. What do you want me to draw?
Q. (By Mr. Penner) I'm sorry. Now, this wasn't an apartment -- let me -- actually, I'll have you turn around for a second. You didn't live in this apartment; is that right?
A. No.
Q. Okay. Do you feel comfortable drawing the living area, the dining area, the kitchen, those three areas?
A. Yes.
Q. Do you feel comfortable also drawing where the bedrooms were or not so much?
A. I can draw the hallway to the bedroom, but I don't remember the bedroom layout.
Q. Okay. So draw big enough that we start the hallway towards the bedroom and then the other rooms, and what I'm going to do is: I'm going to mark this as Exhibit 92. All right. Why don't you take your time and draw it nice and big so the last person in the courtroom can see.
A. (Witness complies.) That's the front door. And this is, like, the foyer. This, over here, is like -- this is the couch right here.
Q. And, I guess, let's do this: Let's have you draw the whole thing, and then I'll have you go through and identify each one.
A. Okay. (Witness complies.) Okay.

1 Q. All right. If you could put your initials down by that card
2 right in the bottom corner and today's date, which is --
3 THE COURT: The 26th.
4 MR. PENNER: Thank you.
5 Q. (By Mr. Penner) -- 02/26/16.
6 A. 01/26.
7 THE COURT: 01/26.
8 MR. PENNER: 01/26. It just feels like
9 February.
10 THE COURT: Let's not have time go by
11 faster than we need to.
12 Q. (By Mr. Penner) All right. So while you're still standing
13 up there -- let's see -- if you can stand --
14 THE COURT: You can tilt -- I think that
15 tilts out a little bit.
16 Q. (By Mr. Penner) We want to make sure all the jurors can see
17 it.
18 THE COURT: Does everybody see that?
19 Q. (By Mr. Penner) Stand on this side right here, and if you
20 could point out just what you've drawn.
21 A. Okay. This is the front door, and there's a foyer here.
22 So, this side of the front door is the living room where the
23 couch was, where we were; and the TV is here, like, on the
24 floor. There's a wall that separates the living room and
25 the kitchen, and then after the kitchen is the hallway to

1 the back rooms and back bedrooms.
2 Q. All right. Could you take the red marker there in the green
3 bin and put an "S" where you fell asleep.
4 A. (Witness complies.)
5 Q. Thank you. And then you can go ahead and have a seat again.
6 Thank you very much.
7 A. Mm-hmm.
8 (The witness returned to the stand.)
9 MR. PENNER: Your Honor, the State would
10 move to admit Exhibit 92 for illustrative purposes.
11 THE COURT: Any objection for illustrative
12 purposes?
13 MS. HIGH: No objection for illustrative
14 purposes only.
15 THE COURT: All right. No. 92 will be
16 admitted for illustrative purposes only.
17 MR. PENNER: Thank you.
18 (Plaintiff's Exhibit No. 92 was admitted as illustrative.)
19 Q. (By Mr. Penner) You mentioned that your Aunt Linda was
20 making Top Ramen for you. Do you remember whether you
21 actually had any food that night before you fell asleep?
22 A. No, we didn't.
23 Q. You didn't have any food?
24 A. Not the Top Ramen.
25 Q. Okay. So you wake up to T.J.'s crying, and the smoke alarm

1 is going off?
2 A. Yes.
3 Q. All right. So where was T.J.?
4 A. When I woke up?
5 Q. Yeah.
6 A. He was crawling from the kitchen area from behind that wall.
7 Q. Out again towards the TV and where you were?
8 A. Right.
9 Q. Okay. So what did you do?
10 A. I was confused as to why he was crying, and I got up and
11 wondered why she was burning the Top Ramen because it's so
12 easy to make; and I went in the kitchen and turned the stove
13 off.
14 Q. Now, at that point, had you noticed your Aunt Linda on the
15 floor?
16 A. Yes.
17 Q. Okay. So let's back up a little bit. You said you woke up;
18 you, basically, were confused.
19 A. Mm-hmm.
20 Q. Your cousin is crying, and you don't understand what's going
21 on. So, you get up off the couch; where do you go to first?
22 A. To pick T.J. up and put him on the couch.
23 Q. And then what did you do?
24 A. And then I went to the kitchen to see why the smoke alarm
25 was going off.

1 Q. All right. And at that point, did you see your aunt?
2 A. Yes.
3 Q. All right. So now, you're seven years old. To the best of
4 your recollection, can you describe to the jury what you
5 saw.
6 A. I saw her laying in the kitchen with a lot of blood
7 everywhere, and I tried to wake her up.
8 Q. Did you understand that she was hurt?
9 A. Yes.
10 Q. Okay. You said you tried to wake her up. How did you do
11 that?
12 A. I just bent down, and I was shaking her and calling her name
13 to wake up; and I was telling her to wake up.
14 Q. Was there any reply or response at all?
15 A. No.
16 Q. Okay. What did you do next?
17 A. Um, I went back to the living room and looked for Nasia, and
18 she was still sitting on the couch; and then I left, and I
19 went across the hall to the neighbors.
20 Q. And I want to back you up. Earlier, you testified you
21 also -- you turned off the stove?
22 A. (Nods head.)
23 Q. Did you check the apartment to see if anybody else was
24 there?
25 A. No.

1 Q. When you went across the hallway to the neighbor, did you
2 take T.J. or Janasia [sic] with you?
3 A. No.
4 Q. All right. What happened when you went across the hallway?
5 A. I knocked on his door and told him that he has to call the
6 police because my aunt is dead.
7 Q. Okay. So you understood at that point or believed that she
8 was already dead?
9 A. (Nods head.)
10 Q. Had you met the neighbor before?
11 A. Not that I recall.
12 Q. Okay. Looking back now, do you remember anything about him
13 when he -- when you met him that night?
14 A. I remember that he said -- well, when I told him to call the
15 police, he -- he said something about the "water boy." I
16 told him, "You can't call the water boy; You have to call
17 the police because my aunt is dead."
18 Q. Okay. Who's the water boy?
19 A. I don't know.
20 Q. Okay. All right. What was your state, then, emotionally?
21 I mean, again, you were a little kid so sometimes kids
22 process stuff differently. Do you remember how you felt?
23 A. I was scared and sad at the same time.
24 Q. So you let the neighbor know that your aunt was dead, and he
25 should call the police.

1 A. (Nods head.)
2 Q. What happened next?
3 A. I believe he took us all over there to his house. He
4 didn't -- we -- I told him that my two cousins were still
5 there, and so he went over there to get them; and then he
6 didn't let us go back in there.
7 Q. Okay. Did you stay at his apartment when he went and got
8 the kids, or did you follow him?
9 A. Yes.
10 Q. Okay. So you didn't go back in after you went across the
11 hall?
12 A. No.
13 Q. All right. What happened next?
14 A. A lot of ambulances and police came.
15 Q. All right. Did your mom come?
16 A. Yes.
17 Q. All right. Do you know how long it took from the time you
18 went to the neighbors until the police or the ambulances
19 started to show up?
20 A. No.
21 Q. Do you know how long it was until your mom showed up?
22 A. No.
23 Q. Okay. I assume the police also arrived; is that right?
24 A. Yes.
25 Q. Do you remember them talking to you at all that night when

1 you were still at the neighbor's apartment?
2 A. Yes.
3 Q. Okay. And do you remember any of the questions they asked
4 or anything that you told them?
5 A. One of them asked me what happened, and I told him what
6 happened. And then I said -- I told him that I was watching
7 *Are You Afraid of the Dark* and that I hid under the blanket
8 while she was making Top Ramen. And I said, "I woke up, and
9 she was dead." And he said, "No, she's not dead; It's
10 okay." And I said, "Yeah, she is because my mom is crying."
11 Q. I'd like to back up a little bit. When you fell asleep, was
12 Linda the only adult in the apartment?
13 A. Yes.
14 Q. Were there any friends who had stopped by and then left
15 again that evening?
16 A. Not that I recall.
17 Q. Okay. And do you recall hearing any voices while you were,
18 kind of, sleeping, maybe coming to the surface and hearing?
19 A. No.
20 Q. All right. And, to the best of your recollection, did
21 Linda, your aunt, or anybody else tell you that anybody else
22 was coming over that night?
23 A. No.
24 Q. Okay. When your mom showed up, do you remember talking to
25 her at all about what had happened?

A. No.
Q. Okay. How long do you think you stayed there at the apartment before you left?
A. I don't know.
THE COURT: Okay. Could you raise your voice; I didn't hear that.
THE WITNESS: I don't know.
THE COURT: Thank you.
Q. (By Mr. Penner) Where did you go next?
A. Home.
Q. And that was with your mom, Gloria?
A. Yes.
Q. All right. Did other family members come over to the house too?
A. Yes.
Q. And did the police come and talk to you there again?
A. I don't remember that.
Q. Do you remember being questioned any further by law enforcement or anybody else about what had happened that night?
A. Yes, a counselor.
Q. Okay. Was that that night, or was that a couple days later?
A. No. It was some days later.
Q. Okay. And I don't expect you to remember what you told the counselor, but did you try to tell the counselor everything

1 to the best of your recollection?
2 A. Yes. She made me draw pictures.
3 Q. Okay. Kind of like you did here today?
4 A. Yes.
5 Q. When you woke up and went and found your aunt -- I just want
6 to clarify: When you tried to wake her up, was there any
7 response from her at all?
8 A. No.
9 Q. Okay. And even at seven, did you have any doubt that she
10 was dead at that point?
11 A. No.
12 MR. PENNER: All right. Thank you very
13 much. No other questions, Your Honor.
14 THE COURT: Cross-examination.
15 MS. HIGH: Thank you, Your Honor.
16 CROSS-EXAMINATION
17 BY MS. HIGH:
18 Q. Ms. Elliott, how are you employed now?
19 A. Can you rephrase the question?
20 Q. Yeah. Do you have a job?
21 A. Yes.
22 Q. Okay. And what do you do?
23 A. I work for Department of Homeland Security.
24 Q. Okay. As a TSA screener?
25 A. Yes.

1 Q. And I think you said that you, also, did some schooling. I
2 think that's what you said. You had a chance to do a
3 telephone interview with my investigator earlier this
4 summer; is that correct?
5 A. Mm-hmm.
6 THE COURT: Okay. "Yes" or "no"?
7 THE WITNESS: Yes.
8 THE COURT: Okay. Thank you.
9 Q. (By Ms. High) And you remember that was on June 2, 2015?
10 A. Yes.
11 Q. Okay. And you told us that you'd also done a course of
12 study in paralegal; is that correct?
13 A. Yes.
14 Q. And you flew into town last week?
15 A. Yes.
16 Q. And so you've had a chance to meet and catch up with your
17 family?
18 A. Yes.
19 Q. So I want to go back over in just a little more detail what
20 you remember, you know, of that day. Now, that day, your
21 mom took you over to your Aunt Linda's; is that correct?
22 A. Yes.
23 Q. Okay. And she drove you in her car?
24 A. I'm not sure who drove.
25 Q. Okay. And do you remember Douglas Glover?

A. Yes.
Q. Okay. And he was your mom's boyfriend at the time?
A. Correct.
Q. And he's still a friend of yours; is that correct?
A. Yes.
Q. Okay. And do you recall if Mr. Glover was with the two of you?
A. Yes.
Q. Okay. So you do remember that?
A. Yes.
Q. And your mom took you over there in the afternoon?
A. I don't remember what time a day it was.
Q. Okay. And when you got there, your little cousin, T.J., was there; and I think you said another cousin, Janasia?
A. Her name is Tanasia.
Q. Tanasia?
A. I don't know her full name.
Q. Okay. But do you know how to spell her name? I'm sorry. It just shows up --
A. I don't know her full name.
Q. Okay. And you said that you were there, and you were watching TV?
A. Mm-hmm.
Q. Okay.
A. Yes.

1 Q. And you don't recall going to a roller rink?
2 A. No.
3 Q. Okay. You don't recall Tarica being there at all?
4 A. No.
5 Q. Okay. You don't recall going out in a car with your Aunt
6 Linda at all as you sit here today?
7 A. No.
8 Q. All right. But you do recall believing that you were
9 watching a TV show called *Are You Afraid of the Dark*?
10 A. Mm-hmm. Yes.
11 Q. And when you fell asleep, you fell asleep on the couch?
12 A. Yes.
13 Q. And Tanasia is, also, on the couch?
14 A. Yes.
15 Q. And the TV was still on?
16 A. Yes.
17 Q. Okay. And then I think it was in March of 2015 you were
18 back in Tacoma for a family funeral?
19 A. Yes.
20 Q. Okay. And at that time, you met with Detective Kobel?
21 A. Yes.
22 Q. And he gave you your -- you reviewed your child witness
23 interview; is that right?
24 A. Yes.
25 Q. Okay. Now, you didn't take home a copy of it?

1 A. No.
2 Q. Okay. Now, like you said, you took a course of study in
3 paralegal, so you know how important it is to prepare for
4 testimony on an important day like this; is that right?
5 A. Yes.
6 Q. Okay. And did you review any of the police reports
7 associated with this case?
8 A. No.
9 Q. All right. Now, back when you met with officers and the
10 child interviewer, I mean, you knew the difference between
11 telling the truth and telling a lie; is that right?
12 A. Yes.
13 Q. And you were definitely going to tell them the truth in
14 everything that you remembered?
15 A. Yes.
16 Q. All right. Now, do you -- you probably don't remember their
17 names, but when you were still at the apartment, you had
18 contact with an officer; is that right?
19 A. The neighbor's apartment, yes.
20 Q. Yes. Okay. You don't remember going downstairs and waiting
21 outside, do you?
22 A. No.
23 Q. Okay. I'm going to hand you what's been marked for
24 identification as Plaintiff's Exhibit No. 1 [sic].
25 A. Okay.

1 Q. Okay. And this was -- like I said, I don't expect you to
2 remember, but Officer Reigle was one of the very first
3 people that arrived there; and do you remember telling
4 him --
5 THE COURT: Plaintiff's No. 1, that's a
6 photograph.
7 MS. HIGH: 91. I'm sorry.
8 THE COURT: All right.
9 MS. HIGH: I'm sorry. 91.
10 Q. (By Ms. High) -- that -- I think -- or he puts down 2100
11 hours. Now, that's military time --
12 A. Mm-hmm.
13 Q. -- 9 p.m., that Linda drove her daughter, her daughter's
14 boyfriend, Tanasia, and Terrence, Junior, to the skating
15 rink. Do you remember telling him that?
16 A. No.
17 Q. Okay.
18 THE COURT: Who was the officer that --
19 MS. HIGH: Reigle.
20 THE COURT: Reigle.
21 MS. HIGH: Yeah.
22 Q. (By Ms. High) But you would have been telling him the best
23 thing that you could remember at that time; is that right?
24 A. Yes.
25 Q. Okay. And then later on, your interview that same

1 evening -- or I should say very early morning hours by
2 another officer, a Detective Minturn at your mom's house, do
3 you remember officers going to the house?
4 A. No.
5 Q. No. Okay. I'd like to hand you what's been marked for
6 identification as Plaintiff's Exhibit 47, and that's by
7 Detective Minturn; and I'll take that from you. Thank you.
8 Now, I think you said at that time, you and your mom lived
9 in Spanaway?
10 A. Mm-hmm.
11 Q. Is that right?
12 A. Yes.
13 Q. And you also had an older brother?
14 A. Yes.
15 Q. And he lived there too?
16 A. Yes.
17 Q. And other family members, I believe, you know, kind of
18 congregated at your mom's house that morning?
19 A. I'm sorry, the morning of what?
20 Q. Well, it would have been February, I guess, 7th, you know,
21 after leaving the apartment complex when the police were
22 there. Do you remember that?
23 A. I don't remember that.
24 Q. Okay. But again, at the time you talked to Detective
25 Minturn, you would have done your very best to be accurate;

1 is that right?
2 A. Yes.
3 Q. And tell him what you remembered at the time?
4 A. Yes.
5 Q. And you told him, as well, that -- that night -- that Linda
6 had taken her daughter, Tarica, to Spinning Wheels along
7 with Tanasia's brother, age six or seven, at approximately 9
8 p.m.?
9 A. Okay.
10 Q. Okay. And then brought the rest of you back to the
11 apartment. Do you remember -- and so you told him that?
12 A. I don't know.
13 Q. Okay. You don't remember that?
14 A. Right.
15 Q. But you would have been -- you would have been accurate at
16 the time?
17 A. Correct.
18 Q. And that Linda was going to baby-sit you until about
19 midnight, and then she was going to go pick up Tarica; you
20 said -- told them that?
21 A. I don't remember what I told them.
22 Q. Okay. But you do remember telling him that you were
23 watching television; is that right?
24 A. Correct.
25 Q. Fell asleep; right?

1 A. Correct.
2 Q. And the next thing you know is you're awakened. There's --
3 your little cousin is crying, and the smoke alarm is going
4 off?
5 A. Yes.
6 Q. Going to your next-door neighbor's house --
7 A. Yes.
8 Q. -- and telling him to call 911?
9 A. Yes.
10 Q. And it's your memory today that you turned off the stove?
11 A. I believe so.
12 Q. Okay. And that you went to your aunt to try to revive her
13 or talk to her?
14 A. Yes.
15 Q. Okay. And that you moved her arms?
16 A. I'm not sure that I moved her arms.
17 Q. Let me hand you what's been marked for identification as
18 Defendant's Exhibit 223.
19 THE COURT: And what is that?
20 MS. HIGH: And that is a transcript of the
21 interview conducted by Mr. Dahlstrom on June 2, 2015.
22 Q. (By Ms. High) Ms. Elliott, I'm going to direct your
23 attention to page six. And I'm sorry. There is a very long
24 answer and narrative here; but about halfway down, I think
25 you talk about trying to wake up your aunt.

1 A. (Reviewing.)
2 Q. And I think, there, you say that you were shaking your aunt;
3 is that right?
4 A. Yes.
5 Q. And that you lifted up her arm?
6 A. No. It says I tried to.
7 Q. Okay. So you tried to lift up her arm. All right. And do
8 you remember when we did the interview that you said your
9 mom came, and then the police came?
10 A. No. I don't remember that.
11 Q. Okay. Take a look at that same paragraph, the same page.
12 A. (Witness complies.) Okay.
13 Q. Okay. Is that your memory, or is that not clear in your
14 mind today?
15 A. I'm not sure who showed up first.
16 Q. Okay. I imagine it was pretty chaotic?
17 A. Correct.
18 Q. Okay. And I think that you also said you remember doing an
19 interview with a child interviewer or counselor --
20 A. Yes.
21 Q. -- back in the day? And I'm going to hand you -- that is,
22 if I haven't already lost it -- what's been marked for
23 identification as Plaintiff's 68.
24 MS. HIGH: And, Your Honor, that's the
25 child witness interview that was conducted on February 19,

1993.

A. (Reviewing.)

Q. (By Ms. High) So as you -- as you testified on direct, a little bit after your -- after these events, you were interviewed by a woman, that you remember it being a woman?

A. Yes.

Q. Okay. And you remember going there with your mother?

A. Yes.

Q. Okay. And I take it, she took you in a room and talked to you by yourself?

A. Yes.

Q. Okay. And you said she had you draw some pictures?

A. Yes.

Q. And, you know, reviewed with you again what you remember?

A. Yes.

Q. All right. Do you remember where you were going to school at the time?

A. Evergreen elementary.

Q. Evergreen elementary school; and what grade were you in?

A. I'm not sure.

Q. Okay. And this is the report that you had a chance to review in March of 2015 when you were in town and you met with Detective Kobel; is that right?

A. I'm not sure if this is the exact one. I'd have to read it.

Q. Sure. Well, take a look at it.

1 A. (Witness complies.)
2 Q. Is that the same report?
3 A. I don't think so.
4 Q. So did you give more than one interview to a child
5 interviewer?
6 THE COURT: Okay. You do need to speak
7 up. Okay? I know this is very difficult for you, but we
8 need to be able to hear you. Okay.
9 Q. (By Ms. High) Did you give more than one interview to a
10 child interviewer?
11 A. Well, I don't know what their job title is.
12 Q. Okay.
13 A. I don't know what their job titles are -- their job titles
14 are.
15 Q. Okay.
16 A. But I don't remember it being this -- I don't know if he has
17 a condensed version. I just don't remember this -- it being
18 this detailed.
19 Q. Okay. But you do remember going and giving an interview to
20 a woman; is that right?
21 A. Yes.
22 Q. And do you remember just doing that one time?
23 A. Yes.
24 Q. Okay. And when you were interviewed by this woman in
25 February of 1993, do you remember telling her that after you

1 were dropped off at your Aunt Linda's, your Aunt Linda took
2 you over to your Aunt Stephanie's?
3 A. No.
4 Q. You don't remember that?
5 A. No.
6 Q. You don't remember going to your Aunt Stephanie's with
7 Tarica -- excuse me -- and after going to your Aunt
8 Stephanie's going to the roller rink to drop off your
9 cousin, Tarica?
10 A. No.
11 Q. Okay. And you don't remember telling them that not only was
12 your cousin -- excuse me -- that you went to the roller rink
13 somewhere around nine o'clock?
14 A. No.
15 Q. Okay. Or that at your aunt's house was not only T.J. and
16 the little girl, but when you went to the roller rink that,
17 also, there was -- the little girl had a six- or
18 seven-year-old brother?
19 A. I don't remember him.
20 Q. And do you remember telling her that you were watching TV?
21 A. "Her" who? Oh, the interviewer?
22 Q. The interviewer.
23 A. Correct.
24 Q. And do you remember telling her you were watching a program
25 called *SNICK*?

1 A. I know what it's called, *Are You Afraid of the Dark*.
2 Q. Okay. And do you remember telling her, though, that you
3 were watching a TV show called *SNICK*?
4 A. I don't remember telling her that.
5 Q. Okay. Now, she asked you that night -- I guess I'll ask you
6 if you remember now, too, whether you ever heard the phone
7 ring?
8 A. No.
9 Q. Okay. Did you ever hear the doorbell?
10 A. Not when I was sleeping, no.
11 Q. Sure. You didn't hear her talking with anybody?
12 A. No.
13 Q. When I say "her," your Aunt Linda.
14 A. Yeah, not when I was sleeping there.
15 Q. Okay. Well, even while you were awake, did you recall
16 anyone calling her?
17 A. I don't remember that.
18 Q. Or anyone coming to the door?
19 A. I don't remember that.
20 Q. Do you remember hearing her say that night -- you might not
21 because you were saying you were asleep -- "Okay, okay,
22 okay," or something to that effect?
23 A. I don't remember that.
24 Q. Okay. When the smoke detector and your little cousin woke
25 you up, do you remember, was the TV still on?

1 A. Yes.
2 Q. Okay. And when you went to the neighbor's house and you
3 knocked on his door, did he come to the door quickly?
4 A. It was quick enough for me.
5 Q. Sure. I mean, it wasn't like, you know, you had to knock,
6 knock, knock for --
7 A. No.
8 Q. All right. And then he left his apartment and just walked
9 across the hallway to your aunt's; is that right?
10 A. Not immediately, no.
11 Q. Okay. So there's a little delay there while you tell him
12 what's happened?
13 A. Yes.
14 Q. And I think you said you remember him saying something about
15 calling a water boy which didn't make sense to you?
16 A. Right.
17 Q. It still doesn't make sense?
18 A. No.
19 Q. You're saying, "No, call 911"?
20 A. Yes.
21 Q. Okay. And, I mean, you knew -- you'd been in the kitchen;
22 you saw what had happened -- that this -- your aunt was
23 really seriously hurt. You even believed, at that time, she
24 was dead?
25 A. Yes.

1 Q. Okay. When you got up from the couch, was the front door
2 open or closed?
3 A. Closed.
4 Q. Okay. And when you ran to the neighbors, do you know if you
5 left it open or closed?
6 A. I don't remember.
7 Q. Okay. You know, you were really young; but it looks to me
8 like you were composed enough to talk to these officers that
9 night?
10 A. Correct.
11 Q. You report your mom was really distressed; is that fair to
12 say?
13 A. Yes.
14 Q. That she was crying and pounding on the walls?
15 A. Yes.
16 Q. And were other family members really upset, as well, to that
17 degree? Do you --
18 A. I don't remember any other family members being there except
19 for my brother.
20 Q. Oh, I wanted to ask you about that. So, your brother was
21 about fifteen at the time?
22 A. Yes.
23 Q. And I think I asked you during the interview, you said he
24 came to -- he came down to Linda's apartment; is that right?
25 A. Yes.

1 Q. And that he walked?
2 A. Mm-hmm. Correct.
3 Q. And I think I asked you how far that was; and we, perhaps,
4 made a guesstimate of about three miles?
5 A. Yes.
6 Q. Okay. And he walked down with one of his friends, was that
7 right?
8 A. Yes.
9 Q. Okay. I just want to check my notes. Oh, you know, at this
10 time, do you remember what your mom did for a living?
11 A. She was a daycare provider.
12 Q. And she ran the daycare at your house?
13 A. Yes.
14 Q. Okay. And do you remember if your Aunt Gloria -- excuse me,
15 that is your mom -- if your Aunt Stephanie was working
16 outside the home at that time?
17 A. Outside of our home?
18 Q. No, outside of her home. Was she working a job, or was
19 she --
20 A. Oh, I don't know.
21 Q. Okay. And do you remember if your Aunt Linda had a job?
22 A. I don't know.
23 Q. Okay. And I think they asked you, and I know they did,
24 that -- were you aware of your Aunt Linda making plans to
25 see anybody that night?

A. I don't remember that.
Q. Okay. And so you weren't aware if maybe she was going to go out at midnight, and Tarica was going to take over the baby-sitting?
A. No.
Q. Okay. And maybe I asked you this: Do you remember the kind of car your mom drove?
A. Yes.
Q. And what was that?
A. A brown Datsun.
Q. Okay. And do you remember if it was at the apartment -- at Linda's apartment that night?
A. I don't remember.

MS. HIGH: Okay. I think that's all I have. Thank you.

THE COURT: Redirect, Counsel?

MR. PENNER: Yes, Your Honor. Thank you.

REDIRECT EXAMINATION

BY MR. PENNER:

Q. You know, I think I forgot to ask you to mark on the diagram where Linda's -- your Aunt Linda's body was when you found her; so if you could step down, grab maybe that red marker, and just write "Linda."

(The witness left the stand.)

A. (Witness complies.)

1 Q. (By Mr. Penner) Thank you.
2 A. Mm-hmm.
3 Q. So just to reiterate, when you woke up -- you can sit down.
4 Thank you.
5 (The witness returned to the stand.)
6 Q. (By Mr. Penner) When you woke up again, T.J., he was awake
7 because he was crying?
8 A. Right.
9 Q. What about the other little girl who was there, do you
10 remember if she was awake or not?
11 A. She was awake.
12 Q. Okay. And I want to just clarify that in terms of the trip
13 to the roller rink -- you've had a chance now to look at
14 some of the statements that you made that night. Is it your
15 testimony today, you didn't go to the roller rink; or you
16 just can't remember, now, 23 years later?
17 A. I don't remember that part.
18 Q. Okay. So it could well have happened, you just don't
19 remember?
20 A. Correct.
21 Q. All right. So there's a lot of things you don't remember
22 from that day; right?
23 A. Yes.
24 Q. But finding your aunt murdered in her kitchen is something
25 you're not going to forget easily; right?

1 A. Yes.
2 Q. And, in fact, you're one of the people who called Detective
3 Kobel and asked him to look into the case again; isn't that
4 right?
5 A. Yes.
6 Q. All right. And do you remember when you did that?
7 A. No.
8 Q. Okay. Was it within the last couple years?
9 A. Yes.
10 Q. All right. And did you have his name, or did you just call
11 the general number?
12 A. I googled it, just googled Pierce County, cold case.
13 Q. And do you remember talking to Detective Kobel?
14 A. Yes.
15 Q. All right. And did he tell you he'd look into it?
16 A. Yes.
17 MR. PENNER: All right. Thank you very
18 much. Nothing else, Your Honor.
19 THE COURT: Anything else, Ms. High?
20 MS. HIGH: No. Thank you.
21 THE COURT: All right. May the witness be
22 excused?
23 MR. PENNER: Yes, Your Honor. We'd ask
24 that she be excused and not subject to recall.
25 THE COURT: All right. Ms. High?

1 MS. HIGH: That's fine, Your Honor.
2 THE COURT: All right. You are excused
3 and are not subject to recall, so you may stay in the
4 courtroom at this time if you wish. Okay?
5 THE WITNESS: Mm-hmm.
6 (The witness was excused.)
7 THE COURT: All right. It's about a
8 quarter till, so we'll go ahead and take the morning recess
9 and then start the next witness.
10 MR. PENNER: Thank you very much, Your
11 Honor.
12 THE COURT: All right. The Court will be
13 at recess, no discussion, no investigation, notepads face
14 down on your chairs; remain in the jury room until
15 Ms. Shipman comes to release you. Thank you.
16 (The jury was not present.)
17 THE COURT: Anything, Counsel, before we
18 break?
19 MR. PENNER: I just wanted to let the
20 Court know, I've got one more witness scheduled for this
21 morning. I don't anticipate he's going to take a full hour,
22 so we'll probably end early. I've got two scheduled for
23 this afternoon, and I'll take a look at my schedule for
24 tomorrow.
25 THE COURT: All right.

1 MR. PENNER: Thank you.
2 THE COURT: Court will be at recess.
3 (A recess was taken.)
4 (The defendant was present.)
5 (The jury was not present.)
6 THE COURT: Anything before we bring the
7 jury in?
8 MR. PENNER: I don't believe so, Your
9 Honor.
10 MS. HIGH: No, Your Honor.
11 THE COURT: All right.
12 (The jury was present.)
13 THE COURT: All right. You may be seated.
14 All right. You may call your next witness, Counsel.
15 MR. PENNER: Thank you, Your Honor. The
16 State would call Kurt Alvernaz.
17 THE COURT: All right.
18 (Pause.)
19 THE COURT: If you'll come forward, sir;
20 watch the ramp. Raise your right hand, sir.
21 KURT ALVERNAZ, witness herein, having been sworn
22 under oath, was examined and
23 testified as follows:
24 THE COURT: If you'll have a seat.
25 There's water and Kleenex to your right. You can pull the

1 chair forward and adjust the mic. Please keep your voice
2 up. And when answering, answer "yes" or "no"; don't nod or
3 shake your head or go uh-huh. It makes my court reporter's
4 life easier.
5 THE WITNESS: Okay.
6 THE COURT: All right.
7 THE WITNESS: Is that okay? Okay?
8 THE COURT: That's good. All right. Your
9 witness, sir.
10 MR. PENNER: Thank you.
11 DIRECT EXAMINATION
12 BY MR. PENNER:
13 Q. Could you state your name for the record, and spell it for
14 the court reporter.
15 A. Kurt, K-U-R-T, Alvernaz, A-L-V-E-R-N-A-Z.
16 Q. All right. And, sir, I'm going to just put you right back
17 to 1993, February 1993. Do you remember where you were
18 living back then?
19 A. In Spanaway in a fourplex.
20 Q. Okay. And you say a fourplex, so you had three other
21 neighbors; right?
22 A. That's correct.
23 Q. Okay. And what were you doing for a living back then?
24 A. I was taping in construction.
25 Q. Okay. And, I guess, why don't you explain to the jury what

1 that means exactly.
2 A. You put Sheetrock on the two-by-fours. The taper goes in
3 and makes those -- the Sheetrock, which are pieces,
4 flat-smooth.
5 Q. Okay. So that the wall is smooth also?
6 A. Yes.
7 Q. Okay. What were your hours like back then?
8 A. We worked in sunlight inside houses. We didn't have
9 artificial light, so we were on the job when the sun came
10 up; and we were off the job when the sun went down.
11 Q. And so in February, you were off the job earlier as opposed
12 to, then, in the summer?
13 A. That's correct. I did have lights with me to extend my day,
14 but we got started as soon as possible whenever possible.
15 Q. Okay. Back in '93, did you get to know your neighbors very
16 well?
17 A. Not really. I was working six days a week, long days, so it
18 was "hi" and "good-byes," if we were crossing paths -- if we
19 crossed paths, a lot of times.
20 Q. Okay. And you said it was a fourplex. Can you describe for
21 the jury, is it -- are they all on the ground floor; or were
22 there some upstairs and some downstairs?
23 A. Two units up, two units down. They were all the same size
24 and design units.
25 Q. Okay. Where was your unit?

1 A. Upstairs.
2 Q. Okay. Do you remember your across-the-way neighbor at all?
3 A. In passing. She was single, and family would come over and,
4 I'm guessing, grandchildren.
5 Q. All right. I'm going to hand you what's been admitted as
6 Exhibit 90. Do you recognize your neighbor?
7 A. Yes, actually, that picture.
8 Q. Okay. All right. And you said she had kids and family. Do
9 you remember how many kids were living there, or did you
10 know?
11 A. I don't remember people living there besides her. I seem to
12 remember the smaller children coming to stay, you know,
13 like, baby-sitting and stuff and visitors and such, not
14 another person actually living there, but --
15 Q. Did you ever go to her place or her ever come to your place
16 socially for dinner?
17 A. No.
18 Q. Okay. All right. So kind of a typical neighbor situation?
19 A. Yes. It was a fourplex. People didn't -- I stayed a little
20 while, but people didn't stay very long.
21 Q. How long did you stay in that apartment?
22 A. I was there -- well, I apologize for having to raise the
23 rent. So, that's how long I was there. Rent, they raised
24 it a couple different times. Six years.
25 Q. All right. And I know you remember the night the police

1 came out; but do you know how long Linda, across the way,
2 had been living there?
3 A. I don't recall.
4 Q. I'm going to back up a little bit. You said the apartments
5 were all the same layout, so I just want to confirm, would
6 you be able to draw a diagram of -- I guess either yours or
7 Linda's apartment if I asked you to?
8 A. I might be able to. I --
9 Q. How long has it been since you lived there?
10 A. I don't remember, a long time, fifteen years, anyway.
11 Q. And you got contacted by law enforcement that night?
12 A. I did.
13 Q. Okay. But you also were contacted by law enforcement more
14 recently, isn't that right, about the case?
15 A. It was not law enforcement; it wasn't the Sheriff's
16 Department or anything.
17 Q. Let me ask a different way: You've been contacted by people
18 involved in the case about the trial; right?
19 A. Yes.
20 Q. Okay. That twenty to twenty-three years, were you kind of
21 waiting to get contacted again?
22 A. At this point in time, not really.
23 Q. Okay.
24 A. It had gone on -- it had been so long. It's a memory, but
25 it's not something I thought was happening or anything.

1 Q. Well, let's focus in. Do you have a good recollection of
2 the events of that night?
3 A. I don't think it's a good recollection --
4 Q. All right.
5 A. -- but I have a recollection of it, yes.
6 Q. And was it a fairly significant event, though, in your life?
7 A. At the time, it was. I mean, I told other people at work
8 and whatnot, but it's -- it -- that was it.
9 Q. All right.
10 A. I didn't have dreams or anything because --
11 Q. But you haven't had that kind of situation happen again
12 since --
13 A. No, I haven't.
14 Q. Okay. That night, was there a knock on your door?
15 A. There was.
16 Q. All right. Do you remember about what time of night it was?
17 A. Other than the fact it was late, no.
18 Q. Okay. So there was a knock on your door. Were you -- were
19 you awake, or were you in bed?
20 A. I was actually in the living room on the recliner. I
21 remember actually having dozed off and being awakened by the
22 person at the door.
23 Q. Okay. So what did you do?
24 A. Well, I woke up to the knocking or the doorbell, whatever it
25 happened to be, and noticed a fire alarm going off. It

1 didn't really register that it was a fire alarm until I
2 actually woke up. I went to the door.
3 Q. So let me -- let me -- so you could actually hear the alarm
4 from across the way?
5 A. Yes.
6 Q. Okay.
7 A. We had the upstairs unit, two units downstairs, two units
8 upstairs; and we walked up a little alcove stairway to our
9 units upstairs. So, it echoed, concrete steps, a little
10 alcove; and going through the door, it would -- things
11 echoed, and you could hear, if the door was open, the fire
12 alarm going off because it was in the hallway that was right
13 inside the door.
14 Q. Okay. So you wake up to a knock on the door and some kind
15 of alarm going off. Did you look through the peephole, do
16 you remember?
17 A. I don't remember.
18 Q. Okay. But did you open the door?
19 A. I opened up the door.
20 Q. And when you opened the door, what did you see?
21 A. There was a little girl asking for help.
22 Q. Okay. Had you seen that little girl before?
23 A. I had seen her coming and going. That was one of the little
24 children that would come over and stay with the neighbor.
25 Q. And what did she say?

1 A. Something along the lines of: "My mom's asleep, and I can't
2 wake her up" --
3 Q. Okay.
4 A. -- is what I remember.
5 Q. All right. So did that concern you?
6 A. By then, I recognized the fire alarm; and I -- there might
7 have been some mention about the noise, the fire alarm, and,
8 you know, "She won't move, can't -- isn't moving; I can't
9 get her to move." And so it did, but I didn't know exactly
10 what.
11 Q. Okay. Could you see -- from your door, could you see into
12 the other apartment?
13 A. You can. I don't remember if I looked through and saw or
14 not.
15 Q. Okay. So what did you do at that point?
16 A. I remember she said her -- I thought it was just her little
17 brother was over there too. I don't remember him being at
18 the door. I went over, collected --
19 Q. Let me -- let me stop you. So did she tell you that there
20 was a young child across the way, or did you just -- you
21 knew that?
22 A. I didn't -- I didn't know -- I didn't know that they -- they
23 were together. There were two of them. I -- so she had to
24 have told me that there was another -- a sibling, a brother.
25 Q. Okay. So you went across to get the child?

1 A. I -- I went over to make sure -- yeah, to get him and bring
2 him -- make sure everybody was out.
3 Q. Okay. The little girl who was in front of you, are you any
4 good at estimating kids' ages?
5 A. No.
6 Q. All right. Give me a ballpark on how old the kid was.
7 A. She was -- she was -- she was little. I -- six, seven,
8 maybe eight, I -- I don't think any older than that.
9 Q. Did she come with you when you went into the apartment to
10 get the other child?
11 A. I don't remember.
12 Q. Okay. All right. Were you able to find any other children
13 in the apartment?
14 A. Well, I -- everybody -- I remember everybody coming out, and
15 she might have -- I don't remember exactly how it all went
16 down, actually.
17 Q. But were there -- was there at least one other child in the
18 other apartment?
19 A. There were -- I remember there were two, total.
20 Q. Two total, the little girl and one more?
21 A. And a smaller one.
22 Q. Okay. And did you get those children into your apartment?
23 A. I brought them over to my apartment. I thought the smaller
24 one was asleep and had been awakened or something because he
25 seemed cold and kind of not quite awake.

1 Q. Okay. And did you go back to the apartment?
2 A. I went back to the apartment to see if there was anybody
3 else there that needed to be gotten out. By then, I -- by
4 then, I had -- I saw -- because we -- if you look in the
5 front door, you could look into the kitchen; so by then, I
6 had seen that there was something not right.
7 Q. Okay. What I'm going to do at this point, then, is: I'll
8 ask you if you could step down and if you can -- you said
9 when you walk in, you could see it; so could you diagram, to
10 the best of your recollection -- I know it's been twenty
11 years but kind of -- when you first walk into the apartment,
12 the layout of the front door and the kitchen and the other
13 area. So, if you step down from the witness stand, there
14 are some black markers right there; and draw nice and big
15 for the very last person in the courtroom.
16 MR. PENNER: And for the record, we'll go
17 ahead and mark this as Exhibit 93.
18 (The witness left the stand.)
19 A. (Witness complies.) Mine might be so much easier.
20 Q. (By Mr. Penner) Yeah.
21 A. The front door would be here. You would come through; the
22 hallway goes down. The living room was over here, dining
23 room, the living room. There was a slider for a patio out
24 there. The kitchen was this hall. The kitchen came in off
25 the dining room into here.

1 Q. Could you take the red marker and write the word "Linda"
2 where you saw her body.
3 A. (Witness complies.) Well, let me -- you had your sink here
4 and your stove here, and she was here in front of the stove.
5 Q. Could you put your initials and today's date, 01/26/16, down
6 by the orange tag.
7 A. (Witness complies.)
8 MR. PENNER: And, Your Honor, the State
9 would move to admit Exhibit 93 for illustrative purposes.
10 A. 01 what?
11 Q. (By Mr. Penner) 01/26/16.
12 MS. HIGH: No objection for illustrative
13 purposes.
14 THE COURT: All right. No. 93 will be
15 admitted for illustrative purposes only.
16 (Plaintiff's Exhibit No. 93 was admitted as illustrative.)
17 MR. PENNER: All right. Thank you, sir.
18 You can be seated again.
19 (The witness returned to the stand.)
20 Q. (By Mr. Penner) I'm going to show you what's been
21 previously admitted as Exhibits 2 and 3. We'll start with
22 Exhibit 2. And I guess I should ask: You've had a chance
23 to see these photographs prior to testifying today?
24 A. I have seen some photographs that were taken at the time of
25 this.

1 Q. And that was --
2 A. I don't know if those are them or not, but --
3 Q. Well, let's ask you to take a look at Exhibit 2.
4 A. Yes, I have seen that.
5 Q. Do you recognize that?
6 A. Yes.
7 Q. Okay. And is this -- is this essentially the view that you
8 saw when you came in?
9 A. Yes. You can see the face of the stove and the door. That
10 was taken, I believe, from the door.
11 Q. All right. Let me --
12 A. The door was right behind them.
13 MR. PENNER: Your Honor, can I publish --
14 the State moves to publish.
15 THE COURT: It's already been published.
16 MR. PENNER: May I re-publish?
17 THE COURT: You may re-publish. If it's
18 already been published, you don't have to ask me again.
19 MR. PENNER: Thank you.
20 Q. (By Mr. Penner) All right. Sir, I'm going to ask you to
21 step down from the stand, if you could, and come over here.
22 MR. PENNER: Do you have the pointer?
23 (The witness left the stand.)
24 Q. (By Mr. Penner) And if you could stand to the side and let
25 us know -- I guess, you mentioned something about being able

1 to see the stove and the view. Can you explain to the jury,
2 I guess, the view that this is taken from and then -- we'll
3 do that first, so where is this scene from?
4 A. Well, back here at her feet would be -- this is the corner
5 going down the hall, so that's over -- in -- in the backside
6 of this is the pantry and then off in that direction, and
7 the dinette area came in from there.
8 Q. Okay. And that's the area that you --
9 A. So the front door would be back here.
10 Q. And does this accurately depict what you saw when you walked
11 into the apartment?
12 A. That would be what I remember.
13 MR. PENNER: All right. Now, Your Honor,
14 I'm going to re-publish Exhibit 3 if there's no objection.
15 MS. HIGH: No.
16 Q. (By Mr. Penner) Can you let the -- I guess, again, let us
17 know where the stove was and where you went to turn off the
18 stove.
19 A. Well, you can see the dinette area or a chair. There's the
20 stove, and I probably -- I would guess I came in -- because
21 she was blocking this entry here, I would have come in and
22 stepped and reached across -- you've got a pot. That pot,
23 there, was on a burner, boiled dry.
24 Q. Okay. And do you remember, did you turn the heat off, move
25 the pot, or both, or --

1 A. I moved the pot, and I'm pretty sure I reached around up on
2 the face there and turned the burner off --
3 Q. Okay.
4 A. -- after I moved the pot.
5 Q. And again, is this the location that you saw Linda's body?
6 A. Yeah, nothing had been moved.
7 Q. Okay. And in terms of this photograph, does it look like
8 anything has been moved since you went in?
9 A. Not that I recall.
10 MR. PENNER: Thank you. Thank you, sir.
11 You can have a seat again.
12 (The witness returned to the stand.)
13 MR. PENNER: And we can turn the lights
14 back on.
15 Q. (By Mr. Penner) Did you make any special efforts not to
16 disturb Ms. Robinson's body?
17 A. I don't know that I made any special efforts, but I -- there
18 was not a need to disturb anything to get the fire situation
19 resolved.
20 Q. Okay. Was there actually a burning fire, or was it just
21 smoke?
22 A. No. It was just smoke. There was no fire. It had been
23 water.
24 Q. Okay. So you -- I want to make sure I understand. So at
25 this point, the children are in your apartment, and you're

1 in --
2 A. I believe they were, yes; they were out. It was --
3 Q. All right.
4 A. And I don't recall -- yeah, they were in my apartment
5 probably in the living room.
6 Q. Okay. Is the first thing you did was to attend to the
7 stove?
8 A. I believe so, after I got the children out.
9 Q. Did you do anything else in the apartment while you were
10 there?
11 A. You know, I -- I remember walking down the hall looking to
12 see if there was anybody else, not knowing how many children
13 there were.
14 Q. Were you looking for someone who had -- who had done this?
15 A. I don't -- you know what, I didn't have anything else in my
16 hands for protection, so I don't think I did anything like
17 that.
18 Q. You were just looking --
19 A. By -- by that point in time, I was awake enough, I would
20 have thought that I wasn't going to be walking down looking
21 for somebody. There was no other noise going on in there,
22 but that didn't necessarily mean that there wasn't somebody
23 else that was in there.
24 Q. Okay. And in terms of looking for people, I guess I just
25 want to clarify: Were you looking for a possible assailant,

1 or were you looking for more kids?
2 A. I think I was looking for more children, not so much an
3 assailant.
4 Q. Okay. Did you find anybody else in the apartment?
5 A. There was nobody else in there.
6 Q. So then what did you do?
7 A. I don't recall if I -- at some point, I called 911.
8 Q. And that -- let me ask you something: Do you remember
9 saying anything to the little girl about calling the water
10 boy or anything like that?
11 A. The water boy?
12 Q. Does that make any sense to you?
13 A. No.
14 Q. Okay. Calling maintenance or anything like that?
15 A. No. There was an off-site owner/manager, so --
16 Q. Did you think about calling that person or just 911?
17 A. No. I -- we just -- it was 911, get the police/ambulance.
18 Q. That little girl, what was her demeanor like? Did she seem
19 shocked? Was she crying, or how was she acting?
20 A. You know, I don't remember. She -- concerned --
21 Q. Okay.
22 A. -- that she wouldn't wake up and wouldn't move.
23 Q. But she was able to speak to you?
24 A. I didn't really ask a lot of questions that I remember. I
25 might have tried to console and calm. After -- after we got

1 out -- or I got out of the apartment and I had talked to the
2 911 operator, I remember finding a blanket. I thought we
3 went outside and waited rather than inside, just to move
4 farther away from everything.
5 Q. Okay. You know, when you went in and you saw your neighbor
6 like that in the kitchen, did you make any efforts to try to
7 see if she was okay, or --
8 A. I did not -- I did not check for a pulse or anything.
9 Q. All right. So would you have done that if you had seen
10 signs of life?
11 A. If I heard or saw movement, I probably would have, at that
12 point, tried to do something; but I -- I was informed before
13 I even walked over that she wasn't moving, and it was pretty
14 messy, so --
15 Q. All right. So you called 911; right?
16 A. Yes.
17 Q. And what happens next?
18 A. Well, we waited for the police.
19 Q. Okay. Do you know -- I mean, was it a reasonably quick
20 response?
21 A. It was fairly quick.
22 Q. Okay. And I think you testified earlier but to the best of
23 your recollection here, you know, 23 years later, where did
24 you meet the police?
25 A. I seem to remember meeting them outside. We might have been

1 upstairs, but it wasn't --
2 Q. Now, this is February.
3 A. I don't think it was raining.
4 Q. Okay. Was there any reason that you didn't just stay in the
5 apartment?
6 A. I don't -- other than maybe move people as far away from
7 what was going on as possible -- it might have been after
8 they got there that we moved, just to -- because of the
9 activity and stuff, and --
10 Q. Okay.
11 A. -- there were people there to take care of.
12 Q. And did relatives arrive to take the children from you?
13 A. I don't -- you know, I don't recall much after that. That
14 was pretty much the extent of my recollection.
15 Q. Okay. I assume the police interviewed you then?
16 A. They did. I remember giving a statement and seeing the
17 statement.
18 Q. All right. And do you remember the police coming back and
19 asking to use your apartment for any reason?
20 A. I got a phone -- I don't remember if it was the police. I
21 got a phone call from *Crime Stoppers,* asking if my apartment
22 could be used in lieu of the next-door apartment because
23 they were mirror images of each other.
24 Q. Okay. And how soon from the time of the murder until
25 that -- until *Crime Stoppers* contacted you?

A. You know, I don't really remember, weeks, a couple months. It was fairly -- it was fairly soon afterwards.
Q. Okay. And did they come out to your apartment?
A. They did.
Q. Okay. And did you watch what they did?
A. I was inside.
Q. And what did they do?
A. They set up what I -- basically, what I walked into, and gave the little story, you know, for their little *Crime Stoppers* story. It was -- it was scripted and stuff, and they might have asked me a couple of questions about things; and I tried to help answer the questions, but --
Q. So kind of a "see if we can solve," this type of thing?
A. Yes.
Q. All right. After that, did you have any further contact with Ms. Robinson's family?
A. I don't recall. I don't think I did.
Q. Okay. How much longer did you live at that apartment complex?
A. Probably a couple more years, anyway.
MR. PENNER: Okay. All right. Thank you, sir, no other questions.
THE COURT: Cross-examination?
MS. HIGH: Yes, Your Honor.
/ / /

1 CROSS-EXAMINATION
2 BY MS. HIGH:
3 Q. Good morning.
4 A. Good morning.
5 Q. So you're currently working at a different occupation than a
6 taper?
7 A. Yes, I am.
8 Q. And do you still live and work in this area?
9 A. Yes, I do.
10 Q. In Spanaway?
11 A. Well, the address is Tacoma; but it's a mile off -- it's
12 about a mile and a half from where I was, so yes.
13 Q. Okay. And you're working in the Spanaway area now too?
14 A. Yes.
15 Q. Okay. And you work at a cafe?
16 A. Yes.
17 Q. And what do you do there?
18 A. I wash dishes and do food prep.
19 Q. Okay. But back in '93, you were doing construction?
20 A. Yes.
21 Q. And as a taper, and that's hard work?
22 A. It took its toll.
23 Q. Right, and you were working long hours?
24 A. Yes.
25 Q. And I think you said you were even working six days a week?

1 A. Yes.
2 Q. Okay. So when you got home, you were tired?
3 A. I was.
4 Q. All right. You have lived on 162nd -- I don't know what
5 number your apartment was; were you 3? 2? Well --
6 A. I believe so, the top left.
7 Q. Okay.
8 A. So 1, 2, 3, 4.
9 Q. Okay. And you'd lived there a couple of years?
10 A. I'd lived there since the -- probably the mid -- mid to
11 early 80s.
12 Q. Okay.
13 A. So I had been there awhile.
14 Q. Okay. And do you remember who lived below you?
15 A. At the time, no.
16 Q. Okay. Do you remember some young women?
17 A. At one point in time, there were a couple young women, yes.
18 Q. Yeah, did they live below you or below Ms. Robinson?
19 A. The two I'm thinking of, the two young -- the two younger
20 ones --
21 Q. Mm-hmm.
22 A. -- they were shortly out of high school, I believe --
23 Q. Mm-hmm.
24 A. -- were below me.
25 Q. Okay. Okay. Well, you've had some training in your

1 background too. At one point, you worked as a -- I want to
2 say a security guard?
3 A. That was -- it was student security at UPS, so I was a
4 student doing part-time work as their little patrol people
5 at night and on weekends.
6 Q. Okay. And some first-aid-type training?
7 A. There was an industrial first-aid class that we took for
8 that -- that job, yes.
9 Q. Okay. And this was, like you said, when you were a student;
10 so this was before you were living at the apartment?
11 A. This was in the mid to late 70s.
12 Q. Okay. So I'm going to turn your attention just a little bit
13 to a little background, your interaction with Ms. Robinson,
14 the deceased here. She hadn't lived there very long?
15 A. I don't recall that, well, I mean, as long as I had already
16 lived there; nobody had lived there longer.
17 Q. Okay.
18 A. They were in and out, you know. It was -- you signed a year
19 lease, so most people were there at least a year, but it
20 didn't seem much longer than that.
21 Q. Okay. But nothing stands out in your mind in terms of your
22 interactions with her or other individuals you saw there?
23 A. No. No. There were some more than others, depending on
24 what time of year that they -- that they lived there --
25 Q. Okay.

A. -- what activities they did. She seemed to be quiet, you know, had people coming, visiting, and reasonable, regular hours.
Q. Mm-hmm.
A. And like I said, with my hours, it was a lot of -- a lot of daytime that I was not there, so --
Q. Okay.
A. She -- she wasn't a partier. She didn't keep me up at night when I came home and tried to sleep.
Q. Well, that's good.
A. So that -- that -- that -- you took notice of the people who partied and the people who didn't party, the noisy ones and the quiet ones, you know.
Q. Sure. I'd like to hand you what's been marked for identification as Plaintiff's Exhibit 91; and, you know, you were just asked -- it was your recollection that when the officers came, you were outside. Is that your recollection?
A. I seem to remember at some point in time being outside, but I don't --
Q. Well, I'd just like you to take a look -- like I said, marked for identification as 91 -- at this little paragraph right here.
A. (Witness complies.) Okay.
Q. Yeah, and so it looks like at least --
A. Outside to meet them at the bottom of the stairs, anyway;

1 right?
2 Q. Right.
3 A. Okay.
4 Q. So at least in your report, when you met the first folks
5 showing up and you said it was pretty quick, you were
6 outside standing at the bottom of the stairs with a couple
7 of small children?
8 A. Okay.
9 Q. Does that kind of jive with your memory there?
10 A. That's -- yeah, that -- like I said, it was late. I
11 remember being outside, and I remember two children.
12 Q. Okay. Also, I'm going to walk you through some of the --
13 some of the statements that you made that night.
14 A. Okay.
15 Q. And I know it's been a long time.
16 A. Okay.
17 Q. So I'm going to hand you what's been marked as Plaintiff's
18 Exhibit 48 to see if this helps your recollection and helps
19 us, kind of, move through this. Okay. Let's see. And so
20 starting at the very bottom of page three -- and then there
21 is, kind of, a report that runs through page four; and then
22 you also have a transcript. Okay?
23 A. Okay.
24 Q. Now, do you remember reporting that somewhere around 10
25 p.m. -- and that's, kind of, near the bottom -- that you

1 were at your home or inside your apartment?
2 A. Okay.
3 Q. Okay?
4 A. Okay.
5 Q. I mean, you were home at 10 p.m.; right?
6 A. I was home, yes.
7 Q. Okay. And I think you said you were watching some
8 television?
9 A. Okay. I -- I had the TV on --
10 Q. Okay.
11 A. -- and maybe the radio or a combination of both. I don't
12 recall.
13 Q. Okay.
14 A. I seem to remember being awakened, which at ten o'clock, at
15 that time, probably is not unusual, fall asleep after a long
16 day in the recliner and get up and go to bed.
17 Q. Sure. Do you recall saying about 10 p.m., you'd been
18 watching TV, and you heard a voice?
19 A. I don't recall that, but --
20 Q. Okay.
21 A. -- I see that's what I said.
22 Q. Yeah, and you didn't interpret the voice as being frightened
23 or overly angered, more just exasperated. Do you remember
24 that?
25 A. It didn't sound like there was a fight going on.

1 Q. Pardon?
2 A. It didn't sound like there was a fight going on, but --
3 Q. Okay. All right. Do you remember telling the officer you
4 thought maybe she -- her daughter was home, and it sounded
5 like an exasperated parent-type thing?
6 A. I don't remember saying that.
7 Q. Okay. Do you remember hearing that at all?
8 A. I don't remember -- I remember far less than what I
9 remembered at the time. It's --
10 Q. Sure, and at the time, you would have given your most
11 complete statement?
12 A. I would have -- I would have -- yes.
13 Q. Yeah. And --
14 A. If I -- if I were to -- if I were to expand -- expand on
15 things now, it would -- it would be --
16 Q. Surprising?
17 A. -- fiction, yeah.
18 Q. Yeah, because at the time, events were fresh in your mind?
19 A. Yes.
20 Q. You were going to give them the best information you had?
21 A. Yes.
22 Q. There was no reason for you to make something up or to skip
23 anything?
24 A. (Shakes head.)
25 Q. Is that right?

1 A. That's right.
2 Q. You know, and not only -- I mean, there's just that report,
3 but you actually gave them a taped statement. Do you
4 remember that?
5 A. I've -- I've read the transcript, and it certainly sounded
6 like it was taped because of all the hems and haws.
7 Q. Well, yeah. I can relate to that.
8 A. It wasn't easy to read.
9 Q. I'm going to hand you what's been marked as Plaintiff's
10 Exhibit 69. And it -- yeah, it is a transcript of an
11 interview that looks like it was recorded with a detective
12 that -- well, 24 minutes after midnight.
13 A. Okay.
14 Q. Okay. And so that's -- I'll give you this one here in case
15 we go back to it. Okay?
16 A. (Reviewing.)
17 Q. Okay. So your interview, it's midnight, a little after
18 midnight, and I'd say it was pretty fresh in your mind; is
19 that right?
20 A. Yes.
21 Q. Okay. And when you meet the officers, you're downstairs;
22 and it's February?
23 A. Yes.
24 Q. And it's late, so it's cold; is that right?
25 A. Yes.

1 Q. And in the report here, you let them know that -- when the
2 officers came, you asked if you could take the kids upstairs
3 because it was cold?
4 A. Okay.
5 Q. Okay. And when they're interviewing you, they ask you, you
6 know, if you remember about what time you made your 911
7 call; and do you remember what time you made your 911 call?
8 A. I don't remember.
9 Q. Okay. If I could direct your attention to page two, it's
10 about halfway down the page.
11 A. Okay.
12 Q. Okay. And do you remember telling them you thought it was
13 right about eleven o'clock?
14 A. That's what it says.
15 Q. Sure. And when you made the 911 call, you could hear the
16 smoke alarm?
17 A. Yes.
18 Q. A little girl had been to your door?
19 A. Yes.
20 Q. And your doors are directly across from each other on that
21 landing?
22 A. Yes.
23 Q. All right. And you could look in, and you could actually
24 see there was a body there?
25 A. You might have been able to see a little bit because of the

1 angle of the door -- the door and whatnot, but yes.
2 Q. Mm-hmm. Okay. And you go into the apartment, and is it
3 smoky?
4 A. I don't remember any smoke.
5 Q. Okay.
6 A. I mean, not like if you burn cheese in the oven or something
7 smoke, but --
8 Q. Okay. And when you go into the apartment, I think you said
9 that, you know, it's obvious when you first go over there --
10 the door is open -- you can see this body once you get up to
11 the doorway; right?
12 A. Right.
13 Q. And I think your testimony is you, kind of, skirt around to
14 go through the living room, kind of the -- there's a little
15 dining room area; right?
16 A. Right.
17 Q. To then reach across and move a pot and turn off the stove?
18 A. That's correct.
19 Q. Okay. And when you're in there, this is -- you've been
20 home. You've been in your recliner. You're in your socks
21 or your slippers?
22 A. Probably barefoot, but slippers, I would think, by the time
23 I went outside.
24 Q. Okay. Yeah, but going right from your home --
25 A. Right.

1 Q. -- probably going over barefoot?
2 A. Right.
3 Q. Okay. And you also -- if I could direct your attention to
4 page three, you -- you want to check and make sure there's
5 nobody else in there; right?
6 A. That's what I remember thinking at the time.
7 Q. Mm-hmm.
8 A. That's how I remember telling the story afterwards when I
9 went back to work, and --
10 Q. Sure.
11 A. -- told them about my exciting evening --
12 Q. Right.
13 A. -- which was more exciting than it had been.
14 Q. Right. Pretty memorable --
15 A. Yes.
16 Q. -- and pretty weird. So, on page three, I think, kind of
17 your first answer there, is, you know, you let -- you tell
18 them -- and this kind of jives with what you just told us,
19 if this helps you remember -- that you went down the hall,
20 you turn the stove off; and let me get to the next page.
21 You're going to, like you said, just make sure nobody else
22 is in there that's been, you know, injured or any other
23 little children; is that right?
24 A. Yes.
25 Q. Okay. And now also on page three, you were asked if you'd

1 heard anything earlier; and like you said, you were going to
2 be accurate, and you were going to be thorough, and you told
3 them around ten o'clock you thought that there was one
4 voice -- it was a woman's -- and you thought it was, maybe,
5 her yelling at her daughter. Does that ring a bell at all?
6 A. I had heard -- I had heard her and her daughter having
7 disagreements, and -- and -- raising voices before; so that,
8 probably, was the first thing that crossed my mind because
9 it had happened before, and I had seen them departing
10 afterwards, and --
11 Q. Mm-hmm. Well, 15-year-olds, you know, and their parents --
12 A. Right.
13 Q. -- sometimes that happens?
14 A. (Nods head.)
15 Q. And like I said, so that was -- you know, that's what you
16 assumed?
17 A. Yes.
18 Q. Sure. And like I said, you heard basically just one female
19 voice?
20 A. Okay.
21 Q. And if I turn you to -- address your attention to page five,
22 at that time, you said you recognized the voice as Linda's.
23 Does that ring a bell?
24 A. It doesn't ring a bell that I said that; but if I said that
25 two hours after I made the call or an hour after I made the

1 call, that would have been the case.
2 Q. Right, and that it was, like, kind of exasperation, kind of
3 enough is enough?
4 A. Okay.
5 Q. And again, two hours after you made the call, you think you
6 would have been pretty accurate; right?
7 A. Yes.
8 Q. Okay. Now, you remember -- do you remember if she had a
9 vehicle there?
10 A. I don't.
11 Q. Do you remember her kind of coming and going in different
12 vehicles?
13 A. You know, I -- I really think that she did have family
14 members that would pick her up and drop her off.
15 Q. Sure. Can I direct your attention to page seven.
16 A. (Witness complies.)
17 Q. And so as you said, you kind of remember people coming to
18 give her rides?
19 A. Okay.
20 Q. And do you remember saying that?
21 A. I don't remember saying it; I'm seeing I said that.
22 Q. Okay. And that she'd borrow vehicles?
23 A. She didn't have -- if she was -- if there were a lot of
24 vehicles that she was coming and going in, then I would
25 assume that sometimes they might have been borrowed.

1 Q. Sure. I'm going to show you a couple of pictures. You had
2 a couple of vehicles parked there; is that right?
3 A. By then, I had two vehicles, yes.
4 Q. Sure. Let me gather up some of these things before I lose
5 those. So you had testified you had two vehicles, one was a
6 work truck?
7 A. Yes.
8 Q. And can you describe that.
9 A. It was a 1985 Dodge pickup.
10 Q. And what color was that?
11 A. They're grey.
12 Q. Okay.
13 A. Charcoal grey, I think, is -- they -- what they called it.
14 Q. And did you have, then, a personal vehicle?
15 A. Yes, I did.
16 Q. And what color was that?
17 A. That was red.
18 Q. Okay.
19 THE COURT: The numbers please, Counsel.
20 MS. HIGH: Your Honor, I have Defendant's
21 Exhibit 200 and Exhibit 201.
22 Q. (By Ms. High) I'm going to hand you -- and before showing
23 them to the jury -- a couple of pictures here.
24 A. Okay.
25 Q. First, I'm going to hand you Exhibit 200.

A. Okay.
Q. Do you recognize that place and what's out front there?
A. That -- I do.
Q. And you recognize that because it's the apartment complex with your trucks?
A. That's correct.
Q. All right. And do you recognize anything else in that picture?
A. I recognize my two vehicles.
Q. Okay. And I'm going to hand you now what's been identified as Defense Exhibit 201.
A. Okay.
Q. Do you recognize that?
A. I do.
Q. And is that an accurate depiction of the apartment complex you were living in in 1993, the front of it?
A. Yes.
Q. Okay. And, as well, is the -- Exhibit 200, the vehicles, is that an accurate depiction of the vehicles in 1993?
A. Yes.

MS. HIGH: Okay. Your Honor, I would move to admit Defendant's Exhibits 200 and 201.

THE COURT: Any objection?

MR. PENNER: No, Your Honor.

THE COURT: 200 and 201 will be admitted.

1 (Defendant's Exhibit Nos. 200 and 201 were admitted.)
2 THE COURT: And may we have them to stamp
3 them.
4 MS. HIGH: Yes. Your Honor, I'm going to
5 ask if I may publish them.
6 THE COURT: Any objections to publishing?
7 MR. PENNER: No, Your Honor.
8 THE COURT: All right. They will be
9 published.
10 Q. (By Ms. High) I'm going to start with Exhibit 201. Let me
11 get this so it makes sense on here. Hmm, it looks like it's
12 upside down. Okay. Now, I'm not going to give you a laser
13 pointer to use because --
14 A. That's okay.
15 Q. -- that won't work for one of our jurors, but I believe we
16 have a pointer.
17 MS. HIGH: Thank you so much, Ms. Shipman.
18 Q. (By Ms. High) If I could have you step down here.
19 MS. HIGH: Would that be okay, Your Honor?
20 THE COURT: That will be fine.
21 (The witness left the stand.)
22 Q. (By Ms. High) And if I could just get you to point out --
23 thanks. Oh, and, yeah, you're nice and tall. There's not
24 going to be a problem with that at all.
25 A. No.

1 Q. I'll get you to -- I'll get out of the way here -- point out
2 where your apartment was and where Ms. Robinson's was.
3 A. This would be mine; this would be hers.
4 Q. You know, and what's that door in between there?
5 A. The one downstairs was laundry. This was two hot water
6 tanks.
7 Q. Okay. So a little flight of stairs and just some utility
8 things in between?
9 A. Yes.
10 Q. Okay. Thank you. I'd have you take your seat, but then I'm
11 going to put another picture up, and I'm going to have you
12 come right back down.
13 A. Okay.
14 THE COURT: Just for the record, could you
15 have him indicate whether he is on the left or the right.
16 MS. HIGH: Yes.
17 THE WITNESS: I'm on the left.
18 Q. (By Ms. High) Your apartment is on the left?
19 A. Yes, ma'am.
20 Q. The door in the middle is the hot water?
21 A. Yes, ma'am.
22 Q. And the door on the right is Ms. Robinson's?
23 A. Yes.
24 Q. Okay. Now, this is Exhibit 200; and again, if I could just
25 get you to come down here and point out the vehicles. And

1 this shows a little bit more of the front of the apartment
2 complex; is that correct?
3 A. Yes.
4 Q. Okay. And so can you tell me, what cars do you see there?
5 A. Well, I recognize my -- my work vehicle.
6 MS. HIGH: Can everyone see, or am I in
7 your way?
8 THE JURORS: (Nod heads.)
9 Q. (By Ms. High) And your work vehicle is the one on the far
10 left?
11 A. Yes, ma'am.
12 Q. Okay. And then right in --
13 A. And my personal vehicle --
14 Q. Yeah. Okay. And do you --
15 A. -- which, in a pinch, doubled for work. There was room to
16 take my stuff.
17 Q. And do you recognize the other car?
18 A. I do not.
19 Q. Okay.
20 A. However --
21 Q. Yes.
22 A. So the parking spaces were marked. We had two parking
23 spaces over here for this unit, and these two were for that
24 unit. So, I would guess that these -- next, over here, were
25 for upstairs; and the two past that would have been for

1 downstairs --
2 Q. Okay.
3 A. -- was the order that they'd do that.
4 Q. Sure, so the car parked there may have been associated with
5 Ms. Robinson?
6 A. Ms. Robinson's, yes.
7 Q. Okay. But that's not a car that you would --
8 A. But I don't recognize it.
9 Q. Okay. Thank you so much.
10 THE COURT: Counsel, it's noon.
11 MS. HIGH: Okay.
12 THE COURT: So we'll go ahead and recess.
13 Are you able to be back here at 1:30, sir?
14 THE WITNESS: Okay.
15 THE COURT: All right. So at this time,
16 I'll give the jury their usual instructions: No discussion,
17 no investigation, notepads face down; remain in the jury
18 room until Ms. Shipman comes to get you. All right. Have a
19 very nice lunch. We'll reconvene at 1:30.
20 (The jury was not present.)
21 THE COURT: All right. Anything before we
22 recess, Counsel?
23 MS. HIGH: No. Thank you.
24 MR. PENNER: No, Your Honor. Thank you.
25 THE COURT: All right. We'll see you at

1:30.

(A recess was taken.)

(The defendant was present.)

(The jury was not present.)

THE COURT: Anything before we bring the jury in?

MR. PENNER: I wanted to advise the Court of the updated schedule. After we finish with Mr. Alvernaz, we have one witness available today. I tried to move one of tomorrow's witnesses to this afternoon; and apparently, he's not feeling well. I'll have -- and then we were going to ask, after that, if the Court would stick around -- we'd let the jury go, but the parties would like to talk about scheduling for tomorrow and move forward; there's some issues.

THE COURT: All right.

MR. PENNER: I think that's it.

MS. HIGH: Sure.

MR. PENNER: Should I get the witness now, Your Honor?

THE COURT: You might as well go ahead and have Mr. Alvernaz come back in; and, of course, we're not in session on Thursday --

MS. HIGH: Right.

THE COURT: -- and Monday and Tuesday of

1 next week.
2 MR. PENNER: Do you want him to take the
3 stand, Your Honor, or sit here?
4 THE COURT: No, he can take the stand, no
5 problem.
6 (The witness returned to the stand.)
7 THE COURT: All right. We'll bring the
8 jury in.
9 THE WITNESS: Do I stand up?
10 THE COURT: When the jury comes in, you
11 can stand up.
12 THE WITNESS: Okay.
13 (The jury was present.)
14 THE COURT: All right. You may be seated.
15 All right. Ms. High will continue cross.
16 MS. HIGH: Thank you.
17 CROSS-EXAMINATION (Cont'd.)
18 BY MS. HIGH:
19 Q. Mr. Alvernaz, you said that you lived in the area for a
20 number of years?
21 A. Yes.
22 Q. And so what I'd like to ask you to do now, if you would,
23 just draw a little map of the location of your apartment,
24 maybe starting with kind of the main street that runs in
25 front there, Pacific, and some of the landmarks -- and hold

on. I'm going to get an exhibit tag on here --

MS. HIGH: Thank you, Ms. Shipman.

THE JUDICIAL ASSISTANT: You're welcome.

Q. (By Ms. High) -- marked for identification as Defendant's Exhibit 227.

(The witness left the stand.)

Q. (By Ms. High) Maybe kind of narrate as you go along -- I think -- if you would.

A. Okay. If you're going south, this would be Pacific Avenue.

Q. All right. And would you label that for us.

A. (Witness complies.)

Q. Okay.

A. And 159th goes off this way. It turns into Military down here. You've got your Safeway -- what used to be Safeway.

Q. Okay. Do you want to put Safeway and maybe the little curb that goes to Military Road.

A. (Witness complies.) And it jots on down and turns into Military Road that way --

Q. Okay. And so that's --

A. -- which takes you all the way up to Canyon Road and Meridian.

Q. Okay. And so --

A. It's -- it's an east/west.

Q. I'm sorry. I keep interrupting.

A. No, that's fine; go ahead.

1 Q. I was just trying to get, for the record here, that when you
2 say "this way," so we're looking at your driveway; right?
3 A. If you're going south, it would be -- actually --
4 THE COURT: You can always draw the
5 arrows.
6 Q. (By Ms. High) Do you want to start over?
7 A. Maybe.
8 Q. That's okay.
9 A. I turn maps all over the place. I point the map the way I'm
10 going.
11 Q. Okay.
12 A. Let me do it this way. Can we do another piece of paper?
13 Q. We can.
14 A. I'm sorry. Can I just take this off?
15 THE COURT: No.
16 Q. (By Ms. High) Hold on a second.
17 A. I'm sorry.
18 Q. I'm going to get another tag. We'll fold that one up --
19 A. I'm sorry.
20 Q. -- and you can start over. No problem.
21 THE COURT: Once it's tagged, it's ours.
22 THE WITNESS: Okay.
23 MS. HIGH: That's right. Just, I won't
24 offer it; so one second, we'll just do a do-over here. And,
25 Mr. Penner, I've marked for identification -- the second

1 sheet, here, is Defense 228.
2 MR. PENNER: Thank you.
3 Q. (By Ms. High) Okay. Don't be nervous.
4 A. It's too late.
5 Q. Okay. Yeah.
6 A. Pacific Avenue, this is north/south.
7 Q. Okay.
8 A. Okay. 159th, Shell, out here is what used to be Safeway.
9 You've got a Rite Aid up in -- up in this area, 159th. It
10 goes like that, and it becomes Military, 176th Street; over
11 here is K-mart. There used to be a Market Place or Stock
12 Market. Do you need the other --
13 Q. Well, I'd like where your --
14 A. -- stuff in between? Those are the --
15 Q. I would like where your apartment was.
16 A. Just, 162nd here, 162nd, Crescent Realty. Our fourplex was
17 behind the Crescent Realty, and there was a -- like, a
18 dining hall here that you rented to the Crescent Realty.
19 Q. And Crescent Realty would use that, like, for lunches or
20 little meetings?
21 A. Yes. It would -- it would -- it had -- it had a small
22 kitchen in it, and we didn't -- we -- there -- we didn't use
23 it. That was used by -- it was rented out to them. This is
24 all parking lots all through here with a big open field back
25 here.

1 Q. When you say "back here," and you're, kind of like, towards
2 the direction of --
3 A. 159th.
4 Q. Thank you. And then also --
5 A. How about a parking -- parking lot. We'll go like that for
6 a parking lot.
7 Q. Okay. So you're putting some hashmarks?
8 A. Right. Back here is -- was another fourplex, and this is
9 all out of scale, I'm afraid. You had A Street, the main
10 road here. This was a flashing red light on Pacific.
11 Q. And would you draw a little circle there.
12 A. (Witness complies.) I don't know if it's still a flashing
13 red light or not, but it was a flashing red light; and at
14 one point in time in the 80s, anyway, there was a Hoagie's
15 Corner here on this side.
16 Q. And --
17 A. I had a lot of dinners there.
18 Q. Okay. Yeah, especially when you're working 12-hour days.
19 A. Yes, they were open; the hours were convenient.
20 Q. And was there a machine shop of some sort across from the
21 Crescent Realty?
22 A. On this side, there was a McCann's machine shop; and at the
23 time, also, there was -- you still have a house here on the
24 corner of A Street -- or I'm sorry. That should be over
25 here, house. And there was, I believe, a house here; right

1 now, it's a vacant lot.
2 Q. Okay. And could I get you, then, to just put the date,
3 01/26/16, and your initials.
4 A. (Witness complies.)
5 Q. Okay. So those are, kind of, the major landmarks -- if I
6 can have you take your seat -- is that right?
7 A. Yes. That is pretty much -- except for the Hoagie's
8 Corner -- pretty much what's still there --
9 Q. Okay.
10 A. -- if you were to drive down the road today.
11 Q. Okay.
12 (The witness returned to the stand.)
13 Q. (By Ms. High) All right. If I can just check my notes.
14 A. Don't give that to anybody for directions.
15 Q. Okay. I'm not -- right, and I understand it's not to scale.
16 It's just a --
17 A. It's not, I'm afraid.
18 Q. But it does help us orient to what was --
19 A. Okay.
20 Q. -- there when you -- when you pulled in at the blinking
21 light, first you'd see the Crescent Realty.
22 A. That was the landmark. If you were to tell somebody how to
23 get there, coming down Pacific, the Crescent Realty on your
24 left coming from Tacoma, the Hoagie's Corner on your right,
25 flashing red light because across the street, some number of

1 blocks, was a fire station; so that's what the flashing red
2 light was there for. It was for emergency vehicles.
3 Q. Okay. So there was aid pretty close?
4 A. Yes.
5 Q. Okay. And then let's see. I guess, just to ask you again,
6 when you went into Ms. Robinson's apartment, you did try to
7 do a sweep. Did you try to turn off the smoke alarm? Do
8 you remember that?
9 A. I don't remember. I could reach it because I'm tall, and
10 they're short ceilings. I don't remember.
11 Q. Okay.
12 A. If it was -- if it -- I wouldn't have taken it off the
13 ceiling if it was still making noise when aid arrived,
14 but --
15 Q. Okay.
16 A. I think I was more concerned about people and clearing
17 out -- clearing the space out.
18 Q. And --
19 A. There was no flame. There was no -- nothing was going to
20 burn down.
21 Q. Fair enough, so you wanted to make sure that you checked the
22 bedrooms and the bathroom --
23 A. Right.
24 Q. -- and to make sure that no one else was still in the
25 apartment that might need help?

1 A. Right. I was, like -- I mean, like, I sort of got an
2 incomplete story as to the request for my help --
3 Q. Sure.
4 A. -- understandably, as it turned out.
5 Q. Right.
6 A. So I didn't know if I needed to be looking for more people.
7 Q. Got it. And so when you went in to do just your quick
8 search, I realize it wasn't -- you weren't in there for a
9 half an hour or anything -- you were in there quickly -- but
10 you did open the doors to look in the bedrooms and into the
11 bathroom?
12 A. I probably pushed doors open more all the way to make sure
13 that nobody was left behind, and I don't know if lights were
14 off or on. I've been told that I left fingerprints all over
15 the place, but I touched things.
16 Q. Sure.
17 A. I tried not to. I mean, I didn't rifle through things. I
18 wasn't under beds or anything, so -- I seem to remember the
19 doorways being open, so I did have a whole lot of pushing --
20 Q. Sure.
21 THE COURT: When there's not a question,
22 you don't need to keep talking. Okay?
23 THE WITNESS: I'm sorry. Okay.
24 MS. HIGH: That's okay.
25 THE COURT: Counsel, do you want that

1 admitted for illustrative purposes?
2 MS. HIGH: Yes. I would ask -- I would
3 offer that for admission for illustrative purposes.
4 MR. PENNER: And this is the second one;
5 right?
6 THE COURT: The second one, 228.
7 MS. HIGH: It is, and it's -- yeah, 228.
8 MR. PENNER: No objection, Your Honor.
9 THE COURT: All right. 228 is admitted
10 for illustrative purposes.
11 MS. HIGH: Thank you.
12 (Defendant's Exhibit No. 228 was admitted as illustrative.)
13 Q. (By Ms. High) And, you know, I think that you said that,
14 hey, you probably touched things; and it wasn't even
15 probably conscious on your part?
16 A. (Shakes head.)
17 Q. I'm going to hand you Plaintiff's Exhibit 69 which is your
18 transcript, and that probably just helps us get there, your
19 very last -- your very last answer. And again, so when you
20 went in there, I think at that time you recalled that you
21 did touch a few things, like, the hall walls?
22 A. Okay.
23 Q. The light switch, do you remember telling them that?
24 A. I don't remember.
25 Q. But you did tell them that?

1 A. I did.
2 Q. Sure, and you were being as accurate as you could?
3 A. Yes.
4 Q. And you said at some point down the road, they told you
5 that, yeah, your fingerprints were in there?
6 A. I heard that, yes.
7 MS. HIGH: Okay. I don't have any other
8 questions. Thank you.
9 THE WITNESS: Okay.
10 THE COURT: Any redirect -- oh, Counsel,
11 do you want to make sure you get the transcript returned.
12 MS. HIGH: Yes, let me put this back on
13 the bar. I don't know if Mr. Penner will need it. Thank
14 you.
15 MR. PENNER: Thanks.
16 REDIRECT EXAMINATION
17 BY MR. PENNER:
18 Q. All right. So just a few questions: First of all, that's
19 very detailed. Are you kind of a "detail" guy?
20 A. Yes.
21 Q. That's good; good memory. And how long has it been since
22 you lived there?
23 A. Oh, it was probably the mid nineties when I moved out,
24 finally.
25 Q. And I think I neglected to ask; but given the age of time,

1 we're asking everybody this: How old are you now?
2 A. 58.
3 Q. Okay.
4 A. It's changing here in a couple months, so I had to do the
5 math.
6 Q. So back in February of '93, you would have been 35; is that
7 right?
8 A. I'll let you do the math. I'm sorry.
9 Q. Does that sound about right?
10 A. Probably.
11 Q. Okay. And you said you lived there about six years. It
12 sounds like it was the kind of place that it could be loud;
13 you could hear your neighbors?
14 A. It was an older fourplex. There wasn't -- there was
15 two-by-four, you know, roof/floors -- or two-by-six
16 roof/floors, things with no insulation. There was wood
17 floors. I don't believe it had the -- the insulated
18 concrete floors. It wasn't an apartment building and such.
19 Q. Okay.
20 A. So, yes, you could hear -- if you were -- if people were
21 noisy and you were downstairs, you could certainly hear the
22 upstairs and vice versa.
23 Q. Okay. And I think you testified earlier that Linda
24 Robinson, she wasn't -- you said she wasn't a partier; she
25 was quiet?

1 A. I -- yeah, I don't remember -- we didn't have an
2 adjoining -- we didn't have a shared wall for the
3 cross-apartments. It was mostly -- most of the noise was --
4 that we heard was top to bottom.
5 Q. Okay. But you were able to hear the fire alarm while you
6 were asleep?
7 A. Yes. Well, at the time -- at the time somebody came to the
8 door and certainly by the time I opened the door and could
9 hear the fire alarm, I don't know if I might have heard that
10 as a background noise and not registered what it was.
11 Q. And you told the officers that you remembered hearing a
12 female voice that sounded exasperated?
13 A. Okay.
14 Q. Is that right?
15 A. That's what I read, yes.
16 Q. Okay. Do you remember that now as you sit here?
17 A. You know, not --
18 Q. Okay.
19 A. It didn't seem -- it didn't really seem to be a
20 back-and-forth argument so much as somebody very loudly
21 expressing some displeasure or maybe anger, but I couldn't
22 hear the words.
23 Q. Okay. And I think you testified you'd actually -- you'd
24 heard that before across the way?
25 A. Yes.

1 Q. A woman -- a single mom and her teenage daughter, you would
2 hear that sometimes?
3 A. Yes.
4 Q. Okay. And you were home by about ten o'clock that night?
5 Were you home sooner than that, do you think?
6 A. I don't -- I was probably home sooner; I don't know how much
7 sooner.
8 Q. Okay. So you heard a woman's exasperated voice through the
9 thin walls; right?
10 A. Or through the front door.
11 Q. Okay.
12 A. The -- the living room -- you saw in the photograph the
13 living room was out -- the doorway was --
14 Q. Right, so the door --
15 A. -- past the -- past the -- you know, we were -- for the
16 sound to come through the doorway, we'd be -- it wouldn't be
17 straight across to where I was sitting. I was sitting at
18 the window --
19 Q. Okay.
20 A. -- in the living room.
21 Q. And you had a chance to review the documents that show that
22 you actually told the officers about the exasperated voice?
23 A. Mm-hmm.
24 Q. Because that would be important. Did you ever hear two men
25 fighting?

A. Not that I remember.
Q. Okay. And if you had remembered that, you would have told the police that; right?
A. Yes. I -- because that would have been probably unusual.
Q. And pretty important that night?
A. They didn't live there, so for two male voices, there -- there had been times while I lived there in other units, you would hear male voices because people would have multiple people over.
Q. Sure.
A. But I don't remember hearing male voices from there, two of them, three of them, four of them, not at the same time.
Q. And certainly not any argument or raised voices or anything like that?
A. No.

MR. PENNER: Thank you. Nothing else, Your Honor.

THE COURT: Anything else, Ms. High?

MS. HIGH: No. Thank you.

THE COURT: May the witness be excused?

MR. PENNER: Yes, Your Honor. Thank you.

MS. HIGH: (No audible response.)

THE COURT: May the witness be excused, Ms. High?

MS. HIGH: Yes. Thank you very much.

1 THE COURT: All right. You may be
2 excused, sir. Thank you very much.
3 THE WITNESS: Thank you.
4 (The witness was excused.)
5 MR. PENNER: Your Honor, may I confirm the
6 next witness is in the hallway?
7 THE COURT: You may confirm the next
8 witness is in the hallway.
9 (Pause.)
10 MR. PENNER: Your Honor, the State will
11 call Jeff Reigle.
12 THE COURT: Watch the ramp.
13 JEFF REIGLE, witness herein, having been sworn
14 under oath, was examined and
15 testified as follows:
16 THE COURT: If you'll have a seat, sir.
17 There's water and Kleenex to your right, if you need them.
18 THE WITNESS: Thank you.
19 THE COURT: You can adjust the mic, pull
20 the chair forward, if necessary. Please keep your voice up;
21 and when answering, don't nod or shake your head but say
22 "yes" or "no."
23 DIRECT EXAMINATION
24 BY MR. PENNER:
25 Q. All right. Could we start -- could you state your name for

1 the record and spell it for the court reporter.
2 A. Deputy Jeff Reigle, R-E-I-G-L-E.
3 Q. All right. And you kind of already told us, but what do you
4 do for a living, sir?
5 A. I'm employed by the Pierce County Sheriff's Department as a
6 deputy sheriff.
7 Q. Okay. How long have you been a deputy sheriff for Pierce
8 County?
9 A. 24 years.
10 Q. So what was your start date?
11 A. March of '92.
12 Q. Okay. And you're dressed in your uniform today. You've got
13 some stripes and some hash marks. Can you let us know what
14 those mean?
15 A. Oh, okay. This is an old shirt, so the hash marks aren't up
16 to date; but I'm a master patrol officer.
17 Q. And that's what the -- the two chevrons on your arm?
18 A. Yeah, the two chevrons.
19 Q. What does that mean?
20 A. Well, we no longer have that program; but it was a program
21 where you had to spend over 70 percent of your time in
22 patrol, meet all kinds of requirements, shoot at -- at
23 expert or above. You couldn't have been in accidents. You
24 had to have all your evaluations at -- at the top of the
25 range.

1 Q. Okay. And then the hash marks on your sleeve are years of
2 service?
3 A. Yeah, years of service.
4 Q. Okay. So again, your start date was what? I'm sorry.
5 A. March of '92.
6 Q. Okay. Do you recall being called out to the scene of a
7 homicide in Spanaway in February of '93?
8 A. Yes.
9 Q. All right. And did you ultimately write a report about your
10 actions that night?
11 A. Yes.
12 Q. Is it safe to assume that your memory was better at the time
13 you wrote your report than it might be here, 23 years later?
14 A. Absolutely.
15 Q. Would it help refresh your recollection as to details if you
16 could refer to your report during your testimony?
17 A. Yes.
18 MR. PENNER: All right. Your Honor, I'm
19 going to hand the witness Exhibit 91.
20 Q. (By Mr. Penner) I'm going to ask if you recognize that
21 document?
22 A. (Reviewing.) Yes. This is the report I wrote on February
23 6th of '93.
24 Q. Okay. In February of '93, were you working by yourself; or
25 did you have a partner?

1 A. This particular night, it -- it appears that I was partnered
2 up with Deputy Brendan Maye.
3 Q. Okay. And were you still, it sounds like, in your first
4 year of service?
5 A. Yes. I was just getting ready to get off probation.
6 Q. Okay. Can you explain to the jury what that means?
7 A. Well, once you're hired, your -- you have a year of
8 probation, just where you're being evaluated monthly after
9 you get off of training. For your first several months of
10 your training, you have to go to your basic academy; and
11 then you go through a field training program. And then you
12 go out into operations, and you're performing your duties;
13 and then monthly, you're evaluated up to your first year.
14 The first year, you're an at-will employee. After that, you
15 have -- you know, you have to make probation; you're a
16 full-fledged employee.
17 Q. Okay. And who was your partner?
18 A. This particular night, Deputy Maye.
19 Q. Okay. Did you have the same partner that whole year of
20 probation?
21 A. Oh, no.
22 Q. Okay. All right. But as the new guy, are you the one that
23 had to write the report sometimes?
24 A. I'm sure that's how it was.
25 Q. All right. Do you now -- as you sit here 23 years later, do

1 you have any independent recollection of this case?
2 A. I remember it but just the -- you know, the main points. I
3 don't remember any specifics, except referring to my report,
4 of times and those kind of things.
5 Q. What do you remember without looking at your report?
6 A. Well, I remember getting dispatched, our radio advising of a
7 fire where there was somebody injured. We were in the area,
8 so we went. I remember getting there and hearing the smoke
9 alarm going off. There was people at the bottom of the
10 stairs. I went up with Deputy Maye. We went into the --
11 the -- the apartment that the smoke alarm was going off; and
12 I remember observing a black female, appeared to be
13 deceased, on the kitchen floor, face down.
14 Q. Okay. So let's break that down and go through it a little
15 slower then.
16 A. Okay.
17 Q. So the initial dispatch was not a homicide or a murder?
18 A. No.
19 Q. What was the initial dispatch?
20 A. If I can refer to my report, and I could tell you exactly.
21 Q. Yes.
22 A. (Reviewing.) I believe we weren't even dispatched to it. I
23 think, probably what happened was -- is they -- the
24 county -- on the air when there's calls that are of a higher
25 priority, they'll just ACB them. They'll broadcast them to

1 all cars; and since that was our assigned area, when we hear
2 that there's a house fire with somebody possibly injured, we
3 can help, so we responded; and obviously, we were close
4 because by the time the -- it only took us one minute to
5 arrive.
6 Q. Okay. And so as you arrive, you think it's a house fire and
7 maybe somebody injured?
8 A. That's what the information that was broadcasted was.
9 Q. And the first thing -- you get out -- you notice is what,
10 again?
11 A. There's no flames. There's no smoke. I can hear, when I
12 get out of the car, that there is a smoke alarm going off;
13 and then there was a small child and another male that was
14 down -- and, I believe, a baby -- that was down at the
15 bottom of the stairway.
16 Q. And those children, were they with any adults?
17 A. Yes.
18 Q. Okay. So what did you do? Did you -- did you contact them,
19 or did you go straight up to the apartment?
20 A. I'm sure there was -- I don't recall, but I know there
21 wasn't an interview, and I later interviewed everybody; but
22 initially, there was -- I hear the smoke alarm, and we
23 headed up the stairs.
24 Q. Okay. When you got to the top of the stairs, was the
25 apartment door open; do you recall?

1 A. I'll have to refer -- I don't recall.
2 Q. Okay. You were able to get into the apartment, though?
3 A. Oh, yes.
4 Q. No trouble with that?
5 A. No.
6 Q. Okay. And what did you observe when you went inside?
7 A. I went inside, and as soon as we -- we got in, there was,
8 like, a little entryway in the hallway; and then you could
9 see on the kitchen floor, there was -- like I said, there
10 was a black female that was face down on the floor with -- I
11 can see blood on -- on the back of a white -- she had a
12 white shirt and then on the left side.
13 Q. Okay. I'm going to show you what's previously been admitted
14 as Exhibit 2, and I'm going to ask if you recognize what's
15 depicted in that photograph?
16 A. Yes. This appears to be what I saw in '93.
17 Q. Okay. All right. I don't think we need to put it up there.
18 Could you -- just for the record, is that consistent with
19 your recollection of the scene when you walked in?
20 A. Yes.
21 Q. Okay. Thank you. So that, I assume, was a surprise?
22 A. Yes.
23 Q. Okay. Did you make any effort at that point to contact the
24 woman?
25 A. Contact the woman?

1 Q. The woman on the floor.
2 A. No. No. Actually, what had happened, as soon as we go in
3 to -- to see what the -- the circumstances were, it was me,
4 Deputy Maye, and there was a firefighter/EMT that was with
5 us; and I remember, from the report, is: I told him, "Wait,
6 because we need to secure" -- because something wasn't
7 right -- "We need to secure the scene first to make sure
8 there was no threats inside there."
9 Q. What kind of threats could there have been?
10 A. There's a -- there appears to be a deceased woman with blood
11 on her on the kitchen floor. Is the assailant, a suspect
12 still on scene? What -- what is going on? So we had to
13 make sure that it's secure before we try to treat any
14 victims or do anything like that.
15 Q. Okay. So did you do that?
16 A. Yes. Me and Deputy Maye -- just briefly, when I say
17 "secure" or "search," we're just looking for anybody else in
18 the apartment. There was nobody so then immediately got the
19 medic back in, and they went to try to treat the -- the
20 victim.
21 Q. Okay. How thorough of a sweep did you do?
22 A. Just looking for somebody. I -- I don't even have a
23 recollection, but it would have been just going into the
24 rooms to make sure there's no other people that could be a
25 threat to us.

1 Q. Okay. All right. And then what did you do? I guess I
2 should ask: Did you see any other adults there?
3 A. There were none.
4 Q. Any -- anybody at all?
5 A. No.
6 Q. Okay. So then what did you do?
7 A. I just -- we -- I notified the -- the duty sergeant of what
8 we had. The other -- there was a couple other medics that
9 had come up, and then I eventually left the apartment and
10 went downstairs and interviewed the complainant and the
11 people that were involved.
12 Q. Okay. So let's step back a little bit. You said you
13 informed the duty sergeant?
14 A. Yes.
15 Q. Is that normal procedure?
16 A. Absolutely.
17 Q. Did you personally contact any homicide detectives, or is
18 that the sergeant's job?
19 A. I didn't personally.
20 Q. Okay. Did you stick around and watch as the paramedics
21 interacted with the woman on the floor?
22 A. I'm sure I did for some time. I -- I don't recall.
23 Q. Okay. How long did you stay in the apartment?
24 A. Not very long. I -- I don't recall today because I had to
25 figure out what was going on.

1 Q. All right. But a few minutes, anyway?
2 A. Probably, at the most.
3 Q. Okay. So then what did you do?
4 A. I went downstairs, and you want to start with whoever called
5 it in to figure out what's going on.
6 Q. Were you able to identify that person?
7 A. Yes.
8 Q. Okay. And what was that person's name?
9 A. (Reviewing.) It looks like Alvernaz.
10 Q. Okay. And did he tell you what happened or at least what he
11 knew?
12 A. Yes.
13 Q. Okay. What did he tell you?
14 A. He stated, at about 2300 hours -- I believe a little girl
15 had knocked on his door and -- and told him that, "My aunt's
16 dead, and there's a fire." He said that he heard the smoke
17 alarm going off, so he went next door. He observed the
18 victim, and so -- and he knew it was serious, so he turned
19 off the stove; and he looked in the bedrooms. He didn't see
20 anybody else in this apartment, so then he got the three
21 kids and went back to the bottom of the stairs, called us;
22 and then that's when we showed up.
23 Q. Okay. And it sounds like this is a fairly quick interview
24 on the scene?
25 A. Oh, yes.

1 Q. All right. If there's going to be a more detailed interview
2 of a witness, is that the kind of thing that you do; or
3 would a sergeant do that or a detective?
4 A. No. It'd be just the initial investigator to secure a
5 scene, make the appropriate calls; and that would be handled
6 by the detectives, take them in a -- to sit down and go over
7 a thorough interview.
8 Q. All right. I assume you didn't have a formal report form.
9 Did you take notes or something? Is that how you do it,
10 or --
11 A. Yes. We have an officer notebook.
12 Q. Okay. And then you write the report at the end of your
13 shift?
14 A. No. Usually, what will happen is: I believe on this one --
15 because I looked at the incident log, and it looks like
16 Deputy Maye took it over, so I probably -- because these
17 take a long time, so I probably, within an hour, went to the
18 car and sat down and started doing the general report
19 because I'm responsible for that while he did the scene
20 security --
21 Q. Okay.
22 A. -- because I -- it looks like I showed that I left, and I
23 would be going to the parking lot to -- to finish the
24 report.
25 Q. Okay. And the thing you said you looked at, that's the log

1 of everybody who goes in and out of a scene?
2 A. Yes.
3 Q. Okay. Did you talk to anybody besides Mr. Alvernaz?
4 A. Yes.
5 Q. Who else did you talk to?
6 A. I talked to -- there was a young child.
7 Q. Okay. And do you have an independent recollection now,
8 talking to that girl?
9 A. After looking at my report over the weekend and getting
10 prepared, a little bit but not -- I couldn't recall without
11 having the report.
12 Q. Okay. But you remember talking to a little girl at the
13 apartment?
14 A. Oh, absolutely.
15 Q. Okay. What did she tell you happened?
16 A. She said that -- I've got to refer just to be specific.
17 (Reviewing.) Her name was Elliott, the victim's niece.
18 Q. Okay.
19 A. She said that she was sleeping and awoke to the fire alarm
20 and Terrence, Junior, crying. She got up and saw her aunt
21 covered in blood, face down in the kitchen; so she ran next
22 door and told the neighbor. She said that around 2100
23 hours, the aunt drove her, the -- I believe it's the
24 daughter of the victim, and the daughter's boyfriend -- and
25 here, it says "Janaski" [sic], but I -- I can't recall if

1 that's the boyfriend's name or somebody else, and Terrence,
2 Junior, to a skating rink. The -- the daughter of the
3 victim and the daughter's boyfriend got out, and then the
4 rest of them went back to the -- the residence after they
5 dropped them off for skating. The niece said that she
6 remembers watching TV and falling asleep around 2130. She
7 stated, at the time that she fell asleep, it was only her
8 aunt, the victim, Elliott, Janaski, and Terrence, Junior,
9 were the only ones inside the apartment; and at that time,
10 the -- her aunt was fine.
11 Q. Okay. At any point, did Mr. Alvernaz mention hearing any
12 arguments or fighting going on?
13 A. No.
14 Q. All right. And the little girl you talked to, did she
15 mention anybody else in the apartment that night?
16 A. No.
17 Q. Any grown men?
18 A. No.
19 Q. After that, did you have anything further to do with the
20 case?
21 A. I think I -- I handled the incident log, like I said, and
22 then wrote the report there; and obviously, when the
23 detectives arrived, I'm sure I briefed them and did those
24 kind of things.
25 Q. And then went back to patrol?

1 A. I probably ended my shift because these take a while there.
2 I'd seen security; and then whenever I left there, I
3 probably went home.
4 MR. PENNER: All right. Thank you,
5 Deputy. No other questions.
6 THE COURT: Cross-examination?
7 MS. HIGH: Yes. Thank you.
8 CROSS-EXAMINATION
9 BY MS. HIGH:
10 Q. So, Officer Reigle, you said in 1993, you were still in your
11 first year; right?
12 A. Yes.
13 Q. But you had completed the academy; is that right?
14 A. Yes.
15 Q. And can you tell me what's involved when you go to the
16 academy.
17 A. I believe at that time, it's, like, 400 hours -- or 440.
18 I -- I'd have to look. It's changed several times over the
19 years. That's where you have to be -- they teach you all
20 the state certifications in criminal procedures, criminal
21 law, how to do this, how to do that, what are people's
22 rights, just the basic academy.
23 Q. And part of, like, how to do this, how to do that, is, like,
24 one, how to make sure that you're going to be safe when you
25 go to a crime scene?

1 A. Absolutely.
2 Q. Like you said, you started your report shortly after being
3 there?
4 A. Yes.
5 Q. So how to get a report to -- and a close-in-time way to get
6 your details; is that right?
7 A. Yes.
8 Q. And so you said that you were in a vehicle with another
9 officer; I guess it would be Deputy Maye?
10 A. Correct.
11 Q. And here -- was it -- was it on the radio back then? Was
12 this before the computers in the car?
13 A. Yes. There was no computers.
14 Q. Okay. So on the radio, and you know that you're close by?
15 A. Yes.
16 Q. And I think you said you were there in a minute?
17 A. That's what the report documents; so, yes, it was in a
18 minute.
19 Q. Sure. And, anyway, quickly; right?
20 A. Yes.
21 Q. And are you and Deputy Maye the first persons that are
22 there?
23 A. Yes.
24 Q. And other folks, though, are arriving very, very close in
25 time?

1 A. Yes.
2 Q. I think in your report, you indicate that when you get
3 there, like you said, you see Mr. Alvernaz and some children
4 outside?
5 A. Correct.
6 Q. At the bottom of the stairs?
7 A. Correct.
8 Q. Of this fourplex?
9 A. Yes.
10 Q. And that your -- you walk up, and you said you could see the
11 body of a woman that's down; so is it your recollection that
12 the door was open? As soon as you came up, you were able to
13 see this?
14 A. No. I couldn't see until I actually got inside.
15 Q. Okay.
16 A. Because you can't see anything from downstairs where the
17 people are.
18 Q. Okay. So you walk up the stairs?
19 A. Correct.
20 Q. And then turn -- I don't know -- I think it's to the right?
21 A. To the right.
22 Q. Was the door open, then, and you could see?
23 A. I don't recall. I know that I didn't see a body out -- from
24 outside because I remember we started to go in because the
25 alarm was -- smoke -- the fire alarm was going off, and then

1 I saw it; and I told the fire guy that was with us to step
2 out until we could secure what was -- the scene.
3 Q. Okay. And when you secure the scene, obviously, your life,
4 or your partner's life, can depend on what you do there?
5 A. Oh, absolutely.
6 Q. And so you will, actually, go look in every room?
7 A. Yes.
8 Q. I mean, you're looking for bodies, so it's not like you're
9 looking in a drawer; but you might look, obviously, in the
10 bathroom and a bedroom or if there are big closets, that
11 kind of thing?
12 A. Yes.
13 Q. And you're going to open those to make sure that there's
14 nobody in there?
15 A. Typically, because all we're doing is: We're looking for a
16 threat, a person.
17 Q. Right. And, as well, I mean, a threat, a person; and when
18 you come on a scene like this, you want to know if there's
19 someone else that's injured?
20 A. Oh, yeah. There could be somebody else that would need
21 help, absolutely.
22 Q. Right. And so it's not a large apartment, but you are going
23 to be thorough?
24 A. Thorough looking for a threat or another victim, yes.
25 Q. And that's what I'm talking about right now.

1 A. Yeah.
2 Q. I'm not talking about collecting evidence or any of that
3 kind of thing. It's just, what your task was at that moment
4 was -- when you say you secure or sweep -- is to make sure
5 that there's no threat to you or your partner or others?
6 A. Yes.
7 Q. Okay. In your reports, you indicate that -- so when you
8 first get there, there's one firefighter, but it looks like
9 District 7 medics, along with Shepherd medics, also arrive?
10 A. Yes.
11 Q. And they come in and do what their job is?
12 A. Yes.
13 Q. And so they're going to take steps to ascertain whether
14 there's -- they put on patches and those kind of things;
15 right?
16 A. Yes, typically.
17 Q. And -- yeah. And so their task, as well, is one that is --
18 once you let them know that the scene is safe for them to be
19 in -- is something different than law enforcement?
20 A. Yes.
21 Q. Right. You know, their job, now, is to see if they can
22 render medical aid?
23 A. Absolutely.
24 Q. Okay. And one -- so they do what it is that they're going
25 to try to do to make a determination on medical aid. I was

1 going to say, I think one of these --
2 MS. HIGH: I'm going to, if I may,
3 approach the witness with what's been admitted as
4 Plaintiff's Exhibit 3.
5 Q. (By Ms. High) And you can take a look at Exhibit 3, and I
6 think you can see over in the corner by the phone what looks
7 to be like some kind of discard from maybe the medical --
8 are you able to tell?
9 A. (Reviewing.) The -- there's something by the phone, but
10 I -- I can't tell what that is.
11 Q. And that's okay.
12 A. Yeah.
13 Q. We're going to have medical people.
14 A. Okay.
15 Q. And one of the other things, then, that you did when you got
16 in there -- and for the medical folks, I mean, they let you
17 know that this individual is deceased?
18 A. Yes.
19 Q. And you make some additional notes, and so you say when
20 you're in there, and you notice that something had been
21 burning on the stove causing smoke inside the apartment?
22 A. I'm sorry. Was that a question?
23 Q. Yes. Do you remember that, that there was some smoke inside
24 the apartment?
25 A. (Reviewing.)

1 Q. Page four of six.
2 A. Four of six. (Reviewing.) "Something was burning on the
3 stove causing smoke inside the apartment." Yes.
4 Q. Okay. And you also note that there was a white kitchen
5 towel on the ground -- or the floor by her left hip?
6 A. (Reviewing.) Yeah, a white kitchen towel on -- appeared --
7 yeah, a white kitchen towel on the ground located by her
8 left hip.
9 Q. Okay. So it sounds like, then, okay, you notify the
10 sergeant and who, I guess, then notifies forensics and
11 homicide teams and everything else?
12 A. Correct.
13 Q. All right. But while that's going on, you do make some
14 contact with the individuals that are right there on the
15 scene when you get there?
16 A. Back down at the bottom of the stairs, yes.
17 Q. Right, and so you, you know, talk to Mr. Alvernaz?
18 A. (Nods head.)
19 Q. And you also talk to the young girl with the last name of
20 Elliott; right?
21 A. Correct.
22 Q. Okay. And we heard -- you know, you kind of recount what
23 they told you; and then you had another task, and that was
24 to start what's called an incident log?
25 A. Correct.

1 Q. Okay. Can you tell us, what is an incident log?
2 A. It's a form. It's called the major incident log; so on
3 major crime scenes, what they'll do is: They'll start it to
4 try to track, the best you can, the people coming and going
5 and the times they arrive, and what their purpose is there.
6 Q. And the reason you do it when you're in a major crime scene
7 like this is: You want to know who goes in and out of the
8 scene; right?
9 A. Yes.
10 Q. And not only to control some access?
11 A. Absolutely.
12 Q. And also just to keep track of when people are in and when
13 they leave because if you need to do some kind of
14 elimination down the road?
15 A. Yeah. It's an evidentiary tool.
16 Q. Okay. And it's one that you were trained to do?
17 A. Yes.
18 Q. And I take it, you were initially given this assignment was
19 that -- because you were the new guy, or --
20 A. I don't know if I was the newest guy, but I just happened
21 to, you know -- it's my area of responsibility; so, yeah,
22 I -- I did it.
23 Q. Absolutely.
24 MS. HIGH: Your Honor, Plaintiff's Exhibit
25 44, which is the major incident log for this case, I'd like

1 to approach.
2 THE COURT: Okay.
3 Q. (By Ms. High) So I'm going to hand you what's been marked
4 for identification as Plaintiff's Exhibit 44.
5 A. Okay.
6 Q. And do you recognize that?
7 A. Yes. This appears to be the incident log for this
8 particular call in my handwriting, some of it is.
9 Q. Sure. And so it looks like you were the one that got it
10 started?
11 A. Yes.
12 Q. Okay. Why don't I grab my copy. And you did not -- you
13 didn't handle this for the entire evening, did you?
14 A. No. It looks like there's at least three deputies that --
15 myself and two others that -- that were doing this.
16 Q. And you were all trained in how to keep track of who goes in
17 and out on an incident log?
18 A. I was.
19 Q. Mm-hmm. Well, and I think you said you handed it off to
20 Deputy Maye; right?
21 A. I believe he's the next one that's listed on here.
22 Q. And he was actually the person that you were, you know, that
23 night kind of training with or in your -- I'm not quite sure
24 what it would be; but, like, I guess, part of your training
25 or your --

1 A. I don't believe, at this time, I was on training. I should
2 have been off for several months. It was just my partner.
3 Q. Oh, just your partner?
4 A. I believe so.
5 Q. Okay. But he had more experience?
6 A. Yes.
7 Q. And, I mean, you would assume that he, as well, would know
8 how to keep an incident log?
9 A. Yes.
10 Q. Okay. Yeah, and then it looks like there's a last person
11 perhaps listed, a Curtis Wright or Wright?
12 A. Wright, yeah.
13 Q. Okay.
14 A. Curtis, yeah.
15 Q. And, as well, an experienced --
16 A. Yeah.
17 Q. -- law enforcement individual who was trained?
18 A. Yes.
19 Q. And I realize it's not all your writing and not all your
20 time, but this is the kind of record that is relied on and
21 kept by your office?
22 A. Yes. It's -- it's part of the -- the general report,
23 correct.
24 MS. HIGH: Sure. At this time, I would
25 offer it into admission.

1 THE COURT: Any objections?
2 MR. PENNER: No, Your Honor.
3 MS. HIGH: Okay.
4 THE COURT: No. 44 will be admitted.
5 (Defendant's Exhibit No. 44 was admitted.)
6 Q. (By Ms. High) And so it looks like when you -- you started
7 out -- you're the very first name on this major incident
8 log?
9 A. Yes.
10 Q. And then there's some law enforcement folks; but I see that,
11 as well, you had Mr. Alvernaz sign in as well?
12 A. Yes, Kurt Alvernaz.
13 Q. Yes. And the reason you do that is: You want to make sure
14 that down the road, people know who all has been in that
15 apartment?
16 A. Yes.
17 Q. Likewise, even though not law enforcement, it looks like you
18 had a Herb Gartner, who was a medic; as well as a Brian
19 Kraft, who was a medic; and a fire department person, Terry
20 Browning, all sign in just to keep track of who's been in
21 there; is that right?
22 A. Correct.
23 Q. Okay. And did you have any, then, additional duties after
24 you manned your part of the incident log and wrote your
25 report?

1 A. I don't recall.
2 Q. Okay. And if, in fact, say, a day or two or something later
3 you'd been asked to do something, you would have prepared a
4 report?
5 A. Oh, absolutely.
6 Q. Yeah. So it sounds like your involvement that evening was
7 what you've reported here?
8 A. Yes.
9 Q. You know, do you guys work in sectors?
10 A. Districts, yes, same thing.
11 Q. Okay. And had you been working in the district that would
12 encompass Spanaway during that time period before?
13 A. Pretty much my whole career, yeah.
14 Q. Oh, your whole career?
15 A. Yeah.
16 Q. Okay. So it wasn't like this was your first night in
17 Spanaway?
18 A. Mm-hmm.
19 Q. Okay. And so you're pretty familiar with the area?
20 A. Oh, yeah.
21 Q. And had you been out to any disturbances or any issues at
22 that fourplex prior to that?
23 A. I'm -- I don't recall now. It's totally possible that I
24 have.
25 Q. Okay. And also in that area, you were familiar where the

1 Stock Market and the K-mart were located?
2 A. Correct.
3 Q. All right. And about how far were those businesses from
4 this location?
5 A. This was on 161st, and those are on 177th, so 16 blocks.
6 Q. Okay. And --
7 A. Oh, 162nd. I'm sorry.
8 Q. Yeah.
9 A. So 15 blocks south.
10 Q. And does that translate to --
11 A. A mile.
12 Q. So it's close?
13 A. Yes.
14 Q. Okay. Let me just check my notes. Oh, and I just wanted to
15 follow up, master patrol officer: One of the reasons that
16 you're, I guess, given that position -- or, as you said,
17 that you have to have very good reviews?
18 A. Yes.
19 Q. And that means that your reports and your attention to
20 detail have always been good?
21 A. Well, I'd like to think so.
22 Q. Well, I'm hoping that they don't just give it to everybody;
23 right?
24 A. No. Yeah.
25 Q. Right. Okay. And so that is one of the things that you're,

1 kind of, graded on; is that right?
2 A. Yes.
3 MS. HIGH: Okay. And that's all I have.
4 Thank you.
5 THE COURT: Redirect?
6 MR. PENNER: Just briefly.
7 REDIRECT EXAMINATION
8 BY MR. PENNER:
9 Q. I just want to clarify. Do you still have the crime scene
10 log in front of you?
11 A. The major incident log, yes.
12 Q. Okay. The first name is yours and then Deputy Maye's;
13 right?
14 A. Correct.
15 Q. And then the three paramedic-medical-type people; right?
16 A. Correct.
17 Q. And then Mr. Alvernaz; right?
18 A. Yes.
19 Q. Okay. He didn't go back into the crime scene, did he?
20 You're just documenting that he was in before you got there?
21 A. Yes. As anybody that had been in the scene; and that's why
22 it's notated over here for reason for his entry, he found --
23 initial, found victim/victim's neighbor.
24 Q. Okay. I just wanted to clarify because he's the sixth name
25 that -- he didn't go in after you got there; right?

A. No. No. He wasn't ever back in there. Typically, nobody would be back in unless somebody after -- who took over the scene after me allowed that, yes.

Q. Okay. And then I just -- I have to ask you this. Sorry.

A. (Nods head.)

Q. Can you just say out loud the county and the state that this took place in?

A. Pierce County, Washington.

MR. PENNER: Thank you. Nothing else.

THE COURT: Anything else, Ms. High?

MS. HIGH: No. Thank you very much.

THE COURT: May the witness be excused, Counsel?

MR. PENNER: Yes, Your Honor.

MS. HIGH: Yes. Thank you.

THE COURT: You may step down; just set that at the corner, anything, there.

THE WITNESS: Okay.

THE COURT: And I'll task the attorneys with returning it.

(The witness was excused.)

MR. PENNER: So, Your Honor, from a scheduling standpoint, that's the witnesses that are available today.

THE COURT: All right.

1 MR. PENNER: So I'd ask that we adjourn
2 until tomorrow morning.
3 THE COURT: All right. Well, that means
4 you're going to get an early release, the usual
5 instructions: No discussion, no investigation, notepads
6 face down on your chairs, and if you would just step in and
7 remain there until Ms. Shipman releases you. I'm sure
8 you'll all begin to be able to recite this with me.
9 (The jury was not present.)
10 MR. PENNER: So, Your Honor, I thought we
11 could talk a little bit about scheduling and expectations.
12 I'll let you know the State's issues, and then I think
13 Ms. High has one she wants to let you know about; and we can
14 figure this out.
15 Tomorrow, I have two witnesses who are available and will
16 be here in the morning. The witnesses that I was going to
17 call in the afternoon, the one I was going to call, is,
18 apparently, not available tomorrow at all. The next logical
19 witness for me to call has been sick all week and is, also,
20 not available. That pushes that into Detective O'Hern, who
21 was the lead detective; but he's only available in the
22 morning. I've spoken with Ms. High, and I don't think it's
23 realistic that we could get him done in only a half a day,
24 so I don't want to call him to -- especially since I already
25 have two other witnesses in front of him, anyway.

1 So, what I'm going to ask the Court to do is to be in
2 session just tomorrow morning with two witnesses, and I know
3 that that slows things down; but on the other hand, at that
4 rate, we will have done nine witnesses this week, and it's
5 about on schedule. And with that, if we stay at roughly my
6 approximation of the schedule, the State would expect to
7 rest probably on Monday the 8th or Tuesday the 9th, so I
8 think we're in good shape on that. The caveat, though, is
9 Ms. High has an issue, so I'll defer to her on that.
10 THE COURT: All right.
11 MS. HIGH: Right. Karen Green, who is my
12 forensic expert, because it's been hard to figure out how
13 fast this trial was going to go, is not available from
14 February 6th to the beginning of March. I have asked
15 Mr. Penner if he would consider allowing me to put her on
16 out of order and if the Court would allow that as well. I
17 think we could find a logical place, hopefully, that doesn't
18 disrupt his case either on the 3rd or the 4th of February.
19 She leaves the 6th and is gone for about three weeks, so I'm
20 hoping that we would be able to --
21 THE COURT: How long would you expect her
22 to take?
23 MS. HIGH: You know, you had a chance to
24 interview her, a couple of hours.
25 MR. PENNER: A couple hours.

1 MS. HIGH: Yeah.
2 THE COURT: Do you think we could put her
3 on tomorrow -- you know, starting tomorrow morning and then
4 perhaps going into the afternoon and then do your other two
5 witnesses?
6 MS. HIGH: You know, I don't know if
7 that's --
8 MR. PENNER: I'd ask that we not do that.
9 I mean, I understand the Court has the ability to interrupt
10 my case, and I think this is a -- this is the typical time
11 to do that. I would not want this witness to interrupt
12 tomorrow where I'm at in my case in chief. I think it makes
13 more sense to have her testify next week.
14 THE COURT: Who do you have planned to
15 testify for the morning?
16 MR. PENNER: Detective Minturn and Terry
17 Browning, who is with Central Pierce Fire & Rescue, so --
18 THE COURT: All right. Well, I have no
19 problem in taking witnesses out of order.
20 MR. PENNER: Right.
21 THE COURT: That's not the issue.
22 MR. PENNER: No, and I think my suggestion
23 is going to be -- Ms. High has, I believe, sent an e-mail to
24 Ms. Green to find out her availability for next Wednesday
25 and Thursday. Once she finds that out, then Ms. High and I

1 can agree on a time to interrupt my case.
2 THE COURT: Okay.
3 MR. PENNER: I would just obviously want
4 the jury to understand, and they're getting used to
5 scheduling problems, obviously, but this is just a
6 scheduling issue and that this is a witness out of order,
7 called early -- it's not a State's witness -- and the
8 State's case will resume again after she's done testifying.
9 THE COURT: All right. Well, I usually do
10 like to keep the jury advised as to, you know, what's going
11 on so they're not wondering. After we finish in the
12 morning, I would just propose to tell them that one of the
13 afternoon witnesses is sick, and the other one is absolutely
14 not available.
15 MR. PENNER: Right, and then remind them
16 that there is a scheduling issue for the attorneys and, as a
17 result, we'll be reconvening on Wednesday.
18 THE COURT: Yes, well, you know, I was
19 going to advise them tomorrow; but they do have the 28th of
20 January and the 1st and 2nd of February off.
21 MR. PENNER: And what I can do, Your
22 Honor -- like I said, I think I've been pretty good on the
23 estimate, a little underestimating, so I can accelerate that
24 a little bit, work with Ms. High and try to make sure that
25 we have full days next week, both Wednesday and Thursday,

1 so --
2 THE COURT: Well, I'm here, whether we're
3 trying this or not. No, I mean, it's just -- it's -- you
4 know, the jurors are the ones that I have a concern with;
5 but I think they can resume their regularly scheduled lives
6 on Thursday and Monday and Tuesday of next week, so --
7 MR. PENNER: And again, I think we're
8 still on schedule for the State to rest its case the week of
9 February 8th.
10 THE COURT: All right. Anything else?
11 MS. HIGH: No. I just want to say, I do
12 appreciate the willingness to allow me to get this witness
13 on. If you think you're going to rest in the first week of
14 February, I do have a case. I have witnesses that I will be
15 calling, as well, so -- okay. Let's work on trying to make
16 sure we get them -- I'm thinking I better start contacting
17 them to line them up.
18 THE COURT: I've had experience as both a
19 trial attorney and since I've been on the bench. It's not
20 like we keep the witnesses in handy boxes down in the
21 basement to bring them up when we need them.
22 MR. PENNER: It would be nice.
23 THE COURT: They do have lives, things
24 happen, you know; so, we have to go with basically what
25 we've got when we've got them, so --

1 MR. PENNER: I appreciate that. Your
2 Honor, I just -- I know we've told you this before, but I
3 appreciate Your Honor's understanding. Thank you.
4 THE COURT: Okay. All right, then.
5 Anything else?
6 MR. PENNER: (Shakes head.)
7 MS. HIGH: (Shakes head.)
8 THE COURT: No? All right. We'll be at
9 recess --
10 MR. PENNER: Thank you.
11 THE COURT: -- until tomorrow morning at
12 9:30.
13 (Court adjourned for the day.)
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,	)	
	)	Superior Court
Plaintiff,	)	No. 14-1-02979-1
	)	
vs.	)	Court of Appeals
	)	No. 48810-8-II
JAMES EDWARD MITCHELL,	)	
	)	
Defendant.	)	

REPORTER'S CERTIFICATE

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

I, Kimberly A. O'Neill, Court Reporter in the state of Washington, county of Pierce, do hereby certify that the foregoing transcript is a full, true, and accurate transcript of the proceedings and testimony taken in the matter of the above-entitled cause.

DATED this 4th day of August, 2016.

_____
KIMBERLY A. O'NEILL, CCR
License No. 1954

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5 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE
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STATE OF WASHINGTON,	)	
	)	Superior Court
Plaintiff,	)	No. 14-1-02979-1
	)	
vs.	)	Court of Appeals
	)	No. 48810-8-II
JAMES EDWARD MITCHELL,	)	
	)	
Defendant.	)	

VERBATIM REPORT OF PROCEEDINGS

Wednesday, January 27, 2016
Pierce County Courthouse
Before The Honorable Katherine M. Stolz
Tacoma, Washington

<<<<<< >>>>>>

A P P E A R A N C E S

For the Plaintiff: STEPHEN M. PENNER
Deputy Prosecuting Attorney

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3 No. 48810-8-II

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1 BE IT REMEMBERED that on Wednesday, the
2 27th day of January, 2016, the above-captioned cause came on
3 duly for hearing before THE HONORABLE KATHERINE M. STOLZ,
4 Judge of the Superior Court in and for the county of Pierce,
5 state of Washington; the following proceedings were had, to
6 wit:
7
8 <<<<<< >>>>>>
9
10 (The defendant was present.)
11 (The jury was not present.)
12 THE COURT: Anything before we bring the
13 jury in?
14 MR. PENNER: No, Your Honor. Thank you.
15 MS. HIGH: No. Thank you.
16 THE COURT: All right. At least we did
17 not lose a juror this morning.
18 MS. HIGH: No, I think we're down to,
19 like, hanging onto -- yeah, I guess we're ahead of the curve
20 today.
21 (The jury was present.)
22 THE COURT: All right. You may be seated.
23 You may call your next witness, Mr. Penner.
24 MR. PENNER: Thank you, Your Honor. The
25 State would call Terry Browning.

1 (Pause.)
2 THE COURT: Okay. If you'll raise your
3 right hand, sir.
4 TERRY BROWNING, witness herein, having been sworn
5 under oath, was examined and
6 testified as follows:
7 THE COURT: If you'll have a seat.
8 There's water and Kleenex to your right, sir.
9 THE WITNESS: Okay. Thank you.
10 THE COURT: You can pull the chair forward
11 and adjust the mic. When answering, please keep your voice
12 up so we can hear you and answer "yes" or "no"; don't just
13 nod or shake your head or go uh-huh. Okay?
14 THE WITNESS: Yes, ma'am.
15 THE COURT: Thank you. Your witness,
16 Counsel.
17 MR. PENNER: Thank you.
18 DIRECT EXAMINATION
19 BY MR. PENNER:
20 Q. Sir, could you state your name for the record, and spell it
21 for the court reporter.
22 A. Terry Browning, T-E-R-R-Y, B-R-O-W-N-I-N-G.
23 Q. And, Mr. Browning, are you currently retired?
24 A. Yes, sir. I'm retired.
25 Q. All right. What did you used to do?

1 A. I was federal civil service, and I was a volunteer captain
2 with Spanaway Fire Department for 27 years.
3 Q. All right. Let's talk about the Spanaway Fire Department
4 for a while. Okay?
5 A. (Nods head.)
6 Q. You said you were a volunteer captain?
7 A. Yes, sir.
8 Q. You didn't start as a captain?
9 A. No, sir.
10 Q. All right. Can you let the jury know -- well, you said for
11 27 years, so what years were those that you were with the
12 fire department?
13 A. From 1980 to 2007.
14 Q. And what duties did you have over the course of those 27
15 years?
16 A. I was in charge of fire suppression and medical aid calls.
17 Q. Okay. And maybe, if we could, just take a moment for the
18 jurors who might not be as familiar with how a fire
19 department is set up. Can you explain to them the different
20 roles a fire department has. Clearly, putting out fires is
21 one of them; but there's more to it, isn't there?
22 A. Yes.
23 Q. What kind of calls would you respond to?
24 A. Any type of medical aid calls, auto accidents, or the gamut,
25 any -- any type of call that -- that came in 911. If it was

1 thought to include the fire department, we were called.
2 Q. Okay. So would that be just anytime where somebody might
3 need medical assistance?
4 A. Yes, sir.
5 Q. All right. Were you ever called out to scenes where there
6 was a homicide, someone is dead?
7 A. Yes, sir.
8 Q. All right. How about accidents or other situations where
9 someone died but not as a homicide?
10 A. Yes, sir.
11 Q. Okay. What I'd like to do is direct your attention to
12 February of 1993. Do you remember what your duties or rank
13 was at that time?
14 A. Yes. I was captain.
15 Q. What does that mean in terms of your -- do you have extra
16 duties and responsibilities?
17 A. I was in charge of the station; and at that time, we had
18 twenty volunteer and resident personnel at that station.
19 Q. Okay. And what kind of calls would you routinely respond to
20 back then?
21 A. Auto accidents, fires, anything involving an injury. If
22 people needed medical aid, we were the first responders.
23 Q. And how would you even know about the call?
24 A. We had pagers that would go off and alert us to the type of
25 call and to the address to respond to.

1 Q. Okay. As a volunteer firefighter, were there times when you
2 were home, you know, with your family or asleep in bed and
3 you got a call and you had to go out?
4 A. Yes, sir, all the time.
5 Q. Were there also times when you were at the station and a
6 call would come in?
7 A. Yes, sir.
8 Q. All right. On February 6, 1993, do you recall being called
9 out to an address of 127 162nd Street South in Spanaway, a
10 fourplex?
11 A. Yes, sir.
12 Q. And were you working on duty that day as captain, or were
13 you home?
14 A. I was at home, sir.
15 Q. Okay. How long did it take for you from the time that you
16 got the call to arrive?
17 A. A little more than two minutes. It was two blocks from my
18 house.
19 Q. All right. When you arrived, could you explain -- or, I
20 guess, describe to the jury the type of residence it was.
21 A. It was a fourplex building with two apartments on each side,
22 one lower and one upper.
23 Q. And I guess I should ask -- it's been 23 years -- as you sit
24 here today, do you have some independent memory of that
25 night?

1 A. I remember the call came in as a "smoke from an apartment."
2 I responded to the call. I was the first one on, and I
3 could see smoke from the second story.
4 Q. Okay. So when you first arrived and saw the smoke, as far
5 as you knew, did you know that there was anybody who needed
6 assistance?
7 A. No, sir.
8 Q. All right. Is it normal that somebody might need assistance
9 in that kind of a situation?
10 A. It was light smoke, primarily; but you never can tell.
11 Q. Okay. At that point, when you first arrived, did you have
12 any idea that someone upstairs had been murdered?
13 A. No, sir.
14 Q. All right. Did you arrive before or after the initial
15 police officers?
16 A. Before.
17 Q. Okay. How much longer until they arrived?
18 A. They were pretty much right behind me.
19 Q. Okay. Did you go up to the apartment?
20 A. Yes, sir. Initially, I wasn't; but I was told that there
21 was, possibly, two people still in the apartment.
22 Q. Okay. Who -- do you remember who told you that?
23 A. It was one of the residents of the structure.
24 Q. Okay. Do you remember anything about that resident? Man?
25 Woman?

1 A. No, sir.
2 Q. Okay. When you went up to the apartment, did you go by
3 yourself; or did some of the officers come with you?
4 A. I went by myself, initially.
5 Q. And what did you see when you went inside?
6 A. I looked in; there was smoke. I saw a person laying on the
7 floor, saw a pan on the stove that was still causing the
8 smoke.
9 Q. All right. I'm going to show you what's previously been
10 admitted and published as Exhibit No. 2. Do you recognize
11 what's depicted in that photograph?
12 A. Yes, sir.
13 Q. All right. And what's in that photograph?
14 A. An individual that was in the apartment when I went in.
15 MR. PENNER: All right. Can we adjust the
16 lights.
17 THE JUDICIAL ASSISTANT: I'm sorry.
18 MR. PENNER: No. No. You're --
19 Q. (By Mr. Penner) And is that the location that she was in
20 when you saw her at first?
21 A. As far as I can remember.
22 Q. Okay. Did you -- all right. So at that point, was there
23 any sign of life from her?
24 A. No, sir.
25 Q. All right. So let's step back and talk about: What do you

1 do generally when you come onto a scene and you see
2 somebody's been injured? What's the first thing that you
3 do?
4 A. The first thing I do is the scene -- assess the scene safety
5 and make sure everything is all right to proceed.
6 Q. Now, why is that?
7 A. So that you don't put yourself in danger.
8 Q. Okay. If you're working on assisting somebody, where is
9 your focus?
10 A. On the patient.
11 Q. All right. And do you have any focus behind you?
12 A. Not usually unless it's your personnel there to help you and
13 have them get you equipment.
14 Q. Okay. So did you personally do, I guess, kind of the scene
15 sweep; or did the officers do that, the cops?
16 A. I initially just did a check around and just to make sure
17 there was nobody else, you know, down on the floor or
18 anything else.
19 Q. Did you go back into any of the back bedrooms?
20 A. No, sir.
21 Q. Okay. What was the next thing that you did there?
22 A. Check for a pulse.
23 Q. Let me back up. I assume sometime in those 27 years, you've
24 gone in to help somebody, and that person is conscious but
25 injured; correct?

1 A. Yes, sir.
2 Q. All right. In that kind of a situation, how do you interact
3 with the patient?
4 A. Identify myself as a firefighter/EMT, that I'm there to help
5 them, try to put them at ease, and make them feel
6 comfortable, then assess whatever the problem is.
7 Q. Okay. Was this the first time that you'd come to a scene
8 and encountered what appeared to be someone who was dead?
9 A. No, sir.
10 Q. All right. In those situations, how is that different in
11 terms of your initial protocol?
12 A. At a scene like this, I come in, and I check for a pulse and
13 determine if there was any need to be rendered. I
14 determined there wasn't; I backed out. The deputies were
15 right behind me. They assessed the scene; then they started
16 their protocols.
17 Q. Okay. And you weren't the only medical person on scene that
18 day; is that right?
19 A. No. We had -- we were a private ambulance at that time, so
20 we had Shepherd ambulance come in.
21 Q. Okay. Nowadays, you guys have your own ambulances?
22 A. Yes, sir.
23 Q. Okay. Did you do all the medical efforts on Ms. Robinson
24 that night?
25 A. They -- they assessed -- they put pads on her to check for

1 any heartbeat or anything, but there was actually no aid to
2 be rendered.
3 Q. Okay. Have you ever had a situation where you see someone
4 who is disabled, not responsive, but when you check for a
5 pulse, there is one?
6 A. Yes, sir.
7 Q. Okay. What do you do in those situations?
8 A. Go through a complete assessment of trying to -- it depends
9 on if they're conscious or unconscious. If they're
10 unconscious, then we secure the C-spine and try to do a
11 survey to find out what the problem is that they're --
12 they're having, what would cause them to be unconscious.
13 Q. Okay. Where on the body do you check for the pulse?
14 A. On the carotid artery.
15 Q. Okay. And can you show the jury where that is.
16 A. Right here.
17 MR. PENNER: And for the record, the
18 witness is pointing to the right side of his neck.
19 Q. (By Mr. Penner) Did you check anywhere else?
20 A. No, sir.
21 Q. You mentioned something about the ambulance people putting
22 pads on her?
23 A. Yes, sir.
24 Q. Can you explain to the jury what those pads are.
25 A. They're little electrode pads that are placed at different

1 places on the body, the upper body, that can generate
2 electrical impulses to see if there's electrical impulses
3 from the heart.
4 Q. And in your 27 years of experience, did you ever have a
5 situation where you didn't feel a pulse on the neck, but the
6 pads detected some heart activity?
7 A. Yes.
8 Q. Okay. So that's just a natural protocol you always do?
9 A. Yes.
10 Q. Did you personally put the pads on Ms. Robinson?
11 A. No, sir.
12 Q. All right. Were you present when they were put on?
13 A. Yes, sir.
14 Q. And why was it important for you to know whether or not
15 there was heart activity at that point?
16 A. To know whether to proceed with medical care to potentially
17 save her life.
18 Q. Okay. The pads, do they have to have contact with the skin?
19 A. Yes, sir.
20 Q. So what does that require in terms of interacting with the
21 body?
22 A. Moving -- put the pads underneath whatever clothing is there
23 at different locations so that you can -- it gives feedback.
24 Q. Okay. And you're not a crime scene investigator; right?
25 A. No, sir.

1 Q. Your concern at that moment is not preserving the scene;
2 it's helping this person?
3 A. Yes, sir.
4 Q. Okay. And it happens very fast; correct?
5 A. Yes, sir.
6 Q. In fact, is it safe to say that as the medical expert, the
7 medical team -- excuse me -- you get to do your job first
8 before the police will come in and start to try to figure
9 out what happened?
10 A. Yes, sir.
11 Q. All right. From the time that you first saw Ms. Robinson
12 until the time -- well, I guess I should ask: Was there any
13 heart activity detected by the pads?
14 A. No, sir.
15 Q. All right. At that point, did you draw a conclusion as to
16 whether she was alive or dead?
17 A. Yes, sir.
18 Q. And what was that conclusion?
19 A. That she had passed away.
20 Q. Okay. Did you inspect her wounds in any way?
21 A. No, sir.
22 Q. Did you make any effort to inspect the body for any evidence
23 or to determine what had happened?
24 A. No, sir.
25 Q. All right. Once you determined that she was dead, what did

1 you do next?
2 A. The deputies were inspecting the apartment to see if anybody
3 else was in there. I just did scene safety to prevent any
4 more of our firefighters from entering the -- the room, that
5 there was -- we'd already moved the pan into the sink, and
6 there was nothing else for us to do.
7 Q. Okay. Do you recall whether you or the ambulance people, at
8 any point, moved Ms. Robinson's body?
9 A. I don't remember, sir.
10 Q. Okay. Would it be normal for there to be some movement
11 while they interact with the body?
12 A. Yes, sir.
13 Q. Okay. I want to show you another photograph that's,
14 previously, been published; it's Exhibit 4. And did you
15 have a chance to take a look at this photograph before you
16 testified this morning?
17 A. Yes, sir, I did.
18 Q. Okay. Could you let the jury know what these items are?
19 There's some paper here; there's some plastic here.
20 A. The paper is the covering for gauze where you wipe to put
21 the pads on. The EKG pads stick to the plastic piece; you
22 take them off those and put them on the body.
23 Q. Okay. So we see a phone receiver, and to the right of that
24 there's, basically, a white rectangle. And it's, kind of,
25 hard because my choices are "dark" or "overexposed"; but

1 it's, kind of, in three sections, it looks like.
2 A. Okay. Right by the phone receiver?
3 Q. Yeah.
4 A. Yes, sir. That's what the EKG pads are stuck to.
5 Q. Okay. And it looks like those are, basically, just kind of
6 thrown off to the side?
7 A. Yes, sir.
8 Q. Is that a standard procedure when you guys are trying to
9 help somebody?
10 A. Yes, sir. We don't take the time to just put them anywhere.
11 We rip them off, throw them, and put them on.
12 Q. Okay. And then there's one more that's really hard to see
13 on this but up here in the corner, there's a white square of
14 paper. Do you see that?
15 A. Yes.
16 Q. Okay. Do you know whether that was, also, medical aid?
17 A. I couldn't -- can't tell, sir.
18 Q. Is it possible?
19 A. It's possible, yes.
20 Q. Is it also possible it's not?
21 A. Yes, sir.
22 Q. All right. Thank you. In situations where the person is
23 alive, you said you make efforts to transport them. Where
24 do they get transported to?
25 A. The closest -- at that time, we took them to the closest

1 medical center.
2 Q. Okay. Was there any reason to take Ms. Robinson to a
3 medical center?
4 A. No, sir.
5 Q. Okay. In situations where the person is dead, where is the
6 body taken?
7 A. To the morgue.
8 MR. PENNER: Thank you, sir. No other
9 questions.
10 THE COURT: Cross-examination, Counsel?
11 MS. HIGH: Yes. Thank you.
12 CROSS-EXAMINATION
13 BY MS. HIGH:
14 Q. Good morning.
15 A. Good morning.
16 THE COURT: Do we need the lights put on,
17 or are you going to use the overhead?
18 MS. HIGH: I'm not going to need the
19 overhead.
20 THE COURT: All right.
21 MS. HIGH: Thank you.
22 Q. (By Ms. High) So your focus, really, is on rendering aid;
23 is that right?
24 A. Yes, ma'am.
25 Q. It's not on crime scene preservation or any of those kinds

1 of tasks?
2 A. No, ma'am.
3 Q. That's going to be left up to your law enforcement officers?
4 A. Yes, ma'am.
5 Q. And you said when you get there, you can see some light
6 smoke coming out of a pan that's still smoking?
7 A. Yes, ma'am.
8 Q. And you put that into the sink?
9 A. Yes.
10 Q. So you indicate that you're up there, but there are also
11 several other individuals rendering aid; is that right?
12 A. Well, the -- yes, ma'am. The paramedics from Shepherd
13 ambulance were -- came up after I entered the apartment.
14 Q. Okay. And do you recognize the names Brian Kraft or Herb
15 Gartner?
16 A. Yes, ma'am.
17 Q. And you'd worked with them in the past?
18 A. Yes, ma'am.
19 Q. And they're the individuals that actually, then, were
20 applying the electrode -- the EKG pads?
21 A. Yes, ma'am.
22 Q. And can you tell me where on the body, typically, they were
23 applied?
24 A. I can tell you approximately.
25 Q. Sure.

1 A. It's on the upper chest under the left breast, on the
2 abdomen, and on the ankles.
3 Q. Okay. And so, I mean, obviously, in order to adhere those
4 pads, the body does need to be moved?
5 A. Yes, ma'am.
6 Q. Okay. And that's pretty standard procedure?
7 A. Yes, ma'am.
8 Q. And that's what occurred in this -- at this time?
9 A. Yes, ma'am.
10 Q. Okay. And then you said that in the case where an
11 individual is deceased, the body goes to the morgue. Is
12 that something that you or Shepherd would take
13 responsibility for?
14 A. No, ma'am. We would contact the Medical Examiner.
15 Q. Okay. So after you were through with your examination,
16 checking the body, putting the pads on, you then back out?
17 A. Yes, ma'am.
18 Q. And that evening, is that what happened?
19 A. Yes, ma'am.
20 MS. HIGH: Okay. Thank you.
21 THE COURT: Any redirect?
22 MR. PENNER: No, Your Honor. Thank you.
23 THE COURT: All right. May the witness be
24 excused?
25 MR. PENNER: Yes, Your Honor.

1 MS. HIGH: (No audible response.)
2 THE COURT: Ms. High, may the witness be
3 excused?
4 MS. HIGH: Yes.
5 THE COURT: All right. Thank you very
6 much for your attendance, sir.
7 THE WITNESS: Thank you.
8 (The witness was excused.)
9 THE COURT: Next witness?
10 MR. PENNER: Thank you. Your Honor, the
11 State would call Larry Minturn.
12 LARRY MINTURN, witness herein, having been sworn
13 under oath, was examined and
14 testified as follows:
15 THE COURT: If you'll have a seat, sir.
16 There's water and Kleenex to your right. You can adjust the
17 chair and the mic. When answering, please keep your voice
18 up so that we can hear you; and answer "yes" or "no" rather
19 than nodding or shaking your head.
20 THE WITNESS: Yes, ma'am.
21 DIRECT EXAMINATION
22 BY MR. PENNER:
23 Q. Could you state your name for the record, sir, and spell it
24 for the court reporter.
25 A. Yeah, Larry Minturn. It's M-I-N-T-U-R-N.

1 Q. And how are you employed, sir? How are you employed?
2 A. I'm a lieutenant with Pierce County Sheriff's Department.
3 Q. Okay. How long have you been with the Pierce County
4 Sheriff's Department?
5 A. 45-and-a-half years.
6 Q. All right. Are you -- are you retiring soon?
7 A. Uh --
8 Q. Maybe?
9 A. I'm not ready.
10 Q. What's that?
11 A. I'm not ready.
12 Q. All right. So you were a sheriff in 1993; is that right?
13 A. That is correct.
14 Q. And what's your current rank?
15 A. Lieutenant.
16 Q. Do you remember what your rank was February of 1993?
17 A. Yes. I was a detective.
18 Q. Okay. What's the difference between a detective and a
19 lieutenant?
20 A. Well, basically now my responsibilities are more
21 administrative and supervisory. I supervise a multitude of
22 people. Back then, it was investigative assignment, and --
23 Q. All right. And did you have occasion to be called out to an
24 address of 127 162nd Street South in Spanaway on February
25 6th or 7th, 1993?

1 A. Yes, I did.
2 Q. All right. And did you write a report about what you did on
3 that case?
4 A. Yes, I did.
5 Q. All right. Is it safe to say your memory of the events were
6 probably better at the time you wrote the report than they
7 are here, two decades later?
8 A. Yes, sir.
9 Q. All right. Would it help refresh your recollection as to
10 details if you could refer to your report while you
11 testified?
12 A. That would be very helpful.
13 Q. All right. I'm going to hand you what's been marked as
14 Exhibit 47, and I'm going to ask you if you recognize that
15 document.
16 A. I do. This is a report that I did after my involvement in
17 that particular investigation.
18 Q. And have you had a chance to review a copy of that document
19 recently prior to testifying this morning?
20 A. Yes, I did.
21 Q. Okay. If you have to refer to the document, would you just
22 let me know that you're doing that?
23 A. I will.
24 Q. All right. And also, do you, as you sit here now, have an
25 independent memory of any of that evening in the -- in the

1 case?
2 A. I do have some recollection of that evening, yes.
3 Q. Okay. All right. What's the -- do you remember how the
4 call originally came in and about what time?
5 A. Yeah. It was about eleven o'clock; and I was, at the time,
6 working a surveillance detail on Pacific Avenue.
7 Q. Did that surveillance detail have anything to do with this
8 case?
9 A. No, it did not.
10 Q. Okay. So were you nearby this particular residence?
11 A. At the time the call came out, I was probably less than a
12 mile from the scene; so I responded.
13 Q. Okay. Is there a reason that you responded rather than
14 continue with your surveillance detail?
15 A. Well, the gravity of the call, I think, necessitated that it
16 was far more important than the surveillance detail I was
17 on; so that's why I responded.
18 Q. What was the nature of the call, initially?
19 A. It was reported as a fire, as I recall. That was about the
20 nature of the call. It was a fire --
21 Q. Okay.
22 A. -- in the apartment complex.
23 Q. All right. And so were you with anybody else in the
24 surveillance, or was it just you?
25 A. No. I was by myself.

1 Q. Okay. Did you immediately go, then, to the apartment?
2 A. I did.
3 Q. And what did you see when you arrived?
4 A. When I arrived, there were two deputies on scene, Deputy
5 Reigle and Deputy Brendan Maye; and I went to the apartment,
6 Apartment No. 4, as I recall; and upon entering the
7 apartment, of course, I could tell that there had been some
8 kind of a fire incident or something like that.
9 Q. How could -- how could you tell that?
10 A. I could tell by the smell.
11 Q. Okay. Do you recall seeing any smoke?
12 A. There was a little bit of more like steam than smoke in the
13 room.
14 Q. Okay. Before you went up to the apartment, did you brief
15 with Deputy Maye or Deputy Reigle?
16 A. I talked to them on my way up to the apartment, and --
17 Q. As you went up the stairs?
18 A. -- they briefed me.
19 Q. Okay. When you went inside, you said you saw steam or
20 smoke?
21 A. Yes.
22 Q. Did you see anything else?
23 A. Yes. I could see a female body lying on the floor in kind
24 of a north/south configuration, prone, face down.
25 Q. All right. I'll show you what's, previously, been admitted

1 as Exhibit 2. Does that depict what you just described
2 seeing?
3 A. Yes.
4 Q. All right.
5 A. Definitely.
6 Q. Okay. At this point, how long have you been a detective?
7 A. I started my investigative career with the Department in
8 1979 as an investigator in the juvenile unit and then, two
9 years later, was promoted to detective.
10 Q. So '81?
11 A. About 1981.
12 Q. All right. So you'd been a detective for about 12 years
13 when you walked into that apartment?
14 A. Yes, I had.
15 Q. All right. Obviously, what you saw was significant;
16 correct?
17 A. Very significant, yes.
18 Q. All right. Explain to the jury how that would change, then,
19 what your -- what your response is going to be to the
20 situation.
21 A. Well, immediately, I could tell that there had been
22 something of violence that had occurred from the amount of
23 blood and from what I observed to be stab wounds to the
24 victim, connoting to me that there had been a violent
25 attack; and she appeared to be deceased.

1 Q. All right. So that converts the scene from a fire scene to
2 a crime scene?
3 A. It's now a death investigation scene for sure.
4 Q. And if I understand correctly, you're one of three officers
5 there, two patrol officers, and you're the detective; right?
6 A. Yes.
7 Q. So are you in charge right now?
8 A. Yes, I am.
9 Q. All right. So what did you do?
10 A. I immediately secured the scene. As I was there, fire
11 paramedics were there and had pronounced the victim --
12 observed -- when they tried to see if they could find any
13 responses from the victim, and they pronounced that she was
14 deceased, immediately secured the scene and had the two
15 deputies that were there try to find whatever witnesses may
16 have been in the area and secure those people. I called for
17 the on-duty CID lieutenant to respond.
18 Q. Okay. I'm going to stop you. What does CID stand for?
19 A. Criminal Investigation Division.
20 Q. Okay.
21 A. And detectives and forensics.
22 Q. Okay. At that point in time, did you guys have a separate
23 homicide division?
24 A. Yes, we did.
25 Q. All right. So were you a homicide detective?

1 A. No, I was not.
2 Q. Did you call for a homicide detective?
3 A. I did.
4 Q. So if I understand, you sent the deputies out to secure the
5 scene and find witnesses, called for a homicide detective,
6 and called for a lieutenant to investigate?
7 A. Yes.
8 Q. Okay. Did you make any other -- any other phone calls or
9 requests?
10 A. No. That was the sum total of my calls at that time.
11 Q. Okay. Was yellow crime scene tape put up?
12 A. Not at that time. I was securing the inner perimeter inside
13 the apartment.
14 Q. Is the detective the one who's usually going to put that
15 tape up or one of the officers?
16 A. Yes. Once they arrive, either the detectives or the
17 deputies would cordon off the area.
18 Q. But it sounds like we're in the first few minutes here,
19 so --
20 A. Yes.
21 Q. At this point, before the calls, or after, did you ever
22 examine Ms. Robinson's body as it lay there in the kitchen?
23 A. Yeah. My observations were that I could see what appeared
24 to be multiple stab wounds through the victim's clothing in
25 the lower back area. There was a significant amount of

1 blood on the floor and most of it was in the kitchen area.
2 The victim's feet were, actually, laying in a carpeted area
3 in the hallway leading to some bedrooms. There was a phone
4 about probably four feet from where the victim was lying,
5 and I could see that the cord was no longer affixed to the
6 wall. Actually, it either had been pulled out or cut.
7 Q. Okay. I'm going to show you what's been, previously,
8 admitted as Exhibit 3. Does that include the telephone you
9 just mentioned?
10 A. Yes, it does.
11 Q. And the cord that you mentioned?
12 A. (Nods head.)
13 Q. Okay. And it's been a while maybe since people plugged the
14 phones into the wall, but was it your observation that it
15 had been unplugged or that it had been cut?
16 A. I really couldn't tell at that point. I didn't examine the
17 end of the cord that closely.
18 Q. Okay. But it wasn't in the wall?
19 A. No. It was not attached to the wall.
20 Q. All right. How close did you get to Ms. Robinson's body in
21 terms of your examination?
22 A. I stood probably a foot to two feet away from her body.
23 Q. Did you physically touch the body at any point?
24 A. No, I did not.
25 Q. Okay. You didn't manipulate it or look at it?

1 A. No.
2 Q. Did you move the clothing at all to get a better look at the
3 injuries?
4 A. No, I did not.
5 Q. Okay. What did you do, next, then?
6 A. I waited until the detectives had arrived, when they got
7 there, and the lieutenant. It was Detective O'Hern and
8 Detective Page, and the lieutenant was Pete Carder.
9 Q. Okay.
10 A. I briefed them on my response, what my observations were,
11 and what I had done once I arrived there.
12 Q. Now, in addition to the detective and the lieutenant, did
13 you guys have a division for forensics for evidence
14 collection?
15 A. Yes, we did.
16 Q. And was there a name for that?
17 A. Well, we called them "IDENT" back then, "identification" in
18 the records division. Now, they're referred to as forensics
19 division.
20 Q. Did you also make a call out for IDENT officers?
21 A. Yes. And Officer Ted Schlosser arrived at the scene
22 thereafter.
23 Q. Okay. All right. Did you stay and observe or supervise any
24 of the evidence collection or evidence documentation inside
25 the apartment?

1 A. No. At that time, when I had briefed the detectives and the
2 lieutenant, I was requested to assist with the interviews of
3 people who may have been witnesses or somehow involved with
4 the incident.
5 Q. So did you then leave and go talk to some people?
6 A. Yes, I did.
7 Q. And in your report, did you indicate which people you talked
8 to?
9 A. Yes, sir, I did.
10 Q. All right. And where did these interviews take place?
11 A. Initially, in the apartment complex itself. I spoke to a
12 young girl. I think she was about seven or eight years old.
13 Q. And did you get her --
14 A. I talked to her.
15 Q. Did you get her name?
16 A. I did, if I can refer to my notes.
17 Q. Please do.
18 A. (Reviewing.) I'm not sure I'm going to pronounce it
19 correctly, but it was Shawonika Elliott.
20 Q. Okay. And this was the little girl that you talked to?
21 A. Yes.
22 Q. What was your -- why was -- why did you talk to her? What
23 was your understanding of her relationship with --
24 A. My understanding was that she had been in the apartment,
25 probably sleeping, and that she had been alerted to a fire

1 alarm going off and had discovered that there was a pot on
2 the stove that was burning and had observed the victim on
3 the floor.
4 Q. And did you know all that before you talked to her?
5 A. No, I did not.
6 Q. Okay. So this is information that she gave you?
7 A. Yes.
8 Q. All right. Did she indicate at any time that she had seen
9 any other adults in the apartment?
10 A. No. She didn't indicate she had seen any other adults.
11 Q. Okay. Who else did you talk to at the scene?
12 A. I was contacted by a department chaplain from our
13 department, and we had learned through conversations with
14 this girl that -- or Shawonika, that there was another
15 relative at a nearby roller rink --
16 Q. Did you --
17 A. -- or ice-skating rink.
18 Q. Did you get the name of that other relative?
19 A. Yes. I'll refer to my notes once again. (Reviewing.) And
20 her name was Tarica.
21 Q. Did you get -- did you get a last name?
22 A. Yeah. I'll get that. (Reviewing.)
23 Q. And if it helps, I'll direct your attention to page four of
24 six after "0045 hours" --
25 A. Yeah.

1 Q. -- four lines down.
2 A. (Reviewing.) Tarica Carter.
3 Q. Okay. And what was your understanding of the relationship
4 between Tarica and Ms. Robinson, the deceased?
5 A. She was the daughter of Ms. Robinson.
6 Q. Okay. What was -- so what did you do when you found out
7 that Tarica was at the roller rink?
8 A. I went there with the chaplain; and when we arrived there,
9 Lieutenant Carder had this young girl in his vehicle. We
10 got her out of the vehicle, and the chaplain made the death
11 notification to her.
12 Q. Okay. And that's formal, but you told her that her mother
13 was dead?
14 A. Yes.
15 Q. Did you tell her any of the details, that she'd been
16 murdered, or what had happened?
17 A. No.
18 Q. All right. How did she respond?
19 A. She became very hysterical at that point and, at one point,
20 fell to the ground; and she was really hard to talk to at
21 that point.
22 Q. Okay. And you've done this a long time. Have you done
23 other death notifications?
24 A. Yes, I have.
25 Q. Do other people respond similarly sometimes?

1 A. Yes, they do.
2 Q. All right. But you also have a job to do; right?
3 A. I do.
4 Q. And what was -- from a law enforcement standpoint, what was
5 one of the things that you needed to do with Tarica that
6 night?
7 A. I wanted to find out any information she might be able to
8 provide about anyone who may have been at the apartment or
9 how she ended up being at the Spinning Wheels, what the plan
10 was as far as her returning home, and the times when she
11 left her home and arrived there.
12 Q. And were you able -- eventually, was she able to -- let me
13 phrase it this way: Eventually, were you able to have that
14 conversation with her?
15 A. To a degree, yes.
16 Q. Okay. And was she able to tell you her activities that
17 night and the last time she saw her mom?
18 A. Yeah. She indicated that her mom was supposed to pick her
19 up about midnight from Spinning Wheels and that her mom was
20 baby-sitting some other children there at the residence
21 that, I believe, were not necessarily her children but were
22 relatives' children.
23 Q. Okay. Did she have any other information in terms of the
24 event?
25 A. She talked about a boyfriend, to her mother.

1 Q. Okay.
2 A. And Bo Babe, I believe, was the name she mentioned.
3 Q. Okay. And it looks like in your report you noted a few
4 different names. I'm going to go through those in a minute.
5 Were these people that she stated were at the apartment or
6 people that you asked, just, did your mom have any friends
7 or boyfriends?
8 A. Yeah. When I had asked her about anybody that would have
9 had contact recently with her mom, she mentioned several
10 names, Bo Babe. I think there was somebody named Billy.
11 Q. Okay. It looks like maybe there was a Fred?
12 A. Yeah.
13 Q. Okay. Did she indicate that any of those people had been
14 over that night?
15 A. No, she did not.
16 Q. How did the conversation go? Were you able to have a full
17 conversation with her?
18 A. Somewhat of a conversation. She would be somewhat lucid at
19 moments, and then she would get very hysterical, again; so
20 it was difficult to talk to her.
21 Q. Does it happen sometimes in situations where you have to
22 just stop the interview, and you'll come back to the person
23 later?
24 A. Yes.
25 Q. Okay. Is that what happened that night?

1 A. Basically, yes.
2 Q. Okay. After you spoke with Tarica, what did you do next?
3 A. I returned to the scene and made contact with Detective
4 O'Hern and Detective Page, and then I went to another
5 residence with Detective Page to talk to some other people
6 that were family members.
7 Q. Okay. So a different residence from the murder scene?
8 A. Yes.
9 Q. Okay. Do you remember who you spoke to there?
10 A. (Reviewing.) Yeah. This was the house on 10th Avenue East.
11 And initially, I recontacted Tarica Carter, who had been
12 taken there; and Raymond Baskerville; his mother, Gloria;
13 and Terrence Lesley.
14 Q. And these were all relatives, one way or another, of the
15 victim?
16 A. Yes.
17 Q. Okay. And you interviewed them; is that right?
18 A. Yes, I did.
19 Q. All right. And did you gain any information from them that
20 was helpful for the investigation?
21 A. Nothing of significance other than some possible names of
22 boyfriends or associates.
23 Q. Okay. In addition to the names you mentioned earlier, I
24 think, Billy, Fred, Bo, did you get another name?
25 A. There was a George. I didn't get a last name from -- for

1 him, but that was one of the other names that was brought
2 up.
3 Q. All right. Now, in terms of this case, after that night,
4 who was the lead -- well, maybe even on that night -- who
5 ended up being the lead detective?
6 A. Once Detective O'Hern arrived, he's the lead homicide
7 detective; and he took over as the incident commander at the
8 scene.
9 Q. Okay. So after that night, if you're going to do anything
10 on this case, is it going to be at Detective O'Hern's
11 direction?
12 A. Yes, it would.
13 Q. Okay. After that night, did you do anything further on this
14 case?
15 A. No. I was not requested to do any further investigation on
16 that.
17 Q. All right. And I guess just one more thing: Do you recall
18 ever contacting any of the neighbors who also lived in the
19 apartment complex?
20 A. I believe I did talk to a gentleman, I think, who was the
21 one who may have run into the apartment to put out the fire
22 when he was notified.
23 Q. And how about a couple of women who lived also in the
24 complex, do you recall that?
25 A. I do recall talking to several people there. I -- without

1 refreshing my memory, I don't remember all their names.
2 Q. But you wrote the information down in the report and gave it
3 to Detective O'Hern?
4 A. Yes.
5 Q. Did that conclude your involvement in this case then?
6 A. That was the sum total of my involvement.
7 MR. PENNER: Thank you very much. Thank
8 you, Your Honor.
9 THE COURT: All right. Cross-examination.
10 MS. HIGH: Thank you.
11 CROSS-EXAMINATION
12 BY MS. HIGH:
13 Q. Good morning, Lieutenant Minturn.
14 A. Good morning.
15 Q. You have written many, many reports, haven't you?
16 A. I have done a few.
17 Q. I know you have. And one of the things that you're pretty
18 careful, in your reports, is: You're really good about
19 logging your times, where you were at different times. Is
20 that something that you're trained to do?
21 A. I try to be as accurate as I can, yes.
22 Q. Sure. And I see that this report was prepared very shortly
23 after these events, and that was also your habit?
24 A. Yes.
25 Q. Would -- and yours were typed, not handwritten which,

1 sometimes back in '93, they were handwritten. Did you work
2 from a notebook?
3 A. At that time, we were dictating most of our information. As
4 we were examining the scene, I would record; but basically,
5 I had a notebook, as well, and so I would record in a
6 notebook and take some verbal notes to myself.
7 Q. Okay. So you weren't the one pecking away at the
8 typewriter; right?
9 A. No. We had stenographers at that time who would use our
10 dictated reports to prepare a printed one.
11 Q. Right. And so by, you know, basically recording
12 contemporaneously, you could get down the information at the
13 time and then keep adding to it on the tape recorder; is
14 that right?
15 A. I'm sorry?
16 Q. So if you were, kind of, taping yourself contemporaneous
17 with what your activities were, you could stop it, do some
18 work, and then add to it?
19 A. Yes.
20 Q. So it's pretty much a contemporaneous record as you're doing
21 your investigation?
22 A. Yes.
23 Q. Okay. Now, that night, you were, as you said, I think, very
24 close by on a surveillance detail; right?
25 A. Yes, I was.

1 Q. And it was an arson detail; is that right?
2 A. Yes.
3 Q. And I think you report that you were able to get to the
4 fourplex at 162nd just moments, maybe seconds, after
5 Deputies Reigle and Maye arrive?
6 A. Yeah. Initially, I heard the fire call go out; and then
7 shortly thereafter, our dispatch center notified our people
8 in the area or the vehicles that were working in that
9 district; and so as soon as I heard a fire call, I was
10 going.
11 Q. Right. Because you were out there thinking arson that
12 night?
13 A. Correct.
14 Q. And you report that you arrive, it looks like, about 2300
15 hours; that's eleven o'clock?
16 A. Yes. That would be approximately -- I was -- 2300, I was in
17 the area. My arrival would have been within a few minutes
18 after that.
19 Q. Okay. And so when you get there, there's Deputy Reigle?
20 A. Yes.
21 Q. Deputy Maye?
22 A. Yes.
23 Q. And fire department personnel?
24 A. Yes.
25 Q. When I say "fire department," that might also include, back

1 in the day, Shepherd ambulance as well?
2 A. It may have been; I don't recall.
3 Q. Okay. And you initially entered the apartment?
4 A. Yes.
5 Q. And, you know, you're able to see the body of a woman on the
6 floor?
7 A. That's correct.
8 Q. And, you know, I think you described that you go in and you
9 kind of make an assessment at that time?
10 A. Yes.
11 Q. The fire or the aid personnel, they do their thing; and they
12 actually touch the body?
13 A. Yes.
14 Q. And they have to move the body, kind of roll it to put
15 different electric -- electronic pads or EKG pads on it or
16 that kind of thing?
17 A. Yeah. They were doing what they do.
18 Q. Right. And their focus is entirely different than what your
19 focus is; is that right?
20 A. Yes.
21 Q. Well, and when I say "entirely," you're obviously concerned
22 about an injured person, but they're not worried about crime
23 scene integrity or any of those kinds of things that you're
24 focusing on?
25 A. It really depends a lot on who the fire personnel are. Some

1 of them have a lot of experience in going to scenes where
2 there may have been a crime committed, and they're careful
3 not to contaminate or disturb things that they can avoid;
4 but they're basically there for life-saving purposes, and
5 that's what they were doing that night.
6 Q. Right. And so what they were doing was: They were kneeling
7 down next to the body; right?
8 A. Yes.
9 Q. Ripping off, you know, their EKG pads, putting them on, that
10 kind of thing?
11 A. I just recall seeing somebody attaching some kind of
12 electrodes, and that's all I really recall of that.
13 Q. Right. And like you said -- I mean, but they get -- they
14 get close, they get up to the body, and their focus is on
15 whether or not this person still needs aid?
16 A. Yeah. They're making a determination whether or not they
17 need to start medical aid or whether the person is deceased.
18 Q. Right. And once you talk -- or you get the information from
19 the medical personnel, you go into, you know, kind of the
20 active mode of now notifying law enforcement who you believe
21 needs to be present on the scene?
22 A. Yes. I basically had that determination as soon as I walk
23 in and saw what I had observed with the victim and the
24 nature of the injuries.
25 Q. Right. And I think you identified that Detective O'Hern and

1 Detective Page arrive?
2 A. Yes, they did.
3 Q. And they, as well, went into the apartment?
4 A. Yes.
5 Q. Lieutenant Carder, was he there as well?
6 A. He arrived there too. I'm not exactly sure of the
7 progression of who arrived first, but he was there.
8 Q. And you report that shortly after you get to the apartment,
9 there was a Sergeant Rod Weast. Do you remember him?
10 A. Yes.
11 Q. And he also arrived and entered the apartment?
12 A. I don't recall specifically if he had entered the apartment,
13 but I know he was there at the scene.
14 Q. Do you still have your report --
15 A. I do.
16 Q. -- Exhibit 47? If I could turn your attention -- it might
17 refresh your recollection -- to page two.
18 A. (Witness complies.) Okay.
19 Q. And the second paragraph from the bottom, it's just a
20 sentence there.
21 A. "Shortly thereafter"?
22 Q. Mm-hmm.
23 A. Okay.
24 Q. And so --
25 A. Do you want me to read that?

1 Q. No, not out loud.
2 A. Okay.
3 Q. Just to yourself.
4 A. (Reviewing.)
5 Q. And so back to my question with, it looks like, Sergeant Rod
6 Weast, do you recall he was there as well?
7 A. Yes. And I see from my report that he did enter the
8 apartment, or I made a notation of that.
9 Q. Okay. Now, like you said, you report that at 2344 hours,
10 the -- what you call the IDENT officer, Ted Schlosser, then
11 arrives?
12 A. Yes.
13 Q. And you're then given some other tasks. One of them was to
14 interview a young girl, Shawonika Elliott; is that right?
15 A. That's correct.
16 Q. And I think that you do that interview nearby; is that
17 right?
18 A. Yes.
19 Q. So it's still at the apartment complex at that time?
20 A. Correct.
21 Q. Okay. And you find out from her that she had been in the
22 apartment that evening?
23 A. Yes.
24 Q. And she'd been in the apartment that evening with a couple
25 of other small children, someone described as a little

1 cousin named T.J. and about ten months old and a little girl
2 about two years of age?
3 A. That is correct.
4 Q. And again, as you said, your tasks were -- even though, you
5 know, she's a child, you're trying to get some kind of time
6 frame, kind of figure out how to reconstruct that evening;
7 is that right?
8 A. Yes.
9 Q. And she tells you that about 9 p.m. that Ms. Robinson had
10 taken her daughter and the other children there, along with
11 Tanasia and the little girl's brother, to the Spinning
12 Wheels roller rink?
13 A. Yes.
14 Q. Okay. And she also knew the plan was for Ms. Robinson to
15 baby-sit them until about midnight at which time she was
16 going to go back to the roller rink and pick up her
17 daughter?
18 A. That's correct.
19 Q. Okay. And she relays to you that she was sleeping and then
20 was awakened by the smoke alarm?
21 A. Yes.
22 Q. And then in your report, it looks like about 12:45 -- and
23 that's on page four of six. I'll just direct you there.
24 You may not need to refresh your recollection.
25 A. I'm sorry. What page was that?

1 Q. Page four of six.
2 A. (Reviewing.) Okay.
3 Q. You go with the chaplain, Peter Annello, over to the roller
4 rink, the Spinning Wheels roller rink?
5 A. Yes, I did.
6 Q. Okay. And when you get there, it looks like Sergeant Weast
7 has made it there before you?
8 A. Yes. He had already arrived there.
9 Q. Okay. And Ms. Tarica Carter, I guess, was with Sergeant
10 Weast at that time?
11 A. Yes. I believe she was sitting in his car with him.
12 Q. Okay. And as you say, she was obviously and understandably
13 very distraught?
14 A. Yes.
15 Q. Okay. But you were able to get some information from her?
16 A. Yes.
17 Q. And she told you that she had left her mom's home somewhere
18 around 9:30 p.m., and the company of her mother, to go to
19 the Spinning Wheels?
20 A. Yes.
21 Q. And again, that the plan was her mom would baby-sit the
22 children and pick her up around midnight?
23 A. Correct.
24 Q. Okay. And she told you that her mom had, you know, a couple
25 of friends and had received a recent phone call from one of

1 them?
2 A. Yes.
3 Q. And she told you how she -- her mother had received the
4 recent telephone call, in fact, maybe about 1 a.m. the
5 previous morning, from a man named Billy?
6 A. Correct.
7 Q. Okay. And she relayed to you how this person had indicated
8 he wanted to come over, but her mother did not want him to
9 come in?
10 A. Yes. That's what she told me.
11 Q. Right. And she said that this person, she believed, drove,
12 like, an orange Skylark; and he'd been to the apartment
13 before?
14 A. Yeah.
15 Q. Okay. So you had that sad task; and then you, it looks like
16 at 1:30 in the morning, go back to the apartment complex on
17 162nd?
18 A. Yes.
19 Q. And again, I think when you get there, there are a couple of
20 other family members now at the apartment complex?
21 A. Yes, there were.
22 Q. And -- but your task, then, was to, I think, contact the
23 young women that lived in Apartment No. 1?
24 A. (Reviewing.) Yeah, when I returned and made contact with a
25 Lesley Robinson and a Priscilla Robinson.

1 Q. Okay. And then also you're approached, it looks like a
2 little bit later on, by a young woman named Michelle Blais?
3 A. Michelle Blais and Elizabeth Nelson.
4 Q. Okay. And about -- it seems like it was a pretty jam-packed
5 night. About 2:08 a.m., you're asked to drive over to 10th
6 Avenue East?
7 A. Yes.
8 Q. And you do?
9 A. I'm sorry?
10 Q. And you do?
11 A. Yes.
12 Q. And just so we kind of get a sense of where that was in
13 relationship, I showed you a little earlier, when we had a
14 chance to talk, a Google map?
15 A. Yes.
16 Q. And this is Defendant's Exhibit 229; and just before I put
17 it up there, I'll -- do you recognize this location or this
18 map and what it depicts?
19 A. It looks to be accurate.
20 Q. Okay.
21 MS. HIGH: And, Your Honor, I would offer
22 for admission Defense Exhibit 229.
23 THE COURT: Any objection?
24 MR. PENNER: No, Your Honor. Thank you.
25 THE COURT: All right. 229 will be

1 admitted.
2 (Defendant's Exhibit No. 229 was admitted.)
3 MS. HIGH: And just because we can't use
4 an electronic pointer here just because one of our jurors
5 won't be able to see anything, I'm going to use the pen; and
6 I hope I won't interfere with --
7 THE COURT: We have a pointer.
8 MS. HIGH: Well, okay. I was just going
9 to -- that would work.
10 Q. (By Ms. High) And, you know, just to orient, you started
11 right about here; is that correct?
12 A. If that's where Crescent Realty is, that would be the point
13 of where I was when I heard the call go out.
14 Q. Oh, boy, you really were close, weren't you, yeah?
15 A. Well, somewhat close.
16 Q. Yeah. Yeah. But, I mean, from the apartment complex. I
17 have, starting here, the apartment complex, but to get to
18 10th Avenue East, it's here; is that right?
19 A. That looks to be accurate, yes.
20 Q. Yeah. And it's -- it's just about a mile; is that right?
21 A. About a mile.
22 Q. Okay. And so when you -- and, you know, one question. I'm
23 sorry to back up. When you initially went into the
24 apartment complex -- or into Apartment No. 4, was -- do you
25 recall if the TV was still on?

1 A. I do not recall.
2 Q. Yeah, it's not in your report. It was just something I was
3 curious about. So you get over to 10th Avenue East, it
4 looks like about 2:33 in the morning, and you have a chance
5 to talk again with Ms. Tarica Carter; is that right?
6 A. Yes.
7 Q. And at this time, she's able to give you a little more
8 information about another friend of the family and of her
9 mother's named George Caldwell?
10 A. That is correct.
11 Q. And while you're there, you also talk, like you said, with a
12 couple of other family members; and one of them was a
13 Stephanie Robinson at about 2:50 a.m.?
14 A. Yes. Yes, I did.
15 Q. Okay. And Ms. Robinson let you know that she, actually, had
16 spoken with her sister on the phone about 10 p.m.?
17 A. That is correct.
18 Q. And that she had also spoken with her sister, Linda, about 2
19 p.m. the day before, where she had also told her that that
20 individual named Billy had called her?
21 A. Yes.
22 Q. Okay. So then about 3:11 a.m., you leave the family members
23 at 10th Avenue East, and you go back to the apartment
24 complex, the fourplex?
25 A. Yes, I did.

1 Q. And when you're there, you're then tasked -- or perhaps
2 maybe your own initiative, you do a search of the
3 surrounding area?
4 A. Yes. I felt that it was possible there could be some
5 evidence somewhere in that area, so I started looking in the
6 trash receptacles and elsewhere.
7 Q. And did you find anything?
8 A. No, I did not.
9 Q. And then it looks like in your report at 3:26 a.m., you then
10 cleared the scene?
11 A. Yes, I did.
12 Q. Okay. And while you were doing some of these interviews,
13 you were working with Detective Page?
14 A. Yes.
15 Q. Okay. And so Detective Page also made notes and wrote a
16 report?
17 A. I believe he did, yes.
18 MS. HIGH: Okay. I'm just checking my
19 notes. That's all I have. Thank you.
20 THE COURT: Redirect, Counsel?
21 MR. PENNER: No, Your Honor. Thank you.
22 THE COURT: All right. May the witness be
23 excused?
24 MR. PENNER: Yes, Your Honor.
25 MS. HIGH: (No audible response.)

1 THE COURT: May the witness be excused --
2 MS. HIGH: Yes.
3 THE COURT: -- subject to recall?
4 MS. HIGH: Yes. Could we have him subject
5 to recall?
6 THE COURT: Subject to recall.
7 MS. HIGH: Thank you.
8 MR. PENNER: Thank you, Your Honor.
9 THE COURT: All right.
10 THE WITNESS: [Microphone.]
11 THE COURT: Like chalk on the chalkboard.
12 THE WITNESS: Sorry about that.
13 THE COURT: All right. You may be
14 excused, sir. Thank you very much.
15 (The witness was excused.)
16 MR. PENNER: Your Honor, at this point,
17 we've run into some scheduling difficulties, and there are
18 no other witnesses available today; so, I'd ask the Court to
19 adjourn, and I know we have other scheduling issues, so --
20 THE COURT: All right.
21 MR. PENNER: -- for the Court.
22 THE COURT: All right. We discussed some
23 of these scheduling issues yesterday after we let you go.
24 Mr. Penner did have two witnesses scheduled for this
25 afternoon. One of them is ill, and the other one has

1 something that came up, so they cannot be here today and
2 will have to be here another time; so at this time, we are
3 going to dismiss you for the day.
4 And because we previously indicated we will not be in
5 session tomorrow, the 28th of January, or February 1st or
6 2nd on this case -- that's someone's previously arranged
7 paid-for travel plans for a family event -- so we'll
8 reconvene on this case on Wednesday of next week, February
9 3rd; so in the interim, you may resume your regularly
10 scheduled lives, and we'll see you Wednesday at 9:30.
11 The usual instructions: No investigation, no discussion
12 with anyone, whatsoever, notepads face down on your chairs.
13 Please remain in the jury room until Ms. Shipman comes to
14 release you.
15 (The jury was not present.)
16 THE COURT: And all of you stay healthy --
17 MR. PENNER: We'll try, Your Honor. Thank
18 you.
19 THE COURT: -- including the jury. I'm
20 more concerned about the jury staying healthy. All right.
21 Any other scheduling issues?
22 MR. PENNER: I don't believe so, Your
23 Honor. I'll provide Ms. High a list of the witnesses
24 planned for next week, and we're also working on scheduling
25 a time for Ms. Green to interrupt the case.

1 THE COURT: All right. Anything else,
2 Ms. High?
3 MS. HIGH: No, Your Honor. If you have a
4 moment afterwards, perhaps we can talk about scheduling. I
5 did find out that Ms. Green would be available, and so I
6 just need to see where that's going to fit with kind of the
7 scheduling of Mr. Penner's witnesses too.
8 THE COURT: All right. In that case,
9 then, we'll recess on this case until Wednesday, February
10 3rd, 9:30 in the morning.
11 MR. PENNER: Thank you, Your Honor.
12 (Court adjourned for the day.)
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,	)	
	)	Superior Court
Plaintiff,	)	No. 14-1-02979-1
	)	
vs.	)	Court of Appeals
	)	No. 48810-8-II
JAMES EDWARD MITCHELL,	)	
	)	
Defendant.	)	

REPORTER'S CERTIFICATE

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

I, Kimberly A. O'Neill, Court Reporter in the state of Washington, county of Pierce, do hereby certify that the foregoing transcript is a full, true, and accurate transcript of the proceedings and testimony taken in the matter of the above-entitled cause.

DATED this 4th day of August, 2016.

_____
KIMBERLY A. O'NEILL, CCR
License No. 1954

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4
5 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE
6

7 STATE OF WASHINGTON,	)	
	)	Superior Court
8 Plaintiff,	)	No. 14-1-02979-1
	)	
9 vs.	)	Court of Appeals
	)	No. 48810-8-II
10 JAMES EDWARD MITCHELL,	)	
	)	
11 Defendant.	)	

12
VERBATIM REPORT OF PROCEEDINGS
13
14 **Wednesday, February 3, 2016**
Pierce County Courthouse
15 Before The Honorable Katherine M. Stolz
Tacoma, Washington
16
17 <<<<<< >>>>>>
18
A P P E A R A N C E S
19
20 For the Plaintiff: STEPHEN M. PENNER
Deputy Prosecuting Attorney
21
For the Defendant: MARY K. HIGH
22 Attorney at Law
23
24 Kimberly A. O'Neill, CCR #1954
Official Court Reporter
25 Department 2, Room 214A
(253) 798-7281

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No. 48810-8-II

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1 BE IT REMEMBERED that on Wednesday, the
2 3rd day of February, 2016, the above-captioned cause came on
3 duly for hearing before THE HONORABLE KATHERINE M. STOLZ,
4 Judge of the Superior Court in and for the county of Pierce,
5 state of Washington; the following proceedings were had, to
6 wit:
7
8 <<<<<< >>>>>>
9
10 (The defendant was present.)
11 (The jury was not present.)
12 THE COURT: Welcome back, both of you.
13 MR. PENNER: Thank you, Your Honor, you
14 too.
15 MS. HIGH: Thank you, Your Honor.
16 THE COURT: Anything before we bring the
17 jury in?
18 MS. HIGH: You know, I think there are
19 just a couple of things that we might want to address. You
20 know, one, on the chain of custody, I did move to exclude
21 items because of the unaccounted for 65/66 of the items.
22 Judge Whitener did rule on those, but I wanted to let the
23 Court know that I would like to preserve that objection to
24 the items, especially on property sheet E that you're going
25 to have before you; and, as well, the Court, Judge Whitener,

1 is permitting, I think, both Officer Hilding Johnson and Ted
2 Schlosser to actually read from some selected portions of
3 their forensic reports or, you know, their documentation;
4 and I had objected on confrontation after Melendes Diaz and
5 confrontation and hearsay, that it was not a business record
6 because it was made in anticipation of litigation.
7 I should let you know, I did not lose that, but I wanted
8 to again just let the Court know I was renewing that
9 objection; and I didn't know if you wanted me to raise that
10 objection again in the course of their testimony as they're,
11 you know, going through those items or whether the Court was
12 comfortable with me basically just letting you know my
13 continuing objection to it.
14 THE COURT: I think it would be easier to
15 deal with it as a continuing objection here rather than --
16 MS. HIGH: I agree.
17 THE COURT: -- going into it in front of
18 the jury.
19 MS. HIGH: Yeah.
20 MR. PENNER: Thank you, Your Honor.
21 THE COURT: Judge Whitener has made her
22 ruling, and we're bound by that ruling, and, you know --
23 MS. HIGH: I agree.
24 THE COURT: -- I'm sure that, you know,
25 Mr. Penner and both of you, the testimony will now be in

1 accordance with whatever that ruling is.
2 MR. PENNER: Correct.
3 THE COURT: But, certainly, all your
4 objections are preserved throughout this entire trial as far
5 as this Court is concerned.
6 MS. HIGH: Thank you. You know, one just
7 gets, you know, anxious and --
8 THE COURT: Twitchy.
9 MS. HIGH: -- yes, twitchy, and I wanted
10 the Court to know. I believe -- and not with this witness
11 but with Officer Schlosser, I think there was some issue --
12 I don't know if you want to take it up now or if you want to
13 take it up --
14 MR. PENNER: We might as well.
15 MS. HIGH: Yeah.
16 MR. PENNER: So just to clarify back on
17 the evidence thing, so the -- what I'll plan to do for the
18 past recollection recorded is still go through and lay the
19 foundation for it, and I don't believe that Ms. High needs
20 to object in front of the jury. She can if she wants, but
21 the State acknowledges that there's already an objection to
22 that testimony and then the same with the items of evidence.
23 I'll take the witness through and move to admit,
24 understanding there's an objection that's already been
25 litigated.

1 THE COURT: All right.
2 MR. PENNER: And then the other issue, Ted
3 Schlosser is going to be the second witness. Mr. Schlosser
4 was one of the two IDENT officers who processed the scene.
5 There are two issues I believe Ms. High would like to go
6 into. This event was in 1993. In 1994, he received -- I
7 forget the exact -- but basically a formal reprimand or
8 internal incident report, something along those lines,
9 indicating that he had done something -- just basically
10 incompetence, maybe. That's probably too strong a word, but
11 he'd done his job not well and got criticized for it
12 officially. That's pretty close in time, and the State
13 won't object to that being admitted.
14 In 2006, he was ultimately terminated for basically an
15 inability to do the job anymore. It was health related. I
16 mean, it still went to competency. He was -- he was no
17 longer competent to do the job, and it was 13 years after
18 this incident. I don't think that is relevant, so I'd ask
19 the Court to exclude the 2006; or, in the alternative, we
20 have the entire document, the termination order which
21 actually, you know, wishes him well in his future and
22 indicates there's a hole -- it will leave a hole in the
23 forensic section, so either don't let it in or let in the
24 entire document so that the jury can get a full picture.
25 THE COURT: Counsel?

1 MS. HIGH: Yeah. Thank you, Your Honor.
2 I think that since it is -- the evidence handling is really
3 central to the defense in this case, and it's our contention
4 that the property was not collected, lack of documentation
5 and, you know, handled in an unprofessional manner, I would
6 like to get into Mr. Schlosser's because it shows a
7 long-term pattern of not being able to perform the job well.
8 I certainly think that we -- the one that is called to
9 criticism is the IPR from 1994, failure to perform duties;
10 and it had to do with failing to follow procedures regarding
11 return of evidence. Part of the problem is a lot of these
12 have been destroyed, so we're relying on e-mails from a
13 Mr. Kelley to Mr. Penner; and he was terminated from his
14 employment in February of '06 for his inability to perform
15 essential functions.
16 He does have -- it says two criticism IPRs, nothing --
17 but neither have to do with truthfulness; and, you know, my
18 point is it's not truthfulness. It's actually improper
19 handling of evidence, and so what I do see is we'd certainly
20 have the one from '94; and it looks like, '05, it was an
21 unsatisfactory performance that photographs were not stored
22 properly; and then it looks like he was terminated, like I
23 said, for incompetency, inefficiency, inattention, or
24 dereliction of duty that was sustained on December 14, 2005.
25 And I understand that, you know, Mr. Penner will want to

1 get out, well, there was, in addition to -- pardon me; as
2 you can tell, I'm working the cold thing here -- that prior
3 to separation, it was due to his inability to perform the
4 essential functions of the position and, certainly, if he
5 wants to get it in, that his 22-year career makes him a
6 senior investigator and his departure will leave a big hole
7 in the forensic section. I understand that, you know, that
8 is part of that document, but -- excuse me --
9 THE COURT: That's quite all right. After
10 you recessed, Ms. Shipman was really ill last week.
11 MS. HIGH: Yeah, I know. I'm moving --
12 I'm just trying to keep our trial moving. I'm going to do
13 the best I can here.
14 THE COURT: Well, we drag ourselves down
15 here, all of us --
16 MS. HIGH: Yes.
17 THE COURT: -- no matter how ill we are.
18 MS. HIGH: So, Your Honor, I guess it's --
19 my thing is, you know, certainly, the one in -- jeez, I want
20 to say '94 is relevant; but the fact that they continued
21 throughout his career that led to a termination, I think
22 it's fair game. I think we heard from Detective Kobel that
23 he wasn't the sharpest tool in the shed or something to
24 those effects, and so I would --
25 THE COURT: Tool in the chest.

1 MS. HIGH: Right. So I would ask that I
2 be able to cross-examine him on his performance deficits
3 because they are central to this case.
4 THE COURT: All right. Anything else,
5 Mr. Penner?
6 MR. PENNER: No, Your Honor.
7 THE COURT: All right. I think that that
8 is the crux of the case and the crux of the defense. I
9 think you are allowed to go into it. Obviously, he was
10 ultimately terminated. I gather we don't have the full
11 record of what was going on between '94 and '06 or '05 when
12 he was terminated, but my guess is there's more in between
13 there; but I will allow you to go into the '06 when he was
14 terminated with the understanding that, you know, Counsel is
15 going to be able to come back and do as much rehabilitation
16 as he feels is necessary because it will all be relevant.
17 MS. HIGH: Thank you.
18 THE COURT: All right. Anything else?
19 MS. HIGH: No.
20 MR. PENNER: I don't think so.
21 THE COURT: All right. Are we ready for
22 the jury then?
23 MS. HIGH: Yes.
24 MR. PENNER: Yes, Your Honor.
25 THE COURT: All right.

1 MR. PENNER: Thank you.
2 (The jury was present.)
3 THE COURT: All right. You may be seated.
4 Counsel, you may call your first witness.
5 MR. PENNER: Thank you. The State would
6 call Hilding Johnson.
7 THE COURT: Come forward, sir; watch the
8 ramp.
9 HILDING (SKIP) JOHNSON, witness herein, having been sworn
10 under oath, was examined and
11 testified as follows:
12 THE COURT: All right. If you'll have a
13 seat, sir. There's water and Kleenex to your right. You
14 can pull the chair forward and adjust the mic. Keep your
15 voice up; and when answering, answer "yes" or "no"; don't
16 just nod or shake your head or go uh-huh. Okay?
17 THE WITNESS: Yes, ma'am.
18 THE COURT: Thank you. Your witness,
19 Counsel.
20 MR. PENNER: Thank you.
21 DIRECT EXAMINATION
22 BY MR. PENNER:
23 Q. Could you state your name and spell it for the court
24 reporter.
25 A. My name is Hilding Johnson. That's H-I-L-D-I-N-G,

1 J-O-H-N-S-O-N; and I normally go by Skip.
2 Q. Thank you. And, sir, are you currently employed?
3 A. No, I'm retired.
4 Q. Where are you retired from?
5 A. The Pierce County Sheriff's Office, Forensics Unit.
6 Q. Okay. How long did you work for Pierce County Sheriff's
7 Department?
8 A. About 28 years.
9 Q. And can you let the jury know what areas you worked for the
10 Sheriff's Department.
11 A. Yeah. It was in forensics, crime scene processing, property
12 crimes.
13 Q. And was that the entire time you worked there?
14 A. Yes.
15 Q. So what year did you start?
16 A. I started in 1977.
17 Q. Okay. And what year did you retire?
18 A. 2005.
19 Q. In 1977, did you have any prior experience when it came to
20 crime scene analysis or forensics?
21 A. No, I did not.
22 Q. Can you explain to the jury a little bit about when you
23 started, how the Forensics Unit interacted with the rest of
24 the Department.
25 A. When I started, our primary job in -- and we were

1 identification officers back then. Forensics was an unknown
2 term to us. Our job was primarily photography and dusting
3 for fingerprints or collecting evidence that we'd process
4 for fingerprints. Detectives did most of the evidence
5 gathering and collection and identifying of that.
6 Q. So in a typical crime scene in the late 70s, what might your
7 duties be?
8 A. Photography, primarily, and looking for evidence that could
9 be fingerprinted.
10 Q. And if you found the possible fingerprint evidence, what did
11 you do with it?
12 A. I processed it at the scene, recovered any fingerprints.
13 Q. All right. And let's pretend we're not forensic officers.
14 What does it mean when you say "processed it"?
15 A. Generally, dusting it with fingerprint powder. I'm sure
16 you've seen that on TV, a little dusting with black powder.
17 Black powder was used then; black powder is still used
18 today.
19 Q. Was there any other type of forensic or evidence-type
20 testing back in 1977 when you started besides fingerprints?
21 A. Nothing that I was involved in in '77, the first few years
22 when I was hired on.
23 Q. Okay. Over the course of your career, did technology change
24 and impact the way you processed a crime scene?
25 A. Oh, very much so.

1 Q. Give us an example of that.
2 A. Actually, there's probably two -- two of the big examples
3 that stick out in my mind is photography. We went from
4 black and white, 4-by-5 film and 35-millimeter film to
5 digital cards today. The other is the collection of
6 evidence. It's gone from needing so much of an item to get
7 any identification of a person's DNA to today where we can
8 use strands of cotton thread.
9 Q. Okay. And in 1977, was there any such thing as DNA
10 analysis?
11 A. Not that we -- no. It was -- we knew about it, but we
12 didn't do it.
13 Q. So if you went to a crime scene and you saw some drops of
14 blood somewhere, what kind of evidence gathering or
15 documentation would you do?
16 A. In '77?
17 Q. Yeah.
18 A. Maybe photograph it.
19 Q. Okay.
20 A. Some was collected. We knew the possibility was there, so
21 we always tried to collect and preserve anything we could.
22 Q. As you move through your career, then, were there any
23 changes in the identification unit, say, in the next ten or
24 fifteen years?
25 A. Well, we became much more -- I guess we became smarter, more

1 educated. We got more involved in preserving and
2 identifying and collecting of the evidence. We used state
3 and FBI procedures that were heavily established, so
4 anything we did was under the guidelines of their process.
5 Q. And how big was the identification department when you
6 started?
7 A. There were four of us.
8 Q. Okay. And how about when you retired in 2005?
9 A. I think there was six or seven of us.
10 Q. Okay.
11 A. Yeah.
12 Q. How about 1993, what were some of the things that you would
13 typically do in a crime scene in 1993?
14 A. Well, establishing first -- most of our job and what we did
15 as a forensic investigator was property crimes, going to a
16 burglary or a theft and -- and searching for evidence,
17 fingerprints, primarily; and that's most of the jobs that we
18 did in those days. Crimes against persons, the same thing
19 was -- was done. We'd photograph and examine the scene for
20 any evidence, fingerprint evidence, trace evidence, any
21 clothing or other items that could be collected for evidence
22 for either latent fingerprint processing or other lab
23 processing.
24 Q. Okay. Did you, at any point in your career, ever collect
25 evidence hoping that maybe right now we can't test it but

1 maybe in the future we could?
2 A. Many times.
3 Q. Okay. And explain to the jury a little bit of the thinking
4 there, how you get to that point where you collect something
5 for maybe possible future analysis.
6 A. Well, I -- I don't remember the precise scene. It was a
7 death investigation scene, but there was a scene where -- it
8 was before DNA. We weren't doing any really lab work other
9 than maybe ABO typing, and it was some clothing. We
10 collected that; and as of today, we had to dry it out; and
11 once it was dried out, we packaged it up in paper, as we do
12 today, and preserve it, knowing or hoping at least at some
13 point in time something could be done with that.
14 Q. And that's a generic -- that's not this case; that's another
15 case?
16 A. It's a case of the past, yes --
17 Q. Okay.
18 A. -- a generic case, yes.
19 Q. You had mentioned something called "ABO typing." Could you
20 let the jury know what that means.
21 A. Basically, your blood type. We know -- and we all have a
22 blood type, and we know what our blood type is; and back in
23 the '70s, basically that's what we could tell you, the blood
24 type of that person that left that blood; and that was
25 basically it.

1 Q. So it was a way to exclude some people --
2 A. Exactly.
3 Q. -- but it didn't identify individuals?
4 A. No.
5 Q. Okay. Did you ever go out -- you said you did mostly
6 property crimes, some crimes against persons. Did you ever
7 do any murder scenes?
8 A. Oh, yes.
9 Q. All right. And what were some of your duties that would be
10 typical in a murder scene, say, in 1993?
11 A. The job would be to, first, walk in -- pardon me -- walk --
12 walk in the scene -- walk through the scene, make contact
13 with the detective, examine the scene for evidence,
14 determine what things should be collected, things that need
15 to be processed at the scene, what photographs should be
16 taken, an overall view of the scene.
17 Q. Okay. Do you need to get some water?
18 A. Yeah.
19 Q. All right. Let's take a minute to do that. So in 1993,
20 you've been a forensics, or IDENT, officer for 16 years;
21 right?
22 A. Correct.
23 Q. So if you show up at a murder scene, who makes the decisions
24 about -- I mean, I guess even, what is evidence? What needs
25 to be documented or collected?

1 A. It's kind of a collaborative effort between myself or any
2 other forensic investigator that could be there and
3 detectives. We worked enough with each other that we -- we
4 knew what had to be done. We knew our duties. We'd
5 interact with what a detective may have seen as opposed to
6 what I may have seen. Many times, a detective would see
7 things that he knew he wanted and be sure to identify that;
8 and so it was a collaborative effort on everybody's part as
9 to what should be collected and photographed.
10 Q. Okay. Let's just pick an item of evidence, just generic,
11 not this case but just generally, you know. It doesn't even
12 have to -- it's a pen. Okay?
13 A. Mm-hmm.
14 Q. And you think that that's relevant to the investigation for
15 some reason. What are the steps taken to document that item
16 of evidence and the collection of it?
17 A. Well, the first thing that we're going to do is identify
18 that pen at the scene in our minds and how it may relate to
19 the scene. We're then going to photograph it as it sits and
20 the area around it. We don't know maybe where it came from,
21 so we're going to try to photograph the whole area, the
22 whole room, so to speak, to put it in perspective with other
23 items in the room. Then we're going to take and put a
24 card -- a numbered card by it; so that, now, is item
25 number -- item number whatever --

1 Q. Okay.
2 A. -- and then photograph it again.
3 Q. And so let's say the card that you put was -- it was the
4 fourth card that you put down, so let's say No. 4. That
5 No. 4, is that now going to stay with the pen throughout the
6 investigation?
7 A. That becomes Item No. 4.
8 Q. Okay. So you take a second photograph with the placard next
9 to it, the number. Then what happens?
10 A. At that -- many times, it will stay there until we're
11 completely done with the entire scene, the entire --
12 anything we've identified, we've now got a placard on it;
13 and it's now been photographed, and we wait until actually
14 the last moment. We're doing okay. We've processed the
15 entire scene. We may do another walk-through to make sure
16 we've identified everything. Now, it's at that point, then,
17 we'll go through and start recovering our evidence.
18 Q. Okay. And why do you wait? Why not pick stuff up as you
19 see it, as you photograph it?
20 A. You never know what's going to come upon. The -- the pen,
21 as we go along through the scene, we may see something else
22 interact with that pen; so rather than recovering it at that
23 point, we wait and go down the line and make sure we have
24 everything.
25 Q. Okay. And as you go into a crime scene, do you collect

1 every possible item, every physical object in the room?
2 A. No.
3 Q. All right. In your career, was there ever a situation where
4 you saw something, didn't know if it was evidence or not but
5 by seeing something else went back and decided it was worth
6 documenting?
7 A. Always.
8 Q. Okay. So you've seen the object, you've made a
9 determination that it might be evidence, photographed it
10 where it sits, put placards, photograph it again. Now,
11 we're at the end of the scene. You've decided -- you've
12 identified all the evidence, and you photographed
13 everything. How were these items actually physically
14 collected at the scene?
15 A. Well, it depends on what it is. The pen would be generally
16 picked up -- pardon me -- put in a paper or a plastic bag.
17 If we're concerned with fingerprint evidence or serologic
18 evidence, it's going to go in the paper.
19 Q. And let me interrupt you. What does serologic mean?
20 A. Blood/body fluids.
21 Q. Okay.
22 A. That never goes in plastic. It always goes in paper.
23 Q. Why?
24 A. So it can breathe. If it's a blood item or serologic or any
25 body fluid, it needs to be able to breathe. If it's in

1 plastic, it's just going to sit there and rot.
2 Q. Okay. So there's different ways that you're going to have
3 to interact, but let's say you have an item that doesn't
4 have serology issues, and you're not concerned at this point
5 about preserving fingerprints. How does it get from on the
6 floor to the property room?
7 A. Well, we pick it up; generally, we have gloves on. We
8 usually don't use tongs or anything like that. We pick it
9 up very carefully; and most objects, it does go in the
10 paper, maybe a paper envelope.
11 Q. And who actually does the picking up? Is it you? Is it the
12 detective or somebody else?
13 A. If it was my evidence, I picked it up. I -- I write a case
14 number on it. I write the item number coinciding with the
15 number by the -- the placard. I write the case number on
16 it, put my initials on it; and then it goes in a bag with
17 all the other evidence we've collected at that point, and
18 then we transport it to the -- to the lab.
19 Q. Okay. And you said you write your -- the case number and
20 the item number and your initials, you said, on it. Do you
21 write it on the actual physical item?
22 A. On the envelope. I'm sorry.
23 Q. Yeah.
24 A. On the envelope or on the paper sack as the case may be.
25 Q. Okay. Do you ever write anything on an actual item of

1 evidence?
2 A. No.
3 Q. Okay. What if it's something with fingerprints you're
4 concerned about, what do you do then? How is that
5 different?
6 A. If we can, we try to process it at the scene. Generally,
7 we'll do fingerprint powder.
8 Q. Now, why do that? Why not just take it to someplace else?
9 A. Rather than disturb the evidence, possibly, if there was --
10 there was a concern that could be disturbed, the evidence
11 could be damaged in transport. We'll process it right
12 there. Sometimes we will transport it, and -- and so we
13 take a little bit more time with it and use some different
14 procedures other than the fingerprint powder. Other types
15 of evidence require other processing, maybe chemical
16 processes that need to be done.
17 Q. What kind of chemical processing would you do?
18 A. Oh, probably the -- the most known evidence we -- or process
19 we hear about is Super Glue.
20 Q. And can you explain to the jury how that works.
21 A. You take and -- and put an item in a tank, a sealed tank,
22 put some Super Glue in -- in the tank and heat it, and that
23 heat process creates a white cloud that then adheres the
24 item, including the fingerprint; and you can dust it away,
25 and the fingerprint will be there.

1 Q. Okay. What about serology evidence? You said it has to go
2 in a paper bag. Are there any other precautions that you
3 take for things that have body fluids on it?
4 A. The big thing is to get it dry.
5 Q. So at the scene, do you do anything about that?
6 A. Sometimes there isn't a lot we can do at the scene. We have
7 to try to, maybe, get the biggest paper box or something to
8 get it in, transfer it down to our lab or down the stairs.
9 We had racks, you could say, that lay a big bedspread out
10 and dry it out.
11 Q. Okay. So at the scene, did you ever have, like, a little,
12 portable hand dryer or anything like that?
13 A. No. I always wanted to air-dry it.
14 Q. All right. Once it's collected and put in the envelopes in
15 the bags -- first of all, is that done at the scene, the bag
16 markings?
17 A. Yes.
18 Q. Okay. Where do those bags go now?
19 A. Well, if it's my evidence, it's going to go in my vehicle --
20 Q. Okay.
21 A. -- and then I'm going to transfer it down to the building
22 here downstairs to our lab; and in that lab, we have a
23 series of lockers, and my evidence will go in that locker;
24 and I have the key, and I will lock it.
25 Q. Okay. Now, are there ever times when you'd collect evidence

at the scene and take it directly to the property room?
A. Usually not.
Q. Okay.
A. Once in a great while.
Q. All right. And then let's take a moment to talk about where the property room is and where this lab you're talking about is. So, where is the property room for the Pierce County Sheriff's Department?
A. It's in the basement of this building.
Q. Okay. And in 1993, where was it?
A. The same place.
Q. Okay. I'll ask, how about 1977, was it here too?
A. I don't remember.
Q. All right. But in --
A. The same place, I think.
Q. Okay. The lab, is it a forensics lab?
A. Yes.
Q. All right. Where is the forensics lab?
A. It's actually right across the street nowadays from the property room.
Q. Across the street?
A. Across the hallway.
Q. Okay. So what building is it?
A. In this building.
Q. And what floor?

1 A. The basement.
2 Q. Okay. Just across the hall from the property room?
3 A. Correct.
4 Q. All right. And that was true in 1993?
5 A. Yes.
6 Q. And true today?
7 A. Yes.
8 Q. All right. Tell the jury why you would not take the item
9 that you've collected straight to the property room. Are
10 there different reasons why you might not?
11 A. Oh, there's so many reasons, yeah.
12 Q. All right. What's one reason?
13 A. It may have quite a quantity, maybe I've got a dozen items;
14 and if it's an elaborate scene, I want to examine those
15 items. I want to carefully fill out a property report,
16 itemize each item, identify it, examine those items. I want
17 to take care that I know everything that needs to be done is
18 done before I get them to the property room --
19 Q. Okay.
20 A. -- not that I can't get it back out, but I'd rather do it
21 before than later.
22 Q. All right. What's the security, then, for the forensics
23 lab? Who has access to it?
24 A. Only the forensic investigators.
25 Q. And in 1993, how many forensic investigators were there?

A. Five, six of us.
Q. Okay. All right. Is the door always -- I mean, is it open during business hours, 8:30 to 4:30? Can the public enter it?
A. No. It's always locked; only we have the key.
Q. What about a detective?
A. No.
Q. A patrol officer?
A. No.
Q. What about the people in the property room?
A. No.
Q. Okay. Can you describe to the jury, then, what areas there are inside this forensic lab.
A. Well, we have a -- we have a -- quite a large room where we can lay things out, examine it. We have a couple vent hoods that we can put evidence in to process it for fingerprints, examining tables when we take a look at it. Our lockers are down there, and they're quite large we can put items of evidence in.
Q. And you mentioned something about drying blood evidence?
A. And there is another room in there that is a -- it's actually a sealed room. It's completely sealed tight, so we can actually turn on a hose -- there's a faucet in there, and we can actually turn on a hose on that and can wash it down. We have PVC piping in there that we put together to

1 create a draft, so we can take -- once we lay an item of
2 evidence on it, if it is blood, blood gets on that -- that
3 PVC, we can then come by and wipe it down to sterilize it.
4 Q. All right. Why do you have to dry out items that have blood
5 or body fluids on them? Why can't you just give that to the
6 property room?
7 A. Well, if you ever left just a piece of meat out, you know
8 what happens to it. It starts getting dry. It turns very
9 bad. Even just a little bit of blood, it will just rot.
10 It -- it becomes useless as evidence.
11 Q. All right. And so you've got a drying room. You've got
12 lockers. You've got an examination area. I want to talk
13 about the lockers for a little bit. Can you let the jury
14 know -- you said they're large. How large are they? Give
15 us an approximation either with feet or compare it to
16 something.
17 A. Oh, I'm going to say they're about -- about four foot by,
18 say, three foot by two or three foot --
19 Q. Okay.
20 A. -- quite large.
21 Q. Pretty big?
22 A. Pretty big.
23 Q. And do they have locks on them?
24 A. Yes.
25 Q. Explain to the jury how that works.

1 A. It's a -- it's a basic key lock, which I have the key. The
2 key is in the locker if it's not used; and once I use it and
3 put something in it, I take the key and I lock it; and then
4 I had my own personal locker -- it is locked -- that only I
5 have a key. Then that key goes in that locker there.
6 Q. Okay. So you've now put something in the locker. Can one
7 of the other forensics officers get to it?
8 A. No.
9 Q. Is there a way for them to get to it?
10 A. Under normal circumstances, no. They'd have to cut the
11 bolt -- the padlock.
12 Q. Okay. Or you'd have to give them the key?
13 A. Yeah.
14 Q. All right. How many of these lockers are there?
15 A. I want to say there's six. It's been awhile. I think
16 there's six.
17 Q. All right. And why have a locker inside an already locked
18 room?
19 A. To preserve the integrity of the evidence, so there's no
20 question that is my evidence; I have control of it. Nobody
21 else, even another forensic investigator, has control of the
22 evidence unless I give them permission to; and that has
23 happened. We work these cases together, so occasionally
24 we'll interact with them; and then they will also look at
25 that evidence.

1 Q. Now, you mentioned also wanting to fill out a property sheet
2 as to each item?
3 A. Yes.
4 Q. All right. Do you do that at the scene, or do you do that
5 in the -- in the forensic setting?
6 A. Actually, we've done it both ways.
7 Q. Okay. Did you have a standard practice that you always did
8 or usually did?
9 A. Well, if it's a big scene and a lot of evidence, many times
10 our detectives were kind enough to sit there; and as we
11 picked things up, they would fill out the -- the items of
12 evidence. They wouldn't fill in my name and all that; but
13 they would fill in the item of evidence, one, two, three,
14 four.
15 Q. Okay. And are those -- one, two, three, four -- is that the
16 same number as the placards in the photographs?
17 A. Yes.
18 Q. Okay. Eventually, would this property make its way over to
19 the property room?
20 A. At some point in time when we were done with all the
21 processing that needed to be done, and the detectives were
22 satisfied with anything that they thought should be done, we
23 would, then, yes, transfer it to the property room.
24 Q. Okay. What are the hours of the property room?
25 A. Hmm, I want to say they were 9:00 to 5:00.

1 Q. And I should ask it a different way: Is the property room
2 open 24 hours?
3 A. No.
4 Q. Okay. Do you have access to the forensics lab 24 hours?
5 A. Yes.
6 Q. Okay. And if you select a locker, do you put one item in
7 each locker or one case in each locker or all your cases in
8 your locker?
9 A. I put a particular case in a locker.
10 Q. Okay.
11 A. And generally, all the items can go in one or both the
12 lockers. Sometimes I might need two lockers for the same
13 case.
14 Q. Would you ever mix two different cases into the same locker?
15 A. Usually, no. No. No.
16 Q. Why not?
17 A. Contamination of evidence. You don't want to cross -- even
18 though the bags are marked with a case number and
19 everything, you don't want to get them mixed up.
20 Q. Okay. And the practices that you've described to the jury,
21 are those consistent, pretty much throughout your career,
22 with the Sheriff's Department?
23 A. From the day I began, the packaging, care and -- of evidence
24 and -- and submitting it has -- has, basically, changed very
25 little.

1 Q. Okay. Now, one area, though, do you seal -- in 1993, did
2 you seal the bags of evidence? Once you collected an item
3 and put it in a paper bag, did you seal it?
4 A. When I was -- when I was turning it in to the property room,
5 I don't remember if we're using evidence tape back then or
6 not. I think we were, but I -- I don't recall if we did.
7 Q. Was there a period in your career when you weren't using
8 evidence tape?
9 A. Yes.
10 Q. Okay. And why not?
11 A. It -- it wasn't -- we just stapled the bag, and we initialed
12 the bag; and basically that was it.
13 Q. Okay. And then eventually by the time you retired, you
14 started to use crime scene sealing tape?
15 A. Correct.
16 Q. All right. What I'd like to do now is focus in on this
17 particular case in 1993. Now, you've had a chance, before
18 testifying, to review your reports, look at photographs and
19 things like that; is that correct?
20 A. Yes, somewhat.
21 Q. And as you sit here today, do you have any independent
22 recollection of this particular crime scene?
23 A. No.
24 Q. Anything at all?
25 A. I have a collage vision of a part of the scene, and that's

1 it.
2 Q. Okay. How many murder scenes did you process in your
3 career?
4 A. I -- I have no idea. In a year, we could do three to four,
5 a half a dozen or so.
6 Q. And do you recall in 1993 or the early 90s, were there more
7 murders in that time period than there were in any other
8 part of your career?
9 A. I -- I do recall that in the 90s, we had quite a -- quite an
10 influx of scenes -- death investigation scenes, not just
11 murder scenes but death investigation scenes; and there were
12 quite a few, yes.
13 Q. Okay. Is it your standard practice to write a report about
14 what you did?
15 A. Correct.
16 Q. I'm going to hand you what's been marked as Exhibit 45, and
17 I'm going to ask you if you recognize that document.
18 A. (Reviewing.) This is my report of the scene.
19 Q. And how do you know that?
20 A. My signature is down at the bottom.
21 Q. Okay. Does it have your name on it?
22 A. Yes.
23 Q. Badge number?
24 A. Yes.
25 Q. And what's the -- there's an incident number associated with

1 this case; correct?
2 A. Yes.
3 Q. What's the incident number?
4 A. It's 930371041.
5 Q. And that number, is that unique to this particular
6 investigation?
7 A. Yes, it is.
8 Q. All right. How do you know that? How are those numbers
9 determined?
10 A. The -- the 93 is the year. The 037 is the 37th day of the
11 year.
12 Q. Mm-hmm.
13 A. 1041 is the -- it's the 1041 case of that day.
14 Q. So the 1,041st call-out that day?
15 A. It was assigned a case that particular day.
16 Q. Okay. All right. I'm now going to show you what's been
17 marked as Exhibit 82. Do you recognize that exhibit?
18 A. This is my property report of the evidence recovered at the
19 scene.
20 Q. And how do you know that?
21 A. Again, my initials and my signature are on it and badge
22 number.
23 Q. And does it have the same incident number?
24 A. Yes.
25 Q. Okay. What was your practice generally in terms of when you

1 wrote your report; in terms of, how soon after you processed
2 the scene would you generally write your report?
3 A. Well, it's generally done that day. This call occurred
4 early in the morning, and I actually didn't clear the scene
5 until mid afternoon, so -- but probably sometime that day, I
6 started on the log and got it done.
7 Q. Okay. And now it's computerized, but back in 1993 when you
8 finished the report, how was it turned in?
9 A. I took a copy of it, and they were taken up to the records
10 office in the -- that was on the second floor of this
11 building at that time.
12 Q. Okay. And does your report indicate what date you completed
13 it?
14 A. (Reviewing.) Yes, it did. Yeah. The day it was completed
15 and turned in.
16 Q. What day was it completed and turned in?
17 A. In this case here, it was February 11th.
18 Q. Okay. So four days after?
19 A. Four days later.
20 Q. All right. When you would write a report, what was the
21 purpose of writing a narrative report?
22 A. To describe my -- the series of events I went through to
23 process that scene, the -- and when I did the photography
24 and so on.
25 Q. Okay. Was it important to be accurate in your reports?

1 A. As accurate as possible, yes.
2 Q. Okay. And did you try to include as much information as you
3 thought was relevant?
4 A. I tried to describe the scene somewhat, evidence that was
5 there that was collected.
6 Q. On this particular case for that particular report, the
7 information that's in there, was that information that you
8 had a memory of four days after you did it?
9 A. Of course, this is taken from an initial -- probably a
10 handwritten scribble I would have done, maybe; or I quickly
11 typed it up. Yes. This is a memory that I have based on
12 that, yes.
13 Q. Okay. So let me ask it a different way: When you wrote the
14 report, did you have a memory back then, even though you
15 don't have one now?
16 A. Oh, yes.
17 Q. Okay. And you've had a chance to review it; correct?
18 A. Yes.
19 Q. And it hasn't really jogged your memory; is that right?
20 A. No. No.
21 Q. All right. But do you believe that it was accurate at the
22 time that you executed it?
23 A. Oh, I don't doubt that a bit.
24 MS. HIGH: I'm going to object, Your
25 Honor. I believe that the accuracy is for the jury to

1 determine.
2 THE COURT: I couldn't hear the last part.
3 MS. HIGH: I'm sorry. I believe that the
4 accuracy is going to be something that the jury is going to
5 determine.
6 THE COURT: I'll sustain the objection.
7 Just ask the question, all right, without offering opinion.
8 MR. PENNER: All right.
9 Q. (By Mr. Penner) Did you generally try to be accurate in
10 your reports?
11 A. Always, yes.
12 Q. Is there anything, after reviewing that report, that makes
13 you believe it might be inaccurate?
14 MS. HIGH: And again, Your Honor, it's
15 going to call for speculation. He just indicated he has no
16 memory of this crime scene.
17 THE COURT: I'll sustain the objection.
18 MR. PENNER: All right.
19 Q. (By Mr. Penner) I'm going to direct your attention, then,
20 to Page 2 of your report and the last paragraph there a
21 little over halfway down. Do you see -- it starts with, "I
22 proceeded"?
23 A. Yes.
24 Q. All right. Could you please read that paragraph to its
25 completion at the end of Page 3.

1 A. "I proceeded to collect what appeared to be blood from
2 several areas of the residence. This included the apparent
3 blood on the bathroom floor and carpet samples with apparent
4 blood from the hallway outside the bathroom door. Samples
5 collected in the bedroom included areas of carpet from the
6 floor, apparent blood behind the door to the bedroom, the
7 edge of the vanity, and a drawer, as well as above the
8 mentioned -- the above-mentioned papers with apparent blood.
9 Also collected was a child's coat which had apparent blood
10 spatter on it. Other samples collected were on the wall in
11 the hallway across from the bathroom, the entry hallway wall
12 next to the living room and the wall next to the kitchen
13 just above and to the right of the victim's feet. See the
14 property report for a complete list of evidence recovered.
15 I took a series of photographs prior to actual recovery of
16 these items with numbered cards next to the items collected.
17 The refrigerator drawer was also collected as an item of
18 evidence."
19 Q. Thank you. Now, Mr. Johnson, you also, in addition to
20 having a chance to review your report and the property
21 sheet, had a chance to look at some photographs associated
22 with this case; is that correct?
23 A. That's correct.
24 Q. All right.
25 MR. PENNER: If I could have a minute,

1 Your Honor.
2 (Pause while counsel confer.)
3 THE COURT: Counsel, it's almost a quarter
4 to 11:00, and I realize that we haven't been in session all
5 that long; but what I propose is we go ahead and give the
6 jury their morning recess while you continue to look through
7 the photos. That way we don't have to interrupt when you're
8 putting them on for --
9 MR. PENNER: Thank you, Your Honor.
10 THE COURT: -- publishing them.
11 MR. PENNER: Thank you.
12 THE COURT: All right. The Court is going
13 to give you your morning recess, no discussion, no
14 investigation, notepads face down on your chairs. Please
15 remain in there until the judicial assistant, Ms. Redmond,
16 comes to release you, our substitute judicial assistant for
17 the day.
18 (The jury was not present.)
19 THE COURT: All right.
20 MR. PENNER: Thank you, Your Honor.
21 (A recess was taken.)
22 (The defendant was present.)
23 (The jury was not present.)
24 THE COURT: All right. Nothing before we
25 bring the jury in, I assume?

1 MS. HIGH: No. Thank you.
2 THE COURT: Okay.
3 (The witness returned to the stand.)
4 THE COURT: What are the numbers on the
5 next batch of --
6 MR. PENNER: It's 1 through 27.
7 THE COURT: 1 through 27. All right.
8 MS. HIGH: Thanks.
9 (The jury was present.)
10 THE COURT: All right. You may be seated.
11 Thank you. All right. Counsel --
12 MR. PENNER: Thank you.
13 THE COURT: -- you have the floor.
14 MR. PENNER: All right.
15 DIRECT EXAMINATION (Cont'd.)
16 BY MR. PENNER:
17 Q. Mr. Johnson, I'm going to hand you now a group of
18 photographs; and I'm going to ask you to take a look at them
19 and let me know if you're able to identify these as being
20 related to the scene.
21 A. The first -- do you want me to identify them or just go
22 through them?
23 Q. Well, what's the -- what's the very first photograph?
24 A. The first photograph is my placard with the case number, my
25 initials, and the date.

1 Q. Okay. And is it this case number?
2 A. It is, yes.
3 Q. Okay. And what's the date?
4 A. 02/07 -- February 7th of 1993.
5 MR. PENNER: All right. Your Honor, move
6 to admit Exhibit 1.
7 THE COURT: Any objections?
8 MS. HIGH: No, Your Honor.
9 THE COURT: All right. No. 1 will be
10 admitted.
11 (Plaintiff's Exhibit No. 1 was admitted.)
12 MR. PENNER: Move to publish, Your Honor.
13 THE COURT: Any objections to publication?
14 MS. HIGH: No, Your Honor.
15 THE COURT: All right. You may publish;
16 and, again, you don't have to ask me each time you put that
17 photo back up.
18 MR. PENNER: Thank you.
19 Q. (By Mr. Penner) So, again, what is it that we're looking
20 at?
21 THE COURT: Well, now it's a little
22 bleached out.
23 MR. PENNER: Yeah.
24 Q. (By Mr. Penner) All right. Well, to the best we can, what
25 is it that we're looking at here?

A. That's a handwritten placard that I wrote out, again with the case number across the top, my initials, and then the date.
Q. And what's the purpose of taking that photograph?
A. It was to identify the next sequence of pictures on that roll of film in this case so that I know that entire roll is this case.
Q. Okay. All right. What's the next picture?
A. It's a picture of our victim in the kitchen.
Q. Okay. And there's two of those, right, 2 and 3?
A. 2 and 3, yes.
Q. Okay. Can I have those?
MR. PENNER: And for the record, I'm publishing Exhibit 2.
THE COURT: Those, you already asked; and they've already been published --
MR. PENNER: Yeah.
THE COURT: -- so you don't have to ask each time.
MR. PENNER: I was just making a record of it, Your Honor.
THE COURT: All right.
MR. PENNER: And so for the record, I'm publishing Exhibit 2.
Q. (By Mr. Penner) And then to the best -- and this is the

1 same case that we're talking about here?
2 A. That is correct.
3 Q. All right. What's the next photograph in that series?
4 A. The next photograph is a picture of a phone and some other
5 kitchen items on the floor --
6 Q. All right.
7 A. -- including some apparent blood.
8 Q. And what's the exhibit number?
9 A. Exhibit 4.
10 MR. PENNER: Thank you. And for the
11 record, I'm publishing Exhibit 4.
12 Q. (By Mr. Penner) And, again, Mr. Johnson, were you the one
13 who took the photographs at this scene?
14 A. I am.
15 Q. Okay. Was there any other IDENT officer with you?
16 A. There was another IDENT officer, yes.
17 Q. And who was that?
18 A. That was Mr. Ted Schlosser.
19 Q. All right. Did he take any photographs?
20 A. He didn't take any still photographs; he took video.
21 Q. Okay. All right. And in terms of this picture, are you the
22 one who makes the determination about whether to photograph
23 this or not?
24 A. Again, in collaboration between myself and the detective,
25 but yes.

1 Q. Okay. And you arrived after the paramedics; correct?
2 A. After what?
3 Q. After the paramedics?
4 A. Yes.
5 Q. Okay. Thank you. What's the next photograph, Exhibit 5?
6 A. It's showing the coin between the victim's legs. It's
7 showing a pair of -- a set of keys, a coin, and some
8 apparent blood on the floor; and that's No. 5.
9 MR. PENNER: All right. And it has,
10 previously, been admitted; and for the record, I'm
11 publishing it.
12 Q. (By Mr. Penner) Why would you take a picture of this?
13 A. The -- typically, of the keys or a question mark on that, I
14 believe, if I remember something about the reports and
15 something about that, I think, and then the blood, of
16 course, apparently.
17 Q. Okay. All right. The next exhibit, Exhibit 6 --
18 A. Yes.
19 Q. -- what does that depict?
20 A. It's the refrigerator door with apparent blood on it.
21 MR. PENNER: All right. Your Honor, move
22 to admit Exhibit 6.
23 THE COURT: Any objections?
24 MS. HIGH: No, Your Honor.
25 THE COURT: No. 6 will be admitted.

1 (Plaintiff's Exhibit No. 6 was admitted.)
2 MR. PENNER: All right. And move to
3 publish, Your Honor.
4 THE COURT: Any objections to publication?
5 MS. HIGH: No, Your Honor.
6 THE COURT: No. 6 will be published.
7 Q. (By Mr. Penner) Can you describe to the jury what we're
8 looking at here.
9 A. That's the refrigerator in the kitchen and showing a
10 considerable, what is, apparent blood on the door.
11 Q. Okay. Let's take a look at Exhibit 7.
12 A. This is a wall with apparent blood on that wall.
13 Q. Okay.
14 MR. PENNER: Your Honor, move to admit
15 Exhibit 7.
16 THE COURT: Any objection?
17 MS. HIGH: No, Your Honor.
18 THE COURT: Any objections to publication?
19 MS. HIGH: No, Your Honor.
20 MR. PENNER: Thank you.
21 THE COURT: All right. It's admitted and
22 published, No. 7.
23 (Plaintiff's Exhibit No. 7 was admitted.)
24 Q. (By Mr. Penner) And, again, you're the one who makes the
25 determination about whether to take a photograph of

1 something?
2 A. Yes.
3 Q. All right. And what's the evidentiary value here? It may
4 be obvious; but for the record, could you state it.
5 A. Well, it's apparent blood; and at some point in time, we
6 were going to probably collect this blood. It looks like a
7 hand, appears to be, but that's for later judgment.
8 Q. Okay. All right. And I notice at this point, we don't see
9 any numbered placards?
10 A. That's correct.
11 Q. And that -- like what you said before, you take photographs
12 first?
13 A. Correct.
14 Q. All right. Exhibit 8, what's that?
15 A. This is a picture of the bathroom.
16 MR. PENNER: Okay. Your Honor, move to
17 admit Exhibit 8.
18 THE COURT: Any objection?
19 MS. HIGH: No, Your Honor.
20 THE COURT: No. 8 will be admitted.
21 (Plaintiff's Exhibit No. 8 was admitted.)
22 MR. PENNER: Move to publish.
23 THE COURT: Any objection to publication?
24 MS. HIGH: No, Your Honor.
25 THE COURT: All right. It will be

published.

Q. (By Mr. Penner) Now, in this photograph, I'm not seeing anything that jumps out immediately as blood evidence or anything like that. Why would you take a picture of the whole bathroom?

A. We generally photograph the entire scene before we do any processing so we can see it as it is at that point in time. I don't see anything right at the moment. There may have been something later on.

Q. Okay. But, for example, we can see what the floor is in case we have a close-up later?

A. That's correct.

Q. All right. What's Exhibit No. 9?

A. A picture of apparent blood on the floor with a scale next to it, a bedroom scale.

MR. PENNER: Your Honor, the State moves to admit Exhibit 9.

THE COURT: Any objection?

MS. HIGH: No, Your Honor.

MR. PENNER: And move to publish.

THE COURT: Any objection to publication?

MS. HIGH: No, Your Honor.

THE COURT: Okay. No. 9 will be admitted and published.

(Plaintiff's Exhibit No. 9 was admitted.)

1 Q. (By Mr. Penner) Tell us a little about this photograph,
2 what we're looking at.
3 A. I'm sorry?
4 Q. Could you tell me about this photograph, what it is that
5 we're seeing here, what that scale is.
6 A. We're seeing apparent blood, and I put a scale down there to
7 give some sense of size and how big a spot it is.
8 Q. All right. What's Exhibit 10?
9 A. It's a picture in the bedroom. Do you want me to include
10 both of these?
11 Q. Let's start with 10.
12 A. 10 is showing the vanity in the apartment here.
13 Q. All right. And actually, can I see 11.
14 MR. PENNER: These have both been,
15 previously, admitted; so for the record, I'm publishing
16 Exhibit 10.
17 Q. (By Mr. Penner) And, again, what are we seeing here?
18 A. It's a picture in the bedroom showing the dresser, the
19 mirror, and part of the bed.
20 Q. All right. And Exhibit 11?
21 A. And showing the dresser and then the door going out into the
22 hallway.
23 Q. It's the same room, though; right? It's the same room?
24 A. It's the same room, yes.
25 Q. Do you have Exhibit 12 with you?

1 A. It's showing the -- on the floor some shoes and a basket
2 with some papers and things and apparent blood on some of
3 the papers.
4 MR. PENNER: So 12, 13, and 14 have been,
5 previously, admitted but, again, publishing 12.
6 Q. (By Mr. Penner) What are we seeing here?
7 A. A big thing, I think, in that picture, there, is a basket
8 with some envelopes and apparent blood on those envelopes,
9 paper envelopes in the basket.
10 Q. Mm-hmm. And Exhibit 13, what's that?
11 A. A close-up of those envelopes with apparent blood.
12 Q. And Exhibit 14, what do we see here?
13 A. I believe it's a jacket. I think that's -- I'd have to look
14 at my report, but it may have had some blood on it; I'm not
15 sure.
16 Q. Okay. And I think you've already read in your report about
17 the jacket?
18 A. Yes.
19 Q. You already read in your report about the jacket?
20 A. Yes.
21 Q. Okay. The next number, is that 15?
22 A. Yes.
23 Q. Okay.
24 A. This shows items 1 and 2 with placards next to them.
25 MR. PENNER: Okay. This has, previously,

1 been admitted.
2 Q. (By Mr. Penner) So tell the jury what it is that we're
3 looking at here as it pertains to what steps you took.
4 A. Okay. These are two items of evidence. They're on the
5 floor; and by my report, they were in the bathroom, and I'm
6 photographing them in their location with the coinciding
7 item number that would go with those items once I recover
8 it.
9 Q. All right. So let's take a look, again, then, at Exhibit 9.
10 So is that --
11 MR. PENNER: So for the record, both 9 and
12 15 are being shown to the jury.
13 Q. (By Mr. Penner) So is this an example of kind of the
14 before-and-after, when you take it before the placard and
15 after?
16 A. That is correct.
17 Q. All right. Do you still have your property sheet -- that
18 property sheet in front of you?
19 A. I do.
20 Q. Okay. We see a 1 and a 2 here. How was that, then,
21 memorialized on the property sheet?
22 A. Well, item 1 corresponds with item 1 on the property sheet,
23 item 1 being the sample that was recovered from the floor.
24 Q. Okay. And what's 2?
25 A. 2 is a sample that was recovered from the bathroom door.

1 Q. And on the property sheet, did you write 1? What did you
2 write for the property sheet under 1?
3 A. 1 is an unknown sample with a control from the bathroom
4 floor.
5 Q. Okay. Now, I want to take a moment to talk about numbering
6 of items of evidence. Let's say you, in this case or any
7 other case, collect twenty items of evidence. How are you
8 going to number those?
9 A. 1 through 20.
10 Q. All right. Now, at the same time that you're doing that,
11 another officer is outside and finds some stuff of
12 evidentiary value, potentially, maybe in a dumpster, and
13 collects three things. How is that officer going to number
14 them?
15 A. First of all, he shouldn't collect them.
16 Q. All right. Let me ask it a different way: So then you've
17 done that, and the next day you come back and you collect
18 those. Are you going to start at 21, or are you going to
19 start with 1?
20 A. 21.
21 Q. Okay.
22 A. If it's a different day, we're probably going to do -- start
23 over again on a different set -- different series of numbers
24 starting with No. 1, yes.
25 Q. Okay. And what if -- what if Ted Schlosser is the one who

1 goes out the next day and collects three items. How is he
2 going to number them?
3 A. He's going to start with Item No. 1.
4 Q. So how do I distinguish between the Item No. 1 that you did
5 inside and the Item No. 1 that Mr. Schlosser did outside?
6 A. Well, the -- the numbers, the initials, my initials on
7 the -- on the item number, photographs, wherever it was
8 located.
9 Q. Does the property room do any kind of numbering system to
10 help us distinguish between those, or did they in '93?
11 A. The property room didn't distinguish where they were
12 recovered. We distinguished that, where they were
13 recovered.
14 Q. All right.
15 THE COURT: You might want to pull the mic
16 closer because you tend to drop down a bit there, so --
17 Q. (By Mr. Penner) Did items ever have letters associated,
18 A-1, A-2, B-1, B-2?
19 A. I can say maybe at times they may have done that; as a
20 routine, no.
21 MR. PENNER: All right. I'm going to ask,
22 then, if I could, Your Honor. At this point, I'm going to
23 show the witness Exhibit 97. All right.
24 Q. (By Mr. Penner) And I'm going to ask you to, maybe, keep
25 the property sheet in front of you. Can you examine that

1 and tell us, generally speaking, what did I just hand you?
2 A. It's a sealed Ziploc bag that's got evidence tape across it
3 with the item number and case number on it.
4 Q. Okay. Now, inside the Ziploc bag, the clear Ziploc bag, is
5 there another envelope?
6 A. There's a paper envelope.
7 Q. Okay. Are there any markings on that?
8 A. Yes. This has -- it's got my initials, the date. There's a
9 control and an unknown sample inside of No. 1.
10 Q. Okay. What's the date? You said it has "the date," but
11 could you state that for the record.
12 A. 02/07 of '93.
13 Q. Okay. So does that appear to be item 1 that we're seeing up
14 on the screen now?
15 A. Yes, it is.
16 MR. PENNER: All right. Your Honor, the
17 State moves to admit Exhibit 97.
18 MS. HIGH: And, Your Honor, that's subject
19 to my objection to the chain of custody.
20 THE COURT: Your previous objections --
21 MS. HIGH: Exactly.
22 THE COURT: -- are noted for the record.
23 MS. HIGH: Yes.
24 THE COURT: All right. It will be
25 admitted.

1 MR. PENNER: Thank you.
2 (Plaintiff's Exhibit No. 97 was admitted.)
3 Q. (By Mr. Penner) So this being an example, we saw photograph
4 9 here; we have the blood drop?
5 A. That's correct.
6 Q. And then photograph 15, the blood drop with the placard next
7 to it?
8 A. Correct.
9 Q. And then Exhibit 97 has Item No. 1 on it?
10 A. That's correct.
11 Q. All right. Thank you. What's the next photograph you have?
12 And I'll take these.
13 A. These are items 3, 4, 5, and 16.
14 MR. PENNER: All right. Your Honor, the
15 State moves to admit Exhibit 16.
16 THE COURT: Any objections?
17 MS. HIGH: No, Your Honor.
18 THE COURT: No. 16 will be admitted.
19 (Plaintiff's Exhibit No. 16 was admitted.)
20 THE COURT: Are you moving to publish too?
21 MR. PENNER: May I publish, Your Honor?
22 I'm sorry. Move to publish.
23 THE COURT: Any objections?
24 MS. HIGH: No, Your Honor.
25 THE COURT: All right. It will be

1 published.
2 Q. (By Mr. Penner) All right. And 3, 4, and 5, what are
3 these?
4 A. They are unknown stains, apparent blood; and each one of
5 those placards indicates where the stains are.
6 Q. Okay. What's the next photograph?
7 A. It's a photograph showing items 6, 7, 8, and 9 in the
8 bedroom.
9 Q. Thank you.
10 MR. PENNER: It's previously been
11 admitted. For the record, I'm publishing Exhibit 17.
12 Q. (By Mr. Penner) So item 6, what's that described as on the
13 property sheet?
14 A. Item 6 is carpet samples; and this is where I did mark A, B,
15 and C, stain unknown. D is a sample of the carpet, a few
16 areas of unknown stain.
17 Q. Okay.
18 A. The placard is down by the 6.
19 Q. What about item 7?
20 A. Item 7 is an unknown sample from the bottom drawer of the
21 vanity in the master bedroom.
22 Q. And what's item 8?
23 A. It is also an unknown sample on the vanity.
24 Q. All right. I'm going to hand you what's, previously, been
25 marked as Exhibit 98; and, first, I'm going to ask you, for

1 the record, just generally, what is it?
2 A. A sealed paper -- Ziploc bag with evidence tape on it.
3 Q. All right. And is there anything on it to indicate that
4 it's related to this case?
5 A. The case number is on it and my initials and the date.
6 Q. And what's the date?
7 A. It is February 7, 1993.
8 Q. All right. And is there anything to indicate that it's any
9 of these items, 6, 7, or 8?
10 A. It has -- it is Item No. 7 marked with a tag on the item.
11 MR. PENNER: Thank you. Your Honor, the
12 State moves to admit Exhibit 98.
13 THE COURT: Any objection?
14 MS. HIGH: Subject to my standing
15 objection.
16 THE COURT: All right. Subject to the
17 standing objection, the Court will, at this time, admit
18 No. 98.
19 (Plaintiff's Exhibit No. 98 was admitted.)
20 Q. (By Mr. Penner) Okay. And let's take a moment here. What
21 we're looking at, really, is what? I mean, what do you have
22 in your hand?
23 A. A Ziploc bag with my -- actually, it's a paper envelope --
24 Q. All right.
25 A. -- with tape across the top of it.

1 Q. And it's --
2 A. It's the envelope I packaged my evidence in.
3 Q. Now, there's some -- there's some red evidence tape on that.
4 Did you put that on there?
5 A. I didn't put any of this tape on here now. That was
6 probably put on by the lab when they examined it.
7 Q. Okay. And so there's some blue evidence tape; right?
8 A. Blue and some red, yes.
9 Q. And there's some stickers that got added later?
10 A. That's correct.
11 Q. All right. There's a lot of stuff added to that; right?
12 A. A lot of stuff added.
13 Q. All right. But inside the paper envelope that you did,
14 what's inside when you collect what's described as item 7,
15 these, you know, blood samples? What do you actually put
16 into a little envelope like that?
17 A. You know, I'm -- I'm not sure exactly what this is,
18 precisely.
19 Q. No, I didn't ask -- let me ask it a different way: If
20 you're collecting blood in the little paper envelope, how do
21 you do that?
22 A. If it's something I can, I'm going to package it in what we
23 call scale paper, a little wax-type paper; so I'm going to
24 lay it in that -- in that paper -- it's called a diaper
25 wrap -- and fold it up in that and then put it in this.

1 Q. Okay. And when it goes into the property room, is it just
2 the envelope; or does it have all this other tape and stuff
3 on it?
4 A. Just my envelope.
5 Q. All right. And all the other stuff is from when people
6 touch it later?
7 A. That's correct.
8 Q. Okay. I'm going to hand you what's now been marked as
9 Exhibit 99. I'm going to ask you to take a look at that
10 paper envelope and let me know whether it seems to be
11 related to this case.
12 A. This is my envelope that I packaged Item No. 8 in. It's got
13 my initials, the date, my unit number, and the case number.
14 Q. Okay. And what item was it again?
15 A. No. 8.
16 Q. All right. And in the photograph, we can see an 8; correct?
17 A. That's correct.
18 Q. All right. And so does it appear to be the same thing that
19 was collected under item 8 in the photograph?
20 A. That's correct.
21 Q. And what's the description again from the property sheet?
22 A. Unknown sample on vanity.
23 MR. PENNER: All right. The State moves
24 to admit Exhibit 99.
25 THE COURT: Any objections, subject, of

1 course, to the long-standing objection?
2 MS. HIGH: Yes. Thank you.
3 THE COURT: All right. It will be
4 admitted, No. 99.
5 (Plaintiff's Exhibit No. 99 was admitted.)
6 Q. (By Mr. Penner) All right. And, again, this would be blood
7 scrapings, basically?
8 A. Correct.
9 Q. All right. What's the next photograph you have?
10 A. 18, and this is taken in the bedroom showing the -- some of
11 the same items in that photograph, the vanity and the jacket
12 on the door.
13 MR. PENNER: For the record, item 18 has
14 already been admitted; and I'm publishing it.
15 Q. (By Mr. Penner) So what placards can we see here?
16 A. We can see 7, 8, 9, 10, and 11.
17 Q. All right. All right. And I'm going to hand you now what's
18 been marked as Exhibit 100. Can you describe, for the
19 record, what that is.
20 A. This is a paper sack with my writing on it, case number, my
21 unit number, the date, and the --
22 Q. Okay. And does it appear to be related to this case?
23 A. Yes, it is. It has my --
24 Q. And how do you know --
25 A. -- handwriting on it.

1 Q. And how do you know that?
2 A. My initials, my writing.
3 Q. Okay. And what item is it?
4 A. Item No. 9.
5 MR. PENNER: Okay. Your Honor, the State
6 moves to admit Exhibit 100.
7 THE COURT: Any objections?
8 MS. HIGH: Your Honor, just my --
9 THE COURT: Subject to the long-standing
10 objection, yes.
11 MS. HIGH: Yes.
12 THE COURT: All right.
13 MS. HIGH: Thank you.
14 THE COURT: Subject to that, 100 will be
15 admitted.
16 (Plaintiff's Exhibit No. 100 was admitted.)
17 Q. (By Mr. Penner) Okay. And, again, what's the description
18 for item 9?
19 A. Papers with unknown stains.
20 Q. Thank you. Mr. Johnson, after you package an item and put
21 it into property, is it normal that you ever go back and
22 look at those items yourself personally?
23 A. I have.
24 Q. Okay. Would there be a reason that you would ever do that?
25 A. If additional processing needs to be done on it, maybe

1 further review of the evidence to finish my report, or for
2 the detective to review.
3 Q. Okay. Has it -- has it ever happened that the detective
4 goes and looks at it without you?
5 A. No.
6 Q. Once it's into property?
7 A. Once it's in the property room, the detective, yes, could
8 sign it out and look at it.
9 Q. Okay. And if it gets sent off to the Crime Lab, are you
10 involved in it going to the Crime Lab?
11 A. Usually not.
12 Q. Okay. So your job is to collect it, preserve it, and store
13 it?
14 A. That's correct.
15 Q. Okay. And the photograph that's up right now, Exhibit 18,
16 what's item 11?
17 A. 11 is "evidence of child's coat with unknown stains."
18 Q. All right. I'm going to hand you what's been marked as
19 Exhibit 95. I'm going to ask if -- well, first of all,
20 describe what that is for the jury.
21 A. It's a paper sack. It's got my evidence tag on it, case
22 number, date. It's got my initials with my unit number, and
23 I can see the item number.
24 Q. All right. And what's the item number?
25 A. Item No. 11.

1 Q. All right. And so that would be the jacket that we're
2 looking at?
3 A. The child's jacket, yes.
4 MR. PENNER: All right. Your Honor, the
5 State moves to admit Exhibit 95.
6 THE COURT: Any objections other than the
7 previously --
8 MS. HIGH: No.
9 THE COURT: All right. No. 95 will be
10 admitted.
11 MR. PENNER: Thank you.
12 (Plaintiff's Exhibit No. 95 was admitted.)
13 Q. (By Mr. Penner) Thank you, sir. What's the next
14 photograph?
15 A. 19 is a photograph of apparent blood on the wall.
16 Q. All right. Are there any placards on that one?
17 A. Yes, Item No. 12.
18 MR. PENNER: The State moves to admit
19 No. 19.
20 THE COURT: Any objections?
21 MS. HIGH: No, Your Honor.
22 THE COURT: All right. No. 19 will be
23 admitted.
24 (Plaintiff's Exhibit No. 19 was admitted.)
25 MR. PENNER: Move to publish.

THE COURT: Any objection?
MS. HIGH: No, Your Honor.
THE COURT: It will be published.
Q. (By Mr. Penner) So that's Item No. 12; is that right?
A. That's correct.
Q. Now, when there's blood on the wall or a hard surface like that, how is that -- or how did you, back in 1993, collect that?
A. In '93, what we would do, we had cotton -- cotton cloth -- cotton swab on threads, and we would take maybe one or two or three of those little cotton threads and wet it with distilled water, a little bit, just enough to dampen it, and then run those threads through the stain; and the -- the water would soak it up -- the thread would soak up that water --
Q. Okay.
A. -- the stain.
Q. Okay. And just so we're clear, I mean, when we look at the photograph -- I don't know. I mean, I guess it's a still photograph. It looks like it might be dry. I don't know. But when you're at the crime scene, is the blood still wet?
A. Generally, it's dry by that time.
Q. Okay. Then how do you collect it by -- with swabbing or cotton? How does -- how does that work?
A. I'll take two or three threads and take a little dropper in

1 and moisten those threads with -- with water --
2 Q. Okay.
3 A. -- and then take a pair of tweezers and just carefully drag
4 those threads through the -- through the stain until it
5 absorbs -- the thread to absorb that stain.
6 Q. So the water re-wets the blood?
7 A. Right. And the cotton threads absorb it.
8 Q. Okay. All right. What's the next photograph?
9 A. Items 13 and 14, Exhibit 20, also stains on the wall.
10 MR. PENNER: Thank you. Your Honor, move
11 to admit Exhibit 20.
12 THE COURT: Any objection?
13 MS. HIGH: No, Your Honor.
14 THE COURT: No. 20 will be admitted.
15 (Plaintiff's Exhibit No. 20 was admitted.)
16 MR. PENNER: Move to publish.
17 THE COURT: Any objection?
18 MS. HIGH: No objection.
19 THE COURT: All right. No. 20 will be
20 published.
21 Q. (By Mr. Penner) And, again, these are bloodstains that you
22 collected the way you just described?
23 A. Apparent bloodstains.
24 Q. What's the next photograph?
25 A. Also apparent blood on the wall, item 15, Exhibit 21.

1 MR. PENNER: Your Honor, move to admit 21.
2 THE COURT: Any objection?
3 MS. HIGH: No, Your Honor.
4 THE COURT: No. 21 will be admitted.
5 (Plaintiff's Exhibit No. 21 was admitted.)
6 MR. PENNER: Move to publish.
7 THE COURT: Any objection?
8 MS. HIGH: No, Your Honor.
9 THE COURT: 21 will be published.
10 Q. (By Mr. Penner) And what are we seeing here?
11 A. This is, again, apparent blood on the wall; and it appeared
12 to be a hand, the form of a hand.
13 Q. All right. I'm going to hand you what's been marked Exhibit
14 101; and we'll start with, generally speaking, what am I
15 handing you?
16 A. A paper envelope.
17 Q. All right. Is there anything inside the paper envelope?
18 A. A Ziploc bag with at least two, maybe three little paper
19 envelopes.
20 Q. Okay. Are there anything on any of those envelopes that
21 indicate it's related to this case?
22 A. The case number.
23 Q. Okay. All right. And is there an item number?
24 A. The Item No. 15, yes.
25 Q. Okay. And so we see up on the screen item 15, the bloody

1 hand print. What's in the bag?
2 A. These are the samples taken from that hand print, and the
3 top envelope is my control.
4 Q. Okay. What does that mean when you say "control"? Can you
5 explain that to the jury.
6 A. Yes. Anytime we take a sample, we take a sample of the
7 unknown first, so we absorb that up in two or three or four
8 threads, then take an area of the wall nearby that is void
9 of any of the sample and take a sample of that so we have a
10 sample that's clean of any of the stain.
11 Q. And let me translate. When you say "void of any sample" --
12 A. Any -- any -- any of the stain, any of the apparent blood.
13 Q. There's no blood there?
14 A. There's no blood there.
15 Q. Why did you do that?
16 A. It gives the lab, when they're testing the apparent blood,
17 to have something to test it against to ensure that there is
18 nothing in the paint on the wall or some other -- something
19 else that could be on the wall that could interfere with
20 the -- the -- the test.
21 Q. And in 1993, were you collecting items of evidence, blood
22 evidence, with DNA testing in mind?
23 A. Yes.
24 Q. All right. Where was DNA -- how much DNA did you need back
25 then; or how much blood did you need, I mean?

1 A. In '93, we had enough on three or four or five threads.
2 That was generally enough.
3 Q. All right. And so item 101 is marked as -- is No. 15;
4 correct?
5 A. That is correct.
6 MR. PENNER: Your Honor, the State moves
7 to admit Exhibit 101.
8 THE COURT: Any objections?
9 MS. HIGH: Just my standing one, Your
10 Honor.
11 THE COURT: Just your standing one. All
12 right. 101, subject to prior objections, is admitted.
13 MR. PENNER: Thank you.
14 (Plaintiff's Exhibit No. 101 was admitted.)
15 Q. (By Mr. Penner) Let's take a look at the next photograph.
16 What's the item number on the photograph?
17 A. Item No. 16.
18 Q. I'm sorry. What's the exhibit number of the photograph?
19 A. Exhibit 22.
20 Q. All right. And it depicts what item?
21 A. Item 16.
22 Q. All right.
23 MR. PENNER: Your Honor, the State moves
24 to admit Exhibit 22.
25 MS. HIGH: No objection.

1 THE COURT: All right. No. 22 will be
2 admitted.
3 (Plaintiff's Exhibit No. 22 was admitted.)
4 MR. PENNER: And move to publish.
5 THE COURT: Any objection?
6 MS. HIGH: No, Your Honor.
7 THE COURT: No. 22 will be published.
8 Q. (By Mr. Penner) So what are we seeing in Exhibit 22?
9 A. This is a handset of a phone, and the property sheet says
10 it's a Radio Shack phone with cord; apparent blood is
11 present.
12 Q. All right. I'm going to hand you Exhibit 96 and, generally
13 speaking, what am I handing you?
14 A. A paper sack, sealed.
15 Q. Okay. Any markings on the sack that show that it's related
16 to this case?
17 A. The item number, the case number, and my initials and date
18 and unit number.
19 Q. All right. And what's the item number?
20 A. Item No. 16.
21 Q. And again, what's the date?
22 A. February 7th, '93.
23 Q. All right. So does that correspond to the phone that we see
24 in the photograph?
25 A. The information on the outside does, yes.

1 MR. PENNER: All right. Your Honor, the
2 State moves to admit Exhibit -- is it 96?
3 THE COURT: Subject, of course, to prior
4 objections?
5 MS. HIGH: Yes, Your Honor.
6 THE COURT: All right. It will be
7 admitted.
8 MR. PENNER: Thank you.
9 (Plaintiff's Exhibit No. 96 was admitted.)
10 Q. (By Mr. Penner) What's the next photograph?
11 A. Exhibit 23, item 17.
12 Q. Okay.
13 A. And this is going to be the phone base for that phone,
14 apparently.
15 MR. PENNER: Okay. Your Honor, move to
16 admit Exhibit 23.
17 THE COURT: Any objection?
18 MS. HIGH: No, Your Honor.
19 MR. PENNER: Move to publish.
20 THE COURT: No. 23 will be admitted.
21 (Plaintiff's Exhibit No. 23 was admitted.)
22 THE COURT: Any objection to publication?
23 MS. HIGH: No, Your Honor.
24 THE COURT: No. 23 will be published.
25 Q. (By Mr. Penner) All right. So what do we see there?

A. That's Item No. 17 and the apparent phone base for the item 16.
Q. Okay. And at the time that you take these photographs, do you necessarily know what's going to be sent out to the lab?
A. Usually not, no.
Q. Who usually makes that determination?
A. Ultimately, it comes down to the detective.
Q. All right. Were you ever consulted?
A. Oh, yes.
Q. Okay. But ultimately, it's the detective's consideration?
A. It's generally his final decision, yes.
Q. All right. So regardless of whether it's going to get sent out, you're going to document everything; is that right?
A. Exactly.
Q. All right. What's our next photograph?
A. Item 18 is Exhibit 24.
MR. PENNER: Okay. And it's previously been admitted, so I'll publish again.
Q. (By Mr. Penner) And what's item 18?
A. It's an empty paper cup from McDonald's.
Q. Okay. What's the evidentiary value, potentially, of a cup?
A. It was an unknown. Somebody, maybe one of the detectives, raised the question about it because of something -- a question they had, so it was documented, photographed, and collected.

1 Q. Okay. And packaged with No. 18; right?
2 A. That's correct.
3 Q. Okay. What's the next photograph?
4 A. Uh --
5 Q. Well, let's go to the photograph. What's the exhibit number
6 of the photograph?
7 A. Item 20 is also an empty cup from McDonald's.
8 Q. All right. What's the exhibit number on the back of the
9 photograph?
10 A. Exhibit 25.
11 MR. PENNER: All right. Your Honor, the
12 State moves to admit 25.
13 THE COURT: Any objection?
14 MS. HIGH: No, Your Honor.
15 THE COURT: No. 25 will be admitted.
16 (Plaintiff's Exhibit No. 25 was admitted.)
17 MR. PENNER: And move to publish.
18 THE COURT: And any objection to
19 publication?
20 MS. HIGH: No. Thank you.
21 THE COURT: It will be published.
22 Q. (By Mr. Penner) So what are we seeing here?
23 A. That's also an empty cup from McDonald's.
24 Q. Okay. The next photograph, what's the exhibit number on the
25 back?

1 A. The exhibit is 26.
2 Q. And what does that --
3 A. It's item 21.
4 MR. PENNER: Move to admit, Your Honor.
5 THE COURT: Any objection?
6 MS. HIGH: No, Your Honor.
7 THE COURT: No. 26 will be admitted.
8 (Plaintiff's Exhibit No. 26 was admitted.)
9 MR. PENNER: Move to publish.
10 THE COURT: Any objection?
11 MS. HIGH: No. No, Your Honor.
12 THE COURT: It will be published.
13 Q. (By Mr. Penner) What do we see in this exhibit?
14 A. That's going to be a paper -- or a plastic bag with a
15 receipt in it, a K-mart receipt.
16 Q. Okay. All right. What's the next photograph?
17 A. The exhibit is 27, and it also shows a close-up of that
18 receipt.
19 MR. PENNER: Okay. Move to publish -- I'm
20 sorry, move to admit 27.
21 THE COURT: Any objection?
22 MS. HIGH: No, Your Honor.
23 THE COURT: Okay. 27 is admitted.
24 (Plaintiff's Exhibit No. 27 was admitted.)
25 MR. PENNER: And move to publish.

1 THE COURT: Any objection?
2 MS. HIGH: No objection, Your Honor.
3 THE COURT: Okay. No. 27 will be
4 published.
5 Q. (By Mr. Penner) So this is a close-up of the previous
6 photograph; right?
7 A. That's correct.
8 Q. And why did you do a close-up?
9 A. To better document what it is I'm going to recover in the
10 receipt.
11 Q. Okay. And what's the significance of a receipt?
12 A. At that point, it's an unknown. Somebody raised a question,
13 so we collected it.
14 Q. All right. And I think you have one photograph left?
15 A. No.
16 Q. That's the last one?
17 A. Mm-hmm.
18 Q. All right. Now, I wanted to ask. You've got your property
19 sheet in front of you; right?
20 A. Mm-hmm. I do.
21 Q. And items numbered 1 through what?
22 A. 1 through 23.
23 Q. Okay. Item 19, we didn't see a photograph of that. What
24 is -- what's item 19?
25 A. 19 is the refrigerator door.

1 Q. Okay. So you took the entire refrigerator?
2 A. The entire door.
3 Q. Okay. And Exhibits 21, 22, and 23, what are those?
4 A. Items 21, 22, and 23?
5 Q. Yeah.
6 A. 21 is the K-mart receipt. 22 is a Stock Market receipt, and
7 then 23 is a set of four keys on a ring.
8 Q. Okay. And you photographed those, as well; correct?
9 A. That's correct.
10 Q. All right. So, Mr. Johnson, after you're done photographing
11 and collecting evidence, you said it usually goes into the
12 forensics lab; correct?
13 A. Initially, it does, yes.
14 Q. Okay. And then eventually, it makes its way across the
15 property room; is that right?
16 A. That is correct.
17 Q. If you could take a look at the property sheet, does it
18 indicate what date you filled out the property sheet?
19 A. I filled it out on February 7, 1993.
20 Q. All right. And does it indicate what date this property was
21 moved from the forensics lab to the property?
22 A. It was moved over on April 12, 1993.
23 Q. So more than two months later?
24 A. Correct.
25 Q. Is that a fairly long time for it to sit in the forensics

1 lab?
2 A. It's fairly long. I wouldn't say it's unusual, but yes.
3 MR. PENNER: Okay. All right. Your
4 Honor, that's all the questions I have. Thank you very
5 much, Mr. Johnson.
6 THE COURT: All right. It's fifteen till,
7 so we'll start cross-examination.
8 MS. HIGH: Sure. Thank you, Your Honor.
9 CROSS-EXAMINATION
10 BY MS. HIGH:
11 Q. Mr. Johnson, you said you started doing your forensic work
12 in about 1977, and you retired in about 2005; is that
13 correct?
14 A. That is correct.
15 Q. And, I mean, your training was pretty much on-the-job
16 training; is that right?
17 A. Not entirely, no.
18 Q. Okay. You didn't have any certifications?
19 A. No. We were not certified.
20 Q. Okay. And, like you said, you might occasionally go to a
21 school or a training being put on depending on budget?
22 A. We frequently went to schools put on by the state and the
23 FBI, yes.
24 Q. Mm-hmm. And, indeed, some of that really depended on the
25 budget of the Pierce County Sheriff?

1 A. I can't talk about that, no.
2 Q. Okay. And that's something that the property room manager
3 would have the information on?
4 A. Our budget?
5 Q. Right, school.
6 A. I doubt it, no.
7 Q. Really? Okay. We'll ask him. So your documentation, let's
8 take a look at that. Now, I think you said that things were
9 really -- you know, I mean, over the course of that long
10 employment history, things really changed on how you
11 collected items; is that right?
12 A. It -- it evolved, yes.
13 Q. Sure. And that's because technological advances actually
14 would have an impact on how you handled a crime scene;
15 right?
16 A. I'm not sure your -- what you're trying to ask.
17 Q. Well, I'll ask it again, then, if it's unclear to you. Say,
18 advances in biology, DNA, had an impact on how you would
19 handle a crime scene?
20 A. We -- we basically handled the crime scene the same from the
21 day I started, protecting the evidence, how we collected it;
22 everything remained the same. What we collected -- in some
23 cases, you've got -- smaller items were collected, so that's
24 when we used different techniques to collect that item; but
25 the basic technique of photographing, documenting,

1 protecting, and collecting remained the same.
2 Q. Okay.
3 A. Nothing really changed.
4 Q. So let's talk about that. When you started in 1977, you
5 didn't wear booties when you went into a crime scene?
6 A. No.
7 Q. And neither did anyone else that went into that crime scene?
8 A. That is correct.
9 Q. And in 1993 when you were in that crime scene, you didn't
10 wear booties?
11 A. I can't say I did.
12 Q. Well, you took the photographs; right?
13 A. (Nods head.)
14 Q. Okay. We've got the photograph that shows shoes?
15 A. Okay.
16 Q. We'll take a look at that, so -- and the detectives weren't
17 wearing booties?
18 A. That's -- okay.
19 Q. Okay. And we didn't hear that the EMTs or anybody else was
20 wearing booties in there?
21 A. Okay.
22 Q. Okay. So that would be something that technological
23 advances had an impact on how a person would go in and walk
24 through a potential crime scene; right?
25 A. Yes.

1 Q. Okay. And that's just because, you know, as DNA advanced,
2 you realized that it took just a very small -- or, you know,
3 very minute amounts of biological materials could result in
4 a DNA profile?
5 A. Okay. That's correct.
6 Q. And you wanted to be careful that you didn't
7 cross-contaminate, and I'd say inadvertently, by
8 transferring some minute amount from one area of the -- of
9 the crime scene to another?
10 A. Okay. Yes.
11 Q. And you'd agree with that?
12 A. I would agree with that, mm-hmm.
13 Q. Sure. And the same, when, say, in 1993 you were collecting
14 items of evidence -- you know, I mean, you didn't have those
15 DNA advances where -- at the end of your career where you're
16 talking nanograms; right?
17 A. We're talking little cotton threads.
18 Q. Right. And I'm saying in 1993, you said you'd do your
19 cotton threads; right?
20 A. (Nods head.)
21 Q. But you didn't have the DNA technology where DNA could be
22 recovered from simply -- like you said, what's the
23 equivalent of 12 or 13 skin cells; right?
24 A. Correct.
25 Q. Right. So that whole notion of how DNA can get transferred

1 was -- or the minute amount that could be transferred wasn't
2 something that you were, actually, managing a crime scene
3 for because it didn't exist at that time?
4 A. I can only say that we managed the crime scene very
5 carefully knowing full well that anything we did could
6 contaminate the evidence.
7 Q. Okay. And so, I mean, because you're familiar, obviously,
8 with the notion of contamination, say, in trace evidence;
9 right?
10 A. Correct.
11 Q. And the "hold the cards principle" which is, basically, that
12 anyone being in a place and touching it and going through it
13 is going to leave some of themselves or pick up something?
14 A. It is possible, yes.
15 Q. Well, and, I mean, that's kind of the foundation for what
16 you do; right?
17 A. That's correct. Mm-hmm.
18 Q. Right. It is the notion that people, you know, can shed a
19 hair or drop a piece of lint or pick something up; is that
20 right?
21 A. That's correct.
22 Q. All right. And by the time, I think -- do you have your
23 report up there?
24 A. My report?
25 Q. Yes. And what exhibit number is that, please?

1 A. 45.
2 Q. Now, on your report, that looks like you prepared it on
3 February 11th, is that right?
4 A. I signed it and turned it in on the 11th, yes.
5 Q. Okay. It says reporting time and date at the bottom?
6 A. February 11th, mm-hmm.
7 Q. Okay. And you also have a time arrived?
8 A. That's correct.
9 Q. And so you get there about 1:37 in the morning?
10 A. That is correct.
11 Q. And so by the time you get there, I mean, you know that, in
12 fact, other people have been in this apartment?
13 A. Yes.
14 Q. And, I mean, because there's something called an incident
15 log that everyone signs in on; is that right?
16 A. That is correct.
17 Q. Let me see if I can find that. And the reason to sign that
18 incident log is, I think, in large measure for you that are
19 going to collect evidence to know who's been in there
20 already?
21 A. That's correct.
22 Q. And to know in case you need to do some elimination, say, of
23 fingerprints or those kinds of things who's been to the
24 location?
25 A. That is correct.

1 Q. Okay. And so you will sign in to that incident log so you
2 can see, as well, who's been there before you; is that
3 right?
4 A. That is correct.
5 Q. And it's important that -- even people after you sign in; is
6 that right?
7 A. That is correct.
8 Q. Because, like you said, I think, as your report shows, you
9 were there from 1:37 in the morning until, it looks like,
10 about 2:21 in the afternoon -- I mean, in the afternoon,
11 1421?
12 A. That's correct.
13 Q. All right. So actually, you're in there a long time; and
14 there are multiple individuals in there even while you are
15 working this scene; is that right?
16 A. I can't say how many people were in there. I know the scene
17 was -- we try to keep it as minimal as possible.
18 Q. Okay.
19 A. How many people were in there, I can't say --
20 Q. Okay. Let me get the incident log for you.
21 A. -- at any one time.
22 Q. Right. I'm sorry. Just give me a second, and I'll find
23 that for you to have you take a look at it.
24 But, like you said, obviously one of your concerns is:
25 You want to keep it -- you'd like to have the numbers as

1 small as possible of individuals being in there?
2 A. Yes.
3 Q. I'm going to hand you what's been admitted as Plaintiff's
4 Exhibit 44.
5 A. Okay.
6 Q. Okay. And you recognize that; right?
7 A. Yeah, I do.
8 Q. Sure. You've probably signed many, many of those over the
9 years?
10 A. Oh, yes.
11 Q. And as you can see on that one, there were a number of
12 people that were in that location before you got there?
13 A. That is correct.
14 Q. Okay. As a matter of fact, on this incident log, you are,
15 it looks like, the last person?
16 A. It appears so, yes.
17 Q. Okay. And so what's happened in there, before you arrive,
18 is not something you can actually control?
19 A. No.
20 Q. Right. I mean, so you have an EMT that comes in, perhaps,
21 and moves or manipulates the body. Those are things that
22 that's -- by the time you get there, that's been done?
23 A. That is correct.
24 Q. You have -- you know, a number of officers are walking
25 through without wearing any protective items. That's

1 something you can't control?
2 A. That is correct.
3 Q. Okay. All you can do is, kind of, deal with what's there
4 when you get there?
5 A. That's correct.
6 Q. All right.
7 THE COURT: Counsel, it's almost noon.
8 MS. HIGH: Okay. And I'm going to move
9 into a series of photographs and maybe that's a good time to
10 take a break.
11 THE COURT: It's probably best to do it
12 after.
13 MS. HIGH: Thanks.
14 THE COURT: All right. Okay, then. At
15 this time, we'll go ahead and recess for the noon hour.
16 We'll reconvene at 1:30, all things being optimistic, no
17 discussion, no investigation, notepads face down on your
18 chairs. Have a very nice lunch. If you would please stay
19 in the jury room until Ms. Redmond comes to release you.
20 MS. HIGH: And, Mr. Johnson, could I have
21 your exhibits back for -- to make sure that we keep them
22 down here. Thank you so much, and I will be using those
23 again, so we'll kind of keep these moving.
24 THE WITNESS: Right here?
25 MS. HIGH: Yeah.

1 (The jury was not present.)
2 THE COURT: Anything before I leave?
3 MS. HIGH: Thank you.
4 MR. PENNER: No, Your Honor. Thank you.
5 THE COURT: All right. We'll be at
6 recess. We'll reconvene at 1:30.
7 (A recess was taken.)
8 (The defendant was present.)
9 (The jury was not present.)
10 THE COURT: Anything before we bring the
11 jury in?
12 MR. PENNER: No, Your Honor.
13 MS. HIGH: No. Thank you, Your Honor.
14 THE COURT: All right.
15 (The witness returned to the stand.)
16 (The jury was present.)
17 THE COURT: All right. You may be seated.
18 Thank you. All right. Counsel, continue.
19 MS. HIGH: Thank you.
20 CROSS-EXAMINATION (Cont'd.)
21 BY MS. HIGH:
22 Q. Mr. Johnson, just because I think these are going to assist
23 you while I'm asking you my questions, I'm going to hand up
24 again for you Exhibit 44, which is the major incident log,
25 and Exhibit 45, which is your written report, and Exhibit

1 82, which is the property inventory report.
2 A. Okay.
3 Q. Okay. I don't know whether it's jet lag or the head cold,
4 so I might ask you a question I've already asked you.
5 A. Okay.
6 Q. But I want to go back to the sign-in -- the major incident
7 log, if I could direct your attention -- I believe that's
8 Exhibit 80 -- excuse me, Exhibit 44.
9 A. 44.
10 Q. Exhibit 44. And that is your handwriting, the very last
11 name on that log?
12 A. That is correct.
13 Q. Okay. So you personally wrote your name and not just one of
14 the officers signing you in?
15 A. That is correct.
16 Q. Okay. Now, there is a column for the time that you arrived;
17 is that correct?
18 A. That is correct.
19 Q. And you didn't put anything in that column?
20 A. Generally, the person that's doing this did that.
21 Q. Well --
22 A. But I --
23 Q. Okay.
24 A. That's what I remember --
25 Q. Okay. So --

1 A. -- just signing me in.
2 Q. I'm sorry to cut you off. Now, there is a column; you sign
3 in, and there's no time; right?
4 A. (Nods head.)
5 Q. And putting the time in, though, is one of the things that
6 you were, probably, trained to do?
7 A. Like I said, many times the person who is signing me in
8 wrote that time in after I signed it. What happened here, I
9 don't know.
10 Q. Okay. Well, we know that it would be important to keep
11 track of, though, who has access to the scene and at what
12 time; is that right?
13 A. That is correct.
14 Q. Okay. And other individuals have a time next to their name?
15 A. The three before me do not.
16 Q. Okay. And -- but the, what, ten plus before them have a
17 time; is that correct?
18 A. That is correct.
19 Q. Right. So others actually put their time in, and there's a
20 column for it; is that right?
21 A. That is correct.
22 Q. Okay. Now, Exhibit, I think, 45 is your report.
23 A. That is correct.
24 Q. And that's the only report that you wrote for your
25 involvement in investigating this case?

1 A. Apparently, this is the only thing I've been given, yes.
2 Q. Okay. Well, if you wrote another one, it would have been
3 provided to somebody else at some point, hopefully; right?
4 A. You would have found it.
5 Q. Right. So we think this is the only one?
6 A. That's correct.
7 Q. All right. And like you said, if there's some other ones
8 floating around out there, then we have bigger problems than
9 we're even addressing today.
10 And so this is your documentation of what happened?
11 A. That is correct.
12 Q. And you try to get all the important, relevant information
13 in there; right?
14 A. That is correct, yes.
15 Q. And, I mean, you know, you've done -- you've completed these
16 many, many, many times; is that right?
17 A. That is correct.
18 Q. And I think your report tells that one of the very first
19 steps that you took was some photographic documentation?
20 A. That is correct.
21 Q. All right. And one of the things that you say is that you
22 began by processing a whole series of still photographs?
23 A. I've taken -- still photographs, yes.
24 Q. Right. You did not keep a photo log, though, did you?
25 A. No. We were not doing that at this time.

1 Q. Okay. And that's -- now, that's certainly something that is
2 now the standard, isn't it?
3 A. I -- I don't -- now, I don't know because I'm retired; but
4 we were doing it before I retired.
5 Q. I was going to say. Okay. Let's say 2004, that would have
6 been standard; correct?
7 A. Yes.
8 Q. All right. At this time, though, there isn't a log?
9 A. Apparently not, no.
10 Q. All right. I would like to -- like you said, you took a lot
11 of photographs, and I know that your independent memory of
12 this actual case isn't there; but I'm going to ask you to
13 take a look at Exhibits 2002 [sic] to -- 2002 -- 200 to 214,
14 some photographs.
15 MS. HIGH: And, Mr. Penner, have you had a
16 chance to look at those?
17 MR. PENNER: I had a chance to see them.
18 MS. HIGH: Okay.
19 MR. PENNER: Thank you.
20 Q. (By Ms. High) And I know that -- like you said, your
21 recollection of this actual event -- but they seem to be
22 part of the sequence in a series of photographs that were
23 taken inside the apartment on February 7th?
24 A. Yeah. Yes, they are.
25 Q. Okay.

1 MS. HIGH: And, Your Honor, I would ask --
2 I would move that we admit 2002 -- 202 to 214.
3 THE COURT: Any objections?
4 MR. PENNER: No, Your Honor.
5 THE COURT: All right. 202 through 214
6 will be admitted.
7 (Defendant's Exhibit Nos. 202 through 214 were admitted.)
8 MS. HIGH: Okay. And then I have just a
9 couple more here, Exhibits 234, 235, 236, and 237; and if I
10 could, I'm going to give these to the judicial assistant.
11 Q. (By Ms. High) Okay. And, again, they appear to be more
12 photographs taken, same time, same place, more or less, as
13 the ones that we admitted earlier?
14 A. I would agree with that, yes. Mm-hmm.
15 Q. Okay. And I think you can tell by the background and by the
16 subject matter; is that correct?
17 A. That is correct, yes. Mm-hmm.
18 MS. HIGH: Okay. I would ask Your
19 Honor -- I'd move to admit -- it's, I think, 2000 -- or
20 excuse me, 234 to 237. I don't know where this 2000 is
21 coming from.
22 THE COURT: Any objections?
23 MR. PENNER: No, Your Honor. Thank you.
24 MS. HIGH: Okay.
25 THE COURT: 234, 235, 236, and 237 will be

1 admitted.
2 (Defendant's Exhibit Nos. 234 through 237 were admitted.)
3 Q. (By Ms. High) Okay. So in your report, you know, it talked
4 about how you start kind of at the beginning, you know,
5 walking up to the apartment and, you know, going in.
6 And that was your typical approach to documenting the
7 scene; is that right?
8 A. That is correct.
9 Q. And also in your report, you write, and I think it's your
10 second paragraph here, that when you got to the apartment,
11 what you saw was Ms. Robinson, the victim, located in the
12 kitchen --
13 A. That is correct.
14 Q. -- kind of on her stomach, so face down; right?
15 A. That is correct.
16 Q. And you report that she was up against the refrigerator.
17 A. (Reviewing.) That's correct.
18 Q. Okay. And like you said, her feet were pointed toward the
19 hall and her head in the direction of the stove inside the
20 kitchen; is that right?
21 A. That's correct.
22 Q. All right.
23 MS. HIGH: And, Your Honor, Exhibit 2 has
24 already been admitted; and I'd like --
25 THE COURT: Yes.

1 MS. HIGH: -- to publish it at this time.
2 I don't know whether to turn it around or not. I'm not sure
3 it makes any difference. Perhaps we can lower the lights
4 just a tad.
5 Q. (By Ms. High) Would it be easier for you if I kind of
6 flipped the orientation?
7 A. Yeah.
8 Q. Sure. That makes a little more sense, doesn't it?
9 THE COURT: All right. Yes. That's good.
10 MS. HIGH: Yeah.
11 THE COURT: That's better.
12 MS. HIGH: Okay.
13 Q. (By Ms. High) Now, as we're looking at this picture here,
14 she's not up against the refrigerator, is she?
15 A. I believe her shoulder is close to it --
16 Q. Okay. Let me --
17 A. -- if I remember right.
18 Q. Okay. So this is the wall over here on the right-hand side;
19 right?
20 A. (Nods head.)
21 Q. And here is the refrigerator on the left?
22 A. (Nods head.)
23 Q. Okay. And so my question, to you, is: You can also see an
24 outline over here on her left side of a discoloration; is
25 that right?

1 A. That is correct.
2 Q. And perhaps where the body has been either moved or,
3 previously, been located; is that right?
4 A. That is correct.
5 Q. Okay. And, as well, in this photograph, it really shows
6 this receipt and a pair of keys between her legs; right?
7 A. That is correct.
8 Q. And I think you mentioned with Mr. Penner, there's a blood
9 drop, as well, between her legs that you thought might be
10 important evidence?
11 A. Yes.
12 Q. Okay. And the reason you thought perhaps those items that
13 were on her body, at the time that you're there, is,
14 clearly, somehow, someway, somewhere, they got placed there;
15 is that right?
16 A. Either I noticed it there, or the detective pointed it out
17 to me and suggested it be photographed.
18 Q. Sure. And, I mean, that's the kind of thing, whether
19 someone pointed it out to you or not, you probably would
20 have collected; is that right?
21 A. That's correct, yeah.
22 Q. Yeah. And especially, I think, when you -- you know, you
23 had a chance to, you know, just take a look at the receipt,
24 which you did collect, it was the kind of thing that might
25 be important?

1 A. That's correct.
2 Q. All right. And I believe -- and do you have Exhibit 82 up
3 there? That might --
4 A. Yes, I do.
5 Q. Great. You know, on your property inventory report on the
6 second page, you identify some items that you collected; and
7 one is Item No. 21 which is the K-mart receipt. Item 22 is
8 the Stock Market receipt; and 23, a set of four keys on a
9 ring; is that right?
10 A. That is correct.
11 Q. Okay. And I guess just before I hand up those items to you,
12 I will show you -- let's see -- what's been admitted as
13 Plaintiff's Exhibit 27; and, again, I think there is 21, and
14 you indicate that in that bag, there was a receipt as well?
15 A. It's -- it's not very clear in that picture, but I think
16 it's that white blob that's there.
17 Q. Yes, I know it is difficult when we have them on the
18 projector like this.
19 A. (Nods head.)
20 Q. And, as well, there were just some other items in the bag,
21 and it's hard for you to see them; but one is, like,
22 something called Refresh; do you remember that?
23 A. I don't remember. I see it in the picture.
24 Q. Sure, and it seems to be some kind of carpet sprinkly stuff
25 that you put down, do you know?

1 A. (Nods head.)
2 Q. Okay. All right. Okay. So I'd like to have you take a
3 look at what's been marked as Plaintiff's Exhibit 103, and
4 do you recognize -- do you recognize that little bag?
5 A. Well, the envelope is evidence -- a bag that I use because
6 it's got my case number, my initials, unit number, date, and
7 the item number on it.
8 Q. Okay. You know, and there's some other things on that bag,
9 as well, like a barcode sticker. That wasn't something that
10 you generated?
11 A. No, it was not.
12 Q. And there's some red evidence tape on the back as well. It
13 looks like it's been signed by a Detective Kobel?
14 A. That is correct.
15 Q. Okay. Dated maybe 12/18/14?
16 A. That is correct, yes.
17 Q. Okay. Now, there is also -- do you have on -- just
18 paperclipped a little, like, pasted-type label on that?
19 A. Yes.
20 Q. Okay. And is that your handwriting?
21 A. No, it is not.
22 Q. Okay. So what is your handwriting on this bag, though, is
23 the initials, the date, and the case number; is that right?
24 A. That is correct, yeah.
25 Q. I think -- and your badge number?

A. And the item number.
Q. Oh, and the item number. Thanks. And that was your collected item 21; right?
A. Yes.
Q. And that's evidence -- excuse me, Plaintiff's Exhibit 103?
A. That is correct.
Q. Okay. And that was the K-mart receipt that you collected; is that right?
THE COURT: You're dropping down, Counsel. You need to elevate your voice.
MS. HIGH: Sorry.
Q. (By Ms. High) That was the -- one of the receipts that you collected; correct?
A. That is correct.
Q. And it was actually the K-mart receipt that you collected that was actually found on her body, is that right; or are you able to recall?
A. Isn't that the one in the bag, 21?
Q. Well, I'm trying to look at your notes here. Let's see, was 21 in the bag? I think you're right, 21 was in the bag.
A. 21.
Q. Yeah. Yeah. 21 is in the bag.
A. That's correct.
Q. So 22, the other one that was on her back, didn't actually have a card on it, I think, in the picture I showed you;

1 right?
2 A. Apparently not.
3 Q. Yeah.
4 A. Okay.
5 MS. HIGH: I would move to admit
6 Plaintiff's Exhibit 103.
7 THE COURT: Any objections?
8 MR. PENNER: No, Your Honor.
9 THE COURT: 103 will be admitted.
10 (Plaintiff's Exhibit No. 103 was admitted.)
11 Q. (By Ms. High) And then I would like you, if I could
12 approach, to look at Plaintiff's Exhibits 104 and 105; and I
13 think I'm going to have you open this.
14 A. Yeah.
15 Q. Okay. So let's talk about 104; and, again, there's some
16 writing on the envelope that you have in your hand?
17 A. That is correct, my writing.
18 Q. Your writing and your initials, right, I think your number,
19 which is 503?
20 A. I'm assuming it's under the tagged exhibit number with the
21 date, the case number, and the item number.
22 Q. And that was your Item No. 22?
23 A. That is correct.
24 Q. Okay. And I think that that, according to your property
25 sheet, was the Stock Market receipt?

A. Yes.
Q. Okay. And then Plaintiff's Exhibit 105?
A. Okay. That's also got my handwriting on it --
Q. Mm-hmm.
A. -- the case number --
Q. Mm-hmm.
A. -- initials, and the item number.
Q. Okay. And that inside that bag, if everything matches up, are the keys --
A. Right.
Q. -- that were located on Ms. Robinson's backside when you got to the apartment?
A. Yes.
Q. Okay.
MS. HIGH: Your Honor, I would move to admit Plaintiff's Exhibit 104 and Exhibit 105.
THE COURT: Any objections?
MR. PENNER: No, Your Honor.
THE COURT: 104 and 105 will be admitted.
(Plaintiff's Exhibit Nos. 104 and 105 were admitted.)
Q. (By Ms. High) Okay. So thanks. You know, and then, like you said, there was also a coin between her legs?
A. Okay.
Q. And the blood drop?
A. Right.

1 Q. Now, I don't see in your documentation that any sample was
2 taken from that blood drop between her legs; and please feel
3 free to take a look because we're all just working off your
4 documentation.
5 A. Yeah, I don't remember seeing anything in here and looking
6 through it, apparently not, no.
7 Q. Okay. You know, one of the things when you took your
8 pictures, you would make these little placards or ID cards;
9 is that right?
10 A. That's correct.
11 Q. And to keep track of, I guess, items down the road, you
12 would, at times, put them actually inside the bag or the
13 sack that contained the item?
14 A. We used to do that, yeah.
15 Q. Okay. And that's something that you used to do, probably
16 wouldn't today?
17 A. Today, I don't know.
18 Q. In 2004-2005?
19 A. Maybe, yeah.
20 Q. Maybe?
21 A. Yeah.
22 Q. Okay. And so when you're at the scene, I think you say that
23 sometimes, as well, depending on how much evidence or how
24 many items you were collecting, how much time you had, you
25 would actually fill out your property inventory at the

1 scene?
2 A. Sometimes we do that, yes.
3 Q. Right. And that's because it's just, like you said, just
4 another check to keep, you know, track of everything that
5 you have, that you've inventoried it. It's been numbered
6 when you get it back?
7 A. That's correct.
8 Q. Okay. When you are lacking time or resources, I think you
9 said you would put collected items into perhaps some larger
10 container or bag to bring back to the -- some other location
11 to fill out the property report?
12 A. Sometimes we would do that, as well, yes.
13 Q. Okay. And I think you also said that it was really
14 collaborative, what am I going to collect at this time, at
15 this place in a collaborative discussion with, say, other
16 personnel, your forensic partner, or a detective, that kind
17 of thing?
18 A. It would be detectives and the other forensic investigator,
19 yes.
20 Q. Okay.
21 A. We'd talk about what we're going to collect and when, yes.
22 Q. Okay. I mean, certainly, there's some things that you
23 probably didn't have to talk to anybody about; you just knew
24 you were going to collect these?
25 A. Most all times in a case like this, we always discussed what

1 we were going to collect.
2 Q. Okay.
3 A. Yeah, almost without exception we would talk about it,
4 and -- because I always depended on the input from the
5 detective. He had been there; he'd been talking about it,
6 always with him.
7 Q. Okay. So I think you said when you first get to a scene
8 like this, you're going to do a general kind of walk-through
9 where you have an opportunity to talk with the lead
10 detective --
11 A. Correct.
12 Q. -- and kind of come up with a game plan; is that right?
13 A. That's correct.
14 Q. And in this case, you were working with another forensic
15 tech, Mr. Ted Schlosser?
16 A. That's correct.
17 Q. And so he was your partner in this -- in this crime scene
18 investigation?
19 A. That's correct, yes.
20 Q. And you divvied up duties?
21 A. Yes.
22 Q. And divvying up the duties, was that something that you two
23 did between each other; or would the lead detective have
24 assigned you a specific task?
25 A. We did that between us, between Ted and I.

1 Q. Okay. And in this one, your job was to take the still
2 photography. He was going to do the video; right?
3 A. That's correct.
4 Q. You were going to be responsible for collecting items,
5 getting them in their bags; and he was going to, if
6 possible, process items at the location; right?
7 A. He was going to do fingerprinting, I believe.
8 Q. Yeah.
9 A. Yes.
10 Q. Fingerprinting?
11 A. Mm-hmm.
12 Q. Okay. You know, and if he had recovered and just -- if he
13 had recovered latents at the scene, they would go on, like,
14 a little card of some sort; is that right?
15 A. That's correct, yes.
16 Q. And so the card would probably have the case number on it
17 and the -- his initials; and the fingerprint, itself, that's
18 recovered, is on that little card?
19 A. That is correct, yes.
20 Q. Okay. And would that have been, then, an item of evidence
21 that you would have put in an evidence bag?
22 A. I'm sorry. I -- that's strange. We used to do it all the
23 time. I don't remember what we did; I honestly do not.
24 I -- I don't think we turned them into evidence, but I -- I
25 honestly don't remember --

1 Q. Okay.
2 A. -- what I did.
3 Q. Okay. So -- but if a -- if latents were recovered from
4 especially a really serious scene like this, the hope would
5 be, whether or not they were turned into evidence, that they
6 would somehow make it to an examination or somehow into the
7 case file?
8 A. That is correct.
9 Q. Okay. And like you said, that might have been later on in
10 consultation with the detective, or who knows; right?
11 A. The examination would have been done later, yes.
12 Q. And that examination might have been done in the secure room
13 that the IDENT, or forensic techs, had access to?
14 A. To examine a fingerprint?
15 Q. Right. Is that where the comparison would be done?
16 A. No. The comparison was, generally, done in our offices; and
17 it depends on -- if it was before AFIS, the Automatic
18 Fingerprint --
19 Q. Mm-hmm.
20 A. -- or it was a one-on-one; generally, we did both.
21 Q. Okay.
22 A. That was done in our offices.
23 Q. Right. So you might expect that if you actually recovered
24 latents from someplace, they would, like you said, be
25 examined in your office where you'd have some comparison

1 potential there?
2 A. That -- that's correct.
3 Q. Okay. So I think we're looking at your Exhibit 45, your
4 report.
5 THE COURT: Just for the record, why don't
6 you identify what the acronym AFIS stands for.
7 MS. HIGH: Oh.
8 THE COURT: I mean, I know it --
9 MS. HIGH: We know it.
10 THE COURT: -- but the jury may not know
11 what that is.
12 THE WITNESS: The Automatic Fingerprint
13 Identification --
14 MS. HIGH: System, I think it is; right?
15 THE WITNESS: -- System, yes.
16 MS. HIGH: Right. Right.
17 Q. (By Ms. High) So, I mean, but that fingerprint
18 identification system, I don't think it was up and running
19 in '93, was it?
20 A. I don't think so, no.
21 Q. Yeah.
22 A. No.
23 Q. And even if so, just, you know, hypothetically, if latents
24 are recovered, that would, certainly, have been something
25 that the lead detective and the forensic specialist would

1 have been interested in?
2 A. That's correct.
3 Q. All right. And I think, when we took a look at your Exhibit
4 45, like you said, the prep date is February 11, 1993; but
5 if I understood your testimony, it may have been a bit of a
6 work in progress, or perhaps you were working from a
7 notebook when you wrote this up?
8 A. I may have had a notebook at the time, yes; and I,
9 obviously, probably did.
10 Q. Mm-hmm.
11 A. I made notes on something else and, thus, a report was
12 generated. I -- it was a work in progress, and I probably
13 typed on it; but I didn't finish it, complete it, and sign
14 it until the 11th of February.
15 Q. Okay. So you didn't use the dictation --
16 A. No.
17 Q. Okay. You would hand-type it yourself?
18 A. That is correct.
19 Q. Okay. And some people did use the dictation services;
20 right?
21 A. I believe the detectives did that.
22 Q. Oh, okay. You guys had to type your own?
23 A. Pardon me?
24 Q. You guys had to type your own?
25 A. We typed our own, yes.

1 Q. Okay. Okay. And so this would be something, like you said,
2 that you would prepare and you did prepare not that far
3 from -- time-wise from the event that you were reporting?
4 A. That is correct.
5 Q. Now, in this report, you don't document that you were the
6 one that took the items to the property -- excuse me, that's
7 probably the wrong term -- to the locked or secure forensic
8 lab?
9 A. I don't mention that in my report, no.
10 Q. Okay. And it's not only not mentioned in your report, but
11 in 1993, if you had, say, gone to the lab and checked out a
12 locker, there was no documentation system that would record
13 that event?
14 A. Not in that time, no.
15 Q. Right. And not even at the time when you retired?
16 A. Okay.
17 Q. I mean -- right?
18 A. That's correct, yes.
19 Q. Right. I mean, there wasn't a log where, jeez, I'm walking
20 in now to the room, and I'm going to my locker 6 or whatever
21 it might be?
22 A. No.
23 Q. Right. And there was no, even, sign-in or sign-out or log
24 into the drying room; is that right?
25 A. Into the forensic lab, no, there was not.

1 Q. Well, yeah. You're -- that's a very good point. Into the
2 lab itself, no sign-in or sign-out; but also the drying
3 room, you know, as already described, was a room by itself
4 with a door with a couple of PVC racks?
5 A. Yeah, it was all in the same facility. There was no --
6 there was no -- it was connected. It was all at the same
7 place.
8 Q. I totally get that it's -- once you get through the locked
9 door to get into the lab, the drying room, though, itself,
10 had its own separate door?
11 A. Correct.
12 Q. Right. And what they're -- what that has are these, I don't
13 know, multi-story or multi-shelved PVC racks; right?
14 A. That's correct.
15 Q. And, you know, they have space between the slats so the air
16 can circulate?
17 A. That is correct.
18 Q. And, again, so there's nothing that you would log in to
19 show, hey, my items are here on Rack No. 1, Shelf 5?
20 A. No.
21 Q. And, in fact, if you had an item in there, there would be no
22 documentation of what other cases were in there at the same
23 time?
24 A. If we had evidence like this -- and I'm only speaking from
25 what we would do. Normally, there would not be another

1 serology case in the same room at the same time. I can't
2 say if there was or wasn't this time, but that was the
3 practice; we tried not to mix.
4 Q. Okay. Well, so you're saying if I have some blood evidence
5 drying that if someone else came in with blood evidence that
6 needed to be dried, they had to wait?
7 A. We worked around it. I -- we were very careful on that.
8 Q. Okay.
9 A. And what we did here, I can't say; but I know we were very
10 careful at that time.
11 Q. Sure. I mean, and here we have the evidence from this case
12 some place until April -- I guess, April 12th?
13 A. It would have been in the locker room -- in the property --
14 in the forensic lab. That's where it would have been,
15 probably.
16 Q. Right. But that's not documented; right?
17 A. No.
18 Q. Right. So no documentation if -- I mean, because one of the
19 things I think you said was the reason we took these things,
20 there was -- because we had to do some additional
21 processing; right?
22 A. That's correct.
23 Q. And part of the processing might be air-drying items?
24 A. If need be, yes.
25 Q. Okay. And the other part of the processing might be the

1 fingerprinting; right?
2 A. That's correct.
3 Q. Right. And the items that would need to be air-dried would
4 have been anything like, say, with the biological or damp
5 kind of items?
6 A. Yes. In this case here, if I may.
7 Q. Sure, and which exhibit are you referring to?
8 A. Exhibit 82.
9 Q. Okay. Which is your property report.
10 A. And I -- the only thing that may have qualified for that
11 would have been the jacket. Nothing else would have been
12 required to be in the drying room.
13 Q. Right. Because the thread method of taking a sample from
14 suspected blood, I mean, they would be dry in minutes?
15 A. That's correct.
16 Q. So that could be the jacket?
17 A. Maybe.
18 Q. Okay. And on, say, that Exhibit 82, your property report,
19 there's some handwriting you recognize; right?
20 A. Yes.
21 Q. And so the date, 02/07/93, that's your handwriting?
22 A. That's correct.
23 Q. All right. The item number and the property description and
24 the quantity, that's your handwriting?
25 A. That is correct.

1 Q. Okay. And then there's a date that says 02/07/93 that's
2 crossed out?
3 A. Yes.
4 Q. And there's -- a date written underneath it is 04/12/93?
5 A. That's correct.
6 Q. And that 04/12/93 is not your writing; is that correct?
7 A. That's correct.
8 Q. All right. And so maybe this -- and then there's also a
9 letter E up in the corner -- up on the right-hand corner?
10 A. That's correct.
11 Q. And that letter E -- I probably should put this up on the
12 screen for these folks. That letter E is also not something
13 that you filled in?
14 A. That's the property room that did that.
15 Q. And there's a location column, and there's something that
16 says old freezer?
17 A. That's also property room.
18 Q. Okay. And some other location information, property?
19 A. That's also property.
20 Q. Okay. Now, the additional description or comments on the
21 bottom there, those -- that's not your handwriting?
22 A. No. That's Mr. Schlosser's.
23 Q. Okay. And you recognize that all these years later?
24 A. Yes.
25 Q. All right. And, as well, on the second page, there's some

1 additional description or comments?
2 A. That is correct.
3 Q. And that is also Mr. Schlosser's?
4 A. Yes.
5 Q. Okay. And that's where he says, hey, I'm going to
6 fingerprint some items and no results on those?
7 A. That is correct.
8 Q. All right. Now, you believe that since it was your
9 evidence, you're the one that took it to the secure forensic
10 lab?
11 A. That is correct.
12 Q. I mean, it's not like you'd send it in with whoever was just
13 coming back to the County-City Building?
14 A. No.
15 Q. And when you had this item -- had your items and you took
16 them to the lab, if you put them in a locker, you'd have a
17 key?
18 A. That's correct.
19 Q. And you're the only one with that key?
20 A. That's correct.
21 Q. It's not like the detective can say, hey, can I borrow it
22 for the afternoon?
23 A. No.
24 Q. And, in fact, if a detective even wanted access to talk to
25 you about what to fingerprint, they'd have to come in with

1 you?
2 A. That is correct.
3 Q. All right. Or in this case, now, there's no documentation
4 of you giving Mr. Schlosser your key?
5 A. No.
6 Q. Okay. And you actually have no memory of whether, at some
7 point, he obtained the key from you?
8 A. I do not.
9 Q. All right. And he might have?
10 A. Yeah. We worked as a team, so, yes, he, at some point --
11 and the fact that he was going to do the fingerprint
12 evidence, he would have gotten the key from me.
13 Q. Okay. And like I said, there's nothing that documents when
14 that trade-off would be?
15 A. No.
16 Q. All right. You know, I think I asked you about when you
17 would go in to a scene like this, it was your recollection
18 that in '93, you'd put on gloves; right?
19 A. Yes.
20 Q. And one of the things that -- I think you said that you
21 might have even changed them at some point?
22 A. Yes, regularly.
23 Q. Okay. That's not something you documented?
24 A. No.
25 Q. No. And you actually don't have any memory or recollection

1 of whether or not you actually did change your gloves?
2 A. I can only say that habit would be, we would have changed
3 them frequently; yet, I don't have any notation saying I
4 did, no.
5 Q. Okay. Now, do you remember testifying under oath on
6 September 24th in this case?
7 A. I -- I don't remember the date, but yes.
8 Q. Fair enough on the date. Hold on; let me find the --
9 THE COURT: In the last year, I assume,
10 or --
11 MS. HIGH: Pardon?
12 THE COURT: Which year?
13 MS. HIGH: Excuse me, 2015.
14 THE COURT: Okay. Thank you, just for the
15 record.
16 Q. (By Ms. High) I have what's been marked as Defendant's
17 Exhibit 219. Okay. And Defendant's Exhibit 219 is a
18 verbatim report from a proceeding that we had.
19 A. Okay.
20 Q. And I'd like to turn your attention to page 60. Okay. And
21 I asked you, "Okay, and so then you would keep these gloves
22 on throughout the -- throughout the processing of this
23 scene; is that correct?"
24 And do you see your answer there?
25 A. "I would occasionally -- on occasion change it -- "

1 Q. Right.
2 A. " -- occasionally changing them."
3 Q. Right. "I would have gloves on, occasionally changing
4 them"; right?
5 A. That's correct.
6 Q. Okay. So the items that were collected by you, as evidenced
7 on your -- the property sheet, Exhibit 82, get booked into
8 the actual Pierce County property system some 60-plus days
9 after they were collected?
10 A. Yes.
11 Q. All right. And I think it's, you know, your testimony -- I
12 think I heard you, today, say that, you know, that was not
13 unusual. Is that -- would that be your testimony?
14 A. I won't say it was -- it wasn't unusual; it happened.
15 Q. Okay.
16 A. It wasn't usual, but it did happen.
17 Q. Okay. So that wouldn't be the usual practice to have that
18 kind of delay even for processing in the forensic -- or in
19 the forensic lab?
20 A. Yeah, but it did happen over the -- over the years.
21 Q. Okay. And that, more or less, depended on -- I mean,
22 sometimes you'd have some delay based on the kind of
23 processing or examination that had to be done?
24 A. That could be part of it, yes.
25 Q. Okay. And I think you're saying here, hey, really, the

1 blood evidence would not take two months to dry?
2 A. No.
3 Q. And, in fact, leaving blood evidence on a rack for two
4 months would not be acceptable?
5 A. It would not have been on the rack for two months.
6 Q. Right. And it would not have been acceptable?
7 A. We wouldn't -- we wouldn't have done it, no.
8 Q. Okay. Right.
9 A. It was not -- it was not acceptable.
10 Q. Right. And, you know, it being in a locker for over two
11 months, in order to be fingerprinted, was still pushing the
12 envelope?
13 A. Yeah. In the locker, it's not going to be bothered. It's
14 not going to be a degraded fingerprint being in the locker.
15 Q. Yeah, so let's talk about that. I mean, you take everything
16 from the case, if it will fit, and these are just thirteen
17 items; and you'd put it all in one locker together, if you
18 could?
19 A. Okay. Yes.
20 Q. Right. And I think you said the reason we wanted to keep it
21 and not turn it into the property room, if we had to process
22 it, was: We wanted to keep it from, like you say, being
23 degraded or damaged or somehow altered?
24 A. That's why we kept it, yes.
25 Q. Right. The thought is, hey, if it's in my control, I don't

1 have ten other people touching it, picking it up, moving it,
2 that kind of thing; is that right?
3 A. That's correct. It was kept in my control.
4 Q. All right. And it looks like the items that were held for
5 fingerprinting that perhaps -- I'll have you take a look at
6 Exhibit 82 -- there were four items that were processed?
7 A. I believe that's right, yes.
8 Q. Okay. And you were not involved in that?
9 A. Not -- not at all, no.
10 Q. And if you had been involved in additional processing, you
11 would have written another report?
12 A. That is correct.
13 Q. Or you would have documented somehow that you did something?
14 A. That's correct.
15 Q. Okay. And there's nothing -- like I said, there's nothing
16 that documents how your partner, Mr. Schlosser, got access
17 to these items?
18 A. There was nothing documented, no.
19 Q. Okay. Or at least not in anything that you have; right?
20 A. No.
21 Q. Right. So when you collect evidence -- going back to your
22 collecting evidence at the -- at the scene, so, in '93, you
23 were not putting on this evidence tape?
24 A. I don't know. I don't honestly remember. I know at one
25 time, we started; but I don't know if we did it then. I

1 don't remember.
2 Q. Okay. But in this case, it doesn't look like it?
3 A. No.
4 Q. All right. It looks -- as you said, in this case, you were
5 just writing on the bags?
6 A. That's correct.
7 Q. Okay. And I think that as we look at some of the items that
8 you collected, you obviously had in your evidence van -- I
9 mean, you would drive a van, or --
10 A. Yes.
11 Q. -- that had supplies and those kinds of things in it?
12 A. That's correct.
13 Q. And you have different-sized envelopes that you would use?
14 A. Yes.
15 Q. Here, I mean, it just looks like the flap, maybe, is licked
16 or gummed down?
17 A. Probably stapled.
18 Q. Okay. Well, I'm going to hand you Plaintiff's Exhibits 103,
19 104, and 105; and I'll ask you about that because I do know
20 that you indicate that sometimes you put things in a bag and
21 you staple them; right?
22 A. These, here, were not stapled.
23 Q. Right. So those weren't stapled?
24 A. No.
25 Q. But sometimes you would staple things?

1 A. Depending on what it was, yes.
2 Q. Sure. And when you would staple items -- it was a stapler,
3 as well, that you had as part of your kit; is that right?
4 A. That's correct.
5 Q. Okay. And would you bring the stapler into the crime scene?
6 A. No.
7 Q. Right. You would do that back in your van?
8 A. At some other point in time, yes.
9 Q. Right. I mean, and you had it there, so you could at least
10 get it stapled before too long; right?
11 A. If it needed to be, yes.
12 Q. Okay. And so here, I mean, some things might not be
13 stapled, might just be dropped into the little coin
14 envelope -- or envelope that you had; right?
15 A. Yes.
16 Q. All right. And like you said, so the stapler that's in your
17 van that you used to staple things, that would have been
18 used on multiple crime scenes or for evidence collected from
19 multiple locations?
20 A. Yes.
21 Q. Okay. And, you know, the evidence markers that you would
22 put in a bag, they would come out at some later date?
23 A. The evidence?
24 Q. Yeah. Those little placards that you might put in your bag,
25 they -- you'd take them out at some later time?

1 A. Yes. If they went in, yes.
2 Q. Okay. You know, and one of the things that -- well, let's
3 see if I can find the picture of it, Plaintiff's Exhibit 96;
4 and this is admitted Exhibit 4. I think you identified this
5 as one of the items that you collected?
6 A. Yes, it is.
7 Q. Okay. And that bag is taped; right?
8 A. Yes, but probably not by me.
9 Q. Right. And I think if you read it, it's not by you?
10 A. That's right.
11 Q. And I think there are probably some other seals on there
12 that also aren't by you, like on the --
13 A. That's correct.
14 Q. And I think on the bottom, there's some Crime Lab tape on
15 there?
16 A. That's correct.
17 Q. Okay.
18 A. Yeah.
19 THE COURT: Counsel, how much more do you
20 anticipate? It's a quarter till.
21 MS. HIGH: Okay. I think probably about
22 twenty-five more minutes or so.
23 THE COURT: All right. Then we'll go
24 ahead and take the recess, no discussion, no investigation,
25 notepads face down on your chairs. Please remain in the

1 jury room until Ms. Redmond comes to get you.
2 (The jury was not present.)
3 MR. PENNER: Thank you, Your Honor.
4 THE COURT: All right. Anything before I
5 leave?
6 MS. HIGH: No. Thank you.
7 THE COURT: All right. We'll be at recess
8 for fifteen minutes.
9 (A recess was taken.)
10 (The defendant was present.)
11 (The jury was not present.)
12 (The witness returned to the stand.)
13 THE COURT: I have a settlement conference
14 at four o'clock, so we may need to recess just a little bit
15 before, so we can get --
16 MS. HIGH: Okay.
17 THE COURT: -- the table cleared off.
18 MS. HIGH: Okay.
19 THE COURT: All right?
20 MS. HIGH: I'll try to pick up the pace a
21 little bit. Okay.
22 THE COURT: Is Mr. Schlosser available
23 tomorrow?
24 MR. PENNER: It's difficult, Your Honor,
25 because of his medical condition; so I'd ask if we could try

1 to get him done today. Probably the longest part of his
2 testimony would be the video, but I think we could probably
3 show that tomorrow.
4 THE COURT: I don't think you're going to
5 get him done today.
6 MR. PENNER: I don't have any control over
7 the schedule, Your Honor.
8 MS. HIGH: Right.
9 THE COURT: No, you don't.
10 MS. HIGH: Right.
11 THE COURT: I mean, if I could, I'd make
12 trains run on time; but that doesn't happen around here. I
13 don't think you're going to get him on and done today --
14 MR. PENNER: Okay.
15 THE COURT: -- not with the things she
16 needs to go into, so my bet would be -- the best thing would
17 be to start him in the morning.
18 MR. PENNER: Should I excuse him, then,
19 Your Honor?
20 THE COURT: Go ahead and excuse him.
21 MR. PENNER: All right.
22 (Pause.)
23 MR. PENNER: Thank you.
24 THE COURT: Okay, then. All right. Are
25 you ready for the jury then?

1 MS. HIGH: Yes. Thank you.
2 (The jury was present.)
3 THE COURT: All right. You may be seated.
4 Thank you. All right. Continue, Counsel.
5 MS. HIGH: Thank you.
6 CROSS-EXAMINATION (Cont'd.)
7 BY MS. HIGH:
8 Q. So, Mr. Johnson, I believe you have Exhibit 96 up there.
9 A. Yes.
10 Q. And, again, that is a Radio Shack phone with a cord in that
11 package?
12 A. Okay. Yes.
13 Q. Okay. I think it was just authenticated by Mr. Penner, and
14 that seems to relate back to your property sheet, as you'll
15 remember.
16 A. Yes.
17 Q. Okay.
18 A. Yes.
19 Q. Now --
20 MS. HIGH: Can you all see?
21 THE JURORS: (Nods heads.)
22 Q. (By Ms. High) So here's a picture -- I guess you can see.
23 This is one that you took showing the phone being severed
24 from the cord; is that correct?
25 A. Yes.

1 Q. Okay. Was it your decision to package the two of them
2 together?
3 A. The cord and the phone?
4 Q. Yes.
5 A. If the cord was still attached to the phone, then I attached
6 it with the phone. I don't recall exactly.
7 THE COURT: Okay. Counsel, what's the
8 number on the exhibit that you've got?
9 MS. HIGH: 96.
10 THE COURT: All right. That is 96?
11 MS. HIGH: Oh, 96 is --
12 THE COURT: No, 96 is in his hands.
13 MS. HIGH: It's 4, Exhibit 4.
14 THE COURT: All right. Let's make sure we
15 have those exhibit numbers referenced in the record.
16 MS. HIGH: Thank you, Your Honor.
17 Q. (By Ms. High) So Exhibit 4 -- maybe if you can come on down
18 here, it might help you a little bit because I know it's
19 hard to see from back there.
20 A. It is, but I can see now it's not connected to the phone.
21 Q. Okay.
22 A. Yeah.
23 Q. And I have a couple other photographs that have already been
24 admitted, I guess; so my point is: But you did put the cord
25 in with the phone?

A. Yes.
Q. And I don't know if I got an answer. Do you know whose call that was, whose decision was that to put them together?
A. They were together, so it was probably my decision just to put them in there together.
Q. And when you say "together," they were in proximity?
A. Yes.
Q. Okay. The phone is on the carpet; the cord, though, runs through the kitchen, according to the pictures; right?
A. Yes. They were right -- the phone was on top of the cord, so I picked them up together.
Q. What's been admitted as Defendant's Exhibit 205, I'd like you to take a look at this.

THE COURT: And are you moving to publish?

MS. HIGH: Yes, I am, Your Honor. Thank you. If I hadn't published it already. Thank you.

MR. PENNER: No objection.

MS. HIGH: I'm obviously tired.

THE COURT: Thank you.

Q. (By Ms. High) Okay. Now, in this picture, are you able to -- are you able to actually see what the items are in there? I know it is kind of difficult from back there. Do you see a set of keys that are on the counter to the right of the photograph?
A. I do.

1 Q. Okay. And are you able to -- and it's kind of difficult to
2 see. There's, like, also, a plastic cup just on the far
3 side of the stove?
4 A. I can't make it out, no.
5 Q. Okay. And those keys were not collected; is that right?
6 A. Apparently not, no.
7 Q. Okay. And if you had collected them, you would have put
8 them on your property sheet?
9 A. That is correct.
10 MS. HIGH: All right. Your Honor, request
11 permission to publish Defendant's Exhibit 210?
12 THE COURT: Any objection?
13 MR. PENNER: No, Your Honor.
14 THE COURT: It may be published.
15 Q. (By Ms. High) Here's another photograph that was taken that
16 day, and this is of the daughter's bedroom; and in this
17 photograph, I guess you could see that there's an answering
18 machine. If you need to go up and look, that's great.
19 A. Okay. I see -- I see where it is, yes.
20 Q. Yeah, on the night table there?
21 A. Yes.
22 Q. Okay. And, again, that wasn't collected or the cassette or,
23 you know, information out of it? I think that's actually
24 one of the old cassette ones.
25 A. Okay.

1 Q. Yeah.
2 A. It's not on my property sheet, anyway.
3 Q. Yeah. So as far as you know, you were responsible for
4 getting all the property, and that wasn't collected?
5 A. That's correct.
6 Q. Okay. And I think you also can see areas of, I don't know,
7 some, like, white stuff on the carpet here?
8 A. Yes.
9 Q. Okay. No samples were taken of that?
10 A. Apparently not, no. It's not on my property sheet. No
11 decision was made by anybody to collect it.
12 MS. HIGH: Okay. Request permission to
13 publish Defendant's Exhibit 213?
14 THE COURT: Any objections?
15 MR. PENNER: No, Your Honor.
16 THE COURT: 213 will be published.
17 MS. HIGH: Thank you.
18 Q. (By Ms. High) And let me know if you have any problems
19 seeing what's depicted -- or, it's kind of a dark picture,
20 yes. I don't know if you can tell on the nightstand that
21 there's another answering machine on there. Is that
22 something you're able to pick out?
23 A. I can pick it out, yes.
24 Q. Okay. And, again, that answering machine wasn't collected
25 either?

1 A. Apparently, no. Nobody made that decision to do that.
2 Q. Okay. In your report, which is Exhibit 45, you have a
3 paragraph that you read for the jury on direct with
4 Mr. Penner, talking about what you collected, you know. And
5 it says, "I" -- it started with, "I proceeded to collect,"
6 and then you kind of go through a paragraph of things. And
7 that's on Page 2 of 3. I don't know if you see that.
8 A. Yes.
9 Q. That's -- there are things on your property sheet, Exhibit
10 82, that aren't referenced in there; is that right?
11 A. Not in this report, no.
12 Q. Okay. And you actually say "see property report for a list"
13 right?
14 A. Yes.
15 Q. Because, I mean, like, you didn't go through and list the
16 McDonald's cups and some of those kinds of items.
17 A. The property report is a part of my report.
18 Q. Okay. So this is just kind of a summary?
19 A. The property report?
20 Q. Well, I'm saying that your report, Exhibit 45, your
21 narrative report, was, perhaps, more of a summary?
22 A. I guess you could say that, yes.
23 Q. Okay. Okay. I mean, you meant for it to be pretty accurate
24 about what you thought were important things, but --
25 A. Yes.

1 Q. -- you didn't actually list everything here?
2 A. Not everything on that --
3 Q. Okay.
4 A. -- in that report, no.
5 Q. Okay. But you would take pains on your property inventory
6 sheet, the Exhibit 82, to be specific about what you
7 actually collected?
8 A. To name or describe where it is, yes.
9 Q. Sure, I mean -- and, you know, I mean, you make it pretty
10 clear, like, when you say an "unknown sample with control,"
11 I mean, you're trying to be specific in that case?
12 A. Yes.
13 Q. All right. And just to go back that -- at this time in '93,
14 it was a very, very busy time for forensic technicians?
15 A. I -- I don't recall how busy we were; but I know in '93,
16 we -- there were -- I -- I was probably pretty busy at
17 times. We were always busy doing things.
18 Q. Right. And, you know, again, when we had an opportunity to
19 do an interview earlier, you know, you reported that you
20 were always busy, rarely a day went by when you didn't have
21 a scene to work. Do you recall saying that?
22 A. Yes. That was generally the case. Generally, every day we
23 had something.
24 Q. Right. And this was before the time that you had office
25 days, is that right, as the property forensic techs now

1 have, actually, office days in order to process or handle
2 their evidence?
3 A. Well, I can't say exactly, but we tried to always
4 occasionally rotate around; so we at least had one or two
5 days in the office to do something, if -- if we could, even
6 back in '93. That always didn't work out, but we tried to
7 do it.
8 Q. Well, and if, in fact, you'd had some of those office days,
9 this property wouldn't necessarily have been sitting around
10 65 days?
11 A. It -- it would not have, that's correct.
12 Q. Right. So I'm assuming that because if you would have, you
13 know, had a little breather there, this property would have
14 been processed and into the property room?
15 A. If that was the case, yes.
16 Q. Right. I mean, because the policy was, you know, whether it
17 was -- you know, standard operating proceeding -- procedures
18 for Pierce County, or the Crime Lab, was to get items into
19 the property room as soon as practical?
20 A. As soon as practical, yes.
21 Q. Right. And so while there's, maybe, not a hard deadline
22 set, you know, you need to have it in within 24 hours or 15
23 hours or whatever, it was still to do it as soon as you
24 could?
25 A. As soon as possible.

1 Q. Right. And while you said back at the time, 65 days could
2 happen, it certainly was kind of pushing the outer limits of
3 what -- how long property would be someplace that's not the
4 property room where it's actually logged in?
5 A. I think saying "pushing the envelope" is a little strong,
6 but it -- it was unusual to go that long --
7 Q. Sure.
8 A. -- but --
9 Q. Sure. Yeah.
10 A. -- it happened.
11 Q. Sure. Okay. And then just real quickly, you had a van that
12 you drove when you went out there that night that was
13 separate from the van that Mr. Schlosser drove?
14 A. That is correct.
15 Q. Okay. And it's because you got there at two different
16 times?
17 A. That's correct.
18 Q. Right. And you had partnered with Mr. Schlosser on this
19 occasion, but you weren't necessarily always partnered
20 together?
21 A. Not necessarily, no.
22 Q. Right. But there was a limited number of you, and so you'd
23 end up working with all of them at different times; is that
24 right?
25 A. The forensic investigators?

1 Q. Sure.
2 A. Yes. We would interact occasionally and together or
3 sometimes just as individuals, yes.
4 Q. Mm-hmm. Okay. And Mr. Schlosser and you had worked
5 together for many years; but he did have, occasionally, some
6 performance problems?
7 A. Who did?
8 Q. Mr. Schlosser?
9 A. I'm not going to comment on that.
10 Q. Do you know?
11 A. I'm not going to comment on performance problems. That's --
12 that's above my -- I'm -- I'm not an expert in that.
13 Q. Okay. So you weren't aware if he received any reprimands?
14 A. I'm not going to talk about that.
15 Q. And my question is: Do you know, but you just don't want to
16 talk about it?
17 A. I don't recall.
18 Q. You don't recall. Well, okay. Let me just check my notes.
19 Oh, I do have something here. Again, nobody, as far as you
20 know from your report or from your property sheet,
21 fingerprinted either the doorbell or the doorknob?
22 A. If it was done, Mr. Schlosser would have done it at the
23 scene.
24 MS. HIGH: Okay. That's all I have.
25 Thank you.

1 THE COURT: Redirect?
2 MR. PENNER: Briefly, Your Honor. Thank
3 you.
4 REDIRECT EXAMINATION
5 BY MR. PENNER:
6 Q. So, Mr. Johnson, you've testified a lot today, also about
7 just generally your practices. Let's focus in on this case
8 again.
9 So, in terms of the drying room, was there any evidence
10 in this case that needed to be put in a drying room?
11 A. I don't believe so.
12 Q. All right.
13 A. Looking at the items, I don't think so.
14 Q. All right. And, typically, what's the kind of stuff that
15 might have to go into a drying room?
16 A. Any item that is wet, obviously, wet.
17 Q. We saw a photograph of Linda Robinson on the floor with her
18 clothes pretty bloody.
19 A. Yeah.
20 Q. Is that -- bloody clothes, is that the kind of thing that
21 might need to be dried?
22 A. Yes. Now --
23 Q. Let me do the follow-up question.
24 A. Yeah.
25 Q. Do you collect, or does the forensics unit collect the

1 clothing of a murder victim at the scene?
2 A. No, we do not.
3 Q. All right. What happens to that clothing?
4 A. That's collected by the Medical Examiner at the time of
5 autopsy.
6 Q. Okay. And do they have their own drying room facility?
7 A. Yes, they do.
8 Q. Regarding fingerprints, can you tell the jury the difference
9 between a latent fingerprint and a usable fingerprint?
10 Let me ask it a different way: "Latent" is one of those
11 technical terms. What does that mean, exactly, to a jury?
12 A. Latent is invisible.
13 Q. Okay. And how do you find a latent fingerprint?
14 A. The most popular way today -- most of the time, we just use
15 a basic black powder. It's the powder we've been using
16 since the beginning of time. Other times, there are certain
17 chemicals to enhance that latent print to make it visible.
18 Q. Okay. Is it possible sometimes -- did you do fingerprint
19 analysis for comparison purposes?
20 A. Yes.
21 Q. Okay. Was it ever the case that you obtained a fingerprint,
22 a latent, but then it wasn't of value for comparison
23 purposes?
24 A. Yes.
25 Q. Can you explain to the jury why that might be or how that --

1 what that means exactly?
2 A. You could have a fingerprint that was, obviously, the
3 fingerprint, but there weren't enough points of comparison.
4 There weren't enough descriptive points on that fingerprint
5 to use to compare the known subject against that
6 fingerprint. There just wasn't enough there to use, so it
7 was of no value.
8 Q. Okay. And I think you testified that if an item was
9 processed for fingerprints, there probably would have been
10 some documentation as to that; correct?
11 A. Yes.
12 Q. All right. And if you take a look at Exhibit 82, which is
13 the property sheet, is there some documentation regarding
14 efforts to fingerprint some of the items?
15 A. Yes.
16 Q. And where is that located?
17 A. It's on the bottom line of the property sheet, Page 2.
18 Q. Okay. And what does it indicate?
19 A. "Items 16, 17, 20, 22 processed for latent fingerprints with
20 negative results."
21 Q. What does "with negative results" mean?
22 A. No prints of value is -- generally -- is what he's saying.
23 No prints of value were recovered; nothing was there.
24 Q. Okay. All right. And then finally, regarding Mr. Schlosser
25 and the last few questions there, did Mr. Schlosser collect

1 and package any of this evidence?
2 A. No.
3 Q. Who did that?
4 A. I did that.
5 MR. PENNER: Thank you. Nothing else,
6 Your Honor.
7 THE COURT: Anything based on that,
8 Counsel?
9 MS. HIGH: Yes.
10 RECROSS-EXAMINATION
11 BY MS. HIGH:
12 Q. If Mr. Schlosser recovered latent prints inside the
13 apartment, he was your -- as a partner, you'd know that; is
14 that right?
15 A. If he did, I would have known that, probably, yes.
16 Q. Okay. And like you said, the problem is we just don't know
17 what would happen to latents that were recovered from inside
18 the apartment at this point?
19 A. I -- I don't recall now what we did with latent
20 fingerprints. There's a control cabinet, but I don't
21 remember where it was.
22 Q. Sure. And I think your testimony earlier was: It's what
23 the items have to have done to them, what processing do they
24 need that drives how long they should be in that secure
25 IDENT tech or forensic lab room; is that right?

1 A. It's certainly one of the players in that. That's not all
2 of the players but one of the players, yes.
3 Q. Okay. And in the -- in the perfect world, they'd only --
4 they'd only be there as long as it took to do whatever you
5 needed to do?
6 A. In a perfect world, yes.
7 Q. Okay. Let me just -- okay. And so you're saying now that
8 the items that were serological blood items would not have
9 been the cause for the delay?
10 A. They weren't -- you mean, because they weren't in the drying
11 room? I'm not sure of your question.
12 Q. Right. Well, you don't really know where they were because
13 you don't have any memory that they were in the drying room
14 or a locker; but I guess what I heard from Mr. Penner was,
15 you know, maybe these blood items weren't the reason why we
16 don't know where this property was for 65 days?
17 A. If it was in my control, it was in the locker, no question
18 about it.
19 Q. Okay. Well, except for you don't have any memory of that,
20 do you?
21 A. It was in the locker until Mr. Schlosser turned it in.
22 Q. Okay.
23 A. That's --
24 Q. Right.
25 A. Granted, there's no documentation; but that's where it would

1 have been, in that locker in our control.
2 Q. Right. Based on what you believed you would have done if
3 you were doing what you often did?
4 A. That's the way we did it, yes.
5 Q. Okay.
6 A. That's procedure.
7 Q. All right. So -- but, I mean, really, as you sit here
8 today, you have no memory of taking those items, going
9 downstairs and putting them in a locker?
10 A. Recovering them from the crime scene and putting them down
11 there, I don't remember; but I would have -- that was
12 procedure. That's what we did.
13 MS. HIGH: Okay. Okay. That's all I
14 have. Thank you.
15 THE COURT: Anything else, Mr. Penner?
16 MR. PENNER: No, Your Honor. Thank you.
17 THE COURT: All right. May the witness be
18 excused, subject, of course, to recall?
19 MR. PENNER: Yes, Your Honor.
20 MS. HIGH: Yes. Thank you, Your Honor.
21 THE COURT: All right. You may step down,
22 sir. Thank you very much.
23 (The witness was excused.)
24 MR. PENNER: Your Honor, given the Court's
25 schedule and the time of day, I guess I'll ask that we

1 adjourn.
2 THE COURT: All right. Mr. Penner had
3 another witness lined up, but I did not think we were going
4 to finish with this witness in time to put that one on, my
5 bench call, so we will start with that witness tomorrow
6 morning.
7 At this time, we're going to recess for the day. I do
8 have a settlement conference at 4:00, so you'll need to
9 clean the tables off.
10 MS. HIGH: Okay.
11 THE COURT: So the usual instructions: No
12 discussion, no investigation no matter how tempting the
13 thought to look into any of these issues, and notepads face
14 down on your chairs, and we'll see you tomorrow morning at
15 9:30; have a nice evening.
16 (The jury was not present.)
17 THE COURT: All right. Counsel, why don't
18 you come up and take a quick run-through to make sure we
19 have all of the exhibits --
20 MS. HIGH: Yeah.
21 THE COURT: -- before you leave; and
22 anything, then, before we recess?
23 MR. PENNER: I don't think so, Your Honor.
24 MS. HIGH: No.
25 THE COURT: All right.

1 MS. HIGH: We'll try to get our stuff
2 cleared out of here, yeah.
3 THE COURT: Okay. The Court will be at
4 recess until 9:30 tomorrow morning.
5 (Court adjourned for the day.)
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,	)	
	)	Superior Court
Plaintiff,	)	No. 14-1-02979-1
	)	
vs.	)	Court of Appeals
	)	No. 48810-8-II
JAMES EDWARD MITCHELL,	)	
	)	
Defendant.	)	

REPORTER'S CERTIFICATE

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

I, Kimberly A. O'Neill, Court Reporter in the state of Washington, county of Pierce, do hereby certify that the foregoing transcript is a full, true, and accurate transcript of the proceedings and testimony taken in the matter of the above-entitled cause.

DATED this 4th day of August, 2016.

_____
KIMBERLY A. O'NEILL, CCR
License No. 1954

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4
5 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE
6

7 STATE OF WASHINGTON,	)	
	)	Superior Court
8 Plaintiff,	)	No. 14-1-02979-1
	)	
9 vs.	)	Court of Appeals
	)	No. 48810-8-II
10 JAMES EDWARD MITCHELL,	)	
	)	
11 Defendant.	)	

12
VERBATIM REPORT OF PROCEEDINGS
13
14 **Thursday, February 4, 2016**
Pierce County Courthouse
15 Before The Honorable Katherine M. Stolz
Tacoma, Washington
16
17 <<<<<< >>>>>>
18
A P P E A R A N C E S
19
20 For the Plaintiff: STEPHEN M. PENNER
Deputy Prosecuting Attorney
21
For the Defendant: MARY K. HIGH
22 Attorney at Law
23
24 Kimberly A. O'Neill, CCR #1954
Official Court Reporter
25 Department 2, Room 214A
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No. 48810-8-II

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1 BE IT REMEMBERED that on Thursday, the 4th
2 day of February, 2016, the above-captioned cause came on
3 duly for hearing before THE HONORABLE KATHERINE M. STOLZ,
4 Judge of the Superior Court in and for the county of Pierce,
5 state of Washington; the following proceedings were had, to
6 wit:
7
8 <<<<<< >>>>>>
9
10 (The defendant was present.)
11 (The jury was not present.)
12 THE COURT: Anything before we bring the
13 jury in?
14 MR. PENNER: I wanted to let the Court
15 know, in terms of scheduling, just -- you know how it is
16 with witnesses -- I've got two witnesses available this
17 morning. I don't believe they're going to take the full
18 morning, both civilians; and I just ran into scheduling
19 issues with my other witnesses, so that will be what I have
20 ready for the morning.
21 Then we've got -- Ms. High's witness is scheduled for
22 this afternoon. At 1:30 today, though, a case that Ms. High
23 and I are also assigned to is scheduled for -- it's a
24 two-count aggravated murder, first degree, case. It's set
25 for an OH and status conference in front of Judge Nevin,

1 who, as the Court knows, is also in the middle of a murder
2 trial; so I think it will be quick, but I'm going to ask the
3 Court if we could start at two o'clock this afternoon.
4 THE COURT: All right. That's fine.
5 MS. HIGH: Okay. Thank you. And I know
6 that Ms. Pries is going to be here. I think I told
7 Mr. Penner, so --
8 THE COURT: Okay.
9 MS. HIGH: -- if he has any additional
10 questions, we'll be able to deal with that.
11 THE COURT: All right. And then if we
12 don't finish with her today, she'll be available tomorrow
13 morning -- oh, no, tomorrow morning is Friday.
14 MS. HIGH: Yeah.
15 MR. PENNER: We'll finish.
16 MS. HIGH: We'll finish with her because
17 we have to --
18 THE COURT: Okay.
19 MS. HIGH: -- because then she's out of
20 the country.
21 THE COURT: That's right.
22 MS. HIGH: You know, and speaking of
23 scheduling, I should let you know I've been trying to
24 contact my witnesses and make sure that there's the
25 availability for next week and where we're going to be and,

1 you know, so that's still up in the air. I want to let the
2 Court know that we did serve Elizabeth Nelson. We had
3 contact with her, of course just this last week, phone
4 disconnected; so we are working on that, just to let the
5 Court know.
6 THE COURT: All right.
7 MS. HIGH: Thanks.
8 MR. PENNER: I also want to let the Court
9 know, Ms. Blais, she -- what she -- part of what she's going
10 to testify to is that she came to a prior trial setting
11 because she had a subpoena and then, at that point, saw
12 Mr. Mitchell. I've explained to her and talked to her about
13 what language she can and cannot use, indicated that she
14 should not use the word "trial," "trial setting," don't talk
15 about subpoenas, and certainly don't talk about anything
16 regarding Mr. Mitchell's custody status, the way he was in
17 custody. I believe she was probably in CDPJ behind glass,
18 so I've instructed her to simply say she came to a prior
19 hearing at which point she saw Mr. Mitchell and then
20 recognized him from being around the apartment around the
21 time, so if that works for the Court; and I've also talked
22 to Ms. High about that, but I wanted to let the Court know
23 that that instruction had been communicated to the witness.
24 THE COURT: Okay.
25 MS. HIGH: Okay.

1 THE COURT: Prior proceeding. Okay.
2 MS. HIGH: Got it.
3 THE COURT: Prior occasion.
4 MR. PENNER: Correct.
5 THE COURT: Something very generic.
6 MR. PENNER: Exactly.
7 THE COURT: All right, then.
8 MS. HIGH: And, you know, if you need to
9 lead a little bit on that.
10 MR. PENNER: And I will, so -- all right.
11 I think with that, then, Your Honor, I expect to finish
12 early this morning; and I apologize for that, but we're
13 ready to go.
14 THE COURT: Okay. All right. The
15 witnesses, is one of those Mr. Schlosser?
16 MR. PENNER: Mr. Schlosser had a doctor's
17 appointment this morning, so I moved him now to Monday.
18 THE COURT: Okay. All right.
19 (The jury was present.)
20 THE COURT: All right. You may be seated.
21 All right. Counsel, you may call your next witness.
22 MR. PENNER: Thank you, Your Honor. The
23 State would call Michele Pries.
24 (Pause.)
25 THE COURT: Why don't you have her put her

1 purse up here.
2 THE WITNESS: Okay.
3 MR. PENNER: Maybe right here.
4 THE COURT: All right. If you'll raise
5 your right hand.
6 MICHELE PRIES, witness herein, having been sworn
7 under oath, was examined and
8 testified as follows:
9 THE COURT: All right. If you'll have a
10 seat. There's water and Kleenex to your right. When
11 answering, keep your voice up. You can pull the chair
12 forward and adjust the mic. When asked a question, answer
13 "yes" or "no"; don't nod or shake your head or go "uh-huh."
14 The court reporter needs to know exactly what you're saying.
15 Okay?
16 THE WITNESS: Okay.
17 THE COURT: Thank you. All right. Your
18 witness, Counsel.
19 MR. PENNER: Thank you.
20 DIRECT EXAMINATION
21 BY MR. PENNER:
22 Q. Could you state your name for the record, and spell it for
23 the court reporter.
24 A. Michele T. Pries, M-I-C-H-E-L-E, T, P, as in Paul, R-I-E-S.
25 Q. Okay. And were you previously known by a different last

1 name?
2 A. Yes, Blais.
3 Q. Okay.
4 A. B, as in boy, L-A-I-S.
5 Q. All right. And, Ms. Blais, I'd like to direct your
6 attention back to February of 1993. Do you remember where
7 you were living then?
8 A. Yes. Off of Pacific Avenue in Spanaway off 161st Street.
9 Q. And what type of dwelling was it? Was it a house or
10 apartment complex?
11 A. It was fourplex apartments.
12 Q. Okay. And how were the -- how were the apartments set up?
13 A. There was two on each side, one above, one down below, and
14 then a washing area, stairs; and then on the other side,
15 there was, of course, the same up above and below.
16 Q. Okay. And which apartment did you have?
17 A. I lived in the lower left.
18 Q. And did you have any roommates?
19 A. Yes.
20 Q. Who were your roommates?
21 A. Elizabeth Nelson.
22 Q. Okay. Did you know your neighbors at all?
23 A. Yes.
24 Q. Okay. Did you know a neighbor by the name of Linda
25 Robinson?

1 A. Yes.
2 Q. I'm going to show you what's previously been admitted as
3 Exhibit 90. Is that Linda?
4 A. Yes.
5 Q. All right. And how well did you know Linda?
6 A. We would just speak briefly and "hi" and "good-bye," say
7 "hi," that's about it.
8 Q. Did you ever go over to her apartment?
9 A. No, I did not.
10 Q. All right. Did she ever come over to yours?
11 A. She actually did use our telephone, but that was with my
12 roommate, Elizabeth Nelson.
13 Q. Okay. How long did you live at that apartment?
14 A. Oh, goodness, probably five years.
15 Q. Okay. And February of 1993, there was a significant
16 incident at the apartment complex; right?
17 A. Yes.
18 Q. Where was that in terms of the five years that you lived
19 there?
20 A. I'm sorry. Can you say that again?
21 Q. Yeah. Was that towards the end of the five years that you
22 lived there or the beginning or somewhere in the middle?
23 A. Towards the end.
24 Q. Okay. And what's the first thing that you remember about
25 that night?

1 A. I was sleeping on the couch, and there was banging at the
2 door; and I looked out the windows, and there was sirens and
3 lights; and so I answered the door, and it was the police.
4 Q. Okay. And what did the police want?
5 A. They wanted to know what I'd been doing all evening, if I
6 had heard anything, seen anything.
7 Q. At that point, did you know something had happened to Linda?
8 A. No, I did not.
9 Q. All right. At some point, did you learn that something had
10 happened to Linda?
11 A. Yes, I did.
12 Q. Okay. Let's back up a little bit and talk about what the
13 police wanted to know; which is, what were you doing that
14 evening?
15 A. Sleeping on the couch.
16 Q. Okay. And do you remember about what time of night you fell
17 asleep?
18 A. It was probably about 11 p.m.
19 Q. Okay. And do you know how long you'd been asleep before the
20 police knocked on the door?
21 A. Approximately two to three hours.
22 Q. Okay. Did you hear anything that entire time?
23 A. No. I'm a very sound sleeper.
24 Q. Okay. And when you went to sleep around, you said, 11:00 --
25 A. Mm-hmm.

1 Q. -- was there any police cars or any activity in the parking
2 lot?
3 A. No.
4 Q. Okay. So you talked to the police that night. Did you end
5 up talking to the police any other time?
6 A. Yes, I have recently.
7 Q. Okay. But back in '93, they talked to you at the scene.
8 They talked to you that night; or, I guess, early morning,
9 they talked to you?
10 A. Correct.
11 Q. Did they talk -- did they talk to Ms. Nelson as well?
12 A. Yes.
13 Q. Okay. Did you tell them everything that you knew?
14 A. Yes.
15 Q. Okay. And at that point, did they inform you that
16 Ms. Robinson had been killed?
17 A. Yes.
18 Q. At any point, did you go up to her apartment?
19 A. No.
20 Q. You never saw the crime scene or anything like that?
21 A. Not that evening, no.
22 Q. Okay. Did you go back up to the apartment any other time?
23 A. Yes. A few months later, the landlord was just replacing
24 the walls; and he had shown me a few things.
25 Q. Okay. Did you talk to the police again after -- I mean,

1 shortly thereafter? Within the next few days or weeks, did
2 the police come and re-interview you?
3 A. Honestly, I can't remember. I don't believe so, no.
4 Q. And then I assumed you went about your life; right?
5 A. Correct.
6 Q. Okay. And then you were contacted recently about this case
7 again; is that right?
8 A. Correct.
9 Q. Okay. And do you recall actually coming to the courthouse
10 for a prior hearing?
11 A. Yes.
12 Q. And do you recall at that point seeing Mr. Mitchell?
13 A. Yes.
14 Q. Okay. When you saw Mr. Mitchell, did you recognize him from
15 having seen him back in 1993?
16 A. His face was very familiar, yes. I recognized him.
17 Q. Okay. So orienting back to 1993, then, again, how many
18 times did you see Mr. Mitchell?
19 A. Probably once or twice, just a couple times.
20 Q. Okay. And in what context and where did you see him?
21 A. Going up the stairs to visit Linda.
22 Q. Okay. And did you ever actually see him with Linda walking
23 up or down the stairs?
24 A. No, I did not.
25 Q. Okay. All right. And at that point, did you know his name?

A. No.
Q. Did you ever have any problems with Linda?
A. No.
Q. What kind of a neighbor would you describe her as?
A. Very nice. She was quiet.
Q. Okay.
A. She would say "hi" and "good-bye."
Q. All right. And was it the type of apartment complex where you could hear if there was loud music and things like that?
A. Yes.

MR. PENNER: All right. Thank you very much, Ms. Pries.

THE WITNESS: Thank you.

MR. PENNER: That's all I have.

THE COURT: Cross-examination?

MS. HIGH: Thank you.

CROSS-EXAMINATION

BY MS. HIGH:

Q. Good morning, Ms. Pries.
A. Good morning.
Q. In 1993, you and your roommate were pretty young girls --
A. Yes.
Q. -- or young women; is that right?
A. Correct.
Q. 18, 19 years old?

1 A. Yes. Correct.
2 Q. And where were you working at the time?
3 A. At Saars Marketplace.
4 Q. Okay. Is -- can you show me where that -- what street that
5 was on.
6 A. It was on 138th Street and Pacific Avenue.
7 Q. Okay.
8 THE COURT: Could we have her spell Saars.
9 MS. HIGH: Certainly.
10 THE WITNESS: Yes, S-A-A-R-S.
11 Q. (By Ms. High) So not that far from where you were living at
12 the time?
13 A. No, ma'am.
14 Q. And did you have a car?
15 A. Yes.
16 Q. Okay. When you lived there, was it apparent to you that
17 Ms. Robinson needed to borrow cars?
18 A. I never was aware of that, no.
19 Q. Okay. Now, you would park your car in front of your
20 apartment?
21 A. Correct.
22 Q. Okay. And everyone was assigned a slot?
23 A. Basically, yes.
24 Q. Okay. Now, certainly, when you talked to law enforcement
25 back in 1993, your memory was probably a lot fresher than it

1 is now?
2 A. Yes.
3 Q. And that's understandable; and, you know, I know -- I think
4 you said that, jeez, you were there in the apartment; you
5 were a sound sleeper, asleep on the couch --
6 A. Yes.
7 Q. -- and it's the officers, maybe, that knock on the door that
8 wakes you up?
9 A. Yes.
10 Q. Okay. I'm going to hand you what's been marked for
11 identification as Plaintiff's Exhibit 47, and I'm going to
12 direct your attention to Page 5 of 6 here, this big
13 paragraph right in here, and it starts with 0135 hours.
14 Okay. I'll have you take a look at that.
15 A. (Witness complies.)
16 Q. So it was -- it looks like, here, you're contacted by
17 Detective Minturn. You may or may not remember his name.
18 A. No, I don't.
19 Q. Sure. And he went -- and about halfway down, it indicates
20 that he contacts you and your roommate?
21 A. Okay. Correct.
22 Q. Right. And talking with you, you indicate that you'd seen
23 Ms. Robinson driving a charcoal grey Astro-type -- or
24 Chevy-Astro-van-type vehicle?
25 A. I don't remember, truthfully.

1 Q. Okay.
2 A. It's been quite a while.
3 Q. But you certainly would have given him your best
4 information?
5 A. Correct.
6 Q. I mean, it's not like you'd just kind of pull things out of
7 the ear to tell him?
8 A. Correct.
9 Q. Okay. And that you had said that that belonged to one of
10 her gentlemen friends?
11 A. Okay.
12 Q. Okay. And do you remember, as well, and I'll have you take
13 a look there, after that where you said that you'd actually
14 seen her about 4 p.m.?
15 A. That sounds about right.
16 Q. And she was waiting to borrow another vehicle?
17 A. Possibly. Like I said, I don't remember. It's been quite a
18 while.
19 Q. Sure. Why don't you take a look there.
20 A. Okay. (Witness complies.) Yeah, if I said it, it must be
21 true.
22 Q. And you told him at that time --
23 A. Correct.
24 Q. -- about four o'clock, she said, "was waiting for four
25 wheels" --

1 A. Okay.
2 Q. -- something like that?
3 A. Okay.
4 Q. And, as well, when you talked to the officers, like you
5 said, it sounded to me like she was a good neighbor?
6 A. Correct.
7 Q. But she was a single woman?
8 A. Correct.
9 Q. And that you believe that she would occasionally frequent
10 the NCO Club?
11 A. Correct.
12 Q. And when she first moved in, you had some contact with her
13 because she would borrow your telephone?
14 A. Correct. With my roommate, correct. Yes.
15 Q. Okay. Now, and had you ever been up to her apartment while
16 she lived there?
17 A. No.
18 Q. Okay. And do you remember seeing any of her gentlemen
19 friends come over?
20 A. (Shakes head.)
21 Q. Not really?
22 A. Not really.
23 Q. Okay. But that wouldn't have been something that would have
24 been surprising, or --
25 A. Correct. Yes.

1 Q. Okay. All right. And that evening -- I mean, I know you
2 said you were a pretty sound sleeper.
3 A. Mm-hmm. Yes.
4 Q. You were woken up when there was a bang on the door about
5 eleven o'clock, and do you remember telling the officers
6 that night that you -- let me make sure it was you and not
7 your roommate; hold on.
8 A. Yes.
9 Q. That was your roommate, so never mind. I'll strike that.
10 A. Okay.
11 Q. And your roommate, as well, did she have a job?
12 A. Yes.
13 Q. And where did she work?
14 A. I believe it was McLean. It was, like, a -- where they go
15 deliver to 7-Elevens and whatnot.
16 Q. Okay. And you don't recall hearing anyone either coming up
17 or going down from the apartment?
18 A. I don't remember.
19 Q. Okay.
20 A. Yeah.
21 Q. Or your, you know, neighbor's television or anything like
22 that on?
23 A. I don't remember, no.
24 Q. And I think, as you said, you're a pretty sound sleeper?
25 A. Very.

1 Q. And I think when you live in an apartment where the walls
2 are thin and you can hear stuff, you, at some point, just
3 kind of tune it out?
4 A. Correct. Yes.
5 Q. Okay. And you got pretty good at that?
6 A. Yes.
7 MS. HIGH: Okay. That's all I have.
8 Thank you.
9 THE WITNESS: Thank you.
10 THE COURT: Redirect, Counsel?
11 MR. PENNER: No, Your Honor. Thank you.
12 THE COURT: All right. May the witness be
13 excused?
14 MR. PENNER: Yes, Your Honor.
15 MS. HIGH: Yes, Your Honor.
16 THE COURT: All right. You may step down.
17 Thank you very much.
18 THE WITNESS: Thank you.
19 (The witness was excused.)
20 MR. PENNER: Your Honor, if I could take a
21 moment to move the exhibit.
22 THE COURT: You may.
23 MS. HIGH: Thank you.
24 MR. PENNER: And then at this time, Your
25 Honor, the State would call George Caldwell.

1 THE COURT: All right.
2 THE COURT: Watch the ramp.
3 THE WITNESS: Okay.
4 THE COURT: Raise your right hand, sir.
5 GEORGE CALDWELL, witness herein, having been sworn
6 under oath, was examined and
7 testified as follows:
8 THE COURT: All right. If you'll have a
9 seat. There's water and Kleenex to your right, sir. You
10 can pull the chair forward and adjust the mic. When
11 answering, answer "yes" or "no" out loud; don't nod or shake
12 your head or go "uh-huh." The court reporter does need to
13 know exactly what you're saying.
14 THE WITNESS: Okay.
15 THE COURT: All right.
16 DIRECT EXAMINATION
17 BY MR. PENNER:
18 Q. Could you state your name for the record, and spell it for
19 the court reporter.
20 A. George Caldwell, G-E-O-R-G-E, C-A-L-D-W-E-L-L.
21 Q. And, sir, what state do you live in now?
22 A. Virginia.
23 Q. Back in February of 1993, where did you live?
24 A. 2105 167th Street -- oh, here in Spanaway/Tacoma, yes.
25 Q. So let's go ahead and do that again.

1 A. Okay.
2 Q. So in February of 1993, where did you live?
3 A. Spanaway.
4 Q. All right. Here in Washington?
5 A. Yeah, Spanaway, Washington.
6 Q. Why did you live in Washington back in '93?
7 A. Because I owned a home, and I was stationed here in the
8 military.
9 Q. All right. And what branch were you in?
10 A. Army.
11 Q. And what years did you serve?
12 A. From 1996 to -- 1976 to 1997.
13 Q. Do you remember your rank in '93?
14 A. Yes, E-7, sergeant first class.
15 Q. Okay. How long had you been stationed -- you say you were
16 at Fort Lewis?
17 A. Right, Fort Lewis.
18 Q. How long were you stationed at Fort Lewis?
19 A. I came here from -- I think I got here from Hawaii, so
20 probably I returned back in '87, yeah, 1987.
21 Q. All right. And did you stay at Fort Lewis, then, until you
22 retired in '96?
23 A. No.
24 Q. Okay.
25 A. No. I left and went to Fort Polk, Louisiana, in --

1 Q. When?
2 A. I think that was '95, 1995; and then from there, I went to
3 Korea, and then I came back to Fort Lewis.
4 Q. All right. And when did you -- how long have you been in
5 Virginia?
6 A. Well, I just left Texas. I left Texas in October --
7 Q. Okay.
8 A. -- to go back to Virginia because I left Virginia to go to
9 Texas, so --
10 Q. And where are you from originally?
11 A. Originally from Florida.
12 Q. Okay. So you've been around a lot?
13 A. I've been around.
14 Q. Okay. Back in 1993, did you know a woman named Linda
15 Robinson?
16 A. Yes.
17 Q. All right. And how did you know Ms. Robinson?
18 A. Well, she was my babysitter's sister.
19 Q. Okay. Do you remember the babysitter's name?
20 A. Yes, Gloria Elliott.
21 Q. Okay. And how long did you know Ms. Robinson?
22 A. Well, up until the time that I left or the time of her
23 death.
24 Q. So prior to that, how long had you known her?
25 A. Hmm, well, I met her through her -- her sister, so whenever

1 she started to baby-sit. As a matter of fact, I needed
2 someone to baby-sit at night for me.
3 Q. Why was that?
4 A. Because I was in the military, and she took care of the kids
5 during the daytime, so I needed someone at night; so she
6 recommended her sister, so she took care of the nighttime
7 sitting for me.
8 Q. Was there something about your job assignment that required
9 that kind of baby-sitting?
10 A. Well, it's just the military because you're on duty 24/7;
11 you don't know when, where, or how you're going to be doing
12 what you're going to be doing.
13 Q. Okay. And back in 1993, how old were your kids?
14 A. Well, my son, he's -- his birthday was February 5th, so --
15 Q. Were they little or teenagers?
16 A. Oh, no. He was, what, 17.
17 Q. Okay. And were you single at the time?
18 A. Divorced.
19 Q. Okay. What was the nature of your relationship with Linda
20 Robinson?
21 A. She was my nighttime sitter, babysitter.
22 Q. Were you guys also friends?
23 A. Oh, yeah. Yeah.
24 Q. Did you date at all?
25 A. No. Well, she came to my house to baby-sit.

1 Q. Okay.
2 A. We never, like, went out-out.
3 Q. All right. Was there any romantic aspect of the
4 relationship or physical aspect?
5 A. Not that I know of.
6 Q. Okay. All right. Did you ever talk to her on the phone?
7 A. Mm-hmm. Yes.
8 Q. Just as a friend, not about the kids but just talked?
9 A. Well, mostly it was to arrange for her to come over or
10 something.
11 Q. Okay. Let's focus in, then, on February 6, 1993.
12 A. Okay.
13 Q. All right. Do you recall being on the phone with her?
14 A. Yes.
15 Q. And let's stop -- let's take a minute just to kind of talk
16 about memory. Do you remember a lot about 1993? Twenty --
17 you know.
18 A. Well, that -- that day was pretty significant because I
19 think we had my son's birthday party that day or, either,
20 was that Friday. It was either Friday or that Saturday, one
21 of the two.
22 Q. So the 5th?
23 A. The 5th or the 6th.
24 Q. Did Linda come to the birthday party?
25 A. Yes.

1 Q. Okay. Did other members of her family come?
2 A. Yes.
3 Q. All right. Did you see her -- to the best of your
4 recollection, did you see her on Saturday the 6th?
5 A. Well, that's the part I can't remember, the date of the
6 birthday party; so whatever day we had the birthday party
7 would be the last date that I saw her, and that was either
8 the 5th or the 6th.
9 Q. Now, eventually, you were talked to by the police; correct?
10 A. Yes.
11 Q. And they asked you some questions about the last time you
12 interacted with her?
13 A. Yes.
14 Q. Was that shortly after the 6th?
15 A. What do you mean shortly after the 6th?
16 Q. Was it within a few days of the last time you talked to her?
17 A. I think it took a while.
18 Q. Okay. But it wasn't ten years later?
19 A. Oh, no. No. No. No. It took longer than I had thought it
20 would take to get back with me.
21 Q. Well, let's talk about the 6th then.
22 A. Okay.
23 Q. When was the -- maybe you saw her that morning for the
24 birthday party or that day?
25 A. Okay.

1 Q. Do you remember being on the phone with her that evening?
2 A. Yes, that night.
3 Q. Okay. And what was the purpose or nature of that telephone
4 call?
5 A. Well, I can't remember why we was talking; but it was kind
6 of late at night, so maybe we were just chewing fat. Maybe
7 just after the birthday party, we were just figuring out
8 what each other was doing.
9 Q. Okay. Do you remember what time of night it was?
10 A. I believe it was between 10:30 and 11:00.
11 Q. And I want to take a minute again to say -- or to ask -- so
12 you had a chance, a few days after the murder, to talk to
13 the police about your telephone call; right?
14 A. Yes.
15 Q. And so that gave you an opportunity to think about the
16 details; is that right?
17 A. Yes.
18 Q. So as you sit here today, this isn't the first time you've
19 thought about what time you did talk to her; correct?
20 A. Right. Yes.
21 Q. Yeah. You had a chance to do that back then?
22 A. Right.
23 Q. Okay. So, again, what time do you think it was?
24 A. Between 10:30 and 11 o'clock on the 6th.
25 Q. And let's just take a minute -- we talked about

1 Ms. Robinson, but I just want to see if we could --
2 MR. PENNER: For the record, I'll publish
3 Exhibit 90.
4 Q. (By Mr. Penner) Is that Linda?
5 A. Yes, that's her.
6 Q. Okay. Did you ever go over to her apartment?
7 A. No.
8 Q. All right. And did she ever come to yours?
9 A. Yes.
10 Q. So it's about 10:30. You guys are just chewing the fat,
11 talking about whatever.
12 A. (Nods head.)
13 Q. How long do you think you talked to her?
14 A. I can't recall, maybe a few minutes, maybe five, ten
15 minutes. I have no idea.
16 Q. Okay.
17 A. I can't recall the exact time.
18 Q. Was there anything notable about the way the conversation
19 ended?
20 A. Yes.
21 Q. All right.
22 A. It ended abruptly, like, she either --
23 Q. Well, let me -- I'm going to stop you, and we'll go through
24 that.
25 A. Okay.

1 Q. So what was the first part about that that was abrupt or
2 ending? What happened?
3 A. Well, we was -- we was talking, and then there was a knock
4 at the door.
5 Q. Did you hear the knock; or did she say, oh, hey, somebody's
6 at the door?
7 A. She said, "Hold on, somebody's at the door."
8 Q. Okay. And then what happened?
9 A. She went to the door, and I'm assuming that's when she
10 looked out the peephole or tried to figure out who was at
11 the door.
12 Q. Was she still on the phone with you?
13 A. Yes.
14 Q. And were you guys still talking, or --
15 A. Not conversating-talking; I was just on hold.
16 Q. Okay. And could you hear, like, her breathing or doing
17 stuff?
18 A. Well, not initially; but as the time went on, the
19 conversation got kind of heated.
20 Q. Okay. Well, let's go through that. What did you hear? You
21 said she said there was a knock at the door; "Hold on"?
22 A. Right.
23 Q. And then what happened?
24 A. So she went to the door, and it -- because I could only hear
25 the conversation. It appeared that whoever was at the door

1 was non-threatening because she didn't ask for my help or
2 assistance or -- or yell out anything that was threatening
3 in nature.
4 Q. Okay. Did you hear her talking to the other person?
5 A. Yes.
6 Q. Okay. Do you recall what she said?
7 A. Well -- yes.
8 Q. What did she say?
9 A. Well, it was more of a submissive-type response. All she
10 was saying was, "Okay. Okay. Okay. Okay," repeatedly.
11 Q. Could you hear the other person that she was talking to?
12 A. No.
13 Q. Then what did you hear?
14 A. Well, after she repeatedly said, "Okay," then the phone went
15 dead.
16 Q. And just completely dead?
17 A. Completely dead.
18 Q. What was the difference, I guess, between hearing silence
19 and hearing -- was there, like, a click; or just how did you
20 know it was dead?
21 A. Well, it was, like, we was talking, so everything was fine;
22 and either one of two things, I think, took place. She hung
23 the phone up, or -- or something else happened.
24 Q. But the call was terminated?
25 A. The call was terminated.

1 Q. Did she say, hey, I got to go --
2 A. No.
3 Q. -- or good-bye, anything like that --
4 A. No. No. No.
5 Q. -- any parting words?
6 A. No parting words.
7 Q. All right. So what did you do? Did you try to call back,
8 or --
9 A. No. I -- I just figured that it was someone she knew, and
10 she needed to take care of that; so I just let it go.
11 Q. At that point, did you have any reason to think she was in
12 any danger?
13 A. No, none whatsoever.
14 Q. When did you hear that something had happened later?
15 A. I think it was probably that Monday when her sister was
16 telling me what had happened to her that night.
17 Q. And is that Gloria?
18 A. Yes.
19 Q. Okay. And were you surprised to hear that?
20 A. Yes. I was shocked. I was saying, "Oh, no, you can't be --
21 can't be true with this; right?" And then she was saying,
22 "Yeah." I said, "Well, if that's the night, you know, what
23 you're telling me, I was talking to her on the phone." And
24 then she responded -- she said, "Well, you probably was the
25 last person she was talking to." And that's when it

1 started.
2 Q. Okay. Did you contact the police, then; or did they contact
3 you?
4 A. Well, they contacted me.
5 Q. All right. And do you remember, then, when you talked to
6 them?
7 A. You mean in terms of time?
8 Q. Yeah.
9 A. Well, it wasn't, like, instant, you know, right away.
10 Q. Was it that week, though?
11 A. It -- it just seemed like it took longer than it should have
12 taken.
13 Q. Because you had information?
14 A. Right.
15 Q. All right. When the police finally came out and contacted
16 you, do you remember where that took place?
17 A. Yes, on the phone.
18 Q. Okay. And did you tell them what you knew?
19 A. Yes. They did the typical Q&A.
20 Q. Kind of like what you and I just did?
21 A. A little more in detail.
22 Q. Okay. Was there anything that they asked about that was
23 significant that you haven't already told the jury?
24 A. Well, yes. They asked, did I hear her crying for help? Did
25 I hear her call any names? Did I know whether the person

1 was a male or female or any type of -- trying to establish
2 some type of a relationship.
3 Q. And what were the answers to that? Did you hear, or did
4 you -- could you tell if it was a male or female?
5 A. No.
6 Q. After that, did you have any further contact with Linda's
7 family?
8 A. Well, her sister.
9 Q. She kept baby-sitting?
10 A. Right.
11 Q. And then I guess the last question I just want to ask you
12 now, as you're sitting here in court, I'll ask you to take a
13 look at the defendant, Mr. Mitchell. Do you recognize him
14 at all?
15 A. No, I can't say I do; he don't look familiar.
16 MR. PENNER: Thank you. That's all I
17 have, Your Honor.
18 THE COURT: Cross-examination.
19 MS. HIGH: Thank you.
20 CROSS-EXAMINATION
21 BY MS. HIGH:
22 Q. Good morning, sir.
23 A. Good morning.
24 Q. Back in 1993, did you own a minivan?
25 A. Yes.

1 Q. And was that a minivan that you would occasionally loan to
2 friends?
3 A. Yes.
4 Q. And was Linda one of the friends that would occasionally
5 borrow that minivan?
6 A. Yes.
7 Q. Okay. And I think that you said that your son's birthday
8 was February 5th?
9 A. Right. Yes.
10 Q. And Ms. Robinson helped you with the party?
11 A. Yes.
12 Q. And that was the last time that you saw her?
13 A. That's correct.
14 Q. Okay. And I think you were saying you weren't quite sure if
15 the party was held Friday or held Saturday; is that right?
16 A. That's correct.
17 Q. And let's see. I have what's been marked as Plaintiff's
18 Exhibit 70, and it's actually a transcript of the portion of
19 the interview that you did with one of the detectives, that
20 was recorded.
21 A. Okay.
22 Q. And it looks like you had the opportunity to talk with a
23 Detective O'Hern first off the tape, just talking --
24 A. Okay.
25 Q. -- and then you went on the tape. Okay.

1 A. Okay.
2 Q. And when he asked you -- let's see -- what day the party
3 was, if I could direct your attention to Page 9 --
4 A. Okay.
5 Q. -- right at the top.
6 A. (Reviewing.)
7 Q. So --
8 A. February 5th.
9 Q. February 5th.
10 A. Okay.
11 Q. So it looks like it was actually held that day before.
12 A. Okay.
13 Q. Okay. And like you said, she came over, participated in the
14 party, helped you serve cake, those kinds of things?
15 A. Right.
16 Q. And then you gave her a ride back home?
17 A. Hmm --
18 Q. I mean, perhaps I could direct your attention to your
19 answer -- your fifth answer on that page.
20 A. (Reviewing.) Okay.
21 Q. And you would have been giving them the most accurate
22 information you had at the time?
23 A. Okay.
24 Q. And, I think, would you agree, that probably your memory was
25 a little better when they interviewed you than here we are

1 many, many, many years later?
2 A. Well, it probably would have been better if they had asked
3 me sooner.
4 Q. Okay. You know, at the top of this page here --
5 A. Okay.
6 Q. -- it looks like -- let's see. I'm hoping they have the
7 date they interviewed you on here. At the very top of this
8 page, it says, date, February 8th; but that doesn't jive
9 with your memory. Do you think it was more than a couple of
10 days?
11 A. Where are you reading that? I don't see that.
12 Q. The very first page of your exhibit -- I think that's 70.
13 It gives a case number and a date.
14 A. Okay.
15 Q. Right. And so that says February 8th?
16 A. Okay.
17 Q. Yeah. But you're saying it felt like it was longer to you?
18 A. Right.
19 Q. Okay. Not a problem. Now, I think you indicated that, you
20 know, Ms. Robinson would help -- as a single dad -- would
21 help baby-sit your children?
22 A. Yes.
23 Q. And you had two children at the time?
24 A. That's correct.
25 Q. Okay. And because of the nature of your work, when you were

1 on 24 hours or out in the field, you still needed somebody?
2 A. That's correct.
3 Q. So the usual, you know, 7:00 a.m. to 6:00 p.m. baby-sitting
4 wasn't going to cut that?
5 A. Right.
6 Q. Now, you know, I think you were asked if you two ever had
7 any kind of personal relationship; and you said that you
8 didn't recall that.
9 A. Well, I told you she stayed at my house.
10 Q. Okay. So -- oh, she would stay at your house sometimes?
11 A. Because she had to baby-sit.
12 Q. Okay. Well, can I direct your attention to Page 2.
13 A. Okay.
14 Q. Yeah.
15 A. Okay.
16 Q. And so when you were asked about the nature of your
17 relationship with her, I guess your fifth answer down, if
18 you have a chance to take a look at that --
19 A. (Reviewing.) Okay.
20 Q. And so while you were friends, and she did do some
21 baby-sitting, you did have a little bit of a romantic or, at
22 least, a physical relationship with her?
23 A. Hmm, not that kind of a relationship.
24 Q. And you told them that you'd had sexual intercourse a couple
25 of times?

1 A. No. No. No.
2 Q. Okay.
3 A. What that meant was because she stayed at my house, right.
4 From when I came home, she stayed in my room.
5 Q. Okay.
6 A. That's what that means.
7 Q. Okay. And so when he asked you, again, you had some kind of
8 personal relationship, you say, "Right"?
9 A. Yes.
10 Q. Okay. And that night, it looks like you called her; is that
11 right?
12 A. Yes.
13 Q. All right. And you called her because she was supposed to
14 come by and see you?
15 A. I'm not sure what was the reason for the call. It could
16 have been probably to borrow the car, maybe. That's usually
17 why she needed it.
18 Q. She needed the car?
19 A. Right.
20 Q. Well, Page 3, if I could direct your attention.
21 A. Okay.
22 Q. And I understand that, you know, you had two vehicles; is
23 that right?
24 A. Yes. That's correct.
25 Q. And she was temporarily without her own set of -- her own

1 car?
2 A. Yes.
3 Q. Okay. So -- let's see. And I think that I'll have you
4 maybe just read, maybe, the first -- oh, I don't know, maybe
5 just read that page to yourself for a moment.
6 A. The whole page?
7 Q. Yeah.
8 A. Page 3?
9 Q. Page 3.
10 A. (Witness complies.) Okay.
11 Q. So it looks like that evening, at least you told the officer
12 when you gave the taped statement, that she was supposed to
13 come over that evening to visit you?
14 A. Right.
15 Q. And perhaps you guys were going to get together and just
16 socialize, maybe a little romance?
17 A. She probably was going to borrow the van.
18 Q. Okay. You didn't tell them that, though?
19 A. (Shakes head.)
20 Q. Right.
21 A. Well, like I say, I --
22 Q. Yeah.
23 A. -- don't recall.
24 Q. Sure. But at the time when you told them that perhaps she
25 was going to come over and hang out, and like you said,

1 maybe have a little bit of romance, that would have been
2 fresh in your mind at that time?
3 A. Well, that would have been --
4 Q. Mm-hmm.
5 A. -- but that usually was not the kind of conversation we
6 would have.
7 Q. Okay. And like you said, this is what you told them?
8 A. I got you.
9 Q. Got it. And that -- you knew that she had a daughter?
10 A. Yes.
11 Q. And a teenage daughter or an older daughter; right?
12 A. Yes.
13 Q. And that if Ms. Robinson was coming over that her daughter
14 was okay to be home alone?
15 A. I guess, yes.
16 Q. Well, I mean, she wasn't a little kid; right?
17 A. Right.
18 Q. Okay.
19 A. Right.
20 Q. And I think you told the officers that you knew that she was
21 going to have her sister's car. Do you see that, your
22 second-to-the-bottom answer, I think, or third.
23 A. Okay. I guess that's why she didn't borrow my car.
24 Q. Right. Yeah. Because she had one, right, and that her
25 daughter was going to, then, take over some baby-sitting;

1 right?
2 A. Okay.
3 Q. You know, and you said that you -- so you're on the phone
4 with Ms. Robinson when she makes this statement that lets
5 you know that somebody is at the door --
6 A. Yes.
7 Q. -- you know, whether you hear a knock or the doorbell; but
8 she's, like, oh, someone's at the door. And does she keep
9 the phone with her, can you tell that; or does it look like
10 the phone has, maybe, been set down? I mean, you could
11 still hear part of the conversation; right?
12 A. Well, the way it sounded is as though she had the phone with
13 her.
14 Q. Okay. Okay.
15 A. Now, I'm assuming it's one of those phones, you know, how
16 back in the day it didn't have a cord, but you could carry
17 it around the whole house.
18 Q. Absolutely. And they were big -- and yes.
19 A. Yes.
20 Q. Absolutely. And I think your assumption is good there. I
21 know I have pictures in here someplace, but I hadn't pulled
22 it out.
23 A. Okay.
24 Q. So you're thinking she probably still has the phone with her
25 because you can hear her voice?

1 A. Yes.
2 Q. And, you know, when you hear her voice, you know, it sounds,
3 like you said, submissive, maybe even apologetic, kind of
4 the okay, okay, okay, you know?
5 A. Could be, yes.
6 Q. And -- yeah. And kind of the, like, submissive or okay, no
7 problem, I don't want a problem, that kind of thing?
8 A. Yes, I agree.
9 Q. Okay. Okay. And what was remarkable is you're in the
10 middle of a conversation with her. Someone comes to the
11 door. You can hear part of this conversation and then a
12 click where the line goes dead?
13 A. Right.
14 Q. And -- but there wasn't anything in that conversation that
15 alarmed you to say, hey, better jump in my car and drive
16 over there?
17 A. No.
18 Q. Right. Or, you know, I mean, because you would have. If
19 you thought she were in danger --
20 A. Yes. Yes.
21 Q. -- you would have done something?
22 A. Correct.
23 Q. Right. And, you know, you're on the phone with her; and I
24 think, as you remarked, she doesn't, you know, somehow call
25 out a name or anything along those lines?

1 A. That's correct.
2 Q. All right. And I don't know if you remember this, but, I
3 mean, in addition to occasionally needing to borrow your
4 car, she did like to talk on the phone?
5 A. Okay. If you say so.
6 Q. Well, I'm asking you.
7 A. She --
8 Q. Was she a phone talker? Yeah?
9 A. She -- only the conversations that we had.
10 Q. Mm-hmm. Okay. All right. I'm just going to check my
11 notes. Okay. So, you know, I think you just said you heard
12 kind of the submissive -- did not -- there was nothing about
13 that conversation that alerted you that she was in danger.
14 You felt that she was just maybe kind of being defensive --
15 A. Yes.
16 Q. -- submissive? And you made, obviously, an assumption that
17 it was somebody she knew?
18 A. Yes.
19 Q. Okay. Because otherwise, she probably wouldn't have opened
20 the door?
21 A. That's correct, or she would have said something.
22 MS. HIGH: Right. Okay. I think that's
23 all I have. Thank you, Mr. Caldwell.
24 THE WITNESS: Okay.
25 THE COURT: Redirect, Counsel.

1 MR. PENNER: Yes, Your Honor. Thank you.
2 REDIRECT EXAMINATION
3 BY MR. PENNER:
4 Q. Prior to her saying, hey, there's somebody at the door, was
5 there any indication in the phone call that there was
6 anybody else in the apartment with her?
7 A. Mm-hmm. Yes.
8 Q. Okay. And who was that?
9 A. That was one reason why she couldn't come back over because
10 she had her -- her niece and somebody else --
11 Q. Okay.
12 A. -- younger kids.
13 Q. Little kids?
14 A. Younger than -- than -- than -- than -- than the niece.
15 Q. But what about adults? Did you hear any other adult voices
16 on the phone?
17 A. No, just her voice.
18 Q. Okay. Any indication that there was another adult there
19 with her?
20 A. No.
21 Q. Okay. And then there's a knock on the door; and she says,
22 "Hold on; I've got to get the door" --
23 A. Right.
24 Q. -- and no -- you didn't hear any raised voices?
25 A. No raised voices.

1 Q. Just the "Okay. Okay"?
2 A. Just the "Okay. Okay. Okay."
3 Q. So that's a little weird; right?
4 A. Well, not necessarily.
5 Q. Not enough to follow up?
6 A. Not enough to alarm me that something's wrong. It just says
7 that, you know, it could have been somebody that was upset
8 with her; or she knew the person that was there, and they
9 was talking, and she was just being submissive, giving in to
10 him, whatever his demand was -- or demands were, so she was
11 saying, "Okay. Okay."
12 Q. All right. And that's the last time you ever heard from
13 her; right?
14 A. Yes.
15 MR. PENNER: Thank you. Nothing else.
16 THE COURT: Anything based on that,
17 Counsel?
18 MS. HIGH: No. Thank you.
19 THE COURT: May the witness be excused?
20 MR. PENNER: Yes, Your Honor.
21 MS. HIGH: Yes, Your Honor.
22 THE COURT: All right. If you would
23 please set that down on the end, sir -- oops.
24 THE WITNESS: Sorry.
25 THE COURT: That happens quite frequently.

1 Okay. It's the equivalent of the chalk scraping on the
2 chalkboard.
3 THE WITNESS: Yes.
4 THE COURT: Okay. Thank you very much,
5 sir.
6 MR. PENNER: So, Your Honor, with the
7 scheduling, that's what is available this morning. We'd ask
8 to adjourn for the morning and come back after lunch.
9 THE COURT: All right. Mr. Schlosser, who
10 we were, you know, hoping to do this morning, had a doctor's
11 appointment, so we couldn't get him in. Other witnesses for
12 this afternoon were not available to be moved up. We're
13 going to be taking a witness out of order this afternoon
14 from the Defense side of the case because, apparently,
15 they're planning on leaving the country on the 6th, so we
16 need to get them in.
17 In addition, both attorneys do need to be in front of
18 another judge in connection with another case at 1:30, so
19 we'll be recessing until two o'clock; so, you're going to
20 get a rather long lunch, as it were.
21 So the usual instructions: No discussion, no
22 investigation, notepads face down on your chairs. We'll
23 reconvene at two o'clock, and please stay in the jury room
24 until Ms. Shipman comes to release you.
25 JUROR NO. 3: Tape?

1 THE COURT: Oh, okay. You can discuss
2 that with Ms. Shipman. Just turn it over. If you need tape
3 for your pad, she'll get it to you when we come back. Okay?
4 THE JUDICIAL ASSISTANT: I'll talk to you
5 in there. Okay.
6 (The jury was not present.)
7 THE COURT: All right. Anything before we
8 recess?
9 MR. PENNER: Not from the State, Your
10 Honor.
11 MS. HIGH: No. Thank you very much.
12 THE COURT: All right. Court will be at
13 recess.
14 MS. HIGH: Okay. And I'll just let
15 Ms. Shipman know, I'm actually going to call Karen Green, my
16 witness, and see if she needs those items of evidence; and I
17 will let you know just in a minute or two.
18 THE COURT: All right. Court will be at
19 recess.
20 MR. PENNER: Thank you, Your Honor.
21 (A recess was taken.)
22 (The defendant was present.)
23 (The jury was not present.)
24 THE COURT: All right. Anything before we
25 bring the jury in?

1 MS. HIGH: Yes, Your Honor. I talked to
2 Mr. Penner, and I think we're in agreement we'd like to
3 offer for admission the document that was discussed
4 yesterday; and that is Plaintiff's Exhibit 82 which was the
5 property report E that Mr. Johnson testified to.
6 THE COURT: Stipulating, then, for
7 admission?
8 MR. PENNER: Yes, Your Honor.
9 THE COURT: All right. Then 82 will be
10 admitted.
11 (Plaintiff's Exhibit No. 82 was admitted.)
12 MS. HIGH: We hadn't offered it yesterday.
13 We just wanted to make sure there was nothing on there that
14 was of concern.
15 THE COURT: Okay.
16 MS. HIGH: And, Your Honor, I do have a
17 bench copy for you of Ms. Green's curriculum vitae; and I
18 have one that's being marked.
19 THE COURT: Okay. Are you ready then?
20 MR. PENNER: Yes, Your Honor. I'd just
21 ask the Court to, again, inform the jury that this is a
22 Defense witness being taken out of order, interrupting the
23 State's case in chief so that they're roughly aware of
24 what's going on.
25 THE COURT: I'll repeat it to them again.

1 MR. PENNER: Thank you.
2 THE COURT: It's like giving a speech in
3 school. You tell it to them in the opening paragraph, and
4 you're telling it to them; and then you tell them in the
5 summary. All right. We're ready for the jury.
6 (The jury was present.)
7 THE COURT: All right. You may be seated.
8 Thank you for your patience. All right. Again, at this
9 time, we're going to be taking Karen Green, who is a Defense
10 witness, out of order to allow for the fact that she has
11 travel plans. All right. Counsel, you may call your
12 witness.
13 MS. HIGH: Yes, Karen Green.
14 THE COURT: Raise your right hand.
15 KAREN GREEN, witness herein, having been sworn
16 under oath, was examined and
17 testified as follows:
18 THE COURT: All right. If you'll have a
19 seat. There's water and Kleenex to your right. Please keep
20 your voice up, and you can pull the chair forward and adjust
21 the mic. When answering, please answer "yes" or "no"; don't
22 nod or shake your head. We all need to understand what
23 you're saying. There's also a shelf you can pull out, if
24 you need to.
25 THE WITNESS: Thank you.

1 DIRECT EXAMINATION
2 BY MS. HIGH:
3 Q. So, Ms. Green, would you state your full name and spell it
4 for the court reporter.
5 A. Karen Green, G-R-E-E-N.
6 Q. And so how are you currently employed?
7 A. I currently work for myself as the president of Green
8 Forensics.
9 Q. And how long have you owned your business?
10 A. I started it late in 2009. I've been doing it exclusively
11 since 2011.
12 Q. And I'm going to hand you what's been marked for
13 identification as Defendant's Exhibit 239. It's your
14 curriculum vitae that may assist as I -- as I go through
15 these questions.
16 A. Thank you.
17 Q. You bet. And so before you -- before you were working full
18 time for Green Forensics, what was your employment?
19 A. I have been a forensic scientist for 20 years. I graduated
20 from Washington State University in 1995 with a Bachelor of
21 Sciences in biology; and shortly after that, I was hired by
22 the Texas Department of Public Safety as a DNA analyst with
23 some crime scene responsibilities.
24 In 1998, I returned to Washington when I accepted a
25 position with the Washington State Patrol as a DNA analyst

1 in the Tacoma Crime Lab; and then in 2004 in addition to
2 those DNA responsibilities, I was selected to join the
3 statewide Crime Scene Response Team.
4 I, in 2007, was promoted to the coordinator and forensic
5 technical lead of the statewide Crime Scene Response Team;
6 and I maintained that position until I left the Washington
7 State Patrol in 2011.
8 Q. And do you belong to any associations?
9 A. I do. I'm an associate member with the American Academy of
10 Forensic Sciences and a provisional member with the IABPA,
11 the International Association of Bloodstain Pattern
12 Analysts. I'm a member of the IAI, the International
13 Association for Identification; and I'm a member and the
14 current president of the Association for Crime Scene
15 Reconstruction.
16 Q. And then have you received any awards during your
17 employment?
18 A. I have. With the Washington State Patrol, I received four
19 chiefs coins, essentially merits for jobs well done. I was
20 the Tacoma Crime Lab employee of the year and the civil
21 service employee of the year for the Washington State Patrol
22 in 2009.
23 Q. Okay. Now, so, Ms. Green, I contacted you and I hired you
24 to assist me in reviewing the collection and the handling
25 and the documentation pertaining to this case in general

1 terms; is that right?
2 A. That's correct.
3 Q. Okay. And so before we, you know, get to this case in
4 particular, would you explain just a little bit what it --
5 what the job duties would be. I think you've already said
6 the statewide Crime Scene Response Team.
7 What are the duties or applications when you first know
8 they are being called out to a crime scene?
9 A. So just as a background for the Crime Scene Response Team
10 with the State Patrol, as I was a part of it, we would
11 assist any law enforcement agency in Washington State with
12 crime scene assistance; so as the head of the team, I would
13 get a phone call. I would get a briefing on what the scene
14 was, where it was, where they were in their process, and
15 then I would either go myself or dispatch the on-call team;
16 and generally, we're asked at different levels of what we
17 might have to do at a crime scene. Sometimes an agency
18 might just request bloodstain pattern analysis; and at other
19 times, the agency might not have the manpower, the
20 experience, and they'll say please come in and process this
21 entire scene; and in general, we're always there to assist
22 with the documentation, the collection, the packaging.
23 We're trained in the recognition of all different types of
24 evidence. In the lab, I'm a DNA analyst; but at the crime
25 scene, I'm trained to collect all types of evidence that I

1 might encounter.
2 Q. Okay. And have you been responsible for actually leading or
3 running -- directing teams that were going to a major crime
4 scene?
5 A. Yes. I've been involved in some of the largest crime scenes
6 in Washington history.
7 Q. Okay. And have you testified before?
8 A. I have. I've testified roughly 75 times.
9 Q. And have you qualified as an expert before in the state of
10 Washington?
11 A. I have.
12 Q. Of the 75 times you've testified, have you ever testified
13 for Defense?
14 A. No. This is my first court testimony as a Defense witness.
15 Q. Okay. So let's take a look at, when you're called out to
16 assess a scene, what steps you actually take. I think that
17 that would make sense here.
18 A. And every -- every scene is different, and that's just a
19 part of my experience, and my training, is understanding
20 when I'm walking into a scene, is it an outdoor scene? Is
21 it an indoor scene? Do I have issues with the public coming
22 through? Is it in the street? Do I have weather
23 considerations? So, it is somewhat hard to say, black and
24 white, this is what I do at every scene; but in general,
25 what we want to do is get in -- we assess the scene. We

1 make an effort to identify probative evidence. As soon as I
2 start working through a scene, as soon as I start moving
3 items, now the scene, itself, has essentially become
4 disrupted, so I want to be very cautious before I move in
5 and get a good feel for what the scene is telling me, take
6 my photographs and take my notes because as soon as I start
7 disrupting the scene, now things have essentially changed.
8 Q. Okay. And so like you said, so when you go in there, you
9 want to be very careful and thoughtful about the steps you
10 take, understanding who's been there before because, like
11 you said, now you're disrupting the scene?
12 A. Correct.
13 Q. Okay. So, you know, you said when you get a call out, so
14 you're going to go through, and you're going to take your
15 photographs. Is that kind of the -- kind of the first step
16 that you're going to do?
17 A. Yes. As we enter a scene, we do want to take our overall
18 photographs and record it as it is as we walk in.
19 Q. Okay. And the purpose of that kind of documentation?
20 A. Is essentially trying to freeze that scene as it is as we
21 walk in. Some agencies, we'll do -- assisting video, with
22 that; but basically, it's just to show that this is how it
23 was when I walked in. Nothing has been moved or tampered
24 with.
25 Q. Okay. And you're going to take, is it fair to say,

1 photographs of things that may or may not be collected for
2 evidence?
3 A. Yes. If, for example, I have a seven-room house, but I
4 think the scene was largely contained in the kitchen and
5 bathroom area, I'm still going to photograph the other areas
6 of the house, do some outdoor establishing shots, walking
7 into the scene; so there are a lot of photo documentations
8 taken of things other than just evidence collecting.
9 Q. Okay. And when you're going to collect evidence, are there
10 any steps that you take before you physically touch it and
11 pick it up?
12 A. Yes. With the photography, I do what's called an "overall,"
13 an establishing, and then a close-up photograph. If I were
14 to just walk around the scene and zoom in close on every
15 item of evidence I see but not back up and let you see where
16 that evidence item actually is, then it's -- it's
17 problematic, so I try to go through that same step; and then
18 I will take notes on the item, itself, when I pick the item
19 up. What's underneath it? Does anything fall out onto the
20 ground? A brief description of what I'm seeing, and then I
21 choose the proper packaging for that item.
22 Q. Well, and I guess kind of the basic question: How do you
23 even determine whether something has evidentiary value, you
24 know, when you're in there?
25 A. It is difficult. Crime scene investigation is difficult.

1 As I walk into a scene, I have to try and assess what is
2 just a function of everyday life in this house or out in the
3 outdoor scene and the garbage on the ground, what just has
4 been there and what has an association with this particular
5 event, and that is difficult; and a lot comes with simply
6 training and -- and experience.
7 Q. You know, and you said with training and experience. Is it
8 your experience that as you progressed and had visited more
9 crime scenes that you could, perhaps, pick up on subtler
10 things? I mean, not just the gun, you know, on the floor.
11 I mean, you're looking at -- or are able to determine other
12 things might be involved?
13 A. Certainly. I have training in crime scene reconstruction
14 which is taking all of the events, all of the -- of the
15 reports and trying to assess really what happened in that
16 scene; and the more experience you get, it is easier to see
17 the scene more -- more broadly. When you're first on scene,
18 and you're first being trained, you do focus in just on the
19 gun or just on the blood; but as you begin to be more
20 experienced, one piece of evidence, where it's at, how it's
21 positioned leads you to think about other questions; and it
22 might lead you to additional evidence that you may have
23 previously missed.
24 Q. So once you've made a decision about what you're going to
25 collect, what happens to those items?

1 A. Then the items, as I said, are -- notes are taken on them,
2 photo documentation. They're placed in packaging. The way
3 my team worked, because we were assisting other law
4 enforcement agencies, when I left a crime scene, I would
5 seal generally all of the evidence. There might be some
6 extenuating circumstances when I wouldn't; but for the most
7 part, I would seal the evidence and then hand those bags
8 over to the agency.
9 Q. Okay. Now, is there anything that you do when you're
10 inside, for example, an apartment that is a crime scene,
11 that you do to try to limit or minimize contamination?
12 A. Certainly, we want to limit the amount of people that might
13 come through a scene; and whether that's a large scene out
14 in the street or a scene containing a single room, it's
15 always best if you can reduce the amount of people that have
16 to go through that scene.
17 We wear booties both to protect ourselves from the scene
18 and the scene from us. We don't want to introduce other
19 dirt or fibers or anything from the bottom of our shoes. We
20 wear call-out gear and gloves. Some agencies have gone so
21 far as wearing hair nets and -- and masks.
22 Q. I take it, though, that perhaps that wasn't de rigueur, that
23 wasn't standard practice?
24 A. Certainly, the protective equipment that we wear now was not
25 what it would have been in 1993. There are advances in

1 technology that have made us aware of different personal
2 protective items that we would need to wear. I would say,
3 at that time, gloves and booties were probably appropriate.
4 Q. Okay. So once you've made your decision about what to
5 collect, you said that you would actually seal everything at
6 the site. Would there be any documentation that would go
7 along with your activities inside?
8 A. Yes. I am a big one for note-taking. I take a lot of
9 handwritten notes that, then, become a part of my case file
10 that help supplement the photographs that I take; so when I
11 leave a scene, generally I should have a list of all of the
12 items that I collected, their associated evidence numbers,
13 and then who I gave that evidence to when I left.
14 Q. Okay. So what's the purpose of these actions that you're
15 describing?
16 A. That particular action is, basically, to establish the chain
17 of custody and, chain of custody, essentially the
18 documentation of a piece of evidence throughout its life; so
19 from the time I walk into a crime scene and see a piece of
20 evidence and I pick it up to the time of the final
21 disposition of that piece of evidence ten years down the
22 road, the chain of custody should be able to show where the
23 evidence has been, who has been in charge of it, and who has
24 accessed it.
25 Q. And why is that important?

1 A. Because it helps establish the integrity of -- of the
2 evidence.
3 Q. Okay. So I'd like to talk a little bit about this case, and
4 I know there's some photos here; and you said that when you
5 go into a scene, you make some assessments.
6 Now, you've had some documents that I've provided you,
7 and what would have been your steps when you came into this
8 apartment?
9 A. My steps in this particular scene?
10 Q. Right.
11 A. Again, just following my -- my basic, general protocol,
12 walking in, identifying immediately what's on the floor in
13 front of me as I'm moving forward. Where am I going to
14 stage my gear? Off to the side, so I'm not getting anything
15 in the way. How am I going to remove the -- the body from
16 the crime scene, generally want to get that removed as
17 quickly as possible but doing it in a fashion that all of
18 the evidence around it has been documented and collected, if
19 necessary; so I would start with that, probably moving into
20 the kitchen area and assessing everything around that and
21 then develop my plan of action.
22 Q. Okay. So let's talk about -- like you said, the kitchen
23 would have been an area that would have been of particular
24 focus for you?
25 A. Yes, it would.

1 Q. And, I mean, besides the obvious, why? Why would you move
2 into the kitchen?
3 A. Well, just looking at the photographs, one, that's where the
4 body is lying; and there has been some sort of dynamic
5 event. There's items on the ground. It appeared that
6 things had been knocked over. There's quite a bit of blood.
7 Just looking at the kitchen leads you to that area as some
8 area of -- of commotion.
9 Q. Right. And so I guess that was -- the point was, you know,
10 that this is an area where there has been activity probably
11 associated with the crime; is that correct?
12 A. Correct.
13 Q. Okay. I'll put on the -- on the overhead for you what's
14 been admitted as Plaintiff's Exhibit 2; and, you know, we
15 had gone through and looked at some different photographs
16 earlier on, so this was a photograph that -- tell me why
17 you -- what was of interest to you when you saw this
18 photograph in terms --
19 THE COURT: Do you want us to dim the
20 lights a little?
21 MS. HIGH: Yeah. I think that would
22 really help. I just want to get out of the view of the jury
23 here.
24 A. So this is a very useful photograph. It's standing in the,
25 essentially, entryway of the apartment, facing east. It

1 shows, hopefully, an undisturbed picture from the scene. I
2 don't have date or time stamps on these, so I believe that
3 they are some of the first photographs taken. This is how
4 someone initially came into the scene. So as you look, you
5 can see items on the back, on the legs. Because the body is
6 already down, then, to me, those are items of interest
7 because they were there after this person is already down;
8 so who placed them there? They obviously would be
9 interesting items of evidence for me to collect.
10 Q. (By Ms. High) And anything else in here that you can
11 observe that, like you said, it gives you some information
12 or information that you would, maybe, want to follow up on
13 as you look at --
14 A. Information or certainly things that, yeah, I would want to
15 know more about. It looks like there -- there may be some
16 sort of dilution in some of the blood that I'm seeing. I
17 don't know why.
18 Q. I know you're kind of talking about this area --
19 A. Yeah.
20 Q. -- I hope I'm not blocking anybody -- but through there?
21 A. And again, I just have these photographs to go from.
22 Q. And is that the kind of thing, though, you would document
23 if, in fact, there was some dilution or something observable
24 like that when you were on a scene and you were
25 investigating this?

A. Yes. As I look at this photograph, I -- I want to document anything that seems out of place to me, out of the ordinary. If there is dilution there, then what happened? Why? What could that have come from? The rug that I'm seeing, it looks disheveled. What happened? What is underneath the rug? What's inside of it? What -- generally, what's associated with all of the items that I'm -- that I'm seeing there? And as I said, I take -- I take quite a few notes, and I write down a lot of that thought process as I go along.

Q. So like that rug, I think you just said, you know, you want to know maybe what's inside of it, what's under it. Is that something that's called "trace evidence" that you would be looking for potentially?

A. It -- it could be. Trace evidence, generally, is identified as, well, small trace things that we would look at under the microscope, fibers, dirt. Footwear impressions are known as trace evidence. In this case, I would want to know more about the blood that, maybe, is on there. Again, is there anything wrapped up inside that rug? So in addition to seeing the rug, I might then unfold it and actually take a photograph of it as it's in an open state.

I'd also like to document not only what I'm seeing but what I'm not seeing; so if I were opening that up and there were no stains on it, then I take a photograph, and -- and

1 I'd make a note, so I -- I definitely go along and think,
2 you know, would I expect -- is there blood on the stove?
3 No. I didn't see any blood on the stove, and I'm going to
4 mark that down to help me remember years down the road that
5 I did look there; and I didn't see anything.
6 Q. Okay. And I would like to have you discuss, again, some of
7 your thoughts and steps you would have taken; and I have,
8 here, Defendant's Exhibit 203 that has been previously
9 admitted. Okay. And that -- I should back up.
10 It seems like they did take a lot of photographs at the
11 time?
12 A. Yes. There was a number of -- of photographs and some
13 reasonable establishing and close-up shots that we talked
14 about.
15 Q. And, you know, I noticed that some of them seemed to be
16 underexposed or overexposed. Did you feel that it was
17 documented sufficiently by photographs?
18 A. Photography, yes. And the technology in '93 versus what we
19 have now, and the exposure, is, certainly, different; so I
20 was able to make observations on these photographs.
21 Q. You know, and now we have time stamps that we can actually
22 have on digital photographs. Certainly, when they were
23 doing the photography, then, there was 35 millimeter; that
24 wasn't available?
25 A. Correct, is my understanding.

1 Q. Right. And at least none that I ever saw, and that was why
2 it was important to keep a photo log; and was that something
3 you used to do?
4 A. Photo logs actually are agency-dependent. I know a lot of
5 agencies kept them meticulously. It was not something that
6 I was trained to do.
7 Q. Okay. So some do; some don't?
8 A. Correct.
9 Q. Right. And so is the -- if you don't keep a photo log, is
10 the point, okay, because we have enough pictures that we can
11 figure out what happened?
12 A. Yes. I was generally taught photo logs are more important
13 when -- if I was out in the middle of the forest and it's
14 very hard to orient myself, so then I might make a photo
15 log, and photo one is me facing north; but in this case, I
16 know that this -- what this is a photo of, so they become
17 less -- less important.
18 Q. Okay. And so with this, here, like you said, these items,
19 in your mind, would be important because, clearly,
20 Ms. Robinson, at this point, is -- is down; and, I mean, you
21 wouldn't normally expect to find things on the back of the
22 legs; right?
23 A. Exactly. I would expect these items to have come from an
24 additional party placing those there.
25 Q. Okay. And so with those items, I mean, not only is, you

1 know, say, a receipt -- and, you know, we've looked at the
2 key; but there was a spot of blood between the legs. I'm
3 not sure if it's, maybe, cutoff on this one. Is that
4 something you would have wanted to at least take a sample
5 of?
6 A. Oh, there it is.
7 Q. Yeah.
8 A. I -- I probably would have taken a sample of that particular
9 stain. As I'm walking through -- I'm -- I'm trained in
10 bloodstain pattern analysis, so I try and identify stains
11 that, maybe, are a little bit outside of -- of the norm, and
12 this one, just in its particular location, I -- I may take a
13 sample of that.
14 Q. Okay. And would you have taken other samples from that
15 kitchen, other blood samples, like, from the refrigerator or
16 some other locations there?
17 A. I may have taken -- taken a few more samples. I know the
18 refrigerator door, itself, was collected. I may have taken
19 a few more swabs from -- from the floor and from different
20 stains just because what I don't want to do when I walk into
21 a scene is make an assumption that everything I'm seeing,
22 here, is coming from this person; and so just to be on the
23 safe side, I may try and come up with a scenario where --
24 you know, who else may have been bleeding and sample a few
25 more of those just to have it.

1 Q. Okay. So when you said "who else may have been bleeding" in
2 a scene like this, is it your experience that there may be
3 blood from other -- another individual or other individuals
4 at a crime scene, not just the obvious?
5 A. Yes, exactly.
6 Q. And in your experience, as you know, this is a stabbing that
7 the individual that's responsible for it possibly, maybe,
8 cut themselves?
9 A. That can happen in cases -- in stabbing cases, yes.
10 Q. And -- but sometimes or not?
11 A. Correct.
12 Q. Okay. So on this picture here, I know that we've talked
13 about, and there was something that you pointed out, that
14 you thought was of significance in terms of collection of
15 evidence here.
16 A. And this is a good photograph to show the east end of the
17 kitchen. It gives a good feel for the number of items that
18 are now scattered around on the ground.
19 THE COURT: Just a second. What's the
20 exhibit number, Counsel --
21 MS. HIGH: I'm sorry.
22 THE COURT: -- just for the record.
23 MS. HIGH: Yeah, Exhibit 3. Thanks.
24 Q. (By Ms. High) Okay.
25 A. So I may have wanted to know a little bit more about some of

1 the items that were on the ground, the -- they appeared to
2 be slippers. What do those look like on the other side?
3 Does it look like there's any blood on the bottom of those
4 slippers? Was she at all walking around? I would just do a
5 little bit more work in trying to answer a little bit more
6 questions about what had happened.
7 Q. Okay.
8 A. The --
9 Q. Oh, I was going to say, so, you know, the slippers,
10 obviously, you want to know, did she have them on her feet
11 when, maybe, there was water or blood on the -- on the
12 floor?
13 A. I think they deserve a close-up look, yes.
14 Q. Okay. And, you know, what about, like, this water pitcher
15 that's tipped over here? Is that something you would have
16 made a note about or addressed?
17 A. Yeah. We can see in the photograph that there is a pitcher
18 on the ground. Is that the source of what may be water in
19 that blood? I don't know. But I would have wanted to look
20 a little bit more at that to see if that's a possible
21 solution or -- or answer to that.
22 Q. Would you at least have addressed whether or not it seemed
23 to be wet inside the container or damp or had juice or
24 something?
25 A. I'd like to believe that's an observation I would have made.

1 Q. Okay. Anything else about this picture -- and I'm taking a
2 look at where, again, we seem to have a stain, you know,
3 something here on the floor that, kind of, to me, represents
4 maybe there's been movement?
5 A. It -- it's a little bit difficult to do -- or to see in this
6 particular photograph, but you can see what looks to be a
7 larger concentration of blood on the ground right by the --
8 the right arm. I looked at that. That might have been
9 something I sampled simply because it looks to be a
10 concentrated sample that has been deposited over the top of
11 this movement, so --
12 Q. And -- and to help you out, this -- and do you think this
13 place right here or this kind of spot?
14 A. Yes.
15 Q. Okay. And like you said, so that's of interest to you
16 because you can almost see, like, this kind of swipe or
17 movement mark; and yet, there's this deposit of blood there?
18 A. And I'm always trying to find things that are allowing me to
19 sequence events in these crime scenes, and it might be just
20 a little detail like that; and maybe it tells me nothing --
21 Q. Okay.
22 A. -- but I do try and come up with some order of events, if I
23 can.
24 Q. Okay. And is there anything else, say -- so now you're
25 making your assessment, you're looking at this kitchen from

1 different points of view, trying to, you know, say in your
2 mind, hey, what do I want to know, say, from these slippers,
3 this rug? Is there anything else in this picture that would
4 have been collected or at least investigated by you?
5 A. A few of the -- the blood drops are apparent blood drops on
6 the -- the kitchen floor somewhere near the pantry door.
7 Again, I'd try to come up with stains that, maybe, are away
8 from my scene, away from where I think this commotion was.
9 I may have sampled a few of -- of those other drops on the
10 ground.
11 Q. You know, I know it's really hard to tell from that picture,
12 but it looks as if some of them are actually under the door,
13 and so would that have been something that would have been
14 of interest to you?
15 A. It is certainly hard to tell with perception of the
16 photographs. At least one of the stains looked like maybe
17 it was slightly under the pantry door which would suggest to
18 me that -- was the door open at the time for that blood to
19 actually hit the ground there? But the photographs are --
20 are difficult to -- to tell for sure.
21 Q. Right. And if it's not documented at the time, it's gone;
22 right?
23 A. Then we are left to just try and deal with the photographs,
24 yes.
25 MS. HIGH: And, Your Honor, I'd like to

1 publish what's been previously admitted as Defendant's 205.
2 THE COURT: Okay. Thank you.
3 Q. (By Ms. High) Okay. And, again, here's another shot of the
4 kitchen but looking up a little bit.
5 A. Yes.
6 Q. And I don't know if you're able to see but anything here
7 that you would have been, I guess, interested in?
8 A. So, yes. This is just showing the east end of the kitchen,
9 just the general kitchen setup, so I like to go through --
10 again, looking around the stove area, do I see any -- any
11 blood up there? Is there any indication that anyone was
12 around here? I know this was a stabbing event. Are there
13 knives in the sink or clean knives in the dish drainer? Is
14 there a butcher block that has knives in it? Is a knife
15 missing? A lot of those observations, again, I just make
16 note of just to see what's happened.
17 It looks like, by the microwave and the closest portion
18 of the picture, that there may be another set of keys there.
19 I start to question that, and I already had a set of keys on
20 the back of the legs and now I have another set up there.
21 Why do I have two sets? I may have -- maybe would have
22 collected those just to try and get an answer of whose they
23 were and where they came from.
24 MS. HIGH: Okay. And, Your Honor, I'd,
25 for the record, like to publish Defendant's Exhibit 206

1 which has been admitted.
2 Q. (By Ms. High) Okay. And, again --
3 MS. HIGH: Maybe I need my glasses. Is
4 that clear?
5 Q. (By Ms. High) Also, just a little bit further review of
6 that same kitchen area, I'd like to draw your attention to
7 what looks to be a tipped over plastic tumbler or glass.
8 A. Yes. Now, we're, again, looking east; and it is a little
9 bit hard to see in that photograph, but it did appear to be
10 a glass that had been tipped over. Again, I think that
11 maybe I have some water introduced into this blood; so, is
12 that my source, and what am I looking for in that immediate
13 area? Is that a glass maybe I would have collected?
14 Because it has been tipped over, was it a part of this
15 commotion?
16 Q. Okay. And so, I mean, obviously, the kitchen would have
17 been an obvious focus for investigation in this case; and
18 what would you be looking for, then, throughout the rest of
19 the apartment?
20 A. Then I would go through the living room, assess who was
21 reported to me to be in there. I'm obviously looking for
22 blood around this apartment. I'm looking for any type of
23 weapons, looking for anything that might indicate to me who
24 else may have been in there; and is there anything I can see
25 to determine where this, maybe, actually occurred? In the

1 bathroom, did anyone clean up? Can I tell if the sink has
2 been wet? Is there any blood in the tub? So, I -- I don't
3 want to just focus on where there's, obviously, a lot -- a
4 lot of blood; and, again, that comes with experience of,
5 hey, did I look for cleanup? Is there anything in the trash
6 can in the bathroom? What else do I need to do as I go
7 through this -- this apartment and make sure I've covered
8 all my bases?
9 Q. Okay. That's a good point, did someone try to wash up or do
10 something like that, and look to see if things are damp,
11 whether it's the kitchen sink, the bathtub, that kind of
12 thing?
13 A. Yes.
14 Q. You know, and I know you've had a chance to review some of
15 the reports, but did you see that that was documented
16 anywhere?
17 A. I believe there was some documentation about the -- the
18 bathroom and there being maybe some wetness. I don't have
19 the report in front of me right now but something about the
20 tub, so that was an observation that I felt was good that --
21 that they made.
22 Q. Well, let me hand you Mr. Schlosser's and Mr. Johnson's
23 reports, the forensic techs --
24 A. Okay.
25 Q. -- to see if you see any reference to that in their reports.

1 A. Okay.
2 THE COURT: And the number on those?
3 MS. HIGH: Yes, 40 -- what is that?
4 THE WITNESS: 45 is Johnson, and 46 is
5 Schlosser.
6 A. (Reviewing.) I'm wondering if it was even in one of the
7 others and not these. I'm not seeing it in Johnson's. I'm
8 not seeing mention of it in these two reports.
9 Q. (By Ms. High) Okay. Like you said, I think you said you'd
10 be, okay, looking for, did someone try to clean up or hide
11 evidence? Is there something in the trash or the laundry,
12 depending on, you know, the residence, that kind of thing?
13 Now, in this case, there were two bedrooms; and I think
14 you recall that there were some envelopes that were
15 collected from one of the bedrooms?
16 A. Yes.
17 Q. Okay. And I take it that's something that you would have
18 collected as well?
19 A. Yes, blood from what you call the master.
20 Q. Mm-hmm. Right, from the master bedroom. Now, in this case,
21 photographs show two different phone messaging machines; and
22 is that something you would have at least listened to or
23 perhaps collected the cassette tapes? This was back in
24 cassette tape days.
25 A. Yeah.

1 Q. Yeah.
2 A. And to be fair, something like a phone message, that's
3 generally left more to the police agency and the
4 investigators. My role is largely forensic-based, blood and
5 hair, guns, obvious forensic evidence; but I would think
6 that given the message, it -- it would be something that I
7 would suggest that they take, but that was not generally my
8 job.
9 Q. Right. And so there's a collaboration that should take
10 place with the lead detective and the investigators; is that
11 right?
12 A. That's correct.
13 Q. And if, in fact, perhaps timing of phone messages or calls
14 was important. If the detective said we want this, would,
15 then -- you'd be the person to collect it or one of your
16 team?
17 A. Yes. We would collect some items at the direction of the
18 detectives on scene.
19 Q. Okay. So I want to talk about -- so -- you know, talk about
20 some things that you would have collected. Why is it
21 important that you employ accepted techniques in, say, your
22 collection and packaging? I think you already talked about,
23 gloves and booties would have been a pretty standard
24 protection?
25 A. Correct.

1 Q. I'm going to hand you what has been admitted already as
2 Plaintiff's Exhibit 96.
3 THE COURT: Do you want us to turn the
4 lights back on?
5 MS. HIGH: Yeah. Please. Thank you.
6 THE COURT: Okay.
7 Q. (By Ms. High) Okay. So it's 1993. You have your paper
8 bag. Is there anything about how that item was sealed that
9 would give you some concern?
10 A. So the paper bag is what we largely accept as the best way
11 to collect any type of biological evidence. It breathes.
12 It doesn't let the DNA degrade, so the paper bag is good.
13 When I seal a piece of evidence, the point of that seal is
14 so I can tell if anybody else has accessed this bag after I
15 have; so if there's just a staple at the top of this bag,
16 that's not a proper seal because anyone could simply remove
17 the staple, take this piece of evidence out, replace it, put
18 the staple right back; and I wouldn't be able to tell that
19 someone else had accessed this evidence.
20 Q. Okay. And in the early nineties, mid nineties, was evidence
21 tape available?
22 A. When I started my internship in '94 and then my training in
23 '95, we did have evidence tape; and evidence tape is the
24 colored tape you can see here. It's designed specifically
25 to be tamper-proof; and if you try to rip it off, it

1 actually comes off in irritating little strips as opposed to
2 a piece of Scotch tape or masking tape that you could just
3 pull off. The evidence tape is designed to be tamper-proof.
4 Q. Okay. So here, you know, we have the staples, but now we do
5 have some seals on this bag; and what's the point of these
6 seals, and what's written on them and all of that?
7 A. So you can see there's evidence tape here. There's actually
8 a date written on here. It says 05/05 of '14. It's written
9 partially on the evidence tape and partially on the bag, and
10 that's so if anyone does manage to get some of the tape off,
11 there's still writing on the bag, so you can still tell that
12 someone took that off.
13 So, that tape, with my initials and the date generally
14 going all the way around the seal, that's -- that's a proper
15 seal; and then you can see that no one -- after this was
16 originally sealed in May of '14, no one broke this. When
17 they needed to access the evidence again, they cut it at a
18 different place on the bag, and then when they sealed their
19 evidence, now this remains intact; and if someone else
20 accesses it here, this seal is still intact.
21 So, if you open a bag enough times, eventually you're
22 just left with shreds of tape and paper, so then if we have
23 to repackage it, we would do so, but we would maintain this
24 original packaging in with the item of evidence.
25 Q. Okay. So the first time that we see any evidence tape seal

1 on this is, I think, 2014?
2 A. I believe the first evidence tape is, yes, 05/05 of '14.
3 Q. Okay. You know, and you said that, you know, staples aren't
4 necessarily an appropriate way to seal an item. I'm going
5 to -- I'll also have you take a look at what's been admitted
6 as Plaintiff's Exhibit 105 just for -- I'm handing you --
7 and it doesn't matter, but it has the car keys in it; and,
8 again, it's just an envelope.
9 What's the first time that you see any evidence seal on
10 that envelope there?
11 A. The evidence tape that, here, it does have the appropriate
12 name and date; but the date is 12/18 of '14.
13 Q. Okay. And so before that, we have, you know, obviously, an
14 envelope that an item has been put in with handwriting on
15 the front; but the fact that the flap isn't sealed is --
16 would have been a concern for you?
17 A. Yes. If someone could just open -- there's a tab on here --
18 if they could just open that and get into the envelope and
19 then close it again -- and the reason we -- we like to have
20 that integrity of evidence is simply because as the analyst
21 out on scene, I need to know what's happened to this
22 evidence from the time I've sealed it until the time I get
23 it in the lab, and --
24 Q. Okay.
25 A. -- it just -- it does maintain the integrity of the evidence

1 to have this chain of custody.
2 Q. Right. Now, what about if you were taking pictures, and you
3 had some numbered placards -- and I know you've probably
4 seen those over the years.
5 A. Yes.
6 Q. Would you have ever put them inside an item of evidence in
7 the bag holding the item of evidence?
8 A. That was not a procedure I was ever taught.
9 Q. Okay. And, again, why would that be a potential problem?
10 A. It depends on the type of placards you're using. If you use
11 the same placards at every scene, and you never
12 decontaminate them and then putting them in the bag with
13 your evidence, you run the risk of -- of some contamination.
14 Q. Okay. And is that the same thing with seals? One of the
15 concerns is you might contaminate or lose evidence?
16 A. Yes. We're always concerned about what, maybe, fell out of
17 an envelope or what, maybe, has fallen in.
18 Q. Okay. And I think we also discussed perhaps just a quick
19 review of Plaintiff's Exhibit 100 that has, previously, been
20 admitted.
21 Now, I think you and I just talked about, okay, large
22 bags versus rolling things up into bags, so the preference
23 in terms of how to package it correctly?
24 A. Yeah. This is actually nicely packaged. It is a large bag.
25 If someone had taken this bag and folded it over and then

1 sealed it here, well, now you've essentially taken a
2 good-sized bag and made it really small because I can't
3 break that seal again; so now it's all rolled up, so this
4 is -- this is a good example of a large bag. It's
5 appropriately used; and then, again, you can see each seal
6 when everyone was accessing this piece of evidence.
7 Q. Okay. Now, originally, it was stapled?
8 A. There are staples here at the top.
9 Q. Right. And so when we first get to the evidence tape, can
10 you -- that one may be --
11 A. There is a date on here of 07/17/13.
12 Q. Okay. And then I believe there is a Washington State Patrol
13 seal on that?
14 A. Yes. The blue tape is, generally, the Washington State
15 Patrol and then an additional seal, 12/18/14.
16 Q. Okay.
17 A. I can't quite read the date for the patrol.
18 Q. Okay. And on the front, handwriting with a Sharpie, is --
19 do you see that on there?
20 A. Yes.
21 Q. Okay. And which item was that?
22 A. This is No. E-9 or MC No. 38. I'm not sure what number you
23 prefer.
24 Q. Okay. Okay. So I'm going to hand you what's been admitted
25 as Plaintiff's Exhibit 82. Okay. So I know you've had a

1 chance to look at Plaintiff's Exhibit 82 --
2 A. Yes.
3 Q. -- which is a property inventory sheet; is that right?
4 A. That's correct.
5 Q. Okay.
6 THE COURT: Okay. Counsel, it's three
7 o'clock. We might as well let the jury have their afternoon
8 recess.
9 MS. HIGH: Okay.
10 THE COURT: The usual instructions: No
11 discussion, no investigation, notepads face down on chairs.
12 We'll reconvene as soon as possible, allowing for all of you
13 to just use the two restrooms; and remain in there until
14 Ms. Shipman comes to get you.
15 (The jury was not present.)
16 THE COURT: All right. Scheduling issues.
17 MR. PENNER: Yes.
18 THE COURT: In the event we are not going
19 to get done with this witness today -- and you can all sit
20 down -- tomorrow morning at ten o'clock, could we pick this
21 back up?
22 MR. PENNER: The State's available.
23 MS. HIGH: I'll be available.
24 THE COURT: I mean, we'll need to make
25 sure the jurors are available; so I'll have to have

1 Ms. Shipman ask them, but --
2 MR. PENNER: We should ask the witness,
3 Your Honor.
4 THE COURT: Are you available?
5 THE WITNESS: I could be available, yes.
6 THE COURT: Okay. Because I don't think
7 we're going to be done by four o'clock today --
8 MR. PENNER: I would agree, Your Honor.
9 THE COURT: -- since my motions calendar
10 for tomorrow morning is small and getting smaller as they
11 kick stuff over. We would probably be able to pick this up
12 by ten o'clock.
13 MS. HIGH: Okay.
14 MR. PENNER: Thank you, Your Honor.
15 THE COURT: All right. I'll have
16 Ms. Shipman see what the availability of the jury is then.
17 MS. HIGH: Thanks.
18 MR. PENNER: Yes, Your Honor. Thank you.
19 THE COURT: All right. We'll be at
20 recess.
21 (A recess was taken.)
22 (The defendant was present.)
23 (The jury was not present.)
24 THE COURT: All right. Anything before
25 the jury comes in?

1 MR. PENNER: No, Your Honor.
2 MS. HIGH: No. Thank you, Your Honor.
3 THE COURT: All right. And I gather
4 tomorrow morning is off.
5 MR. PENNER: Apparently.
6 MS. HIGH: I'll wrap it up.
7 THE COURT: That's a good idea.
8 (The jury was present.)
9 THE COURT: All right. You may be seated.
10 Okay. Continue, Counsel.
11 MS. HIGH: Thank you.
12 DIRECT EXAMINATION (Cont'd.)
13 BY MS. HIGH:
14 Q. So, Ms. Green, I believe you have up there what's been
15 admitted as Plaintiff's Exhibit 82, and that is a property
16 inventory sheet; and I know you've had a chance to review
17 that previously.
18 Now, what we have, there, is a property inventory sheet
19 showing that there's about a 64/65-day gap between when the
20 items were collected. That's documented there at the top on
21 February 7th, and they make it to a property room on April
22 12, 1993. What's your opinion of that?
23 A. As we've been discussing for the day, the chain of custody
24 is what's critical to maintain the integrity of the
25 evidence; so, ideally, I would like to see the evidence

1 collected on 02/07. Maybe there's a week or two gap if
2 evidence is drying or someone's out of -- out of the office
3 before they officially put it into the vault, but to have a
4 64-day gap, we don't, now, have that chain of custody; and
5 from the documentation I've been given, there's no one that
6 can say where this evidence was for those 64 days.
7 Q. And when you take a look at that, without that information,
8 in your mind, would that represent that somehow something
9 broke down here?
10 A. Yes. I think there's certainly a break in the chain of
11 custody, and we're dealing with evidence items now that
12 don't have proper seals, and now I have over two months
13 where no one can account for where they were; so something
14 certainly did break down in the chain of custody procedure.
15 Q. You know, and I know that -- I think you have up in front of
16 you, as well, Exhibit 46, forensic specialist Schlosser's
17 report where he reported actually recovering latent
18 fingerprints from inside the house.
19 And do you find that they were ever documented anyplace
20 after that as making it into any kind of property?
21 A. In the documentation I was given, I -- the only place I saw
22 those latent fingerprints mentioned was on the second page
23 of Officer Schlosser's report. I don't see them listed on
24 the chain of -- or the property and evidence form, so it
25 appears to me that those items were lost.

1 Q. And does that -- perhaps with -- the fact, then, now we have
2 lost evidence, as well as this gap in time, give you any
3 additional concerns about just the handling and the
4 integrity of the evidence in this case?
5 A. It -- it certainly makes you question, if -- if the
6 fingerprints were lost, is there something else out there
7 that -- that was lost, as well, maybe something that didn't
8 get documented in a report or on the sheet, but it has now
9 also -- also disappeared; so it does call into question what
10 else, out there, may be missing.
11 Q. Okay. And then just -- so finally, so you have some
12 concerns about the integrity of the evidence because of the
13 lack of documentation and the breaks in the chain of
14 custody.
15 Now, DNA profiles were developed from some items; right?
16 A. Correct.
17 Q. But that does not -- I guess, all it means is that DNA
18 profiles were developed. It does not somehow eradicate the
19 need for a chain of custody or confidence in the evidence
20 that's collected?
21 A. Correct. DNA profiles were -- were obtained. It doesn't
22 tell me anything about where the items were for 64 days. We
23 still need that -- that chain.
24 MS. HIGH: Okay. And, Your Honor, I would
25 offer for admission Exhibit 239, which is Ms. Green's CV.

1 THE COURT: Any objection?
2 MR. PENNER: No, Your Honor.
3 THE COURT: 239 will be admitted.
4 (Defendant's Exhibit No. 239 was admitted.)
5 THE COURT: And may we have it to stamp.
6 MS. HIGH: Yes. I didn't know if
7 Mr. Penner needed any of these for anything.
8 MR. PENNER: (Shakes head.)
9 MS. HIGH: Okay.
10 THE WITNESS: All these?
11 MS. HIGH: Sure.
12 THE WITNESS: Thank you.
13 (Pause.)
14 THE COURT: Anything else, Counsel?
15 MS. HIGH: Oh, no. Thank you. I'm sorry.
16 THE COURT: All right. Cross, Counsel.
17 MR. PENNER: Thank you.
18 CROSS-EXAMINATION
19 BY MR. PENNER:
20 Q. Good afternoon, Ms. Green.
21 A. Hi.
22 Q. So you weren't involved in this case at the time back in
23 1993; right?
24 A. That is correct. I was not involved.
25 Q. Okay. In fact, you were -- you were still a student at

1 Washington State University; correct?
2 A. I was.
3 Q. All right. And let me make sure, you're a scientist, not a
4 police officer; correct?
5 A. That is correct.
6 Q. And you mentioned in your testimony that you had some crime
7 scene responsibilities when you were with the Texas
8 Department of Public Safety?
9 A. I did, yes.
10 Q. Okay. Does that mean that you went out and processed scenes
11 or that you went out and advised other people on how to
12 process scenes?
13 A. I did go out and process crime scenes in Texas.
14 Q. Okay. And that was in 1995; right?
15 A. When I started, yes.
16 Q. Okay. And then you came up to Washington and took a job
17 with the State Patrol Crime Lab; correct?
18 A. Yes.
19 Q. And you held several different jobs there, different duties;
20 correct?
21 A. Essentially, two different duties, but yes.
22 Q. Okay. And you did crime scene reconstruction; correct?
23 A. Yes.
24 Q. And you did DNA analysis; correct?
25 A. I did.

1 Q. Okay. And you did bloodstain pattern analysis?
2 A. I did.
3 Q. Okay. But you didn't do any of that for this case; correct?
4 A. Not in an official capacity, I did not.
5 Q. Okay. And you haven't made any effort to look through the
6 evidence and try to reconstruct what happened there that
7 night; correct?
8 A. I did not do reconstruction, that's correct.
9 Q. Okay. And you didn't review the DNA analysis that was done
10 in this case for quality or results; correct?
11 A. Other than reading the reports that were authored, correct.
12 Q. All right. And you didn't look at the underlying data and
13 how it was done or anything like that?
14 A. I did not.
15 Q. Okay. And you, I suppose theoretically, could have done
16 that. You had the expertise to do that; right?
17 A. I do have the expertise. I was not asked to do it.
18 Q. Okay. And you read the autopsy report, but you didn't
19 take -- you didn't look at it in terms of trying to figure
20 out how those injuries might be relevant to how the crime
21 occurred; correct?
22 A. Not in an official capacity.
23 Q. Okay. And so you didn't -- you wouldn't be able to testify
24 today as to whether the injuries she suffered, any of them,
25 were what we call defensive wounds?

1 A. I would not testify to that.
2 Q. Okay. And until today, had you physically examined any of
3 the items of evidence?
4 A. No, I had not.
5 Q. All right. But you'd seen photographs of them; is that
6 right?
7 A. That is correct.
8 Q. And you saw photographs of the scene?
9 A. Yes.
10 Q. And you reviewed reports?
11 A. Yes.
12 Q. Okay. So essentially, you just reviewed the photos and the
13 reports, and your testimony today is just about how the
14 crime scene was processed; correct?
15 A. Generally, the procedures followed, yes, and the processing
16 of that scene.
17 Q. Okay. And do you agree with me that you approached that as
18 a scientist who would like to have as much evidence
19 collected as possible so you can do your job as well as
20 possible?
21 A. I think that's a fair statement.
22 Q. Okay. And so some of what you'd talked to the jury about
23 would be, you know, the ideal job done at a crime scene;
24 correct?
25 A. Yes.

1 Q. Okay. And how long -- you've been doing this since 1995;
2 right?
3 A. I have.
4 Q. All right. And most crime scenes aren't processed ideally;
5 isn't that true?
6 A. I would -- would say there are a fair number that are not
7 processed ideally.
8 Q. Okay. And when you testified here as a scientist, we're
9 talking about a scientist in 2016, not a scientist in 1993
10 because science has changed a lot; correct?
11 A. Science has changed. A lot of the procedures I was
12 originally taught in '95 are still basic crime scene
13 procedures I follow today.
14 Q. Okay. And again, that goes to the way to collect items;
15 correct?
16 A. Yes. Collect and documentation packaging.
17 Q. All right. But DNA analysis has changed significantly since
18 1993, hasn't it?
19 A. It certainly has.
20 Q. Okay. And the manner in which you're able to test for DNA,
21 doesn't that impact the way that you would want the crime
22 scene technicians to collect evidence and process the scene?
23 A. Yes.
24 Q. All right. Now, this particular case, again, you've had a
25 chance to look at the photographs. This was a -- and you've

1 read the autopsy report; right?
2 A. I have, yes.
3 Q. Okay. This was a pretty violent attack; correct?
4 A. There were a number of wounds, yes.
5 Q. Do you remember how many wounds?
6 A. Not off the top of my head.
7 Q. Okay. But we've seen the photograph. There was a lot of
8 blood in the kitchen; correct?
9 A. Yes, there was.
10 Q. All right. And I think you indicated that you would have
11 started in the kitchen because that was, clearly -- I think
12 you called it a "dynamic event." Is that right, you would
13 have started in the kitchen?
14 A. Yes.
15 Q. Okay. Blood evidence is pretty important in this kind of a
16 crime scene; correct?
17 A. It is.
18 Q. All right. And I'd like to take a moment to talk about the
19 difference between blood evidence and fingerprint evidence.
20 Do you feel comfortable talking about fingerprint evidence?
21 A. In a general sense. I'm not a fingerprint analyst.
22 Q. Okay. So generally speaking, if a fingerprint is found at
23 the scene, what does that tell you?
24 A. That someone with that fingerprint was in that area at some
25 point.

1 Q. Okay. And that's pretty much all it tells you; right?
2 A. Are you referring to timing, or --
3 Q. Right. When it was left or why the person was there or what
4 happened when they touched whatever they touched.
5 A. Depending on the substrate the fingerprint is in, yes.
6 Q. Okay. And every time somebody touches something, there's a
7 possibility they leave behind a fingerprint; correct?
8 A. Depending on the substrate, yes.
9 Q. Okay. Blood evidence is different, though, because people
10 don't generally go around bleeding in other people's
11 apartments; right?
12 A. I'd like to think not.
13 Q. Okay. And so when we get to blood evidence in this kind of
14 a scene, that has special significance, correct, in a
15 stabbing murder scene?
16 A. Blood in a stabbing murder scene, yes, is significant.
17 Q. All right. And it's important whose blood it is; correct?
18 A. It is.
19 Q. Where it's located; correct?
20 A. Yes.
21 Q. And the way in which it was deposited; correct?
22 A. Yes.
23 Q. Okay. Now, if a -- if blood is found in a location away
24 from the victim, we can conclude that either the victim also
25 bled there or that somebody else bled there; is that right?

1 A. You also have to consider the fact that if there was a
2 weapon used and that weapon was saturated in blood and the
3 weapon is moved and blood falls off of that, it doesn't
4 place the victim in that area, simply an object bearing her
5 blood.
6 Q. Okay. So we could find drips of the victim's blood in a
7 different room, and it might be because the killer took the
8 knife into that room?
9 A. That is a possibility I have to consider, yes.
10 Q. Okay. And I'd like to talk about the different types of
11 blood deposits; and I don't know, if you have technical
12 terms, go ahead and give them back to me; but blood can just
13 drip straight down, correct, from an item or from a person's
14 body?
15 A. Yes. And "blood drop" is appropriate.
16 Q. All right. And when we see that, what shape do we expect to
17 see that, the blood drop?
18 A. A blood drop, simply dropping straight down, what I would
19 call a 90-degree angle to a surface, again, depending on the
20 substrate, should be fairly round.
21 Q. Okay. Now, what about blood that hits an object with some
22 force, I guess, and velocity? What would -- what would you
23 expect to see then?
24 A. Are you referring to the force that created the blood or the
25 blood, itself, impacting an object?

1 Q. When you -- you're the scientist or the forensic tech and
2 you come in, and you see a blood drop. You said circular,
3 so we can conclude it dripped straight down. What if we see
4 a blood drop that's linear, that has an elongated, long,
5 almost line-like shape? What does that indicate?
6 A. The elongated is -- is a nice way to describe that; or if
7 you think of, like, a teardrop that actually has a tail,
8 then that would suggest to me some type of motion. Perhaps
9 if I have blood on my hand and I move it, it's called
10 "cast"; and blood has now flown from that object.
11 Q. Okay. And that can come from force against the victim,
12 blood flying off the victim's body?
13 A. That would actually be a different type of bloodstain
14 pattern.
15 Q. Okay. Would it be circular, or it would be elongated as
16 well?
17 A. Force applied to liquid blood, depending on the angle at
18 which it impacts the surface, can be both round and angular.
19 I'm looking for blood in a somewhat radiating deposit if I
20 have force impacting liquid blood.
21 Q. Okay. And what's "castoff"?
22 A. Castoff would be liquid blood coming from my hand or a
23 weapon or my hair as I turn my head. A lot of it is
24 released from an object in motion.
25 Q. And that's when we'll see those elongated drips more likely?

1 A. That is one time you might see that, yes.
2 Q. All right. And then there's also "transfer blood"; right?
3 A. (Nods head.)
4 Q. And that's where if blood is on an object and that object
5 touches something else, it might leave a smear?
6 A. Blood on my hand, transferring to a surface, could be a
7 "wipe," or we call it a "swipe"; either is fine.
8 Q. Okay. And you've already testified, I believe, that it's
9 not uncommon in stabbing cases for the assailant to, also,
10 be cut; correct?
11 A. It can happen, yes.
12 Q. Okay. And you can't speak to the nature of the injuries of
13 the victim, as you testify here today, because you don't
14 remember all of her injuries from the autopsy report; right?
15 A. I did not commit the autopsy report to memory.
16 Q. All right. But again, it's not uncommon for an assailant to
17 be cut?
18 A. It can happen, yes.
19 Q. All right. So getting back to those three questions, when
20 we find blood, we want to know whose blood it is, where is
21 it, and how is it deposited; right?
22 A. Yes.
23 Q. All right. And the blood that was on the dresser in the
24 back bedroom on the -- on the top of the dresser and on the
25 drawer and on the papers, did you have a chance to look at

1 the way in which that was deposited?
2 A. I saw those stains. Again, I didn't do an official
3 bloodstain pattern analysis. I would classify them as what
4 I would call "spatter" which is simply blood released
5 through the air before it hits a target surface.
6 Q. Okay. And so your analysis is you can't tell if it's a drip
7 or castoff?
8 A. I did not make any such conclusions in this case.
9 Q. But they're relatively round, would you agree with that?
10 A. My memory is -- we're talking about the papers and the fact
11 pattern?
12 Q. And the -- and the dresser and the -- and the drawer.
13 A. I don't have a recollection of a good photograph of the
14 stains from the dresser. The stains on the envelope did
15 appear to have a little more directionality.
16 Q. All right. So as you sit here, you can't remember what they
17 look like on the dresser?
18 A. I don't know that I saw a good photograph that would allow
19 me to make that determination.
20 Q. All right. But it's -- but the evidence technicians who
21 were there that day decided to collect the blood; correct?
22 A. They did from that area, yes.
23 Q. Okay. And that's the same blood that was, then, later done
24 with the DNA analysis, and a profile was obtained; correct?
25 A. From the papers, yes.

1 Q. Okay. Do you recall whether it was from the dresser as
2 well?
3 A. My memory is, no, it was not; but I would need to review the
4 reports.
5 Q. All right. Do you recall whether it was from the dresser
6 drawer?
7 A. I believe the profile, I'm remembering, is from the papers.
8 Q. Okay. Okay. Do you have any recollection of there being a
9 profile obtained from anywhere besides that blood, besides
10 the blood that was on the papers?
11 A. Yes, I do.
12 Q. Okay. The same individual?
13 A. I would be more comfortable going through all the DNA
14 reports as opposed to simply talking from the ring on the
15 DNA.
16 Q. Okay. Well, that's my question. So as you sit here
17 testifying right now, you can't remember necessarily where
18 DNA profiles were obtained from?
19 A. I -- I can. I didn't make a concerted effort to commit it
20 all to memory because DNA was not my focus. I can tell you
21 what I remember at this point.
22 Q. Tell me what you remember at this point.
23 A. The profile was obtained from the papers in the back
24 bedroom, from the coat that was hanging on the doorknob,
25 from the bathroom -- there were some stains there -- and

1 from the jeans.
2 Q. And it's your memory that those all matched?
3 A. And that's where I did not commit the partial versus trace,
4 all of that, to memory.
5 Q. Okay. So really what you're testifying about, today, is the
6 fact that they could have collected more items from the room
7 or from the apartment; right?
8 A. That was part of it, yes.
9 Q. Okay. And that the documentation regarding the evidence,
10 after it was collected, doesn't account for the gap between
11 February 7th and April 12th; correct?
12 A. The documentation I was given, correct, I don't believe it
13 accounts for that.
14 Q. Okay. But if a witness was able to tell the jury where it
15 was in that period of time, that would be helpful for
16 establishing chain of custody; correct?
17 A. If the witness had a solid memory of that, that would be
18 helpful.
19 Q. Okay. And are you familiar with the Pierce County Sheriff's
20 Department's protocols as it pertains to the forensics lab,
21 the property room, and evidence collection?
22 A. I have some protocols that I have read and would say I
23 read -- again, committed them to memory; I've read some.
24 Q. Okay. So you can't really testify now about the procedures
25 that were used in 1993 by the Sheriff's Department?

1 A. I don't believe I was given any protocols from that time,
2 correct.
3 Q. Okay. And so, for example, some of the photographs, they
4 didn't collect the slipper that we saw; right?
5 A. I don't believe they did.
6 Q. Or the glass that was tipped over?
7 A. Correct.
8 Q. Okay. But not collecting the slipper, that doesn't change
9 any of the DNA results, does it?
10 A. That is correct.
11 Q. Okay. And not collecting the glass also doesn't change the
12 DNA results; correct?
13 A. Correct.
14 Q. All right. And while chain of custody is important to
15 document, a failure to document is not the same as actual
16 contamination of the evidence; correct?
17 A. That's correct.
18 Q. All right. And so if I understand, what you're saying is
19 the best practice is document it every step of the way;
20 correct?
21 A. Yes.
22 Q. All right. But failure to do that doesn't automatically
23 mean that the evidence is contaminated in any way; correct?
24 A. It simply calls into question the integrity, but it -- it
25 does not automatically mean it was contaminated.

1 Q. All right. And DNA, we can now test for DNA in very small
2 amounts, correct --
3 A. Correct.
4 Q. -- just even some skin cells?
5 A. Correct.
6 Q. But when you do that analysis, the profile might not be as
7 strong as it would be as if you had, say, blood or some
8 other bodily fluid that had more DNA in it; correct?
9 A. I can get a very significant profile from just skin cells;
10 but when it's in a mixture, you may have an imbalance in
11 those profiles, correct.
12 Q. Okay. And is blood a pretty good place to find DNA? Is
13 that usually a pretty strong DNA location?
14 A. Absent any type of degradation, yes, it is.
15 Q. Okay. And if blood dries out into some paper or fabric
16 absent force on it, it doesn't degrade over time, just
17 naturally; correct?
18 A. If it's properly stored and has been properly dried, then it
19 should remain stable.
20 Q. Okay. And if you had an item that had a few skin cells
21 from, say, one person, you said you could get a DNA profile
22 from that, correct, potentially?
23 A. Potentially.
24 Q. Okay. If we, then, took a large amount of blood from a
25 different person and put it on top of those skin cells, how

1 would that impact your ability to get a profile for those
2 two different people?
3 A. If we're talking about a significant amount of blood with
4 just a few skin cells, then I probably expect the blood to
5 potentially overwhelm the profile that would have been there
6 from the skin cells.
7 Q. Okay. And similarly, if you already have a large amount of
8 blood and a few skin cells drop onto it after, you still
9 have the same situation where the blood is going to
10 overpower the skin cells; right?
11 A. Assuming no degradation and all that, correct.
12 Q. All right. So you would say that the crime scene processing
13 in this case was not ideal; correct?
14 A. I would say the handling of the evidence, post-crime scene,
15 was not ideal.
16 Q. All right. But the processing of the crime scene, pretty
17 typical for the time?
18 A. I would say the processing, yes, was -- was fairly typical.
19 Q. All right. And I think you previously said, but they were
20 able to get the DNA profile; correct?
21 A. Yes. DNA profiles were obtained.
22 Q. All right. And that means that they collected that blood
23 adequately to preserve it so that 23 years later, they could
24 get a DNA profile; correct?
25 A. It means that whatever happened to the evidence in that time

1 did not destroy the DNA.
2 MR. PENNER: Thank you. Nothing else,
3 Your Honor.
4 THE COURT: Redirect?
5 REDIRECT EXAMINATION
6 BY MS. HIGH:
7 Q. Right. The problem with that is: You don't know if it's
8 been contaminated, if blood has been introduced or items
9 contaminated that you get a DNA profile from; is that right?
10 A. It -- to say I don't know it's been contaminated would
11 depend on the type of profile I'm seeing, but I -- I
12 certainly can't speak to the integrity of the item that was
13 in the bag if it's not sealed.
14 Q. Right. And so the integrity really goes to the heart of the
15 confidence and what the results are?
16 A. Correct.
17 Q. Okay. And you were asked about, you know, an assailant may
18 leave their blood. Now, if a person is also a victim of an
19 assault and is injured, they may leave their blood in the
20 apartment, as well; is that correct?
21 A. Anytime anyone has a bleeding wound, they have the potential
22 to leave blood where they've been, correct.
23 MS. HIGH: Okay. That's all I have.
24 Thanks.
25 THE COURT: Any additional cross?

1 MR. PENNER: Just briefly.
2 RECROSS-EXAMINATION
3 BY MR. PENNER:
4 Q. So you can't speak to the integrity of the evidence;
5 correct?
6 A. For the time that it was unsealed and missing, correct.
7 Q. Based on what you've reviewed; correct?
8 A. Based on what I was given, yes.
9 Q. But other people might be able to speak to that; isn't that
10 right?
11 A. If they have an independent memory of what it was, yes.
12 MR. PENNER: Thank you. Nothing else.
13 THE COURT: Anything else?
14 MS. HIGH: No. Thank you very much, Your
15 Honor.
16 THE COURT: All right. May the witness be
17 excused?
18 MS. HIGH: Yes.
19 MR. PENNER: Yes, Your Honor.
20 THE COURT: All right. Then you're free
21 to go. If you have any of the exhibits up there, if you
22 would leave them on the edge of the counter.
23 THE WITNESS: I think they're clear.
24 THE COURT: All right. Is that it for the
25 day?

1 MS. HIGH: It is. Thank you, Your Honor.
2 MR. PENNER: Yes, Your Honor. Thank you.
3 THE COURT: All right. Today is Thursday.
4 We will reconvene on this case on Monday at 9:30, no
5 discussion, no investigation, notepads face down. We will
6 see you then, and stay in the jury room until Ms. Shipman
7 comes to get you.
8 (The jury was not present.)
9 THE COURT: All right. Well, I want to
10 commend your efforts for condensing it a bit there.
11 MR. PENNER: Thank you, Your Honor.
12 MS. HIGH: Yes.
13 THE COURT: All right. Monday's lineup?
14 You may sit down.
15 MS. HIGH: Thanks.
16 MR. PENNER: I was going to take some time
17 to think about it; but roughly, Your Honor, I expect on
18 Monday, we'll have -- sorry, I'm still in my other mode --
19 Detective O'Hern, Mr. Schlosser, Mr. Wilkins from the --
20 from the property room; and then I think the other -- the
21 other three witnesses we have before we rest will be
22 Detective Kobel, Dr. Ramoso, and Chris Sewell of the Crime
23 Lab; and so those are the six witnesses I anticipate to have
24 left in my case.
25 THE COURT: Okay. So by Wednesday, you

1 might be resting?
2 MR. PENNER: Yeah. And, I mean, you know,
3 I say that, and then I look at yesterday, and we did one
4 witness in a day; so it's hard to say.
5 THE COURT: I know, it is difficult to
6 predict.
7 MR. PENNER: My guess is that the State
8 will rest Wednesday --
9 THE COURT: All right.
10 MR. PENNER: -- based on six witnesses and
11 the nature of those witnesses, and some of them could take
12 longer, so --
13 THE COURT: I would think that there is
14 always ones that take longer. All right. Anything else,
15 then?
16 MR. PENNER: No, Your Honor.
17 MS. HIGH: No. But I'll shoot for, then,
18 the witnesses that I have because two of them are out of
19 town. One's on the East Side of Spokane, we've been in
20 touch with, and the other is working, I think, on the
21 Olympic Peninsula; so I'll try to get them lined up for
22 Thursday. Is that --
23 THE COURT: At this point, optimistically,
24 Thursday --
25 MS. HIGH: Right. Okay.

1 THE COURT: -- although, the situation can
2 change.
3 MS. HIGH: Yeah.
4 MR. PENNER: All right. Thank you, Your
5 Honor.
6 THE COURT: All right. We'll see you on
7 Monday.
8 (Court adjourned for the day.)
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,	)	
	)	Superior Court
Plaintiff,	)	No. 14-1-02979-1
	)	
vs.	)	Court of Appeals
	)	No. 48810-8-II
JAMES EDWARD MITCHELL,	)	
	)	
Defendant.	)	

REPORTER'S CERTIFICATE

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

I, Kimberly A. O'Neill, Court Reporter in the state of Washington, county of Pierce, do hereby certify that the foregoing transcript is a full, true, and accurate transcript of the proceedings and testimony taken in the matter of the above-entitled cause.

DATED this 4th day of August, 2016.

_____
KIMBERLY A. O'NEILL, CCR
License No. 1954

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,	)	
	)	Superior Court
Plaintiff,	)	No. 14-1-02979-1
	)	
vs.	)	Court of Appeals
	)	No. 48810-8-II
JAMES EDWARD MITCHELL,	)	
	)	
Defendant.	)	

VERBATIM REPORT OF PROCEEDINGS

Monday, February 8, 2016
Pierce County Courthouse
Before The Honorable Katherine M. Stolz
Tacoma, Washington

<<<<<< >>>>>>

A P P E A R A N C E S

For the Plaintiff: STEPHEN M. PENNER
Deputy Prosecuting Attorney

For the Defendant: MARY K. HIGH
Attorney at Law

Kimberly A. O'Neill, CCR #1954
Official Court Reporter
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No. 48810-8-II

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1 BE IT REMEMBERED that on Monday, the 8th
2 day of February, 2016, the above-captioned cause came on
3 duly for hearing before THE HONORABLE KATHERINE M. STOLZ,
4 Judge of the Superior Court in and for the county of Pierce,
5 state of Washington; the following proceedings were had, to
6 wit:
7
8 <<<<<< >>>>>>
9
10 (The defendant was present.)
11 (The jury was not present.)
12 THE COURT: All right. Anything before we
13 bring the jury in?
14 MS. HIGH: Your Honor, just one thing, and
15 I realize that Judge Whitener had already ruled on allowing
16 Mr. Schlosser from testifying from his report because he
17 lacked a memory. I'm just renewing, for the record, our
18 objection based on confrontation and hearsay.
19 THE COURT: All right.
20 MS. HIGH: Thank you, Your Honor.
21 THE COURT: All right. And I understand
22 that we are awaiting some evidence, but we can start without
23 it.
24 MR. PENNER: Yes, Your Honor.
25 MS. HIGH: Yes.

1 THE COURT: All right. Then we'll bring
2 the jury in.
3 (The jury was present.)
4 THE COURT: All right. You may be seated.
5 All right. You may call your first witness, Mr. Penner.
6 MR. PENNER: Thank you, Your Honor. The
7 State would call Ted Schlosser.
8 THE COURT: If you want to come forward,
9 sir; watch the ramp.
10 TED SCHLOSSER, witness herein, having been sworn
11 under oath, was examined and
12 testified as follows:
13 THE COURT: All right. If you want to
14 come up. There's water and Kleenex to your right. On the
15 stand, you can pull the chair forward and adjust the mic;
16 and when answering, answer "yes" or "no"; don't nod or shake
17 your head. All right? The court reporter does need to know
18 what you're saying. All right. Your witness, Counsel.
19 MR. PENNER: Thank you.
20 DIRECT EXAMINATION
21 BY MR. PENNER:
22 Q. Could you state your name for the record, and spell it for
23 the court reporter.
24 A. Ted Schlosser, S-C-H-L-O-S-S-E-R.
25 Q. All right. And, Mr. Schlosser, did you used to work for the

1 Pierce County Sheriff's Department?
2 A. Yes, I did.
3 Q. In what capacity?
4 A. As a forensic investigator, crime scene investigator.
5 Q. Do you remember what years you worked?
6 A. (No audible response.)
7 Q. Let me ask it a different way. Do you remember what year
8 you started?
9 A. 19 -- I can't remember.
10 Q. Okay. Do you have a general memory of how long you worked
11 there? Was it a year, or --
12 A. 22 years.
13 Q. Okay. And as a crime scene technician, what were your job
14 duties?
15 A. My duties included -- or I was called out to process a crime
16 scene. They -- they included taking videos, photographs,
17 collection of evidence, and processing the -- the scene.
18 Q. All right. And did you work with a gentleman named Skip
19 Johnson?
20 A. Yes, I did.
21 Q. Was he, like, a partner; or did you guys just work in the
22 same department?
23 A. We worked in the same department.
24 Q. Okay. Now, on this particular case from 1993, have you had
25 a chance to look at your police reports that you wrote back

1 then?
2 A. Yes, I did.
3 Q. And did you look at the crime scene photographs?
4 A. Yes, I did.
5 Q. All right. Do you, as you sit here today, have any
6 recollection of the investigation in this case?
7 A. None, whatsoever.
8 Q. Okay. Even after reviewing your report; is that right?
9 A. That's correct.
10 Q. All right. Do you remember what year you retired?
11 A. Approximately seven to eight years ago.
12 Q. Okay. And have you had any medical issues between -- or at
13 least towards the end of your career or since retirement
14 that have impacted your memory?
15 A. Yes, I did.
16 Q. Can you tell the jury what those are.
17 A. I had heart surgery, open heart surgery, and two strokes.
18 Q. All right. I'm going to show you, now, what's been marked
19 for identification as Exhibit 46; and I'll ask you to look
20 at the bottom center of the first page. Do you recognize
21 your name and initials and signature there?
22 A. Yes, I do.
23 Q. Okay. And what type of document is that?
24 A. It's an identification section or forensic investigation
25 section report.

1 Q. Okay. So it's a report for a police incident; is that
2 right?
3 A. Yes, it is.
4 Q. Is there a case number somewhere there?
5 A. Yes, there is.
6 Q. Could you read it into the record.
7 A. 930371041.
8 Q. Okay. And, again, is that the document that you've had a
9 chance to review before today?
10 A. Yes, it is.
11 Q. It still doesn't refresh your recollection?
12 A. No, it doesn't.
13 Q. Okay. Was it your habit to make written reports shortly
14 after you did investigations?
15 A. Yes, it was.
16 Q. Is there a date on that report that indicates when it was
17 turned in?
18 A. 03/09/93.
19 Q. So about a month after the incident date; is that right?
20 A. Yes, sir.
21 Q. Okay. Would you agree with me that your memory of the event
22 was still fresh in your memory back then compared to now?
23 A. Yes. Apparently, it was.
24 Q. Okay. Was it your practice to try to be as accurate as you
25 possibly could?

1 A. Yes, sir.
2 Q. All right. Do you have any reason to believe that you put
3 anything inaccurate in that report?
4 MS. HIGH: Objection, Your Honor;
5 foundation. He doesn't have the memory.
6 THE COURT: Overruled, subject to the
7 prior rulings.
8 MR. PENNER: All right.
9 Q. (By Mr. Penner) You've had a chance to review the police
10 report; correct?
11 A. Yes.
12 Q. And even though you don't remember the incident, was there
13 anything about the police report, itself, that stood out to
14 you to indicate there might be some inaccuracies?
15 A. No, sir.
16 Q. All right. Then what I'd like you to do now, if you could,
17 is if you look at the second paragraph on Page 1, it starts
18 with, "I took."
19 A. Okay.
20 Q. Do you see that?
21 A. (Nods head.)
22 Q. Could you please read to the jury that entire paragraph to
23 the end of the page.
24 A. "I took overall videos of the outside front of the -- of the
25 apartment building and a Datsun B-210 with Washington

1 license Union Frank -- UFY 945 and a Dodge Charger with
2 Washington License No. ALV RNS that were parked in front of
3 the -- in front of the building. Videos were also taken of
4 the interior of Unit No. 4 with emphasis on the kitchen,
5 master bedroom, the living room, hallway, and the hall --
6 the living room, dining room, and hallway. Blood or blood
7 spatter was present in the master bedroom and the hallway,
8 kitchen floor, walls, and refrigerator near the front entry
9 door. The areas of the video were taped. The victim was on
10 the floor with her feet in the hallway and her body in the
11 kitchen. She was laying face down. The victim and the --
12 and the location -- and the condition and location were,
13 also, videotaped. Identification took photographs while I
14 video -- while I was videotaping them."
15 Q. All right. And if you could turn to Page 2.
16 A. (Witness complies.)
17 MR. PENNER: And, Your Honor, may I
18 approach the witness?
19 THE COURT: You may.
20 Q. (By Mr. Penner) Do you see -- about the fifth line down, do
21 you see where it says "I processed"?
22 A. Mm-hmm.
23 Q. Could you read from there to the end of the paragraph.
24 A. "I processed the residence for latent fingerprints,
25 recovering -- recovering fingerprints from the inside of the

1 front door and the door of the refrigerator. Officer
2 Johnson collected evidence, collected blood from various
3 locations throughout the residence; and I assisted him in
4 the collection of other -- other evidence. Prior to
5 collection of the blood evidence from the -- the victim,
6 from the -- from the scene, measurements were taken for a
7 future sketch."
8 Q. Okay. Thank you. At the end there, you mentioned sketches.
9 Was part of your job to sketch the crime scene, sometimes?
10 A. On occasion, it was.
11 Q. Okay. I'm going to show you what have been marked as
12 Exhibits 37 and 38. We'll start with 37. Generally
13 speaking, what is that?
14 A. It's a sketch of a crime scene.
15 Q. Okay. Do you have an independent recollection of it now?
16 A. No, I do not.
17 Q. All right. I'm going to show you 38. And what's that,
18 generally speaking?
19 A. It's the overall measurements of a sketch of a -- of the
20 inside of the apartment complex.
21 Q. Okay. Again, it's a diagram?
22 A. Yes, it is.
23 Q. Can you explain to the jury -- you wrote down that you would
24 take measurements to do a sketch, I guess, at a later date.
25 What was your general practice in terms of creating

1 sketches?
2 A. When you create -- when you created a sketch, you took
3 measurements over all of the room such as this room and the
4 triangulation, where you take one measurement and another
5 measurement; and when you put them all together, you can
6 come back and re-create a scene.
7 Q. Okay. And on these two Exhibits, 37 and 38, did you
8 recognize your handwriting?
9 A. Yes, I do.
10 MR. PENNER: All right. Your Honor, the
11 State moves to admit 37 and 38.
12 THE COURT: Any objections?
13 MS. HIGH: No, Your Honor, just subject to
14 my prior.
15 THE COURT: All right. They will be
16 admitted.
17 (Plaintiff's Exhibit Nos. 37 and 38 were admitted.)
18 MR. PENNER: Move to publish 37?
19 THE COURT: Any objections?
20 MS. HIGH: No. Thank you.
21 THE COURT: All right. 37 will be
22 published.
23 Q. (By Mr. Penner) So, Mr. Schlosser, I know you don't have a
24 recollection of being in the apartment, but could you
25 explain to the jury what some of the markings are and all

1 the different numbers and why those are there.
2 THE COURT: Do you want him to be able to
3 step down and use the pointer?
4 MR. PENNER: Would that assist your
5 testimony if you could step up to the screen?
6 (The witness left the stand.)
7 Q. (By Mr. Penner) Come to this side and kind of let us know
8 what some of the different markings mean, why they're there.
9 A. Well, this is an overall measurement of the -- the inside of
10 the apartment right here, and then up in here --
11 THE COURT: You might want to elevate your
12 voice a little, sir --
13 THE WITNESS: Okay.
14 THE COURT: -- so the jury can hear you.
15 Q. (By Mr. Penner) And it's probably clear from the diagram,
16 but could you indicate where the victim's body was found.
17 A. Right in this location.
18 MR. PENNER: All right. Thank you, sir.
19 That's all. Thank you. You can be seated.
20 (The witness returned to the stand.)
21 MR. PENNER: And if I could publish 38?
22 THE COURT: Any objections to 38?
23 MS. HIGH: No, Your Honor.
24 THE COURT: All right. 38 will be
25 published.

1 Q. (By Mr. Penner) And, Mr. Schlosser, this looks like this is
2 a close-up of one of the rooms; is that right?
3 A. Yes, it is.
4 Q. Okay. All right. Thank you.
5 THE COURT: We need to stamp those.
6 MR. PENNER: All right.
7 Q. (By Mr. Penner) So, Mr. Schlosser, you made a written
8 report. Was it also -- did you ever have occasion to make
9 notations on property sheets directly? Just generally in
10 your career, did you ever write stuff on property sheets?
11 A. Yes, I did.
12 Q. Okay. I'm going to hand you what's been admitted as Exhibit
13 82 and ask if you see, towards the bottom there, your badge
14 number or unit number.
15 A. (Reviewing.) Yes, I do.
16 Q. Okay. And is that under the part that says "additional
17 descriptions or comments"?
18 A. Yes, it is.
19 Q. Do you have any recollection of writing that?
20 A. I do not.
21 Q. Okay. But would you have written it close in time to the
22 date there, April 12th?
23 A. Yes, I would have.
24 Q. Okay. Can you read to the jury what you wrote.
25 A. "Freeze Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 13, 14, 15."

1 Q. And then what?
2 A. And then my initials and -- and -- and unit number.
3 Q. All right. And why would you write that?
4 A. Because when you're working with biological fluid such as
5 blood, it has to be frozen.
6 Q. Okay.
7 A. So it won't deteriorate or whatever.
8 Q. And when you write those comments, who are you writing them
9 to?
10 A. To the property room.
11 Q. All right. Where's the property room related to the
12 forensics lab?
13 A. It's just across the hallway.
14 Q. Okay. Did you ever -- let me phrase it a different way.
15 Let's take a look at Page 2, and were there any notes on
16 Page 2?
17 A. (Reviewing.) Yes, there are.
18 Q. Okay. And, again, does it have your initials and unit
19 number?
20 A. Yes, it does.
21 Q. All right. Could you read the notes on Page 2.
22 A. "Nos. 16, 17, 20, 22 processed for latent fingerprints with
23 negative results."
24 Q. Okay. What does that mean, just -- and can you translate
25 that.

1 A. There were no fingerprints of value or that could be used
2 for comparison purposes with a suspect or -- or anyone that
3 had been at the scene.
4 Q. Okay. Where did you process items of evidence for
5 fingerprints?
6 A. In the laboratory.
7 Q. Okay. Was there a section there?
8 A. Was there --
9 Q. Like, where was that, like, the laboratory downstairs across
10 from the property room?
11 A. Yes, there was.
12 Q. Okay. And does this Exhibit 82 indicate what date, then,
13 the items were provided to the property room?
14 A. 04/12/93.
15 Q. All right. Does it also indicate what date they were
16 collected from the crime scene?
17 A. 02/07/93.
18 Q. Okay. And was it normal practice to leave items in the
19 property room sometimes between collection and submission to
20 the property room so they could be processed?
21 A. At this time -- at the -- at the time and date of the crime
22 scene, we were working numerous cases, numerous homicides,
23 other cases, and cases that were assigned to us to work; so
24 sometimes, there would be a leeway between the time that it
25 was being processed and turned into the property room.

1 Q. Okay. Who had access to the forensic lab?
2 A. All the forensic investigators and -- and the supervisor,
3 and --
4 Q. What about the general public?
5 A. No.
6 Q. All right. Now, you also mentioned in your report that you
7 did a video of the crime scene; is that right?
8 A. Yes, I did.
9 Q. And have you had a chance to look at the video?
10 A. Yes, I did.
11 Q. And does that refresh your recollection at all?
12 A. No, sir.
13 Q. All right. I'm going to show you what's, previously, been
14 admitted as Exhibit 102.
15 MR. PENNER: Actually, Your Honor, if I
16 could publish?
17 THE COURT: You may.
18 Q. (By Mr. Penner) This is a photograph that's been admitted
19 previously of the front of the apartment complex. Did you
20 have a chance to look at the video and compare this
21 photograph to the beginning of the video?
22 A. Yes, I did.
23 Q. And does it appear to be the same apartment complex with the
24 same crime scene and the same vehicles?
25 A. Yes, sir.

1 MR. PENNER: All right. Your Honor, at
2 this time, the State moves to admit Exhibit 102.
3 THE COURT: Any objection?
4 MS. HIGH: No, Your Honor, just subject to
5 my prior.
6 THE COURT: Subject to your prior, it will
7 be admitted.
8 (Plaintiff's Exhibit No. 102 was admitted.)
9 MR. PENNER: And, Your Honor, move to
10 publish?
11 THE COURT: Any objections to publication?
12 MS. HIGH: No, Your Honor.
13 THE COURT: No. 102 will be published.
14 MR. PENNER: If I may have a moment.
15 THE COURT: You may have a moment.
16 (Pause.)
17 Q. (By Mr. Penner) And, Mr. Schlosser, while this is loading,
18 when you were to video a crime scene, generally speaking,
19 did you narrate as you went through; or was it just to
20 document the visuals?
21 A. Just for vision documentation.
22 Q. All right. And did you wait until the very end of the scene
23 to do that; or did you do it kind of as things went along,
24 generally?
25 A. As we were processing the scene.

1 Q. Okay.
2 THE COURT: I think we need some more
3 lights down.
4 MR. PENNER: I think so. Thank you.
5 THE COURT: Thank you, Ms. Shipman.
6 (The DVD was played for the jury.)
7 MR. PENNER: Thank you, Mr. Schlosser. No
8 further questions, Your Honor.
9 THE COURT: Cross-examination?
10 MS. HIGH: Thank you.
11 CROSS-EXAMINATION
12 BY MS. HIGH:
13 Q. Mr. Schlosser, do you still have Exhibits 46 and 82 up by
14 you? It would be your report and the --
15 THE COURT: Property.
16 Q. (By Ms. High) -- property sheet E?
17 A. Yes, I do.
18 Q. Okay. Well, starting with 46, your report, it looks like
19 you arrived -- you put your time down as 2344?
20 A. Yes, it is.
21 Q. And so that would be 11:44 in the evening?
22 A. Yes, it will.
23 Q. I think you said that you started your career, at least
24 perhaps in one of my interviews, in fingerprints; is that
25 right?

1 A. Yes, I did.
2 Q. And you've had the opportunity to fingerprint many, many
3 items over the years?
4 A. Yes, ma'am.
5 Q. Okay. And you also, in this case, did some fingerprinting;
6 is that right?
7 A. Yes.
8 Q. And I think you note in your report that you actually did
9 some fingerprinting activities inside the apartment on the
10 second page?
11 A. Yes, I did.
12 Q. And I think you report that you took some fingerprints from
13 the inside of the front door?
14 A. (Reviewing.)
15 Q. Is that right?
16 A. Yes.
17 Q. And, as well, from the top door of the refrigerator?
18 A. Yes, ma'am.
19 Q. And, in fact, you report that you recovered some latent
20 prints; is that right?
21 A. Yes.
22 Q. And when you recover latent prints, there's a process that
23 you do to save those; is that right?
24 A. Yes, there is.
25 Q. And, I think, they, like, around -- like, a piece of tape

1 type thing that goes onto a card?
2 A. When you process for fingerprints, you develop the -- or it
3 has the fingerprints where they can be seen. Then you --
4 then you place tape on them and transfer them to a white
5 card stock.
6 Q. And that white card stock, you would put, say, this incident
7 number on it someplace and the date; is that right?
8 A. Yes, it is.
9 Q. Okay. And that would be something that would be, now,
10 evidence in this case?
11 A. Yes, ma'am.
12 Q. Okay. Now, those fingerprint cards do not appear on your
13 Exhibit E -- excuse me, Exhibit 82, the property sheet E,
14 anyplace?
15 A. (Reviewing.) That is correct.
16 Q. Okay. And do you know what happened to those cards?
17 A. They would be filed on the first floor in the identification
18 division of this building.
19 Q. And have -- and there's nothing in your report that they
20 were, then, ever consulted again in terms of this case; is
21 that right?
22 A. Not that the report shows.
23 Q. Okay. And, you know, not only do you have a lot of
24 expertise or experience in gathering fingerprints, but you
25 also have training and expertise in writing reports?

1 A. Yes, ma'am.
2 Q. I mean, that's something that was important not just in this
3 case but in every case you worked on?
4 A. Yes, ma'am.
5 Q. And the reason you write reports is so later on if you
6 needed to testify, you would have a document that would tell
7 you what you did in the case?
8 A. That's correct.
9 Q. Okay. And the only document that you wrote with respect to
10 this case is your Exhibit 46; is that right?
11 A. (Reviewing.) No. 46 and No. 82, I wrote -- I wrote reports
12 on what I found.
13 Q. Fair enough. So 46 documents kind of your narrative, what
14 you did with respect to this case; and your report date is
15 March 9, 1993?
16 A. Yes, it is.
17 Q. You know, and I think you testified that at this time when
18 you were working, you had many, many cases going on at once?
19 A. That's correct.
20 Q. And it could be where you were -- have a case come right on
21 the heels of the one before it; is that right?
22 A. Yes, ma'am.
23 Q. And not only did you have a lot of cases going on at once,
24 but you could be called out at any time, middle of the
25 night, weekends, early morning; is that right?

1 A. Yes. Yes.
2 Q. And at that time when you were working in the IDENT section,
3 there were, maybe, four other technicians; is that right?
4 A. Four other -- four or five officers.
5 Q. Okay. And you didn't necessarily have an assigned partner;
6 but at any given time, you might be working with one of the
7 other ones called out?
8 A. Yes.
9 Q. Okay. And -- but you had worked with Mr. Johnson many
10 times; is that right?
11 A. Yes, I have.
12 Q. Okay. Now, I think, in your video, it shows two white vans;
13 and I believe they were the forensic technician vans; is
14 that right?
15 A. Yes. Yes, they were.
16 Q. So you would have driven one; right?
17 A. Yes. I -- I guess so.
18 Q. And Mr. Johnson would have driven another one?
19 A. That's correct.
20 Q. Okay. And I think you say that, you know, you worked with
21 Mr. Johnson. You weren't necessarily always assigned as
22 partners; but when you would come to a scene, you would work
23 as a team?
24 A. Yes, we would.
25 Q. And I think you even talked about, you divvied up some of

1 the duties?
2 A. Yes, ma'am.
3 Q. I mean, you were videotaping while he was doing some other
4 activities; is that right?
5 A. Yes. That's correct.
6 Q. Okay. Now, Exhibit 82, which is the property inventory, I
7 think you identified that some of the information on this
8 sheet is in your handwriting?
9 A. Yes, it is.
10 Q. And so on the bottom of the first page where it says "freeze
11 numbers" and then you give your series of numbers, that was
12 something that you wrote?
13 A. Yes, ma'am.
14 Q. And you're also the person that crossed out the date
15 02/07/93 and wrote in 04/12/93?
16 A. I believe so.
17 Q. Okay. You know, in the column that talks about location
18 where it says "old freezer," that is not your handwriting;
19 is that right?
20 A. No, it is not.
21 Q. That would be something that the property room person would
22 write in that would be part of their obligation?
23 A. Yes, ma'am.
24 Q. Okay. And so they're the ones that would write in "old
25 freezer" there with the line?

1 A. Yes, they would.
2 Q. Okay. Now, on the second page -- like you said, you have
3 your handwriting, again, under the notation "additional
4 description or comments"?
5 A. Yes.
6 Q. And it looks like you processed for fingerprints the Radio
7 Shack phone with the cord; is that right?
8 A. Yes, ma'am.
9 Q. I mean, you identify 16; and that says "Radio Shack phone
10 with cord, apparent blood present." You also processed the
11 phone base; right?
12 A. Yes.
13 Q. And, it looks like, a McDonald's cup?
14 A. Yes.
15 Q. And a Stock Market receipt?
16 A. Yes.
17 Q. And you said, your notes here, "negative results"?
18 A. That's correct.
19 Q. And I think you said to Mr. Penner "no prints of value" when
20 you were just on direct?
21 A. That's correct.
22 Q. And so that's something different than the latent prints
23 that you recovered from the apartment?
24 A. Yes, they are.
25 Q. So the latent prints from the apartment were, in your mind

1 with all your experience in fingerprinting, sufficient to,
2 perhaps, compare or do something with later on?
3 A. They possibly were.
4 Q. Okay. But when you say "no prints of value" or "negative
5 results," in your mind that meant that they would not be of
6 value for comparison?
7 A. That's correct.
8 Q. And also on this page, you cross out 02/07/93 and write in
9 04/12/93?
10 A. Either I did, or Officer Johnson did.
11 Q. Well, so now you think that he wrote the 04/12/93?
12 A. The 04/12/93 is in my handwriting.
13 Q. Okay. So that's in your handwriting, sure. I think you're
14 saying that this was quite a long time ago and a lot of
15 cases in between and some health issues that you don't
16 really recall working this event at all?
17 A. That's correct.
18 Q. And so you don't really have a memory of whether you would
19 have put the items from the apartment in your van or whether
20 Mr. Johnson would put them in his van?
21 A. As far as I recall, I don't know who -- who put them in what
22 van or whatever.
23 Q. Okay. And now, the forensic lab, or the lab, you said, had
24 limited access to individuals that were working in the IDENT
25 section; is that right?

1 A. That's correct.
2 Q. So it would be the technicians as well as the supervisor?
3 A. That's correct.
4 Q. And when someone would take an item into that area, you had
5 to have a key that would let you get in?
6 A. Yes.
7 Q. And once in there, you had some options there, drying racks
8 for items that you said needed to be -- or you would believe
9 to be -- needed to be dried; right?
10 A. Yes.
11 Q. And that would typically be things that were wet or had
12 blood or other kind of biological material on them?
13 A. Yes, ma'am.
14 Q. And in that room, that door, itself, does not have a lock?
15 I mean, once you're inside, you can open the door and go
16 into the drying room?
17 A. As far as I recall.
18 Q. And the drying room has several racks in it, I think, PVC
19 racks. Do you recall that?
20 A. As far as I recall, yes.
21 Q. Okay. But there were racks in there; is that right?
22 A. There was what?
23 Q. Racks in there to put the items on?
24 A. Yes, there were.
25 Q. Okay. And more than one case could have their items in

1 there at any one time?
2 A. That's correct.
3 Q. And, I think, as well, you said that there are lockers not
4 only in the drying room but also in this secure area?
5 A. Yes, there are.
6 Q. And the person that would take the items into that area, if
7 they would place items in a locker, they would have a key?
8 A. That's correct.
9 Q. And they were the only ones that would have that key other
10 than the supervisor?
11 A. That's correct.
12 Q. Okay. And if you put items from a case into a locker,
13 typically, you might take everything that you had collected
14 from the case and put it in one locker?
15 A. Yes, ma'am.
16 Q. And the person that has the key is supposed to keep that
17 key; is that right?
18 A. Yes.
19 Q. Okay. Now, you don't have any memory of whether you're the
20 one that put them in the locker; but if so, you would have
21 had that key and had kept it; right?
22 A. Yes, I would have.
23 Q. And if Mr. Johnson had that key, he would have had to hand
24 it off to you at some point?
25 A. I don't know if he would have handed it off to me or -- or

1 what happened.
2 Q. Okay. Now, at that time, there were no logs -- like you
3 say, you wouldn't log in when you went into the secure lab
4 area, you know, like, write on a sheet, I entered this on
5 this date, that kind of thing; right?
6 A. Yes.
7 Q. And there was, again, nothing like that for the drying room
8 where you would sign in and out on any kind of sheet saying
9 you had items in there when they were taken out; right?
10 A. That's correct.
11 Q. And the same with the lockers, nothing that would show
12 anything that had been signed in or signed out to a
13 particular locker?
14 A. I do not recall.
15 Q. Okay. Do you think there might have been?
16 A. There -- as far as I remember, there weren't.
17 Q. Okay. And the latent prints that you recovered, I think you
18 said, would go onto those print cards that would go to
19 another location; right?
20 A. Yes, ma'am.
21 Q. And there's nothing in your report that you ever took them
22 there?
23 A. I would have transported them upstairs to the first floor of
24 this -- of the County-City Building and placed them in
25 the -- into the -- into the file.

1 Q. Okay. But there's nothing that shows that in your report?
2 A. That's correct.
3 Q. And there's nothing showing on any of the property sheets
4 that these cards were created?
5 A. No. Because it was standard procedure.
6 Q. Okay. And there's nothing to show that anyone did anything
7 with them after you took them upstairs?
8 A. As far as I -- as far as I can tell.
9 Q. Okay. And, I mean, you would write a follow-up report if
10 you'd done some analysis of the fingerprints?
11 A. Yes, I would have.
12 Q. Okay. Now, you know, one of the things, when you would work
13 and collect evidence, obviously, was to keep the evidence
14 from being contaminated at any point; is that right?
15 A. That's correct.
16 Q. And so part of your training would be to get the items into
17 the property room as soon as practical?
18 A. Yes, ma'am.
19 Q. Okay. Now, in this case, we have a lag from February 7th
20 until April 12th?
21 A. Yes.
22 Q. Okay. And that's actually a long time for property to be
23 unaccounted for?
24 A. It was not unaccounted for, and it's not a long time when
25 you're working -- when you're working hundreds of cases.

1 Q. Well, you don't have any documentation of when it got to the
2 property -- I mean, when it got to the forensic lab?
3 A. Yes, I do.
4 Q. Well, you've crossed out the date, 04 -- or 02/07/93 and
5 wrote 04/12/93; right?
6 A. The reason for that is: I do not recall.
7 Q. Mm-hmm. And the date at the top, 02/07/93, you don't know
8 if you or Mr. Johnson actually took these items into the --
9 into the lab room?
10 A. That's correct.
11 Q. All right. So, I mean, there's really no documentation; and
12 you have no memory?
13 A. That's correct.
14 Q. Okay. And, I mean, I think you're saying that, well, while
15 the 64/65 days, there's some extenuating circumstances
16 because we had a lot going on?
17 A. Yes, ma'am.
18 Q. Okay. But it wouldn't be within your usual best practices
19 for your training to have that kind of lag time?
20 A. There is nothing on the training that says that -- that you,
21 normally, have the time of the -- the lag time. It's just
22 that we had so many cases going on because you may be here
23 Monday and be in this building, and then you'd be up on the
24 top of Mt. Rainier or whatever.
25 Q. Sure, and I understand. You're saying because of the volume

1 of cases you were working, it was just taking a long time
2 to, perhaps, get to a case that you'd worked two months
3 earlier on?
4 A. That depends on when the detectives wrote it down and so
5 forth and when you'd get back down to the lab to process it.
6 Q. Okay. And so when you're working those, like, multiple
7 cases like that, some cases might start to stack up; and
8 like you said, the push might be what the detective asks
9 for?
10 A. Yes.
11 Q. Okay. Now, I think you indicate that you retired, oh, seven
12 or eight years ago?
13 A. That's correct.
14 Q. Okay. And your retirement had to do with a couple of
15 things, and one was your health was impacting your ability
16 to do this work?
17 A. Yes, it was.
18 Q. And, as well, before you retired, you'd had a couple of
19 reprimands for your job performance?
20 A. Not -- I can't recall.
21 Q. Okay. So you don't recall in 2005 having a reprimand for
22 what's called "incompetency, inefficiency, or inattention to
23 or dereliction of duty"?
24 A. It's possible.
25 Q. Okay. And let me hand you something.

1 THE COURT: The number, please, Counsel.
2 MS. HIGH: Exhibit 232, Your Honor, and I
3 was also going to hand him Exhibit -- Defendant's Exhibit
4 230.
5 Q. (By Ms. High) I'm going to hand you what's been marked for
6 identification as Defendant's Exhibit 232 and that
7 memorializes something that's called a "criticism" -- I
8 think, it, maybe, is called "IA" and then "IPR 05, dash,
9 230."
10 A. Yes, it is.
11 Q. Okay. And that was a reprimand for failing to develop some
12 photographs or store them properly?
13 A. That's what it says.
14 Q. Okay. And also, there was another criticism; and here's
15 Defendant's Exhibit 230, so back in 1994; and, again, that
16 was for failure to perform duties; is that right?
17 A. Again, I -- I was having eye problems at that time --
18 Q. Okay.
19 A. -- and so forth and various eye surgeries and stuff; and
20 there is no excuse, but it's just a fact of life.
21 Q. Sure. And like you said, some health issues, you know,
22 maybe in '94 with the eye, but it resulted in a reprimand
23 for failing to follow procedures regarding the handling of
24 evidence?
25 A. That's correct.

1 Q. Okay. Now, one of the things about -- in Exhibit 46, your
2 report, you take down some license plate numbers from
3 vehicles that were parked out front according to the report
4 here?
5 A. That's correct.
6 Q. And I take it, you weren't responsible for them following up
7 on who they belonged to or anything along those lines?
8 A. That's correct.
9 Q. Okay. It would just be your job here, hey, I'm just
10 documenting that they were there?
11 A. Yes. Yes, ma'am.
12 Q. And, you know, in terms of the collection of evidence at a
13 scene like that, is it fair to say that that would be
14 something that would be of some collaborative
15 decision-making about what to collect?
16 A. Yes, ma'am.
17 Q. And that would take place, say, between you, Mr. Johnson,
18 and detectives on scene?
19 A. Yes. Yes, ma'am.
20 Q. Okay. And so if, say, there were phone answering machines
21 in this apartment with tapes, maybe, of messages or calls,
22 that would be a decision that the lead detective would make
23 on whether to collect or something that you and Mr. Johnson
24 would make independently?
25 A. Generally, we do not collect that type of evidence unless we

1 were asked to by the detective.
2 Q. Okay. And so some things like that, you would defer to the
3 detective who was the lead on the case?
4 A. Yes, ma'am.
5 Q. Okay.
6 THE COURT: Counsel, do you have much
7 more?
8 MS. HIGH: No. I think, just -- perhaps
9 just one question.
10 Q. (By Ms. High) So I just want to be very clear that when you
11 would go to your -- the secure room for the forensic or
12 IDENT techs, at that time, you don't have any recollection
13 there was no log to check in or check out property?
14 A. That's correct.
15 Q. And you didn't do any follow-up report on April 12th about
16 the location or why these items were only being looked at
17 some 60-plus days after they were collected?
18 A. That's correct.
19 MS. HIGH: That's all I have. Thank you.
20 THE COURT: Redirect?
21 MR. PENNER: No, Your Honor. Thank you.
22 THE COURT: Is it going to be long, your
23 redirect?
24 MR. PENNER: I said I don't have any
25 further questions, Your Honor.

1 THE COURT: Oh, no further questions?
2 MR. PENNER: Yes, Your Honor.
3 THE COURT: All right. It's a little
4 after 11 o'clock, so why don't we give the jury their
5 morning recess.
6 MR. PENNER: Thank you very much, Your
7 Honor.
8 THE COURT: Then we'll take the next
9 witness.
10 MR. PENNER: Thank you.
11 THE COURT: All right. So you may be
12 excused. Any objection to his being excused, Counsel?
13 MS. HIGH: Yes. Thank you so much.
14 THE COURT: All right. Any objection?
15 MR. PENNER: No, Your Honor.
16 THE COURT: All right. You may be
17 excused, sir. Thank you very much for your testimony.
18 (The witness was excused.)
19 THE COURT: The usual instructions: No
20 discussion, no investigation, notepads on chairs; remain in
21 the jury room until Ms. Shipman comes to get you, and we'll
22 give you the morning recess.
23 And if there's exhibits up here, we need them back down.
24 MS. HIGH: Yeah.
25 (The jury was not present.)

THE COURT: All right. Court will be at recess.

MR. PENNER: Thank you, Your Honor.

(A recess was taken.)

(The defendant was present.)

(The jury was not present.)

THE COURT: Anything before we bring the jury in?

MR. PENNER: I don't think so, Your Honor.

THE COURT: Counsel?

MS. HIGH: No. I'm not quite sure if we'll get through Mr. O'Hern or not, but I did -- one of the things I provided to Mr. Penner before, and that was just a map showing where the knife and shotgun were found.

MR. PENNER: Yeah.

(Pause while counsel confer.)

THE COURT: All right. And who is the next witness?

MR. PENNER: It'll be Jim O'Hern.

THE COURT: All right. Are we ready then?

MR. PENNER: If I could just have a moment, Your Honor.

THE COURT: Sure.

(Pause.)

MR. PENNER: Okay. I'm ready, Your Honor.

1 THE COURT: Are you ready, Counsel?
2 MS. HIGH: Yes. Thank you, Your Honor.
3 THE COURT: All right. We'll bring the
4 jury in.
5 (The jury was present.)
6 THE COURT: All right. You may be seated.
7 All right. Mr. Penner, you may call your next witness.
8 MR. PENNER: Thank you, Your Honor. The
9 State would call Jim O'Hern.
10 THE COURT: If you'll watch the ramp, sir.
11 JAMES O'HERN, witness herein, having been sworn
12 under oath, was examined and
13 testified as follows:
14 THE COURT: All right. If you'll have a
15 seat, sir. There's water and Kleenex to your right. You
16 can pull the chair forward and adjust the mic; and when
17 answering, please answer "yes" or "no"; don't nod or shake
18 your head. The court reporter does need to understand
19 what's going on.
20 All right. Mr. Penner, you have the floor.
21 MR. PENNER: Thank you, Your Honor.
22 DIRECT EXAMINATION
23 BY MR. PENNER:
24 Q. Could you state your name for the record, and spell it for
25 the court reporter.

1 A. It's James O'Hern, O, apostrophe, capital H-E-R-N.
2 Q. And, Mr. O'Hern, how are you currently employed?
3 A. I currently work part-time as a driving instructor for a
4 drive school down in Kent; and occasionally, I work as an
5 investigator for Pierce County Risk Management or other
6 police agencies that want to hire my services to look over
7 cold cases.
8 Q. Okay. Are you retired from anything?
9 A. Yes. I'm a retired detective sergeant, Pierce County
10 Sheriff's Department.
11 Q. How long did you work at the Pierce County Sheriff's
12 Department?
13 A. 34 years, 8 months.
14 Q. And do you remember when you started?
15 A. I started July 1st of 1970.
16 Q. And when did you retire?
17 A. February 25th of 2005.
18 Q. Okay. When you retired -- I think you already told us --
19 but what was your title when you retired?
20 A. I was a detective sergeant.
21 Q. And what was your title when you started?
22 A. I was a deputy sheriff.
23 Q. Okay. How long were you a detective of any sort?
24 A. I obtained the rank of detective in August of 1981; and then
25 I believe it was around the latter part of the '90s, the

1 detective rank was reclassified to detective sergeant rank
2 because we were on a parallel grade with -- with the
3 sergeants in the department.
4 Q. Maybe, can you explain to the jury what the sergeants do or,
5 I guess, what a sergeant with the department is and why it
6 was important to have detective sergeants too.
7 A. Well, I actually was a sergeant before I became a detective.
8 A sergeant is a -- is a first-level supervisor in the
9 Sheriff's Department. A sergeant would normally supervise a
10 group of patrol officers in a particular area of the
11 department. A sergeant may also be a supervisor in the
12 narcotics unit. He could be a sergeant in the training
13 division. Detectives are the investigative arm of the
14 Sheriff's Department. They would investigate various crimes
15 based on where they're assigned.
16 Q. All right. And I'll stop for a second. How are you feeling
17 today?
18 A. Well, I'm feeling okay, but I'm -- I'm battling some mild
19 case of pneumonia. It kind of came on here more severe in
20 about the last three days; and so after going to my doctor's
21 office on Friday, I'm taking some heavy-weight antibiotics.
22 I'm not contagious, by the way.
23 Q. Okay.
24 A. They already did one of those tests.
25 Q. All right.

1 A. But I've still got a little bit of pressure in my chest, so
2 I apologize. I may cough occasionally, and I'm -- I'm sorry
3 for that.
4 Q. Okay. And if you need to sip water or take a break, you'll
5 let us know; right? Don't let us know about the water, but
6 if you need --
7 A. Oh, I will.
8 Q. Okay. How long were you a detective sergeant?
9 A. Well, I believe the detective sergeant rank was -- was
10 reclassified in, I want to say, the mid to late '90s when --
11 when we were classified. Detective -- the detective rank,
12 when I made detective, was on a parallel with sergeants in
13 the department. Your career path was -- you could take a
14 detective test, or you could take a sergeant's test. The
15 pay was the same; the responsibilities were different. And
16 I became a sergeant before I became a detective. I was only
17 a sergeant for about six months; and then because detective
18 was where I wanted to pursue my career path, I elected to
19 take that rank in August of '81; so in answer to your
20 question, I probably was a detective sergeant for about
21 eight years.
22 Q. Okay. Generally speaking, what is it that a detective is
23 expected to do?
24 A. Detectives are expected to -- it depends on what your
25 assignment is. You -- usually, you are assigned a specific

1 case. In the case of major crimes, it might be something
2 where you actually go out to the scene and investigate.
3 Q. And what assignments are there for detectives?
4 A. Well, when I was a detective, you had property crimes
5 detectives that just strictly worked burglaries, larcenies,
6 those type of things. You had sexual assault detectives
7 that work, basically, rapes, child molestation, child rapes,
8 those type of things. You had detectives that worked
9 robbery; and in the case of our own department, we had
10 detectives who worked homicide. We called them, at the
11 time, death investigation and missing persons; so if you
12 were a homicide detective or death investigation, as they
13 might refer to it as, you would work both missing person
14 cases and homicide cases.
15 Q. And how long did you work doing homicides and missing
16 persons?
17 A. I was assigned a homicide in 1986, and I worked in that
18 position until I retired in 2005.
19 Q. Okay. So let's talk about homicide investigations, then,
20 generally. Was it normal for a detective to go out to the
21 scene?
22 A. Yes.
23 Q. All right. And why is that?
24 A. Well, usually there were a lot of things that needed to be
25 done at a homicide scene. There were usually people that

1 needed to be interviewed. There was also a crime scene that
2 needed to be examined, reviewed. There was also forensic
3 evidence that needed to be collected.
4 Q. And what's the --
5 A. There are a lot of moving parts at a homicide scene.
6 Q. So what's the role of the detective at the crime scene?
7 A. Well, depending on what your role was, you had detectives
8 that were -- just went out and were directed by other --
9 another detective to do specific things. Maybe there would
10 be a lieutenant on the scene and he would, you know, direct
11 detectives to interview various people; so it could -- it
12 depended on whether you were a -- you were just going out
13 there as part of a team or if you were going out there as a
14 lead detective.
15 Q. Okay. If there's a homicide that gets reported, I mean, I
16 know it varies, but generally speaking, do you have more
17 than one detective responding?
18 A. Yeah. Usually, we'll have anywhere from -- back in the day
19 when I was there, we would have, usually, a minimum of three
20 to four.
21 Q. Plus sergeants and patrol officers?
22 A. Yeah. Usually, there would be a lieutenant who would also
23 respond out there. He would usually be in the
24 investigations division just to kind of oversee and make
25 sure there were enough investigative personnel out there.

1 Q. And, I guess, let's take a moment. What is a lieutenant
2 compared to a sergeant according to rank?
3 A. A lieutenant is a rank above -- now, we're talking about my
4 generation. A lieutenant would be above a detective and
5 above a sergeant, so he is the next level of supervision.
6 Q. Okay. In addition to the detectives, the lieutenant -- I
7 think you mentioned this, but would there be forensic
8 officers too?
9 A. Yes, at a crime scene, yes.
10 Q. And specifically a homicide, could you explain to the jury,
11 at least in your experience, how you interacted with the
12 forensic officers at a homicide.
13 A. Well, depending on -- sometimes, I would get there first;
14 sometimes, a forensic investigator would get there first.
15 The first thing that I normally like to do is find out who's
16 at the scene, find the lead detective, who's coming out to
17 the scene because I knew these forensic investigators. I
18 knew what they did and, usually, we would, kind of, get
19 together unless they were actually in the crime scene doing
20 some work, and then I wouldn't go in and interrupt them.
21 Q. And did that happen sometimes?
22 A. Oh, sure. A lot of times, I would get to a scene, and the
23 forensic investigators had -- had gotten there before me,
24 and they were already in there doing things.
25 Q. How would you even be notified of a homicide?

1 A. Usually, I'd get a phone call at one or two o'clock in the
2 morning, most of the time.
3 Q. And so you've got to get ready and go out and all that
4 stuff; right?
5 A. (Nods head.)
6 Q. How long would it take you to respond, usually?
7 A. Depending on the area of the county, sometimes it would take
8 me 45 minutes if I was going out to, you know, Gig Harbor or
9 Ashford in Pierce County. It might take me one minute if it
10 was a -- it was just a few blocks from my house.
11 Q. Okay. And so you would arrive, and you said sometimes the
12 forensics would already be doing their job. Would you check
13 in with them?
14 A. Yeah. Yeah. We would -- I would touch base with them to
15 find out -- because I needed to know what kind of a scene I
16 had. Usually, my first point of contact at arrival at a
17 homicide scene was with the field supervisor, the sergeant,
18 because he was usually there with the deputy sheriffs who'd
19 gotten there right after the incident was reported.
20 Q. Okay.
21 A. So my first contact was with him or her, and then it would
22 be with the other detectives who were either arriving or had
23 preceded me to the scene as well as the forensic
24 investigators.
25 Q. And what's the point of talking to the sergeant or other --

1 the patrol officers when you arrive, why bother doing that?
2 A. Well, usually, when I receive a phone call, I get an address
3 and the fact that it's a homicide and maybe how many victims
4 there are.
5 Q. Okay.
6 A. And so that's all I know until I get out of my car and walk
7 up and start talking to people. That's how I'm briefed on
8 what type of a scene I'm going to.
9 Q. All right. So you're going to talk to the sergeant maybe
10 who has already talked to the patrol officer who's talked to
11 the witness; right?
12 A. Correct.
13 Q. All right.
14 A. Right.
15 Q. Now, at that point, I assume you get a lot of different
16 information from different people; correct?
17 A. Correct.
18 Q. Does that always bear out after the investigation, that the
19 initial information matches up with what you actually find
20 out later?
21 A. Not necessarily. I mean, the -- the basic information that
22 we receive from the patrol officers is very limited to what
23 they did when they got there, who they talked to, what that
24 person told them, and what they actually saw with their own
25 eyes; so that's, kind of, the information I get, initially.

1 Q. What else do you, as the detective -- let's say you're the
2 lead detective at a homicide investigation. At the scene,
3 what else do you do?
4 A. Well, my job is to find out -- is, basically, to ascertain
5 what type of a crime scene I have.
6 Q. Well, let me stop you there.
7 A. I'm sorry.
8 Q. What different types of crime scenes could you have if
9 they're all homicides? How could they be different?
10 A. I might have multiple victims.
11 Q. Okay.
12 A. I might have multiple victims in various locations. I might
13 have -- I might have multiple crime scenes where I need to
14 have detectives respond to. So what I meant was: I need to
15 know how big the scene is, how many people need to be talked
16 to or interviewed and how many detectives I need to have
17 assist me in that regard; so that's, kind of, what my
18 initial contact is all about. What am I going to do here?
19 What -- how many people do I need? Do I need more
20 detectives than what I have already here at the scene, and
21 do I need to request more, or do I need more forensic people
22 because maybe we have more than one scene to look at; so
23 that's, kind of, what I'm referring to.
24 Q. What about the nature in which the victim is murdered, does
25 that impact the way that you start off the investigation?

1 A. To a certain degree, sure. I mean, if -- if I have a very
2 small area or something has happened, it's not going to
3 require quite the forensic analysis of what -- of what
4 occurred. If I have a -- if I have a large scene where
5 there's a lot of moving parts, a lot of locations that have
6 to be looked at, a lot of evidence that needs to be
7 collected, I might request additional forensic people.
8 Q. What about security concerns at a homicide scene?
9 A. Usually, what we do is: We -- we'll have one of the
10 uniformed officers stationed close to where the scene is at.
11 When I was still working, we had, kind of, a protocol in
12 place where we had -- now, this is closer towards my
13 retirement -- where we would actually cordon off an area
14 with one color of crime scene tape; and then as you got
15 closer to where the initial crime -- where you believe the
16 actual scene was, we would have a second set of tape so that
17 only certain people could go in the parameters of that; so
18 usually when I would get there, there would be a patrol
19 officer stationed fairly close that I would have to contact.
20 Q. All right. And what's the purpose, then, of limiting the
21 number of people who can come into the most immediate part
22 of the crime scene?
23 A. Well, we only want -- we only want people who have a need to
24 be there. Human nature, regardless of whether you're a
25 citizen or a law enforcement officer, is you want to know

1 what happened; right? And so we don't want a lot of people
2 coming into the scene, maybe stepping on something that is
3 part of the crime scene; or, you know, we don't -- we don't
4 want that to happen, so we try to limit it to only people
5 that need to be there, whether it's detectives or patrol
6 officers.
7 Q. Well, isn't there also, though, a danger that law
8 enforcement might step on evidence?
9 A. Sure.
10 Q. Why -- is there any difference between that and a general
11 member of the public?
12 A. Not really because it's -- it's still -- it's still
13 contaminating a crime scene. It's still moving something,
14 changing something from what we want to be able to find; so,
15 no, that's why we try to limit people coming into the crime
16 scene.
17 Q. When you enter a crime scene, were you cognizant of that
18 issue, though?
19 A. Oh, yeah. I usually try to get as much information as I
20 could before I step through the threshold of the door.
21 Q. Why?
22 A. For the same reason. I don't want to step on something. I
23 don't want to contaminate something. I don't want to change
24 anything that's there, so I -- I was very -- usually, always
25 very careful about where I was going; and that's one of the

1 reasons why we would talk to the patrol officers, the field
2 supervisor who was on the scene and find out what we had and
3 what I was going to be walking into before I stepped in the
4 door.
5 Q. Okay. So after you've talked to everybody and you do step
6 through the door, what interaction on a homicide do you, as
7 the lead detective, have with the victim?
8 A. My interaction, mostly, is just to look at where the victim
9 is and, you know, get some type of a visual. Usually, I
10 would try to make a few notes in my notebook of what I was
11 seeing, you know; maybe, I might just do a general -- and I
12 would also try to figure out who was in the scene, itself,
13 who was actually physically on the scene; and usually, I
14 would make a few notes as to who I saw there, who I knew was
15 there, maybe get a list of the officers that had responded
16 and when you're talking about the victim, the victim
17 themselves. Initially, it's just a visual and a few notes.
18 Q. Did you ever -- do you physically touch the victim --
19 A. No.
20 Q. -- manipulate clothing --
21 A. No.
22 Q. -- or anything like that?
23 A. No.
24 Q. Why not?
25 A. Well, that wasn't my -- that was not my responsibility nor

1 was it my legal responsibility to do that. It was the job
2 of the Medical Examiner.
3 Q. Okay. And generally speaking at a crime scene, where do the
4 remains -- how are they removed from the scene?
5 A. Usually, we summon the -- an investigator from the Medical
6 Examiner's Office. They respond to the crime scene. Now,
7 this is just their investigator, not the forensic
8 pathologist; and they, then, after -- in consultation with
9 us because we have to brief them on what we know, then
10 sometimes either they will start to move the victim, or we
11 will assist with moving the victim; and the victim is
12 eventually removed from the scene and taken to the county
13 Medical Examiner's Office where an autopsy is performed.
14 Q. Okay. And I assume clothing can have evidence on it. Is
15 the clothing left behind, or --
16 A. No. Clothing -- clothing -- everything that's on the victim
17 goes with the victim at the time the body is removed.
18 Q. Okay. So in addition to speaking to the officers --
19 initially, you go into the scene and now the body has been
20 removed. What steps are there, now, for the lead detective
21 in a homicide investigation?
22 A. Well, it's usually -- once the body is removed, normally the
23 remains of the victim are left at the crime scene for hours
24 because it takes a lot of time to process a crime scene.
25 Q. Let me interrupt. I was going to ask, how long, on average,

1 does it take to process a homicide scene?
2 A. It used to be four to six hours depending on what -- I've
3 been at crime scenes for eight, ten hours, twelve hours.
4 Q. Okay. It just depends on the crime scene?
5 A. It depends on the crime scene and what needs to be done,
6 correct.
7 Q. So I think I interrupted you, there; but once the victim's
8 remains have been removed, what is there now for a lead
9 detective to do?
10 A. Well, usually, it's just to make sure that -- that everybody
11 who needs to be interviewed has been interviewed or is in
12 the process of getting interviewed. Also, the lead
13 detective wants to make sure that -- that the forensic
14 people have completed their job. Now, I don't stand over
15 the shoulder of a forensic investigator and point to stuff
16 and tell them, I want -- I want this done and this done and
17 this done.
18 Q. Have you ever done that, though, sometimes?
19 A. Yeah. One -- a couple times, I probably have seen something
20 that maybe they didn't see, you know. I might bring it to
21 their attention, did you see this here, or did you see there
22 was anything done with this? But normally, I let them do
23 their job; and they let me do mine.
24 Q. Okay. So what else is your job, then, at the scene?
25 A. Well, after the victim's body is removed, I just want to

1 make sure that everything that needs to be done is done, and
2 I usually consult with the forensic investigators and make
3 sure that they've got their photographs and their -- you
4 know, I -- I do a visual on -- on the scene. Usually,
5 forensic investigators will put placards, a little numbered
6 placard by items of evidence; and, you know, if I see
7 another -- I see a placard that's still on the floor, that
8 usually means that either the placard hasn't been picked up,
9 or the item of evidence hadn't been picked up; so I might
10 question the forensic investigator, you know, on something I
11 see. Normally, it's just to make sure that -- that they
12 have done everything that needs to be done or have done
13 everything that I want them to do.
14 Q. And eventually, any crime scene is going to, I guess, stop
15 being a crime scene. You'll take the tape down, and
16 everybody will --
17 A. Correct.
18 Q. Who's the one who makes the call that it no longer needs to
19 be secured?
20 A. Well, it's kind of a joint decision between the lieutenant,
21 who is at the crime scene -- if he remains there the entire
22 time, he's usually the one who will decide that it's -- it's
23 okay to release the scene. We have held onto scenes for
24 days, so it just -- I mean, it just depends on how much
25 needs to be done. Sometimes, we've come back -- excuse me,

1 I want to take a little sip of water here.
2 Q. Sure.
3 A. So it's, kind of, a joint decision between the lead
4 detective and the supervisor who is at the scene that --
5 whether we should -- we should release the scene back. We
6 should take the crime scene down and walk away.
7 Q. But eventually, that always happens; right?
8 A. Eventually, yes.
9 Q. All right. But you're not done as the lead detective;
10 correct?
11 A. No.
12 Q. Let's step back a little bit. Generally, I mean, what's
13 your overall objective?
14 A. The overall objective is to find out why a living human
15 being became a deceased human being and the victim of
16 homicidal violence, if you want to have a technical term. I
17 want to find out how this person died.
18 Q. All right. And in addition to how the person died, what
19 else do you want to know?
20 A. I want to find out who committed the crime.
21 MR. PENNER: Thank you. Your Honor, can I
22 inquire what time it is now? I can't see.
23 THE COURT: It's about a quarter to 12:00.
24 MR. PENNER: This is kind of a natural
25 break in the direct. I don't know if we should break now,

1 or I can continue. I don't know what the Court wants to do.
2 THE COURT: Why don't you go ahead and
3 continue.
4 MR. PENNER: All right.
5 Q. (By Mr. Penner) Let's talk, then, about this particular
6 case. All right? Now, this was in 1993?
7 A. Correct.
8 Q. Do you have any independent recollection of this
9 investigation?
10 A. Yeah. I remember the case.
11 Q. Okay. Did you write a report about the case?
12 A. Yes. Well, I dictated a report.
13 Q. Tell the jury what that means.
14 A. Well -- excuse me -- in my day, we used dictation to do our
15 reports which meant I sat down at some point in time or
16 multiple times with a notebook and with reports generated by
17 other police officers; and I dictated what I did, who I
18 talked to, what I saw.
19 Q. What did you dictate into?
20 A. I had a little -- I can't remember what the brand of
21 recorder was. It was just a little recorder about maybe an
22 inch thick by about four inches high. It had a cassette
23 tape, and we put the cassette tape in and turned on the
24 recorder; and I would sit down. Usually, what I would do
25 when I did my report is: I'd go into a room, and I would

1 lay out everything that I had on the case; and sometimes I
2 wouldn't dictate my report for a week or two or unless I had
3 a person of interest that was going to be charged by the
4 Prosecutor, and then I would try to expedite; but if I
5 was -- if I was working on the case, it might be a week or
6 two before I actually did a report.
7 Q. Well, let me -- let me interrupt. I want to make sure we've
8 got --
9 A. I'm sorry.
10 Q. -- use the right term. So, the dictation part --
11 A. Correct.
12 Q. -- you had your --
13 A. I had a small recorder to record --
14 Q. Did you carry that with you?
15 A. -- to record, and I spoke into it.
16 Q. As you were doing the crime scene?
17 A. Well, sometimes -- sometimes we would dictate a crime scene.
18 Now, that's different than a report that you're talking
19 about. I would -- I might dictate the crime scene, itself,
20 in other words, at some point in my time. Now, when I first
21 became a detective and the first year that I was a detective
22 sergeant -- or a detective in the homicide, I wasn't -- I
23 didn't have the experience just walking into a scene and
24 turning the recorder on. That's something I learned from
25 senior detectives who had done it for years; and so later

1 on, including this case, I used a recorder to start
2 dictating shortly after I left.
3 Q. Okay. So a little bit earlier, you said something about,
4 you didn't dictate the report maybe for a week or later?
5 A. That was not -- that was not -- I'm not referring to the
6 dictation of a scene. I'm talking about a summary of what I
7 did over a period of time, I might not start that for a week
8 or so.
9 Q. When did the transcription occur?
10 A. The transcription occurs when I finish. Now, the -- if I
11 was at a scene, I couldn't get that tape to our
12 transcription people until the following morning or maybe
13 even after the weekend. I would usually take that to them
14 the first workday that I could --
15 Q. Okay.
16 A. -- and give it to them to transcribe.
17 Q. So you didn't do your own transcription?
18 A. Not back then, no; and, in fact, I don't think anybody has
19 ever done their own transcription, but it's a different
20 story now with today's technology.
21 Q. All right. Well, I'm going to hand you what's been marked
22 as Exhibit 50, and I'm going to ask if you recognize that
23 document; take a moment to look through it.
24 A. (Witness complies.) Yes. This is a copy of a twelve-page
25 report.

1 Q. And does it pertain to the Linda Robinson homicide?
2 A. Yes, it does.
3 Q. How do you know that?
4 A. Her name is on the top of the report.
5 Q. Is there an incident number associated with that?
6 A. Yes, there is.
7 Q. Could you read that into the record.
8 A. It's 930371041.
9 Q. Okay. And have you had a chance to look at that prior to
10 testifying today?
11 A. Yes.
12 Q. Would it help refresh your recollection as to certain
13 details if you could refer to it while you testify?
14 A. Yes.
15 Q. You said that sometimes you wouldn't dictate the report for
16 maybe a week or so afterwards. Is that accurate?
17 A. Correct.
18 Q. Okay. And what's the date that you indicate the reporting
19 on this case?
20 A. Well, the reporting time and date is 02/09 of '93.
21 Q. Okay. And I know we can all do math; but, I guess, for the
22 record, what's that in relation to the date of the murder?
23 A. That would be three days following the homicide.
24 Q. Okay. In addition to dictation, did you do anything else at
25 the crime scene to help remember your thoughts or

1 information that you got?
2 A. Yes. I had a notebook that I kept around my career,
3 different notebooks; and I refresh my memory from that
4 notebook.
5 Q. Would you do a separate notebook for each case, or was it
6 just running --
7 A. No. It was just a running notebook. I was one of those
8 people who could write real small, so I could cover maybe
9 three or four months worth of work in a notebook. It's
10 just, basically, a work product to kind of jog your memory
11 of what you're doing, what you see.
12 Q. Okay. I'm going to hand you what's been marked as Exhibit
13 51. Does this -- well, I'll ask you if you recognize it.
14 A. Yeah. The top page is a little sticky note that I put on
15 here.
16 Q. And what does it say?
17 A. It says, "Notes of Jim O'Hern; homicide; Linda Robinson;
18 PCSD, which stands for Pierce County Sheriff's Department;
19 Case No. 930371041; DOI, which stands for date of incident;
20 02/04 of '93."
21 Q. Okay. Could you take a look at that and let me know if it
22 appears to be photocopies of your notes.
23 A. Yes. The other pages are photocopies of my notes --
24 Q. Right.
25 A. -- out of a notebook.

1 Q. And did you provide those as part of this investigation?
2 A. I provided them at the time I was notified of this trial.
3 Q. Were you asked to do anything in terms of -- well, let me
4 ask it a different way. You said earlier, you write small;
5 is that right?
6 A. Yeah. I write real small, sometimes.
7 Q. All right. Were you asked to go through your handwritten
8 notes and convert them into typewritten notes?
9 A. Yes. That was requested by -- by, I believe, Detective
10 Kobel.
11 Q. All right. So I'll hand you now what's been marked as
12 Exhibit 52. Did you, in fact, go through your notes and
13 convert them into typewritten notes?
14 A. What I did is: I went through my notes; and utilizing a
15 digital recorder, I recorded what I was looking at and then
16 had that -- gave that to a transcription person with the
17 Sheriff's Department who, then, transcribed what I dictated
18 into these notes.
19 Q. I'd ask you to take a look at 52 and compare it to 51 and
20 let us know if that appears to be a transcription of your
21 notes.
22 A. Are you talking about 52, the one you just handed me?
23 Q. Yeah.
24 A. Yeah. It appears to be, yes. This appears to be what I
25 dictated. I can't tell you what day I did it. I did it at

1 home and -- and then took it over to the East Precinct and
2 gave it to them to transcribe and send it down.
3 Q. And let's take a moment, here, to -- what year did you say
4 you retired?
5 A. I retired in 2005.
6 Q. And when you retired in 2005, had the Linda Robinson case
7 been solved?
8 A. No.
9 Q. All right. You said you were contacted by Detective Kobel;
10 is that right?
11 A. Correct.
12 Q. Do you remember when that happened?
13 A. Well, the first contact with him was quite a number of
14 months ago before this case ever came to trial.
15 Q. And what was the nature of that -- why did he contact you?
16 A. Well, he knew that I was the lead detective on this case;
17 and he wanted me to know that they have developed some type
18 of DNA evidence. He thought that I would have an interest
19 in that and told me what case it was, and --
20 Q. And was he right, did you have an interest in that?
21 A. Pardon me?
22 Q. Was he right, did you have an interest in that?
23 A. Oh, yeah. I definitely had an interest in that.
24 Q. In terms of the cases, did you have any other cases when you
25 retired that were unsolved at that time?

1 A. Probably at least -- anywhere from eight to twelve. I think
2 I was -- yeah, I had other cases that were unsolved.
3 Q. Okay. But this is one of the ones you remembered?
4 A. Yes, I remember.
5 Q. All right. In terms of your handwritten notes, would it
6 help refresh your recollection if you could refer to either
7 the handwritten notes or the transcription while you
8 testify?
9 A. Probably either/or. I'm -- I can -- I can read my notes;
10 but the transcription, if you're asking me about something
11 specific, would probably be better because it's -- it's --
12 it's typed.
13 Q. Okay. What I'm going to ask you, then, Detective, is:
14 While we testify, if you're referring to an exhibit, can you
15 just let us know by exhibit number --
16 A. I will.
17 Q. -- for the record, so we know exactly what you're looking
18 at?
19 A. Okay.
20 THE COURT: All right. Do you want to, at
21 this point, break?
22 MR. PENNER: I think so, Your Honor.
23 Thank you.
24 THE COURT: All right. We'll go ahead and
25 take the afternoon recess. It is only five till but

1 probably a good point to break.
2 The usual instructions: No discussion, no investigation,
3 notepads face down on your chairs. Please remain in the
4 jury room until Ms. Shipman comes to release you, if you'd
5 be so kind as to step in. We'll reconvene at 1:30.
6 (The jury was not present.)
7 MR. PENNER: I think it's closed.
8 THE COURT: Okay. Anything before we
9 recess?
10 MR. PENNER: No, Your Honor.
11 MS. HIGH: No. Thank you.
12 THE COURT: All right. We'll be at
13 recess. We'll reconvene at 1:30.
14 (A recess was taken.)
15 (The defendant was present.)
16 (The jury was not present.)
17 THE COURT: Anything before we bring the
18 jury in, Counsel?
19 MR. PENNER: No, Your Honor.
20 MS. HIGH: No. Thank you.
21 MR. PENNER: I'll get the witness.
22 THE COURT: All right. We'll bring the
23 jury in.
24 (The witness returned to the stand.)
25 (The jury was present.)

1 THE COURT: You may be seated. Thank you.
2 All right. Counsel?
3 MR. PENNER: Thank you, Your Honor.
4 DIRECT EXAMINATION (Cont'd.)
5 BY MR. PENNER:
6 Q. So, Detective, what I'd like to do, at this point, is, kind
7 of talk again about this particular case. We talked about
8 generalities this morning; and, I think, you -- if I
9 understood your testimony correctly, when you dictate a
10 report, it's, kind of, chronologically what you did in the
11 investigation; is that right?
12 A. Correct.
13 Q. Okay. So maybe what we could do is just kind of work
14 through it the same way you did back in 1993. Okay. So if
15 you need to refer to your report, just make sure you have it
16 there, handy.
17 A. That would be Exhibit No. 50?
18 Q. Yes, the typewritten report. All right. Does it indicate
19 what time you arrived at the scene?
20 A. I know my arrival time is 2356, which would be 11:56 p.m.
21 Q. Okay. What time were you dispatched, or what time did you
22 get the call?
23 A. It shows I received a telephone call at my home at 2315,
24 which would be 11:15 p.m.
25 Q. Okay. So at the time you got the call, did you know

1 anything more than it was a homicide call?
2 A. I'm referring to my report.
3 Q. Well, before you do that, as you sit here now, do you recall
4 anything more than a --
5 A. No.
6 Q. -- homicide call-out?
7 A. No.
8 Q. Okay. It was a routine that that was about all the
9 information you got?
10 A. Correct.
11 Q. All right. What time, again, did you arrive?
12 A. Again, I noted my arrival time of 2356 hours.
13 Q. And what was the first thing that you did when you arrived?
14 A. Well, usually, the first thing a detective does when he
15 arrives, at least on a major scene, is -- I noticed in --
16 usually, my report is my reference.
17 Q. Mm-hmm.
18 A. I noted the weather conditions, approximated the
19 temperature, noted the time of evening and also the -- a
20 brief description of the location of where I just arrived at
21 which, in my report, indicates a fourplex located on the
22 north side of 162nd Street East.
23 MR. PENNER: All right. I'm going to
24 publish what's, previously, been admitted as Exhibit 200.
25 THE COURT: Do you want us to turn the

1 lights down?
2 MR. PENNER: Yes, Your Honor, please.
3 Thank you.
4 THE COURT: All right. Thank you. All
5 right. Ms. Shipman, if you'd turn the lights down.
6 Q. (By Mr. Penner) Do you recognize what's depicted in Exhibit
7 200?
8 A. Well, it appears to be an apartment complex with a second
9 story.
10 Q. Okay. Is this consistent with your memory of the incident
11 location?
12 A. Correct.
13 Q. Okay. What was the weather like that night?
14 A. Again, could I refer to my report? I believe it was clear,
15 and there was a full moon out.
16 Q. Okay. If you -- yeah, just go ahead and take a look.
17 A. (Reviewing.) Yeah, I noted the weather conditions were
18 mild. The temperature was somewhat cool in the low to mid
19 40s. The sky was slightly overcast, and there was a full
20 moon.
21 Q. And why do the weather conditions matter?
22 A. Well, basically, it matters because it can be relevant later
23 on to the chain of events that occurred. It's also
24 something that I was taught when I went through various
25 schools in crime scene investigation and homicide

1 investigation. Most detectives, when they're responding to
2 a major crime, make a note of weather conditions for future
3 reference.
4 Q. And it's the very first thing you do when you arrive; right?
5 A. Correct.
6 Q. So you don't have --
7 A. It's the first thing I mentally make note of.
8 Q. You don't have any information yet about what actually took
9 place upstairs; right?
10 A. No.
11 Q. Would you agree with me that part of the reason that you
12 note the weather is because you might find something out
13 later that makes the weather relevant?
14 A. Correct.
15 Q. Is part of your job as a detective not just to collect what
16 you know is relevant but try to collect what you might learn
17 later to be relevant?
18 A. Correct.
19 Q. What did you do next?
20 A. Again, referring to my report; it has been 23 years.
21 Q. Mm-hmm.
22 A. (Reviewing.) I believe I described in more detail the --
23 the apartment. I made note of the vehicles that were in the
24 parking lot, the license numbers of the vehicles. I also
25 made note of -- of the access to the apartment complex and

1 how that access was gained.
2 Q. And what do you mean by that, the access?
3 A. Well, in other words, what I do is: I describe how I would
4 get to the apartment where -- where the homicide took place,
5 so I --
6 Q. And where is that in this case?
7 A. It would be the second story, as I recall.
8 Q. All right. And how do you get there?
9 A. Basically, I described it as a fourplex apartment; and I
10 indicated that access was gained via a center walkway.
11 Q. Okay.
12 A. A cement sidewalk leads to the two downstairs -- excuse
13 me -- two downstairs apartments which are identified as --
14 and I noted the -- the apartments.
15 And then I also said, "As you approach the fourplex,
16 there were a number of Sheriff's Department personnel
17 standing by that -- "
18 Q. Okay. Let me -- let me interrupt you there. So did you
19 indicate who you spoke to from the Sheriff's Department? Is
20 that in your report?
21 A. (Reviewing.) Well, I indicate the identity of the officers
22 that are there.
23 Q. Okay.
24 A. And --
25 Q. Regardless of whether you spoke to them?

1 A. Do you want me to list the names of the officers?
2 Q. Who was there when you arrived, regardless of whether you
3 spoke to them?
4 A. Who was -- who was on the scene?
5 Q. Yes.
6 A. Okay. There was a field force sergeant, Sergeant Rod Weast;
7 a deputy sheriff, Brendan Maye; a deputy sheriff, Jeffrey
8 Reigle; and Detective Larry Minturn. That is the people
9 that I noted initially as being on the scene.
10 Q. All right. And did you gain any information from any of
11 them prior to entering the apartment?
12 A. Yes. I was -- I was informed with a few details of what --
13 what had transpired. My report doesn't indicate exactly who
14 gave me that information. It just basically indicates that
15 I was advised of, and informed of, the initial call by the
16 fire department; and I was informed that that, apparently,
17 had been made by a neighbor who lives across from the victim
18 apartment; and then -- that there had been -- they'd been
19 alerted to a fire on the stove inside of the apartment, and
20 they responded to that location and found the victim lying
21 in the kitchen.
22 Q. All right. So at this point, you know that there's a
23 neighbor that you needed to talk to, probably?
24 A. Correct.
25 Q. Is there anybody else that you -- had been identified as a

1 potential witness?
2 A. I -- I have a recollection that there were children in the
3 apartment and that one of them was, approximately, seven
4 years of age, as I recall.
5 Q. Okay.
6 A. So that would have been somebody that I would have thought
7 needed to be talked to or at least identified.
8 Q. Okay. And how long were you a detective again?
9 A. How long was I a detective?
10 Q. Yeah.
11 A. From '81 to 2005, so 24 years, somewhere in there, 25 years.
12 Q. And in that period of time, did you have other cases where
13 young children, seven or eight years old, were witnesses
14 to --
15 A. Yes, I did.
16 Q. Okay. Did that seem like an age that was old enough that
17 you'd be able to get some information from them?
18 A. Well, I don't recall when -- yeah, it would -- it would be,
19 but there was a protocol in place either at that time, or --
20 I'm pretty sure it was at that time -- or we would not try
21 to interview a child of that age because of the sensitivity
22 to the child.
23 Q. And let's -- let me -- who's the "we" that doesn't try to
24 interview?
25 A. "We" being the police.

1 Q. Okay. Is there an effort to interview the child at a later
2 time?
3 A. Correct.
4 Q. Okay. Can you explain to the jury what that would be
5 compared to an on-scene situation.
6 A. Well, there's a protocol in place where we utilize the
7 services of professional child interviewers. As I recall,
8 at the time of this incident, they were located up by Mary
9 Bridge Children's Hospital; and these are people who are
10 trained to talk to a child and obtain information without
11 traumatizing the child about what they witnessed, and so
12 this is in conjunction with the Prosecutor's Office. We
13 would make arrangements to have this person interviewed at a
14 later date and time when it was appropriate.
15 Q. Okay. All right. Did you proceed, then, up to the
16 apartment?
17 A. Yes, I did. That was after I got some more information,
18 though.
19 Q. Okay. What other information did you obtain?
20 A. Well, Detective Minturn advised me about individuals who
21 were at the scene.
22 Q. And what did he let you know?
23 A. Pardon me?
24 Q. What did he tell you?
25 A. He advised me that a six-year-old niece of the victim, who

1 had been sleeping inside the residence, awoke to the sound
2 of a fire alarm going off inside Apartment No. 4 and that
3 she ran to the adjacent neighbor's apartment, which was
4 Apartment No. 3; and this, in turn, resulted in the response
5 by the fire department and later by the Sheriff's Department
6 personnel.
7 Q. Okay. So that's the picture that you got when you go up to
8 the room; is that right?
9 A. Correct.
10 Q. And that's the information you have?
11 A. (Nods head.)
12 Q. When you went upstairs, you walked into the apartment. What
13 was the first thing that you saw?
14 A. The first thing that I recall seeing was a body of a human
15 being laying face down on the floor, as I recall, kind of in
16 the -- in the center of the room.
17 Q. I'm going to publish what's, previously, been admitted as
18 Exhibit 202. Does that accurately reflect what you saw when
19 you walked into the apartment?
20 A. Yes, I would say so.
21 Q. Okay. So what did you do when you walked in and saw this
22 situation?
23 A. Again, referring back to my report, I -- I just walked in.
24 I -- I looked at -- at where the body was located. I also
25 did a -- kind of a visual walk-through of the apartment to

1 see what other things were in there, what the -- what the
2 apartment looked like. At this time, I wouldn't have, you
3 know, written anything down. I was just trying to get an
4 overview of what -- what the situation was, what the
5 apartment looked like, what areas really needed to be
6 examined.
7 Q. Okay.
8 A. So it was just kind of an overview, walk-through, and -- and
9 being advised of -- of -- of what was there, so --
10 Q. Do you recall -- do you recall whether any other officers
11 were inside the apartment when you went inside?
12 A. It seems, to me, that there was -- it seems, to me, that
13 there -- there was, other than officers inside, either
14 forensic people -- but I don't have a clear recollection
15 right now who was in there.
16 Q. Okay. In a portion of your report, you actually kind of
17 detail each room by room and indicate the state of the
18 victim's clothing, things like that?
19 A. Right.
20 Q. But it's consistent with the photographs that we've seen so
21 far; right?
22 A. Yes.
23 Q. Okay. Did you go through the entire apartment?
24 A. Yes.
25 Q. And did you make any observations that you thought were

1 noteworthy around Ms. Robinson's body?
2 A. Yes. I -- I --
3 Q. What were those?
4 A. Well, I don't know as far as noteworthy. What I try to do
5 is: When I'm looking at an area where the -- where a victim
6 is, I try to describe everything because I -- I don't know
7 what's going to be noteworthy or what's going to be relevant
8 later on, so I try to do it like I'm describing something to
9 somebody else; so when I -- when I dictate a report, I -- I
10 kind of do it in a -- I don't know how I can describe it --
11 like, a second person. Like, you're the person who's
12 looking at -- at what's there, and I'm -- I'm telling you
13 what you see; so, I mean, without going through the whole
14 report here, I can -- I can describe it in great detail to
15 you; but that's -- that's kind of how I go about describing
16 a crime scene.
17 Q. And it sounds to me like there's some redundancy here.
18 You're going to describe it, but it's also going to be
19 photographed; and it's also going to be videotaped?
20 A. Correct.
21 Q. Why do all that?
22 A. Well, it's -- basically, in most homicides, hopefully,
23 there's going to be a successful prosecution of the person
24 responsible; and that's done to document for future
25 reference what it is we're seeing on that particular day.

1 In other words, we want to be able to present what we see to
2 a jury later on or police or Prosecuting Attorney, who's
3 making the charging decision; so we try to document
4 everything we do, everything we see, every piece of
5 evidence, and the overall general area --
6 Q. Okay.
7 A. -- as best we can.
8 Q. Let's start, then, with Ms. Robinson's body. Was there
9 anything that you noticed about -- like, anything on her
10 body that you thought was of note, worth writing down?
11 A. Can I refer to my report a little bit?
12 Q. Please.
13 A. (Reviewing.) I -- I put on my report that I noted that
14 there was a set of keys wedged in between the upper portion
15 of the victim's thighs as well as a piece of paper which
16 appeared to be some type of receipt, and there was a --
17 there was a nickel lying between the legs of the victim.
18 Q. All right.
19 A. And I also noted blood spatters and smears, and that was not
20 on the victim; that was on the refrigerator.
21 Q. Okay. Hold on a second.
22 A. Do you want me to describe the victim?
23 Q. Let's stop for a second.
24 A. Okay.
25 Q. Let me go ahead and publish what's, previously, been

1 admitted as Exhibit 2. Can you see those items in this
2 photograph, the things that you thought were important?
3 A. Yeah. I can see.
4 Q. Could you -- could you step down, and with the pointer --
5 well, we've misplaced the pointer. Detective, could you
6 step down, and we'll use this as a surrogate.
7 (The witness left the stand.)
8 Q. (By Mr. Penner) Can you point to the items of interest in
9 this photograph. Let's start with the keys. Can you show
10 the jury where those were.
11 A. I believe it was right -- right here in the fold of the
12 jeans, right in this area.
13 Q. And what about the receipt?
14 A. The receipt would be right here.
15 Q. Why were those significant enough for you to put those in
16 your report back in '93?
17 A. Well, that is not the way a normal person would -- you know,
18 I mean, these have -- they have come -- been deposited in
19 some manner, either dropped by the victim or removed from
20 the victim's clothing or -- you know, so anything that is on
21 the body is relevant to the investigation; and, again, we
22 don't understand what's going to be relevant until we
23 document it and process it; so that's what I saw, and that's
24 what I described, and this is the nickel.
25 Q. All right. What about some of the blood smear that you

1 mentioned that you thought was important enough to put into
2 your report?
3 A. Well, any -- any -- any blood is -- is relevant to the
4 investigation. I mean, it -- it tells a story; so when I go
5 in there and generally describe the area, I -- I try to
6 describe it, again, like, what I'm looking at; and we -- we
7 don't know until things are processed whether there's going
8 to be, you know, things that are going to point towards a
9 suspect or suspects; so we try to describe the entire area,
10 and what do we see? And that's what I saw.
11 Q. Okay. Can you point out some of the blood smear that you
12 mentioned on the wall? I don't know if you can reach that
13 far with the --
14 A. I don't know if I -- that I described any blood smears on
15 the wall. I don't think I said that -- I don't think I read
16 that in my report. I -- I described some blood smears on
17 the refrigerator.
18 Q. Okay. Can you point to those.
19 A. I believe it's -- if this is -- the refrigerator is over
20 here; correct?
21 Q. Yeah.
22 A. I think this is the refrigerator right here, so I think I
23 described some blood smears on -- on the refrigerator right
24 here. I'm not sure. This picture isn't the best quality,
25 so --

1 Q. Okay.
2 A. -- I think this is what I was referring to that I testified
3 about earlier.
4 Q. Thank you. You can -- you can be seated again.
5 (The witness returned to the stand.)
6 Q. (By Mr. Penner) Now, I'd like to take a moment to talk
7 about blood evidence and this case in particular. Have you
8 been to homicide scenes where there's blood in a lot of
9 different rooms or kind of through different areas?
10 A. Oh, yes.
11 Q. Okay. Would you say that this scene was like that?
12 A. No.
13 Q. What was this scene more like?
14 A. My recollection was that particular area of the scene
15 appeared -- that would have been -- I think my judgment was
16 that that was where the majority of whatever happened was in
17 that room.
18 Q. And was that based largely on the blood evidence?
19 A. Yes.
20 Q. In that kind of a situation, though, would you be on the
21 lookout for blood in other areas of the apartment?
22 A. Sure.
23 Q. Now, back in 1993, how good was the technology -- how useful
24 was blood for an investigation?
25 A. Pretty much all you can do with blood was to type it --

1 Q. Okay.
2 A. -- and that was pretty much it.
3 Q. All right.
4 A. You could type the blood and tell what it was -- what type
5 it was.
6 Q. And how useful was that?
7 A. Not very useful, usually.
8 Q. You could -- you could probably eliminate somebody; right?
9 A. You could -- yeah, you might be able to eliminate some
10 people, but it -- it wasn't going to point towards a
11 particular person like today's technology.
12 Q. Okay. But nevertheless, it was collected in this particular
13 case?
14 A. Sure.
15 Q. Was there some feeling in '93 that this information, blood
16 evidence, might be more useful in the future? Was there a
17 feeling that the technology was coming?
18 A. You know, honestly, you know, you -- when you're working in
19 a particular era, it's today's technology that's going to be
20 useful. I don't think any of us ever thought that there
21 would be this new technology that would, you know, change
22 everything; but I think -- and I think when you collect
23 evidence, you collect evidence for the purposes of using it
24 with today's technology. If something comes along in the
25 future, I guess that would be great; but I didn't really

1 ever think about that when I was at that scene.
2 Q. So as you processed this scene, it was in the context of
3 "what can we do now"?
4 A. "What can we do now," correct.
5 Q. After you made those observations in the kitchen, did you
6 make any other observations in the apartment?
7 A. Yes.
8 Q. Okay. And do you need to look at your report to --
9 A. Oh, yes.
10 Q. All right. If you could take a look at the report and let
11 me know, were there -- were there other items that you noted
12 in the kitchen or dining room area?
13 A. I'm sorry. Could you ask me that again?
14 Q. Were there other -- any other items of interest that you
15 noted in the kitchen or dining room area?
16 A. (Reviewing.) Well, there was an extension cord and a phone
17 cord lying under the victim's body, and -- and it was also
18 noted that there was -- a wall mount for the phone has been
19 removed from the wall on the east side dining room area, and
20 portions of the phone were lying on the carpeted area in the
21 dining room; so, to me, these were -- these were all
22 relevant because somehow, they had to have made their way to
23 that location.
24 Q. All right. I'm going to publish what's previously been
25 admitted as Exhibit 3. Are those the items that you just

1 discussed?
2 A. I believe so, yes.
3 Q. All right. We also see in this photograph a pitcher and
4 some slippers. Do you know whether or not those were
5 collected?
6 A. I have no recollection of it. If -- I don't have a personal
7 recollection whether they were or they weren't.
8 Q. Okay. But their location was documented through the
9 photographs; correct?
10 A. Correct.
11 Q. All right. I'm going to now show you what's been
12 published -- admitted as Exhibit 22. Is that a close-up of
13 the same phone?
14 A. Yes. That would be a close-up of the phone.
15 Q. All right. Do you notice anything about the cord?
16 A. Well, it looks like it was cut or pulled out, as I recall,
17 right -- right between the phone; and there's a portion of
18 the cord that comes out of the phone, and then the other
19 portion of the wire is laying behind the phone.
20 Q. Okay. Why is that significant?
21 A. Well, somebody cut it or tore it.
22 Q. And just generally speaking, in an investigation, what types
23 of things are you looking for, normal things or something
24 different?
25 A. Well, again, you -- you never know what's going to end up

1 being normal at the time you look at it. This -- this is an
2 abnormal thing because you wouldn't think somebody would cut
3 the phone wire and then deposit it on the floor of their own
4 apartment, so --
5 Q. All right. Did you go into other areas of the apartment?
6 A. Yes. I believe the apartment consisted of two small
7 bedrooms in addition to the area where the victim was found.
8 Q. Okay. Did you make any observations about those two
9 bedrooms?
10 A. Well, I made quite a few observations as far as what were in
11 the two bedrooms. I described those things in quite a bit
12 of detail. Are you referring to one specific thing?
13 Q. Well, let's start with -- did you make a judgment as to
14 which one was, maybe, the adult's bedroom and which one was
15 the teenager's bedroom?
16 A. Yes. I -- I described -- I described the two different
17 bedrooms in detail, and I think -- let me go back and just
18 take a quick review of this. (Reviewing.) I think I
19 just -- from looking in my report, I just described
20 everything I saw in the bedroom. I -- I don't know that
21 I --
22 Q. I'll go ahead and direct your attention to --
23 A. Yeah, if you could direct my attention to one specific
24 paragraph, that would be great.
25 Q. All right. And how many pages is your report?

1 A. It's 12.
2 Q. Okay. If you'd take a look at Page 7.
3 A. Yes.
4 Q. And I'll direct your attention to the paragraph that starts
5 about the middle of the page, the word "directly."
6 A. Where I indicate, "directly across from the open bathroom
7 door"?
8 Q. Yeah. If you could just read that to yourself, that
9 paragraph.
10 A. (Witness complies.) Okay.
11 Q. Okay. So one of the bedrooms, were you able to make a
12 judgment as to whether that was an adult's or a teenager's
13 room?
14 A. Well, it appeared to be a child's bedroom, the one you're
15 referring to that I just read the paragraph on.
16 Q. Okay.
17 A. I'm describing what I think is a -- is a child's bedroom.
18 Q. And does that comport with your recollection as you sit here
19 today?
20 A. Yes.
21 Q. All right. At this point when you're going through the
22 apartment, are you looking for evidence just anywhere you
23 can find it?
24 A. I'm looking at anything you can see, yes --
25 Q. All right.

1 A. -- any -- anything that, I think, is -- well, I -- usually,
2 what I try to do is: I just describe everything that I see,
3 everything. I mean, certainly if you see something that you
4 know you believe is related to what happened, that's
5 something you describe; but I've -- I also describe mundane
6 objects that might later on become relevant.
7 Q. All right. So there may be some things that you don't know
8 are relevant; but if you saw blood, you would write that
9 down; right?
10 A. If I saw it, yes, I would.
11 Q. All right. Any indication there was any blood in the
12 teenager's room?
13 A. This particular room?
14 Q. Yeah.
15 A. Yes. I noted on the east side interior hallway wall was a
16 spatter of blood approximately two inches in width.
17 Q. So that's on the hallway leading up to that room?
18 A. Yeah. This would be directly across from the open bathroom
19 doors, a closed -- clothes -- clothes closet. Directly to
20 the right of the clothes closet on the east side interior
21 wall was a spatter of blood approximately two inches in
22 width. That's how I described it in my report.
23 Q. Okay. What about inside the second bedroom?
24 A. Inside where?
25 Q. Inside the second bedroom?

1 A. (Reviewing.) Okay. So you -- we're going to another
2 paragraph now because --
3 Q. Okay. So the beginning of your paragraph is "directly
4 across from the open bathroom door is a clothes closet"?
5 A. Correct.
6 Q. And on --
7 A. "And directly to the right of the clothes closet on the east
8 side of the interior hallway was a spatter of blood."
9 Q. Right.
10 A. And then I said, "Proceeding back towards the north side of
11 the apartment is the bedroom." So do you want me to
12 describe from there?
13 Q. So then move on; now, we're in the bedroom.
14 A. Okay.
15 Q. Okay. Did you find any blood -- or did you document finding
16 any blood in the bedroom, this first bedroom?
17 A. I don't -- I don't -- no, I don't -- I don't see anything in
18 that paragraph where I mention anything about blood other
19 than in the hallway where I just described.
20 Q. Okay. And if there had been blood in that bedroom, you
21 would have noted it?
22 A. Well --
23 Q. Let me ask it a different way: If you had seen blood in the
24 teenager's bedroom, you would have written that in your
25 report?

1 A. I would have, yes.
2 Q. Okay. Let's move on to the next bedroom then.
3 A. The next -- okay. The next paragraph down from there?
4 Q. Yeah. And you actually spend several paragraphs describing
5 this room. Do you recall finding any blood in that room?
6 A. Again, is it okay if I just review this?
7 Q. Yeah. Let me ask it this way, though, because this is real
8 serious. So, do you remember it now as you sit here?
9 A. Do I remember whether I had found blood in that bedroom?
10 Q. Yeah.
11 A. I have a recollection that I found blood in one of the
12 bedrooms.
13 Q. Okay.
14 A. I haven't seen this report more than one time -- you know,
15 it's 23 years, so --
16 Q. So what I'll do is ask you to take a look at your report,
17 and I'll go ahead and direct your attention to page 8 --
18 A. Okay.
19 Q. -- halfway down where it says "all."
20 A. "All." Okay.
21 Q. And if you could read that paragraph to yourself.
22 A. The entire paragraph?
23 Q. Yeah. And let me know when you're done.
24 A. Okay. "All the drawers in the vanity -- "
25 Q. No. No. I'm sorry. Not out loud, to yourself.

A. Pardon me?
Q. Read it to yourself.
A. Oh, I'm sorry.
Q. That's okay.
A. (Witness complies.) Okay.
Q. Okay. Does that refresh your recollection as to whether you noted any blood in that bedroom?
A. Yes.
Q. And what did you note in that bedroom?
A. Well, I noted a number of blood spatters in front of a nightstand; and these blood spatters were leading from the corner of the bed over towards the Styrofoam ice chest.
Q. All right. I'm going to show you what's been previously published -- or admitted and published as Exhibit 17. Can you see that Styrofoam ice chest in this picture?
A. I see a Styrofoam ice chest, yes.
Q. Okay. And there's some evidence placards there?
A. Yes.
Q. All right. Does this comport with your recollection of where the blood was found in the bedroom?
A. Yes.
Q. All right. Now, you don't collect the blood yourself, though; right?
A. No.
Q. Who collects the evidence?

1 A. Forensic investigators.
2 Q. And who were the -- who were the forensic investigators on
3 this case?
4 A. Excuse me; just a moment.
5 THE COURT: Do you want us to turn the
6 lights back on?
7 MR. PENNER: Yes, please.
8 A. The question was: Who were the forensic investigators?
9 Q. (By Mr. Penner) Yes.
10 A. My recollection is: It was Ted Schlosser and Skip Johnson,
11 who were two forensic investigators with the Pierce County
12 Sheriff's Department.
13 Q. Okay. And had you worked with them before this case?
14 A. On other cases?
15 Q. Yeah.
16 A. Yes.
17 Q. Okay.
18 A. Many times.
19 Q. Did you work with them after this?
20 A. Correct.
21 Q. All right. Did you personally have any issue with the way
22 Skip or Ted did their jobs?
23 A. No.
24 Q. So I think you testified, generally, you leave it to the
25 forensic investigators to collect the evidence. After you

1 did the walk-through, what did you do next?
2 A. That's probably when I would have started to describe what I
3 saw. So once -- once I got a visual on "what am I looking
4 at," then I would really start getting into detail.
5 Usually, I would have a recorder; and I would, kind of,
6 start with when I arrived. I would walk myself through
7 the -- walking into the apartment, what I did, where I went,
8 what I saw and that -- so I would, basically, be documenting
9 now the whole scene from the time I parked my car, right
10 up -- leading into where I went, what I saw, and -- and do
11 it that way on a -- on a recorder.
12 Q. Okay. And did you do that in this case?
13 A. I'm pretty sure I did because there's a lot of details in
14 this report that are not in my notebook, so I would have
15 recorded the scene, yes.
16 Q. Okay. After you recorded the scene that way and just
17 described everything, what was the next thing you did?
18 A. Well, I would have probably consulted with the different
19 detectives who were there. There's some times when I might
20 have shut the recorder off if I needed to have something
21 done or somebody interviewed. I believe -- my recollection,
22 now, is that there were -- there was another detective by
23 the name of Loren Page who was at the scene. I remember --
24 I can't remember when he arrived. Looking in my report, I
25 believe I directed him to do some interviews. I would

1 have -- you know, I -- I -- I, basically, would continue to
2 evaluate the scene; but when I'm doing the recording of the
3 scene, I pretty much got everything quiet so that I'm not
4 picking up all the background noise from the other
5 investigators, so I would just make sure that things were
6 rolling along the way they should be.
7 Q. And it sounds like, as the lead detective, your main job is
8 to task other people to do things; is that fair?
9 A. Well, to a certain degree, you -- I mean, there's a lot of
10 people to be talked to or interviewed. The lead detective
11 might also be involved in some of those interviews. In --
12 in this case, I know I was busy doing the scene, so I would
13 have delegated other responsibilities to the other
14 detectives that were there.
15 Q. So if Detective Minturn or Detective Page interviewed
16 someone, are they going to write up a report?
17 A. They should have, yes.
18 Q. And are you going to see that report eventually?
19 A. Yes.
20 Q. Do they bring it to you directly; or does it go to kind of a
21 central place, and it's your job to go get them?
22 A. Sometimes they would bring it to me. Sometimes, I might
23 have to go to them and just say, hey, have you -- have you
24 got your supplemental report done yet, you know; can you
25 send it over to me? So, depending on the detective.

1 Q. And to the best of your recollection that night, did you
2 interview any of the, say, civilian witnesses?
3 A. I don't believe I did; I don't believe I did.
4 Q. All right. Now, let's step back again. What's the main
5 goal that you're trying to accomplish as the lead detective?
6 A. The main goal?
7 Q. Yeah.
8 A. Just to make sure things get done, that there's enough
9 resources there to accomplish that task.
10 Q. Okay. But towards what end?
11 A. Well, to document and gather as much information as you can
12 that would -- that might lead you to the next person we talk
13 to.
14 Q. Okay. So did you go talk to any of the family members that
15 night to either check in with them, let them know what had
16 happened, or to start to try and find out names of other
17 people to talk to?
18 A. I don't have a clear recollection of whether I did. I know
19 that there was a family member that showed up and was
20 interviewed, I believe, by one of the detectives.
21 Q. Okay.
22 A. I know I didn't talk to the young girl who was there, I
23 don't believe, at all. I don't think I had any contact with
24 her. I don't recall actually interviewing anybody, no.
25 Q. Okay. So the scene has been processed. Mr. Johnson and

1 Mr. Schlosser are done. The Medical Examiner has taken
2 Ms. Robinson's remains away, and the scene is released. At
3 that point, did you have an identified suspect?
4 A. No.
5 Q. All right. So what are you going to do now as the lead
6 detective? The scene work is done. What are you going to
7 try to do to try to solve the case?
8 A. Well, first of all, the most important thing, I think, in
9 any homicide is to try to find out as much information as
10 you can about the victim.
11 Q. And why is that?
12 A. Well, the lifestyle of the victim could have some relevance.
13 If it's a domestic situation, the domestic relationship
14 between the victim and whoever could be relevant, so you
15 start with the victim and try to gather as much information
16 as you can about them, and then hopefully that leads out to
17 other leads in the case.
18 Q. Okay. And who do you go to to find out information about
19 the victim?
20 A. Well, some of it is to -- usually, family members are a good
21 starting point. Also, we utilize record systems.
22 Sometimes, we'll look the victim's name up in our records
23 file to see if there's previous police reports that were
24 filed or anything regarding them being a victim or they
25 being a suspect; and then that can lead you to other names

1 of other people that you need to talk to.
2 Q. And did you talk to the family members in this case?
3 A. I talked to a lot of them. I talked to -- I talked to a lot
4 of -- my recollection is: I talked to a lot of the friends
5 of the family, I mean, friends of Linda Robinson.
6 Q. Okay.
7 A. I believe other detectives talked to more of the family than
8 I did.
9 Q. All right. Do you remember talking to a man by the name of
10 William Miller?
11 A. I'm sorry?
12 Q. Do you remember talking to a man by the name of William or
13 Billy Miller? And, I guess, I'll refer you to Page 11 of
14 your report.
15 A. Page 11?
16 Q. Yeah. Or actually, I think I misspoke, Page 10.
17 A. Page 10. Okay.
18 Q. And there's a paragraph about two-thirds of the way down
19 that starts with "while I."
20 A. Okay.
21 Q. If you could just review that paragraph.
22 A. (Reviewing.) Okay.
23 Q. Okay. Were you contacted by somebody by the name of Billy
24 that morning?
25 A. Yes. Well, I received a telephone call at -- from an

1 individual identified as Billy, only by the name of Billy.
2 Q. All right. And what was the nature of the phone call?
3 A. Can I -- do you want me to read from my report, or --
4 Q. Just to the best of your recollection after reviewing your
5 report.
6 A. He was somebody who identified himself only by his first
7 name. As I recall, he was an acquaintance of hers and was
8 inquiring about whether she'd been killed -- I think that
9 was what the -- what the gist of the conversation was -- and
10 supplied a telephone number, and that was pretty much it.
11 He wouldn't say anything further over the phone.
12 Q. All right. Did you have contact with him, again; or did you
13 attempt to make contact with him again?
14 A. I believe I did have contact with him, yes.
15 Q. All right. Did you make an effort to call him back at the
16 number that you got?
17 A. Yeah.
18 Q. Were you able to get ahold of him that way?
19 A. No. Can I read a little bit further in my report, if you
20 don't mind?
21 Q. If it helps refresh your recollection.
22 A. Yes, it would. It would help me immensely.
23 Q. Okay.
24 A. (Reviewing.) Okay. I believe I called back and talked to a
25 Mrs. Schuler, as I recall, Sharon Schuler, and she confirmed

1 this Billy Miller's identity and gave me his complete name
2 and told me when he had arrived at her house.
3 Q. Okay. And did she give you any information about how Billy
4 knew to call you?
5 A. I think -- I'm not -- I'm not quite sure how he knew to call
6 me.
7 Q. All right.
8 A. I received a telephone call from him.
9 Q. I'll ask you to take a look at the paragraph at the top of
10 Page 11.
11 A. Okay. (Witness complies.) Okay.
12 Q. So was there any information Ms. Schuler gave you that
13 helped with your investigation regarding Mr. Miller?
14 A. Well, apparently, Mrs. Schuler received a phone call from
15 one of the victim's relatives advising her that Linda had
16 been stabbed, and Miller had been at her residence; and then
17 he used a phone to contact her --
18 Q. Okay.
19 A. -- or contact me, excuse me. I'm sorry.
20 Q. Were you able to eventually talk to Mr. Miller in person?
21 And I'll --
22 A. I believe we were.
23 Q. Okay.
24 A. Again, I -- I've got to go back and refer to wherever you
25 want me in the report because I contacted quite a number of

1 people, and --
2 Q. Well, I guess I'll ask you to take a look at the bottom of
3 Page 11. Does it indicate that you met with Mr. Miller?
4 A. Okay. Yes.
5 Q. And how many different people did you interview, do you
6 recall?
7 A. Well, just off the top of my head, I think about six or
8 seven. Some of them were telephone calls. Some of them
9 were formal statements that we took -- or that I took.
10 Sometimes, it might just have been a phone call that led me
11 to somebody else; so without actually sitting down and
12 looking at the stack of all the transcription statements
13 that I took and going through my whole notebook over again,
14 it would take me a little while to give you an exact number,
15 but that's -- my recollection is, maybe, five, six, seven
16 people.
17 Q. But can you explain to the jury what it is that you're
18 trying to do here. I mean, when somebody gives you a name
19 and you talk to that person and then you get another name
20 and you talk to another person, what is it that you're
21 trying to figure out?
22 A. Again, what you're trying to do is ascertain -- I mean,
23 somebody -- somebody kills the victim, so you're hoping that
24 by contacting as many people as you can, whether they be
25 relatives, whether they be friends or friends of friends of

1 friends, if someone is going to have some pertinent
2 information that's going to lead you to a suspect, I mean,
3 you're trying to find out how this event occurred and why it
4 occurred; so if talking to one person, they give me a name,
5 I'm going to try to find that person. If that person gives
6 me a name, I'm going to try to find that person; so you
7 never know who's going to have crucial information that's
8 going to lead you to who caused the death of the individual,
9 so that's why you just keep making phone calls and
10 contacting as many people as you can.
11 Q. But eventually that could run out; right?
12 A. Pardon me?
13 Q. Eventually, that could run out; correct?
14 A. Eventually, yeah. Eventually, you don't have anybody else
15 to talk to; or, you know, you might have some difficulty in
16 finding people that you want to talk to, so there's always
17 an end at some point with what you can do.
18 Q. And this case ended without identifying the killer, correct,
19 at least for you?
20 A. Correct.
21 Q. Okay. Did the name James Mitchell ever come up in the
22 investigation when you worked on it?
23 A. I don't recall that; and in reviewing all of my reports and
24 all the statements I took, I have not seen that name.
25 Q. Okay. So this happens in 1993. You retired, again, when?

1 A. 2005.
2 Q. All right. So twelve years later; and when you retired in
3 2005, it still hadn't been solved; correct?
4 A. Correct.
5 MS. HIGH: I'm going to object to the word
6 "solved," Your Honor. I know it's been used repeatedly, but
7 that is a question for the jury.
8 THE COURT: I'll sustain the objection.
9 Q. (By Mr. Penner) You hadn't identified, at least to your
10 purposes, who the killer was?
11 A. No.
12 MS. HIGH: Objection, Your Honor, "killer"
13 versus "suspect."
14 THE COURT: I'll sustain the objection.
15 Let's -- it's for the jury to determine who's the killer or
16 who's the suspect.
17 Q. (By Mr. Penner) Okay. All right. But in this case,
18 clearly, someone had killed Ms. Robinson; correct?
19 A. Correct.
20 Q. And when you retired in 2005, you didn't know who that was?
21 A. No.
22 Q. Okay. What happened to the case file?
23 A. The case file remained on a -- on a shelf right behind my
24 seat, similar to this one, in my office right up until the
25 time I retired, and --

1 Q. Okay. Did it ever -- did it ever leave your office?
2 A. Yes.
3 Q. Okay. Where did it go?
4 A. It went to my home.
5 Q. All right. And why did it go to your house?
6 A. Well, I was going to be retiring, and I had about -- I had a
7 month from the time I gave my notice until the time I
8 actually left the Department. I had a lot of cases in
9 various stages in my office. I mean, I had homicides,
10 suicides, missing persons, tons of things; and I was going
11 to -- I was going to spend the month just organizing all
12 those and getting them in some semblance of order.
13 Q. And why would you care about doing that? You're retiring.
14 A. Well, I wanted to make sure that a future detective has a
15 case file that they can work if new leads come up.
16 Q. All right.
17 A. So I didn't want to just leave it in disarray and leave it
18 for -- and that would have happened if I just left them
19 sitting in my office.
20 Q. Okay. And were you able to put the files into some sort of
21 order?
22 A. Do you want to know what I did with the files?
23 Q. Yeah.
24 A. Okay. Do you want to know why I did it or just what I did?
25 Q. Well, why don't we start with what you did.

1 A. Okay. What I did is: I had file boxes, and I went through
2 all -- we had filing cabinets about six feet high. Each one
3 of those had a drawer about three feet wide; and in every
4 one of those file drawers, I had reports or just general
5 information from cases I've worked. Some of them were open
6 cases; some were closed. So what I did is: I went through
7 everything that had nothing to do with an open case, and I
8 shredded it because I spent about two or three days just
9 shredding old police reports that had no reason to be, you
10 know, contained because they were already in LESA Records,
11 and --
12 Q. And let's clarify that. What does that mean they were
13 already in LESA Records?
14 A. Okay. The records system for the Pierce County Sheriff's
15 Department and, I believe, the Tacoma Police Department and
16 other police agencies, are contained in a records center
17 managed by LESA. They're a -- Law Enforcement System
18 Administration, I believe, is what the term was for it.
19 They keep all the police records; so if you file a report
20 with the Sheriff's Department, eventually it's filed with
21 LESA. So, that record stays forever; it's archived. It's
22 microfilmed, at least, microfilmed the way it used to be
23 microfilmed back in the '90s; and it's kept forever is my
24 understanding.
25 Q. So the stuff that you were shredding, that's --

A. Yes. It was all -- it was things that were already in the system which it didn't matter whether I got rid of them or not; they were copies.

Q. What about the open cases like this one?

A. Well, not all the open cases -- some of the open cases I forwarded on, but I had -- I had a number of different cases and different -- that were open homicides. Some were -- some were suicides, things that hadn't been actually closed out; maybe some paperwork hadn't been done on them.

So what I did is: I tried to take them off shelves and out of filing cabinets and just place them together in file boxes.

Q. Okay. Now, did you take home any physical evidence in any of these cases?

A. No.

Q. What was at your house?

A. Basically, police reports, statements, things that hadn't been put in the LESA Records yet; maybe I hadn't got the original copies in there yet. So, anything that I thought was going to be relevant that needed to be, eventually, filed in LESA Records for future investigation is what I took.

Q. All right. Does that include your notebook pages? Did you save all those?

A. I saved every notebook that I ever had, yeah.

1 Q. Actually, I wanted to talk about a notation that you made in
2 one of your -- one of your notebook pages.
3 A. Do you want me to refer to --
4 Q. Yeah. Could you refer to the handwritten notes?
5 A. The handwritten ones. Okay.
6 Q. That's probably --
7 A. This would be Exhibit 51?
8 Q. Yeah.
9 A. All right.
10 Q. And there aren't page numbers on that, but I think if you
11 look to date --
12 A. I think -- okay.
13 Q. -- date entry for 02/16 of '93.
14 A. Yeah.
15 Q. Did you make a notation regarding a different incident
16 number?
17 A. On that particular page?
18 Q. Yeah.
19 A. Yes.
20 Q. And what was that notation?
21 A. Do you want me to read it?
22 Q. Yeah.
23 A. "Bloody knife from sawed-off shotgun, Case No. 930380408,
24 found by apartment manager between 02/06 and 02/07,
25 Driftwood, period."

1 Q. Okay. Is there anything else about that particular note?
2 A. No.
3 Q. All right. And where does that fall in terms of the
4 notes -- the rest of your notes for this case?
5 A. Where does it fall? It -- the notation is made on 02/16 of
6 '93. I've got some names before that with some phone
7 numbers, with date of births, and then the notations in the
8 middle of the page, and then below that is a -- is a -- is a
9 time stamp that I wrote down of 1130 and then contact with
10 an individual.
11 Q. Okay. So if I can interrupt.
12 A. Yeah.
13 Q. So there's other stuff --
14 A. Yeah. There's other stuff above it and other stuff below
15 it, correct.
16 Q. All right. Do you have any recollection as to why you made
17 a notation as to that knife and shotgun in your notes?
18 A. No.
19 Q. All right.
20 A. I have no actual recollection of why I even wrote that down.
21 Q. Okay. And the -- I'm sorry. Did the note have the address
22 that it was found at?
23 A. No. It just has the case number.
24 Q. All right. I'm going to show you what's been marked as
25 Exhibit 84. Does that have the same case number on it?

1 A. Yes.
2 Q. Okay. And does that -- what is 84?
3 A. What is what?
4 Q. What is it -- Exhibit 84, what is it, roughly?
5 A. Are you talking about what this is?
6 Q. Yeah.
7 A. I'm sorry. I think -- I think my ears are plugged up, as
8 well as my chest, so I apologize for -- this is a property
9 report. Oftentimes, if property is just found or evidence
10 is entered, this will be utilized by a law enforcement
11 officer. They'll fill this out, list the items, date it,
12 sign it; and sometimes, they'll put additional descriptions
13 or comments on the bottom.
14 Q. Okay. And does it indicate where the items were found?
15 A. (Reviewing.) Uh --
16 Q. Up at the top of the first page.
17 A. Yeah, I'm looking at an address. There's -- okay. There's
18 an address up here of 8814 -- I think it's Wadsworth
19 Southwest. That's where the property was obtained from
20 between 6 and 7, which I'm assuming is the date of that
21 month; so I'm assuming that's where it was found.
22 Q. Okay. Is that near the murder in this case?
23 A. No.
24 Q. All right. And do you recall doing any follow up regarding
25 that knife or shotgun?

1 A. I have no recollection of this at all --
2 Q. Okay.
3 A. -- that I did anything.
4 Q. All right. All right. Thank you. So you said you retired.
5 You had some boxes with documents at home. Did anybody in
6 the Sheriff's Department know that you had boxes of
7 documents at home?
8 A. Yeah. Well, they did eventually. I -- I was -- I retired
9 on a Friday, and I left for Arizona on a Monday; and I don't
10 recall when I eventually informed a supervisor downtown, but
11 I did inform the captain of the detectives -- he was either
12 a captain or a lieutenant at the time -- that I had taken
13 these documents out of my office, and I had taken them home
14 with me because I had no one to give them to on the day I
15 retired. When I finished up at the end of the day, there
16 wasn't a single solitary person around; and I would have had
17 to be there -- just left them in the office and walked away
18 or taken them with me.
19 Q. All right. And was it your intent to organize them; is that
20 right?
21 A. Correct. That was my -- that was -- my goal was to take
22 them home, organize them and get them in the best order as I
23 can and then turn them back over to somebody.
24 Q. All right. In this particular case, did you eventually turn
25 those back over to somebody?

1 A. Yes.
2 Q. Who did you turn them back over to?
3 A. Detective Kobel.
4 Q. All right. And why was that?
5 A. He called me and wanted me to -- he wanted to pick up the
6 boxes, that he was aware -- he'd been given a direction by
7 somebody to do that.
8 Q. All right. And was it your understanding that he had
9 reopened the case and was working towards solving it?
10 A. I did not know anything about the reopening of this case
11 until I was contacted a year ago. I did not -- that's the
12 first time I knew that this case had been reopened.
13 MR. PENNER: Okay. All right. Thank you,
14 Detective. Nothing else, Your Honor.
15 THE COURT: All right. Well, it's a
16 quarter after, so we'll go ahead and take the recess now
17 before we start cross.
18 So, no discussion, no investigation, notepads face down
19 on your chairs; remain in there until Ms. Shipman comes to
20 get you.
21 (The jury was not present.)
22 THE COURT: Anything before I recess?
23 MS. HIGH: Yes, Your Honor. A couple of
24 times, Mr. Penner --
25 THE COURT: You can be seated.

1 MS. HIGH: -- asked Detective O'Hern if he
2 had developed any suspects, if he had a suspect; did he have
3 any suspects at this time? In fact, during our interviews
4 and our conversation with him, he did. He had a person
5 named Lee Chandler that he believed was a suspect. He
6 believes this was a suspect because he interviewed him, and
7 I know it's not admissible. He did fail the polygraph, and
8 there were some concerns about where he really was that
9 night; he had left.
10 I believe he was even actually arrested at one point. He
11 kept Mr. Chandler's driver's license on top of that box in
12 his office for over ten years. I think, by going down this
13 line of questioning, it allows me to also pursue it; that,
14 in fact, Mr. Chandler was a person of interest for him based
15 on the information that he had received from other friends,
16 from other family about his relationship with Ms. Robinson,
17 about some things that were known about him potentially,
18 that Ms. Robinson was dealing drugs for him. He was known
19 to be a pretty tough guy; and, in fact, that night, he had
20 left the home. He had left the home and wife said for 10 to
21 15 minutes, that he went to get some soda pop, and they were
22 going to be smoking crack; and, you know, wife clearly had
23 some interest in covering for him at the time.
24 So, I think, by asking about "had he developed some
25 suspects; did he have a suspect, someone in mind" that I

1 should be able to inquire about this.
2 THE COURT: Mr. Penner?
3 MR. PENNER: Yeah, I don't think I phrased
4 it quite that way, Your Honor. I expect Counsel to ask the
5 witness if there were other people that he interviewed,
6 people or persons of interest; and I expect Mr. Chandler's
7 name to be one of those people that he interviewed. I think
8 that's fine. I think that's within the realm of what Judge
9 Whitener has already ruled, but to go into his personal
10 opinion as to the guilt or innocence of that person goes
11 beyond what Judge Whitener ruled. That was kind of the core
12 of the ruling, and that goes to the law and other suspect
13 evidence. I think, again, if he's able to identify the
14 names of people that he talked to as a person of interest,
15 that's fine; but, I think, to give his personal opinion that
16 it was one person versus another, I think it's
17 inappropriate.
18 THE COURT: Response, Counsel?
19 MS. HIGH: Yes, Your Honor, and certainly,
20 you know, if we go into, you know, who he talked to; but, I
21 think, along those lines where this is an individual that he
22 not only interviewed multiple times and had actually
23 arrested and kept his driver's license out in his office, I
24 think, goes along with where that line of questioning went.
25 THE COURT: Well, I think -- if he

1 actually arrested Mr. Chandler in connection with this case,
2 I think that is relevant. I don't think that's offering an
3 opinion. I think that's describing what steps he took, so
4 I'll allow you to go into the existence of Mr. Chandler to
5 the extent as to what steps he took while conducting his
6 investigation and, presumably, you know, why Mr. Chandler
7 was, ultimately, released; but no one is to offer any
8 personal opinions about anything. All right? That's the
9 province of the jury.
10 All right. We'll go ahead and recess.
11 (A recess was taken.)
12 (The defendant was present.)
13 (The jury was not present.)
14 (The witness returned to the stand.)
15 THE COURT: Anything before we bring the
16 jury in?
17 MR. PENNER: No, Your Honor.
18 MS. HIGH: No, Your Honor. Thank you.
19 THE COURT: All right.
20 (The jury was present.)
21 THE COURT: All right. You may be seated.
22 All right. Cross-examination.
23 MS. HIGH: Thank you.
24 / / /
25 / / /

1 CROSS-EXAMINATION
2 BY MS. HIGH:
3 Q. Good afternoon.
4 A. Good afternoon.
5 Q. And, again, I know you're still recovering; so if you need a
6 break, just let me know. Okay?
7 A. I'll try.
8 Q. One of the things that you testified, as the lead detective,
9 when you get there, you have more supervisory responsibility
10 than, say, some of the other detectives or personnel there?
11 A. Correct.
12 Q. And so one of the things that you do is: You make an
13 assessment, but you're also kind of ordering the troops to
14 go and follow up on tasks and things that need to be
15 handled?
16 A. You're directing people -- yes. You're directing people
17 to -- to do -- I'm sorry -- specific tasks if you need to
18 have those done.
19 Q. All right. And so this evening, it looks like you received
20 the call a little after 11:00?
21 A. Correct.
22 Q. And I probably have your report there. And you were
23 actually on scene by, like, I think you said, 1156?
24 A. Correct.
25 Q. And when you get there, one of the things that you talked

1 about how you assess, it looks like you take a lot of notes;
2 you know, you documented the weather, you documented license
3 plate numbers, and those kinds of things before you even go
4 inside the apartment?
5 A. Correct.
6 Q. And you said one of the things that you want to do before
7 you go in there, too, is, you know, you want to have a sense
8 of knowing who's been there before you and who's going to be
9 coming after you because you want to preserve the scene to
10 the best of your ability?
11 A. Correct.
12 Q. And that evening when you get there, already, there are a
13 couple of patrol officers?
14 A. Yes.
15 Q. And a couple of -- I don't know if you recall but, like,
16 fire/EMT people?
17 A. I believe -- I believe there were some fire personnel there,
18 yes.
19 Q. Well, and in one of the pictures that you showed, you could
20 actually see kind of the EMT debris from some little plastic
21 things that they used --
22 A. Correct.
23 Q. -- to put on her? And, you know, what I have here, what has
24 been admitted as Plaintiff's Exhibit 44, and it's the
25 incident log; and it might just help you because I'm going

1 to ask you about everyone that was in that apartment.
2 A. Sure.
3 Q. Okay. There you go.
4 A. All right. Thank you.
5 Q. So when -- and the reason an incident log is kept for a case
6 like this is, precisely, because you want to know who's been
7 in and out of whatever is a particular crime scene?
8 A. Correct.
9 Q. And, again, that's important because you want to have a
10 record so you can assess the integrity of the scene?
11 A. (Nods head.)
12 Q. And in this case, it looks like before you actually
13 arrive -- and someone wrote, and it looks like at 2340;
14 although, your report has you, I think, getting up there
15 actually a little bit -- or at least inside the apartment a
16 little bit later; is that right?
17 A. (Reviewing.)
18 Q. Yeah, and on Page 2 of your report, I think you have your
19 time as 2356?
20 A. I do.
21 Q. Okay. And the 2340 that's on the outside here may be --
22 well, who knows -- because that does not look like your
23 handwriting, or is that yours?
24 A. I'm sorry. What were you asking?
25 Q. The 2340 written on --

1 A. That's me.
2 Q. Oh, that is you?
3 A. I signed that at that time.
4 Q. And is that your handwriting?
5 A. Yes, it is.
6 Q. Okay. And so before you get in the apartment, there's
7 already been Officer Reigle?
8 A. Yes.
9 Q. And, excuse me, Deputy -- Deputy Maye?
10 A. Correct.
11 Q. Terry Browning from Fire?
12 A. Yes.
13 Q. Brian Kraft from the Medics -- Shepard Medics?
14 A. Yes.
15 Q. And a Herb Gartner from the Medics?
16 A. Correct.
17 Q. And it's been noted that Kurt Alvernaz, a neighbor, had been
18 in there?
19 A. Correct.
20 Q. I think when you get there, Sergeant Weast is already there?
21 A. Yes.
22 Q. And the forensic technician, Ted Schlosser?
23 A. Yes.
24 Q. Detective Minturn?
25 A. Yes.

1 Q. And then you're the tenth person to get there, Mr. O'Hern?
2 A. Correct.
3 Q. And then after you was a Detective Page?
4 A. Yes.
5 Q. And like I said, someone didn't put the time in for a couple
6 of them here; and then is it a Lieutenant Pete Carder?
7 A. Correct.
8 Q. And then Hilding Johnson?
9 A. Correct.
10 Q. I think, better -- or more commonly known as Skip Johnson?
11 A. Correct.
12 Q. And so some of, you know, what happened in that apartment
13 predated before you even stepped one foot inside the door?
14 A. Correct.
15 Q. And, you know, you've been on a lot of these scenes; and so
16 when the medic or the first responders are there, they have
17 a different focus than you have?
18 A. That's right.
19 Q. You know, they're not thinking, am I walking through
20 something? Am I moving something? Their task is to focus
21 on the individual to see if they can render any medical
22 assistance?
23 A. Yes.
24 Q. Okay. And then also, the same with the neighbor, I mean,
25 the neighbor goes over there; and his thing is not, I'm

1 going to preserve this -- the crime scene integrity. I'm --
2 I'm going to respond to this little girl knocking at my door
3 saying there's a fire, and my aunt is hurt?
4 A. Correct.
5 Q. Okay. When you get there, there are, also, though, some
6 pretty experienced sheriff's officers with you as well?
7 A. I believe most of them were pretty experienced, yes.
8 Q. Well, I mean, I would say Detective Minturn had a fair
9 amount of experience; would you agree?
10 A. We hired on the same day, yes.
11 Q. Okay. And I think it's Lieutenant Carder, also experienced?
12 A. Yes.
13 Q. And I can't remember, was it Lieutenant Weast or Detective
14 Weast at the time?
15 A. No, Sergeant Weast.
16 Q. Sergeant Weast, a --
17 A. He was a patrol sergeant.
18 Q. But, again, a person with a lot of experience?
19 A. Patrol.
20 Q. Right. And I know that you did a walk-through of the
21 apartment?
22 A. Yes.
23 Q. And I know you've reviewed the other reports, that
24 Lieutenant Page did a walk-through?
25 A. Yes. He was -- he was in the apartment at some point, yes.

1 Q. Right. And I believe, as well, Mr. Carder was, also, in the
2 apartment?
3 A. That's my recollection, yes.
4 Q. And, I mean, obviously, Mr. Schlosser and Mr. Johnson. You
5 know, you took a look at one of the pictures that we had up
6 here on the screen; and you, you know, noted that it looked
7 like -- you described, you know, the body in the kitchen.
8 A. (Nods head.)
9 Q. And it looked as if the body, at some point, had been
10 shifted or moved. It was kind of -- you could see the
11 lines, kind of, you know, on the floor. Do you recall that?
12 A. I recall -- I recall that, yes. I recall making those
13 observations.
14 Q. Right. And not only to just see those today, but you made
15 those observations, as well, in your report?
16 A. Yes.
17 Q. Okay. And one of the observations that you made was, you
18 know, even when you first walk up to the front door and
19 you're looking in the -- in the hallway, I think you went
20 pretty much room by -- room by room. Is that fair to say?
21 A. Yes.
22 Q. Yeah. And so you get to the top of the stairway; and in
23 Page 3 of your report, if you need to refresh your
24 recollection, is where you meet Detective Minturn and
25 Sergeant Weast?

1 A. (Reviewing.) Yes. I made note of that.
2 Q. Right. And I think you actually note that when you get to
3 the top of the stairway, the front door is closed?
4 A. I think I made the notation, yes, the -- the doorway was
5 shut at the time of my arrival.
6 Q. And does -- I guess I interpreted that as the front door was
7 closed?
8 A. Closed.
9 Q. Okay. And when you open the door and you enter, in the
10 hallway there, you note a piece of gold-colored carpeting;
11 is that right?
12 A. Yes. That's what I noted in my report.
13 Q. Right. And that it looked like it had been flipped over, or
14 it was turned down?
15 A. Yes.
16 Q. And, as well, you noted right inside the doorway that there
17 was a folded blanket lying on the vinyl flooring just
18 inside?
19 A. Yes.
20 Q. And, as well, a package of disposable diapers?
21 A. Yes.
22 Q. And then you go on to describe, you know, actually seeing
23 into the kitchen; and, as you said, some things it was
24 pretty notable for you, when you saw Ms. Robinson's body,
25 were the things that were on her backside?

1 A. Yes. I started to describe what I was looking at, and
2 that's when I noted those items you're talking about.
3 Q. Right. And like you said, the reason that they were notable
4 to you is that they wouldn't just be there naturally. It's
5 not like, you know, something you would expect to be outside
6 your clothing like that or placed there?
7 A. Well, I would have described the items regardless of how
8 they got there just because that's what I'm looking at.
9 Q. Sure.
10 A. I'm describing what I'm looking at, basically, and that's
11 what was there.
12 Q. Right. And like you said, you know, you're trying to get as
13 much in here as you can?
14 A. Correct.
15 Q. And that's when I think you also describe that it looked
16 like perhaps the body has been shifted or moved a little bit
17 based on kind of the smears and the stains around her body?
18 A. I think, the -- the first time I made -- made that referral
19 to it in my report is when I talked about the pants. They
20 appeared to be pushed down somewhat.
21 Q. Right. Right. And it appeared to you that the pants had,
22 like you said, maybe had been pulled down just a little bit?
23 A. Yeah.
24 Q. Okay.
25 A. Again, that was my general description of the -- of the

1 victim as I was --
2 Q. Right.
3 A. -- as I was describing these things.
4 Q. Right. And you also describe how there were the plastic
5 caps attached by Shepard Ambulance paramedics, who had
6 responded, that were still visible there; right?
7 A. I believe so, yes. Yeah.
8 Q. And some of them, you could actually still see on her body?
9 A. Yes.
10 Q. And I think you described one on the back of the neck, one
11 kind of in the upper right of her buttocks?
12 A. Correct.
13 Q. All right. And then, you know, you start going through the
14 rest of the apartment, and so you have some descriptions of
15 the rooms; that, again, like you said, you're looking for
16 not only things that you'd expect to be there but things
17 maybe you don't expect to be there; is that right?
18 A. Well, we're looking -- we're trying to describe anything and
19 everything that is there; and, you know, you're not quite
20 sure what should be there or shouldn't be there, so you're
21 trying to describe everything you see. That's kind of the
22 way I -- I describe a crime scene.
23 Q. Hold on. I'm just looking for one of the pictures. And so
24 you note that it's a small, two-bedroom apartment?
25 A. Yes.

1 Q. And one room appeared to you to be perhaps more of a child's
2 or a younger person's room?
3 A. Yes. I think I referred to it as a teenage girl's room or
4 something to that effect.
5 Q. Right. Yeah. I'm going to hand you what has been admitted
6 as Defendant's Exhibit 209; and I'll probably put that up on
7 the screen here in a moment, but I wanted to give you a
8 chance to get oriented.
9 A. Okay.
10 Q. Okay. Let me put this up here.
11 MS. HIGH: And, Your Honor, I'll be
12 publishing what's been admitted as 209.
13 THE COURT: All right. 209 will be
14 published. Any objections to that? I don't think it's been
15 published before.
16 MR. PENNER: No objection to publication,
17 Your Honor. It's previously been admitted.
18 THE COURT: That, I know. All right. 209
19 will be published.
20 Q. (By Ms. High) And so is this the room that -- I think you
21 described seeing some stereo equipment in the room; and I
22 think it's hard to see, but do you still see that here?
23 A. I haven't seen those pictures in 23 years; so if you're
24 asking me if that is the room --
25 Q. Mm-hmm.

1 A. -- quite frankly, I couldn't -- I really couldn't say. I
2 mean, I know what I've described in my report.
3 Q. Okay. But it had been admitted. You did describe in your
4 report some stereo equipment --
5 A. Okay.
6 Q. -- and I think we see some in here; is that right?
7 A. Sure.
8 Q. But I wanted to ask you, you know, one of the things that
9 stands out for me in this photograph is the white powder
10 stuff on the carpet. Did you -- I mean, I don't know that
11 you made any observations about that in your report?
12 A. I may have; I may not have. I don't -- I don't recall right
13 now.
14 Q. Okay. We'll take a moment and --
15 A. Sure.
16 Q. -- and see if you do.
17 A. (Reviewing.) Okay. I don't see any reference to what
18 you're talking about. Is that what you wanted me to --
19 Q. Yeah.
20 A. I don't see any description of --
21 Q. Okay. And then --
22 A. -- the white powder.
23 Q. Right. And then you do describe, as well, then, going into
24 what appeared to be the master bedroom.
25 A. Okay.

1 Q. And in the master bedroom, you make a lot of descriptions;
2 but you do note specifically a McDonald's cup?
3 A. Let me just make sure I'm looking at the right -- I'm
4 looking at Page 7 of 12. Is that what we're talking about,
5 the bedroom in the northwest corner of the apartment? It
6 appears to be the master bedroom.
7 Q. Right.
8 A. Okay.
9 Q. Okay. And I think if you get to Page, maybe, 8.
10 A. Page 8. Okay.
11 Q. Right.
12 A. And you were asking me whether I described the cup, is
13 that --
14 Q. Right, and you did.
15 A. Okay.
16 Q. I mean, you noted the McDonald's cup. That was something
17 that was noteworthy for you; right?
18 A. Okay.
19 Q. And, I mean, I think, in your report, also, you noted that
20 there was another McDonald's cup in the living room, as
21 well?
22 A. Let me go back to the living room.
23 Q. And that's on Page 4.
24 A. Page 4?
25 Q. Mm-hmm.

A. Okay.
Q. About six lines up.
A. Yes, upon which was a McDonald's drink container with a straw.
Q. Right. And one of the things that -- you know, like you said, you're trying to describe all different kinds of items that you're finding in there in the house -- is you're interested in things that may, actually, have some evidentiary value for you?
A. I can't really say that. The way I describe the scene is -- I think I -- I mentioned this before -- is: I don't know what's -- what's relevant at all. I'm just -- I'm trying to do it like a picture. Like, if I'm looking at a table, and I see some items on a table, I'm describing what I see, whether it has relevance or no relevance.
Q. Okay.
A. It doesn't matter at that point; it's there.
Q. Okay.
A. So that's what I'm trying to do to the best of my ability, you know.
Q. Right. Well, I mean, so you're going to describe certain things; and certain things are going to get some follow up?
THE COURT: Do we need the lights on or off?
MS. HIGH: Oh, we can turn them back on.

1 I'll get to the next one in a moment.
2 Q. (By Ms. High) So some things are going to get followed up
3 on; right?
4 A. It's going to be described, correct. If I -- I see --
5 visually see it, I'm trying to make a note of it.
6 Q. Right. And I get that, but some items that you're going to
7 describe, you're, perhaps, going to ask your forensic people
8 to do some follow-up work with them as well?
9 A. I'll either ask them, or they'll do it on their own.
10 Q. Okay. So, you know, that takes me to a point. When you're
11 at -- you're at a scene like this, there's some
12 collaboration that goes on between you and the other
13 professionals there?
14 A. To a certain degree, yes.
15 Q. Okay. And as the lead detective, you're going to be
16 responsible for, at least at some point, reviewing the
17 information they've gathered?
18 A. Correct.
19 Q. And, you know, making some decisions about what might get
20 additional testing or sent on to a lab, that kind of thing?
21 A. And sometimes I'll do it; sometimes they will do it on their
22 own.
23 Q. Okay.
24 A. It isn't always me directing them to do something because
25 that's their field of expertise.

1 Q. Right. And if they have recovered something like latent
2 prints, that's something you're going to want to know about,
3 though?
4 A. Correct.
5 Q. Okay. So in this case, in fact, some latents were actually
6 recovered from the top of the refrigerator and the front
7 door. Are you aware of that?
8 A. Not unless I can see some documentation of that.
9 Q. I'm going to hand you what's been marked for identification
10 as Plaintiff's 46, and it's a report by Mr. Schlosser.
11 A. Okay.
12 Q. And I'll just kind of direct you to the second page there.
13 A. All right. (Reviewing.) Okay.
14 Q. Okay. And he does report there that he actually recovered
15 some latent prints from inside the house?
16 A. He does.
17 Q. Okay. And I don't see that in your report or in any of his
18 reports that anything was ever done with those prints?
19 A. I have no recollection one way or the other.
20 Q. Okay. You know, and, I guess, let me ask you this: I think
21 at the time, in '93 when this was going on, it was -- you
22 were pretty busy?
23 A. We were very busy.
24 Q. Right. And, I mean, you were very busy; and you were very
25 busy with a lot of major scenes; is that right?

1 A. Pardon me?
2 Q. With a lot of major crime scenes?
3 A. Yes.
4 Q. And is it fair to say that, you know, one was coming kind of
5 right on top of the one before it?
6 A. We just had a busy, busy time in that time and area of the
7 county, yes.
8 Q. And, you know, you could get a call-out, say, on this
9 evening, February 6, 1993, and then be called out again in
10 the next couple of days?
11 A. Correct.
12 Q. And that was happening?
13 A. It was.
14 Q. Okay. So when Mr. Schlosser recovers these latents, he may
15 or may not have reported that to you?
16 A. I have no recollection, again, of whether he did or he
17 didn't.
18 Q. Okay.
19 A. He may have; he may not have, yes.
20 Q. And the date on his report, I think, is, like, March 9th?
21 A. Correct.
22 Q. So we're about a month down the road already?
23 A. Correct.
24 Q. Okay. And, you know, you have not only this case that
25 you've been working, and I think that you, you know,

1 actually had this period of time in February in your notes
2 where you can tell that you're, you know, still interviewing
3 people, following up, following up, following up; but what
4 was the last date that, I think, you had for some activity
5 in your notes?
6 A. Do you want me to refer to the transcription list of notes?
7 Q. You know, yes, they're a little easier for me. And could
8 you please give the exhibit list -- the exhibit number?
9 A. Yeah, it's Exhibit 52.
10 Q. Thank you. Yeah, I found your handwriting a little
11 difficult.
12 A. Okay. The last notation I have relating to this particular
13 case in my notebook is at -- is on 03/02. That's the last
14 date I have listed.
15 Q. Okay.
16 A. 03/02/93.
17 Q. Okay. Thank you. And his report wasn't prepared until
18 after that?
19 A. Correct.
20 Q. Okay. You know, and I think you were talking just
21 generally, when you're the lead, not only are you assessing
22 the scene, but you're, also, like I said, tasking others to
23 start doing some interviews; and the reason you'd like
24 interviews sooner rather than later is memories?
25 A. Correct.

1 Q. And in this case, you did task a number of the folks that
2 were assisting you, including -- I don't know whether I keep
3 calling them the wrong designation -- is it Detective Page,
4 or was it lieutenant?
5 A. Detective Page, correct.
6 Q. Detective Page. And one of the things you had tasked
7 Detective Page with was to assist with some of those
8 interviews; is that correct?
9 A. Correct.
10 Q. Okay. And he, as well, would have reported back to you?
11 A. Yes.
12 Q. And I had it, but I -- just give me a moment. I just have
13 so many reports here. Okay. And I'm going to hand you
14 what's been marked for identification as Plaintiff's Exhibit
15 48, and so that was a report that Detective Page prepared
16 for you; right?
17 A. Yes, it is.
18 Q. And if I could just turn your attention to Page 5 of 8.
19 A. Okay. I think I've got Page 5.
20 Q. Okay. And, you know, you noted when you were at the
21 apartment that some family members had arrived at the crime
22 scene?
23 A. Yes.
24 Q. And they were, understandably, very, very upset?
25 A. Yes.

1 Q. And I know that, then, they leave and they go to another
2 location; and Detective Page is sent to do some interviews
3 there?
4 A. Well, I don't know that I sent him to a particular location.
5 I believe I asked him to locate these individuals and
6 interview them, so he might have done that on his own.
7 Q. Sure. And one of the things you were trying to piece
8 together, like you said, you said one of the things you want
9 to do is know about the victim?
10 A. Yes.
11 Q. And so you try to piece together a lifestyle but also what
12 was going on that day?
13 A. To the best that we could, yes.
14 Q. Right. And so Lieutenant Page, one of the people he
15 interviews is a sister named Stephanie Robinson; is that
16 right?
17 A. Yes.
18 Q. And like I said, he is there very close in time; and he gets
19 the information from her that Linda Robinson had been at her
20 house for a little barbecue?
21 A. Yes.
22 Q. And that she had left somewhere around 8:00?
23 A. Correct.
24 Q. And she'd also mentioned that Ms. Robinson had an old
25 boyfriend named Billy that had called her about three or

1 four o'clock that very morning?
2 A. That's in this report, yes.
3 Q. And that he was "talking really stupid" and arguing with
4 her?
5 A. Correct.
6 Q. And on Page 6 of 8, I think he also interviewed another
7 sister named Gloria Elliott?
8 A. Yes.
9 Q. And Ms. Gloria Elliott also said that she'd spoken with
10 Linda Robinson earlier that morning?
11 A. (Reviewing.)
12 Q. I think it's the second paragraph.
13 A. The second paragraph. All right. Could I just take a
14 second to review --
15 Q. Please.
16 A. -- it real quick, just to --
17 Q. Absolutely.
18 A. (Reviewing.) Okay. I see here the victim -- the victim had
19 spoken to -- she had spoken to the victim earlier that
20 morning. Okay.
21 Q. Right. And she also tells Lieutenant Page that this person
22 named Billy had called?
23 A. Yes.
24 Q. And, again, her words were: "And he was talking real
25 crazy"?

1 A. Yes.
2 Q. And he's saying he's going to come over and tap on the door
3 three times, and she'd better let him in?
4 A. Yes.
5 Q. Okay. And so you were asked a little bit about your follow
6 up with this individual named Billy by Mr. Penner?
7 A. Correct.
8 Q. And let me just -- and on Page 10 of 12 of Exhibit 50, which
9 is your 12-page report --
10 A. Okay.
11 Q. I see you and I have the same method; we have two things
12 going on at once here. You did some follow up, and you were
13 actually inside Ms. Robinson's apartment when this Billy
14 person calls?
15 A. Yes.
16 Q. And you get a phone number from him, and he was -- he was
17 supposed to give you a call back that night; is that right?
18 A. Yes.
19 Q. And he did not?
20 A. No.
21 Q. And then you followed up with a woman named Sharon Schuler?
22 A. Sharon Schuler, correct.
23 Q. Right. And to find out, I guess, what she might have known
24 about Mr. Billy Miller and your phone call?
25 A. Correct.

1 Q. And in the course of that, you learn that Mr. Miller had
2 arrived at her house about 1:45 a.m.?
3 A. Yes.
4 Q. And then you and Detective Rusef --
5 A. Rusef, right.
6 Q. -- Rusef, right, actually did an interview with Mr. Miller,
7 and it --
8 A. Yes, we did.
9 Q. Right. And it says it was an extensive interview, but there
10 was no transcript or follow-up report by Officer Rusef?
11 A. I thought there were some notes in my notebook relating to
12 this interview, but --
13 Q. And I think there are --
14 A. Yes.
15 Q. -- but it's not something that reflected the extensive
16 interview, certainly no transcript like you took of a number
17 of the other people you interviewed.
18 A. No.
19 Q. Okay. You know, also, Lieutenant Page -- Detective Page,
20 pardon me, on Page 5 of Exhibit 48 --
21 A. Okay.
22 Q. -- went around to contact neighbors?
23 A. Yes, I believe he did.
24 Q. Right. And while he's out and about, he learns that a
25 couple of individuals that live in the area said they'd

1 heard a gunshot about ten o'clock that night?
2 A. Can you refer me to the specific paragraph and the page?
3 Q. Yes. Page 5, and it's the third paragraph.
4 A. Yes.
5 Q. It says, "I was also advised." And I was counting from the
6 first line as a paragraph, so it would be the first --
7 A. So I'm looking -- did you say the third paragraph?
8 Q. Well, actually, I was saying I was counting that first line
9 as a paragraph up at the top of the page.
10 A. Okay.
11 Q. It's probably the second --
12 A. So the paragraph where it says, "I was also advised"?
13 Q. Correct.
14 A. Okay. Yes, he indicated that he hears shooting a lot coming
15 from the gun shop next door. Then, however, about ten
16 o'clock this evening, he heard a shot that sounded much
17 louder.
18 Q. Right. And another gentleman, as well, tells him he heard a
19 shot about ten o'clock?
20 A. Correct.
21 Q. Okay. So then you were asked about your notebook; and in
22 your notebook, which is Exhibit 51 --
23 A. Yes.
24 Q. -- you know, you had a reference to a case, and it's under
25 the date 02/16/93?

1 A. Yes.
2 Q. Okay. And at the top of your page, you, clearly, are making
3 notes about the investigation of the homicide of Linda
4 Robinson?
5 A. Correct.
6 Q. And you identify an Albert Earl Wade that you've talked to,
7 and then you have a notation for the bloody knife and a
8 sawed-off shotgun being found?
9 A. Correct.
10 Q. And now that case number for the sawed-off shotgun isn't the
11 same as Ms. Robinson's?
12 A. No.
13 Q. And that's because the person that found this -- or was
14 called to get these items gave it his own number or gave it
15 their own number?
16 A. Yeah. The way it works is when a call goes out, any call,
17 the communication center assigns a case number to that call;
18 so this would have been a case number assigned to it.
19 Q. Okay. And do you have Exhibit 84 up there, possibly?
20 A. I don't believe so.
21 Q. Okay.
22 A. 44, 50 -- I don't think so; no, I don't.
23 Q. Okay. Okay.
24 A. Oh, I do, excuse me, property report, too many exhibits.
25 Q. Okay. Yeah. As I said, we seem --

1 A. I do have it, yes.
2 Q. -- we seem to have the same method.
3 A. The property report.
4 Q. Okay. And that's the property report that links back to
5 that case number that you referred to in your notebook --
6 A. Correct.
7 Q. -- or in your notes?
8 A. Yes.
9 Q. And the date that this was received was -- or this report --
10 was 02/07/93?
11 A. Correct.
12 Q. Okay. And do you recognize this form that --
13 A. I recognize the form, yes.
14 Q. Right. And it's a standard form that is to be filled out
15 routinely by officers getting property?
16 A. Officers and forensic investigators would, also, fill out a
17 report similar to this.
18 Q. Okay. And these were done in the usual course of business
19 with the Pierce County Sheriff's Department?
20 A. Yes.
21 Q. And I know that you didn't complete this report, but it is
22 the kind of report that was routinely used?
23 A. Yes.
24 MS. HIGH: Okay. And, Your Honor, I would
25 offer for admission Exhibit 84.

1 THE COURT: Any objections?
2 MR. PENNER: No, Your Honor. Thank you.
3 THE COURT: All right. No. 84 will be
4 admitted.
5 (Defendant's Exhibit No. 84 was admitted.)
6 Q. (By Ms. High) And so what this report references is that a
7 sawed-off shotgun was found but, as well, a four-inch
8 kitchen steak knife with a wooden handle?
9 A. Correct.
10 Q. And it said "Old Hickory," it looks like, was the brand?
11 A. Yes.
12 Q. And the blade appeared to have possible dried blood on it?
13 A. Correct.
14 Q. And it said it was found by the apartment manager?
15 A. Correct.
16 Q. In some little room that -- well, he says the door can be
17 opened by a credit card?
18 A. I'm sorry. What was that?
19 Q. He notes that it's in this little room, but it's a door that
20 can be opened by a credit card? I'm thinking he's saying
21 it's easy to get into.
22 A. Oh, you're talking about the -- I'm sorry -- down in the
23 "additional description or comments"?
24 Q. Correct.
25 A. Yes.

1 Q. Okay. And there's a notation that's underlined, that it was
2 "possibly used in a crime"?
3 A. Correct.
4 Q. And then there was a second page there where there was a
5 request that it be processed for fingerprints and the
6 possible blood on the knife blade?
7 A. Correct.
8 Q. And to the best of your knowledge, absolutely nothing was
9 done with this?
10 A. I have no -- I really have no recollection of this report,
11 honestly, so I don't know.
12 Q. Yeah. Right. And in your notes, there's nothing showing
13 that there was some follow-up?
14 A. No.
15 Q. Okay.
16 THE COURT: Just for the record, Counsel,
17 it's ten till; so you might want to edit.
18 MS. HIGH: Okay.
19 Q. (By Ms. High) I'd like to hand you what's been marked for
20 identification as Defendant's Exhibit 241.
21 A. Okay.
22 Q. And I know that we had had a chance to talk just a little
23 bit previously about: This depicts a Google map from Linda
24 Robinson's apartment to the location, at least reported as
25 to where the knife and the shotgun were found?

A. Yes.

MS. HIGH: And, Your Honor, I would move for admission of Defendant's Exhibit 241.

THE COURT: Any objection?

MR. PENNER: No, Your Honor.

THE COURT: 241 will be admitted.

(Defendant's Exhibit No. 241 was admitted.)

Q. (By Ms. High) Now, Mr. O'Hern, I think I'd asked you a little bit --

THE COURT: Do you want to move to publish that?

MS. HIGH: Oh, I'm sorry, Your Honor. Yes. I'm trying to move along, cutting out all the unnecessary steps.

THE COURT: I understand, "*Mother, May I*."

MS. HIGH: Thank you.

THE COURT: Any objections to publication, Counsel?

MR. PENNER: No, Your Honor.

THE COURT: All right. It will be published.

Q. (By Ms. High) And so, Mr. O'Hern, I don't know if the pointer is going to assist you, but I know that we had talked about the route here; and you indicated that back in '93, you weren't sure that the blue route actually went

1 through; is that right?
2 A. Yeah. That's my understanding. There was some -- the
3 military reservation was either closed, or there wasn't a
4 direct route from Spanaway to the location where you're
5 showing the blue line ending. I mean, it could have been;
6 but I'm -- it's my recollection that you couldn't get there.
7 Q. Right. Not sure, but you're thinking not at the time?
8 A. Yeah.
9 Q. But nonetheless, there still was, you know, a route that
10 would come up --
11 A. Correct.
12 Q. -- and over this way?
13 A. Yes.
14 Q. Okay. And that location was close to that military
15 reservation?
16 A. Correct.
17 Q. Right on the boundary?
18 A. Close to it, yes.
19 Q. Okay. And then I would also like to hand you what's been
20 marked for identification as Defendant's Exhibit 240, and
21 I'd like you to take a look at this photograph; and can you
22 tell me what it depicts.
23 A. (Witness complies.) It depicts what looks like a paring
24 knife or a steak knife of some kind.
25 Q. That says "Old Hickory"?

A. Pardon me?
Q. That says "Old Hickory"?
A. That says "Old Hickory" on the handle. It's a wooden-handled knife.
MS. HIGH: Okay. Your Honor, I'd offer this for illustrative purposes only.
MR. PENNER: No objection, Your Honor.
THE COURT: All right. It will be admitted for illustrative purposes only.
MR. PENNER: What was the number again?
MS. HIGH: 240.
(Defendant's Exhibit No. 240 was admitted for illustrative purposes only.)
MS. HIGH: Your Honor, may I publish?
THE COURT: Any objections?
MR. PENNER: No, Your Honor.
THE COURT: All right. For illustrative purposes only, it will be published.
Q. (By Ms. High) And one of the things that we ran into, I think, when I had a chance to interview you, jeez, last summer, was we learned that, in fact, that evidence that had been collected in '93 was no longer in existence?
A. Evidence of --
Q. The shotgun and the knife?
A. I don't remember whether we had that discussion or not. I'm

1 sorry.
2 Q. Okay. But nonetheless, it wasn't ever tested or, to your
3 knowledge, located in the course of this case?
4 A. Again, I -- I don't have any real recollection of those
5 items or that notation in my notebook, to be honest.
6 Q. Okay. Also, in the course of your investigation, like I
7 said, one of the things you were interested in was, kind of,
8 developing the timeline; and you learned that Ms. Robinson
9 had been on the phone with a couple of different people?
10 A. I know that she had been on the phone with at least one.
11 Q. Okay.
12 A. There may have been a second one.
13 Q. Okay. And so you knew that she was on the phone with at
14 least a person named George Caldwell?
15 A. I believe that was the gentleman's name, yes.
16 Q. Okay. And hold on; let me find the report.
17 And like you say, I think it may be in your notes; and
18 you also learned during -- from your other detectives
19 assisting you that her sister had, also, reported talking to
20 her about 10 p.m. Do you recall that?
21 A. Talking about who?
22 Q. The sister had also reported talking to Ms. Robinson about
23 10 p.m.?
24 A. I believe that was the case, yes.
25 Q. Okay. And, as well, then, had been on the phone with

1 Mr. George Caldwell probably very close to the time of
2 whoever came to the door; is that right?
3 A. I believe that, yes.
4 Q. And that he reports being on the phone with her, and there's
5 a click?
6 A. Well, he -- I think he described it more as a disconnect
7 than a click because I think we -- I think those were his
8 words, as I remember.
9 Q. Okay. Right. Anyway, the call ends abruptly?
10 A. Yes.
11 Q. Okay. And when you went through her apartment, you noticed
12 that -- I don't know if you did notice -- but you note in
13 your report that there was an answering machine in her
14 bedroom?
15 A. If I can refer to my report again?
16 Q. Absolutely, Exhibit 50, Page 8 of 12 --
17 A. That would be helpful. Thank you.
18 Q. -- second paragraph, well, starting on that page, "Maybe
19 it's located on either side of the bed."
20 A. Okay. I see it now, yes. "There was an answering machine
21 located in the northeast corner, holds the telephone,
22 answering machine."
23 Q. Okay. And you did not collect the answering machine or the
24 tape and the answering machine?
25 A. Quite frankly, I -- I couldn't tell you if we did or we

1 didn't.
2 Q. Okay.
3 A. I don't have a recollection of it.
4 Q. And if it had been collected, though, it should have made it
5 into a --
6 A. Property report.
7 Q. -- property report?
8 A. Correct.
9 Q. Right. And so if it's not in any property report, it may or
10 may not have been collected; we just don't know?
11 A. Correct. I don't know.
12 Q. Okay. And you also -- at the time, you did not get her
13 phone records?
14 A. No.
15 Q. Okay. And I think also at the time, you did not ask,
16 actually, for the EMT medical reports or records?
17 A. I may have -- back in the '90s, we -- we would have trouble
18 getting those reports, quite frankly. The fire department
19 was either reluctant to turn them over, or they had other
20 things to do; so I don't know whether I -- whether I may
21 have phoned the fire department and asked for those. It's
22 usually standard that I do.
23 Q. Okay. But they didn't make it into the property in this
24 case?
25 A. Again, I -- I don't -- I don't have all the property reports

1 in front of me. I don't know, to be honest.
2 Q. Okay. I can hand you what's been marked for identification
3 as Plaintiff's Exhibit 79.
4 A. Okay.
5 Q. Okay.
6 A. (Reviewing.) Yeah, I don't see it on here.
7 Q. Okay. And, you know, I do see -- if you'll take a look at
8 the first, maybe, ten or so items; and do you recognize that
9 those were the items -- and don't read them out loud,
10 please -- that were in the carton that you took home?
11 A. Yes.
12 Q. Okay. And they included the original child interview of
13 Ms. Shawonika Elliott?
14 A. I don't know whether it was the original or if it was the
15 copy I received, to be honest, without actually looking at
16 it. We received a -- we would receive a copy -- or a copy
17 of the interview from the child witness interviewer.
18 Q. Okay.
19 A. I don't know whether they gave us the original --
20 Q. Okay.
21 A. -- or they gave us a copy of what it was.
22 Q. Okay. But --
23 A. But, yes, it is there.
24 Q. But the first time it makes it into property is -- can you
25 give me the date on that?

1 A. Yes.
2 Q. And the date is, I think, in 2011?
3 A. Yes.
4 Q. Okay. And you, in fact, did tell -- I mean, you were
5 contacted by Detective Kobel. He knew that you had some
6 items at home?
7 A. Correct.
8 Q. Okay.
9 THE COURT: Okay. Counsel, it's four
10 o'clock.
11 MS. HIGH: Okay. And, Your Honor, I
12 believe I still have a little bit more.
13 THE COURT: I understand, but --
14 MS. HIGH: Okay.
15 THE COURT: -- we're going to have to do
16 redirect, and I know we have other things, so --
17 MS. HIGH: Oh, no, tomorrow.
18 THE COURT: By this point, the court
19 reporters are tired, usually, because they're paying strict
20 attention; not to mention it's physically demanding.
21 All right. We'll recess, no discussion, no
22 investigation, notepads face down on your chairs. Stay in
23 the jury room until Ms. Shipman comes to release you. We'll
24 reconvene at 9:30 tomorrow morning.
25 MS. HIGH: And, Your Honor, just to let

you know, we'll have him come back.

THE COURT: And we will need you in the morning, sir, antibiotics and all.

THE WITNESS: Yeah, well, I've got one more pill to take, so --

(The jury was not present.)

MS. HIGH: Great, and I'm going to gather these up; and we're not letting you go out of our sight until we go through the exhibits.

THE COURT: And, Counsel, you'll want to go through them to make sure we've got all of them.

MS. HIGH: Right.

MR. PENNER: Yes, Your Honor.

(Pause.)

THE COURT: All right. We're at recess, then, until 9:30 tomorrow morning.

MR. PENNER: Thank you, Your Honor.

(Court adjourned for the day.)

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,	)	
	)	Superior Court
Plaintiff,	)	No. 14-1-02979-1
	)	
vs.	)	Court of Appeals
	)	No. 48810-8-II
JAMES EDWARD MITCHELL,	)	
	)	
Defendant.	)	

REPORTER'S CERTIFICATE

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

I, Kimberly A. O'Neill, Court Reporter in the state of Washington, county of Pierce, do hereby certify that the foregoing transcript is a full, true, and accurate transcript of the proceedings and testimony taken in the matter of the above-entitled cause.

DATED this 20th day of August, 2016.

_____
KIMBERLY A. O'NEILL, CCR
License No. 1954

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,	)	
	)	Superior Court
Plaintiff,	)	No. 14-1-02979-1
	)	
vs.	)	Court of Appeals
	)	No. 48810-8-II
JAMES EDWARD MITCHELL,	)	
	)	
Defendant.	)	

VERBATIM REPORT OF PROCEEDINGS

February 9, 2016 and February 18, 2016
Pierce County Courthouse
Before The Honorable Katherine M. Stolz
Tacoma, Washington

<<<<<< >>>>>>

A P P E A R A N C E S

For the Plaintiff: STEPHEN M. PENNER
Deputy Prosecuting Attorney

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1 BE IT REMEMBERED that on Tuesday, the 9th
2 day of February, 2016, the above-captioned cause came on
3 duly for hearing before THE HONORABLE KATHERINE M. STOLZ,
4 Judge of the Superior Court in and for the county of Pierce,
5 state of Washington; the following proceedings were had, to
6 wit:
7
8 <<<<<< >>>>>>
9
10 (The defendant was present.)
11 (The jury was not present.)
12 THE COURT: All right. Anything before we
13 bring the jury in?
14 MR. PENNER: I just wanted to apprise the
15 Court on scheduling. So, this morning, there's still
16 Detective O'Hern to finish. Then Steve Wilkins from
17 Forensics is on call and should be here afterwards. I don't
18 know if -- we'll see how long the morning goes, maybe right
19 after the break. The next witness will be Dr. Ramoso. I've
20 got him scheduled right at 1:30.
21 THE COURT: Okay.
22 MR. PENNER: So if we finish before noon
23 with the other two witnesses, I'll ask to adjourn.
24 Dr. Ramoso is scheduled. I have a brief witness from the
25 property room, and I think I can finish this afternoon. If

1 we finish before 4:00, I'm going to ask the Court to adjourn
2 early again because the next witness will be Chris Sewell
3 from the Crime Lab, and I'd like to be able to start with
4 him right at 9:30 tomorrow so that we can get through him in
5 a day. He's got some conflicts, so that's kind of the plan;
6 and I'll have one more witness after that. I'll recall
7 Detective Kobel, and then the State will be ready to rest.
8 THE COURT: Okay.
9 MR. PENNER: So with that schedule and
10 based on things, my guess is the State will probably rest
11 Thursday.
12 THE COURT: All right.
13 MS. HIGH: Okay. And I've been just
14 trying to keep my witnesses in the loop and have been
15 alerting them that Thursday seems like a very likely day
16 that I'll need them here to testify, so -- and I'll make
17 sure I'm in touch with my office as we kind of go along,
18 so --
19 THE COURT: And I do like both sides to
20 coordinate --
21 MS. HIGH: Mm-hmm.
22 THE COURT: -- as to, you know, who's
23 coming up --
24 MR. PENNER: Yes, Your Honor.
25 THE COURT: -- to testify so that, you

1 know, one has a chance to prepare, so --
2 MS. HIGH: Right. Right. And I did let
3 Mr. Penner know who I thought would be here Thursday if we
4 get to them. He knows who the witnesses are.
5 THE COURT: All right. All right. Well,
6 if you wind up adjourning early, that's fine with the Court.
7 I have a 4:15 medical appointment, so --
8 MR. PENNER: Okay.
9 THE COURT: -- it will work out. All
10 right. Anything else?
11 MS. HIGH: No. Just, you know, yesterday
12 when I said I still had more with this witness, Your Honor,
13 I didn't mean the Court to keep going. I just wanted to
14 apologize for taking it that way. I just wanted to alert
15 you that we'd need to have him come back.
16 THE COURT: Oh, yeah, no problem.
17 MS. HIGH: Thanks.
18 MR. PENNER: Shall I fetch the witness,
19 then, Your Honor?
20 THE COURT: You may. The Court does not
21 take offense from things; life is too short.
22 (Pause.)
23 THE WITNESS: Good morning, Your Honor.
24 THE COURT: Good morning, sir. How are
25 you feeling today?

1 THE WITNESS: Better, a lot better.
2 THE COURT: You are the second witness to
3 testify with pneumonia.
4 THE WITNESS: Yeah, I know.
5 (The jury was present.)
6 THE COURT: All right. You may be seated.
7 All right. You may continue. You have the floor, Ms. High.
8 MS. HIGH: Thank you, Your Honor.
9 JAMES O'HERN, witness herein, having been sworn
10 under oath, was examined and
11 testified as follows:
12 CROSS-EXAMINATION (Cont'd.)
13 BY MS. HIGH:
14 Q. So, Mr. O'Hern, I'm also going to hand up a couple of items
15 here if you need to refer to them; and I'm going to hand up,
16 again, Exhibit 50, which was your report, and Exhibit 52,
17 which was the typed transcript of your handwritten notes.
18 A. Okay.
19 Q. Okay.
20 A. Thank you.
21 Q. You know, on your Exhibit 50 of your report, it looks like
22 the very last entry on the last page is somewhere -- I don't
23 know -- 8:57, almost 9 o'clock in the morning, on February
24 7th?
25 A. (Reviewing.) Yes. I think it was 8:57 a.m.

1 Q. But your work didn't stop there?
2 A. No.
3 Q. And that, you know, you're the kind of individual that kept
4 notes in the notebook; and you continue to document
5 interviews and activities that you engaged in on this case?
6 A. Correct.
7 Q. Okay. And I think we talked yesterday that, you know, you
8 interviewed a number of individuals to, kind of, get a
9 picture of Ms. Robinson's family and associates and friends?
10 A. Correct.
11 Q. Okay. And as you went through and you did a number of
12 interviews, you learn that she had a number of gentlemen
13 friends?
14 A. Correct.
15 Q. And engaged in some, say, recreational drug use?
16 A. Correct.
17 Q. And you interviewed individuals -- and I don't even think
18 this is a complete list but a Fred Ross and, if it helps
19 you, Exhibit 52.
20 A. 52 is my notes.
21 Q. Right. Do you have Bates-stamped numbers on the bottom of
22 that sheet there, the little numbers?
23 A. Yeah.
24 Q. Yeah. Fred Ross -- I think in Exhibit 52, you'll see him on
25 page 720.

1 A. Okay.
2 Q. And we'd already mentioned George Caldwell who shows up in
3 your notes.
4 A. (Nods head.)
5 Q. Roy Huber, it looks like you interviewed him and actually
6 took a taped statement from Mr. Huber in Exhibit 52, pages
7 721 and 725, if that assists.
8 A. Yes. Roy, you're talking about --
9 Q. Right.
10 A. -- Roy Huber?
11 Q. Yes. And an Albert Wade, as well, Exhibit 52 on page 722?
12 A. Yes.
13 Q. And eventually, it led you to a person named Lee Chandler?
14 A. Correct.
15 Q. And you interviewed Mr. Chandler several times and then
16 actually ended up taking a taped statement?
17 A. Correct.
18 Q. Okay. Now, I think the first time that you interviewed him
19 was on February 18th; and that's on page 722 of Exhibit 52.
20 A. (Reviewing.) Um --
21 Q. And I believe there's a typo mid page.
22 A. Yeah. I think that's, kind of, what it was. I'm looking at
23 it, yeah.
24 Q. And I think that's supposed to be 02/18, not 12/18?
25 A. What I'm looking at is 10 -- okay. That was when I got

1 there. Okay. Yeah.
2 Q. And then you had him come back in, and you interviewed him
3 yet again on February 20th; and that's on page 723 of
4 Exhibit 52?
5 A. Yes. I think the actual interview was on Page 24.
6 Q. Okay.
7 A. I believe we interviewed his wife first.
8 Q. Okay.
9 A. On -- that's on Page 23.
10 Q. Okay. And like you said -- and I also show on there that --
11 right, so he comes in. Now, you know, you'd seen him once
12 several days before; but after this interview, you book him
13 into the Pierce County Jail on warrants?
14 A. Correct. And they were municipal. I think they were
15 failure to appear/criminal assault warrants.
16 Q. Okay. And it looks like he must have been released because
17 you interview him, then, a third time on February 22nd; and
18 that's on Exhibit 52, page 724?
19 A. (Reviewing.) 24, yeah.
20 Q. Okay.
21 A. Okay.
22 Q. Is that right?
23 A. Yes.
24 Q. Yeah. And now, this is a person who, in the course of your
25 investigation -- I think you said you kept the box from this

1 case in your office for a very long time until you retired?
2 A. Yes. Well, it wasn't really in a box. I just had a stack
3 of folders with -- with all of the statements and all of the
4 supplemental reports and things that I had been given by
5 other officers, yes.
6 Q. Okay. But you had materials relating to this --
7 A. Correct.
8 Q. -- until you retired?
9 A. Yes.
10 Q. And Mr. Chandler's copy of his driver's license was right on
11 top?
12 A. Yes.
13 Q. Okay. Now, just to switch gears a little bit, you talked
14 about when you're in the apartment what you're looking for,
15 anything that maybe seems out of place, anything that maybe
16 just for some reason peaks your interest in order to record
17 and document?
18 A. Well, I -- I -- I think I explained this yesterday. I -- I
19 try to record everything as if I'm taking a picture of it.
20 Q. Mm-hmm.
21 A. So I might be looking at something that has absolutely no
22 relevance to the crime, but it's there; so I -- you know,
23 sometimes you might, you know, scan over something. You
24 might miss a pencil, or -- but you're trying to give an
25 accurate depiction of what you see when you're looking at a

1 crime scene so whether it's out of place or in place.
2 Q. Absolutely. But in your report in your notes, you didn't
3 document looking for cutlery -- I'm thinking knives --
4 inside the house?
5 A. Mm-hmm.
6 Q. Is that correct?
7 A. No. I didn't put anything in my notes, correct.
8 MS. HIGH: Okay. That's all I have.
9 Thank you.
10 THE WITNESS: Thank you.
11 THE COURT: Redirect?
12 MR. PENNER: Thank you, Your Honor.
13 REDIRECT EXAMINATION
14 BY MR. PENNER:
15 Q. So, Detective, back in 1993, was it possible or did it
16 happen often that you were able to identify the assailant
17 based solely on physical evidence left behind?
18 A. Yes.
19 Q. Okay. What kind of evidence would that be?
20 A. It could be a fingerprint. It could be a weapon of some
21 kind that was left behind. It could be -- you're talking
22 about just evidence, or --
23 Q. Yeah, and I'm talking generally speaking.
24 A. Physical evidence?
25 Q. Yeah.

1 A. Okay. You know, you just didn't know what was going to lead
2 you to a particular person; and it could be a number of
3 different things, you know.
4 Q. Okay. But I think you've already testified, when it came to
5 blood evidence, that wasn't something back in '93 that could
6 be used to identify people; correct?
7 A. It could only be used to identify type of -- typing of
8 blood. No, it could not be pinpointed to a specific
9 individual.
10 Q. Okay. So it sounds like, then, back then a lot of what you
11 had to do was good old-fashioned detective work, just beat
12 the bushes and talk to people; correct?
13 A. Yeah. It probably still is today, yeah.
14 Q. Okay. And so you interviewed, it sounds like, a lot of
15 people, Billy Miller, Fred Ross, Albert Wade, just people
16 who knew the victim; correct?
17 A. Correct.
18 Q. All right. But even after all those interviews, you weren't
19 able to identify and arrest anyone for the murder; correct?
20 A. Correct.
21 Q. And, in fact, when you retired, it was still -- you had --
22 no one had been arrested for the murder?
23 A. No.
24 Q. All right. If I could have a moment. Do you have that map?
25 A. I don't.

1 MR. PENNER: Okay. If I could have a
2 moment, Your Honor.
3 THE COURT: You may.
4 MR. PENNER: I guess while that's warming
5 up, for the record, I'm publishing Exhibit 241.
6 Q. (By Mr. Penner) All right. So this is Exhibit 241; and I
7 think you testified yesterday, the blue line, that would be
8 a direct route nowadays between Ms. Robinson's residence and
9 where this knife and shotgun were found; is that correct?
10 A. Yeah. I'm pretty -- I'm pretty sure you can get there --
11 you -- you have to go through a military reservation, but
12 you can get to that area there at 8814 Wadsworth Street.
13 Q. Okay.
14 A. I'm pretty sure that was the way it was in '93.
15 Q. So how would you have to get there?
16 A. You'd -- you'd go down -- basically, go down Pacific Avenue
17 to 512, or you could cut over and go down -- I believe
18 that's Spanaway Loop Road right there. That's the middle
19 gray line.
20 Q. Okay.
21 A. It's about the same distance, and then you'd come out in
22 Lakewood at 512; and then you'd proceed down Interstate 5
23 north to the Tillicum exit which is close to the Madigan
24 Army gate.
25 Q. Okay.

1 A. And so that's --
2 Q. And it looks like the address is not exactly right off the
3 freeway; correct?
4 A. Yes. It's in the little community of Tillicum.
5 Q. Are you familiar with the area?
6 A. I'm -- I'm -- not -- not the specific address, but I'm
7 familiar with the Tillicum area, yes.
8 Q. Okay. Is that part of the county, or --
9 A. Yes.
10 Q. Yeah. So that would have been part of the area that you
11 were patrolling?
12 A. Correct.
13 Q. Okay. So not exactly right off the freeway, would you agree
14 with that?
15 A. No.
16 Q. Okay. And do you have that exhibit still, that property
17 exhibit?
18 A. I don't.
19 Q. Okay.
20 A. I just -- I just have my transcribed notes and my report.
21 Q. I'm going to hand you what's, previously, been admitted as
22 Exhibit 84. Could you -- under the comment section at the
23 bottom, could you read what the officer of the property room
24 wrote.
25 A. Do you want me to read everything in the --

1 Q. Yes, please.
2 A. Okay. "Found by apartment manager, parenthesis, Driftwood
3 Apartments, parenthesis, in storage room. Door can be
4 opened by credit card, both objects under plywood sheet by
5 water heater, parenthesis, process as necessary,
6 parenthesis, possibly used in crime, underlined."
7 Q. Okay. But the incident number is different than your --
8 A. Yes.
9 Q. -- this homicide; right?
10 A. Yes.
11 Q. And does it ever happen in situations where, if evidence is
12 found later and it's clearly related to an existing
13 investigation, that you use the same incident number?
14 A. Well, if -- you're talking about if I found something that I
15 knew for sure was involved in the crime, like, after the --
16 after the fact, yes, you'd use the same case number.
17 Q. Okay. So the one thing that seems to link this to the
18 murder we've been talking about is that the report is for
19 the next day and that it's a knife?
20 A. Correct.
21 Q. Okay. I'd like to show you again Exhibit 240, and I just
22 want to clarify something here. This is a photograph
23 Defense Counsel showed you and asked: Does it essentially
24 match the description in Exhibit 84? And I think you said
25 yes. The murder weapon in this case, was it ever recovered?

1 A. No.
2 Q. Okay. So this is not a photograph of the murder weapon?
3 A. No.
4 Q. This is a typical photograph of something that matches that
5 description?
6 A. It's a photograph of a knife that the Defense handed to me
7 yesterday.
8 Q. Okay. Thank you. After you retired, you said you took the
9 paperwork home with you in an effort --
10 A. Right.
11 Q. -- with an intent to organize it and things like that?
12 A. (Nods head.)
13 Q. And you let -- you let your superiors know where it was?
14 A. Yes. I -- I didn't do it right away because I was -- I was
15 leaving town for a couple months, but I did eventually go
16 downtown and talk to the captain who was in charge of
17 detectives and alerted them to the fact that I had -- had
18 these documents.
19 Q. After you retired, did you retain -- did you do any more
20 work on the case either on a volunteer basis or just --
21 A. I didn't do any more work on this case, but I did come back
22 and do some pro bono work on another murder case that
23 actually happened about two months before this one.
24 Q. Okay. So that is something that you did do but you didn't
25 do for this case?

1 A. No.
2 Q. All right. And the next time you were advised of the case
3 is when Detective Kobel contacted you?
4 A. Correct.
5 MR. PENNER: Thank you. Nothing else,
6 Your Honor.
7 THE COURT: Any additional cross?
8 MS. HIGH: No, Your Honor, not based on
9 that. Thank you.
10 THE COURT: All right. May the witness be
11 excused?
12 MR. PENNER: Yes, Your Honor.
13 MS. HIGH: Yes, Your Honor.
14 THE COURT: You may step down, sir. Thank
15 you very much.
16 THE WITNESS: Thank you, Your Honor.
17 (The witness was excused.)
18 THE COURT: Counsel, if you want to get
19 the exhibits.
20 MR. PENNER: Will do, Your Honor. Your
21 Honor, the State's next witness will be Steve Wilkins. Can
22 I see if he's in the hallway yet?
23 THE COURT: You may.
24 (Pause.)
25 MR. PENNER: Your Honor, I apologize.

1 Mr. Wilkins isn't here quite yet. Can we take a brief
2 recess, and I can have him brought down?
3 THE COURT: Okay. We can do that. All
4 right. We'll take a brief recess until the witness gets
5 here. No discussion, no investigation, notepads face down
6 on your chairs; stay in the jury room until Ms. Shipman
7 comes to get you.
8 (The jury was not present.)
9 THE COURT: All right.
10 MR. PENNER: Thank you, Your Honor.
11 THE COURT: Court is at recess.
12 (A recess was taken.)
13 (The defendant was present.)
14 (The jury was not present.)
15 THE COURT: Anything before we bring the
16 jury in?
17 MR. PENNER: Just to let the Court know,
18 Mr. Wilkins is in the hallway. My next witness, Centura
19 Grey, will be here at 11:00 --
20 THE COURT: Okay.
21 MR. PENNER: -- which is in less than an
22 hour, so maybe we'll take the break after Mr. Wilkins. I
23 wanted to let the Court know this is the lineup for this
24 morning.
25 THE COURT: All right.

1 MR. PENNER: So we're ready for the jury.
2 (The jury was present.)
3 THE COURT: Okay. You may be seated. All
4 right. You may call your next witness, Counsel.
5 MR. PENNER: Thank you, Your Honor. The
6 State will call Steve Wilkins.
7 THE COURT: Watch the ramp.
8 STEVEN WILKINS, witness herein, having been sworn
9 under oath, was examined and
10 testified as follows:
11 THE COURT: If you'll have a seat.
12 There's water and Kleenex to your right.
13 THE WITNESS: Okay.
14 THE COURT: And you can pull the chair
15 forward and adjust the mic; and when answering, please
16 answer "yes" or "no"; don't nod or shake your head. Okay?
17 THE WITNESS: Okay.
18 THE COURT: All right. Counsel, you have
19 the floor.
20 MR. PENNER: Thank you.
21 DIRECT EXAMINATION
22 BY MR. PENNER:
23 Q. Could you state your name for the record, sir.
24 A. Steven Wilkins.
25 Q. And can you spell it for the court reporter.

1 A. Wilkins is spelled W-I-L-K-I-N-S.
2 Q. How are you employed, sir?
3 A. I am the manager of the forensic investigation section for
4 the Pierce County Sheriff's Department.
5 Q. How long have you worked for the Pierce County Sheriff's
6 Department?
7 A. 24 years.
8 Q. And has that been in Forensics the entire time?
9 A. Yes.
10 Q. So what year did you start?
11 A. 1992, February 10th, so one day short of 24 years.
12 Q. All right. You said, now you're the manager?
13 A. Correct.
14 Q. All right. When did you become the manager of the Forensics
15 Unit?
16 A. April of 2005.
17 Q. Okay. Have there been changes in the Forensics Unit over
18 those 24 years?
19 A. Yes.
20 Q. Could you let the jury know how the unit was -- I guess,
21 first of all, what was it called and how was it structured
22 when you started in 1992?
23 A. In 1992, it was called the Ident Unit, Identification Unit;
24 and my official title, then, was ident officer. That was a
25 throwback from early fingerprint days where the unit -- the

1 unit's mission, basically, was fingerprint records. When I
2 was hired, even though the title and the unit was still
3 called Ident, we did all the crime scene investigations and
4 things that you see on TV, like, CSI.
5 Q. Okay. And so, eventually, was the name "Ident" dropped?
6 A. In 1994, Ident was dropped, and it was changed to Forensic
7 Investigations because of the, you know, majority of the
8 work we were doing was forensics or -- forensic
9 investigations of crime scenes or in the laboratory.
10 Q. Okay. Well, let's talk about that for a little bit. The
11 forensic examination of a crime scene, can you explain to
12 the jury what kind of things you look for and what's meant
13 by the term "forensic examination"?
14 A. Forensic examination is, kind of, a different perspective or
15 a different way of viewing a crime scene in that when we --
16 we receive a lot of different training in different aspects
17 of crime scene investigation, but the term "forensic" puts
18 an onus, if you will, for us, when we're in the crime scene,
19 to investigate it, to look for the evidence that could be
20 used in a judicial proceeding.
21 Q. Okay. And so in 1993, do you remember how many people were
22 in the unit?
23 A. Seven ident officers, a supervisor, and three technicians.
24 Q. Okay. And who were the -- what's the difference between an
25 ident officer and a technician?

1 A. The technicians only do work within the laboratory or the
2 office, and the officers were the ones that did go to the
3 crime scenes.
4 Q. When you started, what was your -- which one were you?
5 A. Officer.
6 Q. Okay. Were you ever just a technician?
7 A. No.
8 Q. Okay. Did you know somebody by the name of Skip Johnson?
9 A. Yes.
10 Q. And did you know somebody by the name of Ted Schlosser?
11 A. Yes.
12 Q. In 1993, where did they work?
13 A. They worked in the Identification Unit. They were both
14 identification officers.
15 Q. Okay. In 1993, was it part of your job to collect evidence
16 at crime scenes?
17 A. Yes.
18 Q. And were you ever called out to homicides?
19 A. Yes.
20 Q. Now, you're aware of the case that we're here on today;
21 correct?
22 A. Yes.
23 Q. Back in 1993, were you involved in any way with the
24 investigation of that case?
25 A. No.

1 Q. Now, as the forensics manager, when evidence is collected at
2 a crime scene, where is it taken to?
3 A. When evidence is collected and is going to be retained by
4 the forensic investigators, it is brought to our laboratory
5 in the basement of this building; and we have a laboratory
6 set aside that has evidence storage; and within that
7 evidence storage, each locker, we call it, has a key to that
8 locker. The lockers are numbered, and the officers put
9 their evidence in that locker, take the key; and they retain
10 that key to, basically, guarantee the integrity of that
11 evidence.
12 Q. All right. Who has access to the lab?
13 A. Just the forensics staff.
14 Q. What about detectives?
15 A. No.
16 Q. What about property room officers?
17 A. No.
18 Q. Prosecutors?
19 A. No.
20 Q. Okay. That's -- my question was how it is now. How was it
21 in 1993?
22 A. No different in '93. The laboratory that we use today was
23 in the same configuration that it was in '93. Basically, it
24 was built in that configuration in 1987.
25 Q. And where is the forensics lab in relation to the property

1 room?
2 A. It's in the basement, and it's directly across the hallway
3 from the property room.
4 Q. Mr. Wilkins, if you could step down.
5 (The witness left the stand.)
6 Q. (By Mr. Penner) I'm going to ask you to diagram the
7 interior -- basically, a schematic of the interior of the
8 property.
9 A. Okay.
10 Q. I'm sorry, the forensics lab.
11 A. Forensics lab. Okay.
12 Q. But can you also leave enough room to show the corridor and
13 to mark --
14 THE COURT: Okay. We're going to need to
15 mark it with a number.
16 MR. PENNER: I will, Your Honor. Thank
17 you.
18 Q. (By Mr. Penner) Leave enough room to, also, show us where
19 the property room is across the hall.
20 A. Okay.
21 Q. And, Mr. Wilkins, I'm going to interrupt you just long
22 enough to put a tag on this. It will be 106.
23 A. That's a basic configuration.
24 Q. Okay. So let's do a couple things. Can you put your
25 initials and today's date down at the bottom next to the

1 tag. I think it's the 9th.
2 A. (Witness complies.)
3 Q. All right. And then let's do this. If you could -- we'll
4 go through this -- if you could tell us what each area is
5 and label it.
6 A. Okay.
7 Q. So, first of all, where's the property room?
8 A. This area, here, is the property room across the hall.
9 Q. Okay. And so as we go into the forensics lab, let's just --
10 I guess, let's just kind of go through it as if we were to
11 walk into it.
12 A. Okay.
13 Q. So what's the -- can you label the first thing that we're
14 going to see when we walk into it.
15 A. When you come in here to the door here, this is just a -- we
16 have two doors that access the lab. Right away, here, this
17 is a desk area that was used for marijuana examination when
18 we did that.
19 Q. All right. And I'm going to ask if you can make sure to
20 kind of step back --
21 A. Sure.
22 Q. -- as far as you can so all the jurors can see.
23 A. (Witness complies.)
24 Q. All right.
25 A. This was -- basically, there's -- a big desk there was where

1 we examined marijuana.
2 Q. Could you put, maybe, MJ.
3 A. (Witness complies.) Okay. This room, here, is what we call
4 the drying room; and when we have items that are very wet
5 from rain or blood-soaked and they have to air-dry before we
6 can properly package them, we have an apparatus in this room
7 here and special -- it has special ventilation and
8 everything to accommodate that. These, here, are the
9 lockers, this area here; and then this is just a work area.
10 Q. What kind of things were done in the work area?
11 A. Latent fingerprint processing, repackaging of the evidence,
12 and stuff like that.
13 Q. Okay. And then I guess just above where it says work area,
14 it looks like there's, maybe, a hallway or something?
15 A. Yeah. This -- this hallway in '93 just went to storage.
16 What we have down that hallway, now, is a shooting lab.
17 Q. Okay. Can you tell the jury what the shooting lab is for.
18 A. The shooting lab is -- is a specially designed room. It's
19 noise proof and concrete. We have special bullet traps and
20 stuff in there, and all the guns that come into property
21 that are evidence, we shoot in there.
22 Q. And why would you do that?
23 A. To gather the bullets and spent casings for comparison
24 purposes.
25 Q. Okay. And then one more question about the diagram, you

said that's the locker area.
A. Yes.
Q. There were evidence lockers.
A. Correct.
Q. Were there also lockers -- private lockers for the employees?
A. Yes. There's some private -- some lockers right here for investigators to put their personal stuff, like, their extra evidence tape and stuff like that.
Q. Okay. And it looks like there's two different doors to the lab?
A. Right.
Q. Are both of those secured?
A. Yes.
Q. Thank you. This is 106; right?
A. (Nods head.)

MR. PENNER: Your Honor, the State would move to admit Exhibit 106 for illustrative purposes.

THE COURT: Any objection?

MS. HIGH: No, Your Honor.

THE COURT: All right. It will be admitted for illustrative purposes only.

(Plaintiff's Exhibit No. 106 was admitted for illustrative purposes only.)

(The witness returned to the stand.)

1 Q. (By Mr. Penner) And so, Mr. Wilkins, with the exception of
2 the shooting area, it's the same -- the lab is the same in
3 '93 as it is today; is that correct?
4 A. That's correct.
5 Q. Okay. Why is it important that only the forensics team have
6 access to the forensics lab?
7 A. Just to promote safety and integrity of the evidence that we
8 collect.
9 Q. Okay. Why not let detectives also have access to it?
10 A. The detectives don't have the same mind set that we have
11 when it comes to the evidence. We -- I guess we get very
12 protective of our evidence; and we just don't want people,
13 carte blanche, having access to it.
14 Q. Okay. I'd like to talk about what items go into the drying
15 room. You mentioned things that are wet from rain or
16 blood-soaked?
17 A. Correct.
18 Q. Can you describe to the jury -- you said there's an
19 apparatus in there. Can you be more specific in terms of if
20 an officer collects, maybe, I don't know, a shirt that's
21 got -- it's blood-soaked -- it's still wet. What's the
22 officer going to do?
23 A. We have three racks in there that are made out of PV --
24 two -- two-and-a-half-inch PVC pipe, and they're built so
25 that there's a work table level and then a hanging level;

1 and so when we have items that we need to dry, we have
2 butcher paper that we lay out; and we put the wet item on
3 that butcher paper either on the -- on the work table part
4 of it or on the hanging part of it and let the items air-dry
5 before we package it.
6 Q. Okay. And how long does it take for an item to dry?
7 A. It depends on how big it is and how much humidity is in the
8 air.
9 Q. Okay. If you were to collect a piece of evidence at the
10 crime scene that just had some blood drops on it that were
11 dry by the time you got back to the building, is that also
12 going to go in the drying room?
13 A. No.
14 Q. Okay. Why not?
15 A. The drying room is set up for the really wet stuff; and if
16 it's dry already, there's no reason why you can't go ahead
17 and package it correctly and have it ready to go into
18 property.
19 Q. And what's the danger of packaging something that's still
20 wet with blood?
21 A. Specifically, with blood or -- or with water -- you know,
22 most of our clothing has some organic matter; and then if
23 it's got blood, there's enzymes in the blood that will
24 continue to, what we call, putrefy. It will degrade, and it
25 will mold. It will start eating the object that it's on, so

1 the purpose of air-drying it is to stop that from happening.
2 Q. Okay. And the lockers, how many lockers are there, not the
3 personal lockers but the evidence lockers?
4 A. The evidence lockers, there are eight -- I'm sorry. I have
5 to visualize it. There are twelve that face the drying room
6 and two on each side, larger ones on each side.
7 Q. I was going to ask, how big are these lockers?
8 A. Most of them are, like, a four-by-four-by-four square area
9 like a cabinet. Some of them are two by four, and then the
10 ones on the ends are, like, a broom closet sized, so we can
11 put -- put tall items in them.
12 Q. Okay. So can you give the jury some examples of times when
13 evidence would go to the lab rather than directly to the
14 property room?
15 A. It could be that it's after hours, and property is not open.
16 They're only open Monday through Friday during business
17 hours; so, you know, anytime after that, we would need to
18 put it in a locker. It could be that -- at the crime scene,
19 we gathered several items together into one package just for
20 transport purposes; and now we want to be able to go back
21 later and repackage them as individual items. It could be
22 that there is some further processing that needs to be done
23 on the evidence, say, some latent print processing, some
24 examination of the blood spatter on the object; so we're not
25 going to give it to property until our examination is done.

1 Q. Okay. And who does the examination?
2 A. The investigators.
3 Q. So the ident or forensics investigators?
4 A. Forensics investigators.
5 Q. Okay. And where is that done?
6 A. It can either be done in this work area, or we have another
7 lab down the hall that we have examination tables and
8 special lighting.
9 Q. And what would be done down the hall?
10 A. We would lay the items out, and that's where we would
11 specifically be looking at the blood spatter droplets on
12 the -- on the object. We may be looking for other body
13 fluids to collect as evidence.
14 Q. What about fingerprinting, where was that generally done?
15 A. That's all done in this work area here.
16 Q. Okay. I'd like to, then, go back to 1993. What was the
17 protocol in terms of the lockers, how those were supposed to
18 be used? I mean, where did the key come from? Could you
19 put more than one case per locker? How was that supposed to
20 work?
21 A. The -- each lock had a single key that -- like I said, it
22 was the integrity of the person putting the evidence in. If
23 they lost the key for whatever reason, we would -- we would
24 cut the lock and start over. If they had a lot of small
25 items from multiple cases, they could put multiple cases in

1 a locker. Our technicians who were doing the marijuana or a
2 lot of the latent print processing would do that.
3 Q. How would they keep the items separate?
4 A. They're all marked with an -- with a case number and,
5 usually, evidence number.
6 Q. Okay. And in terms of the key to the lock, is it like when
7 you go to the gym or the Y, it's already in the locker?
8 A. Correct.
9 Q. Okay. Who keeps the key after something goes in the locker?
10 A. Whoever put the evidence in there keeps the key.
11 Q. All right.
12 A. Some keep the key in their personal locker which they have a
13 lock on. Others, like myself, if I do that, I put the key
14 on my County key chain and keep it with me.
15 Q. Okay. Why not just keep the key in the lock if you know
16 you're going to come back later?
17 A. Someone would open it and think it was ready to be used.
18 Q. Okay. And have you had a chance to take a look at this
19 particular case, the evidence that -- not the evidence,
20 itself, but the documentation of the evidence, how it was
21 handled in this case?
22 A. That's correct.
23 Q. Okay. And I'm going to hand you what's been admitted as
24 Exhibit 82, if you could take a moment. Have you seen that
25 document before?

1 A. Yes.
2 Q. All right. And what is that document?
3 A. This is a -- this document consists of two forms. We call
4 them our property sheets or property reports. These are
5 filled out as the evidence is collected. This form is used
6 to document the evidence, its evidence number, how many
7 there are. It also has an area down at the bottom where the
8 collecting officer puts their name and demographics.
9 There's also an area for descriptions and comments and if
10 there were specific things relating -- related to one --
11 some of the items -- say it needed to be put in the freezer,
12 or it was processed for fingerprints or sent to the State
13 Crime Lab or something like that, documentation would be
14 noted in that area on the bottom, and then the rest of it is
15 all property room documentation of them getting the items.
16 MR. PENNER: All right. Your Honor, I
17 don't believe it's been published yet, so I'm going to move
18 to publish Exhibit 82.
19 THE COURT: Any objections?
20 MS. HIGH: No, Your Honor.
21 THE COURT: All right. 82 will be
22 published.
23 Q. (By Mr. Penner) All right. Mr. Wilkins, I'm going to ask
24 you to step down from the stand and come over to the screen
25 and just kind of explain to the jury a little bit about the

1 sheet.
2 (The witness left the stand.)
3 MR. PENNER: Do you have a pointer?
4 Q. (By Mr. Penner) So if you could step off to the side there,
5 and I'm going to ask you to just indicate where a few of
6 these sections are. So -- and is that in focus?
7 A. Hmm, it probably could be a little bit more clear.
8 Q. All right. Okay. So I guess let's just kind of start at
9 the top. What does it say at the very top? What's the
10 title of it?
11 A. At the very top, you have information, like in this case, a
12 death investigation; and it's a Pierce County Sheriff's
13 Office investigation. There's a date, a case number
14 information, and then information regarding the case,
15 whether it's a victim's address, suspect's address,
16 whatever. That is what -- in this case, it says, victim's
17 residence. Her name and address was put in -- in the
18 report.
19 Q. Okay. And then the main part of it is the item numbers and
20 descriptions; right?
21 A. Correct. As items were marked and documented at the crime
22 scene and then we collected, these case -- these item
23 numbers should correlate with those items that were
24 documented at the scene. A description of that item is --
25 is put across here and then the quantity of that item in

1 this -- in this middle section here.
2 Q. So who fills out the description? Is it -- is it the
3 forensics officer or the property room officer?
4 A. It's whoever is collecting evidence. The property officers
5 very rarely, if ever, will fill out this part; and in this
6 case, it appears that it was Skip Johnson who filled this
7 out and put his name at the bottom.
8 Q. Okay. And I was going to ask, how do you know it was Skip
9 Johnson who did it?
10 A. Well, he filled it out; and working with Skip for several
11 years, I recognize his handwriting. Skip's and Ted's
12 handwriting were different and distinctive between each
13 other --
14 Q. Okay.
15 A. -- so I recognize this as being Skip's, and this is pretty
16 customary with him. He would print and sign his name on the
17 bottom.
18 Q. Okay. And is there a date at the top of the sheet?
19 A. Yes. It says February 7, 1993.
20 Q. But we've also got a location for a date towards the bottom
21 there on the far right. What's the difference? Why have
22 two different date areas?
23 A. Well, it appears this one was scratched out because -- then
24 what you have, here, in this description and comment area is
25 some notation; and this notation, I can tell, is all from

1 Ted Schlosser, and that's his initials and his unit number
2 at the time. He puts a note here, so this is specifically
3 for property, that Items 1, 2, 3, 4, and 5 need to be put
4 into the freezer. That's a note for them, and then it
5 continues -- well, yeah, it continues all the way over here.
6 All these items, Ted is telling property he wants these
7 frozen.
8 Q. Okay. So --
9 A. And then -- and then the date that he actually put that note
10 is on there.
11 Q. So there's a difference between the date that it's filled
12 out at the top and the date it's submitted to property at
13 the bottom; right?
14 A. That's correct.
15 Q. Okay. And also at the bottom, we've got some additional
16 fields there. What's that, the very bottom part?
17 A. This is the section that property fills out from the person
18 who is accepting the evidence from whoever is submitting it
19 to property; so they put their number, the date, and who it
20 was at the time.
21 Q. Okay. And what does the "W" mean?
22 A. You know, I don't remember who "W" was.
23 Q. Okay. Property -- it says property received from or method.
24 A. Method -- oh, "W" means window.
25 Q. Okay.

1 A. The window is depicted on the diagram.
2 Q. Okay. And that's on 106. That's this window right here?
3 A. That's correct.
4 Q. Okay.
5 A. That's correct. And this is -- Koontz was one of the
6 property officers that worked in property at the time.
7 Q. Okay. What's the date it was put in at the window?
8 A. This says April 12, 1993.
9 Q. And that corresponds to what Mr. Schlosser wrote?
10 A. That corresponds with the date that's here, yes.
11 Q. Okay. So is it reasonable to conclude, then, that it looks
12 like Mr. Johnson collected -- numbered the evidence, but
13 Mr. Schlosser is the one who gave it to the window?
14 A. That's correct.
15 Q. Was that normal? Did that happen?
16 A. It -- it did happen a lot of times, depending on maybe
17 further processing that the evidence needed; or someone else
18 was already on their way to the County-City Building to put
19 evidence in. It was -- a lot of times, one person collected
20 it at the scene and another person brought it to the
21 building.
22 Q. Okay. This time I'm going to go to Page 2 of the exhibit;
23 and under the additional descriptions or comments, what did
24 Mr. Schlosser write there?
25 A. In this, he says -- I believe that's a 5 through 16, 17, 20,

1 and 22 processed for latent fingerprints with negative
2 results; and he initialed and put his number there. He also
3 put the date of 04/12/93.
4 Q. Okay. So, again, the date submitted is 04/12?
5 A. Correct.
6 Q. Okay. So thank you. You can go ahead and have a seat
7 again.
8 (The witness returned to the stand.)
9 Q. (By Mr. Penner) Ideally, you don't want property sitting in
10 a lab for two months, is that fair to say?
11 A. That is correct.
12 Q. Okay. But if it does in that two months, who has access to
13 the lab?
14 A. The forensic investigation staff.
15 Q. And who do they work for?
16 A. They work for the Sheriff's Department.
17 Q. Okay. So the entire time, it's in law enforcement custody?
18 A. Correct.
19 Q. All right. Have you since instituted any changes recently
20 to help document where things are within the forensics lab?
21 A. The forensic investigators and technicians that I have now
22 are required to put the date, time, and location of the
23 locker that they put evidence into in their notes and to
24 record that into their final report.
25 Q. Okay. Is there actually a paper log that they fill in in

1 the lab?
2 A. No.
3 Q. Okay. Just put it in your report?
4 A. Correct.
5 Q. Okay. Back in '93, were people putting it in their report?
6 A. No.
7 MR. PENNER: Okay. All right. Thank you
8 very much. Thank you, Your Honor.
9 THE COURT: Cross-examination, Counsel.
10 CROSS-EXAMINATION
11 BY MS. HIGH:
12 Q. So it was this Defense investigation that was the catalyst
13 for the new procedures of documenting where items are?
14 A. Yes.
15 Q. Okay. So let's go back here. It looks to me that you
16 started in '92, and you had a period of time where you were
17 a forensic officer out in the field processing crime scenes?
18 A. Correct.
19 Q. And -- but then you moved to the forensic, like, supervisor?
20 A. I was -- I was an investigator until 1998. In 1998, I
21 became the lead investigator; and in 2005, I became the
22 manager.
23 Q. Okay. And so, you know, you have been at the lab where
24 you've seen advances in technology?
25 A. Correct.

1 Q. And I think you said that initially when you were collecting
2 blood evidence, you were just thinking serology or just
3 blood-typing?
4 A. That's -- that's all we had access to at that time, yes.
5 Q. Right. So in 1993, you're not handling crime scenes or
6 evidence collected with the mind set you have today about
7 DNA?
8 A. That's correct.
9 Q. Do you still have -- I'm not sure if you have it up there,
10 the Exhibit 82 -- oh, I don't think you have anything up
11 there. Okay. And I think you said that the lab is still
12 pretty much as it was in 1987?
13 A. This area, yes.
14 Q. Sure. And like you said, you've got a drying room, and
15 there's a series of racks?
16 A. Correct.
17 Q. And you can have more than one case on those racks at a
18 time?
19 A. They wouldn't share the same rack. They would be in the
20 same room, but they wouldn't share the same rack.
21 Q. Right. So I think when I was in there last June, you had
22 two racks, and there was a case on one of the -- they almost
23 looked like bookshelves, you know -- one of the racks, and
24 then another one also had a case in there?
25 A. Correct.

1 Q. Okay. And that would be what you would hope, that you
2 wouldn't have multiple cases on one rack?
3 A. You would hope, yeah.
4 Q. You would hope. And, as well, you have the lockers; and,
5 like you said, going back to 1987, these nice, mauve-colored
6 lockers that seem to be made out of, like, Melamine, or --
7 A. They were Formica, correct.
8 Q. Okay. Formica. And ideally, after everyone finished using
9 it, they wash it out?
10 A. Ideally.
11 Q. And that doesn't always happen?
12 A. No.
13 Q. As a matter of fact when we were there in September, it was
14 apparent that perhaps one still had some debris in it?
15 A. Correct.
16 Q. Okay. You know, one of the other things that I'd asked you
17 about was if you had a manual going back to 1993 or, like,
18 an operating -- your policies and procedures manual?
19 A. Correct.
20 Q. And you couldn't locate one?
21 A. We had a very cursive one back in those days; but, you know,
22 we're all digital and computers now, so --
23 Q. Right.
24 A. -- we couldn't find it.
25 Q. Right. And I think the most recent one, you were able to

1 locate, dates to September 2004?
2 A. When that one was installed, yes.
3 Q. Okay. And I have, here, what's been marked for
4 identification as Defendant's Exhibit 238. Now, in some of
5 the things that are in there, I think you said were best
6 practices, whether it was 1980, 1990, 2000; correct?
7 A. Pretty much.
8 Q. Yeah. I mean, one of the -- kind of the golden rules is you
9 want to make sure that you get property collected at a scene
10 into the property room as soon as possible?
11 A. Correct.
12 Q. And your manual, at least the 2004 which is the oldest one
13 we can locate, said that that should take place basically
14 within a day?
15 A. If possible.
16 Q. Right. And understand that you said if something needed to
17 be on a drying rack, it's going to need to wait until it's
18 dry?
19 A. Right, and that can take several days.
20 Q. Right. You know, back in the day when they were collecting
21 a lot of blood evidence, they would use that method of a
22 string --
23 A. Correct.
24 Q. -- and that would not take several days?
25 A. No.

1 Q. That would take minutes?
2 A. Correct.
3 Q. Okay. And I think you also testified that, you know, the
4 best practice, or the usual practice, would be to fill out
5 your property sheet right at the scene?
6 A. Correct.
7 Q. And you do that -- like you said, you keep a running
8 inventory of what you've collected?
9 A. Yes.
10 Q. You know, one of the other practices, and I don't think you
11 were asked about it, would have to do with preparing a
12 photographic log?
13 A. Correct.
14 Q. And that, as well, would be one of the best practices?
15 A. In -- in that time frame when we were still using film
16 photography, that was the practice; correct.
17 Q. You know, you raise a good point. I mean, this was before
18 we had the date and time stamp?
19 A. Correct.
20 Q. And that's why the photo log was so important?
21 A. Correct.
22 Q. Okay. And, you know, one of the other things, that often
23 with the photography, there would be the little placards
24 with the numbers 1, 2, 3, 4, and 5, that kind of thing?
25 A. We have those now.

1 Q. I know, but you don't put them inside the evidence bags?
2 A. No.
3 Q. Okay. You know, and one of the things today, as well, is
4 you're going to have evidence that's been sealed with --
5 sealed with evidence tape?
6 A. Correct.
7 Q. And that is very, very standard?
8 A. I'm sorry?
9 Q. And that would be very standard?
10 A. Yes.
11 Q. Okay. Back in '93, in fact, there was -- I don't know
12 whether I want to say a policy, but there was, actually,
13 some discouragement to actually sealing evidence that was
14 collected, the packages with that kind of tape?
15 A. That's correct.
16 Q. And the reason it was discouraged is that there was an
17 individual -- I think you identified him as Ray Stock, and I
18 don't know whether he's an auditor or a manager of the
19 property room, wanted to be able to go in and access
20 property bags or storage bags?
21 A. He wanted to be able to audit the property sheet in
22 regards -- excuse me -- in regards to the evidence to make
23 sure that it all lined up.
24 Q. Right. And when you say audit, I mean, he would actually
25 open them and check to see if what was in, say, this bag

1 matched what was on the sheet?
2 A. That's correct.
3 Q. And he would not document, or whoever he had working for
4 him, in any way, shape, or form that they had gone into that
5 item, when they opened it, what else they were looking at?
6 A. That's correct.
7 Q. Okay. That's not something you'd put up with today?
8 A. No.
9 Q. No. Okay. You know, and, as well, today, at least under
10 your leadership and even going back to this 2004 manual,
11 having items unaccounted for, for 60-plus days, would not be
12 acceptable?
13 A. That's correct.
14 Q. Okay. And I understand that people get busy; but still,
15 like you said, you take a lot of pride in maintaining the
16 integrity of the items?
17 A. Yes.
18 Q. I'm going to hand you, again, Plaintiff's Exhibit 82 and
19 that is the inventory sheet, that I think you identified the
20 handwriting as perhaps being Mr. Johnson's?
21 A. That's correct.
22 Q. At least for the identification of what the items were?
23 A. Yes.
24 Q. But there's nothing on this that tells us who, actually, was
25 the person that drove this to your secure lab area?

1 A. No, there's not.
2 Q. Okay. And there's nothing on any of this documentation that
3 tells us that it actually made it to the secure lab area on
4 February 7th?
5 A. That's correct.
6 Q. Okay. I mean, what we first get is some notation by
7 Mr. Schlosser on April 12, 1993?
8 A. Correct.
9 Q. Okay. Like you said, so I know when Mr. Penner asked you,
10 well, it's still in a secure area for these two months, in
11 fact, we don't have anything that shows it was, actually,
12 even there?
13 A. That's correct.
14 Q. Okay. And if I could have you turn to the second page.
15 A. (Witness complies.)
16 Q. And this was just my reading of the additional description
17 or comments where it has the number sign. I thought that
18 meant, in that little apostrophe, just Nos. 16, 17, 20, and
19 22. I heard you read, you thought it maybe said 5 to 16?
20 A. Well, that's kind of the way -- oh, okay. I see what you're
21 saying. It kind of -- hold on a second; you may be correct.
22 Looking back at what No. 5 is, there would be no reason to
23 fingerprint that.
24 Q. Okay.
25 A. So you -- that -- that possibly could be exactly what you're

1 talking about, so it could be --
2 Q. Right.
3 A. -- the pound sign, apostrophe S, 16, 17, 20, and 22,
4 correct.
5 Q. Okay. And that was my thought here. There were some of
6 those there that would seem unlikely to be fingerprinted?
7 A. Right.
8 Q. Okay. You know, when fingerprints would be developed at a
9 scene, and you're actually able to get latents, there's also
10 a process to get that information back into the case file or
11 to the detectives; right?
12 A. Yes.
13 Q. Okay. And, in fact, I mean, you work major crime scenes?
14 A. Yes.
15 Q. I mean, I know you work a number of homicides.
16 A. Yes.
17 Q. And if you were able to raise latents, especially in 1993,
18 that's the kind of information that would be collected?
19 A. Yes.
20 Q. Documented on one of those little cards?
21 A. The -- the latent print card would be documented, correct.
22 Q. And then you would start comparing those to names that are
23 popping up in the course of your investigation?
24 A. That, and they would, have, also -- if there were any --
25 Q. Mm-hmm.

1 A. -- they would have been submitted to AFIS for searching.
2 Q. Right. Right. Exactly. So, you'd also put it in a
3 database?
4 A. Correct.
5 Q. Okay. And if, in fact, there were some that were recovered,
6 say, a case like this, would it have been notated on any of
7 these property sheets?
8 A. No. At the -- at the time that -- and until just fairly
9 recent history, latent prints and photographs were not
10 treated the same as evidence from the crime scene.
11 Q. Okay.
12 A. They were packaged in a -- what we call a jacket or small
13 envelope with the same documentation regarding the case, by
14 case number; and we -- and they were stored in the Forensic
15 Unit.
16 Q. Okay. And so, I mean, you still, though, had some method to
17 try and keep the photographs from this case separate from --
18 A. Oh, absolutely.
19 Q. -- another case? And so hopefully, you can, at some point,
20 get them where they need to be in terms of the detective or
21 into the property or along those lines?
22 A. Repeat that for me.
23 Q. You know, the photographs, you said we weren't treating them
24 the same as other kinds of physical evidence collected?
25 A. No. They were -- they were treated like a record instead of

1 evidence --
2 Q. Okay.
3 A. -- is the best way to put it that way.
4 Q. Okay. But eventually, hopefully, those photos would get to
5 whoever is investigating that particular event?
6 A. They -- yeah, the detectives would come to us and say, yeah,
7 I need a copy of the photos for this case or whatever; and
8 we would print them out a copy.
9 Q. Okay. You know, and it's, I think, fair to say that even in
10 1993, having a two-month/60-plus-day delay in collection to
11 getting an item to property would be something that would
12 concern you?
13 A. Yes.
14 Q. And that's because, as I know, you're concerned about
15 maintaining what's called the chain of custody?
16 A. Correct.
17 Q. And the chain of custody is really kind of the first and the
18 continuing step in having some integrity associated with the
19 items collected?
20 A. Yes.
21 Q. Okay. And in this case, going from 1993, we don't have any
22 documentation like you've implemented now of, hey, I put
23 this and I put this in locker 16, this statement, this time;
24 right?
25 A. Correct.

1 Q. You know, and I think that brings up a point I'm interested
2 in. You said that whoever puts the items in the locker gets
3 the key?
4 A. Correct.
5 Q. And they're supposed to hold onto that key?
6 A. Correct.
7 Q. The only other person that would have the key would be
8 today, I guess, you as the supervisor?
9 A. I don't even have a copy of it.
10 Q. Okay. So that key is pretty special, and it's supposed to
11 stay with the person that put it in there?
12 A. That's correct.
13 Q. And if someone had to hand off that key, you would expect
14 that, at least, to be documented?
15 A. You would hope so, but that wasn't the practice.
16 Q. Okay. But -- and with that, I mean, so the keys are
17 supposed to be, you know, kind of the keeper of the keys;
18 and if someone is just handing it off, again, that's not a
19 practice that you would condone?
20 A. No.
21 Q. And that's not a practice that you routinely engaged in even
22 in '92 or '93?
23 A. That's correct.
24 Q. Okay. I'm just going to check my notes. Oh, and today, you
25 would expect, if one of your employees had an item that has

1 some kind of 64-day window of no documentation, that they'd
2 write a report at the time they would take it to the
3 property room; so, like, on this one here, April 12th, if
4 someone realized, oh, shoot, this thing has been sitting
5 around, you would expect them to document that?
6 A. That's correct. Today, documentation is a whole lot more
7 extensive than it was in '93. This was -- this was it.
8 Q. Right.
9 A. And now, it's all got to be documented in their notes and
10 their reports.
11 Q. Right. And, like you said, this was it; and this does not
12 even tell us when it actually got to your secure set of
13 rooms in the lab?
14 A. That's correct.
15 Q. The only thing we know, really, is: It was collected on one
16 day, the 7th of February, and somehow made it into a
17 property room on April 12, 1993?
18 A. Correct.
19 Q. Okay. We don't even know if it was in somebody's van,
20 somebody's desk drawer; we don't know?
21 A. Correct.
22 MS. HIGH: Thank you.
23 THE COURT: Redirect, Counsel?
24 MR. PENNER: Thank you.
25 / / /

1 REDIRECT EXAMINATION
2 BY MR. PENNER:
3 Q. When you say we don't know if it was just in someone's desk
4 drawer, you're saying just from that exhibit, we can't tell
5 that?
6 A. Correct.
7 Q. Okay. But you guys had routine practices back then;
8 correct?
9 A. Yes.
10 Q. Okay. And did you ever work with Skip Johnson?
11 A. Oh, yes.
12 Q. And did you ever work with Ted Schlosser?
13 A. Yes.
14 Q. All right. And did they appear to follow the routine
15 practices of the division?
16 A. Yes.
17 Q. Okay. Counsel used the phrase "the items being unaccounted
18 for, for 60 days." If the items are in the property -- or
19 the forensics lab, would you consider that to be unaccounted
20 for?
21 A. Not really. I mean, if they're locked up and that's where
22 they're at and they're somewhere and at least with some
23 measure of safety.
24 Q. Okay. They're not just sitting in somebody's trunk or still
25 at the crime scene; right?

1 A. Correct.
2 Q. Okay. And, again, your routine practice for all of you guys
3 was to collect it from the crime scene and take it to the
4 lab --
5 A. Correct.
6 Q. -- until it can be taken across the hall?
7 A. That's correct.
8 Q. All right. How busy were things in '93 for you guys?
9 A. '93 was an extremely busy year for us. We -- of course, we
10 still had Lakewood as our jurisdiction; and with that said,
11 we had lots and lots of gang activity going on in '92, '93,
12 '94. We were working multiple gang-related homicides during
13 that time frame.
14 Q. Okay. And you said that the practice was sometimes people
15 would hand the key off to somebody else on the team?
16 A. That is correct. What was real common, you had a specific
17 investigator that was on call; and it's his responsibility
18 to be the first responder at whatever is going on.
19 Q. Okay.
20 A. And because of that, a lot of times the second, third,
21 fourth, whoever would show up, would be responsible to take
22 the evidence back to the building so that that investigator
23 was ready for the next call.
24 Q. Okay. And that wasn't documented? That was just the
25 practice?

1 A. That was just the practice, correct.
2 Q. And you guys were all on the same team?
3 A. Correct.
4 Q. In fact, it's the forensics team; you don't even let the
5 detectives in?
6 A. That's right.
7 MR. PENNER: All right. Thank you.
8 Nothing else.
9 THE COURT: Anything from that, Counsel?
10 MS. HIGH: Yes. Thank you.
11 RECROSS-EXAMINATION
12 BY MS. HIGH:
13 Q. Now, you said you had some routine practices?
14 A. Yes.
15 Q. But it would not be a routine practice to leave items, even
16 in the property room, for two months?
17 A. In the property room?
18 Q. I mean, excuse me, in the lab room for two months?
19 A. It shouldn't be.
20 Q. Right. I mean, that is not what you would consider a habit
21 that you would encourage even back in 1993?
22 A. That's correct.
23 Q. And, like you said, there's nothing on there that really
24 actually accounts for where the items were?
25 A. That's correct.

1 Q. And there's nothing that actually even accounts for who
2 brought the items in and when?
3 A. That's correct.
4 Q. And I think you just said it might not be unusual for, say,
5 Mr. Johnson to collect items; but then Mr. Schlosser would
6 be the one tasked with eventually getting them into the lab;
7 right?
8 A. That's correct.
9 Q. And that's because, I think you said, you know, working as a
10 team, we don't know who actually brought them to your -- to
11 the lab or when?
12 A. That's correct.
13 Q. You know, and finally, I know that you've worked with
14 Mr. Johnson and Mr. Schlosser; and so you were aware that
15 Mr. Schlosser had some performance deficits?
16 A. I'm not sure if that -- during that time frame that I was
17 aware of anything; but later on, after I was in a position
18 of supervision, yes --
19 Q. Okay.
20 A. -- I was made aware.
21 Q. Okay. And I think you'd agree with me that being busy is
22 not an excuse for not following the protocols that are in
23 place in preserving the integrity of the evidence?
24 A. That's correct.
25 MS. HIGH: Thank you.

1 THE COURT: Anything else, Counsel?
2 MR. PENNER: No, Your Honor. Thank you.
3 THE COURT: May the witness be excused,
4 Counsel?
5 MR. PENNER: Yes, Your Honor.
6 MS. HIGH: Yes.
7 THE COURT: All right. Thank you very
8 much, sir. If you could just go ahead and set that on the
9 end of the bench.
10 THE WITNESS: Okay.
11 (The witness was excused.)
12 THE COURT: All right. It's eleven
13 o'clock. We'll go ahead and give the jury their morning
14 recess, and I believe you have one more witness scheduled
15 for this morning?
16 MR. PENNER: Yes, Your Honor.
17 MS. HIGH: I think so.
18 THE COURT: All right. All right. The
19 usual instructions: No discussion, no investigation,
20 notepads face down on your chairs; remain in the jury room
21 until Ms. Shipman comes to get you.
22 (The jury was not present.)
23 THE COURT: All right. Court will be at
24 recess.
25 MR. PENNER: Thank you, Your Honor.

(A recess was taken.)

(The defendant was present.)

(The jury was not present.)

THE COURT: All right. Are we ready for the next witness?

MR. PENNER: The State's ready, yes.

MS. HIGH: Yes, Your Honor.

(The jury was present.)

THE COURT: You may be seated. All right. Counsel, you may call your next witness.

MR. PENNER: Thank you, Your Honor. The State would call Centura Grey.

THE COURT: Watch the ramp.

CENTURA GREY, witness herein, having been sworn under oath, was examined and testified as follows:

THE COURT: If you'll have a seat. There's water and Kleenex to your right. You can adjust the mic and the chair; and when answering a question, please answer "yes" or "no"; don't nod or shake your head or go "uh-huh." The court reporter needs to understand what you're saying. All right?

All right. Counsel?

/ / /

/ / /

1 DIRECT EXAMINATION
2 BY MR. PENNER:
3 Q. Could you state your name for the record, and spell it for
4 the court reporter.
5 A. Sure. My name is Centura Grey, C-E-N-T-U-R-A, last name
6 G-R-E-Y.
7 Q. And how are you employed?
8 A. I work for the Pierce County Sheriff's Department in the
9 property room.
10 Q. Do you have a title?
11 A. Yeah. I'm the lead property officer.
12 Q. How long have you worked in the Pierce County Sheriff's
13 property room?
14 A. I've worked there eight years now.
15 Q. Okay. And how long have you been the lead property officer?
16 A. Almost four years.
17 Q. When you started, what was the numbering system that was
18 used?
19 A. When I started, it's -- it's the current system with the
20 master case numbers.
21 Q. Okay. Can you explain to the jury what the master case
22 number is, and maybe part of the explanation could be how it
23 used to be done.
24 A. Okay. So, the way we do it now, the officer that goes out
25 on scene, the first piece of property they log in, is Master

1 Case No. 1, and it goes chronologically from there; so each
2 item that's entered will get a new number, master case
3 number.
4 Q. Let me interrupt you. When you say "log in," you mean log
5 in with the property room; right?
6 A. Or even if it's something that's left on scene. Any piece
7 of property they log into their system that's left on the
8 scene, if it's returned to an owner, if it's a piece of
9 property, it's given a number.
10 Q. Okay. And they can do that with computers now?
11 A. Yes.
12 Q. Okay. So, I'm sorry. I interrupted.
13 A. That's okay.
14 Q. Okay. So every item starts with 1, and it just goes on?
15 A. It continues, yeah.
16 Q. Okay. So the 346th item of evidence is going to have what
17 MC number?
18 A. MC 346.
19 Q. All right. How did it used to be done?
20 A. Before each sheet was given, the property was given a
21 letter, A, B, C, D; and then each number -- or item was
22 numbered, so it would be A-1, A-2, A-3.
23 Q. And did you bring with you today a set of old property
24 sheets for this case?
25 A. I did, yes.

1 Q. I'm going to hand you what's been marked as Exhibit 107 and
2 ask you, are these the property sheets for this case?
3 A. Yes.
4 Q. All right. And might it help you to testify if you could
5 refer to these?
6 A. Yes, it would.
7 Q. All right. How was the designation of A, B, C -- how was
8 that made back in the day?
9 A. It was -- just the first page was A, and the second page was
10 B.
11 Q. Okay. And what different types of agencies could submit
12 property on the same type of crime or --
13 A. We --
14 Q. -- on the same case?
15 A. We receive property from the Pierce County Sheriff's
16 Department. We receive it, also, from Tacoma because we
17 hold it for them and our contract agencies. We receive
18 property from the Pierce County Medical Examiners and
19 occasionally from the fire department.
20 Q. And as those come in, each one would be given a different
21 letter; is that right?
22 A. Yes.
23 Q. Now, is part of your job ever to go back to older cases and
24 re-number everything?
25 A. Yes.

1 Q. All right.
2 A. We -- we computerized, so all the property was given a
3 master case number and a barcode.
4 Q. Okay. And they didn't have barcodes in 1993; right?
5 A. No.
6 Q. But they do now?
7 A. (Nods head.)
8 Q. I'm going to show you what's, previously, been admitted as
9 Exhibit 40 -- I'm sorry, 97 -- and I'll just ask you to,
10 first of all, just kind of take a look at it.
11 A. (Reviewing.)
12 Q. Does this look like the type of evidence that you handle?
13 A. Yes.
14 Q. All right. There are a lot of stickers on that; correct?
15 A. There are a lot of stickers on it.
16 Q. Okay. And did you put all those stickers on it?
17 A. Not all of them.
18 Q. Did you put some of the stickers on it?
19 A. Yes.
20 Q. Were any of the stickers that you put on involved in the
21 renumbering system that you did for this case?
22 A. Yes, it was.
23 Q. All right. And specifically what?
24 A. It was the label.
25 Q. Okay. And that's already been admitted, so if you could

1 hold it up and just show the jury and point to the label
2 that you put on it.
3 A. Sure. (Witness complies.)
4 Q. What information is on that label?
5 A. That label has a barcode that indicates for our scanners.
6 It has the case number, the MC number, and a description of
7 the property.
8 Q. Okay. Does it also have your name?
9 A. This particular one does, yes.
10 Q. Okay. And your -- you have a No. 2, don't you?
11 A. I do. That's my County number that's on there.
12 Q. Okay. Okay. So those were added when you went back to go
13 through the property; right?
14 A. Yes.
15 Q. Now, as part of your job, did you go back through, or did
16 you and your team go back through, every single case that's
17 ever been logged in or just specific ones when asked?
18 A. Every case that we still have property on before 2006 that
19 wasn't entered in our system, yes.
20 Q. Okay. That sounds like a big project.
21 A. It's a big project.
22 Q. All right. When you went back to some of the older cases,
23 did you find that some of that evidence hadn't been sealed
24 with evidence tape?
25 A. Yeah.

1 Q. Okay. And this case in specific, were the items sealed with
2 evidence tape when they were put into property?
3 A. Not all of them, no.
4 Q. Okay. On that exhibit that you've got right there, is there
5 some evidence tape that was put on by the property room?
6 A. Yes.
7 Q. Okay. And specifically, who put that on?
8 A. I did.
9 Q. Okay. How do you know that?
10 A. Because this is my seal, my initials, and my County number
11 with the date that I sealed it.
12 Q. Okay. And maybe explain to the jury how evidence tape works
13 and what you do to ensure that if it's tampered with, that
14 can be detected.
15 A. Evidence tape breaks apart; it peels. It doesn't clean
16 break; so if someone were to break my seal, you'd be able to
17 see it. It would be jagged. It wouldn't be smooth. It
18 won't peel off.
19 Q. Okay. There's also some blue evidence tape; correct?
20 A. Yes. Correct.
21 Q. Who does blue evidence tape?
22 A. That's done by the Washington State Crime Lab.
23 Q. Okay. Was there a particular reason -- well, let me ask it
24 a different way. What's the date that you put that red
25 evidence tape on it?

1 A. July 17, 2013.
2 Q. Was there a reason that you put evidence tape on an item of
3 evidence that was already in the property room?
4 A. Yes. If it was to be submitted to the Crime Lab, it had to
5 be sealed.
6 Q. Okay. And was this item going to be submitted to the Crime
7 Lab?
8 A. This item was taken to the Crime Lab, yes.
9 Q. Okay. So, again, what date did you put the red evidence
10 tape on there?
11 A. July -- it looks like July 17, 2013.
12 Q. Okay. Thank you. Now, is there anybody else in the
13 property room who added evidence tape to these items?
14 A. Well, Rick Kennedy also took items to the property -- or to
15 the Crime Lab.
16 Q. Okay. So I'll hand you what's been admitted as Exhibit 95,
17 and I'll ask if you see any red evidence tape from the
18 property room on that exhibit?
19 A. I see that Rick Kennedy has sealed it.
20 Q. Okay. And was that about the same time that you did the
21 sealing on these other items?
22 A. His was done April 30, 2014.
23 Q. Okay. But, again, so it can be sent out to the Crime Lab;
24 right?
25 A. Yes.

1 Q. Okay. And is there Crime Lab tape on that as well?
2 A. There is also Crime Lab tape on it, yes.
3 Q. There's also just regular, clear tape; right?
4 A. Yeah. They -- they had to seal it up with red -- with clear
5 tape, and then they put their seal over the top of the red
6 tape.
7 Q. Why would you do that?
8 A. It's a paper bag; it can separate.
9 Q. Okay. Which wouldn't indicate tampering, it would just --
10 A. Just wear.
11 Q. -- just wear. Okay. Thank you. All right. What I'd like
12 to do at this time -- there's a lot of evidence up here, but
13 I'm just going to go through item by item and if you could
14 tell me the original number, the alphabet number.
15 A. Okay.
16 Q. And then who put the crime tape on it, the red tape. Okay?
17 A. Okay.
18 Q. So this is, for the record, Exhibit 97.
19 A. Okay. Exhibit 97 is MC-30, and it's also -- E-1 --
20 Q. Okay.
21 A. -- is the item number, and I put sealed tape on it and so
22 did the Crime Lab.
23 Q. Okay. I'm now handing you Exhibit 98. Can you tell us, I
24 guess, the MC number, the alphabet number, and who initialed
25 the red tape.

1 A. So this is MC No. 36 and also E-7, and I sealed this one.
2 Q. Okay. Exhibit 99?
3 A. Thank you. MC-37, E-8, and I also sealed this one.
4 Q. Okay. Exhibit 100?
5 A. This one is MC-38, E-9, and this has sealed tape by myself
6 and Detective Sergeant Tim Kobel.
7 Q. Okay. Two separate pieces of tape?
8 A. Two separate pieces of tape.
9 Q. Just, if you could show the jury which is yours --
10 A. Yeah.
11 Q. -- and which is Detective Kobel's.
12 A. This one down here is my seal, and this one up here is
13 Detective Sergeant Kobel's.
14 Q. Okay. And once an item is sealed, is it possible to still
15 access the contents?
16 A. Yeah. You would just open it up and then re-seal it like he
17 did.
18 Q. So open it in a different place?
19 A. Yeah. Yes.
20 Q. Okay. And that's why we'll see the Crime Lab tape in a
21 different place than the evidence tape?
22 A. Correct.
23 Q. Okay. This is Item 95, the numbers for that one.
24 A. This is MC-40 and E-11, and this one is sealed by Rick
25 Kennedy.

1 Q. I'm going to hand you 101. You may need to look inside the
2 envelope.
3 A. Okay. So 101 is MC-44 and E-15, and this one was signed by
4 Rick Kennedy in our property room.
5 Q. Okay. And Exhibit 96?
6 A. 96 is MC-45 and E-16.
7 Q. Okay. So all those items were from the E sheet, and you
8 said you have your property sheets in front of you?
9 A. I do, yeah.
10 Q. Is that right?
11 A. Yeah. Yes, sir.
12 Q. Okay. Now, what I'm going to show you is Exhibit 94. Is
13 this also from the E sheet?
14 A. No, this one is not.
15 Q. Okay. What sheet is that from?
16 A. This one is from the A sheet.
17 Q. All right. And who submitted the A sheet? Who submitted
18 the property that's on the A sheet?
19 A. On the A sheet?
20 Q. Yeah.
21 A. It was picked up at the Medical Examiner's Office.
22 Q. Okay. Does it indicate what date it was picked up?
23 A. February 11, 1993.
24 Q. Okay. And that item, does it have -- in addition to the
25 case number of this case, does it also have the Medical

1 Examiner number?
2 A. It does, yeah.
3 Q. Okay. And what number is that?
4 A. I believe it's 93-0110.
5 MR. PENNER: Okay. Your Honor, the State
6 moves to admit Exhibit 94.
7 THE COURT: Any objections?
8 MS. HIGH: May I voir dire?
9 THE COURT: You may.
10 VOIR DIRE EXAMINATION
11 BY MS. HIGH:
12 Q. I think what you have in your hand there, Exhibit 94, you
13 indicate, came from the A sheet?
14 A. Mm-hmm.
15 Q. Okay. You have to answer "yes" or "no."
16 A. Oh, sorry. Yes.
17 Q. Okay. And you indicate that the method was "received."
18 Somebody went to the ME's office?
19 A. Correct.
20 Q. And there's a number there, 518?
21 A. Correct.
22 Q. You don't know who that is?
23 A. I do not. I wasn't employed in '93.
24 Q. Right. So you don't know who went there and picked it up on
25 02/11, and then you recognize the name Koontz. That's a

1 person back in the property room?
2 A. Correct.
3 Q. Okay. And their number was 520?
4 A. Correct.
5 Q. Okay. So this 518, no name; right?
6 A. Not a name that I know.
7 Q. Okay. And there's a line above that says "submitted by
8 Linda somebody"?
9 A. I can't read my copy either; it's pretty light.
10 Q. Okay. And so we don't know if that was someone who worked
11 at the ME's office or somebody else?
12 A. I didn't -- I didn't work in '93, so I don't know.
13 MS. HIGH: Okay. Your Honor, I don't
14 believe there's a foundation.
15 THE COURT: You're objecting then?
16 MS. HIGH: I am.
17 THE COURT: Counsel?
18 MR. PENNER: I think the issue has been
19 addressed already, Your Honor. I think there is sufficient
20 foundation. I'll lay a little bit more if the Court would
21 like.
22 THE COURT: Why don't you lay a little
23 more.
24 MR. PENNER: Okay.
25 / / /

1 DIRECT EXAMINATION (Cont'd.)
2 BY MR. PENNER:
3 Q. (By Mr. Penner) So let's go through the bag a little bit.
4 A. Okay.
5 Q. Does it have markings on it from the -- to indicate that
6 it's from the Medical Examiner's Office?
7 A. Yes.
8 Q. Okay. What markings are those?
9 A. It's the victim's name and their number.
10 Q. Okay. And what's the victim name listed?
11 A. Linda Robinson.
12 Q. Okay. And, again, what's the number from the property --
13 from the Medical Examiner?
14 A. 93-110.
15 Q. All right. Is the item sealed now?
16 A. It is, yes.
17 Q. Okay. Who put seals on the item?
18 A. Rick Kennedy.
19 Q. Okay. And anybody else?
20 A. Yes, the Crime Lab.
21 Q. Okay. And you have your property sheets; is that correct?
22 A. I do, yes.
23 Q. All right. Can you take a look at property sheet A.
24 A. Mm-hmm.
25 Q. Does it indicate that this item was ever checked out of the

1 property room after it was received on February 11th?
2 A. It was checked out in May of 2014 to go to the Crime Lab.
3 Q. Okay. And did it return?
4 A. It did, yes; and then it was checked out again in September
5 for the courts.
6 MR. PENNER: Okay. Your Honor, renew the
7 motion to admit.
8 THE COURT: Any further objections?
9 MS. HIGH: I just stand on my prior
10 objection.
11 THE COURT: I'll go ahead and admit
12 No. 94.
13 MR. PENNER: Thank you, Your Honor.
14 (Plaintiff's Exhibit No. 94 was admitted.)
15 Q. (By Mr. Penner) And so each of these items was sent off to
16 the Crime Lab; correct?
17 A. Correct.
18 Q. Okay. And then eventually returned in to property?
19 A. Yes.
20 MR. PENNER: Okay. Thank you. Nothing
21 else, Your Honor.
22 THE COURT: Cross-examination?
23 MS. HIGH: Yes. Thank you.
24 / / /
25 / / /

1 CROSS-EXAMINATION
2 BY MS. HIGH:
3 Q. Ms. Grey, you said several times you weren't working in the
4 property room in '93?
5 A. Correct.
6 Q. And you started in, what, 2008?
7 A. Yes.
8 Q. Okay. So the oldest evidence tape on any of those items
9 that, I think, you just talked about is, what, 2013?
10 A. I believe that's correct.
11 Q. Yeah, I've got -- at least, we went through -- the earliest
12 date, I had, was July 17, 2013?
13 A. Yes. Correct.
14 Q. Okay. And then, like, Exhibit 95, it looks like there was a
15 04/30/14 date?
16 A. Yeah, 04/30/14.
17 Q. And then -- I don't know -- on the last one you had, Exhibit
18 94, what's the date on that?
19 A. 94 is, also, 04/30/14.
20 Q. Okay. And you had to put evidence tape on those because the
21 Crime Lab would not accept it without it?
22 A. That's correct.
23 Q. Okay. And so you have to put the -- you put evidence tape
24 on it, and you put the barcode on it?
25 A. Well, the barcode is done before.

1 Q. Okay. And can you tell who put the barcode on it?
2 A. I -- I couldn't tell you who actually placed it on the
3 property. I can tell you I entered the property into the
4 computer system.
5 Q. When?
6 A. When -- it doesn't have a date, whenever we did the project
7 which was, probably, 2010, we went back and did all the
8 numbering.
9 Q. Okay. So 2010 as far back as you probably did that?
10 A. Yes.
11 Q. So otherwise, this property was just as it was when it was
12 sent to the property room in 1993?
13 A. Yes.
14 Q. Okay. Without seals?
15 A. Correct.
16 Q. Without scanner code?
17 A. Yeah, no barcode.
18 Q. Okay. And were you aware that there was an auditor back in
19 the '90s that would, actually, go through and open up items
20 of evidence to see whether or not they matched property
21 sheets?
22 A. I don't -- I don't know that, no.
23 Q. Okay. And that was before your time?
24 A. Correct.
25 Q. And that would be something that would be of concern to you?

1 A. I didn't work here in '93, so --
2 Q. Well, would it be a concern to you now if someone was going
3 through and opening up items of evidence?
4 A. Yes.
5 Q. Yeah. And that's why we now have a system of seals; right?
6 A. Correct.
7 Q. And when you open something, you have to open it in another
8 location so you can keep track of every time it's been
9 opened?
10 A. Correct.
11 Q. And, as well, you make notes on your property sheets to show
12 who checked it out and when it came back?
13 A. Correct.
14 Q. Right. And that's so you can't have somebody with no
15 documentation getting into property?
16 A. Correct.
17 Q. And that's important because maintaining the integrity of
18 the items depends upon this kind of documentation?
19 A. That's correct.
20 MS. HIGH: That's all I have.
21 THE COURT: Redirect?
22 MR. PENNER: No, Your Honor. Thank you
23 very much.
24 THE COURT: May the witness be excused?
25 MR. PENNER: Yes, Your Honor.

1 MS. HIGH: Yes.
2 THE COURT: All right. You may step down.
3 Thank you very much.
4 THE WITNESS: Thanks.
5 (The witness was excused.)
6 THE COURT: Counsel, Mr. Penner, I'll
7 charge you with getting that back over to Ms. Shipman.
8 MR. PENNER: Thank you, Your Honor.
9 THE COURT: All right. I take it, that's
10 all the witnesses we have scheduled for this morning?
11 MR. PENNER: Yes, Your Honor.
12 THE COURT: All right. At this time,
13 then, we're going to go ahead and recess somewhat early for
14 the noon hour. No discussion, no investigation, notepads on
15 chairs. Please remain in the jury room until Ms. Shipman
16 comes to get you.
17 (The jury was not present.)
18 THE COURT: And who is the witness for
19 this afternoon?
20 MR. PENNER: It will be Dr. Ramoso.
21 THE COURT: Okay.
22 MR. PENNER: And, Your Honor, just so the
23 Court's aware --
24 THE COURT: All right.
25 MR. PENNER: -- the findings of facts that

1 were entered by Commissioner -- or I'm sorry -- Judge
2 Whitener included on Page 5, No. 4.9, that the State
3 established chain of custody for Items A-1 through A-14; and
4 that was previously ruled on, so that was the -- that was
5 the reference.
6 THE COURT: Well, I admitted it.
7 MS. HIGH: You did, and I'm sorry. I was
8 focused on E, E, E, E, E.
9 MR. PENNER: Right. No. That's the thing
10 is that there's no --
11 MS. HIGH: Yeah.
12 THE COURT: All right.
13 MS. HIGH: Sorry.
14 MR. PENNER: I didn't -- I didn't just
15 make that up as I was going along.
16 MS. HIGH: Yeah.
17 THE COURT: Sometimes it's hard to keep
18 track of all the millions of threads in these cases. All
19 right. Anything else before we recess?
20 MR. PENNER: Not from the State, Your
21 Honor.
22 MS. HIGH: No.
23 THE COURT: All right. Court will be at
24 recess. We'll reconvene at 1:30.
25 (A recess was taken.)

1 (The defendant was present.)
2 (The jury was not present.)
3 THE COURT: Anything before we bring the
4 jury in?
5 MS. HIGH: No, Your Honor.
6 MR. PENNER: No. Thank you, Your Honor.
7 THE COURT: All right. Just one thing,
8 these photos are the Medical Examiner ones. They do tend to
9 be rather graphic. If you don't think you're going to be
10 able to sit through it, it might be better to leave now than
11 for the door to start banging as they're being shown --
12 MR. PENNER: Yes.
13 THE COURT: -- just by way of information.
14 All right?
15 MR. PENNER: Thank you, Your Honor.
16 THE COURT: Okay.
17 (The jury was present.)
18 THE COURT: All right. You may be seated.
19 All right. Mr. Penner, you may call your next witness.
20 MR. PENNER: Thank you. The State would
21 call Roberto Ramoso.
22 THE COURT: Watch the ramp.
23 ROBERTO RAMOSO, M.D., witness herein, having been sworn
24 under oath, was examined and
25 testified as follows:

1 THE COURT: All right. If you'll have a
2 seat.
3 THE WITNESS: Thank you.
4 THE COURT: There's water and Kleenex to
5 your right. You can adjust the mic by pulling it forward.
6 THE WITNESS: Thank you.
7 THE COURT: You're a little soft-spoken,
8 so we'll probably want you to raise your voice; and make
9 sure you speak into the mic.
10 THE WITNESS: Thank you. Okay.
11 THE COURT: And when answering, answer
12 "yes" or "no"; don't just nod or shake your head or go
13 "uh-huh." Okay?
14 THE WITNESS: Okay.
15 THE COURT: All right.
16 DIRECT EXAMINATION
17 BY MR. PENNER:
18 Q. Could you state your name for the record, please.
19 A. My name is Roberto B. Ramoso.
20 Q. Okay. Can you spell your first and last name for the court
21 reporter.
22 A. Roberto is spelled R-O-B-E-R-T-O. Ramoso is spelled
23 R-A-M-O-S-O.
24 Q. And, sir, are you currently retired?
25 A. Yes.

1 Q. All right. What are you retired from?
2 A. I'm retired from the Pierce County Medical Examiner's
3 Office.
4 Q. When did you work at the Medical Examiner's Office?
5 A. From 1992 to 2007.
6 Q. Okay. And what was your job there?
7 A. I was the Associate Medical Examiner.
8 Q. Okay. And what does an Associate Medical Examiner do?
9 A. We do medical-legal investigation of the dead.
10 Q. Okay. So do you have special education or qualifications
11 that allow you to become a Medical Examiner?
12 A. Yes.
13 Q. Could you tell the jury what that education is.
14 A. Yes. I'm a pathologist; and as a pathologist, I'm one that
15 studies functional and structural changes in the deceased.
16 I have certification in clinical pathology and anatomic
17 pathology. Anatomic pathologists are, usually, in
18 laboratories; and anatomical pathology involves the
19 performance of autopsies and studying tissues removed from
20 the operating room to see the changes to make a diagnosis,
21 and part of the anatomical pathologies is the performance of
22 autopsy.
23 Q. So are you a medical doctor?
24 A. I'm a medical doctor.
25 Q. Okay. So you had to go to college and medical school to

1 become a pathologist; is that right?
2 A. Yes.
3 Q. Okay. In addition to medical school, was there a residency
4 or something similar in pathology?
5 A. Yes. I -- I do have a residency in pathology, both clinical
6 and anatomical pathology.
7 Q. Okay. So where did you go to medical school?
8 A. I went to medical school in the Philippines.
9 Q. Okay. What year did you graduate?
10 A. 1966.
11 Q. All right. And where did you do your pathology residence?
12 A. I did my internship in Newark, New Jersey, United Hospital
13 of Newark. I did my pathology residency at Morristown
14 Memorial Hospital in Morristown, New Jersey.
15 Q. Okay. And then you said you started working for the Pierce
16 County Medical Examiner in what year?
17 A. '92 to 2007.
18 Q. Prior to working at the Pierce County Medical Examiner, had
19 you worked as a pathologist anywhere else?
20 A. Yes.
21 Q. Where?
22 A. Oh, I worked as a naval pathologist in Charleston, South
23 Carolina. I was in the U.S. Navy for a little more than
24 three years; and from the Navy, I went to Hawaii to work as
25 a hospital pathologist for about seven years, then went to

1 New Jersey as a Medical Examiner forensic pathologist for
2 about eight years before coming here to -- to Washington.
3 Q. So in 1993, you were working as a Medical Examiner here in
4 Pierce County?
5 A. Yes.
6 Q. All right. And one of your jobs was to do autopsies, I
7 think you said?
8 A. Yes.
9 Q. Could you explain to the jury what an autopsy is and what
10 the purpose of it is.
11 A. Yes. An autopsy is a postmortem examination of the body.
12 The main purpose why we do that is to determine the cause of
13 death and, if possible, the manner of death; and included in
14 that is the collection of evidence that can be used for
15 administration of justice and the like.
16 The performance of forensic pathology is, kind of,
17 different from the -- the hospital pathologies. Hospital
18 autopsies, generally, are directed to the interest of the
19 family; but forensic autopsy is more directed to the
20 administration of justice or public safety and for public
21 health; so those are the main -- the main concern in the
22 forensic autopsies.
23 Q. And you stated just now that you try to find out the -- try
24 to determine the manner of death and the cause of death?
25 A. Yes.

1 Q. Can you explain to the jury the difference between those two
2 things.
3 A. Yes. The cause of death is the injury of the deceased that
4 initiate the changes that lead to the death of the -- in the
5 victim. The manner of death is to -- determines how the
6 cause of death occurred, whether it's a suicide or a
7 homicide or accidental and -- and -- and could be natural,
8 so those are the things that we use to determine by
9 examining the body and -- and doing the investigations of
10 death.
11 Q. Now, in a situation where it's a murder investigation, how
12 is the body transported from the crime scene to the Medical
13 Examiner's Office?
14 A. We have a medical investigator that usually goes to the
15 scene and investigate the scene and examine the body; and
16 after their scene investigation, they will put the body in a
17 body bag and transport the body to the Medical Examiner's
18 Office. We have a refrigerated room there that they can put
19 the body in overnight before we can examine it --
20 Q. And so --
21 A. -- and --
22 Q. I'm sorry.
23 A. Yeah.
24 Q. And so if there's a body transported, you know, in the
25 middle of the night, when would the autopsy be conducted?

1 A. It depends. Usually, it's the following day; but it depends
2 on how busy we are, and -- and it could be a day or two
3 after, usually.
4 Q. When a body comes into the Medical Examiner's Office, what's
5 done with the clothing that the body is in?
6 A. The clothing is, usually, preserved. When you examine the
7 body, usually in a trauma case, there will be a lot of
8 blood; and it's hard to examine the -- the clothing
9 carefully in those cases, so what we do is we dry those
10 clothings and put it in a -- in a plastic bag and submit
11 that to the Pierce County evidence room; so if it needs to
12 be examined later on, it can be examined more carefully and
13 in more detail.
14 Q. All right. Once the clothing is removed from the body, are
15 there any other steps taken before the autopsy begins?
16 A. We do photographs. We photograph the -- almost everything,
17 the clothing, the body, the injuries, and the identity of
18 the person, or photographs of the face, usually, and --
19 Q. Okay.
20 A. -- and also -- I'm sorry -- and also, we collect evidence.
21 Routinely, we do collect scalp hair, pubic hair. We do
22 swabs of the mouth; if it's a female, the vagina; and also a
23 rectal swab, the rectum.
24 Q. And that's just standard procedure in every case; is that
25 right?

1 A. That's standard procedure for homicide cases.
2 Q. What about the blood that's on the body?
3 A. I'm sorry?
4 Q. What about the blood that's on the body, is that cleaned off
5 prior to the autopsy?
6 A. The blood outside the body, the bloodstaining outside the
7 body?
8 Q. Right, on the -- on the skin, on the surface of the body?
9 A. Yeah. We do take a picture of those before cleaning, and
10 then we'll clean the blood; and we'll take a picture again
11 to show the injuries better.
12 Q. Okay. And I was going to ask, why do you clean the blood
13 off before you proceed to the autopsy?
14 A. Oh, just to take -- excuse me, to take a photograph of
15 the -- the injuries that would show better --
16 Q. Okay.
17 A. -- because a lot of times if you don't do that, you can't
18 appreciate the injuries which are covered with blood.
19 Q. And does each autopsy get its own unique case number?
20 A. It will be given a case number, yes.
21 Q. Okay. All right. I'm going to show you what's been marked
22 as Exhibit 41, and I'm going to ask you if you recognize
23 this document.
24 A. (Reviewing.) Yes.
25 Q. Okay. First of all, generally speaking, what kind of

1 document is that?
2 A. This is the narrative report that I prepared for the case.
3 Q. Okay. So would we call that an autopsy report?
4 A. Autopsy report, yes.
5 Q. And it's written by -- and who's the author of it?
6 A. I did dictate this, and our secretary typed it.
7 Q. What's the case number?
8 A. The case number is 93-0110.
9 Q. All right. And who's the victim?
10 A. The victim is Linda Robinson.
11 Q. All right. Would it help to refresh your recollection if
12 you could refer to the report as you testify about the
13 autopsy?
14 A. Yes.
15 Q. Okay. Is it safe to say that when you wrote this report,
16 the autopsy was fresher in your memory than it would be 23
17 years later?
18 A. That's -- that's true.
19 Q. All right. If you're referring to your report, can you just
20 let us know that you're doing that.
21 A. Let you know what?
22 Q. Let us know that you're looking at your report.
23 A. Yes.
24 Q. Okay. What I'd like to do, then, Doctor, is go through some
25 of the injuries that you observed. One thing, did you go

1 through and number the stab wounds, Wound No. 1, Wound
2 No. 2, Wound No. 3?
3 A. I did that in my report --
4 Q. Okay.
5 A. -- just to make it simple. Otherwise, when you describe a
6 wound, you don't know where it is or what; and it will be
7 hard to understand and more complicated.
8 Q. The numbering that you assigned, does that indicate the
9 order in which the wounds were inflicted?
10 A. No.
11 Q. All right. Is there any way, generally speaking, to tell
12 what order wounds were inflicted?
13 A. Nothing in this case, no.
14 Q. All right. Nothing forensically, anyway; right?
15 A. Yes.
16 Q. Okay. And have you had a chance to review some photographs
17 from the autopsy before testifying here?
18 A. Yes.
19 Q. All right. Then what I'd like to do, Doctor, is if we could
20 start with the injuries to Ms. Robinson's torso; and I'll
21 direct your attention to Page 2 of your autopsy report under
22 the section that says "chest." Do you see that?
23 A. (Reviewing.) Yes.
24 Q. All right. I'm going to show you --
25 MR. PENNER: If I could just have a

1 moment.
2 Q. (By Mr. Penner) And actually, before I do this, I just want
3 to talk a little bit -- generally, when you look at a wound,
4 especially a stabbing or cutting wound, what types of things
5 are you looking for in terms of what is it that you
6 document? What is of interest to you as a pathologist?
7 A. We want to determine if the wound is a cutting wound,
8 primarily, since there is an injury there because a lot of
9 times, a traumatic wound will have an injury, and you will
10 want to distinguish whether it's a cutting wound or due to
11 blunt trauma or to any other trauma; so we do specifically
12 examine the wound and particularly an impact wound.
13 As you know, a sharp -- injuries from a sharp instrument,
14 a knife, for instance, will have a clean-cut edge wound.
15 There will be no bridging or -- the bridging is distorted
16 when it's due to blunt trauma because rather than cutting,
17 it crushed and split the tissue; but the tissue has
18 different elasticity and strength. Like, the blood vessels
19 and nerves will be tougher in the skin subcutaneous tissue;
20 and it won't cut. It will just bridge. So when you open
21 the wound, there will be strands of tissue between the
22 edges; and we look for that just to -- just to be sure that
23 it is a cutting wound rather than a blunt trauma wound.
24 Q. Are you familiar with the term "defensive injury" or
25 defensive wound?

1 A. Yes.
2 Q. Okay. Can you explain to the jury what that term means.
3 A. Defensive wounds are wounds sustained by the -- by the
4 victim trying to protect herself; and these are, usually,
5 injuries in the arms, maybe -- maybe legs and feet, just
6 trying to protect themselves from their being attacked; and
7 so you will see most of the injuries are in the arms and the
8 hands, and those are the so-called defensive wounds; or you
9 can say it's consistent with defensive wounds if there are
10 wounds there.
11 Q. Okay. All right. I'm going to hand you a series of
12 photographs here; and I think what I'd like to do is --
13 first of all, this is Exhibit 29. Is there a way for you to
14 tell if that's associated with this autopsy? I mean, apart
15 from the injury, itself, is there some other indicator in
16 the photograph?
17 A. Yes. We have a label here, the number of autopsy and the
18 date and the Pierce County Medical Examiner's name.
19 Q. Okay. So there's a placard with that information?
20 A. Yes.
21 Q. All right. And what's the date of the autopsy in this case?
22 A. February 8, 1993.
23 Q. Okay. And in the photograph, does it have the same incident
24 or autopsy number that you already read?
25 A. Yes.

1 MR. PENNER: All right. Your Honor, the
2 State would move to admit Exhibit 29.
3 THE COURT: Any objections?
4 MS. HIGH: No, Your Honor.
5 THE COURT: 29 will be admitted.
6 (Plaintiff's Exhibit No. 29 was admitted.)
7 MR. PENNER: All right. Your Honor, move
8 to publish.
9 THE COURT: Any objections?
10 MS. HIGH: No, Your Honor.
11 THE COURT: 29 will be published.
12 Q. (By Mr. Penner) So, Doctor, I'm going to publish this up on
13 the screen; and I'm going to ask you to describe the
14 injuries that we're seeing here; and it might actually help
15 if you could step down from the stand, and I'll give you a
16 pointer. If you need to take your report with you, just
17 bring it with you.
18 (The witness left the stand.)
19 Q. (By Mr. Penner) Okay. So if you could just step to the
20 left and then show the jury where the injuries are and
21 describe the nature of the injuries.
22 A. Yeah, just -- just to -- just to orient in this photograph,
23 the head region would be here, and you can see that's the
24 left arm; and this would be the right breast of the victim,
25 and you can see there's, kind of, superficial injuries here;

1 and these are superficial cuts, an incise wound, a very
2 superficial cut.
3 Q. What does -- what does superficial mean?
4 A. It's not deep.
5 Q. Okay. It doesn't go below the skin?
6 A. It can go below the skin a little bit; but it's, maybe, a
7 sixteenth or an eighteenth of an inch deep.
8 Q. Okay. I'm, next, going to show you what's been marked as
9 Exhibit 30. Is this also from this autopsy?
10 A. Yes.
11 MR. PENNER: Your Honor, the State moves
12 to admit Exhibit 30.
13 THE COURT: Any objection?
14 MS. HIGH: No, Your Honor.
15 MR. PENNER: Move to publish.
16 THE COURT: Any objection to publication?
17 MS. HIGH: No, Your Honor.
18 THE COURT: All right. It will be
19 admitted and published.
20 (Plaintiff's Exhibit No. 30 was admitted.)
21 Q. (By Mr. Penner) All right. Can you tell the jury what
22 injuries we see here.
23 A. Just to orient ourselves, again, in this photograph, this is
24 the -- the torso of the decedent. This is the head area
25 towards here, and that's the leg area; and you can see

there's some superficial injuries around here, maybe there, too; and those are, again, very, very, very superficial -- superficial cuts on the torso of the decedent, the -- the lower chest and upper abdomen area.

Q. Okay. I'm now going to hand you what's been marked as Exhibit 34. Is this also from the same autopsy?

A. Yes.

MR. PENNER: Your Honor, the State moves to admit Exhibit 34.

THE COURT: Any objections?

MS. HIGH: No, Your Honor.

THE COURT: 34 will be admitted.

MR. PENNER: Move to publish, Your Honor?

THE COURT: Any objections?

MS. HIGH: No, Your Honor.

THE COURT: It will be published.

(Plaintiff's Exhibit No. 34 was admitted.)

Q. (By Mr. Penner) All right. What are we looking at here in Exhibit 34?

A. This shows the right forearm of the decedent, the upper arm, and the -- the head area towards there, and you can see there's a fairly significant large cutting injury to the -- to the right forearm; and there are very small, minor injuries in the area through there, and this is a cutting wound.

1 That's what I was describing to you earlier, whether this
2 is a cutting wound or a laceration. It's more of a cutting
3 wound because of the very thin margin, and there's no
4 bridging between the -- between the cut edges here, and
5 that's consistent due to a -- to a sharp instrument.
6 Q. Now, the injury, it looks oval as opposed to a line which
7 you might expect from an incised wound. Why is it in this
8 condition at the time of the photograph?
9 A. The reason for that is the tissue can contract after the
10 injuries are formed; it can pull out. It depends on where
11 the elastic fibers are. And even the muscle can contract,
12 so it kind of just looks more open -- more open.
13 Q. Okay. Is this injury consistent with being a defensive
14 wound?
15 A. It's possible, yes, consistent.
16 Q. And why would you say that?
17 A. Because it -- it's in the arm, and maybe she was trying to
18 protect herself. It's just because of the location of the
19 wounds.
20 Q. Okay. I'm now showing you what's been marked as Exhibit 35.
21 Is this also from this autopsy?
22 A. Yes.
23 MR. PENNER: Your Honor, the State moves
24 to admit Exhibit 35.
25 THE COURT: Any objections?

1 MS. HIGH: No, Your Honor.
2 THE COURT: 35 will be admitted.
3 (Plaintiff's Exhibit No. 35 was admitted.)
4 MR. PENNER: And, Your Honor, move to
5 publish?
6 THE COURT: Any objections?
7 MS. HIGH: No, Your Honor.
8 THE COURT: 35 will be published.
9 Q. (By Mr. Penner) And, Doctor, there's a few injuries here;
10 and there's limitations, I guess, on this screen, but can
11 you show the jury the injuries that are depicted in this
12 photograph.
13 A. Yes. Just to orient, again, this is -- this is the left arm
14 of the decedent. You can see the torso there, the body, the
15 left breast; and this shows primarily this wound here, and
16 there's a very minor one here. There's a wound or two.
17 This is a stab wound, just a different shaped stab wound
18 from the -- from an incised wound. When the surface slant
19 of the wound is shorter than the depth of the wound, it's --
20 we call it a stab wound; and when the wound on the surface
21 is longer than the depth of the wound, that's what we call
22 an incise wound; but both of them are due to a sharp
23 instrument, and this is a stab wound. I believe this wound
24 went all the way back down there for about four inches, if I
25 remember it correctly, so that's a stab wound.

1 Q. And, again, the shape of it in this photograph is more of an
2 oval. Does that mean that -- what does that mean in terms
3 of the weapon that was used, anything?
4 A. It's just because of the tissue contraction; so what we
5 usually do in examining these wounds, we put them together.
6 We even tape it together and just to approximate the edges
7 and to see the -- the right size of the wound, and sometimes
8 you can tell the possibility -- if you put it together, you
9 might notice some changes at the edge of the wound, that you
10 might be able to tell whether it's a one-edged knife or a --
11 probably a double-edged knife. It's not the issue all the
12 time, but sometimes you can -- you can kind of tell
13 something, that there's some changes there, that you can
14 call it due to a one-edged knife.
15 Q. Okay. And the main injury in this photograph, you
16 indicated, was a stab wound. The other injuries, again,
17 where are those? It's hard to see in the photo, but what
18 types of injuries were those?
19 A. Those are also sharp -- sharp injuries due to some -- some
20 type of cutting from a sharp instrument.
21 Q. Okay. And are these injuries consistent with defensive
22 wounds?
23 A. It's possible.
24 Q. I'm going to show you Exhibit 36. Is this from the same
25 autopsy?

1 A. Yes.
2 MR. PENNER: Your Honor, the State moves
3 to admit Exhibit 36.
4 THE COURT: Any objections?
5 MS. HIGH: No, Your Honor.
6 THE COURT: 36 will be admitted.
7 (Plaintiff's Exhibit No. 36 was admitted.)
8 MR. PENNER: Move to publish, Your Honor?
9 THE COURT: Any objections?
10 MS. HIGH: No, Your Honor.
11 THE COURT: 36 will be published.
12 Q. (By Mr. Penner) All right. Could you describe what
13 injuries we're seeing here.
14 A. Yes. Again, this is the left hand of the -- of the decedent
15 and the thumb and the arms toward here and showing this --
16 this wound here, again consistent with -- due to a sharp
17 instrument. This -- this wound is a long surface
18 measurement and the type of the wound, so that's why we call
19 it an incised wound or a cutting wound; and then there's
20 some minor -- it looks like minor -- minor sharp injuries
21 there.
22 Q. And is this consistent with being a defensive wound?
23 A. Yes.
24 Q. I'm going to show you what's been marked as Exhibit 32. Is
25 this from the same autopsy?

1 A. Yes.
2 MR. PENNER: Your Honor, the State moves
3 to admit Exhibit 32.
4 THE COURT: Any objections?
5 MS. HIGH: No, Your Honor.
6 THE COURT: 32 will be admitted.
7 (Plaintiff's Exhibit No. 32 was admitted.)
8 MR. PENNER: And move to publish?
9 THE COURT: Any objections?
10 MS. HIGH: No, Your Honor.
11 THE COURT: 32 will be published.
12 Q. (By Mr. Penner) All right. Can you tell us what we're
13 looking at here.
14 A. (No audible response.)
15 Q. Can you tell us what we're looking at in this image.
16 A. Yes. This is the back of the decedent. Just to orient,
17 again, that's the head area there. This is the lower pubic
18 area, the left shoulder, the right side of the back there;
19 and you can see here -- here, there are several injuries
20 here; and these are all stab wounds. That means it -- it
21 went deeper than the length of the surface wound, so those
22 are all stab wounds in the back of the decedent.
23 Q. Okay. How many are there, can you count?
24 A. I know there are ten stab wounds on the back. As you can
25 see here, this is about the middle of the -- in the middle

1 of the back here, almost -- one, two, three, four, five,
2 six, seven, eight, nine. I think there's one more, but
3 that's not included in this one which is more to the -- to
4 the right. There are ten stab wounds in the backside.
5 Q. All right. I'm going to show you what's been marked as
6 Exhibit 31. Is that from the same autopsy?
7 A. Yes.
8 MR. PENNER: Your Honor, move to admit 31.
9 THE COURT: Any objections?
10 MS. HIGH: No, Your Honor.
11 THE COURT: 31 will be admitted.
12 (Plaintiff's Exhibit No. 31 was admitted.)
13 MR. PENNER: And move to publish?
14 THE COURT: Any objections?
15 MS. HIGH: No, Your Honor.
16 THE COURT: 31 will be published.
17 Q. (By Mr. Penner) Can we see that tenth stab wound in this
18 picture then?
19 A. There's another stab wound here that was not seen on the
20 other photograph, and this is the other stab wound on the
21 back side of the decedent.
22 Q. All right. And, Doctor, how do you measure the depth of the
23 wounds?
24 A. When -- when we do the -- we do probe it sometimes, but we
25 are careful in probing it because we don't want to produce

1 artificial tear in the tissue; so we have a blunt, rounded
2 probe, and we kind of -- we kind of measure it, you know,
3 roughly; but then we do the dissection, and we look for the
4 injuries inside the -- inside the chest, and we do note
5 those, how deep the wound went.
6 Q. Thank you, Doctor. If you could retake the witness stand.
7 (The witness returned to the stand.)
8 Q. (By Mr. Penner) So going through those injuries again, the
9 injuries to the front, to her right chest area, were those
10 potentially fatal wounds?
11 A. No. Those are very superficial wounds.
12 Q. Okay. What about the nicks we saw in the lower left torso,
13 were those potentially fatal?
14 A. No. They are -- they are also superficial wounds.
15 Q. The large incised wound to her right forearm, was that
16 potentially fatal?
17 A. That's a fairly deep wound. It's possible, but I didn't see
18 any large blood vessels cut on that one. It probably won't
19 be fatal immediately, no.
20 Q. The type of thing that if she sought medical attention, she
21 could survive that injury?
22 A. Yes.
23 Q. Okay. What about the stab wound to the upper left arm?
24 A. Again, that's a fairly deep wound, but there was some
25 bleeding in there but no major arteries cut on that one; so

1 that's, probably, survivable too.
2 Q. And do we have arteries in our arms?
3 A. We do.
4 Q. Okay. And if an artery is cut, either through a stab wound
5 or a gunshot or any other mechanism, what's the danger,
6 then, for the person?
7 A. You can bleed to death.
8 Q. Okay. The injuries to her back, the stab wounds, the ten
9 stab wounds that we saw, were those fatal?
10 A. Yes.
11 Q. All right. Can you explain to the jury, I guess, the
12 mechanism from which a person would die from those kind of
13 injuries.
14 A. Yes. The -- the stab wounds to the back, I think we showed
15 that there are ten of them there, the wound on the left side
16 and the wound on the left side. There are two of them. One
17 is the upper one, and one is the lower one. The lower one
18 penetrated the chest cavity, the ribs, and also the lung;
19 and then those are -- those are serious injuries.
20 The more, seven, group of the stab wounds to the right
21 side of the back, two of them penetrated the chest cavity,
22 again, and two of them penetrated the lung, and one of them
23 went to the left side and, again, also penetrated the lung;
24 and there was one injury that -- one stab wound that also
25 punctured the -- the liver in the abdomen because the liver

1 is way up here in the upper -- in the upper abdomen here;
2 and when stabbed in the back, it could injure the liver.
3 Usually, cutting or stabbing injuries like that, the
4 cause of death is bleeding. You can bleed to death; and as
5 I noted in my report, we -- we found, like, a liter, a
6 thousand cc's of blood, in the left chest cavity and about
7 500 cc's of blood in the right chest cavity and about a
8 hundred cc's of blood in the -- in the -- in the abdomen,
9 and that's a significant amount of bleeding. That, by
10 itself, can kill you -- can kill a person if it occurs
11 suddenly, the bleeding, because, again, there will be
12 bleeding outside. I didn't see the scene picture primarily,
13 but I know there must be some blood because the clothings
14 are -- are bloody.
15 And another -- so most of these people died from
16 bleeding; and in this case, that's -- that's probably the
17 cause, and also when you injure a lung, what happens is the
18 lung will collapse, and it will be hard to -- to breathe,
19 you know, and develop air and fluid in the chest cavities,
20 and the -- it's difficult for the lung to expand, and -- and
21 that -- that can contribute to -- to the death too.
22 Q. So at the conclusion of your examination, did you make a
23 determination as to the manner of death?
24 A. Yes.
25 Q. And what was the manner of death for Linda Robinson?

1 A. It's a homicide.
2 MR. PENNER: Thank you. No other
3 questions, Your Honor. Thank you.
4 THE COURT: Cross-examination?
5 MS. HIGH: Yes.
6 CROSS-EXAMINATION
7 BY MS. HIGH:
8 Q. Good afternoon.
9 A. Good afternoon.
10 Q. Dr. Ramoso, you did make some determinations, I think, about
11 the sharp instrument that was responsible for these
12 injuries; is that right?
13 A. That -- that it is a sharp instrument, yes.
14 Q. All right. And I think you also note that it has one blunt
15 edge, and it had one sharp edge?
16 A. Some of the wounds, we can determine that, yes.
17 Q. Right. And, as well, is it fair to say that a four-inch
18 blade could have inflicted these wounds?
19 A. That's possible.
20 Q. You know, one other thing is -- I mean, you can't determine
21 whether the person that inflicted these wounds was
22 right-handed -- right-handed or left-handed?
23 A. Not by just examining the body, no.
24 Q. Or -- yeah, or whether it was a man or a woman?
25 A. That's correct.

1 Q. Now, you also took some samples. I think you indicated that
2 you take swabs from various parts of the body?
3 A. Yes.
4 Q. And those swabs, that's not something that you send out for
5 testing routinely; is that right?
6 A. No. We -- we save that just in case there's a need for it,
7 and we send it to -- to the law enforcement office.
8 Q. Right. And so they can make some decisions. You gather
9 this; and if they want something further, they have it from
10 you?
11 A. That's correct.
12 Q. You know, and you also take, I believe, a sample of blood
13 and a sample of urine?
14 A. That's correct.
15 Q. And it's routine that you would send out both, though, for a
16 toxicological screen?
17 A. That's true.
18 Q. And in this case, only the urine was sent out for the
19 toxicological screen?
20 A. The urine was tested for toxicology screen, but the -- the
21 blood alcohol was, also, performed. I believe -- I've got
22 to see the report here.
23 Q. Yeah, I don't know, do you have the toxicological
24 attachment?
25 A. At least they usually do that, but I want to see the

1 toxicology report.
2 Q. Sure. Hold on. I'm going to see if I have a clean --
3 A. Yeah, I have -- I have the toxicology report.
4 Q. Okay. And is it attached to the exhibit that you're looking
5 at?
6 A. No. This -- this is my own copy.
7 Q. Okay. And I'm going to have one marked.
8 THE COURT: We might as well do that.
9 MS. HIGH: Thank you.
10 Q. (By Ms. High) And I understand you have your attachment
11 there; but just for the record and for the Court, I'll have
12 one that's marked with an identification tag.
13 A. I'm sorry, say that again.
14 Q. I know that you have some in your packet; but for the record
15 here for the Court, I'm going to have one marked with a tag.
16 A. Oh, okay.
17 THE COURT: And when you refer to it,
18 refer to the one with the tag and give the number so the
19 record knows what we're looking at. Okay?
20 THE WITNESS: Yes, Your Honor.
21 THE COURT: Just in case somebody has to
22 read this down the road, they want to know what was being
23 done, when and where.
24 THE WITNESS: Yes, Your Honor.
25 THE COURT: All right.

1 Q. (By Ms. High) So I'm going to hand you what's been marked
2 as Defendant's Exhibit 242, if you would take a look at
3 that. It's probably the same as what you have up there.
4 A. (Witness complies.) Yes, it's the same.
5 Q. And like you said, routinely, you would test the blood; but
6 in this case, that testing was not done; is that right?
7 A. The blood was tested for ethanol, for alcohol.
8 Q. Okay. Well, where it says "not performed"?
9 A. No, it says here "blood ethanol, negative."
10 Q. Okay. And then the blood drug analysis, though, not
11 performed?
12 A. The blood drug analysis, not performed of the blood.
13 Q. Right.
14 A. What -- what the lab did during that time, I believe, is
15 that they tested the urine, and they didn't find anything.
16 They -- they don't test the blood anymore.
17 Q. Right. Although, blood can reveal results in addition to or
18 separate from the urine. That's why you can do both?
19 A. The -- I don't know the concept in the laboratories now; but
20 usually, I think they believe that when it's not in the
21 urine, it's not probably in the blood, but I -- I don't want
22 to put my word on that permanently because I don't know what
23 their concept is now.
24 Q. Right. And so typically when it's sent for both, it's
25 because you can get some different results, potentially,

1 from the blood?
2 A. I guess that's possible.
3 Q. Okay. Let me just check my notes. I think that might be
4 about it. Oh, just one other thing: Not only do you take
5 swabs, but you even take fingernail clippings; is that
6 right?
7 A. Correct.
8 Q. Okay. And, again, you're not responsible for sending them
9 someplace for future analysis? That would be up to a law
10 enforcement request; is that right?
11 A. That's right.
12 MS. HIGH: Okay. Okay. That's all I
13 have.
14 THE WITNESS: Okay.
15 MS. HIGH: Thank you.
16 THE COURT: All right. Redirect, Counsel?
17 MR. PENNER: Yes, Your Honor.
18 REDIRECT EXAMINATION
19 BY MR. PENNER:
20 Q. So just to be clear -- do you still have the toxicology
21 report in front of you?
22 A. Yes.
23 Q. Okay. They tested her blood for alcohol, and there was no
24 alcohol; correct?
25 A. No alcohol, yes.

1 Q. And they tested her urine for other drugs, and there were no
2 drugs in the urine either; correct?
3 A. That's correct.
4 MR. PENNER: Thank you. Nothing else.
5 THE COURT: Anything based on that,
6 Counsel?
7 MS. HIGH: No. Thank you.
8 THE COURT: All right. May the witness be
9 excused?
10 MR. PENNER: Yes, Your Honor.
11 MS. HIGH: Yes, Your Honor.
12 THE COURT: All right. Thank you very
13 much for your attendance, sir.
14 THE WITNESS: Thank you, Your Honor.
15 THE COURT: Why don't you just set that
16 down at the end of the counter.
17 THE WITNESS: Yes, ma'am.
18 THE COURT: And thank you very much for
19 your attendance.
20 THE WITNESS: You're welcome, ma'am.
21 (The witness was excused.)
22 MR. PENNER: Your Honor, with the
23 scheduling, that's all the State has ready for today. I'd
24 ask that we adjourn until tomorrow morning.
25 THE COURT: All right. We will be

adjourning, then, until 9:30 tomorrow morning, no discussion, no investigation, notepads face down on your chairs; stay in the jury room until Ms. Shipman comes to release you.

(The jury was not present.)

THE COURT: Anything, Counsel, before I release you?

MR. PENNER: No, Your Honor.

MS. HIGH: No. Thank you very much, Your Honor.

THE COURT: All right. Court will be at recess, then, until tomorrow morning at 9:30.

(Court adjourned for the day.)

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,	)	
	)	Superior Court
Plaintiff,	)	No. 14-1-02979-1
	)	
vs.	)	Court of Appeals
	)	No. 48810-8-II
JAMES EDWARD MITCHELL,	)	
	)	
Defendant.	)	

REPORTER'S CERTIFICATE

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

I, Kimberly A. O'Neill, Court Reporter in the state of Washington, county of Pierce, do hereby certify that the foregoing transcript is a full, true, and accurate transcript of the proceedings and testimony taken in the matter of the above-entitled cause.

DATED this 20th day of August, 2016.

_____
KIMBERLY A. O'NEILL, CCR
License No. 1954

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4
5 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE
6

STATE OF WASHINGTON,	)	
	)	Superior Court
Plaintiff,	)	No. 14-1-02979-1
	)	
vs.	)	Court of Appeals
	)	No. 48810-8-II
JAMES EDWARD MITCHELL,	)	
	)	
Defendant.	)	

VERBATIM REPORT OF PROCEEDINGS

Thursday, February 18, 2016
Pierce County Courthouse
Before The Honorable Katherine M. Stolz
Tacoma, Washington

<<<<<< >>>>>>

A P P E A R A N C E S

For the Plaintiff: STEPHEN M. PENNER
Deputy Prosecuting Attorney

For the Defendant: MARY K. HIGH
Attorney at Law

Kimberly A. O'Neill, CCR #1954
Official Court Reporter
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No. 48810-8-II

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1 BE IT REMEMBERED that on Thursday, the
2 18th day of February, 2016, the above-captioned cause came
3 on duly for hearing before THE HONORABLE KATHERINE M. STOLZ,
4 Judge of the Superior Court in and for the county of Pierce,
5 state of Washington; the following proceedings were had, to
6 wit:
7
8 <<<<<< >>>>>>
9
10 (The defendant was present.)
11 (The jury was not present.)
12 THE COURT: All right. Anything before we
13 bring the jury in?
14 MS. HIGH: No. I just want to thank the
15 Court for giving me a chance to recover.
16 THE COURT: Uh --
17 MS. HIGH: Yeah.
18 THE COURT: It's, like, well, we didn't
19 want to catch it, so there is a certain amount of
20 self-interest in the motives.
21 MS. HIGH: Yeah, trust me; my daughter has
22 it now, and it's not pretty.
23 THE COURT: I think we should start
24 handing face masks out at the door to the building.
25 MS. HIGH: Yeah, just maybe a Purell spray

1 or something. Well, we're ready to go forward today.
2 THE COURT: All right. Well, hopefully,
3 none of the jury will start catching it; we can only hope.
4 MR. PENNER: Let's hope not.
5 THE COURT: All right. Then we'll bring
6 the jury in, and we will start Defense.
7 (The jury was present.)
8 THE COURT: All right. Good morning. You
9 may be seated. I was just remarking to counsel, I think we
10 should start handing the face masks out this time of year at
11 the door.
12 All right. The State having rested, Counsel, you may
13 call your first witness.
14 MS. HIGH: Yes, Your Honor. We'll call
15 James Mitchell.
16 THE COURT: All right. Mr. Mitchell, if
17 you want to come forward. All right.
18 JAMES MITCHELL, witness herein, having been sworn
19 under oath, was examined and
20 testified as follows:
21 THE COURT: All right. If you'll have a
22 seat, sir. There's water and Kleenex to your right. As
23 you've heard my instructions many times before, you can pull
24 the chair forward and adjust the mic; and remember when
25 you're answering questions, answer "yes" or "no"; don't nod

1 or shake your head. Okay?
2 THE WITNESS: Okay.
3 THE COURT: All right. Counsel, you have
4 the floor.
5 MS. HIGH: Thank you.
6 DIRECT EXAMINATION
7 BY MS. HIGH:
8 Q. Mr. Mitchell, would you state your full name, and spell your
9 last name for the court reporter.
10 A. James Edward Mitchell, M-I --
11 THE COURT: Okay. You need to speak up;
12 pull the mic closer. Okay?
13 A. James Edward Mitchell, M-I-T-C-H-E-L-L.
14 Q. (By Ms. High) Mr. Mitchell, did you kill Linda Robinson?
15 A. No, I didn't.
16 Q. I want to jump back in time now twenty-plus years. Did you
17 know Linda Robinson?
18 A. Yes, I did.
19 Q. Can you tell me how you met her.
20 A. I met her in passing at Safeway.
21 Q. Okay. And tell me a little bit about that meeting.
22 A. I was coming out, and she was going in. She smiled at me,
23 and I asked her what her name was and got her telephone
24 number.
25 Q. Okay. And did you and Ms. Robinson see each other after

1 that?
2 A. Yes, we did.
3 Q. Can you tell me how many times?
4 A. Between -- I'm going to say two or three times, two or three
5 times.
6 Q. Okay. Tell us a little -- can you describe for us what your
7 relationship was.
8 A. Well, we were just getting to know one another, so we were
9 just getting to know one another.
10 Q. Okay. Were you ever at her apartment?
11 A. Yes, I was.
12 Q. Do you remember about how many times?
13 A. Between two or three times.
14 Q. Okay. And --
15 A. I'm not sure.
16 Q. Okay. It was a long time ago. Do you remember what time of
17 the year this was?
18 A. I don't -- I don't remember the time of year.
19 Q. Was it in the fall? Was it in the winter?
20 A. I guess from the testimony here, it was in February, so I
21 guess it would be the fall or winter, early winter, or late
22 winter.
23 Q. Okay. But your own memory is --
24 A. My own memory, I don't -- I don't know.
25 Q. Okay. Now, you said you saw her a couple of times; and you

1 were at the apartment a couple of times?
2 A. Yes.
3 Q. Okay. Can you describe for me the last time that you were
4 over at her apartment.
5 A. I can't give you the date or the time that I was there, but
6 I was there. I don't know. I don't remember when.
7 Q. Okay. Did anything happen while you were there that was
8 memorable?
9 A. The last time that I -- I don't know how to even explain
10 that --
11 Q. Okay.
12 A. -- the last time. I mean, I don't remember the last time as
13 far as the date and the time.
14 Q. That's okay, not the date, just: Do you recall going to her
15 apartment?
16 A. Yes.
17 Q. Okay. And do you know if it was a planned or kind of a
18 drop-in type of situation, do you remember?
19 A. Drop in.
20 Q. Okay. And was she home?
21 A. Yes.
22 Q. Okay. When you got to her house, was anyone else there?
23 A. Some kids were there.
24 Q. Okay. What did you see when you saw some kids there?
25 A. Well, when I walked in, I said, "You all must be camping

1 out."
2 Q. And why did you say you all must be camping out?
3 A. Because the kids were laying down asleep.
4 Q. And so you saw some children asleep?
5 A. (Nods head.)
6 Q. And other things in the living room that looked like camping
7 out?
8 A. It just seemed like they were camping out, just as my way of
9 expressing.
10 Q. Okay. And were they awake?
11 A. No, they weren't.
12 Q. Okay. And Ms. Robinson was home?
13 A. Yes, she was.
14 Q. Okay. And so when you go into the apartment, what happens
15 next?
16 A. I go in the apartment. I make a -- I say, "You all must be
17 camping out." She doesn't respond, so she walks toward the
18 kitchen. I walked toward the kitchen; and at that instance,
19 there's a knock or a doorbell. The door gets our attention
20 at that time --
21 Q. Okay.
22 A. -- at that moment.
23 Q. Okay. And so after the -- someone being at the door gets
24 your attention, what happens?
25 A. She goes and answers the door.

1 Q. All right. And after she answers the door, what happens
2 next?
3 A. A guy walks in.
4 Q. And had you ever seen this guy before?
5 A. I've never seen him before in my life.
6 Q. Okay. Can you describe him a little bit, do you recall?
7 A. Just black with a short haircut, kind of dark skin.
8 Q. Okay. And what happens after she lets him in?
9 A. He makes some kind of remark, and she asked him, "Well, why
10 are you tripping, what's your problem," in general, you know
11 what I'm saying? And so he's looking at me and her, and so
12 she turns to go toward the back, down the hallway; and at
13 that instance, he starts swinging.
14 Q. At you or at her?
15 A. Both of us --
16 Q. Oh.
17 A. -- in a sense --
18 Q. Mm-hmm.
19 A. -- because I -- I didn't know the guy --
20 Q. Okay.
21 A. -- so I don't know why he would be swinging at me.
22 Q. Okay.
23 A. But he's -- he -- he -- he appeared to be agitated.
24 Q. Okay. He appeared to be upset and so what happens after he
25 starts taking a swing?

1 A. We end up down at the end of the hallway.
2 Q. When you say the end of the hallway, towards the bedrooms?
3 The living room?
4 A. Yeah, the bedroom.
5 Q. Okay.
6 A. In the hallway, the bedroom, just at the door.
7 Q. Okay. And so what's going on with this?
8 A. She's saying, "Why are you tripping? I'm tired of this
9 shit. I'm going to call the police." I look -- and I look,
10 and I see a window, and so I'm not going to jump out the
11 window; so I go back down the hallway to protect -- I'm
12 going to get something to protect myself because I don't
13 know what's going on.
14 Q. Okay. And so what's going on while this is going on? Are
15 you guys swinging at each other?
16 A. Well, we started -- he started swinging at us at the
17 beginning.
18 Q. Mm-hmm.
19 A. When we end up down the room, he goes around where he's --
20 he's out of sight; so when I look back and see the window, I
21 say to myself, well, I'm not going to jump out no window.
22 I'm going to go back down toward the kitchen and get
23 something to protect myself.
24 And so I tell her, "I'm out of here." I go back down --
25 and she's behind me; and when I turn the corner, he's in the

1 kitchen around the corner in the living room part. We start
2 fighting again.
3 Q. Okay. And did you guys trade blows?
4 A. Yes, we did.
5 Q. Okay. And I know it's hard to kind of put a time on these,
6 but how long do you think you guys were fighting?
7 A. Not long. It wasn't long, just some blows were thrown. It
8 stopped for a moment. She ends up on the floor, so --
9 Q. How does she end up on the floor?
10 A. I'm not sure.
11 Q. Okay. You don't know whether he pushed her or what
12 happened?
13 A. I'm not sure how she ended up on the floor.
14 Q. Okay. And what happens after she falls?
15 A. She gets up. She's saying she's calling the police. "I'm
16 calling the police. Get out. Why are you tripping? I'm
17 tired of this shit. I'm tired of this shit." Well, we
18 paused -- we -- we had a pause at this time, and so we start
19 back-fighting; and we're wrestling now, and that lasted -- I
20 don't know how long it lasted, but it's over with. And he
21 said, "Well, I'll be back."
22 Q. Does he leave the apartment?
23 A. Yes, he does.
24 Q. What happens after he leaves?
25 A. She's walking around like she's looking for something, so

she goes back to the room. I follow her back to the room.
Q. Okay.
A. And I go in the room, and I look in the mirror because I'm sweating, but I'm thinking I'm bleeding, but I'm sweating, so I look in the mirror and everything is fine --
Q. Okay.
A. -- and so I told her, "I'm out of here."
Q. Okay.
A. But I was concerned about him coming back.
Q. Okay. And when you look -- when you're in there looking in the mirror, you realize that you're not bleeding on your face; is that right?
A. Right. Right.
Q. Okay. And so what do you do; you leave?
A. I tell her, "I'm leaving. I'm out of here. You all right?" or something to that effect, and she says she's going to call the police, so --
Q. And so what do you do?
A. I left.
Q. Okay. Did you at any point realize that perhaps you had been bleeding?
A. No, I didn't, not at that time, no.
Q. Okay. Well, at some time after that?
A. Yes.
Q. Okay. And when was that?

1 A. Later on in the night or that morning or whatever, I guess,
2 maybe.
3 Q. And what did you notice?
4 A. That my hand, my knuckle was bleeding right here.
5 Q. Okay. And do you remember what you did after you left?
6 A. No.
7 Q. Okay. Now, tell me why you were in Florida when you were
8 contacted by law enforcement?
9 A. My mother had passed away.
10 Q. Okay. And between 1993 and now, have you ever worked
11 outside of the state of Washington?
12 A. Yes, I have.
13 Q. And where did you work?
14 A. Anchorage, Alaska.
15 Q. And what would you be doing in Anchorage?
16 A. Crabbing, processing, fishing.
17 Q. Okay. So that was seasonal work?
18 A. Yes.
19 Q. Okay. And between 1993 and now, have you ever visited
20 Florida?
21 A. Yes.
22 Q. About how many times?
23 A. I'm going to say about four times.
24 Q. Okay. And why is that?
25 A. Well, my parents had opened up a barbecue restaurant, but my

1 father had a couple of heart attacks, and so he was, kind
2 of, struggling; but the business was making money, and so I
3 just went down there to help out for a couple of weeks, not
4 that long until my sister and her husband moved down there
5 from up here.
6 Q. So you have family down there?
7 A. Yes.
8 Q. And your parents had some health issues?
9 A. Right.
10 Q. Okay. Now, when did you learn that Linda Robinson had been
11 killed?
12 A. 2014.
13 Q. Okay. And that's when you were contacted by law
14 enforcement?
15 A. Yes.
16 Q. Okay. You didn't know before then?
17 A. No, I didn't.
18 MS. HIGH: That's all I have.
19 THE COURT: Cross-examination, Counsel?
20 MR. PENNER: Yes, Your Honor. Thank you.
21 If I could just have a moment, Your Honor. For the record,
22 I'm publishing Exhibit 90.
23 CROSS-EXAMINATION
24 BY MR. PENNER:
25 Q. So you knew Linda Robinson; correct?

1 A. Yes.
2 Q. The woman in the photograph right there?
3 A. I can't remember her as far as that photograph right there.
4 Q. So you don't recognize her in the photograph?
5 A. No, I don't.
6 Q. All right. You went to Jason Lee middle school in the mid
7 seventies; correct?
8 A. I guess, yeah, you could say that, yeah.
9 Q. Okay. And you remember that you lived at 1523 South
10 Ainsworth?
11 A. I know I lived at Ainsworth; the address I don't remember.
12 Q. All right. And did you know that the Robinsons lived one
13 block up on Ainsworth?
14 A. No, I didn't.
15 Q. Your birth date is August 6, 1962; correct?
16 A. No, it's not.
17 Q. What's your birth date?
18 A. '63.
19 Q. So in February of 1993, you were 29 years old?
20 A. Yes.
21 Q. And in February 1993, Linda Robinson was 36 years old?
22 A. Okay.
23 Q. You knew Linda in February of 1993; correct?
24 A. I don't remember the month.
25 Q. All right. But you knew where she lived?

A. Yes.
Q. You'd been to her home; right?
A. Yes.
Q. All right. And it's the apartment that we've all seen; correct?
A. Right.
MR. PENNER: For the record, I'm publishing Exhibit 200.
Q. (By Mr. Penner) It's that apartment right there?
A. That's the apartment that she said -- that it's been testified that she passed away in or was killed in.
Q. Well, what about the apartment that you went to? Is that the apartment that you went to the two times?
A. It looks like the apartment, the fourplex.
Q. Okay. Was it on 162nd Street?
A. Yes.
Q. In Spanaway?
A. Yes.
Q. All right. You knew she had a teenage daughter; correct?
A. Yes.
Q. All right. And you knew they lived together at that apartment; correct?
A. I didn't know she lived there with her, but I knew she had a teenage daughter.
Q. Okay. And you were a teenager once; right?

1 A. Sure, I was.
2 Q. So you know on a Saturday night, it's likely that a
3 15-year-old girl is going to be out with friends; correct?
4 A. It all depends.
5 Q. Okay. Would you agree with me it's likely that a
6 15-year-old girl is going to be out with friends on a
7 Saturday night?
8 A. It all depends.
9 Q. All right.
10 A. The parents, it all depends on the parents.
11 Q. All right. Now, you're a large man; correct?
12 A. Yes.
13 Q. You're six-two?
14 A. Yes.
15 Q. All right. About 295?
16 A. 300.
17 Q. 300. All right. And were you the same size back in 1993?
18 A. No, I wasn't this big.
19 Q. All right. A little bit lighter, still six-two, though;
20 right?
21 A. I guess, yeah.
22 Q. All right.
23 A. I guess, yeah.
24 Q. All right. And so at six-two, you're taller than most
25 people you meet; correct?

1 A. Yeah. I would say that, yes.
2 Q. Yeah. And, again, you're not a skinny six-two; you're a
3 pretty solid six-two; right?
4 A. Yes.
5 Q. All right. Linda Robinson was smaller than you; right?
6 A. She was chunky from -- from the pictures I've seen, but I
7 guess she was shorter than I was.
8 Q. Okay. You were bigger than her?
9 A. Yeah.
10 Q. All right.
11 A. Yeah.
12 Q. Now, you've testified that you don't actually know what day
13 you went to her apartment the last time you saw her?
14 A. Right.
15 Q. Okay.
16 A. That's true.
17 Q. So this event that you've described, that could have
18 happened a week or a month before she was murdered; correct?
19 A. It could have, I guess. I don't know. I'm not sure.
20 Q. Okay.
21 A. I'm only describing what transpired when I was there --
22 Q. All right. So you can't --
23 A. -- last there.
24 Q. You can't tell this jury that the event you've described
25 actually happened the night she was murdered?

1 A. No, I can't.
2 Q. All right. But when you went over that night, whenever it
3 was, she didn't know you were coming over; correct?
4 A. No, she didn't.
5 Q. All right. You were not invited to come over; correct?
6 A. No.
7 Q. All right. And when you got there, you said you saw there
8 were kids. She was baby-sitting; right?
9 A. Yes.
10 Q. Hadn't she told you that she didn't like men coming to her
11 apartment when she was baby-sitting?
12 A. She never told me that.
13 Q. All right. Did she ever tell you that she wanted people to
14 call before they came over?
15 A. She never told me that.
16 Q. All right. Did you talk to her on the phone a lot?
17 A. No.
18 Q. Only in person?
19 A. I talked to her on the phone a couple times, not many.
20 Q. All right. And when you came over to see her unexpectedly,
21 uninvited while she was baby-sitting, you wanted something
22 from her; right?
23 A. No. I didn't want anything from her.
24 Q. All right. Well, you, at least, wanted to talk to her;
25 right?

1 A. Right.
2 Q. Right. Did you want anything else?
3 A. No.
4 Q. Did you want money?
5 A. No.
6 Q. Did you want sex?
7 A. No.
8 Q. Did you want drugs?
9 A. No.
10 Q. It was just to stop by and say hi.
11 A. It was just to stop by to see how she was doing.
12 Q. All right. What time of night was it?
13 A. I'm not -- I don't -- I'm not sure right now what time it
14 was.
15 Q. Can you -- can you even say it was night? Was it in the
16 morning?
17 A. It was night.
18 Q. It was nighttime?
19 A. Yes.
20 Q. All right. Was it after dinner?
21 A. What time is dinner?
22 Q. Well, what time do you eat dinner?
23 A. Five o'clock, six o'clock, seven o'clock, it all depends.
24 Q. Was it after that?
25 A. I'm not sure.

1 Q. All right. Was it dark out?
2 A. Yes.
3 Q. Okay. So after dark, uninvited, you go to her apartment,
4 safe to say she was surprised that you showed up?
5 A. No.
6 Q. No?
7 A. No.
8 Q. And, again, you're a lot bigger than her; right?
9 A. I'm bigger than her.
10 Q. If you had wanted to, you could have overpowered her;
11 correct?
12 A. I don't think on that term.
13 MS. HIGH: Objection, Your Honor.
14 A. I don't think on that term.
15 THE COURT: Okay. Wait a minute. There's
16 an objection.
17 MS. HIGH: Objection. You know, I believe
18 that this gets into speculation. I don't believe that this
19 is proper cross-examination regarding his testimony.
20 THE COURT: I'll sustain the objection. I
21 think it's up to the jury to determine what they think based
22 on the evidence.
23 MR. PENNER: All right. Thank you, Your
24 Honor.
25 Q. (By Mr. Penner) So you said you've been to her apartment

1 before; correct?
2 A. Yes.
3 Q. You knew the layout of the apartment? You knew -- do you
4 know how it was laid out?
5 A. I haven't lived the last 23 years remembering 23 years ago,
6 so I don't remember the layout of the house other than what
7 I've seen in this courtroom.
8 Q. All right. Well, let me show you --
9 A. So I haven't spent my life thinking about 23 years ago and
10 the layout of an apartment because I've been in many.
11 Q. All right. Exhibit 37, you had a chance to see that earlier
12 in the trial; correct?
13 A. I guess, yeah. The detective that was here -- one of the
14 detectives.
15 Q. I'm sorry?
16 A. One of the detectives, isn't that his drawing?
17 Q. Yeah. It's one of the forensic officer's drawings.
18 A. Okay.
19 Q. All right. And do you remember that the front door is right
20 here?
21 A. Based on that drawing, that's where the front door is.
22 Q. Okay. But my question is: Do you remember now, "yes" or
23 "no," that that's where the front door is?
24 A. I can't say that that's the front door from my memory.
25 Q. Okay.

A. I can say that it's a front door that goes into the apartment from my memory.
Q. All right. And you'd been there before; correct?
A. Yes.
Q. Had you been in the living room area?
A. Yes. I'd been in the living room area.
Q. Okay. Had you guys been in the dining room area?
A. Well, the dining room runs into the kitchen right there, so I'd been in that area.
Q. Okay. And you'd been in the kitchen?
A. Yes.
Q. All right. Had you used the bathroom, do you think?
A. I don't remember using the bathroom.
Q. Okay. Did you ever go back to the bedrooms?
A. Yes.
Q. All right. So you knew where the bedrooms were in the apartment; right?
A. Yes.
Q. Okay. And you knew which bedroom was hers; right?
A. Well, at that time, when we ended up in the back of the bedroom --
Q. No. No. No. Before that night -- before that night, you knew that if you turned left, that was back to the bedrooms; right?
A. Before that night?

1 Q. Before that night.
2 A. I've never been back there in that hallway before that
3 night.
4 Q. Okay. But you'd been to the other parts of the apartment;
5 correct?
6 A. I've been to the living room and the dining room and the
7 kitchen, previously.
8 Q. All right. And you knew there was a bathroom, and you knew
9 there would be bedrooms; right?
10 A. Well, yes.
11 Q. Okay. Right. And if you go to the right, you're going to
12 hit the wall; correct?
13 A. I don't remember that, go to the right, I mean, go to --
14 from that drawing, you would go to the, I guess, left to the
15 kitchen.
16 Q. Okay. But -- so you walk in, and the kitchen is ahead of
17 you. The dining room and living room are to your right, and
18 there's a hallway to your left; correct?
19 A. You walk in. The living room is to the right. The kitchen
20 is this way. The hallway is to the left.
21 Q. All right. And you know the bedrooms are down the hallway;
22 right?
23 A. Well, that's just obvious.
24 Q. Right. And you knew that; right?
25 A. That's just obvious.

1 Q. So you knew Linda's bedroom was down the hall?
2 A. I didn't know which bedroom was her bedroom.
3 Q. All right. But you've described tonight that you went back
4 to the room that was hers and looked at yourself in the
5 mirror?
6 A. Right.
7 Q. Okay. So at least by the time you left that night, you knew
8 which bedroom was hers?
9 A. Right.
10 Q. Okay. And you knew she kept her purse in her bedroom;
11 correct?
12 A. I didn't know anything about that.
13 Q. All right. And you knew if there were any drugs in the
14 house, she'd keep those in her bedroom, too, where her
15 daughter couldn't find them?
16 A. I didn't -- I didn't know anything about drugs.
17 Q. The daughter didn't?
18 A. I didn't.
19 Q. All right. So when you walked in, you said you saw some
20 kids there?
21 A. Yes.
22 Q. How many?
23 A. I would say two.
24 Q. All right. What ages?
25 A. I don't know all the -- whatever, young kids.

1 Q. Seven? Three? Babies? What?
2 A. From the testimony, I would say a seven-year-old --
3 Q. All right.
4 A. -- but I don't remember the age. I seen two kids on the
5 couch.
6 Q. Okay. And you've already testified, this could have been a
7 completely different night, so in terms of --
8 A. It could have been.
9 Q. All right.
10 A. It could have been, you're right.
11 Q. It could have been different kids?
12 A. It could have been.
13 Q. All right. So don't tell me what other people said about
14 that night.
15 A. I don't know what age the --
16 Q. Tell me what you remember about the kids that were there
17 that night.
18 A. I don't know what age the kids were.
19 THE COURT: Okay. One at a time. It
20 makes Ms. O'Neill's life a lot easier. All right?
21 THE WITNESS: Oh, okay.
22 MR. PENNER: Right. I --
23 THE COURT: So don't talk over each other.
24 MR. PENNER: Well, let me -- maybe
25 instruct the witness to wait for me to finish my question.

1 THE COURT: Let him finish his question,
2 and then he will extend the same courtesy to you. All
3 right?
4 THE WITNESS: Okay.
5 Q. (By Mr. Penner) What ages were the kids that you saw?
6 A. I don't know.
7 Q. Can you guess at all?
8 A. They were young kids.
9 Q. Okay. You said there was a knock or a doorbell, which was
10 it?
11 A. I'm not sure. The door got our attention.
12 Q. But you don't remember if it was a knock or a doorbell?
13 A. I don't remember.
14 Q. Oh, I'm sorry. When you walked in and you said, "You all
15 must be camping out," she didn't give any response at all?
16 A. No, she didn't.
17 Q. Did she greet you at the door?
18 A. She -- she opened the door and turned and walked away.
19 Q. Didn't even say hi?
20 A. Didn't even say hi. She realized it was me, and, I guess,
21 had walked away. She was doing something. I'm not sure.
22 Q. All right. Was she on the phone?
23 A. I'm not sure.
24 Q. Okay. And then there's another knock or doorbell. She
25 answers the door, and it's this other guy?

1 A. Yes.
2 Q. And you've never seen him before?
3 A. Never seen him before.
4 Q. Did you ever see him since?
5 A. No, I haven't.
6 Q. All right. You say he was black with a short haircut and
7 dark skin?
8 A. Yes.
9 Q. Anything else about him?
10 A. Just an average black guy.
11 Q. All right. Was he -- how tall was he?
12 A. I'm not sure.
13 Q. How much did he weigh?
14 A. I'm not sure.
15 Q. Was he heavy or skinny?
16 A. Just average.
17 Q. So not heavy, not skinny, just average?
18 A. Just average.
19 Q. Okay. And was he taller than you? And let me -- let me
20 actually ask a different question. At six-two, you're
21 taller than almost everybody; right?
22 A. I guess, yeah.
23 Q. All right. So you know that thing where when you meet
24 somebody who is taller than you, it feels a little bit
25 weird?

1 A. Yes.
2 Q. Okay. Was he taller than you?
3 A. Well, when you meet somebody that's taller than you, they
4 are substantially taller than you are; so you remember that.
5 Like I said, I didn't spend 23 years remembering how tall
6 anybody was or how much they weigh, or who they were. I
7 just lived my life and continued to live my life.
8 Q. All right. And so as you think back now, you don't have a
9 recollection of that feeling when you meet somebody who is
10 taller than you?
11 A. I mean, I met some basketball players, so, I mean --
12 Q. And this guy didn't evoke that same feeling?
13 A. No.
14 Q. It wasn't like, whoa, he's tall?
15 A. No, he didn't.
16 Q. All right. And you said he made some remark, but you don't
17 remember the remark?
18 A. No.
19 Q. And she's immediately saying, "Why are you tripping? I'm
20 sick of this shit"?
21 A. "I'm tired of this shit. I'm going to call the police," or
22 something to that effect.
23 Q. So she's right into the police immediately, the first --
24 A. Yeah. She was --
25 Q. -- response to him?

1 A. She was upset the way that he was conducting himself --
2 Q. All right.
3 A. -- when he got there.
4 Q. So he makes the remark, and she says, "I'm going to call the
5 police"?
6 A. Pretty much.
7 Q. And then you said she started back down the hallway, and the
8 guy just started swinging?
9 A. Yes.
10 Q. But then you said he swung at both of you. That's not
11 actually possible; right?
12 A. Well, it's possible, yeah.
13 Q. Where were you?
14 A. I can't really see that far, but --
15 Q. Well, just tell me where you were.
16 A. I was in the hallway between -- the hallway going toward the
17 room and the hallway in the kitchen.
18 Q. All right. So in this area. She was farther towards the
19 bedrooms than you? Is that --
20 A. No, she wasn't farther. She was just in front of me.
21 Q. Okay. And he started swinging at both of you?
22 A. Yes.
23 Q. For no apparent reason?
24 A. Well -- yes.
25 Q. All right. And she says again, she's going to call the

1 police?
2 A. She asked him why he was tripping and what his problem was,
3 pretty much --
4 Q. Okay. Now --
5 A. -- and she's tired of that shit, so --
6 Q. All right. So you're in this woman's apartment. You've
7 only met her a couple of times, and now there's this guy in
8 there who is throwing punches at you and this woman, and
9 there's at least two little kids in the apartment, but you
10 don't remember what he said?
11 A. He didn't really say anything. I don't remember --
12 Q. I thought you said he had said some remark?
13 A. Well, but I don't remember what the remark was.
14 Q. Does this kind of thing happen to you a lot?
15 A. No, it doesn't.
16 Q. All right. But you don't remember the remark?
17 A. I don't remember the remark.
18 Q. All right. You said you saw a window. Where was the
19 window?
20 A. It was in the room.
21 Q. Which room?
22 A. Her bedroom.
23 Q. So you're in the bedroom all the way back?
24 A. No. We're just in the door. We're not in the bedroom.
25 We're at the door of the bedroom.

1 Q. All right. Did he land any punches?
2 A. Yes, he did.
3 Q. Right then?
4 A. Not right then.
5 Q. Okay. That's what I'm asking. When he started throwing
6 punches --
7 A. He never came back that far. He never came back that far to
8 the bedroom. He never ended up all the way down the
9 hallway.
10 Q. So you're back here at the doorway of the bedroom and look
11 in and see a window, but he's not -- he's back more towards
12 the kitchen?
13 A. Right.
14 Q. But he's throwing punches at you?
15 A. No.
16 Q. Where --
17 A. As she turned to go up the hallway, he started throwing
18 punches. We -- me and Linda ended up at the end of the
19 hallway. He goes back around, somewhere around the living
20 room or the kitchen. I look back at the window, and I says
21 to myself, I'm not going to jump out this window; so I'm
22 going back down to the kitchen to get something to protect
23 myself.
24 Q. So did you get a knife?
25 A. No, I didn't.

1 Q. Did you get anything to protect yourself?
2 A. I didn't have time to get anything to protect myself.
3 Q. Because he jumped on you again?
4 A. Right.
5 Q. All right. And this time, you traded blows?
6 A. We traded blows before and this time.
7 Q. Okay. Wait. So before, it wasn't just that he was swinging
8 at you, you swung back?
9 A. Yes.
10 Q. Okay. You didn't say that before, though, I don't think.
11 A. Well, I'm going to protect myself, so --
12 Q. Okay. Did you land any punches?
13 A. Yes, I did.
14 Q. All right. Did he land any on you?
15 A. Yes.
16 Q. All right. But I think you testified, you looked in the
17 mirror and you weren't bleeding from your face, anyway?
18 A. No, I wasn't.
19 Q. Okay. The only blood you had was from your knuckle?
20 A. I saw blood later on, and I realized I was bleeding.
21 Q. Okay. So you must have punched him in the mouth? Do you
22 remember?
23 A. I don't remember.
24 Q. All right. You said Ms. Robinson, Linda, ended up on the
25 floor. Do you know how?

1 A. No, I don't.
2 Q. All right. She gets up, says, for now the third time, "I'm
3 calling the police"?
4 A. Yeah. "Get out," and just things like -- just normal
5 things, I guess, you would say, "Why are you tripping? I'm
6 tired of this shit. I'm calling the police."
7 Q. And you have no idea why this guy is doing this?
8 A. I have no idea, whatsoever.
9 Q. And he's not saying why he's doing it?
10 A. No, he's not.
11 Q. He's not telling her what he's mad about?
12 A. No, he's not.
13 Q. He's not telling you what he's mad about?
14 A. No.
15 Q. All right. The fight starts up again, but this time, it's
16 just wrestling?
17 A. Well, we interlock, pretty much. We might have some blows,
18 but we interlock. We end up grabbing one another.
19 Q. Okay. But that's all out in the living room, dining room
20 area; right?
21 A. That's out -- that's in the kitchen, just inside the kitchen
22 in front of the -- the sink, just in the living room or the
23 dining room and the kitchen area.
24 Q. Kind of where they meet; is that right?
25 A. Yes. Just -- just right in -- in the dining room area and

1 the living room area --
2 Q. So at no --
3 A. -- I mean, the kitchen area.
4 Q. So, at no point did this struggle with this unknown man go
5 into the bedrooms?
6 A. No.
7 Q. And it sounds like, if I'm understanding correctly, the
8 blows that you say happened were here and here; is that
9 right? The first set is here, and the second set is here?
10 A. The first set is in the hallway just as you start to go up
11 in the -- toward the bedroom. The second set is when you
12 turn the corner in the dining area, the kitchen area right
13 there in between, I guess, the -- the dining area and the
14 kitchen in that area right there is where the second fight
15 started up.
16 Q. Okay. And while that was going on, where was Linda?
17 A. She's in the kitchen --
18 Q. All right.
19 A. -- for the second fight.
20 Q. Okay. And all of a sudden, the fight stops. He leaves and
21 says, "I'll be back"?
22 A. Yes.
23 Q. All right. How did it just stop?
24 A. It just stopped; he just stopped.
25 Q. He let go?

1 A. And he said, "I'll be back," and he left.
2 Q. From the time he walked in to the time he left, how long
3 would you say that was?
4 A. I don't remember. I can't really put a time on it, an
5 honest time on it.
6 Q. It sounds like it would have just been a few minutes?
7 A. I can't put an honest time on it.
8 Q. Okay. But it wasn't a long protracted --
9 A. No, it wasn't.
10 Q. -- ten, twenty, thirty?
11 A. No.
12 Q. Okay. So guy shows up, you've never seen him before, he
13 attacks you, the fight's on, then he leaves?
14 A. Yes.
15 Q. All right. Linda goes back to her bedroom; right?
16 A. Yes.
17 Q. She doesn't call the police, ever, does she?
18 A. I don't know what she did.
19 Q. Well, while you were there, she didn't call the police?
20 A. While -- while I was there, she didn't call the police.
21 Q. All right. And you thought you were bleeding, but then you
22 went back and realized that you were just sweating; is that
23 right?
24 A. Yes.
25 Q. Okay.

1 A. I went back there to check my face because I was sweating.
2 I thought I was bleeding, but I was sweating.
3 Q. Any blood on your face?
4 A. No.
5 Q. Okay. And you don't have any idea what you did after that?
6 A. No. I probably went to -- home -- somewhere, but I'm not
7 sure.
8 Q. All right.
9 A. I'm not sure what I did after that.
10 Q. All right. You testified that the first time you knew Linda
11 Robinson had been murdered was in 2014 when the police told
12 you?
13 A. Right.
14 Q. All right. So let's back up. Linda Robinson, you see her
15 at Safeway; is that right?
16 A. Yes.
17 Q. Okay. She's an attractive woman?
18 A. Yes.
19 Q. She smiles at you?
20 A. Yes.
21 Q. You're encouraged; right?
22 A. Right.
23 Q. Right. So you ask for her name and number, and you get it?
24 A. Right.
25 Q. So that's pretty good; right?

1 A. I got it.
2 Q. You don't always get it; right? I mean, that's --
3 A. Not from all -- not from all women, no.
4 Q. Okay. But she gave you her name and number?
5 A. Yes.
6 Q. And, in fact, you'd been over to her house two or three
7 times?
8 A. Yes.
9 Q. Okay. And I think you said your relationship was: You were
10 just getting to know each other?
11 A. Yes.
12 Q. Okay. But you were interested in her romantically; right?
13 A. Not necessarily.
14 Q. But maybe?
15 A. But maybe.
16 Q. Yeah. And if that had gone that way, that would have been
17 good; right?
18 A. Yeah. I guess it would have been good.
19 Q. Okay. So you stop by her house on this event, this woman
20 that you're interested in maybe dating; and then there's
21 this big knockdown, drag-out fight, and you never try to
22 contact her again?
23 A. No. Because there's too much baggage, and I didn't want to
24 have anything to do with that, so --
25 Q. Were you worried about her safety?

1 A. No, I wasn't.
2 Q. But there's this guy who's big enough to push you around a
3 little bit and, obviously, has a problem with her. You
4 didn't follow up and say, hey, Linda, are you okay?
5 A. No, I didn't.
6 Q. You all right tonight? Who was that guy?
7 A. No, I didn't.
8 Q. Were you -- were you curious who he was?
9 A. I was -- I was curious about what -- what it was all about;
10 but at the end of the day, I wasn't told what it was about
11 and so I left, and I never went back around there because I
12 didn't want anybody's baggage in my life at that time --
13 Q. Even this --
14 A. -- or any other time.
15 Q. Even this attractive woman who gave you her number?
16 A. Yes.
17 Q. Who would let you into her apartment with no notice, no
18 invitation, just a knock on the door, come on in?
19 A. Yes.
20 Q. All right. So to clarify, you went over to Linda's
21 apartment; right? But we don't know what day it was?
22 A. Right.
23 Q. And she was a nice lady?
24 A. Yes.
25 Q. She was a single mother?

1 A. Yes. She was single, yes.
2 Q. Okay. And you said there were young children there?
3 A. Yes.
4 Q. You don't know how old but pretty young?
5 A. Yeah. Yes.
6 Q. All right. And then there's a man there who is large enough
7 to push you around and get into a pretty good fight that you
8 can't just easily win; right?
9 A. Well, I didn't get into a fight to say I was going to win.
10 I got into a fight to protect myself --
11 Q. All right.
12 A. -- and her, as well, so I'm not thinking about losing;
13 never, ever, do I think like that.
14 Q. Right. Now, did he push you all around the apartment or
15 just those two little areas that we talked about?
16 A. Just them two little areas where we got into it at.
17 Q. And, again, you're a pretty big guy, so he must have been
18 pretty descent if it could have been a match like that?
19 A. Okay.
20 Q. Is that right?
21 A. He was just an average guy to me.
22 Q. Okay. And so you leave Linda there with -- or, no, she's by
23 herself at this point, right, because this guy leaves first?
24 A. Well, me and her is there -- after he -- he leaves, me and
25 her is here. Then I -- then I leave, and she -- she's there

1 with the kids.
2 Q. And so you ask her -- of course, you ask her what the heck
3 was that all about; right?
4 A. Yes.
5 Q. And what did she say?
6 A. She didn't give me a response. I don't remember what she
7 said.
8 Q. Zero response?
9 A. She didn't -- I don't remember what she said.
10 Q. Okay. And so you know, when you leave, that she's home
11 alone with young children; and this guy says he'll be back?
12 A. Yes.
13 Q. And you leave, anyway?
14 A. Yes.
15 Q. All right. So you never learn that she was murdered in
16 February back then?
17 A. No, 2014.
18 Q. It was in the papers, though; right?
19 A. I don't know if it was in the papers or not.
20 Q. Did you read the papers back then?
21 A. No, I didn't.
22 Q. And you had information that, if the police had known, might
23 have been important; right?
24 A. Information about what?
25 Q. About what you just told the jury, that whole event with

1 this unknown guy, that might have been important to the
2 police; right?
3 A. I had said, "Leave me out of it. If you're going to call
4 the police, leave me out of it." That's why I left; that's
5 it.
6 Q. All right. So you're, what, 52 now?
7 A. Yes.
8 Q. And you're not a bad person; right?
9 A. What do you mean by that?
10 Q. Well, you've made mistakes; but your mistakes don't define
11 you; correct?
12 A. Right.
13 Q. All right. But mistakes can haunt you, they can hang on,
14 can't they?
15 A. Sure, they can.
16 Q. They can impact the entire rest of your life maybe?
17 A. If you let them, allow them to. It's up to the individual.
18 Q. Even mistakes that are twenty, thirty years old; right?
19 A. Sure.
20 Q. Because you can't undo what you did?
21 A. What did I do?
22 Q. You made a mistake.
23 A. What kind of mistake?
24 Q. Well, you can't undo your mistakes?
25 MS. HIGH: Objection, Your Honor. This is

1 now moving into improper questioning in terms of guilt.
2 THE COURT: I'll sustain the objection.
3 Q. (By Mr. Penner) All right. Mr. Mitchell, you never told
4 anybody back in 1993 what happened that night; right?
5 A. No, I didn't.
6 Q. It's because it never happened, did it?
7 A. It wasn't a big deal. I got into a fight. It wasn't a big
8 deal. I moved on with my life.
9 Q. You went over to her apartment that night for something, to
10 see her; correct?
11 A. Yes.
12 Q. And there was a fight; correct?
13 A. Yes.
14 Q. And you grabbed a knife, and you attacked her, didn't you?
15 A. No, I didn't.
16 Q. And you cut the phone cord, didn't you, so she couldn't call
17 the police?
18 A. No, I didn't.
19 Q. And she fought you, didn't she?
20 A. No, she didn't.
21 Q. She cut up her arms and her -- trying to defend herself,
22 didn't she?
23 A. She cut up her arms trying to defend herself?
24 Q. Yeah.
25 A. I don't know what she did.

1 Q. And there was a struggle for the knife, and you got cut,
2 too; right?
3 A. I wasn't there.
4 Q. And you stabbed her in the back until she fell to the
5 ground; correct?
6 A. No.
7 Q. And you stabbed her repeatedly and punctured her lung and
8 killed her, didn't you?
9 A. No, I didn't.
10 Q. And that you were cut, and you went through her pants
11 pockets, and you went through her dresser looking for drugs
12 or money; correct?
13 A. Not correct.
14 Q. And then you fled?
15 A. Not correct.
16 Q. And you never told the police or her family what happened to
17 her, did you?
18 A. I didn't know anything about a murder.
19 MR. PENNER: No other questions, Your
20 Honor.
21 THE COURT: Redirect?
22 MS. HIGH: No. Thank you, Your Honor.
23 THE COURT: All right. May the witness
24 step down?
25 MS. HIGH: Yes.

1 THE COURT: All right. You may step down,
2 sir. Thank you very much for your testimony.
3 THE WITNESS: Okay.
4 (The witness was excused.)
5 THE COURT: All right. Next witness,
6 Counsel?
7 MS. HIGH: Yes. Let me go check the
8 hallway.
9 (Pause.)
10 MS. HIGH: Defense calls Fred Ross.
11 THE COURT: If you want to come forward,
12 sir; watch the ramp.
13 FRED ROSS, witness herein, having been sworn
14 under oath, was examined and
15 testified as follows:
16 THE COURT: If you'll have a seat, sir.
17 There's water and Kleenex to your right. You can pull the
18 chair forward and adjust the mic. When answering, please
19 answer out loud "yes" or "no"; don't just nod or shake your
20 head or go "uh-huh." Okay?
21 THE WITNESS: Yes.
22 THE COURT: The court reporter is taking
23 everything down. She needs to know what you're saying.
24 THE WITNESS: Okay.
25 THE COURT: All right. Your witness,

1 Counsel.
2 MS. HIGH: Thank you.
3 DIRECT EXAMINATION
4 BY MS. HIGH:
5 Q. First, Mr. Ross, would you state your full name; and spell
6 it for the court reporter.
7 A. Frederick Marion Ross, Jr., and it's spelled
8 F-R-E-D-R-I-C-K, M-A-R-I-O-N, R-O-S-S.
9 Q. And, Mr. Ross, have you ever testified before?
10 A. No.
11 Q. Okay. So if you're nervous, just let us know.
12 A. No, I'm not nervous.
13 Q. Okay.
14 A. Yeah, I am.
15 Q. Okay. And I'm going to take you back in time and back to
16 probably, oh, late 1992, early 1993.
17 A. Mm-hmm.
18 Q. And do you know -- did you know Ms. Linda Robinson?
19 A. Yes, I did.
20 Q. And I believe her photo is up on the screen.
21 A. That's her.
22 MS. HIGH: Okay. And what is that,
23 Exhibit 1?
24 MR. PENNER: 90.
25 MS. HIGH: 90. Okay. Exhibit 90.

1 Q. (By Ms. High) And so, Mr. Ross, can you -- Linda, how long
2 had you known her?
3 A. We went to junior high and high school together, so I knew
4 her from, like, 14 and 15 years old up until she passed.
5 Q. Okay. And you knew some of her family too?
6 A. Yeah. Yeah. I knew Charles and Leslie and Gloria, yeah.
7 Q. Okay. And so you knew the family, and you had known
8 Ms. Robinson for a long time?
9 A. Correct.
10 Q. And did you occasionally get together socially with Ms.
11 Robinson?
12 A. Every now and then, I would see her at Brown's or -- or the
13 Caballeros or some place like that, yeah.
14 Q. Okay. When you say Brown's, that was a little bar and grill
15 on the hilltop?
16 A. Right. Right. It's not in business anymore, but yeah.
17 Q. And the Caballeros, was that --
18 A. Caballeros.
19 Q. Caballeros. Was that also a little nightclub or bar?
20 A. Yeah. It's a black social club here in Tacoma.
21 Q. Okay. And did you have plans to see Ms. Robinson on that
22 Saturday night that she was murdered?
23 A. Yes. Me and her were supposed to be hooking up and going
24 down to the Cab that Saturday night.
25 Q. And do you know about what time you guys had plans to go

1 out?
2 A. I think I told her I'd pick her up between, like, 9:00 and
3 10 o'clock, 9:00 or 10:30, something like that.
4 Q. And did you keep that date?
5 A. No, I didn't.
6 Q. What happened that precluded you from meeting up with her?
7 A. Two of my brothers came by my house, and we got to drinking
8 and partying, and we wound up going to Seattle, and then we
9 wound up in Fife, and it was -- it was, like, 10:30 or 11
10 o'clock at night when I got back, so I figured I had blew my
11 date.
12 Q. Okay. Did you call her or follow up?
13 A. I called her a couple of times earlier in the day, but
14 after -- I think it was after 6:00 or 7:00 when we got to
15 Tacoma, I didn't call her again. I didn't hear anything
16 else until the next day.
17 Q. Okay. And the next day is when you learned that she had
18 passed away?
19 A. Correct.
20 Q. Okay. And did you try calling her that Sunday before you
21 learned?
22 A. No. The police had already -- because I got in about -- I
23 think it was about six or seven o'clock Sunday morning, and
24 the detectives had already been to my parents' house, and --
25 and then I was staying with my grandmother at the time, and

1 they had been to her house and dropped a card off, so I
2 contacted them the next -- that day, and they had me come in
3 the next day.
4 Q. Okay. And, I guess, how old were you back in 1993?
5 A. I'm 59 now, so --
6 Q. Okay.
7 A. I was about 40.
8 Q. Okay.
9 MS. HIGH: That's all I have. Thank you.
10 THE COURT: Cross-examination?
11 CROSS-EXAMINATION
12 BY MR. PENNER:
13 Q. Mr. Ross, had you been over -- had you ever been over to
14 Linda's apartment?
15 A. Yes, I had.
16 Q. Okay. Did she baby-sit a lot?
17 A. I'm not quite for certain. She wasn't baby-sitting the day
18 that I had went to see her.
19 Q. Okay. Because she actually didn't like men coming over when
20 she was baby-sitting; right?
21 MS. HIGH: Objection; foundation;
22 speculation.
23 THE COURT: I'll sustain the objection.
24 Lay some foundation.
25 MR. PENNER: Okay.

1 Q. (By Mr. Penner) Do you know -- did she ever tell you
2 whether she liked men coming over when she was baby-sitting?
3 A. No, she didn't.
4 Q. She didn't say one way or the other, or she didn't like it?
5 A. She never said.
6 Q. Okay.
7 A. It never came up.
8 Q. All right. How often did you guys talk on the phone?
9 A. I hadn't see her for a couple of years; but when I did see
10 her, I think we talked maybe once or twice a week.
11 Q. Okay. And then your recollection is this -- the night that
12 she was murdered, you guys were going to go out around 9:00
13 or 10:30?
14 A. Right.
15 Q. Okay. But you didn't see her that night?
16 A. No. I didn't see her that day at all.
17 Q. Okay. Do you recognize Mr. Mitchell at all from back in the
18 day?
19 A. No, I don't.
20 MR. PENNER: Thank you. Nothing else,
21 Your Honor.
22 THE COURT: Any additional redirect?
23 MS. HIGH: No. Thank you.
24 THE COURT: All right. May the witness
25 step down, Counsel?

1 MR. PENNER: Yes, Your Honor.
2 MS. HIGH: Yes, Your Honor.
3 THE COURT: All right. You may step down,
4 sir. Thank you very much.
5 THE WITNESS: Thank you.
6 (The witness was excused.)
7 MS. HIGH: Defense calls Albert Earl Wade.
8 THE COURT: Okay. If you'll come forward,
9 sir; watch the ramp there. All right.
10 ALBERT WADE, witness herein, having been sworn
11 under oath, was examined and
12 testified as follows:
13 THE COURT: If you'll have a seat, sir.
14 There's water and Kleenex to your right. You can pull the
15 chair forward and adjust the mic. When answering, please
16 answer "yes" or "no" to questions; don't just nod or shake
17 your head. All right?
18 THE WITNESS: Okay.
19 THE COURT: Okay. Counsel, your witness.
20 MS. HIGH: Thank you.
21 DIRECT EXAMINATION
22 BY MS. HIGH:
23 Q. Mr. Wade, would you state your full name, and spell it for
24 the court reporter.
25 A. My name is Albert Earl Wade, A-L-B-E-R-T, E-A-R-L, W-A-D-E.

1 Q. And so, Mr. Wade, do you typically go by Albert or by Earl?
2 A. I go by Earl.
3 Q. By Earl. Okay. And I'm going to take you back in time now
4 to, probably, late 1992, early 1993, and did you know a
5 Miss Linda Robinson?
6 A. I -- I knew Linda.
7 Q. Okay. And so how did you know her?
8 A. I met Linda through a friend of mine that did her hair.
9 Q. Okay. And when you knew her, did -- would you visit her?
10 Would you talk on the phone?
11 A. I -- I never met her. I never seen her. I spoke to her on
12 the phone because her hairdresser was living with me, and I
13 just talked to her on the telephone.
14 Q. Okay. And when you talked on the phone, would you talk
15 frequently?
16 A. Yeah.
17 Q. About how often would you talk on the phone?
18 A. She might call, like, maybe six times a week or something.
19 Q. Okay. So it was pretty regular?
20 A. Right.
21 Q. And when you would talk to her on the phone, lengthy
22 conversations, how were they?
23 A. Yeah, about 35 or 40 minutes.
24 Q. Okay.
25 A. I was just getting to know her from my meeting her through

1 the telephone conversation.
2 Q. Okay. So kind of friends getting to know one another
3 through the phone?
4 A. (Nods head.)
5 Q. Do you recall talking to her on February 6th -- it was a
6 Saturday night -- in 1993?
7 A. Yeah.
8 Q. And how many times do you think you called -- you two
9 talked?
10 A. That day, we probably talked twice.
11 Q. Okay. And do you know if you talked to her that evening?
12 A. Yeah. I talked to her that evening, that day of the murder
13 and what happened.
14 Q. Yes. So you talked to her that evening?
15 A. Yeah.
16 Q. And do you think you talked to her twice that evening?
17 A. Yeah.
18 Q. Do you recall the times that you talked to her?
19 A. The -- the last time I had spoken to her was -- she was
20 calling about 10:30 at nighttime and about 11 o'clock at
21 night. She told me that there was a knock at the door, and
22 she'd call me right back.
23 Q. Okay. And did she call you back?
24 A. I never heard from her.
25 Q. Okay. Now, did you know she had a call waiting feature on

her phone?
A. No, I didn't know that, but -- well, I didn't know that --
Q. Okay.
A. -- but I -- I received a phone call from her sister --
Q. Okay.
A. -- that's saying my phone number is on there.
Q. Okay. And so you talked to her, the last time, somewhere between 10:30 to 11 o'clock?
A. We got off the phone about 11 o'clock.
Q. Okay. About 11:00. And you talked to her, also, earlier that evening?
A. Yeah.
Q. And do you remember kind of the topics of conversation, can you tell me what she said?
A. Well, we were just getting to know each other. I -- I never seen her. I just heard from a friend that he did her hair --
Q. Mm-hmm.
A. -- and this is my first time seeing who she is.
Q. Okay. So you don't recognize this photograph?
A. No. I don't recognize, but I've never seen her.
MS. HIGH: Okay. That's all I have. Thank you.
THE COURT: Cross-examination?
MR. PENNER: Thank you.

1 CROSS-EXAMINATION
2 BY MR. PENNER:
3 Q. Your roommate at the time, his name was Mark; right?
4 A. Right.
5 Q. And he was interested in Linda, maybe romantically?
6 A. Well, I didn't know -- really know what they had going, you
7 know what I'm talking about, because I met her through him.
8 I didn't meet her actually. I just talked to her on the
9 phone.
10 Q. So she would call -- so it started she would call for Mark,
11 you'd answer --
12 A. Right.
13 Q. -- and then maybe you guys would start to talk?
14 A. Right. Well, it was my place, so she was calling my number;
15 and he didn't have a phone, so he was rooming with me.
16 Q. Okay. Do you remember her telling you she didn't really
17 want Mark coming over to her apartment?
18 A. Just maybe one time, but I don't know when it was because he
19 did her hair.
20 Q. All right. Do you remember her telling you she didn't
21 really want anyone to know where she lived?
22 A. That I do.
23 Q. You do?
24 A. (Nods head.)
25 Q. Can you answer out loud?

1 A. Yeah. But I don't really know what she meant by that.
2 Q. Okay.
3 A. I'm just -- like I said, when I was talking with her, she
4 just called there for him because he was doing her hair.
5 Q. Okay. But you do remember at least once her telling you she
6 didn't really want anyone to know where she lived?
7 A. Right.
8 Q. Okay. The night that you talked to her, you think the last
9 time was around 10:30?
10 A. No. No. She must have called about 10:30.
11 Q. And then you guys talked for, what, a half hour?
12 A. A half hour, yes.
13 Q. Okay. And there was a knock at the door, and she said
14 she'll call you back?
15 A. That's right. That's the last time I spoke to her.
16 Q. All right. Had she mentioned anything -- well, I guess, did
17 she mention whether anybody was at the apartment with her?
18 A. Nobody was there.
19 Q. Nobody was there. Okay. Was she baby-sitting?
20 A. I don't know. I didn't know if she had any kids.
21 Q. Okay. All right. But you know nobody else was with her
22 when she was talking to you?
23 A. Right.
24 Q. Okay. Did she mention anything about a big ol' fight
25 happening in her apartment earlier that day?

A. Not to me.

MR. PENNER: Okay. Thanks. Nothing else, Your Honor.

THE COURT: Any redirect?

MS. HIGH: No. Thank you very much.

THE COURT: All right. May the witness be excused?

MR. PENNER: Yes, Your Honor.

(The witness was excused.)

THE COURT: Next witness, Counsel?

MS. HIGH: The Defense rests.

THE COURT: All right. Okay, then. I'm going to go ahead and might as well give the jury their morning recess, if you'd be so kind as to step into the jury room, no discussion, no investigation, notepads face down on your chairs, just in case you forgot.

(The jury was not present.)

THE COURT: All right. We need to -- is there going to be rebuttal testimony?

MR. PENNER: No, Your Honor.

THE COURT: All right. Then, obviously, we are going to need to do the instructions.

MR. PENNER: Your Honor, I've had a chance to review Ms. High's. I think it will be quick. There's one instruction that the State objects to. There's another

1 that she wrote a brief on regarding premeditation. The
2 State is largely in agreement with her instruction. We
3 might need to have some argument on the exact wording, but
4 those are the only two issues that I see, Your Honor; so I
5 don't think it will take very long.
6 THE COURT: All right. The Court,
7 obviously, got her instructions this morning, so I'll need
8 to take a quick look at that; but if most -- and I assume
9 most of them are patterned so that there's not going to be
10 any major discussion on that. Assuming we can deal with the
11 instruction issue, what are you looking at in terms of
12 closing?
13 MR. PENNER: I'd like to do it Monday,
14 Your Honor, not this afternoon.
15 THE COURT: Monday morning then?
16 MS. HIGH: Monday, that would be fine.
17 THE COURT: So at this point, propose we
18 release the jury until Monday morning?
19 MS. HIGH: Okay.
20 MR. PENNER: I don't think we'll need them
21 until then, Your Honor, yes.
22 MS. HIGH: Thank you.
23 THE COURT: All right. Then we'll go
24 ahead and give them their recess. We'll reconvene in 15
25 minutes, bring the jury back in, give them the rest of the

1 day off, and tell them we'll need them on Monday.
2 MR. PENNER: Will we plan to discuss
3 instructions after the break?
4 THE COURT: We will discuss
5 instructions -- let me have time to read that.
6 MR. PENNER: Well, that was my question
7 because --
8 THE COURT: Yeah, it won't take me very
9 long, but --
10 MR. PENNER: Okay.
11 THE COURT: So we could probably -- since
12 it's a quarter to 11:00 now, we probably can start the
13 discussion of instructions, say, at 11:30?
14 MS. HIGH: Oh, sure.
15 MR. PENNER: That's fine, Your Honor.
16 THE COURT: All right.
17 MS. HIGH: Thanks.
18 MR. PENNER: Thank you.
19 THE COURT: Or unless you want to do it at
20 1:30, but we'll say 11:30 and see what we can do because,
21 obviously, we're going to have to get all the copies
22 ready --
23 MS. HIGH: Yeah.
24 THE COURT: -- and I have to instruct, you
25 know, you guys to do that. All right. Then we'll

1 reconvene.
2 MR. PENNER: Thank you, Your Honor.
3 (A recess was taken.)
4 (The defendant was present.)
5 (The jury was not present.)
6 THE COURT: All right. You may be seated.
7 MR. PENNER: Thank you.
8 THE COURT: All right. Well, it didn't
9 take me actually very long to read the memorandum, so I
10 think what we'll do is: We'll dismiss the jury, and then
11 we'll discuss the instructions. All right?
12 MR. PENNER: Okay. Thank you, Your Honor.
13 THE COURT: Unless you need a few minutes?
14 MR. PENNER: I don't believe so.
15 THE COURT: Okay. Then we'll bring the
16 jury in. I honestly did not think we were going to be
17 ending this soon, so one of those reasons why, as a trial
18 judge, you need to learn to go with the flow; you can't
19 control everything.
20 MS. HIGH: Although, you've been
21 remarkably accurate on your timeline.
22 (The jury was present.)
23 THE COURT: All right. You may be seated.
24 All right. The Defense having rested, the State has no
25 rebuttal testimony; so at this time, the attorneys and I

1 have issues that we need to deal with which does not require
2 your participation, so we are going to release you for the
3 day. I'm sure you're beginning to anticipate this. We will
4 see you on Monday morning. They are going to do closing
5 argument Monday morning. I will read the instructions on
6 the law to you at that time which is what we're going to be
7 going over now is the instructions on the law.
8 So for the last time this week, no discussion, no
9 investigation, notepads face down on your chairs. Monday
10 morning at 9:30, we'll be doing closing arguments; and it
11 will, then, go to you for deliberation; so if you'd be so
12 kind as to step into the jury room. Please remain there
13 until Ms. Shipman comes to spring you.
14 (The jury was not present.)
15 THE COURT: All right. Does Mr. Mitchell
16 need to be here for this?
17 MR. PENNER: I think so, Your Honor.
18 MS. HIGH: Yeah. Sure.
19 THE COURT: All right. So he's going to
20 stay?
21 MS. HIGH: Yes, Your Honor.
22 THE COURT: All right. In that case,
23 then, you can -- you can release the jury and have them
24 proceed directly out of the courthouse. All right? This
25 is, however, the kind of thing that's like watching paint

1 peel.
2 (Pause.)
3 THE COURT: All right. So which is the
4 instruction that you object to?
5 MR. PENNER: It's Defense proposed 2
6 regarding chain of custody.
7 THE COURT: All right.
8 MR. PENNER: Would you like me to state my
9 objections?
10 THE COURT: Yes, you may.
11 MR. PENNER: Thank you, Your Honor. I
12 don't think the Court should instruct on chain of custody at
13 all. The proposed language and the citations that Ms. High
14 has provided are designed to guide the Court when it comes
15 to questions of admissibility. Admissibility was already
16 determined in this case after a pretty lengthy hearing. I
17 think Ms. High is more than, and I expect that she will, be
18 able to talk to the jury about why they should, perhaps,
19 have issues with the chain of custody but then try to
20 explain in some way why that would impact the evidence in
21 the case.
22 There's no WPIC on chain of custody, and there's a
23 reason; and I don't think the Court should instruct on it
24 either. If you read it, it doesn't even really tell them
25 why chain of custody is relevant. It says how to establish

1 chain of custody, but it doesn't tell them what that means
2 if it's not established. That's something for argument. I
3 don't think the Court should involve itself in the argument.
4 There's too much importance given to the Court's
5 instructions, and I think this is an area the Court should
6 not instruct on.
7 THE COURT: All right. Ms. High?
8 MS. HIGH: Thank you, Your Honor. I've
9 offered this instruction in that I believe the chain of
10 custody is one of the central issues, obviously, in this
11 trial regarding the collection, the handling, and then the
12 final getting this property into evidence and that it will
13 assist the jury in evaluating the evidence that they have
14 before them. It is not a standard WPIC, but they don't
15 cover every scenario; and I do believe that it is a correct
16 statement of the law. It's a statement of the law that, I
17 believe, will assist me in arguing my theory of the case and
18 will assist the jury in evaluating the evidence that they
19 have before them.
20 THE COURT: Any response, Mr. Penner?
21 MR. PENNER: Well, again, Your Honor, if
22 they find that the chain of custody is or isn't established
23 there, they're instructed what that means; and there's a
24 reason they're not because that's for argument.
25 THE COURT: Well, I think that the idea of

1 chain of custody is an evidentiary question which, in this
2 case, has been dealt with by Judge --
3 MS. HIGH: Whitener.
4 THE COURT: -- Whitener previously, you
5 know. It can certainly go to show that there may be holes
6 in the case, but the whole idea of chain of custody is that
7 it's an evidentiary question for the Court; and the Court
8 has already ruled on it previously, so I will not be giving
9 the proposed Instruction No. 2 from the Defense.
10 MR. PENNER: Thank you, Your Honor.
11 THE COURT: All right. And then the other
12 one is the premeditation.
13 MR. PENNER: Yes, Your Honor, which is
14 Defense proposed 4. I've read Counsel's brief, and I think
15 she makes a good point; and I don't think it's anything that
16 would be unfair to tell the jury exactly what premeditation
17 means. I think that's something the lawyers can have
18 trouble really wrapping their heads around, so I'm not going
19 to object overall to the instruction. I do have a couple of
20 proposed edits, though.
21 I guess -- so I do object to the last sentence saying
22 premeditation may be proven by circumstantial evidence;
23 however, the circumstantial evidence must be substantial. I
24 don't think that's appropriate because what we're doing is,
25 kind of, instructing on burden of proof, giving them some

1 kind of, you know, substantial evidence burden of proof.
2 They're already being told the State has to prove it beyond
3 a reasonable doubt, and I don't think we should start
4 talking about other types of burdens or what type of
5 evidence is sufficient.
6 I think the Court should delete that last sentence, and
7 then I had just really kind of more of a stylistic edit
8 proposal for the second to last sentence; and that paragraph
9 that starts "Rather." My proposal would be -- the first
10 sentence is fine, "and involves the" -- and starting on the
11 second line, "and involves the mental process of" -- delete
12 "actually thinking beforehand" because then we have "actual"
13 and "actually," and I think it's just a -- we've got a list,
14 and I think the list should be uniform in nouns; so "the
15 mental process of actual deliberation, reflection, or
16 reasoning for some period of time, however -- "
17 THE COURT: So strike from "actually
18 thinking beforehand."
19 MR. PENNER: Yeah. Change "a period of
20 time" to "some period of time," and then I was going to
21 propose we write "however long or short" after that.
22 THE COURT: All right. Ms. High?
23 MS. HIGH: Okay. Well, I guess starting
24 with the "actually thinking beforehand, actual
25 deliberation," you know, actually -- *actually* -- apparently,

1 I'm in an "actually" mode. I can live with human -- the
2 sentence reading, "Rather, premeditation is the deliberate
3 formation of and reflection upon the intent to take a human
4 life and involves the mental process of actual deliberation,
5 reflection, or reasoning for some period of time."
6 I think where we run into problems is when we kind of --
7 when we start going to the "however short" because the
8 "however short" is, really, the rub, and it is not -- it's
9 not in the statute and -- which just requires, I guess, more
10 than a moment in time; but if we look -- as we go through
11 the case law and we follow it back, you know, there is no
12 specific length of time for deliberation, premeditation, but
13 there must be some length of time as what we have; so I
14 would suggest that we just for a -- for a period -- I'm
15 sorry, for a period -- did you say for some period of time,
16 or --
17 MR. PENNER: For some period of time.
18 MS. HIGH: Yeah, for some period of time.
19 MR. PENNER: I mean, if you look at the
20 WPIC, there's actually a sentence there, "premeditation must
21 involve more than a moment in point of time," which isn't in
22 the Defense instruction but maybe we should include. I
23 think it's favorable to the defendant.
24 MS. HIGH: Well, I think my problem with
25 that is it really, then, conflates, and that's the

1 problem --
2 MR. PENNER: Okay.
3 MS. HIGH: -- I foresee with --
4 MR. PENNER: All right.
5 MS. HIGH: -- what is intent versus
6 deliberation?
7 MR. PENNER: Okay. No, and that's always
8 the problem with these cases.
9 MS. HIGH: Right. And I would just ask
10 that we reword it --
11 MR. PENNER: Okay.
12 MS. HIGH: -- "for some period of time"
13 and perhaps leave it at that.
14 MR. PENNER: I think that would allow me
15 to argue --
16 MS. HIGH: However long or short.
17 MR. PENNER: -- however long or short. It
18 doesn't prohibit --
19 THE COURT: I'm assuming that you can
20 argue "however long or short."
21 MR. PENNER: Right. Yeah.
22 THE COURT: All right. Well, we'll reword
23 it as "reflection, or reasoning for some period of time."
24 MS. HIGH: And with the last sentence, I'm
25 actually mindful of his, you know, not wanting to somehow

1 water down what the burden of proof is beyond a reasonable
2 doubt. I had included the "circumstantial evidence must be
3 substantial based on Gentry and Hurdle" that used that --
4 you know, they went through "the mere opportunity to
5 deliberate is not enough," and that it says "premeditation
6 may be proved by circumstantial evidence where the
7 inferences drawn by the jury are reasonable, and the
8 evidence of the jury's finding is substantial."
9 And that's why I had included that, and I don't know what
10 the Court's feelings are, if that conflicts with proof
11 beyond a reasonable doubt. I mean, certainly, I don't want
12 to lessen the burden of proof in any way, shape, or form. I
13 just wanted to highlight -- I know we tell them
14 circumstantial evidence is the same, they need to be
15 reasonable inferences. It's just the case law, taking a
16 look at deliberation, also, I think, wanted to highlight
17 that when it's circumstantial evidence, it needs to be
18 substantial; and like I said, now I'm having -- I'm having
19 some qualms that it somehow dilutes beyond a reasonable
20 doubt.
21 THE COURT: Well, I think it does.
22 MS. HIGH: Right.
23 THE COURT: But, I think, when you're
24 looking at State vs. Finch, and that's where you took this
25 language from --

1 MS. HIGH: Yeah.
2 THE COURT: -- which is 137 Wn.2d 792, a
3 1999 case, you're basically looking at the Court of Appeals,
4 you know --
5 MS. HIGH: Mm-hmm.
6 THE COURT: -- decision and the way they
7 wrote it. It can be proved by circumstantial evidence where
8 the inferences drawn by the jury are reasonable, and the
9 evidence supporting their finding is substantial. I think
10 that's their commentary, and I don't think that they're
11 going to make it, you know, as the language for instruction,
12 so I don't think that, you know, because you're already
13 instructing that, you know, circumstantial and direct are
14 equal in value, you know. It is beyond a reasonable doubt,
15 so I don't think that the last sentence is appropriate
16 because I think it could give a diluting of the burden of
17 proof.
18 MS. HIGH: I agree.
19 THE COURT: So I think we'll go ahead and
20 strike that.
21 MR. PENNER: Then, Your Honor, I think the
22 only other difference is the presumed innocent instruction.
23 THE COURT: What?
24 MR. PENNER: The presumed innocent, proof
25 beyond a reasonable doubt instruction, 4.01. It's

1 Ms. High's 1. The State proposed the same pattern. There's
2 the bracketed phrase about "abiding belief"; and, you know,
3 whatever the Court wants to do on that. I don't know what
4 the Court's preference is.
5 THE COURT: All right. Let me look at
6 the --
7 (Pause.)
8 THE COURT: All right. Basically, it's
9 the same WPIC; and then the only thing is that you -- if,
10 from such consideration, you have an abiding belief in the
11 truth of the charge, you are satisfied beyond a reasonable
12 doubt.
13 MS. HIGH: Right, and I've proposed the
14 WPIC that does not include that phrase; and I'll be honest
15 with you, when I start reading "abiding belief," it seems
16 like we've moved away from evidence, you know, we're looking
17 not at proof, now we've moved into belief; and both of them
18 are correct statements of the law. Both of them are
19 approved, and I would ask that we not use the abiding belief
20 because, like I said, I think that it does muddy the waters.
21 There's a way to argue, you know, how it's a clause
22 dependent on first finding proof beyond a reasonable doubt,
23 everyone's eyes glaze over; and like I said, I don't like
24 the language in that. It really does move away from proof,
25 from evidence and takes, I think, jurors to a place of

1 belief that is somehow divorced from the evidence and the
2 proof before them in the way they need to do it.
3 MR. PENNER: Your Honor, the State's fine
4 with the Defense proposed instruction. I don't think it
5 will impact the verdict either way, so I'm fine with it.
6 THE COURT: All right. Well, since I was
7 inclined to make -- you know, while I personally think it
8 sounds elegant, the fact that I think it sounds elegant is
9 not exactly any reason to include it, so we will strike "if,
10 from such consideration, you have an abiding belief in the
11 truth of the charge, you are satisfied beyond a reasonable
12 doubt." We'll go with the Defense proposed instruction
13 based on WPIC 4.01.
14 MR. PENNER: I don't believe that the
15 State has any further objections to any of the proposed
16 instructions by the Defense.
17 THE COURT: All right. Does the Defense
18 have any objections to any of the State's?
19 MS. HIGH: Let's see. It looks like we've
20 addressed burden of proof which I have as their first. I
21 believe that we can get rid of the State's WPIC 6.31,
22 "defendant's not required to testify."
23 THE COURT: Yes. We certainly can remove
24 that one.
25 MS. HIGH: So, I think we can eliminate

1 that one.
2 MR. PENNER: Correct.
3 MS. HIGH: "Direct or circumstantial,"
4 5.01, I believe, is the standard WPIC --
5 MR. PENNER: Mm-hmm.
6 MS. HIGH: -- no changes. We have our
7 experts, again, 6.51. I don't see that has any issue.
8 THE COURT: Murder in the first degree.
9 MS. HIGH: Right, murder in the first
10 degree. It looks like we've adopted some hybrid
11 premeditation, so --
12 THE COURT: So, take the State's out --
13 MS. HIGH: Right.
14 THE COURT: -- and substitute yours.
15 MS. HIGH: Right.
16 MR. PENNER: Wait. Wait. This -- the --
17 THE COURT: Right after the instruction
18 about murder in the first degree.
19 MR. PENNER: Oh, so we're keeping the
20 definitional instruction --
21 THE COURT: Yeah.
22 MR. PENNER: -- and we're using the
23 Defense "as discussed on premeditation." Thank you, Your
24 Honor.
25 MS. HIGH: Right. Yeah.

1 THE COURT: The Defense one, yeah, and put
2 theirs in right after.
3 MR. PENNER: Thank you.
4 MS. HIGH: Right.
5 THE COURT: And then have the definition
6 of intent or intentionally, you know --
7 MS. HIGH: Mm-hmm. The charge --
8 THE COURT: -- the charge, if not, then
9 you can consider murder in the second degree, then the
10 to-convict and murder in the first degree, the to-convict of
11 murder in the second degree, and then the final one about
12 what you do when you get into the jury room.
13 MS. HIGH: Right.
14 THE COURT: And I like that order.
15 MR. PENNER: Yes, Your Honor.
16 MS. HIGH: Yes.
17 THE COURT: That would be the order that I
18 like.
19 MR. PENNER: I can make those changes,
20 Your Honor, and get a packet to the Court and Counsel.
21 THE COURT: All right. By today?
22 MR. PENNER: Absolutely.
23 THE COURT: All right.
24 MR. PENNER: And I did have a question:
25 In the concluding instruction, there's, again, a bracketed

1 phrase regarding questions; and the WPIC has a bracketed
2 phrase, "for this purpose, use the form provided in the jury
3 room."
4 MS. HIGH: Yeah.
5 THE COURT: We have a form in the jury
6 room.
7 MS. HIGH: Oh.
8 MR. PENNER: So, shall I include that
9 sentence?
10 THE COURT: Yes.
11 MR. PENNER: All right.
12 THE COURT: Ms. Shipman has a form that
13 she has printed up and, usually, is in there. All right?
14 MR. PENNER: Thank you. I should be able
15 to get that -- I should have no trouble getting that done
16 this afternoon.
17 THE COURT: All right. You guys are going
18 to make the copies.
19 MS. HIGH: Sure.
20 THE COURT: You can either split it, or
21 the State can do it.
22 MR. PENNER: I believe usually the State
23 does it and bills the Defense.
24 MS. HIGH: Yes.
25 THE COURT: All right. Some judges say

1 they'll do it; but unfortunately, that does come into our
2 copy budget which, you know, we've had cutbacks like
3 everybody else, so we can only copy our stuff; we don't have
4 to do yours.
5 All right. So then we'll need 15 copies and one set of
6 originals; we have 13 jurors.
7 MR. PENNER: I'll provide an extra copy
8 for Ms. High.
9 THE COURT: Oh, all right.
10 MR. PENNER: And I'll make an extra one
11 just to have it.
12 THE COURT: Okay.
13 MS. HIGH: Okay.
14 MR. PENNER: All right. Shall I go ahead
15 and number them, as well, Your Honor, in the order?
16 THE COURT: Yeah, just number them in that
17 order.
18 MR. PENNER: Thank you, Your Honor.
19 THE COURT: All right. And anything else?
20 MR. PENNER: I don't believe so, no, Your
21 Honor.
22 MS. HIGH: No, and before we leave,
23 though --
24 THE COURT: You better go through the
25 exhibits.

1 MS. HIGH: -- we better go through the
2 exhibits just in case --
3 THE COURT: Yes. Just in case.
4 MS. HIGH: -- just in case, and if we find
5 something that for some reason --
6 THE COURT: I would -- it's not likely,
7 but one never knows. All right, then. So Monday morning at
8 9:30.
9 MR. PENNER: Thank you very much, Your
10 Honor.
11 THE COURT: All right. Court will be at
12 recess.
13 (Court adjourned for the day.)
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,	)	
	)	Superior Court
Plaintiff,	)	No. 14-1-02979-1
	)	
vs.	)	Court of Appeals
	)	No. 48810-8-II
JAMES EDWARD MITCHELL,	)	
	)	
Defendant.	)	

REPORTER'S CERTIFICATE

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

I, Kimberly A. O'Neill, Court Reporter in the state of Washington, county of Pierce, do hereby certify that the foregoing transcript is a full, true, and accurate transcript of the proceedings and testimony taken in the matter of the above-entitled cause.

DATED this 20th day of August, 2016.

_____
KIMBERLY A. O'NEILL, CCR
License No. 1954

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,	)	
	)	
Plaintiff,	)	
	)	COA No. 48810-8-II
vs.	)	
	)	No. 14-1-02979-1
JAMES EDWARD MITCHELL,	)	
	)	
Defendant.	)	

VERBATIM REPORT OF PROCEEDINGS
TRIAL - 2/10/16

BE IT REMEMBERED that on the 10th day of February, 2016, the above-captioned cause came on duly for hearing before the HONORABLE KATHERINE M. STOLZ, Department 2, Superior Court Judge in and for the County of Pierce, State of Washington;

WHEREUPON, the following proceedings were had and done, to wit:

Reported by: Dana S. Eby, CCR

APPEARANCES

For the Plaintiff:

Stephen M. Penner
Deputy Prosecuting Attorney
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Tacoma, Washington 98402

For the Defendant:

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FEBRUARY 10, 2016

MORNING SESSION

* * * * * * *

(The following proceedings were held out of the presence of the jury.)

THE COURT: Anything before we bring the jury in?

MR. PENNER: No, Your Honor, and I would like to thank the Court for giving me extra time to get organized.

THE COURT: I understand how that goes. There's an awful lot of moving parts.

MR. PENNER: Yes, Your Honor.

THE COURT: And they all operate sometimes on their own timeframe. All right, then. We'll go ahead and bring the jury in.

Some of my colleagues think there's some perfect way we're going to be able to stuff the cases in here and not be over within, you know, 165 days, but it's sort of like, don't think so. Sort of like a Rube Goldberg machine.

MS. HIGH: Right.

THE COURT: It's not going to work.

(The following proceedings were held in the presence of the jury.)

THE COURT: All right. You may be seated. All right, Counsel, you may call your next witness.

MR. PENNER: Thank you, Your Honor. The State would call Chris Sewell.

THE COURT: You want to watch the ramp, sir.

THE WITNESS: Me? Yes.

THE COURT: Frequently, we have people stumble on it.

CHRIS SEWELL: having been called as a witness on behalf of the Plaintiff, having been first duly sworn by the Court, testified as follows:

THE COURT: Have a seat. There's water and Kleenex to your right. You can adjust the mike and the chair. When answering, answer yes or no so the court reporter understands what you're saying.

All right, Counsel.

MR. PENNER: Thank you, Your Honor.

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DIRECT EXAMINATION

BY MR. PENNER:

Q. Could you state your name for the record and spell it for the court reporter?

A. Yes. It's Chris Sewell, S-E-W-E-L-L.

Q. And Mr. Sewell, did you recently retire?

A. Yes.

Q. Where did you retire from?

A. The Washington State Patrol Crime Laboratory.

Q. And what was your title when you retired?

A. I was a forensic scientist supervisor of the DNA section.

Q. Okay. How long did you work at the Washington State Patrol Crime Lab?

A. A little over 34 years.

Q. And what was your retirement date?

A. June 30th, 2015.

Q. While you were there, what were some of the duties that you did over those 34 years?

A. I began at the crime lab in 1981 as a forensic scientist where most of my training was done by senior forensic scientists, and I began doing drug analysis because my background is chemistry. I then, after a couple of years, trained into what we call serology, which was blood type work. And then eventually that

1 led into DNA typing and that sort of thing.
2 Q. In 1981 when you started, was there any sort of DNA
3 analysis that was being done forensically?
4 A. Certainly not in Washington. I'm not sure across the
5 country what might have been. Very beginnings of
6 that, if at all.
7 Q. Okay. So in, say, 20 -- well, the last few years of
8 your career, what were your duties primarily as a
9 supervisor for the DNA section?
10 A. Excuse me a second.
11 Q. Sure.
12 A. As a forensic scientist supervisor in the DNA section,
13 I would review every request for DNA analysis that
14 came in through our laboratory, made contact with the
15 investigator to determine what items were being
16 requested, what items we were going to actually test,
17 and talk about the priority for the case. I would
18 then assign the case either to myself or to one of the
19 scientists in my section.
20 On the administrative side of being a supervisor,
21 I would do performance evaluations on the scientists
22 in my section, training, time accountability, that
23 sort of thing.
24 Q. Okay. What education or training do you have that
25 allowed you to qualify to be a DNA expert?

1 A. I've got a bachelor of science degree in chemistry
2 from Western Washington State College.
3 Specifically for -- to work in the DNA section,
4 there is some higher education standards than there
5 are for other forensic scientists in the crime lab, so
6 I went back to school to pick up classes in molecular
7 biology, biochemistry, and genetics. So
8 education-wise, that was -- that was a requirement.
9 I also did what we call a personal validation,
10 which is taking numerous samples from a variety of DNA
11 sources and testing those using the methods that we --
12 that we employ, to make sure that I can consistently
13 and reliably get the proper result, the appropriate
14 answers, so then I could be approved to do DNA
15 casework.
16 Q. And when did you start doing DNA casework?
17 A. I started in November of 2000.
18 Q. When did the crime lab for Washington state start
19 doing DNA analysis?
20 A. The original DNA analysis, which is not what we do
21 anymore, was, I believe, started in -- only in our
22 Seattle lab, and I believe that was in -- I want to
23 say in the late '80s, early '90s.
24 Q. Okay. And in a minute, we'll talk about the different
25 types of DNA analysis, but personally, have you had

1 any additional training specific to DNA analysis?
2 A. Well, as I mentioned, the classes that I went back to
3 and the personal validation. I also -- also attended
4 numerous conferences, workshops, those sorts of
5 things. I've been to the FBI academy, had classes
6 through the serological research institute, classes
7 through the Applied Biosystems, Incorporated, which is
8 the company that provides our DNA typing kits, and
9 numerous other workshops, seminars, and classes
10 throughout my career, to keep up with the technology,
11 because, really, the technology in DNA continually is
12 being updated and modified to continue to try to get
13 more and more information.
14 And so the personal validation that I mentioned
15 was done initially but it's also an ongoing process.
16 As -- as things change and new technology, new
17 instruments, and new software become available, then
18 each of us in the DNA section go through that process
19 of making sure that we can use that in proper manner
20 and get the right results before we're approved to use
21 those sorts of things for DNA casework.
22 Q. All right. So let's talk a little bit about DNA
23 generally. What is DNA?
24 A. The letters DNA stand for deoxyribonucleic acid, which
25 is often referred to as the blueprint of life because

1 the great degree it -- it says who we are, anything
2 from our hair color and eye color to our height, foot
3 size, as well as affinity for certain genetic
4 diseases.
5 Q. Okay. And if you were to look up close at a DNA
6 strand, what would it look like?
7 A. The DNA strand looks -- it's called a double helix,
8 kind of looks like a -- like a ladder that's been
9 twisted.
10 Q. And the rungs of the ladder, what are those made up
11 of?
12 A. The rungs of the ladder are what we call base pairs,
13 which are the -- I'm not sure how to -- they're called
14 base pairs, and it's a way of counting how long the
15 DNA molecule is. And the particular sections that
16 we're looking at, it matters as to the length of
17 those.
18 Q. Could you maybe step down from the witness stand?
19 We'll have this marked as an exhibit when Ms. Shipman
20 comes back, but if you can just kind of draw a
21 close-up of the helix and show us where these rungs
22 are, these base pairs.
23 A. (Complying.) I'm not sure how well I can -- I can
24 draw it, but basically, it's -- like I say, it's a
25 ladder, and then if you took this and held this end

1 and twisted this end, that's the double helix. These
2 are base pairs here, and they're joined in the center
3 here. (Indicating.)
4 So there's four base pairs, and they pair in a
5 certain manner. They're adenine, guanine, cytosine,
6 and thymine. So they pair in a certain manner so that
7 we're able to use that chemistry, then, to know how to
8 split this and duplicate, which we'll probably talk
9 about later.
10 Q. Okay. So for the record, first of all, I'm going to
11 put this on as Exhibit 113.
12 And then you said that they -- I think you said
13 they combine in a certain way. So there's four
14 possible chemicals; is that right?
15 A. Yes.
16 Q. All right. If you know that one of the chemicals on
17 the left side is a given one -- aren't there letters
18 for these?
19 A. Yes. A, G, T, and C.
20 Q. What are the four letters?
21 A. Sorry. A, G, T, and C.
22 Q. Does A always pair with one particular other chemical?
23 A. I wouldn't say always, but -- nothing is always -- but
24 yeah, the vast majority, like 99.9 percent of the
25 time, they are chemically matched. They don't fit

1 otherwise.
2 Q. So what does A bond with?
3 A. I believe A goes with T.
4 Q. Okay. And then G?
5 A. With C.
6 Q. Okay. Maybe write that, also.
7 A. (Complying.)
8 Q. Why is that important for when you, say, you split the
9 DNA strand?
10 A. The -- the process that we use is called polymerase
11 chain reaction.
12 THE COURT: Okay. You're going to want to
13 spell that one for the court reporter, please.
14 THE WITNESS: P-O-L-Y-M-E-A-S-E (sic.)
15 Polymerase chain reaction. That's the process of
16 splitting the DNA lengthwise and replicating because
17 these things do match up in a certain order. You
18 split it down the middle; you can replicate the other
19 side. So if you split this down the middle, then you
20 have like this, and you'd have like this, and then you
21 can replicate the other side of each of these to
22 duplicate the DNA. (Indicating.)
23 BY MR. PENNER:
24 Q. Because A always goes with T and C always goes with G?
25 A. Correct, correct. So what this does, through that

1 process, that allows us to duplicate and make millions
2 of copies of particular segments of DNA that are of
3 interest to us.
4 Q. And can you make one copy or can you make more than
5 one copy?
6 A. Well, each time you make a copy, you've doubled the
7 number. So you go from two to four, four to eight,
8 eight to sixteen, and you keep repeating that. We go
9 through, I think, twenty-four cycles of repeating.
10 Q. Every time you do that, it doubles the previous
11 number?
12 A. Doubles the previous number.
13 Q. Okay. Could you put your initials and -- towards the
14 bottom next to the tag and today's date, which I
15 believe is the 10th of February?
16 A. (Complying.)
17 MR. PENNER: And then, Your Honor, the State
18 would move to admit Exhibit 113 for illustrative
19 purposes.
20 THE COURT: Any objections?
21 MS. HIGH: No, Your Honor.
22 THE COURT: All right. 113 will be admitted
23 for illustrative purposes only.
24 (Exhibit 113 admitted for illustrative purposes.)
25

BY MR. PENNER:

Q. Thank you. You can be seated again. Where -- where is DNA -- where is this chain found in the body?

A. DNA that I've described here in what we're looking at is found in the nucleus of the cells of the body. They're organized into what's called chromosomes, so the chromosomes within the nucleus within the cells. And this DNA is found in our blood, in the white blood cells, in spermatozoa, in cells from our body, again. Saliva.

Q. What about skin cells?

A. Skin cells to a certain extent will also contain that DNA, yes, sir.

Q. What about hair cells?

A. The hair itself does not contain this type of DNA. If the hair happens to be plucked with some skin tag on the end of it, basically some tissue, then that's where you'd find the DNA, but not in the shaft or the length of the hair.

Q. All right. So if I can have a moment, I'm going to take down this diagram, and Mr. Sewell, what I'd like to you do now, if you could step down, can you diagram a cell that has a nucleus and show us where the nuclear DNA is and where the mitochondrial DNA and where the chromosomes are? So draw nice and big.

1 A. (Complying.) Okay. So this -- if -- if this is a
2 cell, it has a nucleus and this has the double
3 suspended DNA. So that's what we're looking at.
4 There are also bodies within the -- or structures
5 within the -- within the cell called mitochondria.
6 Q. I'm going to interrupt, and for the record, we're
7 marking this as 114.
8 THE COURT: And also for the record, you
9 might want to spell mitochondria. I know I've read it
10 but --
11 THE WITNESS: M-I-T-O-C-H-R-O-N-D-I-A-L
12 (sic), I believe. I've got to write it down myself.
13 I'm not an expert in mitochondrial DNA. It's not the
14 kind of testing that we do. But there are these other
15 bodies within the cell that do contain mitochondrial
16 DNA, and that is a totally different methodology that
17 can be used on different types of evidence.
18 BY MR. PENNER:
19 Q. And you said you're not an expert, but in terms of
20 the -- the specificity of an individual, can
21 mitochondrial DNA narrow it down to an exact
22 individual?
23 A. No.
24 Q. Okay.
25 A. Neither one of them, actually, can, but -- but much

less so with the mitochondrial DNA.

Q. And people have -- people from the same mother have the same mitochondrial DNA, right?

A. Correct.

Q. But people from the same mother should have different nuclear DNA?

A. Also correct.

Q. So again, if you can let the jury know, where is the DNA that you did the analysis in in a human cell?

A. It's in the nucleus. This would be the DNA organized into chromosomes.

Q. And how many chromosome pairs do humans have?

A. Twenty-three.

Q. Okay. All right. Again, could you put your initials there?

A. (Complying.)

MR. PENNER: And Your Honor, I'd move to admit Exhibit 114 for illustrative purposes.

THE COURT: Any objections?

MS. HIGH: No, Your Honor.

THE COURT: Okay. 114 will be admitted for illustrative purposes only.

(Exhibit 114 admitted for illustrative purposes.)

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/////

1 BY MR. PENNER:
2 Q. Thank you. And you can be seated again.
3 A. Oops, it's the 10th.
4 Q. So the DNA strand that we're talking about, is that --
5 you said that's inside the chromosomes and there's 23
6 pairs. Is it identical in each pair, or is that -- is
7 it the entire strand of 23 pairs of DNA that makes the
8 blueprint for a person?
9 A. The latter. The -- it's 23 pairs of chromosomes but
10 each one is different, and it's -- when we're talking
11 about the DNA strand, we're talking about the whole
12 sum of all of those.
13 Q. Okay. And before, you -- you drew the DNA with the
14 rungs in the ladder?
15 A. Yes.
16 Q. How many rungs are there in the human DNA for one
17 person?
18 A. Lots. I don't know. Millions, I believe.
19 Q. Okay. And when you do DNA analysis, do you look at
20 every single one of those rungs?
21 A. No.
22 Q. Okay. Why not?
23 A. It's not feasible. Basically, when you're talking
24 about every single rung, you're talking about
25 determining a sample's total genome, like you've heard

1 about the genome project. It's not a feasible thing
2 in forensics. So what we do is we look at specific
3 regions of different chromosomes and find out what
4 time we find that that chromosome, those regions, are
5 what we call markers, and we -- we use just specific
6 regions of the DNA.
7 Q. And let's also talk about usefulness. I mean, how
8 much of those millions of rungs are the same for every
9 single person?
10 A. The vast majority of everyone's DNA as human beings is
11 the same for all of us.
12 Q. Okay. And is human DNA similar to other animals' DNA?
13 A. I believe it's similar but distinct. Obviously, we're
14 different than animals, so --
15 Q. So there could be, if I understand, parts. If you
16 look at the rung in the ladder, that base pair is
17 going to be the same pretty much for everybody; is
18 that correct?
19 A. Yes. Everyone's DNA is structurally the same.
20 Q. So the regions that you focus in on, why do you focus
21 in on those?
22 A. Through -- through research and study that have been
23 done over the years, particular regions were selected
24 because of their robustness, their ability to be able
25 to consistently go through a process and get the right

1 result at the end, as opposed to breaking down or just
2 not being reliable. They're also ones that have been
3 chosen because of what -- they are what we call
4 polymorphism, which means that, at any particular
5 site, there's more variety between individuals than
6 you might find at some other sites.
7 Q. Okay. Let's talk a little bit now, then, about the
8 history of DNA testing. What procedure is used now?
9 What's that called?
10 A. Well, what we use now is called STR, which calls for
11 short tandem repeat.
12 Q. What does that mean: Short tandem repeats?
13 A. The sections of DNA that we're looking at, the -- the
14 base pairs have a certain order to them, and these
15 sections of DNA that -- that -- these certain order of
16 the base pairs repeats, and they're a tandem. They're
17 right next to each other, so what we're really doing
18 is looking at the length of the section of DNA that
19 shows up at a particular place on the chromosome based
20 on how many of these repeats there are within that
21 section. So that's what distinguishes between
22 individuals is how many of these repeats are found in
23 a particular place, marker on the chromosome.
24 Q. Okay. And how many of those markers do you look at
25 when you do analysis?

1 A. We're currently using 15 markers as well as the X and
2 Y chromosomes, the sex determination.
3 Q. Okay. How long have DNA scientists been using the STR
4 system?
5 A. The -- in the Washington state system, I believe it
6 was early 2000.
7 Q. And is that the testing procedure that was used in
8 this case?
9 A. Yes.
10 Q. All right. Prior to STR, were there any different
11 types of DNA analysis that were used?
12 A. Yes.
13 Q. All right. What was -- can you let the jury know --
14 maybe let's go through the history. What was the
15 first type of DNA analysis called?
16 A. The first type of DNA analysis was called RFLP, which
17 stands for restriction -- restriction fragment length
18 polymorphism.
19 Q. Can you explain to the jury how the analysis in that
20 type of testing is different than what's done now with
21 STR?
22 A. The technology is quite a bit different in how the
23 fragments of DNA that we're looking at are separated
24 and sized back at that time. Also, the amount of DNA
25 that was needed from a particular sample was

1 relatively large compared to what we need now. You
2 may need a blood stain the size of a dime in order to
3 be able to get enough DNA in that process to be able
4 to develop a type. That was before the polymerase
5 chain reaction, the PCR that I talked about before
6 where we're amplifying and copying the DNA. So prior
7 to that time, what you had was just how much DNA was
8 in that sample and there was no copying to make more
9 of it. So it required a fairly large amount of DNA,
10 so it was limited in its ability, then, to be able to
11 come up with something.
12 Q. Okay. So if you had less than that size DNA sample,
13 you just -- you couldn't test it?
14 A. You would not be able to get a result, no.
15 Q. Okay. How long was -- well, what came after RFLP?
16 A. Sort of during the same time that that technology was
17 being used across the country, the PCR process was
18 developed. And the first rendition of using that
19 technology -- see, what that does is it makes copies
20 of particular sections of the DNA you're looking at.
21 Q. Why is that important?
22 A. Pardon me?
23 Q. Why is that important, your ability to make copies?
24 A. So that we've got -- you can work with much smaller
25 samples so that we can copy and make more so that

1 we've got enough we can actually work with at the
2 other end of the process to develop the types. So the
3 PCR process was developed, and the first application
4 of using these copies of the DNA that we've made was a
5 process called DQ alpha polymarker.
6 Q. I should probably interrupt occasionally with a
7 question. So what's DQ alpha?
8 A. DQ alpha was simply markers that were used at that
9 particular time to distinguish between individuals.
10 Q. So those -- that stood for particular markers that
11 were being looked at?
12 A. Yes.
13 THE COURT: Does DQ stand for something?
14 THE WITNESS: Possibly. I don't know what it
15 is.
16 BY MR. PENNER:
17 Q. Did you ever do any DQ alpha testing?
18 A. I did do some of that, yes. Not on casework.
19 Q. Did you ever do any of the RFLP?
20 A. No.
21 Q. Okay. And you said the DQ alpha you did but not in
22 casework?
23 A. Correct.
24 Q. Can you explain to the jury what you mean?
25 A. Pardon me?

1 Q. When did you use it?
2 A. I went through some of the validation process and some
3 of the training, but then it became obvious when we
4 came on board with that and it was used in the Tacoma
5 lab for a while by one of my scientists, at that point
6 it became obvious that the direction the country was
7 going was towards the STR technology, so that was --
8 that -- so we basically moved in that direction and
9 stopped doing the DQ alpha polymarker testing.
10 Q. And when was that?
11 A. Early 2000.
12 Q. Okay. When did DQ alpha start being used? Do you
13 remember?
14 A. I believe that was 1997.
15 Q. Okay. So how, then, is DNA used to distinguish
16 between individuals?
17 A. Mentioned that we're looking at certain markers,
18 certain places on the various chromosomes, and we're
19 looking for these tandem repeats, how long the DNA
20 strand is at that particular marker. So what we're
21 doing is looking at each of these types that are found
22 at the different markers, and when you put all those
23 together, all these different types for all these
24 different 15 markers that we're looking at, the
25 summation of all of that is what we call the DNA

1 profile, which can then be used to compare, say, an
2 evidence sample to a person.
3 Q. Okay. Are there any types of people that actually do
4 have identical DNA?
5 A. Identical twins. Actually, don't have identical DNA
6 necessarily, but within our process, we cannot
7 distinguish between them. We're not looking at the
8 entire genome.
9 Q. Okay. Let's do a quick biology thing. Can you tell
10 the different between how identical twins are formed
11 and fraternal twins?
12 A. Identical twins are formed from one sperm and one egg
13 divided, whereas fraternal twins are two eggs and two
14 sperm.
15 Q. Okay. So identical twins, if you go back far enough,
16 there's one egg, one sperm, one cell, and then that
17 divides, and that's why the DNA is the same.
18 A. Yes.
19 Q. Okay. Thanks. So what -- what's the actual testing
20 procedure? So you've got a sample, comes in. What do
21 you do? I mean, actually hands on, what do you do?
22 A. There's four main steps in the process that we go
23 through. Once we've got a sample, whether that be a
24 sample from crime scene evidence-wise or a known
25 sample from a person, the process will be the same.

1 Once we've identified what sample we're going to take
2 forward, the first step is called extraction, which
3 means that we're going to open up that cell, open up
4 the nuclear wall, and extract the DNA out away from
5 whatever that sample happens to be, whether it's a
6 swab or a blood stain on piece of clothing or
7 something like that. We're extracting the DNA off of
8 that substrate and away from the other cellular
9 material and basically purifying it, cleaning it up.
10 So that's -- that's the first step is the extraction.
11 The second step, then, is to determine how much
12 actual DNA we've got. That's called a quantification
13 step or quantitation step. So there, again, determine
14 how much DNA we got. That process also gives us
15 whether it's human DNA or not and gives us an idea
16 whether it's male or female DNA.
17 So once we're finished with that second step, then
18 we get to the third step, which is that -- the process
19 of making the copies of the DNA. So we have to know
20 how much we've got to begin with so we know how much
21 to use to make the copies so that, at the end product,
22 what we get out the other end is going to be the
23 appropriate amount. So that -- that step, the making
24 of the copies, is called amplification. So that's the
25 third step.

1 The last step, then, is to take the amplified DNA
2 product that we've got, and we run that through an
3 instrument called a genetic analyzing, which then
4 separates out the different markers and assigns the
5 types and basically spits out the DNA profile, and we
6 can then use to compare it to some -- someone.
7 Q. Okay. And is that given out in terms of data,
8 numbers, or is there a graph? How do you get data?
9 A. Both. There's actually a graph that shows peaks as
10 well as the number, then, that's assigned to how many
11 repeats in that particular section.
12 Q. Okay. And so if you have a graph for one person, how
13 would it differ to a graph for another person? Is
14 that how you're able to tell?
15 A. The graph in the numbers, say, at one marker, an
16 individual may be 14, 15. And I'm saying two numbers
17 because everybody's got a mom and a dad, and so you
18 get half your DNA from your mom, half from your dad.
19 So you can have two different numbers or you can have
20 one number, depending on what exactly you're
21 inheriting. But suppose one person at this particular
22 marker is a 14, 15. Another person may be a 15, 16 or
23 a 17, 18 or something different.
24 So it's a fairly easy matter when you've got DNA
25 from just one source to be able to compare it to -- to

1 another -- to another DNA profile. You just go
2 through each of the markers and look. If they're
3 different, then it's not a match. If they're the
4 same, then it's a match.
5 Q. And if it's the same at 14 out of 15 markers but it's
6 different on the 15th marker, is that a match? Is
7 that good enough?
8 A. I don't think that ever happens because,
9 statistically, it's just not really possible, but
10 hypothetically speaking, if you find a mismatch, then
11 there's no valid scientific reason for that, then it's
12 a mismatch and it's elimination.
13 Q. Okay. Now, you said if there's a single source of
14 DNA. Do you ever have situations where, when you test
15 something collected, say, at a crime scene or
16 elsewhere, that you have what's called a mixed sample?
17 A. Yes. It's fairly common, unfortunately.
18 Q. Can you explain to the jury what a mixed sample means?
19 A. Mixed sample is simply DNA from more than one person
20 in that particular sample. We often see this on -- on
21 DNA samples that have maybe -- maybe an opportunity to
22 be touched or bled on or spit on by a number of
23 different people. So you've got DNA from more than
24 one person there. So when we take our cutting of that
25 sample, go through the extraction process, what we get

1 out the other end is clearly a mixture of more than
2 one person. You have mixtures of two people or three
3 or four or five. It becomes much more difficult to
4 make the interpretation, the more people you've got
5 involved, but it's simply -- a mixture is just a
6 mixture of DNA from more than one person that happens
7 to be in that particular sample.
8 Q. Do you ever have mixed samples where all the donations
9 are about the same strength?
10 A. Yes.
11 Q. Do you ever have them where one is predominantly
12 stronger than the other?
13 A. Yes, a whole gamut of possibilities there.
14 Q. All right. So I'm going to ask you to draw again.
15 A. Can I refuse?
16 Q. No. Sorry. So what I'd like you to do -- this will
17 be 115. At the top half, if you could draw, you know,
18 part of this graph that you've talked about at the
19 markers and show the jury what it looks like if you
20 have a single donor and a successful result developing
21 a profile. Underneath that, can you compare that to
22 what it looks like if you have, say, two donors: One
23 strong donor, one weak donor?
24 A. Okay. (Complying.)
25 So what this might represent would be at this

1 particular marker, you see two peaks, and that
2 represents the type 14, 15 that's been established for
3 those size peaks at this particular marker. So that
4 means, okay, you've got one from Mom, one from Dad. I
5 just threw this one in, also. This is at a different
6 marker. You're seeing just a single peak. That means
7 that both Mom and Dad were type 7 at that particular
8 marker, so that's what the offspring would be. So
9 this is -- this is a single source, just DNA from one
10 person. (Indicating.)
11 Q. Can I ask you on the -- on the mixed sample to use two
12 different colors for the two different persons?
13 A. (Complying.) This would represent a mixture. At this
14 particular site, you've actually got four peaks: Two
15 larger ones and two smaller ones. This would be
16 from -- would match up with this person, their type.
17 These smaller amounts would be from a different
18 person.
19 So that's graphically what we actually see in the
20 data, as well as these number designations. This
21 would be a similar kind of a thing. You've got a
22 single person from here, and because of the difference
23 in the sizes, you've got a separate person here.
24 (Indicating.)
25 Q. And is it possible to compare the DNA profiles if a

1 mixed sample is a profile from a single source sample?
2 A. Sure.
3 Q. All right. And why is that or how would you do that?
4 A. Well, if you've got something of this nature, it's
5 fairly easy to do that comparison because, clearly,
6 this is from one person and this would be from another
7 person. So when you've got that much difference in
8 the peak heights, then you can -- you can figure out
9 who goes with what. It can be more complicated than
10 that, but when you've got something that's fairly
11 clear like this, because of the -- there's so much
12 more DNA from this person represented by how high the
13 peak is than there is from this person by the smaller
14 peak, so you can do a comparison and it may be harder
15 to discern out this person because of a variety of
16 reasons or they could be lost underneath here
17 possibly. So I'm showing you sort of the easiest way,
18 the best way that you can -- I'm sorry. I'm probably
19 standing in your way. The easiest type scenario to
20 make a determination for mixture interpretations so
21 that you can compare a profile like this to this and
22 say, yeah, that's a match at the 14, 15, and that's
23 the match at the 7 for your major contributor.
24 Q. Is there a threshold that that peak has to be above
25 before you're willing to call it an identification?

1 A. Yes. We have what's called relative fluorescence
2 units which has to do with how high these peaks are.
3 And we do have a minimum threshold which a peak has to
4 come up to before we would assign a type and actually
5 say yes, this is -- this is the DNA type at that
6 location.
7 Q. Okay. All right.
8 THE COURT: Do you want to spell the
9 fluorescence? Okay. We'll --
10 THE WITNESS: How about, at the break, I'll
11 give you anything you need, spelling-wise.
12 MR. PENNER: Thank you, sir. You can be
13 seated again.
14 THE COURT: Are you offering that one,
15 Counsel?
16 MR. PENNER: Yes, Your Honor. We'd offer for
17 illustrative, 115, and actually, Mr. Sewell, if you
18 could put your initials and date it.
19 THE WITNESS: (Complying.)
20 THE COURT: Any objections?
21 MS. HIGH: No, Your Honor.
22 THE COURT: All right. 115 will be admitted
23 for illustrative purposes only.
24 (Exhibit 115 admitted for illustrative purposes.)
25

BY MR. PENNER:

Q. Now, you said you're a forensic scientist with the crime lab, so obviously you work on criminal cases. Are there non-criminal uses for DNA analysis?

A. Yes.

Q. What are some of those?

A. The same technology is used in paternity testing. It's used in mass disaster identification of bodies, tissues. It's also used in disease research.

Q. As a forensic scientist with the crime lab, is it safe to say one of the main things that you do is try to compare known samples with unknown samples?

A. Yes.

Q. All right. And what would be examples of unknown samples that you might analyze?

A. By unknowns, we mean samples that we don't know the DNA profile. We don't know who they're from, so we go through the process to develop a DNA profile and then we can compare that to a known sample, a sample -- a DNA sample from a known individual so we can do those comparisons.

Q. Okay. So blood left at a crime scene might be unknown?

A. Correct.

Q. Blood taken from an individual would be a known

1 sample?
2 A. Correct.
3 Q. What I'd like to do now, then, is turn your attention
4 to your work in this particular case. So, did you
5 bring with you today a case file for this case?
6 A. Yes, a copy of the case file.
7 Q. All right. And I'll hand you what's been marked as
8 Exhibit 112. Do you recognize that?
9 A. Yes. It appears to be the file that I brought with me
10 today.
11 Q. Okay. And would it help you to be able to testify if
12 you could refer to that along the way?
13 A. Yes.
14 Q. All right. When you do testing, do you eventually
15 generate a report?
16 A. Yes.
17 Q. Okay. And what's the purpose of the report?
18 A. The purpose of the report would be to convey to the
19 investigator the test results and the conclusions we
20 were able to reach from those test results.
21 Q. Okay. So kind of a summary of your findings?
22 A. Correct. As well as the methodology that was used.
23 Q. And every time that you open up a case, is it given a
24 unique case number?
25 A. Yes.

1 Q. What was the laboratory number for this case?
2 A. The laboratory number was 313-001064.
3 Q. Okay. And does that number stay with any analysis you
4 do from this particular case?
5 A. Yes. It should.
6 Q. How do you know that any particular testing that
7 you're doing is still related to the same case?
8 A. We have -- obviously, government, we have paperwork.
9 There's forms to fill out. So an investigator wants
10 some DNA analysis done. They fill out what we call a
11 request for laboratory examination form. And that
12 lists the known suspects, any victims, the agency case
13 number, the item numbers, those sorts of things. So
14 that data all gets entered into our computer when the
15 evidence -- the request comes in. So then when the
16 subsequent -- if a subsequent request for DNA analysis
17 comes in, that is given the same number because it's
18 looked up in the computer, found to be related to the
19 prior submission.
20 Q. So do you have a copy of your laboratory report dated
21 October 10th, 2013?
22 A. Yes.
23 Q. And does that include the laboratory number that
24 you've already told the jury?
25 A. Yes.

1 Q. Does it also include the Pierce County sheriff's
2 agency number?
3 A. Yes.
4 Q. Could you read that into the record?
5 A. 93-037-1041.
6 Q. All right. And do you indicate what items are
7 received?
8 A. Yes.
9 Q. All right. And how are those designated in your
10 report?
11 A. The item numbers that are assigned by the police
12 department are what is labelled on the evidence items.
13 And so that is the item number that -- it's also used
14 on the request form, and those would be the item
15 numbers that we will use in our report.
16 Q. Okay. So what item numbers did you receive for this
17 initial lab request?
18 A. MC 23, MC 30, MC 36, MC 37, and MC 38.
19 Q. All right. Let's start with MC 23. What's that
20 designated as?
21 A. That was tubes of blood reported to be from Linda
22 Robinson.
23 Q. Okay. I'm going to hand you what's been marked as
24 Exhibit 111. Is there markings on that being
25 consistent with being Item 23?

1 A. Yes.
2 Q. Okay. And in fact, is there blue crime lab tape on
3 that item?
4 A. Yes, which I would have placed here at the end of my
5 examination, sealing up the evidence.
6 Q. And can you explain to the jury how that works? When
7 you receive an envelope like this, you need to open
8 it, right?
9 A. Yes.
10 Q. Okay. Why not just open it where it's already been
11 opened?
12 A. If at all possible, we like to leave the original
13 seals intact so that an officer who placed that seal
14 there can still identify it. It hadn't been
15 disturbed. So we go to a different place, if at all
16 possible, to open the evidence, do the examination.
17 At the completion of that, then, we place blue crime
18 lab evidence tape here. We initial it, put our case
19 number and the date.
20 Q. And I think you said the MC number was 23?
21 A. Yes.
22 Q. All right. If I could just have the item for a
23 moment. Is there also a number on there that starts
24 with the letter A?
25 A. Yes.

1 Q. What's that number?
2 A. A-14.
3 Q. And how long have you been working with the crime lab,
4 or how long did you work at the crime lab?
5 A. Thirty-four years.
6 Q. Are you familiar with the old numbering system that
7 the sheriff's department used?
8 A. Yes.
9 Q. But on your reports, you stay with the MC numbers now,
10 right?
11 A. Yes. That's the current number that's being used on
12 the request.
13 Q. I think you indicated that this was reported to be
14 blood from Ms. Robinson?
15 A. Correct.
16 Q. And you weren't present at the autopsy, correct?
17 A. Correct.
18 Q. All right. But again, you've got the blood. What do
19 you do when you have a vial of blood from a known
20 source? How do you -- I assume you don't pour the
21 blood into the machine, right?
22 A. Correct.
23 Q. What do you do with these vials to get something
24 useful to then analyze?
25 A. What I did in this case was -- I did two things,

1 actually. I took a sterile cotton-tipped swab and put
2 it inside the tube to get some of the blood
3 transferred, and then I used that as my sample that I
4 took through the four-step process to develop a DNA
5 profile. I also took a portion of -- of liquid and
6 put some spots on some photo paper which I then
7 allowed it to dry because that will help preserve it
8 much better than staying in liquid state in a tube.
9 So I let that dry and I then put that back inside
10 here.
11 Q. Okay. And let's take a moment to talk about different
12 body fluids and quality of the DNA. Are there ever
13 situations where you get a sample and there's
14 difficulty extracting or developing a DNA profile?
15 A. Yes.
16 Q. All right. Do you ever have that issue if you have
17 just pure blood?
18 A. Sure. There's times when we get a -- a tube of blood
19 that is just degraded. Perhaps it's from a deceased
20 individual that may have decomposed quite a bit before
21 the sample was taken, or it can be a sample that
22 perhaps was not properly stored. So it could -- it
23 could deteriorate, so a liquid blood sample may or may
24 not be a good source of DNA, depending upon what its
25 condition is in.

1 Q. Okay. Is it ever in such a condition that you can
2 just tell visually or when you first get it that it's
3 been degraded, that it's unlikely to be useful?
4 A. Quite often you can tell by looking at it or smelling
5 it.
6 Q. Okay. And if you were to go ahead and try to do a DNA
7 profile on that kind of blood, what would the result
8 be?
9 A. You'd probably get nothing out the other end. You may
10 not even, in the quantitation step, you may not even
11 show any human DNA present if it's completely
12 degraded.
13 Q. As to this particular sample, 23, did you notice
14 anything either visually or by smell indicated there
15 was any degradation?
16 A. I did not notice anything, no.
17 Q. Were you able to obtain a DNA profile?
18 A. Yes.
19 Q. And so that would have been a profile for Linda
20 Robinson, correct?
21 A. Correct.
22 Q. Why do you want to have a DNA profile for the victim
23 in the case?
24 A. In a case such as this where it was a bloody crime
25 scene, presumably a lot of that blood would be from

1 the victim. So when I'm doing DNA typing, I want to
2 know whether some of the blood samples that I've
3 looked at could be from the victim as opposed to
4 someone else, so I need to know her type to do that
5 comparison and say, okay, this -- this could be from
6 her, or no, this is not from her.
7 MR. PENNER: Your Honor, it's 11:00. I'm not
8 sure when the Court wants to do the morning break.
9 THE COURT: All right. 11:00 would be a good
10 time to give you your morning recess. No discussion,
11 no investigation, notepads on chairs. Remain in there
12 until Ms. Shipman comes to get you, if you'd be so
13 kind.
14 MR. PENNER: Thank you, Your Honor.
15 (The following proceedings were held
16 out of the presence of the jury.)
17
18 THE COURT: Anything before we recess?
19 MR. PENNER: I don't think so, Your Honor.
20 MS. HIGH: No.
21 THE COURT: All right. Well, there will not
22 be a short quiz on --
23 MR. PENNER: Thank you.
24 (Court at recess.)
25

(The following proceedings were held out of the presence of the jury.)

THE COURT: Anything before we bring the jury in?

MS. HIGH: You know, Your Honor, I do have something, and I don't know whether you observed it or any of the staff members, but it appeared to me that Juror Number 6 was nodding off during the testimony. I don't know.

MR. PENNER: Your Honor, I didn't notice it myself, but Mr. DeCosta was present in court and he mentioned it, so we were going to ask the Court if the Court or court staff noticed it. If not, maybe we should pay attention.

THE COURT: I didn't notice it. When I looked over here a few times, he was looking this way.

MS. HIGH: Just perhaps for us to keep an eye on.

THE COURT: Yes. All right.

MR. PENNER: That's all the State had.

MS. HIGH: That's all.

THE COURT: All right. Well, then, we'll bring the jury back in.

/////

1 (The following proceedings were held
2 in the presence of the jury.)
3
4 THE COURT: You may be seated. All right.
5 Continue, Counsel.
6 MR. PENNER: Thank you.
7 BY MR. PENNER:
8 Q. So Mr. Sewell, when we left off before the break, I
9 think we had testified that you had been able to
10 develop a DNA profile associated with Linda Robinson;
11 is that correct?
12 A. Yes.
13 Q. So, in addition to the vials of blood, did you also,
14 then, compare some unknown samples that were provided
15 to you?
16 A. Yes.
17 Q. And who was the one who provided those to you?
18 A. The request for DNA analysis was submitted by
19 Detective Sergeant Tim Kobel.
20 Q. Okay. So let's just go through these in numerical
21 order. After Number 23, what's the next number item
22 on your report?
23 A. MC 30.
24 Q. All right. I'm going to hand you what's previously
25 been admitted as Exhibit 97. I'd ask if you can

1 identify that as MC 30?
2 A. Yes.
3 Q. Okay. And there's lots of different -- there's kind
4 of a bag within a bag within a bag, correct?
5 A. Yes.
6 Q. Is there anywhere that you can indicate where you
7 opened it and resealed it?
8 A. Yes. The blue evidence tape at this end.
9 (Indicating.)
10 Q. Okay. And what was inside that bag?
11 A. I'd have to check my notes. There was a small manila
12 envelope, and inside of that, two small folded
13 packets.
14 Q. Okay. And anything inside the packets that you
15 tested?
16 A. One of them, I opened. The one that was marked
17 "unknown." I opened that one, and it contained
18 small -- some small threads with red-brown material.
19 Q. What was the other bindle labelled as?
20 A. The other package was labelled as "control."
21 Q. All right. Are you familiar with the procedure where
22 they used to do a sample and a control?
23 A. Yes.
24 Q. Can you explain to the jury what that procedure was?
25 A. Back in 1993, the testing that we did was before DNA.

1 Mostly, PBO typing and enzyme typing where the
2 possibility of contamination or false positive results
3 were a possibility with that kind of testing. So we
4 always asked if they were -- if the agency was going
5 to collect, say, a blood sample from a table top, that
6 they would take a clean area of the table or
7 apparently clean area, at least free from blood, and
8 swab that area, also, so that if there was something
9 as part of the substrate, that it would also be shown
10 in this other sample so it would help in our
11 determination if there was a possibility of a false
12 positive.
13 Q. Okay. Is that a concern at all with STR DNA testing?
14 A. No.
15 Q. All right. Did you do any analysis on the controlled
16 sample?
17 A. No.
18 Q. On the unknown sample, what did you do with that?
19 A. I tested to see if it would give a positive reaction
20 for blood, which it did. I then took that sample and
21 ran it through the process that I've previously
22 described and developed a DNA profile.
23 Q. And were you successful in developing a DNA profile
24 from MC 30?
25 A. Yes.

1 Q. All right. Did that profile match any profiles that
2 you had at that point?
3 A. Yes. This matched Linda Robinson's profile.
4 Q. Okay. And according to your report, where was that
5 labelled to have been from?
6 A. Reported to be from the bathroom floor.
7 Q. Okay. I'm now going to hand you what's been admitted
8 as Exhibit 98. Is that one of the items that you
9 examined in this round of testing?
10 A. Yes.
11 Q. And which item is that?
12 A. MC 36.
13 Q. Okay. And what was that reported to be?
14 A. That was reported to be from the bottom drawer vanity
15 in the master bedroom.
16 Q. Okay. And again, we've got a plastic bag with other
17 stuff inside it. So what's inside the plastic bag?
18 A. There's no plastic bag.
19 Q. I'm sorry. What's inside the paper envelope?
20 A. Okay. The manila envelope contains another one of
21 those small bindle packages which contains some
22 red-brown flakes that appear to be blood.
23 Q. Okay. So what did you do with the red-brown flakes?
24 A. Those were tested again for blood, which was positive.
25 And then I took the sample, there again, and ran it

1 through the process to develop a DNA profile.
2 Q. Were you able to develop a DNA profile from that item?
3 A. Yes.
4 Q. Did that profile match Linda Robinson?
5 A. No, it did not.
6 Q. Okay. But was it a profile, all 15 spots?
7 A. Yes.
8 Q. So now that you've got a profile that doesn't match
9 Linda Robinson, do you give a label to this profile?
10 A. I called it Individual A because it was an unknown
11 person.
12 Q. All right. Thank you. I'm now going to show you
13 what's been admitted as Exhibit 99. Which item is
14 this?
15 A. This is MC 37.
16 Q. Okay. And what's that?
17 A. Reported to be from vanity.
18 Q. And inside the packaging, what was inside there?
19 A. As the prior item, there was a small bindle inside of
20 here which contained red-brown flakes.
21 Q. All right. So what did you do with the flakes?
22 A. Same as before. I tested for blood, and it was
23 positive. Took the sample forward and developed a DNA
24 profile from the sample.
25 Q. Okay. And were you successful in obtaining a DNA

1 profile?
2 A. Yes.
3 Q. Did that DNA profile match anyone's that you
4 previously developed?
5 A. The profile from this sample matched the profile from
6 the previous sample, Individual A, and it was not from
7 Linda Robinson.
8 Q. Okay. Thank you. Did you test any other items in
9 this round of testing?
10 A. Yes.
11 Q. What did you test? What was the number?
12 A. MC 38.
13 Q. I'm going to hand you Exhibit 100. It's been
14 admitted. Do you recognize that, or is there markings
15 on it that indicate what number it is?
16 A. Yes. This is MC 38.
17 Q. Okay. And is it possible to open that right now? Is
18 there already an opening, or will we need scissors?
19 A. It's not opened right now, it does not look like.
20 Q. Okay. I'm going to ask you to open that and extract
21 the contents.
22 A. Do we have larger gloves?
23 MR. PENNER: Do we have larger gloves?
24 THE CLERK: That's the largest I have.
25 MR. PENNER: It tore.

1 THE WITNESS: How old are these?
2 THE COURT: I don't know.
3 THE WITNESS: Okay. Contained inside this
4 paper bag, two -- two envelopes: A padded envelope
5 and a regular manila envelope.
6 BY MR. PENNER:
7 Q. Okay. Is there anything inside the padded envelope?
8 A. Inside the padded envelope, there is not.
9 Q. Now, you had --
10 A. This was originally inside the padded envelope. It's
11 a coin purse.
12 Q. Okay. And that was inside the padded envelope?
13 A. Yes.
14 Q. Did you do any testing on the coin purse?
15 A. I did not.
16 Q. Okay. What did you test from these three items?
17 A. I tested a brown stain right here from this manila
18 envelope. (Indicating.)
19 Q. Okay. And were you able to -- if I could just -- all
20 right. Thank you. Were you able to develop a profile
21 from that red-brown stain?
22 A. Yes.
23 Q. All right. And before we go any further, I just want
24 to -- if you could show the jury the red-brown stain.
25 Now, it looks like it's got some smearing and some

1 dripping to it. Is any of that from your activity?
2 A. Yes. The original stain had the dripping, so it
3 appears that it was applied there wet and it ran a
4 little bit. The smearing on -- it would be on your
5 right-hand side, is from me taking a sample.
6 Q. Okay. Were you able to obtain a DNA profile from that
7 blood stain?
8 A. Yes.
9 Q. And did that match any of the profiles you previously
10 developed on the case?
11 A. The profile from this stain actually was a mixture of
12 DNA from more than one person. It had a major
13 component that matched Individual A and a minor trace
14 component.
15 Q. All right. Were you able to identify who the trace
16 component was?
17 A. At that time, I was only able to say it was
18 inconclusive. I could not say conclusively who that
19 could be from.
20 Q. All right. Was it consistent with Linda Robinson's
21 profile?
22 MS. HIGH: Objection, Your Honor. I don't
23 believe that there's a -- a foundation that would make
24 it admissible. He can't say.
25 THE COURT: I'll sustain the objection.

BY MR. PENNER:

Q. I'll rephrase it. Were you able to include or exclude Linda Robinson as that second --

A. Not directly, no.

Q. When you say it that way, what does that mean?

A. It's a little complicated.

Q. Okay.

A. At the time that this examination was done, we have what we call mixture interpretation guidelines. And at the time, if you -- we talked about a threshold of these peaks here. And because the smaller peaks are below the threshold, although there's still DNA and it may look like something in particular, the guidelines in a very strict sense, which is the way I interpreted those guidelines, was that you couldn't say anything about them even if it looked like the types were the same as someone you -- you already have a profile from.

Q. So in your report, did you indicate whether you could include or exclude Ms. Robinson?

A. That is, because of the strict interpretation of the guidelines, I said I could neither include or exclude Linda Robinson as the source of the -- the minor component of the DNA I found.

Q. Okay. But the major component, I think you said, that

1 was Individual A?
2 A. Correct.
3 Q. Is that right? Were there any other items that you
4 tested on this report?
5 A. No.
6 Q. So if I understand correctly, you were able to
7 identify Linda Robinson's profile from a known sample.
8 It matched Item 30. And then Individual A is found in
9 Items 36, 37, and 38. Is that correct?
10 A. Correct.
11 Q. So when you have a situation where you have an unknown
12 individual, are you able to compare that unknown
13 individual to a database that has DNA profiles in it?
14 A. Yes.
15 Q. And did you do that in this case?
16 A. Yes.
17 Q. And doing that, were you able to come up with a name
18 that matched Individual A?
19 A. Yes.
20 Q. Who was Individual A?
21 A. James Mitchell.
22 Q. Okay. And did you indicate that in your report?
23 A. Yes.
24 Q. Did you submit a report, then, back to
25 Detective Kobel?

1 A. Yes.
2 Q. Did he ask you to perform any other further DNA
3 analysis?
4 A. Yes, he did.
5 Q. Now, at this point, you said previously
6 Detective Kobel was the one who just sent you the
7 items. Were you involved at all in the selection of
8 the second round of items to be tested?
9 A. Yes.
10 Q. And could you explain to the jury, I guess, just
11 whatever conversations or meetings you had with
12 Mr. Kobel or Detective Kobel?
13 A. Detective Sergeant Kobel came out to the crime
14 laboratory. He brought crime scene photos and his
15 notes and reports and whatever else he had, and we
16 discussed what other possible items might be
17 worthwhile testing to try to see if we could find any
18 other samples that would match Individual A, James
19 Mitchell. So we collaborated on that, talked about
20 what other items to possibly test and agreed to that,
21 and then the testing could proceed.
22 Q. Okay. And in selecting these items, was there any --
23 why did you select certain items versus other items?
24 What was the discussion?
25 A. Well, he had -- he had certain ideas on what

1 particular items he wanted to have tested, and from
2 that, then it was a matter of trying to decide which
3 samples from those items might need to be tested. So
4 generally, what you're looking for in a situation like
5 this where you've got, essentially, blood all over the
6 place, that most of it, if not all of it, is going to
7 be from your victim. You're looking for something
8 that doesn't quite fit with -- with the crime scene
9 reconstruction, and I don't -- I'm not an expert at
10 that, but I've had some training in that. So we're
11 looking for something that seems out of place, doesn't
12 seem to fit with at least something to try it to test.
13 It may not be from your victim, but could be from the
14 perpetrator.
15 Q. All right. So do you have a copy of your report,
16 then, from June 11th, 2014?
17 A. Yes.
18 Q. All right. And does it indicate which items were
19 tested?
20 A. Yes.
21 Q. What are the numbers for those items?
22 A. MC 10, 40, 44, and 45.
23 Q. All right. I'm going to show you what's been marked
24 and admitted as Exhibit 94. What's the -- what's the
25 MC number for this?

1 A. This is MC 10.
2 Q. All right. And what's that described as?
3 A. A pair of jeans.
4 Q. All right. Why were the jeans selected to look at?
5 A. I believe it would have been because they were on
6 Linda Robinson when she was found.
7 Q. Okay. And in terms of where to test on the jeans, did
8 you test the entire jeans or did you focus in on any
9 particular parts?
10 A. There were -- there were two spots on the back of the
11 left leg that Detective Sergeant Kobel thought might
12 be of value, so I wanted to test those. There are --
13 at the time, all I had was photographs, so I didn't
14 have the actual jeans in front of me at the time.
15 When I got the jeans, he tested those two samples that
16 he had identified as well as a third sample on the
17 back of the right leg that I thought might be
18 worthwhile to test.
19 Q. All right. I'm going to ask you to open up the
20 exhibit and show the jury the jeans.
21 A. Do you want this one back?
22 Q. Yeah. That's probably a good idea.
23 A. (Complying.) Do you want me to pull them out?
24 Q. If you could, and then, to the extent that you could,
25 could you show the jury, and try not to lay it on

1 anything. You can stand up if you need to and show
2 the jury where the stains were that you tested.
3 A. So here's the jeans. Obviously, the back. This is
4 one of the areas that I tested. (Indicating.)
5 Q. How do you know that?
6 A. I've got a mark there, TS 1. That's my way of
7 designating Test Sample 1.
8 Q. Okay.
9 A. Down here is Test Sample 2, both from the back of the
10 right leg. And then I also tested this sample, Test
11 Sample 3, from the back, or these are from the left
12 leg. These are from the back of the right leg.
13 (Indicating.)
14 Q. So if I understand your testimony earlier,
15 Detective Kobel asked you to look at areas one and
16 two, and then you selected three. Is that right?
17 A. Correct.
18 Q. And you selected three based on what?
19 A. Just based upon my observation and what looked
20 worthwhile to test that may be out of place, that
21 didn't seem to fit.
22 Q. And you had seen the crime scene photos, correct?
23 A. Correct.
24 Q. And you had seen that there was a fair amount of blood
25 on Ms. Robinson?

1 A. Yes.
2 Q. Is there any value to the location of these versus,
3 say, the top of the jeans?
4 A. Well, it's a reasonable presumption that all of this
5 staining up here would be from Linda Robinson, so
6 we're looking for something that could be from someone
7 else that may have injured himself, may have bled at
8 the scene.
9 Q. Thank you. You can fold those back up and put them
10 back inside the bag.
11 A. (Complying.)
12 Q. So were you able or did you -- let me ask it this way.
13 Did you develop a full DNA profile from Test Sample 1?
14 A. No, I did not.
15 Q. All right. Why not?
16 A. As I mentioned earlier, in the process we go through
17 where we determine the quantity of DNA, that also
18 tells us whether it's human DNA and whether it's male
19 or female. For Test Sample 1, the result was that
20 this was female DNA. So since I was not looking
21 particularly for female DNA, I wanted to see if I
22 would find any more of Individual A on this item. I
23 stopped at that point rather than developing a DNA
24 profile. I can't -- I'm not assuming that it's from
25 Linda Robinson. On the other hand, in a matter of

1 efficiency, I wasn't going to be taking that sample
2 forward.
3 Q. What about Test Sample 2?
4 A. Same -- same story there. It was female DNA, and I
5 did not take it forward through the testing -- the
6 typing process.
7 Q. When you looked at Test Sample 3, was that also female
8 or was that male?
9 A. That was male.
10 Q. So did you move on, then, and do a full DNA profile?
11 A. I attempted to do a DNA profile.
12 Q. And what happened?
13 A. I got -- I got a little bit more than half of the
14 profile, so part of the profile is there, but it fell
15 below the threshold so I wasn't able to use the data
16 that was below the threshold as far as statistics go.
17 Q. So -- so if I understand, then, so the 15 locations,
18 some were above the threshold, some were below?
19 A. Correct.
20 Q. What do we call that?
21 A. We call that a partial profile.
22 Q. All right. Was that partial profile consistent with
23 any known samples you had for this case?
24 A. Not with any known samples at this point, but it was
25 consistent with Individual A.

1 Q. Okay.
2 A. But I did not have a reference known sample from
3 Individual A, James Mitchell, at that point.
4 Q. All right. But you had a profile from Individual A
5 from the previous items?
6 A. Correct.
7 Q. So let me ask again. Was the profile from Test Sample
8 3, where you could have the partial profiles that were
9 above the level, were those the same as those same
10 areas for Individual A?
11 A. Yes.
12 Q. Okay. All right. Did you look at any other items on
13 this set? Actually, I should ask. Of the 15
14 locations, how many were you able to be above the
15 threshold?
16 A. Ten of the 15 were above the threshold and I was able
17 to reach a conclusion with.
18 Q. Okay. Were any of the ten above the threshold, were
19 any of them in a different location than Individual A?
20 A. No.
21 Q. They all matched up?
22 A. They all matched up.
23 Q. And five of them just didn't reach the threshold?
24 A. Correct.
25 Q. Kind of like the little red bumps on Exhibit 115?

1 A. Yes. It was not a mixture, but they were -- they were
2 lower.
3 Q. That's what I mean. Okay. All right. Let's take a
4 look at, then, the next item on your report. What's
5 the next item?
6 A. MC 40.
7 Q. So I'm going to hand you Exhibit 95. Is this MC 40?
8 A. Yes.
9 Q. I'm going to ask you to go ahead and open that. And
10 while you're doing that, can you let the jury know
11 what it is?
12 A. It's a jacket, multicolored jacket.
13 Q. Okay. And I'll take the other?
14 A. (Complying.) Do you want me to remove it?
15 Q. Please.
16 A. Contained in this sack is a multicolored jacket.
17 Q. And did you examine it to try to find a location where
18 you might test from?
19 A. Detective Sergeant Kobel had told me there were some
20 stains on the left front pocket that he was interested
21 in having tested, so I focused my attention there,
22 and --
23 Q. Did you find anything there worth testing?
24 A. Yes. I did take a sample from the front of the left
25 pocket.

1 Q. All right. Were you able to develop a DNA profile
2 from that?
3 A. Yes, I did. Yes, I was.
4 Q. Was that a full profile?
5 A. It was a full profile, but it was a mixture.
6 Q. Okay. Were you able to identify a full profile for
7 the major donor?
8 A. Yes.
9 Q. And who was -- who was the major donor for that?
10 A. Individual A, James Mitchell.
11 Q. Regarding the mixture, the secondary donor, did
12 that -- did any of that reach the threshold level to
13 identify?
14 A. I believe it did. The minor trace component of this
15 profile was consistent with Linda Robinson.
16 Q. Thank you. You can put it back in the bag there.
17 A. (Complying.)
18 Q. What was the next item on your report?
19 A. MC 44.
20 Q. And what's that described as?
21 A. On the laboratory request form, it says it's an
22 unknown stain from the wall and a control sample.
23 Q. So I'll hand you what's been admitted as Exhibit 101.
24 Can you identify that as being Item 44?
25 A. Yes.

1 Q. Okay. And did you test this item for DNA?
2 A. Yes.
3 Q. And what were the results for this item?
4 A. The -- this sample was female DNA, so I did not take
5 it any further for DNA typing.
6 Q. Similar to the stains on the jeans?
7 A. Two of the stains on the jeans, yes.
8 Q. Okay. Right. All right. Thank you. And did you
9 test any other items in this round of testing?
10 A. Yes. There was MC 45.
11 Q. All right. What's that described as?
12 A. Telephone and phone cord.
13 Q. So I'll hand you what's been admitted as Exhibit 96.
14 Now, did you have a chance to look at the photographs
15 regarding the phone and the phone cord?
16 A. I believe so.
17 Q. Was there anything of note about the phone or phone
18 cord that made it of interest for the investigation?
19 A. Well, the phone and the phone cord were separated, it
20 appeared. I'm not sure how they were separated or
21 when it was -- well, I wouldn't want to speculate how
22 they were separated, but they were separated. They
23 were not together as one unit, although it appeared
24 they may have been at one point.
25 Q. Okay. And -- okay. So I guess, could you open up

1 exhibit -- Exhibit 95?
2 THE COURT: Ninety-six.
3 THE WITNESS: Ninety-six.
4 BY MR. PENNER:
5 Q. Ninety-six. If you could open that.
6 A. (Complying.)
7 Q. Okay. And if you could show the jury what's inside
8 the bag there.
9 A. Inside the bag is this phone and phone cord.
10 Q. And where on all of that did you look for blood?
11 A. Detective Sergeant Kobel had felt that a stain around
12 nine inches from this removed end, this tattered end,
13 was the place to have -- to have tested, I believe.
14 Q. And that was based on the photographs?
15 A. Yes.
16 Q. Did you look for blood there?
17 A. Yes, I'm -- I'm not finding my initials on the spot,
18 but I'm -- let me take a quick look. I did not
19 apparently mark the spot, but there was -- there was a
20 spot approximately nine inches from this end that I
21 did swab and test and take forward for typing.
22 Q. Has it ever happened that you swab an area and there's
23 nothing there? There's no blood or DNA, not in this
24 case but just generally speaking. Does that happen?
25 A. Sure. Usually if you see a stain, you can swab it.

1 You can collect it. If you're looking for skin cells,
2 someone touched something, it's skin cells and that's
3 not going to be visible, so you have to go through the
4 process and see what you can get.
5 Q. Which was it here? Was there a stain that you could
6 see?
7 A. Yes, there was.
8 Q. Is that what you swabbed?
9 A. Yes.
10 Q. Were you able to obtain a DNA profile from that?
11 A. Yes, I was.
12 Q. Okay. And you probably put the items back in the bag
13 now?
14 A. (Complying.) I love it when we use small sacks and
15 can't get the --
16 Q. Maybe I'll ask you to just set that to the side for a
17 minute. Were you able to obtain a profile from that
18 stain on the cut phone cord?
19 A. Yes.
20 Q. Was it a single profile or a mixed profile?
21 A. It was a mixed profile.
22 Q. Were you able to identify the major donor for that
23 mixed profile?
24 A. Yes.
25 Q. And who was the major donor?

1 A. This, again, Individual A and James Mitchell.
2 Q. And were you able to make any identifications
3 regarding the minor donor?
4 A. The minor component was consistent with Linda
5 Robinson.
6 Q. All right. In this round of testing, did you test any
7 further items?
8 A. Not in -- not under this request, no.
9 Q. All right. But based on your testing, did you make a
10 request of Detective Kobel?
11 A. Yes.
12 Q. And what was that request?
13 A. I asked for a fresh reference sample from James
14 Mitchell to do a direct comparison to -- to the
15 profiles from the evidence rather than using a profile
16 from the database.
17 Q. Okay. And were you provided with some swabs to test
18 then?
19 A. Yes.
20 Q. What was the MC number for that?
21 A. Fifty-nine.
22 Q. All right. I'll hand you what's been marked as
23 Exhibit 110. Do you recognize that?
24 A. Yes.
25 Q. Okay. And what is -- what's inside that exhibit?

1 A. There's two swabs that are reported to be a buccal or
2 cheek sample from James Mitchell.
3 Q. All right. And did you develop a DNA profile from
4 those swabs?
5 A. Yes. I selected one of them and did a profile from
6 that.
7 Q. And did that profile match any of the previous
8 profiles from this case?
9 A. Yes, all of the previous profiles that I identified as
10 Individual A matched the profile from this sample for
11 James Mitchell.
12 Q. Once there's a DNA match, is there some calculation
13 method that's used to determine, I guess, the
14 uniqueness of that sample?
15 A. Yes.
16 Q. Could you explain to the jury how that works?
17 A. When you've got a DNA match, we need to establish
18 through statistics the relevance of that match. So I
19 can -- well, so for each of these different types that
20 we look at in the DNA profile, there's a frequency
21 that is assigned to those by population studies. So
22 when you look at all those together, you're able to
23 determine how -- how common or how frequent that
24 profile would be seen in the general population.
25 So based on the statistics, we do that -- this is

1 called a random match probability. So I can provide
2 for any given profile a statistic that lets us know
3 how rare that profile is. And it's called, like I
4 say, a random match probability, so it means, if I
5 were to take someone randomly from the United States
6 population and develop their profile, how -- how
7 common is that? How -- and then the odds of it
8 matching the evidence.
9 Q. And was that done in this case?
10 A. Yes.
11 Q. And what was the result?
12 A. The -- the mixture that I obtained from -- well, went
13 through all of them. The DNA profile that I got from
14 MC 38, which was the envelopes, the DNA profile from
15 the jacket, the MC 40, the mixture from the phone
16 cord, MC 45, the profiles from MC 36 from the vanity
17 and 37 from the vanity all matched James Mitchell.
18 And the estimated probability of selecting an
19 unrelated individual at random from the U.S.
20 population with a matching profile is one in 89
21 quintillion.
22 MR. PENNER: Thank you. Thank you, Your
23 Honor. No other questions.
24 THE COURT: All right. Well, given it's five
25 till, do you want to start cross-examination after

lunch?

MS. HIGH: Yes, Your Honor. That makes sense.

THE COURT: That would probably be more efficient. All right. My usual instructions: No discussion, no investigation, notepads face down on the chairs, remain in the jury room until Ms. Shipman comes to release you. Have a good lunch. We'll reconvene at 1:30.

(The following proceedings were held out of the presence of the jury.)

THE COURT: We're going to move 110 into evidence?

MR. PENNER: Not yet, Your Honor, Detective Kobel will be testifying.

THE COURT: Okay, then. All right. Anything before we recess?

MS. HIGH: No, thank you.

THE COURT: All right. We'll reconvene at 1:30.

(A recess was taken until the afternoon session.)

FEBRUARY 10, 2016

AFTERNOON SESSION

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(The following proceedings were held out of the presence of the jury.)

THE COURT: Anything before I bring the jury in?

MR. PENNER: Just, Your Honor, at the end of the day, depending where we're at, I may be ready to rest. Detective Kobel is on call, so maybe before we let the jury go for the day, we can talk scheduling and when they may or may not come back.

THE COURT: Okay.

MS. HIGH: Thanks.

THE COURT: Whatever you guys need.

MR. PENNER: Thank you. That's all.

THE COURT: All right. We'll bring the jury in.

MR. PENNER: I guess I should also indicate, when Mr. Sewell is over, I'll ask to take the afternoon break at that point, even if it's early. I'll be calling Detective Kobel to come in and testify.

1 THE COURT: Okay. Well, let's see how cross
2 goes, all right? I believe Ms. Shipman put a request
3 in for new gloves.
4 MR. PENNER: Okay. Thank you.
5 (The following proceedings were held
6 in the presence of the jury.)
7
8 THE COURT: All right. You may be seated.
9 Thank you. All right. Cross-examination, Ms. High.
10 MS. HIGH: Yes. Thank you.
11
12 CROSS-EXAMINATION
13 BY MS. HIGH:
14 Q. Mr. Sewell, from the point of view of DNA, the world
15 is a messy place; is that right?
16 A. It's -- it's a lot of places. That's for sure, yeah,
17 DNA.
18 Q. And I mean, you can get DNA from saliva, from hair,
19 hair root, from bone, from semen, from blood, from
20 skin cells?
21 A. Correct, at least potentially.
22 Q. Yeah. Potentially. And maybe even other biological
23 substances?
24 A. Maybe.
25 Q. And you, with the techniques you have now, can develop

1 DNA profiles from very small amounts of biological
2 material?
3 A. Yes. Yes, we can.
4 Q. When I say small, I think we're talking, I don't know,
5 like five-billionths of a gram?
6 A. That sounds about right.
7 Q. Right. And is one of the reasons why the crime scene
8 collection is so critical to the integrity of your
9 work. Is that right?
10 A. Yes. If -- if we don't get good evidence coming in,
11 then it makes it much more difficult to -- to reach
12 valid conclusions from the data.
13 Q. All right. And I know at the lab, the Washington
14 State Patrol Crime Lab, you take the chain of custody
15 pretty seriously?
16 A. Sure.
17 Q. And I mean, you're really diligent in how you document
18 every time an item is either taken out of a vault, put
19 back into a vault, everything to do with it?
20 A. Pretty much, yes.
21 Q. And just in case you need to refer to these, I have
22 Plaintiff's Exhibit 78; Plaintiff's Exhibit 74, your
23 Lab Report 4; Plaintiff's Exhibit 73, Lab Report 3;
24 and Plaintiff's Exhibit 72. I'm just going to hand
25 them up to you so you can have those.

1 A. Okay.
2 Q. And I was asking about chain of custody, and that was
3 Plaintiff's Exhibit 78. If you check something in at
4 10:30 and take it back at 11 o'clock, you're going to
5 have some documentation on that?
6 A. That's correct.
7 Q. Now, one of the links, too, is the lab is not going to
8 accept evidence coming into it that doesn't have
9 evidence tape on it. Is that right?
10 A. Generally speaking, in almost all cases, we require
11 evidence to be sealed, yes.
12 Q. And you're really careful that when you, say, open a
13 package and do some work, that you open it in a
14 different location. And then when you're done, you
15 put your tape on that location?
16 A. If at all possible, yes.
17 Q. Right. No, I think we were just joking around a few
18 minutes ago about when you get packages that are large
19 bags but end up being all rolled up, it's difficult to
20 get it back in?
21 A. Yes.
22 Q. Like that package that you showed us had a phone cord
23 and a phone in it all rolled up together?
24 A. Correct.
25 Q. Okay. One of the things that, like, I know that

1 you're concerned about is how it's collected, how it's
2 stored, because when you go to do your testing, you
3 can only test what you have before you. You're not
4 involved in that collection or storage process?
5 A. That's correct.
6 Q. So if it's been mishandled or there's been
7 contamination, that's really out of your control?
8 A. That's correct. It's all prior to coming to the
9 laboratory.
10 Q. Exactly. And especially in a case like this where
11 you're getting items that have been collected and
12 perhaps stored 20-plus years ago?
13 A. Yes.
14 Q. Now, you know, your first report, it's -- at least I
15 see a lab report, request number 0001, which I believe
16 is your exhibit -- is that 72?
17 A. Seventy-two, yes.
18 Q. Seventy-two. You know you received those items, and
19 your report was prepared in October of 2013?
20 A. Yes.
21 Q. And can you look and tell me the red evidence tape
22 date on that bag?
23 A. This bag?
24 Q. Oh, excuse me. I was actually thinking of -- I think
25 it's MC 38.

1 THE COURT: Let's refer to it by its exhibit
2 number.
3 BY MS. HIGH:
4 Q. Yeah. Let me find those envelopes. Here we go. And
5 that's Exhibit 100. So this is one of the items that
6 you make some reports about in your report Exhibit 72.
7 So your -- you have your tape, and there -- there's
8 some red tape on there?
9 A. Yes.
10 Q. And the first date on the tape on Exhibit 100?
11 A. The red tape is 7/17/13.
12 Q. Okay. And that's the earliest that there's evidence
13 tape on that package?
14 A. Of the red evidence tape, yes.
15 Q. Correct. Okay. And when you did your analysis back
16 in October of 2013, you were provided with some items
17 as it's listed in Exhibit 72, but you were never
18 provided with the chain of custody that went with
19 those items, were you?
20 A. Correct. Not the chain of custody prior to coming to
21 the laboratory.
22 Q. Right. And you discussed how, with -- in Exhibit 72,
23 and I think that's how -- MC 38, two envelopes say
24 with the coin purse, which is our Exhibit 100, you had
25 a trace component. Is that right?

1 A. Yes.
2 Q. And because it was of such limited genetic
3 information, you can't include or exclude, obviously,
4 Ms. Robinson?
5 A. That's the -- the strict interpretation of the
6 guidelines, yes.
7 Q. And I mean, you really can't say much about it with
8 respect to anybody; is that right?
9 A. Correct.
10 Q. Now, your next report that was generated is Report
11 Number 3, and I think that might be -- is that Exhibit
12 73?
13 A. Yes.
14 Q. Now, I think you talked about how the lab
15 automatically will generate a lab number?
16 A. Yes.
17 Q. But somehow we never got a report number, too?
18 A. That's correct.
19 Q. And so something happened here in the automatic
20 numbering system based on, perhaps, when items were
21 brought or inputted; is that right?
22 A. It has to do with when we get the paperwork request
23 for that examination versus when we actually get the
24 evidence, which isn't always at the same time.
25 Q. Okay. And so --

A. Do you need further explanation or is --
Q. No. You just -- you don't have a Report Number 2, right?
A. Correct.
Q. Okay. Kind of jump from one to three?
A. There is no Report 2.
Q. Okay. And in that report -- excuse me. And that is, excuse me, that's Exhibit seventy --
A. -- three.
Q. Exhibit 73. You were provided with, again, a number of items but not the chain of custody for those items?
A. Correct.
Q. And that included, and I think it's up there with you, a bag that contained a Radio Shack telephone and some white cord?
A. Yes.
Q. And can you give me the exhibit on that? I'm sorry. You've got it right there. The exhibit tag might be a hundred --
THE COURT: It's 96.
BY MS. HIGH:
Q. Ninety-six. Thanks. I didn't have it in my notes. So you received that bag with both the cord all rolled up together, right?
A. I believe so.

1 Q. And also a phone base in there?
2 A. Yes.
3 Q. And you just swabbed one portion of that cord. Is
4 that right?
5 A. Correct.
6 Q. And although there was a lot of it?
7 A. Yes.
8 Q. And just looking at the cord, it looks like, I mean,
9 not only was there quite some distance but also what
10 appeared to be spots with additional staining on it;
11 is that right?
12 A. I believe there is, yes.
13 Q. You also -- your Exhibit 73 references some testing
14 that you did on a pair of jeans?
15 A. Yes.
16 Q. And hold on. Let me look at the exhibit number on
17 that, when I find that.
18 THE COURT: Ninety-four is the jeans.
19 MS. HIGH: Thank you.
20 BY MS. HIGH:
21 Q. You actually tested three spots?
22 A. Yes.
23 Q. And two -- once you get through amplification, you see
24 that there's female, you just stop?
25 A. Yes. No, excuse me. It's the quantification step,

1 not the amplification.
2 Q. Excuse me. Quantification. You stop at that point?
3 A. I did, yes.
4 Q. But you go on with what you called TS 3?
5 A. Correct.
6 Q. And now, with TS 3, you actually had to amplify that
7 twice; is that right?
8 A. I'll have to look. Yes.
9 Q. And you had to amplify it because, first go around, it
10 had weak results?
11 A. Yes.
12 Q. And I think you actually had to bump it up to, like,
13 level four when you amplified it, right?
14 A. I had to -- we have -- we have a target of how much
15 DNA we want to come out the other end so that it works
16 through the genetic analyzer. So in the -- I targeted
17 a certain amount the first time. It was not
18 sufficient to give me a complete profile. So went
19 back and retargeted a higher amount. The first time I
20 targeted 1.2, and the second time I targeted three.
21 Q. Okay. So when -- when I interviewed you and you said
22 you had to bump it up to four. Is that -- was that a
23 mistake?
24 A. Oh, no. That's -- that's the sample volume that I
25 used. The target was three.

1 Q. Okay. Okay. Because I think you said strength three
2 is usually your upper limit?
3 A. That's the normal high that we can go for a target
4 amplification.
5 Q. Okay. And even with taking it up to that upper limit,
6 you still only got a partial result; is that right?
7 A. Yes, I believe so. Yes.
8 Q. Okay. And so it still remained a weak sample?
9 A. Yes. It was -- it was a complete profile but only
10 part of it was above our threshold of being able to
11 use for statistical interpretation.
12 Q. You know, and that's a really good point. You use a
13 kit that's been validated, like you said, by certain
14 thresholds and following certain steps very
15 diligently; is that right?
16 A. Yes.
17 Q. And I'm sorry. The kit that you were using to do
18 these samples?
19 A. Identifiler Plus.
20 Q. And you're trained, I'm sure, to, like I said, follow
21 the thresholds and follow the steps?
22 A. Yes.
23 Q. And in this case here, when you had to do the second
24 amplification, is it part of your training and the
25 process that the positive and negative amplification

1 controls should be prepared by the same analyst that's
2 actually doing the testing?
3 A. No, not necessarily.
4 Q. Okay. Or at the same time, at least?
5 A. Yes. They would be prepared at essentially the same
6 time on the same -- the same run, if you will, that's
7 amplified with the same time as these samples.
8 Q. And you should use the same kit lot number?
9 A. I don't believe that's critical, no.
10 Q. Okay. So you don't -- you're telling us that if you
11 don't use the same lot number, that you could still
12 have a valid sample?
13 A. Well, let me -- let me backtrack. The sample that
14 gets amplified would be amplified with the same kit
15 lot number as the positive and negative controls that
16 we run with that amplification. Does that answer your
17 question?
18 Q. Well, I just thought that if you were running it, you
19 had to use the same lot numbers for your control.
20 A. The control and the evidence sample should be run with
21 the same lot number, yes, for it to be valid.
22 Q. Okay. Okay. And I just -- I know you have some of
23 your notes up there. I couldn't determine from your
24 notes whether you actually used the same lot numbers,
25 and if you want to take a moment to take a look at

1 112.
2 A. It's not recorded as being different, so I believe it
3 would be the same.
4 Q. Okay. But it's not documented?
5 A. It's not documented here, no.
6 Q. And if they were different lot numbers, that would
7 invalidate the results?
8 A. No, actually, I have to reverse myself once again.
9 The positive and negative controls in this situation
10 are simply to show that the amplification works and
11 there was not contamination introduced by the reagents
12 that are added to the amplification. So if the
13 amplification worked on the evidence sample and the
14 amplification worked on the positive control, you will
15 know the amplification worked properly.
16 The weakness in that may be in the negative
17 control. If you introduced -- if you weren't using
18 the same lot number, the potential would be there that
19 you would see some -- you could introduce some -- some
20 contamination in. That's what the purpose of the
21 negative control is: Make sure that there's nothing
22 there. And there was nothing there in this case, but
23 what I believe Counselor is pointing out is that I
24 don't have a verification that the same lot number was
25 used with the sample as well as the negative control,

1 so the potential could be there.
2 Q. Okay. And you know, one of my questions, too, with
3 the -- the sample, excuse me, our Exhibit 94, what is
4 your TS 3 --
5 A. Okay.
6 Q. I know, we are going to have enough numbers by the
7 time we're through here. But that's the section on
8 the jeans on the right leg --
9 A. Correct.
10 Q. -- that you ran twice and you got just a partial
11 result. Would that reflect, perhaps, some degradation
12 of the blood or whatever material you were able to
13 test?
14 A. That would certainly be a logical explanation, yes.
15 Q. Okay. And degradation can also indicate improper
16 storage conditions?
17 A. It may be possible, sure.
18 Q. I think, also, on the same Exhibit 73, your -- what's
19 called your request number three, you took a look at,
20 and I know it's right up here, that colored jacket
21 that you showed, and I'm going to get myself over here
22 and -- Exhibit 95.
23 THE COURT: I would say 93 was a drawing.
24 BY MS. HIGH:
25 Q. Yeah. Ninety-five. Exhibit 95. And so that was the

1 jacket that you took a look at.
2 A. Okay.
3 Q. And I think your report that it was found to be
4 consistent with at least two people?
5 A. Yes.
6 Q. Okay. And so could also, perhaps, have more than two?
7 A. I had no indication of that, but I can't eliminate
8 that possibility.
9 Q. Okay. So when we say the minor trace component
10 consistent with Linda Robinson, that's not some
11 statistical match that you're able to do; is that
12 right?
13 A. I'm not able to apply statistics to that, no.
14 Q. You know, and then, I think you asked -- you were
15 asked about what was the statistical match, and I
16 think you reported it was, I don't know, one in 89
17 kadrillion (sic.) Is that --
18 A. I don't think that's a word.
19 Q. I know. I think I just made that one up. Don't ask
20 me to spell it.
21 A. Eighty-nine quintillion.
22 Q. Okay. It wasn't a bazillion. Okay. Quintillion. So
23 that's, you know, based on you using another program.
24 Is that right?
25 A. Yes, Pop Stats.

1 Q. Pop Stats. And so you're not sitting there with your
2 calculator personally or independently running this
3 through some kind of a formula yourself?
4 A. Right. It's computer-generated program.
5 Q. Okay. And you know, and it's a computer-generated
6 program, and I think that your Report Number 4, which
7 is, I think, Exhibit --
8 A. Seventy-four.
9 Q. -- Exhibit 74, you signed in February of 2015?
10 A. Yes.
11 Q. And subsequent to that, there was an erratum that had
12 been issued by the -- I want to say by the FBI?
13 A. I believe it was, yes.
14 Q. And so the lab identified some errors in the database
15 they used for their statistics. Are you familiar with
16 that?
17 A. Yes, some very minor errors.
18 Q. Okay. And so these errors, I think there was a
19 population of 1,100 individuals of which approximately
20 300 were African-American, I guess, I don't know,
21 people in the database?
22 A. I don't have those numbers to verify that.
23 Q. Okay. And what they found was that there were some
24 duplicates, and so actually had to drop out some of
25 the profiles that were in there. Were you provided

1 any of that?
2 A. There again, I don't have that in front of me. I may
3 have seen that last summer, but --
4 Q. You remember seeing something like that last summer?
5 A. Yes.
6 Q. Okay. And actually, in the Washington State Patrol,
7 decided that they would have to do some
8 recalculations?
9 A. It's on a case-by-case basis, but we did -- we did do
10 that for this case, yes.
11 Q. Okay. And in this case, it -- there was a
12 recalculation?
13 A. Yes.
14 Q. And so the items that included, you know, the jacket
15 and the phone cord and the vanity reduced from 89, one
16 in 89 quintillion to one in 83 quintillion?
17 A. That's correct.
18 Q. You know, and as well, like you said, these are
19 things -- these were errors that were caught by the
20 FBI after using those other numbers for well over a
21 decade?
22 A. Yes.
23 Q. And they only came to light with the availability of
24 some new kits that will look at more loci?
25 A. I believe that's how it came about, yes.

1 Q. Otherwise, certainly, you wouldn't have known?
2 A. No.
3 Q. And it sounds like most accredited labs use the same
4 Pop Stat program?
5 A. I believe most labs do, yes.
6 Q. Right. And again, so it only came to light when
7 someone went, actually, back as they started to look
8 at some new technology?
9 A. I've -- possibly. I don't remember exactly how it
10 came to light.
11 Q. Okay. And you also did a statistical analysis, and
12 this is your Exhibit 74, on the partial DNA profile
13 from -- from the jeans, and they were -- I'm sorry.
14 Is that right?
15 A. Yes.
16 Q. And that was one in 170 trillion?
17 A. Correct.
18 Q. And so, because you didn't have a full complement of
19 alleles to look at, it's -- that, of course, decreases
20 the number you can come up with?
21 A. Correct.
22 Q. Okay. You know, I know at the lab, you guys have a
23 lot of training on things to do to try to minimize
24 contamination.
25 A. Yes.

1 Q. And you, you know, wear gloves and probably other
2 protective gear?
3 A. Yes.
4 Q. Masks?
5 A. Sometimes.
6 Q. Sometimes. Lab coats?
7 A. Yes.
8 Q. And are concerned about what surfaces items touch?
9 A. Can you explain that?
10 Q. Well, you know, you're not going to have an item from
11 this case sitting on the table without cleaning the
12 table and then have another case come in?
13 A. They wouldn't be out together, no, if that's what you
14 mean.
15 Q. Right.
16 A. Correct.
17 Q. And you would probably, presumably, clean up between?
18 A. Yes.
19 Q. Right. And with that, still, everyone that works
20 there gives a sample of their DNA so their profile is
21 on record?
22 A. Correct.
23 Q. And even with all of those safeguards, once in a
24 while, the DNA from an analyst will actually show up
25 in a case?

1 A. That's correct.
2 Q. And that's probably happened to almost every analyst,
3 if not everyone?
4 A. Not everyone, but some people tend to -- well,
5 particular types of samples and particular people, it
6 becomes more of an issue.
7 Q. You know, and I think you said the lab is accredited,
8 which means that you do some review process internally
9 or externally on an annual basis?
10 A. Yes.
11 Q. And as a result of those reviews, occasionally
12 there's -- errors are found?
13 A. Certainly can happen, yeah.
14 Q. And I think they're called quality variance incidents?
15 A. Most quality -- we call it a quality variance because
16 it's a -- it's something that happened that shouldn't
17 have happened, whether it's someone not following the
18 proper protocol or dropping a tube of DNA or just
19 doing something in error, we call those quality
20 variances. Almost all of those are generated by the
21 individual scientist. It's a self-reporting thing
22 that we do. It's not something that comes about as a
23 result of an audit, generally speaking.
24 Q. Right. It's because you know that following the
25 procedures and having oversight by other folks in your

1 lab is important, one, for your accreditation and also
2 just for your own professional and scientific pride,
3 right?
4 A. Yes. Our ethics -- I mean, if someone makes a mistake
5 then and they fess up to it, we deal with it, whether
6 it's retraining or just something that just happened
7 or someone that simply doesn't have the capability of
8 doing the job, I suppose. However, covering up a
9 mistake or lying about it, that's termination. That's
10 just not acceptable. So people are trained, and I've
11 got all the confidence in the world that everybody I
12 work with self-reports if they make a mistake. They
13 come and tell me, and we deal with it.
14 Q. Right. You don't want to be in the position, like I
15 think there's -- first it was like dry labbing in
16 Boston or something where there are -- then calls into
17 question the entire lab and all the work that it's
18 done.
19 A. Sure.
20 Q. And I asked if you could, at one point, you know,
21 during your preparation for the quality variance
22 incidents and for a period spanning about a year, and
23 you provided me with those.
24 A. Okay.
25 Q. And that is exhibit --

1 A. It's up there. You have to give it to me.
2 Q. Oh, excuse me. Remember I told you the scientific
3 brain. Right. Exhibit 243?
4 A. Thank you.
5 Q. You bet. And I happen to have yours, but in that span
6 of that year, there were, I think, 13 incident
7 reports.
8 A. Okay.
9 Q. And they range from, you know, failing to package
10 something, perhaps, in the -- in the proper manner,
11 say this first one here, to even some slightly more
12 serious ones involving contamination.
13 A. I believe so, yes.
14 Q. All right. And exactly. Where maybe one might have
15 been a malfunction, I believe, of the machine, and
16 what steps you need to take with that?
17 A. I believe there was some of that.
18 Q. To one of the analysts, and this one wasn't you,
19 somehow loaded two things into, I guess, one machine?
20 A. Into one well.
21 Q. Yeah.
22 A. That happens.
23 Q. Right, and that's something that can happen if you get
24 distracted or are busy, that kind of thing?
25 A. Everyone can make mistakes.

1 Q. Right. And while some of these dealt with your
2 coworkers, say Jeremy Sanderson and William Dean,
3 there are actually a couple that involved you making a
4 report on not following the procedure?
5 A. Probably, yes.
6 Q. I see that there was one, I think, that was dated,
7 like, 12/12/13, and it just was, again, where you
8 reported -- I'm not even quite sure what it is, but it
9 had to do with higher -- higher concentration DNA
10 extracts have to be processed before higher
11 concentrated extracts. Does that make sense?
12 A. That would be a different one than the one on 12/24 --
13 Q. On 12/12 --
14 A. -- '13?
15 Q. 12/12/13.
16 A. Oh. 12/12. Excuse me.
17 Q. That's at the bottom. The top date is 11/27, 2013.
18 A. Yes, low concentration DNA extracts prior to higher
19 concentration DNA extracts with the idea of hoping to
20 not introduce any cross-contamination between samples.
21 Q. Right. And again, I think that the action taken would
22 say we can't overstress this point, but you need to be
23 careful because we don't want contamination or
24 repetition of these type of events?
25 A. Absolutely.

1 Q. Okay. And I think the point why you do this and what
2 I asked about earlier is if you don't follow all the
3 steps precisely, you won't necessarily have a result
4 that can be validated using your -- your kit. Is that
5 right?
6 A. It would depend on the error that's made as to whether
7 the data would be usable or not. But yeah, in a
8 worse-case scenario, when you discover that you've
9 made an error such as that, then it may be you throw
10 out the data. You can't use it at all.
11 Q. Okay. Changing gears just a little bit, you can
12 develop DNA profiles from saliva; is that right?
13 A. Yes.
14 Q. And some of the things you've developed profiles from,
15 maybe not you personally but maybe things like beer
16 bottles, drinking straws, glasses, cigarette butts,
17 and licked envelopes?
18 A. Sure. Things that have been in contact with saliva.
19 Q. Right. And as well, if an item like that was
20 collected and brought to you, you have a process to
21 work through those to try and develop samples?
22 A. Sure. Same process as I had on all the others.
23 Q. Okay. You know, and I think you said that one of the
24 things you said you did was, at one point, sat down
25 with Detective Kobel and looked at some of the crime

1 scene photographs to try and assess items to test?
2 A. Correct.
3 Q. And -- but be that as it may, no one ever brought to
4 you a McDonald's cup or something like that to test?
5 A. Not in this case, no.
6 Q. Do you recall, when you looked through the
7 photographs, seeing a photograph that showed a set of
8 car keys on -- on the back side of Ms. Robinson?
9 A. No.
10 Q. I'm going to hand you what's been admitted as
11 Plaintiff's Exhibit 5. You know, and so, in this
12 photograph, and our jury has seen it a couple of
13 times, it shows kind of a set of car keys, kind of
14 between the legs?
15 A. Yes.
16 Q. And a nickel and a blood drop right between the legs?
17 A. Yes. Does appear that.
18 Q. Okay. And you were never given those keys to do any
19 sampling from?
20 A. I don't believe they were submitted with the jeans,
21 and I did not get them separately, no.
22 Q. Okay. Sure. And if you had been provided with them,
23 they would show up in one of your reports?
24 A. Yes.
25 Q. Same with, say, the nickel that's on the floor there,

1 again?
2 A. Correct.
3 Q. Or that drop of blood right between the legs?
4 A. I don't believe that was ever submitted to me, no.
5 Q. Right. And I mean, things that are submitted. I
6 mean, you have your chain of custody and your report.
7 It would have been something that you would have
8 documented?
9 A. Yes.
10 Q. Okay. And so when you -- was it you that decided on
11 your own to just stop when you got a finding that
12 there was female DNA?
13 A. Yes, that was my decision.
14 Q. Okay. And so that decision was based on an assumption
15 that female DNA might not lead to a suspect?
16 A. We already had male DNA identified on some items at
17 that point, unknown male DNA. So it was -- it was a
18 matter of being efficient.
19 If I've got a lot of blood probably from the
20 victim and I'm basically looking for the male DNA, see
21 if I can find more of what we found before. That was
22 the purpose of the testing.
23 Q. Right. So it was based on an assumption we just stop
24 here?
25 A. I guess it would be a reasonable assumption.

1 Q. Well, your assumption, right?
2 A. All mine are reasonable.
3 Q. Okay. Okay. Mine, too. Okay. So, it wasn't just an
4 assumption to say, hey, to be efficient, I'm not going
5 to run those out. I'm not going to actually run that
6 profile out.
7 A. Correct. I decided to stop at that point.
8 Q. Right. And so by not running those out, you know, we
9 don't know if those would have been inconsistent with
10 Ms. Robinson, those profiles?
11 A. Correct. We don't know who those samples came from.
12 Q. Okay. And you know, one of the things, you can't age
13 blood, really, can you?
14 A. Determine the age of a blood sample?
15 Q. Right. Right.
16 A. Correct.
17 Q. Right. And all you do is you get these items here.
18 You can't determine under what circumstances, say, the
19 blood was deposited on the envelope, whether
20 individuals that left that was also a victim. All you
21 can say is they were bleeding?
22 A. Correct.
23 MS. HIGH: That's all I have. Thank you.
24 THE COURT: Redirect.
25 MR. PENNER: Yes, Your Honor. Thank you.

1

2 REDIRECT EXAMINATION

3 BY MR. PENNER:

4 Q. So, again, talking a little bit about the items that

5 were collected, or I'm sorry, selected to be tested, I

6 think you already testified the phone cord and the

7 jeans. That was part of the second round of testing,

8 right?

9 A. Yes.

10 Q. And that was after consultation with Detective Kobel

11 and looking at photographs, right?

12 A. Yes.

13 Q. And the stains that you tested, those were visible in

14 crime scene photographs as well?

15 A. Pretty much so, I believe.

16 Q. In fact, that guided you to know where to look on the

17 items to try to find the staining, correct?

18 A. Well, Detective Kobel had marked the two items on the

19 back of -- on the jeans, on the back of the left leg

20 on the copy of the photo I had. I'm not sure how

21 readily visible they were. He said, "Here and here

22 are where they are."

23 Q. Okay. So he didn't mark the jeans. He marked the

24 photograph?

25 A. Correct.

1 Q. And then you looked at the jeans?
2 A. Yes.
3 Q. And found those stains, right?
4 A. Yes.
5 Q. Same thing with the phone cord, right?
6 A. Correct.
7 Q. Okay. And regarding the lot number questions?
8 A. Yes.
9 Q. You have to use the right materials as you do this,
10 correct?
11 A. Yes.
12 Q. Okay. And if you had used the wrong lot number, you
13 would have written that down because that would have
14 been significant, correct?
15 A. Unless I made a mistake, yes.
16 Q. You try not to make mistakes?
17 A. I try not to.
18 Q. So you don't write down things if you do them the
19 right way. You write some notes, but if you do things
20 the way you normally do, you don't make a note, "I did
21 what I normally do," right?
22 A. Correct.
23 Q. You testified that the partial profile on TS 3, on the
24 jeans, the third stain --
25 A. Yes.

1 Q. -- that that was 10 out of 15 of the markers rose
2 above the threshold; is that right?
3 A. Yes.
4 Q. The other five markers, they were just under the
5 threshold?
6 A. Yes. They were still present but just under the
7 threshold.
8 Q. Were any of them present in a location different than
9 Mr. Mitchell?
10 A. No.
11 Q. Okay. And even having just 10 out of 15, that was
12 still unique enough to be one in 1 in 170 trillion?
13 A. Yes.
14 Q. And the current world population right now is about
15 8 billion?
16 A. I lost count. Okay.
17 Q. But 170 trillion is a lot more than every person on
18 the planet right now?
19 A. Yes. It's like the national debt or something.
20 Q. You're right. All right. And Counsel had you go
21 through every quality variance incident kind of around
22 the time that you tested these?
23 A. Yes.
24 Q. Not one of these pertains to this case, correct?
25 A. Correct.

1 Q. All right. And in fact, you didn't test just one item
2 in this case. You tested ten different items in this
3 case, right?
4 A. Ten different samples, yes.
5 Q. And there were -- after the initial profile of
6 Ms. Robinson, when you found female DNA, you stopped,
7 correct?
8 A. Yes.
9 Q. But every single time you found male DNA, that was
10 Mr. Mitchell's, wasn't it?
11 A. It matched Mr. Mitchell, yes -- Mr. Mitchell.
12 MR. PENNER: Thank you. Nothing else.
13 THE COURT: Any additional cross, Counsel?
14 MS. HIGH: Yes.
15
16 RECROSS EXAMINATION
17 BY MS. HIGH:
18 Q. Now, going back to the quality variance incident, some
19 of what was found there were mistakes that had been
20 made before, a long time before. Is that right?
21 A. I believe there were some of those.
22 Q. Right.
23 A. One of those.
24 Q. Say in an older care, something that had been done --
25 just detected in 2014, and that was the -- I have it

1 as my 7. That's Exhibit 243, and the date that I have
2 on it was 7/7, 2014, and that's for work that had been
3 done in 2006.
4 A. Yes.
5 Q. So I mean, sometimes you find things that have been
6 done in error but you don't find them right away?
7 A. This one is an administrative error, so it came up in
8 review of cases that old. So it was not a technical
9 error, but yes, it came up later. Much later.
10 Q. Right. And it was -- had to do with whether something
11 was properly put into a certain location or database?
12 A. Yes.
13 Q. Right. And I think there was one other one. But I
14 guess my point is, just because something wasn't
15 reported during the course of this doesn't mean that
16 something down the road -- I mean, an error may have
17 been made?
18 A. Sure.
19 MS. HIGH: Thank you. That's all I have.
20 THE COURT: Any additional redirect?
21 MR. PENNER: No, Your Honor. Thank you.
22 THE COURT: May the witness be excused,
23 Counsel?
24 MR. PENNER: Yes, Your Honor.
25 MS. HIGH: Yes.

1 THE COURT: All right. You may step down,
2 sir. Thank you very much.
3 THE WITNESS: Thank you.
4 THE COURT: Anything that's got an official
5 exhibit tag is ours. Counsel, I'll charge you with
6 moving that back down.
7 MR. PENNER: Thank you, Your Honor.
8 THE WITNESS: This is all mine.
9 THE COURT: All right.
10 THE WITNESS: Thank you.
11 THE COURT: Thank you very much, sir.
12 MR. PENNER: Your Honor, could we take the
13 break now, and then I'll have another witness.
14 THE COURT: All right. Afternoon recess. No
15 discussion, no investigation, notepads face down on
16 chairs. Remain in the jury room until Ms. Shipman
17 comes to get you.
18 (The following proceedings were held
19 out of the presence of the jury.)
20
21 THE COURT: All right. You're going to
22 re-call Detective Kobel?
23 MR. PENNER: Yes, Your Honor. It won't be
24 very long direct. I expect to rest this afternoon.
25 And I'm comfortable advising the Court and the jury of

1 that. Ms. High and I have been discussing scheduling
2 as it moves forward. It might be good to have that
3 cleared up before we let the jury go for the day.
4 MS. HIGH: Right. I may not, because I
5 didn't know where it was going, have witnesses until
6 Tuesday. I've been working on Thursday. I didn't
7 know where we were going to go, so let me make some
8 calls, but that might be my request. We let them know
9 Tuesday.
10 THE COURT: Basically, if you rest today, we
11 are not in session tomorrow -- Thursday -- and Monday.
12 MR. PENNER: Right, because the holiday on
13 Monday.
14 MS. HIGH: Right. Right.
15 THE COURT: That is correct.
16 MR. PENNER: There's no objection from the
17 State to that, Your Honor.
18 THE COURT: All right.
19 MS. HIGH: I'll run out and see what I've got
20 lined up. I've been trying to kind of juggle, and
21 it's really hard to predict.
22 THE COURT: Yes. I know how that goes, if
23 you could predict it, you would buy lotto tickets.
24 All right. Court will be at recess.
25 (Court at recess.)

1 (The following proceedings were held
2 out of the presence of the jury.)
3
4 THE COURT: All right. Anything before we
5 bring the jury in?
6 MR. PENNER: No, Your Honor. Thank you.
7 MS. HIGH: Thank you.
8 THE COURT: One question I did have is how
9 many zeros is in quintillion?
10 MR. PENNER: I counted. It's 18.
11 MS. HIGH: I asked him that when I
12 interviewed him.
13 MR. PENNER: It's 18.
14 THE COURT: Just running through my head.
15 (Off-the-record discussion.)
16
17 (The following proceedings were held
18 in the presence of the jury.)
19
20 THE COURT: You may be seated. All right.
21 Counsel, you may call your next witness.
22 MR. PENNER: Thank you, Your Honor. The
23 State re-calls Tim Kobel.
24 THE COURT: All right, sir, you've been
25 previously sworn under oath. So have a seat again.

1 Usual instructions. Water and Kleenex to your right
2 if you need them, and you can adjust the chair and the
3 mike.
4 Your witness, Counsel.
5 TIM KOBEL: having been called as a witness on
6 behalf of the Plaintiff, having
7 been previously sworn by the Court,
8 testified as follows:
9
10 DIRECT EXAMINATION
11 BY MR. PENNER:
12 Q. For the record, could you state your name again?
13 A. My name is Tim Kobel.
14 Q. Okay. Detective Kobel, after you submitted the first
15 round of items to the State Crime Lab, did you receive
16 information from Chris Sewell that a person had been
17 identified, other than Linda Robinson, as having
18 contributed DNA?
19 A. Yes.
20 Q. Did you get a name for that person?
21 A. Yes.
22 Q. What was the name?
23 A. James Edward Mitchell.
24 Q. Did you then submit more items to Mr. Sewell for
25 additional testing?

1 A. I did.
2 Q. Was that individual, James Edward Mitchell, was his
3 DNA also located on the second round of testing?
4 A. It was.
5 Q. Did Mr. Sewell make a request of you after that second
6 round of testing?
7 A. He did.
8 Q. What was that request?
9 A. He asked that I obtain a fresh sample of swab, buccal
10 swab is what he called them, from Mr. Mitchell.
11 Q. Okay. And so did you do some research and locate
12 Mr. Mitchell?
13 A. I did.
14 Q. And at the time that you did this, this would have
15 been, what, 2014, 2013?
16 A. Sometime around then. I don't remember the exact
17 time.
18 Q. Were you able to locate Mr. Mitchell?
19 A. I was.
20 Q. And where was he?
21 A. He was in Lewisburg, Florida.
22 Q. Did you make arrangements for local Florida law
23 enforcement to contact him?
24 A. I did.
25 Q. All right. And were arrangements made to have

1 Mr. Mitchell come to the state of Washington?
2 A. They were.
3 Q. And did you contact Mr. Mitchell here in Washington in
4 order to get a DNA sample from him?
5 A. I did.
6 Q. The individual that you contacted, is he here in the
7 courtroom today?
8 A. He is.
9 Q. Would you point him out and just indicate by item of
10 clothing who we're talking about?
11 A. It would be over on the defendant's side, next to
12 Ms. High.
13 Q. Did you obtain a DNA sample from him?
14 A. I did.
15 Q. How do you do that?
16 A. It's easier now than it used to be, but we just take
17 sterile buccal swabs and/or, generically, just cotton
18 swabs, and we swab the insides of the mouth. We
19 usually take two on the right, two on the left,
20 rubbing the swab back and forth between the gum and
21 the cheek, and basically what we're collecting is skin
22 cells.
23 Q. Did you do that in this case?
24 A. I did.
25 Q. Did you package those swabs and put them into

1 property?
2 A. I did.
3 Q. I'm going to hand you what's been previously
4 identified as Exhibit 110. Are those the swabs from
5 Mr. Mitchell?
6 A. They are.
7 Q. All right. Is that the items that you sent off to
8 Mr. Sewell?
9 A. Yes.
10 Q. And did you receive word from Mr. Sewell about whether
11 the DNA from those items matched the Individual A, the
12 James Edward Mitchell from the previous tests?
13 A. I did.
14 Q. What did Mr. Sewell tell you?
15 A. He said they were a match.
16 MR. PENNER: Thank you. Nothing else, Your
17 Honor.
18 THE COURT: Cross-examination.
19 MS. HIGH: No, Your Honor.
20 THE COURT: May the witness step down?
21 MR. PENNER: Yes, Your Honor.
22 THE COURT: All right.
23 MR. PENNER: There is one thing, Your Honor.
24 The State would move to admit Exhibit 110.
25 THE COURT: Any objection?

1 MS. HIGH: No, Your Honor.
2 THE COURT: All right. 110 will be admitted.
3 (Exhibit 110 admitted.)
4
5 MR. PENNER: And Your Honor, at this time,
6 the State rests.
7 THE COURT: All right. Just a minute,
8 Counsel. I want to make sure what's submitted and not
9 is up to date. All right. We need to discuss some
10 scheduling issues, so I'm going to ask if you would
11 please step into your jury room. No discussion, no
12 investigation, notepads face down on chairs. Wait
13 until Ms. Shipman comes to get you.
14 (The following proceedings were held
15 out of the presence of the jury.)
16
17 (Off-the-record discussion.)
18
19 THE COURT: All right. Scheduling.
20 MS. HIGH: Your Honor --
21 THE COURT: You may be seated. I'm sorry.
22 MS. HIGH: Your Honor, you know, I am going
23 to ask that we recess until Tuesday. I've been trying
24 to make these on-the-fly calls, and I've told my
25 witnesses several different things where it looked

1 like we were earlier this week. I thought it was
2 going to actually, then, run longer, so I apologize
3 about that. I know Mr. Dahlstrom, my investigator,
4 has been telling folks 9 a.m., just to make sure that
5 they're here on Tuesday morning. I know that we've
6 had, I don't know, 20-some witnesses and some have
7 gone much quicker than I thought and some have gone,
8 actually, somewhat longer.
9 So I would ask that, now -- I owe both the Court
10 and Mr. Penner something that I realized I hadn't
11 provided to you until I got back to my office last
12 night, and those are jury instructions, and I'll get
13 those to you either this afternoon or tomorrow morning
14 so we can take a look at those. In large measure, I
15 think there is some agreement in terms of the lessers
16 and things like that, but I will get those to you, and
17 I've had them sitting on a file folder in the corner
18 of my desk now it seems like for an age.
19 THE COURT: Yes, I can recall those days.
20 All right.
21 MR. PENNER: Your Honor, I -- no objection to
22 adjourning until Tuesday. It is really hard to
23 predict when we're going to end. We've gone through
24 20 witnesses. I think we're roughly on schedule with
25 what we told the jurors, so I think we just let them

1 know, with the holiday and scheduling, we'll see them
2 on Tuesday.
3 THE COURT: All right. Predicting exactly
4 how fast or how slow a trial is going is always a work
5 of art in progress, too. All right. We'll bring the
6 jury back in, dismiss them until Tuesday morning at
7 9 a.m.
8 THE CLERK: At 9:00?
9 THE COURT: Well, we want them here by 9:00.
10 Have them back here by 9:00. We start at 9:30. All
11 right?
12 MS. HIGH: Sounds good.
13 MR. PENNER: Thank you, Your Honor.
14 THE COURT: All right. Okay. We'll bring
15 the jury back in.
16 (The following proceedings were held
17 in the presence of the jury.)
18
19 THE COURT: All right. You may you may be
20 seated. Trying to predict, you know, how fast or slow
21 a trial goes is difficult, and I don't have a crystal
22 ball and neither do Counsel. We've been sort of
23 juggling when the State was anticipating resting and
24 defense would start, and, of course, that means
25 witnesses are given a number of different dates.

1 At this point, the State has rested. The defense
2 does not have any witnesses for tomorrow, but we would
3 anticipate having witnesses Tuesday morning, allowing,
4 of course, for the holiday. So we are going to recess
5 until Tuesday morning, ask you to be here by 9:00.
6 We'll start at 9:30. And my usual instructions: No
7 discussion, no investigation, notepads face down.
8 Have a very nice holiday weekend, and we'll see you
9 Tuesday morning, and stay in there until Ms. Shipman
10 releases you.
11 (The following proceedings were held
12 out of the presence of the jury.)
13
14 THE COURT: Anything else?
15 MR. PENNER: No, Your Honor. Thank you.
16 MS. HIGH: Thank you.
17 THE COURT: You'll indicate to Mr. Penner who
18 your witnesses are for Tuesday?
19 MS. HIGH: Yes.
20 THE COURT: All right. Court will be at
21 recess until Tuesday morning.
22 MR. PENNER: Thank you very much, Your Honor.
23 (An adjournment was taken until
24 February 18, 2016.)
25

REPORTER'S CERTIFICATE

I, Dana S. Eby, Official Court Reporter for Pierce County Superior Court, do hereby certify that the foregoing transcript entitled, "Verbatim Report of Proceedings," was taken by me stenographically and reduced to the foregoing typewritten transcript at my direction and control, and that the same is true and correct as transcribed.

DATED at Tacoma, Washington, this 21st day of June, 2016.

_____

Dana S. Eby, CCR

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,	)	
	)	Superior Court
Plaintiff,	)	No. 14-1-02979-1
	)	
vs.	)	Court of Appeals
	)	No. 48810-8-II
JAMES EDWARD MITCHELL,	)	
	)	
Defendant.	)	

VERBATIM REPORT OF PROCEEDINGS

February 22, 2016, February 24, 2016
March 25, 2016
Pierce County Courthouse
Before The Honorable Katherine M. Stolz
Tacoma, Washington

<<<<<< >>>>>>

A P P E A R A N C E S

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Deputy Prosecuting Attorney

For the Defendant: MARY K. HIGH
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No. 48810-8-II

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1 BE IT REMEMBERED that on Monday, the 22nd
2 day of February, 2016, the above-captioned cause came on
3 duly for hearing before THE HONORABLE KATHERINE M. STOLZ,
4 Judge of the Superior Court in and for the county of Pierce,
5 state of Washington; the following proceedings were had, to
6 wit:
7
8 <<<<<< >>>>>>
9
10 (The defendant was present.)
11 (The jury was not present.)
12 THE COURT: All right. Anything before we
13 bring the jury in?
14 MS. HIGH: Yes, Your Honor. We admitted
15 103 and 104, and there are a couple of receipts. We didn't
16 open those exhibits, and Mr. Penner and I have agreed that
17 we would like to open them.
18 THE COURT: All right.
19 MR. PENNER: That's correct, Your Honor.
20 They're admitted, and I think the jury would be allowed to
21 open them, anyway. I think a stipulation between to the
22 parties to have them opened now is appropriate, and it can
23 be cut on the side or the bottom.
24 MS. HIGH: Yeah.
25 THE COURT: All right. 103 -- yeah, they

1 were admitted on the 3rd of February, so --
2 (Pause while counsel confer.)
3 MS. HIGH: I have Exhibit 103 here, and
4 I'm going to snip along the edge. It's harder than it
5 looks, and 103 is the Kmart receipt; and I've just snipped
6 open 104 which is the Stock Market receipt.
7 THE COURT: All right.
8 MS. HIGH: Thank you.
9 THE COURT: Anything else?
10 MR. PENNER: No, Your Honor.
11 MS. HIGH: No. Thank you.
12 THE COURT: All right. And I'll sign the
13 original on the instructions, and we'll go ahead and bring
14 the jury in.
15 (The jury was present.)
16 THE COURT: All right. You may be seated.
17 On your chair, you will find -- besides your notepads, face
18 down, you will find copies of the instructions of the law on
19 this case which I am going to read to you at this time. You
20 may follow along if you wish.
21 Okay. This is State of Washington, Plaintiff, vs. James
22 Edward Mitchell, Cause No. 14-1-02979-1, Court's
23 instructions to the jury dated this 22nd day of February
24 2016.
25 / / /

1 THE COURT'S INSTRUCTIONS TO THE JURY

2 THE COURT: Instruction No. 1: It is your
3 duty to decide the facts in this case based upon the
4 evidence presented to you during this trial. It is also
5 your duty to accept the law from my instructions, regardless
6 of what you personally believe the law is or what you
7 personally think it should be. You must apply the law from
8 my instructions to the facts that you decide have been
9 proved, and in this way decide the case.
10 Keep in mind that a charge is only an accusation. The
11 filing of a charge is not evidence that the charge is true.
12 Your decisions as jurors must be made solely upon the
13 evidence presented during these proceedings.
14 The evidence that you are to consider during your
15 deliberations consists of the testimony that you have heard
16 from witnesses, stipulations, and the exhibits that I have
17 admitted, during the trial. If evidence was not admitted or
18 was stricken from the record, then you are not to consider
19 it in reaching your verdict.
20 Exhibits may have been marked by the judicial assistant
21 and given a number, but they do not go with you to the jury
22 room during your deliberations unless they have been
23 admitted into evidence. The exhibits that have been
24 admitted will be available to you in the jury room.
25 One of my duties has been to rule on the admissibility of

1 evidence. Do not be concerned during your deliberations
2 about the reasons for my rulings on the evidence.
3 If I have ruled that any evidence is inadmissible, or if
4 I have asked you to disregard any evidence, then you must
5 not discuss that evidence during your deliberations or
6 consider it in reaching your verdict. Do not speculate
7 whether the evidence would have favored one party or the
8 other.
9 In order to decide whether any proposition has been
10 proved, you must consider all of the evidence that I have
11 admitted that relates to the proposition. Each party is
12 entitled to the benefit of all of the evidence, whether or
13 not that party introduced it.
14 You are the sole judges of the credibility of each
15 witness. You are also the sole judges of the value or
16 weight to be given to the testimony of each witness. In
17 considering a witness's testimony, you may consider these
18 things: the opportunity of the witness to observe or know
19 the things he or she testifies about; the ability of the
20 witness to observe accurately; the quality of the witness's
21 memory while testifying; the manner of the witness while
22 testifying; any personal interest that the witness might
23 have in the outcome or the issues; any bias or prejudice
24 that the witness may have shown; the reasonableness of the
25 witness's statements in the context of all of the other

1 evidence; and any other factors that affect your evaluation
2 or belief of a witness or your evaluation of his or her
3 testimony.
4 The lawyers' remarks, statements, and arguments are
5 intended to help you understand the evidence and apply the
6 law. It is important, however, for you to remember that the
7 lawyers' statements are not evidence. The evidence is the
8 testimony and the exhibits. The law is contained in my
9 instructions to you. You must disregard any remark,
10 statement, or argument that is not supported by the evidence
11 or the law in my instructions.
12 You may have heard objections made by the lawyers during
13 trial. Each party has the right to object to questions
14 asked by another lawyer, and may have a duty to do so.
15 These objections should not influence you. Do not make any
16 assumptions or draw any conclusions based on a lawyer's
17 objections.
18 Our state constitution prohibits a trial judge from
19 making any comment on the evidence. It would be improper
20 for me to express, by words or conduct, my personal opinion
21 about the value of testimony or other evidence. I have not
22 intentionally done this. If it appeared to you that I have
23 indicated my personal opinion in any way, either during
24 trial or in giving these instructions, you should disregard
25 this entirely.

1 You have nothing whatever to do with any punishment that
2 may be imposed in case of a violation of the law. You may
3 not consider the fact that punishment may follow conviction
4 except insofar as it may tend to make you careful.
5 The order of these instructions has no significance as to
6 their relative importance. They are all important. In
7 closing arguments, the lawyers may properly discuss specific
8 instructions. During your deliberations, you must consider
9 the instructions as a whole.
10 As jurors, you are officers of this court. You must not
11 let your emotions overcome your rational thought process.
12 You must reach your decision based on the facts proved to
13 you and on the law given to you, not on sympathy, prejudice,
14 or personal preference. To ensure that all parties receive
15 a fair trial, you must act impartially with an earnest
16 desire to determine and reach a proper verdict.
17 Instruction No. 2: The defendant has entered a plea of
18 not guilty. That plea puts in issue every element of the
19 crime charged. The State is the plaintiff and has the
20 burden of proving each element of the crime beyond a
21 reasonable doubt. The defendant has no burden of proving
22 that a reasonable doubt exists as to these elements.
23 A defendant is presumed innocent. This presumption
24 continues throughout the entire trial unless during your
25 deliberations you find it has been overcome by the evidence

1 beyond a reasonable doubt.
2 A reasonable doubt is one for which a reason exists and
3 may arise from the evidence or lack of evidence. It is such
4 a doubt as would exist in the mind of a reasonable person
5 after fully, fairly, and carefully considering all of the
6 evidence or lack of evidence.
7 Instruction No. 3: The evidence that has been presented
8 to you may be either direct or circumstantial. The term
9 "direct evidence" refers to evidence that is given by a
10 witness who has directly perceived something at issue in
11 this case. The term "circumstantial evidence" refers to
12 evidence from which, based on your common sense and
13 experience, you may reasonably infer something that is at
14 issue in this case.
15 The law does not distinguish between direct and
16 circumstantial evidence in terms of their weight or value in
17 finding the facts in this case. One is not necessarily more
18 or less valuable than the other.
19 Instruction No. 4: A witness who has special training,
20 education, or experience may be allowed to express an
21 opinion in addition to giving testimony as to facts.
22 You are not, however, required to accept his or her
23 opinion. To determine the credibility and weight to be
24 given to this type of evidence, you may consider, among
25 other things, the education, training, experience,

1 knowledge, and ability of the witness. You may also
2 consider the reasons given for the opinion and the sources
3 of his or her information, as well as considering the
4 factors already given to you for evaluating the testimony of
5 any other witness.
6 Instruction No. 5: A person commits the crime of murder
7 in the first degree when, with a premeditated intent to
8 cause the death of another person, he or she causes the
9 death of such person or of a third person.
10 Instruction No. 6: Premeditated means thought over
11 beforehand. When a person, after any deliberation, forms an
12 intent to take human life, the killing may follow
13 immediately after the formation of the settled purpose and
14 it will still be premeditated. However, the mere time and
15 opportunity to deliberate is not sufficient to support a
16 finding of premeditation.
17 Rather, premeditation is the deliberate formation of and
18 reflection upon the intent to take a human life and involves
19 the mental process of actual deliberation, reflection, or
20 reasoning for some period of time.
21 Instruction No. 7: A person acts with intent or
22 intentionally when acting with the objective or purpose to
23 accomplish a result that constitutes a crime.
24 Instruction No. 8: The defendant is charged with murder
25 in the first degree. If, after full and careful

1 deliberation on this charge, you are not satisfied beyond a
2 reasonable doubt that the defendant is guilty of that crime,
3 then you will consider whether the defendant is guilty of
4 the lesser crime of murder in the second degree.
5 When a crime has been proved against a person, and there
6 exists a reasonable doubt as to which of two or more degrees
7 that person is guilty, he or she shall be convicted only of
8 the lowest degree.
9 Instruction No. 9: A person commits the crime of murder
10 in the second degree when with intent to cause the death of
11 another person but without premeditation, he or she causes
12 the death of such person or of a third person.
13 Instruction No. 10: To convict the defendant of the
14 crime of murder in the first degree, as charged, each of the
15 following elements of the crime must be proved beyond a
16 reasonable doubt.
17 (1) That on or about February 6, 1993, the defendant
18 acted with intent to cause the death of Linda Robinson;
19 (2) That the intent to cause the death was premeditated;
20 (3) That Linda Robinson died as a result of the
21 defendant's acts; and
22 (4) That any of these acts occurred in the state of
23 Washington.
24 If you find from the evidence that each of these elements
25 has been proved beyond a reasonable doubt, then it will be

1 your duty to return a verdict of guilty.
2 On the other hand, if, after weighing all of the
3 evidence, you have a reasonable doubt as to any one of these
4 elements, then it will be your duty to return a verdict of
5 not guilty.
6 Instruction No. 11: To convict the defendant of the
7 lesser crime of murder in the second degree, each of the
8 following elements of the crime must be proved beyond a
9 reasonable doubt:
10 (1) That on or about February 6, 1993, the defendant
11 acted with intent to cause the death of Linda Robinson;
12 (2) That Linda Robinson died as a result of defendant's
13 acts; and
14 (3) That any of these acts occurred in the state of
15 Washington.
16 If you find from the evidence that each of these elements
17 has been proved beyond a reasonable doubt, then it will be
18 your duty to return a verdict of guilty.
19 On the other hand, if, after weighing all of the
20 evidence, you have a reasonable doubt as to any one of these
21 elements, then it will be your duty to return a verdict of
22 not guilty.
23 Instruction No. 12: When you begin deliberating, you
24 should first select a presiding juror. The presiding
25 juror's duty is to see that you discuss the issues in this

1 case in an orderly and reasonable manner, that you discuss
2 each issue submitted to you for your decision fully and
3 fairly, and that each one of you has a chance to be heard on
4 every question before you.
5 During your deliberations, you may discuss any notes that
6 you have taken during the trial, if you wish. You have been
7 allowed to take notes to assist you in remembering clearly,
8 not to substitute for your memory or the memories or notes
9 of other jurors. Do not assume, however, that your notes
10 are more or less accurate than your memory.
11 You will need to rely on your notes and memory as to the
12 testimony presented in this case. Testimony will rarely, if
13 ever, be repeated for you during your deliberations.
14 If, after carefully reviewing the evidence and the
15 instructions, you feel a need to ask the Court a legal or
16 procedural question that you have been unable to answer,
17 write the question out simply and clearly. For this
18 purpose, use the form provided in the jury room. In your
19 question, do not state how the jury has voted. The
20 presiding juror should sign and date the question and give
21 it to the judicial assistant. I will then confer with the
22 attorneys to determine what response, if any, can be given.
23 You will be given the exhibits admitted in evidence,
24 these instructions, and two verdict forms, A and B. Some
25 exhibits and visual aids may have been used in court but

1 will not go with you to the jury room. The exhibits that
2 have been admitted into evidence will be available to you in
3 the jury room.
4 When completing the verdict forms, you must first
5 consider the crime of murder in the first degree as charged.
6 If you unanimously agree on a verdict, you must fill in the
7 blank provided in Verdict Form A the words "not guilty" or
8 the word "guilty," according to the decision you reach. If
9 you cannot agree on a verdict, do not fill in the blank
10 provided in Verdict Form A.
11 If you find the defendant guilty on Verdict Form A, do
12 not use Verdict Form B. If you find the defendant not
13 guilty of the crime of murder in the first degree, or if,
14 after full and careful consideration of the evidence, you
15 cannot agree on that crime, you will consider the lesser
16 crime of murder in the second degree. If you unanimously
17 agree on a verdict, you must fill in the blank provided in
18 Verdict Form B the words "not guilty" or the word "guilty,"
19 according to the decision you reach.
20 Because this is a criminal case, each of you must agree
21 for you to return a verdict. When all of you have so
22 agreed, fill in the proper form of verdict or verdicts to
23 express your decision. The presiding juror must sign the
24 verdict forms and notify the judicial assistant. The
25 judicial assistant will bring you into court to declare your

1 verdict.
2 And attached are Verdict Forms A and B.
3 All right. At this time, we're going to start with
4 closing argument. The State goes first followed by the
5 Defense; and then because the State has the burden of proof,
6 they will have the final summation, so if you would please
7 give your attention to Mr. Penner who will be giving closing
8 on behalf of the State.
9 MR. PENNER: Thank you, Your Honor.
10 PLAINTIFF'S CLOSING ARGUMENT
11 MR. PENNER: That's Linda Robinson. She
12 was a real person. She had brothers and sisters, a
13 daughter, nieces and nephews, friends and family; and on
14 February 6, 1993, she was murdered in her own home, and she
15 was murdered by the defendant, James Mitchell.
16 Now, this is closing argument; and in closing argument,
17 what the attorneys do is they talk about the evidence, and
18 they go through it and talk about the law, and that's what
19 I'm going to do; but there's some stuff I'm going to do, and
20 there's some stuff I'm not going to do. We're going to talk
21 about the evidence. We're going to talk about how the case
22 was solved. We're going to talk about some of the issues
23 that the Defense has raised, and we're going to talk about
24 the difference between premeditation and simple intent; but
25 there's some stuff that we're not going to do. We're not

1 going to go over every last piece of evidence. There's a
2 tendency of lawyers to like to hear themselves talk and
3 forget that the thirteen of you were all here for this too.
4 You already heard all the evidence. The fact that I may not
5 address a particular piece of evidence in this closing
6 doesn't mean it's not important. It doesn't mean you can't
7 talk about it during deliberations. It just means that I
8 don't want to spend three to four hours going over stuff
9 that you already know.
10 Another thing I'm not going to do in my closing argument
11 is I'm not going to show you graphic photographs of the
12 scene or the autopsy. You will have those photographs with
13 you in the jury room for deliberations. They're important.
14 It was important that you saw them. It will be important to
15 talk about what they depict, but I can do that without
16 having to throw those photographs up on the wall.
17 Another thing that I'm not going to do is: I'm not going
18 to talk about motive. You've heard all the instructions.
19 You've heard everything; and the one thing that you don't
20 have to worry about, and the Judge didn't instruct you, is
21 motive. Why did Mr. Mitchell kill her? We might never know
22 that, and that's unfortunate; but it doesn't impact the
23 verdict that you reach. We don't know why, but we know that
24 he did; that's sufficient. And we'll talk a little bit
25 about why this may have happened; but ultimately, there

1 isn't evidence beyond a reasonable doubt as to the motive
2 here. There doesn't have to be because that's not an
3 element of the defense.
4 The last thing, again, is that I'm going to try to not
5 talk for about more than an hour. I don't want to go
6 through every last piece of evidence because I think you all
7 have seen it. You know what was proved; you know what
8 people said. The fact that I don't spend three to five
9 hours doesn't mean this case isn't important. It means that
10 you're the jurors; you'll have a chance to review the
11 evidence.
12 So let's talk about the evidence. Let's talk about what
13 you did see. Again, Linda Robinson was murdered in her own
14 home on February 6, 1993. Based on the testimony of George
15 Caldwell and the other witnesses who spoke to her that day,
16 it probably took place about ten to eleven o'clock that
17 night. She was home, baby-sitting her niece and nephew and
18 another toddler; and her daughter was off at the roller
19 rink. She had plans to pick her up at midnight. It was a
20 night in -- it was a night in with little kids, watch some
21 TV and once they're down, cook up some Ramen, eat a little
22 bit and then go get your daughter. That was the plan that
23 night, but we all know now that that plan didn't go through
24 the way it's supposed to. Somebody came to her home.
25 Mr. Mitchell came to her home, attacked her, stabbed her to

1 death, and left her there with the children still in the
2 apartment.
3 But it was a cold case. The detectives interviewed the
4 neighbors. They interviewed the family. They interviewed
5 the friends; and ultimately, they were never able to
6 determine who actually killed Linda, not back in 1993, and
7 that's because the technology wasn't there yet. The DNA
8 technology wasn't there yet. Remember the testimony from
9 several witnesses that you needed a pretty large piece of
10 blood back then; and when you used it, you were going to
11 consume all of it. Even if you get a DNA profile, what
12 happens? It's individual A. This case was solved exactly
13 the way it should have been, exactly the way the detectives
14 are supposed to do in a way that's reliable so that we can
15 be comfortable and confident beyond a reasonable doubt that
16 Mr. Mitchell murdered Linda Robinson. That DNA that was
17 left behind, his blood that was left behind, that's as good
18 as a photograph of the crime. He was there -- he was there
19 that night, and he bled that night; and he didn't just bleed
20 a little bit, and he didn't just bleed in one place. He
21 bled far and wide in that apartment, and his blood was mixed
22 with hers which means they bled at the same time.
23 But it's important to go through the way that it was
24 solved, the way that the detective approached it, Detective
25 Kobel, when he went back. He didn't just go down to the

1 property room, scoop everything up and send it off to the
2 Crime Lab, and I think you remember when he -- when he
3 testified, he said, "I got a phone call from a family member
4 who said, hey, could you look into this? Our sister was
5 murdered, and it's never been solved." And he said, "Yeah,
6 I'll look into it. I'm doing cold cases." And then he said
7 he got another phone call a few months later, and he hadn't
8 looked at it yet because he's busy, so he finally made that
9 the priority, and he went and looked at it; but, again, he
10 didn't go down to the property room just looking, I hope
11 there's some evidence here. He went back to the crime scene
12 photographs, and that's really, really important because you
13 heard the testimony now about the way crime scenes are
14 processed; and the way they're processed, back then and
15 today, is the first thing that has to happen is the
16 forensics officers have to try to figure out what's actually
17 evidence, what's important, what to document, what to
18 collect, and that's what they did here; and they knew enough
19 in 1993 to know that blood was important.
20 There's a little bit about DNA, but basically they were
21 looking for just evidence of where the person might have
22 bled, how this might have happened. Did it maybe happen or
23 start in the bedroom because there's some blood there, so
24 they photographed it and put placards next to it, and then
25 they collected it; so the evidence that was tested

1 ultimately by Chris Sewell from the Crime Lab and the
2 evidence that, ultimately, was Mr. Mitchell's blood because
3 he bled there that night when he killed Linda, that evidence
4 was selected because of the photographs that were taken
5 before Ted Schlosser or Skip Johnson touched anything.
6 The blood wasn't just in one location either. It was on
7 the back of Linda's pants. It was on the dresser. It was
8 on the papers next to the dresser. It was on the jacket on
9 the doorknob, and it was all the way over on the phone cord,
10 too. And it wasn't just his blood; it was mixed with
11 Linda's blood.
12 So the detective goes, and, again, he starts with the
13 photographs; and these are photographs that are taken,
14 again, before anything's collected. They mark it, Item 7,
15 blood from this drawer; Item 8, blood from the vanity; Item
16 9, the blood on the papers; Item 11, the blood on the
17 jacket. All of those -- all of those items have
18 Mr. Mitchell's blood on them, not hair, not skin cells, not
19 saliva, blood. And Detective Kobel told you why he thought
20 that was significant. Well, in fact, he didn't tell you
21 that because he didn't know yet if it was significant. He
22 told you why it might be significant.
23 Let's go back to Linda Robinson. Let's talk about her
24 and her body because, again, this case was solved exactly
25 the way it should have been, from the victim out,

1 forensically, not based on stories or speculation or what
2 ifs, but you start with Linda's body; and what was on
3 Linda's body? Defensive wounds. And, again, you saw those
4 photographs; remember the gash, the long -- they called it
5 an incised cut on her arm. It was very long, and it had
6 opened up because of the skin drying; but she put her arm up
7 to defend herself. You don't stab somebody in order to kill
8 them, but you put your arm up to defend yourself from a
9 knife. She had superficial wounds on the front of her as
10 she tried to fight off the blows. She turns, and she ends
11 up with a stab all the way through her arm that actually
12 goes into her forearm like this. She's covering up.
13 There's a fight. There's a struggle. When someone attacks
14 you, you defend yourself; and if there is a sharp knife as
15 the instrument, it might well, and often does, Detective
16 Kobel told you, result in the assailant also being cut.
17 And Detective Kobel knew that because he looked at the
18 autopsy. He looked at the photographs. He looked at the
19 crime scene photographs, and he knew this wasn't a situation
20 where the victim had simply been attacked from behind,
21 unknowing and going to the floor. There had been a
22 struggle; and if there had been a struggle with a knife,
23 there was a good chance that the -- that the killer had,
24 also, been cut which meant let's look for blood elsewhere.
25 Let's look for blood away from the victim. Again, you saw

1 the photographs. You saw how much blood was underneath
2 Linda Robinson. You heard the Medical Examiner talk about
3 how she basically bled into her own chest cavity, and it was
4 a lot of blood. A lot of it was still in her body, but a
5 lot of it was left at the scene. That's not the way to
6 solve a case. The way to solve a case is look for blood
7 away from Linda Robinson and look for blood that's just been
8 dripped.
9 You heard the evidence from Karen Green, who was a
10 Defense witness who came in the middle of my case because of
11 some scheduling issues, but Ms. Green talked to you about
12 the different types of blood evidence, and she agreed,
13 circles mean drips; and if there's a blow, you'll see kind
14 of a radiated pattern. We don't have that here; we just
15 have drips.
16 And so Detective Kobel realizes Linda was murdered,
17 finally, in the kitchen. There's a handprint on the kitchen
18 wall that was tested, and it came back female, so they
19 didn't do further testing; but that's right above where she
20 ends up. She's been attacked. Her hands are bloody. She's
21 trying to save her own life. As far as she knows, she's
22 trying to save the lives of those children, too; but she
23 succumbs, and she goes down. She touches the wall and ends
24 up on the kitchen -- on the floor in the kitchen.
25 So Detective Kobel looks over here, down the hall into

1 Linda's bedroom, and he finds in the photographs, taken,
2 again, before any of this is picked up and put into any
3 property room or forensic lab or whatever, the blood drips;
4 and he says, these are the ones I want to see. I want to
5 see if these are Linda Robinson's blood. I want to see if
6 maybe she got cut in the bedroom and then went back out
7 there. I want to see what this is, so he sends it out to
8 Chris Sewell; and Chris Sewell tests it. And that blood was
9 not Linda Robinson's; it was James Mitchell's. And he said,
10 I'm going to send that stuff out, so then he -- then he goes
11 down to the property room, and he selects those items; and
12 he sends those out to Chris Sewell. And he says, let me
13 know if you can find -- see if there's enough DNA to get a
14 type and sure enough, there was enough DNA to get the type;
15 and the type came back, and it was male, and it was not
16 Linda Robinson, but they had a big, full profile, individual
17 A, all 15 of those markers; and then they checked, and they
18 found a match, and the match is that man right there at that
19 table, James Mitchell.
20 Now, the blood was still fresh; and Skip Johnson
21 testified that most of the blood was dry because blood dries
22 pretty quick, except for the blood that was under Linda
23 Robinson because that was so much; and one thing that's
24 important to remember, folks, when you go back there and
25 deliberate, you don't leave your common sense at the door.

1 Okay? You're allowed to bring in your life experiences.
2 You're allowed to talk about the evidence, and the blood
3 evidence in this case is important because, like I said, the
4 blood in the kitchen is still wet. It's still thick. You
5 saw one of the photographs. I think there was some
6 questions about it. Linda's arm is like this over her head;
7 and then a few inches, kind of from her right forearm, is
8 the big, kind of, blob of drying blood, and that's
9 consistent with where she had been bleeding out of her arm.
10 Most of the blood is dry, but there's one part that isn't
11 because it's just a little bit thicker by the time they
12 collect it; and that's the blood that's on this envelope.
13 You can see it ran because it was still wet.
14 But more importantly than that is, actually, the blood
15 that's on the jacket. Now, you heard a lot of different
16 blood evidence, and you took notes, and maybe you made a
17 chart, maybe you haven't; but if you did make a chart, what
18 you're going to see is that the blood that was on Linda's
19 jeans was Mr. Mitchell's, and the blood that was on the
20 dresser was Mr. Mitchell's and the blood on the envelope.
21 The blood on the jacket was Mr. Mitchell's and then a second
22 donor consistent with Linda Robinson which only makes sense
23 because it was transfer blood; remember that? Detective
24 Kobel told you the blood on the dresser and on the papers,
25 that was drops; but the blood on the jacket was transfer

1 blood from touching. If you're cut and you drip blood, it's
2 your blood. If you've just murdered somebody with, what,
3 twelve, fourteen stab wounds, your hands are going to be
4 bloody with your blood and her blood; so it's significant
5 that the blood on the jacket is both transfer blood and
6 mixed blood because it shows not only did Mr. Mitchell bleed
7 there that night, he bled at the same time as Linda; and the
8 reason that he bled at the same time as Linda is that he
9 murdered Linda with a knife.
10 But that's not the only blood in the case. There's also
11 the blood on the phone cord which is way over here in the
12 dining room, and that blood is mixed, too; and, again, the
13 phone cord was selected by Detective Kobel specifically
14 because of its potential evidentiary value. The phone cord
15 is important for a couple of reasons: One, again, it's away
16 from Linda. It's also been cut; and back in the old days
17 when we still had phone cords, he cut the phone cord so she
18 can't call the police. And you saw the phone cord, it's all
19 frayed and cut; and the detective, he didn't go down to the
20 Crime Lab or down to the property room to select more. He
21 met with Chris Sewell. They had that evidence from the
22 property -- or from the bedroom. They had individual A.
23 They had a name, James Mitchell. Did they just stop? No.
24 They went back, and they said, all right, what else could be
25 of value? What else would be significant forensically?

1 What else was photographed before it was ever touched by a
2 forensic officer? That phone cord and her jeans.
3 So, they look at the photographs, and they say, yeah --
4 and the DNA guy says, yeah, this would be useful. These
5 would be things I'd like to test. Only then does Detective
6 Kobel go down to the property room and get those items and
7 have them transferred out.
8 And then the phone cord, there's a blood drop about nine
9 inches down the cord in the photograph. Twenty-three years
10 after that photograph is taken, Chris Sewell takes out the
11 phone cord, and the bloodstain is still there; and he tests
12 it, and it's James Mitchell and Linda Robinson. And then
13 they go to the jeans, and Tim Kobel saw a couple drops that
14 he thought would be significant, now, not up by the waist
15 because that's Linda Robinson's blood because she got
16 stabbed in the back a dozen times; and it's just going to be
17 overpowered, but if we go down the legs a little bit.
18 So Chris Sewell looks at the jeans, and those stains are
19 there just where the photograph said they'd be; but he
20 notices another one and thinks that that might be useful
21 too. That was Chris Sewell who did that, and it turns out
22 that the blood on the left leg, those first two that
23 Detective Kobel thought, those were Linda Robinson's blood;
24 but the other one, that was the partial profile of James
25 Mitchell, ten out of fifteen markers. The other five were

1 in the right place but not enough to call a full match; but
2 even at partial match, one in a hundred trillion,
3 Mr. Mitchell's blood is on the back of her jeans.
4 And remember, we talked about why that was so significant
5 because if you look at her jeans and look at the back of
6 her, there's a receipt and a set of keys on top of her.
7 Those went on top of her after she was on the ground because
8 Mr. Mitchell went through her pockets and threw out what he
9 didn't want, and Mr. Mitchell bled on her. After she was
10 down, after she was murdered, after she was laying on the
11 kitchen floor bleeding to death, Mr. Mitchell, his hands cut
12 from the -- from the fight, bled onto her jeans. There's no
13 other way for that blood to get there. It's not from
14 scraping your knuckles, fighting off some imaginary guy who
15 showed up.
16 The DNA in that apartment was Linda Robinson's because
17 she was murdered with a knife and bled profusely; and the
18 other DNA in that apartment, the DNA in the bedroom, the DNA
19 on the phone cord, the DNA on the back of Linda Robinson's
20 pants, that's the DNA of the killer. That's the DNA of the
21 person who attacked Linda Robinson, who had to get through
22 her trying to defend herself, her turning, her fighting, her
23 trying to save her life, the killer who cut himself during
24 that struggle and bled in the apartment, and that DNA is
25 James Mitchell because James Mitchell is the murderer.

1 Now, the Defense is going to talk, and has talked,
2 about -- I would say there's going to be two main issues,
3 and I'd like to address those. The first is the idea of
4 chain of custody, that somehow this evidence isn't reliable
5 because of the way it was handled afterwards. Again, I
6 remind you, the evidence that was selected for testing in
7 this case was selected based on photographs that were taken
8 prior to them ever being collected. Those photographs were
9 taken on February 6th and the early hours of February 7th.
10 You saw the sets of photographs where, first, they
11 photographed it. Then they added a placard, and then they
12 photograph it again; and once it's photographed, then they
13 collected it and not just that but remember, these numbers,
14 now, become the numbers that are going to be with these
15 items of evidence forever, at least twenty-three years, two
16 weeks, and two days; and they fill out an evidence sheet,
17 and you have that, too, and it all matches up, and then it
18 goes into property.
19 First, it goes to the forensics lab. Now, the forensics
20 lab is run by the forensics team of the Pierce County
21 Sheriff's Department, just like the property room is run by
22 the property division of the Sheriff's Department. It's
23 secure. It's law enforcement; nobody has access to it. The
24 chain of custody in this case was good. It was very good.
25 Was it perfect? Nothing is perfect, but there's a quote I

1 heard once that says we can't let the perfect be the enemy
2 of the good; and in this case, the chain of custody of these
3 items was exactly what they used to do back then and pretty
4 much what they still do. The only issue is that it was in
5 the forensics lab for longer than normal. All right. It
6 was busy. Ted Schlosser didn't get to the fingerprint stuff
7 until maybe as quickly as he could have, but that whole time
8 it was in the forensics lab.
9 The old property manager asked them not to seal stuff so
10 he could inventory and make sure that what they had filled
11 out on their forms matched what was inside. They don't do
12 that practice anymore, but it comes from a good place; and
13 it's the kind of thing that if they didn't do, you could
14 attack that. Well, do you check -- do you check what the
15 forensics officers say, or do you just take their word for
16 it? Now, they've decided to seal it and take their word for
17 it. That's one way of doing it, but the Defense is asking
18 you to speculate, maybe something happened. There's zero
19 evidence that anything happened to this evidence, that there
20 was any contamination; and if there's contamination, what
21 are we talking about, contamination from what to what?
22 Mr. Mitchell's blood isn't going to appear out of thin air.
23 It has to be from another item, and the items are packaged
24 separately, and I think it's important, too, to note that
25 these -- none of these items went into the drying room.

1 They were all dry. By the time they got back to the
2 property room, they were dry.
3 The only thing that went to a drying room was
4 Ms. Robinson's jeans, and that's really, really important
5 because Ms. Robinson's jeans were not collected at the crime
6 scene. They went with her body to the Medical Examiner.
7 They were removed by the Medical Examiner's staff. They
8 were dried in the drying room, and they were put into
9 property, the property room in this building in the basement
10 right across from the forensics lab on February 11, 1993,
11 four days after the murder, three days after her body was
12 collected; so you can talk about Skip Johnson and Ted
13 Schlosser and the forensics lab and Steve Wilkins and all
14 those people as much as you want, but the pair of jeans on
15 Ms. Robinson's body, Mr. Mitchell's blood on the back of her
16 jeans after she was down, there's no chain of custody issue
17 on that. There's no way around that. And, in fact, the
18 fact that the blood is so far and wide throughout that
19 apartment also shows that the chain of custody in this case
20 was good. It almost basically self-checks because the blood
21 on one item matches the blood on another item which matches
22 the blood on another item and another item and another item.
23 They weren't all contaminated. In fact, they were all
24 handled appropriately, properly, securely so that when Tim
25 Kobel picked out which ones would be the most valuable from

1 evidence at this point, which ones might reveal the identity
2 of who killed Linda Robinson twenty years earlier, they were
3 still there, same condition, and they yielded the evidence
4 that they were expected to yield which was DNA,
5 Mr. Mitchell's DNA.
6 The other issue that I'd like to address is
7 Mr. Mitchell's own testimony. Now, Mr. Mitchell, any
8 criminal defendant, is presumed innocent until proof beyond
9 a reasonable doubt; but when he takes the stand and
10 testifies, he's the same as any other witness. He's not
11 presumed to be telling the truth. You test his testimony
12 the same way you would any other witnesses.
13 Instruction No. 1 tells you that or tells you that you
14 are the sole judges of the value or weight to be given to
15 the testimony of each witness. It doesn't say each witness
16 and then the defendant is different; and in considering
17 that, you can consider many different things. The one I
18 want to talk about is the reasonableness of the witness's
19 statement in the context of all the other evidence because
20 Mr. Mitchell's testimony wasn't consistent in any way with
21 the other evidence. It wasn't even consistent with itself,
22 and it wasn't believable.
23 He couldn't describe this other person. He couldn't
24 describe the kids. The first time he said what happened, he
25 said that Linda had walked back towards the bedroom, and

1 this other man started to just swing at him for no reason.
2 Then he clarified that he was swinging at both of them for
3 no reason, and then when it got pointed out that he said
4 Linda had gone down the hallway, then he said, oh, well,
5 then I had, too, and so did that guy.
6 The other thing that's not believable about it is just
7 the entire way it happened, that some man, unidentifiable,
8 shows up out of nowhere and immediately starts a fight, that
9 Linda Robinson yells at him, "I'm going to call the police,"
10 "I'm sick of your shit," and he yells whatever he yells, and
11 they yell back and forth, and then the blows start, and then
12 there's more, "I'm going to call the police," and then more
13 blows and then a third, "I'm going to call the police."
14 Remember Shawonika, she was the seven-year-old girl.
15 Remember what she woke up to? She woke up to her nephew
16 crying and the smoke alarm going off. She woke up because
17 there were loud noises. That's what she woke up to. What
18 Mr. Mitchell described would have been heard by the
19 children, and it would have been heard by the neighbors.
20 Remember the neighbors that you heard from, Mr. Alvernaz and
21 Ms. Pries who told you, yeah, you know, it was a nice
22 apartment, but the walls were pretty thin, you could hear.
23 She was a good neighbor. She was quiet. We've had other
24 neighbors who aren't quiet. Mr. Alvernaz, he woke up. He
25 could hear the smoke alarm. What he described would have

1 been heard by the neighbors, and they didn't hear anything,
2 and we're going to talk a little bit about why they didn't
3 hear anything, but what Mr. Mitchell described isn't
4 credible in the light of the other testimony, the other
5 evidence, the fact that he can't describe anything other
6 than, the other guy, he attacked me, pushed me around the
7 apartment -- he never mentions going in the dining room
8 where his blood is found on the phone cord. In fact, he
9 said when he went back in the bedroom, he didn't have any
10 blood on him. The only blood that he even noticed was later
11 on a knuckle, and a cut to your knuckle from a fight is not
12 going to leave that much blood in that many places. It's
13 also not going to leave blood on the back of Linda
14 Robinson's pants.
15 So, Mr. Mitchell's testimony isn't consistent with
16 itself. It's shifted around. It isn't consistent with what
17 other witnesses told you, and it simply isn't believable,
18 and you shouldn't believe it, and the reason you shouldn't
19 believe it is because it's not true. What's true is that
20 Mr. Mitchell murdered Linda Robinson that night, fled the
21 scene and never told anybody about it, didn't call the
22 friends and family, not because he didn't care about her, or
23 he wasn't trying to have another date with her because he
24 knew exactly what had happened, and he knew he was the one
25 who'd done it because that's the other part of his story is

1 that he goes over, he knocks on the door, and she lets him
2 in, and we heard from the other witnesses, she didn't like
3 strangers coming over to her apartment. She didn't like the
4 men in her life coming over to her apartment. She liked to
5 talk to them on the phone and meet them someplace else and
6 especially if she's baby-sitting. She's got three little
7 kids in there; plus, she's going to go pick up her daughter.
8 She doesn't want somebody over at her apartment, and
9 Mr. Mitchell's story is not only is he let in, uninvited,
10 but some other guy is let in, uninvited. It's not credible.
11 It's not consistent with the other testimony, and it's not
12 credible or consistent that she would say three times, "I'm
13 calling the police," and then she doesn't call the police.
14 And it's not credible that after all that takes place and
15 this guy has finally left that he doesn't ask, "What the
16 hell was that all about?" That he just leaves. He never
17 checks up on her again, and there's two reasons why that's
18 not credible because if he did care about her in any way or
19 just had basic human curiosity, he'd want to know what that
20 was all about; and secondly, he met -- according to him, he
21 met her at Safeway and got her number. He was romantically
22 interested in her, and he would have followed up. What he
23 told you wasn't the truth. Mr. Mitchell is the one who came
24 into that apartment that night. He's the one who stabbed
25 Linda Robinson, who struggled with her at first, who cut

1 himself, who went through her pockets and bled on her jeans,
2 who cut the phone cord, probably during the struggle which
3 is why his blood is on it; and he went back into her bedroom
4 to look for whatever he didn't find in her pockets, who, on
5 his way out, smeared not just his blood but Linda's blood on
6 the child's jacket. The only question, really, is whether
7 it was premeditated; in which case, it's first-degree
8 murder, or it was intentional and not premeditated; in which
9 case, it would be second degree murder.
10 Murder is a fairly simple crime to define. It's killing
11 another human being intentionally; and if you think about it
12 beforehand, and you premeditate it, then it's first-degree
13 murder.
14 So, what evidence is there that this was premeditated?
15 Again, the best thing to do in these cases is to look at all
16 the evidence, start from the victim out and look at the
17 witnesses who don't have any bias or reason to tell you
18 anything except what the truth is and what they remember.
19 The neighbors didn't hear an argument. The neighbors
20 didn't hear raised voices. Remember, Mr. Alvernaz told you
21 he, sometimes, could hear Tarica -- or, yeah, Tarica, just
22 an exasperated teenage girl. The walls were thin enough to
23 hear raised voices, not yelling but raised voices,
24 parent/teenager types of conversations where the voices go
25 up a little bit. He didn't hear anything.

1 Ms. Pries didn't hear anything. There was no argument
2 that precipitated this. This wasn't a situation where
3 Mr. Mitchell came over, and it was going to be social or how
4 are you doing, and then somebody said something they
5 shouldn't have, and somebody else got angry, and that makes
6 sense because you know what? That doesn't really happen.
7 People get in arguments. If you come over to see somebody,
8 it's not very likely that your argument is going to rise to
9 the level of the violence that you saw in those photos.
10 This was a swift, violent, overwhelming attack on Ms.
11 Robinson that didn't give her time to do more than try to
12 defend yourself and then succumb. She couldn't call the
13 police; the phone cord was cut. The kids didn't wake up
14 because it happened so fast. The neighbors didn't hear it
15 because it happened so fast, and it happened right there;
16 and it happened by somebody that she knew because the door
17 wasn't opened by force. She opened the door, and she
18 succumbed right there in the kitchen right on the floor
19 where they found her. Her blood was under her.
20 The person who did this, Mr. Mitchell, for whatever
21 reason, intended to do violence to Linda when he walked up
22 those stairs, when he knocked on that door. That's
23 premeditation. I can't tell you why, but we know that; he
24 did it. We know how she succumbed. We know what happened
25 to her, and we know how the woman in this photograph ended

1 up being the woman in those other photographs. We know that
2 Mr. Mitchell attacked her in her own home, that he came at
3 her from the front, and she defended herself. That means
4 there was a struggle. We know that he got cut because he
5 bled, and he bled at the exact same time that she did, and
6 we know when she bled. She bled when she was murdered. He
7 bled at the same time because he was the murderer, and he
8 left his blood in the bedroom and on the phone cord and on
9 the back of Linda Robinson's pants. She laid in her
10 apartment on her kitchen floor and bled to death with her
11 daughter at the roller rink and her niece on the couch, and
12 her nephew and another toddler were staying there; and then
13 Mr. Mitchell just left.
14 And twenty years later, Detective Tim Kobel looked at the
15 right photographs and sent the right evidence to the right
16 person at the Crime Lab, and they solved this case. Like I
17 said, that DNA is as good as the photograph. Mr. Mitchell
18 killed Linda Robinson twenty-three years ago, and I'm going
19 to ask you, twenty-three years later, to find him guilty of
20 that murder. Thank you.
21 THE COURT: All right. It's twenty till;
22 so rather than go for five minutes then recess and
23 interrupt, we'll go ahead and take the morning recess now.
24 When we come back, we'll have closing by the Defense.
25 So my usual instructions: Notebooks and instructions

1 face down on your chairs, no discussion, no investigation.
2 Please step into the jury room until Ms. Shipman comes to
3 release you.
4 (The jury was not present.)
5 THE COURT: All right. We'll reconvene in
6 fifteen or twenty minutes.
7 (A recess was taken.)
8 (The defendant was present.)
9 (The jury was not present.)
10 THE COURT: All right. We'll bring the
11 jury in.
12 (The jury was present.)
13 THE COURT: All right. You may be seated.
14 Now, if you would be so kind as to give your attention to
15 Ms. High, she'll be giving closing on behalf of
16 Mr. Mitchell.
17 DEFENDANT'S CLOSING ARGUMENT
18 MS. HIGH: Mr. Mitchell is an innocent
19 man. He sits here. He's enduring one of the worst
20 nightmares an individual or a family can experience, like I
21 say, one of the worst and that is that he is being accused
22 of a crime for which he did not commit.
23 The presumption of innocence is so important that it
24 applies to every state court and every federal court in this
25 land, from Washington to Florida, 94 federal districts, and

1 it is one of the two bedrock foundations of our entire
2 criminal justice system, and that is a person is presumed
3 innocent.
4 The second foundation that we embrace, and that's why
5 we're the envy of the world with our criminal justice
6 system, is the proof beyond a reasonable doubt. Now, the
7 presumption of innocence is like a steel curtain that
8 surrounds an individual, and it's invisible, but it
9 surrounds that individual unless and only unless the State
10 proves beyond a reasonable doubt, and that is a doubt for
11 which a reason exists, to overcome that presumption of
12 innocence and to prove every element of every crime. They
13 have not done it in this case. You know, the presumption of
14 innocence alone is enough to return a verdict of not guilty;
15 and in this case, while I have no burden, whatsoever, to
16 prove that James is innocent, while I have no burden,
17 whatsoever, to solve the mystery or to put on one item of
18 evidence, in fact, we have throughout this case, you have
19 seen and heard that there are reasons that exist for you to
20 return a verdict of not guilty.
21 Now, first and foremost, we have a case here that
22 breaks -- that rests on the breakdown in the investigation.
23 You know, the burden of proof is not somehow diminished by
24 the passage of time, by faded memories, by haphazard
25 investigation, or by advances in scientific technology.

1 There's not a pass for close enough because twenty-three
2 years have passed and so what we've heard, during the course
3 of this case, is instance upon instance upon instance of
4 poor investigation, evidence handling which leads -- for you
5 to find that the integrity of the evidence relied on is
6 not -- is not warranted, and it's not reliable.
7 What do we have here? We have a forensic -- I think I
8 told you the first day, we have the forensic nightmare in
9 that apartment. We have a situation where we have a small
10 apartment. We have multiple individuals in that apartment,
11 and we have evidence handling that will not pass muster,
12 evidence handling that leads one to question and doubt the
13 integrity of each and every item.
14 We also have a situation here where I think you just
15 heard from Mr. Penner, well, but we have the photographs.
16 Now, those photographs, we know, do not accurately depict
17 what happened in that apartment. I know it's a little
18 difficult to see, but here's the first thing that -- and
19 this is going to be Exhibit 202. What did we hear from
20 Detective O'Hern who took a lot of notes, and I am going to
21 probably talk in a little more detail about what every one
22 of these witnesses said, but the first thing he said when he
23 came in was: He noted in the entrance hall, there's a bag
24 of diapers. We don't have a bag of diapers. We heard from
25 the first -- one of the first responders, patrolman deputy

1 Reigle who, even though it had been twenty-three years, he
2 prepared his report within one hour of being in the
3 apartment, and he tells us there's a kitchen towel next to
4 her left hip when she gets there. There's no towel next to
5 her left hip, and we hear from Skip Johnson, "Her body is up
6 against the refrigerator." Her body is not up against the
7 refrigerator. We heard from the EMT that they have to shift
8 the body in order to put on the little pads to check to see
9 if there's a heartbeat, and you saw in some of those
10 photographs very clearly that the body has been moved, and
11 yet, with the body being shifted, with the marks on the
12 floor that you can tell that that's happened, we're told
13 that these keys, a receipt, one of those round, passive
14 blood drops that's supposedly so important, are all in this
15 location.
16 Okay. Were they replaced there? Were they there that
17 way? I don't know. You don't know. We'll never know. And
18 some things, we'll never know; and, you know, it is not my
19 job to solve, fill in the gaps; and, in fact, you can't
20 either. It's not my job to try and make up a story to fit
21 the evidence just as you don't get to make up a story to fit
22 the evidence when there's nothing there, and here, so we
23 know that the body has been shifted, we know the photographs
24 aren't accurate just based on their own observations that
25 were made at the time.

1 But let's say -- let's just say in terms of the
2 investigation that, in fact, these items actually remained
3 in that location after the body being shifted, after things
4 being removed, after how many people have trouped through
5 that apartment, and you'll see in Exhibit 44 all of the
6 individuals that have been in and out of this apartment.
7 What do we know from Officer Reigle? He says he gets there.
8 EMT is there. Deputy Maye is there. We heard from the EMT
9 that, in fact, it was his recollection that he had been in
10 the apartment first, but we do know that we have, at least,
11 Deputy Reigle and Deputy Maye go through the apartment, and
12 they go through the apartment room to room, checking
13 everywhere. This is not about maintaining a pristine crime
14 scene. It's for their safety because their lives depend on
15 it. We heard from the EMTs. They go in, and they do what
16 they have to do not to maintain a pristine crime scene but
17 because they have one focus, and that focus is: Does this
18 person need aid? We heard them say, we'll throw things
19 around. You saw the pictures with all of their items kind
20 of strewn about next to the phone, next to the phone cords,
21 and that they shift the body.
22 We heard from Mr. Alvernaz. He, as well, is not
23 concerned with a pristine crime scene. He was told to check
24 and see if anyone else was in the apartment, and he did; and
25 he talked about how he went from room to room and had to

1 open doors; and, again, all of these individuals have been
2 in and out of this apartment without wearing any booties,
3 whether they wore gloves, we don't know; and we don't know,
4 and that's a reason to doubt because what else do we know
5 about DNA? And, I think I said, it's a messy world when
6 we're dealing with DNA. It takes just nanograms to get a
7 DNA profile, and I think -- I don't know whether -- I think
8 it may have been Skip Johnson, I asked, how are the cards
9 principal? And what does that mean? Every time you go
10 anywhere, every time you touch something, every time you
11 pick up, you leave something of yourself, and you take
12 something away. So what we have in 1993 is a tragedy, the
13 violent death of a fun-loving mother, sister, daughter; but
14 what we have here, as well, are people in this apartment
15 that are not thinking DNA. They're not collecting evidence
16 or conducting themselves inside that apartment with the
17 notion that just mere nanograms can result in transferring
18 evidence from one place to another.
19 And so we have Detective O'Hern, who is the tenth person
20 on that list, and I went through with him in detail how, you
21 know, we had EMTs there which are Brian Kraft, Herb Gartner,
22 Terry Browning, you know, that Jeff Reigle and that Brendan
23 Maye had been inside there, that Ted Schlosser is in there,
24 Larry Minturn, Jim O'Hern, Lieutenant Page, Pete Carder,
25 Hilding Johnson, Sergeant Weast. You'll have Exhibit 44.

1 And so in this case, we have poor investigation; and this
2 poor investigation equals reasonable doubt. Now, we -- like
3 I said, we know the photos don't accurately depict what was
4 in the apartment. We also know in terms of this
5 investigation that things that seemed pretty obvious weren't
6 done. What did we hear from Detective O'Hern? We heard
7 from him that he was going to look at a couple of things,
8 and he said that, you know, when we get into a scene like
9 this, you want to look at almost everything because you
10 don't know what's going to be important and what's not going
11 to be important, so -- and you're going to look for some
12 obvious things. Now, one of the obvious things in this case
13 was: We have a woman who's been stabbed. Not one single
14 person investigating this case documents reporting, looking
15 for the cutlery in this household. It seemed like an
16 obvious thing. Did anyone check to see if, in fact, a knife
17 was missing; or as Karen Green said, "Has a knife recently
18 been washed?" Not one single person does that, so here we
19 are in February, February 6th, arrive at a scene, February
20 7th, that's being investigated, and not a single person
21 remarks on looking inside that apartment for the knife. The
22 only person that we hear from is Detective Minturn, that
23 Detective Minturn, and I think I had him identify for us,
24 you know, the route that he took, that he goes and does some
25 interviews. He has a variety of places, but he gets back to

1 the apartment complex around 3:00 a.m., and one of his tasks
2 is to look outside for evidence. He not only drives back
3 from doing interviews at Gloria's house and looks for
4 evidence, and I went through his timeline with you, within
5 15 minutes, looking in dumpsters, maybe in garbage cans and
6 outside, and he doesn't locate a weapon. He doesn't locate
7 a weapon, and Detective O'Hern learns that on February
8 7th -- this is Exhibit 84 -- there's a report, and there's a
9 report that an apartment manager finds a bloody, four-inch,
10 old hickory knife; and this knife is found maybe twenty
11 minutes away along the military reservation, and I think I
12 asked Detective O'Hern, and Exhibit 241 will show you where
13 this location is.
14 Now, remember, from Ms. Robinson's house to this location
15 here, whether you have to go up and around or over, is a
16 knife that's found on February 7th, and this is just
17 illustrative of a knife. Now, and I asked the ME about what
18 kind of knife it could be, a single edge blade. What do we
19 have here? A single edge blade with the blunt side. So I
20 ask, was that consistent with the knife that killed her?
21 And what happened? Now, you look at 84, they find this
22 four-inch kitchen knife, and it says here, possibly used in
23 a crime. You think? Because what they talked about is this
24 knife, which has apparent dried blood on it, is found on
25 February 7th, never analyzed, never fingerprinted, never

1 preserved. This evidence is gone forever. This is evidence
2 that could have and should have been followed up. This is
3 evidence that could have and should have given you
4 information, whether it excluded or included it in this
5 crime and the investigation, and it's not like it was found
6 two months later, two years later, two hundred years later.
7 No, this was found on February 7th; and nothing was done
8 with it.
9 Now, when Detective O'Hern was questioned about why
10 nothing was done with it and really no good answer, well,
11 maybe it was from some different event, well, it is wedged
12 in his notes between all the entries of his investigation,
13 but what happened here? What was the refrain that we heard
14 time and again from the investigating officers? In 1993,
15 they were swamped, apparently crime is off the hook, and
16 they're busy, and so things don't get done. Things not
17 getting done, evidence not being followed up on, collected
18 or tested is a doubt for which a reason exists in this case.
19 We had the opportunity and another opportunity that was lost
20 by not collecting or doing anything with this knife, not
21 even checking to see if it matched knives or cutlery that
22 were in her apartment.
23 What else happened? Well, like I said, the body was
24 moved. When? How many times? Who touched it? We have
25 information that was never followed up on. Two latent

1 fingerprints were recovered from inside that apartment. We
2 heard from Ted Schlosser who, yes, had some performance
3 deficits; but he writes a report on March 9th, a month after
4 this case was investigated, that he recovered a latent print
5 from the top of the refrigerator and inside of the front
6 door. So, where are those latents? Whoever checked them
7 against anybody in this case, nothing; but, you know,
8 Detective O'Hern's last entry, because I asked him, was
9 March 2nd, just one more, "we didn't do it"; "we don't know
10 where it is." I asked everybody I could, what about these
11 latent fingerprints, are they checked into property? Are
12 they compared against anyone? What happened to them?
13 Absolutely nothing. We have, again, another failure here to
14 take the evidence that was presented to them, so they could
15 actually solve this crime, so they could actually find who
16 committed this offense.
17 You know, we -- when there are assumptions and in this
18 case the assumption that blood evidence or DNA evidence
19 relating to Mr. Mitchell means the crime was solved, now,
20 those assumptions by Detective Kobel, and then the hope that
21 his assumption gave to the family, does not mean that this
22 case has been proved beyond a reasonable doubt; and so let's
23 talk about why the evidence collected that was sent to the
24 lab is not worthy of a conviction in this case.
25 Exhibit 82, what do we have here? In Exhibit 82, those

1 are the items, 23 things that are collected from that
2 apartment. Remember, they're there for hours, and they
3 collect 23 things; and they collect, you know, I think it
4 was, the report by Skip Johnson, some items where he has to
5 go around with some kind of little water bottle and takes
6 some thread and uses a tweezer and puts the threads through
7 what would be apparent blood. We hear from him that he also
8 collects the phone cord and the jeans and this, that, and
9 the other. Okay. So my question to him was: Did you
10 document changing your gloves? And the answer is no.
11 Remember, he uses a stapler. We know having -- using a
12 stapler is a problem. We know that at times, he put the
13 placards inside the bags, so here we have a person going
14 through an apartment who, we know from James, he was there.
15 We know from Ms. Pries he's been at the apartment a couple
16 of times, and we know that the last time he was there, he
17 gets in a fistfight, and he has some blood on him.
18 One of the things that we don't know -- oh, and we also
19 know that they didn't seal their bags. We know that when
20 this evidence was collected that its collection technique,
21 documentation, handling, and storage fall well below the
22 standard. We heard from Mr. Wilkins that even in 1993, not
23 knowing where evidence is for 64 days, is a chain of custody
24 problem; and chain of custody is important because,
25 remember, it's knowing where items have been, whose handling

1 them, how they've been stored is what establishes the
2 integrity for the evidence that's, then, tested twenty-plus
3 years later.
4 So when we take a look here, what do we know, that, well,
5 we collected these items, and they never make it into the
6 property room until April 12, 1993. Now, Mr. Penner is
7 arguing, yeah, but we know that they were in a secure lab.
8 We don't know that, and you can't have it both ways. You
9 can't have Mr. Johnson telling you, I have absolutely no
10 memory really of this crime scene, so I have to read my
11 report. I don't have any documentary proof that I actually
12 took these things in my van to the lab. We have from
13 Mr. Schlosser, I have no memory. I don't have any
14 documentary proof or any information that I actually took
15 these things to the secured property lab, and we also have
16 the information about if he did take things to the lab, you
17 should get a locker key.
18 Now, you can't say that my habit is to always take these
19 things to the lab; and then what? It's my habit to take
20 them more than for 64 days? We don't know where these items
21 were, and this is one of those things that, you know, we may
22 not ever have this information. We know we don't have this
23 information because we know there is no memory, and it's not
24 reasonable to infer that, in fact, we have no documentation.
25 We have people not following standard procedures.

1 That takes me to those locker keys, so we hear from
2 Mr. Johnson and Mr. Wilkins, whoever puts something in a
3 locker holds on to those keys. You're not supposed to hand
4 them off. You're not supposed to pass them around, no
5 documentation how Mr. Schlosser got the keys when he goes
6 back at some later time around April 12th and says that he
7 does some fingerprinting, and he now asks for some things to
8 be sent to the freezer, nothing. We have absolutely nothing
9 there; and, in fact, we have such a lack of documentation on
10 this, and it is such a problem that we heard from
11 Mr. Wilkins that the Defense investigation was the catalyst
12 to put into place some procedures to document this very
13 series of events, you know; and it's this lack of
14 transparency because if you realized, jeepers, I left this
15 stuff in my bottom drawer in the back of my van or all
16 rolled up in one big bag together -- as I said, remember, we
17 collect everything, and I'll throw it all in a bag -- if we
18 had this information, you'd put it down someplace versus, I
19 forgot; I was too busy; it's close enough for government
20 work.
21 We don't know where this -- where this evidence was, and
22 why is that a problem? Well, what we heard from Karen
23 Green, who I hired -- and I didn't hire her to do a crime
24 scene re-creation because I don't care who this unknown
25 assailant was and what he did. I didn't ask her to talk

1 about DNA because, again, I don't care about the results
2 that I'll talk about in a moment, for her to analyze because
3 I know that someone else was in that apartment. I know that
4 James was there and did get injured, but what did she say?
5 Why do we put tape? Why do we seal things? What's the
6 issue here? That's because if you don't properly seal and
7 handle your evidence, stuff can either fall out, blood
8 flakes, stuff can get in, again, from other items of
9 evidence; and what does that do? It can cross-contaminate
10 whatever you have. We have 64 days -- 64 days where it's
11 unaccounted for, and these are items that, then, went to the
12 lab.
13 Now, the other thing that I asked with the collection of
14 evidence in this case, so not only do we not know where
15 things are, we don't know if they have integrity, we know
16 that the crime scene is not pristine because the photographs
17 don't accurately depict what people saw when they walked in
18 that door; but, you know, I also asked, well, hey -- this is
19 Defense Exhibit 210. You can see a phone machine, an
20 answering machine, the old school answering machines.
21 Remember those little cassettes, and there would be a little
22 beep, and your light would blink; and there you have it, so
23 here we have in what has been described as the daughter's
24 bedroom an answering machine and some white stuff on the
25 floor, and I asked about that because, remember, again,

1 you're always looking for something that's not usual, so we
2 have white stuff -- is it Carpet Fresh? Is it something
3 like that? You'll see it in some of the other pictures. It
4 looks like there's some Carpet Fresh out there. Well, when
5 was that put down? Why was that put down? Was that put
6 down to cover something up? We have no evidence that who,
7 when, or why, but then we also have another answering
8 machine in Ms. Linda Robinson's bedroom, and the reason I
9 kept asking about the answering machines is what do we know?
10 We know that this woman talked on the phone a lot. We know
11 that she talked to a number of gentlemen. We know that she
12 had threatening phone calls from Billy Miller somewhere
13 between 1:00 and 3:00 a.m. on February 6th, and we know that
14 she had these phone calls because she told not one, not two,
15 but three family members that he had called, ex-boyfriend
16 was angry, called, and one said he was talking crazy,
17 another said he was talking stupid, but his threat was, I'm
18 going to come over, but she didn't want him to come over.
19 "Well, I'm going to come over. I'm going to knock on the
20 door three times, and you'd better let me in." They had
21 that information. No one ever got phone records. No one
22 ever collected these answering machine tapes.
23 You'll see in Exhibit 206, we had a look here at the
24 kitchen, and you'll see that there is a knocked-over water
25 glass, a tumbler; and, as well, you know that you saw that

1 water pitcher in a number of the other photos that looks
2 like it's somehow got diluted on the floor with different
3 blood. No one collects that glass and tests it. No one
4 collects that second set of keys you see on the counter; and
5 as Karen Green said, you know, I would have wanted to
6 collect those, and that's because it's unusual to have
7 multiple sets of keys in a home.
8 What else did we see? Exhibit 25, we have a picture of a
9 McDonald's cup; and Exhibit 24, we have another one in the
10 living room. We didn't hear from her daughter or Shawonika
11 or anyone that they went to McDonald's. Who brought them?
12 When were they brought there? We know you can get DNA from
13 saliva, and drinking cups and straws is one of the things
14 routinely collected and tested; not done in this case.
15 And when I asked Karen Green about items in the house --
16 now, the State's theory is whoever killed Linda Robinson
17 went through her pockets -- went through her pockets, to put
18 those keys on her backside; and there's the coin between her
19 legs and that passive blood from that, that if you take the
20 State's theory, would have come from the assailant right
21 between her legs, none of those were ever tested; and if
22 your theory is the keys came out of her pocket and were
23 pulled out by the person who killed her, we know that you
24 can get DNA from skin cells. We know you can swab these
25 keys. That was never done. That was never done, and that

1 wasn't done because of the tunnel vision of, hey, once we've
2 got a profile from some papers in the bedroom, we were done,
3 case solved.
4 Now, one other thing I -- Exhibit 234, you know, I don't
5 know who went through her pockets, but we do know at some
6 point, her body is moved by the investigators or EMTs by
7 holding onto her pockets there, so I don't know what that
8 tells you. You know, the assumption was -- the assumption
9 by Detective Kobel was somebody was in there searching --
10 searching her pockets, searching her drawers, in her
11 dresser. You heard from Mr. Penner, when James testified,
12 were you looking for money? Were you looking for drugs?
13 He's right. He does not have to prove motive, but certainly
14 the insinuation that James, who is over there for a friendly
15 visit, is somehow looking for money and drugs, doesn't make
16 any sense, and you heard about this woman's lifestyle, and
17 you heard from Detective O'Hern that, certainly, one of the
18 important things that he always looks at when he's
19 investigating a person's death, well, we know she doesn't
20 have any money. She doesn't have a working car. She's
21 borrowing cars from friends, borrowing cars from family and
22 that while she maybe engages in some recreational drug use,
23 this isn't like a storehouse for El Chapo. This is not a
24 person that's going to have those kinds of things here, and
25 so to insinuate that someone who's seen her a couple of

1 times, and we know that James has been in the apartment a
2 couple of times because we heard from the downstairs
3 neighbor, Ms. Pries. She's seen him come up before. He was
4 welcome at that house. He was welcome at her apartment. To
5 say that she didn't want people over there and told people
6 not to come over, that's not my recollection of the
7 evidence. I believe that it was either Albert Wade or Fred
8 Ross, but it was Albert Wade that said she didn't want Mark
9 McGruder over there, but he never heard her say she didn't
10 want other people over there.
11 So, lifestyle: You heard from Detective O'Hern that it's
12 one of the important things that you have to investigate
13 when you're trying to understand, why was this person
14 murdered? What is going on in their lives that could lead
15 this to happen? And you heard from a number of her family
16 members and from some of her friends, and every single one
17 of us understands why you want to preserve and protect the
18 reputation and the memory of someone you love; we get that.
19 But memories fade, and sometimes even completely false
20 memories are created and, you know, or the memories morph
21 over time. This may seem like a small point, but remember
22 when Shawonika Carter testified, and she mentioned that the
23 video she was watching when she fell asleep about 9:30 was
24 "Who's afraid of the dark"; but when she was interviewed by
25 the child interviewer back in February of 1993, she was

1 watching the video, *SNICK*. She's not up here intentionally
2 misleading, but memories fade or are re-created or morph
3 over time. It was her memory that she turned off the stove,
4 that she went in and tried to rouse her aunt to see if she
5 was awake, and maybe she did go in there, but we saw the
6 photographs in the kitchen, and at least no one remarks or
7 addresses footprints from the youngster there.
8 You know, this was a day that took on importance to that
9 family and because of the tragic events; but when we looked
10 at their memories, what did we know? Let me just get to
11 those. All right. Stephanie Robinson, again, memory of the
12 events and the timeline was diminished. She testified that
13 she didn't remember George Caldwell or Billy Miller. She
14 thought Linda had a car; but, you know, when you look at the
15 photos, you can see there's not a car in Linda Robinson's
16 parking space. It's her sister's car that was borrowed.
17 The information she gave Detective Minturn on February
18 7th is more reliable than what you heard on the stand here,
19 and she told Detective Minturn that Billy Miller had called,
20 that Billy Miller was an old boyfriend, and that he wanted
21 to come over, and Linda did not want him there. She also
22 told us or told Detective Minturn that she talked to her
23 sister at 10 p.m.
24 Gloria Elliott: Also, her memories had faded, also
25 claims didn't remember the conversation about Billy Miller

1 on February 6th or her conversation with Detective Kobel in
2 2014 where she told him that her sister engaged in some
3 recreational drug use. She told how she was ten to fifteen
4 years older than Linda and, again, a small point, but I
5 think she also told us she was born in 1950, and Linda was
6 born in 1956. She did remember George Caldwell. She did
7 remember that she talked to Linda multiple times per day.
8 Tarica Carter, the daughter, probably one of the worst
9 days in that young woman's life but, again, didn't remember
10 what time that she went to the roller rink because what did
11 we have? We had a timeline that was given to the detectives
12 when they interviewed, and that timeline on February 6th
13 starts with Linda Robinson being at a barbecue at her
14 sister's house. She's there with her daughter. They leave
15 about 8 p.m. and go back to her home. We know from the
16 interviews, even though Tarica Carter can remember but that
17 the detectives are told that Linda Robinson loads up that
18 little Datsun B-210 with, at least, I think, maybe three
19 young children, her daughter, and at least one, possibly two
20 friends of her daughters, and they go to the roller rink,
21 and they go to the roller rink around 9 p.m., but, you know,
22 at the time she testified here, she didn't remember that.
23 She thought it was more about 8 p.m.; but, you know, when
24 statements were given in 1993, that family was doing
25 everything they could to get the best, most accurate,

1 information they could, and we all get that memories fade
2 over time, and they do; but, again, the passage of time is
3 not a pass on the State's burden of proof.
4 Tarica Carter also told Detective Minturn that Billy had
5 called about 1 a.m. on February 6th, and her mom did not
6 want to let him in and that he had been to the apartment in
7 the past, and her mom was friends with George Caldwell and a
8 friend named Fred, and we heard from Fred Ross.
9 Kurt Alvernaz: He's the neighbor, a drywall taper, tells
10 us something really important. About 10 p.m., he hears a
11 loud voice, Ms. Robinson's voice from her apartment that
12 sounded exasperated. It sounded like she had -- he made the
13 assumption, probably not unreasonable, she had it with her
14 15-year-old. They were having an argument, but he hears
15 that, and he says he hears it for a few moments, and then he
16 dozes back off to sleep in his chair -- now -- and he
17 doesn't remember anything until just about 11 o'clock when
18 the little girl comes to his house, asking for help. He
19 remembered that little girl. He remembered what he thought
20 was her little brother. He remembers only two children
21 there, how he goes to the apartment. He checks it and turns
22 off the stove, and calls 911 and takes the kids downstairs.
23 He goes outside, and he waits for police.
24 Shawonika Carter doesn't report hearing that irritated
25 voice at 10 o'clock. The downstairs neighbor didn't hear

1 much of anything until the police were pounding on the door,
2 even though we now have, you know, thousands -- I shouldn't
3 say thousands, but quite a few people have been there, EMTs,
4 two responding patrolmen. Detective Minturn is there within
5 one minute because he's doing an arson surveillance who --
6 we have folks that are there quickly. He doesn't hear
7 anything and, certainly, did not hear that 10 o'clock
8 argument where she's exasperated; she's upset.
9 So let's talk about that, exasperated, upset, ticked off,
10 10 p.m., and we heard from James, he went over there. Now,
11 James, no reason to log into his memory banks some of the
12 events that we might have expected the family to remember.
13 He says he goes over to the house, stopping by, has been
14 coming over; and when he gets there, it's dark, and he gets
15 in the house just to say hi and no more, there but a moment
16 or two when some man he's never met before comes in, is
17 upset, starts swinging. They have a fight, and he describes
18 how these events took place. Now, if anyone's been in a
19 fight, these things usually happen pretty quickly. Well,
20 they take almost longer to tell than what actually happened,
21 but now there's this fight. They push each other down the
22 hallway. They come back out. They continue to, you know,
23 have their fisticuffs. At some point, Ms. Robinson skids,
24 falls to the ground, whatever happens, but she's down for a
25 moment, and I think you saw in the picture, she's wearing

1 little, kind of, scuff slippers, and you can see a rug
2 that's been, kind of, bunched up, but this person leaves,
3 and she is irritated, exasperated, and he probably left
4 because she is -- she's had enough of this guy. She is --
5 doesn't want him tripping, doesn't want, you know, his guff
6 that's going on there and threatens to call the police, and
7 he leaves and James leaves. As he told you, he didn't need
8 that kind of baggage, and he didn't want to be involved with
9 police being called; but if this is at 10 o'clock, and like
10 I said, we don't know the exact time, but we do know that
11 after 10 o'clock when Linda is loud, when she is irritated,
12 she talks to several people afterwards. She talks to Albert
13 Wade, another gentleman she's just getting to know. She's
14 getting to know him because he lives with Mark McGruder, a
15 person he said Linda didn't want to know where she lived.
16 It's not that she didn't want everyone to know. A couple of
17 times that night but the last time, somewhere between 10:30
18 and on the phone to 11:00, she talks with her sister
19 Stephanie at 10 o'clock, and she talks to George Caldwell,
20 somewhere, 10:45 to 11 o'clock.
21 You know, you're going to be the sole judges of the
22 credibility of the witnesses; and I think you notice with
23 family and maybe with Mr. Caldwell and Mr. Johnson, when I
24 asked questions, some of them were, kind of, less
25 forthcoming for my answers or a little irritated or with

1 Mr. Caldwell, who retired from the service, was reluctant to
2 acknowledge the nature of their relationship, and I get
3 that. Again, we want to preserve and protect the reputation
4 of someone we love and cared about; but, in fact,
5 Ms. Robinson had set up dates with not one but two men that
6 evening. She was supposed to go out with Fred Ross, but it
7 looks like he got waylaid by getting smashed with his
8 brothers and somehow in a fight in Seattle and didn't make
9 his date. They were going to go either to Brown Star Grill
10 or to the Caballeros, which was an after-hours nightclub,
11 and they, maybe, would occasionally go to the NCO Club, but
12 she also had a date with George Caldwell to go over there
13 sometime after midnight, all part of the lifestyle that led
14 Detective O'Hern to, also, focus an investigation on a Lee
15 Chandler, and we heard from Detective O'Hern that he talked
16 to a lot of people. I think I went through kind of a
17 laundry list of all the individuals that he tried to talk to
18 to get a sense of who she was. Not only he talked to Lee
19 Chandler but his wife, Margaret Chandler, I want to say Fred
20 Ross and Albert Wade and Roy Huber and just a whole lot of
21 people in addition to the family.
22 And Detective O'Hern took a box of items home. Now, I
23 know that it's been brought out these weren't the items that
24 were submitted to the lab for DNA analysis because I told
25 you, it's reflective of the investigation in this case and

1 in it were some important documents, including the child
2 interview, and he told you that, hey, when we had a
3 youngster, we would use an expert to come and interview as
4 well as some of the other interviewers. This is a box that
5 he kept in his office for decades and on top of that box, he
6 kept a photograph of a driver's license of Lee Chandler, and
7 he told you how he took this box home, meaning to reorganize
8 it at some point, and like many of us, we get sidetracked,
9 and we don't actually get to that reorganization, but he let
10 the office know, and he let Detective Kobel know, and so
11 when I ask you to assess the credibility, something you look
12 at is: What's the relationship? Is it love? Is there some
13 other agenda or reason? And with Detective Kobel, we had
14 some reasons to question his -- certainly his neutrality but
15 also his statements.
16 First of all, he admits he doesn't write reports of all
17 the witness interviews that he does. He did not put in any
18 report that he wrote that, in fact, this box of items that
19 he puts into evidence decades later, he knew that they had
20 been in Detective O'Hern's house or his garage; and I asked
21 him about that, and he hemmed and he hawed, and so I had two
22 thoughts: One, why would you -- why would you mislead us
23 about where these items were from? Is it because that you
24 know that chain of custody for every single thing is
25 important, and you're trying to kind of hide this? Okay. I

1 don't -- you know, it's: I'm a Pierce County Sheriff. I
2 know why chain of custody is important because I know that
3 every single item, we need to know who's been at it, who's
4 touched it, where it's been, so I'll just keep that out of
5 my report where I got it from, or is it worse? Does it
6 speak to his ability as a detective? I didn't even bother
7 to ask, even though I'm supposed to be a detective, where
8 this stuff came from. There's no good answer on it, but it
9 gives you kind of that sense and that flavor of: Is he
10 neutral? Is he not neutral?
11 THE COURT: Counsel, just for your
12 information, it's ten till.
13 MS. HIGH: Okay. You know, there's a lot
14 of items of evidence that we don't know where they were for
15 a very long period of time. Like I said, we don't know that
16 they were in a secure lab for 64 days until they finally get
17 to a property room. Once in the property room, we still
18 don't have any sense of integrity because, as Steve Wilkins
19 told us, Ray Scott would go through and open items randomly,
20 no documentation when he touches this one, he puts on
21 gloves, and he goes to another case or in this case,
22 whatever, to just check these out. We have absolutely
23 nothing that helps us with this; and then when we get these
24 items here, the first seal some of them have are, what, July
25 17, 2013, April 2014; Centura Grey testifying, well, you

1 know, we had this project where we put barcodes on them in
2 2010. Those seals, after the fact, don't fix the fact that
3 we have property that has been mishandled and mishandled in
4 a way that decreases our sense of integrity, that calls into
5 the reliability of the results they get from that.
6 And that's -- and that takes us to the DNA. Now, that
7 investigation, as well, was skewed by assumptions. You
8 know, we have some DNA there, but by failing to continue the
9 testing of any samples consistent with female DNA, the
10 analyst assumed the perpetrator was a male. Okay. The
11 presence of female DNA, not mentioning Linda Robinson's,
12 could have been an important investigative tool. It could
13 have let us know whether or not it matched her. You know,
14 and the reason it would be important is: It's unknown who
15 attacked her. There are no witnesses. This is not like
16 somebody in a bar getting in a fight, and there are fifteen
17 witnesses; we don't have that. There was the assumption
18 that it had to be a male, but we don't know that, whether
19 they were male or female or whether there was more than one
20 perpetrator. Only one possible area on that phone cord was
21 tested, and it appeared -- remember that there were other
22 stains. I think you saw the package that was all rolled up
23 together, rolled up with the handset. We know that DNA can
24 be gathered from just nanograms.
25 And I have one other thing I wanted to mention: No one

1 testified that there was mixed blood. We know DNA can come
2 from skin cells. We know it can come from saliva. We know
3 it can come from, jeez, if you sneeze. It's not just blood;
4 and when they swab it, and one says, you know, this was
5 blood and this was blood, all we know is that we have some
6 mixed samples, and we can't say when the blood attributed or
7 the DNA to James was deposited or under what circumstances;
8 and, you know, so what we have, here, are things that
9 weren't tested. Other portions of that cord could have
10 yielded other DNA if they had tested. Karen Green would
11 have tested the refrigerator, as well, and that blood drop
12 between Linda Robinson's legs, and mixtures of DNA can be
13 created during the packaging, the storage, the transport,
14 and not at the time that this crime was committed.
15 So Report No. 1: And remember, also, the DNA lab,
16 somehow there's no Report No. 2 just, again, goes to the
17 accuracy of what happened in this case, on the bathroom
18 floor, one drop, single source, Linda Robinson, nothing
19 linking to James; so if the theory is he somehow is cut
20 because he's a perpetrator, we don't have his blood drops
21 there; and, again, that's not proof beyond a reasonable
22 doubt, this theory, because what do we know? It's but one
23 possibility. It could happen, maybe not. We heard how he
24 cut his knuckle but to make the assumption that he had to
25 have been caught by the knife isn't born out by any of the

1 evidence in this case; it's but a possibility.
2 What I think is more interesting are the unidentified
3 profiles, the envelope. It said at least two individuals --
4 at least two individuals, maybe more, can't even say that
5 the trace components, Linda Robinson's, can't even say
6 whether the trace component was a male or a female.
7 Report No. 3: We get the mixed samples, the jacket and
8 the telephone cord, again, mixed sample, at least two, can't
9 say just two, and consistent with Linda Robinson, remember,
10 this doesn't mean that it's hers, again, frankly, didn't
11 mean much of anything because they stop. They didn't do a
12 statistical match. The assumption was the assailant was a
13 single male, and we don't know why.
14 Two spots on her jeans, you can say were Linda
15 Robinson's. What happened was, remember when they do
16 application, if we get female DNA, we stop, period; we don't
17 do anything else. Again, it goes to the assumption that,
18 oh, it had to be a male; we don't know that.
19 We also saw that in the course of just one year, when I
20 asked for their records, that they had over a dozen
21 corrective reports, and they want to say some were minor,
22 some weren't so minor; some were contaminated samples. Like
23 I said, the world is a messy place for DNA. We don't have
24 any testing of the McDonald's cups. We didn't have any
25 testing of the keys or of the blood, you know.

1 So, one of the main issues here, and I'm not going to
2 take that these photographs show us how things were, and
3 it's all okay, it's good enough for government work. It's
4 how these items were not properly collected or sealed in
5 1993. Again, staples, not acceptable, and that's because
6 you can cross-contaminate items, whether you're licking an
7 envelope shut and that seal becomes unsticky over time,
8 flakes, and things can come in and can come out. There
9 could be a transfer of DNA from one item to another item.
10 You know, also, I was really surprised that they never
11 looked at her fingernail clippings. They were collected.
12 That was never done.
13 THE COURT: Okay. Counsel, it's noon,
14 so --
15 MS. HIGH: Okay. I still have a little
16 more, so I guess we'll be back.
17 THE COURT: I figured, yes.
18 MS. HIGH: Yeah.
19 THE COURT: All right. We're going to
20 release you for lunch, no discussion, no investigation,
21 notepads and instructions on your chairs. We'll reconvene
22 at 1:30. Have a nice lunch, and please stay in the jury
23 room until Ms. Shipman comes to release you.
24 (The jury was not present.)
25 THE COURT: All right, Counsel, we'll

1 reconvene at 1:30.
2 MR. PENNER: Thank you, Your Honor.
3 (A recess was taken.)
4 (The defendant was present.)
5 (The jury was not present.)
6 THE COURT: Anything before we bring the
7 jury in?
8 MR. PENNER: No. Thank you, Your Honor.
9 THE COURT: All right.
10 (The jury was present.)
11 THE COURT: All right. You may be seated.
12 All right. You may continue, Ms. High.
13 DEFENDANT'S CLOSING ARGUMENT (Cont'd.)
14 MS. HIGH: Thank you. There's nothing
15 like after lunch, right, trying to rev these things up. I
16 have gone through the evidence and the testimony in some
17 detail, and it's because I want to now tie that into some of
18 the jury instructions for you, but kind of the recap, the
19 presumption of innocence continues, and it's a bedrock.
20 Burden of proof isn't lessened by faded memories or
21 haphazard investigation or tunnel vision, and I'll have you
22 take a look at -- your very first instruction tells you that
23 you're the sole judges of the credibility of all the
24 witnesses, and I absolutely agree that you're going to be
25 the ones to decide on what value or weight to be given to

1 everybody's testimony, and what we have in Mr. Penner's
2 initial argument was where he says, hey, I mean, it's not
3 credible, not reasonable you'd be in this fight, you would
4 leave this apartment, and you wouldn't call the police, or
5 you wouldn't stay. Well, again, everyone is judged the
6 same. We know that three family members knew that an angry
7 ex-boyfriend had called "talking crazy," and they did not
8 call the police. George Caldwell is on the phone with her,
9 and he hears a caustic conversation, doesn't call the
10 police, and it's because of people that knew Linda, knew her
11 lifestyle, knew her associates. They didn't call the police
12 either. James isn't held to a higher standard.
13 Now, the other thing that -- you know, we heard that he
14 can't be credible because he didn't describe the kids.
15 Well, we heard from Mr. Alvernaz, as well. He can only kind
16 of come up with two kids and not three. Again, they're all
17 held to the same standard; and, you know, we are dealing
18 with events that took place many, many years ago, but with
19 that, if we'll take a look at the burden of proof, and the
20 State has the full burden of proof. You know, even if you
21 just kind of encapsulated everything that James Mitchell
22 said, if you still have a reason to doubt based on that
23 haphazard investigation or the tunnel vision by
24 investigating officers, you'd still have to return a verdict
25 of not guilty, but -- and here's -- an important thing is:

1 The State bears all the risk of the assumptions that were
2 made by their investigators or by the sloppy police work or
3 the failure to follow up with, you know, knives that are
4 found the same day or not testing fingernail clippings,
5 whatever. They bear that full burden of proof if you're
6 going to test female DNA or if you don't follow up on
7 unidentified profiles or try to get other DNA from other
8 known associates.
9 And, you know, one of the things, as well, in your Jury
10 Instruction No. 2, is where it tells you that the defendant
11 is presumed innocent, and this presumption continues
12 throughout the entire trial. The State's whole theory turns
13 that on its head because their whole theory is: His blood
14 is there only if you presume guilt, and it's with the
15 scenario his blood is there because he -- what was, I think,
16 Mr. Penner's language, a good chance the killer was, also,
17 cut. Okay. Now, it's also there with a theory that's
18 equally supportive of innocence, and the presumption of
19 innocence is what you come into it, is that he's there
20 because he's the victim of some off-the-hook, angry friend
21 of hers, that he is -- also, he is injured. His blood is
22 there not because he's the killer, but his blood is there
23 because he was, also, a victim of one of her friends or some
24 acquaintance that she had, so with your presumption of
25 innocence, you know, you have -- you have a theory here that

1 holds you to your job and to your burden of proof or to the
2 State's burden of proof.
3 What do we have with what they need to show? I think, if
4 you'll look at the -- your Instruction No. 4 talks about
5 your witnesses that have special training and expertise.
6 You only -- I think you heard from the ME -- the ME tells
7 you, yes, she's a victim of a homicide, can't tell you --
8 can't tell if they're right-handed, left-handed, whatever.
9 We have Chris Sewell. I'd ask you to kind of evaluate his
10 findings. He made assumptions, assumptions that the State
11 bears the risk, but he also, when you evaluate his
12 expertise, you know, take into account -- I asked him a
13 couple of questions that were, basically, to highlight what
14 his level of expertise is, and one was how many nanograms
15 does it take to get a DNA profile; but, I think, also more
16 telling, there's individualized -- and so what's your --
17 what's the population that you rely upon when you spin out
18 your calculations? And it's because he's not at a board
19 actually doing these calculations. He puts things into,
20 say, just some kind of computer program; and you would
21 think, as an expert, he would know that if the population is
22 1100 people, of 300 African-Americans; and so I pointed that
23 out just so you could have a sense, and it seemed that he
24 was somewhat uncertain as to what the population is.
25 And then we get to your instructions on premeditated

1 first-degree murder. Now, premeditated means thought over
2 beforehand, deliberate, the kind of things that when you're
3 in the jury room, you will be doing, you will be weighing,
4 you will be thinking, you will be deliberating, whoever
5 committed this crime did not commit premeditated
6 first-degree murder. What did we hear? We heard from Kobel
7 that this was a forensic attack. This is not an attack
8 that's consistent with someone thinking beforehand. We
9 don't have any evidence that a person came there with this
10 plan or with a knife or whatever it might be; and, frankly,
11 since we don't know anything about the knife used in this
12 case, again, we don't have a premeditated first-degree
13 murder; and so when you look at the to-convict instructions,
14 Instruction No. 10, you're going to have a reasonable doubt.
15 You're going to have a reasonable doubt not only on
16 premeditation, but I submit to you, you have a reasonable
17 doubt as to who is, actually, the individual that killed
18 Linda Robinson.
19 You're also instructed by the Court that if there's
20 disagreement, and you don't know which level, whoever
21 committed this crime, which level of crime it is, you go to
22 a lower crime, and that would take you to intentional murder
23 in the second degree; so I want to spend a few more minutes
24 on reasonable doubt.
25 You know, I don't know why it's a concept that gives so

1 many of us problems, I mean, both lawyers, jurors, judges,
2 courts. It seems like it should be really simple, but it's
3 a doubt for which a reason exists, right, but it seems that
4 everyone kind of chases their tail as they try to determine
5 what that was.
6 First of all, remember, I don't have any burden to prove
7 that or to prove someone's innocent or to, kind of, solve
8 the mysteries or to speculate as to what happened; but it's
9 more than perhaps, or even it's more than more likely than
10 not. I know you guys went through Jury Administration; and
11 so if this were a civil case and someone was suing someone
12 for a hundred thousand dollars, all it takes is, you know,
13 51 percent, just a little bit more, just the feather on the
14 scale, just more likely than not, but beyond a reasonable
15 doubt, it's even higher than possibly guilty. It's possibly
16 not or guilt even likely, guilt even highly likely. It
17 takes clear and convincing evidence, as another standard;
18 for you to lose your children, clear and convincing. This
19 is higher than that. It's a doubt for which a reason
20 exists. You are reasonable people; and from the evidence
21 that you've heard in this case -- and as I've said, you
22 know, we have great failures in the documentation with the
23 handling of the evidence, and it's this evidence, then, that
24 becomes the cornerstone of the State's case, this blood or
25 DNA evidence; and, you know, I'm going to acknowledge that

1 mishandling, and the failures to account for a very long
2 period of time, isn't the same as saying, it was
3 contaminated, but I am saying, still, it's a doubt for which
4 you have a reason. It's because those failures have been
5 thoroughly documented, and those failures that have been
6 documented in terms of the handling, we don't know where it
7 was for 64 days, we see all these other problems, it gives
8 rise to the question as to the integrity of the evidence
9 that you're being asked to rely upon, and that is a doubt
10 for which a reason exists, and I think, you know, while I'm
11 saying that, again, I don't need to prove it, and you start
12 out with presumption of innocence, and it's not like you're
13 guilty unless I give you all these reasons, clearly, I want
14 you to be thinking about what reasons, I believe, are out
15 there that compel you to return verdicts of not guilty, and
16 I get -- you know, every time I do this, I mean, you know, I
17 get nervous. I'm going to sit down, and I'm going to have
18 forgotten to say something that I probably wrote down in
19 eighteen different places, highlighted, there's a star, and
20 a Post-It, and I'm going to sit down, and I'll have
21 forgotten to say it, and it doesn't mean it's not important.
22 It doesn't mean that I don't want you to consider all of the
23 things that you, as reasonable individuals and jurors, that
24 we're asking you to consider or an argument that I haven't
25 made. You know, I think that in the entire system, you have

1 the most important job and the very hardest job because we
2 ask you to, kind of, turn how we live our everyday life on
3 its head. You know, we don't do everything beyond a
4 reasonable doubt. We ask you to presume innocent. Anyone
5 that's raised children knows that that goes by the boards at
6 some point. You know, we ask you to do a job that we know
7 that we all are -- we find difficult. I mean, there is
8 compassion. We don't want to disappoint the family, or we
9 don't want to disappoint, say, you know, the State kind of
10 jumping to conclusions. I mean, we know that they want to,
11 quote, solve the case; but you have that job that is really
12 hard to do, but we ask you to do it, and we expect you to do
13 it; and when you took the oath, you promised you would do
14 it, and it's a job that actually requires -- well, in many
15 ways, I'm going to just tell you, it requires perfection.
16 It's, you know, we're requiring you to view the evidence
17 from the presumption of innocence, and we ask you to hold
18 the State to their burden of proof. We tell you your
19 decision can't be based on sympathy or prejudice. We ask
20 you to make your own individual decision on how this case
21 should be determined, and we ask you to do all of these
22 things with perfection and so not the -- I think one of the
23 quotes here was, you know, don't let the, I guess,
24 perfection get in the way of doing a good job or something
25 along those lines by the State -- let me see if I can find

1 that -- because, unfortunately -- oh, he said,
2 "unfortunately, if you don't do a perfect job, you have a
3 system that's no longer working"; and we rely on every
4 single one of you to bring your very, very, very best to the
5 determination of this case, and I'm going to ask you to
6 return verdicts of not guilty. I'm going to ask you to
7 think if this were someone that you loved, someone you cared
8 about, is this the kind of evidence you would want to see
9 them convicted of, and I know the answer will be no. Thank
10 you.
11 THE COURT: All right. The State does
12 have the burden of proof. Mr. Penner will give the final
13 summation.
14 MR. PENNER: Thank you, Your Honor. I'll
15 give Ms. High a moment.
16 MS. HIGH: Yeah.
17 PLAINTIFF'S REBUTTAL CLOSING ARGUMENT
18 MR. PENNER: So Ms. High ended with the
19 idea that you have to do a perfect job. There's no such
20 thing as a perfect job. There's not a perfect trial.
21 There's not a perfect police investigation. Perfection is
22 not required. What's required is proof beyond a reasonable
23 doubt, and that has been met in this case; and what's
24 required is that the proof beyond a reasonable doubt as to
25 the elements of the offense, not to every possible

1 unanswered question.
2 If you look at your Instructions 10 and 11, those are the
3 to-convict instructions. They tell you that in order to
4 convict the defendant of murder in the first degree, the
5 State needs to prove beyond a reasonable doubt that he
6 killed Linda Robinson, that he did so intentionally, and
7 that he did so with premeditation. It does not say that you
8 need to know how many kids were in the car when they went to
9 the roller rink. It does not say you need to know who
10 turned off the burner so that the smoke would stop. It
11 doesn't say you have to know what was on the answering
12 machine tapes, and the evidence in this case establishes
13 beyond any reasonable doubt the killer is Mr. Mitchell.
14 Memories do fade. One thing I just want to address is
15 what Shawonika said. She was watching *Nick at Nite,* and
16 Counsel said, well, she was watching something called *SNICK*.
17 *SNICK* is Saturday night *Nickelodeon, Nick at Nite*. She was
18 watching that. She remembers that. This was a big deal in
19 her life, and she got that right.
20 The body was shifted, and you saw that in the
21 photographs; but the bedroom wasn't. The papers weren't.
22 The dresser wasn't, not after the police got there. Those
23 were shifted and moved by Mr. Mitchell after he killed Linda
24 Robinson.
25 The mixed profiles are not because there was blood and a

1 few skin cells on top of it. You heard the testimony from
2 both Chris Sewell and Karen Green, that's not how DNA works.
3 A few skin cells on top of blood, blood is going to
4 overwhelm it; and you didn't hear any testimony about some
5 strange third profile by Skip Johnson or Ted Schlosser or
6 Chris Sewell. The blood in the bedroom, the blood on the
7 phone cord, the blood on Linda Robinson's back was James
8 Mitchell's.
9 The issue with this other knife: Remember, they told you
10 they go around and they search and they look. They know
11 this is a stabbing. Had there been a knife in the sink or
12 elsewhere, they would have collected it; and this other
13 knife that came up, that was not very close by. It was on
14 the other side, pretty much, of the county. It's a twenty,
15 twenty-five minute drive. You go up, you come back down,
16 you get off the freeway, you've got to turn around, you've
17 got to drive towards the lake; and even if that was the
18 knife, that just means that's where Mr. Mitchell dumped it.
19 Counsel said, I don't care who the assailant is or what
20 happened that night; but actually, that's very important.
21 This isn't just a question of: When we find anybody's DNA
22 anywhere in here. What happened to Linda Robinson is very
23 important because it tells you how she died. It tells you
24 that she struggled for her life, and it tells you why
25 there's blood in the bedroom.

1 The idea that there was tunnel vision at the Crime Lab
2 because they stopped once they found a female profile,
3 remember, that was on the second round of testing. That was
4 after the first round of testing when, individual A, they'd
5 gotten a full profile, and that full profile was James
6 Mitchell, and they went back to find other evidence. It
7 wasn't, it must have been a man. It was, we know it's James
8 Mitchell.
9 Counsel said the idea of this attack, this violent
10 attack, doesn't make sense if it's just a friendly visit,
11 and she's exactly right; but you know it was that kind of an
12 attack. You saw the crime scene photographs. You saw the
13 autopsy photographs. You know exactly what kind of an
14 attack it was. It was not a friendly visit. What
15 Mr. Mitchell told you was not what actually happened. This
16 was a premeditated attack. Think about where she ended up.
17 Think about the handprint on the wall. There's a knock at
18 the door; and, remember, she talked to people on the phone.
19 She talked to George Caldwell. She talked to the other men
20 that you heard from, what are you doing tonight? Just
21 watching the kids; nobody else here with me. She didn't
22 tell any story about James Mitchell and some other guy
23 coming over and there being this big ole fight, and there's
24 blood here and this and that, and I'm calling the police.
25 No. And she would have told somebody. She's on the phone

1 all the time, talking to everybody about everything.
2 MS. HIGH: Objection; arguing facts not in
3 evidence and speculation about what she would have said.
4 THE COURT: I'll sustain the objection;
5 just rephrase it.
6 MR. PENNER: Okay. Thank you. The
7 witnesses told you they talked to her that night, and she
8 made no mention of anything that Mr. Mitchell told you.
9 Instead, there's a knock at the door. She opens the door
10 because she knows Mr. Mitchell. She doesn't know what's
11 about to happen. She can't even get back to the kitchen
12 where suddenly, she's attacked by Mr. Mitchell. She puts up
13 her arm to block it off. She then clenches in and gets
14 stabbed through the arm. She spins and gets stabbed on the
15 left side of her body, reaches out for the wall, slides
16 down, and lands in the kitchen; and you saw the photographs
17 of that, those stabs on the right side of her body, six of
18 them. They look like how you set up bowling pins, just one
19 after another after another after another. That's what
20 happened.
21 You know, time passes, memories fade, people make up
22 stories; but the one thing that doesn't fade and doesn't
23 make up stories, that has no interest or bias in the outcome
24 is the DNA, the DNA of the killer; and we know it's the
25 killer because of where it was deposited away from the body,

1 on the back of the body, in the bedroom, how it was
2 deposited, drips, not spatter from the fight, drips from a
3 cut; and when it was deposited, the same time that Linda
4 Robinson bled, mixed with her blood. She bled that night
5 when she was murdered, and Mr. Mitchell's blood mixed with
6 hers because he's the one who murdered her.
7 Ladies and gentlemen, in a moment, you're going to go
8 back and begin deliberations, and I want you to think about
9 Mr. Mitchell walking up those steps to an apartment that he
10 knows inside is a single mother, a single woman. Every step
11 that he took up that staircase, every step to that doorway
12 and when he knocked, knowing what was about to happen,
13 that's premeditation. That's murder in the first degree,
14 and he is guilty. Thank you.
15 THE COURT: All right. At this time,
16 No. 13, we are going to be excusing you. You'll leave and
17 make sure that we have your phone number just in case,
18 during the course of deliberations, something happens to a
19 juror and we would need to call you back in. All right? If
20 you would be so kind as to step into the jury room. Leave
21 your instructions and your notes face down on your chair,
22 and we will excuse you, and the rest of the jury goes in.
23 (Pause.)
24 THE COURT: All right. At this time, the
25 rest of you may depart into the jury room for deliberation.

1 You may take your notes with you and your instructions, and
2 you are now free to discuss the matter, no investigation, so
3 go into the jury room. Thank you very much.
4 (The jury was not present.)
5 THE COURT: All right. We're going to
6 need you to go through the exhibits, Counsel, so we know
7 which ones are going into the jury room.
8 MR. PENNER: Will do, Your Honor. Thank
9 you.
10 THE COURT: Make sure we have all of them.
11 MR. PENNER: Will we be in session for
12 that?
13 THE COURT: No, not technically; wait
14 until Ms. Shipman gets back out here.
15 (Pause.)
16 THE COURT: All right. They'll go over
17 the exhibits one last time with you. All right. Court will
18 be at recess.
19 (Court adjourned for the day.)
20 / / /
21 / / /
22 / / /
23 / / /
24 / / /
25 / / /

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,	)	
	)	Superior Court
Plaintiff,	)	No. 14-1-02979-1
	)	
vs.	)	Court of Appeals
	)	No. 48810-8-II
JAMES EDWARD MITCHELL,	)	
	)	
Defendant.	)	

REPORTER'S CERTIFICATE

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

I, Kimberly A. O'Neill, Court Reporter in the state of Washington, county of Pierce, do hereby certify that the foregoing transcript is a full, true, and accurate transcript of the proceedings and testimony taken in the matter of the above-entitled cause.

DATED this 20th day of August, 2016.

_____
KIMBERLY A. O'NEILL, CCR
License No. 1954

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,	)	
	)	Superior Court
Plaintiff,	)	No. 14-1-02979-1
	)	
vs.	)	Court of Appeals
	)	No. 48810-8-II
JAMES EDWARD MITCHELL,	)	
	)	
Defendant.	)	

VERBATIM REPORT OF PROCEEDINGS

Wednesday, February 24, 2016
Pierce County Courthouse
Before The Honorable Katherine M. Stolz
Tacoma, Washington

<<<<<< >>>>>>

A P P E A R A N C E S

For the Plaintiff: STEPHEN M. PENNER
Deputy Prosecuting Attorney

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STATE OF WASHINGTON vs. JAMES EDWARD MITCHELL

No. 48810-8-II

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1 BE IT REMEMBERED that on Wednesday, the
2 24th day of February, 2016, the above-captioned cause came
3 on duly for hearing before THE HONORABLE KATHERINE M. STOLZ,
4 Judge of the Superior Court in and for the county of Pierce,
5 state of Washington; the following proceedings were had, to
6 wit:
7
8 <<<<<< >>>>>>
9
10 (The defendant was present.)
11 (The jury was not present.)
12 THE COURT: All right. There are -- when
13 I was in practice, I noticed that there were files that
14 seemed to be cursed from the moment you stuck the tab on the
15 manila folder for them. I'm beginning to think this case
16 may be one of those.
17 All right. I have been provided with a curative
18 instruction by Mr. Penner, I believe.
19 MR. PENNER: Yes, Your Honor. Can I just
20 make a brief record?
21 THE COURT: Yes.
22 MR. PENNER: So yesterday afternoon, I
23 sent an e-mail to Ms. Shipman and Ms. High. At about a
24 quarter to 4:00 yesterday, I ran into two members of the
25 victim's family who reported to me that they were waiting

1 outside the courtroom today [sic] in hopes of a verdict and
2 that the alternate juror --
3 THE COURT: Yesterday.
4 MR. PENNER: Yesterday. Thank you. They
5 had waited all day yesterday, and the one remaining
6 alternate juror, who was originally Juror -- Prospective
7 Juror 112 and then seated as Juror 15 [sic], also spent the
8 day in the hallway, or at least part of it, and that he had
9 contacted them and indicated that the jury -- that there
10 were two holdouts, that that was the reason there wasn't a
11 verdict yet -- and this is the juror, Your Honor.
12 THE COURT: Have a seat, sir. Thanks.
13 MR. PENNER: Should we ask the juror to
14 step in the hallway, Your Honor?
15 THE COURT: We're making a record right
16 now. Could you just step into the hallway for a moment.
17 JUROR NO. 13: Sure.
18 THE COURT: We'll have someone come out
19 and get you.
20 (Pause.)
21 MR. PENNER: So I asked the family member
22 how that juror might know that there were two holdouts, and
23 the response I got was that he said that he'd gone to lunch
24 with some of the jurors. That was all the information I
25 had. I advised Ms. Shipman of that and Ms. High. The

1 family member then called me again towards the end of the
2 day and just -- I think concerned that this might impact the
3 case, and she indicated that they didn't contact the juror.
4 The juror -- in fact, they tried to move away from him down
5 the hallway, but he came up to them. They gave him
6 Ms. Sommerfeld's phone number -- for the record,
7 Ms. Sommerfeld is the victim advocate in my office --
8 because he expressed interest in knowing when the verdict
9 will be, so that's why we're all here this morning.
10 THE COURT: Ms. High, anything you wish to
11 add?
12 MS. HIGH: Well, first, I want to thank
13 Mr. Penner for alerting us to this information. I don't
14 know that everybody would have been as forthcoming, so I do
15 greatly appreciate it. You know, obviously, Your Honor, I
16 have some great concerns about the ability of the jurors to
17 follow their oath.
18 You know, I know you have broad discretion in this area
19 into conducting an investigation of what the jury problems
20 are. Of course, it's such a delicate task to try not to get
21 behind the jury's secrecy; but the juror's communication
22 about the case with the third party constitutes misconduct;
23 and that was, you know, one of the things cited in Depaz
24 [phonetic] at 859, and it can warrant a mistrial; and so I
25 don't know whether the Court is going to want to do some

1 independent questioning of the individuals. It does appear
2 to me that we do have, you know, reason to believe that
3 there has been communication about the case with a third
4 party because the only connection between the alternate
5 juror and the jurors he had lunch with was this case; and
6 clearly, there was, at least, discussion about the status of
7 the deliberations; and then we also, then, have some
8 communication with the family.
9 Now, I think it's, without a doubt, that this alternate
10 juror would not be able to be involved in any deliberations
11 if, in fact, something happened to one of the sitting
12 jurors; but the fact that he had lunch with several that
13 provided information about their deliberations, I mean,
14 that's one of the things that we are always really careful
15 to tell the jury, please don't tell us how you're voting,
16 what's going on; to me, that it looks to be misconduct, and
17 I don't want to say he has any kind of evil intent. I just
18 think people aren't thinking; and, you know, I will be
19 asking the Court for a mistrial. Thank you.
20 THE COURT: All right. Well, I think we
21 need to inquire, first of all, from Juror -- the alternate
22 No. 13 as to who he had lunch with and what was -- you know,
23 whether there was any discussion of deliberations other than
24 where they were. If that's the only fact that was reported,
25 that the jury was hung at 10/2, I don't see that that would

1 impact the jury's deliberations. It shouldn't have
2 happened, but the test is: Is that -- in and of itself, if
3 that's the only fact that was communicated, is that
4 prejudicial to the defendant? If there was discussion of
5 anything other than that, then I think that I would have no
6 alternative but to grant a mistrial; but I think we do need
7 to find out whether or not that was the sole topic of
8 conversation, they just informed -- now, if he had
9 discussions with them about why they were hanging, you know,
10 what the issues were, I mean, that is going to impact their
11 deliberations because they could go back and say, you know,
12 maybe we should try this tactic, you know; so I think we
13 really need to talk to him to find out exactly what the --
14 who he talked to, and what were the topics of conversation?
15 MR. PENNER: I would agree, Your Honor. I
16 think once we have that information, then we can, maybe,
17 have another discussion about whether we should talk to the
18 jurors that he had lunch with.
19 THE COURT: That, I think, would be the
20 next step. All right. If you would be so kind as to go
21 fetch Juror No. 13, Mr. Penner.
22 MR. PENNER: Thank you, Your Honor.
23 MS. HIGH: And, Your Honor, the gentleman
24 that just entered may be one of the family members that
25 talked to No. 13 that we may end up having to talk to, so

1 I'm not sure --
2 MR. PENNER: That is --
3 THE COURT: Are you one --
4 MR. PENNER: That is true, Your Honor.
5 THE COURT: Is he one of the family
6 members?
7 MS. HIGH: Yes.
8 MR. PENNER: Yes, Your Honor.
9 THE COURT: All right. In that case, he's
10 going to need to be in the hallway.
11 (Pause.)
12 THE COURT: Just have a seat. All right.
13 We received a report that apparently you had lunch with some
14 of the deliberating jury yesterday?
15 JUROR NO. 13: Yes.
16 THE COURT: Which jurors did you have
17 lunch with?
18 JUROR NO. 13: By name or number?
19 THE COURT: Well, let's have the numbers;
20 that's how we think.
21 JUROR NO. 13: I don't know numbers.
22 THE COURT: All right. Names, then.
23 JUROR NO. 13: Robert, Deja, Topher,
24 Chuck.
25 THE COURT: All right. During the course

1 of that discussion -- well, I understand that you learned
2 from them that the jury was still hung at about ten to two;
3 is that correct?
4 JUROR NO. 13: No.
5 THE COURT: All right. Did you discuss
6 the trial in any way?
7 JUROR NO. 13: No.
8 THE COURT: All right. Did you report to
9 the family members that the jury was hung?
10 JUROR NO. 13: No.
11 THE COURT: All right. Counsel?
12 JUROR NO. 13: I did not -- I was not
13 aware that the jury was hung. We didn't talk about the
14 trial.
15 THE COURT: All right. Mr. Penner, do you
16 wish to have some questions?
17 MR. PENNER: Yeah. Thank you, Your Honor.
18 So, sir, do you remember talking with some of the members of
19 the family at some point yesterday in the hallway -- and by
20 family, for the record, the victim's family.
21 JUROR NO. 13: I asked one of the family
22 members if he had a contact number for what would be -- I
23 guess, it would be your office for when the verdict comes
24 in. My interest was in being in the courtroom when the
25 verdict was read, and he gave me the office phone number, so

1 I could call and try to get on the list so that if the
2 verdict was going to be read, I could be notified because my
3 interest was in just seeing the trial through to completion,
4 just seeing what the verdict was when it came down.
5 MR. PENNER: Do you remember making any
6 comments about there being a hang-up or there being some
7 jurors who might be hanging things up?
8 JUROR NO. 13: No. Because I'd been very
9 careful with -- with any contact that I had with the jurors,
10 not to discuss it. I'm aware of the situation, that it's
11 privileged, and -- and I'm no longer privileged to that.
12 It's, like, let's not talk about anything -- we talked about
13 movies. We talked about, you know, whatever for lunch.
14 MR. PENNER: Okay. Do you have any reason
15 why the family might think that you made a comment like that
16 about there being a couple people --
17 JUROR NO. 13: No. I just -- no. My --
18 any kind of commentary is, like -- clearly, they haven't
19 reached a verdict yet; or we would have heard about it.
20 MR. PENNER: Okay. Thank you, sir. I
21 don't have any other questions.
22 THE COURT: Ms. High, questions?
23 MS. HIGH: Okay. Yeah. And I can,
24 certainly, understand -- you spent a long time on this
25 jury -- wondering where it finally ends up.

1 JUROR NO. 13: Mm-hmm.
2 MS. HIGH: And so I just want to, like I
3 said, be real clear. There were no discussions about, jeez,
4 here's how we're struggling in our deliberations or what's
5 bogging down the deliberations, nothing like that,
6 whatsoever?
7 JUROR NO. 13: No.
8 MS. HIGH: Okay. Other than, I guess, you
9 guys haven't reached a verdict yet?
10 JUROR NO. 13: We were careful not to
11 mention it, you know. There's -- there's -- I trust these
12 guys. They're -- they're really good. They're wanting to
13 do the right job and the same with me, you know. We
14 understood -- we understood the instructions at the very
15 beginning. We took our oath; and through the entire course
16 of the thing, it's, like, there's no -- extreme effort to
17 avoid any kind of conversation, whatsoever, about the
18 direction anything is going or that it's going. The only
19 thing I know is that they're still deliberating because
20 they're not coming out with a verdict, and that's the extent
21 of it.
22 MS. HIGH: Okay.
23 THE COURT: Okay.
24 JUROR NO. 13: I think that's something
25 that, you know, you can just tell by sitting in the

1 hallway --
2 MS. HIGH: Right.
3 JUROR NO. 13: -- they're still
4 deliberating. There's a sign on the door.
5 MS. HIGH: Yeah.
6 THE COURT: Yeah. Any other questions,
7 Mr. Penner?
8 MR. PENNER: Just, you said it was Robert,
9 Deja, Chuck, and who was the fourth?
10 JUROR NO. 13: Topher, Christopher.
11 MR. PENNER: Okay.
12 THE COURT: Christopher.
13 MR. PENNER: All right. Thank you.
14 THE COURT: All right. If you would be so
15 kind as to step back into the hallway again.
16 (Pause.)
17 THE COURT: All right. Do you want to
18 bring in the jurors one by one?
19 MS. HIGH: Do you want to bring in the
20 family members?
21 MR. PENNER: I guess --
22 THE COURT: I mean, he seemed pretty
23 emphatic --
24 MR. PENNER: I --
25 THE COURT: -- that he did not discuss

1 anything with them about, you know -- and that they all knew
2 that they have no verdict --
3 MS. HIGH: Right.
4 THE COURT: -- because they haven't
5 announced a verdict.
6 MR. PENNER: This would be my proposal:
7 The information in front of the Court is that no one's
8 talked about deliberations outside, and it's always
9 dangerous to ask the jury about their deliberations. I
10 think the curative instruction admonishes them not to do it,
11 and I think we just give them the instruction and send them
12 back to deliberating.
13 THE COURT: Ms. High?
14 MS. HIGH: I think we bring in the family
15 member that reported to Mr. Penner about the nature of the
16 conversation.
17 THE COURT: I think we will bring the
18 family member in, and we'll need to have him state his name
19 and spell it.
20 MR. PENNER: Of course.
21 (Pause.)
22 MR. PENNER: Just stand here, and if you
23 could go ahead and start by just stating your name for the
24 record --
25 MR. ROBINSON: All right.

1 MR. PENNER: -- and then the Judge has a
2 couple questions.
3 MR. ROBINSON: All right. My name is
4 James Robinson.
5 THE COURT: Okay. Do you need him to
6 spell it?
7 THE COURT REPORTER: No, Your Honor.
8 Thank you.
9 THE COURT: Okay. All right. We're
10 having -- you know, we're trying to sort out something that
11 was reported to the Court. I understand that the alternate
12 juror was present in the hallway yesterday at some point
13 during the deliberations and that he had some contact with
14 the family that was out in the hallway.
15 MR. ROBINSON: If you want me to tell you
16 exactly what happened, yeah.
17 THE COURT: That's what we want --
18 MR. ROBINSON: All right. Yeah.
19 THE COURT: -- is what was the nature of
20 the contact?
21 MR. ROBINSON: Okay. Yeah, I was sitting
22 down at the other courtroom, me and my wife; and it was
23 about 1:30 or something like that. And the juror, he passed
24 by in front of me and my wife; and he passed by again, and
25 he smiled. He says, "Hello, I'm Juror No. 13. I want to

1 find out, you know, the verdict. That's why I'm around." I
2 said, "Well, I don't feel comfortable in -- in talking to
3 you." And I told my wife -- I said, "I think we, you know,
4 need to go." And he said something to the effect that he
5 had lunch with one of the jurors, and then we left.
6 THE COURT: Okay. There was no discussion
7 with you about what any conversation or topics that he might
8 have discussed with the jury he was having lunch with?
9 MR. ROBINSON: No.
10 THE COURT: Any questions, Mr. Penner?
11 MR. PENNER: Yeah. So you and I ran into
12 each other --
13 MR. ROBINSON: Yeah.
14 MR. PENNER: -- yesterday, and do you
15 remember your wife --
16 MR. ROBINSON: Yeah.
17 MR. PENNER: -- mentioning that he had
18 said something about there being a couple people holding
19 out?
20 MR. ROBINSON: I -- she had said something
21 to me about that as well. On our way, she said, "I think he
22 said that a couple people were holding out or something."
23 MR. PENNER: Did you ever hear that?
24 MR. ROBINSON: No. I didn't hear that.
25 MR. PENNER: All right. Is Nancy here

1 this morning?
2 MR. ROBINSON: No.
3 MR. PENNER: All right. Thank you, Your
4 Honor.
5 THE COURT: Ms. High?
6 MR. ROBINSON: Am I done?
7 MS. HIGH: No. I have a question for you.
8 MR. ROBINSON: Okay.
9 MS. HIGH: So your wife reported that she
10 heard him say that the reason there wasn't a verdict is
11 because a couple of people were holding up deliberations?
12 MR. ROBINSON: Well, she said he -- he
13 thinks a couple of people were holding up deliberations.
14 MS. HIGH: Okay. Well --
15 MR. ROBINSON: That's exactly what --
16 MS. HIGH: What she said?
17 MR. ROBINSON: Yeah.
18 MS. HIGH: I mean, that's what she told
19 you?
20 MR. ROBINSON: Yeah.
21 MS. HIGH: Okay. And, I mean, she
22 wouldn't make that up, just making it up; right?
23 MR. ROBINSON: No, she wouldn't.
24 MS. HIGH: I mean -- right. So, I mean,
25 she wouldn't have said that unless she had heard that?

1 MR. ROBINSON: Right. And so, you know,
2 as we were leaving yesterday afternoon, we saw Steve Penner.
3 And she said, "I better go talk to him."
4 MS. HIGH: And we appreciate that.
5 MR. PENNER: Yeah.
6 MS. HIGH: We really do, greatly.
7 MR. PENNER: Yeah. Thank you.
8 THE COURT: All right. If you could just
9 step out into the hallway, again, sir.
10 MR. ROBINSON: Okay.
11 THE COURT: Thank you.
12 (Pause.)
13 THE COURT: Mr. Penner?
14 MR. PENNER: So if I understand, at least
15 what he said, was that his wife reported that the juror said
16 he thought there were a couple jurors holding up
17 deliberations, which, I guess, is deducible without having
18 discussed the nature of the deliberations; so, again, I
19 think we're at a point where the curative instruction is
20 adequate. We could bring out those four jurors and ask them
21 in an abundance of caution, whatever the Court thinks.
22 THE COURT: Ms. High?
23 MS. HIGH: Well, I think perhaps we do
24 need to inquire. I mean, I'm left with -- the only
25 connection between Juror No. 13 and the other jurors here,

1 of course, is this case and the topic of, you know, whatever
2 their discussion was. I mean, it's one thing -- I mean,
3 anyone sitting here can see if there's still a jury
4 deliberating, the jury is deliberating; but the conversation
5 of "a couple are holding things up," whether it's two, I
6 mean, whatever. I mean, I rely -- I know Mr. Penner put
7 accurately in his e-mail what he was told; and that is, of
8 course, what concerns me because it shows that, you know,
9 there's -- well, I mean, a couple things, but the
10 communication about --
11 MR. PENNER: If I could, Your Honor, I've
12 changed my mind. I'd ask that we talk to each of the four
13 jurors.
14 THE COURT: All right.
15 MR. PENNER: I think it's better to make a
16 record.
17 THE COURT: We can do that then.
18 MR. PENNER: So my -- so based on what he
19 said, I think it's Jurors 1, 2, 6, and 8. I think the
20 questions should be limited to: Did you have lunch
21 yesterday with the alternate juror? Did you -- did you
22 discuss the case? Did you discuss deliberations? And if
23 it's "yes," "no," "no," then I don't think we should ask any
24 more questions.
25 THE COURT: All right. I think in an

1 abundance of caution, we should bring them in; but
2 obviously, you know, as long as there isn't a verdict one
3 way or the other, then that means that there are differences
4 of opinion back there --
5 MS. HIGH: Right.
6 THE COURT: -- which have to be worked
7 through; so, I mean, I think that anybody could make the
8 deduction that there are some people on one side and some
9 people on the other side, and they're still discussing it.
10 We'll go ahead, though, and we'll start with Juror No. 1.
11 (Juror No. 1 entered the courtroom.)
12 THE COURT: Good morning.
13 JUROR NO. 1: Hello.
14 THE COURT: Yes, we understand that some
15 of you had lunch yesterday with the alternate?
16 JUROR NO. 1: Yes.
17 THE COURT: What were the -- what was the
18 topic of discussion during the lunch?
19 JUROR NO. 1: Well, we were talking about
20 *Red Dawn* and a couple of older movies.
21 THE COURT: All right. Any discussion
22 regarding the case?
23 JUROR NO. 1: Oh, no. Oh, no. Oh, no.
24 THE COURT: All right. Mr. Penner, any
25 questions?

1 MR. PENNER: No, Your Honor.
2 THE COURT: Ms. High, any questions?
3 MS. HIGH: Yeah. So not even kind of the
4 status of where you thought you were at?
5 JUROR NO. 1: No, ma'am.
6 MS. HIGH: Nothing like that?
7 JUROR NO. 1: No. No. We -- we were
8 simply -- we were just talking about old movies and the food
9 that was -- that was there at the establishment.
10 MS. HIGH: Okay. And when you came back
11 after lunch, there was no discussion about this case, you
12 know, being talked about with Juror 13 or anything like
13 that?
14 JUROR NO. 1: Oh, no. Oh, no.
15 MS. HIGH: Thank you.
16 JUROR NO. 1: Yeah.
17 THE COURT: Mr. Penner, anything based on
18 that?
19 MR. PENNER: No, Your Honor. Thank you.
20 THE COURT: All right. If you would be so
21 kind as to step back into the jury room.
22 JUROR NO. 1: Sure.
23 (Juror No. 1 left the courtroom.)
24 THE COURT: And we'll have No. 2.
25 (Juror No. 2 entered the courtroom.)

THE COURT: Just have a seat.

JUROR NO. 2: Hi.

THE COURT: We understand yesterday that a couple of you had lunch with the alternate?

JUROR NO. 2: Right.

THE COURT: What was the topic of discussion during lunch?

JUROR NO. 2: Nothing about the case. It was what was on in the movie -- there was an old movie on about the Russians invading -- I forget the name of it, *Red Dawn*. It's an old '70s movie. As a matter of fact, the court reporter that filled in for you was sitting right next to us --

THE COURT: Okay.

JUROR NO. 2: -- so she would have heard everything that we were laughing and carrying on about the movie, about everything about it.

THE COURT: Okay. No discussion regarding --

JUROR NO. 2: None. None, whatsoever.

THE COURT: No discussion of where you were at during the course of the deliberations?

JUROR NO. 2: No.

THE COURT: Okay.

JUROR NO. 2: Where we were at, no.

1 THE COURT: All right. Mr. Penner, any
2 questions?
3 MR. PENNER: No, Your Honor.
4 THE COURT: Ms. High, any questions?
5 MS. HIGH: No. Thank you.
6 JUROR NO. 2: No. Again, the court
7 reporter was sitting right next to us, so --
8 THE COURT: Okay. Well, usually, they
9 don't have their machines with them at lunch.
10 MS. HIGH: Yeah.
11 JUROR NO. 2: No, but she would have
12 heard -- she would have seen, sort of, the topic of the
13 conversation and the laughter and the carrying on, so --
14 THE COURT: All right. So if you would,
15 just, be so kind as to step back into the jury room.
16 JUROR NO. 2: Yeah. Okay. Okay.
17 (Juror No. 2 left the courtroom.)
18 THE COURT: Good morning, sir.
19 JUROR NO. 6: Good morning.
20 THE COURT: Have a seat.
21 JUROR NO. 6: Okay.
22 THE COURT: We understand that you and
23 some of the other jurors had lunch yesterday with the
24 alternate. What was the topic of discussion during the
25 course of the lunch?

JUROR NO. 6: I stayed away from the fellow.

THE COURT: Okay. You stayed away from it?

JUROR NO. 6: Yeah. I stayed away from him; I didn't even talk to him.

THE COURT: Okay. You didn't talk to him?

JUROR NO. 6: No.

THE COURT: All right. Any questions, Mr. Penner?

MR. PENNER: No, Your Honor.

THE COURT: Ms. High?

MS. HIGH: Yeah. So the topics of the discussions that you were having with the other jurors?

JUROR NO. 6: Beer -- beer.

MS. HIGH: Not about the case?

JUROR NO. 6: Gosh, no.

MS. HIGH: Okay.

JUROR NO. 6: No.

MS. HIGH: I just want to, you know -- and not maybe about kind of the status of deliberations or anything like that?

JUROR NO. 6: Absolutely not.

MS. HIGH: Okay.

THE COURT: Just beer?

JUROR NO. 6: Yeah. I --

MS. HIGH: Sure.

THE COURT: Okay.

JUROR NO. 6: I -- every time you say it, I listen.

MS. HIGH: Right.

THE COURT: All right.

MS. HIGH: Right. And that was just, like you said, you know, chitchat about everything but --

JUROR NO. 6: Yeah, everything but --

MS. HIGH: Okay.

JUROR NO. 6: -- and that's difficult, but we did it.

THE COURT: Any other questions, Mr. Penner?

MS. HIGH: It is difficult because you've been here for a while. Okay.

THE COURT: Any other questions?

MR. PENNER: No questions, Your Honor. Thank you.

THE COURT: All right. If you'd be so kind as to step back into the jury room.

JUROR NO. 6: Yeah.

THE COURT: I'm glad to know somebody is paying attention to what I tell them.

JUROR NO. 6: Every time you say it, I listen.

(Juror No. 6 left the courtroom.)

(Juror No. 8 entered the courtroom.)

THE COURT: All right. Good morning. We understand that some of you had lunch yesterday, and the alternate was there?

JUROR NO. 8: Mm-hmm.

THE COURT: What was the topic of conversation?

JUROR NO. 8: We were talking about the place we were at and some movies, and that's about it, personal life info.

THE COURT: Okay. Nothing about the case?

JUROR NO. 8: No.

THE COURT: Nothing about the status of deliberations?

JUROR NO. 8: No.

THE COURT: All right. Mr. Penner, any questions?

MR. PENNER: No, Your Honor. Thank you.

THE COURT: Ms. High?

MS. HIGH: No. And what's your jury number? I'm sorry.

JUROR NO. 8: 8. Thank you.

1 MS. HIGH: Thanks. I just wanted to get
2 that in my notes.
3 THE COURT: All right. Any other
4 questions?
5 MS. HIGH: That's all I have. Thanks.
6 THE COURT: All right. You may step back
7 into the jury room.
8 JUROR NO. 8: Thank you.
9 THE COURT: Thank you.
10 (Juror No. 8 left the courtroom.)
11 THE COURT: All right. Counsel?
12 MR. PENNER: Your Honor, I don't think
13 there's a basis to do a mistrial. All the facts seem to be,
14 they didn't talk about the case. The only real question is:
15 Should the Court give the curative instruction, again, in an
16 abundance of caution and send them back or simply tell them
17 they can begin deliberating?
18 THE COURT: Ms. High?
19 MS. HIGH: Well, I mean, these are always
20 so tricky in that no one wants to be admitting in any way,
21 shape, or form that they made a slip and had some
22 conversation. You know, I have a concern that if a juror
23 can't follow their oath, not following their oath, and then
24 is, in some way kind of trying to cover for maybe making a
25 mistake that that's something we need to be concerned about.

1 I cannot come up with any reason, whatsoever, why
2 Mrs. Robinson would say that he indicated the status of the
3 jury deliberations if, in fact, that hadn't occurred; so I
4 would, again, continue to ask that this Court declare a
5 mistrial.
6 Now, without that, if the Court's not willing to go
7 there, in terms of the curative instruction, I don't know if
8 the Court has a feeling one way or the other. It certainly,
9 again, reinforces what I think you've tried to reinforce,
10 what I know that your judicial assistant, Ms. Shipman, has
11 tried to reinforce at every turn in this case regarding your
12 deliberations. It seems, to me, like it can't do any
13 harm --
14 MR. PENNER: Right.
15 MS. HIGH: -- to, again, you know, perhaps
16 just reinforce this.
17 THE COURT: Anything else, Mr. Penner?
18 MR. PENNER: I don't think so, Your Honor.
19 THE COURT: All right. I don't know how,
20 you know, Mr. Robinson's wife may have gotten the
21 information that she -- or the understanding that she did.
22 It seems pretty clear from what the jurors all said in
23 their -- you know, they've really had no time to coordinate
24 stories or anything on that order -- is that they did not
25 discuss anything regarding the case at all, status of

1 deliberations, what have you. It is easy for anyone to draw
2 a conclusion that as long as a jury has, you know, not
3 announced a verdict that they're still in there deliberating
4 which means that there is a difference of opinion back
5 there.
6 So, in an abundance of caution, I am going to give the
7 curative instruction, and then we will -- I'm not going to
8 mistrial the case. I don't think, at this point, that there
9 is anything that is prejudicial to Mr. Mitchell at all. We
10 all know that there's, obviously, you know, still jurors
11 that, you know, are differing from wherever; and whatever
12 that status is, we don't know, and we don't want to know;
13 but we do know that that is a fact.
14 So at this point, we'll bring the jury in. I'll inform
15 them that in an abundance of caution, I'm giving them this
16 curative instruction; and then we'll let them resume
17 deliberation.
18 MR. PENNER: I'd just ask the Court, not
19 calling it a "curative instruction" to the jury.
20 THE COURT: I won't call it a "curative
21 instruction."
22 MR. PENNER: Thank you, Your Honor. Then
23 we should probably --
24 THE COURT: Number this instruction.
25 MR. PENNER: It would be 13, and we'll

1 need to white out the WPIC citation. I don't have a clean
2 copy.
3 MS. HIGH: Okay.
4 THE COURT: I don't have one --
5 MS. HIGH: Ms. Shipman --
6 THE COURT: I have one that does not have
7 the WPIC on it.
8 MR. PENNER: Fantastic. Thank you, Linda.
9 THE COURT: So we'll call it 13.
10 MS. HIGH: Yes.
11 THE COURT: All right. This will be the
12 original then. I'll put my initials on the original. All
13 right. We'll bring the --
14 MR. PENNER: And then there will be an
15 issue as to what to do about Juror No. 13. We don't
16 necessarily have to do anything.
17 THE COURT: I don't think we necessarily
18 have to do anything.
19 MR. PENNER: I would agree with Counsel,
20 though, it's very unlikely that if there's -- if we lose a
21 juror that he would be appropriate to --
22 MS. HIGH: Right.
23 MR. PENNER: I guess we can cross that
24 bridge --
25 MS. HIGH: But I don't think we need to

1 address that now.
2 THE COURT: All right. Just, let's keep
3 our fingers crossed completely that nothing happens to one
4 of our jurors. All right. We'll bring the jury in.
5 MS. HIGH: Okay. And should Juror 13 hear
6 this?
7 MR. PENNER: (Shakes head.)
8 MS. HIGH: Okay. Got it.
9 (The jury was present.)
10 THE COURT: Good morning. You may be
11 seated. In an abundance of caution, we have agreed to read
12 you -- I shall read you this additional instruction, which
13 is Instruction No. 13: Deliberations have begun. This
14 means that my previous admonition not to discuss the case no
15 longer applies as to your fellow jurors. However, you are
16 still instructed, you may not discuss the case with anyone
17 except your fellow deliberating jurors. You may not discuss
18 the case or your deliberations with anyone else, including
19 alternate jurors who have been excused and have not
20 participated in deliberations. You must keep your mind open
21 and free from outside influences or information. Only in
22 this case will you be able to decide the case fairly based
23 solely on the evidence and my instructions on the law.
24 All right. We are going to have you go back in, and you
25 may commence deliberation this morning. All right?

1 JUROR NO. 1: All right.
2 (The jury was not present.)
3 MR. PENNER: Your Honor, I would propose
4 that we bring in the alternate juror now and the Court
5 instruct him not to discuss the case with anyone.
6 THE COURT: All right. That's fine with
7 the Court. I will -- do you want me to read him this
8 instruction or just tell him --
9 MR. PENNER: I don't think it applies to
10 him because it talks about deliberations.
11 THE COURT: All right.
12 MR. PENNER: The only other question:
13 Should we tell him to not have lunch with the other jurors?
14 THE COURT: Until the verdict has been
15 reached, I think that's appropriate.
16 MS. HIGH: Right, and he probably
17 shouldn't be talking to --
18 MR. PENNER: Yeah, don't talk
19 to anybody --
20 MS. HIGH: -- people associated --
21 THE COURT: Anybody, family.
22 MR. PENNER: And maybe don't talk to any
23 of the jurors or anyone he recognizes associated with the
24 case.
25 THE COURT: You know, if he wants to know

1 when the verdict comes in, we can contact him.
2 MS. HIGH: Right.
3 MR. PENNER: And maybe the Court could let
4 him know -- or Ms. Shipman can let him know.
5 THE COURT: We can let him know that.
6 MS. HIGH: Perfect.
7 THE COURT: It's not common that we have
8 alternates that show up for the verdict.
9 MS. HIGH: Yeah.
10 THE COURT: We've certainly had
11 alternates show up for a sentencing.
12 MS. HIGH: Yeah.
13 THE COURT: As well as on one case, most
14 of the -- I think ten out of the twelve jurors showed up for
15 the sentencing.
16 MR. PENNER: Shall I get him in here, Your
17 Honor?
18 THE COURT: Yes.
19 (Pause.)
20 THE COURT: Good morning, again.
21 JUROR NO. 13: Good morning.
22 THE COURT: In an abundance of caution,
23 all right, we are going to ask that you not have lunch with
24 the jurors while they are deliberating --
25 JUROR NO. 13: Mm-hmm.

1 THE COURT: -- or with any of the family
2 members or anyone associated with the case. All right?
3 JUROR NO. 13: All right. I have no
4 interest in contacting the family members.
5 THE COURT: Okay.
6 JUROR NO. 13: And my only interest in
7 having lunch with these guys is because I was hanging out
8 waiting for deliberation to close.
9 THE COURT: The verdict. I understand. I
10 mean, you've sat through this for so long, one can
11 understand.
12 JUROR NO. 13: Yeah.
13 THE COURT: We can have -- Ms. Shipman
14 will call you to let you know when we reach a verdict. All
15 right?
16 JUROR NO. 13: That would be great.
17 THE COURT: And then you can come down
18 because we'll have to contact everybody else, but we have
19 what they call an "appearance of fairness"; and we try to
20 avoid anything that might cast doubt on that.
21 JUROR NO. 13: I understand.
22 THE COURT: And at this point, I think
23 that having lunch with them might present that there is not
24 an appearance of fairness; and so we're going to ask that
25 you not do that. All right?

JUROR NO. 13: I apologize for that appearance.

THE COURT: That's quite all right. Most of us --

JUROR NO. 13: I guarantee you, there was no -- there was no interaction that would --

THE COURT: Affect them.

JUROR NO. 13: -- influence them.

THE COURT: All right.

JUROR NO. 13: You know, my opinion is my opinion; and nobody even knows that.

THE COURT: Yeah, I understand; and as I say, I can understand your wanting to know what the outcome may be. All right?

JUROR NO. 13: Mm-hmm.

THE COURT: So at this time, we're going to ask to excuse you; and we will contact you -- Ms. Shipman will contact you when we have a verdict. All right?

JUROR NO. 13: All right. Thank you.

THE COURT: Okay.

JUROR NO. 13: And I'm sorry.

THE COURT: Is there anything either of you wish to say?

MR. PENNER: Just, could the Court expand it from not having lunch to just not have any contact?

1 THE COURT: Not having any contact.
2 JUROR NO. 13: Absolutely.
3 THE COURT: All right. Okay, then.
4 MS. HIGH: Okay.
5 THE COURT: Thank you very much, sir.
6 (Pause.)
7 THE COURT: Anything else, Counsel?
8 MR. PENNER: No, Your Honor. Thank you.
9 MS. HIGH: No.
10 THE COURT: All right.
11 MS. HIGH: Back at it.
12 THE COURT: I understand Judge Nevin's
13 jury is deliberating as well.
14 (A recess was taken.)
15 (The defendant was present.)
16 (The jury was not present.)
17 THE COURT: All right. We're back on the
18 record on State of Washington vs. James Mitchell, and I
19 understand that we have a verdict. Anything before we bring
20 the jury in?
21 MR. PENNER: Not from the State, Your
22 Honor.
23 MS. HIGH: No, Your Honor.
24 THE COURT: All right. We will bring the
25 jury in.

1 (The jury was present.)
2 THE COURT: You may be seated. I
3 understand that you have a verdict. If you would hand that
4 to Ms. Shipman, I will read it out loud in open court.
5 (Pause.)
6 THE COURT: All right. State of
7 Washington vs. James Edward Mitchell, Cause
8 No. 14-1-02979-1, Verdict Form A: We, the jury, find the
9 defendant guilty of the crime of murder in the first degree
10 as charged, signed by the Presiding Juror.
11 (Interruption.)
12 THE COURT: All right. If you would just
13 remain silent, the Court is going to poll the jury at this
14 time.
15 Juror No. 1, is this your verdict?
16 JUROR NO. 1: Yes, ma'am.
17 THE COURT: Is it a verdict of the jury?
18 JUROR NO. 1: Yes, ma'am.
19 THE COURT: Juror No. 2, is this your
20 verdict?
21 JUROR NO. 2: Yes.
22 THE COURT: Is it a verdict of the jury?
23 JUROR NO. 2: Yes, it is.
24 THE COURT: Juror No. 3, is this your
25 verdict?

JUROR NO. 3: Yes, ma'am.
THE COURT: Is it a verdict of the jury?
JUROR NO. 3: Yes, ma'am.
THE COURT: Juror No. 4, is this your verdict?
JUROR NO. 4: Yes, ma'am.
THE COURT: Is it a verdict of the jury?
JUROR NO. 4: Yes.
THE COURT: Juror No. 5, is this your verdict?
JUROR NO. 5: Yes, ma'am.
THE COURT: Is it a verdict of the jury?
JUROR NO. 5: Yes.
THE COURT: Juror No. 6, is this your verdict?
JUROR NO. 6: Yes.
THE COURT: Is it a verdict of the jury?
JUROR NO. 6: Yes.
THE COURT: Juror No. 7, is this your verdict?
JUROR NO. 7: Yes, ma'am.
THE COURT: Is it a verdict of the jury?
JUROR NO. 7: Yes.
THE COURT: Juror No. 8, is this your verdict?

JUROR NO. 8: Yes, ma'am.

THE COURT: Is it a verdict of the jury?

JUROR NO. 8: Yes, ma'am.

THE COURT: Juror No. 9, is this your verdict?

JUROR NO. 9: Yes.

THE COURT: Is it a verdict of the jury?

JUROR NO. 9: Yes.

THE COURT: Juror No. 10, is this your verdict?

JUROR NO. 10: Yes, ma'am.

THE COURT: Is it a verdict of the jury?

JUROR NO. 10: Yes.

THE COURT: Juror No. 11, is this your verdict?

JUROR NO. 11: Yes, ma'am.

THE COURT: Is it a verdict of the jury?

JUROR NO. 11: Yes.

THE COURT: Juror No. 12, is this your verdict?

JUROR NO. 12: Yes.

THE COURT: Is it a verdict of the jury?

JUROR NO. 12: Yes.

THE COURT: All right. The jury has been polled. At this time, we will go ahead and file the

1 verdict.
2 This has been a long trial, and I want to thank all of
3 you for your patience and participation, as you realize I
4 don't have total control over people getting ill, whatever.
5 We wish we did; but unfortunately, we don't. But I want to
6 thank you very much for your service.
7 You may want to remain in the jury room. Sometimes the
8 attorneys like to talk to the jury afterward to find out
9 exactly what they were looking at and how they deliberated.
10 It's optional. You do not have to stay. I realize it's a
11 very nice day outside, but it is a useful tool for the
12 attorneys to talk to the jury afterwards; but I do want to
13 thank you very much for your patience and your service in
14 this matter.
15 So, for the last time, would you please step into your
16 jury room.
17 THE GALLERY: Thank you, Jurors. Thank
18 you. Thank you.
19 (The jury was excused.)
20 THE COURT: We'll need to set it up for
21 sentencing, and we'll need to do the conditions of release.
22 MR. PENNER: I'm doing the conditions of
23 release.
24 MS. HIGH: March 25th would work, Your
25 Honor, for the Defense.

1 THE COURT: I'm here, so --
2 MR. PENNER: That will -- that will work
3 for the State, Your Honor; and we'll wait for Ms. Shipman.
4 THE COURT: I don't have to balance the
5 calendar anymore, so --
6 (Pause.)
7 THE COURT: All right. We're going to set
8 sentencing for March 25th. That will be at 1:30 in the
9 afternoon.
10 (Pause.)
11 THE COURT: Ms. Shipman is printing out
12 the scheduling order.
13 (Pause.)
14 THE COURT: There you go.
15 MS. HIGH: Here are the conditions of
16 release.
17 THE COURT: All right. At this time, it
18 will be a no-bail hold --
19 MS. HIGH: Mm-hmm.
20 THE COURT: -- law-abiding behavior, no
21 contact with victim or witnesses.
22 MS. HIGH: Thank you.
23 (Pause.)
24 THE COURT: All right. Sentencing is
25 Friday, March 25, 2016, 1:30, this courtroom. And by the

1 sounds of it, there may be some jurors back there; so is
2 there anything else, Mr. Penner, or Ms. High?
3 MR. PENNER: No, Your Honor.
4 MS. HIGH: No, Your Honor.
5 THE COURT: All right. The Court will be
6 at recess.
7 (Court adjourned for the day.)
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,	)	
	)	Superior Court
Plaintiff,	)	No. 14-1-02979-1
	)	
vs.	)	Court of Appeals
	)	No. 48810-8-II
JAMES EDWARD MITCHELL,	)	
	)	
Defendant.	)	

REPORTER'S CERTIFICATE

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

I, Kimberly A. O'Neill, Court Reporter in the state of Washington, county of Pierce, do hereby certify that the foregoing transcript is a full, true, and accurate transcript of the proceedings and testimony taken in the matter of the above-entitled cause.

DATED this 20th day of August, 2016.

_____
KIMBERLY A. O'NEILL, CCR
License No. 1954

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,	)	
	)	Superior Court
Plaintiff,	)	No. 14-1-02979-1
	)	
vs.	)	Court of Appeals
	)	No. 48810-8-II
JAMES EDWARD MITCHELL,	)	
	)	
Defendant.	)	

VERBATIM REPORT OF PROCEEDINGS

Friday, March 25, 2016
Pierce County Courthouse
Before The Honorable Katherine M. Stolz
Tacoma, Washington

<<<<<< >>>>>>

A P P E A R A N C E S

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Deputy Prosecuting Attorney

For the Defendant: MARY K. HIGH
Attorney at Law

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STATE OF WASHINGTON vs. JAMES EDWARD MITCHELL

No. 48810-8-II

Proceedings of March 25, 2016

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Sentencing Hearing.....1191

1 BE IT REMEMBERED that on Friday, the 25th
2 day of March, 2016, the above-captioned cause came on duly
3 for hearing before THE HONORABLE KATHERINE M. STOLZ, Judge
4 of the Superior Court in and for the county of Pierce, state
5 of Washington; the following proceedings were had, to wit:
6
7 <<<<<< >>>>>>
8
9 (The defendant was present.)
10 THE COURT: All right. The next matter
11 would be State of Washington vs. James Mitchell,
12 14-1-02979-1. The matter is set for sentencing today.
13 MR. PENNER: Yes, Your Honor. The State's
14 ready to proceed.
15 THE COURT: And there is an issue
16 regarding the -- whether he has six points or eight points.
17 MR. PENNER: Yes, Your Honor. The State
18 believes that the Florida conviction is comparable and
19 should count. If it did, it's a violent felony conviction
20 and would add two points to the score. I know that Ms. High
21 filed a brief on this. The State agrees with her recitation
22 of the law. We disagree with the analysis. We do think it
23 is comparable.
24 My expectation is that the Court has had a chance to
25 review that and consider it and, probably, has already made

1 a decision; so unless the Court has questions for me, we
2 would just simply ask the Court to count it as a prior.
3 THE COURT: All right. Ms. High?
4 MS. HIGH: Thank you, Your Honor. Yes, I
5 do challenge the comparability of the Florida robbery
6 conviction. I did provide for the Court the statutes from
7 the time frame 1983 -- I think you saw the Washington, of
8 all things, they archived -- they'd archived '81. They'd
9 archived '83, the only thing was a pocket part that had been
10 in the archives for '82. That's why I provided both of
11 those to show that the statute had not changed during that
12 time period.
13 I think there are a couple of key points. One is
14 Washington requires that it be from the person or in their
15 presence; in as well, that such force or fear must be used
16 to obtain or retain possession or to prevent or overcome
17 resistance to the taking, and that's where it differs from
18 the language from Florida where Florida does not identify
19 from them -- well, it says "from them but or in their
20 presence"; or, in fact, it just talks about from the person
21 or custody of another person which could be Asavale
22 [phonetic] and has absolutely no language regarding that the
23 force be what is sufficient to obtain or retain possession
24 or prevent or overcome the resistance to the taking; so just
25 that additional "overcome the resistance" and the "obtain or

1 retain," I believe, argues that, in fact, it is not
2 comparable and should not count. His score would, then, be,
3 if the Court were to find that the Washington State --
4 they're, basically, a series of drug convictions count. I
5 believe, then, his score would be 6.
6 THE COURT: I did review the brief that
7 was submitted. The Court is going to find that the Florida
8 conviction is comparable to the Washington one, and I'll
9 find that his offender score is 8.
10 All right. Regarding sentencing.
11 MR. PENNER: Thank you, Your Honor. The
12 resultant standard range, then, is 370 to 493 months. The
13 State's asking the Court to impose the high end of 493
14 months. We believe that this is a high-end case. This is a
15 murder in the first degree.
16 When the Legislature passed the Sentencing Reform Act and
17 established these ranges, I think it was with the idea that
18 there could be some murder 1's that were more egregious than
19 others, some less egregious. This is a situation where a
20 woman, a 36-year-old single mother, is home. She's
21 baby-sitting three young children. Her daughter is at the
22 roller rink, and then the defendant attacks her with
23 overpowering force in her own home and murders her in the
24 same apartment as these children. That's a high-end case.
25 This isn't two young men who get into an argument in a bar

1 and things escalate. This isn't even a situation of a
2 couple at home where things get -- starts an argument and
3 escalates. This is a person who is home, taking care of
4 children and, out of nowhere, is murdered, so we think high
5 end is appropriate; and we'd ask the Court to impose that.
6 In addition, Your Honor, there's 24 months of community
7 placement. We'd ask the Court to impose the mandatory,
8 non-waivable fines, but we would agree that Mr. Mitchell is
9 likely or unable to pay any other fines given the sentence
10 that he's facing and his current age.
11 I'd also let the Court know that there are four members
12 of the victim's family who would like to address the Court.
13 THE COURT: All right.
14 MR. PENNER: So I believe the first is
15 Gloria Elliott-Harris.
16 (Pause.)
17 THE COURT: Okay. And would you say your
18 name for the record.
19 MS. ELLIOTT-HARRIS: My name is Gloria
20 Elliott-Harris.
21 THE COURT: Okay.
22 MS. ELLIOTT-HARRIS: On behalf of my
23 father, Leslie Robinson, Senior, and myself, I would like to
24 say on his behalf, the death of Linda put devastation and
25 frustration to his life. It was a tragedy that was totally

1 unexpected, as death is. Sometimes, and my dad has always
2 believed, that his life and my mom's life, would always be
3 taken before their children.
4 I also thought it also brought inconvenience to him
5 because he had given up his burial plot that he had planned
6 to be with my mother in, and he had to give that up for my
7 sister. Now, she shares that burial plot with my mom. My
8 dad is just a few feet away from my mom and my sister, but
9 that was an inconvenience for my -- my dad and my family.
10 The death of my sister, Linda, added years of grief and
11 pain and uncertainty to his life, not knowing who or why
12 this had happened to his daughter.
13 For me, I lost a sister and a best friend. Her death
14 brought years of question to my life, not knowing if I was
15 looking at the person on a day-to-day basis or in a casual
16 passing. It hurt, and I was angry. To my life, and
17 questions to my children that I couldn't answer, is why and
18 what happened to their aunt? But now, I'm relieved that
19 justice has finally come and been served; and my family has
20 closure.
21 And last, thanks to Detective Kobel and the justice
22 system.
23 THE COURT: Thank you. I realize this is
24 difficult.
25 MR. PENNER: Thank you, Your Honor. Next

1 will be Stephanie Robinson.
2 THE COURT: Okay. What do you wish to say
3 to the Court?
4 MS. ROBINSON: Mr. Mitchell, you have
5 impacted me and my family's lives in a way words could never
6 explain.
7 MS. HIGH: And I think it should be
8 directed to the Court, Your Honor.
9 THE COURT: I think that if you would just
10 direct that to the Court, please.
11 MS. ROBINSON: Okay. There's no words to
12 explain the loss of a mother of a single child. I'll
13 express my loss and what it means to me. Mr. Mitchell has
14 taken from me, on the night of February 6th, someone that is
15 so dear to me, someone that was like a mother because I lost
16 my mother at the age of seven. He took not only a mother,
17 he took precious time that I could have spent with my
18 sister. Not only was she a sister but a best friend to many
19 and an aunt to even more. He walked this earth, able to
20 spend time with his loved ones for the last twenty-one
21 years; so today, I can only hope that you, Judge, would
22 sentence him to a life of incarceration, taking away his
23 choice to do the things with his family that I was not able
24 to do with my sister.
25 When all of this happened, I had to keep faith in the

1 justice system that he would one day be caught, and thanks
2 to Detective Kobel, I'm truly thankful. I'm also thankful
3 to Steve Penner and his wonderful staff.
4 Now, the Bible says I have to forgive Mr. Mitchell for
5 what he has done; but the Bible does not say I can't hope he
6 spends the rest of his days behind prison walls; so I hope,
7 again, you, Judge, takes from him today what he has taken
8 from me so many years and that is the freedom to be with
9 someone I truly loved.
10 As he grows older in incarceration, I hope that he can
11 admit to what he has done because I will always be left with
12 an emptiness that on December 14th, I had a sister that was
13 born but also because of his senseless act, she will never
14 have another birthday. Thank you.
15 THE COURT: Okay. Thank you very much.
16 The next one, Counsel.
17 MR. PENNER: Your Honor, Shawonika
18 Elliott.
19 THE COURT: All right. What do you wish
20 to say, ma'am?
21 MS. ELLIOTT: I've thought about this day
22 for a very long time. What I would say, how I would act, I
23 honestly still couldn't decide. He's a monster. But
24 probably even worse, because even monsters show themselves,
25 he's a coward, not even a man; and, quite frankly, where

1 he's going, he needs his manhood.
2 The turmoil that you have caused my family is
3 substantial. The years we have lost with my dear Aunt Linda
4 are years we are never able to get back. My mommy has lost
5 her little sister and, in turn, missed out on big moments in
6 her niece Tarica's life all because of his selfish act of
7 ignorance. My grandfather fell ill, and we couldn't figure
8 out why he -- why he continued to hold on and fight that
9 white light. I have come to the conclusion that he wanted
10 the man that took one of his babies away, for him to serve
11 justice. Well, I can now stand here and say to my grandpa
12 that this day has come.
13 My life will never be the same with the memories that I
14 had of my auntie. Most children love to wake up to
15 Christmas presents, Easter bunnies, snow days, and summer
16 breaks, but he has left me with the devastating wake-up of
17 one with horror, to see someone you love so much, my
18 favorite aunt, lifeless.
19 She never had a chance. I fell asleep with the lights
20 on. I fell asleep with the TV on; and on this day at the
21 age of thirty, I cannot go to sleep without the TV. I
22 cannot go to sleep without the light. Those are things I
23 associate with being safe. He hasn't the slightness clue
24 what I had to deal with, the guilt on my family asking me
25 over and over again if I remember anything, and all I could

1 say at the age of seven years old was no. I thank God every
2 day for not waking me up that awful night, for my family
3 would have had to have two funerals, and no one should have
4 to bury their child, including my grandfather.
5 So, in closing, I say to you, God will be the judge. All
6 I can say is let go and let God; and in the famous words of
7 Linda Robinson, "I'm an Audi 5000."
8 THE COURT: Thank you.
9 MR. PENNER: And finally, Your Honor,
10 Tarica Dudley.
11 (Pause.)
12 MS. DUDLEY: On February 6, 1993, as my
13 mom took her last breath, so did I. My heart stopped when I
14 was picked up from Spinning Wheels only to find out that my
15 mother had been murdered. I think I went through every
16 emotion imaginable as I rode in the back seat of the police
17 car. I just wanted this to be a dream. I wanted so bad for
18 the detective to be wrong about what he had told me. I was
19 fifteen years old, left to figure out how to make it in this
20 world without the one person, the only person I looked to to
21 give me answers.
22 And as a teen growing up, I didn't get a chance to go to
23 my mom for advice. I didn't get a chance to have my mom
24 attend after-school events or witness me walking down the
25 aisle in my graduation. I have three girls that would never

1 get a chance to meet their grandmother. Instead, I was left
2 with a big void in my life, the unknowns, the questions
3 continuously in my head, why?
4 Instead, I was left with fear, fear of not knowing who
5 you are. It would one day come back to get me, too; but
6 instead of holding onto fear and anger, I decided the battle
7 was no longer mine. I have faith in a greater power that
8 there would be here one day. Faith is the substance of
9 things hoped for, the evidence of things not seen. I hope
10 you use your time to ask for forgiveness because I had to
11 learn to forgive you.
12 Today I ask the Court to give you the maximum sentence.
13 Thank you.
14 THE COURT: All right. Ms. High?
15 MS. HIGH: Thank you, Your Honor. I know
16 that Mr. Mitchell will, also, want to address the Court.
17 First, on some legal points, I would ask this Court not
18 sentence him to the high end. The Court has found that you
19 believe that he scores as an 8, and you know that it's, kind
20 of, just a fluke of our sentencing scheme that drug
21 convictions that are decades old will score against him and
22 increase the standard range, and I just heard the State say
23 that this isn't like a family dispute or two young men; but
24 when I have been in this situation where it has been a
25 family dispute, we're then told that that is what makes this

1 more egregious and that it's the domestic violence, or
2 inter-family violence is a reason to give a high end.
3 I'm going to ask that the Court impose a low end. I
4 think you know at his age, any of these sentences likely are
5 going to result in incarceration for the rest of his life.
6 Now, also, I would like to address the LFOs, or the
7 legal/financial obligations, and would ask this Court impose
8 no more than the $500 crime victim penalty and the $100 DNA.
9 And then finally, you know, these days are always hard.
10 You know, the family is expressing feeling relief and
11 closure, but I'm here to tell you that Mr. Mitchell, for
12 him, is: He feels their loss, but he's always maintained
13 his innocence; and he has questioned how this could have
14 happened to him. Yes, we know his DNA was there, but he has
15 always maintained that his DNA was there because he was a
16 victim of some other individual, an individual that, you
17 know, would make a lot more sense with someone from Ms.
18 Robinson's past.
19 So, for me, this is no day of rejoicing. I understand.
20 We feel the family's loss. I know that they are feeling
21 relief, but I see yet another black man in the United States
22 who is going to be facing incarceration, no matter where you
23 sentence him, for the rest of his life.
24 THE COURT: All right. Mr. Mitchell, you
25 have the right to allocution. Is there anything you want to

1 say to the Court?
2 THE DEFENDANT: Yes. I'd like to address
3 the Court. First of all, I am sorry for your loss; but I'm
4 not the guy who took her life; and what I testified to is
5 the truth.
6 THE CORRECTIONS OFFICER: James, you need
7 to address the Court. Okay?
8 MS. HIGH: Face the Judge.
9 THE DEFENDANT: This case, as far as I'm
10 concerned, when Kobel reopened this case, he submitted my
11 DNA (unintelligible). I was already sentenced because of
12 the prior drug convictions, but he didn't go back and do a
13 process of elimination as good detectives do, so they say.
14 He's a veteran in this.
15 There was four other suspects in '93. There was four
16 other suspects when this case was reopened. One failed a
17 polygraph test, twice. One called, less than 24 hours, and
18 threatened her which her sister reported to the police and
19 her daughter and her best friend. There was two other
20 suspects in this case, so why don't he go back and do a
21 process of elimination? If our technology is so great
22 today, why did he start with being stuck with me? Because
23 I'm in the system. Those other people weren't in the
24 system.
25 Steve Penner, seasoned prosecutor: He spoke about Mark

1 Lindquist and the things that he was doing as head
2 prosecutor, but he explained and did the same thing in this
3 trial. He didn't seek the truth. It was about a win or a
4 loss. If he was seeking the truth, he would have told Kobel
5 to go back, and let's do a process of elimination. There's
6 four other suspects in this case.
7 As far as I'm concerned, Judge Whitener violated my
8 constitutional rights for my lawyer to prepare a defense on
9 my behalf by leaving out other suspects.
10 Let's talk about chain of custody, accountability, for
11 the police department. Let's talk about that. Evidence
12 disappeared for 66 days. No one in America knew where it
13 was at let alone Pierce County, and the forensic room knew
14 where it was at. The officer that logged it in 66 days
15 after the fact got fired from the very police department for
16 inappropriate handling of evidence, so its word is no good
17 about anything. No one remembered anything about anything,
18 no documentation, no nothing; so all of this is
19 questionable, as far as I'm concerned.
20 If he's going to hold Mark Lindquist to a higher
21 standard, he needs to hold himself to a higher standard and
22 whistleblower himself, if that's the case, because he did
23 less than a prosecutor and abused his authority in this case
24 by isolating me, him and Kobel, isolated me by myself, by
25 arguing other suspects in this case; and they were being

1 left out. So, quite naturally, the family is going to look
2 at me and say, well, he's the guy. He's the guy because
3 he's the only one.
4 But you sat through this trial from day one. You read
5 those motions that was -- that -- that -- that -- that --
6 that Judge Whitener ruled against, ridiculous. The
7 explanation that she gave don't even make sense to me. It
8 wasn't even case law. It was an opinion.
9 Let's talk about O'Hern, the original investigator from
10 '93. Right now, today, March 25, 2016, ask him who he
11 thinks the killer is, he's going to say it's someone else.
12 He's not going to say it's me because he don't believe it's
13 me; couldn't give his own opinion on testimony about the
14 case. No, you can't -- he can't give his opinion about who
15 he thinks the killer is because of the ruling Judge Whitener
16 gave in the favor of the State; but he's a 40-year veteran,
17 but he can't give his opinion of who he thinks the killer
18 is? Something is wrong with that to me.
19 Expert testimony, let's talk about expert testimony. Not
20 a one of them that got on that stand said I killed anybody.
21 You sat there, Miss. Their last words were, before they
22 left the stand, he could have been a victim as well.
23 So what -- what am I to think? This is not a fair trial
24 to me, as far as I'm concerned. If he was a suspect in '93,
25 he was a suspect when this reopened. They should have went

1 back and eliminated it in a process of elimination, got DNA
2 from everybody, everybody that was involved in this case,
3 and then do a process of elimination. Then if you end up
4 with me, then that's what it is; but that's not what they
5 did. They isolated me and left me by myself, defend for
6 myself and took away my lawyer's ability to prepare a
7 defense in my behalf by taking out other suspects.
8 Where in America do you lose evidence for 66 days and use
9 it against somebody? Nowhere. That's ridiculous to me. If
10 this was a fair trial, I wouldn't say one word, but okay.
11 I'm not the person that killed Linda Robinson, and I'm going
12 to maintain that to the day I die; and I promise you I'll be
13 back here 18 to 24 months from now, and we'll be doing this
14 all over again.
15 I want to thank my attorney and my investigator and --
16 and -- and, Judge Stolz, you sat through this trial. You
17 heard all this, and what I just said -- you just heard what
18 I just said. Let your sentence reflect how you truly feel.
19 I'm good with it.
20 THE COURT: All right. Anything else from
21 anyone, Counsel?
22 MS. HIGH: No. Thank you, Your Honor.
23 MR. PENNER: No, Your Honor.
24 THE COURT: Well, I did sit through the
25 trial, no doubt about that. And, granted, back in 1993,

1 there was not the technology that we have today; and I think
2 we've all read and seen articles where DNA has cleared
3 somebody who was convicted wrongfully a number of years ago,
4 but the flip side of that is that DNA can convict someone
5 who may have walked free for a number of years when a case
6 is re-examined with the technology that we have today.
7 When I listened to the testimony, I -- you know, one of
8 the things not -- you know, not having talked to the jury, I
9 don't know whether they focused on it or not; but, you know,
10 some of the DNA that was tested was yours mixed with the
11 victim's, and it was blood. And, you know, I understand
12 that you feel very strongly that you did not do this and,
13 therefore, you were wrongfully convicted; but the jury heard
14 the evidence, they heard your defense, and certainly your
15 attorney made very strong points regarding the fact that
16 there was this missing evidence for a period of 60 days; but
17 in the end, they chose to believe that the DNA came from
18 your blood because you were the assailant, and they
19 convicted you of murder in the first degree.
20 Now, you are 52 years old, and you're going to be 53 in
21 August. Any sentence I pass, you know, whether high end,
22 middle range, or low end, effectively, you'll remain in
23 prison for the rest of your life. None of that can bring
24 back Linda Robinson. I mean, her family is always going to
25 suffer that loss and always will; and she suffered a loss

1 significantly because she died, and the kind of attack that
2 it was was frenzied. I mean, you know, an outrageous number
3 of stab wounds, somebody really totally lost it that night
4 and killed this woman. I mean, we all saw the crime scene
5 photos that -- for everybody who was here during the course
6 of this trial. I mean, this was a very bloody, very violent
7 attack.
8 That being said, this Court is going to sentence
9 Mr. Mitchell to 450 months in custody; 24 months' community
10 custody; $200 court costs; $500 crime victim penalty
11 assessment; restitution, if any, by later order of the
12 Court. I'm not going to impose any other fines or costs.
13 There's no reasonable way that he would be able to pay
14 those.
15 MR. PENNER: And, Your Honor, no contact
16 with the victim's family?
17 THE COURT: No contact with the victim's
18 family. I don't think either they want contact with him, or
19 he wants contact with them the other way, so no contact.
20 MR. PENNER: Ms. High, do you have the
21 credit for time served?
22 THE COURT: Yes, credit for time served.
23 (Pause.)
24 THE COURT: And I would agree, Ms. High,
25 that the judicial system does convict an inordinate number

1 of black men, but most of that is for drug-related crimes.
2 In the fifteen years I've been sitting here, as far as
3 homicide is concerned, is an equal opportunity crime.
4 Whites kill whites. Whites kill blacks. Blacks kill
5 blacks. Blacks kill whites. Asian kills -- everybody is
6 male and female. Everybody can kill somebody, and I've
7 certainly sentenced both sexes and all the races during the
8 time period that I've been sitting on this bench.
9 MS. HIGH: And it's always tragic.
10 THE COURT: And it's always tragic. I
11 mean, people are wasting their lives.
12 THE DEFENDANT: Can I ask you a question,
13 Your Honor?
14 THE COURT: Why don't you run it through
15 your attorney first.
16 (Pause while defendant confers with counsel.)
17 MS. HIGH: And I'm going to need the
18 fingerprint pad.
19 MR. PENNER: I gave that to you already.
20 THE COURT: The pad is up here.
21 MS. HIGH: Thank you.
22 (Pause.)
23 MS. HIGH: I come up with 536 days.
24 MR. PENNER: Yeah.
25 (Pause.)

1 THE DEFENDANT: Could I say one more thing
2 to the family before I leave? It's going to be polite.
3 THE COURT: Run it by your attorney,
4 please.
5 (Pause while defendant confers with counsel.)
6 THE COURT: I'm going to hand this back
7 down, Counsel.
8 MS. HIGH: Did I miss something?
9 THE COURT: You missed the voting rights
10 statement.
11 MS. HIGH: Oh, sorry about that.
12 THE COURT: That's all right. The
13 defendant also needs to sign the fingerprint page.
14 (Pause.)
15 MS. HIGH: I'm sorry, Your Honor. It
16 looks like we now have the voting rights statement.
17 THE COURT: And the fingerprint page.
18 MR. PENNER: Thank you, Your Honor.
19 (Pause.)
20 THE COURT: Also, Counsel, I think both of
21 you did an outstanding job. I realize these cases are very
22 difficult.
23 MR. PENNER: Thank you.
24 MS. HIGH: Thank you. Thank you, Your
25 Honor.

1 THE COURT: And it helps immensely when
2 the attorneys act professional. All right. The Court will
3 be at recess.
4 (Court was adjourned.)
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,	)	
	)	Superior Court
Plaintiff,	)	No. 14-1-02979-1
	)	
vs.	)	Court of Appeals
	)	No. 48810-8-II
JAMES EDWARD MITCHELL,	)	
	)	
Defendant.	)	

REPORTER'S CERTIFICATE

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

I, Kimberly A. O'Neill, Court Reporter in the state of Washington, county of Pierce, do hereby certify that the foregoing transcript is a full, true, and accurate transcript of the proceedings and testimony taken in the matter of the above-entitled cause.

DATED this 20th day of August, 2016.

_____
KIMBERLY A. O'NEILL, CCR
License No. 1954

Attachment “C”

14-1-02979-1 45818071 FNFCL 11-03-15

FILED
DEPT. 11
IN OPEN COURT
OCT 29 2015
Pierce County Clerk
By DEPUTY

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON, Plaintiff,	CAUSE NO. 14-1-02979-1
v.	FINDINGS AND CONCLUSIONS ON ADMISSIBILITY OF EVIDENCE
JAMES EDWARD MITCHELL, Defendant.	RE: DEFENDANT'S MOTION TO SUPPRESS EVIDENCE FOR LACK OF CHAIN OF CUSTODY (CrR 3.6)

THIS MATTER having come on before the Honorable G. Helen Whitener on the 24th day of September, 2015, and the court having rendered an oral ruling thereon, denying the defendant's motion to suppress evidence for lack of chain of custody, the court herewith makes the following Findings and Conclusions, as required by CrR 3.6.

I. THE UNDISPUTED FACTS

I.1. On February 6, 1993, law enforcement officers from the Pierce County Sheriff Department ("PCSD") were dispatched to the residence of Linda Robinson, an apartment in the Spanaway area of Pierce County.

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930 Tacoma Avenue South, Room 946
Tacoma, Washington 98402-2171
Main Office: (253) 798-7400

I.2. Ms. Robinson was dead at the scene. An autopsy later confirmed that Ms. Robinson died from multiple stab wounds to her back from a knife or similar instrument.

I.3. The investigation was given the PCSD incident number of 93-037-1041.

I.4. In the basement of the County-City Building in Tacoma, Washington, are the PCSD Property Room and PCSD Forensics Lab. They are across the hall from each other.

I.5. At all times relevant herein, PCSD Forensics had no system to log evidence into or out of its Forensics Lab, and no system to log where in the Forensics Lab any item of evidence was at any given time.

I.6. In 2014, several items from the PCSD Property Room, held under incident number 93-037-1041, were sent to the Washington State Patrol Crime Laboratory for analysis. Analysis of blood spots on some of these items developed a DNA profile which was later identified as that of the defendant.

II. THE DISPUTED FACTS

The following facts were all disputed by the defendant, who argued that the witnesses called by the State had insufficient independent memory of the asserted facts and that the reports upon which the witnesses based their testimony were inadmissible hearsay or otherwise unreliable.

II.1. Two of the officers were dispatched to Ms. Robinson's apartment were Hilding Johnson and Ted Schlosser, both employed as forensic technicians by the PCSD.

II.2. Officer Johnson photographed and collected evidence from the scene, to include the following items:

-Suspected blood drops from the top of a bedroom dresser
-Suspected blood drops from a drawer of a bedroom dresser

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-Papers with suspected blood drops
-Jacket with suspected blood drops
-Suspected blood drops from a hallway wall
-Phone and phone cord with suspected blood drops

II.3. Officer Johnson took these items from the scene to the Forensics Lab in the County-City Building.

II.4. Officer Johnson filled out a property report listing all of the items, either at the scene or once he arrived at the Forensics Lab. This form was dated February 7, 1993.

II.5. It was, and still is, the routine practice of PCSD forensics officers to store property items in the Forensics Lab pending final submission to the Property Room whenever items need to be further processed by the forensics officers, items need to have blood or other biohazardous substances dried, or the Property Room is closed.

II.6. The Forensics Lab is a secure holding area. It is locked to the general public. Inside, it has individual lockers where forensics officers can store evidence for a given, lock the locker, and take the key. It also has areas for drying evidence and processing evidence.

II.7. Officer Schlosser submitted the items to the PCSD Property Room on April 12, 1993.

II.8. The items collected by Officer Johnson were in the Forensics Lab from February 7, 1993, to April 13, 1993, a total of 65 days.

II.9. Sometime between February 7, 1993, and April 13, 1993, Officer Schlosser processed several of the items collected by Officer Johnson for fingerprints, with negative results.

II.10. Ms. Robinson's body was collected from the scene by personnel from the Pierce County Medical Examiner (PCME) on February 7. 1993.

II.11. On February 11, 1993, personnel from the PCSD Property Room went the PCME office and took custody of several items of evidence, including jeans and other clothing which

were on Ms. Robinson's body when it was collected from the scene and vials of Ms. Robinson's blood taken at autopsy.

II.12. The items collected by Officer Johnson were designated by the Property Room as items E1-E23.

II.13. The items collected from the PCME were designated by the Property Room as items A1-A14.

III. FINDINGS AS TO DISPUTED FACTS

III.1. The Court finds that all of the disputed facts listed in Section II., *supra*, were established at the suppression hearing, and these facts are all incorporated into this section as if repeated in their entirety.

IV. REASONS FOR ADMISSIBILITY OR INADMISSIBILITY OF THE EVIDENCE

IV.1. When considering whether the proponent of an item of evidence has satisfied the requirement of chain of custody, the court looks to the nature of the article, the circumstances surrounding the preservation and custody of the item, and the likelihood of intermeddlers tampering with the item. State v. Campbell, 103 Wn.2d 1, 21, 691 P.2d 929 (1984).

IV.2. Generally speaking, there are two categories of evidence at issue here. The first category is 'biohazard evidence' and the second category is 'other evidence.' Biohazard evidence have specific and more stringent handling and processing requirements to ensure the integrity of this type of evidence, as it is more susceptible to contamination.

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IV.3. The proponent of the evidence must establish a chain of custody with sufficient completeness to render it improbable that the original item has either been exchanged with another or been contaminated or tampered with. State v. Roche, 114 Wn.App. 424, 59 P.3d 682 (Div. I, 2002).

IV.4. Before a physical object connected with an alleged crime may properly be admitted into evidence, it must be satisfactorily identified and shown to be in substantially the same condition as when the evidence was collected.

IV.5. The methods of labeling and packaging evidence in 1993 were not of the caliber of labeling and packaging used today. Further, the methods used in 1993 were specific to a time and place where scientific and technological advances had not advanced to what is expected today.

IV.6. The State established that items E1-E23 were documented, packaged, and stored according to the more relaxed but acceptable practices of the day.

IV.7. For the 65 days between February 7, 1993, and April 13, 1993, the items were in law enforcement custody in the Forensic Lab.

IV.8. Although the specific location of the items within the Forensic Lab is unknown, this is a minor discrepancy that affects the weight of the evidence, but not its admissibility.

IV.9. The State also established the chain of custody for items A1-A14, inasmuch as they were collected at the scene on February 7, 1993, by PCME personnel, and held by the PCME until transferred to the Property Room on February 11, 2015.

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V. RULING

THEREFORE, for the reasons stated above, the defendant's motion to suppress the above-referenced items of evidence for lack of chain of custody is hereby DENIED.

DATED this 29th day of October, 2015.

JUDGE

FILED
DEPT. 11
IN OPEN COURT
OCT 29 2015
Pierce County Clerk
By DEPUTY

Presented by:

STEPHEN M. PENNER
Deputy Prosecuting Attorney
WSB # 25470

Approved as to Form Only:

MARY K. HIGH
Attorney for Defendant
WSB # 20123

sp

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Attachment “D”

(File 1)

Yes. This is Jim O'Hern, retired Detective Sergeant with the Pierce County Sheriff's Department. I am going to be dictating notes that I took in February of 1992, concerning the death investigation of Linda Robinson. Case number on this was 0371041. I'm going to be dictating from notes that I prepared while I conducted my investigation as the lead investigator of this particular incident. I'm starting with the first page of my notebook, and then I basically will be going through it.

2315. Called by LESA Dispatch, 2/6 of '92.

2340, 1115. Call out regarding homicide-fire death, 127 162nd Street South, #4, 0371041, 649. Clear and cool, light overcast, temperature low 40 degrees.

2356, 10/7, last call. Detective Minturn and Ident Officer Schlosser, S-C-H-L-O-S-S-E-R. On scene U-1654869, unit 285. One firefighter inside Shepherd Amb, A-M-B, on scene. Victim Linda Robinson, 12/14/55, B/F. Four plex which faces south towards 162nd. Several vehicles parked in parking lot. Chaplain Pete Annelo, that's A-N-N-E-L-O, Dan Nolta, N-O-L-T-A. And then I listed a number of license plate numbers. UF, Union, Frank, Young, 945, ALV, that's Adam, Lincoln, Victor, Robert, Nora, Adam, Sam. Next is Lincoln, Tom, 83, 8537. Next one is 45722 R, as in Robert. Next license, 065 Charles, Tom, Ida. Next one, 32151 H, as in Henry. And last, 216 Boy, Sam, David. Upstairs apartment on east side front door faces west. Stairway leads up towards second story landing. Apartment #3 to left, parenthesis, west, parenthesis. Apartment #4 to right, parenthesis, east, parenthesis, at top of stairs.

2259 dispatched.

2300 arrived. Contacted Robinson, Curtis Lee, and Robinson's spelled R-O-B-I-N-S-O-N. B/M, 10/1953. 8825 East E Street. Work, 597-3635. D.J.R., 536-2532. Call from nephew, Raymond. He told me he got a call from Sheriff to pick up my niece, parenthesis, his sister, parenthesis. I contacted my sister and told her 1120. I went to 176th 10th Avenue East to my sister's home. How, H-O-W, Gloria Elliott. Met her boyfriend and came to apartment. Pretty close relationship with. Not aware.

Next page of my notes, dated 2/7 of '93.

A, this will be a name, A-L-V-E-R-M-A-Z, Kirk D. W/M, 4/1957. 630-1830, Mr. Dr. Drywall. 531-0616. Heard loud voice of victim for a couple of minutes around 10 P.M. Heard one voice, sounded like her voice. About 11, little girl came over. We went into apartment, turned off stove, burner red hot and steam smoke coming off stove. Tarica, T-A-R-I-C-A, 383-5279,

Leslie, 17516 10th Ave., 536-9772. Gloria. Daughter stated that mother took her down to Spinning Wheels. Per daughter has been seeing guy named Fred. Robinson, Linda, 17516 10th Avenue East, Spanaway, Washington 98387, 12/14/55, 5-2, 140, brown, 37, 536-4862. Billy Miller, 36, 472-7832, housekeeping, Madigan Hosp, H-O-S-P. Jackie called, lives with her mother.

0401, ME requested. Tarica, T-A-R-I-C-I-A Carter. Unit 227 had been there about ½. Shuler, Sharon, 815 East 46th. Joelle Paul William Tyrone Miller.

0535, ME John Reish, that's R-E-I-S-H, on scene. 70 black or orange, BRR162. Got to my house about 145, pretty sure after. 3104 South 8th, residence of Joelle, J-O-E-L-L-E Maddox, M-A-D-D-O-X, 383-5635. 92-250.

0839, 10/7, 3104 South 8th. Miller contact, CTD.

0853, 10/8, enroute to office with one.

Next page, dated 2/7/93. Victim, Linda Robinson.

0857, 10/7, last call. Miller, William Tyrone, T-Y-R-O-N-E, slash, Sharon Shuler, S-H-U-L-E-R, OCD. That's, has known Linda Robinson since '89. Last time I saw her was early January '93, at her house by myself. Me and my girlfriend were arguing and I left the house and called Heather to see if she saw Linda. She said she had gotten her an apartment, 536-6470, and she had told her if she saw me to tell me, and then I went over there and stayed there most of the day, and her daughter was there. I haven't seen her since that day. I've called her 6 or 7 times since then, about 4, dash, 5 days ago was the last time I talked to her. Our birthdays are right behind each other and we are still friends. Her daughter, Tarica, that's T-A-R-I-C-A, we are still close. She has been telling me she was going to get married to an old boyfriend who used to hound her and would always want to be with her. He is doing this and he is doing that. That's what she was telling me. He was persistent. That's what I called Gloria, her sister, about, to confirm if what I heard was true. Then I asked to talk to her. Me and friends were at Brown's, parenthesis, Paul, P-A-U-L, parenthesis, Grill, having a few drinks. I called Sharon to see what's happened. Jackie called after 2:30 and Sharon came into the room and said Linda is dead. I went home and called Heather and asked Heather if she knew the guy Linda was going to marry. She gave me a name. We met at Brown's, stayed together, and then put our, and then went our separate ways. We never argued, got along good. If we had a problem we worked it out. I lived at Boardwalk Apartments and lived with her. One time we were serious and I lived with her for a short period of time. She was pregnant for this one guy, and he had this black truck. He used to come over to that one apartment before she moved. It had to be last year when we went to Sharon's house he moved some of my stuff in, in his truck. Linda and I were cool together. Got up about 10:30,

went to work at 12:30 at Madigan Housekeeping. I work on ward, doing floors, working in different departments. Average work is 7 and a half hours, and I catch the 9:30 P.M. bus out of there. Normally I go home except on the weekends. I caught the bus and asked the bus driver, asked her if she could stop at the ARCO in Tillicum. I then rode the bus to the Tacoma Mall where I met my friend, Paul Williams, or something like that. He lives off Pearl with his girlfriend who is my son's aunt. We call him PW. He is a young guy, 759-7481. His girlfriend's name is Susie. Paul met me at the Tacoma Mall driving a white Buick Regal, an '82, about 10:55. We went to my house but I couldn't get in because I thought I lost my key. She was at work. I called her job and asked to speak to her. And the manager at TNT, she said she was outside, and he told me to call back in 20 minutes. I originally called her from a little store on 12th Street, where I couldn't get her, I went down to Brown's Grill, at a little after 11. I later went outside at 12 and called her, but I talked to 20, the manager, at the TNT, and she thought she went back to lunch already. So I came back into Browns and I mentioned to Pearl, I mentioned to Paul to let's go. About a little, 5 after 12. Then I went home and arrived about 10 or 12 after 12. I stayed there because Joelle, that's J-O-E-L-L-E, was home. We took her to work because her friend didn't come back. Dropped her off at 12:30 and then went back to Brown's at about 20 to 1. Stayed there until it closed. Then we went home and Paul came in. That's when I called Sharon to see what she was doing and she said to just come on over, so we got in the car and went over to Sharon's, stayed there until after I got the phone call from Jack, from Jackie. We got there about 2, 2:30, 2, 2:20, about 45 minutes after we got there. Jackie, Linda's best friend called, said Linda was dead. Sharon tells me Linda is dead and she is crying and stuff, and I went home and called Heather. Linda's best friend. And she acts like, she acted like she didn't know. This is like 3 something. Paul lives with son's aunt off 44th Wilshire, 759-7481. I work for Chiefa, C-H-I-E-F-A, 968-1041. I called Gloria's home and she just said she's dead. Ron Buffers, B-U-F-F-E-R-S, last night, she used cocaine, she liked to have fun. Linda knew all the shoddy characters. Had called her the night before, had called her the night prior, threatened to do this and do that. Talking real stupid. He did the right thing and not. Jackie. Tarica is with sister Stephanie, 473-4119. Leslie Robinson, brother of victim, 383-5275, 1536 South State, one block, 848-3815. Sharon Vale, 728-3637, Betty, 572-2683.

Date, 2/8/93, 596-9336, 0825, 10/7, ME's Office. Autop of victim Robinson begun. Victim wearing blue jeans, slash, no shoes or socks. White UCLA sweatshirt, two gold chains, one with leaf pendant, white nylon panties, white bra. Laceration on top of left hand, parenthesis, thumb, parenthesis, tears in shirt above both sleeves, tear in left knee, minor scratch on left knee, parenthesis, torn jeans, parenthesis. Large laceration on right lower inside forearm, slash, other minor scratches on upper portion of arm, parenthesis, inside. One puncture type wound below breast. Several superficial lacerations near nipple and right breast. Stab wounds and left upper arm, slash, left lower arm. One wound in back. One wound right side back just below shoulder. Most wounds are right to left and approximately 3 inches deep with one 7 inches deep. Monitor pads on either side of shoulder and right side buttock area. Total of four wounds on left hand,

left arm, through and through, parenthesis, and left upper arm, parenthesis, outside. Hit left lung three times, two wounds. Liver also hit. Extensive internal bleeding. Right lung once. No wounds to heart area.

Schawonika, S-C-H-A-W-O-N-I-K-A, Elliott, B/F, 7, parenthesis, niece, parenthesis. Parenthesis, mother, Gloria Elliott, parenthesis. She said boyfriend, Douglas Gover, Glover, G-L-O-V-E-R, her mom's boyfriend. Being babysat 10 months old, TJ. Tenisha too, Schawanika, S-C-H-A-W-A-N-I-K-A. Tarica went to Spinning Wheels at about 9. Schawanika sleeping in living room heard fire alarm. Victim has been seeing a black male named Fred per her daughter, 40's, 5 foot 4, parenthesis, short, parenthesis. Mom got call previous night from Bo, dash, Babe, B-A-B-E, parenthesis, friend of aunt, parenthesis. She didn't want over also, didn't want. Leslie Robinson, dash, brother, got notified by other sister. George Caldwell, C-A-L-D-W-E-L-L, asterisk next to name, in military. 38, blue and gray van. Raymond Basherville, B-A-S-H-E-R-V-I-L-L-E, 15-16. Knows George, his mother knows George. Asterisk, Jackie Field, F-I-E-L-D, 473-7134. Stephanie Robinson, parenthesis, sister, talked to victim's sister about 10 P.M. Discussed church and taking child. Elizabeth Nelson, Michele Blaze, B-L-A-Z-E, parenthesis, lived downstairs below apartment 4, parenthesis. Victim frequents NCO Club. Last week her boyfriend over, B/M, tall, medium build, sharp dresser. 10, dash, 10:45, saw red or colored fast back, parenthesis, small, parenthesis, leave apartment. Gloria knows Jackie, talks to victim 4 to 5 times a day. Elliott, E-L-L-I-O-T-T, Heather, dash, lives off 7200 and Golden Givens. Billy called her from there. Per Gloria, parenthesis, sister, parenthesis, victim not seeing anyone regular, but Fred used to go to school with her, B/M. John Randolp, R-A-N-D-O-L-P, B/M, worked for Yellow Cab company, 475-4205. Was very interested in the victim. They dated. He drives green Toyota. Went out with victim on and off for 4 months. Patty Lewis worked for Yellow Cab. Knows John Randolp, 43, B/M.

1220, entered motel receipt and taped interviews on Musselman, Todd, homicide, case number 93-031-0152.

1335, contacted by George Caldwell, HHC, 21 Inf., I-N-F, 9/1956, 967-2386. Was talking to victim when she put phone down.

10/7, 17516 10th Avenue East, regarding a homicide follow-up. Contacted Gloria Elliott, E-L-L-I-O-T-T, J., B/F, 6/8/50, parenthesis, sister, parenthesis. Contacted Caldwell to let him know. Fred Ross, R-O-S-S, went to school with him. Went to school, Foss, Mount Tahoma. Betty Knight, dash, Candy, mother. Her baby is nephew. Ross had been coming over to the house. Leslie Robinson, Junior, 383-5275, Frederick Ross, 11/4 of '56. B/M, five foot eight, 155, 5630 North 39th. 3228 Union, 1824 North Lenox, I believe. Contacted Caldwell, George E., B/M, October 1956, 2105 167th Street Court East. 2 slash 1. 536-3567.

1640, 10/7, Ft. Lewis, HHC Inf., I-N-F motor pool. Case number 93-037-104. Called victim at about 10 P.M., talked 10 to 15 minutes. Gloria, her sister, watches. Never. There were other people at the house she was babysitting. Someone came to the door. She said I got to go see who is at the door. After the person came in he said something. Shortly after he said something. She got defensive, defensive on okay, okay, okay. Then he did it again, okay, okay, okay. Every guy I know she called, okay, okay. Last person she talked about. TFT, 253, Ross, Fredrick Marion, lives with grandmother, 1824 North Lenora Street, Tacoma, Washington. Albert Earl Wade, friend, used to live with McGruder, 5401 South 12th, building 2002. Friend she met, 761-2655. Bo-Babe, 66th and Oaks, big white house, 473-7086, 6610, 6210 South Oaks, white house, blue trim. Jackie Field, 473-7134. Victim had gone over to Caldwell's residence Friday night with Tarica and, Tinernan Village, T-I-N-E-R, Tinerer Village, T-I-N-E-R-A Village, 2545 Narrows, Apartment number 2102, 752-5174. Thema, T-H-E-M-A, Delespine, D-E-L-E-S-P-I-N-E, Martin McGruder friends, B/M, hairdresser, TNG Beauty Shop, 3839, birthday October. Roy, parenthesis, in military, parenthesis, Chrysler New Yorker, 3 slash 11th, First Sergeant BAT, parenthesis, with him on New Years, parenthesis. Heather James, 536-6470.

1115, contacted PCSO Detective Division by Ross Fredrick Marion. Advised of rights. We went to school together, me, her, and her brother, Charles and Charles' ex-wife, Vickie Kinner, K-I-N-N-E-R. We were all friends. Always wanted to but I never did. 90 or 91 I ran into her at Brown's Star and Grill. Then a month later I left for Las Vegas. She told my sister, Debbie Jones, that she was trying to locate her. She gave Debbie her phone and my sister's number and called me. Said that Linda had come to church and had given her phone number, and my sister gave it to me so I called it. I went over to her house on Monday, two weeks ago, which I think is the first of February. Stayed about five to six hours. We were kind of just catching up on people we both knew and what our plans were. She told me she had gone out some married guy, but broke it off because they couldn't go anywhere with him because he was married. I talked to her several times on the phone, Thursday and Friday night. I told her I was going to hustle some money so we could go out. I told her if I get some money you go to show or shoot some pool. She told me that if I didn't get any, get some money, she was going to get some money and a guy's vehicle or truck. She said they were friends and she used his van before. She said she kept it once for two to three days. It was around 10:15 o'clock at night. I was kind of embarrassed because I didn't get any money. Saturday night I didn't call her because I didn't get any of the money to take her out. She said if she hadn't heard from me by 5 she was going to get some wheels and do something. I'm not going to sit around. When we talked Monday she said that on New Years' Eve, the married guy walked in on her and another guy. My sister called me Sunday morning and told me Linda Robertson had been killed. I felt really bad because if I had taken her out, it wouldn't have happened. I drive a blue 76 Ford Maverick beater type. I tried calling on Sunday and got answering machine. I figured that you would be getting in touch with me because she talked with Jackie Field. Never asked her to marry me, no sexual relationship with her. Married guy who lives in Puyallup. Early in the afternoon Saturday, I hooked up with my

brother, Mike, and my sister, Renee. We took her and got her a motel and stayed with my brother until 1, until 3 o'clock. Grandmother, Thema, T-H-E-M-A, Delespie, D-E-L-E-S-P-I-E, 752-5174, mother, Barbara Brown, 759-0427, 7368 South Wilkenson, #B, 10773 68 South Wilkenson, #B, Jackie Field, 473-7134, Jacquelyn Y. Fields, 7/30/59. Foster sister, Gloria's daughter, Schewanna, S-C-H-E-W-A-N-N-A, 7. Stephanie's son, TJ, 10 months. Annie Karisa Bo-Babe, met him through Tarica. Bo-Babe called Friday night and was talking. Didn't want anything to do with him. Mom says she really didn't want meet.

2/10/93, 130, Nancy Sutton. 591-6509. Shawonika, S-H-A-W-O-N-I-K-A, 7. Tarica Annie. Jerome Edward Slack, B/M, six five, 245, 5258, 6210 South Oaks, 473-7086. Roy Hubert, 3 slash 11. F slash A, B Battery, 967-7128.

2/11/93, 1025. 10/7, 6210 South Oaks. Known Linda since '89. Met her through Lisa Ballet, B-A-L-L-E-T. Called by Lisa Ballet, B-A-L-L-E-T. Used to work with my wife. Just a friend. Hasn't seen him for 3 weeks. Talked to her Saturday morning and Saturday afternoon. Big guy named Lee. Said she was friends, and Mark. 536-4862. She told me she lived on 162nd. She gave me her address and a week and a half ago. 12, or she called and I talked to her for five minutes because I had company. I know Mark and Lee and they were already, they were the only ones I know. I, we have all Saturday evening with my wife, Darlene Slack. Saturday night my wife and guy Carl never left the house.

1058, parenthesis, Lee, L-E-E, 10/7, 6844 South Lawrence. Leslie Robinson, Junior, 383-5275. Steward, Timothy Wayne, white male, 7/22/56. 10705 149th Street Court East, 98374, dash, failed to stop, failed to provide proof of insurance. 284663215OLN367MU.

(File 2)

Continuation of recording.

This will be 2/12 of '93. S slash A, Michael W. Steward, S-T-E-W-A-R-D, CID, 987-3151, 584-4910. First Sergeant Roy Hubert, H-U-B-E-R-T, B Battery 3rd BN, 11th F slash A. Duty phone 967-7128. Interview appointment with Nancy Sutton to interview Shawonika, S-H-A-W-O-N-I-K-A, age 7, at County City Building, 0930 Thursday 18th. Then I have a First Sergeant Roy Hubert, B Battery 3rd of 11th Field Artillery, 451021036. 967-7128. First Sergeant B Battery 3rd of the 14th, F slash A, April 14th, 53.

Next page, 2/16/93. Homicide victim Linda Robinson, B/F, 12/14/53. Albert Earl Wade, 5401 South 12th, Building 2002, 761-2655. In parenthesis, Martin McGruder, hairdresser at Beauty, parenthesis, Tine, T-I-N-E, Lakewood Mall, TMG. First Sergeant Roy Hubert, 3rd of the 11th Field Artillery, B Battery, SS Number 451-02-1036. B/M, 4/14/53. Duty pho 967-7128, 967-

7128. Home, 584-4910. Bloody knife, sawed off shotgun, case number 93-038-0408. Found by apartment manager between 2627 Driftwood.

1130, contacted by Albert Earl Wade, 6/18/55. Case number 92-037-1041. Albert Earl Wade, 6/18/55. 5401 South 12th, Building 2002, no phone. Hairmasters Lakewood Mall. Linda Robertson, known Linda. Barry, Barry Merriweather, Vets CERTL, B/M, 256, six foot two, brown, black. Mark McGruter. Howard, 6/21/53. Lee Chandler, that's C-H-A-N-D-L-E-R, dope connection. 6844 South Lawrence. Used Linda as a runner. She was smoking rock. 471, 1-0163, 931-2069, underline biz, B-U-S. Chandler, known to be violent when it came to dealing with his dealers. Parenthesis, sister, dash, Sylvia, S-L-Y-V-I-A, 572-5986. Butch, husband. Paul Miller, 383-5500, 917 Pacific Avenue, Suite 417, 1530 appoint, 2/19/93.

12/18/93, 0942. Contacted at CCD by Gloria Elliott and daughter, Schawonika, S-C-H-A-W-O-N-I-K-A, B/F, 7. 17516 10th Avenue East, 98387, 535-6122. Interview of daughter conducted by Nancy Sutton of Pros Office. No new info obtained. Subject asleep inside of apartment until awoke by sound of smoke alarm.

1109, contacted by phone by Leslie Robinson. Advised that Mark McGruter is working at Hairmasters, Lakewood Mall, lives on Hilltop with Charlie Walker.

1851, contacted Chandler Lee Howard at 6844 South Lawrence, biz phone 931-2069. B/M, 6/21/53. Trans subject with Lieutenant Carder to Lakewood Precinct, P-R-E-C.

1915, 10/7, West Precinct with Lieutenant Carder and subject Chandler. Subject advised of rights, 1920 hours. Took non taped statement from Chandler. Has known Linda one and one half, one and one half, dash, two years. Known through Sylvia and Butch. We were friends. She would come over and smoke crack. My wife and I separated in April, then Linda started coming over to the house in May or June. We were just friends. She would bring rock over and smoke it on the weekend. Sometimes we would drink wine. A couple of times we had sex, Oct or Novem, somewhere in there. Last time I saw Linda she came over two weeks ago about 1 A.M. to see what I was doing, because I hadn't seen her but once since January 7th. She stayed for a little but left, and that was the last time I saw her. I'd been to the apartment where she lives. Was about the 2nd week of January. She moved into that apartment in Spanaway in December. The only other guy I know she knew is Mr. Champion, an older guy. Linda asked me if Mark McGruter could stay with me in September or October while she stayed with her sister, Gloria McGruter. Lived with her and her boyfriend. I kicked him out of my place because he wasn't paying his bills and he was not, eating me out of house and home. She told me not to tell Mark where she lived because she didn't want him living off her. She told me Tanica didn't want him to live there either. I didn't know it, parenthesis, McGruter, parenthesis, had happened until Jackie came by on Sunday and told me. On Saturday night I left the house, I got rock. I wasn't

gone more than 10 minutes. My wife was there. My daughter would have been in bed. Wife, Margaret P. Chandler, 48, daughter, Meleisha, M-E-L-E-I-S-H-A, 13, student at Gray Medical, Middle School. Linda used to borrow a van and red pickup from a guy named George. Never knew her to get mad at someone enough that they would do something like that. She used to get crack off of 46th and McKinley. No side, north side of 46th, east off of McKinley, 3rd house down. Old Ford Maverick parked out front.

3/19/93. Learned from Champion, lives with Gloria Ellis, Elliot's boyfriend, 582-0111. Mary Robinson, 572-9027.

1039, contacted by Lee Chandler, who advised of subject Billy. Arrangements made for polygraph, 1000 hours, 2/20/93.

1140, contacted Leslie Robinson, Gloria Robinson, Willie Champion, 3, 582-0111.

2/20/93, 0858. 10/8.

0922, 10/7, office. Contacted Ident Officer Victor. Reviewed questions for subject Chandler regarding poly.

1003, contacted in office by subject Chandler. Introduced Mr. Victor and poly exam began, begun. Subject Chandler failed polygraph per Ident Officer Victor. Post poly interview with Chandler conducted by myself and Detective Rouseff. Subject denies any involvement in death of Linda Robinson.

Subject, 1340, subject booked into County Jail on unrelated District Court, Muni Court warrants. One Tacoma PREC 921466, FTR. One Tacoma PREC 973903, Failure to Appear, Criminal Assault. One District #1, 92C, as in Charles, 044258, Criminal. Subject advised of rights.

1405, 10/7, 6824 South Lawrence. Attempted to contact, attempted to locate Margaret Chandler. Met negative results. Left message with daughter, Meleisha. Contacted Margaret Channel, Chandler, with Detective Rouseff. Enroute CCB with Margaret Chandler.

1618, 10/7, CCB. Advised of rights via rights form.

1622, took taped statement from Margaret Chandler, B/F, 10/14/44. Knew murder occurred on Saturday night. Advised by Jackie on Sunday that she got killed. Stated Husband went out maybe 10-15 minutes. Brought something to drink and then went and got some rock. 9 or something, daughter went to bed. 8:30 to 9 o'clock he said he was gonna go, then be back, 66th and Oaks. He then went to the Lively Market, which is on 70th and Oaks. He's gone maybe 15

minutes. He got the rock from Timmy, Timothy. Gray house on 66th and Oaks. Left here, left half side just before the light. He said he was going to leave and he took the car and went down and then he went to the store and got some pop, about 9:30 to 9:15. He wasn't gone more than 15 minutes. He was having car trouble, can't remember. He might have rode the bike, my daughter's bike. He has stopped me. I saw her after I first came back. Lee told me she was running around with a bunch of guys. Maybe she had a drug deal going or she burned somebody. I told Lee, I said well, you know, God knows I know you didn't do it. Lee cried after he learned she was dead. If so, if you want me to test, I'm not afraid, I'll take a polygraph. I know my husband is not capable of this. I know him. He helps everybody out, just like he helped Linda out. Kept her boyfriend there. I thought they, parenthesis, he and Linda, parenthesis, were friends. He called her sister. I'm not really sure how he felt. He might have took the bike. I seen her twice since I've been back. I don't like her.

1715, enroute to County City Building with Margaret Chandler to residence at 6844 South Lawrence.

1731, 10/7, 6844 South Lawrence, dropped off Margaret Chandler.

1749, 10/7, County Jail. Dropped off phone number for Lee Chandler.

1826, 10/8.

1859, 10/10, residence.

2/22/93, 10/7, office. 1042 hours, took taped statement from Lee Howard Chandler. Subject advised of rights, signed rights, also rights on tape. Denied involvement in Linda's murder.

1106, tape turned off. Advised Roy subject, says girl named Money told him that Linda had a big drug debt and was killed for it. Owns 1968 Grand Prix, 1982 bluish Pontiac Phoenix, parked 2 blocks west of South Alaska, 492LYK.

1549, interviewed victim's sister, Sylvia Patrick, 814 South 13th, Apartment #1, 572-5986. Took taped statement. Used to live with Lee Chandler. Stephanie, 473-4149.

1550, contacted Patrick, Sylvia Lucinda, L-U-C-I-N-D-A, 10/22/59. 814 South 13th, Apartment #1, Tacoma. Fred Meyer, 756-9280. Hus, dash, William. Lived with Lee Margaret Chandler from October through April. Helped them out. They would smoke. Linda would tell me that Lee would call and have Linda go and get the stuff and bring. I knew Linda would go over there. Him and Linda were smoking buddies. I heard two days before from Linda that he, parenthesis, Lee, owed her some money and that he was coming over to pay her back. I was there.

1610, took taped statement from Sylvia Patrick, parenthesis, sister of victim, 93-037-1041. Contacted William E, 4/11 of '54. Met one time at Linda's house, July, August. Went out with him New Years' Eve. Stayed at friend's house, dated a little bit. Has called and never leave. Had home phone, wife gone to Jacqueline, wife's some for 3 months. Somalia. Wife gone to Somalia, wife gone for 3 months. Eric works at Boeing.

1940, contacted First Sergeant Roy Hubert. Conducted interview. 10/7, Lakewood. The First Sergeant E-8. December, January, 92, met. Victim stayed off Pacific. 27th, lost time, dock, dropped, parenthesis, Detective Page took notes, parenthesis.

02/24/93, 0858. Office.

0942, 10/7, 1607 South Ainsworth with Detective Rouseff. Contacted Mark Anthony McGruter. Black male, 10/12/54. Agreed to accompany to CCB for interview.

1014, 10/7, CCB with Mark McGruter.

1027, took taped statement from McGruter. Advised of rights. Has known Linda for 7 years. Indicated that Chandler has pressured Linda and approached her with offers of money for sex. Agreed to take polygraph.

2/25/93, 0931. Picked up Mark McGruter, transported to CCB.

0944, introduced McGruter to Ident Officer, poly operator Van Victor.

1139, polygraph completed. Per Victor, McGruter truthful.

3/2/93, 10/7, office. 0958, 10/7, 6844 South Lawrence, with King-69.

Just above that, there was an entry on 3/1/93, 0813, 10/7, office. Contacted Reinicke, Detective Harris, WSP, 430-0888. Trooper Morris stopped on 2/26/93, in Longview for DUI. Attorney Gary Glover.

(File 3)

Okay, I think that will be the completion of dictation on this particular incident.

Attachment “E”

Pierce County
Sheriff's Department

930 Tacoma Avenue South
Tacoma, Washington 98402

Pierce County Case No. 93-0371041

February 26, 1993

To: Detective James O'Hern, #66

From: Van D. Victor, Polygraph Examiner

Re: LEE HOWARD CHANDLER, JR. POLYGRAPH EXAMINATION

[ ] Pass [X] Fail [ ] Other

On February 20, 1993, Lee Chandler voluntarily submitted to a polygraph examination to investigate the truthfulness of his statements regarding the Linda Robinson homicide case. The scope of the examination included relevant questions to cover any direct involvement on his part, any peripheral involvement, and/or any guilty knowledge.

During the course of the pre-test interview, subject Chandler denied any involvement whatsoever in Linda Robinson's death. The information he provided to me about his association with Linda Robinson was consistent with what he had told in previous contacts with Detective O'Hern. Chandler described Linda as his "smokin' buddy", explaining that they would get together at each others' homes to do crack cocaine. He told me that their association became closer within the recent past when he and his wife were going through a temporary separation. Chandler indicated that during that period, he and Linda had sex a couple times -- but for the most part, they were just "buddies." He added that his wife had gone away with a boyfriend, but had recently returned so was hopeful they could rekindle their relationship. He claimed that since his wife's return, he was taking steps to separate his ties with Linda. The subject offered that the last time he saw Linda was "about the middle of January", and claimed that his last telephone contact with her would have been in that same time frame. He denied any more recent contacts with Linda. Further, he denied any exchange of violence, threats, or arguments in his relationship with Linda. In fact, he added, "I never tried to hurt anyone."

Additional information that I learned about subject Chandler during the pre-test interview included the following. He disclosed that he was arrested once for a domestic violence assault on his wife, recalling that it was approximately three to five years ago. I asked him what prompted that situation. Chandler told me that at the time, his wife had just been released from drug treatment. He indicated that he spotted her on a street attempting to make a drug purchase. He admitted that he lost his temper and struck her. This assault was apparently witnessed by a Tacoma police officer who arrested him. He claimed that this flare up with his wife was an isolated incident, offering that it was prompted by his surprise that his wife had returned to the drug scene so quickly after completing treatment. Chandler added that his wife introduced him to crack cocaine, and that he has been using it in the past year.

cont. of Lee Chandler's polygraph results of 2-20-93.

Subject Chandler volunteered information about another recent incident in which he solved a problem through physical violence. He explained that a man named William Patrick had been staying at Chandler's residence. According to Chandler, Mr. Patrick was drunk one night and was asked by subject Chandler to leave. Apparently, there was also some dispute over Mr. Patrick not paying his share of an electric bill that was due. Chandler admitted that he lost his temper and assaulted Mr. Patrick. When I asked Chandler what prompted this assault, I was told that Mr. Patrick had lied to him.

Before the start of the testing phase, all questions to be used were discussed with the subject to ensure clarity and comprehension. It is noted that Detective O'Hern monitored portions of the polygraph process through a separate but adjoining viewing room.

Results. There were significant emotional disturbances indicative of deception in the subject's polygraph records on the following questions.

1. Do you know who stabbed Linda Robinson around the time of her death?
   Answer: No.

2. Around the time of her death, did you stab Linda Robinson?
   Answer: No.

3. Right now, can you lead me to the knife used to kill Linda?
   Answer: No.

4. Were you there, at Linda's apartment, at the very time she was stabbed and killed? Answer: No.

It is the opinion of the examiner, based upon the subject's polygraph test, that the subject is attempting deception in his answers to the above-listed questions.

After the test, I confronted subject Chandler with the results, and I encouraged him to provide a truthful statement about his involvement in Linda Robinson's death. There were moments during this post-test interview when subject Chandler's eyes welled with tears, but ultimately he maintained denial. I then escorted him to detectives O'Hern and Bill Rouseff. Chandler expressed a willingness to be interviewed by them. Refer to Detective O'Hern's reports for information about this follow-up interview.

No further information.

vv

Attachment “F”

SUPERIOR COURT OF WASHINGTON
COUNTY OF PIERCE

STATE OF WASHINGTON **Plaintiff** v. JAMES MITCHELL **Defendant**	**NO. 14-1-02979-1** TRANSCRIPT OF INTERVIEW OF RETIRED DETECTIVE JIM O'HERN ON MAY 14, 2015

Present for Interview:	Interviewee	Retired Detective Jim O'Hern
	Defense Investigator	Mike Dahlstrom
	Defense Attorney	Mary Kay High
	Prosecutor	Steve Penner

Transcription by: DeAdra Benton
6632 S. Oakes Street
Tacoma, WA 98409
(253) 209-9178

DAHLSTROM: Alright, so today's date is May 14, 2015. It is approximately 9:44 am. This is the State versus James Mitchell; the cause number is 14-1-02979-1. We are going to be interviewing retired Detective Jim O'Hern…and do I have your permission to record this?

OHERN: Yes, you do.

DAHLSTROM: So for the interview (unintelligible) introduce themselves and acknowledge that it's ok to record.

PENNER: Steve Penner, ok to record.

HIGH: Mary Kay High, ok to record.

DAHLSTROM: Alright. So…did you retire out as a detective?

OHERN: I was a Detective Sergeant.

DAHLSTROM: Detective Sergeant…and when did you retire?

OHERN: I…retired February 25th of 2005.

DAHLSTROM: Ok. And during the time you were there, what type of assignments would you do? Would you…

OHERN: The last 18 years I worked uh, Homicide and Missing Persons. We called it Death Investigation Missing Persons.

DAHLSTROM: Ok.

OHERN: Um….I was a detective from…from uh, August of 1981…till I retired as Detective Sergeant in um, February of 2005 so…those last 23 years, 24 years was all investigation with the department.

DAHLSTROM: So…safe to say that on February 6th too…in 1993 you were working as a detective at that time?

OHERN: Correct.

DAHLSTROM: Were you a Detective Sergeant then?

OHERN: I don't believe we had classif…re-classified it. I think I was just a detective…

DAHLSTROM: Ok.

OHERN: ...that didn't come until later.

DAHLSTROM: So prior to handling that particular homicide, how many homicides had you been on?

OHERN: Well I was working about three at the same time...this one came along...cause I remember...the other cases. Uh...but...I actually, as a primary lead detective...uh, I started in '87. Uh...and we had a few really, really busy years between '87 and uh, '90 where we had up to 30 homicides...and so...I couldn't tell you as far as the primary lead detective, but I would say probably...20, 30...either in some kind of role...um...that included officer involved shootings...or...which were also classified as homicides so um...but I'm just guessing. I'd have to go back in my notebook and look.

DAHLSTROM: So strictly talking about '93, what type of training did you guys have when you do homicide training?

OHERN: Well I went to Basic Homicide Investigation class, I went to Advanced Homicide Investigative class...um, I went to Crime Scene Investigation classes, Interview and Interrogation classes...some a these were put on by the Washington State Training Commission. Others were put on by the FBI...um...

HIGH: Uh huh.

OHERN: ...and a lot of it is...you know, is OJT, too, you know...

DAHLSTROM: Uh huh.

OHERN: ...when you're-you're learning as you go. I was...when I was a young detective I used to try to tag along with senior detectives if they had a death investigation, homicide so I could uh, pick up some information on-on how to accurately do it, but...from '83 on I...I went to a number of different schools and classes. Uh, I just don't have the list of em in front of me so...

DAHLSTROM: And during that time period, did you guys have a set protocol? For when you got on scene?

OHERN: Well...it wasn't a set protocol....uh...I knew what I needed to do as the lead detective. Uh...I went through a certain protocol which

1 related to…my arrival on the scene, documenting
2 times…documenting other people who are at the scene…uh, documenting the weather conditions as I saw them as I arrived. But it
3 wasn't a standard written protocol…

4 DAHLSTROM: Uh huh.

5 OHERN: …if that's what you're asking…

6 DAHLSTROM: Ok.

7 OHERN: It was protocol that I had learned from…um…going to other death
8 investigation scenes with senior detectives that had been there a lot longer than me.

9 DAHLSTROM: So, from what you just said if…what would be your protocol from the
10 lead detective aspect of it? I mean well you just talked about…

11 OHERN: Well…

12 DAHLSTROM: …documenting the time you arrived and stuff.

13 OHERN: Yeah, first thing I need to do is…how many, how many people I have
14 on the scene…and then I need to get a…some understanding of that
15 type of a scene I have…before I even go in.

16 DAHLSTROM: Uh huh.

17 OHERN: So that I need to uh…delegate, if I need to delegate detectives for uh,
18 you know, neighborhood canvassing, documenting the scene itself uh…if I need more patrol officers, you know, so…I usually contacted
19 the…the Sergeant who was ever on the scene, that's usually the person I went to…and then he could direct me to the officers that
20 were the first responders, so then I can get their information and then…from that…I would also make sure that the forensic people
21 were…had been dispatched or…a lotta times they beat me to the scene so they were there. Um…I needed to know what I had for a
22 pool of people to be able to, you know, successfully work the scene. If I needed more detectives…
23

24 DAHLSTROM: Uh huh.

25 OHERN: …you know, I can let dispatch know that I needed more than what
26 was there. So that-that was kinda just getting a briefing of the…of

what I was dealing with…and then uh, usually I would…if I was the lead detective and I believe I was on this case…and then I would uh, delegate people to do different things, you know, if I needed somebody to knock on doors or…canvas…I'd do that. And then I'd just…gradually work myself into the scene.

DAHLSTROM: Uh huh.

OHERN: And (unintelligible) being careful, make sure that I had…proper forensic individuals there to…collect what I needed to be done, and then uh…back then, usually…the lead detective would usually was the one who…who uh, documented the scene, just…looked at it and uh…but I can't remember back…in '93 if I was into recording the scene my early years as a detective it was, I just strictly used a notebook and then uh, as I got a little more seasoned I started using a…a tape recorder…to document.

DAHLSTROM: So that was leading into my next question, did you always carry a camera and a tape recorder with you?

OHERN: Yeah, used to…we used to…I came on in the Stone Age so we started off with Polaroids…and then uh, I don't think in '93 we'd gone to digital yet. I don't think I got those for a while so…we'd usually snap a few Polaroids…and…Polaroids were…so that when I sat down with my notebook and my notes…at a table like this…in front of my computer…I would have a visual as to what I saw. Usually I didn't take more than…half a dozen or a dozen…and I didn't do it all the time, you know, it just depended on what I was dealing with. And then those became part of the evidence packet, you know? Just…and so…I had a camera and I usually had a tape recorder with me.

DAHLSTROM: Ok, and…when you did your walk through…did you mark items of evidence you…

OHERN: No.

DAHLSTROM: …wanted collected? Or do you just looked at em? Did you photograph where they were at?

OHERN: No. Usually what I…my-my-my job was just strictly to…go in…and determine what was there…uh, the forensic investigator at the scene was responsible for the marking…collecting and photographing (unintelligible).

DAHLSTROM: Ok.

OHERN: My photographs weren't so much to document…specific items….as much as it was the general…like if I was walking in a room like this and there was a body in the middle of it…I'd want a photograph of…what I'm looking at so when I sit down and…

HIGH: Right.

OHERN: …look at my notes I can…accurately…you know, have a recollection of what I saw. That's all, but it wasn't….wasn't for uh, evidence collection at all.

DAHLSTROM: Ok so…now I kinda wanna move to that date and I know that you actually have had a chance to go over your notes because you had to transcribe them so…

OHERN: Yeah, I had to translate em and read em so…yeah.

DAHLSTROM: So that…having that in mind, would you kinda walk us through the crime scene and what you did and what you saw and…

OHERN: Well…

DAHLSTROM: …all that stuff?

OHERN: …honestly I…I can't…I mean…my notes kinda depict you know, what was there. I remember that there was a, there was a female victim that was deceased from stab wounds…and as I recall in my memory…there was a lotta blood. I mean…it was a pretty bad scene. Um…and I remember there was something on the stove…uh, in the house. I was informed by someone there that uh…um, I believe it was her niece, awoke to the sound of a smoke alarm. There was a pot of something burning or steaming on the stove. I remember forensic investigator Schlasser in there. I have no recollection of the specific patrol officers…cause all I did was write down their unit numbers. I didn't write down their names. Which is usually what I did, and then I could go back and…look at a roster sheet and determine who all was there. Um…but as far as specifics on it…I'll tell ya, quite frankly, without lookin at my reports…I couldn't tell ya exactly…what I did. I know I wrote down a lotta license numbers in the parking lot. I wrote down the license number of every car that was there. Um…I talked to most of the officers in there. I remember…directing uh, a forensic investigator on…you know, what I wanted to have done, which was

basically…I let them do their job. I don't say pick up this item, mark this item…do this, do that, take a photograph of this or that…because that's their field of expertise. So I…you know, unless something hadn't been done that I wanted to have done…I usually would not stand over their shoulder and say…I want this shell casing photographed from this…these different angles. I'd let them do their thing and I would do mine.

DAHLSTROM: So knowing that you just said you hadn't looked at your old reports…

OHERN: I have not seen them since I did em.

DAHLSTROM: This is…one of your reports and it's Bates stamp 33…

OHERN: Ok.

DAHLSTROM: …and it's one of 12 pages…

OHERN: Alright.

DAHLSTROM: If you wouldn't mind taking a look at that…

HIGH: Mary Kay High for the tape recorder. I believe that was kind of your general…overview report.

OHERN: Right. So I probably…yeah…I uh…and this would have been dictated after the fact. I would have dictated this and given the tape to one of our transcription people. And I usually do that…I sit down…with my notebook…with any photographs that I may have taken…and my memory as it was when I was only 47 years of age…and uh…I would basically dictate what I saw. And uh…I believe back at this time I was pretty much walking through the scene with a recorder.

DAHLSTROM: Uh huh.

OHERN: And recording what I saw, what I did…um…I don't…first couple years I was a Homicide Detective I wasn't experienced enough to know to do that and finally…one of the other detectives said…you know, you need to start doin that cause…so…if you-you look through the report, you can see that…none of the specifics are in this notebook. So I know I dictated it as I walked through.

HIGH: Ok.

DAHLSTROM: So that being said then…somewhere those cassette tapes are still available?

OHERN: No, usually the…usually the transcription tapes were never kept. They were, they were recorded and then…transcribed onto here and then…because it was done verbatim…and then usually what I would do is when I would get this report back, I would go through it…and check and make sure that everything that I said was what I wanted to have…put down, that there weren't any errors…uh, usually our…our transcription people were really good. I didn't have to really…sometimes I would make a mistake…on a direction. I might say northeast when I meant to say northwest…well I didn't know that when I'd read it…that I dic…that I dictated it wrong so I might go back and say…um…can you correct this? I meant to say that was…in the northwest corner versus the northeast corner so that type a thing…but no, these tapes were never…never kept after they were used. Fact sometimes we used em over, we just erased em…and then…because they weren't…they weren't really evidence. They were just my words about what I did…that were transcribed.

DAHLSTROM: Ok. So…as you look at that…one of the things you had mentioned earlier to us that you had somebody take down all the license plates in the parking lot…

OHERN: Oh, I wrote down a buncha them cause I saw a buncha them in my notebook. So I know that I wrote down…and I believe in the transcription that I gave to the Sheriff's Department, I just went through my notebook page by page and…and…and I…I think I gave you a bunch of license plates (unintelligible) and license plates of cars that were parked in the parking lot that day.

DAHLSTROM: And when you direct somebody to do that….do they….

OHERN: Sometimes I direct somebody…sometimes I'll do it myself. If…if I'm getting it…if I'm arriving at the scene um, sometimes I'll get out and say…you know, arrived at the scene on the northwest side of the building. I noted the following vehicles in the parking lot…and…I'll just dictate the license plate numbers, the descriptions of the cars. Sometimes I'll get there and things are so chaotic I'll have somebody else go down and do the scene for me. This particular day it looks like I did the scene.

DAHLSTROM: Ok.

OHERN: Which was the norm back then.

DAHLSTROM: So that being said then…you would have somehow or another generated some type of paperwork on what cars were there, the license plates of that car…who the registered owner might have been…

OHERN: Well not necessarily the registered owner. I wouldn't…probably…unless there was a relevance to the, to the registered owner, I might not…I might not have gone back and…and got a registration on the car. I noted the car was there…I noted a license plates of the car…and that was just part of my scene description.

DAHLSTROM: Ok.

OHERN: Uh…now if there was…some relevance where I was trying to identify the owner of a specific car for a specific reason then I might…or I might have somebody else do it. And I might say Detective A, could you run all these license plates for me and give me registered information and then…do some criminal records checks on it so…and I…quite frankly, specifically I have no specifics of whether we, I ever did that or not.

DAHLSTROM: Ok.

OHERN: But I did notice…in my notes, that I had a buncha license plates written down so I'm assuming those were ones that I saw that were there when I pulled up and so I just made a little note of em…

DAHLSTROM: When…as a homicide detective in that particular era…did you have a murder book that you set up and keep contact with all the stuff in it that you have done from the time you were on scene to…the time that you either get it adjudicated or…

OHERN: A murder book? You're talking about what…

DAHLSTROM: Well, I was a California homicide guy so…

OHERN: Uh huh.

DAHLSTROM: …I'd set up…from the time I got on scene I would start with…on scene, these are all my notes, this is the stuff…

OHERN: That's what I did. That's it.

DAHLSTROM: And then every report that came in to me since I was the lead detective, it would go in that sleeve, that sleeve, that sleeve…

OHERN: Well, yeah we did keep a homicide book.

DAHLSTROM: Ok.

OHERN: Kept, we kept a…but I…

DAHLSTROM: Different (unintelligible).

OHERN: Yeah. And sometimes if I had an ongoing investigation my book might just be sittin on the shelf because…unless I had developed a case…sufficient for…prosecution purposes, I wouldn't make up a…book. I wouldn't make up a book.

HIGH: Uh huh.

OHERN: Because the only time I really needed a full book with everybody's report in it, itemized and indexed is when I sent it upstairs.

DAHLSTROM: Ok.

OHERN: For review.

DAHLSTROM: That makes sense.

OHERN: So…a lotta detectives would have folders just stacked with reports on their desks and…you know uh…so…you know, those type a things or you had ho…you had several different homicides goin on at the same time so…

DAHLSTROM: So now…I now you didn't get…take very much time to look at that, but kinda going back to you getting on scene and…what was it like on the outside, do you remember…or does it start…any memories at all about this case as far as who you contacted on the outside walking up…what information you got before you ever walked in?

HIGH: Yeah, and if you wanna take, you know, some time here to just read your report, that's fine.

OHERN: If I read a 12 pager, it'll take me…

HIGH: That's ok.

PENNER: No, you could, you could scan it.

OHERN: I can scan through it…

PENNER: Skim actually, scan makes…very closely…scan…

OHERN: Well I contacted Detective [Mintern] and Sergeant [Weest] (unintelligible)…and…made contact with them. My uh…my report reflects what I saw…and…it also reflects the description of the body of the victim as I saw it. And the interior of the…of the uh, house. Looks like about the first 6 or 7 page….are just basically me walking through…and then there…I made some notes of the…my supervisor, Lieutenant Carter arriving on the scene, as well as Detective [Loren Page]. And then I went on to describe the uh, apartment in a little bit more detail. I also identified the uh, forensic investigators who were on the scene. (Unintelligible) and then went on to describe some blood spatters that I noted…and uh…some of the things that the other detectives had done. Some of the people that they had talked to…and then I made a note of the arrival of the medical examiner on the scene.

****Knock at the door****

PENNER: Hold on a second. Lemme pause this…

DAHLSTROM: Yeah. Ok, we're gonna stop the tape.

****Recorder is stopped and restarted****

DAHLSTROM: Alright, we're back on tape. It's 10:03.

OHERN: Ok, so then the latter part of the report indicates uh…the um, victim's body being moved and what was observed and what the medical examiner did uh…and then on page 10 to 12 my report there's some reference to receiving a telephone call from an individual…um…named Billy…inquiring about Linda Robinson. (Unintelligible) been killed…uh, I made a note of the telephone number. He said he was a friend of Linda's um…and then I made a note earlier in the morning when various relatives had been at the residence and named a subject by the name of Billy had come up as a

person who had been seeing the victim…that was something obviously that then related to uh…either me or another detective. And there's some mention here I had requested another detective, Detective [Ruseff]…to uh…do a criminal records history on an individual by the name of Billy Miller. Um…and then there was some information relayed back to me about Billy Miller's identity. Um…and there's a note in here that I secured from the scene at 745 in the morning…and then I made some notes in here about uh…some of the evidence at the scene and where I thought the initial crime scene had started or the initial assault had started. And it ends with uh…ends with my note that uh…Detective [Ruseff] and I contacted the uh…individual…and a William Tyrone Miller…and (unintelligible) interview…and that interview was initiated by Detective [Ruseff] and I. That's pretty much…what the report reflects.

DAHLSTROM: So…

HIGH: And does that…jog your memory…in any…

OHERN: Little bit…

HIGH: …way?

OHERN: …but there's some parts of it…specially…

Someone's phone starts ringing

DAHLSTROM: Do you want me to stop this?

PENNER: Go ahead.

OHERN: Specially some of the uh, contacts of what the interviews were, what we, what information we gleaned…um…my notebook actually helped me a little bit more than…than the report cause I remember people. I remember…

HIGH: Uh huh.

OHERN: ….individuals we contacted. Some of whom knew Linda, some of whom had dated Linda, some of whom…involved in…

PENNER: (Unintelligible)

OHERN: ...other activities with her...prior to her death.

PENNER: Ok um...that (unintelligible)...

OHERN: Like say I was...at the time I was working two or three different murders and one of, one was a...high profile murder, close to my own residence...that I was spending a lotta time on in addition to this so...it helps me to some degree, yeah. But some degree...23 years later...

DAHLSTROM: Yeah.

OHERN: ...it doesn't help me.

DAHLSTROM: So can you, just by looking at when you said you got to where you had formulated an opinion of where you thought it started and all that stuff...kinda go over what...led you to that...

OHERN: Well, I was...

DAHLSTROM: ...opinion?

OHERN: ...it probably had something to do with...discussions with uh...the forensic people who were there, too.

DAHLSTROM: Ok.

OHERN: Um...and what I saw as far as the-the blood spatter on the wall and what I...what I thought had happened, so in other words...there was something that occurred in one room...I mean, she's deceased in another room...so probably my assumptions were...this blood spatter couldn't have...then transferred onto this...area...if she was dead in the other room. So...when I said...the crime scene indicated to me that in all probability the initial assault took place in the master bedroom of the residence. And then I went on to indicate why.

DAHLSTROM: And...

OHERN: My opinion...

DAHLSTROM: ...(unintelligible)...

OHERN: ...that was my opinion that day and that time and that time of the morning so I mean that's just a...uh...and then I said once the victim got to the kitchen area where her body was found, the increased intensity of the assault was apparent by the large amount of blood stains. It was obvious that there was, that this is where most of the fatal blows occurred...it was with this information in mind that Detective [Ruseff] and I interviewed William Tyrone Miller, so...

HIGH: You know, have you...learned additional information since that time...regarding the investigation in this case?

OHERN: The only thing I've learned is that...that an individual...was arrested based on DNA evidence...um, I've talked to Detective Kobel about it. Um...he...he initially called me and told me. He actually told me that...I think before there an arrest had been made that...they were developing a DNA profile and uh...and that they were looking at an individual. I didn't ask for any information, I'm no longer law enforcement so I didn't wanna have anything that...

HIGH: Uh huh.

OHERN: ...was uh...improper for me to know...and then when the day the arrest was made I opened up the Tacoma News Tribune just like everybody else and...saw my case there. Right? So...then I went back...drug my notebook out and uh, went through it again, cause I figured I was gonna need to make copies of everything...for...for uh, prosecutor office and so...I did that and I sent a copy of my notes down to Tim...and uh...and then he told me that nobody could read my notes so I...sat down with my digital recorder that I had gotten...uh, and uh...tried to go through em as best I could and read em...for, I guess it was for you...and uh, then uh....then I got the phone call from the prosecutor's office...two days before I got the subpoena for this trial that...uh...you'd like to talk to me so...

DAHLSTROM: Wh-when you...end up going through the scene and you secured and you're ready to leave...have you been briefed by the forensic guys that...ok, we've taken this evidence, we've done this, we've done that...

OHERN: Yeah usually they'll give me a, just a short briefing that uh...but I mean I pretty much know it because I'm still at the scene, you know? Everything's usually marked with numbered placards...the placards had all been picked up...and all the evidence was gone. Uh, they don't...we usually get together shortly after the scene...well maybe a

day like this we might go to breakfast…and we'll all go in and…get a cup of coffee and sit down…we try not to discuss the scene…you know, in a public place…

DAHLSTROM: Yeah.

OHERN: …but we'll kinda…before we all get in our cars uh…like Ted or Skip would say…ok, we did a, we did a complete videotaping of the scene, we took extensive photographs of the scene, and we collected everything…well, that's their job and…unless I step over the top of a shell casing or a bloody knife that wasn't picked up then-then I get a little upset and say something…but…never had that happen to it's usually always…

DAHLSTROM: And so it would be…safe to say that at the conclusion of this you were pretty much convinced…

OHERN: I-I was…

DAHLSTROM: …(unintelligible)…

OHERN: …satisfied that the scene had been processed properly and that the evidence, as it was at that time, was collected properly, but…uh, again, I don't go back and ask them ok…how did you, how did you collect this knife? How did you package this knife? How did you…collect…blood evidence? How did…that's not my job. I-I'm too busy. I got two or three other detectives that are movin in different directions and I've gotta start getting information together. I…I don't sit down and…pre…now, if-if evidence is gonna be submitted um…a lotta times I'll request that or I'll even fill out, back in those days sometimes I'd fill out the evidence requests myself.

DAHLSTROM: So like when…you have information on this Billy…right? And you went and interviewed him and stuff knowing that he might be a person of interest…do you ask him for elimination prints or anything like that?

OHERN: Elimination prints?

DAHLSTROM: Yeah. So I mean…I'm assuming that there's fingerprints gonna be taken from the scene so…since there's nobody there and no smoking gun…

OHERN: I don't recall whether I asked him for elimination prints. That's not normally something I would do unless I…was focusing on an individual a little bit uh…a little bit uh…more as a true uh, suspect. Um…lotta times I probably wouldn't ask that unless…unless I…really thought it was gonna be relevant to the case. I…

DAHLSTROM: Ok.

OHERN: …I can't remember the last time I asked somebody…uh, I have asked people for DNA samples towards the end of my career, you know, like a swabbing or something like that. But again, I would probably try to get a search warrant before I'd use that.

DAHLSTROM: Ws it kind of a standard procedure in '93 to ask for DNA swabs? Or not?

OHERN: No.

DAHLSTROM: No…

OHERN: No…DNA in '93 was…you know…wasn't there.

DAHLSTROM: So…there's a buncha people that…you guys interviewed…and I'm not sure if you can recall all these people but…do you remember any of these names like Albert Wade? Or George Caldwell? Lee Chandler?

OHERN: Lee Chandler I remember very well because uh…he took a polygraph exam and failed. And uh…so he was our focus of attention at that time. In fact I uh…they kept his driver's license photo right up to the…right up to the time I retired. I mean up to the time I retired…he was…he was the person that I believed probably…of the people we talked to…uh, most likely had something to do with her death, but…

DAHLSTROM: So…

OHERN: …the other people…I'd have to actually sit down and look at their…

DAHLSTROM: Ok.

OHERN: …recorded interviews or if I took recorded interviews…

HIGH: Uh huh.

OHERN: ....or look at my notes to see what they said. Some of em were...can I look at that list?

DAHLSTROM: Absolutely.

HIGH: Yeah. And, you know, Mike...I think I've probably got...everybody's interview here.

DAHLSTROM: (Unintelligible)

HIGH: Sure.

OHERN: I remember McGruder. I think he took a polygraph, as I recall...and passed. Margaret Chandler was Lee's wife. I remember we talked to her. Um...Caldwell I'm not...I'm...I think I've got him in my notes somewhere as far as...but again, it's...you know...if I sat and-and-and read it...each one of the statements, then I could, I could tell you...but Chandler...I remember cause I, we went to his house...you know, come down to the office...and then Detective [Ruseff] and I...did an extensive post-polygraph interview with him cause we thought hey...you know, here we got a guy that's...hasn't passed the polygraph, let's just go...

HIGH: Yeah.

DAHLSTROM: Ok, so...with Chandler...him being specifics that you said he's kind of ends up being a person of interest from your standpoint...

OHERN: Well, he was...the information we had was that he was supplying dope to her...uh, in my notes that I sent to you...um, I think there was somebody that I talked to that said that uh, he could be violent to his suppliers if they didn't...you know, pay him on time and stuff like that. I mean...uh...he was the one guy that was involved in unlawful activity with her...prior to her death and...so...in that respect...and then especially after he failed the polygraph, you know...he was suspect number one in my mind.

DAHLSTROM: So from that standpoint now being suspect number one...what things did you do from the process of eliminating him as suspect number one or...arresting him?

OHERN: Well we didn't have, we didn't have any evidence to arrest him. We had nothing, I mean he's...all we had was his statement. We didn't have any...we didn't have anything that would, that would direct us

to him, you know? Um…you know how prints were back in '93, you know?

DAHLSTROM: But you guys…

OHERN: And I don't even remember whether we even…unless-unless there were fingerprints obtained at the scene…uh, I couldn't even tell you what those were…you know, or who they were or…whether we ever even looked at any of the prints to compare em to somebody. He…Chandler was somebody who…um…I think he said the he was there…that he was in her apartment, or he was…my recollection is that they had contact with each other quite a bit. So fingerprints…even if his fingerprints were at the scene, they wouldn't have meant anything to us as far as…you know, if he said well I never been there in my life…um…I don't hardly even know her…well then his prints would be relevant to…to determining whether he was there in fact or not. But I-I don't recall what was…what was obtained at the scene really honestly without going back and looking at all the evidence sheets and…

DAHLSTROM: Ok. Go ahead Mary Kay.

HIGH: Let's see…yeah, so I…lemme just get my little notes here…together…so I think you talked about your assignments and everything. Can you…give me a-a good rundown…as the lead…your overarching responsibilities…on the case.

OHERN: Initially or through the whole thing?

HIGH: Through the whole thing.

OHERN: Well initially it's just…basically to make sure that everything is done that needs to be done…and it…the proper amount of personnel are assigned to the case. I have a lieutenant and uh, if I need more personnel then I inform him and then he…supplies me with additional detectives.

HIGH: A-and was the Lieutenant Carter?

OHERN: Yeah.

HIGH: In this case? Thank you.

OHERN: Yeah, he was…he was my boss at the time.

HIGH: Uh huh.

OHERN: He was Investigations Lieutenant. Um…and then down the road uh, my responsibilities would have been to make sure that…is this got to a point where somebody could be charged that I made sure all the proper paperwork and…and…evidentiary items…and things had been processed properly and that I had a case I could send upstairs that I would…I mean I never take a case upstairs unless I thought there was a good chance it was gonna be…

HIGH: Solved.

OHERN: …solved, right.

HIGH: Right.

OHERN: I pretty much knew what the, what the prosecutor's office wanted and if I didn't have something that I thought that could be…there wasn't any eviden…no…any reason for me to bring up a book and drop I ton their desk and say here, I don't think that this is prosecutable, but maybe you can see somethin different then go ahead and look at it.

HIGH: And so this case…was one of those cases that you had where you interviewed a lotta people…she clearly had lots of gentleman friends…

OHERN: Yeah, yeah…

HIGH: …and you know, some…dope world activities…

OHERN: Yeah

HIGH: …but you weren't ever able to kinda get it to a point…that you felt you should refer it upstairs for…

OHERN: No, I…I had…I mean I had nothing that I thought would put a…a case together that the prosecuting attorney would charge a individual with. I mean I just I didn't think that and…

HIGH: So a case like that…did ya have a special drawer or section for the…haven't…haven't solved this one, or we haven't…you know, we haven't…

OHERN: Yeah.

HIGH: ...got enough to charge somebody with this...that...you would periodically go back to or...I-I have no idea what your office was like. You know, did you just like keep a drawer of like...

OHERN: My...

HIGH: ...these are the...

OHERN: ...no...

HIGH: ...open ones...

OHERN: ...my office...

HIGH: ...these are the boxes...

OHERN: ...my office was a...I had a file cabinet uh, about this high. I had, I had...usually if I had active cases I might have a stack of paperwork here, another stack of paperwork here....

HIGH: Yeah.

OHERN: ...if I had a case that was going upstairs we made two books. One book went to the prosecutor, one book stayed in my office and then when the case was...prosecuted and resolved it went into a library downstairs so...

HIGH: Ok.

OHERN: ...all of our cases went there, but no, I had no system. It was....because I might have 3 or 4 or 5 cases going on at one time and so...I knew where everything was at. Anybody came into my office they might not be able to find it, but I could.

HIGH: I...I think we probably have the same system. Mine seems pretty messy and a lot of cardboard boxes with...

OHERN: But you know where...

HIGH: ...things in em...

OHERN: ...everything's at.

HIGH: I do. I know where everything's at.

OHERN: Yeah.

HIGH: So with the…as you're retiring…and you have a…I don't know how many cases you had that…had been open, but not resolved…

OHERN: Uh huh.

HIGH: …what did you do with those files?

OHERN: Well I tell you what, a lot of em I s…put…I…tell ya, my last two weeks of-of-of work here…were-were kind of bizarre. I was getting ready, I still had a lieutenant who felt that even though I was getting ready to retire in three weeks he needed to still send me out on cases. Which…

HIGH: On new cases?

OHERN: …was really…was really kinda bizarre to me, you know? Then…two weeks before I…retired I got selected for jury duty…and I never been selected for jury duty and so uh….back in the old days you just went down there and said hey I'm a cop…uh…get me excused. But I figured well…you know, it's my last two weeks…I might as well report…let the County pay me, rather than go out on my own and then come back and have to report for $10 a day…so I thought well…they're not gonna pick me anyhow, right? I'm a law enforcement officer and my father was an attorney, my mother was a nurse, my brother was a police officer…most of my friends are police officers…so I went down and…lo and behold I got taken into court and the…and Cliff Maury was the defense attorney and uh…I'm tryin to remember who the…the guys that was the prosecutor I think he's still up here…uh…I saw them and I thought well…so when the judge said uh…you recognize anybody in the courtroom, anybody in the, in the jury pool? I waved my hand…I recognize the defense attorney, the prosecuting attorney and Your Honor…so…make a long story short…I got picked for the jury.

HIGH: Wh…and…

OHERN: It was the, it was a…it was a, it was a…sexual assault by a Tacoma police officer on his stepdaughter…and the guy who was the lead detective…his office was right next to me.

HIGH: Oh my gosh.

OHERN: And then I get selected as the presiding juror…for the trial. So…so here at this two weeks that I'm trying to get everything caught up…and trying to figure out…I'm stuck in a trial…right up to about 4 days before I….before I uh, retire. My wife's retired…retiring too so…it really put a [runky] wrench into my getting caught up and getting my things together. Going back to what you were asking…I took a lotta…I…I did not have the time…and nobody else downstairs had the time…to help me get things together so a lotta files I put in boxes and I took home with me so that…somebody wouldn't come in there and mess em all up and then later on I-I turned those over to uh…Detective Kobel.

HIGH: Ok.

OHERN: You know, so a lotta the written documents and stuff like that and…cause I just couldn't see just leavin it…with nobody having any knowledge of it and trying to put it together in some kind of semblance of order and I had original documents that…I hadn't got a chance to get through yet and I felt bad about that, but I wanted to make sure it eventually got to some right hands and I, and I came down and let the captain and detectives know that so that they would know…that I had these documents and I had notes and…things that I hadn't had a chance to prepare and put in the proper order. Wasn't the way I wanted to leave…but it unfortunately…ended up being that way.

HIGH: Ok. Ok…and I also wanna ask a couple of questions about, I mean so your duties a lead, you're kinda the overarching person…ask you about what your cases kinda ended up…you said you had some training in the crime scene…

OHERN: Yeah, I've gone to…let's see, I've gone to…both Basic and Advanced Crime Scene Investigation and all…all…I'd already…and I'd gone back to Blood Spatter Analysis School if you can believe that. I went to a week of Blood Spatter Analysis training put on by the…uh…Minnesota…it was put on by the forensics experts with Minnesota…Department of…of um…Forensic Investigations. So we went back and-and did crime scenes where they used real blood and…and they splattered the room and they…did you ever go through anything like that? Yeah, they would put a helmet on with a s…with a, with a sponge soaked with real human blood…they would get blood from the blood bank that was outdated…

HIGH: Yeah.

OHERN: ...and they would whack em on the head so...they basically would...would uh...do a crime scene...and record it while they were doing it and then they would send you in there and you'd do string lines with-with different...uh...calculations to determine where the initial blows happened. Now, it gave you just enough knowledge to be dangerous...but I always told em that...if I ever needed a crime s...a blood spatter analysis I was gonna call them because there was no way I was gonna try to do that.

HIGH: You know...have you been asked or at the time were you asked to do any spatter analysis? Now, I know from the photos, and you may or may not remember this, but there were string lines that were run in the kitchen....

OHERN: That probably was done by...by...Ted Schlasser or it was done by um...or it was done by Skip Johnson because they had been to the same uh, blood spatter schools that I had gone to...I think taught by that...now some guys went down to Oregon to their schools and...I went back East....there was two different, two different types of training for blood spatter analysis. One was a string line...

HIGH: Right.

OHERN: ...where you use uh, calculations. The other one was where you just go in...and you make up your mind based on...uh, the direction of blood spatters and...so...

HIGH: Uh huh.

OHERN: ...some of these experts would, if they couldn't string it out they wouldn't give an opinion...and other ones could just come in and look at a crime scene.

HIGH: Ok.

OHERN: My...I think my s...my uh...if you look at my notes, I kinda referred to...blood spatter on the wall...

HIGH: Uh huh.

OHERN: I could kinda tell a direction...of blood...by looking at a splatter. I-I retained that much knowledge...you know, I could tell whether it was going down, or sideways, or up...so...and what cast off looked like

	and…but I would never try to ever do that. I was not an expert in that…
HIGH:	Ok. And so you haven't been asked in this case to somehow…
OHERN:	Nope.
HIGH:	…get up there and make…
OHERN:	Never.
HIGH:	…some blood…
OHERN:	On any case.
HIGH:	…spatter expert opinions, ok.
OHERN:	No, I'm…
HIGH:	It's…
OHERN:	…I-I think I've been asked a number of times if I'm an expert and I've always said No.
HIGH:	Sure.
OHERN:	I am not.
HIGH:	Got it. You know…one of the other things that…in the…course of reviewing your transcribed notes, which I really appreciate you taking the time…
OHERN:	(Unintelligible) help ya.
HIGH:	Yeah, they're…the other one…
OHERN:	I write very, very small and…what happens with me is…
HIGH:	And it was light…I couldn't get a copy dark…
OHERN:	Oh really?
HIGH:	Yeah.

OHERN: Well...

HIGH: Yeah.

OHERN: ...wh-what happens is...I have this intensity when I'm interviewing somebody...I start writing smaller and smaller and smaller and smaller because I can do it very fast...and when I was in the Navy I was a dispersing clerk and we used to write with pencils the-the numbers. This was in the day before computers and all that stuff so...

HIGH: Yeah.

OHERN: ...I learned to write real small and I...unfortunately I carried it over into my professional career...but it drove defense attorneys nuts so I figured it was ok.

HIGH: Ok. You have your original notes here...

OHERN: Yeah.

HIGH: ...correct?

OHERN: Yeah.

HIGH: So I have...on my transcribed notes...on page...it's our Bates page...717...which I'm not sure...I'm gonna hand you what I...

OHERN: Yeah, just hand it to me...

HIGH: ...yeah, I'll hand you what I have and I didn't bring an extra one of that, but we'll go through...

PENNER: (Unintelligible) I do have...

HIGH: ...and...

PENNER: ...it pulled up if we need to print other copies.

HIGH: And-and you talk about...er excuse me, 717 is...William Miller...and it says Linda's best friend, Heather...and then on 718...you know, Heather again. I'm just...do we have any idea who Heather is?

OHERN: (Unintelligible)

HIGH: I'm just not sure that I ever quite tied that down.

OHERN: Gotta get to the…

HIGH: Actually I thought…

OHERN: Now did I refer to that at the beginning? Or that's the 857, 10, 7? Ok…2/7/93…ok I'm interviewing William Tyrone Miller…is that what, the one you're talking about?

HIGH: Yeah.

OHERN: Ok. And uh…so where does that name come up…

HIGH: Do you have a copy of…

OHERN: …that you're talking about?

HIGH: Yeah, Heather…that's what I'm…

OHERN: I'm looking through here. I can usually scan my notes pretty quick.

HIGH: Yeah.

OHERN: Oh ok, ask Heather…me and friends were (unintelligible) having a few drinks. I called Sharon to see what's happened. Jackie called after 2:30. Sharon came into the room and said Linda is dead. I went home, called Heather, asked Heather if she knew the guy Linda was going to marry…she gave me a name. Um…if you're asking me if I ever…determined who she was…I don't know.

HIGH: Ok.

OHERN: I don't know, I don't…did you…

HIGH: I didn't…

OHERN: …in my notes, did you see any other place where…

HIGH: N…well…like I said that my-my note too was like who's Heather?

OHERN: Jackie is Lin…ok, Jackie…Linda's best friend…called. Said Linda was dead. Sharon knows…

DAHLSTROM:	(Unintelligible)
OHERN:	...knows Linda is dead. She is crying and stuff. I went home, called Heather...
DAHLSTROM:	(Unintelligible) James?
HIGH:	(Unintelligible) James. Ok, so...
OHERN:	Uh...Linda's best friend...and she asked like she didn't know, so....Heather could have been Linda's...one of Linda's good friends.
HIGH:	You know, actually...Mike, who's more prepped than I am apparently says that if you go to page 720 there's a Heather James. So...
OHERN:	In my notes?
HIGH:	Yeah.
DAHLSTROM:	Yeah.
HIGH:	So you did find...
DAHLSTROM:	I-I'm looking at your notes as you turn your pages. You write, you do write small...
OHERN:	Well see that's a...I tell ya, you know, in a interrogation I...
DAHLSTROM:	(Unintelligible)
OHERN:	...I really get, I really get, I really go wee, wee...real small...but see...it's my work product, see? I mean...that's, now that's a lengthy interview and uh...
HIGH:	Yeah.
OHERN:	...I could...probably, that would be my notes for maybe a half hour a talkin...but I'm hittin the highlights so...
DAHLSTROM:	Uh huh.
HIGH:	Yeah.
OHERN:	...I don't miss anything, you know? It's...

HIGH: Well you…

OHERN: …it's not a verbatim…

HIGH: …you recorded a number of these…

OHERN: Yeah.

HIGH: …so that was also…

OHERN: Yeah.

HIGH: …you know, you had that to…fall back on. And one of the things that…you know, it looks like…a number of folks, you know…(unintelligible) of her activities. I wanna say there was this…

****Someone's phone rings****

PENNER: Can you hang on for just a second?

HIGH: Sure.

PENNER: I gotta take this one. It's (unintelligible).

DAHLSTROM: Ok. We're going to pause it. It's ten thirt…

****Recording is stopped and restarted****

HIGH: (Unintelligible) have that much…

DAHLSTROM: Alright…

OHERN: And I never wanted to do what he's doing now.

DAHLSTROM: …10:30 and we're back on…

OHERN: So…

HIGH: Yeah. Ok. And so…anyway…I guess cause I do know of some…time limitations and you did transcribe em for me that…it looks like as you

were trying to work this case, I wanna say [Ron Buffers] you know, tells you how they'd done cocaine recently. She knew shady characters and…it almost seemed like Miss Robinson had almost a duel life. Some family members….and maybe they're just protecting her reputation…oh gosh, I never knew she…

OHERN: Right, right…

HIGH: …did cocaine or this that and the other…

OHERN: Yeah.

HIGH: …and then some other folks saying you know, it looked like she was…you know, kind of a party girl…I don't know if that's the right term, but…

OHERN: Party girl and uh…I never really…I don't try to ever develop opinions about deceased human beings other than…

HIGH: Yeah.

OHERN: …I wanna know what their lifestyle…what it would lead to and…and that's why Chandler was kind of, you know…here's a guy that's supplying her dope, she's getting dope from him…um, they're connected together…um…he's kinda being up front with us about that…but then he, you know, bombs on the polygraph, so I didn't have anything else. I mean I didn't have any…any other focus…

HIGH: Right.

OHERN: …as to one of these…we gave a polygraph to somebody else and he passed and…

HIGH: Right.

OHERN: …so…

HIGH: Right, well it…it certainly and…you interviewed quite a number of gentlemen that had casual…sexual relationships…

OHERN: Yeah.

HIGH: …with her and…kinda…

1 OHERN: Yeah.

2 HIGH: ...party relationships with her...and also documented in your reports
3 and your notes a number of gentlemen had called her actually that night...

4 OHERN: Uh huh.

5 HIGH: ...and had...

6 OHERN: And one was on the phone with her sounded like...

7 HIGH: Yeah.

8 OHERN: ...at the time this...started to happen.

9 HIGH: Right. Were you able to get any additional information about that
10 through phone companies or any of those kinds of things?

11 OHERN: I don't think, I don't think we did that because...the person who was
12 on the phone with her...told us approximately the time that he was calling so...

13 HIGH: Uh huh.

14 OHERN: ...it wasn't like we needed to go get phone records to substantiate
15 that...

16 HIGH: Ok.

17 OHERN: ...and back in those days...you know, you...you could get a search
18 warrant for a phone record, but I don't...recall whether we ever got
19 any phone records from...from her house or not. I don't have any
20 recollection of ever requesting...phone tolls...

21 HIGH: Got it. You also were present at the autopsy?

22 OHERN: Correct.

23 HIGH: Do you remember anything about that?

24 OHERN: I remember what I wrote on my notes.

25 HIGH: Ok.

26

OHERN: Uh…I remember there was a lot of stab wounds. I remember that she was stabbed multiple times in the lungs…um…you know, autopsies…uh…my notes usually from an autopsy are…from what the medical examiner tells me so…

HIGH: Uh huh.

OHERN: …when you're reading my notes…that's Dr. Howard or it would have been Dr. [Luxina] maybe back then…uh, telling me these are where the wounds were. So I would usually document those in my notes and…and the reason being is that if we developed a suspect…I wanted to have the information right away. I didn't wanna wait a week or two for an autopsy report. I wanted to know right then, so they can…talking to somebody who is involved in-in a death…I have my notes in front of me, I know where the wounds came from, I know where they happened, I know where the defense wounds are at on the hands so…

HIGH: And did you in your conversation with the medical examiner formulate any opinion about…how this event went…

OHERN: No, I've never…

HIGH: …down?

OHERN: …honestly I can…I don't believe…in all my years as a detective, I ever asked the medical examiner…to tell me what his opinion was as far as how the…how it unfolded. I just strictly stuck to the…trajectory of a wound or the number of wounds…and from what direction they came. Because I didn't wanna…sit down and say well, what do you think doc? No, I never did that.

HIGH: Ok. And then….on Bates page 722 of your notes you talk about recovering a bloody knife and a sawed off…or….being alerted to a bloody knife and a sawed off shotgun…and you give a-a case…number.

OHERN: Yeah, I think that was right in the beginning, wasn't it? (Unintelligible)

HIGH: I don't know…(unintelligible) on page, I think it's…what'd I just say…

OHERN: Now you said page…

HIGH: Yeah…

OHERN: …are you referring to the…

HIGH: …I-I'm…

OHERN: …number at the bottom…

HIGH: …I am.

OHERN: …of (unintelligible).

HIGH: I-I'm talking about the Bates page down there.

OHERN: So what page was it?

HIGH: 722…

OHERN: Ok. Ok, and order…722…lemme get the right page. And where on…where on there do I…oh, ok.

PENNER: It's a continuation from the previous paragraph.

OHERN: Yeah, right at the top there? I think that was outta my notes…(unintelligible) sawed off shotgun, case number…but what was the case number on…is that…

HIGH: It's…

OHERN: …the case number on this?

HIGH: …it's a different case number.

OHERN: Yeah, so that was probably…

HIGH: But…

OHERN: …what that was is that's probably a different, a different case that I had…cause sometimes I'll be doing notes and then…on the same day I might do something else. I tried to just give you what related to…uh…related to that case, but that coulda been…uh…relating to another case, but that's what I already sent down so I went ahead and…like when I said that…I-I realized that it wasn't…from this

case, but it was what I had in my notes on that day and so I just put that in there.

HIGH: Well…did you make any determination that it wasn't related to this…

OHERN: There wasn't any…

HIGH: …case?

OHERN: …bloody shotgun that I remem…there was never a sawed off shotgun that I recall ever finding at the scene.

HIGH: Right, well I…

OHERN: Just…

HIGH: …I don't, I don't think these were…at 162nd…

OHERN: Nah…

HIGH: Yeah.

OHERN: …no.

HIGH: But did you…you know, follow up for any link between those items and this crime?

OHERN: No.

HIGH: Ok.

OHERN: No, it's obvious that it was something else relating to another case. I had about three different homicides going at the same time and…

HIGH: Ok.

OHERN: …one of em I was spending a lot of time on…because it was the…

HIGH: Do…what were the other two…if you recall…or the other three homicides?

OHERN: If I can remember one was an individual by the name of Rick Bob…

HIGH: Ok.

OHERN: ...it was a murder that had happened out on South Hill on the 2nd of December...and I was putting a lotta time in on that because it happened two blocks from where I lived.

HIGH: Ok, so that was...

OHERN: And it was bur...

HIGH: ...close to home.

OHERN: ...it was a burglary and a man was...come home, woke up...heard a sound, came out and got shot...and so we were following up on a lotta leads um....going a lotta different places and uh...still an unsolved case, but it's one that I've worked even since I've retired....I've come back and worked on it.

HIGH: Ok.

OHERN: So, and-and then there was a...I think I had a couple a suicides...splattered in there somewhere and...you know, any-any non-non...normal death they would send us out...and then uh...yeah, and then I was on another murder case very shortly after this one where a guy was found in a trailer up in Ashford/Elbe area...shot. Um...so...that was one of the problems with our department is...

HIGH: Uh huh.

OHERN: ...just didn't have enough...homicide people to work all these cases and so...

HIGH: And one of the...one of the things with this knife and the shotgun...it's...it's not in Elbe, it's not in Puyallup...I think you indicate the apartment complex.

OHERN: Yeah.

HIGH: Did...and...

OHERN: I did...I-I listed...

HIGH: ...right...

OHERN: ....it as-as...well I said found by apartment manager between 2627 [Griftwood]...

HIGH: Right.

OHERN: ...and I believe that would be out in Lakewood, so...but there was another case I think...that was involving um....an assault out in Lakewood...around that same time and uh...I think we got a call, but...those two items have been recovered. Um...and I think that's why I just made a note of it...in the notebook...

HIGH: And so...by you making a note of it you would have been involved in...

OHERN: To some degree, yeah, I woulda...

HIGH: ....(unintelligible)...

OHERN: ...got a phone call or somebody woulda called and told me that um...and I woulda made a...a quick note...um, I can't tell you whether I...followed up on that incident or not...(unintelligible)...

HIGH: Ok.

OHERN: ...I would have to go through the whole notebook all the way to the back end...

HIGH: Uh huh.

OHERN: ...and see if there's some other reference to that incident.

HIGH: Ok. But certainly if there are other reports regarding those items...

OHERN: Yeah, they'd be on...

HIGH: ...they would all be under...

OHERN: Sure.

HIGH: ...that incident number.

OHERN: If I wrote down the right incident number. I-I'm assuming I did. I'm assuming I did. Yeah...you could go back in the archives and...and see what that case was.

HIGH: Uh huh.

OHERN: (Unintelligible)...gonna be an unsolved case or…and probably if I…I actually went through my whole notes here, I might even be able to…let's see what I got before then…(unintelligible)…my notebook started on the…(unintelligible) notebook started on the…January 22nd and ended in June.

HIGH: Ok.

OHERN: Cause I write real small so I can put a lot of information in a notebook.

HIGH: Uh huh.

OHERN: But that mighta been something that even happened before uh…before this incident happened. But I have no recollection of…

HIGH: Ok.

OHERN: …that particular case…

HIGH: Ok.

OHERN: …unless I solved the case…I solved the case then I can…then I can probably tell you what it was…

HIGH: Ok.

OHERN: …and you'd be able to…(unintelligible) was.

HIGH: Ok. And…you know, I believe…when I was a much younger attorney…as you said, in this time frame, the late 80's, the early 90's…there was a lot of homicide activity.

OHERN: I tell you what, when I first got assigned to Homicide I thought if we're gonna be doin 30 a year with 3 or 4 of us, we're not gonna be able to do justice to em. I mean the first couple three years it was just like wow…and we were doing Lakewood, too.

HIGH: Right.

OHERN: A lotta gang, lotta gang stuff. Um, sometimes it was a little overwhelming, you know…

HIGH: And so, I mean…it sounds to me like you were really trying to handle a lotta cases with not a whole lotta people.

OHERN: Well, you'd have a lotta people individually initially but then…everybody had their own caseloads. We all had our own caseloads.

HIGH: Sure.

OHERN: And…I'm not making excuses for it, it's just was the way it was back then…

HIGH: Uh huh.

OHERN: …you know? We tried to do as good a job as we could and tried to put em together as best we could.

PENNER: (Unintelligible)

HIGH: Right.

PENNER: That's the actual notes…(unintelligible).

HIGH: Right. Lemme see, so…on this case here…sounds like you had some other things going on…how much time did you have to put on…put into it before you got kinda…diverted into something else since you…

OHERN: Might be the next day….

HIGH: …weren't getting a…

OHERN: I mean it…you can have a homicide…in the evening…I remember in Lakewood we had two on the same day…or…if you're working a homicide and say, an officer involved shooting happened….then the homicide, quite frankly…got set aside and that became the priority because…we have to resolve whether the officer was justified or not. The prosecuting attorney is waiting for reports like…like yesterday…

HIGH: Uh huh.

OHERN: …and so…it's…it just, y-you kind self prioritize what you did back then.

HIGH: Let's see…oh hey…and…if there were requests for forensic analysis like the fingerprints or DNA…although you said in '93 that was pretty…not…a routine thing….or trace evidence, would you as the lead be the one…to spearhead that? Or would your forensics…

OHERN: Sometimes the forensic people…would have enough common sense to know if I had…there was, like a shell casing and there was a gun…that that's something that wa…I wanted to be sent…

HIGH: Sure.

OHERN: …uh…sometimes I would specifically say…do it. Sometimes I would actually fill it out myself. I usually never carried the evidence to the crime lab myself. Back in the day we had a crime lab downstairs.

HIGH: Uh huh.

OHERN: So a lotta times I could run downstairs and talk to the forensic guy as he's doin the…doin it. I could get results back a lot faster. I begged a lot. You know, I'm…then when it went to 38th street…or it went out to uh….out there at, kinda…we got detached…now I couldn't….now it was like oh, I gotta sit around and wait and wait and wait…before…I could actually sometimes even carry evidence over there. I could check it out, walk over and say Larry…can ya, you think you could act…I know you're busier than heck, but…I really need this right now.

HIGH: Uh huh.

OHERN: And get him to, get him to look at it…specially on-on uh, bullet stuff.

HIGH: Ok.

OHERN: But it de…it depended. Some…it just depended on how the case was goin…if I had the time and I specifically wanted somethin I would fill out the lab request, I would take it and give it to forensic, forensics would take it down to property…get the stuff…make sure it gets out to the lab…

HIGH: Uh huh.

OHERN: …and then…then I…

HIGH: Got it.

OHERN: ...paperwork.

HIGH: Ok. Anything else, Mike?

DAHLSTROM: Not unless you wanna go over all those things.

HIGH: Well, I know his time's short...and I...actually...I (unintelligible) a list of each individual that you interviewed...but I do have your reports and the transcripts...for most of em.

OHERN: Good.

HIGH: Which is...yeah, a good thing...and that's why I just asked as kind of a general...I mean a...a lot of these gentlemen had indicated that they had, like I said, kind of...

OHERN: Yeah. Yeah, I...

HIGH: ...casual...

OHERN: ...dated her, I...you know...

HIGH: Yeah.

OHERN: ...I was broken up with my wife, I think one guy said he was...separated and so Linda...and they probably all...I'm just guessing...but they probably all had the same...narcotics...involvement together usually people that are involved in...cocaine and other things...it's like drinkers...you know, drinkers like to hang out with drinkers and dopers like to hang out with dopers so...

HIGH: Got it. And you know, and when we had some reports of...you know, like you said, maybe some wives and some, you know, different things so she was...you know, I mean I realize these were different days, but it seemed like she had some fairly casual sexual relationships with the same folks she was partying with.

OHERN: Probably.

HIGH: Well, I...

OHERN: (Unintelligible)

HIGH: ...and in-in your notes...

OHERN: Yeah.

HIGH: ...that's...

OHERN: Yeah.

HIGH: ...you know, some...

OHERN: I think I would...

HIGH: ...(unintelligible)...

OHERN: ...I-I think that would be a...probably a fairly accurate...I mean that was kind of what I thought, you know....

HIGH: Uh huh.

OHERN: ...but...I never, I never ever tried to...judge a victim. My job was to find out what happened.

HIGH: Right.

OHERN: I never let it, I never let the type of person it was interfere, but if that lifestyle led to somebody else then that was good. Then that...

HIGH: And-and it...and that was my point. The lifestyle would perhaps help inform your investigation.

OHERN: Yeah, sure.

HIGH: Ok. And...

DAHLSTROM: Did you...

HIGH: Yeah.

DAHLSTROM: ...when you would like...in your notes you have [Buffers], you have Heather...you have a couple of other names and stuff...did you personally try to get a hold of Heather or try to get a hold of this...[Ron...Ron Buffers] or whatever his name was to just follow up on what you...?

OHERN: You know I don't know whether I tried to or I had somebody else try to…or if I just went on. I mean I can't, I really don't know. But I don't have it….if I don't have it in my notes that I contacted Heather…and I don't have an address and a telephone number and a date of birth from her, then I probably didn't…for whatever reason.

DAHLSTROM: When you're on the homicide and stuff do you have a second? Do you have somebody that's with you that you can sit and say ok you do these things rather than the patrol guys and stuff like that?

OHERN: Uh…run that by me again. Do I have a what?

DAHLSTROM: A team. A, you know, like a…

OHERN: Initially we have…

DAHLSTROM: …guy that comes with you all…

OHERN: …a team…initially we had a team, usually for about three or four days we have a team. Sometimes that team stays together if the leads are going…but back then we…when I started Homicide we had a real good team stuff…and then after I got about 4 or 5 years into it….your team kinda dissolved…a day or two or three after the homicide and you were left with…followin up everything yourself. You'll see that Detective [Ruseff] was in there…

HIGH: Uh huh.

OHERN: …he and I were partners in a lotta stuff…uh, over the years and so I used him a lotta times…he was a Homicide Detective also…

DAHLSTROM: Uh huh.

OHERN: ….I might just grab a detective and say hey, I gotta go out and do an interview. You know, you got…you got somethin goin on? I think that was the deal with Chandler that day. I grabbed [Ruseff] and said hey, can you do a polygraph…or…this guy just failed a polygraph and I wanna do another interview…would you mind comin in with me? I usually like to always have a second detective…if I was interviewing somebody that I really thought was probably…maybe responsible for what's goin on. I wanted a second set of eyes and ears and so that one of us could take notes and one of us could do the interview.

HIGH: Ok.

OHERN: You know how the process…

DAHLSTROM: Oh yeah.

HIGH: Oh…yes. And I actually…am glad I…I also had a hand-drawn map that we got in Discovery. Steve, pages 391 to 395…

PENNER: Thanks.

HIGH: …and I don't see a name on it. I don't know if you recognize this or…

OHERN: That would probably be Schlasser…that's either Schlasser or uh…or uh…I believe it was Skip. They would do this.

HIGH: Ok, so one of…

OHERN: Yeah, so this would be their rough notes…for uh…cause I didn't, I didn't ask anybody else to do a scene. This is not my drawing.

HIGH: Ok.

OHERN: And uh…but it was done with tape measures…somebody used tapes to measure that, and I believe if you probably go back in Schlasser or uh…or their notes, they would…indicate that they did this.

HIGH: Ok.

OHERN: This rough sketch. I don't know about you, but I was never good at this stuff. I could hold the end of a tape measure…but when I went to, when I went to crime scene school and we had to sit down and do all this stuff…..I was…when I was a brand new…when I was a new deputy I got stuck at some homicide scene just holding the end of a tape measure, you know, for the detectives…but I never….I wasn't real good at doing stuff like this.

HIGH: Ok. So…fair to say…

OHERN: Wasn't me.

HIGH: …this was not your…

OHERN:	Not me.
HIGH:	…map.
OHERN:	No, but I would highly…I could almost guarantee you that it's one of the two forensic investigators. There's nothin, no in…initials or anything on the bottom of it?
HIGH:	You know, I….
OHERN:	Lemme, lemme see it real quick…
HIGH:	…well, take a look again. I couldn't find any, but it just might be my…you know…my copy or you know how it works…
OHERN:	See, and there's a legend on the back of it.
HIGH:	Right, and then there was…
OHERN:	So…
HIGH:	…another little rough outline sketch…
OHERN:	Yeah, and see this is a…this is a photo log here…I think. And then it…this is somebody's sketch of blood spatter.
HIGH:	Right. I-I'm assuming that's the refrigerator door, but I…
OHERN:	Uh huh.
HIGH:	…not labeled I…I'm just guessing.
OHERN:	It's gonna be either Skip or Ted.
HIGH:	Ok, thanks. Lemme see, I had something else here…
OHERN:	I just ran into Ted at a grocery store the other day so I know he's still alive.
PENNER;	Well, tell him we need to talk to him.
OHERN:	Huh?
HIGH:	Yes.

PENNER: Tell him we need to talk to him.

OHERN: Have you tried?

PENNER: Yes. I don't know if…

OHERN: Ted doesn't, you know…

HIGH: Ok, so…I-I don't think we have any more questions, do you Mike?

PENNER: I-I have one.

HIGH: Oh, go ahead…

PENNER: It's just…so when you reviewed your report, you know you kinda went through and-and let us know some of the stuff that was in there…and I guess I'm just curious when we get to trial…and you're testifying…did you have any independent recollection of any of this or were you just kinda…

OHERN: Uh huh.

PENNER: …reading through…

OHERN: No, I…

PENNER: …your report?

OHERN: …remember…

PENNER: Ok.

OHERN: …I remember going there. I remember…the night I got called there. I remember, I remember the uh…going into the scene. I um…I remember Linda Robinson. I remember talkin to Chandler…because he…I had his photograph…laying right on top of my file folder for like…10 years before I retired. I mean I always thought about going back, I even thought about going to Boeing and lettin em know that they had a dope dealer for…for an employee, but I didn't. Uh, I thought well maybe I can jack him up that way a little bit by putting some pressure on his employer…but no…I remembered those things…

PENNER: Ok.

OHERN:	…I remembered….
PENNER:	That's…
OHERN:	…(unintelligible)…
PENNER:	…I just wanted to make sure…
OHERN:	Yeah.
PENNER:	…you know, or not make sure, I just wanted to find out…
HIGH:	Got it.
OHERN:	No, as soon as…as soon as, as soon as uh…Kobel told me…about the case, I mean it immediately came back to me what it was…
HIGH:	Uh huh.
PENNER:	Ok. That's all.
OHERN:	But uh…but the specific details of what I did and the steps I took…uh, when I pull out my notebook that helped me refresh my memory.
HIGH:	Ok.
OHERN:	That's probably me…
HIGH:	Yeah.
PENNER:	Well, that means we're done.
HIGH:	Thank you so much. I do wanna get my…
OHERN:	Yeah, I'll give em back…
HIGH:	…reports back just because…
OHERN:	Nope.
HIGH:	…I gotta…
OHERN:	Nope, I don't need to take em home…

HIGH: ...I file them and then I'll...

OHERN: ...as a souvenir.

HIGH: Yeah.

OHERN: I have enough case files sitting at home from different...trials I've come back and testified on. I need to shred em all...

HIGH: Were...were you involved in the Maples...

DAHLSTROM: So it's 10:52; we're gonna go off tape.

HIGH: ...trial?

END OF INTERVIEW

CERTIFICATION OF TRANSCRIPTION

State of Washington)
) ss.
County of Pierce)

I, DeAdra M. Benton, declare under the penalty of perjury under the laws of the State of Washington that the following is true and correct to the best of my knowledge and belief.

I certify that I am over eighteen (18) years of age and not a party to this action. I prepared the foregoing transcript from a digital recording provided by the Department of Assigned Counsel of an interview of Retired Detective Jim O'Hern in the above captioned matter, which took place in Pierce County, Washington on May 14, 2015 and consists of 47 pages.

Dated at Tacoma, Washington on this _____ day of _____, 2015.

_____

DeAdra M. Benton, Notary Public
In and for the State of Washington
Residing at Pierce County, Washington
My commission expires: 05/05/2018

Attachment “G”

**

PIERCE COUNTY SHERIFF'S DEPARTMENT

STATE OF WASHINGTON
County of Pierce

Case Number 93-037-1041 Date 02/24/93 Time 1027 HOURS

Location PCSD CID/COUNTY CITY BUILDING Officer DET. J. O'HERN, #66

Name of Subject MARK ANTHONY MCGRUDER Date of Birth 10/12/54

Q Yeah, this is Detective Jim O'Hern, of the Pierce County Sheriff's Department. The date is February 24th, 1993. The time now is 1027 hours. The place is the County City Building, Tacoma, Washington, Pierce County Sheriff's Department Investigations Divisions Office. This is going to be a tape recorded interview with Mr. Mark Anthony McGruder, that's M-C, capital G-R-U-D-E-R. This will be in reference to Pierce County Sheriff's Department case number 93-037-1041, which is a death investigation. Present during this interview will be myself and Detective Bill Rouseff. Mr. McGruder, you're aware that I'm a Detective with the Pierce County Sheriff's Department?

A Positive.

Q And are you also aware that this interview with you is being tape recorded?

A Yes.

Q And is that being done so with your permission?

A Yes.

Q Okay. For the record, could you give me your complete name and would you spell your last name for me please?

A Mark Anthony McGruder, M-C, capital G-R-U-D-E-R.

Q And what is your date of birth, Mark?

A 10/12/54.

I make this statement of my own free will and accord. No promises have been made to me, nor any duress used against me. I have read the above statement in its entirety. It is a true and correct statement to the best of my knowledge and belief.

X _____

SUBSCRIBED AND SWORN to before me this _____ day of _____, 19 _____.

WITNESSES:

_____

_____

_____

Notary Public in and for the State of Washington residing in Tacoma, Pierce County, Washington

Q And where are you presently residing?

A Oh, I think it's 16, oh, 1603 Ainsworth.

Q You're staying with, with who?

A Mrs. Clark.

Q And that is her residence?

A Yes it is.

Q Yeah, I believe it's 1607 South Ainsworth.

A 1607.

Q Okay. Now you're aware that we're investigating a murder involving an individual that you knew, a Linda Robinson?

A Yes, I do.

Q Okay. What I'm going to do, is I've already advised you of your rights, but because we're utilizing a tape, I've, I've got to re-advise, and I'm, I'm gonna do that right now. That's basically the same thing you just signed. Okay?

A Okay.

Q It says, before questioning and the making of any statement, I am going to advise you of your rights. You have the right to remain silent. Any statement that you do make can be used as evidence against you in a court of law. If you're under the age of eighteen, anything you do say may be used against you in Juvenile Court, or if you are transferred to adult status, then anything you say may be used against you in criminal proceedings in adult court. You have the right at this time to talk to an attorney of your choice, and to have your attorney present before and during questioning and the making of any statement. If you cannot afford an attorney, you are entitled to have one appointed for you without cost to you, and to have the attorney present at any time during any questioning and the making of any statement. You may stop answering questions or ask for an attorney at any time during any questioning, and the making of any statement. Do you understand each of these rights which I've explained to you?

A Yes, I do.

Q Okay, having been made fully aware of these rights, do you voluntarily wish to answer questions now?

A Yes.

Q Okay. We were talking just a short bit before the tape was turned on. How did you know Linda. How long have you known her? Linda Robinson?

WITNESSED:

X _____

SIGNATURE ON EACH PAGE

A Oh, I'd say, for about seven years.

Q And what type of a relationship did the two of you have?

A Oh, friends.

Q And was there ever any romantic involvement, any sexual . . .

A No.

Q Nothin', hunh?

A Nothin.

Q Okay. And, now you say you were gone for a couple years, and you got back when?

A I got back in September of last year.

Q And, where, where were you? Where had you been?

A I was, I was in California for a while, then I was, I was incarcerated all summer long for a, for a felony I did, and I finished my probation. I also finished my time, doing the felony.

Q What kind of a, what offense was that?

A It was a, getting unemployment when I was working, and, for, and they called it (unintelligible)

Q Welfare fraud type thing? Or . . .

A Unemployment.

Q unemployment.

A Yeah.

Q Okay. Now, you've been back in the area now for how long again?

A Since September of last year.

Q Okay. And during that period of time, have you ever lived with Linda, or resided with her?

A I didn't actually live with her, but I, stayed the night with her, with her sister, Gloria, a couple of, a couple of nights.

Q Um-hm. I mean, was Linda there, then during that period of time?

A Yes. Yes.

WITNESSED:

X _____

SIGNATURE ON EACH PAGE

Q Now, I want you to be somewhat frank with me, because, we, you know we've talked to a number of people about Linda, and it's my understand that she was a smoker, or smoked crack on a semi-regular basis, and that I know some of the people that she's obtained her drugs from, and, and some of the people who she's smoked with. You smoked with her before?

A Yes.

Q Okay. How would you describe her as the amount of drugs that she would normally do? Is she somebody who would smoke every day, every other day?

A Well . . .

Q Occasionally?

A Occasionally.

Q Okay. Where did she normally get her stuff from?

A Sometimes out on 23rd, just basically on 23rd. That's where, that's where me and her would go to.

Q Okay. Now I know that you lived with a guy by the name of Chandler for some period of time.

A Yeah, Lee Chandler, yes.

Q Okay. And again, remember, bear in mind that Linda talked a lot to her sisters, to her friends . . .

A Um-hm.

Q and, you know, she was pretty candid about where she'd go to get her dope, who she was smokin' with. She was candid in her comments about you and about Lee and, and of course we, well we've already talked to Lee and he's been candid with us also, about where he, where he would go, and so I know some, I know kinda where you go to, you know, I, I know some of the areas that you've gone for dope, and again, I think I've told you, we're not narcotics officers, we're just interested in finding out who killed her. We're not interested in knockin' on doors and sayin' that you said that you . . .

A That I . . .

Q scored stuff here. Okay?

A Okay.

Q Okay?

A Okay. Thank you.

WITNESSED:

X _____

SIGNATURE ON EACH PAGE

Q All right. So that we can, we can preface that, and we're not gonna do that. We are, that's not the way we work.

A Okay.

Q So, if, if I ask you now where you went, like I know that, I think 46th and McKinley's a nice place to go, 66th and Oakes is a . . .

A Okay.

Q place you can go, and . . .

A 36th and McKinley was a nice place to go.

Q Okay, and probably still is a nice place to . . .

A Safest place to go.

Q Right. Okay. That, that was some place that you, you and her went to . . .

A Yes.

Q to get stuff? How about 66th and Oakes, same, same thing?

A 66th and Oakes?

Q Now that's right, that'd be just down the street from Lee. Did you ever, did you ever go there . . .

A No, never went there.

Q Okay.

A 66th and, I mean 46th and McKinley was our, our place of business.

Q Okay.

A And like I said, sometimes when, if push came to shove, it was 23rd.

Q Okay. What kind of a relationship did she have with Chandler?

A Strictly a smoking relationship.

Q Okay. Did he use her as a runner?

A Yeah.

Q To go get his stuff, some, on occasion?

A Yes.

WITNESSED:

_____

_____

_____

X _____

SIGNATURE ON EACH PAGE

Q Okay. And what, what would be her, what would she get out of that, a piece of the rock, or .. .

A Just smokin'.

Q Just smoke is all.

A Yeah.

Q He, would he, would he pay her, or he, would he just give her rock for it?

A If he did, it wouldn't be, you know, it wasn't to my knowledge.

Q Um-hm. So it's mostly just to, to be able to have something to smoke?

A Yes.

Q Now, when you were living with Chandler, what kind of a person was he? What, what do you recall about the guy?

A A very skeptical, very I guess because of his job, and because of his ex-wife, so, I've never met his ex-wife before, I was, (unintelligible)

Q What do you, what do you mean by skeptical? What, what kind of . . . .

A Kinda scary, you know. When, when he smoked he would get scary. I guess that paranoia feeling that they say you get when you smoke.

Q Have you ever seen him get violent?

A I've never seen him, I've never seen him get violent.

Q How 'bout, how 'bout, how 'bout towards his wife, how'd he, how'd he treat her when he was smokin'?

A I don't know, 'cause I, I was never there, I've never met his wife.

Q That's right. You were livin' there while she was gone.

A While she was gone, yeah.

Q Did he ever, did he ever talk about Linda?

A Did he ever talk about Linda?

Q Talk about Linda. I mean, you know, I know they smoked together, but I mean, you lived there with him . . .

A Yes. Yes.

Q pretty much full time.

WITNESSED:

X _____

SIGNATURE ON EACH PAGE

A As far as on a sexual basis?

Q Yeah. Whether he . . .

A Umm, not really. You know, he did, he always wanted to, but he never did, you know.

Q He, he talked about wanting to.

A He talked about wanting to.

Q Did, did he ever, you say you never saw him get violent, and . . .

A (unintelligible)

Q Towards you?

A Yeah.

Q What, what, what, in what way?

A Oh, I guess he didn't really like me, you know. I guess he just didn't really like me, I guess maybe I was just an interference, a lot of times, you know. But he was lettin' me stay there because Linda asked him, you know.

Q Did, did he use you to, to run and get crack for him . . .

A Yes.

Q Did he?

A Yeah.

Q And was he a pretty heavy smoker, would you describe . . .

A Yes.

Q Daily, do you think, or when he had money, what, was he usually smokin'?

A Yes.

Q And you say he got real paranoid when he was smokin' about that?

A Yeah.

Q Paranoid of just anybody and everybody, or?

A Yeah. Sit down and shh, be quiet, be quiet, don't move.

Q Um-hm.

WITNESSED:

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A Things like that.

Q Um-hm.

A You know, and sometimes he used to scare me.

Q Did you know any of Linda's other acquaintances. That she was with, guys she was dating or going out with?

A They used to talk about a guy named Billy a lot.

Q Um-hm.

A I've only met Billy once, and it was like a how you doin', you know, what's happenin', and that was it. I met another guy who lives over there near her, who Gloria baby-sits his kids, . . .

Q George?

A Yeah, yeah. And, that's about, it was . . .

Q Did you ever hear him talk about a guy by the name of Roy?

A No.

Q Okay. He's a, he's a, he's in the Army, somebody that she used to see months ago, who we've talked to.

A I've never, I've never met him, and me, me and Linda would get pretty, me and Linda was pretty open with each other, so I . . .

Q Well, how did she feel about Lee? Did she ever, I mean, what, what kind of a, I mean how, does she ever talk about him?

A No. No. Her and Lee, as far as, as far as she was concerned, her and Lee were just smokin' friends, and, and that was just . . .

Q Just a way to get .. .

A just a way to get it. Yeah.

Q Okay. Did, go ahead . . .

Q (Det. William Rouseff) Did Lee ever expand on that, did he ever say like, got into her, got next to her, do you think Lee would tell people as it became a part of conversation, that the relationship was more that what you are led to believe by Linda that it was? She says it's strictly smoking with Lee, would Lee be in your estimation, or your own personal knowledge, the kind of guy that would say well, Gloria and I are, or, Linda and I are real tight, you know, indicating there was more to it than what, than what she would be saying?

WITNESSED:

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A He wouldn't say that.

Q (WR) Okay.

A I don't think, I don't think he would. You know, Linda made it specific, you know, that Lee had approached her a few times, you know, but she just wasn't like that.

Q (WR) Supposing you're in there smokin' crack with Lee and he gets in this paranoid stage that you've somewhat described, you know, shh, sit down, be quiet. Supposedly you didn't sit down and you weren't quiet, what would happen?

A Well, basically, I would. He's so much bigger guy than I was, so I'd, I'd just . . .

Q (WR) So when he said shut up and sit down, you sat down.

A I'd go sit down, because I wouldn't, I wouldn't want to be pressin' like that, you know. Like, me and Lee got into a tussle one time, and that was right before I left, and he did it and he didn't try to hurt me, but he was just makin' a point, so, and naturally he could have, he could have hurt me but he didn't, he just made a point, and I made a point and I wasn't gonna back down from him, but still, I was gonna, you know, just . . .

Q (unintelligible)

A Yeah. Thank you. Thank you.

Q (WR) So, a guy like that, I guess his size was the intimidator. He wouldn't have to . . .

A Yes. Yes.

Q (WR) have to have anything else, hunh? You ever seen him with any knives, clubs, guns?

A No.

Q (WR) Everything (unintelligible)

A Huh-uh.

Q (WR) Crack smokers do a lot of, he was able to support his crack habit strictly through work?

A Yes.

Q (WR) He didn't do it so much that he would go out and do other little things . . .

WITNESSED:

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SIGNATURE ON EACH PAGE

A No.

Q (WR) that we might frown on?

A Not as, not as I know of.

Q (WR) Okay. What, what is your, have you ever been with Lee and Linda together?

A Yes.

Q (WR) And what was the situation?

A Oh, we'd smoke, we'd play cards, watch T.V.

Q (WR) Where would this be at?

A At Lee's house.

Q (WR) At Lee's house? Often, how many times do you think that occurred?

A Oh, only on his paydays.

Q (WR) Okay, since you got back in September, until Linda was killed, do you think, how many times would you say there was?

A Every two weeks.

Q (WR) Just every payday, hunh?

A Yeah.

Q (WR) Just the one night?

A No, it usually lasted for two or three nights. He's space himself out two or three nights.

Q (WR) How much money would Lee normally spend in a night of smokin' and card playin'?

A You know, he kinda kept that a, a secret to himself, but to me, I think he'd spend maybe two or three hundred over the three or four day period. Where he'd be (unintelligible) . . .

Q (WR) Pay day to pay day period.

A sometimes in one night.

Q (WR) Really?

A Yeah.

WITNESSED:

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Q (WR) Depending on the rock, I mean he's going through what, for a twenty dollar rock, he's going through . . .

A He's a big man. Yeah.

Q I got the impression he went to a cash machine the night before he got paid, . . .

A Yeah.

Q and took out every dime he could, and . . .

A Because his was, because his was automatic deposit, so . . .

Q Um-hm.

A he got, he'd get what he could and me and Linda would go back and forth, because, like I said, he had that paranoid type of feeling, he didn't want to leave the house or anything, so . . .

Q Um-hm.

A we said we'd bring him (unintelligible).

Q (WR) Did you know that his wife was back?

A I heard she's back, I heard . . .

Q (WR) But where, do you know where she's stayin'?

A I thought she was staying with him.

Q (WR) Okay.

A You know, from what I gathered, that's when I last heard, that she was staying with him.

Q (WR) Do you know why she left in the first place?

A I heard she was a, a, booster, a shoplifter.

Q (WR) Yeah, I know but is that the reason that they split up?

A I don't know, basically know the reason they split up, but if you say so, it's so. You know she, she was running off with everything and the kids were not doing right, so, if she was doing this and that . . .

Q He just has the one daughter, right?

A I think he has two daughters, he has two daughters.

WITNESSED:

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SIGNATURE ON EACH PAGE

Q Does he? Just one that lives with him?

A Yes. One that lives with him. At least she was living there when I left.

Q Where does the other one live, near, his ex-wife?

A I think, I think, she's with his mother.

Q His mother?

A Yeah.

Q (WR) Let me ask you one question, and then Jim can ask you some other things here. Who do you think did this and why?

A You know, I've been trying to figure out who could have do something like this. I hate to say it, 'cause that's still on, so . . .

Q (WR) Well, that, well, I'll tell you what we can, we can turn that off at the end, but, an opinion is, is, is, you know that's on,

A Um-hm. (unintelligible).

Q (WR) so like, let me rephrase the question. Who, is there anybody that you know that, that she's had some problems with?

A No. Nobody I know that she's had any problems with.

Q (WR) So who, who could have done this then?

A I, I don't know. I really can't . . .

Q Then you, then you think it's related to her usage of crack, or do you think it's somethin' she did to somebody else, or, somebody that is, was . . .

A You know, as much as, as much as I messin' around with it in my mind, I couldn't thing of anybody she's even involved to, you know, as, as far as smoking, I can't see anybody that she's, she's never ripped off any body. You know, she's, she's always been a person that cared a lot about people.

Q Did she ever loan money to anybody on occasion, if they wanted it?

A If she had it, she would, yes.

Q Any body in particular?

A Lee.

Q Lee would ask her for money?

A Sometimes, yes. Ask her to get a rock and say I'll pay you back at this time.

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SIGNATURE ON EACH PAGE

Q Oh. Has it ever been the other way around?

A Yes.

Q She would borrow money from . . .

A Yes.

Q somebody. She would borrow . . .

A She would, she would, she would borrow money from, oh, it's not for say money, I mean drugs, you know.

Q Sure.

A She, she'd go get a rock and Lee would buy a rock and you know, and I guess they had that little thing going on before I was even here.

Q So that's basically when he's out of money and he wants to smoke, she, she'd get him a rock and . . .

A Yes, she had.

Q visa versa type thing?

A Yeah, yeah.

Q How 'bout through, do you know exactly, what, what do you know about the crime itself? What do you know about the physical scene itself?

A Well, from what I read in the paper.

Q Which is . . .

A She was stabbed, she was dropped in the kitchen, they said she was cooking and, cooking for the kids, sounds kinda late to be cooking for the kids, because the kids, from what I, from what Heather told me, they says it happened around midnight, so I don't know, and, so . . .

Q (WR) If she's cooking for the kids, and somebody comes to the door, let's take two scenarios. One, the guy is an absolute stranger who may know her, but not know her know her. Doesn't have the type of acquaintanceship that you had had or Lee had had with her, mainly, some guy that had seen her around a bar or something . . .

A Um-hm.

Q (WR) and knocks on the door,and they might have exchanged numbers or something. Would she have let him in, in your opinion? This is a guy just hittin' on her. Not really a, she never dated him, almost a stranger, or maybe a complete stranger, but certainly not somebody that she dated or

smoked with or anything like that. Would she have let him in? Would she have let basically a stranger, or a fairly known person in the house?

A I don't think so.

Q (WR) Okay. So, getting past that, if the person did in fact get into the house without a struggle, it would be somebody that she knew.

A Yes.

Q (WR) Now you in mulling it over in your own head, had come to some, about what you feel are obvious conclusions based on what (unintelligible) that is out there about this case, and we really don't have that much more. If the person is in there and all of a sudden ends up stabbing her, why would that happen? Why would somebody stab her, as opposed to if somebody just went in to rip her off or, I don't know what they'd rip her off for . . .

A Yeah. Yeah.

Q (WR) 'cause he didn't go in with a gun, that would seem to be the weapon of choice, living in this area, not to say they would have to have a gun, but, why would they stab her?

A I guess so all of (unintelligible) would be quiet. I almost sound like it was premeditated.

Q (WR) Yeah. If they did stab her, if somebody has his choice between let's say a gun and a knife, and, oh, I don't know, a club, and he has to kill somebody with one of those three items, what kind of person would take a knife in your opinion?

A Hmm. What kind of person? I don't know, are you trying to put me in his shoes or (unintelligible) . . .

Q (WR) Well, no, okay (unintelligible). What kind of person would take the gun?

A I guess a person that just don't care.

Q (WR) All right.

A I guess a person that just don't care.

Q (WR) Would it be a big person, it would be kinda like a manly person, do you think? Would it be a person (unintelligible) . . .

A It could be a person that would be a, afraid to be overpowered.

Q (WR) It would be a person that would be afraid. Now a person with a knife could get close to him.

A Yeah.

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Q (WR) Would have no problem.

A Yeah.

Q (WR) Was Linda a strong person, I mean, was she a . . .

A I, I think she was . . .

Q (WR) Yeah.

A I think she was. You know, . . .

Q (WR) She seemed to take care of herself.

A She could take care of herself.

Q (WR) Just streetwise . . .

A She wasn't streetwise, but I know she wasn't, she wasn't afraid, I know, she wasn't afraid.

Q (WR) So somebody with a knife then we could just, just to expand this hypothesis a little longer, I mean, someone with a knife would not be afraid of getting close to her or having that knife turned upon themselves, or theirselves, or it might even be another woman, who knows?

A Yeah, I never thought about that.

Q (WR) Yeah. A knife is more of a . . .

A Because Linda, Linda didn't know a lot of women, didn't have a lot of women friends, except the ones closest to her, Jackie, and . . .

Q (WR) She didn't have a lot of women friends because she was really popular herself. You think she didn't have a lot of women friends because it would be like competition?

A Yeah. Yeah. That'd be very (unintelligible).

Q (WR) So, a person with a knife, who she probably knew, and which would probably be just, just to speculate here, or make some inferences, that person that she probably knew, person with a knife, who, who would fit under those categories that, that you, that you are aware of that Linda would know, or that you would know, or, you know, that would be connected with killing Linda?

A Okay.

Q (WR) Probably be physically, physical person.

A Yeah. Like I tell you, the only guy, the only guys that I knew was Billy, Lee, and the guy that was baby-sittin' with Gloria's kids, . . .

WITNESSED:

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SIGNATURE ON EACH PAGE

Q (WR) George.

A George.

Q (WR) Um-hm.

A They were basically the only guys I actually knew who she dealt with, you know . . .

Q (WR) Did you ever see those guys with a knife or a weapon, any kind of weapon or would talk, you know, big tough talk or something like that, (unintelligible).

A No. I heard her and Billy was pretty tight, you know but I don't know nothin' about Billy, you know. I heard her and Billy used to go together.

Q Let me, let me tell you this, Billy, we had Billy in here the first day, okay, interviewed him for extensively, and he took a polygraph and passed.

A Um-hm.

Q We're .. .

A (unintelligible) been there.

Q We're, we're convinced that Billy didn't have anything to do with her death. He, he cooperated, you know, very, very much with us, and then there was another guy by the name of Fred. Did you ever hear Fred's name come up?

A No.

Q Okay, well, Fred was another acquaintance of her, and he, he's another guy that came in, took the box, and passed, and we also had another person who we are, well, I think it's pretty apparent to you that, because of all the questions I'm asking you about Lee, that we're kinda lookin' at him, in a, in a more serious vein than other people, and there's a number of reasons for that, which I'm not at liberty to discuss right now. Now, we're still not to that point of saying okay, he did it, but we're at that point where we're saying . . .

A Hmm.

Q he could have done it.

Q (WR) There's a very definite personal interest.

Q Yeah, yeah. For a number of reasons, real definite person of interest.

A You know, you know that was my, (unintelligible).

Q That's what you were going to say?

WITNESSED:

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A Yeah.

Q Okay. Well, you're not saying anything then that we aren't . . .

A Okay.

Q we aren't. But why, why do you think then that he is, he's the guy, he . . .

A Well, well . . .

Q (WR) How come in your mind there's a good possibility?

Q Now we, we've been asking you questions . . .

A Because see, as far as I know, he knew where she was moved to, I never knew. I never knew where she lived, where she moved.

Q Right.

A You know, and, you know, Linda would tell me they were supposed to get together, you know, they were, they had been getting together, they had been coming over there spending money, and . . .

Q Coming over where, to her . . .

A Coming, going over to her apartment, and . . .

Q The new apartment?

A The new apartment, and I don't know why, he just seems like, you know, good instinct to say . . .

Q How would he usually get around? He's got a bunch of cars, half of 'em, or ninety percent of 'em are broken down.

A Yeah.

Q Did he ever borrow a vehicle from anybody?

A Not, no, not as I know about.

Q (WR) You never seen him in, what kind of vehicles have you seen him in?

A Um, just seen a blue, I think that's a blue Sky, Skylark, or whatever it is, and the tan, the tan, Camaro.

Q The one that's sittin' there right now broke down?

A Yeah, and then he had a, he had a van up there, he has a black Grand, old black Grand Prix been sittin' up there.

WITNESSED:

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SIGNATURE ON EACH PAGE

Q (WR) Uh-huh. You aware of anybody that has any kind of vehicle that he could borrow?

A Hmm.

Q (WR) That he had, that wouldn't live too far away from 'em, most likely, 'cause of gas?

A No. Not unless it's a, not unless his girlfriend, his, the girl he used to, who he was talking to, I can't remember her name, but she had a, I think she had a Grand Prix. . .

Q (unintelligible)

A and I think it was tan, I'm not sure.

Q (WR) What is this girlfriend business? Is this, this, who has a girlfriend you're trying to think of her name? She live nearby?

A No, she didn't live nearby. I think she lived on, I think she lived up off of Pacific.

Q (WR) Okay, and would she, would she, when Lee's wife came back, what happened with the girlfriend?

A Oh no, I don't know, 'cause like I said, I was out the door before Lee's wife came back. She came over there a couple of times and had dinner with Lee, you know, they bought some Pizza, some, she'd bring her kids, she had some, son and a daughter, she'd bring her kids over, and I guess Lee really liked the girl, and the girl kinda liked Lee, so, she was worried about Lee's wife getting back in the picture, so I don't know if it really came together or not. They talked often on the phone, and that was about it.

Q Okay, let me ask you this. You, you were, were beginning to say, you know, that's who I think, you know, and you said that you thought it was because he used to go over there and spend money over there, and they . . .

A Oh, yeah.

Q How, do you have any idea how often he went over there?

A No, I don't.

Q Did Linda ever talk about how often he came over there?

A No, she just said, you know, me and Linda got into a little argument about, when Lee throwed me, when Lee throwed me out, . . .

Q Uh-huh.

A and so we didn't talk for about two to three weeks.

WITNESSED:

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Q What, what was she upset about, the fact that you weren't there anymore, then that kinda . . .

A I think, no, I think it was just the way Lee did things, you know, Lee would spend money, and I would never ask Lee to spend money, you know. Whatever Lee did, he would smoke, you know, I would smoke, and I would be through with it, you know, 'cause he wanted Linda in there with him, he didn't want me in there doin' the gap, so, when Lee had jumped on me that day, and you know, we're all trying, trying to kinda looked at each other, I kinda looked at Linda, and I said well, you know, well, his apartment, don't you have anything to say about this, and she didn't say anything, so I just picked up my box and I left. So we didn't talk, we didn't talk for about maybe two or three weeks, and then one day I just up and called him and I apologized to him and called Linda and I apologized to her.

Q Was Linda over at Gloria's at that time?

A Yes.

Q She wasn't living at the apartment. You never had the phone number or knew the address?

A Nope.

Q When was the last time you saw Linda?

A The last time I saw Linda?

Q Yeah.

A Boy.

Q Over at Sharon's?

A Over off 46th and McKinley.

Q Okay, I knew, I knew Sharon's name so I . . .

A Okay.

Q And again . . .

A Okay.

Q I could care less, I mean that's . . .

A Okay.

Q How long before her death was that, that you saw her over there?

A I'd say about a month. Guesstimate.

WITNESSED:

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Q And that was the last time you had contact . . .

A Yes it was.

Q with her at all.

A Yeah.

Q When was the last time you talked to her?

A That was about the last time. That was about the last time I talked to her too.

Q So a month before her death?

A Yes.

Q It was the last time you talked to her or saw her?

A Yes.

Q And that was probably her choice, for whatever reason, because of what happened at Lee's?

A No, because I think he was just got back. I think that was (unintelligible). We just . . .

Q Weren't as tight as you were before?

A We was always, we could always keep tight even though we had that little misunderstanding.

Q But you had that month there where you didn't have any type of . . .

A Yeah, we didn't have any contact because I was too busy trying to find me a home. She was probably in the process of trying to find her a home and get settled in, you know, but she, she had called from her home one time. She had called me and I talked to her. I don't know exactly when, okay, so I can't say exactly when it was, it was before I seen her or after I'd seen her. But we had, she had called and she told me she liked her place, and so it's probably right when she moved in, okay?

Q (WR) Okay. So, but you never asked her where, where they're at, what kind of an area it is?

A Yeah, I, I would ask her, say where, well where you livin' at? I'm livin' out in Spanaway, you know, (unintelligible).

Q So . . .

WITNESSED:

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A So I guess she didn't want to give me, like she, like she had a boyfriend or something that she didn't, you know, I guess she didn't want me to come over any more. 'Cause I, I used to come over and bug her a lot. Come on, fix me somethin' to eat, what you eatin', you know, 'cause she was a good cook. So, . . .

Q Yeah.

A I was, you know, I was always over there eatin', 'cause that was, that was my main objective, let's go over there and eat. Let's go to Linda's house and eat.

Q So, let me ask you this, and I asked you this a little bit before the tape was turned on. If I asked you to take a polygraph, regarding her murder and her murder only, and whether you had anything to do with it, would you be willing to do that?

A Yes.

Q Okay, I'll conclude this tape recorded interview. The time now is 1059 hours. The date is the same, February 24th.

WITNESSED:

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Attachment “H”

WASHINGTON STATE PATROL – CRIME LABORATORY
REQUEST FOR LABORATORY EXAMINATION

http://www.wsp.wa.gov/forensics/docs/bureau/forensic_services_guide.pdf

313-001064
0001 - 06/26/2013 - DNA
STR
T8VGU3TG0PUJCR

PRIMARY AGENCY CASE NUMBER	RELATED AGENCY CASE NUMBER(S)
93-0371041	

HAS OTHER EVIDENCE IN THIS CASE BEEN PREVIOUSLY SUBMITTED TO A WSP CRIME LAB? ☐ YES ☒ NO

OFFENSE: Homicide

DATE OF OFFENSE: 02/06/1993

SUSPECT(S) – LAST, FIRST, MI (SID #, if available)	DOB	VICTIM(S) – LAST, FIRST, MI (ALSO USE THIS SPACE FOR ELIMINATION PRINTS)	DOB
1 Chandler, Lee Howard SID # Wa18362325	06/21/1953	1 Robinson, Linda	12/14/1956
2		2	
3		3	
4		4	

INVESTIGATING OFFICER/DETECTIVE (Can be different from submitter) ☐ RUSH COURT DATE

NAME (TYPE OR PRINT) (LAST NAME, FIRST NAME)	RANK/POSITION	BADGE #	SIGNATURE	DATE
Tim Kobel	Det/Sgt.	80-005	Tim Kobel	06/21/1013

E-MAIL ADDRESS(ES)	PHONE	EXTENSION
Tkobel@co.pierce.wa.us	(253) 798-7714	

AGENCY	STREET ADDRESS	CITY	ZIP CODE
Pierce County Sheriff's Dept.	930 Tacoma Ave South	Tacoma	98402

EVIDENCE ITEM # (Prioritized)	ITEM DESCRIPTION	EXAM CODES	SPECIAL INSTRUCTIONS
MC #23	Tubes with blood		victims drawn blood from autopsy for elimination purposes.
MC #30	Unknown sample w/control sample from bathroom floor		compare to MC #23, looking for a male DNA profile
MC #36	Unknown sample, bottom drawer vanity in master bedroom		Compare to MC #23, looking for male DNA profile
MC #37	Unknown sample on vanity		Compare to MC #23, looking for male DNA profile
MC #38	Papers w/unknown stains		Compare to Mc #23, looking for male DNA profile
	6/24/13 - RFLE ONLY,		
	No evidence. M. Brown		

FOR LAB USE ONLY

SUBMITTED BY: (PRINT NAME—LAST NAME, FIRST NAME)	SIGNATURE	DATE	TIME

SUBMITTAL METHOD	TRACKING NUMBER

RECEIVED BY: (PRINT NAME—LAST NAME, FIRST NAME)	SIGNATURE	DATE	TIME

FOR LAB USE ONLY

Evidence Item #	TRANSFERRED BY	TO	VIA	DATE-TIME	RECEIVED BY	DATE-TIME
TRACKING NO.						
TRACKING NO.						
TRACKING NO.						

Item(s) being released:

RELEASED TO: (PRINT NAME—LAST NAME, FIRST NAME)	SIGNATURE	DATE	TIME

RELEASE METHOD ☐ IN PERSON ☐ UPS ☐ FED EX ☐ U.S. CERT. MAIL TRACKING NUMBER

RELEASED BY: (PRINT NAME—LAST NAME, FIRST NAME)	SIGNATURE	DATE	TIME

JAY INSLEE
Governor

JOHN R. BATISTE
Chief

STATE OF WASHINGTON
WASHINGTON STATE PATROL
2502 112th Street East, Rm 273 • Tacoma, WA 98445-5104 • (253) 538-3207 • www.wsp.wa.gov

CRIME LABORATORY REPORT

AGENCY: Pierce County Sheriff's Department
OFFICER: Det/Sgt Tim Kobel
VICTIM: Robinson, Linda
SUSPECT: Chandler, Lee Howard

LABORATORY NO.: 313-001064
AGENCY NO.: 93-0371041
REQUEST NO.: 0001

Items Received

MC#23: Two tubes of red liquid reported to be blood samples from Linda Robinson.
MC#30: One folded bindle labeled "unknown" containing a thread with red/brown stain, reported to be from "bathroom floor". This item also contains a folded bindle labeled "control" which was not examined.
MC#36: One folded bindle containing red/brown flakes, reported to be from "bottom drawer vanity in master bedroom".
MC#37: One folded bindle containing red/brown flakes, reported to be on "vanity".
MC#38: Two envelopes (one with a coin purse) – one with obvious red/brown staining.

Examination Procedures and Test Results

The red/brown staining/flakes found in items MC#30, 36, 37 & 38 were all tested with phenolphthalein, a presumptive chemical test for blood, with positive results. The thread from MC#30, the flakes from MC#36 & 37, and a portion of the largest stain from MC#38 were all removed and extracted for DNA content.

A portion of the red liquid from one tube of MC#23 was removed and extracted for DNA content. Additionally, a portion of the liquid from one tube of MC#23 was spotted onto filter paper, dried and re-packaged back into MC#23.

The extracted samples were quantified for human DNA levels, then amplified by the PCR (polymerase chain reaction) process using the Applied Biosystems (AB) AmpFℓSTR® Identifiler® Plus amplification kit. The resulting amplified STR (short tandem repeat) DNA products were analyzed using an AB 3130 Genetic Analyzer. A threshold of 150 Relative Fluorescence Units (RFU) and above is used for inclusionary purposes. Data at and above 35 RFU may be considered for exclusionary purposes.

The DNA sites examined during this analysis were D8S1179, D21S11, D7S820, CSF1PO, D3S1358, TH01, D13S317, D16S539, D2S1338, D19S433, vWA, TPOX, D18S51, Amelogenin (a sex determination site), D5S818 and FGA.

Christopher G. Sewell, Forensic Scientist — 10/10/13 Date

AGENCY:	Pierce County Sheriff's Department	**LABORATORY NO.:**	313-001064
OFFICER:	Det/Sgt Tim Kobel	**AGENCY NO.:**	93-0371041
VICTIM:	Robinson, Linda	**REQUEST NO.:**	0001
SUSPECT:	Chandler, Lee Howard		

Conclusions

A single source, female DNA typing profile was obtained from MC#30. This profile matches the profile from Linda Robinson, MC#23.

The profile obtained from MC#38 is a mixture of DNA consistent with having originated from at least two individuals. The profile of the major component in this profile is from a single male (designated Individual A). The single male profiles from MC#36 and 37 match Individual A.. The profile of Individual A was entered into and searched against the Washington State Patrol Combined DNA Index System (CODIS) database. A match between the DNA typing profiles of Individual A and **James Mitchell** (DOB 8/6/1962, State ID# WA 15497498, alternate names listed) was declared. It is requested that a known reference sample from James Mitchell be submitted to the Washington State Patrol Tacoma Crime Laboratory to confirm this match. The whereabouts of James Mitchell are unknown.

The trace component in MC#38 is of limited genetic information. Linda Robinson (MC#23) can neither be included nor excluded as being the source of this trace component.

Glossary

DNA (deoxyribonucleic acid): Genetic material found in all nucleated cells of the body.
PCR (polymerase chain reaction): A process used to make many copies of short target segments of DNA which subsequently can be typed. This process is commonly referred to as "DNA amplification".
STR (short tandem repeat): Short segments of DNA, of a particular sequence, which are repeated a variable number of times. STR's are differentiated and categorized based on size.

Remarks

The DNA typing profile of Individual A (from items MC#36, 37 & 38) will also be entered into and searched against the National DNA Index System (NDIS) of CODIS. Routine, scheduled searches of both the WSP and National databases of CODIS will be conducted. If a potentially probative match should occur, a subsequent report will be issued.

Items MC#23, 30, 36, 37 & 38 now contain DNA work product generated during this analysis. All remaining evidence will be stored at the Washington State Patrol Tacoma Crime Laboratory evidence vault pending return to the Pierce County Sheriff's Department.

Christopher G Sewell — 10/10/13

Christopher G. Sewell, Forensic Scientist — Date

Attachment “I”

14-1-02979-1 45818067 ORRE 11-03-15

FILED
DEPT. 11
IN OPEN COURT
OCT 29 2015
Pierce County Clerk
By _____ DEPUTY

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON, Plaintiff,	CAUSE NO. 14-1-02979-1
v.	ORDERS RE: MOTIONS TO SUPPRESS [ER 803(a)(5); OTHER SUSPECT EVIDENCE; FOUND WEAPONS]
JAMES EDWARD MITCHELL, Defendant.	

THE BELOW MATTERS having come on before the Honorable G. Helen Whitener on the 24th day of September, 2015, and the court having rendered an oral rulings thereon, now enters the following written ORDERS.

I. STATE'S MOTION TO ADMIT EVIDENCE UNDER ER 803(a)(5) AND RCW 5.45.020

The State's motion to admit evidence under ER 803(a)(5) is granted.

The police reports and property sheets drafted by Pierce County Sheriff Department ("PCSD") Forensic Officers Hilding Johnson and Ted Schlosser, as well as other similarly situated witnesses, are admissible under ER 803(a)(5) as prior recollections recorded, assuming proper foundation is laid at trial.

The Court, having found the evidence admissible under ER 803(a)(5), need not and does not reach the question of whether the evidence would be admissible under RCW 5.45.020.

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II. STATE'S MOTION TO EXCLUDE OTHER SUSPECT EVIDENCE

The State's motion to exclude other suspect evidence is granted.

In a case where a defendant seeks to introduce evidence connecting another person with the crime charged, a proper foundation must be laid. There must be such proof of connection between the person and the crime as to tend clearly to point to someone other than the defendant as the guilty party. Mere motive, ability, and opportunity to commit the crime are not alone sufficient.

The defendant has the burden to produce the necessary evidence of connection between the crime and the other suspects. Here, the defendant has failed to produce such evidence. Defendant may re-litigate the issue of other suspect evidence based on evidence produced or proffered at trial.

III. STATE'S MOTION TO EXCLUDE KNIFE AND SHOTGUN

The State's motion to exclude evidence of the knife and shotgun seized under PCSD incident number 93-038-0408 is denied.

The victim was murdered with a knife, the knife was never found, and there was testimony of gunfire on the night in question. The original lead detective on the case took notes and made a notation of the knife and shotgun under 93-038-0408 in his notes about this case. These items were found on the day after the murder, there was apparent blood on the knife, and the finding officer requested the knife be processed for fingerprints, which was apparently not done.

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The evidence is relevant and therefore admissible. Any objections go to weight and not admissibility.

DATED this 29th day of October, 2015.

G Helen Whitener
JUDGE

FILED
DEPT. 11
IN OPEN COURT
OCT 29 2015
Pierce County Clerk
By _____
DEPUTY

Presented by:

STEPHEN M. PENNER
Deputy Prosecuting Attorney
WSB # 25470

Approved as to Form:

MARY K. HIGH
Attorney for Defendant
WSB # 20123

sp

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Attachment “J”

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PIERCE COUNTY, WASHINGTON

July 13 2015 2:37 PM

KEVIN STOCK
COUNTY CLERK
NO: 14-1-02979-1

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON, Plaintiff, vs. JAMES MITCHELL, Defendant.	)))))))))	NO. 14-1-02979-1 MEMORANDUM IN SUPPORT OF MOTION ALLOWING OTHER SUSPECT EVIDENCE

INTRODUCTION

Defendant James Mitchell seeks an Order from this court permitting him to introduce other suspect evidence at trial. This evidence is necessary to permit Mr. Mitchell a meaningful opportunity to present a full defense that rebuts the State's case.

I. STATEMENT OF FACTS

Evidence of other suspects is admissible in this case because Lee Chandler failed the polygraph regarding his involvement in her murder and Billy Miller, an individual who was violent with her in the past, called less than 24 hours before Linda Robinson's death threatening to come over to her home

ORIGINAL

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Linda Robinson dated multiple men at the same time, and some of them were reported to be jealous. The day of her death, Ms. Robinson told her sister and best friend that her former lover Billy Miller called her twice "talking stupid" and wanted to come visit her. When she told him she would not let him in if he came over, he threatened her and said she had better open the door for her. Miller was reported to be the jealous type and had gotten rough with Robinson before. The day of her death she also borrowed George Caldwell's van and had made plans to meet up and have sex with him. The plan was to meet him after her daughter was done roller skating at the Spinning Wheels roller rink. She was on the phone with him sometime around 10:45 p.m. He reports he heard someone come to the door, heard what he believed to be a black male's voice and her voice. He describes the male voice as sounding irritated and describes her voice sounding as if she was trying to appease the man who had come to her door. He reports he hears her say, "OK, OK" several times. He then heard a "click" on the line and he did not speak to her after that. She had call waiting but did not believe she had clicked him off the line. She had also made plans to see Fred Ross sometime that same night and was on the phone with him from 10:30 until approximately 11:00 p.m. She did not identify her visitor to either man on the phone. Her neighbor, Mr. Alvernaz said he her speaking in a loud tone of voice for two or three minutes, he did not hear the voice of the person she was speaking to and had assumed she was yelling at her daughter.

She reportedly had a sexual relationship and was a drug runner for Lee Chandler, Mr. Chandler was married and his wife did not like Ms. Robinson. Associates described Mr. Chandler as intimidating and that he and Linda Robinson smoked crack cocaine together. She also borrowed money from him. Mr. Chandler was questioned twice by lead detective O'Hern and gave inconsistent stories about his whereabouts and knowledge of her death. On December

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20, 1993, PCSO Detective Van Victor administered a "Specific Issue" polygraph examination to Mr. Chandler regarding his possible involvement in the death of Ms. Robinson. Mr. Chandler failed the polygraph. He showed deception on the relevant questions:

1. Do you know who stabbed Linda Robinson around the time of her death?
2. Around the time of her death, did you stab Linda Robinson?
3. Right now, can you lead me to the knife used to kill Linda?
4. Were you there, at Linda's apartment, at the very time she was stabbed and killed?

Bates pages 78-79.

Investigators' interviewed Chandler's wife after he failed his polygraph and was arrested. They not only told her he had been arrested but she admitted he told her all the questions the police had asked him after his first interview. She reported that Chandler was the main bread winner for the family and that he could not miss any work or her would lose his job, She was Chandler's only alibi and she reported he left their home in the evening sometime after their 14 year old daughter went to bed to purchase crack cocaine and soda pop, but claims he was only gone for 15 minutes. She said she was unsure if he drove or rode their daughter's bike because the car was not running properly. Officer's did not check the car, either for evidence, or to determine if was operable. Her time frame ranged from 9 to 10 p.m. He supposedly bought the crack at an identifiable house and soda pop at the Lively Market. Nothing in discovery indicates this information was checked out. Mrs. Chandler was not polygraphed, the daughter was not interviewed. The lead detective kept a photo of Chandler out in his office until he retired.

While Mr. Mitchell's DNA was recovered, law enforcement have not bothered to analyze or identify other recovered DNA profiles.

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II. REMEDY SOUGHT

The Defendant moves this court for an order allowing the Defense to argue that another suspect committed this crime.

III. POINTS AND AUTHORITIES

A. Evidence Of Other Suspects Must Be Admitted Under The U.S. and State Constitutions Guarantee Of Compulsory Process.

"Few rights are more fundamental than that of an accused to present witnesses in his own defense." State v. Franklin, 180 Wn.2d 371, 325 P.3d 159 (2014) quoting, Chambers v. Mississippi, infra. The Sixth Amendment, U.S. Constitution, provides as follows: "In all criminal prosecutions, the accused shall enjoy the right . . . to have compulsory process for obtaining witnesses in his favor. . . " The Compulsory Process Clause, which has been incorporated into the Fourteenth Amendment, provides a criminal defendant the right to compulsory process to obtain the attendance of witnesses at his trial. Washington v. Texas, 388 U.S. 14, S.Ct. 1920, 18 L.Ed.2d 1019 (1967); Chambers v. Mississippi, 410 U.S. 284 93 S.Ct. 1038, 35 L.Ed.2d 297 (1973). Few rights are as fundamental than that of an accused to present witnesses in his own defense. Id. For that reason, the United States Supreme Court has ruled that a trial court cannot exclude defense profferd other suspect evidence because of the perceived strength of the State's case. Franklin, at 378, citing Holmes, 547 U.S. at 327-29. Article 1, Section 22 of the Washington State Constitution provides a similar right: "In criminal prosecutions the accused shall have the right . . . to have compulsory process to compel the attendance of witnesses in his own behalf . . ." See State v. Smith, 101 Wn.2d 36, 677 P.2d 100 (1984). The right of compulsory process in Washington is further codified in statute and Court rule both. RCW 10.52.040; CrR 6.12.

In Washington v. Texas, 388 U.S. 14, 19, 87 S.Ct. 1920, 18 L.Ed.2d 1019 (1967), the U.S.

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Supreme Court described the importance of this fundamental right:

> The right to offer the testimony of witnesses, and to compel their attendance, if necessary, is in plain terms the right to present a defense, the right to present the defendant's version of the facts as well as the prosecution's to the jury so that it may decide where the truth lies. Just as an accused has the right to confront the prosecution's witnesses for the purpose of challenging their testimony, he has the right to present his own witnesses to establish a defense. This right is a fundamental element of due process of law.

The Washington court found error because the defendant was denied access to a "witness who was physically and mentally capable of testifying to events he had personally observed, and whose testimony would have been "relevant and material to the defense." Washington v. Texas, supra at 23.

Our State Supreme Court reversed a trial court that excluded other suspect evidence because "the trial court reasoned that such evidence was inadmissible unless it overcomes a "high" bar. Franklin, 180 Wn.2d at 372. The supreme court rejected this reasoning stating, "The trial court clearly meant a bar higher than the relevance, foundation, and similar prerequisites to admissibility established by the Washington Rules of Evidence; the trial court meant it could consider all the other evidence of [defendant's] guilt and exclude "other suspect" evidence because the other proof of defendant's guilt was great." Id.. The State Supreme Court reversed because the United State's Supreme Court bars the trial court from considering the strength or weakness of the State case in deciding whether to exclude defense proffered other suspect evidence. Id. Citing, Holmes v. South Carolina, 547 U.S. 319, 126 S. Ct. 1727, 164 L.Ed.2d 503 (2006). As the State Supreme Court explained, "Washington law reinforces this constitutional mandate. We have never adopted a per se rule against admitting circumstantial evidence of another person's motive, ability, or opportunity. Instead, our cases hold that if there is an adequate nexus between the alleged other suspect and the crime, such evidence should be admitted." Franklin, 180 Wn.2d at 373.

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The admissibility of other suspect evidence was addressed by the United States Supreme Court in Holmes v. South Carolina, 547 U.S. 319, 126 S.Ct. 1727, 164 L.Ed.2d 503, (2006). The court reversed the lower courts decisions which had precluded the defense from presenting evidence that another individual was responsible for the rape, robbery and murder of an elderly woman in her home. The Holmes Court held:

> "[S]tate and federal rulemakers have broad latitude under the Constitution to establish rules excluding evidence from criminal trials." *United States v. Scheffer,* 523 U.S. 303, 308, 118 S.Ct. 1261, 140 L.Ed.2d 413 (1998); see also *Crane v. Kentucky,* 476 U.S. 683, 689-690, 106 S.Ct. 2142, 90 L.Ed.2d 636 (1986); *Marshall v. Lonberger,* 459 U.S. 422, 438, n. 6, 103 S.Ct. 843, 74 L.Ed.2d 646 (1983); *Chambers v. Mississippi,* 410 U.S. 284, 302-303, 93 S.Ct. 1038, 35 L.Ed.2d 297 (1973); *Spencer v. Texas,* 385 U.S. 554, 564, 87 S.Ct. 648, 17 L.Ed.2d 606 (1967). This latitude, however, has limits. "Whether rooted directly in the Due Process Clause of the Fourteenth Amendment or in the Compulsory Process or Confrontation clauses of the Sixth Amendment, the Constitution guarantees criminal defendants 'a meaningful opportunity to present a complete defense.' " *Crane, supra,* at 690, 106 S.Ct. 2142 (quoting *California v. Trombetta,* 467 U.S. 479, 485, 104 S.Ct. 2528, 81 L.Ed.2d 413 (1984); citations omitted). This right is abridged by evidence rules that "infring[e] upon a weighty interest of the accused" and are " 'arbitrary' or 'disproportionate to the purposes they are designed to serve.' " *Scheffer, supra,* at 308, 118 S.Ct. 1261 (quoting *Rock v. Arkansas,* 483 U.S. 44, 58, 56, 107 S.Ct. 2704, 97 L.Ed.2d 37 (1987)).

Holmes v. South Carolina, 126 S.Ct. at 1731.

In the case at bar, the State's seeks to prohibit the defense from arguing "other suspect evidence," such a request denies the constitutional guarantee of an accused to a determination of innocence or guilt by a jury of his peers. Part and parcel of that right is the right to present evidence supporting valid defenses. U.S. Constitution, Amendment VI; Washington Constitution, Article I, Section 21 and 22. Franklin, supra., Holmes v. South Carolina, supra; see also State v. Lavaris, 41 Wn. App. 856, 859, 707 P.2d 134 (1985), *affirmed,* 106 Wn.2d 340, 721 P.2d 515 (1986) (to perform its truth finding function, "the jury must be apprised of all material and relevant evidence, whether presented by the prosecution, the defense, or both"); State v. Sabbot, 16 Wn. App. 929,

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931, 561 P.2d 212 (1977) ("the courts must be both circumspect and motivated by the most compelling of reasons before depriving the jury of material and relevant evidence having a bearing on the truth"). See also Taylor v. Illinois, 484 U.S. 400, 98 L.Ed.2d 398, 108 S.Ct. 646 (1988); Rock v. Arkansas, 483 U.S. 44, 97 L.Ed.2d 37, 107 S.Ct. 2704 (1987); Chambers v. Mississippi, 410 U.S. 284, 35 L.Ed.2d 297, 93 S.Ct. 1038 (1973).

B. The Downs/Mak Line Of Cases Excluding "Other Suspect" Evidence Do Not Apply In This Case And Are Clearly Distinguishable.

The State argues the Defense should not be allowed to put on evidence of "other suspects" since it is irrelevant and speculative. This argument, carried to its logical conclusion, excludes all evidence unless it relates to the person charged in the above captioned information. This is a ridiculous conclusion. As argued below, an accused is only prevented from calling witnesses to show, speculatively, that some third party could have committed the crime. See State v. Downs, 168 Wash. 664, 667, 13 P.2d 1 (1932).

1.) The Downs/Mak Doctrine.

The paradigm case in Washington governing the admissibility of evidence, connecting another person to the crime charged is set forth in State v. Mak, 105 Wn.2d 692, 718 P.2d 407 (1986):

> Before a defendant can introduce evidence connecting another person with the crime charged, a proper foundation must be laid. The rule is stated in State v. Downs, 168 Wash. 664, 667, 13 P.2d 1 (1932): Before such testimony can be received, there must be such proof of connection with the crime, such a train of facts of circumstances as tend clearly to point out someone besides the accused as the guilty party. (citation omitted)

State v. Mak, 105 Wn.2d at 716.

The Mak court cites to the California Supreme Court holding in People v. Mendez, 193 Cal.

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39, 52, 223 P.65 (1924):

> It seems to us that there is a sound basis for this rule and that it rests fundamentally upon the same consideration which lead to the early adoption of the elementary rules that evidence to be admissible must be both relevant and material. It rests upon the necessity that trials of cases must be both orderly and expeditious, that they must come to an end, and that it should be a logical end. To this end, it is necessary that the scope of inquiry into collateral and unimportant issues must be strictly limited.

Mak, 105 Wn.2d at 716-17. (*quoting* Mendez, 193 Cal at 52.)

2.) Application Of The Downs/Mak Doctrine By Washington Courts.

Washington courts have invoked the Downs/Mak doctrine to exclude witnesses for the defense when there is the lack of connection between the testimony and the crime. Consistently the Washington Appellate Courts have held motive alone was not enough: "[m]ere evidence of motive in another party, or motive coupled with threats of such other person, is inadmissible, unless coupled with other evidence tending to connect such other person with the actual commission of the crime charged." State v. Kwan, 174 Wash. 528, 533, 25 P.2d 104 (1933), *cited with approval* in State v. Russell, 125 Wash.2d 24, 77, 882 P.2d 747 (1994), *cert. denied*, ---U.S.---, 115 S.Ct. 2004, 131 L.Ed.2d 1005 (1995).

The defendants in Downs offered evidence that a potential suspect—the apparently infamous burglar " 'Madison Jimmy' "—was in town at the time the charged burglary was committed. Id. at 666, 13 P.2d 1. There was no evidence actually connecting Madison Jimmy in any way to the particular burglary. Without the necessary "train of facts or circumstances" linking him to the crime, opportunity and character evidence alone were insufficient to infer any third-party guilt; it was "the most remote kind of speculation." *Id.* at 668, 13 P.2d 1. As such, it was properly excluded as irrelevant. While Downs remains good law, our courts have since developed the "train of facts or circumstances" standard.

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As the Franklin court noted,

> In contrast, we held in *State v. Maupin* that eyewitness testimony that a kidnapping victim was seen after the kidnapping with a person other than the defendant was both relevant and sufficiently probative to pass the *Downs* test. 128 Wash.2d 918, 928, 913 P.2d 808 (1996). Such evidence links the other suspect to the specific crime charged, either as the true perpetrator or as an accomplice or associate of the defendant. Evidence of this sort differs from evidence of motive, ability, opportunity, or character in that the proffered evidence *alone* is sufficient under the circumstances to establish the necessary connection. However, neither *Maupin* nor the earlier cases stand for the proposition that motive, ability, opportunity, and/or character evidence together can never establish such a connection. The *Downs* test in essence has not changed: some combination of facts or circumstances must point to a nonspeculative link between the other suspect and the charged crime.

State v. Franklin, 180 Wn. 2d at 380-81.

For example, in State v. Rehak, 67 Wn. App. 157, 834 P.2d 651 (1992)[1], the court held that the murder defendant failed to lay a foundation supporting her defense that her son had committed the murder. The defendant admitted she was nearby when her husband was shot; the evidence (absence of tracks in the snow) indicated that she must have been alone in the house with her husband and that no one else could have gone in or out of the house. While her son conceivably could have driven to the scene of the crime from several counties away, there was no evidence that he took a step to act on that possibility. Rehak, 67 Wn. App. at 163, 834 P.2d 651. Rather, all the evidence presented was to the contrary.

Another example can be found in Russell, a first degree murder case cited above. The defendant attempted to introduce evidence that two other men had a motive to kill one of the victims. The trial court excluded the evidence and the Supreme Court affirmed explaining that mere evidence of the existence of someone else's motive to commit the crime is not enough.

In re Personal Restraint of Lord, 123 Wn.2d 296, 315-16, 868 P.2d 835, *cert. denied*, 513 U.S. 849, 115 S.Ct. 146, 130 L.Ed.2d 86 (1994), is another demonstration of the rule. The Supreme

[1] State v. Rehak, 67 Wn.App. 157, 834 P.2d 651 (1992), *review denied*, 120 Wash.2d 1022, 844 P.2d 1018, cert. denied, 508 U.S. 953, 113 S.Ct. 2449, 124 L.Ed.2d 665 (1993).

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Court affirmed the exclusion of certain evidence. In so doing, the Supreme Court stated:

> Lord claims the trial court erred in excluding evidence that (a) other individuals had refused to give hair samples or take polygraph examinations when the police asked them to do so, (b) one of Parker's neighbors owned a blue pickup trick which was not seen after Parker disappeared, (c) Parker's boyfriend wanted to have sex with her, (d) Parker had expressed concern about being followed by someone in a car, (e) several other persons had access to the U-Haul blanket and the residence in which Parker had last been seen alive. The trial court excluded this evidence under State v. Mak, 105 Wash.2d 692, 716-17, 718 P.2d 407, *cert. denied*, 479 U.S. 995, 107 S.Ct. 599, 93 L.Ed.2d 599 (1986), which holds that evidence connecting another person with the crime charged is not admissible unless there is a train of facts or circumstances which tend clearly to point to someone other than the defendant as the guilty party. See also State v. Downs, 168 Wash. 664, 667, 13 P.2d 1 (1932); State v. Kwan, 174 Wash. 528, 533, 25 P.2d 104 (1933). Lord does not explain how any of the above evidence tends to point clearly to anyone else as the guilty party.

Lord at 927-928.

As in the case of Franklin, these cases simply do not apply to this case where, the probative evidence from independent witnesses and law enforcement investigation is not outweighed by the well established considerations found at ER 403, such as unfair prejudice or confusion. As the Franklin court held, "[T]he trial court was thus incorrect to suggest that direct evidence rather than circumstantial evidence is required under our cases. The standard for relevance of other suspect evidence is whether there is evidence " 'tending to connect' " someone other than the defendant with the crime. Downs, 168 Wash. at 667, 13 P.2d 1 (quoting 16 C.J. *Criminal Law* § 1085, at 560 (1918)), *quoted in* Maupin, 128 Wash.2d at 925, 913 P.2d 808. Further, other jurisdictions have pointed out that this inquiry, properly conducted, "focuse [s] upon whether the evidence offered tends to create a reasonable doubt as to the *defendant's* guilt, not whether it establishes the guilt of the *third party* beyond a reasonable doubt." Smithart v. State, 988 P.2d 583, 588 & n. 21 (Alaska 1999). The standard set forth by the trial court establishes a bar to

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admission of other suspect evidence significantly higher than the standard we have previously set forth and higher than the standard used in other jurisdictions. Franklin, 180 Wn.2d at 381.

The Franklin Court's "more restrained interpretation" of the Downs standard is also compelled by the United States Supreme Court's holding in Holmes, 547 U.S. 319, 126 S.Ct. 1727. As discussed above, in that case, the Court examined the South Carolina Supreme Court's transformation of the "train of facts or circumstances" test—i.e., the Downs test—into a balancing of the relative probative value of other suspect evidence against strong forensic evidence implicating the defendant. *Id.* at 328–29, 126 S.Ct. 1727. The Supreme Court held that trial courts may exclude evidence on the ground that its probative value is outweighed by other considerations, but the probative value must be based on whether the evidence has a logical connection to the crime—not based on the strength of the State's evidence: "[j]ust because the prosecution's evidence, *if credited,* would provide strong support for a guilty verdict, it does not follow that evidence of third-party guilt has only a weak logical connection to the central issues in the case." Id. at 330, 126 S.Ct. 1727. Franklin, 180 Wn.2d at 381-382.

As the Holmes case demonstrates, the weighty constitutional interests of the accused may not be abridges by evidence rules that are ""arbitrary" or "disproportionate" to the purposes they are designed to serve."" Holmes, 126 S.Ct. at 1231 citing United States v. Scheffer, 523 U.S. 303, 308, 118 S.Ct. 12611, 140 L.Ed.2d 4113 (1998).

C. The Downs/Mak Doctrine Does Not Preclude Relevant Evidence Of A Valid Claim Or Defense To The Charged Crimes.

The State may not assert that Mak and Downs stand for the proposition that evidence of

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other suspects is irrelevant. The State is simply misapplying the holdings in Mak and Downs and the holdings of the United States Supreme Court in Holmes v. South Carolina, supra; Crane v. Kentucky, 476 U.S. 683, 690, 106 S.Ct. 2142, 90 L.Ed.2d 636 (1986); United States v. Scheffer, supra.

To be relevant, evidence must meet two requirements: (1) the evidence must have a tendency to prove or disprove a fact (probative value), and (2) that fact must be of consequence in the context of the other facts and the applicable substantive law (materiality). 5 K. Tegland, Wash.Prac. § 82, at 168 (3d ed. 1992). The relevance of evidence will depend upon the circumstances of each case and the relationship of the facts to the ultimate issue. Chase v. Beard, 55 Wn.2d 58, 61, 346 P.2d 315 (1959), *overruled on other grounds*, 100 Wn.2d 729, 675 P.2d 1207 (1984). Relevant evidence encompasses facts that present both direct and circumstantial evidence of any element of a claim or defense. Tegland § 83, at 171. **Facts tending to establish a party's theory of the case will generally be found to be relevant.** State v. Mak, 105 Wash.2d 692, 703, 718 P.2d 407 (1986)(citations omitted). See also, Holmes v. South Carolina, 126 S.Ct. at 1231-32 ("Whether rooted directly in the Due Process Clause of the Fourteenth Amendment or in the Compulsory Process or Confrontation clauses of the Sixth Amendment, the Constitution guarantees criminal defendants 'a meaningful opportunity to present a complete defense.' " *Crane, supra,* at 690, 106 S.Ct. 2142 (quoting *California v. Trombetta,* 467 U.S. 479, 485, 104 S.Ct. 2528, 81 L.Ed.2d 413 (1984)).

The defense in the instant case will establish through the presentation of testimony relevant evidence of another suspect, Lee Chandler. Not only will the defense challenge the State evidence as it will be attributed to James Mitchell but it will also establish that detectives investigating this case believe there was a real possibility that another suspect committed this crime. Lee Chandler

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not only failed a polygraph but he was arrested. The defense also intends to use this evidence to point out that the police have failed to thoroughly and competently investigate or eliminate suspects known to them. The Downs and Mak holdings do not render such testimony irrelevant.

The instant case is factually similar to State v. Maupin, 128 W.2d 918, 913 P.2d 808 (1996). In Maupin, the defendant was accused of the kidnap-murder of a child. On January 25, 1988, the Spokane Police Department received a call that Tricna Dawn Cloy, the six-year-old daughter of Christine Fraijo, had disappeared during the night from the family home in Spokane. The previous evening, Ms. Fraijo, her four-year-old son Elston and Tricna, attended a birthday party at the home of a neighbor. Thomas Maupin was also a guest at the party. Tricna was subsequently abducted late that night and unseen until her body was found in a gravel pit nearly six months later. Maupin, at 921. Maupin was charged with abduction and murder.

During the trial, Maupin wanted to have James Brittain testify. Brittain claimed to have seen Tricna Cloy, the day after she was kidnapped, being carried wrapped in a blanket by a Daniel McIntosh. Brittain claimed that McIntosh and another individual kept Tricna in a room in a house where Brittain was staying. According to Brittain, McIntosh and the other man took the girl away early the following morning. Brittain first told this story to Detective James Peterson on September 12, 1991, more than three years after the crime. A defense investigator subsequently interviewed Brittain on September 24, 1991. Maupin, at 921-922.

The State filed a motion to exclude Brittain's testimony. The State based its motion on purported inconsistencies, and on the inability of that testimony to connect McIntosh or anyone else with the crime, citing State v. Downs, 168 Wash. 664, 13 P.2d 1 (1932). The State appended to its motion Detective Peterson's report, the defense investigator's verbatim interview with Brittain, and the affidavit of Detective Peterson, to containing reports that Daniel McIntosh denied Brittain's

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story. Detective Peterson in his report said he did not believe Brittain because Brittain said he saw Tricna with McIntosh the day and evening before she was kidnapped. Maupin, at 921-922. The trial proceeded without Brittain's testimony, and the jury found Maupin guilty of first-degree murder.

The Washington Supreme Court held that defendant was denied his right to compulsory process when the trial court refused admission of testimony that the child victim was seen alive with another person the day after defendant was alleged to have committed the child's murder. The Maupin court emphasized how fundamental the right to call witnesses is in presenting a defense:

> The right to offer the testimony of witnesses, and to compel their attendance, if necessary, is in plain terms the right to present a defense, the right to present the defendant's version of the facts as well as the prosecution's to the jury so it may decide where the truth lies. Just as an accused has the right to confront the prosecution's witnesses for the purpose of challenging their testimony, he has the right to present his own witnesses to establish a defense. This right is a fundamental element of due process of law.

Maupin, at 924, *citing* Washington v. Texas, 388 U.S. 14, 87 S.Ct. 1920, 18 L.Ed.2d 1019 (1967) *cited with approval by* State v. Smith, 101 Wash. 2d 36, 41, 677 P.2d 100 (1984).

The same is true in this case; testimony that Lee Chandler committed this crime will certainly ". . . call into question the State's version of events, and thus, exclusion of the testimony violates defendant's constitutional right to call witnesses in his defense."

D. The Downs/Mak Doctrine Does Not Preclude Direct Evidence Of "Other Suspect" Participation In The Charged Crimes.

Finally, Washington courts only invoke the Downs/Mak doctrine to exclude witnesses for the defense when there is no connection of the proffered testimony to the crime. Maupin, at 928. In the present case there is more than mere motive and speculative opportunity. Chandler had a significant relationship with Linda Robinson, romantic and she washis drug courier. He left his

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hokme the night she was killed. The lead detective kept his photo as his prime suspect out in his office for over a decade. .

E. The Downs/Mak Doctrine Does Not Preclude Presentation Of Circumstantial "Other Suspect" Evidence To Neutralize Or Overcome Evidence Presented By The State In The Charged Crimes.

The Downs/Mak holdings and subsequent cases relying on their holdings indicate that the defendant cannot attempt to rebut the State's case with insufficient evidence that someone else committed the crime. This rule is called into question by Holmes v. South Carolina, 126 S.Ct. at 1231, wherein the Court held that a criminal defendant's federal constitutional rights are violated by an evidence rule under which the defendant may not introduce evidence of third party guilt if the prosecution has introduced evidence, that if believed, strongly supports a guilty verdict. However, after the restrained interpretation of the Downs/Mak line of cases, then the defendant may neutralize or overcome such evidence him by presenting sufficient circumstantial or direct evidence tending to identify some other person as the perpetrator of the crime. "Circumstantial evidence" means proof of such facts and circumstances surrounding the commission of the offense charged as tend to show the guilt or innocence of the accused. State v. "Gillingham, 33 Wn.2d 847, 207 P.2d 737 (1949).

F. Defense Is Permitted To Argue Reasonable Inferences Which Arise From The Evidence Presented At Trial.

The parties have wide latitude in closing argument to draw reasonable inferences from the evidence and to express such inferences to the jury. State v. Hoffman, 116 Wn.2d 51, 94-95, 804 P.2d 577 (1991). Moreover, the jury can draw the same inferences from the evidence before it, and the trial court will instruct the jurors that, in judging credibility, they could take into account "any

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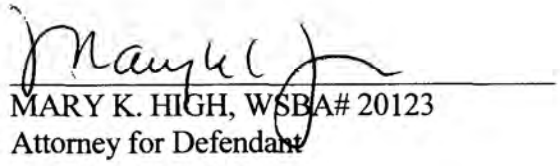
interest, bias or prejudice" a witness might have had. In this case, that includes arguing that Lee Chandler or Billy Miller Wales were responsible for Ms. Robinson's death.

IV. CONCLUSION

The Defense has made a substantial showing of relevance and materiality with regard to the evidence of "other suspects." The evidence is relevant to neutralize or overcome the circumstantial evidence to be presented by the State, to provide Mr. Mitchell with a meaningful opportunity to present a complete defense and to rebut evidence that he committed this crime. An informed, fair and just jury determination of Mr. Mitchell's guilt or innocence cannot be made without this evidence. The due process, compulsory process and the confrontation clauses requires it.

DATED this 13 day of July 2015



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Attachment “K”

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. JAMES EDWARD MITCHELL, Appellant.	No. 48810-8-II MANDATE Pierce County Cause No. 14-1-02979-1

The State of Washington to: The Superior Court of the State of Washington
in and for Pierce County

This is to certify that the opinion of the Court of Appeals of the State of Washington, Division II, filed on August 29, 2017 became the decision terminating review of this court of the above entitled case on February 7, 2018. Accordingly, this cause is mandated to the Superior Court from which the appeal was taken for further proceedings in accordance with the attached true copy of the opinion.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Tacoma, this 16th day of February, 2018.

Derek M. Byrne
Clerk of the Court of Appeals,
State of Washington, Div. II

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Filed
Washington State
Court of Appeals
Division Two

August 29, 2017

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. JAMES EDWARD MITCHELL, Appellant.	No. 48810-8-II UNPUBLISHED OPINION

MAXA, A.C.J. – James Mitchell appeals his conviction of first degree premeditated murder for stabbing a woman to death. Mitchell was convicted over 20 years after the crime based on DNA (deoxyribonucleic acid) testing of blood evidence collected at the crime scene.

We hold that (1) the trial court properly admitted the DNA evidence because the State showed a sufficiently complete chain of custody of the blood evidence collected at the crime scene and any discrepancies affected the weight of the evidence rather than its admissibility, (2) the State presented sufficient evidence of premeditation, and (3) the trial court did not err by including Mitchell's Florida robbery conviction in his offender score because it was comparable to robbery in Washington.

Accordingly, we affirm Mitchell's conviction of first degree premeditated murder and his sentence.

FACTS

In 2015, the State charged Mitchell with first degree murder for the stabbing death of Linda Robinson. Robinson's death had occurred over 20 years earlier, in 1993.

Robinson's Death

On the night of February 6, 1993, Robinson's young nieces and nephew were spending the night at Robinson's apartment. The oldest niece was seven years old, and the other two children were approximately two and one. The children were in the living room.

Around 10:30 PM that night, Robinson was talking on the telephone with her friend George Caldwell. Robinson told Caldwell to "Hold on, somebody's at the door." Report of Proceedings (RP) at 654. Then Caldwell heard Robinson talking to another person and said Robinson sounded "submissive," telling the person "okay, okay." RP at 655. But then the connection went dead.

Around 11:00 PM, the oldest child was awakened by the sound of the apartment's smoke alarm. She went to the kitchen where she saw food burning on the stove and Robinson lying on the kitchen floor surrounded by blood. A neighbor called the police.

Crime Investigation

The autopsy showed that Robinson had 10 stab wounds in her back. Multiple stab wounds penetrated her chest cavity and punctured her lung and liver. Robinson had significant amounts of blood in her chest cavity from her stab wounds. She also had defensive wounds on her hands and forearms and superficial cuts to her chest and torso. The shape of some of the wounds indicated that the likely cause was a single edged knife with a four inch blade. Police never found the murder weapon.

Police and forensic investigators searched Robinson's apartment for evidence. Robinson was lying on the floor in the kitchen. Her pants pockets seemed to be turned out and between her legs were a set of keys, a receipt, and a nickel. The telephone was about four feet away from her and the cord was cut or torn from the wall. In Robinson's bedroom, a dresser drawer was open.

Investigators collected blood evidence. There was blood on Robinson and around the kitchen, including a large blood smear on the refrigerator. There was a small smear of blood on the hallway wall across from the bathroom door. There were also blood spatters in front of a nightstand in Robinson's bedroom. The investigators took possession of the telephone from the kitchen and a jacket from the bedroom that appeared to have blood on it.

At the time, none of the evidence was tested for DNA because the science had not yet been developed to allow for DNA analysis of blood. Detectives were unable to identify a suspect or solve Robinson's murder.

In 2013, a detective reopened Robinson's case and arranged to have the blood evidence tested for DNA. Using a controlled sample of Robinson's blood from her autopsy, forensic scientists created Robinson's DNA profile. They then tested the blood samples taken from the bedroom, the jacket, the telephone cord, and Robinson's jeans. DNA from an unknown individual was present in the blood, and the DNA profile for that individual matched Mitchell's DNA profile. Mitchell was located in Florida, where he was arrested on charges of first degree premediated murder and brought to Washington for trial.

Motion to Exclude Blood and DNA Evidence

Mitchell filed a pretrial motion to exclude the DNA evidence based on an insufficient chain of custody. The trial court held a hearing on the issue, and several witnesses testified. The

court found that blood evidence was collected from the crime scene, stored in the sheriff's department forensics lab for 65 days, and then transferred to the sheriff's department property room. Robinson's clothing was originally collected by the medical examiner and then transferred to the sheriff's department property room four days later.

The trial court ruled that the State had established the chain of custody and therefore that the DNA evidence was admissible. The court ruled that any discrepancies in the chain of custody related to the weight of the evidence, not its admissibility. The court entered findings of fact and conclusions of law regarding its ruling.

Trial

Mitchell testified at trial that he knew Robinson and had been at her apartment a few times. The last time he was there some kids were asleep in the living room. He said that while he was with Robinson, she answered a knock at the door. An agitated man entered the apartment and tried to hit Robinson and Mitchell. Mitchell said that Robinson tried to get the man to leave and threatened to call the police, but the man stayed and exchanged blows with Mitchell.

According to Mitchell, the man left after Robinson again told him to leave. Then Mitchell followed Robinson to her bedroom and looked at himself in her dresser mirror. He later noticed that his hand was bleeding. Mitchell left the apartment and did not see Robinson again. He denied killing Robinson.

The jury found Mitchell guilty of first degree premeditated murder.

Sentencing

The State calculated Mitchell's offender score as 8, based on seven prior felony convictions. One of the prior felonies was a 1983 armed robbery committed in Florida. Mitchell

argued that the Florida robbery should be excluded from his offender score because it was not comparable to a Washington felony. The trial court ruled that the Florida robbery was comparable and found that Mitchell's offender score was 8. The trial court imposed a standard range sentence of 450 months.

Mitchell appeals his conviction and sentence.

ANALYSIS

A. ADMISSIBILITY OF DNA EVIDENCE

Mitchell argues that the trial court should have excluded the DNA evidence because the State failed to sufficiently establish the chain of custody of the blood evidence collected at the crime scene. We disagree.

1. Legal Principles

Under ER 901(a), the proponent of evidence must authenticate or identify it "to support a finding that the matter in question is what its proponent claims." For physical evidence connected to the commission of a crime to be admissible, "it must be satisfactorily identified and shown to be in substantially the same condition as when the crime was committed." *State v. Campbell*, 103 Wn.2d 1, 21, 691 P.2d 929 (1984).

When an item of evidence is not readily identifiable and is susceptible to alteration by tampering or contamination, the proponent typically must show the chain of custody of the evidence from the time it was acquired. *State v. Roche*, 114 Wn. App. 424, 436, 59 P.3d 682 (2002). The proponent of the evidence must establish the chain of custody " '*with sufficient completeness* to render it *improbable* that the original item has either been exchanged with another or been contaminated or tampered with.' " *Id.* (quoting *United States v. Cardenas*, 864

F.2d 1528, 1531 (10th Cir. 1989)). The trial court should consider factors such as the nature of the item, the circumstances surrounding preservation and custody of the item, and the likelihood of tampering or alteration. *Roche*, 114 Wn. App. at 436.

But the proponent does not need to identify the evidence with "absolute certainty" or "eliminate every possibility of alteration or substitution." *Campbell*, 103 Wn.2d at 21. "[M]inor discrepancies or uncertainty on the part of the witness will affect only the weight of evidence, not its admissibility." *Id.*

The trial court has a "wide latitude of discretion" in determining the admissibility of evidence subject to a chain of custody challenge. *Id.* We review the trial court's decision for an abuse of discretion. *See id.*

2. Chain of Custody Facts

The trial court entered findings of fact in its ruling that the DNA evidence was admissible. Mitchell does not challenge the trial court's findings of fact, so they are verities on appeal. *State v. Chambers*, 197 Wn. App. 96, 124, 387 P.3d 1108 (2016), *review denied*, 188 Wn.2d 1010 (2017).

Forensic investigators Hilding Johnson and Ted Schlosser were responsible for collecting and processing the evidence from the crime scene. They did not have an independent recollection of the case, but testified at the hearing based on their reports and their standard practice in 1993.

The trial court's unchallenged findings of fact established that:

a. Johnson photographed and collected various items from Robinson's apartment that had blood on them.

b. Johnson took these items from the scene to the sheriff's office forensics lab, filling out a property report dated February 7, 1993 listing the items.

c. The forensics lab was a secure holding area where forensics officers could store evidence in locked lockers. However, there was no system to log evidence into or out of the forensics lab and no system to log where in the lab any item of evidence was at any given time.

d. Schlosser subsequently submitted the items Johnson collected to the sheriff's department property room. The property room was across the hall from the forensics lab.

e. The items Johnson collected were in the forensics lab from February 7 to April 13, a total of 65 days. During that time, the items were in law enforcement custody.

f. In 2014, the items Johnson collected were sent to the Washington State Patrol (WSP) Crime Laboratory for DNA analysis of the blood spots.

Johnson and Schlosser testified about the standard practices for handling evidence in 1993. Any items that potentially contained blood were placed in paper bags and stapled shut. Then the evidence would be transported to the secure forensics lab. Any wet or blood-soaked items would be placed into a drying room and the other items would be placed in a locked locker. After the evidence was logged and processed it would be taken to the property room where it would be logged again and securely stored. The court acknowledged that "[t]he methods of labeling and packaging evidence in 1993 were not of the caliber of labeling and packaging used today." Clerk's Papers at 193.

A second category of evidence went with Robinson's body from the scene to the medical examiner's office on February 7, 1993. There was no testimony regarding how this evidence

was stored in the medical examiner's office. On February 11, personnel from the property room collected Robinson's clothing and vials of Robinson's blood from the medical examiner's office. In 2014, these items also were sent to the WSP Crime Laboratory for DNA analysis.

3. Analysis

The State was able to account for the blood evidence through each step in the chain of custody. Johnson collected items that had blood on them from the scene and took them that same day to the forensics lab. Schlosser submitted the items to the property room across the hall 65 days later. Regarding the other blood evidence, the medical examiner's office collected Robinson's body and clothes from the crime scene and transferred custody of the clothes and Robinson's blood to property room personnel four days later. The evidence from both sources remained in the property room until transferred to the WSP Crime Laboratory for testing in 2014.

But Mitchell argues that the State failed to establish a sufficient chain of custody for this evidence because it could not account for the handling of the items stored in the forensics lab for 65 days or the handling of Robinson's clothes while in the medical examiner's office for four days.[1] Specifically, Mitchell claims that in the absence of evidence regarding storage procedures in the forensics lab and the medical examiner's office, the State could not show that tampering or contamination was improbable.

However, the trial court expressly found that the forensics lab was a secure holding area that was locked to the general public. In addition, the court found that forensics officers could store evidence in locked lockers. The chain of custody is not broken when evidence is stored in

[1] Mitchell does not challenge the handling of the evidence once it was placed in the property room.

a locked and secured area. *State v. Wilson*, 83 Wn. App. 546, 555, 922 P.2d 188 (1996). And there was no indication that tampering or contamination could occur in the medical examiner's office.

Robinson's clothes present a slightly different situation because there was no evidence as to how the clothes were handled or the security of the medical examiner's office. But the only evidence the State used from Robinson's clothes was a single spot of blood on her pants that provided a partial DNA profile matching Mitchells' profile. Mitchell does not explain how that blood spot could have been contaminated or tampered with in the medical examiner's office.

We agree with the trial court that the absence of evidence regarding how the blood evidence was handled in the forensics lab and the medical examiner's office amounted to minor discrepancies that do not affect the chain of custody. Therefore, Mitchell's argument relates to the weight rather than the admissibility of the blood evidence. *Campbell*, 103 Wn.2d at 21.

Mitchell also argues that chain of custody cannot be established because first responders, investigators, forensics lab staff and property room staff did not make any effort to prevent contamination of the blood evidence. He argues that there were no assurances that the evidence was properly preserved and uncontaminated.

But Mitchell's concerns about potential contamination are speculative. Evidence is admissible if the State's chain of custody shows that contamination was improbable. *Roche*, 114 Wn. App. at 436. Although Mitchell points out that there was a potential for contamination during collection and drying, that risk does not make it *probable* that the evidence was actually contaminated. And he did not provide any actual evidence that there was some probability of contamination. *See State v. Boehme*, 71 Wn.2d 621, 638, 430 P.2d 527 (1967) (holding

admission of blood and urine evidence was proper because "beyond mere speculation and innuendo, there is not the least indication in the evidence that the questioned exhibits were anything other than what they were represented to be or that they were contaminated in the course of their journey to the testing laboratory.").

Here, the State's failure to show that officers' used collection and storage procedures intended to prevent contamination of DNA evidence amounts to a minor discrepancy that does not affect the chain of custody. Therefore, Mitchell's argument relates to the weight rather than the admissibility of the blood evidence. *Campbell*, 103 Wn.2d at 21.

The State accounted for the evidence and provided an unbroken chain of custody. Mitchell's arguments about the risk of contamination are speculative and do not support a real probability that the evidence was not what the State claimed or that the evidence had been contaminated. Therefore, the risk of contamination is a matter affecting the weight of the evidence, not its admissibility. Mitchell was free to argue that the blood evidence had been contaminated and did in fact present expert testimony about the possibility of contamination based on the handling practices used in 1993.

As noted above, a trial court has wide discretion in determining the admissibility of evidence challenged on chain of custody grounds. *Campbell*, 103 Wn.2d at 21. We hold that the trial court here did not abuse its discretion in ruling that the State's chain of custody was sufficiently complete and in admitting the DNA evidence.

B. SUFFICIENCY OF PREMEDITATION EVIDENCE

Mitchell argues that the State failed to present sufficient evidence to prove the element of premeditation, which is required for a first degree murder conviction. We disagree.

1. Standard of Review

When evaluating the sufficiency of evidence for a conviction, the test is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the elements of the charged crime beyond a reasonable doubt. *State v. Homan*, 181 Wn.2d 102, 105, 330 P.3d 182 (2014). We will assume the truth of the State's evidence and all reasonable inferences drawn from that evidence when evaluating whether sufficient evidence exists. *Id.* at 106. We treat circumstantial evidence as equally reliable as direct evidence. *State v. Farnsworth*, 185 Wn.2d 768, 775, 374 P.3d 1152 (2016). And we also will defer to the trier of fact's resolution of conflicting testimony and evaluation of the persuasiveness of the evidence. *Homan*, 181 Wn.2d at 106.

2. Legal Principles

To convict a defendant of first degree premeditated murder, the State must prove that the defendant acted with "premeditated intent to cause the death of another person." RCW 9A.32.030(1)(a). Premeditation is a separate and additional element from the intent requirement for first degree murder. *State v. Bingham*, 105 Wn.2d 820, 827, 719 P.2d 109 (1986). A defendant may act with intent to kill but without premeditation. *See State v. Ollens*, 107 Wn.2d 848, 851-52, 733 P.2d 984 (1987).

"Premeditation" is the " 'deliberate formation of and reflection upon the intent to take a human life [that] involves the mental process of thinking beforehand, deliberation, reflection, weighing or reasoning for a period of time, however short.' " *State v. Gregory*, 158 Wn.2d 759, 817, 147 P.3d 1201 (2006) (quoting *State v. Hoffman*, 116 Wn.2d 51, 82-83, 804 P.2d 577 (1991)). The State may prove premeditation through circumstantial evidence if the inferences

drawn from the evidence are reasonable and the evidence is substantial. *Gregory*, 158 Wn.2d at 817.

But proof of premeditation requires more than the fact that the defendant had an *opportunity* to deliberate. *Bingham*, 105 Wn.2d at 826. "Otherwise, any form of killing which took more than a moment could result in a finding of premeditation, without some additional evidence showing reflection." *Id.* And RCW 9A.32.020(1) states that "the premeditation required in order to support a conviction of the crime of murder in the first degree must involve more than a moment in point of time."

Washington courts have recognized a number of factors that indicate premeditation, including: (1) infliction of multiple wounds, *Gregory,* 158 Wn.2d at 817; *State v. Cross*, 156 Wn.2d 580, 627, 132 P.3d 80 (2006); (2) attacking the victim from behind, *State v. Allen*, 159 Wn.2d 1, 8, 147 P.3d 581 (2006); *Hoffman*, 116 Wn.2d at 84; (3) the presence of defensive wounds on the victim and other evidence reflecting a struggle, *Gregory*, 158 Wn.2d at 817; *State v. Thompson*, 169 Wn. App. 436, 490-91, 290 P.3d 996 (2012); and (4) evidence of some other motive, such as robbery or sexual assault. *State v. Gentry*, 125 Wn.2d 570, 599, 888 P.2d 1105 (1995); *Ollens*, 107 Wn.2d at 853.

Although the above factors are all relevant to finding premeditation, courts have cautioned that "standing alone, multiple wounds and sustained violence cannot support an inference of deliberation and reflection." *State v. Ortiz*, 119 Wn.2d 294, 312, 831 P.2d 1060 (1992). But other evidence, combined with multiple wounds and sustained violence, does support an inference of premeditation. *State v. Sherrill*, 145 Wn. App. 473, 486, 186 P.3d 1157 (2008).

3. Analysis

Here, several factors support premeditation. Robinson suffered 10 stab wounds in her back. The presence of multiple wounds and attacking the victim from behind are both factors supporting premeditation. Robinson also had extensive defensive wounds on her hands, arms, and torso, indicating a prolonged struggle. Robinson's pockets had been turned out and her dresser drawer had been opened, indicating that Mitchell's possible motive was robbery.

In addition, other evidence suggested that Mitchell planned the murder. The phone had been pulled from the wall, which prevented Robinson from calling for help. And none of the children in the next room were disturbed during the murder, indicating that Mitchell used some stealth or compelled Robinson's silence.

Viewing the evidence in the light most favorable to the State, any rational jury could have found premeditation beyond a reasonable doubt based on these factors. This is not a case in which the State relied merely on the presence of multiple wounds. Accordingly, we hold that the State presented sufficient evidence of premeditation to support Mitchell's first degree murder conviction.

C. COMPARABILITY OF FLORIDA ROBBERY CONVICTION

Mitchell argues that his 1983 Florida conviction for armed robbery should not have been included in his offender score because the State failed to show that the Florida conviction was comparable to a Washington offense. We disagree.

1. Legal Principles

Out-of-state convictions can be included in a defendant's offender score only if they are either legally or factually comparable to a Washington conviction. *State v. Arndt*, 179 Wn. App.

373, 378, 320 P.3d 104 (2014). Offenses are legally comparable if the elements of the out-of-state offense are the same or narrower than the Washington statute. *State v. Olsen*, 180 Wn.2d 468, 472-73, 325 P.3d 187 (2014). Offenses are factually comparable when defendant's actual conduct underlying the out-of-state offense would have violated the Washington statute. *State v. Thiefault*, 160 Wn.2d 409, 415, 158 P.3d 580 (2007). The sentencing court must compare the elements of the out-of-state offense to the elements of a Washington criminal statute that was in effect when the out-of-state crime was committed. *In re Pers. Restraint of Lavery*, 154 Wn.2d 249, 255, 111 P.3d 837 (2005).

2. Legal Comparability

Mitchell was convicted of armed robbery under former Fla. Stat. § 812.13 (1975). That statute defined "robbery" as the "taking of money or other property which may be the subject of larceny from the person or custody of another by force, violence, assault, or putting in fear." Former FLA STAT. § 812.13(1). The crime was a first degree felony if the offender carried a firearm or other deadly weapon in the course of committing the robbery. Former FLA STAT. § 812.13(2)(a).

The definition of robbery under Washington law in 1983 provided:

> A person commits robbery when he unlawfully takes personal property from the person of another or in his presence against his will by the use or threatened use of immediate force, violence, or fear of injury to that person or his property or the person or property of anyone. Such force or fear must be used to obtain or retain possession of the property, or to prevent or overcome resistance to the taking; in either of which cases the degree of force is immaterial.

Former RCW 9A.56.190 (1975). And the Washington statute provided that the offense was first degree robbery if the offender was armed with a deadly weapon. Former RCW 9A.56.200 (1975).

Mitchell argues that the Florida statute was broader and not legally comparable to the Washington statutes for two reasons. First, he asserts that the Washington statute required taking from the person or in his presence, but the Florida statute required taking from the custody of a person. But taking property from a person's "presence" is substantially similar to taking property from a person's "custody." In Washington, if the property is taken from the presence of a person, that person must have an ownership, representative, or possessory interest in the property to support a robbery conviction. *State v. Richie*, 191 Wn. App. 916, 922-24, 365 P.3d 770 (2015). Similarly, in Florida custody means having care, supervision, or control over the property. *Gaiter v. State*, 824 So. 2d 956, 957 (Fla. Dist. Ct. App. 2002). The wording is not identical, but under both Florida and Washington law taking property that is under the care of another person by using force against that person is a robbery.

Second, Mitchell asserts that the Washington statute required force to be used to obtain or retain possession of the property or overcome resistance to the taking, while the Florida statute did not include that requirement. But Mitchell is incorrect that the force requirements were different under Florida and Washington law; both statutes required the taking of property through the use of actual or threatened force. Washington merely described "taking" in greater detail as the act of obtaining, retaining, or overcoming resistance to taking.

Although the statutes are not exactly the same, the law "does not require exactitude, only 'comparability.' " *State v. Jordan*, 180 Wn.2d 456, 466, 325 P.3d 181 (2014) (quoting *Lavery*, 154 Wn.2d at 255). The elements are "substantially similar," which is all that is required for legal comparability. *Thiefault*, 160 Wn.2d at 415. Accordingly, we hold that the trial court did

not err in including Mitchell's Florida conviction for armed robbery in his offender score because it was legally comparable to a conviction for robbery under Washington law.

3. Factual Comparability

Mitchell's Florida conviction also was factually comparable to robbery in Washington. We may review the indictment or information from the out-of-state conviction to determine whether the defendant's conduct would have violated a comparable Washington statute. *Arndt*, 179 Wn. App. at 379.

The charging information under which Mitchell was convicted in Florida stated that Mitchell took the victim's room key and wallet from his person or custody, with the intent to permanently deprive him of the property, by using force or violence or by putting him in fear and while armed with a knife. This conduct met the Washington definition of robbery and would have constituted first degree robbery under former RCW 9A.56.200.

Accordingly, we hold that the trial court did not err in including Mitchell's Florida conviction for armed robbery in his offender score because it is factually comparable to a conviction for robbery under Washington law.

D. APPELLATE COSTS

Mitchell asks that this court decline to impose costs if the State prevails because he is indigent. We decline to consider this issue. A commissioner of this court will consider whether to award appellate costs under RAP 14.2 if the State decides to file a cost bill and if Mitchell objects to that cost bill.

CONCLUSION

We affirm Mitchell's conviction of first degree premeditated murder and his sentence.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Maxa, A.C.J.

MAXA, A.C.J.

We concur:

Johanson, J.

JOHANSON, J.

J.

LEE, J.

LAW OFFICE OF COREY EVAN PARKER

November 06, 2018 - 2:01 PM

Filing Personal Restraint Petition

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Trial Court Case Number:	14-1-02979-1
Trial Court County:	Pierce County Superior Court
Signing Judge:	
Judgment Date:	

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