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IN THE CRIMINAL

DISTRICT COURT NO. 3

3

DALLAS

COUNTY, TEXAS

4

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6

7 THE STATE OF TEXAS }

NO. F-96-39973-J

8 VS: }

& A-96-253

9 DARLIE LYNN ROUTIER }

Kerr Co. Number

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REPORTERS

RECORD

15

JURY

TRIAL

16

VOL. 38 OF

53 VOLS.

17

January

21, 1997

18

Tuesday

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Sandra M. Halsey, CSR,
Official Court Reporter

3084

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C A P T

I O N

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3

4 BE IT REMEMBERED THAT, on
Tuesday, the 21st day of

5 January, 1997, in the Criminal
District Court Number 3 of

6 Dallas County, Texas, the above-
styled cause came on for

7 a jury trial before the Hon.
Mark Tolle, Judge of the

8 Criminal District Court No. 3,
of Dallas County, Texas,

9 with a jury, and the proceedings
were held, in open

10 court, in the City of Kerrville,
Kerr County Courthouse,

11 Kerr County, Texas, and the
proceedings were had as

12 follows:

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Sandra M. Halsey, CSR,
Official Court Reporter

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A P P E A R

A N C E S

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5

HON. JOHN VANCE

6

Criminal District Attorney

7

Dallas County, Texas

8

9

BY: HON. GREG DAVIS

10

Assistant

District Attorney

11

Dallas County,

Texas

12

13

AND:

14

HON. TOBY SHOOK

15

Assistant

District Attorney

16

Dallas County,

Texas

17

18

AND:

19

HON. SHERRI

WALLACE

20

Assistant

District Attorney

21 Dallas County,

Texas

22

23

APPEARING FOR THE STATE OF TEXAS

24

25

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Official Court Reporter

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1 ADDITIONAL APPEARANCES:

2

3 HON. DOUGLAS D.

MULDER

4 Attorney at Law

5 2650 Maxus Energy

Tower

6 717 N. Harwood

7 Dallas, TX 75201

8

9 AND: HON. CURTIS GLOVER

10 Attorney at Law

11 2650 Maxus Energy

Tower

12 717 N. Harwood

13 Dallas, TX

75201

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15 AND: HON. RICHARD

C. MOSTY

16 Attorney at

Law

17 Wallace,

Mosty, Machann, Jackson &

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19 Kerrville,

TX 78028

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21 AND: HON. S.

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1

2 AND: HON. JOHN

HAGLER

3 Attorney at

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4 901 Main Street, Suite 3601

5 Dallas, TX 75202

6 ALL ATTORNEYS REPRESENTING

THE

7 DEFENDANT: DARLIE ROUTIER

8 MR. HAGLER HANDLING THE

APPEAL

9 AND:

10 HON. ALBERT D. PATILLO, III

11 Attorney at Law

12 820 Main Street, Suite 211

13 Kerrville, TX 78028

14 APPEARING FOR: Witness-

15 Detective Jimmy

Patterson

16 only on one date in

trial

17 AND:

18 HON. STEVEN J. PICKELL

19 Attorney at Law

20 620 Earl Garrett Street

21

Kerrville, TX 78028

22

APPEARING FOR: Witness

23

Officer Chris

Frosch

24

only on one date in

trial

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Sandra M. Halsey, CSR, Official
Court Reporter

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P R O C E E D I N G S

January 21st, 1997
Tuesday
1:00 p.m.

(Whereupon, the

following

proceedings were

held in

open court, in the

presence

and hearing of the

defendant, being

represented by her

attorneys

and the representatives

of

the State of Texas, but

outside the presence of

the

jury, as follows:)

THE COURT: Today is Tuesday,

January

20 21st, 1997. We had a recess this morning so another
21 judge could use the courtroom, and now we're
beginning at

22 1:10 P.M.

23 Who is the first witness? Is it
Judy

24 Floyd and Bob Poole?

25 We're starting at 1:15

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1 P.M.
2 Who will be your first witness,
Mr.
3 Davis?
4 MR. GREG DAVIS: Bob Poole.
5 THE COURT: All right. Everybody
6 ready?
7 MR. GREG DAVIS: Yes, sir. The
State
8 is ready.
9 MR. DOUGLAS MULDER: Yes, sir.
10 Defense is ready.
11 THE COURT: All right. Bring them
in.
12
13 (Whereupon, the jury
14 Was returned to
the
15 Courtroom, and
the
16 Proceedings
were
17 Resumed on the
record,
18 In open court, in

the

19

Presence and

hearing

20

Of the defendant,

21

As follows:)

22

23

THE COURT: Ladies and gentlemen,

if

24 we can have quiet in the courtroom, please.

25

Good afternoon, ladies and

gentlemen.

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1 Let the record reflect that all
2 parties in the trial are present and the jury is
seated.

3 Mr. Poole, if you will raise your right hand,
please.

4
5 (Whereupon, the witness
6 Was duly sworn by the
7 Court, to speak the
truth,

8 The whole truth and
9 Nothing but the truth,
10 After which, the
11 Proceedings were
12 Resumed as follows:)

13
14 THE COURT: Do you solemnly
swear or
15 affirm that the testimony you are about to give
will be
16 the truth, the whole truth, and nothing but the
truth, so

17 help you God?

18 THE WITNESS: I do, sir.

19 THE COURT: All right. You

have

20 testified before. You are under the Rule of
Evidence.

21 Do you understand what that means?

22 THE WITNESS: I do, your Honor.

23 THE COURT: All right. If you

will

24 please state your name and spell your last name

for the

25 record.

Reporter Sandra M. Halsey, CSR, Official Court

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THE WITNESS: Robert A. Poole,

P-O-O-L-E.

THE COURT: Mr. Davis.

MR. GREG DAVIS: It will be Ms.

Wallace.

THE COURT: Ms. Wallace, excuse

MS. SHERRI WALLACE: Yes, sir.

THE COURT: All right. You may

proceed.

Reporter Sandra M. Halsey, CSR, Official Court

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1 Whereupon,

2

3 ROBERT A. POOLE,

4

5 Was called as a witness, for the State of Texas,
having

6 been first duly sworn by the Court to speak the
truth,

7 the whole truth, and nothing but the truth,
testified in

8 open court, as follows:

9

10 DIRECT EXAMINATION

11

12 BY MS. SHERRI WALLACE:

13 Q. How are you employed, Mr. Poole?

14 A. I'm employed by the Institute

of

15 Forensic Sciences in Dallas, also known as the

Dallas

16 County Crime Laboratory.

17 Q. What I think the jurors have heard

it

18 referred to is SWIFS?

19 A. Yes, ma'am. That's correct.

20 Q. You work in the crime lab portion

of

21 that building?

22 A. I do, ma'am, yes.

23 Q. What job title do you have?

24 A. I am a firearm and tool mark

examiner.

25 Q. What is your educational

background

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1 and experience that qualifies you to hold that
position?

2 A. I have a Masters Degree from
Boston

3 University, but my technical training came as a
result of

4 my active duty service in the U.S. Army.

5 In 1975, when I was on active duty
I

6 was selected for and subsequently went to the U.S.
Army

7 Crime Laboratory System, where I was enrolled in a

8 two-year course in firearm and tool mark
identification.

9 I completed that formal training
in

10 1977. And I was then, at that time, certified by the

11 Department of the Army as a firearm and tool mark

12 examiner.

13 And I did that work almost
exclusively

14 until I retired from active duty in 1992 to accept
the

15 position that was offered to me in Dallas.

16 Q. And so, you have been doing this

work

17 for about 20 years; is that about right?

18 A. Yes, ma'am, a little over 20
years.

19 Q. Have you been published and have
you

20 taught as well on this subject?

21 A. I have.

22 Q. Okay. If you would, tell the
members

23 of the jury what a tool mark is.

24 A. A tool mark is really, in a
forensic

25 sense, that is in doing the kind of work that I do,
is

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17 examined, Mr. Poole?

18 A. Over the course of my career, I
have

19 examined thousands of tools marks.

20 Q. Let me ask you if you were asked
to do

21 that sort of testing in this type of case?

22 A. Yes, I was.

23 Q. I am going to show you what's been
24 admitted into evidence as State's Exhibit 1-A.

Outside

25 the jury's presence, did I ask you to look at that

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1 picture?

2 A. Yes, ma'am.

3 Q. Could you step down, please. Were
you

4 given a portion of Devon Routier's chest plate to
test?

5 A. Yes, ma'am, I was.

6 Q. On State's Exhibit 1-A, would you
show

7 the jury on this photograph what area you were given?

8 A. The medical examiner's office

9 submitted a portion of the chest plate that would
have

10 included these two major cut areas, and it was
perhaps as

11 much as three inches around those two marks, the
chest

12 plate itself, that was sent over to the laboratory.

13 Q. So you were actually given the
bone

14 and the cartilage of that plate?

15 A. Yes, ma'am.

16 Q. Okay. Once you got that, what --
how

17 do you go about testing markings on that chest plate?

18 A. Well, the initial problem that I
am
19 faced with is being able to get to the markings, if,
in
20 fact, there are any there.
21 So, what I have to do is, I have
to
22 cut a plug out, actually cut out the section of rib,
the
23 section of cartilage that has the stab wound in it,
in
24 this case.
25 Once I have cut the plug, I am
then

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1 interested in looking at and seeing if I can detect
2 anything in the way of tool marks on the actual rib
bone,

3 on the cartilage that makes up the rib bone itself.
And

4 so, after having cut the plug, I then expose the
portion

5 of the -- of the rib where the instrument would have
gone

6 through. And I look at it microscopically to see if
7 there is anything there.

8 Q. Did you find anything in the two
holes

9 in Devon Routier's chest plate?

10 A. I found significant tool marks in
the

11 lower of the two. The upper one, though it is
damaged

12 and the damage is obvious, there were no tool
markings

13 there that I could use to identify the instrument
that

14 might have done it.

15 Q. Mr. Poole, when you realized in
the

16 lower hole that you had sufficient tool marks to do
some

17 analysis, were you also given some weapons, some
tools?

18 A. I was.

19 Q. Let me show you what has been
admitted

20 into evidence as the Guzman -- the knives found
around

21 the Guzman home, Nos. 21 and 22. And ask you if
you

22 received those?

23 A. Yes, ma'am, I did.

24 Q. Did you examine those knives to
25 determine if they made the wound in Devon Routier?

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Reporter

1 A. Yes, ma'am, I did.

2 Q. And what was your conclusion?

3 A. That these knives can be
excluded,

4 that is, that these knives did not make at least
one of

5 the cuts in the chest plate of the young -- of
Devon.

6 Q. So those knives did not cause
that

7 hole. Is that what you are telling us?

8 A. That's correct.

9 Q. Now State's Exhibit 67. Were you
also

10 asked to examine the weapon found in the Routier
kitchen?

11 A. I was.

12 Q. And, did you have an opportunity
to

13 compare that as well to the breast plate, the hole
in

14 Devon Routier?

15 A. I did.

16 Q. What was your conclusion with
that?

17 A. My conclusion was that the
18 characteristics of the damage that was present on
the
19 cartilage, was similar to the test marks that I
received
20 in making stabs with this knife.

21 However, I was not able to
22 conclusively determine that this was the knife that
was
23 used. But my opinion would be, that a knife with
similar
24 characteristics, specifically, a knife that would
have
25 perhaps smooth areas in between some serrations.
That is

1 the kind of instrument that was -- that would have
been
2 used, in my opinion.

3 Q. So, what you are saying is that
these
4 knives found in the Guzman home didn't do it, and
that
5 weapon No. 67 is the same class characteristics?

6
7 MR. DOUGLAS MULDER: Object to
the
8 leading.

9
10 BY MS. SHERRI WALLACE:

11 Q. Is that right?
12

13 MR. DOUGLAS MULDER: Object to
the
14 leading.

15 THE COURT: Overruled.
Overruled.

16 Let's phrase our questions right.
17

18 BY MS. SHERRI WALLACE:

19 Q. Is that what you are saying?

20

A. That's correct.

21

Q. All right.

22

23

witness.

MS. SHERRI WALLACE: Pass the

24

25

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CROSS EXAMINATION

BY MR. DOUGLAS MULDER:

Q. Just a thing or two, Mr. Poole.

examined, I take it, both of those wounds, did you?

A. I did, sir, yes.

Q. Would we be safe in assuming that

the course of the thoroughness of your examination,

you discussed those wounds with the autopsying

physician?

A. I did not, sir.

Q. You did not?

A. No, sir.

Q. Okay. I was going to ask you

you had an opinion, within your field of expertise,

whether or not the child was standing, sitting or

lying down, at the time that those injuries were inflicted?

MS. SHERRI WALLACE: Your Honor,

I'll

19 object to that, he said that he didn't have the
20 discussion.

21 THE COURT: Overruled. I'll let
him

22 answer if he knows.

23 THE WITNESS: I have no opinion as
to

24 the position of the victim at the time of the
stabbing.

25

Sandra M. Halsey, CSR, Official Court Reporter

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1 BY MR. DOUGLAS MULDER:

2 Q. Okay. Just out of curiosity, when
3 were you asked to do this analysis?

4 A. My involvement was perhaps a week
or
5 maybe a week and a half before Christmas.

6 Q. In December?

7 A. Yes, sir, in December.

8 Q. Okay. And, if I understood you
9 correctly, you were saying basically, that the lower
10 wound, you can't tell whether it was made by that
11 serrated-bladed knife or not?

12 A. My answer is with regard to this
knife
13 specifically, and the question being, Is this the
knife
14 that did it? My answer would be I don't know.

15 Q. So you can't tell us anything
really?

16 A. I can't tell -- well, I know that
it
17 is a knife with characteristics like this knife, but
I
18 cannot determine whether or not it is this knife or
not.

19 Q. Could you tell whether or not
both
20 punctures, both injuries, both stab wounds were made
by
21 the same instrument?

22 A. No, sir, because the upper wound
23 didn't have any of those characteristics that I
could use
24 to discriminate the characteristics of the
instrument
25 that was used.

1 Q. Okay. I take it then, your
answer is

2 that the stab wounds as you examined them are
consistent

3 with being inflicted by separate, different weapons?

4 A. No, sir. I'm not saying separate
or

5 different. The one has no characteristics that I
could

6 use to make any kind of judgment, other than it's
there.

7 And the second one did have an abundance of
markings that

8 allowed me to identify the class or the style of
the

9 instrument that was used. But I cannot determine
whether

10 or not this was the specific instrument used.

11 Q. And you can't tell us whether
these

12 knives or knives like these could have been used to
make

13 the upper injury?

14 A. That's correct, sir. I don't
have any

15 idea about the instrument that was used to make
that

16 upper one.

17 Q. So, you are saying that these
knives

18 then could have been used to make the higher of the
two

19 injuries?

20 A. Those knives and any other
instrument

21 capable of penetrating.

22 Q. You know, I notice with interest

23 that -- see if you notice this: You notice that
these

24 wounds are made at different angles?

25 A. Yes, sir.

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Reporter

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1 Q. What does that -- does that tell
you
2 that the person inflicting the wound to make this
one,
3 and then if you were going to stab there you would
have
4 to do that, so, to stab like that with a knife held
like
5 that, you would change your position or the body
would
6 change its position or you could change the manner in
7 which you were holding the knife?

8 A. Sir, there are a tremendous number
of
9 variables. First of all, in stabbing situations very
10 seldom, it has been my experience, does the victim
remain
11 stationary.

12 Q. Well, that depends on the victim
and
13 it depends on the person inflicting the injuries; is
that
14 not correct?

15 A. There are a tremendous number of
areas

16 that enter into the characteristics.

17 Q. I mean, you would expect different
18 injuries, perhaps if you and I were involved, you
with
19 that knife, and me with this knife, than you would
if
20 either of us were involved with a child?

21 A. Well, I think the circumstances
would
22 dictate an awful lot of that, sir. Whether or not
we
23 were both conscious, whether or not we would -- I
mean,
24 there's just a tremendous amount of variables that
enter
25 into what occurs during that kind of an incident.

1 Q. I guess there isn't anything in
your
2 vast range of experience that would permit you to
3 speculate as to how many assailants were involved in
4 these injuries?

5 A. No, sir, I wouldn't care to
speculate.

6 Q. Did you examine the injuries to
the
7 other child?

8 A. No, sir.

9 Q. You weren't asked to examine
injuries
10 to the other child?

11 A. That's correct, sir.

12 Q. Okay. Who called you about this?

13 A. I was first brought into this
aspect

14 by Mr. Lynch, one of our trace evidence analysts.

15 Q. Okay.

16

17 MR. DOUGLAS MULDER: I believe
that's

18 all. Thank you, Mr. Poole.

19

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21

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25

Sandra M. Halsey, CSR, Official Court Reporter

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1

REDIRECT EXAMINATION

2

3 BY MS. SHERRI WALLACE:

4 Q. Mr. Poole, that knife, is it
still

5 there in front of you?

6 A. It's here on the side.

7 Q. State's Exhibit No. 67. Could
that

8 knife have caused both wounds to Devon Routier?

9 A. It could have.

10

11 THE COURT: Anything else? All
right.

12 Thank you, sir. You are excused subject to recall.

You

13 may return to Dallas.

14 THE WITNESS: Thank you.

15 THE COURT: All right. The next

16 witness.

17 MR. GREG DAVIS: The State will

call

18 Judy Floyd.

19 THE COURT: All right. Ms.

Floyd, if

20 you will have a seat here, please.

21 THE COURT: Ladies and gentlemen,
this
22 witness has already been sworn outside your
presence.
23 Speak loudly so that the
gentleman and
24 lady down there in the corner can hear you.
25 Okay?

Sandra M. Halsey, CSR, Official Court Reporter

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1 THE WITNESS: All right.

2 THE COURT: All right. Go ahead,
3 please.

4 MR. GREG DAVIS: Thank you.

5

6

7 Whereupon,

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9

JUDITH FLOYD,

10

11 was called as a witness, for the State of Texas,
having

12 been first duly sworn by the Court to speak the
truth,

13 the whole truth, and nothing but the truth,
testified in

14 open court, as follows:

15

16

17

DIRECT EXAMINATION

18

19 BY MR. GREG DAVIS:

20 Q. Ma'am, would you please tell us
your

21 full name.

22

A. Judith Irene Floyd.

23 Q. Ms. Floyd, how are you employed?

24 A. I am the forensic laboratory
25 supervisor at Gene Screen in Dallas.

3106 Sandra M. Halsey, CSR, Official Court Reporter

1 Q. Okay. What is Gene Screen?

2 A. Gene Screen is a DNA identity
testing

3 laboratory. We do identity testing in three areas:
One

4 would be genetic analysis; the other would be
paternity

5 testing; and the third one would be forensic
analysis.

6 Q. How long have you been with Gene
7 Screen?

8 A. Seven and a half years.

9 Q. All right. Would you tell us
briefly

10 about your educational and professional background
that

11 entitles you to hold your present position?

12 A. I have a degree from the
University of

13 Texas at Dallas in Molecular Biology. I have three
years

14 experience prior to Gene Screen in a genetics
testing

15 laboratory doing cancer research.

16 And that particular occupation

17 actually required that I perform more DNA
techniques than

18 I do perform at Gene Screen.

19 Since joining Gene Screen, I
have also

20 attended four separate lab and lecture courses for
21 instruction on RFLP analysis and PCR methods, which
would

22 be DQ-Alpha, polymarker, D1S80 and STRs, which are
all

23 techniques that we've employed in crime scene
24 investigation.

25 Q. Okay. What are your present
duties at

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Reporter

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1 Gene Screen?

2 A. My present duties at Gene Screen
are
3 teaching other forensic analysts that come into the
4 laboratory, and I have also been to South America on
5 three occasions teaching technicians at that
particular
6 locale how to do these techniques also.

7 I perform case work myself, and I
am
8 also supervisor of the laboratory, which means that
I am
9 responsible for the overall running of the
laboratory
10 itself, responsible for testimony, and I am involved
in
11 the incorporation of new DNA testing methods at Gene
12 Screen.

13 Q. Okay. How long have you actually
been
14 performing DNA analysis?

15 A. A little over 10 years.

16 Q. All right. Can you give us an
idea of
17 the number of cases in which you have actually done

this

18 DNA analysis?

19 A. That would be approximately 600
cases

20 and that would involve a little over 4,000 samples.

21 Q. All right. And, over the last 10
22 years, have you had occasion to testify as an expert
in

23 court before?

24 A. Yes, I have.

25 Q. And, in how many cases have you

1 testified previously?

2 A. As far as cases, I'm not sure,
but as

3 far as times in court, that would be about 70. And
the

4 cases themselves would be less than 70, simply
because

5 some of these may have been in pre-trial hearings and
6 then the actual testimony at the trial itself.

7 Q. Okay. In what type of cases is
DNA

8 analysis used?

9 A. DNA analysis is used in sexual
assault

10 cases, homicide, it may be involved in a hit and run
11 case, assault, missing persons, incest cases.

12 In civil cases it may be
incorporated

13 in a paternity suit, identity testing, involving,
14 discerning whether or not the cells from the slide
from

15 which a diagnosis has been rendered to the blood of a
16 patient, just to make sure that the cells on the
slide do

17 indeed belong to that patient.

18 Insurance companies are also
19 incorporating more and more DNA testing in their
suits.

20 Q. All right. I want to go -- let's
just
21 go to square one here. And explain to me what DNA
is.

22 A. DNA is a substance that is found
23 within the cells of your body. This particular
substance
24 is our genetic code or the information contained
within
25 our cells that makes us the unique individuals that
we

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1 are.

2 The coding, or the message on that
DNA

3 is what causes you to have blue eyes or brown eyes,
it

4 causes you to be short, curly hair, your skin color,
it

5 determines whether you have type A blood or type O
blood.

6 All of our physical
characteristics

7 that we can see and those that we cannot see is

8 determined by the message that is incorporated on our
DNA

9 strands.

10 Many of you have heard of DNA
referred

11 to as chromosomes. That is a form of DNA. And we

12 actually look at the chromosomes within the cells,
look

13 at specific sites to obtain information in order to

14 determine whether or not a person could be a donor of
a

15 biological specimen of some sort. And the reason we
can

16 do that, is because the DNA in each of your cells,

within

17 the individual, is the same.

18 For instance, the DNA in your skin
19 cell, is the very same as the DNA in your blood
cells.

20 The DNA in your hair is the same. But your DNA
is
21 different from the individual sitting next to
you.

22 That is why we can
incorporate this
23 type of testing in forensic analysis and match
known
24 blood specimens of a victim or a suspect to
specimens
25 that may have been found at the crime scene.

Sandra M. Halsey, CSR, Official Court
Reporter

3110

1 Q. Okay. For instance, if you
had a
2 sample of my blood, from my blood, could you get
my
3 genetic code, my DNA code?

4 A. Yes.

5 Q. Okay. And my code would be
different

6 than yours and different than anyone else in the
7 courtroom or in the world, correct?

8 A. That is true, unless you had an
9 identical twin.

10 Q. All right. So, would it be fair
to
11 call this, in a way, like a genetic fingerprint then
that
12 is unique to each individual?

13 A. That would be fair.

14 Q. You've mentioned when you talked
about

15 Gene Screen you went through a lot of letters. You
told

16 us about RFLP, PCR, and DQ-Alpha and D1S80. And I
want

17 to go through those in just a little bit more
detail.

18 Are those types of DNA tests that are available to
be

19 run?

20 A. Yes, they are. There are
actually two

21 general categories. And then subtesting categories,
you

22 might say, under the heading of PCR.

23 Q. Okay. What would be kind of the
three

24 major categories then if we look at it?

25 A. We look at actually two major

1 categories. One is RFLP analysis and that is what
you
2 may have referred to as DNA fingerprinting.

3 Q. Okay.

4 A. The PCR analysis is another type
of
5 testing and it actually has some subgroups which we
will
6 talk about also.

7 Q. Okay. All right. So, we have
got
8 these two worlds. We have got the RFLP world and
then we
9 have got this PCR world, right?

10 A. Correct.

11 Q. All right. Just briefly, if you
are
12 going to do an RFLP test, a DNA test using that
method,

13 what exactly are you looking at on the genetic code?

14 A. If you are going to performed an
RFLP
15 analysis, you are looking at different length of
16 fragments that are generated by cutting your DNA
with,

17 what we call, molecular scissors, they are enzymes.

18 And they read the DNA code and
they

19 cut at specific sites according to what they are
reading

20 along the code. And every individual has specific
links

21 that are generated by applying this enzyme to their
DNA.

22 And it is those links, that we then examine and
compare

23 to some other substance.

24 Q. Would it be kind of like -- a DNA
25 strand being kind of like a ladder here in the
courtroom,

1 and you go in with these molecular cutters and on
mine,

2 for instance, the first cutter may cut the first
rung of

3 that ladder out, the second cutter may do another
rung

4 and on and on and on, and you can identify those
rungs as

5 you look at it; is that right?

6 A. That's correct. You can compare
it in

7 that manner or even to a strand of beads. And it
may cut

8 six links out of one strand for one person and three

9 links out of another person.

10 Q. All right. So, that would be in
the

11 RFLP world. Now, the PCR world, that is different,
isn't

12 it?

13 A. That is a different technique.

14 Q. Okay. Just within the general

15 overview of PCR, how do you do that, as opposed to
going

16 in there and actually cutting different strands

along

17 there? What do you do with the PCR?

18 A. With PCR you already typically
have

19 very small strands of DNA. You may be working with
20 degraded DNA, or DNA that has been broken down into
very

21 small pieces through exposure to bacteria, to
sunlight or

22 other factors such as moisture and humidity.

23 You actually amplify the DNA at a
24 certain site on the DNA. You want to look at a type

or

25 a -- some sort of information at a specific site on
a

1 DNA, but you may not have enough. So you amplify it
and

2 it's copied, many, many times, millions of times.
It's

3 very similar to placing a sheet of paper on a
copying

4 machine and setting the cycle to 100 copies.

5 All of your copies are going to
be

6 exact duplicates of your original, and that is

7 essentially what we do with the PCR method. We're

8 actually copying a particular area on the DNA,
obtaining

9 many, many copies and then we're looking at this
10 amplified DNA as to what type an individual may
have.

11 Q. Would one of the advantages of
PCR be

12 that you need less of a sample in order to do your
13 testing?

14 A. That is definitely an advantage.

15 Q. Okay. So you actually need
more

16 material, more DNA material to do the RFLP,
right?

17 A. Yes.

18 Q. Now, at Gene Screen, as you
look at

19 the PCR, do you basically, or do you primarily do
PCR

20 testing at Gene Screen or do you do both?

21 A. I do both, but primarily PCR
analysis.

22 Q. All right. Well, let's talk about
the

23 PCR then. Within the PCR family, do you have, what I
am

24 going to call, DQ-Alpha testing, and then do you have
25 this D1S80 testing over here within the PCR family?

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1 A. Yes, that is two of the four
methods

2 that we now incorporate.

3 Q. Okay. Is there another one
called,

4 STR, for instance?

5 A. Yes.

6 Q. Okay. Let's just stick with D1S80
and

7 DQ-Alpha. What is going to be the basic difference

8 between those two PCR tests?

9 A. The basic difference between those
two

10 tests, is that with DQ-Alpha analysis, your final
product

11 is going to be a strip with blue dots. And those
blue

12 dots will be positive for whatever DQ-Alpha type may
be

13 present in a sample.

14 If you are performing D1S80
analysis,

15 you're going to see the result in the form of
discrete

16 bands on a film.

17 And the final product is
different as
18 well as the methodology that you are incorporating.
For
19 instance, with DQ-Alpha you're actually looking at
the
20 difference in sequence, or a difference in coding
along
21 the DNA.

22 With the D1S80 method, you are
looking
23 at various lengths of DNA because those are due to
tandem
24 repeats or stuttering the D1S80 sequence. And that
quite
25 often varies from individual to individual.

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1 Q. Okay. Are there some cases that
you
2 get, where you decide the DQ-Alpha testing would be
best?

3 A. Yes.

4 Q. Are there other cases that you
might
5 get in, where you may think that this other type of
PCR
6 testing, this D1S80 might be better?

7 A. Yes.

8 Q. Might there also be cases that
you
9 look at and you might decide that RFLP might be best
for
10 that job?

11 A. If I have a choice, and plenty of
DNA
12 so that I have the luxury of making that choice,
yes.

13 Q. All right. In this particular
case,
14 Ms. Floyd, were several items submitted to you for
DNA
15 analysis?

16 A. Yes.

17 Q. And, did you receive items from

18 Charles Linch and Carolyn Van Winkle, of the

Institute of

19 Forensic Sciences in Dallas?

20 A. Yes, I did.

21 Q. Okay. Did you receive items from

any

22 other individuals?

23 A. Only Kathryn Long, Charlie Linch

and

24 Carolyn Van Winkle.

25 Q. And when you received those items,
did

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1 you sit down and try to decide what kind of testing
that

2 you wanted to do on those items?

3 A. Yes.

4 Q. In fact, did you and I, and you
have a

5 boss, Dr. Robert Giles there at Gene Screen?

6 A. Yes.

7 Q. Did we all sit down and try to
decide

8 what kind of testing you thought would be best for
these

9 items?

10 A. Yes, that's correct.

11 Q. All right. What kind of testing
did

12 you finally decide on for these items?

13 A. With this particular case we
decided

14 D1S80 would probably be the preferred testing, using
PCR

15 analysis.

16 Q. Okay. Why did you finally choose
to

17 do D1S80 testing?

18 A. Well, we knew that these stains
were
19 most likely going to yield a possible mixture of
three
20 related individuals. If they are related, that means
21 they are going to be sharing some banding pattern or
some
22 alleles because each child would inherit half of
their
23 DNA from their mother, and the other half from their
24 father. So there would be some commonality there
that
25 might complicate the testing method.

1 If you have mixtures present in a
2 sample, that is DNA that is donated through blood
from
3 more than one individual, the strip method or DQ-
Alpha is
4 very hard to read.

5 If you have only one individual
6 donating blood, it is fine. But if you have a
mixture,

7 it's too difficult to discern what came from where.
If

8 you use D1S80 you have discrete bands generated by
each

9 individual and you can best determine whether or not
that
10 particular person's DNA might be present in that
11 specimen.

12 Q. Okay. Would a good analogy be
that

13 you have got three fingerprints from individuals
within a

14 family and their fingerprints are somewhat similar
15 because they are all in the same family.

16 Is that what the alleles are,
17 basically?

18 A. Similar.

19 Q. Okay. And when you talk about a
20 mixture, it may not be a good analogy, but I
think of

21 where you have one fingerprint and then over that
you

22 might have another fingerprint that might obscure
part of

23 the first fingerprint. Is that what a mixture is
24 sometimes in DNA terms?

25 A. It could be or you could share
some

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1 points on one fingerprint, on your fingerprint that
you
2 would find also in the other one.

3 Q. And this D1S80, in essence, would
it
4 allow you to sort of separate these two fingerprints
and
5 look at them and determine whose fingerprint is
where?

6 A. Yes. And you could determine
also
7 which points were actually shared between the
8 individuals.

9 Q. When you receive samples out
there at
10 Gene Screen for testing, just walk us through the
11 procedures that you use. What is the first thing
that
12 you do when you receive the samples, in this case,
for
13 instance?

14 A. The first thing that we do, is to
15 establish the chain of custody, document how we
receive
16 the samples, from whom, what the samples were,

assign a

17 case number, and for each piece of evidence that is
18 applicable to this case, it also receives it's own
19 individual accession number.

20 At that point, I will photograph
the

21 specimens before I begin work, and determine what
type of

22 testing method might be the best or what type of
testing

23 method may be the only type that I can use on that
24 particular case.

25 It depends on the specimens, how
much

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1 there is, what condition they are in and how fast
someone

2 would like to have some results.

3 Q. What procedures do you have out at

4 Gene Screen to prevent cross-contamination, you
know,

5 something happening where two samples get
intermingled

6 before you do the testing? What sort of safeguards
do

7 you have?

8 A. It's policy to open only one
item of

9 evidence at a time. Never do I open two at a time.
Open

10 only one, take a picture, seal it back up. Open
another

11 one, take a picture, seal it back up.

12 After that, I then begin work on
the

13 specimen, and again, open only one at a time, cut it
out,

14 begin processing it. I open only one tube at a time
if I

15 have several tubes on a rack. I wear gloves. My

16 utensils such as my forceps and my scissors are
always,

17 always cleaned between specimens.

18 We use aerosol resistant tips so
that

19 whenever I am pipetting from one solution into
another,

20 there is no carry-over by aerosol contamination.

21 Q. Okay. How long does the D1S80
test

22 take to run?

23 A. Approximately three days.

24 Q. All right. So from the time that
you
25 are actually beginning that test to the finish when
you

1 get results, it's about three days; is that right?

2 A. That's correct.

3 Q. That test is actually run out at

Gene

4 Screen, correct?

5 A. Right.

6 Q. Okay. Let's say you have got a
7 sample, you have tested it using D1S80, what do you
8 actually do to get a result that you can then report

back

9 to us? How do you do that?

10 A. What I do first is to remove a
11 portion, for instance, of a blood stain, a very small
12 amount from the blood stain. Remove the DNA from the
13 white cells that are contained within that blood. I
have

14 a solution of DNA, I amplify it, copy it, as I
mentioned

15 a few minutes ago, obtain a tube of amplified DNA. I
16 then load this amplified DNA on acrylamide gel. And
I

17 need this acrylamide gel to enable me to visualize
the

18 different lengths of DNA that I have in that
particular

19 sample.

20 I do a silver stain which then
will

21 expose those particular DNA bands to me, and a film
is a

22 permanent record of this.

23 At that point, we then analyze
the

24 results of the unknown, or the evidence specimen and
25 compare that to known specimens, and determine
whether we

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1 have an inclusion, or a match, or an exclusion.

2 If you have an exclusion then you
know

3 that a particular individual could not have donated
or

4 could not have been the donor of whatever DNA or
5 biological specimen you are looking at on the
evidence.

6 Q. Okay. So on the known sample, for
7 instance, where you know the contributor of that
DNA,

8 will that have a set length to it already?

9 A. Yes. If you -- we always
receive

10 blood standards and that is what we call our
known

11 sample, because we know the donor of that particular
12 item. And we have, what we call, our reference, or
our

13 standard bands derived from that person's blood.

14 Q. All right. So, when you are doing
15 this comparison, do you actually have this standard
band

16 from the known, and then you can actually visualize -
- do

17 you visually see whether or not you have a got a
match

18 between the known and the unknown?

19 A. Yes. You visualize it, and also
20 you're comparing those bands to a ladder. When I say
21 ladder, I mean the ladder that we use on the gel
contains

22 all of the allele sizes, or all of the band lengths
that

23 you are going to find generated from any sample.

24 Then if it lines up with band
number

25 29, you know you have a 29. If it lines up with band

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1 number 14, you know you have a 14.

2 Q. And how long have you actually
been

3 doing this, where you have actually looked at these
bands

4 and determined whether or not you have got a match
where

5 you can say, it's included, or you say, no, I don't
have

6 a match, I can exclude this as being the same? How
long?

7 A. For D1S80 testing for
approximately

8 three years, but it is very similar to comparing the
9 results for RFLP analysis, and that I have been
10 performing for seven and a half years.

11 Q. Ms. Floyd, in this case, did you
12 receive from the folks over there at SWIFS, blood
samples

13 identified as having come from Darlie Routier, Darin
14 Routier, Damon Routier and Devon Routier?

15 A. Yes.

16 Q. Okay. Would those then be your
known

17 samples where you know the length that you are

looking

18 for for each one of those individuals?

19 A. That's correct.

20 Q. Let me begin with items

from a

21 T-shirt. Did you receive several blood

samples

22 identified as having come from a T-shirt worn by the

23 defendant in this case?

24 A. Yes, I did.

25 Q. Okay. And did those samples come
to

1 you from Carolyn Van Winkle and Charles Linch of
SWIFS?

2 A. Yes.

3 Q. Did you also receive several
blood

4 samples identified as having come from inside 5801
Eagle

5 Drive in Rowlett?

6 A. Yes.

7 Q. Did those items come from Charles
8 Linch also?

9 A. Yes.

10 Q. Did you also receive several
blood

11 samples identified as coming from a head hair, a
sock, a

12 comforter, Reebok tennis shoes and a knife?

13 A. Yes.

14 Q. Okay. Who did you receive those
15 samples from?

16 A. Charles Linch.

17 Q. Okay. All right. Now when those
18 items come over, does Charles Linch or Carolyn Van
19 Winkle, do they actually have their SWIFS number
assigned

20 to those items, when they come over there to you?

21 A. Yes.

22 Q. Okay. Just for reference sake,

23 starting with the comforter, did that come over as
SWIFS

24 item No. 18?

25 A. Yes, it did.

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1 Q. Okay. The Reebok tennis shoes,
did

2 those come over as SWIFS items No. 103?

3 A. Yes.

4 Q. The knife, did that come over as
SWIFS

5 item No. 2?

6 A. Now, the knife itself, I did not
7 receive.

8 Q. Okay. I'm sorry. The samples
off of

9 the knife?

10 A. The samples from the knife.
Those

11 particular stains I have listed as No. 2.

12 Q. Right. That is SWIFS item No. 2.

And

13 finally, the stains removed and sent to you from a
sock,

14 did those show to be SWIFS item No. 27?

15 A. That's correct.

16 Q. If we could, let's start with
those

17 items. If we could, we have the comforter that came
over

18 as SWIFS item No. 18. Can you tell us what the
results

19 of your DNA analysis was for the comforter items?

20 A. Yes. The comforter, I had four
21 stains, three of those stains typed as Devon, the
fourth

22 stain did not yield a result.

23 Q. Okay. So you had four, three of
them

24 came back as matching Devon Routier, correct?

25 A. Correct.

1 Q. The fourth one, you didn't get a
2 result. Is that uncommon that sometimes you get a
stain

3 and you can't get a result?

4 A. No, it's not uncommon and using
the

5 D1S80 technique, if you retype the specimen, it's
very

6 likely you could get a result.

7 Q. All right. So the three of them
that

8 you got a result, they all came back to Devon,
correct?

9 A. Correct.

10 Q. The Reeboks, SWIFS item No. 103,
could

11 you give us the results of your analysis, please?

12 A. I worked with two stains from the
13 Reeboks. Both of those came back as matching
Darlie.

14 Q. Okay. Two stains both matched
Darlie

15 Routier, correct?

16 A. Right.

17 Q. The samples off the knife, SWIFS

item

18 No. 2, what were your results there?

19 A. I had four stains from the knife.

Two

20 of those stains matched Darlie Routier, one matched

Damon

21 Routier, and the fourth one contained a combination

of

22 Darlie and Damon Routier.

23 Q. Okay. So two of them matched

Darlie

24 Routier, one of them came back to Damon Routier and

the

25 other one is a mixture; is that right?

1 A. That's correct.

2 Q. And, is a mixture something that
you

3 see also, from time to time? It's kind of like the
two

4 fingerprints, one over another?

5

6 MR. DOUGLAS MULDER: Object to
the
7 leading.

8 THE COURT: I'll sustain it. And
9 let's just phrase our questions properly.

10 MR. GREG DAVIS: Yes, sir, I'll
do
11 that.

12

13 BY MR. GREG DAVIS:

14 Q. Is one of them a mixture then?

15 A. Correct.

16 Q. And finally, the sock, SWIFS item
No.

17 27, what were your results?

18 A. I had six stains from the sock.

One

19 stain typed as Damon Routier -- I'm sorry. Two of

those

20 stains typed as Damon Routier.

21 Two typed as Devon Routier --

three

22 typed as Devon Routier. So two typed as Damon,

three

23 typed as Devon Routier. The very last stain did not

24 type.

25 Q. Okay. What does that mean for
the

1 last sample? What does that mean?

2 A. I would just simply issue no
result,

3 indicating that the first attempt to obtain results
from

4 that one were unsuccessful.

5 Q. So five of the six you got
results?

6 A. Right. That's correct.

7 Q. And on the sock, again, did you
find

8 any samples that matched the blood of Darlie
Routier?

9 A. Originally, when I had the
sock, I

10 typed the toe, which gave a very faint typing
matching

11 the D1S80 type of Darlie Routier.

12 Q. Okay. Do you have an opinion as a
DNA

13 analyst as to why that sample came back to Darlie
Routier

14 from the toe area? Do you have an idea of what you
were

15 actually seeing there?

16 A. When I was asked to test the sock,
17 there was an interest in who might have been the
wearer
18 of the sock. I tested the toe area, the heel area
and
19 the band of the sock. Which typically, is a site
where
20 you might obtain cells from the person having worn
a
21 sock. And that is the reason that I chose that
area, and
22 it did not appear to have blood stains in that
particular
23 area.

24 Since I did obtain a faint
typing, and
25 quite often, if you're going to get the person who
might

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1 have worn the sock, it's going to be fairly faint.

And

2 that is a possibility.

3 Q. Okay. Well, if -- as I wear
4 something, do I actually lose skin cells as I wear
5 something?

6 A. Certainly. Especially to
clothing

7 that may be closer to your body. For instance,
around

8 the collar of your shirt, the cuff of your sleeve,
the

9 binding area on your sock.

10 Q. Okay. From the socks I am
wearing

11 today, would you expect that at the end of the day
that

12 you would actually
be able to find my skin
cells on this

13 sock?

14 A.

Yes, I would. The more
stress you're

15 under, the more

cells I'm likely to find.

16 Q.

You would probably see a
bunch of them

17 today then, right?

18 A.

Yes.

19 Q.

Would the same be true
if I put this

20 sock over my hand
and wore it around all
day and I am

21 stressed? Would you
expect to see my skin
cells from my

22 hand on that sock?

23 A.

That is a possibility,
yes.

24 Q.

And from those skin
cells left on my
25 sock either from
wearing it on the foot or
on the hand,

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1 could you then
extract DNA from those
skin cells?

2 A.

Yes, if there was
sufficient there to

3 give a typing, I
could, definitely.

4 Q.

Okay. From the items
that you tested

5 that we have gone
over: From the
comforter, the Reeboks,

6 the knife and the
sock, from the samples
where you got

7 results that you
could report out, were
there any

8 unidentified
samples?

9 A.

No.

10 Q.

Ms. Floyd, if you would
look at

11 State's Exhibit No.

122. And before you
testified today,

12 did I have you look
over samples shown on
this board, and

13 did you initial the
samples that you did the
testing on?

14 A.

Yes, I did.

15 Q.

Okay. Would those
include the two

16 samples listed as
105 here?

17 A.

Yes.

18 Q.

Would they also include
the samples

19 that are marked as
110 and 111?

20 A.

Yes.

21 Q.

Did you do any testing
on any other

22 items shown here on
State's Exhibit 122?

23 A.

Yes, I did.

24 Q.

Is there an additional
one here from a
25 vacuum?

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1 A.

Yes.

2 Q.

Okay.

3 A. Also, the hallway area.

4 Q. All right. We see 1, 2, 3, 4, 5

along

5 the wall of the family room. You also tested

those; is

6 that right?

7 A. That's correct.

8 Q. And are the three on the

hallway, what

9 I am going to call the entry hallway, that you did

10 testing on also?

11 A. Yes.

12 Q. The sample that you tested off

of the

13 vacuum cleaner, what was the result of that, that

14 analysis?

15 A. The spot of blood I removed from

the

16 vacuum cleaner matched Darlie Routier.

17 Q. Did you actually take that

sample

18 yourself?

19 A. Yes, I did.

20 Q. Where on the vacuum cleaner did
you

21 take that sample?

22 A. It was taken on the plastic
casing

23 just above the left wheel.

24 Q. The samples that I just showed
you on

25 State's Exhibit 122, besides initialing for the
sample

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1 itself, are the results shown on that board, are
they

2 true and correct?

3 And do they correspond with the
4 results that you found when you sampled and you
tested

5 those samples?

6 A. Yes, they do.

7 Q. Ms. Floyd, again, now looking at
8 State's Exhibits 120 and 121, before you testified
today,

9 have you also gone through all the samples shown in
these

10 two photographs and have you identified the ones
that you

11 actually tested?

12 A. Yes.

13 Q. Have you now initialed all the
samples

14 that you tested as shown on State's Exhibit 120 and
121?

15 A. Yes.

16 Q. Are the results shown on these
boards

17 accurate? Do they correspond to the findings after

your

18 DNA analysis of the samples?

19 A. Yes, they do.

20 Q. With regards to the samples from
21 inside the house that you received to test, with
regards

22 to all of the samples where you got a result, were
there

23 any unidentified samples after your testing?

24 A. None of the blood stains, no.

25 Q. Okay. You were able to identify
the

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1 contributor on all of those?

2 A. Yes.

3 Q. How about with the samples that
you

4 tested from the T-shirt? With regards to samples
where

5 you got results, were there any unidentified
samples?

6 A. No.

7 Q. Able to identify a contributor on
all

8 of those; is that right?

9 A. That's correct.

10 Q. D1S80, I don't know how to word
this,

11 but just how exact a test is that?

12 A. When performed properly, it's 100
13 percent reliable.

14 Q. All right. You were talking
about

15 being able to exclude people or include people.

What's

16 the power of that test, you know, in percentages, if
you

17 can? How would you express that?

18 A. In the general population, it's
19 approximately 96 to 98 percent power of
exclusion or
20 power of discrimination.

21 Q. Okay. What do you mean by
power of
22 discrimination?

23 A. The ability to discern
between one
24 individual to another by using this particular
25 methodology.

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1 Q. Okay. So, what, a
percentage of

2 accuracy of 96 to 98 percent? Is that what
you're

3 talking about?

4 A. That's correct. Whenever you're
using

5 the general public as a whole and this is a little
bit

6 different in that we were trying to determine from
a --

7 you might say, a group of three people if there was
8 something different other than the bands that were
9 generated by their bloods.

10 Q. Okay. What would you say the
degree

11 of accuracy would be in this particular case with
three

12 family members as possible contributors?

13 A. I would say that the power of
14 exclusion -- if you ran a sample and there were bands
15 that you could align, for instance, with Darlie
Routier's

16 blood, but not with Devon Routier's, that means that
17 Devon is 100 percent excluded as being a donor of

that

18 particular blood specimen. But Darlie would not be
and

19 as to what percentage that would be would be based on
how

20 rare or how common her pattern is.

21 Q. So, if you had a spot, would you
be

22 able to determine 100 percent that it was not one
member

23 of the family, you just can't be 100 percent that
it's

24 the person that you think it is; is that right?

25 A. If you are looking at only three

Sandra M. Halsey, CSR, Official Court
Reporter

1 individuals, you would say that it was 100 percent
2 probability that it would be one of those three and
not
3 the other two.

4 Q. Okay. Ms. Floyd, again, looking
at

5 State's Exhibits 120 and 121. Again, I am drawing
your

6 attention here to, really, five samples. The
sample

7 identified as T-10, the sample identified as T-9,
the

8 sample identified as LS1, LS3 and also the sample

9 identified as T-15; have we accurately portrayed
their

10 locations on that T-shirt with regards to the
photographs

11 on top?

12 A. Yes.

13 Q. Okay. These photographs are true
and

14 accurate depictions of where those particular
samples

15 came from; is that right?

16 A. That appears to be the case, yes.

17

Q. Okay.

18

19

MR. GREG DAVIS: Your Honor, I'll

pass

20

the witness.

21

THE COURT: Mr. Mosty.

22

23

24

25

1

CROSS EXAMINATION

2

3 BY MR. RICHARD MOSTY:

4

Q. Ms. Floyd, I just wanted to cover

a

5 couple of things with you. You testified in some
6 detail

7 about the procedures that you use, that you
8 personally

9 use, and I guess the other people at Gene Screen
10 use to

11 make sure that there is not a contamination of the
12 samples?

13

A. Correct.

14

Q. And that was where you're

15 talking

16 about separate gloves. Even if I were testing,
17 for

18 instance, a blood sample at different locations,
19 you

20 would change gloves even between those two
21 samples?

22

A. Not always, no. But always

23 the

24 scissors and the forceps that are used are cleaned

for it

17 to be free of any DNA so as not to have any carry-
over.

18 Q. Okay. That was even if you were
19 taking one of those blood drops and a couple of
samples

20 off of it?

21 A. I never touch any of the sample
with
22 my gloves.

23 Q. Okay. That is what I mean. And
if

24 you were taking two samples off of one small drop,
you

25 take one sample, you would clean all of your
instruments,

1 you would go back and take the other sample off of
that

2 same drop?

3 A. If it was one drop, I typically
would

4 not extract two times from the same drop.

5 Q. But if you did, the point of it
is

6 that between every sample, you are going to clean
your

7 instruments, isn't that right?

8 A. Between every different sample,
yes, I

9 would clean my instruments. If I cut a sample off
of a

10 spot and then wanted to cut that sample into
smaller

11 pieces, I wouldn't clean it.

12 Q. Let's say that there was a spot
this

13 big, did you make the determination about where on
that

14 spot a sample should be taken? Or did somebody
else

15 already do that?

16 A. Most of the samples were given
to me

17 already excised.

18 Q. Okay.

19 A. From a larger spot.

20 Q. So someone else had selected
that

21 sample and brought it to you for testing?

22 A. Yes. Or the entire sample was
given

23 to me but it was too small to even approach the
size that

24 you were indicating.

25 Q. Okay. And I was really
indicating

 Sandra M. Halsey, CSR, Official Court
Reporter

1 that something out there at the scene might be that
big

2 and someone has gone in and taken a -- maybe one
sample

3 or maybe a couple of samples and brought to you just
that

4 small sample?

5 A. That's right.

6 Q. And, of course, you have no
control

7 over how things are handled before you get them?

8 A. That's correct.

9 Q. You just have control over
maintaining

10 that you don't have contamination once it's there at
Gene

11 Screen?

12 A. That's right.

13 Q. Now, how, just in terms of trying
to

14 get a grip on how sensitive these tests are, how much
15 blood does it take for you to get a suitable amount
to

16 first amplify and then evaluate?

17 A. You can get a D1S80 result from a

spot

18 of blood amounting to the size of a pinhead.

19 Q. Okay. So, you could, did I take

it

20 from that that you could even -- that these tests

are so

21 sensitive, that you could get a sample from

something

22 that you really couldn't see with the naked eye?

23 A. Well, if you are, for instance,

24 testing an item of clothing, you are not going to

see any

25 skin cells.

1 Q. Right.

2 A. And quite often, if you have
seminal

3 fluid on a stain, you may not be able to see that.

4 Q. But as to blood, even if I took a
pen

5 point and dipped it on something, that blood spot
might

6 be so small that I couldn't even see it with my
naked

7 eye?

8 A. It is a possibility, but we do
have

9 the luxury of having some color to blood, so quite
often

10 we do see that.

11 Q. The point of that is that you are
12 talking about very, very, small amounts that are
13 necessary for you to do your testing?

14 A. Very small amounts, yes.

15 Q. And, so I guess, that would be
one of

16 the reasons that you are so concerned about
17 contamination, wouldn't it be?

18 A. Certainly you are concerned about

it,

19 that's right.

20 Q. Just the slightest bit of
touching of

21 your instrument from one sample to another could
bring,

22 could -- it's not going to change your result, but
you're

23 going to -- it would question maybe where that
sample

24 came from?

25 A. Well, actually studies have been

1 performed in which an individual, for the purpose of
the

2 study, did not clean forceps or scissors between
blood

3 specimens, cut or several extractions, and they
found no

4 carry-over. But as good laboratory practice,
certainly

5 we do always clean the instruments between cuttings.

6 Q. And, did you tell -- did you say
that

7 you kept every item separate?

8 A. Yes.

9 Q. That is the way you would like to
10 receive them, is it not?

11 A. That is the way I typically do
receive

12 them.

13 Q. You don't have, for instance,
two

14 bloody rags in one bag?

15 A. No.

16 Q. And, you don't like that as a
17 scientist, you don't -- wouldn't like to receive

two

18 bloody rags like that, would you?

19 A. Well, that is not the ideal
situation.

20 Q. And the reason for that is that
blood

21 from one might get on to the other?

22 A. That is always a possibility.

23 Q. Okay. And, once that blood from
one,

24 gets on to another, from your standpoint, you can
still

25 say, that that is so and so's blood, but you can't
say

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Reporter

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1 with certainty that -- which of the rags it came
from?

2 A. Well, that depends on the
appearance

3 of the stain, when it arrives, that might be.

4 Q. Let's go back to this. Well,
let me

5 go at it this way: Let's say that first, the
stain is on

6 this rag, and then there is a different stain on
this

7 rag, and they are thrown together.

8 A. Okay.

9 Q. And they would have the
opportunity to

10 transfer the blood from the first rag to the blood
from

11 the second rag.

12 And, then in fact, do. And you
run

13 your test, and you can identify that one or two
people,

14 or whatever you find, but you would not be able to

15 identify with certainty that the sample you got

16 originally started on the first rag.

17 A. Well, you would think that the
sample

18 that was there originally, would type stronger.

And we

19 do see that. Whenever you have mixtures, the
lesser

20 component will give a fainter banding pattern.

21 Q. Of course, I guess that depends
upon

22 how much of that blood gets transferred?

23 A. In your hypothetical situation,
yes.

24 Q. Okay. Um-hum. (Attorney
nodding head
25 affirmatively).

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Reporter

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1 And, that would also be true of
a
2 particular item. That is, for instance, has blood
on one
3 side and is folded over and has blood on the other
side.

4 And then a sample is brought to you.

5 Was the blood that was
originally on

6 one side of the shirt could have ended up on the
other

7 side of the shirt?

8 A. If it was soaked all the way
through,

9 is that what you are asking me?

10 Q. Yeah, if there is enough blood,
if it

11 were soaked enough or if there is enough blood, or
it

12 stays long enough to where the blood from one side

13 actually causes blood on to the other side, then
your

14 results would still be accurate, but you couldn't
verify

15 where that blood had originally been?

16 A. That's true.

17 Q. You were asked to test some
facial

18 hair as well, were you not?

19 A. Yes.

20 Q. Do you know where that facial
hair

21 came from, where it was located at the scene?

22 A. The best of my knowledge, I
believe it

23 was from a rug, but I am not sure where the rug
itself

24 was located.

25 Q. Okay. And, the results of your
DNA

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Reporter

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1 testing of that head hair showed you what? I'm
sorry.

2 Was it a head hair or do you know?

3 A. Facial hair.

4 Q. Facial
hair?

5 A. That's
right.

6 Q. Okay. The results of that was
what?

7 A. The result of that particular
facial

8 hair was that it did not match any of the three
9 individuals in this case.

10 Q. Okay. And, also did not match
Darin

11 Routier either, did it?

12 A. That's correct.

13 Q. Okay. So that is an unknown
facial

14 hair? Unidentified is maybe a better word?

15 A. Yes.

16 Q. Okay. When did you first start
doing

17 your testing?

18 A. In this particular case?

19 Q. Yes.

20 A. Our first specimens were received
21 September, September 18.

22 Q. Okay. And, you issued reports
when?

23 December?

24 A. December 2nd and the second report
on
25 January the 7th.

Sandra M. Halsey, CSR, Official Court Reporter

3143

1 Q. The second report is the day after
2 this trial started?

3 A. Correct.

4 Q. Okay. Now, you testified about a
sock

5 and you did not detect, your statement was you did
not

6 detect anyone's blood on the sock except for two
7 locations of Damon and three of Devon?

8 A. I believe that's correct.

9 Q. And one was a no result?

10 A. That's right.

11 Q. How do you get these no
results?

12 A. No result means that there
was no

13 banding pattern that was generated from the
amplification

14 of the sample or there was no amplification, in other
15 words.

16 Q. Okay. And, from a no result, I
guess

17 you can draw no conclusions whatsoever?

18 A. That's correct.

19 Q. Now, you also said -- you
testified

20 about a faint DNA sample. What was that?

21 A. From the sock?

22 Q. From the sock.

23 A. From the testing of the toe area
there

24 was a very faint pattern generated which was the same

as

25 that generated by Darlie Routier's blood.

Sandra M. Halsey, CSR, Official Court Reporter

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1 Q. Okay. But that could also be the
same

2 as her skin?

3 A. Correct.

4 Q. And that could be the same as her
5 saliva?

6 A. Correct.

7 Q. So, if some assailant had that
sock in

8 his hand and stuffed it or tried to stuff it in her
9 mouth, that could leave that kind of result?

10 A. It's a possibility.

11 Q. If an assailant had that sock in
his

12 hand and contacted her skin, it could have that kind
of

13 result?

14 A. Well, I would think that would
have to

15 be pretty hard contact in order to obtain those skin
16 cells, yes. But then you might also obtain skin

cells

17 from his hand applying the same pressure.

18 Q. Right. And you don't know -- I
guess

19 you don't know how long that kind of cell could be
on a

20 sock?

21 A. No.

22 Q. And there is no way to tell
that?

23 A. No.

24 Q. If someone had handled that

sock, I

25 guess if they had picked it up, they could have
their

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Reporter

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1 skin cells on it?

2 A. Well, you wouldn't expect such a
light

3 pressure just picking it up to pose a problem.

Contact

4 would be slight and it would be light.

5 Q. Well, you -- this was a faint
result,

6 wasn't it?

7 A. Yes, but, that is not uncommon
for a

8 typing from an item of clothing that has been worn
by

9 someone, because you are not going to get very many
cells

10 that type very strongly.

11 Q. I'm just using your words. You
called

12 it in your report a faint result, didn't you?

13 A. That's correct.

14 Q. That could be consistent with
any

15 number of contacts between skin or saliva and that
sock?

16 A. Well, based on my experience,

it's

17 takes more than just a light contact such as
picking up a

18 sock.

19 Q. Well, you know, you don't know
how

20 someone picks it up, do you?

21 A. No, not by the way I pick it up
and by

22 the way I have seen most people pick up a sock that
23 looked like that. I would think it would be a
light

24 touch.

25 Q. Okay. Now, you had a -- you did

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Reporter

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1 the -- did you do a saliva swab on Sarah Jones?

2 A. Yes, I did.

3 Q. And were you the one that
determined

4 that her head hair was not -- that the sample that
was

5 thought to be Darlie Routier's sample was, in fact,
Sarah

6 Jones'?

7 A. That's correct.

8 Q. You made that determination?

9 A. Right.

10 Q. And, one thing, when you looked at
11 that vacuum cleaner, were you able to see blood on
it?

12 You took that sample, didn't you?

13 A. That's correct. I removed that
14 particular blood spot from the vacuum.

15 Q. That was something you were able
to

16 visually identify as what you thought to be a blood
spot?

17 A. Yes.

18 Q. Do you do presumptive tests on
blood,

19 or do you just --

20 A. No, I do not.

21 Q. -- wait until you get to the lab
and

22 make the determination that it's blood?

23 A. If -- a rust spot or paint spot,
it's

24 not going to give any result with my testing.

25 Q. Now, did you do any testing on the

Sandra M. Halsey, CSR, Official Court Reporter

3147

1 maroon pillow?

2 A. On the pillow case, yes.

3 Q. Okay. That was maroon in color?

4 A. Yes.

5 Q. Okay. And the results of that
were

6 what?

7 A. I had three stains from the pillow
8 case, one stain matched Damon Routier, two matched
Darlie

9 Routier.

10 Q. Okay. Those were on opposite
sides of

11 that pillow, weren't they?

12 A. I don't know. I did not cut the
13 stains from the pillow case.

14 Q. Okay. So you can't tell where
they

15 originated?

16 A. Right.

17 Q. And, you tested some samples of
the

18 knife, No. 67, I believe it is?

19 A. That's correct.

20 Q. Okay. And the results of that
were

21 two, four locations?

22 A. That's right.

23 Q. None of which were Devon Routier?

24 A. None of those four stains, that's
25 correct.

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1 Q. And that would be consistent with
2 Devon Routier not having been stabbed with that
knife?

3 A. No, that would just be consistent
with
4 his blood not being in those four places that were
5 removed for my testing.

6 Q. So, in other words, all of these
7 testings are just somewhat a matter of hit and miss,
that

8 you happen to pick up a spot or not pick up a spot
that
9 has someone's blood on it?

10 A. Certainly his blood could have
been
11 elsewhere on the knife and it was not removed from
those
12 four swabbings.

13 Q. But you cannot say with any
certainty
14 that his blood was on that knife at all, can you?

15 A. Not from those four
swabbings.

16 Q. You do not know?

17 A. That's correct.

18 Q. So, it could be consistent that

there

19 was maybe a spot of his blood on that knife, that
could

20 be consistent?

21 A. Certainly.

22 Q. And it could be consistent that
there

23 was none of his blood on that knife?

24 A. Unless any further testing was

done

25 other than mine, yes.

Sandra M. Halsey, CSR, Official Court Reporter

1 Q. Well, it could be either way,
couldn't

2 it?

3 A. From my testing, yes.

4 Q. Well, that is the testing -- that
is

5 what we have got, isn't it?

6 A. That's correct.

7 Q. Okay. Any other testing done on
that

8 knife that you know of?

9 A. Not in my laboratory.

10 Q. What about that you know of? Do
you

11 know of any other testing done on the blood samples
on

12 the knife at all?

13 A. I don't know of any other.

14 Q. Okay. We don't know one way or
15 another then, and you have no ability to tell this
jury

16 that Devon Routier's blood was on that knife?

17 A. Not from my four tests, no.

18 Q. Well, and that is the extent of
your

19 knowledge, isn't it?

20 A. As far as the knife is
concerned?

21 Q. Yes.

22 A.
Yes.

23 Q.
But, however you want to
slice it, all
24 the evidence that
you were able to pick up
and analyze
25 was that Devon
Routier's blood was not
on that knife?

Sandra M.
Halsey, CSR, Official
Court Reporter

1 A.

Devon Routier's blood
was not

2 contained in those
four spots that were
removed for my

3 testing.

4 Q.

All right.

5

6

THE COURT: I think we
have covered

7 the knife. Please,
let's move on.

8

MR. RICHARD C. MOSTY:

That's all.

9

10

11

REDIRECT EXAMINATION

12

13 BY MR. GREG DAVIS:

14 Q.

Ms. Floyd, just two questions.

15 Besides the facial hair, were there any other

16 unidentified samples which you tested?

17 A.

There was a pubic hair which I tested,

18 and no result was obtained from that hair.

19 Q. I guess I'm talking about samples

20 where you actually got a result that you could report out

21 any other unidentified samples?

22 A.

No other samples.

23 Q.

When the items that you were to test,

24 when they came over from SWIFS, were they

separated from
25 each other?

Sandra M.
Halsey, CSR, Official
Court Reporter

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1 A.

Yes.

2 Q.

Okay.

3

4 MR. GREG DAVIS: No further

questions.

5

6

7 RECROSS EXAMINATION

8

9 BY MR. RICHARD MOSTY:

10 Q. On those pubic hairs, you had
known

11 samples of Darlie Routier's pubic hairs, didn't you?

12 A. No, I did not.

13 Q. You did not? Did you have any
known

14 samples of any pubic hair?

15 A. No.

16 Q. Well, you knew, but you knew
Darlie

17 Routier's DNA pattern? Or numbers, however --
whatever

18 you want to call that.

19 A. Her D1S80 type, yes.

20 Q. Right. And were you able to see

--

21 were you able to have enough of the pubic hair to
run a

22 DS180 test on that pubic hair?

23 A. From the unknown specimen that I

24 received?

25 Q. Right.

Sandra M. Halsey, CSR, Official Court Reporter

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1 A. There was a root, and therefore,
that
2 is the portion that contains the DNA and it may have
3 issued a result, it may not. Hair gives a success
rate
4 of about 60 percent.

5 Q. And yours was no result?

6 A. On that pubic hair, yes.

7 Q. So from that pubic hair, it, at
least
8 for now, remains unidentified?

9 A. Correct.

10 Q. And, when you have NR on a test,
or
11 your no result, that means on the test you ran, there
was
12 no result?

13 A. That means no bands were
generated.

14 No bands were visualized from the final product.

That's

15 correct.

16 Q. And then you mentioned sometimes
that

17 you would run second or third or more repeats?

18 A. Sometimes if you re-amplify a
portion
19 of that particular specimen, it may give a result.
It
20 may not.

21 Q. On the pubic hair you just ran
the
22 ones -- on the two pubic hairs, on the root and
the
23 shaft, you ran the one test?

24 A. That's correct.

25 Q. With no result?

Sandra M. Halsey, CSR, Official Court Reporter

1 A. That's correct
2
3 MR. RICHARD C. MOSTY: That's all
I
4 have.
5 MR. GREG DAVIS: No further
questions.
6 THE COURT: You may step down,
ma'am.
7 Let's take a 10 minute break, please.
8 All right. Thank you for coming.
9 Watch your step off.
10
11 (Whereupon, a short
12 Recess was
taken,
13 After which
time,
14 The proceedings
were
15 Resumed on the
record,
16 In the presence
and
17 Hearing of the
defendant

18 And the jury, as
follows:)

19

20 THE COURT: All right. Let's
bring

21 our next witness in.

22 All right. Are both sides ready
to

23 bring the jury back in and resume?

24 MR. GREG DAVIS: Yes, sir. The
State
25 is ready.

Sandra M. Halsey, CSR, Official Court Reporter

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1 MR. DOUGLAS MULDER: Yes, sir.
2 Defense is ready.
3 THE COURT: All right. Bring the
jury
4 in, please.
5
6 (Whereupon, the jury
7 Was returned to
the
8 Courtroom, and
the
9 Proceedings
were
10 Resumed on the
record,
11 In open court, in
the
12 Presence and
hearing
13 Of the defendant,
14 As follows:)
15
16 THE COURT: All right. Be
seated,
17 please. Let the record reflect that all parties in
the

18 trial are present and the jury is seated.

19 All right. Ma'am, if you will

raise

20 your right hand, please?

21

22

23 (Whereupon, the witness

24 Was duly sworn by

the

25 Court, to speak

the truth,

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Court Reporter

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1 The whole truth
and

2 Nothing but the
truth,

3 After which, the

4 Proceedings were

5 Resumed as follows:)

6

7 THE COURT: Do you solemnly
swear or

8 affirm that the testimony you are about to give
will be

9 the truth, the whole truth, and nothing but the
truth, so

10 help you God?

11 THE WITNESS: I do.

12 THE COURT: You have testified
many

13 times before and you understand the Rule of
Evidence; is

14 that correct?

15 THE WITNESS: I do.

16 THE COURT: You are now under
it. All

17 right. Ma'am, if you will state your name and
spell your

18 name for the court reporter, please.

19 THE WITNESS: Carolyn Van
Winkle,

20 V-A-N W-I-N-K-L-E.

21 THE COURT: Okay. You need
speak

22 right into that microphone there.

23 THE COURT: Okay. Go ahead.

24 MR. GREG DAVIS: Thank you.

25

Sandra M. Halsey, CSR, Official Court
Reporter

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1 Whereupon,

2

3 CAROLYN VAN WINKLE,

4

5 Was called as a witness, for the State of Texas,
having

6 been first duly sworn by the Court to speak the
truth,

7 the whole truth, and nothing but the truth,
testified in

8 open court, as follows:

9

10

11 DIRECT EXAMINATION

12

13 BY MR. GREG DAVIS:

14 Q. Ms. Van Winkle, would you please
tell

15 us how you are employed?

16 A. I am employed at the Institute of
17 Forensic Sciences in Dallas, as a forensic DNA
analyst.

18 Q. Okay. How long have you been
with

19 SWIFS?

20 A. Since January of 1986.

21 Q. All right. How long have you
been a

22 DNA analyst?

23 A. We began doing DNA analysis at
the

24 laboratory in 1991.

25 Q. All right. And before you began
doing

Reporter Sandra M. Halsey, CSR, Official Court

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1 DNA, what were you doing at SWIFS?

2 A. I was a forensic serologist,
dealing

3 mostly with blood and body fluids in criminal cases
at
4 that time.

5 Q. All right. Would you give us a
little

6 bit more detail of your educational and professional
7 background, please.

8 A. I have a Bachelor of Science
Degree.

9 I am a medical technologist registered by the
American

10 Society of Clinical Pathologists. I'm also a
registered

11 Specialist in Blood Bank Technology with the American
12 Association of Blood Banks.

13 I began my training doing DNA
analysis

14 at the FBI Academy. I have had other training at
15 Cellmark, one of the first laboratories in this
country

16 to do DNA analytical methods.

17 I also was a visiting scientist

18 working on standards used nationwide for forensic DNA
19 analytical methods, at the National Institute of
20 Standards and Technology in Gaithersburg, Maryland.

21 I have had numerous graduate
course

22 work in molecular biology, biochemistry, advanced
23 genetics, biostatistics and numerous other meetings
and

24 seminars and so forth.

25 Q. All right. What are your present

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1 duties at SWIFS?

2 A. Presently, we do all of the DNA
3 analysis requested through the crime laboratory.

These

4 are criminal cases, whether they are rapes, assaults,
5 homicides, body identifications, paternity, all
criminal
6 cases.

7 Q. Okay. How many years have you
been
8 doing the DNA analysis?

9 A. Since 1991.

10 Q. At SWIFS how many people actually
work
11 within the DNA section?

12 A. We have two that do the DNA
analytical
13 methods full time for court. We also have a
technician
14 that works for us.

15 Q. In an average year out there at
SWIFS,
16 how many cases are referred to you for DNA analysis?

17 A. We have between 100 and 200 a
year.

18 Q. And you personally, how many
cases

19 have you actually handled where you did the DNA
analysis?

20 A. Over 200.

21 Q. All right. And have you testified
22 previously in cases involving DNA?

23 A. I have.

24 Q. Approximately, how many times have
you
25 testified in cases involving DNA?

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1 A. Many times. I would say, 40, 50
in
2 that amount.

3 Q. Okay. When a case comes to you,
is it
4 often a situation where you are going to have more
than
5 one sample involved in that particular case that you
need
6 to do DNA analysis on?

7 A. Yes, that's correct. You need a
8 sample to compare whatever evidence you are looking
at
9 to.

10 Q. Okay. In this particular case,
were
11 several items submitted to you for DNA analysis?

12 A. Yes, that's correct.

13 Q. And, did you, in fact, did you
collect
14 some items yourself for DNA analysis in this case?

15 A. Some were collected from the
evidence
16 by me, yes.

17 Q. Did you receive other items from

the

18 medical examiner's office?

19 A. I did.

20 Q. Did you receive some items from

the

21 Rowlett Police Department?

22 A. I did.

23 Q. Did you receive other items from

24 Charles Linch?

25 A. I don't believe any of the
analytical

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1 tests I did on this case I did.

2 Q. How about Kathryn Long?

3 A. I did.

4 Q. What kinds of DNA tests does SWIFS
5 presently do?

6 A. We do two types of methods on
forensic
7 cases. That being PCR or polymerase chain reaction
and
8 RFLP or restriction fragment length polymorphism.

9 Q. Okay. In your PCR testing that
you
10 presently do, do you do DQ-Alpha?

11 A. That is one of the systems we do,
yes.

12 Q. Are you presently beginning to get
13 ready to do D1S80 testing out there at SWIFS, also?

14 A. Yes. We have been in the process
of
15 validating that for a while.

16 Q. Okay. And up to this date though,
you
17 don't, you are not quite ready to begin the actual
D1S80

18 testing out there; is that right?

19 A. We have not done it on case work,
20 that's correct.

21 Q. Okay. When these samples came
22 into
23 you originally, Ms. Van Winkle, what sort of testing
24 did
25 you perform on them? The RFLP or the DQ-Alpha?

26 A. Initially, since there was quite
27 a
28 volume of samples that were requiring testing, DQ-
29 Alpha

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1 was performed. And the reason that was tested, was
2 because the three individuals whose blood would have
been

3 present were different DQ-Alpha types. It was rapid
and

4 it was a way to screen the evidence initially.

5 Q. Okay. Does RFLP testing take
longer

6 than DQ-Alpha?

7 A. It does.

8 Q. So initially you did DQ-Alpha.
Did

9 you later go back with these samples and do RFLP
testing,

10 also?

11 A. Yes, on many of the samples I did.

12 Q. Okay. What was the purpose of
going

13 back with the RFLP?

14 A. The RFLP testing is actually
more

15 discriminating, the set of loci that we look at is

16 extremely discriminating, greater than 99.9
percent of

17 the individuals. It is the most discriminating
test.

18 So in order to rule out the
19 possibility of any other banding pattern or any
other
20 possible contributor of the blood that was done.

21 Q. Okay. In this case, do you
know
22 approximately how many DNA analyses that you
have
23 actually performed on the samples given to
you?

24 A. I do. In this particular case, it
was
25 over 100 analyses done.

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1 Q. Okay. And how does that compare
with
2 the average case that comes out there to you from the
3 DA's office?

4 A. Well, considerably more. The
majority
5 of our cases are sexual assault cases. In a typical
6 sexual assault case, we will have three samples; one
from
7 the victim, one from the accused and one from the
8 evidence.

9 Q. When a sample comes to you for
10 testing, can you walk us through what happens to that
11 sample.

12 Let's say I am a police officer
and I
13 bring a sample out there to you. And I say, I want
that
14 tested for DNA. What would you do with that sample?

15 A. Initially, the officer will
hand
16 deliver that as a rule. It would be given a
specific
17 number, based on that victim and that offense. That
is a
18 number called our FL number. And that number stays

with

19 the case throughout the case. Each item of evidence
is

20 then given another number, usually it's an accession
21 number, one through however many pieces of evidence
there

22 are.

23 Q. So, if I -- let's say I bring five
24 items out there. They are all different items.

Would

25 you then, let's say, I have got five different socks,
for

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1 instance. And I say, I want these tested. Would you
2 then number the socks 1 through 5?

3 A. That would be a common way of
doing

4 it, yes. Unless, for instance, they were packaged in
one

5 bag, and then they may be numbered a little
differently.

6 Q. Okay. So if it came out there,
you

7 have got one 1 through 5, and then let's say that
you,

8 off of that, let's say I am a serologist and I have
9 already taken two samples that I want you testing off

of
10 each one of those socks.

11 Would you then list that as T-1
and

12 T-2 off of each sock?

13 A. Yes, for instance, that would be
1,

14 T-1 and T-2, 2, T-1 and T-2, and so forth.

15 Q. Okay. After you have already
numbered

16 these samples that I give you, what is the next thing

you

17 would do with them?

18 A. Then once the samples are taken or
19 identified on the item of evidence, they are cut out
and

20 then they are packaged separately. They are wrapped
in

21 something similar to a wax paper and then packaged in
a

22 manila envelope and stored frozen.

23 Q. How do you prevent cross-
contamination

24 between samples?

25 A. Each utensil that is used in the

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1 cutting out procedure is cleaned or is used, for
2 instance, sometimes we may use a sterile blade that
is
3 used once and discarded.

4 Again, that would depend on the
5 sample. The sample is then wrapped separately,
placed in

6 the manila envelope and, of course, the whole time,
the
7 sample would be dried.

8 Q. Okay. How long does it take to
run
9 the DQ-Alpha test and actually get a result back?

10 A. If we are doing just that, we can
11 complete that testing in a couple of days.

12 Q. How about for RFLP, how long does
it
13 take to run that test?

14 A. To do the routine amount of --
that we
15 look at which is for -- normally that is anywhere
from
16 four to eight weeks.

17 Q. All right. So two days for DQ-
Alpha,

18 about four to eight weeks for RFLP, right?

19 A. That's correct.

20 Q. And when you are looking at the
21 results for DQ-Alpha, what do you actually look at to
22 determine whether or not you have got a match or
not?

23 A. That type of testing used is
what's

24 called a reverse dot blot and basically all you are
doing

25 is looking at a color change on the dots.

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1 The dots being representative of
the
2 alleles that you are looking at. So you are just
3 comparing the dots and what lights up. It's called
4 lights up, it's just a color change.

5 Q. Okay. And so you have got a
known

6 where these alleles have lighted up, correct?

7 A. Yes.

8 Q. When you are looking at the
unknown

9 from the alleles that have lighted up, do you
expect

10 those then to correspond in position?

11 A. Yes, that's correct.

12 Q. How about RFLP, how do you read
the

13 results there?

14 A. On RFLP, what you are looking at
is

15 similar to an x-ray film where you have a series of
bar

16 code looking lanes. Those are our ladders, our
standards

17 that we put on those gels, and we compare the banding

18 pattern that's between those bar code looking lanes.

We

19 compare it first visually, and then we do a computer

20 imaging or sizing and actually size it and compare

it.

21 Q. In this case, Ms. Van Winkle, did

you

22 receive blood samples identified as coming from the

23 defendant, Darlie Routier, Darin Routier, Damon

Routier

24 and Devon Routier?

25 A. Yes, from the medical examiner I

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1 received Damon and Devon, and drew the blood samples
on
2 Darlie and Darin.

3 Q. Okay. So the defendant's blood
and

4 that of Darin Routier were actually drawn there at
SWIFS;

5 is that right?

6 A. They were.

7 Q. Did you also receive several blood
8 samples identified as having come from the
defendant's

9 T-shirt?

10 A. Yes.

11 Q. Did you also receive several blood
12 samples identified as having come from insides 5801
Eagle

13 Drive?

14 A. Yes.

15 Q. And did you also receive several
blood

16 samples from other individual items identified as
having

17 come from 5801 Eagle Drive?

18 A. Yes.

19 Q. Let me go through some of the
20 individual items first with you. And I'm going to
use
21 your SWIFS number. Would that be the best way to
22 identify it for you?

23 A. That would be easiest, yes.

24 Q. All right. Did you receive a
window
25 screen, which will be SWIFS item No. 1?

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1 A. Yes, I did.

2 Q. All right. And on that window
screen,

3 did you attempt to perform DNA analysis?

4 A. Yes.

5 Q. What was the result?

6 A. Stains are -- stains that reacted
7 presumptively with our reagent were taken off the
screen.

8 And they were actually performed a DNA extraction on.
In

9 other words, DNA that would have been there was
10 extracted. There was no human DNA detectable at all.

11 Q. Okay. Which means what to you
as a

12 DNA analyst?

13 A. There was no human blood
present.

14 Q. No human blood, that is the
window

15 screen item No. 1?

16 A. That's correct.

17 Q. Okay. Let's talk about the
window,

18 which will be SWIFS item No. 47. What were the

results

19 there?

20 A. On that item I also took off or
taken

21 off was approximately five stains. Those again were
done

22 a DNA extraction on and there was no human DNA
present.

23 Q. Okay. Well, if you take, for
24 instance, insect blood, will human DNA extract out
of
25 insect blood?

1 A. It will not.

2 Q. Let me ask you next about a green
and

3 plaid wash cloth, item No. 29?

4 A. Yes.

5 Q. Okay. What were the DNA results
6 there?

7 A. The DNA types that were obtained
from

8 the wash cloth were consistent with Darlie.

9 Q. With Darlie Routier?

10 A. Routier, yes.

11 Q. Okay. Now, let me ask you about
a

12 white dish towel. This will be SWIFS item No. 30.

What

13 were your results?

14 A. The types were consistent with
Darlie

15 Routier.

16 Q. Darlie Routier. I want to talk
about

17 two green and white plaid dish towels. These will
be

18 SWIFS item No. 28. Were you able to get a result

from

19 items 28?

20 A. I was not.

21 Q. Let me ask you now about a

22 multicolored comforter. This is SWIFS item No. 18.

What

23 were your results?

24 A. The type on that comforter was

25 consistent with Devon Routier.

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1 Q. Now, let me ask you about a green
2 blanket, SWIFS item No. 21.

3 A. The DNA from that item was
consistent
4 with Damon Routier.

5 Q. The green blanket, Damon Routier?

6 A. Yes.

7 Q. Now, the blue blanket which is
item
8 No. 26?

9 A. The blue blanket with stains
10 consistent with Darlie Routier.

11 Q. All right. Now, I would like to
ask
12 you about blue jeans which were identified as Damon
13 Routier's blue jeans, item No. 25. What were the
14 results?

15 A. Stains from the right leg, back
and
16 front, were consistent with Darlie Routier and
Damon
17 Routier.

18 Q. Okay. Did you then have two
mixtures
19 actually?

20

A. That's correct.

21

Q. Where both individual's blood is

22 present in the mixture; is that correct?

23

A. That's correct.

24

Q. How many samples did you have on

the

25 jeans?

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1 A. The one that had these results
was one

2 from the front and one from the back of the right
leg.

3 Q. The back and front right leg?

4 A. That's correct.

5 Q. How about item No. 13, that is
Damon

6 Routier's T-shirt?

7 A. From that item, the stain was
8 consistent with Damon Routier and Darlie Routier.

9 Q. Okay. Again, a mixture?

10 A. That's correct.

11 Q. No. 68, a black baseball cap
with

12 Planet Hollywood logo on the front?

13 A. Stains consistent with Darlie
Routier.

14 Q. A vacuum cleaner, item No. 69?

15 A. Several stains consistent with
Darlie

16 Routier.

17 Q. Do you recall how many stains?

18 A. Four were tested.

19 Q. Okay. Four, all Darlie Routier?

20 A. Correct.

21 Q. Okay. A rug, item No. 70. What
were

22 your results?

23 A. Seven stains were tested, all
Darlie

24 Routier.

25 Q. Now, on item No. 3, I'll refer
to

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1 these as Devon Routier's shorts?

2 A. Stain consistent with Devon
Routier.

3 Q. Two items, which I am going to
refer

4 to as Devon Routier pillow and pillow case, the
Power

5 Ranger pillow and pillow case. What were your
results?

6 A. On the pillow, stain consistent
with

7 Darlie Routier.

8 Q. Okay. The pillow, Darlie
Routier?

9 A. That's correct.

10 Q. How about the pillow case?

11 A. Oh, one stain was consistent
with

12 Devon Routier, the other one Darlie.

13 Q. Okay. That's going to be SWIFS
No. 3,

14 also; is that correct?

15 A. Three.

16 Q. Three also. Okay. So we had
pillow

17 and pillow case, still with the SWIFS No. 3.

18 The pillow is Darlie Routier,
the

19 pillow case is Devon Routier on one and Darlie
Routier on

20 the other, right?

21 A. And Darlie and Devon on the
other one,

22 yes. That's correct.

23 Q. Okay. So Darlie and Devon. So
one is

24 pure Devon and one a mixture?

25 A. Yes.

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1 Q. Okay. A black and white
blanket, this

2 is again item No. 3, referred to as Devon blanket.
What

3 was the result there?

4 A. Two stains consistent with Devon
5 Routier.

6 Q. How about an item No. 2, a
knife?

7 A. The stains in the handle of the
knife

8 from -- was consistent, by DQ-Alpha only with
Darlie and

9 one of the boys.

10 Q. Okay. Was that the handle?

11 A. Yes.

12 Q. Okay. And what are the blood
types?

13 A. It was a DQ-Alpha type. And
that

14 particular type was the type consistent with Darlie
15 Routier and one of the boys' types.

16 Q. Okay. Was that a mixture?

17 A. It was.

18 Q. Okay. So it's Darlie. And can
you

19 tell from that DQ-Alpha testing which of the two
boys was

20 the contributor on that mixture?

21 A. From that particular stain, no.

On

22 item 63 through 65, yes.

23 Q. Okay. Where did items 63

through 65

24 come from?

25 A. They were submitted from J.P.
Howell.

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1 Q. Okay. Did they also originate
from

2 the knife, item No. 2?

3 A. They did.

4 Q. Okay. Did they originate from
another

5 part of the knife then?

6 A. Three different areas of the
knife,

7 yes.

8 Q. Okay. What areas did they come
from?

9 A. 63 originated from the blade
tip.

10 Q. Okay. Let's start with No. 63.
What

11 was your result there?

12 A. Consistent with Damon and
Darlie.

13 Q. Damon and Darlie on the tip.
Where

14 did 64 come from?

15 A. 64 was lower on the blade,
toward the

16 handle.

17 Q. Okay. What was your result
there?

18 A. Darlie Routier.

19 Q. And where did No. 65 come from?

20 A. It was another area on the
handle.

21 RFLP pattern consistent with Darlie Routier.

22 Q. 65 from the handle?

23 A. That's correct.

24 Q. That's Darlie Routier?

25 A. That's correct.

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1 Q. Did you receive an item No. 27,
a
2 sock?

3 A. Yes.

4 Q. Okay. What were your results
there?

5 A. One stain from the sock
consistent

6 with Damon and Devon Routier. Additional stain
from the

7 sock with Devon Routier only.

8 Q. So, one mixture of Damon and
Devon,

9 and then one pure Devon, is that right?

10 A. That's correct.

11 Q. Ms. Van Winkle, let me show you
12 State's Exhibit No. 122. Do you recognize this
diagram?

13 A. I do.

14 Q. Have you had a chance to look at
it

15 prior to your testimony today?

16 A. I have.

17 Q. Have I asked you to go through
the

18 blood samples shown on this board and initial the

samples

19 that you have tested?

20 A. Yes.

21 Q. Have I also asked you to look at
the

22 results reported out on this board to determine
whether

23 or not they are accurate or not?

24 A. You have.

25 Q. Okay. Have you initialed the
samples

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1 that you tested and have you also verified that the
2 results shown here on the board are in fact correct
and

3 they correspond with your findings after your
testing?

4 A. Yes.

5 Q. Ms. Van Winkle, also have I had
you

6 look at State's Exhibits 120 and 121 prior to your
7 testimony today?

8 A. Yes.

9 Q. Have I asked you also, with
regards to

10 this, to initial the samples that you tested from the
11 T-shirt front, both front and back?

12 A. Yes, that's correct.

13 Q. Have you done that?

14 A. I have.

15 Q. Have you also verified that the
result

16 shown here on the board, in fact is correct, and it
17 corresponds with the findings of your DNA analysis?

18 A. Yes.

19

20 MR. GREG DAVIS: Your Honor, at

this

21 time we will offer State's Exhibit 120, 121, 120-A,
22 120-B, 120-C, 121-A and State's Exhibit 122.

23 THE COURT: Any

objection?

24 MR. JOHN HAGLER:

Yes, your Honor.

25 May we approach the bench?

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1 THE COURT: You
may.

2
3 (Whereupon, a
short

4 Discussion was
held

5 Off the record, after
6 Which time the
7 Proceedings were resumed
8 As follows:)

9
10 THE COURT: For record purposes,
why
11 don't we just take them one at a time, so we keep
the
12 record clear.

13 MR. GREG DAVIS: Okay. Yes,
sir.

14 THE COURT: All right.

15 MR. JOHN HAGLER: Okay, your
Honor.

16 THE COURT: Just for the record,
you
17 are now viewing State's Exhibits what?

18 MR. JOHN HAGLER: Yes, Your

Honor,

19 we're viewing State's Exhibit Nos. 121-A and 121.

And

20 again, we would re-urge our objection.

21 The State has failed to
establish a

22 proper chain of custody as to the T-shirt from
which

23 these various blood samples were obtained.

24 They haven't -- there is a
break in

25 the link. In fact, they have not brought all of
the

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1 links in the chain. And specifically, they have
not

2 brought paramedic Zimmerman, who handled this
shirt,

3 apparently put it into a bag.

4 Our argument, your Honor, and
5 objection is that the shirt has been contaminated
and

6 there has been no showing made to the jury of the
7 condition that the shirt was in, how it was folded,
how

8 the stains were positioned on the shirt prior to the
time

9 as received by Mr. Zimmerman and at the time that
they

10 were subsequently received by the crime lab.

11 Furthermore, your Honor, there is
no

12 indication as to how the particular shirt was
packaged,

13 or whether or not there were other items in the
package

14 at the time.

15 There has been testimony before
the

16 Court that there were other clothing by other
victims.

17 We would submit that there has been a showing of
18 contamination of this particular exhibit, which is
19 State's Exhibit No. 25 from which the State
subsequently
20 obtained various samples which were subsequently
21 submitted to DNA testing.

22 So based on those reasons, plus
the
23 other reasons that we objected to the admission into
24 evidence of the samples themselves, namely, all of
the
25 samples obtained from State's Exhibit 25, we would
object

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1 to the admission into evidence of this particular
2 exhibit.

3 THE COURT: All right. And for
the

4 record, you are objecting on the grounds stated,
to

5 State's Exhibit No. 120, 120-A, 120-B and 120-C; and
6 State's Exhibits 121 and 121-A; is that correct?

7 MR. JOHN HAGLER: Yes, sir, all of
the

8 photographs on that one board.

9 THE COURT: All right. Overruled.
10 State's Exhibit 120, 120-A, B and C; and State's
Exhibit

11 121 and 121-A are admitted. Let's get --

12

13 (Whereupon, the above

14 Mentioned items

were

15 Received in

evidence

16 As State's

Exhibit

17 Numbers 120, 120-A, 120-

B,

1 MR. JOHN HAGLER: In addition,
your

2 Honor, we would submit that due to the
contamination of

3 that exhibit that the confusing and prejudicial
effect

4 vastly outweighs any probative value that the exhibit
may

5 have.

6 THE COURT: Overruled. Can we see
7 that? Let's go on State's Exhibit No. 121 -- 122
rather.

8 MR. GREG DAVIS: Yes, sir, 122.

9 THE COURT: 122. Now, this is the
10 next one, right?

11 MR. JOHN HAGLER: Again, your
Honor,

12 we would simply re-urge all those objections that we
13 voiced to the admission of evidence obtained from

State's

14 Exhibit No. 25, and submit they have not shown a
proper

15 chain of custody under Rule 901-A.

16 THE COURT: All right. Overruled.
17 State's Exhibit 122 is admitted.

18

19 (Whereupon, the above
20 mentioned item
was
21 received in
evidence
22 as State's
Exhibit
23 Number 122, for
all
24 purposes, after
25 which time, the
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1 proceedings were
2 resumed on the record,
3 in open court,
4 as follows:)

5
6 MR. JOHN HAGLER: Finally, your
Honor,

7 again, as to the last exhibit, that objection
included

8 all of the objections that we have voiced in relation
to

9 evidence of the exhibits arising out of State's
Exhibit

10 No. 25.

11 THE COURT: Fine. That will be
noted

12 in the record.

13 MR. JOHN HAGLER: Furthermore, we
14 would object, your Honor, in addition to the
exhibits, we

15 would also object to any testimony this witness may
have

16 as to the results of the testing of these exhibits
and

17 also, all of the exhibits obtained by State's Exhibit
No.

18 25.

19 THE COURT: Fine. Overruled.

20 MR. JOHN HAGLER: Can we have a
21 continuing objection, your Honor?

22 THE COURT: Continuing objection,
you

23 have it. Anything else?

24 MR. JOHN HAGLER: No, your Honor.

25 THE COURT: Thank you. All
right.

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1 MR. JOHN HAGLER: Thank you.

2 THE COURT: Let's move right
along.

3 MR. GREG DAVIS: Yes, sir.

4

5 BY MR. GREG DAVIS:

6 Q. Ms. Van Winkle, as we look at
State's

7 Exhibit 122, the names down here at the bottom, do
they

8 reflect, we have just color coded the blood results,
have

9 we not?

10 A. Yes, that is correct.

11 Q. So would it be fair to say that
the

12 DNA result, coming back to Damon would be a red and

13 Darlie would be a green and to Devon would be a
yellow?

14 A. Yes, that's correct.

15 Q. So, that wherever we see green on
this

16 board, does that reflect a DNA result that it came
back

17 as a match to Darlie Routier?

18 A. That's correct.

19 Q. Where we see a yellow, would that
be a

20 DNA match back to Devon Routier?

21 A. That's correct.

22 Q. Finally, a red result would be
a

23 match, DNA-wise, with Damon Routier, is that
correct?

24 A. Yes, that's correct.

25 Q. If we come through here, beginning
in

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1 the utility room, for instance, we see three stains,
2 correct?

3 A. That's correct.

4 Q. One on the floor and two on the
ball

5 cap here, just for example, these came back to who?

6 A. To Darlie Routier.

7 Q. Now, did you also test here in the
8 sink area?

9 A. Yes.

10 Q. And, your results there would be
shown

11 here; is that right?

12 A. That's correct.

13 Q. Let me ask you about the two in
14 particular where we have half of it is green and then
we

15 have quarters of yellow and red. What do those

16 particular results reflect there?

17 A. There were two particular stains,
one

18 of which was on the handle of that sink and one of
which

19 was in the bottom of the sink, both fairly faint
stains.

20 They did -- the primary type was Darlie's type.

There

21 was a faint type 3 which could have been contributed

by

22 either Damon or Devon.

23 Q. The samples listed as 70 here on

this

24 rug, those are who?

25 A. Those are Darlie.

Sandra M. Halsey, CSR, Official Court Reporter

3183

1 Q. The item 69 here with the vacuum
2 cleaner, those are whose?

3 A. Those are Darlie's.

4 Q. On the kitchen floor here, with
the RM

5 and RH designation, those are who?

6 A. Those are Darlie.

7 Q. Again, along the wall here in the
8 kitchen near the light switch?

9 A. Yes, those are Darlie.

10 Q. This up here on the kitchen bar
area?

11 A. Darlie.

12 Q. And, then a designation for the
green

13 and white plaid rag there, item No. 29?

14 A. Darlie.

15 Q. Along the wall here in the hallway
as

16 well as the family room?

17 A. Darlie.

18 Q. Where we have represented
Damon

19 Routier here on the carpeted area?

20 A. That is correct.

21 Q. That would be Damon; is that
right?

22 A. That's correct.

23 Q. Okay. Then we have on his T-
shirt and

24 on his blue jeans, we have half green and half
red. Do

25 those reflect the mixtures that you testified
about?

Reporter Sandra M. Halsey, CSR, Official Court

3184

1 A. They do.

2 Q. On the couch here, items 52, 53
and
3 54?

4 A. Darlie.

5 Q. The two samples here on the cut
out
6 carpet behind this couch?

7 A. Darlie.

8 Q. The two samples here on the carpet
by
9 the chair?

10 A. Darlie.

11 Q. Again, on the carpet near the
chair,
12 105s?

13 A. I don't believe I tested those,
but
14 those --

15 Q. -- reflect Darlie also?

16 A. Reflect Darlie.

17 Q. Okay. Now, in the area where we
have
18 represented Devon Routier, the shorts were his,
correct?

19 A. That's correct.

20 Q. And you had two off the black and
21 white blanket came back to him; is that right?

22 A. That's correct.

23 Q. On the pillow case here, and on
the
24 pillow and pillow case, we had one Darlie, one Devon
and
25 then one mixture; is that right?

Sandra M. Halsey, CSR, Official Court Reporter

1 A. That's correct.

2 Q. The carpet area by Devon?

3 A. Darlie.

4 Q. And then finally, in this area
between
5 the two couches, on the green blanket we had Damon?

6 A. Damon, I'm sorry.

7 Q. Damon Routier?

8 A. That's correct.

9 Q. On the blue blanket we had?

10 A. Darlie.

11 Q. Coming from this couch in this
12 position, we had a mixture; is that right?

13 A. That's correct.

14 Q. Of Damon and Darlie Routier; is
that
15 right?

16 A. That's correct.

17 Q. Over here on the arm of this
couch
18 near the windows, we had a Damon; is that right?

19 A. Damon, correct.

20 Q. And, finally, on the handprint
that
21 came out of the carpet, that was Damon; is that

right?

22 A. The print itself was Damon,

that's

23 correct.

24 Q. And the green dot, indicated

right

25 here next to that handprint, what does that
represent?

Sandra M. Halsey, CSR, Official Court Reporter

3186

1 A. Adjacent to the area of the
handprint

2 was a soaked through stain of Darlie.

3 Q. So we have Damon's blood in this
4 portion of the den by the couch and we also find his
5 blood on this portion where his body was; is that
right?

6 A. That's correct.

7 Q. Now, Ms. Van Winkle, looking at
the

8 T-shirt, again, we have used the same color coding;
is
9 that right?

10 A. Yes.

11 Q. Where Damon Routier will be
12 represented in red?

13 A. Yes.

14 Q. Darlie Routier will be represented
in
15 green?

16 A. Yes.

17 Q. And, finally, Devon Routier will
be

18 represented in yellow; is that right?

19 A. Yes.

20 Q. Ms. Van Winkle, for the samples
that
21 you tested where you actually got a result that you
could
22 report out, did you have any unidentified samples?

23 A. Other than the three individuals,
no.

24 Q. So, if you tested and you got a
25 result, they either came back to Damon, Darlie or
Devon

Sandra M. Halsey, CSR, Official Court Reporter

1 Routier; is that right?

2 A. That's correct.

3

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

6 THE COURT: Mr. Mulder. All
right.

7 Thank you.

8

9

10 CROSS EXAMINATION

11

12 BY MR. DOUGLAS MULDER:

13 Q. Ms. Van Winkle, did you do any DNA
14 testing with respect to the pubic hair that was
recovered

15 out there at the Routier residence?

16 A. No, I did not.

17 Q. That was sent over to Gene
Screen; is

18 that right?

19 A. I don't have any direct knowledge
of

20 that, no.

21 Q. Have you reviewed Gene Screen's

22 findings?

23 A. No, I have not.

24 Q. Who would know about that

evidence?

25 Whatever went to Gene Screen came through y'all,
didn't

Sandra M. Halsey, CSR, Official Court Reporter

3188

1 it?

2 A. Through the laboratory, not
through

3 me.

4 Q. Yes, ma'am. But either, as I
recall

5 what Ms. Floyd testified to, she said she either got
the

6 evidence from Ms. Van Winkle, that would be you?

7 A. That's correct.

8 Q. Or Ms. Floyd, would be your
partner, I

9 mean, that was Ms. Floyd or Mr. Lynch?

10 A. Normally, he does the trace
analysis,

11 the hair-type evidence. I deal with the blood and
the

12 body fluid evidence.

13 Q. Okay. So you don't have any idea
why

14 pubic hair was not given to you first, I guess, and
was

15 sent over to Gene Screen?

16 A. I don't have any direct knowledge
of

17 that, no.

18 Q. But that is Mr. Linch's area of
19 expertise, is it not?

20 A. As far as which part of it? As
far as
21 microscopically identifying it?

22 Q. Yes, hair analysis.

23 A. That part of the hair analysis,
yes.

24 Q. Okay. Now, as I understand your
25 testimony, you are telling this jury that you did
your

Sandra M. Halsey, CSR, Official Court Reporter

1 various analysis on the knife, butcher knife. You
only

2 had one knife, didn't you?

3 A. That had blood on it, yes.

4 Q. Yes, ma'am. And you are telling
this

5 jury that you did your analysis on that knife, on the
tip

6 of the knife, several places on the blade of the
knife

7 and on the handle of the knife; is that right?

8 A. Yes.

9 Q. Okay. And you are telling the
jury

10 that you have no evidence that Devon's blood was
ever on

11 that knife. Is that fair to say?

12 A. That's correct.

13 Q. Okay. No question about that,
is

14 there?

15 A. From the samples I tested?

16 Q. Yes, ma'am.

17 A. Which were limited and was not
all of

18 the blood on the knife.

19 Q. Well --

20 A. There was no evidence of

Devon's

21 blood.

22 Q. Okay. Well, you had access to

all of

23 these exhibits and were able to take samples from

24 wherever you desired, were you not?

25 A. Are you referring to the knife?

Sandra M. Halsey, CSR, Official Court
Reporter

3190

1 Q. No, I'm referring to all of the
2 exhibits.

3 A. Basically, yes. That would be
a fair
4 statement.

5 Q. Okay. And, for example, do
your
6 records reflect how many dish towels, wash cloths,
dish
7 rags, whatever you want to call them, came into
your
8 laboratory?

9 A. They do perhaps, but I have not
sat
10 down and counted them.

11 Q. Would you do that please?

12

13 THE COURT: Mr. Mulder, I think
Ms.

14 Van Winkle --

15

16 BY MR. DOUGLAS MULDER:

17 Q. Ms. Van Winkle, how many towels
do you

18 find?

19 A. Towels and rags, approximately
21, if

20 I counted correctly.

21 Q. Approximately 21?

22 A. Yes.

23 Q. How many of those were tested
by you?

24 A. By myself as far as DNA

analysis?

25 Q. Yes.

Reporter Sandra M. Halsey, CSR, Official Court

1 A. Only the ones we spoke of
earlier.

2 Q. All right. Now, I believe you
said

3 you did some green plaid towels?

4 A. That's correct.

5 Q. Would these be the plaid
towels?

6 A. They would be item No. 28.

7 Q. Okay. And, these tests you have
are

8 very sensitive, aren't they?

9 A. Yes.

10 Q. Okay. Matter of fact, I think
it's

11 been said here in Court that you could actually
analyze

12 the --

13

14 THE COURT: Would you mind
standing,

15 please, Mr. Mulder?

16 MR. DOUGLAS MULDER: I don't mind
a

17 bit, Judge. I have got to bend over to pick this
stuff

18 up, unless you would like to have somebody --

19 THE COURT: All right.

20 MR. DOUGLAS MULDER: What's your
21 pleasure? I want to make you happy.

22 THE COURT: Well, I would rather
have

23 you stand, if you would. I mean, there are several
24 people who can pick it up for you.

25 MR. DOUGLAS MULDER: All right.

I

Sandra M. Halsey, CSR, Official Court Reporter

3192

1 don't mind. If one of y'all will get this for me,
but

2 don't bend down when you get it.

3 THE COURT: The sidebar comments
are

4 unnecessary.

5 MR. DOUGLAS MULDER: All right.

6 THE COURT: So please stand.

7 MR. DOUGLAS MULDER: All right.

8 THE COURT: Thank you.

9

10 BY MR. DOUGLAS MULDER:

11 Q. You made the selection as to
where to

12 make this analysis?

13 A. Actually, the serologist cut
those

14 stains out, Kathryn Long.

15 Q. Kathryn Long did?

16 A. That's correct.

17 Q. You testified -- are you saying
there

18 isn't any blood on these towels?

19 A. No, I am not.

20 Q. Okay. It appears to have blood on
21 them, doesn't it?

22 A. Yes, it does have blood on them.
23 Q. Okay.
24 A. On the towels, yes.
25 Q. But your analysis was
inconclusive?

Sandra M. Halsey, CSR, Official Court Reporter

3193

1 A. There was no amplification product
or
2 banding pattern obtained from the stains on those
towels.

3 Q. Did you go back to check on other
4 portions of the towels?

5 A. Another stain from the towel
itself,

6 each of those towels was not taken, no.

7 Q. Okay. I mean, why was that?

8 A. Well, it just wasn't repeated,
that
9 testing.

10 Q. Okay. So you are telling the jury
11 that there is blood on these towels?

12 A. Yes, that's correct.

13 Q. You just don't know whose blood?

14 A. That's correct.

15 Q. Okay. Now, likewise, as I
understood

16 your report on direct examination, you said that you
17 found Darlie's blood in the sink and you found, also
in
18 the sink, blood consistent with the boys' blood?

19 A. On two areas of the sink, there
was

20 primarily her DQ-Alpha type, consistent with Darlie,
and

21 a very faint additional type.

22 Q. Okay. And you are telling the
jury

23 that you can't tell which of the boys' blood was in
the

24 sink?

25 A. That's correct. That faint
additional

Reporter Sandra M. Halsey, CSR, Official Court

3194

1 type could have originated from either.

2 Q. All right. It could have been
3 either -- it could have been both, it could have
been

4 either one; is that right?

5 A. That's correct.

6 Q. And you can't tell from your
testing?

7 A. That's correct.

8 Q. And didn't do any further tests?

9 A. That's correct.

10 Q. Okay. Do you know if they
tested, if

11 you received any samples from the counter where the
blood

12 was located and the knife was recovered?

13 A. Not to my knowledge, no.

14 Q. That appears to be blood there,
15 doesn't it, on the counter?

16 A. Yes.

17 Q. Okay. But that was not tested,
is

18 that what you are telling us?

19 A. To my knowledge, I did not test
that,

20 no.

21 Q. Okay. And these particular
places in
22 the carpet where blood was detected by you and
analyzed
23 by you and determined to be Darlie's or one of the
boys
24 or whatever; you are not saying that there was
another
25 person's blood in that same vicinity, are you?

 Sandra M. Halsey, CSR, Official Court
Reporter

3195

1 A. If I understand you correctly --

2 Q. Did you test, excuse me, did you
test

3 this particular sample? It's identified as State's
4 Exhibit No. 35-E?

5 A. I can't tell where that is from.
Just

6 looking at that, I have no idea where that stain is
from.

7 Q. Does it appear that a sample has
been

8 taken from that?

9 A. I can't tell by looking at that.

10 Q. Okay. It has not been cut out
at

11 least, has it?

12 A. I can't tell by looking at that.
It

13 could have been.

14 Q. Okay. So, when we have these
15 references -- here, this is, I mean this is rather
broad,

16 is it not?

17 A. Well, what do you mean by that?

18 Q. Well, I mean that this, for
example,

19 is the area in which Devon Routier's body was
recovered.

20 Is that your understanding or do you even know?

21 A. Yes, that is my understanding.

22 Q. Okay. And you found his blood
there,

23 naturally; is that correct?

24 A. Yes.

25 Q. Okay. And, did you -- was that

Sandra M. Halsey, CSR, Official Court
Reporter

3196

1 analyzed from the carpet?

2 A. It was analyzed from the stains
that

3 we covered a moment ago.

4 Q. Okay.

5 A. As far as the specific stains
that

6 were tested.

7 Q. Okay. Would you refresh my
memory

8 then?

9 A. Okay.

10 Q. Were those carpet --

11 A. Devon in particular?

12 Q. Devon, uh-huh. (Nodding head
13 affirmatively.)

14 A. No.

15 Q. Those were not carpet stains?

16 A. Those were not carpet.

17 Q. Where were those stains taken
from?

18 A. There were stains taken from a
pillow,

19 a pillow case, a blanket.

20 Q. Okay.

21 A. And shorts.

22 Q. All right. And you found his
blood on

23 the pillow, right?

24 A. No. The stain that was tested was
25 consistent with Darlie.

Sandra M. Halsey, CSR, Official Court Reporter

3197

1 Q. All right. You found his blood on
the
2 pillow case?

3 A. Yes.

4 Q. Was her blood also on the pillow
case?

5 A. Yes.

6 Q. Okay. So, what you are telling us
--

7 it's your understanding that his body remained there
8 until it was removed by the medical examiner's
people.

9 Is that not your understanding? Do you know
anything
10 about that?

11 A. I don't know who removed the
body.

12 Q. Okay. If Darlie Routier had
been

13 injured, if her throat had been cut and she had
been

14 stabbed in the right arm, and was in attendance to
this

15 youngster, after she had been injured, you would
expect

16 to find her blood in about his location, would you
not?

17 A. It's possible, sure.

18 Q. But if it's not possible, but
it's

19 likely that you would find her blood there if she
had

20 been injured; is that not correct?

21 A. It's possible, yes.

22 Q. Okay. When you say it's -- you
know,

23 I noticed when you answered Mr. Davis's questions,
you

24 would answer that it was consistent.

25 So, let me ask you that. Is that

Sandra M. Halsey, CSR, Official Court Reporter

1 consistent with her being in attendance to him after
she
2 had been injured herself?

3 A. If she was actively bleeding at
that
4 time, and the blood was dripping, then that is
5 consistent, yes.

6 Q. Okay. And you are telling us that
you
7 did not analyze the carpet by him; is that correct?

8 A. No.

9 Q. That is correct?

10 A. That's correct.

11 Q. Thank you. Did you do an analysis
12 along this area?

13 A. What numbers are those? If you
could
14 refresh my memory.

15 Q. Okay. Numbers TB-5 of 6. Oh, I
16 can -- maybe you can know better. TB-5 of 6, 5 of 5.

17 A. Those stains, I did not analyze
18 personally, no.

19 Q. Do you know where those stains
were,
20 whether they were on the carpet or on the wall?

21 A. No, I do not.

22 Q. Again, you would expect to find

Darlie

23 Routier's blood in conjunction with her son's blood

if

24 she had rendered him aid after she herself had been

25 injured, would you not?

Sandra M. Halsey, CSR, Official Court Reporter

3199

1 A. Again --

2 Q. That would be consistent?

3 A. If blood was actively dripping
from

4 the wound, that would be consistent.

5 Q. Okay. Now, how many of the white
6 towels did you analyze?

7 A. Of the white ones?

8 Q. Uh-huh. (Attorney nodding head
9 affirmatively).

10 A. I don't know right off. As far as
for

11 DNA analysis, I believe it was only our item No. 30.

12 Q. Just one white towel?

13 A. For DNA analysis that I did, yes.

14 Q. Okay. And you received

some --

15

16

17 (Whereupon, the following

18 mentioned items were

19 marked for

20 identification only

21 after which time the

22 proceedings were

23 resumed on the record

24
25

in open court, as
follows:)

Reporter Sandra M. Halsey, CSR, Official Court

3200

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17

MR. DOUGLAS MULDER: Judge,

some of

these are already in evidence, but in the interest

of

speed, rather than trying to find these, I will

just

offer these. I will offer into evidence what's

been

marked for identification and record purposes as

Defendant's Exhibits 47, 48, 49, and 50.

MR. GREG DAVIS: No objection.

THE COURT: Defendant's Exhibits

47,

48, 49 and 50 are admitted.

(Whereupon, the above

Mentioned items

were

Received in

evidence

As Defendant's

Exhibit

Numbers 47, 48, 49 and

50,

For all purposes,

after

18

Which time, the

19

Proceedings were

20

Resumed on the

record,

21

In open court,

22

As follows:)

23

24 BY MR. DOUGLAS MULDER:

25

Q. You will notice that, Ms. Van
Winkle,

Reporter

Sandra M. Halsey, CSR, Official Court

3201

1 in Defendant's Exhibit No. 48, Defendant's Exhibit
No.

2 49, and Defendant's Exhibit No. 47, there are three
white

3 towels. Do you see those?

4 A. Yes, sir.

5 Q. Okay. Do you know which one you
6 analyzed?

7 A. No.

8 Q. Okay.

9 A. Right off I do not.

10 Q. Okay. Is there some reason that
you

11 didn't analyze -- I know you did 100 analyses, and
I

12 realize you have got to draw the line someplace.

13 A. Right.

14 Q. But any reason you didn't
analyze the

15 other towels?

16 A. It wasn't specifically requested
and

17 it wasn't initially analyzed.

18 Q. Okay. Who makes that
determination as

19 to what is to be analyzed and what is not to be

analyzed?

20 A. It's usually a joint effort,
based on
21 experience and different requests.

22 Q. Between you and the district
23 attorney's office?

24 A. Or the investigators or the
medical
25 examiners.

Reporter Sandra M. Halsey, CSR, Official Court

3202

1 Q. So, you, working in conjunction
with

2 the police agencies, decide what is to be analyzed
and

3 what isn't to be analyzed, basically, is that it?

4 A. Well, that is always part of the
5 decision-making process, yes.

6 Q. Could I see a copy of your
notes, the

7 report that you generated?

8 A. The whole file?

9 Q. Yes.

10 A. This is just a copy of that.

11 Q. I don't know what I'm going to
do with

12 the whole file.

13 A. This is just a copy of the
report that

14 you have.

15 Q. Let me just see the whole file.

16 A. All right.

17 Q. I think we have this. Let me
look at

18 it. Yeah, let me make sure we have it.

19 A. Okay.

20 Q. If we get to a point where you
can't

21 answer and you need your notes, just let me know
and I

22 will get them for you.

23 As I recall, you said the blue
blanket

24 was analyzed and on the blue blanket you found

Darlie's

25 blood; is that right?

Reporter Sandra M. Halsey, CSR, Official Court

3203

1 A. I would like my notes to refer
to,
2 please.

3 Q. All right. Can you do it with
this?

4 A. Sure.

5 Q. Okay.

6 A. Yes, that's correct.

7 Q. Okay. And, the white towel that
you
8 analyzed, what number was that?

9 A. It was item No. 30.

10 Q. Okay. That would appear to be a
very
11 bloody item. This is 30, is it not?

12 A. That's correct.

13 Q. Okay. And, more consistent
perhaps

14 with the exhibit -- it's not consistent with what
is
15 portrayed in Defendant Exhibit No. 49, is it?

16 A. Well, perhaps
if I could -- well, let
17 me look at my file here, and see
if it has any clue about

18 where it was from.

19 Q. Okay.

20

21 THE COURT: We

will now take a 10

22 minute break. During the break,

please get everything

23 out you need to cross examine

this witness.

24

25 (Whereupon, a
short

Sandra M. Halsey, CSR,
Official Court Reporter

3204

1
taken,

Recess was

2
time,

After which

3

The proceedings were

4

Resumed on the record,

5

In the presence and

6

Hearing of the defendant

7

And the jury, as follows:)

8

9

MR. DOUGLAS MULDER: Judge, I

don't

10 know who the witnesses are, so I can't prepare in

11 advance.

12

THE COURT: I said this

witness.

13

MR. DOUGLAS MULDER: I understand.

14 Well, if I knew who the witnesses were.

15

THE COURT: All right. Well, you

know

16 that.

17

18

(Whereupon, a short

19

recess was taken, after

20

which time, the

21

proceedings were

22 resumed in open
court,
23 in the presence
and
24 hearing of the
25 Defendant, being
Sandra M. Halsey, CSR, Official
Court Reporter

3205

1 represented by her
2 Attorney, in the
presence

3 Of the jury as
follows:)

4
5 THE COURT: All right. Are both
sides
6 ready to bring the jury back in and continue with
this
7 witness?

8 MR. GREG DAVIS: Yes, your Honor,
the
9 State is ready.

10 MR. DOUGLAS MULDER: Yes, sir, the
11 Defense is ready now.

12 THE COURT: All right. Bring the
jury
13 back.

14
15 (Whereupon, the jury
16 Was returned to
the
17 Courtroom, and
the

18

Proceedings

were

19

Resumed on the

record,

20

In open court, in

the

21

Presence and

hearing

22

Of the defendant,

23

As follows:)

24

25

THE COURT: All right. Let the

record

Sandra M. Halsey, CSR, Official Court

Reporter

3206

1 reflect that all parties in the trial are present.

The

2 jury is seated. Mr. Mulder, you may continue.

3

4 (Whereupon, the following

5 mentioned items were

6 marked for

7 identification only

8 after which time the

9 proceedings were

10 resumed on the record

11 in open court, as

12 follows:)

13

14 MR. DOUGLAS MULDER: Well, we

will

15 offer into evidence what has been made for

16 identification and record purposes as Defendant's

17 Exhibits 50, 51, and 52.

18 MR. GREG DAVIS: No objection.

19 THE COURT: Defendant's Exhibits

50,

20 51 and 52 are admitted.

21

22 (Whereupon, the items

23

Heretofore mentioned

24

Were received in evidence

25

As Defendant's Exhibit

Sandra M. Halsey, CSR, Official Court Reporter

3207

1 Nos. 50, 51, and 52
2 For all purposes,
3 After which time, the
4 Proceedings were resumed
5 As follows:)

6
7

8 CROSS EXAMINATION (RESUMED)

9

10 BY MR. DOUGLAS MULDER:

11 Q. Did you analyze these Reebok
shoes?

12 A. No, I did not.

13 Q. Okay. If there was blood on them
you
14 don't know where it was, obviously?

15 A. I have no knowledge, no.

16 Q. Would you expect or would it be
17 consistent, if someone went to that light switch
and
18 those are the shoes that we have here, would it
be
19 consistent, if they were bleeding, that blood might
get
20 on those shoes, given their relative position to the
21 light switch?

22 A. Well, bleeding, they would have
to be

23 dripping blood.

24 Q. Do you see --

25 A. Quite a bit.

Sandra M. Halsey, CSR, Official Court Reporter

3208

1 Q. -- any evidence in Defendant's
Exhibit

2 No. 52 of blood being dripped?

3 A. It's hard to say looking at the
4 photographs, on testing perhaps that is blood.

5 Q. Okay. You see some red, looks
likes a

6 red liquid there in the vicinity of the shoes, do you
7 not? Can you see it on the carpet?

8 A. Yes, I do.

9 Q. You see it on the wood?

10 A. Yes.

11 Q. Okay. So, if someone were
dripping

12 blood in that fashion it would be consistent,
would it

13 not that they might drip blood on those shoes?

14 A. It's possible, sure.

15 Q. Sure.

16

17

18

19 (Whereupon, the following

20 mentioned item was

21 marked for

22 identification only
23 after which time the
24 proceedings were
25 resumed on the record

Sandra M. Halsey, CSR, Official Court Reporter

3209

1 in open court, as
2 follows:)

3

4 BY MR. DOUGLAS MULDER:

5 Q. Now, the maroon pillow that has
been

6 marked for identification for record purposes as
7 Defendant's Exhibit 53; let me show that exhibit to
you

8 and ask you whether or not you had had that in your
9 possession at some time?

10 A. I have seen the pillow, yes.

11 Q. Did you do a test on this pillow?

12 A. No, I personally did not. Well,
let

13 me rephrase that. I did not cut out the stains on
the
14 pillow.

15 Q. Okay. Did you test -- do the
testing

16 on the stains?

17 A. Initially, I started testing on
the

18 stains, but I did not finish it.

19 Q. All right. But somebody did test
20 them?

21 A. Yes, that's correct.

22 Q. Okay.

23

24 MR. DOUGLAS MULDER: We will

offer

25 into evidence what has been marked for
identification

Sandra M. Halsey, CSR, Official Court Reporter

3210

1 purposes as Defendant's Exhibit No. 53.

2 MR. GREG DAVIS: No objection.

3 THE COURT: Defendant's Exhibit
53 is

4 admitted.

5

6 (Whereupon, the above
7 mentioned item was
8 received in evidence
9 as Defendant's Exhibit
10 No. 53, for all
11 Purposes,

after

12 which time,

the

13 proceedings

were

14 resumed on the

record,

15 in open court,

16 as

follows:)

17

18 MR. DOUGLAS

MULDER: It was also

19 marked as State's Exhibit No. 92?

20

MR. GREG DAVIS:

That is a label that

21 I put on, and you can remove that if
you would like. Are

22 you labeling another one as 53-A?

23

24

25

following

(Whereupon, the

Sandra M. Halsey, CSR,
Official Court Reporter

3211

1 mentioned item
was
2 marked for
3 identification
only
4 after which time
the
5 proceedings were
6 resumed on the record
7 in open court, as
8 follows:)

9

10

11 MR. MULDER: 53-A, right.

12 MR. GREG DAVIS: Yeah. I've

got no

13 objection to that either.

14 THE COURT: All right.

Defendant's

15 Exhibit 53-A is admitted.

16

17 (Whereupon, the above

18 mentioned items

were

19 received in

evidence

20

as Defendant's

Exhibit

21

No. 53-A, for all

22

Purposes,

after

23

which time,

the

24

proceedings

were

25

resumed on the

record,

Sandra M. Halsey, CSR, Official Court

Reporter

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1 in open court,
2 as follows:)

3

4 BY MR. DOUGLAS MULDER:

5 Q. The rug that you were telling us
about

6 that you analyzed, do you know where that was?

7 A. Yes.

8 Q. Okay. Where was that?

9 A. It's reflected in the bottom
picture

10 there under the sink.

11 Q. Is that the --

12

13 THE COURT: When you turn them
that

14 way they break, kindly stop that. That's the
second one

15 that's happened to.

16 MR. DOUGLAS MULDER: Well, this
is the

17 first one for me, Judge.

18 THE COURT: All right.

19 MR. DOUGLAS MULDER: I beg the
Court's

20 pardon.

21 THE COURT: Thank you.

22 MR. DOUGLAS MULDER: Would you

be so

23 kind as to assist me, Mr. Mosty? We will pick this

up

24 together.

25 MR. RICHARD MOSTY: Yes.

Sandra M. Halsey, CSR, Official Court
Reporter

3213

1 THE COURT: All right. Be
careful.

2 All right.

3

4 BY MR. DOUGLAS MULDER:

5 Q. Are you saying that it is this
6 flowered rug right here?

7 A. That's correct.

8 Q. Okay. And that is the rug that
I am

9 holding up?

10 A. If I could look at the markings,
11 please?

12 Q. Sure. You want to look at the
paper

13 sack that it was in?

14 A. Yes, our number.

15 Q. Does that help?

16 A. Yes, that's correct.

17 Q. This is the rug?

18 A. Yes, it is.

19 Q. And again, you just sampled
the

20 portions that are indicated in the rug, the
defects

21 there?

22 A. Yes.

23 Q. You can see there's more blood
there?

24 A. I personally didn't cut those
out.

25 Those are the areas that were tested, yes.

Sandra M. Halsey, CSR, Official Court Reporter

3214

1 Q. I understand. But there is a
2 considerable blood shown here that is not -- has not
been
3 tested?

4 A. There is.

5 Q. Okay. Now, there was another rug
6 similar, back here, correct?

7 A. Yes.

8 Q. This is the rug that you tested?

9 A. Yes.

10 Q. This is -- have you tested this
rug?

11 A. I have no knowledge of that rug
but --

12 no, I have not.

13 Q. Okay. There was another rug
right

14 here. Have you tested that rug?

15 A. No, I have not.

16 Q. Okay. Just weren't asked to, I
guess?

17 A. That's correct.

18 Q. Okay. What do you -- I think
that is

19 it. When evidence is gathered, you recommend that
it be

20 separated as it's gathered? I mean, if you gather
one
21 bloody thing here and another bloody thing someplace
22 else?

23 A. Yes, that's correct.

24 Q. Okay. And why is that?

25 A. To maintain the integrity of the

Sandra M. Halsey, CSR, Official Court Reporter

3215

1 evidence on that item.

2 Q. Is that so that it doesn't -- if
you

3 put two bloody items together, if they are wet, they
can

4 bleed one into the other, can't they?

5 A. If there is a lot of soaked
through

6 blood, yes, that can happen.

7 Q. Well, there really doesn't have
to be

8 a great deal of soaked through blood, does there?

9 A. Well --

10 Q. Any more than if you took blood on
two

11 pieces of paper and put it together and it would
12 immediately combine and mix, wouldn't it? I mean, we
13 know that from common knowledge, don't we?

14 A. There has to be enough to mix,
yes.

15 Q. Sure. Just like we know from
common

16 knowledge that if we, for example, if things are --
water

17 dilutes, doesn't it?

18 A. Yes.

19 Q. Okay. And if we -- if we were to
wet

20 down some towels with blood, the water would have a
21 diluting effect to the blood, would it not?

22 A. Yes.

23 Q. Okay. Now, if we wanted to find
24 out -- the pubic hair that was submitted to Gene

Screen

25 and where that was recovered from the den of the
Routier

Sandra M. Halsey, CSR, Official Court Reporter

3216

1 residence, who would we talk to?

2 A. I don't have any knowledge of
that. I

3 don't know.

4 Q. Okay. I mean, who would it be in
your

5 facility who would have access to that sort of
6 information?

7 A. Normally, hair analyses would come
in
8 through trace evidence.

9 Q. Okay. That would be Dr. Irving
Stone

10 is the head of trace evidence, is he not?

11 A. Yes, that's correct.

12 Q. And Mr. Lynch works for Dr.
Stone,

13 doesn't he?

14 A. That's correct.

15 Q. Did you -- in your DNA analysis,
you

16 can do hair, can't you?

17 A. If there is a root or tissue
adhered

18 to the hair, yes, we are able to get a type on

hair.

19 Q. If there is a root or tissue to
it?

20 A. Yes.

21 Q. Okay. And did you have a facial
hair

22 submitted to you?

23 A. No.

24 Q. You did not?

25 A. No.

Sandra M. Halsey, CSR, Official Court Reporter

3217

1 Q. You all have had DNA capability
there

2 at SWIFS for 10 years?

3 A. Since 1991.

4 Q. Okay. All right. You can
analyze

5 saliva, can't you?

6 A. Well, if the analysis is actually
on

7 some cells, in the saliva.

8 Q. Right. But saliva has cells,
doesn't

9 it?

10 A. Oftentimes, yes.

11 Q. Just like you can do -- what do
you

12 do, you do the white blood cells?

13 A. From a blood sample?

14 Q. Yes.

15 A. Yes. The DNA is in the nucleated
16 cells, which is normally the white blood cells.

17 Q. Traditionally, the red ones don't
18 have?

19 A. Mature red cells are non-
nucleated,

20 that's correct.

21 Q. But at any rate, it doesn't take

a

22 great deal of saliva to give you a reaction, does

it?

23 Matter of fact, you do cigarette filters, don't

you?

24 A. We do the cigarette filters and

it's

25 from the cells that are on those filters. Normally,
that

1 would be transferred from the mouth.

2 Q. Okay. But, I mean, ordinarily
you
3 don't soak down -- I don't know whether you smoke or
not,
4 or if you smoked filter cigarettes, but ordinarily,
you
5 don't get that part of the tobacco that wet, but
it's so
6 sensitive, that it can pick that up, can't it? The
DNA?

7 A. I'm not quite sure what you are
8 asking, but yes, we can get DNA off of cigarette
filters.

9 Q. They don't have to be soaked with
10 saliva either, do they?

11 A. Again, it is not the saliva we
are
12 looking at. It's the cellular transfer that occurs
on
13 that filter.

14 Q. I understand. The cells are
15 transferred in the saliva, are they not?

16 A. Well, not necessarily, it may be
from

17 the lips themselves.

18 Q. Okay. All right. Well, I guess
they

19 could be blown through from the cells inside the
mouth.

20 A. Right.

21 Q. That we slough all the time,
don't we?

22 A. That's correct.

23 Q. Okay.

24
25 MR. DOUGLAS MULDER: I think
that's

1 all. Thank you, Ms. Van Winkle.

2

3

REDIRECT EXAMINATION

4

5 BY MR. GREG DAVIS:

6

Q. Ms. Van Winkle, I just have one
7 question about the sample retrieved near where the
knife

8 had been. Did you receive an item No. 33-F in a
film

9

canister labeled kitchen bar?

10

A. Yes, I did. That was near that
area.

11

Q. Okay.

12

A. I'm not sure if it's that same
13 location or not.

14

Q. You were not there, so you don't
know

15

where the knife was; is that right?

16

A. That's correct.

17

Q. 33-F, would that be where I am
holding

18

my finger there?

19

A. It is.

20

Q. Okay.

21

22

MR. DOUGLAS MULDER: Could I see

that?

23

MR. GREG DAVIS: Yeah.

24

25

Sandra M. Halsey, CSR, Official Court Reporter

3220

1 BY MR. GREG DAVIS:

2 Q. And that one is one of them that
3 indicated back to Darlie Routier, right?

4 A. It did.

5 Q. All right.

6

7 MR. GREG DAVIS: No further
questions.

8 MR. DOUGLAS MULDER: I think
that's

9 all.

10 THE COURT: Thank you, ma'am. You
may
11 be excused. Your next witness, please.

12 MR. GREG DAVIS: We'll call Tom
Bevel.

13 THE COURT: Tom Bevel. Watch your
14 step.

15 MR. DOUGLAS MULDER: May we
approach

16 the bench?

17 THE COURT: You may.

18

19 (Whereupon, a short

20 Discussion was

held

21

Off the record,

after

22

Which time the

23

Proceedings were resumed

24

As follows:)

25

Sandra M. Halsey, CSR, Official Court Reporter

3221

1 THE COURT: Sir, have a seat
right up
2 here.

3 All right. Sir, if you will
raise
4 your right hand, please?

5
6 (Whereupon, the witness
7 Was duly sworn by the
8 Court, to speak the
truth,

9 The whole truth and
10 Nothing but the
truth,

11 After which, the
12 Proceedings were
13 Resumed as follows:)

14
15 THE COURT: Do you solemnly swear
or

16 affirm that the testimony you are about to give will
be
17 the truth, the whole truth, and nothing but the

truth, so
18 help you God?

19 THE WITNESS: I do, sir.

20 THE COURT: Okay. You're under
the
21 Rule of Evidence. That simply means when you are
not
22 testifying, you must remain outside of the
courtroom.

23 Don't talk about your testimony
with
24 anybody who has testified. In other words, don't
compare
25 it. You may talk to the attorneys for either
side.

Sandra M. Halsey, CSR, Official Court
Reporter

3222

1 If someone tries to talk to
you about

2 your testimony, tell the attorney for the side
who called

3 you. If you will state your name and spell your
last

4 name for the record, please.

5 THE WITNESS: Yes. Tom Bevel.
That's

6 B-E-V, as in Victor, E-L.

7 THE COURT: Mr. Davis.

8 MR. GREG DAVIS: Thank you,
sir.

9
10

11 Whereupon,

12

13 TOM BEVEL,

14

15 Was called as a witness, for the State of Texas,
having

16 been first duly sworn by the Court to speak the
truth,

17 the whole truth, and nothing but the truth,
testified in

18 open court, as follows:

19

20

21

DIRECT EXAMINATION

22

23 BY MR. GREG DAVIS:

24

Q. Mr. Bevel, would you please

tell us

25 what your occupation is?

Reporter Sandra M. Halsey, CSR, Official Court

3223

1 A. Yes, sir. I'm the owner of
TBI,

2 Forensic Education and Consulting.

3 Q. Okay. And what is TBI,
Forensic

4 Consulting do?

5 A. About three-fourths of the
work is

6 teaching, either basic or advanced 40-hour
bloodstain

7 pattern analysis courses.

8 Then there is also a basic crime
scene

9 reconstruction school that is 40 hours. And then
simply

10 lectures. And approximately one-fourth of the work
would

11 probably be case work, such as this.

12 Q. How long have you been the owner
of

13 TBI?

14 A. Since 1979.

15 Q. Okay. Were you previously
employed

16 with the Police Department?

17 A. Yes, sir. I retired May 1 of this

18 year from the Oklahoma City Police Department.

19 Q. Okay. And what rank did you hold

at

20 the time of your retirement?

21 A. I was a captain at the time of

22 retirement. I was in charge of four units, which was

23 homicide, robbery, missing persons and major unsolved

24 cases.

25 Q. Okay. As a police officer, did

you

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1 deal with technical investigations?

2 A. Yes, sir, I did. In fact, a great
3 amount of my time was actually assigned either in
4 technical investigation or the forensic lab. And
would

5 have approximately 25 years experience in that area.

6 Q. All right. When we talk about
7 technical investigations, what are we talking about
8 there?

9 A. We're talking about the processing
of
10 the crime scene, looking for evidence, the
collection,
11 documentation, photography, measuring, sketching of
any
12 of the physical evidence that might be related to a
13 possible crime scene.

14 Q. All right. Do you have experience
in
15 fingerprint identification?

16 A. Yes, sir, I do.

17 Q. Do you have experience in
bloodstain
18 pattern analysis?

19 A. Yes, sir, I do.

20 Q. Do you also have experience in

crime

21 scene reconstruction?

22 A. Yes, sir, I do.

23 Q. Do you hold any certificates or

24 degrees in those particular specialties, sir?

25 A. Yes, I do. I have a certificate
for

Sandra M. Halsey, CSR, Official Court Reporter

3225

1 the 40-hour course in bloodstain pattern analysis.
2 Actually, I have two of them in the basic area. One
of
3 those was taught in Orlando, Florida, in conjunction
with
4 the Orlando, Florida, medical examiner's office, and
the
5 local police department.

6 And I have a 40-hour certificate,
7 again, in bloodstain pattern analysis from the
Laboratory
8 of Forensic Science in Corning, New York. And then
9 advanced studies again in bloodstain pattern from
Elmira
10 College in Elmira, New York.

11 Crime scene reconstruction was
taught
12 as a discipline at Hendon Police College, which is in
13 London, England.

14 I attended a course there that was
six
15 weeks in duration on forensic science and a big
portion
16 of that was crime scene reconstruction, physical
17 evidence.

18 A graduate of the Central U.S.

Police

19 Institute, again, a four-week course dealing
specifically

20 with physical evidence and also crime scene

21 reconstruction, and again some others.

22 Q. Okay. Do you belong to any

23 professional associations or societies?

24 A. Yes, sir. Member of the American

25 Academy of Forensic Science; the Southwest
Association of

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1 Forensic Scientists; was the charter president for
both
2 the Association of Crime Scene Reconstruction and for
the
3 International Association of Bloodstain Pattern
Analysts.

4 1981 was named Member for the
British
5 Academy of Forensic Science, and named also a Fellow
for
6 the British Fingerprint Society. And again, some
others.

7 Q. Have you taught courses in
bloodstain
8 pattern analysis and crime scene reconstruction?

9 A. Yes, sir, I have.

10 Q. Okay. What type of classes have
you
11 taught?

12 A. Well, they have been somewhat
varied.

13 Some of them have been through colleges or
universities.

14 Some of them have been through police agencies or
15 training academies. Of course, some of them are 40
hours

16 in duration, some of them are just simply a day or
17 two-day lectures, such as the National College of
18 District Attorneys, the Southern Police Institute,
again,
19 various groups.

20 Q. Okay. Have you also taught
courses in
21 foreign countries?

22 A. Yes, sir, I have.

23 Q. Okay. Have you had any articles
24 published in professional journals, Mr. Bevel?

25 A. Yes, I have had. Several articles

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1 have been published either on bloodstain pattern
analysis
2 or crime scene reconstruction. They have appeared,
for
3 example, in the Journal of Forensic Identification
which
4 is a publication for the International Association
for
5 Identification. For the Association of Crime Scene
6 Reconstruction newsletter.

7 Let's see, Southwest Association
of
8 Forensic Sciences, I had some published there. And
then
9 I have a book, a hardback book coming out with the
CRC
10 Press, under the Forensic Science Series, is where
it is
11 actually under. And the title of it is, Bloodstain
12 Pattern Analysis, with an Introduction to Crime
Scene
13 Reconstruction. It will be out in May.

14 Q. Has the FBI ever referred cases
to you
15 from other agencies?

16 A. Yes, sir. They have referred
17 approximately 11 or 12 cases from other agencies and
 then

18 I have worked on two cases that they were
 investigating
19 themselves.

20 Q. Have you ever had occasion to
 come
21 down to this part of Texas to work on any cases?

22 A. Yes, sir. A number of years ago,
 Camp
23 Verde, Texas, I worked a case there. Then, one for
24 Kerrville, and there is actually several different
 cases
25 in the general area.

1 Q. Okay. In the case in Kerrville,
did

2 you actually testify here?

3 A. Yes, sir.

4 Q. Mr. Bevel, in this case did I ask
you

5 to look at certain bloodstain patterns?

6 A. You did, sir.

7 Q. All right. And, do you recall
when I

8 first called you or contacted you about this case?

9 A. It was the 1st of September.

10 Q. All right. And before that time,
had

11 you and I ever spoken to each other or met or worked
on

12 any cases together?

13 A. We have not.

14 Q. Okay. Prior to that time, had
you

15 done any work for the Dallas County District
Attorney's

16 Office?

17 A. For the DA's Office, no, I have
not.

18 Q. All right. After I spoke with

you, at

19 some point, did you come to my office in Dallas and
meet

20 with me?

21 A. Yes, sir, I did.

22 Q. Was that some time in September
also?

23 A. I believe September 11th.

24 Q. All right. And at that time, did

you

25 have the opportunity to review certain pieces of

1 evidence?

2 A. Yes, sir.

3 Q. Okay. For instance, did you have
a

4 chance at that point to look at the crime scene
5 photographs?

6 A. That's correct.

7 Q. Did you also have a chance to
look at

8 the autopsy photographs regarding Devon and Damon
9 Routier?

10 A. Yes, sir, I did.

11 Q. Did you look at a T-shirt, which
in

12 this case is State's Exhibit No. 25, a Victoria
Secret

13 nightshirt, did you look at that also?

14 A. Yes, sir.

15 Q. Did you have a chance to look at
the

16 carpet that came out of the family room at 5801
Eagle

17 Drive?

18 A. I have.

19 Q. In addition, did you have an
20 opportunity to look at a vacuum cleaner that had

been

21 taken out of 5801 Eagle Drive?

22 A. Yes, sir, that's correct.

23 Q. Did you meet with me in my office

up

24 there at the courthouse?

25 A. Yes, sir.

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1 Q. Did you also, during that trip,
have
2 an opportunity to go out to SWIFS to talk to the
people
3 out there?

4 A. Yes, sir.

5 Q. Did you also have the opportunity
to
6 go out to the Rowlett Police Department and view
certain
7 other evidence out there?

8 A. Yes, sir, I went out there.

9 Q. Now, during your trip in
September,
10 did you have the opportunity to go inside the house
there
11 at 5801 Eagle Drive?

12 A. On my first trip, I did not.
Access
13 to the house was -- we didn't have permission, I
guess.

14 Q. Okay. Did you have a chance to
drive
15 by the house?

16 A. I did drive by it, yes, sir.

17 Q. Now, after your trip to Dallas in
18 September, did you come back to Dallas again?

19 A. Yes, sir.

20 Q. When did you come back?

21 A. I came back several times. I will
22 have to get a sheet to give you the exact dates.

23 Q. Okay.

24 A. The first trip was September the
11th
25 through the 12th. The next trip was September the
19th.

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1 And then October 1st and 2nd, and then November the
26th.

2 Q. Okay. Did you ever have the
3 opportunity to go into the house there at 5801 Eagle
4 Drive during any of your trips?

5 A. Yes, sir, I did. And that was
6 November the 26th.

7 Q. Mr. Bevel, I want to just kind of
8 start at the beginning here, and if you will, kind
of

9 teach me about bloodstain patterns. Are there
different
10 kinds of bloodstain patterns?

11 A. Yes, sir, there certainly are.

12 Q. What are the different kinds?

13 A. We generally, as a descriptive
term,

14 will break them down into three basic categories,
which,

15 referring to the velocity of the separation from
whatever

16 the blood source is and not how fast they are
travelling

17 in space.

18 The first category would be a low

19 velocity. A low velocity would be, for example, if I
had
20 a cut on the end of my finger, as blood is
accumulating
21 down to the end of the finger, the molecule
attraction
22 and the surface tension of the blood droplet is
actually
23 trying to hold on, but, of course, gravity is trying
to
24 pull it downward.
25 And once it reaches a sufficient

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1 volume to where it is able to overcome the surface
2 tension, then it will break away and it will simply
fall
3 straight downward. If it falls to, for example, the
4 floor or if it would fall to the podium here, it
would be
5 basically round, once it gets done through the
dynamics
6 of impacting and spreading out and ultimately
settling.

7 Now, if I had the same cut on my
8 finger and if I were to start swinging my hand, I am
9 introducing additional force here other than just
simply
10 gravity.

11 And due to the centrifugal force
and
12 the movement of the blood pulling down to the end of
the
13 finger, it will break away and this blood droplet
will be
14 considerably smaller than what the low velocity blood
15 droplet would be just simply due to gravitational
16 separation.

17 The last category and a general
18 descriptive term again is high velocity. High

velocity,

19 if I had my hand up and if it were to be shot with a
20 firearm, the bullet striking the hand would be
possible

21 to produce blood that we refer to as back spatter.

22 That would be blood coming back in
the

23 direction from where the gun was actually being
fired.

24 Upon exit of the bullet, that would be referred to as
25 forward spatter for blood going in the same
direction.

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1 There are some general terms as
far as
2 definitions, for example: Low velocity is typically
5
3 feet per second or lower, medium velocity is
generally 5
4 to 25 feet per second, and then high velocity,
generally
5 associated with firearms or high-speed machinery,
that
6 would typically be 100 feet per second or greater.

7 To give you some ideas of what we
are
8 talking about, 100 feet per second would be
approximately
9 67 miles an hour.

10 Q. All right. Let me throw out some
11 terms and see if you can define these for me. A
12 transfer, what is a transfer?

13 A. Okay. Yes, sir. If I had blood
on my
14 hand and if I were, for example, to come in contact
with
15 my coat, tie and shirt, there would be a transference
of
16 blood from my bloody hand, assuming that it's still

wet,

17 to those items.

18 Now, you will never have a 100
percent

19 transfer. Even though there may be some impression
of

20 blood on the clothing, there will still be an
impression

21 of blood or residue of blood on the item that
originally

22 held the blood.

23 Q. Okay. How about the term,
spatter?

24 A. Spatter is, generically, a lot of
25 people refer to spatter as just simply the overall
term

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1 for bloodstain pattern analysis. But within our
field,

2 it is specifically talking about blood that has been
3 separated due to a force.

4 So, for example, if I had blood on
my

5 hand and if it was impacted by something, the blood
6 coming from that impact would be referred to as blood
7 spatter.

8 Q. How about the term, cast-off?

9 A. If you have some object that has
10 blood, and again, I can just simply use my hand, as I
am

11 swinging my hand, the centrifugal force pulling the
blood

12 away from the end of my appendages as they end up, as
the

13 blood separates, it will go out, if I am swinging
hard

14 enough, well, I doubt if it would reach this ceiling,
but

15 it could go in front of me to the area above me and
also

16 behind me.

17 Q. Okay. When you go out to a crime

18 scene and you look at bloodstain patterns, what kind
of

19 information can you obtain from looking at them?

20 A. We're trying to identify the
21 occurrences that took place in order to produce the
22 bloodstains as they are found. In essence, it's a
form

23 of crime scene reconstruction, but it's a narrow form

24 because we're dealing specifically with bloodstain
25 patterns.

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17 have the same volume of blood on the same surface
and I
18 have the same occurrence impact it, the same type
of
19 bloodstain pattern should result each and every time
that
20 I do that, providing that everything is equal; the
same
21 amount of blood, same surface, same impact.
22 Now, as you start changing that,
then
23 the bloodstain patterns, for example, their size,
their
24 distribution, the direction of travel, the numbers
of
25 them, all of those can change, and what you end up

1 finding should be consistent with the occurrence
that

2 took place in order to produce them.

3 Q. Mr. Bevel, prior to testifying
today,

4 have you had an opportunity to look at photographs
taken

5 of the utility room floor there at 5801 Eagle Drive?

6 A. Yes, sir, I have.

7 Q. Okay. Specifically, I'm showing
you

8 now State's Exhibits 38-A, B, C and D. Do you
recognize

9 these photographs, sir?

10 A. I do.

11 Q. Okay. Now, looking at the
blood on

12 the floor of this utility room, sir, how would you

13 categorize the blood that we see here on the
floor?

14 A. They are low velocity blood
drops

15 simply falling from above impacting the floor,
just

16 simply that, low velocity, 90 degree, blood
droplets.

17 Q. Okay. Would they be consistent
with
18 an individual standing still and bleeding where she
is
19 dripping blood on the floor?

20 A. That certainly could be the cause,
21 yes, sir.

22 Q. Now, during your trip to 5801
Eagle
23 Drive on November 26th, Mr. Bevel, did you have an
24 opportunity to go into the utility room itself and
look
25 at the floor?

1 A. Yes, sir, I did.

2 Q. Okay. And, looking at these
3 photographs here, 38-A, B, C and D, let me ask you to
4 assume that an individual standing in this utility
room,

5 that individual is holding a butcher knife, and I
believe

6 that you have actually seen that butcher knife, it's
7 State's Exhibit No. 67. Have you actually seen that
8 knife, sir?

9

10 MR. RICHARD C. MOSTY: Excuse me,
your

11 Honor, may we approach?

12 THE COURT: Yes, sir.

13 MR. RICHARD C. MOSTY: We need to
have

14 a hearing.

15 THE COURT: All right. Ladies and
16 gentlemen of the jury, it's necessary from time to
time

17 that we have to have hearings on points of law,
outside

18 of your presence. If you will retire to the jury
room,

19 please.

20

All right. Thank you.

21

22

(Whereupon, the jury

23

Was excused from

the

24

Courtroom, and

the

25

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

6
7 THE COURT: All right. Let the
record

8 reflect that these proceedings are being held outside
of
9 the presence of the jury and all parties of the trial
are
10 present.

11 All right. Mr. Hagler.

12 MR. JOHN HAGLER: Let me just
explain
13 to the Court the nature of our request for this
hearing,
14 your Honor.

15 THE COURT: All right

16 MR. JOHN HAGLER: We're not here
to
17 say that this individual is not an expert in certain
18 areas of blood spattering. On the other hand, from
what

19 I understand, we anticipate that he is going to

testify

20 as to more than simply blood spattering in this

21 residence.

22 We anticipate that he is going to

be

23 giving testimony, his own opinion, I guess, so-

called

24 expert testimony, as to certain factors or certain

events

25 that occurred during the alleged offense.

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18 areas of his necessary field.

19 In other words, there are certain

20 areas that the State is required to establish that
there

21 is expert testimony under Section 702 that would aid
and

22 assist the jury. And furthermore, that such
testimony is

23 based on reliable testimony and the fact that it is

24 relevant.

25 Now, I may be getting a little
bit

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1 ahead of myself but we have already gotten into this
2 matter about the T-shirt in State's Exhibit 25. And
the
3 Court, I know is well aware of our position already,
and
4 the Court has already ruled on that. But again, we
want
5 to make sure that Court is fully aware of the fact -
-

6 THE COURT: Yes, I am.

7 MR. JOHN HAGLER: -- that we
8 anticipate this witness to be testifying as to
evidence

9 that was obtained off of State's Exhibit No. 25 in
10 forming his conclusions as to things such as -- I
11 understand he is going to testify as how the knife
was
12 allegedly used; how it was held; how it was raised;
13 position of it, et cetera.

14 And again, our position in this
area

15 is that he may be able to testify as to where some
blood

16 dots are on a shirt or material, on the floor or on
the

17 wall. But there has been no showing that the
science has
18 developed to the point where an individual can give
an
19 opinion supported by scientific reliability and
research
20 and what have you, that would allow him to give such
an
21 opinion under Section 702.

22 Now, I know the Court is aware of
23 several cases, but just so the record is clear, I
would

24 like to cite these in the record for the Court.
25 Of course, one of them is the
U.S.

1 Supreme Court decision on Daubert, it's 113, Supreme
2 Court 2786. D-A-U-B-E-R-T, 113, Supreme Court,
2786.

3 And Daubert is a significant
decision

4 because it virtually rewrote the area of law
regarding

5 the admissibility of expert witness' testimony. The
6 Supreme Court of the United States held that --

7 THE COURT: The Court is familiar
with

8 the decision, but go ahead and put that in.

9 MR. JOHN HAGLER: Well, I would
like

10 to make sure that everyone is aware -- I know you
have

11 read the case, your Honor, but I just want to repeat
it

12 again.

13 But the Court held that you as
the

14 trial judge have a responsibility and a heavy

15 responsibility as being the gatekeeper in
determining

16 what expert testimony is both reliable and relevant.

And

17 you have to make that determination.

18
Daubert

Now, I might also mention that

19 has also been adopted by the Texas courts in
Robinson,

20 923, Southwest, 2nd, 549.

21 Kind of basically, your Honor, in
the

22 Robinson case, what the Court stated to the -- or at

23 least set out kind of a road map for the trial
judges to

24 follow in determining whether or not to allow so-
called

25 expert testimony, the court has to make a number of

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16 subjective interpretation of the expert.

17 That is one area in particular

here

18 where we're saying that in this particular area,

that

19 there is a heavy emphasis on the subjective

20 interpretation by this witness. And there is no

basis in

21 the scientific research or data that would support

his

22 expert opinion testimony.

23

24 THE COURT: We have not heard it

yet,

25 but let's go ahead with your --

1 MR. JOHN HAGLER: Well, I
understand,

2 I kind of got this ahead, Judge, so I don't have to
go

3 backwards and kind of give the Court a road map
here.

4 THE COURT: Okay. Thank you.

5 MR. JOHN HAGLER: Furthermore,
one of

6 the theories has been subjected to peer review
and/or

7 publications, the techniques potential rate of
error,

8 whether the underlying theory or technique has been

9 generally accepted as valid by the relevant
scientific

10 community.

11 That is the old Frye test which
has

12 been pretty much changed by Rule 702. In the
nonjudicial

13 uses which have been made of the theory or
technique.

14 So, again under the Daubert and

15 Robinson line of cases, you know, we would ask that
the

16 State establish the reliability and relevance of
this

17 testimony.

18 And we would urge that it is not

-- we

19 would anticipate that our objection is going to be

from

20 what we have heard so far that it is not going to be

21 admissible under Rule 702, 703 and 705.

22 THE COURT: All right.

23 MR. JOHN HAGLER: And

furthermore, we

24 would ask in the event that the Court does -- again,

we

25 would ask the Court to also take into mind the 403

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1 balancing test rule.

2 THE COURT: All right. Thank you
very

3 much. We appreciate it. If you go ahead and
question,

4 please.

5 MR. GREG DAVIS: Yes, sir.

6

7

8 DIRECT EXAMINATION (Resumed)

9

10 BY MR. GREG DAVIS:

11 Q. Mr. Bevel, how many times have
you

12 testified as an expert witness in this area of
bloodstain

13 pattern analysis?

14 A. It's in the hundreds.

15 Q. Okay. How many times have you

16 testified in the State of Texas as a bloodstain
pattern

17 analyst?

18 A. I don't know the exact number,
but

19 probably 40 or 50 times.

20 Q. Forty to fifty times?

21 A. Yes, sir.

22 Q. Okay. Any idea of the number of
23 states in which you have testified as an expert in
24 bloodstain pattern analysis?

25 A. That I have actually testified, I

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1 think somewhere in the range of probably about 18 to
22,
2 somewhere in there.

3 Q. Okay. Now, you heard Mr. Hagler
talk
4 about the length of time that these techniques have
been
5 in use by your profession?

6 A. Yes, sir.

7 Q. How long has -- have the
techniques
8 been used for bloodstain pattern analysis?

9 A. Well, prior to the 1900's, there
is a
10 great amount of literature studying, for example,
the
11 different types of patterns that are created under
12 certain circumstances, the directionality.

13 Prior to the 1900's they even
14 developed the mathematical principle of the long and
the
15 short axis, being able to do inverse arc sine, so
you
16 could determine what the impact angle was.

17 So it certainly predates 1900's.

18 There have been some very excellent papers done,
for

19 example, by the French, well in advance of the
1900's.

20 And then, there just is simply a whole lot more
since

21 that time.

22 Q. Now, is this a discipline in
which the

23 results are dependent upon your subjective
readings or is

24 there an objectivity to the technique also?

25 A. Well, certainly there is an

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1 objectivity, and we are primarily dealing with a
cause

2 and effect relationship.

3 If we're not able to recognize
the

4 type of patterns that are produced, then we
certainly

5 have to go into objective testings, so that we can
try

6 and determine what occurrence may have taken place
in

7 order to produce them.

8 But once you have done most of
the

9 experiments that are within the basic 40-hour course,
the

10 advanced course, the additional experimentation, you
have

11 been exposed to the majority of the real common ones,
so

12 that you are able to recognize them, without actually
13 being forced to do experimentation.

14 Q. How about peer review? Have these
15 techniques been reviewed by peers in your field?

16 A. In many areas, yes, sir.

17 Q. Okay. And, have your techniques
been

18 accepted as scientifically valid.

19 A. They have been accepted, if not
all 50

20 states, very close to all 50 U.S. states and many
foreign

21 countries.

22 Q. Have they been accepted as
23 scientifically valid in the State of Texas?

24 A. They have.

25 MR. GREG DAVIS: Now, if I may, I
can

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1 summarize for the Court, at this time, the opinions
that

2 I expect to elicit from this witness.

3 I expect this witness to testify
that

4 the patterns found here in the photographs 38-A
through D

5 are inconsistent with an individual dropping or
throwing

6 a bloody knife on the utility room floor.

7 I expect Mr. Bevel to testify
about

8 tests that he performed, on the utility room floor

9 himself, on November the 26th, 1996, when he threw
and

10 dropped a bloody knife, State's Exhibit 67 on the
floor.

11 I expect for him to testify that
those

12 results are inconsistent with what we see here in 38-
A

13 through D. I expect Mr. Bevel to look at State's

14 Exhibits 111-A and B, which are the photographs
showing

15 the imprint of the knife on the carpet.

16 I expect for him to testify about

a

17 test he performed on November 26th, where he took
State's

18 Exhibit 67, put blood on that knife and, then laid
the

19 knife on the carpet, and then also dropped or threw
the

20 knife on the carpet.

21 I expect for him to testify that
in

22 his opinion, that the imprint shown in State's
Exhibit

23 111-A and 111-B are consistent with that bloody
knife,

24 State's Exhibit Number 67, having been laid down on
the

25 carpet at 5801 Eagle Drive.

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1 I expect Mr. Bevel to testify,
with
2 regard to State's Exhibit Number 93, the vacuum
cleaner,
3 that he found evidence of blood drops on the vacuum
4 cleaner, and that those drops were deposited while
the
5 vacuum cleaner was standing upright, and while it
was
6 laying down on the floor. That he found a smear on
the
7 handle consistent with an individual placing her
bloody
8 hand on that handle.
9 I also expect Mr. Bevel to
testify
10 that he saw evidence of roll marks near the kitchen
sink
11 at 5801 Eagle Drive. That those marks are consistent
12 with State's Exhibit Number 93, the vacuum cleaner
having
13 been rolled through the blood, shortly after the
blood
14 was deposited on the floor.
15 I expect Mr. Bevel to testify that

he

16 would expect the intruder to have blood on his hands,

or

17 at least on one hand, when he entered the garage when

he

18 exited out this window, and when he exited the back

yard.

19 I expect Mr. Bevel to testify with

20 regards to the sock that is in evidence, that he

would

21 expect under the scenario, in which two children

were

22 stabbed, and the defendant was wounded with that

knife,

23 and a struggle occurred, that he would expect to

see the

24 defendant's blood on that sock, rather than the two

boys

25 blood.

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LS-1,

16 that being a mixture between Damon and Darlie
Routier,

17 that Mr. Bevel will testify that that is also cast-
off

18 blood, and that is not the product of a transfer
from one

19 part of the T-shirt to another. And with regards
to

20 stain LS-3, I expect Mr. Bevel to testify that that
also

21 is a mixture of Devon and Darlie Routier, that is

22 cast-off, that is not the product of transfer from
one

23 portion of the T-shirt to another. And with
regards to

24 stain T-15 on State's Exhibit Number 121.

25 MR. RICHARD MOSTY: Are you on
the

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1 back now?

2 MR. GREG DAVIS: Yeah, I'm on
the

3 back. That is on the back of the T-shirt, that
being a

4 stain, coming back to Devon Routier, that that is
also

5 cast-off, that the direction on that stain is
either up

6 or down, the long axis being in that direction, in
an up

7 and down fashion, and that that stain is also not
the

8 product of a transfer from one part of the shirt to
9 another.

10 With regards to stain T-15, again
on

11 the back, I expect Mr. Bevel to testify that that
stain

12 is consistent with the defendant leaning over the
victim

13 Devon Routier and stabbing him, and that that
product,

14 that stain T-15 is the product of the withdrawal of
the

15 knife from the victim, and the blood then going over
her

16 right shoulder, and depositing on her back.

17 T-10 and T-9, on the right front
18 portion of the T-shirt, I expect Mr. Bevel to
testify

19 that those are also the product of the defendant
leaning

20 over these two victims, Devon and Damon Routier,
stabbing

21 them, and then withdrawing the knife, and that the
stains

22 are then consistent with that motion.

23 I expect Mr. Bevel to testify on

LS-1

24 and LS-3, that those two stains are consistent with
the

25 defendant leaning over, stabbing Devon and Damon
Routier,

1 and that the stains are consistent with the heel of
her

2 hand coming in contact with the stab wound areas of
each

3 boy producing the cast-off shown in LS-1 and LS-3.

4 I believe that concludes the
opinions

5 that I expect Mr. Bevel to testify to.

6 THE COURT: Mr. Mosty or Mr.
Hagler?

7 MR. RICHARD C. MOSTY: May I
inquire

8 of Mr. Davis something?

9 THE COURT: You may.
10

11 (Whereupon, a short
12 Discussion was

held
13 Off the record,

after
14 Which time the

15 Proceedings were resumed
16 As follows:)

17
18 THE COURT: All right. Back on
the

19 record.

20 MR. RICHARD C. MOSTY: All right.

May

21 I take the witness on voir dire?

22 THE COURT: You may.

23 MR. RICHARD C. MOSTY: And to

focus in

24 on --

25 THE COURT: Sure.

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1 MR. RICHARD C. MOSTY: -- some of
2 these particular things?

3 THE COURT: You may.

4

5 VOIR DIRE EXAMINATION

6

7 BY MR. RICHARD C. MOSTY:

8 Q. Mr. Bevel, let's just talk in
general

9 of these statements, when you say that this is
10 inconsistent with a knife being dropped. Or that
this

11 action is consistent with a cast-off.

12 Now, first you have identified
the

13 blood and the angle and all those things, and that
is not

14 what I am talking about here. Once you make that

15 statement of inconsistent -- or that it is
consistent

16 with this, or it is inconsistent with that, you are
not

17 excluding all other possibilities, are you?

18 A. Well, that would depend on which
area?

19 Q. Okay. I was hoping we could do

this a

20 little easier. But we are going to have to go
through

21 them one by one then.

22 Let's talk about the knife on to
the

23 linoleum. Your testimony, as I understand, would be
that

24 the linoleum that you observed in November was
25 inconsistent with having a knife dropped on it.

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1 A. Inconsistent with a knife
dropping on

2 to the linoleum that had blood on it.

3 Q. Okay. Now, at that time, first,
did

4 you know, whether or not, that area had been cleaned
at

5 all? Or the linoleum that you observed?

6 A. Well, cleaned from when? I know
that

7 there were still individual blood droplets were
still

8 there, so it had not been cleaned to get those blood
9 droplets up.

10 Q. It had not been cleaned
completely?

11 A. Well I don't have any knowledge
that

12 it was cleaned at all.

13 Q. You don't know one way or another
was

14 some of it cleaned, or was some of it not cleaned?

15 A. If there was any cleaning, I am
16 unaware of it and there is certainly no evidence

that

17 there was.

18 Q. Okay. I am not going to try to
argue

19 with you. You don't know one way or another, do
you?

20 A. Well, I gave my answer.

21 Q. Do you know one way or another?

22 A. I do not know, there is no
evidence to

23 indicate that there had been any cleaning.

24 Q. So that means you don't know,
right?

25 A. Well, I'll answer it again, sir.

1 Q. Well, let's don't do that. I'm
not
2 going play that game with you.

3
4 THE COURT: Well now, I think the
5 witness understands, and I think that he has
answered the
6 question.

7

8 BY MR. RICHARD MOSTY:

9 Q. Had it been dusted for prints?

10 A. Had that -- you mean the floor
itself?

11 Q. The entire linoleum floor.

12 A. I have no knowledge that it was
dusted

13 for prints.

14 Q. Don't know one way or another?

15 A. There was no evidence that there
was

16 any fingerprint powder on that area.

17 Q. Had the furniture been moved out
of
18 it?

19 A. I don't have any knowledge.

20 Q. Was there furniture in it?

21 A. I don't have any knowledge, other
than

22 what the photographs depict.

23 Q. I'm talking about on the day when
you

24 were there, on the 26th, was there furniture there

in the

25 room?

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1 A. Oh, I'm sorry. No.

2 Q. Okay. So, if there were
furniture in

3 it, at the time of the crime, then that furniture
had

4 been moved out?

5 A. That's correct.

6 Q. Okay. And, did you see evidence
of

7 some of the blood on the linoleum, having been
disturbed

8 at different places?

9 A. Yes, sir.

10 Q. Were you aware, whether or not
11 originally there were or were not rugs in the room?

12 A. In the room itself?

13 Q. Yes?

14 A. I don't have any knowledge of
there

15 being rugs in the room, no, sir.

16 Q. One way or another?

17 A. No, sir.

18 Q. Okay. When you were there,
there

19 were no rugs?

20 A. That is correct.

21 Q. All right. Now, these
experiments

22 that you did, and as I understand this is taking a
knife,

23 and dropping it on the linoleum floor?

24 A. Yes, sir.

25 Q. Did you take any notes of that?

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1 A. Photographs.

2 Q. Okay. Where are those
photographs?

3 May I see them?

4 A. I don't have them.

5 Q. Who took them?

6 A. The Rowlett Police Department.

7 Q. Who has them?

8 A. Either the Rowlett Police
Department,

9 or the prosecution I am not sure.

10 Q. You haven't seen them?

11 A. Well, I have not seen them since
they

12 have been developed, no, sir.

13 Q. Okay. You don't have those
14 photographs with you?

15

16 MR. GREG DAVIS: They are back
there.

17 MR. RICHARD C. MOSTY: Okay.

Can we

18 get them? We are going to need to get into all of
this

19 stuff. I was hoping to do it quicker, but I'm not

going

20 to be able to.

21 MR. GREG DAVIS: I was under the
22 assumption that these photographs were viewed, when
they

23 came up there to my office in December, and looked
at all

24 of these photographs. But, yes, if they weren't

then I

25 will certainly be happy to bring them all out.

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1 MR. RICHARD C. MOSTY: Well, I
need
2 them very briefly and I will move on to something
else
3 while we are getting them, but I need them very
briefly
4 to talk to him about this experiment.

5 THE COURT: All right. Let's
bring
6 them in.

7 MR. GREG DAVIS: Let me go see if
they
8 are back there.

9 MR. RICHARD C. MOSTY: Do you want
us
10 to go ahead?

11 MR. GREG DAVIS: You can go ahead.
12 Toby is there.

13

14 BY MR. RICHARD MOSTY:

15 Q. You didn't take any notes of these
16 experiments?

17 A. The only notes taken, was the fact
18 that photographs were taken.

19 Q. Let's try to be clear. I'm

talking

20 about you sitting down and saying experiment
number 1,

21 you didn't do that, did you?

22 A. I did not.

23 Q. Now, did you document, in your
notes,

24 for instance, how much blood you loaded on the knife?

25 A. By weighing it, or any manner?

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1 Q. Any manner.

2 A. I just simply had the blade
covered
3 with blood.

4 Q. Had the blade covered with blood?

5 A. Yes, sir.

6 Q. Okay. And, was it dripping or not
7 dripping?

8 A. It was not dripping in all, with
9 exception of one.

10 Q. Okay. One time you had it
dripping?

11 A. Yes, sir.

12 Q. How many experiments did you do?

13 A. Of simply dropping the knife into
that
14 area?

15 Q. On to the linoleum, that's all I'm
16 talking about.

17 A. Okay. Well, let me be specific.
In
18 multiple areas, in other words, not just there, but
on
19 the linoleum in other areas.

20 Q. I'm talking about any
linoleum

21 testing, how many times did you drop the
knife?

22 A. Approximately eight.

23 Q. Okay. You can't verify
that?

24 A. I think we could by looking at
all of
25 the photographs. Yes, sir.

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1 Q. You think you could. Well, you
didn't

2 take any notes of anything?

3 A. No, sir.

4 Q. Now, in each time, did you put
the

5 knife in both sides in the blood and completely got
the

6 knife bloody?

7 A. I did that, and then held the
knife up

8 until it ceased dripping blood.

9 Q. You tapped it?

10 A. Until it ceased dripping blood.

11 Q. You held it up, or did you tap it
into

12 the pan?

13 A. At various times I probably did
both.

14 Q. Okay.

15 A. But the point was that the blood
had

16 ceased dripping.

17 Q. Okay. But sometimes you dipped
it in

18 the pan before you dropped it, and sometimes you

held it

19 over?

20 A. No, sir.

21 Q. Okay. Which did you do?

22 A. I'm not sure I understand your
point.

23 Q. Well, you said sometimes you may
have

24 tapped it, and sometimes you may not have?

25 A. Yes, sir.

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1 Q. Okay. Do you know how many times
you

2 tapped it in there, before which experiments you
tapped

3 it in there, and which you didn't?

4 A. No, sir, because I was always
after,

5 each time, the same result, which was the blood to
cease

6 dripping.

7 Q. Okay. So you held it up and the
blood

8 ceased dripping?

9 A. Yes, sir.

10 Q. Okay. Then what did you do?

11 A. Simply stood and dropped it on to
the

12 floor.

13 Q. The first time, how high were you
when

14 you dropped it?

15 A. Approximately waist high, each
time.

16 Q. Approximately?

17 A. Yes, sir.

18 Q. You didn't verify that, how high

that

19 was?

20 A. No, sir.

21 Q. Okay. How high is that?

22 Approximately how high is approximately waist high?

23 A. Well --

24 Q. On you.

25 A. Like that.

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1 Q. I presume you are talking about
you.

2

3 MR. GREG DAVIS: I don't know, I
mean,

4 I have just come back in, and I was thinking that
this

5 was to test the qualifications of this witness to
render

6 a certain opinion.

7 THE COURT: Well, it is --

8 MR. RICHARD MOSTY: Well, there
are

9 two phases to it. One is, he is going to testify
about

10 these experiments, that are not scientifically
valid

11 experiments. That is part of it. And then the
second

12 is, then he goes on to say that this is consistent
or

13 not. There are two parts to it.

14 THE COURT: Perhaps we could
have him

15 describe in narrative form how he did these things,
and

16 if you have any questions, just ask about that. Is
that

17 satisfactory?

18 MR. RICHARD C. MOSTY: I'll try
to do

19 anything that moves things along.

20 THE COURT: Let's move it along.
We

21 are not letting you use this for discovery.

22 Now, I'll instruct the witness,
do not

23 be evasive in your answers. Answer them straight.
They

24 are pretty simple questions. Answer them straight.
25 THE WITNESS: Yes, sir.

Sandra M. Halsey, CSR, Official Court
Reporter

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1 MR. RICHARD C. MOSTY: Thank
you.

2

3 BY MR. RICHARD MOSTY:

4 Q. Of the approximate eight
experiments,

5 precisely what did you do?

6 A. Each time, the knife was, or had
blood

7 added to both sides, it was held in an upright
position,

8 separate from the blood source, the blood was
allowed to,

9 for all practical purposes, cease dripping off of
the end

10 of the knife blade, as it's held in a vertical
position,

11 with the point of the knife blade downward. And
then, it

12 was just simply allowed to drop from approximately
my

13 waist high on to the floor.

14 Q. Okay.

15 A. And, in order to do this
multiple

16 times, you had to move to different areas, so that

you

17 were not depositing the knife on to the same area.

18 Q. On each time?

19 A. Yes, sir.

20 Q. Okay. Now, there is no way for
me now

21 to go out there, and replicate that experiment, is
there?

22

23 MS. SHERRI WALLACE: Judge, we
are

24 going to have to object. This is just a discovery
25 hearing, and it is not proper under 705, he's gone
beyond

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Reporter

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1 the bounds.

2 THE COURT: I understand what
you --

3 I'll let him answer -- I don't know what he is
going to

4 answer to this question. Go ahead.

5 Let's don't discover. We are
trying

6 to get through with this hearing.

7 MS. SHERRI WALLACE: Exactly
what we

8 are objecting to.

9 MR. RICHARD MOSTY: Well, I have
got
10 to get this -- this is a Daubert objection, and it is
a

11 unique area of the law.

12 THE COURT: Well it is a unique
area

13 of the law, but it's not a discovery hearing, so
let's

14 don't make it that.

15 MR. RICHARD C. MOSTY: And I don't
16 intend for it to be discovery.

17 THE COURT: All right. Fine. I
18 understand what we are doing.

19

20 BY MR. RICHARD MOSTY:

21 Q. In other words, there is no way
22 another scientist can go out there and say, "I'm
going to

23 drop this knife precisely from 34 inches"?

24 A. No, sir. But to answer your prior
25 question, if I may.

Sandra M. Halsey, CSR, Official Court Reporter

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1 Q. No, you did just answer my prior
2 question.

3 A. Well --

4 Q. My prior question is: There is no
way

5 for another scientist to say, precisely the height
from

6 which you dropped that?

7 THE WITNESS: Your Honor, may I
answer

8 the prior question?

9

10 THE COURT: Well, go ahead and
answer

11 it. No. Just answer this and that's enough.

12 I understand where we are going.

13 Let's go.

14

15 BY MR. RICHARD MOSTY:

16 Q. There is no way to identify
precisely

17 how high you dropped it?

18 A. For each time, no, sir.

19 Q. Okay. And there is no way to
identify

20 that each time you dropped it from precisely the same

21 height?

22 A. That's correct.

23 Q. And there is no way to determine

24 whether each time the knife had the same volume of

blood

25 on it?

Sandra M. Halsey, CSR, Official Court Reporter

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1 A. That's correct.

2 Q. And then, the second part of this
--
3 that is the experiment part.

4 Was a photograph taken of each and
5 every experiment or not?

6 A. I cannot answer that. I was not
7 taking the photographs. I believe that most of them
were
8 photographed, yes, sir.

9 Q. There is no written protocol that
you
10 have, that you could hand to another expert, and say,
11 "This is the exact experiment that I did".

12 A. I disagree with that.

13 Q. There is a written protocol that
you
14 have for this experiment?

15 A. I can write a protocol explaining
what
16 I did, that Mr. Labor or Epstein could then follow
suit
17 to determine whether or not it was consistent or
18 inconsistent, with the dropping of the knife, blood
19 covered, onto the floor.

20 Q. Mr. Bevel, this was simply my
21 question: Is there a written protocol that you have
22 prepared that describes this experiment?

23 A. That is written currently?

24 Q. Yes.

25 A. No, sir.

Sandra M. Halsey, CSR, Official Court Reporter

1 Q. Okay. And the second part of that
2 that you say you are going to testify that that is
3 inconsistent with a knife dropping on the floor from
4 waist high, I guess?

5 A. No, sir, not what you stated. I'm
not
6 going to state that.

7 Q. What is going to be your -- the
sum of
8 your opinion on that?

9 A. That a knife that has blood on it,
10 dropped from approximately waist high on to that
floor,
11 will produce stains that are consistent with a knife
that
12 has blood on it, falling on to the floor.

13 Q. Okay.
14

15 THE COURT: The Court understands
that
16 position. Now let's move on.

17 MR. RICHARD C. MOSTY: Okay.
18

19 BY MR. RICHARD MOSTY:

20 Q. Okay. And, there is no -- there's

no

21 additional testing that can be done to independently
22 verify your opinion is there? Other than somebody
23 else -- other than you just doing that?

24 A. Well, somebody else can do

exactly

25 what I have described and make a determination in
their

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Reporter

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1 opinion.

2 Q. But there is nothing further
beyond

3 that. No additional tests that can be done other
than

4 that, to verify the accuracy of what you observed.

5 A. Well I don't know how else you
would

6 go about doing it, no, sir, other than that.

7 Q. Now the experiment where you
laid the

8 knife on the carpet let's move to that one?

9 A. Yes, sir.

10 Q. Okay. Is that -- did I
describe

11 that correctly? What was that experiment?

12 A. Where we did basically --.

13

14 THE COURT: Ms. Wallace, can you
have

15 a seat at the counsel table, please?

16 MS. SHERRI WALLACE: I'm sorry,
your

17 Honor.

18 THE COURT: Thank you.

19 THE WITNESS: Where we
basically did

20 the same thing that we just previously talked
about,

21 where the knife, and a --

22 THE COURT: Would you get that
book

23 back from her, and bring it back up here right now.

24 MS. SHERRI WALLACE: I'm sorry,
Judge.

25 She was sharing it with me.

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Reporter

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1 THE COURT: Well, just put it
there.

2 MS. SHERRI WALLACE: Yes, sir.

3 THE COURT: Now, let's get on
with
4 this hearing.

5 THE WITNESS: Basically, the
same
6 thing we just described where the knife had a blood
7 source that was added to it, it was held up to where
the
8 blood, for all practical purposes, ceased dripping
and
9 then it was just simply laid down, at various
times, it
10 was just simply dropped, from approximately waist
high
11 again, and then at other times it was actually
thrown.

12

13 BY MR. RICHARD MOSTY:

14 Q. Okay. So again, we have the
same
15 thing with the waist high, there is no way to
identify

16 exactly how high that was.

17 A. To precisely identify that, no,
18 sir.

18 Q. And the times that it was thrown,
19 was

19 it thrown with a hand? I mean, how did you throw
20 it?

20 A. With my hand.

21 Q. Okay. And --

22

23 THE COURT: Well, isn't it
24 sufficient

24 to say it was thrown, and is there a protocol to
25 that, is

25 that the next question?

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Reporter

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1 I mean, can we just keep the
question

2 in the same line? I understand what you are trying
to
3 demonstrate.

4

5 BY MR. RICHARD C. MOSTY:

6 Q. How many -- how many -- how many
times

7 did you toss the knife?

8 A. I would say approximately 5 to 6
9 times, somewhere in that range.

10 Q. Okay. And, again, you cannot
be sure

11 of the exact number?

12 A. No, sir, I said approximately 5
to 6.

13 Q. Okay. And you -- of those, how
many

14 times was it thrown -- or how many times was it
simply

15 dropped from waist high?

16 A. Now, we're talking about two
different

17 occurrences here, but just simply dropping again,

18 somewhere in that same range, 5 to 6 times.

19 Q. Okay. Now, what was the first 5
to 6

20 you were describing? Was that the tossing?

21 A. Tossing. They were separate,
yes,

22 sir.

23 Q. All right. And, from what
height did

24 you toss it?

25 A. Well, it would depend upon when
it was

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Reporter

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1 let go.

2 Q. And I cannot reproduce that, can
I?

3 A. To be exact, no, sir.

4 Q. Okay. I could not reproduce --
did

5 you toss it under-handed?

6 A. I did it both.

7 Q. Okay. You tossed it over-handed
and

8 under-handed?

9 A. Primarily under-handed.

10 Q. Okay. And, there is no way for
me, or

11 anyone now, to reproduce how hard you swung your
arm when

12 you --

13 A. No, sir, not precisely.

14 Q. Okay.

15

16 THE COURT: All right. I think
we

17 understand. The Court understands that. Can we
move on,

18 please?

19

20 BY MR. RICHARD MOSTY:

21 Q. With respect to the expectation
of

22 blood on the hand, there is no way of being -- on
one

23 hand, not two, is that what Mr. Davis said you were
going

24 to testify to?

25 A. I'm not --

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Reporter

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1 Q. That you would expect blood to
be on

2 one hand -- at least on one hand is that -- am I
wrong?

3 A. What are we talking about here?
Blood

4 on the hand in reference to what?

5 Q. Of the assailant?

6 A. Okay. I'm sorry, that was the
part

7 that I was not clear on. If the assailant is the
person

8 who has left the blood that is running on the door,
as

9 you exit the utility room.

10 Then, that would certainly be

11 consistent with blood on at least one hand. Now,
whether

12 or not that means there is blood on the other hand,
I do

13 not know.

14 Q. Okay. On the sock, the statement
was

15 that you expect that -- your opinion would be that
you

16 would expect to see the defendant's blood rather

then the

17 boys?

18 A. That is incorrect.

19 Q. Okay.

20 A. I would expect to see any of
their

21 blood on it. I would expect to see more of the
mother's

22 blood. I would not testify that I would not expect
to

23 see the boys' blood.

24 Q. Okay. And there is no way to
25 independently verify or analyze that statement is
there?

1 A. Well --

2 Q. It is simply your opinion?

3 A. Well, I disagree with your
statement.

4 Q. Okay.

5 A. Another person can come in with
equal

6 qualifications and do an analysis of the physical
7 evidence and the information that is known, and they
can

8 make that their opinion.

9 Q. Okay. But that is what it is.
It's
10 an opinion?

11 A. Certainly.

12 Q. Okay. And there is no way to
13 replicate the occurrences that led to that?

14 A. Not precisely, no, sir.

15 Q. And there is no way to conduct
any

16 kind of objective test that says that opinion is
right,

17 or that opinion is wrong?

18 A. I would have to agree with that.

19 Q. Okay. And, with respect to this,
you

20 can't exclude other possibilities, can you? For
21 instance, that only small amounts of the boys' blood
is
22 on there. You cannot exclude that as being a
reasonable
23 probability?

24 A. I cannot exclude that. I can
simply
25 offer my opinion as to what I would expect, based
upon

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1 the story given, the physical evidence that is there,
and

2 the type of blood that has been lost.

3 Q. Okay. Now, with respect to the
4 T-shirt are you not going to testify about
experiments?

5 MR. GREG DAVIS: I'm sorry?

6 MR. RICHARD C. MOSTY: With
respect to

7 cast-off blood and T-shirts, we're not going to
testify

8 about experiments?

9 MR. GREG DAVIS: Yes, we will be
10 talking but an experiment that he did with a T-shirt.

I

11 think that is the experiment that he talked to you
all

12 about.

13 MR. RICHARD C. MOSTY: That's the
one

14 that I have got the video of?

15 THE COURT: Well, let's get right
on

16 it, and just say what it was, and ask your
questions.

17 MR. RICHARD MOSTY: Well, I know

what

18 the experiment was, so we don't need to do that.

19 THE COURT: Thank you. Let's
move on.

20

21 BY MR. RICHARD C. MOSTY:

22 Q. That experiment was, when you
are

23 dipping the blood, and you come up with a motion
like

24 this? (demonstrating)

25 A. Yes, sir.

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Reporter

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1 Q. And the -- that experiment,
there is

2 no written protocol for it, is there?

3 A. No, sir.

4 Q. And again, there is no way to
identify

5 precisely how much blood is loaded on to that
knife?

6 A. Precisely, no, sir.

7 Q. And in that one in fact,
sometimes you

8 dipped it in, and then you went, pretty much
straight to

9 movement.

10 A. What are you talking about? Are
you

11 talking about the tapping?

12 Q. Tapping into the pan?

13 A. Right. Trying to again, cease
the

14 dripping.

15 Q. Okay. But every time you are
tapping

16 the pan, you are reloading the point, aren't you?

17 A. No sir?

18 Q. You're not?

19 A. No, sir.

20 Q. All right. But there is no way
that

21 someone can replicate that motion? Precisely?

22 A. Precisely, no, sir.

23 Q. Okay. And, as a matter of fact,
the

24 video that you have, doesn't have -- it can't even
tell

25 us how many times you did that motion, does it?

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Reporter

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1 A. It can't?

2 Q. Well, not on my copy.

3 A. Well, it's all in the
withdrawing --

4 Q. How many times did you do it?

5 A. Well, now you may be referring
to the

6 fact that at the end of the video I talked about
going to

7 a horizontal --.

8 Q. I'm not there yet.

9 A. Okay.

10 Q. I'm talking about this part?

11 A. Okay. That documentation, in
it's

12 entirety, was simply to show that that is an
occurrence

13 that can occur.

14 Q. But you did not document every
move

15 like that, did you? On video?

16 A. Not every single move, no, sir.

17 Q. Then, the second part of that
is, and

18 on that one, you didn't take any notes of, "I did

this, 5

19 times or 8 times or 10 times"?

20 A. No, sir.

21 Q. Okay. And, then in the second
part of

22 the video, the camera broke?

23 A. For the very last stage, the
camera

24 broke, but I do have the T-shirt that I can show
you,

25 that was done at that particular point, so I mean
it is

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Reporter

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1 here.

2 Q. So, but as far as some other
person

3 being able to look at that, and say this is what
Mr.

4 Bevel did, and I will try to replicate it on the
video,

5 that video doesn't exist for the second part of
that

6 experiment.

7 A. For one occurrence that is
correct.

8 Q. Okay. And then, let me try to
focus

9 here. You were going to testify about what you
have

10 described as cast-offs on the -- can I say right
front

11 shoulder?

12 A. You can.

13 Q. Okay. What about cast-offs
on the

14 left front shoulder?

15 A. There are some stains over
there that

16 could have come from cast-off, or spatter, given
the size

17 and location as to where it is.

18 Q. Okay. But it was only
mentioned the

19 right shoulder, and that is the only one that
you are

20 going to testify about that it is consistent
with?

21 A. As far as coming off of the
knife?

22 Q. Yes?

23 A. In that particular movement?

24 Q. Yes.

25 A. Yes, sir.

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Reporter

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1 Q. Okay. And, with respect to
that,
2 whether or not it's consistent or not consistent
you
3 can't exclude other possibilities for that cast-off,
can
4 you?

5 A. Not exclusively, no, sir.

6
7 THE COURT: Okay. Anything else?

Is
8 that it, Mr. Mosty?

9

10 BY MR. RICHARD MOSTY:

11 Q. With respect to the statements
about,
12 that certain items are consistent with someone
leaning
13 over the victims, stabbing, those are going to be
things
14 that, again you can -- that you might say are
consistent,
15 but you cannot exclude other possibilities, or other
ways
16 that those blood stains could have gotten on the

back?

17 A. With complete certainty, I cannot
18 exclude the other possibilities.

19 Q. Okay. And then all you can ever
20 really say about those cast-offs is, that, something
21 is
22 consistent, or maybe there is a probability of it?

22 A. Yes, sir.

23 Q. Okay.

24
25 THE COURT: That's it for the
purpose

Sandra M. Halsey, CSR, Official Court Reporter

1 of the hearing?

2 MR. JOHN HAGLER: As far as our
Voir

3 Dire examination, your Honor.

4 THE COURT: As far as the hearing
is
5 concerned?

6 MR. JOHN HAGLER: We would like to
7 make some objections, your Honor.

8 THE COURT: Well, please make
them. I

9 think the Court understands what you want to object
to,
10 so let's get on with it

11 MR. JOHN HAGLER: I'll be very
brief,
12 your Honor.

13 THE COURT: Thank you

14 MR. JOHN HAGLER: Your Honor,
again,

15 we would submit that the State has failed to satisfy
16 their burden of proof under Daubert and Robinson.
That

17 the most that we have heard, is opinion testimony,
not

18 based on a valid scientific theory of principles.

19 His opinions are no more than what
the
20 jurors themselves could conclude. They are not based
21 on -- there is no reliance on the valid scientific
22 principle or theory.

23 As far as the T-shirt, your Honor,
24 again, we have already objected on the fact that it's
25 going to be based on the evidence that has been

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1 contaminated, and no showing of the chain of custody.

2 Therefore, this testimony is not

3 scientifically based on a valid -- on a valid
evidentiary

4 basis.

5 Your Honor, in particular, there
are

6 areas where there has been no showing that his
opinion

7 testimony, personal opinion testimony, is based on
a

8 theory that could allow him to testify, as to how
the

9 assailant was positioned, how the knife was used,
how it

10 was raised and how the victim was stabbed. There
has

11 been no showing of that.

12 Likewise, the same thing goes --
or is

13 true, with the fact that there is no basis for his

14 opinion, as to whether or not the knife was thrown
or not

15 thrown on the floor.

16 And finally, your Honor, as far
as the

17 areas about whether or not the intruder should have
blood
18 on his hands; or whether or not the sock should
have had
19 more of the defendant's blood or the individual's
blood
20 on the sock, that is simply no more than his
personal
21 opinion, and he is being presented as an expert
witness,
22 and certainly the jury is going to take into
account his
23 credentials, and we would submit that it is going
to be
24 confusing and misleading to the jury, and we
further say
25 that his testimony is not admissible under section
702,

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Reporter

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1 703 and 705.

2

3 THE COURT: All right.

4 MR. RICHARD C. MOSTY: May I ask

one

5 question on voir dire?

6 THE COURT: One question.

7

8

9 VOIR DIRE (Continued)

10

11 BY MR. RICHARD MOSTY:

12 Q. There is no academy that -- or

13 certificate that you can obtain to determine how

much

14 blood somebody gets on them when they stab someone;

is

15 there?

16 A. No, sir.

17

18 MR. JOHN HAGLER: One more

objection,

19 Your Honor.

20 THE COURT: One more objection.

21 MR. JOHN HAGLER: Your Honor, we

are

22 fully aware, that Rule 704 allows an expert, a
validly,

23 qualified expert to give an opinion, on such an
issue,

24 but the fact of the matter is, in this case, with
the sum

25 total of his opinions, it's more than simply an
opinion

Reporter Sandra M. Halsey, CSR, Official Court

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1 as to an ultimate issue, it is simply an opinion as
to
2 the defendant's ultimate guilt, and therefore, we
would
3 urge that the total -- the sum total of his opinion
4 testimony before the jury, would constitute a
violation
5 of the defendant's due process of rights.

6 THE COURT: Thank you

7 MR. RICHARD C. MOSTY: And I
would
8 just like to be real clear about one thing.

9 I am not objecting to testimony,
for
10 instance, about what a cast-off is, or what,
11 directionality is, or those things that are related
to
12 physical properties, of blood in flight, and blood,
how
13 it hits, as to, you know, angle of impact, or
whatever
14 those -- that is not our objections.

15 Our objection is to the
experiments,

16 and the opinions or the conclusions that are drawn

from

17 those areas, which I believe, do have a scientific
basis.

18 THE COURT: Thank you. Is that
it?

19 MR. JOHN HAGLER: Yes, sir.

20 THE COURT: All right. The
defense

21 objections are overruled. The Court feels that in
view

22 of this expert's knowledge and experience, that this
23 testimony is admissible, because it may assist the
jury

24 in reaching a just verdict in this case. And, I
think

25 that will satisfy the 401 and 403 balancing test.

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19 reflect a running objection, your Honor?

20 THE COURT: Oh, yes, by all means.

21 All right. Let the record

22 reflect that all parties at the trial are present and
the

23 jury is seated.

24 Mr. Davis.

25

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1

DIRECT EXAMINATION (Resumed)

2

3 BY MR. GREG DAVIS:

4 Q. Mr. Bevel, I believe I just asked
you

5 if you went out there to the residence on November
26th.

6 Did you actually go into the utility room?

7 A. Yes, sir, I did.

8 Q. Did you have a chance to look at
the

9 flooring there?

10 A. Yes, sir, I did.

11 Q. What was the appearance of the
utility

12 room floor there on November 26th?

13 A. There was, well, the furniture
that

14 previously had been there was not still in place.

Some

15 of the items, for example, in the photographs, such
as a

16 cap and some other items were no longer in place. So
it

17 is basically a bare room.

18 The floor was still consistent

with

19 the tile that was shown in the photograph. And that

is

20 basically it.

21 Q. All right. Did it appear to you

that

22 the same linoleum flooring shown here in 38-A through

D

23 was still present and on the floor on November 26th,

24 1996?

25 A. Yes, sir.

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1 Q. Now, when you went out there that
day,

2 sir, did you have in your possession State's Exhibit
67?

3 A. Yes, sir.

4 Q. All right. And, when you went
into

5 the utility room floor (sic), did you do some
testing

6 inside the utility room, sir?

7 A. I did, sir.

8 Q. All right. Can you describe for
the

9 jury, the type of testing that you did inside of that
10 utility room that day in November?

11 A. Yes. I took whole human blood,
and

12 insured that the knife blade on both sides was
covered in

13 blood, and then I simply held it in an upright manner
14 over the container that held the blood, allowing

the

15 blood to run down until it stopped dripping off of
the

16 pointed end of the knife.

17

At that point from

approximately

18 waist-high, I just simply dropped the knife onto

the

19 floor.

20

Q. Okay. What were you attempting

to do

21 in those tests?

22

A. To, again, as a cause and

effect, if

23 there is a knife that has blood on it and it's

dropped,

24 again, from approximately waist-high, what sort of

25 bloodstains would result from that occurrence.

That is

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1 what I was looking for, was the bloodstains that
may

2 result.

3 Q. Okay. With the Court's
permission,

4 Mr. Bevel, would you please step down here in
front of

5 the jury?

6

7 THE COURT: Yes, go ahead.

8

9 (Whereupon, the witness
10 stepped down from the
11 witness box, and approached
12 The jury rail, for the
13 purpose of further describing
14 the exhibit to the jury.)

15

16 BY MR. GREG DAVIS:

17 Q. Now, taking State's Exhibit No.
67,

18 can you demonstrate here on this carpeted floor the
types

19 of movements that you did during your test on
November

20 26, '96?

21 A. Yes.

22 Q. How did you perform that test?

23 A. Okay. The first thing that I
did was

24 to simply kneel down in order to get the whole
human

25 blood on both sides of the knife, and I had a
container

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1 that held the whole human blood. Then I held the
knife

2 just simply in this fashion, (demonstrating), to
where

3 the blood coming down to the point ceased dripping.

4 At that point I just simply
stood up

5 and turned away from where the container was and
then

6 just simply dropped it.

7 Q. Okay. Now, the record would
reflect

8 the knife -- when you dropped it, you dropped it
from

9 about waist-high; is that right?

10 A. Approximately my waist, yes,
sir.

11 Q. Okay. When you dropped it, did
the

12 knife appear to bounce off of the carpet and then
land in

13 a second location?

14 A. It did.

15 Q. All right. What did the knife do
when

16 you dropped it on the linoleum out there at 5801

Eagle

17 Drive? Was it a similar type motion as we saw here
18 today?

19 A. Each and every time it bounced,
yes,
20 sir.

21 Q. Okay. So it would actually fall
and
22 then it would move to a -- and actually rest in
another
23 location; is that right?

24 A. It would rest in an area other
than
25 the first location that it impacted.

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1 Q. All right. Approximately how many
2 times did you perform those tests out there?

3 A. In that area as well as some other
4 areas, again approximately, that particular drop, 8
to 10
5 times.

6 Q. Okay. In the utility room itself;
is
7 that right?

8 A. Yes, sir.

9 Q. Were certain photographs taken
after
10 you had performed those tests?

11 A. They were.

12 Q. Do you recall whether or not we
took
13 photographs after each and every time that you
dropped
14 the knife or not?

15 A. I don't have personal knowledge
of
16 that. I believe that there were, but I don't know
if
17 each and every one was photographed.

18 Q. Okay.

19

20

21

(Whereupon, the following

22

mentioned items were

23

marked for

24

identification only

25

after which time the

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

5

6 BY MR. GREG DAVIS:

7 Q. Let me now show you, Mr. Bevel,
what

8 has been marked as State's Exhibit 125-A, 125-B as
well

9 as 126-A and 126-B. Do you recognize these
photographs,

10 sir?

11 A. Yes, sir, I do.

12 Q. Okay. Do they truly and
accurately

13 depict the test that you performed out there on
November

14 26th, 1996, in the utility room?

15 A. They do.

16 Q. Okay. The top photograph 125-A
and

17 126-A, do we see the knife actually laying on the
floor?

18

19 MR. RICHARD C. MOSTY: Excuse me.

20 Before we go into that, I need to take the
witness on

21 voir dire on that exhibit very briefly.

22 THE COURT: Very well.

23

24

25

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1

VOIR DIRE EXAMINATION

2

3 BY MR. RICHARD MOSTY:

4 Q. Mr. Bevel, you've just testified
that

5 you have no knowledge of what the photography was
doing

6 other than the photography was being done?

7 A. I'm not sure. I didn't take the
8 photographs.

9 Q. Well, for instance, on those
exhibits

10 you cannot say that this photograph came from the
third

11 test, the second test, the fifth test? You can't
say

12 that, can you?

13 A. Well, other than the order that
they

14 occurred, on the roll of film, that would be the
only

15 way.

16 Q. But then you would have to go to
the

17 roll of film and say, negative number 1, test
number 1,

18 negative number 2 or whatever it is?

19 A. That would be the only way that

I

20 could do that, yes, sir.

21 Q. Whoever was taking those,

whoever was

22 creating the contact sheet, or the notes on the

23 photography would be able to say, these photographs

are

24 the first test, these photographs are the second,

these

25 photographs are the third?

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1 A. Or anybody who had access to
that
2 contact sheet or negative.

3 Q. That is not you?

4 A. If I had them in my possession I
could
5 tell you, yes, sir.

6 Q. Well, but as we sit here today,
you
7 are not able to?

8 A. I don't have the negatives or
contact
9 sheets in my possession.

10

11 MR. RICHARD C. MOSTY: We'll
object to

12 what's that number?

13 MR. GREG DAVIS: 125-A, 125-B,
126-A

14 and 126-B.

15 THE COURT: Is that being
offered now?

16 MR. GREG DAVIS: It will be in
just a

17 moment, your Honor. Yes, sir.

18 THE COURT: Well, whenever it
gets

19 offered, state the objection.

20 MR. RICHARD C. MOSTY: Thank
you.

21

22 DIRECT EXAMINATION (Resumed)

23

24 BY MR. GREG DAVIS:

25 Q. Mr. Bevel, again, we've labeled
these

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1 as test 1 and test 2 for the sake of simply
2 differentiating that 125-A and 125-B belong
together; is

3 that correct?

4 A. That is correct.

5 Q. 126-A and 126-B belong together,
so we

6 have labeled that as test 2; is that right?

7 A. Yes, sir.

8 Q. Okay. And then photographs,
125-A and

9 125-B, do we see in the first photograph the blade
knife

10 actually still laying on the floor, and then 125-B,
does

11 that represent the same floor after that knife had
been

12 removed off the floor?

13 A. It does.

14 Q. Would the same be true for
State's

15 Exhibit 126-A and 126-B? First, photographs
showing the

16 knife still on the floor, and then 126-B showing
the

17 floor after that knife has been removed; is that
right?

18 A. Yes, sir, that's correct.

19 Q. And these four photographs truly
and

20 accurately depict the scenes that they purport to
depict;

21 is that correct, sir?

22 A. That is correct.

23

24 MR. GREG DAVIS: Your Honor, at

this

25 time we will offer State's Exhibit 125-A, 125-B,
126-A

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1 and 126-B.

2 MR. RICHARD C. MOSTY: We object
on

3 the basis that the witness cannot identify what is
test

4 1, test 2. He said he does not have knowledge of
what

5 the photographs are, which test they
are, or that you can

6 tie those four photographs together.

And for the

7 previous reasons that we mentioned
earlier.

8 THE COURT: We
understand. All right.

9 All of those are noted. Objection
overruled. State's

10 Exhibit 125-A and B, and 126-A and B
are admitted.

11 MR. GREG DAVIS:
Okay.

12

13 (Whereupon, the
items

14 Heretofore
mentioned

1 A. All right.

2

3 (Whereupon, the
witness

4 stepped down from
the

5 witness box, and approached
6 The jury rail, for the
7 purpose of further describing
8 the exhibit to the jury.)

9

10 BY MR. GREG DAVIS:

11 Q. If you could, kind of walk us
through

12 these photographs and take us first to 125-A. What
does

13 that show us?

14 A. This is a photograph showing the
knife

15 laying on the tile floor in question in the utility
area

16 after it had come to rest from being dropped at
17 approximately waist-high.

18 Q. Okay. And again, we're looking
at

19 State's Exhibit No. 67 in this photograph; is that

right?

20 A. Yes, sir.

21 Q. Did you use the actual State's
Exhibit

22 for this test; is that right?

23 A. That is correct.

24 Q. Okay. And what does 125-B show
then?

25 A. 125-B is the same area from

1 approximately the same angle showing the tile, once
the

2 knife from 125 has simply been removed.

3 Q. Okay. What sort of pattern do we
see

4 there on 125-B?

5 A. On 125-B we have two different
types

6 of pattern. One of them is linear, both from where
the

7 knife originally hit as well as up above to where it

8 ultimately comes to rest, there are linear lines

9 consistent with the edge of the knife; and then going
out

10 from the linear line in both areas, there is blood

11 spatter that has gone from that impact to the tile

12 surrounding the linear lines.

13 Q. Okay. Now, this line here on
125-A,

14 that we see up here, okay, some distance away from
the

15 knife tip. Do you see that, what I am indicating on
the

16 right hand portion of that photograph?

17 A. Yes, sir, I do.

18 Q. Was that blood pattern produced

when

19 you dropped the knife shown in 125-A?

20 A. It was.

21 Q. Okay. So, we have the pattern

shown

22 on the right hand portion, then we also have the

pattern

23 shown around the knife; is that correct?

24 A. That is correct.

25 Q. And they are both produced by
the same

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1 drop?

2 A. Same drop of the knife, yes,
sir.

3 Q. If we can, let's go to 126-A
and

4 126-B. Again, what do see we in these two
photographs?

5 A. The same occurrence where in
126-A,

6 the top photograph, the knife is shown after it was
7 simply dropped from approximately waist-high on the
tile

8 floor, and then in 126-B is the same area, just
simply

9 the knife has been removed.

10 Q. Now, in State's Exhibit 126-A,
I'm

11 pointing to an area here, which I am going to call
the

12 right center portion of the photograph. Do you see
that,

13 sir?

14 A. Yes, sir, I do.

15 Q. Okay. And is there blood in that
16 area?

17 A. Yes, sir, there is.

18 Q. Okay. And, was that blood
produced

19 and actually deposited on the floor when you dropped
the

20 knife shown in State's Exhibit 126-A?

21 A. It was, sir.

22 Q. Okay. Again, looking at 126-B,
do we

23 see, again, corresponding area right center portion,
and

24 this time do we also see blood that is now from the
area

25 where the knife originally was in 126-A?

1 A. That is correct.

2 Q. Okay. Both of these patterns --
were

3 both of them produced when you made the one drop
here

4 shown in 126-A?

5 A. Yes, sir.

6 Q. Okay. Now, if you will just hold
7 this. Now, looking at State's Exhibits 38-A through
8 38-D, Mr. Bevel, do you see any bloodstain pattern in
any

9 of these four photographs that correspond to the
types of

10 blood patterns that you saw during your test on
November

11 26th, 1996?

12 A. No, sir.

13 Q. The blood drops that we see in 38-
A

14 through 38-D, are they consistent or inconsistent
with a

15 bloody knife being dropped or thrown on to the
utility

16 room floor on June 6th, 1996?

17 A. They would be inconsistent.

18 Q. Okay. Thank you, sir.

19

20

21

(Whereupon, the witness

22

Resumed the witness

23

Stand, and the

24

Proceedings were resumed

25

On the record, as

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1 Follows:)

2

3 BY MR. GREG DAVIS:

4 Q. Mr. Bevel, during your visit to
5801

5 Eagle Drive, sir, did you have a chance to go into
the

6 carpeted area of the house?

7 A. Yes, sir, I did.

8 Q. Okay. Let me back up. When you
were

9 doing the tests here shown in 125-A, 125-B and 126-A
and

10 126-B, was there any fresh blood on that floor, sir?

11 A. At the time that we began, no,
sir.

12 Q. Okay. The fresh blood that was
13 deposited, was that the product of your testing,
actually

14 dropping the blade knife on to the floor?

15 A. That is correct, sir.

16 Q. All right. Now, let me take you
into

17 the carpeted portion of the house. Did you actually
look

18 in I believe, what, the formal living area and the

dining

19 room of the house?

20 A. That is correct, sir.

21 Q. Mr. Bevel, have you had an
opportunity

22 to look at the photographs marked as State's Exhibits

23 111-B and 111-C?

24 A. Yes, sir, I have.

25 Q. Okay. And, have you also had an

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1 opportunity, sir, to look at the carpet that was
removed

2 from the family room?

3 A. I have.

4 Q. Were you able to actually see the
5 imprint in the carpet that we see here in State's
Exhibit

6 No. 111-B and 111-C, as you looked at the carpet out
7 there?

8 A. That is correct, sir.

9 Q. Okay. Now, when you went out
there on

10 November 26th, did you do any testing using State's
11 Exhibit No. 67 in any of the carpeted area of the
house?

12 A. I did, sir.

13 Q. Okay. Can you describe for the
14 members of the jury the type of testing that you did
in
15 the carpeted area of the house?

16 A. Yes, sir. The same occurrence
that we

17 previously described in taking the knife to a
container

18 that held whole human blood, to get blood coverage on

19 both sides of the knife blade, again, holding it
upright
20 until the dripping ceased from the pointed end of the
21 knife, and then did different experiments from
different
22 occurrences; in other words, of laying the knife down
to
23 dropping the knife to throwing the knife.
24 Q. Okay. And again, what was the
purpose
25 of that test?

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1 A. To try and determine if the stain
on
2 the carpet, that we previously talked about, from the
3 actual crime scene, if that was consistent with the
type
4 of pattern that could be left with a bloody knife,
either
5 being laid, dropped or thrown onto the carpet.

6 Q. Okay. Now, looking at State's
Exhibit
7 11-B and 11-C, the imprint there on that carpet, sir,
do
8 you have an opinion concerning what produced that
9 imprint?

10 A. Yes, sir, I do.

11 Q. Okay. Based upon your
observations of
12 that imprint and also based on the testing that you
did
13 on November 26, 1996, what is your opinion concerning
14 what produced the imprint shown in these two
photographs,
15 sir?

16 A. That it was done from a item that
is
17 similar in the configuration as to the knife as far

as

18 the, for example, the pointed end, the wide end,
the

19 handle, that has been just simply placed in that
area.

20 Q. Okay. As opposed to what?

21 A. Dropping or throwing.

22 Q. Okay. Again, would you
categorize

23 dropping as being a motion that you had shown
earlier

24 with regards to the linoleum floor, where you held
it at

25 waist level and then dropped it?

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1 A. That would be correct, sir.

2 Q. Okay. And again, throwing
would be

3 more of a movement of actually tossing it down on
the

4 floor, right?

5 A. With more force, yes, sir.

6 Q. Okay. And, the movement that I
am now

7 doing where I am actually just placing it down on
the

8 carpet, is that the motion that you are talking
about

9 this imprint being consistent with?

10 A. It is.

11 Q. If you either drop this or you
toss

12 this knife down on carpeting, what kind of imprint
do you

13 see?

14 A. You end up seeing the identical
15 occurrence that you saw on the tile floor where the
knife

16 originally strikes, it then bounces to another area
and

17 you are able to see the impression from the first

contact

18 to the second contact.

19 Q. Okay. Somewhat similar to what
we see

20 here in State's Exhibit 125-A, where we have a knife
that

21 is laying in one area but we have a sharp edge on
another

22 section of the flooring?

23 A. That is correct, sir.

24 Q. Did you observe the same type of
thing

25 when you would toss or drop State's Exhibit 67 on
the

1 carpet?

2 A. That is correct, sir.

3 Q. Now, Mr. Bevel, let me direct
your

4 attention to the vacuum cleaner, which in this case
has

5 been admitted as State's Exhibit No. 93. And let me
ask

6 you whether or not this is the vacuum cleaner that
you

7 inspected during one of your trips to Dallas?

8 A. That is correct, sir.

9 Q. Okay. And, when you looked at
this

10 vacuum cleaner, sir, did you see evidence of blood
on the

11 vacuum cleaner?

12 A. Yes, sir.

13 Q. All right. And as you looked at
it,

14 can you describe the type of blood that you actually
saw

15 on the vacuum cleaner?

16 A. Yes, sir. There was a bloody
transfer

17 on the handle, the upper portion of the vacuum
cleaner

18 that would be consistent, for example, with a bloody
hand

19 actually grabbing a hold of the handle.

20 Then, as you go down from the
handle

21 to the front part, there is a black, plastic piece
that

22 holds the bag cover, upright. And on that black,
plastic

23 piece there are several low velocity, in other
words,

24 very good sized volume blood droplets that are just
25 simply going down to that particular area as well as
to

1 other locations. As you go further down, there is
2 evidence of blood just simply falling downward with
the
3 vacuum cleaner in that upright position.

4 Q. Okay. Now, did you see evidence,
Mr.

5 Bevel, that blood had been dropped on to this vacuum
6 while it was still in an upright position as it is
right

7 now?

8 A. That is correct, sir.

9 Q. And again, was that low velocity
10 blood?

11 A. That is correct, sir.

12 Q. Which as a blood stain analyst
would

13 indicate to you, what?

14 A. That the item that was -- the
blood

15 was being separated from, which is simply above it
in

16 this case and instead of shaking your hand or
whatever

17 the blood source may be, there is little
movement. It's

18 just simply gravitational pull separating the
blood and

19 it falling downward as it separates from the
blood

20 source.

21 Q. Okay. Would that blood be
consistent

22 with an individual who is bleeding, dripping
blood,

23 standing next to this vacuum cleaner and as she
is doing

24 that, blood dripping from her on to this vacuum
cleaner?

25 A. It certainly would.

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Reporter

1 Q. The stain up here on the
handle, would

2 that also be consistent with an individual
standing next

3 to this and placing her bloody hand onto the
handle of

4 the vacuum cleaner?

5 A. It would.

6 Q. Okay. Now, did you see
evidence --

7 and let me just for the record, let me just
place this

8 vacuum cleaner down onto the floor.

9 Did you see evidence, Mr.
Bevel, that

10 blood had been deposited on this vacuum cleaner
after it

11 had been laid on to the floor?

12 A. Yes, sir. There are
numerous places

13 all over the vacuum cleaner as blood is found
consistent

14 with it being in this position at the time that
the blood

15 gets on it.

16 Q. Okay. Would that be
consistent with
17 an individual standing next to this vacuum
cleaner who's
18 bleeding, and as she is dripping blood, it
drips onto the
19 vacuum cleaner, sir?

20 A. Well, both that and simply
standing
21 next with the blood hitting the floor and then
additional
22 blood droplets impacting to the still wet blood
and then
23 going over or blood spatter going on to the
vacuum
24 cleaner.

25 Q. Okay. So actually, that
individual

1 could deposit blood on to the floor next to it
and then

2 that blood could impact other blood and then
could

3 basically bounce up and spatter over on to
this?

4 A. Yes, sir.

5 Q. Okay.

6

7 THE COURT: I think the
defense wants

8 to view.

9 MR. DOUGLAS MULDER: I just
wanted to

10 see what you were talking about.

11 THE COURT: All right. Come
on

12 around.

13 MR. DOUGLAS MULDER: Judge,
we can see

14 fine from here.

15

16 BY MR. GREG DAVIS:

17 Q. Okay. Just indicating
again, Mr.

18 Bevel, am I now pointing to an area basically
adjacent to
19 the vacuum cleaner as it is on the floor here?
20 A. Yes, sir.
21 Q. And as I understood your
testimony
22 then, it's possible for that individual who is
dripping
23 blood to then drip blood on to the floor area
next to the
24 vacuum cleaner for that blood to impact blood
already on
25 the floor; is that right?

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1 A. Yes, sir.

2 Q. And then as an occurrence of
the

3 collision of the two blood droplets, that that
will

4 produce spatter that then can come up and then
produce

5 small drops on the back side of this vacuum
cleaner; is

6 that right?

7 A. Or various places of the vacuum
8 cleaner, yes, sir.

9 Q. And you saw droplets on there, on
this

10 vacuum cleaner consistent with that also; is that
right?

11 A. That is correct.

12 Q. Mr. Bevel, while you were out
there at

13 the scene on November 26th, did you have an
opportunity,

14 sir, to look at the portion of the kitchen floor near
the

15 sink area?

16 A. I did, sir.

17 Q. Okay. How would you describe the
18 appearance of the flooring when you saw it?

19 A. There was evidence that, for
example,

20 a chemical, I believe amido black, that had been
sprayed

21 on the floor and it was still visible. And there was
22 some interaction with the chemical with blood that
was

23 still there.

24 Other items originally seen in the
25 photographs certainly were not in place; for example,
the

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1 vacuum cleaner was not there, a throw rug was not
there.

2 So things certainly had changed from the original
3 photography of the area.

4 Q. All right. Could you see evidence
of
5 blood on the floor?

6 A. Yes, sir.

7 Q. Okay. What types of patterns did
you
8 see on the floor in that area, sir?

9 A. There were low velocity blood
10 droplets, there was satellite created from blood
dripping
11 into blood. There were also patterns of blood being
12 disturbed. There were areas where blood had had
13 something that was rolled through the blood, such as
a
14 wheel of the vacuum cleaner.

15 Q. Okay. Let me show you State's
Exhibit

16 No. 43-E. Okay. Do you recognize what is portrayed
17 there in that photograph, sir?

18 A. Yes, sir, I do.

19 Q. Okay. And, the portion of the

20 photograph that I am now pointing to, how would
you

21 categorize this, sir?

22 A. That is a source of blood that
was

23 still wet and viscous. That had an item such as
the

24 wheel of the vacuum cleaner that was rolled
through it

25 and as the wheel is going through it, it's both
pushing

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1 blood in front of it as well as to the sides of
it,

2 leaving little ridges from where the blood has
been

3 displaced from rolling through the wet blood.

4 Q. Okay. With the amido black on
the

5 floor, were there other areas of the floor that
were

6 similar in appearance to the roll mark shown here
in

7 43-E?

8 A. That were similar in
appearance as

9 well as dimensions.

10 Q. Okay. As far as width, for
instance?

11 A. Yes, sir.

12 Q. Okay. As you looked at those
roll

13 marks, sir, could you make -- could you determine a
14 direction for the roll marks?

15 A. For some of them such as that
one,

16 there certainly a direction that is obvious.

17 Q. All right. If you could, if you
could

18 just take that photograph and just show us what
direction

19 we see in that one?

20 A. It's the same principle if you
had a

21 paint brush that has paint on it and then as you
make a

22 mark, you go from the most paint to a smaller volume
of

23 paint. And it's the same thing we have here; the
first

24 contact is where you have the greatest volume of
blood

25 and then it dissipates, the correct term is
feathering,

1 out, as you go along.

2 In this photograph as I am
looking at

3 it, it is going from the proximate center, downward
and

4 to the left, the actual motion.

5 Q. Okay. So, actually as we look at
it

6 then, did I understand you to say that the motion
starts,

7 what I'm going to say is the right portion of that
roll

8 mark and it moves over toward the left; is that
right?

9 A. Yes, sir.

10 Q. Okay. On the other roll marks
that

11 you saw, were you able to make some determination
of

12 direction on those, also?

13 A. On some of them, not all of
them.

14 Q. Okay. And, what were your
findings

15 there?

16 A. That the item

creating the roll marks
17 was going in opposing directions. In
other words, if we
18 have a motion that is in this
direction that we were just
19 simply looking at, that if you go over
to another area,
20 you have got direction going actually
in a different
21 direction or almost at a 90 degree
angle to the original.
22 Q. Okay. Again, with
the Court's
23 permission, if you could just step
down here and just use
24 State's Exhibit No. 93. Demonstate
the type of motion
25 that you were seeing on that kitchen
floor on November

Sandra M. Halsey, CSR, Official
Court Reporter

1 26th, '96?

2 A. Yes, sir.

3

4 (Whereupon, the
witness

5 stepped down from
the

6 witness box, and approached
7 The jury rail, for the
8 purpose of further describing
9 the exhibit to the jury.)

10

11 BY MR. GREG DAVIS:

12 Q. All right, go ahead.

13 A. Okay. It is a motion just simply
of

14 the wheel rolling through the bloodstain. However,
they

15 are not connected. You then have another area and
you

16 would just about have to lift the vacuum cleaner and
go

17 over to another area and then proceed to roll again
in a

18 different direction from the original location or --
and

19 original direction.

20 Q. Okay. So there were differing
21 directions to these movements; is that right?

22 A. As well as not being connected,
23 so

23 there has to be some movement up off of the floor
with

24 the vacuum cleaner.

25 Q. The roll marks that you saw on
the

Reporter Sandra M. Halsey, CSR, Official Court

1 floor, sir, were they consistent with State's
Exhibit No.

2 93 just simply being dumped over or knocked over
in one

3 motion?

4 A. They would not, no, sir.

5 Q. Okay. Would they be
consistent with

6 State's Exhibit No. 93 having been rolled in
several

7 different directions, in the sink area on June
6th, 1996?

8 A. That would be consistent with
what was

9 found, yes, sir.

10 Q. Okay.

11

12 THE COURT: Mr. Davis, have
you

13 completed the vacuum cleaner questions?

14 MR. GREG DAVIS: I just have
one more

15 question.

16 THE COURT: All right. That
will be

17 fine. Go ahead with that one.

18 MR. GREG DAVIS: Yes, sir,
thank you.

19 THE COURT: I think we will
finish

20 that one point and then recess for the day.

21 MR. GREG DAVIS: Yes, sir.

All right.

22

23 BY MR. GREG DAVIS:

24 Q. Mr. Bevel, based upon the
photographs

25 that you have seen in this area and your
observations on

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1 November 26th, '96, and also your examination of
the
2 vacuum cleaner, sir; do you have an opinion about
the
3 amount of time that passed between the time that
these
4 blood drops are actually dropped on the floor and
the
5 vacuum cleaner is then run through the drops?

6 A. I have an approximation, yes,
sir.

7 Q. Okay. And, what is your
opinion
8 concerning the time period between the dropping of
the
9 blood and the rolling of the vacuum cleaner through
the
10 blood?

11 MR. RICHARD C. MOSTY: Your
Honor, I
12 am going to have to -- this is a separate objection.
13 This witness has not been shown to be an expert in
blood
14 coagulation.

15 THE COURT: Overruled. Go ahead.
If

16 you have an opinion, state it.

17 THE WITNESS: Yes, sir. It would

be a

18 relatively short period of time because there is no

19 peripheral staining or skeletalization of the

individual

20 blood seen prior to the movement of the item through

the

21 blood.

22

23 BY MR. GREG DAVIS:

24 Q. Okay. When you talk about

25 skeletalization of a blood drop, what do you mean?

1 A. Blood drops from the -- or excuse
me,

2 blood dries from the outside edges, and then it
dries

3 inward. Even if the blood is wiped away within 50
4 seconds from the time that it is actually deposited,
you

5 will see a peripheral stain that is consistent with
the

6 original area of the outside edges of the blood
stain.

7 Q. Okay. Do you see that kind
of

8 skeletalization of the blood as shown on the
kitchen

9 floor here in State's Exhibit No. 43?

10 A. I do not.

11 Q. Okay. And when you talk
about a

12 relatively short period of time, between the
drops

13 dropping and the rollers rolling, what kind of time
frame

14 are you talking about, sir?

15 A. Because, again of the volume of
blood

16 and we're not talking about an individual droplet
and
17 that is what I was talking about just a moment ago,
but I
18 would say somewhere in the range of several minutes.

19 MR. GREG DAVIS: Judge, I believe
that
20 concludes this portion of my questioning.

21 THE COURT: All right. Ladies
and
22 gentlemen of the jury, we want to thank you for
staying
23 over, and we're going recess now until 9:00 tomorrow
24 morning. And, if we're all here on time, we're
going to
25 get going just as quick as we can.

1 Same instructions as always. Do
no
2 investigation on your own. You will decide this
case on
3 the testimony and the evidence you hear and see in
this
4 Courtroom, and nothing else. Do not discuss the
case
5 among yourselves for any reason whatsoever, because
it is
6 not over yet. When the trial is over you may talk or
not
7 talk as you see fit. Do no investigation --
8 Please be seated in the audience.
9 Do no investigation on your own.
This
10 will obviously be on radio and TV and the newspapers
and
11 if you see anything like that or hear it, just please
12 ignore it. Only decide -- your verdict will be
based
13 only on the testimony you hear and the evidence
you
14 receive in this courtroom.
15 Wear your juror badge in the
16 courthouse and in the area. And other than, don't

wear

17 it out anyplace else. We will see everybody
tomorrow

18 morning at 9:00 o'clock. Thank you for coming.

19 If the audience will remain
seated

20 please until the jury clears the
courthouse. Then we are

21 going to clear the courtroom and
those who want to see

22 the exhibits can step back in
briefly. We know there are

23 some here that some of the press
particularly want to

24 see.

25 All right.

Sandra M. Halsey, CSR,
Official Court Reporter

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1
2 (Whereupon, a
short
3 Recess was
taken,
4 After which
time,
5 The proceedings were
6 Resumed on the
record,
7 In the presence and
8 Hearing of the
defendant
9 And outside the
presence
10 Of the jury, as
follows:)
11
12 THE COURT: Let's clear the room.
If
13 you will clear the room, please.
14 Let the record reflect that these
15 proceedings are being held outside the presence of
the
16 jury, and that all the parties in the trial are
present.

17 MR. GREG DAVIS: I have all of
18 photographs that were taken out there on 26.

19 MR. RICHARD C. MOSTY: Mr. Davis
has
20 handed me what he says are all the photographs taken
on
21 November 26th.

22 MR. GREG DAVIS: Right. This is
just
23 for the record, this will include the photographs
that
24 were taken in the carpeted area, the linoleum area.
25 And also there are photographs
in here

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Reporter

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1 that were taken of the section of wall that was
removed

2 from the family room and I have also got one
additional

3 board back here that contains three photographs of
the

4 carpeted area, and I am going to leave that in here
for

5 counsel to look at also.

6 MR. RICHARD C. MOSTY: I take it
there

7 are no contact sheets?

8 MR. GREG DAVIS: No.

9 MR. DOUGLAS MULDER: There were
three

10 photographs that were taken of the defendant by
11 Patterson, on June the 6th. And, Lloyd?

12 MR. LLOYD HARRELL: Yes, sir.

13 MR. DOUGLAS MULDER: The
three

14 Polaroid pictures that you saw that were
taken by

15 Patterson, were taken by somebody?

16 MR. LLOYD HARRELL:

Beddingfield or

17 Patterson on June the 6th.

1 MR. DOUGLAS MULDER: There
were three

2 of them taken of her in the hospital.

3 MR. GREG DAVIS: All right.

4 THE COURT: Whatever is
needed, please

5 let them have it.

6 MR. GREG DAVIS: Okay. We'll
7 certainly look for those tonight.

8 MR. DOUGLAS MULDER: Can I
expect

9 those in the morning?

10 THE COURT: Well, I think if
you will

11 stick around, they'll probably have them at 6:30.

12 MR. DOUGLAS MULDER: Well, I
don't

13 mind. I will be happy to stay if you are telling
me they

14 are going to get them.

15 THE COURT: Well, can you get
them in

16 the morning?

17 MR. GREG DAVIS: Well, I'll
tell you,

18 I don't know where they are right now. I have

not talked

19 with Detective Patterson about that, but I will
speak

20 with him when we leave the courtroom today.

21 THE COURT: All right. Let's
see if

22 we can get some tomorrow morning. Again, do you
still

23 think you will close tomorrow?

24 MR. GREG DAVIS: Yes, sir.

25 THE COURT: All right. Is
that all?

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MR. DOUGLAS MULDER: Yes, sir.

THE COURT: All right. Thank

you.

(Whereupon, the jury was
Earlier excused for the
day, to return on the
next day, January 22, 1997,
at 9:00 a.m.)

(These proceedings are continued

to
the next volume in this cause.)

Sandra M. Halsey, CSR, Official Court Reporter

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CERTIFICATION PAGE

THE STATE OF TEXAS)
THE COUNTY OF DALLAS)

I, Sandra M. Halsey, was the Official Court
Reporter of Criminal District Court Number 3, of

Dallas

County, Texas, do hereby certify that I reported in
Stenograph notes the foregoing proceedings, and that

they

have been edited by me, or under my direction and the
foregoing transcript contains a full, true, complete

and

accurate transcript of the proceedings held in this
matter, to the best of my knowledge.

I further certify that this transcript of the
proceedings truly and correctly reflects the

exhibits, if

any, offered by the respective parties.

SUBSCRIBED AND SWORN TO, this _____ day of
_____, 1997.

Sandra M. Day Halsey, CSR
Official Court Reporter
363RD Judicial District

Court

Dallas County, Texas

22

Phone, (214) 653-

5893

23

24 Cert. No. 308

25 Exp 12-31-98

Sandra

M. Halsey, CSR,

Official Court

Reporter

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1 STATE OF
TEXAS)
2 COUNTY OF
DALLAS)

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JUDGES CERTIFICATE

8 The above and foregoing transcript, as
certified

9 by the Official Court Reporter, having been presented
to
10 me, has been examined and is approved as a true and
11 correct transcript of the proceedings had in the
12 foregoing styled cause, and aforementioned cause
number
13 of this case.

14
15
16
17
18

MARK TOLLE, JUDGE

19
20

Criminal District Court Number 3

21

Dallas County, Texas

22

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Sandra M. Halsey, CSR, Official Court Reporter

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