

Thursday

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Sandra M. Halsey, CSR,
Official Court Reporter

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C A P T

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4 BE IT REMEMBERED THAT, on
Thursday, the 23rd 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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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

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

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14

15 AND: HON. RICHARD

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16 Attorney at

Law

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Street, Suite 200

19 Kerrville,

TX 78028

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21 AND: HON. S.

PRESTON DOUGLASS, JR.

22 Attorney at

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1

2 AND: HON. JOHN

HAGLER

3 Attorney at

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4 901 Main Street, Suite 3601

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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

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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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P R O C E E D I N G S

January 23rd, 1997
Thursday
9:00 a.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: We're back on the

record

21 now.

22 MR. GREG DAVIS: Yes, sir.

23 THE COURT: The first witness is

Alan

24 Brantley. Call the witness in, please.

25 If you will have a seat right
here,

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1 please, sir.

2 All right. Bring the jury in,
please.

3 MR. RICHARD C. MOSTY: Before we
4 start, could we inquire as to the nature of his
5 testimony? I think we may have to have a hearing
outside
6 of the presence of the jury.

7 MR. TOBY SHOOK: He is Alan
Brantley,
8 who is a special agent with the FBI. He is in the
9 behavioral science unit.

10 He is going to testify on
criminal
11 investigative analysis and staging.

12 MR. RICHARD C. MOSTY: Profiler?

13 MR. TOBY SHOOK: No, criminal
14 investigative analysis and staging. He is not
testifying
15 on profiling.

16 THE COURT: Well, should we need
that,
17 we will do it at the appropriate time.

18 MR. RICHARD C. MOSTY: Well,
before we
19 get into anything that is expressing opinions about

20 staging, then we are going to have to have a Daubert
21 hearing. _____

22 THE COURT: Well, first of all, I
gave
23 you Daubert the other day. Now, I permitted
Daubert.

24 And that Daubert, Robinson hearing was on the

25 qualifying of the State's expert, Mr. Bevel.

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1 Well, the scope of any Daubert
2 hearing, first of all, it's not germane because it's
3 primarily a civil case, it was tried. The Supreme
Court
4 brought it out. It's a civil case. Robinson is a
civil

5 case. It is adopted in Texas by the Texas Supreme
Court,

6 which handles only civil matters.

7 So it has no bearing on a
criminal

8 case, and is not controlling. So, it does not
control

9 any criminal proceeding.

10 MR. RICHARD C. MOSTY: Of course,
I

11 beg to differ. If the Supreme Court of the United
States

12 sets a standard of expert testimony in a civil case,
then

13 you know for a fact, that that standard is going to
be

14 equally applied in a criminal case, where the burden
of

15 proof and the presumption of innocence and the

16 constitutional rights of an accused come into play.

17 So, I don't -- there is no sense

in

18 arguing with the Court about that, but we do have to
make

19 our record because we disagree with the Court, and

we

20 want to make sure that any Daubert objection is

21 preserved.

22 THE COURT: Well, I will deny the

23 hearing now. Any error will be preserved by that

ruling.

24 MR. RICHARD C. MOSTY: And that

25 continues on, that is running --

1 THE COURT: Oh, yes, you will
have a

2 running objection.

3 MR. RICHARD C. MOSTY: That is
4 actually a denial of even the right to a hearing to
5 determine what this witness is going to testify
about, is

6 what you have denied us?

7 THE COURT: Well, if you want to
have

8 the hearing itself, that is fine, we will do the
hearing.

9 MR. TOBY L. SHOOK: Well, Judge,
if he

10 wants to have a 705 hearing, that is how you do it
under

11 the Rules.

12 THE COURT: A 705 is the correct
way

13 to do it under the Rules. We are not going to have
14 another Daubert hearing like that --

15 MR. TOBY L. SHOOK: That is just
to

16 inquire into his opinions and underlying data.

17 THE COURT: -- because we have

already

18 been through that, and that doesn't control down
here.

19 MR. RICHARD C. MOSTY: 705
doesn't

20 control in Kerr County?

21 THE COURT: 705 does, and we can
get

22 on that kind of hearing.

23 These proceedings are being held
24 outside of the presence of the jury, and all parties
in
25 the trial are present.

1 Tell the jury they can be seated
in
2 the jury room for a few minutes.

3 Raise your right hand. Do you
4 solemnly swear or affirm that the testimony that you
are
5 about to give will be the truth, the whole truth,
and
6 nothing but the truth so help you God?

7 THE WITNESS: I do.

8
9 (Whereupon, the witness
10 Was duly sworn by the
11 Court, to speak the
truth,

12 The whole truth and
13 Nothing but the truth,
14 After which, the
15 Proceedings were
16 Resumed as follows:)

17
18 THE COURT: You are under the
Rule of
19 Evidence, which simply means when you are not
testifying,
20 you have to remain outside the courtroom.

21 Don't talk about your testimony
to
22 anybody who has testified, in other words, don't
compare
23 it. You may talk to the attorneys for either side.
24 If someone tries to talk to you
about
25 your testimony, please tell the attorney for the
side

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1 that called you.

2 If you will state your name and
spell

3 your last name for the court reporter, please.

4 THE WITNESS: My name is Alan
5 Brantley, B-R-A-N-T-L-E-Y.

6 THE COURT: All right. Mr.
Shook.

7

8

9 Whereupon,

10

11 ALAN BRANTLEY,

12

13 was called as a witness, having been first duly
sworn by

14 the Court to speak the truth, the whole truth, and
15 nothing but the truth, testified in open court, as
16 follows:

17

18 MR. TOBY L. SHOOK: Judge, so
it's

19 clear, are we doing a 705 hearing? Is that what you
are

20 requesting?

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

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

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1 facts or data --

2 THE COURT: That is correct.

3 MR. TOBY L. SHOOK: -- so we can
get

4 into what those are, and that is all it's limited to
and

5 that voir dire is supposed to be conducted, of
course, by

6 the defense counsel.

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

8 Proceed.

9

10

11 VOIR DIRE EXAMINATION

12

13 BY MR. DOUGLAS MULDER:

14 Q. Mr. Brantley, tell your us your
full

15 name, please, sir.

16 A. Alan Brantley.

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

18 A. I'm a supervisory special agent
with

19 the FBI, that is correct.

20 Q. All right. And, how many years
have

21 you been an FBI agent?

22 A. About 13 and a half years.

23 Q. Okay. Would you acquaint the
Court

24 with your educational background and experience?

25

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

2 Mulder. Judge, this is outside the scope of a 705
3 hearing. A 705 hearing is only to elicit his
opinions

4 and then what the underlying factors are for those
5 opinions --

6 THE COURT: Sustained. Let's
get

7 right into the opinions. Ask what the opinions are
and
8 the basis for them, please.

9

10 BY MR. DOUGLAS MULDER:

11 Q. All right. Mr. Brantley, you
have

12 apparently -- I don't know why you are here. Are
you

13 here to testify with respect to fingerprints?

14 A. My understanding is, I'm here to
talk

15 about crime analysis and the analysis of this
particular

16 crime scene.

17 Q. All right. Have you analyzed

this

18 crime scene?

19 A. I have, yes, sir.

20 Q. And when was that done?

21 A. Well, I first encountered this
case

22 back in June of '96. I was in Dallas on another
matter

23 and was aware that this had occurred, and was
actually

24 assigned this case, September 20th.

25 Q. All right.

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

8 Q. When did you arrive here?

9 A. I came in --

10

11 MR. TOBY L. SHOOK: Judge, again,

we

12 will object. That is outside of the scope of 705.

13 THE COURT: Sustained. Let's stay

14 right on the point, please.

15

16 BY MR. DOUGLAS MULDER:

17 Q. All right. Well, just tell us

what

18 information that you have received from the
prosecution.

19

20 MR. TOBY L. SHOOK: Judge, again,
this

21 is outside scope of 705.

22 MR. DOUGLAS MULDER: Well, Judge
we

23 have a right to look at what he has reviewed.

24 MR. TOBY L. SHOOK: As long as
they do

25 it according to 705.

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1 THE COURT: That is right. All we
2 need to do, is elicit from him what his opinions will
be,
3 and the underlying basis of them, please.

4 MR. RICHARD C. MOSTY: It's the
5 underlying facts or data upon which he bases his
opinion

6 is how the rule says, and that's the question --

7 MR. DOUGLAS MULDER: That's right.

8 THE COURT: Do that, and do that
9 briefly, please.

10 MR. DOUGLAS MULDER: All right.

11

12 BY MR. DOUGLAS MULDER:

13 Q. All right. Well, tell us all of
the

14 underlying facts and data upon which you base your --
15 first, tell us what your opinion is.

16 A. My opinion based on a
comprehensive

17 review of all the facts and circumstances and
information

18 that was provided to me by the prosecutors and
19 investigators, it's my opinion that this crime scene
was

20 staged, and that both Devon and Damon were killed by
21 someone that they knew, and someone that they knew
very
22 well.

23 Q. Is that the extent of your
conclusion?

24 A. That is it in summary form. Of
25 course, I looked at a variety of features at that
crime

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1 scene in arriving at that opinion, and certainly have
2 some thoughts on those particular features.

3 Q. Yes, sir. Mr. Brantley, what I
would

4 like from you is your -- just give us the entire
opinion

5 that you intend to project to the jury?

6 A. That's it.

7 Q. You are not going to flower it up
a

8 little bit?

9 A. Well, it depends on your
questioning

10 and the questions from the prosecutor, but I also
intend,

11 again, to talk about how I arrived at that opinion,
and

12 again, the major features that I considered.

13 Q. Have you prepared a report?

14 A. No, I have not.

15 Q. Okay. Well, tell the Court the
data

16 that you reviewed, and how you have arrived at that
17 decision?

18 A. If I may refer to my notes?

19 Q. You bet.

20 A. The materials I reviewed
included --

21 excuse me -- crime scene photos, crime scene video,
22 autopsy photos, autopsy reports, I looked at aerial
23 photographs, crime scene sketches, also medical
reports.

24 Q. Let me -- I'm trying to write
these
25 down; crime scene photos, videos, autopsies?

1
correct.

A. That's

2
photos?

Q. Aerial

3
correct.

A. That's

4
diagrams?

Q. What else? Crime scene

5
diagrams.

A. Crime scene sketches or

6

Q. Sketches?

7

A. That's right.

8

Q. Okay.

9

A. Medical reports, forensic
reports,

10 investigative reports or police reports.

11

Q. All right. Just a second.

Forensic

12 reports?

13

A. That's correct.

14

Q. Okay.

15

arrest

A. Court documents, affidavits for

16 and search.

17

Q. Okay.

18 A. Newspaper accounts and media
accounts

19 of what occurred.

20 Q. All right.

21 A. Witness statements.

22 Q. Witness statements by whom?

23 A. By neighbors, friends and
relatives of

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

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1 Q. Okay.

2 A. Transcript of the 911 call that
was

3 made, and a variety of consultations with the
4 prosecutors, and the investigators.

5 Also, I visited the residence at
5801

6 Eagle Drive.

7 Q. Okay.

8 A. I looked around in the vicinity
of

9 that particular neighborhood. Consulted with
forensic

10 experts that have also testified, and also
consulted with

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

12 believe.

13 Q. Did you talk with Mr. Bevel?

14 A. I did, yes, sir.

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

16 A. This was in October of '96,
when I

17 travelled to Dallas for a pretrial consultation

with the

18 prosecutors, investigators and forensic experts.

19 Q. Did you testify in their mock
court,

20 mock trial?

21 A. No, sir.

22 Q. You didn't? Were you there for
that?

23 A. No, sir.

24 Q. Okay. Let me see if I have got
the --
25 everything that you tell me you based your opinion
on?

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1 Crime scene photos, videos of the crime scene,
autopsy

2 protocol, crime scene sketches and diagrams?

3 A. Autopsy photos, also.

4 Q. Crime scene sketches and
diagrams?

5 A. That's correct.

6 Q. Aerial photographs?

7 A. That's correct.

8 Q. Medical reports?

9 A. That is also correct.

10 Q. Is that -- would that be the
autopsy

11 protocols?

12 A. No. I included in the medical
reports

13 reports of Mrs. Routier's injuries and wounds.

14 Q. Okay. Forensic reports?

15 A. That's correct.

16 Q. By whom?

17 A. Mr. Bevel, and I believe, Mr.
Linch.

18 Also contained in that would have been, well, some
19 information from the medical examiner's autopsy
protocol,

20 and I considered the forensic -- or the toxicology
21 results.

22 Q. Okay. Court documents?

23 A. That's correct.

24 Q. What court documents?

25 A. Well, affidavits for arrest and
search

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1 warrant, primarily.

2 Q. Okay.

3 A. And investigative reports or
police

4 reports, their entire file.

5 Q. Okay. Media accounts, witness

6 statements, and could you tell me who you had
witness

7 statements from?

8 A. Well, they were numerous. I have
not

9 listed them out, but for the most part, these were
10 employees of the Routiers' or
coworkers, neighbors,

11 relatives.

12 Q. Okay. That would

be Basia, or Barbara

13 Jovell?

14 A. Again, I have not
delineated any.

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

16 A. No, sir.

17 Q. The young lady from
Poland, that

18 speaks with an accent?

19 A. I am aware of the
information that she
20 has provided to the prosecutors and
the investigators and
21 that information was relayed to me.

22 Q. So you have not
talked to her in
23 person?

24 A. No, I have not.

25 Q. Okay. All right.
Friends and

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1 relatives?

2 A. When I'm talking
about witness

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

4 interviews that I have conducted
myself. These are

5 accounts or reports of these
interviews.

6 Q. All right. Things
that came to you

7 second or third-hand?

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

9 prosecutor and the investigators.

10 Q. Were these related
to you orally or in

11 writing?

12 A. A combination.

13 Q. Okay. I assume you
would have made

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

15 have in your file?

16 A. That's correct.

17 Q. You have your file

with you, don't

18 you?

19 A. Not the complete
file, but I brought a
20 considerable amount of the case file
information with me
21 to review while I have been here.

22 Q. Where is the
complete file?

23 A. Most of it is back
at Quantico.

24 Q. Well, I mean, why
would you come to
25 Kerrville to testify and leave your
file back in

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1 Quantico?

2 A. Well, the
information that I left back

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

4 prosecutor and they had a complete
file here.

5 So I had, just to
give you an idea of

6 what I have looked at, I had almost a
thousand 8 by 10

7 color photographs of the crime scene,
and aerial

8 photographs, autopsy reports, that
stuff. That is a

9 rather sizable carry, if you will.

10 Q. You had a thousand
photographs?

11 A. Well, 975, to be
exact.

12

13 MR. DOUGLAS MULDER:

Judge, we asked

14 for all of the photographs, and we do
not have 975

15 photographs.

16 THE COURT: Fine.

Let's continue with

17 the hearing, please.

18

19 BY MR. DOUGLAS MULDER:

20 Q. Would you show me

what you brought of

21 your file?

22 A. I certainly can, if

the Judge would

23 permit me to step down?

24

25 THE COURT: You may
step down, by all

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1 means.

2

3 (Whereupon, the
witness

4 Stepped down from
the

5 Witness stand, and
6 Approached the jury
rail

7 And the proceedings
were

8 Resumed as follows:)

9

10 BY MR. DOUGLAS MULDER:

11 Q. Is this the extent of your file?

12 A. This is the extent of what I
brought

13 with me here to Kerrville.

14 Q. All right. What about that
envelope

15 you have on the --

16 A. These are personal notes.

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

19 A. These, I believe, were
representative,

20 and very descriptive of some of the features that I
21 focused on.

22 Q. I just -- were these photographs
taken

23 according to some FBI protocol?

24 A. No, sir.

25 Q. Are you sure about that?

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1 A. These were taken by the local
police

2 department investigators.

3 Q. Okay.

4

5 MR. DOUGLAS MULDER: I'll just
need a

6 minute to look this over.

7 THE COURT: All right. Go ahead.

8 MR. DOUGLAS MULDER: Do you want
me to

9 do it now?

10 THE COURT: Yes, sir.

11 MR. DOUGLAS MULDER: I was going
to do

12 it during the --

13 MR. JOHN HAGLER: Your Honor,
while

14 he's looking at those documents, to save some time
for

15 the Court, I'd like to go ahead and make some
objections

16 now, based on what has been testified to.

17 THE COURT: That will be fine,
Mr.

18 Hagler.

19 MR. JOHN HAGLER: Okay, Your
Honor.

20 May I just put my book up here?

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

23 MR. JOHN HAGLER: Your Honor, as
I
24 understand the witness has already stated that he
is
25 going to testify essentially, that in his opinion,
that

1 this is a staged crime scene; and secondly, that
whoever

2 the assailant was was apparently well known to the
3 victims in this case.

4 First, your Honor, we would
reurge all

5 of our previous objections that were voiced to the
6 testimony of Mr. Bevel, you know, under Daubert and

7 Robinson. _____

8 And I might also point out to
the

9 Court, obviously, Daubert is a Supreme Court case,
and

10 Robinson is a Texas Supreme Court case. The
significant

11 fact is, your Honor, that they are interpreting
Rule 702.

12 And Rule 702, as the Court well knows, applies both
to --

13 is virtually identical as far as the civil and
criminal

14 codes of evidence.

15 Now, so far, your Honor, this
witness,

16 and our objection would be that; one, that under
the

17 Daubert and Robinson standards, of course, this
Court now

18 _____
has the responsibility of reviewing expert
testimony, and

19 determining whether or not it's relevant, whether
it's

20 reliable, and whether it's based on a proven
scientific

21 and valid principle.

22 In -- and our objection under
Rule

23 702, 703 and 705, is the fact that essentially what
this

24 witness is going to be testifying to, is that there
is no

25 basis under any scientific technique or principle
or

1 theory that would validate his personal opinion.

It's

2 simply mere speculation on his part as to what
actually

3 happened.

4 Secondly, your Honor, there is
no

5 adequate and reliable evidentiary base. In other
words,

6 he is stating what he is basing his opinion on.

It's

7 basically on various types of matters, documents or
8 photographs interviews, that in many cases are going
to

9 be hearsay. Their reliability is unestablished and
10 unproven. We have no idea as to what the source of
the

11 underlying facts, upon which he is basing his so-
called

12 scientific opinion.

13 Now, in this respect, your Honor,

I

14 might also mention that it denies us the opportunity
of

15 effectively confronting and cross examining his --
the

16 underlying sources or witnesses that have provided
him
17 with the information upon which his expert opinion
is
18 based.

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

22 Now, we're fully aware, your
Honor,

23 that under Rule 704, that the Courts have
liberalized
24 admission of expert testimony to the extent that
an
25 expert witness can now, if in fact, he is a
proven expert
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Reporter

1 and his testimony is based on a valid
scientific

2 technique or theory, can testify as to all of
the
3 conditions of fact.

4 However, there is a close and fine
5 line as to what an ultimate issue in a case is, and
what

6 a final issue is. And a final issue, I'm referring
to

7 it, as a witness's opinion as to an individual's
guilt or

8 innocence.

9 Now, in this case, if this witness
10 testifies, your Honor, we're going to cross that
line.

11 He is not here simply to testify as to a particular
12 location of a so-called piece of evidence, or this
type
13 of thing.

14 What he is going to be testifying
to

15 is, if you objectively and fairly examine his
testimony,

16 he is going to testify to this Jury, that the

defendant

17 committed the offense. That is what it boils down
to.

18 He is going to cross that
line, and if

19 that be the case, it goes further than the intent
of 704.

20 It's, in effect, -- this witness's expression as
to his

21 personal opinion as to the guilt of the
defendant.

22 Now, in that respect, again,
it's

23 based on -- it's a violation of 702, 703 and 705.
We've

24 effectively been denied our right of cross
examining the

25 underlying sources of his opinion which, again,
goes

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1 beyond the scope of Rule 704.

2 THE COURT: That's it?

3 MR. JOHN HAGLER: Well, we
also,

4 obviously, your Honor, we have a 703 situation, a
5 balancing -- I think, even, you know, in the
unlikely

6 event the Court would admit this testimony, we
would

7 submit that clearly, clearly by -- we have had 13
days of

8 testimony, and now they bring in at the last minute
one

9 witness, who says that he has examined a few
photographs,

10 and has talked to some neighbors, and looked at a few
11 reports. And in his opinion the defendant is
guilty.

12 We would submit that is clearly
going

13 to be misleading, confusing and, again, would
constitute

14 a violation of the Fourteenth Amendment.

15 THE COURT: Well, I think the
opinion

16 is that both Damon and Devin Routier were killed by
17 someone they knew well and the crime scene was
staged.

18 I think that is the opinion; is
that
19 correct?

20 THE WITNESS: That is correct,
your
21 Honor.

22 THE COURT: All right.

23 MR. JOHN HAGLER: One other thing
too,
24 your Honor, is that he is again basing -- he has
already
25 stated his source of some of those underlying facts,
and

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1 again, it's broad. It's going to include hearsay
2 statements from other individuals, that we have been
3 denied our opportunity to confront and cross examine,
so
4 his opinion is going to be based on inadmissible or
5 testimony that we would submit would be hearsay
testimony
6 and therefore would constitute a violation of the
Sixth
7 Amendment, and Article 1, Section 10.

8 THE COURT: All right. Objection
9 overruled, and with the 401, 403 balancing test,
the
10 Court feels that it's relevant and the Court feels
the
11 prejudicial effect is far outweighed by the
probative
12 value and it would help the jury come to a just
verdict
13 in this particular case.

14 MR. RICHARD C. MOSTY: Of
course,
15 we're not through with our examination of him yet.

16 THE COURT: We understand that,
and we

17 likewise understand Mr. Hagler's objections.

18 MR. DOUGLAS MULDER: Judge, this
19 is
20 going to take some time. And, I might point out to
21 the
22 Court, they have reports in here, that we have never
23 seen
24 before. As the Court may well understand, and I am
25 going
26 to need to read these reports.

27 THE COURT: Well, how long do you
28 think it will take you?

29 MR. DOUGLAS MULDER: Well, I don't

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1 know, I'm reading them as I go along, but I don't
know

2 how many there are.

3 MR. RICHARD C. MOSTY: Here is
4 information that he has based on -- for instance, on
this

5 stack here is the Dallas Morning News, which if I --
my

6 recollection is, that it has not been admitted into
7 evidence, nor will it be, ever in this trial.

8 It is going to take us a while to
go
9 through all this stuff.

10 THE COURT: Well, do you think --

11 MR. TOBY L. SHOOK: Well, Judge
the

12 basis of the hearing is to go over the underlying
facts

13 and data. It's not -- they can read the file before
they

14 cross examine him though. We can move forward.

15 THE COURT: Well, I understand
that.

16 The hearing is here and what we intend to do is go
ahead.

17 Before you cross examine the witness, I certainly
will

18 give you time to read the file.

19 MR. RICHARD C. MOSTY: We're
entitled

20 in this hearing to direct our examination to the
21 underlying facts and data fully, not partially, but
22 fully. And, we have got to have adequate time to do
23 that.

24 THE COURT: And how long will that
25 take?

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1 MR. DOUGLAS MULDER: Well, I can't
--

2 I can't do it until I read the file. And I have -- I
got

3 the file about five minutes ago.

4 THE COURT: Well, you are
experienced

5 attorneys, and how long do you think it will take you
to

6 read it?

7 MR. DOUGLAS MULDER: Judge, I
don't

8 know. A couple days? I don't know. Well, you know,
it

9 may take me a half hour. I don't know.

10 THE COURT: I'm happy to recess.

11 MR. DOUGLAS MULDER: I don't want
to

12 reread stuff I have already read.

13 THE COURT: I understand.

14 MR. DOUGLAS MULDER: But there are
15 things in here that I have never seen before, and I
need

16 to read it.

17 THE COURT: Well, if we recess for

30

18 minutes and see what it's like then, is that fair
enough?

19 MR. DOUGLAS MULDER: Sure.

20 THE COURT: Fine. Let's do that
then.

21 MR. RICHARD C. MOSTY: May we know
22 that we have everything?

23 MR. DOUGLAS MULDER: What do we
have

24 up there, Mr. Brantley?

25 THE WITNESS: My notes.

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1 MR. DOUGLAS MULDER: Could we see
2 those too?

3 THE WITNESS: Certainly.

4 THE COURT: All right. We will
recess

5 until 10:00 o'clock, and see how it goes at that
time.

6 MR. DOUGLAS MULDER: Where can we
go
7 to confer?

8 THE COURT: You can go in Judge
Proh's
9 office if you want to.

10

11 (Whereupon, a short
12 recess was taken, after
13 which time, the
14 proceedings were
15 resumed in open

court,

16 in the presence

and

17 hearing of the

18 Defendant,

being

19 represented by

his

20

Attorney, but

outside of

21

the presence of the

jury

22

as follows:)

23

24

MR. RICHARD C. MOSTY: Your

Honor, we

25 need a few more minutes.

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1 THE COURT: How much longer?

2 MR. RICHARD C. MOSTY: Well, I
don't

3 know. Mr. Mulder is trying to read it as fast as he
can.

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

5 THE COURT: We understand that,
Mr.

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

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

10 MR. RICHARD C. MOSTY: Well, how
many
11 are you going to let cross examine the witness, your
12 Honor? If you let all of us cross examine him, I
bet we

13 can be ready in just a minute.

14 THE COURT: This is not
discovery, and

15 I think that you are entitled after the witness --
how

16 much time do you need?

17 MR. RICHARD C. MOSTY: This

gentlemen

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

19 bit of time to do that, and Mr. Mulder is reading as
fast

20 as he can. I think he will be done in a few
minutes.

21 THE COURT: 15 more minutes.

22

23 (Whereupon, a short

24 Recess was taken,

25 After which time,

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1 The proceedings were
2 Resumed on the record,
3 In the presence and
4 Hearing of the defendant
5 As follows:)

6
7
8
9 THE COURT: All right. Be
seated,
10 please, ladies and gentlemen.
11 Bring the -- tell the lawyers to
come
12 back in, please.

13 All right. Mr. Brantley, if you
will
14 be kind enough to take the stand, please.

15 MR. DOUGLAS MULDER: Judge, we
are
16 reporting -- we would like this on the record. We
are
17 reporting back, as instructed by the Court.

18 THE COURT: Thank you.

19 MR. DOUGLAS MULDER: We have not
had
20 an opportunity to review the files that Mr. Brantley

has

21 used to form his opinion, but he has been
cooperative

22 with us and has gone through his notes with us and we
23 have been able to decipher his notes.

24 THE COURT: All right. Thank you.
25 The hearing will continue.

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1 MR. DOUGLAS MULDER: Judge, excuse
me,

2 I am not finished yet. Would you mind if I complete.

3 THE COURT: Oh, by all means.

4 MR. DOUGLAS MULDER: Yes, sir.

Did

5 you want to go ahead, Judge? I don't want to
interrupt

6 you.

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

9 MR. DOUGLAS MULDER: Okay. Very
good.

10 It includes some seven pages, and I have looked
through

11 the photographs, but I have not read the reports and
12 there are many reports in there that we have not
seen.

13 In fact, there are reports by Cron, that Cron did
not

14 furnish us when he testified.

15 So, at any rate, I would like
an

16 opportunity to go through these. And let the
record

17 reflect that the file is approximately, what,

Mr.

18 Brantley? Three or three and a half inches thick?

19 THE WITNESS: Well, if I had to
call

20 it, I would say maybe around four.

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

23 THE COURT: Thank you. Well,
that is

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

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

2 MR. DOUGLAS MULDER: Yes.

3 I want to ask Mr. Brantley just briefly.

4

5

6 VOIR DIRE (Continued)

7

8 BY MR. DOUGLAS MULDER:

9 Q. We would like to know -- you
have
10 given us, Mr. Brantley, your opinion in this case,
and
11 that is the sum and substance of your opinion; is
that
12 right?

13 A. That's correct.

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

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

you.

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

25 A. The analysis that I --

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1

2 MR. TOBY SHOOK: Judge, we will
object

3 again. This is going beyond the scope of 705.

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

5 MR. DOUGLAS MULDER: You don't
want to

6 know whether or not there is any way to check the
7 accuracy of his analysis?

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

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

12 THE COURT: Fine. It's been
objected

13 to. The objection is sustained. Ask the next one.

14 MR. RICHARD C. MOSTY: Your Honor,
we
15 would request the ability to go into that under
Daubert.

16 That is, under Daubert and Robinson, that is one of
the

17 tests as the Court well knows, the Court is the
18 gatekeeper for scientific opinion or speculative

opinion,

19 whichever it is, and the Court is the gatekeeper and
20 unless there is some empirical manner of testing
the
21 accuracy of it, the testimony should not be
allowed.

22 THE COURT: Thank you.

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

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

2 Mulder to ask your next question.

3 MR. DOUGLAS MULDER: Judge, that
was

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

5 gate, that you would want to know whether or not
there is

6 any way that -- the accuracy of his conclusion.

7 THE COURT: Well, is there?

8 THE WITNESS: Based on the
standards

9 within my profession, again, there has been
numerous

10 publications and text books where this information
is

11 reported on, and certainly anyone with the
background,

12 education and training and experience that I have
had,

13 would come to, I believe, the same conclusion.

14 Certainly, the people that I work with at the FBI
Academy

15 are all in agreement with my conclusion.

16

17

18

VOIR DIRE (Continued)

19

20 BY MR. DOUGLAS MULDER:

21

Q. Do you traditionally review each

22

other's work before you testify?

23

A. That is correct. Not necessarily

24

before we testify, but it's a collaborative, group

25

process that we engage in. That's correct.

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

3 A. At times, again, it varies. It's
not

4 mandated that we do that, but just as a matter of
course,

5 we try to that whenever possible.

6 Q. Do you have a committee?

7

8 MR. TOBY L. SHOOK: Judge, again,

I am

9 going to object.

10 THE COURT: Mr. Mulder, can we

keep

11 the questions on the basis --

12 MR. DOUGLAS MULDER: Well, I

think I

13 am getting into things that I am going to cross

examine

14 him on, Judge.

15 THE COURT: Thank you. We can do

that

16 at the appropriate time. Anything else for this

hearing?

17 MR. DOUGLAS MULDER: Well, Judge,

we

18 simply suggest to the Court, and we would like to
develop

19 the fact that there is no empirical test upon which
the

20 accuracy of his proclamation or his conclusion can
be

21 tested and judged.

22 THE COURT: I understand what you
are

23 saying. The Court has heard that. Anything else?

24 MR. DOUGLAS MULDER: No, if you
are

25 denying me any opportunity to go further on that?

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1 THE COURT: I think he already
2 answered that question.

3 MR. RICHARD C. MOSTY: Well, your
4 Honor, he didn't answer that question. What he said
was
5 that there was a lot of literature in the field.

And
6 that is not the question. My question is not -- Mr.
7 Mulder's question is not whether or not there is a
bunch
8 of literature because there is a lot of literature
in all
9 sorts of idiotic fields and drawing idiotic
conclusions.

10 The question is -- am I interrupting a conversation?

11 THE COURT: Oh, by no means.

12 MR. RICHARD C. MOSTY: The
question is
13 not whether or not there is literature or whether or
not
14 there is information on it. The question is whether
or
15 not something can be empirically, objectively tested
16 beyond the opinion and say, yes, in 60 percent of
these

17 times, this is right; or 95 percent or whatever.

18 There is no method to empirically
test

19 whether or not he is accurate. He can just get up
there

20 and spout an opinion, based upon non-testimony and
21 non-evidence, and there is no way that anybody can
say,

22 is he right or is he wrong?

23 THE COURT: Well, I think you can
24 develop that on cross examination. Anything else
for
25 this hearing?

1 MR. RICHARD C. MOSTY: Judge,
that is
2 the gatekeeping that the Court is supposed to do --

3 THE COURT: Mr. Mosty, please, I
have
4 already ruled. If I have made an error, I think I
(sic)
5 have preserved it, please.

6 MR. DOUGLAS MULDER: Let me ask
him
7 this last thing, and as the gatekeeper I would think
you
8 would want to know this.

9 THE COURT: Okay.

10 MR. DOUGLAS MULDER: In fact, you
may
11 be thinking of it already.

12

13

14 VOIR DIRE (Continued)

15

16 BY MR. DOUGLAS MULDER:

17 Q. But I want to know, Mr. Brantley,
if

18 the information upon which you based your opinion

and

19 conclusion is totally accurate?

20

21 MR. TOBY SHOOK: Judge, again, we
will

22 object, they are going outside of the scope of the

23 hearing.

24 THE COURT: I think that is within

the

25 province of the jury. I'll sustain the objection.

Let's

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1 move on. Anything else?

2 MR. JOHN HAGLER: Your Honor,
could I

3 just wrap this up by finalizing our objections?

4 THE COURT: Oh, yes, by all means,
Mr.

5 Hagler. I would encourage that.

6 MR. JOHN HAGLER: Okay. Your
Honor,

7 as to the so-called expert opinion testimony,
first, we

8 would submit that it's been a failure for the State
as

9 the proponent of this expert testimony, to
establish --

10 to lay the predicate with the four Daubert factors;
and

11 also, the subsequent Robinson factors, that have
been

12 incorporated by the Supreme Court. We would submit
have

13 been further extended to Rule 702.

14 Secondly, your Honor, there has
been

15 no showing of reliability or relevancy of this
witness's

16 testimony; and in that connection, there has been a
17 failure of a showing of methodology, in which an
opinion
18 could be properly formed, as to whether or not there
was
19 in fact staging.

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

25 In addition, your Honor, there is
a

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1 of the Fifth and Fourteenth Amendments to the United
2 States Constitution, Article 1, Section 10 of the
Texas

3 Constitution; Rules: 701, 702, 703 and 705 of the
Texas

4 Rules of Criminal Evidence. And we would also ask
for a
5 403 ruling, please.

6 THE COURT: All right. Objection
is

7 overruled. The Court -- Mr. Brantley has revealed
the

8 underlying basis and facts of his testimony, it will
be
9 permitted.

10 The 401 and 403 ruling will be
that

11 the Court considers it relevant. The probative value
far

12 outweighs any prejudicial effect it might add, in the
13 fact that it might -- it would assist the jury in
coming

14 to a just verdict in this particular case.

15 With that in mind, we will bring
in

16 the jury and commence the testimony.

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

19 THE COURT: Oh, yes, you may.

20 THE COURT: All right.

21

22 (Whereupon, the jury

23 Was returned to

the

24 Courtroom, and

the

25 Proceedings

were

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1 Resumed on the
record,

2 In open court, in
the

3 Presence and
hearing

4 Of the defendant,

5 As follows:)

6

7 THE COURT: Good morning, ladies
and

8 gentlemen.

9 Let the record reflect that all
of the

10 parties in the trial are present and the jury is
seated.

11 Ladies and gentlemen of the
jury, this

12 witness has already been sworn outside of your
presence.

13 Go ahead, please, Mr. Shook.

14 MR. TOBY L. SHOOK: Thank you,
Judge.

15

16

17 Whereupon,

18

19

ALAN BRANTLEY,

20

21 was recalled as a witness, for the State of Texas,
having

22 been previously duly sworn by the Court to speak
the

23 truth, the whole truth, and nothing but the truth,

24 testified further in open court, as follows:

25

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1

2

DIRECT EXAMINATION

3

4 BY MR. TOBY L. SHOOK:

5

Q. State your name, please.

6

A. Alan Brantley.

7

Q. And how are you employed, sir?

8

A. I'm a supervisory special agent

with

9

the Federal Bureau of Investigation.

10

Q. And, where are you currently

assigned?

11

A. I'm currently assigned to the

National

12

Center for the Analysis of Violent Crimes, which is

part

13

of the Critical Incident Response Group at

Quantico,

14

Virginia.

15

Q. How long have you been with the

FBI?

16

A. Approximately 13 and a half

years.

17

Q. And, what positions have you

held with

18

the FBI?

19 A. Other than being an
investigative
20 agent in the field, I have been assigned to the
National
21 Center since 1988, and in that position have been
22 responsible for the analysis of violent crimes, and
the
23 providing of information of lead value to
investigators
24 that are confronted with repetitive violent crimes,
25 unusual and particularly vicious types of violent

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1 offenses as well.

2 Q. And what is your current
position?

3 A. I am a supervisory special agent
as I

4 have said, but I am also the Program Manager of the
5 Forensic Psychiatry Fellowship in conjunction with
the

6 Armed Forces of the United States out of Walter
Reed Army

7 Medical Center in Washington D.C.

8 I am also the program manager of
the

9 component at the National Center, that addresses
10 individuals that threaten and/or attempt to use
weapons

11 of mass destruction. These are primarily weapons
12 involving nuclear, biological and chemical threats
or
13 entities.

14 Q. What are your duties with your
current

15 position with the FBI?

16 A. Well, I am primarily responsible
for

17 supervising others at the National Center in the
areas

18 that I have already outlined, and also, working a
variety

19 of violent offenses, including homicides and
threats

20 against others.

21 Q. Tell the jury your educational
22 background.

23 A. I received a Bachelor's of Arts
in

24 1972 from Appalachian State University with an
25 undergraduate degree in psychology.

1 I completed a Master's degree in
2 counseling and psychology, also at Appalachian
State in
3 1976 after I served a tour as an officer in the
Marine
4 Corps.

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

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

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

13 Q. What were your duties there?

14 A. A combination of things, but
primarily

15 I evaluated and assessed the inmates in that
population,

16 all adult males. I provided evaluations for the

court,

17 and presentencing studies, and also did reviews and

18 analysis of inmate cases for consideration of

release

19 back into the community and parole.

20 Q. Okay. Do you have any

specialized

21 training?

22 A. My specialized training, while in

the

23 FBI, is centered on information about violent crime,

24 death investigation, crime scene analysis, forensic

25 pathology, forensic dentistry, almost any type of

course

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1 that might help us to understand not only the
behavior of

2 violent criminals, but some of the things relating to
the

3 forensic evidence that they may leave behind as well.

4 Q. Have you served on any
faculties?

5 A. I am on the faculty at the
FBI

6 Academy, and also an adjunct faculty member of the
7 University of Virginia.

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

10 A. Primarily, on the violent crime
scene

11 analysis, and the assessment of dangerousness, also,
12 criminal psychology. While at the FBI Academy, I
taught

13 a course at the National Academy on applied criminal
14 psychology. Also, I taught the new FBI trainees that
15 same course on applied criminal psychology.

16 Q. Have you made presentations in
your

17 field?

18 A. I have.

19 Q. What types?

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

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1 very broad range of audiences.

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

4 A. I am. I'm a member of the
American

5 Academy of Criminal Justice Sciences, also the
6 International Homicide Investigators Association,
Harvard

7 Associates in Police Science and the Association of
8 Threat Assessment Professionals.

9 Q. And what is the Criminal
Investigative

10 Analysis Program?

11 A. Well, for the most part, when you
talk

12 about criminal investigative analysis, or crime scene
13 analysis, we're talking about the analysis of the
14 behavior displayed at a crime scene by an
offender.

15 What we look at, to determine
this

16 assessment, is primarily in three areas:

Victimology, in

17 other words, what is it about a particular victim
that

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

23 We believe since all crimes are
24 committed by human beings, that some stage along
this
25 crime commission process, there is going to be a
display

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1 of human behavior, that lends itself to analysis,
2 interpretation, and from that analysis,
information of
3 lead value that could be provided to
investigators, to
4 prosecutors and to jurors, like yourselves, to
hopefully
5 get a little better understanding of the types of
6 criminal behavior that you are not as likely to
encounter
7 in your life experiences, as I am to encounter in
what I
8 do for a living.

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

12 A. I have.

13 Q. Involving Devon and Damon
Routier?

14 A. That's correct.

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

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

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

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

9 A. I was.

10 Q. Okay. And what is that opinion?

11 A. My opinion is that in this
particular

12 case, and this particular crime scene, that this
crime

13 scene had been staged, and in all likelihood whoever
14 killed both Devon and Damon, was someone that they
knew,

15 and someone that they knew very well.

16 Q. When you say a crime scene is
staged,

17 what do you mean?

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

25 Q. What is staging?

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

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

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

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

20 But first and foremost, at least I
do,

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

25 Unless I am able to establish
that, in

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1 this case I was informed it was a very low crime rate
2 area. As a matter of fact, certainly no other
homicides

3 like this, to my knowledge, ever, and the homicides
that

4 had occurred had been resolved, or had been
effectively,

5 you know, ruled one way or the other.

6 Also, what I am trying to do with
my

7 assessment of the crime rate, I'm trying to determine
8 risk factors; risk factors to the victims, and risk
9 factors for the offender, which is also very
important.

10 I think the vast majority of
offenders

11 that I have ever encountered do not want to get
caught.

12 So, they are going to attempt to commit their crimes
in

13 such a way as to prevent that.

14 Well, they are going to take into
15 consideration, for instance, whether there are any
16 witnesses around, for instance.

17 In this particular case, I

looked at

18 the location of the home and how it was surrounded
by

19 homes on almost every side. I also looked --

20 Q. Did you -- let me just interrupt

21 you -- did you look at photographs, aerial

photographs of

22 the neighborhood?

23 A. I did.

24 Q. And you also went to that

neighborhood

25 yourself; is that right?

1 A. That's correct.

2

3 MR. TOBY SHOOK: Okay. Could I
have

4 the witness step down for a moment? Please step
down.

5 THE COURT: Yes, you may step
down.

6

7 (Whereupon, the witness
8 stepped down from

the

9 witness stand, and
10 approached the jury

rail

11 and the proceedings

were

12 resumed as follows:)

13

14 BY MR. TOBY SHOOK:

15 Q. Let me show you what has been
entered

16 into evidence as State's Exhibit 7. Do you
recognize

17 this as being one of the aerial photographs?

18 A. I do.

19 Q. Okay. Is the -- turning this to
the
20 jury, so we can all see. What is it about the
particular
21 neighborhood that you consider as one of the risk -
- as
22 you call them risk factors; is that right?

23 A. Well, as I suggested, this
victim
24 residence is completely surrounded, actually, by
25 residences on all sides. Certainly, it would
increase

1 the observation of others, and somebody being
detected

2 coming in and out of that area. That is certainly
3 something that I think that most criminals are
going to

4 take into consideration.

5 Also, I looked at other factors,
and

6 considered that the vehicle was in front of the
home,

7 suggesting to someone that might have been
motivated to

8 burglarize that home, that there may be somebody
there.

9 Certainly, that is a deterrent, that is a risk factor
for

10 burglars that don't want to get caught, or don't want
11 anyone else to know what they are up to.

12 Also, was able to learn from
13 investigators and from reports, that there were
people

14 sleeping downstairs, and there were lights on. So
there

15 was light emanating from the inside.

16 Someone coming around to the back
of

17 the house certainly would have been able to see that
18 there was light on downstairs. Again, suggesting to
19 an
19 offender motivated to either rob, rape or murder
that
20 obviously, from these lights being on, then someone
may
21 be down there occupying that space. That is
certainly
22 another risk factor.

23 Q. Let me ask you, Agent Brantley,
is
24 there anything about the make-up of the neighborhood
or
25 the way the streets are constructed that is valuable

1 information to you, in regards, again, to the risk
2 factors?

3 A. Well, you look at neighborhood
4 permeability, and again, you look at people that
live
5 right on a major thoroughfare, certainly that
increases
6 their risk of coming into contact with a variety of
7 people, because it is a high trafficked area.

8 But when you consider other
areas,
9 like a cul-de-sac, it's a little more secure, and
people
10 coming back into that location, they need to be
going
11 back there, and are more likely to be observed or
12 contacted.

13 Plus, if an offender is detected
in
14 his intention to flee or escape, then his options
for
15 escaping successfully are also more limited when he
goes
16 into a development which is surrounded by homes and
other

17 obstacles and certain access roads. It doesn't
18 necessarily give them a direct access out to a major
19 thoroughfare and escape.

20 Q. Okay. You can go back to your
seat.

21

22 (Whereupon, the witness

23 Resumed the witness

24 Stand, and the

25 Proceedings were resumed

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1 On the record, as

2 Follows:)

3

4 BY MR. TOBY L. SHOOK:

5 Q. Now, Agent Brantley, in regards --
you

6 looked at the neighborhood itself, and what type of
7 neighborhood it is. Then do you move, in what you
call

8 the risk factors, you look at the home itself where
the

9 crime occurred?

10 A. Certainly. And again, I start
from a

11 broader, expansive view of the neighborhood and the
12 surrounding area and start moving in and start
focusing a

13 little more. Certainly, focusing on the alleged
point of

14 entry and escape, that window and that cut screen.

15 As you look at that, and you look
at

16 the outside, you see that once someone has negotiated
or

17 gotten beyond that 6-foot fence, then you have some

other

18 interesting considerations.

19 I think first and foremost, when
you

20 look into that garage, what you are confronting
almost

21 immediately is an extremely large animal cage, or
what

22 one would surmise was the cage of an animal. I think
if

23 you were a stranger, and you don't know who lives
there,

24 or what you are likely to encounter, you may suspect
25 reasonably, that there may be a rather large animal,
or a

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the

21 all the education, training and specialized course
work

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

We

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

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

or

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

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1 from.

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

3 all are looking at things which would worry, I guess,
4 someone that is going to commit an offense?

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

6 years of experience in the prison setting where I
7 interviewed hundreds of violent felons, we also got
into

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

9 MO, and some of their rituals.

10 And then since that time, since
being

11 at the FBI Academy, we have done a number of research
12 projects, where we go out into the prisons, and we
13 interview offenders that commit violent crimes and
14 homicides, and we ask them these same kinds of
questions:

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

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

17 it you consider while you are there committing the
actual

1 A. That's correct. And in addition
to
2 that, I think on the outside, there are some animal
bowls
3 or water and food dishes also, that might suggest to
4 someone motivated to break in, that there in all
5 likelihood is an animal present.

6 Q. Okay. Let me show you what's been
7 marked as State's Exhibit 40-B. Is this a
photograph, I
8 guess on the inside, of the large cage that you're
9 talking about?

10 A. That's correct.

11 Q. That is the type of thing, I
guess,
12 someone coming in is going to be a little wary of if
they
13 see an animal cage?

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

18 Q. Okay. You said you recall bowls

of

19 food on the outside patio?

20 A. That's correct.

21 Q. Okay. For animals?

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

23 for -- on the part of an offender, that those are

animal

24 dishes.

25 Q. Is that another factor that,
again,

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1 you consider about --

2 A. Certainly.

3 Q. Okay. You said, I believe, your
4 information was that the -- that back patio door,
that

5 there was a TV visible from the outside?

6 A. Light.

7 Q. Okay. What does that -- is that
8 another risk factor you consider?

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

10 individuals that are motivated at least to rob or
11 burglarize, they are going to want to go into a
residence

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

13 that someone is there, I think for some, not all
14 certainly, they are less likely to select that house.

15 Again, victim selection is
important

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

17 risk to themselves.

18 Q. What about the point of entry
itself,

19 the cut screen? What did that tell you?

20 A. In terms of risk, not anything
21 significant, but, I think it was unusual in the way
that
22 it was cut. In our experience when we see screens
that
23 are cut, and we have seen screens that have been cut
24 before in the commission of an offense, they are
25 generally small cuts that they use to gain access to
a

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1 lock or a latch or something else that they can
throw,

2 and then they will gain entry through a window or
through

3 a door. But quite often, they will pull the screen
off

4 after they have slit the screen to open the lock.

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

6 that is another --

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

8 factor.

9 Q. Okay. I might be getting a little
10 more ahead of myself. Let's stick along these risk
11 factors as to the offender. What else about the
crime

12 scene in the house do you feel would be a risk
factor?

13 A. I think as you move into the
14 residence, and again, if you are to believe that
this is

15 someone that is unfamiliar with the floorplan of the
16 home, and as compressed as it is, and was much, as
many

1 But I think what becomes more
2 important, from the standpoint of risk, is that the
3 offender in this particular case, which is very
4 contradictory of my experience, focused on the
children,
5 went to the children, assaulted them first. And
again,
6 their wounds, the nature and severity of their wounds
was
7 significantly different than the wounds of Mrs.
Routier.

8 Now, what that suggests to us, and
9 what that tells us, is very contradictory, is that
for
10 the most part, offenders coming into an environment
like
11 that that encounter victims, or potential victims,
they
12 generally are attempting to limit their risks, by
dealing
13 with, or dispatching the adult members first.
Because
14 again, the adults, especially male adults, would
15 represent the greatest threat or greatest risk. In
this
16 case, that was not accomplished.

to

17 pursue him.

18 That also is something I think

that

19 increases his risk and something you don't

ordinarily

20 see.

21 Q. Okay. When you are making an

22 assessment of a crime scene, from your standpoint,

are

23 you looking at, kind of, contradictions, or what's

wrong

24 with this?

25 A. Exactly. And that is what we
start

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1 with. I guess, fundamentally is, "What's wrong with
this

2 picture?" And what we're looking for, are behavioral
3 contradictions, and forensic contradictions. And
things

4 that just don't line up with our experience and what
5 these people have told us in past interviews.

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

8 A. Well, I think primarily that was
all,

9 but what was interesting, and what I did note, was
10 that -- it kind of goes back to the sock that was
found.

11 If you are to believe that the offender, after
exiting

12 the residence, then proceeds in that direction,
instead

13 of running away from the development or getting out
of

14 the development in the quickest way, he seems to
run back

15 into the development again, which might increase
his risk

16 of being seen by others, or confronted by others.

17 Plus, if he is not familiar

with that

18 development and those roads, he could get back in
there

19 and get turned around and get lost, and again, he
20 increases his risk of maybe being discovered.

21 Q. Okay. Is that primarily all of
the

22 risk factors you were considering then?

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

24 Q. Okay. Now, you talked about --
you
25 are looking at the victimology, and that there are
high

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1 risks or low risks, what do you mean by that?

What is

2 victimology?

3 A. Exactly. Victimology, again,
is

4 basically, what is it about a particular victim
or

5 victims that increases his or her risk of
becoming a

6 victim of a violent crime? It's lifestyle kinds
of

7 things. It's where are they employed? Who have
they

8 angered in the past? Are they having any
extramarital

9 affairs, or things that might create friction or
conflict

10 with others? Do they abuse alcohol or drugs? Those
kind

11 of things, lifestyle questions.

12 When you consider this case, and
these

13 victims, I think I would classify them as extremely
low

14 risk, probably the most low-risk victims that there
are.

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

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

14 A. Well, because for the most part,
their
15 life experiences, they have got their circle of peers
and
16 friends, and they go to school. I mean, they are not

17 involved in a lot of the risky kinds of activities
that

18 we consider elevates a victim's risk.

19 I mean, they are not going out
into

20 high crime rate neighborhoods at night, going to
bars,

21 picking up people for one-night stands, doing those
kinds

22 of things, again, that certainly would elevate one's
23 risk.

24 Q. The method that they were killed,
the
25 two children, was that important to you; and compared
to

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1 the contrast to the injuries that Mrs. Routier
received?

2 A. Well, it's basically what we
consider

3 the nature and severity of the trauma was incredibly
more

4 significant than Mrs. Routier sustained. Certainly,
that

5 is a dramatic difference. Also, to us, represented a
6 major contradiction; why she was left alone,
seemingly

7 left alive, and the kids were killed.

8 Q. Okay. And you believe, from
looking

9 at the crime scene and the method of the killing,
that

10 the children were the object of the attack?

11 A. Certainly. There is no question
about

12 it. Because again, just the number of wounds, the
13 placement of the wounds, all focused right in the
chest

14 area here, almost as if the offender is going for the
15 heart, or going for the most vital regions of the
body.

1 Q. Okay. Now, you talked about
staging,

2 and that you believe this crime scene may have been
3 staged.

4 A. That's correct.

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

7 A. Well, in addition to everything we
8 have described, we're looking for things that have
been

9 done or manipulated at the scene. Things that just
don't

10 occur, what we consider naturally. And again, as you
11 proceed on in, and we look at what's happened to the
12 children, we look at what's -- what else has been
done at

13 the scene. What else is either out of place, missing
or

14 has been brought there by the offender.

15 And I think what stands out, what
is a

16 stark contrast, is you have a maximum, human
devastation

17 and loss here, but an absolute minimum of breakage or
18 property damage. And this is very, very curious to

us.

19

It's almost like our offender

had no

20

real regard for the children, they just wanted the

21

children eliminated. But yet, when it comes to the

22

protection and preservation of the material items in

the

23

home, he was very careful, very cautious not to

break

24

anything.

25

Some things were disturbed, but

no

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16 you have this violent struggle, the assault and
killing

17 of two young children and an adult, you would
certainly

18 have expected to see much more in the way of
disruption

19 and breakage and damage, and things turned over, and
20 evidence, just evidence that someone else was there,
21 other than the people that live there.

22 Q. What kinds of things did you
consider

23 when coming to that opinion, there in the room
itself?

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

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

7 Certainly, when you look at that
room,

8 or that den, the Roman room, I guess it's called,
it's

9 very compressed, it's a very small area. And for
two

10 adults to be in there fighting and struggling with
one

11 another, you would have expected to see some more
12 dislodged.

13 Of course, then you proceed on
out of

14 that room, and you get into the kitchen area where
the

15 wine rack and the glass was broken. There's some

1 not something that has been thrown or knocked over in
the

2 struggle, but something that has been deliberately
placed

3 there and then turned over.

4 Then again, you go further, if you
are

5 to assume that the avenue of escape for the offender
is

6 through the utility room and out the garage, and then
out

7 that cut screen. You look for any other disruption.
You

8 look for blood, transfer of blood, or any sign that

9 someone else has been through there, that has just
been

10 engaged in a violent struggle. And there is none of
11 that.

12 You look for disruption in the
yard,

13 the flower bed and the mulch, any sign of blood, or
of

14 fingerprints, or any other scuffs, or tears or
material

15 items on the fence, the gate. Nothing.

1 A. Well, again, not only that it's
there,

2 and it's disrupted, but the severity of the
disruption.

3 Again, it's just kind of pushed to the side. This
very,

4 light based, papier-mache vessel, and then these
dried

5 flowers and things, which is very light, is just
kind of

6 tipped over, it's not knocked off at all, and there
is

7 nothing broken, none of these stems or these
leaves or

8 anything are really out of place.

9 Again, somebody hitting into
that

10 during the course of a violent struggle, you would
have

11 anticipated more disruption.

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

14 A. Well --

15 Q. I think it shows it, maybe not in
this

16 photo, maybe clearer in another one, but that was

17 somewhat askewed?

18 A. Yes.

19 Q. Does that, again, does that enter
into

20 your indications anyway? Here it is in State's
Exhibits

21 47-A and 47-B?

22 A. Well, it's moved, and again, but
not

23 dramatically so. Again, when you ask, "What's wrong
with

24 this picture?" I mean, are there signs, indications
that

25 there has been a tremendous struggle here, and a

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1 homicide, or is it something other than that.

2 Q. Okay. You also mentioned a lamp
shade

3 that had been knocked off at the top of the lamp.

4 A. Certainly. The lamp shade was
down

5 over the, I guess, the pillar there of the lamp, but
as

6 they examined the base of the lamp, the lamp base has
not

7 been moved at all.

8 So it looks like this has been hit
and

9 the lamp shade falls, but no destruction whatsoever.

10 Now, I understand that there was no clasp or no screw
at

11 the top of this lamp shade to hold that in place, so
it

12 was just kind of balanced. So, it wouldn't take a
lot of

13 force or a lot of energy, at least to knock that lamp
14 shade down.

15 And again, it appears that that is
16 exactly what happened, not a lot of force or energy
taken

17 to cause that lamp shade to come down.

18 Q. You described, I believe, you
referred

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

20 it; is that right?

21 A. That's correct.

22 Q. The area where the murders
occurred?

23 A. Yes, sir.

24 Q. Were there a lot of items that
could

25 be broken in there?

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1 A. Certainly. Especially the -- I
guess
2 the sofa table behind one of the sofas there. There
were
3 quite a few items on that table that were all in
place.
4 And, again, nothing broken or damaged.

5 Q. Okay. Again, the sofa table, are
we
6 talking about -- could I have the witness step down
for
7 just a moment?

8
9 THE COURT: Please step down.

10
11 (Whereupon, the witness
12 stepped down from
the
13 witness stand, and
14 approached the jury
rail
15 and the proceedings
were
16 resumed as follows:)

17
18 THE WITNESS: This table right

here,

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

20 decorative items in the photograph, and when you
compare

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

22 if you believe from the statements, that the
offender

23 then encounters Mrs. Routier, and exits or leaves the
24 area, he comes from this area, which is very, very,
25 narrow, there are two tables there. There is a table

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

1 for the members of the jury to see?

2

3 THE COURT: Can all the members
of the

4 jury see that?

5 THE JURY: Yes, sir.

6 THE COURT: Make sure you can
see.

7 All right. Thank you.

8

9 BY MR. TOBY L. SHOOK:

10 Q. Looking here at 36-D and the
11 photographs here in the upper right of the line, is
that

12 the wine rack you are talking about?

13 A. This is exactly what I'm talking
about

14 here. You see the glass broken here on the floor,
and

15 the decanter here that is on its side. But there
are

16 some very small glasses up here that are seemingly
17 undisturbed.

18 You have one wine bottle here,
leaning

19 in that direction. But what is interesting, and

1 on this corkscrew, and they are still sitting there
very
2 symmetrical.

3 You also have two glasses on
either
4 side of this ice bucket, and they also are very
5 symmetrically placed. And, it looks like they
haven't

6 been disturbed at all.

7 So if you are to believe someone
hits
8 into this wine rack, with enough force to cause
this wine

9 glass to come up over that obvious holder or lip,
which
10 is almost like a, I guess, a U-shape, then why
wasn't

11 there enough force applied to dislodge some of
those
12 other items: Contradiction.

13 Q. Okay. Again, you mentioned the
vacuum

14 cleaner that we see here at the bottom of the
Exhibit,

15 lying there on the floor.

16 A. Certainly. You look at this
vacuum
17 cleaner, and you look at how it's positioned. You
notice
18 and you understand that there are bloody footprints
19 underneath. Certainly the bloody footprints were
there
20 before the vacuum cleaner was overturned. It's
take no
21 behavioral scientist, or no rocket scientist to
come in
22 here and talk about those kinds of things.
23 You also have a significant
amount of
24 blood up here on the handle, indicating or
suggesting
25 that someone grabbed this, transferred that blood,
and

1 placed it over. I looked at the position of the
cord,

2 and this doesn't depict it as accurately as some
other

3 photos that I have seen. But you can see that the
cord

4 is kind of piled up, or stacked underneath the base
of

5 this vacuum cleaner.

6 If someone had grabbed this and
thrown

7 it in an attempt to create an obstacle for someone

8 pursuing or for any other reason, you would have
expected

9 that cord to be in a different position.

10 Q. Okay. Go and ahead and have a
seat,

11 Agent Brantley.

12

13 (Whereupon, the witness

14 Resumed the witness

15 Stand, and the

16 Proceedings were resumed

17 On the record, as

18 Follows:)

19

20 BY MR. TOBY L. SHOOK:

21 Q. Were there any other areas in
the

22 house that you were looking at as far as this
staging

23 that was important to you in your analysis?

24 A. Well, as you come out past the
25 kitchen, and you go to the utility room, and I
think

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16 analysis?

17 A. Certainly. That is something
else

18 that is an obvious major contradiction.

19 If you are to believe that the
20 offender gains access, and how an offender gains
access

21 to a residence is very important to us. How does
this

22 offender gain access?

23 If you are to believe that the
24 offender cuts the screen with that particular knife
that
25 has microscopic evidence of rubber particles and
glass

1 particles, then that's extremely curious.

2 Why would an offender break
into a

3 home, or gain access to this home, and then take
that

4 knife and then go back outside and cut the
screen, to

5 come back in? That is ludicrous.

6 And certainly, if the offender
is

7 already there, and he gets this knife and he is
using

8 that to escape, we have seen no cases where an
offender

9 breaks out of a residence like that, where they come
10 through and then cut the screen and then go out.

11 And then they go back and replace
the

12 knife into the butcher block before they run through
it.

13 Again, that is very contradictory, and very unusual.

14 But beyond that, you look at this
15 knife that was used to cut the screen, and then after
the

16 cutting of the screen that knife is replaced, and
then

1 We all have patterns of relating
to
2 our environment, and patterns of doing things. For
3 instance, people go and they take knives from a
certain
4 location, they use that knife and they replace that
knife
5 right back into its rightful position or place. What
6 stranger is going to take a knife, and use it, and
then
7 go back and be concerned about replacing it in its
8 rightful position?
9 Again, this is suggestive of
someone
10 that is used to doing that, and this is just part of
11 their pattern. Because a stranger is not going to
have
12 any concern for that. They can throw the knife down,
as
13 they did with the other knife, leave it on the
counter
14 top, throw it in the garage, take it with them
because he
15 may know that this weapon, certainly the knives or
16 anything he touched, it is obvious -- that it has

an

17 obvious evidentiary value.

18 And most offenders are

cognizant or

19 aware of that fact, and they don't want to leave

that

20 behind for the police to discover or use in a

court of

21 law.

22 Q. Going back to, from your analysis,

it

23 looks as if the children were the object of the

attack?

24 A. Yes.

25 Q. Did the fact that a knife, the
butcher

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1 knife, a kitchen knife from the home is used to do
the

2 killing, is that significant to you?

3 A. It is. And again, weapon
selection is

4 important, and another feature that we consider.

5 In our experience, most offenders
that

6 go to a residence to commit a homicide, they are
going to

7 take a weapon with them, something that they are

8 comfortable with, something that they can use to
commit

9 the homicide, or another weapon, take a gun, a
ligature.

10 The fact that nothing apparently was taken to the
scene,

11 but the offender goes to the scene, obtains a weapon

12 there, uses that weapon, and then leaves it behind,
is

13 important.

14 Q. Okay. Let's take the bread knife
out

15 of the picture for a moment, the knife that had the

16 microscopic characteristics consistent with the
screen.

17 A. Certainly.

18 Q. Okay. Does that change your
opinion

19 in any way?

20 A. No.

21 Q. And why is that?

22 A. Well, because that is just one
23 feature. There are many other features that we took
into

24 consideration. And what we look at, when we do our
25 assessment and our analysis, is not one individual

1 feature, or behavior, it's the totality of the
2 circumstances. And an awful lot of these kinds of
3 features are interrelated, they are tied to one
another.

4 So you really can't look at one in isolation and
5 determine anything.

6 Q. Okay. Again, you looked at
possible

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

11 A. That's correct.

12 Q. Okay. Do you remember what
types of

13 items we're talking about?

14 A. Well, primarily, the jewelry,
the
15 large amount of jewelry that was left there in plain
16 view, and certainly, this also seemed to be in this
path

17 of entry and escape, and so, I mean, it was right
there

18 for the taking, and all someone had to do was just

reach

19 over and grab it.

20 Also, you looked at the purses

that

21 were in the area, and whether they were disturbed,

or

22 whether anyone was attempting to steal money, cash

or

23 credit cards. And there is no indication that

anything

24 like that has occurred.

25 As a matter of fact, nothing was

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1 disturbed. Nothing of value in that home seemed to
be of

2 interest whatsoever to the offender in this case.

3 Q. Okay. Well -- I may not can
find it,

4 but are you talking about on the island there,
there was

5 various rings left?

6 A. That's correct.

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

8 A. Yes, sir.

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

10 on the island there?

11 A. That's correct.

12 Q. Okay. Now, we talked about
another

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

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

15 that go in, rapists --

16 A. Yes, sir.

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

18 assault women?

19 A. Yes.

20 Q. Do they do that when children
are
21 present?

22 A. Yes, that is a common practice,
as a
23 matter of fact. For a rapist to go in, either they
are
24 going to primarily select a female alone in the
25 residence, or a female with young children. And
the

1 reason they select females with young children, is
that
2 they can use the threat of violence directed
against
3 these children, as a way to control the female
victim.

4 For instance, "If you just do
what I
5 tell you and you give me what I want, I'll leave
your
6 children alone. But if you don't, I'll hurt the
7 children."

8 So that is a very effective
control
9 maneuver that they will implement.

10 Q. Looking at it from a standpoint
of
11 perhaps maybe this was a party coming in to
sexually
12 assault Mrs. Routier, the killing of the children,
was
13 that a contradiction from what you are used to
seeing?

14 A. It is a major contradiction in
that

15 behavior and that belief on their part, because
again,
16 they want those children alive. It's the threat of
the
17 harm that they use to control the victim. If they
have
18 already stabbed and hurt the children and killed
the
19 children, they can forget about any cooperation on
the
20 part of that female victim, than -- that victim is
much
21 more inclined to fight, and to fight for their
life.

22 Q. Has that then, from what you
have
23 seen, if someone starts harming a mother's
children, what
24 is going to happen?

25 A. Well, it depends on that
relationship

1 that the mother has with the children, but most of
the

2 mothers that I have known, and I have talked to
quite a

3 few surviving mothers that have lost their
children, when

4 they have the opportunity, they are going to fight
you,

5 and they are going to fight for not only their
lives, but

6 the lives of their children.

7 Q. That is just a natural reaction?

8 A. Yes, in my experience, that is
what

9 they described.

10 Q. Now, you have been doing this
type of

11 crime scene analysis for how long?

12 A. Well, I have been assigned to
the unit

13 there since 1988.

14 Q. Okay. And when is the first
time you

15 talked to our office in regards to this case?

16 A. I believe this was the 19th of

June of

17 1996.

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

20 right?

21 A. That's correct.

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

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

1 Q. Okay. And then how long were
you in

2 Dallas on that particular occasion?

3 A. The first time, I believe, it
was two

4 or three days.

5 Q. Okay. You said you went out to
the --

6 you didn't, on that occasion you didn't go into the
7 residence itself, did you?

8 A. No, I did not go into the
residence,

9 that's correct.

10 Q. Okay. Just outside the
residence?

11 A. That's correct.

12 Q. All right. And then, of course,
you

13 have spoken on the phone with me numerous times?

14 A. That's correct.

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

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

18 However, I was one of our field coordinators before
that,

19 and was involved in some training, and some work
with the

20 unit before I actually was assigned there.

21 Q. Okay. And you assist -- on a
daily

22 basis, do these things come into your office?

23 A. Oh, certainly.

24 Q. Okay.

25 A. We literally provide services to

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1 legitimate law enforcement agencies, not only
nationally,

2 but from around the world. I have just gotten back
from

3 a trip to Israel, and provided training to the
Israeli

4 National Police on violent crime scene analysis, so
that

5 we get quite a few requests.

6 Q. Okay. So, you don't just
concentrate

7 on crimes here in the nation, you do it world-wide
also?

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

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

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

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

18 A. Certainly.

19

20

MR. TOBY L. SHOOK: Just one

moment,

21 Judge.

22

THE COURT: Okay.

23

MR. TOBY L. SHOOK: Judge,

that's all

24 of the questions I have at this time.

25

THE COURT: All right. In view

of the

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

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

8 Thank you.

9
10 (Whereupon, a short

11 Recess was
taken,

12 After which
time,

13 The proceedings
were

14 Resumed on the
record,

15 In the presence
and

16 Hearing of the

defendant

17

And the jury, as

follows:)

18

19

THE COURT: All right. Let's go

back

20

on the record. And we're back on the record in the

21

Darlie Routier case.

22

Are both sides ready to bring the

jury

23

in and resume this trial?

24

MR. GREG DAVIS: Yes, sir, the

State

25 is ready.

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1 MR. DOUGLAS MULDER: The defense
is
2 ready.

3 THE COURT: All right. Bring the
jury
4 in, please.

5
6 (Whereupon, the jury
7 Was returned to
the
8 Courtroom, and
the
9 Proceedings
were
10 Resumed on the
record,
11 In open court, in
the
12 Presence and
hearing
13 Of the defendant,
14 As follows:)

15
16 THE COURT: Good afternoon,
ladies and
17 gentlemen. Let the record reflect that all

parties in

18 the trial are present and the jury is seated.

19 All right. Mr. Mulder, will

you be

20 cross-examination?

21 MR. DOUGLAS MULDER: Yes,

Judge.

22 THE COURT: All right.

23 MR. DOUGLAS MULDER: And I'll

try to

24 be brief.

25

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19

CROSS EXAMINATION

BY MR. DOUGLAS MULDER:

Q. Mr. Brantley, did you prepare a report?

A. No, I didn't.

Q. Mr. Hoover doesn't provide you

all

with typewriters anymore?

A. I don't type, sir, no. Most of

my

documentation are in the form of personal notes.

Now,

when I get back to the Academy, what I will do is, I

will

memorialize the nature of my testimony, and that will

be

made the matter of our record.

Q. I guess you will send us all a

copy?

A. If you would like a copy --

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

object

to the side-bar.

THE COURT: Sustain the objection.

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

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

23 THE COURT: Thank you. We
understand

24 what you mean.

25

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1 BY MR. DOUGLAS MULDER:

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

5 A. That's correct.

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

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

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

18 A. That is.

19

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

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

4

5 BY MR. DOUGLAS MULDER:

6 Q. They are rather difficult to
read, but

7 you have been good enough to translate for us where
we

8 needed to, haven't you?

9 A. That's correct.

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

12 A. That's correct.

13 Q. Okay. That would be September
the

14 20th of '96?

15 A. That's correct.

16 Q. All right. And then, it goes on
to

17 say, that on September the 30th of 1996, through
October

18 the 3rd of 1996, some four days or so, you met with
the

19 prosecution, the police, the forensic people and the
20 medical examiner's people; is that correct?

21 A. That's correct.

22 Q. Okay. You didn't go in the
house, but

23 you went out and looked at the house?

24 A. That is also correct.

25 Q. Now, I think risk factor was one
of

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

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

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

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

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

16 going the other way to Interstate 30?

17 A. I believe that's correct.

18 Q. Okay. So anybody interested in
19 getting out of the area could probably, if it took
the

20 police two or three minutes to respond, they could
be on

21 I-30 or Highway 66 in the same amount of time,
couldn't

22 they?

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

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

25 A. Yes, sir.

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

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

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

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

14 A. That is fair to say, certainly.

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

18 A. It could.

19 Q. And I understand that you have
not

20 pointed the finger at anybody in this courtroom,
but you

21 have, by what you've said, certainly narrowed
things

22 down, haven't you?

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

24 Q. Okay. And you said that the
children

25 were killed by someone you felt who knew them, and
knew

1 them well?

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

3 Q. Okay. Now, one of the things
that you

4 said -- and you are primarily, Mr. Brantley, a --
what

5 they call a profiler, for lack of a better word?

6 A. They refer to us -- the title is
7 supervisory special agent, but we have been called
8 profilers, we have been called violent crime
specialists,

9 crime scene analysts, we go by a variety of terms
and

10 labels.

11 Q. Okay. I'm sure you do. I read
a book

12 by one of your colleagues, John Douglas. I had no
way of

13 anticipating that you would be with us this month,
or

14 next month, or however long we are going to be
here. But

15 he is -- John Douglas is one of the -- was he the --
- I

16 think he calls himself the originator, or what is

he?

17 A. I don't know if he calls himself
that.

18 He certainly was involved in this program for quite
a

19 number of years, but there were people that
predated him,

20 certainly.

21 Q. Well, he may have exaggerated
his own

22 position. Have you read his book?

23 A. I have, sir.

24 Q. Okay.

25 A. I am cited in it, as I recall.

1 Q. All right. All right. Do you -
- you
2 know, I read that thing and it's interesting,
because
3 you, as a profiler, you will go and review the
4 information of a particular crime scene or an
event, and
5 then, at least Mr. Douglas would -- I don't know
whether
6 you have this, well, I'm sure you do, whether you
have
7 the ability -- but Mr. Douglas would, after he
looked at
8 a crime scene, he would say the victim or the
perpetrator
9 is a white male, 21 to 23, lives in the -- within
two or
10 three blocks of where the crime was committed,
probably
11 stays with some relatives, is dysfunctional in some
12 respects, and will do this again, and drives a
13 Volkswagen, probably red.
14 Do you remember things like that
that
15 he would write in this deal, where he would even

predict

16 the color of the Volkswagen?

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

18 sir.

19 Q. Do you remember where he
predicted the

20 color of the Volkswagen that the man was driving?

21 A. Well, on occasion what we do,
and I

22 can't speak for John or what he has written or
account

23 for that, but what we do on occasion, we may talk
about

24 the type of vehicle that someone may drive, but as
far as

25 I go, and my understanding of the limitations of
this

1 process, we don't get into predicting or assessing
2 vehicle color. I don't.

3 Q. All right. Well, you don't.

But if

4 you will go back and reread, you will find that he
5 predicted even the color of the man's car. And I
6 wondered at that time, and I'll ask you, do you all
keep

7 statistics as to when you are wrong?

8 A. Well, first of all, I think I
know

9 your understanding of this process so far has been
based

10 on that one book, but I think a lot of that book is
11 accurate, a lot of it is inaccurate.

12 I think what you have to
understand,

13 first of all, I think you are describing a profile,
and

14 what we did in this case was not provide a profile.

15 Q. No, I understand, that wasn't
an

16 answer, I appreciate the information, that wasn't
an

17 answer to my question.

1 If you interviewed people who were friends and
associates

2 of Mrs. Routier, did you do that?

3 A. No, sir.

4 Q. Did you have reports of people
who

5 were friends and associates of hers?

6 A. I did.

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

8 A. I would have to go back and look,
to

9 be exact, several neighbors, as I recall, and
coworkers,

10 I believe there was a report, an interview with a
11 housekeeper or maid.

12 Q. Okay. Did you put particular
stock in

13 the -- what the coworker said and what the
housekeeper

14 said?

15 A. No. And what I did, and again, I
was

16 wanting to take in all of the information available,
17 there was obviously some information that I

discounted or

18 thought was unimportant from the standpoint of what
I do.

19 Primarily, what I was looking at was victimology,
20 information about the victims.

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

23 time is very valuable.

24 A. Thank you.

25 Q. And I'm going to go through this
just

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1 as quick as I can, and if you will just answer my
2 question instead of giving a dissertation.

3

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

5 object to that.

6 THE COURT: Sustain the
objection.

7 MR. DOUGLAS MULDER: Well, Judge,
if

8 you will caution the witness to just answer my
question,

9 we are going to get along fine. I am not going to
drag

10 this out.

11 THE COURT: Mr. Mulder, ask your
next

12 question, please.

13

14 BY MR. DOUGLAS MULDER:

15 Q. Yes, sir. Did you put any
particular

16 credence in what the -- as you have termed her
17 housekeeper or what the coworker said?

18 A. Again, I reviewed it. I took it
into

19 consideration. But I didn't -- I don't believe I
20 weighted that quite as much as I did
other case
21 materials.

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

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Court Reporter

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1 A. Certainly.

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

4 A. Well, it would be
important.

5

6 MR. TOBY L. SHOOK:
Judge, I'm going

7 to object here for going into facts
not in evidence, and

8 for going way out --

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

11 MR. DOUGLAS MULDER:
Well, Judge, I'd

12 like to be heard on this then, outside
of the presence of

13 the jury. Let me have my exhibit and
let him --

14 MR. TOBY L. SHOOK:
Judge, could we

15 approach the bench for a moment?

16 THE COURT: Yes,

you may. What do you

17 have? Let's see what we have.

18 MR. TOBY L. SHOOK:

Could we bring

19 this exhibit with us, please?

20 THE COURT: Would

the jury please step

21 outside into the jury room briefly,

please.

22 All right.

23

24 (Whereupon, the

jury

25 Was excused from

the

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Court Reporter

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1 Courtroom, and the
2 Proceedings were
held

3 In the presence of
the
4 Defendant, with
his
5 Attorney, but
outside

6 The presence of
jury

7 As follows:)

8
9 THE COURT: Let the record
reflect

10 that these proceedings are being held outside the
11 presence of the jury, and all parties in the trial
are
12 present.

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

15 MR. DOUGLAS MULDER: Judge, my
16 position is simple. This man said he had received
17 information, and if this is the woman, and we have
not
18 established that yet, but if this is the coworker

and he

19 took her information into account, and he said her
mental

20 health would be important, then he has a right to
know

21 that she is a nut. It is that simple.

22 MR. TOBY L. SHOOK: Judge --

23 MR. DOUGLAS MULDER: She has
been

24 diagnosed as having a borderline personality
disorder,

25 and he will know this, that one of their
characteristics

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Reporter

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1 is that they are untruthful.

2 THE COURT: Let the record
reflect,

3 that the Court is holding Defendant's Exhibit 45
which

4 was admitted for record purposes only. It was not
5 admitted earlier in the trial.

6 And, the -- so what you want to do
is

7 get it admitted now for all purposes; is that
correct?

8 MR. DOUGLAS MULDER: No. I just
want

9 the witness to look at it, and I don't want him to
take

10 my word for the fact that she has been diagnosed as
11 having a borderline personality disorder. I'll let
him

12 look at it himself.

13 THE COURT: All right. I'll
sustain

14 your objection, Mr. --

15 MR. TOBY L. SHOOK: Judge, I'll
object

16 to him going into any line of questioning about her
17 mental history. You have already ruled directly when

the

18 witness was on the stand that that particular exhibit

and

19 questions going into that exhibit were not

admissible.

20

So you can't bring it in through

the

21 back door, through the agent, who just testified

that he

22 looked at some witness statements of a coworker and

he

23 already --

24

THE COURT: I'll sustain the

25 objection.

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1 MR. RICHARD C. MOSTY: Your
Honor,
2 here's a stack six inches thick of things that he
has
3 considered, including newspaper clippings that are
not in
4 evidence.

5 And he gets to let the State give
him
6 evidence, things that are not in evidence, and draw
his
7 conclusions, and we're precluded from giving him
8 information that might change his opinion.

9 THE COURT: We're speaking
10 specifically about Exhibit 45. That is my ruling.
11 Please let's proceed.

12 MR. DOUGLAS MULDER: Judge, excuse
me,
13 if I just might be heard on this so that my position
is
14 clear. May I have permission from the Court to
speak?

15 THE COURT: Well, yes.

16 MR. DOUGLAS MULDER: Thank you.

17 THE COURT: By all means.

18 MR. DOUGLAS MULDER: Judge, he

has

19 stated that he considered her opinion. He said he
would

20 also consider her mental health or lack thereof.

21 You know, they have got to take
the

22 bad with the good. If they want to put him up and
they

23 want him to consider people like Ms. Jovell, then
they

24 have to take the bad along with that. Her baggage
comes

25 with her, you know.

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1 THE COURT: Thank you. The
Court's

2 ruling remains the same. Objection is sustained.
Next

3 question.

4 MR. TOBY L. SHOOK: Judge, if
that's

5 all we have along these lines, then we will ask --

6 THE COURT: I guess we will,
until we

7 see what the next question is.

8 MR. DOUGLAS MULDER: Well, Judge,
I

9 would prefer to question him in front of the jury, if
10 that is all right with the Court?

11 THE COURT: Are you through with
this

12 hearing now?

13 MR. DOUGLAS MULDER: Yes, you have
cut

14 me off. You won't let me --

15 MR. TOBY L. SHOOK: Well, then,
Judge,

16 we will object further to any interrogation along
those

17 lines. And you know, if that is what we're going to

18 have, we need to get that hashed out now.

19 THE COURT: Well, I don't think
Mr.

20 Mulder will go into those other things.

21 MR. DOUGLAS MULDER: Why don't you
22 just cut me off from all cross examination?

23 THE COURT: Well, no, I can't do
that,

24 Mr. Mulder. We'll bring the jury in, you may
continue.

25 MR. RICHARD C. MOSTY: We can't

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1 provide him any information that he might use in
2 formulating his opinion?

3 THE COURT: We will go question by
4 question, and Mr. Mulder is handling this, and he
will do

5 all the talking for the defense.

6 MR. RICHARD C. MOSTY: Can I make
7 objections outside of the jury's presence and
comments

8 for the Court?

9 THE COURT: Right now, you may,
yes.

10 MR. RICHARD C. MOSTY: Thank you.

11 MR. DOUGLAS MULDER: So, he can
confer

12 with me too, can't he?

13 THE COURT: Oh, yes, he can, as
long

14 as it is done in soft tones.

15 MR. DOUGLAS MULDER: We'll confer
in

16 sign language, Judge.

17 THE COURT: Well, no, that will
not be

18 necessary.

19 Bring the jury back, please.

20

21

(Whereupon, the jury

22

Was returned to

the

23

Courtroom, and

the

24

Proceedings

were

25

Resumed on the

record,

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1 In open court, in
the

2 Presence and
hearing

3 Of the defendant,

4 As follows:)

5

6 THE COURT: Let the record reflect
7 that all parties in the trial are present and the
jury is

8 seated.

9 You may continue, Mr. Mulder.

10

11

12 CROSS EXAMINATION (Resumed)

13

14 BY MR. DOUGLAS MULDER:

15 Q. Yes, Mr. Brantley, I believe I had
16 asked you, if you all kept, you, the FBI and the
17 Behavioral Science Unit, if you kept statistics as to
how

18 often you're wrong?

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

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

how

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

22 statistics, we do keep some figures. We are

attempting

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

year

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

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

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1 Was that a yes or a no?

2 A. Well --

3 Q. Do you keep statistics as to how
often

4 you are wrong?

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

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

7 answer that.

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

9 those with you, do you?

10 A. I do not.

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

12 batting average is, or do you?

13 A. The best way I have of assessing
that

14 is the overwhelming amount of requests that we
receive

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

16 determine that what we do is beneficial.

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

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

19 the answer, isn't it?

20

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

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

23 argumentative.

24 THE COURT: I'll sustain the

25 objection.

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1

2 BY MR. DOUGLAS MULDER:

3 Q. Let me ask you this: You said one
4 of

5 the risk factors that you consider, when I looked in
6 your

7 notes, you said there was a car in the Routier
8 garage; is

9 that correct?

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

11 Q. You didn't?

12 A. I said, I believe it was in front
13 of
14 the house.

15 Q. Okay. I'm sure you are right,
16 Professor.

17

18 MR. TOBY L. SHOOK: Judge, again,
19 I'm

20 going to object to the improper questioning and the
21 side-bar comments.

22 THE COURT: I'll sustain your
23 objection.

24 MR. DOUGLAS MULDER: He is a
25 professor. He testified that he teaches at --

21

THE COURT: Mr. Mulder, please

cease

22 the side-bar. Ask your next question, please.

23

24 BY MR. DOUGLAS MULDER:

25 Q. What does this say? I'm showing
you

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1 what's been marked for identification and record
purposes

2 as Defendant's Exhibit No. 64. What does that say?

3 A. You are showing me a copy of my
notes

4 and work papers.

5 Q. Yes, sir.

6 A. And I have got this down. Again,
a

7 lot of this I was not prepared to testify to, because
I

8 later learned that it was inaccurate. The question I
had

9 before I arrived here, or wanted to confirm was where
the

10 location of the vehicle was. I wanted to know
whether it

11 was in the garage or where it was located. I was
12 informed it was located in front of the residence.

13 Q. Okay. When you were so good as
to

14 read that -- can I have it back, please?

15 A. Sure.

16 Q. You have got a copy of it right
up

17 there, don't you?

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

19 Q. When you were so good as to
translate

20 this for me because I couldn't read your writing,
you

21 didn't tell me that that was one of your
questions, did

22 you?

23 A. I don't believe you asked me
that. I

24 mean, you were just having me read that for you.

25 Q. Well, you said evidence that
occupants

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1 are home, the TV on -- well, let's see what you
wrote

2 down. And, when did you make these notes?

3 A. Now that copy -- what I did is
I had a

4 lot of other notes that I consolidated.

5 Q. No, no, my question was: When
did you

6 make these notes?

7 A. Probably within the last two
weeks.

8 Q. Okay. So you knew within the
last two

9 weeks your question about the car in the garage
had been

10 answered, hadn't it?

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

12 question.

13 Q. Do you think there was a car
in the

14 garage right now, as you sit here today?

15 A. My understanding is there was
not a

16 car in the garage.

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

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

24 Q. Matter of fact, the car wasn't
in the
25 garage and you now know that, don't you?

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1 A. That is my understanding.

2 Q. Okay. Matter of fact, the
vehicle

3 that the -- that Mrs. Routier drove was parked
out in

4 front, wasn't it?

5 A. That is -- my understanding was
there

6 was a vehicle in front of the house.

7 Q. And the car her husband drove,
the

8 Jaguar, the 1987 Jaguar, traditionally was parked
not in

9 the garage but in the driveway, wasn't it?

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

12 Q. Of course, it had been in that
garage

13 for the last two days, that was your understanding
too.

14 So for all outward appearances, anyone who knew that
15 house, or knew that area, would think that the wife
was

16 home and the husband was gone; is that reasonable?

17 A. All I was looking at, again,

not

18 necessarily who specifically was home, but just
that

19 there was some indication that someone was home.

20 Q. Well, you quarrel -- of course,
the

21 object of the intruders crime in this case could
well

22 have been the mother or the woman of the house,
couldn't

23 it?

24 A. It could have been.

25 Q. All right. And anyone, like
I said,

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1 anyone familiar with that house and with the
occupants

2 would know or would assume that the husband was
gone

3 because his car was gone.

4 A. That's possible.

5 Q. But she was there because her
car was

6 there?

7 A. That is possible as well.

8 Q. Okay. You know, you stated,
and I

9 wrote it down, that the focus of the assailant
was on the

10 children; is that right?

11 A. That's correct.

12 Q. I wrote that down right?

13 A. I'm not sure what you wrote
down, but

14 that is what I testified to.

15 Q. Okay. And, how do you know
that?

16 A. How do I know that they were
the focus

17 of the offender's interest or assault?

18 Q. Yes, sir.

19 A. I think it's fairly obvious
from the
20 nature and severity of the trauma they sustained
and the
21 location of the trauma. Again, the placement of
those
22 wounds for maximum killing efficiency, that
pretty much
23 stands out to me.

24 Q. And I think you told us that
the
25 children were attacked first?

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1 A. It appears to have been the
case,

2 that's correct.

3 Q. Okay. It appears to you but
it's not

4 quite as apparent to me. Could you enlighten me
as to

5 how you reached that conclusion?

6 A. Well, in part from the
witness's

7 description of events.

8 Q. From -- are you talking about
Mrs.

9 Routier's?

10 A. That's correct.

11 Q. Oh, she told you the children
were

12 attacked first?

13 A. I was able to review her
statement.

14 Q. And it says in there the
children were

15 attacked first?

16 A. She indicates that, as I
recall, that

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

22 Q. Okay.

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

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1 Q. If he made his exit, then she
had

2 already been attacked to, hadn't she?

3 A. That is reasonable.

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

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

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

11 A. That's correct.

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

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

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

19 with the facts, are you?

20 A. I hope not.

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

24 A. That's what it appears.

25 Q. Okay. Would you tell the jury the

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1 extent of Mrs. Routier's injuries as you understood
them,

2 Mr. Brantley, or Agent Brantley?

3 A. Right. My understanding is she
has a

4 wound to the left shoulder, has a wound -- actually
two

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

6 the neck.

7 Q. Okay. And, those were
superficial?

8 A. I remember from reading the
medical

9 reports that they had been described by the medical
10 professionals as superficial.

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

12 Brantley?

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

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

17 A. That certainly was taken into
18 consideration, but I think also, the depth of the

wounds,

19 and the amount of structural damage that has been
20 committed.

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

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

25 Q. Okay. And you think if the
carotid

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1 artery were missed by two millimeters that that is a
2 superficial or a not life threatening or an
unimportant

3 injury?

4 A. I certainly looked at that with
great

5 interest. And again, relied on the accuracy and
6 reliability of the medical professionals that did the
7 assessment and wrote the reports.

8 Q. Is that where Dr. Parchman-
Townsend

9 comes in?

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

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

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

18 Q. Mr. Brantley, can you tell me how
many

19 weapons you assumed were involved?

20 A. To my knowledge, based on the
21 facts

22 and circumstances, it looked like two knives in the
23 home

24 were involved. At least those were the only ones
25 that

26 demonstrated through forensics and through
27 examinations

28 that they had come in contact with either blood,
29 fibers,

30 or rubber particles or glass fragments from a window

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1 screen.

2 Q. As a special agent you are no
doubt

3 aware of the laboratory that the FBI has in
Washington

4 D.C., are you not?

5 A. I am.

6 Q. Okay. Do you know
whether or not the

7 bread knife was ever submitted to the
laboratory in

8 Washington D.C. that is run by the FBI?

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

10 Q. Okay. And if you talked
with Mr.

11 Linch you know that he was only able to make
-- because

12 of the minute quantities of the fiberglass
and the rubber

13 dust, he was only able to make a visual
examination in

14 comparison with the screen. Did you know
that?

15 A. I'm not sure I understand

your

16 question. The visual --

17 Q. He was only able to
eyeball it and say

18 it looks the same.

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

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

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

25 Q. It was so minute that you
couldn't see

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1 it with the naked eye.

2 A. It was microscopic, yes,
sir.

3 Q. Okay. And, did you take
into

4 consideration that -- and did Mr. Linch tell you, and
I

5 don't know where the knife is, but I'll use this,
because

6 it really doesn't make any difference. But did Mr.
Linch

7 tell you that he didn't know where on the knife he
found

8 the fiberglass rod and where on the knife he found
the

9 rubber dust?

10 A. I don't recall if we got that
11 detailed. It was just indicated to me that there was
the

12 presence of those items on the knife. He may have,

13 however, he may have told me exactly what the
location

14 was.

15 Q. Did you examine that screen?

16 A. Did I examine the screen itself?

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

19 A. No, sir.

20 Q. To know that you could just --
it's of

21 such a fabric that you could cut it with relative
ease,

22 that doesn't surprise you, does it?

23 A. Well, I really couldn't testify to

24 that. I have not examined the screen. I have been
told

25 by others that have that the composition of the
screen --

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1 Q. Well, would it, as an FBI agent,
would

2 it make a difference to you that if the window wasn't
3 raised all the way up, that the knife when it cut the
4 screen, of course, couldn't go in more than about,
what

5 two inches?

6 The screen fit over the window,
say an

7 inch or two, and if he found what he found up in
here, it

8 has absolutely nothing to do with this case. Are you
9 following me?

10 A. I think so. If you go with your
11 theory that the window is closed, again --

12 Q. Well, do you know whether it was
open

13 or closed?

14 A. I do not.

15 Q. But that doesn't make any
difference

16 to you, does it?

17 A. Well, it could, as you say if the
18 particles are found further up on the knife, then
that

19 would suggest that the window was open possibly, and
you

20 didn't have that obstruction for the knife.

21 Q. Because that fits your
conclusion?

22 A. No, I haven't testified to
anything

23 about the condition of the window.

24 Q. Well, I mean that knife may not be
25 involved in this case?

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1 A. The knife you just showed me?

2 Q. Well, the knife I showed you was
not

3 the bread knife.

4 A. That's correct.

5 Q. Did you know that when -- that
there

6 has been testimony that this knife does not have the
7 blood of Devon Routier on it?

8 A. You're asking me if I am
knowledgeable

9 about the testimony that has gone on about the knife?

10 Q. No, I assume you have not been
told

11 what the testimony is.

12 A. I have not.

13 Q. But I assumed the prosecutors
shared

14 that with you.

15 A. About the testimony that has
occurred

16 about the knife?

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

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

that

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

20 Devon Routier is on this knife.

21 Now, did you form an opinion or
did

22 you make an assumption as to how many knives were
23 involved in the assault, in the cutting of the three
24 victims?

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

1 I looked at and what I found to be reasonable was
that
2 the butcher-styled knife or chef's knife, whatever
you
3 want to call it, that was found saturated with blood
was
4 indeed used in some assault there at the residence.

5 Again, it was not until later on
when

6 it was processed and they came up with the
information

7 about the blood types that we went beyond that.

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

9 types are on the knife?

10 A. My understanding earlier was that
it

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

13 Q. Okay. Well, if you have received
14 information -- well, you know you may not have
received

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

16 jury may have received information that contradicts

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

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

20 Q. No, but can you appreciate that?

That

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

22 the witnesses have testified to before the jury?

23 A. That could be possible.

24 Q. Okay. Now, you can't tell, I dare
25 say, which of the youngsters was stabbed first?

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

3 Q. But you are telling this jury that
you
4 assumed that the one boy had been stabbed some four
5 times, is that right, in the back?

6 A. As I recall, the -- I believe it
was
7 Damon, the youngest, had four stab wounds and two
fairly
8 large incised wounds to the back for a total of about
six
9 wounds to the back.

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

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

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

16 A. I didn't assume that they had
been,

17 but I believe from my recollection of information of
18 events, that the wounds appeared to be consistent
with
19 having been made by that butcher knife.

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

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

23 Q. I asked you if you assumed that
the

24 boys were cut and stabbed with the same weapon?

25 A. Again, you say assumed, I looked
at

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1 all the possibilities and considered all the
information

2 before I make my determination or assessment.

3 Now, again, early on I'm not going
to

4 assume anything. If you have additional information
that

5 I can consider, I will consider that.

6 Q. Okay.

7 A. Again, my opinion is not locked up
or

8 carved in granite.

9 Q. Well, I would think before you get
up

10 here and give a jury some opinion about who might
have

11 killed or attacked some children, that you would have
12 some idea as to what went on?

13 A. Well, maybe it's a semantic thing
that

14 you are talking about assume. I think I'm relating
that

15 to kind of quick to react and quick to or jump to
16 conclusions, and that is not what I'm doing.

17 Q. Are you assuming now as we sit

here

18 today, that one weapon was used to assault those
19 children?

20 A. It's my opinion that, again, that
that

21 butcher knife was used to kill those children.

22 Q. To the exclusion of all others?

23 A. To the exclusion of the others
that

24 were discovered at that scene, covered in blood, and
25 reported to be handled by the offender on his exit.

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1 Q. Okay. I just want to make sure I
2 understand, and -- you're saying that that was the
only

3 weapon? You have ruled out any other weapon?

4 A. Again, not -- to my knowledge
there

5 was no other weapon discovered at that scene that had
on

6 it the victim's blood, and that was reportedly
carried

7 and dropped or thrown down by the offender as he
exited.

8 Q. Okay. All right. Did you assume
that

9 Devon, both Devon and Damon Routier's blood was on
this

10 weapon?

11 A. The information that I had
available

12 to me was that that is indeed the case.

13 Q. That is the case?

14 A. Yes, sir.

15 Q. All right. Thank you. Now, may
we

16 assume further that you don't know which of the boys

was

17 stabbed first, but did it make sense to you, based

on

18 your vast experience that the six injuries to the

one

19 youngster, to Damon, were received at approximately

the

20 same time?

21 A. I would say they were

coincidental to

22 that event, if you consider the event the assault of

the

23 three members of that family.

24 Q. So, in other words, the

perpetrator,

25 whoever that might be, stabbed Damon and cut him six

1 times and then stabbed and cut Devon some two times,
and

2 then the knife was turned on Darlie; is that right?

3 A. That is -- if that is the order
you

4 believe it. I haven't said that that is the order,
no,

5 sir. I can't state that.

6 Q. Well, you know, it could have
been

7 Devon first, it could have been Damon first, either
one?

8 A. It could have.

9 Q. All right. But the boys were
before

10 she was assaulted?

11 A. That is my opinion.

12 Q. Okay. And then, after the boys -
-

13 after the assault was finished on the boys, then she
14 either herself inflicted those wounds or somebody
15 inflicted the wounds upon her, is that -- are we on
the

16 same sheet of music?

17 A. I think that is reasonable.

18 Q. Okay. It doesn't make sense to
stab
19 one of the boys and then stab the other boy and then
cut
20 her and go back and stab the other boys again, does
it?

21 A. I'm not sure I understand what
you
22 mean by "make sense."

23 Q. Well, I mean, your -- that is what
24 your whole premise is built on is common sense, isn't
it?

25 A. Again, I'm not sure I understand
what

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1 you are saying. My opinion is based on a number of
years

2 of training and experience and education --

3 Q. No, I know all about that.

4 A. -- and working hundreds of these
kinds

5 of cases.

6 Q. Yeah, we know all about your
education

7 and your training. But the whole thing is based on
8 common sense, isn't it?

9 A. I'll tell you one of the -- if you
10 will allow me to explain this, I believe in the rule
of

11 thumb, but be aware of the obvious. I try not to
over

12 interpret or over analyze. And I think, again, what
I

13 have testified to are major features, things that I
14 believe, most people, once these things are
explained to

15 them, and again things that may be beyond what they
16 encounter in their daily lives, I think it really
does

17 make sense to people once they have all of the facts

and

18 circumstances.

19 Q. The whole thing is based on

common

20 sense, isn't it? I know you have got experience.

Have

21 you actually worked murder cases?

22 A. I have, yes, sir.

23 Q. Okay. You weren't a street

officer

24 with any PD or anything like that, were you?

25 A. No, I was not.

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

3 of Columbia?

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

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

8 A. That's correct.

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

11 A. When I was assigned to our office
in
12 Connecticut, there was -- we did a nationwide round
up of

13 the Hell's Angels motorcycle gang, and there was a
14 homicide that occurred while we were investigating
that

15 group. We had to respond to that scene and do some
16 inventories and some data collection.

17 Q. Okay. Is that the extent of the
18 murder cases that you, yourself, have worked?

19 A. On the scene. However, I have
worked

20 hundreds of murder cases at the National Center.

21 Q. Yeah. Well, a lot of that stuff
is
22 telephone too, isn't it?

23 A. I'm sorry?

24 Q. Where you talk to somebody on the
25 phone and give them advice.

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1 A. Well, we do quite a bit of what
we do
2 on the telephone, that's correct. But we also make
3 on-site visits, and we have investigators that come
back
4 to the Academy for consultation.

5 Q. Now, in the course of your
reviewing
6 the facts, you told us that you read the various
reports
7 of the police officers; is that right?

8 A. That's correct.

9 Q. Okay. And I think, you know, one
10 thing that kind of stuck out in my mind, you said you
11 made the inquiry as to whether there had been any
similar
12 crimes in the neighborhood?

13 A. That's correct, similar or related
14 offenses.

15 Q. Why is that important?

16 A. Well, if you are trying to
consider
17 whether this may be part of a series, that certainly
18 would be important to know.

19 Q. Okay. And I think you also -- I
heard

20 you say something but you didn't expound on it, but
there

21 was something about a car, a black car that was in
front.

22 Do you recall reviewing one of the
23 officer's notes where he questioned the lady
directly

24 across the street who said that she was awakened
that

25 morning by a scream and thought it was a slumber
party

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1 the people next door were having.

2 And she looked out and she saw a
small

3 black car out there with dark windows, and she
assumed

4 that it was a slumber party, and nothing going on,
so she

5 went back to bed.

6 And then she heard the emergency
7 vehicles out there, and then she got up and looked
out

8 again, and that vehicle was gone. That small black
car

9 with the tinted windows. That didn't belong to
anybody

10 in the neighborhood. What did you make of that,
Agent

11 Brantley?

12 A. I don't recall reading that.

13 Q. Oh, you don't?

14 A. No.

15 Q. Well, let's see if we can find
that

16 for you. Would that make a difference?

17 A. I would certainly take that into

18 consideration.

19 Q. Well, before I go to the trouble
of
20 finding it, I want to know if it's going to make a
21 difference.

22 A. A major difference?

23 Q. If not, we'll go on to something
else.

24 A. You mean, will I change my
opinion?

25 Q. You are not going to change your

1 opinion, are you?

2 A. Not based on that information,
no,
3 sir.

4 Q. All right. I'll just move on to
5 something else then. But you didn't inquire about
it or

6 say, "Hey, what is this black car doing at 2:30 in
the

7 morning, where it has no business being and nobody
knows

8 anything about it? Why is it out there and why does
it

9 leave right after the scream for help"?

10 A. I -- not that specific incident
or

11 that specific vehicle -- I did ask many, many
questions

12 about people that lived in the neighborhood, anybody
that

13 might have had a history of problems, or arrests and
14 convictions, I mean, any of that information,
certainly,

15 I would want to know ahead of time.

16 Q. Okay. Now, you said you took into

17 consideration this business about no evidence in the
den

18 or the Roman room or the family room, call it what
you

19 will, of a violent struggle; is that right?

20 A. I don't believe I characterized it
21 quite that way.

22 Q. Well, you were the one that -- I
wrote

23 down violent struggle. I mean, I got that from you.

24 A. There was certainly evidence of a
25 violent struggle. Again, whether you -- when you
look at

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1 the quality and the nature of that struggle, it would
2 certainly seem to be less than dramatic.

3 Q. Um-hum. (Attorney nodding head
4 affirmatively.)

5 A. Certainly, in the hundreds of
cases we

6 have analyzed in the past, when you see a violent
7 struggle between two adults and there is a knife
involved

8 as the weapon, and people have been cut, you
generally

9 see a considerable amount more of disruption than we
saw

10 in that.

11 Q. Hey, I agree with you
wholeheartedly.

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

15 You just said that she woke up and
saw

16 this man walking away from her. She didn't say that
she

17 engaged in a violent struggle with him. Why are you
18 looking for a violent struggle?

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

22 but that was obvious, a violent crime scene.

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

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1 that. So I had gotten that information from them.

2 Q. Okay. I mean because you saw a
lot of

3 blood there on the carpet?

4 A. I don't understand your question.

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

7 A. Because there is a lot of blood on
the

8 carpet, did I assume or believe that there had been a

9 violent confrontation there in that location? Is
that

10 what you are asking me?

11 Q. Yes.

12 A. Yes, that's reasonable.

13 Q. Okay. You don't know -- and
again,

14 you don't know what the first responders, how they
may

15 have changed the scene, do you?

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

17 asked.

18 Q. Okay.

19 A. And I wanted to get some

information

20 about that, because that is important also to
consider.

21 Q. You considered the vacuum
cleaner,

22 didn't you?

23 A. I did.

24 Q. Okay. And, I noticed you've
made a

25 comment about the cord, didn't you?

1 A. I did.

2 Q. And you said something about the
way

3 the vacuum cleaner cord was coiled up. Didn't you
say

4 something about the way the vacuum cleaner cord was
5 coiled up, that gave you some concern?

6 A. I don't know if I said the word
7 coiled, but certainly the way it was underneath the
base

8 of the vacuum was of interest, that's correct. It
9 appeared to be more stacked or -- than coiled, I
think.

10 Q. And you said it looked like it
had

11 been placed in there as part of staging?

12 A. That's correct. I believe that
was

13 indicative of the staging that occurred at the
scene.

14 Q. Okay.

15

16 (Whereupon, the
following

17 mentioned item was

18 marked for

19 identification only
20 after which time the
21 proceedings were
22 resumed on the record
23 in open court, as
24 follows:)
25

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1 BY MR. DOUGLAS MULDER:

2 Q. Let me hand you what's been marked
for

3 identification and record purposes as Defendant's
Exhibit

4 No. 65. And I'll ask you if that is the photograph
that

5 you are talking about?

6 A. No, it's not.

7 Q. Okay.

8

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

18

19 BY MR. DOUGLAS MULDER:

20 Q. Let me show you what has been
marked

21 for identification and record purposes as

Defendant's

22 Exhibit No. 61. I'll ask you if that is the
photograph?

23 A. No, it's not.

24 Q. Okay. There was another one?

25 A. There are several others.

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MR. DOUGLAS MULDER: I'll offer
into
evidence what has been marked for identification
record
purposes as Defendant's Exhibit 61 and 65.

MR. GREG DAVIS: No objection.

THE COURT: Defendant's Exhibit 61
and
65 are admitted for record purposes.

(Whereupon, the above
mentioned items
were
received in
evidence
for record
purposes
only, after which
time,
the proceedings
were
resumed on the
record,
as follows:)

18 BY MR. DOUGLAS MULDER:

19 Q. Well, I'll be happy to -- the
cord

20 appears to be in a different position. I don't
know

21 whether it's the same or different. Is there
another

22 photograph that shows it better?

23 A. There were several of them, yes,
sir.

24 Q. Okay.
25

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1 THE COURT: Did you offer that
for

2 record purposes only?

3 MR. DOUGLAS MULDER: No, no. I
4 offered for all purposes, but --

5 THE COURT: Any objections?

6 MR. TOBY L. SHOOK: No objection.

7 THE COURT: All right. Both
exhibits

8 are admitted for all purposes. Thank you.

9

10 (Whereupon, the above
11 mentioned items
were

12 received in
evidence

13 as Defendant's
Exhibit

14 Nos. 61 and 65,
15 for all purposes,
after

16 which time, the
17 proceedings were
18 resumed on the

record,

19 in open court,

20

as follows:)

21

22 BY MR. DOUGLAS MULDER:

23

Q. Can you show me the picture that

you

24 are talking about?

25

A. Sure, there are 4.

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1 Q. Okay.

2

3 MR. DOUGLAS MULDER: Let me have
these

4 marked for identification.

5

6 (Whereupon, the following
7 mentioned items were
8 marked for
9 identification only
10 after which time the
11 proceedings were
12 resumed on the record
13 in open court, as
14 follows:)

15

16 THE COURT: They will be
Defendant's

17 Exhibit what, Mr. Mulder?

18 MR. DOUGLAS MULDER: 66, 67 and 68.

19 THE COURT: All right.

20 MR. DOUGLAS MULDER: 69.

21

22 BY MR. DOUGLAS MULDER:

23 Q. Let me show you what has been
marked

24 for identification and record purposes as 66, 67, 68
and
25 69. And I'll ask you if those are the photographs
that

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1 you were telling us about?

2 A. Yes, they are.

3 Q. Okay. And, what is it that your
4 keen

5 eye caught about the cord?

6 A. I think it's probably best
7 depicted in

8 what you described as Defendant's Exhibit No. 67.

9 Q. Okay.

10 A. Where the cord --

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

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

15 MR. DOUGLAS MULDER: Yeah. I'll
16 offer

17 them into evidence.

18 THE COURT: Are you offering them?
19 All right. Any objection?

20 MR. TOBY L. SHOOK: No objection.

21 THE COURT: All right.

22 Defendant's

23 Exhibit Nos. 66, 67, 68 and 69 are admitted.

24

25 (Whereupon, the items

23

Heretofore mentioned

24

Were received in evidence

25

As Defendant's Exhibit

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1 Nos. 66, 67, 68, and 69,
2 For all purposes,
3 After which time, the
4 Proceedings were resumed
5 As follows:)

6
7 THE WITNESS: Where the cord
seems to

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

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

12 THE WITNESS: I'm sorry. Where
the
13 cord is underneath the base of the vacuum cleaner
and it
14 seems to be focused and kind of stacked on top of
one
15 another.

16 It certainly does not present with
the
17 appearance that this was been snatched and thrown, or
18 otherwise violently placed in that position.

19 THE COURT: If you could step down

and

20 just go down the aisle and show it to all the members

of

21 the jury.

22

23 (Whereupon, the witness

24 stepped down from the

25 witness box, and approached

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

4

5 BY MR. DOUGLAS MULDER:

6 Q. That appears to you that was done
with

7 a great deal of concern and design?

8 A. Well, you see here, this cord,
seems

9 to be very focused at the bottom of this vacuum
cleaner,

10 not stretched out or elongated. As if someone
grabbed it

11 or snatched it. You would have anticipated the cord
12 would be elongated, especially if it had been plugged
in,

13 obviously.

14 But again, this appears to have
been

15 held, placed underneath the vacuum cleaner, the
vacuum

16 cleaner base placed on top of it.

17 And then, considering the
amount of

18 blood on the handle of the vacuum cleaner, looks

like

19 that is the area that was grabbed. So, not thrown
off at

20 the top of this.

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

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

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

7 Q. For what?

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

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

15 Q. Okay. So you think that --

16

17 THE COURT: If you want to have a
seat

18 again, please, sir.

19

20

(Whereupon, the witness

21

Resumed the witness

22

Stand, and the

23

Proceedings were resumed

24

On the record, in open

25

Court, as follows:)

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1

2 BY MR. DOUGLAS MULDER:

3 Q. You think that the perpetrator
wanted

4 somebody to think that there was a fight going on
around

5 the -- not over the vacuum cleaner but around the
vacuum

6 cleaner? This is close to the kitchen sink, isn't
it?

7 A. It is close to the kitchen sink.

8 Q. You said you read her statements.
She

9 didn't say anything about a vacuum cleaner, does she?

10 A. I tell you, that was another
thing

11 that was considered. What was conspicuously absent
was

12 the comment by anyone about the vacuum cleaner.

And

13 again, other things were commented on, but there was

14 absolutely no mention made of this vacuum cleaner, it
was

15 totally avoided and I thought that was interesting.

16 Q. Well, now, if I -- I don't know

as

17 much as you do, obviously, but if I had wanted to
find

18 out how that vacuum cleaner got there, Agent
Brantley, I

19 would have asked the first officer on the scene if
he saw

20 a vacuum cleaner out of place in the kitchen. And
if he

21 said no, then I might think that maybe one of the
first

22 responders got it out of the way in their
emergency. But

23 did you talk to Waddell?

24 A. I did not personally talk to
him

25 but --

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1 Q. Didn't think it was necessary?

2 A. I talked to the prosecutors and
the

3 other investigators involved and certainly asked
that

4 question, I wanted to know if this was discovered in
this

5 position and if this photograph accurately depicted
that

6 position of the vacuum cleaner. I was advised that
that

7 indeed had not been handled by the paramedics or any
of

8 the responding officers.

9 Q. Okay. And, of course, you took
that

10 at face value, didn't you?

11 A. Well, I considered that to be
accurate

12 information at the time, yes, sir.

13 Q. Okay. Now, you are familiar with
14 staged evidence or throw-down evidence, aren't you?

15 A. I am familiar with staging.

16 Q. You have heard the term throw-
down

17 evidence, or I guess if you have not been a street
cop

18 and haven't worked a lot of these things, you
probably

19 haven't heard the term throw-down evidence?

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

21 Q. All right. If someone -- let's
just

22 use planted evidence, does that have a better
23 connotation? I mean is it clearer?

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

25 Q. Okay. Assuming that someone
wants to

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1 plant evidence to either divert attention from
themselves

2 or avert attention to someone else, what is the
first

3 thing and the most important thing that they want
to

4 achieve? What is the most important thing to
them, if

5 somebody is going to plant evidence?

6 A. You mean besides diverting
attention

7 away from themselves?

8 Q. Well, isn't the -- if you are
going to

9 plant evidence, you don't want to plant evidence
that is

10 so subtle the police might, in their zeal,
overlook it,

11 do you, if you are going to plant evidence?

12 So the most important thing to

13 somebody who plants evidence, is that the police
find the

14 evidence. They can't very well find it
themselves, can

15 they?

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

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

20 A. That is a fair statement.

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

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

25 Q. You can go along with that?

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1 A. Yes.

2 Q. Okay. And generally don't you
find

3 that planted evidence is overdone?

4 A. I think that is also fair to
say,

5 especially with people that don't have a history of
6 committing violent acts. They stage it, they try to
make

7 it look like they think it should look, but don't
8 necessarily base that on experience or knowledge of
doing

9 it before.

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

11 smidgen of blood on it, you find a blood soaked sock
at

12 the end of the driveway, or something that is
obvious.

13 It's got to be -- of course, for the police to find
it,

14 many times it's -- you want something that they are
going

15 to find and not something that they are going to

16 overlook. So you want to make it fairly obvious,

don't

17 you?

18 A. Well, I have seen that before
where

19 people do make things very obvious.

20 Q. Okay.

21 A. Now, if you're saying -- if you
are

22 asking me whether I think the sock was placed in an
23 obvious location or not, I could answer that.

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

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1 A. All right.

2 Q. I think you have answered it or
given

3 us your view on it?

4 A. Well, I --

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

7 the development?

8 A. Someone had.

9 Q. Um-hum.

10 A. Whether that was the perpetrator
or

11 someone else, I wouldn't be able to make that
12 determination based on the location of the sock.

13 Q. So you are saying that the
perpetrator

14 might have been aided by someone else. Is that what
you

15 are saying, or there may have been two perpetrators?

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

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

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

19 As an expert, how many perpetrators did you see
involved

20 in this event?

21 A. From my review of the case and all
the

22 materials, to me it appears that there was only one

23 individual involved in the assault.

24 Q. Okay. In the assault, in the
crime,

25 in the planting evidence?

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

4 Q. Can you just a give us your -- you
say
5 the -- there was one person involved. So the one
person
6 killed both of the boys and then cut and slashed
Darlie,
7 and then planted this sock, this ruse, this -- as
part of
8 the staging?

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

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

14 A. Well, I cannot give you an exact
15 chronology, but what I believe occurred is that the
16 offender in this particular case, I think at some

point,

17 at some level realized, hey, this crime scene, for
the

18 most part, really does not go beyond the confines of
this

19 residence.

20 And maybe I need to leave some
sort of

21 a trail to suggest that the intruder, if you will,
has

22 come from the outside and again also has exited --

23 Q. I don't want to interrupt you,
really,

24 but I want you to tell them at what point this
25 perpetrator realized that? As soon as the two boys
were

1 stabbed, or after her throat was cut, or after her
arms

2 were --

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

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

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

6 Q. Why not?

7 A. I just don't have enough
information

8 to make that call. But I think what I can say is
that,

9 that sock was planted after the boys had been
stabbed

10 because my understanding is that --

11 Q. Well, that is brilliant, because
the

12 boys' blood is on it. I mean, there isn't anybody
in

13 this courtroom who couldn't have handled that.

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

15 Q. Well, I mean, it's common sense
then,

16 isn't it?

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

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

22 A. That is a fair statement.

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

1 A. Well, I couldn't say with any
degree

2 of certainty exactly when that sock was placed
there.

3 Q. When was the window cut?

4 A. I couldn't say exactly when that
5 window was cut.

6 Q. Can you tell us who put the
7 fingerprints right up here? Did they tell you that
they

8 had an experiment for the jury here?

9 They had a police officer bigger
than

10 you are, squat down and go, and he too -- you know,
they

11 said something about the windowsill not being
disturbed,

12 the dust on it. You put that in and factored that
in,

13 didn't you?

14 A. That combined with the lack of
15 transferring anything outside the house, mulch,
grass,

16 moisture, blood going out the other way.

17 Q. Or mud?

18 A. Mud, exactly.

19 Q. Well, it was not muddy, why would

you

20 expect to see mud?

21 A. Well, I think with the moisture

and

22 the climate at the time is reasonable that some

moisture

23 had been picked up and if that came in contact with

dust

24 or dirt that may create mud.

25 Q. Well, it rained the next day. It

1 rained the 7th. There was a thunderstorm the 7th,
but
2 the 6th was hot and dry. Why would you expect to
see
3 mud?

4 A. Again, moisture from the dew in
the
5 evening and from -- you know, that is the moisture I
had
6 in mind.

7 Q. Show me where he is going to step
in
8 mud. Will you? Show me where the mud is here that
you
9 think somebody -- you think he brought some mud with
him?

10 A. Mud is your term, I'm not saying
mud.

11 Q. No, you said -- there wasn't or
you
12 didn't see any muddy footprints or you didn't see
any
13 mulch disturbed?

14 A. That's correct.

15 Q. Well, show me where the mud is

going

16 to come from.

17 A. Well, I'm considering dirt, it
doesn't

18 have to be mud, or a puddle of mud, but there could
be

19 some --

20 Q. Well, where is the dirt going to
come

21 from, Special Agent?

22 A. Dirt on the outside of a home
here in

23 Texas?

24 Q. This is all paved, isn't it?

25 A. Well, but still. See the yard
there,

1 the grassy area, in some areas there is no grass.

That

2 is bare exposed dirt.

3 Q. You think this is bare exposed
dirt?

4 A. That is mulch. It's my
understanding

5 that is mulch.

6 Q. Why would you walk through the
mulch

7 when you could walk on the sidewalk?

8 A. You could. You could walk on the
9 sidewalk.

10 Q. I mean why? Tell me. I mean I'm
11 interested in this. Why would you walk across the
garden

12 part when you can walk on the sidewalk?

13 A. Well, from interviews of
offenders

14 that I have talked to based on my knowledge of that
15 backyard area with the outside lighting and sensor,
that

16 one possible reason or explanation is you want to
avoid

17 setting off that light or that sensor. So you might

want

18 to take as direct, close route to the side of the
house,

19 as possible.

20 Q. You know, and that is a good
point.

21 A. Yeah, because you actually become
more

22 visible or exposed, I think, if you go down the
walkway.

23 Q. Yes, sir. And we have a man who
24 performed some tests, but the State hasn't seen fit
to
25 bring him yet.

1 But one of the witnesses, one of
the
2 police officers testified --

3

4 MR. TOBY L. SHOOK: Judge, we'll
5 object to the side-bar once again.

6 THE COURT: Sustain the
objection. I

7 instruct the jury to disregard the comments made by
the
8 attorney.

9

10 BY MR. DOUGLAS MULDER:

11 Q. Well, one of the police officers
12 testified that a Sergeant Nabors did some tests out
there

13 and he said that you could walk from this window
through

14 here to the gate and not set off that light.

15 A. I believe that is accurate. I
saw

16 that same report.

17 Q. So the light doesn't have
anything to

18 do with it, does it, unless you are just running

around

19 the yard?

20 A. Well, it is something I
considered.

21 But if you knew that about the light, you knew the
22 positioning of the light and that cone of
sensitivity,

23 then you could reasonably assume that.

24 But if you are a stranger and

you are

25 not aware of how that light is positioned, you are
not

1 going to know that that wouldn't come on. So you
might

2 want to be a little more cautious and you might
want to

3 hug the wall of that home a little more closely
than

4 otherwise.

5 Q. Well, who said it was a
stranger?

6 A. I'm just saying that is a
possibility.

7 Q. Okay.

8 A. And if you believe that, if you
9 believe that it's a stranger, that's certainly
something

10 you want --

11 Q. Or if you don't -- you know, not
many

12 places have these sensor lights, do they?

13 A. I'm sorry?

14 Q. Not many, probably 99 percent of
the

15 places don't have a sensor light that goes on like
that.

16 Isn't that fair to say?

17 A. I have no information about that
18 neighborhood, how many people have that light.

19 Q. Any neighborhood?

20 A. It's fairly common in the area
that I
21 live in.

22 Q. Well, it would have to be. You
live
23 up there by Washington D.C.

24 A. I do.

25 Q. Everybody carries a gun up there,

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1 don't they? Or they need to, probably.

2 But at any rate, why would you
expect

3 the mulch to be disturbed?

4 A. If somebody had gone through there
it

5 would be reasonable to assume that the mulch had been
6 disturbed.

7 Q. All right. Now, did you say there
was

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

9 you say that?

10 A. You are talking about other than
the

11 screen being cut?

12 Q. Yes, sir.

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

15 Q. Well, when you say a minimum, what
are

16 you talking about?

17 A. Well, again, going back to the
dust

18 and dirt on the sill, talking about a transfer,

talking

19 about any blood evidence being brought back through
there

20 on the exit of the offender.

21 Q. Did you know that when that police
22 officer went through that the only place that he
touched

23 was the place that they found the unidentified
prints?

24 A. I was aware of that.

25 Q. Do you think he just touched it in

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1 front of the jury, just to -- by design? Or do you
think

2 it was just a natural place that somebody would touch
as

3 they were going through that window?

4

5 MR. TOBY L. SHOOK: Judge, I'm
going

6 to object to speculation.

7 THE COURT: Sustained.

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

10 THE COURT: If you know the
answer,

11 answer it. If you don't, let's move on to the next
12 question.

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

15

16 BY MR. DOUGLAS MULDER:

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

18

19 (Whereupon, the following
20 mentioned items were
21 marked for
22 identification only

23

after which time the

24

proceedings were

25

resumed on the record

Sandra M. Halsey, CSR, Official Court Reporter

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1 in open court, as
2 follows:)

3

4 BY MR. DOUGLAS MULDER:

5 Q. Let me show you what has been
marked

6 for identification and record purposes as Defendant's
7 Exhibit 62 and 63.

8

9 MR. DOUGLAS MULDER: And I will
offer

10 these into evidence.

11 MR. TOBY L. SHOOK: No objection.

12 THE COURT: Defendant's Exhibit 62
and

13 63 are admitted.

14

15 (Whereupon, the above

16 mentioned items

were

17 received in

evidence

18 as Defendant's

Exhibit

19 Nos. 62 and 63,

20 for all purposes,

after

21

which time, the

22

proceedings were

23

resumed on the

record,

24

in open court,

25

as follows:)

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1

2 BY MR. DOUGLAS MULDER:

3 Q. You can see, it looks like a
Dallas

4 Cowboy trash can kicked over there, doesn't it?

5 A. Certainly.

6 Q. And here it looks like another
trash

7 can kicked over, doesn't it?

8 A. Yes, sir, a wastebasket.

9 Q. So that would be -- would that be
some

10 evidence of somebody going through?

11 A. It could be, and I certainly
12 considered that. And again, what I think that really
13 addresses is you have those things laid down in a
fairly
14 conspicuous way.

15 Certainly, there is nothing again
16 damaged. I mean, these are plastic kind of a tin
metal

17 wastebasket. No damage, no dent in that wastebasket
18 whatsoever.

19 Again, the question arose, is this
20 something that was knocked over and disturbed as
someone

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

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

23 well, how come on the exit they knocked into these
items?

24 I think what we also considered was whether somebody
may

25 have pulled these things behind them to impede
someone

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1 chasing them, or delay someone from actually catching
up
2 with them. So we looked at those as well.

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

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

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

9 A. I'm sorry?

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

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

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

17 A. It would, if there had been
something

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

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

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

24 Q. And a blood pattern
interpretation?

25 A. Well, I am not an expert in that
area,

Sandra M. Halsey, CSR, Official Court Reporter

1 but certainly I have had that kind of information
2 presented to me before.

3 Q. Okay. Now, we're in agreement now
4 that whoever did this thing finished off the boys
before

5 Darlie was attacked and her throat cut, stabbed here
a
6 couple of times and stabbed in the chest. Are we in
7 agreement?

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

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

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

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

15 A. Well, they are very interesting.

I
16 looked at that when I received the case materials
and I
17 asked quite a few questions.

18 Q. Okay.

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

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

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

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

13 Q. Pretty determined individual if
they
14 are beating their arms up in the fashion that they
are
15 bruised all the way from the wrist to the,
virtually, the

16 shoulder, wouldn't you say?

17 A. I recall what was distinctive, it
was

18 a very clear line of demarcation where from that
line

19 below there was absolute no bruising and then from
that

20 line above, there was significant bruising.

21 Q. The doctor says, blunt trauma.
What

22 does that mean to you?

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

something
25 hard.

1 Q. Okay. And I take it you factored
that

2 in?

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

4 Q. Okay. And, you talked to Mr.
Bevel,

5 didn't you?

6 A. I did.

7 Q. Okay. And he no doubt told you
about

8 the blood that was on her T-shirt?

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

11 Q. Okay. And you found that
interesting,

12 did you?

13 A. Certainly, I took that into
14 consideration.

15 Q. Okay. And what consideration did
you

16 give that?

17 A. Well, that was not a major
feature.

18 And again, as I testified on direct, that was really
not

19 anything that I focused on.

20 Q. That didn't mean a whole heck of
lot

21 to you?

22 A. Well, based on what I was trying
to do

23 and the focus of what I was doing, again, it was

24 certainly not a major feature.

25

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1 MR. DOUGLAS MULDER: Judge, if
you
2 will bear with me. I want to get down, like on my
knees
3 here.

4

5 BY MR. DOUGLAS MULDER:

6 Q. But, Mr. Bevel had the opinion,
that

7 Darlie got the blood on her, by stabbing the boys,
and

8 working the knife in this fashion, and the knife
came up

9 and spattered or cast off on her shoulder. Did he
tell

10 you that?

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

12 Q. Okay. And, he said that in
these

13 areas where you see the multicolored kind of
14 lifesaver-looking deals, you see four of them on
there?

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

16 referring to.

17 Q. The two here.

18 A. The yellow and orange?
19 Q. And a couple here?
20 A. Yes, sir.
21 Q. Okay. He said that those were
22 occasioned when the knife was stabbed into the boys
and
23 came out and the blood spattered or was cast off on
her
24 shoulder. Does that make sense to you?
25 A. Again, if that is Mr. Bevel's

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

2 Q. Okay. Well, as an analyst, I
guess my

3 question for you is: And he said that the blood
here,

4 and there is going to be testimony, he said
initially, it

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

6

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

8 object to him going into --

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

10 to --

11 THE COURT: Sustain the
objection.

12 MR. RICHARD C. MOSTY: Excuse
me,

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

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

15 testified to a whole lot of stuff yesterday.

16 THE COURT: We understand that.
Let's

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

18 MR. TOBY L. SHOOK: We'll object
to
19 him going into any comparison.

20 THE COURT: Sustained.

21

22 BY MR. DOUGLAS MULDER:

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

24 Analyst. If, in fact, these represent --
25

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1 THE COURT: His name is Brantley
and

2 please address him as such.

3 MR. DOUGLAS MULDER: Mr.
Brantley,

4 Agent Brantley.

5 THE COURT: Thank you.

6 MR. DOUGLAS MULDER: Yes, sir.

7

8 BY MR. DOUGLAS MULDER:

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

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

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

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

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

14 are you telling me that?

15 Q. It's a mixture.

16 A. Also the court reporter is
blocking my

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

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

I

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

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

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

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

23 and Devon's blood.

24

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

1 into a conclusion, and there were two different
areas of

2 testimony given on that, and the conclusion that he
has

3 given. Two different explanations.

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

5 MR. DOUGLAS MULDER: Well, Judge,
are

6 you telling me that I can't ask this analyst this
7 question? These are facts based on evidence.

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

11 MR. DOUGLAS MULDER: All right.

12

13 BY MR. DOUGLAS MULDER:

14 Q. Well, the knife has to be wet with
15 both of their blood to be able to stab -- to be able
to

16 stab, and get that blood on her, if that is how it
got on

17 there.

18 It has to have both her blood, and
the

19 youngster, Devon's blood, on it at that time. And
for
20 that to happen, he must have already -- she has
either
21 got to cut her throat first and injure herself first
and
22 then stab the boys and do it, or she has got to stab
the
23 boys and then cut her throat, and then go back and
stab
24 the boys again to do this.
25

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

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

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

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

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

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

16

17 BY MR. DOUGLAS MULDER:

18 Q. Just a thing or two. Were you
aware,

19 Agent Brantley, that there were some suspicious

people

20 looking into the Routier garage, the late evening of
June

21 the 5th? Were you aware of that?

22 A. I am not aware of that, no, sir.

23 Q. Okay. That doesn't make any

24 difference, does it?

25 A. That would make a difference if I
had

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1 that information, but I received no information that
that
2 had taken place.

3 Q. What if they were in a black car?
4 Would that make it any more interesting for you?

5 A. Would I take that into
consideration?

6 Q. Yes.

7 A. Is that your question? Certainly.

8 Q. Well, what -- are you going to
give
9 that any value of any sort?

10 A. Well, any events leading up to
these
11 homicides, certainly I would. Again, anything
especially
12 in close proximity to that residence.

13 Q. Okay. What does that do for you?
14 What does that tell you?

15 A. Well, I would consider whether
maybe
16 that is part of some surveillance that may have been
17 going on.

18 Q. Okay. Let me ask you this: How
long

19 would it take, in your judgment, to do all this? To
kill

20 both boys, self-inflict the wounds, stage the scene,
21 plant the sock, call 911, how long would all of this
22 take?

23 A. You are saying --

24 Q. I'm saying, how long would it
take?

25 A. If the defendant did this, how
long

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1 would it take if self-inflicted?

2 Q. Yeah.

3 A. Because I haven't said that.

4 Q. I know you haven't.

5 A. But again, I really have not
assessed

6 it. The only thing I base my opinion on is when the
call

7 came in, and when the police responded to it. I

8 certainly looked at the time of death from the
medical

9 examiner's reports. So, again, I really have made
no

10 assessment as -- from the beginning of the event to
the

11 end of the event.

12 Q. Well, I'm asking you to do that
now.

13 A. I don't know that I can do that,
sir.

14 Q. Okay. All right. I mean, now,
what

15 if you had the boys back at the Behavioral Science
Unit,

16 do y'all sit down and kind of brainstorm, something

like

17 that and come up with a factor?

18 A. I think depending on the
condition of

19 the victims, and lividity, and rigor, and some other

20 postmortem changes in the body, I mean, you can

tell, I

21 think we would probably be able to assess whether

the

22 kids had been killed, and were discovered fairly

soon

23 after the homicides, or whether they had been there

a

24 while before they were discovered.

25 But again, as far as giving you

an

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1 exact time, and again, a specific chronology, that
is
2 something that we don't do.

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

5

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

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

10

11 BY MR. DOUGLAS MULDER:

12 Q. The majority of it has all been
13 testified to here. I mean we all know.

14 A. Well, I -- but, again, I haven't
been
15 here for the testimony.

16 Q. Well, I know it. But I'm asking
you,
17 just based on everything that you have received,
tell us
18 how long it would take, from start to finish, or
from

19 start to the 911 call?

20 A. Well, I would look at a variety
21 of
22 options.

23 Q. I know you would.

24 A. If they were killed and then the
25 perpetrator remained at the scene for some time
before
26 any of the other events occurred, like, as you
said, the

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1 self-inflicted wound.

2 They could have been killed or
3 assaulted, and it could have been sometime before
the
4 other injuries were inflicted.

5 If it occurred coincidental to
the
6 children being assaulted, then it would be a
relatively
7 short period of time.

8 Q. How many minutes? Just give me
your
9 best guess. I'm not going to hold you to it.

10 A. Again, I'm sure you probably
will.

11 But again, I really am not comfortable with making
that
12 kind of an assessment of chronology or time.

13 Q. Well, I noticed that you -- when
you
14 were talking about the broken glass, you told the
jury
15 that you said, "Hit the wine rack." Now, where on
earth

16 did you get the idea that somebody hit the wine

rack?

17 A. Well, I look at the condition of
the
18 wine rack and the glass breaking and the statements
of
19 hearing the glass breaking, again, somehow that
glass
20 became dislodged.

21 And because it was described as
being
22 coincidental to the offender escaping, unless the
23 offender went by and knocked it off or hit into
that wine
24 rack, there is really no other way that that could
have
25 occurred.

1 Q. Well, now, wait a minute. There
are a
2 bunch of different ways that could have occurred,
aren't
3 there?

4 A. Well --

5 Q. Okay. Remember, you said you
were --

6 I wrote it down -- and you said that you were
alarmed or

7 curious that some of the other things on the wine
rack

8 were not knocked off?

9 A. Yes, sir, that's correct.

10 Q. You said that when he hit the
wine

11 rack?

12 A. Well --

13 Q. I mean, why does somebody have
to hit

14 the wine rack to break a glass?

15 A. Well, there would have had to
have

16 been some sort of contact with the wine rack for
that, I

17 believe, for that glass to become dislodged and for
the

18 other items on that wine rack to be moved.

19 Q. Uh-huh. So are you suggesting
that

20 somebody took the wine glass, and threw it down on
the

21 floor?

22 A. No, I'm not. I didn't say that.

23 Q. And you don't have, we can
agree, that

24 you don't have to hit the wine rack to knock a
glass off,

25 do you?

17 Q. And maybe even in the little ice
18 bucket top as well, if it were broken up here as
opposed

19 to being thrown down on the floor? Fair enough?

20 A. That is fair to say.

21 Q. She didn't say in her statement
that

22 somebody hit the wine rack, did she?

23 A. Well, my recollection is she
heard the

24 sound of breaking glass.

25 Q. Not the sound of somebody
hitting the

1 wine rack?

2 A. No, sir.

3

4 MR. DOUGLAS MULDER: I think
that's

5 all. Thank you, Agent Brantley.

6 MR. TOBY L. SHOOK: Nothing
further,

7 Judge.

8 THE COURT: You may step down,
sir.

9 Thank you for coming.

10 MR. RICHARD C. MOSTY: Your
Honor,

11 could we take care of a housekeeping matter?

12 THE COURT: We sure can. Just a
13 moment.

14 All right. Ladies and gentlemen
of

15 the jury, we'll take a 10 minute recess now,
please.

16

17 (Whereupon, a
short

18 Recess was
taken,

1

2 THE COURT: All right. Let
the record

3 reflect that these proceedings are being held
outside of

4 the presence of the jury.

5 All parties in the trial are
present.

6 Mr. Mosty.

7

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

17

18 MR. RICHARD C. MOSTY: The
district

19 attorney's office is in the process of copying
all of Mr.

20 Brantley's file, except for the photographs,

which we

21 will mark and introduce for record purposes as

Exhibit

22 70.

23 THE COURT: Any objection to

24 Defendant's Exhibit 70 for record purposes?

25 MR. TOBY L. SHOOK: No, sir.

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1

THE COURT: Defendant's

Exhibit 70

2 will be admitted for record purposes after it is
3 prepared.

4

5

(Whereupon, the above

6

mentioned item was

7

received in evidence

8

as Defendant's Exhibit No.

70,

9

for record purposes only,

10

after which time,

11

the proceedings were

12

resumed on the record,

13

as follows:)

14

15

MR. RICHARD C. MOSTY: In that

regard,

16 your Honor, what we would have covered in particular
with

17 Mr. Brantley, as part of an offer of proof, or a Bill
of

18 Exception is that we would have gone through, and
listed

19 in particular, all of those things that he had in his

20 file, the Dallas Morning News reports; Altoona,
21 Pennsylvania, news reports; numerous summaries that I
22 believe --

23 THE COURT: Just a moment. We
have to

24 have that noise stop. All right. Now, go ahead.
25 BY MR. RICHARD MOSTY: Also
numerous

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1 summaries --

2 THE COURT: The noise has stopped
now.

3 If you would start again, Mr. Mosty, please.

4 MR. RICHARD C. MOSTY: This is
simply

5 with respect -- Mr. Hagler will handle another matter
in

6 a second -- but this is strictly in respect to the
FBI

7 agent.

8 And the proof we would offer and,
of

9 course, a lot of it will speak for itself in the
record,

10 but that he had in his file, and amongst the things
that

11 he had relied upon were news reports from Dallas,
from

12 Altoona, Pennsylvania.

13 He had numerous summaries of
14 witnesses, who, I believe, were probably conducted
by

15 Bosillo as summaries of testimony, many of whom have
not

16 testified, some of whom in the nurses, regarding the

enough

16 force?" or "I believe that this is a contradiction."

17 Those are the things that are
18 specifically prohibited by Daubert, and all of his

19 testimony amounted to, was putting someone under
oath,

20 and delivering the State's final argument.

21 And for all of those reasons, we
22 reincorporate our Daubert objection, and we request
the

23 Court to instruct the jury to disregard all of his
24 testimony.

25

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1 THE COURT: Thank you.

2 MR. RICHARD C. MOSTY: Is that
request

3 denied?

4 THE COURT: That request will be
5 denied.

6 MR. RICHARD C. MOSTY: And we
would

7 move for a mistrial.

8 THE COURT: Motion for mistrial
9 denied.

10 And of course, the Court will
also

11 note that all -- as regards to Mr. Brantley, all
12 questions asked to Mr. Brantley were referred to
exhibits

13 already in evidence, or placed in evidence during
his

14 testimony.

15 MR. RICHARD C. MOSTY: I'm sorry.

I

16 didn't understand that.

17 THE COURT: All questions asked
to Mr.

18 Brantley when we were referring to various exhibits
and

19 things referred were -- he was questioned on
exhibits
20 already in evidence or from exhibits already in
evidence,
21 or exhibits placed in evidence during his testimony.
22 MR. RICHARD C. MOSTY: And of
course,
23 the Court will also note on the record that he said
that
24 he relied on a number of documents that are not in
the
25 record.

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1 THE COURT: His testimony will be
2 noted, and all of his testimony will be in the
record.

3 All right.

4 Now we have covered Mr. Mosty.
Mr.

5 Hagler.

6 MR. JOHN HAGLER: Thank you, your
7 Honor. I have just one brief objection.

8 THE COURT: Oh, okay. Go ahead.

9 MR. JOHN HAGLER: Your Honor,
again,
10 we have already objected and of course certainly
11 understand the Court's ruling, however, after
12 reviewing -- after hearing this witness' testimony,
it's
13 pretty apparent that there is only one conclusion
that
14 can be drawn from his testimony, and that is the
15 conclusion, at least from his standpoint, that the
16 defendant committed the offense.

17 Now, regardless of what his
testimony
18 was, where he said he never testified that the
defendant
19 did it, and although admittedly maybe he never did

make

20 that specific statement, it is pretty apparent,

that the

21 sum total of all his testimony, is that the

defendant did

22 commit the offense.

23 And again, this total, the sum

total

24 of his testimony constitutes a violation of 704. I

25 should say it goes beyond the scope of 704 in the
fact

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1 that such testimony reaches the issue of ultimate
guilt

2 or innocence of the defendant, and therefore, we
would

3 move for a mistrial based on the admission into
evidence

4 of that testimony based on the Fifth, Sixth and
5 Fourteenth Amendments.

6 THE COURT: All right. Motion
for

7 mistrial denied. Anything else? Are we ready to
bring

8 the jury in?

9 MR. GREG DAVIS: Yes, sir.

10 THE COURT: Just a
moment.

11 MR. DOUGLAS MULDER:
Judge?

12 THE COURT: Yes, sir.

13 MR. DOUGLAS MULDER: I assume
they're

14 going to rest just as soon as the jury comes in, and
15 we're going to make a motion for a directed verdict,

16 which, in line with everything else you have done,
I'm

17 sure you will deny it.

18 THE COURT: Well, we will
certainly

19 hear the motion, Mr. Mulder.

20 MR. DOUGLAS MULDER: Well, are we
21 going to run the jury out twice or can we do it now?

22 THE COURT: Yes, we can do it
right

23 now. Is that satisfactory?

24 MR. GREG DAVIS: Yes, sir, that
is
25 fine.

1 THE COURT: All right. Go ahead
with

2 your motion, Mr. Mulder.

3 MR. DOUGLAS MULDER: Well, we are
4 going to wait until they rest.

5 MR. GREG DAVIS: While we're
here,

6 outside the presence of the jury, the State will
announce

7 at this time, that it rests its case in chief.

8 THE COURT: All right. You will
do

9 that again in front of the jury?

10 MR. GREG DAVIS: Yes, sir, I
will.

11 THE COURT: And you are ready to
go

12 forward?

13 MR. DOUGLAS MULDER: Yes, sir.

14 THE COURT: You can have your
motion

15 now.

16 MR. JOHN HAGLER: Okay, your
Honor.

17 With leave of the Court, before they rest in front
of the

1 In fact, in light of the fact
that a
2 rational trier of the fact could not have found that
the
3 defendant committed all of the elements, or any of
the
4 elements alleged in the indictment.

5 And, based on the State's failure
to
6 carry the burden under Jackson_versus_Virginia, we
would

7 urge this Court to instruct a verdict of not guilty.

8 THE COURT: All right. Motion
for
9 instructed verdict of not guilty is denied.

10 And if you will bring the jury
in,
11 please.

12
13 (Whereupon, the jury

14 Was returned to

the
15 Courtroom, and

the
16 Proceedings

were

17 Resumed on the
record,

18 In open court, in
the

19 Presence and
hearing

20 Of the defendant,
21 As follows:)

22

23 THE COURT: All right. Be seated,
24 please. Let the record reflect that all parties in
the
25 trial are present, and the jury is seated.

1 Mr. Davis.

2 MR. GREG DAVIS: Yes, sir. May it
3 please the Court, your Honor, and ladies and
gentlemen of
4 the jury, at this time the State of Texas rests its
case
5 in chief.

6 THE COURT: All right. Ladies and
7 gentlemen, that's all the testimony you are going to
be
8 hearing from the State, that is their case in chief.

9 Mr. Mulder, are you ready to go
10 forward?

11 MR. DOUGLAS MULDER: Yes, sir.

12 THE COURT: All right, sir.

13 MR. DOUGLAS MULDER: We will call
14 Sherry Moses, Mr. Biggerstaff.

15 THE COURT: Sherry who?

16 MR. DOUGLAS MULDER: Sherry Moses.

17 THE COURT: Sherry Moses, all
right.

18 Ms. Moses, come on up. If you will raise your
right

19 hand, please, ma'am.

20

21 (Whereupon, the witness

22 Was duly
sworn by the
23 Court, to
speak the truth,
24 The whole
truth and
25 Nothing but
the truth,

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Official Court Reporter

1 After which,
the

2 Proceedings
were

3 Resumed as follows:)

4

5 THE COURT: Do you solemnly
swear or

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

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

8 help you God?

9 THE WITNESS: I do.

10 THE COURT: Okay. If you will
just

11 come on up and have a seat right here, please.

12 All right. Ma'am, you are now
under

13 the Rule of Evidence. What that simply means is
this:

14 When you are not testifying, you have to remain
outside

15 the courtroom. Do not talk about your testimony
with

16 anybody who has testified. In other words, don't

compare

17 it. However, you may talk to the attorneys for
either

18 side. If someone tries to talk to you about your
19 testimony, please tell the attorney, whichever side
who

20 called you. All right?

21 THE WITNESS: Okay.

22 THE COURT: Now, speak out in a
loud

23 voice. If you will state your name and spell your
last

24 name for the court reporter, please, ma'am.

25 THE WITNESS: Okay. Sherry Moses,

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1 M-O-S-E-S, S-H-E-R-R-Y.

2 THE COURT: Can you all hear this
3 witness?

4 THE JURY: Yes, sir.

5 THE COURT: All right. Go ahead.

Mr.

6 Glover.

7

8

9 Whereupon,

10

11 SHERRY MOSES,

12

13 Was called as a witness, for the defense, having been
14 first duly sworn by the Court to speak the truth, the
15 whole truth, and nothing but the truth, testified in
open

16 court, as follows:

17

18

19 DIRECT EXAMINATION

20

21 BY MR. CURTIS GLOVER:

22 Q. Now, Sherry, tell the jury where
you

23 are from?

24
25

A. I'm from Pennsylvania.
Q. Okay. What town?

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1 A. Roaring Spring.

2 Q. Okay. And you know Darlie
Routier?

3 A. Yes.

4 Q. How is it you know Darlie?

5 A. She is my niece.

6 Q. I see. How is that relationship?

7 A. I don't know what you mean.

8 Q. You're the sister of her mother;
is
9 that right?

10 A. Yes. Um-hum. (Witness nodding
head
11 affirmatively.)

12 Q. What is her mother's name?

13 A. Darlie Kee.

14 Q. Okay. She is named for her
mother; is
15 that right?

16 A. Yes.

17 Q. Okay. What age difference between
you
18 and Darlie, if you know?

19 A. I'm 40 and Darlie is 44.

20 Q. I'm not talking about this Darlie.

21 A. Oh, Darlie, I call her Darlie

Lynn.

22

Q. Okay. Why don't we call her

Darlie

23 Lynn?

24

A. Okay. She is 27 and I am 40.

25

Q. Okay. And, you live in
Pennsylvania.

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1 What do you do there in Pennsylvania?

2 A. I help with my husband's business.

He

3 has a flooring installation business and I home
school my

4 children.

5 Q. Okay. How many kiddos do you
have?

6 A. I have two.

7 Q. Okay. Boys, girls?

8 A. I have a daughter, 13, and a son,
7.

9 Q. Okay. You say you home school
your
10 children. That means you teach them at home; is
that
11 right?

12 A. Yes, I do.

13 Q. All right. Okay. Is Darlie
Lynn

14 originally from Pennsylvania?

15 A. Yes, she is.

16 Q. Okay. Born there?

17 A. Yes.

18 Q. Okay. In the same neighborhood

where

19 you live, that part of the country?

20 A. Yes. Um-hum. (Witness nodding
head

21 affirmatively.)

22 Q. Did you know her as a small
child?

23 A. Yes.

24 Q. Okay.

25 A. Yes, I was there when she was
born.

1 Q. Okay. And, I assume that at
some

2 point in time she moved to Texas; is that right?

3 A. Yes. Um-hum. (Witness nodding
head

4 affirmatively.)

5 Q. When would that have been, if
you

6 know?

7 A. I think she was around 13.

8 Q. Okay. And where did she move
to?

9 A. Well --

10 Q. Was it Lubbock or --

11 A. I'm not sure. They moved a
couple

12 different places. There was Lubbock and Beaumont,
at

13 different times.

14 Q. Okay. Let's kind of come up to
the

15 present time and I'll ask you if over the past
year or so

16 you have had occasion to visit with Darlie both
here as

17 well as in Pennsylvania?

18 A. Yes, I have.

19 Q. Okay. Tell us about any trip
to

20 Pennsylvania that she's made recently or in the
past year

21 or so.

22 A. Okay. Her and Devon and
Damon came up

23 in March of '95.

24 Q. Had Drake been born at that
time?

25 A. No. She was pregnant with
him at the

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1 time, but she didn't know it yet until she got
home.

2 Q. Okay. And, during that visit
up

3 there, did y'all get together and socialize?

4 A. Yeah.

5 Q. Tell the jury about the two
boys.

6 What do you think about them at that time?

7 A. They were just precious, happy,
little

8 boys that were just a joy to be with.

9 Q. Okay.

10 A. They were just happy because they
11 loved and just ornery little boys.

12 Q. Okay. Tell the jury about
Darlie's

13 relationship with those little boys when you saw
them

14 there.

15 A. Oh, she's just always such a
gentle

16 mother, always very patient with them and just so
17 soft-spoken with them, even, you know, when they
were

18 ornery or something, she would be just so gentle
with

19 them. She never spanked them, just tell them to
behave.

20 Q. Did she approach those boys in a
21 responsible manner?

22 A. Oh, yes, yes.

23 Q. Tell the jury about her
demeanor, her

24 behavior as she was there. Did you see anything
unusual

25 about her as she was there visiting in your home?
And I

1 think, what did you say, in March of '95?

2 A. Yes.

3 Q. Okay. These little boys were
killed

4 in June of '96. That would have been, what,

5 approximately a year before that?

6 A. Yes.

7 Q. Okay.

8 A. Um-hum. (Witness nodding head
9 affirmatively.)

10 Q. Okay. Did you find anything
unusual

11 about her relationship with those little boys as
they

12 visited there in your home?

13 A. No,

nothing unusual, just that

she was

14 a wonderful mother.

15 Q.

Okay.

16 A. I

just thought her patience

was

17 incredible.

18 Q.

Okay. Did you have
occasion then to
19 visit with her again in
November of '95?

20 A. Yes,
my daughter and I came down
for
21 Thanksgiving.

22 Q.
Okay. You came to the
Dallas area?

23 A. Um-
hum. (Witness nodding head
24 affirmatively.) Yes.

25 Q.
Okay. And, that would be
your

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1 daughter, what is her
name?

2 A.
Shana.

3 Q. Shana?

4 A. Um-hum. (Witness nodding head
5 affirmatively.)

6 Q. Where did you stay at the time
that
7 you came in November of '95?

8 A. Mostly, I stayed with Darlie Kee,
my
9 sister. But we had time that we stayed at Darlie
Lynn's
10 house, too.

11 Q. Okay. If you would, tell the
jury
12 about Darlie Lynn's household and how things went
there
13 in her household when you visited there with her?

14 A. Well, it was just a special,
joyous
15 time, being together because we don't get to see
each

16 other that often and, just --

17 Q. Did she make -- tell the jury
what she

18 did with her house on holiday periods.

19 A. Oh, she always had her house
20 beautiful. She loves beautiful things and she
decorated

21 it really nice and put a lot of effort into it.

22 Q. Did she, by virtue of the effort
that

23 you saw her exude there in your presence, by virtue
of

24 the way she decorated, did that look to you like a
person

25 who was down and out or depressed?

1 A. No, not at all.

2 Q. Did she express anything to you
that

3 indicated to you that she was suffering from any
kind of

4 blues?

5 A. No.

6 Q. Okay.

7 A. No, not at all.

8 Q. I believe you told the jury it
was a

9 joyous time?

10 A. Yes, it was, very.

11 Q. Okay. Did you then have occasion
to

12 come back when the little boys were killed?

13 A. Yes.

14 Q. Okay.

15 A. We came back.

16 Q. When did you hear about this?

17 A. We heard just a little bit after
it

18 happened. Darlie Kee called us on the phone.

19 She called my sister, LuAnn,
first.

20 It was about 3:30 Dallas time. And she was just
21 hysterical.
22 And then my sister LuAnn called
me,
23 and we just couldn't believe that this had happened.
And
24 then I got a call from Darlie Kee, and she was just
so
25 hysterical, and just screaming and crying, and just

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1 asking us to pray, that she thought Darlie Lynn might
die
2 too.

3 And we just -- it was just so
4 unbelievable, it just happened.

5 Q. Okay. Did y'all then pack up and
come
6 to Dallas?

7 A. Yes, sir. We just waited until we
8 could make the arrangements. We were on the phone
all
9 day between Darlie, and Darlie was trying to arrange
for
10 us to get airplane tickets transferred that Darlie
Lynn
11 had had.

12 They had had tickets to come up
to
13 visit us. We were planning a 50th anniversary for my
14 parents. And they changed the tickets over to our
family
15 so that we could come down.

16 Q. Okay. Explain that to us. You
say
17 they were planning to come up to a family reunion

there

18 in Pennsylvania?

19 A. Yes.

20 Q. When was that to have been?

21 A. It was scheduled for June 15th.

22 Q. Okay.

23 A. We had been planning since January

of

24 '96.

25 Q. And the little boys were killed on
the

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1 6th of June; is that right?

2 A. Yes.

3 Q. So just shortly after that, they
were

4 due, all of them, to go to Pennsylvania?

5 A. Yes, they were due to come in on
the

6 14th.

7 Q. And had their tickets all ready to
go?

8 A. Yes. Um-hum. (Witness nodding
head

9 affirmatively.)

10 Q. Okay. They had Drake by then, did
11 they not?

12 A. Yes.

13 Q. Do you recall when Drake was born?

14 A. Yes, October 18, 1995.

15 Q. Okay. He was born then right
before

16 you came down for the Thanksgiving visit; is that
right?

17 A. Yes, he was exactly a month old
when

18 we got there.

19 Q. Okay. So you had a chance to
visit

20 with the newborn with his mom?

21 A. Yes.

22 Q. How was that?

23 A. Just very special, like all
babies,

24 and we just enjoyed him a great deal, all of us.

25 Q. Was he special to her?

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1 A. Very special.

2 Q. Okay.

3 A. All of her babies were special to
her.

4 Q. Getting to the events around this
5 awful thing in June, when did you have your
occasion,

6 first occasion to see Darlie when you came to
Dallas?

7 A. Oh, we came to the hospital
shortly

8 after we flew into Dallas. It was a little before
9 midnight on Friday that we got there and we went into
her
10 hospital room.

11 Q. Okay. Who was with you?

12 A. I went in with my sister LuAnn and
13 Darin was in the room and Dana and her mother,
Darlie.

14 Q. Okay. Did you notice her
condition as

15 she was there in the hospital bed?

16 A. Yes, I did. I sat on the bed with
17 her.

18 Q. Okay. Describe what she was

doing, if

19 anything.

20 A. She was sort of numb when we first
got

21 there, but when we started talking about what
happened,

22 she started crying and just in agony.

23 Q. Do you know a false cry from a
real

24 cry?

25 A. Yes, I do.

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1 Q. What kind of a cry was this?

2 A. It was a very deep cry.

3 Q. Did she have pictures of the boys
4 there?

5 A. I can't recall if she had them
right

6 there at that time.

7 Q. Okay. Did you have occasion to
see

8 her injuries?

9 A. Yes, I did.

10 Q. Describe those to the jury.

11 A. Well, naturally, I looked at her
neck

12 first, you know, but her arm was bandaged and the
bandage

13 was loose and she kept adjusting it and pulling it
up,

14 and I noticed bruising on her arm, that was just
covering

15 her arm.

16 Q. Do you know a bruise when you see
it?

17 A. Yes, I do.

18 Q. You have lived 40-some-odd years,

you

19 know a bruise when you see one?

20 A. Yes.

21 Q. Was her arm bruised?

22 A. Yes, it was.

23 Q. Any doubt in your mind about that?

24 A. No doubt at all.

25 Q. Okay. I guess you had occasion
then

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1 to go to the funeral and the viewing of these little
2 boys?

3 A. Yes, I did.

4 Q. Okay. I believe the viewing was
on

5 the 8th of June; is that right?

6 A. Yes, yes.

7 Q. There were a lot of people there?

8 A. Yes, a lot.

9 Q. Okay. Would you describe what you
saw

10 concerning Darlie at that time, Darlie Lynn?

11 A. At the viewing?

12 Q. Yes.

13 A. Well, she got there late. We had
all

14 been there a couple of hours before her because she
was

15 with the police at the time.

16 Q. She was -- did she ever indicate
to

17 you that she was anything less than cooperative with
the

18 police?

19 A. Not at all. I thought she was

very

20 cooperative. She just gave all -- every information

she

21 could give. She just wanted to catch the man that

did

22 this.

23 Q. Did she tell you that?

24 A. Yes, she did.

25 Q. Okay. The police then kept her
for

1 two hours, even through the viewing?

2 A. Well, she was there for like six
or

3 seven hours with the police that day. She was two
hours

4 late to the viewing.

5 Q. Okay. And how many people were
at the

6 viewing, if you know, approximately?

7 A. There were probably several
hundred.

8 Q. Okay. If you would, would you
tell

9 the jury whether or not you had occasion to see her
arms

10 there at this awful event?

11 A. Yes, I did.

12 Q. Okay.

13 A. She was wearing a short sleeve
dress

14 for the viewing, and it was very visible, and the
15 bruising was really getting dark there.

16 Q. Did you have occasion to be
around her

17 when she was viewing these two children?

18 A. Well, they took her in privately
with
19 the immediate family and closed the doors. And I
was
20 standing outside of the doors and I could hear her.
I
21 could hear her screaming when she saw her boys, and
she
22 was damning the person who did this to her babies.
And
23 it just tore our hearts out, we could feel her pain.

24 Q. Did you remain in the Dallas area
for
25 a time after this, Sherry?

1 A. Yes, I did. We stayed for a
week.

2 Q. Okay. Did you have occasion to
go to
3 a prayer service at the grave site?

4 A. Yes, we did. It was the
afternoon

5 before we left Dallas that we had the prayer service
and
6 the birthday celebration for Devon.

7 Q. Okay. Describe the prayer
service.

8 A. It was just -- we had prepared to
9 go -- the children had made cards up and plaques
and

10 stuff, and they had gotten balloons, and just
wanted to

11 make the day special to honor Devon, because he was
12 looking forward to his birthday so much, and they
had

13 already had so much prepared for it.

14 And their birthdays were so
special to

15 them, and Darlie always made them special to them.
And,

16 we just gathered around and we wished him happy
birthday,
17 and sang happy birthday to him and we just held
hands and
18 prayed.

19 Q. Okay. I believe there was a
prayer
20 service actually before the birthday party; is that
21 right?

22 A. Yes. This was sort of a birthday
23 celebration for just the family that was leaving
that
24 day, that was flying back to Pennsylvania. And it
was a
25 little more private, and then she said she was going
to

1 have a celebration for the children, to -- she just
2 thought it would be nice to just make it --
something

3 joyous out of it, you know, that because they had
already

4 been prepared for the party, that she just thought
it

5 would be something nice to do for Devon's friends.

6 Q. What did you think about that?

7 A. I didn't think anything of it. I
just

8 thought that it was just Darlie Lynn's touch. That
is

9 the way she always did things. She always made
10 everything special and beautiful for those boys.

And it

11 was just, to me, it was just a final tribute to
Devon.

12 Q. Okay.

13

14 MR. CURTIS GLOVER: Pass the
witness.

15

16

17 CROSS EXAMINATION

18

19 BY MR. GREG DAVIS:

20 Q. Ms. Moses, my name is Greg Davis.

I

21 don't believe we have had the opportunity to speak

22 before, have we?

23 A. No.

24 Q. Ms. Moses, first of all --

25

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1 MR. GREG DAVIS: Can I have a
copy of
2 her written statement, her notes that she has given
you
3 please?

4 MR. DOUGLAS MULDER: We didn't
take
5 any statement from her.

6
7

8 BY MR. GREG DAVIS:

9 Q. Okay. So, I take it, prior to
your
10 testifying today, that you have talked with Mr.
Glover
11 about your testimony?

12 A. Yes, I did.

13 Q. How about the other four
attorneys

14 over here, have you spoken with them also?

15 A. Preston Douglass was there.

16 Q. Okay. How many times have you
met

17 with them?

18 A. Just once, briefly.

19 Q. Okay. Now, you have been in
Kerrville

20 since when?

21 A. I'm trying to think. My mind is
kind

22 of -- we got down here on the 11th.

23 Q. You got down here on January
11th, and

24 since that date, where have you been staying?

25 A. I have been staying at Inn of
the

1 Hills.

2 Q. How many other of the Routier
family

3 are staying at the Inn of the Hills?

4 A. My sister Darlie is there and
her

5 daughters, Dana and Danielle, my sister LuAnn, and
my

6 daughter Shana.

7 Q. All right. And certainly, you
have

8 had an opportunity to talk to them on a regular
basis

9 since the 11th, haven't you?

10 A. Yes.

11 Q. Okay. Matter of fact, there are
still

12 members of the Routier family inside the courtroom
today,

13 aren't there?

14 A. Yes.

15 Q. Okay. This second row back here
to my

16 left, are those members of the Routier family also?

17 A. A few, not many.

18 Q. If I could, the young lady here,
the
19 blonde, with the red sweater, you recognize her,
don't
20 you?

21 A. Yes.

22 Q. Okay. The woman who has been
taking
23 notes throughout the trial?

24 A. Yes.

25 Q. And, who is that?

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1 A. Darin Routier's aunt.

2 Q. What is her name?

3 A. Sandy.

4 Q. Okay. And, certainly, since the
11th,

5 you have seen Sandy here in Kerrville, haven't you?

6 A. Yes.

7 Q. And I guess she has told you she
has

8 been taking notes every day of the testimony,
correct?

9 A. Yes, I am aware of that, yeah.

10 Q. Okay. And, Ms. Moses, isn't it
true

11 that you are very much aware of just about every
bit of

12 testimony that has been given in this case up to
this

13 date?

14 A. Well, I have known everything
before

15 this, because I have kept in touch with my sister
from

16 the time this happened.

17 Q. Okay. My question though, Ms.

1 Q. Okay. Did any of these attorneys
ever
2 tell you about the Rule of Evidence where witnesses
are
3 not supposed to discuss what is going on in this
4 courtroom?

5 A. I have not talked to the attorneys
6 until just briefly last night.

7 Q. So, they didn't tell you that it
would
8 be improper for you to be talking with people who
have
9 been inside this courtroom, discussing testimony?
They
10 didn't -- they never went over that with you?

11 A. Not really, no.

12 Q. Certainly, it's very advantageous
for
13 you as a witness, isn't it, to know what's been
going on
14 outside of your presence. That helps you, doesn't
it?

15

16 MR. DOUGLAS MULDER: Judge, there
17 hasn't been anybody testifying what went on back in

18 Pennsylvania here that I am aware of.

19 MR. GREG DAVIS: Is that an
objection?

20 THE COURT: Well, is that an
21 objection?

22 MR. DOUGLAS MULDER: Yes, sir.

23 THE COURT: Okay. Overruled. Go
24 ahead.
25

1 BY MR. GREG DAVIS:

2 Q. So you know what we have been
hearing

3 in here, and you know that there has been a lot of
4 testimony about bruises to the right arm of Darlie
Lynn

5 Routier, don't you?

6 A. Yes, I do.

7 Q. And, ma'am, just your own -- when
you

8 came down here last year in June, I'm sure that when
you

9 saw those bruises, you made some comments to the
nurses

10 or doctors or someone in that hospital about them
caring

11 for those bruises, that were so evident to you,
didn't

12 you?

13 A. No, I did not, because I was at
the

14 hospital around midnight, and I was only there a few
15 minutes.

16 Q. So, that day, those bruises were
not

17 important enough for you to go up there to the
nurse's

18 desk and say, "Listen. Would you please come down
here

19 and look at these bruises because they are large
enough,

20 I'm concerned about them." You didn't do that that
day,

21 did you?

22 A. No, it's not my place to.

23 Q. And yet, some seven months later,
you

24 are able to recall in great detail what those
bruises

25 looked like?

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1 A. Yes, I am because they were the
worst

2 bruises I have ever seen.

3 Q. The worse you have ever seen and
you

4 never even told a nurse or a doctor about them or
5 inquired about them, did you?

6 A. They were just beginning the night
7 that I saw her.

8 Q. Ma'am, could you please answer my
9 question. Did you inquire, talk with medical
personnel

10 about the bruises, the worst you had ever seen in
your

11 life, while you were at Baylor Hospital?

12 A. No, I did not, because they were
not

13 the worst I had seen at the time.

14 Q. Okay. Now, Ms. Moses, when you
talked

15 with the defendant in this case, she described what
16 happened to her, didn't she?

17 A. Yes, she did.

18 Q. Okay. And, what did she say
happened

19 to her that evening?

20 A. Well, there's a lot she can't
21 remember. She was in a lot of shock at the time, and
22 there's still a lot she can't recall.

23 Q. Well, I'm just talking about the
24 things that she could recall.

25 A. Well, she just said that she had
been

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1 sleeping downstairs with Devon and Damon, and that
she

2 woke up with -- Damon had nudged her awake.

3 Q. Okay.

4 A. And she just saw this man leaving.

5 And then she started to follow him, and she realized
that

6 the room she was in, the TV was on and there was a
little

7 bit of light, but as she was getting further out into
the

8 kitchen near the utility room, it was darker and she
just

9 stopped and thought, he could still be out there, you
10 know, I better not go any further.

11 Q. Okay.

12 A. And she said about -- she wasn't
even

13 aware that she was wounded until she had turned on
the

14 lights and she saw her boys.

15 Q. Okay. So as I understand, what
she

16 told you, and that is what you have to go on because
you

17 weren't there that day, were you?

18 A. No, I was not.

19 Q. Okay. And, so, according to what
the

20 defendant told you then, when she woke up, this man
21 started to walk away from her; is that right?

22 A. Yes, or was moving away, yes.

23 Q. Right. So she wasn't, according
to

24 her story that she gave you anyway, this man did not
25 attack her after she woke up and saw him, did she?

1 A. She just had like a sensation of
a
2 struggle, but she had been in a deep sleep.

3 Q. Um-hum. (Attorney nodding head
4 affirmatively.)

5 A. And I don't think she is aware of
what
6 all happened to her.

7 Q. Well, certainly she didn't see
this

8 intruder or this other person attack her two
children
9 after she saw the man, did she?

10 A. We don't know if she saw that
because
11 there is so much she doesn't remember.

12 Q. I'm just going on the version
that she
13 gave you. In the version that she gave you, she
does not
14 have this intruder attacking her children after she
sees
15 the man, does she?

16 A. No.

17 Q. And in the version that she gave

you,

18 she doesn't have the attacker attacking her after
she

19 sees the man either, does she?

20 A. No.

21 Q. And he just simply leaves, she
starts

22 to follow, then she stops and realizes that she has
been

23 injured, correct?

24 A. Yes.

25 Q. Now, she did tell you though that
she

1 could recognize this man, didn't she?

2 A. No, she didn't.

3 Q. She didn't tell you that?

4 A. No, she just had a vague
description

5 of him, that she didn't see him very well.

6 Q. All right. You recognize this

7 gentleman right back here in the front row, Mr.

Bosillo,

8 don't you?

9 A. Yes, I do.

10 Q. And do you recall that Mr.

Bosillo

11 came to talk with you there in Pennsylvania, didn't
he?

12 A. Yes.

13 Q. And you were kind enough -- was
it on

14 July the 4th?

15 A. Yes.

16 Q. You were kind enough to sit down
and

17 talk with him for a little bit, weren't you?

18 A. Um-hum. (Witness nodding head
19 affirmatively.)

20 Q. Okay. And, isn't it true that
when
21 Mr. Bosillo was talking with you, Ms. Moses, that
you
22 told him that Darlie Lynn, the defendant in this
case,
23 had told you that she could identify the person that
did
24 this to her, didn't you?
25 A. No, I did not say that.

1 Q. Were you at the hospital each day
that

2 the defendant was in Baylor?

3 A. No, I just got there midnight
Friday

4 and she was released the next day.

5 Q. Okay. So, you would not have
been

6 there the next day when Drake was brought in there
to her

7 and she refused to hold him. You were not there for

8 that?

9 A. No, I was not.

10 Q. Okay. I know that -- I have in
my

11 notes here that she came and visited you in March of
'95?

12 A. Yes.

13 Q. Then you and your family came
down

14 here in November of '95; is that right?

15 A. Yes, my daughter and I did.

16 Q. All right. When you came down
here in

17 November, things looked real good, didn't they,

inside

18 the house? You didn't see any problems or any
troubles;

19 is that right?

20 A. No, none.

21 Q. Wouldn't you agree with me, Ms.

Moses,

22 that a lot of times families are going to keep their
23 problems to themselves and they may not share that
with

24 people outside the house?

25 A. Not particularly with our family.

1 We're a very close family and we share our problems.

2 Q. Okay. When -- just how quickly
after

3 she attempted suicide in May, did someone call you
from

4 that house to tell you that she had attempted
suicide?

5

6 MR. DOUGLAS MULDER: Judge, there
was

7 not any suicide attempt.

8 THE COURT: Well, if she knows
the

9 answer, I'll let her answer it.

10 MR. CURTIS GLOVER: He is
assuming a

11 fact not in evidence, Judge, and we would object to
it.

12 THE COURT: I'll sustain the
13 objection. Let's ask the next question.

14 MR. GREG DAVIS: All right.

Well, I

15 will ask it this way.

16 THE COURT: Rephrase your
question.

17

18 BY MR. GREG DAVIS:

19 Q. Ms. Moses, when Mr. Bosillo came
and

20 talked to you on July the 4th of last year, you and
Mr.

21 Bosillo described this incident that occurred in
May,

22 didn't you? You know what I am talking about, don't
you?

23 A. No.

24 Q. Well, you are aware of a journal,
25 aren't you?

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1 A. I was aware a journal after it
came
2 out in the newspapers.

3 Q. You mean that -- and that came
out,
4 what, sometime in June?

5 A. Probably. I don't know the date.

6 Q. Well, you weren't made aware of
any
7 journal entries by Ms. Routier at the time -- at or
near
8 the time that she made these journal entries?

9 A. No.

10 Q. Okay. So that, apparently, that
was
11 something that she was keeping to herself?

12 A. No, I do recall a mention of it
while

13 I was there in June, the week I stayed there with
them.

14 Q. Um-hum. (Attorney nodding head
15 affirmatively.)

16 Well, did she tell you what the
entry

17 was, the last entry in that journal?

18 A. No.

19 Q. She didn't share that with you?

20 A. Not specifically. It was just --
21 people were talking about a journal or something and
--

22 Q. Well, what did she share with you
23 about that journal entry?

24 A. We didn't talk one on one about
the
25 journal.

1 Q. So I guess the answer to the
question

2 would be, she didn't share the contents of the
journal

3 with you; is that right?

4 A. No.

5 Q. So whatever the content is,
either

6 good or bad, I mean, she didn't go into that with
you,

7 did she?

8 A. No.

9 Q. You said something that I noted
there

10 in your direct examination, "She loved beautiful
things."

11 She did, didn't she?

12 A. Yes, she did.

13 Q. There was a lot of money put into
that

14 house out there, wasn't there?

15 A. Yes, there was.

16 Q. A lot of beautiful things in
there?

17 A. Yes.

18 Q. At the viewing, Ms. Moses, on June
the

19 8th?

20 A. Yes.

21 Q. Were you close enough to hear,
what

22 words, if any, that the defendant uttered to the two
23 deceased children in the casket?

24 A. No. At the time I went in, it was
25 when other people were coming in and she was talking
to

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1 them.

2 Q. So if she said something softly to
the

3 two deceased children, you weren't in a position to
hear

4 that; is that right?

5 A. No.

6 Q. You told us about the birthday
party

7 on June the 14th. And have you seen the videotape of
8 that?

9 A. Yes, I have.

10 Q. Tell us about the birthday party
that

11 happened on June the 9th at Darlie Kee's house.

12 A. She didn't have a birthday party.

13 Q. There wasn't another party after
the

14 funeral on June the 9th?

15 A. No.

16 Q. And, would it be fair to say,
Ms.

17 Moses, that your exposure to the defendant and
her

18 children was pretty limited. I mean, you live

in

19 Pennsylvania so you got to see them when they came

to

20 Pennsylvania, and then you got to see them when you

came

21 down in November; is that right?

22 A. Yes.

23 Q. Would you agree with me that it's

24 possible that the defendant behaved differently with

her

25 children when you weren't around her?

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1 A. No, I don't believe that.

2 Q. You don't think that is even
possible?

3 A. No, I don't, because I know her
very

4 well.

5 Q. So, just no possibility that when
you

6 were up there in Pennsylvania, that this woman over
here

7 might just possibly treat her children just a little
bit

8 differently than you had seen her treat them?

9 A. No.

10 Q. As I recall your testimony was,
she

11 was always very softspoken with the kids; is that
right?

12 A. Yes.

13 Q. Certainly, you wouldn't expect
her to

14 be yelling or cursing at her children, that would be
very

15 much out of character with what you saw during your
16 visits with her; is that right?

17 A. Well, I never saw that, no.

18 Q. That would really surprise you,
19 wouldn't it?

20 A. Well, not really. We all have
21 children, and we all tend to do that once in a
while.

22 Q. Well, I'm just trying to
understand.

23 You say she is softspoken, she is always softspoken.

24 Do you think maybe now, upon
25 reflection, maybe that there is a possibility that
maybe

1 she does talk to them a little bit differently than
you

2 saw her talking to them?

3 A. Not by very much at all.

4

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

7 MR. CURTIS GLOVER: Nothing
further,

8 Judge.

9 THE COURT: You may step down,
ma'am.

10 Remember, ma'am, you are under the Rule of Evidence.
Do

11 not discuss or talk to anybody. Do not read her
notes

12 everyday. Is that clear?

13 THE WITNESS: Okay.

14 THE COURT: Thank you.

15 Your next witness.

16 MR. S. PRESTON DOUGLASS, JR.:

David

17 Rogers.

18 THE COURT: Raise your right
hand,

19 please.

20

21

(Whereupon, the witness

22

Was duly

sworn by the

23

Court, to

speak the truth,

24

The whole

truth and

25

Nothing but

the truth,

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1 After which,
the

2 Proceedings
were

3 Resumed as follows:)

4

5 THE COURT: Do you solemnly
swear or

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

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

8 help you God?

9 THE WITNESS: Yes, I do.

10 THE COURT: Have a seat right
here,

11 please. You are under the Rule of Evidence. What
that

12 simply means is when you -- do not -- when you are
not

13 testifying you have to remain outside the courtroom.

Do

14 not talk about your testimony with anybody who has

15 testified. In other words, don't compare it. Is

that

16 clear?

17 THE WITNESS: Yes, sir.

18 THE COURT: You may talk to the
19 attorneys for either side. If someone tries to talk
20 to
21 you about your testimony, please tell the attorney
22 for
23 the side who called you.

24 THE WITNESS: Okay.

25 THE COURT: Fair enough?

THE WITNESS: Sure.

THE COURT: All right. Speak
loudly

1 and spell your last name for the court reporter.

2 Go ahead, please.

3

4

5 Whereupon,

6

7 DAVID ROGERS,

8

9 was called as a witness, for the Defense, having
been

10 first duly sworn by the Court to speak the truth,
the

11 whole truth, and nothing but the truth, testified in
open

12 court, as follows:

13

14

15 DIRECT EXAMINATION

16

17 BY MR. S. PRESTON DOUGLASS, JR.:

18 A. Mr. Rogers, would you tell the
jury

19 what you do for a living?

20

21 THE COURT: State your name and

spell

22 the last name for the court reporter.

23 THE WITNESS: I'm sorry. That's

David

24 Rogers, R-O-G-E-R-S. I am the pastor of Shepherd's

Heart

25 Fellowship Church in Mesquite, Texas.

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1

2 BY MR. S. PRESTON DOUGLASS, JR.:

3 Q. And how long have you been the
pastor

4 there at that church in Mesquite?

5 A. Ten and a half years.

6 Q. Before that time, had you been a
7 pastor at another church?

8 A. Yes, I pastored three other
churches

9 besides that.

10 Q. Where were they located?

11 A. One near Mount Vernon, Texas, and
two

12 in the Tyler, Texas area.

13 Q. How many years total have you been
in

14 the ministry?

15 A. In the pastorate about 12 years
and in

16 the ministry, about 20.

17 Q. Okay. Are you married?

18 A. Yes, I am.

19 Q. Do you have children?

20 A. Yes, I have two.

21 Q. How many children do you have?

22

A. Two.

23

Q. What are the children's ages?

24

A. Fifteen and seven.

25

Q. Okay. How many years you been

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1 married?

2 A. Almost 22.

3 Q. All right. Now, I want to direct
your

4 attention to June of 1996. I want to ask you if you
were

5 requested to take part and officiate the burial
service

6 for Damon and Devon?

7 A. Yes, I was.

8 Q. Now, prior to that time, had you
known

9 Darlie Routier?

10 A. No, I had not.

11 Q. Had you met Darin Routier?

12 A. Yes, I had.

13 Q. Would you tell the members of the
jury

14 how you had met Darin?

15 A. Darin's cousin is a good friend of
16 mine and also a member of our church. And I had
met

17 Darin on two or three occasions at his cousin's
home.

18 Q. So, I guess the obvious is that

Darin

19 and Darlie were not members of your church; is that
20 right?

21 A. That's correct.

22 Q. You had not been to their home or
23 spent any time with them.

24 A. No, I had not.

25 Q. And you had not met the children
prior

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1 to that time?

2 A. No, I had not.

3 Q. Okay. Now, when, to the best of
your

4 recollection, were you approached, and I am talking
about

5 a date, about officiating with the funeral? Or, let
me

6 back up, was that the first time you were
approached?

7 A. Well, approached --

8 Q. How did you find out about what
9 happened?

10 A. Darin's cousin called me about
4:00

11 o'clock in the morning, 4:00 A.M., the morning of
the

12 murders, and told me of the murders and asked us to
begin

13 to pray for the family.

14 We have a group of people at our
15 church that pray for all kinds of needs, and so we
16 contacted those people and we began to pray for the
loss,

17 and the needs of the family.

18 Q. Okay. Obviously, at that time
you

19 knew Darin but you had not met Darlie?

20 A. That's correct.

21 Q. Okay. And then, what was the
next

22 contact you had with anybody about this matter?

23 A. Well, I went to the hospital that
24 morning. I guess I got to the hospital around 10:00
25 o'clock. I think it was, if I remember right.

1 I visited with family members and
2 prayed with them and just offered to help in any way
we
3 could.

4 Q. Okay. Did you talk to Darlie on
that
5 visit?

6 A. No, I did not.

7 Q. Did you ever visit with Darlie
Routier

8 while she was in the hospital?

9 A. No, I did not.

10 Q. All right. After you went to the
11 hospital, and you visited with the family --

12 A. Um-hum. (Witness nodding head
13 affirmatively.)

14 Q. -- I'm assuming you spoke with
Darin?

15 A. Yes, I did, um-hum. (Witness
nodding

16 head affirmatively.)

17 Q. And did Darin pray with you on
that

18 day?

19 A. Yes, we did.

20 Q. Now, for purposes of the jury
21 understanding, was there a network of family support
for

22 Darlie and Darin?

23 A. At the hospital?

24 Q. Yes.

25 A. Oh, yes, there was a tremendous
amount

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1 of support.

2 Q. All right. And obviously, all of
3 these people are deeply affected by what happened?

4 A. Yes.

5 Q. And they were concerned for
Darlie?

6 A. Yes.

7 Q. And they were concerned for
Darin; is

8 that right?

9 A. Yes.

10 Q. Now, what, if you will, jump
ahead a

11 little bit, the next role that you took in this
story is

12 what day?

13 A. Well, the following -- I think it
was

14 the following day which, I guess, would have been on

15 Friday, Darin's cousin called me and said Darin had
asked

16 him to contact me and see if I would be willing to

17 preside at the funerals.

18 Q. Now, obviously, you agreed?

19 A. Yes.

20 Q. And what after that?

21 A. I visited the hospital again that
day,

22 on Friday, again, met with family members, prayed
with

23 them, offered to help in any way we could.

24 Q. Would you go by yourself or with
your

25 wife or how did that work?

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1 A. At the hospital I went by myself,
2 um-hum. (Witness nodding head affirmatively.)

3 Q. And, when was the first time that
you
4 met Darlie Routier?

5 A. When -- the day Darlie was
released
6 from the hospital, which was on Saturday, the boys'
7 bodies were prepared at the funeral home there in
8 Rockwall, and we were waiting there for the police
to
9 bring her from the hospital to the funeral homes --
to
10 the funeral home for the viewing of the bodies.

11 I was waiting in the back of the
12 funeral home in the private family room entrance
with,
13 her -- Darin's cousin, and one of the funeral
directors,
14 one of the funeral home employees.

15 The police officers brought them
to
16 the back of the funeral home, and entered through
the
17 private entrance back there, and they came into the

18 private family room, and that is the first time I
met

19 Darlie.

20 Q. And who was Darlie with at the
time

21 she arrived for the viewing?

22 A. She was with her husband Darin,
and

23 the two police officers from Rowlett, they
introduced

24 themselves to me as Detective Patterson and Frosch

or

25 something like that.

1 Q. And did you get the impression
that
2 those detectives had been escorting her or
shepherding
3 her around or something?

4 A. Well, I mean, they said they
picked
5 her up at the hospital and brought her there for
the
6 viewing. Although, there was a long delay because
they
7 had taken her by the police station.

8 Evidently, there had been
several
9 hours of questioning, so we were there for quite a
long
10 time waiting.

11 Q. Do you have any idea that you
could
12 tell the jury about when you arrived at the funeral
home
13 on that day?

14 A. It seems like to me that it was
15 probably late afternoon, maybe five o'clock in
the

16 afternoon, if I remember correctly.

17 Q. Now, is that when you arrived
or when

18 Darlie arrived?

19 A. That is when I arrived, I
think.

20 Q. Okay.

21 A. I think Darlie arrived a
couple of

22 hours after I arrived.

23 Q. All right.

24 A. If I remember correctly. I

could have

25 the times wrong, but I was there for a couple of
hours

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1 before she was.

2 Q. That is the best you
recollect?

3 A. Yes. Um-hum. (Witness
nodding head
4 affirmatively.)

5 Q. All right. If you would,
would you

6 walk the jury through what happened next?

7 A. Well, the police officers
pulled into

8 the private entrance and she and Darin got out of
the

9 back seat of the car and we held the door open
for them

10 to come into the family room, and we stood there,
Darin's

11 cousin on one side of them and me on the other
side.

12 And we laid our hands on them
and we

13 prayed for them, prayed God's mercy upon them and
His

14 peace upon them and His healing, and just talked
with

15 them for a minute before they went in to view the
16 boys'

17 bodies, and what they would see when they went
18 in,

19 because we had already gone in and looked at the
20 boys'

21 bodies, and so we knew what they would see when
22 they went

23 in.

24 Q. All right. Mr. Rogers, over a
25 period

of your career, I believe you said some 20 years,
do you

26 have any idea how many funerals or memorial
27 services you

28 may have taken part in during that time?

29 A. Dozens and dozens. I couldn't
30 tell
31 you, lots.

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1 Q. And, is it a regular part of
your
2 duties and your vocation to take part in funerals
and
3 officiate at funerals?

4 A. Sure. Um-hum. (Witness nodding
head
5 affirmatively.)

6 Q. Do you have any idea how many you
may
7 do in a month?

8 A. Well, it's hard to say because
the
9 church that we're in now is a very small
congregation so
10 I don't do as many now as I did several years ago
when I
11 was in larger congregations. So, I couldn't really
give
12 you a number.

13 Q. All right. Have you come into a
14 number of people who were in the same situation
that
15 Darlie Routier was in in losing a loved one or
even a

16 child?

17 A. Yes.

18 Q. And are you familiar and have
you come

19 into contact with mothers who have lost children in
20 tragic circumstances?

21 A. Yes.

22 Q. Are you familiar and do you
recall the

23 way that those mothers responded to that tragic
event and

24 the type of grief and the display of emotion that
they

25 felt?

1 A. Yes.

2 Q. Now, I'm going to ask you a
broad

3 question first. I'm going to ask you: Based upon
your

4 observations of people you have seen, mothers in
these

5 same situations, and based upon your observations
of

6 Darlie Routier, do you have an opinion that you can
tell

7 this jury, as to whether you feel like Darlie Routier
was

8 grieving appropriately?

9 A. Yes, she was grieving
appropriately.

10 Q. Now, tell jury what you saw in --
I

11 jumped ahead of myself a little bit. From the
time of

12 the viewing to the funeral, and did you also go to
the

13 prayer service?

14 A. Yes, I did.

15 Q. So you were actively involved

with the

16 family and with Darlie for a few days from the
period of

17 the viewing onward; is that right?

18 A. Yes, that's correct.

19 Q. Do you believe that you can tell
the

20 jury that it was not limited to a viewing and a
funeral,

21 but that you spent some time with Dalie?

22 A. Yes, we did.

23 Q. Now, that has been laid out,
based

24 upon the time that you spent with Darlie, what did
you

25 see, what did you observe?

1 A. Well, I observed a mother who
was
2 grieving, and heartbroken, and anguishing over the
loss
3 of her children.

4 Q. Did she have periods that she
would
5 cry in your presence?

6 A. Oh, sure. Um-hum. (Witness
nodding
7 head affirmatively.)

8 Q. Now, there has been
representations
9 made that, oh, that maybe Darlie would just whine,
or
10 maybe Darlie would just kind of tear up, but they
weren't
11 real tears. Maybe that these were crocodile tears.
That
12 maybe it was kind of an inappropriate display of
grief.

13 Do you agree with that?

14 A. No, I don't agree with that at
all.

15 She never whined in my presence. Her displays of

grief

16 appeared to be genuine and real.

17 Q. Did you see times that she
smiled?

18 A. Yes.

19 Q. Is that normal?

20 A. Sure.

21 Q. In fact, Mr. Rogers, wouldn't it
be

22 abnormal for a person over a three or four day
period

23 that you see them to be hysterical the whole time?

24 A. I don't see how anybody could be
25 hysterical for that length of time.

Sandra M. Halsey, CSR, Official Court Reporter

1 Q. I don't know if this is the right
word

2 to use, but sometimes your emotions just simply play
out,

3 don't they?

4 A. Um-hum. (Witness nodding head
5 affirmatively.) They do.

6 Q. Sometimes you just get to the
point

7 that you have to look for some stronger foothold;
isn't

8 that right?

9

10 MS. SHERRI WALLACE: I'm going
to

11 object to leading.

12 THE COURT: Rephrase your
question.

13

14 BY MR. S. PRESTON DOUGLASS, JR.:

15 Q. In terms of a person smiling, do
you

16 consider that appropriate or inappropriate, under
those

17 circumstances?

18 A. Well, what happens in
circumstances
19 like that is a person cries, a person grieves, a
person
20 sometimes just sits and stares with almost no
emotion,
21 sometimes someone mentions something sweet or a
fond
22 remembrance of their loved one that they have lost
and
23 they smile or they even laugh.
24 All of those things are
appropriate
25 and common in grieving situations.

Sandra M. Halsey, CSR, Official Court Reporter

1 Q. Is it correct that sometimes it's
the
2 memories that get you through, isn't it?

3 A. It is sometimes the memories. And
in
4 addition to that, faith gets you through.

5 Q. Now, did you go -- obviously, you
6 officiated at the funeral which is on the 10th?

7 A. It was on a Sunday. Um-hum.

(Witness

8 nodding head affirmatively.)

9 Q. I may have my date wrong.

10 A. Sunday the -- I think it was the
11 9th,
12 but it was on Sunday.

13 Q. Right. The viewing was the 8th?

14 A. Right. On a Saturday, that's
15 right.

16 Q. All right. And, after -- during
the
17 funeral, did Darlie Routier appear to act
appropriately
18 in your eyes?

19 A. Sure. She grieved and she cried
and

18 acted just like dozens of other people I have seen
who

19 have lost loved ones.

20 Q. And did you also take part and
conduct

21 a prayer service at grave side a few days after that?

22 A. A few days after that, I didn't
23 actually conduct it, I was there at it. Okay. There
was

24 another minister that Darlie's mom had asked to
conduct
25 it.

Sandra M. Halsey, CSR, Official Court Reporter

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1 But, I was certainly there, and we
2 prayed, and we read Scripture, and then we talked
3 privately with the family and prayed with them and it
was
4 a very meaningful and appropriate time.

5 Q. Now, did you know, of your own
6 knowledge, at that time that there was a prayer
service

7 earlier in the afternoon, and that there was also
what

8 has been called a birthday party that was planned
later

9 that day?

10 A. I didn't know anything about
that. I

11 mean, I heard at the prayer service --

12

13 MS. SHERRI WALLACE: I'll object.

I'm

14 going to object to what he had heard as hearsay.

15 THE COURT: Overruled. I'll let

him

16 testify. Go ahead.

17 THE WITNESS: I mean, it seems

like I

18 heard some mention of that at the prayer service, but

I

19 don't know anything about it, or didn't at the time.

20

21 BY MR. S. PRESTON DOUGLASS, JR.:

22 Q. Well, let me ask you, if after a
23 prayer service, the family gathered again, and placed
24 items of remembrance around the grave, some --

including

25 the balloons with the children's name on it.

Sandra M. Halsey, CSR, Official Court Reporter

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1 A. Um-hum. (Witness nodding head
2 affirmatively.)

3 Q. And had a birthday party for on
the --

4 a child that was very soon dead, and was having his
5 birthday -- was scheduled, obviously, his birthday.

6 A. Right.

7 Q. They couldn't have the birthday,
8 obviously.

9 A. Right.

10 Q. Does it strike you as abnormal
that

11 that type of event would take place?

12

13 MS. SHERRI WALLACE: Object to
14 leading.

15 THE COURT: Let's rephrase our
16 question.

17

18 BY MR. S. PRESTON DOUGLASS, JR.:

19 Q. Does that strike you as abnormal,
yes

20 or no, whether that type of event as scheduled, from
your

21 perspective?

22 A. No, it didn't strike me as

abnormal.

23 Q. Now, I want to ask you if at any
time

24 after coming in contact with Darlie Routier, if you
25 noticed any bruising on her arm?

Sandra M. Halsey, CSR, Official Court Reporter

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1 A. Well, when she arrived at the
funeral
2 home on Saturday that -- when the police brought her
from
3 the hospital to the funeral home, her arm, her right
arm
4 was in a sling at that time, and, of course, not
having
5 seen her before, the wounds were significant to see
and I
6 believe it was Darin's cousin did help her adjust the
7 sling when we were in the family room, and there
was
8 bruising on her arm.

9 Q. And that was on the right
arm?

10 A. Um-hum. (Witness nodding head
11 affirmatively.)

12 Q. And, did that bruising seem
13 significant to you?

14 A. Well, it appeared significant to
me.

15 Q. And that was on the 8th?

16 A. Yes, on Saturday when she came.

17 Q. After she was escorted in by

police

18 officers?

19 A. Yes, that's correct.

20 Q. I'm going to ask you perhaps one
more

21 question that was -- that is: Would you agree or
22 disagree with the statement that mothers who have
lost

23 their children, as a rule, are inconsolable?

24 A. Mothers who have lost their
children

25 as a rule are inconsolable.

Sandra M. Halsey, CSR, Official Court Reporter

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1 Q. Can they be consoled?

2 A. Well, certainly, they can be
consoled.

3

4 MR. S. PRESTON DOUGLASS, JR: Pass
the
5 witness, your Honor.

6 THE COURT: Ms. Wallace.

7

8

9 CROSS EXAMINATION

10

11 BY MS. SHERRI WALLACE:

12 Q. Mr. Rogers, how large is your
13 congregation?

14 A. We probably have about 80 to 100
15 people that come to our services often.

16 Q. Okay. And then you have another
17 full-time job; isn't that right?

18 A. Yes, I do.

19 Q. What is that in?

20 A. I sell computers and software and
21 things like that.

22 Q. Who do you work for?

23 A. I work for a company called

Cheetah

24 International.

25 Q. How long have you been with them?

Sandra M. Halsey, CSR, Official Court Reporter

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1 A. About a year.

2 Q. And your wife is working now a
little

3 bit for the defendant's husband, isn't she?

4 A. She has done some work since the
trial

5 started, to try to help him keep his business open.

6 Q. And a little bit this fall as
well;

7 isn't that correct?

8 A. Um-hum. (Witness nodding head
9 affirmatively.)

10 Q. Now, I think the defense attorney
11 brought out the fact that you had never even met the
12 defendant before the boys were murdered, had you?

13 A. No, I hadn't.

14 Q. Okay. So they weren't a member
of
15 your church?

16 A. No.

17 Q. And, I assume that there wasn't a
18 pastor that they were familiar with because they had
you

19 do the service; is that right?

20 A. That's correct.

21 Q. All right. And, Randy Regan is
the
22 husband's cousin that you were speaking of that is a
23 member of your congregation?

24 A. Yes, that's correct. Um-hum.
25 (Witness nodding head affirmatively.)

Sandra M. Halsey, CSR, Official Court Reporter

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1 Q. How many times had you met the
2 defendant's husband before you did their funeral
service
3 for their boys?

4 A. Well, are you talking about before
the
5 murders themselves?

6 Q. Yeah. Well, thank you. Yes,
before
7 the murders themselves.

8 A. Well, I believe it was three
times, if
9 I remember correctly. It might have been just two,
but
10 two or three times at Randy's house.

11 Q. All right. Would you say that
y'all
12 were friends or were just acquaintances?

13 A. No, just acquaintances.

14 Q. Okay. Now, since the murders,
you've
15 developed a very strong relationship with the
defendant,
16 haven't you?

17 A. She needed pastoral ministry,

that's

18 correct.

19 Q. So you developed a very strong
20 relationship with the defendant, haven't you?

21 A. That's correct.

22 Q. In fact, I think by my count, you
23 visited her when she was in jail in Dallas about 51
24 times; is that right? Sound about right?

25 A. Well, over the months, that's
probably

1 true.

2 Q. Okay. And then how many times
did you

3 come down to Kerrville when we were in jury
selection

4 back in the first -- or the latter part of October,
5 beginning of November?

6 A. One time.

7 Q. Okay. One time?

8 A. Um-hum. (Witness nodding head
9 affirmatively.)

10 Q. And have you been to Kerrville
other

11 than for your testimony, arriving, what -- you
arrived

12 last night; is that right?

13 A. Yes, that's correct. Yesterday
14 afternoon we arrived.

15 Q. Where you here earlier in the
trial?

16 A. No, I have not been.

17 Q. And you -- I mean, you want the
truth

18 out about this crime, don't you, Mr. Rogers?

19 A. Certainly, yes.

20 Q. Okay. You would want to

cooperate in

21 any investigation; is that correct?

22 A. Sure. Um-hum. (Witness nodding
head

23 affirmatively.)

24 Q. In fact, I mean, you cooperated

with

25 the press in this case, haven't you?

Sandra M. Halsey, CSR, Official Court Reporter

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1 A. Well, I answered questions when
asked

2 questions. Um-hum. (Witness nodding head
3 affirmatively.)

4 Q. And you and the defendant's
mother

5 have met, had a specific meeting with an AP
reporter;

6 isn't that correct?

7 A. Um-hum. (Witness nodding head
8 affirmatively.) That's correct.

9 Q. And, in fact, our office
contacted you

10 and you spoke over the phone to Miss -- well, you
first

11 spoke over the phone and then later you met you Ms.
12 Kinne, Anita Kinne?

13 A. In your office, yes, that's
correct.

14 Q. And how that took place was
15 Investigator Kinne called you several times and
left

16 messages, didn't she?

17 A. I don't know that she called
several

18 times. I got a message and I returned her call.

19 Q. In fact, you didn't return her
call,
20 she had to call you and when you finally answered
the
21 phone, that's when y'all got to visit; isn't that
right?

22 A. No, that is incorrect. I
returned her
23 call several times.

24 Q. And, when you came to our
office, fair
25 to say, you were reluctant to speak to Investigator

1 Kinne, weren't you?

2 A. I was apprehensive.

3 Q. Okay. And you said that you
were

4 concerned about talking with us because she should
know

5 there is nothing you could tell her because a
minister

6 counseling with people is privileged. Isn't that
what

7 you told her?

8 A. That's correct.

9 Q. In fact, that is not true, is it,
Mr.

10 Rogers? In a criminal case, there is no such thing
as a

11 minister/parishioner privilege, is there?

12

13 MR. S. PRESTON DOUGLASS: I'll
object

14 to that. It calls for a legal conclusion on his
part, he

15 doesn't know that.

16 THE COURT: I'll sustain the

17 objection.

18 MR. JOHN HAGLER: Furthermore,
your

19 Honor, Rule 505, there is a privilege.

20 THE COURT: I'll sustain the
21 objection.

22

23 BY MS. SHERRI WALLACE:

24 Q. Anyway, let's suffice it to say,

Mr.

25 Rogers, obviously, you weren't at the crime scene
when

Sandra M. Halsey, CSR, Official Court Reporter

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1 these events occurred?

2 A. That's correct.

3 Q. So all you know about what
happened

4 about this crime is what the defendant has told you?

5 A. No, that is incorrect. There's
been a

6 lot in the newspapers and on the television about it.

7 Q. Okay. So you gathered your
8 information from the press, and you've gathered your
9 information from the defendant, and I suppose you
have

10 spoken with the defendant's husband as well?

11 A. Sure. Um-hum. (Witness nodding
head
12 affirmatively.)

13 Q. Okay. And, in that conversation
you
14 had with Investigator Kinne in our office, do you
15 remember her telling you that we wanted to be very
16 careful not to overlook anything or anyone?

17 A. Yes, I do.

18 Q. And you promised her if you had
any
19 further information, you would give her a call,

didn't

20 you?

21 A. Um-hum. (Witness nodding head
22 affirmatively.) I did.

23 Q. And you haven't called her, have
you?

24 A. No, I haven't, because I haven't
had
25 any further information.

Sandra M. Halsey, CSR, Official Court Reporter

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1 Q. Okay. I want to talk to you a
little

2 bit about at the viewing.

3 A. Um-hum. (Witness nodding head
4 affirmatively.)

5 Q. I think you testified that the
6 defendant had been with the police for a number of
hours;

7 is that right?

8 A. I know we were there waiting for a
9 couple of hours. Um-hum. (Witness nodding head
10 affirmatively.)

11 Q. And in fact, they had requested a
12 police escort that day who had taken them and run
them

13 around town and done errands for them; isn't that
14 correct?

15 A. That I don't know.

16

17 MR. S. PRESTON DOUGLASS:

Objection,

18 your Honor, only if he knows that can he answer it.

19 THE COURT: If you know the
answer,

20 answer it. If you don't, just say you don't know.

21

THE WITNESS: I don't know.

Honestly,

22 I don't know.

23

24 BY MS. SHERRI WALLACE:

25 Q. All right. No problem.

Sandra M. Halsey, CSR, Official Court Reporter

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17 immediately? You didn't see what happened when she
first

18 went in?

19 A. No, because we had gone out the
little

20 door and into the other door and someone had said

21 something to me and I was --

22 Q. Drew your attention away?

23 A. -- stopped there for a minute or
two,

24 yes.

25 Q. Okay. Now, when you did go in
to the

1 viewing area there with the casket --

2 A. Um-hum. (Witness nodding head
3 affirmatively.) Yes.

4 Q. -- about a minute or two later,
you

5 saw the defendant at that time, correct?

6 A. Yes. And I could hear her in
the

7 hallway before that even.

8 Q. She was --

9 A. Wailing.

10 Q. Wailing loudly, right?

11 A. Yes. Um-hum. (Witness nodding
head

12 affirmatively.)

13 Q. And when you went, I suppose,
you

14 didn't see a tear, did you?

15 A. Well, I mean, she was crying.

16 Q. You didn't see any water on her
face

17 or any tears, did you, Mr. Rogers?

18 A. I saw -- sure, she was crying,
there

19 were tears.

20 Q. Well, was Randy Regan in the
same

21 room?

22 A. Right. Um-hum. (Witness
nodding head

23 affirmatively.)

24 Q. So if he never saw a tear --
25

Sandra M. Halsey, CSR, Official Court Reporter

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1

MR. S. PRESTON DOUGLASS, JR.:

Excuse

2 me, your Honor. Randy Regan isn't here. It's
hearsay

3 whatever he said or saw.

4 THE COURT: I'll sustain the
5 objection. Let's move on.

6

7 BY MS. SHERRI WALLACE:

8 Q. Well, it's your testimony that
she

9 actually had tears at that time?

10 A. She had been crying when we were
11 standing there in the family room, yes, just about a
12 minute or two before.

13 Q. Did -- you were aware, that there
were

14 two pocketknives put in the casket with the boys,
weren't
15 you?

16 A. I think there were. It seems like
I
17 remember that.

18 Q. Okay. And, do you remember the
first

19 song played at the funeral?

20 A. Yes, ma'am, I do.

21 Q. And what was that?

22 A. I don't know the name of the song

23 but --

24 Q. Let me see if I can help you. Was

it

25 Gangster's Paradise?

Sandra M. Halsey, CSR, Official Court Reporter

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1 A. I think that was the name of the
song.

2 Q. Now, Mr. Rogers, were you at this
3 prayer service before the birthday party, Silly
String

4 party?

5 A. Yes, I was.

6 Q. And what -- there were about 12 or
15
7 people there at that time?

8 A. Something like that, yeah.

9 Q. It was in the afternoon; is that
10 right?

11 A. Yes, it was in the afternoon.

12 Q. And they had also invited a
newspaper

13 reporter to be present, had they not?

14 A. Well, there was --

15

16 MR. S. PRESTON DOUGLASS: Your
Honor,

17 again, only if he knows what other people did can he
18 answer.

19 THE COURT: Just a minute, sir.

20 Wait -- when they object, just stop.

21 THE WITNESS: I'm sorry.

22 THE COURT: If you know the answer

23 from your own knowledge answer it. If you don't know

it

24 from your own knowledge, say so.

25 THE WITNESS: I apologize.

Sandra M. Halsey, CSR, Official Court Reporter

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1 THE COURT: You don't have to
2 apologize.

3 Now then, we have what is called
4 hearsay down here. Don't say what other people have
told

5 you. Okay?

6 And only answer questions from
your

7 own knowledge. If you don't know of your own
knowledge,

8 just say, "I don't know".

9 THE WITNESS: Yes, sir. Thank
you.

10 THE COURT: In the meantime, does
any

11 member of the jury desire a break?

12 THE COURT: All right. We have
one.

13 That's enough. We'll take a 10 minute break.

14 Thank you.

15

16 (Whereupon, a short
17 recess was taken, after
18 which time, the
19 proceedings were
20 resumed in open

court,

21

in the presence

and

22

hearing of the

23

Defendant,

being

24

represented by

his

25

Attorney, but outside of
Sandra M. Halsey, CSR, Official Court Reporter

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1 the presence of the jury
2 as follows:)

3
4 THE COURT: All right, are both
sides

5 ready to bring the jury in and continue?

6 MR. S. PRESTON DOUGLASS, JR.:
Yes,

7 sir, the defense is ready.

8 MS. SHERRI WALLACE: Yes, sir, we
are

9 ready to continue.

10 THE COURT: All right. Bring the
jury
11 in, please.

12

13 (Whereupon, the jury

14 was returned to

15 the

16 courtroom, and

17 the

18 proceedings

were

17 resumed on the

record,

18 in open court, in

the

19

presence and

hearing

20

of the defendant,

21

as follows:)

22

23

THE COURT: All right.

Let the record

24 reflect all parties in the trial are present

and the jury

25 is seated. Ms. Wallace.

Reporter Sandra M. Halsey, CSR, Official Court

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1 MS. SHERRI WALLACE: Thank
you, your
2 Honor.

3

4

5

CROSS EXAMINATION

(Resumed)

6

7 BY MS. SHERRI WALLACE:

8 Q. Mr. Rogers, I think this
is where I
9 was, I'm not sure.

10 At the prayer service the
day of the
11 birthday party, it was like a week --

12 A. Yes.

13 Q. -- about a week after the
killing.

14 A. The following Friday.

15 Q. Okay. Yeah. Just over a
week. You

16 said you were there; is that right?

17 A. Yes, ma'am.

18 Q. And are you aware that
there was a

19 newspaper reporter there as well?

20 A. Yes, I am aware of that.

21 Q. Okay. And after that

service, did

22 you --

23

24 THE COURT: Sir, could you

please

25 speak up a little bit louder so that the lady
and

Sandra M. Halsey, CSR, Official Court
Reporter

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1 gentleman right there in the corner can hear
you.

2 THE WITNESS: Yes, sir.

3 THE COURT: Thank you.

4

5 BY MS. SHERRI WALLACE:

6 Q. It was a pretty emotional
service,

7 wasn't it?

8 A. The prayer service?

9 Q. Yes.

10 A. Yes, ma'am, it was.

11 Q. And right after, the defendant
and her

12 mom spent about an hour with this newspaper
reporter;

13 isn't that correct?

14 A. Everybody was around talking, and
they

15 talked to him, I don't know how long.

16 Q. Did you leave before they did?

17 A. I honestly don't know because I
was

18 talking to different people.

19 Q. Okay. You didn't conduct that

20 service. I think that is what you said; is that
right?

21 A. That's correct.

22 Q. Okay. What denomination are you,
Mr.

23 Rogers?

24 A. We're Independent.

25 Q. Okay.

Sandra M. Halsey, CSR, Official Court Reporter

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1 A. And I guess Baptist and
Independent

2 kind of, so --

3 Q. I'm Baptist. Don't let the
Baptists

4 hearing you saying Independent. They don't take too
5 kindly to that.

6 A. Yes, well there's all kinds of
7 Baptists, so --

8 Q. What church were you pastoring
before

9 that?

10 A. What church was I pastoring
before

11 this one?

12 Q. Um-hum. (Attorney nodding head
13 affirmatively.)

14 A. I pastored a church called Tyland
15 Baptist Church in Tyler, T-Y-L-A-N-D, in Tyler.

16 Q. How big is that church?

17 A. That church, at that time,
probably

18 had 250 or 300 members, something like that.

19 Q. How long were you there?

20 A. About two and a half years.

21 Q. Did you do that full time? Was
that
22 church large enough to support that?
23 A. Part of the time I did, and part
of
24 the time I didn't.
25 Q. Okay. What business did you have

Sandra M. Halsey, CSR, Official Court Reporter

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1 there in Tyler, other than your pastoring?

2 A. Well, at that time I was working
3 part-time for Sears.

4 Q. In these -- I don't know, in my
count

5 I guess it's now 52 times you visited with the
defendant

6 since she has been incarcerated?

7 A. Um-hum. (Witness nodding head
8 affirmatively.)

9 Q. Have you made any notes of those
10 visits?

11 A. No.

12 Q. Okay. Have you made any notes
about

13 what you have observed or anything prior to
testifying

14 today?

15 A. No.

16 Q. You didn't write down what you
17 remembered for the lawyers here?

18 A. No.

19 Q. You knew that the bruises were
20 important in this trial, didn't you?

21 A. I have heard on the news that

they

22 talked about bruises. Um-hum. (Witness nodding

head

23 affirmatively.)

24 Q. Have you been made privy to the

notes

25 the family is taking here, or have you just heard
about

Sandra M. Halsey, CSR, Official Court Reporter

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1 this?

2 A. I know that it's being done. I
have

3 not seen any of them.

4 Q. They told you what's going on?

5 A. Um-hum. (Witness nodding head
6 affirmatively.) Sure.

7 Q. And I don't guess you knew that
you

8 weren't supposed to talk to them about the
testimony, did

9 you?

10

11 MR. RICHARD C. MOSTY: Your
Honor, you

12 know, we been through this with the State's
witnesses --

13 MR. GREG DAVIS: I'm going to
object

14 here.

15 MR. RICHARD MOSTY: -- that
until they

16 are placed under the rule.

17 MR. GREG DAVIS: If we could
just have

18 an objection and no side-bars, please. If he has
an
19 objection, please state it.

20 MR. RICHARD C. MOSTY: We have
been
21 through this --

22 MR. GREG DAVIS: Again, if he
will
23 please state his objection.

24 THE COURT: Gentlemen, please.
All
25 right. Go ahead, Mr. Mosty.

Sandra M. Halsey, CSR, Official Court
Reporter

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16 BY MS. SHERRI WALLACE:

17 Q. Mr. Rogers, anyway, you know what
has
18 been going on here in the courtroom, don't you?

19 A. To some degree, yes.

20 Q. Okay. In all of these times that
you
21 have visited with the defendant, what has she told
you
22 about the offense?

23 A. I can't tell you what she has told
me
24 about the offense.
25

Sandra M. Halsey, CSR, Official Court Reporter

1 MR. RICHARD C. MOSTY: May we
approach

2 the bench?

3 THE COURT: You may. Come on
around

4 here.

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

11

12 THE COURT: All right. Back on
the

13 record now.

14

15 BY MS. SHERRI WALLACE:

16 Q. Mr. Rogers, you testified just
before

17 the break, I think, that you felt like that the
defendant

18 had grieved appropriately. Do you remember saying
that?

19 A. Yes.

20 Q. And you felt that the birthday

party

21 at the grave side with the Silly String was
appropriate.

22 Do you remember that?

23 A. I remember that.

24 Q. Okay. Did you also feel like the
25 pocketknives in the casket for two boys that had been

Sandra M. Halsey, CSR, Official Court Reporter

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1 stabbed was appropriate?

2 A. It was not my decision, you know,
that

3 is a family matter, and I have seen families put a
lot --

4 Q. I'm sorry. I'm sorry, Mr. Rogers.
Do

5 you think that is appropriate?

6 A. That is their decision.

7 Q. So, you don't think it's
appropriate?

8 A. If it was appropriate for them, it
was

9 appropriate for that moment.

10 Q. Do you think it's appropriate to
you?

11 A. I'm not a pocketknife person, so I
12 wouldn't have done that, no.

13 Q. So you think it's inappropriate;
is
14 that correct?

15 A. No, that is not what I said.

16 Q. You are not a pocketknife person?

17 A. Right.

18 Q. What about the Tarot cards in the
19 casket, do you think that is appropriate?

20 A. I don't know anything about Tarot
21 cards.

22 Q. You didn't know about those?

23 A. No.

24 Q. When is the first time the defense
25 attorneys talked to you about the bruises?

Sandra M. Halsey, CSR, Official Court Reporter

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1 A. The defense attorney last night
asked

2 me if I had seen any bruises.

3 Q. Is that the first time that anyone
has

4 asked you about the bruises?

5 A. Yeah, the defense attorneys.

6 Q. No. Anybody?

7 A. Nobody has asked me about bruises
that

8 I'm aware of.

9 Q. So, you have not talked to anyone
10 about bruises?

11

12 MR. DOUGLAS MULDER: Judge, he has
13 made that fairly clear.

14 THE COURT: I'll sustain the
15 objection. Let's move on. Let's get the next
question

16 in, please.

17

18 BY MS. SHERRI WALLACE:

19 Q. And you have testified that you
knew

20 bruises were important in this trial; is that

correct?

21

A.

Yes.

22

Q.

Okay.

23

24

MS. SHERRI WALLACE: I'll pass the

25 witness.

Sandra M. Halsey, CSR, Official Court Reporter

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1

2

3

REDIRECT EXAMINATION

4

5 BY MR. S. PRESTON DOUGLASS:

6

Q. Just one last question. With respect

7 to the song, Gangster's Paradise, you knew that that was

8

one of the children's favorite songs?

9

10

MS. SHERRI WALLACE: I'll object

11

leading.

12

13 BY MR. S. PRESTON DOUGLASS:

14

Q. Did you know?

15

16

THE COURT: All right. Thank you.

17

If you know it from your own knowledge, just answer it.

18

If you don't, just say so.

19

THE WITNESS: I was told by their

20

father that it was.

21

MR. S. PRESTON DOUGLASS, JR:

That's

22 all. Thank you very much.

23 THE COURT: Thank you.

24 MR. RICHARD C. MOSTY: Your Honor,

I'm

25 going to have to object to Mr. Davis. I have been

Sandra M. Halsey, CSR, Official Court Reporter

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1 holding my -- but Mr. Davis has continued to make
facial

2 expressions at different times.

3 I have been trying to hold that,
but

4 it's inappropriate.

5 THE COURT: Kindly, both sides do
not

6 make any kind of facial expressions. Thank you.

7 MR. DOUGLAS MULDER: Judge,
sometimes

8 I just can't help it.

9 THE COURT: I know that you can't,
Mr.

10 Mulder. I enjoy them when they are directed at me.

11 Thank you very much.

12 If you will step down, sir. Good
13 luck.

14 All right. Call the next witness,
15 please.

16 If you will raise your right hand,
17 please, ma'am.

18

19 (Whereupon, the witness

20 Was duly sworn by the

21 Court, to speak the

truth,

22

The whole truth and

23

Nothing but the truth,

24

After which, the

25

Proceedings were

Sandra M. Halsey, CSR, Official Court Reporter

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1 Resumed as follows:)

2

3 THE COURT: Do you solemnly
swear or

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

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

6 help you God?

7 THE WITNESS: I do.

8 THE COURT: Just have a seat right
9 here, please.

10 Ma'am, you are now under the Rule
of

11 Evidence, here's what that means. That means when
you

12 are not testifying, you have to remain outside
the

13 courtroom. You understand that?

14 THE WITNESS: Yes, sir.

15 THE COURT: Don't talk about
your

16 testimony with anybody who has testified. In
other

17 words, don't compare it. Do you understand
that?

18 THE WITNESS: Yes, I do.

19 THE COURT: You may talk to the
20 attorneys for either side. If someone tries to talk
21 to
22 you about your testimony, please tell the attorney
23 for
24 the side who called you.

25 Now, will you please state your
name

and spell your name for Mrs. Halsey, the court
reporter?

25 Go ahead.

Sandra M. Halsey, CSR, Official Court Reporter

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1 THE WITNESS: My name is Dana
Godfrey,

2 D-A-N-A, G-O-D-F-R-E-Y.

3 THE COURT: Can all the jurors
hear

4 this witness? You have to speak loudly.

5 All right. Go ahead.

6

7 Whereupon,

8

9 DANA GODFREY,

10

11 was called as a witness, for the Defense, having
been

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

13 whole truth, and nothing but the truth, was examined
and

14 testified in open court, as follows:

15

16

17 DIRECT EXAMINATION

18

19 BY MR. CURTIS GLOVER:

20 Q. Dana, tell the jury what you do.

21 A. I'm a housewife and I also work

with

22 my husband part-time now in electronics.

23 Q. Okay. And that is in, where?

24 A. In our home.

25 Q. Okay. Dallas or Rowlett or
where?

Sandra M. Halsey, CSR, Official Court Reporter

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1 A. In Rowlett.

2 Q. In Rowlett. Tell the jury how
you
3 know Darlie Routier.

4 A. I met Darlie the first day she
moved
5 into her home on Bond Street, I brought her cookies
over
6 to her house.

7 Q. Okay. How many years ago has
that
8 been?

9 A. Say, approximately eight years.

10 Q. Okay.

11 A. Devon was just born.

12 Q. Okay. She had a baby then,
Devon; is
13 that right?

14 A. Yes, she did.

15 Q. Okay. Did you all become pals?

16 A. Very close, very soon.

17 Q. Okay. What did you all do
together?

18 A. Everything. We shopped, just
walking
19 the babies, we have just been long time close

friends

20 together, just camping, everything that friends do

21 together.

22 Q. What kind of person was Darlie
Lynn?

23 A. She was a sweet, caring, loving
person

24 from the first day I met her.

25 Q. Okay. She is a good friend of
yours?

Sandra M. Halsey, CSR, Official Court Reporter

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1 A. Very good.

2 Q. Is she still a good friend of
yours?

3 A. She is a good friend, yes.

4 Q. Okay. As the years have gone by,
have
5 you all remained as close as you were back, say,
eight
6 years ago?

7 A. No, we didn't.

8 Q. Okay. How did y'all drift apart,
if
9 you did?

10 A. We drifted apart as soon as I
started
11 coaching softball and getting in the PTA and going
back
12 to college.

13 Q. Okay.

14 A. They moved and, like I said, I
started
15 coaching and my life was coaching after that.

16 Q. But did you stay in touch?

17 A. Yes, quite frequently we
did.

18 Q. Have you found, since you

have

19 indicated to the jury you all drifted apart, that
there

20 was any change in the Darlie that you had always
known?

21 A. Never.

22 Q. What kind of person was she?

23 A. She was good. She was a good
mother,

24 caring. Darlie was always there if you ever needed
her

25 to talk to. She was just a sweet, good person.
Always.

1 Q. Okay. When, if you know, do you
think

2 the last time you would have talked to her prior to
these

3 little boys tragically dying?

4 A. I'm sorry. Can you repeat that?

5 Q. When would have been the last
time, if

6 you know, that you spoke with her prior to this
event, in

7 June of '96 when the little boys were killed?

8 A. I would say about two months
prior to

9 that we had spoken. I went to visit her at her
office.

10 I just happen to go up there to see how she was
doing.

11 Q. Okay. And how was she doing?

12 A. She was doing great. The boys
were

13 running around, she was feeding the baby.

14 Q. Had you seen the baby?

15 A. Yes, I had.

16 Q. I said, had you seen it prior to
that

17 time?

18 A. Yes, I had.

19 Q. Okay. So you were familiar with

20 Drake?

21 A. Yes, I was.

22 Q. How was he doing?

23 A. He was doing just fine.

24 Q. Okay.

25 A. Just fine.

Sandra M. Halsey, CSR, Official Court Reporter

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1 Q. Everybody seem happy?

2 A. Everybody did. The boys were
running

3 around, drives them crazy, and she was trying to
calm

4 them down, and I was talking to Darin and her and
just a

5 normal atmosphere.

6 Q. Okay. When did you get any hint
about

7 what ultimately happened there in June?

8 A. I got a phone call early that
morning

9 from a neighbor, Celia Morgan, and she called me,
and

10 said that --

11

12 MR. GREG DAVIS: I'm going to
object,

13 that is hearsay. I'll object to it.

14 THE COURT: Sustained.

15

16 BY MR. CURTIS GLOVER:

17 Q. You found out what happened, did
you

18 not?

19 A. Yes, I did.

20 Q. What did you do?

21

22 THE COURT: Just a moment, Mr.

Glover.

23 Ma'am, don't tell him what people told you. Wait

until

24 you hear the lawyer's next question. Okay?

25 THE WITNESS: I'm sorry.

Sandra M. Halsey, CSR, Official Court Reporter

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1 THE COURT: That is quite all
right.

2 Go ahead.

3

4 BY MR. CURTIS GLOVER:

5 Q. What did you do, Dana, as a
result of

6 what you found out?

7 A. Well, I believe I dropped the
phone

8 down and then ran upstairs hysterically, to my
husband,

9 who was in the shower, and screamed that the boys
were

10 dead, and that they were murdered, and he came out
of the

11 shower, and of course, my children ran down the
hallway

12 and heard me, unfortunately, and I got them out of
the

13 room, and he tried to calm me down, and we got
dressed

14 and we went right to the hospital.

15 Q. Okay. What did you see when you
got

16 to the hospital?

17 A. Well, first we had to wait down
for a

18 while until the police let us up, and when we got up
19 there, I'm sorry, we got upstairs and they wouldn't
let

20 us in. We saw Darin and they said we had to wait a
while

21 to see Darlie and I just wanted to see her.

22 Q. Okay. How was Darin?

23 A. Darin was -- I'd say he was still
in

24 shock. He was so out of it and pacing and I just
25 remember him tapping his hands on the side of the
bar,

1 talking to me and my husband, and trying to tell us,
you

2 know, what had happened. And we waited until they
let us

3 go in and then I went in.

4 Q. What time was that?

5 A. I'd say it was anywhere between
9:00

6 and 9:30 that morning.

7 Q. Okay. And, when you got into the
8 room, what did you see?

9 A. I saw Darlie holding her boys'
10 pictures in her arms.

11 Q. How was that? Describe that for
the
12 jury.

13 A. It was -- she was just crying and
14 holding their pictures in her arms and rocking back
and
15 forth, just kind of out of it, just in shock and
just
16 crying.

17 Q. Okay. You have known this woman
for
18 eight years?

19 A. Um-hum. (Witness nodding head

20 affirmatively.)

21 Q. Y'all had a close relationship?

22 A. Yes, sir.

23 Q. Okay. You knew her emotionally?

24 A. Yes, I did.

25 Q. Okay. Describe her emotion.

Sandra M. Halsey, CSR, Official Court Reporter

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1 A. Her emotion was -- I would say
she --

2 from the looks of her she was on heavy medication,
3 tearful, she couldn't speak very well, she was
listless.

4 I fed her some ice and we talked a little bit.
Well, I

5 finally pulled the pictures out of her hand. I told
her

6 I said, "Darlie, just put the pictures down, babe.
Just

7 get some rest."

8 And then she tried to tell me
what

9 happened.

10

11 MR. GREG DAVIS: I'm going to
object

12 to that as being hearsay, what was said.

13 THE COURT: Sustain the
objection.

14 Let's rephrase our question.

15

16 BY MR. CURTIS GLOVER:

17 Q. Now, this would have been around

9:00

18 or 9:30 that you were in there?

19 A. Yes, sir.

20 Q. You made some statement when we
talked

21 last night about the fact that she was not cleaned
22 properly. Explain that to the jury.

23 A. I remember I was just staring at
her

24 hands also when I took the pictures out I saw the
blood

25 between her fingers, dried blood, and then on her

1 fingernails there was dried blood, and even on her
arms,

2 on her arm, there was blood on her arm.

3 And it just looked like -- and
then to

4 see her neck, it just looked like they just didn't
clean

5 her up very well.

6 Q. Okay. Dana, did you have an
occasion

7 to go to the viewing of the boys?

8 A. Yes, I did.

9 Q. Okay. Did you have occasion to
see

10 Darlie then?

11 A. Yes, I did. She came in late.

12 Q. Where did you see her?

13 A. I don't remember.

14 Q. What kind of shape was she in?

15 A. Out of it, just not with it.

16 Q. Okay. Did that seem genuine to
you or

17 did it seem like she was faking that?

18 A. There was no faking, none. I
just saw

19 a mother that had been through a very, very, bad
tragedy

20 and I didn't see any faking. I saw the real Darlie
and

21 she was heartbroken.

22 Q. All right.

23

24 MR. CURTIS GLOVER: Pass the
witness.

25 THE COURT: All right. Mr.
Davis.

1

2

3

CROSS EXAMINATION

4

5 BY MR. GREG DAVIS:

6

Q. Mrs. Godfrey, my name is Greg Davis.

7

I just have a few questions for you just so I'm clear.

8

Were you in the house there at 5801 Eagle Drive the evening of June the 5th, 1996?

10

A. No, sir, I was not.

11

Q. Were you in that house during the

12

early morning hours of June the 6th of 1996?

13

A. No, I was not.

14

Q. When you saw that the defendant had

15

not been cleaned properly, which nurse did you go to to

16

report that?

17

A. There was a nurse -- I didn't report

18

that she wasn't cleaned properly. I reported to the

19 nurse to please give her some -- something that
would

20 calm her down. And then the nurse did get up, and
came

21 over and spoke to me, and said that she had been
like

22 this for a while and --

23 Q. Okay. Well --

24 A. And proceeded to give her

medication.

25 Q. Well, I'm sorry, my question was:

Sandra M. Halsey, CSR, Official Court Reporter

1 Which nurse did you report that to?

2 A. The one that was in the room at
the
3 time, sitting up on the side.

4 Q. You reported the fact that she had
not
5 been cleaned properly to that nurse?

6 A. No, I did not report that she had
not
7 been cleaned.

8 Q. Thank you. Thank you. When you
saw
9 her two months prior to this incident, you said that
she
10 appeared to be doing great; is that right?

11 A. Yes.

12 Q. Would you agree with me that if
an
13 individual attempted to take her life, that she is
not
14 doing --

15

16 MR. JOHN HAGLER: Excuse me,
your

17 Honor, excuse me, there has been no showing --

that is

18 not in evidence, your Honor.

19 MR. GREG DAVIS: Barbara Jovell

--

20 THE COURT: I'll let her answer

it.

21 Ask that question, and if she knows the answer, I'll

let

22 her answer it.

23

24 BY MR. GREG DAVIS:

25 Q. Let me ask you again. If the

1 defendant, during that time period that you say she
is

2 doing great, had started to take her life, but was
3 interrupted by her husband before she completed the
act,

4 would you consider that to be doing great?

5 A. I don't believe she would do
that.

6 Q. That wasn't my question. I know
that

7 you may not believe that, but my question is: If
that

8 occurred, would you consider the
defendant to be doing

9 great during that time period, Mrs.
Godfrey?

10 A. No, not with any
person.

11

12 MR. GREG DAVIS: No
further questions.

13 MR. CURTIS GLOVER:

That's all we

14 have.

15 THE COURT: You may
step down, ma'am.

16 Watch your step. Please do not
discuss your testimony

17 with anybody who testifies. Thank
you.

18 All right. Your
next witness.

19 MR. S. PRESTON

DOUGLASS: Cara Byford.

20 THE COURT: Will
you raise your right

21 hand, please, ma'am.

22

23 (Whereupon, the
witness

24 was duly sworn by

the

25 Court, to speak
the truth,

Sandra M. Halsey, CSR, Official
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: Yes, I do.

12 THE COURT: Have a seat right
here

13 please. Ma'am, you're now under the Rule of
Evidence.

14 When you are not testifying, you must remain
outside the

15 courtroom. Don't talk about your testimony with
anybody

16 who's testifying. In other words, don't compare
it. Do

17 you understand that?

18 THE WITNESS: Yes, sir.

19 THE COURT: You may talk to the
20 attorneys for either side. If someone tries to
talk to

21 you about your testimony tell the attorney for the
side

22 who called you. Okay?

23 THE WITNESS: Um-hum. (Witness
24 nodding head affirmatively.)

25 THE COURT: Is that a yes?

Sandra M. Halsey, CSR, Official Court Reporter

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1 THE WITNESS: Yes.

2 THE COURT: All right. Good.

All

3 right. Now, you have to speak loudly into this
4 microphone so the ladies and the gentlemen at the
end can

5 hear you. Okay?

6 THE WITNESS: Okay.

7 THE COURT: Please state your
name and

8 spell your last name for the court reporter.

9 THE WITNESS: My name is Cara
Byford,

10 B-Y-F-O-R-D.

11 THE COURT: Okay. You are going
to

12 have to speak up just a little bit, so the folks
can hear

13 you. Speak right in here.

14 THE WITNESS: Cara Byford,

15 B-Y-F-O-R-D.

16 THE COURT: Okay. Go ahead.

17 BY MR. S. PRESTON DOUGLASS:

Thank

18 you, your Honor.

19

20

21 Whereupon,

22

23 CARA BYFORD,

24

25 was called as a witness, for the Defense, having
been

Sandra M. Halsey, CSR, Official Court Reporter

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1 first duly sworn by the Court to speak the truth,
the

2 whole truth, and nothing but the truth, testified
in open

3 court, as follows:

4

5

6

DIRECT EXAMINATION

7

8 BY MR. S. PRESTON DOUGLASS:

9 Q. Do you go by a nickname?

10 A. Yes.

11 Q. What is that?

12 A. Jeanie.

13 Q. Jean or Jeanie?

14 A. Jeanie.

15 Q. Okay. Where do you live?

16 A. In Plano.

17 Q. How long have you lived in
Plano?

18 A. About four years.

19 Q. How old are you?

20 A. Twenty-seven.

21 Q. Are you married?

22 A. Yes.

23 Q. Do you have children?

24
25

A. Yes.

Q. How many children do you have?

Sandra M. Halsey, CSR, Official Court Reporter

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1 A. I have one.

2 Q. What is your child's name?

3 A. Kaylie.

4 Q. How old is your child?

5 A. Three.

6 Q. What do you do for a living?

7 A. I am an administrator.

8 Q. And what company do you work at?

9 A. Erickson.

10 Q. Okay. And, have you met Darlie
11 Routier?

12 A. Yes.

13 Q. And can you tell the ladies and
14 gentlemen of the jury how you met Darlie?

15 A. I met her through her mother,
16 Darlie
17 Kee, when we were going to school together in '89.

18 Q. Okay. Now Darlie Kee works for
19 the
20 same employer that you do; is that right?

21 A. Yes.

22 Q. All right. And how was it that
23 if
24 you -- you met the mother, how did you come to meet
25 the

22 daughter?

23 A. Just studying together at her
home.

24 Q. At whose home?

25 A. Darlie Kee's.

Reporter Sandra M. Halsey, CSR, Official Court

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1 Q. And, then, during visits
Darlie
2 Routier would come by?
3 A. Yes.
4 Q. And did you get to know Darlie?
Did
5 you come to know her?
6 A. Yes.
7 Q. Now, I'm talking about Darlie
Routier?
8 A. Yes.
9 Q. Can you describe -- well, first:
What
10 year would that be when you first met Darlie
Routier?
11 A. In 1989.
12 Q. And since 1989, have you had
occasion
13 to see Darlie Routier frequently during that time?
14 A. Yes.
15 Q. Have you socialized with Darlie?
16 A. Yes.
17 Q. Have you been on a trip with
Darlie?
18 A. Yes.

19 Q. Do you believe that you can
20 characterize yourself as a good friend?

21 A. Yeah.

22 Q. All right. If you would, please
23 describe for the jury your impression of Darlie
Routier.

24 How would you describe her to the jury?

25 A. Kind-hearted. One of the nicest

Sandra M. Halsey, CSR, Official Court Reporter

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1 people I have met. She would do pretty much
anything for
2 you.

3 Q. Is she a generous person?

4 A. Yes.

5 Q. Was she generous to you?

6 A. As a friend.

7 Q. Was she a happy person?

8 A. Yes.

9 Q. Did she seem to be upbeat the
majority

10 of the time you were around her?

11 A. Yes.

12 Q. Now, I want to ask you a little
bit

13 about grief. And, for background, you have had a
child

14 that died?

15 A. Yes.

16 Q. How old was your child when --
was it

17 a boy?

18 A. It was a boy, yes.

19 Q. How old was your boy when he
died?

20 A. He was four months old.
21 Q. And, he aspirated; is that right?
22 A. Yes.
23 Q. And, Darlie, of course, knew
that?
24 A. Yes.
25 Q. And, after her boys were killed,
did

Sandra M. Halsey, CSR, Official Court Reporter

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1 she seek you out for help?

2 A. Yes.

3 Q. Why did she seek you out for
help?

4 A. She thought I would understand.
That

5 I could give her support because I had lost my
child.

6 Q. I have not been in that
situation,

7 thankfully. But I want to ask you a question: Does
the

8 process of grieving, when you have lost a child as
you

9 have, do you think there is any way that a person
can

10 have the right to say how someone ought to grieve
when

11 they have lost a child?

12 A. No.

13 Q. Do you think anybody has a right
to

14 judge that?

15 A. No.

16 Q. I want to ask you if you can

describe,

17 for the jury -- or let me start back. Do you believe

18 that you saw Darlie Routier exhibit any

inappropriate

19 actions or behavior after her children were

killed?

20 A. No.

21 Q. Can

you describe what you saw when

you

22 observed Darlie?

23 A. She

was very hurt, painful. She

24 missed her boys.

25 Q. Did

she show outwardly signs of

Sandra M. Halsey,
CSR, Official Court Reporter

3891

1 emotion?

2 A. Yes.

3 Q. What
kind?

4 A. She
cried.

5 Q. Now, were these fake tears?

6 A. No.

7 Q. Did she have some time that she
was

8 just quiet?

9 A. Yes.

10 Q. Did you see her at times where
she

11 would hold pictures of the boys in her arms?

12 A. Yes.

13 Q. And did she look at that picture?

14 A. Yes.

15 Q. And did you see times when she
would

16 smile?

17 A. Yes.

18 Q. Now, did that seem inappropriate
to

19 you?

20

A. No.

21

Q. Did you visit with her at the

22 hospital?

23

A. Yes.

24

Q. Do you recall what day it was you

25 visited her?

Sandra M. Halsey, CSR, Official Court Reporter

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1 A. I visited her on the 6th and on
the
2 7th.

3 Q. At any -- on either the 6th or
the
4 7th, while she was still in the hospital, did you
have an
5 opportunity to look at her right arm?

6 A. Yes.

7 Q. Did you see any bruising on her
right
8 arm?

9 A. Yes.

10 Q. Now, is there any question in
your
11 mind about that?

12 A. No.

13 Q. Did the bruising seem to be a
slight
14 bruise or a significant bruise?

15 A. Significant.

16 Q. How did it affect you?

17 A. I got real upset and had to walk
out
18 of the room.

19 Q. Because of the bruise?

20 A. Yes.

21 Q. Now, I got a suspicion that you
are

22 going to be asked if you ever ran to a nurse.

23

24 MR. GREG DAVIS: I'm going to

object

25 to that as being leading here.

1 THE COURT: Sustained. I'll
sustain

2 the objection.

3

4 BY MR. S. PRESTON DOUGLASS:

5 Q. Did you ever feel the need -- let
me

6 ask you this: Did you think those bruises were
obvious?

7 A. Yes, sir.

8 Q. Did you ever feel like you had
the

9 need to go tell a nurse that she was bruised,
when she is

10 in a hospital?

11 A. No.

12 Q. Now, after Darlie was
discharged from

13 the hospital, did you have an occasion to go
to what has

14 been called -- well, did you go to the
funeral?

15 A. Yes.

16 Q. Did you go to the viewing?

17 A. Yes.

18 Q. And throughout that time,
did Darlie

19 Routier appear to exhibit what you thought was
20 appropriate displays of grief?

21 A. Yes.

22 Q. Did she talk to you about
it?

23 A. Yes.

24 Q. Did she express to you
dismay?

25 A. Yes.

Sandra M. Halsey, CSR, Official Court
Reporter

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1 Q. Did she express to you that
she felt

2 helpless?

3 A. Yes.

4 Q. How did that go?

5 A. I think she didn't know
what to do. I

6 know she felt alone, although she wasn't going
through

7 this alone. It's -- I think that is the way
anybody

8 would feel.

9 Q. And, over a period of time,
have you

10 continued to talk to her on the phone and try
to help

11 her?

12 A. Yes.

13 Q. And, throughout all of
this, have you

14 observed a great deal of support for Darlie
through her

15 family?

16 A. Yes.

17 Q. Did you go to the -- what

has been

18 called the prayer service at the grave site?

19 A. On Devon's birthday, yes.

20 Q. Did you -- were you aware

that certain

21 items were being placed grave side as mementos

or

22 memorializing, or placed at the grave for the

children?

23 A. Yes.

24 Q. Did you do that?

25 A. Yes.

Sandra M. Halsey, CSR, Official Court
Reporter

3895

1

2

MR. S. PRESTON DOUGLASS:

May I

3

approach the witness, your Honor?

4

THE COURT: You may.

5

6

(Whereupon, the following

7

mentioned item was

8

marked for

9

identification only

10

after which time the

11

proceedings were

12

resumed on the record

13

in open court, as

14

follows:)

15

16

BY MR. S. PRESTON DOUGLASS:

17

Q. Ms. Byford, I want to hand you

what I

18

have marked as Defendant's Exhibit No. 71, and ask

you if

19

you can identify that exhibit?

20

A. Yes, the poem I gave to Darlie.

21

Q. You gave that to Darlie?

22

A. Yes.

23

Q. Okay. Now, I have folded the

paper,

24 is the poem that's on the underside, was that given

to

25 Darlie also?

Sandra M. Halsey, CSR, Official Court Reporter

3896

1 A. Yes.

2 Q. So both of them were?

3 A. Yes.

4 Q. And does that correctly reflect
the

5 poem that you gave Darlie before the memorial
service?

6 A. Yes.

7

8 MR. S. PRESTON DOUGLASS: I'll
offer

9 Defendant's Exhibit No. 71.

10 MR. GREG DAVIS: Object to it as
it's

11 irrelevant as to what this witness gave to the
defendant.

12 It's hearsay also.

13 THE COURT: Well --

14 MR. GREG DAVIS: What relevance is
a

15 poem given by this witness to the defendant?

16 MR. DOUGLAS MULDER: Judge, it's
every

17 bit as relevant as the knife.

18 THE COURT: Gentlemen, please.

Just a

19 minute. If you have an objection, Mr. Douglass is
20 handling this part of the examination for the
defense.

21 All the other attorneys will
kindly
22 remain silent over there. Let me have this, let me
see
23 that.

24 MR. RICHARD C. MOSTY: Your Honor,
may
25 I respond? Can we confer with Mr. Douglass? Is that

Sandra M. Halsey, CSR, Official Court Reporter

1 okay with the Court?

2 THE COURT: I don't think that is
3 necessary. Thank you.

4 MR. RICHARD C. MOSTY: We can't?

5 THE COURT: Objection overruled.

I'll

6 admit it. Go ahead.

7

8 (Whereupon, the above

9 Mentioned item was

10 Received in

evidence

11 As Defendant's

Exhibit

12 No. 71, for all

purposes,

13 After which time, the

14 Proceedings were

15 Resumed on the

record,

16 In open court,

17 As follows:)

18

19 BY MR. S. PRESTON DOUGLASS:

20 Q. Why did you give this poem to

Darlie

21 Routier?

22 A. It was given to me after my son
died,

23 even though it's sad, I found it comforting.

24 Q. Did you give it to Darlie to help
25 comfort her?

Sandra M. Halsey, CSR, Official Court Reporter

3898

1 A. Yes.

2 Q. Would you read that poem for us,
3 please?

4 A. Yes. "Oh, Lord I cried, my heart
will

5 break. Nothing can ever stop the ache. Oh, Lord our
6 loved one is gone. 'Gone,' God said, 'No, your loved
one

7 is not gone, because as long as you have memories in
your

8 heart, they live on. My child, don't you know I
care. I

9 won't give you more than you can bear. Life and
death

10 are my choice. Trust my wisdom and rejoice. Wipe
away

11 the tear from your eye, for there is no longer a
need to

12 cry. My son died so your loved one could have
eternal

13 life. Now they are with me in paradise. I am the
King,

14 for each life I have a plan. I hold your future in
the

15 palm my hand. I am the Good Shepherd and I know my

own.

16 You are never forsaken or left alone. I know you
loved

17 them but I loved them more. I held their hand and
gently

18 led them through the door. They are more alive now
than

19 they were before. They are happier now than they
have

20 ever been in this perfect world without hurt or
sin.'

21 Asleep? No. We walk together today, and they
watched

22 you as you knelt to pray. They smiled and said,
'They

23 miss me,' you know. Do they understand why I had to
go?

24 I love them and I know they love me. Tell them I'm
25 happy. Tell them I'm free. Loved one, it is
wonderful

1 here, don't weep for me. We will soon be together
again

2 for eternity."

3 Q. Now, along with bracelets and
cards

4 and things, there were poems like what you just
read to

5 the jury and placed at the grave side?

6 A. Yes.

7 Q. Thank you.

8

9 MR. S. PRESTON DOUGLASS: Pass
the
10 witness.

11

12

13 CROSS EXAMINATION

14

15 BY MR. GREG DAVIS:

16 Q. Ms. Byford, how long have you
been

17 good friends with the defendant's mother, Darlie
Kee?

18 A. Since '89.

19 Q. You all were both coworkers and
then

20 obviously good enough friends that you went over
and

21 visited at her house several times?

22 A. Yes.

23 Q. Okay. And you've talked with
her

24 since you have been down here in Kerrville, I take
it?

25 A. Yes.

Sandra M. Halsey, CSR, Official Court Reporter

3900

1 Q. You have described the defendant
as
2 being kind-hearted, upbeat. Would you agree with me
that
3 even kind-hearted people can have problems that may
seem
4 overwhelming in their life?

5 A. Yes.

6 Q. Would you agree with me also that
even
7 kind-hearted people may reach a point in their life
where
8 they just cannot seem to cope with those problems?

9 A. No.

10 Q. You don't believe that is
possible?

11 A. Well, not in this case.

12 Q. The bruises that you saw on the
13 defendant's right arm?

14 A. Yes.

15 Q. Okay. Describe those bruises for
me.

16 A. Very dark purple, covered a large
part
17 of her arm.

18 Q. Okay. So very, dark purple. And
if
19 you can let me --

20

21 MR. GREG DAVIS: Judge, if I may
22 approach the witness, your Honor?

23 THE COURT: You may.

24

25

Sandra M. Halsey, CSR, Official Court Reporter

3901

1 BY MR. GREG DAVIS:

2 Q. Ms. Byford, if you will just
indicate

3 on my arm where you saw the bruising to the
defendant

4 that you saw at the hospital. Was it outside,
inside,

5 up, down, what part of the arm was the bruising?

6 A. Right through here.

7 Q. Okay. You are indicating on the -

-

8 A. To the inside.

9 Q. The inside. Okay. How long?

10 A. Well --

11 Q. What's the length?

12 A. About to here.

13 Q. Okay. You have indicated above my
14 elbow. Okay. How far down did it extend?

15 A. About right to here.

16 Q. Right above the wrist all the way
up

17 to the elbow, right?

18 A. Yes, from what I remember.

19 Q. Okay.

20

21

MR. S. PRESTON DOUGLASS: Your

Honor,

22 that is a misstatement. He said above the elbow.

23

MR. GREG DAVIS: That is where she

24 indicated.

25

THE COURT: Well, let the record

Sandra M. Halsey, CSR, Official Court Reporter

3902

1 reflect that she indicated approximately one inch
above

2 the left elbow to about one inch above -- or excuse
me --

3 right elbow, to the right wrist.

4

5 BY MR. GREG DAVIS:

6 Q. And, when was it that you first
saw

7 this bruise on her right arm, Ms. Byford?

8 A. The 7th.

9 Q. What time on the 7th?

10 A. I don't know what time. I went to
the

11 hospital. I believe it was -- I know it was after
she

12 was transferred into the private room.

13 Q. Okay. Well, okay. Morning, noon,
14 afternoon, evening?

15 A. I believe it was in the afternoon.

16 Q. About what time in the
afternoon?

17 A. Maybe, 2:00 or 3:00.

18 Q. Okay. How long did you stay at
the

19 hospital at that time?

20 A. Not very long, about an hour.

21 Q. What was the appearance of her

left

22 arm?

23 A. I don't remember.

24 Q. You don't remember?

25 A. No.

Sandra M. Halsey, CSR, Official Court Reporter

3903

1 Q. What about her right hand?

2 A. I don't remember the right hand.

3 Q. How about the left hand?

4 A. No.

5 Q. And, Mr. Douglass has been kind
enough

6 to indicate that I'm not going to ask you about going
and

7 asking the nurses about any of this. But surely when
you

8 saw the bruising you asked the defendant how she got
that

9 bad bruise on her right arm, didn't you?

10 A. No.

11 Q. You didn't?

12 A. I just assumed.

13 Q. Assumed what?

14 A. That she got it from the stab or
from

15 a struggle. I didn't want to ask her details.

16 Q. And she didn't volunteer as to how
she

17 got that bruise?

18 A. No.

19 Q. Well, when you went up to talk

with

20 her when she was in the hospital, didn't she tell you
21 what had happened to her there in the house?

22 A. Yes.

23 Q. Okay. What did she say to you?

24 A. She said --

25 Q. What version did she give you?

Sandra M. Halsey, CSR, Official Court Reporter

3904

1 A. She just told me that someone had
come
2 into the house and killed her boys and attacked her.

3 Q. Okay. And you just gave that in
the
4 order that that man killed her boys and then attacked
5 her. Is that the way she told you?

6 A. Yes.

7 Q. No more detail than that?

8 A. No.

9 Q. All right. Let me move forward
just a
10 bit here. Since the defendant has been out of the
11 hospital, you have continued to talk with her; is
that
12 right?

13 A. Yes.

14 Q. Counsel with her about what's
15 happened; is that right?

16 A. Yes.

17 Q. And, surely in those conversations
she
18 has gone over this incident in greater detail with
you,
19 hasn't she?

20 A. No.

21 Q. So in all of the conversations --

22 about how many conversations have you had with her
since

23 she was discharged from the hospital?

24 A. Well, maybe 15.

25 Q. So, in none of those 15
conversations

Sandra M. Halsey, CSR, Official Court Reporter

3905

1 that you have had with her, has she ever told you
what

2 happened to her in that house?

3 A. No, other people have.

4 Q. Well, right now I'm just talking
about

5 the defendant, and the conversations you have had
with

6 her. She has never told you, since the hospital any
7 other details about what happened to her; is that
right?

8 A. No.

9

10 MR. GREG DAVIS: No further
questions.

11 MR. S. PRESTON DOUGLASS: I don't
have

12 any other questions, your Honor.

13 THE COURT: You may step down,
ma'am.

14 Ladies and gentlemen of the jury,
in

15 view of the hour and the length of time that a
witness

16 would take, we will adjourn until 9:00 o'clock
tomorrow

17 morning.

18 Same instructions as always. Do

no

19 investigation on your own. You will decide this

case on

20 the testimony you hear and the evidence you receive

in

21 this courtroom.

22 This probably will be in the

newspaper

23 or on TV or on the radio, please ignore it. Do not

talk

24 about the case among yourselves yet, because it's

not

25 over yet. When the case is over, you may talk or

not

1 talk, as you see fit.

2 Please wear your juror badges at
all

3 times around the courthouse. We'll see everybody
here

4 tomorrow morning at 9:00 o'clock.

5 Thank you.

6 All right. If the viewing
audience

7 will remain seated until the jury clears the
courthouse.

8 Thank you.

9 All right.

10

11 (Whereupon, the
jury

12 Was excused from
the

13 Courtroom, and
the

14 Proceedings were
held

15 In the presence of
the

16 Defendant, with
his

17 Attorney, but
outside

18 The presence of
jury

19 As follows:)

20

21 THE COURT: Let the record
reflect

22 these proceedings are being held outside of the
presence

23 of the jury, and all parties of the trial are
present.

24 Mr. Mosty?

25 MR. RICHARD C. MOSTY: The
exhibit is

Sandra M. Halsey, CSR, Official Court Reporter

3907

1 No. 70, which was identified earlier for the record
2 purposes as FBI Agent Brantley notes that he
identified
3 from his file.

4 THE COURT: For the record
purposes.

5 MR. RICHARD C. MOSTY: It includes
all
6 of the notes he had except for the photographs which
we
7 have not copied.

8 THE COURT: Any objection to the
9 records?

10 MR. TOBY L. SHOOK: No objection.

11 THE COURT: All right.

Defendant's

12 Exhibit 70 is admitted into the record.

13

14 (Whereupon, the above

15 Mentioned items

were

16 Received in

evidence

17 As Defendant's

Exhibit

18 No. 70, for all

purposes,

19

After which time, the

20

Proceedings were

21

Resumed on the

record,

22

In open court,

23

As follows:)

24

25

THE COURT: All right. Can I see

the

Sandra M. Halsey, CSR, Official Court Reporter

3908

1 young lady up here and that gentlemen on the record?
All

2 right.

3 Come on up here. Okay. We're
already

4 on the record now. Your name, ma'am, is?

5 THE WITNESS: Peggy Rogers.

6 THE COURT: And your
name?

7 THE WITNESS: Sandy
Aitken,

8 A-I-T-K-E-N.

9 THE COURT: All right, ma'am.
And

10 your name?

11 THE WITNESS: Pamela King, K-I-
N-G.

12 THE COURT: Your name?

13 THE WITNESS: Ted King, K-I-N-
G.

14 THE COURT: And your name?

15 THE WITNESS: LuAnn
Brown.

16 THE COURT: Are any
of you planning on
17 being a witness?

18 THE WITNESSES: No.

19 THE COURT: All

right.

20 Ladies, please do

not communicate with

21 those who will testify, anyone who is

going to testify.

22 Is that clear?

23 THE WITNESSES: Yes,

sir.

24 THE COURT: Okay.

Thank you.

25 That's all. See
everybody in the

Sandra M. Halsey, CSR, Official
Court Reporter

3909

1 morning at 9:00 A.M.

2

3

(Whereupon, the jury

was

4

thereby excused for

the

5

day, to return on

the

6

next day, January 24, 1997,

7

at 9:00 a.m.)

8

9

(These proceedings are continued

to

10 the next volume in this cause.)

11

12

13

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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

3911

1 STATE OF
TEXAS)
2 COUNTY OF
DALLAS)

3

4

JUDGES CERTIFICATE

5

6

7

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

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21

MARK TOLLE, JUDGE

22

Criminal District Court Number 3

23

Dallas County, Texas

24

25

Sandra M. Halsey, CSR, Official Court Reporter

3912

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Sandra M. Halsey, CSR, Official Court Reporter

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