

Tuesday

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Sandra M. Halsey, CSR,
Official Court Reporter

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4 BE IT REMEMBERED THAT, on
Tuesday, the 28th 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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HON. JOHN VANCE

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Criminal District Attorney

7

Dallas County, Texas

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9

BY: HON. GREG DAVIS

10

Assistant

District Attorney

11

Dallas County,

Texas

12

13

AND:

14

HON. TOBY SHOOK

15

Assistant

District Attorney

16

Dallas County,

Texas

17

18

AND:

19

HON. SHERRI

WALLACE

20

Assistant

District Attorney

21 Dallas County,

Texas

22

23

APPEARING FOR THE STATE OF TEXAS

24

25

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4401

1 ADDITIONAL APPEARANCES:

2

3 HON. DOUGLAS D.

MULDER

4 Attorney at Law

5 2650 Maxus Energy

Tower

6 717 N. Harwood

7 Dallas, TX 75201

8

9 AND: HON. CURTIS GLOVER

10 Attorney at Law

11 2650 Maxus Energy

Tower

12 717 N. Harwood

13 Dallas, TX

75201

14

15 AND: HON. RICHARD

C. MOSTY

16 Attorney at

Law

17 Wallace,

Mosty, Machann, Jackson &

Williams

18 820 Main

Street, Suite 200

19 Kerrville,

TX 78028

20

21 AND: HON. S.

PRESTON DOUGLASS, JR.

22 Attorney at

Law

23 Wallace,

Mosty, Machann, Jackson &

Williams

24 820 Main

Street, Suite 200

25 Kerrville,

TX 78028

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4402

1

2 AND: HON. JOHN

HAGLER

3 Attorney at

Law

4 901 Main Street, Suite 3601

5 Dallas, TX 75202

6 ALL ATTORNEYS REPRESENTING

THE

7 DEFENDANT: DARLIE ROUTIER

8 MR. HAGLER HANDLING THE

APPEAL

9 AND:

10 HON. ALBERT D. PATILLO, III

11 Attorney at Law

12 820 Main Street, Suite 211

13 Kerrville, TX 78028

14 APPEARING FOR: Witness-

15 Detective Jimmy

Patterson

16 only on one date in

trial

17 AND:

18 HON. STEVEN J. PICKELL

19 Attorney at Law

20 620 Earl Garrett Street

21

Kerrville, TX 78028

22

APPEARING FOR: Witness

23

Officer Chris Frosch

24

only on one date in

trial

25

Reporter Sandra M. Halsey, CSR, Official Court

4403

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the
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P R O C E E D I N

January 28th, 1997
Tuesday
8:30 a.m.

(Whereupon, the
proceedings were held
open court, in the
and hearing of the
defendant, being
represented by her
and the representatives
the State of Texas, but
outside the presence of
jury, as follows:)

THE COURT: Mr. Mosty, are you

ready?

20

MR. RICHARD C. MOSTY: Well,

that

21 depends on what we're getting ready to do.

22

THE COURT: Well. All right.

Where

23 is Mr. Mulder?

24

MR. RICHARD C. MOSTY: I don't

know,

25 your Honor.

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4404

1 THE COURT: All right. Let the
record

2 reflect that these proceedings are being held
outside the

3 presence of the jury and all parties in the trial
are

4 present.

5 Mr. Mosty, you will be
representing

6 Mrs. Routier for this hearing. It's past 8:30 and
I have

7 told everyone to be here at 8:30.

8 MR. RICHARD C. MOSTY: Yes, sir,
I

9 will represent Mrs. Routier.

10 THE COURT: I figured that is
what we

11 will do.

12 MR. RICHARD C. MOSTY: If that
is okay

13 with the Court?

14 THE COURT: That is fine with
the

15 Court. Fine with the Court. All right. The
purpose of

16 this hearing today is we're discussing the

microphones

17 that were put out at the cemetery. And Officer --
let

18 the record reflect that Officer Patterson is
present, and

19 he has been appointed an attorney for this purpose,
Mr.

20 Albert Patillo, from Kerrville; and Officer Frosch
has

21 been appointed Mr. Steve Pickell, P-I-C-K-E-L-L, of
22 Kerrville.

23 And, Mr. Patillo, you have
conferred

24 with your client?

25 MR. PATILLO: Yes, I have, your
Honor.

1 THE COURT: And, what is the
result of

2 that conference?

3 MR. PATILLO: We will decline to
4 testify further in this matter. And my client, on
my

5 advice, will take the Fifth.

6 THE COURT: As regards to the
7 microphones at the cemetery?

8 MR. PATILLO: Yes, sir.

9 THE COURT: All right. Will
you, have

10 Mr. Pickell, and his client, step in, please.

11 And, let the record reflect that
12 Officer Frosch -- and I am embarrassed, I have
forgotten

13 your first name.

14 OFFICER CHRIS FROSCH: Chris.

15 THE COURT: Officer Chris
Frosch,

16 F-R-O-S-C-H, is present, and with his attorney, Mr.
Steve

17 Pickell.

18 And you have conferred with your
19 client, Mr. Pickell?

20 MR. PICKELL: Yes, your Honor.

21 THE COURT: Okay. What is the
result

22 of that conference?

23 MR. PICKELL: Your Honor,
Detective

24 Frosch would assert his Fifth Amendment right.

25 THE COURT: Concerning the
testimony

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4406

1 as regards to the recording devices or the
microphones,

2 or whatever, that were put up at the cemetery, and
only

3 regards that, concerning only that portion; is that
4 correct?

5 MR. PICKELL: That is correct,
your

6 Honor.

7 THE COURT: All right. Fine.

8 Anything, Mr. Davis?

9 MR. GREG DAVIS: Yes, sir. At
this

10 time, the State would indicate that we believe this
11 testimony is not relevant, it's improper
impeachment.

12 And, again, I'm talking about the subject of the
mike on

13 the grave site. And we would ask that the Court
instruct

14 Mr. Mulder not to go into these matters any further
in

15 front of this jury, because again, we feel the
16 prejudicial effect here, of having to inform the
jury

17 that these officers have taken the Fifth Amendment.

1 jury.

2 THE COURT: Was there any
exculpatory

3 material in that?

4 MR. GREG DAVIS: No, sir, but in
all,

5 in caution, I did turn over those matters to the
defense.

6 THE COURT: So the defense has
those

7 tapes? You gentlemen have those tapes?

8 MR. DOUGLAS MULDER: Judge, they
are

9 the ones that first went into this matter. We
didn't go

10 into anything at the grave site. They did.

11 THE COURT: All I want to know
right

12 now, Mr. Mulder, is: Do you have those tapes?

13 MR. DOUGLAS MULDER: Well, I
have some

14 tapes. I don't know whether I have those.

15 THE COURT: Did you listen to
them?

16 MR. DOUGLAS MULDER: Yes, sir.

17 THE COURT: When were they given

to

18 the defense?

19 MR. DOUGLAS MULDER: Well, we
didn't

20 get into the case until --

21 MR. GREG DAVIS: Probably
sometime in

22 November, I believe.

23 MR. DOUGLAS MULDER: So, if it's
like

24 everything else, it came in at the last minute or
25 sometime in January.

1 MR. RICHARD C. MOSTY: Well, let
me
2 describe that, your Honor. There is a video tape,
that
3 is obviously taken from a vehicle near the grave
site,
4 that you can see it panning on various people. And,
then
5 you hear the audio.

6 Sometimes the audio -- it depends
on
7 how close they were to the mike, on whether or not
you
8 could hear it. But that video is -- it starts off
with
9 some gentleman out there watering the grave sites,
10 apparently an employee, and is, I am guessing, it
covers,
11 maybe, as much as 14 hours that day.

12 THE COURT: Well, then the video
13 does --

14 MR. RICHARD C. MOSTY: So it's
hard to
15 say, and our copy -- I don't know what the State's
copy
16 is like -- our copy is not all so great on the video

17 part.

18 MR. DOUGLAS MULDER: Judge, I
would

19 like to point out to the Court, that I think
felonious

20 conduct on the part of the police officers during
an

21 investigation is always material.

22 It goes to the integrity of the
23 investigation. And, you know, whether they like
it or

24 not, they are the ones that opened this up. We
didn't go

25 into anything at the grave site. The prosecution
did.

15 want to talk about that, and I want to hide behind
the
16 Fifth Amendment."

17 MR. RICHARD C. MOSTY: And not
only on
18 the relevance issue, the Court has got to remember,
that
19 Cron has testified that he decided within 20 minutes
20 that -- of the defendant's guilt, that the Rowlett
Police
21 Department was informed of that, that Mr. Davis was
on
22 the job within five days after that, and that this -
- and
23 this whole focus, as I said in my opening statement,
she
24 became the target in the rifle scope, at the
beginning,
25 and the methodology and how Rowlett went about

1 investigating this, and choosing not to investigate
other

2 things, is directly shown by going out and putting
an

3 illegal bug out in a graveyard.

4 THE COURT: Okay. So you're
using

5 this to impeach the officers; is that correct?

6 MR. RICHARD C. MOSTY: I don't
know

7 that impeach is the right --

8 MR. DOUGLAS MULDER: Not
exclusively.

9 MR. RICHARD C. MOSTY: We're
using it

10 to show what they did. It's just a simple fact of
how

11 they investigated it.

12 MR. DOUGLAS MULDER: But, Judge,
once

13 again, they brought it up. We didn't go into this
14 matter. And now they have got to take the bad with

the

15 good.

16 THE COURT: Let Mr. Hagler make

his

17 objections. These are the real objections.

18 MR. JOHN HAGLER: Well, your

Honor, a

19 couple things as far as the facts. They are arguing

20 irrelevancy, your Honor.

21 Again, I think Mr. Mosty has

already

22 stated, that certainly it's relevant, in the fact

that

23 the defendant was targeted in this case within 20

minutes

24 as being the assailant.

25 And, certainly, this would have
some

talking about

17 tapes and the video. Now, to my understanding,
and I

18 don't know all of the facts, obviously, but there
was an

19 open wire on this grave side.

20 There may well be matters other
than

21 that which appears on the tape, and on the video

22 surveillance. Of course, the tape is the
intercept

23 problem we have here.

24 But we don't know what all
transpired

25 out there. We don't know who was privy and
overheard all

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Reporter

4412

1 of these oral conversations.

2 As I understand it, if the
Court

3 denies us an opportunity to confront and cross
examine

4 these witnesses, we're denied the opportunity of
5 eliciting all the facts and testimony surrounding
the

6 grave side event, and incidents. And, I would
further

7 submit to the Court, that the Court can't simply
rely on

8 the blanket assertion by the State, that there is no
9 exculpatory statements made during any of these
10 intercepted conversations.

11 I think it's for the Court to
make

12 that decision. It's for us to be able to elicit that
13 such information by means of cross examination and
14 confrontation.

15 Your Honor, but if the Court rules
16 that and prohibits us from cross examining the
witnesses

17 concerning their knowledge, the conversations, the
events

18 surrounding the illegal intercept of the

conversations at

19 the grave side, that would constitute a violation of
the

20 defendant's Fifth and Sixth rights under the U.S.

21 Constitution and the Fourteenth Amendment rights.

And

22 Article 1, section 10 of the Texas Constitution, and

23 specifically the right to confront and cross examine
the

24 witnesses concerning the events surrounding the

illegal

25 intercept.

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4413

16 to admit them as evidence.

17 For these reasons, I find that
the
18 potential prejudice outweighs the probative value of
this
19 evidence, and the defense is ordered not to go into
it,
20 should these officers be recalled to the stand.

21 Now, if you want a running
objection
22 on that, you may have it.

23 MR. JOHN HAGLER: Yes, your
Honor.

24 MR. RICHARD C. MOSTY: Your
Honor, we
25 can go into, for instance, things that refute, on
that

1 tape, refute the inference that the State has done?

2 THE COURT: There was a videotape
done

3 by Channel 5. I think everyone in the country has
seen

4 out there.

5 MR. RICHARD C. MOSTY: Well, you
know

6 what they didn't see, was the funeral service. The
State

7 has illegally intercepted the funeral service where
they

8 stand around and pray. The State offers the Silly
String

9 part of the day, and they have the prayer there,
where

10 the first part of it is the prayer where they
illegally

11 intercept a prayer at a grave side. And we can't
offer

12 that?

13 THE COURT: Well, I think that
has

14 already been offered.

15 MR. GREG DAVIS: You know, your

16 Honor --

17 MR. RICHARD C. MOSTY: We have a
video

18 of it.

19 MR. GREG DAVIS: I don't think
there

20 is any problem with Mr. Mosty or Mr. Mulder offering
that

21 videotape. I mean, whatever was visually recorded
out

22 there, we certainly don't have a problem with them
doing

23 that. It's just the circumstances under which that
was

24 gathered. You know, if they can show what happened
out

25 there, if they want to show that videotape.

1 MR. DOUGLAS MULDER: But we can't
ask

2 the --

3 MR. GREG DAVIS: So they have
that

4 option. And they still get to show what they
feel is

5 important for them to show to this jury.

6 THE COURT: Well, anyway, that
is

7 fine. If you want to do that, that will be fine,
but

8 that is the Court's ruling, and the Court will note
your

9 objection.

10 You don't have to object in front
of

11 the jury for any purposes. You will have a running
12 objection. And, at 9:00 o'clock we will proceed.

13 MR. GREG DAVIS: Yes, sir.

14 MR. DOUGLAS MULDER: Just so I
am

15 abundantly clear on this, are you telling me that
if I

16 recall Detective Jimmy Patterson, that I can't go

into

17 this matter at all?

18 THE COURT: That's correct.

19 MR. DOUGLAS MULDER: Okay.

20 MR. RICHARD C. MOSTY: And we

can't

21 even go into the motive of how they conducted their

22 investigation?

23 It's been a central theme of this

case

24 from the beginning, is that these men went to the --

went

25 to the stage of illegal activities, to try to target
in

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4416

1 on this lady. That has been the beginning of this
case,

2 and it is exactly what this case is about, in it's
3 entirety. Is that they never did anything, other
than

4 focus on Darlie Routier, and they wanted to do it so
bad,

5 that they would violate state and federal law to do
so.

6 And we are not allowed to go into that?

7 THE COURT: Well, the Court ruling
8 stands. Thank you.

9 MR. DOUGLAS MULDER: Judge, let me
ask

10 this just for a little direction from the Court.

Does

11 the Court intend to give the jury any explanation or
12 clarification, or just let it --

13 THE COURT: Well, we will go over
the

14 charge at the appropriate time. I'm happy to do
that.

15 MR. DOUGLAS MULDER: I mean, you
don't

16 intend to say anything to the jury. You know, he was
17 plucked from the witness stand, rather

inappropriately,

18 and I take it the Court doesn't --

19 THE COURT: Well, I think both
sides

20 agreed with that. I don't think he was plucked from
the

21 witness stand.

22 MR. DOUGLAS MULDER: Well, he
refused

23 to answer any questions, Judge, until he had a chance
to

24 talk to his lawyer.

25 THE COURT: I understand that.

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4417

1 MR. RICHARD C. MOSTY: Well, if --

2 MR. DOUGLAS MULDER: If they call

-- I

3 understand if I call the officers, I can't go into
it.

4 If they call them, can I go into it as impeachment?

5 THE COURT: Well, certainly if any

6 door is opened. I don't think they will be calling
the

7 officer, but they may very well do it. But we want
to

8 stay out of that, because I am holding that that is
not

9 relevant in this particular case.

10 MR. DOUGLAS MULDER: Well, I'll

11 suggest to the Court, that the door is opened if
they

12 talk about any part of the investigation, because
this

13 was part of the investigation.

14 THE COURT: Well, let's take

that up

15 at the appropriate time.

16 MR. DOUGLAS MULDER: Well, you

know,

17 Judge, it kind of depends on -- it has interrupted

our

18 strategy in this case. And you know, I can go with

it

19 either way. I don't care what the rules are, just

as

20 long as I know what they are. If I understand what

the

21 rules are, I can play by anybody's rules.

22 THE COURT: Well, the rule now

is

23 this: Don't go into it.

24 MR. DOUGLAS MULDER: All right.

I

25 understand that. But, are they going to call -- if
they

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4418

1 are going to call the officers, I will be allowed to
go

2 into it?

3 THE COURT: Well, anything, Mr.
4 Mulder, that is opened up by any examination, you
will be

5 allowed to go into. That is correct.

6 MR. DOUGLAS MULDER: Well, I would
7 suggest to the Court, that if they go into anything,
8 about an investigation, that this is part of the
9 investigation.

10 THE COURT: Well, we'll cover
that at
11 the time that it comes. That may very well be the
case.

12 MR. RICHARD C. MOSTY: Is the
Court
13 going to allow, for instance, Mr. Frosch to get up
and
14 testify about some things, and then in the middle of
it,
15 prohibit -- or take the Fifth?

16 THE COURT: The Court is going to
17 allow -- if Mr. Frosch is called, Mr. Frosch will
18 testify.

19 MR. RICHARD C. MOSTY: Pardon me?

20 THE COURT: If Mr. Frosch is
called,
21 he will testify. If the door is opened to anything,
22 certainly, you will be able to get into it.

23 MR. RICHARD C. MOSTY: So the
Court is
24 going to let him get up and testify about some
things,
25 and prohibit us from going into the full
investigation?

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Reporter

4419

1 THE COURT: We are not going to
go
2 into whatever happened at the grave side as
regards to
3 the alleged recordings out there.

4 MR. RICHARD C. MOSTY: Well,
what
5 about the other officers who did it? Can we call
them?

6 THE COURT: We will go each one
7 individually at the time.

8 MR. RICHARD C. MOSTY: All
right.

9 THE COURT: Anything else?

10 MR. JOHN HAGLER: Just so I'm
clear,
11 your Honor. You stated that, of course, we cannot
12 question them in front of the jury, but we also are
13 prohibited from questioning them during the
hearing, as
14 to any and all statements.

15 THE COURT: You may question
them
16 during the hearing. Do you want to question the
officers
17 now?

18 MR. RICHARD C. MOSTY: Well, we
19 want -- one thing we want to know is we want to
know
20 everyone who was involved in this.

21 THE COURT: Well, can you give
them
22 that information?

23 MR. RICHARD C. MOSTY: And who
knew
24 about it, participated in it, planned it.

25 MR. GREG DAVIS: That I don't
know. I

1 don't know those facts.

2 MR. DOUGLAS MULDER: Well, maybe
Mr.

3 Davis needs a lawyer.

4 MR. GREG DAVIS: Maybe you do.

5 THE COURT: Well, I doubt
that.

6 MR. DOUGLAS MULDER: I've got
one.

7 THE COURT: I doubt that. I
think

8 both sides -- all right, gentlemen, fine. Excuse me,
go

9 ahead, Mr. Davis.

10 MR. GREG DAVIS: I was just going
to

11 say, in this matter, so that we can all be clear, if
Mr.

12 Mulder believes that the door has been opened, would
you

13 please instruct him to approach the bench, discuss
this

14 matter with you, before he begins to go through that

15 "open door," because we both know what he is going to
do

16 here. He has done it in the past.

1 that if it's not clear. And there wasn't anything
2 Friday. There wasn't anything said Friday about this
3 business.

4 MR. GREG DAVIS: No, I'm talking
about

5 the other agreement that we had that he broke on
Friday..

6 MR. DOUGLAS MULDER: There wasn't
any

7 agreement Friday, not to go into the fact that
Patterson

8 was --

9 THE COURT: Gentlemen, Friday has
10 passed. Friday has passed, and what occurred,
occurred.

11 MR. RICHARD C. MOSTY: Yeah, well,
12 yesterday --

13 MR. DOUGLAS MULDER: Well, I
didn't

14 make any agreement with them, not to mention that,
Judge.

15 THE COURT: All right, Mr. Mulder,
16 fine.

17 MR. DOUGLAS MULDER: Y'all may
have

18 had an agreement among yourselves, but I wasn't a

party

19 to it.

20

THE COURT: Mr. Mulder. We do

not

21 have any agreements with the Court. Is that clear?

22

MR. DOUGLAS MULDER: Right.

Well, I

23 wasn't a party to that agreement. I didn't have any

24 agreement with them.

25

THE COURT: We understand. Would

you

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4422

1 please modulate your voice. I can hear you.

2 MR. DOUGLAS MULDER: I

understand. I

3 didn't have any agreement with them. The only
agreement

4 I had with them, was that their witnesses would be
5 present until -- the ones under subpoena -- until I
6 agreed to excuse them. And I never made that
agreement.

7 I told them I would exercise that agreement Friday.

8 THE COURT: The Court understands
what

9 happened last Friday, and that is over and passed and
10 done with. We're not going to discuss that.

11 MR. RICHARD C. MOSTY: Well, there
is

12 also, for instance, a motion in limine prohibiting
going

13 into breast implants that Mr. Davis went right
through

14 yesterday without bothering to say, "Is the door
open?"

15 Can I go into this?"

16 And now we're supposed to abide
by

17 these things and the State doesn't have to?

18 THE COURT: No. You all abide by
19 whatever motions are in the file.

20 MR. DOUGLAS MULDER: Well, Judge,
21 would the Court address that now?

22 THE COURT: Both sides are
instructed
23 to stay within the motions of limine that are in
there.

24 MR. DOUGLAS MULDER: Well, they
25 understood that, Judge. We went into it before the

1 Court. You understood it, they understood it, but
they

2 barged right in.

3 THE COURT: All right. Well,
the

4 Court will instruct both sides to remain within the
5 motions in limine. You both know what they are.

Let's

6 stay with it. If anybody does anything against it,
well,

7 let's stand up and object. There was no objection
8 yesterday.

9 MR. RICHARD C. MOSTY: Well, of
course

10 not.

11 MR. DOUGLAS MULDER: All that
would do

12 is call attention to it. That is why we filed the
motion

13 in limine, so we don't have to object.

14 THE COURT: All right.

15 MR. RICHARD C. MOSTY: And that
is why

16 Mr. Davis did it that way.

17 THE COURT: Gentlemen, gentlemen,
we

18 are here this morning on the hearing on Officer
Patterson

19 and Frosch.

20 MR. RICHARD C. MOSTY: Well, may
I go

21 back to my question?

22 THE COURT: Yes.

23 MR. RICHARD C. MOSTY: I would
like to

24 know who all was involved in this?

25 MR. DOUGLAS MULDER: Well, he
said you

1 can go into that. Let's call Patterson --

2 THE COURT: Just a minute. Just
a

3 minute. Calm down, Mr. Mulder. I can only talk to
one

4 attorney at a time.

5 If the State knows who was
involved in

6 it, you may please find out, and please advise the
7 defense.

8 MR. GREG DAVIS: Yes, sir.

9 MR. RICHARD C. MOSTY: May we
call one

10 of these gentlemen and find out?

11 THE COURT: You may indeed.

12 MR. RICHARD C. MOSTY: Mr.
Patterson

13 is under oath, isn't he?

14 THE COURT: He is indeed.

15 MR. RICHARD C. MOSTY: May I
16 inquire --

17 THE COURT: You may. Who was
18 involved -- I'll inquire. Who was involved in it?

19 MR. PATTERSON: I don't want to
answer

20 that.

21 MR. DOUGLAS MULDER: Judge --

22 THE COURT: Well, all right.

23 MR. DOUGLAS MULDER: Well, he

either

24 answers or goes to jail, doesn't he?

25 THE COURT: Mr. Mulder, if I want

Sandra M. Halsey, CSR, Official Court Reporter

4425

1 anything from you, I will ask you. Is that clear?

2 MR. DOUGLAS MULDER: Well, yes,
sir.

3 THE COURT: Thank you very much.

You

4 are refusing to answer that on the grounds that it
may

5 tend to incriminate you; is that correct?

6 MR. PATTERSON: Yes, sir.

7 THE COURT: All right. Fine.

8 MR. RICHARD C. MOSTY: May we
also

9 identify that Mr. Frosch says the same thing?

10 THE COURT: Mr. Frosch, is that
your

11 answer?

12 MR. FROSCH: Yes, sir, it is.

13 MR. RICHARD C. MOSTY: So, now we
14 can't even find out who was involved?

15 THE COURT: Just a minute. Just
a

16 minute. Just a minute, gentlemen.

17 All right. All right. The

Court's

18 ruling is -- the Court's ruling stands as it is, as

it

19 has been expressed. And if you object to that, we
will

20 note your objection.

21 MR. RICHARD C. MOSTY: No. My
inquiry

22 is, I want to know who else was involved. The State
23 ought to know, this is exculpatory evidence. This
ought

24 to be turned over.

25 THE COURT: If the State knows who
is

Sandra M. Halsey, CSR, Official Court Reporter

4426

1 involved, please inform the defense.

2 MR. RICHARD C. MOSTY: I mean,
first,

3 there ought to be an investigation going on in Dallas
4 County as we speak about this.

5 THE COURT: Well, there may very
well

6 be one, but right now, we're in a trial in Kerrville.
We

7 have completed this hearing, and it's five minutes
until

8 9:00, and at 9:00 o'clock I intend to continue the
cross

9 examination of Darin Routier -- or the direct (sic)
10 examination by Mr. Davis.

11 MR. RICHARD C. MOSTY: When is the
12 State going to give me that information? I mean,
it's

13 not going to do me much good in May.

14 THE COURT: Well, the State --
Mr.

15 Mosty, we understand that. Mr. Davis, should you
learn

16 the information, give it to the defense as soon as
17 possible.

18 MR. GREG DAVIS: Yes, sir, I

will.

19 MR. RICHARD C. MOSTY: And are
they

20 under a duty to inquire?

21 THE COURT: Yes, they are under
a duty

22 to inquire.

23 MR. RICHARD C. MOSTY: I just
want to

24 be clear, because if he never asks him, he might
never

25 know it.

1 THE COURT: Well, Mr. Mosty, I
think

2 that Mr. Davis and Mr. Shook and Miss Wallace will
ask.

3 All right. Thank you. These
4 proceedings are concluded.

5

6 (Whereupon, a short
7 Recess was
taken,

8 After which
time,

9 The proceedings
were

10 Resumed on the
record,

11 In the presence
and

12 Hearing of the
defendant,

13 But outside the
presence

14 Of the jury, as
follows:)

15

16 THE COURT: All right. Let's go

back

17 on the record. Briefly, Mr. Hagler has a couple
more

18 objections he wants to make.

19 MR. JOHN HAGLER: Your Honor, I
will

20 be very brief here with the Court.

21 Your Honor, just so that we are
clear

22 on the ruling, your Honor, it's our understanding of
the

23 ruling that both, of course, Frosch and Patterson
have

24 invoked their Fifth Amendment privilege against
25 self-incrimination under the Fifth Amendment.

Sandra M. Halsey, CSR, Official Court
Reporter

4428

1 We further understand the
Court's
2 ruling, that in light of that invocation of the
Fifth

3 Amendment right, that we're prohibited from
inquiring

4 from those two officers, and I assume other
officers who

5 may be involved in this intercept.

6 As to the: One, we are
prohibited

7 from cross examining and questioning the officers
8 regarding the intercept, and all facts surrounding
the
9 intercept.

10 THE COURT: That's correct.

11 MR. JOHN HAGLER: And
furthermore, if

12 we were given the opportunity to question the
officers,

13 we would go into matters such as the procedures
utilized,

14 who initiated the -- who made the decision to
initiate

15 the intercept, the individuals involved in the

intercept,

16 how it was conducted, and any and all information
that

17 was learned through the intercept, including
matters, not

18 only those matters on the tape, but also matters
that may

19 have been overheard but were not recorded by the
20 officers.

21 THE COURT: All right.

22 MR. JOHN HAGLER: And

furthermore,

23 your Honor, we would also submit that the State has
made

24 the assertion that there was no exculpatory matters
on

25 the tape, and, again, we would urge that it's not
for the

1 State to make that decision. It's one that only
the
2 Court can make, and the only one that we could
bring to
3 light through cross examination and confrontation
of
4 witnesses.

5 THE COURT: All right. Thank
you.

6 MR. JOHN HAGLER: And finally,
your
7 Honor, we would ask for a mistrial, based on our
lack of
8 opportunity to cross examine the witnesses regarding
9 this, and the fact that we cannot question
Patterson
10 regarding these matters.

11 THE COURT: All right. Thank
you.

12 Now, had you made those objections prior to the
ruling,
13 the Court's ruling would have been the same.
Regarding
14 the motion for a mistrial, the motion for mistrial
is

15 denied. With that in mind --

16 MR. GREG DAVIS: Also, before
the jury

17 comes in, if I could inform the Court, that during
the

18 break, I delivered to Mr. Mulder and Mr. Mosty the
names

19 of two officers who I was informed actually did the
20 taping. So they now have those names.

21 MR. DOUGLAS MULDER: I don't
have

22 the -- I would like the names of the co-
conspirators in

23 the record, if we might.

24 THE COURT: I think -- the names
have

25 been delivered, Mr. Mulder. Thank you.

1 MR. RICHARD C. MOSTY: One point
of
2 that delivery is, that these are Garland Police
Officers,
3 which goes again, to show that they were not only -
- not
4 only had Rowlett PD focused in, but they had
focused in
5 with every other resource, and they brought in
Garland PD
6 to do the illegal bug.

7 THE COURT: Thank you.

8 Now, I believe that Mr. Darin
Routier
9 was on the stand on direct (sic) examination.

10 Mr. Biggerstaff, would you have
him
11 step in, please?

12 MR. DOUGLAS MULDER: One last
thing,
13 Judge, if we might.

14 THE COURT: Oh, just a minute.
Okay.

15 MR. DOUGLAS MULDER: Aside from
the

16 two names that we understand are Michael, R-O-B-E-
R-B-S,

17 Roberbs. Is that supposed to be a T?

18 MR. GREG DAVIS: No, I believe
it's a

19 B.

20 MR. DOUGLAS MULDER: Okay.

21 R-O-B-E-R-B-S. And Darin Baker. We want to know
who

22 else knew of this plot.

23 THE COURT: Well, I doubt that
there

24 are conspirators or a plot, but in any event, the
Court

25 has directed Mr. Davis to give you the names
available,

1 which he has done, and that will conclude this
hearing.

2 And have Mr. Routier step in, please.

3 All right.

4

5 (Whereupon, the jury

6 Was returned to

the

7 Courtroom, and

the

8 Proceedings

were

9 Resumed on the

record,

10 In open court, in

the

11 Presence and

hearing

12 Of the defendant,

13 As follows:)

14

15 THE COURT: All right. Good

morning,

16 ladies and gentlemen.

17 Let the record reflect that all

18 parties in the trial are present, and the jury is

seated.

19 And we will continue with the direct (sic)
examination of

20 Mr. Routier by Mr. Davis. You may proceed.

21 MR. GREG DAVIS: Thank you,
Judge.

22

23

24

25

Sandra M. Halsey, CSR, Official Court Reporter

4432

1 Whereupon,

2

3

DARIN ROUTIER,

4

5 was recalled as a witness, for the Defense, having
been

6 previously duly sworn by the Court, to speak the
truth,

7 the whole truth, and nothing but the truth, was
examined

8 and testified further in open court, as follows:

9

10

11

CROSS EXAMINATION (Resumed)

12

13 BY MR. GREG DAVIS:

14

Q. Mr. Routier, yesterday, do you
recall

15 that we talked about your Jaguar?

16

A. Yes, sir.

17

Q. And, yesterday, do you recall
telling

18 me what was wrong with that Jaguar?

19

A. Yes, sir.

20

Q. What was wrong with it?

21

A. There was a tube that was going

to

22 the -- one of the diaphragms that goes up into the
23 transmission.

24 Q. Okay. I believe that you had

told me

25 yesterday, that it cost about three dollars to have
that

Sandra M. Halsey, CSR, Official Court Reporter

4433

1 car fixed, correct?

2 A. Yes, sir.

3 Q. Now, on July the 1st, when you
came

4 down to the courthouse and you were sworn in, do
you

5 recall that we talked about the Jaguar at that
time?

6 A. Yes, sir, I said that the
transmission

7 had gone out.

8 Q. Okay. By the way, last night,
did you

9 have a chance to go over your prior testimony?

10 A. No, sir.

11 Q. Okay. Did you talk to any
lawyers

12 about your testimony?

13 A. No, sir.

14 Q. Nobody has talked to you?

15 A. I talked to Mr. Mulder about my
sister

16 being -- just came in town.

17 Q. In July, when you came down, you
told

18 me that the transmission was out, and it was going
to

19 cost about three thousand dollars to fix that car,
right?

20 A. I don't remember if it was three
21 thousand.

22 Q. Okay. About three thousand?

23 A. Well, I think it may have been
more

24 around eight hundred.

25 Q. Okay.

1 A. It was a Turbo 400.

2 Q. Let me show you page 16 of that
3 transcript. Do you see where I said, "Would it be
fairly

4 expensive to repair the automobile just to get it
5 running?"

6 Do you see your answer, "About
three
7 thousand dollars".

8 A. Yes, sir. (Witness nodding head
9 affirmatively.)

10 Q. Okay. Was that your answer back
on
11 July the 1st?

12 A. Yes, it is.

13 Q. And, in July, do you remember
telling

14 me that you only had thirty-two hundred dollars
available
15 to you?

16 A. I don't recall.

17 Q. Do you remember that?

18 A. Oh, at the bond hearing?

19 Q. Yes, sir.

20 A. I remember saying that, yes,

sir.

21 Q. Okay. Now, if we can, let's
talk

22 about your business for a while. Yesterday, Mr.
Mulder

23 asked you certain questions about your business,
how it

24 was doing in 1996. And if you could, tell me again
what

25 you projected your earnings to be for 1996 for your

Sandra M. Halsey, CSR, Official Court Reporter

4435

1 business.

2 A. I would project probably around
a

3 quarter of a million dollars.

4 Q. Okay. Quarter of a million
dollars.

5 Okay. Do you know what your income was through the
first

6 five months of 1996, sir?

7 A. I have no idea.

8 Q. Okay. No ballpark figure?

9 A. No, sir.

10 Q. How were you doing this
projection of

11 \$250,000?

12 A. Just based on the first six
months, I

13 did a hundred and eleven thousand. We would have
had

14 June, July and August of our biggest months, about
40 or

15 50 thousand dollars during those three months.

16 Q. Of course, if your expenses are
higher

17 than your income, it doesn't really matter how much

you

18 are earning if you are spending more than you take
in,

19 does it?

20 A. It really doesn't matter.

21 Q. I mean, it's not good, is it?

22 A. No, but we weren't spending more
than

23 we were bringing in.

24 Q. Okay. Are you sure about that?

25 A. Yes, sir.

1 Q. Okay. Have you looked over your
2 business records?

3 A. Not since -- no.

4 Q. Okay. Is it possible that you
could
5 be wrong about that?

6 A. It's possible.

7 Q. Yesterday, when Mr. Mulder was
asking

8 you questions about your business situation, what
records

9 had you gone over to tell us about the condition of
your
10 business?

11 A. Just looking at my books.

12 Q. Okay. Bank account records,
also?

13 A. No, I have a CPA for that.

14

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

Sandra M. Halsey, CSR, Official Court Reporter

4437

1 MR. GREG DAVIS: Your Honor, at
this
2 time, we are going to offer State's Exhibit 50-B,
which
3 is the remainder of the Bank One records that were
4 previously admitted as State's Exhibit 50.

5 50-B contains the bank records
6 pertaining to Testnec. These have also been on file
more
7 than 14 days as a part of the other records.

8 THE COURT: When you do talk,
please
9 speak loudly. The last two jurors are indicating
that
10 they can't hear you. Okay.

11 Make sure that you speak loud
enough
12 so that gentlemen there and the lady in the pink
back
13 there can hear you.

14 THE WITNESS: Yes, sir.

15 THE COURT: Can you hear that?

16 THE WITNESS: Yes, sir.

17 THE COURT: All right.

18 MR. DOUGLAS MULDER: Judge, this
19 appears to be all 1995 records.

20 MR. GREG DAVIS: It's right here.

21 MR. DOUGLAS MULDER: Judge, if
you're

22 ready, we're ready to be heard on this.

23 THE COURT: I'm ready.

24 MR. DOUGLAS MULDER: Judge, I

don't

25 think the records from 1995 are relevant or
material. We

Sandra M. Halsey, CSR, Official Court Reporter

4438

1 have offered his income tax return that shows he
grossed

2 263 thousand. Are they suggesting that he
overstated his

3 income so he could pay more taxes?

4 THE COURT: I think the exhibits
will

5 speak for themselves. Are you objecting to the
exhibit?

6 MR. DOUGLAS MULDER: Well, I
object to

7 those. I don't object to the -- so far as they go,
to

8 the records in 1996.

9 MR. GREG DAVIS: Well, your
Honor, I

10 think, at this time, that we will agree to withdraw
any

11 bank records pertaining to 1995, and simply then
offer as

12 State's Exhibit 50-B, the records pertaining to
1996.

13 And in State's Exhibit 50-C, we will separate out
1995

14 and offer those for record purposes only.

15 THE COURT: Is that satisfactory?

16 MR. DOUGLAS MULDER: Well, let me
take

17 a look at these, Judge.

18

19 (Whereupon, the following
20 mentioned item was
21 marked for
22 identification only
23 as State's Exhibit No. 50-C
24 after which time the
25 proceedings were

Sandra M. Halsey, CSR, Official Court Reporter

4439

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

4
5 THE COURT: All right. So 50-C
will
6 be the '95 records offered for record purposes only,
not
7 to be shown to the jury.

8 Any objections to that? Anybody
want
9 to object to that? Mr. Hagler?

10 MR. DOUGLAS MULDER: Excuse me,
Judge.

11 I was trying to do five things at one time.

12 THE COURT: We appreciate your
13 efforts, but are you going to object to the
record
14 purposes only of 50-C?

15 MR. DOUGLAS MULDER: No, not
for
16 record purposes only.

17 THE COURT: Thank you. All
right.

18 State's Exhibit 50-C is admitted for record
purposes

19 only.

20

21

(Whereupon, the

above

22

mentioned item was

23

received in

evidence

24

for record

purposes

25

only, after which

time,

Sandra M. Halsey, CSR, Official Court Reporter

4440

1 the proceedings were
2 resumed on the
record,

3 as follows:)

4

5 THE COURT: All right. Any
objection

6 to the 1996 records?

7 MR. DOUGLAS MULDER: No, we have
no

8 objection.

9 THE COURT: State's Exhibit 50-B
is
10 admitted.

11

12 (Whereupon, the item
13 Heretofore mentioned
14 Was received in evidence
15 As State's Exhibit No. 50-B
16 For all purposes,
17 After which time, the
18 Proceedings were resumed
19 As follows:)

20

21 BY MR. GREG DAVIS:

22 Q. Mr. Routier, again, have you had
an
23 opportunity recently to look over the records that
I am
24 holding from Bank One?
25 A. No, sir.

 Sandra M. Halsey, CSR, Official Court Reporter
4441

1 Q. Okay. And again, now showing
you only

2 those portions that have been admitted as State's
Exhibit

3 50-B, do you recognize the first page as being a
summary

4 for your transactions between January 1st and
January

5 31st, 1996?

6 A. Yes, sir.

7 Q. Okay. All right. And do we see
that

8 your deposits for January were twenty-two thousand,
nine

9 hundred and fourteen dollars and sixty-nine cents,
is

10 that correct?

11 A. Yes, sir.

12 Q. Checks paid out of your account
were

13 twenty-one thousand, nine hundred and fourteen
dollars

14 and forty-six cents; is that correct also?

15 A. Yes, sir.

16 Q. As we go to the period of
February the

17 1st through February the 29th, do we show deposits
of ten

18 thousand, two hundred and eighty-two dollars and

19 ninety-three cents, checks paid out of fifteen
thousand,

20 three hundred and forty dollars and sixty cents?

21 A. Yes, sir, being a balance of
\$78.47.

22 Q. Right. And, for the period of
March

23 1st through March 31st, do we see that you had
deposits

24 of fifteen thousand, two hundred and fifty-four
dollars

25 and seventy-eight cents, and checks paid out of
twelve

1 thousand, six hundred and thirty-nine dollars and
2 seventy-seven cents?

3 A. Yes, sir, with a balance of five
4 thousand, three hundred and two dollars.

5 Q. Okay. That is your ending
balance,
6 correct?

7 A. Yes, sir.

8 Q. And, for the period of April the
1st

9 through April the 30th, do we have you with
deposits of

10 twelve thousand, five hundred and thirty-three
dollars;

11 and checks paid out of thirteen thousand, three
hundred

12 and fifty-eight dollars and one cent?

13 A. Yes, sir, with an ending balance
of

14 four thousand, four hundred and fifteen dollars.

15 Q. Okay. And for the last period
shown

16 of May the 1st through May 31st, do we have
deposits of

17 thirteen thousand, three hundred and ninety-one

dollars

18 and forty-seven cents, checks paid out of fourteen

19 thousand, forty-four dollars and eighty-two cents,

and

20 your ending balance on May 31st was three thousand,

six

21 hundred and ninety-eight dollars and forty-four

cents; is

22 that right?

23 A. Yes, sir.

24 Q. Mr. Routier, are you aware, that

when

25 you add up the deposits, and the checks paid out,
that

1 your deposits for the first five periods there shown
were

2 seventy-four thousand, three hundred and seventy-six
3 dollars and eighty-seven cents, and your checks paid
out,

4 if you total those up, are you aware that they total
out

5 to seventy-seven thousand, two hundred and ninety-
seven

6 dollars and sixty-six cents?

7 A. No, sir, I was not aware of that.

8 Q. Are you aware, that when you look
at

9 the first five months that actually, you had a
deficit of

10 nearly three thousand dollars? Are you aware of
that?

11 A. No, sir.

12 Q. Okay. You know Willie Short,
don't

13 you?

14 A. Yes, sir.

15 Q. Okay. Willie Short was your
landlord?

16 A. Yes, he is.

17 Q. You had a rent each month of \$525
18 dollars; correct?

19 A. Yes, sir.

20 Q. Was that due on the first of the
21 month?

22 A. On the 1st or the 15th.

23 Q. Okay. Do you recall Willie Short
24 coming by or talking to you on June the 5th about
being
25 late for your rent for the month of June?

Sandra M. Halsey, CSR, Official Court Reporter

4444

1 A. Not in June. I don't recall.

2 Q. You don't recall?

3 A. No, sir.

4 Q. Were you behind on your rent out
5 there?

6 A. We're four months behind now.

7 Q. I'm talking about in June of
1996?

8 A. Just that one month.

9 Q. So you're one month behind on the
10 rent?

11 A. It was not due until the 15th, or
late
12 on the 15th.

13 Q. Now, Mr. Routier, I want to
direct
14 your attention back to June the 8th of 1996 when you
went
15 to the Rowlett Police Department with your wife. Do
you
16 recall that date?

17 A. Vaguely.

18 Q. Okay. Well, yesterday when Mr.
Mulder
19 asked you about it, do you recall telling him that

the

20 Rowlett Police Department asked you to give them a
21 statement?

22 A. Yes, sir.

23 Q. Do you remember giving that
statement

24 to them?

25 A. Yes, sir, before the viewing.

Sandra M. Halsey, CSR, Official Court Reporter

4445

1 Q. Okay. When you gave that
statement,

2 did you, in fact, give that in your own handwriting?

3 A. Yes, I did.

4 Q. Okay. Do you recall it being six
5 pages long?

6 A. I don't remember how long it was.

I

7 haven't seen it since.

8 Q. Right. Okay.

9

10 (Whereupon, the following
11 mentioned item was
12 marked for
13 identification only
14 as State's Exhibit No. 141,
15 after which time the
16 proceedings were
17 resumed on the record
18 in open court, as
19 follows:)

20

21 BY MR. GREG DAVIS:

22 Q. Let me show you what for record
23 purposes has been marked as State's Exhibit 141.

And if

24 you would, take a couple of moments and look over
that
25 statement.

Sandra M. Halsey, CSR, Official Court Reporter

4446

1 A. Yes, sir.

2 Q. Okay. Do you recognize that as
the
3 statement you gave to the police?

4 A. Yes, sir. It's a vague
description.

5 Q. Why don't you just keep it up
there?

6 I may be referring to it. We have another copy
down
7 here.

8 Mr. Routier, when you gave that
9 statement to the police, would it be fair to say that
the
10 purpose of giving that statement was to try to help
the
11 police find the person who killed your two children;
is
12 that right?

13 A. Yes, sir. That is why I did it.

14 Q. All right. Would it also be fair
to
15 say that that statement was given only two days after
16 this attack occurred at your home; right?

17 A. Yes, sir.

18 Q. Okay. And I assume, that when

you

19 gave that statement, were you making your very
best

20 effort to be as truthful and as honest, and as
complete

21 as you could possibly be in that statement?

22 A. Well, I tried. Yes, sir.

23 Q. Okay. Looking at that
statement --

24 yesterday, do you recall Mr. Mulder asking you
about

25 discussions that you had with your wife that evening
on

1 June 5th?

2 A. Yes, sir.

3 Q. Do you remember yesterday that
you

4 told us that you talked with her about trips that
y'all

5 were planning? A trip to Pennsylvania, a trip to
Cancun

6 that your wife was planning to take, and some plans
that

7 y'all had in the future; correct?

8 A. Yes, sir. We talked about a lot
of

9 things in those hours.

10 Q. Okay. But yesterday, when you
told us

11 about your discussion, you didn't tell us all of the
12 things that y'all discussed that night, did you?

13 A. Well, it says here that I was
talking

14 about -- about getting the boys into playing
baseball.

15 Q. Well, isn't it true that, it
says

16 there in the statement, on June the 8th when you

gave

17 this to the police, that what you said about that
18 discussion is: "We talked about the business, bills,
and
19 how Darlie was having a hard time with taking care of
the
20 babies," and then you have in parenthesis, "all
today".

21 That was also part of the
discussion

22 that night, wasn't it?

23 A. Yeah, it was some.

24 Q. So that, that discussion wasn't
all
25 positive, was it?

Sandra M. Halsey, CSR, Official Court Reporter

4448

1 A. Actually, it was.

2 Q. Well, the problems that she was
having

3 taking care of the boys that day. I mean, she was

4 discussing that that she was having a problem. It
was

5 something that was causing her to have a problem,
wasn't

6 it?

7 A. No, sir, that was taken out of

8 context.

9 Q. Well, I'm just reading the
sentence.

10 Have I misread that sentence?

11 A. No, sir.

12 Q. Okay. You -- did you not use
the

13 term, "Was having a hard time taking care of the
babies

14 all today," those were your words, weren't they?

15 A. Yes, sir.

16 Q. Okay. Bills, I mean those are
bills

17 that you have to pay, correct?

18 A. Well, we were talking about the

19 business like we do every night. Talking about
the
20 bills, and how many people owed me money, what
phone
21 calls I needed to make the next day, to make sure
that
22 those bills, you know, got taken care of.

23 Q. Having been self-employed myself,
it's
24 important that you get paid, isn't it?

25 A. Yes, you can't survive without
it.

1 Q. If you don't get paid, you have
to
2 close the door, don't you?

3 A. Well, I have been in business for
4 seven years, and doing okay so far. I have been
able to
5 salvage it after this.

6 Q. All right. So, you talked about
the
7 trips, you talked about the business, the bills,
about
8 how she's having a hard time with the boys.

9 As you look at that statement
there,
10 yesterday you told us on direct examination, about
where
11 Darlie was during the time that you were giving CPR
to
12 Devon.

13 As you look through the statement
that
14 you gave on June the 8th, can you point us to a --
well,
15 let me just ask you: In that statement, did you tell
the

16 police that Darlie was with you while you were giving
CPR

17 to Devon?

18 A. Yes, I did. He said he was going
to

19 take notes on what I couldn't remember. I told him
20 that --

21 Q. I'm sorry. You may have you
22 misunderstood me.

23

24 MR. DOUGLAS MULDER: Excuse me,

Judge,

25 we have been through this yesterday. He gets a
chance to

Sandra M. Halsey, CSR, Official Court Reporter

4450

1 complete a sentence.

2 THE COURT: Just a minute, Mr.
Mulder.

3 We understand, Mr. Mulder. Ask the question, again,
4 please.

5 MR. GREG DAVIS: I was asking
about
6 the written statement.

7 THE COURT: Ask your question
again,
8 please.

9 MR. GREG DAVIS: I'm asking about
the
10 written statement.

11 THE COURT: What was your answer
going
12 to be?

13 THE WITNESS: I don't know, I
forgot
14 what the question was.

15 THE COURT: Let's re-ask the
question.

16

17 BY MR. GREG DAVIS:

18 Q. I'm talking about the written
19 statement that you have before you.

20 A. Yes, sir.

21

22 MR. DOUGLAS MULDER: Your Honor,

23 excuse me. That is a different question

24 THE COURT: Well, the witness had

25 forgotten. We're going to go ahead. Ask the next

Sandra M. Halsey, CSR, Official Court Reporter

4451

1 question, please.

2

3 BY MR. GREG DAVIS:

4 Q. Okay. Sir, would you look through
the

5 written statement in front of you, and tell me,
whether

6 or not you told the police in that written
statement on

7 June the 8th, that your wife was next to you as you
8 performed CPR on Devon?

9 A. No, I don't see that in here.
10 Actually, there was a lot of details not in here.

11 Q. That is one of the details that
you
12 left out, wasn't it?

13 A. Yes, sir.

14 Q. Matter of fact, isn't it true
that

15 when you're talking about doing CPR on Devon,
you're

16 talking about blowing into the holes in his chest.
What

17 you actually said on June the 8th was, "I looked
over at

18 Darlie and she was on the phone calling 911."

Isn't that

19 correct?

20 A. Yes, sir, she was all over the
place.

21 Q. Of course, when you gave that
22 statement, Mr. Routier, back on June the 8th, we
didn't

23 have the DNA results back on her T-shirt yet, did
we?

24 A. No, sir, and I was also in
shock.

25 Q. So when you gave the statement,
you

1 didn't know that your older boy's blood cast off
was on

2 her T-shirt, did you?

3 A. I still didn't know that.

4 Q. And, when you spoke with Jamie
5 Johnson, the CPS worker, you still didn't know that
6 Devon's blood was on your wife's T-shirt, did you?

7 A. No, sir.

8 Q. Okay. Do you remember what you
told

9 Jamie Johnson about her activities while you were
10 performing CPR on Devon?

11 A. No, I don't.

12 Q. Do you remember talking with her
about

13 how you were trying to blow more air into Devon's
mouth,

14 and do you remember telling her, that at this point,
you

15 said: "Darlie was calling 911 in the background?"

16 Do you remember telling Jamie
Johnson

17 that?

18 A. Yes, sir. When I went over to him
the

19 first time, that is the way it was.

20 Q. You never did tell Jamie Johnson
that

21 your wife was standing next to you, or by you at any
time

22 while you were doing CPR on Devon, did you?

23 A. I don't recall.

24 Q. Now, again, I'm referring back to
the

25 voluntary statement that you gave there, the six
pages

Sandra M. Halsey, CSR, Official Court Reporter

4453

1 before you.

2 Mr. Routier, can you look through
that
3 statement, please, sir, and tell me whether or not in
4 that six pages that you hand wrote, whether or not
you
5 told the police at any point in that statement that
your
6 wife gave you towels while you were doing CPR on
Devon?

7 A. I remember we talked about that
on
8 February 12th.

9 Q. I'm sorry. I'm looking here on
this
10 statement that you gave to the police on June the
8th.

11 A. Yes, sir.

12 Q. In that six page statement, sir,
do
13 you say anything about Darlie Routier getting
towels?

14 A. No, sir, I skipped right over
it.

15 Q. So that is another detail that

you did

16 not put in your statement; is that right?

17 A. Yes, sir, but it didn't mean it
didn't

18 happen.

19 Q. And, if you would, would you
look

20 through that six page statement and tell me whether
or

21 not you told the police in your handwriting there,
that

22 the defendant placed a towel on Damon's back?

23 A. No, sir, there's a lot of things
24 missing.

25 Q. Well, on that point then is that
also

1 a detail that you forgot the fact that your wife
put a

2 towel on Damon's back? That's not in there, is it?

3 A. No, sir, it's not in this
statement.

4 Q. Okay. And at the time that you
gave

5 that statement, would it be fair to say that you
didn't

6 know that Damon's blood would be found on your
wife's

7 T-shirt either, did you?

8 A. No, sir, I didn't know that.

9 Q. And yesterday during your
testimony

10 with one of us, either Mr. Mulder or myself, you

11 mentioned your wife going over to the sink in
the

12 kitchen. Do you recall that?

13 A. Yes, sir.

14 Q. Okay. Would you look through
those

15 six pages that are in your own handwriting, and tell
me,

16 sir, whether or not on June the 8th, just two days

after

17 this event, you told the police that your wife went
over

18 to the sink that night?

19 A. Chris Frosch was very specific to
tell

20 me not to say anything about what she was doing,
only

21 what I was doing.

22 Q. Well, in the statement on page 3
don't

23 you say, "She told them that he went out in the
garage"?

24 A. On which page?

25 Q. Page 3. I mean, there are a lot
of

1 references to what she did out there that night,
weren't

2 there? Do you see "I told them that my babies were
3 stabbed, and she told them that he went out in the
4 garage."

5 A. "I looked over and Darlie was on
the
6 phone calling 911. I ran over to Damon laying on
the
7 floor in the hallway between the wall, and the side
of
8 the couch near the bathroom. He had no pulse, but I
9 could not see any injuries."

10 Q. Okay. So, on that one page you
have
11 the fact that she called 911, you have the fact that
she
12 is relating to the police officers that the intruder
went
13 out in the garage. And on that one page alone, you
have
14 got her doing two things, don't you?

15 A. Yes, sir.

16 Q. Okay. So my question again to you
is:

17 Is there anything in that six page statement, sir,
about

18 your wife going to the sink?

19 A. No, sir, not in this statement. I
20 believe there is another statement besides this one.

21 Q. Who did you give that statement
to?

22 A. To the police.

23 Q. A written statement?

24 A. Yes, sir.

25 Q. Okay. And, what day did you give
a

Sandra M. Halsey, CSR, Official Court Reporter

4456

1 written statement to the police?

2 A. I believe on the 10th.

3 Q. Well, on the 10th, are you
referring

4 to a diagram that you drew for the police on June
the

5 10th?

6 A. Chris Frosch, we went back and
forth

7 several times, he said he was taking notes on
everything

8 that I was telling him. I kept telling him more

9 information as I remembered.

10 Q. Well, so that I am clear then,
when

11 you talk about a statement on the 10th, you are
simply

12 talking about notes that Detective Frosch may have
taken

13 during the conversation that you had with him,
correct?

14 A. Yes, sir.

15 Q. You are not talking about another
16 statement in your handwriting, such as the one that
you

17 gave on June the 8th? You're not talking about that,
are

18 you?

19 A. No, sir. There was a supplement
to
20 this report.

21 Q. And, on the 10th, you did do a
diagram

22 on the 10th though, didn't you?

23 A. I believe so, yes, sir.

24 Q. In which he asked you to show him
how

25 your wife was positioned when you last saw her on the

Sandra M. Halsey, CSR, Official Court Reporter

4457

1 couch; correct?

2 A. Yes, sir.

3 Q. Where Damon was when you last saw
him;

4 correct?

5 A. Correct.

6 Q. Where Devon was positioned on the
7 floor when you last saw him; correct?

8 A. Yes.

9 Q. And, where Damon was when you came
10 downstairs and came in the Roman room, correct?

11 A. Yes, sir. And he tried to make
sure

12 that everything that I did, and what she did was
separate

13 from our statements, and that we didn't discuss
anything

14 about what we were talking about.

15 He said that he only wanted to
know

16 what I did, and what I saw, and what I glanced at.

17 Q. Well, for instance on page 5 then,
I

18 guess that Detective Frosch must have been very

19 disappointed, when you told him that she said,

"Darin,

20 you have to promise me you will find this man. He
killed

21 our babies."

22 Again, you are not talking about
what

23 you did, you are talking about what she is saying to
you

24 and what she is doing; correct? Was Detective Frosch
25 upset when you did that?

Sandra M. Halsey, CSR, Official Court Reporter

4458

wet

19 towel as opposed to just a towel that you could use

to

20 try to absorb the blood or stop the bleeding?

21 A. Well, I don't really know. A

person

22 with first aid knows that you usually use a dry

towel,

23 but you have to have that experience in order to

find out

24 that it's not good to wet any towels. It's a

natural

25 instinct.

1 Q. From your viewpoint though, that
2 didn't really seem to be the right thing to do
 though,

3 did it? It's not what you would have preferred,
 right?

4 A. Well, I don't really know if
 it really
5 mattered.

6 Q. A dry towel would have been
 better
7 though?

8 A. Probably, if it could have
 helped.

9 Q. Now, I want to ask you: How
 long did
10 you sit down and read -- and write this statement
 out?

11 Do you remember about what time? I'm not talking
 about

12 exact minutes, but just give me a ballpark figure
 on the

13 amount of time that you spent writing this
 statement out.

14 A. I don't know. I mean, it
 looks real

15 good in the beginning, and then you can almost
see my
16 anger as I am writing it. It gets really sloppy
and
17 sloppy. And, just guessing, I don't know, maybe,
a half
18 hour. Frosch gave me a break in between, to let
me relax
19 a little bit. I remember being sick that whole
day.

20 Q. Okay. Let me ask you about
this dark
21 car that you saw.

22 A. Yes, sir.

23 Q. That you are aware of. You
were aware

24 of that on June the 5th, right?

25 A. Yes, sir.

Sandra M. Halsey, CSR, Official Court
Reporter

4460

1 Q. Had you all been receiving any
2 threats, or any sort of threatening gestures
toward any
3 member of your family?

4 A. No, we had been getting a lot
of phone
5 calls, hang up phone calls, that we just thought
maybe it
6 was because of Devon getting out of school, he
gave his
7 phone number out to every kid in his class.

8 Q. So, you are getting the phone
calls,
9 you see this car. Seeing this car on the 5th did
not
10 concern you, did it?

11 A. It didn't concern me, no.

12 Q. Because, in fact, you had an
alarm
13 system on your house, didn't you?

14 A. Yes, sir, we did.

15 Q. Okay. But that evening it was
not
16 turned on, was it?

17 A. I never set my alarm in my

house.

18 Q. Okay. And that is true on the
5th, it

19 wasn't turned on, was it?

20 A. No, sir.

21 Q. The defendant was aware that
it was

22 off that night; correct?

23 A. Yes, sir.

24 Q. Okay.

25 A. We never set it. If you're
not safe

Sandra M. Halsey, CSR, Official Court
Reporter

4461

1 at home, where are you safe at?

2 Q. And that evening when you left
the

3 garage, in fact, you decided to leave the window
up,

4 correct?

5 A. Yes, sir.

6 Q. You would not have done those
things,

7 you wouldn't have left the window up and left the
alarm

8 off if you really thought there was a threat to
somebody

9 in your household, would you?

10 A. No, sir. I wouldn't do it
purposely.

11 Q. What is the first version of the
12 attack that the defendant gave to you? What did
she

13 first tell you happened out there on that
evening?

14 A. Just that she had felt Devon --
Damon

15 waking her up saying, "Mommy, Mommy, Mommy." And
then

16 she looks up over her and she sees a glimpse of this
man
17 going towards -- I don't know how, probably, maybe at
the
18 island, I don't know -- going from the kitchen,
probably
19 two to three seconds of a glimpse of this man going
into
20 the utility room and then gone.

21 Q. I want to make sure that -- I want
to
22 be clear about what you said. You said that she said
23 that she felt Damon touch her?

24 A. Touch her on the shoulder and he
woke
25 her up.

Sandra M. Halsey, CSR, Official Court Reporter

1 Q. Okay. And he was saying something
to
2 her?

3 A. "Mommy, Mommy, Mommy."

4 Q. Okay. And, she then woke up and
saw a
5 man walking away through the kitchen?

6 A. Yes, sir.

7 Q. And he then walked into the
utility
8 room?

9 A. Yes, sir.

10 Q. Okay. And, what did she say that
she
11 did as this man got up and walked away from her into
the
12 utility room?

13 A. She said that he had already gone
out
14 the utility room, and then she went around towards
him,
15 and Damon was standing right beside her, and she
asked
16 him to stay back, and she walked across the room,
across

17 the kitchen, and when she looked down, there was a
knife
18 in the -- right there in the doorway, and she said
that
19 she reached down to pick it up and when she did, her
neck
20 just spewed blood all over the floor. That is when
she
21 realized that she was cut.

22 Q. Okay.

23 A. And she walks back and turns on
the
24 light, and then she sees Devon face up, and then she
just
25 goes into hysterics.

Sandra M. Halsey, CSR, Official Court Reporter

1 Q. Okay.

2 A. Screaming, "Devon, Devon, Devon".

3 Q. Does that pretty much pick it up
where

4 you start your statement, where you hear her saying,
5 "Devon, Devon, Devon," you come downstairs; right?

6 A. Yes, sir.

7 Q. Okay. When did she first tell you
8 that story?

9 A. Probably at the hospital, or later
10 that afternoon. I couldn't be in the room with her
for
11 longer than 10 or 15 minutes at a time.

12 Q. All right. So sometime of the
13 afternoon of June the 6th?

14 A. Yes, sir.

15 Q. And, I assume that you have
talked

16 with her since then about what happened out there
that

17 night, haven't you?

18 A. Yes, sir.

19 Q. Okay. And in your discussions
with

20 her, has she ever told you a different version of

what

21 happened?

22 A. No, sir.

23 Q. And, again, just an estimate,

but

24 about how many times have

you talked with her about what

25 happened that night?

Sandra M. Halsey, CSR,
Official Court Reporter

4464

1
estimate?

A. An

2
sir.

Q. Yes,

3

A. A lot.

4

Q. And --

5
five

A. Two hundred, three hundred,

6 hundred, I have no idea.

7

Q. So I mean, it's --

8

A. Same thing over and over and

over

9 again. It's like a broken record.

10

Q. Mr. Routier, by the time that

you

11 talked with Jamie Johnson, certainly your wife

had

12 already told you this, right?

13

A. Oh, yes, sir.

14

Q. Probably had told you several

times

15 about what had happened to her?

16

A. I'm sure she had, yes, sir.

17

Q. Okay. Do you remember what you

told

18 Jamie Johnson concerning the version that your wife
had

19 given you of the attack?

20 A. Do I remember? No.

21 Q. Okay. Do you remember saying to
her

22 that you told Jamie Johnson that Darlie told you that
she

23 woke up because there was weight on her legs and the

24 intruder supposedly was sitting on her legs? Do you
25 remember telling Jamie Johnson that that is the
version

Sandra M. Halsey, CSR, Official Court Reporter

4465

1 that your wife gave to you about this attack?

2 A. We didn't know if that was really
true

3 or not. We didn't know if that was a dream.

4 Q. Well, Jamie Johnson, when you
5 discussed this incident with her, this is the version
6 that you gave to Jamie Johnson, wasn't it?

7 A. Yes, sir.

8 Q. So, when you talked with Jamie
9 Johnson, you didn't give her the correct version of
what

10 your wife had told you, did you?

11 A. We didn't know -- I mean, I wasn't
12 there when it happened, so I don't know what exactly
13 happened. I just know what she told me and what she
told

14 me was that she woke up with Damon tugging on her.

15 Q. You never told that to Jamie
Johnson

16 though, did you?

17 A. I don't recall. About that Damon
woke

18 her up?

19 Q. Yes, sir.

20 A. I would think I would, that has

never

21 changed.

22 Q. Well, but as you sit there on the
23 stand right now, you don't know whether you told her
that

24 or not, do you?

25 A. I don't know what I said to Jamie

Sandra M. Halsey, CSR, Official Court Reporter

4466

1 Johnson.

2 Q. Do you remember describing to
Jamie

3 Johnson how the attacker would have to cut Darlie's
neck,

4 and how he would have to get past her breasts in
order to

5 get at her neck? Do you remember telling Jamie
Johnson

6 that?

7 A. No, sir.

8 Q. And do you remember telling Jamie
9 Johnson that your wife would have been face-to-face
with

10 this attacker?

11 A. No, sir.

12 Q. Mr. Routier, again going back to
13 Corrine Wells, again, do you recall Corrine Wells is
the

14 individual, the lady that lives there at the house
that

15 you used to live at on Bond Street? Do you remember
16 that?

17 A. Yes, sir, I didn't know her name.

18 Q. Right. Okay. Do you remember

when

19 you went over to talk with her on December the 3rd
that,

20 in fact, you went into your wife's version of the
attack

21 with Corrine Wells also, didn't you?

22 A. Well, I had a good talk with her.

23 Q. And it included what your wife had

24 told you about the attack, correct?

25 A. I don't think she remembers any of
the

Sandra M. Halsey, CSR, Official Court Reporter

4467

1 attack.

2 Q. Well, my question to you is: Did
you

3 tell Corrine Wells what your wife had related to you
4 about the attack?

5 A. No.

6 Q. So, you did not tell Corrine Wells
7 that the man was on top of her, and was intending to
rape

8 her when she woke up? You didn't tell Corrine Wells
9 that?

10 A. That would be my assumption.

11 Q. From what your wife had told you?

12 A. No. My assumption of everything
that

13 I know. I know everything about this case.

14 Q. Well, let me just ask you then:
Did

15 you tell Corrine Wells that the man was on top of
your

16 wife and was intending to rape her? Did you say
that to

17 Corrine Wells?

18 A. I said that could very well be.

19 Q. So that is a yes?

20 A. Yes, sir.

21 Q. Did you also tell Corrine Wells
that

22 what they had read in the paper about the boys
saving

23 Darlie's life by waking her up was not true, and in
fact,

24 the boys didn't save her life?

25 A. I did not say that.

Sandra M. Halsey, CSR, Official Court Reporter

4468

1 Q. Do you remember telling Corrine
Wells

2 that the boys couldn't save her life because their
lungs

3 had been collapsed by the stabbing?

4 A. No, sir, I did not say that.

5 Q. And do you remember telling
Corrine

6 Wells, in fact, that a 300 pound man did this to
Darlie?

7 A. No, sir.

8 Q. So those statements about the
boys not

9 saving her life, and about a 300 pound man attacking
10 Darlie, those statements aren't true, are they?

11 A. We know that Damon saved Darlie's
12 life.

13 Q. Okay. Well, that is not what you
told

14 Corrine Wells though, is it?

15 A. I don't remember what I said to
her.

16 Q. Well, that was a pretty long
17 conversation that you had with her too, wasn't it?

18 A. Yes, we had a good talk.

19 Q. About an hour and a half to two
hours

20 over there at her house, correct?

21 A. She was showing me what they had
done

22 to the house since I had left there and how much
they

23 were enjoying it, and also it brought back memories
of

24 when the kids were babies.

25 Q. Right. Do you remember telling

1 Corrine Wells about your wife's necklace?

2 A. Yes, sir.

3 Q. Okay. About how that necklace is
4 actually the thing that saved her life?

5 A. I know that the necklace was
embedded

6 into her neck.

7 Q. How do you know it was embedded
into

8 her neck?

9 A. Because I saw it.

10 Q. Where did you see it?

11 A. When she came to the front door
and

12 paramedics were bringing her out.

13 Q. Okay.

14 A. She took her hand like this and
she

15 goes, "Darin, I'm cut." She pulled that thing down,
and

16 I mean a gap in her neck was that wide, muscles,
tendons,

17 veins, everything.

18 Q. That necklace was cut?

19 A. The necklace was inside of there.

I

20 don't know if it was cut.

21 Q. Okay. In fact, that necklace
wasn't

22 cut at all, was it?

23 A. No, sir.

24 Q. She was wearing that necklace
that

25 night, a man cut her neck, and yet, there wasn't a
single

1 thing done with that necklace, was there?

2 A. It was a rope chain.

3 Q. That's right.

4 A. It's my understanding that there
is a

5 nick in it.

6 Q. There is a nick in it?

7 A. Yes, sir.

8 Q. Do you think you would recognize
that

9 necklace if you saw it?

10 A. Yes, sir, I would like to see it.

11 Q. Okay.

12

13 THE COURT: This is 142?

14 MR. GREG DAVIS: No, sir. This

will

15 be State's Exhibit 26.

16 THE COURT: 26?

17 MR. GREG DAVIS: Yes, sir.

18 THE COURT: All right.

19

20 BY MR. GREG DAVIS:

21 Q. Mr. Routier, I'm handing you

State's

22 Exhibit 26, and if you will look at that, please,
sir,

23 and tell me whether or not you recognize that to be
your

24 wife's necklace?

25 A. Yes, sir, it is.

Sandra M. Halsey, CSR, Official Court Reporter

4471

1 Q. Okay.

2

3 MR. GREG DAVIS: Your Honor, at
this

4 time we'll offer State's Exhibit No. 26.

5 THE COURT: Any objection?

6 MR. DOUGLAS MULDER: We have no
7 objection.

8 THE COURT: State's Exhibit 26
is
9 admitted.

10

11 (Whereupon, the item
12 Heretofore mentioned
13 Was received in
evidence

14 As State's Exhibit
No. 26

15 For all purposes,
16 After which time, the
17 Proceedings were
resumed

18 As follows:)

19

20 BY MR. GREG DAVIS:

21 Q. Mr. Routier, looking at the

necklace,

22 the clasps are still intact, are they not?

23 A. Yes, sir.

24 Q. Okay. No visible defects to this
25 necklace, are there?

Sandra M. Halsey, CSR, Official Court Reporter

4472

1 A. Let me see it again.

2 Q. Okay. Just take your time.

3 A. Right there.

4 Q. Okay. You've indicated a spot
right
5 there; is that right?

6 A. Yes, sir.

7 Q. Okay. Now, again, your wife was
still
8 wearing the necklace when you saw her, correct?

9 A. Yes, sir.

10 Q. It was still around her neck,
right?

11 A. Yes, sir. It was embedded into
her
12 neck.

13 Q. The pendant that we see here, the
14 diamond pendant, that was still attached when you saw
it,
15 correct?

16 A. Yes, I would assume so.

17 Q. Just like it is today in Court?

18 A. Yes, sir.

19 Q. Okay. The cat that y'all had, the
big
20 cat, what was the cat's name?

21 A. Bear.

22 Q. Okay. And that evening that cat
was

23 in the cage in the family room?

24 A. Yes, sir, he was.

25 Q. Okay. And I don't recall what you

Sandra M. Halsey, CSR, Official Court Reporter

4473

1 said about the cat's disposition. It was not good
2 though, was it? It's a pretty feisty cat, wasn't it?

3 A. Yeah, he is.

4 Q. When strangers came around that
cat,

5 did he take to strangers well?

6 A. Well, he was caged so he couldn't
get

7 at you, but he just -- well, if you aggravated him,
he

8 would kind of get at you, but --

9 Q. How big was that cat?

10 A. Oh, probably, just guessing,
probably

11 15 or 16 pounds, and he was only a year old.

12 Q. And that cat cage was sitting
right

13 next to the couch where your wife was supposedly
sleeping

14 that night, correct?

15 A. Right in the corner, yes.

16 Q. Pretty close to where Damon and
Devon

17 were both sleeping too, right?

18 A. Yes, within 10, 12 feet.

19 Q. And you would expect that if a

20 stranger came into that room and came over there by
that

21 cage, that that cat is going to raise a ruckus, isn't
he?

22 A. Personally, I wish that cat could
23 talk. That cat got to see a lot.

24 Q. Right.

25 A. We wouldn't be here right now.

Sandra M. Halsey, CSR, Official Court Reporter

4474

1 Q. Well, I think we would, but --

2 A. That cat didn't make -- it would
3 probably hiss, but not make a sound like a dog would.

4 Q. Okay. A sound like a dog would.

Your

5 Pomeranian would make a sound, wouldn't it?

6 A. Yeah, he would. He is a yapping
7 little thing.

8 Q. Now, when strangers came into your
9 house, I mean, that is one time when he would be
yapping,

10 wouldn't he?

11 A. Well, that dog was so little he
12 couldn't go down the stairs, so he slept upstairs by
the
13 fireplace right beside our bed in this great big huge
14 pillow, about this big, and real, real deep, he
would

15 kind of buried himself down in that pillow and go
to
16 sleep.

17 Q. So that evening the yapping little
dog
18 and the hissing cat were both inside your house; is
that

19 right?

20 A. Yes, sir. The dog was upstairs.

21 Q. The coffee table that was in

the

22 middle of your room there?

23 A. Yes, sir.

24 Q. The coffee table that you said

the

25 paramedic put back on the pedestal?

Sandra M. Halsey, CSR, Official Court Reporter

4475

1 A. Yes, sir.

2 Q. Was the paramedic the one who was
nice

3 enough to put the flowers back on the table too, or
did

4 somebody else do that?

5 A. I don't know. All I know is that
it

6 was all slid down sideways.

7 Q. So you saw the paramedic put the
table

8 back up, but you are not quite sure who put the
flower

9 arrangement back in the center of the table?

10 A. I don't think the flower
arrangement

11 really fell off the glass, I think it just slid down
the

12 glass, and all he did was lift it up. He just
lifted the

13 whole thing up at one time.

14 Q. So, when he lifted it back up,
the

15 flower arrangement didn't slide down that glass
table on

16 to the floor?

17 A. Well, it was all the way to the
18 floor.

18 Q. Yeah.

19 A. And then when he picked it up,
20 they

20 all kind of went up together.

21 Q. What kind of towel did Darlie
22 have

22 around her neck when the police got there?

23 A. Seemed like a washrag or
24 something

24 smaller than a dish towel.

25 Q. Are you even sure that she had a
26 towel

1 up around her neck?

2 A. Yes, sir. Or the paramedics
could

3 have put it on there before.

4 Q. Do you remember back in
September, on

5 September the 12th I asked you about the towels? Do
you

6 recall that?

7 A. Yes, sir, I do.

8 Q. Do you remember I asked you about
the

9 towel around Darlie's neck?

10 A. Yes, sir.

11 Q. Do you recall that I said, "Well,
did

12 you see Darlie with any towel around her neck at any
13 time?"

14 Let me just show you on page 158,
it

15 will be the last line on this -- let's turn this
around.

16 Do you see that I'm asking: "Well, did you see
Darlie

17 with any towel around her neck at any time?"

18 Do you see that
question?

19 A. At anytime, yes, sir.

20 Q. Okay. At anytime --

21

22 THE COURT REPORTER: Excuse me,

what

23 was your answer?

24

25 A. My answer was no then.

Sandra M. Halsey, CSR, Official Court Reporter

4477

1 Q. Back on September the 12th, now -

-

2

3 THE COURT: Well, I think we want

to

4 get the answer that --

5 MR. GREG DAVIS: I think that he

6 actually said, "At anytime."

7 THE WITNESS: At anytime.

8

9 BY MR. GREG DAVIS:

10 Q. Back on September the 12th of
1996,

11 your answer was, no. And yet today, some, what,
four to

12 five months later, your memory is such that you can
tell

13 us that it was some sort of wash cloth; is that
right?

14 A. Yes, sir. But the question you
were

15 asking me about that before, you just asked me to

16 describe it, and I said it was a green and white
towel.

17 Q. No, sir, I asked you -- no, sir,

that

18 was the towel about -- that you placed on Damon. I

was

19 asking about the green and white checkered. Do you

20 remember that?

21 A. Yes, sir.

22 Q. Okay. This question here, "Did

you

23 see Darlie with any towel around her neck?" That

was

24 concerning Darlie alone.

25 A. Yes, sir, in the house, I didn't
see a

Sandra M. Halsey, CSR, Official Court Reporter

4478

1 towel on Darlie's neck.

2 Q. Well, remember the question was at
any

3 time? Right?

4 A. Yes, sir. I must have
misunderstood.

5 Q. Okay. Let me ask you: The
jewelry

6 that was laying up there on the kitchen counter?

7 A. Yes, sir.

8 Q. Okay. And you are familiar with
that

9 jewelry, correct?

10 A. Yes, sir.

11 Q. I think that we've looked at a
picture

12 of that previously, and I'm talking about the rings,
the

13 bracelets that were on the kitchen bar between the
family

14 room and the kitchen. Okay?

15 A. Yes, sir.

16 Q. Okay. Most of that jewelry,
would it

17 be fair to say, was bought at pawn shops?

18 A. Yes, sir.

19 Q. Would it also be fair to say that
you

20 and the defendant made several trips over to pawn
shops

21 to purchase the jewelry?

22 A. Yes, sir, we had a friend that
would

23 call us whenever something really of a good value,
he

24 would call us and let us know what was there, and

we

25 would go over and take a look at it.

1 Q. All right. Would there be
occasions

2 when the defendant would go over to the pawn shop
with

3 the children?

4 A. Occasionally. They liked going
in

5 there.

6 Q. And, how would you describe the
7 defendant's demeanor or her behavior when she went
to

8 that pawn shop?

9 A. Sometimes it was just like
shopping

10 for something for our anniversary or a birthday or
11 Christmas. I wouldn't say her demeanor was in any
12 strange way.

13 Q. Nothing out of the ordinary?

14 A. Nothing.

15 Q. Acted inside the pawn shop pretty
much

16 like she acted outside of the pawn shop, right?

17 A. Pretty much, yeah.

18 Q. Do you remember the names of the
women

19 inside the pawn shop that dealt with y'all?

20 A. No, sir.

21 Q. Do you remember on occasion that
there

22 were women working in there, that would wait on you
or

23 the defendant?

24 A. Most of the time we dealt with
this

25 man named Dan.

Sandra M. Halsey, CSR, Official Court Reporter

4480

1 Q. I'm sorry?

2 A. We mainly dealt with a man named
Dan,

3 who was one of the managers.

4 Q. Mr. Routier, yesterday Mr. Mulder
5 asked you some questions about Gangster's Paradise.
Do

6 you recall those questions?

7 A. Yes, sir.

8 Q. And did I understand you to say
9 yesterday, that you thought there was absolutely
nothing

10 wrong with playing that song at a funeral?

11 A. Yes, sir.

12 Q. Did I also understand you to say
that

13 you didn't think there was anything wrong with your
five

14 and six year old children adopting that song as
their

15 favorite song?

16 A. No, sir. I never understood
what the

17 words were, but they didn't know how to sing the
words so

18 they just liked the way that the song was made, the
way

19 it was put together.

20 Q. All right. And, when it came
on, I

21 think you said they said, "Daddy, crank it up."

Right?

22 A. Yes, sir, they loved that song.

23 Q. Okay. Have you ever looked at
the

24 lyrics to that song?

25 A. No, sir, I haven't.

1 Q. Do you know what that song is
about?

2 A. Street crime.

3 Q. Violent street crime. That's
right.

4 Do you know how it begins?

5 A. No, sir.

6 Q. "As I walk through the valley of
the

7 shadow of death, I take a look at my life and
realize

8 there is nothing left."

9 That is the first two lines of
your

10 children's favorite song. Did you know that?

11 A. No, I didn't know that.

12 Q. Do you know, that in that song by

13 Coolio, he says, "You better watch how you're
talking and

14 where you are walking, or you and your homies might
be

15 lying in chalk." Do you know that?

16 A. I do remember that lyric, yes,
sir.

17 Q. Yeah. Do you remember the next

two

18 lines are: "I really hate to trip, but I gotta
lope, as

19 they croaked, I see myself in the pistol smoke
fool." Do

20 you know that?

21 A. I didn't know that. Kids
sometimes

22 adopt songs that we as adults don't always
understand.

23 Q. You know that it goes on in this

24 favorite song to say, "I'm an educated fool with
money on

25 my mind. I got my tin in my hand and a gleam in my
eye.

1 I'm a loped out gangsta, set tripping banker, and my
2 homies is down, so don't arouse my anger, fool."

3 Did you know that was part of
that

4 song, too?

5 A. No, sir.

6 Q. Did you know that he continues:
"They

7 ain't nothing but a heartbeat away. I'm living my
life,

8 do or die, what can I say. I'm 23 now, but will I
live

9 to see 24? The way things is going, I don't know."

10 Did you know that?

11 A. I know what he is saying.

12 Q. Yeah. Because of street violence
and

13 violent crime, he may not live another year, right?

14 A. Yes, sir, I think we're all that
way.

15 Q. Then he goes on and he says:

"Tell

16 me, why are we so blind to see that the ones we hurt
are

17 you and me." Do you recognize that?

18 A. Yes, sir. Street crime people
killing

19 each other.

20 Q. People that they love sometimes?

21 A. Not necessarily.

22 Q. You know in the last verse, do you
23 know that he goes on to say, "Power and the money.

Money

24 and the power. Minute after minute, hour after hour.
25 Everybody is running, but half of them ain't looking
at

Sandra M. Halsey, CSR, Official Court Reporter

4483

1 what's going on in the kitchen. But I don't know
what is
2 cooking. They say I got to learn, but nobody is here
to
3 teach me. If they can't understand it, how can they
4 reach me. I guess they can't, I guess they won't, I
5 guess they front. That is why I know my life is out
of
6 luck, fool."

7 A. Mr. Davis, I didn't write that
song.

8 Q. No, I know. Coolio did.

9 A. Coolio did.

10 Q. This is the song that you and
your
11 children listened to.

12 A. They listened not to the words
but to
13 the music.

14 Q. And these are the lyrics that
were
15 played at your children's funeral too, weren't
they?

16 A. Yes, sir, they were. If they
had

17 loved Barney, we would have played Barney.

18 Q. One last subject I want to
discuss

19 with you here. That is the fact that you and your
wife

20 both have a financial interest in this case, don't
you?

21 A. What do you mean?

22 Q. Book deals?

23 A. We haven't made any deals at all.

24 Q. Do you remember back on December

3rd

25 of '96 that you discussed those book deals with
Corrine

1 Wells?

2 A. I said that is how we're going to
pay

3 for these attorneys, but we're just hopeful
thinking.

4 Q. Well, you didn't mention attorneys
5 back then. Didn't you say that you had been
approached

6 by 17 to 19 book companies?

7 A. No, sir, that is not true.

8 Q. And do you remember that when you
said

9 that to Corrine Wells that you said that you weren't
10 going to settle for the small dollars like 30 or 40
11 thousand dollars? Do you remember that?

12 A. No, sir, I did not say that.

13 Q. Do you remember telling Corrine
Wells

14 that, in fact, the defendant was going to write the
book

15 herself?

16 A. I don't remember saying that
either.

17 Q. And do you remember the reason why
she

18 was going to write the book herself, because she was
19 going to cut out the middle man, and that you and she
20 were going to go for the big figures?

21 A. No, sir, I did not say that.

22 Q. That is what you told her back in
23 December, wasn't it?

24 A. No, sir, I did not. There's six
25 people in here writing books right now.

Sandra M. Halsey, CSR, Official Court Reporter

1 Q. I'm just talking about the one --
2 about the one the defendant is going to write?

3 A. I don't know if that is true.

4 Q. You don't know whether she is
going to

5 write a book or not?

6 A. I don't know if she is or not.

7 Q. Going to go for the big figures,
8 correct?

9 A. No, sir.

10

11 MR. GREG DAVIS: Pass the witness.

12 THE COURT: Ladies and gentlemen,

I

13 think now we will take our morning break. Let's be
back

14 at 25 after, please.

15 THE COURT: All right.

16

17 (Whereupon, a short

18 Recess was

taken,

19 After which

time,

20 The proceedings

were

21 Resumed on the
record,
22 In the presence
and
23 Hearing of the
defendant
24 And the jury, as
follows:)
25

Sandra M. Halsey, CSR, Official Court Reporter

4486

1 THE COURT: All right. Let the
record

2 reflect that all parties in the trial are present in
3 these proceedings. Mr. Mosty?

4 MR. RICHARD C. MOSTY: Your Honor
--

5 THE COURT: These proceedings are
6 being held -- excuse me -- all parties at trial are
7 present, and these proceedings are being held outside
the
8 presence of the jury.

9 MR. RICHARD C. MOSTY: I just had
one
10 more thought about why that illegal bug is relevant.

11 THE COURT: All right.

12 MR. RICHARD C. MOSTY: And it
relates

13 to, for instance, all of the reports, but I can't
14 remember, this is Mr. Patterson's entire file, this
red
15 folder. And I think it was marked for record
purposes.

16 THE COURT: It was.

17 MR. RICHARD C. MOSTY: I don't see
a

18 sticker, but it -- well, yes, it was marked for

record

19 purposes, as Defendant's Exhibit 72. And what is
20 notoriously missing from this report, and all of the
21 reports, is any report of this illegal bug.

22 For instance, you will recall they
23 brought in the Garland K-9 unit, I think it was

Garland,

24 it was some other city anyway.

25 MR. DOUGLAS MULDER: It was.

Sandra M. Halsey, CSR, Official Court Reporter

4487

1 MR. RICHARD C. MOSTY: It was
Garland.

2 And, there is a Garland K-9 report. And in all of
these

3 records, there is not one reference in Garland, or
4 Rowlett, or anywhere else, to this illegal bug.

5 And so, that raises the question
of,

6 what else did they leave out, as we have gone through
all

7 this stuff about never taking any notes.

8 Another reason that all of this is
9 relevant is, that it goes to what they chose to
write

10 down and what they chose not to write down and what
they

11 chose to leave out. And this goes directly to that
as a

12 relevance to impeach these officers, and how they
went

13 about this investigation.

14 THE COURT: Thank you. That is
now in

15 the record. Let's bring the jury in, please.

16 MR. RICHARD C. MOSTY: Do I
surmise

17 that that would be overruled?

18 THE COURT: Yes, that is
overruled.

19 MR. DOUGLAS MULDER: Judge, we
don't

20 find it curious that they have --

21 THE COURT: Gentlemen, we have
22 concluded that hearing. That hearing is over.

23 MR. DOUGLAS MULDER: Well, we just
24 thought of some new things we thought you might want
to
25 entertain.

1 MR. RICHARD C. MOSTY: We've still
got
2 to keep pointing those things out, and we might think
of
3 others.

4 THE COURT: I'm sure you will.

5 MR. DOUGLAS MULDER: Can we not
6 confer?

7 THE COURT: You may confer with
each
8 other, yes.

9 MR. DOUGLAS MULDER: Thank you,
Judge.

10 Thank you, Judge.

11 THE COURT: Now, in the meantime,
we
12 will bring the jury back in.

13

14 (Whereupon, the jury
15 was returned to

the

16 courtroom, and

the

17 proceedings

were

18 resumed on the

record,

19

in open court, in

the

20

presence and

hearing

21

of the defendant,

22

as follows:)

23

24

THE COURT: Let the record

reflect

25 that all parties in the trial are present and the
jury is

Sandra M. Halsey, CSR, Official Court Reporter

4489

1 seated.

2 Mr. Mulder? Anybody have anything
3 else? Thank you.

4 MR. DOUGLAS MULDER: Yes, sir.

5

6

7 REDIRECT EXAMINATION

8

9 BY MR. DOUGLAS MULDER:

10 Q. Just a thing or two, Darin.

You've

11 never doubted your wife's innocence, have you?

12 A. No, sir.

13 Q. You were asked about the towels.

And

14 about how many towels were in that room in the den

and in

15 the hall and in the area where the action was?

16 A. Probably five or six.

17 Q. Do you know how many?

18 A. Not exactly, no.

19 Q. Did you get any towels?

20 A. No, sir, I didn't.

21 Q. Did Waddell or Walling or any of

the

22 police officers get any towels?

23 A. No, sir, they didn't.

24 Q. Did the paramedics get any towels

to

25 your knowledge?

Sandra M. Halsey, CSR, Official Court Reporter

4490

1 A. No, sir.

2 Q. The towels that were there, came
out
3 of your towel drawer, didn't they?

4 A. Yes, sir, they did.

5 Q. All right. Who was left to get
the
6 towels?

7 A. Darlie.

8 Q. Was she just getting the towels in
the
9 sink and throwing them at you, or was she bringing
them
10 to you?

11 A. She was bringing them to me.

12 Q. That makes sense, doesn't it?

13 A. Yes, sir.

14 Q. Is there any other way that that
would
15 be done?

16 A. No, sir.

17 Q. Was she there, and did she wipe
18 Devon's chest as you blew into his mouth?

19 A. Yes, sir, she was
there.

20 Q. Got the blood off of
him?

21 A. Yes, sir.

22 Q. Did you think that was something
that

23 a mother would do to comfort her son under those

24 circumstances? Does that seem unreasonable to you

that

25 she would do that?

Sandra M. Halsey, CSR, Official Court Reporter

4491

1 A. No, it's not unreasonable at all.

2 Q. Now, when these statements were
given

3 by you and by Darlie, did you, at the time request
the

4 officers to video record, or tape record your part?

5 A. Yes, sir. I told him that I could
not

6 write down as fast as I can think, and that he was
7 going -- he said he would just put -- he would just
go in

8 with some notes and some other things that he wanted
to

9 fill in.

10 Q. All right. So they didn't
question

11 you while you were giving your statement as to what
they

12 thought might be important? You were just to write
down

13 what you thought was important; is that right?

14

15 MR. GREG DAVIS: I'm sorry. I'm
going

16 to object to that as being leading.

17 THE COURT: Overruled. I'll let
him

18 answer it if he knows the answer. Go ahead.

19 THE WITNESS: No, sir. They just
20 asked me -- they just basically told me to write what
I

21 could remember, and I did in a very quick manner.

22

23 BY MR. DOUGLAS MULDER:

24 Q. Has your memory improved since the
25 event?

Sandra M. Halsey, CSR, Official Court Reporter

4492

1 A. Yes, sir, very much so.

2 Q. Over the recess, I was reading
through

3 your statement. Did you put in your statement,
4 initially, is there something in there that after the
5 police got there, you went upstairs and put your
pants

6 on?

7 A. No, sir, I had my pants on.

8 Q. But didn't you put in your
9 statement --

10 A. I put in my statement that I
couldn't

11 remember putting my pants on before I went
downstairs. I

12 knew I had my glasses on, because I can't see two
feet in

13 front of me.

14 Q. Well, I mean, when you gave the
15 statement, you put in there that it wasn't until
the

16 police got there, that you went upstairs and put
your

17 pants on?

18 A. I knew that couldn't be true.

19 Q. But that is in your statement,
isn't

20 it?

21 A. Yes, sir.

22 Q. That means you were down there
nude?

23 A. No, sir, I wasn't down there
nude. I

24 think I would have been embarrassed if the police
25 officers would have started coming in, and I would
have

1 been standing there stark naked.

2 Q. Has your memory gotten
progressively

3 better with time?

4 A. Yes, sir, it has.

5 Q. Did you remember more of what
happened

6 on the 8th than you did the 6th, and more on the
10th

7 than you did the 8th, and more on the 20th than you
did

8 on the 10th?

9 A. Yes, sir.

10 Q. And more as we go down the line?

11 A. A lot more now.

12 Q. Okay. Do you find that unusual?

13 A. No, sir.

14 Q. Given the circumstances?

15 A. No, sir. I have had a lot of
time to

16 think about all this.

17 Q. In your effort to reconstruct
things

18 with Darlie, did y'all go to a psychic?

19 A. Yes, sir, we did.

20 Q. Did a psychic tell you and her
what

21 the psychic thought happened?

22 A. Yes, sir.

23 Q. Okay.

24 A. We were looking for answers that
the
25 police couldn't tell us.

Sandra M. Halsey, CSR, Official Court Reporter

4494

1 Q. Just looking for help anywhere
you
2 could get it?

3 A. Yes, sir.

4 Q. And did the psychic have a
theory
5 about what this man did?

6

7 MR. GREG DAVIS: I'm going to
object

8 to that as being hearsay from a psychic.

9 THE COURT: Sustained.

10 MR. DOUGLAS MULDER: I'm not
going to

11 go into what --

12

13 BY MR. DOUGLAS MULDER:

14 Q. Did the psychic have a version, a
sort

15 of a phrenology, where you feel the bumps on your
head,

16 reconstruction of the scene?

17

18 MR. GREG DAVIS: I'm going to
object

19 to that, again, whether she has got an opinion or
not.

20 It's still hearsay.

21 MR. DOUGLAS MULDER: Judge, if
the FBI

22 agent can testify, then we can hear what the psychic
has

23 to say.

24 MR. GREG DAVIS: Well, if the
psychic

25 wants to come in here and testify, let her.

1 THE COURT: Gentlemen, the
objection

2 is sustained. Rephrase your question.

3

4 BY MR. DOUGLAS MULDER:

5 Q. Did y'all talk to a psychic?

6 A. Yes, sir, we did.

7 Q. Did Darlie relate to you that she
had

8 had dreams and nightmares concerning this attack?

9 A. Yes, sir, we've both had a lot of
10 nightmares.

11 Q. And are the dreams and nightmares
12 different versions of what her version was to you
about

13 Damon coming in and tapping her on the shoulder?

14 A. Are they different?

15 Q. Well, yes.

16 A. Yes, sir.

17 Q. Okay. Mr. Davis has had a number
of

18 questions about your finances and your business.

Will

19 you tell the jury what your expenses were? I think
we

20 know your rent was \$525 dollars per month.

21 A. Yes, sir. I had just paid all my
22 equipment off. We had taken a loan out for about
23 seventy-five thousand dollars on equipment, and it
was

24 all paid by January.

25 So, all of a sudden we had almost

1 three thousand dollars a month extra per month, that
we
2 weren't used to having, because we had made -- it's
like
3 paying off a house in three years.

4 Q. I understand that, but I want to
get
5 to the point here.

6 A. Individually, what my bills were?

7 Q. Tell us what your fixed expenses
were
8 each month.

9 A. About five thousand dollars a
month.

10 Q. All right. That includes what?

11 A. Electricity, phone bills, I have
three

12 phones, rent, labor is usually the highest, you know,
the
13 highest amount that you have to pay.

14 Q. Did that include Basia?

15 A. Yes, sir, it did.

16 Q. During your personal knowledge of
her,

17 has she had mental difficulties?

18 A. Yes, sir.

19

20 MR. GREG DAVIS: I'll object to
that,

21 your Honor. That is an area that we have already
22 discussed.

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

24

25

Sandra M. Halsey, CSR, Official Court Reporter

4497

1 BY MR. DOUGLAS MULDER:

2 Q. Are you personally aware --

3

4 MR. GREG DAVIS: Again, I'm going
to

5 object to that, if it deals with the same area. I
assume

6 it will.

7 THE COURT: Well, let him ask the
8 question first.

9 MR. GREG DAVIS: May we approach
the
10 bench for a moment?

11 THE COURT: Yeah, I can see both
sides

12 up here.

13

14 (Whereupon, a short

15 discussion was

held

16 at the side of

the

17 bench, between the

Court,

18 and the attorneys for

19 both sides in the case,

20 off the record, and
outside
21 of the hearing of the
22 Jury, after which
time,
23 the proceedings
were
24 resumed on the record,
25 outside the hearing of

Sandra M. Halsey, CSR, Official Court Reporter

4498

1 the jury as follows:)

2

3 THE COURT: Mr. Mulder, I have
already

4 ruled on that. You are instructed not to ask any
5 questions in that area. I have already ruled on
that.

6 MR. DOUGLAS MULDER: Can I get it
on
7 the record?

8 THE COURT: I will put it in the
9 record once we get through. All right.

10 Let's move on to the next
question,
11 please.

12

13 (Whereupon, the following
14 mentioned item was
15 marked for
16 identification only
17 as Defendant's Exhibit 81,
18 after which time the
19 proceedings were
20 resumed on the record
21 in open court, as
22 follows:)

23

24 BY MR. DOUGLAS MULDER:

25 Q. Let me hand you what has been
marked

Sandra M. Halsey, CSR, Official Court Reporter

4499

1 for identification and record purposes as Defendant's
2 Exhibit No. 81. I will ask you if you recognize that
and
3 can identify it?

4 A. Yes, sir.

5 Q. And, is that true and accurate?

6 A. Yes, sir.

7 Q. Bank statement?

8 A. Yes, sir.

9 Q. Concerning your business?

10 A. Balance, yes, sir.

11

12 MR. DOUGLAS MULDER: We'll offer
into

13 evidence what's been marked and identified as
Defendant's

14 Exhibit No. 81.

15 MR. GREG DAVIS: No objection.

16 THE COURT: Okay. Defendant's
Exhibit

17 81 is admitted.

18

19 (Whereupon, the above
20 mentioned item was
21 received in evidence as
22 Defendant's Exhibit No.

81,

23

for all purposes

24

after which time,

25

the proceedings were

Reporter Sandra M. Halsey, CSR, Official Court

4500

1 resumed on the record,
2 as follows:)

3

4 BY MR. DOUGLAS MULDER:

5 Q. This shows your bank
statement through

6 June of 1996 through June 30th; is that right?

7 A. Yes, sir.

8 Q. And it shows a bank
balance, of June

9 30th, of how much?

10 A. Seven thousand, nine
hundred forty-one
11 dollars and ten cents.

12 Q. Okay. Now, I believe you
have already

13 testified that you had some 18 or 20 thousand
in accounts

14 receivable at that time?

15 A. Yes, sir.

16 Q. That were good accounts
receivable?

17 A. Yes, sir.

18 Q. And that have since been
collected?

19 A. Yes, sir.

20 Q. You were asked about an
American

21 Express bill?

22 A. Yes, sir.

23 Q. Remember I wanted you to
explain that,

24 and he went on to something else?

25 A. Yes, sir.

Sandra M. Halsey, CSR, Official Court
Reporter

4501

1 Q. Did you pay that bill?

2 A. Yes, sir, I did.

3 Q. Was your house payment
current?

4 A. Yes, sir.

5 Q. In June?

6 A. Yes, sir, it was. I made the
bank

7 payment -- the June payment wasn't late until the
15th.

8 I just hadn't written out the bills yet.

9 Q. Maybe we're beating this thing
to

10 death, but with that Gangster Paradise, and I
frankly

11 hadn't heard it until the other day, and I cannot
recite

12 any of the lyrics.

13

14 MR. GREG DAVIS: I'm going to
object

15 to that as really side-bar.

16 THE COURT: Well, I think I will

17 let --

18 MR. GREG DAVIS: Let's do a

question,

19 not leading.

20 MR. DOUGLAS MULDER: Judge, if
it gets

21 much more complicated than George Strait or Willie
22 Nelson, I don't listen to the words.

23 THE COURT: Oh, I understand,
Mr.

24 Mulder, I understand. Well, let's ask the
question.

25 Yes.

1 BY MR. DOUGLAS MULDER:

2 Q. Do you listen to the words of
those

3 things?

4 A. No, sir, I don't.

5 Q. Do you think your children
understand

6 what the words are, or if they hear the words,
understand

7 the meaning?

8 A. No, sir, I think they just
understand

9 the beat.

10 Q. They like the beat and the
rhythm and

11 that sort of thing, right?

12 A. Right. They jump around all
over the

13 floor and dance.

14 Q. When you and Darlie -- they gave
you

15 your warnings when you -- on that affidavit sheet,
it's

16 got your warnings there, "That you have a right to
remain

17 silent. That you have a right to a lawyer. If you
can't

18 afford a lawyer, a lawyer will be appointed for you
to

19 counsel with you, prior to or during any
questioning by

20 the police; and you have a right to terminate the
21 interview at any time." That is basically your

Miranda

22 warnings. You are familiar with those now?

23 A. Yes, sir, I am.

24 Q. You had never had those warnings
given

25 to you before, had you?

1 A. No, sir,

2 Q. In fact, other than an estate
planning

3 lawyer, you have never even talked to a lawyer?

4 A. Yes, sir, and we never even
talked to

5 him.

6 Q. Now, when Mr. Patterson and Mr.
Frosch

7 asked you to give statements, did you hide behind
your

8 Fifth Amendment right to remain silent and not say

9 anything at all, or did you tell them --

10 A. I told them everything. I
didn't have

11 anything to hide.

12 Q. You answered all of their
questions?

13 A. Yes, sir.

14 Q. You gave them keys to your
house, and

15 your boat, and storage and the company, didn't you?

16 A. Yes, sir, I gave them keys to
17 everything I had.

18 Q. There has been some talk about

19 insurance. Did you have several hundred thousand
dollars

20 worth of insurance on your life?

21 A. I have eight hundred thousand
dollars

22 worth of life insurance on me.

23 Q. All right. How much did you
have on

24 Darlie?

25 A. I think -- I believe two hundred

1 thousand.

2 Q. All right. And the children, it
was

3 just a family policy, where there was 5,000 on each
of

4 the children?

5 A. Yes, sir, and they just add them
on as

6 you have them.

7 Q. You were asked about a sock and
you

8 said you had never seen that sock.

9 Is this one of y'all's towels?

10 A. Yes, sir.

11 Q. Do you recognize these as
towels?

12 A. Yes, sir, kitchen towels.

13 Q. Let me just ask you --

14

15 MR. DOUGLAS MULDER: Of course,
it

16 would be on the very bottom.

17 THE COURT: Always the way.

18 MR. DOUGLAS MULDER: Why is it
always

19 the last place you look?

20 THE COURT: Just fate.

21

22 BY MR. DOUGLAS MULDER:

23 Q. What did you do with old socks?

24 A. We just -- we had a rag pile.

25 Q. Okay. This sock was described
as

Sandra M. Halsey, CSR, Official Court Reporter

4505

1 having some holes in it, other than the obvious
holes

2 that you see.

3 A. That is a pretty holey (sic)
sock.

4 Q. Well, some places there are
marks on

5 it, and other places, there are holes and no marks,
6 indicating that it was worn?

7 A. Yes, sir.

8 Q. I suspect. Did you wear
socks with

9 multiple holes in them?

10 A. No, sir.

11 Q. Is this the type of sock
that you

12 wore?

13 A. Tube sock, yes, sir.

14 Q. Okay. Do you have any
reason to

15 believe that this is not one of your old
socks?

16 A. Just by -- what if you
flipped it

17 around, see where the heel is, just by

guessing at it, I

18 would say that it was my sock.

19 Q. That it is your sock?

20 A. Yes, sir.

21 Q. Okay. Where would you

put a sock that

22 had holes in it and was --

23 A. We had a basket on top of

the washer

24 and dryer and we would just use them for

rags, just for

25 waxing the cars, you know.

Sandra M. Halsey, CSR, Official Court
Reporter

4506

1 Q. Cleaning up around the
house?

2 A. Cleaning up around the
house.

3 Q. Plenty to do with three boys, I
guess?

4 A. Oh, yeah.

5 Q. I mean, the more you clean, the
more

6 there is to clean?

7 A. Yes, sir.

8 Q. It's like shoveling sand against
the

9 tide, isn't it?

10 A. Yes, sir.

11

12 MR. GREG DAVIS: Again, if we
could

13 stop with the leading, please.

14 THE COURT: Sustained. Let's stop
the

15 side-bar and the leading. Let's phrase our
questions,

16 both sides please. You are both experienced
attorneys.

17 Let's everyone phrase the questions properly.

18 MR. DOUGLAS MULDER: Judge, excuse
me.

19 I'm just trying to move along on some of the things
that

20 are obvious.

21 THE COURT: And we appreciate
that,

22 Mr. Mulder.

23 MR. DOUGLAS MULDER: Thank you.

24 THE COURT: All right.

25

Sandra M. Halsey, CSR, Official Court Reporter

4507

1 BY MR. DOUGLAS MULDER:

2 Q. Let me ask you this, and I made a
note

3 of it. Did Darlie, when you went to see her in the
4 hospital, did she at any time complain about or
remark

5 about an injury to her mouth?

6 A. Yes, sir, she did.

7 Q. What was that?

8 A. When I first got in there, the --
some

9 other family members were giving her ice chips, and
10 feeding her ice chips because her lips were just all
11 swollen, like this, you could see the cuts on the
inside

12 of her mouth.

13

14 MR. DOUGLAS MULDER: Okay. I
believe

15 that's all.

16 THE COURT: Mr. Davis?

17 MR. GREG DAVIS: Yes, sir.

18

19

20 RECROSS EXAMINATION

21

22 BY MR. GREG DAVIS:

23 Q. Mr. Routier, it's really more
accurate

24 to say that your memory got better every time we got

a

25 test result back in this case, didn't it?

Sandra M. Halsey, CSR, Official Court Reporter

4508

1 A. No, sir.

2 Q. Every time we found out something
3 else, you remembered something else that would
correspond
4 with that finding, didn't you?

5 A. No, sir. What I remember is
exactly

6 what is the truth.

7 Q. So that when Mr. Mulder said, that
8 your memory was better on September the 12th than it
had

9 been on June 8th, and now it's better than it was in
10 September. Of course, we have had all of these
test

11 results come back, and you are privy to all them
now,

12 aren't you?

13 A. Not necessarily.

14 Q. You pretty much know everything
that

15 has happened in this case, haven't you?

16 A. Yes, sir, but the truth doesn't
have

17 anything to do with the test results.

18 Q. Let me show you again, State's

Exhibit

19 83-B. This is the letter I showed you yesterday.

Do you

20 remember me showing you this letter, sir?

21 A. Yes, sir.

22 Q. And let me ask you: Is your

memory

23 better about that today? Do you remember that is

one of

24 the letters addressed to you now?

25 A. Yes, sir.

Sandra M. Halsey, CSR, Official Court Reporter

4509

1 Q. Okay.

2

3 MR. GREG DAVIS: Your Honor, at
this

4 time we will offer State's Exhibit 83-B.

5 THE COURT: Any objection?

6 MR. DOUGLAS MULDER: I thought
that

7 came in yesterday.

8 MR. GREG DAVIS: No, sir, just
83-A.

9 He said he didn't remember that one yesterday.

10 THE COURT: Any objection?

11 MR. DOUGLAS MULDER: Judge, just
a

12 moment. No, we don't have any objection.

13 THE COURT: State's Exhibit 83-B
is

14 admitted.

15

16 (Whereupon, the above

17 mentioned item

was

18 received in

evidence

19 as State's Exhibit No.

83-B,

20

for all purposes

21

after which time,

22

the proceedings

were

23

resumed on the

record,

24

as follows:)

25

Reporter Sandra M. Halsey, CSR, Official Court

4510

1 MR. GREG DAVIS: Judge, may I
publish

2 this briefly.

3 THE COURT: You may.

4 MR. GREG DAVIS: Ladies and
5 gentlemen, this is a letter from Mellon Mortgage
Company,

6 May the 8th, 1996, addressed to Darin E. Routier
and

7 Darlie L. Routier, in reference to a loan number.

8 "Dear mortgagor, your situation is
serious.

9 Your mortgage payments for April and May of 1996
have not

10 been received and you are in default of your loan.

11 "Mellon Mortgage would like to help
you.

12 Including late charges, the total amount past due
is

13 \$2,525.74. If payments are not received by May
23, 1996,

14 you risk foreclosure. You could lose your home.

15 "Additionally, a deficiency judgment
could

16 be sought against you for any losses that might
result."

17 It goes on then with instructions as
to the
18 payment of these charges.

19

20 BY MR. GREG DAVIS:

21 Q. Sir, the situation by June the
3rd,

22 had gotten to the point where you got rejected on
a five

23 thousand dollar loan at Bank One. You remember
that,

24 don't you?

25 A. Yes, sir, that was an unsecured
loan.

 Sandra M. Halsey, CSR, Official Court
Reporter

4511

1 Q. Okay. You remember dealing
with an

2 Okie Williams, correct?

3 A. Yes, sir, I do.

4 Q. And, the bottom line on that
5 transaction, sir, was that they would not loan you
five

6 thousand dollars unsecured, would they?

7 A. Not unsecured, no, but they
would

8 secured.

9 Q. You didn't get that five
thousand

10 dollars from Bank One, did you?

11 A. I wasn't too heartbroken about
it

12 either.

13 Q. Could you please answer my
question?

14 Did you get the five thousand dollars?

15 A. Did we get the loan? No.

16 Q. Okay. That document,
Defendant's

17 Exhibit 81, that summary, from Bank One that deals
with

18 the month of June, it shows deposits of eleven
thousand,

19 seven hundred and fifty-six dollars; is that
correct?

20 A. Yes, sir.

21 Q. Okay. And again it shows --

22 A. And only seven thousand came
out.

23 Q. Right. Checks paid of seven
thousand,

24 one hundred and fifty-four dollars and nine cents,
25 correct?

Sandra M. Halsey, CSR, Official Court
Reporter

4512

1 A. Yes, sir.

2 Q. So if we're correct for the
first five

3 months of '96 that you have receipts for seventy-
four

4 thousand dollars, if we add these deposits of
eighty-five

5 thousand dollars, we now have the receipts for six
months

6 of 1996, don't we?

7 A. Five months.

8 Q. No, sir. I mean, I am
including

9 through June.

10 A. One through six, yes, sir.

11 Q. Right. We have eighty-five
thousand

12 dollars received and deposited in Bank One by
Testnec,

13 don't we?

14 A. Yes, sir.

15 Q. Two times eighty-five thousand
is how

16 much money, sir?

17 A. Two times eighty-five thousand?

18 Q. Yes, sir.

19 A. A hundred and seventy-some
thousand.

20 Q. Okay. That is ninety thousand
dollars

21 less than your company earned in 1995; is that
correct?

22 A. That is not adding the twenty
thousand

23 that I still had on the books open.

24 Q. No. I'm just talking about
monies

25 that you had received and put in there?

Reporter Sandra M. Halsey, CSR, Official Court

4513

1 A. Yes, sir.

2 Q. And these represent accounts
3 receivable for earlier months, don't they?

4 A. Yes, sir.

5 Q. A hundred and seventy-something
6 dollars as opposed to two hundred and sixty
thousand,

7 would you agree with me that is a difference of
ninety
8 thousand dollars?

9 A. Yes, sir, it would have been.

10 Q. And when you came into Court on
July
11 the 1st, on that bond hearing, it's fair to say you
were
12 trying to portray yourself as poor as you could that
day,
13 weren't you?

14 A. Yes, sir.

15 Q. That's true?

16 A. I am broke.

17 Q. Because on July the 1st, when you
were
18 asked about how much money was in this bank account,
this

19 account that shows seven thousand, nine hundred and
20 forty-one dollars on June 30th, do you remember what
you

21 told this Court, how much money you had in that bank
22 account then on July the 1st?

23 A. I was guessing, about twenty-five
24 hundred.

25 Q. Well, actually you guessed a
little

Sandra M. Halsey, CSR, Official Court Reporter

1 bit lower than that.

2 A. Two thousand?

3 Q. Yeah. I asked, "How much money do
you

4 have in that account?"

5 "About two thousand dollars."

6 You were about six thousand
dollars

7 short on July 1st, weren't you?

8 A. I don't recall.

9 Q. Well, seven thousand, nine hundred
and

10 forty-one dollars minus two thousand dollars is what?

11 Five thousand, nine hundred and forty-one dollars?

12 A. Yes, sir.

13 Q. Of course, that was on July 1st.

Now

14 the situation is that you are trying to paint this
one as

15 rosy as you can about your finances, aren't you?

16 A. There was nothing wrong with my
17 finances. July the 1st, I just hadn't had the money
come

18 in yet.

19 Q. On June the 8th, you said that you

20 asked or said that you wanted these police officers
to

21 videotape, or audio tape what you were saying,
because

22 you really didn't trust them to get down everything
that

23 you were writing, or that you were saying to them;
right?

24 A. I just can't write everything that

I
25 think.

Sandra M. Halsey, CSR, Official Court Reporter

4515

1 Q. You have had a lot of discussions
with
2 these attorneys. They haven't even -- have they
written
3 down notes of what you told them?

4 A. Very little. I don't know.

5 Q. Well, I would imagine given that
fact,
6 that you have obviously then asked them to audio or
7 videotape you, haven't you? Make sure that they get
it
8 down right?

9 A. No, sir, I haven't.

10 Q. Would it be fair to say, that
really
11 back on June the 6th, by your version, we have got a
real
12 lucky intruder, don't we?

13 A. There was an intruder.

14 Q. A lucky intruder?

15 A. Why lucky?

16 Q. I mean, after all, he picked a
house
17 where the window just happened to be open to the
garage,

18 right?

19 A. Yes, sir.

20 Q. Just happened to pick a house
where on

21 that night, the alarm system is not turned on or
armed,

22 correct?

23 A. Yes, sir.

24 Q. Lucky that in fact once he gets

past

25 the alarm system off, he gets through the window,
open,

Sandra M. Halsey, CSR, Official Court Reporter

4516

1 when he gets to the utility room, he just happens to
find

2 a sock available to him for his use that night,
right?

3 A. Yes, sir.

4 Q. And lucky enough that when he does
5 that, he gets into the kitchen and lo and behold
there in

6 the butcher block he finds a weapon to attack your
two

7 children and your wife, right?

8 A. My understanding is that it is
called

9 an opportunist.

10 Q. No, my question is, he was lucky
11 enough that evening, that once he got past all that,
the

12 murder weapon is actually provided inside the house;
13 right?

14 A. Yes, sir.

15 Q. Lucky enough that while he is
16 attacking both your children, your wife doesn't wake
up,

17 right?

18 A. Yes, sir.

19 Q. Lucky enough that after he attacks
20 her, that in fact, she doesn't even get a good
look at
21 his face, right?

22 A. Yes, sir.

23 Q. Lucky enough, that as he is
leaving
24 the house, he drops the knife on the floor there,
and
25 your wife doesn't pick it up and doesn't use it
against

Sandra M. Halsey, CSR, Official Court
Reporter

4517

1 him, right?

2 A. Yes, sir.

3 Q. Lucky enough that when he gets
into

4 the garage that he doesn't deposit any blood on
the

5 floor, no blood on the window, correct?

6 A. I don't know anything about
that.

7 Q. And then lucky enough that when
he

8 leaves out that garage into your back yard, that
he

9 either scales that fence without leaving a mark,
or he

10 opens up that gate and he then latches and closes
it

11 without anybody detecting that either, right?

12 A. Yes, sir.

13 Q. A real lucky guy, wasn't he?

14 A. Yeah, and I want him dead.

15 Q. So do I.

16

17 MR. GREG DAVIS: No further
questions.

18

19

20

REDIRECT EXAMINATION

21

22 BY MR. DOUGLAS MULDER:

23

Q. I guess he is lucky that the

police

24 don't pursue the leads that they received?

25

A. Exactly.

Sandra M. Halsey, CSR, Official Court
Reporter

4518

1 Q. Lucky that when people
called in

2 having seen a man with a black ball cap and a
black

3 T-shirt and jeans, in the vicinity, that the
police

4 didn't pursue it?

5 A. They never looked.

6 Q. Lucky enough that when Angel
Rickels

7 got a hold of them and they came out to her house,
they

8 weren't interested?

9 A. Yes, sir.

10 Q. Lucky enough that the police are
not

11 interested in pursuing the fingerprint that the man
left

12 as he went out that window?

13 A. Yes, sir.

14 Q. You aren't responsible for the
luck or

15 the happenstance of some crazy assailant, are you?

16 A. No, sir.

17 Q. Anything more precious to you than

18 those two youngsters?

19 A. Nothing. There is nothing more
20 important than those boys to us.

21 Q. Have you ever doubted your wife's
22 innocence?

23 A. No, sir.

24 Q. Do you doubt it now?

25 A. No, sir.

Sandra M. Halsey, CSR, Official Court Reporter

4519

1
2 MR. DOUGLAS MULDER: I believe
that's
3 all we have.
4 MR. GREG DAVIS: I don't have any
5 further questions.
6 I would offer State's Exhibit 141,
the
7 voluntary statement given on June the 8th.
8 THE COURT: Any objection?
9 MR. DOUGLAS MULDER: Is that his
10 statement?
11 MR. GREG DAVIS: Yes, sir.
12 MR. DOUGLAS MULDER: No objection.
13 We'll call --
14 THE COURT: Just a minute.
State's
15 Exhibit 141 is admitted.
16
17 (Whereupon, the item
18 Heretofore mentioned
19 Was received in
evidence
20 As State's Exhibit No.
141
21 For all purposes,

22

After which time, the

23

Proceedings were

resumed

24

As follows:)

25

Sandra M. Halsey, CSR, Official Court Reporter

4520

1 THE COURT: You're under the Rule.
Do
2 you understand that, sir?
3 THE WITNESS: Yes, sir.
4 THE COURT: Do not discuss your
5 testimony with anybody who had testified. In other
6 words, do not compare it.
7 You may talk to the attorneys for
8 either side. If someone tries to talk to you about
your
9 testimony, tell the attorney for the side who called
you.
10 Of course, you have to remain
outside
11 the courtroom when you are not testifying.
12 THE WITNESS: Yes, sir.
13 THE COURT: All right. Thank
you.
14 Step down, please. Watch your step.
15 MR. TOBY L. SHOOK: Judge, could
we
16 have a 705 hearing, pursuant to the expert
testimony,
17 please?
18 THE COURT: Well, you certainly
can.

1 In the presence of
the
2 Defendant, with
his
3 Attorney, but
outside

4 The presence of
jury

5 As follows:)

6
7 THE COURT: Will you raise your
right
8 hand, please, sir?

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

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

18
19 THE COURT: Do you solemnly

swear or

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

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

22 help you God?

23 THE WITNESS: I do.

24 THE COURT: All right. Have a

seat

25 right there. You have, of course, testified many
times.

Reporter Sandra M. Halsey, CSR, Official Court

4522

1 You understand the Rule of Evidence. You are
under it

2 now. You don't need to have it explained to you
now.

3 THE WITNESS: Yes, sir.

4 THE COURT: Thank you. Let the
record

5 reflect that these proceedings are being held
outside the

6 presence of the jury, and all parties at the trial
are

7 present.

8 This is a 705 hearing on Dr.
DiMaio's

9 testimony, and the conclusions and underlying data
that

10 go to those conclusions.

11 So, if we could get right to the
12 point, please.

13 MR. TOBY L. SHOOK: Yes, sir.

14

15

16

17

18

19

20

21

22

23

24

25

Sandra M. Halsey, CSR, Official Court Reporter

4523

1 Whereupon,

2

3

DR. VINCENT J.M. DIMAIO,

4

5 was called as a witness, for the purpose of a
hearing,

6 outside the presence of the jury, having been first
duly

7 sworn by the Court to speak the truth, the whole
truth,

8 and nothing but the truth, testified in open court,
as

9 follows:

10

11

EXAMINATION

12

13 BY MR. TOBY L. SHOOK:

14

Q. Dr. DiMaio, my name is Toby
Shook. I

15 just have a few questions for you for this hearing.

16

What opinions have you come to
testify

17 for today?

18

A. One, that the injuries incurred
by

19 Mrs. Routier are those that would be incurred if
one was
20 assaulted with a knife, and are not consistent with
21 self-inflicted wounds. She has shown significant
blood
22 loss, and that her hemoglobin dropped two grams.
She has
23 evidence of severe blunt trauma to both forearms,
more on
24 the right than the left. Let's see.
25 Q. Is that it?

Sandra M. Halsey, CSR, Official Court Reporter

4524

the

16 location and direction of the wounds and the nature
of

17 the wounds, these are the type of wounds that one
would

18 get if one was assaulted, rather than self-
inflicted.

19 They are not consistent with self-inflicted wounds.

20 Q. And what facts or data do you
rely on

21 for that opinion?

22 A. Essentially, the photographs of
the

23 wounds and the medical records. All of my opinions
are

24 based on photographs of her and her wounds, the --
and

25 the medical records. So that is about it.

Sandra M. Halsey, CSR, Official Court Reporter

1 Q. Okay. And then, the other was an
2 opinion on blunt trauma to the right arm, primarily,
and
3 then maybe blood loss?

4 A. You get various evidence of blood
5 loss, her hemoglobin went down from 11.6 at about
3:30 in
6 the morning, down to 9.6 the following day.

7 Q. Okay. Is that, as far as you
know,
8 the extent of the opinion that you have come to
testify
9 for today?

10 A. Yes, I think I have covered
11 everything. Let me think a second.

12 Q. And which attorney did you
discuss it
13 with? Was it Mr. Mulder?

14 A. Well, my original conversation
was
15 with Mr. Parks when he was originally -- he was the
one
16 who originally retained me, and then I discussed it
with
17 Mr. Mulder as well.

18 Q. Okay.

19

20 THE COURT: All right.

21 MR. TOBY L. SHOOK: Is that as far
as

22 it goes?

23 THE COURT: Any objection?

24 MR. DOUGLAS MULDER: I think so --
25 that is pretty close, yeah.

Sandra M. Halsey, CSR, Official Court Reporter

4526

1 MR. TOBY L. SHOOK: That's all
then,

2 Judge.

3 THE COURT: All right. Any
objection?

4 MR. DOUGLAS MULDER: We have none.

5 THE COURT: I didn't think so.
What

6 about you, Mr. Shook?

7 MR. TOBY L. SHOOK: No, sir.

8 THE COURT: All right. Thank you,
9 Doctor.

10 Bring the jury in, please.

11

12 (Whereupon, the jury

13 Was returned to

the

14 Courtroom, and

the

15 Proceedings

were

16 Resumed on the

record,

17 In open court, in

the

18 Presence and

1 outside of your presence.

2 Mr. Mulder.

3 MR. DOUGLAS MULDER: Yes, sir.

4 THE COURT:

5

6

7

8

9 Whereupon,

10

11 DR. VINCENT J. M. DIMAIO,

12

13 was called as a witness, for the Defense, having
14 been

15 first duly sworn by the Court to speak the truth,
16 the

17 whole truth, and nothing but the truth, testified
18 in open

19 court, as follows:

20

21

22 DIRECT EXAMINATION

23

24 BY MR. DOUGLAS MULDER:

25 Q. You are Dr. Vincent DiMaio?

23

A. Yes, sir.

24

Q. And will you tell the jury your

25

profession?

Sandra M. Halsey, CSR, Official Court Reporter

4528

1 A. I am a physician, presently
employed

2 as the chief medical examiner for Bexar County.

3 Q. You are a medical doctor?

4 A. Yes, sir. I graduated from
medical

5 school in 1965 from the State University of New
York,

6 Downstate Medical Center.

7 Q. Dr. DiMaio, do you have a
specialty in

8 the field of medicine?

9 A. Yes, sir. I am a specialist in
the

10 overall branch of medicine called pathology which is
the

11 study and diagnosis of diseases. Then I have a

12 subspecialty in forensic pathology, which is
essentially

13 a branch of medicine concerned with the application
of

14 all aspects of medical science, the problems and the
law.

15 Q. Doctor, are you board certified?

16 A. Yes, I am board certified in

17 anatomical pathology, clinical pathology and forensic

18 pathology.

19 Q. Does a pathologist also perform
20 autopsies?

21 A. Yes, sir.

22 Q. And will you give the jury some
idea

23 of how many autopsies you have performed?

24 A. I would say that I've performed
25 somewhere over 7,000 autopsies, and supervised maybe

Sandra M. Halsey, CSR, Official Court Reporter

1 about 21,000, in addition.

2 Q. For how many years have you been
the

3 chief medical examiner for the county of Bexar?

4 A. Since March the 1st, 1981, so it
will

5 be 16 years come the end of February.

6 Q. And Dr. DiMaio, will you please
7 outline for the jury your education and professional
8 experience for the position that you now hold?

9 A. Yes, sir. After graduating from
10 medical school and obtaining my M.D. Degree, I spent
four

11 years additional training in the fields of anatomical
12 pathology, and clinical pathology at Duke Hospital in
13 Durham, North Carolina, and the King's County
Downstate

14 Medical Center, in New York City.

15 I then spent the fifth year of
16 training in the field of forensic pathology at the
Office

17 of the Chief Medical Examiner for the State of
Maryland.

18 Following this, I took my board
exams

19 in '70 and '71 and was certified as a specialist in
the
20 three fields of anatomical pathology, clinical
pathology,
21 and forensic pathology.

22 I then went into the military, I
23 served two years in the Army, assigned to the Armed
24 Forces Institute of Pathology in Washington, D.C.
where I
25 was chief of the medical legal section for one year,
and

Sandra M. Halsey, CSR, Official Court Reporter

1 chief of the wound ballistics for another year. Then
I
2 got out of the service, and I moved to Texas. I took
the
3 position as a medical examiner in Dallas. I was
there
4 from around June the 1st, '72 to, as I said, March
the
5 1st of 1981. I was the medical examiner there and
6 eventually ended up as the Deputy Chief Medical
Examiner
7 for Dallas County.

8 That is about it.

9 Q. All right. Now, Doctor, there is
a
10 magazine or journal in the field of forensics,
forensic
11 medicine. Are you familiar with the American
Journal of
12 Forensic Medicine and Pathology?

13 A. Yes. The American Journal of
Forensic
14 Medicine and Pathology is the only medical journal
15 devoted to the field of forensic pathology published
in

16 the United States.

17 Q. Would you tell us who the editor
18 in
19 chief is?

20 A. I am the editor in chief.

21 Q. Okay. How long have you been
22 editor
23 in chief?

24 A. I think this is the 6th year.

25 Q. You have published books in the
26 past,

27 have you not?

28 A. I have published three books. I
29 was

1 the editor of one book on forensic pathology. I
wrote a
2 book on gunshot wounds, which has been published.
And I
3 am also the co-author with my father, who is the
Chief
4 Medical Examiner in New York City, on a book called,
5 Forensic Pathology, which kind of covers all the
other
6 areas of forensic pathology except for gunshot
wounds,
7 which I covered in the other book.

8 Q. In addition to your father, you
have
9 other pathologists in the family, do you not?

10 A. Actually, I -- well, yes, I
guess

11 that's right. The older of my three sisters is a
12 pathologist and my son is a pathologist in Houston,
13 hospital pathology, he is not interested in
forensics.

14 Q. You also have a sister who is a
15 pediatrics physician?

16 A. No, two sisters in pediatrics.

17 Q. Two, excuse me. Doctor, in

addition

18 to the books, you have published 70 or 80 articles,
have

19 you not?

20 A. 70 articles, 7 book chapters and
10 or

21 11 professional scientific letters.

22

23

24 (Whereupon, the following
25 mentioned item was

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4532

1 marked for
2 identification only as
3 Defendant's Exhibit No. 94,
4 after which time the
5 proceedings were
6 resumed on the record
7 in open court, as
8 follows:)

9

10 BY MR. DOUGLAS D. MULDER:

11 Q. I have marked for identification
12 and
13 record purposes as Defendant's Exhibit 94, your CV,
14 which
15 would acquaint the jurors with your background and
16 qualifications?

17 A. Yes, sir.

18 Q. All right.

19

20 MR. DOUGLAS MULDER: We will
21 offer
22 into evidence what has been marked and identified
23 as
24 Defendant's Exhibit No. 94.

25 MR. TOBY L. SHOOK: No
26 objection.

22

THE COURT: Defendant's

Exhibit 94 is

23 admitted.

24

25

(Whereupon, the item

Reporter Sandra M. Halsey, CSR, Official Court

4533

1 Heretofore mentioned
2 Was received in
evidence as
3 Defendant's Exhibit No.
94
4 For all purposes,
5 After which time, the
6 Proceedings were
resumed
7 As follows:)
8
9
10 (Whereupon, the
following
11 mentioned items were
12 marked for
13 identification only
14 as Defendant's Exhibits
15 No. 82, 83, 84, 85, 86,
16 87, 88, 89, 90, 91,
17 92, 93 and 95,
18 after which time the
19 proceedings were
20 resumed on the record
21 in open court, as
22 follows:)

23

24

MR. DOUGLAS MULDER: Your Honor,

at

25 this time, I'm going to offer into evidence what has
been

Sandra M. Halsey, CSR, Official Court Reporter

4534

1 marked and identified as Defendant's Exhibits 82, 83,
84,

2 85, 86, 87, 88, 89, 90, 91, 92, 93 and 95?

3 THE COURT: Any objection?

4 MR. TOBY L. SHOOK: Wait a minute.

5 What is 93?

6 MR. DOUGLAS MULDER: 93 was Dr.

Santos

7 report. I think it was already in. I just couldn't
find

8 it.

9 MR. TOBY L. SHOOK: No objection.

10 THE COURT: All right.

Defendant's

11 Exhibits 82, 83, 84, 85, 86, 87, 88, 89, 90, 91,
92, 93

12 and 95 are admitted.

13

14 (Whereupon, the above

15 Mentioned items

were

16 Received in

evidence

17 As Defendant's Exhibits

18 No. 82, 83, 84, 85, 86,

87,

19 88, 89, 90, 91, 92, 93

and 95

20 For all purposes, after

21 Which time, the

22 Proceedings were

23 Resumed on the

record,

24 In open court,

25 As follows:)

Sandra M. Halsey, CSR, Official Court Reporter

4535

1

2 BY MR. DOUGLAS MULDER:

3 Q. Doctor, so that we might identify
4 these exhibits, Defendant's Exhibit 93 is an
operative

5 record that was dictated by Dr. Patrick Dillawn, and
also

6 bears the name of Alex Santos?

7 A. Yes, sir.

8 Q. All right. And you have had that
in
9 the past, a copy of that to refer to?

10 A. Yes, I have.

11 Q. Okay. And then Defendant's
Exhibit

12 No. 95 is a Polaroid photograph that has been
admitted

13 into evidence that is dated 6-6-of 96, at 16:05
hours,

14 which would be, I suspect military time, for 4:05
P.M. of

15 Darlie Routier. This picture was taken June the 6th
of

16 1996. I'm sorry. Can you see it now?

17 A. Yes. Okay.

18 Q. Also, you have had occasion to

see

19 that, have you not?

20 A. Yes, I have.

21 Q. All right. And, could you come
up

22 here so that Richard, and John maybe, so we can show
the

23 jury the various photographs that we're talking
about?

24 Maybe each could hold three or four.

25

1 MR. DOUGLAS MULDER: Judge, I
just

2 want them generally to be familiar with the
photographs

3 that we have here.

4 THE COURT: I understand. All
right.

5 Maybe we could get in line in order so we don't
inundate

6 the jury.

7 MR. RICHARD C. MOSTY: Should I
be at

8 the end?

9 THE COURT: Well, let's put it at
the

10 other side. We would never place you at the end.

11 MR. DOUGLAS MULDER: I said the
ones

12 in the hospital are June the 6th, the Polaroid is
June

13 the 6th, and the deals where she is standing in
clothing

14 other than hospital, are June the 10th.

15

16 BY MR. DOUGLAS MULDER:

17 Q. Dr. DiMaio, in reviewing

Defendant's

18 Exhibit No. 93, that is the operative report, did
you

19 determine from that report that Darlie Routier had
20 experienced considerable blood loss?

21 A. The -- yes, sir. That in
conjunction

22 with the lab reports. That is, the report by Dr.
Santos

23 describes an incised wound, running down the right
side

24 of the neck onto the chest, and then a continuation
on

25 the left side of the chest.

Sandra M. Halsey, CSR, Official Court Reporter

1 And, he indicates that the -- he
calls
2 it a laceration, it's really an incised wound, a cut
--
3 extend down to the sheath of the carotid artery, and
this
4 is almost like a thin, transparent membrane, the best
way
5 to think of it, it looks like Saran Wrap, so, that
was
6 wrapping the vessel, and it is about a millimeter
thick,
7 there may be a little more there.

8 So, essentially, you are talking
about
9 a cut that went down to, virtually, the wall of the
10 carotid artery. And, if it had severed the carotid
11 artery, she would have bled to death, because the
blood
12 would have pumped out in a matter of a few minutes
and
13 there would have been death.

14 When you look at the rest of the
15 medical records, they indicate that when she came
into

16 the hospital, she had a blood hemoglobin, that is
the

17 amount of -- that is kind of a measurement, the
amount of

18 hemoglobin that you have in your blood.

19 A blood hemoglobin level of about
11.6

20 and this is about 3:30 in the morning. Then by the
next

21 day, it had dropped two points, from 11.6 down to
9.6,

22 and what happened was is that she had lost a
significant

23 amount of blood from this injury. And -- but it's
not

24 initially reflected. That is, what happens is that
when

25 you lose blood, your body compensates for it by

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1 mobilizing fluid from outside the bloodstream and
pours

2 it in.

3 In addition, when you go to the
4 hospital, you know, they run those IV's, they are
putting

5 in fluids. So what happened is, is that her
hemoglobin

6 appeared relatively normal when she came in, because
the

7 blood not been diluted by the fluids. The fluids
came

8 in, it dropped. And what it meant was, that she had
lost

9 a significant amount of blood from these wounds. And
in

10 fact, one of the diagnosis was acute posthemorrhagic
11 anemia, which meant she lost a lot of blood.

12 So this, these wounds were not,
you

13 know, that and the other wounds on the arm, caused a
drop

14 of two points in her hemoglobin, which is a
significant

15 drop.

16 Q. Okay. Dr. DiMaio, what is your
17 evaluation as regards to the seriousness of that neck
18 wound?

19 A. About another millimeter or two,
and
20 she would have been dead. It would have cut right
21 through the carotid artery.

22 In theory, you could put pressure
on
23 to stop it, but, you know, in a real life situation,
24 people aren't trained like physicians, and she would
have
25 bled to death.

Sandra M. Halsey, CSR, Official Court Reporter

1 It's -- the carotid artery, or the
two
2 carotid arteries deliver 75 percent of the blood
going to
3 your head. So, she would have lost approximately 40
4 percent of the blood supply going to her head. And
every
5 time her heart beat, there would have been a pulse of
6 blood shooting out the neck, four or five feet, if
she
7 had cut the carotid artery. And, the cut was, as I
said,
8 down to the sheath, a millimeter thick, maybe.

9 Q. Dr. DiMaio, have you had the
10 opportunity to view the photographs taken of Darlie
11 Routier on June the 6th, there in the hospital?

12 A. Yes, sir.

13 Q. And, have you also had occasion to
14 review and evaluate the photographs where she is in,
not
15 in hospital garb but in regular civilian clothes,
shorts,
16 I believe, the photographs that were taken on June
the
17 10th of 1996?

18 A. Yes, sir.

19 Q. Okay. Do the bruises on June the
10th

20 of 1996 demonstrate bruising?

21 A. Yes. I mean, if you look at her
arms

22 on the 10th, you can see there is just massive soft
23 tissue hemorrhage.

24 This is her right arm. And what
it is

25 going from the wrist right up to past the elbow and
into

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1 the upper arm, so it's going, just sweeping, all the
way

2 here on what you would call the plexor surface of the
3 arm, not on the back. And this is extensive
hemorrhage.

4 And it appears to be a few days old, because it's
5 turning, it's a good purple color, and it's
indicative of

6 severe, blunt trauma.

7 This, you know, everyone bumps
into

8 something, an edge or something and gets a little
bruise,

9 but just think about, if you have gotten one little
10 bruise, how much force must have been generated,
must

11 have been put against this arm to cause the whole
arm

12 from the wrist past the elbow, to be bruised.

13 So that is a lot of force. And
so

14 there is evidence of really severe injury, and
there is

15 like a little, a few little, what appears to be
scrapes

16 here, indicating that there was an impact with

1 A. Yes, sir.

2 Q. And also, an IV in her, I guess,
what
3 is that, the inside of the left elbow?

4 A. Yes, sir. Right. Yes.

5 Q. That's what I call it.

6 A. All right. That is good enough.

7 Q. All right. At least --

8 A. At the cubital fossa, let's use
the
9 crease.

10 Q. Is that bruising, in your judgment
and
11 experience, is that a result of medical intervention?

12 A. No. The bruising here -- I mean,
I --

13 at one time I actually treated live people. I
started

14 IV's. That was the day before we had disposable
needles,

15 and those needles were dull.

16 I can tell you, I perforated
vessels

17 and there was blood, and you did not get this massive
18 hemorrhage into the arms.

19 And I have had IV's started on

me,

20 where they have poked through, and you don't get
it.

21 This is blunt force injury, and it's deep, it's deep
down

22 into the muscle. And so, it was deep down and then

23 gradually the blood percolates up to the surface

24 underneath the skin.

25 Q. Doctor, directing your attention
to

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4542

1 the right arm, the photographs that depict the right
arm?

2 A. Yes, sir.

3 Q. And, you will notice two stab
wounds

4 in the right forearm?

5 A. Yes, sir.

6 Q. One of some two inches in length
and

7 the other, of approximately a half inch in length?

8 A. Yes, sir.

9 Q. Do you have an opinion with
respect to

10 whether or not the bruising associated with the right
arm

11 was caused by those two stab wounds?

12 A. No. Stab wounds in those
locations

13 would not produce that massive bleeding into the
arm.

14 And in fact, if you even use a
15 little -- if you think about it, look at where they
are.

16 They are on the back, and on the back, there is not
much

17 bleeding. Where is all of the bleeding? Let's see,
18 excuse me.

19 There's so many, I have got to
juggle

20 these things. It's on the other side. So, these
stab

21 wounds have nothing to do with the bleeding in the
arm.

22 Q. All right. Doctor, what sort of
23 instrument caused those injuries?

24 A. The two penetrating wounds in the

--

25 Q. No. No. That caused the
bruising?

Sandra M. Halsey, CSR, Official Court Reporter

19 compatible, those shown in the photographs of June
the
20 10th, of 1996, are those consistent and compatible,
the
21 bruises evidenced in those photographs, with having
been
22 received by Darlie Routier during the early morning
hours
23 of June the 6th of 1996, some four days or so
earlier?

24 A. Yes, sir. The coloration is
25 appropriate, and it is consistent with it.

Sandra M. Halsey, CSR, Official Court Reporter

4544

1 Q. Okay. Dr. DiMaio, are those
injuries

2 consistent or inconsistent with having been
3 self-inflicted, the bruising?

4 A. That is -- I would say it's
5 inconsistent. I mean, how do you get blunt force
6 injuries here? I mean, it's easy to get blunt force
7 injuries here, if you want, you know, I can bang my
arm

8 against the edge here. But to here? And, also,
again,

9 it's very wide spread.

10 I mean this, this, a lot of
force.

11 You -- everybody has bumped into something and you
get a

12 bruise, but look at this. It's just really severe
13 hemorrhage up and down the arm. This is tremendous
14 force.

15 Q. Doctor, what are defensive wounds?

16 A. Defensive wounds are injuries that
you

17 get when you try to ward off an attacker. And, the
18 original description had to do with knives, and it
could

19 also be blunt force.

20 In other words, if somebody is
21 swinging something hard at you like a hard object,
and

22 you put your arm up like that and you get injuries
here

23 and here, then you have what is called defensive
wounds,

24 because they are incurred when you try to protect
25 yourself. And people will typically protect the most

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4545

1 important part of the body, that is the head. So
people

2 tend to raise arms up, if it's a blunt force, and try
to

3 protect their face and head.

4 Q. Doctor, I'll ask you to refer to
the

5 photographs and see if they don't depict an injury to
the

6 neck of Darlie Routier, an injury, a stab wound to
the

7 left chest of Darlie Routier, cuts to the left,
inside

8 fingers to three of her fingers on her left hand, and
two

9 stab wounds in her right forearm?

10 A. Yes, sir.

11 Q. All right. Would you characterize
any

12 of those injuries as defensive wounds?

13 A. The wounds that you would consider
14 defensive would be the wounds of the back of the
right

15 forearm. This is a close-up in my right hand. This
is

16 the type of wound that if somebody was trying to
stab at
17 you with a knife, what do you do? You put your arm
up.
18 And there are two stab wounds here and here.
19 If she had been dead, and I had
done
20 an autopsy, I would have called -- I would have put
this
21 section down as two penetrating stab wounds of the
right
22 forearm, parenthesis, defense wounds. Because this
is
23 the location that you get these wounds in, if
somebody is
24 going to attack you with a knife. It's typical.
25 That is, people who commit suicide

Sandra M. Halsey, CSR, Official Court Reporter

1 will cut themselves here. Why? Because this is the
2 natural way to do it. Although, they cut the edge,
this
3 way. But these are vertically oriented, you know, on
the
4 hands in its normal position, and on the back. And
this
5 is typical for the defense wounds, when someone is
coming
6 at you with a knife and you hold your arm up in the
front
7 of you, and this is where you would get the defense
8 wounds.

9 Q. Okay.

10 A. And the other place you get
defense

11 wound are on the hands. In fact, the original
12 description of defense wounds is on the hands.

13 Because what happens is someone
comes

14 at you with a knife, you try to ward them off, a lot
of

15 times they try to grab the blade, and you can see
there

16 is a cut going across, a very superficial cut going
from

17 one finger to the other and there. This has the
18 appearance of one single cut.

19 All right. I know someone says,
20 "Well, they don't exactly line up," but you know,
your

21 fingers, you don't walk around with your hand like
that,

22 I mean, you curl them and then maybe down or up.

And

23 this has the appearance, again of a defense wound.

24 Again, if this was an autopsy

case, I

25 would put, you know, incised wounds of fingers,

Sandra M. Halsey, CSR, Official Court Reporter

4547

1 parenthesis, defense wounds.

2 Q. Okay. Dr. DiMaio, have you had
3 occasion in the past to examine injuries or render an
4 opinion as regards to whether or not those injuries
were
5 self-inflicted?

6 A. Yes. The last time I think was
about,
7 just before Christmas. A nurse shot her, I think it
was
8 common-in-law husband, and her defense was is that he
9 attacked her with a knife. And, you know, they were
10 obviously self-inflicted wounds.

11 And my office has had two other -
- in
12 the last three or four years, two other cases where
the
13 defense was, you know, it was self-defense, and I
had
14 to -- I warded off a knife, and these are defense
wounds,
15 you know, these wounds were incurred, but actually
they
16 were incised wounds.

17 One was, I think, an oral surgeon,
18 another one, a dentist. And again, I had another

case of

19 a doctor who self-inflicted wounds and was trying to
say

20 he was attacked.

21 Q. All right. Dr. DiMaio, assume
that

22 Darlie Routier is right-handed, are those injuries
that

23 you observed in the photographs, are they consistent
or

24 inconsistent with self-infliction?

25 A. They are inconsistent with

Sandra M. Halsey, CSR, Official Court Reporter

4548

17 THE WITNESS: The cut comes down
like
18 that, and now you start to go back. And notice how
you
19 get a skip, and if you look at these wounds, they
line
20 up.

21

22 BY MR. DOUGLAS MULDER:

23 Q. Would that be the same if I were
--

24 could you demonstrate that same thing if I were
lying on
25 a sofa?

Sandra M. Halsey, CSR, Official Court Reporter

4551

1 A. Sure. It's the same thing. Well,
it
2 doesn't make everybody horizontal, but it's the same
way.

3 If you look at this, this is one wound coming
straight

4 down this way. It's coming from here, gap, space.

5 And this is not consistent with
6 someone self-inflicting it with the right hand. I
mean,

7 obviously, you can't stab yourself in the back. And

8 people who do self-inflict wounds, will always use
their

9 dominant hand, because that is how you are taught to
use

10 knives and things.

11

12 THE COURT: Thank you, Doctor.

All

13 right. We will recess for lunch now. Until 10
minutes

14 after 1:00 o'clock.

15 All right. Same instructions to
the

16 jury as always: Don't discuss the case
among yourselves,

17 or with anyone. Do no investigation on
your own. If you
18 see any publicity about the case either
on radio or T.V.,
19 newspapers, please ignore it. Thank
you.

20

21 (Whereupon, a short
22 recess was taken,
after

23 which time, the
24 proceedings were
25 resumed in open
court,

Sandra M. Halsey, CSR, Official
Court Reporter

4552

1 in the presence and
2 hearing of the
3 Defendant, being
4 represented by his
5 Attorney, but

outside of

6 the presence of the
jury

7 as follows:)

8

9 THE COURT: Are both sides ready
to
10 bring the jury back in and resume the trial?

11 MR. DOUGLAS D. MULDER: Yes,
sir.

12 MR. GREG DAVIS: Yes, sir, the
State
13 is ready.

14 THE COURT: All right. Bring the
jury
15 in, please.

16 Will the Court come to order,
please.

17 THE BAILIFF: Please have a seat.

18

19 (Whereupon, the jury

20

the

21

the

22

were

23

the record,

24

court, in the

25

and hearing

was returned to

courtroom, and

proceedings

resumed on

in open

presence

Reporter Sandra M. Halsey, CSR, Official Court

4553

1 of the
defendant,

2 as
follows:)

3

4 THE COURT: All right.

Let the record

5 reflect that all parties in the trial are
present and the

6 jury is seated.

7 Mr. Mulder.

8 MR. DOUGLAS MULDER: Yes,
sir.

9

10

11 DIRECT EXAMINATION

(Resumed)

12

13 BY MR. DOUGLAS MULDER:

14 Q. Dr. DiMaio, are you
familiar with

15 blood pattern interpretation?

16 A. To a certain degree, yes,
sir.

17 Q. And Dr. DiMaio, as a
medical doctor,

18 what aspects and variables from a medical
standpoint must
19 be taken into consideration in blood pattern
20 interpretation?

21

22 MR. TOBY L. SHOOK: Judge

-- excuse

23 me, Doctor -- could we approach the bench
for one moment?

24 THE COURT: You may.

25

Sandra M. Halsey, CSR, Official Court
Reporter

4554

1 (Whereupon, a
short
2 discussion was
held
3 at the side of
the
4 bench, between the
Court,
5 and the attorneys for
6 both sides in the case,
7 off the record, and
outside
8 of the hearing of the
9 Jury, after which time,
10 the proceedings were
11 resumed on the record,
12 in the presence of
13 the jury as follows:)

14
15 THE COURT: Okay. Thank you.

Go

16 ahead.

17

18 BY MR. DOUGLAS MULDER:

19 Q. Dr. DiMaio, what are the
variables

20 that have to be taken into consideration from a
medical

21 doctor's standpoint in blood pattern
interpretation?

22 A. Okay. Essentially, bleeding is
not a

23 simplistic thing. So, if you have -- some people
think,

24 you know, if you cut yourself or you have a wound,
25 everybody bleeds the same. But there are a lot of
things

1 that go into how you bleed.

2 One of the simplest is, it has to
do

3 with what is called, the Langer's lines, the elastic
4 fibers in your skin.

5 We all know as we get older, our
skin

6 sags. And what happens is is that in the skin,
beneath

7 the skin, there are elastic fibers and they make the
skin

8 very contract, you know, contractile.

9 And, they run certain ways
through the

10 body. And, have you ever seen anyone with a
vertical

11 scar on their forehead, you notice how it stands
out, but

12 then you see people who have horizontal scars and it
gets

13 lost in the normal folds.

14 And plastic surgeons take
advantage of

15 these elastic fibers to hide their scars. And so,
if

16 you -- let's say you have been stabbed. Suppose you

get

17 stabbed, if you get stabbed perpendicular to

Langer's

18 lines, the elastic fibers pull open the wound and

you get

19 a lot of blood coming out, if there is a vessel

20 underneath that is spurting, it will spurt out.

21 If you cut along the fibers, the

wound

22 tends to be slit-like and it may not begin bleeding

23 immediately, or if it does bleed, it will not bleed

as

24 much as the vertical one.

25 Then you have to take other
factors.

1 Right beneath the skin in most parts of the body,
you
2 have muscle. And everybody has had a muscle cramp,
you
3 know, when the muscle contracts down.

4 Suppose you get a stab wound in
the
5 chest here, through the muscle. Is the stab wound
6 parallel or perpendicular to Langer's lines? Then
when
7 it goes in, is it running with the muscle or against
it?
8 If it's running against the muscle, the wound will
gape
9 open.

10 If it's running with the muscle,
it
11 will be slit-like. And then you are irritating the
12 muscle, will it go into a cramp and shut down and
reduce
13 the amount of bleeding?

14 Then, suppose you do have a stab
wound
15 going through here. And then suppose you move your
arm

16 or maybe your arm had already been moved in an
unusual

17 position when you had the wound, and now you
moved it

18 back, the muscle can slide over, and there could
be

19 contraction.

20 So, a simple stab wound may
not be

21 simple. The amount of bleeding may be determined
by

22 Langer's lines, the elasticity of the skin, whether
you

23 are cutting against the muscle or with the muscle,
24 whether the muscle contracts down.

25 And then, when you get into a
body

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1 cavity, do you hit a large vessel? Does the
bleeding

2 from the large vessel go into the cavity first, and
then

3 leak out? Or does it -- is the vessel so close to
the

4 surface that it pulsates out?

5 Then, of course, you have
clothing.

6 You have, say, a shirt like that. You get a stab
wound

7 here and then the clothing shifts, or maybe the
clothing

8 had been pulled over when you got the stab wound.

9 Now the clothing shifts over it.
And

10 so that affects the way you're bleeding. So the
concept

11 people have is you get a wound and the blood comes
out in

12 a simple pattern. It is not that simple.

13 There are a number of factors that
can

14 determine how much blood comes out, how fast, and
whether

15 it comes out in spurts or kind of dribbles out, and
16 unfortunately, some people don't take that into
account
17 in bloodstain interpretation and that is the Achilles
18 heel of bloodstain interpretation.

19 It makes an assumption that is
not
20 true. That all wounds are equal, all wounds bleed
the
21 same, and that you can -- you have -- you are
starting
22 out with a fixed concept, or fixed concept and then
you
23 can interpret, and it doesn't always happen that
way.

24 On top of that, you will actually
get
25 certain areas of the body where you will get a wound,
you

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15 blood comes out is complex and it's not simple, and
16 to
17 try to assume everybody and every wound will bleed
18 the
19 same, doesn't work out. And again, that is the
20 Achilles
21 heel.

19 Q. So, I guess what you are saying
20 is
21 that, when somebody gets a stab wound or a puncture
22 wound, the body doesn't always bleed like water
23 runs out
24 of faucet, when you turn the faucet on.

23 A. Right. It depends on, again,
24 all of
25 these factors, including clothing, whether it's
with the
26 grain, against the grain, whether it's muscle,
whether

1 you hit a vessel, there's a whole bunch of things.
And

2 you can only generalize, but it may not actually,
what

3 you may say, may not apply in this case. But you
can

4 just get a general feel.

5 Q. Dr. DiMaio, have you seen many
victims

6 of stab wounds?

7 A. Yes. I would say a couple hundred
in

8 the last few years.

9 Q. Let me show you what's been marked
for

10 identification and record purposes as State's Exhibit
No.

11 25.

12 A. Yes, sir.

13 Q. And it has quite a number of holes
14 that are taken for evidence purposes. But it also

has a

15 hole here, a defect here, and it has a defect here,
and

16 it has a defect here.

17 I was thinking there were four of

18 those defects, but at any rate, here, here and here.

Do

19 you routinely find defects in clothing worn by a

victim

20 where there is no corresponding stab wound or cut on

the

21 body itself?

22 A. All the time.

23 Q. How is that?

24 A. Because essentially, what you are

25 talking in most cases, it's not just somebody
sticking a

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4560

1 knife in. There is a struggle. And you try to grab
2 people, and most stabbings are close combat.

3 Suppose you grab a shirt like
this,

4 and you pull it, and then a knife blade comes toward
you,

5 and you pull back, so it cuts the material.

6 But, let's put it this way: I
would

7 say that maybe a quarter of all cases, you will
find a

8 little tear, you know, of multiple stab wound
cases, a

9 little tear, a point where the tip of the knife has
gone

10 through, and even a slash, and on the body it doesn't
11 correspond.

12 Because what's happened is, during
the

13 struggle the clothing has been pulled away, or it --
14 maybe just hangs down, and so, when someone slashes
the

15 knife, it catches the material, but it doesn't go in
deep

16 enough to cut the body.

17 So that's just common, all the

time

18 you will find defects in the clothing, and no
injury to

19 the underlying body. An examination of the
clothing at

20 the time of the autopsy is part of the autopsy.

21 In my autopsy reports, and every
one

22 that comes out of my office, if the person is
wearing

23 clothing and we have the clothing, in the autopsy
report

24 will not only be a description of the body, but will
be a

25 description of the clothing, and whether there are

Sandra M. Halsey, CSR, Official Court Reporter

4561

1 corresponding defects or noncorresponding defects in
that

2 clothing.

3 MR. DOUGLAS MULDER: Thank you,

4 Doctor.

5 Mr. Shook will have some
questions for

6 you.

7

8

9

CROSS EXAMINATION

10

11 BY MR. TOBY SHOOK:

12 Q. Dr. DiMaio, it's my understanding
you

13 are the chief medical examiner of San Antonio?

14 A. Yes, sir.

15 Q. Okay. And additionally, you make
16 extra money coming in and testifying at -- out of
other

17 jurisdictions?

18 A. Right. I am not here as -- in my
19 official capacity as chief medical examiner. I am
here

20 on my own time, compensatory time, and this is what
I do,

21 you know, it's work on the side.

22 Q. And when you are testifying as an

23 expert, for instance, today, how much -- what is

your fee

24 that you charge for that?

25 A. It depends on how far I have to
go and

Sandra M. Halsey, CSR, Official Court Reporter

4562

1 it depends on how long, it depends on how much time.

2 Q. In this particular case?

3 A. I think my total bill, when I
submit

4 it, is going to be about fifteen hundred dollars.

5 Q. Okay. And, you, in recent years
6 testified for, as I said, the defense in cases such
as

7 this, haven't you?

8 A. Yes, most of my testimony is for
the

9 prosecution in Bexar County, obviously, because that
is

10 where my job is. And then I -- on private, I do
about

11 half the time for the prosecution and half the time
for

12 defense. This Friday I was testifying for the

13 prosecution in Florida, and Tuesday I am testifying
for

14 the defense.

15 Q. A medical examiner is not
supposed to

16 be biased one way or the other; is that right, Dr.

17 DiMaio?

18 A. That's correct.

19 Q. You just, you get the body in and

you

20 do the autopsy, and you testify to questions asked

about

21 what you found; is that right?

22 A. Right. And that is what I'm

doing

23 here. I am just testifying to my scientific

observations

24 of the wounds in this case.

25 Q. And, you have testified for Mr.

Mulder

Sandra M. Halsey, CSR, Official Court Reporter

4563

1 before, haven't you?

2 A. When he was a district attorney,
yes,

3 and also when he was in private practice.

4 Q. How many times have you testified
for

5 him since he has been in private practice, would you
say?

6 A. Maybe four or five times.

7 Q. Okay. And have you consulted with
him

8 on other cases?

9 A. Well, he's shown me occasionally a
10 case or two, and I have told him things.

11 Q. Did you make any report in regards
to

12 this case?

13 A. No, sir.

14 Q. Any notes in regards to this case?

15 A. Just this sheet right here. If
you

16 want to take a look at it.

17 Q. And then the -- the only other
items

18 you looked at were the photographs?

19 A. And the medical records.

20 Q. And the medical records.

21 A. Yes.

22 Q. Did you look at all of the
medical

23 records?

24 A. What? Well, on my testimony.

I've

25 also -- I also have here some testimony by Dr.

1 Townsend-Parchman, but I'm not using any of that.

Do you

2 want to take a look?

3 Q. Yes. But you had the Baylor

medical

4 records to look at; is that right?

5 A. Yes, sir.

6 Q. Okay. And is that -- and then

you had

7 some photographs. When is the first time you looked

at

8 these photographs?

9 A. When I was originally given them

by --

10 it was by Mr. Parks.

11 Q. Okay. You have not interviewed

anyone

12 else in regards to your testimony or opinions?

13 A. No, sir.

14 Q. Have not talked to Dr. Santos or

Dr.

15 Dillawn or any of the nurses at Baylor, have you?

16 A. No, I have just read his medical

17 records and such, yes.

18 Q. Okay. And you said that you

worked on

19 several cases where people have committed self-
inflicted

20 wounds to try to, I guess, what, cover their tracks
or

21 throw off blame on them?

22 A. Yes, sir.

23 Q. Situations like that?

24 A. Yes, sir.

25 Q. So you do see that from time to
time,

1 don't you? People will go to the trouble of
actually

2 having a self-inflicted wound to try to shove blame
off

3 on them?

4 A. Yes, sir.

5 Q. Or point it in another direction?

6 A. Yes, sir.

7 Q. I guess, in your line of work, it
8 never ceases to amaze you what people can be capable
of?

9 A. Yes, sir.

10 Q. Okay. Now, you say that -- well,
let

11 me start this way. You talk about --

12 A. Excuse me.

13 Q. Yes, sir.

14 A. Are you through with my
material, or

15 do you want to look through it?

16 Q. Well, I was going to look
at here in a

17 second.

18 A. Okay. That is fine.

19 Q. Would it be better --

20 A. No, no, no. Go ahead and
look at it.

21 Q. I'll leave it with you in
case you
22 need to refer to it.

23 A. Okay. My piece of paper.

24
25 THE COURT: Can you all
hear him okay?

Sandra M. Halsey, CSR, Official Court
Reporter

4566

1 THE JURORS: Yes.

2 THE COURT: Thank you.

All right.

3

4 BY MR. TOBY L. SHOOK:

5 Q. Now, as far as the
seriousness of the

6 defendant's wounds, Dr. DiMaio, wouldn't the
surgeons who

7 actually performed the surgery on her, be a
better judge

8 of how serious those injuries were?

9 A. Well, yes, sir. And that
is why I'm

10 using their description that it went down to
the carotid

11 sheath. If you are down to the carotid
sheath, you are

12 within one or two millimeters of the carotid
artery.

13 And then, of course, the
medical

14 records, also -- I'm answering you now -- all
the medical

15 records also show the hemoglobin has dropped

by two

16 milligrams. So --

17 Q. But would you agree,

Doctor, that the

18 surgeons who actually performed the surgery

would be a

19 better judge to how serious their injuries --

or her

20 injuries were?

21 A. They might be, yes, sir.

22 Q. Well, they were there,

weren't they?

23 A. Yes, sir, but I don't know

what -- but

24 I mean, you know, it's like saying, someone

shot at me

25 with a .44 magnum and it missed me, so
therefore, it

Sandra M. Halsey, CSR, Official Court
Reporter

4567

1 wasn't very serious.

2 Q. Doctor, that is not the
question I

3 asked you. They were there, weren't they?

4 A. Right, yes, sir, they
were.

5 Q. Okay. They performed the
surgery on

6 her neck, didn't they, Dr. DiMaio?

7 A. Yes, sir. And I'm basing
my opinion

8 on their description of it.

9 Q. They saw the wound opened
and operated

10 on it?

11 A. Yes, sir.

12 Q. So wouldn't they be the
better judge

13 of just how serious that injury was?

14 A. Yes, sir.

15 Q. Okay. Now, as far as your
opinion

16 about the defendant self-inflicting these
wounds, are you

17 saying that it is impossible, that it

couldn't have

18 happened?

19 A. No. What I'm saying is,

that based

20 upon their location and their path, and the

nature of the

21 wounds, it is more probable, the term I used,

that it's

22 inflicted by someone else. Anything is

possible, but I

23 am saying in this case, it's not probable.

24 Q. Okay. And as far as the

neck wound,

25 you were talking about -- well, how would you describe

Sandra M. Halsey, CSR, Official Court
Reporter

4568

1 the neck wound? Is it -- it's a pretty long
wound, I

2 guess, wouldn't you say?

3 A. It looks to be about three
inches or

4 so, the primary wound.

5 Q. Okay. Have you actually
gotten to

6 examine her scar?

7 A. No.

8 Q. Okay. Would that help you
in some of

9 your opinions, if you got to look close at
the scar?

10 A. It doesn't make any
difference because

11 it is pictured in the photographs.

12 Q. Okay. So those would be
fine for you?

13 A. Yes, sir.

14 Q. Okay. You said -- do you
have any

15 opinion as to how fast that wound would bleed
out? You

16 were talking about when Mr. Mulder was
finishing these --

17 what did you call them? Langer's lines?

18 A. The Langer's lines, yes,
sir.

19 Q. Did that make a difference
in this

20 case, or do you have an opinion as to how
fast the neck

21 wound might bleed?

22 A. No, sir. All I know is
that, you

23 know, she lost two milligrams -- two grams of
hemoglobin.

24 Q. If that neck was cut, or
when it was

25 cut, would you expect it to bleed pretty
quickly?

Sandra M. Halsey, CSR, Official Court
Reporter

4569

1 A. It would begin bleeding
fairly

2 quickly, within 30 seconds to a minute, yes,
sir.

3 Q. Would a neck wound like that
bleed a

4 lot, have a lot of blood coming out of it?

5 A. Under most conditions, it would
bleed

6 a lot, yes, sir.

7 Q. Okay. And, how would you
describe the

8 position of this wound on the neck. Is it -- I
mean,

9 let's say, she didn't survive, she had died. How
would

10 you describe it in an autopsy?

11 A. An incised wound.

12 Q. Okay. And what position would
you say

13 it was on the neck?

14 A. Okay. It's on the -- okay, it
would

15 be an incised wound of the anterior aspect of the
neck,

16 beginning, say, this is -- I'm just throwing numbers
out

17 saying --

18 Q. Sure.

19 A. -- 2 inches to the right of the
20 midline, above -- say an inch or two above the
clavicle,

21 the collarbone and running downward and medially,
that is

22 towards the center of the body, crossing the midline
and

23 extending towards the medial end, that is the inner
end

24 of the left collarbone. And the incised wound
extends

25 down through the muscle, up to the carotid sheath.

1 Q. Okay. How about the angle? How
2 severe an angle is the neck wound?

3 A. What do you mean, how severe an
angle?

4 Q. Well, is it, like, vertical,
oblique,
5 horizontal?

6 A. It's an oblique. It's running
7 downward from right to left.

8 Q. As far as the neck wound goes,
would
9 you say it was a pretty long wound?

10 A. Well --

11 Q. I think it's in the medical --

12 A. It's a couple of inches, right.

I

13 think it says 7.5 centimeters or so. Let me see how
long

14 is this drawing?

15 Q. I thought I saw nine millimeters.

16 A. Nine centimeters?

17 Q. Or centimeters, I'm not sure.

18 A. Okay. Nine centimeters then
would be

19 approximately four and a half inches. No, let me

see,

20 no. It's three and a half inches, that is what I
said.

21 Okay. It's 2.5 centimeters per inch and 10
centimeters

22 would be four inches.

23 Q. Okay.

24 A. So, it's a little less than four
25 inches.

Sandra M. Halsey, CSR, Official Court Reporter

4571

1 Q. A little less than four inches.

2 A. Yes, sir.

3 Q. And looking at the photograph
here in

4 28-B, it covers most of the front of the neck, I
guess,

5 wouldn't you say?

6 A. It begins to the right of the
midline,

7 runs downward onto the upper chest, right. Yes,
sir, so

8 that is the primary one.

9 Q. So we're talking about all down
the

10 front of the neck? Starting at the top right and
going

11 down?

12 A. Yes, sir.

13 Q. Now, you can't say, or maybe you
can,

14 if it started here or there? I mean, at which end
it

15 starts, the cut? Can you tell us which end, just
looking

16 at it?

17 A. No.

18 Q. So it could go this way or that
way?

19 A. You could in theory say, it went
up

20 this way. But of course, the problem there is if
you are

21 trying to say it was self-inflicted, it becomes even
more

22 difficult.

23 Q. Now Doctor, are you saying that
the

24 defendant could not take this knife --- oh, I think
we --

25 she could cut her own neck with this knife, couldn't
she?

1 A. Well, I said it's possible, but
2 improbable due to the -- if you look at it, see how
it
3 comes down and then skips and then down.

4 Q. Well, that is if you take it
through
5 that that is one long, continuous cut, right?

6 A. Yes, sir, and it lines up, and
it's
7 consistent with it. Down, then you come, as you're
8 coming, then you come back and put your chest out
and
9 then it catches it.

10 Q. Well, I don't want to use this
knife
11 on myself, obviously. Let's try to measure it up
here.

12 But there is nothing --

13 A. It would settle the problem, how
fast
14 the bleeding was, you know.

15 Q. Yeah. All right. Well, I don't
think
16 I will be demonstrating it. Maybe Mr. Mulder could
come

17 up here and do that.

18

19 MR. DOUGLAS MULDER: Hand me the
20 knife, I'll do it.

21

22 BY MR. TOBY L. SHOOK:

23 Q. But there is nothing -- nothing
that

24 would prevent her from taking that knife, if she
wanted

25 to, and cutting across here?

Sandra M. Halsey, CSR, Official Court Reporter

4573

1 A. That's correct. Then she would
have

2 to cut again, then she would have to change hands.

3 Q. Yes. And then do --

4 A. Turn her arm like that.

5 Q. Yeah.

6 A. But, what I'm saying is, it's
7 improbable.

8 Q. It's improbable?

9 A. Yes, because people who we've
seen and

10 who have had incised, who do try to do that, do the
same

11 thing, they always use the dominant hand, the right
hand.

12 It's so ingrained that you don't even think about
it.

13 Q. That is what people usually do?

14 A. Right. These people are, you
know --

15 Q. Okay. But there is nothing
preventing

16 the --

17

18 MR. DOUGLAS MULDER: Excuse me.

19 Excuse me. If you just will let him answer.

20 THE WITNESS: These people, no
insult

21 to the defendant, but they're a little better --
they

22 were better educated than her and they are familiar
with

23 medical things and they may even be familiar with

24 forensics, which I seriously doubt that she is.

25

Sandra M. Halsey, CSR, Official Court Reporter

4574

1 BY MR. TOBY L. SHOOK:

2 Q. But there would be nothing
preventing

3 the defendant from -- take the knife with the left
hand,

4 stabbing it right there in the right arm. She could
do

5 that, couldn't she?

6 A. That's what I said. I said it's
7 possible, but not probable.

8 Q. Well, in fact, there were two
wounds

9 there on the right arm, aren't there?

10 A. Right.

11 Q. One is much smaller?

12 A. Yes.

13 Q. Didn't even require any sutures
or

14 anything. This wound we're talking about right here?

15 A. Yes.

16 Q. And, is this wound kind of right
here,

17 Doctor, would you say in the middle of the forearm or
18 near the elbow?

19 A. It's on -- it's approaching the

side

20 of the arm.

21 Q. Okay. And this other one is right

22 above it?

23 A. Right.

24 Q. Okay.

25 A. It's actually a little further

towards

Sandra M. Halsey, CSR, Official Court Reporter

4575

1 the finger.

2 Q. You talk about hesitation wounds,
that

3 is when a person might work up enough courage, or
testing

4 out, for instance, sometimes you get suicides, they
might

5 cut a little bit before they make the big cut. Is
that

6 right?

7 A. Hesitation marks are associated
with

8 incised wounds, right. Cuts where they start to
make a

9 cut and it hurts, and then they start and it hurts,
so

10 you will see a number of smaller wounds.

11 Q. This smaller wound we see here
could

12 be consistent with sort of a hesitation wound,
couldn't

13 it?

14 A. You could say that if you think
15 it's -- if you think they are self-inflicted. Or,
if

16 it's not self-inflicted, it's just a small stab
wound.

17 Q. Right. It could go either way?

But

18 it could be consistent with someone stabbing their
arm

19 and then stabbing it with greater force right below
it.

20 A. Right. What I am talking about
is

21 medical probability. I'm not talking about
possibility.

22 Q. And, again, as far as the angle
goes,

23 right-handed, I mean, do you think it's real
difficult

24 just to do that?

25 A. It actually is.

1 Q. Well, I'm doing it, aren't I?

2 A. Yes, I know.

3 Q. Okay.

4 A. But well, okay. Never mind.

5 Q. Okay.

6 A. It's difficult, but then again,
okay,

7 so you do it this way, which is difficult, it's
easier

8 just to go this way, and most people would go this
way.

9 Why go this way? Why do it difficult?

10 First of all, if you're going to
cut

11 yourself and you know it's going to hurt and
everything,

12 why do it the hard way? Why not just go that way?

13 You are saying she went that
way, then

14 put the knife in her other hand and then stabbed
herself.

15 Q. Could do it? Could happen
though?

16 A. It could happen, but --

17 Q. Nothing could stop her and it's

not

18 physically impossible to do that?

19 A. It's not possible (sic) -- it's

not

20 impossible, I said it's not probable.

21 Q. As far as that blunt trauma

goes, that

22 is severe blunt trauma; is it not?

23 A. Yes, sir.

24 Q. And the bruising that you see

there,

25 you said -- could that be consistent with just
being two

1 days old?

2 A. It looks to be a couple of days
old.

3 That's all I will say. You can't date it any
better.

4 Q. You can't come to dating them
real

5 close, can you, Doctor?

6 A. No, sir.

7 Q. If this photograph was taken on
the

8 10th, it's possible that injury could have happened
on

9 the 8th?

10 A. It's possible, yes, sir.

11 Q. Okay. This bruise is still --
well,

12 somewhat crimson here on this.

13 A. Yes, sir.

14 Q. Which shows it's a more recent
bruise;

15 is that right?

16 A. Well, I wouldn't say that. I
mean, I

17 have said that it can, so I wouldn't push my

luck.

18 Q. Okay.

19 A. Okay. With the coloration.

20 Q. And blunt trauma is caused
when

21 something strikes the skin very hard; is that
right?

22 A. Yes, sir.

23 Q. Okay. And you have looked at
-- it

24 could be like you say, people oftentimes use a
bat,
25 right?

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Reporter

4578

1 A. Yeah, I just used it because
everyone

2 talks about a bat, but it could be anything hard.

3 Q. Does it look like there might
be some

4 kind of pattern to these abrasions?

5 A. The only thing that I saw that
6 suggested a pattern of some sort was those little
marks

7 over there, but I'm not going to commit myself.

8 Q. Okay. But this could possibly
have a

9 pattern, what you see here, these red --

10 A. It could be something, right.

11 Q. Okay. And a pattern can be
caused

12 when someone, I don't know, well, you tell the
jurors how

13 a pattern can show up on skin.

14 A. A pattern indicates that the
surface

15 that -- impacting was not smooth. I mean, there
was some

16 irregularity on it.

17 Q. A brick, something like that
could

18 leave a pattern?

19 A. Yes, sir, anything with a
little

20 irregularity on it.

21 Q. Okay. And wherever it strikes
the

22 skin, it might leave an abrasion to the skin? Or

--

23 A. Well, only if you hit it on
the side,

24 you have to hit the edge.

25 Q. Okay. And you can see,
possibly, you

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Reporter

4579

1 don't know, but possibly that's what we see here
on the

2 forearm?

3 A. Yes.

4 Q. These marks?

5 A. There's three or four marks
there and

6 I don't know what they are, they may be abrasions
and

7 such, but, it's too slim a thing to hang your hat
on, I

8 mean.

9 Q. Right.

10 A. Mix up what I'm saying, but,
let's put

11 it this way, it's there, the significance, I'm
not sure.

12 Q. Well, on Defendant's Exhibit
86, do

13 you also see maybe a similar-type abrasion?

14 A. Yes, sir.

15 Q. Okay. And on, I think, it's
52-E, you

16 have already pointed out this area.

17 A. Right.

18 Q. But also, right along in

there, is

19 there also an area?

20 A. Well, I'm talking about the
same

21 thing.

22 Q. All right. All that area.

And this

23 bruising, obviously, goes from here to here?

24 A. Yes, sir.

25 Q. More on inside; is that right?

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Reporter

4580

1 A. Yes, sir.

2 Q. Again, looking at it from the
other

3 point of view, if you wanted to self-inflict
those

4 wounds, you would just have to take an object and
hit the

5 inside of your arm; is that right?

6 A. Interesting, it's again, with
the

7 non-dominant hand, yes, sir.

8 Q. If you wanted to do it. Or
you could

9 just take your arm against the wall and whack it
real

10 hard, couldn't you?

11 A. Not -- the wall wouldn't work
because

12 your hand would hit also.

13 Q. Your hand would hit? Okay.

But you

14 could do it if you wanted to?

15 A. It's possible. It would be
very hard.

16 Q. But again, like you said, in

your line

17 of work you see people do all kinds of things?

18 A. Occasionally.

19 Q. You didn't get any information
in the

20 medical records that Mrs. Routier had any blunt
force

21 trauma to her torso, did you?

22 A. No.

23 Q. To her head or face?

24 A. That's correct. There's

photographs

25 of the face and then part of, well, just her
upper

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Reporter

4581

1 extremities, upper chest.

2 Q. Okay. This -- getting back to
the

3 neck wound again, it's almost four inches across
and

4 extends across the front of the neck; is that
right?

5 A. No, it four inches long. It
begins in

6 the neck and then runs down onto the chest.

7 Q. Okay. Wouldn't you consider that,
as

8 far as a neck wound, a pretty long wound?

9 A. Four inches is fairly long, yes,
sir.

10 Q. Okay. And is it just one, is it
just

11 one wound? The primary one we are talking about on
the

12 neck, is that made with one swipe of the knife?

13 A. The only description says, it says
one

14 wound, so that's the only thing. But, it's all been
15 sewed up at that point.

16 Q. Okay. Well, looking at the photos
and

17 what the description is from the medical reports,
that's

18 what it shows? It shows one long --

19 A. It shows a single swipe, yes, sir.

20 Q. Okay. Now, you gave an example of

--

21 well, usually, when you see someone that has been
22 attacked from the front, frontal attack to the neck
with,

23 let's say with a knife or sharp instrument?

24 A. Yes, sir.

25 Q. Those wounds inflicted are usually

Sandra M. Halsey, CSR, Official Court Reporter

4582

1 short, are they not?

2 A. Yes, sir.

3 Q. Okay. Here we have a more long,
4 continuous wound?

5 A. Well, okay.

6 Q. Is that different?

7 A. By short, most -- okay, if you are
8 talking about incised wounds of the neck, generally,
they

9 run about that size which would probably be about
three

10 or four -- three or four inches, you know, three or
four

11 inches for a neck wound, could be called short. I
mean,

12 they are not going to be one-inch wounds, obviously,
they

13 are going to be a couple of inches.

14 Q. Well, just a moment ago you said
you

15 would consider it long, did you not?

16 A. Yeah, it's long. It's not short -

-

17 but when you ask me about short wounds to the neck,
I'm

18 talking three or four inches, too. I mean, I'm

19 talking -- a long wound to the neck is when somebody
gets

20 someone behind you and runs it completely around, so
you

21 are talking about six or seven inches.

22 But slash wounds of the neck
typically

23 run like this, because what happens is they will
slash

24 down like this, and so you will see it running about
that

25 length. But a long wound would be if you're cutting

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4583

1 someone's throat from ear to ear.

2 Q. Now, defensive wounds, you said
that
3 you usually see those on the palms of the hand, don't
4 you?

5 A. No, I said the original
description of
6 them is on the palms of the hand, but you will get
them
7 on the palms of the hands, and on the back of the
8 forearms, even on the back of the other arms. We
have
9 had people lying on the ground who have put their
legs up
10 and have gotten them actually in their legs.

11 All that a defense wound means, is
12 that it is a wound incurred, in an extremity, in
an
13 attempt to ward off an attacker.

14 Q. And it's just natural to put
your
15 hands up and that kind of thing, to block off
blows,
16 knife or blunt trauma?

17 A. Yes, sir.

18 Q. And you will often see, for
instance,
19 in a knife attack, wounds to the palms of the hand?
20 A. Well, the fingers and palms, yes,
sir.
21 Q. And they can be quite deep?
22 A. They can be deep, yes, sir.
23 Q. Cut to the bone often, don't
they?
24 A. They can be, yes, sir.
25 Q. Now, this particular wound to
Mrs.

1 Routier's hand, that is not a very deep wound, is
it?

2 A. No, it's a very superficial --
there's

3 actually three of them, but I think it's probably
one

4 swipe, but they're very superficial.

5 Q. Extremely superficial?

6 A. Yes, sir.

7 Q. Okay. Also, many times on your
8 defensive wounds, you see them -- what part of the
arm do

9 you call this?

10 A. You talking about plexor surface?

11 Q. I guess so. If that is the word
I'm

12 looking for.

13 A. Yes.

14 Q. You put your arm up. You will
see

15 cuts across that way in defensive wounds?

16 A. Actually, most defensive wounds
from

17 knives are in the back, they are not on this
surface.

18 In fact, that's the way you can
tell
19 people come in with scars. People come in with
scars on
20 this surface, you think they may have tried suicide.
21 This surface, you think they have been in knife
fights.

22 So --

23 Q. What's this surface called?

24 A. That would be the posterior
aspect,
25 back of the forearm.

1 Q. And what is this surface called?

2 A. Plexus. Okay. It's this
surface,

3 plexor surface.

4 Q. And you are saying you don't see
5 defensive wounds on the plexor surface?

6 A. Well, you can see -- what I'm
saying

7 is, you're asking me where they usually occur. And
they

8 are classically described as being on the back and
not

9 here.

10 These suicidal wounds are
described as

11 being on this surface. Homicidal, that is where
people

12 attack you, on the back.

13 Q. Okay. Usually, in cases of
homicide,

14 the assailant doesn't leave the weapon at the scene,
does

15 he?

16 A. Yeah, that's correct.

17 Q. Okay. Another area I wanted to

ask

18 you: Did you look at the autopsy reports on the two
19 boys?

20 A. I just briefly went through them,
but

21 since I didn't intend to testify in anything about
them.

22 Q. I just had one quick question
about

23 that. As far as stab wounds in this case or any
other

24 case, the angle, how it goes in the body. Let me
show

25 you this one. You see this stab wound number 1?

1 A. Yes, sir.

2 Q. It shows the knife coming across
this

3 way into the torso. You can't tell from an autopsy
if

4 the person was laying on their back and they were
being

5 stabbed at this angle, if they were moving around
and

6 maybe the knife went in that way; is that right? Do
you

7 understand what I am saying?

8 A. Well, I think so. What you're
saying

9 is, that just by examining the stab wound alone, you
10 can't say necessarily whether they are standing up or
11 lying down. Is that the question?

12 Q. Right.

13 A. The answer is yes.

14 Q. And even if they were lying down,
they

15 could be moving around during the attack when the
knife

16 is going in?

17 A. Yes, sir.

18 Q. Okay. And as far as blood on the
19 knife, I think that it's your understanding that
three
20 people could have been cut with this knife; is that
21 right?

22 A. Yes, sir.

23 Q. Now, if blood of one of the
children
24 was not found on this knife, that is not -- you
can't
25 say, well, then this knife wasn't used to do the
killing,

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Reporter

4587

1 could you?

2 A. No.

3 Q. Oftentimes --

4 A. It's only significant if you
find

5 blood, it means something; if you don't find it,
it

6 doesn't mean anything.

7 Q. When you stab someone in the
body,

8 skin might wipe it off, an organ might wipe it off,
that

9 kind of thing?

10 A. Yes, sir.

11 Q. Okay. As far as -- here, let me
give

12 you your notes back. I don't want to forget those.

13 A. Okay. Thank you.

14 Q. The blunt trauma that the
defendant

15 received, you wouldn't expect her to sleep through
that,

16 would you?

17 A. No.

18 Q. Okay. And that is going to hurt

when

19 you get hit like that?

20 A. Yes, sir.

21 Q. And, is it a natural reaction,

would

22 you say, that the person that is getting hit with

blunt

23 trauma, they are going to yell out?

24 A. Well, I would assume -- well, I

don't

25 know, I have not beaten anybody, so I can't say. I

would

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4588

1 think it would depend on the person, I mean what is
going

2 on, I mean, you know.

3 Q. Okay. Nothing --

4 A. I think that is outside of my
area.

5 Q. Nothing would prevent a person
from

6 yelling out if they were suddenly attacked in their
home

7 and someone started hitting them with a stick, brick
or

8 whatever?

9 A. I guess not, no, sir.

10 Q. And certainly, the defendant, when
she

11 is stabbed on the throat, wouldn't sleep through
that,

12 would you think?

13 A. No, sir.

14 Q. I mean, they are going to wake up
when

15 someone starts cutting you with a knife?

16 A. Well, I think she would have to
have

17 been moving by virtue, as I said, of going backward,
18 because I think that is one slice wound.

19 Q. Okay. And if her children were in
the

20 same room and stabbed, you wouldn't expect her to
sleep

21 through that either, would you?

22 A. Well, depends.

23 Q. Okay.

24 A. It depends on how violent the
attack

25 was and it depends on how hard the person sleeps, but

Sandra M. Halsey, CSR, Official Court Reporter

1 most -- under most circumstances, you would think
that

2 they wouldn't sleep through it.

3 Q. Well, if you had information that
they

4 were a light sleeper and that they had taken
amphetamines

5 that day, and the amphetamines in fact, are in their

6 blood when they were taken to the hospital, you
wouldn't

7 think they would sleep through that, would you?

8 A. I would say under most
circumstances,

9 right. I think phentermine, not amphetamines.

10 Q. Well, what is that?

11 A. Phentermine is a -- the toxicology
12 report, the only drug present being phentermine,
not

13 amphetamines. Phentermine is essentially a
weight

14 reducing drug.

15 Q. Okay. It's certainly not
something

16 that will put you to sleep though, right?

17 A. No.

18 Q. And, if one of your children were
19 about as far from I am to you right now, the one that
 had
20 all of the stab wounds in the back, Damon, you
 wouldn't
21 expect her to sleep through that, would you?

22 A. Again, as I said, under most
23 circumstances, no, sir.

24 Q. Okay. And if the other child was
25 about from, about this distance, say about five feet,
 you

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1 wouldn't expect her to sleep through that either,
would

2 you?

3 A. Under most circumstances, no, sir.

4 Q. Okay. And did you review the
wounds

5 that those children received, Dr. DiMaio?

6 A. I looked, again, as I say, I
looked at

7 them, I didn't pay that much attention.

8 Q. Those were obviously deep,
penetrating

9 wounds to the trunk, were they not?

10 A. Obviously, yes, sir.

11 Q. Okay. What do you think happened
12 first, the blunt trauma, or the cut to the neck?

13 A. It would be speculation on my
part. I

14 can't answer that.

15 Q. Okay. And would you say, Dr.
DiMaio,

16 that the wounds that the children received, the deep,
17 penetrating wounds to their trunk areas, are
extremely

18 different from the type of incised wounds that she

19 received?

20 A. Well, by definition, a stab wound
and

21 an incised wound are different things. And so the

22 incised wound is inflicted from a swipe with a
knife,

23 while stab wounds is with the tip end, yes, sir.

24 Q. You have come across, I think,

you

25 have, in one of your books that I have looked at, you

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4591

1 have a section about children that are killed,
homicides?

2 A. Yes, sir.

3 Q. And, you talk about, I think it's
in

4 the miscellaneous section, that sometimes children
are

5 killed, they are shot or stabbed or things like
that?

6 A. Most killed -- most children
are

7 murdered within the first two or three years of life
--

8 usually, within the first two years of life or the
first

9 year.

10 Q. Okay. And again -- well, let me
make

11 sure I get the quote right.

12 In talking about these
miscellaneous

13 deaths where children are stabbed or clubbed or
shot, I

14 believe that you write that, "Homicides are
committed by

15 sane individuals, for reasons that may or may not be
16 apparent. There are two groups in this category:
First
17 are violent deaths, which while no attempt is made
to
18 conceal the cause of death, the perpetrator will
attempt
19 to make the death appear to be an accident, or due
to
20 another individual. Thus, the perpetrator will
relate
21 that a child accidentally drowned in the bathtub or
fell
22 in a river. There may be claims that a child was
23 kidnapped by a bearded or masked individual."

24 A. Yes, sir.

25 Q. So you have had -- seen
situations

1 where it's a very violent death to a child and the
2 perpetrator might say, well, just try to blame it
on
3 someone else?

4 A. Oh, yeah.

5 Q. Okay. I don't know if I caught
this

6 right. Did you say people just -- people can
commit

7 suicide by cutting their own throat, can't they? You
8 have seen that, haven't you?

9 A. Yes.

10 Q. And when they do that, they do one
11 long continuous cut, don't they?

12 A. Usually what they do is they will
13 start high up on the side and they will cut down this
way

14 and then they will stop about here.

15 Q. Okay.

16 A. If they are right-handed, you
know.

17 If left-handed, then they will start and they will
come

18 down. It will be cut through, it will start up
high,

19 below the ear and then cut down this way.

20 Q. Starts up high and then comes down

at

21 an angle?

22 A. Yeah, and then loops across the

other

23 side.

24 Q. And then all the way across the

neck?

25 A. Yes, sir.

Sandra M. Halsey, CSR, Official Court Reporter

4593

1 Q. Okay.

2 A. Well, up to a certain point.

Usually,

3 they only get here. Because what happens is, once
you

4 get to this point, it becomes difficult to angle the
5 knife.

6 Q. Thank you, Doctor.

7

8 MR. TOBY L. SHOOK: That's all I
have.

9 THE COURT: Mr. Mulder?

10

11

12

13 REDIRECT EXAMINATION

14

15 BY MR. DOUGLAS MULDER:

16 Q. Doctor, just a thing or two. Are
you

17 familiar with amnesia following a traumatic event?

18

19 MR. TOBY L. SHOOK: Judge --

20 THE COURT: Sustain the objection.

21 705 hearing. The doctor has testified as to what

the

22 basis of his testimony is going to be.

23 Move on to the next question.

24

MR. DOUGLAS MULDER: Yes,

sir.

25

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4594

1 BY MR. DOUGLAS

MULDER:

2 Q.

Doctor, there is a
Polaroid photograph

3 up there, that was
taken by a member, I
believe it's

4 Beddingfield of the
Rowlett Police Department.

5 A.

Yes, sir.

6 Q. It
has some writing on the
back.

7 A.

Yes, sir.

8 Q. Do
you see anything in that
photograph

9 that is dated, I
think at 16:05 on June the
6th of '96,

10 do you see anything
to indicate bruising of

that

11 particular arm?

12 A.

There is a suggestion of
some

13 discoloration below
this wound over here.

14

Unfortunately, because
it's out of

15 focus, you know, it's
difficult to say.

16 Q.

Okay. It would be
somewhat unusual to
17 batter someone in an
isolated incident, just on
the arms,

18 wouldn't it?

19 A.

You mean in defensive?

20 Q.

No, just to -- the
bruising here?

21 A.

Um-hum. (Witness nodding
head

22 affirmatively.)

23 Q.

It's likely that this
occurred at the

24 same time that the
stab wounds were

inflicted, is it not?

25 A.

Yes, I mean, right, yes.
I thought I

Sandra M.
Halsey, CSR, Official
Court Reporter

4595

1 had said that. Yes,
sir.

2 Q.
Okay.

3 A. All I said was, I couldn't say
whether
4 it occurred immediately before or after. There is no
way
5 to say.

6 Q. And they have quite a sensitive
test
7 now, to determine the presence and absence of blood,
even
8 though the instrument has been wiped clean, don't
they?

9 A. Right. You can do a test that
would
10 identify the blood. You might not be able to type
it,
11 but you could say that there was hemoglobin
present, or
12 material that tests positive for hemoglobin.

13 Q. One last thing: You have
testified

14 before lunch that, in your opinion, those bruises

are

15 consistent with Mrs. Routier having been beat
violently

16 with a blunt instrument on or about both of her arms.

It

17 would not be unlikely to also receive an injury to
the

18 head during that beating, would it?

19 A. That's correct, yes, sir.

20

21 MR. DOUGLAS MULDER: I believe
that's

22 all. Thank you.

23

24

25

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4596

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REXCROSS EXAMINATION

BY MR. TOBY L. SHOOK:

Q. But you saw nothing in the medical

records that showed any blunt force injury to the

head,

did you?

A. No, not to the face. I mean, that

also includes the top and back covered by hair and

there

is no mention in the records, and, of course, I can't

see

it on any photographs.

Q. And no indication that anywhere in

the

medical records that she complained about getting her

head whacked real hard?

A. That's correct.

Q. Okay. If you are going to get the

blunt trauma to the arm that is going to cause that

kind

of damage, and you got hit in the head anywhere, it

would

cause a pretty big knot, wouldn't it?

A. It may. I mean, you know, what

we're

20 talking about is not a stationary -- it's not like
you

21 are hitting a stationary object. You would have to
say

22 that -- it's like, what's on one arm that person
would be

23 moving trying to avoid it. So, it just depends on
how

24 hard the impact is. I wouldn't rule it out, but I
mean,

25 I can't say.

Sandra M. Halsey, CSR, Official Court Reporter

4597

1 Q. Well, if a person got hit on the
head,

2 as hard as they did on the arm obviously, that is
going

3 to cause an injury, is it not?

4 A. Right. If that was the case,
right.

5 But I'm saying, I can't, you know I cannot discuss
6 something that I don't know if it was there or not
and

7 say how much force was used to produce a wound which
may

8 or may not be there.

9 Q. Because you don't have evidence or
10 information that tells you that there was any injury
like

11 that?

12 A. That's correct.

13

14 MR. TOBY SHOOK: Okay. That's all
we

15 have, Judge.

16 MR. DOUGLAS MULDER: That's all we
17 have. May he be excused?

18 THE COURT: Any objection? All

1 Your next witness.

2 MR. DOUGLAS MULDER: Dr. Lisa
Clayton.

3 THE COURT: All right.

4 MR. TOBY SHOOK: Judge, could we
5 approach the bench?

6
7 (Whereupon, a short
8 discussion was
held
9 at the side of
the
10 bench, between the
Court,
11 and the attorneys for
12 both sides in the case,
13 off the record, and
outside
14 of the hearing of the
15 Jury, after which
time,
16 the proceedings
were
17 resumed on the
record,
18 outside the

hearing of

19

the jury as

follows:)

20

21

THE COURT: All

right. Ladies and

22 gentlemen, if you will step back to

the jury room,

23 briefly, please.

24

25

(Whereupon, the

jury

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Court Reporter

1 Was excused from
the

2 Courtroom, and the
3 Proceedings were
held

4 In the presence of
the

5 Defendant, with
his

6 Attorney, but
outside

7 The presence of
jury

8 As follows:)

9

10 THE COURT: Let the record
reflect

11 that these proceedings are being held outside of
the 12 presence of the jury and all parties at the
trial are 13 present.

14 Raise your right hand, please,
ma'am.

15

16 (Whereupon, the witness

17 Was duly sworn by the

18 Court, to speak the

truth,

19

The whole truth and

20

Nothing but the truth,

21

After which, the

22

Proceedings were

23

Resumed as follows:

24

25

THE COURT: Do you solemnly

swear or

Sandra M. Halsey, CSR, Official Court Reporter

4600

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

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

3 help you God?

4 THE WITNESS: I do.

5 THE COURT: Have a seat right
here,

6 please. Pull that microphone there. There you go.

7 Okay. And, you have testified before?

8 THE WITNESS: Yes, sir.

9 THE COURT: You are under the
Rule of

10 Evidence.

11 That simply means -- do you
understand

12 what that means? You may not discuss your
testimony with

13 anybody, don't compare it with anybody who has
testified.

14 You may talk to the attorneys for both sides.

15 If someone tries to talk to you
about

16 your testimony, tell the attorney for the side who
called

17 you.

18 THE WITNESS: Yes, sir.

19 THE COURT: All right. These
20 proceedings are being held outside of the presence
of the
21 jury and all parties at the trial are present.

This is a

22 Section 705 hearing to determine the basis of this
23 doctor's testimony.

24 So, if you will state your name

and

25 spell your name, and Mr. Shook is going to be
asking you

Sandra M. Halsey, CSR, Official Court Reporter

4601

1 some very direct questions, and if you will just
answer

2 those. And move on and get the jury back in.

3 Go ahead Mr. Shook.

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

5

6

7

8 Whereupon,

9

10 DR. LISA CLAYTON,

11

12 was called as a witness, for a hearing outside the
13 presence of the jury, having been first duly sworn
by the

14 Court to speak the truth, the whole truth, and
nothing

15 but the truth, testified in open court, as follows:

16

17

18 EXAMINATION

19

20 BY MR. TOBY L. SHOOK:

21 Q. Dr. Clayton, could you tell the

Court

22 your opinions --

23

24 THE COURT: First of all, state

your

25 name, and spell it.

Sandra M. Halsey, CSR, Official Court Reporter

4602

1 THE WITNESS: Lisa, L-I-S-A,
initial

2 K, Clayton, C-L-A-Y-T-O-N.

3 THE COURT: Thank you. Go
ahead.

4

5 BY MR. TOBY L. SHOOK:

6 Q. Could you please disclose the
opinions

7 that you have come to testify on today?

8 A. Well --

9

10 MR. DOUGLAS MULDER: Judge, I
think I

11 can probably sum this up a little bit quicker.

12 THE COURT: All right.

13 MR. DOUGLAS MULDER: She will
testify

14 as to what psychic numbing is. She will testify
with

15 respect to traumatic amnesia.

16 She will testify as to the
effect of

17 the certain sedatives and pain pills and
medication. She

18 will testify -- she is a psychiatrist, Judge. She
is an
19 MD, and she will testify as to her training in
forensic
20 psychiatry.

21 THE COURT: Well, we will place
you as
22 an expert. If you will just sum up what your
findings
23 are and what you are going to testify to.

24 MR. DOUGLAS MULDER: Well, if I
could
25 go on a little bit more, I can do it. She will
testify

1 as to, Dr. Resnick and Dr. Scott's studies with
respect

2 to mothers who kill their children. And she
studied

3 under Dr. Resnick and trained under him, and she will
4 testify with respect to the six categories of mothers
who

5 kill their children.

6 She will testify that she has
examined

7 Darlie Routier, that she has spent, however many
hours

8 with her that she spent with her, that she has
9 interviewed not only her, but family members.

10 And then, we will go through
each of

11 these categories, and she will render an opinion,
and

12 tell why it is or isn't applicable to this
particular

13 case.

14 That is basically -- she will
testify

15 with respect to grieving, and she will testify as
to

16 whether or not she believed that on or about the
3rd day

17 of May of 1996, she believed that the accused was
18 involved in a serious suicidal attempt.

19 THE COURT: Well, anything, Mr.
Shook?

20 MR. TOBY L. SHOOK: Yes, if I
could

21 just ask the doctor some questions.

22 THE COURT: Sure.

23

24 BY MR. TOBY L. SHOOK:

25 Q. So one of your opinions will be
about

1 psychic numbing; is that right?

2 A. Yes, sir.

3 Q. Okay. Could you tell us what
that is?

4 A. Psychic numbing is a term that
is used

5 by psychiatrists and psychologists to describe
someone

6 when they have experienced a traumatic event,
whether it

7 be some sort of assault, witnessing an assault,
rape,

8 witnessing some sort of tragic life threatening
kind of

9 event that may not necessarily threaten them, but
10 threaten someone else.

11 And it just describes how some
12 individuals are essentially -- go through kind of a
state

13 of, I guess, psychic shock, is also another term
for it,

14 where they may be somewhat emotionalist. They may
remain

15 kind of somewhat detached from any type of emotion
that

16 other people might expect someone to have.

17 There may be periods of emotion
and
18 then also periods of, again, detachment. And
again, it's
19 a phenomenon that is seen with anybody that -- or
with
20 some people, not all people -- but some people that
go
21 through any kind of a tragic, shocking kind of
22 witnessing-type event.

23 Q. And, what are the facts or
underlying

24 data that you used to form that opinion in this
case?

25 A. Various, I guess, psychiatric

1 textbooks, there's some articles that have been
written

2 about psychic numbing, but predominantly, I guess,
3 psychiatric and psychological textbooks.

4 Q. Have -- is any of your opinion
based

5 on the interview with the defendant?

6 A. About the psychic numbing?

7 Q. Yes.

8 A. Yes.

9 Q. Okay. And then also, is any of
that

10 done with -- by interviews with relatives, friends?

11 A. Yes.

12 Q. Were any other tests performed?

13 A. Are you talking about in
relation to

14 the psychic numbing?

15 Q. Right.

16 A. No, sir.

17 Q. Is that all the data then that
you

18 relied on in forming your opinion on the psychic
numbing?

19 A. No, I also listened to the 911

tape.

20 Q. Okay.

21 A. And then I also read her written

--

22 Mrs. Routier's written statement to the police.

23 Q. Okay. Then is that all the data

then

24 that you used in forming that particular opinion?

25 A. Yes, sir.

Sandra M. Halsey, CSR, Official Court Reporter

4606

1 Q. Okay. Then traumatic amnesia,
is that

2 another opinion you will be testifying to?

3 A. Yes. That is something that
occurs

4 when, or can occur when an individual, again,
experiences

5 some type of traumatic event where they may have
kind of

6 no memory for, again, parts of the event. They may
have

7 memory of before and then sometime afterwards
regain

8 memory.

9 There have been, again, in the
10 literature, psychiatric literature case reports,
it's

11 also in psychiatric textbooks that essentially some
part

12 of the memory, it's still encoded, but some part of
the

13 memory, it's just essentially dissociated from
their

14 conscious memory. And, sometimes hypnosis can
bring it

15 back, but then sometimes it cannot.

16 Q. And again, what is the
underlying

17 facts or data that you used to form that opinion in
this

18 case?

19 A. Mrs. Routier's statement.

Again, I

20 guess, the 911 tape, the interview, interviews, I
spent

21 over 12 hours on different dates talking to Mrs.
Routier.

22 The interview with her family, and just various
23 psychiatric textbooks and articles.

24 Q. Okay. And, then, you were going

to

25 give an opinion, I believe, on sedatives or the
effects

1 of sedatives?

2 A. Yes, sir.

3 Q. Okay. What is that?

4 A. It's basically how certain kinds
of

5 sedatives that Mrs. Routier had in her system, I
guess,

6 at the first interview when she was still in the
7 hospital, of Demerol and Phenergan.

8 And then, also, throughout the -
- I

9 guess the time after she came home from the hospital,
she

10 was on painkillers, she, -- various family members
and

11 friends, because of her, I guess, emotional state,
gave

12 her numerous pills, such as Valium and Xanax.

13 These kind of medications serve
as

14 disinhibitors, and if anything, it's almost like
some

15 sort of a truth serum.

16 There is a famous type of
interview

17 that psychiatrists sometimes use called an Amytal

1 of disinhibition would be -- she would experience,
and

2 most likely it would induce the truth.

3 Q. And, what underlying facts or
data

4 have you used to form that opinion?

5 A. Again, her -- all of the ones
that I

6 already listed, I guess would be.

7 Q. Her interview as well as the
other

8 interviews you talked about?

9 A. Yes, sir.

10 Q. Okay. And Mr. Mulder said you
were

11 going to talk about studies on mothers that kill
their

12 children; is that right?

13 A. Yes, sir.

14 Q. The six categories. Are you
going to

15 render an opinion about that?

16 A. Yes, sir.

17 Q. Okay. What is that
opinion?

18 A. Well, Dr. Resnick has

listed or

19 proposed six categories. And my opinion about

Dr.

20 Resnick's categories are that Mrs. Routier or

Mrs.

21 Routier does not fit in any of those

categories.

22 Dr. Scott has five categories

and,

23 again, in my opinion about his categories are that

she

24 doesn't fit in any of those categories either.

25 Q. Okay. What are those categories?

Sandra M. Halsey, CSR, Official Court Reporter

4609

1 A. Dr. Scott's categories are
battering
2 mothers, retaliating mothers, mentally ill mothers,
3 unwanted children, and mercy killings.

4 Dr. Resnick's categories are,
5 altruistic murderers, acutely psychotic murderers,
6 unwanted-child murderers, accidental murderers,
7 spouse-revenge murderers, and then another -- his
last

8 category which does not correspond is neonaticide,
which

9 is murder of a baby within the first 24 hours of
life.

10 Q. And what underlying facts or data
did
11 you use to come to that opinion?

12 A. Again, the -- my interviews with
13 Darlie, with her family, again, I guess, the 911
tape,

14 the written statement by her, the various textbooks,
and

15 articles, and obviously, the articles written
16 specifically about those categories, but then also,
other

17 psychiatric textbooks and categories.

18 Q. And what other opinions was it

that --

19 grieving, I believe, is that the other opinion you
are

20 going to render?

21 A. Yes, sir.

22 Q. What's that opinion?

23 A. That opinion has to do with --

24 everyone grieves in different ways, and that there is

no

25 appropriate type of way of grieving. There may --
you

Sandra M. Halsey, CSR, Official Court Reporter

4610

1 might, if you are going to categorize them, you
might, as

2 far as healthy and unhealthy. But people grieve in
3 different ways.

4 I guess I am going to give an
opinion

5 about -- that the events at the cemetery, which some
6 people have misinterpreted, was an appropriate form
of

7 grieving. Do you want me to go into --

8 Q. Yes, please, your opinion.

9 A. That it was not planned to be that
way

10 by Mrs. Routier, that they had had a prayer service
11 before, which she was crying, her mother had told
her

12 that she needed to quit crying so much, that they
were

13 going to be -- that the neighborhood kids were
going to

14 be there and that it would scare them and upset
them,

15 that she tried to essentially put on almost an
16 hysterical-like, kind of happy face.

17 Her sister, her younger sister
had

18 bought this Silly String, and then, they had the kind
of,
19 essentially, celebration as if the child was still
alive
20 for the benefit of neighborhood kids. That it
reflects
21 some cultural and biblical context, in that
Christians
22 are taught, that if they believe in the Resurrection
23 that, you should celebrate a death because the person
is
24 no longer here on earth to suffer, but they are in
25 heaven.

Sandra M. Halsey, CSR, Official Court Reporter

1 That, there are other customs, and
the

2 Irish wakes, where people actually party with the
3 deceased body present. And, that there is different
4 cultural standards.

5 And again, grief is not something
that

6 is a -- universally applied to everyone in every
7 situation.

8 Q. So your opinion on that, I guess a
lot

9 of that came -- the facts on that came with the
interview

10 of the defendant?

11 A. Yes, sir. And, then I guess, you
12 know, everything I also listed. I had, I guess, I
did

13 review parts, or see parts of the news media tape,
and

14 then also my, I guess, biblical and Christian
training or

15 knowledge.

16 Q. And, I think the last opinion
listed

17 was a suicide attempt on May 3rd?

18 A. Yes, sir.

19 Q. What's the opinion on that?

20 A. My opinion is that Mrs. Routier
was

21 not imminently suicidal. That it was more of a
gesture.

22 She did not make an attempt. She phoned her husband.

23 It was more kind of -- she was
just at

24 her wits end at that moment, that her husband

immediately

25 came home, he -- things changed, she began -- he
began, I

Sandra M. Halsey, CSR, Official Court Reporter

4612

1 guess, kind of helping around the house more, that
she
2 was never actually going to go through with this.
3 It was not a fatal-type attempt.
4 Obviously, there was no attempt. The outcome,
obviously,
5 was not fatal. And, that her partial suicide note
that
6 was in her, I guess, diary shows her love and
compassion
7 for her sons.
8 That her, you know, depression or
9 dysphoria was related probably to not having her
period
10 due to the fact that she was breast feeding. That
she
11 had stopped breast feeding but still had not had her
12 period.
13 That within three to four days she
14 began her menstrual cycle again, and there was a
dramatic
15 change in her mood, and that this was not some
chronic
16 type of depression or postpartum psychosis that
lasted
17 until the events on the first -- in the first part

of

18 June.

19 Q. And, again, what are the
underlying

20 facts and data that you rely on for that opinion?

21 A. I guess her suicide note, the
diary,

22 my interviews with her. My interviews with the
families,

23 family members. And again, I guess her statement,
and

24 then various, again, psychiatric textbooks and
articles

25 dealing with depression, suicide attempts and
postpartum

Sandra M. Halsey, CSR, Official Court Reporter

4613

1 depression.

2 Q. Okay.

3

4 MR. TOBY L. SHOOK: If I could
have

5 just one moment, please?

6 THE COURT: Yes. Do you have
anything

7 else, Mr. Shook?

8 MR. TOBY SHOOK: No, sir. I
believe

9 that is all the opinions; is that right?

10 THE WITNESS: Yes.

11 THE COURT: All right, thank you.
12 Bring the jury in, please.

13

14 (Whereupon, the jury

15 Was returned to

16 the

17 Courtroom, and

18 the

19 Proceedings

were

18 Resumed on the

record,

19 In open court, in

the

20

Presence and

hearing

21

Of the defendant,

22

As follows:)

23

24

THE COURT: All right. Let the

record

25 reflect that all parties in the trial are present
and the

Reporter Sandra M. Halsey, CSR, Official Court

4614

1 jury is seated.

2 Ladies and gentlemen of the jury,
this

3 witness has been sworn outside of your presence.

4 This is Dr. Lisa Clayton. C-L-A-Y-T-
O-N.

5 Mr. Mulder.

6

7

8

9 Whereupon,

10

11

12 DR. LISA K. CLAYTON,

13

14 was called as a witness, for the Defense, having
been

15 first duly sworn by the Court to speak the truth,
the

16 whole truth, and nothing but the truth, testified in
open

17 court, as follows:

18

19

20 DIRECT EXAMINATION

21

22 BY MR. DOUGLAS D. MULDER:

23 Q. Dr. Clayton, would you tell the
jury

24 your name, please?

25 A. Dr. Lisa K. Clayton.

Sandra M. Halsey, CSR, Official Court Reporter

4615

1 Q. And, you are a physician, a
medical
2 doctor?

3 A. Yes, sir.

4 Q. Okay. Will you tell the jury
your

5 educational background and experience that qualifies
you

6 as a medical doctor?

7 A. Yes, sir, I received my
Bachelor's

8 degree in psychology from the University of
Oklahoma. I

9 was also a premed --

10

11 THE COURT: Ma'am, you are going
to

12 have to speak a lot louder than that so the last two
13 jurors can hear you.

14 THE WITNESS: Oh, okay.

15 I received my Bachelor's degrees
in

16 psychology from the University of Oklahoma. I was
also

17 premed at the time.

18 I applied, and was accepted into
19 medical school. Four years later, I graduated from
Emory

20 University School of Medicine in Atlanta, Georgia.

21 During medical school you rotate
22 through your third and fourth years. You rotate
through

23 the various specialties of medicine such as OB-GYN,

24 surgery, internal medicine, pediatrics, and

psychiatry.

25 It was during these medical school

Sandra M. Halsey, CSR, Official Court Reporter

4616

1 rotations that I decided that I wanted to specialize
in

2 the medical field of psychiatry.

3 After I graduated from medical
school,

4 I did a one year general internship at Emory in
Atlanta.

5 This consisted of working in neurology, internal
medicine

6 and psychiatry.

7 After I completed my internship, I
did

8 two years of full time psychiatric residency training
at

9 Emory in Atlanta. I then moved to Dallas, Texas, and
10 completed my fourth year of psychiatric residency
11 training at U.T. Southwestern Medical School in
Dallas.

12 There is now a sub-specialty in
the

13 field of psychiatry, called forensic psychiatry.

It's

14 basically how psychiatry interacts with the law in
both

15 civil and criminal matters, and also has to do with

16 taking care of and evaluating inmates who have either

17 been accused of a crime, or already convicted of a
crime,

18 and are incarcerated, but have some sort of
psychiatric

19 disturbance and need medication.

20 I did a one year -- after I did my
21 four years of residency -- internship and residency,
I

22 did an extra year called a fellowship. This was a
23 specialization in forensic psychiatry. I did this at
24 U.T. Southwestern.

25 This consisted this year, of
working

Sandra M. Halsey, CSR, Official Court Reporter

1 solely in forensic psychiatry. I worked at the
Dallas

2 County jail, I have worked at the federal prison in
3 Seagoville. I have worked under various other
forensic

4 psychiatrists. I attended SMU Law School classes. I
5 also went to various conferences and workshops around
the

6 country that had specialization courses in various
7 aspects of forensic psychiatry.

8 Since the time that I have
completed

9 my forensic fellowship I have been in private
practice in

10 the Dallas area.

11 My private practice consists of
both,

12 general adult psychiatry and some forensic work.

13 I have an office by Baylor
downtown, I

14 am on staff at Baylor and I see both in-patients at
15 Baylor Hospital, and I also see out-patients.

16 I also work at some senior centers
at

17 Baylor and see geriatric patients. I work

approximately

18 8 to 10 hours a week at the Dallas County jail, where

I

19 see inmates who are accused of crimes or have already

20 been convicted, but they need psychiatric

medication

21 evaluations or maybe to be put on suicide watch.

But I

22 see them solely as a Dallas County psychiatrist.

23 I work one day a week at

Corsicana,

24 residential youth treatment center, where I

evaluate

25 juveniles who of been committed to TYC, but then
have

1 also been found to have some severe mental
disturbance,

2 and they are sent to Corsicana.

3 I -- and also in part of my
forensic

4 practice I evaluate criminal defendants, such as
Mrs.

5 Routier, and then I also evaluate cases in civil
6 litigations also.

7 I evaluate people for competency,
8 sanity, dangerousness, that sort of thing. And, I
also

9 am on the clinical teaching staff at U.T.
Southwestern,

10 where I help out in the community oversee residents
who
11 are in training, and, I think that is about it.

12 Q. Okay. Very good.

13 A. And, oh, I'm sorry. I'm licensed
to
14 practice medicine in both the states of Texas and
15 Georgia.

16 Q. All right. Dr. Clayton, are you
17 frequently called upon to render a psychiatric
opinion,

18 an expert opinion in court?

19 A. I guess I would call it
frequently,

20 yes, sir.

21 Q. Okay. Have you testified in
court

22 over one hundred times?

23 A. Yes, sir.

24 Q. And you have been qualified as an
25 expert?

1 A. Yes, sir.

2 Q. All right. I'll ask you, Dr.

Clayton,

3 approximately how many people have you examined who
were

4 charged with criminal offenses?

5 A. Any type of criminal offense?

6 Q. Yes.

7 A. I'm sure over a thousand.

8 Q. Okay. Can you give the jury some
idea

9 as to how many people you have examined who are
charged

10 with either murder or capital murder?

11 A. Probably, I guess around seventy-
five

12 to a hundred.

13 Q. Okay. Dr. Clayton, is there a
14 difference in examining someone who is charged with
a

15 serious criminal offense as opposed to seeing
someone who

16 is -- as an out-patient in your office?

17 A. Yes, sir.

18 Q. Okay. And what is that

difference?

19 A. The difference is, is in an
20 out-patient or office, regular relationship it is a
21 therapeutic relationship. Psychiatrists are
essentially
22 taught, in our training to be very accepting and
23 believing of what people tell you, until you find
out
24 otherwise.
25 That is the reason that I did the

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4620

1 extra year of forensic fellowship training.

Because,

2 when you are working in the realm of criminals, you
need

3 to be able to assess and confront that what they are
4 telling you, may in fact be not truthful, out and out
5 lies, and that sort of thing.

6 And so, I have received special
7 training in how to, I guess, confront, how to look
for

8 people who are lying, are not telling the truth, and
that

9 sort of thing. So, it's much more of an aggressive
type
10 of evaluation and interview.

11 The, you know, -- I am not trying
to

12 treat the person, I am just trying to evaluate and
render

13 an unbiased opinion.

14 Q. Okay. Are there techniques, that
you

15 as a physician would employ, to determine whether or
not

16 the person you are examining is being truthful with

you,

17 or whether they are fudging or lying, or being
deceitful

18 or otherwise trying to influence the examination and
your

19 ultimate evaluation of them?

20 A. Yes, sir.

21 Q. Okay. Would you tell the jury,
just a

22 give them some example of how you do that?

23 A. Well, the best probable technique
is

24 time, time, time, and the amount of time you spend
with

25 someone, and have it be over different periods, not
all

Sandra M. Halsey, CSR, Official Court Reporter

4621

lying

19 to you they will look you straight in the eye because

20 they have always heard that, you know, you don't -

- if

21 you are not looking in the eye, so you look for

such

22 things like that, and they will, you know, they

will

23 start looking you straight in the eye, instead of

kind of

24 the way they have been looking at you before.

25 You also look for the changes in
their

Sandra M. Halsey, CSR, Official Court Reporter

4622

1 voice, motion, the way they relate the story. And
then
2 again, you go back and do this over again at a later
3 date.

4 You also are assessing when
someone is
5 telling the truth. Most often, anybody relating any
kind
6 of story there is slight discrepancies or changes,
just
7 because of the way our memory works. So, you are
looking
8 for that, versus someone that is telling a rote lie,
they
9 tend to be very ridged, the wording is almost exactly
the
10 same every single time.

11 So, you look for different kind of
12 nuances, about that In their description. And
then
13 again, you do this again, over and over, to --
at
14 different times, if possible, to just assess, you
know,
15 whether someone is telling you the truth.

16 Q. Okay. And in the course of your
17 psychiatric practice, are you frequently called upon
by
18 prosecutors and defense lawyers, as well as
requested by
19 judges, to examine someone and render a professional
20 opinion?

21 A. Yes, sir.

22 Q. Now, Dr. Clayton, are you
familiar
23 with the psychiatric studies of Dr. Scott and Dr.
24 Resnick, concerning the categorization by them of
women
25 who have killed their children?

1 A. Yes, sir.

2 Q. Okay. And, I think one of the
3 physicians divides it into five categories; is that
4 correct?

5 A. Yes, sir, Dr. Scott has the five
6 categories, and then Dr. Resnick, he has -- his
7 categories pretty much coincide with Dr. Scott's,
but he

8 added another category, and he has six categories.

9 Q. All right. Both of those
physicians
10 are considered to be two of the leading authorities
in
11 that field, are they not?

12 A. Yes, sir, they are.

13 Q. Do you personally know Dr.
Resnick?

14 A. Yes, sir, I do. I had the luxury
or
15 the pleasure of training under him during my
forensic
16 fellowship.

17 Q. Okay. All right. Can you tell
the
18 jury what those categories are?

19 A. Okay. Doctor -- you just want

me to

20 list them out?

21 Q. Yes, if you would please?

22 A. Dr. Scott's categories are
battering

23 mothers, retaliating mothers, mentally ill mothers,

24 unwanted children mothers and mercy killing

mothers.

25 Dr. Resnick, he categorized them
as

1 altruistic murderers, acutely psychotic murderers,
2 unwanted child murderers, accidental murderers and
spouse

3 revenge murderers, and then his last category,
which is

4 in addition, is neonaticide, which is the killing
of an

5 infant within the first 24 hours of life.

6 Q. Okay. Would it be fair to say
that we

7 could, I think Dr. Scott calls the first category
the

8 battered child --

9 A. Yes.

10 Q. Or the battering mother?

11 A. Yes, and that kind of coincides
with

12 Dr. Resnick's accidental.

13 Q. Okay. Could you explain to the
jury

14 just what that is?

15 A. Well, both of them, are pretty
much

16 the -- both of the doctors use pretty much the same
17 description. That it is a child who has

experienced --

18 or a mother who has abused the child over a long
period

19 of time, and then, actually doesn't mean to kill
the

20 child, but just the physical abuse finally does
become

21 fatal.

22 And those children show long
history

23 of, you know, bruising, broken bones, past
injuries, and

24 then finally there is one injury that finally is
fatal to

25 the child.

1 Q. Okay. It is just where they
have
2 gotten into a routine, and they just -- that last
time,
3 they just went too far?

4 A. Yes, sir.

5 Q. And, many times is that not
evident
6 when the pathologist x-rays the child, and can see
the
7 broken bones that have mended, and things of that
nature
8 that would alert the physician?

9 A. Yes, I mean, it's almost always
10 evident on autopsies that, not only by x-rays but
just
11 the physical exam of old bruising, healed wounds and
12 scaring and then the history of the broken
bones.

13 Q. Okay. Dr. Scott calls the
next
14 category retaliation, or the retaliating mother,
and
15 would that correspond to Dr. Resnick's revenge
mother?

16 A. Yes, sir, those are the two
that
17 correspond.

18 Q. Okay. And, could you acquaint
the
19 jury with that category, please?

20 A. This is a category where it's a
mother
21 who is usually very angry at the child's father,
whether
22 it be her husband or not.

23 Most often the way they talk about
it,
24 the mother has been -- is separated, or the father is
not
25 living in the home, and it's getting back at the
father.

Sandra M. Halsey, CSR, Official Court Reporter

usually

17 before and after the murders, they exhibit
psychotic

18 symptoms that are very evident to even, usually,
lay

19 people, before and after the murders and they are

20 basically just very crazy and mentally ill and
that is

21 what causes them to kill their children.

22 Q. Okay. And they generally confess
and

23 justify it in their own minds, don't they?

24 A. Oh, yes, they don't try to hide
the

25 murder and they are very open about it usually.

Sandra M. Halsey, CSR, Official Court Reporter

4627

1 Q. Okay. All right. And frequently,
2 the mentally ill and the psychotic category would
exhibit

3 symptoms that the lay person could recognize readily?

4 A. Yes. Someone that is psychotic,
you

5 don't just suddenly snap and for 10 minutes be
acutely

6 psychotic and then snap back.

7 It may be a fairly brief psychosis
in

8 that it, you know, might just last a few hours today,
but

9 there has been -- usually there are symptoms where
they

10 aren't able to keep their house, they may not be able
to

11 keep themselves groomed.

12 They start saying weird things to
13 their family and friends. They might start talking
about

14 hearing voices, they become paranoid.

15 They might have very rapid,
16 unexplained mood swings, where one minute they are
17 talking normally, and the next minute they are crying
18 hysterically and that is probably in response to the

19 voices and the delusions that they are having.
20 And again, it's not -- you don't
just
21 go from being totally normal to 10 minutes or an hour
of
22 psychosis. It's something that may be limited, but
there
23 is a what we call prodromal, and then residual
symptoms
24 before and after.
25 But usually it is much longer. I

Sandra M. Halsey, CSR, Official Court Reporter

4628

1 would say months to years, in these mothers that they
are

2 talking about.

3 Q. It's not something that you could
turn

4 on and off like a water faucet?

5 A. No, sir.

6 Q. Okay. How about the unwanted
7 category?

8 A. There again, that is the same, in
both

9 of the doctors' classifications, those are usually --
10 they are usually predominantly teen-age mothers who
have

11 children out of wedlock, the majority of the
children in

12 this category show signs and actually the majority,
13 pretty much predominantly all of them show signs of
14 neglect, meaning not being fed properly, they may be
very

15 thin, they may have vitamin deficiencies, kind of
dirty,

16 not being kept clean.

17 In the category of both of these
18 doctors, over 50 percent actually died from the
neglect,

1 actually kills the child.

2 Q. Okay. And in Dr. Scott's last
3 category, I believe he calls it the mercy category,
and

4 Dr. Resnick calls that category -- or his
corresponding

5 category would be the altruistic?

6 A. Yes, sir.

7 Q. Is that correct?

8 A. Yes, sir.

9 Q. So could you explain to the jury
that
10 category, please?

11 A. Well, this is the -- well, there
is
12 kind of two different types. This is the mother who
was
13 suicidal but sees that, you know, the child cannot
live
14 without her, or she is afraid that the husband or
15 relatives, or there is no one to take care of the
child,
16 and so there is no hope for the child, so, this is
the
17 mother that kills her children, and then kills

herself.

18 It also is the mother who may
have a
19 mentally retarded, terminally ill, chronic illness
child,
20 where the mother feels like that the child is
"better off
21 dead," and that she needs to kill the child in order
to
22 relieve the child's suffering.

23 So those are pretty much the
24 descriptions in that category.

25 Q. All right. That would be the
final

1 category for Dr. Scott, and then I believe that Dr.
2 Resnick had a 6th category, did he not?

3 A. Yes, his was again neonaticide,
which

4 is the mother who -- usually it's a mother who has
the

5 baby at home, oftentimes the pregnancy has been
hidden,

6 and what happens is within the first 24 hours of
life,

7 the mother kills the infant.

8 Q. Okay.

9

10 THE COURT: All right. Thank
you,

11 Ladies and gentlemen, members of
the

12 jury, we're going to take a 15 minute break now.

We're

13 going to break until 3:00 o'clock. And, members of
the

14 viewing audience, it will be necessary at this time
to

15 vacate the courtroom, please.

16 All right. Nothing dangerous,
just a

17 housekeeping chore.

18

19 (Whereupon, a short
20 recess was taken, after
21 which time, the
22 proceedings were
23 resumed in open

court,

24 in the presence and
25 hearing of the

Sandra M. Halsey, CSR, Official
Court Reporter

4631

1 Defendant, being
2 represented by her
3 Attorney, but
outside of
4 the presence of the
jury
5 as follows:)
6
7 THE COURT: All right, are both
sides
8 ready to bring the jury back and resume with Dr.
Clayton? 9 MR. DOUGLAS D. MULDER: Yes, sir,
the
10 Defense is ready.
11 MR. GREG DAVIS: Yes, sir.
12 THE COURT: All right, bring the
jury
13 back in, please.
14
15 (Whereupon, the jury
16 was returned to
the
17 courtroom, and
the
18 proceedings
were

19 resumed on the
record,
20 in open court, in
the
21 presence and
hearing
22 of the defendant,
23 as follows:)

24
25 THE COURT: Let the record reflect
Sandra M. Halsey, CSR, Official Court Reporter

4632

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

3 Mr. Mulder.

4

5 BY MR. DOUGLAS MULDER:

6 Q. Dr. Clayton, you have been called
here

7 to testify as regards to Darlie Routier. Do you know
8 her?

9 A. Yes, sir.

10 Q. Do you see her here in court on my
11 immediate left?

12 A. Yes, sir.

13 Q. Have you had occasion to examine
her?

14 A. Yes, sir.

15 Q. And has she been made available to
you

16 as you required?

17 A. Yes, sir.

18 Q. Can you tell the jury
approximately

19 how many times you have seen her?

20 A. I have seen her for these -- this
21 evaluation approximately five or six times for

over a

22 total of over 12 hours, probably about 12 and a
half

23 hours total time that I have spoken with her in this
type

24 of interview setting.

25 Q. Is that relatively long or is it
Sandra M. Halsey, CSR, Official Court Reporter

4633

1 longer than you usually take to examine and evaluate
2 someone?

3 A. Yes, usually most evaluations are
done

4 within an hour to two-hour period. On some other
5 previous capital cases, I have talked with the
defendant

6 up to about four hours and usually it's between two
to
7 three different times.

8 Q. Okay.

9 A. But yes, I have spent more time.

10 Q. Okay. And, have you likewise
been

11 given access to, for example, the 911 tape?

12 A. Yes, sir.

13 Q. Okay. Have you had access to,
and do

14 you have a copy of the statement that she made to
the

15 police on June the 8th of 1996?

16 A. Yes, sir.

17 Q. I'll ask you if you likewise have
a

18 copy of the journal that contains a final entry on

May

19 the 3rd of 1996 addressed to her three sons?

20 A. Yes, sir.

21 Q. Okay. That is the statement in
which

22 she mentions ending it all or --

23 A. Yes, sir.

24 Q. Or the so-called suicide note?

25 A. Yes.

Sandra M. Halsey, CSR, Official Court Reporter

4634

1 Q. Have you also had occasion to
visit

2 with family members of Darlie Routier's?

3 A. Yes, sir, I have.

4 Q. Now, Dr. Clayton, could you start
with

5 the first category that we discussed, and tell the
jury,

6 based on your examination and evaluation of Darlie

7 Routier, whether or not she fits in the first
category

8 that we talked about that Dr. Scott and Dr. Resnick

9 defined on mothers who kill their children?

10 A. Yes, the first category would be
11 battering mothers, and under Dr. Resnick's
classification

12 accidental deaths, again, those are mothers who have

13 physically abused their children for a long time,

and

14 then finally one incident of physical abuse, is
fatal.

15 Based upon my interviews with
Mrs.

16 Routier and her family members, and I guess all of
the

17 other things you mentioned, there is no history of
any

18 type of physical abuse.

19 There was no history of any type
of

20 physical abuse found on autopsy, in fact, it's been
21 reported by not only Mrs. Routier, but her husband,
her

22 mother-in-law, and her mother is --

23

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

object

25 to hearsay.

1 THE COURT: Sustained, ma'am.

Now,

2 Doctor, just testify as to what you know from your
own
3 personal knowledge.

4 MR. DOUGLAS MULDER: Well,
Judge, in

5 forming her opinion, she can consider all that.

6 THE COURT: Oh, by all means
there.

7 Let's just rephrase your question the right way.

8 MR. DOUGLAS MULDER: Yes, you
are

9 doing fine, Doctor. If you will just carry on.

10 THE WITNESS: That Mrs. -- well,
it's

11 my opinion, from those sources, that Mrs. Routier did
not

12 even physically spank her children, on a regular
basis,

13 maybe once or twice in their whole entire lives and
that

14 she never used any kind of physical force, to any
kind of

15 excess at all with her children in the history.

16 Q. Okay. So she doesn't fit in the
17 category 1 of Dr. Scott and Dr. Resnick's categories?

18 A. No.

19 Q. Okay. How about category 2, the
20 retaliating mother or the revengeful mother?

21 A. Well, again, those are usually
mothers

22 who are separated from their spouse, or find out
their

23 husband or the baby's father is being in some way
24 unfaithful to them, and kills the children out of
25 revenge.

Sandra M. Halsey, CSR, Official Court Reporter

15 mother. Would you explain to the jury whether or
not

16 that is applicable based on your examination and
your

17 evaluation of Darlie Routier?

18 A. Again, I do not think it is
19 applicable. It's my opinion that Mrs. Routier was
very

20 much functional. She was performing regular
household

21 chores, she was not saying any bizarre statements,
or

22 showing any type of bizarre behavior. There was no
23 evidence that she had any type of psychosis prior to
the

24 alleged offense.

25 And then, from hearing the 911
tape

Sandra M. Halsey, CSR, Official Court Reporter

1 again, that she is, I guess, performing -- or not
2 performing, she is reacting in a very appropriate
manner.

3 You know, the distress, she is coherent, she is not
4 talking about, you know, the devil or evil, or some
sort
5 of bizarre, psychotic delusion, that you would expect
6 from a mother who had just killed their children in a
7 psychotic state.

8 And then, even after the events
she
9 was examined by other psychiatrists at the jail, and
then
10 also by me, when I was functioning in my jail
psychiatry
11 role, a few days after the arrest, and there has
never
12 been any thought by any of these psychiatrists that
she
13 had any evidence of any type of psychosis.

14 So, I do not think that she fits
into
15 that category.

16 Q. Okay. And that would really be
17 covered by the postpartum psychosis?

18 A. Yes.

19 Q. What exactly is take, and what are
20 those -- I take it those are degrees?

21 A. Yes, they kind of -- they have
22 actually, depending on the textbook that you read,
they
23 usually are divided into about three categories. One
is
24 postpartum blues.

25 Q. Is that also called baby blues?

Sandra M. Halsey, CSR, Official Court Reporter

1 A. Yes. Um-hum. (Witness nodding
head
2 affirmatively.)

3 Q. Okay.

4 A. And again, this usually happens
within

5 two or three days after delivery, up until like about
6 three weeks, feeling just kind of down. Again,
usually

7 these -- any type of postpartum problems usually
happen

8 with the first baby more than any other pregnancy.

9 But again, it's usually somewhat
--

10 it's very close to the time of the delivery. It is
more

11 of just kind of a period of dysphoria, that usually,
you

12 know, resolves without any kind of treatment or
anything.

13 They just start feeling better.

14 Q. Just kind of moody?

15 A. Yes.

16 Q. And for no reason?

17 A. Yes, but again, that is usually

18 within -- usually within the first month of the new
19 infant's birth.

20 Q. Okay.

21 A. And then the second category is
22 postpartum depression with major depression. Again,
this

23 is kind of when the blues linger on, and they become
what

24 we psychiatrists would call majorly depressed,

meaning

25 that their sleep is disrupted, even if the baby is
not

Sandra M. Halsey, CSR, Official Court Reporter

she quits

18 caring for herself or the baby, housework doesn't
get

19 done. Just regular, basic personal hygiene is
totally

20 neglected, and these mothers, usually because
there is an

21 infant in the home, and the family needs the mom
there to

22 take care of the infant, but they usually come to
the

23 attention of mental health people very quickly,
because

24 of the high demands of caring for an infant, that
if the

25 mother is not able to do so in the appropriate
way,

Sandra M. Halsey, CSR, Official Court
Reporter

4640

1 family usually bring the mother in, and she
receives

2 psychiatric treatment. And that usually does
require

3 medication for it to resolve.

4 Q. Dr. Clayton, in the case of
postpartum

5 psychosis, in postpartum psychosis, that is severe
6 enough, that it results in violence towards a child,
is

7 not the child generally to whom and against whom the
8 violence is directed is the newborn?

9 A. Yes.

10 Q. Is that not practically always
true?

11 A. Yes, that is, in I would say
probably

12 from 90 to 95 percent of the time, is that it's
focused

13 around the infant that has just been birthed by the
14 mother.

15 Q. All right. Doctor, the fourth
16 category would be the unwanted child category, it's
the

17 same in both Dr. Scott and Dr. Resnick's research?

18 A. Yes, sir. This is the category

that

19 is the majority are unwanted-type pregnancies,

wherein

20 the mother is usually teen-aged, there is no

social

21 support, there -- from anybody. They may resent

the

22 child that -- or the children, and sometimes they are

of

23 another -- by another father that -- or they have got

a

24 boyfriend who doesn't want children and that sort of

25 thing.

Sandra M. Halsey, CSR, Official Court Reporter

4641

1 Again, a majority of these
children
2 are killed by actual neglect. Meaning that they are
not
3 properly fed, they don't -- you know, they may be
vitamin
4 deficient on autopsy and that they are actually on
5 autopsy, the reason they have been found to be dead
is
6 because of either malnutrition or untreated medical
7 illnesses that the mother has just ignored. So, that
is
8 how the majority of these children die.

9 The other ones that may not die
10 actually from the actual neglect do show symptoms of
--
11 or evidence of neglect, such as unkept, dirty, not --
12 again the not being fed properly, that sort of
thing.

13 So again, this is a very long -
- I
14 guess or somewhat long process, in that the mother
has
15 not wanted the child, and essentially has rejected
the
16 child over a long period of time, and then culminates

in

17 murdering the children or the child.

18 Q. And do you think that is
applicable in

19 this situation?

20 A. No. Again it's my medical
opinion,

21 from my evaluation, that Darlie Routier was a very
22 devoted mother, she went the extra mile as far as her
23 devotion to her children. She had a great
amount of

24 social support. Support for her when she
needed, I

25 guess, breaks from the children and that sort of
thing.

Sandra M. Halsey, CSR, Official Court Reporter

1 That, again, there is -- my
opinion is
2 that there was no lover, or any reason why she needed
to
3 rid herself of the two younger children.

4 Again, usually those type of
murders

5 are -- you don't just, I guess, murder one of the
6 children, or some of them, it's usually the hole
group of

7 children if the mother wants to be childless.

8 Or in the few situations, I guess,
9 where a child has been born by one father, and the
mother
10 might kill the children that have been born by the
father

11 who she is no longer with, and just want to keep the
baby
12 by her newer husband or newer father.

13 So, it's my opinion that she does
not
14 fit in that category either.

15 Q. Okay. Doctor, the fifth and last
16 category for Dr. Scott, would be the mercy killing
that

17 is the one that correlates to the altruistic for Dr.
18 Resnick, could you tell the jury, based on your
19 examination and evaluation of Darlie Routier, whether
20 or
21 not you feel that is applicable to her situation?

22 A. Well, obviously neither one of the
23 two
24 children had any type of fatal or significant,
25 long-standing chronic illness, where she would have
felt
26 that she needed to relieve their pain or suffering.
27 I do not think at the time, that
she

Sandra M. Halsey, CSR, Official Court Reporter

1 was suicidal. I think even when she contemplated or
2 thought about committing suicide, in May, that the
note
3 showed -- that she wrote, or part of the note because
she
4 stopped before she finished it. It showed a concern
and
5 love for her boys, and a plan that she -- the boys
were
6 going to be taken care of and would live on without
her.
7 There was no evidence that she felt like they could
not
8 survive without her, and there would be no one to
care of
9 them, and that sort of thing. But all in all, I
don't
10 think that she was suicidal at the time of the
offense,
11 and I don't think that she killed the two boys and
then
12 was trying to kill herself.

13 In the event where a mother kills
her
14 children and then kills herself, it's very rare,
15 especially for women, to stab themselves as a method

of

16 suicide. It's more likely some sort of
asphyxiation,

17 even such as putting all of the kids in the car, and
18 putting them in the garage, and, you know, having
carbon

19 monoxide kill everyone of them, including the
mother, or

20 some type of gassing again in the home, or some type
of

21 overdose, and if there is going to be a violent
death,

22 it's usually a gun used.

23 But women, very rarely, kill

24 themselves with a knife. In fact, most -- in the
25 American culture, it's very rare, I guess, maybe
common

Sandra M. Halsey, CSR, Official Court Reporter

1 with Japanese soldiers, but it's very rare for a
woman to

2 try to kill herself with a knife.

3 Q. Okay. Doctor, that -- we have
gone

4 through Dr. Scott's categories, and Dr. Resnick has
one

5 more category, and that is the --

6 A. Neonaticide.

7 Q. Yes, neonaticide. And, can you
tell

8 us whether or not that is applicable to this
situation?

9 A. Well, obviously it's not, because,
she

10 did not -- again that is the category that Dr.
Resnick

11 described, in that mothers who kill their infant
within

12 24 hours of being born.

13 So obviously, by the fact that
the

14 offense that the baby that she had was not harmed,
and

15 was much older than -- all of the children were
much

16 older than 24 hours old.

17 Q. Okay. Dr. Clayton, based on your

18

18 plus hours of examination and evaluation of Darlie

19 Routier, and based on your examination and

evaluation of

20 her family members, and the review of the matters

that

21 you have received, do you feel that Darlie Routier

was

22 being truthful with you when you examined her?

23 A. Yes, I do.

24 Q. Okay. Now, Dr. Clayton, you are

25 aware that Darlie Routier was questioned by the
Rowlett

1 Police Department on June 6th of 1996, shortly after
she
2 came out of surgery for the injuries that she had
3 sustained?

4 A. Yes, sir.

5 Q. And had been given, as I recall,
some
6 Demerol and some Phenergan?

7 A. Yes, sir.

8 Q. She was questioned on other
occasions
9 again, on June 8th of 1996, and again on June 10th
of
10 1996, while she was under sedation and under
medication.

11 Can you, as a psychiatrist, tell
the
12 jury what effect that medication and sedation and
the
13 medications that I have described to you would have
on
14 her?

15 A. Yes, those medications, the
Demerol to

16 Phenergan then later on the other painkillers, and,

1 lying, their inhibitions are dropped and they tell
the
2 truth.

3 So, if someone is making up
something,

4 they are -- because they are essentially somewhat
5 intoxicated by the medication, their ability to lie
is
6 decreased and they more often tell the truth.

7 By the fact that Mrs. Routier was
on

8 these medications over this time period, and was
9 questioned extensively, if she were lying, it would
be,

10 usually at that point, under those conditions, where
she

11 would -- where the truth would come out. Meaning
that,

12 if she had done this she would have confessed, that
sort

13 of thing. By the fact that she was on these
medications

14 and did not change her story within any amount of,
you

15 know, I did it, versus I didn't, it's my medical

opinion

16 that she was being truthful.

17 Q. When she denied it?

18 A. Yes, sir.

19 Q. Okay. A good police strategy is
to

20 question someone when they come out of surgery, isn't
it?

21 A. Yes, or when they are under some
type

22 of sedating-type medication, yes.

23 Q. Okay. Doctor, can you tell the
jury

24 whether or not you are familiar with the term psychic
25 numbing?

Sandra M. Halsey, CSR, Official Court Reporter

4647

1 A. Yes, I am.

2 Q. All right. And will you tell the
jury

3 what that is?

4 A. Well, it's a term that has been
coined

5 by some psychiatrists, also it's called -- there is a
6 thing or another phrase call psychic shock, and it's
used

7 to describe someone's emotional lessness or their
8 decrease in emotional reactivity when they have
witnessed

9 some sort of traumatic, tragic event.

10 Either whether they have been
11 assaulted or attacked, or they have witnessed
something.

12 There is -- essentially their body may not be in
shock,

13 but their emotional reactivity is somewhat decreased.

It

14 may fluctuate, meaning that they may kind of go in
and

15 out.

16 With different people it's
different,

17 but it's something that is recorded in the literature

and

18 part of any kind of traumatic stress that people
again

19 may, to others seem very cold and not really having
any

20 emotions over it, whereas what is probably happened
is

21 because of the trauma, on -- to use the psychiatric
term,

22 ego, their mind has kind of blocked it off and
separated

23 it out, that the emotions from the event. And at
times

24 they can appear very emotionless and essentially just
be

25 in a shock kind of state.

Sandra M. Halsey, CSR, Official Court Reporter

4648

1 Q. Okay. Doctor -- Dr. Clayton, are
you

2 familiar with the grieving process that went on with
3 Darlie Routier, and with grieving in general?

4 A. Yes, sir.

5 Q. Okay. And, can you express to the
6 jury whether or not you feel her grieving was
appropriate

7 or inappropriate given the circumstances?

8 A. I feel like her grieving was
9 appropriate.

10 Q. Okay. Do people grieve in
different
11 ways?

12 A. Yes, sir, grieving is a very
13 individual response. I guess I wouldn't -- if I were
14 going to label grieving I wouldn't label grieving
either

15 appropriate or inappropriate, because who is to say?
16 Every one is different. We all handle things in
17 different ways.

18 If I were going to categorize it,
I

19 would categorize it to healthy and unhealthy
grieving.

20 Some people are very stoic and don't elicit a lot

of

21 emotion, and more private people, sometimes that

is

22 cultural, sometimes it's individual.

23 Other people are more, I guess

loud,

24 wailing and sobbing, you know, kind of throw their

body

25 over the caskets and that type of grieving. And
again,

Sandra M. Halsey, CSR, Official Court Reporter

4649

1 it's somewhat of an individual and somewhat of a
cultural

2 response.

3 Some people, kind of, I guess what
I

4 would call wax and wane, meaning that at some points
they

5 are very in touch with grieving and emotion, and at
other

6 points they aren't. Again, I think some of that has
to

7 do with medication, when -- you know, when someone is
8 very, very upset, the family and friends respond,

and

9 again, it's my opinion that this is what happened
in

10 Darlie's case, is to give her medication to sedate
her.

11 Some that wasn't prescribed for her, and probably
was

12 given in too strong of doses, where it can almost
make

13 someone zombie-ish (sic) like because they are so
14 sedated.

15 Again, I think from my evaluation

that

16 Mrs. Routier's grieving was within normal grieving

and

17 appropriate.

18 Q. So it was healthy?

19 A. Yes, sir.

20 Q. Okay. Dr. Clayton, are you

familiar

21 with the term traumatic amnesia?

22 A. Yes, sir.

23 Q. And what is that, and how does

that

24 apply based on your examination and evaluation of

Darlie

25 Routier?

1 A. Again, that is a term that is
used in
2 various psychiatric textbooks. To describe when
someone
3 is a victim or witnesses something very traumatic.
I
4 guess, psychically, and for the most part they have no
5 memory of the event.
6 I guess in literature there is
7 several -- you know, someone being shot at point
blank
8 range, and not remembering what happened right
before, or
9 someone being raped, and basically having no memory
of
10 it. It is basically a type of disassociation where
the
11 person walls off the memory in another spot in their
12 brain and has no connection.
13 Again, there is -- at times,
sometimes
14 these memories can later resurface. Again, these are
15 kind of -- a lot of times you are seeing this with
the
16 sexual abuse kind of stuff. People literally don't
17 remember things, and then later on, bits and pieces

kind

18 of come back.

19 I believe that this is probably

the

20 case in Mrs. Routier's accounting of the events.

21 And, lack of, I guess, consistent

22 memory throughout the whole offense.

23 Again, it's -- I wouldn't say, I

guess

24 it's not common, because most people don't go through

25 hopefully those kind of traumatic events that these
other

Sandra M. Halsey, CSR, Official Court Reporter

4651

1 individuals have, but within victims of traumatic
events,

2 there are most definitely memory lapses that there is
no

3 real explanation for.

4 Q. And that is not unusual?

5 A. No, not with victims of traumatic
6 events.

7 Q. Dr. Clayton, I believe you have
8 already stated that you did not think that Darlie
Routier

9 was suicidal on May the 3rd of 1996, despite any
entry in

10 her journal?

11 A. Yes. I guess when I say suicidal,
and

12 when I am dealing with it with people and patients,
13 meaning everyone, I think, or most people have
thought of

14 what would it be like to just have it all over, or I
15 would like to go to sleep and not wake up, and just
be

16 away from here.

17 I think that is very different,
and I

18 don't consider that suicidal versus someone who has

a

19 plan, is going to -- they, are for sure going to act

on

20 it, and they usually do not tell family members.

They

21 are secretive because they want their plans to be

22 successful. From my evaluation of Mrs. Routier,

it's my

23 opinion that she had suicidal ideation.

24 I think it was more of a cry for

attention

25 and help from her husband. She did not complete the

Sandra M. Halsey, CSR, Official Court Reporter

4652

1 note. She called her husband and told him how bad
she

2 was feeling. Again, these are not the acts of
someone

3 who was really going to kill themselves. It's more
of

4 someone, I want you to realize how bad I am feeling
and

5 how I need some help.

6 I think that was the case in --
with

7 Mrs. Routier on May the 3rd.

8 Q. And I believe you said in three
or

9 four days, she had the menstrual cycle and things
perked

10 up?

11 A. Yes. And again, I think
hormonally

12 she was very vulnerable to feeling kind of anxious
and

13 dysphoric, and that she would have been classified
as

14 P.M.S. And then also, the fact that she had not had
a

15 menstrual cycle, since over a year, she had not had
one

16 since the birth of her baby.

17 So, by the accounts that she --
once

18 she had, you know, her period, that she felt much
better,

19 and I also think that not only that, but just the
fact

20 that her husband acknowledged that she was having
stress,

21 and responded appropriately, and came home and the
22 situation was remedied.

23 Q. Well, three boys could be a
stressful

24 situation for any mother, couldn't it?

25 A. Yes, sir.

Sandra M. Halsey, CSR, Official Court Reporter

1 Q. And that is not unusual, is it?

2 A. No, sir. I think that most
mothers

3 and especially mothers that stay at home with their
4 children, either full time or most of the time, every
now

5 and then, you know, tell their husbands or, you know,
6 other family members --

7 Q. "I need a break."

8 A. "I need a break. Help me out."

And I

9 think that is very common. People just may do it in
10 different ways.

11 Q. Sure. Dr. Clayton, are you
familiar

12 with the prayer service at the cemetery, and the
birthday

13 party or celebration that followed that? Are you
14 familiar with that?

15 A. Yes, sir, I am.

16 Q. Okay. And, could you give us your
17 professional opinion as to whether or not that was
18 appropriate based on your examination and evaluation
of

19 Darlie Routier?

20 A. Well, again, I don't think that I
can
21 necessarily say what is appropriate or inappropriate
with
22 any family that is grieving over someone that has
died.
23 I think it is in the realm of normal grieving, and
thus
24 in that way, I guess it would be appropriate, in that
25 there was a prayer service.

Sandra M. Halsey, CSR, Official Court Reporter

4654

1 comes to mind is the wakes, or the Irish-Catholic
type
2 wakes, where people actually have parties, and are
3 drinking and partying around the body of someone in
a
4 casket.

5 And so, I think different
cultures and
6 different people grieve in different ways, and
personally
7 I don't feel like any -- no one can say what is
8 appropriate or not appropriate for a family grieving
over
9 someone.

10 Q. Okay.

11

12 MR. DOUGLAS MULDER: Thank you.
Dr.

13 Clayton. One of the prosecutors will have some
questions
14 for you.

15 THE COURT: All right. Mr.
Shook.

16 MR. TOBY SHOOK: Thank you,
Judge.

17

18

19

CROSS EXAMINATION

20

21 BY MR. TOBY L. SHOOK:

22

Q. Dr. Clayton, I believe the first
time

23

you met Mrs. Routier was part of your regular
duties, in

24

the Dallas County jail, when you see people that
have

25

been put in isolation; is that right?

Sandra M. Halsey, CSR, Official Court Reporter

4656

1 A. Yes, sir.

2 Q. Okay. And, the time you saw her

I

3 believe was back on June the 20th of 1996?

4 A. Yes, sir. I mean, I don't have
those

5 notes, but, I think you do.

6 Q. Okay. I think I have got a copy
of

7 them here.

8 A. Yes, sir.

9 Q. Okay.

10 A. And I know we have gone over
those

11 notes, and yes, I would say that is the date. It
was

12 just a few days after her arrest at some point.

13 Q. Okay.

14

15 BY MR. TOBY SHOOK: Mark this,
please.

16

17 (Whereupon the next exhibit was
18 marked for identification as
19 State's Exhibit No. 145.)

20

21 BY MR. TOBY L. SHOOK:

22 Q. Dr. Clayton, let me show you some

23 copies, I believe, of the Dallas County Medical

Records,

24 marked as State's Exhibit No. 145, and if you could

look

25 through those and see if you recognize those as
being

Sandra M. Halsey, CSR, Official Court Reporter

4657

1 records kept by the jail in regards to Darlie
Routier?

2 A. Yes, sir.

3 Q. And I believe some of your
notations

4 will be in there, is that right?

5 A. Yes, it looks like the first one
was

6 on 6-20-96.

7 Q. Okay. Let me see it just a
second.

8 I'll give it back to you in a minute.

9

10 BY MR. TOBY L. SHOOK: Your
Honor, at

11 this time we will offer State's Exhibit 145.

12 THE COURT: Any objection?

13 MR. DOUGLAS MULDER: Well, Judge,

I

14 don't think she is the person who can sponsor some
Dallas

15 County jail medical record.

16 THE COURT: Well, she said --

17

18 BY MR. TOBY L. SHOOK:

19 Q. You recognize those, don't you,
Dr.

20 Clayton?

21 A. Well, I mean, I don't know if
that is

22 the full one. I can recognize my writings on that.

23

24 MR. DOUGLAS MULDER: All right.

Okay.

25 I am not finished with it, but --

1 THE COURT: Any objection?

2 MR. DOUGLAS MULDER: Well, Judge,

I

3 don't know. I have not read it. I would like to
see it

4 first, if the Court doesn't mind.

5 THE COURT: All right. Well, let
Mr.

6 Mulder read it.

7 MR. DOUGLAS MULDER: Judge, this
is a

8 20 page deal that has many entries in different

9 handwritings.

10 THE COURT: Well, I think this is
the

11 one that the Doctor said she reviewed; is that
correct?

12 You reviewed this document; is that correct?

13 THE WITNESS: Well, I don't know
14 specifically if that is the one.

15 THE COURT: Well, perhaps you
might

16 want to look at it and see if that is the one that
you

17 reviewed.

18 Mr. Shook, hand it to her.

19 THE WITNESS: But I have reviewed
her

20 medical records. They are actually in the jail
medical

21 record file, they are on blue paper.

22 THE COURT: I understand, I think
that

23 would be --

24 THE WITNESS: And they are the
25 physicians notes.

Sandra M. Halsey, CSR, Official Court Reporter

4659

1 THE COURT: Okay. Mr. Shook.
2 MR. TOBY SHOOK: Do you want me to
3 show it to her?
4 THE COURT: Just show it to her
again.
5 MR. DOUGLAS MULDER: Well, we want
to
6 see it again.
7 THE COURT: Oh, by all means.
8 MR. DOUGLAS MULDER: Well, Judge,
I
9 just hate to sit here for 20 minutes just to read
this
10 thing.
11 THE COURT: Well, you know, I
have
12 nothing better to do. I might as well sit here.
13 MR. DOUGLAS MULDER: All right.
14 THE COURT: I am very comfortable,
and
15 I don't mind waiting.
16 MR. DOUGLAS MULDER: Well, it's
fine
17 with me, if it's all right with you.
18 THE COURT: All right. Very fine.
19 THE WITNESS: Do you want me --

20 I haven't specifically -- there
are
21 some notes in here that wouldn't have been on the
blue
22 paper, they would have been on another color paper
23 because they are not on the physicians.
24 THE COURT: But you recognize that
as
25 a document that you have reviewed?

Sandra M. Halsey, CSR, Official Court Reporter

4660

1 THE WITNESS: Well, I have not
2 reviewed the ones that are not on the blue paper, but
the
3 ones -- I did recognize my writing.

4 THE COURT: All right. That is
fine.

5 Anything else? Any objection now?

6 MR. DOUGLAS MULDER: Yes, Judge.
I
7 would still like to read it, if the Court wouldn't
mind.

8 THE COURT: All right. Well, let
Mr.

9 Mulder continue to perusing the documents.

10 THE WITNESS: Well, let me just be
11 sure that they have pretty much gotten all my
notes.

12 MR. DOUGLAS MULDER: Judge,
that
13 happens to be a number of different people's
handwriting
14 on there.

15 THE COURT: I understand that.
Thank

16 you. All right.

17 MR. DOUGLAS MULDER: And, may I

just

18 take the witness on voir dire and ask her something?

19 THE COURT: You may.

20

21

22 VOIR DIRE EXAMINATION

23

24 BY MR. DOUGLAS MULDER:

25 Q. Did you consider what is on these

--

Sandra M. Halsey, CSR, Official Court Reporter

4661

1 what is contained in these records in forming your
2 evaluation and opinions?

3 A. No, we didn't discuss any -- I was
4 seeing her under the guise of being the jail
5 psychiatrist. At that point I was -- I see -- the
way it

6 works in the Dallas County jail is I see the women
that
7 are in the north tower. I see the women that are on
8 suicide, specifically because of the clothing issues
they
9 are on paper drapes and that sort of thing.

10 So, I was seeing her because when
11 someone is in a high profile case they are
automatically

12 placed on suicide precautions. And I was not there,
I
13 guess, the first day she was arrested, but then I
was --

14 and two other male psychiatrists saw her, I guess,
in
15 some sort of hold-over cell or something, and then
once
16 she was transferred I saw her.

17 And it's rules by the sergeant
that

18 women that are housed in a single cell in the
Dallas
19 County jail be seen by the psychiatrist every two
weeks,
20 every one to two weeks. And so, I was, at that
point
21 just basically checking in with her. I guess
obviously,
22 my notes talk about how she didn't appear psychotic
and
23 the other psychiatrist thought she was not
psychotic, so
24 I guess in some sense, I did possibly use -- not
those
25 notes, but just some of my first impressions.

Sandra M. Halsey, CSR, Official Court Reporter

4662

16 County to put someone who comes in in a high
profile case

17 on a suicide watch?

18 A. Yes, sir, that is usually what
19 happens.

20 Q. It doesn't make any difference
whether

21 it is a man or a woman.

22

23 MR. TOBY SHOOK: Judge, are we
going

24 back to direct, or --

25 THE COURT: Well, let's
authenticate

Sandra M. Halsey, CSR, Official Court
Reporter

4663

1 Exhibit 145. I believe the witness has stated
that --

2 Dr. Clayton has said that she did review some
pages in

3 there, and her signature or notes appear thereon; is
that

4 correct, Doctor?

5 THE WITNESS: Yes, sir, that's
6 correct.

7 THE COURT: Okay.

8 MR. DOUGLAS MULDER: Well, Judge,
I

9 obviously had -- I don't have any objections to any
10 entries that she has made.

11 THE COURT: Well, fine. Then
State's

12 Exhibit 145, the entries made by this witness are
13 admitted. We will excise the other portions that she
14 cannot recognize.

15

16 (Whereupon, the above
17 mentioned item

was

18 received in
evidence

19 as State's Exhibit No.

145,

20

for all purposes

21

after which time,

22

the proceedings

were

23

resumed on the

record,

24

as follows:)

25

Sandra M. Halsey, CSR, Official Court Reporter

4664

1 MR. DOUGLAS MULDER: Well -- or
that

2 she did not author.

3 THE COURT: Did not author,
that's

4 correct. I think that the pages that her notes
appear

5 on, they are in. The rest of it is out until it's

6 authenticated. Thank you. Let's excise those pages
and

7 get on with the trial.

8 And since that document will

9 eventually be excised. You will question Dr. Clayton
10 only on those portions of that exhibit that she has
11 personally reviewed, and I believe your signature or
some

12 note of recognition appears on them. Okay?

13 THE WITNESS: Yes,
sir.

14 THE COURT: Thank
you.

15

16

17 CROSS EXAMINATION

(Resumed)

18

19 BY MR. TOBY SHOOK:

20 Q. Okay. Thank you. So the first
time

21 you saw the defendant would be on the 20th of June
of

22 '96; is that right, Doctor?

23 A. Yes, sir.

24 Q. Okay. And that was part of your

--

25 part of your duties as part of your employment with
the

Sandra M. Halsey, CSR, Official Court Reporter

4665

1 Dallas County jail system; is that right?

2 A. Yes, sir.

3 Q. Okay. And, when was it that you
4 became hired as an expert in this case for the
defense?

5 A. I think I was contacted sometime
6 around the first of November.

7 Q. Okay. Who contacted you?

8 A. Mr. Mulder's paralegal, Carol.

9 Q. Okay. And, did they -- what were
you
10 asked to do at that time?

11 A. I was asked to do a psychiatric
12 evaluation on Mrs. Routier.

13 Q. Okay. Any particular type of
14 psychiatric evaluation?

15 A. No.

16 Q. Okay. I mean, were any goals
told to
17 look for this, or look for that, and that kind of
thing?

18 A. No, he just -- Carol just said
that
19 they wanted to hire me to do a psychiatric
evaluation.

20 Then I -- and I would have to look at my notes at

what

21 day, but I flew down to Kerrville, and when I met
Mr.

22 Mulder for the first time, he asked me just to go in
and

23 interview her, and that was basically all he said,
and

24 that was on 11-15-96.

25 Q. How long was that interview?

Sandra M. Halsey, CSR, Official Court Reporter

4666

1 A. That interview was two and a
half
2 hours.

3 Q. Okay. Who was present during
that
4 interview?

5 A. Just Darlie and I.

6 Q. Was Mr. Mulder ever in there in
the
7 interview?

8 A. No, it's my -- I don't, when I
do a
9 psychiatric evaluation of someone, in either a
criminal
10 or a civil matter, I just want the person and me in
the
11 room.

12 I did, essentially, tell her
about her
13 rights and told her that I would tell the truth
about
14 what happened in our interview.

15 Q. Okay. Now, so you have
interviewed
16 her for a total of 12 hours; is that right?

17 A. Well, actually I think 12 and a
fourth

18 to 12 and a half.

19 Q. Okay. And you reviewed the 911
tape?

20 A. Yes, sir.

21 Q. And, her voluntary statement, I
22 believe; is that right?

23 A. Yes, sir.

24 Q. Okay. What other materials have
you
25 reviewed?

1 A. The diary.

2 Q. Okay.

3 A. Which included the partially
finished
4 note --

5 Q. Right.

6 A. The suicide note.

7 Q. Right.

8 A. That is all.

9 Q. Okay. Have you reviewed any
video
10 tapes?

11 A. Not specifically. When -- I
guess
12 when the video tape of the --

13 Q. Of the Silly String party?

14 A. Yes, I caught part of that just
in
15 watching the nightly news.

16 Q. Okay.

17 A. I didn't even see all of that.

18 Q. Okay. So you have only -- the
only
19 part of the Silly String tape you have seen, is what
part
20 of it that might have been shown on T.V.?

21 A. Yes, sir.

22 Q. Okay. And, you have interviewed
some

23 people besides Darlie; is that right?

24 A. Yes, sir.

25 Q. Who was that?

Sandra M. Halsey, CSR, Official Court Reporter

4668

1 A. I interviewed her mother-in-law,
Mrs.
2 Routier, for about an hour and a half. I interviewed
her
3 mother, Mrs. Darlie Kee, for approximately three
hours.
4 I interviewed her husband, Darin, for approximately
three
5 and a half hours.

6 Q. Okay. Is that all of the people
you
7 have interviewed?

8 A. Yes, sir.

9 Q. Any friends, have you interviewed
any
10 friends?

11 A. No.

12 Q. Okay. But that is the sum total
of
13 people you have interviewed in coming here?

14 A. Yes. I was told by Mr. Mulder and
the
15 Routier family, that they would make anybody and
anything

16 I wanted available, or any other things, and I did

not

17 feel like, after talking to all of the above people I

18 have already talked about, I didn't feel like I

needed to

19 talk to more friends and family members.

20 Q. Okay. Now your opinions, I guess,

21 that you have given here today, well, I guess like

you

22 would at any time, are only as good as the accuracy

of

23 the information you are given; is that right?

24 A. Well, I guess -- no, in that, I

guess

25 somewhat in part, but also if someone is sitting
there

1 lying to me, and I get my opinion from what I see,
and
2 observe and hear, whether they are being truthful or
not.

3 So in that sense, someone I can
have
4 an opinion that is not -- it's based on whether --
what
5 the person is telling me is accurate or not.

6 Q. Well, if your other information
is
7 inaccurate, your opinion might be inaccurate?

8 A. I'm sorry, could you --

9 Q. Are you saying that if you are
given a
10 bunch of inaccurate information, you are going to
have
11 good opinions?

12 A. Well, again, what I am saying is
part
13 of what I was trained to do, was to assess whether
14 someone is telling the truth or not. So, in that
sense,
15 I don't need to -- you know, someone can sit there
and be

16 telling me inaccurate information and, I can still
make a

17 valid assessment.

18 Q. Are you always going to know when
they

19 are telling you the truth?

20 A. I don't think any person can know
100

21 percent of the time, but I think I am within
reasonable,

22 medical certainty.

23 Q. And you believe Darlie Routier
told

24 you the truth?

25 A. Yes, I do.

1 Q. Okay. And how about the other
people

2 you interviewed? Did you believe they were telling
you

3 the truth? Darin Routier?

4 A. I believe that -- yes, that he
was

5 telling the truth.

6 Q. Okay. Would you agree, Dr.
Clayton,

7 that the more information you have, the more
accurate

8 your opinion can be?

9 A. Again, I felt like I had enough
10 information for my opinion to be accurate.

11 Q. I know you felt that you had
enough,

12 but would you agree that the more information you
have,

13 the more accurate your opinion can be?

14 A. What are you -- as far as --

15 Q. It's
kind of a general statement.

I'm

16 not trying to trick you or

anything.

17 A. Well --

18 Q. Wouldn't

you agree that it is good to

19 have as much information as

possible when you are forming

20 an opinion?

21 A. Yes.

22 Q. Okay.

And so, the more information

23 you get, usually the better

your opinion would be, the

24 more accurate it could be?

25 A. Yes,

that could be the case.

Sandra M. Halsey, CSR,
Official Court Reporter

4671

1 Q. Okay.
Now, how many people -- what
2 exactly is wrong with Mrs.
Routier? What condition is it
3 that she has? Is it
traumatic amnesia?

4 A. Well, I
said that it's my opinion that
5 she has traumatic amnesia
for the events.

6 Q. Okay.
And, how many times have you
7 treated someone that has
this traumatic amnesia?

8 A. I guess
I would say I have treated
9 probably, again, 5 to 10
cases, but again, in that sense
10 the goal of treatment is
not necessarily to bring back
11 the memory. Oh, I would
say probably 10 plus cases. I
12 have evaluated people or
observed that they have had that
13 probably in about the same
amount.

14 Q. Okay.
And, how many murder defendants
15 have you evaluated that
have traumatic amnesia or
claimed
16 to have had traumatic
amnesia?

17 A. Probably
out of that 10 about 5 to 7,
18 for some -- again, it's --
there's spots of memory loss,
19 for the events.

20 Q. Okay.
Now---

21 A. I guess
you said murder victims?

22 Q. No, I
said people accused of murder?

23 A. Yes.

24 Q. Okay.
Looking at it from Mrs.
25 Routier's point of view,
you are talking about a victim

1 that would have traumatic
amnesia? Is that right?

2 A. Yes,
sir.

3 Q. It can
cut both ways, can't it?

4 Murderers can have
traumatic amnesia also?

5 A. Yes,
they can.

6 Q. Okay. A
person can commit murder, and
7 just won't remember what
they did?

8 A. Yes, I
guess in my experience of

9 interviewing murderers that
is most predominantly not the
10 case.

11 Q. Right,
in fact, I guess you talked
12 about it, what you have to
be careful with as a
13 psychiatrist in this
situation where someone that is
14 accused of a crime, is that

-- I believe your term for it
15 malingering; is that right?

16 A. Yes,
sir.

17 Q.

Basically in plain English,
that means

18 people will lie to you to
try to get out of something?

19 A. Yes,
sir.

20 Q. Okay.
Fake a condition?

21 A. Yes,
sir.

22 Q. Lie
about their symptoms, that kind
of
23 thing?

24 A. Yes,
sir, people try to do that.

25 Q. And in
this type of situation, you

1 have to be extremely
careful of people doing that,
don't

2 you?

3 A. In what
type of situation?

4 Q. Well, in
a situation where a person is
5 charged with a crime and --

6 A. Yes,
sir.

7 Q. Okay.

8 A. That is
the reason I did the forensic
9 fellowship and had the
extra training, was to be able
to
10 assess that.

11 Q. Okay.

Now, let me ask you this, is
12 her traumatic amnesia, is
that part of what y'all believe
13 some of the disorders y'all
go over -- well, let me ask
14 you this: This is DSM-IV,

which is the book y'all use in
15 talking about mental
disorders and that sort of
thing;

16 right?

17 A. Yes,
it's used in classification of
18 mental disorders and for
filing insurance claims, and
19 that sort of thing.

20 Q. Is that
anywhere in here? Traumatic
21 amnesia?

22 A. I don't
think it's listed as a
23 diagnosis in and of itself.
I think it's under -- they
24 talk about it some under
post-traumatic stress disorder.

25 Q. Okay.
It can be part of

1 post-traumatic stress
disorder?

2 A. Yes it
can.

3 Q. And, in your opinion, is Darlie
4 Routier suffering from post-traumatic stress
disorder?

5 A. Again, I haven't -- I think she
had
6 some of the symptoms. She is not -- because of
her
7 incarceration, she is not -- she is kind of somewhat
8 removed from real life in order to meet the criteria
of
9 post-traumatic stress disorder, but yes, I do think
she
10 meets some of qualifications.

11 Q. Does your training tell you that
in
12 situations where -- well, I think it's as far as
13 malingering goes, y'all are trained that in
situations
14 where a lawyer refers the client to you, you have to
be
15 extra careful about malingering or lying; is that

right?

16 A. That is the case.

17 Q. Okay. And any time a person has

a

18 motive, they are under some legal accusation,

obviously,

19 you want to be careful of that?

20 A. Yes, I am very careful.

21 Q. And obviously, the more serious

the

22 legal accusation the more motive there is for a

person to

23 possibly want to get out of it; is that right?

24 A. Yes.

25 Q. Okay. Now, have you talked to the

Sandra M. Halsey, CSR, Official Court Reporter

4675

1 defendant about what she does remember about what
2 happened that night?

3 A. Yes, sir.

4 Q. Okay. What has she told you?

5 A. Again, it pretty much -- I have
talked

6 to her on several different occasions about it.

7 Q. You have gone over this more than
once

8 with her?

9 A. Yes, sir.

10 Q. Okay.

11 A. Her descriptions of the events
follow,

12 but with more detail, her -- the written statement
that

13 she gave to the Rowlett detectives. I mean, do you
want

14 me to just go through that, or --

15 Q. You are saying that the statement
she

16 gave to Rowlett was more detailed than what she told
you?

17 A. No, no, I went over in very minute
18 details.

19 Q. Just tell us what she remembers
about

20 that night, please?

21 A. Do you want me to start with when,
in

22 the evening?

23 Q. Well, I guess the evening hours
when

24 the family got together there.

25 A. Okay. Because we kind of -- the

Sandra M. Halsey, CSR, Official Court Reporter

4676

1 way -- the way it worked is she -- she first, again,
that

2 is one of the techniques that you start at different
3 places in the events, in the sequence of events

because,

4 it's harder if someone is lying for them to lie out
5 sequence.

6 Q. Right.

7 A. So on my first interview, we
started

8 actually when she starts having memories of the
offense.

9 And so, could I start there? And then later --

10 Q. Yes, go ahead.

11 A. Then later, I had her go back to
talk

12 about what led up to that.

13 Q. Well, the best way you feel that
you

14 can explain it to the jury, you go that way.

15 A. She talks about hearing and
feeling, I

16 guess Damon, on her right shoulder, as she was lying
on

17 the couch. She saw a man and stood up and saw him

run

18 into -- kind of followed him into the kitchen.

19 She said she put her arm on

Damon's --

20 around Damon, and -- or on his chest, and then it
dawned

21 that the lights were turned off. And, she describes

22 going over to the island, I guess, in the kitchen,
and

23 seeing a knife lying on the floor. Kind of in that,
she

24 also describes not really knowing what happened.

She

25 kind of felt like her gown, when she woke up, was up
to

Sandra M. Halsey, CSR, Official Court Reporter

4677

1 her waist, but she wasn't sure if that was actually
true
2 or not.

3 She said that Damon -- she kind of
--
4 she pushed him up against the wall, she ran over and
5 grabbed the knife. And at that point, she realized
that
6 there was blood on her night gown. She saw blood
kind of
7 dripping down. She said solid blood. And she put
the
8 knife on the counter, and she looked across the
room,
9 because now she had turned on the light and she
saw
10 Devon, I guess who was laying over, back in the
living
11 room, and he had no shirt on. And she said that she
saw
12 that his eyes were completely open, and he wasn't
moving,
13 and she saw, one wound and her mind started -- she
14 describes it as her mind started spinning, she kind
of
15 was running around, she describes it as running all

16 around. Didn't feel anything.
17 She looked at the other little
boy,
18 Damon, and he was standing there looking at her, and
she
19 said there was nothing on the front, so she turned
him
20 around and that is when she saw the stab wounds
through
21 his shirt. And she told him to lay down, and said
hang
22 on, and she said, that the last thing he said to
her was,
23 "Okay, Mommy."
24 She runs to the hall, yelling
for her
25 husband. She was just screaming at that point.
He comes

Sandra M. Halsey, CSR, Official Court
Reporter

4678

1 down running down the stairs, and he had his jeans
on.

2 He says he had his glasses on, but she didn't
report

3 that, she wasn't -- she didn't remember the
glasses.

4 She said that was, that,
"Okay,

5 Mommy." Was the last thing that Damon said to
her.

6 She said that she ran -- they
ran

7 through the hallway together, and then, that he went
to

8 Devon, and she grabbed the phone to the right and
called

9 911, and she had the phone I guess it was a portable
10 phone and she had it on her shoulder. And she also
11 grabbed a handful of towels, and went over and
started

12 wetting them as she was talking to the 911 operator.

13 I had asked her kind of
specifically

14 why wetting towels, and she thought that, in
retrospect,

15 she said she wasn't conscious of it at the time,

but she

16 thought that she had seen something like that on
one of

17 the 911, or emergency shows that they have.

18 So, she said that she wasn't --
had no

19 training in, first aid or CPR but Darin did. And
so, she

20 grabbed the towels, and that is when she saw, in
some

21 mirror -- she was running somewhere, and she still
had

22 the phone, I guess, she describes talking to 911,
and she

23 saw her neck for the first time, and said something
like,

24 "Oh my God, he got my neck."

25 And then she runs in the living
room,

1 and starts putting the towel on Damon's back and
Devon

2 (sic) is giving CPR. She reported kind of
thinking, at

3 that point, that she didn't know what to do, she
didn't

4 know any kind of first aid like Darin did.

5 And, she said she walked back,
she

6 laid the towels down and then walked back to Damon,
and

7 then she was kind of running around, "I don't know
CPR, I

8 felt helpless."

9 Then she ran to the door, and she
10 remembered her friend Karen, I guess, who is a nurse,
and

11 she screamed for the neighbor. She said she
remembers

12 talking to the 911, and again this is something that
most

13 traumatic victims will tell you, is that it seems
like it

14 takes forever for the emergency help to get there,
and

15 she told me that she goes, "I thought, what is taking
16 them so long," in that help wasn't arriving quick
enough.

17 She states that she remembers
seeing

18 the vacuum cleaner, seeing the knife again. And she
said

19 something about the 911 operator was telling her, you
20 know, "Don't touch anything." And then her response
was

21 something like, "I have already touched the knife."

And

22 she was crying to her husband, and talking to him
about

23 that she shouldn't have touched the knife, they told
me

24 not to touch it.

25 She is crying and screaming she
says,

Sandra M. Halsey, CSR, Official Court Reporter

1 and, I guess, thinking and saying my babies are dead,
she

2 said that -- Darin said there was no pulse after
working

3 on, I guess, Damon.

4 She said, then an officer got
there,

5 and he just walked in, and he looked scared and did
not

6 move, he just kind of stood there, she said. He
didn't

7 do anything.

8 She describes then other people
9 started kind of coming in, and talking and she
couldn't

10 think. She describes feeling dizzy, that she
couldn't

11 get her breath, that she felt like she was dizzy.

And

12 the officer said: "Where did he go?" And she, I
guess,

13 told the officer, "Out that door." She said that
the

14 officer didn't go out there.

15 And then she said the two

officers

16 went to the kitchen and then the paramedic comes in.

She

17 remembers seeing -- she described remembering -- she
said

18 that the police said that Karen wasn't in the house,
but

19 she remembers Karen coming on over, and being there,
kind

20 of in -- and she describes a very chaotic scene,
where

21 everybody is running around and screaming and
everything.

22 She said that the paramedic came
in,

23 and then she said, "Is he dead?"

24 And the paramedic pulled him over
and,

25 I guess at this point she is talking about Devon.
And

Sandra M. Halsey, CSR, Official Court Reporter

4681

1 his eyes were open, and she said -- or he said he is
2 dead.

3 And then the paramedics started
4 talking to her, and the next thing she remembers is
about

5 a necklace, the necklace kind of being embedded in
her

6 neck or something, and something about that. And
she

7 said most of this is really very hazy.

8 She didn't remember the E.R.
She

9 didn't remember really much about getting in the
10 ambulance except that Darin wanted to get in
the

11 ambulance and then they said, no, he
couldn't.

12 Her next real, kind of
clear,

13 consistent, lengthy memory, is her mom being in her
room

14 and she was asking her mom if they were both dead.

15 Again, do you want me to go on? I
16 mean, then we're kind of getting into --

17 Q. Well, that gets more into her
hospital

18 stay?

19 A. Right.

20 Q. When did her memory clear up?

21 A. Well, again, her memory is very
patchy

22 or spotty for a lot of the time, before her arrest.

23 Q. Okay.

24 A. And I even think within the first
day

25 or so of her arrest, it's kind of, you know, she kind
of

Sandra M. Halsey, CSR, Official Court Reporter

4682

1 again, remembers some things and then other people
told

2 her other things.

3 Q. Okay. So you went over this story
4 with her several times?

5 A. Yes, sir.

6 Q. And in quite a bit of detail?

7 A. Yes, sir.

8 Q. Okay. And, what you have just
related

9 to the jury, is that the story that she would tell
you

10 every time?

11 A. Yes, sir.

12 Q. Okay.

13 A. Again, I can go back. I started -
- we

14 had, where we started that morning, started that
evening,

15 you know, with cooking dinner.

16 Again, I started at the point of
17 waking up, I started at the point of waking up in
the

18 hospital. I started at the point of Darin running
down

19 the stairs. There were just a lot of -- you start
at

20 different points?

21 Q. Right. That is -- she gave you
the

22 same story?

23 A. Yes.

24 Q. As out and running through, and
waking

25 up, and this man is what, walking off? Or where
is he

Sandra M. Halsey, CSR, Official Court
Reporter

4683

1 when she spots him?

2 A. Yes, she describes seeing a
figure,

3 that I guess she assumes he is a man, kind of with
his

4 back to her, walking away, or into the kitchen.

5 Again, I never -- that is --
okay.

6 Q. Now, and then you went into
great

7 detail about what happened after that, as far as
where

8 she was with the towels and the children and the
9 paramedics and all of that, didn't you?

10 A. Yes, sir.

11 Q. And, basically it was the same
story

12 every time?

13 A. Yes, within reason. Again, I
think

14 anybody, in that situation, including probably the
15 paramedics and even the police, when something is

so

16 chaotic, and everybody is -- everybody's adrenalin
is

17 running, and there is some, you know, you may not

18 remember where you step five feet over this way,

versus

19 going over to this chair, or picking up this,

versus

20 that, and in what order, I mean, there may be

some normal

21 discrepancy. In fact, if there are not, I would

think

22 someone was not being truthful.

23 Q. Did she ever tell you that

she

24 actually went over to Devon and put her hand on

his

25 chest, and tried to close his chest wound?

Sandra M. Halsey, CSR, Official Court
Reporter

4684

1 A. Yes, in one of her
descriptions, she
2 did.

3 Q. She did tell you that?

4 A. She kind of talked about
going over

5 there, going over there to him, and trying to --
well, I

6 guess she was talking about going over there to
him, and

7 yes, I think I remember that.

8 Q. Is that one of the later
times?

9 A. You mean --

10 Q. When you said -- when you
asked her

11 about the story?

12 A. Again, I don't -- I didn't --
I don't

13 know shorthand, so I don't take everything down,
but it

14 may not have been the first time I spoke with
her, it may

15 have been the second or third time but, I mean -

-

16 Q. Did you -- you said she
remembered

17 seeing a vacuum cleaner?

18 A. Yeah.

19 Q. Where was that?

20 A. She didn't say where it was.

21 Q. Did she ever say she did
anything with

22 it?

23 A. I would have to look. Do you
want me

24 to go back through whether -- I know there was
some -- I

25 know she felt like that there was some
discrepancy in the

Sandra M. Halsey, CSR, Official Court
Reporter

4685

1 way that the police detectives had described the
vacuum

2 cleaner, and the way that she knew it was
suppose to have

3 been, or was.

4 Q. Well, did she ever say that
she was

5 using that as a crutch, or walking around with
it, or

6 anything like that?

7 A. No, she did not tell me about
anything

8 like that.

9 Q. Okay. Now, so, as far as the
attack

10 goes, I guess she has no memory of that?

11 A. No.

12 Q. Her boys being attacked and
then the

13 assault on her?

14 A. Right.

15 Q. And -- okay. Did you ask her
about

16 that, to try to see if she had any memory at
all?

17 A. Yes, sir.

18 Q. Okay. And she has just

blacked that

19 out apparently, as far as the attack on her

children and

20 herself goes?

21 A. Yes, sir.

22 Q. Her earliest memory would be

her son

23 touching her and this man walking away?

24 A. Yes, sir. I mean, I guess

her

25 assumption is that there was -- that some of it
may have

Sandra M. Halsey, CSR, Official Court
Reporter

4686

1 happened while she was still asleep. And, that
she
2 didn't kind of awaken or whatever, until her son
was
3 pressing on her on arm and said, "Mommy."

4 Q. Has she told you that she was
just
5 assuming that, that she was asleep when all this
assault
6 occurred?

7 A. Yeah, I mean, she doesn't
understand
8 it, and her description was that she wishes she
could
9 remember, and she doesn't -- I mean, she doesn't
10 understand why she doesn't have a memory of it.

11 Q. Okay. So she has no memory of
this
12 event at all as to when her -- where her children
were
13 attacked, when attacked or when she was attacked?

14 A. Yes, sir.

15 Q. Okay. Now you only caught part
of
16 that Silly String video, I guess you said, on the

news;

17 is that right?

18 A. Yes, sir.

19 Q. Okay.

20

21 MR. TOBY SHOOK: Judge, could I

have

22 just a moment, please?

23 THE COURT: Yes, you may.

24 MR. TOBY SHOOK: All right. Let

me

25 play something here.

Sandra M. Halsey, CSR, Official Court Reporter

4687

1 THE WITNESS: All right.

2 MR. TOBY SHOOK: All right. We
have

3 another copy. Judge, I don't see the original
videotape.

4 We have another copy.

5 THE COURT: Perhaps Ms. Wallace
6 wouldn't mind going to get that.

7 MS. SHERRI WALLACE: Yes, sir.

8 THE COURT: Well, let's move on to
9 something else.

10 MR. TOBY SHOOK: All right.

11

12

13 BY MR. TOBY L. SHOOK:

14 Q. All right. When do you think that
15 this traumatic amnesia took place. When did it
start?

16 Right there at that time?

17 A. Well --

18

19 THE COURT: I believe Ms. Wallace
has

20 located that other copy now, if you want to go ahead,
Mr.

21 Shook.

22

MR. TOBY SHOOK: Yes, sir.

23

THE COURT: By agreement, that is

an

24 extra copy of that tape, and it can be shown; is that

25 correct?

Sandra M. Halsey, CSR, Official Court Reporter

4688

1 MR. DOUGLAS D. MULDER:
Absolutely.

2 THE COURT: Thank you. Let's move
on.

3 MR. TOBY SHOOK: Okay. Thank you.

4 THE COURT: All right. Okay. Can
5 you see it from there?

6 THE WITNESS: Yes.

7 MR. TOBY SHOOK: Is everybody
going to
8 be able to see this? Can you see it, Dr. Clayton?

9 THE WITNESS: Um-hum. (Witness
10 nodding head affirmatively.)

11 MR. TOBY SHOOK: Okay. I want to
show
12 you -- this is the latter part of the interview, just
13 show you one part of it.

14

15 (Whereupon, a portion of
16 the video was played
for
17 the jury, after which
time,
18 the proceedings were
19 resumed on the record,
20 as follows:)

21

22

THE WITNESS: Okay.

23

24 BY MR. TOBY L. SHOOK:

25

Q. Did you hear that?

Sandra M. Halsey, CSR, Official Court Reporter

4689

1 A. Yes, sir.

2 Q. Do you want me to play it again?

3 A. No, sir.

4 Q. I mean, I know it was kind of
quick?

5 A. No, sir.

6 Q. Okay. "He went after something
7 defenseless, something so defenseless first, then he
came
8 to me, but he went after them first."

9 A. Um-hum. (Witness nodding head
10 affirmatively.)

11 Q. Did you hear her making that
12 statement?

13 A. Yes, sir, I did.

14 Q. Okay. That is a pretty positive
15 statement, isn't it, Dr. Clayton?

16 A. I think it's an assumption.

17 Q. You think it's an assumption?

18 A. Well, that she made, and I think
19 everybody else also pretty much made, as far as how
the
20 events occurred.

21 Q. Well, why do you think it's an
22 assumption that she made, that she said, "He went to
them

23 first, and then he tried to come to me"?

24 A. I guess I just -- this has just

been

25 an assumption made by her and everybody else, I
think,

Sandra M. Halsey, CSR, Official Court Reporter

4690

1 with this case.

2 Q. Well, she didn't say that she is
3 assuming that on that statement, does she?

4 A. No, she does not.

5 Q. She sounds pretty positive about
what

6 she is talking about, doesn't she?

7 A. Well, again, I think she -- she
thinks

8 that is the way it occurred, but I don't think that
comes

9 from her memory.

10 Q. So --

11 A. Or she has not told me that comes
from

12 her memory.

13 Q. So when she makes this statement,
and

14 this is back on the 14th of June.

15 A. Yes, sir.

16 Q. Okay. She just doesn't know
what she

17 is talking about?

18 A. Well, I think she is stating what
she

19 thinks is true.

20 Q. Okay. She is just assuming that,
and

21 that is your opinion?

22 A. Yes, sir.

23 Q. Okay. If she has amnesia,
traumatic

24 amnesia, it should be pretty consistent, shouldn't

it? I

25 mean if she doesn't remember the events, she
shouldn't

1 remember the events, right?

2 A. Well, again, and it's something
that,

3 I guess, I questioned her extensively about was that
she

4 had, you know, various people, kind of, "Well did
you

5 fight him off? Do you remember that?" And, at some
6 point, everybody has somewhat of a sense of -- or
7 somewhat of a suggestibility realm, and I think we
talked

8 about that, and she stated that she had made a
9 statement -- and I can't remember to whom, but she
said

10 something like, "I must have tried to fight him off.
It

11 must have happened, that, you know, he, you know, was
12 trying to stab me and I was fighting him off."

13 But as far as her consistent
14 recollection of the events, that I have kind of
related

15 to you, that has all been very consistent. I think
we

16 talked about it, and I questioned her about various
17 statements that have either been, I guess, stated
that

18 she said, or that she may have actually said, at
some

19 point, how they might be more -- have been more
20 suggestions, or her trying to make sense out of
what

21 happened. And in the sense that: It must have
happened

22 like this.

23 Q. So, if you heard, or are given
24 information that on the -- when she was at Baylor
25 Hospital, that she told a nurse, that she laying on
her

Sandra M. Halsey, CSR, Official Court Reporter

1 right side in her bed and she said, "I was lying just
2 like this when it happened. I went to sleep. Damon
woke
3 me up. There was a man wrestling at my neck area,
and I
4 yelled, and he went off, and ran off."

5 Would that be just her trying to
6 remember events or perhaps that is just -- perhaps
she
7 didn't get her story straight yet?

8 A. Well, it's my opinion that is
probably
9 a misrecollection of either Mrs. Routier, or the
nurse,
10 as to exactly what was worded when.

11 Q. So your opinion is that would just
be
12 a misrecollection on her part?

13 A. Or the witness that says that is
what
14 she said.

15 Q. Oh, the witness. That would be a
16 mistake on the witness's part?

17 A. Well, when anybody is recounting
18 something that they have heard in a very traumatic
event,

19 words like must have happened, or it must have been
this
20 way, or maybe it did, might get lost or
misunderstood.

21 Q. Well, have you interviewed any of
22 these nurses that heard her various stories of how
this
23 happened?

24 A. No, I was not privy to talk with
them.

25 Q. Okay. Of course, the other

Sandra M. Halsey, CSR, Official Court Reporter

1 explanation for it could be, Dr. Clayton, is that she
2 just had not gotten her story straight?

3 A. I guess that could be one
explanation,

4 yes.

5 Q. Right. And you say that you
tested

6 her, to make she is telling the truth, and you can
do

7 that by having her go through this story, and
checking

8 for discrepancies, and that sort of thing, and you
9 started at different points; is that right?

10 A. Yes.

11 Q. Okay. Now, if she is saying, "I
have

12 traumatic amnesia," and she can't remember any of
the

13 assault, you obviously can't question her or try to
trick

14 her on that, can you?

15 A. Well, you can question her about
the

16 events, or what does she think happened, and that
sort of

17 thing, but as far as --

18 Q. Well, if she says, "I just don't
19 remember what happened." You can't really question
her

20 about a whole bunch, can you?

21 A. No, not about specific details.

22 Q. If she says "I can't remember
anything

23 about how I was attacked or my children were
attacked,

24 you can't test her on her truthfulness on that, can
you?

25 I mean, that kind of shuts it down, doesn't it?

1 A. Well, about the specific
details, yes,

2 sir.

3 Q. Okay. And that is what is
important

4 here, isn't it? The specific details. I mean,
this can

5 be kind of a convenient defense, if you say "I just
don't

6 remember what happened." That prevents detectives
from

7 asking questions like, "Well, golly, how could you
sleep

8 through your children being murdered, Mrs.
Routier?"

9 "I just don't remember. I have
got

10 traumatic amnesia".

11 A. Well, sometimes some events are
12 unexplainable.

13 Q. Right.

14 A. And there have been other case
reports

15 and literature where people, when -- even when they
16 wanted to remember specific events were unable to,

and

17 just didn't. And, it is my opinion that this is

one of

18 these cases.

19 Q. Okay. But, this type of

traumatic

20 amnesia, it's very rare, isn't it?

21 A. Again, people not remembering

events,

22 it's somewhat rare, as far as in the general

population,

23 because, not that many people are attacked, or have

that

24 violent assault. But, among violent assault

victims, it

25 may not be the common occurrence, but it's not, you
know,

1 it does happen. I mean, I don't know what you
2 statistically mean by rare.

3 Q. Okay. Well, if she tells
detectives

4 on the morning when they question her on the 6th,
that

5 she struggled with this man on the couch, are you
saying

6 that she was just being -- that they were suggesting
this

7 to her, or she was misinterpreting things?

8 A. Well, in any kind of police or
9 detective interrogation, there are a lot of different
10 interpretations about what they are doing with their
11 questioning, and whether a lot of times, police or
12 detectives interrogating someone, or questioning him,
may

13 say, "Well, could it have happen like this and that?"

14 And so, I don't know, I wasn't
there,

15 and I have not seen any kind of statement written, or
16 heard anybody say that statement, that she said
that.

17 So --

18 Q. Okay. And if she told any other

19 nurses throughout the day that, "This man was
standing

20 over me, and tried to attack me, and I fought him
off".

21 That would be just something that she is trying to
22 explain to them or just something that she is
grabbing

23 out of the thin air, or something that they are

24 suggesting to her?

25 A. Again, I would have had to -- for
me

Sandra M. Halsey, CSR, Official Court Reporter

4696

1 to know that she actually told those nurses that, I
would

2 have had to hear that for myself.

3 Q. Okay. And if she told a good
friend

4 of hers, by the name of Barbara Jovell, that the man
was

5 standing over her, and started to stab her and she
was

6 able to block the knife, again, would that be just

7 something that she was just making up?

8 A. Again, I would have had to -- for
me

9 to believe that actually happened, I would have to
hear

10 her telling her that.

11 Q. Why would you have to be there,
and be

12 present, Dr. Clayton?

13 A. Because I know of this woman's
mental

14 history.

15 Q. Okay. Now, that you saw this
video

16 tape -- do you know of the nurses mental history?

17 A. No, sir, I don't.

18 Q. Is that why you would have to --
well,

19 why would you have to be there when the nurses --

20 A. Well, again, for someone to
remember a

21 statement that someone made in the course of their
work

22 six months ago, I mean, I have trouble, you know,

23 recollecting things, and I have taken handwritten
notes,

24 again, people's memory is not infallible, and if
they

25 have not taken notes and --

1 Q. So if they have taken careful
notes,
2 you could trust their memory more on that, couldn't
you?

3 A. I would be more likely to trust
their
4 memory, yes, sir.

5 Q. If you knew one of those nurses
took
6 two and a half pages worth of notes, within the day
of
7 her telling that, would you trust the nurse then?

8 A. Well, again, I would have to know
the
9 nurse and the situation and also read the notes.

10 Q. Okay. So you just have to know
the
11 nurse and the situation, before you could trust her,
12 whether she is telling the truth about that?

13 A. Well, for you to have me make an
14 opinion about something that was said, I would --
again,
15 it would be best if I had heard actually what was
being
16 said, and in what context.

17 Q. Okay. And this videotape you
just saw
18 of her statement, that he went to them first, and
then he
19 tried to come to me. Does it look like anyone was
20 suggesting anything to her at that time?
21 A. Not at that time, but I know that
she
22 had been -- had come from a police interrogation.
And
23 also had had, I think one other one in the hospital
24 before that.
25 Q. You told this jury that when the

1 police came and questioned her that she was on
Demerol?

2 A. That is my understanding, yes.

3 Q. Okay. And because she was on
Demerol,

4 that acted as kind of a truth serum?

5 A. Well, Demerol is a narcotic, and
so is

6 Phenergan, and yes, they tend to -- again it's a lot

7 like, people are more disinhibited and, in trying to

--

8 where you just, in like similar to when someone is

9 drinking, except it is usually a little heavier
sedation,

10 to kind of disinhibit inhibition, that people are
more

11 likely to tell the truth, or not be able to follow
along

12 with previous lies or deceptions. They are just not
as

13 sharp, so the truth comes out.

14 Q. So, are you telling this jury,
that if

15 she was on some Demerol there, and had committed
this

16 murder, that she would have told the police: "I did
17 it."

17 Because Demerol acts like truth serum?

18 A. Well, I said, that is a
possibility,

19 yes, sir, that if she were going to -- I mean, most
20 people that commit murders confess. Most people
have --

21 Q. They do?

22 A. Yes, sir, they do. At one point
or

23 another.

24 Q. I guess they keep giving me the
wrong

25 cases.

1 All right. Are there any studies that
show

2 that Demerol acts as a truth serum?

3 A. No. Again, I am comparing it to
the

4 Amytal interview, and there are many, many studies
about

5 that being --

6 Q. What is a Amytal interview?

7 A. Amytal is another narcotic, that
is

8 used in the psychiatric community, when someone is
either

9 consciously or subconsciously not being truthful.

10 Q. They don't use Demerol for that,
do

11 they?

12 A. No, Demerol is longer acting.

That is

13 one of the reasons that Amytal is used, is because it
is

14 very short acting, and they come out of it.

15 Q. Is that other drug you talked
about,

16 is that a painkiller?

17 A. Amytal?

18 Q. Yes.

19 A. It can be used somewhat that way.

20 Again, it's somewhat of a heavy sedation. You might
use

21 it in some sort of surgery procedure. It basically,
to

22 my knowledge, is pretty much just used in those type
of

23 interviews at this point.

24 Q. Do you know how much Demerol she

was

25 given before the detectives talked to her?

Sandra M. Halsey, CSR, Official Court Reporter

4700

1 A. No, I do not.

2 Q. Okay. If it was a very light
amount,

3 would that change your opinion on that?

4 A. Well, again, I would -- because of
the

5 Phenergan also, and I know that she was given, or I -
- I

6 seem to recollect that she was given 25 milligrams.

7 Q. What is Phenergan?

8 A. Phenergan is another narcotic that
is

9 used to sedate people. It is also used to decrease
10 nausea, vomiting and also diarrhea.

11 Q. And they give you the Phenergan
with

12 the Demerol to keep you from getting an upset
stomach,

13 right?

14 A. Yeah, but anybody that has had
a

15 Phenergan shot, knows that it -- unless you have
been

16 addicted, and using it on a daily basis, it makes
you

17 very sedated.

18 Q. Okay. But having this

traumatic

19 amnesia, again, that prevents any detective or

anyone

20 else from asking key questions about what may

have

21 happened in that room, doesn't it, Dr. Clayton?

22 A. Well, it's my understanding

that

23 from --

24 Q. Is that right, Dr. Clayton?

25 A. No, it doesn't prevent a
detective

Sandra M. Halsey, CSR, Official Court
Reporter

4701

1 from asking that.

2 Q. It doesn't? So --

3

4 MR. DOUGLAS MULDER: Excuse
me, Judge,

5 if he will just do her the courtesy of letting
her answer

6 the question.

7 THE COURT: Well, I think both
sides

8 should do that, yes, sir. Mr. Shook, please do
that, and

9 ask another question and then let her answer
that.

10 THE WITNESS: Well, I don't
think it

11 prohibits the detective from asking.

12

13 BY MR. TOBY SHOOK:

14 Q. Well, it would prevent -- I
guess if

15 the person said, "I just have amnesia, and I
can't

16 remember."

17 He can't ask her those few

questions.

18 It wouldn't do him any good, would it?

19 A. Well, I don't know, I'm not a

20 detective, but I think that he could ask the
questions,

21 and I think that they -- my understanding is that
they

22 did, over many, many hours, on different
occasions.

23 Q. Do you think that she slept
through

24 this attack?

25 A. I guess it's my opinion that
probably

Sandra M. Halsey, CSR, Official Court
Reporter

4702

that he was

16 stabbed in the back.

17 Q. Okay. How many times?

18 A. I don't know, several.

19 Q. At least four penetrating
wounds, and

20 two incised wounds.

21 A. All right.

22 Q. And Darlie told you that she
was a

23 light sleeper, didn't she?

24 A. No. What she told me was that
she had

25 always thought that she was a light sleeper, but
it is

Sandra M. Halsey, CSR, Official Court
Reporter

4703

1 more that she -- once she was awake, she had
trouble

2 getting back to sleep.

3 Q. Okay. Did she tell you, or do
you

4 remember reading in her voluntary statement that
she

5 wanted to sleep downstairs because she woke up
when the

6 baby turned over?

7 A. She said -- yeah, I read that
in the

8 statement.

9 Q. Okay. If Damon Routier was
about one

10 foot from her, or two feet at the most, when he
was

11 stabbed in the back, do you believe that she
could have

12 slept through that?

13 A. I don't know.

14 Q. What does your common sense
tell you?

15 A. That probably she wouldn't
have been

16 asleep.

17 Q. Okay. And, if her other son,
Devon,

18 was about as far as from me to you when he was
stabbed in

19 the chest twice. Do you think that she would
have slept

20 through that?

21 A. I don't know.

22 Q. Well, what does your common
sense tell

23 you?

24 A. I guess, that at that

distance, I

25 think some people could possibly sleep through
it,

Sandra M. Halsey, CSR, Official Court
Reporter

4704

1 depending on the amount of noise and what
happened.

2 Q. What about if she was hit a
whole

3 bunch and caused blunt trauma to her arms, she is
not

4 going to sleep through that, is she?

5 A. No, sir.

6 Q. And she is certainly --

7 A. I would not --

8 Q. You wouldn't think she would?

9 A. I would not think so.

10 Q. Okay. And you wouldn't think
she

11 could sleep through getting her throat slashed, or
her

12 arm cut, or anything like that, would you? You
probably

13 would wake up if that happened, wouldn't you?

14 A. Again, yes, but I think that she
has

15 no memory of it, and I think that it's explainable.

16 Q. Okay. You read over her
voluntary

17 statement; is that right?

18 A. Yes, sir.

19 Q. And you also -- well, let me ask

you

20 this: Do you remember in the voluntary statement,

her

21 making the statement that, in the middle of all

this

22 commotion going on, with the children laying

there

23 bleeding, Darin trying to administer CPR; do

you have a

24 copy of it?

25 A. Yes, sir.

Sandra M. Halsey, CSR, Official Court
Reporter

4705

1 Q. Okay. Good. Go to page 7.

I'm

2 sorry, page 8, and in the middle there, you see
the

3 sentence that starts out, "I then stood up and
turned

4 around and saw glass all over the kitchen floor."

5 A. Well, I'm not sure where that
is.

6 Q. Page 8, it should be up at the
top.

7 A. Then holding a towel --

8 Q. Go to page 8. Is it the next
one?

9 Let me check it out. No, that's too far. Here it
is.

10 A. Okay.

11 Q. All right. Do you see where it
says,

12 "I then stood up and turned around, and saw glass
all

13 over the kitchen floor."

14 A. Yes, sir.

15 Q. That is part of the statement
where

16 she is -- Darin has come down and is attending to
Devon,

17 and she is calling 911; is that right?

18 A. That is my understanding.

19 Q. All right. And then, the next

20 sentence is, "I tried to glance over to see if
anything

21 was out of place, and if anything was missing."

22 A. Yes.

23 Q. Okay. And she told you on the

911, I

24 believe it is apparent on the 911 tape, she says,

25 "Nothing is touched, nothing is touched," one time
in

1 there; is that right?

2 A. I don't remember hearing that
3 statement.

4 Q. Okay. Does it seem strange to
you,
5 that a mother that is witnessing all this, was woken
up,
6 her children are stabbed, and her husband is trying
to
7 administer aid, and she starts taking an
inventory, to
8 see if items are missing; does that seem like
strange
9 behavior to you?

10 A. Well, again, human behavior,
people do
11 a lot of different things, and focus on a lot of
12 different things when things are happening.
13 My view of the situation is, and
her
14 description of it repeatedly to me was that that may
have
15 been like a split second kind of look, or later on
16 something that she kind of thought about, but her
main

17 concern was the boys and their, you know, being
hurt.

18 Q. Well, but we know from her
statement

19 that at one time during that scenario, her concern
was,

20 she wanted to see if any of her items were gone.

21 A. Well, again, if you are looking
22 around, or if you are just glancing at a room, you
might

23 just glance and make a statement about that.

24 Q. So you think that is a normal
25 reaction?

1 A. To glance at a surrounding when
you

2 are --

3 Q. Well, are you assuming that she
just

4 glanced at the surrounding?

5 A. Yes.

6 Q. Okay. Do you recall on the 911
tape

7 her saying about the knife, "Oh, I picked it up.
Maybe

8 we could have gotten prints off of that."

9 A. The way I remember the tape, is
10 hearing the operator saying, "Don't pick up or
don't

11 touch that, and then her saying, 'Oh I picked it
up.' "

12 Q. Okay. Do you have a copy of
the

13 transcript or did you just listen to it?

14 A. I just listened to it.

15 Q. Okay. Let me show you what has
been

16 marked as State's Exhibits 18-E, and I will let you
start

17 looking at page 9.

18 A. All right.

19 Q. And if you will go over to the
next

20 page, do you see where she starts talking about
picking

21 up the knife?

22 A. Yes.

23 Q. Okay. Now, at that point,
actually

24 the 911 operator was saying: "You need to let the
police

25 officers in the front door," is that right? At
least,

1 according to that document.

2 A. Yes.

3 Q. Okay. And then her response is,
"His

4 knife was lying over there, and I already picked it
up";

5 is that right?

6 A. Well, I see it, but it is printed
as

7 unintelligible --

8

9 MR. DOUGLAS MULDER: Judge, this
is --

10 we will object --

11 THE COURT: Just a minute, ma'am.

12 MR. DOUGLAS MULDER: Judge, this
is

13 misleading and this is out of context, and he knows
that.

14 He knows that there are a number
of

15 conversations going on at that same time, that a
police

16 officer is already there, and she's talking to the
police

17 officer, and she is talking to her husband, and she

is

18 talking to 911.

19 THE COURT: What is your legal

20 objection?

21 MR. DOUGLAS MULDER: Well, that

is my

22 objection.

23 THE COURT: Okay. Overruled. Go

24 ahead.

25 MR. DOUGLAS MULDER: He has

misadvised

1 the witness as to the circumstances.

2 MR. TOBY SHOOK:: I'm not trying
to

3 misadvise you, Doctor. It comes up several times.

4 THE WITNESS: Yes.

5 THE COURT: Go ahead, continue.

6

7 BY MR. TOBY SHOOK:

8 Q. Now, I just want to talk about
the

9 time she talks about getting prints. That only
comes up

10 once.

11 A. Yes.

12 Q. Okay. And then, the operator
says,

13 "Okay, it's all right. It's okay." And then, it
says,

14 female caller, "God, I bet we could have gotten the
15 prints maybe, maybe."

16 Do you think that is normal
behavior

17 for a mother on the 911 call, talking to an
operator,

18 while her children are lying there dying?

19 A. Well, I think it is in the

realm.

20 Again, I listened to the whole tape, and the
whole

21 conversation sounds very in the realm of
appropriateness,

22 or of a mother with two dying children.

23 Q. Okay. So, you think there was
nothing

24 inappropriate, or abnormal, or strange about that
comment

25 at all?

Sandra M. Halsey, CSR, Official Court Reporter

4710

1 A. Not in the whole context of the
911

2 call, no, sir.

3 Q. Okay. What did she tell you
about --

4 what her suicide was all about? The May 3rd suicide
5 attempt.

6 A. Well --

7 Q. Or contemplation of suicide.

8 A. Well, it wasn't an attempt.

Again,

9 her description of it was that she was just feeling
kind

10 of somewhat overwhelmed. That, she had, I guess,
bought

11 some over-the-counter pills and she was thinking
about

12 taking them. That she started writing out the note,
but

13 then she didn't think she could do it. Or thought
about

14 writing it, I don't remember which, but in the
event, she

15 called her husband, and essentially told him that,
"You

16 need to come home. I'm feeling really bad."

17 And he came home, and they cried,
and

18 talked and things got better very shortly after
that.

19 Q. Okay. And, did she tell you that
the

20 first time you talked to her, when you saw her in
jail

21 back on June the 20th?

22 A. Well --

23 Q. Let me get some of that stuff out
of

24 your hands.

25 A. When, I saw her, pretty much, I

1 think -- whenever you are interviewing someone,
like, as
2 far as in jail, to assess if they are suicidal.
What I
3 always do, that first interview is a little longer,
is
4 you ask them about past suicide attempts. I didn't
know,
5 I mean, I wasn't privy to any of the police things,
so
6 just in my regular talking to her as an inmate, I
asked
7 her if she had ever -- was she suicidal now, and she
said
8 no, and -- that -- and I asked her if she had ever
9 thought of -- or if she had ever had any other
suicide
10 attempts.
11 And she said no, she had not had
an
12 attempt, but that she had thought about suicide.
And,
13 she again, this is her just talking to me as a jail
14 psychiatrist, that she felt tired and upset, and
that she
15 actually bought some over-the-counter pills, but

wrote a

16 note and knew she couldn't do it, she called her
husband,

17 he came home, they talked and cried, and she felt
better,

18 and that the depression was gone after -- totally
gone by

19 a month.

20 She said things were better. She

21 talked about them starting to do things as a family.

22 Doing things I mentioned -- or she mentioned I
remember,

23 roller blades. She denied -- I asked her, then I
asked

24 her, "Do you know anybody that has actually killed
25 themselves?"

21 nurses notations also; is that right?

22 A. Yeah, in the way you have the
23 documents put together, in the actual chart, the
way it

24 is, is the doctors' notes are on blue sheets and
they are

25 separate from the nurses' notes.

Sandra M. Halsey, CSR, Official Court Reporter

4713

1 Q. Okay.

2 A. Which are on, I think, white
sheets.

3 Q. But they are all kept together,
are

4 they not?

5 A. Yes, but they are not in -- again
they

6 are separated out. The doctors, from day one to the
7 current date are in one place, and then the nurses,
from

8 day one to the current are in another place. They
are

9 not like blue, white, blue, white pages.

10 Q. They are all regular business
records

11 for the stuff that you do when you see --

12 A. Yes, sir.

13 Q. Patients out there?

14 A. Medical records.

15 Q. Medical records?

16 A. Yes, sir.

17 Q. You use business records. Okay.

But

18 they are all kept in the regular course of you and

the

19 other doctors and the nurses duties; is that right?

20 A. Yes, sir.

21 Q. Okay. And, they are on the

Dallas

22 County medical records sheets that -- the information

23 that you usually put it on; is that right?

24 A. Yes, sir.

25 Q. And all of these records here are
all

Sandra M. Halsey, CSR, Official Court Reporter

4714

1 related to Darlie Lynn Routier; is that right?

2 A. That is my understanding, I mean,
yeah

3 if they have got a name on it, I assume, yes.

4 Q. Okay.

5

6 MR. TOBY SHOOK: We will offer all
of

7 State's Exhibit 145 at this time, Judge.

8 MR. DOUGLAS MULDER: Judge, again
we

9 don't have any objection to the notes that Dr.
Clayton

10 took on there, but we're not going to agree -- A:

We

11 have not read it; and, B: We are not going to
agree to

12 some notes that --

13 THE COURT: Well, take time to
read it

14 right now.

15 MR. DOUGLAS MULDER: This may
take

16 some time --

17 THE COURT: All right.

18 MR. DOUGLAS MULDER: Well, Judge,

one

19 other thing, she is not the custodian. She is not
the

20 proper person to support this.

21 THE COURT: Well, then my ruling
is,

22 if she is not the custodian, I am going to let in
those

23 records that she can identify. I think I have made
that

24 clear. And the others, they can question her about
them,

25 but we're not going to admit those.

Sandra M. Halsey, CSR, Official Court Reporter

4715

1 She is not the custodian of the
2 records, and so, I think we have already admitted
those,
3 and she has said that -- the Doctor has said that
she can
4 identify, and the others will not be admitted at
this
5 time.

6 So, what else do we have to rule
on?

7 Let's move on.

8 MR. DOUGLAS MULDER: All right.

9
10 BY MR. TOBY L. SHOOK:

11 Q. All right. Well, let me show you
the
12 first page here. Those are some nurses' notes taken
on
13 the 18th of June; is that right?

14 A. Yeah. Again, I don't feel like -
- I
15 don't feel confident in talking about anything but
the
16 notes that I know I wrote, because --

17
18 THE COURT: All right. That's

fine.

19

MR. DOUGLAS MULDER: Well, Judge,

he

20 is try to do indirectly what he cannot do directly.

21

THE COURT: I understand all of

that,

22 and the ruling stays the same. Let's move on to

23 something else, Mr. Shook.

24

25

Sandra M. Halsey, CSR, Official Court Reporter

4716

1 BY MR. TOBY L. SHOOK:

2 Q. Do you think that someone might
have

3 slipped something in there, Doctor?

4 A. No, I just don't know that -- I
am not

5 familiar with that part of the record, but I do
recognize

6 my own writing.

7 Q. Well, let's stick just to your
notes.

8 Okay?

9 A. Okay.

10 Q. First of all, when you first saw
--

11

12 THE COURT: We are going to
continue

13 with this witness, ladies and gentlemen, if we can
14 possibly finish today.

15

16 BY MR. TOBY L. SHOOK:

17 Q. When you saw her on the 20th, you
18 didn't feel any need to prescribe antidepressants,
or any

19 other medication at that time, did you?

20 A. I don't know -- feel any need, I
21 thought that her -- as far as treating, I guess, my
22 medical opinion, as far as treating depression, is
 that
23 you don't necessarily treat someone for major
 depression,
24 when they have just undergone a traumatic event.
 Because
25 that is appropriate to have a depressed mood, and
 grief

Sandra M. Halsey, CSR, Official Court Reporter

4717

1 and sorrow. So --

2 Q. Did you prescribe any
antidepressants

3 or medications at that time?

4 A. No, I did not.

5 Q. Okay. She was able to sleep and
eat

6 okay at that time, wasn't she?

7 A. She again, she -- her eating, she
8 described as fair. She said her sleeping was -- I
guess

9 I wrote okay. Again, I think I was assessing it in
the

10 context of the situation. Most people don't go to
sleep

11 and -- but she was having -- or getting some sleep.

12 Usually the way the jail works and just after any
13 traumatic situation it is within an hour or two, and
then

14 another hour. But -- I assessed her sleeping as
15 appropriate for the situation.

16 Q. Okay. And, you have not seen all
of

17 this tape that was taken by Channel 5 out at the
grave

18 site, called the Silly String party, have you?

19 A. No, I have not.

20 Q. Okay. But you say that that is
21 an

22 appropriate grief response. That is appropriate
23 behavior; is that right?

24 A. Well, the events surrounding it
25 have

26 been described to me by Mrs. Routier, her husband,

27 her

28 mother, and I guess I have heard various comments,
29 or

Sandra M. Halsey, CSR, Official Court Reporter

4718

1 seen various comments other people have made about
it in
2 the paper, and the description.

3 Q. But you have not seen it
yourself;
4 right?

5 A. No, I have not seen the whole
thing,
6 no, sir.

7 Q. It has only been described to you
by
8 the defendant, her husband, and the mother?

9 A. And the news media.

10 Q. And the news media?

11 A. Yes, sir.

12 Q. And, you think that
that is

13 appropriate behavior what went on out
there?

14 A. Well, again, I don't think it's
-- I

15 don't think you can say what is appropriate and not
16 appropriate in grief situations. I think everybody
17 grieves differently, and that, if people were at an
Irish

18 wake, or something like that, that some people might
19 think it was inappropriate.

20 I think it's in the realm of
normal

21 grieving. And I know that Mrs. Routier is on trial
for

22 murder, but everybody else there is not, so
obviously,

23 they were, you know, grieving in the same type of way
24 that she was.

25 Q. And, how much are you paid for
your

Sandra M. Halsey, CSR, Official Court Reporter

4719

1 work that you have done?

2 A. I'm paid an hourly fee.

3 Q. How much is that?

4 A. Two hundred and fifty dollars an
hour.

5 Q. Okay. Are you paid any more while
you

6 testify?

7 A. No, sir, it's my -- I bill,
actually

8 I'm kind of in the middle of the road for forensic
9 psychiatrists. Some of the other ones bill up to
three

10 hundred and fifty to four hundred dollars an hour.

11 But, I bill for my time, no matter
12 whether it's reviewing records or testifying, it's
all a

13 part of my time. So I bill the same amount.

14 Q. And what is your total bill for
this

15 case going to be? Do you have that totaled up yet?

16 A. No, I don't. I have not -- I have
not

17 totaled it up. My secretary bills monthly, and I
don't

18 even know if she has sent out the bill for December.

19 Q. Okay.

20 A. And I know she has not sent it out
for

21 January, because it's not over yet.

22 Q. Okay. As far as the categories
you

23 were going over that Mrs. Routier doesn't fit into.
One

24 was revenge; is that right? Or what was that
category
25 called?

Sandra M. Halsey, CSR, Official Court Reporter

4720

1 A. I think specifically, retaliation
or
2 spousal revenge.

3 Q. Spousal revenge.

4 A. Yes. That was Dr. Resnick's
category.

5 Q. Okay. And, of course, your
6 information about their relationship comes from Darin
7 Routier and Darlie Routier; is that right?

8 A. Well, also, the mother-in-law.

9 Q. Okay.

10 A. And then her mother.

11 Q. And her mother?

12 A. Yes.

13 Q. So as far as whether there is any
14 problems in their relationship, and what was going
on,

15 you have to depend on those people to give you the
16 accurate information; is that right?

17 A. Yes.

18 Q. Okay. And did she tell you that
they

19 had been fighting that night, that Wednesday night?

20 A. She -- yes, I mean, again,
throughout

21 the whole, I guess, 12 and a half hours, she has
been

22 very forthright and honest about their problems,
their

23 lumps and bumps in the marriage.

24 Q. What were they fighting about?

25 A. She was upset because he -- his
Jaguar

Sandra M. Halsey, CSR, Official Court Reporter

4721

1 had been breaking down all the time, and I guess what
had

2 kind of culminated it, was that he had left it
somewhere,

3 and the man had called her that afternoon, and kind
of

4 been rude to her, about having Darin come get the
Jaguar.

5 People kind of described Darin, or
the

6 people that I have interviewed, as someone that you
kind

7 of have to tell him several times to do something
before

8 he does it.

9 So, she was kind of aggravated she
10 stated because he hadn't -- he didn't take care of
the

11 Jaguar and here she was having to deal with this
man

12 calling her up and being rude, while she had her
kids,

13 and, you know, neighborhood kids and everybody in and
out

14 of the house.

15 Also, she was a little bit upset

15 Q. And, do you believe that they
had a

16 very happy relationship from what they told you?

17 A. Yes, I do.

18 Q. Okay. And, you believe Darlie
when

19 she tells you that she can't remember any of this
that

20 happened?

21 A. Yes, I do.

22 Q. Okay. But you were not present
at the

23 house during any of this, were you, Dr. Clayton?

24 A. No, sir, I was not.

25 Q. And you were not present at the
house

1 during the month leading up to this, and saw how
their

2 relationship was personally, did you?

3 A. No, I did not.

4 Q. Okay. But you trust and believe
the

5 versions of what they have told you?

6 A. And, also, I guess his mother,
and

7 then also her mother. Yes, sir.

8 Q. Okay.

9 A. Again, they -- I don't want to
10 mislead that they -- either one of them told me
11 everything was perfect and they never had arguments
or
12 fights. I think that both of them, which is one of
the

13 reasons that I tended to believe them, did admit,
to

14 fights and disagreements, and you know, problems
that

15 regular married people have in their relationship.

16 And I think also, his mother and
her

17 mother both were very much the same way, in that

1 Q. Okay. What it boils down to is
this,

2 I guess: It happened one of two ways, some stranger
came

3 in and did this horrible killing; or, you have been
4 fooled by the defendant and she did it?

5 A. Well, I think there is another
6 possible explanation is that, maybe this wasn't --
and I

7 know that both of them have told the police, on
numerous

8 occasions that there were some different individuals
that

9 might have had some motive.

10 Q. Who are these people?

11 A. They're -- I guess, a man that had
12 worked around where they did at the shop. I guess
his

13 name is Glenn. And that he had made threats
against

14 them, and he had allegedly kind of come on to
Basia.

15 His wife had called up Darlie,
and

16 talked to her, and Darlie had told the man's wife,

call

17 Basia, and I guess Basia told the man, yes, that he
had

18 made threats to come on to her, and, that this man
--

19 Q. Let me stop you there for a
second,

20 and I will let you continue. Who was telling you
this

21 about this man named Glenn?

22 A. Both Darlie and Darin.

23 Q. Okay. Okay. And this is a man
that

24 threatened them, you say, or they told you that --
Darlie

25 told you this man named Glenn had threatened her?

1 A. Yes, that he had made some
threats,
2 and she also told me that she had told the police
3 detectives about this.

4 Q. When did she say she told the
police
5 detectives this?

6 A. From the very beginning, it's my
7 understanding.

8 Q. Did she think that this man was
the
9 one that came in there?

10 A. She didn't identify him as being
a --
11 specifically, but she thought that he might have --
he --
12 you know, he was someone with possibly a motive,
because
13 he had just gotten a divorce and lost his rights to
his
14 kids, essentially because of this whole deal with
his
15 wife and Basia and Darlie, not -- I guess not lying
for
16 him.

17 Q. Okay. And so, she says she told
the

18 police that this man, Glenn, might be the one?

19 A. Yes. And she said that, I guess,
a

20 couple of weeks prior to the murder the divorce was

21 final, he had lost custody of his little boy, he

22 supposedly has a history of being somewhat
physically

23 abusive, and had been arrested several times for

24 fighting, and that a lot of people are afraid of him

25 because of his temper.

1 Q. Okay. Does he look anything like
the
2 man she saw leaving the house?

3 A. We didn't really go into that. I
4 mean, when I was talking about -- this is just more
of
5 her expressing her frustration with the police not
6 looking at any leads.

7 Q. So she says that she told the
police
8 that this man named Glenn has threatened me, and
y'all
9 need to check him out?

10 A. Um-hum. (Witness nodding head
11 affirmatively.)

12 Q. Okay. Anyone else? Did she
give
13 anyone else as a suspect?

14 A. Well, my understanding is that
she
15 told, I guess, the detectives, Patterson and
Frosch,
16 this.

17 Q. Okay.

18 A. And, I don't know about anybody

since

19 then.

20 Q. Okay. That is the only one then?

21 A. The only police?

22 Q. The only suspect?

23 A. Oh, yes, that was the only --

yeah,

24 that was the one that she mentioned to me.

25 Q. Okay.

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Reporter

4727

1

2 MR. TOBY SHOOK: That is all
we have,
3 Judge.

4

THE COURT: Mr. Mulder.

5

MR. DOUGLAS MULDER: I'll be
brief.

6

7

8

REDIRECT EXAMINATION

9

10 BY MR. DOUGLAS MULDER:

11 Q. Frustrated with the police
and their
12 investigation?

13 A. Yes, sir.

14 Q. All right. Just a thing or
two, and I
15 will be brief. But when I first contacted you I
told you
16 that I had just got into this case, a week or
ten days,
17 or two weeks ago, or whatever.

18

19 MR. TOBY SHOOK: Judge, I
will object

20 to the leading.

21 THE COURT: Well --

22 MR. DOUGLAS MULDER: Well,

Judge, they

23 brought it up.

24 THE COURT: Well, go ahead,

Mr.

25 Mulder. I think that is offered merely, what is
being

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Reporter

4728

1 said, not for the truth of the matters asserted,
but

2 let's just go ahead and be brief, Mr. Mulder.

3

4

5 BY MR. DOUGLAS MULDER:

6 Q. You understand that I had
just

7 recently come into the case?

8 A. Yes, sir.

9 Q. All right. And, I told you that
you

10 could see --

11

12 MR. TOBY SHOOK: Judge, I will
object

13 to that. That is hearsay.

14 THE COURT: I'll sustain that.

15 MR. DOUGLAS MULDER: Judge, this
was

16 gone into.

17 THE COURT: All right.

18

19

20 BY MR. DOUGLAS MULDER:

21 Q. You set up the guidelines - -

22

23

MR. TOBY SHOOK: Judge, was that

24 sustained?

25

THE COURT: Mr. Mulder, phrase

your

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4729

1 questions properly.

2 MR. DOUGLAS MULDER: Yes, sir.

3 THE COURT: All right, go ahead.

4

5 BY MR. DOUGLAS MULDER:

6 Q. You set up the terms under which
you

7 wanted to see Darlie, did you not?

8 A. Yes, sir.

9 Q. And I agreed to them?

10 A. Yes, sir.

11 Q. You just said that you would tell
the
12 truth, regardless of what it was?

13

14 MR. TOBY SHOOK: I will object to
15 leading and bolstering.

16 THE COURT: I will sustain as to
the

17 bolstering. The jury is instructed to disregard the
18 comments of the witness. Next question. Go ahead,
19 please.

20 MR. DOUGLAS MULDER: Yes, sir.

21

22 BY MR. DOUGLAS MULDER:

23 Q. And, I dare say, in the majority

of

24 the cases in which you are hired, you probably don't

end

25 up testifying, do you?

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4730

1 A. In the capital, when I am hired,
I
2 have been hired several times by the defense in
capital
3 murder cases, and, yes, I don't usually testify,
because
4 when I come back, I give my honest opinion, after I
have
5 interviewed the person, and done the evaluation.
6 And when I come back, most often,
what
7 I say, the defense doesn't want to use me, because, I
say
8 the person either admits it to me when they didn't
admit
9 it to the police or in court. Or, that they are
lying,
10 and they have got a history of being anti-social,
and,
11 you know, I can't say anything good about this
12 individual.
13 So, yeah, most of the time in
capital
14 murder cases, I am not asked to testify by the
defense
15 when they -- when I have been hired to evaluate

them.

16 Q. Okay. You made a statement to
Mr.

17 Shook on cross examination that you could make a
valid

18 assessment, even though you didn't get the truth, or
even

19 though people lied to you, or give you false
information

20 about a situation. You said that you could still
make a

21 valid assessment.

22 Will you clear that up, so that -
- I

23 know where you going on it, but will you clear that
up

24 for the jury?

25 A Well, I am just saying that I
have

1 interviewed a lot of criminal defendants, and I can
2 assess, even when they are lying to me, a valid
3 assessment that they are lying to me.

4 I don't -- you know, the way he
was

5 making the question, it would be every one would
have to

6 tell me the truth in order for me to make a valid
7 assessment, and that is not the case.

8 I can make a valid assessment if
9 someone is lying to me, when they are lying to me.

10 Q. Okay. You have furnished Mr.
Shook

11 with copies of all of your notes?

12 A. Yes, sir.

13 Q. Okay. And in that, in the notes,
you

14 had questioned Darlie or she had told you about
dreams

15 that she had had about these events?

16 A. Yes, sir.

17 Q. Can you briefly tell us what the
18 dreams were?

19 A. Well --

20 MR. DOUGLAS MULDER: That is my
last

21 question, Judge.

22

23 THE COURT: Well, Mr. Shook may

have

24 some further cross.

25 THE WITNESS: Would you -- in my

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4732

1 notes, I don't know where in my notes -- I know that
she

2 talked about having dreams --

3

4 BY MR. DOUGLAS MULDER:

5 Q. Nightmares or dreams?

6 A. Well, yes, I was just trying to
see

7 where, I don't have them numbered. Oh, she said 5
to 7

8 times she had dreamed of laying on the couch with
this

9 man laying on her, touching her, that the knife is
on her

10 chin, he was saying something, but she couldn't see
him.

11 She was fighting him.

12 He falls off, hits the coffee
table,

13 and lands on Damon, stabbing him. That she was
beating

14 him, hitting him, and he reaches over and tries to
stab

15 patient. She wakes up at that point, and she said
that

16 in some of the dreams that she saw the man wearing a

17 baseball cap, and sometimes she didn't.

18 And that she had the dream
several

19 times within that first month of what had happened.

20 Q. Okay.

21

22 MR. DOUGLAS MULDER: I believe
that's

23 all. We will pass the witness.

24 MR. TOBY SHOOK:: Nothing

further,
25 Judge.

1 THE COURT: You may step down,
ma'am.

2

3

(Whereupon, the witness

4

was excused from the courtroom.)

5

6

THE COURT: All right. Ladies

and

7

gentlemen, we're going to be recessed until tomorrow

8

morning, at 9:00 o'clock. Same instructions as

always:

9

Do no investigation on your own. Do not speak about

this

10

case with anybody. The case is not over yet.

11

If someone tries to talk to you,

tell

12

the bailiff who is with you at the time. Do no

13

investigation on your own. You will decide this case

14

from the testimony you hear, and the evidence that

you

15

will receive in this courtroom.

16

Will everybody please stop

moving

17

their books and have a seat, please, just a

minute.

18 All right. This
case, the publicity
19 is rampant about this, it may be on
the radio, or T.V.,
20 or in the newspapers, if it is,
please ignore anything,
21 you see or hear, and it would be a
good idea not to read
22 the papers, listen to the radio, or
see T.V., while this
23 case is going on.

24 Wear your juror
badge at all times,
25 and see you tomorrow morning at 9:00
o'clock.

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Court Reporter

4734

1
2 (Whereupon, the
jury
3 was excused from
the
4 courtroom, and
the
5 proceedings were
held
6 in the presence of
the
7 defendant, with
her
8 attorney, but
outside
9 the presence of the jury
10 as follows:)
11
12 THE COURT: All right. Thank
you.
13 Can the attorneys please remain?
14 MR. RICHARD MOSTY: Can Dr.
Clayton
15 go?
16 THE COURT: Dr. Clayton and Dr.

17 DiMaio, you are free to go. Please do not discuss
your

18 testimony with anybody. Ma'am, particularly with
the

19 T.V.

20 THE WITNESS: I'm not saying
anything.

21 THE COURT: If this shows up on
the

22 T.V., that would be a violation, and you could end up
in

23 the Kerr County jail.

24 THE WITNESS: No, I'm not saying
25 anything.

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1 THE COURT: All right. I
understand

2 that we may be -- I understand that we may be
3 approaching -- you willing be closing -- you will
have

4 one more witness, Mr. Mulder; is that it?

5 MR. DOUGLAS MULDER: I didn't say
that

6 I have one more witness.

7 THE COURT: Well, do you or don't
you?

8 MR. DOUGLAS MULDER: Well, I told
you

9 that I would take three days, and I will finish up by
10 noon tomorrow.

11 THE COURT: All right. By noon
12 tomorrow. Excuse me, I don't mean one more, but you
will

13 be finished by noon tomorrow, is that right?

14 MR. DOUGLAS MULDER: I will
indeed,

15 your Honor.

16 THE COURT: All right. So if
there is

17 any rebuttal coming on, you will have witnesses
ready?

18 MR. GREG DAVIS: Yes, sir.

19 THE COURT: And, I assume you will
20 have some sur-rebuttal is that correct?

21 MR. DOUGLAS MULDER: Well, it
depends

22 on the rebuttal.

23 THE COURT: I understand that.

But,

24 if you will have any sur-rebuttal witnesses ready

then we

25 can do that too.

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4736

1 When do both sides anticipate
finally

2 resting and closing?

3 MR. DOUGLAS D. MULDER: Well,
Judge --

4 THEH COURT: We won't hold you
down.

5 I understand.

6 MR. DOUGLAS MULDER: Well, then it
7 kind of depends on them. You wouldn't want me to put
my

8 rebuttal on now, do you?

9 THE COURT: Well, that would be
10 wonderful. It would be nice of you.

11 MR. DOUGLAS MULDER: Well, I don't
12 know what the rebuttal will be until I hear theirs.

13 THE COURT: Well, I understand
what

14 you are saying. But do you think that we will be
able to

15 get this to the jury by Friday? That is what I am
asking

16 both sides. Do you think that is a possibility?

17 MR. DOUGLAS MULDER: Anything is
18 possible, Judge.

19 THE COURT: Well, I know it is,
but it

20 may not be probable. Do you think it is legally
probable

21 that we might get that done?

22 MR. DOUGLAS MULDER: Well, it kind
of

23 depends on their --

24 THE COURT: I understand.

25 MR. DOUGLAS MULDER: Well, do you
want

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4737

1 me to comment on it or not?

2 THE COURT: Well, do you think
that is

3 possible?

4 MR. DOUGLAS MULDER: Well, it
depends

5 on their rebuttal.

6 THE COURT: I understand.

7 MR. DOUGLAS MULDER: If they have
a

8 day's worth of rebuttal, then it probably won't be

9 possible.

10 THE COURT: Well, I don't think
it's

11 going to be that long.

12 MR. DOUGLAS MULDER: All right.

13 MS. SHERRI WALLACE: Doug, do you
mean

14 by that, you would be finished by tomorrow at noon,
is

15 that our cross examination of your witnesses as
well?

16 MR. DOUGLAS MULDER: I would
think

17 that with reasonable cross examination, then I will

be

18 finished tomorrow at noon, or so.

19 THE COURT: All right. Well,

here's

20 the thing. Well, I assume Mr. Hagler is going to

be in

21 charge of the Charge; is that correct? For your

side.

22 MR. DOUGLAS MULDER: He will do

the

23 "haggling" for our side.

24 THE COURT: That is fine.

25 And, who will do the haggling for

the

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4738

1 State's side?

2 MR. GREG DAVIS: Well, I don't
know

3 that there will be haggling here.

4 THE COURT: Okay. Well, all
right.

5 Well, whatever will be.

6 MR. GREG DAVIS: We will find
someone.

7 THE COURT: Well, let's get
someone to

8 get on the Charge because the Charge is pretty well
done.

9 When we do get into argument, by agreement it is an
hour

10 and a half to the side; is that correct?

11 MR. DOUGLAS MULDER: Yes, sir.

12 MR. GREG DAVIS: Yes, sir.

13 THE COURT: Any number of lawyers
can

14 argue, but the total to each side is just going to
get an

15 hour and a half.

16 So, on that note we will see
everybody

17 tomorrow morning, 9:00 o'clock. Let's have all the

18 witnesses, rebuttal and sur-rebuttal ready to go if
19 necessary.

20 MR. GREG DAVIS: I can tell you
that

21 we will have some of them, we may not have all of
them

22 here tomorrow.

23 THE COURT: I understand.

24 MR. GREG DAVIS: But we will do

our

25 very best.

1 THE COURT: I understand what you
are

2 saying, we will just do the best we can do.

3 MR. DOUGLAS MULDER: Judge, if we
go

4 into -- if we go into Thursday, does that mean that
we

5 are going to argue Thursday or does that mean that we
are

6 going to argue Friday?

7 THE COURT: Well, I would like to
--

8 what I ideally like to do is finish up and have
arguments

9 in the morning and then give the case to the jury.
That

10 is what I would like to do.

11 MR. DOUGLAS MULDER: Argue Friday?

12 THE COURT: Yes, or whenever --
you

13 know. I mean, both sides will put on their cases.

14 Obviously, if it runs through Friday, we are not
going to

15 do it. But I am saying if we could do it, I would
like

16 to argue first in the morning, and then give the case

to

17 the jury during the day.

18 MR. DOUGLAS MULDER: Well, I think

19 that is --

20 THE COURT: As opposed to arguing

in

21 the evening and giving the jury -- giving the case to

22 them then.

23 MR. DOUGLAS MULDER: Are you going

to

24 sequester the jury?

25 THE COURT: Well, it depends on

what

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4740

1 you want to do. Do both sides want them sequestered?
It
2 depends. If you don't want them sequestered, I will
3 certainly consider that.
4 Why don't you think about it and
let
5 me know. You don't have to make an ironclad
statement
6 now. Just think about it, and let me know what you
want
7 to do.

8 MR. DOUGLAS MULDER: Okay. We
will do
9 that.

10 See you in the morning.

11 THE COURT: You bet.

12

13 (Whereupon, the jury was
14 previously excused, and
15 the proceedings were
16 recessed for the
17 day, to return on the
18 next day, January 29th, 1997,
19 at 9:00 A.M.)

20

21

22

(These proceedings are continued

to

23 the next volume in this cause.)

24

25

Sandra M. Halsey, CSR, Official Court Reporter

4741

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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

4742

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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MARK TOLLE, JUDGE

21

Criminal District Court Number 3

22

Dallas County, Texas

23

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Sandra M. Halsey, CSR, Official Court Reporter

4743

