

IN THE CIRCUIT COURT OF THE
FIFTH JUDICIAL CIRCUIT, IN AND
FOR LAKE COUNTY, FLORIDA

CASE NO. 87-1347-CF-A-01 and
88-262-CF-A-01

STATE OF FLORIDA,

Plaintiff,

v.

JAMES AREN DUCKETT,

Defendant.

VOLUME IV

AUG 11 2 49 PM '88
CLERK OF CIRCUIT
AND COUNTY CLERK
LAKE COUNTY
TAVARES, FLORIDA



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135.4

1 was a mile and a half between Groveland and Mascotte?

2 A. Yes, sir.

3 Q. Or did you say there was a mile and a half between
4 the Groveland Police Station and the Mascotte Police Station?

5 A. Approximately a mile an a half between the Groveland
6 Police Department and the Mascotte Police Department.
7 Approximately.

8 Q. Thank you very much. No further questions, Your
9 Honor.

10 MR. HURM: Just one, Your Honor.

11 RE-DIRECT EXAMINATION

12 BY MR. HURM:

13 Q. How far is it from Bay Lake Road, the intersection
14 of Bay Lake Road and Highway 50, to the Mascotte Police
15 Department, do you know?

16 A. Approximately one mile.

17 Q. Thank you.

18 THE COURT: That is all, Mr. Hurm?

19 MR. HURM: Yes, sir.

20 THE COURT: Anything further, Mr. Edmund?

21 MR. EDMUND: No, thank you, Your Honor.

22 THE COURT: What do we say about this gentleman's
23 subpoena?

24 MR. HURM: He may be released, Your Honor.

25 THE COURT: Any objection, Mr. Edmund?

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1 MR. EDMUND: No, Your Honor.
2 THE COURT: You are released from your subpoena. You are
3 free to go, sir. Thank you very much.
4 If you would, Mr. Bailiff, is that it for the audio tape?
5 MR. HURM: Yes, sir.
6 THE COURT: Alright, let's retrieve it from the machine.
7 You can go, Mr. Campbell, thank you, sir.
8 Tender it to madam clerk, please.
9 (WHEREUPON, AUDIO TAPE IS GIVEN TO THE CLERK OF THE COURT)
10 THE COURT: Who is your next witness?
11 MR. HOGAN: Salvador Calisto.
12 THE COURT: Salvador Calisto. And you say you need an
13 interpreter for him?
14 MR. HOGAN: Yes, sir.
15 THE COURT: Who do you propose to be your interpreter?
16 MR. HOGAN: Reverend Fuller.
17 THE COURT: Are we prepared to stipulate and agree that
18 Reverend Fuller is fluent in translations from English to
19 Spanish and vice versa in both written and oral form?
20 MR. HOGAN: Yes, sir.
21 MR. EDMUND: I will stipulate, Your Honor.
22 MR. HOGAN: He has testified many times.
23 THE COURT: We will note the stipulation and qualify him
24 as an expert in the translation of Spanish to English and
25 vice versa.

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1 MR. HURM: Your Honor, while he is coming in, I would
2 offer this into evidence.

3 THE COURT: Alright, let's mark that for your next letter
4 for identification. What have we reached, madam clerk?

5 CLERK: WWWW.

6 THE COURT: Four Ws.

7 MR. EDMUND: No objection, Judge.

8 THE COURT: State's Exhibit WWWW for identification
9 admitted into evidence without objection as State's Exhibit
10 #17.

11 (WHEREUPON, STATE'S EXHIBIT #17 IS ADMITTED INTO
12 OBJECTION WITHOUT OBJECTION.)

13 THE COURT: Reverand Fuller, I am going to ask you first
14 to stand with me and raise your right hand.

15 (WHEREUPON, OATH IS ADMINISTERED TO THE INTERPRETER,
16 REVERAND FULLER, BY THE COURT)

17 THE COURT: Alright, now, if you will explain to this
18 gentleman, he needs to raise his right hand. I am going to
19 ask you to translate the oath and his responses verbatim.

20 (WHEREUPON, THE OATH IS ADMINISTERED TO THE WITNESS BY
21 THE CLERK OF THE COURT AND IS INTERPRETED BY REV. FULLER
22 AND ANSWER GIVEN OF "YES".)

23 THE COURT: Alright, thank you very much.

24 DIRECT EXAMINATION

25 BY MR. HOGAN:

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1 THE COURT: Ladies and gentlemen, so you will understand,
2 this procedure becomes slightly laborious. There is no other
3 way Mr. Hogan will ask the question in English, Rev. Fuller
4 will translate the question verbatim into Spanish, the
5 witness will respond in Spanish, Rev. Fuller will translate
6 his response exactly to the extent that anyone can be exact
7 when translating, into English. Do we all understand?

8 Alright. Thank you very much.

9 Q. Rev. Fuller, if you would please ask Salvador to
10 state his name for the record?

11 A. Salvador Calisto.

12 Q. Ask Mr. Calisto if he lived in Mascotte in May of
13 1987?

14 A. Yes.

15 Q. Is Mr. Calisto familiar with the Circle K or
16 convenience store at the intersection of Sunset, South
17 Sunset Road and Highway 50?

18 A. Yes.

19 Q. Did he, at that time, ask him if there is also a
20 laundromat in the same building?

21 A. Yes.

22 Q. At that time, was he a frequent customer of that
23 store and that laundromat?

24 A. Yes.

25 Q. During that time period, did he know a young girl

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1 by the name of Teresa McAbee?

2 A. Yes.

3 Q. I would like to show Mr. Calisto what is marked in
4 evidence as State's Exhibit #1 and ask him if he recognizes
5 the young girl in that picture?

6 A. Yes. It is Teresa.

7 Q. Calling Mr. Calisto's attention to May 11th, the
8 early evening hours, did he have an occasion to be at the
9 Circle K laundromat at the location that we discussed?

10 A. Yes.

11 Q. Why was he there?

12 A. He went to wash clothes.

13 Q. On that occasion, on that date, did he happen to
14 see Teresa McAbee at the store?

15 A. Yes.

16 Q. How does he know Teresa McAbee?

17 A. There at the store.

18 Q. Was that where he met her?

19 A. Yes.

20 Q. Is that the place where he had contact with her?

21 A. Yes.

22 Q. What was the nature of his relationship with Teresa
23 McAbee?

24 A. Just as a friend.

25 Q. Okay, sir. Did he state what time approximately

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1 what time he got to the store?

2 A. Around 7:30, when he first arrived at the store.

3 Q. How did he get to the store?

4 A. His uncle took him in the car.

5 Q. What is his uncle's name?

6 A. It is Maximinio.

7 Q. What is his last name?

8 A. Rubio.

9 Q. Does Mr. Calisto know an individual named James
10 Duckett, who was a police officer at that time?

11 A. Yes.

12 Q. Ask him to look around the courtroom and if he sees
13 Mr. Duckett in the courtroom, point him out for us.

14 (WHEREUPON, WITNESS POINTS TO DEFENDANT)

15 Q. Please describe what he is wearing?

16 MR. EDMUND: I'll stipulate he has described my client.

17 THE COURT: Alright, ladies and gentlemen, the record
18 will reflect the witness has identified the defendant.

19 Q. Calling Mr. Calisto's attention to later on in the
20 evening sometime between ten and 10:30. Does he recall
21 Teresa McAbee being at the store during that time?

22 A. Yes.

23 Q. Does he know why she was at the store at that time?

24 A. She came to buy a pencil.

25 Q. Do I understand correctly, ask him, please, if she

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1 had been to the store earlier that evening while he was doing
2 his laundry?

3 A. Yes.

4 Q. Please ask him to relate to us what happened at the
5 time she came back to buy the pencil. Did he have a conver-
6 sation with her and did he have a conversation with Officer
7 Duckett and relate to us what happened in the sequence of
8 events, if he could?

9 A. She first went into the store to buy the pencil.
10 And then she spoke to me. They went over to buy the pencil.
11 Then she went over to pay for the pencil. And then he went over
12 to the door to go check on the clothes.

13 Okay, he went to the door and then she asked him to
14 wait. And then from there, they went outside over to the
15 corner.

16 Q. Which corner?

17 A. In the corner where the ice machine is.

18 Q. Okay.

19 A. And she was then going to go to her house and he
20 would offer to walk her home.

21 Q. What happened next?

22 A. She asked something of which he did not understand
23 what she meant, because he doesn't speak much English.

24 And we were there talking, trying to understand what
25 Teresa was asking for and I couldn't really understand what

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1 she was wanting.

2 Q. Where were they standing at this point?

3 A. Where the dumpster is. The garbage dump.

4 Q. I show you, Mr. Calisto, what has been marked JJJ,
5 which is a diagram, and ask him if this would help him in
6 explaining?

7 A. Yes.

8 Q. First of all, I need to ask him does this diagram
9 if it is a depiction of the store, laundromat that would help
10 him in his testimony?

11 A. Yes.

12 Q. We move this into evidence for purposes of a
13 demonstrative aid testimony. It is JJJ for identification.

14 THE COURT: Any objection, Mr. Edmund?

15 MR. EDMUND: No, Your Honor.

16 THE COURT: State's Exhibit JJJ for identification will
17 be admitted into evidence as State's Exhibit #18.

18 (WHEREUPON, STATE'S EXHIBIT #18 IS ADMITTED INTO
19 EVIDENCE WITHOUT OBJECTION)

20 Q. You could have him hold this up and point to it.
21 I am not sure these folks can see it.

22 A. Okay, he was here right behind the dumpster is where
23 he was standing.

24 Q. When he was doing what?

25 A. Talking to Teresa.

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1 Q. Would you please show us on there where Highway 50
2 is?

3 A. That is Highway 50.

4 Q. And where is the laundromat?

5 A. The laundromat is here.

6 Q. And the Circle K Store?

7 (WHEREUPON, WITNESS POINTS TO DIAGRAM)

8 Q. So he and Teresa had walked around behind the
9 dumpster and was talking.

10 A. Yes.

11 Q. Were they beside the dumpster or behind the dumpster?
12 Ask him to point to where they were.

13 (WHEREUPON, WITNESS POINTS TO DIAGRAM)

14 A. Right at the corner.

15 Q. Does he know where Sunset Road or Street is?

16 A. He doesn't really know the names of the streets.

17 Q. Does he know where Polly's Bar would be?

18 (WHEREUPON, WITNESS POINTS TO DIAGRAM)

19 A. Over in this area.

20 Q. Is that a street there on the edge?

21 A. Yes.

22 Q. What happened as he was talking to Teresa behind the
23 dumpster?

24 A. The officer came.

25 Q. Show us from where the officer came?

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1 A. From over in this corner.

2 Q. Okay, let me show you what is marked for identification
3 as State's Exhibit QQQQQ, and ask him if this would help him
4 testify further?

5 A. Yes.

6 MR. HOGAN: Any objection?

7 MR. EDMUND: No objection.

8 THE COURT: Are you moving that into evidence, sir?

9 MR. HOGAN: Yes, sir.

10 THE COURT: Alright, State's Exhibit QQQQ for identification
11 admitted into evidence without objection as State's Exhibit
12 #19.

13 (WHEREUPON, STATE'S EXHIBIT #19 IS ADMITTED INTO EVIDENCE)

14 Q. Would it be possible for the witness and interpreter
15 to stand down?

16 THE COURT: You all please stand down.

17 (WHEREUPON, WITNESS AND INTERPRETER STEPS DOWN FROM WITNESS
18 BOX)

19 Q. Is he familiar with that area?

20 A. Yes.

21 Q. Make sure these folks can see please. That's fine.
22 If you would please, have him use the diagram and
23 testify and tell us while he was standing behind the dumpster,
24 talking to Teresa McAbee, what Officer Duckett was doing?

25 A. He was parked over here in this corner.

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1 Q. What did he do next?
2 A. He came down 50 and came down here.
3 Q. In his car?
4 A. Yes.
5 Q. And then what happened?
6 A. Okay, he came down here and somewhere down in here,
7 he turned around and came on back and went on through 50.
8 Q. Okay. He saw him drive past him going South on
9 Sunset and then again going North on Sunset?
10 A. This is Sunset?
11 Q. Right?
12 A. Yes.
13 Q. About how much time passed between the first time he
14 went past and the second time he came by?
15 A. About five or ten minutes.
16 Q. And when was the next time he saw Officer Duckett?
17 A. After while, he came back and parked over here at
18 the store.
19 Q. Did he see which direction he came from on that
20 occasion?
21 A. Don't know really for sure, but he thinks from over
22 on this side.
23 Q. The next time he saw Officer Duckett he was parked
24 in front of the store?
25 A. He came with a flashlight.

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1 Q. And he was still talking to Teresa?
2 A. Yes.
3 Q. Did he know where Teresa McAbee lived at that time?
4 A. Yes.
5 Q. Is it on that map?
6 A. Right down here.
7 Q. So she was ... that was the direction that she was
8 walking when you stopped to talk to her?
9 A. Yes.
10 Q. What happened when he saw Officer Duckett and Officer
11 Duckett had a flashlight? Where was he? Where was Teresa?
12 What did the Officer do?
13 A. They were here in the corner, and he was out
14 just a little bit.
15 Q. What did the Officer do?
16 A. He came to the corner here and he turned on his light
17 so I presume there is a gap there.
18 Q. Okay, ask him.
19 A. Yes, there is a gap, a delay there.
20 Q. Between the dumpster and the ...
21 A. Yes.
22 Q. And he and Teresa were standing not between that
23 gap but behind?
24 A. Just behind the dumpster right by the gap.
25 Q. When he says the Officer has a light, does he mean a

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1 flashlight?

2 A. Yes.

3 Q. Was the officer on foot?

4 A. Yes, he was on foot.

5 Q. What did the officer do next?

6 A. Asked him, "What are you doing here?", and then he
7 asked how old he was.

8 Q. Was he able to understand the questions?

9 A. Yes.

10 Q. What happened next?

11 A. He asked how old I was.

12 Q. Did he tell him how old he was?

13 A. That I had sixteen years old. And then he asked
14 Teresa how old she was. She said she had eleven years of age.

15 And then he said that you are too old to be talking to a
16 girl this young at this hour of the night.

17 And then I told Teresa to go home.

18 Q. He did?

19 A. Yes.

20 Q. What happened next?

21 A. And the officer said, "No, he needed to talk to her".
22 And so he said, "Let's go to the car". So I went to the
23 ... with the officer to the door of the car.

24 Q. The police car?

25 A. Yes.

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1 Q. Where was Teresa McAbee at that time?
2 A. Where the seats are.
3 Q. She also came around to the front of the store?
4 A. Yes.
5 Q. And was Officer Duckett also in front of the store?
6 A. Yes.
7 Q. What happened next?
8 A. He asked my name and directions to my address.
9 Q. Alright.
10 A. Then he asked if I was there alone or if someone was
11 accompanying me.
12 And I told him that I had come with an uncle.
13 Then he asked what time the uncle was coming.
14 He said somewhere... I said somewhere around 10:30 or
15 11:00. And then he finished talking to me.
16 Q. What did Mr. Calisto do at that point after he
17 finished talking with the officer?
18 A. I went up and sat down.
19 Q. In front of the store?
20 A. In front of the laundromat.
21 Q. Did the Officer tell him that he was through talking
22 with him?
23 A. Yes.
24 Q. Go ahead.
25 A. And then he spoke to Teresa. I went to sit down and

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1 at that moment my uncle arrived.

2 Q. And his uncle is Maxima?

3 A. Yes.

4 Q. And what did he see Teresa and the officer doing at
5 this time?

6 A. At the moment my uncle arrived, I went and got the
7 clothes and went and put them into the car.

8 Q. The clothes from the laundry?

9 A. Yes, from the laundromat.

10 Q. Where was Teresa and where was the officer?

11 A. The officer was by the door of the car with Teresa.

12 Q. The passenger door or the driver door?

13 A. The side of the driver side door at that time.

14 Q. Then what happened?

15 A. I went over and put the clothes in. The door was
16 still open and the officer pointed at Maximo and said, "How
17 old is he?".

18 Q. How old is who?

19 A. Salvador. And Maximo asked me then how old I was
20 and the officer said, "No, don't answer". He wanted Maximo
21 to answer and to know.

22 And then he told Maximo that Maximo needed to talk to
23 Salvador; that he was going to talk to Teresa.

24 Q. The officer was going to talk to Teresa?

25 A. Yes.

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1 Q. What happened next?

2 A. Then he took Teresa around to the passenger side of
3 the officer's car. And he put her in the car.

4 Q. Alright, and then what happened?

5 A. And then I got up into Maximo's car and Maximo started
6 the car, and he backed up and while they were backing out,
7 then the officer went and got into his side of the vehicle.

8 Q. So at this point, Officer Duckett and Teresa McAbee
9 were both in the Mascotte police car?

10 A. Okay, he said that he came around to the door, but
11 he didn't actually see him get into the car.

12 Q. And then what happened?

13 A. And then he left.

14 Q. Where did he go?

15 A. He went home.

16 Q. Does he live with Maximo?

17 A. Yes.

18 Q. Did Salvador have anymore contact with Officer Duckett
19 that night or in the early morning hours?

20 A. Yes.

21 Q. I believe you can be seated for the rest of the
22 questions.

23 (WHEREUPON, WITNESS AND INTERPRETER TAKE WITNESS STAND)

24 Q. Does he recall about what time it was the next time
25 he saw Officer Duckett?

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1 A. Around 1:00 to 1:15 in the morning.
2 Q. What was he doing at that time?
3 A. He was asleep.
4 Q. Where did he come in contact with Officer Duckett?
5 Where was it he had this contact?
6 A. He arrived at the home of Maximo.
7 Q. Officer Duckett came to Maximo's and Salvador's house?
8 A. Yes.
9 Q. Did Officer Duckett come inside the house?
10 A. Yes.
11 Q. Which part of the house did Salvador have this
12 conversation with Officer Duckett?
13 A. He was standing in the doorway. By the door, there
14 was a chair and there I sat down and talked with the officer.
15 Q. And the officer never actually came all the way in
16 the house?
17 A. Yes, he stood right there in the doorway.
18 Q. Was he invited to come into the house?
19 A. Yes, he was.
20 Q. Who invited him to come in the house?
21 A. Maximo did.
22 Q. What did the officer say to that invitation?
23 A. That he believed what Maximo had said.
24 Q. So the officer declined the invitation to come into
25 the house?

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1 A. Yes, he refused.

2 Q. Up until the last time that Salvador saw Teresa
3 McAbee at the Circle K Store, did he, at any time, see her
4 place her hands on the hood of the police car or sit on the
5 police car?

6 A. No.

7 Q. And the last time he saw her, she was seated inside
8 the patrol car?

9 A. Yes.

10 Q. Did he consent to have body hairs samples pulled
11 from his body, including pubic hairs and did he also consent
12 to have his fingernails scraped for samples?

13 A. Yes, he did.

14 Q. Did he ever see Teresa McAbee again after the last
15 time he saw her in the patrol car with Officer Duckett?

16 A. No, he never did.

17 Q. Can I have one moment, Judge? I would like to
18 know how much, if any, English Salvador Calisto understands
19 and how he was able to communicate with Teresa?

20 A. I understand a little bit.

21 Q. How could he communicate with Teresa?
22 Did she speak Spanish?

23 A. No, she did not speak spanish.

24 Q. Did they have a difficult time communicating?

25 A. Yes.

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1 Q. Thank you, Judge.

2 THE COURT: Mr. Edmund.

3 CROSS EXAMINATION

4 BY MR. EDMUND:

5 Q. How long were you and Teresa behind the dumpster?

6 A. Maybe around twenty minutes.

7 Q. Could you see the police car when you were behind the
8 dumpster?

9 A. Yes.

10 Q. Could you see the police car all the while you were
11 behind the dumpster?

12 A. No, not when it passed.

13 Q. I beg pardon?

14 A. Not all the time.

15 Q. How much of the time behind the dumpster were you not
16 able to see the police car?

17 A. I could only see it when it went by.

18 Q. You indicated that the police car was parked over
19 on the next corner toward Groveland, when you first saw it,
20 is that right?

21 A. Yes.

22 Q. Was it on the Circle K side of 50 or the other side of
23 50?

24 A. As far as Highway 50 goes, it was on the K side,
25 the Circle K side of Highway 50.

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1 Q. Where were you when you first saw the police car?
2 A. Outside the laundromat.
3 Q. And how long were you outside the laundromat?
4 A. I was there with some friends talking.
5 Q. How many friends?
6 A. Four.
7 Q. Did those friends walk off towards the dumpster with
8 you and Teresa?
9 A. When they went behind the dumpster, it was he and
10 Teresa.
11 Q. Where did the friends go?
12 A. First, two of them left and two stayed.
13 Q. Which way did the first two go when they left?
14 A. They went home.
15 Q. Which way? Which direction is home?
16 A. One lives up Highway 50.
17 Q. Is it Highway 50 toward Groveland or Highway 50
18 away from Groveland?
19 A. It was just about two blocks up Highway 50.
20 Q. Which way? Towards Groveland or away from Groveland?
21 A. The opposite of Groveland.
22 Q. Did they walk in front of Polly's Bar or behind Polly's
23 Bar?
24 A. I didn't see them go past the bar.
25 Q. Where were you when they left?

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1 A. I was sitting down on the chairs there.
2 Q. Where was Teresa?
3 A. She was in the store.
4 Q. How long was she in the store?
5 A. About a half hour.
6 Q. Teresa was in the store about a half hour?
7 Is this at the time that you could see the officer up the road?
8 The police officer?
9 A. Yes.
10 Q. And Teresa was in the store for a half an hour?
11 A. Yes.
12 Q. Do you know what she was doing in the store?
13 A. When I went in the store, I didn't see her. She was
14 in the restroom at the time.
15 Q. Had he seen her when he was outside the store looking
16 through the window?
17 A. I wasn't looking through the window.
18 Q. Had you and the other boys discussed Teresa when
19 she was in the store? Had you talked about her?
20 A. No, sir.
21 Q. Had you spent time at the store with Teresa before?
22 A. I have just seen her once in a while for a few
23 moments.
24 Q. You have not spent time in the company of Teresa
25 playing video games or being around the store?

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1 A. No, sir.

2 Q. Do you understand a good bit of English?

3 A. Just a little bit.

4 Q. You did understand me though when I asked you if you
5 spent time in the store with her playing video games, didn't
6 you?

7 A. Only under interpretation.

8 Q. Only under interpretation?

9 A. Yes, sir.

10 Q. Then how ... what did you and Teresa talk about
11 during the twenty minutes you were behind the dumpster?

12 A. She was wanting me to give her some type of a
13 package, but I couldn't really understand what he was trying
14 to get at.

15 Q. And you talked about this for twenty minutes?

16 A. Yes.

17 Q. After he said the officer went by on Sunset, how
18 long was it before the officer came back and parked in the
19 parking lot?

20 A. About ten to fifteen minutes.

21 Q. How long had you been behind the dumpster when the
22 officer went by?

23 A. They had just arrived back there when he passed the
24 first time.

25 Q. How long did the officer talk to you when he took

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1 you back there to the front of the laundromat?
2 A. Maybe around ten to fifteen minutes.
3 Q. Where was Teresa during that time?
4 A. She was up where the seats are.
5 Q. Where were you standing with regard to where the
6 police car was?
7 A. When he was talking to him?
8 Q. While you were talking to the officer?
9 A. I was by the door on the driver's side.
10 Q. By the door of the police car on the driver's side?
11 A. Yes, on the door of the officer's door was open.
12 Q. And were you standing in front of the door or behind
13 the door as far as the hood of the car is concerned?
14 A. I was about a pace and a half in front of the door.
15 Q. Up by the hood and the fender?
16 A. Yes, in front of the ...
17 Q. How close were you to the fender?
18 A. About around a pace and a half from the fender.
19 Q. How close was the officer to the fender?
20 A. He was ... would be in back of the door. He was by
21 the officer's door with the door open. The door was between
22 the two of them.
23 Q. The officer was in back of the door?
24 A. Yes.
25 Q. Alright. The door was between the two of them?

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1 A. Yes, sir.

2 Q. Were they talking across the top of the door or around
3 the side of the door?

4 A. The window was open.

5 Q. Were they talking through the window or talking
6 across the top of the window or how were they talking?

7 A. They were just there talking.

8 Q. I just wanted to know if ... was the door between you
9 and the officer?

10 A. Yes, sir.

11 Q. Alright. Did you ever just lean on the car?

12 A. No, sir.

13 Q. Did the officer ever lean on the car?

14 A. I don't remember seeing him... his hand on the car.

15 Q. Did you ever place your hand on the car?

16 A. No, sir.

17 Q. Did the officer ever threaten you in any way?

18 A. No, sir.

19 Q. Did he tell you in a serious tone that you should not
20 be out at that time of night with an eleven year old girl?

21 A. Yes, he did, sir.

22 Q. And did you understand what he was saying to you?

23 A. Yes, sir.

24 Q. Excuse me, Your Honor, may I have a moment?

25 Had you seen Teresa earlier that day?

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1 A. No, sir.

2 Q. At no time earlier?

3 A. No, sir.

4 Q. Had you seen Teresa earlier that night?

5 A. Yes.

6 Q. Where did you see Teresa earlier that night?

7 A. No, I didn't see her earlier that night. I have
8 seen her other times.

9 Q. But you did not see her earlier that night?

10 A. No, sir.

11 Q. How long had you been at the laundromat when Teresa
12 came to buy the pencil?

13 A. About an hour and a half.

14 Q. Hadn't Teresa been at the Circle K for something up
15 until ten o'clock?

16 A. Would you repeat again, sir?

17 Q. Hadn't Teresa been at the Circle K for some time
18 that evening up until ten o'clock?

19 A. Yes, sir.

20 Q. Were you talking with her then?

21 A. Yes.

22 Q. Were the other boys talking with her then?

23 A. No, sir.

24 Q. Did she make plans to come back and see you when
25 her mother got her and took her home?

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1 A. No, sir.

2 Q. Her mother did come pick her up, didn't she?

3 A. Yes, sir.

4 Q. Did she have on any fancy clothes or anything like
5 that when she was there early in the evening?

6 A. No, I don't remember what she really had on.

7 Q. He don't remember having on any fancy clothes or
8 anything like that earlier in the evening when she was there?

9 A. No, sir.

10 Q. Little short dress or dancing costume or anything
11 like that?

12 A. I think she had on blue jeans.

13 Q. He thinks she had on blue jeans both times she was
14 there?

15 A. Yes, sir.

16 Q. Do you remember her being dressed any differently
17 the first time she was there and the second time she was
18 there?

19 A. She was dressed the same way.

20 Q. Dressed the same way both times?

21 A. Both times, yes.

22 Q. And you were with her about an hour before her mother
23 came to get her?

24 A. What is that?

25 Q. You were with her about an hour before her mother

1 came to get her?

2 A. I was sitting in the chair in front of the laundromat
3 when Teresa arrived there with ... he doesn't know the relation-
4 ship, some other young man that was with her, and they sat
5 down with me for a few moments and then they went into the
6 store.

7 Q. And then what happened?

8 A. I stayed there talking to my friends.

9 Q. How long did you stay there talking with your friends?

10 A. My friends were there talking with me until about
11 ten o'clock.

12 Q. And that is when Teresa left?

13 A. Her mother came for her.

14 Q. What happened to the young man... I am sorry... she
15 got in the car with her mother?

16 A. Yes.

17 Q. What happened to the young man that was with her?

18 A. I am sorry?

19 Q. What happened to the young man that was with her?

20 A. He got into the car with the mother.

21 Q. He got in the car with the mother?

22 A. Ahum. (Affirmative response)

23 Q. And with Teresa?

24 A. And Teresa and the momma, yes.

25 Q. Alright, when did your other two friends leave?

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1 A. They left when Teresa came out and we went over to
2 the dumpster. They came over and said they were leaving and
3 when the patrol car came, they left.

4 Q. Did they all go towards the dumpster together?

5 A. First Teresa and I went over to the dumpster.

6 Q. And did the other two follow?

7 A. A few minutes later, they came by.

8 Q. And then where did they go?

9 A. They were going home.

10 Q. Which direction did they go home?

11 MR. HOGAN: Asked and answered.

12 MR. EDMUND: No, sir, the second set.

13 MR. HOGAN: I believe these are the same people.

14 MR. EDMUND: No, sir, we are talking about the second
15 two, are we not?

16 THE COURT: Let's be very clear that the witness under-
17 stands that, Reverend. That has been a little confusing.

18 Q. May I ask this, Reverend. Before this, two boys had
19 gone home?

20 A. Yes.

21 Q. And then two boys left with you?

22 A. Yes.

23 Q. These two boys followed you and Teresa to the dumpster?

24 A. They went by the dumpster. Yes, sir.

25 Q. Which direction did they go?

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1 A. Going by the road where the bar is.
2 Q. Did they go past the bar like the other two or did
3 they go down the road towards Teresa's?
4 A. IN the direction where Teresa lives.
5 Q. Down the road towards Teresa's house?
6 A. Yes.
7 Q. Did you notice the police car parked where the
8 green mark is? Would you lean up, please, son. May I talk
9 from here, Your Honor?
10 Did you notice the police car parked here when you
11 and Teresa walked behind the dumpster and the two boys
12 followed?
13 A. Yes. It was there when I went behind the dumpster.
14 Q. Thank you. No further questions.
15 RE-CROSS EXAMINATION
16 BY MR. HOGAN:
17 Q. These four friends of yours, two left earlier and
18 then two left at the time you walked behind the dumpster,
19 is that correct?
20 A. Yes, sir.
21 Q. All four of these friends are of Mexican descent?
22 A. Yes.
23 Q. Could I have one moment, Judge?
24 THE COURT: Yes, sir.
25 Q. And likewise, the man who earlier had been at the

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1 store with Teresa and left with Teresa and her mother was
2 also Mexican, correct?

3 A. Yes, he was Mexican, too.

4 Q. Thank you. Thank you, Judge.

5 THE COURT: Anything further, Mr. Edmund?

6 MR. EDMUND: No, Your Honor. Thank you.

7 THE COURT: What about this young gentleman's subpoena?

8 MR. HOGAN: He can be released.

9 THE COURT: Mr. Edmund?

10 MR. EDMUND: No objection.

11 THE COURT: He is free to go. He is released from his
12 subpoena.

13 Would you tell him, Reverend, that he is free to go and
14 he is released from his subpoena.

15 Gents, can we approve the bench a moment, please?

16 (WHEREUPON, BENCH CONFERENCE IS HELD AS FOLLOWS:)

17 THE COURT: Who do we have next?

18 MR. HOGAN: I intend to call Maximo ... Maximinio Rubio,
19 so that Rev. Fuller can not have to come back.

20 THE COURT: Is that the only other Spanish speaking witness
21 we have?

22 MR. HOGAN: Yes, that we have for today. Yes, sir.

23 THE COURT: He shouldn't be too long, should he?

24 MR. HOGAN: I don't know. The cross examination...

25 MR. EDMUND: The cross examination will be short, forgive

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1 me.

2 (WHEREUPON, BENCH CONFERENCE ENDS)

3 THE COURT: Call your next witness, sir?

4 MR. HURM: The State would call, Maximinio Rubio.

5 (WHEREUPON, MR. RUBIO IS CALLED AS NEXT WITNESS BY THE
6 STATE AND IS DULY SWORN BY THE CLERK OF THE COURT)

7 THE COURT: I would just remind you Reverend, you are
8 still under oath as regards to your translation. Thank you,
9 sir.

10 (WHEREUPON, TESTIMONY OF WITNESS IS TRANSLATED BY REV.
11 FULLER, JUST AS PREVIOUS WITNESS)

12 THE COURT: Folks, the lawyers told you I would work you
13 hard. I am not going to work you to death. We are going to
14 quit after this witness, trust me.

15 DIRECT EXAMINATION

16 BY MR. HURM:

17 Q. How are you today?

18 A. Fine.

19 Q. Would you state your name, please?

20 A. Maximinio Rubio.

21 Q. Mr. Rubio, do you understand any English?

22 A. A little bit.

23 Q. Enough to get by when you have to?

24 A. No.

25 Q. Okay. Where do you live?

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1 A. Mascotte.
2 Q. And what area of Mascotte? What street?
3 A. Hibiscus Avenue, 11.
4 Q. Is that where you lived in May of 1987?
5 A. Yes.
6 Q. Do you know Salvador Calisto?
7 A. Yes.
8 Q. How do you know him?
9 A. He is my nephew.
10 Q. Does he live at your home with you?
11 A. Yes.
12 Q. Did he live with you in May of 1987?
13 A. Yes.
14 Q. I would like you to recall in your mind what happened
15 on the night of May 11th, 1987.
16 On that night, I think it was a Monday night.
17 A. I don't remember.
18 Q. Do you remember going to the laundromat with
19 Salvador?
20 A. Yes.
21 Q. What time?
22 A. A little bit after seven.
23 Q. And was it just you and Salvador?
24 A. I am not sure if at that point when I went to the
25 laundromat if I might have had two friends with me or not,

1 right at that point, I am not sure.

2 Q. Did you stay at the laundromat with Salvador or
3 did you drop him off and go elsewhere?

4 A. I just remember I was with two friends and we left
5 and I went to make a phone call at the Jiffy Store.

6 Q. Did you go anywhere before you went to the Jiffy
7 Store to make a phone call?

8 A. Went straight over to the Jiffy Store.

9 Q. That is not the same as the Circle K?

10 A. No.

11 Q. Did you return to the Circle K to pick up the clothes
12 and Salvador?

13 A. No. I went to the house of a friend first.

14 Q. After the Jiffy Store, you went to a friend's house.
15 And then did you come back to the Circle K?

16 A. Around 10:00 o'clock I went home.

17 Okay, I went home and two friends told me that the
18 police officer had Salvador.

19 MR. EDMUND: I object, if it please the Court, on the
20 grounds that would be hearsay.

21 MR. HURM: I will move on.

22 THE COURT: Reverend, instruct him not to tell us what
23 his friends told him. I know that is difficult to translate.

24 Q. These two friends, without telling me what they said,
25 were these Mexican friends or Anglo friends?

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1 A. Mexican.

2 Q. After you talked to them, did you go to the store?

3 A. Yes.

4 Q. Showing you what has been marked State's Exhibit #18,
5 would this assist you in telling us what happened at the
6 store that night?

7 Hold it, if you will, right up here. We need to make
8 sure the Jury can see it. Now, which direction is North on
9 that?

10 A. I don't know.

11 Q. Where is Highway 50 on that?

12 A. That is Highway 50.

13 Q. Which way is Groveland?

14 A. That way.

15 Q. And this way would be Ridge Manor and Brooksville?

16 That is alright. Let's move on.

17 A. That is where I live.

18 Q. That is where you live? Okay. When you came ... did
19 you come up 50 to go to the store?

20 A. Yes.

21 Q. When you got there, where was the police officer's
22 car parked?

23 A. He was on the right hand side of the laundromat,
24 but not where the Circle K is. Where the laundromat is.

25 Q. Right in between, sort of the laundromat and the

- 634 -

1 Circle K?

2 A. Right totally in front of the laundromat.

3 Q. And where did you see Salvador?

4 A. Salvador was sitting down in the seat.

5 Q. Salvador was sitting down in what seat? Where was

6 the seat located?

7 A. In front of the laundromat.

8 Q. What kind of seats were there?

9 A. They are three plastic seats and fastened together.

10 Q. Did you see a little girl there at that time?

11 A. Yes.

12 Q. Did you know her?

13 A. There. Just there.

14 Q. Had you seen her before that night?

15 A. No, I had not.

16 Q. I am showing you State's Exhibit #1, do you recognize

17 either of the people in that photograph?

18 A. It looks like her, but I don't really know her.

19 Q. This looks like the little girl you saw?

20 A. Yes.

21 Q. Where did you park? When you pulled up?

22 A. In front of the Circle K. I parked next to the

23 police officer, in front of the Circle K.

24 Q. So you were parked next to his passenger door?

25 A. Yes.

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1 Q. Did you get out of your car?

2 A. I opened the door and stood up right in between the
3 door and the car and stayed right there.

4 Q. Where was the little girl, Teresa? When you got
5 there?

6 A. She and he were standing towards the front of the
7 car on the left hand side, the driver's side, of the car up
8 in front.

9 Q. She and he. He would be the police officer?

10 A. The officer. Yes, sir.

11 Q. Had you ever seen the officer before?

12 A. Yes.

13 Q. Did you know his name?

14 A. I didn't really remember his name, but he was involved
15 one time when I had a car accident.

16 Q. Look around the courtroom, if you will, and tell me
17 if you see that individual.

18 A. Yes.

19 Q. Would you point to him and tell us what he is wearing,
20 please?

21 MR. EDMUND: I will stipulate, Your Honor.

22 THE COURT: The record will reflect the witness has
23 identified the Defendant.

24 Q. You said the little girl and the officer were standing
25 in front of the police officer's car?

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1 A. Yes.

2 Q. When you pulled up, what did Salvador do?

3 A. I told him to go get the clothes so that we could go.

4 Q. Did he obey?

5 A. Yes.

6 Q. Go ahead.

7 A. He went and got the clothes and was putting it in

8 the car and the officer came and spoke to me.

9 Q. What did the officer say to you?

10 A. He asked me how old was Salvador and he... I didn't

11 really know the number, and he said, "How old is he?".

12 Q. What did you do? What did you say?

13 A. Salvador was standing by the other door and I turned

14 to Salvador and said, "How old are you?".

15 Q. What happened next?

16 A. The policeman said, "Uhuh, you tell me".

17 Q. And did you tell him?

18 A. And then I began to think about it a little bit and

19 realized he had completed sixteen years of age.

20 Q. So you told him he was sixteen?

21 A. Yes.

22 Q. Did the officer tell you that Teresa and Salvador

23 had been doing anything wrong?

24 A. He said in English you talk to him.

25 Q. Before he said that, did he tell you why he had

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1 stopped them? Why he was talking to them?

2 A. He told me that he wasn't doing anything talking
3 about Salvador. He wasn't doing anything wrong. He wanted
4 me to talk to Salvador.

5 Q. Why did he want you to talk to Salvador if Salvador
6 wasn't doing anything wrong?

7 MR. EDMUND: Your Honor, I have got to object. That is
8 certainly calling for an opinion, conclusion, or speculation.

9 MR. HURM: I am asking him if the officer told him why
10 he was talking to him, and why he wanted him to talk to him.

11 THE COURT: Let's rephrase it that way.

12 MR. HURM: I'll rephrase it. I'll rephrase it.

13 MR. EDMUND: Just let him tell us.

14 Q. Did the officer tell you why he wanted you to talk
15 to Salvador?

16 A. He asked me to talk to him, because he was of minor
17 age and she was of young age.

18 Q. Did he say anything to you about what he would do?
19 When you talked to Salvador?

20 A. He said, "Look, they are both minors. You talk with
21 him and I'll talk with her".

22 Q. Did he do anything when he said he would talk to her?

23 A. He winked at me.

24 Q. Mr. Rubio, what happened next?

25 During the time that you were talking, he had her in front

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1 of the passenger door.

2 Q. And what did he do with her then?

3 A. When he told me he was going to talk to her at the
4 same time, me to talk to Salvador, he took her by the arm
5 and opened the door on the passenger side and he put her in
6 the car and shut the door.

7 Q. What did you do and what did Salvador do then?

8 A. Armando was at the store and he came around and he
9 said let's go for a ride and during that time the officer went
10 over to the driver's side of the car and that is when they
11 backed out.

12 Q. Was Salvador with you, and you and Armando and
13 Salvador left in your car?

14 A. Armando said he was going to go on foot.

15 Q. You and Salvador left?

16 A. Yes.

17 Q. Where was Teresa as you left the parking lot?

18 A. She was in the officer's car.

19 Q. Was the door open or closed?

20 A. Closed.

21 Q. Where was the Defendant, the officer?

22 A. When I left, he had gone around to the driver's side
23 and had opened the door, but I did not actually see him get
24 in the car.

25 Q. Now, at any time while you were at the Circle K, did

1 you see Teresa put her hands on the hood of the police car?

2 A. At the time, when I saw her, she was standing, they
3 were talking. She was standing between the door and the
4 fender.

5 Q. Did she ever touch the hood of the car?

6 A. No, I did not.

7 Q. Did you ever see her sit on the hood of the car?

8 A. No, she was standing there very nervous.

9 Q. Now, Mr. Rubio, did you see the defendant, the officer,
10 later that night?

11 A. Yes.

12 Q. About what time?

13 A. Around 1:00 or 1:15.

14 Q. In the morning?

15 A. Yes.

16 Q. Where did you see him?

17 A. I was cooking some meat in the house. There was
18 others with me in the home. About seven others in the house.

19 Q. Friends?

20 A. Yes. I was in cooking and I went over to sit down
21 by the table and I noticed the window, a flashlight.

22 Q. Where was Salvador?

23 A. Asleep.

24 Q. At your house?

25 A. Yes.

1 Q. Alright, all of the friends who were there with you,
2 were they all Mexicans or were any of them...
3 A. All of them were Mexicans.
4 Q. Did the officer come to the door?
5 A. No. What happened, I went, when I saw the light,
6 I went to the door and opened it up and then I noticed that
7 it was a police car and the officer and I asked what happened.
8 Q. Did he tell you what he wanted?
9 A. He asked if Salvador was in the house and I said
10 "Yes". He said he wanted to talk to Salvador. I said, "Okay".
11 I asked him to come in. I told him that he was asleep.
12 Q. Did he accept your invitation to come in?
13 A. Yes.
14 Q. So he stepped into the house?
15 A. The door stayed open and he just stood just inside
16 the door, a little bit to one side of the door.
17 Q. Did you wake Salvador up?
18 A. Yes.
19 Q. Did he talk to Salvador in front of you?
20 A. I went and woke up Salvador, but he didn't come
21 right away. I was waking him up.
22 Q. Did the police officer tell you what he wanted and
23 why he wanted to talk to Salvador?
24 A. Not until Salvador arrived.
25 Q. When Salvador arrived, what did he say?

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1 A. He said that Teresa had not arrived and wanted to know
2 if he knew where she was.

3 Q. What did he say? "He" was Salvador.

4 A. Okay.

5 Q. Did you invite him in to look through the house for
6 Teresa?

7 A. Yes, I did.

8 Q. What did he say?

9 A. He asked if he had stayed somewhere to talk to her
10 somewhere else. That is when I told him if you want to look,
11 go ahead and look through the house. That is when he said,
12 "That's okay. I trust you."

13 Q. Did he leave then?

14 A. Yes, he went.

15 Q. Did he ever come back to your house again that night?

16 A. No.

17 Q. Were you home all night?

18 A. Yes.

19 Q. Going back just one minute to the Circle K, when you
20 left the Circle K with Salvador, did you come straight home?

21 A. Yes.

22 Q. Did you ever leave your house again that night?

23 A. I don't remember. I don't think so.

24 Q. Did Salvador leave your house?

25 A. No.

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1 Q. What did he do as soon as you got home?

2 A. He ride home, ate and went to bed.

3 Q. Is Armando Mexican or Anglo?

4 A. Yes. Yes, Mexican.

5 Q. Nothing further, Your Honor.

6 THE COURT: Mr. Edmund?

7 MR. EDMUND: I have no questions, Your Honor.

8 THE COURT: What do you say about the gentleman's
9 subpoena?

10 MR. HURM: He can be released, Your Honor.

11 THE COURT: Any objection?

12 MR. EDMUND: No, sir.

13 THE COURT: He is released from his subpoena, Reverend,
14 if you would tell him that, please, sir. Thank you.

15 Do I hear a strong objection, gentlemen, to an evening
16 recess?

17 MR. HOGAN: I suppose not, Your Honor.

18 MR. EDMUND: That is the first thing we are not going to
19 argue about today, Judge.

20 THE COURT: Reverend, thank you very much. We appreciate
21 your services.

22 REV. FULLER: You are welcome.

23 THE COURT: Alright, ladies and gentlemen, we are going
24 to take our evening recess and as much as you are tired of
25 hearing me say it, I am going to keep on saying it. I am going

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1 to remind you not to discuss this case among yourselves or
2 with anyone else. You are not to read anything about the case
3 in any media; not to watch anything on television or listen
4 to any radio accounts. You are not to visit the scene of the
5 alleged occurrence if you think you might know where that is
6 by now.

7 Let me ask any of you all, I think you must have an idea
8 of where this Circle K Store is by now. Do any of you have to
9 go by that direction in your normal course of returning home?
10 If you do, would you raise your hand?

11 Okay, since noone has to do that, I am going to ask that
12 you all make a specific point to avoid that whole area of
13 Lake County. Don't go down by Mascotte; don't go down by
14 the Circle K. That is something we should not do. Are we
15 all clear about that?

16 Alright, thank you very much.

17 Gentlemen, anything else before we recess?

18 MR. EDMUND: No, Your Honor.

19 MR. HOGAN: No, Your Honor.

20 THE COURT: Alright, the Jury is free to step out. We
21 will see you back at 9:00 o'clock tomorrow morning. The same
22 place.

23 Mr. Hurm, if you would be so kind as to retrieve any
24 evidence you might have at counsel's table. None over there,
25 Mr. Bailiff?

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1 MR. CORBETT: No, sir.

2 THE COURT: Alright, we can remove the Defendant, please,
3 Mr. Bailiff.

4 (WHEREUPON, DEFENDANT IS REMOVED FROM COURTROOM)

5 THE COURT: We will be in recess until nine in the
6 morning.

7 (WHEREUPON, COURT IS IN RECESS AT 5:00 P. M.)

8 April 28, 1988, 9:00 A. M.

9 (WHEREUPON, DEFENDANT IS PRESENT IN COURTROOM WITH HIS
10 COUNSEL, MR. EDMUND)

11 (WHEREUPON, COURT CONVENES AT 9:08 A. M.)

12 THE COURT: Do we have anything before we bring the Jury
13 back, gentlemen?

14 MR. HOGAN: No, sir.

15 MR. EDMUND: No, Your Honor.

16 THE COURT: Alright. If you would, please, Mr. Bailiff.

17 (WHEREUPON, JURY ENTERS COURTROOM AT 9:09 A.M.)

18 THE COURT: Good morning, folks. Please be seated and
19 welcome back. Can you all assure us you did abide by our
20 admonitions of yesterday?

21 JURORS: Yes.

22 THE COURT: Thank you very much.

23 Alright, Mr. Hurm?

24 MR. HURM: Your Honor, the State would next call Polly
25 Carr.

1 THE COURT: Alright, Ms. Carr.

2 (WHEREUPON, POLLY CARR IS CALLED AS NEXT WITNESS FOR THE
3 STATE AND IS DULY SWORN BY THE CLERK OF THE COURT)

4 DIRECT EXAMINATION

5 BY MR. HURM:

6 THE COURT: That chair will roll around, ma'am. Just
7 make yourself comfortable and the microphone will move, if you
8 will roll yourself right up to that middle microphone, you can
9 just move it around if you need to. Thank you very much.

10 Q. Good morning, Ms. Carr.

11 A. Good morning.

12 Q. How are you?

13 A. Fine, thank you.

14 Q. State your name for the Jury, please?

15 A. Polly A. Carr.

16 Q. How are you employed?

17 A. Self-employed.

18 Q. Would you describe the kind of business you are self-
19 employed in?

20 A. I have a bar on Highway 50 in Mascotte called Polly's
21 Mascotte Bar.

22 Q. What is the intersection on Highway 50 that you are
23 on?

24 A. The name of the street?

25 Q. Where your business is located?

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1 A. Sunset.
2 Q. Corner of Sunset and Highway 50?
3 A. Yes, sir.
4 Q. How long have you been employed in that business?
5 A. Ten years.
6 Q. Were you working, do you recall, back on May 11th of
7 1987?
8 A. Yes, sir.
9 Q. Ms. Carr, is that located in Lake County?
10 A. Yes, sir.
11 Q. Would you describe for the Jury, please, the layout
12 of your business? In terms of where the front door is and
13 if there are any side doors, and so forth?
14 A. The front entrance door is facing Highway 50.
15 We have a side entrance door facing the Circle K, Sunset Street.
16 Q. That would be on Sunset, facing the Circle K?
17 A. Yes.
18 Q. Is the Circle K East or West of your business?
19 A. East.
20 Q. Ms. Carr, did you have occasion between ten and eleven
21 to be out by the side entrance?
22 A. Yes, sir.
23 Q. Would you describe the lighting outside your door and
24 also on the West side of the Circle K, if you can see from your
25 door?

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1 A. There is no light in the area across the street.

2 I have a light over the door entrance.

3 Q. At the Circle K, there was no lighting?

4 A. There is no lighting at the Circle K.

5 Q. Your Honor, may I have the witness step down to the
6 diagram?

7 THE COURT: Yes, sir. If you would, please, ma'am, watch
8 your step.

9 Q. Ms. Carr, are you right or left handed?

10 A. Right handed.

11 Q. Why don't you stand over here then, and I'll stand
12 on this side, so the Jury can see.

13 Just indicate, please, ma'am, where your business is
14 located?

15 THE COURT: Mr. Hurm, pardon my interruption, reference
16 your diagram by evidence, please.

17 MR. HURM: Yes, sir, I am sorry. This is State's Exhibit
18 #19.

19 Q. Ms. Carr, would you indicate on State's Exhibit #19
20 where your business is located?

21 A. I don't understand the exhibit number?

22 Q. That is just the exhibit number, for the purpose of
23 the record, but on this diagram, do you see where your business
24 is located?

25 A. Yes, I am right here.

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1 Q. And this is Highway 50?

2 A. Yes, sir.

3 Q. And this is Sunset?

4 A. Yes, sir.

5 Q. So would you point to me where the door would be
6 that is the side entrance you are referring to?

7 A. Somewhere in this area here.

8 Q. Right across the street from the door to the Circle
9 K?

10 A. Yes, sir, over here on the side.

11 Q. Now, I would like to show you a different diagram,
12 this is State's Exhibit 18, and if you would look at this
13 one. It is a close up of the Circle K area. With regard to
14 this particular diagram, where would your business be located?

15 A. Left.

16 Q. Off the diagram?

17 A. Yes.

18 Q. Now, if you would, tell the Jury, please, Ms. Carr,
19 what did you see that night as you looked out initially what
20 attracted your attention over in the area of the Circle K?

21 A. My place of business is on this side. The Circle K
22 is to the right. There is a dumpster sitting not directly
23 across from the entrance of the back door. I have a walk-in
24 cooler at the back of the entrance door. I was going in the
25 walk-in cooler, to the area, the front area, of the cooler

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1 that I re-stocked from the cooler to the front of the bar
2 area.

3 Q. Ms. Carr, when you say the dumpster is directly across
4 from the door, is your back door up here or down here? Where
5 would it be if not directly across from the dumpster?

6 A. it is not directly from the back entrance of the
7 door. I would say maybe my entrance door is a little ...

8 Q. Closer to 50?

9 A. Closer to 50.

10 Q. Were you able to see from that particular location
11 at your back door, were you able to see behind the dumpster,
12 the South side of the dumpster?

13 A. Yes.

14 Q. As you looked out that night, did you see anyone
15 around the dumpster?

16 A. Yes, sir.

17 Q. Could you tell the Jury, please, what you saw?

18 A. I saw a man, a person, two children behind the
19 dumpster.

20 Q. Was there anything about the man's appearance that
21 helped determine who it might be?

22 A. Not exactly. There was a police car in front of the
23 Circle K.

24 Q. Could you tell whether the man was in uniform?

25 A. Yes.

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1 Q. Was he?

2 A. Yes, he was in uniform.

3 Q. What kind of police car was sitting in front of the
4 Circle K?

5 A. Mascotte police.

6 Q. Were you able to see enough of the distinguishing
7 features of the three individuals you saw to tell who they
8 were?

9 A. No, sir.

10 Q. Where were they located with regard in reference to
11 the dumpster on this diagram?

12 A. This is the sidewalk. This is the Circle K. The
13 dumpster is here. In behind this area here, the Circle K
14 building.

15 Q. So as you are pointing, it would be directly South of
16 the dumpster then?

17 A. In behind here.

18 Q. There is a passageway, isn't there, in between the
19 dumpster and the wall?

20 A. Very small.

21 Q. Were they in that passageway?

22 A. No, sir, in behind the dumpster.

23 Q. Now, you said that one of the Mascotte ... or what
24 appeared to be a Mascotte police officer.

25 A. Yes, sir.

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1 Q. The other two individuals, could you describe them?
2 A. No, sir.
3 Q. How old would you say they were?
4 A. They were small children.
5 Q. Could you tell whether they were boys or girls?
6 A. No, sir.
7 Q. What did they appear to be doing?
8 A. Well, the man was back towards my entrance door.
9 The two children were facing him.
10 Q. What did you do after you saw them?
11 A. I kept making trips from the walk-in cooler to the
12 front entrance bar of my cooler re-stocking.
13 Q. How long would you be away from the door during those
14 trips?
15 A. Not exactly. I can't give an exact time.
16 Q. Did you have customers in the bar as well?
17 A. Yes, I had one customer at the time.
18 Q. Were you waiting on that individual as well as stocking
19 from the back cooler to the smaller cooler?
20 A. Yes.
21 Q. Did you have occasion to look out the door and see
22 anymore of the police officer and any of the other individuals
23 at a later time?
24 A. Occasionally, I looked out the times that I made the
25 trips from the cooler to the front entrance of the bar.

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1 Q. Tell the Jury, please, what else you saw?

2 A. From the time?

3 Q. Yes, ma'am, after you saw the three behind the
4 dumpster, did you ever see them anywhere else around the
5 Circle K?

6 A. Yes, I saw an officer in front of the Circle K,
7 and small children, one ... she was standing or he was standing,
8 I am not sure if it was a girl or a boy, in front of the police
9 car in front of the Circle K, and he was standing on the side
10 of his vehicle, apparently talking to the child.

11 Q. Which side of the vehicle was he standing on?

12 A. The West side.

13 Q. Which would be the driver's or passenger's side?

14 A. Passenger's side.

15 Q. And the child, you are not sure if it was a girl or
16 a boy?

17 A. No, sir, I am not sure.

18 Q. Was standing right in front of the car?

19 A. Yes.

20 Q. At any time during the time you looked out that
21 evening and saw a police car, did you ever see either of the
22 children sitting on the hood of the police car?

23 A. No, sir, I did not see that.

24 Q. Did you ever see the child in any other position
25 other than in front of the car?

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1 A. No, sir.
2 Q. Were you able to recognize the officer at that time
3 when he was in front of the Circle K?
4 A. No.
5 Q. Did you see the officer again that night?
6 A. No, sir, I did not.
7 Q. Did you see the child again?
8 A. No, sir, I did not.
9 Q. Could I have a moment, Your Honor?
10 THE COURT: Yes, sir.
11 MR. HURM: Thank you. No further questions.
12 THE COURT: Mr. Edmund?
13 MR. EDMUND: If it please, Your Honor.
14 THE COURT: Yes, sir.
15 CROSS EXAMINATION
16 BY MR. EDMUND:
17 Q. Ms. Carr, I am Jack Edmund. Ms. Carr, did you also
18 see the police officer with his foot on the bumper?
19 A. No, sir, I did not.
20 Q. Did you see him leaning against the car?
21 A. No, sir, I didn't.
22 Q. Do you recall giving a statement to the law enforce-
23 ment officers during the course of this investigation, Ms.
24 Carr, when you spoke to Rocky Harris and Sgt. Lynn Wagner on
25 the 29th of May, 1987, at about noon?

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1 A. Did you say did I make a statement?

2 Q. Yes, ma'am?

3 A. Yes, I did.

4 Q. Do you recall making this remark to the law enforcement
5 officer? They asked you, "Did you sit there and watch and
6 did you pay attention"and do you recall this response,
7 "Well, from back and forth, I would say approximately three
8 minutes all in all and then I seen the officer go to the front
9 of the Circle K and I saw a little girl standing and talking
10 to him and he had a pad writing something and he was leaning
11 the front of his car, which was the police car." Do you recall
12 making that statement?

13 A. Yes.

14 Q. What did you mean by leaning the front of the
15 police car, Ms. Carr?

16 A. He wasn't exactly leaning on the car. He had a pad
17 writing something. I assumed he was writing something.

18 Q. As officers are prone to do, use the top of the hood
19 to put their pads when they are writing something down?

20 MR. HURM: Objection, Your Honor, to the testimony of what
21 officers are prone to do. He can ask her what she saw. She
22 can testify to that.

23 MS. CARR: Thank you.

24 THE COURT: What do you say, Mr. Edmund? He is objecting
25 to your question.

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1 MR. EDMUND: No argument, sir.

2 THE COURT: Alright, I am going to sustain the objection.
3 You can rephrase the question.

4 Q. Have you had occasion to see police officers using
5 the top of their hood to write tickets and make notes on pads?
6 Things like that?

7 A. I have never been involved in anything like that.
8 No, sir, I can't say I have.

9 Q. Alright, well, will you tell the Jury, then, how was
10 she standing specifically? Did he use the top of the hood at
11 any time you saw him to write on whatever he was writing on?

12 A. I did not see him leaning on the hood. I saw him
13 standing by the officer's car, the police car.

14 Q. Then, will you tell the Jury why you told the officers
15 back on the 29th of May of 1987, that he was leaning on the
16 front of the car. What do you mean by leaning? Have you and
17 I talked before, Ms. Carr?

18 A. Have I ever talked to you before?

19 Q. Yes, ma'am?

20 A. I talked to someone in your office. I can't remember
21 if it was you or not.

22 Q. Alright, but did you ever talk to anyone who identified
23 himself... I just wonder if I have done something that has
24 got your ire up, or something like that, Ms. Carr?

25 MR. HURM: Your Honor, I would object. It is improper

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1 cross examination. It is argumentative. Badgering the witness.

2 MR. EDMUND: It just seems to me, Your Honor, that I
3 got jumped on by a witness I have never seen before.

4 THE COURT: I am going to overrule your objection.
5 Can you answer the question, ma'am? Have you ever talked to
6 Mr. Edmund before if you recall?

7 A. Not that I recall. I talked to someone in his
8 office.

9 Q. Let's talk once more about the leaning. Explain to
10 the jury what leaning meant back on the 29th of May of 1987,
11 that is different than your testimony here today when you said
12 he wasn't leaning on the car?

13 A. It is dark where I am standing looking across the
14 street. I wasn't at the point where I could say he was
15 leaning.

16 Q. Then why did you say he was leaning, Ms. Carr?

17 A. To me, I saw an officer standing, in uniform, standing
18 beside the car or close by the car, talking to a small
19 child. I didn't stand there to interview what was going on,
20 because I had a job to do. What happens across the street
21 is no concern to me, but I just happened to be traveling back
22 and forth at the entrance that night doing my job. I looked
23 out and I see an officer talking to the children.

24 Q. Thank you, ma'am. Now, please answer my question.
25 What is the difference between leaning on the 29th of May of

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1 1987 and today, whatever the day's date, of 1988, Ms. Carr?
2 Leaning is leaning, seeing is seeing, ain't it ma'am?

3 A. Yes, sir.

4 Q. You claimed you saw his lean, didn't you, and now
5 are you telling the Jury you couldn't see what you said you
6 saw?

7 MR. HURM: Your Honor, I am going to object to the
8 badgering of the witness. She is testifying as she can
9 testify.

10 THE COURT: I am going to overrule your objection. Go
11 ahead, ma'am, and answer, if you can.

12 A. No, I can't answer that.

13 Q. Now, you tell the Jury it was dark when you saw these
14 people around the police car, it was standing out in front of
15 the Circle K with all the lights on, aren't they, ma'am?
16 Now, is it dark or is it light?

17 A. I did not see a bunch of people. I saw a police
18 car.

19 Q. Right, and two people whom you say now you can't
20 describe as far as boy, girl or what, but here on the 29th of
21 May, 1987, you described it as a girl, didn't you?

22 A. Well, she looked like a girl. She had long hair.

23 Q. Tell the Jury that now, if you will, please, now
24 ma'am, and don't tell us you couldn't describe what the child
25 looked like.

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1 A. I couldn't identify the child.

2 Q. Noone asked you to identify the child. Identify
3 as much as you know...

4 A. Well, boys wear long hair, too, excuse me.

5 Q. Yes, ma'am, and sometimes old men wear long hair?

6 A. Yes, sir, you are right.

7 Q. Now, let's get back. What is the difference between
8 leaning then and today, Ms. Carr?

9 A. Are you trying to have me to say that he was sitting
10 or laying on the car?

11 Q. All I am trying to do, ma'am, is to get you to repeat
12 what you said back in May instead of denying it to this jury
13 today, when for whatever reason you may have decided that was
14 critical for this case.

15 A. No.

16 Q. Have you choosed up sides or something...

17 A. No, sir, I have not.

18 MR. HURM: This is totally improper, Your Honor.

19 THE COURT: Alright.

20 MR. HURM: Totally improper.

21 THE COURT: Stop for a minute, ma'am and sir. Mr. Edmund,
22 I am going to ask you to slow down and don't ask the witness
23 if she has choosed up sides. Just ask her specific questions
24 and we will get specific answers.

25 A. Thank you.

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1 Q. Now, let's get to the dark. It was dark by the
2 dumpster, wasn't it?

3 A. Yes, sir.

4 Q. It was dark by the dumpster, but you could still see
5 there was a police officer and still see he had on a uniform?

6 A. Yes, sir.

7 Q. Because you got a fraidy light out there, don't you?

8 A. Excuse me?

9 Q. You have got a fraidy light out there, a security
10 light out there by your bar, don't you?

11 A. I have a couple of them, sir.

12 Q. Yes, ma'am, and it is right across the road here
13 from the Circle K, is it not, over on that side?

14 A. I have one in the rear of the bar, yes. I have lights
15 over the door, yes, sir.

16 Q. Now, can you tell this Jury now whether you saw a boy
17 and a girl standing behind the dumpster?

18 A. I cannot say whether it was a boy or a girl.
19 I just seen there was some children there.

20 Q. Let me ask you this, do you remember Mr. Harris asking
21 you this question: On May 11th, 1987, at approximately some-
22 where in the vicinity of 10:00 o'clock or thereafter, did you
23 see a boy and a girl at the dumpster and did you reply, "Yes,
24 sir"?

25 A. I assumed it was, yes.

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1 Q. How about now, ma'am, presume whatever else you
2 presumed that night and tell the Jury what you told Mr. Harris
3 back in May. Will you do that, please, ma'am?

4 A. All I can say is I saw a couple of children, I assumed
5 a boy and a girl, behind the dumpster, or a man in uniform,
6 talking to the children.

7 Q. Now, at least we have progressed from you don't know
8 what they were to a boy and a girl. Now, can we progress on
9 to again what you told Investigator Harris back on the 29th of
10 May of 1987, and get around to the leaning aspect of this
11 thing. How close was the girl to the front of the car, ma'am?

12 A. I can't answer that, because I don't know. I saw her
13 standing in front of the Circle K or Shop and Go at that time.

14 Q. What about in front...

15 A. In front of the officer's car.

16 Q. How far away from the front of the officer's car?

17 A. I cannot answer that, because I don't know.

18 Q. Could you estimate how far the front bumper of the
19 car was from the curb?

20 A. I cannot answer that.

21 Q. Can you estimate how far it was from the building
22 itself?

23 A. No.

24 Q. Was the little girl leaning against the building?

25 A. No, sir, I did not see that.

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1 Q. Was the little girl leaning against the car?

2 A. No, sir, I did not see that.

3 Q. Was the police officer leaning against the car?

4 A. I can't say that he was. All I saw was an officer
5 standing beside the car.

6 Q. When did you...

7 A. I don't know if he was leaning or not.

8 Q. When did you decide that you can't decide whether he
9 was leaning or not, Ms. Carr?

10 MR. HURM: Your Honor, I am going to object again. May
11 we approach the bench?

12 THE COURT: Go ahead from there.

13 MR. HURM: He has already made his point. She made a
14 statement then and he is arguing to the Jury it is different
15 than what she is testifying now. He established that. I
16 object that he is not letting it rest and moving on. To keep
17 going on the same ground over and over again. It is badgering
18 the witness. It is improper.

19 THE COURT: What do you say, Mr. Edmund?

20 MR. EDMUND: If the State wants to concede that her
21 testimony now is different than ... or no longer the leaning
22 part of her testimony, and it differs from the 1987, yes, sir,
23 I will go on to something else.

24 MR. HURM: Your Honor, the State is not conceding anything,
25 but he is attempting to impeach her with prior, according to

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1 him, inconsistent statements. She has addressed that as best
2 she could and now he can certainly, in closing argument, make
3 an argument to the Jury about that point, but to continue to
4 berate this witness is improper.

5 A. Thank you.

6 THE COURT: What say you?

7 MR. EDMUND: Thank you, sir.

8 THE COURT: Go ahead, but I do think we have just about
9 gone over that point enough.

10 MR. EDMUND: Alright, sir.

11 Q. You weren't paying too much attention to this,
12 were you?

13 A. No, sir, I wasn't.

14 Q. You really didn't much care about it?

15 A. Yes, sir, I did.

16 Q. You did or did not?

17 A. I do.

18 Q. I don't mean about the case itself, but I mean about
19 the fact of the officer talking to the child?

20 A. It wasn't none of my concern, because I don't work
21 at the Circle K. I work across the street.

22 Q. You weren't really interested, were you?

23 A. No, sir, I wasn't.

24 Q. Why did you call your customer over and show him what
25 was going on across the street?

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1 A. Why?

2 Q. Yes, ma'am, if you...

3 A. Because I happened to be alone that night.

4 I live that place alone.

5 Q. What does that got to do with calling your customer
6 to show him a police officer is talking to a boy and girl and
7 it may have not have been a boy and girl, and you may or may
8 not have been able to identify, and who may or may not have
9 been leaning on the side of the car? Why does that mean you
10 call your customer over to the door and say, "Hey, Joe, take
11 a look". His name was Joe, wasn't it?

12 A. Yes, it was.

13 Q. Now, Joe is the one that said...

14 MR. HURM: Objection. Objection. He is going into
15 hearsay testimony.

16 MR. EDMUND: No, no, no, no, it is part of her statement.

17 MR. HURM: May we approach on this?

18 THE COURT: That doesn't make any less hearsay, Mr.
19 Edmund, as to what this Joe might have said to this witness.
20 I will sustain the objection as to hearsay with regard to what
21 Joe might have said.

22 Q. You did call him over, didn't you?

23 A. Yes, I did.

24 Q. To show him something you are not interested in?

25 A. Yes.

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1 Q. That you can't remember today like you remembered on
2 the 27th of May of 1987? Fair statement?

3 A. Yes, sir.

4 Q. Thank you, ma'am. No further questions, Your Honor.
5 May I move this, Your Honor?

6 THE COURT: Yes, sir, unless you need it again, Mr. Hurm?

7 MR. HURM: No, I don't need it.

8 RE-DIRECT EXAMINATION

9 BY MR. HURM:

10 Q. Ms. Carr, the light outside the door, where is that
11 located?

12 A. Just above the door, sir.

13 Q. What kind of a light is it?

14 A. It is just an ordinary outside light.

15 Q. Light bulb?

16 A. Yes, sir.

17 Q. Thank you. Nothing further.

18 THE COURT: Mr. Edmund?

19 RE-CROSS EXAMINATION

20 BY MR. EDMUND:

21 May I have a moment, please, Your Honor.

22 THE COURT: I am down to what kind of light is outside the
23 door, on re-cross, Mr. Edmund, so it is getting pretty narrow.
24 We will have to admit.

25 Q. Did you refer to it as just a light bulb when you were

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1 talking to the law enforcement officers back in May of 1987,
2 ma'am?

3 A. Excuse me?

4 Q. Did you refer to it as just a light bulb when you were
5 talking to the officers back in May of 1987?

6 A. Over my door entrance?

7 Q. Yes, ma'am?

8 A. Yes, sir, it is all. Just a light bulb.

9 Q. I see, well, tell me whether or not you made this
10 statement. "I had a security light myself. Florida Power
11 put up mine. At the time, I couldn't see the face to identify
12 either one. I couldn't identify the police, but I had a security
13 light.". Isn't that what you said?

14 A. Yes, sir. I do have a security light, put there by
15 Florida Power.

16 Q. Yes, ma'am. Thank you.

17 RE-DIRECT EXAMINATION

18 BY MR. HURM:

19 Q. Where is that security light?

20 A. That is in the rear of the building.

21 Q. Is that the same as the light bulb above your door
22 at the side entrance?

23 A. No, sir, it is not the same door.

24 Q. Thank you. Nothing further.

25 RE-CROSS EXAMINATION

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1 BY MR. EDMUND:

2 Q. And that shines across the street to the parking lot
3 of the Circle K, doesn't it, ma'am?

4 A. Which light are we talking about, sir?

5 Q. Both of them?

6 A. The entrance door light shines out toward the parking
7 area of the Circle K, yes, sir.

8 Q. And your security light illuminates there also, does
9 it not, ma'am?

10 A. No, sir.

11 Q. You are just across the street, aren't you?

12 A. Yes, sir.

13 Q. And the back of your place is even with the parking
14 lot of the Circle K, isn't it?

15 A. No, sir, that has nothing to do ... the back entrance
16 of my place has nothing to do with the parking area of the
17 Circle K. Across the street.

18 Q. Nothing further, Your Honor.

19 MR. HURM: Nothing further, Your Honor.

20 THE COURT: What do you say about this lady's subpoena,
21 gentlemen?

22 MR. HURM: She can be released.

23 THE COURT: Any objection?

24 MR. EDMUND: No, Your Honor.

25 THE COURT: You are free to go, ma'am. Thank you very much.

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1 THE COURT: Your next witness, Mr. Hurm?

2 MR. HURM: Your Honor, at this time, we would offer the

3 video tape testimony of Gwen Gurley.

4 THE COURT: Alright, has that been marked for identification?

5 I think we need to admit the tape into evidence?

6 MR. HURM: Yes, it has, Your Honor, and I would offer

7 it into evidence.

8 THE COURT: What is the letter on it, if you would?

9 MR. HURM: TTTT, Your Honor.

10 THE COURT: TTTT, the video tape...

11 MR. HURM: I should point out, Your Honor, this is a

12 composite exhibit consisting of certificate of authenticity

13 by Jonalyn Berry, as well as the Beta tape, which is the

14 original and then the VHS tape, which she copied from that,

15 which is the one we will be showing.

16 THE COURT: Alright, any objection to this being admitted

17 into evidence and shown to the Jury, Mr. Edmund?

18 MR. EDMUND: May we approach the bench, Your Honor.

19 THE COURT: Alright.

20 (WHEREUPON, BENCH CONFERENCE IS HELD AS FOLLOWS:)

21 MR. EDMUND: My only objection would be if the Jury at

22 some point in time were to request a TV and a VCR, whatever

23 you call it, to see... to look at that to the exclusion of

24 other testimony in the trial.

25 THE COURT: I understand. That is just like asking to

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1 to have testimony read back. We just have to rule on it at
2 that time.

3 MR. EDMUND: Thank you, Your Honor. No objections, Your
4 Honor.

5 THE COURT: Thank you, sir.

6 (WHEREUPON, BENCH CONFERENCE ENDS)

7 THE COURT: State's Exhibit TTTT for identification will
8 be admitted into evidence as State's Exhibit #20. I believe we
9 have a stipulation, gentlemen, from yesterday, that madam court
10 reporter need not transcribe this tape again.

11 MR. HURM: Yes, sir.

12 THE COURT: She was present when we did this.

13 MR. EDMUND: Yes, sir.

14 THE COURT: Folks, bear with us for a second while we set
15 this set up for you and let me explain to you what happened.
16 I think you probably understand. This witness is in her last
17 term of pregnancy. By stipulation, between counsel for the
18 Defense and for the State, prior to the commencement of this
19 trial, her testimony was video taped. I was on the bench and
20 the lawyers were present and the Defendant was present just as
21 though this were in the courtroom. She testified under oath and
22 was cross examined by an associate of Mr. Edmund's, so you are
23 to consider this testimony just as though it were live and here
24 in the courtroom and consider it just like you would any other
25 witness. Does everyone understand that clearly?

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1 Thank you very much.

2 MR. HURM: May we have the lights down?

3 THE COURT: Yes, sir, we will do that.

4 (WHEREUPON, VIDEO TAPE OF GWEN GURLEY IS SHOWN TO THE
5 JURY AND IS NOT TAKEN BY COURT REPORTER, PER STIPULATION OF
6 COUNSEL)

7 (WHEREUPON, VIDEO TAPE OF GWEN GURLEY ENDS AT 10:54 A. M.)

8 THE COURT: Folks, would you be adverse to a fifteen
9 minute recess at this time?

10 If you would, Mr. Bailiff, remove the Jury, please.

11 (WHEREUPON, JURY IS OUT AT 10:55 A. M.)

12 MR. EDMUND: May we approach the bench?

13 (WHEREUPON, BENCH CONFERENCE IS HELD AS FOLLOWS:)

14 MR. EDMUND: May we have a fifteen minutes chambers
15 conference with the court reporter, towards the end of our
16 lunch period, Your Honor. It is a matter I need to bring up
17 with the Court. I have to explain it to both Mr. Hogan and
18 Mr. Hurm what I want to talk to you about.

19 THE COURT: I am hoping to break right about noon and
20 come back at 1:30, so we we meet at about 1:15, we can have
21 that.

22 MR. EDMUND: Thank you, sir.

23 (WHEREUPON, BENCH CONFERENCE ENDS)

24 THE COURT: Remove the Defendant, please, Mr. Bailiff.

25 (WHEREUPON, DEFENDANT IS TAKEN FROM COURTROOM AT 10:55 A. M.)

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1 (WHEREUPON, COURT IS IN RECESS AT 10:55 A. M.)
2 (WHEREUPON, DEFENDANT IS PRESENT IN COURTROOM WITH HIS
3 COUNSEL, MR. EDMUND, AT 11:15 A. M.)
4 (WHEREUPON, COURT RECONVENES AT 11:21 A. M.)
5 THE COURT: Anything before we bring the Jury back,
6 folks?
7 MR. HOGAN: No, sir.
8 MR. EDMUND: No, Your Honor.
9 THE COURT: Please, Mr. Bailiff.
10 (WHEREUPON, JURY ENTERS COURTROOM AT 11:22 A. M.)
11 THE COURT: Welcome back, folks. Be seated, please.
12 Can you assure us that you did abide by our admonitions?
13 JURORS: Yes, sir.
14 THE COURT: Mr. Hogan?
15 MR. HOGAN: The State would call Mayetta Rose.
16 (WHEREUPON, MAYETTA ROSE IS CALLED AS NEXT WITNESS FOR
17 THE STATE AND IS DULY SWORN BY THE CLERK OF THE COURT)
18 DIRECT EXAMINATION
19 BY MR. HOGAN:
20 THE COURT: Alright, Ms. Rose, you are soft spoken, so
21 please sit right in this chair and roll it right up to that
22 middle microphone. You can move that microphone, yes, ma'am,
23 just move it so that you are speaking right into it. Thank
24 you, ma'am.
25 Q. Please state your name for the record?

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1 A. Mayetta Rose.

2 Q. Where do you live?

3 A. Bushnell.

4 Q. In May of 1987, were you working in Mascotte,
5 Florida?

6 A. Yes.

7 Q. Do you work there now?

8 A. Yes.

9 Q. Where do you work in Mascotte?

10 A. Jiffy Food Store.

11 Q. That is in the City Limits of Mascotte?

12 A. Yes.

13 Q. Is that on Highway 50?

14 A. Yes.

15 Q. Calling your attention to last may, are you familiar
16 with a store in Mascotte on the corner of Highway 50 and
17 Sunset? At that time, it was called the Shop and Go and now
18 it is called the Circle K?

19 A. I only know that it is there.

20 Q. Do you know where it is?

21 A. Yes.

22 Q. Do you know about how far it is from your store?

23 A. Half mile, if that far.

24 Q. Ms. Rose, do you know an individual by the name of
25 James Duckett, who was a Mascotte police officer last May?

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1 A. Yes.

2 Q. Do you see him in the courtroom here today?

3 A. Yes.

4 MR. EDMUND: I would stipulate she could identify my
5 client, Your Honor.

6 THE COURT: Alright. Ladies and gentlemen, the record
7 will so reflect.

8 Q. Ms. Rose, calling your attention to May 11th, did you
9 work on that day?

10 A. I worked that night.

11 Q. That night? What time did you go to work?

12 A. 11:00 P. M.

13 Q. You got to the store at 11:00 o'clock?

14 A. Yes.

15 Q. At the Jiffy Store?

16 A. Yes.

17 Q. After you got to work, after 11:00 o'clock on May 11th
18 or possibly the early morning hours of May 12th, in other words,
19 past midnight, did you have occasion to come in contact with
20 Officer Duckett?

21 A. Yes, he came in the store.

22 Q. Do you know about what time that was?

23 A. No, I really couldn't say. It was after I got to work
24 is all I remember.

25 Q. Okay, it was after 11:00 anyway, on May 11th?

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1 A. Yes.

2 Q. Do you recall ... was there anything unusual about
3 that visit at that time?

4 A. He brought a picture in and showed me.

5 Q. Did he ask you to do anything with the poster or
6 piece of paper?

7 A. Later on, his next trip in.

8 Q. Was that the same night?

9 A. Ahum. (Affirmative response)

10 Q. What did he ask you to do with that piece of paper
11 or that poster?

12 A. Put it up where everybody could see it.

13 Q. Where did you put it?

14 A. By the register.

15 Q. He asked you to display it where the customers could
16 see it?

17 A. Right.

18 Q. I show you what has been put in evidence, State's
19 Exhibit #1, and ask if you recognize that picture?

20 A. Yes.

21 Q. Is that the same picture that was on the poster?

22 A. Yes.

23 Q. You believe it is?

24 A. Yes.

25 Q. May I have one moment, Judge.

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1 THE COURT: Yes, sir.

2 MR. HOGAN: Thank you, Judge. Thank you, Ms. Rose.

3 THE COURT: Mr. Edmund?

4 MR. EDMUND: If it please, Your Honor.

5 CROSS EXAMINATION

6 BY MR. EDMUND:

7 Q. Ms. Rose, my name is Jack Edmund. Ms. Rose, have
8 you seen Jim Duckett before that night on other occasions,
9 ma'am?

10 A. Yes, he came in the store when he was on duty.

11 Q. Did he seem any different to you that night that he
12 brought in the picture than he did any other night?

13 A. No, he didn't.

14 Q. Did his clothing seem messed up in any way?

15 A. Not at all.

16 Q. Did his hair seem messed up in any way?

17 A. No.

18 Q. Did you notice any mud on his shoes or anything like
19 that, ma'am?

20 A. No, I didn't.

21 Q. Did he just seem to be the Jim Duckett that was the
22 police officer that would come in and out and have coffee
23 from time to time?

24 A. Yes.

25 Q. And this was after midnight, is that right, ma'am?

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1 A. Yes.

2 Q. Thank you, Ms. Rose; no further questions, Your Honor.

3 RE-DIRECT EXAMINATION

4 BY MR. HOGAN:

5 Q. Ms. Rose, do you know what kind of shoes Officer Duckett

6 was wearing?

7 A. No, I really don't.

8 Q. Do you know if Officer Duckett carried a comb with

9 him?

10 A. No.

11 Q. No further questions.

12 THE COURT: Mr. Edmund?

13 MR. EDMUND: No thank you, Your Honor.

14 THE COURT: Alright, may we release Ms. Rose from her

15 subpoena?

16 MR. HOGAN: No objection.

17 MR. EDMUND: No objection, Your Honor.

18 THE COURT: You are free to go, ma'am. Thank you very

19 much. Please watch your step.

20 MR. HURM: Your Honor, the State would next call

21 Edward Crumbley.

22 THE COURT: Edward Crumbley.

23 (WHEREUPON, EDWARD CRUMBLEY IS CALLED AS NEXT WITNESS

24 FOR THE STATE AND IS DULY SWORN BY THE CLERK OF THE COURT)

25 DIRECT EXAMINATION

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1 BY MR. HURM:

2 Q. Good morning, Mr. Crumbley.

3 A. Good morning.

4 Q. Roll your chair up, if you would, so that you are
5 speaking into that microphone and address your answers to
6 the Jury, if you would.

7 State your name for the record?

8 A. Edward W. Crumbley.

9 Q. And Mr. Crumbley, in May of 1987, did you live in
10 Lake County?

11 A. Yes, I did.

12 Q. Where did you work at that time?

13 A. Presto Food Store in Mascotte.

14 Q. Where is that located in relationship to the
15 Jiffy Store?

16 A. It is approximately maybe three blocks away.

17 Q. To the East or West? Towards Groveland or away from
18 Groveland?

19 A. Towards Groveland, right on the City Limits line.

20 Q. So then would the Jiffy be between the Presto Store
21 where you work and the Circle K in Mascotte?

22 A. Yes.

23 Q. Were you working on the night of May 11th and
24 early morning hours of May 12th, 1987?

25 A. Yes, I was.

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1 Q. What was your position in the store?

2 A. Assistant Manager at that time.

3 Q. Was anyone working with you that night?

4 A. No, they weren't.

5 Q. Did you know, as a result of working in the Presto
6 Store, any Mascotte police officers?

7 A. Yes, I did.

8 Q. Did you know one by the name of James Duckett?

9 A. Yes, I did.

10 Q. How did you know him?

11 A. The officer on duty, they rotate different times of
12 the night.

13 Q. So they come in the store and get coffee and that
14 sort of thing?

15 A. And sometimes they flash their lights at the window
16 to make sure we are alright, and drive on through.

17 Q. Do you see James Duckett in the courtroom?

18 MR. EDMUND: I would stipulate he would identify my
19 client Your Honor. I am sorry.

20 THE COURT: Alright. We will note that for the record.

21 Q. Mr. Crumbley, on the night of May 11th or early
22 morning hours of May 12th, did James Duckett come into your
23 store?

24 A. Yes, he did.

25 Q. Did he have anything with him?

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1 A. A flyer.
2 Q. Did he have a photograph on him?
3 A. Yes.
4 Q. I would show you what has been marked State's Exhibit
5 #1, and would you examine that please, sir, and tell me if you
6 recognize that?
7 A. That is the mother and the missing child.
8 Q. Is that the photograph that was shown to you?
9 A. Yes, it was.
10 Q. What did James Duckett tell you about this photograph?
11 A. That there was a missing child approximately maybe
12 10:30 or 11:00 o'clock, she was found missing, and he asked me
13 if I had seen her and I said, "No".
14 Q. Did he ask you to do anything with the flyer he gave
15 you?
16 A. If we don't mind putting it in the window.
17 Q. Did you do that?
18 A. Yes, sir.
19 Q. Did he ever come back later that night and check to
20 see if you had seen the girl?
21 A. No, he hadn't.
22 Q. Thank you. May I have a moment, Your Honor?
23 THE COURT: Yes, sir.
24 MR. HURM: No further questions at this time, Your Honor.
25 THE COURT: Mr. Edmund, your witness.

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1 CROSS EXAMINATION

2 BY MR. EDMUND:

3 Q. Mr. Crumbley, my name is Jack Edmund. Let me
4 put it this way. Had you seen James Duckett around the town
5 on other occasions before this night? He had been a police
6 officer there for four or five months?

7 A. Before the night, he was usually on duty.

8 Q. That is what I mean, you had seen him on duty before
9 had you not?

10 A. Yes, I had.

11 Q. Had he been in your store before, perhaps Mr. Hurm
12 asked you, but had he been in there for coffee and such as
13 that?

14 A. Yes, sir.

15 Q. And you had conversation with him before?

16 A. Briefly, just to pay for the coffee.

17 Q. Did you notice anything unusual about him on the
18 night he brought you the flyer?

19 A. Yes, I did.

20 Q. What was that?

21 A. They usually have a routine that they come through
22 and there is more like forty-five minutes to an hour they are
23 coming through. Okay, that is all the officers. On that
24 night, he approximately come in I figure about 9:30, I was
25 mopping up at that time, and I didn't see him until when he

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1 come in with the flyer.

2 Q. And when you were talking to him, did you notice any-
3 thing unusual about his clothing or anything like that?

4 A. No, I never.

5 Q. Did you see any dirt on him or anything of this nature?

6 A. No, usually when he walked through the store, the
7 store counter is up higher and he would come in through the
8 door. The door is more or less right here and the counter is
9 here. You only see this part of his body.

10 Q. Did he have any conversation with you about that
11 particular girl?

12 A. No, sir.

13 Q. Can you recall in any detail the conversation that you
14 did have about that poster?

15 A. As I recall, he come into the store later on that
16 evening and showed me the photograph. He asked me if I had
17 seen this little girl. She had been missing, and if I do see
18 her, call the Sheriff's Department and they will patch through
19 to the Mascotte police.

20 Q. Anything else about the conversation?

21 A. No, sir.

22 Q. Can you see the police station from your store?

23 A. No, sir.

24 Q. Which of the convenient stores is located nearest
25 the police station?

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1 A. The Jiffy.

2 Q. The Jiffy Store? Alright, sir. Was anyone else on
3 duty with you that night at any point in time?

4 A. It was seven to seven that night. There was myself
5 and the Manager, and we switch on seven to seven.

6 Q. Were you both in there for this entire period of
7 time?

8 A. No, maybe more or less thirty minutes.
9 I got there at 7:00. She left at 7:30.

10 Q. Was there anyone else there with you the rst of the
11 evening?

12 A. No, sir, just coming and going.

13 Q. I am talking about employees?

14 A. No, sir.

15 Q. During the course of the evening, what are your duties
16 in the store?

17 A. My duties are to serve all the customers. Stocking
18 the cooler; stocking the shelves; loading the shelves;
19 sweeping up and cleaning the windows.

20 Q. When you are stocking the cooler, do you stock the
21 cooler from the front or do you stock the cooler from the
22 rear?

23 A. Okay, first, I start at the front and pull everything
24 forward and turn the belt and go around to the back and stock
25 in the back.

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1 Q. Would you describe the coolers? Do they cover the
2 whole wall in your store?

3 A. Yes, they do.

4 Q. And is the room behind them a cold room?

5 A. Yes.

6 Q. And that is where you keep the drinks and such as
7 that? Is it drinks that you stock in the cooler? Sandwiches,
8 cheese, all these other things?

9 A. Yes, all of it.

10 Q. And during the course of the evening, you would be
11 replacing cartons of drinks and sandwiches and things like that
12 in the cooler?

13 MR. HURM: Your Honor, I would object. It is irrelevant
14 and beyond the scope of direct examination.

15 THE COURT: What do you say, Mr. Edmund?

16 MR. EDMUND: I think it goes to his whereabouts in the
17 store during various points of the evening, Your Honor. Going
18 to what he might have observed in and outside the store.

19 THE COURT: I'll overrule it. Go ahead.

20 A. I can answer that?

21 Q. Yes.

22 A. Okay, in between different shifts, okay, when I come
23 on in that thirty minutes time, that is when the next or the
24 last employee that was there, they stock the coolers and what
25 have you, and that is ... okay, the Manager, she stocked the

1 cooler and that usually runs to my shift.

2 Q. I thought you said, sir, that during the evening
3 you mopped the floor, did you not?

4 A. Yes, sir.

5 Q. I thought you said during the evening you stocked
6 the coolers, did you not?

7 A. Yes, I did.

8 Q. Well, did you or didn't you stock the coolers?

9 A. Not during the evening, but that is my routine of what
10 I do.

11 Q. Alright, did you mop the floors?

12 A. Yes, I did.

13 Q. And you did or did not stock the coolers?

14 A. At the end of my shift.

15 Q. When was the end of your shift?

16 A. That would be 7:00 o'clock in the morning.

17 Q. The next morning? Alright.

18 What else did you do during the course of your shift?

19 A. The doors and one window that comes out towards the
20 pump...

21 Q. Do you stock the shelves?

22 A. They are usually stocked.

23 Q. During the course of your shift at night, when there
24 is nothing going on, no customers coming in and things like
25 that, what do you do? Where do you sit? What do you do

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1 around the store? You don't busy yourself around the store
2 at all?

3 A. That is more or less cleaning the windows, sweeping,
4 mopping, and between customers, just usually in between say
5 11:30 to maybe about 3:00, that is when the truck drivers
6 start coming in for coffee, about in that time is when I
7 usually do my cleaning in there when there is hardly any
8 customers there.

9 Q. What time is that? The truck drivers come in about
10 11:30 or they quit coming in at about 11:30?

11 A. That is when all your beer drinkers, people that
12 buy beer, that is when they start stop coming in.

13 Q. They stop coming in about that time?

14 A. Yeah.

15 Q. And that is when you get busy with the cleaning, the
16 mopping, the sweeping and this kind of thing, is that what
17 you said?

18 A. Yes, sir.

19 Q. I see. Fine. Do you recall whether or not you did
20 that on this evening?

21 A. Yes.

22 Q. Was there ever a time when the store had a run of
23 customers that evening or do you recall the events that well?

24 A. The run of customers usually run to about after
25 dinner time between I figure about usually when I get there,

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1 about seven to eight, when we get our most customers.

2 Q. Do you have paperwork or bookwork that you do?

3 A. That is at the end of the shift.

4 Q. At the end of the shift?

5 A. Yes.

6 Q. Do you ever work on paperwork or bookwork during your

7 shift?

8 A. No, sir.

9 Q. during a lull between customers, you do nothing

10 unless you are cleaning the floors or cleaning the windows or

11 something like this?

12 A. Yes.

13 Q. Alright, the shelves on that store, do they run

14 perpendicular to the street or parallel to the street?

15 A. Parallel to the street.

16 Q. When you mop the floor, do you mop all of the floors

17 within the building?

18 A. Just the ones out in the front at the counter.

19 Q. That's all? You don't mop the ones along the aisles

20 and things like that?

21 A. Down the aisles, yes.

22 Q. Down the aisles and in front of the coolers?

23 A. Yes.

24 Q. In front of the coolers and all that?

25

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1 A. Yes.

2 Q. Thank you, Your Honor.

3 RE-DIRECT EXAMINATION

4 BY MR. HURM:

5 Q. Mr. Crumbley, you indicated that the Mascotte officers,

6 including Officer Duckett, had a routine coming by your

7 store?

8 A. Yes.

9 Q. What was that routine again?

10 A. Talking about the routine where they come in? They

11 drive by or come in for coffee approximately forty-five

12 minutes to an hour.

13 Q. So every forty-five minutes to an hour, it is your

14 experience that the Mascotte police officer on duty would

15 come by your store?

16 A. Yes, sir.

17 Q. Now, you said... may I have a moment, Your Honor?

18 THE COURT: Yes, sir.

19 Q. Now, if the officer did not come in the store for

20 coffee, how would you know the officer was there?

21 A. He usually would flash... they flash those sirens

22 ... there is a bright light on the side ... the light on the

23 top of the car. They will flash it at the building. Or hit

24 their siren.

25 Q. If you were mopping, would that light attract your

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1 attention or alert you?

2 A. Yes, the light.

3 Q. And you would look up and see the car?

4 A. Yes.

5 Q. Now, on May 11th, you said you saw the defendant,
6 James Duckett, at about 9:30?

7 A. Yes.

8 Q. And what did he do then? Did he come in for coffee
9 or did he just drive by and flash his lights?

10 A. Driving by.

11 Q. And then did you see him again forty-five minutes to
12 an hour later?

13 A. No, I didn't.

14 Q. When was the next time you saw him?

15 A. When he come into the store with the photograph.

16 Q. And that was after midnight?

17 A. As I recall, yes, it was.

18 Q. Do you know whether Officer Duckett carried a comb?

19 A. A comb?

20 Q. Yes, sir?

21 A. No, I do not.

22 Q. Nothing further. Thank you.

23 THE COURT: Mr. Edmund.

24 MR. EDMUND: No, Your Honor, thank you.

25 THE COURT: What do you say about the gentleman's subpoena?

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1 MR. HURM: Can I have just one moment, Your Honor?
2 He can be released.
3 MR. EDMUND: No objection, Your Honor.
4 THE COURT: You are free to go. Thank you very much.
5 Watch your step as you come down.
6 You all approach the bench a second.
7 (WHEREUPON, BENCH CONFERENCE IS HELD AS FOLLOWS:)
8 THE COURT: Do we have another Jiffy witness or not a
9 longer witness. It is quarter to twelve?
10 MR. HOGAN: It is probably a little bit longer. Probably
11 be a good idea to break for lunch.
12 MR. EDMUND: That is fine.
13 THE COURT: Let's come back at 1:30... I will see you all
14 in chambers at 1:15, with Ms. Patz, okay?
15 MR. HOGAN: Yes, sir.
16 (WHEREUPON, BENCH CONFERENCE ENDS)
17 THE COURT: Alright, Mr. Bailiff, we are going to take
18 our noon recess. Our next witness couldn't be fit in with
19 any real consideration for a time frame, folks. Just to
20 remind you again, please don't discuss the case among your-
21 selves or with anyone else, don't read anything about it,
22 listen to anything on the radio, or watch anything on
23 television. Don't attempt to visit the scene of the alleged
24 occurrence. Mr. Bailiff, we will see you all back here at
25 1:30. Attorneys and Ms. Patz, in chambers at 1:15, if we would

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1 please. We will be in recess.

2 (WHEREUPON, COURT IS IN RECESS AT 11:45 A. M.)

3 THE COURT: Mr. Bailiff, remove the defendant, sir.

4 (WHEREUPON, DEFENDANT IS REMOVED FROM COURTROOM)

5 (WHEREUPON, BENCH CONFERENCE IS HELD BRIEFLY AS FOLLOWS:)

6 THE COURT: The question is do we need Mr. Duckett in
7 chambers at 1:15?

8 MR. EDMUND: No, sir. I think not.

9 THE COURT: Alright. Fine.

10 (WHEREUPON, BENCH CONFERENCE ENDS AND COURT IS IN
11 RECESS AT 11:47 A. M.)

12 (WHEREUPON, COURT RECONVENES IN CHAMBERS AT 1:22 P. M.)

13 THE COURT: What do we have for our attention, gents?

14 MR. EDMUND: Your Honor, it is about the hair analysis.
15 When I got into the thing, I determined that the FDLE had
16 made an evaluation of the hair, and they had found in essence
17 that they could not determine it to be sufficiently close to
18 Duckett's, to give an opinion as to whether or not it may have
19 come from his pubic hair section. Shortly after that, the hair
20 was delivered to the Federal Bureau of Investigation and the
21 report came back that there was sufficient comparisons to say
22 that they are the comparisons it could be, of course, not for
23 positive identification.

24 The dates, I think, later became critical. I checked with
25 Debra Steger, who is the hair analyst for the Florida Department

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1 of Law Enforcement. She indicated that when the questioned
2 hair was presented to her, along with it were a relatively
3 small number of hairs from some other person and thirty hairs
4 from ...known hairs from Duckett. She found twenty-eight of
5 them to have absolutely none of the characteristics of the
6 Q hair; two with some similarities, but distinguishable non-
7 similarities. I contacted a man by the name of Peter
8 DeForest, the PhD, these kind of things, and he is pre-
9 eminent in the field of hair analysis in White Plains, New
10 York. He has tremendous credentials and Steve has met him
11 and familiar with his background, and such as this. Based
12 upon what we knew at the time, it was our joint decision that
13 it would be certainly within the realm of good exploration
14 for the Defense to have the hair further examined by someone
15 of his eminence. So I asked for the Order from you and got it
16 and Steve and Ray... Aleno and Bob Nipper, all went to White
17 Plains and delivered the known hairs and the Q hair to
18 DeForest.

19 There was the one known hair that was mounted by the
20 F.B.I. and there was fifteen mounted ... it was a one Q hair
21 mounted by the F. B.I. and the fifteen known hairs of Duckett
22 that were mounted by the F. B. I. also. DeForest discovered
23 something that was of such an impact type of discovery, that
24 it is his opinion that no analyst could have missed it, and
25 these were present in substantial number of the known hairs

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1 and present, of course, in the Q hair. He calls it a
2 repeated discontinuity and it is generally described that the
3 hair itself is covered with a sheath that they call the
4 cuticle. I know you are aware of all this, but for the
5 record, let me put it on, sir, and he found two types of
6 things. You know, the kid will get a long narrow balloon and
7 squeeze it and it leaves indentations along the balloon, and
8 also it breaks in the sheath. Now, the sheath is not smooth.
9 It is a sort of scaly thing, but there are literally breaks
10 in it. Additionally, the hair that he examined is of varying
11 colors of brown; a darker and a lighter brown intermittently,
12 not in any pattern, but intermittently colors of brown.

13 Deborah Steger, the hair that she examined, has no
14 intermittent coloration whatsoever, and no discontinuity
15 to the cuticle.

16 DeForest told me that it really gave him some concern
17 right off the bat, that hairs that were removed from Duckett's
18 body on November 16th, which is when the known hairs were
19 collected to send to the F. B. I., would be as close in
20 characteristics as some of the characteristics that he observed
21 with the question hair. He explained to me that the pubic hair
22 grows somewhat differently than head hair in that it reaches
23 a point in its life that it stops growing and becomes dormant
24 and then ultimately sluffs off. In other respects, it will
25 grow like the head hair, only it doesn't keep on forever

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1 growing like the head hair does.

2 To go a step further, we took up twenty-five known hairs
3 from Duckett that we had them ... had him give us the latter
4 part of April. They went up with ... they went up about the
5 same time that Steve and Aleno and Bob went up.

6 At first glance, DeForest found no discontinuity on those
7 twenty-five hairs. Then he found on very very minor number
8 of those hairs, right at the tip, what appeared to be a
9 discontinuity as though it had grown on out.

10 In my conversations with him, and I can only say in my
11 conversations with him, and I assume his testimony would be
12 the same, when he came down here, it would be totally unusual
13 that a known hair that was lost in May would be so identical
14 to the unknown... an unknown hair lost in May would be so
15 identical to the known hairs taken six months later in
16 November, and then progressing on another five months to
17 April, with again these variances. I think I said to you that
18 he found the difference in the coloration where her's was a
19 solid, not dark, but not light brown and his is the intermittent.

20 Now, he will give a possible explanation for that in that
21 he said, "Now, that could be as a result of the mounting."
22 The hair, you know, is elliptical. If mounted in one of its
23 plains, you might ... the coloration might vary because it is
24 not a nerve, but there is a core down the center of the hair,
25 you know, and it may have little breaks in it, intermittent,

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1 not in any formed pattern, but in a random pattern. It could
2 cause a discoloration in the over-all hair itself. Where if
3 it were turned on the high side of the elliptical or with the
4 elliptical portion of the hair being up when it is mounted,
5 you could have a difference so that it would appear to have
6 that normalcy color.

7 Now, the State Attorney contacted DeForest, according to
8 DeForest, and I have no reason to believe or no reason to say
9 that Tom would say differently, and wanted to talk to him
10 about his examinations and he told them that he thought he
11 would have an ethical problem with that. Then I talked to
12 him last night. He indicated to me that he had received a
13 phone call; that they were going to have a Rule to Show Cause
14 served on him for extradition under the Uniform Extradition
15 of Witnesses Statute, and I told him, "Don't go through that
16 hassle. Call him and tell him you will come on down.".
17 When he was talking, he said the aim was that he was to be
18 here on Friday. He has talked with Deborah Steger. She is
19 really bent out of shape. I don't know that it was after my
20 opening statement yesterday, but I am inclined to believe it
21 was after my opening statement yesterday, she received a call
22 from law enforcement telling her that she would be over here
23 Friday. I get the impression she would be over here to
24 testify Friday and that would, of course, shoot the hell out
25 of me, but now, according to DeForest, there may be some change

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1 in that and all three of the analysts are supposed to meet
2 at some point tomorrow at the F.D.L.E. over in Lakeland,
3 according to what Peter has been told, for the purpose of
4 examining the known hairs that Deborah Steger examined, and
5 have Deborah Steger take a look at the now unknown hairs.
6 If this is the case, then I feel that it is proper that I be
7 there and if this should come up, I would be asking Your
8 Honor, and I wanted to do it out of the public, for a recess
9 for that purpose. Now, Tom and Steve may have some additional
10 facts with regard to whether or not this is going to happen,
11 but this is why I wanted to talk to you this afternoon. I
12 think there may be a couple other points that escaped me right
13 now, but that, in essence, then is basically what I wanted to
14 talk to you about.

15 THE COURT: Your understanding is this was scheduled for
16 Friday?

17 MR. EDMUND: It was my understanding from Peter last night
18 that this was scheduled for Friday. That was the first day
19 that, without being put in handcuffs and dragged screaming
20 away from his house, that he could get away. He is a Professor
21 somewhere as well as having his own independent practice
22 in consulting and this kind of thing.

23 MR. HOGAN: A lot of that information... First of all,
24 I had no idea what Mr. DeForest had found, because he didn't
25 tell me. Secondly,...

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1 MR. EDMUND: I have got to interrupt one more time.
2 Please. We asked for an additional ... he said that the
3 number of hairs we had sent him were not sufficient for him
4 to carry out the process of excluding our client, so we asked
5 for additional hairs to be sent; were assured they would be
6 sent by the Sheriff's Office, and then we found that a veto
7 of that was entered and they were never sent, so there he was
8 without being able to exclude, and this happened on Friday
9 of last week. That is when I learned of it was on Friday of
10 last week.

11 MR. HURM: Let me address that point. When we met for
12 a pre-trial conference on Tuesday, a week ago, Jack had come
13 to me and said, "We want to go pull some more of Duckett's hair
14 and we have invited Randy Aleno to come down there, and we
15 are going to send them up to DeForest.". I said, "There is
16 no problem with that.". I didn't understand at that point
17 that he wanted us to take the hairs and us to send them and
18 when I realized that is what was desired, later that day, I
19 told Aleno, "No, we are not going to do that. We have sent
20 all the evidence off that we want to send off. If they want
21 to send more evidence, they are welcome to take their client's
22 own hair and send it up there, but we are not going to do it.
23 They can develop their own chain." That's why that wasn't
24 done.

25 MR. EDMUND: That is not what Aleno told us.

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1 MR. HURM: Well, that is what I told Aleno. Secondly,
2 when I contacted DeForest initially after meeting him up
3 there, we took every hair we had, everything that was in
4 evidence; we had a bag this big. We took them all up. He
5 made his own slides. He didn't just rely on the F. B. I.
6 slides. He made his own slides. I was there two days with
7 him while he analyzed this material. Then he said, he got
8 sick on Sunday, because we were supposed to finish it by
9 Sunday and we were going to bring it all back; he got sick
10 and said, "Can you leave some of it up here, and he picked
11 what he wanted, to continue his analysis for when he got
12 better on Monday or Tuesday, whenever he got over his flu
13 or whatever it was he had; we brought the rest back. He kept
14 what he wanted and we indicated to him at that point we were
15 going to put him in our chain of custody at that time, so he
16 kept some of the hair at that point.

17 It was only after we had our meeting on Friday and Jack
18 indicated he was not going to use DeForest, was not going to
19 use any of the witnesses, in a telephone conference we had,
20 in regard to our Motion for Continuance. That is when I called
21 DeForest, because I felt at that point, he wasn't going to be
22 used, then I was not invading any kind of an ethical privilege,
23 even though I don't think it is a privilege there...

24 MR. EDMUND: I don't either.

25 MR. HURM: But I respected the fact that I understood he

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1 didn't want to talk to us about his findings until he consults
2 with you, and so it was after I learned that he wasn't going
3 to be used, so I called him and said, "Have you prepared a
4 report", and he said, "No", and I said, "Can you tell me what
5 it is about?" and he said, "Well, you know," he wobbled and
6 didn't want to say and I said, "Well, I am just interested
7 in finding out", and he said, "I think you can read between
8 the lines, by virtue of the fact that I am not going to be
9 called". That was the extent of our conversation.

10 It was after jury selection began and some of the things
11 that happened during voir dire, that we re-contacted
12 Dr. DeForest, because we felt that that might be advisable
13 for us to possibly have him come down as a witness and
14 we wanted to find out what his findings were. He still has not.
15 This is the first we have learned what his findings were.
16 He still did not consult with us.

17 MR. HOGAN: The only way for us to find out what he had
18 done was to subpoena him, and take his deposition.

19 As far as the thing on Friday goes, that is the first
20 I have heard of it. Certainly, we have no... at least I have
21 no intention of asking people to go back and re-analyze what
22 Deborah Steger did and if she thinks that is what we plan to
23 do, I am sure she is bent out of shape, but there is no plan
24 for a pow wow or seance or whatever she said this morning,
25 at FDLE tomorrow, so as far as I am concerned, there will be

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1 no place for any of us to go, or nothing will happen
2 tomorrow that any of us would like to see. Now, the only
3 other thing I would ask is that my understanding is one of
4 the conversations either Steve or I had with DeForest, he
5 requested... he made a request of us that he wanted to do some
6 equipment to look at something else, and maybe he had requested
7 to look at what Steger had done. We never set it up or never
8 asked him to do it.

9 MR. HURM: I never called FDLE and said, "I would like
10 to look at that".

11 MR. EDMUND: I don't think that the State asked him to
12 do that, but they are going to have it, and according to what
13 he has said... according to what he has been told, Malone
14 is supposed to be there...

15 MR. HURM: Malone is going to be here to testify.

16 MR. EDMUND: Well, Judge, additionally, I made a decision
17 that since these hairs that we had sent up in April were so
18 different, that I didn't want someone thinking that we had
19 switched hairs, because of the different pigment, the
20 different coloration; they have got this little thing on the
21 end and that is a distinguishing characteristic, if any,
22 between them and the unknown hair. So I was beginning
23 thinking in terms of, hey, this thing is really ratically,
24 graphically different. That is when I wanted ... I must not
25 have explained it to you, though I did to the Sheriff's Office,

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1 and the statement I got over the telephone was, well, I didn't
2 get it. Bob got it. I might as well tell you, Horner said,
3 No, if you want the damn stuff, tell him to come get it."

4 MR. HURM: It wasn't Horner's decision. It was my decision.

5 MR. EDMUND: Well, it was his statement.

6 MR. HURM: I told Randy Aleno we are not sending anymore
7 evidence up there. He is going to give him everything he is
8 going to get and if he wants more, wants more pulled, he can
9 do it.

10 MR. EDMUND: If Malone is not to be a party to this
11 thing with Steger, you haven't called Deborah Steger and told
12 her to be here tomorrow to testify?

13 MR. HOGAN: No, I called Deborah Steger, because she
14 called me and I returned her phone call. She asked me, "When
15 do you expect me to testify?" and I said, "I'm not sure when
16 you are going to testify." I said, "I hope to put the hair
17 evidence on on Friday." I said, "It may be that we would need
18 you on Friday for the chain on the hair.". The Q hair went
19 there. I said, "Be on standby for possibly Friday". That is
20 all I said to her. I reminded her that she was also listed
21 by you and also subpoenaed by you and I told her I could not
22 answer for you, that you maybe wished to call her at some other
23 time. That I could not advise her what her schedule should
24 be for that." Our conversation as far as that went was her
25 scheduling. I said, "You are the chain. I anticipate having

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1 to call you, and if I do, Friday would be the day."

2 MR. EDMUND: We may have a mole hill that looks to me
3 like a mountain, but should it transpire that they are going to
4 have that session, I would want to ask you to let me be
5 present over there.

6 THE COURT: Isn't there some simple way we can resolve
7 whether or not this is going to happen? What I am concerned
8 about is that they may be intending to do that without even
9 telling you all and it is just that you don't know about it.

10 MR. HOGAN: Malone is not going to be there. He has
11 got a flight to be here. It is directly out.

12 Dr. DeForest, the last we heard, is still waiting to
13 see if he has to come down here. The only reason we agreed
14 on Friday for him, was because it fit his schedule. He said
15 next week he was tied up and I told him on the phone, I said,
16 "Well, if we go through with the witness expedition, you are
17 going to be down here next week, because they are not going to
18 be able to have a hearing up there until Friday." I said,
19 "So if you want to voluntarily come down, come down on Friday
20 and we will fit your schedule. Otherwise, you are going to
21 have to give up something next week.

22 MR. EDMUND: Has anyone from your office talked to him
23 today?

24 MR. HURM: Yes, I talked to him this morning.

25 MR. EDMUND: And what did he say?

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1 MR. HURM: He told me he had found a flight for tomorrow
2 morning. He said, "Now, what I would want to do is can I get
3 into F.D.L.E. and use their lab to analyze the known hairs
4 that Steger analyzed, at F.D.L.E. before testifying?". I said,
5 "I am sure we can work that out. The problem is going to be
6 timing. I don't know if you get in at 10:47, that you are
7 going to have time to go and do a hair analysis and get over
8 to Lake County, which is an hour and a half or more away from
9 the lab, and be here to testify before we end Friday afternoon."

10 MR. HOGAN: That was, you see, he won't talk to us for
11 whatever reason.

12 MR. HURM: I even told him on the phone this morning,
13 Jack, I said, "If you will tell us what your findings were,
14 we may eliminate having to have you come down here at all."
15 He brought it up. He said, "I realize you guys are flying
16 blind. You really don't know what I have concluded."
17 I said, "You're right".

18 MR. EDMUND: He has made conclusions on both ends of the
19 spectrum and believe me, that was his decision, not mine, and
20 I am delighted he made it, but I didn't make it for him, okay?

21 MR. HURM: Oh, well, he told me and I am not implying in
22 any way that you asked him to keep quiet. He told me today
23 was the first he had talked to you about all of this, was last
24 night and he has told me, "Well, I feel like the Defense should
25 have a second opinion without it biting them... coming back to

1 bite them in court.". I said, "Well, under Florida law, there
2 is a provision for that, appointment of a confidential expert,"
3 and I said, Mr. Edmund didn't take advantage of that situation
4 and for what reason I don't know, but he didn't take advantage
5 of it. We know it and so we can avail ourselves of your
6 testimony if we so choose.

7 THE COURT: Where all this leaves me with wondering ...
8 I think Mr. Edmund has a right to be there if any such meeting
9 is going to take place, but it sounds to me that it is
10 apparent that one of the people is not going to be there for
11 sure. That leaves us with the proposition that Ms. Steger
12 might be there when DeForest comes down to use their equipment.
13 Is she from that same lab?

14 MR. HURM: She is from F. D. L. E. She said nothing to
15 us yesterday on the telephone which would indicate any knowledge
16 of a meeting. If DeForest has talked to Steger, which you
17 indicated they had talked, I don't know what they discussed.
18 That is the first we have heard that he had even been in
19 contact with her.

20 MR. EDMUND: He has talked with her. He talked with her
21 yesterday before you all talked with her. He talked with her
22 yesterday morning.

23 MR. HOGAN: As far as I know, there is not going to be any
24 meeting at our request and we can get on the phone and find
25 out.

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1 THE COURT: Why don't we do this. Why don't we ask
2 someone from your office and probably the easy way is to call
3 Steger and find out if there is any such planned meeting at all,
4 whether you now know about it or not, I assume you don't know
5 about it, and frankly, it strikes me that, just talking off
6 the top of my head, they shouldn't have any such meeting.
7 If we had invoked the rule in this case, long ago and far
8 away, these phone calls would not have ever happened between
9 these experts to begin with.

10 I really think, Jack, I need to hear you on it, but I
11 think even if they plan a meeting, that none of us are totally
12 aware of in this room, they shouldn't have that meeting.
13 If they want to run their analysis and everybody contradict
14 everybody else or agree with everybody else or what they want
15 to do, that is fine, but I don't see that two experts sit there
16 and I re-examine what you did and then tell you why I think
17 it is wrong and you tell me why you think I am wrong and all
18 of us are going to testify in a First Degree Murder case.

19 MR. HOGAN: I am opposed to a meeting.

20 MR. HURM: I am opposed, too. We had no knowledge of
21 any meeting nor did we even give or entertain a thought of
22 trying to call such a meeting.

23 MR. EDMUND: I would just assumed you all had set it up.
24 I just assumed the State had set it up. They must have set it
25 up among themselves. He specifically told me that Malone is

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1 supposed to be there.

2 MR. HOGAN: No. Why don't we do it first thing in the
3 morning, so you don't have that in your mind.

4 THE COURT: We just want to agree that there won't be a
5 meeting. How about that?

6 MR. EDMUND: Call Steger, and there won't be a meeting.

7 THE COURT: Can you all make sure there is no meeting?
8 That eliminates this entire problem at this level.

9 MR. EDMUND: But he is going to want to ... he said he
10 is not competent to testify unless he can examine those hairs
11 that were taken as closely concurrent with the Q hair as
12 possible.

13 MR. HOGAN: Well, here again, if he can somehow feel
14 comfortable talking to us on the phone, we may be able to
15 eliminate him coming at all, but see, he still feels bound
16 by something. I don't know where he gets his rules. Some
17 kind of personal ...

18 MR. EDMUND: Then why don't I do this. I have already
19 told him...understand that, because he got his plane ticket
20 last night, to heck with this other thing, get yourself down
21 here. As soon as I can reach him; as soon as I can find Bob,
22 I will have him reach him and tell him to call you and tell
23 you what he has found. Okay?

24 MR. HURM: We have a number for him, if Your Honor will
25 give us fifteen minutes now, I told him we would try to reach

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1 him at noon. That was before we were aware that this was...
2 that you wanted to have this meeting concerning the hair
3 analysis and so we delayed that. We haven't contacted him,
4 but I have got a number at John J. College where I can reach
5 him and if we can have fifteen minutes, we can reach Steger,
6 we can reach DeForest, and resolve the whole thing.

7 THE COURT: It is probably worth taking the time. Then
8 if you are going to need him, let's find out how to get the
9 hairs to him. Maybe you all can go ahead and try to do all
10 that. I'll give you twenty minutes. We will just let
11 everybody wait. Thank you all.

12 (WHEREUPON, CONFERENCE IN CHAMBERS ENDS AT 1:48 P. M.)

13 (WHEREUPON, DEFENDANT IS PRESENT IN COURTROOM WITH HIS
14 COUNSEL, MR. EDMUND)

15 (WHEREUPON, COURT RECONVENES AT 2:15 P. M.)

16 THE COURT: Anything before we bring the Jury back, Mr.
17 Hogan?

18 MR. HOGAN: No, sir.

19 MR. EDMUND: No, Your Honor.

20 THE COURT: Thank you. Mr. Bailiff.

21 (WHEREUPON, JURY ENTERS COURTROOM AT 2:17 P. M.)

22 THE COURT: Welcome back, folks. Be seated please.
23 Folks, can you assure us you did abide by our admonitions?

24 JURORS: Yes.

25 THE COURT: You have been patient with us, folks. We had

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1 some matters come up and I am not at liberty really at this
2 time to discuss with you. I hope by taking a little more time
3 now, in the recesses when we work on certain things, we can
4 ultimately speed the trial up. I know that as this case goes
5 on and on, you are probably going to be less and less patient
6 with these delays. All I can do is ask you to trust me when
7 I tell you that when these... we are supposed to start back at
8 1:30 and we start at 2:20, we have not, in fact, been ignoring
9 you. We have been trying to work on this case and trying to
10 expedite certain matters. I apologize.

11 Mr. Hogan?

12 MR. HOGAN: Daniel Coleman.

13 (WHEREUPON, DANIEL COLEMAN IS CALLED AS NEXT WITNESS
14 FOR THE STATE AND IS DULY SWORN BY THE CLERK OF THE COURT)

15 DIRECT EXAMINATION

16 BY MR. HOGAN:

17 Q. Please state your name for the record?

18 A. Daniel Dougherty Coleman.

19 Q. Mr. Coleman, where do you live?

20 A. 200 Dryden Place, Brooksville, Florida.

21 Q. Did you live in Brooksville, Florida on May 11th and
22 12th of last year?

23 A. Yes, I did.

24 Q. Mr. Coleman, on May 11th, or the early morning hours
25 of May 12th, did you have an occasion to be driving down

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1 Highway 50, heading towards Brooksville through the Mascotte
2 area?

3 A. I was heading away from Brooksville on that morning
4 and heading towards Cape Canaveral where I was working.

5 Q. You were on Highway 50?

6 A. Yes, I was.

7 Q. Going from Brooksville to Cape Canaveral?

8 A. Yes.

9 Q. Now, when you were driving through... what time did
10 you have to be at work?

11 A. Seven o'clock in the morning.

12 Q. Do you recall about what time you were going
13 through Mascotte?

14 A. Approximately 5:40, I was running a little late that
15 morning.

16 Q. And since you were running a little late, did you
17 drive a little too fast, do you think?

18 A. I was pushing it pretty hard to make it to work on
19 time.

20 Q. Did you happen to get a speeding ticket in the early
21 morning hours of May 12th in Mascotte?

22 A. Yes, I did.

23 Q. I show you what has been marked State's Exhibit XXXX,
24 four Xs, and ask you if you recognize that xerox copy?

25 A. Yes, I do.

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1 Q. And what is that, sir?

2 A. It is a copy of the citation that I was issued on that
3 morning for speeding.

4 Q. You were issued this by a police officer?

5 A. Yes, I was.

6 Q. Do you know what agency that police officer worked
7 for?

8 A. Mascotte Police Department.

9 Q. And that says you were going fifty-one in a thirty-
10 five, is that...?

11 A. Yes, that's true.

12 Q. Now, this ticket has a signature of an officer on
13 here, it is signed J. Duckett. Do you recall that officer?

14 A. I was more upset about getting the ticket, and I
15 really didn't pay that much attention to the officer.

16 Q. Except for this ticket being a xerox, does this
17 appear to be representative of the ticket that you received?

18 A. Yes, it is.

19 Q. Did you pay that ticket? Pay it by mail, or...?

20 A. Well, I sent the ticket in through the mail and I
21 went to driver improvement school to keep from having points
22 against me on my license.

23 Q. I move this into evidence.

24 MR. EDMUND: No objection, Your Honor.

25 THE COURT: State's Exhibit XXXX for identification

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1 moved into evidence without objection as State's Exhibit #21.
2 (WHEREUPON, STATE'S EXHIBIT #21 IS ADMITTED INTO EVIDENCE
3 WITHOUT OBJECTION)
4 Q. Mr. Coleman, you said you were more upset about
5 receiving a ticket than anything else; that you really
6 wasn't paying much attention to the officer, is that correct?
7 A. Yes, it is.
8 MR. HOGAN: Just one moment. Thank you, Judge.
9 THE COURT: Mr. Edmund?
10 MR. EDMUND: I have no questions.
11 THE COURT: Can we release Mr. Coleman from his
12 subpoena, gentlemen?
13 MR. HOGAN: With thanks from the State, Judge.
14 MR. EDMUND: No objection, Your Honor.
15 THE COURT: You are free to go. Thank you very much.
16 Your next witness?
17 MR. HOGAN: We call Benny McDaniel.
18 (WHEREUPON, BENNY MC DANIEL IS CALLED AS NEXT WITNESS
19 BY THE STATE AND IS DULY SWORN BY THE CLERK OF THE COURT)
20 DIRECT EXAMINATION
21 BY MR. HOGAN:
22 THE COURT: Just roll that chair right up to the
23 microphone, if you would, Mr. McDaniel, and make yourself
24 comfortable.
25 Q. State your name for the record?

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1 A. Benny L. McDaniel.
2 Q. Mr. McDaniel, where do you live?
3 A. Groveland.
4 Q. Mr. McDaniel, do you ever drive through the City of
5 Mascotte?
6 A. Yes.
7 Q. Calling your attention to the early morning hours,
8 approximately 5:40 A. M., on May 12th, did you have an occasion
9 to be driving through the City of Mascotte?
10 A. I feel sure I did, because I go to work every day and
11 I don't remember that particular date.
12 Q. Okay, did you have an occasion to possibly be driving
13 on Bay Lake Road?
14 A. Yes.
15 Q. Did you have an occasion to possibly be in a hurry
16 about getting to work?
17 A. No, sir, I wasn't in a hurry.
18 Q. Okay, did you have an occasion to possibly be driving
19 too fast?
20 A. It was stated that I was driving too fast.
21 Q. Alright. Let me ask it another way. Did you receive
22 a traffic citation that accused you of driving too fast?
23 A. Yes, I did.
24 Q. Do you know the officer who gave you that ticket?
25 A. Did I know him? No, sir, I did not.

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1 Q. Do you think you would be able to recognize him if
2 you saw him again?

3 A. Not instance, but through the paper or whatever it is.

4 Q. Okay, then, that is fine. In the early morning hours,
5 on that day, you did receive a traffic citation?

6 A. Yes, I did.

7 Q. And was that officer known to you at that time or
8 do you now...

9 MR. EDMUND: I am not going to question the ticket and
10 the rest of it, Mr. Hogan. If it please the Court.

11 Q. Do you know an officer by the name of James Duckett?

12 A. I saw that signature on the ticket.

13 Q. Okay, thank you, sir. Nothing fruther.

14 CROSS EXAMINATION

15 BY MR. EDMUND:

16 Q. He gave you the ticket as a municipal police officer,
17 sir?

18 A. Yes, sir.

19 Q. And you were within the city limits?

20 A. Yes, I was.

21 Q. And you were coming from the South?

22 A. Yes, I was coming from the South on Bay Lake Road.

23 Q. Okay, sir, and do you know how far the city limits
24 go out on Bay Lake South of Highway 50?

25 A. Yes, I do.

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1 Q. How far is it, sir?

2 A. I would say approximately three-quarters of a mile
3 from 50.

4 Q. So he was within that three-quarter mile area of
5 Highway 50?

6 A. Yes, he was.

7 Q. You were coming into town?

8 A. That is true.

9 Q. Was he parked, moving, or how?

10 A. He was parked.

11 Q. Alright, sir, and at what point was he parked?

12 A. He was parked ... I am familiar with the area and I
13 am not sure you know it... he was parked on a dirt road right
14 along Bay Lake Road and kind of on a curve. There are two
15 roads intersect one another.

16 Q. And this was all inside town?

17 A. It was within the city limits, yes.

18 Q. And he stopped you on Bay Lake Road?

19 A. Yes.

20 Q. Alright, sir. Thank you.

21 MR. HOGAN: Nothing further.

22 THE COURT: Can we release him from his subpoena,
23 gentlemen?

24 MR. HOGAN: No objection.

25 MR. EDMUND: No objection, Your Honor.

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1 THE COURT: You are free to go, sir. Thank you very
2 much. Watch your step when you come down.

3 Your next witness?

4 MR. HURM: The next witness, Your Honor, if it please
5 the Court, is Shirley Williams.

6 (WHEREUPON, SHIRLEY WILLIAMS IS CALLED AS NEXT WITNESS
7 FOR THE STATE AND IS DULY SWORN BY THE CLERK OF THE COURT)

8 THE COURT: Folks, some of you may be new with us here
9 as we turn over spectators day by day and morning and after-
10 noon. We abide absolutely no whispering in the courtroom.
11 I want to be sure that is clear for everyone.

12 DIRECT EXAMINATION

13 BY MR. HURM:

14 Q. Good afternoon, Ms. Williams.

15 A. Good afternoon.

16 Q. How are you?

17 A. Fine.

18 Q. A little nervous?

19 A. A lot.

20 Q. Try to relax as much as possible. Try to make this
21 painless.

22 State your name, please?

23 A. Shirley Williams.

24 Q. Ms. Williams, how are you employed?

25 A. Now, or...?

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1 Q. Well, in May of '87?
2 A. At the Circle K in Mascotte.
3 Q. Is that located on Highway 50 in Mascotte?
4 A. Yes, sir.
5 Q. The corner of Sunset?
6 A. Yes, sir.
7 Q. Ms. Williams, how were you employed there? What was
8 your job?
9 A. I was a clerk.
10 Q. What hours did you work?
11 A. On the night...
12 Q. Just generally? Did you change hours and things?
13 A. Yeah. (Affirmative response)
14 Q. Do you know Joyce Reynolds?
15 A. Yes, sir.
16 Q. How do you know her?
17 A. I worked with her.
18 Q. At the Circle K?
19 A. Ahum. (Affirmative response)
20 Q. Ms. Williams, on the night of May 11th, early
21 morning hours of May 12th, 1987, do you recall whether you were
22 working those hours?
23 A. I was working midnights.
24 Q. What time did you come on on May 11th?
25 A. It was between 10:30 and 20 to eleven.

- 715 -

1 Q. That would have been the evening of May 11th. When
2 did you get off work the next morning?

3 A. Seven o'clock.

4 Q. On May 12th?

5 A. Yes.

6 Q. When you came in, whom did you relieve? Who was
7 getting off duty when you came on?

8 A. Joyce Reynolds.

9 Q. Ms. Williams, I am going to show you what has been
10 marked as State's Exhibit 18, and ask if you can refer to that
11 and try not to get in Ms. Patz's way here... tell you what,
12 why don't you step down off the stand and I will hold this.

13 If you could, stand on this side of me and just make
14 sure the jury can see.

15 Would you indicate to me, please, where the Circle K
16 is on the diagram?

17 A. Ahum. (Affirmative response)

18 (WHEREUPON, WITNESS POINTS TO DIAGRAM)

19 Q. And this would be Highway 50?

20 (WHEREUPON, WITNESS POINTS TO DIAGRAM)

21 Q. And this is the parking lot and this is Highway 50?

22 A. Yeah. (Affirmative response)

23 Q. And this would be West and this East, correct?
24 Towards Groveland this way?

25 A. Yes.

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1 Q. Ms. Williams, would you speak up and address your
2 answers to the members of the Jury. Did you have a parking
3 place you usually parked when you came on duty?

4 A. Yes.

5 Q. Where was that, if you could show us?

6 A. Right along in here is usually where I parked.

7 Q. You would park at the end of the sidewalk in front
8 of the Circle K. Would you park along side the sidewalk,
9 this way, or was it pulled straight in?

10 A. I came straight in.

11 Q. Was it at the sidewalk or did you go over to the side
12 of the sidewalk towards the dumpster area?

13 A. No, it was right here at the end.

14 Q. So right here is where you parked your car?

15 A. Ahum. (Affirmative response)

16 Q. Is that where you parked on May 11th when you went
17 to work?

18 A. Ahum. (Affirmative responses)

19 Q. Now, you drove to the parking lot that night. Did you
20 notice any other vehicles leaving the parking lot?

21 A. Officer Duckett.

22 Q. And where was ... it was a police car?

23 A. Yes.

24 Q. And where was the police car coming from? Could you
25 tell?

- 717 -

1 A. From like in front of the roadway over here, to
2 Sunset, there is a stop sign.

3 Q. Here is the laundromat. He was coming from about
4 here?

5 A. Yes.

6 Q. And as he pulled out, did he go out through here?
7 Did he go onto 50 or onto Sunset?

8 A. He came out onto 50. Onto Sunset and then back onto
9 50, but I am not sure. He was just pulled at the stop sign.

10 Q. He was parked at the stop sign; you went in the store?

11 A. Ahum. (Affirmative response)

12 Q. Go ahead and have a seat.

13 Ms. Williams, you said Officer Duckett's car. Did you
14 recognize who was in that car that night?

15 A. Officer Duckett.

16 Q. Do you see the person known to you as Officer Duckett
17 in the courtroom?

18 A. Sitting right over there.

19 MR. EDMUND: We would stipulate, Your Honor.

20 THE COURT: The record would reflect the witness has
21 identified the defendant.

22 Q. Ms. Williams, were there other cars parked in the
23 parking lot when you pulled in?

24 A. Yes, sir.

25 Q. Other than the police car?

- 718 -

1 A. Yes, sir.

2 Q. When you went in the store, you said you relieved
3 Joyce Reynolds. Was she still in there?

4 A. Yes, sir, she didn't get off until twelve.

5 Q. Now, her name is Joyce Reynolds Reitz now, isn't
6 it?

7 A. Correct.

8 Q. You were referring to her as Mrs. Reitz.
9 When you went inside, about what time was it again?

10 A. Between 10:30 and 20 to 11.

11 Q. Did you ... do you know who Teresa McAbee was?

12 A. I didn't know the little girl personally, no.
13 I had seen her a couple times at the store.

14 Q. You know who I am referring to, though?

15 A. Yes.

16 Q. Did you see that little girl you had seen before
17 around the front of the store at that point?

18 A. No, sir, I didn't

19 Q. When you went in the store, was anyone other than
20 Joyce Reynolds Reitz in there?

21 A. Yes, Kim, but I don't know her last name.

22 Q. Did she live around there, do you know?

23 A. At the time, she lived across the road.

24 Q. Did you happen to see at all Teresa that evening?

25 A. No, sir.

- 719 -

1 Q. Did Joyce leave at midnight?
2 A. Yes, sir.
3 Q. What happened at about midnight before Joyce left?
4 A. Teresa's mother came in and asked had we seen her.
5 Q. Had you seen Teresa?
6 A. Teresa. Then Joyce told her yes, that she had sold
7 her a pencil earlier.
8 Q. Did you tell Mrs. McAbee what she should do to
9 continue looking for her daughter?
10 A. We told her she should report it to the police.
11 A. Did she then leave the store?
12 A. Yes, she did.
13 Q. Did you ever see her again that night?
14 A. Not that I can recall.
15 Q. After Joyce left, what kind of duties did you
16 start to attempt to do there at the store?
17 A. I went outside and got the water and started washing
18 the front of the store.
19 Q. What happened while you were doing that? Did anybody
20 come up to the store?
21 A. Officer Duckett came up. He pulled in the parking
22 lot and I asked him had he found the little girl and he said,
23 "Not yet".
24 Q. About what time was that?
25 A. It was after midnight. It was after Joyce had left.

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1 Q. How long would you say Mrs. McAbee and Joyce had
2 been gone when he pulled into the parking lot?
3 A. Maybe thirty to forty-five minutes.
4 Q. Did he have a photograph with him at that time?
5 A. Not at that time.
6 Q. Did he come back again that evening? To the store?
7 A. Yes, sir, he did.
8 Q. About how much later?
9 A. I am not really sure how long it was. You lose
10 track of time.
11 Q. By yourself on the midnight shift?
12 A. Yeah. (Affirmative response)
13 Q. But sometime later, he came back to the store?
14 A. Yes, sir.
15 Q. Did he have anything with him at that point?
16 A. He had a flyer of a little girl.
17 Q. What was on the flyer? A photograph on it?
18 A. Yes, sir, there was. It showed Teresa and her
19 mother and ...
20 Q. Go ahead.
21 A. I asked him where to put it.
22 Q. Let me show you what has been marked State's Exhibit
23 #1. Do you recognize that photograph?
24 A. It looks like the picture that was on the flyer.
25 Q. When he gave you the flyer and you asked him what you

- 721 -

1 should do with the flyer, what did he tell you?

2 A. I had asked him where he wanted me to put it, in the
3 door or the window, and he said, "Don't put it up." He said,
4 "I'll run you by a better one later.".

5 Q. Did he say anything else about why he didn't want you
6 to put it up?

7 A. It wasn't a good picture.

8 Q. After he brought that flyer to you, did he ever come
9 back again that evening to the store?

10 A. Not that night.

11 Q. Did he ever bring another flyer back to you?

12 A. Not that I know of, no, sir.

13 Q. May I have just a moment, Your Honor?

14 THE COURT: Yes, sir.

15 MR. HURM: I don't have any further questions at this
16 time.

17 CROSS EXAMINATION

18 BY MR. EDMUND:

19 Q. Ms. Williams, I am Jack Edmund. Ms. Williams, when
20 he told you don't hang it up, he would bring you another, he
21 said when people come in, ask him about it, didn't he?

22 A. Not that I can recall. He said, I said to him,
23 you know, can I leave it on the corner and he said, "Yes,
24 leave it on the counter and ask them.".

25 Q. And ask them? Ask the people who came in?

- 722 -

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A. Yes.

Q. Now, out in the parking lot, you saw him on only one occasion?

A. Yes, sir, just once that night.

Q. Did he tell you at that time, he was going to talk with the Mexican boys that the girl had been with?

A. Yes, sir.

Q. Ma'am?

A. Yes, sir.

Q. Had you had any discussion with either Joyce or Kim about what had gone on at the store earlier about the little girl? Were you aware at that time that Duckett had talked to the young Mexican boy and to the young girl?

A. Yes, sir.

Q. You all had discussed all of that?

A. Yes, sir.

Q. During the morning hours, did he come back into the store any more than the one time when he brought the flyer?

A. To come back into the store?

Q. Yes, ma'am?

A. No, sir, he just came in that one time and brought the flyer.

Q. During the morning hours, did he drive through the parking lot on any other occasion that you are aware of?

A. Just the once, while I was cleaning is the only time

1 I know of.

2 Q. And between then and daylight, he didn't drive back
3 through the parking lot any more times that you are aware of?

4 A. Not that I am aware of, no.

5 Q. After you came on duty, you say you got there
6 between twenty minutes to eleven and fifteen to eleven?

7 A. No, sir, 10:30 and twenty to.

8 Q. Oh, between 10:30 and ... okay... did you ever see
9 the little girl after that?

10 A. No, sir.

11 Q. Did you see her at any time on that evening?

12 A. No, sir.

13 Q. Did you see any other young people around when you
14 drove up? Two girls and a boy?

15 A. Not young people, no.

16 Q. Were there some adults around, Ms. Williams?

17 A. Yes, sir.

18 Q. But not sixteen year olds or anything like that?

19 A. Not that I noticed.

20 Q. Did any sixteen year olds come in after you got
21 there and buy a coke or try to buy beer or anything like that?

22 A. No, sir.

23 Q. Now, did you say that Kim lived right across the
24 street from the Circle K?

25 A. At the time?

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1 Q. That is what I mean, at that time?
2 A. Yes.
3 Q. Was she in and out of the Circle K pretty regularly?
4 A. Yes, sir.
5 Q. She and Joyce were good friends?
6 A. Yes, sir.
7 Q. And she would spend a lot of time with Joyce?
8 A. Yes, sir.
9 Q. Did she also spend a lot of time looking across the
10 street at her house?
11 A. She watched the house.
12 Q. May I have just a moment, Your Honor?
13 THE COURT: Yes, sir.
14 MR. EDMUND: Thank you, Your Honor.
15 MR. HURM: No further questions, Your Honor. She may
16 be released.
17 THE COURT: Okay, you are free to go, ma'am. You are
18 released from your subpoena.
19 MR. HURM: The next witness, Your Honor, is Jim Clark.
20 (WHEREUPON, JIM CLARK IS CALLED AS NEXT WITNESS FOR THE
21 STATE AND IS DULY SWORN BY THE CLERK OF THE COURT)
22 DIRECT EXAMINATION
23 BY MR. HURM:
24 Q. Good morning, Mr. Clark.
25 A. Good morning.

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1 Q. How are you doing?
2 A. Pretty good.
3 Q. State your name, please, sir?
4 A. Jim Clark.
5 Q. How are you employed?
6 A. I am unemployed.
7 Q. Where do you live, presently?
8 A. Lot 42, Groveland Motel Trailer Park.
9 MR. EDMUND: May I move this back.
10 Q. Is that where you were living, sir, on May 12th,
11 1987?
12 A. Yeah. (Affirmative response)
13 Q. Are you married?
14 A. Yes.
15 Q. Do you have children?
16 A. Three.
17 Q. How old are they?
18 A. One is seven, one is nine, and one is twelve.
19 Q. Boys or girls?
20 A. Two boys and one girl.
21 Q. Mr. Clark, are you a fisherman?
22 A. Yes.
23 Q. How often do you try to get out and fish?
24 A. I try to go every day.
25 Q. Do you like to go in the morning or the evening?

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1 A. I go most of the time in the morning. I drop the
2 kids off at school.

3 Q. Where do they go to school?

4 A. Mascotte Elementary.

5 Q. I would like you to recall back in your mind, if you
6 would, to the morning of May 12th, 1987, and I believe it was
7 Tuesday morning.

8 Q. Do you recall what you did that morning when you first
9 got up?

10 A. Yes.

11 Q. Tell the Jury, please, sir?

12 A. I got up, made my kids breakfast and got them dressed
13 for school and then I took them to school and I went
14 fishing.

15 Q. Now, the night before, had you been home all night?

16 A. Yes, sir, no...wait... I went down to the shine hole.
17 It is between six and 6:30 that evening to bait the shiner
18 hook.

19 Q. What time did you get home?

20 A. After quarter to seven.

21 Q. Did you stay in the house the rest of the evening?

22 A. Yes.

23 Q. Was your wife and family with you?

24 A. Yes.

25 Q. After you dropped the kids off at school, about what

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1 time was that?

2 A. Between 7:15 and 7:25.

3 Q. Where did you go to fish?

4 A. I went to what I call Polly's Bar Lake. It is the
5 lake off of Sunset behind Polly's Bar. I went right there
6 by the right the first time and fished there and I went to
7 my shiner hole and got me some shiners and fished there for
8 a few minutes, and then I went down to the canal that runs
9 in there, and I went down to the canal and caught some mud
10 fish there, and then I went behind the pumphouse and found
11 the little girl.

12 Q. Now, the pump house, how long had you been fishing
13 before you got to the pumphouse?

14 A. Twenty to twenty-five minutes.

15 Q. Is that pumphouse also on the same lake where...
16 behind Polly's Bar?

17 A. Yes, it is behind Polly's, by a canal.

18 Q. What kind of vehicle were you driving?

19 A. A 1967 Chevrolet pickup.

20 Q. Let me show you some photographs. First, this is
21 State's Exhibit FFFF, 4Fs for identification, do you recognize
22 that?

23 A. Yes, that's her.

24 Q. Her?

25 A. My truck.

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1 Q. Meaning your truck, right?
2 A. Ahum. (Affirmative response)
3 Q. How about State's Exhibit GGGG for identification?
4 A. That's them.
5 Q. What is them?
6 A. That's my tires.
7 Q. That is one tire from the truck? What about HHHH
8 for identification?
9 A. That is the other tire.
10 Q. And then IIII?
11 A. That is it. The tire.
12 Q. That is also a tire on this truck?
13 A. Yeah. (Affirmative response)
14 Q. And these are the tires that were on your truck when
15 you drove down to Knight Lake pumphouse on May 12th, 1987?
16 A. Pretty sure.
17 Q. And that is the truck you drove?
18 A. Yes.
19 Q. Your Honor, I would offer these...
20 MR. EDMUND: No objection, Your Honor.
21 THE COURT: Alright, FFFF will be admitted into evidence
22 without objection as State's 22. GGGG admitted into evidence
23 without objection as State's 23. HHHH admitted into evidence
24 without objection as State's 24. IIII admitted into evidence
25 without objection as State's 25.

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1 (WHEREUPON, STATE'S EXHIBITS #22, 23, 24, AND 25 ARE
2 ADMITTED INTO EVIDENCE WITHOUT OBJECTION)

3 Q. Mr. Clark, after you left the other areas, you said
4 you caught some light fish and then you went down to the
5 pumphouse. Looking at diagram of the pumphouse area, would
6 that aid in your testimony? Explaining to the Jury?

7 A. I don't know what you mean.

8 Q. Do you think you could utilize a diagram and explain
9 where you were?

10 A. Yeah. (Affirmative response)

11 Q. I show you what has been marked as State's IIII...

12 THE COURT: That is four. I think you said four.
13 III is what we really have, right?

14 Q. Well, IIII is the picture. This is III.

15 THE COURT: This is III.

16 MR. HURM: Did I say III? I apologize.

17 THE COURT: You said three "I"s and then said it four
18 times, I think. Let's try not to beat this thing to death.

19 MR. HURM: The Chinese alphabet.

20 THE COURT: Three "I"s is what this is.

21 Q. I show you what has been marked as State's Exhibit
22 III for identification and ask if that is familiar to you?
23 Is that a diagram of the area you have been talking about?

24 A. Yes.

25 Q. Does it fairly and accurately depict what it purports

- 730 -

1 to be a picture of?

2 A. Yes.

3 MR. HURM: Your Honor, at this time, I would offer
4 State's Exhibit in evidence as State's next in order.

5 MR. EDMUND: No objection, Your Honor.

6 THE COURT: State's Exhibit III for identification
7 admitted into evidence without objection as State's Exhibit
8 #26.

9 (WHEREUPON, STATE'S EXHIBIT #26 IS ADMITTED INTO EVIDENCE
10 WITHOUT OBJECTION)

11 MR. HURM: If I may just have a moment, Your Honor.

12 THE COURT: Yes, sir.

13 Q. Mr. Clark, I wonder if you would step down from the
14 witness stand for me, please. Are you right handed or left
15 handed?

16 A. I am right handed.

17 Q. Okay, if you would stand then on this side of the
18 diagram and take care, if you would, to make sure all the
19 members of the Jury can see it. Utilizing, without opening it
20 or writing on it, but use that as a pointer...

21 A. Where is Polly's Bar on it?

22 Q. Okay, well, this isn't ... this doesn't have Polly's
23 Bar on it. Okay? It would be up this way up Sunset. If you
24 would stand off to the side a little bit more and indicate where
25 the pumphouse is you referred to in the testimony?

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1 A. right here.

2 Q. And this is South of Sunset Street?

3 A. Right.

4 Q. How did you enter into this area, Mr. Clark?

5 A. I came in where this is up here. I fished right here
6 at this wash out and fished right there and come up to the
7 pumphouse where there is an open body of water at.

8 Q. Where did you park when you got to the pumphouse?
9 If you can stand out of the way a little bit.

10 A. I come down the road here and I stopped at the second
11 road, it would be right about here.

12 Q. Did you park your truck?

13 A. I parked my truck right there and got me a shiner
14 and put him on the hook and walked over there away from the
15 pumphouse there and cast up over a little hump there.

16 Q. Now, all this green markings in there, what does that
17 represent?

18 A. Woods, I recollect.

19 Q. Was it heavily underbrush? Heavy underbrush there?

20 A. Yeah. (Affirmative response) It has got a lot of
21 grape vines and just weeds...

22 Q. Now, as you cast... you say you cast your line over
23 these bushes?

24 A. Over these weeds right in here, in the open part of
25 the water right in here, and I cast it right across there.

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1 Q. What is the water like in here?

2 A. Just a little piece, a little open spot down through
3 here, but it is all growed up and I casted over this thing and
4 got a bite. When I got a bite, it snatched my shiner and went up
5 to the edge of the weeds. I walked up there along the wash
6 out behind the pumphouse and I walked right there and I didn't
7 know if it was a manikin or body or what. I got back in my
8 truck and I drove around like this and went and got Chief
9 Brady.

10 Q. Let me slow you down and go back through there.
11 You threw your line out in the open water and got a bite.
12 As you pulled back, you got a snag in the weeds?

13 A. I got snagged in the weeds.

14 Q. So you walked around behind the pumphouse and got
15 down to this area?

16 A. No, I didn't... I went like this. I walked around
17 there and as I walked around there, I looked down and I didn't
18 know what it was. I just wrapped my line around my hand and
19 jerked it and took off.

20 Q. Okay, but you saw something in the water that caused
21 you concern?

22 A. Yes.

23 Q. It appeared to be a body?

24 A. Yes.

25 Q. Now, you got back in your truck. Now, when you left,

- 733 -

1 how did you leave?

2 A. The same way I went and got Chief Brady. Just like
3 that.

4 Q. Did, at any time, you drive your truck past that
5 pumphouse and go down this area at all?

6 A. No, I didn't.

7 Q. Thank you, sir. Go ahead and have a seat.

8 Mr. Clark, I show you a photograph that has been marked
9 State's SSS for identification and ask if you recognize that?

10 A. Yeah, that is the pumphouse.

11 Q. And then I'll ask you to look at UUUU, do you recognize
12 that? That exhibit for identification?

13 A. Yes, sir, that is where the girl was laying.

14 Q. And this photograph, VVV for identification, do you
15 recognize that?

16 A. Yes.

17 Q. What is that?

18 A. That is that little girl Chief Brady said was missing.

19 Q. So this is the body you saw in the body of water?

20 A. It is.

21 Q. Your Honor, I would offer these photographs into
22 evidence.

23 MR. EDMUND: Without any further predicate, no objection,
24 Judge.

25 MR. HURM: There is one other, Your Honor, I neglected

1 with the truck. This is EEEE for identification. Is that
2 your truck?

3 A. Yeah, that is my truck.

4 MR. HURM: I would offer this one as well, Your Honor.

5 MR. EDMUND: No objection, Your Honor.

6 THE COURT: Alright. State's SSS for identification
7 admitted into evidence without objection as State's Exhibit
8 27.

9 State's Exhibit UUU for identification admitted into
10 evidence without objection as State's Exhibit #28.

11 State's VVV for identification admitted into evidence
12 without objection as State's 29.

13 State's EEE for identification admitted into evidence
14 without objection as State's Exhibit #30.

15 (WHEREUPON, STATE'S EXHIBITS #27, 28, 29 AND 30 ADMITTED
16 INTO EVIDENCE WITHOUT OBJECTION)

17 Q. Mr. Clark, after you saw the body, and you say you
18 jerked your line out and left. Where did you go?

19 A. I went and got Chief Brady.

20 Q. Where was he?

21 A. At the school crossing.

22 Q. Acting as school crossing guard?

23 A. Yes, sir.

24 Q. What did you tell him you found?

25 A. I told him I didn't know if it was a body or a

- 735 -

1 manikin, or somebody pulling a joke or what, but he ought
2 to check it out.

3 Q. Did you know anything about a little girl being
4 missing from the night before?

5 A. No.

6 Q. What did you and Chief Brady do then?

7 A. I took Chief Brady back down there and then the other
8 guy, he went to wait on the Ranch and Grove men to come in.

9 Q. Ranch and Grove, meaning one of the Sheriff's
10 Deputies?

11 A. Yeah. (Affirmative response)

12 Q. And that was the school crossing guard?

13 A. Yes.

14 Q. When you and Chief Brady got down there, first of
15 all, did the school crossing guard go down to the pumphouse
16 with you?

17 A. I don't think he did. I think that Chief Brady told
18 him to wait outside the road for the Ranch and Grove.

19 Q. Was he riding with Chief Brady or did he have his
20 own car?

21 A. No, he was in his car.

22 Q. So as far as you know, his car never went down to
23 the lake area?

24 A. No, I don't think it did. I think it sat out by
25 the gate that was there.

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1 Q. Now, when you and Chief Brady went down, did you go
2 in your truck and his car, or did you go in one vehicle?

3 A. No, we went ... I drove and he said take me and show
4 me, so I went and showed him.

5 Q. And he followed you?

6 A. Right.

7 Q. Where did you park the second time? When you went
8 down the second time with Chief Brady?

9 A. Pretty much the same exact part where I stopped to
10 start with.

11 Q. Where did he park?

12 A. I believe in behind me.

13 Q. Did his car ever, while you were down there, go past
14 your truck?

15 A. No.

16 Q. Up further, closer to the body?

17 A. No.

18 Q. While you were still there, did other law enforcement
19 officers come down?

20 A. Yeah, one big guy, Ranch and Grove truck.

21 Q. Deputy North?

22 A. Yeah. (Affirmative response)

23 Q. Where did he park his vehicle?

24 A. In behind Chief Brady's car.

25 Q. Did anybody go in front of your truck while you were

- 737 -

1 there? In a vehicle, closer to the pumphouse?

2 A. No. Not that I can remember.

3 Q. Were you there when Investigator Johnson arrived?

4 A. No, I don't think so.

5 Q. Did any law enforcement officer ask you to move your
6 truck further back from where it was parked?

7 A. No.

8 Q. Sir, prior to that morning when you found the little
9 girl's body in the lake, when was the last time you had been
10 to that particular spot?

11 A. Three or four days.

12 Q. Had you been to that lake the night before?

13 A. I had been to Polly's Bar at the washout.

14 Q. Had you been down the night before to the pumphouse?

15 A. No.

16 Q. Do you recall what the weather was like the night
17 before?

18 A. It was raining.

19 Q. And how hard was the rain?

20 A. It quit about six, but it was a pretty hard rain
21 before six.

22 Q. Did the sky clear up completely or remain overcast?

23 A. It was sprinkling, you know, drizzle.

24 Q. On through the evening?

25 A. Yeah. (Affirmative response)

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1 Q. Thank you very much, sir. I appreciate it.
2 THE COURT: Mr. Edmund?
3 MR. EDMUND: No questions, Your Honor.
4 THE COURT: Alright, can we release Mr. Clark from his
5 subpoena, gentlemen?
6 MR. EDMUND: No objection, sir.
7 MR. HURM: Yes, Your Honor.
8 THE COURT: You are free to go, sir. Thank you very much.
9 Your next witness?
10 MR. HOGAN: Michael Brady.
11 (WHEREUPON, MICHAEL BRADY IS CALLED AS NEXT WITNESS FOR
12 THE STATE AND IS DULY SWORN BY THE CLERK OF THE COURT)
13 DIRECT EXAMINATION
14 BY MR. HOGAN:
15 Q. Please state your name for the record?
16 A. Michael Patrick Brady.
17 Q. How are you currently employed?
18 A. Pardon?
19 Q. How are you employed today?
20 A. Today I am a Correction Officer for the State of
21 Florida.
22 Q. Calling your attention to May of last year...
23 A. At that time, I was employed as the Chief of Police
24 for the City of Mascotte.
25 Q. Thank you very much. How many officers were on the

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1 police department at that time, excluding yourself? How many
2 men were you in charge of?

3 A. Excluding myself, there were three full time and one
4 part time.

5 Q. One of those officers known to you as James Duckett?

6 A. Yes, Mr. Duckett was one of the full time patrolmen.

7 Q. Do you see Mr. Duckett in the courtroom today?

8 A. Yes, he is.

9 MR. EDMUND: I will stipulate, Your Honor.

10 THE COURT: Alright, ladies and gentlemen, the record will
11 reflect that the witness has identified the Defendant.

12 Q. How long had James Duckett been a police officer?

13 A. We employed him towards the end of November, 1986.

14 Q. To your knowledge, was that his first police job?

15 A. Pardon?

16 Q. To your knowledge, had he had any previous police
17 experience?

18 A. He had no previous experience. He had just graduated
19 from the police academy.

20 Q. Calling your attention to the early morning hours of
21 May 12th, do you know which officer was on duty at that time?

22 A. On May 12th?

23 Q. Yes, sir, for Mascotte?

24 A. On May 12th is when I was on duty.

25 Q. Well, I am talking about the early morning hours.

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1 More specifically, about one o'clock in the morning?

2 A. Okay, that would have been Officer Duckett.

3 Q. Who else... were there any other Mascotte police
4 officers on duty at that time?

5 A. He was the only officer on at that time.

6 Q. What was his shift?

7 A. His shift was from 7:00 P. M. on May 11th, until
8 7:00 A. M. on May 12th.

9 Q. At about one o'clock in the morning, on May 12th,
10 did you have occasion to have a conversation with Officer
11 Duckett?

12 A. Yes, he called me shortly after one A. M. that
13 morning.

14 Q. What was that conversation regarding?

15 A. He basically stated he had a missing person, an
16 eleven year old child, and he gave me a brief run-down on
17 what he had done to that point and just more or less asking
18 for advice or assistance on what else to do.

19 Q. What did you tell him to do?

20 A. Pardon?

21 Q. What were your instructions?

22 A. Okay, since he had already talked to the mother and
23 several other people and had distributed a flyer on the girl
24 that he had made up with the copier, I instructed him, at that
25 point, which he said he did not need my assistance, so at that

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1 point, I instructed him to continue to tear up the streets
2 in an effort looking for the girl and to do that the remainder
3 of his shift.

4 Q. You instructed him to tear up the streets or to
5 intentionally...

6 A. To continue looking for the girl.

7 Q. The remainder of his shift?

8 A. Correct.

9 Q. And he did not need your assistance?

10 A. I am sorry, I didn't hear you. I suffered a hearing
11 loss from a shooting incident years ago, so I have a hearing
12 disability.

13 Q. I apologize. I am not speaking up. So Officer
14 Duckett told you he did not need your assistance?

15 A. Pardon?

16 Q. Did not need your assistance after the phone call?

17 A. Right. I asked him if he needed me to come around
18 and he didn't think so, because everything he had done to
19 that point, there was nothing else I could do.

20 Q. Now, Mr. Brady, calling your attention to the next
21 morning at 7:00 A. M., when you went on duty. Did everything
22 appear to be normal at that time?

23 A. Yes, it did. I asked if he had found the girl and
24 he said she was still missing.

25 Q. Can you tell us how many police vehicles, marked

1 police vehicles the City of Mascotte had at that time?

2 A. Two.

3 Q. And were they assigned numbers so we can distinguish
4 them?

5 A. They were assigned numbers. 203 and 204.

6 Q. Do you know which unit Officer Duckett was driving
7 on May 11th and May 12th, on the shift he had covered that
8 time period?

9 A. 203.

10 Q. Where were the keys to automobile 204 be located
11 if Officer Duckett was driving 203? Did you drive 204?

12 A. No, sir, 204 was parked at the city complex.

13 Q. Did you have your own car that was an unmarked car?

14 A. Yes, I had 205, which was an unmarked car, painted
15 the same but unmarked.

16 Q. And 204, the other marked vehicle, had been parked
17 at the police department?

18 A. Right.

19 Q. And who would have had the keys to 204?

20 A. At that particular time, there were four sets of keys.
21 He would have had the two sets that the officers used on his
22 person. The third set was the set that I had which was in
23 my car, which I had at home that night. The fourth set was
24 a missing set of keys.

25 Q. When did they become missing?

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1 A. They became missing in December of '86.

2 Q. Three or four months prior to this?

3 A. Right.

4 Q. So if I understand you correctly, then, any time an
5 officer was on duty by himself, like Mr. Duckett was the night
6 of May 11th and early morning hours of May 12th, an officer
7 on duty by himself, he held the keys to both 203 and 204?

8 A. That is correct.

9 Q. Was that so that if something happened to the unit
10 he was driving, he would have access to the other unit?

11 A. Basically, so that if he locked the keys in the
12 vehicle, he had a backup set on him to get in, but yes, he
13 could also use the other vehicle too.

14 Q. If he had car trouble, he could use the other vehicle?

15 A. Right.

16 Q. Now, does the City of Mascotte own those vehicles?
17 The two marked units?

18 A. Did they own them?

19 Q. Did they own them?

20 A. Yes, they are being lease purchased through Ford
21 Motor Company.

22 Q. When you, as police chief, were you attempting to
23 keep the mileage about the same on the cars for service?

24 A. On those two vehicles, yes, we were. It was easier
25 to have them both scheduled for service or maintenance at the

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1 same time.

2 Q. So you tried to keep the cars balanced. In other
3 words, if I understand you, you tried to alternate days that
4 they were used?

5 A. That is correct.

6 Q. How did you keep track of the mileage on those
7 vehicles?

8 A. We had what we called vehicle mileage logs, hand
9 written logs that were in each vehicle.

10 Q. How would that work?

11 A. Basically, the officer coming on duty, recorded the
12 date on the log and his identification number and his beginning
13 and ending mileage and his total mileage and then we had a
14 comments category, if we exceeded the limit of miles that we
15 had and could explain why we were so many miles on the vehicle.

16 Q. What was the typical number of miles per shift
17 per unit?

18 A. It would have been about five miles for each hour
19 of patrol, and an eight hour shift would have been about forty
20 miles; twelve hour shift, sixty miles.

21 Q. And Officer Duckett was working from seven to seven
22 shift, which would have been ...

23 A. Twelve hour shift.

24 Q. Or a sixty mile shift, if you look at it that way?

25 A. Correct.

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1 Q. Now, if a car was not driven, for example, if 203
2 was driven during one shift and 204 sat in the gargage, then
3 204 would have no mileage on it on that particular day?

4 A. That is correct.

5 Q. I show you what has been marked for Exhibit ZZZZ,
6 four Zs and ask you if you recognize that?

7 A. This is one of the mileage logs from one of the
8 vehicles we use.

9 Q. Okay, you can unclip it if you want to. It is falling
10 apart, but let's see if we can keep it in the same order here.

11 Q. Okay, this appears to begin on the date April 7th.

12 A. April 7th, 1987.

13 Q. Does this appear to be the mileage log from unit 203
14 or 204?

15 A. You can't distinguish, because the front cover would
16 have had that on it and it is missing.

17 Q. Okay, in this particular... this is one of the
18 mileage logs from one of the two vehicles?

19 A. Yes, it is.

20 Q. Referring to, if we can follow me here, and clip
21 this first page over, and come down to May 10th, 1987. Was
22 the car driven on May 10th, 1987?

23 A. On May 10th, 1987, Officer Duckett used that vehicle.

24 Q. What was his ending mileage on May 10th?

25 A. His ending mileage was 22,163.5 miles.

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1 Q. Was the car driven on May 11th?
2 A. No, it was not.
3 Q. Was the car driven on May 12th?
4 A. It was used on May 12th, 1987 by Officer Troy Smith,
5 with a beginning mileage of 22,163.5.
6 Q. So the car was not driven at all on May 11th?
7 A. No.
8 Q. And if Officer Duckett was driving Unit 203 on
9 May 11th?
10 A. That is correct.
11 Q. Then this log must be which log?
12 A. For 204.
13 Q. Okay, sir. Enter this into evidence, Judge?
14 THE COURT: State's Exhibit ZZZZ for identification
15 admitted into evidence without objection as State's Exhibit
16 #31.
17 (WHEREUPON, STATE'S EXHIBIT #31 IS ADMITTED INTO EVIDENCE
18 WITHOUT OBJECTION)
19 Q. Just one moment, Judge.
20 Now, did you keep a log in your car?
21 A. Pardon?
22 Q. Did you keep a mileage log in your car?
23 A. Yes, I did.
24 Q. Is your car... you said it was painted the same color
25 but not marked. Is there any other difference between your

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1 car and the two marked Mascotte vehicles? 203 and 204?

2 A. You mean with respect to them being marked or
3 not marked?

4 Q. Well, in addition to being marked, was any of the
5 equipment different?

6 A. Okay, 205, which is my vehicle, at that time, still
7 had the tires on it that were on the vehicle when we purchased
8 it, whereas the other two vehicles had each received a new
9 set of tires.

10 Q. Do you recall what kind of tires the marked units
11 203 and 204 had on them as of May 11th, 1987?

12 A. Yes, they had Goodyear tires. They were eagle M & S
13 tires.

14 Q. Do you recall what kind of tires your vehicle had
15 on it?

16 A. They had Goodyear Eagle GT tires.

17 Q. I show you a photograph marked for identification
18 MMMM and ask you if this is the type of tire, in fact, this
19 was one of your tires, possibly your spare tire, it looked
20 like, but was this the type of tire that you had on your car
21 at that time? Or can you say?

22 A. I am really not going to be able to tell you that.

23 Q. Okay. I didn't think you would be able to, to tell
24 the truth. How about this one? It shows a few more things
25 in the trunk of the car that maybe will help you identify it?

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1 A. Okay, this picture was taken from the car that I had.
2 This would be the spare tire from 205.
3 Q. That is your car?
4 A. Right.
5 Q. And that is the type of tire you had on your car?
6 A. They were the Eagle GT.
7 Q. What I am asking you, is that the type of tire that
8 you had on your car on May 11th? Eagle GT?
9 A. Yes, on May 11th, right.
10 Q. Yes, sir, thank you.
11 THE COURT: What letter is that second one, Mr. Hogan?
12 Just for my record, please?
13 MR. HOGAN: Judge, it is not lettered, because it was
14 part of a composite, so what we will have to do is give this
15 one a new letter.
16 THE COURT: If you don't mind. What are we up to,
17 madam clerk?
18 CLERK OF THE COURT: Five "A"s.
19 THE COURT: Five "A"s.
20 MR. HOGAN: Objection?
21 THE COURT: Are you moving those in, Mr. Hogan?
22 MR. HOGAN: Yes, sir, I am. Just that one.
23 THE COURT: THE five "A"s?
24 MR. HOGAN: Yes, sir.
25 THE COURT: State's Exhibit AAAAAA for identification

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1 admitted into evidence without objection as State's Exhibit
2 #32.

3 (WHEREUPON, STATE'S EXHIBIT #32 IS ADMITTED INTO EVIDENCE
4 WITHOUT OBJECTION)

5 Q. Now, Mr. Brady, calling your attention to May 12th,
6 what time did you go on duty, sir? What time did you go to
7 work? What time did you go to work on May 12th?

8 A. I came to work that morning probably about 6:30 A. M.
9 and met on shift at 7:00 A. M.

10 Q. Did you have occasion to come in contact with an
11 individual known as Jim Clark or that you later knew as Jim
12 Clark?

13 A. Yes, I know Mr. Clark. I met him that morning at
14 Mascotte Elementary School.

15 Q. You knew him prior to that day?

16 A. Pardon?

17 Q. You knew him prior to May 12th?

18 A. Yes.

19 Q. He lives there in Mascotte?

20 A. Yes, he does.

21 Q. Did Mr. Clark report anything unusual to you at that
22 time?

23 A. He came up to me while I was working the school zone,
24 the elementary school, and advised that he had just been down
25 to the lake by the pumphouse and saw something floating in the

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1 water and he thought it might be a body.

2 Q. What did you do?

3 A. At that point, I asked him, you know, exactly where
4 it was and he was trying to describe the area to me; since I
5 was unfamiliar with the area, I told him to take me back down
6 and I would follow him.

7 Q. You are unfamiliar with the area by the pumphouse?

8 A. That is correct.

9 Q. Had you ever been down there before?

10 A. No, I had not.

11 Q. Did you know that was in the city limits of Mascotte?

12 A. I still don't know whether it is or not, but at that
13 particular time, we thought that area was in the unincorporated,
14 or the County area.

15 Q. That was not an area that you had assigned or
16 instructed your men to patrol?

17 A. We didn't have any exact instructions one way or the
18 other.

19 Q. Okay, since not knowing it was even in your
20 jurisdiction, you certainly didn't give out instructions to
21 go down there?

22 A. Right.

23 Q. What did you do when you got down to the pumphouse?

24 A. I followed Mr. Clark down to the area he had
25 described. He stopped. We both got out of our vehicles and

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1 he proceeded to take me to the bank of the water near the
2 pumphouse and pointed out what he had described earlier.

3 Q. Okay, and did you follow him down and park behind his
4 truck?

5 A. Yes, I did.

6 Q. At any time, did you drive your car past where he
7 parked his truck?

8 A. No, I did not.

9 Q. At any time, did you drive your car past the pumphouse
10 further South of the pumphouse?

11 A. Not ... I want to say this... not at that time. No.

12 Q. Did you ever drive South of the pumphouse that day?

13 A. That day, yes.

14 Q. How far South of the pumphouse did you go?

15 A. That particular night, we drove all the way through
16 the area.

17 Q. Later on that night?

18 A. Probably about nine o'clock that night.

19 Q. That was after the scene had been processed by the
20 Sheriff's Office?

21 A. That is correct.

22 Q. Let me ask you the question this way again, so we
23 are clear. From the time you went down to the pumphouse with
24 Mr. Clark until the time the scene was completely processed;
25 all photographs taken and all plaster casts and tire impressions

1 taken, during that time period, did you drive your car South
2 of the pumphouse?

3 A. I never did, no.

4 Q. Once you got there with Mr. Clark, what did you do?

5 A. Okay, the body appeared to be that of the missing
6 child we were looking for.

7 Q. Did you walk down to the water's edge?

8 A. I walked down to the water to see the body.

9 Q. Did you pull the body out of the water?

10 A. I never touched the body.

11 Q. You just looked at the body and retreated?

12 Is that correct?

13 A. Right.

14 Q. I show you what is entered into evidence as State's
15 Exhibit #27 and ask you if you recognize that photograph?

16 A. That is a photograph of what we are calling the
17 pumphouse.

18 Q. Okay, that is the pumphouse that you did not drive
19 your car South of after you got there with Mr. Clark until
20 after the crime scene was processed?

21 A. That is correct.

22 Q. I show you what has been marked for identification
23 as State's Exhibit #28, and ask you if you recognize that?

24 THE COURT: That is in evidence as 28, Mr. Hogan.

25 MR. HOGAN: Yes, sir.

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1 A. This is basically a photograph of what I saw that
2 morning when I arrived there.

3 Q. Okay, that was enough for you to see to know that that
4 was the missing girl?

5 A. Pardon?

6 Q. You made your decision that that was the body of
7 the missing girl after you saw the young girl floating in the
8 lake?

9 A. Yes, I did.

10 Q. Okay, I also show you what is in evidence as State's
11 Exhibit #29.

12 A. Okay, that is just a closer photograph of the same
13 thing.

14 Q. You saw... you got pretty close, close enough to know
15 that it was the young girl?

16 A. Right.

17 Q. For clarification purposes, I would ask to be
18 allowed to publish these to the Jury.

19 THE COURT: Any objection, Mr. Edmund?

20 MR. EDMUND: No, I have no objection, Your Honor. May
21 we approach the bench?

22 (WHEREUPON, BENCH CONFERENCE IS HELD AS FOLLOWS:)

23 MR. EDMUND: Would you tell them they will have them in
24 the jury room so they won't have to study them now.

25 THE COURT: I will do that.

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1 MR. HOGAN: One question. Having to publish photographs
2 that I can recall, would you like me just to pan them to one
3 of the end jurors and let them pass them down?

4 THE COURT: It is best not to ask questions or other
5 testimony. They can't do both at once.

6 (WHEREUPON, BENCH CONFERENCE ENDS)

7 THE COURT: Folks, we are going to publish these
8 pictures to you, which means we are just going to give them
9 to you and give you an opportunity to look at them. I do
10 want to go ahead and advise all the jury at this time that
11 all evidence actually admitted into evidence will go back
12 with you to the jury room when you retire to deliberate,
13 because you will have more opportunity to look at all the
14 evidence; any and all of it that you will want to see.

15 We don't ask questions while you are looking at the
16 pictures, because we are not going to try to ask you to do
17 two things at once. It just requires your patience for a
18 few minutes, please.

19 MR. HOGAN: Thank you, Judge.

20 (WHEREUPON, JURORS LOOK AT PHOTOGRAPHS)

21 MR. HOGAN: I would ask the witness be allowed to step
22 down, briefly.

23 THE COURT: Step down, if you would, Mr. Brady, please.

24 Q. Now, Mr. Brady, you have given testimony about
25 following Mr. Clark down to the pumphouse and you have

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1 identified picture #27 as the pumphouse. Do you recall that?
2 A. That is correct.
3 Q. On this diagram here, do you recognize this diagram
4 as being Sunset and this is supposed to represent the pump-
5 house. Does that look about accurate to you?
6 A. It is fairly accurate.
7 Q. Okay, is this area in here, is this burned out
8 grove?
9 A. Yes, it is.
10 Q. And now, this road that is depicted on this diagram,
11 would you describe it for us, please? Is it paved?
12 A. It is an old dirt road and some areas is rather
13 rocky and some areas soft sand and curves and everything
14 and there is shrubbery and bushes all around toward the
15 road and the water.
16 Q. If you could please point out for us where,
17 approximately where you stopped your vehicle and how you
18 entered and exited the area?
19 A. I came in from this roadway here, following Mr.
20 Clark and his pickup truck and I went on up to this point.
21 It goes in a little, about a thousand feet from the main
22 road and stopped almost the front of his truck, the area of
23 the pumphouse and then I was directly behind him.
24 Q. This is the area that you never traveled until
25 after the scene was processed?

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1 A. That is correct.

2 Q. Thank you very much.

3 (WHEREUPON, WITNESS RESUMES WITNESS STAND)

4 Q. Now, when you came on duty on the 12th, at 6:30 A. M.,
5 were you then the only officer on duty?

6 A. Pardon?

7 Q. When you came on duty on May 12th, at 6:30 A.M.,
8 and I assume that Officer Duckett went off duty?

9 A. That is correct.

10 Q. Were you, at that time, the only Mascotte police
11 officer on duty?

12 A. Yes, I was.

13 Q. Now, when we look in the mileage log, the mileage
14 log reflects that another officer, I believe Officer Smith
15 came on duty at some point in time and drove Unit 204 on
16 May 12th?

17 A. That is correct. We called Officer Smith in after
18 the discovery, because it was apparent that I wouldn't be
19 able to handle duty that day, so he came in sometime between
20 ten and eleven that morning.

21 Q. Okay, so Unit 204 sat idle from the time it went
22 off duty or no longer driven on May 10th, until ten or
23 eleven o'clock on May 12th, when Officer Smith was called in
24 to assist you, because of a homicide?

25 A. That is correct.

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1 Q. Now, if we could get back, I think I messed you
2 up out of order there, but if we can get back to what you and
3 Mr. Clark did after you went down to look at the body that
4 we have seen in the photograph, and you determined that it
5 was the small girl. What did you do then?

6 A. At that point, because I indicated earlier, I
7 didn't know where the jurisdiction lies, I notified the
8 Sheriff's Department by radio that the missing person had been
9 located.

10 Q. You did that from your vehicle?

11 A. Pardon?

12 Q. From your motor vehicle, you called them?

13 A. That is correct.

14 Q. And what did you do?

15 A. And at that time requested their assistance, because
16 of a problem in establishing jurisdiction, not knowing
17 where the body was being discovered, county or city.

18 Q. At any rate, you probably would have called them
19 or possibly would have called them to help with the crime
20 scene processing anyway, would you not?

21 A. Pardon?

22 Q. For any homicide, the County would have assisted
23 you as far as crime scene processing in any event, is that
24 not correct?

25 A. Correct.

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1 Q. So it was a normal thing to call the County?

2 A. In a situation like that.

3 Q. Exactly. And did you stay there at the scene until
4 they arrived, or what did you do?

5 A. Okay, I stayed there at the scene until they arrived
6 and then pretty much throughout the entire day.

7 Q. You were helping to secure the area, in other words?

8 A. We placed a ribbon around the area.

9 Q. And when the ribbon was placed around the area, no
10 vehicles of any type was allowed to drive through the area,
11 is that correct?

12 A. Some did, but no, they weren't supposed to.

13 Q. Well, which vehicles drove past the ribbon?

14 A. Once the ribbon went up, one Sheriff's Department
15 vehicle was admitted, a Ram Charger, and that was the ID
16 technician's vehicle.

17 Q. Now, before going further, let's explain what an
18 ID technician is for the Jury?

19 A. Okay, the ID technician is, in essence, the man who
20 is going to process the crime scene. The vehicle had the
21 necessary equipment that he would need to work within the
22 area, so as the process starting at the ribbon and working
23 South past the pumphouse, it became evident he is getting
24 further away from his vehicle, so as he processed the area,
25 moving this way, he took his vehicle with him.

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1 Q. In other words, he kept the vehicle behind him as
2 he was processing his way through the scene?

3 A. Right. He had processed up to the area of the
4 pumphouse completely before he went through.

5 Q. And anybody else?

6 A. One other vehicle I recall that went into the scene
7 was from the funeral home in Clermont. They were called, in
8 essence, to transport the body to the Medical Examiner's
9 Office.

10 Q. And that also came behind the ID tech, as the ID
11 tech was working his way through?

12 A. That is correct.

13 Q. So the ID tech's vehicle and the Medical Examiner
14 and the body removal by the funeral home, came in and they
15 also were in a parade, more or less, behind the ID tech?

16 A. Right.

17 Q. Okay. Now, were you there present, maintaining your
18 duty at the scene until the body was removed? Were you
19 there when the body was removed?

20 A. Okay, I was there the entire time.

21 Q. And you were there when the body was removed from
22 the lake?

23 A. Right.

24 Q. And you saw the body leave the scene in the funeral
25 home vehicle?

1 A. That is correct.

2 Q. Now, did you have an occasion to have any conversation
3 with James Duckett on May 12th, after ... not the 1:00 A. M.
4 discussion, but after the body of Teresa McAbee had been
5 located? Discovered?

6 A. Yes, he was called back in after the body was
7 located, he was called in in the early afternoon.

8 Q. Did you call him in the morning to notify him of
9 the discovery?

10 A. I had the secretary call and notify him in the
11 morning that the body had been found.

12 Q. About what time was that?

13 A. Offhand, I would say somewhere in the area of
14 11:00 A. M.

15 Q. Could it have been as early as nine o'clock?

16 A. Pardon?

17 Q. Could it have been as early as 9:00 A. M.?

18 A. No, because that is when the body was found.

19 Q. Did Officer Duckett then come to the scene?

20 A. According to the secretary, he offered to come to
21 the scene and we told him it wasn't necessary at that time.
22 We later re-contacted him at the request of the Sheriff's
23 Department and advised him to go ahead and come in.

24 Q. About what time did he show up?

25 A. That was early afternoon, but I can't recall exact

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1 time.

2 Q. At any time, did you also have Officer Smith, who was
3 driving 204, did Officer Smith come to the scene?

4 A. Smith was driving 204. He was just in and out of the
5 area and handling activity in the city.

6 Q. When you say he was in and out of the area, he was
7 still parked behind your vehicle. In other words, he never...

8 A. At the time Smith came in, the ribbon had already
9 been placed and I had pulled my vehicle back and the ribbon
10 had been placed and he was driving up to the ribbon.

11 Q. In other words, he did not enter the area that was
12 being processed?

13 A. No.

14 Q. And at any time after Officer Duckett got to the
15 scene, I presume he came to the scene, is that correct?

16 A. That is correct.

17 Q. That was later on in the afternoon? After 2:00
18 o'clock?

19 A. It might have been. I don't really recall. I just
20 remember it was early afternoon.

21 Q. I didn't mean to ... I thought you had said to a
22 point, some point. Early afternoon. He was driving then 203?

23 A. That is correct.

24 Q. At any time, did he drive into the crime scene
25 area or past the ribbon?

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1 A. Not through the ribbon, no.

2 Q. In other words, he was still... if he drove down

3 there, he was also parked back behind your vehicle?

4 A. On the outside of the ribbon.

5 Q. On the outside of the crime scene. Did Officer

6 Duckett then take the day shift beginning at 2:00 o'clock

7 in the afternoon?

8 A. Right, he got off that morning at 7:00 and came back

9 in around 2:00 and started work again from 7:00 P. M. to

10 7:00 A. M. In essence, he came back in early afternoon and

11 stayed.

12 Q. All the way through?

13 A. If my memory serves me correctly. Because at that

14 time, we had an officer on vacation, so we were even shorter.

15 MR. HOGAN: May we have one moment, Judge.

16 Q. That would have been Officer Poole that was on

17 vacation?

18 A. Sgt. Poole was on vacation at that time, correct.

19 Q. I show you what has been marked for identification

20 purposes and it is being labeled with five "B"s.

21 I ask you if you recognize that?

22 A. This would be the vehicle mileage log for Unit 203.

23 Q. That was the unit Duckett, James Duckett was driving

24 on his shift that covered May 11th, and the morning hours of

25 May 12th?

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1 A. That is correct.

2 Q. Please tell me what this indicates, what this mileage
3 log indicates about May 11th?

4 A. On May 11th, 1987, the vehicle was used by Officer
5 Duckett with a beginning mileage of 22,190.1 and the space
6 for ending mileage is empty. Blank.

7 Q. Okay, sir. The space for ending mileage was never
8 filled in?

9 A. That is correct.

10 Q. And does this appear to be, in fact, the mileage
11 log from Unit 203? Does it appear to be altered or changed
12 or tampered with in any way? Other than what would be in
13 the normal course of whatever your officers did?

14 A. This is the mileage log. Because some of it is when
15 I used the vehicle and it is in my handwriting and then I
16 am the one that marked it 203.

17 Q. Okay. I move to enter five "B"s into evidence.

18 THE COURT: State's Exhibit BBBB for identification
19 admitted into evidence without objection as State's Exhibit
20 #33.

21 (WHEREUPON, STATE'S EXHIBIT #33 IS ADMITTED INTO
22 EVIDENCE WITHOUT OBJECTION)

23 Q. Now, Mr. Brady, I'll show you five "C"s. CCCCC.
24 I ask you if you recognize that?

25 A. This is what we call our oath of office. It is a

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1 loyalty oath that is required by all police officers in the
2 City.

3 Q. Does that reflect an employment date for the
4 officer?

5 A. Yes, it would.

6 Q. And does that document in your hand, is that the
7 loyalty oath of James Duckett?

8 A. Yes, it is the oath of office of James A. Duckett,
9 certifying him on November 23, 1986, signed by Bill Harb,
10 the Mayor of Mascotte and it is attested to by James
11 Caudill, who, at that time, was a Deputy Clerk.

12 Q. And that is a xerox copy or appears to be a xerox
13 copy of the one from the personnel file, is that correct?

14 A. That is correct.

15 Q. Any objection?

16 MR. EDMUND: No, sir.

17 THE COURT: State's Exhibit five "C"s, for identification,
18 admitted into evidence without objection as State's Exhibit
19 #34.

20 (WHEREUPON, STATE'S EXHIBIT #34 WAS ADMITTED INTO
21 EVIDENCE WITHOUT OBJECTION)

22 Q. Now, Mr. Brady, at the time that you were police
23 chief, did you establish certain policies that you required
24 your men to abide by?

25 A. That is correct.

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1 Q. Did one of those policies have to do with police
2 officers allowing civilians or juveniles or anyone else to
3 ride in their vehicles?

4 A. I had a written police with regard to that.

5 Q. What was that policy, sir?

6 A. In essence, the policy, due to insurance regulations,
7 only allowed an officer to transport city employees in their
8 vehicle, or persons being arrested.

9 Q. Did you instruct Officer Duckett on that regulation?

10 A. I instructed him on it and he also read the policy.

11 Q. Is this lake and pumphouse area in Lake County,
12 Florida?

13 A. Pardon?

14 Q. Is that in Lake County, Florida? The pumphouse?

15 A. The lake?

16 Q. Is it in Lake County? Is that located in this
17 County?

18 A. Yes, it is.

19 Q. And I believe you may have touched on this, but I
20 want to be clear on it, the tires that were on 203 and 204
21 had been purchased. Do you know when they were purchased?

22 A. Not exactly, probably within two months of the
23 incident.

24 Q. They were relatively new tires?

25 A. Yes, they were.

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1 Q. And those were the Goodyear M and S tires?

2 A. Right.

3 Q. Okay, sir, may I have one moment, Judge?

4 THE COURT: Yes, sir.

5 Q. Do you recall where you purchased those tires?

6 A. They were purchased at Ekiert Tire Center in
7 Clermont.

8 Q. Did he put those tires on the car for the police
9 department?

10 A. That is the only place we purchase, because of
11 State contract.

12 Q. Thank you very much. Thank you, Judge.

13 MR. EDMUND: If it please, Your Honor.

14 CROSS EXAMINATION

15 BY MR. EDMUND:

16 Q. Chief, when you told Duckett to tear up the streets,
17 you didn't imply that if he saw a speeder, he wasn't supposed
18 to give him a ticket, did you?

19 A. That would be in the course of his normal duties.

20 Q. If he saw somebody violating the law, whether he
21 was looking for the little girl or not, he would be expected
22 to perform his duties, would he not?

23 A. That is correct.

24 Q. And you wouldn't expect him to turn on his radar if
25 he was driving up and down the street either, during this

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1 time he is looking for the little girl, would you?

2 A. No.

3 Q. And you would expect him to drive his vehicle at a
4 much slower speed looking for the little girl than if he
5 were on normal patrol, wouldn't you?

6 A. That would depend. If he were on the back streets
7 or in the open area where the traffic is flowing, you would
8 expect him to continue with the flow of traffic.

9 Q. But on the back streets is where he would be
10 actually looking around and looking for the little girl,
11 wouldn't he?

12 A. That is correct.

13 Q. And he is expecting to drive slowly at that time;
14 anybody looking for somebody is going to drive more slowly
15 than they would if you are driving around the streets,
16 wouldn't they?

17 A. That is correct.

18 Q. Now, did you have any policy wherever possible
19 that you kept the cars on the pavement?

20 A. With regard to cars on pavement, there was nothing
21 in writing on that.

22 Q. But did you have a general policy around your
23 department that wherever possible, you kept the cars off the
24 dirt or non-paved road?

25 A. Right. Basically, my theory was to keep it on the

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1 pavement as much as possible.

2 Q. And this was known through the officers, was it not?

3 A. Pardon?

4 Q. This would have been known to the officers, would
5 it not?

6 A. That is correct.

7 Q. Now Chief, did you go on down to the water's edge
8 when you went and viewed the little girl laying in the lake?

9 A. I probably went within two feet of the edge of the
10 water.

11 Q. Alright now, by two feet from the edge of the water,
12 does that mean ... is this a pretty steep bank down to where
13 the little girl was?

14 A. It is a good slope or incline, yes.

15 Q. Did you stand on the top and you are looking right
16 down there on the top of the sandy portion of this incline?

17 A. I stopped on the incline, whether it was mud or
18 dirt area.

19 Q. Alright, sir. You stepped down far enough to get
20 in the mud, didn't you?

21 A. Yes, I did.

22 Q. And you had mud on your shoes and all later, didn't
23 you?

24 A. At the end of the day, I did, yes.

25 Q. Alright, sir, and to put that body down where it was,

1 it is very likely whoever was in there did the same thing you
2 did, isn't that a fair statement?

3 MR. HOGAN: Objection, that calls for speculation.
4 Certainly, a strong man could have thrown the body down there;
5 it is consistent with the way the body was laying. That calls
6 for speculation.

7 MR. EDMUND: I don't know if the State Attorney has been
8 out there or not, sir, but that is even greater speculation.
9 It is not even under the pretense of being under oath and I
10 move it be stricken. The Jury should be instructed to
11 disregard it and ask the State Attorney not to make statements
12 that go directly to the facts of this case.

13 MR. HOGAN: Judge, if we are going to strike things,
14 we can back all the way up and strike his...

15 MR. EDMUND: I don't mind if we back all the way up and
16 strike mine if it was improper, Your Honor.

17 THE COURT: I think we will do that. Let's go all the
18 way back to the start of this line of questioning, ladies
19 and gentlemen, and I know this is difficult, but I am going
20 to ask you to disregard the statements made by both attorneys
21 with regard to the condition out there and we are just going
22 to ask this gentleman questions and he will answer them,
23 alright? So you are instructed to disregard those state-
24 ments.

25 Q. When Duckett called you in the early morning hours

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1 to talk to you about the missing person's report, was it a
2 joint decision that you not come down, or did he say, "Don't
3 come on down here"? Was it joint between you and him?

4 A. I asked him if he needed me and he said he didn't
5 think so.

6 Q. Did you feel a necessity under those circumstances
7 to go down?

8 A. No, I did not.

9 Q. Did you feel that you could have contributed anything
10 other than another car out on the streets?

11 A. No.

12 Q. Had, from what he told you, was the indication that
13 he had done what you would have done, had you been there?

14 A. That is correct.

15 Q. Thank you. I have no further questions, Your Honor.

16 MR. HOGAN: No re-direct, Judge.

17 THE COURT: What do you say about the witness's subpoena?

18 MR. HOGAN: Released.

19 MR. EDMUND: No objection, Your Honor.

20 THE COURT: Excuse me a second. We are going to take
21 a fifteen minute recess at this time, folks.

22 (WHEREUPON, JURY LEAVES COURTROOM AT 3:44 P. M.)

23 THE COURT: Folks, while the Jury is stepping out,
24 to the members of the press, I want to reiterate, because I
25 know you all do change throughout the course of the day, that

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1 we do not allow any pictures of the sitting jury. If you have
2 taken any, I don't want them published, okay? I appreciate
3 that.

4 Alright, remove the Defendant, please, Mr. Bailiff.

5 (WHEREUPON, DEFENDANT IS TAKEN FROM COURTROOM AT 3:45
6 P. M.)

7 (WHEREUPON, BENCH CONFERENCE IS HELD AS FOLLOWS:)

8 THE COURT: What were we able to resolve about our
9 situation in chambers? What happened?

10 MR. HOGAN: I think we resolved it. Steve and I haven't
11 had a chance to talk it over strategy-wise, but Mr. DeForest
12 certainly would be helpful to us and we would like to have
13 him. I don't know if it is going to be worth the hassle that
14 it is going to take to get him here. We just haven't had a
15 chance to...

16 THE COURT: What about this alleged meeting?

17 MR. EDMUND: We got him on the speaker phone and when
18 she told him that Malone was coming in, the State Attorney
19 said to use other equipment and I have no problem with that.

20 MR. HOGAN: What that is is he was going to be there...
21 not to meet with her, and I am sure of that, for other
22 readons; not to meet with her, but somewhere ... I am more
23 sure now, but somewhere along the line, he never sent us his
24 notes or something on one of the Mexicans that he examined.
25 He has hair and either I lost the notes or he lost the notes.

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1 To cover all of our bases, he was going to...

2 MR. EDMUND: If he comes here tomorrow with a black ring
3 around his eye, she pulled one on him.

4 THE COURT: So we are straight on that?

5 MR. EDMUND: Yes, sir.

6 THE COURT: Let's take about fifteen minutes and come
7 back and who is next?

8 MR. HOGAN: What we are going to try to do is try to
9 take another person that was at the crime scene and try to
10 work here and try to get through the scene hopefully down to
11 where we can start with Dr. Shutze tomorrow.

12 (WHEREUPON, BENCH CONFERENCE ENDS)

13 (WHEREUPON, COURT IS IN RECESS AT 3:46 P. M.)

14 (WHEREUPON, DEFENDANT IS PRESENT IN COURTROOM WITH HIS
15 COUNSEL, MR. EDMUND, AT 4:15 P. M.)

16 (WHEREUPON, COURT RECONVENES AT 4:25 P. M.)

17 THE COURT: Anything before we bring the Jury back,
18 gents?

19 MR. HOGAN: No, sir.

20 MR. EDMUND: No, Your Honor.

21 THE COURT: Please, Mr. Bailiff.

22 (WHEREUPON, JURY ENTERS COURTROOM AT 4:26 P. M.)

23 THE COURT: Welcome back, folks. Be seated, please.

24 Can you assure us you did abide by our admonitions over
25 the break?

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1 JURORS: Yes, sir.

2 THE COURT: Thank you kindly. Next witness?

3 MR. HURM: The State calls Deputy John North.

4 (WHEREUPON, DEPUTY JOHN NORTH IS CALLED AS NEXT WITNESS
5 FOR THE STATE AND IS DULY SWORN BY THE CLERK OF THE COURT)

6 DIRECT EXAMINATION

7 BY MR. HURM:

8 Q. Good afternoon, Deputy. Pull up to the microphone
9 and address your answers to the Jury, please.

10 State your name?

11 A. John North.

12 Q. How are you employed?

13 A. Deputy Sheriff, Lake County Sheriff's Office.

14 Q. How long have you been with the Lake County Sheriff's
15 Office?

16 A. Approximately four and one-half years.

17 Q. What are your responsibilities?

18 A. Road patrol, Zone 7, South end of the County.

19 Q. Now, in May of 1987, were you assigned road patrol
20 at that time?

21 A. Yes, sir.

22 Q. Were you on duty on the morning hours of May 12th,
23 at 9:00 A. M.?

24 A. Yes, sir.

25 Q. Did you have occasion to be contacted by then Chief

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1 of Police, Michael Brady, of the Mascotte Police Department?

2 A. Yes, sir.

3 Q. Could you tell the Jury please, what was the nature
4 of that contact?

5 A. Around 8:40, Chief Brady called me and asked me to
6 come to South Sunset, to an entrance off a grove near Knight
7 Lake. He had found what he believed was a missing juvenile
8 that was dead in the lake.

9 Q. Did he call you directly or did he call the Com
10 Center?

11 A. He called the Sheriff's Office and they dispatched
12 me and then he called me on the radio.

13 Q. When you got there, where did you find Chief Brady?

14 A. Chief Brady was down by the pumphouse at the end of
15 Knight Lake.

16 Q. Did anyone meet you at the entrance to the little
17 dirt road back the grove?

18 A. Yes, a school crossing guard there.

19 Q. Deputy North, would you mind stepping down from the
20 stand, please, sir.

21 (WHEREUPON, WITNESS STEPS DOWN FROM WITNESS BOX)

22 Q. I will show you what has been marked as State's
23 Exhibit #26 in evidence. Do you recognize the area of that
24 diagram?

25 A. Yes, sir. I do.

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1 Q. Could you indicate, please, sir, with this pen as
2 a pointer, would you indicate the direction of travel of your
3 vehicle when you came; how did you get into that area by
4 Knight Lake?

5 A. I came in off South Sunset and turned...

6 Q. Could you move back just a little bit?
7 Let me turn this up so that everybody can see it.

8 A. I came off South Sunset in this direction and
9 proceeded West along the dirt road like this and met Chief
10 Brady right about here.

11 Q. Now, the school crossing guard, did you see whether
12 or not he had a vehicle?

13 A. Yes, sir, he had a gold Monte Carlo parked here.

14 Q. Did you give him any instructions?

15 A. Yes, sir, I told him not to let anyone past him.

16 Q. And as you went in, you got to what point again?

17 A. Right about here, I met Chief Brady.

18 Q. How many vehicles were down there when you got
19 there?

20 A. Mr. Baker's pickup truck. Chief Brady's Mascotte
21 patrol car...

22 Q. You mean Mr. Clark?

23 A. I mean Mr. Clark, yes.

24 Q. What kind of pickup truck?

25 A. It was a rusted color Chevrolet.

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1 Q. So his pickup truck and Chief Brady's police car?

2 A. Yes.

3 Q. Was that his unmarked car?

4 A. Yes, sir.

5 Q. Now, in what order were those two vehicles sitting
6 on the road? Do you recall?

7 A. The fisherman's pickup was parked here; Chief
8 Brady's was parked directly behind it.

9 Q. Okay, now, you have indicated ... was it all the
10 way up to the pumphouse?

11 A. It was right back here.

12 Q. Right where that dark dot is?

13 A. Yes, sir.

14 Q. And did you then pull in behind his car?

15 A. I pulled directly behind Chief Brady.

16 Q. At any time while you were there, did Chief Brady
17 or Mr. Clark, go past the pumphouse in a vehicle and drive
18 down the road? In a Southerly direction?

19 A. No, sir.

20 Q. Did you in your vehicle?

21 A. No, sir.

22 Q. What kind of vehicle were you driving?

23 A. A Dodge Ram Charger.

24 Q. I show you State's Exhibit #27 in evidence. Do you
25 recognize that photograph?

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1 A. Yes, sir, that is the pumphouse.
2 Q. And that is #29 in evidence. Do you recognize that?
3 A. Yes, sir. That is the scene there and the position
4 the victim was in when I arrived.
5 Q. And #28, also in evidence, do you recognize that
6 photograph?
7 A. Yes, that is the same area somewhat behind the
8 pumphouse.
9 Q. Now, go ahead and sit down. Thank you, Deputy.
10 (WHEREUPON, WITNESS RESUMES WITNESS BOX)
11 Q. How long were you at the scene, Deputy North?
12 A. Approximately twenty minutes.
13 Q. While you were there, did anyone in any vehicle,
14 go past your vehicle and on past the pumphouse and South on
15 that little dirt road?
16 A. No, sir.
17 Q. What was your responsibility when you found the
18 body, saw the body, what did you do?
19 A. I notified my supervisor and told him what we had
20 and we set up a parameter.
21 Q. Who was your supervisor?
22 A. Lt. Wimberly.
23 Q. Alright. When you say to set up a parameter, what
24 do you mean?
25 A. We set up a parameter as best we could to secure the

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1 scene to keep anyone from going inside until Lt. Wimberly
2 would assign an Investigator and he arrived.

3 Q. Where was your post with regard to that parameter?

4 A. Upon the arrival of Sgt. Chuck Johnson, I moved out
5 to Sunset, the entrance to the grove.

6 Q. Chuck Johnson, is he with the Sheriff's Office?

7 A. Yes, sir.

8 Q. And is he the Sergeant?

9 A. He is a Sergeant, CID.

10 Q. Which would be the Detective Division?

11 A. Yes, sir.

12 Q. Were you still down by the pumphouse when Sgt.
13 Johnson got there?

14 A. Yes, sir.

15 Q. Did you hear him give any orders or see any
16 response to orders that he gave?

17 A. He asked me and Chief Brady to move our vehicles
18 behind where his was.

19 Q. Where was Jim Clark?

20 A. Jim Clark had left. I got his information and let
21 him go.

22 Q. When he left, did he go South on the dirt road or
23 did he turn around and go back out?

24 A. No, sir, he went back out.

25 Q. And then when Sgt. Johnson got there, you went out

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1 to the entrance on Sunset near Pearl Street?

2 A. Right.

3 Q. While you were out there, did... how long did you
4 stay out there, first?

5 A. I was there until one o'clock.

6 Q. While you were there, did any marked Mascotte police
7 cars come into the scene?

8 A. One marked Mascotte car went approximately fifty
9 feet off of Pearl Street and I stopped him there and called
10 Chief Brady and told him to come up and get him there.

11 Q. Okay, who was driving that car, do you know?

12 A. I believe it was Officer Troy Smith.

13 Q. Did you ever see the defendant, James Duckett, down
14 there that day?

15 A. No, sir.

16 Q. Prior to one o'clock, you had not seen him?

17 A. No, sir.

18 Q. I had one other photograph to show you, Deputy
19 North, marked TTT for identification. Would you look at that
20 and tell me if you recognize what it depicts?

21 A. I believe it is the same basic area around the
22 pumphouse.

23 Q. That would be up the hill from where the body was
24 found at the back of the pumphouse?

25 A. Yes, sir.

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1 MR. HURM: Your Honor, I would offer this in evidence.

2 MR. EDMUND: No objection.

3 THE COURT: State's Exhibit TTT for identification
4 admitted into evidence as State's Exhibit #35.

5 (WHEREUPON, STATE'S EXHIBIT #35 IS ADMITTED INTO
6 EVIDENCE WITHOUT OBJECTION)

7 MR. HURM: I have no further questions.

8 MR. EDMUND: No questions, Your Honor.

9 THE COURT: May we release Deputy North from his
10 subpoena, gentlemen?

11 MR. HURM: Yes, sir.

12 MR. EDMUND: No objection, Your Honor.

13 THE COURT: You are free to go, sir. Thank you very
14 much.

15 Next witness, Mr. Hurm?

16 MR. HURM: Sgt. Chuck Johnson.

17 THE COURT: Sgt. Johnson.

18 (WHEREUPON, SGT. CHUCK JOHNSON IS CALLED AS NEXT WITNESS
19 FOR THE STATE AND IS DULY SWORN BY THE CLERK OF THE COURT)

20 DIRECT EXAMINATION

21 BY MR. HURM:

22 Q. Good afternoon, Sgt. Johnson. Address your answers,
23 please, to the Jury.

24 State your name, please?

25 A. Charles David Johnson.

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1 Q. How are you employed?
2 A. I work for the Sheriff of Lake County.
3 Q. How long have you been with the Sheriff's Department?
4 A. Since January 6, 1981.
5 Q. Did you have prior law enforcement experience to
6 that?
7 A. Yes, I did.
8 Q. Where was that?
9 A. I worked for the City of Mount Dora from 1978 to
10 1980.
11 Q. So then, law enforcement, you have been in about
12 ten years?
13 A. Including my military police experience, just a
14 little over ten years.
15 Q. Sgt. Johnson, what is your position, your rank,
16 with the Sheriff's Office?
17 A. I am the Senior Sergeant with the Criminal
18 Investigation Division.
19 Q. Were you ... did you have that position in May of
20 1987?
21 A. Yes.
22 Q. In the course of your duties, did you have occasion
23 to be called down to an area in Mascotte known as Knight
24 Lake? Off Sunset Street? On May 12th, 1987?
25 A. Yes, I did.

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1 Q. About what time did you get the call to go down
2 there?

3 A. It was somewhere before nine, because I arrived
4 a little bit around 9:27 or 9:25, in that area.

5 Q. Were you called from your home or from your office?

6 A. I heard the radio transmission concerning a death,
7 and I became curious about it and stopped at a phone and
8 called in and they explained more about what was going on
9 and I took it upon myself to be in route to that location.

10 Q. That would be within the course of your duties as
11 CID Supervisor?

12 A. That is correct.

13 Q. All major homicides, or all homicides, for that
14 matter?

15 A. That is correct.

16 Q. When you arrived at Sunset and Pearl Street, the
17 entrance to the dirt road going back to the lake, what did you
18 find there? At the entrance?

19 A. At the entrance, the dirt road ran out to my right,
20 there was, what I believe a school crossing guard. He was
21 just standing there and I stopped him and asked him some
22 questions about what was going on. He pointed me the right
23 direction to go to and I had asked him, "Please don't allow
24 anybody else to go down this road until you hear back from me".

25 Q. As you went on down the road, what did you find?

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1 A. I traveled down the road, maybe a little over a
2 quarter of a mile and eventually came to ... I saw two
3 police cars and a block building. The two police cars were
4 pulled up to the block building.

5 Q. Now, this area where you saw the block building and
6 the police cars, is that located in Lake County, Florida?

7 A. Yes, sir.

8 Q. The police cars, did you recognize what department
9 they were from?

10 A. Yes, sir.

11 Q. Where were they from?

12 A. One was from the City of Mascotte and one was a
13 Lake County Sheriff's Office.

14 Q. Was the Mascotte police car an unmarked police car?

15 A. It had markings as far as color.

16 Q. But no lights on the top?

17 A. Not that I recall, sir.

18 Q. Now, if you could step down, Sergeant Johnson, to
19 this diagram here, and this, for the record, is State's
20 Exhibit 26 in evidence, and using this pen as a pointer,
21 would you indicate and step back so that the members of the
22 Jury can see, would you indicate, please, sir, the direction
23 you traveled to get down to the block building?

24 A. I came in on this road here; talked to the school
25 crossing guard I believe right here; proceeded down this road

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1 and followed up and stopped my vehicle some fifty yards
2 from this pumphouse, where I saw the two police cars.

3 Q. What was your first action when you stopped there
4 and got out of the car?

5 A. I observed Deputy North and Chief Brady standing
6 near the pumphouse.

7 Q. Deputy North is with your department?

8 A. Yes, sir.

9 Q. And Chief Brady, that is Chief Michael Brady of the
10 Mascotte Police Department?

11 A. Yes, sir.

12 Q. They were standing with the pumphouse indicated on
13 the diagram there, if you would show where they were standing
14 in relation to the pumphouse?

15 A. They were standing in the rear section of the pump-
16 house which would be to the right rear corner right here.

17 Q. What did you do when you saw them?

18 A. I stopped my car some fifty yards back. I simply
19 told them if you will, please get the car and bring it
20 and park it behind mine.

21 Q. Do you recall what order they were parked in?

22 A. I don't know.

23 Q. You were about fifty yards back from the pumphouse
24 and you asked them to move their cars behind yours?

25 A. Yes.

1 Q. Did they do so?
2 A. Yes, sir.
3 Q. Was that before you had seen the body?
4 A. That is correct.
5 Q. What did you do after they moved their cars?
6 A. Once they moved their cars, I simply maintained the
7 perimeter of teh scene.
8 Q. Where did you establish the perimeter?
9 A. At my car.
10 Q. The front of your car?
11 A. The front of my car. Nobody went past the front of
12 my car.
13 Q. Now, you got there, you said about 9:25, somewhere
14 thereabouts?
15 A. Yes.
16 Q. What was your... after you established your perimeter,
17 did you go down to the lake to see the body?
18 A. No, sir.
19 Q. You didn't?
20 A. No, sir.
21 Q. Who did you call?
22 A. Not for a substantial period of time.
23 Q. What did you do?
24 A. Simply waited. Knowing what I believed to have
25 happened, that there would be other people around shortly and

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1 it would be a good idea to wait until help arrives. I had
2 supervised and that once upon their arrival, we would determine
3 what action needed to be taken.

4 Q. You said you knew there had been a death. Did you
5 ascertain that from your conversations with Chief Brady?

6 A. I originally got it from the Communications Center
7 of the Lake County Sheriff's Office.

8 Q. Did you learn more from them in discussions with them?

9 A. I learned, in fact, there was a body in the water.

10 Q. Let me show you some photographs marked in evidence
11 as State's 28, State's 29, State's 27. Do you recognize those
12 photographs?

13 A. I recognize what is depicted in the photographs.

14 Q. That is what I mean. What is depicted in them.
15 Do they fairly and accurately represent what is depicted from
16 that day?

17 A. Yes, sir.

18 Q. And this one photograph in State's 27, is that the
19 pumphouse you referred to on the diagram?

20 A. As I recall.

21 Q. Deputy Johnson, when did you first go down to the
22 shore of the lake?

23 A. After Captain Jimmie Horner arrived. The two of us
24 got together and realized that the investigation had to
25 continue somehow. We entered the crime scene area for cursory

1 investigation. To see what steps needed to be taken.

2 Q. Now, from the time you actually see Brady and North,
3 they moved their vehicles back behind yours, you said noone
4 entered the crime scene. Did anyone enter on foot or are you
5 just talking about vehicles, until Captain Horner arrived?

6 A. I need to refer to my notes. Deputy Aleno, at one
7 point, was allowed to go inside the particular crime scene and
8 video it, so that we have a current record. I need to make
9 sure that he did not go in prior to my going in.

10 Q. Okay, well, that is alright for now. Let's move on
11 from that. Deputy Aleno, how is he employed at the Sheriff's
12 Office?

13 A. Deputy Aleno is a Technical Services Officer. His
14 main function is to gether evidence.

15 Q. Crime Scene Technician?

16 A. Crime Scene Technician, if you will.

17 Q. So normally then, in the procedure, it would be that
18 with the Sheriff's Office, the Crime Scene Tech would be one
19 of the first individuals to go into a crime scene?

20 A. Yes, sir, that is probably the best ways, to have
21 them go in first. A Tech Services officer can go in there and
22 video if it needs to be videoed and a permanent recording,
23 and then go in and investigate the scene.

24 Q. After you entered the crime scene with Captain Horner,
25 what did you do?

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1 A. Captain Horner and I checked it out and discussed
2 what action had to be taken.

3 Q. What did you see when you got down to the lake?

4 A. When I arrived at the pumphouse, in looking down
5 into the water by the pumphouse, I observed what appeared to
6 be a body of what appeared to be a female, but of course it
7 had not yet been determined. The body was floating face down
8 and it was just simply a body at that point.

9 Q. Okay, now, was it ... you say it was floating. Was
10 it anchored in any way to anything?

11 A. I am not sure that anchored is the right word.
12 However, the girl's or the body's feet were crossed and
13 somewhat being held against the bank or against or along the
14 bank. The material underneath and around the body was very...
15 had a lot of vegetation on it and it was being held by the
16 vegetation.

17 Q. Go ahead and have a seat.

18 At some point after you and Captain Horner discussed the
19 next steps to take, did you retrieve the body from the water?

20 A. Yes, sir.

21 Q. Please describe for the Jury, sir, how you went
22 about that?

23 A. Captain Horner and I determined that the next step
24 would have to be the removal of the body. We, using the
25 available resources, took a Lake County Sheriff's Office

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1 Department raincoat and spread it out and Investigator Harris
2 and I, it was decided, would go down to the bank; simply
3 slide the raincoat underneath the body in an attempt to
4 preserve as much evidence as we could, and lift the body out
5 of the water and place it up on the bank.

6 Q. So you slid the raincoat under the water under the
7 body?

8 A. That is correct.

9 Q. And then pulled the body out using the raincoat
10 as a stretcher?

11 A. That was our intention just as a stretcher.

12 Q. When you retrieved the body, who else was at the
13 scene? Who had gotten there?

14 A. Captain Horner was there; Rocky Harris, Investigator
15 with the Lake County Sheriff's Office; Dr. Shutze, and his
16 assistant, who is the Medical Examiner for the Fifth Circuit,
17 Dr. Shutze is the Medical Examiner; and he had an assistant
18 there. I believe Sgt. Wagner was there at that point and
19 Deputy Aleno.

20 Q. I am sorry?

21 A. And Deputy Aleno was there.

22 Q. And he was processing and videoing?

23 A. He was videoing, at that point, our actions.

24 Q. Now, Sgt. Johnson, at any time while you were
25 retrieving the body, and discussing what to do with Captain

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1 Horner, or any point that morning, did any vehicle go down
2 past the pumphouse and on in a South direction back out to
3 South Sunset Street?

4 A. No, sir.

5 Q. Was crime scene evidence tape or plastic tape put up
6 at any time?

7 A. Yes, sir.

8 Q. When was that?

9 A. Shortly after the removal of the body.

10 Q. Prior to that time, was someone at all times insuring
11 that noone would enter the crime scene?

12 A. Understanding that I was there the whole time and
13 busy removing the body, I was able to see that nobody was
14 or had contaminated the crime scene and I had left other people
15 at my vehicle with instructions noone could go any further
16 than that.

17 Q. Let me ask you to jump ahead for a moment.
18 How long did you say you stayed there at the crime scene?

19 A. From, I believe, when I arrived at around 9:27 or
20 9:25, until about 5:30 in the afternoon.

21 Q. Did any vehicle other than Deputy Aleno's and the
22 body removal service enter the crime scene perimeter during
23 that period of time while you were there?

24 A. No, sir.

25 Q. Sgt. Johnson, you removed the body and then laid it

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1 on the ground?

2 A. I put another raincoat on the ground and then placed
3 the body.

4 Q. Let me show you photographs marked State's Exhibit
5 WWW for identification. First, do you recognize that? What
6 that purports to depict?

7 A. Yes, sir.

8 Q. What does it show?

9 A. This is the victim.

10 Q. Is that a fair and accurate representation of how
11 she appeared after you removed her from the lake on May 12th,
12 1987?

13 A. Yes, sir.

14 Q. Now, I show you State's Exhibit S for identification.
15 Could you also identify that photograph?

16 THE COURT: You said S, Mr. Hurm.

17 MR. HURM: Yes, sir.

18 Q. Do you recognize what the purports to depict?

19 A. Yes, sir.

20 Q. What is that?

21 A. The victim, Teresa McAbee.

22 Q. Is that a fair and accurate representation how she
23 appeared after you removed her from the lake?

24 A. Yes.

25 MR. HURM: Your Honor, I would offer these photographs

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1 into evidence at this time.

2 MR. EDMUND: No objection, Your Honor.

3 THE COURT: State's WWW for identification admitted into
4 evidence without objection as State's Exhibit 36.

5 State's Exhibit S for identification admitted into
6 evidence without objection as State's Exhibit 37.

7 (WHEREUPON, STATE'S EXHIBITS #36 AND 37 ADMITTED INTO
8 EVIDENCE WITHOUT OBJECTION)

9 Q. Sgt. Johnson, did you know a Mascotte officer by
10 the name of James Duckett?

11 A. No, sir.

12 Q. Did you have occasion to meet such an individual on
13 that day?

14 A. Yes, sir.

15 Q. What time was that?

16 A. I believe it to be around 2:30 in the afternoon.

17 Q. Did you see how he arrived at the crime scene
18 area?

19 A. Yes, sir.

20 Q. How was that?

21 A. In a Mascotte police car.

22 Q. How far along that route did the Mascotte police
23 car travel that Duckett was in?

24 A. The easiest way to describe it is that he did not
25 go beyond my vehicle, which is the first vehicle from the

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1 crime scene back. There were probably four or five or six
2 other vehicles after mine.

3 Q. That is the way I should have asked it. Did he go
4 into the crime scene?

5 A. No.

6 Q. He didn't?

7 A. No, sir.

8 Q. Do you see the individual who became known to you
9 that day as James Duckett in the courtroom?

10 A. Yes, sir.

11 Q. Would you point to him and describe what he is wear-
12 ing?

13 MR. EDMUND: I will stipulate, Your Honor.

14 MR. HURM: Thank you.

15 THE COURT: The record will reflect the witness has
16 identified the defendant.

17 Q. Sgt. Johnson, you were there until about 5:30 P. M.?

18 A. Yes, sir.

19 Q. Thank you, Your Honor. No further questions. I would
20 like to publish the photographs to the Jury at this time.

21 THE COURT: Objection, Mr. Edmund?

22 MR. EDMUND: No, Your Honor. I have no questions.

23 THE COURT: Alright, Sgt. Johnson, you are free to leave.
24 Do we release him from his subpoena, gentlemen?

25 MR. HURM: Yes, sir.

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1 MR. EDMUND: Yes, Your Honor.
2 MR. HOGAN: We may need him at a later time, Judge.
3 THE COURT: Alright, we will retain you under subpoena,
4 but you are free to go about your business, just as long as
5 you will let the State Attorney know where they can find you.
6 SGT. JOHNSON: Thank you, Your Honor.
7 THE COURT: Thank you, sir.
8 MR. HOGAN: May we approach the bench?
9 (WHEREUPON, BENCH CONFERENCE IS HELD AS FOLLOWS:)
10 THE COURT: Who is your twelve minute witness?
11 MR. HURM: The only other witness is Lt. Wimberly, who
12 would testify that he came to the scene and helped secure it
13 and then followed the body to the Medical Examiner's Office.
14 MR. EDMUND: I will stipulate, if you want to announce
15 that.
16 MR. HURM: We can put him on and off real quick. If you
17 don't have any questions, it will be very brief.
18 THE COURT: Anyone after him?
19 MR. HOGAN: No, sir.
20 MR. HURM: Then we will start with Dr. Shutze in the
21 morning.
22 THE COURT: Sound fine to you?
23 MR. EDMUND: Yes, Your Honor.
24 MR. HURM: Just put Wimberly on and off and quit for today.
25 THE COURT: Sounds okay. Dr. Shutze is first in the

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1 morning?

2 MR. HURM: Yes, sir.

3 MR. HOGAN: He is out there.

4 THE COURT: Alright.

5 (WHEREUPON, BENCH CONFERENCE ENDS)

6 THE COURT: Your next witness, please?

7 MR. HURM: Our next witness would be Lt. Dan Wimberly.

8 (WHEREUPON, LT. DAN WIMBERLY IS CALLED AS NEXT WITNESS
9 FOR THE STATE AND IS DULY SWORN BY THE CLERK OF THE COURT)

10 DIRECT EXAMINATION

11 BY MR. HURM:

12 Q. Good afternoon, Lieutenant, state your name, please?

13 A. Dan Wimberly.

14 Q. How are you employed?

15 A. Lake County Sheriff's Department.

16 Q. What rank do you hold with the Sheriff's Department?

17 A. Lieutenant.

18 Q. What are your responsibilities as Lieutenant?

19 A. Supervisor of the Patrol Division.

20 Q. Were you employed as Lieutenant with the Patrol
21 Division on May 12th, 1987?

22 A. I was.

23 Q. Did you have occasion to be dispatched to the Knight
24 Lake area in Mascotte reference a homicide?

25 A. Yes, I did.

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1 Q. What time did you arrive at the scene?
2 A. Approximately 9:30.
3 Q. Who was there when you got there?
4 A. Several other units, John North, who was protecting
5 the scene.
6 Q. What action did you take with regard to preserving
7 the crime scene?
8 A. Assisted in guarding the perimeter.
9 Q. Were you there when the body was removed from the
10 lake?
11 A. Yes, sir, I was.
12 Q. Did you have any contact with the body in terms of
13 going to the Medical Examiner's Office?
14 A. Yes, sir, I did.
15 Q. Tell us about that? What was your responsibility?
16 A. I followed the body up to the Medical Examiner after
17 it was placed in the funeral home vehicle.
18 Q. Were there any stops on the way by the funeral home
19 vehicle?
20 A. No, sir.
21 Q. Did you watch it transport the body to the Medical
22 Examiner's Office?
23 A. Yes, sir.
24 Q. Now, back at the scene, after the body was recovered
25 from the water, did you see it placed on a raincoat?

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1 A. Yes, I did.

2 Q. Was it taken from that raincoat and placed in the
3 hearse?

4 A. Yes.

5 Q. And then went straight to the Medical Examiner's
6 Office?

7 A. Yes.

8 Q. Were you there for the autopsy?

9 A. No, sir.

10 Q. Were there other officers with the body when you
11 left the Medical Examiner's Office?

12 A. I don't recall any investigators that were out there.

13 Q. Was the body secured with the Medical Examiner's
14 Office when you left?

15 A. Yes.

16 Q. Thank you. I have no further questions.

17 MR. EDMUND: No questions, Your Honor.

18 THE COURT: Release the Lieutenant from his subpoena,
19 gentlemen?

20 MR. HURM: Yes, Your Honor.

21 THE COURT: Any objection?

22 MR. EDMUND: No, Your Honor.

23 THE COURT: You are free to go, sir. You are released from
24 your subpoena. Thank you.

25 I believe that will conclude our witnesses for today

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1 gentlemen?

2 MR. HURM: Yes, sir.

3 THE COURT: Ladies and gentlemen, we are going to take
4 our evening recess and remind you once again, please don't
5 discuss the case among yourselves or with anyone else.
6 Don't read anything about the case; don't watch any television
7 accounts of the case; or listen to the radio; don't attempt
8 to visit the scene of the alleged crime. We will come back
9 tomorrow morning at the same place and same time. 9:00
10 o'clock, if you would, please.

11 Thank you. We will be in recess.

12 (WHEREUPON, JURY LEAVES COURTROOM AT 4:53 P. M.)

13 THE COURT: Remove the Defendant, please, Mr. Bailiff.

14 (WHEREUPON, DEFENDANT LEAVES COURTROOM AT 4:54 P. M.)

15 THE COURT: Court is in recess.

16 (WHEREUPON, COURT IS IN RECESS AT 4:55 P. M.)

17 April 29, 1988, 9:00 A. M.

18 (WHEREUPON, DEFENDANT IS PRESENT IN COURTROOM WITH HIS
19 COUNSEL, MR. EDMUND)

20 (WHEREUPON, COURT CONVENES AT 9:10 A. M.)

21 THE COURT: Do we have anything before we bring the Jury
22 back?

23 MR. HOGAN: No, sir.

24 MR. EDMUND: No, Your Honor.

25 THE COURT: Please, Mr. Bailiff.

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1 (WHEREUPON, JURY ENTERS COURTROOM AT 9:10 A. M.)

2 THE COURT: Welcome back, folks. Be seated, please.

3 Well, Mr. DeClerk, you have done it to me. There is
4 not a chance I am going to figure that puzzle out in this
5 lifetime. That is why we are starting late, to be honest
6 with you. I have been fiddling with it for ten minutes.

7 Mr. DeClerk made up a little puzzle and he gave everybody
8 on the Jury and gave me one to try to figure out. They are
9 simple little four piece puzzles.

10 When this thing is over, someone is going to tell me
11 how to do that. Alright?

12 Folks, can you all assure us you did abide by our
13 admonitions of yesterday?

14 JURORS: Yes, sir.

15 THE COURT: Thank you.

16 Alright, from the State?

17 MR. HOGAN: The State would call Dr. Shutze.

18 THE COURT: Dr. Shutze.

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