

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

4 CASE NO. 87-1347-CF-A-01 and
5 88-262-CF-A-01

6 STATE OF FLORIDA,

7 Plaintiff,

8 v.

9 JAMES AREN DUCKETT,

10 Defendant.

11 V O L U M E V

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CLERK OF CIRCUIT
AND COUNTY COURTS
LAKE COUNTY, FLORIDA
TAVARES, FLORIDA

Case: 1987 CF 001347
00084352497
Dkt: CETRANS

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Tavares, Florida 32778

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1 (WHEREUPON, DR. SHUTZE IS CALLED AS NEXT WITNESS FOR
2 THE STATE AND IS DULY SWORN BY THE CLERK OF THE COURT)

3 DIRECT EXAMINATION

4 BY MR. HOGAN:

5 Q. Good morning, Doctor. Please state your name for the
6 record?

7 A. William Henry Shutze.

8 Q. How are you employed?

9 A. I am the Fifth District Medical Examiner.

10 Q. Can you tell us a little bit about your educational
11 background?

12 A. Yes, I attended the Creighton University for three
13 years, for pre-medical school, and the Creighton School of
14 Medicine for four years of medical school, graduating in
15 1970. I interned at St. Catherine's Hospital in Omaha,
16 followed by a year of general surgery at the University of
17 Arkansas, and then two years of pathology residency at Mercy
18 Hospital in Des Moines and two years of pathology residency
19 at the Nebraska Methodist Hospital in Omaha.

20 MR. EDMUND: If it please, Your Honor, I would stipulate
21 that Dr. Shutze is qualified as an expert in the field of
22 pathology and I would waive any further qualifications that
23 the State wishes to offer.

24 THE COURT: Do you want to continue, Mr. Hogan, or accept
25 the stipulation?

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1 MR. HOGAN: Judge, the only additional thing that I would
2 like to ask Dr. Shutze is, Dr. Shutze, how many times have
3 you testified as the forensic pathologist for this Circuit?

4 A. Probably approximately three hundred fifty times.

5 Q. Thank you, Doctor.

6 THE COURT: Alright, based upon the stipulation of counsel
7 for the Defendant, Dr. Shutze will be accepted, ladies and
8 gentlemen, as an expert in the field of forensic pathology
9 and as such, entitled to give opinions in this field.

10 Q. Doctor, did you have an occasion to be working in
11 your capacity as a Medical Examiner for this Circuit on May 12,
12 1987?

13 A. Yes, I was.

14 Q. And did you have an occasion to go to an area of
15 Lake County known as the Mascotte... the City of Mascotte?

16 A. Yes, I did.

17 Q. And once there, were you directed to a ledge or a
18 marshy lake area near a burned out orange grove that may or
19 may not be known to you as Knight Lake?

20 A. Yes, I was directed there.

21 Q. Doctor, I show you a series of photographs starting
22 with photograph #27 in evidence and ask if you recognize that
23 building?

24 A. Yes, this is ... this picture depicts a building that
25 was set right adjacent to the lake where the ... close to the

1 edge of the lake where the body was found.

2 Q. And I ask you to look at these two photographs, being
3 photograph #28 and photograph #29, in evidence, and ask if you
4 recognize those photographs and did you see the body depicted
5 in that photograph in that condition?

6 A. Yes, these two photographs depict the edge of the
7 lake and the body floating face down at the edge of the lake.

8 Q. Okay, now, my question is did you go to the scene
9 and see the body still in the lake floating in the water as it
10 is there?

11 A. Yes, I did.

12 Q. So you got to the scene before the body was even
13 removed from the water?

14 A. Yes, sir.

15 Q. Now, I show you photograph in evidence, #37, and
16 ask you if this is the same body that is depicted face down
17 in the lake there? Is that the same little girl?

18 A. Yes, it is.

19 Q. That is the body of the little girl and did you
20 pronounce the little girl dead?

21 A. Yes, I did. The identification of the body was
22 related to me as the body of that of Teresa Mae McAbee.

23 Q. Alright, sir. Dr. Shutze, you examined the body
24 of Teresa Mae McAbee at the scene there by Knight Lake by the
25 pump house. Did you notice anything about the body at that

1 time during your cursory examination at the scene?

2 A. Yes, there was foam coming from the nose and from
3 the mouth.

4 Q. What does that indicate?

5 A. This is what is known to medical examiners as a
6 pedicle and this is commonly seen as a result of drowning.
7 The water ... as a person drowns, the water going in... the
8 person continues to breathe under water. The water going in
9 and out of the bronchial tree of the lung mixes with what
10 we call the surfactin, or what is part of the secretion in
11 the lung, and this forms, along with the fluid and the water
12 that is going in and out, forms a kind of a pedicle or a
13 foamy appearing material in the nose and mouth.

14 Q. You noticed that in this case?

15 A. Yes, sir.

16 Q. What else did you notice about the body of Teresa
17 Mae McAbee during your initial examination at the scene?

18 A. At the scene, there appeared to be marks on the skin
19 of her neck.

20 Q. Okay, sir, and did you make a determination about
21 those marks on the neck?

22 A. Not at the scene, but at the time of autopsy, these
23 marks became more apparent to be abrasions or scrapes on the
24 skin, as well as contusions or bruises of the skin of the neck.

25 Q. Did you notice anything else at the scene during your

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1 cursory examination? Any other marks or injuries on the body?
2 A. Yes, there was some marks on the left arm and in
3 this area... the elbow area.
4 Q. What kind of marks were those?
5 A. Those were... there was a bruise and an abrasion or
6 a scraped area.
7 Q. Was there any shape to that bruise on the arm?
8 A. It was kind of a round mark or contusion or bruise
9 which may be as a result of squeezing or something inflicted
10 with an object that was perfectly round.
11 Q. Okay, sir, did you do any further examination at the
12 scene?
13 A. No, I did not.
14 Q. At that point, was the body of Teresa Mae McAbee
15 then transported to your laboratory?
16 A. Yes, it was.
17 Q. Did you have an occasion to perform a further or
18 detailed autopsy of the body of Teresa Mae McAbee?
19 A. Yes, I did, on the morning of 5 ... well, it was
20 on the afternoon of 5/12.
21 Q. Later on the same day, in other words?
22 A. Yes, sir.
23 Q. Now, prior to performing that autopsy, did you remove
24 the clothing that Teresa Mae McAbee was wearing; that you seen
25 her wearing at the scene?

1 A. Yes, I did.

2 Q. How did you go about removing that clothing?

3 A. After examining the clothing and the body and the
4 external surfaces and taking photographs, each article of
5 clothing was removed one piece at a time and examined. The
6 sweater, and then the jeans and the underpants.

7 The underpants, there was blood in the crotch of the under-
8 pants.

9 Q. Was there a great deal of blood or...?

10 A. It was not a great deal. A moderate amount.

11 Q. A moderate amount? Okay, sir, did each item of
12 clothing... what did you do with each item of clothing as you
13 removed it?

14 A. Each item of clothing was then subsequently placed
15 in a bag and transferred to the Lake County Sheriff's
16 Department.

17 Q. This is what we call evidence bags?

18 A. That is correct.

19 Q. And that would include a separate bag for the shirt
20 and a separate bag for the pants and a separate bag for the
21 underpants and likewise for the shoes and the socks?

22 A. Correct.

23 Q. And this was the common practice?

24 A. Yes, this is routine practice for evidence collected.

25 Q. And that is done for the preservation of evidence?

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1 A. Yes, it is.

2 Q. Now, once the body had been clothing... the body of
3 Teresa Mae McAbee's clothing was removed, what did you next
4 do?

5 A. The external surface of the body was examined and
6 photographs taken, and the injuries to the body were then
7 documented and then the autopsy was performed.

8 Q. Before we go into that, let me go back to the scene
9 for just a moment and show you what is in evidence as State's
10 Exhibit #36 and ask you if that photograph depicts the
11 injury on the arm that you discussed? Testified to? Can you
12 see it there?

13 A. Yes, it shows the contusion on the right arm.

14 Q. On the right arm? Is there one on the left arm as
15 well?

16 A. Yes, on the inner surface of the left arm.

17 Q. Excuse me, now, if we can go back to the autopsy that
18 you performed, if you can tell the folks on the jury what
19 you did and what your findings were?

20 A. The examination of the external surface of the body
21 revealed an abrasion and contusion of the skin of the lower
22 neck and a prominent contusion... a prominent contusion of the
23 skin of the right side of the neck, across this area. There
24 was an abrasion in this area of the left elbow and a contusion
25 in this area.

1 Q. When you say contusion, is that what we call bruising?
2 A. Yes.
3 Q. After the body ... after the external surface, then
4 as we progressed down to the lower portions of the body and
5 examined the perineal area or the genital area, external
6 genital area, there was a laceration of what is commonly called
7 the hymen, a portion of skin that partially covers the
8 entrance to the vagina and there was a fresh laceration,
9 because there was blood present on the edge of the wound.
10 Q. Is this blood, would this be a hemorrhaging wound or
11 how would you describe it?
12 Q. It would be an oozing type injury, similar to if
13 you cut your ear or a superficial cut on the finger.
14 Q. Did you discover anything else in your external
15 examination of the body?
16 A. On the external examination, no.
17 Q. Continue on with what you did next?
18 A. As we opened the body to examine the inner surface
19 of the body, there was hemorrhage into the muscles of the neck
20 and the ... there was a fracture of what is called the
21 highway bone. This is a small U-shaped bone that is placed
22 between our voice box and the tongue and it is commonly
23 fractured in strangulation.
24 Q. Doctor, Teresa Mae McAbee was eleven years of age at
25 the time of her death, of her murder, and you say her highway

1 bone was broken. Is there anything unusual about the highway
2 bone of a person that young being fractured?

3 A. The highway bone is very flexible in a young person
4 and it is very difficult to fracture.

5 Q. Now, if you found the highway bone broken in an
6 elderly person, would you have a different opinion as opposed
7 to a person of eleven years of age?

8 A. Both as a result of strangulation are commonly seen
9 in association with strangulation, but it takes a lot more
10 force to fracture a highway bone in a younger person than it
11 does in an elderly person.

12 Q. Your opinion as far as there being a great deal of
13 force to fracture the highway bone in Teresa Mae McAbee, is
14 that also consistent with the bleeding you found in the muscles
15 of her neck?

16 A. Yes, sir.

17 Q. Now, I show you what has been marked for identification
18 as State's Exhibit XXX, three Xs, and ask you if you recognize
19 that photograph?

20 MR. EDMUND: May I, Your Honor?

21 THE COURT: Yes, sir.

22 MR. EDMUND: We could do it all now and save some time.

23 MR. HOGAN: Well, I would like to do it away from the
24 Jury, if there is going to be a problem.

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

1 THE COURT: Was the question to the Doctor does he
2 recognize the photograph?

3 MR. HOGAN: Yes, sir, that is as far as I have gotten.
4 This is the photograph we are working on at the moment.

5 MR. EDMUND: That I have no objection.

6 THE COURT: No objection on that one. Are you moving this
7 into evidence?

8 MR. HOGAN: I would like to do it with the witness, if
9 I could.

10 THE COURT: I don't know why I am up here.

11 MR. HOGAN: I am not sure either, except that Mr. Edmund
12 approached the bench...

13 MR. EDMUND: I want to take a look at these others the
14 way he is carrying them in front of the Jury.

15 MR. HOGAN: Well, I intend to go into these photographs
16 next. These photographs depict the broken highway bone.

17 MR. EDMUND: That could only be offered for the purpose
18 of inflaming this Jury. The description by the Doctor more
19 than adequately did it. It could do no more than over-kill
20 sexual prosecutions and homicide prosecutions.

21 THE COURT: What do you say as to these two?

22 MR. HOGAN: Judge, the reason that I have it...

23 THE COURT: Let's put on the record, I am looking at
24 State's Exhibit 5 Gs for identification and five Fs for
25 identification.

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1 MR. HOGAN: Several things to say about these photographs.
2 Number one, I think that they are not overly graphic in that
3 they are not a complete body shot with the neck exposed. I
4 have chosen photographs that zero in on the highway bone and
5 the Doctor certainly, I presume, or hope, that after he
6 examines them in the identification process, he will be able
7 to say that they do depict the broken highway bone that he
8 has been testifying to and therefore, they are relevant, so
9 I think the question of relevancy certainly will not be a
10 question. Whether or not they are too explicit for the Jury,
11 I don't think that they are. I think that they are necessary.
12 The Court will have to, obviously, make that decision as you
13 do all others. Should the Court deny me the use of those
14 photographs, then I would request that the Doctor be allowed
15 to go into that area further and that we try to construct
16 some kind of crude diagram to illustrate that broken highway
17 bone, but I don't think that would be as good a depiction of
18 the broken highway bone as those photographs, and I am request-
19 ing to use the photographs.

20 THE COURT: I understand and you intend to move this XXX
21 in front of the Jury. Obviously, you have no objection to XXX?

22 MR. EDMUND: No, Your Honor.

23 THE COURT: I am not going to allow GGGGG and FFFFFF into
24 evidence over State's objection, and I find that they are too
25 inflammatory for the Jury and that the doctor can otherwise

1 describe it through the use of a diagram or otherwise.

2 MR. HOGAN: Okay.

3 THE COURT: I am going to ask you to keep these face down
4 and not exhibit them.

5 MR. HOGAN: We could hand them back to the clerk.

6 THE COURT: They are not to be used.

7 (WHEREUPON, BENCH CONFERENCE ENDS)

8 DIRECT EXAMINATION CONTINUES

9 BY MR. HOGAN:

10 Q. Now, I believe, Doctor, I am showing you photograph
11 XXX and ask if you recognize that photograph?

12 A. Yes, this photograph depicts the face and neck and
13 upper chest of the victim and the picture also depicts the
14 pedicle or foam exuding from the nose and mouth as well as
15 it also shows the abrasions or scrape marks on the lower part
16 of the neck and the contusion on this side of the neck.

17 Q. Talking about the contusions or what I would call the
18 scratch marks or small cuts, is that right?

19 A. Yes, they are superficial scrapes or cuts on the front
20 part of the neck here, in this area, and then there is a
21 bruise.

22 Q. Following the evidence you had so far, in your
23 opinion, as far as strangulation, what would have caused those
24 contusions on the neck?

25 A. It is most probably a hand would be the most logical

1 thing. A ligature or rope restraint would leave a linear
2 or a straight line across the neck. This is most consistent
3 with a hand type, a hand grasping a person around the neck
4 in this fashion.

5 Q. Okay, and those small cuts or abrasions, what would
6 cause those?

7 A. It could either be from most likely from either finger
8 nails or from a watch or any kind of a sharp object.

9 Q. That is consistent with fingernails scrapes?

10 A. Yes.

11 Q. Is this photograph accurately depict what you testified
12 to as far as the injuries to Teresa Mae McAbee?

13 A. Yes, they do.

14 Q. I moved photograph XXX into evidence.

15 THE COURT: Any objection, Mr. Edmund?

16 MR. EDMUND: No objection, Your Honor.

17 THE COURT: State's XXX for identification admitted into
18 evidence without objection as State's Exhibit #38.

19 (WHEREUPON, STATE'S EXHIBIT #38 IS ADMITTED INTO
20 EVIDENCE)

21 Q. Now, Doctor, would you be able to further explain
22 the injury to the highway bone and the subdural injuries to
23 the neck better to the Jury by using the easel?

24 A. Yes, I would be happy to.

25 Q. Alright, sir, if you would stand down, I will get it

1 for you, sir.

2 (WHEREUPON, MR. HOGAN GETS EASEL FOR THE DOCTOR)

3 Q. If you would, please, just do a rough sketch of what
4 happened to Teresa Mae McAbee's neck and the injuries you
5 found?

6 A. This is the chin here and the mouth. The neck and
7 her shoulders. The voice box sits in this area of the neck
8 and then the trachea comes on down this way to the lung.
9 The highway bone is a U-shaped bone in this shape like in this
10 fashion and it is muscles attached to this bone as well as
11 to the thyroid cartilage or our voice box. There are also
12 muscles that cover this portion, that cover the voice box,
13 and there are hemorrhages into the muscles in this area here.

14 The thyroid cartilage was fractured in this area here,
15 or the highway bone.

16 Q. Thank you very much, Doctor.

17 (WHEREUPON, WITNESS RESUMES SEAT IN WITNESS STAND)

18 THE COURT: Do you want that marked, Mr. Hogan?

19 MR. HOGAN: Yes, sir.

20 THE COURT: What letter is that, please, ma'am?

21 CLERK OF THE COURT: 5Hs.

22 THE COURT: HHHHH.

23 MR. HOGAN: Just for the record, HHHHH will be the diagram
24 that Dr. Shutze just drew and I move that into evidence.

25 MR. EDMUND: No objection, Your Honor.

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1 THE COURT: State's HHHHH for identification admitted
2 into evidence without objection as State's Exhibit #39.

3 (WHEREUPON, STATE'S EXHIBIT #39 IS ADMITTED INTO EVIDENCE
4 WITHOUT OBJECTION)

5 Q. Dr. Shutze, continuing with your examination during
6 the autopsy, can you tell us about the other injuries to
7 Teresa Mae McAbee?

8 A. The other traumatic injuries were that in the left
9 arm again, was contusion of the inner surface of the left arm,
10 as well as abrasions on this side.

11 Q. Is this injury consistent with being held by human
12 hands?

13 A. Yes, it is consistent with what we commonly see in a
14 sexual assault. A person grabs the victim and with both hands,
15 holds the arms in an attempt to hold the victim down on their
16 back.

17 Q. And please continue with what else you found?

18 A. The other injury was that of the laceration of the
19 hymen, which is a thin membranous tissue that covers a portion
20 of the entrance of the opening of the vagina.

21 Q. Now, was Teresa Mae McAbee, was she a large girl?

22 A. No, she was a small girl, just a slight girl; thin
23 and the vaginal opening was small.

24 Q. Can you tell us how tall she was? Teresa Mae McAbee?

25 A. She was 58 inches in length.

1 Q. And how much did she weigh?
2 A. She weighed eighty-three pounds.
3 Q. Now, this tear to the hymen, how big was that tear?
4 A. It was in the metric system, one centimeter, which
5 would be approximately one-half of an inch.
6 Q. Examining Teresa Mae McAbee in the vaginal area,
7 and the fact that she had a tear to the hymen, is that
8 consistent with any type of criminal act?
9 A. This is consistent with vaginal penetration, which
10 is seen with sexual assault.
11 Q. Is there any indication that Teresa Mae McAbee,
12 prior to this laceration to her hymen, had engaged in sexual
13 activity?
14 A. I am sure she had not.
15 Q. Is this type of injury painful, Doctor?
16 A. Extremely.
17 Q. Doctor, can you tell us from someone with strangulation
18 or indication of strangulation found on the body of Teresa
19 Mae McAbee, can you give us some indication of how long that
20 person would remain conscious during that process?
21 A. They would lose consciousness if all of the air
22 was, you know, all of the pharynx, or the airway was
23 completely obstructed, a person would lose consciousness in
24 a period of one to two minutes.
25 Q. One to two minutes. Now, Doctor, this injury to the

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1 hymen, can you tell us if that was done to Teresa Mae
2 McAbee while she was still alive?

3 A. Yes.

4 Q. The answer is yes, she was alive when that happened?

5 A. Yes.

6 Q. Doctor, I would like for you to assume the fact
7 that (1) that the body of Teresa Mae McAbee had the injuries
8 to the neck that you found, that being the subdural hematoma
9 or bleeding in the muscles of the neck; the broken highway
10 bone; the bruising on the arm consistent with having been
11 held; the torn hymen in the very small vaginal tract; the
12 fact that she had never had any type of sexual activity
13 prior to this attack; and also, assume that semen is found
14 in the inside seat portion of her blue jeans and in the seat
15 or crotch area of her underpants. What type of criminal act
16 would that evidence be consistent with?

17 A. It would be consistent with a sexual assault on the
18 victim in which there was a partial penetration of the vaginal
19 tract and then subsequent ejaculation of the assailant into
20 the clothing of the victim.

21 Q. Okay, sir. I show you what has been marked for
22 identification. Let me approach the bench. It might save
23 some time.

24 (WHEREUPON, BENCH CONERENCE IS HELD AS FOLLOWS:)

25 THE COURT: Five Ds and five Es for identification.

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1 MR. EDMUND: The same objection as to the preceding
2 photographs marked for identification.

3 THE COURT: What are these photographs?

4 MR. HOGAN: Those are of the tear to the hymen, Judge.
5 They also depict how small the girl was. I don't, you know...
6 I don't think that the doctor is going to be able to draw
7 this evidence, because of the size, the relative size of the
8 vaginal opening.

9 MR. EDMUND: I don't think the doctor needs to draw. He
10 has graphically drawn by words which was sustained. Who
11 in this courtroom denies that she was a tiny child that was
12 assaulted.

13 MR. HOGAN: There is one other point that I would like to
14 make with these photographs, and that is that I anticipate,
15 based on Mr. Edmund's opening, that he is going to argue that
16 to quote him "profuse bleeding" from this injury and there
17 wasn't, and this picture shows that.

18 MR. EDMUND: These pictures do not speak to that. The
19 doctor's testimony speaks to that and I will speak to him
20 about that and we'll find out whether I was right or whether
21 I was wrong on cross examination.

22 THE COURT: These two photographs, I specifically find
23 that these are not necessary or prejudicial. They are simply
24 small photographs of the tear of the hymen and over defense
25 objection, I am going to admit these two and let the doctor

1 testify to them.

2 MR. HOGAN: Thank you, Judge.

3 (WHEREUPON, BENCH CONFERENCE ENDS)

4 DIRECT EXAMINATION CONTINUES

5 BY MR. HOGAN:

6 Q. Doctor, I would like to show you two photographs,
7 and for the record they are marked for identification first
8 with five Ds and it is DDDDD and five Es, EEEEE, and ask you
9 if you recognize those photographs?

10 A. Yes, these are photographs of the external genital
11 area of that of Teresa McAbee, taken at the time of autopsy.
12 They depict the tear in the vaginal hymen as well as we were
13 in the process of taking samples from the vaginal at the time
14 too... no, I will take that back. What we are doing is just
15 taking the photograph of that laceration rather than taking
16 samples.

17 Q. There was also depicted in the photograph a human
18 hand.

19 A. Yes.

20 Q. That is yours?

21 A. Yes.

22 Q. And that, therefore, would have some prospective on
23 how small the girl was?

24 A. Yes, my hands are not very large.

25 Q. And those photographs accurately depict what you

1 testified to?

2 A. Yes, sir.

3 Q. We would move these into evidence, Judge.

4 THE COURT: State's Exhibit DDDDD will be admitted into
5 evidence as State's Exhibit #40 over noted objection.

6 State's Exhibit EEEEE will be admitted into evidence as
7 State's Exhibit #41 over noted objection.

8 (WHEREUPON, STATE'S EXHIBITS #40 AND 41 ARE ADMITTED INTO
9 EVIDENCE OVER OBJECTION)

10 Q. Doctor, can you give us your opinion as to the cause
11 of death of Teresa Mae McAbee?

12 A. The cause of death is a combination of strangulation
13 and drowning. The ultimate cause of death would be most
14 consistent with drowning because of the pedicle formation
15 present on the body at the time the body was found and removed
16 from the lake.

17 Q. Doctor, based on the fact that the body of Teresa
18 Mae McAbee was found floating face down, in fact, her feet
19 were still on the bank of the lake, as you saw her and as you
20 identified in the photographs, can you give us your opinion as
21 to whether or not she was unconscious at the time she was
22 placed in the water?

23 A. No, I am not able to give an opinion as to whether
24 she was conscious at the time she was placed in the water.

25 Q. The only other question, Doctor, can you give us your

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1 opinion as to whether she was strangled prior to being placed
2 in the water?

3 A. No, I can't tell you for sure as to the fact that
4 she was strangled before or simultaneously at that time.

5 Q. So the strangulation and drowning occurred at
6 approximately the same time?

7 A. Yes, sir.

8 Q. Now, Doctor, you then, of course, ruled out any
9 natural cause of death?

10 A. Yes, sir.

11 Q. Would it be fair to say this death was the result
12 of a homicide?

13 A. Yes, sir.

14 Q. Intentional act?

15 A. Yes, sir.

16 Q. Doctor, you had an occasion further in this case to
17 be called upon to take into evidence several hair samples from
18 different people?

19 A. Yes, I was.

20 Q. Let me show you just for identification purposes
21 Exhibits N, P, O, RR, LLL, MMM, that being the known hair
22 samples of Armando Morales, Antonio Morales, Salvador Calisto,
23 Tammy Zavala, Pedro Zavala and Dorothy McAbee, and Armando
24 Morales. These are the type of envelopes or sample envelopes
25 that you prepare for the Sheriff's Office?

1 This first one being LLL, Antonio Morales?

2 A. Antonio Morales. Yes, this is my writing and
3 signature on it.

4 Q. And likewise, for MMMM, which is identified as
5 Armando Morales?

6 THE COURT: Are you saying "M", Mr. Hogan?

7 MR. HOGAN: Three Ms.

8 THE COURT: Three Ms. Thank you.

9 A. Yes, this is the hair ... these are the envelopes
10 in which the hair samples were placed at the time they were
11 removed from Armando Morales.

12 Q. These are N, single N, which would be the hair samples
13 of Salvador Calisto?

14 A. Yes, these are the hair samples that were removed
15 from Salvador Calisto by me and transferred to the Deputy at
16 the time of collection.

17 Q. Okay, sir. Next is for identification purposes SS,
18 the hair standards of Maximinio Rubio.

19 A. Yes, these are the envelopes in which the hair samples
20 were placed and given to the Deputy at the time of collection.

21 Q. Okay, sir. Thank you. Next is for identification
22 purposes a P, single letter, which would be the hair standards
23 of Tammy Zavala.

24 A. Yes, these are the envelopes in which the hair samples
25 were placed ... they were placed in envelopes by the deputy

1 and the collection was made by me at my office.

2 Q. Next will be single letter D, which would be the hair
3 standards of Pedro Zavala. Okay, this might be an O. Judge,
4 I misread it. It is a flat sided O.

5 THE COURT: Call it O then.

6 A. These are the envelopes in which the hair samples
7 that were removed from Pedro Zavala were placed by the
8 deputy at the time of collection.

9 Q. Thank you, sir. I show you what is marked for
10 identification by letters RR, the hair standards of Dorothy
11 McAbee.

12 A. Yes, these are the envelopes in which the hair samples
13 were placed by the deputy after I had collected them from Mrs.
14 McAbee.

15 Q. Okay, sir. And lastly, letter V, the hair sample
16 of Armando Morales.

17 A. Yes, these are the envelopes in which the hair
18 samples were placed by the deputy at the time of collection
19 by me of Armando Morales.

20 Q. May I have one moment, Judge?

21 THE COURT: Yes, sir.

22 Q. Now, I show you what is marked with YY, that being
23 the hair standards collected from the defendant and ask you
24 if you recognize those packages?

25 A. Yes, these are the envelopes in which the hair samples

1 were placed by the deputy at the time the collection of hair
2 samples were removed from the defendant.

3 Q. Now, if you could, Doctor, explain to the folks
4 on the jury, in each of these cases, how you go about collecting
5 hair samples? In other words, what regions of the body do
6 you take hair samples from and how do you do that?

7 A. Samples of hair removed from the scalp, the chest,
8 the abdomen, arms, legs, pubic area, fifty samples are removed
9 from each area. From the scalp, from the head, we removed
10 fifty samples from the front, the back... from the front and
11 the back and from each side. And from the top. Also, from
12 the chest area, if there is sufficient amount of hair present
13 on the chest, then there are fifty samples removed, or whatever
14 hair is present, we do remove from the chest, and the same
15 from the abdomen. Again, depending on the amount of hair
16 present.

17 From the arms and legs, we just take fifty samples from
18 one arm and one leg and then the pubic area, the samples are
19 obtained from several areas around, in the pubic area. From
20 the ... we usually start at the top and go across the top
21 and three across in three areas, and then down near the
22 ... if it is a male, on the shaft near the top of the shaft
23 of the penis and then down both sides as well as if there is
24 hair on the shaft of the penis, those are also sampled.

25 Q. Now, Doctor, as you take ... as you pull each hair

1 from each region, you then place that in a separate envelope?

2 A. Yes.

3 Q. And you do that as you are pulling the hair?

4 A. Correct.

5 Q. And you went through each one of these pieces of
6 evidence you identified, you testified that you pulled the
7 hair and placed the hair in the envelope that the deputy is
8 holding, is that correct?

9 A. Yes, they were wrapped in ... they were all placed in
10 a square or rectangular portion of paper and the paper was
11 folded and then placed in the envelope.

12 Q. So that you are careful to keep each sample separate
13 in its own envelope?

14 A. Yes, sir.

15 Q. May I have a moment, please. Thank you, Doctor.
16 Thank you, Judge.

17 CROSS EXAMINATION

18 BY MR. EDMUND:

19 Q. Doctor, I am Jack Edmund. Doctor, you indicated
20 that at the present time the State's Exhibits that are marked
21 for identification, N, P, O, RR, LL, MM and YY, contain hair
22 samples that you had personally taken from the bodies of the
23 individuals whose names you attached to each, is that correct?

24 A. Yes. Would you repeat the question?

25 Q. Contained hair samples that you had personally taken

1 from the bodies of each of the individuals that you named
2 related to each of the numbers or letters I read off to you?

3 A. Yes, I did remove the hair samples in the presence
4 of a deputy from the Lake County Sheriff's Office, except for
5 Armando Morales and Antonio Morales, and a deputy was not
6 present during these collections.

7 Q. Now, Doctor, have you examined any one of those
8 exhibits marked for identification, either N, P, O, RR, LL,
9 MM, or YY... MMM or YY, this morning or within the immediate
10 past to determine even if there is hair in them now?

11 A. No, I have not. You mean taken the contents and
12 removed them from the envelopes? I have not seen the hair
13 samples since the time of collection.

14 Q. And if you saw the hair samples, you would not be
15 able to determine whether or not they were the hair samples
16 that you had the deputy put in each of those individual
17 envelopes, would you?

18 A. No, I would not.

19 Q. Alright, sir. So, when you made the statement that
20 these exhibits that are marked for identification contain
21 hair samples, you were assuming that there was still hair inside
22 each of those envelopes?

23 A. Yes, what I am saying is those were the envelopes
24 in which the hair was placed at the time of collection.

25 Q. Would it be a fair statement to say that those ...

1 you recognize the envelopes and you know that you had the
2 hair put in them, but you don't have any knowledge of what
3 is in them at this time?

4 A. I do not.

5 Q. Alright, sir, thank you. Doctor, would the penis
6 of the individual who committed this assault and rape on
7 this little girl have suffered any trauma? Would it have
8 suffered any discernible abrasion or contusion or anything in
9 your years of medical experience? Would you have an opinion
10 as to that?

11 A. I think it is unlikely that the penis would have
12 received any injury, noticable injuries or identifiable injury
13 form this act.

14 Q. Alright. Would you give the Jury your best medical
15 opinion as to whether the strangulation and the drowning,
16 whether the strangulation preceded, was concurrent with, or
17 followed the drowning? It would be unlikely, I suppose, if the
18 strangulation followed the drowning. Could you give them your
19 best medical opinion?

20 A. My best medical opinion is that most probably the
21 strangulation and drowning occurred simultaneously, at the
22 same time, but that is my medical opinion.

23 Q. Thank you. Now, could you differentiate between
24 a statement where you would say moderate bleeding on one
25 occasion and considerable bleeding on another, is there some

1 difference in that?

2 A. I think it is a subjective... I think the amount of
3 bleeding is a subjective finding and probably would be
4 described differently from one person to another.

5 Q. From one person to another. Now, the photographs
6 ... may I have the last two by number, please, madam clerk,
7 I just need the numbers... forty and forty-one... State's
8 Exhibits 40 and 41, which display the vaginal area of the
9 victim, that is in a state... those photographs were taken
10 after the body had been cleaned and would not be the state
11 that one would observe, for example, had a similarly built
12 child suffered a similar laceration and not been placed in
13 water and not been cleaned up in any way. The evidence of
14 the blood would be substantial on the latter example, would
15 they not, Doctor?

16 A. Would you repeat the question?

17 Q. Yes, sir. These photographs, 40 and 41, we referred
18 to, show the vaginal area after or during the autopsy when
19 it had been cleared, is that correct?

20 A. That is correct.

21 Q. And further, the body had been emerged in water for
22 a considerable period of time, assumably, that is correct?

23 A. That is correct.

24 Q. So the depiction in the photographs 40 and 41,
25 Exhibits 40 and 41, would not reflect what one would observe

1 had the body not been placed in water and had the body not
2 been cleaned prior to the time the photographs were taken
3 as it relates to the visibility of blood?

4 A. That is correct.

5 Q. Alright. When you said moderate amount of blood,
6 would you liken it to something that I might recognize?

7 A. What I am saying is that there was a sufficient
8 amount of blood to be visibly present in the underpants, but
9 not sufficient enough ... but not sufficient bleeding to be
10 visibly present in the ... in her outer garment, in her jeans.

11 Q. Now, approaching that issue, this is not the type of
12 laceration to the hymen that could have been effected with
13 her jeans up, zipped, and buttoned, is it?

14 A. No, it is not.

15 Q. But it is the type of laceration or injury that
16 under certain circumstances could have been effected with her
17 panties still on?

18 A. It is possible.

19 Q. It is, though, nevertheless, the type of injury that
20 it likely would have been sustained, based upon your general
21 knowledge of attacks, rapists, etc., when both of those
22 garments had been fully removed?

23 A. It is most consistent with that, yes, sir.

24 Q. And that it is most consistent.

25 A. By fully removed, you mean from the body?

1 Q. At least to a point that the man would be able to
2 place himself in a position to effect the penetration?

3 A. Or move the clothing to one side or the other.

4 Q. Well, how are you going to move blue jeans from one
5 side to the other to effect that penetration?

6 A. I am talking about moving the underpants.

7 Q. Alright, but again, you say in cases of this nature,
8 you would generally expect the clothing would have been
9 removed, pulled off, torn off, or something of that nature?

10 A. Yes, sir. In sexual assaults in the majority of
11 the time, the clothing is either torn off or removed.

12 Q. Or removed completely?

13 A. Depending on the situation.

14 Q. Did you remove the clothing from this child?

15 A. Yes, I did.

16 Q. Did you observe any tears, rips or any sort of
17 defects to the jeans?

18 A. No, I did not.

19 Q. To the panties?

20 A. No, I did not.

21 Q. Would this indicate to you then that in all
22 probability each had been removed?

23 A. I would not be able to say.

24 Q. Would it be a fair statement to say that to effect
25 this type of penetration, there is a great probability that

1 the jeans were fully removed or at least removed totally from
2 one leg?

3 A. I think it is possible to inflict these injuries to
4 be inflicted with the jeans partially removed, say down to the
5 knees, or say off of one leg.

6 Q. Okay, thank you. And the panties was a pure matter
7 of speculation?

8 A. As to what?

9 Q. As to being removed, being moved aside, being partially
10 removed, or otherwise?

11 A. I think they could be partially removed or I think
12 the crotch could be moved over to one side of the genital
13 area, so as to allow the assailant to perform the act.

14 Q. Did you get any indications whether or not this
15 laceration to the hymen was effected before or after the
16 child lost consciousness?

17 A. It is my opinion that from the amount of blood present
18 in the underpants, that this happened immediately or in the
19 state, probably immediately before the body was placed in
20 the water.

21 Q. From what did you draw that conclusion, Doctor?

22 A. Well, if the person had been alive... if the victim
23 had been alive for a longer period of time, there would have
24 been more blood present from the injury.

25 Q. Right, Doctor. What you are saying is that what you

1 observed indicates to you, because the panties were on, and
2 the pants were up and buttoned and zipped, that the rape
3 probably took place virtually simultaneous to the strangulation
4 and the drowning?

5 A. Or in close proximity to.

6 Q. But it is just as reasonable is it not, to assume
7 that had the panties been removed, had the jeans been removed,
8 the rape could have taken place ten hours before and had the
9 panties not been put back on, and had the jeans not been
10 put back on, we would have the same indication in the panties
11 when they were finally put on and the body dropped in the
12 water?

13 A. I doubt it. The time frame there is, from the time
14 of the assault, assuming that the clothing was removed, that
15 she would still have bleeding from the injury.

16 Q. Alright, Doctor, how long would she bleed?

17 A. I think that is probably an individual thing, but
18 an individual ... it would vary from one person to another.
19 But from this injury, it is possible that this person could
20 ooze blood For a period of maybe one to two hours.

21 Q. Certainly up to an hour?

22 A. Certainly.

23 Q. Right, and the child could have been disrobed
24 then for an hour and still have been bleeding during that
25 period of time when the panties were put back on and as a

1 result, the indication that small amount of blood in the
2 panties?

3 A. That is true.

4 Q. But a greater amount of bleeding than what you
5 observed is consistent with a laceration of the hymen of
6 that sort, is it not?

7 A. Repeat the question, please?

8 Q. A greater amount of bleeding than the small amount
9 that you observed in the panties is consistent with and
10 expected in a laceration of the hymen of the type depicted
11 in Exhibits 40 and 41?

12 A. Usually, the amount of blood is considerable.

13 Q. Considerable, and as a matter of fact considerable
14 is the word that you used when you were briefing the law
15 enforcement officers relative to this case, as opposed to
16 moderate, isn't it?

17 A. I can't remember.

18 Q. If the reports were to reflect it, that is likely
19 what you told them, is it not?

20 A. I can't remember what I ...

21 Q. Then is it the phrase that you just used to the Jury
22 as opposed to moderate, you have now used considerable?

23 A. Yes.

24 Q. In your terminology, is there a difference between
25 moderate and considerable?

1 A. Considerable is a term of which I would use to
2 indicate more bleeding.

3 Q. So you have now used both moderate and considerable.
4 Could you use substantial?

5 A. Substantial and considerable would...

6 Q. Would be virtually similar, aren't they?

7 A. Similar.

8 Q. May I have a moment, Your Honor.

9 When you first observed the body, the jeans were up, zipped,
10 and buttoned, were they not?

11 A. Yes.

12 Q. And when you first observed the body, the shoes were
13 on, laced and tied, were they not?

14 A. Yes, sir.

15 Q. And the socks were inside the shoes and on the feet?

16 A. Yes, sir.

17 Q. Thank you, sir. Thank you, Your Honor.

18 RE-DIRECT EXAMINATION

19 BY MR. HOGAN:

20 Q. Doctor, you testified that from that type of injury
21 you would have expected considerable or possibly more bleeding
22 than you found in the panties of Teresa Mae McAbee, is that
23 correct? You just testified to that?

24 A. Yes, sir.

25 Q. Isn't that also consistent with your previous

1 testimony?

2 MR. EDMUND: I object to the leading question, if it
3 please the Court.

4 MR. HOGAN: I haven't had a chance to ask a leading
5 question.

6 MR. EDMUND: It sounds to me as though it is leading
7 coming out, Your Honor. May we approach?

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

9 MR. EDMUND: Isn't that also consistent with is not a
10 question on direct examination if it please Your Honor.
11 That is a question that leads into a yes or no answer, but
12 a statement is made that is prejudicial perhaps that regardless
13 of what the answer is, the effect of the question is still
14 in the mind of the Jury, would be as an affirmative.

15 MR. HOGAN: This is an expert witness. Mr. Edmunds went
16 through this long, "what if? What if? What if?" questions.
17 I have a right to rehabilitate the expert witness and expert
18 witnesses, you can ask them leading or hypothetical questions.
19 I am asking, what I am doing at this point is asking him to
20 recall a segment of his direct examination, so that I can
21 question him on that, and I should be allowed to direct him
22 to that without having to go back through the entire direct
23 to get there.

24 THE COURT: I understand what you are saying, but when you
25 start, "Isn't that consistent with" you are obviously asking

1 a leading question. I am sure you can re-phrase it.

2 MR. HOGAN: I certainly can.

3 THE COURT: Okay, I'll sustain your objection to that
4 question.

5 MR. EDMUND: Thank you, Your Honor.

6 (WHEREUPON, BENCH CONFERENCE ENDS)

7 Q. Doctor, directing your attention to your opinion on
8 the sequence of events, your testimony, I believe, if I could
9 direct you to that, would be previously that the sexual
10 assault occurred simultaneously with or immediately prior
11 to the strangling and drowning?

12 A. Yes, that is correct.

13 Q. And would the strangulation and drowning or death
14 of Teresa Mae McAbee have stopped the bleeding from the teat
15 in her hymen?

16 A. Yes, the bleeding would have stopped... it may not
17 have stopped it completely, but with this type of injury,
18 the blood backs up in the periphery of the body, because of
19 the distribution of this type of manner of death, with
20 strangulation, the heart beats more rapidly in an attempt
21 to pump oxygen to the brain as well as to the rest of the
22 body, and in the faster the heart beat, then the heart
23 subsequently fails and the blood, as a result of this failure,
24 backs up in the skin and muscles and organs of the body. As
25 a result of this peripheral congestion, or accumulation of

1 of blood, there would be some oozing after death, but it would
2 be not too great. It would be a small amount.

3 Q. So then, Doctor, the injury, the tear to the hymen
4 that you found, do you have an opinion as to when that
5 occurred in relationship to the death?

6 A. Yes, I feel that the sexual assault occurred immediate-
7 ly prior to death.

8 Q. Can I have one moment, Judge.

9 Thank you, Judge. Thank you, Doctor.

10 RE-CROSS EXAMINATION

11 BY MR. EDMUND:

12 If it please, Your Honor.

13 Q. Didn't you say, Doctor, that you base that opinion
14 upon the amount of blood you found in the panties?

15 A. That is correct.

16 Q. And didn't you say that if the panties had been
17 taken off the sexual assault could have taken place as long
18 as an hour before and the hymen would have still been oozing
19 blood? And the panties put back on and wind up with the same
20 amount of blood in the panties , isn't that what you said?

21 A. That could also be the other scenario.

22 Q. Well, you would rather the scenario for the
23 prosecution, I would rather the scenario for the defense,
24 but they are both equal scenarios, are they not?

25 A. With this...

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1 Q. With what exception, Doc? Give us an exception?

2 I have no further questions.

3 A. I think that it is my opinion that with this type
4 of injury, it has been my experience that the one act follows
5 another closely.

6 Q. Doctor, you are basing your opinion on something in
7 the past. I am asking you for a medical opinion now. You
8 gave it. You say that there are two equal scenarios as to how
9 this could have occurred, did you not?

10 A. That is right.

11 Q. Thank you, Your Honor. I have no further questions.

12 RE-DIRECT EXAMINATION

13 BY MR. HOGAN:

14 Q. Doctor, in your examination...

15 MR. EDMUND: Excuse me. I stand up too often.

16 MR. HOGAN: I agree with that.

17 MR. EDMUND: But I have got a young man here that does
18 it better.

19 Q. Doctor, in your examination of this injury to the
20 hymen of Teresa Mae McAbee, did you find any coagulated blood
21 or any other indication that this injury was any older than
22 you previously testified to?

23 A. No, I did not.

24 RE-CROSS EXAMINATION

25 BY MR. EDMUND:

1 If it please Your Honor.

2 Q. In all likelihood, had any blood coagulated, it would
3 have dissolved with the body in that water for whatever length
4 of time it was there, would it not?

5 A. No, if the blood was clotted, the blood clots would
6 not dissolve.

7 Q. We are talking about exterior, Doc. By the same token,
8 there is no reason that there would be any indication of
9 coagulation, would there? Why?

10 A. You were the one that mentioned coagulation.

11 Q. No, sir, he is the one that mentioned coagulation.

12 A. Okay, what was your question again, please, sir?

13 Q. I don't think I have any more, if it please, Your
14 Honor.

15 MR. HOGAN: Doctor.

16 MR. EDMUND: I didn't get any answer, so I don't think
17 there is any further re-direct.

18 THE COURT: He answered one question, I recall. Go ahead
19 Mr. Hogan.

20 RE-DIRECT EXAMINATION

21 BY MR. HOGAN:

22 Q. Clotted blood... I may have said coagulated, I mean
23 clotted blood, did you find any clotted blood either
24 interior next to the injury or anywhere on the crotch area of
25 Teresa Mae McAbee?

1 A. Let me refer to my notes. I have no documentation
2 in my notes in the autopsy protocol indicating blood clots.

3 Q. Could you give us the time of death?

4 A. The time of death ... the best estimated death is
5 sometime between around eleven and twelve on the evening of
6 4/11/87.

7 Q. Thank you, sir.

8 RE-CROSS EXAMINATION

9 BY MR. EDMUND:

10 Q. There is no place in your autopsy protocol that you
11 would indicate coagulated blood, is there?

12 A. I would have indicated whether there was clotted blood
13 present in the vagina.

14 Q. In the vagina, but not on the exterior. As a matter
15 of fact, you cleaned it up and you made no reference to it
16 in any autopsy, do you, Doctor?

17 A. Yes, I do.

18 Q. When they bring a stab victim in to you and somebody
19 cut him from here to here and he is bleeding all over the
20 place, do you mean to tell this jury in your autopsy report
21 you say the victim was covered with blood?

22 A. Yes.

23 Q. Doc, when is the last time you put that in an
24 autopsy report? The victim is covered with blood?

25 A. What I say, I describe the clothing and the amount of

1 blood present on the clothing. Then I describe there is
2 blood present on the exterior surface of the body and in those...
3 and ...

4 Q. And what?

5 A. And on the individual areas that are involved.

6 Q. On the individual areas that are involved, right.

7 A. With the injury.

8 Q. But you won't say in your autopsy report that there
9 was clotted blood here; there was clotted blood there. You
10 wouldn't use the term, would you?

11 A. Well, the blood is... by the time we see the body,
12 it is clotted. It is dry.

13 Q. You would not use such a term on ... that is not a
14 medical term, clotted, is it?

15 A. It sure is.

16 Q. Well, not on the outside of a person. That is
17 coagulated. Clotted is on the interior, isn't it? When
18 it runs in the veins and clots up?

19 A. Clotting is a more accurate determination than
20 coagulated.

21 Q. I agree with you entirely, but I never had a doctor
22 up until you agree with me on that. They want to use these
23 terms we would rather not use...

24 MR. HOGAN: Excuse me.

25 MR. EDMUND: I am sorry. Please forgive me. No further

1 questions, Your Honor.

2 RE-DIRECT EXAMINATION

3 BY MR. HOGAN:

4 Q. Doctor, did you find any blood clots or clotting or
5 coagulating...

6 MR. EDMUND: I object on the grounds this is repetitious,
7 Your Honor.

8 THE COURT: We have both made it repetitious. Overruled.
9 Go ahead, Mr. Hogan.

10 Q. Did you find any coagulated or clotted blood at the
11 location of the injury to the hymen of Teresa Mae McAbee?

12 A. No, I did not.

13 Q. Thank you, sir.

14 MR. EDMUND: I wouldn't get up for anything...

15 THE COURT: Can we release the Doctor from his subpoena,
16 gentlemen?

17 MR. HOGAN: It would be a great thing for the State,
18 Judge.

19 THE COURT: Any objection, Mr. Edmund?

20 MR. EDMUND: No objection.

21 THE COURT: You are free to go, Doctor. Thank you, sir.
22 Let's take a fifteen minute recess, Mr. Bailiff, if we might.

23 (WHEREUPON, JURY LEAVES COURTROOM AT 10:24 A. M.)

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

25 (WHEREUPON, THE DEFENDANT IS REMOVED FROM THE COURTROOM)

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1 (WHEREUPON, COURT IS IN RECESS AT 10:25 A. M.)

2 (WHEREUPON, DEFENDANT IS PRESENT IN COURTROOM WITH HIS
3 COUNSEL, MR. EDMUND, AT 10:45 A. M.)

4 (WHEREUPON, COURT CONVENES AT 10:54 A. M.)

5 THE COURT: Anything before we bring the Jury back,
6 gentlemen?

7 MR. EDMUND: No, Your Honor.

8 MR. HURM: No, Your Honor.

9 (WHEREUPON, JURY ENTERS COURTROOM AT 10:55 A. M.)

10 THE COURT: Welcome back, folks. Be seated, please.

11 Folks, can you assure us you did abide by our admonitions
12 during recess?

13 JURORS: Yes, sir.

14 THE COURT: Thank you.

15 MR. HURM: The State's next witness, Your Honor, is
16 Deputy Randy Aleno.

17 (WHEREUPON, DEPUTY RANDY ALENO IS CALLED AS NEXT WITNESS
18 BY THE STATE AND IS DULY SWORN BY THE CLERK OF THE COURT)

19 DIRECT EXAMINATION

20 BY MR. HURM:

21 Q. Good morning, Deputy Aleno.

22 A. Good morning.

23 Q. Would you state your name, please?

24 A. Randall Robert Aleno.

25 Q. How are you employed, sir?

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1 A. I am with the Lake County Sheriff's Department.
2 Q. How long have you been with Lake County Sheriff's
3 Department?
4 A. A little over two years.
5 Q. Do you have prior law enforcement experience?
6 A. Yes, sir, totally, about eighteen and one-half years.
7 Q. Where was your prior experience?
8 A. Volusia County.
9 Q. What is your position with the Lake County Sheriff's
10 Department?
11 A. I am in the Technical Crime Scene Division.
12 Q. Would you explain what ... are you a Crime Scene
13 Technician?
14 A. Yes, sir.
15 Q. Would you explain what you do in that position?
16 A. Whenever it is necessary, I go to a crime scene
17 and process the scene and look for any physical evidence;
18 take latent prints; photographs and get it ready for Court.
19 Q. What do you mean processing the scene? What all
20 is involved in that?
21 A. If there is latent fingerprints, or fingerprints
22 left at the scene, we obtain those. Any physical evidence.
23 Each item left by suspects, perpetrators of the crime.
24 Q. It is the collection and preservation of evidence?
25 A. Yes, sir.

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1 Q. Is the sealing of a crime scene important to you to
2 do your job properly?

3 A. Yes.

4 Q. Why is it important?

5 A. To keep it from becoming contaminated.

6 Q. To make sure that the evidence left at the scene of
7 the crime is the only evidence there?

8 A. Yes, sir.

9 Q. Now, Deputy Aleno, do you sometimes on some cases,
10 major cases, such as homicide, enlist the aid of other
11 State agencies in helping you process the scene or evidence
12 found at the scene?

13 A. Yes.

14 Q. What agencies do you use?

15 A. We use the Florida Department of Law Enforcement,
16 the F. B. I. and sometimes other sources where they are
17 specialized analysts, or specialists in the field.

18 Q. Deputy Aleno, were you employed as a Crime Scene
19 Technician on 5/12/87?

20 A. Yes, sir.

21 Q. Did you have occasion to be dispatched to the area
22 of Knight Lake in Mascotte?

23 A. Yes, sir.

24 Q. What time were you dispatched and what time did you
25 arrive?

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1 A. I was dispatched a little after nine A. M. in the
2 morning and I arrived approximately 9:35.

3 Q. What did you find when you arrived?

4 A. There were other officers on the scene and they had
5 their vehicles stopped at a certain point. In the procedure,
6 we do not penetrate an area until we know where the actual
7 crime scene is.

8 Q. Deputy Aleno, in the process of your responsibilities
9 with regard to this particular case that began on May 12, 1987,
10 did you prepare a diagram of the crime scene area?

11 A. Yes, I did.

12 Q. Was that diagram to scale?

13 A. Yes, sir.

14 Q. I show you, Deputy Aleno, on this easel, which has
15 been marked as State's Exhibit #26 in evidence, do you
16 recognize it?

17 A. Yes, sir, I do.

18 Q. Is this the diagram that was prepared?

19 A. Yes, sir, it is.

20 Q. Do you mind, with the Court's permission, if I could
21 have the witness step off the stand and come down to the
22 diagram?

23 A. No.

24 Q. Deputy Aleno, I give you a pen to use as a pointer.
25 Would you indicate, please, sir, so that all the members of

1 the Jury can see, stand back to the side, and then indicate
2 for the record the direction you came into the crime scene
3 area.

4 Q. Highway 50 is North of this area. This is Sunset.
5 I proceeded down Sunset and at the intersection of Pearl
6 Street and I was informed the dirt road, right directly across
7 from Pearl Street, was the road I was to turn on.

8 Q. Was that over the radio or was there someone there
9 at the scene?

10 A. At this point, my basic directions to get there, I
11 turned and proceeded down this dirt road on around to this
12 area right in here.

13 Q. Now, you said there were other officers on the scene.
14 Who else was there when you arrived?

15 A. There was Sgt. Johnson, Lt. Wimberly, a person
16 identified later as Chief Brady of the Mascotte Police
17 Department.

18 Q. Were those... anyone else?

19 A. There were other people there, but without looking
20 at the records, I couldn't tell you.

21 Q. Now, where you pulled your vehicle up, were you on
22 the right side of the road? Or the left side?

23 A. No, sir, I pulled my vehicle at an angle to the
24 grove, back behind here.

25 Q. Who was the front vehicle in the procession there,

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1 if you recall?

2 A. Sgt. Johnson of the Lake County Sheriff's Office.

3 Q. Were any of the vehicles up to parallel or past
4 the pumphouse? Indicated on your diagram?

5 A. No, sir, they were not.

6 Q. Could you indicate, Deputy Aleno, I have some stickers
7 here... place one in the location of the furthest penetration
8 of any vehicle at the time you arrived at the scene, approxi-
9 mately, on the diagram?

10 (WHEREUPON, DEPUTY ALENO PLACES YELLOW STICKER ON DIAGRAM)

11 Q. And would the furthest sticker be as far forward as
12 they went?

13 A. I would say the front, it was probably back in a
14 little bit. It was a good distance from the pumphouse.

15 Q. Using that pen, if you would just mark #1 on that
16 yellow sticker.

17 And for the record, that #1 indicates the furthest
18 towards the pumphouse any vehicle was parked at the time you
19 arrived at the crime scene?

20 A. Yes, sir.

21 Q. Deputy Aleno, what was your first responsibility when
22 you arrived there?

23 A. Sgt. Johnson briefed me on the situation that we
24 had.

25 Q. Basically, what was that situation?

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1 A. He advised we had a young, white female's body that
2 had been found in the water just beside the pumphouse.

3 Q. And what did you do?

4 A. At that time, he briefed me on where the vehicles
5 had been as far as contaminating. He had advised me that
6 people had walked down to where the body was located. As far
7 as any penetration further down, there was a partial dead
8 orange tree approximately in this area here where all the
9 vehicles including the subject that had initially found the
10 victim.

11 Q. Jim Clark?

12 A. Yes, sir. Had all turned and proceeded back out the
13 same way they entered the crime scene.

14 Q. Is that point marked with a black dot just to the
15 East and a little bit Northeast of the pumphouse?

16 A. Yes.

17 Q. Alright, what did you do after learning all this
18 information?

19 A. I proceeded with the video camera to do a 360 degree
20 pan of the area, showing the location and then I proceeded
21 towards where the victim was located before any tampering
22 or anything was done with the body.

23 Q. With the video camera?

24 A. Yes, sir.

25 Q. Did you video the body in the water?

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1 A. Yes, I did.

2 Q. Did you also have occasion to take still photographs
3 in the water?

4 A. Yes, I did.

5 Q. First, I show you ... First, tell us what kind of a
6 road is that that you have marked in brown on the diagram?

7 A. It is a grass-dirt road all the way through. This
8 is paved blacktop. This is grassy and dirt all the way
9 through and around back to where it exits out.

10 Q. And it exits back out onto Sunset?

11 A. Yes, it does.

12 Q. I will show you what has been marked State's Exhibit
13 #27 in evidence. Do you recognize that photograph?

14 A. Yes, sir, that is the North side of the pumphouse.

15 Q. Did you take that photograph?

16 A. Yes, sir, I did.

17 Q. Is that how it appeared on that particular morning?

18 A. That is what I saw that day.

19 Q. I show you State's Exhibit 35 in evidence. What is
20 that?

21 A. That is on the North side of the pumphouse going down
22 this little opening here towards the water.

23 Q. The water where the body was found?

24 A. Yes, sir.

25 Q. Thank you, sir. State's Exhibit 28?

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1 A. This photograph was taken from the area on the East
2 side of the pumphouse and shooting down a little pathway
3 leading to the water.

4 Q. Would that be the East side of the pumphouse or the
5 West side?

6 A. That should be the West side.

7 Q. The West side of the pumphouse looking down to the
8 water. Alright. And then finally, this is State's 29 in
9 evidence?

10 A. Yes, sir, this is a photograph I took of the close-
11 up showing the victim in the water.

12 Q. Deputy Aleno, based on your examination of the scene
13 with the video camera and the still photographs at that time,
14 could you mark with this second yellow tab where you found
15 the body?

16 (WHEREUPON, WITNESS PUTS SECOND YELLOW TAB ON DIAGRAM)

17 Q. Mark that with #2, if you would, please.

18 Now, I understand from the photographs and from your
19 testimony that the body was found face down?

20 A. Yes, sir.

21 Q. In the water, with the head away from the bank?

22 A. Yes, sir.

23 Q. And the toes were kind of into the bank?

24 A. Yes, sir.

25 Q. What was the condition of the ground area, if you

1 would describe it, behind the pumphouse and down to the water's
2 edge? Elevation as well as texture of it?

3 A. It is a slope going all the way down. It is an
4 incline going down to that area and it was a hard gray-type
5 soil.

6 Q. Were there any stones or pebbles in the soil?

7 A. I don't recall any stones.

8 Q. When you say it was hard, what do you mean?

9 A. It had rained the night before and the ground was
10 packed.

11 Q. Was the ground wet when you were there at that point?

12 A. It would appear to have the dampened look like wet
13 sand.

14 Q. Now, after you video taped the body in the water,
15 what did you do?

16 A. I started observing different items in the area which
17 were also videoed; an old spare tire and items like this.
18 I found cigarette butts and cigar butts and just anything that
19 looked unusual that shouldn't have been there, or was
20 placed by human beings.

21 Q. Anything other than natural vegetation?

22 A. Yes, sir.

23 Q. After finishing the video taping, is that when you
24 took the still photographs?

25 A. Yes, sir.

1 Q. Have you had occasion to look at that video tape
2 since it was taken?

3 A. Yes, sir.

4 Q. As far as you know, the video camera was operating
5 properly?

6 A. Yes, sir.

7 Q. Is the video tape ...

8 MR. EDMUND: I will waive that predicate, Your Honor.

9 Q. Just one last question. Does it fairly and accurately
10 represent what you saw through the viewfinder and what you
11 saw without the viewfinder that day out at Knight Lake?

12 A. Yes, sir, it does.

13 Q. Deputy Aleno, after you finished photographing the
14 scene, what was your next duty, responsibility?

15 A. Still in photographing this was a more lengthy
16 process, because we went to the process because of tire tracks
17 that I had noticed at the crime scene.

18 Q. Where were the tire tracks?

19 A. They started just beyond the point where everybody
20 had made the turning around. I had one set of tire tracks
21 continue straight on down the dirt road.

22 Q. How far did you follow them?

23 A. Eventually, I followed those tire tracks all the way
24 around up to this point where it would appear to me this
25 vehicle was headed back towards Mascotte.

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1 Q. Now, you say there was one set of tire tracks. Were
2 there any others that appeared to have been obliterated by
3 that one set? Did you see any sign of any other tire tracks
4 other than that one set that you followed on the way out?

5 A. Beyond this point?

6 Q. Yes, sir?

7 A. No, sir.

8 Q. Now, did you photograph those tire tracks?

9 A. Yes, sir, I did.

10 Q. Did you note as you were photographing them, the
11 position of the tires or of the tracks the way you took these
12 photographs?

13 A. Yes, sir, I have that on my numbering...

14 Q. I show you what has been marked as State's Exhibit
15 YYY. Do you recognize that photograph?

16 A. Yes, sir.

17 Q. What does that depict?

18 A. This would have been one of the photographs I took
19 in this area right in here.

20 Q. How do you know it was that area?

21 A. By the 32-33 number on the back.

22 Q. What is 32-33?

23 A. That is my exposed number on the film, the negative.

24 Q. Would you take this yellow tab, please, sir, and
25 indicate either on the outside pointing in or on the inside

1 pointing out, the position where you took that particular
2 photograph?

3 (WHEREUPON, WITNESS PUTS THIRD YELLOW TAB ON DIAGRAM)

4 Q. And mark that with #3.

5 So then, you indicated with number three on the diagram
6 that that is where you took State's Exhibit YYY for
7 identification, the photograph?

8 A. Yes, sir.

9 MR. HURM: Your Honor, at this time, I would offer this
10 into evidence.

11 MR. EDMUND: No objection.

12 THE COURT: State's Exhibit YYY admitted into evidence
13 without objection as State's Exhibit 42.

14 (WHEREUPON, STATE'S EXHIBIT #42 IS ADMITTED INTO EVIDENCE
15 WITHOUT OBJECTION)

16 Q. Deputy Aleno, I show you what has been marked as
17 State's ZZZ for identification and ask you if you recognize
18 that?

19 A. Yes, sir.

20 Q. Before we get to that, Your Honor, was that State's
21 #42?

22 THE COURT: The last one was.

23 Q. Would you indicate #42 under the #3 on the yellow
24 tab?

25 Thank you. Where was that photograph taken? ZZZ for

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1 for identification?

2 A. This photograph would have been taken approximately
3 in this area. Starting a little incline here also.

4 Q. Would you take another yellow tab, please, sir, and
5 mark where you took that photograph?

6 (WHEREUPON, WITNESS MARKS WITH YELLOW TAB ON DIAGRAM)

7 Q. And mark that with #4, if you would.

8 Now, you have indicated the #4 on the yellow tab on the
9 diagram is where you took this particular photograph marked
10 State's Exhibit ZZZ for identification?

11 A. Yes, sir.

12 MR. HURM: Your Honor, I would offer this as State's
13 #43.

14 MR. EDMUND: No objection.

15 THE COURT: State's Exhibit ZZZ for identification admitted
16 into evidence without objection as State's Exhibit #43.

17 (WHEREUPON, STATE'S EXHIBIT #43 IS ADMITTED INTO
18 EVIDENCE WITHOUT OBJECTION)

19 Q. Would you mark a 43 on that, number 4.

20 I show you what has been marked AAAA for identification
21 and ask you if you recognize that?

22 A. Yes, sir, I do.

23 Q. How do you recognize it?

24 A. It is a partial barefoot print taken in this
25 photograph, along with the tire track.

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1 Q. Where did you discover that?

2 A. Right on this curve area.

3 Q. Would you indicate with this mark where that was
4 taken.

5 Put #5 on that sticker.

6 MR. HURM: Your Honor, I would offer AAAA into evidence.

7 MR. EDMUND: No objection.

8 THE COURT: State's Exhibit AAAA for identification
9 admitted into evidence without objection as State's Exhibit
10 44.

11 (WHEREUPON, STATE'S EXHIBIT #44 IS ADMITTED INTO EVIDENCE
12 WITHOUT OBJECTION)

13 Q. Would you indicate a #44 under that #5 on that
14 sticker.

15 Q. Did you have occasion... let me get that photograph
16 again, Deputy Aleno, the footprint you indicated marked there,
17 did you have occasion to measure that?

18 A. Yes, sir.

19 Q. What was the length of that footprint?

20 A. This footprint measured just under nine and one-half
21 inches.

22 Q. Thank you. Was that footprint made by a foot with a
23 shoe on or barefoot?

24 A. No, sir, it was barefoot.

25 Q. I show you next what has been marked State's BBBB,

1 for identification and I ask you if you recognize that
2 photograph?

3 A. Yes, sir.

4 Q. How do you recognize that?

5 A. Also by the partial barefoot print on the side of
6 the photograph and the tire print.

7 Q. Would you mark where you recovered that photograph?
8 Where you took that photograph?

9 (WHEREUPON, WITNESS MARKS ON DIAGRAM WHERE PHOTOGRAPH
10 WAS TAKEN)

11 Q. Would you mark that with #6.

12 MR. HURM: Your Honor, I would offer that photograph
13 as State's next in order.

14 MR. EDMUND: No objection, Your Honor.

15 THE COURT: State's Exhibit BBBB for identification
16 admitted into evidence without objection as State's Exhibit
17 #45.

18 (WHEREUPON, STATE'S EXHIBIT #45 IS ADMITTED INTO EVIDENCE
19 WITHOUT OBJECTION)

20 Q. Would you indicate #45 on that tab.

21 I show you what has been marked CCCC for identification.
22 Do you recognize that?

23 A. Yes, sir, I do.

24 Q. How do you recognize it, first of all?

25 A. This is the mentioned tire track and the only other

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1 place that I noticed besides right in this area where there
2 is any mud on the road, is over in the dumping area along this
3 section of the dirt road.

4 Q. Where did you take that photograph?

5 A. That would have been approximately right in this
6 area right here.

7 Q. Would you indicate that with another sticker, please.

8 (WHEREUPON, ANOTHER YELLOW STICKER IS PLACED ON DIAGRAM
9 BY WITNESS)

10 Q. Mark that #7.

11 MR. HURM: I would offer this into evidence, State's
12 CCCC for identification.

13 MR. EDMUND: No objection, Judge.

14 THE COURT: State's Exhibit CCCC for identification
15 admitted into evidence without objection as State's Exhibit
16 #46.

17 (WHEREUPON, STATE'S EXHIBIT #46 IS ADMITTED INTO EVIDENCE
18 WITHOUT OBJECTION)

19 Q. Would you write #46 in parenthesis, please, sir.

20 And then finally, I show you State's Exhibit DDDD for
21 identification and ask you if you recognize that?

22 A. Yes, sir.

23 Q. How do you recognize that? Where was that taken?

24 A. Between the two muddy holes in that area on the
25 road, I found this tire impression.

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1 Q. Would you mark that #7?

2 MR. HURM: Your Honor, I would offer that into evidence,
3 State's Exhibit DDDD for identification into evidence.

4 MR. EDMUND: No objection.

5 THE COURT: State's Exhibit DDDD for identification
6 admitted into evidence as State's Exhibit #47.

7 (WHEREUPON, STATE'S EXHIBIT #47 IS ADMITTED INTO EVIDENCE
8 WITHOUT OBJECTION)

9 Q. If you would write #47 on that one.

10 You said you followed the track to South Sunset Street?

11 A. Yes.

12 Q. What did you find at the intersection or South
13 entrance or exit of the crime scene and South Sunset?

14 A. The tire tracks as I stated continued on in this
15 direction and before my arrival here, I had been advised a
16 vehicle had pulled in here. We found broken tire impressions
17 in this point. They still appeared to be the same as I had
18 followed.

19 Q. How far were you advised the vehicle had come in that
20 way up the road?

21 A. Just a short distance.

22 Q. About how far? Up to where you have marked "dirt
23 road", or a little past that?

24 A. Yes, but I was understanding it was this area here.

25 Q. Go ahead.

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1 A. This vehicle that the tire impressions I was
2 following appeared to come back in a Northerly direction.

3 Q. What gave you that indication?

4 A. It is sandy through here and on an incline and a
5 little bit rough and by the spinning action of the tires on
6 the soil and everything, in a backwards motion, as if the
7 tire spun this way and grabbing and putting it back that way.

8 Q. That indicated the vehicle went North on South
9 Sunset?

10 A. Yes, sir.

11 Q. How long were you at the crime scene that day?

12 A. The first time I left there approximately around
13 12:30 - 1:00 o'clock.

14 Q. From the time you first arrived at 9:35 to the time
15 you left, did any vehicle go past this black dot which you
16 indicated was the furthest point you saw any tracks other than
17 the one you marked here; did any other vehicle go past that
18 point while you were at the crime scene?

19 A. No, sir.

20 Q. While you were there, did you see any Mascotte
21 police cars at the scene?

22 A. Yes.

23 Q. Could you describe them for us?

24 A. As I stated earlier, one of the vehicles was parked
25 behind Sgt. Johnson's vehicle, identified as Chief Brady's

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1 vehicle.

2 Q. Was that a marked or unmarked vehicle?

3 A. It was an unmarked vehicle.

4 Q. Did you have an opportunity at that time to look
5 at the tires any time that day, the tires on Chief Brady's
6 car?

7 A. Yes, sir, I did.

8 Q. Did you compare those with the impressions that
9 you photographed?

10 A. I visually looked at the tires on that vehicle, and
11 at that time they did not look like they did match.

12 Q. Now, getting back to ... you said this was a long
13 process of photographing tire tracks.

14 A. Yes.

15 Q. Back to the body in the water, with a #2 on the
16 diagram, how was that body removed?

17 A. By two of our officers. Sgt. Johnson and Investigator
18 Harris.

19 Q. Would you explain how they went about doing that?

20 A. They took a raincoat, one of which was mine and laid
21 the body on the second raincoat and placed the coat underneath
22 the body and lifted the body out of the water.

23 Q. I show you what has been marked as State's Exhibit
24 JJJJJ, five "J"s for identification. Would you look at what
25 is in that bag and tell me if you recognize it?

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1 A. Yes, sir.

2 Q. What is that?

3 A. This is the raincoat used to remove the victim
4 from the water.

5 Q. Now, after the victim was taken out on the raincoat,
6 you said you laid out another raincoat?

7 A. Yes.

8 Q. What then did you do?

9 A. I photographed the body.

10 Q. Video and still photography?

11 A. Yes.

12 Q. I show you what has been marked in evidence as
13 State's 36, and State's 37 in evidence. Would you look at
14 those photographs and tell me if you recognize those?

15 A. These are two of the photographs that I took of the
16 victim that day.

17 Q. As she was on the ground on the raincoat?

18 A. Yes.

19 Q. That is what the yellow is under her?

20 A. Yes, sir.

21 Q. Did you note anything about the victim's appearance?
22 Teresa's appearance? After she was pulled out of the water?

23 A. Yes, sir, I took the photos for two purposes. One
24 to show what she was wearing and again, any unusual marks on
25 the body.

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1 Q. Did you notice any unusual marks?

2 A. Yes, sir, I did.

3 Q. Tell us what you found?

4 A. In the neck area, the front of the neck, appeared to
5 be bruising and something similar to fingernail marks in the
6 center of her throat.

7 Q. Did you check the victim's clothing at all at that
8 point for anything in the pockets or anything like that?

9 A. Yes, sir, she was turned over. She was first placed
10 on the ground and she was face down, as the same position she
11 was in the water, and we could see in her pockets there was
12 a bulge in one pocket and what appeared to be two buttons or
13 two coins in the other pocket. It turned out to be two dimes.

14 Q. Were those removed at that time?

15 A. At the scene, no.

16 Q. You just observed the bulges and let it go until
17 later?

18 A. Yes, sir.

19 Q. How was the body removed after it was taken from the
20 water? How was it removed from the scene?

21 A. There was a funeral home called to come pick her up.

22 Q. So the body was taken out of the water and laid on
23 the raincoat on the ground?

24 A. Yes, sir.

25 Q. And then was she placed into other than raincoats,

1 what was she, if anything, placed into?

2 A. She was placed into a body bag.

3 Q. Was that zipped up and secured?

4 A. Yes, sir.

5 Q. And then placed in the funeral home car?

6 A. Yes.

7 Q. Where did the car go?

8 A. It went to the Medical Examiner's Office and it was
9 my understanding that an officer followed the funeral home
10 vehicle.

11 Q. Was that Lt. Wimberly?

12 A. I am not sure about that.

13 Q. Did you have occasion to go to the Medical Examiner's
14 Office later that day?

15 A. Yes, sir.

16 Q. For what purpose?

17 A. I arrived at the M. E. Office and set up the video
18 camera and videoed the autopsy and I took some pictures also.

19 Q. Now, did anyone else from your particular division
20 of the Sheriff's Office arrive that day to assist you in
21 processing the scene?

22 A. Yes.

23 Q. Who was that?

24 A. Deputy Gary Nelson.

25 Q. Did you make known to him your findings with regard

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1 to the tire tracks?

2 A. Yes, sir.

3 Q. At the autopsy, what was your function there? What
4 did you do?

5 A. I had the video camer so I set it up and just assisted
6 a short time and then I left.

7 Q. You video taped the autopsy?

8 A. Yes, sir.

9 Q. Did you collect any evidence at the acene of the
10 autopsy?

11 A. Yes, the victim's clothing.

12 Q. Did you have occasion to remove what was in the pockets
13 of her clothing at that time?

14 A. Yes, sir.

15 Q. I show you what is marked as State's Exhibit K for
16 identification and ask you if you will take the scissors and
17 open that. First of all, do you recognize that package?

18 A. Yes, sir.

19 Q. How do you recognize the package?

20 A. By the two numbers stated on the red tape I placed on
21 there.

22 Q. Go ahead and open it up, if you would.

23 MR. EDMUND: What was the ID numbers?

24 MR. HURM: That was K, I believe, for identification.

25 Q. What is in that package?

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1 A. Two dimes.

2 Q. Are those the two dimes you found in the back pocket
3 of the victim's jeans?

4 A. Yes, sir.

5 Q. I would offer that exhibit into evidence at this
6 time, Your Honor.

7 MR. EDMUND: No objection.

8 THE COURT: State's Exhibit K for identification admitted
9 into evidence as State's Exhibit #48, without objection.

10 (WHEREUPON, STATE'S EXHIBIT #48 IS ADMITTED INTO EVIDENCE
11 WITHOUT OBJECTION)

12 Q. Did you find anything else in that pocket?

13 A. Yes, the empty bottle of lip gloss.

14 Q. I show you State's Exhibit I for identification and
15 ask you do you recognize that?

16 A. Yes, sir.

17 Q. Would you cut that open, please, sir.

18 Is that what you found in the back pocket?

19 A. Yes, sir.

20 Q. That is the bottle of ... what is it?

21 A. Lip gloss.

22 MR. HURM: Your Honor, at this time, I would offer
23 that into evidence.

24 MR. EDMUND: No objection, Your Honor.

25 THE COURT: State's Exhibit I for identification admitted

1 into evidence without objection as State's Exhibit #49.

2 (WHEREUPON, STATE'S EXHIBIT #49 IS ADMITTED INTO EVIDENCE
3 WITHOUT OBJECTION)

4 Q. I show you what has been marked State's J for
5 identification. Was the little girl wearing any jewelry?

6 A. What appears to be a key ring she was wearing on
7 her ring finger.

8 Q. Would you open that, please, sir, and tell me if you
9 recognize that?

10 A. Yes, sir.

11 Q. That is what she had on her finger?

12 A. Yes, sir.

13 Q. I would offer that next in order, Your Honor.

14 MR. EDMUND: No objection.

15 THE COURT: State's Exhibit J for identification admitted
16 into evidence without objection as State's Exhibit #50.

17 (WHEREUPON, STATE'S EXHIBIT #50 IS ADMITTED INTO
18 EVIDENCE WITHOUT OBJECTION)

19 Q. You said, sir, that you recovered her clothing as
20 well. What did you do with the clothing?

21 A. Put it in a bag from the Sheriff's Office and held it
22 in evidence until it was taken to the crime lab.

23 Q. I show you what has been marked in evidence as
24 State's #4, a pair of blue jeans. Do you recognize those?

25 A. Yes, sir, those are the blue jeans the victim was

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1 wearing at the time that we discovered the body.

2 Q. Were you there when they were taken off the victim?

3 A. Yes, sir.

4 Q. Did you assist Dr. Shutze in that effort?

5 A. No, sir.

6 Q. When he removed the clothing, what did you do with it?

7 A. Placed it carefully into a bag in case there was any

8 evidence on, hairs, fibers, anything.

9 Q. They were placed in a bag and sealed by you?

10 A. Yes, sir.

11 Q. And then transported to the Department?

12 A. Right.

13 Q. I also show you what has been marked in evidence as

14 State's #3. Do you recognize that?

15 A. Yes, sir, these are the panties that the victim was

16 wearing at the time.

17 Q. Were those recovered in the same manner as the jeans?

18 A. Yes, they were.

19 Q. And placed into a bag, sealed by you and transported

20 to your department?

21 A. Yes, sir.

22 Q. There is one I neglected to pick up over here. I

23 show you what is State's #6 in evidence. A shirt. Do you

24 recognize that?

25 A. Yes, sir. This is the knit top that the victim was

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1 wearing at the time.

2 Q. Was that recovered the same way as the jeans and
3 panties?

4 A. Yes, sir.

5 Q. And also sealed by you?

6 A. Yes, sir.

7 Q. Deputy Aleno, did you have occasion to subsequently...
8 before I get to that, did you also recover the shoes and socks?

9 A. Yes, sir.

10 Q. And they were handled the same way?

11 A. The same manner, yes, sir.

12 Q. Did you have occasion to transport all of these
13 items, including the raincoat, to the Florida Department of
14 Law Enforcement?

15 A. Yes, sir, I did.

16 Q. Were they in a sealed condition, the same sealed
17 condition as when you recovered them from the autopsy, when
18 you delivered them to the lab?

19 A. Yes.

20 Q. Now, did you return after the autopsy and after
21 collecting this evidence, did you have occasion to return
22 to the crime scene?

23 A. Yes, sir, I did.

24 Q. About what time was that?

25 A. Approximately 3:30 in the afternoon, as I recall.

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1 Q. I promise I am going to let you sit down. I have
2 one more thing for here. When you returned to the crime scene,
3 did you further look at the tire tracks?

4 A. Yes, sir.

5 Q. Was there anything else brought to your attention
6 regarding the tire tracks?

7 A. Anything other? It had been mentioned that a suspect
8 vehicle had, to the best of my recollection, was a red Pontiac
9 firebird vehicle with large back tires and small front tires,
10 was a suspect vehicle and I advised the investigator these
11 tires appeared to be the same size and very good condition.
12 This assisted in their investigation.

13 Q. Did you see any vehicles at the scene that made
14 tire impressions that appeared to be similar to tire impressions
15 you spoke of?

16 A. Yes, sir. The other police car in Mascotte, arrived
17 on the scene.

18 Q. While you were there?

19 A. Yes, sir.

20 Q. How far did they get up into the scene?

21 A. They were in back in this area here.

22 Q. Mark that with a yellow tab, please, sir.

23 Indicate that with a #9, I believe we are up to.

24 At any time, did either of the Mascotte police cars go
25 any further than where you marked on the diagram as #9, further

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1 into the crime scene on through the road out to South Sunset?

2 A. No, sir. I was informed no vehicles had proceeded
3 past this point and upon my arrival back, no vehicles had
4 entered that point.

5 Q. Thank you. Go ahead and have a seat.

6 (WHEREUPON, WITNESS TAKES SEAT IN WITNESS BOX)

7 Q. Can I have just a moment, Your Honor?

8 THE COURT: Yes, sir.

9 Q. Deputy Aleno, did you have occasion to be involved
10 in the processing of a Mascotte police car with regard to this
11 homicide?

12 A. Yes, I did.

13 Q. When did that occur?

14 A. The following day.

15 Q. Were photographs of that car taken?

16 A. Yes, sir.

17 Q. Do you have those with you?

18 A. I believe I do. Yes, sir, I do.

19 Q. Can I see them?

20 MR. EDMUND: No objection, Your Honor.

21 MR. HURM: I would ask that these be marked as a composite
22 exhibit consisting of four photographs, the four sides of the
23 police car.

24 THE COURT: What letter next, ma'am?

25 CLERK OF THE COURT: Five "K"s.

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1 THE COURT: Five "K"s, alright. Mark them for identifi-
2 cation. Are you moving them in at this time, Mr. Hurm?

3 MR. HURM: In just a moment, Your Honor, I will.

4 Q. Deputy Aleno, look at those photographs and tell me
5 if you recognize what they depict?

6 A. Yes, sir, they depict the Mascotte police car that
7 had been impounded the night before and driven to the Eustis
8 shop ...the Lake County Sheriff's Office uses for their vehicles.

9 Q. Do you know who drove that car to the shop?

10 A. Deputy Mock, Jimmie Mock.

11 Q. Who took these photographs

12 A. I took these photographs.

13 Q. I notice they are all different angles. Why is
14 that?

15 A. To give an over-all look at the vehicle.

16 Q. Did you take photographs of the front and back and
17 both sides?

18 A. Yes, sir, here depicts the license plate on the
19 vehicle and the front of the vehicle. This shows the spare
20 tire and the contents of the inside of the trunk. So that
21 there is no question this was a Mascotte police car.

22 Q. Was this the car known to you as Unit 203?

23 A. Yes, sir.

24 Q. Do you know who was driving this vehicle the night
25 of May 11th?

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1 MR. EDMUND: Your Honor, I will object on the grounds
2 that is not...

3 MR. HURM: I am sorry?

4 MR. EDMUND: Withdrew.

5 Q. Go ahead. Do you know who was driving the vehicle
6 on the night of May 11th?

7 A. I was advised that Officer Duckett was the person
8 driving that vehicle.

9 Q. Your Honor, now I would offer this in evidence
10 as a composite exhibit next in order.

11 MR. EDMUND: No objection.

12 THE COURT: State's Composite KKKKK admitted into evidence
13 without objection as State's Composite Exhibit 51.

14 (WHEREUPON, STATE'S COMPOSITE EXHIBIT #51 IS ADMITTED INTO
15 EVIDENCE WITHOUT OBJECTION)

16 MR. EDMUND: May we step to the bench just a moment,
17 Judge?

18 THE COURT: Sure.

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

20 MR. EDMUND: It just occurred to me as I was sitting down
21 I have been addressing you with no objections and all that, is
22 that okay?

23 THE COURT: Yes, sir.

24 (WHEREUPON, BENCH CONFERENCE ENDS)

25 Q. Deputy Aleno, if we can depart just a moment from the

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1 scene of the garage and go back to your photography of the
2 general crime scene area, do you recognize this photograph
3 marked as State's Exhibit 0000?

4 A. Yes, sir.

5 Q. How do you recognize it?

6 A. This is a photograph, a picture shooting North of
7 Sunset towards Highway 50.

8 Q. Do you know where the victim's home was?

9 A. Yes, sir, it was approximately four hundred feet from
10 the Circle K Store located at Highway 50.

11 Q. Where was the victim's home in relationship to where
12 that picture was taken?

13 A. In close proximity to the front of the house.

14 Q. Shooting North towards the Circle K?

15 A. Yes, sir.

16 Q. I would offer this in evidence, Your Honor.

17 MR. EDMUND: No objection, Your Honor.

18 THE COURT: State's Exhibit 0000 for identification
19 admitted into evidence without objection as State's Exhibit
20 52.

21 (WHEREUPON, STATE'S EXHIBIT 52 IS ADMITTED INTO EVIDENCE
22 WITHOUT OBJECTION)

23 Q. Don't allow a stack this size to alarm you, Deputy
24 Aleno. These are just four composite exhibits.

25 Did you have occasion to take any known tire impressions

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1 of the Mascotte police car Unit 203 while at the Eustis
2 garage?

3 A. Yes, we did.

4 Q. Explain what that process is and why you do that
5 and what is involved?

6 A. Because of the similarity of the tire impressions
7 that I found at the crime scene and the tires that were on the
8 vehicle that was on duty that night, we felt it necessary
9 to examine this vehicle and get tire impressions.

10 Q. What kind of tires were on Unit 203?

11 A. The make and brand, I don't recall.

12 Q. You say because of the similarity, you felt it was
13 important to do further work. What further work did you do?

14 A. At my request, the Florida Department of Law Enforce-
15 ment was called in to assist in the processing of the police
16 car at the shop.

17 Q. What individual came out to assist you?

18 A. Leroy Parker, Mike Raferty and Gary ... I forget the
19 last name; another agent from the Florida Department of Law
20 Enforcement.

21 Q. Was Paul Brackman also there?

22 A. Paul, excuse me, that is right. Paul Brackman.
23 Not Gary.

24 Q. What did you do with regard to the tires?

25 A. I found an area on the side of the shop where we

1 could drive the vehicle and leave nice, clear tire impressions.
2 Q. Was that in dirt or cement or what kind of surface was
3 it?
4 A. It was actually dirt on top of blacktop.
5 Q. What did you do to prepare that surface before trying
6 to make any impressions?
7 A. I raked it.
8 Q. Was it clear of any tire impressions before you
9 attempted to make the known impressions of the 203 tires?
10 A. There were no other tire impressions present.
11 Q. Now, describe ... did you take impressions of each
12 tire separately?
13 A. Yes, we did.
14 Q. How would you go about that? How did you do that?
15 A. I would angle the vehicle up and try to run a
16 straight line, so that the back tire would not cross over.
17 For example, the left front and what we did is that they set
18 up their camera and took pictures in a sequence so that they
19 could cover 360 degrees of that tire and we did this on each
20 tire.
21 Q. Now, when you are talking about 360 degrees, is that
22 one full revolution of the tire?
23 A. Yes, sir.
24 Q. In other words, you got the full track, the whole
25 revolution of the tire photographed, every inch of the track

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1 or tread of the tire?

2 A. Yes, sir.

3 Q. How many photographs were used to do that? Do you
4 know?

5 A. I don't recall.

6 Q. I show you what has been marked State's Exhibit PPPP,
7 for identification, a composite exhibit, consisting of
8 fifteen photographs, do you recognize those?

9 A. Yes, sir, this is the photographs taken by the
10 Florida Department of Law Enforcement.

11 Q. And which tire impression are those photographs taken
12 of?

13 A. It is indicated that this would be the left rear
14 tire.

15 Q. I show you also State's QQQQQ for identification,
16 do you recognize that?

17 A. Yes, sir.

18 Q. What is that? That is a composite exhibit of fifteen
19 photographs, for the record.

20 A. Yes, sir, and it looks like the right front tire.
21 The letter is hard to distinguish, but...

22 Q. Now, Deputy Aleno, between the time ... let's assume
23 that you first did the left rear tire. Did you then go and
24 re-rake the area before doing another tire impression?

25 A. yes, sir, all tire impressions were removed prior to

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1 us doing each individual tire.

2 Q. So each photographing session was done separately
3 after the area was re-raked?

4 A. Yes, sir, it was.

5 Q. I show you what has been marked State's RRRR for
6 identification and ask you if you recognize that set of
7 fifteen photographs as a composite exhibit?

8 A. Yes, sir, this would be the same type of procedure
9 of the right rear tire.

10 Q. And then I show you State's Exhibit SSSS for
11 identification, fifteen photographs, composite exhibit.

12 A. Yes, sir, this indicates the left front tire.

13 Q. Are those a fair and accurate representation in all
14 the exhibits of the tire impressions that you made with Unit
15 203, the Mascotte police car, on that day at the Eustis
16 garage?

17 A. Yes, sir.

18 Q. Your Honor, at this time, I would offer these four
19 composite exhibits into evidence.

20 MR. EDMUND: No objection, Judge.

21 THE COURT: State's Composite Exhibit PPPP for identifi-
22 cation admitted into evidence without objection as State's
23 Composite Exhibit 53.

24 State's Composite Exhibit QQQQ for identification admitted
25 into evidence without objection as State's Composite Exhibit

1 #54.

2 State's Composite Exhibit RRRR for identification admitted
3 into evidence without objection as State's Composite Exhibit
4 55.

5 State's Composite Exhibit SSSS for identification admitted
6 into evidence without objection as State's Composite Exhibit
7 56.

8 (WHEREUPON, STATE'S COMPOSITE EXHIBITS #53, 54, 55, AND
9 56 ARE ADMITTED INTO EVIDENCE WITHOUT OBJECTION)

10 Q. Deputy Aleno, what other action was taken by you
11 and the F. D. L. E. personnel with regard to processing this
12 particular car? Unit 203?

13 A. They requested what type of process that we wanted
14 done with the vehicle and I advised them that I wanted the
15 inside swept for hairs and fibers. They did the test for
16 body fluids, blood, on the interior of the car, and also to have
17 it dusted for fingerprints.

18 Q. What area of the car did you have dusted for finger-
19 prints?

20 A. I advised them to do the front, roof area, from the
21 light bar across to the rear bumper and to do the same thing
22 to the front bumper.

23 Q. In other words, the entire surface of the car you had
24 asked to have dusted for fingerprints?

25 A. Yes, sir, I did.

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1 Q. What is the process of dusting for fingerprints?

2 A. You use a graphite powder. It will adhere to the
3 fingerprints, the amino acids, the oils, that the body secretes.

4 Q. Now, when you dust for you discover fingerprints,
5 in other words, if I left my fingerprint, if I touched there
6 and you dusted, you would be able to see something?

7 A. Yes, sir.

8 Q. What would that appear to be?

9 A. It would show the ridges of what makes up your finger-
10 prints.

11 Q. How are you able to use that? What do you have to do
12 with that after you have dusted it, in order to use it for
13 comparison purposes with a known fingerprint?

14 A. If it is on a surface that you can make out a good
15 fingerprint and you don't think that it can be lifted, you can
16 photograph it. Most times, sometimes you attempt to lift that
17 or move it, the impressions, and place it on a card.

18 Q. Is that what was done in this case? Were they lifted?

19 A. Yes, sir, they were.

20 Q. What are those called after the fingerprints are
21 lifted? What do you call those fingerprints?

22 A. They are latent fingerprints.

23 Q. Can I have just a moment, Your Honor.

24 THE COURT: Yes, sir.

25 Q. Who did the dusting of the hood of the police car in

1 this particular case?

2 A. The Florida Department of Law Enforcement.

3 Q. Were you present when they did that?

4 A. Yes, I was present at all times when they did that.

5 Q. Did they follow a procedure you have been trained is
6 the proper procedure for dusting for prints?

7 A. Yes, sir.

8 Q. What did you see when they dusted this area?

9 A. They started on the rear section of the vehicle.
10 There wasn't a large amount of fingerprints. The car was in
11 a clean condition also.

12 As they proceeded on towards the front of the vehicle and
13 they got in the hood area, we got a large area of fingerprints
14 on the hood itself.

15 Q. How readily discernible were those fingerprints?

16 A. They responded to the powder immediately.

17 Q. How dark were they?

18 A. Very dark.

19 Q. What would that indicate to you based on your training
20 and experience?

21 A. Due to the condition, they were fresh fingerprints.

22 Q. And those were then lifted off with tape?

23 A. Yes, sir.

24 Q. And placed on cards?

25 A. They were photographed first by F. D. L. E. and then

1 lifted.

2 Q. Did you remove any evidence from the car other than
3 trace evidence that you mentioned, the sweeping and so forth?
4 Did you remove any other pieces of evidence from the car?

5 A. Yes, sir.

6 Q. What was that?

7 A. A log book.

8 MR. EDMUND: Sir?

9 A. A log book.

10 Q. I show you, Deputy Aleno, what has been marked
11 State's Exhibit NN for identification, a composite in an
12 envelope and tell us what those are?

13 A. Yes, sir, these are the latent fingerprints the
14 Florida Department of Law Enforcement removed off the patrol
15 car.

16 Q. So when they put the tape on and lifted them off, and
17 put them on cards, those were the cards?

18 A. Yes, sir.

19 Q. Do they appear to be in substantially the same
20 condition as when you saw them lifted?

21 A. Yes, sir.

22 Q. Thank you. After these latent fingerprints were
23 lifted, what did you do with them?

24 A. As I stated earlier, the Florida Department of Law
25 Enforcement maintained custody of those prints after they were

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1 removed.

2 Q. Did you ever retain custody of them after they had
3 processed them?

4 A. They were sent back to our office, yes, sir.

5 Q. What was done with the police car #203 after you
6 were finished processing?

7 A. After we completely had finished the vehicle, I
8 washed the vehicle and turned it to the Mascotte Police
9 Department to Chief Brady.

10 Q. Why did you wash it?

11 A. It was covered with fingerprint powder.

12 Q. Was there any discussions whether or not to take that
13 car into evidence? In other words, take the whole car and
14 impound it?

15 A. Yes, sir, there had been discussions of it.

16 Q. Why wasn't that done?

17 A. To my knowledge, I don't know.

18 Q. Did you have any contact the next day on 5/13/87,
19 further contact with the body of Teresa McAbee?

20 A. Yes, if I can reflect in my notes, I can tell you.

21 Q. I apologize. I have been advised it was 5/14.

22 A. I can say it was late in the evening when I returned
23 the police car, around five o'clock, and I didn't recall coming
24 in contact with the victim then.

25 Q. Okay, the next day, on 5/14, did you have any contact

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1 with the victim's body?

2 A. Yes, sir, on 5/14, I believe that is the date that I
3 followed the victim's body in a funeral home vehicle to the
4 Orlando Crime Lab.

5 Q. Where was the body taken from?

6 A. From the Medical Examiner's Office in Leesburg.

7 Q. Did... was that the time you took the victim's clothes
8 to the lab as well, or did you take those to the lab earlier?

9 A. The clothing, I believe, were taken ... here again,
10 I have to refer to my notes, either that day or the following
11 day.

12 Q. When you got to the Crime Lab with the body, what was
13 done with Teresa's body?

14 A. It was taken into the laser room at the Florida
15 Department of Law Enforcement where they did laser processing
16 on the body.

17 Q. What is the purpose of laser processing?

18 A. To locate hairs, fibers, that sort of thing, on the
19 body that can't normally be seen with the naked eye.

20 Q. Were body and head hairs taken from the victim's body
21 at the lab?

22 A. They found to be what appeared to be hairs on or
23 about the body from the crevice, from the body and they took
24 pubic and head hairs samples.

25 Q. Who took the pubic and head hairs samples from Teresa?

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1 A. Mike Rafferty.

2 Q. Was that in your presence?

3 A. Yes, sir.

4 Q. What was done with the, first the head hairs?

5 What procedure did you use for sealing those and putting them
6 in containers as he drew them out?

7 A. He placed them in envelopes and marked them.

8 Q. Were they sealed in your presence?

9 A. Yes, sir.

10 Q. And then the pubic hair, did he follow the same
11 procedure?

12 A. Yes, sir.

13 Q. Did you have occasion to come in contact with that
14 hair of the victim; the known hairs; the pubic and head
15 hairs; at a later occasion?

16 A. After they completed their examination, yes, sir,
17 they were checked back into evidence.

18 Q. Did you take them anywhere else? Those particular
19 hairs?

20 A. Yes, sir.

21 Q. Before we get into that, let me show you some other
22 items. First, I show you , let me show them to you all
23 together. State's YYY for identification... I am sorry, YY
24 for identification, double Y; State's V for identification;
25 State's RR for identification; State's O for identification;

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1 State's P for identification; State's SS for identification;
2 State's N for identification; State's LL for identification...
3 I am sorry, that should be three "L"s, LLL; State's MMMM;
4 State's UUUU. Do you recognize those particular exhibits?

5 A. Yes, sir, this appears to be all the hairs from
6 subject that I transported.

7 Q. Now, who all had head, body and pubic hairs taken
8 in your presence?

9 A. In my presence?

10 Q. Yes, sir.

11 A. The victim.

12 Q. Besides the victim, Teresa McAbee?

13 A. I was present at one time that Dr. Shutze removed
14 head hairs, body hairs, from Mr. Duckett.

15 Q. When you say Mr. Duckett, is that the defendant you
16 are indicating?

17 A. Yes, sir.

18 Q. How about Maximo Rubio?

19 A. There was two other subjects that were taken to
20 Dr. Shutze's office and their names, I would have to go through
21 and find my initials on the envelopes.

22 Q. These envelopes are the envelopes that the hairs
23 ... into which the hairs were placed?

24 A. Yes, sir.

25 Q. Now, along with the victim's, you said you had the

1 victim's hair, and all these other hairs and the defendant's
2 known hair. Did you have occasion to transport all those hairs
3 to the F. B. I.?

4 A. Yes, I did.

5 Q. After you transported them to the F. B. I., did you
6 stay there and bring them back or were they sent back? How
7 did they get back to your custody?

8 A. I delivered them to the F. B. I. and they kept them
9 and then they sent them back.

10 Q. Now, Deputy Aleno, after the clothes were delivered to
11 the F. D. L. E. Lab, did you receive any information concerning
12 a pubic hair found in the victim's panties?

13 A. I have been advised that what appeared to be a pubic
14 hair had been located in the victim's panties.

15 Q. Who located that, do you know?

16 A. Witt Graves.

17 Q. Is that an F. D. L. E. Technician?

18 A. Yes, sir.

19 Q. Did you receive that unknown pubic hair found in the
20 victim's panties, when you received it, was it in your custody?

21 A. At that time, no.

22 Q. At any time?

23 A. Oh, yes, sir, I have had it in my possession.

24 Q. Okay, so you got it from F. D. L. E. Was that also
25 transported to the F. B. I.?

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1 A. Yes, sir.

2 Q. Along with these known hairs?

3 A. Yes, sir.

4 Q. What was the purpose of taking the unknown hair along
5 with all the known hairs to the F. B. I.?

6 A. To either compare or eliminate the hair standards
7 from the known subjects that we had to the unknown hair.

8 Q. As far as you know, was that done at the F. B. I.?
9 Was that study done? The analysis?

10 A. Yes, sir.

11 Q. After the F. B. I. finished its processing, did you
12 retrieve all of the hairs, including the unknown pubic hair
13 from the F. B. I.? Did you receive them back?

14 A. Yes, sir, I did.

15 Q. Going back to fingerprints, I hate to jump around
16 as we did so much in this case, but it is necessary. Did you
17 have occasion to take known fingerprints, rolled fingerprints
18 of any subject with regard to this case?

19 A. Yes, sir.

20 Q. Whose prints did you take?

21 A. On the evening of the 12th, as I recall, the three
22 subjects that had been seen in the area of the convenience
23 store earlier that night, or the night prior to this. I was
24 requested to go and taken fingerprints and fingernail
25 scrapings.

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1 Q. That was Maximo Rubio, Salvador Calisto and Almando
2 Villareal?

3 A. Yes, sir.

4 Q. And Armando Morales?

5 A. Yes, sir.

6 Q. What was done with those fingerprint cards?

7 A. They were submitted to the lab for comparison to
8 the prints that were on the vehicle.

9 Q. Very briefly, what is the difference between known
10 inked fingerprints and latent fingerprints?

11 A. A latent fingerprint is an unknown print left unknown
12 to the suspect.

13 Q. And that is collected by the dust method?

14 A. Yes, sir.

15 Q. What is an inked or rolled print?

16 A. An inked or rolled print is when I have an individual
17 that I can identify or I have say a body person to take the
18 fingerprints directly from them.

19 Q. Okay. Thank you. I show you what has been marked
20 as State's ... I am not sure what letter that is... State's
21 D for identification... State's E for identification ...
22 State's F for identification. If you would open those up and
23 tell me if you recognize what is inside?

24 A. These are the inked fingerprints I took from Mr.
25 Morales.

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1 Q. That is F, Your Honor. I would offer this card
2 into evidence as State's next in order.

3 MR. EDMUND: No objection, sir.

4 THE COURT: State's Exhibit F for identification admitted
5 into evidence without objection as State's Exhibit #57.

6 (WHEREUPON, STATE'S EXHIBIT #57 IS ADMITTED INTO EVIDENCE
7 WITHOUT OBJECTION)

8 Q. If you would offer State's Exhibit E, please, sir.

9 THE COURT: Be a little more specific, Mr. Hurm. My notes
10 show there are two Mr. Moraleses involved.

11 Q. This is Armando Morales.

12 THE COURT: Who was the former one that we just admitted?

13 MR. HURM: No, no, that was Armando Morales, Judge.

14 THE COURT: That we admitted?

15 MR. HURM: Yes, sir.

16 THE COURT: State's Exhibit #57, is Armando Morales.

17 A. These are the inked fingerprints of Salvador Calisto,
18 taken by me on the 12th.

19 MR. HURM: That is State's Exhibit E for identification,
20 Your Honor. I would offer that into evidence.

21 MR. EDMUND: No objection.

22 THE COURT: State's Exhibit E for identification admitted
23 into evidence without objection as State's Exhibit #58.

24 (WHEREUPON, STATE'S EXHIBIT #58 IS ADMITTED INTO EVIDENCE
25 WITHOUT OBJECTION)

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1 A. These are the inked fingerprints taken by myself of
2 Rubio Maximinio.

3 Q. This card, I would offer as State's D for identifi-
4 cation and I would offer it as State's next in order.

5 MR. EDMUND: No objection, Judge.

6 THE COURT: State's Exhibit D for identification admitted
7 into evidence without objection as State's Exhibit #59.

8 (WHEREUPON, STATE'S EXHIBIT #59 IS ADMITTED INTO EVIDENCE
9 WITHOUT OBJECTION)

10 MR. HURM: Your Honor, may we approach the bench?

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

12 MR. HURM: I was moving so much I lost track of time.

13 I don't have too much more to go through, but we could take a
14 break now.

15 THE COURT: Any objection to taking a break now?

16 MR. EDMUND: Love it, Your Honor.

17 THE COURT: Okay. We will do that.

18 (WHEREUPON, BENCH CONFERENCE ENDS)

19 THE COURT: Folks, we are going to go ahead, although it
20 is a little unusual in the middle of testimony, and take our
21 luncheon recess at this time. I remind you not to discuss
22 the case among yourselves or with anyone else. Don't read
23 anything about it. Don't watch any television accounts or
24 listen to any radio accounts. Don't attempt to visit the
25 scene of the alleged occurrence. We will come back at 1:30.

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1 Attorneys, if you would, with Ms. Patz, at 1:15 in chambers,
2 please. Thank you kindly. We will be in recess until 1:30
3 for the Jury.

4 (WHEREUPON, JURY LEAVES COURTROOM AT 12:00 Noon)

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

6 (WHEREUPON, DEFENDANT LEAVES COURTROOM AT 12:01 P. M.)

7 (WHEREUPON, COURT IS IN RECESS AT 12:02 P. M.)

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

10 (WHEREUPON, COURT RECONVENES AT 1:42 P. M.)

11 THE COURT: Anything before we bring the Jury back?

12 MR. EDMUND: No, Your Honor.

13 MR. HOGAN: No, Your Honor.

14 THE COURT: Please, Mr. Bailiff.

15 (WHEREUPON, JURY ENTERS COURTROOM AT 1:45 P. M.)

16 THE COURT: Welcome back, folks. Be seated, please.
17 Can you assure us that you did abide by our admonitions?

18 JURORS: Yes, sir.

19 THE COURT: You know the menu by heard by now, don't you?

20 JURORS: Yes.

21 THE COURT: Just start ordering breakfast over there, just
22 to get something different.

23 Alright.

24 MR. HURM: The State is prepared to continue with Deputy
25 Aleno, Your Honor.

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1 THE COURT: Alright, Deputy Aleno, please, Mr. Bailiff.
2 (WHEREUPON, DEPUTY ALENO RESUMES THE STAND AND REMAINS
3 UNDER SAME OATH PREVIOUSLY ADMINISTERED)
4 THE COURT: Just take a seat, Deputy. I remind you you
5 are still under oath.
6 DIRECT EXAMINATION CONTINUES
7 BY MR. HURM:
8 Q. Deputy Aleno, I believe, among other things, we were
9 talking about fingerprints that were lifted from the hood of
10 the Mascotte police car, #203?
11 A. Yes, sir.
12 Q. You said that the Florida Department of Law Enforce-
13 ment had taken a photograph of the hood after the fingerprint
14 dust had been applied and the prints had become visible?
15 A. Yes, sir.
16 Q. I show you what has been marked State's Exhibit C
17 for identification and ask you if you recognize that?
18 A. Yes, sir. That is the photograph.
19 Q. Does that fairly and accurately represent the way
20 the hood looked after the print dust was applied?
21 A. Yes, sir, it is.
22 Q. Your Honor, I would offer this into evidence at this
23 time.
24 MR. EDMUND: No objection, Your Honor.
25 THE COURT: State's Exhibit C for identification admitted

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1 into evidence without objection as State's Exhibit 60.

2 (WHEREUPON, STATE'S EXHIBIT #60 IS ADMITTED INTO EVIDENCE
3 WITHOUT OBJECTION)

4 Q. Deputy Aleno, did you take measurements at the scene?

5 A. Yes, sir, we did.

6 Q. Before we get into the measurements themselves, would
7 you tell us if you and Deputy Nelson went out to the scene
8 about a week after the body was discovered?

9 A. On Thursday, yes, sir.

10 Q. Okay, so that would have been two days later?

11 A. Yes, sir.

12 Q. The body was discovered on Tuesday?

13 A. Yes.

14 Q. Two days later. What was the purpose of your going
15 to the scene at that time?

16 A. We were going back to photograph the entire area where
17 the victim had been seen and the route down Sunset to the crime
18 scene.

19 Q. From the Circle K?

20 A. Yes, sir. And also we had been informed that the
21 victim had actually purchased a pencil at the store that night
22 and we did not locate the pencil on the victim or at the
23 crime scene, so our purpose of going was also to attempt to
24 locate the crime scene if it would have been in a different
25 area where the body was.

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1 Q. I assume you also didn't locate the pencil in the
2 police car?

3 A. No, sir, I stated we did not find it in the police
4 car.

5 Q. Now, as you drove from the Circle K to the crime
6 scene, did you measure the distance from the Circle K to the
7 victim's house and then to the crime scene?

8 A. Yes, sir. Officer Nelson actually did the measure-
9 ments.

10 Q. Were you there during the measurements being done?

11 A. I was driving the automobile. We had a roller tape
12 that we were using to get the measurements.

13 Q. Do you have notes of what those measurements were?

14 A. Yes, sir.

15 Q. Would you, refreshing your memory with your notes, if
16 you need to. First, if you can give me the measurement of the
17 distance from the Circle K to the victim's house? On Sunset?

18 A. Approximately four hundred feet.

19 Q. And then from the victim's house to the entrance to
20 the crime scene, which would be there at the intersection of
21 Pearl and Sunset?

22 A. Fourteen hundred feet.

23 Q. Crime Scene Entrance. (Writing on easel)

24 So then from the crime scene entrance to let's say the pump-
25 house?

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1 A. To the center of the pumphouse, approximately, that
2 also measured fourteen hundred feet.

3 Q. So then from the Circle K to the center of the pump-
4 house, would be thirty-two hundred feet?

5 A. Yes, sir.

6 Q. Circle K to Pumphouse, Thirty-Two Hundred Feet.
7 Now, did you locate.... were you able to locate the pencil
8 at the crime scene?

9 A. We located a pencil described to us as one which was
10 bought at the Circle K.

11 Q. I show you what has been marked in evidence as
12 State's Exhibit #15, taped together. Would you examine that
13 and tell me if you recognize that?

14 A. Yes, sir, I do.

15 Q. What is it? How do you recognize it?

16 A. It is the two parts of the pencil at the time it
17 appeared in new condition. The eraser was attached to the
18 eraser end of the pencil. It did not appear it had ever been
19 used. As the point end had never been sharpened.

20 Q. Deputy Aleno, I am going to just hold this diagram,
21 if you could come down. And bring your notes. You may need
22 them. I am going to ask about where you located the pencil.

23 THE COURT: Your number in evidence, Mr. Hurm? Of the
24 diagram?

25 MR. HURM: This is the diagram numbered 26, Your Honor, in

1 evidence. If you would take that box and pull the label out.

2 What I would like you to do first is take one of those
3 labels and indicate, sire, the area where you found the
4 eraser end of the pencil?

5 A. The eraser end was found in what would have been the
6 left tire if the vehicle would have been traveling down this
7 dirt road.

8 Q. If the vehicle was traveling in this direction?

9 A. Yes, sir. And from the corner of the pumphouse,
10 it is approximately twenty-six feet.

11 Q. Alright. Now, take my pen, if you would, and just
12 write, "top of pencil". Thank you.

13 And then if you would indicate with another sticker,
14 please, sir, where you found the bottom end of the pencil or
15 the point end if it would have been sharpened?

16 A. Alright, approximately six feet from the one end
17 off the side of the road under some brush, I found the other
18 end of the pencil.

19 Q. That would be the top end...the bottom end, I am sorry.
20 Thank you.

21 Thank you, Deputy. Have a seat.

22 (WHEREUPON, WITNESS RESUMES WITNESS STAND)

23 Q. Deputy Aleno, with regard to the prints on the hood,
24 were you involved in any process at a later time whereby
25 photographs of the prints, the latents that were lifted off the

1 hood, were placed back on the hood of that particular patrol
2 car by F. D. L. E. agents and then Jennie Ahern was asked
3 to illustrate for video and still photography purposes, the
4 position the victim may have been in at the time the prints
5 were made?

6 A. Yes, sir.

7 MR. EDMUND: I would like to object, Your Honor. May we
8 approach the bench?

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

10 MR. HURM: I believe I can predict the objection, Your
11 Honor. I misspoke myself. I should not have said prints
12 the victim made, but rather the position the person who made
13 the prints would have been in.

14 I didn't mean to ...

15 MR. EDMUND: That is my objection. My objection would be
16 if you are intending to offer any explanation on video or
17 photographs or attempting to reconstruct, what may or may not
18 have occurred, would be too speculative. If it can be properly
19 covered by the testimony of the fingerprint examiner, but any
20 effort to show some girl's hands on the hood of a car, in a
21 particular place, and again would not be relevant, nor is it
22 proper. It would only be based upon speculation of the people
23 involved. When that spoken speculation is bolstered by
24 photographs and particularly video photographs, it would carry
25 an unusual amount of weight with the Jury. Not commensurate

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1 with whatever value it may or may not have with the trial,
2 and am I anticipating incorrectly?

3 MR. HURM: No, I would state that the objection, I believe,
4 is premature. I am not attempting to offer through Deputy
5 Aleno any if you want to call it speculation or opinion as to the
6 position of the body or the victim when the prints were made.
7 What I am attempting to do is establish a predicate for
8 introduction of the video at the time we want to offer the
9 video and I think the argument could be made at that time.
10 Frankly, what we were going to ask the Court to do when Ms.
11 Ahern is here, is have her demonstrate on the car itself with
12 the photographs as a demonstrative aid, in front of the Jury,
13 and have her demonstrate the position of the victim's prints
14 and show with herself with an individual the say size as
15 Teresa McAbee, how she would have had to have been positioned
16 when the fingerprints were made. If we are not able to do
17 that, and we are not offering that now, that will be next
18 week, obviously, but I want to establish a predicate through
19 this witness for the video tape so that if we are not able to
20 go downstairs and use the car as a demonstrative exhibit,
21 then we would be able to offer or argue that we should be able
22 to offer the video at that time, next week. Just to avoid
23 bringing him back at a later time. Just to establish that
24 predicate.

25 THE COURT: All I understand is you want to set the

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1 predicate for the video tape at this time.

2 MR. EDMUND: Judge if he is going to talk in terms of
3 placing some girl on the hood, placing hands in a certain
4 place, or positions, that is what I object to. If he wants
5 to establish a time, date, place, in which Officer Aleno made
6 a video tape and then he wants to enter it and proffer the
7 other evidence out of the presence of the Jury, I have no
8 problem with that.

9 MR. HURM: That is all I want to do through this witness.

10 THE COURT: Why don't you just tighten up your question
11 tight enough so that he knows what to talk about and say I
12 made the tape and don't go into the details.

13 MR. HURM: Yes, sir.

14 (WHEREUPON, BENCH CONFERENCE ENDS)

15 DIRECT EXAMINATION CONTINUES

16 BY MR. HURM:

17 Q. Deputy Aleno, did you meet with the F. D. L. E.
18 agents sometime with the police car, the Mascotte police car,
19 Unit 203, and video tape proceedings involving that police
20 car?

21 A. Yes, sir, I did.

22 Q. Was the video tape ... the video camera operating
23 properly at that time?

24 A. Yes, sir, it was.

25 Q. Have you had an opportunity to review that video tape

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1 since?

2 A. Yes, sir, I have.

3 Q. Does it fairly and accurately depict what was done
4 on that particular day?

5 A. Yes, sir, it was.

6 Q. Thank you.

7 Deputy Aleno, I show you what has been marked over here
8 as State's Exhibit KK for identification. Do you recognize
9 this, sir?

10 A. Yes, sir, I do.

11 Q. How do you recognize it?

12 MR. EDMUND: I would waive any predicate that the State
13 wishes to offer and would stipulate that it is an aerial view
14 of the City of Mascotte and the black lines are, I would assume,
15 indicating the city limits of the City of Mascotte.

16 MR. HURM: Will you so stipulate?

17 MR. EDMUND: I so stipulate.

18 MR. HURM: Thank you, Mr. Edmund. I would offer this
19 into evidence at this point as State's next in order.

20 THE COURT: State's Exhibit KK will be admitted into
21 evidence as State's Exhibit #61 without objection.

22 (WHEREUPON, STATE'S EXHIBIT #61 IS ADMITTED INTO EVIDENCE
23 WITHOUT OBJECTION)

24 MR. HURM: May I have the witness step down, Your Honor?

25 THE COURT: Yes, sir.

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1 (WHEREUPON, WITNESS STEPS DOWN FROM THE WITNESS BOX)

2 Q. Deputy Aleno, if you would step down, sir, and again
3 taking our stickers, if you would indicate first the direction
4 North according to this photograph.

5 A. North is in the upper direction.

6 Q. And what is this road right here?

7 A. This will be Highway 50.

8 Q. And that goes East and West?

9 A. Yes, sir.

10 Q. And which way is Groveland?

11 A. Groveland would be to the East.

12 Q. So that Groveland City Limits would be up right here?

13 A. Yes, sir.

14 Q. And Brooksville would be off this way, this side
15 off the map?

16 A. Yes, sir.

17 Q. Could you indicate, please, sir, with a sticker and
18 mark on there the Circle K on the aerial diagram.

19 And just write Circle K if you would.

20 Now, where is the Mascotte Police Department located on
21 there?

22 A. The Mascotte Police Department should be ... it is
23 this area right in here.

24 Q. Put a sticker on that, please, and mark that as
25 Mascotte P. D.

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1 Q. If you would back up, does the Mascotte Police
2 Department go right out onto 50?

3 A. The front part of the building is on 50.

4 Q. Is that on the front parking lot or on the road?

5 A. Yes, sir.

6 Q. Do you know where the Jiffy Store is in relationship
7 to the Mascotte Police Department?

8 A. No, sir, I don't.

9 Q. Now, the victim's house, we have been talking about,
10 where is that located on this aerial photograph?

11 A. That would be approximately directly across from the
12 shadow of the trees across the street.

13 Q. If you would put a sticker on that and mark it
14 "victim's house".

15 Where is Sunset Street?

16 A. South Sunset?

17 Q. Yes, sir.

18 A. Right here.

19 Q. Where is the intersection of Sunset and Pearl?

20 A. Right here.

21 Q. Would you mark that, please and put Sunset and Pearl?

22 Now, where does pearl Street and as you travel East
23 from the intersection of Sunset and Pearl?

24 A. I have not followed it through to exactly where it
25 ends up.

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1 Q. Have you driven it from here to Highway 50?
2 A. No, sir, I have not.
3 Q. Where was the pumphouse area? Where was the little
4 girl's body found?
5 A. This white square area here is the pumphouse.
6 Q. Would you put a sticker next to that and indicate
7 pumphouse, please.
8 And do you know where Bay Lake Road is?
9 A. No, sir, I don't.
10 Q. Thank you. Deputy Aleno, did you have occasion to
11 go back to the Circle K and purchase a pencil?
12 A. Yes, sir, that afternoon, I did.
13 Q. The afternoon you found the broken one?
14 A. Yes, sir.
15 Q. I show you what has been marked in evidence as
16 State's #14. Do you recognize that?
17 A. Yes, sir, this is the pencil that I purchased from
18 the Circle K on 5/21/87.
19 Q. From whom did you purchase that, do you remember the
20 person's name?
21 A. No, I don't.
22 Q. From your examination, does it appear to be the same
23 type pencil that you recovered from the crime scene?
24 A. Yes, sir, it appears that way.
25 Q. Your Honor, at this time, I would offer into evidence

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1 what has been marked as JJJJJ for identification, that being
2 the raincoats.

3 MR. EDMUND: No objection, Your Honor.

4 THE COURT: We will admit that, State's Exhibit JJJJJ
5 for identification will be admitted into evidence without
6 objection as State's Exhibit 62.

7 (WHEREUPON, STATE'S EXHIBIT #62 IS ADMITTED INTO EVIDENCE
8 WITHOUT OBJECTION)

9 Q. No further questions. Thank you, Deputy.

10 CROSS EXAMINATION

11 BY MR. EDMUND:

12 If it please the Court.

13 THE COURT: Yes, sir.

14 Q. Mr. Aleno, I am Jack Edmund. You have said that you
15 obtained a substantial amount of evidence from the scene, is
16 that a fair recitation of the general nature of your original
17 testimony?

18 A. I never stated substantial that I know of.

19 Q. Did you obtain evidence from the scene?

20 A. Yes, sir.

21 Q. Now, among that evidence you said were some cigarette
22 butts, and various and other sundry other things?

23 A. Yes, sir.

24 Q. Were there any of the cigarette butts that appeared,
25 for example, to be reasonably fresh?

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1 A. How do you describe reasonably fresh?

2 Q. Well, let me ask you this. Did you ... when you were
3 asking the other agents to assist you in preparing an
4 investigation of this case, and preparing this case, did you
5 ask any of the other agents to run any scientific tests on any
6 of those cigarette butts to make a determination, (1) if they
7 were fresh, (2) if they had any saliva on them so that the
8 blood type of the smoker may have been determined, or anything
9 of that nature?

10 A. The cigarette butts were sent to the F. D. L. E.
11 Crime Lab.

12 Q. And did you receive any reports that would indicate
13 that they were able to make any scientific determination
14 regarding the cigarette butts?

15 A. No, sir, there was none.

16 Q. Did you find a frip flop immediately adjacent to the
17 child's body in the water?

18 A. It was some distance from her head, and out a little
19 further in the water, yes, sir.

20 Q. Was that taken into evidence?

21 A. Yes, sir, it was.

22 Q. Was that also furnished to one of the agencies that
23 was assisting you in the preparation of this case?

24 A. No, sir.

25 Q. The investigation of this case?

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1 A. No, sir, it was not.

2 Q. And that simply has remained in evidence or has that
3 been thrown away or has there been any effort made to identify
4 the flip flop?

5 A. It is still in evidence.

6 Q. But there has been no effort made to identify where
7 it came from or anything of that nature?

8 A. No, sir.

9 Q. Was any effort made, for example, to determine its
10 approximate age?

11 A. By the appearance of the algae, what appeared to be
12 the algae growing on the side of the flip flop all the way
13 around, it appeared to have been in the water for some time.

14 Q. Was any effort made to determine its apparent age?

15 A. No, sir.

16 Q. Was any effort made to determine its manufacturer?

17 A. Not to my knowledge.

18 Q. Alright, sir, now, among the photographs that you
19 took, I think Exhibit #46, did you say that was of a muddy
20 tire print?

21 A. I would have to re-examine it.

22 Q. Well, I don't mean to misquote a particular item of
23 evidence, but in the photographs that were introduced, you did
24 refer to one of them as a muddy tireprint, did you not?

25 A. It was in an area that was muddy, yes, sir.

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1 Q. Alright, now, was there by a muddy tire print, were
2 there good, deep indentations in the soil made there by that
3 tire?
4 A. Yes, sir, that is why I took these photographs.
5 Q. Were they clear and concise?
6 A. They appeared to be clear to me.
7 Q. Was the ground at that time, beginning to harden up?
8 A. At that time, it was not hard, no, sir.
9 Q. Did you make any effort to cover that portion of that
10 tire print so as to come back later and make any sort of plaster
11 casts of that tire print?
12 A. My partner took the plaster cast.
13 Q. Were plaster casts, in fact, made of that tire print?
14 A. Of that particular one, I cannot tell you.
15 Q. Were plaster casts made of the tire prints of other
16 tire prints that you found out there?
17 A. From my understanding, my partner took several.
18 Q. You were the first officer on the scene from the
19 Crime Scene Department, were you not, sir?
20 A. Yes, sir, I was.
21 Q. Did you maintain an immediate and close contact with
22 this case from its inception until now?
23 A. Pretty much so, yes, sir.
24 Q. Were you the officer to whom evidence would flow when
25 it was sent to the various other agencies that were assisting

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1 you in the investigation and the preparation of this case?

2 A. Most of the time, yes, sir.

3 Q. Did you, in fact, come into personal possession of the
4 tire casts, tire print casts and did you, for example, furnish
5 them to some agencies that had expertise in comparing tire
6 tracks?

7 A. I would have to check the F. D. L. E. records to see
8 if I personally delivered them to F. D. L. E.

9 Q. Well, under your supervision, direction or with your
10 acquiescence, that was done, was it not?

11 A. Yes, sir.

12 Q. As were what? Nineteen photographs of tire prints
13 and things like that?

14 A. Yes, sir, photographs.

15 Q. Did you get reports back from the agency regarding
16 those tire tracks and prints?

17 A. Yes, sir.

18 Q. Now, you said there was at least one mud hole on the
19 way out going South from that particular area where the child's
20 body was found. Was it more than one mud hole? Were there
21 two?

22 A. As I indicated earlier, right where all the vehicles
23 turned around, there was a slightly muddy area. When I say
24 muddy, it was not where you sink into it.

25 Q. You referred to ... excuse me, sir. Go ahead.

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1 A. I was just going to describe the other two spots to
2 you.
3 Q. Go ahead.
4 A. The other two areas were both where I have the yellow
5 marks.
6 Q. And each of those indicates a mud hole?
7 A. It would be in that close proximity, yes, sir.
8 Q. Alright, sir, now, did the tire tracks that you were
9 following proceed on through those mud holes?
10 A. Yes, sir, they did.
11 Q. Did the Florida Department of Law Enforcement, when
12 it was assisting you in the preparation of this case, and
13 obtaining evidence or possible evidence from the vehicle, did
14 it take samples of soil from under the fender wells?
15 A. No, sir.
16 Q. Who did that?
17 A. I did that.
18 Q. You did that personally?
19 A. Yes, sir.
20 Q. And did you furnish it to any one of the agencies
21 that was assisting you in the preparation of this case and if
22 you did, was it the F. B. I.?
23 A. Yes, sir, it was.
24 Q. Did you also take soil samples from the area South of
25 that pumphouse, and as a matter of fact, specifically from the

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1 two mud holes?

2 A. Yes, sir.

3 Q. And did you send that along with the samples that
4 you took from under the fender wells of the police vehicle that
5 Mr. Duckett was driving on the night of this homicide?

6 A. Yes, sir, I did.

7 Q. And did you receive a report from the F. B. I. regarding
8 whether or not they were able to make a comparison that the
9 soil under the fender matched the soil that came from those
10 mud holes?

11 A. It did not.

12 Q. It did not. Alright, sir, now, did you indicate on
13 direct examination that you had asked the agents from the
14 Florida Department of Law Enforcement to attempt to by whatever
15 means I guess, the presumptive testing or something like that,
16 make a determination whether there was blood or body fluids
17 located anywhere in that police vehicle?

18 MR. HURM: Your Honor, I would object. Can we approach?

19 THE COURT: Yes, sir.

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

21 MR. HURM: Your Honor, he is attempting to elicit from
22 this witness hearsay testimony as to what the results of these
23 tests were. That is improper.

24 MR. EDMUND: I have only asked him if the tests were made
25 and if he requested these tests be made.

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1 MR. HOGAN: You asked him the results of the tests.

2 MR. EDMUND: He responded to a question, did you receive
3 a report and his response was, "Yes, and it did not match".

4 MR. HOGAN: We can have Ruth read it back.

5 MR. HURM: I would just ask the witness be advised to
6 answer the questions and not indicate what he was told or what
7 he read.

8 THE COURT: I think what happened is he volunteered this
9 information and he didn't ask; he was just asked, "Did you get
10 the results back?".

11 MR. EDMUND: That's it.

12 THE COURT: I may be mistaken, but the point of the
13 objection is he is probably not qualified to recite what the
14 test results are.

15 MR. EDMUND: I understand.

16 THE COURT: I know you are not trying to ask him that.
17 He is just telling you that, and I think we need to advise him
18 just to answer the questions and not volunteer information.
19 Any objection to that?

20 MR. HURM: No, sir.

21 MR. EDMUND: I think once a witness is on the stand and
22 it is a harmless thing such as a response of that nature that
23 Court's objection would carry an awful lot of weight right now
24 with this Jury.

25 THE COURT: I am not going to go back to that. I am going

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1 to advise him in the future simply answer the questions and
2 don't volunteer information and I note your objection.

3 (WHEREUPON, BENCH CONFERENCE ENDS)

4 THE COURT: Deputy Aleno, I am going to advise you to
5 specifically answer the questions asked and not volunteer any
6 information, if you would.

7 DEPUTY ALENO: Yes, sir.

8 CROSS EXAMINATION CONTINUES

9 BY MR. EDMUND:

10 Q. Deputy Aleno, I think we were talking about blood
11 and semen and you did make such a request, did you not?

12 A. Yes, sir.

13 Q. And you received a report with regard to the results,
14 did you not?

15 A. I don't recall if they actually made a report
16 stipulating what they found.

17 Q. You would expect to receive a report if you made such
18 a request from the Florida Department of Law Enforcement, would
19 you not?

20 A. That is an on the spot examination.

21 Q. Alright, sir. Did you make up a file for example,
22 of reports that you received back from the Florida Department
23 of Law Enforcement concerning matters that you had requested
24 them to look into and things that you had requested them to
25 perform?

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1 A. Yes, sir.

2 Q. Do you have a copy of that file with you?

3 A. Yes, sir.

4 Q. Would you check that file to see whether or not you
5 received the report from the Florida Department of Law
6 Enforcement concerning whether or not their presumptive tests
7 for blood or body fluids was received by you or the Department?

8 A. Under submission #1, the only reference made was
9 ... seemed to consist of that, would be different ... relating
10 to a different submission.

11 Q. Yes, sir.

12 A. My reports, I don't reflect the results at the time
13 the shop where they examined it.

14 Q. No, I don't mean that the shop, when they examined it,
15 sir. I am talking about a written report that you would have
16 received from F. D. L. E. concerning their presumptive testing
17 of the carpet, the seats, the interior of the vehicle, for
18 blood and body fluids. You received such a report, didn't you?

19 A. Yes, sir. It was not at the time I thought you were
20 speaking.

21 Q. You did receive such a report based upon your request
22 for a test for those items?

23 A. Yes, sir.

24 Q. Is that right, sir?

25 A. Yes, sir.

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1 Q. Alright, sir, now, among the items that you picked...
2 you testified that you picked up items from the Medical Examiner
3 and took to the Florida Department of Law Enforcement. Among
4 those items you picked up were fingernail scrapings from under
5 the fingernails of the little victim, were they not?

6 A. Yes, sir.

7 Q. And you delivered that again to the Florida Department
8 of Law Enforcement?

9 A. Yes, sir.

10 Q. And did you request of them that they make scientific
11 effort to determine if those fingernail scrapings were of
12 evidentiary value in the prosecution of this case?

13 A. Yes, sir.

14 Q. And did you receive a report regarding the fingernail
15 scrapings?

16 A. Yes, sir.

17 Q. Alright, sir. Now, you indicated that you took the
18 clothing to the Florida Department of Law Enforcement and asked
19 that they sweep the clothing. Let me digress a moment.
20 Among the things that you had asked Florida Department of Law
21 Enforcement to do was to sweep the vehicle for debris, isn't
22 that also correct?

23 A. Yes, sir.

24 Q. And getting back to the blood, you had asked the
25 Florida Department of Law Enforcement to attempt to make

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1 scientific determination of whether there was blood on the
2 exterior of the vehicle, on the hood and fender areas, had you
3 not?

4 A. Yes, sir.

5 Q. And you received a report on that also, did you not?

6 A. Yes, sir.

7 Q. Now, getting back to the debris, you asked that they
8 sweep the vehicle for debris and is it also correct that you
9 or someone acting under your supervision, direction or control,
10 went out to the area and got together some debris of leaves,
11 bushes, grass, etcetera and then sent that to one of the
12 agencies that you were requesting assistance from and this
13 being the University of Florida at Gainesville, and asked for
14 a scientific comparison between the two, did you not?

15 A. I was not involved in that, no, sir.

16 Q. Was that done to your knowledge, in your participation
17 as one of the officers in this case, who is charged with the
18 preparation of this case as it relates to evidence with this
19 trial? It was done to your knowledge?

20 A. I heard it had been done.

21 Q. And you received a report ... your office received a
22 report regarding the results of this testing, isn't that also
23 correct?

24 A. I am not familiar with that report.

25 Q. You did ask them to examine it in light of an attempt

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1 to scientifically assist in the prosecution of this case, is
2 that fair to say?

3 MR. HURM: I am going to object.

4 MR. EDMUND: I withdraw that and get on, if he doesn't
5 know I can get back on to something else.

6 Q. You indicated that you took a photograph of at least
7 one barefoot impression near a particular numbered tire track
8 photo, did you not?

9 A. Yes, sir.

10 Q. That is not the only barefoot impression that you
11 took photos of, is that correct?

12 A. Myself, yes, sir.

13 Q. There were other photos taken at the scene of bare-
14 foot tracks, is that not correct?

15 A. Yes, sir, to my knowledge.

16 Q. And these were fresh tracks were they not?

17 A. I presume.

18 Q. We had a rain and so they had been there since the
19 rain and the rain was sometime the evening hours of that
20 night that this homicide occurred on, isn't that correct?

21 A. Yes.

22 Q. Did you or anyone working under your supervision or
23 direction or control or under whose supervision, direction and
24 control you were working, measured that footprint?

25 A. The footprints were measured and photographed with a

- 918 -

1 scale.

2 Q. With the scale beside it, were they not?

3 A. Yes, sir.

4 Q. And at least one of those footprints measured
5 ten and a quarter inches, did it not?

6 A. Not to my knowledge.

7 Q. Alright sir, what ... have you examined those
8 photographs here lately to make a determination of the length
9 of those footprints?

10 A. I checked the questionable footprint was measured
11 yesterday, with the photograph, and they measured approximately
12 just under nine and one-half inches.

13 Q. This is the partial footprint that you are referring
14 to, that measures just under nine and one-half inches, is
15 that correct?

16 A. We have one that is detailed in a little more detail
17 than we measured.

18 Q. Didn't you testify that the partial footprint measured
19 nine and one-half inches or under nine and one-half inches,
20 when you testified on direct examination?

21 A. The photographs that I referred to, the footprints
22 were partials identified next to the tire tracks.

23 A. But there were footprints... there were photographs
24 of other footprints taken with the scale beside them and
25 measured with a rule beside them and all that, was there not?

- 919 -

1 A. Yes, it was. I stated before.

2 Q. And those measured what, sir? Those footprints
3 measured how long?

4 A. Those were the ones that measured just under nine
5 and one-half inches.

6 Q. Nine and a half inches. Alright, sir. Now, did you
7 observe any shoe prints that were of evidentiary value at
8 the scene?

9 A. No, sir, I did not.

10 Q. Did you or anyone working under your direction or
11 supervision or under whose supervision and direction you were
12 working, perform a grid search or a pattern search of the area
13 looking for evidence?

14 A. Yes, sir, we did.

15 Q. Would you tell the Jury on State's Exhibit #36, may
16 I step in front of the witness, Your Honor, and let him just
17 stand up.

18 Would you point out to the Jury the approximate area
19 around the pumphouse that was encompassed by your search for
20 evidence?

21 A. We started in an area just before where the vehicles
22 had been turned around.

23 Q . Yes, sir.

24 A. As I stated earlier, this is where we found the
25 pencil.

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1 Q. Yes, sir.

2 A. We concentrated on the area over here around the
3 pumphouse, this area here. We worked our way up and around
4 and some of the beer cans and bottle tops that were all collected
5 were up around the curve.

6 Q. Alright, sir, thank you. At any point along that ...
7 first of all, would you tell the Jury what this type search
8 consists of? How you go about this type of search?

9 A. The immediate area around the pumphouse and where we
10 located the pencil were raked and searched with a metal detector.

11 Q. Was it gone over and looked over before you raked it
12 and disturbed it?

13 A. Yes, sir.

14 Q. How many people would be involved in a search of an
15 area of that size?

16 A. On this particular one, there was I would say approxi-
17 mately six.

18 Q. Six persons were involved in this search?

19 A. Yes, sir.

20 Q. Alright. In the search of this type, around the
21 area where a body has been found, what is it that you look for
22 when you are making the search?

23 A. As I stated earlier, anything that would be unnatural
24 placed there.

25 Q. Alright, that would include blood, would it not?

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1 A. Yes, sir, if you could determine there was blood
2 there.

3 Q. That would include some indication of a scuffle or
4 a laying down grass and things of this nature, would it not?

5 A. Yes, sir.

6 Q. It would include footprints, would it not?

7 A. Yes, sir.

8 Q. It would include anything that might particularly in
9 a case involving an obvious violent death, would include any
10 area that might look as though there had been any sort of
11 violent struggle?

12 A. Yes, sir, you look for areas like that.

13 Q. And with a violent death like that of a child, I am
14 assuming that officers would certainly at least take into
15 consideration that there might also have been a sexual attack
16 when you find a body of a child like this, would you not, and
17 you might look for an area where someone had been lying on the
18 ground, would you not?

19 A. Yes, sir.

20 Q. You did say that the area, that it had rained out
21 there the night before, prior to when we think that the child
22 was killed?

23 A. Yes, sir, to my knowledge.

24 Q. Did you find anything, any indication in that area
25 of a struggle?

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1 A. No, sir.

2 Q. Did you find any indication in that area of someone
3 having been lying on the ground?

4 A. No, sir, I couldn't say that I did.

5 Q. Now, in the area, there was grass, was there not?

6 A. Yes, sir.

7 Q. And there were weeds, were there not?

8 A. Yes, sir.

9 Q. And yet they were not real tall, were they?

10 A. Around the edges, they were very tall.

11 Q. Around the lake, yes. If someone had invaded those
12 tall bit of weeds and bushes and all around the lake, something
13 like that so shortly after the commission of the invasion,
14 would probably be pretty readily apparent, wouldn't it?
15 You could see where they walked in through the bushes?

16 A. Outside the area where we found the victim.

17 Q. Well, surrounding the area where you found the victim,
18 if somebody pushed through those type weeds, there would be
19 indications that somebody had pushed through there, would there
20 not?

21 A. No, sir, not in the area leading to the victim.
22 No, sir.

23 Q. Tell the Jury about the area leading down to the
24 victim. Did you find any footprints down there?

25 A. There was a scuff mark and I also did not find the

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1 victim's footprints there.

2 Q. There was a scuff mark. Would you describe that
3 scuff mark to the Jury and describe first of all, how high
4 above the water level is the top of that ... may we call it
5 a bank? That area behind the pumphouse? That short area in
6 there behind the pumphouse before you fall off into the water?

7 A. There was a slope. I don't have the measurements of
8 the elevations.

9 Q. I am going to not come back and say it was 5'6" or
10 3'2". Would you give the Jury an estimate of the height?

11 A. I would estimate two and a half, maybe three feet
12 slope where the water is.

13 Q. Would you describe that slide mark, scuff mark, that
14 you observed?

15 A. It would resemble something like maybe the ball of
16 the foot had turned or something like this.

17 Q. Did it have any characteristics through it that
18 would indicate if the ball of that foot was shod?

19 A. I didn't notice any characteristics to it at all.

20 Q. Did you photograph it?

21 A. Yes, sir.

22 Q. Did you send it anywhere for analysis for someone to
23 attempt to determine whether or not it was a barefoot print,
24 a shod footprint or just a natural indentation in the dirt?

25 A. No, sir, we did not.

1 Q. Did you yourself make any effort other than looking
2 at it at the scene, make any effort to further scientifically
3 identify what may or may not have made that particular scuff
4 mark?

5 A. There was nothing else that I could think of we
6 could do with it.

7 Q. When you got back in your car to leave, did you carry
8 debris from the ground into your automobile? You know, stuff
9 stuck to your foot? Grass and sand and all that?

10 A. Not to my knowledge. No, sir.

11 Q. Out there, it had been raining, hadn't it? You got
12 in your car and nothing stuck to your foot?

13 A. By the time I got there it was after nine o'clock,
14 and the sun had been up for awhile.

15 Q. But it would have been damp out there at or about the
16 time the little girl was killed and raped. Wouldn't it?
17 That is why the tire tracks were muddy or were so vividly out
18 there?

19 A. I understand it had rained earlier in the early
20 evening hours.

21 Q. Alright, sir. You received reports of the results
22 of the sweeping of the clothing and among what you indicated
23 you received was a report of what appeared to be a pubic hair,
24 is that right?

25 A. Yes, sir.

1 Q. You also received reports of results of the sweeping
2 of many other types of hair not that of the victim, that
3 were...

4 MR. HURM: Your Honor, I object. He is testifying to
5 hearsay and asking this witness to confirm it. It is improper.

6 THE COURT: He is right, Mr. Edmund.

7 MR. HURM: I would ask that that last question be stricken
8 and the Jury be instructed to disregard it.

9 THE COURT: It is only about half a question, but I will
10 instruct the Jury to disregard it and strike it from the record.

11 Q. Now, when you received the pubic hair from the Florida
12 Department of Law Enforcement and later sent it up to the
13 F. B. I., you had had conversation with the Florida Department
14 of Law Enforcement hair analyst prior to that, had you not?

15 A. Yes, sir.

16 MR. HURM: Your Honor, may we approach?

17 THE COURT: Yes, sir.

18 MR. EDMUND: I am not going into the conversation. I
19 just want to know if he gave her certain instructions and if
20 she followed those instructions, Your Honor. I am not asking
21 for hearsay on her side at all.

22 THE COURT: Why don't you go ahead, then.

23 Q. At that point in time, you instructed the Florida
24 Department of Law Enforcement to box up that stuff and send it
25 to you, didn't you, or words to that effect?

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1 A. I don't recall using the...

2 Q. Well, you told her to get it back to you right away,
3 didn't you? And she did.

4 A. We did receive the hair back.

5 Q. And all of this was on or about the latter part of
6 June of 1987, wasn't it?

7 A. Exact date, I would have to reflect back to my notes.

8 Q. And when she sent the pubic hair back to you, she
9 sent numerous other hairs back to you at the same time, didn't
10 she?

11 A. Yes, sir.

12 Q. And those were hairs that had been taken from Jim
13 Duckett on the 14th of May, 1987, were they not? Pubic hairs?

14 Q. Here again, the dates I am not positive of.

15 Q. Nevertheless, thirty pubic hairs taken from Jim
16 Duckett at the request of the Sheriff's Office, given freely
17 and voluntarily, and sent along with the evidence to the F. D.
18 L. E. for the purpose of microscopic comparison tests with the
19 pubic hair, isn't that correct?

20 MR. HURM: Your Honor, I am going to object. He is
21 testifying hearsay and offering evidence that hasn't been
22 introduced.

23 MR. EDMUND: I am asking a question.

24 MR. HURM: No, it is improper to ask a question where he
25 is going to introduce evidence that has never come out in this

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1 trial and he is offering it himself and implying to this
2 Jury that they should trust it and that they must have
3 forgotten where it came from, when that has not been intro-
4 duced.

5 MR. EDMUND: I am not implying anything to this Jury,
6 Judge. I don't imply things to the Jury.

7 THE COURT: Come on up.

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

9 THE COURT: Alright, gents, I see your problem. I know
10 you think that Mr. Edmund is getting evidence in the back door
11 with the F. D. L. E. results, or lack of results. It seems
12 to me he is asking the Jury straightforward questions. Didn't
13 you send the hair to the F. D. L. E....

14 MR. HURM: Judge, that is not what he is saying. He is
15 talking about it being taken voluntarily and reports of this
16 and ...microanalysis and ... that is not proper.

17 MR. EDMUND: I will go back and ask ...

18 MR. HURM: If he just asks did they send hairs? Yes.
19 Did they get hairs back? Yes. That is fine.

20 THE COURT: Which you don't think he has a right to
21 ask why did you send them...?

22 MR. HURM: If he asks why did you send them, fine, but
23 if he starts offering in all this other testimony that he is
24 giving himself, that is what is improper. That is what I
25 object to.

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1 MR. EDMUND: I am on cross examination.

2 THE COURT: I think I understand what the State is saying.
3 I think just in a matter of semantics that you are telling
4 them it was done, instead of asking if it was done, but I think
5 you can get there with just a few more questions going the
6 same way you are going.

7 (WHEREUPON, BENCH CONFERENCE ENDS)

8 CROSS EXAMINATION CONTINUES

9 BY MR. EDMUND:

10 Q. Will you tell the Jury whether or not and during the
11 month of May, hair was taken, pubic hair was taken from Jim
12 Duckett?

13 A. Here again, the month that the standards were taken,
14 I am not sure of, but...

15 Q. Well, let me ask you this. Wasn't it done within
16 two days of the homicide?

17 A. This I am not sure. I did not take the hairs.

18 Q. You know when you talked to the F. D. L. E. in June
19 the results of the testing were complete, do you not?

20 A. I had received information that they had concluded
21 what they could do, yes.

22 Q. When you sent those hairs, you requested that they
23 attempt to make a comparison between his hair, the known hair
24 that you sent of his, and the pubic hair that they had found
25 in the panties of the little girl, did you not?

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1 A. Yes, sir.

2 Q. Did you receive a report verbally and later in writing
3 of the results of the test, did you not?

4 A. Yes, sir.

5 Q. Now, when that occurred and when you got the evidence
6 back, do you have your correspondence with you from Florida
7 Department of Law Enforcement and with Lifecodes?

8 A. Yes, I do.

9 Q. Tell the Jury what is Lifecodes?

10 A. It is a laboratory that is supposed to be expertise
11 in the new DNA testing.

12 Q. Are they located in New York?

13 A. Yes, sir.

14 Q. Did you, in fact, go to New York?

15 A. Yes, sir, I did.

16 Q. Did you take certain evidence out to New York for
17 DNA testing?

18 A. Yes, sir.

19 Q. Did you leave it with DNA?

20 A. Yes, sir.

21 Q. Did you later receive it back from DNA?

22 A. Yes, sir.

23 Q. Was it delivered back to you personally or mailed to
24 you?

25 A. I personally picked it up.

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1 Q. Now, when you sent the ... when you received the
2 unknown pubic hair from Florida Department of Law Enforcement,
3 you received it on or about the 26th of June, did you not?

4 A. Here again, I received it back. The date I am not
5 sure of.

6 Q. Do your records reflect when you saw it? When you
7 got it back?

8 A. Yes, sir, they would.

9 Q. Would you take a look and see whether or not that is
10 about the date you got it? Do you have your letter to
11 Lifecodes?

12 A. Yes, sir, I do.

13 Q. Wasn't the letter to Lifecodes written the day after
14 you received the evidence back from F. D. L.E.?

15 A. It would be in close proximity, yes, sir.

16 Q. Alright, sir.

17 A. I delivered these items to Lifecodes on...

18 Q. You carried with you a letter of transmittal from
19 the Sheriff, did you not?

20 A. Yes, sir, they had to have a letter authorizing them.

21 Q. And it is dated on a particular day and you actually
22 arrived there the following day, didn't you, sir?

23 A. Yes, to the best of my knowledge.

24 Q. What is the date of the letter from the Sheriff
25 authorizing Lifecodes to conduct the tests and to bill the

1 Sheriff's Department?

2 A. June 26, 1987. It is a copy of it.

3 Q. Does that refresh your memory that you received the
4 items you transmitted to Lifecodes from Florida Department of
5 Law Enforcement the day preceding the 26th or the 25th of
6 June?

7 A. Yes, sir, in that close proximity.

8 Q. And you delivered it up there on the 27th of June?
9 You went there the next day, didn't you?

10 A. On June 29, 1987, at 3:30 P. M., is when I hand
11 delivered it there.

12 Q. Alright, sir, three days later, alright sir.

13 When you received that particular evidence from the
14 Florida Department of Law Enforcement, was it numbered?

15 A. Yes, sir, they had a number assigned to it.

16 Q. Do you recall the number to which it was assigned...
17 that was assigned to it?

18 A. At this time, off the top of my head, no, sir.

19 Q. When you took it to the Lifecodes, did they number it?

20 A. Yes, sir, they did.

21 Q. When you received it back, how was it numbered?

22 A. We are speaking of the sweepings?..

23 Q. I am speaking of the many numbers that were attached
24 to many pieces of evidence to the point that ... do you know
25 now which number is appropriate to each piece of evidence?

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1 A. I have Lifecodes numbering system in front of me.

2 Q. I know, but did there become some conflict between
3 the numbering systems to the point that there became some
4 question as to which was which as this evidence went back and
5 forth between you and F. D. L. E. and you and Lifecodes and
6 you and the F. B. I.?

7 A. No, sir. Lifecodes had mixed up the numbering system.

8 Q. Lifecodes had mixed up the numbering system.

9 A. Right.

10 Q. And it caused some concern as to what they had
11 received and what they had returned and whether or not they
12 were not the same items or mixed up items?

13 A. No, they had all the items at the time.

14 Q. They had all the items, they just had the numbers
15 all mixed up?

16 A. Yes, sir.

17 Q. How did you get it straightened out?

18 A. When I went over the letter they initially sent me,
19 the numbers did not correspond to what I had on my records
20 and they had failed to examine the blue jeans that had a large
21 semen supposedly a large semen spot in them.

22 Q. How did the numbers get mixed up, Mr. Aleno?
23 They did get mixed up, didn't they?

24 A. Lifecodes did that.

25 Q. And item is assigned a number...

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1 A. Lifecodes did it.

2 Q. Lifecodes did it, but they confused your evidence
3 by confusing their numbers on your evidence, did they not?

4 A. I used their original numbers to correspond.

5 Q. Alright, when you got the pubic hair back, how did
6 you know from their number, that it was the pubic hair?

7 A. Because it was the identifying number that we had on
8 it was still sealed.

9 Q. Sir?

10 A. It had our identification number on it and it was
11 still sealed.

12 Q. You mean Lifecodes didn't open the pubic hair?

13 A. No, sir, they did not.

14 Q. They wrote you back and said ... did they tell you
15 they were able to conduct any scientific tests on the pubic
16 hair?

17 A. They had not conducted any test on it.

18 Q. Did they ever tell you how they could look through
19 a wrapped up, sealed up package and tell you they couldn't
20 conduct scientific tests on a pubic hair?

21 A. This was in a Petri type dish that they could look
22 through.

23 Q. A Petri type dish. Didn't you say it was sealed?
24 Was it sealed in cellophane or something like that?

25 A. No, sir, it was sealed in the dish itself. It was

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1 sealed.

2 Q. They took the wrapper off, didn't they?

3 A. Yes, sir.

4 Q. And then they looked at this thing, didn't they?

5 And they gave it a wrong number and they wrapped it back up
6 again, didn't they?

7 A. Not to my knowledge, they didn't do that.

8 Q. Did it come to you in the cellophane or did it come
9 to you wrapped up in something Lifecodes wrapped it up in?

10 A. When I received it back?

11 Q. Ahum?

12 A. It was in the wrapping I had taken it up in.

13 Q. They just re-wrapped it in the wrapping you took
14 it up in?

15 A. Yes, sir.

16 Q. And they resealed it?

17 A. Yes, sir.

18 Q. Or whatever they did to it. Now, when you went
19 up there, did you take any of the head hairs that were found
20 on the little girl's body and in her clothing?

21 MR. HURM: I am going to object. May we approach?

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

23 MR. HURM: That is assuming facts not in evidence. Nobody
24 has ever testified except Mr. Edmund in opening statement that
25 head hairs were found on her body.

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1 MR. EDMUND: He said he received certain things. I guess
2 I can go back and ask him what else he received from F. D. L. E.
3 when he got this evidence back.

4 THE COURT: I'll sustain that objection.

5 (WHEREUPON, BENCH CONFERENCE ENDS)

6 Q. As regards to hair, Mr. Aleno, when you received the
7 pubic hair back, the unknown pubic hair back from F. D. L. E.
8 and you received the known pubic hair donated by Jim Duckett,
9 what else did you receive from Florida Department of Law
10 Enforcement regarding hair?

11 A. Are we speaking of Lifecodes?

12 Q. I want to go back to the Florida Department of Law
13 Enforcement. You said there came a point in time when you
14 told them to send the stuff back to you. They did. And they
15 sent you a pubic hair and they sent you back the known Duckett
16 hairs that you had sent over there for comparison purposes.
17 What, if anything else, regarding hair, did they send to you
18 at that time?

19 A. They sent the ...

20 Q. They sent head hair?

21 A. The Petri dish with the...

22 MR. HURM: Objection, Your Honor, that is the same
23 objection.

24 MR. EDMUND: It is not. I am on cross examination.

25 MR. HURM: But he can't testify, Your Honor.

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1 MR. EDMUND: I am not testifying, if it please, Your
2 Honor.

3 THE COURT: Enough. Overruled. You can ask the question.

4 MR. EDMUND: Thank you.

5 Q. Was it head hair?

6 A. I received numerous head hairs back from the lab.

7 Q. Were they small white hairs?

8 A. Not to my knowledge.

9 Q. You received head hairs? At the same time, did you
10 receive head hairs that had been taken from Duckett and sent
11 over for comparison purposes?

12 A. Yes, sir.

13 Q. Alright, when you sent this ... all this hair up
14 to the Lifecodes, did you send them the pubic hair?

15 A. The unknown pubic hair?

16 Q. The unknown? Did you send them the pubic hairs that
17 had been taken from Duckett sometime earlier? Long before he
18 was arrested?

19 A. The ones I received from F. D. L. E., yes, sir.

20 Q. Did you send them up there? To Lifecodes?

21 A. Yes.

22 Q. Did you send them the head hairs that had been sent
23 to you by F. D. L. E.?

24 A. Head hairs, yes.

25 Q. Did you send the known head hairs that had been taken

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1 from Duckett? That had been examined by F. D. L. E.?

2 A. Those are the hairs I was speaking of.

3 Q. Did you send the unknowns as well as the knowns?

4 A. I misunderstood your question. I thought you asked
5 me if I sent pubic hairs of the victim, of the defendant and
6 head hairs.

7 Q. Did you send both?

8 A. Yes, sir.

9 Q. Did you send unknown pubic hair? You did?

10 A. The unknown pubic hair, yes.

11 Q. Did you send the unknown head hair that was sent
12 to you by F. D. L. E.?

13 A. I am not familiar with unknown head hairs you are
14 speaking of.

15 Q. Now, did you... did there come a point in time when
16 you sent all of this to the F. B. I.?

17 A. I advised I took the hairs to the F. B. I., yes, sir.

18 Q. Alright. Precisely regarding pubic hair, what did
19 you take to the F. B. I.?

20 A. We had standards from several subjects that we
21 earlier mentioned the names. I am not that familiar with.
22 We sent hairs from the defendant. We sent hairs from the
23 victim. And we sent the unknown pubic hair.

24 Q. Now, the hairs you sent from the defendant, when were
25 they collected?

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1 A. I would have to examine the evidence.

2 Q. Would it be on or about the 16th of November? I mean
3 on or about the 14th or 16th of November?

4 A. Yes, sir, that sounds approximate.

5 Q. Alright, did you send along the known pubic hair
6 from Jim Duckett that had been donated back in May?

7 A. The original hairs were destroyed by Lifecodes.

8 Q. The original hairs were destroyed by Lifecodes?
9 The original hairs that Jim Duckett gave back in May were
10 destroyed by Lifecodes?

11 A. Yes, sir, the amount was small...after F. D. L. E.
12 done their examination and their process, they said they
13 destroyed the hairs.

14 Q. They destroyed your evidence?

15 MR. HURM: Your Honor, he has answered the question.
16 This isn't the appropriate time for argument by Mr. Edmund.

17 Q. Were none of them left?

18 A. The hair standards from Mr. Duckett, no, sir, I did
19 not receive those back.

20 Q. Alright, you did though, receive the known head hairs
21 from Duckett back from F. D. L. E., didn't you?

22 A. To my knowledge, I believe we did, yes, sir.

23 Q. Did you send those to F. B. I.?

24 A. Yes, sir.

25 Q. Did you take additional head hairs from Duckett in

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1 November?

2 A. Let me correct that. The head hairs that went to the
3 F. B. I. were taken in November. That is what we sent to them.

4 Q. What happened to the head hairs of Duckett that were
5 taken in May?

6 A. As I earlier stated, the Lifecodes had the hairs from
7 F. D. L. E. It is my understanding, I did not examine the
8 package, were few and they were destroyed or ...

9 Q. They destroyed not only the pubic hairs that F. D. L. E.
10 had tested, but the head hairs that F. D. L. E. had tested?

11 A. No, sir, it was my impression these were hairs that
12 were left in an envelope that they did not use. F. D. L. E.
13 did not use.

14 Q. Well, now, F. D. L. E., when it compares hair, doesn't
15 destroy the unknown hair, does it?

16 A. No, sir.

17 Q. They don't destroy the known hairs, do they?

18 A. No, sir.

19 Q. They box everything up and send it back to you, don't
20 they?

21 A. We got slides, when they examine hairs, we get
22 back slides.

23 Q. Didn't you receive slides from F. D. L. E.?

24 A. Yes, sir, I got slides from F. D. L. E.

25 Q. Weren't those slides of known pubic hair?

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1 A. Here again, I would have to look to my records to whose
2 hair were whose.

3 Q. Did you send those slides of known pubic hair of
4 Duckett to Lifecodes?

5 A. There were slides, I believe.

6 Q. Do you know?

7 A. I don't recall. No.

8 Q. Well, are you aware now of any slide, the existence
9 of any slides of the original hair that was taken from Duckett
10 in May, the pubic hair?

11 A. To my knowledge right now, no, sir.

12 Q. What has happened to them?

13 A. Here again, if I reflected to my records, if we had
14 slides of them, we would have them.

15 Q. If we had slides of them we would have them... would
16 you reflect on your records?

17 There are presently slides in existence that were made
18 up by F. D. L. E. back in June containing specimens of pubic
19 hair taken from Jim Duckett back in June of 1987, aren't there?

20 A. My records reflect that on 6/15/87, I delivered ...
21 I rescind that... Officer Harris delivered one set of friends,
22 one sealed envelope containing known samples of pubic hair
23 recovered from the subject, James Duckett, and also one sealed
24 envelope containing known head hair recovered from James
25 Duckett.

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1 Q. Okay, to F. D. L. E.?

2 A. Yes, sir.

3 Q. When was it returned to you and do you have the
4 transmittal information and what did you receive?

5 A. On 6/25 or '87, at 4:45 P. M., I received back
6 items marked B and C which would be the envelopes containing
7 the pubic hairs and head hairs of James Duckett.

8 Q. Were they in slides or not? Were they mounted?

9 A. According to my records what I picked up, were items
10 B and C, which would be the sealed envelopes containing the
11 hairs.

12 Q. Now, are you saying that there is no way that any
13 expert could compare the questioned pubic hair tha was found
14 on the child's body with the pubic hairs that were taken from
15 James Duckett back near the time of the commission of this
16 crime? Because somebody in the chain of custody has destroyed
17 them?

18 A. Unless F. D. L. E. has got slides I did not receive,
19 or I have no knowledge of. Those original hairs, to my
20 knowledge, ...

21 Q. So unless by the grace of the Lord, F. D. L. E. has
22 kept a slide or two, there is no way that somebody now could
23 take that questioned hair, that questioned pubic hair, and
24 compare it against Duckett's pubic hairs back in the Spring
25 or the early Summer of 1987?

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1 MR. HURM: Objection. That is asked and answered.

2 THE COURT: Go ahead and answer it. Overruled.

3 A. To my knowledge, as I stated, I don't recall slides
4 being ...

5 Q. And the same is true with his head hair, isn't it?

6 A. From the evidence I received and what I took to
7 Lifecodes...

8 Q. It got destroyed also.

9 A. I don't know... also those hairs are the ones that I
10 was informed in their testing were destroyed.

11 Q. Do you figure maybe they may have tested that pubic
12 hair, too?

13 A. No, sir.

14 Q. They claim they didn't do that? They didn't destroy
15 that or get it mixed up or anything like that?

16 When you called F. B. I., did you tell the F. B. I. that
17 another agency had conducted tests on the questioned hairs that
18 you sent them?

19 A. They were advised that the hair had been recovered at
20 the Florida Department of Law Enforcement and they had examined
21 it.

22 Q. Did you advise them that the hairs that the Florida
23 Department of Law Enforcement had compared with that hair had
24 been destroyed?

25 A. No, sir, we had other standards that had been taken

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1 later to submit.

2 Q. Well, don't you know that hair changes?

3 MR. HURM: Objection, Judge.

4 MR. HOGAN: It does not change.

5 MR. EDMUND: It certainly does.

6 MR. HURM: My objection is he is testifying now and that
7 is improper in that kind of a question. He is putting himself
8 into the witness chair and saying that hair changes.

9 THE COURT: I am going to sustain that objection,
10 Mr. Edmund, unless you can lay a basis or a predicate.

11 Q. Do you know whether or not hair changes?

12 A. No, sir, I am not a hair expert.

13 Q. How many samples did you take up to the F. B. I.?

14 A. Would you be more specific on what samples?

15 Q. Of pubic hairs from Duckett?

16 A. From Duckett, I did not count the hairs. There was
17 numerous hairs pulled and like a twelve o'clock position,
18 three o'clock position, six, nine, so that there was a variety
19 of hairs. Exact number of hairs, I cannot tell you.

20 Q. They were in four packages?

21 A. Yes, sir.

22 Q. And you don't know the number of hairs in each package?

23 A. No, sir, I didn't count them. Dr. Shutze did the
24 pulling of the hairs.

25 Q. Alright, is the same true with the head hair?

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1 A. Yes, sir.

2 Q. Did the F. B. I. ask you why the Lake County Sheriff's
3 Office needed a second opinion on hair comparison?

4 MR. HURM: Objection, Your Honor, that calls for hearsay.

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

6 MR. EDMUND: I don't offer it for the truth or whatever
7 is going on, only whether or not it occurred, Your Honor.

8 THE COURT: I am going to sustain the objection.

9 Q. In the past, when you received reports from Florida
10 Department of Law Enforcement in investigative matters, have
11 you gone to the F. B. I. for second opinions?

12 A. I have heard of it done. Right off-hand, I am not
13 familiar with a case.

14 Q. Have you done it yourself?

15 A. Not that I can recall.

16 Q. If a fellow goes seeking a second opinion, would it
17 be a fair statement to say it would be because he didn't like
18 the first one?

19 MR. HURM: Objection. That is totally improper.

20 MR. EDMUND: I don't think it is improper.

21 MR. HOGAN: It is speculative and argumentive.

22 MR. EDMUND: I don't think that is improper, Your Honor.

23 THE COURT: Excuse me, Mr. Hogan, one lawyer per witness.
24 Mr. Hurm can handle himself. Alright, I sustain the objection.

25 MR. HURM: May I ask that it be stricken and the Jury told

1 to disregard it, sir?

2 THE COURT: Alright, strike the question from the record
3 and the Jury will disregard it.

4 Q. Duckett was at the scene the day following or the day
5 of the finding of the child's body, isn't that correct?

6 A. He showed up later that afternoon.

7 Q. When he was called, according to the testimony here,
8 and we don't have the ruling on it.

9 A. I can just tell you what hearsay was.

10 Q. Did you see him at the scene?

11 A. Yes, sir.

12 Q. Was he in uniform?

13 A. To the best of my recollection, yes, he was.

14 Q. Did anyone request of him that he provide the uniform
15 to you that he had been wearing the night before?

16 A. No, sir.

17 Q. Did anyone ask him if he would provide the shoes that
18 he was wearing?

19 A. Did anyone ask him to provide them to us?

20 Q. Ahum?

21 A. To my knowledge nobody asked him and they weren't
22 volunteered.

23 Q. Did anyone ask him to provide for scientific examination
24 the accouterments to his uniform?

25 A. Not to my knowledge.

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1 Q. Did anyone ask him for fingernail scrapings?

2 A. At this time, not to my knowledge.

3 Q. At some point during this investigation?

4 A. I don't recall if it had been done.

5 Q. Were there other individuals who were asked for
6 fingernail scrapings?

7 A. Yes, sir.

8 Q. The suspect automobile with the small front tires
9 and the back wide tires, was that a brown Oldsmobile?

10 A. I couldn't tell you.

11 Q. Was it an automobile that had been in the area a
12 great number of times that night, all the way up until virtually
13 daylight or did you make any inquiry?

14 A. No, sir, my job is to do the crime scene and from the
15 details I got were possibly a suspect vehicle with large tires
16 on the back and smaller tires on the front.

17 Q. Now, when you tell them the tread marks as you saw
18 it there were not large on the back and small on the front,
19 a decision was made that that vehicle was no longer a suspect
20 vehicle?

21 A. No, sir.

22 Q. Well, what was done?

23 A. From what I could hear around the radio and all,
24 they were looking for the other vehicle.

25 Q. Did they ever find it?

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1 A. This I cannot tell you.

2 Q. Was there ever a description of the vehicle put out
3 other than it had small front tires and wide back tires?

4 A. I don't know the exact description, but I know that
5 our officers and other agencies were looking for the certain
6 vehicle, if it was one or two or three, I couldn't tell you.

7 Q. When you took the fingerprints, did you inventory
8 the fingerprints, giving them a 1A, 1B, 1C, 1D and all that?

9 A. May I ask which prints you are referring to?

10 Q. I am sorry, off the hood.

11 A. F. D. L. E. did this.

12 Q. Alright, but do you have an inventory which gives
13 to you the fingerprints that were lifted from the hood and
14 the hood area, the front post and all that, giving those
15 specific numbers of 1A, 1B, 1C and on down the line?

16 A. What I received was a copy of what F. D. L. E. stated
17 that their numbers were.

18 Q. Alright, sir, there is then such a list?

19 A. Yes, sir.

20 Q. Are all those fingerprints still in existence?

21 A. To my knowledge, they would be. They gave them a
22 number, I would imagine they would be.

23 Q. So you are not aware whether or not any of those
24 prints may or may not be now available?

25 A. No, sir.

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1 MR. EDMUND: Can I have just a moment, Your Honor?

2 THE COURT: Yes, sir.

3 Q. Did you get a report from the F. D. L. E. concerning
4 the fingerprints and identification of individuals from those
5 prints?

6 A. From the vehicle, yes, sir.

7 Q. Alright, sir. Did you ask the F. B. I. for a second
8 opinion?

9 A. On the fingerprints, no, sir.

10 Q. Did you receive a report from whatever agency it was
11 that you asked to give you a tire track comparison of the
12 photos and the plaster casts and the tires on that car? Did
13 you receive a report from them?

14 A. Yes, sir.

15 Q. Did you ask the F. B. I. for a second opinion?

16 A. No, sir.

17 Q. You did receive a report from the Florida Department
18 of Law Enforcement concerning the hair comparison?

19 A. Yes, sir.

20 Q. And you asked the F. B. I. for a second opinion?

21 A. Not for a second opinion. We asked them to...

22 Q. You asked for a different opinion?

23 MR. HURM: Objection, Your Honor. I ask him to allow
24 the witness to answer the question.

25 THE COURT: You can answer the question. Go ahead, Officer.

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1 A. We asked them to examine the new standards, hair
2 standards, and exhibits sent to them.

3 Q. Why? Didn't you already have a report from the
4 Florida Department of Law Enforcement? Why didn't you send
5 it back to Florida Department of Law Enforcement and ask them
6 to examine the new standards? You asked them for a second
7 opinion, didn't you?

8 MR. HURM: Objection. It is a compound question. He
9 asked them in a roll and he needs to allow the witness to
10 answer.

11 Q. I'll ask it this way. In light of your answer, you
12 asked them for a second opinion, because you didn't like the
13 one you got from the Florida Department of Law Enforcement,
14 didn't you?

15 A. No, sir, that is not my reason.

16 Q. That is not your reason? You liked the one you got
17 from the Florida Department of Law Enforcement?

18 A. I didn't judge it either way. I was just advised to
19 send the...

20 Q. Somebody in your Department then didn't like the
21 report you got from the Florida Department of Law Enforcement,
22 okay? Thank you, Your Honor.

23 RE-DIRECT EXAMINATION

24 BY MR. HURM:

25 Q. Deputy Aleno, what was the report you got from the

1 Florida Department of Law Enforcement? With regard to hair
2 analysis?

3 Your Honor, may I ask why Mr. Edmund is standing up?

4 MR. EDMUND: Because Mr. Edmund is a wanderer and I am
5 sorry, Your Honor.

6 MR. HURM: I didn't know whether there was an objection
7 coming.

8 MR. EDMUND: No, I am just eager to get back there.

9 A. Do you want verbatim?

10 Q. Please?

11 MR. EDMUND: Here you go. May I approach the witness,
12 Your Honor?

13 THE COURT: He has it... you have it there, Officer?

14 A. No, sir, I haven't found it.

15 THE COURT: Alright.

16 MR. HURM: You can use mine.

17 MR. EDMUND: I have got mine all underlined.

18 MR. HURM: We have an underlined copy too.

19 Q. With regard to the second paragraph, under the results
20 section, please if you would read that?

21 A. Yes, sir. "Found within the debris from Q6, the
22 victim's panties, was one caucasian pubic hair, microscopically
23 different from pubic hair standards from the victim."

24 Q. Continue reading.

25 A. "No comparison examinations were performed on these

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1 hairs with the standards collected from Morales, due to the
2 lack of sufficient number of hairs."

3 The next paragraph, "Microscopic comparisons of the
4 Q hair with the known sample from Duckett, revealed both
5 similarities and differences, such that no conclusion could
6 be reached as to whether or not this hair could have originated
7 from source represented by Exhibit B."

8 Q. Did you later learn what the reason for no conclusion
9 being able to be drawn from that comparison was?

10 A. That there was not enough sample hairs to do the
11 comparison.

12 Q. Sample known hairs from the Defendant?

13 A. Yes, sir.

14 Q. Was a subsequent withdrawal, if you will, or taking
15 of known hairs from the defendant done?

16 A. Yes, sir.

17 Q. And was that the known hair sample sent to the F. B. I.?

18 MR. EDMUND: Your Honor, the leading, I don't mind where
19 we are going. I object to the leading, if it please, Your
20 Honor.

21 MR. HURM: I'll rephrase it, Your Honor.

22 Q. What was done with that known set of hairs taken
23 from the defendant?

24 A. The second time they were submitted to the F. B. I.

25 Q. Who did the analysis on that?

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1 A. Mr. Malone.

2 Q. Now, did you take any other evidence to Lifecodes
3 when you went to Lifecodes, other than the hairs?

4 A. I took cuttings from the underwear; the underwear
5 themselves; sweepings from the jeans; sweepings from the
6 panties and the blue jeans.

7 Q. What was the purpose of taking the blue jeans and the
8 underwear and the cuttings from them?

9 A. F. D. L. E. had stated that they had found what
10 appeared to be semen in the panties and in the back seam of
11 the blue jeans.

12 Q. What was the purpose of taking those items to
13 Lifecodes? With regard to the semen?

14 A. For the purpose of the DNA examination.

15 Q. And then you took it to Lifecodes for hair analysis
16 and also semen analysis?

17 A. Yes, sir.

18 Q. Was there also a request to do any analysis of the
19 blood found in the panties?

20 A. The blood was so deteriorated they...

21 Q. Lifecodes couldn't do anything with that?

22 A. No, sir.

23 Q. Now, you indicated that the hair, the Q hair, unknown
24 hair, that was recovered from the victim's panties, was placed
25 in a Petri dish?

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1 A. Yes, sir.

2 Q. And you received it back from F. D. L. E. in that
3 Petri dish?

4 A. Yes, sir.

5 Q. I show you what has been marked as ... oh, this hasn't
6 been marked. I would ask that it be marked for identification.

7 THE COURT: What say you, ma'am?

8 CLERK OF THE COURT: Five "L"s.

9 THE COURT: Five "L"s.

10 Q. I show you what has been marked LLLLLL for identification
11 Deputy Aleno, and ask if you recognize it?

12 A. Yes, sir.

13 Q. What is that?

14 A. This is the envelope that contained the Petri dish
15 that contained the hair removed from the panties.

16 Q. The unknown pubic hair?

17 A. Yes.

18 Q. Alright, would you take whatever is in the envelope
19 out and tell me if you recognize it?

20 A. Yes, sir.

21 Q. What is that?

22 A. That is the Petri dish that did contain the unknown
23 pubic hair found in the panties of the victim.

24 Q. Is there writing on that Petri dish?

25 A. Yes, sir.

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1 Q. Is your writing anywhere on that Petri dish?
2 Or on the envelope?

3 A. On the envelope, yes, sir.

4 Q. Now, when you took that Petri dish to Lifecodes, was
5 it in a sealed condition?

6 A. Yes, sir.

7 Q. The dish itself?

8 A. It would have had the tape across it, yes.

9 Q. Now, when you received it back from Lifecodes, did
10 it appear to have been tampered with in any way?
11 The Petri dish itself?

12 A. No, the F. D. L. E. number and seal was still on it.

13 Q. Did Lifecodes indicate to you what, if anything,
14 they had done with the pubic hairs?

15 A. It would be an assumption of what they told me that
16 they could see there was not enough root to do the examination.

17 Q. So they didn't put that, as far as you know, through
18 any of the process to try to extract the DNA?

19 A. No, sir.

20 Q. What was the reason for that, did they indicate?

21 A. As I stated, the follicle or the hair root was what
22 they needed, and this had deteriorated enough that they could
23 not use it.

24 Q. Now, since then, there was other evidence tape on
25 there, white and red, who is that from?

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1 A. That would be Mr. Malone from the F. B. I.
2 Q. Was the unknown hair in this Petri dish when you took
3 it to the F. B. I.?
4 A. Yes, sir.
5 MR. HURM: Your Honor, at this time, I would offer State's
6 LLLLLL for identification into evidence.
7 MR. EDMUND: I don't have any problem with that,
8 Your Honor.
9 THE COURT: State's LLLLLL for identification admitted
10 into evidence as State's Exhibit 63, ma'am?
11 CLERK OF THE COURT: Yes, sir.
12 THE COURT: #63.
13 (WHEREUPON, STATE'S EXHIBIT #63 IS ADMITTED INTO EVIDENCE
14 WITHOUT OBJECTION)
15 Q. Deputy Aleno, as you examined the Petri dish there
16 now, did it have the hair in it? The unknown pubic hair?
17 A. At this time, no, sir.
18 Q. Now, when the defendant came to the scene that day,
19 did he ever offer to give up his uniform, once he was advised
20 he was possibly a suspect?
21 MR. EDMUND: Your Honor, I object. I move it be stricken.
22 He was not advised he was a possible suspect and he did make
23 certain offers, if it please, Your Honor.
24 MR. HURM: May we approach, Your Honor?
25 THE COURT: Come on up.

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1 MR. EDMUND: I move it be stricken and I am about to
2 make another motion.

3 MR. HURM: Your Honor.

4 THE COURT: Alright, come ahead. One at a time.

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

6 THE COURT: I will ask you the question. Was he in fact
7 advised at the scene that he was a suspect?

8 MR. HURM: He was advised at some point. He was questioned
9 that night. They gave him Miranda.

10 MR. EDMUND: At some point in time about three days
11 later.

12 MR. HURM: Your Honor, he opened this up on cross examin-
13 ination when he asked whether he was ...

14 MR. EDMUND: That doesn't give him the prerogative of
15 making untrue statements.

16 MR. HOGAN: You do it.

17 MR. HURM: Whether or not he was asked for shoes and I am
18 simply trying to establish whether he was asked for his uniform,
19 whether he was asked for his shoes, whether he was asked for
20 any of the accouterments, I am simply going to establish that
21 he didn't need to offer those things.

22 THE COURT: I don't think there is a problem with that.
23 The problem is the statement that when he was advised he was
24 a suspect.

25 MR. HURM: I'll stricken that from my question.

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1 THE COURT: I am going to strike that from the record
2 and tell the Jury to disregard it and we will start over.

3 (WHEREUPON, BENCH CONFERENCE ENDS)

4 THE COURT: Ladies and gentlemen, we are going to strike
5 the last question from the record and advise you to disregard
6 it.

7 RE-DIRECT EXAMINATION CONTINUES

8 BY MR. HURM:

9 Q. Deputy Aleno, did the defendant ever offer to you
10 or to other members of the law enforcement, to your knowledge,
11 his uniform?

12 A. Not to my knowledge.

13 Q. Did he ever offer the shoes?

14 A. Not to my knowledge.

15 Q. Did he ever offer any of his accouterments; I
16 suppose that means gun belt and so forth? That he wore?

17 MR. EDMUND: I hope you know what it means.

18 MR. HURM: I assume that is what you meant, Mr. Edmund.

19 A. Not to my knowledge, no, sir.

20 Q. Now, you talked about the cigar butts and cigarette
21 butts which you found at the scene. In your experience, when
22 you go to the scene of a homicide, what is your policy with
23 regard to picking up things around the scene that would seem
24 unnatural?

25 A. If unnatural, we normally pick them up.

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1 Q. Why?

2 A. Just for evidentiary value. Not knowing what we have
3 got, we take everything we can.

4 Q. So when you first get to a scene, do you know what is
5 going to be of value in evidence and what is not going to be
6 of value?

7 A. Not totally, no, sir.

8 Q. Now, the flip flop that was next to the victim,
9 let me get a photograph... I show you what is marked as
10 State's #29 in evidence. That photograph, is there a flip
11 flop depicted in that photograph?

12 A. Yes, sir, there is.

13 Q. Your Honor, with permission of the Court, I would like
14 to have the witness step down and point that out to the Jury,
15 please, sir.

16 (WHEREUPON, WITNESS POINTS OUT FLIP FLOP ON DIAGRAM
17 TO THE JURY)

18 Q. Thank you. You can have a seat again.

19 Did you or did you not recover that flip flop as
20 evidence?

21 A. Yes, sir, we did.

22 Q. And what was it you found on it?

23 A. Around the edges, it appeared to be like an algae
24 type grass had been growing on it.

25 Q. Did you find that algae type grass anywhere on the

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1 victim's body?

2 A. Algae growing on the victim? No.

3 Q. Did you find any algae growing on her shoes?

4 A. No, sir.

5 Q. Now, the mud that you found the ... you photographed
6 the tire impressions in, how deep was that mud?

7 A. In the basic area, I estimate maybe three inches.
8 The photograph was taken just out of it.

9 Q. Of the barefoot impressions that you photographed,
10 did any of them measure ten and a quarter inches?

11 A. No, sir, they did not.

12 Q. Now, you talked about where you found the broken
13 pencil. They were twenty-five feet or thereabouts away from
14 the pumphouse?

15 A. Approximately twenty-six feet, yes, sir.

16 Q. Do you have an opinion as to whether that might
17 indicate a sign of a struggle at that point? From your
18 experience?

19 A. Yes, sir.

20 Q. Now, the scuff mark that you saw on the incline there,
21 near the body, were you able to make any findings as to whether
22 that was made by as Mr. Edmund said, a shod foot or an unshod
23 foot?

24 A. No, sir.

25 Q. Had other individuals, to your knowledge, been down

1 to the waterline where the body was prior to your arrival?

2 A. As far as closeness to the body, I don't know how
3 close anybody else could have gotten.

4 Q. Where the scuff mark... where you found the scuff
5 mark on the incline, had anybody gotten there to your knowledge?
6 Jim Clark, who found the body, or Mike Brady?

7 A. To my knowledge, no, sir.

8 Q. Did you find any of the victim's shoe prints?

9 A. No, sir.

10 Q. Now, the other car you mentioned, the brown Olds-
11 mobile you think you thought it was a Firebird earlier?

12 A. Yes.

13 Q. But we are talking about the same car, aren't we?
14 Big rear wheels and small front wheels?

15 A. The vehicle you are speaking of has large tires and
16 small tires.

17 Q. From the tire impressions you observed at the scene
18 and you photographed, do you have an opinion as to whether
19 those tire impressions were made by a car with different sized
20 wheels in the front and back?

21 A. No, sir, they would appear to be the same size.

22 Q. Now, after the hairs... after you retrieved the
23 hairs from the F. B. I., did you have to take them to any
24 other hair expert?

25 A. Yes, sir, I did.

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1 Q. And who was that?

2 A. Dr. DeForest.

3 Q. At whose request did you take those hairs to
4 Dr. DeForest?

5 A. The Defense.

6 Q. Where is Dr. DeForest headquartered?

7 A. Just outside of White Plains, New York.

8 Q. Can I have a moment, Your Honor?

9 THE COURT: Sure.

10 MR. HURM: Thank you, Deputy. I have no further
11 questions. I would like, Your Honor, I have neglected before,
12 I would like to mark this for identification and offer it into
13 evidence.

14 MR. EDMUND: No objection, Your Honor.

15 THE COURT: It will be marked ... this is the chart
16 with the distances, it will be marked MMMMM for identification.
17 Admitted into evidence without objection as State's Exhibit
18 #64.

19 (WHEREUPON, STATE'S EXHIBIT #64 IS ADMITTED INTO EVIDENCE
20 WITHOUT OBJECTION)

21 RE-CROSS EXAMINATION

22 BY MR. EDMUND:

23 Q. Mr. Aleno, did you offer your clothing for
24 examination?

25 A. No, sir, I did not.

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1 Q. Did Officer North offer his clothing for examination?
2 A. No, sir.
3 Q. Did Chief Brady offer his clothing for examination?
4 A. Not to my knowledge.
5 Q. Did Officer Johnson offer his clothing for examination?
6 A. Not to my knowledge.
7 Q. Then why should Mr. Duckett come up and offer his
8 clothing for examination?
9 A. At that time?
10 Q. No reason, right? Thank you.
11 Now, the fact is that F. D. L. E. called you and said,
12 "Look, twenty-eight of the thirty hairs we have have none of
13 the characteristics..."
14 MR. HURM: Objection, may we approach?
15 MR. EDMUND: Judge, this is a question, if it please,
16 Your Honor, he is the one that started the hairsay.
17 THE COURT: Gentlemen, come up, please.
18 (WHEREUPON, BENCH CONFERENCE IS HELD AS FOLLOWS:)
19 MR. HURM: Your Honor, I am going to object. This is
20 hairsay, pun intended. He read the report and if he wants
21 to come in on the report, then that is fine, but to get into
22 what maybe perhaps he has been told separately, that is
23 commenting on evidence that hasn't come up before this Jury
24 and it is improper.
25 MR. EDMUND: He went far past that, Your Honor, and he

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1 opened up the door to why the things were sent back and I know
2 why it was sent back and I have witnesses coming to testify
3 about why it was sent back.

4 MR. HURM: Then let them do that.

5 MR. EDMUND: I want to offer something that wasn't a
6 conversation.

7 MR. HURM: Then that is fine, if he wants to offer that
8 conversation then, but he can't himself. He is not a witness.

9 THE COURT: I feel you opened the door and Mr. Hogan,
10 don't shake your head when you don't like my ruling.

11 MR. HOGAN: Yes, sir.

12 THE COURT: He can continue your line of questioning at
13 least to a point.

14 MR. EDMUND: Thank you, Your Honor.

15 (WHEREUPON, BENCH CONFERENCE ENDS)

16 Q. A phone call came in from F. D. L. E. regarding the
17 comparisons between the unknown pubic hair and Duckett's known
18 pubic hair in June of 1987. You were advised that of the thirty
19 hairs, twenty-eight of them did not have the characteristics
20 of the unknown hair; and two had similarities and dissimilarities
21 and that Special Agent Deborah Steger needed additional hairs
22 in order to affect an elimination of Duckett, isn't that
23 correct?

24 A. I don't recall a phone call specifying the number of
25 hairs.

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1 Q. Well, do you recall a phone call specifying, "I need
2 more hairs to affect an elimination of Duckett"?

3 A. I recall going to the lab and sitting down myself
4 and some other people from our agency, and discussing the
5 hairs.

6 Q. And they needed more to affect an elimination?
7 You don't remember that?

8 A. It seems like that she said she did not have enough
9 hair standards to do a comparison.

10 Q. To affect an elimination? Alright, sir, now...

11 A. Not to my knowledge.

12 Q. And is that when you said, "Give me my stuff and let
13 me go home"?

14 A. No, sir.

15 Q. When was that?

16 A. When I was advised to collect the items up...

17 Q. Oh, when you came back and told somebody who didn't
18 like the report and they said, "Go get your stuff and bring
19 it home", is that a fair statement?

20 A. I wouldn't use that terminology, no, sir.

21 Q. That is when you went looking for another fella like
22 the F. B. I.?

23 A. I was advised to send them to the F. B. I.

24 Q. Not you. I ddidn't mean you. I don't mean to whack
25 you with that, Randy. But whoever was telling you to do it

1 said, "Go find somebody else who will give us a favorable
2 ruling, or give it a shot".

3 A. It would just be an opinion that we would have it
4 examined, the hair, that is all I can state.

5 Q. No further questions, Judge.

6 THE COURT: Mr. Hurm?

7 MR. HURM: I don't have any further questions.

8 THE COURT: What do you say about Deputy's subpoena,
9 gentlemen?

10 MR. HURM: We would like him on stand-by, Your Honor,
11 since he is so much of the chain.

12 THE COURT: If you would let the State Attorney know
13 where you will be.

14 MR. EDMUND: Oh, wait, wait, wait, wait, Your Honor.

15 THE COURT: Yes, sir.

16 MR. EDMUND: May I approach the bench?

17 THE COURT: Yes, sir, don't go away.

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

19 MR. EDMUND: There is another matter on re-direct I
20 need to go into and that is regarding delivery of the hair
21 to DeForest.

22 THE COURT: Alright. I'll let you do that.

23 MR. EDMUND: Thank you, Your Honor.

24 (WHEREUPON, BENCH CONFERENCE ENDS)

25 RE-CROSS EXAMINATION CONTINUES

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1 BY MR. EDMUND:

2 Q. Regarding DeForest, isn't it correct that at some
3 point in time week before last you were requested to get
4 additional hairs from Duckett and send to DeForest and you
5 agreed you would?

6 MR. HURM: Your Honor, I am going to object. This is not
7 inside the scope of Re-Direct.

8 MR. EDMUND: It is, Your Honor.

9 MR. HURM: It is a separate matter than what I went into
10 on Re-Direct.

11 THE COURT: Overruled. Go ahead.

12 Q. And you agreed you would?

13 A. I was advised to take the hair standards to Dr.
14 DeForest, yes, sir.

15 Q. No, sir, I am talking about we asked you to get
16 additional hairs from Duckett and send them up to DeForest.
17 After you had taken the hair up there originally.

18 A. You are speaking after I returned to Florida?

19 Q. Yes, sir?

20 A. Yes, sir.

21 Q. Alright, and you agreed you would?

22 A. Yes, sir.

23 Q. And you were ordered not to were you not, by your
24 superiors?

25 A. I was told not to, yes, sir.

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1 Q. No further questions.

2 RE-DIRECT EXAMINATION

3 BY MR. HURM:

4 Q. Who told you not to, Deputy Aleno?

5 A. Captain Horner.

6 Q. Did I not also tell you not to?

7 A. Your office did.

8 MR. EDMUND: Your Honor, if it please the Court, hold
9 the phone a minute, Judge. If he wants to get on the witness
10 stand, then I would like to question him as to why. If he
11 wants to get into a swearing contest, I am ready to get into
12 that swearing contest, Your Honor.

13 MR. HURM: Your Honor, may we approach?

14 THE COURT: Alright.

15 (WHREUPON, BENCH CONFERENCE IS HELD AS FOLLOWS:)

16 THE COURT: I am going to get the gloves out.

17 MR. EDMUND: Judge, it is going to be ...

18 MR. HURM: Judge, if he was ... when he was told not
19 to take them, this is what we have discussed in chambers.
20 That we are under no obligation to produce evidence for them.
21 If they wanted Duckett's hair, they could have taken it
22 themselves, just like they did before.

23 MR. EDMUND: We are going to have to get into a swearing
24 contest if this goes any further. I know what my conversations
25 were with the people nad what their conversations were with me
and they are not the same now as they were then.

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1 MR. HURM: Let me clarify...

2 MR. EDMUND: I want the Court to talk to us...

3 MR. HURM: Well, let me question him and I need to ask
4 him, are you talking about you wanted us to send Duckett's
5 knowns that F. D. L. E. looked at, that he said Lifecodes
6 destroyed, or did you want us to pluck more hairs from
7 Duckett?

8 MR. EDMUND: My statement to you was my son is a person
9 who is in the chain of custody on the original hairs. It
10 now appears there are going to be differences.

11 MR. HURM: Wait a minute, Jack, you never told me about
12 your son.

13 MR. EDMUND: Let me finish. Peter needs more hair to
14 affect an elimination or make a comparison. If there is an
15 elimination, I don't want him to be in the custody, because I
16 don't want any indication that we switched hairs. We needed
17 somebody in the Sheriff's Department to take them and send
18 them.

19 MR. HURM: I don't like that. That is not what I recall
20 at all.

21 MR. EDMUND: I don't want to get Randy in a bind, but he
22 kept ducking this and ducking it, and he finally said, "Hell,
23 I have got to be up front, Horner told me no".

24 THE COURT: Without regard to what you also said, he has
25 testified that he was told not to take them and he was told by

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1 Horner and I think it is on the record probably that he was
2 told by Mr. Hurm not to take them. That is about how far
3 we got. Alright? It seems to me the last question was going
4 to be why did I tell you not to take them, and the answer is
5 going to be because you told me we don't have to supply them
6 for the Defense.

7 MR. HURM: Exactly.

8 MR. EDMUND: And then I am going to ask Steve Hurm to
9 take the stand and then explain to him why I needed an officer
10 to take them. it is just that simple. We can stop here or we
11 can get into a small...

12 THE COURT: Why don't we stop here. How much more is
13 there?

14 MR. HURM: There is nothing more except my only concern
15 is he has got his word in as to why or the implication being
16 that we are trying to hold something back and that is not the
17 case.

18 MR. EDMUND: No, no, you did that. I left it with Hurm.

19 MR. HURM: No, sir. If there is an implication, or a
20 miscommunication, my understanding when he and I talked, the
21 day of the pre-trial conference, it was that he was telling me
22 they were going to take more hairs, that the person needed
23 more hairs and they were asking, and they said, "We told
24 Randy, and he is going to be there.". I took that as a
25 courtesy to us that Randy be there to see it. There was no

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1 understanding on my part that we had to send that out; that
2 that was going to be our understanding, and had I understood
3 that, Jack, I would have objected and told you ...

4 MR. EDMUND: We got in the car and left town on the
5 assurance that they would be gone. The next day came and
6 Peter called and said, "Where is the hair?", and I said, "It is
7 probably in the mail". The next day, "Where is the hair".
8 We get Randy on the phone and then he says ... he spoke with
9 Bob, but bottom line is that Horner told me to tell you to
10 stick it.

11 MR. HURM: I don't think this is right.

12 MR. EDMUND: We can stop here, and there is no damage done
13 but if we go any further, we have got problems.

14 MR. HURM: We will stop here.

15 (WHEREUPON, BENCH CONFERENCE ENDS)

16 MR. HURM: May I have just a moment, Your Honor?

17 THE COURT: Yes, sir.

18 MR. HURM: I don't have anything further.

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

20 MR. HURM: As I said, we would like him under subpoena.

21 THE COURT: You are under subpoena, just let us know
22 where you will be, please, sir.

23 Let's take a fifteen minute recess, Mr. Bailiff?

24 (WHEREUPON, COURT IS IN RECESS AT 3:35 P. M.)

25 (WHEREUPON, JURY IS OUT AT 3:35 P. M.)

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1 (WHEREUPON, DEFENDANT IS REMOVED FROM COURTROOM AT 3:36
2 P. M.)

3 (WHEREUPON, COURT IS IN RECESS AT 3:36 P. M. FOR FIFTEEN
4 MINUTES)

5 (WHEREUPON, DEFENDANT IS PRESENT IN COURTROOM AT 4:10 P.M.)

6 (WHEREUPON, COURT RECONVENES AT 4:10 P. M.)

7 THE COURT: Folks, for those of you that are with us for
8 your convenience, let me advise you that we have two more
9 witnesses this afternoon. One of them may take a while. We
10 are going to go until that witness is finished. It may be
11 substantially after five o'clock before we are through. You
12 know my policy about coming and going, so you are forewarned.
13 If you would like to leave knowing that, feel free to leave
14 now. Otherwise, we are going to stay until these witnesses are
15 completed. Are we all clear?

16 Alright. Anything before we bring the Jury back?

17 MR. HURM: No, sir.

18 MR. EDMUND: No, Your Honor.

19 (WHEREUPON, JURY ENTERS COURTROOM AT 4:11 P. M.)

20 THE COURT: Welcome back, folks. Be seated, please.
21 I was just telling the members here in the courtroom with us,
22 we have two more witnesses to call this afternoon, one we
23 think will be very brief. The second one may take a while.
24 I made a determination that we are going to finish that
25 second witness's testimony today, even if we have to go past

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1 five o'clock. It will probably be obvious to you why before
2 we are through. Alright, the State's next witness?

3 MR. HURM: Witt Graves, Your Honor.

4 (WHEREUPON, WITT GRAVES IS CALLED AS NEXT WITNESS FOR
5 THE STATE AND IS DULY SWORN BY THE CLERK OF THE COURT)

6 DIRECT EXAMINATION

7 BY MR. HURM:

8 Q. Take a seat, Mr. Graves. Good afternoon, Mr. Graves.

9 A. Good afternoon.

10 Q. Address your answers to the Jury and speak right into
11 the microphone, if you would, please.

12 THE COURT: You can pull that microphone back, if you
13 would like, sir.

14 Q. Would you state your name, please?

15 A. Witt Smith Graves.

16 Q. How are you employed?

17 A. With the Florida Department of Law Enforcement as a
18 Crime Lab Technician.

19 Q. How long have you been a Crime Lab Technician with
20 F. D. L. E.?

21 A. Four and a half years.

22 Q. What are your responsibilities as a Crime Lab
23 Technician?

24 A. My primary responsibilities are to recover trace
25 evidence.

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1 Q. From items of evidence that are brought to you?

2 A. Items that are submitted to the laboratory for
3 analysis, for micro analysis as well as for serology.

4 Q. Now, Mr. Graves, did you have occasion to become
5 involved in the case of a homicide of Teresa McAbee in May or
6 June of last year?

7 A. Yes, I did.

8 Q. How did you become involved in that case?

9 A. My first involvement with this case was to receive
10 one sealed box containing items Q-1 through Q-8. The second
11 involvement was to remove the first submission, the second
12 submission, the third submission from the vault and to sweep
13 the third submission only.

14 Q. Now, the third submission, did that include a pair
15 of panties?

16 A. Yes, sir.

17 Q. I show you what has been marked in evidence as State's
18 #3 and ask you if you recognize these?

19 A. Yes, I do.

20 Q. How do you recognize them?

21 A. This tag attached to the panties, Q-6, which is the
22 item number, 87-3889, which is the abbreviated lab number for
23 submission three, and the date I swept it and my initials.

24 Q. What date did you sweep those panties?

25 A. 5/18/87.

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1 Q. Now, May 18, 1987, would you describe the process you
2 used to sweep the panties?

3 A. The process involves first of all, laying a white
4 butcher paper on a large table. The bag is opened and the
5 bag is swept also to recover debris, by shaking or taking a
6 spatula and going around inside the bag.

7 Q. Now, when you talk about sweeping, is that kind of a
8 generic term? It doesn't mean actually with a broom?

9 A. It is a generic term. We do use a broom occasionally,
10 or a brush, but we use also tweezers and we use a spatula to
11 use a sweeping motion very gently across the fabric to release
12 loose debris.

13 Q. Go ahead, what did you do?

14 A. These particular pair of panties laid on the table
15 and we first observed them for any unusual markings, cuts,
16 tears, or fabric markings such as fabric content, and before
17 it is swept. As these particular panties were turned inside
18 out, I noticed what appeared to be a pubic hair.

19 Q. Where was that pubic hair located?

20 A. It was located inside the crotch area.

21 Q. What did you do when you saw that, what appeared to be
22 a pubic hair?

23 A. I took that particular hair with the tweezers, placed
24 it in what we call a Petri dish, sealed the Petri dish and marked
25 the Petri dish and retained that particular hair until I

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1 finished sweeping the garment.

2 Q. Alright, sir, I show you what has been marked as
3 State's Exhibit UU for identification and ask you if you will
4 open that up. Please, first of all, do you recognize the
5 outside of that?

6 A. This is called a debris fold or a pharmaceutical fold.
7 I do recognize this debris fold because it contains my markings
8 of Q-6, swept on 5/18/87, with the case number, submission
9 three and my initials and also it has brown plastic tape
10 which I have sealed it with, giving my initials and the date
11 that I sealed it.

12 Q. Alright, sir. What did you find within that?

13 A. Contained in the debris fold was the Petri dish
14 in which I submitted the one particular what appeared to be a
15 pubic hair. This was sealed, labeled and initialed and dated
16 with my initials.

17 Q. Is there still the hair in that Petri dish?

18 A. No, there is not.

19 Q. Is this the butcher paper you mentioned that is also
20 included in this?

21 A. That is correct. That is a sealed fold containing
22 other debris collected ... well, there is nothing in it now,
23 but at one time there was.

24 Q. Thank you, Mr. Graves. At this time, I would offer
25 State's UU for identification into evidence.

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1 MR. EDMUND: No objection, Judge.

2 THE COURT: State's UU for identification will be admitted
3 into evidence without objection as State's Exhibit #65.

4 (WHEREUPON, STATE'S EXHIBIT #65 IS ADMITTED INTO EVIDENCE
5 WITHOUT OBJECTION)

6 MR. HURM: I have no further questions.

7 MR. EDMUND: No questions, Your Honor.

8 THE COURT: Can we release Mr. Graves from his subpoena?

9 MR. HURM: Yes, sir.

10 THE COURT: Any objection, Mr. Edmund?

11 MR. EDMUND: No, Your Honor.

12 THE COURT: You are free to go, Mr. Graves, thank you very
13 much.

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1 THE COURT: The State's next witness.

2 MR. HOGAN: Michael Malone.

3 THE COURT: Michael Malone, please.

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

6 DIRECT EXAMINATION

7 BY MR. HOGAN:

8 Q. Please state your name for the record?

9 A. It is Michael P. Malone. It is M A L O N E.

10 Q. Mr. Malone, how are you employed?

11 A. I am a Special Agent for the Federal Bureau of
12 Investigation.

13 Q. What is your current assignment?

14 A. Currently I am assigned to the Hairs and Fibers Unit
15 of the FBI in Washington, D. C.

16 Q. How long have you been an Agent with the FBI?

17 A. Seventeen years.

18 Q. What is your educational background, Agent Malone?

19 A. I have a Bachelor of Science Degree in Biology from
20 Talson State University in Baltimore, Maryland and a Master of
21 Science Degree in Biology from James Madison University in
22 Harrisonburg, Virginia.

23 Q. Do you have any specialized training that you received
24 at the Bureau involving your specialty of hair and fiber?

25 A. After being assigned to the lab in 1974, my first full

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1 year at the lab was in training.

2 Q. What did that training consist of?

3 A. The early part of the training, I went to the hair
4 and fiber schools at the FBI Academy in Quantico. I attended
5 lectures and seminars and I read a great deal available
6 literature in the field, but as far as hairs, there is one
7 way and one way only to learn about hairs, and that is to
8 literally look at thousands and thousands of hairs and this
9 is what I spent most of the year doing. At the end of that
10 time, my supervisor gave what you might want to call a final
11 exam. He went out and he got hairs from fifty different
12 people and mounted these on glass microscope slides and he
13 went out and he got known hair samples from the same fifty
14 people and he mounted these on slides also. These slides were
15 mixed all up. Now, what I had to do to be qualified as a hair
16 examiner at the lab was match the fifty unknown hairs back to
17 the original fifty people and get all of them right.

18 Q. Were you able to do that?

19 A. Yes, I did.

20 Q. Now, since that time, is that what your career
21 consisted of? Examining hairs and fibers?

22 A. Yes, the bulk of it, of course, I have been doing
23 teaching also.

24 Q. Where do you teach?

25 A. I started out by teaching at the Air Force OSI, and

1 that is their Office of Special Investigations Forensics
2 Program in Washington, where they train all their investigators.
3 I taught several hair and fiber schools at the Academy down
4 in Quantico. The last two years, I have been going all over
5 the United States lecturing at international, national, and
6 regional seminars on serial murders. I had to handle the
7 forensic aspect of the serial murder investigation.

8 Q. You have co-authored a book on how to investigate
9 serial murders?

10 A. Yes, I authored publications of it, but I have also
11 been contributing author to a manual that was put together by
12 the local... for local law enforcement officers. It is called
13 the Multi-Agency Investigative Team Manual. That is just a
14 long name for saying it tells them how to investigate a
15 serial murder. It was published by the National Institute of
16 Justice and it was distributed to every law enforcement
17 agency in the United States just this past month.

18 Q. Agent Malone, in your instruction at Quantico, you
19 commonly instruct people who are potential laboratory analysts
20 from other states, who are going to work in State agencies?

21 A. Yes, the classes down at Quantico all our students
22 are local crime lab people.

23 Q. Have you instructed on any occasion persons who are
24 attempting to become qualified as fiber and hair analysts for
25 FDLE or the Florida Department of Law Enforcement?

1 A. I have done some, but of course, our lab has done
2 numerous people from there.

3 Q. Now, in the course of the last thirteen years, how
4 many hairs have you examined as an expert after you had your
5 initial year of training?

6 A. I have examined hairs from about 10,000 different
7 people. That is, 10,000 different individual known hair
8 samples. As far as unknown hairs, it would run well into
9 hundreds of thousands.

10 Q. And you commonly testify in court?

11 A. Yes, I do.

12 Q. Give us an estimate of how many times you have been
13 qualified as an expert in court?

14 A. I have been qualified as an expert in hair and fibers
15 over three hundred times in forty-two states, the District of
16 Columbia, the Virgin Islands, and the Commonwealth of Saipan.

17 Q. Agent Malone, in fact in late 1987 you were qualified
18 as an expert in this Circuit, were you not?

19 A. Yes, I was.

20 MR. HOGAN: I tender to the Court Agent Malone as an
21 expert in hair and fiber analysis.

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

23 VOIR DIRE EXAMINATION

24 BY MR. EDMUND:

25 Q. Agent Malone, my name is Jack Edmund. Will you

1 describe how you go about the examination of an unknown hair?

2 A. What I do is a three part examination using three
3 different microscopes before I come up with any type of
4 conclusion.

5 Q. Would you start the jury from when you receive the
6 hair until you complete the examination of the hair? The
7 process that you use?

8 A. I was going to use a chart for this later.

9 MR. EDMUND: Well, if it please the Court, I am on
10 Voir Dire. Would Your Honor instruct the witness to respond
11 to my question. I want ... I have a place I am going, if it
12 please the Court.

13 THE COURT: Go ahead. You have the right to voir dire
14 as to whether or not Agent Malone is an expert.

15 Q. When you get the hair in, Agent Malone, what is the
16 first thing you do with it?

17 A. The first thing you have to do is it has to be mounted
18 on glass microscope slides.

19 Q. And do you do that personally?

20 A. No, I don't.

21 Q. Someone else does that for you?

22 A. That is correct.

23 Q. Then what do you personally do when you get ... when
24 did you reach the point in your career that someone else was
25 mounting the slides for you?

1 A. As soon as I became qualified as an examiner, I was
2 assigned a technician who did this for me, so it would have
3 been after the first year.

4 Q. Alright and then would you state how do you go about
5 the examination of the hair from that point on?

6 A. The first step, of course, after you have mounted
7 the unknown hair on the microscope slide and the only thing
8 you know about it at this point is that it is, in fact,
9 hair, is you look at the hair under what is called a low power
10 stereo scope, which goes up to about eighty power. This
11 enables you to look at the three major regions of the hair;
12 that is the root, the shaft and the tip, and from these regions,
13 you can deduce certain things immediately about that hair,
14 so first of all, whether it is human hair or secondly, whether
15 it is an animal hair. Now, if it is an animal hair, you can
16 tell what kind of an animal it came from; dog, cat, horse,
17 whatever. If it is a human hair, there are several things you
18 can tell with a very high degree of accuracy. First of all,
19 being the race. In other words, you can tell what race that
20 hair, the person who deposited that hair, whether Negroid,
21 Mongoloid, Caucasian, or mixed race. The second thing you can
22 tell is body hair and I can get it down to seven specific
23 areas of the body, each area having its own characteristics..
24 The next thing I can tell, I can look at the root of the hair
25 and tell you how that hair came out, whether it came out

1 forcibly or if it came out ... if it was naturally shed. I
2 can look at the tip and tell whether it has been cut with a
3 razor, scissors or knife, or was broken, or if it has a natural
4 tip. I can look at the shaft of the hair and tell you whether
5 it has been bleached or died or permed or whether anything
6 else has been done to that hair. Now, this is all what I call
7 step one of the procedure.

8 Q. About how long does this step take, Doctor?

9 A. Well, it depends. Are you talking about one hair?

10 Q. Yes, sir?

11 A. Probably about an hour.

12 Q. It takes about an hour? What is the next step?

13 A. The next step, what you are trying to do is identify
14 the individual characteristics of the hair; the microscopic
15 characteristics. These are the characteristics that can make
16 your hair different from my hair and different from somebody
17 else's hair. Now, you can't really see except eighty power,
18 so what you have got to do is take the hair out of the first
19 scope and put it on the second scope, which is called a high
20 powered light microscope, and that is L I G H T. This enables
21 you to look inside the hair shaft itself. When you do this,
22 then you can look at the three main regions of that hair.
23 Now, by looking at all the characteristics there in those
24 three main regions, and how they are arranged, then you get a
25 good picture, a mental picture, of the characteristics of

1 that hair, but you still haven't compared it to a known sample.
2 So this is going to be step three of the process. You then
3 take your unknown hair; you put it on a third microscope, which
4 is called a comparison microscope, and you compare the unknown
5 hair against the known hair. What you are comparing again,
6 all the characteristics and how they are arranged, of the
7 two hairs, and when you do this, you come up with one of two
8 conclusions about your hair. With one significant difference
9 between the unknown and the known, you can eliminate somebody.
10 In other words, you can say, "This hair did not come from that
11 person". Now, the second conclusion is if those hairs are
12 what we call absolutely indistinguishable under the scopes,
13 so that they look like the same hair, the same characteristics
14 and the same arrangement, you then say, "This hair microscop-
15 ically matches the hair of this person and therefore, this hair
16 is consistent with having originated from that person".

17 Q. How long does that procedure take?

18 A. It depends on the hair, but I would say a few hours.

19 Q. A few hours? One, two, three, what?

20 A. It depends on the hair.

21 Q. Alright, would an average be two?

22 A. Two or three, I would say.

23 Q. So you spent an average then of say three hours on the
24 examination of the unknown hair?

25 A. On the unknown hair, yes.

1 Q. On the unknown hair. Did you say to this jury that
2 you had examined literally hundreds of thousands of unknown
3 hairs?

4 A. Yes, I have.

5 Q. At three hours per hair... hundreds of thousands
6 would be at least 200,000, wouldn't it?

7 A. Correct.

8 Q. And you put at least three hours on each hair. That
9 is 600,000 hours. Please explain to the Jury how you put in
10 600,000 hours into seventeen years?

11 A. I am still going to say I have looked at hundreds
12 of thousands of hairs, because I have looked at a number...

13 Q. I just wondered if you would, sir, answer my question
14 and explain to the Jury how you examined hundreds of thousands
15 of unknown hairs in seventeen years, if it takes you 600,000
16 hours to do that?

17 A. Well, maybe it doesn't take quite as long as two hours
18 to do the unknown.

19 Q. Well, suppose we knock that down then to oh, an hour
20 and a half, so now we are down to 300,000 hours. Would you...
21 I am not very good at mathematics, but if you divided
22 seventeen years into 300,000 hours, you would still have an
23 awful lot of hours. Explain to the Jury how you even did
24 that in seventeen years?

25 A. First of all, the process I just went through is for

1 hair that is suitable for comparison.

2 Q. Well, do you want to knock off another half...?

3 MR. HOGAN: Excuse me, Judge...

4 MR. EDMUND: I have no further questions, Your Honor.

5 MR. HOGAN: I thought not.

6 THE COURT: Now, is he tendered as an expert?

7 MR. HOGAN: Yes, sir.

8 THE COURT: Any objection?

9 MR. EDMUND: Yes, Your Honor, but none that I will voice
10 for the record.

11 THE COURT: Alright. Agent Malone will be accepted by
12 this Court over objection as an expert in the examination of
13 hairs and fibers, including comparative examination.

14 DIRECT EXAMINATION CONTINUES

15 BY MR. HOGAN:

16 Q. Agent Malone, I would like for you to continue with
17 the answer. There are some hairs, you were saying, that are
18 not suitable for examination?

19 A. Yes, limb hairs, beard hairs, eyebrow hairs. I can
20 look at a hundred or a thousand of them at one time and make
21 an instant appraisal that is the body area, and I won't even
22 look at them anymore. The process I was talking about is a
23 suitable hair for comparison, which is basically, head hairs
24 and pubic hairs and that is a detailed examination of the hairs.
25 On your typical case, one case may have a thousand hairs and

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1 maybe nine hundred and fifty of them are no good. You can
2 make this instantly. This is an instant assessment that
3 is done under the stereoscope.

4 Q. In other words, hair off an arm or a leg is not
5 suited for comparison?

6 A. That is correct.

7 Q. And you can look at that hair and as soon as you see
8 that hair and realize that was body hair and there is no point
9 in going any further with that hair?

10 A. That is correct and that assessment is made in a
11 fraction of a second.

12 Q. I show you what has been marked for identification
13 with five Ns, and ask you to recognize that.

14 A. Yes, this is a chart that I have prepared showing
15 the characteristics of a hair.

16 Q. Would this chart be useful to you in explaining to
17 the Jury further how you go through the process of analyzing
18 hair?

19 A. Yes, it would.

20 Q. I put this into evidence, Judge.

21 MR. EDMUND: No objection, Judge.

22 THE COURT: State's Exhibit 5Ns for identification,
23 admitted into evidence without objection, as State's Exhibit
24 66.

25 (WHEREUPON, STATE'S EXHIBIT #66 IS ADMITTED INTO EVIDENCE)

1 Q. With the Court's permission, may Agent Malone stand
2 down and explain to the Jury the process?

3 THE COURT: Yes, sir, you can step down, Agent.

4 AGENT MALONE: Thank you, Your Honor.

5 A. I don't want to be redundant, but what I am going to
6 do now is just basically give you a little bit more detailed
7 explanation of what I have just explained.

8 It is basically how I do a hair examination, but you have
9 got to remember in the first part of this exam, you are examining
10 a hair, but the only thing you know about it, at this time, is
11 it is, in fact, a hair, so in forensic science, that is
12 basically what you are trying to do with anything. You are
13 trying to take an unknown hair or an unknown anything, and
14 comparing it against a known commodity and doing one of two
15 things. The unknown is different from a known; the unknown
16 didn't come from the known, or that the unknown is consistent
17 with or the same as or it looks like the known, and, therefore,
18 it is consistent with coming from it.

19 Now, as I said, the way we do this with a hair is a three
20 part microscopic examination. As I said earlier, on the
21 stereoscope, we can look at the root, at the shaft and the
22 tip and we can tell all those things I said about the face,
23 body area, how it came out, bleaching, perming, dyes and things
24 like that. I went into that earlier, but the second step, I
25 didn't go into in too great a detail. This is when we look at

1 the individual microscopic characteristics in the hair. Again,
2 these are the characteristics that are going to make my hair
3 different from your hair and different from somebody else's
4 hair. They are very small. To even see them, you have got
5 to get up in the range of 250 to 400 power. To do this, you
6 have to put it on a high power light microscope. Now, when
7 you do it, you are going to see the hair and what I have done
8 is taken a small section of this hair and I have blown it up
9 to show you what it might look like. You are going to see
10 that a hair is constructed of what are called three anatomical
11 regions. Going along the outside of your hair is a thin layer
12 known as the cuticle of the hair and it is made up of over-
13 lapping scales and under the microscope they look a little bit
14 like fish scales. What you are looking for here are how far
15 these scales stick out. How well you can see them. You are
16 looking at the color of this cuticle and how thick the cuticle
17 is. You are looking whether there is any diameter variation
18 along this cuticle. Now, the second area runs right down the
19 core of the hair, the middle, is known as the Medulla. What
20 you are looking for here are the shape of these cells, the
21 size, the color, clarity and two other things: how they are
22 distributed along the hair or across the hair.

23 Now, the third area, which is the largest portion of the
24 hair, this is called the Cortex of the hair, in this area, and
25 it contains the pigment. The pigment, of course, is what gives

1 your hair the color. The more pigment you pack into the
2 Cortex area, the darker your hair is going to be.
3 The brunettes are going to have more pigment; the blondes are
4 going to have very little pigment, and at some point in most
5 people's lives, the very base of the root, which is the only
6 living portion of the hair, will quit manufacturing the
7 pigment and as the hair grows out, it will be gray and finally
8 white. What you are going to look at in the Cortex, you will
9 look at the size of the granual, the shape of the granule,
10 the density, how many of them there are, the distribution,
11 where they are and sometimes the line-up will change, which
12 is called streaking and sometimes they will come together in
13 a group called clumping. You might see these little air
14 spaces in here which is called the cortical fusi. Without
15 getting too detailed, the important thing that I have to
16 remember or you have to remember on Step Two, is I have got
17 to find fifteen individual microscopic characteristics in
18 the hair and if I can't, then I will say basically the hair
19 is no good or no value for comparison and I will stop the
20 exam hair and there is no further going on.

21 Most normal hairs, average hairs, will have about twenty
22 individual microscopic characteristics. You have a hair with
23 twenty characteristics, you have got a very good hair to work
24 with. Alright. The key to the whole exam then is how
25 these characteristics are arranged within that hair. They are

1 arranged slightly differently in almost everybody's hair.
2 I don't want to mislead you, you can never take it to the
3 point of fingerprints. In other words, where you can say
4 "This hair came from that person and nobody else in the world".
5 Trained hair examiners normally have no problem separating
6 out hairs of different individuals. In my personal experience,
7 I said I have looked at hairs from about 10,000 different
8 people and have only run across two occasions out of 10,000
9 times where I had hairs from two different people that I could
10 not tell apart.

11 This is going to take us to Step Three, and that is on
12 the comparison scope. What we are going to do here, we are
13 going to compare our unknown hair, which is always given a
14 Q number, standing for question. We are going to compare it
15 against our known hair sample and again, this is on a
16 comparison scope which is actually two scopes connected
17 together with an optical bridge with one eye piece. What
18 you are doing is comparing the two hairs. All the characteris-
19 tics and their arrangement and again, when you do that, there
20 is one of two conclusions. If there is one significant
21 difference, you can say this hair did not come from this
22 person, or number two, if you have got exactly the same
23 arrangement and exactly the same characteristics, so these
24 hairs are what we call distinguishable and we then say,
25 "This hair is consistent with having originated from that

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1 person".

2 Q. Thank you very much. I would like to show you a
3 number of exhibits and ask if you have seen them before. For
4 record purposes, let me be sure we are clear on the record
5 and go through them one at a time. For identification
6 purposes, this is Exhibit MMM, consisting of eight envelopes
7 that were identified earlier by Dr. Shutze as having come from
8 Armando Morales. Do you recognize that? Those containers?

9 A. Yes, I do.

10 Q. Did you receive those containers in a sealed fashion?

11 A. Yes, I did.

12 Q. Did you open these containers?

13 A. Yes, I did.

14 Q. What did you do with the hair that was in there?

15 A. I removed the representative sample of the hairs and
16 mounted them on glass microscope slides.

17 Q. You say you mounted them on glass microscope slides,
18 is that so that you could then conduct this process of looking
19 at them under the microscope?

20 A. Yes, I did.

21 Q. Alright, sir, I show you what has been marked for
22 identification as State's Exhibit LLL, consisting of eight
23 envelopes identified by Dr. Shutze as coming from Antonio
24 Morales, and ask you if you recognize that exhibit?

25 A. Yes, I do.

1 Q. And likewise, did you receive that in a sealed
2 ... was it in a sealed condition when you received it?

3 A. Yes, it was.

4 Q. And likewise, did you open this? Unseal this
5 package?

6 A. Yes, I did.

7 Q. And placed them on the glass slides?

8 A. Yes, a representative sample of the envelopes on
9 glass slides.

10 Q. And I show you what has been marked for identification
11 as State's Exhibit B which was identified by Dr. Shutze as
12 hair coming from Armando Morales and ask you if you recognize
13 that contained two envelopes?

14 A. Yes, I do.

15 Q. And did you go through the same procedure with this?

16 A. Yes, I did.

17 Q. And having received them in a sealed fashion?

18 A. They were sealed, correct.

19 Q. And you opened them and put them on the microscope?

20 A. Yes, I did.

21 Q. And I show you what is marked as State's Exhibit P
22 for identification. This is consisting of three separate
23 packages identified by Dr. Shutze as hair having come from
24 Tammy Zavala. Do you recognize that?

25 A. Yes, I do.

1 Q. And did you receive this in a sealed fashion?

2 A. Yes, I did.

3 Q. Did you open it?

4 A. Yes, I did.

5 Q. And placed the hair on the microscope slides?

6 A. Yes, a representative sample of hair was taken out and
7 placed on slides.

8 Q. Alright, sir, now I show you what has been marked for
9 identification as State's Exhibit N. This is an exhibit
10 consisting of fifteen separate containers identified by
11 Dr. Shutze as hair coming from Salvador Calisto and ask you
12 if you recognize that container?

13 A. Yes, I do.

14 Q. Did you receive those in a sealed condition?

15 A. Yes, I did.

16 Q. Did you open them?

17 A. Some of them, yes.

18 Q. And the ones that you opened, did you place those on
19 microscope slides?

20 A. Yes, we did.

21 Q. And now, I show you what is marked as State's
22 Exhibit RR, which have been identified by Dr. Shutze as hair
23 having come from Dorothy McAbee and ask you if you recognize
24 those containers?

25 A. Yes, I do.

1 Q. Did you receive those in a sealed condition?
2 A. Yes, I did.
3 Q. And likewise, go through the same process of preparing
4 them on microscope slides?
5 A. Yes.
6 Q. I show you what has been marked for identification
7 as State's Exhibit D...
8 THE COURT: Is that D as in dog?
9 MR. HOGAN: I am sorry. I did it again. It is O.
10 Q. This is State's Exhibit O. This is three separate
11 containers having been identified by Dr. Shutze as coming
12 from Padro Savala. Do you recognize those containers?
13 THE COURT: While the Agent is looking, let me see that
14 if you would. I am going to ask madam clerk to make that O
15 look more like an O, so we don't go through that every time.
16 MR. HOGAN: It is probably my fault, Judge.
17 A. Yes, I can identify it.
18 Q. And did you receive these in a sealed condition?
19 A. Yes, I did.
20 Q. Did you open them and prepare them on microscope
21 slides?
22 A. Yes, I did.
23 Q. This is State's Exhibit SS for identification
24 purposes. This was identified by Dr. Shutze as having come
25 from Maximinio Rubio, consisting of fourteen... fifteen

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1 containers and ask you if you recognize those?

2 A. Yes, I do.

3 Q. You received those in a sealed condition?

4 A. Yes, I did.

5 Q. And likewise, did you open them and prepare them on
6 microscope slides?

7 A. Yes.

8 Q. I show you what has been marked for identification
9 as 4Us, and ask if you recognize that container, sir?

10 A. Yes, I do.

11 Q. That has been identified as being the known hair
12 samples coming from the victim, Teresa McAbee?

13 A. That is correct.

14 Q. Did you receive that in a sealed fashion?

15 A. Yes, I did.

16 Q. Now, with regard to each of these containers, they
17 have initials written on them and they have white and red
18 evidence tape. Do you recognize that?

19 A. Yes, plus they each have a specimen number.

20 Q. Okay, sir, and do you recognize the handwriting
21 and initials on there?

22 A. Yes, I do.

23 Q. Are those your initials?

24 A. Yes, they are.

25 Q. And is that FBI evidence tape?

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1 A. Yes, it is.

2 Q. I show you what has been marked for identification
3 as State's Exhibit YY. That is this one here, and ask you
4 if you recognize those containers which should be fourteen of
5 them?

6 A. Yes, I do.

7 Q. And those are identified by Dr. Shutze as being known
8 hair samples of the defendant, James Duckett. Did you receive
9 those in a sealed condition, sir?

10 A. Yes, I did.

11 Q. And did you likewise open these or a representative
12 sample of these containers and prepare microscope slides?

13 A. From some of them, yes.

14 Q. You say from some of them. Did you concentrate on
15 the pubic hair sample?

16 A. That is correct. The ones that are suitable for
17 comparison. The head and pubic.

18 Q. Now, I show you what has been marked for identifica-
19 tion as State's Exhibit 5Ls, and ask if you recognize that?

20 A. Yes, I do.

21 Q. Could you tell us ... oh, it is in evidence.

22 THE COURT: It is #63 in evidence.

23 Q. Sorry, Judge. It is in evidence, #63 for the record.
24 How do you recognize that?

25 A. It has my initials and a specimen number.

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1 Q. Who did you receive that from?

2 A. I received this from Mr. Randy Aleno.

3 Q. Okay, sir, and that was identified to you as being
4 the unknown hair?

5 A. This was identified as a pubic hair removed from
6 the Teresa McAbee's pants.

7 Q. Now, did you bring with you today the slides that
8 represent the samples you took from each of these known
9 samples and the unknown hair.

10 A. Yes, I do.

11 Q. And you have that with you here today?

12 A. Yes, I do.

13 Q. Get it out, please.

14 THE COURT: What letters are those, Mr. Hogan?

15 MR. HOGAN: Five Os, Judge.

16 THE COURT: Five Os.

17 Q. These containers contain the known exhibits from
18 the hair samples?

19 A. Yes, they do.

20 Q. With reference to State's Exhibit #22 for identifica-
21 tion, your records reflect which known samples?

22 THE COURT: Excuse me. This is going to drive our system
23 insane. You have got identification numbers on those
24 already.

25 MR. HOGAN: Sorry, Judge, it is actually ZZ. It said

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1 22. It is actually ZZ.

2 THE COURT: Okay. ZZ.

3 Q. Do you know which known samples are in that
4 slide, sir?

5 A. In the package marked State's Exhibit ZZ, these
6 contain the unknown hairs and they contain the known hair
7 samples of Mr. Duckett.

8 Q. Known hair samples of Mr. Duckett?

9 A. Correct.

10 Q. The known hair. This is the known hair from James
11 Duckett?

12 A. Plus, some of the unknown hair also from the case.

13 Q. Okay. And you have in your hand there item marked
14 with five Os. What does that slide contain?

15 A. This slide is actually inside the mailer. This
16 contains the pubic hair which was identified as ... the unknown
17 pubic hair identified as coming from Teresa McAbee's pants.

18 Q. And how about Exhibit AAA?

19 A. State's Exhibit triple A is a large package of
20 mailers. These contain several more of the knowns. Now,
21 exactly which ones I couldn't say without opening them.

22 Q. Okay. This is labeled with 5 Rs, likewise a
23 package of slides.

24 A. State's Exhibit 5 Rs, contains the known hair samples
25 of Armando and Antonio Morales.

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