

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

(87-1347)

CASE NO. 87-~~1147~~-CF-A-01 and
88-262-CF-A-01

STATE OF FLORIDA,

Plaintiff,

v.

JAMES AREN DUCKETT,

Defendant.

VOLUME VI

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Case: 1987 CF 001347



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DR: CFTRANS

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135.6

1 Q. State's Exhibit 3 Bs?

2 A. State's Exhibit 3 Bs, this is again a package of
3 mailers. This would contain the known hair samples of
4 Dorothy McAbee, Salvador Calisto and Maximinio Rubio.

5 Q. How about State's Exhibit 3 Es?

6 A. State's Exhibit EEE, this would contain the known
7 hairs of Armando Morales.

8 Q. Do you have this one in your paperwork? The
9 breakdown on this? This is State's Exhibit 3A, can you give
10 us a breakdown on what is in that package.

11 A. State's Exhibit AAA would be the known hairs of
12 Teresa McAbee, Pedro Savola and Tammy Zavala.

13 Q. Okay, sir, if I understand you correctly, these
14 slides, being slides in Exhibit RRRRR, Exhibit EEE, Exhibit
15 AAA, Exhibit ZZ, Exhibit BBB, represent all the known samples
16 taken from YY, UUUUU, SS, O, RR, N, P, B, LLL, MMM, is that
17 correct?

18 A. That is correct, yes.

19 THE COURT: I think you want to correct one thing,
20 Mr. Hogan. I think that is four Us. You said five. If
21 you would go back and look.

22 MR. HOGAN: You're right, Judge. I should get glasses.
23 UUUU. And this container labeled with five Os represent the
24 hair, that were in the Petri dish that came from the panties
25 of Teresa McAbee?

- 1001 -

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1 A. That is correct.

2 Q. Did you have an occasion to compare all of these
3 hairs from all the people that you named to the hair that
4 came from the panties of Teresa McAbee?

5 A. Yes, I did.

6 Q. What was your conclusion with regard to the hairs
7 that came from Maximinio Rubio?

8 A. The hair reported as being from the... the pubic
9 hair reported as being from the panties of Teresa McAbee
10 was a brown, Caucasian pubic hair. It did not come from
11 Teresa McAbee. It did not come from Pedro Savala. It did
12 not come from Tammy Zavala. It did not come from Dorothy
13 McAbee. It did not come from Salvador Calisto. It did not
14 come from Maximinio Rubio. It did not come from Armando
15 Morales. It did not come from Antonio Morales. It did not
16 come from Armando Morales. I then compared this pubic hair...

17 Q. Before you go any further, did it come from any
18 person of Mexican descent?

19 A. No, this was not a Hispanic type hair.

20 Q. How do you know that?

21 A. Hispanic type hairs are normally the hairs from
22 Hispanic type people ae normally mixed racial. They normally
23 in combination of Mongoloid, Caucasian. They get the
24 Mongoloid from the Indian side and they get the Caucasian from
25 the Spanish side. They are a mixed race. The pubic hair

- 1002 -

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1 reported as being from Teresa McAbee's panties, was a pure
2 Caucasian hair.

3 Q. Now, have you had much experience examining Mexican
4 hair, pubic hairs or Mexican hairs?

5 A. A tremendous amount of experience, yes.

6 Q. How did that come about?

7 A. Over the last three years, I have worked two
8 particular cases, one of them involving the murder of the
9 D. E. A. Agent in Mexico. The other involving a murder of a
10 little girl in Belleview, Florida, where I had to examine
11 literally dozens of hair samples from Hispanic type
12 individuals.

13 Q. Okay, so you have seen a great number of Mexican
14 hairs over the last three years?

15 A. Yes, I have.

16 Q. It is your opinion that this hair, this unknown hair,
17 the hair from Teresa McAbee's panties, is definitely not of
18 Mexican origin?

19 A. That is correct.

20 Q. Okay, sir. Continue on with your examination.

21 A. After eliminating all these individuals I stated
22 before, I then compared this Caucasian pubic hair to the
23 pubic hairs of Mr. Duckett. This pubic hair reported as being
24 from Teresa McAbee's panties microscopically matched the
25 pubic hairs of Mr. Duckett. In other words, it had exactly

- 1003 -

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1 the same characteristics and the same arrangement. It was
2 completely indistinguishable from his pubic hairs and,
3 therefore, I concluded that the hair from the panties is
4 consistent with having originated from Mr. Duckett.

5 Q. With that, Your Honor, I would move into evidence
6 State's Exhibit UUUU, State's Exhibit SS, State's Exhibit O,
7 State's Exhibit RR, State's Exhibit N, State's Exhibit P,
8 State's Exhibit YY, State's Exhibit MMM, State's Exhibit B,
9 State's Exhibit LLL, as well as State's Exhibit RRRRR,
10 State's Exhibit EEE, State's Exhibit AAA, State's Exhibit ZZ,
11 State's Exhibit BBB, and State's Exhibit OOOOO.

12 THE COURT: What say you, Mr. Edmund?

13 MR. EDMUND: No objection, Your Honor.

14 THE COURT: Alright, gentlemen, now we are going to have
15 to ask you to bear with us. Ma'am, I think I am on number
16 67?

17 CLERK OF THE COURT: Yes, sir.

18 THE COURT: Alright, if you will work with me.

19 State's Exhibit N will be admitted into evidence as
20 State's Exhibit 67.

21 State's Exhibit P will be admitted into evidence as
22 State's Exhibit 68.

23 State's Exhibit RR admitted into evidence as State's
24 Exhibit 69.

25 State's Exhibit LLL admitted into evidence as State's

1 Exhibit 70.

2 State's Exhibit MMM admitted into evidence as State's
3 Exhibit 71.

4 State's Exhibit SS admitted into evidence as State's
5 Exhibit 72.

6 State's Exhibit O admitted into evidence as State's
7 Exhibit 73.

8 State's Exhibit B admitted into evidence as State's
9 Exhibit 74.

10 State's Exhibit YY admitted into evidence as State's
11 Exhibit 75.

12 State's Exhibit UUUU, four Us, admitted into evidence
13 as State's Exhibit 76.

14 State's Exhibit OOOOO, five Os, admitted into evidence
15 as State's Exhibit 77.

16 State's Exhibit ZZ admitted into evidence as State's
17 Exhibit 78.

18 State's Exhibit AAA admitted into evidence as State's
19 Exhibit 79.

20 State's Exhibit RRRRR admitted into evidence as State's
21 Exhibit 80.

22 State's Exhibit BBB admitted into evidence as State's
23 Exhibit 81.

24 State's Exhibit EEE admitted into evidence as State's
25 Exhibit 82.

- 1005 -

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1 Did we cover them all? All without objection.

2 (WHEREUPON, STATE'S EXHIBITS 67 THROUGH 82 ADMITTED INTO
3 EVIDENCE WITHOUT OBJECTION)

4 Q. Now, Agent Malone, knowing that this unknown pubic
5 hair was found in the panties of Teresa McAbee, and also I
6 believe you previously testified that two hairs out of
7 10,000 that you looked at over your career, you could not
8 distinguish, although you knew they came from different
9 people?

10 A. Two times out of 10,000.

11 Q. Knowing that and knowing that this hair was found
12 in the panties of Teresa McAbee, if this was not James
13 Duckett, then how could another person have gotten, assuming
14 there is somebody else...

15 MR. EDMUND: If it please the Court, I object on the
16 grounds that is not within the area of expertise of which
17 Your Honor has qualified this witness.

18 MR. HOGAN: I believe he was qualified as hair and fiber,
19 Judge, and this is part of hair and fiber.

20 THE COURT: Why don't you approach the bench. You didn't
21 finish your question and I would like to hear it, if we could,
22 out of the presence of the Jury, please.

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

24 THE COURT: Just re-state the question.

25 MR. HOGAN: What I am trying to ask them and I don't know

- 1006 -

1 if I can state exactly. What I am trying to ask him is
2 if he can explain, if a person does exist that has that type
3 of hair, how that person could transfer the hair to that
4 location.

5 MR. EDMUND: That is not the area he has expertise in.

6 MR. HOGAN: I beg to differ.

7 THE COURT: I will sustain that objection. I think we
8 are beginning to invade the province of the Jury. He doesn't
9 know how hair gets in places. He just knows what hairs look
10 like and what ...

11 MR. HOGAN: Well, he does, Judge. ..

12 THE COURT: I'll sustain the objection.

13 MR. HOGAN: But Judge...

14 THE COURT: Why don't you ask him how hairs are
15 transferred and what studies have been done on that.

16 MR. HOGAN: Judge, he does have training and expertise
17 in how hairs are transferred. I would like to be able to go
18 into that.

19 THE COURT: You didn't qualify him for that. I am not
20 going to stop you from qualifying him for that if you want to
21 try to build that as part of talking about comparison. If you
22 can qualify him as an expert in how hairs are transferred, I
23 am not going to keep you from trying to do that.

24 MR. HOGAN: Alright. Thank you.

25 (WHEREUPON, BENCH CONFERENCE ENDS)

- 1007 -

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1 DIRECT EXAMINATION CONTINUES

2 BY MR. HOGAN:

3 Q. Now, Agent Malone, during the last thirteen years
4 of your career as a hair and fiber expert, have you studied
5 material and examined case studies on how hairs are transferred
6 from one place to another?

7 A. Yes, I have.

8 Q. Okay, and can you tell us how that is done?

9 A. First of all, hairs are transferred, they adhere
10 to things because of their construction. If you go back to
11 the diagram, the little scales and the cuticle, they protrude
12 out and what happens is they will attach to a piece of
13 clothing almost like a little piece of velcro. The scales
14 become entangled with the fibers and that is how it sticks
15 there. Now, there are basically two mechanisms of hair
16 transfers. What is called a direct transfer and what is
17 called a secondary transfer. In the category of secondary
18 transfer, there is two further categories. Now, studies have
19 been done ... scientific studies have been done and published
20 on which of these mechanisms is the most common, most likely
21 to occur and which is the least likely to occur and the same
22 studies also saw or studied how long a hair will normally,
23 and that is with normal activity, remain on a certain item.

24 Q. What is the most common way of hair transfer?

25 A. A secondary transfer is called a first order.

- 1008 -

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1 secondary transfer, without getting too complicated, but what
2 it means is the hair goes from a person's head to their
3 clothing. This is the first order, secondary transfer. This
4 is by probably the most common type of transfer.

5 Now, a second order, secondary transfer or I am sorry,
6 let me back up a second... or if the hair is on an item
7 of clothing and it is transferred to another item of clothing,
8 so there is only one step basically. The second method is
9 called a second order, secondary transfer and this involves
10 the hair going from a person to an object and back to a
11 third person, so there is intermediate steps in between and,
12 of course, the more intermediate steps the least likely, so
13 this is the least likely, is a second order, intermediate
14 transfer.

15 Q. So the most likely is the direct transfer from one
16 person to the next and the least likely is with a third step
17 involved?

18 A. Yes, this is not really a direct transfer. It is
19 called a first order, secondary transfer.

20 Q. Now, knowing that this pubic hair that you said
21 could have originated from Mr. Duckett was found in the
22 underpants of Teresa McAbee, and also based on your testimony
23 that during your career, there are two times out of 10,000
24 hairs that you found hairs that you could not distinguish,
25 if that hair did not come from Mr. Duckett, can you explain

1 how somebody else, if there is somebody else that has the
2 same type of hair, could have gotten their pubic hair into
3 Teresa McAbee's underpants?

4 MR. EDMUND: Same objection. Same objection, Your Honor.
5 Same grounds.

6 THE COURT: Overruled on that. Go ahead.

7 A. First of all, it would have to be a Caucasian
8 individual. Then it would have to be a Caucasian individual
9 with exactly the same microscopic characteristics as the
10 pubic hair. Pubic hairs have the same characteristics as
11 Mr. Duckett. Then it would have to be a Caucasian individual
12 with the same characteristics, having them in exactly the
13 same arrangement as Mr. Duckett. Now, if that person exists,
14 then according to all the law of transfer, that other person
15 would have had to have been in a position where they could
16 have had contact with Teresa McAbee's panties and the hair
17 transfer from them to her. That is the only other possible
18 scenario.

19 Q. May I have one moment, Judge.

20 Now, a moment ago, you testified that hairs do not
21 usually remain in a position to be transferred for a very
22 long period of time. What is your knowledge on that? How
23 long do they usually remain in a position to be transferred?

24 A. After a hair is transferred to a certain person,
25 it only remains normally for approximately two days of normal

1 activity.

2 Q. Now, based on your training and experience and your
3 expertise in the field, and based on your knowledge of hair
4 transfer and hair comparison, and based on the work done in
5 this case, do you have an opinion, within the degree of
6 scientific certainty, as to whether or not the pubic hair
7 found in the underpants of Teresa McAbee came from James
8 Duckett?

9 A. I would say that it would be a very high degree of
10 probability that it does. Or to reverse it, I would say the
11 chances of it being from somebody else other than Mr. Duckett
12 would be highly unlikely at best.

13 Q. Thank you. One other thing. One very important
14 thing. Based on your training, expertise and your experience
15 over the years, you find that hair of one individual will
16 change in a year's time?

17 A. The only time I have seen this occurrence is when
18 a person is growing gray. Now, graying is a gradual process
19 and I say it might take place over let's say, two to three
20 to five years, whatever it takes for the individual. Pubic
21 hairs are normally the last hairs on the body to go gray.
22 Just a few months time, no. Normally, a pubic hair will not
23 change its characteristics.

24 Q. Thank you, Judge. Thank you, Agent, Malone.

25 THE COURT: Mr. Edmund?

- 1011 -

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

2 THE COURT: Sure.

3 CROSS EXAMINATION

4 BY MR. EDMUND:

5 Q. Mr. Malone, you say that normally a pubic hair will
6 not change its characteristics?

7 A. Unless it has been chemically treated, but no, a
8 natural pubic hair will not.

9 Q. Does pubic hair grow in the same manner that head
10 hair grows?

11 A. Yes, it does.

12 Q. I beg your pardon?

13 A. Yes, it does.

14 Q. Does it continue to... does your head hair continue
15 to grow for the individual's lifetime?

16 A. You shed pubic hairs just like you shed all the
17 other areas of the body, so you have pubic hairs, but what
18 you are doing is every two to five years, you are getting
19 new hairs.

20 Q. Well, don't the characteristics of the hair change
21 as the hair grows?

22 A. Normally, no.

23 Q. Are there no distinctive characteristics that might
24 change as the pubic hair grows?

25 A. Unless it is exposed to something unusual, no.

- 1012 -

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1 Q. Would exposure to a change of diet change the
2 characteristics of a pubic hair?

3 A. I don't believe so, no.

4 Q. Do you know that it wouldn't?

5 A. I have never read anywhere that it did.

6 Q. Then I ask you again sir, do you know that it
7 wouldn't?

8 A. To my knowledge, it would not.

9 Q. How about changes of environment?

10 A. If hairs can be sun bleached, of course, but the
11 pubic hairs normally aren't, but head hairs, especially in
12 an area like Florida, they can become sun bleached where the
13 sun bleaches out the distal portions of the hair, but unless
14 it is exposed to no unnatural characteristics, and a person
15 is not going gray, then normally, it will not change.

16 Q. Will illness affect the characteristics of pubic
17 hair?

18 A. You are going to have to be more specific as to what
19 kind of an illness?

20 Q. Well, I am asking you if there ... is there an illness
21 that you are aware of that will affect the characteristics
22 of a pubic hair?

23 A. There are illnesses, I believe, where you can lose
24 your hair.

25 Q. I am talking about the physical characteristics that

1 you would observe in your microscope?
2 A. None that I know of.
3 Q. Do you know that there are none?
4 A. Again, to my knowledge, I don't know of any.
5 Q. How about stress? Can that have an affect and change
6 the characteristics of a pubic hair?
7 A. I don't believe so, no.
8 Q. Do you know that it can't?
9 A. To my knowledge, it does not.
10 Q. For head hair, for example, would heat or a permanent
11 or something affect the characteristics of head hair?
12 A. Yes, it would.
13 Q. Alright, then would heat affect the characteristics
14 of a pubic hair?
15 A. If you gave your pubic hair a permanent, I imagine
16 it would.
17 Q. Well, if you just got pubic hair and heated it,
18 would it change its characteristics? That is what I am asking?
19 A. If you heated it and exposed it to a great deal of
20 heat, it certainly would.
21 Q. Well, when you are mounting slides, don't you heat
22 them?
23 A. No, I do not. Not at all.
24 Q. How do you adhere the hair to the slide?
25 A. Through a solution called Xylene.

- 1014 -

1 Q. How does that work?

2 A. It works by a certain adhesive characteristics...
3 what is it called... I forget the technical term, but it is
4 the same term as a boat being able to walk on water. It
5 doesn't sink.

6 Q. You have examined hundreds of thousands of these
7 things and the technical term doesn't come to you?

8 A. It is not a hair term. It is a physics term, but
9 I just can't think of it right now.

10 Q. Can you unmount this hair once you have mounted it?

11 A. I just thought of the term. Circumstantial.

12 Q. Can you unmount this hair, once you have mounted it?

13 A. On Xylene, this is not a permanent mount. That is
14 just holding the hair in place until you put the permanent
15 mounting medium which is Permout.

16 Q. Now, how about Permout. Is that heated in order to
17 permanently mount the hair?

18 A. No, it is not.

19 Q. Is it also that Permout is just an adhesive, such
20 as the other mount, the mounting substance you were talking
21 about?

22 A. Permout is actually a mounting medium. Xylene is
23 not. Permout will harden over time and form a permanent
24 slide of a hair.

25 Q. Can you dismount a slide that has been mounted in

- 1015 -

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1 Permout?

2 A. Yes, if you break the cover slip and you dissolve
3 the Permout inside.

4 Q. Would that have any affect on the characteristics
5 of the hair that has been mounted?

6 A. Normally, no.

7 Q. Could it?

8 A. The hairs that I have looked at that have been
9 unmounted and re-mounted showed no characteristics and that
10 is about all I can tell you from my own experience.

11 Q. Now, are there different systems used or methods used
12 by different experts used in the field of mounting hairs
13 for comparison purposes?

14 A. The mounting medium may be different, but most labs
15 I am aware of use the same system. A mounting medium in
16 between a cover slip and a slide.

17 Q. Now, are there differences in techniques of comparing
18 the known and the unknown hairs in that are there some of the
19 experts in the field who prefer to compare one against one and
20 others who compare one against a few and others who compare
21 one against many, and things of that nature?

22 A. Well, eventually, you are always going to have to
23 compare your known against many.

24 Q. I am talking about ... well, I guess I put that
25 question poorly. Do you mount the standard... do you mount

- 1016 -

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1 the known hair in order to compare it against the unknown?

2 A. Yes, you do.

3 Q. Do you mount it on a slide?

4 A. Several slides unusually.

5 Q. Do you mount it in virtually the same manner that
6 you mount the unknown?

7 A. Exactly the same manner, yes.

8 Q. Do you mount it singularly or multiply?

9 A. Normally, I will mount four to five hairs on a slide.

10 Q. Four to five hairs at one time on slides?

11 A. Known hairs, yes. Four or five known hairs on a
12 slide.

13 Q. Do you ever mount a great number than four to five?

14 A. I may have on occasion. I am talking about normally.

15 Q. And then the process of comparing, do you put them
16 both under a microscope at the same time or both slides or do
17 you put them under a microscope and make notes and then put
18 the other slide under the microscope and make notes, or ...
19 what do you do?

20 A. The only time that they are examined at the same time
21 and I am talking about unknown versus the known, in the third
22 step, the comparison scope. The first two steps you will
23 examine both the unknown, and the known, normally not at the
24 same time.

25 Q. But when you get to the point where you are examining

- 1017 -

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1 the known and the unknown at the same time, do you have a
2 slide on one side with maybe four or five or more hairs on it
3 and a slide on the other side with an unknown hair on it?

4 A. You can have several unknown hairs and several known
5 or one.

6 Q. Well, in this particular instance, how long did you
7 spend examining the known and unknown hairs in this case as
8 they relate specifically to James Duckett?

9 A. Several hours.

10 Q. Well, could it be several? Three? Four? How long
11 then? Mr. Duckett alone now?

12 A. Duckett alone, the best of my recollection, three to
13 four hours.

14 Q. Three or four hours. Okay. Would that have been
15 multiple slides of the known hairs compared with the one
16 slide of the unknown hair, or did you just use one slide of
17 the known hairs? How many of the known hairs did you prepare
18 and I'll strike those other questions? How many of the
19 known hairs did you wind up comparing with the unknown hair
20 of Duckett's?

21 A. Possibly twenty.

22 Q. Twenty?

23 A. Correct.

24 Q. Now, are the microscopes equipped so that you can
25 superimpose one hair on top of the other?

- 1018 -

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1 A. No, you do it side by side comparison.

2 Q. Is your microscope equipped so that you can bring
3 them close together side by side?

4 A. Oh, yes, the optics, it looks like a split screen
5 on a TV.

6 Q. It looks like a split screen on a TV. Alright. Now,
7 when you got this split screen on the TV, you got one over
8 on the left screen and you got four or five over on the right
9 screen? When you bring them together like that?

10 A. No, on high power you cannot get more than one in a
11 field of view, sir. You are looking one on one.

12 Q. Is your microscope put so you can actually cross
13 one and impose it on top of the other? In other words, you
14 have got the one hair and the other hair, is your microscope
15 equipped so that you can turn this eye piece or this particular
16 slide so that you superimpose the known over the unknown in
17 that manner?

18 A. Well, my microscope has a revolving stage, but you
19 can't superimpose. Superimpose means one on top of the
20 other.

21 Q. Do you ever make slides?

22 A. Yes.

23 Q. Do you ever superimpose slides on one another?

24 A. Never.

25 Q. I am talking about photographs? Pictures of hairs?

- 1019 -

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1 A. I don't follow you at all.

2 Q. Do you ever take pictures of the hair that you are
3 examining and put them on slides that you can put in one of
4 these machines that goes ...(noise made)... and it comes on
5 the screen? Do you ever do any of that?

6 A. No.

7 Q. Do you have equipment that is capable of analyzing the
8 color of the hair that you are examining?

9 A. I have the best available equipment for that.

10 Q. What does this do? Does that just magnify it and
11 lighten it to the point that you make the determination or
12 is it a microcomputer of some sort?

13 A. I have two pieces of equipment, my microscopes are
14 equipped with what is called an Accrochromatic lens system.
15 This is just a long name for color corrected lens system,
16 so that you know chromatic aberration. Then I have this
17 second piece of equipment which is the most sensitive technique
18 that I am aware of as far as color and that is the human eye.

19 Q. You have the final determining, or the determiner
20 of the color, are you not? Your eye?

21 A. That is correct.

22 Q. You don't have any computerized system that you stick
23 the hair in under the microscope and it comes out and says
24 it is exactly XYZ?

25 A. No.

1 Q. Isn't there such equipment available?

2 A. Not for hairs that I ever heard of. I never heard
3 of anybody using them.

4 Q. You have never heard of anybody using them, but
5 isn't there such equipment available, or is there?

6 A. To my knowledge, it would be no more sensitive than
7 the human eye.

8 Q. Is such equipment available?

9 A. I don't really know, to tell you the truth about it.

10 Q. Is there equipment available that can actually ...
11 you put the hair in and it microcomputerizes this thing and
12 gives you out a form and says it has all these characteris-
13 tics?

14 A. I have never heard of any.

15 Q. Now, is it true that the color of hair will vary
16 from one side to the other?

17 A. That is possible, yes.

18 Q. Is it also true that the color of hair might vary
19 from the top side of the ... hair is elliptical, is it not?

20 A. Yes.

21 Q. Is it also true that the pubic hair is a little less
22 elliptical than the head hair or are they about the same?

23 A. It depends on the race.

24 Q. The Caucasian being elliptical; the Oriental being
25 less so; the Negroid being flatter, or is that what we are

- 1021 -

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1 talking about?

2 A. As a general rule, it doesn't matter what race, the
3 cross section of the pubic hair is not as thick or round as
4 head hair.

5 Q. Now, what you did say, it depended upon the race, and
6 the distinctions are basically as I have said them, are they
7 not?

8 A. Now, we are talking about head hairs now?

9 Q. No, sir, I was talking about the pubic hair?

10 A. All pubic hairs are somewhat flattened.

11 Q. Somewhat flattened. Less elliptical, but neverthe=
12 less distinguishable because among other things, their shape?

13 A. That is one of several characteristics.

14 Q. Let's get back to my other question, for the purpose
15 of my argument, let's make it elliptical, okay? Is it correct
16 that viewed from this angle, hair might be a solid color
17 where ... more than likely my example is poor ... what your
18 multi-color, where viewed from the elliptical side, it might
19 show a solid color. Is that a reasonably fair statement?

20 A. No. Using your drawing, I would say if you looked
21 at it from the top, you get hair darker, sure.

22 Q. That is what I am saying.

23 A. You are looking through more of the hair.

24 Q. And as a matter of fact, what is that thing in the
25 middle, the Medulla, as you have got there, is sometimes

- 1022 -

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Tavares, Florida 32778

1 broken, right?

2 A. Correct.

3 Q. And when you look at it from the thin side of the
4 elliptical portion of it, it could show a darker color hair
5 and a lighter color hair and a darker color hair, would it
6 not? When you look through it?

7 A. From the top?

8 Q. From this side?

9 A. Normally, the Medullas I have looked at are either
10 dark or light.

11 Q. Isn't it correct, sir, that there are numerous
12 instances where with the Medulla being broken as it is and
13 shows in your diagram, that when looked through the thin way,
14 there are variations of color along these ranges. This being
15 darker; this being lighter; this being darker; this being
16 lighter; this being darker.

17 A. No.

18 Q. No?

19 A. No.

20 Q. Then why, if you looked at it from the top, would
21 it show darker? My next question was going to be, when you
22 look at that same hair from the top of the elliptical portion
23 of it, it looks solid color, doesn't it?

24 A. We are talking about pigment now. We are not
25 talking about Medulla at all.

- 1023 -

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Tavares, Florida 32778

1 Q. But the Medulla affects the color of the over-all
2 hair under your microscope and under the illumination that
3 goes along with being under your microscope, doesn't it,
4 Mr. Malone?

5 A. No, I don't believe the Medulla affects the color
6 at all.

7 Q. You don't believe or you don't know?

8 A. To my knowledge, it does not.

9 Q. Have you ever considered that something solid in the
10 middle of something as small as a hair might have some effect
11 on the color of the over-all hair?

12 A. First of all, the Medulla is not solid. It is a
13 hollow inner core.

14 Q. But it is of a broken consistency, so that part of
15 it is one consistency and part of it is another consistency,
16 isn't it? Isn't it, sir?

17 A. If you are talking of ... I am not sure I follow
18 you. You are talking about the Medulla being distributed
19 along the hair, yes, it can be broken.

20 Q. Is it possible you might mount a hair in one position
21 and you would look at it as we have talked earlier and it
22 would appear one color, and you changed it to another
23 position, and it would be another color? Darker or lighter?

24 A. You are talking about orientation.

25 Q. I am talking about orientation.

1 A. Okay, and if you looked at it along the length, let's
2 say the top, it probably appears slightly darker than it
3 would the other way.

4 Q. During the course of your examination of the known
5 hair, do you rotate so that you can see if the colors change
6 from side to side? Or once you mount it, does it stay right
7 there?

8 A. No, it stays right there.

9 Q. Alright, now, once you mount the unknown hair, do you
10 rotate it so that you can examine it for color changes of
11 another side?

12 A. No.

13 Q. Then isn't it possible a person could put a piece
14 of hair on a slide and I don't know whether you put it
15 wiggley or whether you put it straight, and it would appear
16 to you, to him, to everybody else to be of a certain color,
17 and then someone else could take that hair and put it on
18 another slide and when they could go this way and you are
19 looking at a different side of the hair, and to you and
20 any other expert who examines it, it would appear to be
21 another color?

22 A. No, I don't think so.

23 Q. Well, didn't you say you could look at it from one
24 side and it was light and look at it from the other side and
25 it is dark?

1 A. I said it might appear darker, but I am not, first
2 of all, I am not going to change the hair on the slide.

3 Q. No, that is not what I asked you. I say you
4 dismount hairs on the top and change its position and look at
5 it again and you are looking at a hair of a different color,
6 aren't you?

7 A. First of all, I would never dismount a hair. There
8 is no reason.

9 Q. I didn't ask you that, sir. What I am saying to you
10 is this: Some other expert could mount a hair and say that
11 it is dark brown and then it could come to Agent Malone and
12 he would mount it in a different manner, not knowing someone
13 else had mounted it on the side, because I don't know how you
14 would tell, and you would say it is a lighter brown, couldn't
15 you?

16 A. It is possible.

17 Q. Because your eyes are, as you say, the best color
18 detector that there is.

19 A. I am saying my version of dark brown might be not
20 the same as his.

21 Q. Now, is it possible, for example, to, with your
22 equipment, to examine the interior of hair?

23 A. That is the whole purpose.

24 Q. I am talking about physically? Can it be split and
25 take a look at it?

1 A. No, we don't do that.

2 Q. The interior, is that within the realm of scientific
3 probability?

4 A. I don't think it would prove a thing.

5 Q. Your microscope, you are sort of acting like an x-ray
6 with your microscope. I don't know if it is the higher your
7 power, you look deeper into the hair, is that a reasonable
8 statement or not?

9 A. You look through the entire hair. If you can't
10 look through the entire hair, you can't examine it.

11 Q. And the stronger the power, the most accurate
12 would be your observations while looking through the hair?

13 A. Up to a point, yes.

14 Q. Now, do you recall how many of the known hairs of
15 Duckett you received?

16 A. Numerous. I stopped counting at twenty.

17 Q. Over twenty? And you also stopped using at twenty,
18 is that right?

19 A. That is correct.

20 Q. Now, is it normal or abnormal that the FBI laboratory
21 will conduct comparisons, hair comparisons or otherwise,
22 evidence that has been examined by some other agency?

23 A. No, normally, we will not.

24 Q. Were you aware that this particular known hair had
25 been examined and compared by another agency prior to being

1 brought to you?

2 A. When I first examined it?

3 Q. At any time?

4 A. Initially, no.

5 Q. Had you known that, would you have examined those
6 hairs?

7 A. I would have talked to my superiors and had they
8 given me permission, yes, I would have.

9 Q. Well, is it likely that your superiors would have
10 given you permission?

11 A. It depends on the circumstances.

12 Q. Well, it is, though, your policy of your Bureau not
13 to do that?

14 A. Normally, but they will waive on certain conditions.

15 Q. But you wouldn't normally do that for a law enforce-
16 ment agency just running around looking for someone to give
17 them a different opinion than they already had, would you?

18 MR. HOGAN: That assumes we had an opinion, Judge. I
19 object to the question.

20 MR. EDMUND: I think it is a fair comment on the evidence
21 that is before the Court at this time, Your Honor.

22 MR. HOGAN: Well, it is not, Judge. We have an inconclusive
23 report and you are trying to get an answer. It was an
24 insufficient sample the first time. The question implies that
25 we were looking for a second opinion, and we had no opinion

1 to start with.

2 THE COURT: I think the testimony brought out that the
3 original opinion was inconclusive, Mr. Edmund. You will have
4 to proceed on those grounds.

5 Q. Are there any expects that you know who heat the hair
6 when they are mounting it?

7 A. That I am aware of personally?

8 Q. Yes?

9 A. No.

10 Q. Does pubic hair deteriorate after it has been
11 removed from the body?

12 A. If it is exposed to harmful bacteria or harsh
13 chemicals, yes. If it is in a safe, protected environment,
14 no.

15 Q. If you had the election of examining two sets of
16 hair with the thought in mind of being most nearly correct
17 in your opinion, one set, the standards had been donated
18 shortly after the crime and the other set of standards having
19 been donated six months after the crime, which set would you
20 prefer to examine?

21 A. If those hairs were protected, it wouldn't matter.

22 Q. So it wouldn't matter whether they, for example,
23 the donor had been swimming in a chlorinated swimming pool
24 during that six months or had suffered some debilitating
25 illness that might have that you think there are illnesses

1 that could affect the characteristics of the hair, or it had
2 a substantial change of environment...

3 MR. HOGAN: Agent Malone never said there was any illness
4 that he was aware of.

5 MR. EDMUND: I thought he said there were illness that
6 could have. If I am wrong, I am wrong.

7 MR. HOGAN: Once again, you are wrong, Mr. Edmund.

8 MR. EDMUND: I don't know whether once again I am wrong
9 or not. Am I wrong?

10 A. I never said that illness would change a pubic hair.

11 Q. What did you say?

12 A. I said there might be a disease where your hair will
13 fall out.

14 Q. You would not prefer the hair that was donated most
15 closely after the commission of the offense that resulted
16 in the obtaining of the unknown hair?

17 A. Ideally, yes, I would, but I don't think it would
18 make a difference.

19 Q. Why would you?

20 A. You could do the exam quicker.

21 Q. That is the only reason?

22 A. Well, it is ... the hair would be ... it is not
23 going to change the characteristics, but the quicker you can
24 do it, I think the better.

25 Q. Well, obviously, it is your gut reaction that it

1 would be a heap better to get that hair in a hurry than wait
2 six months to get that hair to compare it with the unknown
3 hair, and we are talking about now, seventeen years of
4 experience and hundreds of thousands of viewings and things
5 like this. What is it that suddenly, deep down in you, no
6 matter how subtle, had made you realize that there is some
7 importance to getting hair quickly and examining it?

8 A. If the hair is not exposed to anything, it is not
9 going to make any difference, but you always want to do the
10 examination as quickly as possible.

11 Q. Sure you want to do the examination as quickly as
12 possible, but your action was to the six month period having
13 some effect on the characteristics of the hair, deep down
14 within your psychic, wasn't it, sir?

15 A. No, I don't think the six month period would make any
16 difference in the characteristics.

17 Q. Again, I ask you then why would you want the fresher,
18 closer in proximity in time...?

19 MR. HOGAN: Asked and answered.

20 THE COURT: You can go ahead and answer it.

21 A. To do the exam more quickly.

22 Q. Is there a method of weighing hair?

23 A. I imagine there is.

24 Q. Would that not seem to be of some importance or
25 consequence in the examination of hairs?

1 A. No, not at all.

2 Q. What is the significance of having spent a lot of
3 time investigating serial murders have to do with qualifications
4 of a hair analyst, Mr. Malone?

5 A. Because hair is or can be one of the most important
6 forensic tools in connecting seemingly unrelated cases.

7 Q. How long have you traveled around giving lectures
8 on the serial murder investigations?

9 A. Since 1984 when I did the Bobby Long murder case in
10 Tampa.

11 Q. And you spend a good deal of time traveling?

12 A. I testified approximately twenty-five to thirty times
13 per year.

14 Q. And about what does this take out of your working
15 week when you go to testify?

16 A. Average trip is two to three days.

17 Q. And so we are talking about twenty-five or thirty
18 times a year and we are talking maybe ninety days out of the
19 year?

20 A. That would be a fair assessment.

21 Q. We are adding a lot of hours ... I mean knocking a
22 lot of days off those 300,000 hours that you examined here,
23 aren't we? Traveling around the country?

24 MR. HOGAN: Once again, he has not testified to 300,000
25 hours and certainly not in one year. Once again, Mr. Edmund

- 1032 -

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1 is twisting the testimony and I object to it.

2 THE COURT: Sustained.

3 Q. I didn't say it took three hours to examine each one
4 and I have examined hundreds of thousands of them, Your Honor.

5 MR. HOGAN: Is that a question? If so, I object.

6 THE COURT: It is not a question. Stricken from the
7 record.

8 MR. HOGAN: Thank you, Judge.

9 Q. Can there be hairs of different color from the same
10 head?

11 A. Yes, there can.

12 Q. Can there be hairs of identical color from 10,000
13 different heads?

14 A. It is possible.

15 Q. Can there be hairs of identical color from 100,000
16 different heads?

17 A. It is possible.

18 Q. Can there be hairs of the same color from a million
19 different heads?

20 A. I haven't looked at a million different heads, yet.

21 Q. You are coming close.

22 A. I really couldn't answer that.

23 Q. Can there be hairs of different colors from a million
24 different heads?

25 A. I don't know.

- 1033 -

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1 MR. EDMUND: I have no further questions.

2 THE COURT: Mr. Hogan?

3 MR. HOGAN: Thank you, Judge.

4 RE-DIRECT EXAMINATION

5 BY MR. HOGAN:

6 Q. Agent Malone, back to the very beginning of your
7 testimony, you testified that you had to have fifteen
8 characteristics in order to make a match?

9 A. That is correct.

10 Q. How many characteristics did you find and match in
11 this particular case between the hair from Teresa McAbee's
12 panties and the known pubic hair of James Duckett?

13 A. Twenty individual microscopic characteristics.

14 Q. Why don't you take pictures of hairs? That is one
15 of the things that Mr. Edmund was talking about. I presume
16 he was talking about slides; picture slides?

17 A. This is correct. There are two reasons. First of
18 all, hair is three dimensional object. Photographs are two
19 dimensional. Now, at the power that I do my comparisons
20 and make my conclusions, we are talking of the range 250 or
21 400. First of all, there is a problem here called depth
22 focus. Now, to tell you what depth focus would be at 250
23 to 400 power, you can only see maybe a third to a half of
24 that hair at the same time. In other words, you could see the
25 top half, but you can't see the bottom half. It is out of

- 1034 -

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1 focus. Also, field of view, and field of view is the actual
2 area of the hair you are looking at at 250 to 400. It is much
3 smaller than a head of a pin. Now, to show one hair, you would
4 have to start at the root and go continually up and down
5 through the hair so that hundreds of photographs would be...
6 you would take hundreds of photographs just to show one hair.

7 Now, there is another problem. If I wanted to take
8 two hairs that actually matched and I wanted to make them
9 look like they don't match, then I would just photograph one
10 portion of the hair at the upper level and the other hair at
11 the lower level and it is going to look like they don't match
12 so they are very unreliable for the hairs, photographs are.

13 Q. The other question that you were asked is why don't
14 you split hairs, which I believe is what Mr. Edmund is doing,
15 but why you don't physically dissect hairs...

16 MR. EDMUND: I think I should object to that, Your Honor,
17 but I won't.

18 THE COURT: Thank you.

19 Q. Physically dissecting hairs, was it your testimony,
20 or would you please explain how you can see inside the hair
21 if you don't cut the hair open?

22 A. First of all, the mounting that hair is mounted in,
23 Permunt, has the same what is called refractive index as
24 the hair. Now, that is just a technical term about how light
25 passes through the middle, but it is almost exactly the same

1 as the hair. Because of that reason, you can see inside the
2 hair very clearly, all the way through the hair. These
3 powerful lenses and these powerful lights, you can see right
4 through the hair and there would be absolutely no reason to
5 cut the hair open. It would serve absolutely no useful
6 purpose.

7 Q. Mr. Edmund was asking you about whether, if you looked
8 through the narrow side of the hair or the top of the hair or
9 the side of the hair, if it makes a difference to the color
10 and you said it would make a difference in how the hair may
11 appear darker, but it wouldn't change the color. Could you
12 explain that?

13 A. First of all, assuming that the hair is changing
14 orientations, and this is possible, but all I am saying is
15 looking through the long end, and looking through more pigment,
16 that is why it might appear a little darker, whereas if you
17 are looking at the narrow end, there wouldn't be quite as much
18 pigment, and, therefore, it might appear a little lighter,
19 but normally pubic hairs will lay flat on the slide and
20 there is not that much twisting.

21 Q. In other words, the color is not based on which side
22 of the hair you look through?

23 A. Oh, no, the color is based on the ... your eye and
24 these color corrective lenses.

25 Q. And you are talking about the Medulla, I believe

1 that is not what you base the color of the hair on. That is
2 actually inside the hair?

3 A. Right, the Medulla has no color. It is the pigment
4 that has the color and that is what gives the hair color.

5 Q. And you are able to actually examine the individual
6 cells of pigment as well as the Medulla?

7 A. Yes.

8 Q. Now, isn't it common, or is it common, Agent Malone,
9 to investigate and work cases where you compare hairs where
10 a suspect may not even be known for six months, so that many
11 times the known hairs are six months older or more than the
12 unknown hair?

13 A. Yes, I compared hairs where they did not arrest
14 the suspect up to two to three years later and still were
15 able to match them.

16 Q. In other words, the known hairs were not pulled from
17 the suspect until two or three years later?

18 A. Correct.

19 Q. Now, you said it might be better to get the hairs
20 as soon as possible. Is there another reason for that because
21 the defendant himself might attempt to...

22 MR. EDMUND: I object to that question. Leading, if it
23 please Your Honor.

24 MR. HOGAN: I'll put it another way.

25 Q. Is it possible for someone to alter their own hair

- 1037 -

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1 intentionally?

2 A. Oh , yes.

3 Q. Now, in the Bobby Joe Long case, the serial murder
4 case, how many different homicides were you able to link
5 together through hair and fiber analysis?

6 A. Ten.

7 Q. Thank you, Judge. Thank you, Agent Malone.

8 RE-CROSS EXAMINATION

9 BY MR. EDMUND:

10 Q. How could someone go about altering the
11 characteristics of their pubic hair, Mr. Malone?

12 A. They could dye them or they could bleach them.

13 Q. And you wouldn't notice that as an expert?

14 A. Oh, yes, you can tell both of those.

15 Q. Well, it wouldn't be of any consequence to dye them
16 or bleach them, would their? You would pick up all the
17 other characteristics, wouldn't you?

18 A. First of all, if you bleach them, the whole purpose
19 of bleaching the hair is to destroy pigment, so you can
20 destroy the pigment and the pigment is not going to be there
21 anymore. The dye is going to change the color of both the
22 interior and the exterior of the cuticle and again, if they
23 are not indistinguishable, you cannot match them.

24 Q. Then anyone of ... what else can change the
25 characteristics of pubic hair?

- 1038 -

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1 A. Harsh chemicals.

2 Q. Okay, what else can change the characteristics, and
3 what do you consider harsh chemicals?

4 A. Any type of oxidizing agent.

5 Q. Well, give me a for instance?

6 A. Peroxide, sodium hydroxide, things like that.

7 Q. What else can change the characteristics of a
8 pubic hair?

9 A. I imagine you could cut them.

10 Q. What else?

11 A. Right off the top of my head, you could burn them
12 or singe them.

13 Q. If you found some treated with dyed pubic hair or
14 bleached pubic hair, it would be easy enough just to hold
15 him in the slam for awhile and get the hair when it grew
16 out, wouldn't it? You say it continues to grow?

17 A. It may take two to five years if you have got to
18 replace all of them.

19 Q. But to get enough to compare, since you used about
20 twenty?

21 A. Well, it is going to take ... if he does them all,
22 it is going to take at least two years, because that is
23 how long it takes to turn over the whole thing.

24 Q. No further questions, Your Honor.

25 MR. HOGAN: No questions.

(WHEREUPON, AGENT MALONE IS RELEASED FROM HIS SUBPOENA)

- 1039 -

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1 THE COURT: Alright, ladies and gentlemen, we are going
2 to take our evening recess and I do want to once more remind
3 you, don't discuss the case among yourselves or with anyone
4 else. Don't read any accounts of the case. Don't listen to
5 any television or radio reports of the case. Don't visit the
6 scene of the alleged occurrence. We are going to have to tell
7 you and the other folks that are here some other things about
8 this case. We had a situation arise, it is personal, through
9 the attorneys or one of the attorneys and we don't need to go
10 into it. I don't know frankly for you all whether this is
11 good news or bad news, it just depends on how you look at it.
12 We are not going to work Monday. We are going to commence
13 this case Tuesday. I assure you I didn't make that decision
14 lightly. The situation was serious enough that we have to
15 take Monday off. We are going to do that. We are going to
16 ask each of you to call the Code-A-Phone Monday evening after
17 five. I think you have our number. That will assure you
18 that we are going to start at nine o'clock Tuesday, number
19 one; also, there is a possibility we are going to have to move
20 this trial next door to the old courthouse, and all that will
21 be on the Code-A-Phone. If you come here, we will tell you
22 exactly where to come and what time to be here, but for your
23 planning purposes, count on nine o'clock Tuesday morning.

24 Alright, I realize the good news is you get a long
25 weekend, and the bad news is it makes the trial last a day

- 1040 -

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1 longer on the other end and we just can't help that and I do
2 appreciate your consideration, but that is what we are going
3 to have to do.

4 Anything else, gentlemen before we let the Jury go for
5 the weekend?

6 MR. EDMUND: No, sir, Your Honor.

7 MR. HOGAN: No, sir.

8 THE COURT: Alright, folks, you are free to go. Thank
9 you very much.

10 (WHEREUPON, JURY LEAVES COURTROOM AT 5:50 P. M.)

11 THE COURT: Gentlemen, what we are going to do is have
12 all the evidence placed back in the vault. It will not remain
13 in the courtroom over the weekend. Madam clerk will take
14 all of our evidence and make sure it is in the vault. I am
15 going to charge counsel for both parties to supervise that
16 if you choose to. If you don't and trust her, fine. Other-
17 wise, I want to make sure that is done.

18 Anything else at all?

19 Alright. Remove the Defendant, please.

20 (WHEREUPON, DEFENDANT IS REMOVED FROM COURTROOM AT
21 5:52 P. M.)

22 (WHEREUPON, COURT IS IN RECESS AT 5:53 P. M.)
23 May 3, 1988, at 9:00 A. M.

24 (WHEREUPON, DEFENDANT IS PRESENT IN COURTROOM WITH HIS
25 COUNSEL, MR. EDMUND)

- 1041 -

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1 (WHEREUPON, COURT CONVENES AT 9:13 A. M.)

2 THE COURT: Anything before we bring the Jury back,
3 gentlemen?

4 MR. HOGAN: No, Your Honor.

5 MR. EDMUND: No, Your Honor.

6 THE COURT: Alright, Mr. Bailiff, bring the Jury back,
7 please.

8 (WHEREUPON, JURY ENTERS COURTROOM AT 9:14 A. M.)

9 THE COURT: Mrs. Stroud, Mr. Hall, Dr. Emerson,
10 Mrs. Warren, Mrs. Gries, Mr. Schlager, and Mrs. Rhodes.
11 Mr. Barry, Mr. DeClerk, Mrs. Stephens, Mrs. Gray, and Mr.
12 Martin. Mrs. Martin.

13 You have noticed, folks, your sitting arrangement is
14 a little different. I am almost certain we will conclude the
15 trial over here, if you try to remember where you are seated.
16 We can always help you. Have a seat, please and welcome back.

17 Can all of you assure us you did abide by our admonitions
18 over the three day weekend?

19 JURORS: Yes, sir.

20 THE COURT: Alright. Thank you very much.

21 Your witness, sir?

22 MR. HURM: Your Honor, the first witness the State would
23 call is Professor Herbert Spiegel.

24 (WHEREUPON, PROFESSOR HERBERT SPIEGEL IS CALLED AS NEXT
25 WITNESS FOR THE STATE AND IS DULY SWORN BY THE CLERK OF THE COURT)

- 1042 -

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1 DIRECT EXAMINATION

2 BY MR. HURM:

3 Q. Good morning, Professor.

4 A. Good morning.

5 Q. Would you address your answers, please, to the Jury.

6 A. Certainly.

7 Q. Would you state your name for the record?

8 A. My name is Professor Herbert Spiegel.

9 Q. How are you employed?

10 A. I am a Professor of Meteorology at Miami-Dade Community
11 College in Miami, Florida.

12 Q. How long have you been a Professor of Meteorology?

13 A. Approximately nineteen years, full professor for the
14 past seven years.

15 Q. Have you been involved in Meteorology that entire
16 nineteen years?

17 A. Yes, I have.

18 Q. Would you describe for the Jury, please, sir, the
19 education and background and training you have had in
20 Meteorology?

21 A. I have a Bachelor's Degree in Meteorology from
22 Florida State University. I have a Master's Degree in
23 Meteorology from Rutgers University in New Jersey. I worked
24 for my Doctorate at Rutgers University in the field of
25 Meteorology. I have taken some specialized courses both with

- 1043 -

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1 the U. S. Coast Guard in which I am a recently retired Captain
2 of the Coast Guard Reserve, in the field of Meteorology and
3 taught Meteorology for Coast Guard personnel on active duty.

4 Q. Would you describe for the Jury, please, sir, what
5 Forensic Meteorology is?

6 MR. EDMUND: If it please, Your Honor, if the State
7 wishes to offer, I would stipulate to the Professor's
8 qualifications in the Field of Forensic Meteorology.

9 MR. HURM: I appreciate that, Mr. Edmund. I will
10 accept the stipulation, but I would like to go further in what
11 Forensic Meteorology is with the witness, Your Honor.

12 THE COURT: Do you tender him as an expert in the Field
13 of Forensic Meteorology?

14 MR. HURM: Yes, sir.

15 THE COURT: No objection, Mr. Edmund?

16 MR. EDMUND: No, Your Honor.

17 THE COURT: Ladies and gentlemen, Professor Spiegel
18 will be accepted by the Court as an expert in the field of
19 Forensic Meteorology and as such, entitled to give opinions
20 in his field.

21 MR. HURM: Thank you, Your Honor.

22 Q. Professor, what is the field of Forensic Meteorology?

23 A. There are two basic fields of Meteorology. One is
24 called synoptic meteorology, which is the type of meteorology
25 which is forecasting, which is the part that anyone would hear

- 1044 -

1 on the television or radio on what the weather will be in
2 the future.

3 Q. The local weatherman?

4 A. That is correct. Forensic Meteorology is part of the
5 branch called Climatology, which is using past weather data
6 and a forensic meteorologist would be a person who used past
7 weather data to come up with a recreation of the weather at
8 a particular time and location.

9 Q. What do you use without going into too much detail
10 at this point, what do you use to help you recreate the
11 weather?

12 A. National Weather Service of the United States has
13 over 2,000 weather stations in the United States. Each of
14 them taking weather observations, both at the surface, through
15 radar and also upper air observations.

16 All of these observations are sent to the National
17 Climatic Data Center in Ashville, North Carolina, which is
18 a National Impository for all this data, and put on microfilm
19 and this data goes back to 1871.

20 Q. Have you ever been qualified as an expert in
21 Forensic Meteorology in Courts before?

22 A. Yes, I have, many times.

23 Q. How many would you estimate?

24 A. In the past five years, approximately sixty times.

25 Q. Addressing your attention to this case, were you

- 1045 -

1 contacted by members of the Lake County Sheriff's Office and
2 asked to do a study of the rainfall amounts over the area of
3 Mascotte in Lake County, Florida, the days of May 11th and 12th,
4 1987?

5 A. Yes, I was.

6 Q. Did you prepare documents and reports with regard
7 to that request?

8 A. Yes, I did.

9 Q. I show you what has been marked State's Exhibit QQ
10 for identification and ask you... it is a composite exhibit,
11 and ask if you would look at that and tell me if you recognize
12 it?

13 MR. EDMUND: I would waive any predicate, Your Honor.
14 I have seen it and if the State wishes to offer it, I have no
15 objection.

16 MR. HURM: Thank you.

17 THE COURT: State's Composite QQ for identification
18 admitted into evidence without objection as State's Composite
19 Exhibit #83.

20 (WHEREUPON, STATE'S COMPOSITE EXHIBIT #83 IS ADMITTED
21 INTO EVIDENCE WITHOUT OBJECTION)

22 Q. Professor, while marking the exhibit, could you
23 explain to the Jury, please, sir, what action you took to
24 try to determine the rainfall for the night of May 11th and
25 early morning hours of May 12th, 1987?

- 1046 -

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1 A. When I received the confirmation letter from the
2 Lake City Sheriff's Office, included in that confirmation letter
3 was a copy of the certified weather data they had obtained
4 from the National Climatic Data Center. It was in code and
5 you have to be a trained meteorologist to understand it. They
6 sent it to me for interpretation. I looked at the data and
7 the data was data from McCoy in Orlando, and from Orlando
8 Flight Service Station, both of them take weather observations
9 twenty-four hours around the clock.

10 Q. And those weather observations are done out of the
11 surface?

12 A. Yes, those are surface weather observations.

13 Q. And would you explain what they are observing? Is
14 it what happens right there or what happens elsewhere?

15 A. Well, it is within fifteen mile radius of the observer's
16 line of sight. The line of sight is the person standing on
17 the ground approximately fifteen miles to the horizon.
18 They can identify areas of bad weather greater distances away,
19 especially at night time when you can see lightning as much as
20 fifty to sixty miles away. They will so note that on the
21 report that there would be distant lightning to the West or
22 Northeast whatever the case may be. But it is from an
23 observer's point of view. When you visually see it and then
24 measure it.

25 Q. Now, I show you what is part of this exhibit. It has

- 1047 -

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1 blue ribbon and a gold seal on it. Is that the material that
2 you received from the Lake County Sheriff's Office?

3 A. Yes, it is.

4 Q. Now, Professor, was that material enough in and of
5 itself to help you determine what the rainfall was over Mascotte
6 on May 11th?

7 A. No, it was not.

8 Q. What else did you have to do?

9 A. Since the two observing stations were approximately
10 twenty-five to twenty-seven miles away, that would not give
11 me any proof of what the actual weather was over Mascotte.
12 However, the National Weather Service has radar stations
13 and it is specifically geared for identifying precipitation
14 areas located over the entire country. One of which is in
15 Daytona Beach, Florida, and Mascotte is approximately fifty-
16 seven miles away on a 231 degree radial, which is towards
17 the Southwest from Daytona Beach.

18 Q. What is the range of the radar from Daytona Beach?

19 A. The range of the radar is 250 miles in all directions
20 with 125 miles being the most accurate. That was well within
21 the range of the accuracy of the radar. I contacted the
22 National Climatic Data Center in Ashville, North Carolina.
23 Every radar station takes a picture of the radar scope every
24 three minutes. This is recorded on microfilm. I requested the
25 microfilmed radar for that particular time period, actually

- 1048 -

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1 it was from three days; within that radar reading, and then
2 reproduced the radar scope on black and white glossies, which
3 I submitted in the report.

4 Q. The photographs are part of this exhibit?

5 A. Yes, they are.

6 Q. Professor, if you wouldn't mind stepping down in front
7 of the Jury, with the Court's permission, could you just take
8 your report and going through a page at a time or however you
9 feel it is appropriate, and explain what you did and how you
10 arrived at your conclusions?

11 A. The first thing I did was try and locate Mascotte
12 on a map or a grid. It so happens that the Daytona Beach radar
13 chart, which is the chart that is used by the National Weather
14 Service, located at Daytona Beach, actually has Mascotte on it,
15 so I didn't have to locate it by latitude and longitude.

16 Q. You marked that in red on there?

17 A. It is in red right here, and then I marked the three
18 stations that are used in this report and that would be McCoy
19 Air Force Base, MCO, and the Flight Service Station in Orlando,
20 ORL, and finally, Daytona Beach, DAB, which is the radar at
21 Daytona Beach. Each one of these grid lines is twenty-five
22 miles and, of course, Mascotte is approximately somewhere in
23 the vicinity of fifty-seven miles from Daytona Beach.

24 I looked at the weather maps for both the 11th and the
25 12th of May, 1987, to see what kind of weather systems were in

- 1049 -

1 the area and whether or not those weather systems would
2 generate showers and thunder storms, so that I would have an
3 idea what type of precipitation pattern existed. I find that
4 on the 11th, there was a stationary front that was located in
5 the West Coast of Florida and it rapidly dissipated, disappearing
6 by the 12th, it had disappeared altogether.

7 Therefore, on the 11th, it was a possibility of showers
8 and because a high pressure area came over the area on the 12th
9 the high pressure area is an area of good weather, there probably
10 wouldn't be any showers, which proved to be true.

11 The radar observer at Daytona Beach does two things.
12 First of all, he takes a plastic overlay and puts it on the
13 radar scope and draws out all the areas of precipitation,
14 which would be exactly the same thing that would be on the
15 microfilm, the picture taking of the scope at the same time.
16 He also offers a code of the intensity level of the thunder
17 storm. How bad they are. From the intensity level, one can
18 estimate the amount of precipitation that had fallen. The
19 intensity level is determined by the size of the raindrops.
20 When you run radar, it goes out and hits the raindrops. The
21 raindrop is small, the return from that to the station is small.
22 However, if the raindrop is large, the signal will be greater,
23 and therefore, of greater intensity. The larger the water
24 droplets, of course, the more rain one gets, the water drop
25 is larger. What I have done, is I have plotted on the intensity

- 1050 -

1 level chart from code where the storms were located at the time.
2 Those that are in red, are thunder storms and those in blue,
3 are rain showers, and each one of these has an intensity level
4 as determined by radar observer at that time, and the intensity
5 levels will tell me the approximate rainfall.

6 In addition to that, we have the radar scope.

7 MR. HURM: Here, Professor, let me help. I will hold it.

8 A. We have our radar scope, and I took the radar scope
9 starting at 6:00 P. M., Daylight Savings Time, on May 11th,
10 1987, and the center of the radar scope is, of course, Daytona
11 Beach and then I laid off on a rule the ratio distance, which
12 is 231 degrees and you can see the degrees around the edge of
13 the scope and measured out fifty-seven miles and that would be
14 the location of Mascotte, Florida. What you see on the scope,
15 on the pictures, are the rain showers that existed at that
16 particular time and you can see at 6:00 P. M., the location
17 of Mascotte, Florida was in an area of scattered light to
18 moderate showers.

19 Q. Now, Professor, you talked about the intensity level
20 on this previous chart. You said the ones in red were thunder
21 storms and the ones in blue were showers? Scattered rain
22 showers?

23 A. Yes, sir.

24 Q. What is the signifance of the numbers?

25 A. The higher the number, the greater the rainfall.

- 1051 -

1 Q. So what would a five be?

2 A. A five would be a severe thunder storm on here.

3 Q. And this chart shows at 5:26 P. M. on the 11th of
4 May, Mascotte had what intensity level?

5 A. It was a five in the area of Mascotte.

6 Q. Go ahead.

7 A. These were done every hour for the intensity level
8 and you can see Mascotte in the next hour still was under the
9 influence of severe thunder storm, number five.

10 You can also see that in the next hour, as we went through,
11 you could see it was still in the area of showers, which
12 coincides with the intensity level and I did this for all the
13 way through until the 12th of May, 1987, at 9:00 P. M. and
14 if you can take a look at each one of these radar scopes,
15 you will see that the line of showers that went over the
16 Mascotte area was moving towards the Southeast and successive
17 photographs I will show you that.

18 Now, you can see at approximately 9:03 P. M. It is just
19 on the edge of the showers and the showers are just about
20 moved out of the area.

21 If you will take a look at the next one, which is 9:34,
22 you will see the showers had moved out of the area and each
23 successive photograph is going to show that line of showers
24 towards the Southeast away from the area and as a matter of
25 fact, there was no other rain after that time.

- 1052 -

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1 As we progress, I will take a few of them right here and
2 you can see that by 1:01 A. M., the showers are resolved and
3 there is no other rain anywhere in the area.

4 The little blob that you see in the middle is called
5 ground cover and that would be radar hitting off the building
6 in the Daytona Beach area. Sometimes you hear it as called
7 ground cover, and really, it doesn't mean much rain. It is a
8 known pattern and meteorologists learn that pattern and will
9 disregard it. There is a way of getting around it and that is
10 to raise the radar antenna, but since there wasn't any showers
11 in the area, you can just see the pattern.

12 Q. What was the last photograph you took of the radar
13 scope of Daytona Beach with regard to the Mascotte area?

14 A. It was on the 12th of May, at 8:59 A. M. in the
15 morning and you can see that all showers were well off. There
16 were no showers in there at all.

17 I correlated the radar with the surface observations.
18 As I said, the surface observations were not in and of
19 themselves good enough to tell me what the rain was in
20 that area, because they were too far away. However, when I
21 looked at those observation sheets, the observer at the time
22 of the rainfall, coincided on the radar scope, reported
23 lightning to the West, which of course is in the direction of
24 Mascotte from those observation stations, and also reported
25 darkening to the West, which indicated rain showers. So both

- 1053 -

1 of them correlated and of course, this is much better, because
2 this is actual.

3 Q. This is Daylight Savings Time?

4 A. That is correct.

5 Q. Professor Spiegel, based on your analysis of the
6 information and the process through which you analyze this,
7 have you reached an opinion as to whether rain fell in Mascotte
8 during the evening hours of May 11th; when it stopped; and
9 how much rain fell?

10 A. Yes, I have.

11 Q. What is that opinion?

12 A. The rain existed in the Mascotte area between 6:00
13 and 9:00 P. M., on May 11th, 1987. They were scattered and
14 moderate to heavy showers with few embeded thunder storms
15 throughout the area until approximately 8:30 - 8:45 and then
16 a few rain showers until 9:00 o'clock. After 9:00 o'clock,
17 there was no rain for the entire period of which I investigated;
18 which was until around 9:00 o'clock on the 12th. The total
19 rainfall that occurred was estimated to be around 7/10 of an
20 inch.

21 Q. That would be for the entire period between six and
22 nine on the 11th?

23 A. That is correct.

24 Q. Thank you, Professor. I have no further questions,
25 Your Honor.

- 1054 -

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1 THE COURT: Mr. Edmund?

2 CROSS EXAMINATION

3 BY MR. EDMUND:

4 If it please, Your Honor.

5 THE COURT: Yes, sir.

6 Q. Professor Spiegel, I am Jack Edmund. Professor,
7 there are occasions when the showers of a scattered nature
8 like this can go through an area and there will be areas
9 without rainfall?

10 A. That is correct.

11 Q. Alright. We see the phenomena of the rain on one
12 side of the road and rain not on the other side of the road
13 in Florida at times, do we not?

14 A. That has been reported, although I have not seen it.

15 Q. Did you have occasion to make a determination whether
16 it rained during the hours... during any of the hours of
17 May 10th, of 1987?

18 A. I was not requested to do so, nor did I.

19 A. Alright. Thank you. No further questions, Your
20 Honor.

21 THE COURT: May we release the Professor from his
22 subpoena?

23 MR. HURM: Yes, sir.

24 THE COURT: Any objection, Mr. Edmund?

25 MR. EDMUND: No, Your Honor.

- 1055 -

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1 THE COURT: You are free to go, sir. Thank you very
2 much.

3 Please watch your step as you come down.

4 MR. HURM: The State's next witness, Your Honor, will be
5 Gary Nelson.

6 (WHEREUPON, GARY NELSON IS CALLED AS NEXT WITNESS FOR THE
7 STATE AND IS DULY SWORN BY THE CLERK OF THE COURT)

8 DIRECT EXAMINATION

9 BY MR. HURM:

10 Q. Good morning, sir. Would you state your name for
11 the Jury?

12 A. Gary L. Nelson.

13 Q. Mr. Nelson, in May of 1987, were you employed with
14 the Lake County Sheriff's Office?

15 A. Yes, sir.

16 Q. What was your position?

17 A. I was Supervisor of the Technical Services Unit.

18 Q. Would you describe, please, for the Jury what your
19 responsibilities were?

20 A. Basically, to oversee the activities taking place
21 in the Technical Service Unit and the Technical Services Unit
22 predominately investigates crime scenes, works with fingerprints,
23 physical evidence and photography.

24 Q. When you say investigates crime scene, and talking
25 about physical evidence, what actually do you do as a Crime

- 1056 -

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1 Scene Technician?

2 A. Our basic function is to record the crime scene and
3 collect the evidence.

4 Q. When you get to a homicide, to this one or any other
5 homicide scene, Deputy Nelson, would you tell the Jury what
6 your procedure is with regard to collection of evidence?
7 Do you collect all of it or do you collect some of it? How
8 do you pick and choose if you pick and choose? What is your
9 procedure?

10 A. Primarily, major crimes, we arrive on the scene, or
11 main function is to first record the scene as accurately as
12 possible, we do this for by records of photography and
13 diagrams. Upon completion of that, we start collecting the
14 evidence. We more often than not take everything that we
15 think of that could possibly relate to the crime, no matter
16 which way it went, not knowing the circumstances and not being
17 privileged with information of investigation at that time, we
18 collect a preponderance of evidence that may or may not be
19 significant.

20 Q. In other words, when you go to a crime scene, are you
21 going in cold? Or do you have some clue as to who did it or
22 how it was done?

23 A. We try to be apprised of what they think happened,
24 to kind of guide us as to the criteria of what we are going to
25 take and how we are going to record the scene. However,

- 1057 -

1 sometimes we don't have that information and, therefore, we
2 have to go over the broad scope of evidence collection.

3 Q. In this particular case, did you have to use the
4 broad scope or narrow scope of collecting evidence?

5 A. We used a fairly broad scope for this location.

6 Q. Have you ever had the occasion, in your experience,
7 by the way, how long have you been involved in this type of
8 business?

9 A. This specific type of work over twelve years.

10 Q. In your experience as a Crime Scene Technician, of
11 twelve years, have you ever had the occasion to collect any
12 evidence that later proved to be not connected in any way with
13 the particular offense that you are investigating?

14 A. Often times.

15 Q. Was that the case in this particular investigation,
16 the death of Teresa McAbee?

17 A. I believe, if I understand you correctly, we did
18 collect a lot of stuff that didn't pertain to the particular
19 incident.

20 Q. Like what?

21 A. Some of the scrap papers lying around in the general
22 area. Some of the miscellaneous debris that was in the area,
23 because of the prior people being there, or possible people
24 there.

25 - 1058 -

1 Q. Deputy Nelson, what time did you arrive at the scene
2 on May 12th?

3 A. Approximately 11:30 in the morning.

4 Q. Now, when I talk about the scene, I show you what
5 has been marked as State's Exhibit 26 and ask if you recognize
6 this diagram?

7 A. Yes.

8 Q. Does this fairly and accurately depict the scene as
9 you found it? Is it a diagram of the scene?

10 A. I believe it does.

11 Q. What was your first responsibility when you arrived
12 at Knight Lake that morning?

13 A. My primary responsibility or the reason I went there
14 was to voersee and make sure that everything had been done
15 according to normal procedure. Often times, in a major
16 crime, one technician isn't adequate. You need more help.
17 Especially on an outdoor scene.

18 Q. Who was already there?

19 A. Deputy Aleno.

20 Q. Did you discuss with him what he had done during
21 his time on the scene prior to your arrival?

22 A. Yes.

23 Q. What was your first duty after you got to the scene
24 and talked with him and so forth? What was the first action
25 you took?

- 1059 -

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1 A. I photographed as a procedure that we like to do, is
2 to do backup photography just in case something happens in
3 processing of the photos, you take a backup with a second
4 camera, to alleviate any possibility of camera malfunction
5 or processing problems. I took general over-all photos and
6 photos of tire tracks that were on the scene.

7 Q. I show you what is marked as State's Exhibit #27
8 in evidence. Do you recognize that? What that photograph
9 is of?

10 A. Yes.

11 Q. What is that?

12 A. That is the pumphouse.

13 Q. And then #35 in evidence?

14 A. This is the Northeast corner of the pumphouse and on
15 the back was the lake.

16 Q. Leading down to where the body was found?

17 A. Yes.

18 Q. Was there any malfunction of the camera of Deputy
19 Aleno?

20 A. No.

21 Q. Were you there when the body was taken from the lake?

22 A. No, it had already been removed prior to my arrival.

23 Q. Had it been removed from the scene?

24 A. Yes.

25 Q. Did you go and attend the autopsy?

- 1060 -

1 A. Yes.

2 Q. Now, prior to your leaving the scene to attend the
3 autopsy, had you examined the tire tracks that ran past the
4 pumphouse and on out to the South end of the area, the exit on
5 Sunset?

6 A. Yes, I did.

7 Q. Have you had any experience in tire track impressions
8 or cases? Have you seen them before in investigations?

9 A. Yes, sir, I worked tire tracks was a very significant
10 factor in the department I came from, which was up in Northern
11 States, which require tire tracks, especially after a fresh
12 snowfall.

13 Q. Now, Deputy Nelson, are there any books or booklets
14 with photographs of tire impressions that are made available
15 to law enforcement by various tire companies?

16 A. Yes, there is.

17 Q. Describe what they are and why that is important?

18 A. Well, we have publications that come out from tire
19 manufacturers and also there is a source that combines all
20 different manufacturers' tire impressions or prints, their
21 patterns. Sometimes they are utilized to try to determine the
22 make of the tires and it comes in a bound book, loose leaf,
23 bound book, and we can review through that and see what tire
24 pattern, what type of tire it may be.

25 Q. When you looked at the impressions at the crime scene,

- 1061 -

1 on May 12th, there where Teresa McAbee's body was found, what
2 was your impression when you looked at those tracks?

3 A. It had a very unique pattern. One that is, I guess
4 the best way to explain it would be it was unique to me.
5 I was not familiar with that type of pattern. It is not a
6 common pattern you see with different tire impressions.

7 Q. Not common for a particular geographical area or...?

8 A. Just a relatively uncommon tire that I come across.
9 I haven't seen that pattern. If I have seen that, I don't
10 recall seeing it before.

11 Q. Let me show you what has been marked in evidence,
12 several photographs, first #47, #46, #45, #44, #43, and I
13 think this is probably 42... it is. Are those the photograph
14 of the impressions that you saw at the scene that day?

15 A. Yes.

16 Q. So those are the tire impressions that you looked at
17 and thought they were unusual?

18 A. That is correct.

19 Q. As you were leaving the scene, did you notice any
20 more tire impressions that appeared to be similar to those
21 that you had seen past the pumphouse?

22 A. I was requested at approximately just prior to noon,
23 to go up to the area at Highway 50 to check some tire tracks
24 that somebody discovered that looked supposedly similar to
25 the ones that we had at the scene. I was leaving the crime

- 1062 -

1 scene that has a long road from the pumphouse, and I parked
2 somewhere back here and this has quite a long drive to get
3 back out to the main road. As I was coming through here,
4 somewhere in this vicinity was a Mascotte police car parked
5 on the side facing in. As I pulled past it, I glanced to
6 my left and I saw the tire impressions that it left as he
7 pulled off the main portion of the drive area, and they
8 caught my eye, because there was a real good shale sand type
9 surface behind it, so I stopped my vehicle and got out and
10 put my tape measure on each individual tire impression and
11 the size was consistent with the tire impressions we had at
12 the scene.

13 Q. Had you measured the size of the tread width and the
14 tracks you had up through here?

15 A. Yes, and then I measured from the outside extremities
16 of the right and left tire and found the track width to be
17 consistent with what we had at the scene.

18 Q. Describe what you mean by track width?

19 A. Okay, different manufacturers and different makes
20 of vehicles have different track widths. What I mean, by the
21 right and left rear tires are wider or further apart than
22 other vehicles. They have a wider stance.

23 Q. So that would have nothing to do with the tires, but
24 rather with the chassis of the car?

25 A. Yes, with the over-all make and model of the car and

- 1063 -

1 this was consistent with the tracks, the unknown impressions
2 that we found at the scene as far as the track width and the
3 tire impression width.

4 Q. So then you measure the tire impression of the track
5 behind the Mascotte police car?

6 A. That is correct.

7 Q. And that was approximately the same as the track
8 width impressions you had seen going past the pumphouse as
9 indicated on this chart?

10 A. That is correct.

11 Q. And then what was the other measurement that you
12 said?

13 A. The track width and the impression width.

14 Q. Okay, the impression width is the first one I was
15 talking about. The impression width and the track width that
16 is the distance between the two tires?

17 A. Yes.

18 Q. And was that the same as what you found at the scene?

19 A. Yes.

20 Q. Did you go on to the autopsy?

21 A. Yes, I did.

22 Q. What action did you take with regard to the tires
23 when you came back?

24 A. When I returned to the scene, I took and did casts,
25 the impressions of the tire tracks.

- 1064 -

1 Q. I show you what has been marked in evidence as DD
2 for identification and ask if you will open that up and tell
3 me if you recognize what is in there?

4 (WHEREUPON, WITNESS OPENS EXHIBIT)

5 A. This is the unknown cast from the impressions at the
6 scene.

7 Q. Alright, sir. There are two of them there?

8 A. Yes, sir.

9 Q. Both are unknowns from the scene?

10 A. That is correct.

11 MR. HURM: Your Honor, at this time, I would offer I
12 believe DD for identification into evidence.

13 MR. EDMUND: No objection, Your Honor.

14 THE COURT: State's Exhibit DD for identification admitted
15 into evidence without objection as State's Exhibit #84.

16 (WHEREUPON, STATE'S EXHIBIT #84 IS ADMITTED INTO EVIDENCE
17 WITHOUT OBJECTION)

18 Q. Deputy Nelson, I show you what has been marked as
19 State's Exhibit LL and MM for identification and ask you if you
20 recognize those photographs?

21 A. Yes.

22 Q. What are they photographs of?

23 A. This photograph here...

24 Q. Without showing to the Jury yet. They haven't been
25 introduced into evidence.

- 1065 -

1 A. This particular one here was taken at the scene of the
2 unknown tire impression. This particular tire track here was
3 taken of the known impression from the Mascotte police car.

4 Q. Where was that known impression taken?

5 A. At the County shop in Eustis.

6 Q. After the car was taken into custody to process?

7 THE COURT: Mr. Hurm, help me with your letters as to
8 which so that the record will be clear.

9 MR. HURM: The unknown is LL, the one found at the scene.
10 The known from the shop is MM.

11 Q. Are these fair and accurate representations?

12 MR. EDMUND: I waive any further predicate, and no objection.

13 MR. HURM: I would offer them into evidence, Your Honor.

14 THE COURT: State's Exhibit LL admitted into evidence
15 without objection as State's Exhibit #85. State's Exhibit MM
16 admitted into evidence without objection as State's Exhibit
17 #86.

18 (WHEREUPON, STATE'S EXHIBITS #85 AND #86 ARE ADMITTED
19 INTO EVIDENCE WITHOUT OBJECTION)

20 MR. HURM: Your Honor, I ask permission to show these to
21 the Jury at this time.

22 THE COURT: Any objection, Mr. Edmund?

23 MR. EDMUND: No, Your Honor.

24 THE COURT: Alright, sir.

25 (WHEREUPON, EXHIBITS ARE PUBLISHED TO THE JURY)

- 1066 -

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1 Q. Deputy Nelson, did you have occasion, during your
2 investigation of this offense, to take photographs of Lake
3 County Deputy Sheriff vehicles from the scene that morning?

4 A. Yes.

5 Q. I show you what has been marked first as State's
6 Exhibit LLLL, Composite Exhibit, consisting of three photographs
7 and ask you if you will look at that and tell me if you
8 recognize that?

9 A. Yes, I recognize it.

10 Q. And then KKKK, four photographs?

11 A. Yes.

12 Q. And JJJJ?

13 A. May I speak with the State Attorney, Your Honor?

14 THE COURT: Yes, sir.

15 MR. EDMUND: I waive further predicate, Your Honor, and
16 I have no objection, Your Honor.

17 MR. HURM: I would offer these into evidence, Your Honor,
18 as State's next in order.

19 THE COURT: If you would identify for me, Mr. Hurm,
20 four "L"s first?

21 MR. HURM: LLLL consists of three photographs of Lake
22 County Sheriff Unit 1007.

23 THE COURT: State's Exhibit LLLL for identification,
24 a composite, admitted into evidence without objection as
25 State's Composite Exhibit #87.

- 1067 -

1 (WHEREUPON, STATE'S COMPOSITE EXHIBIT #87 IS ADMITTED
2 INTO EVIDENCE WITHOUT OBJECTION)

3 MR. HURM: Four "K"s would be four photographs, composite,
4 of Unit 5032, Lake County Sheriff's Office.

5 THE COURT: KKKK admitted into evidence without objection
6 as Composite Exhibit #88.

7 (WHEREUPON, STATE'S COMPOSITE EXHIBIT #88 IS ADMITTED
8 INTO EVIDENCE WITHOUT OBJECTION)

9 MR. HURM: And next, four "J"s, would be two photographs
10 of Unit 5071.

11 THE COURT: Composite JJJJ for identification admitted
12 into evidence without objection as Composite Exhibit #89.

13 (WHEREUPON, STATE'S COMPOSITE EXHIBIT #89 IS ADMITTED
14 INTO EVIDENCE WITHOUT OBJECTION)

15 Q. Deputy Nelson, while you were on scene that day on
16 May 12th, did you have occasion to look at the tires and/or
17 tire impressions of other vehicles on the scene, apart from
18 the Mascotte police car?

19 A. No, I didn't.

20 Q. Did you ever go back down to the scene, Deputy Nelson,
21 after May 12th?

22 A. Yes.

23 Q. I show you what has been marked in evidence as
24 State's #15. Do you recognize what those are?

25 A. Yes, this is a pencil that we located at the scene

- 1068 -

1 at a later time, the 15th or 21st.

2 Q. Who was with you when you recovered that?

3 A. Deputy Aleno.

4 Q. Thank you, sir. Deputy Nelson, while you were in
5 the Medical Examiner's Office, did you have occasion to take
6 fingernail scrapings of Teresa McAbee?

7 A. I attempted to take them, but she was a fingernail
8 person... she was evidently a nail bitter and she had no
9 projecting fingernails.

10 Q. Let me show you what has been marked State's 00 for
11 identification. Let's switch gears here from tracks for a
12 moment to prints. I ask you if you recognize those cards?

13 A. Yes, these are the fingerprints that I fingerprinted
14 Mr. Duckett at our lab facility.

15 Q. When was that done?

16 A. The 15th of May.

17 Q. May or ...?

18 A. June 15th.

19 Q. And do you see the individual you took the fingerprints
20 from in the courtroom?

21 A. Yes, I do.

22 MR. EDMUND: I will stipulate he can identify my client,
23 Your Honor.

24 THE COURT: Alright. Ladies and gentlemen, the record
25 would reflect that the officer will identify the defendant.

- 1069 -

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1 MR. HURM: Your Honor, at this time, I would offer these
2 in as State's next in order. The known fingerprints of the
3 Defendant.

4 MR. EDMUND: No objection, Your Honor.

5 THE COURT: State's Composite 00 for identification
6 admitted into evidence without objection as State's Composite
7 Exhibit #90.

8 (WHEREUPON, STATE'S COMPOSITE EXHIBIT #90 IS ADMITTED
9 INTO EVIDENCE WITHOUT OBJECTION)

10 MR. HURM: May I have just a moment, Your Honor?

11 THE COURT: Yes, sir.

12 Q. The day after you recovered the pencil, the broken
13 pencil, did you go back to the scene the next day?

14 A. Yes, we came back with a metal detector.

15 Q. What area did you sweep with the metal detector?

16 A. From the pumphouse around the pumphouse and down where
17 we found the pencil in this general area right here.

18 Q. Okay. Thank you. One other thing, Deputy, did you
19 photograph any footprints at the scene?

20 A. Yes, I did.

21 Q. Do you recall whether the footprints were made by
22 someone wearing shoes or without shoes?

23 A. Without shoes.

24 Q. How many did you photograph, do you recall, right
25 off the top of your head?

- 1070 -

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1 A. I know there was two different ones. There was a
2 small one of a small child and what appeared to be a little
3 larger one measuring approximately nine inches or under.
4 Q. Now, the smaller, the small child's, did you measure
5 that and compare the measurements to that of Teresa McAbee's
6 foot?
7 A. Yes, it was way smaller than Teresa's.
8 Q. Was Teresa wearing shoes when she was recovered?
9 A. She was wearing shoes.
10 MR. HURM: No further questions at this time, Your Honor.
11 MR. EDMUND: If it please, Your Honor.
12 THE COURT: Yes, sir.
13 CROSS EXAMINATION
14 BY MR. EDMUND:
15 Q. May I ask questions from here, Your Honor?
16 THE COURT: Yes, sir.
17 Q. Deputy Nelson, did you compare the larger one with
18 Teresa McAbee's foot?
19 A. Yes, I believe we did.
20 Q. And how did it compare?
21 A. It was too large for Teresa.
22 Q. Was it too large for Teresa's?
23 A. Yes.
24 Q. Was it substantially larger than Teresa's?
25 A. Yes, insofar as foot wear, yes, her foot impressions,

- 1071 -

1 yes.

2 Q. Alright, fine. Now, would you show or tell me, sir,
3 I was behind when you explained it to the Jury, where you
4 found, if it please, Your Honor?

5 THE COURT: Yes, sir.

6 Q. Where you took the casts that is reflected in
7 State's Exhibit #84, the tire impression?

8 A. This is the pumphouse. We went behind the pumphouse.
9 This has predominately grassy covered areas throughout here.
10 It didn't record well for tire tracks. Around this bend here
11 and up through this area is where all the casts photos were
12 taken.

13 Q. Alright, and none were taken on past there?

14 A. I didn't take any past there.

15 Q. Alright, sir, thank you. Do you consider the cast
16 that you took that is now State's Exhibit #84, to be a
17 good impression?

18 A. I would have to say it is an average impression.

19 Q. Is it an impression that would give you an opportunity
20 to measure the depth, for example, of the tread that is left
21 on the tire?

22 A. The recording surface was such that in sand, it is
23 not an ultimate recording medium for tire impressions or
24 anything, for that matter. I really don't know the answer to
25 that.

- 1072 -

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1 Q. Is there a formula that you can use that you can
2 apply to tire impressions that are taken from sand to get an
3 estimate or reasonably accurate estimate of the tread depth
4 and a formula that you can apply to clay; a formula that you
5 can apply to various and sundry surfaces, so that you can have
6 a pretty good idea of the tire wear on a particular tire that
7 made the impression from which the cast was made?

8 A. I am not aware of it.

9 Q. Were ever any impressions made... may I strike, Your
10 Honor,... were you present when sand was placed on the asphalt
11 and the police car driven in such a manner as to leave
12 impressions of each of the tires?

13 A. No, I wasn't.

14 Q. Alright. Did you or did anyone working under your
15 direction or supervision or under whose supervision and
16 direction you were working, make any photos of tire tracks or
17 tire impressions of the other Mascotte police car?

18 A. I don't ... there are two other police cars, now.

19 Q. Alright, well, of either or both of the other
20 Mascotte police cars?

21 A. We noted the tire impressions on the Chief's car,
22 which was an unmarked car. Mascotte has two marked police
23 cars and one unmarked. The Chief's car was originally down
24 there the first thing in the morning. He left upon my
25 arrival. The second car that came down was a marked unit.

- 1073 -

1 I don't know which one it was of the two marked units they
2 have. The one that I said the tire tracks were consistent
3 with. The Chief's car was noted. The tires have been photo-
4 graphed on the unmarked police car.

5 Q. Were they photographed on both of the marked police
6 cars?

7 A. I don't believe so.

8 Q. Were impressions made with both of the marked police
9 cars and photographs taken of those impressions?

10 A. No.

11 Q. Only one car were impressions made and photographs
12 taken?

13 A. I believe that is correct.

14 Q. Will you tell the Jury when you are comparing a known
15 and an unknown tire impression, what are the various things
16 that you would look for to either distinguish between the two
17 or to match the two?

18 A. Well, first of all, I believe you would look for the
19 size of the impression or the tread pattern. Number two, you
20 look for unique characteristics present in the tires. Tread
21 wear...

22 Q. Would you enumerate some of those, please?

23 A. The wear patterns that are present on tires like
24 outside wear; over inflation; problems where the center becomes
25 more worn than the edges; various road hazard cuts in the tire;

- 1074 -

1 imperfection in the tread pattern itself. Various things.
2 They vary depending upon the surface that it is recorded in.
3 Some of the surfaces obviously are not that detailed rendering
4 of an impression as some others may be. Going through oil,
5 for instance, and running across a cement surface would leave
6 an ultimate tire print and in sand, there is probably less
7 desirable surface that you can leave any kind of impression
8 in as far as the minor details.

9 Q. Is there a method of inking a tire and putting its
10 impression on paper for better examination?

11 A. Yes, sir.

12 Q. Was that done in this case?

13 A. No.

14 Q. Alright, sir. Now, in the area of collecting evidence,
15 is it not better to secure the evidence itself as opposed to
16 photographs and casts and impressions such as taking the tires
17 from the vehicle in order to attempt to match with whatever
18 impressions you observed?

19 A. Ultimately, yes.

20 Q. Was that ever done with either of the Mascotte police
21 cars?

22 A. It was considered and due to the inconvenience to
23 Mascotte or whatever, I wasn't involved in that particular
24 thing, they decided not to do it.

25 Q. Has it ever been done to your knowledge?

- 1075 -

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1 A. In past cases, no, sir. In this case, not to my
2 knowledge.

3 Q. Was any effort made to determine if the spare tire
4 of the ... of either or both of the automobiles of the Mascotte
5 Police Department had the matching tires, had ever been on the
6 ground?

7 A. I don't know.

8 Q. You went back to the scene on May 12th or sometime
9 later or after May 12th, and you found the pencil? Is that
10 State's Exhibit #15?

11 MR. HURM: The broken pencil is in there.

12 MR. EDMUND: The broken pencil?

13 MR. HURM: Yes, sir.

14 Q. How many days following the finding of the body was
15 that, sir? I mean, was it more than one? I won't pin you
16 down, but was it more than a day or so?

17 A. Yes.

18 Q. Were there still tire tracks visible at the scene
19 from people going in and out of the scene?

20 A. As I recall, the scene was well traveled.

21 Q. Could you observe ... I mean, were there discernible
22 tracks of any vehicles out there at that time?

23 A. Yes, there was.

24 Q. And this was several days later, was it not?

25 A. Yes.

- 1076 -

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1 Q. Thank you, sir. I have no further questions.

2 MR. HURM: Just one.

3 RE-DIRECT EXAMINATION

4 BY MR. HURM:

5 Q. The day the body was discovered, May 12th, past the
6 pumphouse, where you took the casts and the photographs were
7 taken, in this area... did you see any other sets of tracks?
8 Other than the ones you photographed and casted?

9 A. No, just that one set.

10 Q. Nothing further.

11 THE COURT: Mr. Edmund, anything further of this witness?

12 MR. EDMUND: May I have just a moment, Your Honor?

13 THE COURT: Yes.

14 RE-CROSS EXAMINATION

15 BY MR. EDMUND:

16 Q. Is there any attempted norm of unknown either
17 photographs, casts, impressions, that you attempt to obtain
18 for later comparison purposes?

19 MR. HURM: Objection, Your Honor, that is outside the
20 scope of my re-direct. Just one question.

21 MR. EDMUND: Absolutely right, sir. I apologize.
22 No further questions.

23 THE COURT: May we release Mr. Nelson from his subpoena,
24 gentlemen?

25 MR. HURM: We would like him on call, Your Honor.

- 1077 -

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1 THE COURT: Alright, if you will be under your subpoena,
2 but you are free to go as long as you let the State know where
3 you are, sir.

4 Thank you very much.

5 Who is your next witness for the State?

6 MR. HOGAN: Tammy Zavala.

7 THE COURT: Alright. Please raise your right hand,
8 ma'am, and Madam Clerk will swear you in.

9 (WHEREUPON, TAMMY ZAVALA IS ALLED AS NEXT WITNESS FOR
10 THE STATE AND IS DULY SWORN BY THE CLERK OF THE COURT)

11 DIRECT EXAMINATION

12 BY MR. HOGAN:

13 Q. State your name for the record?

14 A. Tammy Zavala.

15 Q. Mrs. Zavala, what is your husband's name?

16 A. Pedro.

17 Q. Ms. Zavala, is your husband of Mexican descent?

18 A. Yes, sir.

19 Q. Ms. Zavala, lat May, May of 1987, where did you
20 live?

21 A. 29 South Sunset in Mascotte.

22 Q. Who lived there with you?

23 A. Dorothy McAbee, Teresa McAbee, Tina Lancaster,
24 and Michelle.

25 Q. Are you related to Dorothy McAbee?

- 1078 -

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1 A. I am her sister.

2 Q. And then Teresa McAbee would have been your niece,
3 is that correct?

4 A. Yes.

5 Q. Calling your attention to May 11th, 1987, did you
6 become aware of the fact that Teresa did not come home from
7 the Circle K Store?

8 A. Yes.

9 Q. About what time did you become aware of that?

10 A. About 9:00 or 9:30.

11 Q. Not what time she went to the store, ma'am, what time
12 you were aware that she had not come home?

13 A. About 10:00 ... 9:30 or 10:00.

14 Q. Alright. Later on that night, did you have an
15 occasion to come in contact with an individual later known
16 to you as James Duckett?

17 A. Yes.

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

19 A. Yes.

20 Q. Please point to him and describe what he is wearing?

21 A. He is wearing a brown suit.

22 MR. EDMUND: I will stipulate that she has identified
23 him.

24 THE COURT: Ladies and gentlemen, the record would reflect
25 that the witness has identified the defendant.

- 1079 -

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1 Q. Ms. Zavala, about what time... is that on May 12th,
2 the following day, about what time of day was that?
3 A. When I seen Duckett?
4 Q. Yes, ma'am.
5 A. The first time I seen him was maybe 11:30 - 12:00,
6 maybe later.
7 Q. But probably late evening hours of May 11th or
8 early morning hours of the 12th?
9 A. Yes.
10 Q. Did you have occasion to see him again, in the early
11 morning hours of May 12th?
12 A. Around 3:30 - 4:00 o'clock, he was leaving as I was
13 coming in the yard.
14 Q. And after that, did you have an occasion to do
15 anything yourself in an attempt to find Teresa McAbee?
16 A. Yes, I walked down by the lake.
17 Q. What time of day was that?
18 A. About 6:00 - 6:30.
19 Q. Was it daylight?
20 A. Just getting daylight.
21 Q. Okay, who was with you?
22 A. My sister, Shirley.
23 Q. And who else?
24 A. Angel.
25 Q. Who is Angel?

- 1080 -

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1 A. My little niece.
2 Q. How old is Angel?
3 A. Four.
4 Q. How old was she last year?
5 A. Three. Last year she was three.
6 Q. I show you what is marked in evidence as State's
7 Exhibit 26. This will be Sunset and that is Pearl Street.
8 Your house was on the road that way, is that correct?
9 A. I don't know my directions.
10 Q. Well, I am telling you. Talbott was the street that
11 way. Do you recognize this was the dirt road?
12 A. Ahum. (Affirmative response)
13 Q. This being Knight Lake?
14 A. Yes.
15 Q. Is this the dirt road you are talking about that you
16 walked down?
17 A. Yes, it is.
18 Q. Will you please show the Jury where you walked?
19 A. All the way down the dirt road about up in here.
20 Q. And then what did you do?
21 A. We turned around and went back.
22 Q. Back where?
23 A. To the house.
24 Q. Back up on Sunset?
25 A. Ahum. (Affirmative response)

1 Q. Did you see anything? Did you see Teresa when you
2 walked down there?

3 A. No, I did not.

4 Q. Did you go down and look in the lake?

5 A. No.

6 Q. Now, Mrs. Zavala, what kind of shoes were you
7 wearing?

8 A. I wasn't.

9 Q. And what kind of shoes was Shirley wearing?

10 A. She wasn't.

11 Q. And what kind of shoes was Angel wearing?

12 A. She wasn't.

13 Q. All three of you were barefooted?

14 A. Ahum. (Affirmative response)

15 Q. Did you have occasion to have your foot measured
16 by Detective Wagner of the Lake County Sheriff's Office?

17 A. Yes.

18 Q. Can I have one moment, Judge. Thank you, Judge.
19 Thank you, Ms. Zavala.

20 CROSS EXAMINATION

21 BY MR. EDMUND:

22 If it please Your Honor?

23 THE COURT: Yes, sir.

24 Q. Again, may I ask questions from here?

25 A. I'll waive.

1 Q. Ms. Zavala, my name is Jack Edmund. Did you go all
2 the way to the pumphouse, ma'am?

3 A. Yes, I did.

4 Q. And was it daylight when you were there?

5 A. Yes.

6 Q. Did you go along either side of the pumphouse?

7 A. No.

8 Q. And in what direction were you walking when you
9 were around the pumphouse? Were you continuing on around
10 or were you walking towards the lake or away from the lake?

11 A. I was wlaiking just on the road beside the lake.

12 Q. Would you tell the Jury how near you ever got to the
13 pumphouse?

14 A. Outside the window, the little window in the front.

15 Q. How near do you mean when you say right beside,
16 ma'am?

17 A. I was right next to the window. I looked inside the
18 window.

19 Q. You actually looked into the pumphouse?

20 A. Yes.

21 Q. Alright. Did either ... did anyone with you go
22 around the pumphouse, to your knowledge?

23 A. No.

24 MR. EDMUND: No further questions, if it please the Court.

25 THE COURT: Anything further, sir?

- 1083 -

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1 MR. HOGAN: No questions.
2 THE COURT: May we release Ms. Zavala from her subpoena?
3 MR. HOGAN: Yes, sir.
4 THE COURT: Any objections?
5 MR. EDMUND: No objection, Your Honor.
6 THE COURT: You are released from your subpoena and free
7 to go, ma'am. Let's take about a fifteen minute recess at
8 this time, if we would, gents.
9 (WHEREUPON, JURY LEAVES COURTROOM AT 10:18 A. M.)
10 THE COURT: Mr. Bailiff, please.
11 (WHEREUPON, THE DEFENDANT IS REMOVED FROM THE COURTROOM
12 AT 10:19 A. M.)
13 (WHEREUPON, COURT IS IN RECESS AT 10:20 A. M.)
14 (WHEREUPON, DEFENDANT IS PRESENT IN COURTROOM WITH HIS
15 ATTORNEY, MR. EDMUND AT 10:44 A. M.)
16 (WHEREUPON, JURY ENTERS COURTROOM AT 10:45 A. M.)
17 THE COURT: Welcome back, folks. Be seated, please.
18 Can you assure us you did abide by our admonitions
19 during break?
20 JURORS: Yes, sir.
21 THE COURT: Thank you.
22 MR. HOGAN: We call Lt. Wagner.
23 (WHEREUPON, LT. LYNN WAGNER IS CALLED AS NEXT WITNESS FOR
24 THE STATE AND IS DULY SWORN BY THE CLERK OF THE COURT)
25

- 1084 -

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1 DIRECT EXAMINATION

2 BY MR. HOGAN:

3 Q. Please state your name?

4 A. Lynn Allen Wagner.

5 Q. How are you employed?

6 A. Deputy Sheriff, Lake County.

7 Q. How long have you been so employed?

8 A. Five and one-half years.

9 Q. Do you have previous law enforcement experience?

10 A. Yes, sir, fifteen years.

11 Q. Detective, are you familiar with the Mascotte area?

12 A. Yes, sir.

13 Q. And are you familiar with the road called Bay Lake
14 Road?

15 A. Yes, sir.

16 Q. I show you what is marked in evidence as State's
17 Exhibit #61 and ask you, Detective Wagner, to stand down and
18 point out Bay Lake Road.

19 THE COURT: Yes, sir.

20 Q. Please indicate Bay Lake Road, sir.

21 A. Bay Lake Road, it runs South of Highway 50 in a
22 Southwesterly direction. Sunset, you will go approximately
23 a quarter mile.

24 Q. This is it right here?

25 A. Yes, sir and it turns a little northerly and Sunset

- 1085 -

1 is right here on 50.

2 Q. Alright, sir. Thank you. Would you help me move
3 this back.

4 (WHEREUPON, MAP IS MOVED BACK OUT OF WAY OF THE COURT
5 AND COUNSEL)

6 Q. Detective, do you know Tammy Zavala?

7 A. Yes, I do.

8 Q. Did you have an occasion to examine her bare foot?

9 A. Yes, sir.

10 Q. Did you have occasion to take a ruler and measure
11 her foot?

12 A. Yes, sir.

13 Q. What are the measurements of her feet?

14 A. Can I refer to my notes and get them exact?

15 Q. Sure.

16 A. Standing barefoot on a ruler, with her heel up against
17 a stationary object, exactly, her right foot is nine and five-
18 eighth inches. Her left foot is exactly nine and one-half
19 inches.

20 Q. Do you know Shirley Fernandez?

21 A. Yes, I do.

22 Q. Did you have an occasion to examine her bare feet?

23 A. Yes, I did.

24 Q. Did you have occasion to measure her feet?

25 A. Yes, sir.

- 1086 -

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1 Q. What measurements were her feet?
2 A. Using the same standard, her left foot is eight
3 and five-sixteenth inches exactly and her right foot is eight
4 and three-quarters inches exactly.
5 Q. Could I have one moment, Judge?
6 THE COURT: Yes, sir.
7 MR. HOGAN: I have no further questions at this time.
8 THE COURT: Mr. Edmund?
9 MR. EDMUND: No questions, Your Honor.
10 MR. HOGAN: I would ask that the witness remain under
11 subpoena.
12 THE COURT: You remain under subpoena, but you are free
13 to step down.
14 MR. HURM: Next, Your Honor, the State would call
15 Terrell Kingery.
16 (WHEREUPON, TERRELL KINGERY IS CALLED AS NEXT WITNESS
17 FOR THE STATE AND IS DULY SWORN BY THE CLERK OF THE COURT)
18 DIRECT EXAMINATION
19 BY MR. HURM:
20 Q. Good morning, Mr. Kingery. State your name, please?
21 A. Terrell W. Kingery.
22 Q. Is it Kingery without an L?
23 A. Yes, sir.
24 Q. I apologize. I thought there was an L in there.
25 Mr. Kingery, how are you employed?

- 1087 -

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1 A. I am employed at the Crime Lab, an analyst at the
2 Orlando Regional Crime Laboratory in Orlando, Florida.

3 Q. Do you have a particular specialty in that occupation?

4 A. I am assigned to the latent print section.

5 Q. Does that also include tire and foot impressions
6 as well as fingerprints?

7 A. Yes, it does.

8 Q. Would you tell us some of your educational background?

9 A. Yes, I have a Bachelor of Science Degree in Secondary
10 Education from Southeast Missouri State University. I
11 received my basic training in Forensic Science with the
12 fingerprints with the Federal Bureau of Investigation, where
13 I worked approximately two years. From there, I went to the
14 Illinois Department of Law Enforcement in Joliet, Illinois
15 and Maywood, Illinois, where I worked approximately five years
16 and ten months. There I received my training in latent
17 prints and shoe and tire tracks. For the past eight years,
18 and six months, I have been with the Florida Department of
19 Law Enforcement in Joliet... excuse me, in Sanford, Florida
20 and in Orlando, Florida, doing shoe and tire tracks and latent
21 prints.

22 Q. So altogether, you have been in crime scene
23 investigations as a technician in that occupation for fifteen
24 years?

25 A. Approximately, yes, sir.

- 1088 -

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1 MR. EDMUND: I will stipulate if you wish to offer him.
2 I have no objection, Your Honor.

3 MR. HURM: Thank you, Mr. Edmund. I would offer him as
4 an expert entitled to give opinions in the area of tire and
5 shoe track impressions.

6 THE COURT: Alright, Mr. Kingery will be so accepted as
7 an expert by the Court.

8 Q. Mr. Kingery, did you have occasion to become involved
9 in the case of death or homicide of Teresa McAbee in May of
10 last year?

11 A. Yes, I did.

12 Q. How were you first involved? What was your first
13 involvement?

14 A. My first involvement was receiving evidence on the
15 21st day of May, 1987.

16 Q. What did that evidence consist of you were given?

17 A. It consisted of two plaster casts.

18 Q. I will show you what has been marked in evidence as
19 State's #84 and ask if these are the plaster casts you
20 received?

21 A. Yes, they are.

22 Q. How do you recognize them?

23 A. On the back, I have my case number, my initials and
24 the exhibit number. Again, on the back, I have my case
25 number, my initials and the exhibit number.

- 1089 -

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1 Q. What else did you receive other than these plaster
2 casts?

3 A. I received photographic negatives of impressions found
4 at the crime scene, and I received photographic negatives of
5 tires that were taken when a vehicle was driven across sand
6 or dirt, recording a tire impression and then being photographed.

7 Q. Those would be known as the known impressions, would
8 they not? The latter one?

9 A. Yes.

10 Q. I show you what has been marked in evidence first as
11 State's Composite #53 and State's Composite #54, State's
12 Composite #55, and State's Composite #56, all in evidence.
13 Are those photographs made from those negatives?

14 A. They appear to be, yes, sir.

15 Q. Okay. Thank you. Mr. Kingery, did you bring any
16 exhibits with you to court today?

17 A. Yes, I did.

18 Q. May I see them, please?

19 (WHEREUPON, EXHIBITS ARE HANDED TO MR. HURM)

20 Q. All these in this box pertain to this particular
21 case?

22 A. Yes, sir.

23 Q. Your Honor, may I just have this whole box marked as
24 a composite exhibit for identification?

25 THE COURT: Yes, sir. We will mark that with your next

- 1090 -

1 letters, madam clerk.

2 MR. HURM: Five "S"s.

3 MR. EDMUND: I would waive a predicate on them.

4 MR. HURM: I would offer them into evidence then.

5 THE COURT: Any objection, Mr. Edmund?

6 MR. EDMUND: No, sir.

7 THE COURT: Alright, what are these of, Mr. Hurm?

8 Or purport to be?

9 MR. HURM: These are the photographs of known and unknown
10 tire impressions Mr. Kingery used in making his analysis.

11 It is a composite. I have not counted the number of
12 photographs, Your Honor.

13 THE COURT: State's Composite Exhibit SSSSS for
14 identification, admitted into evidence without objection as
15 State's Composite Exhibit #91.

16 (WHEREUPON, STATE'S COMPOSITE EXHIBIT #91 IS ADMITTED INTO
17 EVIDENCE WITHOUT OBJECTION)

18 MR. HURM: Your Honor, if I may have the witness step
19 down in front of the Jury?

20 THE COURT: Yes, sir.

21 Q. Mr. Kingery, I wonder if you could come down, please,
22 sir, and explain to the Jury, utilizing your exhibits here,
23 what you did in analyzing the knowns and unknowns?

24 First, if you can explain to the Jury how you go about
25 a tire analysis and taking a known print and comparing the

- 1091 -

1 unknown print?

2 A. Basically, it depends on exactly what you receive
3 in evidence. In this particular instance, I received
4 negatives that were used to make photographic enlargements
5 to compare. Basically, a tire impression is where the tread
6 design of the tire comes in contact with a surface. Being a
7 multiple surface... it could be clay, dirt, sand, mud or where
8 you have the tire rolling across and giving three dimensional
9 impressions.

10 The other impression would be where the tread design
11 rolls across the hard surface, a non-multiple surface, such
12 as a floor or pavement. Again, giving you a recording of
13 that tread design that came in contact with that surface.

14 To make a comparison, you are taking an unknown, an
15 impression that is found at the scene of the crime or a
16 location where you do not know the particular tire that made
17 that impression. This is compared with the known tire or
18 impression. That is one where you know the specific tire
19 that made or left that impression.

20 First of all, you look at the known. You look at the
21 known to see ... excuse me, the unknown, to see if there
22 actually is a tread design present and if that tread design
23 could be a possible tire impression. If you feel that there is
24 tread design there, and it is a possible tire impression,
25 you compare it with the known.

- 1092 -

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1 First of all, you look at the tread design to see how
2 many ribs you have. How many grooves you have. The size
3 arrangement. How many slots you have or how many notches you
4 have. These are all characteristics meaning that every tire
5 of that particular brand name and size will have these
6 particular characteristics.

7 If the class characteristics are all similar or
8 consistent, then you go further and start looking for
9 individual type characteristics. You have the general
10 individuals which would be your wear. Once a tire is placed
11 on a vehicle, and rolls across a surface, it wears in
12 different manners. This wear must be consistent. You also
13 pick up nicks and cuts. You have foreign objects, such as
14 glass, tacks, and nails, leaves, sticks, gum that may adhere
15 to this particular tread design. These are individual type
16 characteristics. Class characteristics consistent to the
17 individual type characteristics are consistent, then you can
18 make a positive identification, where you state that one
19 particular tire and only that one tire made a particular
20 impression.

21 Q. Were the impressions made in something like sand?
22 First of all, if you had to rate the quality of sand as a
23 material in which to make a tire impression, how would you
24 rate it?

25 A. In Florida, we see an awful lot of sand impressions.

- 1093 -

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1 Again, depending on the speed of the vehicle, the weight of
2 the vehicle, consistency of the sand, you can receive a good
3 transfer.

4 Q. Now, if you receive let's assume, a good transfer
5 on sand, is sand the kind of medium where you are able to
6 pick up all the individual characteristics that you mentioned,
7 such as gum or leaves or the other things you mentioned?

8 A. Again, it depends on the way it is photographed. The
9 type of lighting. If it is casted. Sometimes you are able to
10 pick up individual type characteristics.

11 Q. Would you explain the exhibits here... State's #91,
12 just how you went about the analysis of this particular tire?
13 Starting, as you explained, to begin with the unknown and
14 determine whether or not it is the track...

15 A. Is it alright if I take the one...

16 Q. However you proceed in your analysis.

17 A. First of all, I looked at the negatives and had all
18 the negatives enlarged. These are photographic enlargements.
19 I had them stapled together. Just different angles of the
20 same tire track.

21 In this particular instance, I saw there was a tire
22 track and I saw there was a bare footprint track in this
23 particular photographic enlargement.

24 First of all, I was looking at the particular tread
25 design. This particular area here is a ribbed tire. The area

- 1094 -

1 coming across here are the slots or grooves of the tire.
2 I am looking, when I made my comparison, the comparison
3 against the tire was on the vehicle, driven across the sand,
4 leaving an impression. I compared the tread design. I
5 compared the approximate size of the tread design left and I
6 looked for wear characteristics and individual type
7 characteristics. I noticed again there was one tire track
8 in these three photographs and based upon the comparisons,
9 there was consistency in the tires that I received and the
10 tread design that I saw in the unknown or photographic
11 enlargement.

12 Q. These are photographs of unknowns, these three?

13 A. Yes, sir.

14 Q. How about this next photograph? Is that also of
15 one of the unknowns?

16 A. Yes, this is a photographic enlargement again of
17 an unknown with another footwear impression in the side.

18 Q. Now, this impression here, was this at the site, or
19 is this a known?

20 A. No, this was an impression of the known, meaning
21 an indication on the ruller that this was the right rear
22 tire.

23 Q. Comparing that, just put these two side by side,
24 were you able to count the number of ... what are the class
25 characteristics you mentioned?

- 1095 -

1 A. First of all, we are looking for how many ribs do
2 we have in this particular tire.

3 Q. The ribs are these that go perpendicular to the tire?

4 A. The ribs are the ones that are going circumference
5 around the tire.

6 Q. I see. Okay.

7 A. The wide spaces running against the circumference of
8 the tire are known as the grooves. Here you have larger grooves
9 and smaller grooves, and larger grooves. The area running
10 laterally across going all the way across the particular rib,
11 these are known as slots. The ones running between the ribs
12 here are known as notches. The small ones here in each rib
13 running across, these are known as sights.

14 Q. Okay, now, beginning with sights, that is the last
15 one you mentioned, were you able to count the number of
16 sights on the known tire?

17 A. I was able to... I did not count the number. I was
18 not interested in the number. I was interested in is it
19 consistent with the tread design and size and did I find any
20 noise treatment...

21 Q. As far as any of those characteristics that you found,
22 how did they compare to the unknown tire impressions, the
23 photographs of which you received?

24 A. Based on the tread design and size, I could not
25 eliminate or could not find any differences where I could
state that that particular tire could not have made that

- 1096 -

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1 particular impression.

2 Q. Now, Mr. Kingery, based on your examination of the
3 known tire first, did you find any individual characteristics
4 of the photographs, and the impressions made by the known
5 tire?

6 A. I did not note any gross individual type
7 characteristics.

8 Q. Explain that, if you would?

9 A. Any large nicks or cuts or foreign objections adhering.

10 Q. Alright, sir. Did you notice any gross characteris-
11 tics, individual characteristics in any of the impressions
12 found at the scene?

13 A. I did not.

14 Q. Was this a known or unknown?

15 A. This is an unknown.

16 Q. Mr. Kingery, based on your analysis... you can go
17 ahead and have a seat..

18 (WHEREUPON, WITNESS RESUMES SEAT IN WITNESS BOX)

19 Q. Based on your analysis, comparison of the unknown
20 impressions taken at the scene of the homicide of Teresa
21 McAbee and comparing those with the known taken from the
22 police car driven by the Defendant, do you have an opinion
23 as to within a reasonable degree of scientific certainty,
24 as to whether or not that particular car, the tires on that
25 car, are consistent with the tracks found at the scene of the

~ 1097 -

1 homicide?

2 A. They were consistent with all the tracks except two.

3 Q. And where were those two unknowns found? Do you know?

4 A. No, I do not.

5 Q. How many photographs of known impressions at the scene
6 were you given?

7 A. I can't remember the number of negatives. There was...
8 and the plaster casts, there were two plaster casts, four
9 tire tracks represented and the negatives of unknowns, there
10 were nineteen tire impressions noted.

11 Q. And seventeen of them matched the knowns?

12 A. Seventeen were consistent, yes.

13 Q. Thank you. Can I have a moment, Your Honor?

14 THE COURT: Yes, sir.

15 Q. In your examination of the foot impressions next
16 to the tire tracks, could you tell whether or not those
17 impressions were made by a person who was wearing shoes or not
18 wearing shoes?

19 A. They were made by a person not wearing shoes.

20 Q. How many different foot impressions did you see?

21 A. I noted three.

22 Q. Three different sizes?

23 A. The only thing I did, I looked to see if there was
24 any friction ridge detail and noted any foot impressions. I
25 did not note any ridge detail. In my particular field, if

1 there was friction ridge detail noted, then I could compare
2 it to the footprint of a known person. Ridge detail, if it
3 is not noted, then I just mention it in a report that I did
4 note this particular evidence and it is up to the agency to
5 decide if they want to pursue it further.

6 Q. Okay, now, friction ridge detail, you are talking
7 about the same ridges as make fingerprints?

8 A. The same friction ridge detail that you find in the
9 area on the underside of your palms, your fingers, you will
10 find on the underside of the feet.

11 Q. Nothing further, Your Honor.

12 THE COURT: Mr. Edmund?

13 CROSS EXAMINATION

14 BY MR. EDMUND:

15 If it please, Your Honor?

16 THE COURT: Yes, sir.

17 Q. Mr. Kingery, I am Jack Edmund. Mr. Kingery, when
18 you say that the known and the unknown in this particular
19 case were consistent with one another, would it be a fair
20 statement to say that any other tire out of the mold from
21 which those tires came with the same wear or mileage, would
22 also be consistent in all probability?

23 A. From the same mold, bearing the same brand of tire,
24 same size, yes, it would be consistent.

25 Q. Alright, sir, did you have occasion to examine

- 1099 -

1 impressions or photographs of impressions or the tires
2 themselves from any other vehicle than the vehicle that the
3 defendant, Jim Duckett, was driving on the 11th and 12th of
4 May, 1987?

5 A. I did not compare any other tires other than the
6 ones that were sent to me in the negatives.

7 Q. Alright, sir. Now, the fact that the unknowns had
8 no gross individual characteristics merely means that the
9 photographs of that portion of those tracks that were taken,
10 each of those sections had no known gross characteristics,
11 is that correct?

12 A. Yes, the areas that were recorded in the photographs,
13 right.

14 Q. And would you estimate for the Jury the approximate
15 length of each of those sections of tire tracks that were
16 taken and presented to you as the unknown?

17 A. I would say anywhere from eight to maybe fourteen
18 inches.

19 Q. Alright, sir, would eight to fourteen inches be a
20 tire track of the entire circumference of that tire or just
21 a short portion of the circumference of that tire?

22 A. Just a short portion.

23 Q. Alright. You have no way of knowing whether you
24 could make up a composite that would show the entire
25 circumference of the unknown tire, do you?

- 1100 -

1 A. No, sir.

2 Q. Now, are the photographs in your opinion that you
3 observed of the unknown tire, all of the same tire or of
4 more than one tire?

5 A. Of the unknowns?

6 Q. Yes, sir?

7 A. That I do not know.

8 Q. In all probability, would it be simply the back
9 tire?

10 A. In some of the photographs, I would not know if it
11 would be the back or the front. In some of the photographs,
12 I had an overlap of tires which is consistent with a front
13 and rear tire overlapping together as the vehicle is moving.

14 Q. And what would cause the front and rear tire to
15 overlap one another as the vehicle is moving?

16 A. As the vehicle is driving, unless the individual has
17 the same size tire, it is probably aligned... sometimes they
18 are going in an exact straight line and sometimes one could
19 cover ... the rear tire would cover up the front tire.
20 But during turning and basically you are not steering in one
21 straight area, you have overlap of the tires.

22 Q. Alright, sir, what did you attribute the overlap you
23 saw in the unknowns? Poor alignment? Or turning?

24 A. Well, the area that I received there, it was such a
25 short area, I couldn't tell whether it was turning, or stopped

- 1101 -

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1 or the car was going to make another turn on another maneuver.

2 Q. Did you observe more than one photograph that
3 indicated that overlap?

4 A. Yes, I did.

5 Q. Did it exhibit itself in such a pattern that it
6 would appear to you that it was an out of line vehicle or
7 a vehicle in a long turn?

8 A. That I couldn't just have enough area of photograph
9 there... I didn't have all of the entire area that I could
10 make a statement on.

11 Q. Alright, sir, now, you did have an opportunity to
12 examine the entire circumference of the known tire, did you
13 not?

14 A. Yes, I did.

15 Q. Of each of the known tires?

16 A. Yes, sir.

17 Q. Now, on none of the four known tires did you find
18 gross characteristics?

19 A. No, I did not.

20 Q. So we know to a matter of scientific certainty that
21 the known tires, that is the tires on the police car, had no
22 imperfections that were discernible to you?

23 A. I did not note anything that would tell me that this
24 tire had a lot of wear on it, no.

25 Q. Alright, sir, and so we know that there were no

- 1102 -

1 individual gross characteristics on any of the four tires
2 on the police car?

3 A. Yes, sir.

4 Q. But we don't know that about the unknowns, because
5 you don't know what the entire circumference of the unknown
6 tire consisted of with regard to possible or not possible
7 blemishes or characteristics?

8 A. That is correct.

9 Q. Alright, sir. Now, we don't know now if the other
10 police car had any imperfections or individually ...
11 individual gross characteristics that would be apparent, had
12 it been put through the same process as the suspect vehicle,
13 do we?

14 A. No, sir, I was not submitted the tires from that car
15 nor impressions from that car to make a comparison.

16 Q. Was there anything that you observed that would indicate
17 that the suspect vehicle, the one driven by Mr. Duckett,
18 was out of line to the point that it was overlapping of the
19 rear and front tires?

20 A. Again, I didn't examine the vehicle at all. I never
21 saw the vehicle.

22 Q. Were you furnished a set of photographs that showed
23 the tracks of this vehicle traveling in a straight line?

24 A. I did not see how the photographs were taken when the
25 car was driven.

- 1103 -

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1 Q. Did you observe an overlapping except when they had
2 this vehicle in the turn so that they could individually
3 process a tire?

4 A. The only thing that I ... they photographed ... You
5 would have to ask the crime scene person how they did this...
6 they gave me photographs of the circumference of each
7 individual tire.

8 Q. Alright, so you don't know whether or not the
9 vehicle Mr. Duckett was driving had any overlapping of its
10 rear tire to its front tire, do you, sir? You weren't
11 furnished that information?

12 A. No.

13 Q. And you weren't furnished photographs from which you
14 could discern that from your examination?

15 A. No, sir.

16 Q. May I have a moment, Your Honor?

17 THE COURT: Yes, sir.

18 Q. From the Exhibit #84, which was a plaster cast that
19 was furnished you, was it not, sir?

20 A. #84? I think it was.

21 Q. If I drop and break this, you will all have to
22 believe it is an accident.

23 You were furnished this, among other things?

24 A. Yes, I was.

25 Q. Alright, sir. Now, is it of such a clarity and

- 1104 -

1 definity that you could make measurements as to the depth
2 of what was left on the tire that made this print of the
3 tread?

4 A. It could be, but depending on the consistency of the
5 soil, the weight of the vehicle, you may not get the complete
6 depth of the grooves in the particular tire.

7 Q. Did you make any effort to make such measurements?

8 A. No, sir, I did not. I did not receive the tires
9 to compare the measurements with.

10 Q. To really complete and do justice to your
11 comparison of the tires, you would have wanted the tires
12 themselves as quickly as possible after the commission of the
13 crime that the tires were allegedly related to, would you
14 not?

15 A. Yes, sir.

16 Q. And that was never furnished to you, was it?

17 A. No.

18 Q. Is it correct that tires that are furnished to you,
19 your examination can fair exceed the examination that you were
20 able to do from the photographs and from the plaster casts?

21 A. It could, yes.

22 Q. You could make much more minute examinations and
23 look for imperfections in the unknowns that you find in the
24 knowns, can't you?

25 A. Yes, sir.

- 1105 -

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1 Q. You can both compare and you can exclude more
2 readily or the probability of your being able to compare and
3 the probability of your being able to exclude the known and
4 unknown from one another or to one another, are much greater
5 if you have the known tires themselves, the known tires
6 themselves, are they not?

7 A. It helps to make an elimination or to make identifi-
8 cations, if you have the known tires. You can do it without,
9 but it is a further assistance in the examination.

10 Q. Can you tell the Court and the Jury at or about what
11 mileage point after tires have been placed on a vehicle, and
12 this is sort of a dumb question, I guess, because so many
13 variables, but would you, as an expert, begin to notice
14 discernible wear to tires?

15 A. It depends on how the particular tires are driven.

16 Q. How it is driven, and whether or not it is properly
17 aligned, whether the brakes were over-used, and these kind of
18 things we are talking about, right?

19 A. Yes.

20 Q. The type of terrain it is driven on and things like
21 that?

22 A. Yes, sir.

23 Q. Is there any rule of thumb you and the others in your
24 profession go by when you think if it has got a thousand miles
25 on it or five thousand miles or ten thousand miles, I am going

- 1106 -

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1 to begin to find some discernible wear that will come close
2 to begining a gross individual characteristic?

3 A. Well, the first thing we are looking at as I mentioned,
4 is showing the enlargement, we are looking for the sites.
5 The grooves are a deeper impression in the tread design of the
6 tire. The sites are very thin and they are not as deep, so
7 when a tire starts wearing, these are the first things to
8 go. They start disappearing and become very small.

9 Q. And you don't have a rule of thumb as to what
10 distance a tire is normally driven before it becomes discern-
11 ible to you?

12 A. I have seen ... depending on how the individual
13 drives it, the particular individual, by what terrain he drives
14 on, I have seen some last for several thousand miles.

15 Q. How soon have you had occasion to see where the
16 wear is discernible?

17 A. I have seen it start to wear at approximately a
18 thousand miles.

19 Q. A thousand miles. Now would the... had you had the
20 tires from the suspect vehicle, would you have been able to
21 make a closer determination with regard to that type of wear?

22 A. Again, if I had the particular tire and I could examine
23 the tire circumference of it, looking again at all the
24 particular tread design... I am talking about the ribs, the
25 grooves, the sites, the slots and the notches... the depth of

- 1107 -

1 each one of these. How it is produced when you roll it
2 across the surface, then I might have been able to find
3 something else.

4 Q. Is it also correct that you have a greater probability
5 of picking up a manufacturer's defect if you observe the
6 tire itself, as opposed to a photograph or a plaster cast
7 or something of that nature?

8 A. Again, the way a tire is made, yes, can be molded...
9 a two piece mold ... sometimes with the tire, you can pick up
10 these imperfections.

11 Q. And once you have picked up imperfections of that
12 sort, is it just a plain, fair statement that then you go to
13 the unknown and you have a greater likelihood of finding that
14 if it is present in the segment that you happen to be
15 examining?

16 A. That is correct.

17 Q. That you might have overlooked it for whatever reason
18 before, but if you know of its presence, then you can go to
19 a particular point looking for a particular thing and have a
20 greater probability of either eliminating it or identifying
21 it?

22 A. That is correct. If I had an idea of what area
23 it is in, if I looked... first of all, I compare the known
24 to the unknown. I compare the unknown to the known. Looking
25 through, when I am comparing the known, if I see this

- 1108 -

1 imperfection, where there is a two piece mold in this
2 particular tire, I know it is made by a two piece mold.

3 Sometimes, when the two molds come together, you have
4 a seam around the circumference of the tire. Sometimes, you
5 have an off-set that you can pick up in a particular tire.
6 This would not be an individual characteristic, because until
7 it is corrected at the manufacturer area, all of the tires
8 manufactured from these molds will have that offset in that
9 tire.

10 Q. Can I have another moment, Your Honor?

11 THE COURT: Yes, sir.

12 Q. Thank you, Your Honor. No further questions.

13 RE-DIRECT EXAMINATION

14 BY MR. HURM:

15 Q. What brand tires were on the known?

16 A. Goodyear.

17 Q. How about the unknown?

18 A. It was a Goodyear tread design.

19 Q. Were you able to tell the specific type of
20 Goodyear tire?

21 A. It was a Goodyear Eagle M & S.

22 Q. What is M & S stand for?

23 A. M & S is the designation for mud and snow.

24 Q. Now, you were able to make that determination from
25 the unknown as well as the known?

- 1109 -

1 A. Yes. First of all, by looking at the unknown, we
2 have a tread design guide, which is published by a then
3 Garfield Company, and it had going back through 1978 and up
4 through 1988, and I went through the particular books,
5 looking for the particular tread design. I first ran across
6 the particular tread design in the 1984 book, so it was this
7 particular tread design, was put out and published in the
8 early part of 1984.

9 Q. You said they were mud and snow tires?

10 A. This particular tread design was manufactured for
11 the purpose of mud and snow type tire for a more northern
12 area.

13 Q. Have you seen in your eight years with the F. D. L. E.,
14 have you seen any mud and snow tires in other cases in this
15 area?

16 A. Well, some of the radial tires, Goodyear GT or
17 Goodyear Vector has a designation as a mud and snow tire.
18 It means that it is a year around tire. The traction is
19 there for mud and snow or sand and it can be driven twelve
20 months out of the year.

21 Q. These are designed primarily for northern areas?

22 A. This particular tread design is a very aggressive
23 tread design and it was designed by Goodyear for a northern
24 climate. It is not... Goodyear puts out a print out of all
25 its manufacturers, giving the type of tires that are suitable

- 1110 -

1 for that particular area they are selling in and this
2 particular brand, Goodyear Eagle M & S is not recommended for
3 southern driving.

4 Q. Mr. Kingery, is the Eagle M & S Goodyear tire different
5 from the Eagle GT?

6 A. Yes, it is.

7 Q. Is the GT tire recommended for southern driving?

8 A. Yes, it is.

9 Q. Now, the overlapping that we talked about, would
10 that be consistent, in your opinion, whether that would be
11 consistent with a vehicle driving a road as marked by this
12 brown line? Would there be overlap of a vehicle driving down
13 that road?

14 A. It could be. The overlap I see very often when I am
15 dealing with tire comparisons, where a vehicle is traveling
16 in a direction. The front tire, which is the leading tire,
17 whichever one is the leading tire, going frontwards or back-
18 wards, the front tire leaving an impression and the rear tire
19 running across the front tire and not covering the entire
20 front tire. The impression left by the front tire... so
21 you have, instead of having one impression, of a tire, you
22 have two impressions that are distinguishable.

23 Q. That would be consistent with driving a road like
24 this?

25 A. It could be consistent with driving on a paved road.

- 1111 -

1 It is not uncommon.

2 Q. Even a straight road?

3 A. Yes, sir.

4 Q. Now, in order to have that driving on a straight
5 road, would the vehicle have to be out of alignment?

6 A. No, sir.

7 Q. I know you didn't get the tires in this particular
8 case. You didn't receive the tires off the car, the actual
9 tires. However, with the photographs that you received, was
10 that enough for you to do a comparison, either to eliminate
11 or compare?

12 MR. EDMUND: I object, Your Honor, on the grounds that
13 is repetitious, if it please, Your Honor.

14 THE COURT: Overruled.

15 Q. Did you have enough with the photographs of the
16 known and the photographs of the unknown for you to make
17 a comparison and either eliminate that tire or say it is
18 consistent with?

19 A. Yes, I was able to make a comparison, and offer an
20 opinion.

21 Q. Which was?

22 A. That it was consistent with the tires that were on
23 the vehicle.

24 Q. Now, you mentioned the sites are one of the first
25 characteristics on a tire to go with wear. Were the sites

- 1112 -

1 present on the photographs that you examined?

2 A. On some of the photographs, yes, sir, they were
3 very present.

4 Q. On both the knowns and unknowns?

5 A. Yes, sir.

6 Q. Now, you said that these photographs give you,
7 for example this one, in evidence as State's #54, is of the
8 right front?

9 A. Yes, sir, right front.

10 Q. So those fifteen photographs give you the entire
11 circumference of the right front tire?

12 A. It should, but again, I wasn't at the scene, so I
13 don't know how ...

14 Q. There could be overlap and so forth, but basically
15 that is why there are that many photographs taken?

16 A. Yes, there should be overlap.

17 Q. And you had a set of photographs for each of the
18 tires on the defendant's car?

19 A. Yes.

20 Q. Now, the purpose of that is to show gross deformities
21 in the tire... I am sorry, what is the purpose of that?

22 A. Again, so I can make a thorough comparison.

23 Q. Now, in your experience with F. D. L. E., have you
24 had any cases where criminals were kind enough to leave the
25 entire circumference of the tire as they left the scene?

- 1113 -

1 A. Very seldom.

2 Q. Is it more common or less common for you to find
3 or be given photographs of casts of partial tracks at the
4 scene of the crime?

5 A. May I re-state my first ...?

6 Q. Yes, sir.

7 A. I very seldom receive the photographs or plaster
8 casts of an entire circumference of a tire. Whether they
9 were present at the crime scene, I don't know. The evidence
10 I receive, I don't think, since I have been with Florida, I
11 have received a crime scene photograph or plaster cast of
12 the complete circumference of one particular tire.

13 Q. Thank you. I don't have anything further.

14 MR. EDMUND: If it please, Your Honor?

15 THE COURT: Yes, sir.

16 RE-CROSS EXAMINATION

17 BY MR. EDMUND:

18 Q. Mr. Kingery, you have had occasion to receive casts
19 or photographs from which you were able to determine a gross
20 individual characteristic in the unknown, have you not?

21 A. Yes, sir.

22 Q. And match it with a known?

23 A. Yes, sir.

24 Q. You have had other occasions where in this instance
25 you were unable to match a known with an unknown other than

- 1114 -

1 that they were consistent with one another and that has been
2 your statement to the Jury that these tire tracks are
3 consistent with one another, are they not?

4 A. Yes, sir.

5 Q. Now, the truth is, you didn't have enough so that
6 you could make a statement that you did have enough to
7 eliminate, did you, because you didn't have the entire
8 circumference of the unknown?

9 A. Based on what I received, I could not eliminate.

10 Q. Based on what you received, you could not eliminate,
11 but we will not know what the rest of the circumference of
12 that unknown tire contains...

13 MR. HURM: Object, Your Honor. That is testimony. That
14 is not a question.

15 THE COURT: Overruled.

16 Q. Will not know what the rest of the circumference
17 of the unknown tires contained, but which you might have
18 eliminated had you had the entire circumference of the unknown
19 tire, is that a fair statement?

20 A. Experience.

21 MR. EDMUND: May I have just a moment, Your Honor.

22 Q. Now, there are publications available to the
23 motoring public particularly the off-road type of public
24 that contains a mud and snow tire, sand tires, all types of
25 tires and those publications go throughout the United States,

- 1115 -

1 don't they?

2 A. Yes.

3 Q. And we don't know what outlaw might want to buy
4 M and S tires to drive in the sand, do we?

5 A. I have no idea who would purchase that particular
6 tire.

7 Q. Thank you. No further questions.

8 RE-DIRECT EXAMINATION

9 BY MR. HURM:

10 Q. Briefly, Mr. Kingery, did you find any gross
11 imperfections in the knowns that you were given?

12 A. No, sir.

13 Q. And you had that entire circumference, didn't you?

14 A. Yes, I did.

15 Q. And the photographs you have of the unknowns at
16 the scene, although you didn't have the entire circumference,
17 did you find any gross imperfections in the unknown impressions?

18 A. I found no gross imperfections in the area that I
19 received in the photographs from the unknowns, no.

20 Q. Thank you, sir.

21 MR. EDMUND: No, Your Honor.

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

24 MR. HURM: No objection.

25 THE COURT: Any objection, Mr. Edmund?

- 1116 -

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1 MR. EDMUND: No objection, Your Honor.

2 THE COURT: You are free to go, sir. Thank you very
3 much.

4 Who do we anticipate next?

5 MR. HURM: The next witness, Your Honor, will be Gary
6 Nelson, back again briefly.

7 THE COURT: Alright, Gary Nelson, please.

8 (WHEREUPON, GARY NELSON IS AGAIN CALLED AS A WITNESS
9 FOR THE STATE AND REMAINS UNDER PREVIOUS OATH ADMINISTERED)

10 THE COURT: I remind you you are still under oath.
11 Take a seat, Mr. Nelson.

12 DIRECT EXAMINATION

13 BY MR. HURM:

14 Q. Deputy Nelson... may I have these marked for
15 identification, Your Honor, as a composite consisting of
16 ten photographs of foot impressions?

17 THE COURT: What letters, ma'am?

18 CLERK OF THE COURT: Five "T"s.

19 THE COURT: Five "T"s for identification.

20 Q. I show you what has been marked TTTTTT for identifi-
21 cation. I ask you to look at those photographs, please, sir.
22 Do you recognize them?

23 A. Yes, sir.

24 MR. EDMUND: I waive any further predicate and have no
25 objection if you wish to offer them.

- 1117 -

1 MR. HURM: I would offer those in evidence at this time.

2 THE COURT: State's Exhibit Composite TTTT for
3 identification admitted into evidence without objection as
4 State's Composite Exhibit #92.

5 (WHEREUPON, STATE'S COMPOSITE EXHIBIT #92 IS ADMITTED
6 INTO EVIDENCE WITHOUT OBJECTION)

7 Q. What are those photographs of?

8 A. Photographs of foot impressions.

9 Q. Were those taken at the scene on May 12, 1987?

10 A. Yes.

11 Q. Could you show us on this diagram approximately the
12 area that you photographed those?

13 A. They were all taken in this proximity here.

14 Q. He is indicating, for the record, between sticker
15 #3 and #4.

16 A. Yes.

17 Q. On the road itself?

18 A. Yes, on the pathway that would be normally driven.

19 Those photos were taken by Deputy Aleno and one was taken by
20 myself and then one of them was taken in this corner of the
21 pumphouse ...

22 Q. Okay, and that would be the Northeast corner of the
23 pumphouse?

24 A. It would be the Southeast corner.

25 Q. The Southeast. This corner. Okay.

- 1118 -

1 A. On this side and at the corner, that end.

2 Q. Thank you, sir. Deputy Aleno, from examining
3 those footprints, the impressions when you took the photo-
4 graphs, could you tell whether they were made by a shoed foot
5 or an unshoed foot?

6 A. It is Deputy Nelson and it was a bare foot.

7 Q. I am sorry, Deputy Nelson. That is right. Barefoot,
8 all the footprints?

9 A. Yes.

10 Q. Were there different sized footprints?

11 A. Yes.

12 Q. How many different sizes could you tell?

13 A. I noted two, a small child and it appeared to be a
14 female's footprint.

15 Q. How could you tell it was a female?

16 A. Well, the length for one thing and the width of the
17 ball portion of the foot.

18 Q. Did you take casts of any of those footprints?

19 A. Yes.

20 MR. EDMUND: I waive any of that predicate also.

21 MR. HURM: Your Honor, this has not been marked for
22 identification. It would be a composite, three plaster
23 casts.

24 THE COURT: Five "U"s, ma'am?

25 CLERK OF THE COURT: Yes, sir.

- 1119 -

1 THE COURT: Composite UUUUU ...

2 MR. EDMUND: No objection if you wish to offer it.

3 MR. HURM: I would offer it at this time.

4 THE COURT: State's Exhibit Composite UUUUU for
5 identification admitted into evidence without objection as
6 State's Composite Exhibit #93.

7 (WHEREUPON, STATE'S COMPOSITE EXHIBIT #93 IS ADMITTED
8 INTO EVIDENCE WITHOUT OBJECTION)

9 Q. Specifically with this small impression, #4 as marked
10 on the back, is that the impression of the child's foot?

11 A. I believe so.

12 Q. I show this to the Jury, Your Honor?

13 THE COURT: Yes, sir.

14 (WHEREUPON, CHILD'S FOOT IMPRESSION SHOWN TO THE JURY)

15 Q. And then Deputy Nelson, number six... first let me
16 start with #3. This was also an impression found at the
17 scene?

18 A. Yes.

19 Q. And this is the one that you thought was of the
20 female?

21 A. Yes.

22 Q. I show this to the Jury?

23 THE COURT: Yes.

24 (WHEREUPON, FEMALE'S FOOT IMPRESSION SHOWN TO THE JURY)

25 Q. And then finally #6. This was also found at the

- 1120 -

1 scene, was it not?

2 A. Yes.

3 Q. I will gather those up momentarily.

4 Deputy Nelson, did you submit, when you submitted the
5 seventeen photographs of the unknown tire impression at the
6 scene, did you submit other photographs of unknown tire
7 impressions as well to the lab?

8 A. Yes, we had taken some on Highway 50 West of town,
9 that somebody referred us to, they thought they were similar
10 in a turn-around area.

11 Q. Did you photograph those?

12 A. Yes, I did.

13 Q. And send them to Mr. Kingery for his analysis?

14 A. I believe.

15 Q. There were two photographs you sent?

16 A. I don't recall exactly, but I believe it is somewhere
17 in that area, yes.

18 Q. These have been admitted into evidence?

19 THE COURT: Yes.

20 Q. Thank you, Deputy Nelson, no questions.

21 MR. EDMUND: No questions, Your Honor.

22 THE COURT: What say you about the deputy's subpoena?
23 Still remain under?

24 MR. HOGAN: We would ask that he remain on standby, Judge.

25 THE COURT: Alright. You will be under subpoena, but you

- 1121 -

1 are free to step down.

2 Who do we anticipate next, gentlemen?

3 MR. HURM: May we approach?

4 THE COURT: Yes.

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

6 MR. HURM: It is Richard Ekiert.

7 MR. HOGAN: The last time I was out there, he wasn't

8 here.

9 THE COURT: It is quarter to twelve. What do you think?

10 Just take a noon break and start back at 1:15?

11 MR. HURM: That's fine.

12 (WHEREUPON, BENCH CONFERENCE ENDS)

13 THE COURT: Ladies and gentlemen, it wouldn't be

14 profitable to start the next witness. I think it would take

15 longer than just a few minutes, so we are going to take the

16 noon recess at this time. I advise you once again not to

17 discuss the case among yourselves or with anyone else; not

18 to read any articles or accounts of the case; or watch any

19 television or listen to any radio accounts; or attempt to visit

20 the scene of the alleged occurrences. We will be back at

21 1:15, Mr. Bailiff.

22 (WHEREUPON, JURY LEAVES COURTROOM AT 11:47 A. M.)

23 (WHEREUPON, DEFENDANT LEAVES COURTROOM AT 11:48 A. M.)

24 (WHEREUPON, COURT IS IN RECESS AT 11:48 A. M.)

25 (WHEREUPON, DEFENDANT IS PRESENT IN COURTROOM AT 1:26 P.M.)

- 1122 -

1 (WHEREUPON, COURT CONVENES AT 1:27 P. M.)
2 THE COURT: Anything before we bring the Jury back, gents?
3 MR. HURM: No, sir.
4 MR. EDMUND: No, Your Honor.
5 THE COURT: Please, Mr. Bailiff.
6 (WHEREUPON, JURY ENTERS COURTROOM AT 1:28 P. M.)
7 THE COURT: Welcome back, folks. Be seated, please.
8 We will see that you get out and get a little fresh air
9 tomorrow. I promise absolutely. This is not some horrible
10 plan to keep you inside all day.
11 MR. HURM: Your Honor, the next witness the State would
12 call would be Richard Ekiert.
13 THE COURT: Richard Ekiert.
14 (WHEREUPON, RICHARD EKIERT IS CALLED AS NEXT WITNESS FOR
15 THE STATE AND IS DULY SWORN BY THE CLERK OF THE COURT)
16 DIRECT EXAMINATION
17 BY MR. HURM:
18 Q. Hello, Mr. Ekiert. Address your answers to the
19 Jury and speak into the microphone as much as possible.
20 State your name, please?
21 A. Arthur Ekiert.
22 Q. Mr. Ekiert, how are you employed?
23 A. I am the owner of the Ekiert Tire Center in
24 Clermont.
25 Q. Is that tire center assigned to a specific manufacturer

- 1123 -

1 of tires? Are you a franchise?

2 A. We have the Goodyear franchise, but we sell other
3 tires besides Goodyear.

4 Q. How long have you been the owner of Ekiert Tire
5 Center?

6 A. Nine years now.

7 Q. Did you have any experience in the tire business
8 prior to purchasing that?

9 A. No, sir.

10 Q. And has the Ekiert Tire Center that you own always
11 been there in Clermont?

12 A. Yes, sir.

13 Q. Are you familiar, Mr. Ekiert, with the Goodyear tire
14 known as the Eagle M & S Tire?

15 A. Yes, I am.

16 Q. Could you tell us what kind of tire that is?

17 A. It is a high performance tire and occasionally the...
18 I suppose the police up north use it a lot more, because it
19 is a mud and snow tire.

20 Q. Is that what the M & S stand for?

21 A. M & S, mud and snow. And not used in the South though.

22 Q. Is that a different type than the Eagle GT, for
23 instance?

24 A. It is slightly different. The tread is different.

25 Q. Have you ever had occasion in your nine years at the

- 1124 -

1 Ekiert Tire Center to sell any Goodyear M & S tires? Eagle
2 M & S tires?

3 A. Never.

4 Q. At all? Even last year?

5 A. Never.

6 Q. How about have you done any business with the
7 Mascotte Police Department? The City of Mascotte?

8 A. Yes, we have.

9 Q. Did you have occasion to provide tires for the
10 Mascotte Police Department cars in February of 1987?

11 A. Yes, sir.

12 Q. What kind of tires were put on those Mascotte police
13 cars?

14 A. Those at that time were mud and snow tires.

15 Q. The Eagle M & S tires?

16 A. The Eagle M & S, I put on two of their police cars.

17 Q. Now, Mr. Ekiert, I am going to show you what has
18 been marked State's Exhibit VVVVV for identification and ask
19 if you recognize that?

20 A. Yes, I do.

21 Q. Is that the ... are all those the documents you
22 brought to court with you today and gave to me before you came
23 in?

24 A. Yes, sir.

25 Q. And what are those documents?

- 1125 -

1 A. These are our invoices to the City of Mascotte.

2 Q. What are the dates on those two documents?

3 A. February 3rd on the one police car and February 4th
4 on the next police car. 1987.

5 Q. Thank you. Your Honor, I would offer these in
6 evidence as State's next composite stapled together.

7 MR. EDMUND: No objection.

8 THE COURT: State's Composite Exhibit VVVVV for
9 identification admitted into evidence without objection as
10 State's Composite Exhibit 94.

11 (WHEREUPON, STATE'S COMPOSITE EXHIBIT #94 IS ADMITTED
12 INTO EVIDENCE WITHOUT OBJECTION)

13 Q. Mr. Ekiert, I ask you to look at those again. Is there
14 an indication as to what kind of tires were placed on those
15 police cars in February of 1987?

16 A. Yes, 225-70HR15, Eagle M & S.

17 Q. On 225-70HR15, what is the signifance of that number?

18 A. That is the size of the tire. I am not an expert
19 in that.

20 Q. Okay, but that is the size of the tire. And it says
21 Eagle M & S tire?

22 A. Eagle M & S.

23 Q. Was the same kind of tire put on both cars?

24 A. Same tires on both cars.

25 Q. Now, those police cars, were they marked or unmarked

- 1126 -

1 units? Were they unmarked police cars?

2 A. These were the marked police cars.

3 Q. With lights on top and the City emblem on the side?

4 A. Yes, sir.

5 Q. Is there any indication on the top page of that
6 composite exhibit that shows the license number, the tag
7 number of the police car?

8 A. Yes, it does. It shows the license number on both
9 of them.

10 Q. Okay, what is the one on the top?

11 A. The one on the top is 72,600.

12 Q. 72,600?

13 A. Right.

14 Q. And how about the second one?

15 A. The other one is 72,601.

16 Q. I show you a photograph, part of Composite Exhibit
17 #51 in evidence and ask if you look at that photograph and
18 tell me if you recognize the automobile?

19 A. I didn't actually put the tires on, but ...

20 Q. Okay, can you see the tag number in the photograph?

21 A. Yes, sir, 72,600.

22 Q. Is that the same number that is indicated on the
23 first page of this invoice?

24 A. Yes, sir.

25 Q. Mr. Ekiert, could you explain how you ... why did

- 1127 -

1 Ekiert Tire Center put M & S mud and snow tires on the two
2 Mascotte police cars?

3 A. That is sort of an embarrassing question, but the
4 way we order tires from Goodyear, you order them by product
5 code and it is a nine digit number, and if you happen to give
6 them the wrong number, you are going to get a wrong tire.
7 Now, I don't know if that is exactly what happened or whether
8 they made an error up in Jacksonville when we gave them the
9 order, but anyhow, we got the order and they were Eagle M & S
10 which we never ordered.

11 Q. So you had not ordered mud and snow tires?

12 A. No. We had not.

13 Q. But that is what you got?

14 A. That is what we got.

15 Q. Did you discuss that with Chief Brady?

16 A. I don't know whether my man had discussed it with
17 Brady or not, but he had discussed it with the Goodyear man
18 and he said that they would do the job.

19 Q. So you went ahead and put those on the police car?

20 A. We put those on the police car.

21 Q. Now, you said that 72600, that was the top sheet.

22 When were those tires installed, do you recall?

23 A. On February 3rd. The next police car was on February
24 4th.

25 Q. Alright. Mr. Ekiert, apart from ... I am sorry,

- 1128 -

1 strike that. When you sold these tires to the Mascotte
2 Police Department, how many tires did you sell altogether?

3 A. Eight. Four on one day and four on the next day.

4 Q. Did you replace the spare tires as well?

5 A. No.

6 Q. With M & S tires as well?

7 A. No.

8 Q. Just the eight tires?

9 A. Four tires on each vehicle.

10 Q. Apart from selling those four Eagle mud and snow
11 tires to the Mascotte Police Department, in your nine years
12 at the Ekiert Tire Center in Clermont, have you ever sold
13 another Eagle mud and snow tire to anyone else?

14 A. Never.

15 Q. When you ordered these particular tires, where did you
16 send the order?

17 A. We either phoned the order in ... this must have been
18 phoned in by my man, to Jacksonville.

19 Q. Is that where they... did they have the tires there?

20 A. No, they don't stock them ... apparently they don't
21 stock them there, because again, it is a mud and snow tire
22 and we don't use very much mud and snow tires here in Florida.

23 Q. We don't have much mud and snow, do we?

24 A. No.

25 Q. Where did you have to go to get the tires?

- 1129 -

1 A. I think they shipped those from Birmingham, a warehouse
2 up in Birmingham. They have the big warehouse in Jacksonville,
3 but apparently they don't care those in Jacksonville.

4 Q. Thank you, Mr. Ekiert. I have no further questions.

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

6 THE COURT: Yes, sir.

7 CROSS EXAMINATION

8 BY MR. EDMUND:

9 Q. Mr. Ekiert, my name is Jack Edmund. May I approach
10 the witness, Your Honor?

11 THE COURT: Yes, sir.

12 Q. I am going to hand you State's Exhibit #94 again,
13 and ask you if there appears a place on there that shows the
14 mileage at the time the tires were installed?

15 A. Yes, there is.

16 Q. Tell the Jury what the mileage was on each of those
17 vehicles...

18 A. On the one, the 72600, the one that had the picture
19 there, the mileage is 17,647.

20 Q. And the mileage on the other?

21 A. On the other was 17,649.

22 Q. Alright, sir. Did you go back and search through
23 your records and make a determination that your organization
24 had never sold another set of tires of that type before,
25 Mr. Ekiert, or are you just going on what someone told you?

- 1130 -

1 A. No, between me and my manager, who is my son-in-law,
2 we know that we never got those kind of tires before. We sell
3 tires to the City of Groveland, to Minneola and so on and
4 never any mud and snow tires.

5 Q. What does a dealer on the local level do when he finds
6 himself overstocked with a particular type of tire? How does
7 he go about getting rid of them if he can't get rid of them
8 through a sale or something?

9 A. Well, Goodyear will let you return them within a
10 reasonable time and of course, you have got to pay the two
11 and one-half percent handling fees and transportation back
12 to Jacksonville.

13 Q. Does a dealer ever make calls around to other dealers
14 to see whether that other dealer can use some of his tires?

15 A. I have done that probably once since we have been
16 there, but that doesn't seem to be successful, because they
17 are older tires and they don't want them either.

18 Q. Now, when they ... where do you get your tires? What
19 is the place called where you get your tires from? The next
20 step up the line between you and the manufacturer?

21 A. From Jacksonville.

22 Q. AND IS THAT part of Goodyear or is that an independent
23 distributor?

24 A. No, that is Goodyear.

25 Q. Alright. Now, do you know whether or not there are

- 1131 -

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1 a number of these distribution centers for Goodyear scattered
2 around the country?

3 A. Yes, there are.

4 Q. And do you know whether or not there are calls back
5 and forth between those distribution areas saying, "Hey, I
6 got too many of this kind of tire, can you take some in your
7 area?"?

8 A. There probably could be.

9 Q. And do you know if tires get moved back and forth and
10 around under circumstances similar to that?

11 A. Well, I wouldn't be aware of it, because again, that
12 is headquarters. I wouldn't know.

13 Q. I see. This is considered to be a high performance
14 tire?

15 A. Yes, it is.

16 Q. By whom is it considered to be a high performance
17 tire? Police agencies as well as other people? How does
18 Goodyear put it out? As a high performance tire?

19 A. Yes, they do.

20 Q. Now, what area does Birmingham distribute to,
21 Mr. Ekiert?

22 A. Well, again, you see, that is not... we don't do
23 anything with Birmingham directly ourselves. In other words,
24 when we order tires, we order through our Jacksonville
25 set-up, and they ...

- 1132 -

1 Q. Birmingham is one step above Jacksonville in the
2 shipping chain, is it not?

3 A. Probably so.

4 Q. And you don't know whether or not Jacksonville had
5 these tires and shipped them to you?

6 A. Jacksonville didn't have these tires.

7 Q. But Birmingham did, didn't they?

8 A. Yes, they did.

9 Q. And Birmingham is in the South, isn't it?

10 A. Yes, it is.

11 Q. No further questions, Your Honor.

12 RE-DIRECT EXAMINATION

13 BY MR. HURM:

14 Q. Do you know if they ever have snow in Birmingham?

15 A. I don't know. I am from Pennsylvania, and I know we
16 had it up there.

17 Q. Okay. Now, high performance tires, you said are
18 sometimes used by police departments, I believe, Mr. Ekiert?

19 A. They are mostly high performance tires are generally
20 used by police departments.

21 Q. Now, at Ekiert Tire Center, have you provided tires,
22 sold tires, to any other police departments in Lake County?

23 A. Yes, we have sold them to Minneola, Groveland...

24 Q. Have either of those departments ever purchased mud
25 and snow tires from you?

- 1133 -

1 A. Never.

2 Q. Mr. Ekiert, are you aware of any specifications or
3 instructions that Goodyear puts out for certain types of
4 tires, as far as where they should be used and sold
5 geographically?

6 MR. EDMUND: Your Honor, I think I have laid no ground
7 work for that. It is not within the scope of cross.

8 MR. HURM: Certainly, it is within the scope, Your
9 Honor. He went into where the tires were distributed and
10 so forth.

11 THE COURT: Overruled.

12 Q. Are you aware, does Goodyear put out any specifications
13 saying this is the tire that should be sold in this geograph-
14 ical region?

15 A. I am not aware of that.

16 Q. You are not aware of that? Okay. Nothing further,
17 Your Honor.

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

19 THE COURT: What do we say about Mr. Ekiert's subpoena?

20 MR. HURM: He may be released.

21 THE COURT: Any objection, Mr. Edmund?

22 MR. EDMUND: No, Your Honor.

23 THE COURT: Thank you, Mr. Ekiert. You are released from
24 your subpoena. You are free to go. Thank you very much.
25 Please watch your step.

- 1134 -

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1 THE COURT: The State's next witness?

2 MR. HOGAN: Call Paul Brackman.

3 THE COURT: Paul Brackman.

4 (WHEREUPON, PAUL BRACKMAN IS CALLED AS NEXT WITNESS BY
5 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. My name is Paul E. Brackman.

10 Q. Mr. Brackman, how are you employed?

11 A. I am employed with the Florida Department of Law
12 Enforcement with the Orlando Regional Crime Laboratory.

13 Q. And how long have you been employed with the Florida
14 Department of Law Enforcement?

15 A. Approximately thirteen years.

16 Q. What is your assignment with the Florida Department
17 of Law Enforcement?

18 A. I am a Crime Laboratory Analyst, assigned to the
19 Latent Print Section.

20 Q. What do you do in the Latent Print Section? What
21 are some of your duties?

22 A. My duties include the examination and processing of
23 evidence submitted to the laboratory for the presence of
24 latent prints. If latent prints are noted or developed on
25 these items of evidence, these latent prints are then compared

- 1135 -

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1 against the inked prints of known suspects for elimination
2 purposes. I also examine the hands and fingers of deceased,
3 unknown persons, for elimination purposes or for identification
4 purposes, and I also examine footwear tracks that are found
5 at the scene, and the known suspect's shoes for possible
6 identification. That is why I am at the request of the Court
7 to testify to any of my findings.

8 MR. EDMUND: Mr. Hogan, I would stipulate and move to
9 have him qualified as an expert.

10 MR. HOGAN: We tender him, Judge, as an expert in the
11 location and lifting of fingerprints in this particular case.

12 THE COURT: The location and lifting?

13 MR. HOGAN: Identification of latent prints and preser-
14 vation, I guess would be a better term.

15 THE COURT: Alright, any objection to any of that,
16 Mr. Edmund?

17 MR. EDMUND: No, Your Honor.

18 THE COURT: Ladies and gentlemen, Mr. Brackman will be
19 established by this Court as an expert in that field and
20 entitled to give opinions within his field.

21 DIRECT EXAMINATION CONTINUES

22 BY MR. HOGAN:

23 Q. Mr. Brackman, did you have an occasion to work on
24 a case involving the murder of Teresa McAbee?

25 A. Yes, I did.

- 1136 -

1 Q. And what did you do in that case?

2 A. Basically, I assisted in the processing of the police
3 vehicle for latent prints and I also printed the deceased,
4 the deceased person's hands for fingerprints.

5 Q. That would be Teresa McAbee?

6 A. Yes.

7 Q. Did you... would you explain to the ladies and
8 gentlemen of the Jury how you go about taking the fingerprints
9 from someone, a deceased person?

10 A. Well, in this case, what we did, we applied a thin
11 film of printer's ink to the fingers and the palms of the hands
12 and then pieces of white paper are then applied to the hands
13 to get the ... record the inked prints.

14 Q. I'll show you what has been marked for identification
15 as State's Exhibit EE and ask you to examine the package and
16 its contents and tell me if you recognize that?

17 A. Yes, I do. It bears the laboratory case number, my
18 initials and the date and these are the inked fingerprints
19 and palm prints of Teresa McAbee.

20 Q. Okay. Now, in this package, there are a lot more
21 than just that one item. Can you explain what these other
22 items are in here?

23 A. Yes, they are the larger pieces of paper bear the
24 inked palm prints of the deceased and smaller lifts are the
25 inked fingerprints and joint area of the fingers.

- 1137 -

1 Q. That is what all these are?

2 A. Yes, they are.

3 Q. Now, what about these ones that appear on clear paper,
4 upon these transparencies, is that the same process?

5 A. yes, it is a lift in which the black ink is applied
6 to the hand and then the sticky side of this lifter is applied
7 to the finger or the palm and it is then lifted off and a
8 clear piece of acetate is then applied over it, resulting in
9 an impression of an inked print.

10 Q. So you have numerous examples of the known fingerprints
11 and handprints and palm prints of Teresa McAbee?

12 A. Yes, we do.

13 Q. Now, can you tell the folks in the Jury the difference
14 between a known fingerprint or a known print, and a latent
15 print?

16 A. Yes, a known fingerprint is taken by applying ink
17 to the hand and then recording that finger on a piece of paper.
18 That would be a known fingerprint and it is taken for the
19 purpose of identification or elimination for comparison purposes.
20 A latent print is a reproduction of the friction ridge detail
21 of the hand to an object when it is touched. The reason
22 latent fingerprints are left on an item is because dotted upon
23 these raised strips of skin that are found on the fingers and
24 palms and both of your feet, are tiny sweat pores. These sweat
25 pores are constantly exuding perspiration, which eventually

- 1138 -

1 cover these friction ridges and then when you touch an item,
2 that residue then is transferred to the item that is touched.
3 That is a latent print. Latent prints many times, are invisible
4 to the naked eye, but needs some method of development to render
5 them visible for identification purposes, such as the use of
6 powders or chemicals.

7 Q. What types of powders are commonly used?

8 A. Well, depending on the item that is to be processed,
9 you would use a contrasting colored powder to make them visible,
10 for instance, if the item was black, you would use a white
11 powder; if the item was white, you would use a black powder.

12 Q. What is the powder made of?

13 A. It is made of many different things, depending upon
14 the company you buy it from. Basically, it is made up of
15 filler dirt and carbon and lamp black, city material.

16 MR. HOGAN: I would like to move this into evidence, Judge.

17 MR. EDMUND: No objection, Your Honor.

18 THE COURT: State's Composite Exhibit EE for identification
19 admitted into evidence without objection as State's Composite
20 Exhibit #95.

21 (WHEREUPON, STATE'S COMPOSITE EXHIBIT #95 IS ADMITTED
22 INTO EVIDENCE WITHOUT OBJECTION)

23 MR. HOGAN: That consists of twenty-six separate known
24 fingerprints of Teresa McAbee.

25 THE COURT: Alright.

- 1139 -

1 Q. Are there certain surfaces that are more conducive
2 to achieving a good lift of a latent print on other surfaces?

3 A. Yes, there are.

4 Q. Can you give us an example of what type of surfaces
5 would be very good for the exposure of fingerprints, opposed
6 to a surface that would be a poor surface?

7 A. Well, basically, a hard smooth surface is a good
8 surface for developing latent fingerprints. Latent prints,
9 left on rough surfaces, may be difficult to develop latent
10 prints on, because the residue from the finger, as it transfers
11 to the object, is then lost in the curvature of the rough
12 surface. So, hard, smooth surfaces are very good for the
13 development of latent prints; also paper items would be some.

14 Q. How about lifting fingerprints off human skin? Is
15 that possible?

16 A. The development of latent prints on human skin is
17 possible, yes.

18 Q. How do you go about doing that?

19 A. Well, there are several methods. One method is by
20 applying crumbcoat paper to the skin, and that is done by just
21 using a crumbcoat piece of paper. That is just a piece of
22 paper with a very shiny, slick surface to it, and you apply
23 the crumbcoat paper to the skin and then either roll, using a
24 roller, you roll it over the top of the crumbcoat paper. Then
25 the residue that was left on the human skin would be trans-

1 ferred to the crumbcoat paper and then the crumbcoat paper
2 could be dusted, using fingerprint powder. You can also use
3 iodine, which is another method used in developing latent
4 prints. You can also use the laser.

5 Q. What kind of success rate have you had, have you seen
6 getting fingerprints from a human body?

7 A. I have never had any success with that, personally.

8 Q. In other words, it is very difficult to do?

9 A. It has occurred, but I have never had an experience
10 to develop latent prints on a human body.

11 Q. Now, you said that fingerprints from a hard, smooth
12 surface are most conducive to lifting prints, correct?

13 A. Yes, sir.

14 Q. Did you have occasion to process, I believe we have
15 it testified to, to process the police car involved in this
16 case?

17 A. Yes, I did. I assisted in the processing of the
18 police car.

19 Q. I show you what has been in evidence as State's Exhibit
20 #51, a composite, Mr. Brackman, a group of pictures and look
21 at those pictures and tell me if you recognize the vehicle?

22 A. Yes, I do. As a matter of fact, I am in one of the
23 photographs.

24 Q. Is that the car you assisted in processing?

25 A. Yes, I did.

- 1141 -

1 Q. What type of method did you use on this for lifting
2 prints on that vehicle?

3 A. In this particular case, we used the black powder
4 and a fiberglass brush to apply the powder to the vehicle.

5 Q. Okay, did you apply that powder... when you become
6 aware... how do you become aware that fingerprints or latent
7 prints exist?

8 A. As you are brushing over the surface, the latent
9 prints, the powder is ... it adheres to the latent fingerprints,
10 and as you brush over the latent prints are developed by the
11 powder adhering to the fingerprint residue.

12 Q. I show you what has been marked as State's Exhibit
13 NN and ask if you would examine the contents of that package.

14 A. yes, this package bears a variety of latent lifts.

15 Q. Do you recognize those?

16 A. I did not initial or sign the latent lifts. The
17 Senior... the Crime Scene Coordinator, Mike Rafferty, would
18 have signed and then taken the lifts, but I believe he saw
19 the items.

20 Q. Okay, those are the lifts? From where?

21 A. From the...

22 Q. From the vehicle that you identified in this photo-
23 graph?

24 A. Yes.

25 Q. Now, as you were developing or you were dusting for

- 1142 -

1 prints on that police vehicle, these prints became apparent
2 to you? Were they easy to see or hard to see?

3 A. They were very easy to see.

4 Q. Okay, how can you describe them? Can you give us
5 some description of how they appeared?

6 A. There was a lot of contrast between the black finger-
7 print powder and the car.

8 Q. Then they were very clear?

9 A. Yes.

10 Q. I'll show you what is in evidence as State's Exhibit
11 #60, and ask you if you recognize that?

12 A. Yes, I believe this is a photograph, an enlargement
13 of the hood of the car as it appeared after we processed it,
14 using the black fingerprint powder.

15 Q. Would you point out where the fingerprints are, so
16 we can understand exactly what you are talking about?

17 A. Can I stand in front of the Jury?

18 Q. With the Court's permission?

19 THE COURT: Yes, sir.

20 MR. EDMUND: May I step around, too, Your Honor?

21 THE COURT: Yes, sir.

22 A. Any of these where you see the black. These areas
23 that appear black are actually the fingerprint, palm, and here
24 is a thumb print. Here, you can see is a single fingerprint
25 and basically in this area where the prints were developed are

- 1143 -

1 in this area, in this area, these areas and this area and off
2 to the side.

3 Q. So the dark, black areas are...

4 A. Blank areas.

5 Q. Those are the actual fingerprints.

6 MR. HOGAN: Thank you. May I have a moment. Thank you,
7 Mr. Brackman, thank you, Judge.

8 MR. EDMUND: If it please the Court, Your Honor.

9 THE COURT: Yes, sir.

10 CROSS EXAMINATION

11 BY MR. EDMUND:

12 Q. Mr. Brackman, my name is Jack Edmund.

13 Mr. Brackman, did you participate in the comparison of
14 the latents and the knowns as far as finger or palm prints or
15 placements are concerned?

16 A. No, I did not.

17 Q. Is there such a thing as a latent fingerprint?

18 A. Yes, there is.

19 Q. Or a latent palm print?

20 A. Yes, there is.

21 Q. Is there something known as a latent impression?

22 A. Yes, there are.

23 Q. What is a latent impression?

24 A. A latent impression is an impression that we don't
25 know, if it is, in fact, a finger or a palm. it is an area of

- 1144 -

1 a print, that just by looking at the impression itself, we
2 can't determine if it is of the finger area or the palm area,
3 so we record it as an impression, meaning it would be searched
4 in both the finger and the palm areas.

5 Q. Now, an impression is of such a nature most of the
6 time, so that it is identifiable, if you can locate it, either
7 in the palm or on a finger, isn't that also correct?

8 A. Or the foot.

9 Q. Yes, so that you can locate it?

10 A. Yes.

11 Q. It is identifiable?

12 A. Yes, sir.

13 Q. And it is subject to being compared with other prints,
14 with known prints?

15 A. Yes, that is correct.

16 Q. Now, what is it about the touching or the lifting of
17 fingerprints where you might see prints side by side, but one
18 will be quite dark and the other will be quite light? Is that
19 an indication that one is older than the other, or what is that
20 an indication of?

21 A. Well, the development of latent prints is dependent
22 upon how the powder adheres to the residue of the latent print
23 on the item, and if the print appears dark or light, that might
24 be dependent upon how the person was perspiring. People
25 perspire at different rates, so that is one.

- 1145 -

1 Q. Might it also be that one has been there longer than
2 the other?

3 A. That is also possible.

4 Q. Alright, are there other reasons why one print side
5 by side... or two prints side by side, one would be light and
6 one would be darker?

7 A. Yes, those things are dependent upon many factors.
8 One print might have more oil on it than the next. So when it
9 was put down, one would develop heavier than the other.

10 Q. Could it be that one had been either lightly dusted
11 or lightly washed with water? The spraying of an object might
12 not necessarily remove fingerprints, would it, with water?

13 A. Not necessarily.

14 Q. Alright, sir. Might a light print be the product of
15 a fingerprint that had been sprayed with water?

16 A. Well, if they are side by side, I would think they
17 would both be light in that instance.

18 Q. Well, that is why I am asking you, could one of them
19 have been there first and sprayed by water and then another
20 one there and it is darker, is that a reasonable hypothesis?

21 A. That is possible.

22 Q. Alright, sir, is there some reason why you hesitate
23 to say that that is possible? Now, if I put my finger here...

24 MR. HOGAN: Judge, I would like to ask him if he wanted
25 an answer to the question.

- 1146 -

1 THE COURT: He didn't get a chance to answer that
2 question, Mr. Edmund.

3 MR. EDMUND: I'm sorry.

4 A. What was the last question, I am sorry.

5 Q. I'll get back to that, is there some reason that you
6 hesitated in saying that that is a possible hypothesis?

7 A. Well, there is a lot of different things that come
8 into play when you are talking about why one latent might
9 appear darker than another.

10 Q. I will ask you to name some.

11 A. Some of those would be, first of all, the development
12 of latent prints is dependent upon the residue that is on
13 the fingers before, during and after an item has been touched.
14 By that, I mean some people perspire heavily, so they are
15 going to leave a heavier deposit. If you have oil on your
16 hands, if your hands come in contact with the skin, those
17 oils are on your hands and when you touch an item, those
18 prints will last longer than prints merely in a light perspir-
19 ation. If you touch an item very hard, you would leave more
20 of a deposit generally than if you lightly touched an object.
21 It is also dependent upon, after the item is touched, was it
22 exposed to the wind; was it exposed to the sun; all of these
23 items come into play.

24 Q. What if it is exposed to water?

25 A. Yes, was it exposed to water.

- 1147 -

1 Q. Thank you. Is the science of comparing fingerprints
2 sufficiently exacting so that you can distinguish between the
3 light touch and a heavy touch by looking up at the color of
4 the print itself, but the spread and the swirls and the curls
5 and things of that nature? In other words, if you assume this
6 was a good surface, and there was a touch here with a finger
7 with a precise degree of oil on it, a light touch, and next to
8 it, a touch here with a finger with precisely the same amount
9 of oil on it, but a heavier pressure. Now, is the system of
10 comparing prints and evaluating and blowing them up,
11 sufficiently precise so that you can tell whether or not it
12 was a heavy pressure or a light pressure, just by looking at
13 the spaces between the swirls and curls and such?

14 A. Generally not.

15 Q. Is your science capable of doing that?

16 A. Determining the amount of pressure that was applied?

17 Q. Whether one pressure was heavier than the other as
18 opposed to a precise amount of pressure?

19 A. I don't know of any, no, sir.

20 Q. Alright, sir. Now, what effect, if any, would
21 washing with soap and water have upon a surface to which prints
22 had been adhered?

23 A. They would be destroyed.

24 Q. Would the same be true of the wiping of it with a dry
25 rag?

- 1148 -

1 A. Generally, yes.

2 Q. And with a wet rag?

3 A. Generally, yes.

4 Q. Alright, sir. Do you, Mr. Brackman, have the capacity,
5 in your present technology, to lift cloth prints from surfaces?

6 A. Yes, we do.

7 Q. Did you make any effort to lift cloth prints from
8 the hood of the vehicle that is reflected here as State's
9 Exhibit #60, the photograph?

10 A. I am not aware of any cloth prints being lifted,
11 but Mike Rafferty was the Crime Scene Analyst in charge of
12 the scene, and he would have made notes of that.

13 Q. Alright. That is within your scientific capacity,
14 though, to lift cloth prints had anyone suggested or requested
15 that you do so?

16 A. No, actually, that would be a Micro-Analyst or the
17 crime scene person, Mike Rafferty or Leroy Parker. I was
18 there more in the capacity of the latent print examiner.

19 Q. Do you... are you familiar with ... well, you say
20 that you are capable of lifting them. What is the difference
21 in the procedure of lifting cloth prints and lifting latent?

22 A. I believe there is none.

23 Q. Alright, so you would spread the... you would spread
24 out the powder and it would begin showing traces and ridges
25 and indications of cloth pressure being exerted at a particular

- 1149 -

1 point, would it not?

2 MR. HOGAN: We have an objection, Your Honor. I believe
3 that he stated that is outside of his realm of expertise.

4 MR. EDMUND: I thought he said he was capable of doing
5 that. I'm sorry if I misunderstood him.

6 THE COURT: We will just let him ... can you answer the
7 question, sir?

8 A. I do not do fabric impressions.

9 THE COURT: Do you possess enough knowledge to answer
10 that question, even though you may not do it?

11 A. I have never lifted a fabric impression.

12 CROSS EXAMINATION CONTINUES

13 BY MR. EDMUND:

14 Q. You do, though, say it is done in the same manner?

15 A. I know a liquid technique is used. Yes.

16 Q. Thank you, Your Honor.

17 MR. HOGAN: No further questions of this witness.

18 THE COURT: Release Mr. Brackman from his subpoena?

19 MR. EDMUND: No objection, sir.

20 THE COURT: You are free to go, sir, thank you very much.

21 MR. HOGAN: We would call Mike Rafferty.

22 THE COURT: Good afternoon, sir, please raise your left
23 hand and madam clerk will swear you in.

24 (WHEREUPON, MR. MIKE RAFFERTY IS CALLED AS NEXT WITNESS
25 FOR THE STATE AND IS DULY SWORN BY THE CLERK OF THE COURT)

- 1150 -

1 DIRECT EXAMINATION

2 BY MR. HOGAN:

3 Q. Please state your name for the record?

4 A. Michael Rafferty.

5 Q. Mr. Rafferty, how are you employed?

6 A. I am employed with the Florida Department of Law
7 Enforcement at the Orlando Regional Crime Laboratory as a
8 Crime Scene Analyst.

9 Q. How long have you been so employed?

10 A. Since May of 1980.

11 Q. Do you have any previous experience in that field?

12 A. Not specifically in the crime scene processing aspect
13 of it. I was formerly a police officer/patrolman for New
14 Smyrna Beach Police Department.

15 Q. What type of formal training did you have in Crime
16 Scene Analysis?

17 A. With the Florida Department of Law Enforcement, at
18 that time, it required a four year degree in Biology, Chemistry,
19 or a hard science, which I received from DesMoines College in
20 Syracuse, New York, and in addition to that, we were given
21 a basic four hundred hour course taught in Tallahassee by
22 members of the Florida Department of Law Enforcement, and their
23 special areas of expertise as firearms, latent prints, documents,
24 photography, etcetera. Courses by the F. B. I. in crime scene
25 investigations, arsen investigations, for the blood spatter

- 1151 -

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1 analysis by Judy Bunker and numerous other courses over a
2 year to a year and a half span in time.

3 MR. EDMUND: After reviewing Mr. Rafferty's qualifications,
4 I would stipulate him as being qualified by the Court in the
5 area to which he is offered.

6 THE COURT: Which areas are those, sir?

7 MR. HOGAN: We are offering him as a Crime Scene Tech-
8 nologist, Judge, particularly in preserving latent prints.

9 THE COURT: Alright, Mr. Rafferty will be accepted as
10 an expert in those fields, and entitled to give opinions
11 within his field.

12 DIRECT EXAMINATION CONTINUES

13 BY MR. HOGAN:

14 Q. Mr. Rafferty, did you have occasion to become involved
15 in the investigation of the death and murder of Teresa McAbee?

16 A. Yes, I did.

17 Q. Calling your attention to May of 1987, did you have
18 an occasion to assist in the processing of a Mascotte Police
19 Department police vehicle? A car?

20 A. Yes, I did, a 1986 Ford.

21 Q. I show you what has been received in evidence as
22 State's Exhibit #51, a composite exhibit, and ask you if you
23 recognize the vehicle?

24 A. Yes, I do.

25 Q. Is that the same vehicle you helped process?

- 1152 -

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1 A. Yes, it is. On May 13th, of 1987.

2 Q. Okay, and part of that processing includes the
3 identifying and lifting or preservation of latent fingerprints?

4 A. That is correct, processing and collecting of latent
5 print evidence.

6 Q. Where did you... what part of the car did you test
7 for fingerprints?

8 A. We processed the entire outside of the car. The
9 exterior of the car and the interior portion of it.

10 Q. During that process, do you use the dusting powder?

11 A. Yes, sir. Black powder and some gray powder, I
12 believe.

13 Q. Did you have occasion to find any latent fingerprints
14 on that vehicle?

15 A. Yes, I did.

16 Q. Where were those latent fingerprints?

17 A. Pretty much, the majority of them were located on the
18 hood portion and the right front quarter panel, and some in
19 other areas of the vehicle, but that is where the majority of
20 them were.

21 Q. Alright, sir. Now, when you were processing this
22 car for fingerprints, can you describe to us how those prints
23 appeared? Were they hard to find or did they readily appear?

24 A. Well, unless the prints are actually visible, that is,
25 in some foreign material, what we call latent prints, they

- 1153 -

1 require a powder or some other means of developing them. This
2 is just standard procedure to use a black or gray powder or
3 contrasting color and to apply it to the area where prints
4 are located. The powder will adhere to them, causing, you know,
5 the color change which you look for.

6 Q. Okay, I will show you what has been marked in
7 evidence as State's Exhibit #60 and ask you if you recognize
8 that?

9 A. Yes, I do.

10 Q. What is that?

11 A. It is a photographic overlay, showing the positioning
12 of ridge detail, fingerprints, palm prints, that I did on
13 that vehicle.

14 Q. That is on the same vehicle you identified in the
15 previous photographs?

16 A. Yes, it is.

17 Q. How did you go about lifting or removing or preserving
18 those fingerprints that were on that vehicle?

19 A. In the normal manner, which is, once the powder is
20 applied and it adheres to ridge detail, then a transparent
21 piece of tape, either a 2, 4 or 6 inch tape, is placed over
22 that. That adheres to the powder and that is just lifted off
23 and placed on a contrasting backing. If it was black powder,
24 it would be placed on a white card and just taped down in that
25 fashion.

- 1154 -

1 Q. Is that what you used in this particular case? You
2 used the tape with a white card?

3 A. That is correct.

4 Q. I'll show you what is marked as State's Exhibit NN,
5 a composite exhibit, and ask you if you recognize these items?

6 A. Yes, I do.

7 Q. What are those?

8 A. Sir, these are the latent print cards that I spoke of,
9 the fingerprint powder on the tape, which is then placed on
10 the backing.

11 Q. Did you move each of these latent prints from the
12 vehicle that you have identified from the previous photograph?

13 A. Yes, I did.

14 Q. Okay, do you recognize these by your initials on
15 them?

16 A. By my initials, the date, and the letter with the
17 case number which I placed on it.

18 Q. There are other numbers that appear on there. What
19 are those other numbers?

20 A. there are other numbers, such as I have them labeled
21 like 1M, 1B, etcetera. They go along with a sketch that I
22 drew of the vehicle and then placed them in the approximate
23 positions on the vehicle.

24 Q. By your numbering system on these photographs, you can
25 place, I mean, excuse me, of these latent lifts, you could

- 1155 -

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1 place these fingerprints back on the vehicle in the same
2 location they were at the time that you lifted them?

3 A. That in conjunction with the photograph I took showing
4 the hood area with a ruler, yes.

5 Q. Do these appear to be in the same condition or
6 substantially the same condition at the time that you removed
7 them from the vehicle that you identified in the previous
8 photograph?

9 A. Yes, they do.

10 Q. I submit State's Exhibit NN into evidence.

11 MR. EDMUND: No objection, Your Honor.

12 THE COURT: State's Composite Exhibit NN for identification
13 admitted into evidence without objection as State's Composite
14 Exhibit #96.

15 (WHEREUPON, STATE'S COMPOSITE EXHIBIT #96 IS ADMITTED
16 INTO EVIDENCE WITHOUT OBJECTION)

17 MR. HOGAN: May I have one moment, Judge?

18 THE COURT: Yes, sir.

19 Q. Mr. Rafferty, did you also examine the body of Teresa
20 McAbee at your laboratory?

21 A. Yes, I did.

22 Q. Could you tell the Jury, is it possible to lift
23 fingerprints from a nude body?

24 A. Yes, it is.

25 Q. Did you attempt to do that in this case?

- 1156 -

1 A. An examination was made by our latents examiner with
2 the laser, and a visual search for fingerprints on the body.

3 Q. Were you there?

4 A. yes, I was.

5 Q. And were you able to lift any fingerprints from the
6 body?

7 A. I think Ms. Ahern will be able to testify. To my
8 knowledge, no.

9 Q. Was the entire body examined?

10 A. I believe so, yes.

11 Q. Thank you, Judge. Thank you, Mr. Rafferty.

12 THE COURT: Mr. Edmund?

13 CROSS EXAMINATION

14 BY MR. EDMUND:

15 Q. Mr. Rafferty, I am Jack Edmund. Mr. Rafferty, you
16 say that you made an inventory of the prints and cards that
17 you lifted?

18 A. That is correct.

19 Q. And does that inventory run 1A through 1M, is that
20 what you said?

21 A. The inventory itself, at one time, I take up a sheet
22 that says 1A through 1M, it shows thirteen latent print cards.

23 Q. It shows thirteen latent print cards?

24 A. That is correct.

25 Q. Do you have a copy of that sheet with you?

- 1157 -

1 A. Yes, I do.

2 Q. Now, I notice that there is a 1A and a 1B. Can you
3 tell the Jury how many latent fingerprints, latent palm prints,
4 and latent impressions were recovered in total?

5 A. No, I cannot.

6 Q. Is there anyone who would be able to tell us that?

7 A. Probably the latent print examiner that examined the
8 prints.

9 Q. That would be Mrs. Ahern?

10 A. That is correct.

11 Q. Alright. Now, does your inventory reflect any prints
12 being taken from the interior of the vehicle?

13 A. If you will let me check, I believe there was one.
14 Yes, the latent lift that I listed or identified as 1M was
15 listed from the interior of the passenger's front door.

16 Q. Alright, sir. Now, do you have the training, back-
17 ground or experience for the lifting of cloth impressions?

18 A. Yes, I do.

19 Q. Would you describe whether that technique is similar
20 to the technique of lifting latent fingerprints?

21 A. No, it is not, depending on what the cloth impressions
22 are in. Once again, they could be visible, that is, if they
23 are in some foreign substances as in paint, grease, tar.
24 Now, transfer evidence or fabric marks is what they are
25 commonly called. When they may be on the surface, they may

- 1158 -

1 be in dust, in which case if you process them with powder, all
2 you are doing is you are dusting away at the print, in effect.
3 Usually, we're involved with them in hit and run cases where
4 a forceable contact was made between the fabric and the contact
5 surface or the harder surface, in which case they then can be
6 processed with powder and a pattern similar to that of the
7 pattern will be developed or just visualized.

8 Q. How about ... what did you call it... a fabric?

9 A. A fabric mark or a fabric impression.

10 Q. A fabric mark. How about a fabric mark imprinted with
11 pressure on a hot surface; a hot paint surface? Is that likely
12 to leave an impression?

13 A. Not unless there is a large amount of dust, or, like
14 I say, a foreign material there. I'm not familiar with seeing
15 them.

16 Q. Are there such things as fabric scratches and marks
17 that are discernable to you as an expert, if you are asked to
18 look for them and examine for them?

19 A. Could you repeat the question another time?

20 Q. Are there such things as fabric scratches or marks
21 that are discernable to you as an expert, in the event someone
22 asked you to examine a particular surface to see whether you
23 could discover such marks?

24 A. Yes, basically just through use of oblique lighting
25 or where we believe that it is a hit and run involving a

- 1159 -

1 pedestrian, then we will process it with powder.

2 Q. Did anyone request that you examine this particular
3 vehicle, looking for fabric marks?

4 A. No, as I recall, in this particular case, and after
5 working with Lake County for six years, it was just ... we
6 were requested to process the vehicle for evidence.

7 Q. For evidence. Did it occur to you to examine the
8 vehicle or any point on the vehicle for fabric marks?

9 A. No, it did not.

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

11 RE-DIRECT EXAMINATION

12 BY MR. HOGAN:

13 Q. When you are processing a vehicle for fabric marks,
14 is this the same type of powder?

15 A. Yes, it is.

16 Q. And you dusted the entire vehicle, is that correct?

17 A. Yes, I did.

18 Q. And you didn't find any fabric marks?

19 A. I saw nothing, like I say, that would develop with
20 powder and nothing that was obviously visible as being fabric
21 impressions or fabric marks.

22 Q. Would you expect to find fabric marks if someone had
23 just sat on the hood of the car?

24 A. Only if there was a lot of dust on it, or, like I say,
25 some other surface that would take on the characteristics of

- 1160 -

1 the fabric, the weave of that. In fingerprints, the person is
2 sweating and stuff, and that is actually leaving the ridge
3 detail. That is where the material for transfer is, in the
4 sweat and such. On fabric, there has to be an outside material
5 there or very, very forcible contact, as in a hit and run
6 accident or something of that nature.

7 Q. Okay, so merely sitting on the hood of a relatively
8 clean car would not... you wouldn't expect to find fabric
9 marks, would you?

10 A. I wouldn't expect to no.

11 Q. Thank you, sir; thank you Judge.

12 RE-CROSS EXAMINATION

13 BY MR. EDMUND:

14 Q. You wouldn't look for them, would you?

15 A. The thing is, like I say, if we were told the nature
16 of the case and there was reason to believe that they were
17 there, we would conduct an examination. In this ...

18 Q. But you didn't in this instance?

19 A. No, not specifically, no.

20 Q. Thank you.

21 THE COURT: What do you say about Mr. Rafferty's
22 subpoena?

23 MR. HOGAN: He can leave, but he will have to be on
24 standby.

25 THE COURT: Alright. You will still be on subpoena.

- 1161 -

1 You are free to go. Can he go back to Orlando and be on
2 standby there?

3 MR. HOGAN: We would ask him to remain at the courthouse
4 for the next hour or so.

5 THE COURT: Alright. Thank you very much. I appreciate
6 it.

7 Your next witness?

8 MR. HOGAN: Leroy Parker.

9 (WHEREUPON, LEROY PARKER IS CALLED AS NEXT WITNESS FOR
10 THE STATE AND IS DULY SWORN BY THE CLERK OF THE COURT)

11 DIRECT EXAMINATION

12 BY MR. HOGAN:

13 Q. Please state your name for the record?

14 A. N. Leroy Parker.

15 Q. Mr. Parker, how are you employed?

16 A. I am a semen criminologist for the Florida Department
17 of Law Enforcement, Orlando Regional Crime Lab.

18 Q. What type of background do you have in law enforce-
19 ment?

20 A. I have been with the F. D. L. E. for the last eight
21 years.

22 Q. And your duty has been in the crime lab for the last
23 eight years?

24 A. Crime scenes, in addition to I do blood and semen
25 analysis.

- 1162 -

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1 Q. Do you have experience in lifting and reconstructing . .

2 MR. EDMUND: I would stipulate to Mr. Parker's
3 qualifications also, if it please, Your Honor.

4 Q. For the preservation of fingerprints and also general
5 crime scene technology.

6 THE COURT: Alright. Mr. Parker will be accepted by the
7 Court as an expert in those fields and entitled to render
8 opinions within his field.

9 Q. Mr. Parker, with regard to the murder of Teresa
10 McAbee, did you have occasion to work on that case?

11 A. Yes, I did a couple things in that case.

12 Q. Calling your attention to the fingerprint work that
13 was done on the Mascotte police car, do you recall working on
14 that car?

15 A. Yes, I assisted Mike Rafferty.

16 Q. What did you assist Mike Rafferty in doing?

17 A. Collection of trace evidence and collection of
18 fingerprints.

19 Q. I show you a picture now, State's Exhibit 51, do you
20 recognize that police car?

21 A. I do.

22 Q. Is that the police car we are talking about?

23 A. Right.

24 Q. With regard to the collection of fingerprints, what
25 did you assist Mr. Rafferty in doing?

- 1163 -

1 A. Dusting the exterior of the car and collecting some
2 of the prints.
3 Q. The latents? What we call latent fingerprints?
4 A. Right. Some of them were palm prints.
5 Q. Sir?
6 A. Some of them were palm and fingerprints.
7 Q. I show you what is in evidence as State's Exhibit
8 96 and ask you if you recognize the composite exhibit? If you
9 would look at those?
10 A. Yeah, I recognize them.
11 Q. What are those, sir?
12 A. Those are prints taken from the Mascotte police car.
13 Q. You were there and you observed or assisted in lifting
14 these from the car?
15 A. Correct.
16 Q. Now, these latent fingerprints and palm prints have
17 a numbering system on there, do they not? Speaking of these
18 numbers here?
19 A. Yeah, right.
20 Q. I show you what is in evidence as State's Exhibit
21 60 and ask you if you recognize that?
22 A. Yeah, I do.
23 Q. What is that?
24 A. It is a picture of the prints before they were lifted
25 from the car.

- 1164 -

1 Q. Do you have an occasion, using this numbering system
2 and using this photograph and the ruler in it, to place each
3 fingerprint back on the vehicle in the place they originally
4 were located?

5 A. I did it, yes.

6 Q. You were able to do that?

7 A. Right.

8 Q. And that is based on the numbering system and on this
9 photograph?

10 A. By the scale in the picture.

11 Q. The scale meaning the ruler?

12 A. The ruler, that is correct.

13 Q. Now, when was the last time you placed these
14 fingerprints back on the vehicle?

15 A. I think last week, Thursday.

16 Q. Now, when you completed your task, did it fairly
17 and accurately resemble the way the car looked or the location
18 of the fingerprints at the time they were developed?

19 A. Very much so.

20 Q. Was that process video taped?

21 A. It was by the Mascotte Police Department.

22 Q. Were you present for that?

23 A. I was present for that.

24 Q. May I have one moment, Judge?

25 THE COURT: Yes, sir.

- 1165 -

1 Q. Thank you. Thank you, Mr. Parker.

2 THE COURT: Mr. Edmund?

3 CROSS EXAMINATION

4 BY MR. EDMUND:

5 Q. Mr. Parker, what do you mean, sir, you placed the
6 fingerprints back on the car?

7 A. Okay, we dusted the car and when the prints came up
8 we numbered the prints before we lifted them and before we
9 lifted the prints, we took some photographs with the scale of
10 reference with the prints, so I was able to use this scale
11 and the prints that were actually life-sized, and put them
12 back in pretty much the same location as they were at the time
13 we took them from the car.

14 Q. You took the photographs when?

15 A. The photographs of the prints were taken before the
16 prints were removed.

17 Q. The photographs of the prints were taken before the
18 prints were removed?

19 A. The car was dusted and the prints popped up. Because
20 of the location of the prints, we placed a measuring device,
21 in this case, a ruler, and we photographed it from overhead,
22 to show the relationship of the prints on the hood of the
23 car.

24 Q. Now, is State's Exhibit #60, is that the photograph
25 you took of the prints that were on the car or prints you put

- 1166 -

1 back on the car?

2 A. That was taken by Mike Rafferty and they were the
3 prints on the car.

4 Q. That was the prints on the car before you lifted them
5 off the car?

6 A. Before they were lifted, yes.

7 Q. Alright, sir. Now, what did you mean by you placed
8 them then back on the car, sir?

9 A. Okay, what happened, the original prints were taken
10 to the lab and they were photographed. We took photographs
11 of the prints and placed them back on the car to show the
12 original location at the time they were dusted.

13 Q. Did you take a photograph of that?

14 A. That was video taped at the Mascotte Police Department.

15 Q. Now, you also did presumptive testing for blood inside
16 and outside of the car, didn't you?

17 A. I believe they did it at the Orlando Crime Lab.

18 Q. Alright, sir. And the results of your tests were that
19 you found no blood?

20 A. Correct.

21 Q. Alright, sir. What other tests did you conduct or
22 assist in the conducting of relative to the car, Mr. Parker?

23 A. Nothing else.

24 Q. So the prints, the lifting of the prints and the
25 presumptive testing for the blood?

- 1167 -

1 A. The lifting of prints, putting the prints back on the
2 car, and the presumptive testing for blood.

3 Q. Would you tell the Jury what presumptive testing
4 for the blood, how you go about doing that? Procedurally?

5 A. There are two presumptive tests. One is known as
6 luminol, L U M I N O L. It is very sensitive, not that
7 specific. It is very sensitive to small traces of blood and
8 in cases where blood has been cleaned up. A once cleaned
9 area, it glows with a bluish-white light. Since it is not
10 specific... another test is done, which is more specific,
11 and this is part of it, then it is an indication of blood.

12 Q. Would you tell the Jury precisely where in the car
13 you conducted this test? These testings?

14 A. The test was done in the exterior and interior of the
15 car. The car was brought to the lab and we got it on the
16 outside and the inside. We sprayed the outside and then the
17 inside.

18 Q. You sprayed the entire outside of the vehicle, didn't
19 you?

20 A. Correct.

21 Q. And you sprayed the entire inside of the vehicle,
22 didn't you?

23 A. Correct.

24 Q. And this was done in total darkness, wasn't it?

25 A. Correct.

- 1168 -

1 Q. And there would be a glow if there was blood or
2 a residual of blood, blood present?

3 A. A bluish-white glow.

4 Q. And there was never a glow with either of the tests
5 that you conducted?

6 A. Correct.

7 Q. Thank you. No further questions, Your Honor.

8 MR. HOGAN: May we approach?

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

10 MR. HOGAN: Judge, I don't want to release this witness,
11 because after we have the prints identified by the examiner,
12 who is here now, hopefully, we are going to request that he
13 be allowed to place the prints back on the car.
14 That we be allowed to display that to the Jury. It is a very
15 significant piece of evidence in this case.

16 MR. HURM: What he did, Judge, for clarification, is he
17 took the photographs of the latents from the car. Photographs
18 were taken when it was dusted, before they were lifted, and he
19 took those photographs and placed them back on the car in the
20 position that the latents were found after the dusting, and we
21 got photographs taped to the hood of the car in the position
22 the latents were found and the car is down stairs and at the
23 break, we are going to have it brought underneath the over-
24 hang there where the Sheriff parks his car, next to the jail,
25 and ask that Jennie Ahern be allowed to give some testimony

- 1169 -

1 there with those photographs on the hood of the car as a
2 demonstrative exhibit.

3 MR. EDMUND: It is immaterial, irrelevant and doesn't
4 add to the State's case and it is tantamount to the position
5 of the Supreme Court of overkill.

6 THE COURT: Don't comment.

7 MR. EDMUND: I got pretty good peripheral vision, fellas,
8 and would serve no proof, Your Honor, to the prosecution of
9 this.

10 THE COURT: Let me understand how you propose to proceed.
11 You want next to call the fingerprint person?

12 MR. HOGAN: Yes, sir.

13 THE COURT: And we will go through the fingerprint
14 comparison with that person before you propose this view?

15 MR. HOGAN: In my mind, we would have to at least have her
16 say that she has identified the victim's and the defendant's
17 prints to make it relevant. It is not really a view, but the
18 use of a demonstrative aid relevant and once it becomes
19 relevant by her saying, "Yes, I found his fingerprints on that
20 car and the victim's fingerprints on that car", then in order
21 to ask her the question, "Where did you find them on the car?",
22 it would be necessary, ideally, we would have the car in the
23 courtroom, which is what, you know, ideally that is what we
24 would have done, but that is impractical, so what we are asking
25 the Court to do is to allow us to reconvene the courtroom

- 1170 -

1 where the piece of evidence is. Since the piece of evidence
2 is too big to bring into the courtroom, and then ask the
3 question, "Where did you find the various prints that you have
4 told us that you identified?", and then have her say, "I found
5 this print right here, I have identified as the victim's. This
6 print right here, I have identified as the victim's. This
7 print here I have identified as the defendant's." I don't want
8 to release him in case there is some question about the
9 placement.

10 MR. EDMUND: Only he could do that. She just took the
11 cards and compared them.

12 MR. HOGAN: She was there. She is going to be able to
13 say, "This is the victim's print right here".

14 THE COURT: He is going to say where they were and she
15 says whose they are?

16 MR. HOGAN: Yes.

17 THE COURT: Okay, what I will let you do is let's press
18 on and keep him under subpoena and when you get to the point
19 where you want to break, what I am going to do is let's us go
20 down with the court reporter and take a look at this set-up
21 and make a determination whether or not I feel it is practical
22 to do this and then I will give you a ruling then.

23 (WHEREUPON, BENCH CONFERENCE ENDS)

24 MR. HOGAN: I have no further questions of this witness
25 at this time, but I would like him to remain.

- 1171 -

1 THE COURT: Alright. If you would, Mr. Parker, just
2 remain under subpoena with us and stay outside in the hall,
3 please.

4 We appreciate it. You are free to go at this time.

5 MR. HOGAN: Ms. Ahern is our next witness, Judge.
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-1172 -

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

3 DIRECT EXAMINATION

4 BY MR. HOGAN:

5 Q. Please state your name for record.

6 A. Jennie T. Ahern.

7 Q. How are you employed?

8 A. By Florida Department of Law Enforcement at the
9 Orlando Regional Crime Laboratory.

10 Q. And how long have you been so employed?

11 A. Since January of 1981.

12 Q. What is your specialty there?

13 A. I am a Senior Crime Laboratory Analyst in the Latent
14 Print Section.

15 Q. What do you do in the Latent Print Section?

16 A. I analyze evidence for the presence of latent prints
17 and compare those latent prints with known inked prints to
18 determine the identity of the prints. I am also a footwear
19 examiner and examine shoe tracks at crime scenes with known
20 shoes to determine whether or not those shoes were or were
21 not made by...that the track was made by that particular pair
22 of shoes. As the Senior Analyst of the Section, I am also
23 responsible for the training and quality assurance of the
24 Section.

25 Q. How do you go about examining a fingerprint? What is

- 1173 -

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1 it about one fingerprint that makes it able to be identified
2 as coming from certain objects; such as latent prints. What
3 does a fingerprint look like, that you can say this finger-
4 print matches this fingerprint?

5 A. Okay, the best way to describe that, if you look at
6 the palm of your hand, just start in the palm of your hand,
7 and the bottom of your feet, it's different from the rest of
8 the skin of your body. It has ridges, and these ridges do
9 different things; they run in the hand, they form into two
10 ridges; they can form into two ridges and form one ridge again;
11 and they have dots. Now the way these ridges, or the way the
12 prints are compared with each other, is by looking at those
13 characteristics, in a latent print, which is the print left
14 on an object that is touched, with a known inked print, which
15 is an intentional print taken by inking the finger.

16 Q. Now, is the fingerprint a positive form of identifi-
17 cation?

18 A. Yes, sir, it is.

19 Q. Why is that?

20 A. Because all fingerprints are individual, that means
21 that no two people have the same identifying characterstics
22 in their finger than anyone else, and they're permanent, your
23 fingerprints are formed in the twelfth week of gestation,
24 and they remain constant and continuous throughout your life
25 until decomposition.

- 1174 -

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1 Q. How do you...what causes fingerprints to transfer,
2 this impression to transfer from your fingertips to a surface?

3 A. Various things, one is perspiration. These ridges
4 that I have described to you have tiny little sweat pores
5 along the ridges and they exude perspiration and can transfer
6 prints that way. You also pick up oil, grease, blood, peanut
7 butter, anything on your hands and you can transfer them to
8 another surface.

9 Q. What is the difference between a known fingerprint
10 and a latent print?

11 A. A latent print is usually invisible, it's the print
12 that's left onto an object when it's touched; this is usually
13 through perspiration or some foreign matters, like I just
14 described. A known inked print is an intentional print,
15 taken for elimination purposes or comparison purposes, by
16 applying a thin layer of printers ink on the fingers and rolling
17 it onto a card.

18 Q. Have you ever qualified in the Courts of Law as an
19 expert of fingerprinting. Is that okay?

20 MR. EDMUND: I'll stipulate, Your Honor.

21 THE COURT: Specifically what are you offering?

22 MR. HOGAN: Fingerprint identification.

23 THE COURT: And comparison?

24 MR. HOGAN: Yes, sir.

25 THE COURT: Alright, Ms. Ahern will be accepted by the

- 1175 -

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1 Court by stipulation as an expert in the area of fingerprint
2 identification and comparison, entitled to give opinions in
3 her field.

4 DIRECT EXAMINATION CONTINUES . . .

5 BY MR. HOGAN:

6 Q. Ms. Ahern, did you have an occasion to become involved
7 in the investigation of the murder of Teresa McAbee?

8 A. Yes, sir, I did.

9 Q. And did you have occasion to use your expertise in
10 the identification and comparison of the fingerprints in that
11 case?

12 A. Yes, sir, I did.

13 Q. Were you present when fingerprints were identified,
14 and lifted from a motor vehicle, a Mascotte Police car?

15 A. When they were photographed and lifted?

16 Q. When they were identified and lifted, were you pre-
17 sent?

18 A. I was the one that identified them, yes, sir.

19 Q. Okay, what I mean by identify is not, identify through
20 making them, but identify them as being fingerprints; were
21 you there when the car was processed?

22 A. No, sir, I was not.

23 Q. I'll show you what's been marked for identification,
24 or in evidence rather, State's Exhibit 88, State's Exhibit
25 90, State's Exhibit 96, State's Exhibit 95 and see if you

- 1176 -

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1 recognize the contents of that package?

2 (WHEREUPON, PACKAGE IS OPENED)

3 A. Yes, sir, I do.

4 Q. And what is that?

5 A. They are major case prints or the ink prints that were
6 taken of the victim at the Crime Laboratory.

7 Q. Okay, Teresa McAbee?

8 A. Yes, sir.

9 Q. Those are Teresa McAbee's finger...finger and hand
10 prints?

11 A. It's called major case prints, it's the fingertips,
12 joint areas and palm prints and the tips of the fingers.

13 Q. Okay, that's what you call known prints?

14 A. Yes, sir.

15 Q. I ask you to examine State's Exhibit 90, and tell me
16 if you recognize the contents of that package?

17 A. Yes, sir, I do.

18 Q. And what is that?

19 A. They are inked fingerprints, palm prints and partial
20 joint impressions bearing the name of James Duckett.

21 Q. Are those also known prints?

22 A. Yes, sir, they are.

23 Q. Meaning they are inked and rolled?

24 A. Yes, sir.

25 Q. Now I'll show you what's marked State's Exhibit 96

- 1177 -

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1 and ask you if you recognize the contents of that package?
2 A. Yes, sir, I do.
3 Q. And what is that?
4 A. They are the latent lifts that were taken from the
5 police vehicle.
6 Q. Now, were you able to conduct a comparison between
7 these latent lifts and the known fingerprints and handprints
8 of James Duckett and the known fingerprints and handprints of
9 Teresa McAbee?
10 A. Yes, sir.
11 Q. Can you tell us, if it would be possible for you to
12 identify those fingerprints that are relevant in this package?
13 Do your notes do that for you?
14 A. My notes do that for me. Do you want me to tell you
15 everything that was of value, and who it was identified with?
16 Q. If you would?
17 THE COURT: When you say this package, Mr. Hogan, please
18 which one in evidence?
19 MR. HOGAN: I'm sorry, Judge, it's in evidence number
20 96, which is the prints from the police vehicle.
21 THE COURT: Yes, sir.
22 MR. HOGAN: And I would be comparing 90, James Duckett
23 prints and 95, Teresa McAbee's prints to those.
24 MS. AHERN: Can I just look through them?
25 A. Okay, one lift which is on a transparent backing which

- 1178 -

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1 is labeled 1B, there were no latent prints of value noted on
2 that, then there was ridge detail but there was not enough
3 characteristics distinct to do a positive identification on
4 this one.

5 Q. How many characteristics do you require before you
6 make a positive identification?

7 A. We don't have a set number, it depends upon the print.

8 Q. There is not enough quality in that print, enough
9 detail in that print, for you to say where it came from?

10 A. Not to say who it belongs to and where it came from.
11 1C which is also another transparent lift, there was one latent
12 palm print, it was identified as the right palm print of Mr.
13 Duckett. 1D, had one latent palm print, it was identified
14 as the right palm print of the victim.

15 Q. Teresa McAbee?

16 A. Yes, sir. 1E, there was one latent impression which
17 could either be a fingerprint or a palm print, was not iden-
18 tified as the victim, Mr. Calisto, Duckett, Gurley, and in
19 comparison of our sample, with Rubio or Morales. The reason
20 being, I did not get palm prints on those two people. There
21 was also one latent palm print in this lift, it was not iden-
22 tified as the victim, Calisto, Duckett, Gurley, and there
23 was no palm prints on the other two for comparison. 1F, there
24 was one latent palm print, it was identified as the left palm
25 of Teresa McAbee. 1G, there were three latent fingerprints,

1 they were identified with number 2, which is the right index;
2 number 4, which is the right ring; and number 5 finger, which
3 is the right little finger of Mr. Duckett. LH is actually in
4 two parts; this is the top part and this is the bottom part,
5 they should be pieced together something like this. And now
6 there is a total of five latent fingerprints which are iden-
7 tified with, actually there were seven latent fingerprints
8 which were identified as the victims', two off of the bottom
9 part and five off of the top part. They were identified as
10 being number 6 finger, which is the left thumb; the number 7
11 finger, which is the left index finger; three of them I iden-
12 tified as the left middle finger, two of them would be left
13 index finger...left ring finger; one latent fingerprint was also
14 noted on there and it was identified as the number 2 finger,
15 which is the right index of Mr. Duckett; there were three la-
16 tent palm prints which were identified with the left palm
17 prints of the victim, and there is one latent fingerprint on
18 there which was not identified with the victim, Calisto, or
19 Duckett; and on comparison so far as possible, with Rubio,
20 Morales and Gurley; the reason being, that this was an extreme
21 tip area of the finger and I had not submitted that on those
22 three individuals for comparison, i, is a total of four latent
23 fingerprints which are identified with the number 2, 3, and two
24 of the items with the number 4 finger, which is the right index,
25 right middle, right ring finger of the victim and six latent

- 1180 -

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1 palm prints which are identified as the right palm of the vic-
2 tim. 1J, there is one latent fingerprint which was identified
3 as Mr. Duckett's, the number 6 finger, which is the left thumb;
4 one latent palm print which was not identified with the victim,
5 Calisto, Duckett, or Gurley. 1K, there is one latent palm
6 print, it was not identified with the victim, Calisto, Duckett,
7 or Gurley. 1M, there was one latent fingerprint and it came
8 from the inside of the vehicle and it was identified with the
9 number 6 finger of the victim, which is the left thumb of 1L,
10 there were three latent fingerprints, which were identified
11 as number 2, 3, and 4, which is the right index, right middle,
12 and right ring fingers of Mr. Duckett.

13 THE COURT: Which letter next, Madam Clerk?

14 MADAM CLERK: Five Ws.

15 THE COURT: Five Ws.

16 Q. Ms. Ahern, have you prepared a chart to illustrate the
17 process that you have just gone through?

18 MR. EDMUND: Your Honor, I would waive the predicate, if
19 she would describe it or identify it, I have no objections if
20 the State wishes to offer it.

21 Q. Is this your chart?

22 A. Yes, sir, it is.

23 Q. Does it illustrate one of the fingerprints identified
24 in this case?

25 A. Yes, it does.

- 1181 -

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1 MR. HOGAN: We move this into evidence, Your Honor.

2 THE COURT: State's Exhibit five Ws for identification
3 admitting into evidence, without objection as State's Exhibit
4 #97.

5 Q. Ms. Ahern, what does this chart depict?

6 A. It shows one of the latent fingerprints, which was
7 on the left and one of the inked fingerprints from Ms. McAbee
8 that was identified with each other.

9 Q. Could you, with the Court's permission, stand down
10 and illustrate for the jury the process that you have gone
11 through in identifying these fingerprints?

12 A. Yes, sir.

13 THE COURT: Yes, ma'am you can step down.

14 A. This is, when it's on your left, is identified as
15 a latent fingerprint; this is one of the latent fingerprints
16 which was lifted off of this list, labeled as LH-Bottom; on
17 here you want to try inked fingerprints, is one of the inked
18 fingerprints from number 6 finger, which is the left thumb
19 of Ms. McAbee. The black lines in here are the ridges in the
20 fingers, the white lines demonstrate the furrows or the valleys
21 between those ridges; the red numbers, the red numbers and the
22 red lines we placed simply on our chart, to demonstrate to
23 you how we compare latent fingerprints with inked fingerprints
24 and we were able to show that this print was definitely made
25 by this finger. We start out with print number 1, the latent

- 1182 -

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1 print, we have a ridge ending, count over 1, 2, 3, 4, and you
2 have another ridge ending; if you follow that ridge down and
3 you go from 1, 2, 3, you'll have another ridge ending; now
4 from the same area, the same relationship, in inked print;
5 back to number 1, you have a ridge ending, count over 1, 2, 3, 4,
6 you have another ending ridge, come back down, over 2 and you
7 have another ending ridge, just as you had from the latent;
8 come back to point number three on the latent and follow that
9 down and you have the other end of that short ridge, come down
10 two, you have another ending ridge, come down two more, you
11 have another ending ridge; go back to your inked print, then
12 place another four and a three and you have another ending
13 ridge, follow that ridge down and continue into that short
14 ridge; follow down two, you have another ending ridge; follow
15 down two more, you have another ending ridge. Now based on
16 these points I have demonstrated to you, others which I have
17 charted and numerous others which we'll count, that I was
18 able to determine that this print which came off of LH, was
19 identified with the left thumb of the victim, Teresa McAbee.

20 Q. Ms. Ahern, I'll show you what's in evidence as State's
21 Exhibit 60, which has been identified as the fingerprints on
22 the hood of the car, do you recognize that?

23 A. Yes, sir, I do.

24 Q. And, have you gone through the process with Mr. Parker,
25 of examining the fingerprints back on the hood of the car?

- 1183 -

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1 A. Yes, sir, I did.

2 MR. HOGAN: I need to have a proffer at this time, Judge.

3 THE COURT: We'll take a recess, what we discussed before
4 at the Bench.

5 MR. HOGAN: Yes, sir.

6 THE COURT: Any objection to that, Mr. Edmund?

7 MR. EDMUND: No, Your Honor.

8 THE COURT: Alright, we're going to take a recess, Mr.
9 Bailiff, this could be as long as thirty minutes so we'll ask
10 the Jury to bear with us. Folks, I'll remind you not to dis-
11 cuss the case.

12 (WHEREUPON, JURY IS TAKEN OUT AT 3:00 P.M.)

13 THE COURT: What I'd like to do, if we could, gentlemen,
14 is ask Ms. Patz and attorneys to meet me up in Chambers and
15 let's discuss this procedure a little further before we move
16 on, if you would.

17 (WHEREUPON, CONFERENCE IS HELD IN JUDGE'S CHAMBERS)

18 THE COURT: The question that I had in my own mind was
19 whether or not we need the defendant present here. Let me
20 tell you what I intend to discuss, we'll stop there and see
21 what we think. I want to talk about our proceedings, number
22 one, I wonder if we even need him present, just when we go
23 down to see if we're going to do this, because we may have
24 some discussion among ourselves; two, do we need him present,
25 even here right now, which I'm willing to stop and have him

- 1184 -

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Javares, Florida 32778

1 brought up immediately.

2 MR. EDMUND: If I could waive his presence, I waive it.
3 We're simply having a conference at this point in time, we
4 agree?

5 MR. HOGAN: Well, I would agree that we are just going to
6 be going over some procedural matters.

7 MR. EDMUND: I think so. Maybe I can shorten things up,
8 Judge. I don't really have tremendous opposition to what the
9 State is moving to accomplish, except it won't reflect the
10 entire picture, with the unknowns not being part of the final
11 composite and I don't think there's any way they can now
12 reconstruct the unknowns as part of the final composite.

13 THE COURT: You're telling me the unknowns have not been
14 placed back on the hood.

15 MR. HOGAN: I believe they have.

16 MR. EDMUND: Well, if they have, then I can withdraw that,
17 provided they're identified, but if you would check that out
18 then I don't really have a quarrel with a thing, Judge.

19 THE COURT: Okay.

20 MR. HOGAN: The only other...

21 THE COURT: Go ahead.

22 MR. HOGAN: Thing that we would like to do, also, Judge,
23 we have a witness that we've listed for the sole purpose of
24 the fact that she's the same height and size of the victim,
25 and rather than have Ms. Ahern have to crawl up on the hood

1 of the car we would like to use her, as the...

2 MR. EDMUND: Now, wait a minute...

3 MR. HOGAN: demonstrative purposes, show the, where the
4 fingerprints...

5 MR. EDMUND: We must be talking apples and oranges then,
6 I thought we were going to demonstrate by the placing of the
7 fingerprints on the hood by way of demonstration, not by way
8 of somebody sitting up there and putting hands and things of
9 this nature. If that's the case, then my position is totally
10 different. I envisioned that they...they said they had the
11 photographs put back on the hood, this is what I evenvisioned,
12 and a description by Ms. Ahern that this one is so and so,
13 this one's so and so and this one's so and so.

14 THE COURT: That, is as far as I intend to go. I under-
15 stand what you proffer, but I'm not going to allow you to use
16 a similar size person, and in any event, even though you don't
17 have an objection, i'd like to go view this, because I have
18 several concerns yet; one is I know the defendant's going to
19 have to be there at this point and now we can talk security.
20 We can't leg iron or handcuff him because the jury is going to
21 be there and they will see that. Mr. Bailiff, help me with
22 that, if we had to take the defendant down underneath where
23 the Sheriff, where the Sheriff parks, to view a car and take
24 some testimony there, he could be present. Can you assure his
25 security, without any leg irons or handcuffs?

- 1186 -

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1 BAILIFF: What's the place again, Judge?

2 THE COURT: Right where the Sheriff parks everyday, right

3 you know, underneath that sallyport, next to the jail?

4 BAILIFF: Would there be an objection to having, besides

5 myself and the plainclothes bailiff that's in the courtroom,

6 a uniformed officer in that immediate area?

7 MR. EDMUND: No objections, Your Honor, but I think his

8 chances of running are nil.

9 BAILIFF: Then I think that would suffice.

10 THE COURT: Alright. Let me ask you to do this. How long

11 will it take you to get him down to that area right now?

12 BAILIFF: Five minutes.

13 THE COURT: Alright, let me give you five minutes to get

14 him in place, with your officers, then I'd like all of us to

15 go down with Ms. Patz, as a preview of this matter, a proffer,

16 if you will. Just let me see how it's set up and see if I

17 think we're going to be able to do it, appropriately, with the

18 Jury, without any security problems. But I want him in place

19 before I even do that, so I'll let you go get him now, and

20 round up a uniformed officer, just take him down there right

21 underneath that carport area.

22 BAILIFF: Yes, sir.

23 MR. HOGAN: Judge, is there anything else I ought...

24 THE COURT: Do we, I don't think we need anything else

25 right now, do we?

- 1187 -

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1 MR. EDMUND: Aim me at where we're going, now.

2 THE COURT: They'll show you where it is, I'll meet you
3 down there in about five minutes.

4 (WHEREUPON, COURT CONVENES UNDER CARPORT BY LAKE COUNTY
5 JAIL BY MASCOTTE POLICE CAR)

6 (WHEREUPON, DEFENDANT IS PRESENT WITH COUNSEL)

7 THE COURT: I do want to remind the spectators we are
8 going to ask you to do no talking whatsoever. Court is in
9 session. Second, gentlemen, we do not want pictures of the
10 Jury. That will make it difficult for you. We don't want
11 pictures of the jury in the press.

12 (WHEREUPON, JURY IS PRESENT AT THE SCENE)

13 THE COURT: Ladies and gentlemen, can all of you see the
14 hood of this car?

15 Madam reporter, let the record reflect we are out of the
16 courthouse, next to the Lake County Jail, and the carport
17 next to the Lake County Jail, and next to the courthouse.
18 We do have counsel, and the Defendant present.

19 The Defendant is present and all are able to view the
20 scene we are about to see.

21 Ms. Ahern, you are still on the stand, and I remind you
22 you are still under oath.

23 DIRECT EXAMINATION CONTINUES

24 BY MR. HOGAN:

25 Q. Before we adjourned to come down to the carport area

- 1188 -

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1 where we have present before us Unite 203 of the Mascotte
2 Police Department, and for the record, the hood of the car
3 has photographs of numerous fingerprints. Do you recogize that?

4 A. Yes, I do.

5 Q. What are those?

6 A. Those are the photographs of the latent prints taken
7 off the vehicle originally.

8 Q. And they are placed back in the same position as when
9 they were lifted from the car?

10 A. Yes, correct as positioned, yes, sir.

11 Q. Now, before coming down to the carport, you testified
12 about your identification through analysis of fingerprints,
13 comparing to known fingerprints, you were able to identify
14 certain fingerprints and palm prints on the hood of the car.
15 Please point out the fingerprints and palm prints on the hood
16 of the car as they appear on the car.

17 To make it shorter, all those in red were thoe identified
18 with the victim, Teresa McAbee?

19 A. Yes. Those marked in yellow were identified with
20 Mr. Duckett.

21 Q. Were there any unknown fingerprints or palm prints
22 on the car that had enough detail to make an identification,
23 but you don't know whose they are?

24 A. Palm print, yes. One tip of a finger here. There is
25 one palm print here. And on this corner a palm print...

1 I can't place them back exactly on the car.

2 Q. Those are prints that you did not identify?

3 A. They were not identified with any prints submitted.

4 Q. Were there other finger prints and palm prints on the
5 car?

6 A. The only one was 1B, which came from the door of the
7 car. One belonged to Teresa McAbee. Starting with left 1B,
8 there is one palm print identified with the right palm. There
9 is another right plam here. Another right palm here, here,
10 here, and here. Also being identified, a right index finger,
11 right middle finger, right ring finger, up here and right
12 ring finger here.

13 Q. Of Teresa McAbee?

14 A. Of Teresa McAbee. There was one palm print left 1C
15 and that is here and identified with the right palm print of
16 Mr. Duckett. And on this side, left 1F, was the left palm
17 print here and then the left palm print here and here, and
18 the left ring finger, left middle finger, left ring finger,
19 left middle finger, left index finger, and the right thumb.

20 Q. Okay.

21 A. That was off left 1H top and bottom. 1G, there were
22 three latent fingerprints of value. They were identified
23 with the left index, right ring, and right middle finger of
24 Mr. Duckett and up here, in 1H, there was the right index
25 finger of Mr. Duckett.

- 1190 -

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1 Q. Alright, Ms. Ahern, was there another print over there?

2 A. Yes, sir, there was one thumb print, one print here,
3 which was identified as the left thumb of Mr. Duckett.

4 Q. Okay.

5 A. That is a palm print here and which was not identified
6 with any of the people submitted.

7 Q. In your opinion, can you tell us, first of all, how
8 tall you are?

9 A. 5'6".

10 MR. EDMUND: I object to this. I think we have spoken
11 to this. It is not within the area of expertise of this wit-
12 ness, when she was qualified as an expert, if it please the
13 Court.

14 MR. HOGAN: That is exactly the expertise in fingerprint
15 and what position the victim's hands had to be to make the
16 fingerprints.

17 MR. EDMUND: Where they are is one thing. What position
18 she placed them from is another. If it please the Court, and
19 to make a matter of speculation...

20 THE COURT: Why don't you see if she can testify to that
21 in her explanation. Can she testify how the hand had to be
22 placed, the hand of Teresa McAbee in order to make these
23 fingerprints on the hood of the car.

24 Overrule your objection, Mr. Edmund.

25 MR. EDMUND: Voir dire.

- 1191 -

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1 VOIR DIRE EXAMINATION

2 BY MR. EDMUND:

3 Q. These are the left prints, are they not, of the victim?

4 A. Yes.

5 Q. May I hold your hand. Can you place it there?

6 A. Yes.

7 Q. Can you place it over there?

8 A. Yes.

9 Q. Can you place it down here?

10 A. Yes, sir.

11 Q. May I have your right hand? Can you place it here?

12 Can you place it there? Can you place it there? Can you
13 place it there? Can you place it in each print standing
14 there beside of the automobile?

15 A. Yes, sir.

16 Q. As you could from perhaps a half dozen other positions.

17 A. I can. I am 5'6" and I have two and one-half inch
18 heels on.

19 THE COURT: We are not going to go any further on that
20 line of questioning. Her explanation could go in that direct-
21 ion, Mr. Hogan. I sustain the objection.

22 DIRECT EXAMINATION CONTINUES

23 BY MR. HOGAN:

24 MR. HOGAN: What I am asking, Judge, if she can give an
25 explanation of how the hands had to be placed or more likely

- 1192 -

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1 were placed when the prints were made, based on the position
2 of the prints.

3 MR. EDMUND: And there are a dozen ways and any way would
4 be speculation and I object on those grounds.

5 MR. HOGAN: I believe that is why there are experts, that
6 there are certain positions along with the prints, marks, and
7 in her field, she could determine how they were made.

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

9 THE COURT: I am not certain about something. Is she
10 going to testify, based upon the demonstration you conducted
11 at some other time with a small person?

12 MR. HOGAN: No, sir. She is simply going to show the
13 position of the hands based upon the fingerprints on the hood.

14 THE COURT: I want no mention of a small person or a
15 demonstration.

16 MR. HOGAN: No, sir.

17 THE COURT: What concerns me, she is presuming a small
18 person, I think.

19 MR. HOGAN: I can ask her to determine the stature of the
20 victim...I can say it however you want me to phrase it, but I
21 think she understands what I want her to do. To show us how
22 they found them to be placed consistent with the prints we
23 had and consistent with the slide marks. Without reference
24 to the victim's stature and without reference to any test or
25 experiment that may have been conducted at another time.

1 MR. EDMUND: Again, we are getting back to the area of
2 pure speculation. I think she can testify other than from
3 this position or over a half dozen positions, it could have
4 been done. She already jumped up once and I am sure that
5 was a pure contrivance and it just left a point where this
6 demonstration has gotten totally out of hand.

7 MR. HOGAN: It is not a contrivance thing, but I believe
8 it may go to the weight of the evidence, that this is the way
9 the fingers hand to be placed. The position they had to be
10 in. This is the whole function of having an expert.

11 THE COURT: I am going to note your objection and I
12 rule it is a position for cross examination and you can bring
13 out those points on the cross examination.

14 (WHEREUPON, BENCH CONFERENCE ENDS)

15 DIRECT EXAMINATION CONTINUES

16 BY MR. HOGAN:

17 Q. Now, with reference to this particular fingerprint
18 here or any other, if you could show the folks of the Jury,
19 in your opinion, how these fingerprints were placed on the
20 car.

21 A. From backwards to sitting on the car. To do it
22 standing, I would have to put her right hand here, here, here,
23 here and here. This would be in a scooting motion across the
24 car and then she would have to come over here and put her
25 hand here, here, here, and this one here, she would have to

- 1194 -

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1 turn and have her thumb completely up. It was identified
2 with the top outer portion of the thumb. Up like this.

3 Q. And those are prints with a scooting motion?

4 A. Yes, those are moving.

5 Q. And the other way?

6 A. Would be to put this hand here. This hand here.

7 And up on the car and moving back like this and back like this.

8 MR. HOGAN: May I have one moment, Judge. Thank you,
9 Judge, thank you, Ms. Ahern.

10 CROSS EXAMINATION

11 BY MR. EDMUND:

12 If it please the Court.

13 THE COURT: Yes, sir.

14 Q. Now, Mrs. Ahern, you were totally seated on the auto-
15 mobile at that time, were you not?

16 A. Yes, sir.

17 Q. Alright. If a female were totally seated on a car
18 at that time, and was bleeding from her vaginal area, there
19 would be a possibility of blood on the automobile, would there
20 not?

21 A. That is outside the field of my expertise.

22 Q. That goes to common sense?

23 MR. HOGAN: I object, Your Honor.

24 THE COURT: Anything else?

25 MR. HOGAN: No, sir.

- 1195 -

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1 THE COURT: Overruled. Go ahead.

2 Q. Would it be a fair statement, I said, if a female
3 were sitting on an automobile and she was bleeding from the
4 vaginal area, there would be a very good probability there
5 would be blood on the vehicle, would there not?

6 A. It is possible.

7 Q. Probable or possible?

8 A. I am going to say possible. That is not my area.

9 Q. Now, there were prints that were supposed to be or
10 that were claimed to be identified as those that were made
11 by my client, co-mingled in prints of Teresa, is that correct?

12 A. That is correct. The left one or more was in this
13 area here. One print right here. And then another was in,
14 I think, in the area as I have it, in area J up on the front,
15 right here, yes, sir.

16 Q. Whose is the dark print in the back there?

17 A. That is one that is unidentified.

18 Q. That is also an unidentified one on that corner,
19 that is quite dark?

20 A. Yes, sir.

21 Q. And there was still another unidentified one 1E just
22 on the top of the fender over there, isn't that correct?

23 A. There was a palm print and an impression.

24 Q. Alright, so in here we have a very dark print, un-
25 known. Mingled amongst Teresa's dark prints, do we not?

- 1196 -

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1 A. Yes, sir.

2 Q. Will you tell the Jury if this very, very, very,
3 light print in there is Duckett's print?

4 A. Yes, it is.

5 Q. Will you tell the Jury why that is the only print
6 that is within this area of say 18" square?

7 A. It is the only one in LH.

8 Q. Maybe we should refer to it as an area of 18 to 24
9 inches square?

10 A. Yes, sir.

11 Q. Are these very, very light prints over here, these
12 light prints much lighter than any of the others?

13 A. Yes, sir, they are.

14 Q. Is this the only print from Duckett that has any
15 dark shades to it, found on this vehicle at all?

16 A. Yes, sir.

17 Q. The only three were also very faint?

18 A. Yes, sir.

19 Q. Very faint prints, alright ma'am. Is there anything
20 to indicate whether this print of Duckett's is superimposed
21 on the others or the others are superimposed on his?

22 A. No, sir.

23 Q. And there isn't any way from the particular way these
24 are laid out, such that someone could determine as to which
25 was there first?

- 1197 -

Ruth C. Patz & Associates
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Tavares, Florida 32778

1 A. No, sir.

2 Q. Nor any way to determine if Mr. Duckett's prints were
3 under hers that might have been obliterated?

4 A. That is true.

5 Q. And it showed Duckett's prints were very light, Duckett's
6 print over hers in Exhibit 1J?

7 A. Yes, sir.

8 Q. And is that the one again outlined in yellow over there?

9 A. Yes, sir.

10 Q. At that point, I think that is all I have, if it
11 please the Court.

12 MR. HOGAN: Nothing further down here, Your Honor. Nothing
13 needs to be done down here.

14 THE COURT: Anything of this on other witnesses down here?

15 MR. EDMUND: Were there any prints taken along the sides
16 of the car this way?

17 A. Other than the two I did of an impression over there,
18 1E or 1K, something like that.

19 MRS. AHERN: K1 down there.

20 MR. EDMUND: But there were none on the sides of the car?

21 MS. AHERN: No, sir.

22 MR. EDMUND: Thank you.

23 THE COURT: Anything else, Mr. Hogan?

24 MR. HOGAN: No, sir.

25 THE COURT: Alright, we will have the Jury go back with

1 Mr. Bailiff at this time, please, folks.
2 (WHEREUPON, JURY LEAVES AREA AT 4:13 P.M.)
3 THE COURT: While we are here, gentlemen, do we expect
4 this to be processed...Do you want a photograph taken so that
5 the record will reflect what we were looking at?
6 MR. HOGAN: That might be a very good idea.
7 THE COURT: So that we have one clear picture of what we
8 did here.
9 MR. HOGAN: I want to move these exhibits on the car now.
10 THE COURT: Do you have any objection to moving them,
11 Mr. Edmund? Having them photographed?
12 MR. EDMUND: No, sir.
13 THE COURT: Then we will move them after you remove them.
14 Just mark them with identification numbers and move them in.
15 MR. HOGAN: It will be a composite.
16 THE COURT: That will be fine.
17 (WHEREUPON, THIS PORTION OF PROCEEDINGS RECESSES AT 4:15
18 P.M.)
19 (WHEREUPON, COURT RECONVENES IN COURTROOM)
20 THE COURT: Anything before we bring the Jury back, gen-
21 tlemen?
22 MR. HOGAN: No, Your Honor.
23 MR. EDMUND: No, sir.
24 THE COURT: Thank you. Mr. Bailiff.
25 (WHEREUPON, JURY ENTERS COURTROOM)