

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,

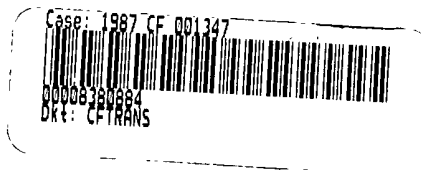
v.

JAMES AREN DUCKETT,

Defendant.

VOLUME VII

AUG 11 2 46 PM '88
CLERK OF CIRCUIT
AND COUNTY COURTS
LAKE COUNTY
TAVARES, FLORIDA



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135.7

1 THE COURT: Welcome back, folks. You got your fresh air,
2 just like I promised. You can't complain. Be seated, please.
3 You all, seriously, did not discuss the case among yourselves?

4 (THE JURY INDICATING AFFIRMATIVELY)

5 THE COURT: Thank you. I'll remind you, you're still
6 under oath, ma'am.

7 MS. AHERN: Yes, sir.

8 DIRECT EXAMINATION CONTINUES

9 BY MR. HOGAN:

10 Q. Ms. Ahern, did you have occasion to process the body
11 of Teresa McAbee or go through some process with the body of
12 Teresa McAbee in an attempt to lift latent fingerprints from
13 her body?

14 A. Yes, sir, I did.

15 Q. When did you do that?

16 A. On May 14, 1987.

17 Q. Did you, for some reason, fail to examine her body
18 from the waist down?

19 A. No, sir, I did not.

20 Q. What portions of her body did you examine?

21 A. Her entire body.

22 Q. Were you able to lift, or find any fingerprints on
23 her body?

24 A. No, sir.

25 Q. Now you were given a large number of other items

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1 that were removed from the scene; I'm referring to a King
2 Edward cigar box, gum wrappers, plastic cup lid, a piece of
3 plastic cellophane wrapper, Bud beer cap, Marlboro cigarette
4 and other butts, another Bud beer bottle cap, another beer cap,
5 and a Busch beer can, a red plastic ring, cigarette butts and
6 plastic cigar tip. Did you process those items?

7 A. Yes, sir, I did.

8 Q. And were you able to lift any latent prints from those
9 items?

10 A. No, sir.

11 Q. Did you also examine for fingerprints of the clothing
12 of Teresa McAbee?

13 A. Yes, sir, I did.

14 Q. Were you able to lift any fingerprints from the
15 clothing of Ms. McAbee?

16 A. No, sir.

17 MR. HOGAN: May I have a moment. Thank you, Judge, thank
18 you Ms. Ahern.

19 THE COURT: Mr. Edmund?

20 MR. EDMUND: No questions, Your Honor.

21 THE COURT: Alright. What do you say about Ms. Ahern's
22 subpoena, gentlemen?

23 MR. HOGAN: She's released to go, with the thanks from
24 the State.

25 THE COURT: Any objection, Mr. Edmund?

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1 MR. EDMUND: No objection, Your Honor.

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

4 (WHEREUPON, MS. AHERN IS RELEASED FROM HER SUBPOENA)

5 MR. HURM: The next witness, Your Honor, is Carrie
6 Bennett.

7 (WHEREUPON, CARRIE BENNETT IS CALLED AS NEXT WITNESS
8 FOR THE STATE AND IS DULY SWORN BY THE CLERK OF THE COURT)

9 DIRECT EXAMINATION

10 BY MR. HURM:

11 Q. Hello, Ms. Bennett, state your name for the record,
12 please?

13 A. Carrie D. Bennett.

14 Q. If you would address your answers to the Jury, please,
15 ma'am. What is your occupation?

16 A. I am a school teacher.

17 Q. Where do you teach?

18 A. At Mascotte Elementary.

19 Q. What grades do you teach?

20 A. Fifth Grade.

21 Q. How long have you been at Mascotte Fifth Grade?

22 A. About sixteen years.

23 Q. Ma'am, in the school year 1986 to 1987, did you have
24 a little girl in the class by the name of Teresa Mae McAbee?

25 A. Yes.

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1 Q. She was in the fifth grade at that time?

2 A. Yes.

3 Q. Do you recall, ma'am, the week of May 11th, 1987, a
4 detective coming showing a photograph?

5 A. Yes.

6 Q. And what did he ask you to do with regard to the
7 photograph?

8 A. He asked me to identify her as Teresa Mae McAbee.

9 Q. Were you able to do so?

10 A. Yes.

11 Q. Now, I am showing you what has been marked in evidence
12 as State's Number 37, a photograph. Is that the photograph
13 he showed you?

14 A. Yes, it is.

15 Q. And is that Teresa Mae McAbee?

16 A. Yes.

17 Q. Okay, no further questions.

18 THE COURT: Mr. Edmund?

19 MR. EDMUND: No questions, Your Honor.

20 THE COURT: May Ms. Bennett be released from her subpoena?

21 MR. HURM: Yes, Your Honor.

22 THE COURT: Any objection, Mr. Edmund?

23 MR. EDMUND: No, Your Honor.

24 THE COURT: You are free to go, ma'am. Thank you very
25 much. Please watch your step.

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

2 MR. HURM: That concludes what we have time for today.
3 We don't have anything else for today.

4 THE COURT: Oh, dārn. We have to quit for today.

5 MR. HURM: I knew you would be disappointed.

6 THE COURT: If we quit for today, would nine o'clock in
7 the morning be about right?

8 MR. HOGAN: Yes. Thanks, Judge.

9 (WHEREUPON, BENCH CONFERENCE ENDS)

10 THE COURT: Well, folks, we are going to take our
11 evening recess at this time. You will be surprised to hear
12 me tell you that you should not discuss the case among yourselves
13 or with anyone else. You should not read any accounts of the
14 case; watch any television accounts; listen to any radio
15 accounts; don't visit the scene of the alleged occurrence.
16 We will meet back here in this building at nine o'clock
17 tomorrow morning. We will be in recess until then.

18 (WHEREUPON, THE JURY LEAVES COURTROOM AT 4:35 P. M.)

19 MR. HOGAN: Your Honor, could we hold the Jury in the
20 jury room for a couple minutes?

21 THE COURT: Yes.

22 MR. HOGAN: May we approach?

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

24 MR. HOGAN: One of the things we have left to do that I
25 see as a major time consumer, is going to be the Williams Rule

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1 witnesses. Obviously, we feel they are admissible, so we feel
2 we need to make a very avid argument for that and I don't see
3 any way to cut any corners about proffering it to the Court.

4 THE COURT: I think we have to proffer it.

5 MR. HOGAN: We have the serologist and a couple little
6 short witnesses, and then some statements of the defendant,
7 so the reason I asked to hold the Jury was possibly you might
8 want to have them... tomorrow morning might be a good time.
9 It may not be that you want to do it then, but I just wanted
10 you to have the option.

11 THE COURT: How much time do you think all of your
12 remaining witnesses except your Williams Rule witnesses will
13 take?

14 MR. HURM: Probably half a day.

15 THE COURT: We could use tomorrow morning probably for
16 that.

17 MR. HURM: We had hoped not to get to the Defendant's
18 statements until after we presented the Williams Rule evidence.

19 MR. HOGAN: If it is going to be admissible.

20 MR. HURM: If the Williams Rule is going to be admissible,
21 so we would rather not get into that prior to the proffer
22 of the Williams Rule.

23 THE COURT: How much time will you need...

24 MR. HURM: Two hours.

25 MR. HOGAN: I would say two hours.

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1 MR. HURM: Depending on cross examination. I don't
2 know how much he is going to have. And that would be a
3 maximum, outside.

4 MR. EDMUND: We very well may be able to get through
5 that other stuff in the morning.

6 MR. HURM: If we do them in the morning and proffer,
7 we could just let the Jury not come in until afternoon and
8 then we can present ... then we will have our argument and we
9 don't have to present the Williams Rule right then. We can
10 present the serology and then the Williams Rule and then the
11 statements.

12 MR. HOGAN: And we can have our witnesses come back.

13 MR. HURM: Yeah, that's no problem. If you just want
14 to do the proffer in the morning.

15 THE COURT: Otherwise, we will get them here for two
16 hours and send them home for all day, or send them home for
17 four hours.

18 MR. HOGAN: Or have them sit in the jury room.

19 THE COURT: Let's just have them come back at one and
20 we will take the proffer in the morning and that will give
21 you plenty of time to put your evidence on and everybody take
22 an oral argument.

23 MR. HOGAN: Yes, sir.

24 THE COURT: How about that?

25 MR. HURM: That would be fine.

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1 THE COURT: Let me inquire if I could. I will do this
2 either way. I will just have the bailiff tell them to come
3 back at one, is that acceptable?

4 MR. HOGAN: That is fine. One thing I want to ask is
5 that he just also tell them that we have some legal work to
6 do. Or something. That the Court had...

7 MR. EDMUND: No objections.

8 MR. HOGAN: Something like that.

9 (WHEREUPON, BENCH CONFERENCE ENDS)

10 THE COURT: Mr. Bailiff, we are going to change our
11 order and I have permission of counsel for both parties for
12 you to advise the Jury they will not need to come back until
13 one o'clock tomorrow and advise them that we are going to be
14 working on this case in the morning outside their presence.

15 MR. BAILIFF: Yes, sir.

16 THE COURT: Alright. Thank you very much.

17 Ladies and gentlemen, for those of you that are here, we
18 are going to be taking a proffer of testimony in the morning
19 starting at nine o'clock in this courtroom. Then I will have
20 to make a determination as to whether or not that testimony
21 will be heard by the Jury. There is no need to have them come
22 here and wait all morning while we do that. So we are going
23 to have them come back at one o'clock, but so the spectators
24 and the press understand, we will be taking testimony here
25 beginning at nine o'clock tomorrow morning in this room.

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1 Anything else?

2 MR. EDMUND: No, Your Honor.

3 MR. HOGAN: No, sir.

4 THE COURT: Mr. Bailiff, please.

5 (WHEREUPON, DEFENDANT IS TAKEN FROM COURTROOM AT
6 4:40 P. M.)

7 (WHEREUPON, COURT IS IN RECESS AT 4:41 P. M.)

8 May 4, 1988, at 9:00 A. M.

9 (WHEREUPON, COURT CONVENES IN CHAMBERS)

10 THE COURT: Alright, what do we have?

11 MR. EDMUND: This is the information we developed to
12 this point, Your Honor. This is just on a motion hearing.
13 I would waive his presence and have him waive it when we get
14 through.

15 Your Honor, at some point in time, ideally early on,
16 we got Mr. Rick Reynolds and we were unable to locate him.
17 The State gave us the name Wednesday of last week. I
18 contacted an investigator in Gainesville and sent him to
19 Lake Butler on Friday. When I contacted him, I gave him the
20 barest skeletal information regarding the case and no conception
21 or idea of the chronological order of any events whatsoever.
22 Simply something that had occurred at the Circle K involving
23 Duckett and a little girl. His report to me on Friday night
24 put things in specific chronological order. Reynolds had
25 said to him while he was in Lake Butler that day. That

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1 Reynolds had gone over... Reynolds lived at that time, across
2 the road and back down on one of the side streets from the
3 Circle K and had gone over between 9:30 and 9:45 to do his
4 laundry and he remained there for something over an hour.
5 That there came a point in time that he observed the little
6 girl with three Mexicans. He observed them leave. He
7 observed the police car pull up and he observed the police
8 bringing two individuals back to the car and put one in the car
9 although at the time, he couldn't recall which on Friday.
10 That the policeman talked to the other standing in front of
11 the car and the other left and the policeman sat and talked
12 with the little girl. The little girl got up, went out of
13 his sight. The little girl came back and was picked up in a
14 light blue automobile. Now, we have been trying to put some
15 things together in the beginning. In some of the statements
16 that we looked at, and one of the statements we had looked
17 at, we come across this business of when Investigator Hampton
18 was talking to one of the Mexicans through an interpreter,
19 he brought up a subject of a tall... well, not a tall, but a
20 skinny, long blonde straggly haired, white male, doing his
21 laundry and then it stopped and there was a little more
22 conversation about this and someone... I can't remember whether
23 it was Wagner or Hampton, that said, "Well, that is of no
24 significance", so anyway, it went away. The significance of
25 the thing that we find is this. That Reynolds worked for a

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1 man named Larry Lowe, who lives in Groveland. His wife's
2 name is Gail. We spoke to them last night after getting an
3 address and phone number. Lowe was told by Reynolds what he
4 had seen the day following the homicide and he waited a couple
5 of days to see whether law enforcement officers came around
6 and they didn't. He had told his wife. She became concerned
7 and personally went to the Groveland Police Department and
8 spoke with the Captain. He called the Sheriff's Department
9 in her presence and when he hung up, he said they had asked
10 him to keep her there while they went to interview Reynolds.

11 Reynolds was taken from his job and he was asked, accord-
12 ing to what he told later, to identify the vehicle and Lowe
13 doesn't recall the description of the vehicle. He was asked
14 to identify it. We spoke with the Captain last night and
15 he took two positions. First, he took the position he
16 didn't recall and he had plenty of other cases he had been
17 working on at the time; he had his own case load and what not;
18 he was not very much involved in this. Then at the end of the
19 conversation, that he didn't recall what he told us earlier
20 or not, he got back to he was heavily involved in this
21 investigation. Let me think what else. That's about it.

22 MR. HOGAN: Are you saying Larry Lowe had been contacted by
23 Sheriff's office, or Mr. Reynolds?

24 MR. EDMUND: Reynolds was contacted.

25 MR. HOGAN: Who are you saying interviewed Reynolds?

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1 MR. EDMUND: We don't know, but we know an interview
2 was conducted. Obviously, they were aware of him on the 15th
3 as opposed to on or about the 17th, as I put in my Motion
4 as I prepared it. It was only last night that we hooked this
5 thing up with the statement taken on May 15th referring to
6 the white man with the long, blondish straggly hair and
7 skinny, in the laundromat doing his laundry at or about this
8 time.

9 I need him here, number one. I would like whatever time
10 reasonable to determine which of the investigators or which
11 one or which group interviewed him and in addition to this,
12 Judge, this boy had told... you remember when Tom blew up over
13 my trying to sneak in on him with hearsay with Joyce Reitz?
14 That is where I was going and at some point in time, obviously,
15 the State Attorney's Office must have known that Joyce had
16 made a report or had been making a statement that Reynolds
17 had told her and Shirley Williams about seeing this girl get
18 into this blue station wagon after the policeman left.
19 Neither Joyce nor Shirley remembered him saying after the
20 policeman left. They just didn't remember that.

21 As I told you at the bench, we have even gone ... what
22 we found out from Joyce, where it involves Mrs. Reitz, an
23 automobile accident resulted in a fatality and we were even
24 going through fatal accident reports trying to find drivers
25 to run this scoop down and were unable to do so. He is from

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1 Jasper. He is a stranger around Lake County area and
2 couldn't get any leads to run him down, so here we are and
3 we think it is critical. We think it is exculpatory. I
4 know what the position is going to be, taken by law enforce-
5 ment, and that is he was referring to the mother picking the
6 girl up, but the chronological order of events he gave through
7 an interview on Friday, was the chronological order that I
8 gave you.

9 THE COURT: And we are addressing the Motion to have
10 him brought down?

11 MR. EDMUND: Well, we are addressing I think a couple
12 things. That. I want to ask the State to furnish me with
13 the names of the people who conducted the initial investigation
14 on Reynolds as soon as they find out and I am absolutely
15 certain they didn't know about it. I am absolutely certain
16 that it just got kept from them at some point in time. At
17 some point in time, about Shirley and Joyce. At some point
18 in time that was before this broke. When they learned that,
19 I don't know. I am sure, at that time, they took the
20 statements of the officers that this boy seen something
21 before the interview, but that ain't the way the kid told it.

22 THE COURT: Any objection to bringing Reynolds down?

23 MR. HOGAN: No objection to bringing him down. I
24 don't know where we are exactly or what this is all leading
25 to. I don't know how to go forward until we resolve it.

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1 MR. EDMUND: I was going to ask you when we concluded
2 today, if we can get him down here, that we recess tomorrow
3 to give everybody an opportunity to find out. You are a very
4 big man and I just have to come back at you.

5 THE COURT: We are going to do what is fair. Let me
6 read your Order real quick and just take it one step at a
7 time.

8 This tells the Department of Corrections to bring him.
9 I think we had better tell the Lake County Sheriff's Office
10 to bring him.

11 MR. EDMUND: What I was hoping was to get him here and
12 back in a day. I think that is probably no longer possible.

13 Whatever it is worth, he is less concerned about going
14 into the Lake County Jail.

15 THE COURT: He is at Lake Butler now?

16 MR. EDMUND: Yes, sir, he is on a medical. He is in
17 jail on that vehicular homicide ... I mean that vehicular
18 manslaughter, DWI, about eleven months left. He hurt himself
19 playing ball. Dislocated his shoulder and busted up his face.
20 I need to conform the copy, if Your Honor please.

21 THE COURT: The quickest way to get this done is to
22 conform all the copies and I will sign all of them and that
23 will save you some time, and hand carry these over to the
24 Sheriff's Department; who should they give them to specifically?

25 MR. HOGAN: I can take them over. I'll get it right to

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1 the Major.

2 THE COURT: And if you will make sure he understands...
3 why don't you take these to your office and conform the
4 copies, if you don't mind, Steve, and I will file the Motion
5 actually, to give you all the Orders and if you will tell the
6 Major that means today. He has got to put somebody on the
7 road right now today to bring him down. That is the other
8 Order.

9 That will get Reynolds back. We have to deal with this
10 Williams Rule situation today. You have more testimony or
11 different testimony even than that, if we should run short
12 today, don't you?

13 MR. HOGAN: The problem I have, Judge, is I don't know what
14 is coming on the Motion for Mistrial. I need to know as soon
15 as possible.

16 MR. EDMUND: We will end up with a Motion. It may be a
17 Motion to Dismiss and not a Motion for Mistrial, for
18 prosecutorial misconduct, but I don't ... I haven't prepared
19 such a Motion, but it would not be such a Motion for Mistrial.

20 THE COURT: The smartest thing to do then is to just
21 go ahead and press on. Are you going to take a statement
22 from Mr. Reynolds when we get him back here? Is that your
23 idea?

24 MR. EDMUND: I want to. Yes, sir. I assume the State
25 would want to depose him. I don't know. I want to be present

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1 and I assume they want to be present.

2 THE COURT: I think at this point we clearly have
3 reciprocal rights to be present if anybody talks to him.
4 Also, I am going to request the State to ascertain from law
5 enforcement who, if anybody, interviewed him, and give us the
6 name of the persons, all of them, who were present.
7 It seems to me that doesn't keep us from moving ahead with
8 our plans for today. We will take these proffers this
9 morning. You all have evidence one way or another this
10 afternoon for the Jury, don't you?

11 MR. HURM: We were advised last night at 8:30, that
12 Kimberly Fowler, who is one of our three Williams Rule people,
13 has extremely significant and important testimony to give
14 in that she will testify that Duckett had sex with her in the
15 car. She was the only one who actually had sex acts. She
16 is pregnant and not due until the late mid part of June.
17 I discovered that Friday before we began picking the Jury on
18 Monday, when she came in for a Pre-Trial interview.

19 She said she was having more problems. That is why we
20 made the effort to depose her and filed a Motion to
21 perpetuate her testimony by deposition. Last night, at 8:30,
22 I was called and advised that she was going into labor and
23 going to the hospital. She was at the Orlando Regional
24 Medical Center. We called and ascertained that through the
25 evening last night. This morning, as soon as they opened at

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1 8:30, the Department that does the ultrasound, I called there
2 and they have no paperwork on her at all. She is not scheduled
3 for an ultrasound or anything. We don't know whether she is
4 trying to evade coming in. She is served and so forth and
5 frankly, we cannot go forward without her testimony on the
6 Williams Rule testimony. Hers is part of the whole package
7 on which our argument is predicated, and we have not yet
8 although we are planning or preparing a Rule to Show Cause,
9 to have served on her for evading being here today.

10 MR. HOGAN: We are trying to locate her right now.

11 MR. HURM: We have people out seeing if she is at home
12 and where she is. Since this happened with Duckett, she has
13 gotten married and gotten pregnant. Her husband, understand-
14 ably, I think many of us in the same position, would not
15 look kindly on her having to come in and testify as to what
16 happened before he met and married her. I don't know if he
17 is influencing her or not, or she is doing it on her own, but
18 we are trying to track her down. Frankly, right now, we
19 don't know where she is.

20 THE COURT: Who did she call to let you know?

21 MR. HURM: Her father called Rocky Harris and told him
22 to advise us of this. First, her father said she was in
23 South Lake Memorial. They didn't have her. Then we found
24 out it was Orlando Regional, I guess, because of the premature
25 nature of labor.

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1 She was assured that she wasn't going to have to testify
2 and it would not be made public. It may have something to
3 do with that.

4 MR. HURM: We interviewed her last Friday and she was
5 told what she could expect from the stand and how we would
6 go about it and so forth.

7 THE COURT: As soon as you locate her, it seems to me
8 I think that Jack may have a better idea. Just do an
9 Instanter Subpoena and I will sign it and we will just bring
10 her here physically.

11 MR. HOGAN: We will prepare that.

12 THE COURT: Meanwhile, we can hear from the other
13 two girls at least.

14 MR. HURM: We can present or proffer the testimony.
15 We would prefer not to make argument until we hear all the
16 evidence.

17 THE COURT: That will help us to do something.

18 Let's just play with some semantics. Suppose we don't
19 find this girl this morning. We can't give you a decision
20 until I have heard all three. We would understand that, I
21 suppose. Do you have testimony you can put on for the Jury
22 this afternoon? We talked yesterday about the serologist
23 and some others?

24 MR. HOGAN: What I can do, Judge, if you will excuse
25 me to go work, I can work on lining up other witnesses.

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1 THE COURT: I would like to keep the Jury as busy as
2 we can this afternoon. If there are matters that you all can
3 put on logically.

4 How much do you think we can do?

5 MR. HOGAN: This afternoon? We can do a good amount
6 this afternoon.

7 THE COURT: Most of the afternoon, do you think?

8 MR. HOGAN: I think so.

9 THE COURT: It is most important that you talk directly
10 to Major Allen on this transport and tell him I want somebody
11 in the vehicle now. They are going to hold this whole trial
12 up, if we don't do it. They can just drive up there and get
13 him and bring him back and let me know as soon as he is
14 back here. Have the jail let me know when he has arrived, so
15 I can tell you.

16 MR. HOGAN: Can we have twenty minutes or so?

17 THE COURT: Why don't we start ... it is approximately
18 9:30. Why don't we start at ten in the courtroom proper?

19 MR. EDMUND: Thank you, Judge.

20 (WHEREUPON, WE ARE IN RECESS AT 9:35 A. M.)

21 (WHEREUPON, COURT CONVENES IN COURTROOM AT 10:08 A. M.)

22 (WHEREUPON, DEFENDANT ENTERS COURTROOM, AND IS PRESENT
23 WITH HIS COUNSEL, MR. EDMUND)

24 THE COURT: Are you prepared to proceed, gentlemen?

25 MR. HURM: Yes, Your Honor.

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1 MR. EDMUND: Yes, Your Honor.

2 THE COURT: Alright. Mr. Hurm?

3 MR. HURM: The proffer, Your Honor, the State would
4 first call Shelby Ann Dow.

5 THE COURT: Shelby Ann Dow.

6 (WHEREUPON, SHELBY ANN DOW IS CALLED AS FIRST WITNESS
7 FOR PROFFER TESTIMONY AND SHE IS DULY SWORN BY THE CLERK OF
8 THE COURT)

9 DIRECT EXAMINATION

10 BY MR. HURM:

11 Q. Good morning, Shelby. We talked about the Jury
12 is not in here at this point. You need to speak up so that
13 the Judge can hear you and we all can hear you. Okay?
14 Speak right into the microphone.

15 Tell us your name?

16 A. Shelby Dow.

17 Q. How old are you, Shelby?

18 A. Twenty.

19 Q. What is your date of birth?

20 A. October 1, 1967.

21 Q. You will be twenty-one this October?

22 A. Yes.

23 Q. Shelby, where do you live now?

24 A. In Virginia.

25 Q. Did you ever live in Mascotte, Florida?

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A. Yes.

Q. When was that?

A. We moved away last July. We lived there about a year.

Q. July of '86 to July of '87?

A. Yes.

Q. What street did you live on in Mascotte?

A. Talbott.

Q. Do you know where the Circle K store is on 50 between Talbott and Sunset?

A. Yes.

Q. How many blocks away did you live?

A. About one. We lived on the second block.

Q. Shelby, did you ever meet any police officers that worked for the Mascotte Police Department?

A. Yes.

Q. How many of them did you know by name?

A. I met about three.

Q. Did you ever meet an individual by the name of James Duckett, who was a policeman in Mascotte?

A. Yes.

Q. About when did you meet him for the first time, do you remember?

A. I think it was around Thanksgiving.

Q. Of 1986?

1 A. Yes.

2 Q. Shelby, look around the courtroom and tell me
3 if you see that person, James Duckett, in the courtroom?

4 A. He is the one over on the end.

5 Q. What is he wearing?

6 MR. EDMUND: I will stipulate.

7 A. A brown suit.

8 Q. Thank you.

9 THE COURT: The record will reflect that she has
10 identified the defendant.

11 Q. Shelby, when you first met the defendant, James
12 Duckett, tell us about that meeting?

13 A. It was about 2:30 or 3:30. I was asleep in my
14 boyfriend's sister's house and my boyfriend hadn't come in
15 and ususally he stayed next door to play cards.

16 Q. Let me stop you for a minute. Is this the first time
17 you met the defendant? Thanksgiving of 1986?

18 A. The first time I ever met him, but he said I met him
19 before that a couple days before that, a couple houses down
20 from us.

21 Q. And there was a disturbance on Thanksgiving?

22 A. Yes.

23 Q. Now, when was it that you are telling about 2:30 in
24 the morning?

25 A. This is after Christmas.

- 1221 -

1 Q. About how long after Christmas, do you recall?
2 A. Maybe a month.
3 Q. Sometime in January of '87?
4 A. January or February.
5 Q. You were asleep in your boyfriend's sister's house.
6 A. Yes.
7 Q. What is your boyfriend's name?
8 A. Rafael Lopez.
9 Q. Go ahead.
10 A. I was asleep and his brother come to the house and
11 woke me up getting something to eat.
12 Q. Who was that?
13 A. Rafael's brother.
14 Q. Rafael's brother?
15 A. Yeah. And I asked about Rafael and he said he
16 didn't know. He never stayed out that late.
17 Q. Had you all had any problems?
18 A. We had an argument, yes. I went next door. They
19 play cards there a lot and drink and everybody was asleep
20 so I, on the way back, the officer stopped me and called my
21 name.
22 Q. The officer? Are you talking about the defendant,
23 Duckett?
24 A. Yes.
25 Q. He called you by name?

- 1222 -

1 A. Yes. And I went to the car and he asked me if I
2 was looking for Rafael and I said, "Yes". He said he was
3 looking for him too, because he had just saw Jessie Gate and
4 he had been beat up and wanted to talk to Rafael about beating
5 up Jessie Gate.

6 He said he just saw Rafael and I tried to get him to tell
7 me where and finally he told me where he was and he offered
8 to take me to go look for him.

9 Q. Did he tell you who Rafael was with?

10 A. A girl named Michelle Davis, I believe.

11 Q. He said he saw Rafael with a girl?

12 A. Ahum. (Affirmative response)

13 Q. He offered to take you to where Rafael was?

14 A. Yes. And Rafael's sister went with us.

15 Q. Who is Rafael's sister?

16 A. Juanita Lopez.

17 Q. You and Juanita got into... how did you get there?

18 Did you follow him in your car?

19 A. No, he told us he would take us in the car.

20 Q. Where did you sit in the police car?

21 A. In the middle.

22 Q. In the front seat?

23 A. All of us sat in the front seat.

24 Q. You were right next to the defendant?

25 A. Yes, sir.

- 1223 -

1 Q. And then Juanita was on the other side of you?

2 A. Yes, sir.

3 Q. Where did you go?

4 A. We went to Crawford Apartments. That is where the
5 girl lives and I knocked on the door and the father answered
6 the door and said she wasn't there and so he took us home.

7 Q. Did you have any other contact with the defendant
8 that night?

9 A. Yes.

10 Q. Tell us about that?

11 A. Juanita had went into the house and I went in with
12 her.

13 Q. Do you call Juanita Poncho as well?

14 A. Yes, sir. He came back and he said he was going
15 to go look for Rafael and he came back and he told me, he
16 asked me if I wanted to go look, too.

17 Q. How much later did he come back?

18 A. About a half an hour.

19 Q. So what time of day was this?

20 A. Maybe almost four.

21 Q. In the morning?

22 A. Yes.

23 Q. When he came back, what did he ask you?

24 A. He asked me if I wanted to go and look for Rafael.
25 I said, "Yes". We went all around Mascotte and went back by

- 1224 -

1 the apartments again and went down the road called American
2 Drive, I believe, by a gas station, or a church hall, back
3 in the woods and went down by the orange groves and we went
4 through a place across from the Circle K and all through the
5 houses.

6 Q. Now, as you were driving along out of Mascotte,
7 was the defendant talking to you at all?

8 A. Yes.

9 Q. What was he telling you about?

10 A. He was asking why I was with Rafael and I shouldn't
11 be living with him and if I needed anybody to talk to, to
12 tell him.

13 Q. Did he say anything else about you and Rafael?
14 As you drove around?

15 A. Just that I shouldn't let him treat me like that.

16 Q. Did you ask him what he meant?

17 A. No.

18 Q. What he was talking about, Rafael treating you that
19 way?

20 A. No.

21 Q. Now, you said you drove by the church hall and
22 across from the Circle K and down by the apartments again?

23 A. And down by Herman's. It is like a tire place where
24 they fix tires and stuff.

25 Q. Where is that? In relationship to the Circle K?

- 1225 -

1 Is that toward Groveland or towards Brooksville?

2 A. No, it is past... it is on the way to Tarrytown, I
3 believe. It is in the direction of Tarrytown.

4 Q. That would be West?

5 A. Ahum. (Affirmative response)

6 Q. Did you ... was all the driving done within the
7 city limits of Mascotte or did you ever go outside the city?

8 A. I don't think we went outside. Herman's isn't out
9 of the limits, I don't think.

10 Q. Tell us what happened next?

11 A. Then we rode around Mascotte again and he went to
12 take me home and then we stopped in front of the street...
13 in front of Talbott, the one that goes to the Talbott and we
14 were talking and when we were riding around he started rubbing
15 my shoulder and kept telling me he liked little girls.

16 Q. He liked little girls?

17 A. Small, petite girls.

18 Q. Small, petite girls?

19 A. Ahum. (Affirmative response)

20 Q. What did you say? What was your response as he was
21 rubbing your shoulder and telling you this?

22 A. I was nervous.

23 Q. Where were you sitting when this was going on?

24 A. By the door.

25 Q. Did he do anything else or say anything else?

- 1226 -

1 A. No, he was just telling me if I needed somebody to
2 talk to that I could talk to him, and he told me he wasn't
3 married and that he would like to see me and stuff.

4 Q. What did you take that to mean? Did he say anything
5 more about what he meant, that he wanted to see you?

6 A. He wasn't really rude, you know, being very forward.

7 Q. Did he ever try to do anything else?

8 A. He tried to kiss me before I got out of the car.

9 Q. Where did he try to kiss you?

10 A. My mouth.

11 Q. What did you do when he tried to kiss you?

12 A. I turned away and got back out of the car.

13 Q. How many times did he try to kiss you?

14 A. Once.

15 Q. What did you tell him when he asked if you would
16 start seeing him?

17 A. I just said I liked Rafael.

18 Q. When you went in the house, what did he do?

19 A. He left.

20 Q. Did you ever see him again that day?

21 A. No, he said he was getting off duty.

22 Q. Did he come back by your house at all after he
23 dropped you off?

24 A. I think he came by one more time.

25 Q. Did you go out?

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A. No.

Q. Shelby, did you ever give him any indication that you wanted him to kiss you or rub your shoulder?

A. No.

Q. Were you ever asked by anyone whether you wanted to press charges against him for this?

A. Officer Cooper.

Q. Tell us about that?

A. I had gone away and just got back and I was doing my laundry...

Q. How long after this happened?

A. Almost a month.

Q. A month later? Probably February or March of 1987?

A. Yes. It was after February, I think after March.

Q. April?

A. It was April. Beginning of April.

Q. Alright.

A. I was doing my laundry and Rafael had gone to the store.

Q. Where did you to your wash?

A. At the Mascotte laundromat.

Q. Next door to the Circle K?

A. Yes. And he had gone to get some cigarettes and on the way back, Cooper stopped him and was telling Rafael an officer was bragging that he made a pass at somebody's

1 wife and he was telling Rafael what had happened and then
2 Rafael called me out to the car and made me tell Officer
3 Cooper what happened.

4 Q. You told Rafael what the defendant had done?

5 A. No.

6 Q. You hadn't told him?

7 A. No. Then Officer Cooper gave me this piece of paper
8 to write down everything that happened and he told me to
9 mail it in. I never mailed it in. I had left the area.

10 Q. That is when you left town?

11 A. No, I had gone to visit my Mom in Virginia for a
12 couple weeks and then I came back.

13 Q. You said Cooper told you the defendant had bragged
14 that he had made a pass at you?

15 A. That is what he told Rafael.

16 Q. Thank you, Shelby. Nothing further.

17 CROSS EXAMINATION

18 BY MR. EDMUND:

19 Q. Ms. Dow, my name is Jack Edmund. When you asked
20 him to take you home, he took you home, did he not?

21 A. Yes.

22 Q. And he took you home, headed home just as soon as
23 you asked him to take you home, didn't he?

24 A. Yes.

25 Q. And whatever overtures he made to you were made in

- 1229 -

1 front of your apartment, were they not?

2 A. Yes.

3 Q. And when you talked to the officers during your
4 initial interview on December 5th, of '87, you didn't
5 indicate to them that he had said anything to you about being
6 married, did you?

7 MR. HURM: Objection, Your Honor. That is impeachment
8 by absence of prior statement.

9 MR. EDMUND: I think that is true if we have a Jury here,
10 but I think you are making a decision on the Williams Rule
11 at this time ...

12 MR. HURM: And I have to make my objection for the
13 record.

14 THE COURT: Alright. I will overrule it at this time,
15 so I can hear the testimony.

16 Q. You didn't have anything to say... you didn't say
17 anything to the officers about him saying or telling you that
18 he was not married, did you?

19 A. No, not until I talked to them later on.

20 Q. But during the initial statement, you didn't say
21 anything about that?

22 A. No.

23 Q. Now, at no point in time did he ever use vulgarity,
24 did he?

25 A. No.

- 1230 -

1 Q. And he offered to go into the house with you when you
2 got home in case Rafael might want to beat you up or something,
3 didn't he?

4 A. Yes.

5 Q. Did you tell the officers that you didn't want to
6 file a complaint, that you didn't think it was any big deal?

7 A. I don't remember saying that.

8 Q. Ma'am?

9 A. I don't remember.

10 Q. Is that the reason that you didn't file a complaint?
11 That you didn't think it was any big deal?

12 A. No. I had gone away and disregarded it.

13 I had gone away and I just forgot about it.

14 Q. You had gone away and forgot about it at that time?

15 A. Yes.

16 Q. Now, do you recall the officers on the 5th of
17 December, 1987, they were talking about the route that you
18 had taken. Do you recall in answer to a prompting question
19 by the officer, do you recall saying this: On page five,
20 last paragraph. In between the gas station and the car
21 lot and then you talk about where you were going and things
22 like that and then you got over on the top of the next page,
23 Mr. Hurm... Rafael came home and told me that Cooper had told
24 him that Duckett was bragging that he had made a pass at
25 somebody's girlfriend and Cooper asked me if I wanted to press

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1 charges and I told him no, because I didn't think it was that
2 big of a deal. Do you recall making that statement to the
3 officers?

4 A. Yes.

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

6 RE-DIRECT EXAMINATION

7 BY MR. HURM:

8 Q. Shelby, how tall are you?

9 A. 5'1", I think.

10 Q. How much do you weigh?

11 A. I am not sure. I just had a baby.

12 Q. Approximately?

13 A. Now, I weigh about 125.

14 Q. How much did you weigh when this happened?

15 A. I was ninety-two before that.

16 Q. I am sorry?

17 A. Ninety-two.

18 Q. Ninety-two and 5'1"?

19 A. Yes.

20 Q. Nothing further.

21 THE COURT: Mr. Edmund, anything further?

22 MR. EDMUND: Nothing further, Your Honor.

23 THE COURT: Will you all entertain my questioning this
24 witness since we don't have a Jury here briefly?

25 MR. HURM: Certainly.

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1 MR. EDMUND: No objection.

2 EXAMINATION

3 BY THE COURT:

4 Q. Ma'am, during the course of this evening, you
5 have testified about, was Officer Duckett in uniform?

6 A. Yes.

7 Q. In his full Mascotte police uniform?

8 A. Yes, he was on duty.

9 Q. And he was in a marked Mascotte police car?

10 A. Yes.

11 Q. One that you would recognize by the blue lights and
12 the seal on the side?

13 A. Yes.

14 Q. That is all I have, gentlemen. If that creates
15 any more questions from either one of you, you are welcome.

16 MR. HURM: No questions.

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

18 THE COURT: Alright, you are free to step down, ma'am.
19 You will have to be under subpoena with us and stay with us
20 outside, please.

21 MR. HURM: The State's next witness, Your Honor, is
22 Linda Upshaw.

23 THE COURT: Upshaw. Linda Upshaw.

24 (WHEREUPON, LINDA UPSHAW IS CALLED AS NEXT WITNESS BY
25 THE STATE FOR PROFFER OF TESTIMONY AND SHE IS DULY SWORN BY

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1 THE CLERK OF THE COURT)

2 DIRECT EXAMINATION

3 BY MR. HURM:

4 Q. Good morning, Linda. We talked about no Jury here,
5 but the Judge needs to hear your testimony and the lawyers
6 need to hear, so speak up right into the microphone.

7 Would you tell us your name?

8 A. Linda Upshaw.

9 Q. Are you nervous?

10 A. Yes.

11 Q. Where do you live? Just the town?

12 A. Leesburg.

13 Q. Linda, how old are you?

14 A. Eighteen.

15 Q. What is your birthday?

16 A. 6/3/69.

17 Q. June 3rd? You will be nineteen next month?

18 A. Yes.

19 Q. Did y ou ever live down in the Mascotte- Groveland
20 area?

21 A. Yes, sir.

22 Q. When did you live there?

23 A. 1987.

24 Q. How much of 1987?

25 A. Until November.

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1 Q. And when did you move there?
2 A. In 1984.
3 Q. You were there about three years?
4 A. Ahum. (Affirmative response)
5 Q. What street did you live on in Mascotte?
6 A. In 1987, I was on Mohawk.
7 Q. Mohawk? Is that near the Circle K on Highway 50?
8 A. Yes, sir.
9 Q. How far from the Circle K?
10 A. Probably a five minute walk.
11 Q. How many blocks?
12 A. Not even a block.
13 Q. Linda, did you, while you lived in Mascotte, ever
14 come to know any of the policemen who worked down there?
15 A. Yes, sir.
16 Q. How many did you meet and know by name?
17 A. Two.
18 Q. Who were they?
19 A. Duckett and Cooper.
20 Q. I want you to look around the courtroom and tell me
21 if you see Officer Duckett in the courtroom?
22 MR. EDMUND: I will stipulate she will identify him.
23 THE COURT: Alright, the record will reflect the witness
24 has identified the defendant.
25 Q. Linda, when did you first meet the defendant, Duckett?

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1 A. May 1st.
2 Q. That was the first time you met him?
3 A. Yes, sir.
4 Q. Of 1987?
5 A. Yes, sir.
6 Q. What day of the week was that, do you remember?
7 A. On a Friday.
8 Q. Was that Friday, about what time?
9 A. One o'clock in the morning.
10 Q. Thursday night, one o'clock in the morning, or
11 Friday night one o'clock in the morning? Actually a Saturday,
12 May 2nd?
13 A. Yes, sir.
14 Q. Now, where were you when you met the defendant at
15 one o'clock in the morning?
16 A. In front of Johnny Steffels.
17 Q. Where is Johnny Steffels?
18 A. On the side of Highway 50.
19 Q. What kind of business is that?
20 A. It is used cars.
21 Q. Where is that in relationship to the Circle K?
22 Is it towards Groveland?
23 A. Towards Groveland.
24 Q. Is it between the Circle K and Groveland?
25 A. Yes, sir.

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1 Q. What were you doing at one o'clock in the morning
2 in front of John Steffell's?
3 A. I was walking and thinking.
4 Q. What were you thinking about?
5 A. Just problems.
6 Q. You had some personal problems?
7 A. Yes, sir.
8 Q. Had you been crying?
9 A. Yes, sir.
10 Q. Were you crying as you walked when the defendant
11 came up?
12 A. Yes, sir.
13 Q. Now, when he came up, what kind of car was he in?
14 A. He was in his police car.
15 Q. How did you recognize it as a police car?
16 A. Because it was brown with lights on top.
17 Q. It looked like the other Mascotte police cars you
18 have seen?
19 A. Yes, sir.
20 Q. How was he dressed?
21 A. He was in uniform.
22 Q. Police uniform?
23 A. Yes, sir.
24 Q. Was there anybody in the car with him?
25 A. No, sir.

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1 Q. When he came up to you, what did he say?
2 A. He said, "What are you doing out on the road?".
3 Q. What did you tell him?
4 A. I told him I was thinking.
5 Q. Did he ask you what your name was?
6 A. No, sir.
7 Q. Pardon me?
8 A. No. He just asked my age.
9 Q. Did he ask how old you were?
10 A. Yes.
11 Q. Did you tell him?
12 A. Yes.
13 Q. At that time, how old were you?
14 A. Seventeen.
15 Q. Did he say anything to you about a curfew?
16 A. No.
17 Q. Did he tell you to go home, that it was past curfew?
18 A. No. He told me to get in the car and he would
19 ride me around and talk about it. It would make me feel
20 better.
21 Q. You would ride around and talk about what?
22 A. What was bothering me.
23 Q. And he said that would make you feel better?
24 A. Yes.
25 Q. Did he tell you you were under arrest?

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A. No.

Q. Did he tell you that he wanted to ask you any questions about a case he was working on?

A. No, sir.

Q. Did you get in the car?

A. Yes.

Q. Did you have any hesitation about getting in the car?

A. When he first told me to, I said I didn't want to bother. I just wanted to keep on walking. And after he told me the second time, I got in the car. I felt like I could talk to him, because he was a police officer.

Q. Where did you go?

A. We went behind the Circle K and down the block where the houses are. And then he told me he had to check on Steffle's house, which was just being built and he went up to the yard and he pulled in and he shined his light directly on the house.

Q. So with you in the car, he drove up to the house that he wanted to do a police check on?

A. Ahum. (Affirmative response)

Q. Had you ever been to that house before?

A. I have went by it.

Q. Did he tell you he wanted you with him, because you might have some information about anything regarding that

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house?

A. No, sir.

Q. After he checked the house, where did you all go?

A. We went... we backed out and he didn't head back towards town.

Q. Where is Huey Steffell's house from Highway 50? Is it North of Highway 50 from Leesburg or South?

A. Towards Leesburg.

Q. So you went North to Highway 50 to Huey Steffell's house and when he pulled out, what direction did he go?

A. He went towards 33.

Q. Towards Highway 33? Where does 33 go to?

A. Where does it go? Towards Leesburg or back into town.

Q. Which way did he turn when he got out on 33?

A. He went to the left.

Q. Which is in which direction? Towards town or towards Leesburg?

A. Towards Leesburg.

Q. How far did you go on Highway 33?

A. We went down a couple roads and then went back onto the main road and it was I can't... I am almost positive the first road to your left... the first dirt road left.

Q. Off 33?

A. Off 33.

1 Q. Now, was that in the city of Mascotte or outside
2 the city of Mascotte?

3 A. Outside.

4 Q. How do you know?

5 A. Because as we were leaving, we had already passed
6 the city limits sign before we got to Huey Steffell's.

7 Q. Huey Steffell's house was built outside the city of
8 Mascotte?

9 A. Right outside.

10 Q. And you passed the city limits sign and then you
11 didn't go back to town after you left Huey's?

12 A. Right.

13 Q. Now, Linda, do you think you could recognize Highway
14 33 on a map?

15 A. Most likely.

16 Q. Why don't you step down with the Court's permission
17 and come over with me to this big aerial. It is not a map.
18 It is a photograph.

19 Linda, this has been marked as the Circle K Store on
20 Highway 50 and this is the Mascotte Police Department.
21 Knowing those two points, can you tell us where Highway 33
22 is? This is towards Groveland and this is towards Brooksville.

23 A. This is the Circle K?

24 Q. Yes, this is the Circle K. This is the Police
25 Department and this is the Jiffy Store. You would have lived

- 1241 -

1 here on Mohawk. This is where 50 makes that big curve
2 around the corner. This is 33?

3 A. Ahum. (Affirmative response)

4 Q. As you were on 33, you said you went outside the
5 city limits. The city limits ... you went outside the city
6 limits to Huey Steffel's house. Can you point to us
7 approximately where you turned off 33?

8 A. It was a long road.

9 Q. Well, you said you went outside the city limits to
10 Huey's house and that would have been out here, and when you
11 came back out to 33, you turned left and went toward Leesburg?

12 A. Ahum. (Affirmative response)

13 Q. You would have gone this way?

14 A. We would have gone up towards Leesburg.

15 Q. You went on up 33 this way?

16 A. Ahum. (Affirmative response)

17 Q. Would the record reflect she is indicating North
18 of the city limits on Highway 33, and 33 is marked on the map
19 here.

20 THE COURT: Yes, sir.

21 Q. You can go ahead and have a seat.

22 (WHEREUPON, WITNESS RESUMES WITNESS STAND)

23 Q. Linda, you said you turned onto a dirt road off 33.
24 What did it lead to?

25 A. Well, we went past a dump and then there was a big old

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1 ... I guess a water...

2 Q. A water tower?

3 A. Yes.

4 Q. And then what kind of area was it? Were there
5 houses around or businesses?

6 A. There was houses when we first went into the road,
7 there was houses by there, and then we went all the way down
8 to the end and there was a house at the very end of it,
9 and we turned around and went back and where we ended up was
10 we were going around a curve and there was a little road and
11 a canal and I remember parking right beside an oak tree.

12 Q. Were there any orange trees around there?

13 A. Not in the specific area that we were at.

14 Q. Do you remember passing an old grove of any kind?

15 A. During the ride, yes.

16 Q. Now, Linda, was anybody around when you were parked
17 under those trees?

18 A. No, sir.

19 Q. What was the lighting like? Was there any light?

20 A. It was very dark.

21 Q. Any street lights you could see?

22 A. No, sir.

23 Q. Were there any houses in view from where you stopped?

24 A. No, sir.

25 Q. Where were you sitting in the police car?

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1 A. I was sitting on the passenger side up front.

2 Q. How were you feeling when you stopped under the
3 trees?

4 A. I was very scared.

5 Q. What did he do? What did he say to you?

6 A. He told me to scoot over and so I scooted over next
7 to him.

8 Q. Why did you scoot over next to him?

9 A. Why? Because I was scared and I didn't want to do
10 anything to make him mad. He put his arm around me and he put
11 his hand on my breast and tried to kiss me and when he tried
12 to kiss me, I just turned my face and before we ever... before
13 I scooted over, I told him I had to go to the bathroom and then
14 why he was trying to kiss on me and everything, I kept telling
15 him I had to go to the bathroom.

16 Q. Did you have to go to the bathroom?

17 A. No.

18 Q. Why did you tell him you did?

19 A. It was an excuse to leave.

20 Q. Now, did he ever say anything to you about whether or
21 not he was married?

22 A. He said he was not married.

23 Q. What else did he say to you as he was kissing you?

24 A. Nothing really.

25 Q. Were you calm or did you start to cry or how were

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1 your emotions?

2 A. I was very upset.

3 Q. Were you crying?

4 A. Ahum. (Affirmative response)

5 Q. Did you keep telling him you had to go to the
6 bathroom?

7 A. Yes.

8 Q. Tell us, you said he touched your breasts. With which
9 hand, do you recall?

10 A. His right.

11 Q. Did he ever go under your clothes?

12 A. No, sir.

13 Q. Did he touch both breasts?

14 A. No.

15 Q. How long did this last? Him touching your breast
16 and kissing you?

17 A. Five or ten minutes.

18 Q. What did... what then happened?

19 A. Well, after I asked him a couple times to go to the
20 bathroom, he said, "Well, wait a minute", and then I asked the
21 last time and he said, "We will leave in just a few seconds"
22 and he waited two or three minutes and by that time, I was
23 already back in my side of the car.

24 Q. He just sat there not touching you?

25 A. Right.

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1 Q. What was he doing?

2 A. I don't know. I was looking out the window. And
3 then he left after two or three minutes.

4 Q. How did he seem? Emotionwise, when he started
5 up the car and left? Did he talk to you on the way back to
6 town?

7 A. No, he didn't say a word.

8 Q. Did he smile at you or wink at you or anything like
9 that?

10 A. I wasn't looking at him.

11 Q. Where did you go?

12 A. Into the new Jiffy.

13 Q. Is that the one next to the police department?

14 A. Yes, sir.

15 Q. That you pointed out on the map?

16 A. Ahum. (Affirmative response)

17 Q. When you got there, did you ask him to go there?

18 A. I asked to go there.

19 Q. Why did you ask to go to the Jiffy?

20 A. Because I knew my friends would be there. That was
21 the hang out.

22 Q. What friends?

23 A. Peggy and Linda and Tina.

24 Q. Peggy Kahle? Tina Holbrooks?

25 A. Yes, sir.

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1 Q. When you got to the Jiffy, what did you do?

2 A. I went inside. Before I went inside, he asked me
3 would I go riding around with him some more and I told him,
4 "Yes". I was still scared. I wasn't in with my friends.

5 Q. Did you have any intentions of riding around with him
6 again?

7 A. No, sir. I got in there and my girlfriends was
8 towards the door nad he walked in behind us and whenever I
9 was going to the bathroom, he went to either the coffee and
10 I called my girlfriends in there and I told them I wanted to
11 go home with them.

12 Q. You called them into the bathroom?

13 A. I told them I wanted to go home with them, that I
14 didn't want Jim to take me back to my home.

15 Q. Jim meaning the defendant, Duckett?

16 A. Yes.

17 Q. Were you still upset when you got to the Jiffy
18 Store?

19 A. Yes, sir.

20 Q. Did you ever encourage him in any way to touch your
21 breasts or try to kiss you?

22 A. No, sir.

23 Q. Did you ever tell him you thought he was cute or
24 lead him on in any way?

25 A. No, sir.

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1 Q. Did you ever see him again after that?

2 A. I seen him one time town the road.

3 Q. Did you ever ride with him again?

4 A. No, sir.

5 Q. Thank you.

6 CROSS EXAMINATION

7 BY MR. EDMUND:

8 Ms. Upshaw, my name is Jack Edmund. Ms. Upshaw, are you
9 certain that this was a Friday night?

10 A. Yes, sir.

11 Q. Is there any question in your mind that this was a
12 Friday night?

13 A. No, sir.

14 Q. Are you aware that Mr. Duckett's days of work were
15 Monday, Tuesday, Wednesday and Thursday and that he didn't work
16 Friday, Saturday or Sunday?

17 A. Well, I know it was him.

18 Q. Are you certain that the Steffel's house was outside
19 the city limits?

20 A. Right outside the sign.

21 Q. Right outside the sign? Well, isn't it correct that
22 Steffel's house is off of 33 and sits there in this old dead
23 grove, and that is the Steffel's house right there?

24 A. There is a sign that says, "Mascotte City Limits"
25 and it is a brick house right past that.

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1 Q. Is it in that old dead grove there at this point here
2 ma'am? It is a large house, is it not?

3 A. It is a large house.

4 Q. And it is just off the paved road, is it not?

5 A. Yes.

6 Q. And if these lines are correct and if this is that
7 house, then it was not outside... the house was not outside
8 the city limits, is it?

9 MR. HURM: Objection, Your Honor. Assuming facts not in
10 evidence. She said it was outside the city limits.

11 THE COURT: I think I will sustain that.

12 Q. You say that the house is just outside the city
13 limits sign?

14 A. Yes, sir.

15 Q. Alright, then, will you come back to this State's
16 Exhibit #61, if it please the Court. Would you come back over
17 here please, ma'am?

18 The State Attorney has said to you, ma'am, that this is
19 the city limits of the City of Mascotte. Now, is there any
20 house at all on that paved road there?

21 A. I am going by the sign on the side of the road.

22 Q. So it could have been this one as any other?

23 A. There is a sign right out here that says, "Mascotte
24 City Limits" and that is where the house is.

25 Q. Okay, so this is the house?

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1 A. Yes, sir.

2 Q. Thank you, ma'am.

3 Would Your Honor take judicial notice that she has
4 identified a point within the outlines of what was stipulated
5 as the city limits of the City of Mascotte, for whatever
6 reason.

7 MR. HURM: I have no objection.

8 Q. Ms. Upshaw, were you under the care of a psychiatrist
9 at that time?

10 A. Yes, sir.

11 Q. How long had you been under the care of a
12 psychiatrist?

13 A. I went two or three times.

14 Q. Ma'am?

15 A. I only went two or three times.

16 Q. Now, this was about one o'clock in the morning,
17 wasn't it?

18 A. Yes, sir.

19 Q. And you were walking down the street and you were
20 crying, weren't you?

21 A. Yes.

22 Q. And you had had some scrap with a friend?

23 A. Yes, sir.

24 Q. And Mr. Duckett stopped. He never got out of the car,
25 did he?

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1 A. No.

2 Q. You walked up to the window and talked to him, is
3 that right?

4 A. I was walking down the street and he parked up there
5 at Huey Steffel's and he waited until I walked up to the window.
6 There was no way to avoid the car without getting into the
7 street.

8 Q. You stopped and talked with him?

9 A. Yes, he asked me what was the matter.

10 Q. He didn't drive along the side of you while you were
11 walking? You stopped and talked to him at the car, did you
12 not?

13 A. Yes, I did.

14 Q. And you all rode for maybe ten to fifteen minutes
15 in all, did you not?

16 A. Before he went out on 33.

17 Q. And once you stopped, you were not out there any
18 longer than five minutes, were you?

19 A. After we stopped?

20 Q. Yes, ma'am?

21 A. It was about two or three minutes before he even
22 left...

23 Q. Ma'am? I didn't hear you.

24 A. We were out there until about ten or fifteen
25 minutes.

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1 Q. After you parked?

2 A. After we were parked.

3 Q. Alright, ma'am, now when did you report this matter
4 to the police?

5 A. I really don't know, sir.

6 Q. Was it before or after the homicide of the little
7 girl?

8 A. It was after.

9 Q. It was after the homicide of the little girl when
10 Duckett's name was being talked all over town, wasn't it?

11 A. I don't really know. I wasn't staying in town very
12 often. I was staying with my mom.

13 Q. You didn't say to the officers that Duckett's name
14 was being used all over town by that time, ma'am?

15 A. I did say that.

16 Q. You did say that. So when you made the statement to
17 these officers, you had already heard Duckett's name being
18 bantered around town as a suspect in the homicide case, had
19 you not?

20 A. Yes.

21 Q. Now, you also said that you didn't have to go to the
22 bathroom, is that correct?

23 A. Right.

24 Q. You did, in fact, have to go to the bathroom and you
25 told the officers you had to go to the bathroom, didn't you?

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1 A. I went to the bathroom to call my friends in there.
2 I wanted to talk to them, because whenever he was present...

3 Q. On page eight, sir. Do you remember saying this to
4 the officers, "As soon as we parked, I started telling him
5 that I wanted to go to the bathroom, because I really had to
6 go."

7 A. Yes.

8 Q. You really had to go to the bathroom or you really
9 had to go what?

10 A. I really had to go.

11 Q. To the bathroom?

12 A. I had to leave.

13 Q. I see. Alright. You didn't mean you needed to go to
14 the bathroom, when you said you really had to go? Now, do
15 you also recall further down saying, "So after about five
16 minutes of pleading with him to take me to the bathroom, and
17 when he was trying to kiss me all over, he left and he took
18 me to the bathroom and then I left with my girlfriends."

19 A. Right.

20 Q. Now, you gave this statement, didn't you, back in
21 June of 1987, on June 25th of 1987? Your recollection of
22 the times would be more exact then than they would be now
23 as to how long you all were out there, isn't that correct?

24 A. I guess so, yes, sir.

25 Q. And you did tell the officers you all were out there

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1 about five minutes and then you left. Now, was he ever vulgar
2 with you in the sense of using vulgar language?

3 A. No, sir.

4 Q. Did he ever push the issue when, for example,
5 he asked you what is the matter and you just told him you had
6 to go to the bathroom and he didn't push the issue any more
7 after that, did he?

8 A. No, sir.

9 Q. Thank you, Your Honor.

10 RE-DIRECT EXAMINATION

11 BY MR. HURM:

12 Q. Ms. Upshaw, let me show you a copy of the statement
13 you gave to the police officers. Have you seen this since
14 it was done?

15 A. No.

16 Q. I would like you to read, if you would, right there,
17 "And so..." and read down to your answer right there.

18 THE COURT: What page?

19 MR. HURM: Also on page eight.

20 MR. EDMUND: Are you back on page eight?

21 MR. HURM: Yes, sir.

22 THE COURT: You want her to read that out loud or to
23 herself?

24 MR. HURM: Yes. Begin at "And so...".

25 A. Right here?

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1 Q. Yes.

2 A. "And so after about five minutes of pleading with
3 him to take me to the bathroom and trying to kiss all over
4 me, he took me and left. He took me to the bathroom and then
5 left me with my girlfriends."

6 Q. And the next question?

7 A. Okay. "Let me, now I get to ask my question."

8 Q. And you said?

9 A. Okay.

10 Q. And the question was?

11 A. Now, when you first parked underneath the tree, you
12 were upset and crying and he was trying to talk to you and
13 he was trying to talk to you prior to him putting his hands
14 on you. About how much time went by before he started the
15 physical things? Can you... I mean, don't you know as best
16 you can, whatever the time was ... was it five minutes or ten
17 minutes that he talked to you or what? Ten minutes at the
18 most."

19 Q. The next question?

20 A. "Okay, so this was before anything started?"

21 "Yes".

22 Q. so then you told the officers on this date that you
23 were out there for ten minutes before anything physical
24 started?

25 A. Yes, sir.

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1 Q. And then the physical contact was about five minutes?

2 A. Yes, sir.

3 Q. Total of fifteen minutes?

4 A. Yes, sir.

5 Q. Nothing further.

6 THE COURT: Mr. Edmund?

7 RE-CROSS EXAMINATION

8 BY MR. EDMUND:

9 Q. You told the officers that after they asked you
10 that, didn't you, ma'am?

11 A. Sir?

12 Q. The officers were prompting you, weren't they?

13 MR. HURM: Objection, Your Honor, to that characterization.
14 The Court heard they said, "Was it five minutes or ten minutes
15 or what?", and then she said, "Ten minutes at the most".

16 MR. EDMUND: No further questions, sir.

17 THE COURT: Anything else, sir?

18 MR. HURM: No, sir.

19 THE COURT: You are free to step down, Ms. Upshaw. You
20 have to stay with us under subpoena, ma'am.

21 Can you all approach the bench for a second, please,
22 gents?

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

24 THE COURT: We are looking for Kimberly Fowler Ruetz.

25 MR. HURM: The last name now is R U E T Z. Ruetz.

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1 Her married name.

2 We have got a number of people trying to locate her.

3 THE COURT: Do you have any word on that situation?

4 MR. HURM: The only word was that she definitely was not
5 lined up at the hospital and we called and spoke with either
6 her husband or father, or father-in-law, and they said that
7 she was on her way to a doctor in Orlando, but he had no
8 idea what the guy's name was, where his office was, or anything
9 like that, so we are still trying to track that down. When I
10 came over to begin Court.

11 THE COURT: Were you able to speak with Major Allen
12 about that?

13 MR. HURM: Yes, sir, they had somebody within ten minutes
14 of my giving him the Order to have somebody on the road.

15 THE COURT: Alright. And they will let us know once
16 they have him?

17 MR. HURM: I told him to call you and me both as soon as
18 they do.

19 MR. EDMUND: Will you call me?

20 MR. HURM: Yes, sir.

21 THE COURT: I don't know that we can do anything else
22 this morning. We just blow it. You will have an afternoon
23 of evidence, I suppose.

24 MR. HURM: Yes, sir, Tom seems confident that we can fill
25 out the afternoon.

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1 THE COURT: What I think we need to do is late this
2 afternoon, we need to get this Reynolds back here by mid
3 afternoon...

4 MR. HURM: We think so.

5 THE COURT: Do you think, Bob, we can go ahead and
6 start taking the statement while we are working in here?
7 Can you bring somebody to cover as well and maybe by late
8 afternoon, we would be able to talk about where that leaves
9 us visa vis Reynolds and the trial.

10 MR. HURM: Yes, sir.

11 THE COURT: Let's take our recess and come back at
12 one o'clock.

13 (WHEREUPON, BENCH CONFERENCE ENDS)

14 THE COURT: Ladies and gentlemen, we have nothing
15 further for the Court's attention this morning. We are going
16 to be in recess until one o'clock.

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

18 (WHEREUPON, COURT IS IN RECESS AT 10:56 A. M.)

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

20 (WHEREUPON, DEFENDANT ENTERS COURTROOM TO BE WITH
21 COUNSEL, MR. EDMUND AT 1:11 P. M.)

22 THE COURT: Anything before we bring the Jury back,
23 gentlemen?

24 MR. HOGAN: No, sir.

25 MR. EDMUND: No, Your Honor.

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1 THE COURT: Please, Mr. Bailiff.

2 (WHEREUPON, JURY ENTERS COURTROOM AT 1:12 P. M.)

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

4 Can you all assure us you have abided by our admonitions?

5 JURORS: Yes, sir.

6 THE COURT: Thank you very much.

7 MR. HOGAN: Margaret Tabor.

8 THE COURT: Ladies and gentlemen, while we are waiting
9 for the witness, let me tell you that when the trial is
10 completely concluded and all your business is done, actually,
11 I make it a point to come back and personally thank you for
12 your service. You all will receive double thanks before this
13 is over, I am sure. At that time, and not until that time,
14 I will be able to explain to you why we had some of these
15 delays and recesses that we have had. I am just going to have
16 to ask you to trust us and believe that we are working on the
17 situation and it wouldn't be appropriate for me to go into
18 all of that at this time, but I will have an opportunity to
19 talk to you about the procedural aspects of the case.
20 Naturally, we couldn't discuss the merits of the case, but just
21 why we did what we did.

22 (WHEREUPON, MARGARET TABOR IS CALLED AS NEXT WITNESS FOR
23 THE STATE AND IS DULY SWORN BY THE CLERK OF THE COURT)

24 DIRECT EXAMINATION

25 BY MR. HOGAN:

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1 Q. Please state your name for the record?

2 A. My full name is Margaret Carla Tabor.

3 Q. How are you employed?

4 A. I work as a Forensic Serologist at Orlando Regional
5 Crime Laborator, part of the Florida Department of Law Enforce-
6 ment.

7 Q. How long have you been so employed?

8 A. I have been with the Florida Department of Law
9 Enforcement since 1981. In 1984, I began training as a
10 Forensic Serologist and my training in Tallahassee and came
11 back down here in 1986 and have been working ever since.

12 Q. What kind of educational background did you have
13 with regard to serology?

14 A. I have a four year degree at the University of
15 Florida and two years in Medical Laboratory Technology from
16 Valencia Community College in Orlando, and I also trained in
17 Tallahassee Regional Crime Laboratory working in serology.

18 Q. What is serology?

19 A. A serologist... what I do on my job, is I examine
20 various items submitted to the laboratory to see if I can
21 detect or perhaps determine the presence of any stains of
22 body fluid such as blood, semen, things of that nature
23 and if I determine that this is present, I further attempt
24 to examine those stains by attempting to determine what body
25 fluids.

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1 MR. EDMUND: I would stipulate, Mr. Hogan.

2 THE COURT: Do you move for her as an expert, Mr. Hogan?

3 MR. HOGAN: I submit Ms. Tabor as an expert in Forensic
4 Serology.

5 THE COURT: Ms. Tabor will be accepted by the Court as an
6 expert in that field, with no objection from the Defense,
7 and is entitled to give her opinions within her field.

8 Q. Ms. Tabor, just a moment ago, you said sometimes you
9 attempt to further classify stains. For example, I believe
10 you were saying that once you determine a stain to be a blood
11 stain, you attempt to further classify that.

12 A. Yes, we will try to determine if we can tell what
13 blood group it is, A, B, or whatever, and not only for the
14 blood group, but also for several different enzymes, and so
15 we attempt to perform further grouping tests on these blood
16 stains.

17 Q. Are you always successful in doing a further
18 analysis on the stains once you have identified them?

19 A. No, sir, not always.

20 Q. Why are you sometimes not always able to do that?

21 A. Well, say you get something submitted to the lab,
22 like a blood stained shirt, we will examine it to determine
23 if blood is present and then run a test to determine whether
24 it is human blood and sometimes that comes and sometimes it
25 doesn't, because of environmental conditions that can affect

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1 the stains and sometimes if we can determine like through further
2 tests, like an enzyme, but sometimes it doesn't work.

3 Q. Sometimes you may be able to identify a stain as
4 being blood, but you can't go any further with it?

5 A. Right.

6 Q. Calling your attention to the murder of Teresa McAbee,
7 which occurred in Lake County, Florida, on May 11, 1987, have
8 you had occasion to work on that case?

9 A. Yes, sir.

10 Q. Did you work on that case with regard to serology?

11 A. Yes, sir.

12 Q. I show you what has been entered into evidence as
13 State's Exhibit 3 and State's Exhibit 4 and ask you if you
14 would look in these two packages and tell me if you recognize
15 these two articles of clothing? This is Exhibit 3.

16 A. Yes, sir, I do.

17 Q. And those articles of clothing were given to you as
18 having come from Teresa McAbee?

19 A. They were represented to me as being from her.

20 Q. What type of tests did you perform on those two
21 articles of clothing?

22 A. I examined both of the garments for the presence of
23 blood and semen.

24 Q. How did you go about doing that?

25 A. Well, just general. Basically what I do when I first

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1 get an article of clothing for blood, semen, or whatever, I
2 take and I look at it and now I look to see if there are any
3 stained areas that might make me believe it might be blood or
4 semen stains and also in case of semen, I also feel where I
5 might not see it as easily, and if I do find like a reddish-
6 brown stain, that possible is blood, I have a presumptive
7 test that I use and that becomes positive, a presumptive test
8 lets me determine if it could possibly be blood and I will
9 test an article for that and if that tests positive, then I
10 will later test for semen, blood, as I discussed before.

11 Q. Starting with the underpanties, do you, when you do
12 your test, do you cut little holes in the garment?

13 A. Yes, sir.

14 Q. Will you demonstrate that for the Jury, please?

15 A. These little holes where, I do various test cuts and
16 I cut these little holes out and see if I can do a presumptive
17 test for blood and see if it could be blood and in some
18 garments, I will make a lot of stain test checks and that is
19 what I have done here.

20 Q. There is also a pretty big place cut out of those.
21 Is that also a test area?

22 A. No, sir, that was for the further testing.

23 Q. All the holes that have been cut into that garment,
24 were holes that you cut in there during your laboratory
25 analysis?

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1 A. What I have seen so far.

2 Q. In other words, what I am trying to get across, that
3 is how you go about testing is actually cutting holes in the
4 garment?

5 A. There is no other way of getting around cutting holes
6 in the garment.

7 Q. And the same procedure was done on the jeans?

8 A. Yes, the same basic type of procedure.

9 Q. And that explains the holes that have been cut in
10 the rear seat of the jeans and various other places?

11 A. Ahum. (Affirmative response)

12 Q. Now, with regard to the underpants, what did your
13 test reveal for the presence of blood? What did you find?

14 A. I tested these panties for the presence of blood.
15 I saw some areas here that I thought... there were various
16 areas here that I thought perhaps might possibly be blood
17 and so I tested it and it came up positive presumptive test
18 on them, which means it could be blood. However, I did not
19 do any further testing, because the condition of the possible
20 blood stains were unsuitable for further analysis.

21 I was afraid that any answer would be unreliable.

22 Q. Did that have anything to do with the fact that the
23 body was found floating in fresh water lake?

24 A. That kind of condition could cause it. Any time
25 you have like a blood stained shirt for instance, and it

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1 started out with it maybe in good shape, but a shirt from
2 something that has blood on it, you take it outside, in the
3 condition of the heat, humidity, things like that, can affect
4 it and if it doesn't dry rot away, we may later determine that
5 that garment is unsuitable for further analysis. Any further
6 testing would not give reliable results.

7 Q. And certainly a fresh water lake would be?

8 A. Yes, sir.

9 Q. Did you do testing for the presence of semen?

10 A. Yes, sir, I did.

11 Q. What were the results of that?

12 A. From the one area I examined these pants and I
13 determined that there could be a stain here that could be semen
14 and I cut it out and I made a stain smear on this. What we
15 do is we take the semen stain and make an extract on a slide
16 and look at that under the microscope and I determined the
17 presence of sperm on the pants, however, I did not do any
18 further testing on that, because I felt any further results I
19 got would be unreliable.

20 On semen, about eighty percent of the population, you
21 can tell the blood group from the saliva, and other body fluids.
22 Those are called secreters. About twenty percent of the
23 population you can't, so many times on an alleged sexual
24 assault case, a semen stain, when we cut it out and we process
25 it for ABO to see if perhaps we can pick up any blood group

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1 factors. However, in this case, I determined it would be
2 unreliable.

3 Q. That again goes back to the fresh water lake?

4 A. Ahum. (Affirmative response)

5 Q. But you did find the presence of sperm and possibly
6 the presence of blood?

7 A. Yes, sir.

8 Q. Did you find what might be called a profuse amount
9 of blood or large amount of blood? Or possible blood?

10 A. I found several areas, really large areas of
11 possible blood, but I established various areas that could
12 possibly be blood. Not large, huge stains.

13 Q. Not large, huge stains. With regard to the jeans,
14 which I believe is State's Exhibit #4?

15 A. Yes.

16 Q. Did you test those for blood?

17 A. Yes, I did. I examined the pants inside and out for
18 possible presence of blood stains and here again, I tested
19 these as I usually do. I took them out and looked at them to
20 see if I could see the possible presence of stains of that
21 nature. I didn't see any. I performed other tests, a
22 presumptive test on the whole pair of jeans and I found no
23 evidence of any blood stains that I could detect.

24 Q. Does that include the inside crotch area of the jeans?

25 A. Yes.

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1 Q. You found no presence of blood?

2 A. I didn't find any possible presence of blood in the
3 crotch area.

4 Q. Did you test the jeans for the presence of semen?

5 A. Yes, sir, I did.

6 Q. How did you do that and what was the result?

7 A. Basically, on this, it is a small area in the back
8 seam that I thought perhaps might be a possible semen stain,
9 so I cut it out and made an extract and I found a small
10 amount of sperm on there.

11 Q. Is that this hole here on the inseam or the crotch
12 seam of the jeans?

13 A. Yes, sir.

14 Q. So you found the presence of semen or sperm in this
15 area right here?

16 A. Yes, sir.

17 Q. If I can have a moment, Judge, to get organized.

18 THE COURT: Yes.

19 Q. Ms. Tabor, let me show you what is State's Exhibit
20 #5. A bag containing one sock having come from Teresa McAbee.
21 Did you examine that?

22 A. Could I tear it open?

23 Q. Sure, tear it open.

24 A. I did. I recognize it by my initials.

25 Q. Likewise, they have little holes cut in them?

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1 A. Just various areas, yes.

2 Q. Would you find the presence of blood or any indication
3 of blood on those socks?

4 A. On the base of the sock. These were my Exhibit
5 Q3 and Q4. I examined these for the presence of both blood
6 and semen and I could not detect the presence of anything.

7 Q. There was no blood and no semen?

8 A. Correct.

9 Q. Would you examine, please, State's Exhibit #6, which
10 is identified as being the shirt of Teresa McAbee.

11 A. Okay, again, I recognize this by my initials.

12 Q. You also cut holes in that shirt?

13 A. I have a test area that I examined. I examined this
14 also for possible presence of blood and semen. I could detect
15 the presence of neither.

16 Q. I show you what is in evidence as State's Exhibit #7,
17 which is the right and left shoe that was worn by Teresa
18 McAbee and ask if you examined those for semen and blood?

19 A. Here again, I recognize these by the presence of my
20 initials. I examined these and my exhibits numbers are Q2 and
21 Q1, and I examined these for the presence of both blood and
22 semen and I could indicate the presence of neither.

23 Q. Could I have one moment.

24 THE COURT: Yes, sir.

25 MR. HOGAN: Thank you, Ms. Tabor. Thank you, Judge.

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1 THE COURT: Mr. Edmund?

2 CROSS EXAMINATION

3 BY MR. EDMUND:

4 Q. If it please, Your Honor. My name is Jack Edmund.
5 Ms. Tabor, would you say again the items upon which you
6 detected the presence of blood?

7 A. I detected the possible presence of blood on my
8 Exhibit Q6, the pair of panties.

9 Q. And would you... were you more definitive in detecting
10 the presence of semen or of possible presence of semen?

11 A. I detected semen on the panties, however, I formed no
12 further tests, because I felt that my test results would be
13 unreliable.

14 Q. Alright, and on what other item or items did you
15 detect the presence of semen?

16 A. I also detected the presence of semen on a pair of
17 Q-5, a pair of blue jeans.

18 Q. Were there any other items on which you detected
19 the presence of semen?

20 A. No, sir.

21 Q. Was the semen that you detected on the jeans in the
22 same general position as the semen detected in the panties?

23 A. I am sorry?

24 Q. Well, you said that you made the decision that you
25 couldn't make any further definitive tests of the semen.

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1 that you detected in the panties. Was that the same conclusion
2 you came to regarding the semen you found in the jeans?

3 A. Due to the condition of the clothing, they appeared
4 soiled. They had been partially in water and the panties
5 where there was possible blood stains, were an odd color. I
6 felt to do any further testing on either of these, my test
7 results would not be reliable.

8 Q. I think that is what I asked you was did you make
9 the same decision about the semen on the jeans as that you
10 found on the panties and I assume that response was yes?

11 A. Yes, sir.

12 Q. Alright. Now, did you respond in the affirmative
13 when the State Attorney indicated fresh water lake was humid?

14 A. Well, it is.

15 Q. Well, did you respond affirmatively?

16 A. Yes, sir.

17 Q. Did you have any experience at all with fresh water
18 lakes and testing humidity, temperatures or otherwise in the
19 early parts of May of any year in Florida, Central Florida?

20 A. No, sir.

21 Q. Was your response just an affirmative response to a
22 leading question by the State or do you have any scientific
23 conclusion regarding the humidity of Central Florida fresh
24 water lakes?

25 A. Well, I assume that water is humid.

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1 Q. Do you assume, in your scientific calculations
2 regarding the detection or possible detection of blood?

3 A. No, sir.

4 Q. Do you assume in your scientific determinations of
5 the detection of sperm?

6 A. No, sir.

7 Q. Do you assume when you classify blood in its various
8 classifications?

9 A. No, sir.

10 Q. Then do you think you have any right to assume that
11 a fresh water lake is humid?

12 A. It is a body of water.

13 MR. HOGAN: I object, Your Honor, the way the question was
14 asked, the clothes were in the water. The question was if
15 being in the water would classify it as humid.

16 MR. EDMUND: I withdraw it, Your Honor.

17 Q. Now, if the Medical Examiner opined in your testimony
18 that there would probably be considerable bleeding incidental
19 to death...

20 MR. HOGAN: That is not what he testified to.

21 MR. EDMUND: May I address the State Attorney? What did
22 he testify to?

23 MR. HOGAN: He testified to there was some bleeding. He
24 never said profusely or considerable.

25 MR. EDMUND: Your Honor, at the conclusion of his

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1 testimony and when I sat down, is when he considered moderate
2 and considerable to be the same thing and that is when I
3 stopped my questioning of the Medical Examiner. And he
4 specifically used the phrase or the words "considerable" and
5 that is when I went back to that chair and sat in that chair.

6 I suggest, Your Honor, I am proposing a question based
7 upon a fact ... an issue... not an issue, a fact that is
8 before the Court.

9 THE COURT: I am going to advise the ladies and gentlemen
10 of the Jury to rely on their best recollection of what the
11 Medical Examiner said and I will allow you to pose your
12 question, Mr. Edmund.

13 MR. EDMUND: Thank you, Your Honor.

14 CROSS EXAMINATION CONTINUES

15 BY MR. EDMUND:

16 Q. If the Medical Examiner opined that in his opinion
17 there would be ... probably be considerable bleeding incidental
18 to the rupture of the hymen as that that appeared in the body
19 of this child, did you find any scientific facts in your
20 investigation that would indicate anything to the contrary?

21 A. No.

22 Q. Did you find anything in your examination that would
23 indicate that the Medical Examiner's opinion was incorrect?

24 A. I feel like I am getting kind of out of my area of
25 expertise. Asking me about something a Medical Examiner said.

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1 Q. You were asked the question if there was any
2 indication in the panties of profuse bleeding. You were asked
3 the question if there was any indication in the panties of
4 considerable bleeding. I am asking you if you found anything
5 in your examination that would contradict the Medical Examiner's
6 opinion that there ...

7 A. I found evidence of possible blood stains in the
8 panties.

9 Q. You found nothing of scientific fact evidence that
10 would contradict the opinion of the Medical Examiner, did you?

11 A. Not that I can think of, sir.

12 Q. Alright. Fine. Excuse me just a moment, please,
13 Your Honor.

14 Now, is it a fair statement to say that blood will tend
15 to dissipate when immersed in water if it is in a fabric?

16 A. Yes, when it is totally under water.

17 Q. Ma'am?

18 A. Totally under water?

19 Q. As one example?

20 A. It could possibly.

21 Q. You mean only possibly. If I throw a blood stained
22 rag in a tank of water, it is only possible that that blood is
23 going to float out through the water, Ms. Tabor?

24 A. I imagine it could possibly be dispersed and be diluted
25 out.

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1 Q. Could we get that up to probably?
2 A. Probably, yes, sir.
3 Q. Could we even get that up to you bet your life?
4 A. Well, it would depend on how long it was in there
5 and things like that, but I am talking it would probably be
6 started to be washed out of the fabric.
7 Q. It would start to be washed out of the fabric the
8 second the fabric hit the water, scientifically in microscopic
9 amounts, would it not?
10 A. It could possibly.
11 Q. Could it probably?
12 A. Probably.
13 Q. Could you bet your life?
14 A. There again, it depends on the conditions. How long
15 it is in there. I want to make sure there are different factors
16 involved and it could possibly be, probably be washed out.
17 It would depend on the factors, but it would be starting to
18 be diluted by water.
19 Q. Virtually immediately, wouldn't it?
20 A. Possibly.
21 Q. Probably?
22 A. Probably.
23 Q. Bet your life?
24 A. Maybe.
25 MR. HOGAN: I object. He is gambling with someone's life.

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1 THE COURT: Do you have anymore questions, Mr. Edmund?

2 MR. EDMUND: No further questions. Thank you.

3 THE COURT: Mr. Hogan?

4 RE-DIRECT EXAMINATION

5 BY MR. HOGAN:

6 Q. Ms. Tabor, when you examined these, you found no
7 evidence of blood whatsoever?

8 A. Not that I could detect from my tests.

9 Q. And you only found a small spot of blood or what
10 appeared to be blood in the panties?

11 A. I found various areas here, that appeared to be
12 probably blood stains.

13 MR. EDMUND: I am going to object to the State categoriz-
14 ing the spots as small. I don't think there are any facts in
15 evidence in which that statement has been made and I object
16 to the leading question and it is too late to do anything
17 about it and I'll sit down.

18 THE COURT: Overruled. Any further questions for this
19 lady from either side?

20 MR. HOGAN: No, sir.

21 THE COURT: Anything further, Mr. Edmund?

22 MR. EDMUND: No sir, Your Honor.

23 THE COURT: What about Ms. Tabor's subpoena, gentlemen?

24 MR. HOGAN: She can be released, Judge.

25 THE COURT: Any objection?

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1 MR. EDMUND: No objection, Your Honor.

2 THE COURT: You are released from your subpoena, ma'am,
3 and free to go. Thank you.

4 MR. HOGAN: May we approach, Your Honor.

5 THE COURT: Alright.

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

7 MR. HOGAN: Your Honor, we found her. She is here. Kim
8 Fowler. We have got one more witness and with regard to the
9 Defendant's statements made during the interview, we would
10 like to present that witness and then, other than the Williams
11 Rule testimony and rebuttal witnesses, that would be the
12 extent of my case. We would be ready to rest after the Williams
13 Rule testimony.

14 After we take this next witness, we can go ahead and
15 release the Jury and have the last Williams Rule witness and
16 argue that and maybe tomorrow morning, depending on the
17 ruling, if you are going to admit it, we could offer that
18 tomorrow morning to the Jury and that should be the end of
19 our case.

20 THE COURT: Let me ask you, trying to figure out the
21 timing. How long is this witness? A long witness or a short
22 witness?

23 MR. HOGAN: Relatively short.

24 THE COURT: It seems to me if we argue the Williams Rule
25 this morning...

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1 MR. HOGAN: This person is most likely longer than
2 the others were.

3 THE COURT: Even if she is, it seems we could proffer her
4 and have the arguments all today.

5 MR. HOGAN: If we can get her by five.

6 THE COURT: They are going to have to do that.

7 MR. HOGAN: Can we do that now?

8 THE COURT: Let's hear the State's witness for about
9 thirty minutes so far today.

10 MR. HOGAN: Yes, sir.

11 THE COURT: Okay, let's go.

12 (WHEREUPON, BENCH CONFERENCE ENDS)

13 THE COURT: Your next witness?

14 MR. HOGAN: Gerard King, Your Honor.

15 (WHEREUPON, GERARD KING IS CALLED AS NEXT WITNESS BY THE
16 STATE AND IS DULY SWORN BY THE CLERK OF THE COURT)

17 DIRECT EXAMINATION

18 BY MR. HOGAN:

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

20 A. Gerard Thomas King, Sr.

21 Q. How are you employed?

22 A. I am Chief Investigator with the State Attorney's
23 Office.

24 Q. Do you have previous law enforcement background?

25 A. I have approximately twenty-one years in law enforce-

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1 ment.

2 Q. Does that include Marion County Sheriff's Office?

3 A. Yes, sir, I was Captain for twelve years.

4 Q. How about military?

5 A. I was CID Agent, a criminal investigator in the
6 United States Army.

7 Q. Mr. King, calling your attention to the murder of
8 Teresa McAbee, which occurred on May 11, 1987, did you have
9 occasion to become involved in that investigation?

10 A. Yes, sir, I did.

11 Q. Calling your attention to an individual who may be
12 known to you as James Duckett, do you see him here in court
13 today?

14 A. Yes, sir, I do.

15 Q. Would you please point to him and describe what he
16 is wearing?

17 A. He is wearing a brown suit with a pink shirt.

18 MR. EDMUND: I'll stipulate, Your Honor, he has identified
19 my client.

20 THE COURT: Alright. The record would reflect the
21 witness has identified the Defendant.

22 Q. Mr. King, did you have an occasion to advise
23 Mr. Duckett of what is known as his Constitutional Rights and
24 Miranda warning?

25 A. Yes, I did, sir.

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1 Q. How did you do that?

2 A. I advised Mr. Duckett of his Miranda warning,
3 Constitutional rights by a card which I have in my possession
4 at all times.

5 Q. Do you know the date that you did that?

6 A. I believe it was June 15th if I am not mistaken.

7 Q. Do you know where you were when you did that?

8 A. Mascotte Police Department.

9 Q. Do you remember about what time of day it was?

10 MR. EDMUND: I would waive all that predicate, Your
11 Honor. I would waive the predicate with regard to any further
12 testimony regarding the Miranda warning.

13 MR. HOGAN: In that case, does that include his responses?
14 In other words, he understood his rights and so forth?

15 MR. EDMUND: Yes.

16 MR. HOGAN: I move the statement be freely and voluntarily
17 given.

18 THE COURT: Do we have a stipulation then that the
19 Miranda warnings were adequately given, understood by the
20 Defendant, and his responses were freely and voluntarily given?

21 MR. EDMUND: Yes, Your Honor.

22 THE COURT: The Court so finds they were freely and
23 voluntarily given. You can proceed, Mr. Hogan.

24 DIRECT EXAMINATION CONTINUES

25 BY MR. HOGAN:

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1 Q. Mr. King, at that time, did you have an occasion to
2 ask Mr. Duckett whether or not , or did you ask him generally,
3 about the subject of driving his patrol car, his Mascotte
4 police car, down by Knight Lake, on the dirt road by Knight
5 Lake?

6 A. Yes, sir.

7 Q. What did he tell you about that?

8 A. He emphatically denied driving his patrol vehicle
9 down the dirt road to where the body of Teresa McAbee was
10 found. He denied driving his vehicle to that area while on
11 duty that night.

12 Q. Did you ask him when the last time if ever he had
13 driven his Mascotte police car down that road by Knight Lake?

14 A. Yes, he had in the past, approximately three months
15 prior in that vicinity.

16 Q. That was the last time?

17 A. Yes, sir.

18 Q. Mr. King, with regard to my question of whether or not
19 Teresa McAbee was ever in the position to leave fingerprints
20 on the hood of Mr. Duckett's police car, did you ask
21 Mr. Duckett that question?

22 A. Yes, I did.

23 Q. What was his response?

24 A. He emphatically stated that she was not on the hood
25 of his patrol car at all.

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1 Q. Did you ask him if it was possible that she could
2 have been on the patrol car?

3 A. No, sir, I didn't put it in those words.

4 Q. How did you ask him?

5 A. I asked him ... when I mentioned fingerprints being
6 discovered on the hood of the patrol vehicle, that of hers,
7 he stated to me that she did not sit on my patrol car.

8 Q. Did he tell you or offer any explanation as to how
9 those fingerprints got on the car?

10 A. He said, "I don't give a damn what you say, of those
11 fingerprints, she did not sit on my patrol car.".

12 Q. Could I have a moment, Judge.

13 THE COURT: Yes, sir.

14 MR. HOGAN: Thank you. Thank you, Judge; Mr. King.

15 THE COURT: Mr. Edmund?

16 CROSS EXAMINATION

17 BY MR. EDMUND:

18 Q. Mr. King, I am Jack Edmund. You were questioning
19 Duckett with Captain Horner of the local Sheriff's office,
20 were you not?

21 A. Yes, I was.

22 Q. And you have how many years of police and investigative
23 experience?

24 A. Approximately twenty-one years.

25 Q. And you are what age, sir? How old are you?

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1 A. Forty-two.

2 Q. Alright, older than Duckett?

3 A. Yes, sir.

4 Q. How about Captain Horner? Do you have any idea how
5 long he has been involved in law enforcement?

6 A. I would say approximately about the same, maybe a
7 little longer than I.

8 Q. Alright, sir, and is he a man about your age or
9 older?

10 A. About my age.

11 Q. Alright, sir, again, a man older than Duckett?

12 A. Yes, sir.

13 Q. Alright. And between you, you had combined forty or
14 forty-five years of law enforcement, did you not?

15 A. I would say approximately.

16 Q. And there were a number of times during this
17 questioning that you told Duckett that you all had this great
18 amount of investigative experience compared to his, did you
19 not?

20 A. Yes, sir.

21 Q. During the course of this investigation... of this
22 interrogation, incidentally, how long did it last?
23 About two and a half hours?

24 A. Approximately two hours.

25 Q. And at every stage throughout that questioning,

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1 Duckett maintained his innocence, did he not?

2 MR. HOGAN: May we approach the bench, please?

3 THE COURT: Yes, sir.

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

5 MR. HOGAN: Judge, that is outside the scope of my direct
6 examination. What he is attempting to do is elicit from this
7 witness Duckett's statement that I never elicited and it is
8 self serving.

9 MR. EDMUND: Judge, I asked if he took a statement.

10 MR. HOGAN: I was very careful how I worded my question.

11 THE COURT: I understand your objection, but in a case
12 of this magnitude, I am going to let Mr. Edmund explore.
13 I am going to overrule your objection.

14 MR. EDMUND: Thank you, Your Honor.

15 (WHEREUPON, BENCH CONFERENCE ENDS)

16 CROSS EXAMINATION CONTINUES

17 BY MR. EDMUND:

18 Q. That statement was taped, wasn't it?

19 A. Yes, sir.

20 Q. And it was ultimately reduced to seventy pages of
21 typed material, was it not?

22 A. Yes, sir.

23 Q. And in that seventy pages of typed material, you lied
24 to him on more than one occasion, didn't you?

25 A. I lied to him a couple of times, sir.

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1 Q. You lied to him about things like, "We found your
2 fingerprints on the girl's body", didn't you?

3 A. Yes, sir.

4 Q. What other things did you lie to him about?

5 A. Sir, the lie, if you want to call it lying...

6 Q. Would you tell me what and then explain to me?

7 A. Sir?

8 Q. Would you tell me what other lies you told him and
9 then explain to me how come?

10 A. I don't remember. I just remember talking about
11 the laser. Did he know anything about a laser.

12 Q. Alright, and ...

13 A. And what the laser could do.

14 Q. And you told him his fingerprints were all inter-
15 mingled in her prints, didn't you?

16 A. Sir?

17 Q. You told him his fingerprints plural, were inter-
18 mingled in her prints, didn't you?

19 A. I had a photograph in my possession of the hood
20 of the vehicle depicting the fingerprints.

21 Q. Did you tell him that his fingerprints plural, were
22 intermingled in the hand prints of the child?

23 A. I am not sure if I used the word plural. I told
24 him that his fingerprints had been identified as being inter-
25 mingled with hers, yes.

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1 Q. Did you also tell him his tires on his patrol
2 car had absolutely been identified as having been the tracks
3 out there having come from his vehicle?

4 A. Yes, sir, I did.

5 Q. That is not correct. That is not true, is it?
6 The testimony is that they are consistent and could have come
7 from his vehicle, isn't it? You also throughout, exerted
8 every bit of psychological pressure that you and Captain
9 Horner brought up out of your forty some years of experience
10 to get him to confess, didn't you?

11 A. Sir?

12 Q. Did you or did you not?

13 A. I did not. This man was not coerced in any way,
14 shape or form in talking with us.

15 Q. It is not coerced when you threaten a man?

16 A. What do you mean by threaten, sir?

17 Q. Threaten him with prosecution for a case when he
18 keeps telling you, "I don't care. I didn't do it". How
19 many times in this statement do you think he told you, "I
20 didn't commit that crime."?

21 A. Sir, this man was not threatened in any way, shape
22 or form.

23 Q. How many times throughout this statement do you
24 estimate he told you, "I did not commit this crime"?

25 A. I do not know.

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1 Q. How many people have you and Captain Horner ever
2 questioned for two hours under circumstances such as this,
3 throwing out the evidence that you threw at James Duckett and
4 not have him capitulate and confess?

5 A. Sir, a lot of people don't tell the truth for
6 different reasons. A lot of people do not tell me the truth.

7 Q. They sure don't, like people who interrogated
8 Duckett weren't telling the truth, correct?

9 A. You used the word "interrogation". This was not an
10 interrogation, sir.

11 Q. This is not an interrogation when you talk to him
12 about what a horrible thing he did; how that was a child;
13 how ... couldn't he make it right with his own conscience
14 and tell you the truth? That is not an interrogation?

15 A. As far as I am concerned it is not an interrogation.

16 Q. Well, that is an interview?

17 A. I would classify it as an interview, yes, sir.

18 Q. When you are shooting at him from one side and
19 horner shooting at him from another side. And isn't it a
20 fact that if Duckett had told two lies, he wouldn't even be
21 a suspect, if he said, "Yeah, I drove through there looking for
22 the girl", and "Yes, she sat on the hood of my car out in
23 front of the Circle K", he wouldn't have even been a suspect,
24 would he? Would he?

25 A. You are asking me that?

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1 Q. Yes, that he would not have been a suspect had he
2 told you incidentally, ...

3 A. That is not a true statement.

4 Q. This wasn't the first interview with Duckett, was it?

5 A. No, sir.

6 Q. This was... the first interview with Duckett was on
7 the 12th of May, immediately following the finding of the
8 body, wasn't it?

9 A. Yes, sir.

10 Q. And the statement he gave you at that time on the
11 12th of May is identical in every respect to the statement
12 he gave you on the 15h... is it not? On the 15th of June,
13 is it not?

14 A. I did not interview him on the 12th. I was not
15 brought into the case until after that.

16 Q. You are an investigator with the State Attorney's
17 Office, aren't you?

18 A. Yes, I am.

19 Q. You familiarized yourself with the facts of this
20 case before you interviewed Duckett, didn't you?

21 A. Yes, I did.

22 Q. You didn't read the statement that they took from
23 him on the 12th of May before you went out there to interview
24 him?

25 A. Yes, I did.

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1 Q. Then I ask you again, isn't it the same in every
2 respect as the statement that he made back on May 12th on the day
3 following ... on the day of the finding of the body?

4 A. I have a more detailed statement than what was taken
5 on...

6 Q. You have more detailed statement, because you went
7 over everything four, five and six times and you got the same
8 answer every time, didn't you?

9 A. What I did this time was to show him the evidence
10 itself.

11 Q. Do you have a copy of this statement with you?

12 A. I do, sir.

13 Q. Do you find in that statement a single conflict in
14 what he said earlier in the statement and later in the state-
15 ment and what he said in the statement that you all took from
16 him on May 12th of 1987?

17 A. A single one?

18 Q. A single discrepancy?

19 A. There are similarities, sir.

20 Q. Sir?

21 A. There are similarities.

22 Q. The similarities are specific, aren't they? Green
23 blouse with two buttons on it? Exactly where he went?
24 What time he arrived at the police station? How he went about
25 making the missing person's report? That he got there and

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1 then the deputy arrived and then the mother got on the scene
2 at the police station?

3 A. Yes, sir, it says that.

4 Q. That he didn't have enough paper at Mascotte to do
5 properly the posters that he was putting out in both state-
6 ments, isn't it?

7 A. That is consistent.

8 Q. Had to go to Groveland in order to get it done,
9 didn't he?

10 A. That is consistent.

11 Q. Told you about the Crumbley boy at the Jiffy Store,
12 who was so scared that he was making him come around there
13 every night checking on people who walked in to buy stuff in
14 the store, didn't he? Didn't he?

15 A. I don't remember that, sir.

16 Q. Well, if you look back through the statement, it is
17 there. In every detail and every respect, it is identical,
18 is it not? It is also identical in the respect that you
19 asked him if he would take a lie detector test and he said
20 "Yes", in both and in the last one he said, "And I want to see
21 a lawyer", and you all stopped then, did you not?

22 A. He stated in the statement to me that he would take
23 the lie detector but then shortly, he refused to take it.

24 Q. Oh, he shortly refused to take it? In this one,
25 when you asked him to take the lie detector test, he was

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1 ready to go.

2 A. I did not interview him on the 12th of May.

3 Q. And on this one, when you asked him about the lie
4 detector test, he said, "Yes, I was ready to take it before.
5 I am ready to take it now.", did he not?

6 A. But he did not.

7 Q. He did not? For goodness sakes, by that time, you
8 had accused him of everything, had you not? And you never
9 asked him to, did you? Did you?

10 A. I did.

11 Q. After this statement, did you ever again ask Duckett
12 to take a lie detector test?

13 A. After the tape was turned off.

14 Q. After the tape was turned off? He said, "I'll take
15 the thing tomorrow", didn't he? I'm going to take one. Right?
16 I am going to talk to an attorney in the morning and I am
17 agreeing to take one. If my attorney says it is cleared with
18 him, did he not?

19 A. He said that, yes, sir.

20 Q. He had some lawyer by that time, didn't he?

21 A. I don't know.

22 Q. The lawyer had his own, whoever the lawyer was, had
23 his own tape recorder, didn't he?

24 MR. HOGAN: Objection, Judge. There is no way for this
25 man to know that.

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1 MR. EDMUND: It is in the statement, if it please the
2 Court.

3 THE COURT: If it is in the statement, he can answer.

4 Q. It is in the statement, isn't it? You stopped the
5 tape so he could change his tape on the tape recorder,
6 didn't you?

7 A. He asked me ...

8 Q. You better believe it...

9 A. Prior to the interview...

10 Q. And said this lawyer he had was going to bring a
11 tape recorder around there and tape this statement so there
12 couldn't be any discrepancies, didn't he?

13 A. Sir, I do not know if he had an attorney at the
14 time that I interviewed him. He had his tape recorder with
15 him and he asked me if he could take the statement and I said,
16 yes, he could.

17 Q. Is there any reason in the world why back on the 12th
18 of May of 1987, when he agreed right then to take the lie
19 detector, and you knew it, because you had read this, that
20 you didn't go ahead and let him take the lie detector test?
21 Any reason whatsoever why he wasn't then taken over to take the
22 lie detector test?

23 A. Yes, sir, there is.

24 Q. What?

25 A. I wanted to present him the evidence that we at the

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1 Lake County Sheriff's Department had uncovered. I wanted him
2 to actually see it.

3 Q. Why?

4 A. I wanted him to see...

5 Q. You wanted to scare the pants off of him?

6 A. I wanted him to see...

7 Q. That is psychological coercion.

8 THE COURT: Mr. Edmund, don't argue with the witness.
9 Let him answer the question.

10 A. It is not psychological pressure at all.

11 Q. Well, what is scaring a person? That is not
12 psychological pressure?

13 A. What is to scare with the truth? I was telling him
14 the truth.

15 Q. What is to scare with a lie? What is to scare with
16 "We have got fingerprints off the body", when you know that
17 is a lie? What is the truth in, "We have positive evidence
18 that those are your tire tracks"?

19 A. Alright, let's stay on that just a second.

20 Q. Yeah, let's do.

21 A. You mentioned just a minute ago about me lying about
22 fingerprints being on her body.

23 Q. We have got evidence in this case from witness after
24 witness there were none.

25 A. I asked him about that. I asked him about the laser

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1 and what a laser can do to a body. He really didn't know,
2 so I told him what if the laser showed that your fingerprints
3 are on her body. He initially told me that there would not
4 be and then during the conversation he said, "Well, maybe there
5 could be", and then the conversation continued and he said,
6 "Yes, probably I did touch her arm", and that was consistent
7 through his statement. This is why he was ... what you want
8 to call lied to.

9 Q. Are you saying, sir, that you didn't in here say
10 "We found fingerprints on this body"?

11 A. I probably stated that, yes.

12 Q. You know you stated that. You didn't say probably.
13 You said, "We got laser fingerprints". "Fingerprints off
14 her body... your fingerprints with a laser", didn't you?

15 A. I would have to say that is probably right. I would
16 have to refer to the statement to be positive, but you are
17 probably right.

18 Q. You know you did. You know you did it, didn't you?

19 A. Would you like me to refer to it and I'll tell you
20 positively?

21 Q. Yes, sir. Since I have lost my page, how about
22 telling me the page when you find it. I think we are going to
23 get around page forty-two and go from there.

24 A. Speaking about the laser, do you want me to start
25 there?

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1 Q. Alright.

2 A. "Do you know what a laser is?" is the question that
3 I asked him. Mr. Duckett's response: " A laser?".

4 Q. Let me ask you this, sir, if I may interrupt. Let
5 me interrupt a minute, if it please, Your Honor.

6 MR. HOGAN: He has been interrupting...

7 THE COURT: The only thing I don't want the witness do
8 is to read this whole thing. If we are on the revelevant
9 section and he wants to answer the question by saying, "Here is
10 what I asked; here is the answer", fine.

11 Q. I'll ask you to turn to page forty-three.

12 MR. HOGAN: Judge, I ask that he be allowed to read the
13 whole thing.

14 THE COURT: You can come back on your re-direct and ask
15 him to read anything you want to clarify it.

16 A. Okay, I am on page forty-three.

17 Q. Alright, sir. Do you consider this to be a statement
18 that the fingerprints were found on her neck. You have got the
19 guy now. You are on page forty-three. You have had him for
20 an hour and bouncing him off the walls. You say...

21 MR. HOGAN: Objection, Your Honor. I object to the
22 bouncing off the wall. It is not true.

23 THE COURT: I trust you don't mean that literally,
24 Mr. Edmund, or if you do, you had better ask the question and
25 not make the statement.

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1 MR. EDMUND: Yes, sir.

2 Q. Is there any reason why your fingerprints would be
3 found on the neck of Teresa? That is not saying the finger-
4 prints were found on the neck of Teresa?

5 A. Is there any reason why your fingerprints would be
6 found on the neck of Teresa.

7 Q. Correct.

8 A. What is wrong with that, sir?

9 Q. Isn't that a clear indication that you found
10 fingerprints on the neck of Teresa?

11 A. I am asking him. He is giving me a voluntary
12 statement and I am just asking him if he can answer that for
13 me. That's all.

14 Q. And other places in here you have gone right back
15 to the fingerprints, have you not?

16 A. Yes, sir.

17 Q. On the body?

18 A. I don't know. If you can find the page.

19 Q. How about page forty-seven, is there any reason why
20 fingerprints belonging to you would be found on the body of
21 Teresa? That is not saying fingerprints were found on the
22 body?

23 A. That is an appropriate question.

24 Q. That is an appropriate question. That is not an
25 implication? That is not a statement that the fingerprints

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1 were found, is that right? I just asked you a question and
2 I am looking for a response. Now, you also told him that
3 you found soil from the wheel wells, some soil from out from
4 under the wheel wells that matched the soil at the scene,
5 didn't you?

6 A. That question was asked, yes, sir.

7 Q. That statement was made, wasn't it?

8 A. Again sir, for us to get it accurately, I would
9 like to...

10 Q. How about let's go to page fifty.

11 A. Yes, sir.

12 Q. If both of those items were sent to the lab and the
13 lab said, "This is identifical soil", what would you think?
14 That is not saying to him that the soil that they found
15 under the wheel well was the soil that they found out at that
16 place?

17 A. Sir, I just asked him a question.

18 Q. You know that is not true, don't you? And you knew
19 then that wasn't true, didn't you?

20 A. Sir, I just asked him a question.

21 Q. On the 15th of June of 1987, you knew that the soil
22 that was found on the wheel wells did not match any of the
23 soil out at the scene where the body was found, didn't you?

24 A. Sir, I cannot answer that question.

25 Q. Why not?

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1 A. Because I do not know the answer.

2 Q. How did you know they took soil from under the
3 wheel wells?

4 A. I knew they took soil samples, but I did not know
5 that they matched or did not match at the time I interviewed
6 him.

7 Q. You just make up things to tell people?

8 A. No, sir, I don't make them up. I asked the question
9 and I was looking for the truth. That's all.

10 Q. There were times when you pushed him so hard that
11 he virtually yelled back at you, didn't he?

12 A. Sir, that is not a correct statement.

13 Q. What? That he yelled back or that you pushed him
14 so hard?

15 A. That I pushed him so hard. I don't remember him
16 yelling at me at all.

17 Q. Well, when the typist puts a phrase in capital
18 letters, wouldn't that be an indication that there is some
19 sort of noise on the tape?

20 MR. HOGAN: I object. He is not a typist. We need the
21 typist here to find out why it was put in capital letters.
22 The witness said there was no yelling.

23 THE COURT: I sustain that, Mr. Edmund.

24 Q. Then I'll ask you this. When you asked him, is there
25 any reason why your pubic hair would be found in the panties

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1 of Teresa and in capital letters, it says, "Hell, no". Do
2 you remember now that he yelled "Hell, no" at you?

3 A. I remember he made that statement to me, but it
4 wasn't ... I wouldn't consider it yelling.

5 Q. What would you consider it?

6 A. An exclamation response. But he didn't yell at
7 me.

8 Q. Not like I'm doing?

9 A. I didn't consider you yelling.

10 Q. Thank you. Now, is there any reason why hair from
11 your body would be found on Teresa? "No" in capital letters.
12 Right? You told him that fibers off his brown uniform were
13 found on Teresa, didn't you?

14 A. Yes, I did.

15 Q. And that is not true, is it?

16 A. No, sir.

17 Q. What other things did you tell him that weren't
18 true?

19 A. I don't remember general statements such as this,
20 looking for the truth from him.

21 Q. Now, the truth from him was this. The truth from him
22 was that somebody spotted tire tracks out at the scene the
23 morning of the crime and they decided then that whoever put
24 those tire tracks down...

25 MR. HOGAN: Objection. This is a closing statement and

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1 not a question.

2 THE COURT: It is certainly a long question, Mr. Edmund.

3 MR. EDMUND: I get into those things, Judge. I
4 apologize.

5 THE COURT: Alright. Bifurcate it down, if you would.

6 MR. EDMUND: There you go.

7 THE COURT: Alright.

8 MR. EDMUND: I apologize on that also, Your Honor.

9 Q. There came a time during the morning on May 12th,
10 1987, the tire tracks were spotted circling through that
11 scene of where that child's body was found, right?

12 A. Yes, sir.

13 Q. There came a time shortly after that that those tire
14 tracks were concluded to compare with favorably, if not
15 identically, the tire tracks on at least one and possibly
16 two of the police vehicles of the City of Mascotte, correct?

17 A. Yes, sir.

18 Q. And the time came immediately after that when Duckett
19 became a suspect, didn't he?

20 A. Yes, sir.

21 Q. And from that point on, things sort of went down
22 hill for Jim Duckett as far as anything he could say making
23 any sense that anybody would believe, isn't that true?
24 For example, Duckett says to you, on your statement and in
25 his first statement, that the little girl was wearing a blue-

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1 green blouse that the mother said was knit and it had two
2 buttons on the chest, didn't he? In both statements?
3 Right?

4 A. Yes, sir.

5 Q. Alright. Did it ever occur to you how in the world
6 would Duckett know that unless the child had that on when he
7 saw her at the store or the mother told him? But that was not
8 what was found on the child's body, was it?

9 A. Sir, I just took a statement from him that he told
10 me what he wanted to say.

11 Q. That was not what was found on the child's body, was
12 it?

13 A. Well, sir, there is much more investigation that goes
14 on during any criminal offense. But when something like that
15 is brought up, it is looked into more and more and more.

16 Q. Mr. King, a month and three days had passed since
17 this man had told you all that the mother told him the child
18 was wearing a blue-green blouse with two buttons on the front,
19 but when the body was found, it was found in a striped brown
20 and white pull-over type of thing. A month and three days
21 had passed. Had you been to the house to see whether there
22 was a blue-green blouse at that house?

23 A. Sir, another officer had.

24 Q. Where was the blouse?

25 A. I cannot testify to that, because I do not know.

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1 Q. Was the blouse ever taken into custody?

2 A. Sir, I did not see it. I do not know.

3 Q. You know it existed?

4 A. Yes, I know it existed.

5 Q. Well, how would he have known it existed unless the
6 child had it on when he saw her at the Circle K or the
7 mother told him when she came down and gave him the missing
8 person's report? Is there any explanation for that?

9 A. Sir, you are asking me a question I cannot answer.

10 Q. Now, can you explain this? If that child didn't have
11 on a blue-green blouse when she left the house that night,
12 and Duckett mentions to the mother a blue-green blouse and
13 the mother is going to say "yes, okay"? Is there any explana-
14 tion for that or did it ever occur to you to go see whether
15 or not the child had, in fact, changed clothes after she left
16 Jim Duckett at the Circle K?

17 A. Sir, I did not get into that part of the investigation.

18 Q. I didn't ask you that. I asked you did it ever occur
19 to you to do that?

20 A. You are asking me a question that I cannot answer
21 at all.

22 Q. Well, you knew about the blue-green blouse, didn't
23 you?

24 A. From the statement that he gave me, yes, sir.

25 Q. You knew about the blue-green blouse from the statement

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1 you read?

2 A. Yes, sir. But there were other investigators doing
3 other things at the time.

4 Q. You also knew that the child was found in a brown
5 and white blouse, didn't you?

6 A. From what I had been told, yes, sir.
7 I did not see...

8 Q. Part of the investigation, isn't it?

9 A. Yes, sir.

10 Q. Did you ever go to the board and start writing these
11 things down? Blue-green blouse; striped brown blouse? Why?
12 Who? What is the answer? Did you ever do any of that?

13 A. Sir, we have used boards on numerous occasions.

14 Q. I am asking about blouse. Did you put blouses on the
15 board?

16 A. That has been brought up, yes, sir.

17 Q. Did you say "Who?" "Why?" and all the rest of those
18 things?

19 A. All that has been talked about.

20 Q. Did anybody ever reconcile it?

21 A. Sir?

22 Q. Did anybody ever reconcile how it got on the missing
23 persons' report? Blue-green blouse?

24 A. I don't understand, sir.

25 Q. It was on the missing person's report that she was

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1 wearing a blue-green blouse, was it not?

2 A. Duckett wrote the missing person's report.

3 Q. Based upon what the mother told him, didn't he?

4 A. That I cannot tell you.

5 Q. When did someone learn that the blue-green blouse
6 was back at the house?

7 A. I cannot answer that as far as time frame goes.
8 I do not know the answer.

9 Q. One thing that law enforcement has proved in this
10 case is that there is a blue-green blouse, isn't it?

11 A. From what I understand.

12 Q. It belonged to the little girl?

13 A. From what I understand, yes, sir.

14 Q. And was at the house?

15 A. From what I understand, yes, sir.

16 Q. When you were talking to him about the fingerprints,
17 did you yell at him?

18 A. Sir, I didn't yell at this man at all.

19 Q. Is there any reason ... "I want you to look at this"
20 in capital letters...

21 MR. HOGAN: Your Honor, we have been through that one
22 before.

23 THE COURT: If he says he can answer it. Go ahead.

24 A. When I showed him a photograph.

25 Q. Did you yell at him?

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1 A. I didn't yell at him at all.

2 Q. Why would the typist put just those words in
3 capital letters and then go back to small letters?

4 A. I probably emphasized it a little bit stronger than
5 normal tone, but there was no yelling at all. I just showed
6 him a photograph showing the fingerprints on the hood of the
7 car.

8 Q. And then when you got to the end of that, you said,
9 "I am showing you what is evidence", you didn't yell that
10 either?

11 A. No, I just raised my pitch. My voice might have been
12 up a little bit higher, but as I said, there was really no
13 yelling at all in this conversation.

14 Q. Now, what has been the other extent of your
15 investigation of this case?

16 A. Do you want to be more specific, or...?

17 Q. Well, the State Attorney asked if you were involved
18 in the investigation of this case and I just wondered what
19 other areas of investigation you participated in?

20 A. Sheriff Griffin asked me to assist in his investi-
21 gation. Captain Horner and I met with his investigators and
22 I have been with them listening to what they have done.
23 Captain Horner and I interviewed Duckett. I am aware of basically
24 how this investigation is being conducted.

25 Q. Have you interviewed people other than Duckett?

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1 (WHEREUPON, BENCH CONFERENCE ENDS)
2 THE COURT: Thank you, Your Honor. No further questions.
3 THE COURT: Alright. Re-Direct?
4 RE-DIRECT EXAMINATION
5 BY MR. HOGAN:
6 Q. Mr. King, you said that the blue-green blouse
7 situation has been reconciled. Tell us about that, please?
8 A. From what I understand, an Investigator from the
9 Lake County Sheriff's Department has recovered the blouse that
10 from what I understand, Teresa wore earlier in the evening
11 of her death. The investigation from what I understand is
12 she went back home and changed the shirt and left to go back
13 to the store to buy a pencil. This is the information that
14 I have.
15 Q. Where was the shirt recovered?
16 A. I believe from Teresa McAbee's mother.
17 Q. Now, during your interview with the defendant, at
18 what point in time did he tell you that he sat in the corner
19 of West Mohawk Street and North Sunset, from which vantage
20 point he was able to observe the Circle K Store?
21 A. Yes, sir.
22 Q. What did he tell you he was able to see from that
23 vantage point?
24 A. He told me he was able to see a boy and a girl that
25 he had previously observed at the Circle K food store near a

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1 A. In this case?

2 Q. Yes, sir?

3 A. I do not believe so.

4 Q. Is it possible? Have you interviewed anybody by the
5 name of Reynolds?

6 A. No, sir, I have not.

7 Q. Are you familiar with that in any way, shape or form?

8 MR. HOGAN: May we approach the bench, please?

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

10 MR. HOGAN: He hasn't interviewed Reynolds. He doesn't
11 know Reynolds and if this Reynolds thing is going to be injected
12 into this trial, if that is the way this thing goes, fine.
13 Then we will let Reynolds testify. He is going to be here
14 if he is not already here, but I object to him trying to
15 slip it in through other witnesses.

16 MR. EDMUND: I told you before, if I tried to slip
17 something in, you won't see it coming.

18 THE COURT: I don't hear any exact objection, but
19 frankly, now we are wildly outside the scope of direct. I
20 think we have gone over that statement taking and that is
21 beyond the scope of direct, through the statement, but we are
22 beyond what he did now. You may have to call him as your own
23 witness.

24 MR. EDMUND: I'll sit down.

25 THE COURT: Alright.

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1 Dempsey Dumpster. He was able to see that from the location
2 that you just described.

3 Q. Okay, I show you what is in evidence as State's
4 Exhibit #27 and ask you if those streets that I have just
5 described are on this sketch?

6 A. Yes, sir, in this area right here. This is where I
7 interviewed Mr. Duckett. I interviewed him right here.

8 Q. And he said he could see what from here?

9 A. He said he could see a boy and a girl at the Dempsey
10 Dumpster right beside the Circle K in this area here.

11 Q. And this was at night?

12 A. No, this was during the daytime. Approximately
13 I would say six o'clock in the evening, in that vicinity.

14 Q. That was your interview?

15 A. That was a video tape interview I had.

16 Q. But I am asking you, sir, was it at nighttime that
17 he said he could see the boy and the girl behind the dumpster?

18 A. Yes, he did.

19 Q. Could you see behind the dumpster from West Mohawk
20 and North Sunset?

21 A. To be frank with you, I could not even see the
22 dumpster from where I was standing.

23 Q. Yet that is from where he said he saw all this
24 going on?

25 A. Yes.

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1 Q. How many suspects or defendants have lied to you
2 in your twenty-one years of experience?

3 A. I am going... I could give you a percentage. It may
4 not be accurate, but it focuses upon, I would say about ninety
5 percent of them lie to me one way or the other initially.

6 Q. Now, Mr. Duckett was offered a polygraph or lie
7 detector?

8 A. Yes, he was.

9 Q. And he refused to take that?

10 MR. EDMUND: I object to the leading question. Your Honor,
11 he not only didn't refuse, he twice said he would take it and
12 that is an improper statement by the State Attorney.

13 MR. HOGAN: Where are the results? Let's see the
14 results.

15 THE COURT: Don't argue with one another. Stop. He
16 objected to the question as being leading and I sustain that
17 and strike the answer and you can rephrase your question.

18 Q. Did Mr. Duckett ever take a polygraph examination?

19 A. No, he did not.

20 Q. Why not?

21 A. He would not take it.

22 Q. Did you ask Mr. Duckett whether or not or why he did
23 not take Teresa McAbee home?

24 A. Yes, sir.

25 Q. What did he say?

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1 A. It didn't dawn on him to take her home.

2 Q. Did you ask him if there was any kind of policy against
3 taking people home?

4 A. Yes, sir, he said that the Mascotte Police Department
5 had the policy that says not to take, transport people in
6 the patrol vehicle and take them home.

7 Q. So he absolutely said he never took her for any kind
8 of ride in that car?

9 A. Yes, sir.

10 Q. May I have one moment, Judge?

11 THE COURT: Yes, sir.

12 Q. Now, during your interview and after the time that
13 Officer Duckett claimed that he left Teresa McAbee at the
14 Circle K Store, did he tell you where he went and what he
15 did?

16 A. He told me that upon observing her go around the
17 Circle K to her home, he immediately went to ... I think it
18 was East on 50, is how he described it to me, to the Mascotte
19 Police Department, where he used the bathroom. He said that
20 was the only place where he could take off his gunbelt and
21 lock the door, basically, is what he told me and from there,
22 he said he went to a couple stores in the area. I think he
23 went through a tavern, a Country Tavern or something, the
24 parking lot and to a couple stores.

25 Q. After he left the police department, after having gone

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1 to the bathroom, did he mention the name, Mr. Crumbley, to you?
2 The Jiffy Store clerk?
3 A. I am not positive.
4 Q. Or Presto Store?
5 A. I would have to refer to my statement. I am not
6 positive if he did or not.
7 Q. Would you look and see what he said.
8 THE COURT: Mr. Hogan, do you have a page in mind of this
9 statement you might be able to help the witness or not?
10 MR. HOGAN: It is a reference to a Presto Store, Mr. King.
11 Okay, check on page twenty-nine, the bottom of page twenty-
12 eight and top of page twenty-nine and see if that refreshes
13 your recollection.
14 A. Would you like me to read his statement on what he
15 said he did?
16 Q. Yes, sir, please.
17 A. Okay, basically, I asked him, "After you saw Teresa
18 go", which I meant home, "past the store to her house, what
19 did you do then?". I said, "Be specific what you did then."
20 Okay, this is Jim Duckett's response. "Okay, I backed out of
21 the parking lot, headed back East on 50, went straight to our
22 P. D.", which means Police Department, "I went in there to
23 use the bathroom, so I had to take my gunbelt and all off..
24 stuff off, and the P. D. is the only place I can lock the
25 doors to. I had to take the gunbelt off and all this to use

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1 the bathroom. I got back in my patrol car and I went back on
2 patrol. I headed down Allbrook and went around County Tavern
3 and went through the parking lot of the Presto; came back to
4 the Jiffy Store and went in there and got a cup of coffee
5 and from there I just went on regular patrol through the city."

6 Q. Through the City of Mascotte?

7 A. I would assume that is what he was talking about.

8 Q. Thank you. Could I have one moment, Judge.

9 THE COURT: Yes, sir.

10 Q. Now, Mr. King, during the cross examination, reference
11 was made to the fact you asked questions supposing soil samples
12 were found or supposing fingerprints were found on the body.
13 Is that a common interrogation or interview technique?

14 MR. EDMUND: That is not ... supposing is not a proper
15 recitation of what was asked on cross examination, Your Honor.

16 MR. HOGAN: Well, the question is worded "if".

17 MR. EDMUND: No, the questions were worded directly out
18 of his statement, "What would you say"...

19 MR. HOGAN: "If". If I told you.

20 THE COURT: Why don't you rephrase it that way.

21 Q. Did you ask the question in a supposing nature?

22 A. Yes.

23 Q. Is that a common interview or interrogation technique?

24 A. Yes, sir.

25 Q. At any time, did you threaten Mr. Duckett with any

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1 kind of physical violence?

2 A. No, sir, I did not.

3 Q. did you promise him anything?

4 A. No, I did not.

5 Q. Did you deprive him of water or food or anything
6 like that?

7 A. No, I did not.

8 Q. Did Mr. Horner, Captain Horner?

9 A. No, sir, he did not.

10 Q. Thank you, Judge. Thank you, Mr. King.

11 THE COURT: Mr. Edmund?

12 RE-CROSS EXAMINATION

13 BY MR. EDMUND:

14 Q. Tell the Jury when between May 12th of 1987 and June
15 15th of 1987, that you or anybody working with you, under
16 your direction, control or supervision, or under whose
17 direction, control or supervision you were working, asked
18 James Duckett to take a lie detector test?

19 A. When?

20 Q. When? At any point during those thirty some days?

21 A. All I can tell you is when I asked him.

22 Q. Right. When, after the 15th of June of 1987, have
23 you or anyone working under your direction, or supervision,
24 or under whose supervision or direction you were working, ever
25 asked James Duckett to take a lie detector test?

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1 A. I asked him the day I took the interview and he
2 stated that he did not want to take it. He changed his mind.
3 Q. Fine. Go to the last page, sir.
4 A. This was after the tape recorder had been...
5 Q. Oh, isn't that beautiful!
6 MR. HOGAN: Objection, Judge.
7 A. It is the truth.
8 Q. This is after you turned off the tape recorder?
9 A. this is when the interview was concluded. I asked
10 him...
11 Q. Tell the Jury precisely what you asked him, okay?
12 A. Just that one question.
13 Q. What?
14 A. When do you want to take the lie detector?
15 Q. Alright, now, you asked him that right after you
16 turned the tape off, right?
17 A. Yes, sir.
18 Q. Get to the last page of seventy, please, sir.
19 A. Okay, sir.
20 Q. Now, is it correct that about a fourth of the way
21 up from the bottom, J. D. is James Duckett, isn't it?
22 A. Right, sir.
23 Q. Does J. D. say, "Tomorrow I will take a polygraph.
24 I'll tell you what. I am not going to take one right... I
25 am going to talk to an attorney in the morning." and then

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1 J. H. Who is that?

2 A. Jim Horner.

3 Q. Jim Horner. "Well, I don't blame you for not taking
4 one.." and then J. D., "Like I am going to. I agree to take
5 one if my attorney says it is clear with him, but I want an
6 attorney.". J. H. What does he say? "Do you?". J. D.
7 "Yeah.". GK. That is you?

8 A. Yes, sir.

9 Q. Then the interview ceases.

10 A. Yes, sir.

11 Q. And you are telling this Jury when you turned this
12 tape off after those statements, you say to him, "Are you
13 ready to go take the lie detector test?"?

14 A. I said, "When do you want to take the lie detector?".

15 Q. After those statements, you are saying to this Jury
16 that you said, "When do you want to go take the lie detector
17 test?", and what did he say?

18 A. I do not want to take one now.

19 Q. Oh, he had just seconds before told you that he wanted
20 to clear it with his attorney and now, he is telling you,
21 "I am not going to take it", in a matter of seconds, isn't it?

22 A. Yes, sir.

23 Q. And this is what you are telling me, but it is not
24 on tape?

25 A. That is right.

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1 Q. Nowhere is it preserved for posterity, except in your
2 mind?

3 A. Probably Mr. Duckett's tape.

4 Q. Well, we will have to check Mr. Duckett's tape to
5 find out.

6 MR. HOGAN: We will be glad to.

7 MR. EDMUND: There you go.

8 THE COURT: Is there a question on the floor, gentlemen?

9 MR. EDMUND: I am not sure, Your Honor.

10 THE COURT: I don't think so.

11 Q. Now, Horner is the polygraph examiner, isn't he?

12 A. Yes, he is, sir.

13 Q. And Horner had just kicked him all over the room,
14 hadn't he?

15 MR. HOGAN: Objection.

16 MR. EDMUND: My mistake.

17 Q. Horner had just participated in a gentle, gentile,
18 interview, that lasted for a hundred and twenty minutes at
19 least and culminated in a tape being turned off before you
20 asked the magic question, right? Now, you said that he went
21 on up to Mohawk and he could see all of this. In fact, on
22 page thirteen, didn't he say to you, "It was absolutely black
23 back in there"? May I step up and just help point it out? It
24 is in the middle of a paragraph. It is right about in here.
25 Okay? "It was absolutely black in there. I could just make

- 1315 -

1 out the heads above the trash dumpster. They were standing
2 real close together and I didn't see any contact. I decided
3 to check into it a little bit further. I went back up, back out
4 onto Sunset, and turned back on East Mohawk and went down to
5 Hickory; turned back onto Highway 50 and came up and parked in
6 front of the laundromat." Now, let me ask you this, sir.
7 Is there some question in your mind that these kids weren't
8 behind the dumpster?

9 A. I can only tell you what I saw during the daytime.
10 I could not see anything near the dumpster myself, if anything
11 was there.

12 Q. In light of the testimony of all the witnesses,
13 including the witness who was standing behind the dumpster,
14 is there any doubt in your mind the kids were behind the
15 dumpster?

16 A. I do not know. I was not there.

17 Q. Now, you say that your investigation in the case, the
18 child had on a blue-green shirt at the store; went home and
19 changed the shirt and came back to the store and you got this
20 information from her mother? Did you ever talk with the
21 mother?

22 A. I did not, no, sir.

23 Q. So you just are talking something somebody else said
24 to you and the mother has testified here under oath, hasn't
25 she?

- 1316 -

1 A. I have spoken to other investigators who have been
2 involved in this investigation.

3 Q. And other investigators have told you that the
4 mother has told them that that night the child did change
5 shirts, is that right? Is that what you are saying?

6 A. I don't know what the mother testified to.

7 Q. That is not what I asked you. Other investigators
8 have told you that the mother told them the child did go home
9 and change shirts, is that what you have testified to this
10 Jury?

11 A. What I am saying is that the mother gave this
12 greenish-bluish shirt to an investigator, that the girl
13 supposedly had on that night.

14 Q. What do you mean supposedly had on?

15 A. Well, from what I understand. I don't know, sir.
16 I didn't see her.

17 Q. Well, then, why did you tell the Jury that is how
18 you reconstructed it?

19 A. This is the information that had been given to me.

20 Q. By whom?

21 A. Investigators of the Lake County Sheriff's Office.

22 Q. That the mother said to them that the child did, in
23 fact, come home and change shirts and go back to the store?

24 A. No, I didn't say that.

25 Q. What did you say?

- 1317 -

1 A. That they were given a shirt that had been worn by
2 Teresa McAbee, described as you initially described it in this
3 statement here.

4 Q. You didn't just get through telling this Jury in
5 response to Mr. Hogan's question that you understood that the
6 little girl had on a blue-green shirt at the store; went home
7 and changed shirts; decided she wanted a pencil; and went back
8 to the store in a changed shirt? You didn't just get through
9 telling the Jury that?

10 A. I stated...

11 Q. Did you just get through telling that Jury that?

12 A. I stated this is what I was told...

13 Q. Did you just get through telling that Jury that?

14 A. I stated that this is what...

15 Q. Did you just get through telling that to this Jury?

16 MR. HOGAN: Give him a moment, please.

17 MR. EDMUND: Judge, he is not responding to my question.

18 THE COURT: I think he is, Mr. Edmund. Listen to what
19 he says. Give your answer, Mr. King.

20 A. This is what I had been told, yes, sir.

21 Q. And you were told that the deputies or the
22 investigators got that information from the mother?

23 A. From what I recollect, yes, sir.

24 Q. You have no idea when they got that information from
25 the mother?

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1 A. Sir, I did not interview the mother. I can't say
2 positively. This is just from what my recollection is.
3 There is so much involved in this case. I can't remember
4 everything without referring to notes, etcetera.

5 Q. Now, in response to the State Attorney's question,
6 "Why didn't he take her home?", you said he said it didn't
7 dawn on him. That is not what he said, is it? And that is
8 not what the question was, is it?

9 A. He stated that there was a policy of his organization
10 not to transport people.

11 Q. The Chief said it wasn't a taxi service, didn't he?

12 A. I think that is what his response was also.

13 Q. Right. And on only one occasion had he transported
14 juveniles, isn't that correct?

15 A. Yes.

16 Q. And those juveniles had repeatedly refused to go
17 home and it was two o'clock in the morning and he called the
18 folks and met them ... made them meet him at the police
19 station, didn't he?

20 A. Yes.

21 Q. And that is the only occasion he had transported
22 juveniles while he was employed at Mascotte?

23 A. That is what he told me.

24 Q. Right, and it was an unusual situation that night?
25 The night that he transported the juveniles who were up until

- 1319 -

1 two o'clock in the morning playing video games and wouldn't
2 go home? Right?

3 A. Only from what he told me, sir.

4 Q. But that is what he told you, isn't it?

5 A. Yes, it is.

6 Q. Alright, sir. Thank you, Your Honor.

7 RE-DIRECT EXAMINATION

8 BY MR. HOGAN:

9 Q. Have you ever seen the polygraph results in this
10 case?

11 MR. EDMUND: I object, Your Honor. It is a leading
12 question; to the sarcastic nature of the question; and going
13 into an area where we know that there is no such results, is
14 not being material or relevant.

15 THE COURT: I'll sustain that objection.

16 MR. HOGAN: No further questions. Thank you, Mr. King.

17 THE COURT: What say you about Mr. King's subpoena,
18 gents?

19 MR. HOGAN: He is released.

20 THE COURT: Objection?

21 MR. EDMUND: I have no objection.

22 THE COURT: You are free to go, sir. Released from your
23 subpoena. Thank you.

24 It is going to be appropriate to take a recess at this
25 time. Ladies and gentlemen, we are going to take a recess and

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1 not trying to make a mystery out of this, but for reasons that
2 I am not at liberty to explain to you, it may take a while.
3 We are just going to ask you to bear with us. We will notify
4 you when we come back again today and remind you not to discuss
5 the case. Thank you very much.

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

7 THE COURT: Yes, sir.

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

9 MR. EDMUND: When I get wound up, I sometimes revert to
10 some of my colloquialisms and "there you go" is no way to
11 address the Court and I apologize.

12 THE COURT: No offense at all.

13 Let me talk to you all about timing. Probably I am
14 more concerned about the Jury's time and some people, but the
15 worst thing I hate to do is keep them sitting around forever.
16 If we take a short break and then start the young lady, we
17 might finish with her at about quarter of four roughly, and
18 then we are going to have argument on the Williams Rule and I
19 presume that is 4:15. At that point, we can't get all three
20 of the girls on between 4:15 and a reasonable hour.

21 MR. HOGAN: We could start them, though, Judge.

22 THE COURT: I really wonder if you want to do that. We
23 could get one of them on if we allow it, of course. What I
24 don't want to do is us to get wound up in this thing and the
25 next thing we know it is 4:30 and we have finished all our

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1 proffers and the Jury has sat back there from 2:30 to 4:30
2 and we decided we can't go ahead...

3 MR. HURM: Judge, there are two other witness relative
4 to the Williams Rule that basically just support the
5 statement. They are the girls that were in the store when
6 she was brought in by Duckett. I just forgot they were out
7 there, frankly, this morning and forgot to call them. We
8 would call them maybe real brief, but is it possible that we
9 could go late.

10 MR. EDMUND: I think it may be after 4:30 and we may be
11 shorter, but it looks ... the Jury sitting back there does
12 leave a bad taste.

13 THE COURT: That doesn't work to anybody's benefit.
14 It doesn't make them astatic that we pulled them in today
15 for an hour and a half's testimony.

16 MR. EDMUND: I don't know. They enjoyed that.

17 MR. HOGAN: Mr. Reynolds is supposed to be here as well.
18 We could see if he is here.

19 MR. HURM: Reynolds, the guy from Lake Butler.

20 MR. HOGAN: I could go take care of that matter.

21 THE COURT: Do you all want to take that statement?

22 MR. HOGAN: We could probably get a court reporter.

23 THE COURT: Do you have someone, Ruth?

24 COURT REPORTER: I will check up there and arrange it.

25 THE COURT: You have no problem with Bob handling that?

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1 MR. HOGAN: I do need to take a bathroom break.

2 THE COURT: We are going to do that now.

3 MR. EDMUND: I would let them go, Judge.

4 THE COURT: I really think we ought to send them home.
5 They are going to hate me for the rest of their lives, but
6 that is my high-powered life, right?

7 I think we ought to bring them back out and then send
8 them home.

9 MR. EDMUND: I will waive the admonition and let them
10 go.

11 MR. HOGAN: That's fine.

12 THE COURT: Alright.

13 (WHEREUPON, BENCH CONFERENCE ENDS)

14 THE COURT: Mr. Bailiff, given the posture of this case
15 at this time and we have had a fairly full and detailed
16 discussion about it, I am going to change my mind and we are
17 going to allow the Jury to go home. We have waived the
18 admonition. I am sure they have heard them enough times by
19 now. Let's ask them to be back here at nine o'clock tomorrow
20 morning and advise them, if you would, nothing more than that
21 and that we are going to continue to work on the case.

22 Alright, thank you.

23 MR. BAILIFF: Yes, sir.

24 THE COURT: Folks, we will be in a fifteen minute recess
25 and then we will be back.

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1 (WHEREUPON, THE DEFENDANT IS REMOVED FROM COURTROOM
2 AT 2:43 P. M.)

3 (WHEREUPON, COURT IS IN RECESS AT 2:43 P. M.)

4 (WHEREUPON, COURT RECONVENES AT 3:10 P. M.)

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

7 MR. HURM: May it please the Court. The State would
8 call Kimberly Fowler Ruetz, R U E T Z.

9 THE COURT: Thank you.

10 MR. HURM: May I ask the Court to remind them with regard
11 to identity disclosures?

12 THE COURT: yes, sir. We have discussed it with them.

13 (WHEREUPON, KIMBERLY FOWLER RUETZ IS CALLED AS NEXT
14 WITNESS FOR THE STATE FOR THE PROFFER OF TESTIMONY AND SHE IS
15 DULY SWORN BY THE CLERK OF THE COURT)

16 DIRECT EXAMINATION

17 BY MR. HURM:

18 Q. Good afternoon, Kimbelry. I knw you are real soft
19 spoken and we don't have a Jury here as we talked about
20 earlier, but the Judge has to hear everything you say and
21 Mr. Edmund has to be able to hear what you say, okay? You
22 need to speak right into these microphones if you would and
23 pull your chair right up to them, if you would.

24 Comfortable?

25 A. Ahum. (Affirmative response)

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1 Q. Would you say your name, please?
2 A. Kimberly Ruetz.
3 Q. You have to speak up even more than that.
4 A. Kimberly Ruetz.
5 Q. Is that R U E T Z?
6 A. Ahum. (Affirmative response)
7 MR. EDMUND: May we approach the bench?
8 (WHEREUPON, BENCH CONFERENCE IS HELD AS FOLLOWS:)
9 MR. EDMUND: I know I am old and old fashioned, but
10 is there no way you can clear the courtroom for this girl?
11 MR. HURM: I would have no problem, I would have suggested
12 it, except that I thought Mr. Edmund would not.
13 THE COURT: You mean the press too?
14 MR. EDMUND: It seems to me this is just that this kid
15 has to go through...
16 MR. HURM: This one is real bad.
17 THE COURT: These are voluntary and consensual activities?
18 MR. HURM: Yes, sir.
19 THE COURT: I can preclude the press, but I shouldn't
20 you know...
21 MR. EDMUND: Your Honor, just the spectators...?
22 MR. HURM: Your Honor, would it be possible to do it
23 maybe in chambers with one representative of the press there?
24 For one thing, I am concerned about her being loud enough to
25 be heard. You have got some problems hearing her.

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1 MR. EDMUND: I may ask you to let me sit in the Jury box
2 during the interview.

3 MR. HURM: But if we do it in chambers, that would be
4 some representative of the press and that would eliminate the
5 spectators and make it easier on her.

6 THE COURT: I'll tell you what I can do. I could do it
7 here and put all the spectators out and keep one member of
8 the press from each organization only, which will cut the
9 press way down. I can do that.

10 MR. HURM: Can I tell her that?

11 THE COURT: Yes, go ahead.

12 (WHEREUPON, BENCH CONFERENCE ENDS)

13 THE COURT: Alright, Mr. Bailiff, I have determined
14 after conference with both the attorneys and with their
15 consent and frankly, at their urging, for this testimony, we
16 are going to clear the courtroom of all spectators. As to the
17 press, one member of each respective newspaper or radio
18 station or television station may remain. You all can make
19 your choices among yourselves.

20 MR. BAILIFF: We will do this in an orderly manner.
21 Starting with the folks on this row.

22 MR. HURM: Your Honor, her husband is here. May he stay?

23 THE COURT: Yes.

24 MR. HURM: He is right here in the courtroom.

25 MR. EDMUND: That is her decision.

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1 MR. EDMUND: Would Your Honor allow me to sit over
2 there?

3 THE COURT: Anywhere. I realize the witness is soft
4 spoken.

5 Alright, Mr. Hurm?

6 DIRECT EXAMINATION CONTINUES

7 BY MR. HURM:

8 Q. Ma'am, state your name again, please?

9 A. Kimberly Ruetz.

10 Q. How old are you?

11 A. Seventeen.

12 Q. What is your birthday?

13 A. 7/16/70.

14 Q. So you will be eighteen this July?

15 A. Ahum. (Affirmative response)

16 Q. Kim, are you married?

17 A. Yes.

18 Q. What is your husband's name?

19 A. David Ruetz.

20 Q. Where do you live?

21 A. Groveland.

22 Q. I see you and David are expecting a baby. When is
23 the baby due?

24 A. June.

25 Q. Hoping for a boy or a girl?

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A. Girl.

Q. Girl? Kim, what was your maiden name?
Before you were married?

A. Fowler.

Q. Were you known as Kim Fowler in February and March
of 1987?

A. Ahum. (Affirmative response)

Q. Were you living in Mascotte or Groveland?

A. Mascotte.

Q. What street did you live on in Mascotte?

A. I don't remember the street.

Q. Do you know where the Circle K is on Highway 50
and Sunset, right near Polly's Bar?

A. Yes.

Q. Where was your house in relationship to that Circle
K?

A. It was further down the road.

Q. About how far? How many blocks? Just a rough guess?

A. Four or five.

Q. Four blocks? Kim, who did you live with there in
Mascotte?

A. My mother.

Q. Did you ever meet any of the Mascotte policemen?

A. Yes.

Q. How many of them did you know by name?

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1 A. Two.
2 Q. Which once were they?
3 A. James Duckett and I know the other, but I can't
4 remember his name.
5 Q. Cooper? Troy Smith?
6 A. I heard, but I don't know.
7 Q. When did you meet James Duckett?
8 A. Around Christmas of 1986.
9 Q. How did you meet him?
10 A. My boyfriend and I got in a fight and my mother
11 called the police and he came.
12 Q. Kim, I want you to look around the courtroom and
13 tell me if you see James Duckett in the courtroom today?
14 A. Yes.
15 Q. Will you point to him, please?
16 MR. EDMUND: I'll stipulate, Your Honor.
17 MR. HURM: Thank you.
18 THE COURT: The record will so reflect the witness has
19 identified the defendant.
20 Q. Now, Kim, it was Christmas of '86 when you met the
21 Defendant, Mr. Duckett?
22 A. Ahum. (Affirmative response)
23 Q. Did you see him more after Christmas of '86?
24 A. Yes.
25 Q. Okay, and where would you see him?

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1 A. Riding around the neighborhood.
2 Q. Was he in a police car when you saw him riding around
3 the neighborhood?
4 A. Yes.
5 Q. Did you ever see him when he wasn't in a police car?
6 A. Once.
7 Q. Was he in uniform when you saw him most of the time?
8 A. In uniform most of the time.
9 Q. Okay, the first time you met him on Christmas of
10 '86, was he in uniform then?
11 A. Yes.
12 Q. And in a marked police car?
13 A. Yes.
14 Q. How did you know it was a police car? How did you
15 recognize it? It may sound like a silly question.
16 A. The lights and it said "Mascotte Police Department".
17 Q. Looked like the other Mascotte police cars that you
18 had seen?
19 A. Yes.
20 Q. In February of 1987, do you remember a night when you
21 and a friend of yours, Becky Purvis were riding around town?
22 A. Yes.
23 Q. Do you remember what night that was?
24 A. I don't remember.
25 Q. Do you remember what day of the week it was?

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1 A. No.

2 Q. Were you going to school in February of 1987?

3 A. Yes.

4 Q. Where were you going to school?

5 A. Groveland High School.

6 Q. What grade were you in?

7 A. Tenth.

8 Q. Tenth grade? Now, on that night when you and Becky...

9 was Becky a friend of yours?

10 A. Ahum. (Affirmative response)

11 Q. Is she still a friend of yours?

12 A. Ahum. (Affirmative response)

13 Q. When you and Becky were riding around, what had you

14 been doing that evening? When you were riding around

15 together? That night in February?

16 A. What were we doing?

17 Q. Yes.

18 A. Just riding around.

19 Q. Just riding around? In whose car?

20 A. Mine.

21 Q. Did you have a driver's license at that time?

22 A. Ahum. (Affirmative response)

23 Q. Now, did you see the defendant, Duckett, that night,

24 when you were with Becky?

25 A. Yes.

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1 Q. About what time did you see him?

2 A. Eleven.

3 Q. Eleven in the morning or eleven at night?

4 A. At night.

5 Q. What was the weather like?

6 A. It was cold.

7 Q. When you saw Duckett, did you talk to him?

8 A. Yes.

9 Q. What did you all talk about?

10 A. I don't remember.

11 Q. What did he say to you? Do you remember anything
12 about what he said to you?

13 A. He told me after I took Becky home if I could come
14 to the clay pits.

15 Q. Why did he want you to go to the clay pits, did he
16 say?

17 A. To meet him there.

18 Q. At the clay pits?

19 A. Ahum. (Affirmative response)

20 Q. Do you know where the clay pits are in relationship
21 to the Circle K? On Highway 50?

22 A. They are across from the trailer park where I used
23 to live, across Highway 50.

24 Q. Look across the courtroom here at this big aerial
25 kind of a map that shows the roads and houses and so forth.

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1 Do you think you could pick out where the clay pits are on
2 that if you walk over to it? You step down and I'll show you
3 where the Circle K is.

4 THE COURT: Help her step down, Mr. Hurm, since she is
5 pregnant if you don't mind, sir. Our steps are tricky
6 enough.

7 Q. Looking at this aerial, which has been marked as
8 State's #61 in evidence, this is the Circle K marked here.
9 This is the police department, the Mascotte Police Department
10 down here. Groveland is that way, East, and Brooksville is
11 this way, West. So from the Circle K, where did you live?
12 This is Highway 50.

13 MR. EDMUND: Show her the clay pits. I would stipulate
14 for the State to show her the clay pits, Your Honor.

15 Q. Can you point them out? Is this the area of the
16 clay pits right here? Is that a yes?

17 THE COURT: I am not sure what she said. I am sorry,
18 Mr. Hurm, did she say yes?

19 A. Yes.

20 THE COURT: Thank you.

21 MR. HURM: Do you stipulate, Mr. Edmund, for purposes of
22 the record that is just according to this diagram, that is
23 just North and West of the sticker that denotes Bay Lake Road?

24 A. Yes, sir.

25 Q. Bay Lake Road is the large white area. Okay, thanks.

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1 go on back to your seat.

2 (WHEREUPON, WITNESS RESUMES SEAT ON WITNESS STAND)

3 Q. Now, when the defendant asked you to meet him at the
4 clay pits, do you know where he was talking about?

5 A. Yes.

6 Q. Do you know where the clay pits were?

7 A. Yes.

8 Q. What did you tell him when he asked you if you would
9 meet him there?

10 A. I told him I would.

11 Q. Did he say anything about what he wanted with you
12 down there at the clay pits?

13 A. No.

14 Q. Did you do anything between the time you saw him and
15 he asked you to meet him at the clay pits and the time you
16 actually went down? What did you do in that period of time?

17 A. I took Becky home and was riding around for a while.

18 Q. Why were you riding around?

19 A. Just to be riding around.

20 Q. How long after you dropped Becky off did you go to
21 the clay pits?

22 A. About an hour.

23 Q. About what time was that then when you got to the
24 clay pits?

25 A. About twelve.

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1 Q. Midnight?

2 A. Ahum. (Affirmative response)

3 Q. Kim, tell us a little bit about the clay pits. What
4 kind of area is that? Are there houses around?

5 A. No.

6 Q. Are there lights down in the clay pits?

7 A. No.

8 Q. Are there any buildings at all down there?

9 A. No.

10 Q. When you got down there, were there any people there
11 at all?

12 A. Not at first.

13 Q. Was Duckett down there when you got there?

14 A. I don't remember if he was there or not.

15 Q. If you don't remember, that's fine. Did he come down?
16 Was there some point that night where you and Duckett were at
17 the clay pits together?

18 A. Yes.

19 Q. When you got down there, did you get out of your car
20 or did you stay in your car?

21 A. I got out.

22 Q. Where did you go? What did you do?

23 A. I stood beside his car.

24 Q. You stood next to his car?

25 A. Ahum. (Affirmative response)

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1 Q. Were the cars... how were the cars parked? Side by
2 side? Front to back?
3 A. Side by side.
4 Q. Did he get out of his car?
5 A. He got out and stretched.
6 Q. Do you remember what you were wearing?
7 A. Blue jeans, tennis shoes and a white tank top with
8 a yellow stripe around it.
9 Q. Now, how tall were you back then?
10 A. 5'1".
11 Q. The same height as you are now?
12 A. Yes.
13 Q. How much did you weigh approximately?
14 A. 120 to 125.
15 Q. Kim, you said he got out and stretched and then got
16 back into his car. What did you do?
17 A. I was still standing.
18 Q. Did he ever say anything to you about what he wanted
19 you to do?
20 A. He asked me... he said it was cold and I could get
21 in the car.
22 Q. Was it cold?
23 A. Ahum. (Affirmative response)
24 Q. Did you get in his car?
25 A. Yes.

- 1336 -

1 Q. Where did you get in his car?
2 A. On the passenger side.
3 Q. Front seat or back seat?
4 A. Front seat.
5 Q. Where was he located in his car?
6 A. In the driver's seat.
7 Q. What kind of car was it you got into?
8 A. Patrol car.
9 Q. Mascotte police car?
10 A. Ahum. (Affirmative response)
11 Q. Did it have lights on top?
12 A. Ahum. (Affirmative response)
13 Q. You have to say yes, not just ahum.
14 A. Yes.
15 Q. Okay, what was he wearing?
16 A. His uniform.
17 Q. Mascotte police uniform?
18 A. Yes.
19 Q. Was the radio on in the car? The police radio?
20 A. Yes.
21 Q. As far as you know, was he on duty then?
22 A. Yes.
23 Q. And you said this was about midnight when you got
24 down there?
25 A. Yes.

- 1337 -

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1 Q. Kim, what did you all talk about when you got in the
2 car?
3 A. At first, we were just passing the time, talking about
4 everything.
5 Q. And then what happened?
6 A. Then he started talking about sex.
7 Q. Started talking about sex?
8 A. Ahum. (Affirmative response)
9 Q. Who brought it up? Do you remember?
10 A. I don't remember.
11 Q. How did the talk about sex get started? What was
12 said?
13 A. He told me that I had pretty eyes and I said he was
14 fine.
15 Q. What did you mean when you said he was fine?
16 A. Cute.
17 Q. Cute? Was that an expression you use a lot? When
18 you say something was fine, you meant cute?
19 A. Ahum. (Affirmative response)
20 Q. When you were saying this, where were you sitting?
21 A. Almost in the passenger side.
22 Q. How far away from him? In other words, were you in
23 the middle of the seat or next to the passenger's door?
24 A. Next to the door.
25 Q. Did you ever move from that position?

- 1338 -

1 A. Yes.

2 Q. Tell me about that. How did you move from that
3 position?

4 A. He pulled me over to his side.

5 Q. How did he pull you over? Did he grab your arm and
6 yank you or...

7 A. No.

8 Q. Tell us about how he did it?

9 A. He just reached over and pulled me over. He just
10 reached over and didn't pull hard.. . he just...

11 Q. Did he pull you by putting his arm around your
12 shoulder or take your hand or move your legs or how did he
13 pull you over?

14 A. I think he put his arms around the top of my
15 shoulders.

16 Q. Did he say anything as he pulled you across the
17 seat?

18 A. I don't remember.

19 Q. Kim, you said he didn't pull hard. It wasn't
20 forceful. Did you resist?

21 A. No.

22 Q. At all?

23 A. No.

24 Q. Did you object to him pulling you over and sitting
25 next to him?

- 1339 -

1 A. No.

2 Q. How did you feel about the defendant?

3 A. I thought he was a nice person.

4 Q. Immediately after he pulled you over next to him,

5 how close were you after he pulled you across the seat? Were

6 you touching him or away from him?

7 A. Right next to him.

8 Q. What happened next after he pulled you across the

9 seat?

10 A. We started kissing.

11 Q. Who kissed first, or did anybody kiss first?

12 A. I don't think anybody kissed first.

13 Q. Just kind of mutual kissing of each other?

14 A. Ahum. (Affirmative response)

15 Q. Did he say anything to you or you say anything to him

16 before you started to kiss?

17 A. I don't remember anything.

18 Q. Kim, where did he kiss you?

19 A. On the mouth.

20 Q. Where were his hands as he kissed you?

21 A. Touching my breasts.

22 Q. On the outside of your clothes or on the inside?

23 A. At first on the outside.

24 Q. Did he kiss you anyplace other than on the mouth?

25 A. Yes.

- 1340 -

1 Q. Where was that?
2 A. On my breasts.
3 Q. Did he ever kiss you on the neck?
4 A. Ahum. (Affirmative response)
5 Q. Now, Kim, tell us what he did with his hands in
6 touching your breasts?
7 A. He rubbed on it.
8 Q. On the outside of your clothes?
9 A. Yes.
10 Q. And then did he go inside?
11 A. Yes..
12 Q. How did he go inside?
13 A. He pulled the sweater, tank top down and pulled my
14 bra up.
15 Q. Did he then touch your bare breasts with his hand?
16 A. Yes.
17 Q. Did he touch one or both?
18 A. Both.
19 Q. You said he kissed your breasts. Did he do anything
20 else?
21 A. He sucked on them, too.
22 Q. Did you object to that at that point?
23 A. No.
24 Q. Kim, did he touch you anywhere else? Other than
25 your breasts?

- 1341 -

1 Q. Where?

2 A. At first he touched me on my jeans.

3 Q. Where on your jeans?

4 A. In my genital area.

5 Q. Between your legs?

6 A. Yes.

7 Q. Did he say anything to you about your jeans?

8 A. He said they were too tight. They looked good, but

9 they were too tight and he wished I wouldn't wear them.

10 Q. Did he tell you why he thought they were too tight?

11 A. Because he couldn't get his hand under them.

12 Q. Was that problem solved? In other words, was he

13 able to get his hand inside your jeans?

14 A. Yes.

15 Q. Tell us about that. How was he able to do that?

16 A. He upzipped them, but he couldn't unbutton them,

17 because they were tight, so I unbuttoned them and pulled them

18 down to my knees.

19 Q. Were you wearing panties?

20 A. Yes.

21 Q. What happened to those?

22 A. Pulled those down.

23 Q. Who did?

24 A. He did.

25 Q. He pulled your panties down?

- 1342 -

1 A. Yes.
2 Q. They were also to your knees?
3 A. Ahum. (Affirmative response)
4 Q. What did he do then after your panties were down?
5 A. He started rubbing.
6 Q. Where did he rub?
7 A. Between my legs.
8 Q. Did he ever put his finger inside your vagina?
9 A. Yes.
10 Q. Did he say anything to you while he was doing this?
11 A. I don't remember if he said anything or not.
12 Q. Now, Kim, after this happened, after he put his
13 finger in your vagina, what did you do? Did you ever touch
14 him? Did you ever touch him anywhere?
15 A. Yes.
16 Q. Where did you touch him?
17 A. Between the legs.
18 Q. Tell us about that. When you first started to touch
19 him between the legs. Were his clothes off or on?
20 A. On.
21 Q. You say he was wearing a uniform, did he have a gun-
22 belt on?
23 A. Yes.
24 Q. Did he have any other police equipment that you
25 noticed that he was wearing?

- 1343 -

1 A. I remember he had the belt on and his radio or
2 something.
3 Q. You are pointing up to your shoulder. Was the radio...?
4 A. There was something on the shoulder. I don't remember
5 what it was.
6 Q. You touched him on the outside of his pants? What
7 were you touching?
8 A. His penis.
9 Q. Did you ever touch his penis with his clothes off?
10 A. Yes.
11 Q. Tell us how his clothes came off?
12 A. He didn't take his clothes off. He just unzipped
13 them.
14 Q. He unzipped them?
15 A. Ahum. (Affirmative response)
16 Q. And who took his penis out?
17 A. I did.
18 Q. Kim, did he have an erection?
19 A. Yes.
20 Q. And did he say anything after he took his penis out
21 of his pants?
22 A. Well, I started rubbing and he said it felt good.
23 Q. What else did you do?
24 A. I sucked on it.
25 Q. You sucked on his penis?

- 1344 -

1 A. Ahum. (Affirmative response)
2 Q. What happened as you sucked on his penis?
3 A. He came in my mouth.
4 Q. By that you mean ejaculated?
5 A. Yes.
6 Q. What did he say after he ejaculated in your mouth?
7 A. What did he say? He said it felt nice.
8 Q. Was he saying anything as you were sucking his penis?
9 A. Making loud noises.
10 Q. After he ejaculated, can you tell us what happened?
11 A. He just put it back in his pants and talked a little
12 bit longer and then left.
13 Q. Did you leave in your own car?
14 A. Yes.
15 Q. About how long were you with him in his car?
16 A. An hour.
17 Q. What time did you get home? Did you go straight
18 home from the clay pits?
19 A. I don't remember if I went straight home or not.
20 Q. When you were in the police car, had he told you and
21 this may sound like a silly question, had he told you that
22 you were under arrest?
23 A. No.
24 Q. Did he talk to you about a case that he was
25 investigating?

- 1345 -

1 A. No.

2 Q. Did he ever say anything to you that night about
3 ... were you aware as to whether or not there was a curfew
4 in Mascotte?

5 A. I knew about it.

6 Q. Who did that curfew apply to, if you know?

7 A. Under age.

8 Q. Under eighteen? Under twenty-one?

9 A. Under eighteen.

10 Q. Were you under eighteen at this time? In February
11 of '87?

12 A. Yes.

13 Q. You were seventeen? Or are you seventeen now and
14 you were sixteen then?

15 A. Yes.

16 Q. Did he ever say anything to you about being out past
17 curfew?

18 A. No.

19 Q. Did he ever tell you to go home, that you were out
20 too late?

21 A. No.

22 Q. Did he offer to drive you home?

23 A. No.

24 Q. Did he ever say he was going to call your mother and
25 tell her you were out past curfew?

- 1346 -

1 A. No.

2 Now, to get down in the clay pits, what kind of a road
3 do you drive on?

4 A. A clay road.

5 Q. Is it paved?

6 A. No.

7 Q. You said when you first got down there, there was
8 somebody else there, at first. That implies that somebody
9 came down at some point. Did someone come down there?

10 A. Yes.

11 Q. Tell us about that? When did they come down? Was
12 that before the sex acts or after?

13 A. I think it was before.

14 Q. And who came down, did you see who it was?

15 A. No, I don't know who it was.

16 Q. Were they on foot or in a vehicle?

17 Q. In a truck.

18 Q. How far into the clay pits did they come?

19 A. It wasn't too far from the road that goes down... not
20 too far from there.

21 Q. Did their headlights hit your car or the police
22 car?

23 A. I think they did.

24 Q. What did Duckett do when that truck came down in the
25 clay pits?

- 1347 -

1 A. He put the spot light on and was looking around.
2 Q. What did he tell you to do?
3 A. Get out and go on the other side.
4 Q. Say that again? Go out and do what?
5 A. Get out and go to the other side of the car.
6 Q. Did he tell you to act any certain way?
7 A. Just as if we were talking.
8 Q. Now, at any time, did he ever say anything to you
9 about not telling anyone about what you had done? Either that
10 night or at a later time?
11 A. At a later time.
12 Q. What did he say?
13 A. He said that he had gone through too much to get to
14 where he was.
15 Q. What did you take that as meaning, to get where he
16 was? What was he talking about?
17 A. To me, it meant he went to police school and whatever.
18 Q. Being a policeman?
19 A. Yes.
20 Q. So he said he had gone through too much to get to
21 where he was?
22 A. Worked too hard.
23 Q. Worked too hard and what else?
24 A. He said he worked too hard for anything to happen, so
25 he said for me not to say anything about it.

- 1348 -

1 Q. Did you agree not to say anything?

2 A. Yes.

3 Q. Can I have a moment, Your Honor?

4 THE COURT: Yes, sir.

5 Q. Kim, did you ever meet Duckett at another time and
6 engage in any sex acts with him?

7 A. Yes.

8 Q. Tell us about that? When was it?

9 A. That was either beginning of May or late April.

10 Q. Of 1987?

11 A. Yes.

12 Q. And how did you meet him on that night?

13 A. Becky and I were out riding around and we saw him and
14 I stopped and talked to him.

15 Q. What did he say to you? Did he ask you to meet him
16 a certain place again?

17 A. Ahum. (Affirmative response)

18 Q. What was his mood at that time?

19 A. He seemed upset and mad.

20 Q. Where did he ask you to meet him?

21 A. Behind the County barn.

22 Q. The County barn?

23 A. Ahum. (Affirmative response)

24 Q. Is that a tavern or is that a place where they keep
25 County trucks or what?

- 1349 -

1 A. Where they keep County trucks.
2 Q. I guess it is the Country Tavern down there, isn't
3 it? Is that a bar?
4 A. Yes.
5 Q. Where is that located? Is that in Mascotte city
6 limits?
7 A. Yes.
8 Q. Tell us about that area. First of all, was the
9 County barn open when you met him there?
10 A. There wasn't anybody there.
11 Q. About what time of the day was it?
12 A. That was at night.
13 Q. What time?
14 A. Approximately around eleven o'clock.
15 Q. Was there anybody there?
16 A. No.
17 Q. Were there any lights in that area?
18 A. I don't believe so.
19 Q. Where you met him, would you describe that? How
20 would you describe the lighting in that area where you met
21 him at the County barn?
22 A. It was dark.
23 Q. What happened? Did you go in your car there and he
24 was there in his car?
25 A. Ahum. (Affirmative response)

- 1350 -

1 Q. Was he in uniform on that night?
2 A. Ahum. (Affirmative response)
3 Q. Was he in a police car?
4 A. Yes.
5 Q. Was it a marked Mascotte police car?
6 A. Yes.
7 Q. Did you get in his car that night?
8 A. Yes.
9 Q. Was the radio on?
10 A. I think it was on.
11 Q. Let's get back to the clay pits, one question I
12 forgot to ask. Did he get any radio calls when you were at
13 the clay pit?
14 A. Yes.
15 Q. Do you remember what the nature of the call was?
16 A. No, I remember him saying he was in the clay pits,
17 but I don't know what he said.
18 Q. Now, back to the County barn, when you were with him
19 in his car, tell us what happened. You got in the car. You
20 said he seemed mad or upset?
21 A. He told me that the Chief had gotten onto him because
22 he was talking to too many girls around Mascotte.
23 Q. He said the Chief got on him, because he was talking
24 to too many girls around Mascotte?
25 A. Yes.

- 1351 -

1 Q. And what was his attitude towards that? How did he
2 feel about that?
3 A. He was mad; kind of mad about it.
4 Q. What did you say?
5 A. I told him everything would be okay.
6 Q. What did he say to you then?
7 A. He told me thank you for cheering him up.
8 Q. What did he do then?
9 A. He kissed me.
10 Q. Where were you sitting?
11 A. I was sitting beside him.
12 Q. Tell us briefly, Kim, what happened after he
13 kissed you the first time at the County barn?
14 A. The same thing as the other time.
15 Q. Did he rub your breasts again?
16 A. Yes.
17 Q. On the inside of your clothes or on the outside?
18 A. Yes.
19 Q. Did he kiss your breasts?
20 A. Yes.
21 Q. Did he suck your breasts?
22 A. Yes.
23 Q. Did he ... were your pants taken down?
24 A. Yes.
25 Q. Did he rub your genital area?

- 1352 -

1 A. Yes.
2 Q. Did he put his finger in your vagina?
3 A. Yes.
4 Q. Did you rub his penis?
5 A. Yes.
6 Q. Did you suck his penis?
7 A. Yes.
8 Q. Did he ejaculate again as you sucked his penis?
9 A. Yes.
10 Q. Did you have any further conversation with him with
11 regard to getting together again?
12 A. No.
13 Q. Did he kiss your neck that night?
14 A. Yes.
15 Q. Do you recall whether or not he made any marks on
16 you?
17 A. Yes.
18 Q. Tell us about the marks?
19 A. They were dark blue.
20 Q. Where were they located?
21 A. Around in here.
22 Q. What did you call them?
23 A. Hickeys.
24 Q. Were you ever asked by anyone about those marks?
25 A. By my mom.

- 1353 -

1 Q. What did you tell her?

2 A. Well, she was naming off people and she named him...

3 Q. Him, being Duckett, the Defendant?

4 A. Yes, and I said, "Yes, it was him".

5 Q. Did he ever say anything to you about whether or not
6 he was married?

7 A. No.

8 Q. At the time of the clay pits, did you know whether or
9 not he was married?

10 A. No.

11 Q. How about at the County barn, that incident, did you
12 know then whether he was married?

13 A. I heard he was married. I was pretty sure he was.

14 Q. Did you ever ask him about it?

15 A. No.

16 Q. Did he ever say anything to you about your age?

17 A. He told me he wished I was eighteen or over.

18 Q. Did he say why he wanted that?

19 A. No, he never said why.

20 Q. Did he ever say anything about his age?

21 A. He wished he would be younger.

22 Q. Did he ever say anything about his job?

23 A. He said he wished he would be younger and not be a
24 police officer.

25 Q. Did he explain that to you?

- 1354 -

1 A. He didn't say anything about it, but I figured he
2 meant that he didn't want either one of us to get in trouble
3 for anything.

4 Q. Did you know how old he was?

5 A. I thought he was around twenty-nine.

6 Q. And you were sixteen?

7 A. Yes.

8 Q. Thank you, Your Honor, I don't have any further
9 questions.

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

11 THE COURT: Yes, sir.

12 CROSS EXAMINATION

13 BY MR. EDMUND:

14 Q. Do you mind if I call you Kim?

15 A. No.

16 Q. I am Jack Edmund.

17 MR. HURM: May I sit over there, too?

18 THE COURT: Yes, sir.

19 Q. Before you met Duckett at the clay pits, you all
20 had talked before on other occasions, had you not?

21 A. Yes.

22 Q. There had come a time prior to that that you had
23 dared him to come to the house, to your house, hadn't you?

24 A. Yes.

25 Q. And he had come around to the house and you all were

- 1355 -

1 just joking about that, isn't that true?

2 A. Yes.

3 Q. Alright, now, when you went to the clay pits, didn't
4 he wear a wedding ring?

5 A. I never saw a wedding ring.

6 Q. Did you look?

7 A. I looked. He didn't have one on.

8 Q. Now, when you went to the clay pits, you went there
9 in your car, didn't you?

10 A. Yes.

11 Q. And he went there in his patrol car?

12 A. Ahum. (Affirmative response)

13 Q. You had never ridden in a patrol car while it was
14 moving, had you?

15 A. No.

16 Q. Only on two occasions you have been in it when it was
17 sitting still; once at the clay pit and once at the barn?

18 A. Yes.

19 Q. Now, your home is just a couple minutes away from the
20 clay pits, is it not?

21 A. Yes.

22 Q. You were home within two minutes after this was over?

23 A. If I went straight home. I don't know if I went
24 straight home or not.

25 Q. How far is your home from the barn?

- 1356 -

1 A. It would take about four minutes to get there.

2 Q. Did you ever feel threatened when you were with
3 Duckett?

4 A. No.

5 Q. Did you feel comfortable with Duckett?

6 A. Yes.

7 Q. Did you feel that he was a gentle person?

8 A. Yes.

9 Q. Did you even compare him as being a nice guy, good
10 cop and not a, as you put it, bad ass like Barniville?

11 A. No.

12 Q. Is that how you compared them? Who is Barniville?
13 Is he a cop over in Groveland?

14 MR. HURM: Objection, Your Honor. It is outside the
15 scope.

16 MR. EDMUND: I think it is...

17 MR. HURM: It is irrelevant. Anything that has to do
18 with Ron Barniville is irrelevant.

19 MR. EDMUND: It is part of her statement, Your Honor.
20 I'll get to it if the State quits interrupting.

21 THE COURT: Go ahead, for purposes of this hearing
22 anyway, and I'll give you a ruling on that if we go to the
23 Jury.

24 Q. You didn't qualify him as being a bad person, did
25 you?

- 1357 -

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A. No.

Q. You qualified him as being a good person?

A. Yes.

Q. And did you say that on both occasion, he was very gentle?

A. Yes.

Q. Now, when the conversation got around to using vulgarity or four letter words, he never used any four letter words, did he?

A. I don't remember if he did or not.

Q. But you did, didn't you?

A. Yes.

Q. You used the four letter word that we all know that begins with "F", don't you?

A. Yes.

Q. And you asked him when are we going to do that, didn't you?

A. Yes.

Q. Alright, but then you made him promise that at some point in time, you all would do that, didn't you?

A. Yes.

Q. And he did promise that some day he would, right?

A. I don't know if it was a promise or anything. I remember about saying something.

Q. Now, when he pulled you over in the seat, he pulled

- 1358 -

1 you over slow, didn't he?

2 A. Yes.

3 Q. He did it gently, didn't he?

4 A. Yes.

5 Q. He didn't smash you around or hurt you in any way,
6 is that correct?

7 A. Yes.

8 Q. Now, do you remember giving a statement to Denise
9 Anderson sometime back on the 17th of June of 1987, a female
10 deputy?

11 A. Yes.

12 Q. At that time, on page fourteen, about half way down
13 the page, do you remember Denise Anderson saying this to you:
14 "Now, I'll let you hold this right here and just be careful
15 not to ... yeah, hold it like that. This way, you can talk
16 into it and you won't have to look at me, okay? My big
17 mouth, you can hear without any problem. Q. Did he ask you
18 to take your slacks off?" Do you remember that conversation?

19 A. Yes.

20 Q. Do you remember telling Denise, "No", that he didn't
21 ask you to take your slacks off? Correct?

22 A. Right.

23 Q. And she asked you, "Did you take your slacks off
24 and then was your answer, "Not off. They just went down a
25 little.". Do you recall that?

- 1359 -

1 Q. And then she said, "Kimberly, I know that they didn't
2 go down by themselves. How did they get down?" and you said,
3 "Me", correct?

4 A. Yes.

5 Q. And she said, "You unzipped them" and you said,
6 "Yes". Correct?

7 A. Yes.

8 Q. And then she said, "Did he ask you to?" and you said,
9 "No. He started to, but he couldn't, because they were too
10 tight.", right?

11 A. Yes.

12 Q. Now, you actually unzipped his pants also, did you
13 not? On the first occasion? Can you remember talking to
14 her about that?

15 A. I think I did. I am not sure about it.

16 Q. You unzipped his pants on the first occasion and
17 you think he unzipped his pants on the second occasion, is
18 that correct?

19 A. Yes.

20 Q. There was never a time that he asked you to do any
21 particular thing to him, like touching him or have oral sex
22 with him or anything like that, did he?

23 A. No.

24 Q. There was never a time that he even took your hand
25 and placed it on his person anywhere, is there?

- 1360 -

1 A. I don't remember if he took my hand and put it on
2 him or not.

3 Q. And there was never any time that he forced you to
4 have any sex with him. This was something that you did of
5 your own volition is it not?

6 A. Yes.

7 Q. Even on the second occasion, he didn't ask you to
8 perform any acts at all, you did it all voluntarily without
9 any conversation about anything, didn't you? You and him?

10 A. Yes.

11 Q. Did your mother know that you were seeing Duckett?

12 A. She knew I talked to him.

13 Q. She pretty well suspected that he was the person
14 who put the hickeys on your neck, didn't she?

15 A. Yes.

16 Q. And she laughed about it and really wasn't too
17 concerned about it?

18 A. Yes.

19 Q. The people at work were more concerned about it than
20 your mother was, correct?

21 A. They wondered who did it.

22 Q. Ma'am?

23 A. They wondered who did it.

24 Q. Now, did you tell Denise that Duckett was... I am
25 sorry, sir... page forty-five, about the middle of the page,

- 1361 -

1 the largest paragraph on the page; she asked you, "Did he
2 ever see you... did you ever see him act, you know, you had
3 better go home after curfew to anybody", and you said, "No.
4 He seemed kind of more like the type of person that didn't
5 want anybody to get hur or get in trouble, you know. It felt
6 like he was concerned about people, like, "Don't go out and
7 get into trouble... bad trouble, you know... go out and get
8 hurt. Don't meet anybody that you don't know", things like
9 that." That is how you felt about Duckett and that's how
10 you told her you felt about Duckett, isn't it?

11 A. Yes.

12 Q. You met him on the second night and he was actually
13 in an angry and a frustrated mood when you first saw him,
14 didn't you?

15 A. Yes.

16 Q. And it turned out he was angry at something that
17 happened on the job, correct?

18 A. Yes.

19 Q. But he was still gentle with you and still gentle
20 with you, wasn't he?

21 A. Yes.

22 Q. And at some point in time, he even thanked you for
23 finally making him smile?

24 A. Yes.

25 Q. But he didn't beat up on you or get nasty or curse

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1 and swear at you, use vulgarity or anything. You talked and
2 he smiled and one of the other of you said, "Well, let's get
3 on with it". That is about how it happened, isn't it?

4 A. Yes.

5 Q. Page sixty-seven, sir. Do you remember Denise asking
6 you this: "But then it was after that he saw you and the hickeys
7 on your neck, that night that you were together, did he tell
8 you not to say anything to anybody? Did he ever tell you not
9 ... did he ever tell you at any time not to tell anybody that
10 you were seeing him"and your answer was "No". He never
11 said, "Well, don't tell your mom; go blabbing around town"?
12 I am not sure whether that is her or the Deputy. Was it her?
13 It indicated KF. KF, that is Kimberly. And you said, "No,"
14 he never said, 'Don't tell your mom or go blabbing it around
15 town, or you know ... and in a way, he didn't really seem
16 to care if anybody found out about it or not. In a way he
17 did and in a way he didn't. He didn't want anybody to find
18 out and he never told me not to say anything. I guess he
19 figured I wouldn't, because I always told him, 'God, I hope
20 nobody finds out'". Did you remember saying that?

21 A. Yes.

22 Q. Alright, and now, one time he did say, "I worked
23 hard to get here. I would hate to lose it, but you won't
24 say anything... if you won't say anything, I won't.". He
25 didn't make any threats or anything like that, did he?

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1 A. No.

2 Q. But his general attitude was, "I hope nobody finds
3 out, but no threats to you or anything about not saying
4 anything, correct?

5 A. Correct.

6 Q. Thank you, Judge.

7 THE COURT: Mr. Hurm?

8 RE-DIRECT EXAMINATION

9 BY MR. HURM:

10 Q. When you went to the County barn, did he give you
11 instructions on where to park?

12 A. He was already parked and he turned his lights off
13 and on so that I could see where he was parked.

14 Q. Did he tell you where to park though, after you
15 pulled up and talked to him?

16 A. Yeah, we backed up.

17 Q. What did he say?

18 A. He said to park beside his car.

19 Q. Did he say anything more about it?

20 A. He just said he didn't want anybody to see us back
21 there.

22 Q. Okay.

23 THE COURT: He said what? I am sorry.

24 Q. Say it again, so the Judge can hear you.

25 A. He didn't want anybody to see us back there.

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1 THE COURT: You all back there. I understand. Thank you.
2 Q. Kim, did you ever tell him you were going to tell
3 somebody? About your involvement with him?
4 A. I don't think so.
5 Q. Did you ever tell him, say, "I am going to tell my
6 mother. I am going to tell Becky. I am going to tell anybody
7 else."?
8 A. I don't think so.
9 Q. Was it most of the conversation to him to the effect
10 that, "I am not going to tell anybody and I hope nobody finds
11 out"? That was your feeling wasn't it?
12 A. Ahum. (Affirmative response)
13 Q. I don't have anything further.
14 MR. EDMUND: No, sir.
15 MR. HURM: Thank you, Kim.
16 THE COURT: Alright, ma'am, you can step down from the
17 witness stand. You will have to remain with us outside, if
18 you would, please.
19 Mr. Hurm, did you want to call the other witnesses from
20 this morning?
21 MR. HURM: Your Honor, the only other witness I have
22 is Becky Purvis. Her only testimony is going to be she was
23 there with Kim and heard the Defendant say to meet him in
24 the clay pits. If you want that now, or as an officer of the
25 Court, I am representing that is all she is going to testify to

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1 and we can go ahead and do it now or we can just save that
2 and I'll accept...

3 THE COURT: I'll accept your word for it as a proffer.

4 MR. HURM: That's fine.

5 THE COURT: Are we prepared to argue with regard to the
6 Williams Rule issue?

7 MR. EDMUND: Yes, sir, Your Honor.

8 MR. HURM: Yes, sir.

9 THE COURT: Gentlemen, you have done, obviously, a lot
10 of research and analysis with regard to the Williams Rule and
11 I have, as well, particularly with the assistance of my law
12 clerk while he was here, before he went on vacation.

13 I know you want to argue it your own way, but I want to
14 ask you all to make a couple of notes, because I would like
15 you to address these issues at some point in your relevant
16 argument.

17 It seems to me at least one orderly way to proceed with
18 regard to the Williams Rule is to ask ourselves perhaps first,
19 what issues in the trial are this testimony relevant to.
20 What issues are we offering this testimony to prove. What is
21 it relevant and material to. My analysis would go to that
22 first. If we have no relevancy or materiality, we don't need
23 to get to all the other questions that need to be discussed
24 with regard to the Williams Rule.

25 My second analysis would be have we, in fact, met the

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1 Williams Rule test. That is, are the facts of these
2 instances sufficiently unique and similar to those before the
3 Court. I know that you will recite to me as many cases as
4 I have read and we all know Williams Rule factual comparisons
5 are all over the place. To the extent we can make sense out
6 of those, we will all try to do so.

7 I think we then have a question of whether the prejudicial
8 effect of the Williams Rule testimony would outrule the
9 probative value. The legal relevancy issue.

10 We also have the question of whether or not the Williams
11 Rule testimony will become the focus of the trial. Certainly,
12 to some extent, all of these four prongs are intertwined, but
13 it seems to me, although I am going to leave you free to argue
14 this any way you want to, if I were analyzing the whole question,
15 I would start with the question of relevancy and materiality,
16 and address that, and then I would talk about the facts, the
17 uniqueness and then the prejudice versus probative value
18 and then whether or not the Williams Rule testimony would
19 become the focus of the trial.

20 I think we properly have waited until late in the
21 State's case in chief, particularly, I am not sure we ever
22 said this on the record, but it was my suggestion that there
23 seems to be there would be no way a trial judge can ever
24 decide the focus of the trial question if you haven't heard
25 the rest of the trial, so you know essentially what it is you

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1 are comparing to be the focus, and essentially, I think we
2 have heard the rest of the trial from the State's case in
3 chief.

4 Mr. Hurm, you are to argue. You are the moving party,
5 so I will allow you to go first.

6 ARGUMENT

7 BY MR. HURM:

8 Your Honor, first addressing the first issue the Court
9 has raised.

10 As the Court has pointed out, the test with regard to
11 the Williams Rule is relevancy and not necessity to prove
12 the material fact and in Rule 404.28 sets out not an exclusive
13 list, but rather a suggestion of some of the material issues
14 that could be proved by similar fact evidence.

15 THE COURT: I agree.

16 MR. HURM: Among those listed are motive, opportunity,
17 intent, preparation, plan or common scheme or design, common
18 course of conduct, knowledge, identity, absence of a statement,
19 or actions.

20 I submit that in this particular case, the crucial issue
21 as to who committed this homicide, or the crucial issue in
22 the trial is who committed the homicide; the identity of the
23 perpetrator seems to be the issue on which the entire trial
24 hinges, if indeed, we believe and we presented testimony that
25 it was the Defendant, then certainly this Williams Rule evidence

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1 would support the identity of the defendant. However, I
2 believe that it supports other things as well.

3 (1) The testimony as proffered by the State has
4 illustrated that this man made sexual advances at three young
5 girls. One, nineteen; one seventeen; and one who was sixteen
6 at the time. All of them... although the victim was eleven,
7 we heard testimony that Joyce Reynolds, at least, thought
8 she may have been as old as thirteen or fourteen. There has
9 been other testimony that she looked older than eleven to
10 some people's eyes and I think the ages of the victim or age
11 of the victim, and the age of the three witnesses with regard
12 to the Williams Rule are close enough to be a point of
13 similarity.

14 The defendant made sexual advances at three of them.
15 Two of them rebuffed him to some extent: Shelby Dow and
16 Linda Upshaw. Linda Upshaw was taken to an abandoned grove
17 area, down a dirt road, where she was ... her breasts were
18 fondled and she ... he attempted to kiss her. She responded
19 in a very upset manner and said she needed to go to the rest
20 room and so forth. There was a delay of fifteen minutes, she
21 testified to, and then the defendant finally did bring her
22 back.

23 The last witness the Court heard, Kimberly Fowler Ruetz,
24 testified that she had assured the defendant that she didn't
25 want anybody to find out about this. She had said, as a

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1 matter of fact, at one point in her statement, I think
2 Mr. Edmund brought out was that she had said, "God, I hope
3 nobody finds out about this".

4 As to motive, the State would submit that this could
5 show the motive of the defendant to commit the homicide,
6 because after the sexual contact was had with the victim in
7 this case, Teresa McAbee, and again this is a supposition
8 because I wasn't there and noone was there except the killer
9 and Teresa McAbee, but it is certainly reasonable with the
10 facts of this case, that after the sexual contact to which
11 Dr. Shutze testified occurred shortly before the killing;
12 very shortly before; Teresa could have said, "I'm going to
13 tell my mother. I am going to report this. You had no right
14 doing this." The fact that none of these other girls had
15 indicated they were going to tell on him or they were going
16 to report it, as a matter of fact, all three of the girls
17 had indicated that they did not report it. Kim Fowler said
18 she didn't want anybody to find out at all. Of course, hers
19 is different from the other two in the sense that it was
20 consensual on her part. The other two girls indicated,
21 "No, they didn't want to report it. They didn't want the
22 hassle. They didn't want to file the papers and so forth."
23 As a matter of fact, one of them said... she said it wasn't
24 that big a deal. That was Shelby Dow, the one who was the
25 least accosted among the three. She was the first one to

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1 testify.

2 That Teresa McAbee may have said, "I am going to report
3 this", could have provided a motive for the defendant to kill
4 her at that point. A motive that was lacking in the other
5 three cases, because none of them said they were going to
6 report it. In addition, Theresa's hymen was torn. Dr. Shutze
7 said it would cause a great deal of pain when that occurred.
8 That also could have prompted Teresa say that she was going
9 to report that. So I believe that this testimony could help
10 to prove and does help prove the defendant's motive for the
11 homicide.

12 Secondly, it shows opportunity on the part of the
13 defendant. This was not something that was unusual or
14 uncharacteristic for him. He had, on three prior occasions,
15 taken young girls into his police car while he was on duty
16 and while he was in uniform, on the night shift, taking them,
17 two of them, to abandoned areas where they were out of sight.
18 This is two individuals on three occasions, to abandoned
19 areas where they were out of sight of the public. As a matter
20 of fact, he instructed Kim Fowler on the second occasion
21 at the County barn, to park so that noone could see them.
22 He also instructed her to jump out of the car when the truck
23 came down the clay pits and act as though they were having
24 normal conversation. He tried to conceal it, his involvement
25 with these other three girls. It shows that he had an

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1 opportunity to do this to Teresa McAbee. To pick her up
2 in the police car and take her out to Knight Lake and
3 sexually assault her and murder her there.

4 In addition, I believe it goes to show his intent and
5 that would dovetail into my argument with regard to motive.
6 His intent for committing the homicide could have been brought
7 about by virtue of the fact that her hymen was torn and she
8 was in a great deal of pain, and this eleven year old girl,
9 she said, "I'm going to tell someone you did this to me", and
10 he recognized he is a twenty-nine year old man, a police
11 officer, that that would be the end of his world, as it were,
12 his job and possibly his marriage and so it would go to
13 his intent.

14 In addition, it goes to show a plan or a common scheme
15 or a common course of conduct on his part, which has been
16 recognized by what is in the rule and it has been recognized,
17 of course, by the Court decision, as a valid issue to be
18 proven by similar fact evidence.

19 In this particular case and this is where and I may be
20 jumping ahead a bit to the unique part, but certainly it
21 shows a common scheme of where the same individual, in a police
22 uniform, in a police car, while on duty, on the midnight
23 shift, takes young, teen-aged girls down dirt roads, and two
24 of them into an abandoned orange grove; one into a clay pit
25 area; attempted to perform sexual acts with them or actually

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1 did perform sexual acts with them. As a matter of fact, in
2 one case, there was digital penetration and Dr. Shutze said
3 that Teresa McAbee's injury was consistent with digital
4 penetration as well as penal penetration.

5 That picking up these girls was in violation of a policy
6 regarding riders in the police car; that in none of these
7 cases were any of the girls in the police car as an arrested
8 subject, as a city employee, or as any witness who could
9 provide information in the police cruiser.

10 All these individuals were met within a mile of the
11 Circle K. So the area was the same type. The timing was
12 the same. One girl, this occurred on May 1st; Kimberly Fowler
13 said that the second occasion, at the County barn, occurred
14 in late April or early May. The other occasion with Kim
15 Fowler occurred in February. She thought late February of
16 1987 and then, of course, Teresa McAbee was murdered on
17 May 11th, of 1987. All within a few months of that period
18 of time.

19 The hour of the night was the same. The police car was
20 the same. Sex was the same. Not the same acts, but the
21 same intent on the part of the defendant to have sex with
22 each of these young girls. So I would submit that it shows
23 a common scheme or course of conduct on the defendant's part.
24 That he did it those three times and the same course, the
25 same scheme was followed in this particular occasion. We have

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1 heard evidence that he picked the girl up and he placed her
2 in his car at least on one occasion. We have had testimony
3 that he came back, put her in the car and drove out towards
4 the crime scene. Tire tracks consistent with the tread
5 coming from the tires on his police car; tread of tires that
6 are very, very unusual in Central Florida. As a matter of
7 fact, they were ordered by mistake. Mr. Ekiert said he had
8 never in nine years sold another set of Mud and Snow tires.
9 They were the same size and they were consistent with coming
10 from the same tires. Those tracks were found at the crime
11 scene.

12 The victim's fingerprints, the position that was
13 illustrated yesterday, were found on the hood of the police
14 car. The victim's fingerprints were found inside the police
15 car. All of that evidence and in addition, some of the most
16 damning evidence is the fact that the defendant's hair was
17 found in the victim's pants. Based on the expert testimony
18 that we have received. All those point to the identity of
19 the murderer in this case as being the defendant, Duckett.

20 The fact that the police car was involved; the tire
21 tracks and the young lady was placed in the police car on the
22 night of the murder; that he was seen leaving the scene; all
23 those are similar to and consistent with the testimony of the
24 Williams Rule witnesses, that he picked them up in a police
25 car and he was in uniform and he was on duty and it was the

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1 midnight shift; the same hour of night; the same general
2 area geographically; that sex was attempted or performed in
3 the police car. All those are consistent with the evidence
4 that we have seen adduced at this particular trial with
5 regard to the death of Teresa McAbee.

6 In addition, I would submit, Your Honor, that we are
7 not just talking about the murder here, although that has been
8 the focus I think, of the trial, and we are talking about
9 this being a murder trial. The defendant is also being
10 tried at the same time with Capital Sexual Battery, in that
11 he injured the sexual organs of Teresa McAbee. The fact that
12 Kim Fowler's contact with him was consensual is of no issue
13 as to whether or not it should come in, to prove any of
14 these facts or mode of opportunity, intent, plan, or identity.

15 Capital Sexual Battery we don't know whether Teresa
16 McAbee voluntarily consented to sex with the defendant. I
17 submit that there is absolutely no evidence of that, but even
18 had she done that, that is not... we don't have to prove
19 non-consent, and so consent is not an issue, so whether or
20 not Kim Fowler consented to this really is not a dissimilarity
21 that should be the focus of the Court's intention, I would
22 submit in this particular case.

23 So all of those similarities and I have listed thirteen
24 and just for my own mind's clarity, I would like to list
25 those again. The hour of the night; the fact they were young

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1 females; the fact the Defendant placed the individuals in the
2 car, or they were picked up by the defendant; sex acts were
3 attempted or performed; the police car was present at the
4 scenes of these occasions; the scenes, with one exception,
5 and that was Shelby Dow, which time the attempted sexual
6 assault was committed in front of her home on the street, on
7 all the other occasions they were on abandoned out-of-the-way
8 areas, abandoned orange groves or clay pits; violation of
9 policy regarding riders in the police car; dirt roads were
10 involved in all of them; he was in uniform in all of them;
11 he was on duty in all of them; he was in a police car in all
12 of them; and he met all of them within a mile of the Circle K.
13 All of those similarities, I would argue, support the
14 identity, the issue of identity being proved by these witnesses
15 by their testimony.

16 As to whether the prejudicial effect outweighs the
17 probative value, Your Honor, anything that we have presented
18 in the two weeks or week and a half that we have been engaged
19 in this trial, I would trust have been prejudicial to the
20 defendant. That is our job. We have presented evidence that
21 we believe supports the fact that he is guilty of these
22 heinous crimes. This evidence is prejudicial. There is no
23 doubt. That is its purpose, but its purpose is not to prove
24 a propensity on his part to commit these crimes, but it is
25 to prove that he is the individual who did it, because of the

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1 fingerprint, if you will, similarities; the unique nature of
2 the offenses concerning the three Williams Rule girls and the
3 same characteristics in the Homicide of Teresa McAbee and
4 Sexual Battery of Teresa McAbee.

5 Whether or not it outweighs the probative value is an
6 issue the Court obviously must decide. I would argue that
7 it hasn't and I would like to argue that issue along with the
8 fourth issue, and that of whether this would become the focus
9 of the trial. We have had, so far, five days, five full days
10 of testimony with over forty witnesses on behalf of the
11 State, covering many, many areas; scientific evidence;
12 scene evidence as in terms of what was done at the scene;
13 the people who saw Teresa; who saw Teresa get in the car with
14 the defendant; who saw them together the night before. All
15 of these witnesses have been presented before this Court.
16 The testimony of the Williams Rule evidence would take, at
17 most, half a day. At the most half a day. So in terms of
18 time, certainly this evidence would not become the focus of
19 the trial. The Court, of course, is well aware as I am sure
20 Mr. Edmund is, that there are instructions, jury instructions,
21 specifically geared to tell the Jury just what the purpose
22 of this evidence is and those will be given before the
23 evidence is presented, after the evidence is presented, and
24 then again, during the jury charge at the end of the trial,
25 after the presentation of all the evidence and argument of

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1 counsel.

2 I would submit that, based on what the Court has heard,
3 certainly the probative value is such, going to the area of
4 mode of opportunity, intent, plan and identity, and common
5 scheme or course of conduct. All those issues, there is
6 probative, as far as all of those issues are concerned, and
7 prejudicial value is not so great... the prejudicial effect
8 is not so great that it outweighs the probative value and
9 thereby, causing this Court to exclude it or rule it inadmiss-
10 ible.

11 I do not believe it would become a focus of the trial.
12 What we have presented here today is how we would present it
13 before the Jury. I do not intend to utilize theatrics in
14 presenting this; in our argument, this will not be the focus
15 of our argument. We are here to try the defendant on the
16 rape and murder of Teresa McAbee and that is what will continue
17 to be our focus. This is simply evidence that points to him
18 as the perpetrator of those crimes and based on that, I would
19 urge the Court to admit this evidence and to permit us to go
20 into it in front of the Jury.

21 I would cite to the Court and I know the Court has read,
22 I am sure, more cases than I have on this issue, in preparation
23 for this, but I cite some cases. First, Randolph versus State,
24 a Supreme Court opinion from 1984, cited at 463 So2d 186, where
25 the Court ruled that the State's chief witness was a co-

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1 defendant, was a self-declared prosecutor and of course, this
2 case was to show that the modus operandi had been followed by
3 Randolph in this collateral offense. It certainly corroborated
4 the testimony of the witness. The testimony was geared for
5 proving material issues of the case rather than to demonstrate
6 that Randolph had character and the evidence was admissible,
7 citing Russell v. State, 397 So2d 277, Florida Supreme Court
8 case, 1981.

9 In proving common course of scheme for proving modus
10 operandi, and just as in Randolph, the Court found that as a
11 legitimate issue to be proved and to be proved by the use of
12 collateral crime evidence in this case. The Court should admit
13 it for that purpose.

14 In the Randolph, the testimony as the Court said, was
15 geared toward proving material issues and it corroborated the
16 testimony of another witness. In this case, this evidence
17 corroborates the testimony of Grace Gurley, who saw the
18 defendant put the little girl in the car and called her over
19 to the car and put her in, and drive off toward the crime
20 scene. That is consistent with what he did on other occasions.
21 Shelby Dow, he picked her up walking down the street and told
22 her to get in the car drive, supposedly to look for her boy-
23 friend, and then Linda Upshaw, he put in the car and drove
24 around Mascotte for a while and then drove her out of the
25 city limits to an abandoned orange grove. It corroborates

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1 one girl's statement with regard to the defendant's actions
2 in this particular case.

3 Wicker versus State, 445 So2d 581, a Second District
4 opinion of 1983, where the Court said that collateral crime
5 evidence admitted was clearly unique, unusual and relevant
6 to the crime charged. There were numerous similarities between
7 this crime and the collateral crimes. In this case, the
8 collateral crime sought to be introduced is similiar in that
9 the rape on which the defendant was being tried had been
10 committed by an individual who came in, raped the victim in her
11 home, and put a cloth over her head and told her to count to
12 a hundred or she would be killed. The collateral crime
13 evidence, those were the similar facts. There was a rape
14 in the early morning hours; afterwards, her head was covered
15 and she was told to count to a hundred or she would be killed.
16 That particular case, I was looking at the opinion, in the
17 early morning hours, head is covered, told to count to a
18 hundred or she would be killed. Three similarities and the
19 Court, in that case, found that was enough to show unusual,
20 unique circumstances. In this particular case as I have
21 cited to the Court, there are at least ten by my count... I
22 am sorry, at least twelve by my count.

23 I would also cite Mason versus State, Supreme Court of
24 Florida opinion, 1983, at 438 So2d 374. By the way, I have
25 copies of all these cases for both the Court and Mr. Edmund.

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1 In that particular case, I want to read some of the lengthy
2 opinion where the Court said, "Appellate first argues that
3 the Trial Court erred in admitting evidence of an unrelated
4 rape and burglary incident purportedly to prove identity.
5 The collateral crime evidence which was admitted pursuant to
6 and in compliance with Section 90.404, Florida Statute, was
7 introduced only to show bad character, propensity, and show
8 nothing unique or unusual about him or disclose modus operandi,
9 asserts the Appellant. We disagree. There are several
10 distinctions between the two crimes. For example, one was a
11 Homicide and the other a Rape. One home was ransacked and
12 robbed, the other was not. The knife as to one crime, was
13 taken from a kitchen drawer, the other from a kitchen sink
14 and so on. Especially important, states Appellant, is
15 dissimilar physical descriptions of the attacker as given by
16 the State's witnesses in each case. There are, as the Court
17 said, many similarities between the crimes. They occurred
18 within two days, eight-tenth of a mile from each other.
19 In both cases, the attacker entered the home through a window,
20 armed himself with a knife in the kitchen, and assaulted the
21 woman in her bedroom. One victim was stabbed through the
22 heart, while the other was verbally threatened with the same
23 and a towel was found in the bedroom outside near the points
24 of entry at both locations. Finally, Appellant's fingerprints
25 were found in both scenes. And that case, I cited for the

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1 proposition that even though there are dissimilarities, the
2 Court found Williams Rule Evidence, collateral crime evidence,
3 can come in. The burden on the State is not to prove that
4 they were exactly the same, but in this particular case, one
5 was a homicide and the other was not. One house was ransacked
6 and the other was not. In this particular case, there are
7 differences. Teresa McAbee was murdered. The other three
8 girls weren't, obviously. There was not visual or penial
9 penetration in two of the cases. In Teresa McAbee's case
10 there was and there was digital penetration in the case of
11 Kim Fowler. However, the fact that there are some dis-
12 similarities not fatal to the State's case and the State's
13 argument for admissibility of these witnesses.

14 I would suggest that the twelve or thirteen similar
15 areas that I cited earlier outweigh and show a unique and
16 unusual characteristic of these crimes and they outweigh the
17 dissimilarities that may exist.

18 Townsend versus State, a Fourth District Court opinion
19 from 1982, at 420 So2d 615, states that it is axiomatic that
20 evidence of unrelated crimes is generally inadmissible.
21 However, if such evidence is relevant to any material issue
22 other than propensity or bad character, it is admissible,
23 even though such evidence points to the commission of another
24 crime. It cites another Florida Supreme Court case that is
25 cited quite often in this area, Drake versus State, 400 So2d

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1 1217, 1981 case. Yesbick, Y E S B I C K versus State, a
2 Fourth District opinion from 1982, 408 So2d 1083. In that
3 particular case, it dealt with the sale of qualudes or possession
4 of qualudes and possession of cocaine. That is what the trial
5 was about with the defendant. The State sought to and was
6 permitted by the trial court to introduce evidence of
7 collateral crimes, wherein defendant had sold qualudes in one
8 other case to another individual. The Court said, "Appellant
9 contends testimony regarding the previous purchase of qualudes
10 is in violation of the rule in Reed versus State. The cite
11 was given. We disagree. The evidence has a reasonable
12 tendency to establish the crime charged is not inadmissible
13 because it points to another crime committed by the defendant.
14 The evidence of the other transaction is quite relevant in
15 this case, because it linked the appellant's continual
16 relationship with the undercover officers and the co-defendant and
17 there reason for being in appellant's home. It also tends
18 to corroborate Statler's testimony that appellant was the
19 seller and rebutes appellant's theory of the case.

20 Now, in this particular case, I cite this opinion and
21 the next one for this proposition: The defendant has raised
22 as a defense and he has thrown in, in his opening statement,
23 and through his cross examination of the witnesses, that some-
24 one else committed this crime. That there is some other person
25 stalking the streets of Mascotte who has not been apprehended.

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1 because the police narrowed in on Mr. Duckett.

2 In the Yesbick case and then again in the King case,
3 King versus State, a Supreme Court of Florida case, 1983,
4 436 So2d 50, the Court specifically found the Williams Rule
5 testimony, Williams Rule Evidence, helped rebut the
6 Defendant's theories of the case. As I just read from Yesbick
7 and then in King.

8 King had to do with a homicide and evidence was intro-
9 duced, collateral crime evidence, showing that the appellant
10 had severely beaten the victim twenty-three days prior to
11 the homicide. The method of the homicide was different.
12 Appellant contends the trial court improperly allowed
13 testimony that he had severely beaten the victim twenty-three
14 days prior to the killing. The circumstances of this beating
15 were not similar to those in the killing and the beating was
16 too remote in time to be relevant to the case. Consequently,
17 he argues this evidence was admitted in violation of Williams
18 versus State, because it utilized only to show propensity
19 and not to prove an element essential to this offense.
20 We disagree. We believe that the testimony was not remote
21 in time. Was proper as to evidence of premeditation and
22 was proper for identification, since one of the theories of
23 appellant's defense was to imply that the victim's present
24 husband could have been the killer. Under these circumstances,
25 we find the testimony admissible.

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1 One of the defendant's... one of the theories of the
2 defendant's defense, in this case, is that someone else did
3 it. Perhaps one of the Mexicans he has argued. Perhaps some-
4 one else came on the scene. This Williams Rule Evidence
5 establishes the identity of the defendant and helps prove the
6 identity of the defendant, the one who took Teresa McAbee
7 from the Circle K that night and drove her down to Knight Lake
8 and raped her and strangled her, and therefore, it should be
9 admissible, because it refutes part of the theory that the
10 defense is trying to interject in this case, and that is that
11 there is someone else who committed the crime. Based on these
12 cases and based on my argument, I would ask that the Court
13 admit this testimony since there are so many similarities;
14 since it is certainly relevant to the issues that I cited to
15 the Court; the prejudicial effect would not outweigh the
16 probative value and this evidence and this testimony would
17 not become the focus of the trial.

18 THE COURT: Before you yield the floor, Mr. Edmund, the
19 Court will have your time, help me with a problem that has
20 bothered me, Mr. Hurm, about this testimony, since I first
21 was aware that it might be proffered.

22 If this were a capital sexual battery trial, I would have
23 much less problem with the Williams Rule Evidence, because
24 I think you properly say it is not a question, but would
25 simply be a fact that the young lady was under age and the

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1 alleged sexual acts had taken place, and then we can talk
2 about Mr. Duckett allegedly luring young girls without
3 belaboring the eighth difference, which I am sure Mr. Edmund
4 will do for me, into his car in order to avail himself of
5 the opportunity to take sexual advantage of young ladies.
6 Alright, and I understand everything you said about that.
7 The problem for me is that he is not just charged with that
8 in this case, but he is charged with First Degree Premeditated
9 Murder. The Williams Rule Evidence that we have heard, of
10 course, does not lead to that conclusion at all. I mean,
11 he never injured any of these three Williams Rule victims at
12 all, by their own testimony. He was really not forceful
13 with any of them to speak of.

14 You are going to urge me to allow this testimony in a
15 First Degree Murder case, not just to show that he may have
16 committed the Capital Sexual Battery, but that he may have
17 killed this victim, and there is the problem for me. No
18 violence at all towards the victims in the Williams Rule.

19 MR. HURM: Yes, sir, if I may address it, I have given
20 that some thought, and Mr. Hogan has, and we have discussed
21 that very point. The problem in this case is that you can't
22 delineate between who committed the Homicide and who committed
23 the Capital Sexual Battery. The same individual did both.
24 I think the evidence is clear on that. So there is no way
25 we can bifurcate it and say, "Well, we will have two separate

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1 trials and we will present it as to this case, but not as to
2 this case. We could have argued that when we filed our
3 Motion for Consolidation, we could have argued that. However,
4 Mr. Edmund chose to stipulate to the consolidation of these
5 matters for trial. I would submit that the Court could
6 adequately instruct the Jury that they were to apply the
7 Williams Rule Evidence only to their consideration of Capital
8 Sexual Battery. Now, quite frankly, if they find him guilty
9 of Capital Sexual Battery, I think it is given that they are
10 going to find him guilty of First Degree Murder. I will be
11 astonished if they come back guilty of Capital Sexual Battery
12 and not guilty as to the Homicide, based on the evidence in
13 this case. I think there is a unique situation where the
14 two are so close in time and they have been consolidated for
15 trial, there is no way really to separate them other than
16 with an instruction, but certainly, I believe the Court has
17 pointed out, this evidence is very relevant to the commission
18 of Capital Sexual Battery. Now, why the defendant at that point,
19 after committing Sexual Battery, went ahead and strangled
20 Teresa is something that frankly, I can't tell you. I can
21 speculate, based on the evidence. I would say again that
22 none of the other three girls ever gave him any reason,
23 because there was no indication given by them that they were
24 going to report it, and that could have been different with
25 Teresa. I don't know because I wasn't there, but I would say

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1 that since the defendant waived his right to have these trials
2 ... well, not right, but he waived his argument as to whether
3 these should be tried separately. I don't believe he had a
4 right to do that. Agreed, stipulated to the consolidation,
5 that the Court should still permit this and instruct the
6 Jury that it should be applied as to the Count of Sexual
7 Battery and the Jury will follow that instruction and consider
8 this particular evidence only in their consideration of the
9 Capital Sexual Battery. I am sure Mr. Edmund, as able a
10 lawyer as he is, can make that distinctive argument as
11 well, and explain fully the Court's instruction on that matter.

12 That is what we have discussed. Frankly, that is the only
13 way to resolve it and I believe that to exclude the evidence
14 on that ground, when the defendant could have fought the
15 consolidation of this and chose not to, would not be fair
16 to the State and the State would not be receiving a fair trial
17 and the ability to present all of the evidence on the Sexual
18 Battery Count. We should be able to present all the evidence
19 relevant to that and the fact that it is consolidated with
20 another, is just a fact of life that has been stipulated to
21 by the defendant.

22 May I have a moment?

23 One other point, Your Honor, is that in the case I have
24 just cited, I believe it was King, ... the one before that,
25 Yesbick, where there was the rape in one case and the homicide

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1 in the other, and the homicide case in which the rape testimony
2 was introduced, the Court said even though one was a homicide
3 and one was a rape, that doesn't matter. It is the facts
4 leading up to those that were similar and I submit that in
5 this case, there would even be relevance to the homicide as
6 well.

7 THE COURT: As we all know, maybe we do and maybe we
8 don't, but in my mind, one of the problems with Williams
9 Rule is when we start making factual comparisons, we can all
10 find cases that say anything we want to.

11 MR. HURM: That is one reason, Your Honor, that I picked
12 a few and I did not bring the entire stack, because every case
13 is different, because the facts of every case is different.

14 THE COURT: I found a case called Thompson versus State
15 at 494 So2d 203, Florida Supreme Court, 1986, that seems to
16 say just the opposite of what you cited. That we had one
17 case where there was a homicide and one where there wasn't,
18 but the facts were similar and they said you should not have
19 allowed the Williams Rule because this case was not a homicide.
20 I appreciate your argument. I understand your position.

21 MR. HURM: Thank you.

22 THE COURT: Mr. Edmund?

23 ARGUMENT

24 BY MR. EDMUND:

25 If it please, Your Honor. We will take the last things

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1 first.

2 It would seem that the State can hardly ask for a fair
3 at this point, but I think the State is probably entitled to
4 a fair, but the State wanted two bites of the apple. I think
5 it became apparent pretty early on that the purpose of the
6 Sexual Battery charge was to attempt to introduce the Williams
7 Rule and then under whatever subterfuge, say, "Well, the Court
8 can instruct that the testimony is applicable only to the
9 Sexual Battery and don't pay it any attention as far as the
10 Homicide is concerned, with full knowledge that this is not
11 the type of case where such an instruction could be accepted
12 by the Jury notwithstanding how strong the may be in their
13 attitude toward applying the law Your Honor gives them.

14 I think we have reached that point where we have to look
15 at the capital case involved and apply then to it whatever
16 facts that might be applicable from the three separate
17 instances which the State has offered under the Williams
18 Rule.

19 Judge, I believe that the primary step that the Court
20 has to take is to separate the three proffered Williams Rule
21 cases. First, to determine if they are sufficiently unique
22 to one another to be put in a bunch and then determine
23 whether they, in fact, ... whether that bunch is now unique
24 to the case that is before the Court, to which the cases are
25 offered for additional proof or for whatever the purpose is.

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1 If you take the cases individually, I suggest Your Honor, that
2 from the outset, these three cases are not sufficiently unique
3 as to apply to one another and neither standing alone is
4 sufficiently unique in its facts to apply to the facts of the
5 cases on trial here today.

6 With Kim Fowler, there is only an officer in uniform in
7 a police car. As relates to the other two cases, from that
8 point on, the factual situation differs entirely from the case
9 of Ms. Upshaw and the case of Ms. Dow. If you would set that
10 aside and concur that only as to a police officer and a police
11 car do they have any connection. When you compare Ms. Down
12 and Ms. Upshaw, the only connection that you find between those
13 two is the riding in a police car with an officer in uniform
14 and perhaps a momentary whatever happened with Ms. Down at the
15 time she was let out at her house. The commencement of the
16 situation being under totally and entirely different circum-
17 stances than the commencement of the situation with Ms. Upshaw.
18 When you compare Ms. Upshaw back to Kim Fowler, there is
19 absolutely nothing to connect the two. One could not be
20 offered, for example, as Williams Rule Evidence for the other
21 in any of these three instances. Again, we are back to the
22 police officer in the police car, and in uniform, and those
23 are the connections between the three cases.

24 As far as the issues of the trial, this testimony is
25 relevant to, I guess we all agree that it is the identity.

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1 At least, that is all I can see from where it is offered,
2 but when you start comparing the facts to whatever testimony
3 they might be relevant to, we are still not getting back to
4 any of the facts in the Fowler case; any of the facts in the
5 Dow case; any of the facts in the Upshaw case; tending to
6 prove the identity of the individual who committed the acts
7 in the case before the Court now. If you look at the facts
8 of the Dow case, there was no violence used. Look at the facts
9 of the present case, there was extreme violence. You look
10 at the facts of the Dow case, we are talking about a nineteen
11 or twenty year old woman. You look at the facts of this case,
12 we are talking about an eleven year old child. You look at
13 the facts of the Upshaw case, and you are talking about no
14 violence being used. You look at the facts of the instant
15 case, and you are talking about violence is being used.
16 You look at the facts of the Upshaw case, and you are looking
17 at a seventeen or eighteen year old girl and you look at the
18 facts of the instant case, and you are looking at an eleven
19 year old child. You look at the facts of the Kimberly Ruetz,
20 Kimberly Fowler case, you are looking at absolutely no
21 violence whatsoever, not even the instigation of the getting
22 together with the exception of "meet me at the clay pit",
23 which followed, "How about coming to my house" the day before,
24 as an invitation of "let's get together later". As opposed
25 to the taking in the instant case. You look at the Fowler

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1 girl and you are still talking about a girl who is sixteen
2 years old and who was knowledgeable in sexual matters and
3 again, we get back to the instant case and we are looking at
4 an eleven year old child. I suggest that the facts of neither
5 of those three cases even taking them collectively and certainly
6 not taken individually, tend to prove the identity of the
7 person who committed the violent act that resulted in the
8 death of Teresa McAbee.

9 I think the State's entire argument, Your Honor, turns on
10 the supposition, assumption or presumption that Teresa, at
11 some point in time, said, "I am going to report this". It
12 seemed to me like the argument by the State started out that
13 way, permeated with that throughout and as a result of
14 "I am going to report it", she was killed. I suggest, Your
15 Honor, that a much more logical assumption or presumption
16 would be that when Teresa McAbee got into the company of
17 whoever it was who killed her, she was dead then, and nothing
18 she did from that point on was going to have any effect on
19 whether she lived or whether she died. That assumption, which
20 I think is a much more logical assumption, when we are assuming
21 that an adult dealing with a child, in a sexual... I think
22 it is much more reasonable assumption than I am going to report
23 this thing.

24 Judge, it makes it so foreign from the three cases that
25 have been offered to you under the Williams Rule, as to really

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1 not be given any consideration and frankly, Your Honor, I
2 think that would apply even if we were trying the sexual
3 battery case on its own, but we are not and I get back to
4 there is no way you can instruct a Jury that they will
5 disregard as it relates to the instant case.

6 Judge, the prejudicial effect of these three proffers,
7 is really coupled then with whether or not it was or would be
8 the focal point of the trial and I suggest that when offered
9 in this three tier manner, it will become the focal point of
10 the trial. The focal point of the trial will be not whether
11 any of the Williams Rule proffered testimony tends to identify
12 the person who killed Teresa McAbee, but the focus of that
13 testimony will be that Duckett is a no good, son of a whatever,
14 who was running around on his wife with teen-aged girls or
15 at least attempting to run around on his wife with teen-aged
16 girls, and somebody like that is a person of bad character,
17 breaking his marital vows and as a consequence, could be
18 guilty of anything that comes down the pike, and it is going
19 to become... if it struck me that Kimberly Ruetz was in a
20 terrible position sitting on that witness stand, and I am the
21 defense lawyer, it is going to strike that Jury the same way
22 and it is going to take on the circus-like atmosphere of
23 this is the main event and we have got to listen to this and
24 we have got to catalog all this and we have got to say that
25 Duckett is a no good so and so, because of all of this and

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1 then tack Dow and Upshaw on top of that. All it would... I
2 suggest to the Court that the only value that could come out
3 of this would be the prejudicial value of this testimony in
4 favor of the State of Florida. It certainly doesn't establish
5 I suggest, Your Honor, the identity of the defendant. It isn't
6 so unique as to prove any facts in issue. It is of such a
7 nature as is going to color the Jury's thinking and I think
8 it comes in the category that it is recited in Banks versus
9 State, where Chief Judge Rawls said, "Once again we have
10 before us a record with the state in the name of Williams,
11 one girl was killed." That is about how I see it at this
12 particular point in time.

13 THE COURT: I know that the State would love to offer
14 rebuttal and then I will get counter-rebuttal, and what have
15 you, but I really know your arguments, gentlemen and I
16 appreciate it, but what I would like to do is if you want to
17 submit cases to me at this time, I will take them, I will
18 give you a decision at nine o'clock tomorrow morning. I have
19 heard your argument. I have heard the testimony. I will
20 read any additional cases you have. I'll tell you first thing,
21 do have those witnesses here in case I should rule that they
22 may testify.

23 MR. HURM: I do have one other I forgot to give you.

24 THE COURT: Gentlemen, if we can just discuss and I
25 realize that it is going to turn on what I decide, but either

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1 way, what more do we have to do as we see this entire case
2 right now?

3 MR. HOGAN: We just have a few very short witnesses on
4 some evidence cleaning up matters, a few exist. I have to
5 introduce in our chain, that has to be done, for example,
6 the photograph of the car downstairs, the actual fingerprints
7 lifted off the car, shirt, a couple other things, but no
8 long witnesses.

9 THE COURT: Alright, you all may even want to discuss
10 stipulating to those. I am not forcing that, but if we have
11 an accurate picture of the car downstairs, we only took that
12 to show what we did down there.

13 MR. HURM: Judge, that last case I gave you, that has
14 to do with the fact that we stipulated to consolidation.
15 That is the only reason for that one.

16 THE COURT: Alright. Are you in a position, and you
17 understand, Mr. Edmund, I am not forcing you to give the
18 Court any idea of how long your case might take, and if you
19 are not all you have to say is, "I am not".

20 MR. EDMUND: Judge, depending on what happens as far as
21 when I talk to Bob about Reynolds is concerned, I am looking
22 at... I don't think I am looking at more than two days.
23 Oh, I have my defendant. Maybe we would crowd in by the end
24 of Friday. I think it might go over.

25 THE COURT: I would like you all... this is what I am

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1 worried about. I would like you all to give some serious
2 thought to the proposition of what you are going to propose
3 to me we are going to do if this case wraps up testimony-
4 wise, mid afternoon to late afternoon Friday. I mean, our
5 choices are we have got to ... if we are going to sequester
6 that Jury, we are going to work on Saturday, I can tell you
7 that. I am not going to have them sitting in a motel room
8 all weekend by themselves, or we can try to find a convenient
9 point to perhaps come back Monday. We have to go over the
10 Jury Instructions of course. I don't have an idea of how
11 much time you all want for closing argument. Can you give me
12 a ballpark? I don't usually force those things.

13 MR. HOGAN: With this many witnesses, Judge and exhibits,
14 we are going to need quite a bit of time. There is a hundred
15 exhibits and if we spend one minute on each exhibit that is
16 an hour and a half.

17 THE COURT: Here is what I have always suggested the
18 lawyers to consider about closing arguments. If each of you
19 only takes an hour, we just went to a movie. Alright?

20 MR. HOGAN: How about an epic?

21 THE COURT: We already have had an epic. You all think
22 over how much time you are going to want. I don't force you
23 on it, but I do ask you to try and agree on it if you can,
24 before we get to that point. I don't think we have any choice,
25 but could we have this whole issue with this witness that we

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1 brought down and I don't know what was discovered in that
2 particular statement taking, whether or not we are going to
3 be using that person. Does the State know at this time whether
4 or not you are going to call him?

5 MR. HOGAN: I am considering it, Judge. I need to talk
6 to Mr. Hurm about it, who obviously wasn't there. He was
7 deposed and either Mr. Nipper or myself has ordered the
8 deposition to be typed and somebody will pay for it. I expect
9 whatever act we may want to take we will want for the
10 response whatever they do.

11 THE COURT: It is understood, I hope, and you know as I
12 think, maybe it isn't, are they going to hold him here until
13 we make a decision about whether we want him?

14 MR. HOGAN: That was my understanding.

15 THE COURT: I will ask you all to double check that.
16 Don't let them ship him back today.

17 MR. HOGAN: I told them to hold him here.

18 THE COURT: You have just enough time to call Major
19 Allen to be sure that he is held. Anything else before we
20 go?

21 MR. HOGAN: No, sir.

22 THE COURT: Alright, we will be in recess until nine in
23 the morning.

24 (WHEREUPON, DEFENDANT IS REMOVED FROM THE COURTROOM)

25 (WHEREUPON, COURT IS IN RECESS AT 4:53 P. M.)

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1 May 5, 1988, 9:00 A. M.

2 (WHEREUPON, COURT CONVENES IN CHAMBERS)

3 THE COURT: Folks, I just wanted to make you all aware
4 of something that I want to file in the Court file.

5 When I returned to my office yesterday, slightly after
6 five o'clock, there were on my desk, two telephone messages.
7 The exact messages are taped to this white sheet of paper
8 and marked, "Court's Exhibit A". I propose to file them with
9 the Clerk immediately after this discussion.

10 The first message is addressed to me, dated 5/4, time...
11 it is either 2:35 or 3:35. From a Pamela Douglas, who I have
12 never met and do not know, from Mascotte. It gives me her
13 phone number and the message is: "Her daughter was a classmate
14 of Teresa, the victim in the Duckett case. She would like the
15 testimony of the three girls heard by the Jury.

16 The second one was addressed to me, dated 5/4 at 2:35.
17 I can't read the first name, it is J O A ... N, I think,
18 Creech, with a phone number and the message reads:
19 "Re: Trial. Read in paper re. those girls and very important
20 that you listen to that testimony." I think it goes without
21 saying I don't know either of these people. I didn't return
22 either of these phone calls, but these are ex parte communica-
23 tions concerning the merits of this trial that I received
24 inadvertently. I just looked down at the messages and there
25 they were. I assure everyone these have nothing to do with my

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