

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

CASE NO. 87-¹³147-CF-A-01 and
88-262-CF-A-01

STATE OF FLORIDA,

Plaintiff,

v.

JAMES AREN DUCKETT,

Defendant.

VOLUME VIII

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CLERK OF CIRCUIT
AND COUNTY COURTS
LAKE COUNTY
TAVARES, FLORIDA



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Tavares, Florida 32778

135.8

1 decision in this case. I felt it obligatory to bring this to
2 everybody's attention. You can make any remarks you want to
3 on the record about it. I am going to file these with the
4 Clerk, but you are welcome to read them if you want.
5 That doesn't need to be marked into evidence. I marked it
6 Court's Exhibit A. Just file it in the Court file.

7 That is all I have. Thank you.

8 The only other matter I have on my mind and I know I am
9 still premature, but if we get to the issue of Jury sequestration
10 you will remember early on we discussed that set of rules that
11 I handed out, a proposed set of rules that hopefully we would
12 at least, in a large part, agree upon, and perhaps enter an
13 Order based upon stipulation to that effect. We are getting
14 close enough now, it seems to me, and I would ask you all,
15 both sides, to sit down and consider those rules. If you can
16 agree on them, fine. If you want to make changes, fine.
17 If you can't agree, bring your disagreements to my attention,
18 but I would like to enter an order, a conditional order. I
19 am not presuming that we are going to get that far, but should
20 we, I think we ought to be ready to do it, and particularly
21 help the bailiffs by telling them exactly what we expect of
22 them if we reach that point well in advance, but I am going to
23 ask you all to look at those rules. We will talk later today
24 or tomorrow morning about some other logistics, such as when
25 are we going to get together and go over the jury instructions

- 1400 -

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1 and those types of things. I think we certainly learned in
2 retrospect we made a wise decision yesterday to send that
3 Jury home as we did, so they didn't have to sit all afternoon,
4 because we would not have been done.

5 I don't have anything else. Those were the only matters
6 that were on my mind. Do you all have anything?

7 MR. HOGAN: No, sir.

8 MR. EDMUND: No, Your Honor.

9 THE COURT: I'll see you downstairs in just a minute.

10 (WHEREUPON, COURT IS IN RECESS AT 9:10 A. M.)

11 (WHEREUPON, COURT RECONVENES IN COURTROOM AT 9:28 A. M.)

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

14 THE COURT: Good morning, gentlemen. Anything before
15 the Court reaches its decision on the Williams Rule Evidence?

16 MR. EDMUND: No, Your Honor.

17 THE COURT: We reached the issue of the admissibility of
18 the State's proffered testimony with regard to the Williams
19 Rule Evidence, an issue which this Court finds extremely
20 difficult, a question which is extremely close.

21 As the attorneys in this case have done, so have I, since
22 I have become aware that this issue would be before the Court.
23 I have researched as thoroughly as is in my capacity, the cases
24 with regard to the admissibility of Williams Rule testimony
25 in the State of Florida. I have read dozens of cases. I find

- 1401 -

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1 candidly, little real bright lined guidance with regard to
2 the cases. There is always the question of factual comparisons
3 between the factual identity of the Williams Rule testimony
4 and the other testimony in the case. In any instance where
5 we find a situation where the Court has to make a decision
6 based upon a case by case analysis of facts, there is
7 definitionally no real guidance, so we do the best we can.
8 We study the law and we make our decision accordingly.

9 After having reviewed the law, it is the decision of this
10 Court that the proffered Williams Rule testimony of yesterday
11 will be admitted in this trial. I am required to state my
12 reasons for that and I find these reasons to be clear and
13 convincing.

14 First of all, I find that the Williams Rule testimony
15 is material and relevant to the issues of identity, motive,
16 opportunity, and common scheme or plan. My specific findings
17 are as follows: That with regard to each of these issues,
18 there are similarities among the three Williams Rule witnesses
19 and the testimony in this case today. Presuming that the
20 Jury chose to believe the Williams Rule testimony, which we
21 have to assume for purposes of this analysis, though not for
22 ultimate decision, I would find as follows: That in each and
23 every case, the defendant, an officer of Mascotte police,
24 in uniform, on duty, and by use of his patrol car, and with
25 his badge of authority, lured young ladies into his car to

- 1402 -

1 place them in a position to take sexual advantage of them.

2 Admittedly, there are many distinctions in this case as
3 well and I will address those at the end.

4 First, the other similarities. This was done in each and
5 every case while the defendant was on duty; late at night or
6 early in the morning; it was done in proximity to the Circle K
7 in Mascotte in each and every case; in each case that he took
8 the young ladies to an isolated area in order to take advantage
9 of them sexually; in each case he performed or attempted to
10 perform sexual acts with the young ladies. In several of the
11 cases, the dates of the occurrences are close in time to the
12 dates of the allegations in the instant case before the Court.

13 I find for those reasons that the defendant has exhibited
14 a common scheme or plan of using his badge of authority to
15 lure young ladies into a position to take sexual advantage
16 of them. I am not unmindful that the major distinction in
17 this case is that in the Williams Rule Evidence cases the
18 defendant did no real serious physical harm to any of those
19 witnesses. That is a substantial distinction which has
20 troubled me for some time in this case, and for that reason,
21 when I instruct the Jury with regard to the Williams Rule
22 Evidence, I understand that some of this is semantical, but to
23 me it is yet important. The Jury will be instructed they will
24 consider the Williams Rule Evidence only as it applies to the
25 Sexual Battery charge in this case. There is no evidence that

- 1403 -

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1 would lead us to go further than that with regard to the First
2 Degree Murder charge in this case.

3 I find that on balance, in my opinion, the prejudicial
4 effect of the Williams Rule Evidence would not outweigh the
5 probative value. It is legally relevant. I find on balance,
6 given the nature of this trial, and the length of the trial,
7 the relative shortness of the Williams Rule testimony that
8 the Williams Rule testimony will not become the focus of the
9 trial.

10 That is my decision with regard to this issue. Does any-
11 one have any questions for purposes of clarification? I state
12 this decision over noted Defense objection.

13 MR. HOGAN: No, sir.

14 MR. EDMUND: No, Your Honor.

15 THE COURT: Are we prepared to proceed with the Jury?

16 MR. HOGAN: I have one matter, housekeeping matter, Judge.

17 You instructed us to take photographs of the car with
18 the fingerprints cards in place before we removed those
19 fingerprint evidence from the car. I want to make sure these
20 photographs are satisfactory with everyone. May we approach?

21 THE COURT: While you are having those marked for
22 identification, the only reason we had these taken was for
23 purposes of record preservation, because there is obviously
24 no way for the record to show the scene as we conducted
25 our investigation and discussion and testimony at the carport

- 1404 -

1 next to the Sheriff's Office and this is simply for purposes
2 of preserving that scene for future review, should that be
3 necessary.

4 Are you moving those into evidence?

5 MR. HOGAN: If they are satisfactory.

6 MR. EDMUND: No objection.

7 THE COURT: Madam clerk, what is your next lettered
8 exhibit?

9 CLERK OF THE COURT: Five X's.

10 THE COURT: Five X, we will mark Composite Exhibit XXXXX,
11 photographs of the scene of the automobile with the fingerprints
12 taped on it, admitted into evidence without objection as
13 Composite Exhibit 98, Madam Clerk?

14 CLERK OF THE COURT: Yes, sir.

15 (WHEREUPON, COMPOSITE EXHIBIT #98 IS ADMITTED INTO
16 EVIDENCE WITHOUT OBJECTION)

17 MR. HOGAN: With that, Judge, I also move into evidence
18 the photographs of the fingerprints on the hood of the car.

19 MR. EDMUND: No objection.

20 MR. HOGAN: And I would ask the Court to instruct Mr.
21 Aleno, at this time, to go and remove them from the car. He
22 was awaiting your decision on those.

23 THE COURT: Yes, sir, is he with us here in court?

24 MR. HOGAN: I believe he is.

25 THE COURT: If you would, sir, please go and remove those

- 1405 -

1 photographs and bring them to the courtroom immediately.

2 MR. HURM: Your Honor, may I step outside? I want to make
3 sure our witnesses are here.

4 THE COURT: Yes, sir.

5 The photographs of the fingerprints will be marked
6 Court's Composite Exhibit YYYYY for identification. Any
7 objection to those being admitted, Mr. Edmund?

8 MR. EDMUND: No, Your Honor.

9 THE COURT: They will be admitted without objection as
10 Court's Composite #99, State's Composite #99, I am sorry.

11 (WHEREUPON, STATE'S COMPOSITE EXHIBIT #99 IS ADMITTED
12 INTO EVIDENCE)

13 MR. EDMUND: Your Honor, may we approach the bench?

14 THE COURT: Yes, sir.

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

16 MR. EDMUND: I know that we are getting a little late
17 start, but may we break about 10:30, if Bob doesn't get here,
18 so that we can call Debra Steger?

19 MR. HOGAN: We can do it right now, if you want to.

20 THE COURT: Why don't we do that now while we are waiting
21 for him to get back here with the pictures.

22 MR. EDMUND: I think it is going to take ten minutes or so.

23 THE COURT: Yes, sir. Fine.

24 (WHEREUPON, BENCH CONFERENCE ENDS)

25 THE COURT: Ladies and gentlemen, we are going to take

- 1406 -

1 about a ten minute recess to give Mr. Edmund an opportunity
2 to make a phone call and the officer to come back with the
3 photographs from the car. We will reconvene in approximately
4 ten minutes. You can sit still, please, if you would. We
5 have to remove the defendant, I am sorry. Mr. Bailiff.

6 MR. EDMUND: May I leave the courtroom, Your Honor?

7 THE COURT: Yes, sir.

8 MR. EDMUND: Thank you, Your Honor.

9 (WHEREUPON, DEFENDANT IS TAKEN FROM COURTROOM AT 9:37 A. M.)

10 (WHEREUPON, COURT IS IN RECESS AT 9:38 A. M.)

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

13 THE COURT: Anything further before we bring the Jury
14 back, gents?

15 MR. HOGAN: No, sir.

16 MR. EDMUND: No, Your Honor.

17 (WHEREUPON, JURY ENTERS COURTROOM AT 10:00 A. M.)

18 THE COURT: Welcome back, folks, be seated, please.
19 Again I apologize for the delay. We have been busy. Can you
20 assure us you did abide by our admonitions?

21 JURY: Yes, sir.

22 MR. HURM: The State's next witness is Shelby Dow.

23 (WHEREUPON, SHELBY DOW IS CALLED AS NEXT WITNESS BY THE
24 STATE AND IS DULY SWORN BY THE CLERK OF THE COURT)

25 DIRECT EXAMINATION

- 1407 -

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1 BY MR. HURM:

2 THE COURT: Ladies and gentlemen, pay careful attention.
3 I have very important instruction to read you at this time.
4 The evidence you are about to receive concerning evidence of
5 other crimes allegedly committed by the defendant will be
6 considered by you for the limited purpose of proving motive,
7 opportunity, plan and identity on the part of the defendant,
8 and you shall consider it only as it relates to those issues
9 and only as it relates to the charge of Sexual Battery in this
10 case. The defendant is not on trial for a crime that is not
11 included in the Information of the Indictment, does everyone
12 understand?

13 Thank you. Mr. Hurm?

14 Q. Good morning, Shelby?

15 A. Good morning.

16 Q. Would you pull your chair right up to the microphone
17 please and this is a big courtroom, so you are going to need
18 to speak up so that everybody in the jury, the Judge and
19 lawyers can hear you.

20 Would you tell us your name?

21 A. Shelby Dow.

22 Q. Shelby, where do you live?

23 A. Virginia.

24 Q. How long have you lived in Virginia?

25 A. All my life, except last year.

- 1408 -

1 Q. Shelby, how old are you?
2 A. I'm twenty.
3 Q. What is your date of birth?
4 A. October 1, 1967.
5 Q. So you will be twenty-one this October?
6 A. Yes, sir.
7 Q. Have you ever lived in Mascotte, Florida?
8 A. Yes.
9 Q. Tell me when you lived there?
10 A. From July 1986 to July 1987.
11 Q. Now, while you were in Mascotte, what street did you
12 live on?
13 A. Talbott.
14 Q. Do you know where Talbott Street is in relationship
15 to the Circle K Store on Highway 50?
16 A. Yes, sir, it is the block behind it.
17 Q. So it was just a block away?
18 A. Yes.
19 Q. Shelby, while you lived in Mascotte, did you ever have
20 any occasion to meet any of the Mascotte police officers?
21 A. Yes, sir.
22 Q. How many of them did you know by name?
23 A. Two.
24 Q. Who were they?
25 A. Officer Cooper and Officer Duckett.

- 1409 -

1 Q. Is that Officer James Duckett?
2 A. Yes.
3 Q. Shelby, I want you to look around the courtroom and
4 tell me if you recognize James Duckett here in the courtroom?
5 A. Yes.
6 Q. Point to him and please describe what he is wearing.
7 A. The gentleman in the gray suit.
8 MR. EDMUND: I'll stipulate that she has identified my
9 client, Your Honor.
10 THE COURT: The record would reflect the witness has
11 identified the defendant.
12 Q. Shelby, tell the Jury, if you would, how you first
13 met the defendant?
14 A. I was home and I was at my boyfriend's sister's
15 house sleeping and his brother come in and woke me up about
16 2:30 or 3:00.
17 Q. Now, you say "his brother", you mean whose brother?
18 A. Rafael's brother, my boyfriend, and he has never
19 stayed out that late and the next door neighbor, he always
20 went over there and played cards and drank and so I walked
21 next door and knocked on the door and nobody answered, so I
22 went back...
23 Q. This was after his brother, Rafael's brother, came
24 over and told you he wasn't home yet?
25 A. Yes.

- 1410 -

1 Q. Okay.

2 A. And when I went over and nobody answered, and on the

3 way back, an officer stopped in a car and called my name.

4 Q. Now, do you remember when this was?

5 A. What date?

6 Q. Approximately what month?

7 A. It was February or March... I mean, the end of

8 March... I mean, the end of February or early February.

9 Q. Late January or early February of 1987?

10 A. Yes.

11 Q. Now, when you were walking back, what street were you

12 on when you were walking back?

13 A. Talbott.

14 Q. When the officer pulled up, did you recognize who

15 the officer was?

16 A. No.

17 Q. Did you see his name tag?

18 A. No.

19 Q. Is that officer the same one you have identified as

20 the defendant?

21 A. Yes.

22 Q. When the defendant pulled up to you, how was he

23 dressed?

24 A. In his uniform.

25 Q. What kind of car was he in?

- 1411 -

1 A. In a police car.

2 Q. How did you recognize it as a police car?

3 A. With the lights on it and it had a sticker saying
4 Mascotte Police.

5 Q. What did the defendant say to you when he pulled up
6 to you on the street?

7 A. He asked me if I had seen Rafael, because Jessie,
8 he saw him... Jessie had been beaten up and he wanted to know
9 if I knew where Rafael was because he said he saw him earlier
10 and he wanted to question him about Jessie.

11 Q. Now, what time of day was this?

12 A. Three o'clock.

13 Q. In the morning?

14 A. Ahum. (Affirmative response) And I told him I
15 didn't know where he was, that I was looking for him, and
16 he wouldn't tell me where he had seen him and finally, I got
17 him to tell me where he had seen him. He said he saw him
18 by the post office.

19 Q. Let me take you back. He asked you where if you knew
20 where Rafael was?

21 A. Yes.

22 Q. And then he told you he had seen Rafael?

23 A. Yes, he said he saw him earlier and now he was looking
24 for him because he saw Jessie.

25 Q. Shelby, did he tell you whether or not he saw anybody

1 with Rafael?

2 A. Yes, a young girl.

3 Q. Did he tell you what her name was?

4 A. Michelle Davis.

5 Q. What next happened? What else did he say to you?

6 A. Well, he told me and I got kind of upset.

7 Q. Why did you get upset?

8 A. Because I thought Rafael was with another girl.

9 Then he offered to take me to look for him. He said he was
10 going to go look for him and he would be back to look for
11 him, and I got Rafael's sister.

12 Q. The defendant said he was going to go look for him?

13 A. Yes. Then he came back and Rafael's sister and I got
14 in the car.

15 Q. What is her name?

16 A. Juanita Lopez.

17 Q. Does she have a nickname?

18 A. Poncho. And we went to the girl's house.

19 Q. How did you go to the girl's house?

20 A. We got in the car.

21 Q. Which car?

22 A. The police car.

23 Q. With the defendant?

24 A. Yes.

25 Q. Now, when you got in the police car, was that... did

- 1413 -

1 you just go and get in or did he ask you to come in or tell
2 you to get in?

3 A. He told us to come with him and he would take us to
4 the girl's house.

5 Q. Told you to get in the car?

6 A. Yes.

7 Q. And he would take you to the girl's house, right?

8 A. Yes.

9 Q. Did you and Poncho both go?

10 A. Yes.

11 Q. What did you do after you got in the police car?

12 A. We went over to the girl's house. We knocked on the
13 door and the father answered and said he wasn't home.

14 Q. Where did the girl live?

15 A. In Crawford Apartments in Mascotte. She wasn't
16 there and so we went around looking for her and then he took
17 us hom and said he had to do some rounds and then he would be
18 back. So I went in her house and...

19 Q. Poncho's house?

20 A. Yes.

21 And when I came back, or when he came back, I went
22 with him alone to look for him.

23 Q. Tell me about that? How did you decide to go with
24 him again?

25 A. Because he told me he would take me looking for him.

- 1414 -

1 Q. Were you concerned about Rafael?

2 A. Yes.

3 Q. Did you have any hesitation about getting in the car
4 with the defendant?

5 A. No, he was an officer.

6 Q. When he came back the second time, was he in his
7 police car still?

8 A. Yes.

9 Q. Was he in uniform?

10 A. Yes.

11 Q. When you got in the car, was the police radio on, do
12 you remember?

13 A. No, I don't think so. I don't remember.

14 Q. But he had told you he had to go on some rounds?

15 A. Yes.

16 Q. Did you believe that he was on duty?

17 A. Yes.

18 Q. Shelby, when you got in the car the second time,
19 where did you go?

20 A. We drove around Mascotte and back by the apartments
21 again and then we turned, a place called American Drive, a
22 dirt road, where there is a church home, and then we rode across
23 from Circle K down through the houses through there and out to
24 Herman's place. Around the houses back in there.

25 Q. Were you looking for Rafael all this time?

- 1415 -

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A. Yes.

Q. What was the defendant saying to you as you drove around?

A. Just asking me where I was from and he was talking about Rafael mainly, and he told me if I needed anybody to talk to, that he would talk to me, and that I shouldn't be with Rafael, because he treated me bad, and then we rode around some more and then he started putting his hand on my shoulder.

Q. As he was driving?

A. Yes.

Q. And I was upset anyway and I asked him to take me home, because I was afraid Rafael would get home before me. Across from Talbott, the adjoining street, he stopped and he was telling me he liked small, petite girls and that is why he noticed me and he would like to see me and then he tried to kiss me. And then I got out.

Q. Where did he try to kiss you?

A. My mouth.

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

A. I pushed him away.

Q. Where were you sitting in the police car?

A. In the passenger seat by the door.

Q. Did you ever any time slide over next to him?

A. No, sir.

- 1416 -

1 Q. Did you, at any time, give him any indication that
2 you wanted him to kiss you?

3 A. No.

4 Q. Now, Shelby, when this happened, in February of '87,
5 how old were you?

6 A. Nineteen.

7 Q. And how tall were you?

8 A. 5'1".

9 Q. How much did you weigh?

10 A. Ninety-two pounds.

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

12 A. Once.

13 Q. And that was near your house?

14 A. Yes, across the street from it.

15 Q. Was there anybody around?

16 A. No.

17 Q. About what time of the night was that?

18 A. By that time, it was about four or four-thirty.

19 Q. Did you get out of the car then?

20 A. Yes.

21 Q. Did he say anything else to you?

22 A. No, he said, "Goodbye".

23 Q. What did you tell him when he asked you to start
24 seeing him?

25 A. I said I liked Rafael and didn't want to see him.

- 1417 -

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1 Q. Did he ever say anything to you about being married?
2 A. He said he wasn't married.
3 Q. Was this ... had you ever met Duckett before this?
4 A. I couldn't remember, but he said that he met me
5 when there was a disturbance a couple houses down from us
6 when him and Officer Cooper and another man come.
7 Q. Shelby, when he first pulled up to you, did he just
8 say, "Hey, come here", or "What are you doing?" or did he
9 call you by name?
10 A. He called me by name.
11 Q. Did you ever encourage him to do any of the things
12 that he did?
13 A. No, sir.
14 Q. Shelby, did you ever think about pressing charges
15 against him for this?
16 A. Not really.
17 Q. Why not?
18 A. I was getting ready to go to my mother's house.
19 Q. Which is where?
20 A. Virginia, and then I didn't think anything really
21 there was any need to...
22 Q. Were you ever asked by another member of the police
23 department if you wanted to press charges?
24 A. Yeah. (Affirmative response)
25 Q. Tell us about that?

- 1418 -

1 A. Well, when I came back from Virginia, Rafael and I
2 were doing the laundry at the Mascotte laundromat and Rafael
3 went to Cress's to get some sodas ...

4 Q. Cress's, is that across the street?

5 A. Yes, and Officer Cooper stopped Rafael and was talking
6 to him and then he told him that an officer, Mr. Duckett was
7 bragging about making a pass at someone's wife, and he was
8 telling Rafael all about it and Rafael called me over to the
9 car and asked me about it and he made me tell Cooper what had
10 happened and then Officer Cooper gave me a piece of paper and
11 I filled it out and he told me to mail it in after I showed
12 him what I wrote and I had left again, and I never mailed it.

13 Q. Why didn't you mail it?

14 A. I was leaving. I didn't think it was enough to make
15 any trouble over.

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

17 THE COURT: Yes, sir.

18 Q. After he dropped you off that morning, after he
19 tried to kiss you in the car, did you see him again that
20 particular day?

21 A. Just he drove by one time.

22 Q. Did he stop and come up to the door or anything?

23 A. No.

24 Q. Did you go outside?

25 A. No.

- 1419 -

1 Q. Did you ever have any other contact with him?

2 A. No.

3 Q. Thank you, Shelby.

4 THE COURT: Mr. Edmund.

5 MR. EDMUND: If it please, Your Honor?

6 THE COURT: Yes, sir.

7 CROSS EXAMINATION

8 BY MR. EDMUND:

9 Q. Ms. Dow, I am Jack Edmund. Ms. Down, your maiden
10 name?

11 A. Is Dow.

12 Q. Ma'am?

13 A. Dow.

14 Q. Is your maiden name?

15 A. Yes.

16 Q. Is that your present name?

17 A. Yes.

18 Q. Are you married?

19 A. No, sir.

20 Q. Are you a mother?

21 A. Yes. Two months ago.

22 Q. When were you a mother?

23 MR. HURM: Objection, Your Honor, this is not relevant
24 to any matter in this case. He is trying to smear her
25 character. It is irrelevant.

- 1420 -

1 MR. EDMUND: I am not trying to smear her character.
2 I am going into what type of a background she has, Your
3 Honor.
4 MR. HURM: It is not relevant.
5 MR. EDMUND: It might go to her credibility.
6 MR. HURM: That is not relevant to her credibility.
7 MR. EDMUND: She talked about being someone's wife, if it
8 please the Court.
9 MR. HURM: May we approach?
10 THE COURT: No, I am going to sustain the objection.
11 That is not relevant to the issue before this Court at all.
12 I instruct the Jury to disregard the witness's answer and I
13 strike it from the record.
14 CROSS EXAMINATION CONTINUES
15 BY MR. EDMUND:
16 Q. It was two o'clock in the morning when he saw you,
17 Ms. Dow?
18 A. Around two or three.
19 Q. And this was in the town of Mascotte?
20 A. Yes.
21 Q. And you were walking the streets?
22 A. No.
23 Q. Where were you, ma'am?
24 A. I was at my house.
25 Q. Were you in the house or outside the house?

- 1421 -

1 A. Outside the house.
2 Q. Where were you outside the house?
3 A. In between the apartments.
4 Q. Were you sitting there, walking there, or what were
5 you doing?
6 A. I was walking from one apartment to the other.
7 Q. I see. To whose apartment were you walking?
8 A. The next door neighbors'.
9 Q. And from whose apartment had you gone?
10 A. From mine.
11 Q. What was your purpose of going to the next door
12 neighbors' apartment at two in the morning?
13 A. To see if Rafael was still there.
14 Q. To see if Rafael was still there?
15 A. Yes.
16 Q. Alright. Now, when Officer Duckett first questioned
17 you, he was involved at least ostensibly in investigating
18 some sort of complaint, wasn't he?
19 A. Yes.
20 Q. How long did you all ride around together?
21 A. For about an hour.
22 Q. Will you tell the Jury why you were afraid that
23 Rafael might get home before you? Did he abuse you or
24 something, ma'am?
25 A. No, he would be angry, that I was out looking for him

- 1422 -

1 with another man.

2 Q. I see. Now, Mascotte is a town of what? Five or
3 six hundred people?

4 A. I don't know.

5 Q. And the police officer was bragging that he had made
6 a pass at someone else's wife?

7 A. That is what the officer said.

8 Q. Did you ever attend a Friday night softball game in
9 Mascotte?

10 A. No.

11 Q. So you don't know whether or not on virtually every
12 Friday, Duckett would take his wife and family to the softball
13 games right there in the City of Mascotte?

14 A. No.

15 Q. Now, is there any place, as far as you know, in the
16 City of Mascotte, that is not within a mile of the Circle K?
17 The city is not much bigger than a mile from one end to the
18 other, is it?

19 A. I don't know.

20 Q. When any officer talked to you about whether or not
21 you wanted to make a complaint, your remark was, "Oh, it wasn't
22 such a big deal", didn't you?

23 A. Yes.

24 Q. Alright. Now, where did you all drive in this riding
25 around, ma'am?

- 1423 -

1 A. Out by Herman's Tire place and on American Drive,
2 a dirt road, and around through Mascotte and across from the
3 Circle K.

4 Q. You were in the car for an hour in the city of
5 Mascotte driving around like that?

6 A. Yes.

7 Q. Did he try to hold your hand or anything while you
8 were driving along?

9 A. He put his arm on my shoulder.

10 Q. That is when you were about to get out of the car,
11 isn't that what you said?

12 A. It is when we were around American Drive.

13 Q. I see. Now, this is a full sized automobile?

14 A. Yes.

15 Q. And you are sitting against one door and he is
16 driving the car?

17 A. Yes.

18 Q. Is that right, ma'am?

19 A. Yes.

20 Q. Nobody else was in the car driving, so he is driving
21 the car?

22 A. Yes.

23 Q. And he put his arm around your shoulder?

24 A. On my shoulder, his hand on my shoulder.

25 Q. His hand on your shoulder. Alright. Now, at the time

- 1424 -

1 Now, at the time, you were about nineteen, right?
2 A. Yes, sir.
3 Q. And he put his hand on your shoulder and patted you?
4 How did he put his hand on your shoulder?
5 A. He was rubbing my shoulder.
6 Q. Rubbing your shoulder, alright. Did he become any
7 more intimate with his hands than putting it on your shoulder,
8 ma'am?
9 A. No.
10 Q. And you were with him for an hour?
11 A. Yes.
12 Q. About when did this occur as relates to the little
13 girl's death? Teresa's death?
14 A. It happened the end of February or early March.
15 Q. Did you get into any areas of town that were remote
16 like the clay pit or up in trees or anything like that?
17 A. No, just American Drive, sort of out of the way.
18 Q. But the car didn't stop along any of those places?
19 A. No. He stopped and shined his light.
20 Q. Looking around?
21 A. Ahum. (Affirmative response)
22 Q. And at that point in time, he was using a spotlight
23 or using what sort of a light?
24 A. Spot light.
25 Q. And he was looking?

- 1425 -

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A. Yes.

Q. He wasn't accosting you in any way?

A. No.

Q. And when he dropped you at home, you were right across the street from your house, were you not?

A. Yes.

Q. It wasn't on some side street or anything, it was directly across the street from where you lived?

A. Yes.

Q. How long did you and the other girl ride with him when you all were looking the first time?

A. About ten minutes. We just went to the apartment and back.

Q. How long were you in Virginia?

A. I lived there all my life.

Q. No, ma'am, I mean...

A. At the time? About a month.

Q. You were there for about a month?

A. Almost a month.

Q. Except for the Officer Cooper, did anyone else say anything to you about Duckett having made a pass at you or something like that?

A. No, sir.

Q. Did you remain in Mascotte for any period of time after you got back from Virginia?

- 1426 -

1 A. Yes.

2 Q. Did you mix around with people in Mascotte after
3 you got back from Virginia?

4 A. No.

5 Q. Well, you had friends there, didn't you?

6 A. I stayed home most of the time and worked.

7 Q. Where did you work, ma'am?

8 A. Lake Highlands Nursing Home.

9 Q. Ma'am?

10 A. Lake Highlands Nursing Home.

11 Q. You didn't talk to any of the other people in town?

12 A. Just the neighbors.

13 Q. Did Rafael go to Virginia with you?

14 A. Not the first time.

15 Q. But when you were gone that month, did Rafael go to
16 Virginia with you?

17 A. No.

18 Q. So Rafael was in town for that entire month?

19 A. Yes.

20 Q. And when you got back from Virginia, Rafael didn't say,
21 "Hey, somebody said they made a pass at you, tell me about
22 it" or anything like that?

23 A. Yes, he did.

24 Q. What did he say, ma'am?

25 A. He said that Officer Cooper stopped him while he was

- 1427 -

1 driving and then he had mentioned it then and he asked me about
2 it, but I didn't go into it with him.

3 Q. Excuse me.

4 A. Until Cooper had stopped us at the laundromat.

5 Q. Okay, did Rafael say that anyone else had mentioned
6 it to him?

7 A. No, just his sister.

8 Q. Did Rafael say that he was angry because it was all
9 over town? Or anything like that?

10 A. No, because...

11 Q. It wasn't, was it?

12 A. Just that the man at the police force said he had
13 heard it there.

14 Q. Right. That is it?

15 A. Ahum. (Affirmative response)

16 Q. No further questions.

17 MR. HURM: Nothing further, Your Honor.

18 THE COURT: Alright, may we release this lady from her
19 subpoena, Mr. Hurm?

20 MR. HURM: Yes, sir.

21 THE COURT: Mr. Edmund, any objection?

22 MR. EDMUND: No objection, Your Honor.

23 THE COURT: Ladies and gentlemen, while the witness is
24 stepping down, I want to remind you the evidence which has been
25 admitted to show similar crimes, wrongs or acts allegedly

- 1428 -

1 committed by the defendant, will be considered by you only as
2 that evidence relates to proof of motive, opportunity, plan,
3 or identity on the part of the defendant, and only as to the
4 charge of Sexual Battery in this case.

5 Your next witness?

6 MR. HURM: Linda Dale Upshaw.

7 THE COURT: Linda Upshaw.

8 (WHEREUPON, LINDA UPSHAW IS CALLED AS NEXT WITNESS BY THE
9 STATE AND IS DULY SWORN BY THE CLERK OF THE COURT)

10 DIRECT EXAMINATION

11 BY MR. HURM:

12 THE COURT: Ladies and gentlemen, I want to advise you
13 again as well as to this witness, the evidence you are about
14 to receive concerning evidence of other crimes allegedly
15 committed by the defendant will be considered by you for the
16 limited purpose of proving motive, opportunity, plan or
17 identity on the part of the defendant and you shall consider
18 it only as it relates to those issues and only as to the
19 Sexual Battery charge against the defendant. The defendant is
20 not on trial for a crime that is not included in the
21 Information or Indictment. Mr. Hurm?

22 MR. HURM: Yes, sir, Your Honor.

23 Q. Good morning.

24 A. Good morning.

25 Q. Are you nervous?

- 1429 -

1 A. Yes.

2 Q. A little bit? Pull your chair, if you would, up to
3 the microphone. I need you to speak out real loud so we can
4 all hear and additionally, we have a Jury in the jury box,
5 okay?

6 A. Okay.

7 Q. Would you tell us your name?

8 A. Linda Upshaw.

9 Q. How old are you?

10 A. Eighteen.

11 Q. What is your birthdate?

12 A. June 3, 1969.

13 Q. So you will be in another month, you will be nineteen?

14 A. Yes, sir.

15 Q. Linda, where do you live now?

16 A. In Leesburg.

17 Q. Did you ever live in Mascotte?

18 A. Yes, sir, I did.

19 Q. When was that?

20 A. In 1987.

21 Q. Were you there in April and May of 1987?

22 A. Yes, sir.

23 Q. What street did you live on when you lived in
24 Mascotte?

25 A. Mohawk.

- 1430 -

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1 Q. Do you know where Mohawk is in reference to the
2 Circle K? On Highway 50?

3 A. It is not even a block away.

4 Q. Did you ever have occasion to come to know any of the
5 Mascotte policemen?

6 A. Yes, sir, I did.

7 Q. How many did you know by name?

8 A. I knew two, Cooper and Duckett.

9 Q. Did you ... is that James Duckett?

10 A. Yes, sir.

11 Q. Do you see James Duckett in the courtroom today?

12 A. Yes, sir.

13 Q. Would you look at him and point to him and tell us
14 what he is wearing?

15 A. He is wearing a gray suit and blue shirt.

16 MR. EDMUND: I will stipulate, Your Honor, that she has
17 identified my client.

18 THE COURT: The record would reflect the witness has
19 identified the defendant.

20 Q. Linda, when did you first meet James Duckett?

21 A. I met him in May.

22 Q. In May of '87?

23 A. Yes, sir.

24 Q. Do you remember what date it was?

25 A. The first.

- 1431 -

1 Q. Not the date, what day of the week was that?
2 A. Friday.
3 Q. Linda, about what time of day was it that you saw
4 Duckett?
5 A. It was one o'clock in the morning.
6 Q. What were you doing?
7 A. I was walking.
8 Q. Now at that time, how old were you?
9 A. Seventeen.
10 Q. How tall were you?
11 A. 5'3-1/2".
12 Q. How much did you weigh?
13 A. I really don't know.
14 Q. Where were you walking at one o'clock in the morning
15 on... now, was that Friday, May 1st, was that the night,
16 Friday night at one o'clock or Saturday morning?
17 A. Saturday morning.
18 Q. Okay, at that time, where were you walking?
19 A. I was walking on the sidewalk down 50, heading towards
20 Groveland.
21 Q. Do you remember any landmarks or any buildings that
22 you were near as you walked?
23 A. In front of John Stiefel's Used Car Lot.
24 Q. You need to speak up. You are fading a little bit.
25 A. In front of Johnnie Stiefel's Used Car lot.

- 1432 -

1 Q. Is that on the... which side of 50 is that on as you
2 walk towards Groveland?

3 A. I was on the right hand side.

4 Q. As you are going towards Groveland, it is on the
5 right, the South side of 50?

6 A. Yes, sir.

7 Q. Now, as you walked along, what was your emotional
8 state?

9 A. I was upset.

10 Q. Why were you upset?

11 A. Personal problems.

12 Q. Why were you walking?

13 A. Because I always walk. It just clears my head.

14 Q. Helps you sort it through?

15 A. Yes, sir.

16 Q. At that time, you said you were how old?

17 A. Seventeen.

18 Q. Were you aware of whether there was a curfew or not
19 in Mascotte for minors?

20 A. Every place has a curfew, but I didn't think about it.
21 I didn't realize what time it was, and I didn't think about
22 the curfew.

23 Q. As you walked along, did the defendant come up to
24 you?

25 A. He pulled his car up in the second driveway and

- 1433 -

1 he pulled around to the first one almost through and pulled up
2 and waited for me to walk up to his car, the car.

3 Q. That was in the driveways of Johnnie Stiefel's Used
4 Car Lot?

5 A. Yes, sir.

6 Q. Do those driveways intersect the sidewalk?

7 A. Sir?

8 Q. Do they intersect the sidewalk? In other words,
9 does the sidewalk go into the driveway?

10 A. Yes, sir.

11 Q. When he pulled his car up, how far away from you was
12 his car parked when he stopped it?

13 A. Probably a car's distance.

14 Q. Could you have continued on the sidewalk and avoided
15 his car?

16 A. Probably.

17 Q. By staying on the sidewalk?

18 A. Yes, sir.

19 Q. What kind of car was it?

20 A. It was the brown police car.

21 Q. A Mascotte police car?

22 A. Yes, sir.

23 Q. Did it have lights on top?

24 A. Yes, sir.

25 Q. How was the defendant as he sat in the police car?

- 1434 -

1 A. He was in his uniform.

2 Q. What did he say to you as you walked toward the
3 police car?

4 A. He asked me what was I doing out at one o'clock in
5 the morning.

6 Q. Did you tell him?

7 A. I was upset. I didn't say much to him.

8 Q. Did he ask you what your name was?

9 A. No, sir.

10 Q. Did he ask you anything else about yourself?

11 A. He asked my age.

12 Q. What did you tell him?

13 A. I told him I was seventeen.

14 Q. At that point, did he say anything to you about a
15 curfew?

16 A. No, sir.

17 Q. Did he ever tell you you were out past the time you
18 should have been?

19 A. No, sir.

20 Q. Did he say to go home?

21 A. No, sir.

22 Q. What did he say to you?

23 A. He said let's go riding around. It helps to talk
24 about your problems. You'll feel better.

25 Q. What did you say?

- 1435 -

1 A. I told him that I just wanted to keep on walking.

2 Q. What was his response to that?

3 A. He told me, he said, "Let's ride around. You'll
4 feel better. I have to go check on some places."

5 Q. He told you he had to check on some places?

6 A. He said that he was going to go his rounds and he had
7 to check on some places and we talked a while and all that.

8 Q. Did you get in the car?

9 A. Yes, sir, I did.

10 Q. Why did you get in?

11 A. Because he was a police officer.

12 Q. Did you have any hesitation about getting into the
13 car with him?

14 A. Not really.

15 Q. Did you trust him?

16 A. I trusted him.

17 Q. Linda, after you got in the car, where did you go?

18 A. We went behind the Circle K in Mascotte and there is
19 a block of houses and we went around the block and we checked
20 on the houses and then we left there and he told me he had to
21 check on Hughie Stiefel's new home that was being built.

22 Q. Let me stop you before you go on to Hughie Stiefel's
23 house. Did he ever tell you you were under arrest?

24 A. No, sir.

25 Q. Did he tell you that he was going to take you home,

- 1436 -

1 because you were out past curfew?

2 A. No, sir.

3 Q. Did he ask you to get in the car and help him
4 investigate a case that he was working on?

5 A. No, sir.

6 Q. After you got in the car, you said you drove on the
7 rounds and then you headed towards Hughie Stiefel's house.

8 Where is Hughie Stiefel's house?

9 A. It is across from the Circle K, the road that takes
10 you to 33. I don't know the name of the road.

11 Q. Now, is the house across from the Circle K or is the
12 road that leads to the house across from the Circle K?

13 A. The road that leads to the house.

14 Q. Where is Hughie Stiefel's house with regard to the
15 city limits sign?

16 A. It is right on the other side.

17 Q. As you drove out towards Hughie Stiefel's, did he
18 say what he had to go to Hughie Stiefel's for?

19 A. He just said he had to check on it. He pulled up
20 into the lot and he shined his lights on the house.

21 Q. As you drove to Hughie Stiefel's, did you see a
22 Mascotte city limits sign?

23 A. Yes, sir, I did.

24 Q. Where was that in relationship to Hughie's house?

25 A. Right before we got to it.

- 1437 -

1 Q. What did you think as you saw the city limits sign?
2 A. I wasn't scared or anything at that point, because
3 it was just on the other side.
4 Q. After he shined his light at Hughie Stiefel's,
5 what did he do?
6 A. He backed up and he headed towards the stop sign
7 right there on 33 and you go to your right to go back to town
8 or you can go to your left and go to Okahumpka.
9 Q. Which way did he go, right or left?
10 A. He went to his left.
11 Q. When he turned left, as far as you knew, were you
12 inside the city limits or outside the city limits?
13 A. Outside.
14 Q. Was he headed back towards town?
15 A. No, sir, he wasn't.
16 Q. What did you think at that point?
17 A. I was starting to get scared.
18 Q. Did he say where he was going?
19 A. No, he didn't.
20 Q. Where did he go?
21 A. He went down 33 and to the first road to your left.
22 Q. Towards Okahumpka? On 33?
23 A. Yes, sir.
24 Q. The first dirt road to your left?
25 A. Yes, sir. After the houses, but the first dirt road

- 1438 -

1 that leads ... that goes on the road beside the houses; that
2 road.

3 Q. So it wasn't a driveway?

4 A. No, it wasn't.

5 Q. Did he turn on that dirt road?

6 A. Yes, he did.

7 Q. Were there any lights on that road?

8 A. No, sir.

9 Q. Were there any houses?

10 A. There was ... if I remember correctly, there was a
11 house at the very end of the road that leads to a dead end.

12 Q. Was the house lighted up?

13 A. No, sir.

14 Q. Were there any orange groves around there?

15 A. Yes, sir.

16 Q. Now, Linda, when you drove back on that dirt road,
17 did he talk to you at all? Did he tell you what he was doing?

18 A. No, sir.

19 Q. Where did he go?

20 A. He went down around some curves and everything, and
21 past a dump and a well thing and there is a curve that goes
22 off to your right. He went down a little road that was ... it
23 was just narrow enough for the car to go down and he parked
24 beside a big old tree.

25 Q. Were there any other cars down there?

- 1439 -

1 A. There was no cars.
2 Q. Were there any buildings down there at all?
3 A. No, sir.
4 Q. Were there any people?
5 A. No, sir.
6 Q. Were there any lights?
7 A. No.
8 Q. What was the lighting condition like?
9 A. It was very dark.
10 Q. Where were you sitting in the car?
11 A. I was sitting up front in the passenger side.
12 Q. Were you in the middle of the seat or the other end
13 of the seat?
14 A. I was right next to the door.
15 Q. When he stopped the car under the tree, did he turn
16 off the car?
17 A. Yes, sir, I think he did.
18 Q. What was he wearing?
19 A. He was wearing his uniform.
20 Q. Do you remember whether the police radio was on?
21 A. I think it was on, but it was turned on very, very
22 low.
23 Q. What happened after he stopped under the tree?
24 A. He told me to slide over next to him.
25 Q. Did you do that?

- 1440 -

1 A. Yes, sir, I did.

2 Q. Why?

3 A. Because I was scared. I didn't want to do anything
4 to make him mad.

5 Q. After you slid over next to him, what happened?

6 A. He put his arm around me and put his hand on my
7 breast.

8 Q. Was that on the outside of your clothes or on the
9 inside of your clothes?

10 A. On the outside.

11 Q. What were you doing?

12 A. I was crying.

13 Q. Did he touch just one of your breasts or both of
14 them?

15 A. Just one.

16 Q. Did he say anything to you while he was doing it?

17 A. No.

18 Q. What else did he do?

19 A. He tried to kiss me.

20 Q. Where did he try to kiss you?

21 A. He tried to kiss me on my lips.

22 Q. What did you do?

23 A. I turned my face.

24 Q. Did you say anything to him as he was trying to do
25 this?

- 1441 -

1 A. I told him I had to go to the bathroom.
2 Q. Why did you tell him you had to go to the bathroom?
3 A. Because I wanted to leave.
4 Q. What did he say when you told him you wanted to go
5 to the bathroom?
6 A. He said, "Wait a little bit".
7 Q. Did he keep trying to kiss you?
8 A. No, sir.
9 Q. Keep rubbing your breasts?
10 A. I moved back over.
11 Q. How long had you sat there under the tree before he
12 told you to scoot over?
13 A. About ten minutes.
14 Q. How long did he rub your breast and try to kiss you?
15 A. About five.
16 Q. After you scooted back over, what did you do?
17 A. I said I needed to go to the bathroom.
18 Q. Did you look at him?
19 A. Yes, sir.
20 Q. Did he say anything to you?
21 A. He said, "What's the matter?".
22 Q. What did you tell him?
23 Q. I didn't say anything. I told him I had to go to
24 the bathroom.
25 Q. How long were you there after you scooted back across

- 1442 -

1 the seat? Before you left?
2 A. Before I scooted back?
3 Q. No, after you scooted back across the seat?
4 A. Two or three minutes.
5 Q. What was he doing during that two or three minutes?
6 A. He wasn't doing anything.
7 Q. Was he saying anything?
8 A. No.
9 Q. Did he then start the car and leave?
10 A. Yes, sir.
11 Q. Where did you ask him or where did you tell him you
12 wanted to go to the bathroom?
13 A. To the Jiffy.
14 Q. The Jiffy Store?
15 A. Yes.
16 Q. Is that on 50?
17 A. Yes, sir.
18 Q. Did he take you there?
19 A. Yes, he did.
20 Q. Why did you want to go to the Jiffy Store?
21 A. All my friends hang out there and I knew there would
22 be somebody there.
23 Q. Speak up a little bit now.
24 A. Because all my friends hang out there and I thought
25 there would be somebody there I knew.

- 1443 -

1 Q. Was there someone there you knew when you got there?
2 A. Yes, sir, there was.
3 Q. What did Duckett say to you when you got to the
4 Jiffy Store, before you got out of the car?
5 A. Before I got out, he didn't say anything until I
6 got out.
7 Q. As you got out, as you were going into the store,
8 did he say anything?
9 A. He asked me would I go riding around some more.
10 Q. What did you tell him?
11 A. I told him yes.
12 Q. Why?
13 A. Because I wasn't near the store yet. I didn't feel
14 like I was safe.
15 Q. After you got in the store, were your friends there?
16 A. Yes, they were.
17 Q. Where did you go?
18 A. We went to the bathroom.
19 Q. What did your friends do?
20 A. What did they do? They took me home.
21 Q. Did they come back to the bathroom with you?
22 A. They went to the bathroom with me.
23 Q. What did Duckett do?
24 A. He went over to get some coffee.
25 Q. Now, did you ever encourage him to do, to rub your

- 1444 -

1 breasts or kiss you?

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

3 Q. Linda, do you know Shelby Dow?

4 A. I met her yesterday.

5 Q. How about Kim Ruetz? Do you know her?

6 A. I know of her name, by name.

7 Q. Did you know her when this happened?

8 A. No, I didn't.

9 Q. Can I have a moment? I don't have any further
10 questions, Your Honor. May we approach?

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

12 MR. HURM: Your Honor, there is one question that was
13 asked yesterday on cross examination during the proffer that
14 I want to object to if asked again today and I don't want to
15 wait until after it is said, because by then, the bell will
16 have been rung. It has to do with whether or not this witness
17 ever saw a psychiatrist. It is not relevant at all. I believe
18 it displays an archaic impression of the mental health field
19 in trying to smear this witness's character by saying that
20 she has visited a psychiatrist and therefore, she shouldn't
21 be believed. There was no showing yesterday as to how that
22 went to her credibility whatsoever and I would ask that
23 basically ask in limine that that be ruled on now, so that it
24 is not asked and then I have to object after it has already
25 been mentioned.

- 1445 -

1 MR. EDMUND: I am not going to go into that at all.

2 THE COURT: I think I will grant the motion. I don't think
3 we should bring that out.

4 MR. HURM: Thank you, sir.

5 (WHEREUPON, BENCH CONFERENCE ENDS)

6 MR. HURM: No further questions, Your Honor.

7 THE COURT: Your witness, Mr. Edmund.

8 CROSS EXAMINATION

9 BY MR. EDMUND:

10 Q. Ms. Upshaw, I am Jack Edmund. Ms. Upshaw, where
11 had you been when you were walking on 50?

12 A. Where had I been earlier?

13 Q. Yes, ma'am?

14 A. I was at home.

15 Q. Where is your home located, ma'am?

16 A. On Mohawk.

17 Q. Ma'am?

18 A. On Mohawk.

19 Q. That is across on the other side of 50 from the side
20 you were walking on, right?

21 A. Yes, sir.

22 Q. Now, is it on Mohawk toward Groveland from where the
23 Circle K would be on 50 or towards...

24 A. Mohawk is in Mascotte.

25 Q. Yes, and is your home on the East side of Sunset or

- 1446 -

1 on the West side of Sunset?

2 A. It is across the road.

3 Q. Alright, now, if you came out of the Circle K and
4 you walked up Sunset to Mohawk, would you turn right and go
5 to your house or turn left and go to your house?

6 A. I don't know where Sunset is, by the road.

7 Q. You know where the Circle K is?

8 A. Yes, sir, I do.

9 Q. If I tell you that Sunset is the street that runs
10 along between Polly's Bar and the Circle K, and it goes North
11 across 50. If you came out of the Circle K and you walked
12 North across the road or across 50 and got on that street and
13 went to Mohawk, which is one block up, right?

14 A. Yes.

15 Q. Mohawk is one block off of 50, right?

16 A. Yes, sir.

17 Q. Would you turn right or would you turn left?

18 To get to your house?

19 A. You turn to the left.

20 Q. Turn to your left. How far left would you go after
21 you turned left? How many blocks?

22 A. After you got off the main road?

23 Q. Yes, ma'am?

24 A. You don't even go a block.

25 Q. Alright, so you are pretty close then to Sunset. When

1 you left home, which direction did you take? How did you
2 leave your home and where did you walk?

3 A. I walked across the road and up towards Groveland.

4 Q. Ma'am?

5 A. I walked across the road and up towards Groveland.

6 Q. Alright, across which road?

7 A. Across 50.

8 Q. Alright, and you got over there on the Circle K side
9 of the road?

10 A. Yes, sir.

11 Q. Is there a sidewalk along there?

12 A. There is a sidewalk that runs all the way down.

13 Well, there is a light there and then you have to walk a little
14 ways before you get to the sidewalk.

15 Q. Alright, so you have got to walk that block that the
16 Circle K is on, doesn't have a sidewalk on it, does it?

17 A. No, it doesn't.

18 Q. And did you get on the sidewalk in the next block?
19 Or do you still have to go another block before you get to the
20 sidewalk?

21 A. From my house?

22 Q. No, after you leave the Circle K and you head towards
23 Groveland?

24 A. It is about a block and a half before you reach the
25 sidewalk to the Circle K.

- 1448 -

1 Q. Right you go that half a block from the Circle K and
2 another full block and then you finally come to the sidewalk,
3 right?

4 A. From the Circle K.

5 Q. And where were you headed?

6 A. Just walking.

7 Q. Just walking. As luck would have it, you just
8 happened to be walking in that direction, is that right, ma'am?

9 A. I never walk down towards Mascotte.

10 Q. Alright, but you walked in your usual direction and
11 for no purpose other than you were just walking?

12 A. I was upset.

13 Q. You weren't going to any particular place?

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

15 Q. Well, would you tell the Jury how you knew that you
16 had friends waiting at the Jiffy Store?

17 A. Because there is always people in there at the Jiffy
18 Store.

19 Q. Would you tell the Jury how you knew you had friends
20 at two o'clock in the morning waiting at the Jiffy Store?

21 MR. HURM: It has been asked and answered.

22 A. The bar closes at two. There is always people coming
23 up after the bar closes.

24 Q. I see, but you knew you had friends that were going
25 to be at the Jiffy Store and the Jiffy Store is on past where

- 1449 -

1 you were towards Groveland, isn't it?

2 A. Yes, sir.

3 Q. Now, the curfew age in Mascotte is sixteen and younger

4 isn't it?

5 A. I really don't know.

6 Q. Do you know that it is not, ma'am?

7 A. I don't know nothing about the curfew.

8 Q. Now, if it please, Your Honor, may the witness step

9 down to the board?

10 THE COURT: Yes, ma'am, if you would step down, please.

11 Q. Ms. Upshaw, would you come down, please, ma'am and

12 look at State's Exhibit #61. First, will you tell the Jury,

13 after you left Hugh Stiefel's house, how far did you drive?

14 A. After we left Hughie's?

15 Q. Yes, ma'am?

16 A. I don't know exactly miles, but...

17 Q. Was it a minute... two minutes... five minutes...

18 how long?

19 A. About five minutes.

20 Q. About five minutes. When you came out ... when you

21 pulled out of Hughie Stiefel's yard, were you on 50... I mean,

22 on 33?

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

24 Q. What were you on?

25 A. I don't know the street name.

- 1450 -

1 Q. And it did run into 33?

2 A. Yes, sir.

3 Q. Alright, now, Hughie Stiefel's house is, we have
4 determined yesterday, is right here, is it not? And we also
5 determined that these outlines were the city limits of
6 Mascotte, did we not?

7 A. Yes, sir.

8 Q. Thank you, ma'am. Go back and have another seat.

9 (WHEREUPON, WITNESS RESUMES WITNESS BOX)

10 Q. When you first got in the patrol car, where did you
11 all go?

12 A. Behind the Circle K.

13 Q. Behind the Circle K, alright, and did you make any
14 stops along there at all?

15 A. No, sir.

16 Q. After you went in behind the Circle K, where did you
17 all go?

18 A. Hughie Stiefel's.

19 Q. You went directly from there to Hughie Stiefel's?

20 A. Yes, sir.

21 Q. How long were you in the police car total, ma'am?

22 A. For a total of everything?

23 Q. Yes, ma'am?

24 A. Is about thirty-five minutes.

25 Q. Okay, would you tell the Jury what you saw on the

- 1451 -

1 front seat of the patrol car, if anything?

2 A. Anything?

3 Q. Was anything on the front seat of the patrol car?

4 A. The seats were bucket and in the middle is a little...
5 I don't know what you call it ...

6 Q. Had bucket seats in the patrol car?

7 A. There is about this much seat, I guess and then there
8 is up there and it is in the middle.

9 Q. Is there some sort of arm rest or console or something
10 like that? In the patrol car?

11 A. It is a console.

12 Q. Was there anything on it, or in it, leaning against
13 it? Anything like that?

14 A. Yes, sir, there was a whole bunch of things in it.

15 Q. What was there, ma'am?

16 A. I don't know.

17 Q. Well, what did he do, tear the console out when you
18 moved over next to him or the console was still in between you
19 all or what?

20 A. The console was still there.

21 Q. Was still in between you all?

22 A. Yes.

23 Q. And with the exception of one hand touching one of
24 your breasts, he never touched any other part of your body,
25 did he?

- 1452 -

1 A. No, sir.

2 Q. And when you turned your face, he didn't... when he
3 moved to kiss you, he didn't grab you and spin you back around
4 and plant a kiss on your lips or anything like that, did he?

5 A. No, sir.

6 Q. Did he ever put his hand on your face?

7 A. No, sir.

8 Q. After you all were there... all this took five
9 minutes?

10 A. In the bathroom?

11 Q. That is not what I asked, ma'am, I mean, he pulled
12 you over there and he tries to kiss you and you turn your
13 face and this goes on for five minutes? Or does it go on for
14 a matter of seconds, or does it go on at all?

15 A. It goes on.

16 Q. How long, ma'am?

17 A. Five minutes.

18 Q. Five minutes?

19 A. I didn't have a watch on timing.

20 Q. I see. Now, you are telling that you have got friends
21 at the Jiffy Store and you wanted to go there, is that right?

22 A. Yes, sir.

23 Q. He didn't take you to the Circle K and drop you or
24 he didn't take you to the Presto and drop you or he didn't take
25 you home or anything like that and drop you?

- 1453 -

1 A. No.

2 Q. After he has had you out in the grove making a pass
3 at you, he takes you to the Circle K where your friends are?

4 A. He didn't know my friends were there.

5 Q. You just told the Jury you told him you wanted to
6 meet some friends there, didn't you?

7 MR. HURM: I would object. Mr. Edmund said that, Your
8 Honor. She never said that.

9 THE COURT: Sustained.

10 MR. EDMUND: That is correct, Your Honor, I apologize.

11 Q. Where were your friends when you drove up to the Jiffy
12 Store?

13 A. They were inside.

14 Q. They were inside? Could you see them from the car?

15 A. There is a window all along the Jiffy.

16 Q. Could you see them, ma'am?

17 A. Yes.

18 Q. Could he see them?

19 A. I imagine.

20 Q. How many of them were in there?

21 A. Three.

22 Q. Were they men or women?

23 A. They were all women.

24 Q. Did he ask you if you knew any of those people in
25 the store?

- 1454 -

1 A. No, sir.

2 Q. Did he say anything to you about keeping your mouth
3 shut?

4 A. No, sir.

5 Q. Did he say anything to you about not saying anything
6 about what occurred?

7 A. No, sir.

8 Q. Did you make a complaint to the Police Department?

9 A. No, sir.

10 Q. Did you make a complaint to the State Attorney's
11 Office?

12 A. No, sir.

13 Q. Did you make a complaint to the Sheriff's Office?

14 A. No, sir.

15 Q. Did you make a complaint to any law enforcement
16 agency?

17 A. I told my stepfather.

18 Q. Before you lived in Mascotte... well, what did he do?

19 A. He is a Deputy Sheriff of Sumter County and he told
20 me if I didn't come forward, that he would get somebody to come
21 talk to me and I refused to do anything and then that is why
22 I come forward, because he told me.

23 Q. You didn't come forward until after Teresa's death,
24 did you?

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

- 1455 -

1 Q. And Duckett was a suspect around Mascotte within a
2 day after Teresa's death, wasn't he?

3 A. Yes, sir.

4 Q. How long after that was it that you came forward?
5 The 25th of June?

6 A. I don't know what day it was.

7 Q. Was it a month or so later? More than a month later?

8 A. I don't remember.

9 Q. Was it a good long time? We talk about five minutes,
10 fifteen minutes, ten minutes... now let's talk about days.

11 Was it more than ten days after Teresa's death?

12 A. It was more than ten days.

13 Q. Was it more than twenty days after Teresa's death?

14 When is your birthday, ma'am?

15 A. June 3rd.

16 Q. Was it after your birthday?

17 A. It was after my birthday.

18 Q. So it was at least that many days after Teresa's
19 death. How long after your birthday was it, ma'am?

20 A. I don't know.

21 Q. Were you in school at that time?

22 A. No, I wasn't.

23 Q. Do you know when school let out during the month of
24 June of that year? Or May or whatever? Were you working
25 at that time?

- 1456 -

1 A. Yes, at All American.
2 Q. Ma'am?
3 A. I worked at All American.
4 Q. When did you start working there?
5 A. I started working there in January.
6 Q. Were you working there in June?
7 A. I quit in June.
8 Q. When did you quit in June? What time?
9 A. I really don't know.
10 Q. Was it before or after you quit working that you made
11 this report?
12 A. It was after.
13 Q. So it was into June at least before you reported this
14 to anyone, isn't that correct? Isn't that correct, ma'am?
15 A. I reported it to Groveland.
16 Q. Can you tell the Jury anything else about the interior
17 of the patrol car? About what you saw?
18 A. Most of the time, I was looking at the window.
19 Q. You weren't looking out the window necessarily when
20 you all were riding around Mascotte, were you?
21 A. No.
22 Q. Alright, then can you tell the Jury anything else
23 you observed about the interior of the patrol car?
24 A. No, I was talking to him.
25 Q. Okay, was there a radio on?

- 1457 -

1 A. His police radio.
2 Q. Were there messages coming to him on a radio?
3 A. Not that I can remember.
4 Q. Do you remember any messages at all coming across
5 the radio during the thirty-five minutes you were in the
6 patrol car?
7 A. No, sir.
8 Q. Did he turn the car off when you all were out in the
9 grove?
10 A. Yes, sir.
11 Q. Ma'am?
12 A. Yes, sir.
13 Q. I can't hear you, I am sorry, ma'am.
14 A. Yes, sir.
15 Q. Thank you. Did he turn the radio off while you all
16 were out in the grove?
17 A. He turned it down.
18 Q. The radio stayed on after the car was turned off?
19 A. I don't know. I was scared and I was paranoid and
20 I wasn't paying attention to that.
21 Q. What is paranoid, ma'am?
22 A. I was scared he was going to hurt me.
23 Q. I see. Where did you live before you lived in
24 Mascotte?
25 A. I lived in Sumter County.

- 1458 -

1 Q. And where did you live in Sumter County?
2 A. I lived across from the Battlefield, in that area.
3 Q. How long did you live there?
4 MR. HURM: Objection, Your Honor.
5 MR. EDMUND: I am just testing her recollection of
6 events, if it please, Your Honor. I want to find out where
7 she lived, if she knows.
8 THE COURT: I'll let it go a little further. Overruled.
9 Q. How long did you live there in Sumter County?
10 A. I lived there on and off twelve years.
11 Q. By on and off, where did you live in the times that
12 you didn't live there?
13 A. All over.
14 Q. Whereabouts, ma'am?
15 A. I lived in Texas and other small towns.
16 Q. Who were you living with when you lived in Mascotte?
17 MR. HURM: That is irrelevant, Your Honor.
18 THE COURT: Sustained.
19 Q. How about when you lived in Sumter County?
20 MR. HURM: Same objection, Your Honor.
21 THE COURT: Sustained.
22 Q. Have you ever lived places where you weren't living
23 with a family?
24 MR. HURM: That is irrelevant.
25 THE COURT: I sustain the entire line of questioning. It

- 1459 -

1 is sustained. It is not relevant, Mr. Edmund.

2 MR. EDMUND: May we approach the bench?

3 THE COURT: Alright.

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

5 MR. EDMUND: You are not the only one that got phone
6 calls last night, Your Honor, after yesterday. I have not
7 had any chance to investigate this and I am not going to
8 blurt out some question... I am trying to approach it where
9 I don't imply even where I am going, but I received one of
10 these anonymous phone calls that you receive in a trial of
11 this nature, that this girl has spent two sessions in a mental
12 institution and I haven't, this morning, of course, had any
13 opportunity to run that down. I was trying to get to it
14 by way of questions that do not treat anything that results in
15 a mistrial type of statement being made in this court, and I
16 can't come right out and ask it. I have certainly done it
17 so that nothing has been disclosed, but that is where I am
18 going and that is what I am interested in.

19 If she has a history of mental problems, it does become
20 material.

21 THE COURT: I don't think that does unless you can show
22 it affects her credibility.

23 MR. EDMUND: I think that is the first step I have to take.

24 THE COURT: I disagree. You are going to have to bring
25 somebody in to establish if she was in one of those

- 1460 -

1 institutions.

2 MR. EDMUND: If I can take a shortcut. I haven't any
3 chance to get somebody to come in.

4 THE COURT: My ruling is you have got to do it the long
5 way.

6 (WHEREUPON, BENCH CONFERENCE ENDS)

7 MR. EDMUND: Thank you, Judge.

8 I have nothing further, Your Honor.

9 MR. HURM: No further questions, Your Honor.

10 THE COURT: What do you say about the witness's subpoena,
11 gentlemen?

12 MR. HURM: She may be released.

13 THE COURT: Objection?

14 MR. EDMUND: No objection, Judge.

15 THE COURT: You are free to go, ma'am, thank you very
16 much. Step down.

17 THE COURT: While the witness is stepping out, ladies
18 and gentlemen, let me remind you the evidence which has been
19 admitted to show similar crimes, wrongs, or acts allegedly
20 committed by the defendant will be considered by you only
21 as that evidence relates to proof of motive, opportunity,
22 plan or identity on the part of the defendant and only as to
23 the charge of Sexual Battery.

24 We are going to need to take about a ten minute recess,
25 Mr. Bailiff, and I promise we will keep it at ten minutes.

- 1461 -

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1 Gentlemen, could you all approach the bench, please?
2 (WHEREUPON, BENCH CONFERENCE IS HELD AS FOLLOWS:)
3 THE COURT: Presumably the next girl is next as yesterday.
4 MR. HURM: Yes, sir.
5 THE COURT: My intentions are to clear the courtroom as
6 I did yesterday. I will give you an opportunity to object to
7 that if anyone wants to.
8 MR. HURM: I don't have any objection.
9 MR. EDMUND: No objection, Your Honor.
10 MR. HURM: I would like to let her husband remain in as
11 yesterday.
12 THE COURT: I am going to take the defendant out. Mr.
13 Bailiff wants to clear the courtroom on a break, and that is
14 frankly the only real reason why I took the break. As soon as
15 we get the courtroom cleared, we will take a real quick
16 recess.
17 MR. HURM: Just one representative from each press?
18 THE COURT: Yes, just as yesterday.
19 MR. HURM: Okay.
20 MR. EDMUND: I have a strange request, but I bring my
21 secretary wherever possible to at least a day or so of trial.
22 One is my stepdaughter and the other is my daughter-in-law.
23 It is not that I want to subject them to this type testimony,
24 but they not only had to travel from home, but I would like
25 them to know the sordid side of things as well as the unsordid.

- 1462 -

1 Could we talk to the witness about them sitting in the
2 far corner of this courtroom or something like that?

3 THE COURT: You are talking about two young ladies?

4 MR. EDMUND: Two young ladies.

5 THE COURT: I will let them stay. They can't make any
6 substantial difference in the witness's testimony.

7 MR. EDMUND: They don't have a big problem with that.

8 MR. HURM: Not an insurmountable problem.

9 MR. EDMUND: Thank you.

10 (WHEREUPON, BENCH CONFERENCE ENDS)

11 THE COURT: Mr. Bailiff, please remove the defendant.

12 (WHEREUPON, DEFENDANT IS TAKEN OUT OF COURTROOM AT
13 11:00 A. M.)

14 THE COURT: Ladies and gentlemen, as we did yesterday,
15 so we will do today. We are going to clear the courtroom
16 for this next witness's testimony. The persons that can
17 remain are the witness's husband, the persons we discussed
18 at the bench, one representative from the media from each
19 respective television station, news station, newspaper. One
20 each. Just as we did yesterday.

21 Mr. Bailiff, if you would, please, sir.

22 (WHEREUPON, COURTROOM IS CLEARED OF SPECTATORS)

23 THE COURT: Gentlemen, if you will, I note that Judge
24 Hill is present. I intend to allow him to remain as well.

25 MR. HOGAN: That is fine, Judge.

- 1463 -

1 THE COURT: Did we lose your folks, Mr. Edmund? Where
2 did your ladies go?

3 MR. EDMUND: Judge, I just let them go out in the bunch
4 and I will go get them now.

5 THE COURT: Yes, they are welcome to be here. That is
6 right. I will see you all in about ten minutes.

7 (WHEREUPON, COURT IS IN RECESS AT 11:02 FOR TEN MINUTES)

8 (WHEREUPON, COURT RECONVENES AT 11:15 A. M.)

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

11 THE COURT: Before we bring the Jury back, it occurred
12 to me over the break and with regard to the Williams Rule
13 testimony, I neglected to recite one additional fact or
14 comparison in the record before and that is dealing with the
15 discrepancy between the ages of the Williams Rule victims
16 or testimony witnesses at the time as compared to that of the
17 victim in this case, Teresa McAbee.

18 The Court specifically finds that each of the Williams
19 Rule witnesses were in their late teens and that is established
20 by the record as to exactly what age they were, and it is
21 clear that Ms. McAbee at the time of her death, was age
22 eleven. Nevertheless, there is competent testimony in the
23 record from which the Jury could conclude that Ms. McAbee
24 looked several years older than her actual chronological age,
25 which would place her at thirteen or fourteen and I find that

- 1464 -

age discrepancy then between fourteen and sixteen, seventeen
and eighteen to be not so sufficient as to make these not
similar acts for purposes of the Williams Rule. I simply
forgot to state that comparison on the record and I apologize.

Anything before we bring the Jury back?

COUNSEL: No, sir.

THE COURT: Please, Mr. Bailiff.

(WHEREUPON, JURY ENTERS COURTROOM AT 11:18 A. M.)

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

JURORS: Yes, sir.

THE COURT: The State's next witness, please?

MR. HURM: The State would next call Kimberly Fowler
Ruetz.

(WHEREUPON, KIMBERLY FOWLER RUETZ IS CALLED AS NEXT
WITNESS FOR THE STATE AND IS DULY SWORN BY THE CLERK OF THE
COURT)

DIRECT EXAMINATION

BY MR. HURM:

THE COURT: Before we commence, I want to advise you once
again the evidence you are about to receive concerning evidence
of other crimes allegedly committed by the defendant will be
considered by you for the limited purpose of proving motive,
opportunity, plan or identity on the part of the defendant
and you shall consider it only as it relates to those issues

- 1465 -

1 and only as it relates to the charge of Sexual Battery against
2 the defendant in this case.

3 Mr. Hurm.

4 Excuse me, I forgot one more thing. The Defendant is
5 not on trial for a crime that is not included in the Information
6 or Indictment. I won't interrupt you again.

7 Q. How are you?

8 A. Okay.

9 Q. Nervous?

10 A. Ahum. (Affirmative response)

11 Q. We have talked outside and talked yesterday, so you
12 are going to need to speak up real loud. You have a soft
13 voice and all these folks need to be able to hear your
14 testimony, alright?

15 A. Ahum. (Affirmative response)

16 Q. Would you tell us your name?

17 A. Kimberly Ruetz.

18 Q. Kim, what was your... was Ruetz your married name?

19 A. Yes.

20 Q. What is your husband's name?

21 A. David Ruetz.

22 Q. I see you and David are expecting a baby. When is
23 your baby due?

24 A. In June.

25 Q. Middle of June?

- 1466 -

1 A. Yes.
2 Q. Kim what was your maiden name?
3 A. Fowler.
4 Q. Where are you living now, just the town?
5 A. Groveland.
6 Q. Did you ever live in Mascotte?
7 A. Yes.
8 Q. How old are you, Kim?
9 A. Seventeen.
10 Q. When is your birthdate?
11 A. July 16, 1970.
12 Q. So you will be eighteen then this coming July?
13 A. Yes.
14 Q. Kim, when did you live in Mascotte?
15 A. I couldn't hear you?
16 Q. When did you live in Mascotte?
17 A. 1986 and part of '87.
18 Q. When did you move from Mascotte in 1987?
19 A. I think it was the end of March. I don't remember.
20 Q. That's alright. Were you living in Mascotte or
21 were you in and around Mascotte in February, March, April,
22 1987?
23 A. Yes.
24 Q. How old were you during those months? In '87?
25 A. Sixteen.

- 1467 -

1 Q. Kim, while you lived in Mascotte, did you have some
2 occasions to meet any of the Mascotte police officers?

3 A. Yes.

4 Q. How many did you know by name?

5 A. One.

6 Q. Who was that?

7 A. James Duckett.

8 Q. Do you see James Duckett in the courtroom today?

9 A. Yes.

10 Q. Would you point to him and tell us what he is
11 wearing?

12 A. Gray suit.

13 MR. EDMUND: I would stipulate that she has identified
14 my client, Your Honor.

15 THE COURT: Thank you, sir. Ladies and gentlemen, the
16 record would reflect the witness has identified the defendant.

17 MR. HURM: Thank you, Mr. Edmund.

18 Q. Kim, when did you first meet the defendant, Duckett?

19 A. He came to our house when my boyfriend and I got in
20 a fight and my mom called Mascotte Police Station and he
21 was the one that was sent.

22 Q. About when was that?

23 A. Christmas of 1986.

24 Q. Did you see him after he came to your house that
25 night?

- 1468 -

1 A. Yes.

2 Q. Where or how would you see him?

3 A. Riding around my neighborhood.

4 Q. Did you ever talk to him?

5 A. Yes.

6 Q. Now, when you would see him riding around the
7 neighborhood, was he ... how was he dressed?

8 A. He was in uniform.

9 Q. What was he driving?

10 A. The Mascotte police car.

11 Q. Now, Kim, do you remember a particular night in
12 February or March of 1987, when you and a friend of yours were
13 driving around and ended up meeting the defendant in the clay
14 pits?

15 A. Yes.

16 Q. Now, on that particular night, who were you riding
17 with?

18 A. Becky Curtis.

19 Q. What were you and Becky doing?

20 A. Just riding around.

21 Q. Where did you see the defendant that night? Where
22 did you first see him? Do you remember?

23 A. No.

24 Q. About what time did you first see him?

25 A. Around ... I don't remember the time.

- 1469 -

1 Q. Was it daytime or nighttime?
2 A. No, it was night. It was late at night.
3 Q. Was it before or after midnight?
4 A. It was before midnight.
5 Q. What did the defendant say to you when you and Becky
6 saw him?
7 A. He told me that after I take Becky home, to go down
8 to the clay pits and talk to him for a while.
9 Q. Where are the clay pits?
10 A. In Mascotte.
11 Q. What street were you living on in Mascotte, do you
12 remember?
13 A. No.
14 Q. Where was it in relationship... where was your house
15 in relationship to the clay pits?
16 A. Right across Highway 50.
17 Q. Do you know where the Circle K is on Highway 50 in
18 Mascotte?
19 A. Yes.
20 Q. The clay pits and your house, are those towards
21 Groveland from the Circle K or are they the other way towards
22 Terrytown and Brooksville?
23 A. Towards Terrytown.
24 Q. About how far from Circle K toward Terrytown in blocks?
25 A. About three or four.

- 1470 -

1 Q. Did you agree to meet him at the clay pits after
2 you dropped off Becky?

3 A. Yes.

4 Q. About what time did you drop Becky off, do you know?

5 A. I think around ten o'clock.

6 Q. What did you do immediately after dropping Becky off?
7 Did you go right to the clay pits?

8 A. I went riding around for a while.

9 Q. Why did you ride around?

10 A. I just went riding around.

11 Q. How long did you ride around before you went down to
12 the clay pits?

13 A. About an hour.

14 Q. When you went to the clay pits, had you seen the
15 defendant again between the time you and Becky talked to him
16 and the time you went to the clay pits?

17 A. I don't think so.

18 Q. When you went down to the clay pits, was he there?

19 A. I don't remember if he was there before or after I was
20 there.

21 Q. Tell us about the clay pits. What kind of a place is
22 that? Why do they call them the clay pits?

23 A. It is a big hole in the ground and it is all clay.

24 Q. Are there any buildings down there?

25 A. No.

- 1471 -

1 Q. Any houses where people live down there?

2 A. No.

3 Q. Are there any lights?

4 A. No.

5 Q. When you got down there and the defendant was down
6 there... when the two of you were down there together, were
7 there any other cars there?

8 A. Not at first.

9 Q. Did any cars come down and stay there while you were
10 there with the defendant?

11 A. No.

12 Q. How would you describe the lighting conditions when
13 you got down there?

14 A. It was dark and you couldn't hardly see anything
15 unless you had your lights on.

16 Q. Did you keep the lights on your car on?

17 A. No.

18 Q. Did the defendant keep lights on his car on?

19 A. No.

20 Q. When you got down there, first of all, when you and
21 Becky talked to the defendant, how was he dressed at that
22 time?

23 A. In uniform.

24 Q. What kind of car was he driving?

25 A. Mascotte police car.

- 1472 -

1 Q. How did you recognize it as the Mascotte police car?
2 A. From the side and the lights.
3 Q. Lights on the top?
4 A. Ahum. (Affirmative response)
5 Q. When you got down there, was he driving the same car?
6 A. Ahum. (Affirmative response)
7 Q. Was he still in uniform?
8 A. Yes.
9 Q. How did you park your car in relationship to his?
10 A. Side by side.
11 Q. Did you get out of your car?
12 A. Yes.
13 Q. How about him, did he get out?
14 A. He got out and stretched.
15 Q. What was the weather like that night?
16 A. It was cold.
17 Q. Was it raining or was it dry?
18 A. It was dry.
19 Q. How were you dressed, do you remember?
20 A. I had on a pair of jeans, tennis shoes and a white
21 tank top and yellow sweater.
22 Q. Kim, when you got out of the car and Duckett got out
23 of his car, did you have any conversation? Did you talk
24 together?
25 A. When?

- 1473 -

1 Q. Okay, when you were both outside of your car, outside,
2 did he say anything to you then?

3 A. He got in the car and then he asked me if I would
4 like to go in there, because it was cold.

5 Q. Was his engine running? The car's engine running?

6 A. Yes.

7 Q. Was the heater on?

8 A. Yes.

9 Q. Did you get in the police car with him?

10 A. Yes.

11 Q. Where did you sit when you got in the police car?

12 A. I was sitting on the passenger side.

13 Q. Tell us about the front seat. What kind of seat is
14 it?

15 A. A full seat.

16 Q. Are there any things that come down in the middle
17 from the seat to separate the passenger side from the driver's
18 side?

19 A. No.

20 Q. Was there anything on the seat when you first got in?

21 A. I don't think there was. I am not sure.

22 Q. When you first sat down in the passenger seat, were
23 you in the middle of the seat or were you over next to the
24 passenger's door?

25 A. Next to the door.

- 1474 -

1 Q. Where was he?
2 A. He was in the driver's seat.
3 Q. Was the police radio on?
4 A. Yes.
5 Q. Were you under the impression that he was on call ...
6 I mean, that he was on duty or off duty?
7 A. On duty.
8 Q. Did he ever get any radio calls while you were with
9 him in his car that night?
10 A. He got one.
11 Q. Do you remember what the nature of the call was?
12 A. No, I don't know, but he told them he was in the clay
13 pits.
14 Q. Kim, what did you all talk about when you first got
15 in the car?
16 A. Just making conversation.
17 Q. And did the conversation turn to any one particular
18 subject?
19 A. Ahum. (Affirmative response)
20 Q. What was that subject?
21 A. Sex.
22 Q. How did the conversation turn to the topic of sex?
23 A. He started telling me that I had pretty eyes and I
24 told him he looked fine.
25 Q. What did you mean when you said he looked fine?

- 1475 -

1 A. Meaning he was cute.
2 Q. Was that an expression you used a lot?
3 A. Yes.
4 Q. When you thought something was cute, you said it
5 looked fine?
6 A. Yes.
7 Q. What did he do after you told him he looked fine and
8 he had told you that your eyes were pretty?
9 A. We started kissing.
10 Q. Where were you located when you started kissing?
11 A. I was sitting beside him.
12 Q. How did you get from over next to the door to beside
13 him?
14 A. I slide over there.
15 Q. Did you do that on your own or did he help you slide?
16 A. He had his arm around the back of my shoulders.
17 Q. Did he pull you over and gently help you over, or how
18 did that all happen?
19 A. He just gently helped me over.
20 Q. Did you object to being... to sliding over and sitting
21 next to him?
22 A. No.
23 Q. What did you think about him?
24 A. I thought he was a nice person.
25 Q. When he kissed you, did you object to that?

- 1476 -

1 A. No.
2 Q. Did you kiss him back?
3 A. Yes.
4 Q. Where did he kiss you?
5 A. On the mouth.
6 Q. Did he kiss you anywhere else?
7 A. Yes.
8 Q. On your neck?
9 A. Ahum. (Affirmative response)
10 Q. What did he do with his hands while he was kissing
11 you?
12 A. He had them on my breasts.
13 Q. And did Duckett have his hands on your breasts outside
14 your clothes or inside your clothes?
15 A. Outside.
16 Q. What else did he do?
17 A. After that, he put them underneath.
18 Q. He put his hands underneath your clothes?
19 A. Ahum. (Affirmative response)
20 Q. How did he ... did he take your shirt off or how
21 did he get his hands underneath?
22 A. He pulled my sweater tank top down and my bra up.
23 Q. And then touched your bare breasts?
24 A. Yes.
25 Q. One of them or both of them?

- 1477 -

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A. Both.

Q. Did he do anything else to your breasts other than touch them and rub them with his hands?

A. He kissed and sucked on them.

Q. Did you object to that at that point?

A. No.

Q. Kim, did he kiss you anywhere else, other than your breasts and mouth?

A. On my neck.

Q. Was he saying anything as he kissed you or as he was rubbing your breasts?

A. I don't remember if he said anything or not.

Q. Did he touch you anywhere else on your body?

A. Yes.

Q. Where?

A. Between my legs.

Q. Was that outside your clothes or inside your clothes?

A. At first outside.

Q. Now, when you say in between your legs, what part of your body between your legs? Your genital area?

A. Yes.

Q. You said at first outside. How did he get his hands inside? You were wearing blue jeans.

A. Ahum. (Affirmative response)

Q. How did they fit you?

- 1478 -

1 A. They were tight.
2 Q. Did he say anything about your jeans?
3 A. He said they were tight and he said they were too
4 tight and I shouldn't wear them.
5 Q. How did your jeans ... did your jeans ever come off?
6 A. No.
7 Q. Were they ever pulled down at all?
8 A. They were pulled down to my knees.
9 Q. How did that happen?
10 A. I unbuttoned them and pulled them down.
11 Q. Had he made any attempt to unbutton them before you
12 unbuttoned them?
13 A. He tried to. He got them unzipped, but he couldn't
14 unbutton them.
15 Q. Were you wearing panties?
16 A. Yes.
17 Q. What happened to your panties?
18 A. I pulled them down.
19 Q. You pulled them down or he pulled them down?
20 A. I don't remember who pulled them down.
21 Q. Did he touch you in your genital area between your
22 legs then after your jeans and panties were pulled down?
23 A. Yes.
24 Q. Kim, did he ever put his finger into your vagina?
25 A. Yes.

- 1479 -

1 Q. After he did that ... how was he dressed when all
2 this was going on?
3 A. He was still in uniform.
4 Q. Did he take any of his uniform off?
5 A. No.
6 Q. Did you ever touch him anywhere on his body?
7 A. Yes.
8 Q. Tell us about that? Where did you touch him?
9 A. I touched him between the legs.
10 Q. Outside his clothes or inside his clothes?
11 A. Outside.
12 Q. Did you ever touch him inside his clothes?
13 A. Yes.
14 Q. Did his pants come off?
15 A. No, they didn't come off.
16 Q. Tell us how you touched him inside?
17 A. They were just... he unzipped them.
18 Q. He unzipped them?
19 A. Ahum. (Affirmative response)
20 Q. And you put your hands in?
21 A. Yes.
22 Q. What did you touch? What did your hands touch
23 inside?
24 A. His penis.
25 Q. Did you take that out of his pants?

- 1480 -

1 A. Yes.
2 Q. Did he have an erection?
3 A. Yes.
4 Q. What did he say when you touched his penis?
5 A. I started rubbing it and he said it felt good.
6 Q. Did you do anything else to his penis?
7 A. Yes.
8 Q. What was that?
9 A. I sucked on it.
10 Q. What happened as you sucked his penis?
11 A. He came in my mouth.
12 Q. When you say he came in your mouth, do you mean he
13 ejaculated?
14 A. Yes.
15 Q. What did he say after he ejaculated?
16 A. He said that it felt nice.
17 Q. Kim, did you ever have any conversation with him
18 with regard to having sexual intercourse with him?
19 A. Yes.
20 Q. Tell us about that conversation?
21 A. I asked him when we were going to and he said, "Soon".
22 Q. Did he ever say anything to you about whether he was
23 married or not?
24 A. No.
25 Q. Now, after ... you said earlier that a car ... at first

1 there were no cars in the clay pit and then a car came down
2 there at some point.

3 A. Yes.

4 Q. Would you tell us about that? When did that happen?

5 A. After I had gotten in the car and we were still
6 talking, there was a truck that came down and they saw us down
7 there, I guess, and turned around and started leaving. He
8 turned his light on them.

9 Q. He turned his spotlight on them?

10 A. Yes.

11 Q. What did he say to you?

12 A. He told me to get out of the car and go on the other
13 side like we was talking.

14 Q. Did you do that?

15 A. Yes.

16 Q. Did you then get back in the car?

17 A. Yes.

18 Q. Was that before, during, or after the sex?

19 A. Before.

20 Q. After this was over at the clay pits, did you all
21 have any discussions as to whether anyone should be told
22 about what had happened?

23 A. We said something about it, but I don't remember.

24 Q. What was said?

25 A. He told me that he worked too hard to get to where

- 1482 -

1 he was and if I didn't say anything to anybody, he wouldn't.
2 Q. Did you intend to say anything to anybody?
3 A. No.
4 Q. Kim, did you ever see him again after that?
5 A. Yes.
6 Q. Was there ever a time when you were alone with him
7 after that?
8 A. Yes.
9 Q. Tell us about that? When was it?
10 A. It was the end of March or beginning of May.
11 Q. You mean end of April, beginning of May?
12 A. Yes.
13 Q. Of 1987?
14 A. Yes.
15 Q. And when, on that particular occasion, do you
16 remember where you first saw him?
17 A. He was sitting beside the Shop and Go.
18 Q. The Shop and Go, is that the Circle K now?
19 A. Yes.
20 Q. Did you all make arrangements to meet later?
21 A. Yes.
22 Q. Where were you going to meet?
23 A. Behind the County barn.
24 Q. Tell the Jury what the County barn is?
25 A. It is where they keep the County trucks and things.

- 1483 -

1 Q. When you saw him at the Circle K that night and agreed
2 to meet him at the County barn, what time was it?
3 A. I think it was about eleven or eleven-thirty.
4 Q. At night?
5 A. Yes.
6 Q. And what was Duckett wearing when he made those
7 arrangements?
8 A. He was in uniform.
9 Q. What kind of vehicle was he in?
10 A. The Mascotte police car.
11 Q. Did it appear to you that he was on duty or off duty?
12 A. On duty.
13 Q. Now, did you go out and meet him at the County barn?
14 A. Yes.
15 Q. How did you get out there?
16 A. I drove.
17 Q. Was anybody with you?
18 A. No.
19 Q. When you got there, was anyone at the County barn
20 other than this defendant?
21 A. No.
22 Q. Were there any other cars there with people in them?
23 A. No, sir.
24 Q. Were there any houses around you could see?
25 A. No.

- 1484 -

1 Q. Tell us about the area of the County barn. What kind
2 of a road do you have to go on to get there, first of all?

3 A. It is a dirt road.

4 Q. Are there trees around there?

5 A. Yes.

6 Q. When you got there, was Duckett already there?

7 A. Yes.

8 Q. Did he tell you how to park or give you any
9 instructions with regard to parking?

10 A. he was already sitting back there and when I pulled
11 on the road, he turned his lights on and turned them back off
12 so I could see where he was.

13 Q. When you got back there, did he tell you where he
14 wanted you to park?

15 A. Yes, sir.

16 Q. What did he say?

17 A. He said you pull back further so nobody can see the
18 cars.

19 Q. After you pulled back so nobody could see the cars,
20 what did you do? Did you stay in your car?

21 A. No, I got out and got in his.

22 Q. The passenger side?

23 A. Yes.

24 Q. Front seat?

25 A. Yes.

- 1485 -

1 Q. What was his mood that night?
2 A. He seemed like he was upset and mad.
3 Q. Did he tell you why?
4 A. Yes.
5 Q. What was the reason he was mad?
6 A. The Chief had gotten onto him because he was talking
7 to too many girls.
8 Q. Chief Brady of the Mascotte Police Department?
9 A. Yes.
10 Q. He said the Chief had gotten on him because he was
11 talking to too many girls?
12 A. Ahum. (Affirmative response)
13 Q. What did you say when he told you that?
14 A. I told him everything would be okay.
15 Q. And what was his response?
16 A. He told me, thank you for cheering him up.
17 Q. Did he do anything when he thanked you for cheering
18 him up?
19 A. He kissed me.
20 Q. Was it the kind of kissing that had occurred before
21 in the clay pits?
22 A. At first it was just a kiss on the cheek and then
23 it was like the clay pits.
24 Q. Tell us what happened at the County barn that night.
25 A. The same thing happened like the clay pits.

- 1486 -

1 He started touching me the same way he did.
2 Q. Did he touch your breasts?
3 A. Yes.
4 Q. Outside your clothes?
5 A. Outside and inside.
6 Q. Did he kiss and suck your breasts?
7 A. Yes.
8 Q. Did he touch you between the legs?
9 A. Yes.
10 Q. Did he put his finger inside your vagina?
11 A. Yes.
12 Q. Did you touch his penis?
13 A. Yes.
14 Q. Did you suck his penis?
15 A. Yes.
16 Q. What happened this time when you sucked his penis?
17 A. The same thing.
18 Q. He ejaculated again in your mouth?
19 A. Yes.
20 Q. Did you have any conversation with him after that
21 was over?
22 A. I think we did. I don't know what it was about.
23 Q. Did you ever talk again about having sexual inter-
24 course?
25 A. I don't remember if I did or not.

- 1487 -

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

2 A. No.

3 Q. Now, that night at the County barn, did he kiss your
4 neck?

5 A. Yes.

6 Q. After it was all over, did you notice any marks on
7 your body?

8 A. Yes, he left bruise marks.

9 Q. What did you call them?

10 A. Hickeys.

11 Q. Did you ever meet him again after you saw him at the
12 County barn?

13 A. No.

14 Q. You said this was the end of April or beginning of
15 May?

16 A. Yes.

17 Q. At that time, and the time at the clay pits occasion,
18 how old were you?

19 A. Seventeen. ... At the clay pits?

20 Q. Yes?

21 A. I was sixteen.

22 Q. And you turned seventeen July of last year, right?

23 A. Ahum. (Affirmative response)

24 Q. So if the County barn was in April or May, you were
25 still sixteen at that point too, correct?

- 1488 -

1 Q. Kim, how tall were you then?
2 A. About 5'3".
3 Q. How much did you weigh?
4 A. Between 120 and 125.
5 Q. Did you know how old the defendant was?
6 A. I thought around twenty-nine.
7 Q. After the clay pit incident and before the County barn
8 incident, did you learn anything with regard to whether he was
9 married or not?
10 A. I had heard he was.
11 Q. What did you think about that?
12 A. I just wondered why he never said anything about it.
13 Q. Did you ask him about it?
14 A. No.
15 Q. Did he tell you the second time at the County barn
16 that he was married?
17 A. No.
18 Q. Can I have a moment, Your Honor?
19 THE COURT: Yes, sir.
20 Q. Kim, when you got in his car down at the clay pits,
21 first of all, did he tell you you were under arrest?
22 A. No.
23 Q. Did he tell you he needed your assistance in investi-
24 gating any case he was working on?
25 A. No.

- 1489 -

1 Q. Were you aware of a curfew in Mascotte?
2 A. Yes.
3 Q. What was the curfew time?
4 A. Ten o'clock.
5 Q. Who did it apply to?
6 A. Under age, under eighteen.
7 Q. Under eighteen?
8 A. Ahum. (Affirmative response)
9 Q. Did he ever say anything to you the night at the clay
10 pits about being out past curfew?
11 A. No.
12 Q. Did he offer to take you home?
13 A. No.
14 Q. Did he tell you to go home?
15 A. No.
16 Q. Did he tell you that he was going to call your mother?
17 A. No.
18 Q. How about the time at the County barn, did he tell
19 you that you were under arrest?
20 A. No, sir.
21 Q. When he put you in the police car or when you got in
22 the police car?
23 A. No.
24 Q. Tell he tell you that he needed your assistance on a
25 case he was working on then?

- 1490 -

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A. No.

Q. Did he say anything about the curfew that night?

A. No.

Q. Did he offer to take you home that night?

A. No.

Q. Kim, did he ever say anything about your age and his age in comparison between the two?

A. He told me that he wished I wasn't so young, that I could be older than eighteen or he could be younger.

Q. Why did he say that? Did he tell you why he wished that?

A. So we wouldn't get in trouble.

Q. Did he say anything about his job in regard to his relationship with you?

A. When he told me that he wished he could be younger, and not a police officer.

Q. Kim, do you know Linda Upshaw?

A. I have seen her around Mascotte, but I didn't know who she was.

Q. Had you ever talked to her before?

A. No.

Q. How about Shelby Dow?

A. No.

Q. Did you ever discuss this incident with the defendant ... these two incidents, did you ever talk about those with

- 1491 -

1 Shelby Dow or Linda Upshaw prior to talking to the police
2 about it?

3 A. No.

4 Q. Could I have another moment?

5 THE COURT: Yes, sir.

6 Q. Kim, did you ever feel threatened by the defendant
7 in any way?

8 A. No.

9 Q. Did you ever tell him that you were going to tell
10 someone in authority about what he had done?

11 A. No.

12 Q. I don't have any further questions, Your Honor.

13 THE COURT: Mr. Edmund?

14 CROSS EXAMINATION

15 BY MR. EDMUND:

16 Q. If it please Your Honor. Mr. Ruetz, my name is
17 Jack Edmund. Ms. Ruetz, did you make a report of either of
18 these meetings that you say you had with Mr. Duckett? Did you
19 report it to the police?

20 A. No.

21 Q. Did there come a time in June that you gave one or
22 more statements to the police?

23 A. Yes.

24 Q. Did you first give a statement to an officer named
25 Rocky Harris?

- 1492 -

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1 A. Yes.

2 Q. And did you tell Mr. Harris that you didn't have any
3 sex with Mr. Duckett?

4 A. Yes.

5 Q. Alright. And then later you gave a statement to
6 Officer Anderson, is that right?

7 A. Yes.

8 Q. And then you told Officer Anderson that you did have
9 sex with Mr. Duckett?

10 A. Yes.

11 Q. Which is true?

12 A. We didn't have full sex.

13 Q. Well, you told him that you all just kissed and played
14 around. You told Rocky Harris that you all just kissed and
15 played around, didn't you, ma'am?

16 A. Yes, it is a little hard to talk to a man than it is
17 to a woman.

18 Q. I see. You were under oath, weren't you?

19 A. Yes.

20 Q. Was Mr. Harris angry or mean or nasty to you?

21 A. No.

22 Q. As a matter of fact, as far as talking to a man is
23 concerned, when you were talking to Officer Anderson, she
24 asked you, it is easier talking to a woman than a man, and you
25 told her no, didn't you?

- 1493 -

1 A. Yes.

2 Q. So you told her it wasn't any easier talking to a
3 woman than it was to a man, didn't you?

4 A. I felt easier talking to her than I did him.

5 Q. Well, didn't you tell her that you didn't? Which
6 is true? That you were or you weren't? You did tell her
7 it was no easier talking to her than it was to Harris, didn't
8 you?

9 A. Yes.

10 Q. Now, on the first occasion that you all met, you say
11 it was at the clay pits?

12 A. Yes.

13 Q. Where was Duckett... strike that... Prior to that
14 had you struck up conversations with Officer Duckett on
15 occasions?

16 A. Yes.

17 Q. Had you invited him around to your house? As a
18 matter of fact, dared him to come to your house?

19 A. Yes, as a joke.

20 Q. But you dared him to come to your house, didn't you?

21 A. Yes.

22 Q. Now, where was the conversation where he said, "Meet
23 me at the clay pits"? Where did that conversation take
24 place?

25 A. That was by the Shop and Go; Circle K.

- 1494 -

1 Q. At about what time did this conversation take place?
2 A. When we were talking?
3 Q. At the clay pits, about what time was it?
4 A. It was probably about 9:30.
5 Q. What sort of car were you driving?
6 A. A Chevette.
7 Q. Was it a very distinctive looking car of any sort?
8 A. Not really.
9 Q. Looked like other Chevettes on the road? Nothing
10 distinctive about it in any sense?
11 A. No.
12 Q. Okay, now, after you said that you would meet him
13 at the clay pits, you drove around for an hour?
14 A. It was about an hour, I guess.
15 Q. Where did you drive to during that hour?
16 A. Just around Groveland and Mascotte.
17 Q. Did he tell you a specific time to meet him at the
18 clay pits?
19 A. No.
20 Q. He tells you to meet him at the clay pits and you
21 drive around for an hour or so and when you get to the clay
22 pits, he is sitting there waiting, is that what you are saying,
23 ma'am?
24 A. I didn't say he was sitting there when I got there.
25 Q. What was he doing? Was he there?

- 1495 -

1 A. I don't remember if he was there or if he wasn't.

2 Q. Didn't you just testify that he was there when you got
3 to the clay pits and you pulled up along side of his car?

4 MR. HURM: Object, Your Honor, he is mischaracterizing
5 the testimony.

6 THE COURT: I am sorry, Mr. Edmund, that is what she said
7 about the County barn, not the clay pits. She said before
8 she wasn't sure whether he was there or not with regard to the
9 clay pits.

10 Q. Well, tell us about the clay pits. How did you all
11 meet at the clay pits? Do you remember who got there first?

12 A. No, I don't.

13 Q. Do you remember where you were parked or anything like
14 that in the clay pits?

15 A. Yes, I remember I was parked.

16 Q. Where were you parked in the clay pits?

17 A. It was further back from the road, back towards the
18 other side.

19 Q. How many ways are there to get into the clay pits?

20 A. One.

21 Q. Do you remember sitting there and him driving up or
22 not?

23 A. I don't remember.

24 Q. Okay, now, someone else came in while you were in the
25 clay pits?

- 1496 -

1 A. Yes.

2 Q. How long had you been there at the clay pits when
3 someone else came in?

4 A. It wasn't real long. I don't know how long it was.

5 Q. Did you recognize the vehicle that came into the clay
6 pits?

7 A. No.

8 Q. Do you know whether it was a car or a truck?

9 A. I think it was a truck.

10 Q. How near did it get to you all?

11 A. It didn't come close to us.

12 Q. Well, ma'am, how big is the clay pit area?

13 A. It is a pretty large area.

14 Q. Are you familiar with the parking lot around this
15 building?

16 A. No.

17 Q. Well, you came into the building this morning. Is
18 it as big as a city block? Or bigger?

19 A. I think it is.

20 Q. Is this a clay pit area here? This white area?

21 A. Yes.

22 Q. This being 50 and this being Bay Lake Road? This is
23 the clay pit?

24 A. Yes.

25 Q. That is the Bay Lake Road. Now, did you come in from

- 1497 -

1 Q. Now, did you come in from the North side or did you
2 come in from the South side? Or do you remember?

3 MR. HURM: Your Honor, if I could just clarify for the
4 record, he is indicating between North of Bay Lake Road and
5 South of 50, that large white area on the diagram.

6 MR. EDMUND: And adjacent to the tab that says Bay Lake.

7 MR. HURM: Alright, just for the record.

8 Q. Did you all come off of Bay Lake Road or off of 50
9 or off of some other street?

10 A. Off of 50.

11 Q. Okay, now you live somewhere in that area, don't you?

12 A. I live across Highway 50.

13 Q. Across Highway 50 from there?

14 A. Yes.

15 Q. You live a couple of minutes from there in an
16 automobile?

17 A. Yeah, a couple of minutes.

18 Q. How long does it take you to drive from the clay pits
19 across Highway 50? Is it a block? And you live in this area
20 up here, or where do you live? It is a block out of the clay
21 pits and then into the subdivision that you live in, is that
22 right?

23 A. Yes.

24 Q. Didn't you tell the officers that it took you two
25 minutes to get home?

- 1498 -

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1 A. I don't remember.

2 Q. When you made your statement?

3 A. I don't remember what I told them.

4 Q. Now, someone came in ... what sort of lights did he
5 flash at them to run them away?

6 A. A spotlight.

7 Q. A spotlight?

8 A. Yes.

9 Q. Are you pretty sure it was a pickup truck?

10 A. It looked like it from where I was.

11 Q. Alright, and he flashed a spotlight and just turned
12 and went away?

13 A. Yes.

14 Q. What did he say about that? Did he say, "Maybe we
15 had better leave. Maybe we had better go. Someone has seen
16 us. They recognized the patrol car." Did he say any of those
17 things?

18 A. No, he didn't say anything.

19 Q. Did you say, "Maybe we ought to leave. Maybe we
20 ought to go. They might have recognized the patrol car."?

21 A. I don't remember if I said anything or not.

22 Q. Do you remember if this was a week night or a weekend
23 night?

24 A. I don't remember what night it was.

25 Q. Did anyone ever say to you later that they had been

- 1499 -

1 in that vehicle, whether it was a car or a truck, and had
2 recognized your car down there?

3 A. No.

4 Q. Can you describe the interior of the patrol car,
5 Mr. Ruetz?

6 A. I don't remember what it looked like.

7 Q. You don't remember at all what it looks like? Do
8 you remember any things about the inside of that patrol car
9 at all?

10 A. It looked like a normal car except for the police
11 equipment in it.

12 Q. What sort of police equipment did you see in it?

13 A. The radio, the radar or whatever it is.

14 Q. Did you see anything else in it?

15 A. No, not that I remember.

16 Q. Did you feel anything else in there? Were there
17 any objections in it that hit you or hurt you or poked you in
18 any way?

19 A. No.

20 Q. Were there any objects that got in your way when you
21 were moving back and forth across the seat?

22 A. There was something that was pretty close to the seat,
23 but I don't know what it was.

24 Q. In the front or the back or where?

25 A. In the front.

- 1500 -

1 Q. Was it on the floorboards or where was it now?

2 A. I don't remember what it was connected to, but I just
3 remember it was close to the seat.

4 Q. Now, you described to the officers the position that
5 you were in on the front seat, didn't you, ma'am?

6 A. Yes.

7 Q. Sort of with your feet toward the passenger door and
8 one leg straight and one leg up and your panties and your jeans
9 down below your knees?

10 A. Yes.

11 Q. Was there anything in the seat or when you were in
12 that position that caused you any sort of discomfort?

13 A. I don't think so.

14 Q. This was a very cold... this first night was a very
15 cold night, wasn't it?

16 A. Yes.

17 Q. Even to the point you said you were freezing when
18 you were standing outside?

19 A. Yes.

20 Q. Okay, now, would you describe the position to the
21 Jury that ... if this were the driver, were you in such a
22 manner that your feet were up toward the passenger door in
23 that direction?

24 A. Yes.

25 Q. And yourfannie was sort of up against his side?

- 1501 -

1 Is that right, ma'am?

2 A. Yes, I was facing the back of the seat.

3 Q. And you were facing the back of the seat. Turned in
4 such a manner that you were facing the back of the seat.
5 Did you have your arm around his shoulder or something of
6 that nature?

7 A. Yes.

8 Q. And again, you felt nothing that caused you any
9 discomfort or anything like that?

10 A. I don't think... I don't remember.

11 Q. Did you observe anything behind the seat?

12 A. There was a rail or a guard rail.

13 Q. Did you observe anything else?

14 A. A gun.

15 Q. Okay, when you moved over toward him, did he have
16 to move anything off the seat or anything like that?

17 A. I don't know.

18 Q. Was this a bench seat or bucket seats?

19 A. Bench.

20 Q. A bench seat? Alright. When you asked him when you
21 all were going to have sex, that is not the phraseology
22 that you used, is it?

23 A. No.

24 Q. You used the four letter word that we refer to as
25 starting with "F", did you not?

- 1502 -

1 A. Yes.

2 Q. Did he ever use any vulgarity or anything like that?
3 Any four lettered words when he was with you?

4 A. I don't think he did.

5 Q. Did he ever and even on the night that you say
6 that he was angry, did he ever use any force or violence on
7 you?

8 A. No.

9 Q. Was he gentle with you at all times?

10 A. Yes.

11 Q. Now, this first time you say it occurred somewhere
12 in the early part of the year, 1987?

13 A. Yes.

14 Q. About what month, ma'am?

15 A. February.

16 Q. Alright, and the next occasion was when?

17 A. The end of April or beginning of May.

18 Q. So at least the months of March and April and part of
19 February had gone by, right?

20 A. Ahum. (Affirmative response)

21 Q. Had you had occasion to see him at any time in the
22 interim? Between the first time and the second time, did you
23 ever see him?

24 A. I saw him riding around.

25 Q. Did he ever stop you?

- 1503 -

1 A. No.
2 Q. Did he ever phone you?
3 A. No.
4 Q. Did you ever stop him?
5 A. No.
6 Q. Did you ever phone him?
7 A. No.
8 Q. Where was he on the time he said, "Meet me at the
9 County barn, or at the barn"?
10 A. He was parked beside the Circle K.
11 Q. Was that daylight or dark?
12 A. At night.
13 Q. About what time was that?
14 A. That was around 9:30.
15 Q. Could you tell me again how long it was between that
16 conversation and the time you got to the barn? Did you go
17 straight to the barn or did you drive around again?
18 A. I went straight to the barn.
19 Q. Did you leave directly from the Circle K and went
20 straight to the barn?
21 A. Yes.
22 Q. How did he get there before you did?
23 A. He can drive faster than I can.
24 Q. You all talked about that from time to time, didn't you?
25 Which one could drive faster, because of the way you drove,

- 1504 -

1 didn't you?

2 A. I think so.

3 Q. Yes, you were known to drive...

4 MR. HURM: Objection. That is irrelevant.

5 MR. EDMUND: It is a question just in response to her
6 response, if it please, Your Honor.

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

8 Q. You did, in fact, even talk to the officers about
9 how fast you would drive around town, and you all discussed
10 that you shouldn't drive that fast, because you might hurt
11 yourself, isn't that correct?

12 A. Yes.

13 Q. How long did it take you to get to the barn?

14 A. I don't know how long it took.

15 Q. Did he pull out and you pull out and you both went
16 to the barn or how did you go?

17 A. He pulled out first and he got there before I did,
18 and I left right after he did.

19 Q. Did you get out of your car after he left or anything,
20 or did you pull out right after him?

21 A. I just pulled out right after him.

22 Q. And how far away is the barn?

23 A. It is not far.

24 Q. About how long did it take you to drive there at the
25 speed you were driving?

- 1505 -

1 A. A minute or two.

2 Q. About a minute or two? And he had time to go in
3 there and park and get off in some secluded area and had to
4 flash his lights at you so that you could see him?

5 A. Yes, he was driving pretty fast.

6 Q. How large is this area around the County barn?

7 A. I don't know how large it is. It is the first time
8 I had ever been back there.

9 Q. Did you know how to get there?

10 A. I knew where the road was. I didn't know where he
11 was going to be.

12 Q. But you knew how to get there?

13 A. Yeah, I knew where the County barn is and I knew
14 the road was right beside it.

15 Q. Did you lose sight of his taillights or anything
16 like that while he was going?

17 A. Yes.

18 Q. You didn't receive even one phone call between
19 February and the last of April or first of May from Duckett?

20 A. No.

21 Q. You didn't make even one phone call from the last of
22 February to ...from February to the last of April or the
23 first of May to Duckett?

24 A. No, I never had his phone number.

25 Q. On the occasions you all saw each other, he never

- 1506 -

1 stopped you on one occasion between February and the last of
2 April and the first of May?

3 A. I don't think he did. I don't know.

4 Q. And on the times you all saw each other, you never
5 stopped him even on one occasion between February and the last
6 of April and the first of May?

7 A. We may have talked, but I don't remember.
8 I don't remember anybody stopping anybody.

9 Q. If you had talked, where would you have talked?

10 A. When I was still living in Mascotte, we were talking
11 in front of the house. If it was after I moved to Sumter
12 County, it was wherever he was sitting or whatever, of it he
13 was at the Shop and Go.

14 Q. When did you move to Sumter County?

15 A. I don't know exactly when it was.

16 Q. Well, was it before the first episode at the clay
17 pits?

18 A. No.

19 Q. Was it before the episode in the last of April or
20 the first of May?

21 A. Yes.

22 Q. How long before that episode?

23 A. It had been a while because he told me he hadn't
24 seen me and wondered where I had been.

25 Q. How much of a while had it been, do you remember?

- 1507 -

1 A. I don't know.

2 Q. Were you in and out of Mascotte regularly even after
3 you moved to Sumter County?

4 A. Not very much.

5 Q. How far away from Mascotte was it that you moved?

6 A. I lived in Center Hill.

7 Q. Well, Center Hill you can just about hit with a
8 rock from Mascotte, can't you?

9 A. No.

10 Q. Isn't it each pretty near the County Line and the
11 cities... the towns are not very far apart?

12 A. It takes from Mascotte, it takes about twenty minutes
13 to get to Center Hill.

14 Q. How often did you go back into Mascotte after you
15 moved to Center Hill?

16 A. It wasn't very much, because I had been working.

17 Q. Were you not in school?

18 A. No.

19 Q. And where had you been working?

20 A. At the Florida Citrus Tower.

21 Q. Where, ma'am?

22 A. The Citrus Tower in Clermont.

23 Q. How would you go from Center Hill to the Citrus Tower
24 in Clermont?

25 MR. HURM: Objection, Your Honor, that is irrelevant.

- 1508 -

1 The way she drove to work from her home to the Citrus Tower
2 is not relevant to any issue in this case.

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

4 MR. EDMUND: It is relevant to her frequency of being in
5 or through Mascotte, if it please the Court.

6 THE COURT: Go ahead. Overruled.

7 Q. Did you drive through Mascotte to get to Citrus
8 Tower?

9 A. Yes.

10 Q. From Center Hill?

11 A. Yes.

12 Q. And how many... what were your working hours?

13 A. Mostly from eight in the morning until 4:30 in the
14 afternoon.

15 Q. And would you virtually every trip go through
16 Mascotte?

17 A. You have to go through Mascotte.

18 Q. Your Honor, no further questions. Thank you.

19 RE-DIRECT EXAMINATION

20 BY MR. HURM:

21 Q. Mrs. Ruetz, did you ever know the defendant Duckett
22 to work daylight shift?

23 A. Most of the time, he worked the nights. I don't
24 remember him working during the day.

25 Q. When you talked to Ms. Anderson, the Investigator

- 1509 -

1 from the Sheriff's Office, did you feel more comfortable or
2 less comfortable with her than you did with Rocky Harris?

3 A. I felt more comfortable with her than I did him.
4 Most of the time, it is easier to talk to men, but he seemed
5 to be a little different.

6 Q. Most of the time it is easier to talk to men?

7 A. Ahum, he told me himself that it was hard for him
8 and it made it hard for me.

9 Q. Did you consider this a real comfortable topic of
10 conversation?

11 A. No.

12 Q. May I have a moment?

13 THE COURT: Yes, sir.

14 MR. HURM: I don't have anything further, Your Honor.

15 THE COURT: Mr. Edmund?

16 MR. EDMUND: Can I have just a second, Judge?

17 THE COURT: Yes, sir.

18 MR. EDMUND: I don't have any further questions, Your
19 Honor.

20 THE COURT: Alright, may we release this lady from her
21 subpoena? Any objection, Mr. Edmund?

22 MR. EDMUND: No, Your Honor.

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

25 Ladies and gentlemen, as Ms. Ruetz steps down, I want to

- 1510 -

1 advise you one last time, the evidence which has been admitted
2 to show similar crimes, wrongs or acts allegedly committed
3 by the defendant will be considered by you only as that
4 evidence relates to proof of motive, opportunity, plan or
5 identity on the part of the defendant, and only as to the
6 charge of Sexual Battery in the case.

7 Gentlemen, I think it would be appropriate to take our
8 noon recess at this time, unless I hear anything else from
9 either side.

10 MR. HURM: No objection.

11 MR. EDMUND: No objection, Your Honor.

12 THE COURT: Ladies and gentlemen, let me run over the
13 admonishments once again, which I am sure you know by heart
14 as well as I by now. You are not to discuss the case among
15 yourselves or with anyone else. You are not to read any
16 newspaper accounts of the case. Don't watch any television
17 accounts of the case or listen to any radio accounts. Don't
18 attempt to visit the scene of the alleged occurrence. We will
19 be in recess until 1:30, Mr. Bailiff.

20 (WHEREUPON, JURY LEAVES COURTROOM AT 12:07 P. M.)

21 THE COURT: Gentlemen, are you all in a position to
22 advise the Court as to where we are going this afternoon
23 with witnesses?

24 MR. HOGAN: We have a couple things that we need to
25 discuss. I don't think there will be any lengthy witnesses.

- 1511 -

1 THE COURT: Do you anticipate being through early?

2 MR. HOGAN: By 3:30, I would say.

3 I would like an opportunity, Judge, to meet with the
4 Clerk to go over the evidence to make sure we don't have any
5 misunderstandings.

6 THE COURT: You have a whole hour and a half for lunch,
7 Mr. Hogan. I am sure she will accommodate you during that
8 period of time. Will you be prepared to go into your case,
9 Mr. Edmund, assuming you choose to put one on in mid afternoon?

10 MR. EDMUND: I will put one on, yes, sir, and yes, sir,
11 I can reach out for I think to carry us the rest of the
12 afternoon. Certainly awful close.

13 THE COURT: Late this afternoon, we will talk about
14 timing for the rest of the trial. I am particularly concerned
15 about the weekend and sequestration of the Jury and those
16 kinds of things.

17 See you all at 1:30 P. M.

18 (WHEREUPON, COURT IS IN RECESS UNTIL 1:30, AT 12:08 P. M.)

19 (WHEREUPON, COURT RECONVENES AT 1:54 P. M.)

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

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

23 MR. HOGAN: No, Your Honor.

24 MR. EDMUND: No, Your Honor.

25 THE COURT: Please, Mr. Bailiff.

- 1512 -

1 (WHEREUPON, JURY ENTERS COURTROOM AT 1:55 P. M.)
2 THE COURT: Welcome back, folks, and be seated, please.
3 Can you assure us you abided by our admonitions?
4 JURORS: Yes, sir.
5 THE COURT: I understand the lunch was a little better
6 today than it has been.
7 JURORS: Yes, sir.
8 THE COURT: Every now and then you deserve some treat
9 for this job.
10 Gents?
11 MR. HOGAN: Judge, at this time, the State rests.
12 THE COURT: Alright. Motions to be made, Mr. Edmund?
13 MR. EDMUND: Yes, Your Honor.
14 THE COURT: We have a very patient jury, Mr. Bailiff,
15 and I am very glad of that and I will ask all the Jury to
16 step back out, please.
17 (WHEREUPON, JURY LEAVES COURTROOM AT 1:57 P. M.)
18 THE COURT: Alright, Madam Reporter, let the record
19 reflect the Jury is not present in the courtroom. Mr. Edmund?
20 ARGUMENT BY MR. EDMUND:
21 If it please, Your Honor, the Defendant moves this
22 Honorable Court to direct this Jury to return a Judgment of
23 Acquittal as to the Count of First Degree Murder, contained in
24 the Indictment and the Count of Capital Sexual Battery,
25 contained in the Information and the argument would be the

- 1513 -

1 same to both, if it please the Court.

2 On the grounds, if it please, Your Honor, the State has
3 failed to prove the essential elements of the offense and
4 the material allegations contained in the Indictment and the
5 Information and the primary allegation and essential elements
6 that I am referring to, Your Honor, would be the identity of
7 the perpetrator of each of the offenses, and I am taking each
8 of the offenses was, of course, perpetrated by the same
9 individual.

10 I suggest, Your Honor, at this point in time, this case
11 is based, as the State has stated on a number of occasions,
12 totally upon circumstantial evidence and at this point in
13 time, I suggest, Your Honor, that there are two reasonable
14 theories to the case. One is consistent with my client's
15 guilt and one that is consistent with my client's innocence.
16 I suggest to the Court that although the Florida Supreme Court
17 has not ruled upon the matter yet, that I have maintained and
18 hopefully find other judges, but most in the Fourth District,
19 to find that upon the withdrawal of the circumstantial
20 evidence instruction and the standard instructions given in
21 the State of Florida, that it then placed the burden upon the
22 trial court to examine the evidence at the time of the Motion
23 for Directed Judgment of Acquittal, in a light that was
24 somewhat different than the light in which the Court examined
25 that evidence prior to the withdrawal of the circumstantial

- 1514 -

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1 evidence instruction, and that is, Your Honor, that it
2 imposed the duty in circumstantial cases, upon the Trial
3 Judge to now examine the evidence in the light of whether or
4 not it is circumstantial and further, whether there are two
5 reasonable hypothesis, one which would indicate guilt and
6 the other would indicate innocence, and if the Trial Court
7 should find that there are the two reasonable theories, the
8 Trial Court is now bound and the Jury was formally bound to
9 apply the theory or hypothesis that is consistent with the
10 innocence of the Defendant and direct the Jury, at that point
11 in time, to return such a judgment.

12 Your Honor, we are dealing primarily with the evidence
13 of the tire tracks, the hair and the fingerprints and I am
14 sure that the State is going to point out substantial other
15 evidence we are dealing with, and I don't mean to belittle
16 the other evidence, but merely that I feel that is the
17 evidence upon which this case will turn.

18 I would only want to speak briefly to the Williams Rule
19 evidence as Your Honor might apply it to the Information,
20 and we will not, of course, apply it to the Indictment as
21 you have told the Jury, and so I know you will not. That
22 notwithstanding that, Your Honor has allowed the Williams
23 Rule evidence in, I think that at some point in time, we may
24 have overlooked what I would consider to be pretty critical
25 aspect of Williams Rule and I really think that Williams Rule

- 1515 -

1 applies to criminal acts that have been charged, if it please
2 the Court; criminal acts that are subject to substantial
3 proof beyond a reasonable doubt and I don't believe in any
4 of the three instances criminal acts have been charged and I
5 have a question in my mind as to whether or not in each of
6 the three instances, a criminal act, if the facts were taken
7 in a light that is in the best interest of the State, would
8 be indictable and certainly, if the facts were taken in a
9 light that is in the best interest of the State, would not
10 be of such a nature as to result in a conviction of whatever
11 offenses that might be charged.

12 It doesn't seem to me that there was even a possibility
13 of any offense being charged in the Shelby Dow matter. It
14 doesn't seem to me that there was even a possibility of a
15 criminal charge being charged in the Upshaw matter. When you
16 go to abandonment, because certainly there was nothing...
17 assuming that everything that the girl said was true, there
18 was nothing to indicate that the abandonment was predicated
19 on anything other than the Defendant making the decision to
20 ... Duckett making the decision to abandon, and renouncing
21 whatever criminal intent there may have been present at the
22 time, and thus, not having even an attempt at Sexual Battery
23 or even an attempt at contributing to the delinquency of
24 whatever it may be, with the Upshaw girl, and of course,
25 there would be no contributing to the delinquency of the Dow

- 1516 -

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1 girl.

2 As it relates to the Ruetz girl, I am still somewhat
3 confused and frankly, was planning to look at lunch, told
4 Bob I was planning to look into it before my Motion for a
5 Judgment of Acquittal, as relates to what prior chase character
6 has upon any offense now brought under the sexual battery
7 statutes. Frankly, it has been so long since I have tried one
8 that I am not in the water that I am comfortable in when I
9 am making this argument to the Court, and I want to let Your
10 Honor know that in advance. It has been my intention to duck
11 into a library at the next recess on that one and we did
12 discuss it at lunch, so I would ask Your Honor, when you are
13 considering both the Indictment and the Information, now
14 discard the Williams Rule Evidence as to what weight, effect
15 or otherwise it might have upon your decision on my Motion
16 for Directed Judgment of Acquittal.

17 As far as the tire tracks are concerned, I would suggest
18 to Your Honor, that, of course, they have not been identified
19 to the exclusion of others than the tire tracks of the vehicle
20 that was driven by James Duckett, on the night of May 11th,
21 1987. I suggest to Your Honor, that the contrary facts that
22 would indicate or the facts that would indicate that to the
23 contrary, he was there, would be the total lack of any
24 indication of soil from that particular area adhering to
25 the fender wells of the vehicle that Duckett was driving on

- 1517 -

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1 that evening and through the nighttime hours of the 11th and
2 12th of 1987, and I suggest to Your honor that the photographs
3 that have been introduced into evidence of the vehicle, the
4 numbers of which I don't have at this particular time, but
5 which are in the record for Your Honor's consideration, which
6 I will get for you if you want to peruse them before making
7 your decision on my Motion, would indicate that there had been
8 no mud whatsoever adhering to the tires of the vehicle which
9 went through two mud holes according to the witness, Aleno,
10 of some three inches in depth. Even to the point that those
11 were the areas that the State took the soil samples from in
12 anticipation of the vehicle having gone through such an
13 arris, leaving soil from that type of mud hole adhering to the
14 undersides of the wheel wells, and I think we get back to the
15 circumstantial evidence theory as far as the tire tracks are
16 concerned, Your Honor, and certainly, there are two reasonable
17 theories as to whether the vehicle was there and whether the
18 vehicle was not there. We have the theory in favor of the
19 vehicle being there and that being that the tire tracks were
20 similar, and could have been made, but only could have been
21 made, I believe, Your Honor, by the vehicle that Duckett was
22 driving. To the other side of the other theory inconsistent
23 with the vehicle having been there, is the lack of the soil
24 samples and the lack of any indication that any of the tires
25 on that vehicle had been through the mud holes that had been

- 1518 -

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1 referred to in the testimony. Now, a side comment on that,
2 Your Honor, it is obvious, I would suggest it is obvious,
3 from the evidence and the only conclusion that could be
4 reached from the evidence at this point in time that the
5 vehicle was not cleaned after that particular tour, because of
6 the finding of the fingerprints and other evidence... items
7 of evidence that may or may not have been retrieved from the
8 vehicle. So I suggest to Your Honor that that would fall on
9 the Defendant's side of the circumstantial evidence instruction.

10 As far as the body hair is concerned, Your Honor, I cannot
11 say to you at this point in time there is evidence to the
12 contrary of the testimony of Mr. Malone, but I suggest to Your
13 Honor, the coming out of the gate, the testimony of a man who
14 conducted 600,000 hours of examination of hairs over a period
15 of time that itself only encompasses 145,000 hours, is a
16 little ridiculous starting out.

17 I would like to suggest to Your Honor that notwithstanding
18 his testimony, that in each of the twenty hairs he found
19 twenty characteristics that to him were either substantially
20 or totally identical to the questioned hair, to be of some
21 question in that there is not yet a question to ask him
22 to give an example of a single similarity that he discerned
23 between the questioned hair and the twenty hairs that he
24 indicated that he had examined, and I suggest to Your Honor
25 that again, his testimony at some point in time contained

- 1519 -

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1 the statement and the predicate that hair comparison was not
2 an identification process that was in the nature of finger-
3 print comparisons and was not a positive identification type
4 of process. This again, Your Honor, gives rise to two
5 reasonable theories as they are related to the hair itself
6 and as they relate to the guilt and the innocence of James
7 Duckett, and as to the fingerprints, if it please the Court,
8 I suggest, Your Honor, that the only logical conclusion that
9 can be reached when an examination is made of the fingerprints
10 and an interpretation made by Mrs. Ahern and the explanation
11 that she and the witnesses that preceded her gave for the
12 dark and the light fingerprints that the ... and the testimony
13 of the forensic meteorologist that it had rained during the
14 earlier part of the evening, the only conclusion that I can
15 come to and I think I have approached it logically, when you
16 examine the heavy prints of the child, the heavy prints of
17 the unknown person, the light prints almost indiscernible
18 prints of Duckett, coupled with the one heavy print of
19 Duckett near the antenna and on the top of the fender of the
20 automobile and the number, at this moment in time, escapes
21 me, but I am sure Your Honor knows what I am referring to,
22 could only indicate that Duckett's prints at some point in
23 time prior to the rain had been placed on the hood, which
24 is not unusual, if it please the Court, for a police officer.
25 And that the one print that he placed there was during that

- 1520 -

1 period of time when he was talking to whomever he was talking
2 to, whether it be the young Mexican boy or the young McAbee
3 girl, whether standing beside or at some point in time around
4 the automobile, and that at some point in time, the girl's
5 prints got on the vehicle. Now, the car had been parked
6 there earlier, as we know. The little girl had been there
7 earlier, as we know. I suggest to the Court that just based
8 upon your common sense and your knowledge of the every day
9 activities of people, not only children, but of people, it is
10 not at all unusual for people of a close neighborhood area
11 to get on somebody else's car, to sit on somebody else's car,
12 put their feet on somebody else's car, and that theory, Your
13 Honor, when coupled with the fact of no blood being visible
14 or being discernible on the sides or the hood of the vehicle,
15 would indicate that the child was there prior to the time of
16 the rupture of the hymen. I can only assume from this graphic
17 demonstration made by Ms. Ahern, laying back on the automobile
18 to reach back, there must be some theory in someone's mind,
19 at least in Mrs. Ahern's mind, that perhaps some act of
20 intercourse took place when the child was positioned on the
21 car, as Defense would indicate that at some point in time,
22 she was likely positioned, although I don't concede that she
23 was positioned precisely as Ms. Ahern demonstrated. I can
24 only concede that there is a distinct probable probability and
25 I guess a probable probability is a little stronger than just

- 1521 -

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1 a probability, that the child, in fact, was at some point in
2 time on the hood of the car. But the physical facts of the
3 fingerprints themselves indicate that Duckett's hands were
4 not on the hood of the vehicle at the time of the child's
5 hands being present on the vehicle, nor at the time of the
6 unknown hands being present on the vehicle, and I am not
7 dragging an unknown here across Your Honor's thoughts, and
8 please don't misunderstand me. I don't mean to imply there
9 is some unknown individual got the vehicle and took the child
10 and assaulted the child and killed the child. I don't mean to
11 imply that, but at some point in time, after a rain, or after
12 whatever dusted or washed away portions of Duckett's prints,
13 not portions of, but the depth and strength of Duckett's
14 prints, these other prints were out on that vehicle.

15 Now, Your Honor, in the event and in anticipation of the
16 State's argument that Duckett's hands might have been drier
17 and not left heavy prints and such as that, I would ask Your
18 Honor again to call upon your common sense or call upon just
19 cliches that Your Honor hears from time to time, that I was
20 so angry, I was so nervous, I was so up that my hands were
21 sweating. Sweating, if it please Your Honor, is one of the
22 illustrations that the experts use to indicate that prints
23 would be darker and adhere more readily to whatever the
24 fingerprints touched. I suggest to Your Honor, that in a
25 situation of stress, whether that stress be making a pass at

- 1522 -

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Javares, Florida 32778

1 the little girl; whether that stress be attempting intercourse
2 with the little girl; whether that stress be killing the little
3 girl; whoever did it would have been under stress to the
4 point, I suggest, Your Honor, that it is reasonable to
5 conclude that that person's hands would be sweating and that
6 person's hands, if touching the hood of the car, would have
7 left fingerprints that were at least equally delible as those
8 of the child and of the unknown prints that are on that car.
9 So I believe that there are ... I suggest, Your Honor, there
10 are two reasonable theories as to how the child's prints got
11 on the car. One being that it is consistent with the State's
12 contention that she was on the car at some point in time,
13 when she was out at the car with James Duckett. I suggest to
14 Your Honor, that when you look at the quality of her finger-
15 prints as opposed to the quality of his fingerprints, and take
16 that into consideration with your knowledge of every day
17 affairs, it is equally consistent or perhaps more consistent
18 I suggest, Your Honor, that the prints were placed there at
19 totally different times. Thus, again, giving rise to a
20 theory that is consistent with my client's innocence, if it
21 please Your Honor. And to take that one step further, I would
22 suggest to the Court that if there was any hanky panky going
23 on on that hood, when that child left her prints on that hood,
24 whoever was involved in that hanky panky, could hardly have
25 failed to leave at least a print on the hood in the general

- 1523 -

1 area of the child's fingerprints, in delible condition at
2 least similar to the condition of the child's fingerprints
3 that were left on that hood.

4 So that, Your Honor, I think brings us to the decision
5 of is there a reasonable hypothesis of guilt that is directly
6 connectable with the tires and my answer to that is yes.
7 But is there a reasonable hypothesis of innocence that is
8 directly connectable with the tires and my answer to that is
9 yes. Is there a reasonable hypothesis that is consistent
10 with my client's guilt connected with the question here, and
11 of course, my answer is yes. And is there a reasonable
12 theory consistent with my client's innocence connected with
13 the question here, and my answer to that is yes. Is there
14 a reasonable theory consistent with my client's guilt
15 connected with the fingerprints and frankly, Your Honor, my
16 answer to that is questionable. But there is a theory.

17 I suggest to the Court it is simply not a reasonable
18 theory that those prints were put there during any assault
19 or any homicide, and is there a reasonable theory connected
20 with those fingerprints that is consistent with my client's
21 innocence, and my answer to that is yes.

22 Now, I believe that Your Honor can take into consideration
23 the lack of any other physical evidence at the scene where the
24 body was found, the probable assumption, and I think reasonable
25 assumption. I frankly think, Your Honor, the only assumption

- 1524 -

1 and that is that the homicide and the assault occurred at some
2 other point than the point at or near where the body was
3 found.

4 Notwithstanding the child's size. Notwithstanding
5 Duckett's size. A homicide of the type that was suffered
6 by that little girl has violence connected with it. Violence
7 connected with the movement of a man's hands the size of
8 Duckett's, is going to be translated on down to whwere his
9 feet hit the ground because that is the fulcrum from which
10 he is working, and when he is working, he is going to leave
11 marks of some sort out there, and none were found.

12 Your Honor can take a look at the man and see that he
13 is a man of some size, and I don't say he is 150 or 250
14 pounds, but Your Honor, use your own common sense in making
15 that determination. And there is not a single indication
16 that a man of that size ever went near, even close enough to
17 as Mr. Hogan suggests, throw the body into the water, so when
18 you take those things into consideration... and no blood
19 whatsoever. Now, Mr. Hogan and I have bantered over whether
20 or not...Mr. Hogan may say it wasn't banter, but we have
21 disagreed over whether or not there has been a moderate,
22 considerable, or profuse bleeding. I now stand on considerable.
23 I understand that I did, in my opening statement, make the
24 statement of profuse, and I am stuck with it, but I am not
25 stuck with it for the purpose of arguing my Motion for

- 1525 -

1 Directed Judgment of Acquittal. I am now to considerable
2 and the Medical Examiner likened considerable to moderate and
3 the Medical Examiner had given information to law enforcement
4 that it was considerable and it appears in their reports and
5 it has been, I think, testified to by Mr. Aleno.

6 Considerable bleeding, Your Honor, I suggest, Your Honor,
7 would have resulted in blood of some sort being found at the
8 scene. We have photographs of the scene and the scene... I
9 didn't get to it back in May. I didn't get hired until
10 probably the first of the year or later. I don't remember
11 precisely when... no, I got hired when he got arrested, so
12 I got hired sometime last Fall. When I got there, the
13 terrain was such that you could observe on top of relatively
14 short grasses and weeds and such as that, had there been
15 blood. I don't know what it was like in May, but I do know
16 the photographs indicate that it was very similar to what I
17 observed when I was down there in the Fall when I went to the
18 scene as quickly as I could after having gotten hired.

19 They did perform a grid search, if it please. Your Honor,
20 so now I think we have reached a point where there is a
21 reasonable theory consistent with a homicide and I think
22 the assault and the homicide probably took place, and it is
23 only my theory, at the same time. I believe that the child
24 was probably still alive when she was thrown into the water,
25 and that is why there is an indication of possible or even

- 1526 -

1 probable strangling while drowning. If it was strangling
2 by drowning, then you have got to give him a Judgment of
3 Acquittal, because he was seen after that, shortly after that,
4 he was seen after it was obvious that the homicide occurred,
5 within no more than an hour. If we take the assumption as
6 being true that he drove away from there with the child at
7 or about 10:30 or 10:45. I would say an hour and fifteen
8 minutes. Within an hour and fifteen minutes, he was seen by
9 the mother and he was seen by Deputy Pahaley, and at that
10 point in time, he was not disheveled; his clothes weren't wet;
11 he wasn't messed up. If we go back to the Williams testimony
12 he didn't take his clothes off when he allegedly had sex with
13 the Fowler girl, then we have got to assume if there was a
14 simultaneous strangling and drowning, the only assumption
15 is that he didn't do it, but getting back to my argument
16 with regard to the scene of the homicide and assault. The
17 probable scene of the homicide and the assault. I suggest,
18 Your Honor, that the physical evidence obtained from the
19 scene where the body was recovered indicates to me and I think
20 only logically, but certainly reasonably, so there are two
21 reasonable theories, that the homicide occurred somewhere
22 else. If you can accept the reasonable theories that the
23 homicide occurred somewhere else, and if you will apply the
24 theory of circumstantial evidence, then I suggest to the
25 Court that you must, then you have to give him the benefit of

- 1527 -

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1 that doubt for the purpose of making your decision now,
2 regarding the Directed Judgment of Acquittal Motion that I am
3 arguing to the Court at this moment, and you have to say,
4 "Alright, it is reasonable it was somewhere else.". Now, we
5 get to the testimony of Mr. Parker, who is the serologist or
6 the lab technician whose field is serology in the sense that
7 he looked for the blood. He sprayed the entire interior of
8 the car, blacked out conditions, with a material that would
9 render a blue light if there was blood left. If there was
10 blood on any of the areas that he sprayed. Even if it had
11 been washed, he said, Your Honor, and he found none. He
12 sprayed the exterior of the car under the blacked out
13 conditions, with the material that resulted in the blue light,
14 had there been traces of blood present. He didn't say that
15 it wouldn't show up on a car if it had been washed. Pardon
16 me. But we know the car wasn't washed, on account of the
17 fingerprints were there. On account of the dust was there.
18 On account they were able to lift fingerprints from there.
19 Because if you go back to Ms. Ahern's testimony and the
20 testimony of the analyst who preceded her, washing, rubbing,
21 water, those kind of things, would have removed the finger-
22 prints from the car and thus, they would have found none, so
23 I suggest the only reasonable theory then is there never was
24 any blood on the car or in the car.

25 Now, if we go to the contention or the theory that the

- 1528 -

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1 child was bleeding considerably... no... that there was the
2 probability of considerable bleeding incidental to the
3 rupture of the hymen, then we can only conclude that there
4 would be blood in such quantity as to leave some, even
5 infinitesimal residue of blood, had the body been transported
6 in that vehicle; had the child been transported in that
7 vehicle while still alive; and had the person who had
8 suffered the ruptured hymen been in the vehicle; even in a
9 lying down position, certainly in a seated position, if it
10 please the Court. Again, two reasonable theories. No blood
11 in the car. Step back up to the reasonable theory that the
12 homicide was committed elsewhere; that the assault was
13 committed elsewhere; and you step back into reasonable
14 hypothesis of innocence, as relates to that, Your Honor.
15 Then when you stack one upon the other upon the other, and I
16 suggest to Your Honor, that any reasonable hypothesis, the
17 hypothesis of innocence is sufficient to place the burden
18 upon the Court of accepting it and directing the Jury to
19 return a Judgment, so you don't have to stack them, and I am
20 not stacking them to make them stronger. I am only stacking
21 them to show you that there are such a multitude of them that
22 Your Honor's conclusion should be yes, this entire case is
23 replete with reasonable presumption of reasonable construction
24 theory, hypothesis or otherwise, of innocence.

25 Now, I don't know where reasonable falls on the scale.

- 1529

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1 I only know that if it makes sense to talk about it, then
2 that would seem to me to be reasonable. There is nothing
3 that says they have to be equal. There is nothing that says,
4 and Your Honor knows, you cited me the case when I was up
5 here last time, from the Fourth District, so you are aware of
6 the case. There is nothing that says that the hypothesis
7 of innocence must be greater. Only that there be two
8 reasonable theories. One consistent with guilt and the other
9 consistent with his innocence, that you must accept the
10 hypothesis that is consistent with his innocence and award a
11 verdict or return a verdict of the Jury of not guilty or
12 grant, I suggest to Your Honor, a Directed Judgment of
13 Acquittal at the conclusion of the State's case in chief.

14 Thank you, Your Honor.

15 THE COURT: Thank you, sir.

16 MR. EDMUND: Your Honor, I don't want to stand here
17 forever. There may be some other facts that I might argue.
18 May I sit down now and not waive those facts in the event
19 of an appeal?

20 THE COURT: Yes, sir.

21 ARGUMENT BY MR. HOGAN:

22 Judge, I believe at this point, the Court has an
23 obligation to take the evidence in a light most favorable
24 to the State and what Mr. Edmund, his argument has attempted
25 to do is to separate each circumstance and argue them

- 1530 -

1 separately. We are asking the Court to take the State's case
2 in whole or in toto in making this decision. I think
3 certainly, when you take all the circumstances and having
4 put them together, there is no other reasonable hypothesis
5 at this point, other than the Defendant is the one that
6 committed this crime.

7 With regard to the Williams Rule Evidence, that was
8 admitted and submitted for the purpose of showing identity,
9 among other things, and certainly, I think it has shown, has
10 gone to that point of identity with regard to Sexual Battery.

11 As Mr. Hurm pointed out yesterday during the argument,
12 I don't think that we are going to be able to logically
13 separate the Sexual Battery from logic, when it comes to the
14 point of who did it. I think it would be unreasonable to
15 assume that one person committed the Sexual Battery and another
16 person committed the Homicide. That is based on Dr. Shutze's
17 testimony that the girl was strangled and killed shortly
18 after she was sexually attacked or her hymen was torn because
19 there was no clotting at the hymen.

20 Now, with regard to the blood, Mr. Edmund again and again
21 has talked about considerable and moderate as if he somehow
22 knows that means profuse bleeding. The best evidence of how
23 much bleeding took place, Judge, is the girl's clothes.
24 There was very little blood in the clothes. In fact, no
25 blood in her blue jeans at all and those jeans were tested

- 1531 -

1 from head to toe by the serologist, Ms. Tabor, who testified
2 here, so I don't think we should expect to find any blood
3 evidence. Now, there may be traces of blood at the... at
4 Knight Lake at that scene, but certainly what he testified
5 to during his argument just now, the fact that he visited
6 the scene, is not in evidence and the Court should not
7 consider that. He also told you about Officer Pahaley. That
8 is not in evidence. Mr. Edmund also argued about soil
9 analysis. Soil analysis is not in evidence. So all those
10 things that he is asking the Court to consider, he has not
11 presented to the Court in the form of testimony for you to
12 consider at this point.

13 Now, with regard to the fingerprints on the hood of the
14 car, Mr. Rafferty and Mr. Brackman testified... Brackman
15 testified that the fingerprints could have been made by a
16 light touch. On cross examination, he agreed there were other
17 reasons for darker fingerprints, but he said the light touch
18 is just as likely and I think when you take that... those
19 fingerprints and you put them together with all the other
20 evidence, then it is not reasonable to assume anybody else
21 did it. Certainly, when you take the facts in a light most
22 favorable to the State.

23 We have additional evidence besides the tire tracks and
24 the fingerprints and the pubic hair, and at this point in
25 time, the pubic hair analysis by Agent Malone is unrebutted

- 1532 -

1 and the statement Mr. Edmund made about 600,000 hours is
2 wrong, because once Agent Malone was given a chance to
3 respond to the question Mr. Edmund asked him, he explained
4 that lots and lots of hairs, thousands of hairs he examined,
5 he just eliminated in a matter of seconds, so this 300,000
6 or 600,000 hours that Mr. Edmund keeps throwing up, is not
7 true. He knows that.

8 With regard to his analysis that his client would have
9 been sweating if he was committing this homicide. Well,
10 certainly a normal person may be sweating, but his client
11 may be a sociopath. He probably wasn't sweating, so that
12 can be taken into consideration. There is no evidence of that
13 either way.

14 The fact that the homicide occurred at Knight Lake
15 is certainly consistent with the evidence that we have in this
16 case. The girl was strangled and then drowned shortly after
17 she was sexually assaulted and the broken pencil was found
18 in the area where the body was found. That is certainly
19 consistent and reasonable that the homicide occurred at that
20 site.

21 We also have the Defendant had the opportunity to commit
22 this crime in that he normally went by the convenience store
23 to check on the convenience store clerks every forty-five
24 minutes to one hour, but on this night, he disappeared from
25 9:30 to 12:30 and was not seen, so he had the opportunity to

- 1533 -

1 have committed this crime.

2 With regard to Mr. Edmund's argument that the Williams
3 Rule Evidence should not have been admitted because it was
4 not charged, or an indicted offense, and I don't think that
5 is the state of the law at all. I think prior acts, or bad
6 acts of the Defendant and that is what I believe the Court
7 is aware of, but I would also point out to the Court, certainly
8 the Defendant could be charged with, at the very least,
9 Battery for the act that he committed on Ms. Dow. He could
10 be charged at the very least with Battery and Kidnapping for
11 the actions with Ms. Upshaw, and with regard to the Sexual
12 Battery that he committed upon Ms. Ruetz, even if she
13 consented, because of her age, the Court well knows that she
14 could not legally and that is what we used to call Statutory
15 Rape, which would be Capital Sex Battery. She was sixteen
16 years of age or younger.

17 I think the Court needs to take the case in its whole
18 and take all the circumstances and put them all together and
19 it is not reasonable to assume that anybody else did this.

20 THE COURT: Anything further, Mr. Edmund?

21 MR. EDMUND: I think not, Your Honor.

22 THE COURT: Alright, the Court's decision is as follows:

23 (1) It is clear the case is a circumstantial evidence case.
24 I believe the law in the State of Florida is as correctly
25 cited by Mr. Edmund. However, it is the Court's position that

- 1534 -

1 when taking all the circumstances presented by the State, in
2 the light most favorable to the State, and as a whole, there
3 is, at this time, in the mind of the Court, no reasonable
4 hypothesis of innocence. I deny your Motion and find a Jury
5 question.

6 Anything further?

7 MR. EDMUND: Yes, sir. May we approach the bench?

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

9 MR. EDMUND: Well, you know, you open your big mouth
10 and you usually get it stuck in your ear. When I said yesterday
11 to Tom that he wasn't going to see it coming, I didn't see it
12 coming either. Seriously, I am pulling your leg here. I
13 was anticipating even when we walked away for lunch, three
14 o'clock. I need thirty minutes. I have Michael Brady to
15 go with and I may be in a lunch position after that.

16 THE COURT: How long would that take?

17 MR. EDMUND: Judge, I think Carla will be maybe as much
18 as thirty minutes and whatever they do with cross. Brady is
19 perhaps a little less and whatever they do on cross.
20 I have got something of a problem and I tried to reach out
21 for a couple of other people= but it will take thirty minutes.

22 THE COURT: We will do that. Give some thought to this.
23 If we run out of time today and it is still fairly early,
24 we could start working on our jury instructions. We can't do
25 them all. There are some that you never can do until you are

- 1535 -

1 through, but we can sure get started.

2 MR. HOGAN: For the Court's information, we had another
3 witness we intended to call and we can't find him and it
4 wasn't worth coming back in and asking for another delay.
5 He is somewhere in South Florida driving a truck.

6 (WHEREUPON, BENCH CONFERENCE ENDS)

7 THE COURT: Mr. Bailiff, at this time, we are going to
8 be required to take a thirty minute recess. I am going to
9 ask that you advise the Jury that we have done that. We have
10 extended the recess for another thirty minutes. We have no
11 option with regard to that.

12 (WHEREUPON, THE DEFENDANT IS TAKEN FROM THE COURTROOM
13 AT 2:35 P. M.)

14 (WHEREUPON, COURT IS IN RECESS AT 2:36 P. M.)

15 (WHEREUPON, COURT RECONVENES AT 3:17 P. M.)

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

18 THE COURT: Anything before we bring the Jury back,
19 gents?

20 MR. EDMUND: No, Your Honor.

21 MR. HOGAN: No, sir.

22 THE COURT: Mr. Bailiff.

23 (WHEREUPON, JURY ENTERS COURTROOM AT 3:19 P. M.)

24 THE COURT: Welcome back, folks. Be seated, please.
25 Can you assure us you abided by our admonitions?

- 1536 -

1 JURORS: Yes, sir.

2 MR. EDMUND: May the Bailiff call Michael Brady?

3 THE COURT: Michael Brady.

4 (WHEREUPON, MICHAEL BRADY IS CALLED AS FIRST WITNESS FOR
5 THE DEFENSE AND IS DULY SWORN BY THE CLERK OF THE COURT)

6 DIRECT EXAMINATION

7 BY MR. EDMUND:

8 If it please, Your Honor?

9 THE COURT: Yes, sir.

10 Q. Would you state your name, sir?

11 A. Michael Patrick Brady.

12 Q. Mr. Brady, what is your business, your occupation
13 or profession?

14 A. I am in the law enforcement field.

15 Q. Alright, sir, what was your business occupation
16 or profession in the last part of 1986 and first part of 1987
17 through the Summer months?

18 A. I served as Chief of Police for the City of Mascotte.

19 Q. Did you have working for you at that time, James
20 Duckett?

21 A. Yes, I did.

22 Q. Do you see him in the courtroom today?

23 A. Yes, I do.

24 Q. Would you point him out and describe what he is
25 wearing?

- 1537 -

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1 A. Sitting over there with the gray suit on and the
2 light blue tie.

3 MR. HOGAN: I know he knows James Duckett, Judge. I have
4 no problem with that.

5 THE COURT: The record will reflect that the witness
6 identified the defendant.

7 Q. Do you recall when you first met James Duckett?

8 A. In November of 1986.

9 Q. And under what circumstances did you meet him?

10 A. We had called the Lake County Vo-Tech Center, School
11 of Public Safety, and advised them that we had a vacancy in
12 the Police Department. They had told us they had a class
13 graduating towards the end of that month and I more or less
14 asked Mr. Quarrie to put the word out that we were looking
15 for anyone who might be interested in employment and he
16 responded.

17 Q. Do you recall at least the circumstances and the
18 events of your first meeting with Duckett?

19 A. He first came on the weekend and picked up an
20 application from the Sergeant and then came back later to see
21 me one day after school, and I just conducted a preliminary
22 interview with him at that time.

23 Q. Would you tell the Jury what you observed about his
24 appearance and his demeanor when you first interviewed him?

25 A. He had a pleasant appearance and demeanor. He was

- 1538 -

1 clean and clean cut so-to-speak and his hair was well
2 groomed, as was his clothing and everything and he presented
3 himself quite well in the interview.

4 Q. Would you tell the Jury what you observed about
5 his appearance and his demeanor during the period of time that
6 he worked for you?

7 A. Each month that he was evaluated, we always gave him
8 a good rating for appearance and demeanor. The officers,
9 of course, were issued a city uniform. He wore his uniform
10 in compliance with the manner in which it was supposed to be
11 worn. He took care of his clothing. He always reported to
12 work in clean uniform or a uniform that wasn't tattered or
13 well soiled, and kept his shoes clean and always reported
14 to work clean shaven and his hair conformed to our regulations.

15 Q. Now, did you have any specific rule with regard to
16 the cleanliness of the patrol cars that the officers used?

17 A. Yes, we did. Each officer, basically, was responsible
18 for the automobile during the time it is issued to him.
19 They were to keep the interior as clean as possible and remove
20 any litter; coffee cups or styrofoam cups of whatever at the
21 end of their shift and if the vehicle needed washing, they
22 were to wash the vehicle.

23 Q. Did Duckett comply with those regulations that you
24 put forth with regards to his patrol car?

25 A. Yes, he did; basically all the officers did.

- 1539 -

1 Q. Did he have one particular patrol car that he used
2 to the exclusion of all other officers or one that he shared
3 with anyone?

4 A. He shared a vehicle with somebody else. He
5 predominately used the same one, but on occasions, he had to
6 switch according to mileage.

7 Q. Alright, now, would you describe to the Jury...
8 are you familiar with the interior of the patrol car that
9 Duckett was using on the night of May 11th and morning of
10 May 12th, 1987?

11 A. Yes, I am.

12 Q. Would you describe the interior of that vehicle to
13 the Jury?

14 A. The interior of the vehicle, the one you saw the
15 other day, the vehicles are ordered with what we call split
16 seat, as opposed to a bench seat in that the passenger or
17 the driver could adjust himself accordingly. This was necessary
18 because the type of equipment that was installed on what we
19 called the hump of the floorboard, we had a make-shift type
20 console there. As you noticed, it has siren controls, radio
21 controls and the light switches for all the lights that is
22 on top of the vehicle; radar unit, of course, was mounted as
23 you saw on the dash, with the computer head. The vehicles
24 were equipped with a security or screen cage for the officer's
25 protection and the other day, that vehicle did not have a

- 1540 -

1 shotgun in it, but the vehicles did have a shotgun in the
2 back rack.

3 Q. Now, during the time that Duckett was in your employ,
4 did you ever have occasion to chastise him for any actions
5 that he was engaged in while on duty?

6 A. Yes, on one occasion.

7 Q. What was that? What did that arise from or result
8 from?

9 A. Okay, a citizen came in and complained that Officer
10 Duckett had supplied her daughter with what we call a code
11 sheet, which you might refer to as a Ten sheet. It is a
12 sheet that explains what the signals are in English people...
13 the mother indicated that her husband has a scanner at home
14 and always wanted one of those sheets, and that he had
15 supplied it to the girl, who gave it to the father, and
16 basically chastised him for supplying her with that
17 information.

18 Q. State whether or not you ever had complaints
19 regarding him sitting around talking with girls or spending
20 any time with girls while on duty?

21 A. Not per se, no, I have never had any complaints about
22 him.

23 Q. Now, would you state whether or not you ever became
24 aware of a rumor in the police department regarding his making
25 any statements concerning a woman that he had made a pass at?

- 1541 -

1 A. No, there was never such a rumor.

2 Q. Alright, sir. Now, state whether or not you are aware
3 of any complaint ever having been made with regard to his
4 having made a pass at some man's wife?

5 A. No complaints.

6 Q. Now, on what shift did you put him when you hired
7 him?

8 A. The night shift.

9 Q. How do you select an officer for night shift? Do
10 you consider what you observed about his ethics and his
11 character and his ability to perform his duties?

12 A. Basically. He was in training with the Sergeant
13 at the time and we had every intention of placing him on the
14 night shift, because we thought he could handle himself
15 accordingly, basically, because the officers in that city work
16 by themselves at night, and after he went through what we
17 call "in service" training, which was short compared to most
18 other departments, we saw no problem with assigning him to
19 work at nighttime.

20 Q. After that, was he in a unsupervised capacity?
21 In the sense that he didn't have anybody riding with him?

22 A. He worked a four day work week, so minimum of three
23 days a week. On the fourth day, we sometimes had two officers
24 working at night, but they did not ride together.
25 They were in separate vehicles.

- 1542 -

1 Q. When he was employed at Mascotte as a police officer,
2 what were his duty days of the week, or nights?

3 A. Okay, he was assigned to work Saturday through
4 Tuesday, which is confusing, but it means to come to work
5 at 7:00 P. M. on Saturday night and the last day he would work
6 for the week, he would get off on Wednesday morning at
7 7:00 A. M. and he would be off Wednesday, Thursday, and
8 Friday.

9 Q. When you say he was off Wednesday, Thursday and
10 Friday, he was off Wednesday, Thursday and Friday nights?

11 A. That is correct.

12 Q. Do you know which officers were pulling the shifts
13 on the first of May on Friday the first of May of 1987, at
14 night?

15 A. At nighttime?

16 Q. Yes, sir?

17 A. Okay, I was the only one that got Fridays off, so
18 at nighttime, it was 7:00 P. M., Officer Smith and Officer
19 Cooper would come on duty and relieve Sgt. Poole, who worked
20 the day shift and Officer Smith would be the officer working
21 from 7:00 P. M. on Saturday to 7:00 A. M. on Saturday and
22 Officer Cooper would only work from 7:00 P. M. to Friday to
23 3:00 A. M. on Saturday, in separate vehicles.

24 Q. Alright, sir. Excuse me just a moment, Your Honor.
25 Are you familiar with the name Linda Dale Upshaw?

- 1543 -

1 A. Yes.

2 Q. Do you know Ms. Upshaw to be a girl who had at one
3 time lived in Mascotte?

4 A. She did live in Mascotte at one time.

5 Q. Are you familiar with her reputation in the...

6 MR. HOGAN: Objection.. Can we approach the bench, please?

7 THE COURT: Let me hear the question first.

8 Go ahead and ask the question.

9 MR. EDMUND: I was going to ask for her reputation for
10 truth and veracity in the community, if it please, Your Honor.

11 THE COURT: That is what I thought. Any objection,
12 Mr. Hogan?

13 MR. HOGAN: No, Your Honor.

14 THE COURT: Go ahead.

15 Q. Are you familiar with her reputation for truth and
16 veracity in the community? Just give me a yes or no, sir?

17 A. Yes.

18 Q. Will you tell the Court and Jury upon which...
19 upon which you base your knowledge of her reputation in the
20 community for truth and veracity?

21 A. Basically, from the complaints we had received that
22 she was involved in.

23 Q. Alright, sir, based upon that, would you tell the
24 Court and Jury whether her reputation for truth and veracity
25 in the community was good or bad?

- 1544 -

1 A. Bad, I would say.

2 Q. Now, did you have occasion... do you recall the
3 events of the morning the day light hours of the 12th of May,
4 1987?

5 A. Yes.

6 Q. On the morning and daylight hours of May the 12th of
7 1987, did you have occasion to see James Duckett?

8 A. Yes, I relieved him that morning.

9 Q. Would you tell the Jury the circumstances around your
10 relieving him on that morning?

11 A. I basically came in to work that morning at about
12 6:30 or 7:00, and I go on duty at 7:00, relieving him. Since
13 he had previously called me on the missing girl, I asked him
14 you know, if she had been located at that time and he said,
15 "No, she was still missing.". We discussed other things and
16 then I told him to go ahead and leave, because he had to come
17 back and relieve me that night.

18 Q. Would you describe the general layout of City Hall
19 and the police station and any compound area there for
20 vehicles in Mascotte?

21 A. Okay, you lost me there.

22 Q. Give the Jury a general description of what City Hall
23 was like inside and was the police station in City Hall?

24 A. Yes, it was.

25 Q. Is it a new building? Relatively new building?

- 1545 -

1 A. It has been renovated, yes.

2 Q. So it is a newly renovated building?

3 A. It is renovated.

4 Q. Did you meet with Mr. Duckett inside or outside the
5 building?

6 A. Inside.

7 Q. Would you tell the Jury what the lighting conditions
8 are or were on that morning when you met with James Duckett?

9 A. I relieved the officers in the officers' station.
10 The lighting conditions there would be about the same as the
11 lighting is here. It is a much smaller room, but adequate
12 light.

13 Q. Would you tell the Jury how near you got to Duckett
14 physically?

15 A. Close enough for him to hand the car keys to me, so
16 touched.

17 Q. State whether or not you had a habit of just generally
18 looking at your officers when ... to check on their appearance
19 as Chief? Did you do that?

20 A. Yes, I did.

21 Q. Would you state to the Jury whether or not you gave
22 such at least a cursory look to Duckett on that morning?

23 A. Appearance was satisfactory. His clothing wasn't
24 soiled or anything.

25 Q. Tell the Jury specifically what you observed? Say

- 1546 -

1 whether or not you observed any mud on his shoes, pants or
2 person?

3 A. There was none.

4 Q. State whether or not there appeared to be any wrinkles
5 in his shirt, pants or any of his other equipment?

6 A. Wrinkles in the back of his shirt, yes, sir, from
7 sitting in the vehicle.

8 Q. Did you notice anything else unusual about his
9 person at all?

10 A. No.

11 Q. Would you tell the Jury what was the state of his
12 hair and things of that nature?

13 A. Pardon?

14 Q. Tell the Jury what you noticed about the state of the
15 condition of his hair and whether it was combed, whether it
16 was neat, whether it was disheveled?

17 A. His hair was always combed.

18 Q. State whether or not you noticed anything unusual about
19 him on that morning?

20 A. No, other than the fact a few facial whiskers, he
21 looked like the night before.

22 Q. How long did you converse with him, Mr. Brady?

23 A. Less than ten minutes.

24 Q. But perhaps as long as ten minutes?

25 A. At the most.

- 1547 -

1 Q. What, if anything, unusual did you notice about the
2 way he was acting?

3 A. Nothing out of the ordinary.

4 Q. Did he appear to be normal and usual to you at that
5 time?

6 A. Yes.

7 Q. You had become aware that a child had been missing
8 the night before, had you not? You testified to that on another
9 occasion, and you questioned him at that time about whether
10 the child had been found?

11 A. That's right.

12 Q. Tell the Jury what reaction, if any, you saw on him
13 when you asked him about the child?

14 A. He just stated she hadn't been found.

15 Q. Did he appear to be evasive in any way?

16 A. No.

17 Q. Did he appear to be nervous in any way?

18 A. No.

19 Q. Now, on the night of May 11th, was there any
20 particular political function in the City of Mascotte?

21 A. The monthly council meeting.

22 Q. The monthly council meeting? Where is that monthly
23 council meeting held?

24 A. In City Hall.

25 Q. What duties, if any, did you have regarding the monthly

- 1548 -

1 council meetings, Mr. Brady?

2 A. I was required to attend those meetings and submit
3 a monthly report to the council.

4 Q. And did you attend those meetings in your capacity
5 as Chief of Police?

6 A. Yes, I did.

7 Q. Did you attend those meetings in uniform?

8 A. Yes, I did.

9 Q. As part of your uniform, did you have any receiving
10 or transmitting equipment?

11 A. I had.

12 Q. Did you have a radio?

13 A. Each officer was issued a portable radio.

14 Q. What, sir?

15 A. Each officer, including myself, was issued a portable
16 radio.

17 Q. Is that what some people might call a walki-talki
18 of some sort?

19 A. That is right.

20 Q. What sort of range did this have as it relates to the
21 City of Mascotte? Could you talk all over the City of
22 Mascotte with those radios?

23 A. On the City frequency, you could. On the County,
24 we could call as far away as Tavares.

25 Q. On your walki-talki radio?

-1549 -

1 A. Yes, sir.

2 Q. You had no trouble conversing with your officers on
3 your walki-talkie when they were in their vehicles, is that
4 correct?

5 A. That is correct.

6 Q. Now, what were the normal hours of the City Council
7 Meetings in Mascotte?

8 A. The meetings began at 7:30 P. M. and until the ending.

9 Q. Do you recall at or about what time the City Council
10 Meeting ended on the 11th of May, 1987?

11 A. I don't recall exactly, no.

12 Q. Alright, after the Council Meetings, did you have
13 other duties that you perform in your capacity as Chief of
14 Police?

15 A. Myself or the officer on duty would be responsible
16 for securing the building after the meeting had ended, and they
17 had left.

18 Q. Let me go at this another way. Where did you live
19 at that time?

20 A. Directly behind City Hall at Mascotte Elementary
21 School.

22 Q. Did you have any duties in connection with living
23 at Mascotte Elementary School?

24 A. Yes, sir. I lived on the school grounds.

25 Q. Did you have any duties incidental to living there?

- 1550 -

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1 A. Yes, what we call vandal watchers.

2 Q. Alright, and on this particular night, did you have
3 occasion to patrol any area around the Mascotte Elementary
4 School?

5 A. We had to make a nightly check on the school.

6 Q. Did you?

7 A. Yes, I did.

8 Q. Alright, now, tell the Jury generally what you did as
9 regarding patrolling around the school?

10 A. Basically, I leave the house and at that time, we had
11 to physically check or inspect every door on all the buildings
12 within the complex and that would normally take at the most
13 twenty minutes.

14 Q. Alright, sir, now, did you say that you could see
15 City Hall from some place near your home?

16 A. In the area that I call the front yard.

17 Q. Alright. Tell the Jury what you did just prior to
18 going into your home on the night of May 11th, of 1987, with
19 regard to Patrolman Duckett?

20 A. Okay, this was after I had checked the school, came
21 back and viewed from where I lived that the lights were off
22 at City Hall. When I left the Council Meeting was over, but
23 other city officials were still meeting and discussing items,
24 so I was unable to secure the building. I left and went home
25 and had dinner. After I checked the school that night, I

- 1551 -

1 looked towards City Hall and I saw the lights off in the
2 council room and the Clerk's office was on the back side of
3 the building, so as part of routine, since I had left and the
4 building was still unlocked, I called the officer on duty to
5 tell him to go ahead and do the security check to the building,
6 to see that it had been locked by the other people.

7 Q. Did you do this this night with Duckett?

8 A. Yes, I did.

9 Q. Alright, and upon completing that, did he acknowledge?

10 A. Yes, he did.

11 Q. Alright, upon completion of that call, then tell the
12 Jury what you did and what you observed while doing it?

13 A. After I called him on the City channel and advised
14 him that the meeting was over and to do a security check on
15 the building, I went into my house and undressed and took a
16 shower and went to bed.

17 Q. What, if anything, gave you an idea of the time
18 occurred, once you entered your home, Mr. Brady?

19 A. Okay, just as I finished undressing, the news was
20 coming on television.

21 Q. What time does that news come on?

22 A. Eleven P. M.

23 Q. Would you estimate the time between the call you made
24 to Duckett and the time the news came on?

25 A. Less than five minutes.

- 1552 -

1 Q. Thank you, sir. May I have a moment, Your Honor/

2 THE COURT: Yes, sir.

3 Q. With regard, back to the officers and their obligations
4 would you state what the officers' obligation or duty was with
5 regard to recording mileage on the vehicle that they were
6 assigned to?

7 A. There is a mileage chart in the vehicle and they
8 simply put down the date and time and number of beginning and
9 ending mileage. Total amount of miles.

10 Q. Would you state whether or not there were occasions
11 with officers forgot to add up one or the other of those
12 mileage figures?

13 A. Yes, there were some occasions.

14 Q. Do you recall whether or not that happened with any
15 degree of frequency?

16 A. Define what you mean by degree of frequency.

17 Q. I guess that wasn't a very good question. I think
18 I'll withdraw it, if it please the Court. Thank you, Your
19 Honor.

20 CROSS EXAMINATION

21 BY MR. HOGAN:

22 Q. Good afternoon, Mr. Brady. Now, you said you are the
23 one that hired Mr. Duckett?

24 A. Yes, I am.

25 Q. And did you do a background check on him?

- 1553 -

1 A. Yes, I did. I am sorry, Sgt. Poole did, yes.

2 Q. I show you ... if I can keep track of it.

3 THE COURT: What letter madam clerk, please?

4 CLERK OF THE COURT Five "Z"s.

5 THE COURT: Alright.

6 Q. Marked for identification as ZZZZZ and ask you if
7 you recognize that document?

8 A. Yes, this is a photo copy of the application
9 submitted to the City.

10 Q. And you hired him based on that application?

11 A. Right.

12 Q. Under Item 16, please, tell us if Mr. Duckett
13 claims to have gone to college?

14 MR. EDMUND: I object, if it please, Your Honor, to any
15 questions regarding the exhibit marked for identification
16 until such time as it is offered and Your Honor determines
17 whether or not it will be received in evidence.

18 MR. HOGAN: Judge, if there is no objection, I will do
19 it now.

20 THE COURT: Do you have any objection, Mr. Edmund?

21 MR. EDMUND: I would like to take a look at it now, if
22 it please, Your Honor.

23 THE COURT: Yes, sir.

24 (WHEREUPON, MR. EDMUND EXAMINES DOCUMENT)

25 MR. EDMUND: I don't believe I have any objection to it

- 1554 -

1 being entered, Your Honor.

2 THE COURT: State's Exhibit five "Z"s, for identification,
3 admitted into evidence without objection as State's Exhibit
4 100, ma'am?

5 CLERK OF THE COURT: Yes, sir.

6 (WHEREUPON, STATE'S EXHIBIT #100 IS ADMITTED INTO
7 EVIDENCE WITHOUT OBJECTION)

8 Q. Okay, let's go back on this page and start off with
9 Item 13, please. What does that item say?

10 A. Item 13 is a question. Do you want me to read it?

11 Q. Please?

12 A. Have you ever been arrested? The answer is, "Yes".

13 Q. Do you know anything about that?

14 A. Yes, I do.

15 Q. What do you know about it?

16 A. Okay, Mr. Duckett showed us a court paperwork from
17 Polk County, where he had been charged by, I believe it was
18 two Counts of what we call issuing a worthless check and the
19 State Attorney's Office did not file on the charges.

20 Q. Now, Item 16, please?

21 A. Item 16 is a statement that deals with education.
22 The education lists highschool and/or college. Want me to
23 read line by line?

24 Q. Yes, sir.

25 A. It says, "1971 to 1975 - South Sumter High, Bushnell,

- 1555 -

1 Florida. And question, "Graduated?". He answered "Yes".
2 1975 to 1977 Polk Community College, Winter Haven, Florida
3 and where it says "Graduated", he put "No", and it says,
4 "8/86 to 11/86, Lake County Vo-Tech, Eustis, Florida" and
5 where it says, "Graduate" the answer is blank.

6 Q. With regard to the Community College, did you ask
7 any questions about him attending Community College?

8 A. Pardon?

9 Q. Did you ask any question about what courses he took
10 at the Community College? Polk County?

11 A. Yes, he said they were courses dealing in the
12 law enforcement field.

13 Q. Did you see a transcript from that school?

14 A. No, we did not, because he did not graduate, therefore,
15 we were not obligated to pay him for any of the classes.

16 Q. You just took his word to the fact that he had taken
17 law enforcement classes at Polk Community College?

18 A. Pardon?

19 Q. You took his word that he had, in fact, gone to
20 college?

21 A. Yes, sir.

22 Q. Now, during the course of your administration of the
23 Mascotte Police Department, did you ever have officers that
24 changed shifts? Switched with one another? Have to have a
25 day off, vacation or whatever?

- 1556 -

1 A. Yes, ahum.

2 Q. Were you normally the one that relieved Officer
3 Duckett at seven o'clock in the morning?

4 A. Yes, my hours on Monday was seven to three and
5 Tuesday through Thursday, seven A. M. to seven P. M.

6 Q. So was there any time or any occasions that you can
7 think of that you saw Officer Duckett when he seemed
8 disheveled or messed up? Hair messed up?

9 A. No.

10 Q. So no matter what he did the night before, he looked
11 good at seven o'clock in the morning?

12 A. That is correct.

13 Q. Even if he had, for example, had a sexual encounter
14 with a girl in a car, he still looked clean-cut in the
15 morning?

16 A. That is true.

17 Q. How many uniforms did you issue to your officers?

18 A. Four shirts and three pairs of trousers.

19 Q. Now, this seat in the front of Duckett's car you
20 described as a split seat. That is sort of a combination
21 between a bucket seat and a bench seat, isn't it?

22 A. Yes.

23 Q. With regard to Mr. Brady with this girl, you say
24 her mother got upset because Officer Brady gave the girl a
25 10 sheet or a signal sheet. How old is the girl?

- 1557 -

1 A. Officer Duckett.
2 Q. I'm sorry.
3 A. She was eighteen or nineteen.
4 Q. In fact, do you know her name?
5 A. Her last name is Holmes.
6 Q. First name is Beth maybe?
7 A. Yes.
8 Q. And you are telling us you never heard of any other
9 relationship or any other problem between Mr. Duckett and
10 Beth Holmes?
11 A. No.
12 Q. And her mother was upset merely because the girl was
13 given a 10 signal sheet?
14 A. No, she came in basically and complained, but that
15 was her basic complaint. She was upset because the girl had
16 left home and was staying with somebody and she said they had
17 a questionable reputation and she wanted us to go down there
18 and remove the girl from the home. When we found out the
19 girl was legal age, we told her there was nothing we could act
20 on.
21 Q. This girl was a friend of Officer Duckett?
22 A. I don't know.
23 Q. Friendly enough to get gifts? A signal sheet from
24 him?
25 A. What?

- 1558 -

1 Q. He gave her the signal sheet you are talking about?
2 A. That's true. That's true.
3 Q. You don't know anything else about any relationship
4 between her and Officer Duckett?
5 A. No.
6 Q. Now, Mr. Brady, you have been interviewed a number
7 of times by Sheriff's Office Detectives in regard to this
8 case, have you not?
9 A. That is right.
10 Q. How many times do you think you have been interviewed
11 about this case?
12 A. By whom?
13 Q. By anybody? Any other law enforcement officer who
14 interviewed you regarding the murder and rape of Teresa
15 McAbee? How many times have you been interviewed?
16 A. I couldn't even guess, Mr. Hogan.
17 Q. Many times?
18 A. Many times.
19 Q. And have you ever told anybody that you called
20 Officer Duckett on the radio prior to today?
21 A. That question was never asked, no.
22 Q. And you never volunteered the information, did you?
23 A. No.
24 Q. And in fact, you are mad at the Sheriff's Office,
25 because in your words, "They wouldn't play ball with you",

- 1559 -

1 because they excluded you from the investigation, isn't that
2 correct?

3 A. They did exclude us, yes.

4 Q. And you are mad about that?

5 A. No, I am not mad about that.

6 Q. Well, didn't you get mad at some of the detectives
7 just the other day, telling them you are mad at them because
8 they would not play ball with you?

9 A. I had a disagreement with Captain Horner on wanting
10 the officers to take a polygraph test.

11 Q. In fact, you are mad at several law enforcement
12 agenices. You are mad at the Groveland Police Department, too,
13 aren't you?

14 A. Pardon?

15 Q. You are mad at the Groveland Police Department, too,
16 aren't you?

17 A. If you want me to go into that, I will.

18 Q. Well, you are fixing to sue them?

19 A. I am fixing to sue the Chief, because of comments
20 that he made regarding this investigation stating the
21 Sheriff's name in his allegations.

22 Q. Against you?

23 A. Against me. That is correct.

24 Q. Do you recall giving a statement on June 18th, to
25 Detective Rocky Harris and Captain Jimmie Horner with regard

- 1560 -

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1 to this case?

2 A. I am not sure.

3 Q. And you say that you went to the Council Meeting
4 and you said you went home and walked around the school and
5 as you completed walking around the school, you called Duckett
6 on the radio, is that correct?

7 A. That's right.

8 Q. How big is the school?

9 A. How big is the school?

10 Q. Did it take you five minutes or what?

11 A. No, it takes about twenty minutes to check all the
12 doors. There are several mobile trailers out there and
13 there is three major buildings.

14 Q. Alright, twenty minutes. It takes you twenty minutes
15 Then you call Duckett on the radio, and what time did you say
16 that you got home from the Council Meeting, sir?

17 A. From the Council Meeting, I said I wasn't sure.

18 Q. Do you recall making this statement? You were
19 asked the question, "Do you have any other officers scheduled
20 to work? A. No, that was a Monday and on that particular day
21 I went to work at 3:00 P. M. Sgt. Poole came ... or excuse
22 me, I went off work at 7:00 P. M., since Sgt. Poole was on
23 vacation. When I went to work at 7:00 P. M., the Council
24 Meeting was beginning. I left the Council Meeting that night
25 at about 9:30 or quarter to ten ad went straight home."

- 1561 -

1 A. That is right.

2 Q. 9:30?

3 A. I don't recall the time lapse. May I see the
4 statement for a moment. I believe you have the other
5 time incorrect.

6 Q. That is what you said.

7 A. Okay, I didn't understand that part about it.

8 Q. So you went home from the Council Meeting at 9:30,
9 and twenty minutes later, you call Duckett on the radio?

10 A. No, no, that is not what I have testified to.
11 I went home after the Council Meeting, had dinner and talked
12 with my wife and then went out and checked the school.
13 If there is a question about that, have them read it back.

14 Q. It is not in here, sir, because you never bothered
15 to tell anybody about it before you got to court.

16 A. Nobody ever asked. The State Attorney's Office never
17 even took a deposition from me.

18 MR. EDMUND: That is argumentative, Your Honor.

19 THE COURT: He has answered it. Overruled.

20 Q. Thank you, Judge.

21 RE-DIRECT EXAMINATION

22 BY MR. EDMUND:

23 Q. If it please, Your Honor.

24 Mr. Brady, until I came blundering along, had anybody
25 ever asked you if you had occasion to contact Duckett that

- 1562 -

1 night?

2 A. Did anybody ever ask me if I had occasion?

3 Q. Until I came along?

4 A. No.

5 Q. Alright, sir. Now, in your experience as a police
6 chief, are you familiar with the phrase of police standards?

7 A. Yes.

8 Q. And is police standards a qualification type of thing
9 that candidates for police officers must go through? Run by
10 the State of Florida?

11 A. That is correct.

12 Q. And is it correct that people graduating from that
13 must be free of felony convictions and they must pass the
14 background examination given by the State of Florida?

15 A. I am unaware of any background that the State gives.

16 Q. Alright, sir, can a man be a police officer with a
17 felony conviction?

18 A. No.

19 Q. Alright, sir. Now, would you tell the Jury when the
20 shifts changed as relates to May 1st that Friday, and May 11th,
21 the night of the homicide and why?

22 A. The shifts changed because we had an officer go on
23 vacation.

24 Q. But nevertheless, Monday was one of Duckett's work
25 nights anyway, wasn't it?

- 1563 -

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1 A. He normally came in at 11:00 P. M.
2 Q. But he was now working 7:00 to 7:00 because of the
3 officer being on vacation?
4 A. That is correct.
5 Q. Was his shift... from the time he went to work there,
6 until the time he changed it when he went on vacation from
7 11:00 to 7:00?
8 A. On Mondays.
9 Q. On what other days was it different?
10 A. The other days, he worked from 7:00 P. M. to 7:00 A. M.
11 Q. On every other day besides Monday?
12 A. Right, they work one eight hour day and three twelve
13 hour days.
14 Q. But on the Monday, it would be that 11:00 to 7:00
15 regularly?
16 A. Right.
17 Q. Now, tell the Jury what your quarrel is with
18 Horner?
19 A. Sir?
20 Q. Tell the Jury what your quarrel is with Horner, with
21 Captain Horner?
22 A. If the date is correct that Mr. Hogan gave on that
23 particular date when he took depositions from us, it was after
24 the Sheriff had implicated Officer Duckett in the news media,
25 Captain Horner came down and he questioned me and then he took

- 1564 -

1 the other officers into the room one at a time and questioned
2 them and upon taking their depositions, he wanted them to
3 ... he asked them if they would submit to the polygraph test
4 and one officer came out and told me that. I then went in and
5 called Captain Horner out and told him that our officers for
6 the City of Mascotte had no pre-employment agreement with
7 personnel to submit to a polygraph test for investigation
8 purposes and it would be up to the officer if they wanted to,
9 but I was advising them not to on the advice of our city
10 attorney.

11 Q. Was Duckett the officer who came out and complained?

12 A. No, sir, he was on administrative leave at that time.

13 Q. So he wasn't even a party to that conversation about
14 a polygraph test, was he?

15 A. No.

16 Q. Is that the only beef you have with Horner?

17 A. Well, with him, yes.

18 Q. Did you use the term "play ball"?

19 A. I don't recall, but that is possible.

20 Q. Now, tell the Jury what it is that your beef is with
21 the Groveland Police Department?

22 A. Basically, since being terminated from the City and
23 trying to seek employment, and involved in litigation with the
24 City of Mascotte in an attempt to regain my position, the
25 City of Mascotte has been referring potential employers to the

- 1565 -

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