

No. 20-826

In the Supreme Court of the United States

MIKE BROWN, ACTING WARDEN, PETITIONER

v.

ERVINE DAVENPORT

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JOINT APPENDIX - VOLUME I OF III

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STATE OF MICHIGAN
9th JUDICIAL CIRCUIT COURT
TRIAL DIVISION
FOR THE COUNTY OF KALAMAZOO

PEOPLE OF THE STATE OF MICHIGAN,
v Case No.:C07-165FC
ERVINE LEE DAVENPORT.
Defendant.

JURY TRIAL - VOLUME I
BEFORE THE HONORABLE
PAMELA LIGHTVOET
Kalamazoo, Michigan - Tuesday, July 8, 2008

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* * *

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[THE COURT cont.] particular witness objecting to Ms. Eifler examining him if he's called to the stand. So at this point that request is denied.

And again, I'm not gonna delay this trial any more. You know, we need to move forward and I--the Court does not see that would be--that that's--issue would be detrimental to Mr. Davenport at this point.

Anything else, Ms. Eifler, before we address your client's attire?

MS. EIFLER: Yeah, that's actually what--and I would just for the record place my objections on the--on the record regarding Court's decision on the--the decision on the motion for speedy trial, as well as the conflict of interest issue. And I guess we are at the issue of the attire.

I know that Mr. Davenport has clothing that's available to him, according to conversations I've had with him in the past. Given the seriousness of this case, I think it's important that he appropriately dressed to be viewed by the jurors.

(Sidebar conversation between the Defendant and Ms. Eifler)

MS. EIFLER: Mr. Davenport's indicating at this time that he would be willing to dress for trial. I don't know if the Court would--would--I guess I'm ask--gonna ask

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for that. I would object. If he's--if he's willing to be dressed, I would be--I would object to the trial starting if he's wearing oranges.

Additionally, I would just suggest perhaps his clothing could be brought here by transport or he were brought over at--after the noon hour to start trial, if he would come dressed at that time.

The other thing is I understand the Court's policy regarding the shackles. However, it's important that Mr. Davenport and I have an opportunity to communicate back and forth, and generally we use a--I use a method where he would write notes back and forth. I would ask that any handcuffs during trial be removed prior to the jury entering, giving us an opportunity to write back and forth freely.

THE COURT: Mr. Fenton.

MR. FENTON: Your Honor, I have no objection to the one writing hand being uncuffed. I think that's a procedure that's been done in the past.

As far as the dress, Mr. Davenport is just playing games with this Court. He was well aware that today was his jury trial date. He chose not to get dressed.

Every jury trial where a Defendant's in custody, they have the opportunity to dress in street clothes. It's standard procedure at the jail. That was given to him this

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morning, he waived it. That was his choice. That's not the Court's choice. He chose to come to court in oranges today to delay a hundred people upstairs coming down until this afternoon or another hour so that now we can arrange for him to get dressed when he waived that this morning, knowingly would be unconscionable. Why should we delay things longer.

He wants to get dressed at lunch and dressed for the rest of his trial, that's his choice. But he knew what he was doing this morning and I object to another hour delay so that he can get dressed now.

THE COURT: Well just--just so the record's clear, my understanding is that Mr. Davenport did have an opportunity to change this morning, is that correct?

MS. EIFLER: That's correct. And when I initially spoke with him it was his position he did not want to dress for trial, Judge. That position--position has changed.

I think that this is easily fixable and I--would not cause hopefully too much delay for the Court or the jurors, and due to the seriousness of this offense I think it's very important that he is presented appropriately to the jury. And again, since it is something that can easily be fixed, I would ask that we can do that. If--

THE COURT: Mr.--hold on. Mr. Davenport, you had

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the opportunity to change this morning, is that right?

THE DEFENDANT: Yes.

THE COURT: And you chose not to?

THE DEFENDANT: Yes.

THE COURT: Was there a particular reason for that?

THE DEFENDANT: How many times have we been over there and we ain't started the trial. So I just-

THE COURT: I'm sorry?

THE DEFENDANT: I say we've been over here what, five or six times for trial, and I didn't see a need to change outfit because I didn't think the trial would gonna happen.

THE COURT: You knew it was--

THE DEFENDANT: We--you know, I mean we've been over here I don't know how many--you know, five or six times. So for me to--

THE COURT: You were aware today was scheduled--another day that was scheduled for trial.

THE DEFENDANT: Yeah, another date that was scheduled.

THE COURT: Okay.

THE DEFENDANT: So it was like okay here we go again.

THE COURT: Okay. I'm not going to delay the

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jury at this time. He can change during--over the lunch hour. I'll instruct the jury to disregard his attire this morning if counsel wants me to do that. But you know, it's scheduled for trial today and I'm not--I'm not gonna delay it any more. So he change appropriate--change into other attire for the remainder of the trial. I'd certainly urge him to do that and he had a choice this morning. He choose--chose not to do that.

I will allow his right hand to be uncuffed so he can write notes to his counsel. Are you right-handed, Mr. Davenport?

THE DEFENDANT: Yes.

THE COURT: Yes. And I will note that he does have cuffs around his--I think his ankles, is that correct?

THE DEFENDANT: Yes.

THE COURT: And also around his waist and there is a curtain around the table so the jury won't be able to observe that.

MS. EIFLER: Judge, I would just place my objection on the record because I do--again, I would just state that I believe it's prejudicial to him that--and I understand he had an opportunity to dress today, but again I believe it's something that could be easily fixed

so that there's no prejudice to the Defendant to appear in his jail issue clothing for trial.

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THE COURT: Counsel, would you like me to instruct the jury that they are to ignore his attire? Sometimes counsel chooses not to do that because it might bring more attention to the matter, but if you want me to do that, I would be happy to do that.

MS. EIFLER: And Judge, I would--I would ask the Court to ignore that instruction for that particular reason, so it does not bring more attention to it.

THE COURT: Anything further counsel before we bring the jury down?

MR. FENTON: Nothing your Honor.

MS. EIFLER: No ma'am.

THE COURT: And just so I'm clear, I know, counsel, we previously discussed the fact that we were projecting that this trial might go into next week. Is that still where we're at?

MR. FENTON: I'm trying very hard to get it done this week, your Honor, but it's always possible.

THE COURT: And I'll let the jury know. Is that-is that accurate, Miss Eifler?

MS. EIFLER: I'm sorry. That was that the trial could potentially go into next week?

THE COURT: Potentially could go into next Tuesday or Wednesday.

MS. EIFLER: Yes.

* * *

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[THE COURT cont.] to place on the record, counsel, before we break for the noon hour?

MR. FENTON: No your Honor.

MS. EIFLER: Judge, I--I would just ask the Court to reconsider with the handcuffs. Unfortunately the jurors have been moving about the courtroom and I--and I believe while I've been up to the bench they may have seen the fact that Mr. Davenport is in one handcuff.

I would I guess suggest to the Court that as of this moment his behavior has been fine in court. If--if that should change, then the Court could reconsider. But at this time I would ask that the handcuff--the one handcuff be removed so that the jurors--I--the reason why I'm bring that up, obviously we've got the issue with the--with the oranges and that's fine. But given the circumstances, the testimony, the evidence I believe is going to be presented, I don't want the jurors to be unduly influenced and fearful of Mr. Davenport, and--and develop prejud--prejudice for him for that reason.

THE COURT: Mr. Fenton.

MR. FENTON: Your Honor, my experience with jurors are that they're gonna decide the case based on the evidence, not based on whether or not Mr. Davenport is handcuffed.

He's, I believe, a fourth, fifth, or sixth habitual

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offender, he's charged with murder. I think it's a reasonable precaution under the circumstances. He's got four prior felonies, he's spent a substantial period of time in prison in the past, and jurors aren't going to decide the case based on whether his left hand is cuffed.

THE COURT: Okay. I'm going to deny the--the request. And again, I'd urge Mr. Davenport to put on normal clothes throughout the remainder of the trial. And my guess--is that--well the jurors should be able to see--

MR. FENTON: The record should also reflect that we've got some--we've got curtain under the table from the table level to the level to the floor so that the leg cuffs to the belly chain cannot be seen, and if Mr. Davenport keeps his left hand beneath the desk, then they shouldn't be able to see that left cuff either.

THE COURT: Well in any event, I'm--I'm going to deny the request, but I--at this time.

Anything further, counsel?

MR. FENTON: No your Honor.

MS. EIFLER: No ma'am.

THE COURT: All right. I'll see you about 1:20 and I plan to get started at 1:30. Court's in recess.

(Court recesses at 12:06 p.m.)

(Court resumes at 1:40 p.m.)

MS. JOHNSON: The court recalls the case of People

* * *

STATE OF MICHIGAN
9th JUDICIAL CIRCUIT COURT
TRIAL DIVISION
FOR THE COUNTY OF KALAMAZOO

PEOPLE OF THE STATE OF MICHIGAN,
v Case No.:C07-165FC
ERVINE LEE DAVENPORT.
Defendant.

JURY TRIAL - VOLUME II
BEFORE THE HONORABLE
PAMELA LIGHTVOET
Kalamazoo, Michigan - Wednesday, July 9, 2008

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[THE COURT cont.] limits provided by law.

I may give you more instructions during the trial, and I will give you more detailed instructions about the law at the end of the trial. You should consider all of my instructions as a connected series. Taken all together, they are the law that you must follow in this case.

After all of the evidence has been presented and the lawyers have given their arguments, I will give you detailed instructions about the rules of law that apply to this case. Then you will go to the jury room to decide on your verdict. A verdict must be unanimous. That means every juror must agree on it, and it must reflect the individual decision of each juror. It is important for you to keep an open mind and not make a decision about anything in the case until you go to the jury room to decide the case.

Okay ladies and gentlemen, I'm going to turn it over to Mr. Fenton for opening statements.

MR. FENTON: Thank you your Honor. Good morning again.

On January 12, 2007, the Defendant, Ervine Dav-enport, killed the victim in this case, Annette White. It's undisputed. He didn't shoot her, he didn't stab her. He didn't hit her over the head with a blunt instrument. He literally choked the life out of her with those huge hands of his.

* * *

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THE COURT: Please raise your right hand. Do you solemnly swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth so help you God?

DR. HUNTER: Yes.

THE COURT: Please have a seat, sir. I need you to state your first name and your last name, and please spell both your first name and your last name for the record.

THE WITNESS: Brian Hunter, B-R-I-A-N, H-U-N-T-E-R.

BRIAN HUNTER

(At 2:05 p.m., sworn as a witness, testified as follows)

DIRECT EXAMINATION

BY MR. FENTON:

Q Can you please state your occupation for the jury.

A I am a forensic pathologist and medical examiner.

Q How long have you been so employed?

A Eight years past fellowship.

Q Can you detail some of your background that qualifies you to be a forensic pathologist.

A I did my medical school at the University of Cincinnati, that was after four years of undergraduate training at Miami University in Oxford, Ohio. I then did my residency

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the University of Michigan, that was five years, and then I did a one-year fellowship at the Hennepin County Medical Examiner's Office, which is in Minneapolis, Minnesota. I then--I passed board certification in pathology and forensic pathology, and am licensed to practice in the State of Michigan and have been doing so for the past eight years.

Q Have you been recognized as an expert witness in forensic pathology on numerous occasions, numerous courts in this State?

A Yes.

MR. FENTON: At this time I'd move for the admission of this doctor as an expert witness in forensic pathology under MRE 7.02.

MS. EIFLER: No objection.

THE COURT: The Court finds he's qualified as a forensic pathologist. Go ahead Mr. Fenton.

MR. FENTON: Thank you.

Q What is forensic pathology, doctor?

A A forensic pathologist is a doctor that primarily does autopsies, and I do autopsies in cases where

they fall under the medical examiner's jurisdiction. The medical examiner is a government appointee who is charged with signing death certificates in cases where someone dies suddenly, unexpectedly, or due to violent means.

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In some places, as in the case where I'm currently employed, I'm the medical examiner and the forensic pathologist. But in other circumstances, there'll be two separate people. So a medical examiner will learn of a case and then ask me to do the autopsy to give them information to help them sign the death certificate.

Q What's the purpose of the autopsy?

A The autopsy is to gain information from the body as to why they died. So it may be due to an injury, due to a natural disease, other things like pills that may be in the stomach, things that can help clarify what caused the person's death.

Q Did you conduct the autopsy on the victim in this case, Annette White?

A Yes.

Q Did you weigh the body?

A Yes.

Q What was the weight of Annette White?

A 103 pounds.

Q Was there any obvious trauma to the body exteriorly?

A There's minimal trauma to the exterior of the body. There--what I would--best be described as nicks or scrapes. She had two small nicks on the forehead, a scrape on the right shoulder, one on the front of her left arm, and on the back. Two on her abdomen, one on the back of the right

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form, and one on the knee. But these are small scrapes--less--all less than an inch.

Q Nothing causing death.

A No.

Q Would those be consistent with a body being thrown to the ground in the woods for instance?

A Yes.

Q You said she was 103 pounds. Do you know how tall she was?

A I'm gonna refer to my report. I have 62 inches.

Q Which is five feet, two inches according to my math?

A Correct.

Q Do you know her age or date of birth?

A 48 years.

Q Do you perform an autopsy on her?

A Yes.

Q Did you look at her internal organs?

A Yes.

Q Were you able to find evidence of injury internally?

A Yes.

Q Please describe for the jury what you found.

A She had--in my report I described it as hemorrhage. Basically it's blood or bruising in the muscles that lie beneath the skin on the neck.

So when we do our autopsy we make an incision from one shoulder down to the middle of the chest, one shoulder down

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the middle, and then down the abdomen. It's called a Y-shaped incision. What this allows us to do is reflect the skin, and you reflect it over the chest and the abdomen, but we can also reflect it above the neck. So we can pull this triangular portion of skin up toward the jaw, the lower jaw. When you do that, that exposes--excuse me--the muscles. There are muscles right underneath the skin, the skin on your neck's pretty thin, and right underneath there are muscles that I call strap muscles. These are the muscles that allow your airway to work, that allow your throat to work, and allow you to control your head.

When you--when you do that, you're not looking at the muscles. In every case we look for evidence of injury, evidence is what I call bruising or hemorrhage. In this case, she had bruising in the strap muscles of the neck. Now this is not a common phenomenon, you don't see bruising there just due to accidental--I mean due to normal, daily activity. There has to be trauma to that area. In this case she had bruising in multiple layers of the strap muscles. These--these muscles are--come in layers and they have names, and when you reflect each layer I could actually see there was bruising in multiple layers.

In cases such as this, this person was found down in a field, dressed inappropriately for the weather, suspected something happened to her, she was placed there. Coupled

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with this bruising in these muscles of her neck tells me that she was strangled.

There wasn't any injury to--there are other things in the neck, your airway or your larynx, your trachea, which are all part of the--the process by which you breath, your vocal cords. There's another bone in the neck called your hyoid bone. Sometimes those are broken in the process of strangulation. In this case they were not, but there was hemorrhage in those muscles, which in this case tells me she was strangled.

Q Could you tell whether she was strangled by some sort of ligature, a rope, string, anything like that, as opposed to hands?

A She didn't have any marks on her neck that would tell me a ligature was used. Circumstances where you typically see ligatures is if someone hangs themselves. And when they hang themselves they'll use a rope or a cord of some sort, and what you'll see is sort of a linear abrasion or scrape across the neck where that rope or that ligature was. If someone is strangled, likewise, you would see a crease or a scrape right in the furrow, right where that ligature was.

In this case there was nothing on the outside of the neck that told me that. So that led me to conclude that there wasn't a ligature used. In situations like this, this can be due to manual strangulation.

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Q We've had two photographs admitted from the autopsy. The jury has not seen them yet. Now clearly there were more than just two photographs of the victim's body taken, correct?

A Correct.

Q We've narrowed it down to two because of the nature of the photographs. But first of all, can we see People's Exhibit 12 and then 13, and could you indicate what is relevant about these photographs in your determination of the cause of death.

THE WITNESS: May I stand up?

THE COURT: Yes.

THE WITNESS: Thank you.

THE COURT: Can you just make sure that you're speaking into the microphone and you can move it.

THE WITNESS: Okay thank you.

Q Okay. What--what you're seeing here is--just for a quick orientation--this is her hair. So this is the head, this is her head, this is going to her feet. What you're seeing here are the cut edges of the ribs. When we reflect back the skin, we're then gonna--we'll see the rib cage with all the organs enclosed in it, and what we'll end up doing is cutting through those ribs so we can get to those chest organs. And what you're looking at here is the cut edges of those ribs.

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So basically what we've done is reflect that skin up toward the jaw, which is right under here, and you're now looking at the muscles underneath the neck, those strap muscles that I talked about.

What you can see here is this dark areas. This is normal red appearing muscle here, okay. The yellow stuff is partially bone and partially fat, okay. This is normal red muscle, external clata mastoid, and what you're looking at now, and that's--I mentioned there were names for these layers of muscles, external clata mastoid is one name. But what

you're looking at here is lots of blood. These dark red areas are blood. That's the bruising I was talking about, and that's caused by the trauma to the neck by a hand clinching around the neck and damaging blood vessels in there, allowing blood to leak into there.

MR. FENTON: Can se see 13 please.

A Now same orientation, the head is here to the--as you look at it, it will be the right hand screen--the right hand side of the screen. The feet is the left as you look at it. Again, the cut margins of the ribs. You're looking at now what I've done is I've taken those layers of muscles and I've peeled them back. They attach down here, these are your clavicles right here. They attach--and what I did is I cut off the attachment and I peeled them back up this way, toward the head. So now you're looking at deepest

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layers of muscles in the underside of the layers of muscles above.

And what you can see here is there's large area of blood. This is the left hand side of her body. There's a large area of blood right here. Again, indicative of trauma caused by a hand gripping around that area, breaking blood vessels. Just like another bruise. The key is in this case is if you bruise this area, it's a lot worse than if you just get a bruise on your arm. Because that's indicative of trauma on the airway underneath.

Q Thank you.

MR. FENTON: You can take that photograph off.

Q What kind of force is necessary to choke someone to death, doctor?

A It's a significant force.

Q How long does it take approximately? Are there some ranges? First of all, does someone become unconscious before they actually die?

A Yes.

Q How long would it take to cut someone's air off sufficiently by choking to cause them to become unconscious?

A I'd say a minimum of 30 seconds.

Q A minimum of 30 seconds?

A Yes.

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Q Up to what?

A Up to minutes depending on how completely you cut off the airway. As you can imagine, you have to deplete the body of oxygen. So it can take quite a while to render them unconscious depending on how completely you're able to cut off that airway.

Q And it takes longer, does it not, for someone to actually die of choking?

A Yes.

Q How long?

A Minimum of four to five minutes to get what I call irreparable brain damage, meaning you've completely depleted oxygen supply to the brain for four to five minutes, and now you're causing brain tissue to die off. And depending on how much brain tissue dies off and where, that's what leads to death. So a minimum four to five minutes, but it can take, again depending on how completely you cut off the airway, it can take longer.

Q Up to what?

A If you--I guess if you continue to do this, it could take, you know, hour, depending on how long the struggle goes. It's dependent upon how long the struggle goes and how long you can hold pressure to cut off the airway. So it can take quite a number of minutes.

Q So based on your examination, what were your conclusions as

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to first of all, the manner of death?

A It's a homicide.

Q And the cause of death?

A Manual strangulation.

Q Manual strangulation?

A Yes.

Q Now you did also find that the victim had some cocaine in her system?

A Yes.

Q Was that a cause of her death?

A No.

Q Thank you.

A I-I did misspeak. The cause of death I listed as strangulation.

Q Cause of death, strangulation.

A Correct.

Q Thank you very much.

THE COURT: Miss Eifler.

MS. EIFLER: Thank you.

CROSS-EXAMINATION

BY MS. EIFLER:

Q Good afternoon.

A Good afternoon.

Q Sir, when you took a measurement of Annette White's body, did you happen to measure, for instance, length of limbs,

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such as arms, anything like that?

A No.

Q You took her height. Did you at any point measure different sections of her--of her height? In other words, her torso versus her legs.

A No.

Q Okay. Now you've testified that you observed some minimal trauma on her--on her body, correct?

A Correct.

Q Were you able to age that particular--those particular wounds?

A No. I do not take sections of those for aging.

Q Okay. So you have no idea when the decedent would have received those wounds, correct?

A Correct.

Q All right. Mr. Fenton asked you, you know, could it have been caused when a body was tossed into--into the woods. You don't know that the decedent may have already had those wounds on her at the time of death, is that correct?

A Correct.

Q Now did you--you did a visual inspection of the body prior to going into the autopsy's--or that's part of the autopsy, correct?

A Correct.

Q And you did not observe any visible marks on the external

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portion of her neck, is that correct?

A Correct.

Q All right. Also, can you explain to us what is petechiae?

A Petechiae are pinpoint areas of bleeding. So to give you the best example, if you had a garden hose with really small, little leaks in it allowing just spray--a spray of blood to come out, each one of those little droplets of water that came--that comes out really small, and these are pinpoint holes, that would be a petechial-type hemorrhage. You can see these on different parts of the body and when they come out they look like pinpoint red dots.

Q Okay. And often under what circumstances would you, conducting an autopsy, observe petechiae?

A You can see petechiae in cases where you have compression of the blood vessels that allow blood to leak out of a certain area. So your--your body, you head needs blood flow in, blood flow out. If you compress the venous structures, the veins, those are the vessels that allow blood to flow away, now

you're blocking--you're creating a blockade causing blood to be trapped in that area.

Now blood gets backed up all the way into the small vessels called capillaries, and it's that back up which allows that blood to leak out. So anything that causes pressure to prevent blood flow from coming out of an area can cause petechiae. You can see it in traffic accidents,

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you can see it in strangulation cases.

Q Do you ever observe it, say for instance, in child abuse cases?

A Yes you can. Mmm-hmm.

Q Okay. Where perhaps a child has been grabbed in a--

MR. FENTON: I'm gonna object as to relevance.

MS. EIFLER: Oh. If you--

THE COURT: Miss Eifler?

MS. EIFLER: It--I'm going--basically to determine what type of compression would--would cause the petechiae.

THE COURT: I'm gonna allow it. Go ahead Miss Eifler.

Q Would you notice it in that sort of a case, perhaps where a suspect or--a parent would have grabbed

a child using compression around say for instance an arm?

A You wouldn't necessarily see it in that area if they compressed an arm, mainly because there's such a large surface area where blood can be trapped without leaking out in the blood. So you wouldn't necessarily see it there. Where you typically see petechiae are in the face, on the skin of the face. You'll see it in the eyelids, and in cases of child abuse, you might see it in the backs of the eyes internally where a child has been shaken. You'll talk about petechial hemorrhages on the retina. Those are some

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areas where you can see petechiae.

Q Did you notice any petechiae in this case?

A No.

Q Did--you did not notice any in the--in the facial area or on the backs of the eyelids, anything of that nature?

A I didn't look at the backs of the eyelids, that wouldn't be something I would do in a case like this. But I didn't see any in the facial area.

Q Now going back to the vis--no visible marks on the external portion of the neck, you testified previously in this case, is that correct

A I don't remember. Perhaps I did.

Q Okay. Very good.

A It's been quite some time ago.

Q Not in this courtroom, maybe downstairs?

A Okay.

Q All right.

A It's possible.

Q Did you have an opportunity to review your notes-

A No.

Q On this case at all?

A I reviewed my report. I did not review any other testimony.

Q Okay. Do you recall--so you do not recall testifying. Let me ask you this. Would it be helpful to refresh your

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memory if you were able to-

A Sure.

Q Review--

A Yes.

Q Your testimony.

A If-if you need it. I'm--I'm okay, but if you want me to review it, that's fine.

Q Sir, let me--let me see if this refreshes your memory. Do you remember testifying before when you were asked regarding manual strangulation if it's more common than not to find marks? Do you remember being asked that question?

A I don't remember testifying at the prelim, so I'll have to say no.

Q Okay.

A But it's been quite-

Q May I approach?

A Quite some time ago?

MS. EIFLER: May I approach?

THE COURT: Yeah.

(Cell phone rings in the courtroom)

THE COURT: Well hold on a second. Any other cell phones will be taken away if they go off during the trial. And I'll just also--also caution the jurors, cause sometimes the jurors have cell phones. So please make sure your cell phones are off.

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Second of all, you may approach but you can also ask him that question. He may or may not give the

right--or the same response. But go ahead, I'll--I'll allow you to do it this way.

A Okay. Okay, that's fine.

Q Did that help to refresh your memory?

A I read that statement. I don't remember-

Q Okay.

A Again, I don't remember testifying so.

Q Okay. Well let me ask you this then. Is it--in your opinion, is it more common than not to see marks or defined marks in manual strangulation?

A I would say in my cases that I've seen of manual strangulation, more often than not I've seen marks on the skin. Doesn't mean I haven't, I've seen cases were there aren't, but more--more of my cases have had that than not.

Q Thank you. Now in this particular case, you also have testified that there was cocaine located in the decedent's system, correct?

A Correct.

Q All right. And was there anything significant about the cocaine that was in her system?

A Well the fact that there's parent--what I called parent cocaine, meaning it's cocaine that hasn't been broken down, is significant. Cocaine has a really short half-life,

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meaning it's broken down really quickly in the system. So when someone uses cocaine, I would say it's not uncommon, probably more frequently, that you actually see what I call the breakdown products of it.

Your body has to break down any drug that it gets. It has to break it down to make it inactive after awhile. And so when it breaks it down and makes new stuff out of it, it's like cleaving up that cocaine and when you cleave it up, all those little parts that it's cleaved up into have-are called metabolites.

In this case, she had a sizeable amount of cocaine proper or parent drug that hadn't been cleaved up yet. She also had parts--other parts that had been cleaved up. So what you'll see in there is a metabolite called benzoylecgonine--and it begins with a B when you look at the report--

THE COURT: And I'm gonna need you to speak up again.

THE WITNESS: Okay.

THE COURT: Or--or if you're gonna face the jurors, then maybe you can move the microphone a little bit so we pick it up for the record.

THE WITNESS: Okay.

A Benzoyllecgonine is that breakdown down product or that cleaved up product. That's--that is a metabolite of it and

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that's present also. So she had a sizeable dose of parent cocaine as well as that cleaved up product, that benzoyllecgonine, that metabolite.

Q Did you also determine whether or not she had consumed alcohol prior to her death?

A Yes.

Q And did you form an opinion regarding her level of intoxication?

A She was definitely intoxicated. She had a point 12, which a point zero eight is considered legal--legal level as far as intoxicated. Now what that means as far as behavioral ability, I can speak to. What I can say is she would legally be considered intoxicated.

And there was another metabolite in her system called cocaethylene, which basically cocaine and alcohol together will form that product called cocaethylene. It's like they get together and they bond, and they recog--they're recognized as a new product.

Q Could you tell how--how soon prior to death she had consumed alcohol?

A I can't say that, no.

Q What about the alcohol--or excuse me--what about the cocaine though, given the fact that you had located the parent cocaine in her system?

A I would say she had done cocaine pretty recent or pretty

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close to the time of death because she had a sizable dose in there. Now if she takes a whopping big dose, it's gonna take longer for it to leave the system than a small dose. So if she used a huge dose of cocaine and then was alive for longer period--a longer than expected period of time, she still may have parent drug in there. So I can't say how long, but my experience has said when you see parent drug there, it's fairly close to the time of death, but I can't give you a time interval.

Q Human beings are not supposed to consume cocaine, is that correct?

A Correct.

Q It can be lethal to them, is that correct?

A Correct.

Q But for the manual strangulation, did Annette White have enough cocaine in her system that could have been lethal to her?

A If she had not been manually strangulated--strang--you know, strangled, yes.

Q What about the--that coupled with the alcohol? Did that have any bearing on that?

A That would have been a contributory factor, yes.

Q Okay. And sir, may I ask, have you conducted autopsies in regards to deaths caused by the consumption of--of cocaine?

A Yes.

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Q Are you familiar with cocaine as it relates to causing behavioral changes in a--in a person?

A Very loosely. I'm not a toxicologist or a medical toxicologist, so I don't see patients who are under the influence of cocaine. My general training has talked about that, I've seen videos, things such as that, but I don't have firsthand knowledge of that, no.

Q Well based on your training, what is your understanding?

A It's an excitatory drug. It causes--it--it's known to cause excited, agitated behavior. So people who are under the influence of cocaine can be very agitated, very aggressive. But it also can cause people to have cardiac arrhythmias or irregular heartbeats. It can cause them to have a seizure and go unconscious.

So it can have mixed effects, and then in the chronic cocaine user, I really don't have any knowledge of because your--you have people who

are naive to the drug, meaning they've never really used it before or use it very infrequently, and then your chronic users. So what may be a really potent dose for one person, may not have as much of effect on another person, and yet we also know that even in the chronic cocaine user, that last dose, albeit small, may be the final one. It hit their heart at the wrong time. It's a drug that's known to be active on the heart function itself.

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So if you can imagine a pump. If there's a cycle of a pump that's really vulnerable to knock it out of whack, if you did something right in that cycle, it can knock it out of whack. So there--it's kind of a--it's a drug that we really can't predict and probably what makes it not very effective from a therapeutic standpoint because you can't predict what's gonna happen.

Q Let me ask you this. Do you have any training or knowledge as it relates to an individual's perception regarding heat or hot flashes while using cocaine?

A No.

Q Okay. What about related to alcohol consumption?

A No.

Q Isn't it true that during a man--manual strangulation, there's really no marker for a time--or a timeframe, there's just a general idea of the time--length of time it would cause--

A Correct.

Q A death to come on.

A Correct.

Q Would that be different for each individual?

A Yes. Different for each individual and for each event.

Q Excuse me, I'm sorry. I didn't have--

A And for each event.

Q Each event?

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A Right.

Q What do you mean by that?

A The mechanics of the event. As I mentioned, your--when you're talking about minimums and maximums of time, you're talking about rules of thumb. In--in the ideal setting-not ideal--but I mean in the--in the setting where all things are met, you're talking about minimum's 30 seconds to render unconscious. That means you--you perfectly cut off oxygen. So if you have a struggle, only if you were perfect in your ability to hold oxy--cut off oxygen for 30 seconds and the person was at that right phase where they could be depleted for 30 seconds, then that would work. So each event, the mechanics are different, and each person is different.

Q Thank you.

MS. EIFLER: I have nothing further.

THE COURT: Mr. Fenton.

MR. FENTON: Yeah, I have some follow-up questions based on that cross-examine.

REDIRECT EXAMINATION

BY MR. FENTON:

Q There was some questions about petechiae, which is what now? Basically some kind of external bleeding or something?

A It's a pinpoint speck of blood which can be seen on the

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surface of the skin. It's where blood has leaked out of capillaries, the smallest blood vessels in the body, and that blood goes into the skin and it's seen as a sort of a pinpoint red mark.

Q Would you normally expect to see that on a manual strangulation case?

A You can, yes.

Q You can. Would you expect to?

A It depends. Again, manual strangulation depends on the event. If you compress the neck enough to compress just the veins, yes, you should see

petechiae. If you compress it hard enough to compress the arteries, no, you will not see petechiae.

Why? If you cut off blood flow to the brain, meaning cut off the influx of blood via the arteries-arteries are what take blood to the body part, in this case the brain-if you cut off that blood flow now, you don't have the pool of blood available to create petechiae.

So in cases where you put enough pressure on the neck, where you cut off blood flow in the arteries, all you have to do is compress 'em to where you don't get blood flow into the brain, you will not see petechiae.

Q Would you expect to necessarily see any external marks on a strangulation case?

A Not necessarily.

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Q So if you don't see external markings or petechiae, does that mean that's not a strangulation?

A No.

Q Does that an effect or change your conclusion as to cause and manner of death?

A No.

Q And there was some questions about the victim's ingestion of cocaine and alcohol. Obviously you didn't have the Defendant's body to test his blood for those drugs, did you?

A Correct.

Q So you have no idea if he had ingested any of those either.

A Correct.

Q You said cocaine--she had taken enough cocaine that--that could have been lethal.

A Correct.

Q Had she not been choked to death.

A Correct.

Q Anybody who takes cocaine--is it not true--could potentially die from that?

A Correct.

Q But you know as well as I do that people take cocaine every day and don't die, right?

A Correct.

Q Even these amounts that she had?

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A Correct.

Q Same thing with alcohol and cocaine and mixed together?

A Correct.

Q Could cause death, many people do it all the time and don't.

A Correct.

Q That's all I have. Thank you.

THE COURT: Miss Eifler, anything further?

MS. EIFLER: Thank you.

REXCROSS-EXAMINATION

BY MS. EIFLER:

Q Sir, Mr. Fenton was just asking you didn't know--you didn't have information regarding the Defendant, any level of cocaine he would have had in his system, correct?

A Correct.

Q You--you have no idea who caused the manual strangulation to Annette White, is that correct?

A Correct.

Q All right. That's not part of your job to--to try to match who may have con--committed a manual strangulation to the decedent, correct?

A Correct.

Q He also asked you that many people--he mentioned that many people use cocaine on a daily basis and--and do not die from it, correct?

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A Correct.

Q But you primarily see the ones that do die from it, correct?

A Correct.

Q Approximately how many autopsies do you conduct each year for individuals who expire due to cocaine usage?

MR. FENTON: I'm going to object as relevance. She s--he's already testified as to the cause and manner of death in this case, and it wasn't cocaine ingestion.

MS. EIFLER: I believe it's relevant because Mr. Fenton raised this on redirect.

THE COURT: Well overruled. That's not gonna indicate how many--in a particular person what's gonna happen or how many, you know, deaths overall would be caused by this amount of cocaine so.

MR. FENTON: How's that relevant? It's not at issue here before this jury. That's my objection.

THE COURT: It's--it's overruled. Next question.

Q Okay. How many do you--how many autopsies do you conduct each year then for folks who expire due to cocaine usage?

A I don't keep exact numbers, but I'm currently the medical examiner for Genesee County where Flint

is located. So that should give you some perspective.

Q Okay.

A The drug use there is rampant. So I would say in-- I would-

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-I don't know. I would say well over half of my current cases--and I've already done 250 since I started there--cocaine is a suspected drug or benzoyecgonine. So I don't even begin to have the numbers on that. I've been doing it for eight years, but it's high.

Q Thank you.

MS. EIFLER: I have nothing further.

REDIRECT EXAMINATION

BY MR. FENTON:

Q Well again, did that contribute to Annette White's death?

A No.

Q You said that cocaine can make people agitated, is that correct?

A Yes.

Q Does that necessarily mean agitated in a mean or aggressive way?

A No.

Q Can it just make people feel good and high and want to be hyper as well?

A I've been told, yes.

Q From what you understand in your training and experience.

A Yes.

Q Doesn't necessarily mean it makes people mean and want to fight, does it?

A Correct. Correct.

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Q Do you have any opinion as to the length of the high that someone would get from ingesting cocaine?

A No.

MR. FENTON: That's all I have.

THE COURT: Anything further, Miss Eifler?

MS. EIFLER: Yes ma'am.

RECROSS-EXAMINATION

BY MS. EIFLER:

Q On the other hand--on the other hand, this--this agitation could be--could make someone more

aggressive, more physically assaultive, is that correct?

A Again, from what I've seen, I have no firsthand knowledge. Possibly, yes.

Q Okay. I'm just--Mr. Fenton asked you your opinion again that the fact that cocaine was not the cause of death in this case, correct?

A Correct.

Q Once you determined, located the hemorrhaging and the bruising, and determined that the manual strangulation was the--the cause of death in this situation, is that--is that basically what you focus in on?

A When I rendered my cause death in this case, what I had at autopsy is evidence of the cause of death. The toxicology you get back after that fact.

In this case, this is the cause of death. It's much

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akin to a gunshot wound to the head. It is the cause of death, regardless of the cocaine. You can see cocaine in people who are shot, stabbed, whatever. We know the gunshot wound, the stab wound are the cause of death. In this case, this is the cause of death, regardless of the drugs in her system.

Q And I believe you--Mr. Fenton had asked you in the event, basically a perfect storm situation, the minimum before a person would lose unconsciousness is 30 seconds, is that correct?

A Correct.

Q And if everything comes together that could be the length of time it will cause--that would be to cause death or a person to eventually expire from the manual strangulation.

A Well 30 seconds is--is the rule of thumb for unconsciousness. Longer periods of time to cause the damage to brain which leads to death. So 30 seconds is sort of the minimum for unconsciousness, longer four to five minutes as rule of thumb for brain damage, and we know brain damage is what leads to death in these cases so.

Q Would you have any way of knowing if Annette White's heart stopped as related to cocaine usage after she lost consciousness?

A What I have is an injury pattern that happened while she was alive. At what point after this injury occurred--this

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injury was inflicted with her heart beating, okay? How long afterward, you know, the exact time of her heart stoppage, I can't talk about, and this is enough to cause the damage to stop her heart from beating. Cocaine with--can cause it also, but in this case, this is it.

Q Thank you.

MS. EIFLER: I have nothing further.

THE COURT: Mr. Fenton, anything further?

MR. FENTON: No your Honor.

THE COURT: Thank you sir. You may step down.

(The witness was excused at 2:41 p.m.)

THE COURT: Ladies and gentlemen, if you want to stand and stretch a moment, you're welcome to do that while the next witness approaches.

MR. FENTON: I call Dr. Charles Moore to the witness stand.

THE COURT: Please raise your right hand. Do you solemnly swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth so help you God?

DR. MOORE: I do.

THE COURT: Please have a seat sir. Why don't you repeat your answer. I don't know if the re--

THE WITNESS: I do.

THE COURT: If we picked it up. Thank you. And

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please speak as close to the microphone as possible.

THE WITNESS: Okay.

THE COURT: I need you to state your first name, your last name, and please spell both your first name and your last name also.

THE WITNESS: Charles Moore, C-H-A-R-L-E-S,
M-O-O-R-E.

CHARLES MOORE

(At 2:42 p.m., sworn as a witness, testified as follows)

DIRECT EXAMINATION

BY MR. FENTON:

Q What is your profession, sir?

A Physician.

Q What type of physician?

A Emergency medicine.

Q Are you licensed to practice--practice emergency medicine in Michigan?

A Yes.

Q Can you give us a little bit about your background that qualifies you to practice emergency medicine.

A I did a residency from 1976 to 1979 at Detroit General Hospital, specializing in emergency medicine. I've been working since 1979 at Borgess emergency department.

Q Are you licensed in Michigan to practice emergency

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medicine?

A Yes.

Q And you've been doing so for numerous years as you just testified.

A 29.

MR. FENTON: Move for admission of this witness as an expert under MRE 702 in emergency medicine.

MS. EIFLER: No objection.

THE COURT: He is so qualified. Go ahead Mr. Fenton.

MR. FENTON: Thank you.

Q Dr. Moore, did you happen to see Annette White as a patient a few days before her death on January 8, 2007?

A Yes.

Q Where'd you see her at?

A In the emergency department, Borgess Medical Center.

Q What did you see her for?

A Injury to her left wrist.

Q Did she indicate for purposes of diagnosis and treatment what her injure--how she obtained her injury?

A Yes she did.

Q What'd she say?

A She had it hurt the evening before at her neighbor's house. She indicated somebody pushed her against the wall, somebody named Andre, and that was around 12:30 I think,

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and she came in the next morning with pain in her wrist.

Q Did you diagnosis it?

A Yes.

Q What did she have?

A A fracture of her left wrist, distal radius.

Q Did it require treatment?

A Immobilization and follow-up.

Q Immobilization how?

A We used a cock-up splint.

Q What kind of wrist splint?

A It's called a cock-up splint.

Q What's that?

A It's not a cast, it's just a velcro splint.

Q So it's like a removable cast?

A Yes.

Q Some sort of thing, somebody can take it off?

A A splint, yes.

Q What limitations would she have with the use of that arm based on that injury?

A Well certainly it would be painful to use it. That's why you immobilize it.

Q Would she have the full use of it or full range of it if as though were not broken?

A Her range of motion would be limited by the amount of pain she had.

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Q How long does it take to recover from such an injury?

A Six weeks or more.

Q Thank you. That's all I have.

THE COURT: Ms. Eifler.

MS. EIFLER: Thank you.

CROSS-EXAMINATION

BY MS. EIFLER:

Q Sir, again it's your understanding that this injury occurred as a result of an aggressive or an assaultive situation with another individual, is that correct?

A Yes ma'am. I have a hard time hearing you.

Q Okay. I'll try to--I'll try to speak up. Did you need me to repeat that?

A Was this injury related to some other--some other incident? Just repeat it.

Q Okay. Thank you. She reported to you that she obtained this injury due to being in an altercation with another individual, is that correct?

A Yes.

Q To the best of your knowledge, did she have full range of motion of her elbow?

A Yes.

Q How about of her shoulder?

A Yes.

Q All right. The immobilization, was that primarily of the

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wrist and the surrounding hand area?

A It would extend from mid-forearm to middle of the hand, you can use your fingers.

Q She could still use her hand--fingers?

A Yes.

Q Okay.

MS. EIFLER: I have nothing further. Thank you.

THE COURT: Mr. Fenton.

MR. FENTON: Nothing else.

THE COURT: Thank you sir. You may step down.

(The witness was excused at 2:47 p.m.)

THE COURT: Does anyone need a break? My plan is to listen to one or two more witnesses, depending on how quickly they go, and then we'll take a break, okay?

MR. FENTON: I'd call Gerald Luedecking.

THE COURT: Please raise your right hand. Do you solemnly swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

MR. LUEDECKING: I do.

THE COURT: Please have a seat, sir. Please state your first name and your last name, and please spell both your first name and your last name for the record.

THE WITNESS: My name is Gerald A. Luedeking.

It's G-E-R-A-L-D, L-U-E-D-E-C-K-I-N-G.

* * *

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A-T-H-A-M.

GARY LATHAM

(At 3:33 p.m., sworn as a witness, testified as follows)

DIRECT EXAMINATION

BY MR. FENTON:

Q Are you a crime lab--let's see. What is your formal occupation?

A I'm currently employed by the City of Kalamazoo Department of Public Safety. I am promoted to the position of crime lab specialist.

Q What is a crime lab specialist?

A A crime lab specialist is a senior member of the crime lab. We specialize in drug testing, evidence preparation, evidence recovery, as well as crime scene documentation and preservation.

Q Did you respond to the scene of where Annette's--Annette White's body was found in the city of Kalamazoo, in the county of Kalamazoo, State of

Michigan on Blakeslee in the wooded area on January 13th, 2007, in the afternoon hours?

A Yes I did.

Q Did you process the crime scene?

A Yes I did.

Q Were you present when photographs of the crime scene were taken?

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A Yes. Lab Technician Neldon took those photographs.

Q And you were present and have you had a chance to look at them?

A Briefly, yes.

Q And do they accurately depict the scene?

A Yes they do.

Q Did you also participate in and observe the footwear impressions that were casted?

A Yes. I was actually a active participant in that. At the time I was actually instructing Technician Neldon and this was one of his first cases that he actually got a chance to process.

Q So we've already seen some photographs of a footwear impression and--I seem to be missing it--

you've seen People's Exhibit 24, which is the actual photograph of the impression at the scene, correct?

A Correct.

Q And so you observed that and assisted in actually casting that?

A Yes I did.

Q And we saw the photograph of the cast, which is People's Exhibit 23, and that--is that an accurate depiction of the cast that he made?

A Yes it is.

Q And the cast itself has already been introduced into

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evidence as well, which was People's Exhibit 27. You participated in casting this, correct?

A I certainly did.

Q And you've had training and experience in doing that?

A Yes I have.

Q This isn't the first footwear impression you've made?

A No sir.

Q All right. Now the last witness who testified, Gerald Luedeking, is he also a senior member of the crime lab?

A Yes sir.

Q He's a specialist also?

A He is.

Q He wasn't out there at the time that you were making this cast, right?

A No he was not.

Q But he participated in the comparisons afterwards.

A Correct.

Q All right thank you. I want to go through the crime scene with you and for the jury's benefit. I'll show what's been marked as People's proposed Exhibit 2 first of all. Is this an accurate depiction of the entrance to--if you will--where the body was found?

A It is. The--the crime scene that night, obviously as you can see here this is a flash photography, so it's a accurate depiction as far as the camera sees. It was dark

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at the time that we were there.

Q All right.

MR. FENTON: Move for admission of People's Exhibit 2.

MS. EIFLER: No objection.

MR. FENTON: Can we see that please.

THE COURT: 2 is received.

(People's Exhibit 2 is received at 3:37 p.m.)

MR. FENTON: Thank you.

Q So describe what we're looking at for the jury. I believe there is a laser pointer somewhere if you need it up here.

MS. HYBEL: On the cart.

Q Buried under all this evidence.

A Oh here it is.

Q Okay. Where would the street be in relation to where we're at?

A There are actually two streets--or three to be more correct I suppose. We have Blakeslee, which is gonna be behind the picture what--that you're seeing right here. This would be as if you were standing close to Blakeslee Street and you're gonna be looking relatively toward the south. The second street that you have is Prairie, and that street is gonna be located over in this area and it's gonna run pretty much north and south there.

The connecting street--and I'm not sure if it actually

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has a name or if it's just kind of a cross-over--there's a third street that creates a triangle in this area, and it runs pretty much in this direction and it would be over to your left as you look at this picture.

What you're looking at right here is an entrance to--for lack of a better term--a trail into the woods, similarly to what it would be ridden on by a mountain bike or a hiking trail. And this trail actually heads towards the south, meanders down a quite large hill where it meets up with a secondary trail at the bottom.

Q I'll show you what's been marked as People's Exhibit 3. Is this a closer up of the trail?

A That is.

Q Accurately depicted?

A Accurately depicts what we had there that night, yes.

MR. FENTON: Move for admission of People's 3.

MS. EIFLER: No objection

THE COURT 3 is received.

(People's Exhibit 3 is received at 3:38 p.m.)

Q Please describe it for the jury.

A What you're looking at here, from the other picture, we've now moved further to the south. As you see here, we have tons of briars that are hanging into the trail area, but here is the trail that I was speaking of, the hiking trail or--or like a single track for a mountain bike.

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The victim's actually located just a short way down this trail to the left hand side.

Q Now is there any--anything significant about those number placards that you've got there in the picture, five and six?

A Prior to my arrival on the scene, Technician Fall had been at the scene and secured it. He also examined it--loosely examined it and noticed some footwear impressions and he put the numbers out to identify different footwear impressions that were there so that they weren't trampled on, weren't ruined as more people ended up coming to the scene to process it.

Q I'll show you what's been marked as People's proposed Exhibit 4. Is this farther along into the woods with a shot--the first shot of the body as well?

A Yes it is.

Q Accurately depicted?

A It's an accurate depiction of that part of the scene, correct.

MR. FENTON: Move for admission of People's Exhibit 4.

MS. EIFLER: No objection.

THE COURT: 4 is received.

(People's Exhibit 4 is received at 3:40 p.m.)

Q Please explain.

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A This is a little bit further down the trail. As we head south down our single track here, to the left hand side, in the briars themselves, we've located our victim lying facedown in--in the briar patch.

What was noted about this general area when we got closer is the fact that the briars close to the trail didn't seem to be disturbed. There is no disturbing of the briars as if you were--were tracking through it or if you had stepped on them, broken them down. And they appeared to be in relatively decent shape, except for the area where the victim was located.

Q That was significant to you why?

A Being that I--I've been raised on wooded acreage my whole life, I know that if you have to walk through briars, you're gonna make--you're gonna leave your mark. You're gonna leave some briars stepped down. It was significant because the--the

victim was lying a significant distance from the path, but it didn't appear that anyone had--had entered the area. They hadn't walked over there and placed the victim there. They hadn't drug the victim to that location. It appeared that the victim was almost thrown to that location.

Q I'll show you what's been marked as People's proposed Exhibit 5. Is that a closer up of the victim?

A That is, it is a accurate depiction of the scene.

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MR. FENTON: Move for admission of 5.

MS. EIFLER: No objection.

THE COURT: 5 is received.

(People's Exhibit 5 is received at 3:41 p.m.)

Q Please describe.

A This is a little closer of the victim. We've now moved south of the victim and kind of into the briar patch itself. But if you notice the briars here, which would be the closest to the trail, aren't disturbed. This area here isn't disturbed. The briars aren't broken, the briars aren't trampled down.

Something that really caught my attention when we were there is this stick in particular, that you see sticking up there to the left of the victim, actually ends up being broken. It's broken and the broken piece of it is lying under the victim itself, as if to kind of affirm my thought that the victim

was drug to that location, wasn't placed there, but actually some force was involved, whether the victim was thrown or howmever (sic) the victim got to that location.

Q Besides that did it appear that there was any kind of struggle there? Were other things disturbed in the immediate area?

A There was nothing that--that showed any sign of struggle. There was nothing that showed that the victim had any--that

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the victim had actually walked in that area, because if you notice the bottom of the victim's socks, they appeared to be void of dirt. And if you notice the two-track from earlier, it was a completely dirt, mud two-track, enough to make footwear impressions.

The ground was soft and there was no dirt, no mud, nothing on the lower extremities of the victim. It wasn't until later when the medical examiner arrived that we actually rolled the victim over, and the only injuries that we could see weren't really injuries themselves. It was merely the pressure of the--the weeds and the--and the brush pushing up on the skin, and as--as a person is dead and the brush or whatever you're lying on, it leaves an impression, and that impression stayed as we rolled the victim.

Q And I'm going to show you the next picture where she actually is rolled over, but before I do that, can

you tell in this photograph where the--the footwear impression was found, which was later matched or at least same characteristics as the Defendant's shoe?

A The footwear that--that was identified by specialist Luedecking was actually located closer to the roadway, closer to Blakeslee. It would be in the general area of where we had the first picture that you showed, showing the trailhead, showing where the--where the weeds go in. That

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footwear was in that soft ground right there.

Q All right thank you. I'll show you what's been marked as People's Exhibit 6. Is this an accurate depiction of the victim being rolled over?

A Yes it is.

MR. FENTON: Move for admission of 6.

MS. EIFLER: No objection.

THE COURT: 6 is received.

(People's Exhibit 6 was received at 3:44 p.m.)

A This is a depiction of when we actually rolled the body when the medical examiner was there. As you can see, these are the indentations I was speaking of earlier of--from the foliage there on the ground that left impressions in the body.

This is the stick that I was speaking of earlier, and you can't really see--this photo doesn't really show very well--the secondary part of it that's broken, but it--it was underneath the body, and it was a fresh break. It wasn't like the stick had been broken and just lying there and just happened to be where the victim ended up. It was as if the force of that victim hitting that location broke the stick.

Q Was a--any kind of murder weapon or anything like that found near the scene?

A There was nothing located that would have been--anything I

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would have ventured a guess as being a murder weapon.

Q And was there any obvious cause of death to the naked eye?

A There was nothing that we could tell on the scene that night as far as manner of death.

Q Did you and other laboratory technicians process the scene as thoroughly and completely as you could for any other forms of evidence that you could find?

A We did.

Q Was there anything significant besides the shoe impressions developed?

A We located several areas. We found a sock further down the trail, but of course the victim had both their--her socks on.

Q Let me--

A Things--

Q Go ahead. Let me ask it this way. Was there anything relevant that you found besides what you've already testified about?

A Nothing relevant, no.

Q All right. Now did you diagram the scene for it--for--for later preservation in some fashion?

A Correct. We--we marked the scene the best we could that night. We were expecting quite a storm to come in. We gathered the evidence, we collected it as--as speedily as we could in doing it completely. From that point we marked

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places of evidence with evidence flags and we kept the scene secured until we were able to come back with our total station and map out the scene itself.

Q Your total station, what's that?

A The total station is a forensic mapping device. It's comprised of a theodolite, which all that does is--is measures angles. It's similar to what a surveyor would use to survey property. It's also coupled with a laser measuring device. With that, we're able to make a scaled diagram of scenes to the tolerance of

like a thickness of a matchbook cover, and that's within 1,000 feet. It's very accurate. It allows us to have a visual representation of locations of evidence, locations of--of items found at the scene, so that we can come back later and--and say how far away something was from something else.

Q Okay. Let me show you People's Exhibit 25. Is this the result of your forensic mapping of the scene in terms of diagram of the area and where--where the body was found?

A That is. This is a diagram produced by me, using the total station.

Q Does it accurately depict the locations and general areas that you've testified about?

Q It does.

MR. FENTON: Move for admission of People's Exhibit 25.

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MS. EIFLER: No objection.

Q Can you--

THE COURT: 25 is received

(People's Exhibit 25 is received at 3:48 p.m.)

MR. FENTON: Thank you your Honor.

Q Can you explain what we're looking at for the jury then as terms of overview of the scene.

A I sure can. What we have here--and this will easily--more easily descript (sic) what I was talking about with the streets. We have Blakeslee here to the north. We have the trail going through the woods here. We have Prairie, which starts here and actually kind of takes a jog but ends up going north and south, and then this is that connection street that I was talking about, that I'm not actually sure has its own name other than just being a connection between Blakeslee and Prairie.

The little dots that you see here, which are kind of hard to read from this location, are actually points of evidence, things that we took from the scene that day. Whether that was a footwear impression or if it was a--a tire cast or where the body was located. And actually right here--it's kind of hard to make out, but right there is a body in the location that she was when we found her. We marked where her head was and where her feet were and put in the scale a person to depict what--what was actually

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there.

Q So if I understand you correct, the body was found here?

A Correct.

Q Is that the depiction of the body?

A Yes, that's where the body was.

Q What is this area here between the street and the back?

A It's really just kind of a grassy--for lack of anything better--a yard. It's just kind of a grassy trailhead that leads into this area. There's another little spot back here that is another small trail, but it doesn't actually lead to anything. It really just dead ends into the woods.

Q Do you have any kind of distance as to how far the body was found from the road?

A I don't have it written right out, but I could do a quick measure with what we have here and tell you--

Q Or an estimate?

A Yeah, I can give you a quick estimate if you give me just a second.

Q Sure.

A Just a quick estimate measuring with a--what I have here, we're close to 60 feet from the road where the victim was located. This scale that you see here is a 20-foot scale and that being used on this diagram, it's a little over 60 feet to the edge of the roadway.

Q And so if my estimation's be right at about 30 feet from

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the beginning of the trail or into the woods?

A Correct.

Q All right. I'll show you what's been marked as People's proposed 26. Is this another way of looking at that diagram, perhaps closer up to where she was actually found?

A Yes it is. It's actually a--a blown up section of the same drawing.

MR. FENTON: Move for admission of 26.

MS. EIFLER: No objection.

THE COURT: 26 is received.

(People's Exhibit 26 is received at 3:51 p.m.)

Q Can you just briefly describe that for the jury.

A As I said before, it's really a blown up representation. It's about the exact same drawing, just in a different area, a little larger so it's easier to see. A little easier to see the location of the victim where those evidence placards were that we showed in the--one of the first couple photos that we looked at. The entrance to the trailhead, and of course the trailhead obviously wasn't demarked (sic) with these wonderful straight lines, but in general we have to use something, and we used the tree edge to make our lines here. And then this is Blakeslee and showing all our points of evidence that we located at that.

Q Do you know which evidence placard depicts the footwear impression that was later generally matched to the

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Defendant's footwear?

A I do. It was our evidence placard number three.

Q Can you--is that on the diagram? Which one is it?

A It certainly is. Evidence placard three is located in this area right here.

Q All right. And for the record that's on the grassy area?

A It is. It's very--it was some extremely soft, grassy dirt located between those two trees.

Q Were there any footwear impressions developed anywhere directly where the body was dumped?

A Close to it. These footwear impressions right here--I don't know the numbers right off hand there--looks like four, five, and six were located on the trail itself. And they appeared to be similar boots to what a uniformed officer would wear, as well there was a--I believe there was impression that appeared to me--and I'm not a footwear expert--but it appeared like a--

MS. EIFLER: Your Honor, I'm gonna object then. If--if he's not an expert then it's probably outside of his realm.

THE COURT: Mr. Fenton.

MR. FENTON: Well under 701 he can give his general observations.

THE COURT: I'll allow it, overruled. Go ahead.

A It appeared to be like an athletic shoe.

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Q All right. I take it there were several officers at the scene that night.

A There were. There were officers that had been at the scene prior to my arrival. I had actually been called in, I was off duty at the time.

Q Were their footwear either photographed or used for comparison purposes as well?

A I believe it was, yes.

Q And did Officer Luedeking look at those as well?

A He did.

Q Did he make some identifications?

A He actually identified I believe two of our officers from those footwear impressions.

Q All right. Now later on you were asked to inventory and look at a car that Mr. Davenport had been driving that was involved in a crash, correct?

A Yes sir.

Q Did you photograph that car?

A I most certainly did.

Q I'm gonna show you some pictures of that vehicle. See if I can get a date here for you. Would that have been on January 18th, 2007?

A Yes sir.

Q Five days after Annette's--Annette White's body was found, Correct?

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A That's correct.

Q All right. I'll show you what's been marked as People's 14 through 19. Just look at them to yourself first of all and indicate whether or not they're accurate depictions of that vehicle that you processed.

A Yes they are.

Q When I say processed, I mean photographed and looked at and that sort of thing.

A Yeah. The term process that we use in the crime lab can mean several different things. In this particular case, we were asked to examine the vehicle for any signs of trace evidence, anything that was out of the ordinary.

No particular--you know, items were asked to be, you know, looked for. Just looking for things that would correlate this car possibly to our scene, and so in that case, a complete inventory was done of the car, including things that were located in the trunk and in the backseat.

MR. FENTON: If I haven't already done so, I'd move for admission of People's 14 through 19.

MS. EIFLER: No objection.

THE COURT: 14 through 19 are received.

(People's Exhibit 14 through People's Exhibit 19 was received at 3:56 p.m.)

MR. FENTON: First can we have 14.

Q Describe for the jury what we're looking at please.

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A We are--we are inside the crime lab bay at our Public Safety headquarters. It's a secured vac--facility, which is only accessed through our proximity cards and there's a limited access among the officers even to get into the bay.

This vehicle had been towed into, brought in with Mc Donald's Wrecker, and placed in our lab bay, and the lab door shut. Right now what we're looking at is the front right corner of that vehicle, and I--

Q What kind of vehicle is it?

A I believe it was a Buick, but I could refresh my memory from my report.

Q Please, and year on that as well.

A It was a 1991 Buick.

Q Thank you. Looks like it's in pretty bad shape.

A From what I have recalled from the scene--or from reports, that day I had showed up for work and was advised that we had been in it earlier--

MS. EIFLER: Your Honor, I'm gonna object. I don't know that this individual has firsthand knowledge of what led up to this vehicle being--

THE COURT: Counsel, will you approach.

(Bench conference begins at 3:57 p.m. between the Court and counsel, transcribed as follows)

THE COURT: What's the purpose of having the shape of the vehicle?

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MR. FENTON: Well we're going to get into that with the officers who testify that he was fleeing from the police. That's all it is. It's just--

THE COURT: Well it's--

MR. FENTON: Obviously it depicts that it was in a crash.

THE COURT: And--and how does that relate to this? How's that relate to this case?

MR. FENTON: He was running from the police, that's how he came into custody. He was later--he crashed the vehicle and then it's a--what's been defined at the scene.

THE COURT: You can indicate that he was driving and I mean did you need to say that was fleeing?

MR. FENTON: Well he was fleeing. We'll have evidence of that later from other officers. I'm just asking him to describe the photograph, that's all.

MS. EIFLER: Well I would say let the other officers--

THE COURT: You can't hang--

MS. EIFLER: I'm saying let the other officers testify to that then.

MR. FENTON: If--

THE COURT: Well if they're gonna testify, I don't--

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MR. FENTON: It's harmless.

THE COURT: If it's gonna come out, it's gonna come out.

MR. FENTON: But then if--

THE COURT: I don't think--

MR. FENTON: But (inaudible--Court speaking over Mr. Fenton)--testify about the whole thing. So he's just explaining the photograph, that's it.

THE COURT: Well--

MR. FENTON: It's not being offered for the truth of anything.

THE COURT: Okay. I'll allow it.

MS. EIFLER: Okay.

(Bench conference ends at 3:58 p.m.)

THE COURT: Mr. Fenton.

Q Please continue officer.

A I was advised that the vehicle had--that we had been involved a pursuit earlier that evening. The vehicle had crashed during that pursuit, and it had been secured into the lab bay and needed processed.

Q So does this photograph depict a lot of damage to that vehicle?

A It does. It depicts damage consistent with a vehicle that has been in a crash and/or rolled over upon itself, crushing the top area of the vehicle, including the

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windshield, crushing the ceiling of the--of the passenger compartment and as well as damaging the axles and the driver's side.

Q Now do you know who the vehicle was registered to?

A I do not know who the vehicle was registered to.

Q Is that in your notes any where?

A I believe it is.

Q Can you take some--

A Sure.

Q Time and see if you can discover that.

A My notes say that the vehicle was registered to a Tracie-I'm gonna mess up the last name, but I'll spell it for you-G-O-L-T-Z-E-N-E, and that was out of Paw, Paw Michigan.

Q Tracie?

A Correct.

Q Goltzene.

A Sure.

Q All right.

MR. FENTON: Now can we see the next photograph please. What's the number on this one?

MS. HYBEL: 15.

MR. FENTON: 15, thank you.

Q Can you just-

A This is a--

Q Go ahead.

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A This is a picture of the driver's side of the vehicle. Again, the damage that I was describing earlier, consistent with a rollover crash with the denting on the--on the top of the vehicle, as well as the damage to the driver's side, broken axle on the rear of the vehicle. Numerous scratches on the--in the metal, which is consistent with it rolling over on a paved surface.

MR. FENTON: 16.

A This is gonna be the rear of the vehicle, the driver's side rear. Depicting some more damage, more of the scratching. The rear trunk was damaged but still latched at this point. The passenger side of it was crushed in quite severely, and--but it appeared that in--in general the contents were inside the trunk that--I could see through the crack here, which is large enough for me to actually look into and see items in the trunk.

MR. FENTON: 17 please.

Q What's this?

A This is after we removed the locking mechanism on the trunk itself. The keys weren't with the vehicle, so the lock had to be actually removed from it. And the trunk was opened and this the trunk before any processing began. This is just a photograph of where things were located inside that trunk.

Q So describe what's--what is that, that's all in the trunk?

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Show us with your laser and describe it for the jury.

A There--there's a lot stuff in here.

Q What's--what's on top? Start from the top and then go down.

A We'll go from the top down. Right off the bat we have a trash can located on the top, a large plastic trash can. Wasn't really anything in the trash can at this point in time. We had a can gas located there. What you see here is a red shirt, which was kind of used like a laundry bag. It had just crammed full of clothing, appeared to be dirty clothing, and it was stuffed back in--inside the trunk here. We had other clothing inside the trunk as well.

What you see on--located on the top of the trash can is--is glass. The back window of the vehicle had been smashed out during the crash and some of the glass particles from that rear window actually ended up inside the trunk.

Over here to the right we have a snow brush, it was January at the time. And this item located under here looked like a heater to me at the time of examination. I'm not exactly sure we ever firmed up what that was.

Q Were there other items underneath this trash can, and clothing, and gas can as you've described?

A There were. There were layers of items inside the trunk.

MR. FENTON: Can we see the next photograph.

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This is what, 18?

MS. HYBEL: Yes.

Q What is 18 depict?

A We've removed kind of the first layer. We removed the trash can and the gas can. Here's that red shirt I was talking about, kind of utilized as a laundry bag. But now we're able to actually look back in here, we've got shoes located further down. This is the item I've described as a heater. A sandal located back here, some plastic jugs, more loose clothing, and there was still more inside the trunk, another layer beyond this.

Q Does 19 depict that?

A Yes it does.

Q What do we have in 19 in the third layer?

A The third layer, we've removed a lot of the clothing, the loose items, removed the item that I called the heater. And in here we have extension cord, jugs of deicing fluid, another snow brush. We have a tool bag here, a VHS tape, a pillow, the spare tire, which was loose in the trunk. Kitty litter and some more loose clothing just lying about.

Q Now originally when you inventoried item--first of all, let me ask you, did you inventory all this material?

A We inventoried the--the trunk itself and the things that were in the trunk we looked at. Like I went through the bag of clothing. Anything that was out of the ordinary was

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packaged separately, anything that appeared that may have even an inkling to do with the case was packaged separately.

Q So did you see any kind of box cutter, or razorblade, or knife when you first inspected the trunk?

A Nothing that drew my attention at the time, no.

Q Now what was it, around a month or so ago I called you, did I not, and ask you--asked you whether or not you actually inventoried that tool bag?

A Yes. It was about a month ago.

Q Had you done that before? Had you looked inside of the tool bag and inventoried everything that was in the tool bag?

A I had not. I'd not got through it. It-

Q Why not?

A It didn't appear relevant at the time.

Q All right.

A As I stated before, we were asked to do a general processing of the vehicle, looking for items that would tie this vehicle to our crime scene, and the tool bag--even though we looked in it--we never went through it piece by piece.

Q So when I called you and asked you to do that, what did you do?

A I got the box that the--the evidence box where the tool bag

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was located in. I removed that tool bag from the evidence box and went through it piece by piece.

Q Did you find a box cutter at that point?

A I did.

Q Was that the only thing in there?

A No.

Q What else was in there?

A Just normal tools that you would find in a toolbox. Drywall saw, a ratchet, some sockets, various sanding pads. There was also a kind of a knit cap that was located on the top of the toolbox (sic) as you unzipped it. It was a nylon tool bag and as you unzipped it, the knit cap was across all the tools in a fashion like someone had placed it there.

Q Did the box cutter that you found there, did it appear to be out of order in any way?

A No.

Q Did it appear to have been randomly or haphazardly thrown in there?

A No.

Q How did it--how was it in relation to the other items that were in there?

A It was on the bottom of the tool bag, along with the drywall saw and several other times. And it--it appeared just as a razor knife, a box cutter would in a--in a

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toolbox.

Q Do you know was the blade open?

A I believe the blade was shut.

Q Did you analyze it for any kind of forensic evidence?

A Yes I did.

Q Did you find anything?

A I printed the item, I examined it using cyanoacrylate, which is super glue, attempting to locate any latent fingerprints on it. None were located. The item was then powdered, it was also dye stained, and examined with a forensic light source.

The blade itself was examined for any traces of blood. On the blade itself, as it was extracted from the box cutter, there was kind of a brownish material on it. That brownish material was taken and I--I observed that using a polarizing light microscope and a infrared spectrometer, and it came to my attention that it was ferrous oxide, which is nothing more than oxidized metal. So the blade was actually rusting. But we had no--no trace amounts of blood, none of the presumptive blood tests came back as a positive.

Q And you were asked to package that or somebody was to bring it to court for the trial, correct?

A That's correct.

Q I've marked this as I believe People's Exhibit 44. Yes.

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Is this--it's been packaged for court, has it not?

A It has.

Q Which means all the tools were actually taken out of the bag?

A That's correct.

Q Other than that, is this the exhibit that you saw in the third layer of the trunk of the car that the Defendant crashed?

A Correct. Everything that you see from this point on was actually inside the tool bag.

MR. FENTON: Move for admission of People's Exhibit 44.

MS. EIFLER: No--no objection.

THE COURT: 44 is received.

(People's Exhibit 44 is received at 4:08 p.m.)

Q And so where's the box cutter in here?

A The box cutter is located right here.

Q All right. So here's the box cutter.

A Correct.

Q And again, maybe you could just explain how this was all packaged in the tool bag please.

A The--the tool bag I had packaged with other items that we got out of the trunk because at the time it did not seem relevant.

Q Once I removed it from the box, it was opened to find

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this knit cap over the top of it. From there, there were items located--the hacksaw was toward the top as long--along with several of the sanding pads being lighter in general. Beyond that, the thing that drew my attention was the sockets and the sock--and the box-end wrenches, which are laying in there as--as they are in my toolbox at home.

As we got further down it in and I started taking out the box-end wrenches and I started taking out the sockets, that's when I located the drywall saw and the box cutter.

Q All right. Did there appear to be anything unusual or out of the ordinary about the placement of this box cutter or anything else about it at all in this toolbox (sic)?

A No. It just appeared to be in its right spot.

Q Did you notice any orange peels in the car?

A I believe I did. I located orange peels as well as an orange in my--

Q Where was that?

A It was in the dashboard. This vehicle has a--kind of a recess in the dashboard, and the orange was in that recess.

Q Let me ask you this question. I'll show you what's been marked as People's Exhibits 20 through 22, photographs of the box of shoes. Did you ever see these?

A I have not.

Q You were asked, were you not, to take the original DVD tape of the Defendant's interview and edit it for purposes of

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court, were you not?

A I was.

Q I'll show you what's been marked as People's proposed Exhibits 34 and 35. Did you do that?

A I did. Let me take a look at some--

Q Did you make two DVDs consisting of several portions of the Defendant's interview from the original for purposes of court at the prosecution's request?

A Yes I did.

Q Do those accurately depict those relevant portions of the tape?

A Yes.

Q Did you doctor it or edit it in any way or alter it?

A No. I was given timeframes from the original interview that were requested by the prosecution to be put on a single DVD for courtroom purposes.

Q Thank you.

MR. FENTON: Move for admission at this time of People's Exhibits 34 and 35.

MS. EIFLER: No objection.

THE COURT: 34 and 35 are received

(People's Exhibit 34 and People's Exhibit 35 are received at 4:12 p.m.)

MR. FENTON: I don't believe I have any further questions for this witness.

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THE COURT: Miss Eifler.

MS. EIFLER: Thank you.

CROSS-EXAMINATION

BY MS. EIFLER:

Q Good afternoon.

A Good afternoon.

Q Sir, originally you processed this vehicle I believe you said on January 18th of 2007, is that correct?

A That's correct.

Q All right. And that's when you went through the trunk, and you took the photos, and kind of inventoried the trunk, correct?

A That's correct.

Q All right. Now tells us a little bit more about you went through a bag of clothing, is that correct?

A Yes I did.

Q All right.

A Actually it was a shirt.

Q A shirt?

A That was kind of utilized as a bag.

Q Okay.

A As if someone had taken a T-shirt and stuffed it full of dirty clothes.

Q Did you go through the contents then of what was contained within that shirt?

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A I did.

Q You did? Okay. And you got--you went through every item in there?

A I went through the--the clothing to see if there was anything that had what would appear like a blood stain on it. I removed I think two items from that that weren't really out of place but they had staining on 'em, and I packaged those separately from the rest of it.

Q Now this item that you called a heater, was that in--did I notice that was in a box?

A Actually it's not--not a box, is it--that is actually the item itself.

Q Okay. All right.

A It's kind of--well it's kind of like a space heater that you would use in your house, kind of a flat--

Q So if I understand you correctly, on January 18th you opened up the black tool bag, is that correct?

A Yes. We--I opened it, looked it in it to see if there was anything right on top and being that there was nothing seen right then, it was packaged with the rest of the items.

Q And then it wasn't till much later when you actually went through and inventoried every item, correct?

A That's correct. It wasn't till I was asked by prosecution based on what they had gleaned from the investigation to go through that particular tool bag.

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Q Do you--what's your understanding of why you were asked to go through that bag?

A I--my understanding was that the Defendant had said that there was a box cutter somewhere in the vehicle.

Q Were you advised what color that particular box cutter would have been?

A Not at the time of my initial examination, no.

Q Okay. Did you later learn?

A Yes.

Q And what was your--what the Defendant had said that--the color of it.

A I believe it was blue and gray is what he had said.

Q And the one that you located was blue-handled, correct?

A Blue and gray, correct.

Q Blue and gray. That would have been on May 20 of 2008, correct?

A Yes.

MS. EIFLER: Can we have Number 4 please back up.

Q Now you--did you--you actually processed this scene, correct?

A Correct.

Q All right. And so you looked through the--through that area for footprints?

A I did.

Q Okay.

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A Actually in this general area here, after we had worked our way in from the outside, I was on my hands and knees trimming the foliage away to examine later. It was actually packaged up as an evidence package, the foliage from around where the victim was located.

Q Can you tell us--do you have any idea what the distance is--I'm gonna approach over there. How much

distance is there between this area here and then here.

A From the weed area to where the victim was-

Q Right.

A Or was the trail is?

Q From that--it--

A From you're asking--

THE COURT: Let me do it this way. Can you use- I think there's a pointer because otherwise we're not gonna pick it up if you're not near a microphone, Miss Eifler.

MS. EIFLER: Thank you. All right. Let me see if I can get this to work.

THE COURT: Thank you.

Q All right, this particular area right here to where the victim is at.

A I can give you a general-

Q Okay.

A Distance and actually if I could use my--use one of the exhibits here, I think it's 26--

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Q 26, sure.

A I can measure it off. From the edge to about the center of the body's roughly five feet.

Q Five feet, okay. Now is it your understanding that officers had been on the scene, that there had also been passerbys who had come in that general location.

A Correct, yes.

Q All right. So it--there had been others who had been around this particular area, correct?

A Yes they had.

Q All right. And the footwear that you had observed was farther back on the trailhead, is that correct?

A Yes. We observed footwear on the trail itself, as well as footwear out in the grassy area leading up to it.

MS. EIFLER: And can we please have Number 5.

Q Now in this particular area right here, would you agree that there is--there are no briars right particularly there, at--

A There is none to--

Q At least they're not as dense as the briars right here.

A I would agree. There's--they're not as dense here. We do have a briar--this is kind of an optical illusion a little bit. It appears that it's going up over the top of the body. It's kind of more this way of her

foot. It's casting a shadow on the backside from the flash. But yeah,

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there--there are less briars here than there are in the dense area around it.

MS. EIFLER: Can we go back to Number 4 again please.

Q And in this particular area, again, that looks to be less dense than the area right around the body, is that correct?

A I wouldn't say that this is less dense. You have quite a snag of briars right here. The area that we were talking about is--if--if we had a three-dimensional image then I could kind of go up and over the top of it, it would be in this area where the victim's feet are located. And as we moved in closer to the victim, of course we had to move briars to get in closer.

Q Now you were--when you were observing this area, you were looking to see if there had been signs that someone had walked on top of the briars, correct?

A Correct.

Q All right. And you've--you've already testified about your experience with briars.

A Yes.

Q Sometimes you can walk through the briars and they catch your clothing, but you're not necessarily standing on top of the briars, isn't that correct?

A Correct.

Q All right.

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A They'll catch your clothing at times.

Q You don't necessarily cause any damage then if you walk through the briars and not break them down, correct?

A Normally you can see where something or somebody has been through a briar patch, especially in colder weather when the briars and the actual foliage is--is crisp. At this particular time in January, it was quite cold--

Q Well let me ask you this. You didn't see where the--the neighbor in the area, you didn't see where he had been through on the trail, correct? So he--you couldn't find his footwear there, correct?

A The neigh--the person who found the-

Q Correct.

A The victim? I'm not sure if his footwear was ever located or ever matched to anybody. I didn't--

Q You never found it.

A No.

Q All right. And then the first officer on the scene who came up to observe the bod--body, again you didn't find his footwear in that general area either, correct?

A I don't know whose--which officers' footwear were actually identified, but I do--

Q They weren't--they weren't identified in this particular area, they were identified farther back on the trailhead, correct?

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A Correct.

Q All right. So in this general area you could find no signs that anyone had been there, is that correct?

A That's correct.

Q And you testified that the only injury that you noticed to the victim was basically the impressions left on her body by the brush she was lying on, correct?

A Correct.

Q Okay. So you don't know how her body came to be there, is that correct?

A I--no I don't know how it came to be there.

Q Okay.

A But I know she didn't walk there.

Q Okay, all right. Fair enough. She's not lying all cockeyed, correct?

A No. She was lying quite straight.

MS. EIFLER: I have nothing further.

THE COURT: Mr. Fenton.

REDIRECT EXAMINATION

BY MR. FENTON:

Q And if she didn't walk there, I'm assuming she can't fly. Is that why you deduced that she was thrown in that position?

A That's one of the reasons that I deduced that. There were several others that led to that. The positioning of her

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arms, which were underneath the body, lead me to believe that the victim had been carried into that area and actually tossed in face up. And then as the--where the force, when I said that the stick had been broken--it appeared that the rolling action of the victim rolling from its back to its front side would allow the left arm to be underneath.

MS. EIFLER: Your Honor, I'm gonna--I'm gonna object. Can we approach.

THE COURT: Yes.

(Bench conference begins at 4:23 p.m. between the Court and counsel, transcribed as follows)

MS. EIFLER: I think we're getting a little far into this. He has--I mean there's no foundation that he has any expert knowledge as to how the body would have traveled to lie in that particular position.

MR. FENTON: Well I can build a foundation, but I'm following up from your cross-exam.

MS. EIFLER: I understand that.

MR. FENTON: And we can make these objections on the record. There's no reason to come up to the bench. I mean that's a valid objection and I'll make a better foundation if you want, but I'm following up from what you brought up.

MS. EIFLER: Well I understand that, but he was

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talking about--not what she's being inverted and he's giving test that--

THE COURT: Well I--yeah. I'll agree with--

MS. EIFLER: An opinion on.

THE COURT: Well you would to tell him. There is no foundation from that type of testimony.

MR. FENTON: Okay. But--

THE COURT: So if you want, are you going to go into that further, is that--

MR. FENTON: Yeah briefly. That's fair of redirect.

THE COURT: Okay. I'll let you go ahead and do that then.

(Bench conference ends at 4:24 p. m.)

THE COURT: The objection right now is sustained. And Mr. Fenton--

MR. FENTON: Thank you your Honor.

THE COURT: You can ask some follow up questions.

Q Officer Latham, can you just give us some background as to what qualifies you to give opinions in this regard? Have you taken courses and trained in crime scene investigation?

A Yes I have. I've got a Bachelor's of Science in criminal justice criminalistics from Lake Superior State University, which is all law enforcement classes, certified law enforcement officer with also classes in chemistry,

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biology, and physics. From there I've also been trained in crime scene investigation from Schoolcraft College on the east side of the State. From that I also was trained in photography and death investigation from several different agencies, including criminal justice agencies who specialize in nothing but death investigations.

I've had several--several classes in just general physiological changes in the--in people who have been deceased. On top of that I've investigated thousands of crime scenes, not necessarily all major crime scenes, but thousands of scenes involving people's movements as well as I was trained as a defense and tactics instructor in the PPCT fashion and also in controlled force, which deals with body--body movements, joint movements, joint manipulations, the way the body is going to react when its--when force is supplied to it.

Q Have you previously been recognized as an expert in area in courts in this County?

A I've been recognized as an expert in crime scene investigation, yes.

Q And is part of the courses that you've testified about extensively, actually determining how bodies came to be at particular areas and all the dynamics of what would have occurred that resulted in that death?

A Yes.

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Q So have you looked at photographs of countless crime scenes, homicide crime scenes, and actually studied the mechanism--mechanisms of death?

A Correct.

MR. FENTON: Yes. Move for his recognition as an expert in crime scene investigation.

MS. EIFLER: No objection.

THE COURT: I think he's already been qualified in that regard, and I believe Mr. Fenton that you properly laid foundation for the prior question that was objected to. I have not indicated to the jury that they should ignore that testimony. So the foundation's been laid. Go ahead Mr. Fenton.

MR. FENTON: Thank you.

Q Now can you explain then all the factors that led to your that she had been tossed there?

A Definitely. Actually if we can have the photo of the vicor counting exactly one it is.

Q Show us which one.

A The one closer up, if we could please. The factors that I determined, given that she--she didn't walk into this general location based on the fact that her feet had no dirt on 'em. There's nothing from the lower extremities down.

There's no fresh signs of bleeding from the--the

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briars, scratching her body, and--and bleeding prior to death. It's my belief that she was dead prior to getting to this location.

What leads me to believe that she was thrown to this is the fact that her left arm, which you can't see because it's underneath her, is in a very unnatural position. It's--it's not normal to carry your

arms tucked underneath your body. And being that this particular branch was broken leads me to believe that there was force involved.

Putting all that back together, kind of the same way we do an accident reconstruction when we deal with the physics, this body did not come into this location being dragged. It didn't come into the location by wandering in. That body was actually physically thrown face up, where the body hit this branch, breaking it, and then rolled to its final position here with her arm underneath her.

The fact that her body is kind of straightened out, that it's not in the fetal position, it's not kind of in a crunched up position, it would indicate that a force was produced to elongate the body. When people die, if they die in--in a general spot, if someone were standing here and they were to pass away, they aren't just gonna flop flat and straight. More likely they're just gonna crumble or crumple down unto the floor, which is very similar to anything that we get when bodies found in houses of people

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who've passed away walking from their chair to the bathroom. They aren't usually just kind of spread out nice and straight. They're more in a crumpled position or more in a kind of fetal position.

So this kind of--this kind of body positioning, the fact that she is straightened up, her legs are straight, and the arm is tucked underneath led me

to the conclusion that she had actually been thrown to that position.

Q Thank you.

MR. FENTON: That's all.

THE COURT: Miss Eifler, any further questions?

MS. EIFLER: Just one follow up.

REXCROSS-EXAMINATION

BY MS. EIFLER:

Q Sir, have you observed crime scenes where a person has been laid out after--after death?

A Yes.

Q Okay. And are they generally laid out in a straight fashion?

A It depends on--on the case. Specifically bodies that have been manipulated post-mortem will have characteristics that are consistent with. In a lot of cases you can determine where a body was prior to it--well at more--more of a postmortem time based on blood flow, also based on the way they are--like you say--they're laid out.

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Q Mmm-hmm.

A If a person actually manual lays a person out in a position, it would be generally straight. There are

cases-and I've been on few--that the victim's actually posed, and that's a completely different situation.

Q Okay. Let me ask you this. You had not been to this scene prior to being called there for this investigative purpose, is that correct?

A That's correct.

Q All right.

MS. EIFLER: I have nothing further.

THE COURT: Mr. Fenton.

REDIRECT EXAMINATION

BY MR. FENTON:

Q Real quick, let me just ask you this question. Based on your training and experience, do you have any opinion as to how long the body had been there?

A The body had been there less than 12 hours I would assume, but that's just lividity, which is the blood settling in the body. And we didn't have any lividity when we rolled her over, and that usually is a -a 12-hour phenomenon.

THE COURT: I--I missed the--you didn't have any what?

THE WITNESS: Lividity, liver mortis. When a body dies, when someone dies, their blood vessels lose

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rigidity. The lose the effectiveness of holding in the blood. That blood then starts to pool at the lowest location of the body. People who are found facedown or slumped over will normally have a--a blackening of the face where all the blood and fluid will collect, as well as the lower extremities if they're sitting in a chair.

In this particular case, we didn't have really any lividity. However, we did have weather conditions which hindered that determination as well. I mean it was--it was cold and it had snowed earlier in the winter and melted off since, and then got cold again, and we were expecting a storm.

Q Thank you. That's all.

THE COURT: Miss Eifler, anything further?

MS. EIFLER: No ma'am.

THE COURT: Thank you sir. You may step down.

THE WITNESS: Thank you.

(The witness was excused at 4:32 p.m.)

MR. FENTON: Your Honor, if I may I'd like to call one last witness today.

THE COURT: Yes you may.

MR. FENTON: Thank you.

THE COURT: Ladies and gentlemen, if you want to stand and stretch a moment while the other witness enters the courtroom, you may do that.

STATE OF MICHIGAN
9th JUDICIAL CIRCUIT COURT
TRIAL DIVISION
FOR THE COUNTY OF KALAMAZOO

PEOPLE OF THE STATE OF MICHIGAN,
v Case No.:C07-165FC
ERVINE LEE DAVENPORT.
Defendant.

JURY TRIAL- VOLUME III
BEFORE THE HONORABLE
PAMELA LIGHTVOET
Kalamazoo, Michigan - Thursday, July 10, 2008

APPEARANCES:

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* * *

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MR. FENTON: First witness this morning would be Ray Fults. Ray, right next to the Judge up there please.

THE COURT: Right up here, sir. Please raise your right hand before you have a seat. Do you solemnly swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

MR. FULTS: Yes I do.

THE COURT: Please have a seat, sir. Pull the chair up to the microphone if you can, and state your first name, your last name, and please spell both your first name and your last name for the record.

THE WITNESS: Raymond Fults, R-A-Y-M-O-N-D, F-U-L-T-S.

THE COURT: Mr. Fenton.

RAYMOND FULTS

(At 9:37 a.m., sworn as a witness, testified as follows)

DIRECT EXAMINATION

BY MR. FENTON:

Q Mr. Fults, did you know Annette White?

A I was acquainted with her.

Q How were you acquainted with her?

A I spoke to her maybe three or four times.

Q Did you know where she lived?

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A Yes I did.

Q Is that at that apartment on Douglas?

A Yes.

Q Yellow apartment complex?

A (No response)

Q Yellow apartment complex?

A I don't know if it was yellow or not.

Q Okay. Well in any event, you know what floor she lived on?

A Yes I do.

Q Which floor?

A She lived down in the basement.

Q Did you know anybody else who lived in that apartment?

A Yes I did, I knew Tonya--I don't know her last name. She lived up on the third floor I believe.

Q All right. Now Tonya, whose last name you don't know, did she have somebody, either a roommate or a male that stayed over there sometimes?

A I believe Andre stayed there.

Q Do you know Andre's last name?

A No I don't, sir.

Q If I said Andre Randall, does that sound familiar?

A I never heard his last name, sir. No.

Q All right. But do you know the Andre that you're talking about? Have you seen him, do you know what he looks like?

A It's been awhile since I seen him, but yeah'r probably

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would.

Q Are you acquainted with him or were you at that time?

A Yes.

Q I want to draw your attention to Friday night, January 12th, 2007, the night before Annette White's body was found. Do you remember being in the area of her apartment complex?

A Yes sir, I do.

Q Did you see her, in fact?

A Annette?

Q Yes.

A Yes sir, I did.

Q Tell the jury under the circumstances under which you saw her.

A Well that Friday night I was going to Tonya's house, Annette stood out in the basement. I was on the sidewalks, she waved me to come over there. I walked over there to see what--what she wanted. She showed me a broken arm, she told me that Andre broke her arm. Then she told me she smelled a gas leak in her apartment, and asked me if I--I come in, but about the time I went in, the gas man came and they found that pilot lights were out on her stove.

Q The pilot was out on the stove.

A Right, and he relit them. Okay and I sat there for a few minutes with Annette, and I smoked a rock with Annette and-

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Q All right. And when you--just so the record is clear, when you say you smoked a rock with her, you're talking about a rock of crack cocaine?

A Yes sir.

Q All right.

A And--

Q Was that inside her apartment?

A That was inside her apartment.

Q And that's on the ground or bottom floor?

A Bottom floor in the basement.

Q Was it just the two of you?

A Yes at that time, yes.

Q Now when you smoke a rock of crack cocaine, first of all what is the effect it has on you?

A It's a hard one to explain, sir, but it's just a--a quick feeling, a quick high.

Q Quick high.

A Yeah.

Q How long does it last? Approximately.

A Probably four or five minutes, if that.

Q Four or five minutes if you smoke one rock?

A Yeah.

Q Okay. So when you say a quick high, is it an upper or is it a downer, does it make you feel more alive, does it make you feel sleepy, does it make you hallucinate--

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A An upper.

Q What's the effect that it has on you?

A An--an upper. Right.

Q Kind of an upper?

A Yeah.

Q All right. So now you smoked a rock with her, and how long would you say you were together with her that evening, approximately?

A Maybe about a half hour or 20 to 30--25 minutes.

Q Any idea what time that was?

A 8:00, 8:30 maybe.

Q P.M.?

A Yep.

Q Was that the last you saw of her?

A That's the last saw of her, yes sir.

Q Now did you see anybody else in that apartment or did you go anywhere else in that apartment complex that evening?

A I went up to Tonya's.

Q You went up to Tonya.

A Yes.

Q Now she lives in the same complex, you don't know her last name.

A No, I don't know her last name.

Q And she's somehow associated with Andre I believe you testified?

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A Yes.

Q Did he stay there on occasion?

A I believe so. He was always there when I'd stop in to see Tonya.

Q All right. Did you, in fact, see Andre that night later, after you left Annette White?

A Yeah. I went up--I went upstairs.

Q You went to Tonya's.

A Right.

Q Was Andre there?

A Yes.

Q All right.

A He was sitting at the end of the table, and I gave Tonya some money to go get some dope, and she did--

Q When you say dope, what are you talking about?

A Some more crack cocaine.

Q Some more crack cocaine. All right.

A Okay. And Tonya didn't come back, it was Andre and I sitting at the table. Probably about 30 minutes we sat there and then somebody knocked on the door, and it--Andre got up and let 'em in. It was--

Q Who?

A It--Andre got up and let these people in. There was Earl and Teresa came in.

Q Now when you say Earl, do you see Earl in the courtroom

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today?

A No I don't.

Q All right. Do you know the Defendant seated at counsel table?

A Yeah.

Q Ervine Davenport, do you know him?

A Do I know Earl Davenport?

Q Yeah.

A I's--

Q Do you--do you know of him?

A Yeah, I--I've only seen Earl maybe two times. That-

Q All right. Well is that Earl?

A If it--if it is, he's changed.

Q How changed how?

A No, that ain't--it don't look like Earl to me, no.

Q Oh that's not Earl that you saw that night?

MR. FENTON: I'd ask if the Defendant could stand up please.

THE COURT: Well--

MS. EIFLER: Your Honor, I'm gonna object.

THE COURT: No--I--

MS. EIFLER: I think that the witness has already answered--

THE COURT: If--if the witness wants to stand and look, fine.

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THE WITNESS: All right.

THE COURT: But other than that, he's given his answer.

Q Would it help you if he stood up or does that not matter to you?

A Well I don't see Earl.

Q All right. So you don't think this gentleman here is Earl that you saw that evening?

A Don't look--don't look familiar to me. No.

MS. EIFLER: Your Honor, asked--objection. Asked and answered.

Q All right.

MR. FENTON: If I could just have a moment please.

Q Do you remember describing a large black male as being involved?

A Yes. Yes I do.

Q Over six feet tall?

A Yep.

Q Do you remember the detective showing you a photograph of someone and you--

A Yes.

Q Picking that person out?

A Yes I did. Yeah.

Q As Earl?

* * *

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A Yep.

Q All right. You're just saying that now today you can't identify the person in court.

A I've only seen him a couple times, that's it. That's all I can say.

Q All right. In any event, tell us more about that. So someone named Earl--and is this a black or white person?

A A black man.

Q Black male.

A Yep.

Q And can you describe him in any other way?

A Other than he was big, no r--I can't describe him any other way. No I can't.

Q Just a--just a large black male?

A Large black male.

Q All right. So he comes into Teresa's apartment with-

A No, Tonya's apartment.

Q Tonya's apartment I mean, with other people as well?

A He--him and Teresa came to the door, yeah.

Q Who's Teresa, do you know her last name?

A Hell no I don't.

Q All right. And what happened when they came to the door?

A They came in, Teresa sat down, Andre got up. Teresa came in and sit in the chair where Andre was at. Okay, when Earl--I stayed, I didn't get up, I stayed in the chair

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where I was at, and Earl come by, he gave Teresa a piece of dope, and took Andre in Tonya's bedroom, and pretty soon they stuck their head out the door and called me in the bedroom, gave me a hit off the rock.

Q All right. So basically you're all getting high.

A Yeah.

Q And from what you just testified to, this person named Earl brought some dope into the apartment.

A Yes.

Q All right. How long were you there with these folks?

A Well Earl left again.

Q Alone or with anybody?

A Alone, left Teresa sit at the table.

Q Did you ever see Earl again that night?

A Yes I did.

Q Where was that?

A 8:00--later about 20 minutes later he came back into the apartment. That's when I got up and left.

Q Okay. So how long were you in that apartment?

A All together, probably about a hour-and-a-half or so.

Q Mostly getting high?

A I was waiting for Tonya to come back with my money and dope.

Q And this is upstairs in the same apartment complex?

A The third floor, yes.

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Q As Annette White lived in, correct?

A Do--

Q Same apartment complex as Annette White lived in.

A Yes.

Q Now did you ever see Annette come up to the apartment that night?

A Not that night, no. Not that night. I met Annette one time I was at Tonya's, and she came knocked on the door, she brought Tonya a plate of food, and Tonya introduced me to her then. That's the first time I ever seen Annette.

Q All right. So you've actually seen Annette in that apartment before, but not that night?

A Yeah. A long--probably a year before.

Q Who introduced you to who?

A Tonya introduced me to Annette when--see I don't know, but it was on a Thanksgiving or something. She brought--she brought Tonya a plate of food.

Q Annette did?

A Yes.

Q So it was your understanding then that they were acquainted?

A Yes, that was my understanding. Yes.

Q All right. Thank you Mr. Fults. I don't have any further questions for you.

THE COURT: Miss Eifler.

[Page 529]

MS. EIFLER: Thank you.

(Sidebar conversation between the Defendant and Ms. Eifler)

CROSS-EXAMINATION

BY MS. EIFLER:

Q Good morning.

A Morning.

Q Sir, were--you said that you talked with Annette and she took--she showed you her arm, correct?

A Yes ma'am.

Q All right. So you were aware that there had been some trouble between Annette and another individual named Andre, is that correct?

A Yes.

Q They--they'd had an altercation?

A Yes.

Q Did you know Annette to be someone who used crack cocaine?

A Excuse me?

Q Did you know that Annette White used crack cocaine?

A I did not know that she used it, but I knew that she sold it.

Q Okay. How did you know that?

A Because I bought from her.

Q Was that in exchange for a pair of shoes?

A The what?

[Page 530]

Q Was that--did you buy--in other words, you exchanged a pair of shoes for some crack?

A Yes I did. Yes I did, ma'am.

Q All right. Was there--was there ever any time where you actually purchased it using money from Annette?

A I'd sent Tonya down there before with money, yes.

Q And did Tonya come back then with--

A Oh yeah, this a different times though.

Q Okay.

A Yes, and she did. She went downstairs and came back up with it.

Q Okay. So you Tonya downstairs to Annette's with money to purchase crack, is that correct?

A Right. That was at a different time. Not on this Friday though.

Q Okay.

A A little bit.

Q This was in the past.

A Right.

Q All right. And then did then Tonya come back with crack cocaine?

A Yes she did.

Q So is your understanding there had been some kind of a fight between Annette and Andre shortly before that Friday, is that correct?

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A That--that's what I was told. Annette told me that Andre broke her arm, and Tonya--Tonya also told me that Annette and Andre had--had problems, you know. But I was not there to see it.

Q Okay fair enough. So that Friday when you were there, did Earl give you any--any crack cocaine or did--

A He called me into the bedroom and gave me a hit off of the pipe.

Q Is that Tonya did not--had not come back yet?

A I'm--I don't know why.

Q Okay.

A I really don't, I mean.

Q All right.

MS. EIFLER: I have nothing further.

THE COURT: Mr. Fenton.

REDIRECT EXAMINATION

BY MR. FENTON:

Q When you said she showed you her broken arm, was she wearing anything on it?

A She had a cast or--or it was strapped up.

Q Do you know if it was a hard cast or a soft splint?

A No. I couldn't--I couldn't tell you that, sir.

Q She had something on it though.

A Yeah.

Q All right. Thanks.

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MR. FENTON: That's all I have.

THE COURT: Anything further, Miss Eifler?

(Sidebar conversation between Miss Eifler and the Defendant)

MS. EIFLER: I have nothing further.

THE COURT: Okay. Thank you sir. You may step down.

(The witness was excused at 9:52 a.m.)

MR. FENTON: I'd like to call Brian Beauchamp briefly at this point.

THE COURT: Please raise your right hand. Do you solemnly swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

MR. BEAUCHAMP: I do.

THE COURT: Please have a seat. State your first name, your last name, and please spell both your first name and your last name for the record.

THE WITNESS: Brian Beauchamp, B-R-I-A-N, B-E-A-U-C-H-A-M-P.

BRIAN BEAUCHAMP

(At 9:53 a.m., sworn as a witness, testified as follows)

DIRECT EXAMINATION

BY MR. FENTON:

* * *

[Page 536]

Q Thank you.

MS. EIFLER: I have nothing further.

THE COURT: Mr. Fenton, any further questions?

MR. FENTON: Nothing at this point, your Honor.

THE COURT: Thank you sir. You may step down.

THE WITNESS: Thank you.

(The witness was excused at 9:56 a.m.)

MR. FENTON: I call Earl Carswell.

THE COURT: Before you have a seat, sir, please raise your right hand. Do you solemnly swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

MR. CARSWELL: I do.

THE COURT: Please have a seat. Please pull the chair up as close to the microphone as possible. I need you to state your first name and your last name, and please spell both your first name and your last name, sir.

THE WITNESS: Name Earl Carswell, spelling E-A-R-L, C-A-R-S-W-E-L-L.

EARL CARSWELL

(At 9:57 a.m., sworn as a witness, testified as follows)

DIRECT EXAMINATION

BY MR. FENTON:

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Q Mr. Carswell, did you know Annette White?

A What was that again?

Q Did you know Annette White?

A Yes I did.

Q Now did you see her the night before she perished?

A Yes I did.

Q Friday night, January 12th, 2007, did you see her that evening?

A Yes, late that night after I got off work.

Q What time did you get off work?

A 11:00.

Q Where did you work?

A Bowers Corporation out on Sprinkle.

Q Bower what?

A Bowers Incorporated out on Sprinkle.

Q Okay. What do you do there?

A I was what they call a racker packer.

Q What does that consist of?

A That consists of putting parts on a rack so they can get anodized.

Q What time'd you get home that night?

A About 11:30.

Q Did you have another job at the time as well?

A Yes I did.

Q What was your other job?

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A Gazette. Gazette newspaper over here in Kalamazoo.

Q What'd you do there?

A Also I stacked papers and moved 'em around for being shipped out first thing in the morning.

Q When--so what time did you have to be to work at the Gazette?

A 7:30.

Q Did you have to work Saturday morning the 13th?

A Yes I did.

Q So after you came home Friday night sometime after 11:00 you said?

A Yes.

Q P.M.

A Yep.

Q Is that when you saw Annette White?

A Yes.

Q Where did you live at the time?

A At 309 Cedar Street.

Q Cedar Street?

A Yes.

Q Is that somewhere near here, downtown?

A Yes.

Q Is that an apartment?

A Yes it is.

Q Who are you living there with?

[Page 539]

A My wife.

Q What's her name?

A Derene Carswell

Q Was she there that night?

A Yes she was.

Q Where was she when Annette White came over?

A In the bedroom sleeping.

Q You were awake, I assume, cause you had just gotten home.

A Yes.

Q Was Annette White alone or with anybody when she came over to your apartment?

A She had somebody else with her at the time.

Q Do you know who that is?

A Hmm?

Q Do you know who that is?

A I believe it was Ervine Davenport.

Q Okay. Do you see him in the courtroom?

A That's the gentleman sitting right over there.

MR. FENTON: May the record reflect the witness identified the Defendant.

THE COURT: Yes, that may be done for the record.

Q Now when you say believe are you saying that because you don't know his full name or why are you saying that?

A It's cause I had just met him just that night.

Q I'm sorry?

[Page 540]

A It's because I had just--just met him that night.

Q You just--

A She introduced to us that night so.

Q Met him that night?

A Yep.

Q Now within a week or so this all happened, however, at some point were you spoken to by a detective?

A Yes I was.

Q And did you gave that information to the detective?

A Yes I did.

Q All right. Now what did they want when they came over? What happened? Tell the jury what happened when they came over.

A At that time they came over and they asked about if, you know, if I had seen her that night and stuff like this here, and who she was--

Q I'm sorry, if what?

A If she had came by my house that night and stuff, and who she was with and stuff. And I explained to 'em--

Q No, no, no. Not what the detectives asked you. I want you to tell the jury what happened when Annette White and the Defendant came over on Friday night.

A Oh okay. We stood there, we had about a--you know, 40-ounce of beer and stuff we drank. And

then after that I sent 'em out for some more beer and stuff, and they came

[Page 541]

back and we drank the beer, and I also had a little crack, and we sit there, did that. And then you know, she started goofing off like usually did at that time, and I told 'em they had to leave cause I had to get up and get to work the first thing in the morning.

Q What do you mean she started goofing off like she usually did?

A You know, you know--talking kind of--you know, crazy about silly stuff, you know.

Q What do you--what do you mean?

A Like you know, she was talking about, you know, like with my wife, all the problems she had and stuff like this here, and bringing up old things cause you know, her and my wife, she used to do my wife's hair for me.

Q All right. So that was about the extent of it?

A Yep. And like I told 'em they had to leave because of the simple reason I had to get up and go to work first thing in the morning cause I have a job.

Q So how long were they there total?

A About two hours, two hours-and-a-half at the most.

Q And that included the time that they left and had got some beer and maybe crack and came back?

A Correct.

Q So they got there what time would you think? Approximately.

[Page 542]

A Oh I'd say about 11:45, somewhere around there.

Q And what time would you say they left?

A About 2:00, 2:30, somewhere around there.

Q Now did your wife ever leave the bedroom?

A No.

Q When they first came to the door, did they knock?

A Yes.

Q Tell me what happened.

A Well like I said, they knocked at the door, I answered the door. She came in and stuff, said she stopped over, and she asked if my wife was up. I said no my wife's asleep and so she, you know, went to the bedroom door and knocked. And he was out there, me and him were getting introduced to each other. She knocked at my wife's door, went in the bedroom, came back out and stuff, and then he came in the bedroom with us. Like I said, offered 'em beer, we sat there and drank the beers and stuff. Then like I said, later on sent 'em out for

some more beer and stuff. They came--they came back with the beer and also like I said, a little bit of crack and stuff.

Turned around and smoked that and stuff, and drank our beer. Then like I said, I asked 'em to leave later on. You know, about 2:30 or so.

Q So when they first came over, Annette was the only one who went into the bedroom with your wife?

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A Yes, at first.

Q And you sat out front and got acquainted with the Defendant?

A Yes, a little bit.

Q And was that the first time you ever met him?

A Yes.

Q Did you ever see her alive again after that night?

A No.

Q Did you see what they were driving?

A No I didn't.

Q What effect does crack cocaine have on you when you smoke it?

A It gives you a quick rush and a buzz.

Q How long does it last?

A I'd say about ten, 15 minutes.

Q Thank you.

MR. FENTON: That's all I have.

THE COURT: Miss Eifler.

MS. EIFLER: Thank you.

CROSS-EXAMINATION

BY MS. EIFLER:

Q Good morning.

A Mmm.

Q Sir, what's your relationship again with Annette White?

A It was my wife's friend. She used to come over and do her

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hair for her.

Q Okay.

A For me.

Q She--your wife's--I'm sorry, what was that?

A One of my wife's--I call--I guess I'd call it a friend. You know, she'd come over and do my wife's hair for her and stuff.

Q Okay. A friend?

A Yeah.

Q All right. Did she ever refer you as Uncle Earl?

A Sometimes, yes.

Q Okay. Did she introduce Ervine Davenport to you as Uncle Earl, do you know?

A It might have been.

Q All right. How long have you known her?

A About a couple years.

Q You've mentioned that on that particular time, you smoked crack cocaine with her.

A Yes.

Q Have you done that in the past?

A Once other time then that.

Q What's that?

A Once or twice other than that.

Q Okay. So you--you've had opportunity in the past and then also that particular time to observe Annette when she was

[Page 545]

using crack cocaine, is that correct?

A That's correct.

Q All right. Your testimony is that you got off from work around 11:00, and then Annette showed up to your house about 11:45 p.m.

A Yes.

Q All right. Sir, when you sent them out to get some more beer, was it your understanding that they were also gonna get some crack cocaine?

A Yes.

Q Was that your understanding that everyone was gonna use it together when they got back?

A Yes.

Q All right. Did you give Annette any money for-

A Yes I did, to get the beers and stuff, yeah.

Q Okay. Did you take a Bridge card or identification card from Annette to hold on to while she went and bought this stuff?

A Yes.

Q Why'd you do that?

A Because at one time she did run off with part of our money at one time.

Q So the first time you met Ervine Davenport was on this particular occasion, correct?

A Yes.

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Q All right. And would you characterize it that basically Annette and Ervine were there with you, and you're just kinda winding down from work, kinda partying together?

A Yes.

Q All right. Now at some point did Annette become agitated?

A Yes.

Q What was that about?

A I don't really know. She's--like I said before, she had just went off at times and would left the house and stuff so.

Q I'm sorry. Could you repeat that?

A No. I said at times you know, she went off a couple times before and she just end up leaving the house, I'd have to tell her to leave.

Q You said she went off a couple times before. Can you tell me what you mean by went off? What does she do?

A She went to, like I say, just rampaging about different things, you know.

Q Would this occur on times when she'd used crack before?

A That or been drinking excessively.

Q Did you have to--did you ask to her leave your house on those occasions?

A Yes.

Q She was disturbing your household?

A Yeah I'd say so.

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Q Okay. Did she ever become assaultive or aggressive with you?

A No.

Q Okay. Did you--but her--she was rampaging. Can you tell us what you mean by that.

A Well she'd be, like I say, she'd go to talking about, you know, different, you know things that, you know, you don't really want to hear about, you know.

Q Like what?

A Oh women types things, you know.

Q Okay. Had she brought other people to your home in the past?

A Mostly by--most of the time by herself.

Q Did you ever go over to her home?

A Once.

Q Did you use crack cocaine with her on that occasion?

A Not on that occasion, no.

Q So if I understand you correctly, she'd been--you'd used crack cocaine with her approximately three times?

A Three or four times.

Q Three or four times. And isn't it true that generally when she uses crack cocaine that you observed she would kind of get crazy, like you said.

A A little bit that--

MR. FENTON: This been asked answered and

[Page 548]

explained several times.

THE COURT: Overruled. I'll allow it. Go ahead.

A Yes, most of the time. You know, get a little agitated and stuff like.

Q Mr. Fenton asked you how you reacted or how the high felt to you. Did you become agitated when you used crack cocaine with her?

A Not really.

Q So her behavior was different than how you reacted to the crack cocaine, is that correct?

A That's correct.

Q Do you know how long she had known your wife?

A Well me and her I think met her about at the same time.

Q Okay. There were other folks who came to your house while Annette and Ervine were there, is that correct?

A That night? No.

Q Do you remember was it your son who came there with a female?

A No not my son.

Q You don't recall that? Okay. Is your recollection that they left around 2:30 in the morning.

A Yes.

Q And at that time Annette had kind of started getting crazy?

A Yes.

Q Did she want her ID back?

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A Yes she did.

Q Did you give it back to her?

A Yes.

Q And did Ervine kind of help resolve the issue with the ID?

A Yes he did.

Q All right. Was--you never had any problems with Ervine while he was at your house, isn't that true?

A No, didn't have no problem with him.

Q There was no fighting going on between Annette and Ervine while they were at your house, is that correct?

A No, no problem.

Q Okay. Mainly the problem was Annette just kind of acting crazy.

A Yes it was.

Q Did you ever know her to carry a knife?

A Not sure.

Q What do you mean by that?

A Well she asked me one night to take a knife from my house.

Q She asked to take a knife from your house?

A Yes.

Q Was that this particular night?

A No.

Q Was that a time when she'd been using crack cocaine?

A Yeah.

Q Did you let her take it?

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A No.

Q Why didn't you let her take it?

A Because I didn't know what she was--what might happened with it and I didn't want have a knife in my house.

Q You're afraid she might do something dangerous with it?

A Didn't know, so you know with her acting at that time like, you know, she was acting, I wasn't gonna give her anything.

Q Now you stated originally the three of you drank a 40-ounce of beer, is that correct?

A Yes.

Q You shared it?

A Yeah.

Q All right. How much--and then you sent them out for more beer and at that time they brought back crack cocaine, correct?

A Yes.

Q And how much beer did they bring with them?

A Three 40s.

Q Three 40s?

A Mmm-hmm.

Q Is that so that each of you would have a 40-ouncer?

A Yeah.

Q Did all of you drink your beers?

A Yes.

Q Any--can you tell us at what time--well let me rephrase

[Page 551]

that please. This smoke--when you were smoking the crack cocaine, how many--how many hits did you have throughout that night?

A Two.

Q And do you know how many hits Annette had while she was at your house?

A I couldn't really say.

Q Did you see her take hits?

A Yes.

Q You think it was more than two?

A Yeah, I'd say so.

Q More than five?

A I don't it was more than that, no.

Q So more than two, but less than five.

A Yeah.

Q Do you have any idea the last time she took a hit off from the crack?

A Other than that night, I couldn't really say.

Q What's that?

A Other than night, I couldn't really say.

Q I'm--that's what I'm talking about. During that night, do you have any idea what time she--while she was at your house, the last time that she took a hit. Do you have any idea what time it was?

A It was say about 15 minutes before left.

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Q Do you know--well let me ask it this way. How long did it take her to consume her 40-ounce of beer after they came back with the beer?

A About 35 minutes or so.

Q What time did they get back from buying the beer?

A From buying the beer, it was about 20 minutes or so.

Q They were out for about 20 minutes.

A Yep.

Q Do you know what time they got back?

A About 1:00--1:00, 1:15.

Q And then so she finished her beer, and then she took hits off from the crack after that, is that correct?

A No she--she'd hit the beer, wait a few minutes, then say then hit the crack, then go back to drinking the beer. Wait and then hit--take another hit.

Q And you're observing her do this, correct?

A Yes.

Q All right. And her mood is changing, is that true?

A Yeah.

Q And I'm sorry, I didn't hear you. Did you say that you asked her to leave that night?

A Yes.

Q And that's consistent to other times she's been at your home, smoking crack cocaine, you've had to ask her to leave, correct?

[Page 553]

A Yes.

Q All right.

MS. EIFLER: I have nothing further.

THE COURT: Mr. Fenton.

REDIRECT EXAMINATION

BY MR. FENTON:

Q Was she violent that evening?

A I wouldn't say violent, but just like I say, went to ranting and raving.

Q Was she a violent person?

A No, she's just what's not called violent, but you know, go off on tantrums, you know talking about like I said different things where like I--she was telling me how one person that was staying with her had jumped on her and broke her hand or something, you know, and things like this here.

Q Okay. So you didn't you ask her to leave because she was being violent, did you?

A No.

Q You just wanted to go to sleep and she was talking.

A I just--yes.

Q Okay. So she was verbally aggressive.

A Yes.

Q She talked a lot when she got high.

A Yeah, right.

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Q How long have you been smoking crack, sir?

A I'd been smoking crack say about almost about eight or nine months.

Q Eight, nine months?

A Mmm-hmm.

Q You mean at that time?

A At that time, yeah.

Q So now for a couple of years have you continued to smoke crack in the interim?

A No.

Q All right. When you smoked for that eight, nine months, was it on a regular basis?

A Ahhh--

Q Couple times a week?

A Maybe once or twice a week.

Q Did it ever keep you high for more than ten or 15 minutes?

A Usually when--if I did it, it was like just before I'm laying down or getting ready, you know, go to sleep or something like this here.

Q You take an upper to go to sleep?

A Well it did the work for me.

Q Ahh.

A I don't know.

Q So it didn't make you more aggressive.

A It didn't make me more aggressive, you so know, relax.

[Page 555]

Q You said it--you said it gave you a quick rush or a buzz though.

A Yes.

Q All right. Did it ever last more than ten or 15 minutes? That's my question?

A No. Like I say, I guess it does different people different ways so.

Q All right. I'm asking about your--yourself.

A About--about--about like with myself, yeah you know, ten, 15 minutes, and just relax me. That's it.

Q Now there's a lot testimony about Annette smoking crack that night. Was the Defendant, Earl

Davenport, also smoking crack and fully partaking in this crack that night?

A Yes.

Q Do you know someone named Andre Randall?

A I don't know that--

Q Anyone named Andre that may or may not have been in Annette White's life?

A Well I'm not really sure so.

Q In any event, was there anybody there besides the two of them, Annette and the Defendant, and you and your wife that evening?

A At that time, no. Just us.

Q And when they came they didn't have a third person with them, did they?

[Page 556]

A No.

Q Thank you. That's all.

THE COURT: Miss Eifler.

MS. EIFLER: Thank you.

RE-CROSS-EXAMINATION

BY MS. EIFLER:

Q Mr. Fenton was just asking you if it was just you, and Anita (sic), and Ervine that night. Do you remember your daughter showing up?

A No.

Q You don't recall that?

A Not that night.

Q Okay. Are you've--Mr. Fenton was also asking you whether Anita--Annette was violent that night, and--but you've had to ask her to leave before. We've already asked you that, correct?

A Right.

Q You don't want her to get violent, correct?

A Correct.

Q And it's--she's--she's talking on this night and you want to go to sleep, correct?

A Correct.

MR. FENTON: This has been asked and answered about three or four times, your Honor.

MS. EIFLER: This is--this is cross-examination

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based on his redirect.

MR. FENTON: This is recross and these issues have already--

THE COURT: Overruled. I'll allow it, go ahead.

MS. EIFLER: Thank you.

Q And she was continually getting more and more agitated, is that correct?

A Yes.

Q Mr. Fenton asked you whether Mr. Davenport had been partaking in using crack cocaine that night and you answered, "Correct," that yes he had, correct?

A Yes.

Q But you did not see Annette becoming agitated with Mr. Davenport at that time, is that correct?

A No I didn't.

Q They were getting along pretty well?

A Yes.

Q Was she sitting on his lap, if you recall?

A She did it a couple times, yeah.

Q Mr. Fenton was asking you about how you respond to using crack cocaine. You--you recognize that's it's--it-different people respond differently, correct?

A Correct.

Q And is that based on your observation of other people using crack cocaine?

[Page 558]

A Yes it is.

Q You were aware that Annette had somehow broken her hand or her wrist, correct?

A Correct.

Q And it was your understanding that that occurred during an altercation with another person?

A Yes.

(Court coughs several times)

THE COURT: Counsel, yeah I need to take a break. Let's recess.

(Court recesses at 10:21 a.m.)

(Court resumes at 10:21 a.m.)

Q Were you aware of the altercation involved anything regarding crack cocaine?

A No.

MS. EIFLER: I have nothing further.

THE COURT: Mr. Fenton.

REDIRECT EXAMINATION

BY MR. FENTON:

Q Do you remember whether she was wearing anything on this broken arm?

A It was a little splint or something that was on--on her hand.

Q That night?

A Yeah.

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Q You saw it?

A Yeah.

Q All right thanks. That's all

THE COURT: Miss Eifler.

MS. EIFLER: I have nothing further

THE COURT: We'll recess. Thank you sir. You may step down.

THE WITNESS: Mmm-hmm.

(The witness was excused at 10:22 a.m.)

THE COURT: We're gonna take about a ten-or 15-minute break. Follow Mr. Brooks out. Court's in recess.

(Court recesses at 10:22 a.m.)

(Court resumes at 10:47 a.m.)

MS. JOHNSON: The court recalls the case of People versus Ervine Lee Davenport, Case Number 07-0165FC. Parties please restate appearances for the record.

MR. FENTON: Stuart Fenton for the People.

MS. EIFLER: Good morning, Susan Eifler, appearing on behalf of the Defendant, Ervine Davenport. He is present in Court today. And Judge, may we approach?

THE COURT: Yes.

(Bench conference begins at 10:47 a.m. between the Court and counsel, transcribed as follows)

MS. EIFLER: And I'm--I'm going to approach you because I see the jury's outside. I do want to address the

* * *

[Page 627]

THE COURT: Yes.

MR. FENTON: Miss Eifler and I have agreed, ladies and gentlemen, that I need not recall to the witness stand, Gary Latham. However, Gary Latham would testify that he found the gloves upon which the DNA samples were later taken and submitted to the Michigan State Police laboratory, that we just heard testimony about, from the backseat of the car that was crashed that the Defendant was in.

So with that, I'll move on to the next witness.

THE COURT: Is that accurate, Miss Eifler?

MS. EIFLER: That is an accurate statement and I've had the chance to confer with Mr. Davenport about that.

THE COURT: Okay, thank you. Go ahead Mr. Fenton.

MARQUETTA TARVER

(At 2:08 p.m., sworn as a witness, testified as follows)

DIRECT EXAMINATION

BY MR. FENTON:

Q Can you please state your name for the jury.

A Marquetta Tarver.

Q You're gonna have to speak up.

A Marquetta Tarver.

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Q Thank you. It's really hard to hear in this court-room, so if you just--

THE COURT: And it is helpful if you speak closer to the microphone like you just did. So I'd appreciate that.

Q Miss Tarver, do you have a nickname?

A Yeah.

Q Do you go by TK sometimes?

A Yes.

Q All right. Now you came into court today in shackles, correct?

A Yes.

Q You're incarcerated somewhere?

A Scotts.

Q Scotts Correctional Facility?

A Yes.

Q That's a prison, correct?

A Right.

Q All right. What are you in there for?

A Credit card.

Q Credit card?

A Mmm-hmm.

Q All right. You used someone's credit card or something like that without their permission?

A Right.

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THE COURT: And you're gonna need to speak up.

Q Can you repeat that answer.

THE WITNESS: Right.

THE COURT: Thank you.

Q I want to take you back, Miss Tarver, to January of 2007. At some point did you meet the Defendant, Earl or Ervine Davenport?

A Yes.

Q How did you meet him?

A At Marvin's house.

Q At Marvin's house?

A Mmm-mmm.

Q How do you know Marvin?

A Through Delisha (phonetic)

Q Delisha?

A Yes.

Q Do you know her last name?

A No.

Q Did you hang out with the Defendant for a week or so at Marvin's house?

A Nah, I didn't hang out for a week.

Q Couple days?

A Yeah.

Q Do you remember what day of the week that would have started?

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A Like Friday night, Saturday.

Q Friday night, Saturday.

A Yeah.

Q Any idea what time you started hanging out with him on Friday night?

A I don't really remember.

Q All right. During--Friday night, Saturday, until when?

A Saturday morning like 5:00, 6:00 in the morning.

Q 5:00, 6:00 in--until when did you stop hanging out with him?

A I left and I didn't meet--see him again until Tuesday.

Q All right. And then where'd you see him at on Tuesday?

A At Marvin's.

Q Saw him again at Marvin's. Did you continue to hang out with him Tuesday into Wednesday?

A Right.

Q Was Wednesday the day that you were involved in a car crash with him?

A Yes.

Q And would that have been the last day that you saw him?

A Yes.

Q So basically you were on and off with him for half a week would you say?

A Right, for those days, yeah.

Q I'm sorry?

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A Yes.

Q I didn't hear what else you said.

A I said for those days, yes.

Q Did you know him before that?

A No.

Q Did you know Annette White?

A No.

Q So you never knew the victim in this case.

A No.

Q The majority of time that you were hanging out with the Defendant for that half a week, were the both of you obtaining crack cocaine and getting high?

A Yep.

Q Did he have a vehicle?

A Yes.

Q Is that the same vehicle that he had when the two of you crashed?

A Yes.

Q Did he have that vehicle, as far as you knew, from the weekend before up through that Wednesday night

A Right.

Q Did you ride in that vehicle on several occasions?

A On Tuesday and Wednesday, yes.

Q Can you describe it? Do you remember it at all?

A Grey, four-door, back window bust out, that's about it.

[Page 632]

Q All right. Do you know how the back window came to be busted out?

A Nope.

Q Did he ever tell you?

A Think he locked--I think he said he locked the keys in the car.

Q Do you know where he got the car from or how he got the car?

A Nah, he said it was his girlfriend's.

Q Who was his girlfriend?

A I never knew her.

Q Did he gave you a name or not?

A No, just girlfriend.

Q All right. Was there a time when you were with him throughout that half a week where he started making statements about having been responsible for the homicide in this case?

A Yes.

Q Tell the jury about that. How'd it come about, where was it at. What'd he say?

A First at Marvin's, sitting on the couch. They were in the-Marvin and whoever else was in the backroom, he was sitting on the corner of the couch. It was like dark, just talking to himself, saying, "I done it," or whatever. I ain't know what he was talking about. Shortly after that

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the news came on about Annette-

Q About Annette?

A Yeah.

Q So you saw on the news the story about her death?

A After--after--after he said he had done it or you know, "It's done." He said it was done. I didn't, you know-that's--that's--that's pretty much it. I just thought he was tripping.

Q Well after the news came on--

MS. EIFLER: Can she repeat that please. I didn't hear that.

THE WITNESS: I just thought he was tripping.

Q After the story came on, did he make any statements about whether or not that was true or whether or not he did it?

A Can't remember.

Q Okay. Well after the story came on, is that the first time you knew anything about Annette White's death?

A Mmm-hmm. Yes.

Q What--what did he say, if anything, after the news story?

A Just kept saying it was done, stuff like that. "It's done."

Q What else.

A "I done it." That's--that's--that's all I can remember.

Q Was he referring to Annette White's death?

A Yeah.

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Q How did you know that?

A Because later on down the line that's when I found out about the whole situation, like that Wednesday afternoon.

Q What do you mean? Tell us about that.

A That Wednesday afternoon--well prior to that Tuesday, that's when I was supposed to been going back to Grand Rapids, and he was like, "No, I was going to Detroit." So I got all my stuff together, we was riding--

Q You gotta slow down. You were supposed to go back to Grand Rapids and he said, "I'm going to Detroit?"

A No, Marvin actually say he have a car, he'll take you, you know so.

Q Marvin--

A My dad had just sent me some money so I was gonna pay--pay for, you know, to get back to Grand Rapids. So instead of going back to Grand Rapids right then, we just around to the different stores, whatever--that was Tuesday. That's when he had told me he had been up like eight days or something like that--

Q He told you that he'd been up for like eight days?

A Yeah.

MS. EIFLER: I'm sorry. I--I can't hear. Could you repeat that.

THE WITNESS: That he had been up for like eight days.

[Page 635]

THE COURT: Who said that?

THE WITNESS: Earl.

THE COURT: Okay.

Q Earl the Defendant here?

A Yeah.

Q All right. Keep going.

A Then that Wednesday we was talking. I don't know who house we was in, it was just we was downstairs, and we was talking about that. What was I supposed to be talk-answering? I forgot.

Q How did you know that when he said, "I done it. It's done,"--

A Oh.

Q He was talking about the murder of Annette White.

A Oh okay. I remember. All right. And so he was talking about it cause when we was talking about going to Detroit and he was saying some things about, "I be surprised to know this and that," that-then he just started talking about her. You know, "I done it. I had to. It got out of hand. I had to off

her,” and that was that. And I asked him what, and he was like, you know, he had did that that Friday.

Q You said he had to do it, things got out of hand.

A Yeah.

Q “I had to off her.”

[Page 636]

A Yep.

Q Why did he have to go to Detroit, according to him?

A He just wanted to get away he said.

Q Did he indicate whether or not he knew the police were looking for him?

A Nah, I told him.

Q What did you say?

A Cause we went back to Marvin house Tuesday or Wednesday, and I went to the door, and Marvin told me to tell him that the detectives had been by looking for him, so--

Q Marvin told you to tell Earl that the detectives had been by looking for him?

A Yeah.

Q All right. I’m just trying to make what you say clear.

A Yeah.

Q So everybody hears you.

A That the police come by looking for him, and so I came back to the car and I told him, and when I--I told him, I asked him, "What the police looking for you for?" He said, "Oh my girlfriend probably reported the car stolen." So you know, I ain't think nothing of it. He had the keys to the car, so you know, tripping you know, relationship thing. I got in the car, we left. Then we went to the store after that.

Q All right. So you told him the police were looking for

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him.

A Mmm-hmm.

Q Because that's what Marvin wanted you to do.

A Right.

Q Did you tell him the police were looking because of the homicide?

A No.

Q Or did you tell him any particular reason?

A Nah, I just told him what Marvin told him when I came to the door.

Q And is that when he said he wanted to get away and go to Detroit?

A Later on that evening, yeah he said that.

Q All right. Now during this half-a-week you spent with him, did he ever talk about choking women?

A Yeah pretty much.

Q Tell the jury about that. How did that come up and what did he say?

A It was just a general conversation as far as how he do or whatever he'd do if, you know, things got out of hand, you know--

Q How he would do, whatever he would do if things got out of hand?

A Yeah, What he would.

Q What?

[Page 638]

A You know, how--you know, just he--

Q Give us some context. How did this come up? What are we talking about?

A It was general conversation and you have to look it too as that at the time that he was talking or we was talking, it was, you know, everybody was under the influence. So I can't specifically say everything we was talking about.

Q I understand.

A You know, it was a general conversation and that's what it was, and you know, he just--he a big guy, flexed his hands all the time. So you know, just talking--

Q He--

A You know, about that this is how he do something, you know.

Q How he do something if what happened?

A As far--like if he got into it, if there was a problem or whatever. You know, he'd choke 'em up, you know.

Q All right. Did he say that on more than one occasion?

A Couple times.

Q Was this conversation with respect to women? How he would deal with women or anybody or you know, what are we talk-put some context on this.

A I think it didn't matter. Women, men, I don't think it mattered.

Q You say he would flex his hands a lot, he had big hands.

A Yeah.

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Q What do you mean by that? How'd that come up?

A That was part of--that's what he would do when he talked.

Q Show the jury. What--I mean what would he say and what would he do.

A Like you know when a person talk, like you know, hand motions, the same thing. Flex your hands while you talking and when you--when you describing something. You know, so at the time he was talking, he was flexing his hands at the same time.

Q And what exactly would he--was he saying to the best of your knowledge?

A You know, stuff like you know, things he ain't have to worry about cause he'd just, you know, just choke 'em, and then you know, that'd be the thing. You know, he'd just squeeze his hands, flex his hands.

Q Why would he have to worry about anything to start with?

A I don't know. I didn't know him.

Q I mean, did--do you remember how the conversation got started or what you were specifically talking about?

A No.

Q Can you give us any more context than that? How this con--what this conversation was about?

A No.

Q All right. You say he talked about choking on more than one occasion.

[Page 640]

A Yes.

Q Did you know how Annette White died?

A No.

Q Did he ever tell you specifically what he did to her?

A No.

Q Just that he had to off her.

A Yeah. That was after--that was like that Wednesday evening before we got into the car accident, when I found out exactly what was going on--not exactly, but that the fact that he had done something, I just didn't know what.

Q When did you find that out?

A Like that Wednesday night right before the accident, you know.

Q What happened, how'd you find out?

A It was right before we went to the Meijers. He was just talking--

MS. EIFLER: Your Honor--

Q No, I just want to know what he said. How--how you found out as to what he did with respect to this murder.

A It's just--it was just that he had done something. He didn't tell me what he did, he just said he had done something.

Q What did he say?

A That I had done something, you know.

Q Well that he had done something--

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A Right.

Q Or that he offed her, that he killed her, what did he say?

A No. That was a different conversation. He said he offed her when he was talking to me in the basement. You know, I'm saying when he was just sitting there in the chair, he was talking about it, and he was like she--she kept coming back at him and it just got out of hand, and that's when he offed her. And I was like, what? He was like, "Yeah, I had to off her."

And we was coming from the store, and I told him--I said it looked like we're being followed. He said, "Yeah I see 'em." And I'm like well what's going on? And he was like, "I done something," so I was fitting to jump out the-the car.

Q All right.

A He was like, "Hold on baby girl, just wait," cause I took my seatbelt off, I was gonna go. And we went down a dead end street, he turned around. The police car come behind us, he took off. We hit about 60 miles, hit the tracks, spint (sic) out of control, hit the pole, and that was that.

Q That was the--that was the crash.

A Mmm-hmm.

Q How were you able to get out of that car and run for it and why did you do that?

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A Actually I came through the back window. I was in the front. I come through the back window, he pulled me out cause I was halfway in, halfway out. I remember coming-coming to, he was pulling me out, saying, "come on baby girl, let's go." So he pulling me up, I'm still dazed, you know, and I'm--and I'm running and then I stopped and I'm just walking. I'm confused cause I'm not from here.

So that's when the police walked up on me and they's-they pulled me over. They saw the blood coming from my head or whatever. So they asked me where was I coming from, I couldn't really tell 'em. They put me in the car, they was taking me somewhere, then I ended up at the hospital.

Q All right. Are you from Grand Rapids?

A I caught my case there.

Q Is that why you were going back there? You have some connection to Grand Rapids?

A Yeah. My parole officer.

Q All right. Why did you run from the car?

A Good question. I--like I said, he helped pull me out the car. I didn't--at that time I was dazed. I just flipped over five times and you know, come from the back--the front seat through the back window. So I was a little dazed and he pulling me up, and like I said, I started running because it was like what am I running for, you know. And

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that's when the police stopped me.

Q Were you on the run from your parole?

A I wasn't on the run, you know. I didn't report, but I hadn't absconded yet. So I wasn't on the run.

Q Okay. So you missed some reporting dates or something.

A One day.

Q One day.

A Yeah.

Q All right. When the Defendant talked about what he did to Annette White, did he ever use the term rob or rape

A Couple times, yeah.

Q Tell the jury about that.

A That's like--ooh. I'm trying to remember which conver--yeah, it was a conversation at the house.

Q What did he say?

A In the basement about, you know, how he would take money, rob 'em, or you know, if he had to if they wouldn't give it up, he'll rape 'em or whatever.

Q Who was he talking about?

A I didn't--he didn't say specifically. He was just talking.

Q Did he ever relate that, either robbing or raping, to the victim in this case?

A I'm not sure.

Q DO you remember telling Detective Beauchamp that he said that about her, that he was either gonna rob her or rape

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her, and that's what this was all about?

A Probably.

Q Probably. When you talked to Detective Beauchamp months ago, in fact over a year ago--do you remember talking to Detective Beauchamp shortly after the accident?

A Yeah.

Q Was your memory fresher about it then than it is now?

A No.

Q You remember it as well now?

A No, actually I remember it the same.

Q All right. Well in his police report of your interview it indicates that you said that he was talking about robbing and/or raping, and that's what this was all about, this particular victim. Do you remember that?

A You said particular victim. I didn't say particular victim. I said he was talking about robbing or raping. I never said it was toward her.

Q You sure about that?

A You must be surer than I am. I--you got the paper. That's what it is then.

Q All right. So you're not so sure about that or you are sure?

A (No response)

Q Do you remember telling the detective that the reason why the window--

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THE COURT: I didn't hear the response. Was--
was there--

MR. FENTON: Well I don't think she did respond,
so I just moved on.

THE WITNESS: I didn't respond.

THE COURT: I'm sorry?

THE WITNESS: I didn't respond.

THE COURT: Do you remember that or not

THE WITNESS: I--I know I said something about
robbing and raping, but I never said it was anything
like it was particularly toward her. I don't remember
that like that. So I said if he had the paper in front of
him, then that's what--that's what it is.

Q Do you remember the Defendant whether or not he
told you how he got the body out of the car?

A Did I what?

Q Do you remember him telling you how he got her
body out his car?

A Nah.

Q Do you remember telling the detective that he had
to break a window to do that?

A Nah. I told the detective he had to break the win-
dow to get the--the keys out the car.

Q Never said to get the body out of the car?

A No.

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Q Now you said he talked about choking a couple of times.

A Mmm-hmm.

Q Do you remember telling the detective that he was talking about strangling people and choking all the time. He was always talking about that, seemed to be obsessed by--with it.

A You confusing me. What is you saying?

Q You said a couple of times here. Do you remember saying to the detective that he was always talking about strangling people.

A See there you go emphasizing words. It's the same difference. He talked about it a couple times. You know, I only knew the guy for like four days, on that Friday, Saturday I seen him, and Tuesday and Wednesday I saw him. You know what I'm saying? All the time is all the time, like I know him forever. No.

Q How many times would you estimate he talked about it?

A Say what?

Q How many times would you estimate he talked about it?

A A few times.

Q Three, four?

A I can't be specific.

Q All right. Let me ask you this. Do you remember him telling you about exchanging his shoes?

A Yep.

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Q At Kmart.

A Yep.

Q Tell the jury what he told you.

A What he told me about what?

Q About exchanging the shoes at Kmart.

A He just went in Kmart and changed his shoes.

Q Well all right. They don't have the police report, they've not read anything about this.

A Oh. He said--

Q So you have to tell them the whole thing.

A We got to the store, was in the store, didn't know specifically what we was there for. He changed his shoes, got some socks, left out the store.

Q All right. So you were actually with him when he did that.

A Yeah. I was like--yeah I was with him but not with him with him. We was at the store together, yeah, but not in the same aisle or anything like that. I just knew he came out with different shoes.

Q All right. Did the two of you walk in together?

A I can't remember.

Q The two of you walk out together?

A I'm not sure, probably so.

Q You told the detectives that he actually exchanged his shoes at Kmart, right?

A Yeah.

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Q Left--left his old ones there, and left-

A Yep.

Q With a new pair of boots.

A Right.

Q You were the one who gave them that information.

A Right.

Q How did you know that?

A Because he came out with different shoes on.

Q Did he tell you what he did?

A Yeah, he put 'em in the box.

Q He put the old ones in the box.

A Yeah.

Q And basically walked out with the new ones on, right?

A Right.

Q And did he tell you why he wanted to do that?

A No.

Q You also suggested to the detectives to check under the victim's fingernails, didn't you?

A Right.

Q Why'd you do that?

A Because of the scratch on his face.

Q So he had a scratch on his face?

A Yep. Before the accident.

Q When did you notice that?

A Like late Friday--or Satur--early Saturday morning maybe.

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Late Friday night.

Q Do you have any idea when you first--what time it was when you first hooked up with him that Friday night?

A No.

Q Could it have been late? After midnight?

A It was--it was late the first time, but it wasn't that late.

Q But you don't-

A Cause he left.

Q Were you using crack?

A Yep.

Q Throughout the whole weekend?

A Yeah.

Q So you don't know for sure what time it was, whether it was 12:00, 1:00, 2:00, 3:00, or 4:00 in the morning, right?

A Right.

Q What kind of scratch did you see on his face when you hooked up with him early Saturday morning?

A What kind of scratch?

Q Yeah. I mean how--what did it look like?

A A scratch.

Q All right.

A Like down his face, from under his eye like to his nose like.

Q Do you know--did it heal up throughout the week?
Did it

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look better on Wednesday when you last saw him
or-

A I ain't payed attention to him like that.

Q Did he explain it or did you ask him--

A No.

Q Where he got the scratch from?

A No. I was--I figure it come from when he was telling that things had got out of hand, that's where it come from.

Q Do you remember telling the detectives that Ervine told you that they got into it because she didn't want to give him something.

A Right.

Q All right. Did he tell you that?

A Yes.

Q What did he tell you?

A What you just said.

Q They got into it because she didn't want to give him something.

A Right.

Q And you told that to the detectives within a week or so after this happened, right?

A Right.

Q You were interviewed by the detectives after you got out of the hospital, was it?

A Right.

Q You didn't know for sure whether it was money or sex

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though, right?

A Right.

Q Did he ever tell you what he did with the body?

A No.

Q Did he make any comments about where it might be or anything like that?

A No.

Q And do you remember telling the detective that he told you wherever it was, it wasn't right.

A Right.

Q Well is that true?

A Mmm-hmm.

Q Did he--did he tell you that?

A Yeah.

Q What did he say?

A What you just said.

Q Well I don't want to put words in your mouth. I want you to testify.

A That's what--what you just say. Is he-

Q What did--

A He said it--he had to go take care of it because it wasn't right. So I figured it was where somebody could see it.

Q I'm sorry. Say that again.

A He said he had to move it cause it wasn't right, something to that effect. Cause I figured somebody could see it. I

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mean, hey, I wasn't trying to ask no questions for real.

Q Did he ever tell you that she attacked him with a box cutter?

A No.

Q Did he ever tell you that she attacked him with a knife?

A No.

Q Or a razor?

A He just said things got out of hand.

Q And he had to off her.

A Yeah.

Q And that he wanted something for her--from her that she wasn't giving up.

A {No response}

Q Is that right?

A Yep.

Q Let me ask you this. You remember going to Kmart and him changing his shoes that you just testified about, right?

A Right.

Q Was that before or after he was informed that the police were looking for him?

A It was--you said he went to--it was after.

Q Do you remember what day that was? If the crash was Wednesday--

A Yeah. It was Wednesday.

Q You think it was Wednesday that the Kmart exchange

[Page 653]

happened?

A Yeah, Tuesday or Wednesday. I believe it was Wednesday.

Q All right. When was he told that the police were looking for him? If you know.

A I don't know. I think it--it was Tuesday or Wednesday. It was one of them two days, Tuesday or Wednesday, I'm not sure.

Q Are you sure that the shoe switch happened afterwards though?

A Yeah. Yeah, it did happen afterwards.

Q Thanks. That's all I have.

THE COURT: Miss Eifler.

MS. EIFLER: Thank you.

CROSS-EXAMINATION

BY MS. EIFLER:

Q Good afternoon. Ma'am, you are--you testified that you are currently incarcerated due to using someone else's credit card, correct?

A Correct.

Q Have you been offered anything by the prosecutor's office in exchange for your testimony?

A No.

Q No? You didn't get anything for your-

A I--what you saying, I could have?

Q What's that?

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A No.

Q You did--you did not?

A No. I'm saying I could have?

Q Are you asking me? I've got to ask questions, you answer 'em okay. All right.

A I'm sitting in prison.

Q What's that?

THE COURT: Repeat what you just said. I'm sorry?

THE WITNESS: I said I wouldn't be sitting in prison.

Q I'd like to get a timeline from you. You met Ervine Davenport at Marvin Fraction's house, is that correct?

A Right.

Q Do you remember what day that was?

A Friday.

Q Friday. Do you know the date?

A No.

Q Approximately how long did you know him?

A I met him Friday, I left that Saturday morning, I seen him Tuesday, and got in the car I said then with him Wednesday.

Q So when was it that you saw the news on the TV about Annette White?

A Like in the middle of the night, what? Friday morn--or Friday night, Saturday morning. You know how they have the

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little late news special on or something they flash on the TV.

Q Like the 11:00 news Friday?

A Nah. Later than that.

Q So would it be Saturday morning?

A It would be like in the morning. Sometimes the news come on like at 2:00, 3:00, 4:00 in the morning, different time.

Q You said you thought he was tripping.

A You smoke crack, you trip.

Q So you thought his statements were because he was tripping.

A Right.

Q Now he didn't do anything to prevent you from going back to Grand Rapids, correct?

A What do you mean?

Q Well I think you testified Marvin had a car and Marvin could have taken you back, correct?

A No. Marvin said he had a car, Earl had a car.

Q All right. But you--you weren't--you could have gone to Grand Rapids on your own, correct?

A Yeah I could have.

Q All right.

A But crack, trip.

Q What's that.

A Nothing.

Q Go ahead and answer. I'm sorry.

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A Nothing.

THE COURT: You need to repeat your answer.

THE WITNESS: Crack, you trip.

Q Okay. So you were tripping too?

A Yeah. I ain't never smoked the stuff before so that was the first time, so yeah I stayed around.

Q That was the first time? When was--when was the first time?

A Nah, I'm saying around that period. That's the first time I ever tried it, like in that--that time, you know, being in Kalamazoo.

Q Can you describe what you mean by you tripping?

A Nah, I can't describe it.

Q What--what--

A You can't describe it. You know, you trip.

Q What'd you mean you--what'd you mean when you said you were tripping?

A No, I'm saying--I'm just saying you don't want to go no where. I could have left at the time, I could have left that morning at 8:00 o'clock in the morning when I first said I was leaving, but I didn't. You know what I'm saying? Because stuff was on the table, so it was like all right, forget it. So I--you know--and actually I brought it to the house and was like hey I'm fitting to be out. And that's when Marvin asked me about the--where was I

[Page 657]

going, and I told him I was fitting to get on the bus and leave. And it was just him and Jerry there, and then he come in like about a half-hour--Earl come in a half-hour later. And you know, just set around and time just passed by. So you get stuck when you start smoking.

Q After this accident you were taken to the hospital, correct?

A Right.

Q Did you give a name of Michelle Jackson at the hospital?

A I gave some name, I don't know which one it was.

Q Do you go by Michelle Jackson?

A I go by a ton of names.

Q These are legal names or are they kind of aliases or?

A They aliases.

Q So your testimony is that Mr. Davenport made some statements such as it got out of hand, is that right?

A Right.

Q You said that she kept coming back at him. Was he referring to Annette White, do you know?

A I guess so.

Q He didn't elaborate what he meant?

A He said it got out of hand. So if, you know, you into with somebody, they keep coming at you wherever you went to or with, then that's--that's it. It got out of hand.

Q Did he tell you he was in a car?

[Page 658]

A Say what?

Q Did he tell you he was in a car at the time?

A Was in the car what?

Q With Annette White when this happened?

A Nah, he ain't say where he was at.

Q Did he tell you that Andre Randall was involved with him?

A I don't remember.

Q You don't remember telling the police that?

A I don't remember.

Q You don't remember the police asking you if--if Ervine was with Andre Randall and you told 'em that--that they were together?

A I don't remember what part you're talking about. I might have--huh?

THE COURT: You need to speak up a little bit. I think you said, "I don't remember what," and I didn't hear the answer.

THE WITNESS: Yeah. I don't remember and I might have told 'em that. If it's down there in writing, then I told 'em that, but I don't--I don't remember. But yeah-yeah I told him--yeah, I remember now. Yeah. I told him that was the guy that--

Q You told him--

A I'd seen him like at Daysha's (phonetic) or something, somewhere around there or driving by something. I told

[Page 659]

'em, yeah.

Q Okay. So you saw them together, correct?

A Right.

Q And this is when you were--I believe you were in the hospital. You were talking with Detective Beauchamp, do you remember that?

A Right.

Q Yeah? And you told Detective Beauchamp that--that the both of them had tried to either rob her or rape her, something with an R. Do you remember telling 'em that?

A That both of 'em--nah. I don't know. I mean I was at, like you said, at the hospital. They had--they

was doping me up even more, so I--hey. I don't remember that part-

Q They were what?

A Saying about both of 'em.

Q They--what was happening at the hospital?

A I said they were doping me up even more. I don't remember telling 'em that part about both of 'em have something to do with robbing or raping 'em. I don't remember that, but I remember saying something about robbing or raping, but I'm not sure as to whom.

Q So if it's in--if it's in the report that you were referring to the both of them, you would agree then that you did tell Detective Beauchamp that?

A Yeah I said that.

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Q Do you remember how long you'd been at the hospital at the time that this interview took place?

A No.

Q But you were being treated for injuries sustained in the accident, correct?

A Right.

Q And you were receiving medication, is that correct?

A Right.

Q Were you under the influence at that time of any other controlled substances?

A Was I what?

Q Under the influence of any other controlled substances at that time?

A What other than the hospital?

Q Correct.

A Yeah.

Q Okay. Well what--what were you under the influence of?

A Crack.

Q Crack. Were you also found to be in possession of heroin at the time?

A Oh no.

Q No?

A No.

Q So based on treated and the fact that you were on crack and also being given medication at the hospital, is it fair to

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say that any statements that you gave while at the hospital may not have been a 100-percent accurate?

A Could have been, could have been not.

Q I mean were you--I mean you were of all your faculties? I mean you knew exactly what you were saying, what was happening?

A I knew what was happening.

Q Okay. Well then why--you brought up the fact that you were on the medication, correct?

A Yeah, you was asking cause I was in the hospital. I mean-

Q Okay. You were doped up?

A Yeah. The question you asked was dumb so I gave you the answer.

Q My question was dumb?

A Yeah.

Q All right. What kind of medications were they giving you?

A I'm not a doctor. I--I really don't know.

Q All right.

A I can't tell you.

Q So what do you mean by doped up?

A You know, for pain?

Q Mmm-hmm, right.

A Stuff like that.

Q Did it work?

A Yeah

[Page 662]

Q All right.

A Had me knocked out.

Q What's that?

A It had me knocked out.

Q Knocked out.

A Mmm-hmm.

Q Okay. So this medication-

A After the questioning.

Q Oh okay. When did they gave you the medication?

A What? I don't know--when I got there.

Q Before the questioning?

A Yeah, but they came somewhere down the line and in fact, I told 'em don't talk to me right now until I to sleep actually, and that was the black guy that was there. Cause I told him that I'm not thinking straight, so I told 'em to stop talking to me. That's why we--they stopped talking to me till that Monday.

Q Okay. So was it on Monday when you were asked whether Ervine and Andre were together when something happened to that girl?

A I don't remember which day it was when they asked that question. I just said I remember seeing them together at once upon a time. I--I don't know who Andre is, so I knew who he was when I saw him when they described him to me. Well I described them to--him to them, and they was like

[Page 663]

okay, so yeah. So I seen him at Daysha's and that was that. I don't remember what day it was.

Q Did--

A And actually I didn't even know really what--why they was questioning me like they was questioning until they came back and picked me up.

Q Daysha, as she someone you had been staying with on and off?

A Who?

Q Daysha.

A Nah, that's a store.

Q Well--Delisha then? Were you staying with someone by the name of Delisha?

A Delisha, yeah.

Q Off and on?

A Nah, not off and on. I stayed with her then I left.

Q You never went to Detroit with Ervine Davenport, correct?

A No.

Q Who else was there when you were--when he was talking about choking people?

A Nobody.

Q You said there was a general conversation going on, it was just between you and Ervine?

A I think so.

Q Well what'd you mean by that?

[Page 664]

A What I mean by what?

Q By, "We were just talking."

A Yeah, we was just talking.

Q It was a general conversation?

A Yeah.

Q All right. Were you tripping then?

A Was I tripping or was he tripping?

Q Either one of you.

A I can't speak for him. I wasn't tripping.

Q All right. You--

THE COURT: I'm sorry. You were or you were not?

THE WITNESS: I weren't.

THE COURT: "I was not?"

THE WITNESS: I was not.

MS. EIFLER: I have nothing further.

THE COURT: Mr. Fenton.

MR. FENTON: Yeah, I'd like to follow up a little bit. Thank you your Honor.

REDIRECT EXAMINATION

BY MR. FENTON:

Q I want to make this very clear. You were interviewed by the detectives at the hospital, correct?

A Right.

Q And at some point you cut off questioning cause you were

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kinda out of it?

A Right.

Q Did they come back and talk to you like six days later?

A Right.

Q When you were out of the hospital?

A Right.

Q How was your state of mind then?

A It was good.

Q Did you tell 'em what you knew?

A Yep.

Q Were you under the influence of any drugs at that point?

A Nah.

Q In fact, you were in jail, weren't you?

A Right.

Q You went from the hospital to jail, right?

A Right.

Q And stayed in jail until they interviewed you, right?

A Right.

Q And continued to stay in jail probably up until this day?

A Well no, actually I got out and went back.

Q You got out, but then you were later--

A Right. Two days later.

Q Caught and went back.

A Right.

Q All right. In any event, were you either in the hospital

[Page 666]

or in jail between the first time they talked to you and-

A Right.

Q The second time?

A Right.

Q All right. I just want to clear something up. You gave statements--you testified that the Defendant basically took responsibility for her death, right?

A Basically.

Q You also said on cross-exam that you may have told the police something about Andre being involved as well. Where--where'd you get that information and is that accurate or do you remember the Defendant telling you that or how'd that come up?

A I really can't say. I--

Q Do you remember the Defendant telling you that Andre was involved as well or not?

A I--I really can't say.

Q All right.

A I really can't say to that.

Q So today as you're sitting here thinking, do you remember the Defendant telling you that Andre was involved?

A I think so. I can be for certain though. I'm not--I can't remember that.

Q You said you had several conversations with him though and you've already testified to those conversations--

[Page 667]

A Yeah.

Q About had to off her and all those sorts of things. Was he talking about just himself during those conversations?

A I believe so.

Q Did you know Andre?

A I ain't know nobody.

Q Have you ever met Andre Randall?

A Not, personally. Not sit down, hey, how ya doing.

Q Well I mean can you quantify this out of all the statements the Defendant made about this

murder? Like on how many of them was he claiming sole responsibility and how many would he have said that Andre might have been involved.

A Nah-uh. He didn't claim sole responsibility like that. No.

Q All right.

A I think in the end is where--where it all came out as far as him taking responsibility because he said it had got out hand. So I figure, hey, that would be taking responsibility at that point. I don't know what happened beforehand though.

Q All right. You said you thought the news was Friday night but you don't really know that for a fact, do you?"

A Right.

Q It could have been Saturday night.

A Yeah.

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Q It could have been Sunday.

A Could have been.

Q Cause you were on crack during that time.

A Sure was.

Q And the last thing you're paying attention to is the day and the time, right?

A Right.

Q Didn't have a job or weren't--

A It was late so that's all I know. It was late.

Q You didn't have a job, you weren't working, right?

A Right.

Q Just basically living on the streets.

A No, I wasn't living on the streets. I was living at Delisha's house.

Q All right. You know Delisha's last name?

A I know her sister's last name if that's the same.

Q Where was this basement at that you were having some of these conversations with the Defendant at?

A I cannot tell you. I do not know. I'm not from here.

Q Was it at some apartment complex?

A It's not--no. It was a house.

Q Okay. Did you--do you remember the color of the house?

A It was dark when we got there, and like I said, I had been up myself for like four or five days and.

Q Do you know anything about a dehumidifier and/or a stereo?

[Page 669]

A No.

Q You didn't see him give any of that stuff to Marvin Fractions?

A No.

Q All right. Thanks. That's all I have.

THE COURT: Miss Eifler.

MS. EIFLER: Thank you.

RECROSS-EXAMINATION

BY MS. EIFLER:

Q To the best of your knowledge though, this news that came on, that was somewhere between Friday night and Saturday morning. That's what you told me, correct?

MR. FENTON: That's been asked and answered and covered.

MS. EIFLER: I'm just recovering it on cross.

THE COURT: Overruled, I'll allow it. Go ahead.

Q That's--that's-

A That weekend, yeah.

Q That's what--sometime that weekend.

A The weekend, mmm-hmm.

Q Is that a yes?

A Yes.

Q Thank you.

MS. EIFLER: I have nothing further.

MR. FENTON: Nothing else.

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THE COURT: Thank you ma'am. You may step down.

(The witness was excused at 2:52 p.m.)

(Sidebar conversation between the Defendant and Ms. Eifler)

MR. FENTON: I call Bill Moorian.

THE COURT: Do you solemnly swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

MR. MOORIAN: I do.

THE COURT: Thank you sir. You may have a seat, and state your first name and your last name for the record please, and also spell both your first and last name.

THE WITNESS: William Moorian, W-I-L-L-I-A-M, MO-O-R-I-A-N.

WILLIAM MOORIAN

(At 2:53 p.m., sworn as a witness, testified as follows)

DIRECT EXAMINATION

BY MR. FENTON:

Q Are you a detective for the Kalamazoo Department of Public Safety?

A Yes.

Q Did you assist in this investigation?

A I did.

Q Did you interview or were you part of an interview

* * *

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whole truth, and nothing but the truth, so help you God?

MR. COOPER: Yes.

THE COURT: Please have a seat. I need you to state your first and last name. Please spell both your first and last name. If you need to pull that microphone down a little bit, you can do that too.

THE WITNESS: Kenneth Cooper, K-E-N-N-E-T-H, C-O-O-P-E-R.

KENNETH COOPER

(At 4:21 p.m., sworn as a witness, testified as follows)

DIRECT EXAMINATION

BY MR. FENTON:

Q Mr. Cooper, are you friends with Leslie Snook?

A Yes.

Q How do you know her?

A She's my girlfriend.

Q I'm gonna take you back to an incident that occurred January 8th of 2007. Do you know the Defendant, Ervine Davenport?

A Yes.

Q Do you see him in court?

A Yes.

Q Is he wearing the striped shirt--plaid shirt, seated at counsel table?

[Page 713]

A Yes.

MR. FENTON: Let the record reflect the witness identified the Defendant.

THE COURT: That is noted for the record.

MR. FENTON: Thank you.

Q Tell the jury what you saw him do to Leslie Snook on January 8th of 2007.

A Well I seen him choke her, pick her off the floor, and I asked him to let her go, and he let her go.

Q You say you saw him choke her.

A Yes.

Q How?

A By his hands were around her throat, picking her up off the floor.

Q Actually picked her up off the floor with his hands?

A Yes.

Q Around her neck?

A Yes.

Q How high?

A I 'm not sure about that.

Q Did she seem to be in pain?

A She was passed out.

Q What did you do to help?

A I just asked him would he let her go.

Q Did you have something in your hand?

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A Well I had a bottle, I had just come from the store.

Q When you came in was this already happening?

A Yes.

Q So it started when you weren't there.

A Right.

Q Do you know why he did it?

A Well they had--had--having an argument all day.
I--I believe they had some kind of affair going on,
I'm not sure.

Q All right. Did you see her have any weapon in her
hands?

A No.

Q Knife, razor blade, anything else?

A No.

Q Is the Defendant a pretty big man?

A Yes.

Q How big would you say?

A How big is--he's--he's a nice size guy.

Q Over six feet?

A Yes.

Q Over 300?

MR. FENTON: Your Honor, I'm gonna object. I think the witness can testify as to his own impressions. The prosecutor's leading this witness.

MR. FENTON: That's fine. I'll withdraw.

Q Do you know--do you have any guesstimate as to how much he

[Page 715]

weighs?

A No I don't.

Q Is he a lot bigger than you?

A Yes.

Q So you weren't there when it started.

A No.

Q Was it just the two of them alone?

A Yes.

THE COURT: I'm gonna need you to lean up towards the microphone. I'm sorry.

THE WITNESS: Okay.

THE COURT: Thank you.

Q Was Miss Snook in any distress as a result of this, aside from being unconscious?

MS. EIFLER: I'm gonna object again. He can't testify as to her impressions. He can testify about what he saw.

MR. FENTON: That's what I mean.

Q Did you see her under any distress other than the fact that she was unconscious?

A No.

THE COURT: And I'll overrule the objection and you just restated the question. So go ahead.

MR. FENTON: Thank you your Honor.

Q I'm sorry?

[Page 716]

A What was the question please.

Q Did you see her in any distress as a result of this?

A No.

Q When she came to?

A It's hard--when she came to, I'm trying to think of--yes, she was a little distressed when she came to.

Q Was she upset?

Q Yes.

Q Could you tell whether she had urinated on herself?

A I could--

MS. EIFLER: Your Honor, I'm gonna object. I think that the--the prosecutor may call this person to testify about what happened to her. I don't--I think he can get it in through a different witness, not this witness.

THE COURT: If--if he knows, I think that's something he could observe. Go ahead Mr. Fenton.

Q What's your answer? You don't know?

A I don't know.

Q Did she require any medical treatment as a result?

A No.

Q All right. Did the Defendant leave shortly afterwards?

A Yes.

Q Thank you.

MR. FENTON: That's all I have.

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THE COURT: Miss Eifler.

MS. EIFLER: Thank you.

(Sidebar conversation between Ms. Eifler and Mr.

CROSS-EXAMINATION

BY MS. EIFLER:

Q Sir, did I understand you correctly that Miss Snook is your girlfriend?

A At the time.

Q All right. At that time. She's no longer your girlfriend?

A No.

Q All right. When did--when did the two of you break up?

A I'm not sure about that.

Q Was it around the time of this incident?

A Yes.

Q Well was it the day of the incident?

A I'm not sure about that one.

Q Okay. You're--you're testifying that--something's that pretty serious, correct?

A Pardon?

Q This is a pretty serious thing that you observed, is that correct?

A Yes.

Q And you asked--well let me ask you this. Did you ask the Defendant to leave?

[Page 718]

A Yes.

Q Because of what he had done to Leslie Snook?

A Yes.

Q You never called the police though to report this, isn't that true?

A No.

Q In fact, you were--

THE COURT: Wait, hold on a second. Just so we're clear, no you did not call the police or no that's not true?

THE WITNESS: No I did not call the police.

Q You were actually located by the police, is that correct?

A Yes.

MS. EIFLER: I have nothing further.

THE COURT: Mr. Fenton.

MR. FENTON: Just briefly.

REDIRECT EXAMINATION

BY MR. FENTON:

Q She asked you if you were located by the police. Does that mean that the police came to talk to you about this sometime later on?

A Yes.

Q And did you tell 'em what happened?

A Yes.

Q Did they promise you anything?

[Page 719]

A No.

Q Offer you anything?

A No.

Q Why didn't you report it to the police that day?

A I didn't think it was--at the time I didn't think it was that serious.

MR. FENTON: That's all.

THE COURT: Miss Eifler, anything further?

MS. EIFLER: Could we have the witness repeat that? I didn't hear it.

THE COURT: Can you repeat that answer, sir.

THE WITNESS: At the time I didn't think it was that serious.

MS. EIFLER: I--I don't have any further questions.

MR. FENTON: Just one follow-up.

REDIRECT EXAMINATION

BY MR. FENTON:

Q You didn't think it was that serious even though she was unconscious?

A Well I'm not--I'm not a very medical person and I was a little bit--had been drinking that day.

Q Had you guys been smoking crack too?

A Not that day.

Q Do you know if Leslie Snook and the Defendant were smoking

[Page 720]

crack that day?

A I'm not sure. They was together when I-wasn't around.

Q Was there crack inside the apartment?

A No.

Q Where did this happen at?

A At my house.

Q Where's that?

A 810 Howard.

Q Is that somewhere near downtown?

A On the north side.

Q On the north side. Thank you. That's all

THE COURT: Miss Eifler, anything further?

MS. EIFLER: Just--just one follow-up question.

REXCROSS-EXAMINATION

BY MS. EIFLER:

Q Sir, the only time that you talked to the police about this was on February 15th, 2007, when the police contacted you, correct?

A Yes.

MS. EIFLER: I have nothing further.

MR. FENTON: Nothing else.

THE COURT: Thank you sir. You may step down.

(The witness was excused at 4:29 p.m.)

MR. FENTON: I call Leslie Snook.

THE COURT: Before you have a seat, please raise

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your right hand. Do you solemnly swear or affirm that the testimony you are about to give will be the truth,

the whole truth, and nothing but the truth, so help you God?

MS. SNOOK: Yes.

THE COURT: Please have a seat. Repeat that answer. I don't know if we recorded that.

THE WITNESS: Yes.

THE COURT: Thank you. I need you to state your first name and your last name, and I need you to spell both your first and last name, and why don't you pull that microphone down so that it's even with your mouth if you would.

THE WITNESS: Les--

THE COURT: Right into the microphone.

THE WITNESS: Leslie Snook. I spell it? You said to spell it?

THE COURT: I need you to spell your first and last name.

THE WITNESS: L-E-S-L-I-E, S-N-O-O-K.

LESLIE SNOOK

(At 4: 30 p.m., sworn as a witness, testified as follows)

Q Miss Snook, do you know the Defendant, Mr. Dav-enport?

A Yes.

Q Did you have some kind of relationship with him?

[Page 722]

A Not a relationship, no.

Q Were you--

A He was an associate.

Q An associate of yours. Were you together on January 8th, 2007?

A Yes.

Q Something happen that day?

A Yes.

Q Tell the jury what happened that day.

A That day we'd had a few words, and the--what ended up happening was that he choked me.

MS. EIFLER: I'm sorry. I cannot hear.

THE COURT: You need to speak up if you would.

A I say that day he ended up choking me.

Q He ended up choking you.

A Yes.

Q Can you describe exactly how that came about please for the jury.

A The night before we had been together. I had him drive me to Battle Creek. It was snowing out real bad and he drove me in my car to Battle Creek. I guess in that time there and back--it took quite awhile because of the weather--he ended up getting upset with me. You could tell the atmosphere just changed. So we get back to the house where we had originally started from and I was like well I'm

[Page 723]

going to bed now. And he hung out downstairs with the guy that owns the house, which we both know, that's how we know each other. And I went upstairs and went to bed.

We call him E. E hung out all night to the next night and--

Q Who's E?

A E Davenport.

Q The Defendant here?

A Yes.

Q All right, go ahead.

A And then the guy who owned the house said it was time to go and they left in the car. He took him, dropped him off a few blocks from the house. Well I didn't know they even left together, I just knew the car pulled out of the driveway, and so then I'm upstairs and I hear a knock on the door. Okay, keep on knocking. I--this in the north side, so I was

always told don't let nobody in when he-when the owner's gone, but it was Davenport and he had lived there before. So I let him in. I said okay, shut the door, I'm going back upstairs. Shut and lock the door, I'm going back upstairs.

I go upstairs to my room and I'm on the phone. He comes up to my room in the doorway and asked me if I had some drugs or something or knew where to get some, and I say yeah, I'm on the phone, trying to get some right now.

[Page 724]

He came behind me while I was on the phone in a conversation and said, "You got something in your hair." You know, lint or whatever. And I'm still on the phone. He came back behind me again and did that again. And I look--I shook my head and I said, "Hey dude, don't worry about it, I gotta take a shower," you know. And he--then was behind me and said, "I said you got something in your fucking hair," and snatched me up by neck from behind, and choked me.

Q When you say he snatched you up, what do you mean?

A I mean with both his hands he literally choked me to death.

Q Did he--

A Strangled me.

Q Lift you off of the ground?

A Huh?

Q Did he lift you off of the ground?

A You know, I think so. I don't even know cause I was out.

Q How long--

A I think so, I don't know.

Q Were you out right away or did it take-

A No. No, it wasn't--it wasn't right away.

Q So can you tell us the details of this choking, to the best of your recollection.

A Only--only thing I can tell you that the honest truth I remember, is him doing it from behind, me going--

[Page 725]

(The witness making choking sounds)

A Just could not get no breath, you know. I--I was up off my feet I do believe. And then I was out. You know, my mind had drifted off somewhere and I was on the ground then in front of him, and he was down on top of me, like bent over, and I was on the ground facedown, and that's when I--I--then I was unconscious cause I was having a--some kind of-I wasn't, you know--

(The witness making choking sounds)

A In my--

Q Were you able to breathe when he was-

A No.

Q Choking you?

A No. I had lost my breath totally. I kept--

(The witness making choking sounds)

A Trying to get it and I couldn't get it. And then is when I drifted out of unconsciousness I guess because I pissed my pant--I urinated on myself, and then bit my tongue and stuff.

Q You bit your tongue?

A Yep. And then the guy who owns the house ended up coming upstairs, whatever--thank God he came back--and got him off me somehow.

Q Who's that?

A Ken Cooper.

[Page 726]

Q Were you attacking the Defendant when he did that to you?

A No.

Q Did you have a knife?

A No.

Q Did you have a box cutter?

A No. I didn't have anything in my hand. My cell phone when I was on the phone before when he was behind me, but that's all.

Q Were you posing any threat to him whatsoever?

A No.

Q Now Miss Snook, you didn't report this to the police right away, did you.

A No.

Q In fact, you never made a police report about it until--or did you make a police report about it?

A I didn't make a police report.

Q How did the police come to learn about you and this incident?

A I had warrants, you know, and stuff and I got arrested on February 6th, '07, my birthday, and I was held in the county jail and me--I--me and--me and another girl was in the transport van, going downtown or whatever to court, and he ended up being the guy in the back of the van.

Q He being Ervine Davenport?

A Yeah.

[Page 727]

Q So you were being transported to court on your case and the Defendant was in the transport van as well.

A Yeah.

Q All right. Please continue.

A And that's--that's odd because they don't usually put men and women together, but for some reason they ended up putting him in the back of our van, and I guess it was real odd coincidence.

It's the first time I had seen him since that happened, and I, you know, something came over me like it did--that feeling, you know--

Q What feeling is that?

A Feeling like I'm choking, I can't breathe, you know, just panic attack. And it's the first time I seen him since it happened and he's just sitting back there smirking, and I said--you know, we started going down the road in the van, and I finally said, "Hey dude, why'd you do that to me?" You know? And see I always wanted to know that cause I didn't do nothing to him.

Q What was his response?

A He said cause I was showing my ass the night before or something like that, like acting up or something, whatever that means. Not literally, I think it means like you know, talking to him snotty or

something. And then he said, "You know, you're lucky, I wanted to squish you like a bug."

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Q "You know you're lucky, I wanted to squish you like a bug?"

A Yeah. And that's the whole thing that, you know. I ended up talking to Officer Greenlee at the jail after that, I was really upset, and she's the one that, you know, I guess called Beauchamp or Moorian.

Q Who's that?

A The officer I talked to, the woman at the jail. You know, she talked to me and said I should say something to somebody cause that's--you know, she helped me, and that's when it came about to tell him.

Q Did you know why the Defendant was going to court that day?

A Yeah.

Q Did you talk to him about that at all?

A Yeah. And it just not talk to him about it, but--

Q Was there any conversation at all back and forth about that?

A Yeah.

Q What'd you say?

A He said something about his shoe got him caught up in this stupid shit or something. He--

Q How did it start out?

A I--you know, how--it started out just like I told you about, asking him why he did that to me.

Q And then did it shift to his case?

A Yeah.

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Q Did you ask--

A And the thing is--the thing is he--where he put the girl I guess was just a few blocks from my house.

Q Well I'm not asking you a question about that.

A Oh I'm sorry.

Q I just want to know how the conversation shifted to his case.

A I don't know. He said he--he said he wouldn't have even been caught up in this if it wasn't for shoes. Getting caught by his shoe or something like that. I can't exactly--that's the only thing I remember about that.

Q All right. Why didn't you call the police?

MS. EIFLER: Your Honor, again, I'm gonna--I'm gonna object to the previous response that she gave

which was on the response, and have the Court instruct the jury not to--not to--

THE COURT: What response? Which--

MS. EIFLER: She--she--her statement was, "I guess he put her--"

THE COURT: Oh.

THE WITNESS: Right.

MS. EIFLER: The object is being unresponsive.

THE COURT: Yeah, I--I will instruct the jury to disregard her answer with regards to the effect of, "Where he put her was a few blocks from my house" or something.

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There's no foundation for that. I don't know--there's no indication where she allegedly got that information from. So you are to disregard that answer and ignore it.

Go ahead Mr. Fenton.

MR. FENTON: Thank you your Honor.

Q Miss Snook, at the time that you talked to Detectives Beauchamp and Moorian, did you know how the victim in this case, Annette White, was killed?

A Did I know?

Q Yeah.

A No.

Q Do you know today?

A How she was killed?

Q Yeah.

MS. EIFLER: Your Honor, I'm gonna object. Again, I--I don't know.

THE COURT: Okay. If you want to lay a foundation for it. The objection's sustained. I don't know where she would get the information from. It would be hearsay and--

MR. FENTON: Well it--if the--

THE COURT: Unless you can lay a foundation.

MR. FENTON: It's not relevant in terms of--it's not being offered for the truth of it. It's being offered to reflect on her prior testimony.

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THE COURT: Counsel, why don't you approach.

(Bench conference begins at 4:40 p.m. between the Court and counsel, transcribed as follows)

THE COURT: Her testimony was--I don't know what else she'll--

MR. FENTON: She's talking about him choking her.

THE COURT: Right.

MR. FENTON: It's getting them to know that victim in this case was choked. And she testified a moment ago--today.

THE COURT: Then why did you ask her then-

MS. EIFLER: She's already said that.

MR. FENTON: I just asked her today.

THE COURT: In--in--

MS. EIFLER: She's already said that then.

THE COURT: Well--

MR. FENTON: I don't know if she said that about today.

THE COURT: Can't--why don't you ask-

MS. EIFLER: She said she didn't know.

MR. FENTON: She said that then, she said she didn't know that then when she talked to Beauchamp.

MS. EIFLER: Then why is it relevant that she knows it today? Then you're--

MR. FENTON: What if she doesn't know it, that's

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how it's relevant. She's testifying today.

MS. EIFLER: Okay. Well I thought you asked her does she know now. I think maybe--

MR. FENTON: No. That's what I asked and you objected to.

MS. EIFLER: I don't want--I don't want her to testify--

THE COURT: Listen--

MS. EIFLER: If she knows it.

THE COURT: I think the question is yeah, do you know she was--

MR. FENTON: Killed.

THE COURT: Killed.

MR. FENTON: Today, do you know that today? I'm not asking for hearsay. I don't want to know how she knows.

MS. EIFLER: Well you need--you need to instruct her.

MR. FENTON: I want to know if she knows.

MS. EIFLER: You need to instruct her.

MR. FENTON: I'll just tell her it's a yes or no question.

MS. EIFLER: All right.

MR. FENTON: I--I don't want the hearsay. My point is I don't think she knows.

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THE COURT: If what if known, if she knows that today, okay.

MR. FENTON: Right.

THE COURT: Go ahead.

(Bench conference ends at 4:41 p.m.)

Q Miss Snook, let me rephrase the question. It's--it's a yes or no question, you can answer it yes or no. Do you know today how the victim in this case, Annette White, was killed?

A Do I know?

Q Yeah. Do you know today. The method of--

THE COURT: It's a yes or no. It's a yes or no--

A Yeah. I'm--yeah.

Q All right. I take it you've heard that from somewhere.

A Yeah.

Q All right.

A The whole jail talks about it.

Q All right. At the time you talked to the detectives though, over a year ago, did you know that?

A No.

Q Thank you.

A Not at all.

MR. FENTON: That's all I have.

THE COURT: Miss Eifler.

MS. EIFLER: Thank you.

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CROSS-EXAMINATION

BY MS. EIFLER:

Q Ma'am, you--you talked with Detective Beau-champ?

A Yes.

Q All right. This--this detective who is court today, correct?

A Yes.

Q All right. And you gave him a full--you gave him a full statement, is that correct?

A Yep.

Q Now this is a pretty serious thing that you're reporting to us, correct?

A Yes it's very serious.

Q But you never called the police, correct?

A Correct.

Q You never contacted anyone until you were lodged in the county jail, correct?

A I haven't contacted anyone-

Q Is that a--it's a yes or no?

A Yes.

Q Are you familiar that sometimes folks lodged in the county jail might contact the police to try to get some consideration for why they're lodged?

A Sure.

MS. EIFLER: I have nothing further.

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THE COURT: Mr. Fenton.

REDIRECT EXAMINATION

BY MR. FENTON:

Q Did you get anything for giving the information to the detectives that the Defendant choked you?

A No. I'm still in jail.

Q Thank you.

THE COURT: Anything further, Miss Eifler?

MR. FENTON: You know what I did have one other question if I may.

Q Why didn't you report it to the police when he choked you?

A I was on drugs, I had warrants, you know, just-- that's why.

Q Didn't need police involvement.

A Scared.

Q That's all. No wait a minute.

MS. EIFLER: So you're telling me--

THE COURT: No wait just a minute, Miss Eifler. He--I think he said one moment.

MS. EIFLER: I'm sorry your Honor.

THE COURT: I'm not sure if he's done.

Q Do you remember the first detective that you talked to about what the Defendant did to you was actually Moorian?

A Yeah, Detective Moorian.

Q And then Detective Beauchamp talked to you later.

A Yeah.

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Q All right thanks. That's all I have.

THE COURT: Miss Eifler.

CROSS-EXAMINATION

BY MS. EIFLER:

Q Ma'am, since back in--on February 13th--February 14th of '07, you've--you've been released from the county jail though, isn't that correct?

A Yes.

Q All right. So you did get out, correct?

A That's on my--I was on a parole violation.

Q Okay. But you didn't have any conversation with Detective Beauchamp until he got there, you didn't know what he was gonna do for you, is that correct?

A What who was gonna do for me?

Q The--Detective Beauchamp.

A What'd he do for me? All he did was talk to me.

Q Okay. Thank you.

MS. EIFLER: I have nothing further.

MR. FENTON: Well I need to follow up on that to clarify.

REDIRECT EXAMINATION

BY MR. FENTON:

Q Has anybody done anything for you to get you out of jail?

A No.

Q Did you serve a sentence and were released?

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A Yeah, I've got--when I go to jail it's for something I had did before that has nothing to do with this.

Q All right. And then when you were released did it have anything to do with this?

A No. It's from my PO.

Q Thank you. That's all--PO being who?

A Probation officer. Parole officer.

Q Parole officer, all right. Thank you.

THE COURT: Anything further, Miss Eifler?

MS. EIFLER: No ma'am.

THE COURT: Thank you ma'am. You may step down.

THE WITNESS: Thanks.

(The witness was excused at 4:45 p.m.)

MR. FENTON: Your Honor, I believe I've got three witnesses left, and if we could I'd like to handle that tomorrow.

THE COURT: Okay. Ladies and gentlemen, we had a discussion over the break. We may or we may not finish tomorrow. We won't finish tomorrow morning, I know that for sure. It will depend upon--possibly may finish in the afternoon, and then what happens is I have to instruct you and then you begin your deliberations.

Even if we do finish, there's a possibility we may finish late in the afternoon and then I might--you may need to come back the next week for deliberations. It just

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STATE OF MICHIGAN
9th JUDICIAL CIRCUIT COURT
TRIAL DIVISION
FOR THE COUNTY OF KALAMAZOO

PEOPLE OF THE STATE OF MICHIGAN,
v Case No.:C07-165FC
ERVINE LEE DAVENPORT.
Defendant.

JURY TRIAL- VOLUME IV
BEFORE THE HONORABLE
PAMELA LIGHTVOET
Kalamazoo, Michigan - Friday, July 11, 2008

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* * *

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Q All right. You're not familiar particularly what type of gloves were back there, if any?

A If they were mine, they would have been like black, fuzzy, mitten type gloves.

Q All right. Girl type of gloves?

A Yes.

Q Female gloves I should say. Smaller and fuzzy.

A Yes.

Q All right. Thank you. That's all.

THE COURT: Anything further, Miss Eifler?

MS. EIFLER: No ma'am.

THE COURT: All right. Thank you ma'am. You may step down.

(The witness was excused at 9:58 a.m.)

MR. FENTON: I call Brian Beauchamp.

THE COURT: I'll place you under oath again. Please raise your right hand. Do you solemnly swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

MR. BEAUCHAMP: I do.

THE COURT: Please have a seat. Just state your name for the record please.

THE WITNESS: Brian Beauchamp.

BRIAN BEAUCHAMP

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(At 9:59 a.m., sworn as a witness, testified as follows)

DIRECT EXAMINATION

BY MR. FENTON:

Q Are you the lead detective in this case?

A Yes I am.

Q Is there anybody that you know of who knows more about this case than you?

A Probably not.

Q How long have you been a police officer?

A For ten-and-a-half, 11 years.

Q Did you spend some time investigating drug crimes in the KVET unit?

A For five years.

Q As a result of that experience, did you learn how to talk to witnesses as well as suspects?

A Yes I did.

Q How long have you been a detective?

A For four years.

Q Have you had some training on the interviewing of suspects?

A Yes I have.

Q Can you describe a little bit of it.

A I attended a training put on by the company--

THE COURT: I'm sorry sir, you 're gonna have to speak up.

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A I attended a training put on by John Reid and Associates. They're a company that goes around the country and interviews--or not--conducts training with different departments, showing officers and detectives how to speak to potential suspects.

Q Can you just give us a general short version of what they train you or what they teach.

A The--the biggest thing is they talk about using--developing a theme with a--with an individual cause it's not--it's not easy for somebody to just come out and tell you that they did something wrong. So they would like you to develop a theme, something, a bond that you have in common with that individual.

Q What other techniques do they train you on?

A Once you can identify that you have this common bond, they would like you to minimize the crime itself, give them an out so to say.

Q What do you mean by give them an out?

A Well if you--for instance if you might have stole some--stole a candy bar from a store, try to make that less--try to make the person less--make them fell less culpable for what they did.

Q How?

A Suggest that they could have--suggest that if they were to admit to the crime that maybe they could be forgiven for

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it, something along those--

THE COURT: I can't hear you.

A Suggest that if they were--if they admitted to the crime that possibly they could apologize for the crime.

Q All right. So is minimization a big theme that Reid teaches when you interview suspects?

A Yes it is.

Q And generally when you're interviewing a suspect, isn't that one of last things you do in an investigation?

A I'm sorry, you repeat that.

Q When you interview a suspect, isn't that one of the last things that you do in an investigation?

A Yes.

Q Have you not usually already developed some other evidence against that person?

A Correct.

Q So you're not going in cold?

A Correct.

Q You generally have a pretty good idea that someone may be involved in a crime before you actually interview them?

A Yes.

Q And can you give us some examples of other minimization techniques that are effective with people.

A If somebody was involved in selling drugs, you would tell-I--I commonly would say, you weren't selling to school

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children, were you? You were just involved in trying to help your family make some extra money, and minimize it in that respect.

Q All right. And is that a common theme that you utilized when you work for KVET?

A Yes.

Q Cause it's easier to admit dealing to your friends than to dealing to school children.

A Correct.

Q That's sounds horrible, dealing to school children?

A Yes.

Q All right. Was that technique generally effective?

A Yes it was.

Q How about something to the effect of you weren't dealing in kilos, you weren't a kingpin were you? You were just making some extra money on the side. Is that another typical example of a Reid type of theme?

A Yes it is.

Q Minimization in terms of drug dealing.

A Correct.

Q Just to give the jury some ideas of what we're talking about here. All right. Well before we get to the Defendant's interviews, can you tell the jury how you proceeded in this investigation. I assume-- were you called out to the scene?

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A Yes I was.

Q Were you familiar with the fact that there were some orange peels found near the scene?

A Yes I was.

Q Where Annette White was found?

A Correct.

Q And later did you find out during your investigation that the Defendant, in fact, liked to eat oranges?

A Yes I did.

Q And did he not even admit that during your interviews with him?

A Yes he did.

Q Later. All right. And you're also familiar with the fact that orange peels were found in the car later as well?

A Orange peels and a--and an orange that was uneaten.

Q All right. Now so you were at the scene, how did you proceed with the investigation? How did you wind up focusing on the Defendant, Ervine Davenport? Tell the jury in general.

A Well I was called at home and responded to the scene on January 13th, probably around 5:00 p.m. We arrived on scene, we didn't know who the victim was. It took several hours to identify who that victim was. Initially it was believed that it was possibly an African-American juvenile. So Captain Mallery had all the detectives that had

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responded to work go back to the office, research all the African-American juvenile--female juveniles we had that were listed as runaways. Because the body at first glance appeared to be very petite and it was on its stomach, so they couldn't--they couldn't identify the face to give it a proper estimate on the age of the individual.

So not--and the crime lab had instructed us that it was gonna be several hours processing the scene going up to the body. They didn't want to lose any potential trace evidence. So instead of just standing around doing nothing for three, four hours, we took that route. We ended up subsequently finding three or four runaways that had actually returned home, just didn't report it to the police department.

And then at a short time--not a short time later, probably about three to four hours later, we were advised that based on the fingerprints, once the lab was able to get to the body, that the body was identified by--of--that of Annette White.

Q So where'd you proceed from there?

A From there we learned where she had resided at, which was a--not too far away from where her body was found, probably five to six city blocks. We researched what type of cases our department had had with her as far as her list--her making police reports or being victims of police reports,

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and learned that on January 9th she was--she reported that she had been in an altercation with an individual by the name of Andre Randall.

So we investigate--well we--we read that report and began the investigation from there as far as looking at Mr. Randall as the first suspect in the investigation.

Q All right. So did you locate Mr. Randall?

A We didn't locate Mr. Randall till Monday the 15th, but yes we did locate him.

Several interviews were conducted prior to that with the victim's family, with people that lived at the apartment building where she lived at. There was four to five apartments at her--at the building she resided at. So we talked to those individuals, trying to piece together a timeline for when she may have last been seen alive.

But when we--we eventually located Mr. Randall on the 15th, in the afternoon on the 15th, and spoke to him at the police department.

Q Now at some point when talking about finding a timeline and who may have last seen her alive, at some point did you interview the Carswells, who testified during this trial?

A I actual--yes. I interviewed them actually after I'd spoke to Mr. Davenport.

Q Okay.

A Based on something he had advised me during the interview.

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Q And as a result of your investigation, do you believe that they were the last people to see her alive?

A Yes I do.

Q Did you find anybody else during the investigation that saw her after the Carswells?

A No one.

Q All right. So let's get back to Mr. Randall. Did you interview him?

A Yes we did.

Q Extensively?

A Quite extensively.

Q You and other detectives as well?

A Me and probably three to four other detectives.

Q And did he acknowledge having caused her broken arm?

A Yes.

Q Did he admit anything having to do with the murder, however?

A He did not.

Q And how lengthy was your interrogation of him?

A Oh we spoke to him I would estimate probably 15 to 16 hours over two separate days.

Q Was he in custody or not?

A He was in custody, yes.

Q On unrelated things or for this?

A On unrelated things.

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Q All right. On other stuff.

A Correct.

Q And did you coerce him in any way, physically or mentally, or did you treat him with respect and dignity?

A No. He was treated with a great amount of respect and dignity. He was provided pizza cause it had been a long time for us to be there as well, and our supervisor had ordered out pizza, and he was provided pizza, pop, and allowed to use the bathroom--the bathroom's right adjacent to the interview room--whenever he was--whenever he requested that.

Q And was this a straight interrogation or were there breaks?

A Oh there were several breaks.

Q All right. In any event, as a result of your questioning of Mr. Randall, did you get any hint whatsoever that he was involved in this crime?

A No I did not.

Q All right. So then what happened? How did you shift focus?

A Something Mr. Randall said at the very end of the interrogation of him was in--he mentioned the name Earl. He had mentioned this in the 15 to 16 hours we had been speaking to him. We'd asked him who was at the apartment that Friday night, the 12th of January, and he went through a list of people, basically people that lived in the

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complex. And he finally at the end of the interview had mentioned the name Ray Fults and Earl. So--

Q Ray Fults, who testified during this trial?

A Correct.

Q Who was one of the last people who saw the victim on Friday night, smoked something with her, and then he left and went upstairs to the party.

A Correct.

Q Just to refresh the jury's recollection. All right.

A That's correct.

Q Did you know who Earl was at that point?

A Didn't know who Earl was.

Q So then what'd you do?

A We--at that point we then went and we spoke to Mr. Fults. Mr. Fults identified--(inaudible--garbled)--well I'm sorry, no that was after we went to Paw Paw. On the 17th we went to Paw Paw and spoke to an Eric McLemore--

Q All right, now to refresh the jury's recollection, Eric McLemore was the individual with Tracie Goltzene at the party where the car was obtained?

A Correct.

Q All right. Please continue.

A I gotta backtrack. On the--in regards to Miss White's broken--broken wrist, she had informed Officer Lisa Moore on January 12th in the afternoon that she saw Mr. Randall.

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She didn't know his name, so when she made the initial police report there was an unlisted suspect. She just had general information. She saw Mr. Randall in a car on Friday the 12th at around 4:00 to 4:30 in the afternoon with the license plate being that of Miss Goltzene's vehicle.

And Officer Moore had reported that to us on the afternoon of this--13th at--oh I'm sorry--on the afternoon of the 14th after she had been at work and learned that the victim of the homicide was Annette White.

So on the 17th we made it out to Paw Paw and spoke to Mr. McLemore and then eventually Miss Goltzene.

Q And then so you interviewed Mr. McLemore and Miss Goltzene?

A Correct.

Q As a result of the interviews of McLemore and Goltzene, what did you learn?

A Miss Goltzene had a phone number for the individuals of the apartment where she had been attending that party at. And I cross-referenced that phone number and it came back to a Marvin--Marvin--the phone company said Marvin Sraction, which is S-R-A-C-T-I-O-N, when in fact it was actually--

(The witness coughs)

A Excuse me--Marvin Fraction. They provided the address in Interfaith Apartments, 1001--

Q So you learned about Marvin Fractions from your interviews with the--Goltzene and McLemore.

[Page 775]

A Correct.

Q Did you also learn about the Defendant, Earl?

A Yes.

Q And did that information come to you from both Tracie and from McLemore?

A Correct.

Q And he was supposedly the last person with the car?

A Correct.

Q All right. And then we won't get into the details of that cause that'd be hearsay. But in any event, where'd you go from there?

A After we conducted that interview in Paw Paw, we drove directly to Interfaith Apartments, 1001 Interfaith, and made contact with Marvin Fraction.

Q Did you learn from your interviews with Marvin Fractions that the Defendant had a--any association with his apartment and with him?

A Yes. Mr. Fraction advised that he was a cousin to an individual by the name of Earl. We asked Mr. Fraction about the incident with the two white people, being that of a Mr. McLemore and Miss Goltzene, where they attended a party approximately a week before. And he--he agreed that they were there, they attended a party, and that Earl may have been there at different times.

Q All right. Was--do you know--when you were there, was the

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Defendant's brother in that apartment as well?

A Yeah. I didn't know anyone else was in the apartment, I was there with Detective Moorian. It's a one-bedroom apartment, it's an upstairs apartment.

Q This is at Patwood or Interfaith?

A Yeah. Correct. And in the back bedroom or in the bedroom was R.B. Davenport, he goes by the nickname of Jerry, and his girlfriend, Charlotte Simmons, who goes by the nickname of Cake or Cupcake.

Q Did Mr. Daven--did you learn at some point that Mr. R.B. Davenport or Jerry was the Defendant's brother?

A Yes I did.

Q Did he take exception to you being there asking questions about the Defendant?

A He would--

MS. EIFLER: Your Honor, I'm gonna object. I think we're gonna--this is hearsay.

MR. FENTON: Well it's not being offered for the truth. I mean somebody taking exception by itself is not important. It's going to the fact that the Defendant was then communicated this information, which is what led to the police chase.

THE COURT: I will allow it and I think he can also probably get it in by way of just testifying with regards as to how he was acting and so forth. But go

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ahead, Mr. Fenton. That's overruled.

Q Please--please continue, detective.

A We had been speaking to Mr. Fraction for probably ten to 15 minutes, and all of a sudden an individual came out from the bedroom who was identified as R.B. Davenport. And he started yelling at us, and came within two to three feet of Detective Moorian and I. We were simply sitting on the couch. Mr. Fraction was sitting across from us, and all of a sudden this gentleman appeared and started screaming at us. I haven't had this feeling too many times in my life, let alone my--let alone my career--

THE COURT: Hold a second. Counsel, will you approach a moment.

(Bench conference begins at 10:15 a.m. between the Court and counsel, transcribed as follows)

THE COURT: Okay, where are we going with this and why do we need to explain--

MR. FENTON: I--

THE COURT: How his feeling is probably scared of R.B., is that right or?

MR. FENTON: Agitated because the police were looking for his brother.

THE COURT: Well I realize that, but how does that relate this. I mean--

MR. FENTON: Well I didn't ask him all these

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details and--

THE COURT: Okay. Yeah, well--

MR. FENTON: He's just explaining the course of the investigation.

THE COURT: Okay. We'll allow that, we can do that.

MR. FENTON: All right.

THE COURT: I will give you that.

MR. FENTON: All right.

(Bench conference ends at 10:15 a.m.)

THE COURT: Next question, Mr. Fenton.

MR. FENTON: Thank you.

Q Detective, the bottom line is, was it made clear to the Defendant's brother that you were asking some questions about the Defendant?

A Yes.

Q And did he take exception to that?

A Yes he did.

Q Specifically referencing questioning my brother or asking questions about my brother--

MS. EIFLER: Your Honor, I'm gonna object as to relevance.

MR. FENTON: Well we've argued this, it's already been overruled.

THE COURT: I'll let him answer it and then

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let's--let's move on. I think he-

MR. FENTON: Thank you.

THE COURT: Already testified a little bit about it so.

A He took exception, he felt we were beating around the bush, trying to gain information.

Q All right. As a result of that conduct, did you leave?

A Yes. We left rather quickly after that contact.

Q All right. So then what happened of relevance to the investigation leading you to the Defendant?

A At that point I went back to the office. We had learned of this name Earl a couple days before and now on the 17th, two other individuals, being Mr. McLemore and Miss Goltzene, had spoke about Earl, and also Mr. Fractions then had identified Earl as his cousin, Mr. Davenport, R.B. Davenport, identified him as his brother. So we started doing research to identify who Earl is and we learned that Earl is actually Ervine Davenport.

Q The Defendant here?

A Correct.

Q So what's the next significant development that happened in the case?

A I put out--I put a--sent an email out--department wide email--and also asked the dispatchers to put it out on the MDTs--the mobile dispatch terminals--to the officers on the

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street to be on the look out or an attempt to locate Mr. Ervine Davenport and this silver or gray Buick Regal.

Q So then what happened? The 18th.

A That evening, the same day--that was on the 17th in the afternoon around 4:00 or 5:00 when I did that--approximately 4:00 in the morning I received a phone call from Lieutenant Merlo, who was a shift lieutenant at the time in charge of the patrol division on then shift shift. He requested that come to work as there had been a pursuit involving Sergeant Brinkman and that with the vehicle that I had put the ATL out on, and that there were two occupants in the vehicle that were tracked and were currently in the hospital.

Q Those two being?

A Marquetta Tarver and Ervine Davenport.

Q Did you proceed to interview either of these individuals.

A Yes. I responded to the hospital with a--first I came into work, met with Detective Johnson and Detective Pittelkow. We went up to the hospital and we made the decision we didn't to speak to Mr. Davenport, we wanted to speak to Miss Tarver first cause we had no idea who she was and we wanted to see what information, if any, we would gain from her.

Q Was she still in the hospital when you talked to her?

A Yes.

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Q Did she provide some information to you incriminating the Defendant?

A Yes she did.

Q In the--in this homicide?

A Correct.

Q All right. Now did she appear to be under medication at that time?

A Yeah, she was definitely under some medication. However, she was emotional to the effect that I saw tears coming out of her eyes when she was talking about this information, info--

Q Information about what the Defendant told you--told her regarding Annette White.

A Correct. And then information she was talking about, just general information. You know, she was not crying, so it was emotional to her, I could tell.

Q All right. Well did you make a determination to cut off interviewing at some point?

A Yes. I--well I actually had to leave for a short time and Detective Johnson and Pittelkow were there, but it was ended I believe at her request because she was telling them that she was under the medication, and just wanted to rest cause she was in pain from being in the accident.

Q So did you subsequently interview her?

A Yes. We waited until--that was on January 18th in the early

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morning hours. It was until the 24th of January, six days later, that we decided to go back and speak to her. We figured enough time had elapsed. We had conducted other follow-up on the--in this investigation and just thought it was time to go speak to her.

When we decided to do that, we learned that she had gone back to the hospital for pain received from the accident. She had been incarcerated at the sheriff's department on a parole violation, and

because she went to the hospital, the determination was that they wanted to keep her at the hospital. So she was accidentally--she accidentally was released from custody. She wasn't returned to the--to the jail.

Q So did you find her?

A We went out and we located her. She went back to Interfaith Apartments and was staying with a friend of hers, and we then contacted her parole officer and took her back into custody.

Q And while you were doing that, did you talk to her about more details of this crime?

A Yes.

Q Did you re-interview her essentially about the information that she had given to you six days before?

A Yes I did.

Q Did she confirm most of that information?

[Page 783]

A Yes she did.

Q Was she lucid?

A Yes she was.

Q Did she appear to be under the influence of drugs or alcohol?

A She did not.

Q Did you drive her around and have her show you certain locations as she was telling you things?

A Correct. Cause she wasn't from Kalamazoo, so we were trying to determine different locations that her and Mr. Davenport may have gone to at another time together.

Q And was one of those Marvin Fraction's apartment?

A Yes.

Q Did she confirm that they had been there together?

A Yes.

Q She actually drive you by there or tell you where to go and point that out to you?

A Correct.

Q All right. So as a result of--strike that, let me go back. When you first went to the hospital, did you eventually interview the Defendant that day as well after you were finished interviewing Marquetta Tarver?

A Yes I did.

Q And he was still in the hospital?

A No. At about 3:00 to 4:00 in the afternoon, he was

[Page 784]

released from the hospital and there was instructions that we wanted to speak to him at that point. So an officer brought him to the detective bureau so we could do an interview.

Q So it wasn't at the hospital, it was at the detective bureau.

A Correct.

Q Was he in custody?

A Yes he was.

Q Did you Mirandize him?

A Yes I did.

Q Did he waive his Miranda rights and agree to speak with you?

A Yes he did.

Q Okay. So what did you talk to him about on that occasion?

A That was a very brief contact with him.

Q Why was it brief?

A Because he had a cast on his left arm and when I was reading him his Miranda rights, he was falling asleep on me, which isn't good if you're reading somebody their Miranda rights, because you want

to make sure that they understand them so there's not a problem later on.

And I--but I had previously been told by the officer that they thought that Mr. Davenport was faking to some respect. So I kind of had that in the back of my mind at

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that point as well.

Q Was this cast or whatever he had on his arm from the accidentally basically?

A Correct.

Q All right. So he's falling asleep during Miranda, did you get a waiver that you were satisfied with that he understood?

A Yeah. It took--it took a few minutes before I was comfortable that he was awake, and he listened to it, and he--and he waived his rights.

Q So you repeated the Miranda more than once?

A Yes I did.

Q Making sure he was awake.

A Correct.

Q Did you go into any kind of details about this case with him that day?

A None whatsoever.

Q Can you just give us a very brief overview of your interview that day.

A Just told him I was wanting to speak to him about the--the crash, and what had transpired in regards to that and to the vehicle.

Q Did you get any substantive information from him on that day? What did he say?

A Nothing substantive, no.

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Q All right. Did he acknowledge having driven the car and crashed it?

A Yeah.

Q Did he say why he was running from the police?

A I don't recall. I'd have to refer to my report.

Q All right. In any event, it wasn't significant to you, didn't stand out.

A Correct.

Q If it had, you would have put it in your report.

A Correct.

Q So why was it a brief interview? Why did you cut off the interview after a short period of time?

A Sergeant Thomas was watching the interview from the viewing room and I took a break and I went out

and spoke to her. I said--I advised her I wasn't comfortable cause I had just learned from Mr. Davenport--cause during the interview he was still falling asleep, nodding off on me. And I--I asked him if he had been--if he had surgery today and he said he did, and I asked him if it was a general or a local anesthesia that was used for the surgery on his hand, and he said he was knocked out, which told me it was a general anesthesia and it was major surgery. So I didn't feel comfortable continuing the interview at that point because if he did tell me anything significant, I--I didn't feel it'd be--be able to be used later on.

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Q In court?

A Correct.

Q Because you'd be taking advantage of his mental state?

A Correct.

Q So a determination was made to end the interview?

Q That's correct.

Q After like how long?

A About 30 minutes, 20 to 30 minutes.

Q Did you even get anything about the homicide?

A No.

Q What was he in custody for?

A For the fleeing and eluding. Fleeing and eluding and I believe some cocaine possession.

Q All right. In any event, he wasn't in custody for the homicide yet.

A Correct.

Q You hadn't charged him yet.

A Correct.

Q He was a suspect, wasn't he?

A Yes he was.

Q You wanted him to talk to him about Annette White's murder, didn't you?

A Yes I did.

Q So after 30 minutes the decision was made not to interview him. So then what happened.

[Page 788]

A We transported him back to the sheriff's department, which was--that was on the 18th. We did further follow-up in between the 18th and the 24th, trying to find out more about Annette White, more about Mr. Davenport. Spoke to several other individuals who provided some insight into both of them.

And then after speaking to Miss Tarver on the 24th, she had indicated that--when we got her back to the police station, that the first thing she said to me when I walked in the interview is, "Did you check the scratch underneath his eye?" And I asked her what scratch. Cause when I had saw him on the 18th, I would have--I attributed everything that was wrong with him physically to the--to the accident that he had been involved in. And she said no, there was a scratch underneath his eye, so that was of significance to me.

And then she also indicated prior to getting back to the police department about the shoes, about him switching the shoes out at Kmart, and Detective Moorian and Detective Johnson went down to Kmart in Portage, and while I was speaking to her, they were contacting me on my Nextel-

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MS. EIFLER: Your Honor, I'm gonna object. He-- I would ask that he just testify to what he has firsthand knowledge of.

MR. FENTON: Well first of all, he does, but

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second of all, it's already been testified to and it's not being offered for the truth. The jury's already heard this. Just putting everything into context as to how the investigation and the course of it went.

THE COURT: Overruled, I'll allow it. Go ahead.

A They were just asking for directions, what she remembered from inside of Kmart, what kind of box. So obviously eventually they ended up locating--or the box was located with the shoes in it.

Q So was a determination then made to interview the Defendant again seriously and about this particular homicide?

A Yes it was.

Q And that was after talking to Miss Tarver again and recovering the shoes.

A Yeah, and then the shoes were taken to lab specialist Luedeking. He conducted his--his evaluation of the shoes and then also provided me a photograph--a color print photograph of the shoe print at the crime scene. And it was after that point, we--we had that, you know, those two objects that I wanted to speak to Mr. Davenport further.

Q So at that point you were pretty convinced that the Defendant was involved in Annette White's death.

A Yes.

Q So did you interview him again then on the 24th?

A Yes I did.

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Q So what time did this interview start?

A About--

Q Approximately.

A Approximately 4:30, 5:00.

Q P.M.?

A P.M.

Q Did you Mirandize him again?

A Yes I did.

Q And for the jury's edification, that means that you read him his Miranda rights from a standard card.

A Correct.

Q The right to remain silent, the right to not answer questions, the right to have a lawyer present before questioning, and a court-appointed lawyer if you can't afford one.

A That's correct.

Q Did he waive all those rights and agree to speak with you?

A Yes he did.

Q So how did you start your interview? What was your technique that you were gonna use to start interviewing Mr. Davenport?

A I wanted him to make him feel at ease in the interview. Obviously I didn't want to get right into the crux of the investigation. So I began speaking to

him about the incident with the car, and wanted to get him to feel

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comfortable with me. And we spoke about the incident with the car, how he came to be in possession of the car. What he did for the last--for that week, for the time he came into possession of the car till the time of the accident. I wanted him to think--I didn't want him to think anything about this homicide. I didn't want him to think I was even looking into that homicide.

Q Did he acknowledge having possession of that car for a week or so?

A Yes.

Q What did he tell you as to how he obtained possession of it?

A That he gave Mr. McLemore a ride home to Paw Paw. Tracie Goltzene--he didn't know her name--he described her as a white female with kind of dirty blonde hair, little larger, and that she was from the--that she was--she had been at the apartment looking for some crack cocaine.

So then he said that Mr. McLemore--she--he said that Goltzene said to give McLemore a ride home. So then he went outside and told McLemore, "Let's go. You're gonna drive back home, and then I'm gonna take the car, and bring it back to her."

Q Did he ever bring it back to her though?

A No he didn't.

Q All right. So he's essentially admitting having gotten the

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car from them that evening.

A Correct.

Q Did he have any justification for it as to how that he would have it legitimately? I mean did he give you a version that sounded valid to him or legal?

A I think so.

Q What--what was his explanation?

A That it was given to him.

Q By who?

A Miss Goltzene.

Q Oh. So he's claiming that she gave him permission to have the car?

A Correct.

Q Did he indicate whether he even knew her before that night?

A No he didn't.

Q No he didn't indicate or no he didn't know her before that night?

A He didn't indicate that he knew her before that night.

Q All right. So he's acknowledged having the car. At some point do you ask him to go through his activities, blow-by-blow, of that weekend.

A Yes.

Q The weekend of the murder?

A Yes.

Q Did he give you a blow-by-blow account of that?

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A Yes.

Q And did it primarily consist of doing a lot crack?

A Yeah. Lot of partying.

Q Lot of partying, eating, and sleeping?

A Yep.

Q Anything else significant that stand out over that weekend?

A No.

Q Was that before you said anything about the murder?

A Yes.

Q So you got his--his supposed alibi or what he was doing that weekend.

A Yeah. He--he became suspicious when I was speaking to him, but yes, I got his supposed alibi. I--I cut him off a couple times. I didn't want to get into it at that point. I wanted to get more information, have him still feel at ease, but he started to ask a question at one point about Annette White, and I--and I cut it off and changed--changed the topic. I was--I wasn't ready to start speaking about that. I wanted to get more information.

Q All right. Why didn't you want to start speaking about Annette White right away?

A Because I wanted to get some more information about where he'd been and what--what his response was.

Q Why? Strategy wise, why?

A Because I wanted to see if he was gonna lie about certain

[Page 794]

things.

Q All right. If you start mentioning a murder victim and a suspect becomes suspicious that you're interrogating him, what's their likely response gonna be?

A They had nothing to do with it.

Q All right. So it's important to try to get a general story first as to their activities?

A Yeah, you want to lock 'em to what they were doing.

Q And when you say lock 'em in, are you trying to trick them in any way?

A No.

Q Are you--

A It's their own words.

Q Just asking them general questions?

A Correct.

Q About what they were doing?

A Correct.

Q All right. So then he gave you an account of his weekend activities.

A Yes.

Q Had nothing to do with Annette White.

A Correct.

Q So how did things shift? How did the interview start changing?

A I took a break. I--I provided him with--cause he was

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getting a little antsy, I provided him with--it came out that the name Annette White had been--the name Andre Randall came out towards the--before I took the first break, and I provided him with some scenarios of things that have happened in prior cases where people have been murdered, and then I--

Q What do you mean?

A And then I took a break.

Q What do you mean? What were you trying to do?

A I was trying to minimize any potential involvement. I wanted him to start thinking about how he may be able minimize what I was going to get into next, even though he didn't know where I was going next.

Q Well can you be specific with the jury? What were you trying to do? Minimize how?

A So he'd be comfortable in telling me his involvement with Miss White.

Q I understand that. But when you say the name Andre Randall came out during the interview, and you started throwing out scenarios at him of other cases, specifically what were you trying to do?

A I was trying--

Q What was your strategy?

A I was trying to get him to think about what he was gonna tell me next.

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Q All right. Well when you say minimize, I'm asking you to try to be specific. I--you're not--you're not following me I guess, but have you had other cases where there were different--strike that. Have you had other murder cases where there was more than one suspect where the roles were not necessarily equal?

A Yes.

Q Where some people were more involved and some people were less involved?

A Correct.

Q That's what I'm trying to get you to explain to the jury. Can you explain that please.

A Yes. I've had a couple different cases like that and I want him to make himself feel like the person that was less involved.

Q All right, thank you. So what happened after the break?

A I came back into the interview room--interview room carrying the box from Kmart with the tennis shoes inside of it, along with a large color photograph of the shoe print from the crime scene as a prop.

Q What do you mean a prop?

A Carried it in, sat it down, and want him to--well I want him to look at it, and think what's gonna happen next.

Q All right. so when you say a prop you mean like a demonstrative exhibit type of thing to get his mind

[Page 797]

thinking and see how he's gonna react to it?

A Correct.

Q All right. Please continue.

A I asked him if he knew what was in the box and we played a game for a minute. He said, "Well tell me what's in the box," and I said, "You tell me what's in the box," and he kind of chuckled a little bit. And eventually I asked him, "Well where did I get this from?" And he said, "Kmart."

Q So he told you where he got it from?

A Correct.

Q He acknowledged that.

A Correct.

Q And was there a discussion about that?

A Yeah. I mean he--he was very uncomfortable about the box.

Q So his demeanor is changing?

A Yes.

Q All right. So do you set a scenario for him using this Reid minimization technique?

A Yeah.

Q At some point?

A Correct.

Q Well first of all, before you do that do you get into a discussion with him about whether or not he was involved in Annette White's death?

A Yes.

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Q What does he say.

A He says he's not involved in Annette's White--Annette White's death.

Q Does he know anything about it at all?

A No.

Q Does he maintain that for a substantial period of time?

A Yes.

Q So he specifically denies being involved in her death on several occasions?

A Yes.

Q During this interview?

A Yes.

Q So then how do you deal with that?

A I inform him that, you know, I--I've spoke to lots of people in this investigation, one of which is Andre Randall, and he--he advises--he acknowledges that he knows Andre Randall--had been picked up at some point over the previous week or two, and I told him that I--I have Andre's Ran--Andre Randall's version of events and I need to get his version of his events.

And I give him a scenario of a train leaving a station, and Andre Randall has given me his version of events, and Andre Randall has dove into this train, trying to help himself out, and I need to get his side of the story and see if he wants to jump on the train.

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Q Do you also explain to him that if he only helped dispose of the body afterwards that that might be something less than murder?

A Yes I did.

Q What's that known as in the law?

A The?

Q The crime of helping someone after the fact.

A Accessory after the fact.

Q And is accessory after the fact a less serious crime than murder?

A Yes.

Q Did you use that theme with him?

A Yes I did.

Q How? Explain to the jury.

A Just telling him that if he was simply contacted by Mr. Randall, if Mr. Randall did this crime, and he simply just helped dispose of the body, that that would be something that would be a lot less--he'd be a lot less culpable for anything that happened to Miss White.

Q So at some point after you ran that theme by him, did he acknowledge having helped Andre Randall get rid of Annette White's body?

A Yes.

Q How long did it take to get to that point with him?

A Approximately.

[Page 800]

A From the beginning of the interview?

Q Yeah. From 4:30 p.m., how long did it take until you got him to acknowledge that?

A Probably 7:30, quarter-to 8:00, 8:00 o'clock.

Q So about four hours later or so?

A I'd say three, three-and-a-half.

Q Three-and-a-half hours?

A Yeah.

Q Now during that time are you--first of all, how do you to talk to your suspects?

A Just in this tone of voice.

Q Do you yell at them?

A No.

Q Do you shout at them?

A No.

Q Do you get in their face?

A No.

Q You've heard the old TV adage, good cop/bad cop?

A Yeah.

Q Are you ever a bad cop?

A I've played bad cop before, yes.

Q Were you ever in this case?

A No.

Q Is being bad cop genuinely an effective way to get someone to confess to a crime?

[Page 801]

A For the good cop.

Q Does the bad cop usually succeed though?

A Not--not usually, no.

Q Did you use any of that technique here?

A No.

Q All right. So after about three-and-a-half hours--now during that time, did you take breaks?

A Yeah. We took probably at that point I think we'd taken two breaks.

Q How long are the breaks roughly?

A Five to 15 minutes.

Q Do--do you ask Mr. Davenport if he was hungry or needed anything to eat?

A Yep the entire time. When I--every time I left the room, if I--you know, do you need anything, you want some water, pop, something to eat.

Q Did you get him pop?

A Yes.

Q Did you ask him if he wanted cigarettes?

A He smoked, yes.

Q Did you--you provided him with cigarettes?

A Yes.

Q Cause he was in custody, right?

A Correct.

Q So he normally wouldn't have access to cigarettes,
would

[Page 802]

he?

A Correct.

Q All right. At some point did he actually dictate a
scenario of helping Andre Randall get rid of the
body afterwards and you wrote it down.

A That's correct.

Q So you took actually a written statement from
him?

A Yes.

Q And he was telling you what to write and you wrote
it down?

A Correct.

Q And that involved the scenario that I've just de-
scribed.

A Yes.

Q Did you--was he willing to sign that?

A No he was not.

Q Did you ask him to sign it?

A Yes I did.

Q Did you write on there anything other than what he told you?

A No.

Q But he still wasn't willing to sign that.

A Correct.

Q Were you convinced that that story was the truth?

A No I wasn't.

Q That he helped Andre Randall only after the fact get rid of the body and that Andre Randall was the killer?

[Page 803]

A Right.

Q Did you have any evidence in this case at all that Andre Randall was the killer?

A No. I--we had Andre Randall's shoes also and we had no--his shoe prints didn't match according to the crime lab. Had no--no evidence whatsoever to show that he was involved in this crime.

Q So did you just stop when you got the Defendant's admission to helping dispose of the body?

A No.

Q What did you do then?

A Well he had provided some information about where some property was at.

Q Some what?

A Property of Annette White's.

Q Who provided that information?

A Mr. Davenport.

Q Told you about what?

A The dehumidifier and the speakers.

Q How--how did he explain that?

A Said simply that they were in the car and he wanted to--and he got rid of 'em.

Q How did they get to be in the car, according to him?

A Umm--

Q If you recall.

[Page 804]

A I don't recall.

Q All right. So what did you do with that information?

A Well when he said he wouldn't sign the--sign the written statement, there was some talk back and forth, and I had to stop the interview. So then I left with Detective Pittelkow, he was left in the interview room, he's being watched. I--

Q Gonna have to speak up a little bit.

A Sorry.

Q You want some water?

A Yeah please. Thank you. We left CID, the detective bureau, Detective Pittelkow and I, and went up to Interfaith Apartments to Marvin's apartment.

Q What'd you do there?

A Recovered the dehumidifier and the speakers.

Q All right. So I'm showing you--I'm showing you People's Exhibit 43. You actually brought this to court, right?

A Correct.

Q And People's Exhibit 42 and 41 are the speakers, correct?

A That's correct.

Q Are all these exhibits what you obtained from Marvin Fraction's apartment?

A Yes.

Q And these were identified as having been taken from the victim's apartment by her family members?

[Page 805]

A Yeah.

MR. FENTON: Move for admission of People's Exhibits 41, 42, and 43.

MS. EIFLER: No objection.

THE COURT: Those are received.

(People's Exhibit 41, People's Exhibit 42, and People's Exhibit 43 are received at 10:43 a.m.)

Q So the Defendant admitted having possession of that property?

A Yes he did.

Q And giving it to Marvin Fractions?

A Yes.

Q And you recovered it shortly there after.

A Short--during the interview, yeah.

Q During the interview.

A Correct.

Q Was he being interviewed by anybody else while you went to recover the property?

A I didn't know he was, but when I came back from recovering the property, Captain Mallery was speaking with him.

Q Who's Captain Mallery?

A He's my--one of my three supervisors. He's in charge of the detective bureau.

Q So Captain Mallery was speaking to the Defendant?

A Correct.

[Page 806]

Q And did he talk to him for a period of time after that?

A Yeah, I watched him speak with him for probably 30 to 45 minutes before--

Q Is it--

A Captain Mallery came back out.

Q And then what happened?

A He informed me how the contact took place, how he was able--well how he was--started speaking with Mr.--

MS. EIFLER: Your Honor, I'm gonna object as to hearsay.

MR. FENTON: Again, it's not being offered for the truth. It's being offered to explain how Captain Mallery came to interview the Defendant.

THE COURT: I'll allow it.

THE DEFENDANT: Cause I asked for an attorney. That's how.

THE COURT: Mr. Davenport, you're not allowed to say anything, sir.

I will allow it. Go ahead.

Q Please continue.

A So he had speak--spoke to him for 30 to 45 minutes that I watched, and then Captain Mallery came out asked that I come back into the room with him.

Q All right. So then did the two of you interview him?

A Yes.

[Page 807]

Q How much longer?

A Probably two hours total.

Q So what time did--

A Two more--two more hours.

Q I'm sorry?

A Two more hours, two-and-a-half.

Q What time did the whole interview end that day?

A Around 2:00 a.m. in the morning on the 25th.

Q So you started about 4:30 p.m. and you went through 2:00 a.m. basically.

A Correct.

Q Were there many breaks during that time?

A Yes there was.

Q And was the Defendant provided with food and/or drink at his request, and/or cigarettes?

A Yes he was.

Q During the portion that you watched Captain Mallery interview the Defendant, did he use any coercive techniques whatsoever?

A No, not at all.

Q Did he speak to him in a friendly, respectful, and dignified manner?

A Very much so.

Q Same thing after you joined Captain Mallery in there, was the same demeanor maintained?

[Page 808]

A Yes.

Q Did any of you--or either you threaten him in any way?

A No, not at all.

Q Or promise him anything in exchange for his statements?

A Not at all.

Q Now at some point did the Defendant's story or version of events change from having helped Andre Randall dispose of a body to actually taking responsibility for the crime solely himself?

A Yes he did.

Q How did that come about?

A When Detective Mallery was speaking to him when I was in the room with him, he changed his story, advised that-

Q How did that come about? Do you--

A Well he was provided with--provided with an out, and-

Q What do you mean by provided with an out?

A We gave him the--the out of self-defense. We-

Q How--how did you do that?

A We--we told him that there was--we knew that he had more involvement than what he had told us so far, and if it was something along the lines of she attacked him, you know, either with a knife or a box cutter, then that could be easily explained and

we portrayed the victim, Miss White, at that point as being an aggressive person.

Q You actually portrayed her as being an aggressive person to

[Page 809]

him?

A Yes.

Q What was the purpose of that?

A To make him use that as part of his--to get him to say what was--what he actually did.

Q Is that part of the minimization strategy?

A Correct.

Q Was it only after that that he then told you what he told you?

A Yes.

Q And what did he tell you?

A He said that they were over at Earl's--Earl and Derene's apartment, they'd been over there smoking some crack. They left there, they were driving back up Douglas coming off of North Street, and he said she started acting crazy, and she came at him with a box cutter. So he had to reach across and hold her back and by her throat, and he said he started holding her by her throat and choking her in the area of Daysha's, which is near North

and Douglas, and stopped up near Ravine Road, which is probably a couple minutes drive on Douglas when you're going north.

Q So then what happened?

A He said she slumped down in the seat. He drove out on Ravine to Nichols, then to Alamo, and then over to Prairie, and then turned on to Blakeslee, and then he took her body,

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and placed it in a woods.

Q Was Andre Randall present during any of that

A No.

Q And was a written statement taken from him a second time?

A Yes.

Q To that effect?

A Yes.

Q Was he willing to sign that one?

A Yes he did.

Q Was all of this being videotaped?

A The entire interview.

Q I've already shown People's Exhibit 34 and 35 to lab tech Latham, and he's identified them as

accurate portions of the entire interview that we've asked to have brought to court today. Have you also reviewed those and do they accurately portray the relevant portions of the interview as set forth that day?

A Yes they do.

(Sidebar conversation between the Defendant and Ms. Eifler)

MR. FENTON: At this point, I'd like to play these video tapes, your Honor. I don't know if you want to take a break before we start them, if anybody needs to, or if we want to just keep going because they're fairly lengthy, but we can get started if you want or however you

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want to handle it.

THE COURT: It's been almost a hour-and-a-half. I think it might be a good idea. We'll take a break first and then we'll come back and hear the interviews.

(Sidebar conversation between the Defendant and Ms. Eifler)

THE COURT: And approximately how long, Mr. Fenton?

MR. FENTON: It's a couple hours worth, two to three hours.

THE COURT: Mr. Brooks should be here shortly.

(The jury members exit the courtroom at 10:50 a.m.)

THE COURT: Counsel, is there anything we need place on the record at this time?

MR. FENTON: No your Honor.

MS. EIFLER: Your Honor, I guess at this time would--I know that the issue regarding Mr. Davenport's request for attorney has been dealt with previously by this Court, but by the fact that Mr. Fenton has asked multiple times going through very explicitly the Miranda process, I believe now he's opened it up where issues regarding Mr. Davenport's request for attorney would be appropriate for the--for the jury to hear. Just because I believe that it's been asked at least two to three times, and I know

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that the--at least one of those times it was very explicit, very specific about the process, making sure that he understood all of his rights, and that he waived those rights when we know that throughout this interview he did request for attorneys.

So now that that can of worms, so to speak, has been opened up, I would say that it's--would be appropriate for the jury to hear--to hear about his request for attorney.

THE COURT: Mr. Fenton.

MR. FENTON: Judge, normally the--well first of all, I'm required to go through the Miranda rights and

the waiver. Often times lawyers don't do it, but the proper procedure is to actually specify the Miranda rights that are waived. So that's a precursor to the confession even coming in. I had to do that.

If they want to open it up to him asking for a lawyer and the detectives explaining how that was waived by him, that's fine. Normally that's a legal issue and it's not brought before a jury because it protects the Defendant. Because when someone asks for a lawyer, that's an incriminating statement or at least that's the inference that is made to a jury. So normally they don't bring that out to protect the Defendant.

The--if the defense wants it out, that's fine with me. I mean the detective can more than explain how the

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Defendant chose to speak with him after that whole thing. But normally that's a legal issue, not a factual issue because it's normally prejudicial to the defense.

THE COURT: Well I don't know what portions of the--of the interview Mr. Fenton plans on playing at this time. I know there were--we had a prior motion with regards to this. Why don't we discuss that, counsel, over the breaks. Then I know exactly what he's--what portions he plans on playing before the jury and then we can discuss that any portions that you might request also, and we can address it at that time.

All right, we'll take a break and then we'll--I'll put my ruling on the motion before we bring the jury back down. Court's in recess.

(Court recesses at 10:53 a.m.)

(Court resumes at 11:26 a.m.)

THE COURT: The court recalls the case of People versus--versus Ervine Davenport, the File Number 07-0165. Counsel, please identify yourselves for the record.

MR. FENTON: Stuart Fenton for the People.

MS. EIFLER: Susan Eifler, appearing on behalf of the Defendant, Ervine Davenport. He is present in Court today.

THE COURT: Counsel, the jury's on the way down. Mr. Davenport, I just want to caution you. Please don't

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speak up again, sir. If you do it again, then I'm gonna have you watch the trial from the--a different room, and I know you've been writing notes and so forth, so I think it's important that you're here, sir. So just be aware of that.

My plan is as follows. I understand the first tape is a little--about 65 minutes. So hopefully we can get through that. We'll take a little bit of a late lunch then, right around 12:30, and then I'll ask them to be back at 1:30.

My understanding is we--that the second tape is about an hour-and-a-half. So we'll watch that after lunch. We'll see where we're at at that point.

I was going to--because it's clear we're going into Tuesday at this point--I might break a little bit early for their sake today at around 4:00 or so, but we'll see where we're at with wit--witnesses. I just want to make sure, Miss Eifler, I understand you've got witnesses coming in, that that won't be a problem for your witnesses either. So that's the plan for the day.

The jury's on the way down. Counsel, is there--we also discussed the handling of the matter that you brought up, Miss Eifler. You're certainly allowed to examine the witness, ask questions of the witness with regards to the Miranda warnings as we discussed, and the other matters I know we discussed potentially may or may not be brought out

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in your--in your portion of your case. So we can address that then on--over the--next Tuesday.

(Jury members enter the courtroom at 11:29 a.m.)

THE COURT: Well the question was brought up, I understand, whether or not you're gonna have to watch the two to three hours of video before lunch, and I certainly would not do that to you or anyone else in the courtroom.

This is the plan. My understanding is that Mr. Fenton wants to show a video. It's going to be I think 65 minutes, is that a good estimate, right around there?

MR. FENTON: I--I'm not exactly sure. I believe something around there.

THE COURT I would like to try to get that first tape in before lunch. So that means we would break right around 12:30 or shortly thereafter, just so that you're aware of that. And then we'll break for the lunch hour and then we'll watch the second tape, which I understanding is-I understand might be about an hour-and-a-half or so.

MR. FENTON: Yeah, maybe a little longer. I'm not sure.

THE COURT: After lunch, then we'll see where we're at with--with witnesses. It's seems clear that we're gonna go into Tuesday. So you won't be coming back on Monday just due to my docket. So hopefully no one had to rearrange any schedules for that, but I will need you to

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come back on Tuesday and we should be able to finish all the testimony and the jury instructions and so forth on Tuesday, so you should be able to begin deliberations then.

My plan is to try to let you go a little bit early today. I know it's been a long week and I do appreciate the fact that it gets a little tiresome too in listening to me coughing and hacking up here too. But so that's the plan for the day, and it'll just kind of depend on where we're at with witnesses.

Mr. Fenton.

MR. FENTON: Thank you your Honor.

(People's DVD Exhibit begins playing at 11:31 a.m.)

(People's Exhibit 34 paused at 11:33 a.m.)

MR. FENTON: Because the tape is hard to hear, your Honor, I'd like to stop at certain portions and just clarify what the detective--what was said. Detective, what was the last question and answer?

THE COURT: Just a minute. Just let me make clear too, you are still under oath, sir.

THE WITNESS: Yes ma'am.

THE COURT: So go ahead, Mr. Fenton.

Q What was the last question and answer?

A Who--he asked who--isn't that girl dead.

Q Isn't that girl dead?

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A Yes.

Q And what did you say.

A I said yes.

Q What that the first discussion about Annette White?

A Yes.

Q And then what did he say about chocolate?

A Her--he referred to her as Chocolate as her nickname, which is a nickname that I heard through the investigation for Annette White.

Q All right.

MR. FENTON: Please continue.

(People's Exhibit 34 resumes playing at 11:33 a.m.)

MR. FENTON: I'm sorry, could you stop that please.

(People's Exhibit 34 paused at 11:44 a.m.)

Q Can you repeat his answer just so it's clear on the record.

A Andre said he needed some help.

Q All right.

MR. FENTON: Please continue)

(People's Exhibit 34 resumes playing at 11:44 a.m.)

MR. FENTON: I'm sorry. Could you stop that.

(People's Exhibit 34 paused at 11:45 a.m.)

Q Repeat that.

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A I asked him if it was Chocolate.

Q Can you go back a sentence or two. What did you say to him? What did he help--need doing?

A Moving--removing--or moving a body.

Q All right. Is that what he said?

A I'd have to hear it again, I--

Q All right. Did you ask him what did he help need doing? Is that what the question was?

A Correct.

Q And was his response Chocolate?

A Yes.

Q All right.

MR. FENTON: Please continue

(People's Exhibit 34 resumes playing at 11:46 a.m.)

(People's Exhibit 34 paused at 11:57 a.m.)

Q What did you say? The prostitute had a history of doing what?

A Pulling knives on her johns.

Q All right thank you.

MR. FENTON: Please continue.

(People's Exhibit 34 resumes playing at 11:57 a.m.)

(People's Exhibit 34 paused at 12:19 p.m.)

MR. FENTON: Before we begin the next one, it's

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about 35 minutes. I don't know, and that will be the last segment of the first tape, but it's longer than the next one that we--

THE COURT: Let--let's stop now. I think that's good.

MR. FENTON: Okay.

THE COURT: We'll play that after lunch so.

Okay, ladies and gentlemen, we will break for lunch. Please remember my prior instructions. Do not discuss this case with anyone, even amongst yourselves. And don't watch any news reports or read any news reports with regards to this case.

I'm gonna ask that you check in upstairs at 1:30. So that gives you a little bit more than an hour-and-a-half, or an hour for lunch. So 1:30, check in upstairs, all right? Have a good lunch.

(The jury members leave the courtroom at 12:20 p. m.)

THE COURT: And those of you in the courtroom, I appreciate you just being patient until the jury has a opportunity to clear out here for the noon hour.

Counsel, is there anything else we need to place on the record at this time before we break for lunch?

MR. FENTON: No your Honor. Just for logistics, we probably got a good two hours of tape left. We've got

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Miss Eifler's cross-exam. Would it be safe for me to instruct Captain Mallery probably Tuesday?

THE COURT: That's kind of what I was thinking, although I am concerned about Miss Eifler's witnesses. I know she does have some witnesses coming in. As long as you can, you know, get those witnesses back next Tuesday, and I think that we talked about that a little bit. My understanding is it probably shouldn't be a problem, but you had somebody that was gonna check in at 1:30 so.

MR. FENTON: And if we finish earlier than I expect, I don't have a problem with her calling them out of order today too.

THE COURT: And--and that might be appropriate too. So we'll let--we'll have to talk to her about that and see how she wants to handle that so.

MR. FENTON: Thank you. So I'll instruct Captain Mallery that he's free this afternoon.

THE COURT: Yeah, I think that that's probably a good plan right now given the length of time.

MR. FENTON: Maybe Tuesday morning.

THE COURT: And then of course we do have cross-examination so.

MR. FENTON: Thank you your Honor.

THE COURT: All right. So around 1:30 or shortly thereafter I plan to begin again. Have a good lunch.

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Court's in recess.

(Court recesses at 12:21 p.m.)

(Court resumes at 1:53 p.m.)

THE COURT: Counsel, I'm gonna call the case. I don't have a way to confirm that this is recording other than the light. I think everything's okay, but when Mr. Brooks gets back in I'll have him see if he can check with the computer to make sure we're--we are recording, but I don't know what--what the code is to get in.

So the Court recalls the case of People versus Davenport, File Number C07-0165. Counsel, please identify yourselves for the record.

MR. FENTON: Stuart Fenton for the People.

MS. EIFLER: Susan Eifler, appearing on behalf of the Defendant, Ervine Davenport. He is present in court today.

THE COURT: And the jury is on the way down. Actually counsel, will you approach please.

(Bench conference begins at 1:54 p.m. between the Court and counsel, transcribed as follows)

THE COURT: Do you have more questions for Beauchamp then?

MR. FENTON: For Beauchamp?

THE COURT: Any additional questions from him.

MR. FENTON: Probably, yeah.

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THE COURT: Would you rather do your cross-exam-how long's your cross-examination gonna be? Any idea?

MS. EIFLER: (No audible response)

THE COURT: Would you rather do that now or come back--

MS. EIFLER: No.

THE COURT: And do it on Tuesday because I'm looking at the time. If you got two-and-a-half hours

MS. EIFLER: Here's what my thought is. I would like time to go back and just kind of check my--you know, I know why--why things were cut out, but I just want to go back in and check what was cut out and--and compare it so I can ask him questions maybe about some stuff that was cut out.

THE COURT: Well I don't think we're gonna get to your cross-examination anyway.

MS. EIFLER: Okay. I would prefer to do that on Tuesday--

THE COURT: Okay.

MS. EIFLER: When I've had a chance to kind of-

MR. FENTON: That's fine. Why don't we just finish the tapes today--

MS. EIFLER: And can--

THE COURT: And then that--

MR. FENTON: And I'll finish my direct, and then

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rest for the day.

THE COURT: Yeah. How much direct do you have?

MR. FENTON: Oh not much. It's just whatever follow-up. I don't know, I was just looking at that now. Whatever I haven't asked him, I'm just trying to see what I've missed if anything. Cause I wasn't looking at my notes when I was questioning him, I was just shooting from the hip. Just tidy up a few things I'm sure.

THE COURT: Yeah. Because--if that's okay with you and that sounds like that is better for you-

MS. EIFLER: Yep.

THE COURT: If we do it that way.

MR. FENTON: That's fine.

MS. EIFLER: It will be, yeah.

THE COURT: Then that's gonna be my plan.

MS. EIFLER: Okay.

THE COURT: It's just better. We've had a long week and I don't want to go after 5:00 o'clock today.

MR. FENTON: No, I don't either.

THE COURT: And so that will give you some time then and you can review the tapes so.

MS. EIFLER: That's perfect.

MR. FENTON: Great.

THE COURT: We'll do it that way. Okay.

MS. EIFLER: Thank you.

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(Bench conference ends at 1:56 p.m.)

(The jury members enter the courtroom at 1:56 p.m.)

THE COURT: Well I must say I don't think I've been this far off with my times every time we take a break in any other trials. So I apologize for that.

What we're gonna do is likely just play the rest of the tapes today and then we'll probably break for--for the weekend and have you return on Monday (sic), just so that you know what the most recent plan is.

So I will turn it over to Mr. Fenton, but I need to wait one moment just to have Mr. Brooks--

MR. FENTON: Thank you your Honor. I'm just gonna shut the lights off. If we can start--

THE COURT: Well give me one moment because I want him to check--

MR. BROOKS: Oh you want to know if we're on the record. I'll see.

THE COURT: Miss Johnson's in a meeting and I just need to double check to make sure that everything is being recorded. It appears as though we're in order but just bear with me a moment.

MR. BROOKS: Yeah it should be on.

THE COURT: Okay. Go ahead Mr. Fenton.

(People's Exhibit 34 resumes playing at 1:58

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p.m.)

(People's Exhibit 34 concludes playing at 2:33 p.m.)

MR. FENTON: For the record that was People's Exhibit 34. Now we're going to start 35.

THE COURT: Before you do that, ladies and gentlemen, if you want to stand and stretch a moment, you can do that. Okay.

(People's Exhibit 35 begins playing at 2:34 p.m.)

THE COURT: Mr. Fenton, can you just stop that a second. Counsel, will you approach a moment.

(People's Exhibit 35 is paused at 3:09 p.m.)

(Bench conference begins at 3:09 p.m. between the Court and counsel, transcribed at follows)

THE COURT: You have this one and then how much is the next one because--

MR. FENTON: I don't know. My notes are over there.

THE COURT: Well if this one--

MR. FENTON: But we've got a substantial amount left. If you feel like taking a break now--

THE COURT: That's what I'm thinking

MR. FENTON: We probably could break because I could go to the john.

THE COURT: Cause that says 34 minutes left on

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this one.

MR. FENTON: Okay.

THE COURT: And I think you're--you might be starting to lose a couple of 'em.

MR. FENTON: Sounds good.

THE COURT: So why don't we take about a ten-minute break and then we'll do this one and then--

MR. FENTON: Okay.

THE COURT: What's--can you check with her real quick and tell me how much the next one is.

MR. FENTON: Okay.

THE COURT: Just let me know.

MR. FENTON: The next one's an hour-and-a-half.

THE COURT: We're not gonna get through all this today.

MR. FENTON: No we may not. But then that's it. So we've got two hours left basically.

THE COURT: Okay.

(Bench conference ends at 3:10 p.m.)

THE COURT: We 're gonna take a break. I think the next segment is about 30 minutes. so it's probably a good time to do that. So Mr. Brooks will bring you back upstairs.

(The jury members exit the courtroom at 3:10 p.m.)

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Those of you in the courtroom, just please patiently sit or you can stand, but just wait for the jury

to exit the hallway, if you would, before you leave the courtroom.

Court's in recess, and counsel, just let me see you in chambers a moment.

(Court recesses at 3:11 p.m.)

(Court resumes at 3:34 p. m.)

MS. JOHNSON: The court recalls the case of People versus Ervine Lee Davenport, Case Number 07-0165FC.

Parties please restate appearances for the record.

MR. FENTON: Stuart Fenton for the People.

MS. EIFLER: Susan Eifler, for the Defendant-(People's Exhibit 35 starts playing)

(People's Exhibit 35 stops playing)

MS. EIFLER: Susan Eifler, for the Defendant, Ervine Davenport. He is present in Court today.

THE COURT: Counsel, the jury's on the way down.

My understanding is you're gonna have a little bit of testimony and then we'll do the next video.

(Sidebar conversation between Mr. Fenton, Ms. Hybel, and Ms. Johnson)

MR. FENTON: The next segment's so minutes apparently. So if you want to stop somewhere through it to--I

THE COURT: The next segment is?

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MR. FENTON: Yeah. I thought it was 37. I thought I saw that on there.

THE COURT: How much testimony do you have?

MR. FENTON: Not long, five--five minutes. Or actually, ten or 15 I forgot when we were up at the witness stand.

MS. EIFLER: The one we're doing right now has how many minutes left?

MR. FENTON: That's what we're talking about.

THE COURT: 50.

MR. FENTON: The next segment's 50 minutes.

MS. EIFLER: Did this just go up? I thought it said at 30--

MR. FENTON: No. This is the start of the next segment.

MS. EIFLER: Okay. All right.

MR. FENTON: Right? Which time you got-

MS. HYBEL: Entitled two.

MR. FENTON: We're starting the next one then.

MS. HYBEL: Entitled two.

MR. FENTON: We're not in the middle of it right now, are we?

MS. HYBEL: No.

MS. EIFLER: Okay.

THE COURT: Well when you get through the

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different titles, I plan to stop around 4:00. So if it switches over, there's usually a break there. So we can stop in between one of those.

MR. FENTON: If we need to, we can always stop and start it.

THE COURT: Yeah. I'll let you know.

(The jury members enters the courtroom at 3:37 p.m.)

Q I'd like to just ask you a couple questions, detective, before we start the next segment. First of all, there was a lot of reference during that interview when Captain Mallery was interviewing the Defendant, about him spending the night at 1137 Douglas at Tonya's apartment. Who's Tonya?

A Tonya is LaTonya Murray. Tonya's Latonya Murray.

Q Who's LaTonya Murray?

A She lives in apartment number four.

Q Same apartment complex as the victim?

A Yeah, it's the same house. It's just the top floor apartment is number four.

Q Was she the person who lived with Andre Randall supposedly?

A Yes.

Q All right. And he stayed there occasionally that we heard some prior testimony about?

A Correct.

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Q So when the Defendant was indicating to Captain Mallery that he was sleeping when Andre approached him at 1137 Douglas, that's the same apartment complex as the victim was living in.

A Yes it is.

Q All right. Next question, were two--the tape where you are brought into the room with Captain Mallery, at this point had you already taken a written statement from him?

A Yes I had.

Q And was that after what we saw earlier when Captain Mallery was telling the Defendant to--that he

wanted to take a written statement because to protect the Defendant as well as to protect the police so that--because of the distrust of the police, etcetera, etcetera, etcetera, it's important to write things down?

A Yes.

Q So had you come in and then taken a written statement from him?

A Yes I did.

Q Did you just basically go through his version of events with him and then write it down?

A Yes I did.

Q Just like the jury's been watching Captain Mallery do with him?

A Correct.

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Q And that took some time, didn't it?

A It took a good hour, maybe hour and 15 minutes.

Q So for the jury's edification, I decided that since it's in writing that the jury didn't need to see that--the tape of it. It's available if necessary, but I'll show what's been marked as People's Exhibit 36. Is this that statement?

A Yes it is.

Q So again, you wrote that out?

A Yes, I wrote it out, my handwriting.

Q As the Defendant was telling you what happened?

A Yes, in his own words.

Q And were you taking it down accurately?

A Yes.

Q All right. Please read to the jury the detailed state-first statement that the Defendant gave you over that course of the hour as to what happened or his involvement in this crime.

THE COURT: Counsel, this is Exhibit--this is proposed Exhibit--

MR. FENTON: Yeah, I'm sorry I didn't even move for it to be admitted and I should have, 36.

MS. EIFLER: I have no objection and--and I--I was having a hard time hearing. I'm gonna object if he's gonna ask the witness to read it because if it's been admitted, the jury can read it on their own.

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MR. FENTON: Well Judge, it's like showing the jury a photograph. Once it's been admitted that's normal procedure. Whether he reads it or I read it, I think they're entitled to hear it and so I'm entitled to ask it. It's in evidence.

THE COURT: Well it doesn't have to be read necessarily. It's two pages long--how long is it?

THE WITNESS: Two-and-a-quarter.

THE COURT: Okay. I will allow him to read it.

Just so I'm clear, Ms. Eifler, do you have any objections to Exhibit--Exhibit 36 as far as--as I--I believe he just moved to admit it.

MR. FENTON: I believe she's already indicated she doesn't have an objection to it.

THE COURT: Well she hasn't said that on the record yet.

MR. FENTON: Oh I thought she did earlier.

MS. EIFLER: Can we approach?

(Bench conference begins at 3:40 p.m. between the Court and counsel, transcribed as follows)

THE COURT: If we're gonna do this, I'm not gonna play another video. All right? At least for you.

MR. FENTON: Okay.

THE COURT: But that's fine.

MS. EIFLER: That was in--he said he wrote it by

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hand and--right?

MR. FENTON: He wrote it by hand-

MS. EIFLER: Right.

MR. FENTON: As he was dictating it to him.

MS. EIFLER: All right. And are you gonna--I mean--okay. You didn't call it his written statement?

MR. FENTON: I'm sorry?

MS. EIFLER: Did you call it his written statement?

MR. FENTON: I don't know what I called it.

THE COURT: Is this the--

MR. FENTON: It's on the record.

THE COURT: Is this the state--can I see the Exhibit 36. Is this the one that's not signed by him?

MR. FENTON: Right.

MS. EIFLER: Right.

MR. FENTON: Which he's already testified about.

MS. EIFLER: But it's not his written statement.

MR. FENTON: Well okay, that's semantics.

THE COURT: Okay. And the other thing--

MR. FENTON: It's--it's his statement that he gave to him.

THE COURT: Okay. Well let's clarify that then for them and let them know it's not his written

statement, it's the written--it's a statement that he was writing

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down. I mean it was never--I--I guess-

MR. FENTON: It is.

THE COURT: It's--

MR. FENTON: I think it's clear, but--

THE COURT: It's his statement that was written I guess at this point.

MS. EIFLER: Mmm-hmm.

MR. FENTON: Right.

THE COURT: We also need to clarify because you indicated for the record that it's available if they want to look at it.

MR. FENTON: Well it's not an exhibit, that's true.

THE COURT: The--this portion of--it's not available.

MR. FENTON: That's true.

THE COURT: We need to let them know that.

MR. FENTON: That's true.

THE COURT: And I can do that too. I'll--let me--that needs to be clarified. It can be introduced but-

MR. FENTON: The prosecution isn't offering the whole thing.

THE COURT: Right, right.

MR. FENTON: That's fine.

THE COURT: So I'm gonna let them know that the

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portion of the video is not available to them unless it's introduced as an exhibit, and at this point you've chosen not to do that so.

MR. FENTON: That's true.

THE COURT: Okay.

MR. FENTON: No objection.

THE COURT: So we'll clarify that this is the statement that--it's not a signed statement of the Defendant, but I'm allowing him to read it that. Do you have any more questions then after this or no?

MR. FENTON: A couple.

THE COURT: Okay. Just checking.

(Bench conference ends at 3:42 p.m.)

THE COURT: Ladies and gentlemen, just a couple things to clarify. This is a statement that was just testified to. It's not signed by the Defendant, as you will see. I am allowing it to be read into evidence.

And I also want to clarify I think there was a statement made by Mr. Fenton that the portion of the DVD I which shows kind of how this statement came--came about--and obviously there was testimony about that just a moment ago--about how this statement was made is available if you want to review it. It's not available because my understanding is that the prosecuting attorney has chosen not to introduce that into evidence. But I think that the

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statement was probably made because if the--if the prosecuting attorney--attorney chose to introduce that portion of--of the DVD into evidence, then they certainly could if there were no objections to it and so forth. But under the circumstances, that's my understanding that it's not gonna be introduced into evidence. So it is not available for you to review the DVD.

But the statement--and I'm sorry, Miss Eifler, any objections to the statement itself, Exhibit 36?

MS. EIFLER: Well--.

THE COURT: It's not--it's not a signed statement of the Defendant, but it's a statement that was made as Mr. Beaucharnp--or Detective Beauchamp just testified to.

MS. EIFLER: And written by--written by this witness.

THE COURT: Right.

MS. EIFLER: Okay.

THE COURT: Not signed by Mr. Davenport.

MS. EIFLER: Then I have no objection.

THE COURT: Okay. So Exhibit 36 is received.

(People's Exhibit 36 is received at 3:43 p. m.)

THE COURT: And I will allow you to read the statement then.

MR. FENTON: Thank you.

THE COURT: At this time.

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Q And remember, just try to keep your voice up and close to the microphone.

THE COURT: And I would urge the same thing please.

A "I was sleeping in Tonya's bed on Saturday, January 13th after midnight, and Andre came and woke me up and said he wanted to get a drink. I told him no at first and he closed the door and stayed in the room.

He said, "I need your help." I said, "What's up," and he said, "I need your help getting rid of something." I said, "What are you talking about?" and he said, "I need your help... 'getting of something' is what I wrote, "... I said, "Give me a minute, the keys are on the table in the bedroom," and he left.

I got up and sat on the bed for a minute and on my clothes and he came back and I got up--got up, went out to the living room and then I went to the living room. We went down to the car and he told me about--he told me what he did. He said he took care of that and he pointed to the back and she--Chocolate--was laying in the back. I was in the driver's seat and her head was on the passenger side. I saw that she had a bra and panties on and I think they were

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white.

We drove out of the parking lot and turned up Alamo, went to the second street to the left and turned left. We went straight until there was a turn area to go down towards North Street, and then I backed up toward the woods and parked it.

I was cussing him out and walked over toward the woods and he was trying to get her out on the driver's side and he was having a problem. I went over to--I went over to the passenger side and reached under her arms and pulled her out, and her arms went around my head, and that was how I got a scratch on my face. I pulled her out and her feet hit the ground and he came around and grabbed her and put her on his back and walked towards the woods.

I got back in the car and I saw him toss her in the woods, like he was getting something off his shoulder--off of his shoulder. He came back and got in the car and I drove him back to the house.

I drove off and came back about 15 to 20 minutes later and he had some stuff that that he needed to get rid of. He had a humidifier, some food, crab legs and chicken, and a boom box and told me to get rid of the stuff. I left and went to Patwood and

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the humidifier is at Marvin's house. I put the humidifier in the front room and I saw it in the last day I was over there before I got chased by the police.

I left and drove around. I left the food and boom box at Marvin's also. Marvin kept the speakers because the rest of it wasn't working. I threw the main part of the boom box in the dumpster at Daysha's in the morning of January 17th, 2007.

I cleaned out the car on Saturday, January 13th. I threw some--I threw out some belongings from the car, including paper and shoes, small brown shoes on Amsterdam Street on the right hand side.

I changed my shoes at Kmart on South West-nedge and I left my other pair of shoes in the box on the top shelf in Kmart. I left my white socks in the box with a hole in the left heel, and I got another pair of socks from the store that are in my property."

Q Now did you make any of that up yourself?

A No I did not.

Q Were you writing it in his presence?

A Yes I was.

Q As he was telling it to you?

A Yes.

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Q So was that statement taken before the last segment of the video that we watched with Captain Mallery interviewing him?

A Yes it was.

Q Where he reiterated many of the same things that he had told you earlier.

A Yes.

Q And that you wrote down.

A Correct.

Q All right. Now when he just--when you just read that statement, he said something about she was wearing bra and panties, correct?

A Correct.

Q Didn't he say earlier in the interview he didn't know how she was dressed?

A Yes he did.

Q Is that only one of numerous statements that changed throughout the interview?

A Yes.

Q Can you give the jury an idea approximately how long it even took him to get to the point of admitting helping Andre get rid of the body. In other words, how long was he maintaining that he had nothing to do with this case whatsoever.

A Approximately two-and-a-half to three hours.

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Q And then how long roughly was it that he went with this second story, which is that he helped Andre get rid of the body?

A Probably around I'll say 7:30 to 8:00 on that evening is when I began taking this statement, and it was about 11:30 that Captain Mallery and I entered the room again--

Q For the next segment?

A For this next segment.

Q That we're about to see.

A Yes. So during that time--during that three-and-a-half hours, I took the statement, I left, went up to Patwood Apartments to Marvin Fraction's apartment. Detective Pittelkow and I retrieved the humid--dehumidifier and the speakers during that time.

Q And Mallery was interviewing him as we just watched.

A When I came back, Captain Mallery was in the room interviewing Ervine.

Q So over what period of time was he maintaining this story about helping Andre dispose of the body only?

A Probably three hours.

Q Next question. When there was a statement made by Captain Mallery to the Defendant or the--excuse me--the conversation back and forth about the way that he came into possession of the car was that he rented it for crack. And I believe the Defendant made the statement that you had

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told him or you agreed with him that that's what the alleged victim, Tracie Goltzene, had told you. Do you remember that part of the conversation?

A Yes I do.

Q Did you tell the Defendant that?

A I minimized what had happened and told him that it wasn't a straight stolen vehicle, and I believe I told him that Goltzene did tell us that it was traded for crack. However, she did not.

Q So was that a lie?

A It was a lie.

Q So when we heard on the tape that this was really a crack rental as to how he got the car, you just represented that to the Defendant.

A Correct.

Q That's not what Tracie Goltzene told you.

A That's correct.

Q In fact, she's never told anybody that, has she?

A No she hasn't.

Q That was part of your minimization technique-to explain how he got the car?

A Yes.

Q All right. And in a similar vein--I believe this will be my last question for the day--did you hear Captain Mallery disparaging the victim and telling the Defendant about how

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you all had talked to numerous people and found out that she was a very violent person, she carried a knife all the time, she pulled knives on people at Daysha's, etcetera, etcetera? Did you hear all that?

A Yes I did.

Q Was that all true?

A No it was not.

MS. EIFLER: Your Honor, I'm gonna object. He's asking questions of another witness and I think that he can get it in through that witness, not this witness.

MR. FENTON: Well I'm--I'm gonna ask Mallery also, but the point is Mallery said, "Our detectives--"

THE COURT: Hold on, hold on. Approach please. Approach.

(Bench conference begins at 3:51 p.m. between the Court and counsel, transcribed as follows)

MR. FENTON: It's a legal argument. I mean we can make it in front of the jury, but Mallery said to him, "Our detectives have talked to numerous people."

THE COURT: I heard that. Yeah.

MR. FENTON: And he's the main detective, so that's why I'm asking him.

MS. EIFLER: Well I think you can ask--I think you can ask about the investigation, but you know, to--

MR. FENTON: I'm just prefacing it by making it

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relevant.

THE COURT: You may--yeah, you have to remind me what the exact question was. It was what? Oh you just asked whether that was true.

MR. FENTON: Right.

THE COURT: And he said no. You were gonna go on and say something else, you didn't finish that question.

MR. FENTON: I was just gonna follow-up a little bit.

THE COURT: He's--

MR. FENTON: Did you--did you talk to anybody who said that, you know, she pulled a knife at Daysha's and all that kind of stuff. You know, what was that basically, another minimization technique.

THE COURT: Okay. You've got rebuttal issue and then that's it.

(Bench conference ends at 3:52 p.m.)

THE COURT: You may ask your next question, Mr. Fenton.

MR. FENTON: Thank you.

Q Was that information true in terms of had you talked to someone at Daysha's who had said that she pulled knives on people regularly and that sort of thing?

A No I had not.

Q What was that represent--

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A It was--it was a minimization technique to make Mr. Davenport feel more at ease, that Mrs.--Miss White was a violent person.

Q All right.

MR. FENTON: I believe that's all I have at this point, your Honor.

THE COURT: Okay. Ladies and gentlemen, it's very close to 4:00 o'clock and I was going let you home--go home a little early today. I'm not going to play the next video, which I understand is longer than what we initially expected, and I think we have at least couple more hours of video to watch. So we'll do that on Tuesday morning.

I'm gonna caution you. We are gonna do our best to get all the evidence in, including closing arguments and jury instructions on Tuesday. Given the length of the videos, I'm a little concerned that we might be going into Wednesday, so just--I need you to be prepared for that.

And of course we never know how long deliberations are going to be. But I do caution to you to please make those arrangements if necessary, and again we will try to push this along as quickly as possible on Tuesday, but we do have quite a bit of video to watch still. So be aware of that.

I'm going to read to you again just a couple instructions just cause I know it's--you're gonna be gone

* * *

No. 20-826

In the Supreme Court of the United States

MIKE BROWN, ACTING WARDEN, PETITIONER

v.

ERVINE DAVENPORT

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JOINT APPENDIX - VOLUME II OF III

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Petition for Writ of Certiorari Filed Dec. 14, 2020
Certiorari Granted April 5, 2021

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STATE OF MICHIGAN
9th JUDICIAL CIRCUIT COURT
TRIAL DIVISION
FOR THE COUNTY OF KALAMAZOO

PEOPLE OF THE STATE OF MICHIGAN,
v Case No.:C07-165FC
ERVINE LEE DAVENPORT.
Defendant.

JURY TRIAL - VOLUME V
BEFORE THE HONORABLE
PAMELA LIGHTVOET
Kalamazoo, Michigan - Tuesday, July 15, 2008

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* * *

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[MR. FENTON cont.] Miss Eifler and I have agreed that apparently there's approximately 50 minutes of tape left. However, that's not necessary to watch it. It's in evidence, if the jury wants to watch it later they can. The sum and substance of this statement has already been produced, so we're gonna just move on.

THE COURT: Just so I'm clear then, Mr. Fenton, that is Exhibit--which exhibit is that?

MR. FENTON: 35.

THE COURT: Miss Eifler, is that accurate?

MS. EIFLER: Yes ma'am.

THE COURT: Okay. And I did previously admit Exhibit 35 and you will be given all the exhibits after the close of proofs and after the attorneys give their closing arguments. So you will be provided and you'll have the ability to--to watch the remaining portion of that in the deliberation room.

Mr. Fenton.

MR. FENTON: Thank you. I just have a few last questions for Detective Beauchamp

DIRECT EXAMINATION

BY MR. FENTON:

Q First of all, do you independently recall, Detective Beauchamp, the sum and summary of whatever's left on that tape, what happened after that?

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A We speak to him for probably another--well obviously 50 minutes, but it's--it's small talk.

Q All right. And then was he bought some dinner or something, some food?

A Captain Mallery, when he--at the end of the interview told him that he would bring him back the following day on the 25th in the afternoon, and buy him whatever he wanted for lunch. At the end of the interview he told them that.

Q Was that--was whatever he wanted for lunch provided for him the next day?

A Yes it was.

Q What was that?

A He ordered lunch from Applebee's.

Q All right. I think you may have testified to this earlier, but just to clarify, did you obtain Andre Randall's shoes for comparison purposes?

A Yes I did.

Q And his D--DNA was also obtained, was it not?

A Yes it was.

Q And submitted to the Michigan State Police?

A Yes.

Q Do you have an approximation on the Defendant's height and weight?

A Mr. Davenport's approximately six foot five, approximately 300 pounds.

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Q Can't remember if I asked you this before or not, did you go over the Defendant's jacket and look at it, the one that was taken from the hospital, to see if it had any cuts on it?

Q Yes. I--I actually packaged that into the plastic material that was presented here in court, and went through the--went through the entire jacket and did not observe any cuts of any--or any marks on the jacket.

Q Now that's the camouflage jacket that's packaged with one of the boots that was taken from the hospital, right?

A That's correct.

Q Is there some apparent blood on there, correct?

A Yes.

Q And is that from the Defendant from the accident?

A Correct.

MR. FENTON: I believe that's all I have of this witness. Oh let me just get this in.

Q I'll show you what's been marked as People's proposed Exhibit 37. Is that the written statement, the second one taken from the Defendant that the jury just heard on the videotape that he signed, Captain Mallery signed, and you signed?

A Yes it is.

MR. FENTON: Move for admission of People's Exhibit 37

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MS. EIFLER: No objection.

THE COURT: 37 is received.

(People's Exhibit 37 is received at 11:41 a.m.)

MR. FENTON: With that I have no further questions.

THE COURT: Miss Eifler.

MS. EIFLER: Your Honor, may we approach.

THE COURT: Yes.

(Bench conference begins at 11:41 a.m. between the Court and counsel, transcribed as follows)

MS. EIFLER: I have fairly lengthy cross-exam.

THE COURT: Okay.

MS. EIFLER: I think you know, if I could just do it all in one--

THE COURT: You want to just do it after the noon break?

MS. EIFLER: Yes.

MR. FENTON: Why the half turn now?

THE COURT: Well she wants to--

MS. EIFLER: After, you got 15 minutes.

MR. FENTON: Cause it's wasting a half-hour of time.

THE COURT: Well it doesn't matter whether they're gonna go to lunch right now or we go to lunch later so. And the deputies would probably prefer it this way

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anyway so that they know, they can bring him back and so forth.

Well all right, if that's the case then--what are we looking at here? Do we think we're gonna get this done today or not?

MR. FENTON: Hopefully.

THE COURT: Because we need to at some point we'll need the jury instructions then. If we break now, should I tell them to come back at 1:15, 1:30 then, so we can do jury instruction?

MR. FENTON: Well if she's got fairly lengthy cross and we're not even gonna start now, that's gonna make it more difficult to finish today.

THE COURT: Well that's not gonna matter. The timing isn't gonna matter whether she starts now and we break it up and then--I mean, they're still gonna get the same amount of time for lunch.

MR. FENTON: Well I was just thinking if we get done with the cross--

THE COURT: Well then you're gonna go--

MR. FENTON: Then there's only one witness left after lunch.

THE COURT: But either way, Stuart, you're gonna get--either way they're gonna get an hour-and-a-half or so for lunch. So it doesn't matter if we take it now--

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MR. FENTON: But if--I don't know.

THE COURT: Or we take it later.

MR. FENTON: It's hard--

THE COURT: Anyway, we're gonna take a break now.

MR. FENTON: It just seems it's gonna take longer if we break now, but I don't know. I can't tell.

THE COURT: Okay. Then you got Mallery. Any idea how long he's gonna be?

MR. FENTON: I'm not gonna have him on more than ten, 15 minutes.

MS. EIFLER: And I'm not sure how long the cross-examination's gonna be on Beauchamp.

THE COURT: Right now what are you thinking as far as your witnesses are concerned?

MS. EIFLER: Well it might just be Diane out there, there are none out there, but they've been instructed to come back at 1:00. So hopefully they'll be here ready to go.

THE COURT: So we very--okay. Depending on--and they shouldn't be that long.

MS. EIFLER: Right.

THE COURT: So we very well may be able to finish it today then.

MS. EIFLER: Right.

THE COURT: So we could potentially take a break

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after all the witnesses then and do jury instructions and then don't worry about during the noon hour. Yes?

MR. FENTON: Sure. We can do jury instructions whenever.

THE COURT: Okay.

MR. FENTON: It shouldn't be a big deal.

THE COURT: No, it shouldn't be.

MR. FENTON: You've reviewed them, right?

MS. EIFLER: Correct.

MR. FENTON: Do you have any objections to anything?

MS. EIFLER: I don't.

MR. FENTON: I even added a couple for her this morning.

MS. EIFLER: The only thing--

THE COURT: Okay. Well then we'll plan on doing that over the break so that you can get some stuff taken care of too.

All right. I'm gonna tell 'em to come back then at 1:15. Okay?

MR. FENTON: Okay.

THE COURT: All right. And that'll give you time to voir dire with Johnson too so.

MR. FENTON: Okay. The only thing I was gonna say is Mallery's on vacation. I've been putting him off

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and told him to be here at 1:30. Now if she's got lengthy cross-exam--

MS. EIFLER: So?

MR. FENTON: We may not get to him till 3:00 or something.

THE COURT: Oh well.

MR. FENTON: That's what I was thinking.

THE COURT: Oh well.

MR. FENTON: If we could get that double for a break but whatever, you're the boss.

(Bench conference ends at 11:43 a.m.)

THE COURT: Ladies and gentlemen, we're gonna break now for the noon hour since the--obviously since they're not gonna play the video we don't have to worry about that. So I'm gonna ask that you check in upstairs at 1:15. Mr. Brooks should be here in a moment.

Please remember my prior instructions about not discussing this case with anyone and not reviewing any media coverage with regards to this matter, and not speaking about the case amongst yourselves either.

I think Mr. Brooks will be here momentarily. Okay.

(The jury members exit the courtroom at 11:45 a.m.)

THE COURT: Counsel, is there anything else we need to address then at this time?

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MR. FENTON: No your Honor.

MS. EIFLER: No ma'am.

THE COURT: Court's in recess.

(Court recesses at 11:45 a.m.)

(Court resumes at 1:27 p.m.)

MS. JOHNSON: The court recalls the case of People versus Ervine Lee Davenport, Case Number 07-0165FC. Parties please state appearances for the record.

MR. FENTON: Stuart Fenton for the People.

MS. EIFLER: Susan Eifler, appearing on behalf of the Defendant, Ervine Davenport. He is present in Court today.

THE COURT: Good afternoon counsel, the jury's on the way down.

MR. FENTON: Thank you.

(Sidebar conversation between the Defendant and Ms. Eifler)

(Sidebar conversation between Mr. Fenton and the witness)

(The jury members enter the courtroom at 1:30 p.m.)

THE COURT: We will continue with Detective Beauchamp, and Mr. Fenton, I believe you are done with your questioning, is that correct?

MR. FENTON: Yes.

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THE COURT: Okay. Miss Eifler.

MS. EIFLER: Thank you.

THE COURT: And remember you're still under oath.

THE WITNESS: Thank you.

MS. EIFLER: Thank you.

CROSS-EXAMINATION

BY MS. EIFLER:

Q Good afternoon.

A Afternoon.

Q Sir, were you involved in the investigation regarding Leslie Snook?

A Yes I was.

Q All right. And did you meet with Mr. Davenport for that incident?

A Yes I did.

Q And Mr. Davenport, in fact, denied involvement in that incident, is that correct?

A Yes he did.

Q All right. He had told you that he recognized her as being one of Kenneth Cooper's girls, correct?

A Yes he did.

Q What did you take that to mean?

A Took it to mean that she was a friend of Kenneth Cooper's.

Q Mr. Davenport told you that he does not--he never remembered going to Battle Creek with Leslie Snook, is that

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correct?

A That's correct.

Q Did you speak with Leslie Snook about this incident?

A Not initially.

Q To the best of your knowledge, this was an incident that allegedly occurred back on January 7th, 2007, is that correct?

A Correct.

Q When did you talk to her?

A Talked to her couple times since Detective Moorian initially spoke to her. In February of '07 and last summer, I don't remember when. Last summer and then again this past spring.

Q Okay. So the first time you became aware these allegations was in February of '07?

A Yes, after Detective Moorian informed me of it.

Q And that's--and your understanding that Leslie Snook had been informed or--or had gotten word to your office while she was incarcerated, correct?

A Correct.

Q You've testified that you've talked with her a couple of times since February, correct?

A Correct.

Q And do you have any reason to doubt her testimony that she had been out of--out of the county jail on occasions up to

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this date?

A Well she was, in fact, arrested a couple times and then reincarcerated.

Q Thank you. So you are--you're the lead detective on this case. So is it your job then to talk with all the other officers and detectives to gather the information from your office?

A Yes.

Q All right. And did you personally speak with several--several people in regards to this incident?

A Yeah, several.

Q When you first found out the identity of the victim, it was important to know some things about her like where she lived, is that correct?

A Correct.

Q You're also trying to figure out who would have wanted to do this to Annette White, correct?

A Correct.

Q So part of what you're trying to figure out is who's had problems with Annette White in the past, correct?

A Yes, that's correct.

Q And so we've heard quite a bit of testimony about persons having problems with Annette White in the past, and is it your understanding based on conversations you've had with others during the investigation, that that, in fact is

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true?

A Correct.

Q Is it your understanding that often she is the aggressor in situations?

MR. FENTON: I'm gonna object to that. That's pure speculation and/or hearsay.

THE COURT: Miss Eifler.

MS. EIFLER: Well I believe that it has been testified to and I believe that he can testify about this based on the fact that he has gathered all the information as the lead detective.

THE COURT: Overruled, go ahead.

Q Is it your understanding in meeting with others that she often is the aggressor in a situation?

A No that is not correct.

Q Then it's not true?

A Correct.

Q Did you meet with Andre Randall?

A Yes I did.

Q Did Detective Johnson also meet with Andre Randall if you can recall?

A Yes he did.

Q Did you observe any of that interview while-

A Yes.

Q Okay.

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A Yes I did.

Q Did Andre Randall report that there were lots of run-ins?

MR. FENTON: I'm gonna object. That's blatant hearsay.

THE COURT: Miss Eifler.

MS. EIFLER: Your Honor, may we approach.

THE COURT: Yes.

(Bench conference begins at 1:38 p.m. between the Court and counsel, transcribed as follows)

MS. EIFLER: This is a witness who apparently was served--served by the prosecutor. We also had him listed as a witness and he's not located so.

MR. FENTON: Regardless, it's still blatant hearsay. That has nothing to do with the hearsay analysis.

MS. EIFLER: Well he's an unavailable witness.

MR. FENTON: And what's your exception under the court rules?

MS. EIFLER: I don't know, let me look at that.

THE COURT: Well--

MR. FENTON: There isn't one.

THE COURT: I'm trying to remember if he's--I don't think he has testified specifically about any conversations that he's had with Andre.

MR. FENTON: He can't.

MS. EIFLER: Well then I guess I'm gonna need

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Andre Randall here because he--

MR. FENTON: Well he's on the run.

MS. EIFLER: Okay I know that.

MR. FENTON: We served him a subpoena to be here, he's not here.

MS. EIFLER: Fine, well we'll need it.

MR. FENTON: Well--

MS. EIFLER: You know--

MR. FENTON: I need a lot of things, it doesn't mean I can have 'em.

THE COURT: Well--

MR. FENTON: If he's on the run, he was served a subpoena to be here, and nothing I can do about that.

THE COURT: What have you done with it?

MR. FENTON: There's warrants for him is my understanding. He's on probation and he's not reporting to his probation officer.

THE COURT: Well can we notify someone that they need to be on the lookout for him today?

MR. FENTON: Sure.

MS. EIFLER: Okay. I'll move on that. That's fine.

THE COURT: And then we'll move on right now and address it--

MR. FENTON: Okay.

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THE COURT: And if we need to wait a night and see if they find him, then we'll do it.

MR. FENTON: Okay.

THE COURT: You want to do that right now? You want to--

MR. FENTON: Yeah.

(Bench conference ends at 1:39 p.m.)

THE COURT: Just wait one moment while he leaves the courtroom for a moment.

(Mr. Fenton exits the courtroom)

(Mr. Fenton enters the courtroom)

THE COURT: You may continue, Miss Eifler.

MS. EIFLER: Thank you.

Q Now you were--you were involved though too with the interview on Andre Randall, correct?

A Yes I was.

Q And this interview lasted--this occurred on more than one day, correct?

A Two consecutive days.

Q And did he also come in for some period on January 24th?

A He may have. I don't recall.

Q You testified earlier that you had ordered pizza and pop for Andre, is that correct?

A Pizza and pop were--well the pizza was already ordered, but he was provided some.

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Q Okay.

A That was there.

Q And he was allowed to use the bathroom, correct?

A Correct.

Q But for the most part he was mainly in a room at your station used for conducting interviews, is that correct?

A The same room Mr. Davenport was in.

Q All right. And that--and that's a--well we--it's--we've seen on the--on the DVD, it's a room where basically the individual is locked in that room, correct?

A Yeah, you need a card key to gain access in and out.

Q Okay. Now Andre Randall at one point was the main suspect, isn't that correct?

A Yes he was.

Q That was based on the fact that Annette White had had a broken arm, that she had reported Andre Randall had broken her wrist, correct?

A Based on--it was based on the initial part of the investigation when we did--started to do the victimology on Miss White and discovered the previous Monday she'd reported it, aggravated assault, and on that Friday the 12th she had informed an officer that responded to her house, that she had summoned, that she had the name of the person who had assaulted her and also a license plate on the vehicle, which subsequently was the vehicle owned by Miss

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Goltzene that Mr. Davenport had taken. And that was all placed in that initial aggravated assault report.

Q Was your--during the investigation, you spoke with others who live--lived at the Douglas Street address, correct?

A We spoke with the residents and everyone in the apartments there.

Q And was it your understanding during the investigation that there was some kind of problem between Andre Randall and Annette White, correct?

A Yeah, on that--on that Monday, the 9th I believe it was.

Q On the 9th, and then you--you asked him questions or interviewed about him about that during the interview process, correct?

A Yes.

Q There was information that Annette White's relatives had visited Andre Randall, did you follow up on that?

A Yes.

Q Did you learn that they in fact had visited Andre Randall?

MR. FENTON: Objection. This is all irrelevant. Whether or not the victim's relatives visited Andre Randall has nothing to do with the ultimate issues that we're here to decide.

THE COURT: Miss Eifler.

MS. EIFLER: Judge, I believe it does. I believe it does because it--it all goes to the form of

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interrogation that was used for both Andre Randall and Ervine Davenport.

THE COURT: Overruled, go ahead.

Q Did you learn whether or not her relatives had-- had visited Andre Randall?

A We were not able to confirm that.

Q Was--was it your understanding that there was some kind of problem about--over some money?

A Between who?

Q Between Andre Randall and Annette White.

MR. FENTON: Same objection, irrelevant.

THE COURT: Overruled, go ahead.

A I don't recall if that was what the argument was over.

Q Now during the interview process with Andre Randall, Andre Randall gave some names of individuals that he had been with, correct?

MR. FENTON: Objection, this is hearsay and irrelevant.

THE COURT: Miss Eifler.

MS. EIFLER: You--it is--Judge, I would say it is not irrelevant. It goes--I'm not offering it for the truth of the matter asserted. If witness can answer, it will be what would--what his office did following the answer.

THE COURT: Overruled, go ahead.

A During the investigation Andre Randall gave some
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information about some individuals he had been with, correct?

A On which day?

Q On--during--from the time following the assault on Annette White up until the time of her death.

A Yes he did. He informed me that he had been incarcerated for three days and he got out of jail on midnight, turning into January 12th.

MR. FENTON: Again, I'm gonna have to object to this narrative of what somebody else said out of court. The jury doesn't need to hear this in order to know what he did as a result of that, that's hearsay.

THE COURT: The question I believe was whether he provided some names, so that's the question that needs to be answered.

THE WITNESS: Yes he did.

THE COURT: Not--not necessarily who they are, but just whether he provided that information.

THE WITNESS: Yes he did.

Q And he gave a name of Devin Cole, correct?

A Yes.

Q And Devin Cole's daughter, Brittany, correct?

A Correct.

Q All right. And after he gave those names, did someone then from your office go out to interview Devin Cole?

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A Yes they did.

Q And did someone also reach Brittany?

A I believe they did.

Q He also gave the name of a--of a female named Jackie, having a birthday party?

A Yes he did.

Q And did anyone reach Jackie?

A That I don't recall.

Q So was Devin Cole then interviewed?

A Yes she was.

Q And then based on that interview, your interview and Andre Randall continued, correct?

A Correct.

Q He was still the main suspect, correct?

A Yes he was.

Q And that interview with Devin Cole I believe was on January 16th, 2007?

A That sounds correct.

Q The timelines weren't matching up, is that correct?

A What timelines?

Q The--that Andre Randall had provided versus what Devin Cole had told you.

A They matched up, but it still was after the--his timeline was for that weekend.

Q Now Mr. Fenton had asked you earlier, sometimes you want to

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see how a person will react if you're--if they're told that they're responsible for a particular incident or action?

A Yes.

Q Even if it's not true.

A Yes.

MR. FENTON: Your Honor, may we approach.

THE COURT: Yes.

(Bench conference begins at 1:48 p.m. between the Court and counsel, transcribed as follows)

MR. FENTON: He's gonna try to get in his fake DNA report that they used with Andre Randall. That has nothing to do with this case. She just wants to smear the police. She can comment on any tactics that they used with Mr. Davenport, that's relevant, but what they did on somebody else who's not before this court or this jury is irrelevant.

THE COURT: Miss Eifler.

MR. FENTON: I don't need them hearing the questioning of it. It's more prejudicial than probative, even if it's marginally relevant, it's certainly more prejudicial than probative under 403.

MS. EIFLER: Well actually I wasn't going to get into that at this point, but it's my understanding that that DNA--that fake DNA was presented to Ervine Davenport too.

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MR. FENTON: I'm sorry?

MS. EIFLER: I think that was presented to him too.

MR. FENTON: There was no testimony on this record about that.

MS. EIFLER: Well but if for hours and hours-

MR. FENTON: You can ask--you can ask him if they showed a fake DNA report to Ervine.

MS. EIFLER: Okay. But I wasn't getting into that.

MR. FENTON: All right. Well I objected ahead of time so the jury doesn't hear it. If you want to ask him about what they showed to Andre, this fake DNA report. We talked about that earlier and I said I was giving you heads up--

MS. EIFLER: Mmm-hmm.

MR. FENTON: That I wanted to object before you got to it.

THE COURT: Okay. You're not going there anyway at this point.

MS. EIFLER: Well not at this time, but at some point I was going to.

THE COURT: Well are you gonna--are you gonna--just so I'm clear, well was it presented to Davenport too or don't you know?

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MR. FENTON: I--I don't think it was. Nothing in the report about that.

MS. EIFLER: That was my understanding.

THE COURT: Okay. Well if it was, then it comes in obviously.

MR. FENTON: Yeah to Davenport but not to Randall.

THE COURT: So.

MR. FENTON: And this--this whole line of questioning about Andre Randall isn't relevant.

THE COURT: Well you know, Stuart, she's allowed to put on her defense.

MR. FENTON: But that's not the defense, what they did with Andre Randall.

THE COURT: But yes she--I mean, you know what? It may very well be that there's involvement or whatever. I don't know how she's gonna wrap this up.

MR. FENTON: Well can we at least get an offer of proof, where we going with this? I mean we're wasting time.

MS. EIFLER: We're not wasting time. You're gonna say in your closing argument that my guy lied. Well it was for basically after hour of umpteen hours of forcing it to demonstrate what they think he did. You know, we could either not say anything and get life and if this--

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MR. FENTON: What does that have do with Andre Randall's questioning? Nothing. That's my point. She can comment--you can comment on all that. Was that 11-hour interview or whatever, and of course he was gonna but--

MS. EIFLER: When Ervine Davenport was--when they were conducting the interview, in my opinion, he initially--Andre Randall was still the suspect.

MR. FENTON: That's on the record.

MS. EIFLER: Okay.

MR. FENTON: But to go into all the details of Andre Randall, that's just wasting time, Judge.

MS. EIFLER: I don't think that it changed until the 24th.

MR. FENTON: Ask him, did it change until 20--you know, ask him. But to go through all the details--it's just wasting time--of Andre Randall's interview.

THE COURT: Well--

MS. EIFLER: Okay. If you--if he will admit to it, then I don't need to do all that. That's fine.

THE COURT: If you want?

MS. EIFLER: If he admits that Andre Randall was still a suspect as of the 24th--

MR. FENTON: Ask him.

MS. EIFLER: You know what, probably--

MR. FENTON: Ask him what changed.

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MS. EIFLER: But I think---

MR. FENTON: But to go through all the details of Andre Randall's interview--

MS. EIFLER: Sure, sure.

MR. FENTON: We're just spinning our wheels, we'll be here all day.

MS. EIFLER: I understand that. But I think you already--he's basically saying that they wrapped up Andre back on the 16th, and I don't think that's the case.

MR. FENTON: Well, I mean ask him the question.

THE COURT: Well it's her cross-examination. She can do it whatever way she wants to.

MR. FENTON: If you let her.

THE COURT: If she wants to kind of pin him into it, then she can do it that way. I don't know what he's gonna say either so.

MR. FENTON: Well if you let her.

THE COURT: I have a question too. I can't remember, was there--there was a preliminary examination here or was that waived?

MS. EIFLER: No I don't think so.

MR. FENTON: No there was one.

THE COURT: There as a preliminary. Did Andre testify there?

MR. FENTON: I doubt it. I don't--I don't-

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truthfully, I don't think so.

MS. EIFLER: If he did--

THE COURT: I don't have that transcript. I gotta go get that. I gotta have--

MR. FENTON: I'll check. I've got it.

THE COURT: But I--I'm--

MR. FENTON: But I don't think he would have testified.

THE COURT: Then I must be missing a portion of the file. I gotta have it up here, then I'll do it but all right. She can cross-examine him the--any way she wants to. I mean it's--if she wants to lay it out first and then ask him, you know, depending on--and lay out some things first, she can do it that way. I mean it's up to her.

MR. FENTON: And you have a right to control the proceedings too.

THE COURT: So well she's just started. She hasn't gone all that far.

MR. FENTON: Well I--

MS. EIFLER: Stuart, Stuart I'll ask him right now.

MR. FENTON: Okay.

MS. EIFLER: As of January 24th, was Andre Randall still a suspect.

MR. FENTON: Okay.

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MS. EIFLER: If not, then I'm gonna need to get into this, Stuart, all right?

MR. FENTON: Thank you.

(Bench conference ends at 1:52 p.m.)

Q Let me ask you this. January 24th, 2007, during the timeframe when you were interviewing Ervine Davenport, isn't it true that Andre Randall was still a suspect?

A No he was not.

Q He was not. When was he ruled out?

A He was ruled on January 16th at the conclusion of our interview into January 17th.

Q And you talked with Marquetta Tarver on January 18th?

A Correct.

Q And at that time she told you that--or she told someone from your office that Andre Randall was involving--involved in some form of this incident, correct?

A In this incident?

Q Correct.

A I don't recall her saying that. His name came up, but I don't think it was in regards to this incident.

Q Do you--were you present when Captain Mallery--were you aware that Captain Mallery spoke with Ervine Davenport?

A Yes.

Q Were you aware of Captain Mallery advising him that they were gonna put Andre Randall up on one board and Ervine

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Davenport on the other board and look at all of the facts?

A Yes I was.

Q And that interview was on January 24th, 2007, correct?

A That's correct.

Q So that was not true, then?

A No.

Q That was never gonna happen?

A No, that was not going to happen.

Q That was not gonna happen. Now you were the first person to meet with Ervine Davenport, correct?

A Yes, on January 18th.

Q January 18th. You knew he had been in the hospital, correct?

A Correct.

Q All right. And you knew he'd had surgery on his hand?

A I learned that during the interview.

Q Okay. You learned that because he was nodding off and not acting as though he was with it, correct?

A Correct.

Q And is it your understanding that he was transported directly from the hospital to your office?

A Correct.

Q Were you aware that he was taking medications at that time for his treatment at the hospital?

A No I was not.

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Q You'd been at the hospital, correct?

A I was at the hospital from probably 5:00 a.m. till 7:00 a.m., and he was brought over around 3:30 I believe.

Q Do you know what time the surgery was?

A I do not.

Q In the meanwhile, did you have contact with the officers who were at the hospital guarding Ervine Davenport?

A I had contact with the initial officers that were there, and then because of the time change--well because of the shift change at 7:00 a.m.--our patrol officers change shifts at 7:00 a.m. and 7:00 p.m.--and I had contact with the officer who brought him back over at 3:30, who had informed me that they felt Mr. Davenport was trying to--was faking an illness, in their opinion, and that was a determining factor when I began the interview with him.

Q Okay. But he really wasn't faking it, correct?

A No he was not.

Q All right. He was still under the effects of having surgery.

A He was.

Q All right. In fact, he was fairly cooperative throughout this whole entire process, isn't that correct?

A Yes.

Q He told you about being involved in the crash even while under the effects of the surgery, correct?

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A Correct.

Q Now on January 24th, 2007, then you had an opportunity again to interview Mr. Davenport, correct?

A That's correct.

Q Mr. Fenton has talked to you about different methods that are used to make someone feel more at ease or comfortable in talking, correct?

A Yes.

Q Do you remember giving scenarios to Mr. Davenport?

A For what?

Q All different scenarios. If he was to admit to one thing, this might happen. If he didn't cooperate, then this might happen.

A Yes I do.

Q Isn't it true that your examples that you gave to him were geared toward him being a helper or an assistant in this situation, is that correct?

A That is correct.

Q And what time do you recall beginning that interview?

A I believe it was around 4:45 p.m. on the 24th.

Q 4:45 p.m., and eventually there was a written statement, is that correct?

A There was two.

Q Okay. Well the first written statement.

A Yes.

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Q All right. Do you know what time that was written?

A I--because it wasn't signed, I'm guessing, but I believe it was in the area of 7:30 to 8:00 o'clock.

Q And you wrote that out for him, is that correct?

A That's correct.

Q You gave him examples of different cases that your agency had worked on, correct?

A Yes.

Q And in those examples, there were situations where there was one person who was primarily responsible for the death of an individual, is that correct?

A That's correct.

Q And then there were--and then also in those same situations there were others who helped the person, correct?

A Correct.

Q And you gave him several of those scenarios, correct?

A I gave him two I believe.

Q Two, okay. When you interviewed Andre Randall, you did not give him any scenarios as to being a helper, isn't that correct?

A That's correct.

Q And that was back at a time where he was the primary suspect, correct?

A Yes.

THE COURT: Just a minute. Mr. Brooks. I think

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they went--

MR. BROOKS: Oh.

THE COURT: Sorry, go ahead Miss Eifler.

MS. EIFLER: Thank you.

Q You gave a third scenario in regards to someone pulling a knife, a prostitute pulling a knife on--on her johns, correct?

A That--yes. You are correct. There was a third example.

Q And this--and that example, you knew nothing about a box cutter at that point from Mr. Davenport, is that correct?

A That's correct.

Q Why did you bring up an example of--involving a knife?

A That was the facts of that case.

Q But your testimony today is is that Annette White was not the aggressor in most of those incidences, but yet in this situation you brought up pulling a knife. Didn't you do that because it would fit the information that you had learned about Annette White?

A No it would not.

Q So how come you used that scenario?

A To make Mr. Davenport feel at ease and give him an out to help himself confess to the crime.

Q You talked to Mr. Davenport about his DNA being on Annette White's fingernails, is that correct?

A Yes I did.

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Q But you didn't have that information back from the laboratory at that point, did you?

A I don't think we received that until April or May of 2007.

Q Now let me go to the incident revolve--involving Tracie Goltzene, the car incident. Ervine Davenport told you that he--the reason--or the way he got that car is because Tracie Goltzene wanted to use crack cocaine and wanted to use his car--or her car--trade her car for crack cocaine, correct?

A Yes he did.

Q And you testified in court in regards to that, correct?

A Yes I did.

Q And it was referred to several times during the interview process, that it was a crack car or car exchanged for crack, correct?

A Correct.

Q What is a crack car?

A A crack--a vehicle traded for crack?

Q Right.

A Just that. It's--the owner of the car loans their car out for some crack cocaine.

Q So that is something that is done within the community of drug users?

A Yes it is.

Q And to the best of your knowledge, Tracie Goltzene had come

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from Paw Paw to Kalamazoo to see if she could get crack cocaine, correct?

A That's correct.

Q And it's your understanding that she flagged down someone or some unknown person flagged her down and got a ride from her, correct?

A Correct.

Q And took her to a party with other people she didn't know, correct?

A Correct.

Q Is that behavior also indicative of a person who uses crack cocaine, if you know.

A Yes it is.

Q After the first written statement, when you and Mr. Davenport are discussing that particular written statement, how long did you talk to him about signing that statement?

A Maybe a few minutes.

Q Few minutes. Did Captain Mallery also talk to him about signing that statement?

A Yes he did.

Q And how long did it take for Captain Mallery to talk to him about that?

A I think he was in the room for five to ten minutes, to my best recollection.

(Sidebar conversation between Ms. Eifler and Mr.

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Fenton)

Q Regarding that first written statement, Mr. Dav-enport asked to see an attorney, didn't he?

MR. FENTON: Your Honor, I'm--I'd like to place an objection on the record. Whether or not someone asks for an attorney is a legal issue, not a jury issue, and it's my understanding that the Court has already made a ruling in this regard, and that the statements were in fact admissible.

THE COURT: Counsel, will you approach a mo-ment.

(Bench conference begins at 2:06 p.m. between the Court and counsel, transcribed as follows)

THE COURT: You're planning to go with this and-

MS. EIFLER: What I'm gonna ask him is there approximately 13 times that he asked for an attorney. I'm not doing it because of legal issue. I know that that's already been decided. It's just this goes to--well you know, again, this guy has told one version because this is what is given to him by the police, help yourself

out here, help yourself out. And they really want him to sign this statement.

THE COURT: Okay.

MR. FENTON: So she wants it in, and usually they don't want it in. So we had talked about this in chambers.

THE COURT: Right. So I'm gonna let them know

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that I've already made a ruling.

MR. FENTON: You've determined the statement's admissible, but you're gonna allow--

THE COURT: Tell the jury that I'll allow--the statements are admissible, and obviously they heard portions. Yeah, so if--

MR. FENTON: But the defense has requested this to come in, so you're gonna allow them to--to hear it, but that they shouldn't be concerned with it. They're not the statements admissible because you've already ruled on that.

THE COURT: Right. Right.

MR. FENTON: How's that?

MS. EIFLER: That's fine.

THE COURT: Yeah. So I'll just let 'em know that, you know, there's been some testimony about the fact

that he received his Miranda rights and so forth, and I've already made a ruling on that, and we--

MR. FENTON: Well we're not talking about the Miranda though, we're talking about later he claims he wants an attorney.

THE COURT: Well he asked for his attorney, yeah so.

MR. FENTON: Yeah.

MS. EIFLER: Right, well.

THE COURT: Okay.

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MR. FENTON: All right.

THE COURT: Thank you.

(Bench conference ends at 2:07 p.m.)

THE COURT: Ladies and gentlemen, you're gonna hear some questioning with regards to the Defendant's request for an attorney during the interview process. I've already made a ruling with regards to the statements and obviously we've heard some testimony or--or we--some of the portions of the interview have been admitted and we watched that.

So you are not to worry about or look at this in light of whether or not, you know, the statements should come in or not. That's already been ruled on by this court. So I am allowing Miss Eifler to continue with regards to this line of questioning, but you should

not worry about whether or not this is--or his request affect whether or not you should consider these statements cause I've already ruled on that, okay?

Go ahead Miss Eifler.

MS. EIFLER: Thank you.

Q And sir, again Mr. Davenport did not want to sign that initial statement, isn't that true?

A That's correct.

Q All right. And he asked for an attorney, correct?

A He did not ask for an attorney, no.

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Q Well what did he ask for?

A He asked a question, "Should I consult with an attorney?," not should I, can I have an attorney.

Q Did he basically about 13 times say something to that essence, "I need an attorney. I would like to talk with an attorney. I need some legal advice," and you told him that you were not an attorney and you couldn't give him legal advice, correct?

A I think your number of 13 times is very inaccurate.

Q Okay.

A I believe it was around four.

Q Four times? Okay.

A Correct.

Q All right. So this--you--if I go back to your previous testimony, you said that--that it was about between three to four minutes when you were talking with him, correct?

A To my best recollection, yes.

Q And Captain Mallery was in there for about five to ten minutes?

A To my best recollection, yes.

Q So do you recall what time that would have been?

A In the evening you mean?

Q Correct.

A No I don't.

Q Well what time did the second statement then take place?

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How much time span?

A I left the detective bureau with Detective Pit-telkow, to the best of my recollection, in the area of 8:30 to 9:00 I believe. I was gone for about an hour to an hour and 15 minutes to go up to Patwood to retrieve the dehumidifier and speakers, and when I came back Captain Mallery was speaking to Mr. Davenport. It was around 11:20 to 11:30 when I came back in the room with Captain Mallery and

it was probably about an hour after that, so probably around 12:30 when the second wricken--written statement was taken.

Q So this first written statement that Ervine Davenport gave was not correct, is that true?

A Parts of it were correct.

Q Well about him assisting Andre Randall, that was not true, correct?

A Correct.

Q What you eventually learned during this interview process was that Ervine Davenport was, in fact, responsible for Annette White's death, correct?

A Yes.

Q And he described the scenario, we--we've heard--we've heard the DVDs, correct?

A Correct.

Q And you've already told us he's been--he was very cooperative during on--during all this process, correct?

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A Yes he was.

Q Even during points where he had asked for an attorney he was still cooperative, correct?

A You keep saying that he asked for an attorney several times.

Q Or yet he suggested he may need some legal assistance.

A Correct.

Q Is that--is that a better way to phrase it?

A Correct.

Q Okay. Even during that, he was cooperative, correct?

A Yes.

Q Now did you go out to Patwood to look for the clothing?

A He indicated that the clothing he threw in the--in the dumpsters, but yes we did go out there and look for it and I also went to Woodward and Shakespeare, the intersection where he indicated he had a friend that lived there, and I think he even said there was a burn barrel in his friend's yard. So we walked in the snow, Detective Pittelkow and I, looking for some of the items of clothing that--to see if there was possibly in his friend's yard or in that burn barrel area.

Q Well I think we just heard today, and I certainly could be corrected if I'm wrong, that he said he just dumped the clothes at Patwood.

A Some of it, yes.

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Q All right. Now this--this incident took place between Ervine Davenport and Annette White on Annette White--excuse me--that took place between January 12th, January 13th, correct?

A Yeah. The late evening of the 12th into the early morning of the 13th.

Q And no one had contact with Ervine Davenport from your office until January 18th early in the morning hours, correct?

A Correct.

Q So you don't have any idea what he was wearing on the 12th or the 13th, is that correct?

A No I don't.

Q You testified today that you took a look at a coat that Mr. Davenport was wearing when he was picked up, but you don't have any way to know that--if that was the coat that he was wearing on the 12th or 13th, correct?

A No I don't.

Q So let's back up. He told you that he got the car from Tracie Goltzene, correct?

A Yes.

Q And he told you that Tracie Goltzene had been to Marvin Fraction's apartment, correct?

A Correct.

Q And you confirmed, you'd already actually known that to be

[Page 899]

true, correct?

A That's correct. We confirmed that story.

Q He told you that he had been with LaTonya Murray or Tonya Murray, is that correct?

A At different points, yes.

Q Okay. Would this have been around January 12th, 2007?

A In the--I'll call it the early evening as that's what he said.

Q And did you confirm that with Ms. Bar--Ms. Murray?

A Yes and no. She had a hard time recalling dates and times due to her excessive drug use.

Q Okay. Did you talk with others who were present at the--at the Douglas Street address on January 12th, 2007?

A Yes I did.

Q And you confirmed that, in fact, Mr. Davenport had been there that day.

A Yes.

Q In fact, when you spoke with Andre Randall, he also advised that Mr. Davenport had been to the Doug--Douglas Street address that day, correct?

A Yes he did.

Q Mr. Davenport also told you that he had picked up Annette White, was--who flagged him down on Westnedge, correct?

A In the--the last--the latest version of his story, yes.

Q Okay. And at that point he also told you that they went to

[Page 900]

Uncle Earl's, is that correct?

A Earl Carswell, yes.

Q Earl Carswell. And at that point you had not talked with Earl Carswell, is that correct?

A No. That was the first time we'd heard his name.

Q So then did you speak with Earl Carswell or someone from your office?

A Detective Moorian and I did.

Q Okay. And you confirmed that, in fact, Ervine Davenport and Annette White had been to their residence, correct?

A Yes we did.

Q Mr. Davenport told you that when they got back into the vehicle after being at the Carswells for some period of time to leave their place, that as they were driving along she became crazier and much--and more agitated, correct?

A Yes he did.

Q And he told you that she brought out a box cutter, correct?

A Yes he did.

Q A gray or blue box cutter, correct?

A Correct.

Q And you were present in court when it was testified that in May of 2008 that a box cutter was located in the trunk of this silver gray Regal, correct?

A Correct.

Q Did you know who this transvestite person, the friend of

[Page 901]

Todd's, that Mr. Davenport told you about? Did you know who that was?

A Friend of Marvin you mean?

Q Or excuse me, you're right, friend of Marvin, Todd's a transvestite?

A Yes I did.

Q Did--were you able to contact him?

A No.

Q Did you--

A He was a parole absconder.

Q Okay. So did you look for him?

A Yes we did.

Q All right. Mr. Davenport told you--I think it came up many times--that he likes oranges, correct?

A Yes he did.

Q And even when his first version where he was telling that you that he helped Andre Randall he admitted that that may be how the peach--or excuse me--the apple--let me go through all my fruits here--how the orange peels may have been located at the--at the place where her body was located.

A Yes.

Q And then on the last final version, again, he admitted that's how the orange peels may have been located there.

A Correct.

[Page 902]

Q He told you the whole scenario about hiding his shoes at Kmart.

A Yes he did.

Q In fact, he already knew that you knew about that because during the interview process you'd already told him about the shoes, correct?

A Correct.

Q He told that after he had disposed of Annette White's body that he returned to Douglas Street, correct?

A Yes he did.

Q And that's where he located the humidifier and the--the speakers, and the stereo, and the food, correct?

A Correct.

Q And he told you that--that he had taken that over to Marvin Fraction's, correct?

A Yes he did.

Q Now during this--this final version, Mr. Davenport signed that, correct?

A Yes he did.

Q And you--you followed up by checking with the Carswells, that sort of thing, correct?

A Yes we did.

Q Did you look in the trunk of the car?

A I did not search the trunk of the car. I saw a bunch of belongings in there and the crime lab were the ones that

[Page 903]

were instructed to process it. We didn't want--

THE COURT: I--I didn't hear the last part.

THE WITNESS: The crime lab were--were the ones that were instructed to process the vehicle, and we were not to touch it so we didn't harm any potential evidence.

Q Did you tell Officer Latham to--or specialist Latham to look for the box cutter?

A I did not. I believe he was instructed to do that by one of our command officers.

Q Okay. Who was that?

A One of three at the time. I don't know which one.

Q Okay. You felt--is it fair to say that Ervine Davenport gave that final statement and he signed it, you felt that he had finally given you the full version of what had occurred, is that correct?

A Not the full version, no.

Q Well what did you think happened?

A I--I don't know 100-percent positive where she was killed at, if it was in the car or some where else.

Q Did you have the car checked for DNA?

A Yes, it was swabbed by the crime lab.

THE COURT: I didn't hear that.

THE WITNESS: It--

THE COURT: Yes it was?

THE WITNESS: It was swabbed by the crime lab.

[Page 904]

Q And did you confirm that Annette White was in that vehicle?

A They were not able to confirm that.

Q You have witnesses that placed her in the vehicle, is that correct?

A I don't think anybody saw her in that vehicle that evening. The Carswells couldn't say that that was the car that she had left in.

Q They had told you that--or at least Mr. Carswell told you--that she had been with Ervine Davenport, correct?

Q Correct.

Q So based on everything that he told you during that final version, he was being honest, isn't that correct?

MR. FENTON: I'm gonna object. The witness can't testify as to whether somebody else is being honest. That's--that's argument to be made from the inferences.

MS. EIFLER: Well I'll withdraw the question. I'll--I'll ask it a different way.

THE COURT: Thank you Miss Eifler.

Q He told you about a box cutter and that was found in the trunk, correct?

A Yeah at the bottom of a tool bag.

Q In the trunk, correct?

A At--yeah, underneath three layers of things.

Q Was it in the trunk or not?

A Yes it was.

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Q All right thank you. He told you about the humidifier, and the speakers, and the food, correct?

A Yes he did.

Q And in fact, that is where you had already located those things, at Marvin Fraction's, correct?

A Not the food, but the humidifier and speakers, yes.

Q All right. He told you they had been to Carswells, correct?

A Yes he did.

Q And that was the first that you knew anything about either of them being at Carswells, correct?

A Correct.

Q When Mr. Davenport was in this room, he too was locked in the room, correct?

A Yes. In the interview room you're saying, correct?

Q What's that?

A You meant the interview room?

Q The interview room, correct.

A Yes.

Q All right.

MS. EIFLER: If I may have just a moment.

(Sidebar conversation between Ms. Eifler and the Defendant)

MS. EIFLER: Your Honor, may we approach?

THE COURT: Yes.

[Page 906]

(Bench conference begins at 2:25 p.m. between the Court and counsel)

MS. EIFLER: We may--we may not have to be doing this, but again in going over the DNA--

THE COURT: I can't hear you.

MS. EIFLER: I'm gonna bring up the DNA part and as it relates to the interview with him.

THE COURT: You're going to use this?

MS. EIFLER: Yeah. I'm running a neutral line and I need to tell you, the next witness, the DNA, I don't think that the DNA results--

MR. FENTON: I don't have any problem with her questioning him about interview techniques that he used with the Defendant.

MS. EIFLER: Okay.

THE COURT: If--now--

MR. FENTON: I only object to interview things--

THE COURT: Are you planning on following up with the fact that that was brought in in the interview with Rod--Andre?

MR. FENTON: That's the only thing I object to.

MS. EIFLER: Mmm-hmm.

THE COURT: And if so how--

MS. EIFLER: No. No, because my only purpose in doing this is because of the Andre Randall questioning, and

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it was just to show that-

THE COURT: Yeah.

MS. EIFLER: That they were still looking at Andre Randall as a suspect.

THE COURT: Okay. Then--

MR. FENTON: Oh. Then in that case I object because we've already covered that. That's all been--he's already clarified when one person sees things specify-

THE COURT: Well just because he's testifies doesn't mean that she's not allowed to argue it otherwise. So you can--

MR. FENTON: But what's the relevance? It--I mean it's obvious--

THE COURT: Well the relevance is it goes against his credibility then.

MS. EIFLER: Yeah. Well-

THE COURT: I mean he's trying to get--downplay his credibility and say no, when he's saying in this situation it's not accurate. So she's allowed to do that.

MS. EIFLER: But well I mean--

MR. FENTON: But I don't think that's why she's doing it.

MS. EIFLER: This is the part where it's just more of the--the fact that why did this guy make these statements because they were looking real hard and Andre

[Page 908]

Randall was a suspect.

THE COURT: I can't hear you. Because they were what?

MS. EIFLER: They were having him think that Andre Randall was a suspect, and then withheld the news, well then Andre Randall in fact was a suspect.

THE COURT: Well you can go ahead and--you can go ahead and ask him about that.

MR. FENTON: Okay.

(Bench conference ends at 2:27 p.m.)

Q Now prior to this--this written statement, you had presented Mr. Davenport with some--some information, correct? In other words, you had given him a picture of Andre Randall to look at.

A Yes I believe so.

Q You brought--you brought in a file and it had a picture of Andre Randall?

A Yes.

Q All right. And in--in that file also next to it, isn't it true, that you had a copy of a DNA report and suggesting that Andre Randall was somehow linked to Annette White?

A I could have. I don't recall if it was there or not.

Q Okay. Do you recall having that sort of a report during the investigation?

A Yes I do.

[Page 909]

Q And you--again, did you have any sort of a report back from the DNA specialist?

A No.

Q And how was it that that DNA came to be produced?

A Sergeant Kari--

MR. FENTON: I'm gonna object as to relevance. If he can link it to this Defendant, that it was used with this Defendant, fine, but I would ask that that question be asked first before he goes on to what may have been done in an interview with Andre Randall.

MS. EIFLER: Well I think he's already--

THE COURT: Hold on a second. Just so that we're clear, you're not denying that that was used during

the interview. You just don't recall, is that right? The interview with Mr. Davenport?

THE WITNESS: I don't recall if it was or it wasn't.

THE COURT: Go ahead Miss Eifler.

MS. EIFLER: I'm sorry. Could the Court give its response one more time please.

THE COURT: I'm gonna allow you to continue.

MS. EIFLER: Thank you.

THE COURT: Just--we've had a number of discussions about we're--what can't--you can and cannot go into so.

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MS. EIFLER: Thank you.

THE COURT: But you can continue.

MS. EIFLER: Thank you.

Q And sir, do you know how that report came about?

A During the investigation you mean?

Q Correct.

A Sergeant Thomas authored the report.

Q And was this a--sort of a tactic in having Mr. Davenport talk about the incident?

A Not for Mr. Davenport, no.

MR. FENTON: I'm gonna renew my objection then. If it wasn't utilized in Davenport's interview, it's irrelevant and I'd ask that jury be instructed not to even consider any of the last couple of questions and answers.

THE COURT: Well he's already indicated he's not sure it was--he--he's not denying that it was not used. So I'm not going to give that instruction. Your objection's noted for the record. Go ahead Miss Eifler.

MS. EIFLER: Thank you.

Q Now sir, you had a--you're agreeing though that there was a file that Andre Randall's picture in it, correct?

A Yes.

Q All right. And at some point you brought that and talked to Mr. Davenport about that, correct?

A I brought in a lot of pictures, yes.

[Page 911]

Q Okay. All right.

THE COURT: Just so the record's clear, did you bring in a file with that picture also at some point?

THE WITNESS: Of Mr. Randall?

THE COURT: Yes.

THE WITNESS: Yes.

THE COURT: Okay. Sorry. Go ahead.

Q Was that on January 24th?

A Yes.

Q And according to your testimony, Andre Randall had already been ruled out, is that correct?

A Correct.

Q He was no longer a suspect on January 24th.

A That's correct.

Q Sir, how many homicide investigations have you been involved in in your career?

A Involved in probably 20 at least.

Q And sometimes you get a statement from a suspect, sometimes you don't, is that correct?

A Correct.

Q You've also talked about different techniques that the police will use to make someone feel comfortable, correct?

A Correct.

Q And do you remember talking with Mr. Davenport about a situation that you had been involved in when you were a

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private investigator up in Racine, Wisconsin?

A Yes.

Q All right. And you had told him about a guy basically getting angry when you were an investigator and he chased you down the highway.

A Correct.

Q Okay. And that--that chase occurred for several miles, is that correct?

A Correct.

Q Now to the best of your knowledge, there--there were never--there were no signs of any rape, is that correct?

A Correct.

Q You don't believe that Annette White was raped by Mr. Davenport, correct?

A No I don't.

Q Did you ever observe her body?

A No I did not. Not--just except for pictures.

Q You saw pictures you said?

A Correct.

Q And there--there was no injury to her body that you could notice, is that correct?

A Correct.

Q Let me ask you this. Back on January 24th, '07, do you know whether or not Mr. Davenport was taking any medication following his surgery?

[Page 913]

Q I do not know.

Q Did--did you--you didn't ask him?

A I don't recall if I asked him or not.

Q Do you recall if Mr. Davenport told you anything about pain?

A I don't recall.

Q Do you believe Mr. Davenport is responsible for Annette White's death?

A Yes I do.

Q Do you believe that that was done by cutting off her oxygen?

MR. FENTON: I'm gonna object. You can't ask somebody what they believe. We've had testimony from the pathologist. What he believes is irrelevant and speculative in any event.

MS. EIFLER: Well let me rephrase the question.

THE COURT: Thank you.

Q Does your investigation lead to the fact that Annette White died from having her oxygen cut off?

A From strangulation, yes.

Q And her body was found in a field, correct? Or in a-around some briar bushes?

A In some woods, yes.

Q And that Mr. Davenport's shoe print was found in that general area, is that correct?

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MR. FENTON: Judge, she's just reiterating fact which she can argue in closing. These aren't-

THE COURT: Overruled, go ahead.

MR. FENTON: Firsthand facts that he's observed.

THE COURT: Overruled, go ahead.

MS. EIFLER: Thank you.

Q His shoe print was found in a field near where her body was at, is that correct?

A In the grassy area near the bod--near where the body was found.

Q And there were orange peels located near where the car had parked, is that correct?

A Yeah. I believe they were located in the roadway.

Q And you verified and Mr. Davenport and Annette White had been to the Carswells' apartment, correct?

A Yes.

Q Is it your understanding that they had been smoking crack cocaine there?

MR. FENTON: Objection. Once again, 602, lack of personal knowledge. These are all facts that have been testified to by other witnesses. She can't just go through every fact that somebody else has testified about.

THE COURT: Okay. You know what, counsel approach. Hold on. Counsel, approach please.

(Bench conference begins at 2:37 p.m. between the

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Court and counsel, transcribed as follows)

THE COURT: She--you've presented a lot of testimony about what the investigation has--

MR. FENTON: Firsthand.

THE COURT: Indicated--well no, not necessarily.

MR. FENTON: I called witnesses to establish all those things.

THE COURT: Well I realize that. She's entitled to do her cross-examination--

MR. FENTON: Of the witnesses with personal knowledge.

THE COURT: Any way--any way that she wants to do that.

MR. FENTON: Personal knowledge. That's all hearsay, what other people have said, what other people have done. This is a closing argument. She can cross examine him on things he did firsthand.

THE COURT: Just a minute.

(Bench conference ends at 2:37 p.m.)

THE COURT: You can stretch a moment if you want to.

(Bench conference begins at 2:37 p.m. between the Court and counsel, transcribed as follows)

MS. EIFLER: We've gotten into quite a bit of testimony about--and the same--the same realm that he's

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given under on direct examination.

THE COURT: Yeah.

MR. FENTON: That's 602 or it's 403. She's reiterating things that have already been testified to firsthand by other witnesses. It's a waste of time.

THE COURT: Well--

MR. FENTON: You can control this.

THE COURT: You know what, Stuart? I am in control of this.

MR. FENTON: Well I know you're in control.

THE COURT: And you and I disagree with this because I let the defense put on their defense any way they want to. This is not a waste of time.

MR. FENTON: That's not a rule of evidence, any way they want to. It's got to be within the bounds and the rules of evidence.

THE COURT: Well it is.

MR. FENTON: Okay.

THE COURT: I'm allowing it.

MR. FENTON: All right.

THE COURT: Okay. Go ahead.

(Bench conference ends at 2:38 p.m.)

Q It's your understanding that they had been smoking crack cocaine at the Carswells, correct?

A From--

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MR. FENTON: Objection. Lack of personal knowledge, MRE 602.

MS. EIFLER: Well let me rephrase it.

Q Did the investigation--

THE COURT: Hold on a second. The Court's already made a ruling on that. So you may continue, Miss Eifler.

MS. EIFLER: Thank you.

Q Is it your understanding that they had been smoking crack cocaine at the Carswells?

A Based on interviews that were conducted, yes.

Q And did the investigation suggest that Mr. Davenport had picked up Annette White on North West-nedge just prior to going to the Carswells?

MR. FENTON: Same objection. No personal knowledge, hearsay.

MS. EIFLER: Judge, he's already test--

THE COURT: The Court's--the Court's ruled on it already. Go ahead Miss Eifler.

MS. EIFLER: Thank you.

Q Did the investigation suggest that Mr. Davenport had just picked Annette White up on North West-nedge prior to going to the Carswells?

A That's what Mr. Davenport said.

Q Okay.

[Page 918]

THE COURT: I--I didn't hear the answer.

THE WITNESS: That's what Mr. Davenport advised us.

Q And of the other witnesses that you talked to, other than Mr. Davenport, when was the last time that Annette White had been seen?

A The last time she was seen was by the Carswells to my-based on our interview with them.

Q Okay. Then going backwards, other than what Mr. Davenport had told you, when was the last time that Annette White had been seen?

A I believe--well you have to--you have Teresa--I can't think of her last name, Holiday I believe--and LaTonya Murray who said they saw her earlier in that evening, and then Officer Lisa Hendricks saw her at 5:00 p.m. on the 12th also.

Q You talked with Ervine Davenport or Captain Mallery talked to Mr. Davenport about why he took her body to the field, correct?

A Yes I believe so.

Q He indicated he was scared, correct?

A Correct.

Q He indicated he did not mean to hurt her, is that correct?

A Correct.

Q He wanted Captain Mallery to talk with her family and tell her family what happened, is that correct?

[Page 919]

A Yeah. Captain Mallery suggested it, yes.

Q And he agreed for Captain Mallery to do that, correct?

A Correct.

MS. EIFLER: I have nothing further.

REDIRECT EXAMINATION

BY MR. FENTON:

Q Detective, do you have any personal knowledge of any of the facts that you didn't observe with your own eyes?

A No.

Q Just going based on what other people told you, correct?

A Correct.

Q Lot of questions about what the Defendant told you during the interview, right?

A Correct.

Q How common is it for a Defendant to just out and out admit killing somebody without some excuse?

A Not very common at all.

Q Working backwards from the defense questioning, there was a question about on the 24th was the

Defendant's--on any medication. Hadn't he been in jail for about a week already?

A Yes.

Q Out of the hospital?

A Correct.

Q Did he appear to be under the influence of drugs at all?

[Page 920]

A Not at all.

Q If he had been and he wasn't lucid, would you have continued the questioning?

A No. I--like I did on the 18th, I stopped the questioning.

Q Did he indicate at any point that he didn't feel like he could continue?

A No he did not.

Q That he was uncomfortable?

A No.

Q Or sleepy?

A No.

Q You testified that you didn't see the body of the victim, then Miss Eifler asked you well were there

any injuries. Well did you ever see the body up close and personal?

A Not in person.

Q You only saw photographs later?

Q Correct.

Q So do you think you're the best person to give an opinion as to whether or not there were injuries on the body?

A No I'm not.

Q Now there was some questions about this DNA report that was eluded to. We didn't have an actual DNA report for a couple months, right?

A Correct.

Q What--explain to the jury, I don't think they know what

[Page 921]

that's all about. What--what are you talking about?

A For what?

Q Well there was some testimony about a DNA report that may have been in your possession at the time you interviewed the Defendant. That's what you testified, right?

A Correct.

Q What was that?

A That was authored by Sergeant Thomas during the interview of Andre Randall to use as a tool to try to get him to speak further about the crime cause at that point he was the number one suspect.

Q So it was basically a doctored DNA report.

A Correct.

Q It was used with Andre Randall to try to get him to confess.

A Correct.

Q And you said that may have been in the room with you. Do you know if you used that in your interview of the Defendant?

A I don't think I did but I'm not positive.

Q Did you ever doctor up a false DNA report saying that the Defendant was--that the Defendant's DNA was on the victim?

A No.

Q Did you ever tell him as a matter of fact your DNA is on her?

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A No.

Q You suggested that it might be and that science might prove that.

A Correct.

Q Miss Eifler said several times the Defendant was locked in the room. Did you lock him in the room, Detective?

A The room locks--

Q Was--

A But I didn't lock him in there.

Q Did he ask to leave?

A No he did not.

Q Was he being held against his will?

A He--well he was in custody on other charges.

Q He was in custody in general because of the fleeing and eluding, correct?

A Correct.

Q So he wasn't free to walk out onto the street, right?

A Correct.

Q Was he there in the interview room voluntarily?

A Yes.

Q Did you ask him if he would speak with you?

A Yes.

Q Read him a full set of Miranda.

A Yes I did.

Q Did he waive it and agree to talk to you?

[Page 923]

A Yes he did.

Q If he had unequivocally said at any time during this interview this interview is done, I don't want to talk to you any more, let me go, would you have let him go?

A I would have taken him back to jail.

Q Well that's what I mean.

A Yes.

Q Out of that room.

A Correct.

Q So was he being held in that room against his will in any way?

A No.

Q One of the things that the Defendant told you was that he got the car from Tracie Goltzene, right?

A Correct.

Q But he told you it was in a crack rental, right?

A Yes he did.

Q That wasn't accurate information, was it?

A Not from what Mrs. Golt--Miss Goltzene told me.

Q You had spoke to Mr. McCellom (sic) as well, right?

A McElmore, yes.

Q Or McElmore I mean. That was her passenger that night at the party?

A Correct.

Q You weren't able to confirm that information that he gave

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you, were you?

A That--

Q That it was a crack rental?

A That who gave me? Davenport or McElmore?

Q Yeah, that Davenport gave you.

A Correct.

Q In fact, they told you the opposite, that it wasn't a crack rental, right?

A That's correct.

Q And in fact, we know the car was reported stolen.

A Correct. There's a report on that.

Q All right. There was some talk about at some point during this interview he made some comment about whether or not he should talk to a lawyer, correct?

A Correct.

Q Now I don't want to get too much into this because it's more of a matter of law, but when someone unequivocally indicates to you that they want to talk to a lawyer and they're in custody, what do you have to do?

A Stop.

Q And what?

A Cease questioning.

Q All right. Was any unequivocal request for a lawyer made in this case?

A At the end of the second--after the second break.

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Q Then what? Did you cease questioning?

A Yes I did.

Q Who reinitiated questioning?

A Ervine Davenport did.

Q And does the law not say if the suspect reinitiates conversation that you can then listen to him and continue talking to him?

A Correct.

Q When he reinitiated conversation, did you not or did not Captain Mallery read him his Miranda rights again?

A Yes, they were read to him again.

Q Did he waive them and continue to agree to speak to you?

A To Captain Mallery, Yes.

Q All right. So did anything that you did or Captain Mallery did during this interview violate the law in any way as you understand it?

A No.

Q Now the defense attorney asked you a couple times wasn't the Defendant cooperative with you. What's your definition of cooperative?

A Not arguing or wanting to be loud.

Q Not belligerent?

A Correct.

Q Do you normally find interviewees in this type of a setting to be belligerent?

[Page 926]

A No.

Q When they're in custody and there's one or two detectives with them and in handcuffs?

A No.

Q It took eight hours to get him to admit to his involvement, didn't it?

A Yes it did.

Q There were a whole lot of lies that were told, weren't there?

A Yes there was.

Q Would you consider that to be cooperative?

A Not necessarily, no.

Q So you have a pretty broad definition of cooperative when you say he was cooperative, don't you?

A Yes.

Q Didn't you tell him from the very beginning you were looking for the truth?

A Yes I did.

Q He didn't give you the truth for a long time, did he?

A No he did not.

Q And you don't even know to this day whether his last statement is the truth, do you?

A No we don't.

Q There's some questions about that first written statement that he would not sign. Did you write it out the same way

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as the jury saw the second statement dictated to by the Defendant to Detective--or to Captain Mallery?

A Yes I did.

Q Same slow, painstaking manner, he's saying what's going on and you writing it down?

A Yes.

Q He didn't disagree with anything that was on there, did he?

A No he did not.

Q Just refused to sign it.

A Correct.

Q I believe you said that Miss Snook was assaulted by the Defendant on January 7th. Could that have been January 8th if the police report indicates so?

A Yes.

Q Same thing with the victim being assaulted by Andre Randall. Would that not have been the 8th?

A Yes.

Q Now the first question defense counsel asked you I believe was isn't it true that the Defendant denied any involvement in Miss Snook's incident, right?

A Yes.

Q You didn't spend hours interviewing him like you did on this murder case, did you?

A No we did not.

Q How long was your interview with him regarding Miss Snook?

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A I believe less than an hour.

Q So he denied his involvement assaulting Miss Snook, just like he denied his involvement in assaulting Annette White, for several hours, didn't he?

A Yes.

Q And an aggravated assault case isn't as serious as a murder, is it?

A Correct.

Q So you didn't spend nearly as much time with him on that as you did with this, right?

A That's correct.

Q Thank you. That's all I have.

THE COURT: Miss Eifler.

MS. EIFLER: Thank you.

RECROSS-EXAMINATION

BY MS. EIFLER:

Q Mr. Fenton just asked you, you don't even know to this day if the statements that Ervine Davenport gave you were true, correct? His final statements?

A That's correct.

Q Did you conduct any more interviews with him about this particular incident after January 24th, 2007?

A No.

Q Mr. Fenton also asked you about the DNA report. Do you recall asking Mr. Davenport why would Andre Randall's DNA

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be found on Annette White's neck?

A I don't recall asking him that question.

Q If you had asked that, would that be part of the investigation or your--your invest--the--your investigation tools?

A If I had asked him why would his DNA be around her neck?

Q Andre Randall's, correct.

A I wouldn't call that a tool, no.

Q What--what would you call it?

A A question.

Q What's that?

A A question.

Q A question? Okay. Miss--you wouldn't expect to Mr. Davenport to know why Andre Randall's DNA would be on Annette White.

A No.

Q So why would you ask Mr. Davenport that?

A You're gonna have to back up. What was the question before that?

Q Why would--the question before that is whether you would expect Mr. Davenport to know that answer. To know whether Andre--

A It's just part of a line of questioning during a lengthy interview. There were lots of questions that were asked that were inconsequential to the case.

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MS. EIFLER: I have nothing further.

THE COURT: Mr.--

MR. FENTON: Just one question.

REDIRECT EXAMINATION

BY MR. FENTON:

Q You said there were no more questioning of the Defendant after you said 1/24, but you meant after it turned over into the early morning hours of 1/25, right?

A Yes.

Q Wouldn't the Defendant have been charged with murder that day?

A That day was a Thursday. He was charged I think on the 26th.

Q All right.

A Cause we needed--we needed time to do all our reports.

Q You'd already interviewed him for how long?

Q Eight hours. We left work about--

Q Did you feel any further questioning was necessary at that point?

A No.

Q Once someone's charged, are you allowed to continue interviewing them?

A No you're not.

Q Thank you. That's all.

THE COURT: Miss Eifler, any further questions?

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MS. EIFLER: No ma'am.

THE COURT: Thank you sir. You may step down.

THE WITNESS: Thank you.

(The witness was excused at 2:53 p.m.)

MR. FENTON: Last witness

THE COURT: How are we doing, ladies and gentlemen? Does anyone need a break now? If so, raise your hand. All right, we'll continue.

MR. FENTON: I call Jim Mallery.

THE COURT: Please raise your right hand. Do you solemnly swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

MR. MALLERY: I do.

THE COURT: Please have a seat. State your full name or first and last name, and spell both your first and last name for the record please.

THE WITNESS: Jim Mallery, J-I-M, M-A-L-L-E-R-Y.

JIM MALLERY

(At 2:54 p.m., sworn as a witness, testified as follows)

DIRECT EXAMINATION

BY MR. FENTON:

Q What's your position in the police department?

A I'm the captain of the criminal investigation division.

* * *

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Court's attention.

THE COURT: Appreciate that.

MR. FENTON: It's been brought to my attention that Andre Randall has been located and apparently he's gonna be brought to court so.

THE COURT: Okay. We'll address that in a moment then. Mr. Fenton, are you planning on--are you done? Are you resting now?

MR. FENTON: Yes, I'm-

THE COURT: Okay.

MR. FENTON: I'm gonna rest when we come back.

THE COURT: Okay. Then counsel, we'll take a break for about ten or 15 minutes, and--and I just

want to-we need to touch base on jury instructions and additional witnesses then right before we come back from the break, all right?

MR. FENTON: All right. Thank you.

THE COURT: Court's in recess.

(Court recesses at 3:33 p.m.)

(Court resumes at 4:14 p.m.)

MS. JOHNSON: The court recalls the case of People versus Ervine Lee Davenport, Case Number 07-0165FC.

(Court coughs)

THE COURT: Sorry.

MS. JOHNSON: Parties please restate appearances

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for the record.

MR. FENTON: Stuart Fenton for the People.

MS. EIFLER: Susan Eifler, appearing on behalf of the Defendant, Ervine Davenport, who is present in Court today.

THE COURT: Counsel, the jury's on the way down and I have in--my office is going to be contacting Marcina West, also known as Marcina--

MR. FENTON: Potter.

MS. EIFLER: Potter.

THE COURT: Potter.

MR. FENTON: Did we reach her?

THE COURT: We're gonna try to get a hold of her.

MR. FENTON: Oh, trying.

THE COURT: Anything else we need to address before the jury comes down, counsel?

MR. FENTON: No your Honor.

(Sidebar conversation between the Defendant and Ms. Eifler)

(The jury members enter the courtroom at 4:17 p.m.)

THE COURT: Mr. Fenton.

MR. FENTON: Your Honor, the People rest.

THE COURT: Miss Eifler, are you ready to proceed?

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MS. EIFLER: Yes. At this time I will give an opening statement.

Thank you for going through this process with us. We really appreciate it, we appreciate your attentiveness, and we have all noticed that you've been very

involved in--in listening to the witnesses, and we do appreciate this. It's been a long process.

At this point the prosecution has rested and the defense intends on calling witnesses. As you all recall, you agreed that the defense did not need to call witnesses if it chose not to do so, and that the defense has no burden of proof in this case, that the burden of proof rests solely on the prosecution.

Ladies and gentlemen, we believe that the testimony that has come in and the testimony that you will hear from defense witnesses, however, will clearly show that Ervine Davenport is not responsible for the death of Annette White because he used self defense.

He was put into a situation where he had to use self defense to protect himself, that he was being attacked by a woman who had a box cutter, and that he was at danger himself of being severely injured or even death because he was facing a woman who was out of control. She'd been using crack cocaine, that she wanted more crack cocaine, that she was becoming more and more aggressive because

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Ervine Davenport would not allow her to get more crack cocaine, that he was trying to deliver her back to Douglas Street when she went berserk essentially, whipped out a box cutter, and starting slashing at him.

In that situation, in that moment, in that time, he reacted. He reacted by choosing to hold her, to hold her back as far away from him as possible. That he did

that by holding her by the neck, by pressing her against the back of the car door, the passenger side door. This woman who is whip-whipping a knife at him, getting her as far away from him as possible to protect himself from grave danger or even the possibility of being killed himself.

That she even, after dropping the box cutter, continued to hit him, to kick at him, to assault him, to go berserk in that vehicle, and that he was trying to get her under control. That in the course of doing this that he had essentially choked her. He did that because he needed to protect himself, that he did not necessarily want to hurt Annette White, he had no reason to hurt Annette White, but he did this to protect himself, to use what was lawfully available to him to protect himself, that is self defense.

The defense also intends to show you that Ervine Davenport, as of January 24th, 2007, was not the only suspect, that Andre Randall had been a suspect for an

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incident that had occurred involving Annette White, a physical altercation in which she had a broken wrist, and which Mr. Randall was in fact charged.

That he was questioned by the police on the 15th or 16th of 2007, and that he was later, after being taken into custody for something unrelated to this case, was brought over on January 24th, 2007, and was further questioned by Detective Beauchamp, and by Captain Mallery, and those involved in the investigation. That as of January 24th, when Ervine

Davenport gave his first statement to the detectives, he was not the only suspect in this case.

And finally, it is important for you to know that this is a not--this is not about making Annette White look like a bad person. You are not to use sympathy for the Defendant, for the victim, but we do intend to show you that she had a character, she had a reputation in the community for having an aggressive trait after she had used crack cocaine, and that would be consistent to her behavior on the evening of January 12th, early hours of January 13th, 2007, when she essentially went crazy and attacked Ervine Davenport with a box cutter. And at that point in time, to protect himself, which he was lawfully able to do according to the law, as the judge will instruct you, he used self defense.

Thank you.

[Page 965]

THE COURT: You may call your first witness, Miss Eifler.

MS. EIFLER: Yes. Go ahead and stand by the witness stand. Thank you.

THE COURT: Please raise your right hand. Do you solemnly swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

MR. RANDALL: Yes I do.

THE COURT: Please have a seat, sir. I need you to state your first and last name, and I need you to spell both your first and last name for the record. And please pull that microphone down as close to your mouth as possible.

THE WITNESS: Andre Randall. A-N-D-R-E, R-A-N-D-A-L-L.

ANDRE RANDALL

(At 4:23 p.m., sworn as a witness, testified as follows)

DIRECT EXAMINATION

BY MS. EIFLER:

Q Thank you. Mr. Randall, you're doing a really nice job. It's--this is a hard room to hear in, so if you can talk as much into the mics as possible, that'd be great, then we can hear everything.

[Page 966]

A All right.

Q Sir, did you know Annette White?

A Yes.

Q And how did you know Annette White?

A We stayed in the same apartment building.

Q And at some point in January of 2007, was there an altercation between you and Annette White?

A Yes.

Q Now how long had you known Annette as of January 2007?

A Probably about six months, six to nine months, something like that.

Q And were you aware whether she had a reputation in--in the community?

A I don't know about the community, but at--at the apartment building, yes.

Q And what was that reputation?

A Being a spitfire.

MR. FENTON: I'm sorry?

THE WITNESS: A spitfire.

Q What do you mean by that?

A Always in conflict with somebody in the building.

Q Did this involve physical conflicts?

A I know of two and then the--

MR. FENTON: I'm gonna object to specific incidences. That's improper use of character evidence.

[Page 967]

MS. EIFLER: Well I'm--I'm asking him about the reputation in the community, or at least in the apartment building, and so I will--I will requestion Mr.

Randall, but I believe he can--he can testify whether he knows of a reputation for physical conflicts.

THE COURT: I'm going to allow it. Go ahead.

MS. EIFLER: Thank you.

Q And sir, I don't want you to talk about specific incidences, but regarding her reputation at least in the apartment building community, do you know whether she had a reputation for physical conflicts?

A Yes.

Q Do you know whether during these physical conflicts, do you know that had anything to do with her using crack cocaine?

A I don't know.

Q Okay. Thank you. Sir, were you at some point charged with an assault on Annette White?

A Yes.

Q When were you charged?

A It--it was after I was locked up.

Q Were you questioned by the police regarding this matter?

A Yes.

Q Do you recall what dates you were questioned?

A No I do not.

Q Were you questioned prior to being locked up?

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A No.

Q At some point did you arrive off from a bus to I think the Drop In Center?

A The Plasma Center.

Q What's that?

A The Plasma Center.

Q At the Plasma Center.

A Yeah.

Q Okay. Were you taken into custody at that time?

A Yes.

Q Okay. So when you appeared for an interview were you in street clothes?

A Well when they took me from the Plasma Center, they told me they was just taking me for questioning.

Q Okay. So you were not in custody at that time.

A No. Not--not when I was first questioned.

Q Okay.

A No.

Q Do you recall the day?

A I think it was--I don't--I know--know it's the first week of January '06.

Q Would it be helpful--

A '07, I'm sorry.

Q Okay.

A All right.

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Q Were you later interviewed, do you know, on January 15th of 2007?

A I--I don't recall any of the dates cause I was in jail.

Q Okay. The date that you were taken from the Plasma Center that you were not in custody, do you recall how long you were questioned?

A About ten hours.

Q Were you allowed to leave?

A No. But they said they were, but I--I wasn't.

Q Was it your understanding that you were a suspect for the death of Annette White?

A That's what I came--I came to learn. I didn't know that until after they took me into question--questioning.

Q Well how did you come to learn that?

A That's what they told me.

Q Who's that?

A The detectives.

Q At the conclusion of the interview, were you told that you were ruled out as a suspect?

A No.

Q Was it your understanding that you were still a suspect for the death of Annette White?

A I--not--I didn't--I didn't know cause I didn't--I didn't know what was going on at the time. All I know when they let me out, then they--the police came and arrested me for

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a probation violation.

Q Okay. When they let you out, what do you mean?

A When--when they got--they say they was through questioning me, that's 2:00 o'clock in the morning, and as soon as I walked through the door, a police car pulled up and arrest me.

Q Now were you presented with different scenarios from the police as to your potential involvement in this case?

A Yes.

Q And you can tell us about those different scenarios?

MR. FENTON: Objection as to relevance.

THE COURT: Counsel, will you approach a moment.

(Bench conference begins at 4:30 p.m. between the Court and counsel, transcribed as follows)

THE COURT: First of all, I just want to make clear that specific instances are allowed with regards to the victim's character under 405(b)

MR. FENTON: Only if he knows about them under the case law, not against--

THE COURT: Well I think that he was about ready to get into that so--

MR. FENTON: No, if--if he--if he, Ervine Davenport, knows about them.

THE COURT: No. If it goes to a defense.

MR. FENTON: He's gotta know about specific

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incidences under the case law in order for it to be admissible.

THE COURT: Well that's what the rule says, 404-well on (b), (c)'s--

MR. FENTON: I don't--it's little bit more complicated than this.

THE COURT: So--

MR. FENTON: It's a complicated case law.

THE COURT: Just so that we're clear on that one. And it would--

MR. FENTON: Well we're not clear yet. I'd like to be heard on that if she's gonna try to get into that. I've got a case I'm playing.

THE COURT: Well then we can do that and--and take a break.

MR. FENTON: Okay.

THE COURT: If that--what's the case? Do you have it handy?

MR. FENTON: Mmm-hmm.

THE COURT: Okay. What--

MR. FENTON: Got it in my manual.

THE COURT: Why don't you go get and I'll--you have it--okay.

MR. FENTON: Want me to grab it right now?

THE COURT: Yeah. Now your objection is--so I'll

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let you know if we need to get back into this, you can, and now I forgot what the question was. That--

MR. FENTON: About--she's asking him about specific interview techniques--

MS. EIFLER: Techniques.

THE COURT: Oh that's right.

MR. FENTON: On him.

THE COURT: Okay.

MR. FENTON: And themes that were thrown at him. That's not relevant.

MS. EIFLER: And again I think it is because clearly he was not left as a suspect.

MR. FENTON: So what?

MS. EIFLER: So--

MR. FENTON: You can make that point without getting into--

THE COURT: Yeah. I'm gonna allow it. It goes to the--it goes to her whole theory about the defense.

MR. FENTON: Which is?

THE COURT: Well which is the reason that he--

MR. FENTON: Substantives?

THE COURT: Was not--was giving different stories was because the--the police were leading him down that road, and under the circum--I mean it--

MR. FENTON: Right. But what does that have to

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do with them questioning him, Andre Randall?

THE COURT: Well they--they gave him the same tactics. So it's--

MR. FENTON: Oh come on.

THE COURT: They're--

MR. FENTON: It's some where not relevant than probative. I mean it's marginally relevant.

MS. EIFLER: It--it is--it is not. I mean you, aren't you in your closing argument gonna say gee, ladies and gentlemen, he had every opportunity in the world-

MR. FENTON: Yeah.

MS. EIFLER: To tell the truth.

MR. FENTON: And what is--

MS. EIFLER: It is relevant.

MR. FENTON: Andre Randall's questioning have to do with that?

MS. EIFLER: Because when they are questioning-

THE COURT: I'm gonna allow it.

MR. FENTON: Doesn't matter, she's gonna allow it so.

THE COURT: Now hold on, let me read this.

MR. FENTON: It's not--it's not an easy case to understand.

THE COURT: The actual violent character of the deceased, even though is unknown to the defendant, is

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admissible as evidencing the deceased probable of correction to the defendant.

MR. FENTON: By opinion and reputation. Specific instances, however, have to be known to the defendant.

THE COURT: Then it says in contrast what about--that's what she's getting out, opinion and reputation.

MR. FENTON: No he--no, the objection was to specific instances.

THE COURT: Right. But that's allowed under 4--it's--

MR. FENTON: That's what this--you haven't gone far enough apparently. Opinion and reputation is general--

THE COURT: Okay. Hold on, let me continue.

MR. FENTON: That's okay

THE COURT: All right. Seems to me like it's both.

MR. FENTON: My understanding of the law is that if he doesn't know about specific instances, that's not relevant. You can't just disparage a victim. You can talk about their general character.

THE COURT: This said--I mean depending on the circumstances, if I'm--if I'm reading this, my reading is that you can do it either way.

MR. FENTON: That's not how I understood it.

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THE COURT: For--

MR. FENTON: Specific instances only--

THE COURT: Sure, well for self defense--

MR. FENTON: Known to the defense.

THE COURT: He--the--he's got to know about it.

MR. FENTON: Right. Right.

THE COURT: However, if you're going to, as far as her reputation is concerned, her reputation for being the aggressor; i.e.--

MR. FENTON: That's just opinion.

THE COURT: Did she pull a knife out, then it would be allowed. So arguably, they've got both cases here.

MR. FENTON: Well I disagree but-

THE COURT: So--okay.

MR. FENTON: It's un as clear as mud I think. But that was my--I read it and reread it, talked about it with other people, and that was the general consensus.

THE COURT: Well it--it does give the distinction in here between both types, whether it's reputation or whether we're looking at it for self defense. But she's asking what her reputation is of the victim--

MR. FENTON: Right. Generally that's fine.

THE COURT: Generally.

MR. FENTON: But when you start getting on

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specific instances, that's highly prejudicial unless it's known to him, it's not relevant. It's more prejudicial than probative.

THE COURT: Well okay. Well anyway, what's your-

MS. EIFLER: I--

THE COURT: Anything else that you have to say with regards to that?

MR. FENTON: I mean anybody could talk about someone's specific instances of bad conduct all over the place. It's not really probative, it's not really narrowed down, focused relevant unless it's known to him in a self defense claim.

MS. EIFLER: I don't know the case so.

THE COURT: Okay. I'm gonna allow it. Go ahead.

(Bench conference ends at 4:39 p.m.)

MS. EIFLER: Thank you.

THE COURT: And the objection's overruled.

Q Now sir, I believe I was just asking you about some different scenarios that the detectives gave you while you were being interviewed. Do you remember having different scenarios described to you?

A Yes.

Q And what were those scenarios?

A One was I was the murderer and I had a accomplice, and one

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was I was the accomplice and helped somebody else murder.

Q At some point did--were you advised that you were no longer a suspect in this case?

A When I--when they let me out--out of the jail that's when I found out.

Q And do you recall when that was?

A The middle of February, the end of February.

Q And would that have been in the year 2007?

A Yes ma'am.

Q Were you ever aware that Mr. Davenport had been charged in this case?

A No I wasn't.

Q And--so you--if I get your--if I understand correctly, the day you went to the Plasma Center, you were picked up but you were not under arrest that day, is that correct?

A That's correct.

Q Okay. And then that is the day that you were taken over to the police station and questioned at length, correct?

A Yes.

Q At any point were you advised that there was DNA evidence in this case?

A Yes.

MR. FENTON: Objection. Same objection, irrelevant, more prejudicial than probative. It's already been discussed, asked and answered on--with other

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witnesses, for what marginal relevance it is.

THE COURT: Overruled, I have gone over this before and the Court has found that it is relevant number one, and number two, there were questions also asked of Detective Mallery with regards to the DNA evidence being presented to this witness. So I'm allow--the door's been opened, go ahead Miss Eifler.

MR. FENTON: Well just for the record--

THE COURT: That's the rule--that's the Court's ruling, Mr. Fenton. Go ahead Miss Eifler.

MS. EIFLER: Thank you.

Q Sir, were you advised that there was--there were DNA results in this case?

A Yes.

Q And was it your understanding that your DNA had apparently been confirmed to have been located on Annette White?

A Yes.

Q Was that on this same day that you were taken from the Plasma Center?

A Yes.

Q All right. And for the record, what is the Plasma Center?

A Where you donate plasma, they take out your blood.

Q Were you later questioned by the police about this same incident?

A Yes.

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Q All right. And at that point do you recall whether you were in custody or out of custody?

A I was in custody.

Q Do you recall the day?

A I have no idea what day it was.

Q Was it a week or so after your initial questioning?

A I got questioned like four or five times, so I don't recall exactly.

Q On different days?

A Yes.

Q Do you know whether you were ever questioned at the same time that Ervine Davenport was being questioned at the police station in another room?

A I was told I was.

Q At that particular time did you still believe that you were a suspect in the homicide of Annette White?

A Yes.

Q Why's that?

A Because they was still questioning me about what was going-how did she get murdered, or what was my part in it.

Q Let's go back to the incident involving you and Annette White. Do you recall her coming to your apartment around January 8th of 2007?

A Yeah, it was some where around in there.

Q What happened?

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A She pushed her way in and started throwing pots around, and so I-I grabbed her by her shirt or something and pushed her outside the door.

Q Did she touch you while she was at the apartment?

A Yeah.

Q What'd she do?

A She was--she was hitting me, trying to hit me with the pots, and I just had to get her, and get her out the house so I could close the door.

Q Did she ever poke you, do you recall?

A Not that I recall.

Q How many pots did she throw at you?

A Three.

MS. EIFLER: I have nothing further.

THE COURT: Mr. Fenton.

MR. FENTON: If I could just have a moment, your Honor.

CROSS-EXAMINATION

BY MR. FENTON:

Q All right. Mr. Randall, first of all did you see the Defendant, Ervine Davenport, over at Douglas at the same apartment complex as Annette White lived in on Friday night, the night that she wound up being murdered?

A Yes.

Q In what context did you see him there?

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A Just in passing. I had came in and he was with my roommate.

Q You were with a roommate?

A No, he was.

Q He was with your roommate?

A Yes.

Q What was her name?

A Tonya.

Q Tonya.

A Mmm-hmm.

Q You know Tonya's last name?

A Murray.

Q I'm sorry?

A Murray.

Q Murray?

A Yeah.

Q She use crack?

A Maybe.

Q I'm sorry?

A I said maybe.

Q So you saw him just in passing.

A Yes.

Q Was he leaving or coming, and what were you doing?

A I was getting ready to lay down and I think they were in the room together, and then I seen them leave out.

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Q Any idea what time that was?

A No I don't.

Q Did you see Annette White that night?

A No I didn't.

Q Did you see the Defendant later on that evening?

A No.

Q Did he ever come there and, quote on quote, "lay his head down and go to sleep?"

A That night?

Q Yeah, Friday night.

A I--I can't say cause I was in there asleep. I don't-

Q You were asleep.

A Not that I know of. I don't know.

Q So you didn't wake him up and ask him to help you do something?

A No.

Q Did you tell him that you needed his help at all that night?

A No.

Q Did you ask him to drive you some where?

A No.

Q Did you ask him to help you dispose of a body?

A No.

Q Did you put a body in a car that night?

A No.

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Q Did you have him drive you to a location to dispose of a body?

A No.

Q Did you load Annette White into the backseat of a car?

A No.

Q Did you ever ride in the Defendant's Buick Regal?

A No.

Q Did you see that he had a Buick Regal, gray Buick Regal around that time?

A No.

Q Were you friends with the Defendant?

A We were associates.

Q How?

A He talked to my roommate and that's how I knew him.

Q Did you drive him to the--

THE COURT: I'm sorry. I missed the last part. I'm sorry. He talked to your roommate---

THE WITNESS: You know, they were seeing each other I guess.

THE COURT: You have to speak into the microphone.

THE WITNESS: They was seeing each other and that's how I knew him.

Q They being who?

A Him and Tonya.

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Q All right. Did you drive with the Defendant to a wooded area around Blakeslee and Prairie and unload Annette White's dead body at that location?

A No.

Q Did you have anything to do whatsoever with Annette White's murder?

A No.

Q Now you've never seen Annette White with a knife or a blade, have you?

A No.

Q And you've never seen her pull a knife or a blade on anyone, have you?

A No.

Q Now during part of the interviews of you, you were actually in custody on other matters, right?

A Yes.

Q Traffic matters?

A After--after they questioned me the first time, they took me into custody for a probation violation. So while they were questioning me they had me--my probation violated, and then I was took into custody.

Q So when you say you weren't allowed to leave, you were actually in custody on some other matters, right?

A No.

Q You were not?

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A I was--I was not in custody until they finished questioning me.

Q All right.

A Soon as I left out the building, a police car comes up, talking about he has warrant for me.

Q But they did tell you during the questioning at first that you were free to leave, didn't they?

A They let me walk out the--like let me open the door, and that was about it.

Q But at the beginning, they told you you were free to leave, right? That you weren't under arrest?

A Oh yeah.

Q All right.

MR. FENTON: I don't believe I have any further questions, but if I could just have a moment.

THE COURT: Yes you may.

MR. FENTON: Thank you.

Q Do you remember smoking crack with the Defendant on that Friday night?

A No.

Q Is it possible that it happened, that you just don't remember it?

A No.

Q You remember telling a detective that way back in January of '07?

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A I--well that's a mistake cause I came in, I had--had drunk some beer and I went to bed.

Q Do you know Ray?

A Yes.

Q Ray Fults.

A Yes.

Q Do you remember smoking crack with him and the Defendant that night?

A No.

MR. FENTON: That's all I have. Thank you.

THE COURT: Miss Eifler.

REDIRECT EXAMINATION

BY MS. EIFLER:

Q Sir, Mr. Fenton just asked you if you remembered seeing Annette White that night. Do you remember talking about a situation where you had seen her at the gas station and you--

A That night?

Q Some time that--that day or that night.

A I had just had got out--out of jail that Friday.

Q Okay. Well did there come a point in time where you had seen her at the gas station?

A Yes.

Q And do you remember when that was?

A That was early in the week, maybe Wednesday or so.

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Q And what happened?

A She was telling me what she gonna have somebody do to me.

Q Was--was she--how was she saying that to you?

A How--

MR. FENTON: I'm gonna object. Hearsay, irrelevant.

THE COURT: Sustained. Go ahead, Miss Eifler, move on.

Q Sir, were you provided a report about the DNA?

MR. FENTON: Asked and answered. Same objection as previously made several times.

THE COURT: Overruled, go ahead.

A Just they brought a letter in.

Q Okay. Did you have an opportunity to examine that?

A Yes.

Q Did you--how long did you have to examine that?

A I don't know. Ten--ten minutes I guess, I don't know. They left it in on the table, but--

Q What's that?

A I said they left it on the table where they were questioning me at.

Q Okay.

MS. EIFLER: Your Honor, may we approach.

(Bench conference begins at 4:53 p.m. between the Court and counsel, transcribed as follows)

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MR. FENTON: Okay, now she wants to admit this fake DNA report. This is like so far off field already-

THE COURT: Yeah, I'm not gonna allow that.

MS. EIFLER: Okay. Very well.

THE COURT: I mean you've got the testimony, they've got the evidence on it.

MS. EIFLER: Very well. Very good.

(Bench conference ends at 4:53 p.m.)

MS. EIFLER: I have no further questions.

MR. FENTON: Nothing further.

THE COURT: Thank you sir. You may step down. You are excused.

THE WITNESS: All right thanks.

(The witness was excused at 4:53 p.m.)

THE COURT: It's five to 5:00. We will end for the day. I would ask that you check in upstairs tomorrow at 9:00 o'clock in the morning please.

Please remember my prior instructions. Don't watch or read any news coverage with regards to this case. Make sure you're not speaking with anybody about the case, and have a good evening.

(The jury members exit the courtroom at 4:54 p.m.)

(Sidebar conversation between the Defendant and Ms. Eifler)

STATE OF MICHIGAN
9th JUDICIAL CIRCUIT COURT
TRIAL DIVISION
FOR THE COUNTY OF KALAMAZOO

PEOPLE OF THE STATE OF MICHIGAN,
v Case No.:C07-165FC
ERVINE LEE DAVENPORT.
Defendant.

JURY TRIAL - VOLUME VI
BEFORE THE HONORABLE
PAMELA LIGHTVOET

Kalamazoo, Michigan - Wednesday, July 16, 2008

APPEARANCES:

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* * *

[Page 1001]

THE WITNESS: S-P-A-N-N.

THE COURT: Two N's okay. Thank you sir.

MS. EIFLER: Thank you.

ARTHUR SPANN

(At 11:19 a.m., sworn as a witness, testified as follows)

DIRECT EXAMINATION

BY MS. EIFLER:

Q Mr. Spann, this is a really hard room to hear. It echoes and it's just hard to get the sound across. So if you could really try to project your voice back to me, then hopefully everyone will be able to hear you real well. And if you'll just lean up and talk into the microphone as well, okay?

A Yep.

Q Okay.

THE COURT: And I think you can move your chair. I--I think you can scoot that forward. There you go, great. Thanks.

Go ahead Miss Eifler.

MS. EIFLER: Thank you.

Q And sir, you are presently in--located in the county jail, is that correct?

A Yes.

Q All right. And sir, can you just tell us briefly why you

[Page 1002]

are currently lodged at the jail.

A I'm in jail for delivering cocaine.

Q Okay. Thank you. Sir, have you had in your lifetime a fair amount of contact with the legal justice system?

A Yes.

Q All right. But you understand that you are under oath and you are to testify truthfully today.

A Yes.

Q All right. Sir, did you just recently--just today as a matter of fact--had a chance to speak with me regarding Annette White?

A Yes.

Q All right. Let me ask you this. Do you--did you know Annette White?

A Yes.

Q All right. And for how long did you know Annette White?

A Years. I knewed (sic) her a couple years.

Q And did you have as--did you happen to know whether she had a reputation in the community?

A Yes she had a reputation.

Q And what was that reputation?

A Get angry sometimes when she smoke or you know. I had a little incident with her before in a hotel.

MR. FENTON: I'm gonna object as to little incidents that this witness can testify about that the

[Page 1003]

Defendant doesn't know about. That's irrelevant.

THE COURT: I missed the first part of what you said before you referenced this--the little incident in the hotel. What was your answer before that?

THE WITNESS: That I knew her, that she had a reputation.

THE COURT: And--okay. What was that reputation?

THE WITNESS: She get angry and stuff when she get high.

THE COURT: Okay.

MR. FENTON: I didn't hear what he said.

THE COURT: Can you repeat that a little bit louder and right into the microphone.

THE WITNESS: She get angry when she get high off crack.

THE COURT: And the jury is to disregard any--the reference to any incident that this--this witness had with her in the hotel.

Q And sir, what the judge is--is telling you is that you have--what I would just be asking you is to go by what you understand her--her reputation in the community to be.

A Okay.

Q You've testified that she would get--she had a reputation for becoming angry when she smoked crack cocaine, correct?

A Yes.

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Q All right. Would--do you know whether she had a reputation or a trait for doing anything else while she was under the influence?

A Yeah. She just--just have a different personality when she smoked. She just get loud with people, say things that were--things that, you know, just inordinary (sic).

Q I'm sorry, could you repeat that.

A She just say things to, you know, offend people and stuff like that. You know.

Q Say things to offend people?

A Yeah, you know, just start talking about people when she's getting high.

Q Now I'm gonna ask you this question because if I don't I'm sure Mr. Fenton, the prosecutor, will. Based on the fact that you've had contact with the legal justice system, do you have any--any--I mean you're basically telling us what her character is when perhaps your character is not as high as what--what one might expect. Do you have any--do you have any reason to--to get up here and lie about Annette White?

A No I don't.

Q Okay. Are you trying to pass any type of judgement on her?

A No I'm not.

Q Okay. And you're not hiding from--from things that you've done, is that correct?

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A No I ain't hiding nothing from 'em.

Q All right. And is there anything else regarding her reputation that you are aware of or any traits that she may have in the community that you may--that you're aware of?

A No.

Q Okay.

MS. EIFLER: I have nothing further. Thank you.

THE COURT: Mr. Fenton.

MR. FENTON: No questions.

THE COURT: Thank you sir. You may step down.

(The witness was excused at 11:24 a.m.)

THE COURT: Miss Eifler.

MS. EIFLER: May we approach.

THE COURT: Yes.

(Bench conference begins at 11:24 a.m. between the Court and counsel, transcribed as follows)

MS. EIFLER: I need--I'm prepared to call my client. He wants his other witness called to first, and I don't mind doing that necessarily in front of the jury. I-I don't know if it's time now that we shouldn't--

THE COURT: I thought about what I would do is just indicate that the Defendant's going to testify and I'm just gonna put him under oath where he's at, and he can raise his right hand from there.

MS. EIFLER: Okay.

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THE COURT: And that way they won't see that he's in chains.

MR. FENTON: He's not gonna take the witness stand?

THE COURT: No. Can I have him testify from the table?

MS. EIFLER: I think that that's gonna be more prejudicial.

MR. FENTON: I don't think so.

THE COURT: You think so? Okay.

MS. EIFLER: I think so. Maybe we can address the other witness issues outside of the jury. Get that and whatever that ends up being and then--then meet and then I would call him to testify.

THE COURT: Okay. So he--they're gonna be able to see that he is--

MR. FENTON: I have a better idea?

MS. EIFLER: What's that?

MR. FENTON: Let's send the jury in the hallway, have the deputies uncuff his feet or whatever needs to be uncuffed, his hands, whatever.

THE COURT: Have him sit there.

MR. FENTON: And have them--then--then bring the jury back in and have him walk to the witness stand. We can put all this other stuff on the record later.

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THE COURT: Yeah we can do that later.

MS. EIFLER: Okay fine.

MR. FENTON: But to send them back upstairs is--is ridiculous.

THE COURT: No, I'm not gonna do that.

MS. EIFLER: Fair enough. Fair enough.

THE COURT: Okay. So we're just gonna have his feet cuffed. We can keep the cuff around his--around his feet uncuffed. We can keep the cuff around his right--

MS. EIFLER: What if I--I mean I don't know him if I'm gonna have him--well I probably won't have him stand. If he's gonna walk to the witness stand, he's gonna need to have the belly chain off.

MR. FENTON: That's fine.

THE COURT: No I was--

MR. FENTON: I want him to walk to the witness stand. I want them to see how large he is. Otherwise I'm gonna have him stand up at some point in closing or something. Now would be the time I would think.

MS. EIFLER: I'd rather have him do that now then during the closing.

MR. FENTON: Yeah.

THE COURT: You want to--the whole--have the whole thing, you want him uncuffed then completely?

MS. EIFLER: Mmm-hmm.

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MR. FENTON: Probably need to talk to the deputies about that. But why don't we just send the jury in the hallway for five minutes so we can accomplish that.

THE COURT: Just a minute.

(Bench conference ends at 11:26 a.m.)

(Bench conference begins at 11:27 between the Court and Mr. Brooks, transcribed as follows)

THE COURT: We're trying to decide the--how we're gonna handle--the Defendant's gonna testify. But we're trying to figure out how to uncuff him at this time. I'm just gonna have you put them out in the hallway for about five minutes or so, not all the way up. You can't hear anything out in the hallway can you?

MR. BROOKS: No.

THE COURT: That we do in here? I just wanted to make sure of that. So they can just go wait out in the hallway and then I'll have Cherie come and get you.

MR. BROOKS: All right.

(Bench conference ends at 11:27 a.m.)

THE COURT: Mr. Brooks is just going to bring you out to the hallway for a moment. We have something real quick that we just need to take care of, and then he'll bring you back in here when we're--when we're ready.

(The jury members exit the courtroom at 11:27 a.m.)

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(Sidebar conversation between Ms. Eifler and the Defendant)

(Bench conference begins at 11:28 a.m. between the Court and Sheriff's Deputy, transcribed as follows)

THE COURT: Are there any issues that you're aware of? I'm gonna--he's gonna testify. I'd like to have him uncuffed so that they can't see anything, just so that you're aware of that. I don't know if you want to bring anyone else in or not, but my plan is--

SHERIFF'S DEPUTY: I don't think it would be a problem, if you want him up here. You want the restraints off as well?

THE COURT: Yeah. Yeah, because he's gonna walk to the witness stand.

SHERIFF'S DEPUTY: Okay.

THE COURT: All right. So just--I don't-

SHERIFF'S DEPUTY: We can do it right here.

THE COURT: Yeah. I don't know if you want--and you'll probably gonna need somebody--

SHERIFF'S DEPUTY: I'll call down just to let them know what we're doing.

THE COURT: Yeah, why don't you do that real quick before I go back on the record.

SHERIFF'S DEPUTY: All right.

THE COURT: Because I don't if he wants--

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(Sheriff Deputy contacts the holding center)

SHERIFF DEPUTY: Go ahead ma'am. The officer will be up here in a few minutes.

THE COURT: Okay.

(Bench conference ends at 11:28 a.m.)

THE COURT: Okay. My understanding, Miss Eifler, is that you're gonna have Mr. Davenport testify. So we are going to remove the restraints.

MS. EIFLER: That is correct.

THE COURT: Then we'll let the jury come back in and then Mr. Davenport can take the stand at that time and then we'll--I'll swear you in from there so.

MS. EIFLER: Your Honor, this may be the appropriate--

THE COURT: I'm sorry?

MS. EIFLER: This may be the appropriate time, however, to talk about the witnesses. I'm talking with Mr. Davenport about him testifying, which he has--he has made that--that individual choice to do that at this time. However, it--he would like--

THE COURT: Okay.

MS. EIFLER: He would like to testify after all the defense witnesses have testified. So I don't know-

THE COURT: Okay hold on a moment.

MR. FENTON: Apparently they've discovered a

[Page 1011]

location where R.B. Davenport is supposedly residing. However, he's not there, is that correct?

UNIDENTIFIED MALE: Correct.

MR. FENTON: They've spent the last hour-and-a-half looking for him. Apparently there's warrants out for his arrest, apparently he's on the run.

THE COURT: Okay.

MR. FENTON: So there's no luck in trying to have the Defendant's brother, R.B. Davenport, brought to court today.

THE COURT: All right. I'm not gonna delay the trial any more as far as the witnesses are concerned. So we'll put--my understanding is you don't have any other witnesses that are ready at this point to testify, other than Mr. Davenport. We'll--we will address what's happened with the other witnesses then after we're done with Mr. Davenport's testimony and depending on time and so forth after possibly--possibly after jury instructions and closing arguments.

So he needs his chair back. Go ahead and have a seat, counsel and Mr. Davenport, and then we'll bring the jury back in and we'll address the other issues at this time. But I'm not--I'm not gonna delay the--the trial any further. We'll continue and if there's no other witnesses, then we'll go into closing arguments and jury instructions

[Page 1012]

so.

Okay. We'll bring the jury back in. Excuse me.

And Mr. Davenport, you've heard the prior information--Mr. Davenport? Just remember to scoot your chair up as close as possible when you--when you have a seat here.

THE DEFENDANT: Yep.

THE COURT: And as you know, make sure you're talking right into the microphone too.

(The jury members enter the courtroom at 11:31 a.m.)

THE COURT: Okay. Miss Eifler, are you now ready to proceed?

MS. EIFLER: Yes ma'am. At this time I would call Ervine Davenport.

THE COURT: Mr. Davenport, if you would just-- before you have a seat, raise your right hand. Closer to the microphone, sir. Do you solemnly swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

THE DEFENDANT: I do.

(Cell phone rings in the courtroom)

THE COURT: Okay. Please have a seat. Just state your name for the record. And it sounds like somebody has a cell phone. I'll give her a moment to turn that off. All set.

[Page 1013]

Okay. Please state your name for the record, sir.

THE WITNESS: Ervine Lee Davenport.

THE COURT: Go ahead.

MS. EIFLER: Thank you.

ERVINE LEE DAVENPORT

(At 11:32 a.m., sworn as a witness, testified as follows)

DIRECT EXAMINATION

BY MS. EIFLER:

Q You're doing a nice job. I can hear you well, I don't have to give you the instruction.

A Hmm.

Q Sir, you--as you've obviously been present during all of this proceeding, and you understand that you have a right to remain silent, that you would not need to testify in this case. Is that correct?

A Yes.

Q And you, however, have made that decision to testify, correct?

A Yes I have.

Q And can you just very briefly tell us why it is that you want to testify?

MR. FENTON: I'm gonna object. That's not relevant. He can state what he needs to state, but that would be improper bolstering or attempted bolstering of his

[Page 1014]

credibility.

THE COURT: Sustained. Next question, Miss Eifler.

MS. EIFLER: Thank you.

Q Sir, did you know Annette White?

A Yes I did.

Q And how long did you know Annette White?

A For about--about six months.

Q How did you meet her?

A Through LaTonya.

Q Okay. Now--now I'm losing you a little bit. Can you maybe move the--

A Through LaTonya.

Q Okay. And who's LaTonya?

A She was a friend who stayed on Douglas Street.

Q Would that LaTonya Murray that we've been hearing about?

A Yes.

Q Okay. And can you--prior to the January 12th, January 13th, 2007, incident, can you describe your relationship with Annette White.

A I knew Annette basically on passing at first. Tonya had introduced me to her, she took me down to her--to her apartment and introduced me. That was it the first time. The second time Annette wanted to purchase something and we had that occasion.

[Page 1015]

Q Okay. Purchase something from whom?

A From me.

Q Okay. And what was it she was purchasing?

A Drugs.

Q Okay. Were there other times that you had occasion to see Annette White?

A Yes. Another time she wanted to purchase something and I went to her apartment, and she had a problem with paying for it.

Q What do you mean by that?

A Well she--she used the drugs and then didn't want to pay for it. And then when I confronted her about getting paid for it, she proceeded to try to kick me out the house.

Q Where were you at when this occurred?

A In her apartment.

Q And what did she do to proceed to kick you out of the house?

A She grabbed a knife and told me to get out.

Q Did you contact the police about that?

A No.

Q Why not?

A Cause we was doing something illegal.

Q How long did that whole altercation or incident occur when--from the time you asked her to pay for the drugs until the time that you left her apartment?

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A About two minutes. Once she pulled the knife I left.

Q Did you have any opportunity to--to watch Annette White when you came to see LaTonya Murray or times that you were at that address?

A Yes.

Q And for--and for the record, I don't know if you told me but, what--what address is that?

A I don't know the address, I just know the street and the apartment.

Q Okay. And that's on Douglas Street?

A Yes.

Q All right. Now do you know Andre Randall?

A Yes I do.

Q And how is that you know Mr. Randall?

A He stayed with LaTonya.

Q How long had you known him?

A About the long--about the same amount of time as I knew LaTonya.

Q Let me take you now to January 12th or January 13th. Can you tell us approximately what time it was that you can first remember being at the Douglas Street address?

A The first time I was there was that early morning on the 12th.

Q And had you spent the night there or how'd you come--how'd it come about that you were there?

[Page 1017]

A Yes. I had stayed the night there.

Q Now on the day of January 12th, did you see Annette White during the daytime hours?

A Yes, I saw her when Andre returned. She was downstairs yelling up at Andre.

Q Do you know what that was about?

A About the broken arm.

Q Were you aware that Annette White had a broken arm as of January 12th, '07?

A I was made aware of what happened with that incident when Andre told me what happened. When--after she had hollered upstairs.

Q You've described an incident where she pulled a knife on you.

A Yes.

Q You've also described this incident where she was yelling at Andre on January 12th.

A Yes.

Q Had you had any other instances where you observed her in this kind of a behavior or state?

A Yes. Another time was when she came into the apartment upstairs where Tonya stayed, and no one--no one was there but me. I was in the bedroom laying down and she came into the bedroom, and I asked her what was she doing there. She said looking for Tonya and I told her Tonya wasn't here.

[Page 1018]

So she proceeded to go through some of Tonya's stuff and I told her she's--she got to leave. She refused to leave. I grabbed her by the arm and proceeded to try to take her to the door. She grabbed a pot off the stove and started swinging it at me.

Q Did she eventually then leave Tonya's?

A Yeah, after I got the pot out of her hand and she left.

Q Now approximately what time of day was it on January 12th, 2007, when you saw Annette downstairs yelling at Andre?

A It was around noon time.

Q Now let me ask you this. Can you tell us what kind of relationship you had with Tonya Murray?

A We was off and on, off and on a couple. You know.

Q Off and on. So you had a romantic relationship with her?

A Yes.

Q Okay. But off and on meaning sometimes you were together, sometimes not.

A Yeah. Yeah, it was one of those type of relationship, off and on. You know.

Q Okay. Do you recall a time on January 12th where you left with some others from Douglas Street to go and obtain money?

A Yes.

Q All right. And who all went?

A Me, Tonya, some girl in a wheelchair, I can't think of her

[Page 1019]

name.

Q Some girl? I'm sorry I didn't hear that.

A Some girl that was in a wheelchair.

Q Had you met her before?

A Yes.

Q And how did you know her?

A Through Tonya.

Q Okay. Did she also live at the Douglas Street address, if you know?

A No.

Q Okay.

A And Andre was in the car also.

Q And what did you do?

A Took 'em out to--I think I first took 'em to--out to the store, and then I took 'em downtown.

Q What'd you do there?

A I waited in the car. They went in and I guess to purchase something or to do something. To get some money, that's all I knew.

Q Okay.

A I was just driving.

Q What store was this?

A Meijer's.

Q And where was that Meijer located?

A West Main.

[Page 1020]

Q Approximately what time of day was that?

A Around 3:00 maybe.

Q Do you know a person by the name of Ray Fults?

A Sound familiar like I heard it before. Not for sure.

Q Do you remember Mr. Fults testifying in court earlier?

A Oh yes.

Q Okay.

A Yes.

Q And--and did you know him prior to him testifying in court?

A When I saw him over to Tonya's that time.

Q Okay. How many times had he been to Tonya's, if you know.

A A couple times.

Q What--and what on January 12th, 2007, what was Ray doing at the--at the Douglas Street address?

A Waiting for Tonya.

Q Okay. Let me speed this ahead. Did there come a point on January 12th where you and Annette were in a car together?

A Yes.

Q And do you know what time that was?

A It had to be after 2:00.

Q After 2:00 in the morning or the-

A After 2:00 in the morning.

Q And that was on January 12th?

A Yeah--no that was on January 13th. I picked Annette up on Westnedge, coming down Westnedge. It was raining that day.

[Page 1021]

Q Okay. And we've heard testimony about North Westnedge, is that--is that accurate?

A Yes.

Q Okay. And how come you picked her up?

A Cause it was raining and she flagged me down.

Q Then what happened, where'd you go?

A She got in the car and she asked me did I have anything, and I told her no at the time. And she asked me where could she get--get something from, and I told her of a couple spots, and she said to take her over to Woodbury.

Q Let me stop you for a minute. When you say get something, are you referring to purchasing drugs?

A Yes.

Q Okay. All right. All right. So if you would continue.
You said Wood--Woodward?

A Woodbury.

Q Woodbury, thank you.

A Instead of taking her to Woodbury I took her over
to Rose--Church Street, Rose and Church. And
from there we went to Woodbury.

Q Okay. And this is all in a--an attempt or a search
to find drugs?

A Yes.

Q Now did you get out at Rose and Church?

A I got out at--on Church Street.

[Page 1022]

Q And was there anyone else there?

A On Church? Yeah, there's people on Church Street.

Q Okay. What happened over on Church Street?

A I purchase--I purchased something and Anita (sic)
wasn't happy with what she saw, so we went to
Woodbury.

Q What happened over on Woodbury?

A She purchased something and we left Woodbury. While we was on Woodbury, she got into it with one of the individuals who stay on Woodbury.

Q Do you know who that person is?

A Only by nickname or I don't know if it's his real name or not.

Q Okay. What the nickname you--do you know

A Todd.

THE COURT: Ty or Todd?

THE WITNESS: Todd.

THE COURT: Ty?

THE WITNESS: Todd.

Q Did you ever tell the detectives about Todd?

A Yes.

Q And how did you describe Todd to the detectives?

A A homosexual. They know him, they knew him.

Q Did Todd have an unusual manner of dress?

A Yes.

Q Okay. What--what did you--I mean what's your understanding

[Page 1023]

of his manner of dress?

A He dress in fem--in ladies clothes.

Q And what was going on between Anita or Annette and Todd?

A Nita--he wanted Anita to get off his porch, that's all I heard. She was waiting for someone to come out of the house and he didn't want her to be on her--on the porch and told her to get off the porch. And they got to arguing and eventually she came off the porch and stood in the middle of the street, and they was hollering back and forth at each other.

Q Did you have to intervene in that situation?

A No. Someone finally came out the house and told Todd to let it go and he came back in. He went back in the house, and him and Anita and the individual went and talked.

Q All right. And then at some point did you go to the Carswells?

A Yes. After we left Woodbury.

Q And did you know the Carswells?

A No.

Q When's the first time you met them?

A That night.

Q Do you know--going back to Woodbury--do you know whether Annette purchased any drugs at Woodbury?

A Yes she did.

Q Why did you go to the Carswells?

[Page 1024]

A Cause Annette wanted to go there and that's where she said she had came from. She had told me that she had gotten some money from Earl and was taking his part back.

Q Okay. So how long were you there?

A For--for awhile,.

Q I mean can you gives us an estimate? Was it longer than hour?

A Yes.

Q Was it longer than two hours?

A Yes.

Q What did you do while you were there?

A Talked, drunk beer, smoked.

Q When you say smoked, are you referring to smoking crack cocaine?

A Yes.

Q And there came a point in time where you left, correct?

A Yes.

Q Okay. Why did you leave?

A The first time?

Q Yes.

A The first time we left to go get more--Nita wanted more drugs. She didn't want what I had, so we left.

Q Okay. Did you go and purchase any alcohol during that time?

A Some beer.

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Q Do you know--did you get any money from Earl Carswell or do you know whether Annette got any money from him?

A Annette did, I didn't. I had my own money.

Q Okay. How long were you gone during that time?

A Maybe about 20, 30 minutes, if that.

Q And then I assume then you went back to the Carswells.

A Yes.

Q All right. Then what did you when you were there?

A Just sit and talked, and listened to them arguing.

Q What were they arguing about?

A Everything me, to her credit cards, and her IDs, to her and Miss--Mrs. Carswell got into it about--I think Miss Carswell attempted to give me a hug and Anita didn't like it, so they got into it about that and.

Q When you said that they were arguing about--about you, is that what you're talking about?

A Yes.

Q All right. And when you said Mrs. Carswell, is that Derene Carswell?

A Yes.

Q And she testified in court earlier?

A Yes.

Q And any point did you notice a change in Annette White's mood?

A Well it'd go back and forth depending on what she was

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doing. She was more calmer when she was sitting on--sitting on--sitting on my knee. She--she sit on my knee most of the night. So she just, you know, depended on what she was doing.

Q Okay. So then if she wasn't sitting on your knee, then what happened?

A She was running around the house, acting a fool.

Q I'm sorry. I didn't catch that.

A She was running the house acting a fool, you know, clowning.

Q Like trying to make jokes?

A No. Arguing with Mrs. Carswell and Mr. Carswell, debating about the amount that he received, and you know, just one thing after another.

Q Was she--you've testified that you have sold drugs, that you have used drugs. Do you know how much she was supposed to purchase for Mr. Carswell?

A Yes I know.

Q Did she try to give him the correct amount?

A No.

Q Did he have any item belonging to her that he was holding in exchange for the drugs?

A Yes.

Q And what was that?

A Her IDs and Bridge card and all her personal identification

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stuff.

Q And I'm assuming she wanted those back.

A Yes.

Q All right. Well at some point then did you leave a second time?

A Yes.

Q And why's that?

A Cause she was--well basically cause she was fighting with Mr. Carswell again, and he told her to get out.

Q Had she been fighting with him when you first arrived during this get together, whatever you want to call it?

A Yeah, they was arguing about the amount he received and.

Q Okay. So he's asked you now or asked Annette now to--to leave. Did you have any problems with Mr. Carswell while you were there?

A No.

Q How about with Mrs. Carswell?

A No.

Q All right. Were there others who came to the Carswells residence while you were there?

A Yes.

Q And do you recall who that was?

A It was I think Mrs. Carswell, Mr. Carswell daughter and her boyfriend.

Q All right. So when you leave, where are you going?

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A I'm fitting to take Anita home.

Q Where are you planning on staying that night or that early hour morning?

A More than likely I was gonna go by Marvin's and check on them.

Q And when you say Marvin, you're talking about Marvin Fractions, who testified previously.

A Yes.

Q And he is your cousin, is that correct?

A Yes.

Q All right. But you never made it to Annette's with Annette, correct?

A No.

Q Tell us what happened.

A Well we came out the house, we got in the car. It was--it was kind of--it was crazy by the way that we had left anyway because Earl was trying to shove us--push us out the door, and Annette was trying to get another drink from Earl's daughter who had brought a--brought some liquor in and we was just--it was raining that night also. Me trying to calm her down from--from the argument with Earl, and I just told her to get in the car--

Q I'm gonna--

A And she got in the car, put her coat--

Q All right. Let me stop you for a minute. Let's talk about

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the car. What car were you in?

A I was in a Regal.

Q What color?

A I think it was silver or gray.

Q Let me ask you this. Were you the registered owner of that vehicle?

A No.

Q How'd you get that car?

A A girl came over to Marvin house and I gave her some crack to use the car.

Q Was that the same girl, Tracie Goltzene, who testified previously?

A Yes.

Q Do you recall--going back to that incident--do you recall approximately what time of day or night that that exchange took place?

A In the morning time, early in the morning.

Q Who else was present when that happened?

A My brother, R.B., a couple other people that I can't remember they name.

Q Was Eric McElmore present when that happened?

A Eric McElmore?

Q That would be the friend of Miss Goltzene.

A No, he was down in the car.

Q Did she tell you how to get a hold of her or when she'd

[Page 1030]

need her car back, or how was that gonna all take place?

A No. She just told me to come back and make the--make sure she was okay.

Q Come back where?

A Come back to Marvin house.

Q Did you do that?

A Yes.

Q When did you do that?

A After I dropped her friend off in Paw Paw.

Q Okay. So was she okay?

A Yes.

Q And then how was it that you came to be able to-- that you came to have the car after that?

A I gave her some more drugs when I came back, and her and my brother hung out together.

Q Okay. When you came back to check on her, see if she was okay, gave her more drugs, did--did she then say hey, I need my car back or I need a ride back home or anything like that?

A No. She--she didn't say nothing like that. She told me to come back again and check on her when I get done, and I did.

Q When was that?

A Early in the morning around--when the sun came up really.

Q So you checked on her again. Was she still there?

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A Yes.

Q All right. Then what happened.

A Then I left.

Q Okay. What was the agreement at that point?

A Nothing. She just said to--if she's not there, to--to leave the car there and she'll come back and get it.

Q Did you ever at any point leave the car there?

A No. I wasn't done with it.

Q Okay. So was it your understanding this agreement that you had with her that you would keep it as long as you needed it, and then you would return it back to Marvin's and she'd pick it up.

A Yes.

Q Did she give you a way to reach her?

A No. She just--I just knew she stayed in Paw Paw and I knew where the guy stayed if I--you know. Back then I--I knew cause I remembered where I took him to. It wasn't no address on the keys or anything like that. I didn't--I didn't go through her--through her car and look for address or nothing.

Q Okay. Do you--did there come a point in time where you thought perhaps you'd kept it longer than she had anticipated?

A Yes.

Q When was that?

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A When I came over to Marvin house and I was informed that the police was looking for me for a stolen vehicle.

Q So let's go back January 13th and you're telling us about getting in the car, in this Regal, and Annette getting in this car, okay?

A Yes.

MR. FENTON: Can we--can we approach at this point?

THE COURT: Yes.

(Bench conference begins at 12:00 p.m. between the Court and counsel, transcribed as follows)

MR. FENTON: Before he starts getting into the details, I've really got to hit the john, and it's noon, and I don't know if you want to keep going through the lunch hour or if you're gonna break for lunch.

THE COURT: I was planning on going till about 12:30 or so. How long--how much longer do you--

MR. FENTON: I'll never make it that long.

THE COURT: How much longer do you have?

MS. EIFLER: Well--(Inaudible--whispering)

THE COURT: Yeah, I was planning on getting through her direct.

MR. FENTON: Can we just take a five-minute potty break or?

THE COURT: Why don't you just leave real quick

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and then come back.

MR. FENTON: Fine okay. Okay thanks.

(Bench conference ends at 12:00 p.m.)

MS. EIFLER: Your Honor, may I approach the witness?

THE COURT: Yes. Just move that microphone for a second.

(Sidebar conversation between the witness and Ms. Eifler)

THE COURT: Sir, you're not allowed to--oh I'm sorry. I thought you had a cell phone. You're jus grabbing your ear, sorry.

Ladies and gentlemen, it's noon right now. I would like to continue with Mr. Davenport's testimony until around 12:30 or so. Does anyone need a break right now? If so, raise your hand. I know we didn't get on the record until around 11:00 but raise your hand. All right we'll continue. Go ahead Miss Eifler.

MS. EIFLER: Thank you.

Q Okay sir, going back to when you and Annette are getting into the car, tell us what's going on then.

A I'm trying to calm Annette down, telling her that I'm fitting to take her to her house.

Q Do you recall what she was wearing at that time?

A No.

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Q At any point did she give you any articles of clothing?

A She had gave me her big coat before we left the Carswells.

Q What do you mean big coat?

A Winter coat.

Q What'd it look like?

A Just big, like a ski jacket, ski coat.

Q Okay.

A You know, puffy.

Q Do you know if she had on jeans or slacks or anything like that?

A All I remember is the coat and I think she had on another jacket up under that, and shirt.

Q Why did she give you the big coat?

A Cause she was going through some things upstairs at the Carswells. She was getting hot and just wanted me to hold on to it.

Q Okay. All right. So you got her in the car or she got in the car, and you tried to calm her down.

A Yes.

Q Then what happens?

A I started the car up, she fumbled around in her--in her clothes, her jacket that she had on. Pulled out a--pulled out her hitter, her pipe, whatever you want to call it, tried to hit it. I proceeded to leave and came down Park Street I think it was, headed towards the north side.

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Q Headed toward the north side?

A Yeah, north side.

Q Okay. She--she was agitated cause she wasn't getting what she wanted.

Q What'd she want?

A I guess a hit.

Q Did she ask you to go anywhere or do anything?

A Not at that time. She--she didn't ask me nothing until we-we got over by Douglas Street. We was on North and--North coming up on Douglas.

Q You were on North coming up on Douglas?

A Coming up on Douglas.

Q Okay.

A By the time we made it down to Douglas, I guess it--I guess she figured out that I was taking her home, and she told me she wanted to go Alamo. I told her I wasn't taking her to Alamo.

Q Okay. Let me stop you there. Take--she wanted you to take her to Alamo.

A Alamo.

Q What--what is that--what does that mean?

A That's an apartments--

Q Okay.

A Apartment building up on Alamo Hill.

Q All right. And you told her no, you weren't gonna take her

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there. Is that what you just said?

A Yes.

Q All right. Then what happened?

A I proceeded down Douglas. She kept telling me to take her to Alamo, I told her no. She tried to grab the wheel and turn the car. I pushed her back, proceeded down Douglas. There was cars coming towards me as well as in the back of me and in front of me. So I'm--

Q Do you recall how many cars you saw?

A I don't know how many cars was coming at me, but it was lights coming towards me and it was lights in front of me, and I saw the lights in the back of me.

Q All right. Then what happens.

A She tried to grab the wheel again. I pushed her back again.

Q When you say you pushed her back, can you show us what you mean? Can you show us what you did.

A Well if she's--she was to my right and she grabbed the wheel and I pushed her back.

Q Oh you gotta keep your--I'm sorry you gotta keep your--your voice--you gotta talk right in the microphone.

A Okay. She's--she's to my right, so I just took my hand and pushed her back. You know, pushed her back from the wheel.

Q Okay. Did you hurt her at the time?

A No, I wasn't trying to hurt her. I was just trying to push

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her back. Hopefully she would have stopped trying to grab the wheel.

Q Then what happened?

A She started yelling and kicking. She went to her side, pulled out a box cutter, and I grabbed her.

Q Okay. She went to her side, is that what you said?

A Yes.

Q Okay. Did you get a--I mean you--you--at what point did you know she had a box cutter?

A When she pulled it out.

Q Did you get a good look at it?

A Not really. I thought it was a knife at first.

Q Okay. What was she doing with this object?

A Swinging it at me.

Q Okay. Did she ever touch me with it?

A She hit my arm.

Q Can you show us which arm?

A My--this arm right here.

Q That's be your right arm?

A Yes.

Q Okay. And you were just showing us where she hit you in the arm, is that correct?

A Yes.

Q Can you show us again?

A Right here, up in here.

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Q Okay. So that would be your upper right arm.

A Yes.

MS. EIFLER: If the record may reflect.

Q What were you wearing at that time?

A I had on a coat.

Q What kind of coat?

A I think it was like a winter coat but you know.

Q Okay. What else were you wearing?

A Jeans probably.

Q If you know. You can't testify if you don't recall.

A I really can't recall. I know I had--I know I had a coat and probably tennis shoes, something.

Q Okay. You've just described for us that she had struck you or hit you in the arm?

A Yes.

Q Was that--was that with the knife?

A Yes.

Q And did anything happen to your coat?

A Yes, it--it was--it was cut. I didn't know it, notice it till after.

Q And do you know did it touch your arm at all?

A Not at the time I didn't.

Q Okay. Afterwards did you realize that it'd done something to your arm?

A Yeah after.

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Q What happened, what'd you realize?

A I didn't realize until really way after.

Q Okay. Then what'd you realize?

A That I was cut a little bit.

Q Okay. So let's go back. Now she has this box cutter out. At some point did you get a good--good look at it or a chance to see what it was?

A I--like I say, I thought it was a knife at first.

Q Okay.

A I really didn't know it was a box cutter until I picked it up off the floor.

Q Okay. And can you describe that box cutter for us?

A It was a box cutter, blue, gray. You know, a box cutter.

Q Okay. So let's go back to you've just been struck in the-in the arm by this box cutter.

A Yes.

Q Then tell us what's going on, what is happening in that car?

A We was already--it was already--it was already crazy before we even got to Douglas. I mean she was already angry. Before we had even got to Douglas she was already took-tooken (sic) off most of her clothes.

Q What do you mean by that?

A I mean when we left the Carswell house, she was still saying she was getting hot. I rolled down the window a

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little bit, cracked the window, and she was starting saying she was hot. So she was taking off her clothes.

Q Was she doing--what was she doing with the clothes?

A Just throwing 'em down, throwing 'em to her side, throwing 'em down. Just taking 'em off. I've seen other people do it, so I didn't--I didn't--it wasn't no alarm or nothing cause I seen other people do the same thing after they-

Q She wasn't neatly folding them or anything like that.

A No.

Q Okay.

A No, no.

Q All right. Let me ask you this. You see her bring out this object that you think at the time is a knife. What is going on in your head?

A Keep her up off me.

Q Why?

THE COURT: I--I didn't hear the answer. Keep her?

THE WITNESS: Keep her up off me.

THE COURT: Oh.

Q Why's that?

A Cause I didn't want to get cut.

Q Were you afraid of that object?

A Of course, yes.

Q Were you afraid of Annette White with that object?

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A Oh yeah.

Q Why were you afraid?

A Because she got a knife in her hand. I don't want her to hit me, I don't want her to hit my neck or the--hit--or you know, to hit me period with it.

Q Is this all going through your head?

A Yeah, at the same time I'm trying to stay on the road and keep from hitting somebody or keep from hitting another car.

Q Let me ask you this. You're trying to keep her away from you with this knife, you're also trying to keep on the road. At any point did it occur to you to pull over?

A Well I had cars coming at me, I had a car in front of me, and a car in the back of me. I had up--when she grabbed the wheel I almost had hit a car then. I was only a few--well not even a block away from her house--so I was basically trying to get her to the house.

Q Okay. So she is now swinging at you with this knife. What else is going on? Tell us what happens next.

A She hit my arm, she pulled back again and hit the dashboard.

Q What do you mean she hit the dashboard? Was she aiming at the dashboard?

A No. She just--when she was reaching back I guess the--to try to swipe at me again.

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Q Okay. Then what else.

A When she hit the dashboard, the knife fell. I had her pinned up against the other side of the car.

Q Let me--let me ask you about that. Do you recall at what point you pinned her up against the car?

A Do I know what point?

Q Yes.

A When I grabbed her.

Q Okay. Was this before or after she hit you with the knife or with the box cutter?

A Soon as I noticed the box cutter, I grabbed her.

Q Okay.

A And pushed her over towards the other side of the car, far away from me as I could.

Q Did that stop her from swinging at you?

A No.

Q And in fact, you've testified that she even struck you why--would this have been while you had her pinned up?

A Yes.

Q Can you show us what you mean by pinned up.

A Like you jack somebody up.

Q Well we all don't now what that means. So show us if you could please.

A Oh okay. Like holding somebody back.

Q Okay.

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A Pinned up.

Q So you had your arm out, fully extended, is that correct?

A Yes.

Q And you had--you were showing your hand was I guess in a flexed position?

A Yeah I didn't--

Q Is that right?

A I didn't have to grab her because I had her pinned up.

Q Okay.

A I mean, you know, just holding her towards the--you know, I didn't have my hand around her neck.

Q At what--what part of her body was your hand located?

A Right up under her chin, right up under there.

Q Okay.

A On her chest, like right here.

Q All right. Was that something you thought out? Gee, I'm gonna press her up against the car by her neck or how did that happen?

A No. That was the only spot that I could really--you know, the extinct, just grab, just push, get her far away as possible. It wasn't a matter of something that I thought about. It was more impulse than anything.

Q Okay. So let's move to the point. You said that she has struck the dashboard and now the knife falls, right?

A Yes.

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Q Okay. Then what--then what happens?

A I'm holding her there and she started kicking and trying to reach at--trying to reach at me. She--when I--when I let up, when I was about to let up, she reached over and scratched me on my face. And I pinned her back up against the other side of the car.

Q Okay.

A Down like towards--

Q Let me stop you there for a minute. Where did she scratch you?

A On the face. Right here.

Q And that would be on your--underneath your--your left eye, on your left cheek, is that correct?

A Yes. Yes.

Q Do you recall how--what size person Annette was?

A She was small.

Q Okay. And how tall are you?

A I'm 6'5".

Q You didn't think that you could get that small person under control?

A Yeah, whenever I--when I grabbed her, she couldn't--she can barely reach me, you know what I mean? So I knew I had her under control then, but then I let go or I was about to let go. And that's when I--you know, re--repositioned her back in the same spot.

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Q Do you believe she was attacking you?

A Oh she was attacking me.

Q How long did this go on?

A It happened quick but it seemed like it took forever.

Q Did you mean to hurt her when you were doing this?

A No, no.

Q What was your purpose in--in holding her?

A Just holding her back, keeping her down, keeping her up off me until I can pull over at least, until I can get her to the house. My intention was to get her to the house, but we went past the house. Someone was calling me, I think it was Tonya. I heard her calling me when we got up by the house. So I'm, you know, trying to hold her, trying to make sure she don't get the knife again, and trying to keep from hitting something. Just--

Q How come you didn't go to Tonya, drive over there so she could help you?

A Like I say, that's where I was headed, but I was--I couldn't turn right into the driveway. I'm coming--going I think--the house is to your--your left. It's a wide street. I got traffic coming towards me, traffic in the back of me, traffic in the front of me. All I could do at that point really is just hope--make sure I keep her head up.

Q At some point did you realize she's no longer struggling?

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A When we got past the house, little ways past the house.

Q What was going on?

- A I thought she had calmed down. I really was just trying to focus on driving. When I got up to where Deja Vu at, I pulled over and let her go, and at first I thought she was just passed out. I didn't know that she--she wasn't breathing. If I would have known that I--I don't know.
- Q So at that point you realized she's not breathing. What--what did you do then?
- A Sit there for a minute. I don't know how long. Not for--not for long. I--I panicked. I, you know, just got scared and panicked. Didn't know what to do.
- Q Let me ask you this. Let's go back to when you first initially pushed her back. From that time forward, do you know how long you had had her pushed back?
- A No. I--it's--it seemed like it happened so fast but getting from--from Alamo and Douglas to down there is--it is not--I don't think it's--I don't think you can make it, you know, in that span fast. But it seemed like it--everything happened fast, but I really don't know the time, you know.
- Q Okay. So let's go then back up to where you're at. Are you in a parking lot by Deja Vu?
- A No, I'm just to the side of the road.
- Q All right. Then--then what happens? What do you do then?

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Q I drive off, continue to go down--I don't know which road that is. I continued to drive and came up on Alamo again, coming from the backside somehow. I mean--I don't even really remember how I got to that--that area, back up on top of the hill. Came down Alamo, trying to figure out what to do. Drove up--

Q Did you--let me ask you this. Did you think at that point to contact the police?

A I don't know if I thought about contacting the police or not. I mean me and the police is not--not friends.

Q Okay. So as you're driving down Alamo, I mean describe for us--describe for us how you're feeling.

A You can't describe it. Fear, panic, confused, you know what I'm saying? Trying to figure out what just happened. It's--it's undescrivable.

Q What about any feelings for--for Annette?

A Just a bad situation. That's all. Just a bad situation.

Q Okay. Okay. Let me ask you this. You're driving down Alamo, then what happens?

A Just--just a bad situation. All I can do is just try to figure out what to do, and I couldn't figure out what to do.

Q So where'd you go?

A I parked the car and got out of the car. And went out to my--my mother-in-law.

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THE COURT: I--I didn't hear that, you-

THE WITNESS: Went out to my mother-in-law.

Q Went out to your mother's house?

A My mother-in-law.

Q Okay. Where's that at?

A Out in Portage.

Q Okay. At this point was--where was Annette White? Where was her body?

A Where I left it.

Q Okay. And that was in the field that we've heard about, correct?

A Yes.

Q All right. How did it--how did you--why there? How did that come about?

A I don't even know. Like I say, I panicked.

Q I'm sorry. I didn't hear that.

A Like I said, I panicked.

Q Okay. Now we've heard--we've heard testimony about oranges. Do you know whether there were any orange peels in your car at that time?

A I don't know nothing about no oranges.

Q Okay.

A Yes, I eat oranges but you know.

Q All right. So it's very possible that that's how orange peels got there, is that right?

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A That night anything is possible.

Q Okay. How much had you had to drink at that point?

A Not that much.

Q Okay.

A Not that much.

Q But had you been smoking crack cocaine?

A Say what.

Q Had you been smoking crack cocaine?

A Yes.

Q Now we've heard testimony from others as to how it affects--affects others. What does crack cocaine, if anything, do to you?

A What it does to me?

Q Yeah.

A Make me hungry.

Q What's that?

A Make me hungry.

Q Horny?

A Hungry.

Q Hungry, thank you. Okay. I'm sorry, I didn't understand you. Makes you hungry, okay. All right. All right. Did you give it a lot of thought as to where you were going to Annette's body?

A No.

Q We've heard some speculation that her body was tossed in

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this area. Do you remember anything about placing her body or tossing her body in that location?

A No. No.

Q Do you remember seeing anyone at that location?

A No, no.

Q Do you know whether--I mean anybody--any neighbor's dogs barking, anything like that?

A I might have heard a dog. I don't really even remember.

Q Did you see any other cars?

A No.

Q All right. Now you've testified that you go out to your mother-in-law's, is that right?

A Yes.

Q And what's her name?

A Lenora Stuart.

THE COURT: I missed the first name.

THE WITNESS: Lenora.

THE COURT: Lenora Stuart.

Q And it--has Miss Stuart since passed away?

A Yes.

Q And when did she pass away?

A The end of last year.

Q The end of '07?

A Yes.

Q Why'd you go out there?

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A I wanted to talk to her.

Q Is she someone that you have confided in in the past?

A Yes.

Q Did she--did she help you out in anyway?

A Yes, she wrapped my arm and we talked for a minute.

Q You said she wrapped your arm?

A Yeah, she wrapped my arm.

Q Okay. Was there anyone else there?

A Her stepson--I mean her son, Jimmy.

Q Do you know Jimmy's last name?

A Henry.

Q I'm sorry, what was that?

A Henry.

Q Can you spell that, if you know?

A H-E-N-R-Y I think.

Q Henry, okay. And did you talk with Jimmy at all?

A No not really.

Q Did Jimmy see you there?

A Yeah.

Q And do you know whether Jimmy is still alive today?

A No he passed. He was hitting on a car accident.

Q When was that?

A Last year.

Q Again back in 2007?

A Yes.

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Q How long were you at at this location.

A I don't think that long. Short.

Q Then what'd you do?

A Went back--back towards the north side.

Q Tell us what's happening in your head?

A I really can't tell you. It's--it was crazy. Just-

Q Did you--did you eventually go to Marvin's?

A Yes.

Q All right. At some point did you come in contact with Marquetta Tarver?

A Yes, that Monday.

Q So this would have been after January 13th, 2007?

A Yes.

Q And had you known Marquetta Tarver previously?

A No.

Q How did you meet her?

A Through Marvin.

Q Do you remember seeing anything come on to the television in regards to Annette White's body being located?

A No. My sister said something that--that Monday. That was about it.

Q Okay. And what's your sister's name?

A Patricia.

Q Where--where was that at that Patricia said this?

A Marvin's house.

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Q Was she staying there at the time?

A No.

Q Did she stay in that general area?

A She stay out in Patwood.

Q Patwood?

A Yeah.

Q Okay. Did you ever talk to Marquette Tarver about anything you saw on the news?

A No.

Q Do you--

A I don't even know her.

Q What's that?

A I don't know--I don't know her like that. I don't even know that--know her.

Q What--can you describe for us what you mean by, "I don't know her like that."

A I mean I met her at Marvin's in passing. It wasn't like we was friends, it wasn't--I didn't know her like that. I didn't--I didn't tell no one except for Lenora and I didn't really even tell her everything. I just--you know. I wouldn't tell Miss Tarver nothing, I mean I don't know her.

Q Do you remember what you told Lenora Stuart?

A Just told her it was a bad situation and.

Q Now did you see your brother after this occurred?

A Yeah.

[Page 1054]

Q Okay. Did you talk to--and what's your brother's name again?

A R.B.

Q R.B. Davenport. Did you talk to R.B.?

A Yes.

Q Did you tell him what happened?

A No.

Q So you didn't--did you tell Patricia what happened?

A No.

Q Who's the first person or persons that you can remember telling what exactly happened? Who was--who was it that you first told?

A Lenora.

Q Okay. You told her everything that happened?

A Not everything.

Q Okay. Who was it that you told everything to?

A Captain Mallery.

Q So how did it come about that you and Marquette hung out? How'd that happen?

A She wanted a ride to Detroit and we hung out over at Marvin's that Monday I think, Tuesday. And

me, her, and another girl hung out for--for awhile. Like I said, I didn't know her that well. I just--she was someone that came over to Marvin's and we hung out.

Q Okay. We've heard testimony about your shoes found at

[Page 1055]

Kmart. When did you go to Kmart?

A That Wednesday I think.

Q Wednesday?

A Tuesday or Wednesday.

Q Did you do that because you knew that that was going to link you to where Annette's body was?

A No.

Q Why did you go there?

A Get some boots. The shoes wasn't mine no ways, so they was--they was 11. I wear like 13.

Q Whose shoes where they?

A My brother's.

Q R.B.'s?

A No. My--my youngest brother.

Q Okay. There came a point in time, January 18th, where you were in--in an accident, is that correct?

A Yes.

Q All right. And tell us about that accident. Did you see the police?

A Did I see 'em?

Q Yes.

A When I came down Portage Street I saw 'em, passed me. I think I seent (sic) 'em turnt (sic), I wasn't for sure if they was coming at me or not. I really wasn't even.

Q Okay. But you had reason to believe if they were coming

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for you, you kind of knew why?

A Yeah. Pretty--I--I had a idea, you know.

Q So what'd you do when you saw the police?

A Continued down Portage.

Q At any point did you speed up?

A On Portage?

Q Yes. Or during that occasion.

A I think I did.

Q Okay.

A Turnt down a dead end street.

Q And you--did you speed up on that dead end street?

A Yeah.

Q How fast were you going?

A Not that fast. It takes a while for it to I mean.

Q Okay. Did you lose control of the vehicle?

A Later on.

Q Okay. Where were you at at that point?

A Downtown area, right cross from the power plant I think.

Q And were--were the police following you at this point?

A Yes I think they was.

Q So you recall having the accident.

A Yeah.

Q Were you injured in the accident?

A Yes.

Q What happened to you?

[Page 1057]

A Lost part of my hand, some meat off my hand, and some cuts.

THE COURT: I missed it. You lost what off your hand?

THE WITNESS: Some meat off my hand.

Q Okay. So and what happened to the vehicle?

A It flipped.

Q Do you know if the trunk opened up?

A I don't know. They say stuff was every where, so that's all I remember.

Q But you don't recall.

A I didn't.

Q Okay.

A I didn't.

Q Then what's your reaction at this point?

A At that point?

Q Yeah. Did you get--you got out and ran, correct?

A Yeah I got out the car.

Q Why did you do that?

A Number one cause I was just on the high speed chase with the police, and that was basically it.

Q Did you--

THE COURT: I missed the last part of that. And the--I'm sorry?

THE WITNESS: I said that was basically it. I was-

[Page 1058]

THE COURT: That was basically it.

THE WITNESS: Yeah.

THE COURT: Okay.

THE WITNESS: Yeah.

Q Did you have reason to believe that you no longer had use of that car?

A When my brother told me that they was looking or me, yes.

Q Okay. And when was that that your brother told you?

A I don't know the date. I don't know the date.

Q Was it that day or before?

A Before that day I think.

Q Okay. All right.

A I think it was like that Tuesday or Monday, not for sure.

Q And do you know whether anyone was looking for you to talk to you about Annette White?

A No. No. I thought the whole--I thought they was looking for me about the car.

Q Did you end up then having surgery on your hand?

A Yes.

Q All right. And did you talk with the police after you had surgery?

A I remember being taken over to the station.

THE COURT: You need to scoot up towards the-

THE WITNESS: I said I remember--I remember being taken over to the station at--when I came out of--when I

[Page 1059]

woke up.

Q Okay. Do you know what time your surgery was by any chance?

A No.

Q Okay. Did this--did this accident occur during the early morning hours?

A Yes.

Q All right. And do you know if your surgery was later on in the day?

A Yeah, I think it was done in the morning.

Q Early in the morning?

A Early in--like late in the morning.

Q And were you--were you put fully out with anesthetic or was it--

A Yes.

Q Okay. Do you recall what time you were released from the hospital?

A Had to be the afternoon, I'm not for sure.

Q Tell us how you were feeling at that time?

A Doped up.

Q What's that?

A Doped up.

Q Dope--

A I was tired, sleep.

Q Okay.

[Page 1060]

A I was in and out really.

Q So you remember being taken over to the police station, correct?

A Yeah. I remember giving--being given some oranges, some jail clothes and--

Q Is that what you mean by oranges?

A Yeah.

Q Okay.

A Some jail clothes and told to put 'em on and hand cuffed-

Q Was this while you were still at the hospital?

A Yes while I was in the hospital.

Q Okay.

A Handcuffed and put in a squad car.

Q Do you remember meeting with Detective Beauchamp?

A I remember--I remember going into--going into a room and him saying something to me. I really don't remember that--that whole thing. I saw the--saw the DVD, a lot of that I don't remember.

Q Okay. A lot of what you saw on the DVD during that interview, you do not remember?

A No. I don't remember. I was kind of surprised at what--what I did in the video so.

Q Okay. You were nodding off, that sort of thing.

A Yeah, I was nodding off and I had got up and used the garbage can as a--as a toilet I guess. I urinated in it,

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so I don't even remember none of that.

Q You didn't even know you did that until you watched the DVD?

A No. I didn't, I didn't--I wasn't aware of that.

Q Now did you talk with the police several days later.

A Yes.

Q And that was on January 24th, 2007?

A Yes.

Q All right. And at that point--I mean we watched this video. We've seen you on it. Do you believe you were being cooperative?

A Yes I was in a way.

Q Did you want to tell the police what happened?

A I--I don't know if I'd say I wanted to. I think the way Detective Beauchamp came at me, I wasn't--I knew he wasn't there to help me. So you know, he talked and I listened and--

Q Now we've heard about some of these techniques, some of it is to try to make you feel more comfortable or to establish a bond. Did you--did you--were you getting that sense? Were you--you and Detective Beauchamp establishing a bond?

A No, no. His first--his first--his--the way he--he approached it was he showed me some--some pictures and--of Andre and Nita, and some--some other people, and after I had requested an attorney, I kind of much just listened and

[Page 1062]

tried to figure out his angle.

Q Okay. So I mean this--this went on for quite some time, is that right?

A Yeah a long time.

Q Okay. And initially it--it even started out more in relation to the car, correct?

A Yeah that's how it all started.

Q All right. But then--

A They switched up to do you know this person and do you know that person.

Q And you figured out this is more than just about the car.

A Yes.

Q All right. Do you remember telling Detective Beauchamp that the car was a--was a crack car or that the owner had traded it for crack cocaine?

A Yes.

Q So what was your understanding of--of Andre Randall's involvement with Annette White?

A What was my understanding?

Q Right.

A At that time, talking to him, he--

THE COURT: Just a minute. Mr. Fenton?

MR. FENTON: Yes?

THE COURT: Can you maybe talk in a different spot or out in the hallway?

[Page 1063]

MR. FENTON: I'm sorry, of course.

THE COURT: Thank you.

MR. FENTON: Fine.

THE COURT: Go ahead Miss Eifler.

Q Okay. What was your understanding of Andre Randall's involvement with Annette White?

A That they believe Andre Randall done it.

Q And based on this--based on how this conversation's gong, how this interview is going, are you getting a sense of how they feel that you were involved in this?

A Yeah, I figured out what he was going at, what he was--what he wanted me to say any way.

Q Okay. Well how do you think--I mean based on what they're saying to you or what he's saying to you, I mean were there mon--more than one--there was more than one detective coming in talking to you.

A Well no. First it was just Beauchamp.

Q Okay.

A And--

Q Okay.

A Captain Mallery came in for a minute while we--while we was in there. But for the--for the most part it was Beauchamp.

Q Well we've talked about these different scenarios, these different cases where there was somebody primarily responsible and then someone who helped after the fact.

[Page 1064]

A Yeah.

Q Okay. What did you--why do you think he--I mean what was going through your head as to why he was telling you that?

A He wanted me to say that Ron--Andre done it.

THE COURT: I missed it. That he wanted--

THE WITNESS: He wanted me to say that Andre done it and that I was--I was either a witness or--or something. I knew Andre done it basically.

Q We--we watched these DVDs at length here in court. How long, in your mind, do you recall this going on where the line of questioning was going as Andre being the main suspect or the main person responsible for Annette's death?

A How long?

Q Yeah.

A Up until Mallery came in.

Q The first time or the second time?

A The second time.

Q I mean--

A And even after awhile, I mean he was on that same tip too until after awhile.

Q Okay. You at some point told Detective Beauchamp that you had assisted Andre Randall, is that right?

A Yes.

Q And that--that was not true, right?

A No. That was--that was a scenario that he--that he came up

[Page 1065]

with, that he put out there.

Q Why--why'd you do it? Not what he did, but why--why did you do that? Why did you say that?

A Why did I say it?

Q Yeah.

A Fear. Not so much fear of--of--of--of him, fear of what could happen.

Q You mean fear what could happen to you?

A Yeah.

Q How long were you interviewed until Captain Malley then changed it where the focus was more on you. I mean can you give us an estimate how many hours?

A No. I--I was in there so long and.

Q They were nice to you, weren't they?

A They was nice to me? No, they had the room zero below zero and--

Q They had what now?

A They had the room, the room that I was in, they had the air conditioning on. My hand was hurting and I told 'em this. I told 'em that they wasn't giving me anything out there in the jail for it.

Q Did you have any medication for your hand?

A I didn't have none with me, no.

Q Okay. Did--was anything prescribed for you from the hospital, if you know.

[Page 1066]

A Yes.

Q Okay. And were you getting that medication while you were at the jail?

A No.

Q Did you eventually get that medication?

A No.

Q Was it some sort of a painkiller, if you know? Do you-

A Yes.

Q What was it, do you know?

A Vicodin.

Q Okay.

A And Motrins I think.

Q Vicodin or Motrin?

A Vicodins and Motrins.

Q And Motrin, okay. Were you given any type of pain relief medication at the jail?

A No.

Q Did you talk to Detective Beauchamp about that?

A Yes.

Q This come up more than once?

A I think twice maybe.

Q Okay. Did you tell him--complain about the temperature in the room?

A I said something about it. I think that's when he said something about coffee.

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Q Okay.

A And I don't drink coffee, so I didn't want any of it.

Q But if we watched this DVD, it's--it's coming across as-

A That's cause it's not a complete DVD.

Q Okay. But what we've seen on the DVD, I mean it--it looks like it's pretty civilized conversation.

A But it's what you don't see.

Q Okay. Well just as--answer me about what we do see. It's civilized on that portion.

A Is it civilized?

Q Right.

A Well I guess it's civilized.

Q Okay.

A But it's--

Q Well did there come a point in time where it was not--I--I don't know--I chose the word civilized--that it wasn't--didn't have that--that sense?

A Well it, you know, you got to realize it wasn't about--at that point it wasn't about what was--what was true. They wasn't trying to get the truth. They wasn't--they wasn't trying to hear the truth.

Q Well did you--did you say hey, hey, this isn't true?

A No, I listened. It's not.

Q Okay. There came a point in time where there was a first written statement that was prepared, and you were asked to

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sign it after it was read to you, is that correct?

A Yes.

Q All right. You--you never signed it, right?

A Yes I never signed it.

Q Why not?

A One cause it wasn't the truth and two, they wouldn't let me talk to an attorney.

Q Did that--in that first written statement, jury's going to see that. It--it implicates Andre Randall, correct?

A Yes.

Q Were you at any point concerned about implicating Andre Randall?

A That's why I didn't sign it.

Q He wasn't involved in this at all, was he?

A No.

Q All right. Do you know how many times you were asked to sign that?

A A bunch.

Q Were you talked to by Captain Mallery also about signing it?

A Yes.

Q We know that there came a point in time where Captain Mallery came to you and said, "Hey, we think you are primarily responsible for Annette White's death." You recall that?

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A Yes.

Q All right. And then eventually you told Captain Mallery what happened, correct?

A Yes.

Q Okay. How did you feel then after you told him?

A How did I feel after?

Q Yes.

A At peace.

Q He told you that he was going to be a messenger to the jury. Did you think that that was necessarily true?

A At the time.

Q Did you have a problem with him talking to Annette's family?

A No.

Q Did you know other members of her family at that time?

A Yes I think I did. I think I do.

Q Now at some point you were asked about what happened with Annette White's property that was in the car, her clothing.

A Yeah.

Q I think you said that her clothing was--you took it to Patwood?

A Yes.

Q You also told the detectives a couple of different things about her clothes, is that correct?

A Say that again.

[Page 1070]

Q You--you had previously told them a couple different things about her clothes?

A No.

Q No?

A No.

Q Okay. Where did you take her clothes?

A When I made it out to Patwood, I just--I remember balling up some clothes and taking 'em out the car.

Q And at some point did you clean up the car?

A Yes, later on that--later on that morning.

Q That would have been on the 13th of January?

A Yes.

Q Okay. What did you do with the box cutter?

A When I--when I found it, I put it in the trunk with the rest of some stuff that was in the car.

Q A lot--we've heard Tracie Goltzene testify about the contents of that trunk. Her testimony has been

that a lot of that stuff wasn't hers. Do you know how that--that stuff got in her trunk?

A Some of it I put in there. Some of it Ken put in there, Kenny Cooper. As far as I know.

Q Okay. What were you gonna do with it?

A I don't remember all that stuff being in there really.

Q Okay. Why was it in the trunk?

A Like I said, I don't remember all that stuff being in

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there.

Q Okay.

A The heater--the heater was in there. Kenny put that in there that--to take over to his son along with some other stuff.

Q Now Ken Cooper, he testified in this case also, is that correct?

A Yes.

Q And he advise--talked to us about Leslie Snook.

A Yes.

Q You--you know Leslie Snook.

A I know her, but don't know her.

Q Okay.

A You know, we--we ain't.

Q Tell me--she told us that there came a point in time about a week prior to Annette White's death where you had choked her.

A No.

Q Did you ever have any physical altercation with her?

A Only--not--I wouldn't even say altercation.

Q Well what--how would say it? What would you describe it?

A Flirting and--the altercation she's talking about never occurred.

Q Okay.

Q The only time I--only time I even test--touched Miss Snook

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is when I washed her back one day while I was over to Kenny Cooper's.

Q You washed her back?

A Yeah, she wanted me to wash her back.

Q So there was some flirting going on.

A Yeah.

Q Okay. Did you and she ever have any type of intimate relations?

A Not intercourse. She--she was--she was--she was a prostitute. So she, you know. It wasn't no intercourse or nothing like that. She was one of his girls and she did things around the--around the house, that's all.

Q Okay. So you--do you remember telling--talking to Detective Beauchamp about Leslie Snook?

A Yes.

Q Okay. Do you remember when that was?

A No.

Q Was that after Annette White's death?

A Yes.

Q You were in custody at that time?

A Yes. This was after I had saw her in a van. We rode over here in the van, and we was in the--downstairs in the same area when my attorney came to talk to me, but that was it.

A That's the last I had saw of her until they brought her back up again.

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Q Did you ever--did you ever tell her that you could squish her like a bug?

A No.

Q Now you told Detective Beauchamp that she was one of Ken Cooper's girls. What do you mean by that?

A He had a bunch of girls, you know.

Q That lived at his house or what?

A Some did.

THE COURT: Counsel, will you approach please.

(Bench conference begins at 12:57 p.m. between the Court and counsel, transcribed as follows)

THE COURT: I don't know how much you have left. We've had--it's 1:00 o'clock. If you've got a ways, then I'm tempted to take a break until about 1:15 or so.

MS. EIFLER: Why don't we take a 1:15.

THE COURT: About 15 minutes or so.

MR. FENTON: And we're not taking lunch?

THE COURT: Oh I'm sorry, it's 1:00 o'clock.

MR. FENTON: Yeah.

THE COURT: So 2:15.

MS. EIFLER: Okay. And where we going on that one? Where are we going? I mean are we just gonna say it's more prejudicial than probative--

THE COURT: All right. Why don't we-

MS. EIFLER: I mean right now we're at--

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(Inaudible--whispering) and coming in?

THE COURT: Yeah. Yeah. All right. Let's--let's take a break. We'll take an--I'll take an hour-and-15 minute lunch quick then. All right? And then I'll call back.

Did you receive notification about Davenport? Is that what--were any of your notes with regards to his brother or no?

MR. FENTON: I'm not following your question.

THE COURT: Well you've had a couple contacts-

MR. FENTON: Well that wasn't about--nothing about it.

THE COURT: Well located him I guess, okay. Let's have lunch now. Well alright I'll have them back here at 2:15.

MR. FENTON: All right thanks.

(Bench conference ends at 12:59 p.m.)

THE COURT: Counsel, I'm gonna take a lunch break at this time--or ladies and gentlemen. It's 1:00 o'clock and so we'll do it that way. I would ask that you check in upstairs at 2:15. Mr. Brooks should be here shortly.

Please remember my prior instructions and make sure you turn your notepads over on your seat.

(The jury members exit the courtroom at 12:59 p.m.)

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THE COURT: All right counsel, I know we've got some witness issues to address too at some point, but it's 1:00 o'clock and we've gone through the lunch hour. So we'll do that at a later time.

I'll see everyone at 1:15 (sic). Court's in recess.

(Court recessed at 1:00 p.m.)

(Court resumed at 2:35 p.m.)

MS. JOHNSON: The court calls the case of People versus Ervine Lee Davenport, Case Number 07-0165FC. Parties please restate appearances for the record.

MR. FENTON: Stuart Fenton for the People.

MS. EIFLER: Susan Eifler, appearing on behalf of the Defendant, Ervine Davenport. He is present in Court today.

THE COURT: And the jury's on the way down. As soon as Mr. Davenport's done, why don't you just re-take the witness stand. Just remember when you begin to testify again, make sure you pull that microphone towards you.

(The jury members enter the courtroom at 2:39 p.m.)

THE COURT: All right, we're ready to continue. Mr. Davenport, please remember you are still under oath.

Q Remember to speak right into the mic please. I think when we broke we were talking about your talking with Captain Mallery. Why did you tell Captain Mallery what happened?

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A Basically I was told by my--by mother-in-law that when the time is right to tell somebody what's--what happened, I'll know--

THE COURT: I missed what you said. When the time is right?

THE WITNESS: When the time is right, I--I'll know when to tell someone what--what happened.

A I didn't--I felt that you know, he was sincere at the time and I definitely wanted the family to know what had happened. So that's what he said he would do.

Q He asked you about any remorse that you felt. Were you being truthful with him regarding the remorse?

A Yes. I was--I was truceful--truthful with him. I been truthful ever since I told him what happened.

Q Now I'd asked you about talking with anyone else and you told us that you'd had--you'd told your mother-in-law a little bit about what happened but not the whole story, is that correct?

A That's correct.

Q If--if there was a member of your family that you would have told, who would it have been?

A My brother.

Q And--and which brother is that?

A R.B.

Q Why's that?

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A He's my oldest brother and he probably closest thing that I'm to. We spent a lot of time together.

Q At any point when you were at the police station on January 24th, 2007, were you--did you--were you ever aware that Andre Randall was there?

A Yes. I--I thought I heard him next door and I think one of the--the captain or the detective mentioned that he was there. So I assumed, plus I thought I was told that.

Q Now let me ask you this. We've seen some clothes that you were wearing at the time of the accident. Were those the same clothes that you were wearing on that night?

A No.

Q I've asked you what you were wearing, you said you were wearing a winter coat. Can you describe it for us?

A I don't know if it was--I don't know which one it probably was. I can't remember that far back.

Q Okay.

A I just know that I--when I got to my mother-in-law's I took it of so that she could look at the--at the cut and I don't think I left it there but I might have did. I'm not for sure.

Q Do you--so you don't know what specifically what you did with that coat?

A No, but.

Q This camouflage coat that we--we've seen here in court, do

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you know where you got that coat?

A Max 10.

Q When did you get that?

A That Tuesday.

THE COURT: I'm sorry, I didn't hear the answer.

THE WITNESS: That Tuesday, the day before I was arrested.

A I also got some pants to match it.

Q At Max 10?

A Yeah. I got both the set.

Q Okay. There were some pants that went with the coat?

A Yes.

Q All right. Now after you left your mother-in-law's home, did you return to Douglas Street?

A Yes.

Q Do you recall what time that was?

A No.

Q Okay. And what's the reasoning for doing that?

A I really don't know. I--I really don't know why.

Q At some point in time you had Annette's dehumidifier, and her speakers, and her stereo, is that correct?

A Yes.

Q And this was after her death.

A Yes.

Q And also some food?

[Page 1079]

A Yes.

Q All right. How--how'd you get that stuff?

A The--the humidifiers and the speakers were outside. I don't know how they got out there, I don't know who put 'em out there. Like I said, I--it--it was a crazy night. I don't know--I don't even know why I even took the stuff or put the stuff in the car.

Q Did--did Annette owe you any money?

A No. No.

Q So we later heard that that stuff was taken over to Marvin's, is that correct?

A Yes.

Q Do you have any good reason why you took it?

A No. I--I wasn't even--I wasn't even thinking really. I was--

Q Were you at that point--

THE COURT: Hold on a second. You're gonna have to speak up. I didn't hear.

THE WITNESS: I really wasn't even--I don't know.

A I saw Tonya, said something to her. I don't--like I said, I don't even know how it got out there. I don't know. They had to have it cause going to each

other's houses. So like I said, I don't know, but I said something to her and left there. I left.

Q Did--do you remember telling I think Captain Mal-
lery that

[Page 1080]

you put the cat in--it was it the bedroom or the
backroom?

A Yes, yes.

Q All right. Do you remember why you did that?

A No.

Q Were you mad at Annette at this point?

A No, no.

Q Did you ever tell Marquette Tarver that you and
Andre were involved in robbing Annette?

A No, no.

Q How about raping Annette?

A No.

Q Had you ever had sexual intercourse with Annette
before?

A No.

Q Did--is that what this is all about? Did she resist
you, were you trying to--

A No.

Q Have intercourse with her?

A No.

Q Is there any reason that you are aware of why Mar-
quetta Tarver would come in and--and testify
against you?

MR. FENTON: I'm gonna object to that. That's to-
tally speculative.

MS. EIFLER: Well I'm asking what he knows of.

MR. FENTON: Calls--

MS. EIFLER: If there's any reason he knows.

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MR. FENTON: Calls for speculation.

THE COURT: I'll sustain the objection. You can
reword the question, but that question--the objection
is sustained.

Q Do you know whether or not Marquetta Tarver
was taken into custody following the accident?

A Yes.

Q Were you aware at the time that she was in the car
with you, were you aware that she was on parole?

A Yes.

Q Were you aware that she was due to report and had missed a report date in Grand Rapids?

A Yes.

Q Now what about Miss Snook?

MR. FENTON: Same objection, speculation.

MS. EIFLER: I haven't even asked the question. Let me ask the question.

THE COURT: Finish your question.

MS. EIFLER: Thank you.

Q At that time you were questioned by Detective Beauchamp about Leslie Snook situation, did you know where she was located?

A Yes. She was in the county jail.

Q Was she having any type of a romantic relationship with Kenneth Cooper, if you know?

[Page 1082]

A Yes.

Q Okay. Would that have been back around January 8th, 2007?

A Yes.

Q Do you know--are you aware of whether or not Mr. Cooper was upset with her, thinking that the two of you were having an affair?

A I didn't know that. That was something new to me when he said that.

Q When he testified in court?

A Yeah. I didn't know he thought we was having an affair. And I didn't think that it--even if we was, I didn't think that it would have mattered to him. I mean-

Q Why's that?

A Cause I didn't think he had feelings for her like that. I mean I didn't think it was that type of a relationship where, you know, he consider her his woman or girlfriend or something like that. I knew that they had--they was involved. I knew that they, you know, did business, but that was it.

Q Now you've told us that you went over to Lenora Stuart's house after the incident and talked with her and she treated your arm, correct?

A Yes.

Q Did anyone else see your arm after she had treated it?

A My brother did later on. I think it was that Monday maybe,

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Tuesday.

Q And did you show him a cut or--or what did he see if you know.

A No, he seen my arm wrapped up and asked me what happened.

Q And what'd you tell him?

A I told him I talk to him later on, that I need to talk to him about something.

Q So you did have intentions of talking to him at some point?

A Yes.

Q But you didn't get that opportunity, is that correct?

A No.

Q All right. Well we've got two statements here. We've got one statement saying one thing where you're helping Andre Randall, and you've got another statement stating that you did this. How do we know what to believe when we've got two different statements?

A How we to know?

Q Yeah, how are we to know which of your statements to believe?

A Well one I refused to sign and the other one I signed. I was told a long time the truth will set you free. So there you have the truth. I wasn't fitting to sign a state--statement saying that someone else had did something just because someone else wanted me to sign it. Just wasn't gonna do it.

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Q Do you believe during the interview process that you had every opportunity to come right out with truth?

A No.

Q Why's that?

A Basically the first person wasn't looking for the truth. It was obvious from the--from the start. I didn't bring up Andre, I didn't bring up no scenarios. I didn't--I didn't, you know, offer any information. When I saw an opportunity to--to get it right, to--to do the right thing, that's when I stepped forward, you know. It was a big difference between the two--

Q Between the two?

A So I thought.

Q What do you mean between the two?

A Between the two officers. You know, I wasn't comfortable with the first one, and didn't feel that he was--he had my best interests at heart or really cared what happened. Even though he might have cared, he--I didn't--I didn't get that so.

Q If you hadn't have held Anita (sic) White back, what do you think would have happened?

A Say that again.

Q If you had not held Anita White back while you were in this car, what do you think would have happened?

A She would have cut me up.

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Q You don't think that you, this big man, could have stopped that little woman?

A I could have hit her, but I wasn't trying to hit her. Trying to drive and at the same time keep her off me was all I could do at the time, and all I could do was just grab. I wasn't--I didn't want to hit her, so I just grabbed her.

Q I believe it came out that at some point when you were driving you saw Tonya Murray, is that correct?

A Yes.

Q Okay. Did you see Tonya any later on in the evening or-

A Yeah, I saw her later on when I came back over.

Q Did you want to tell Tonya what happened?

A No.

Q Is it fair to say that the person you wanted to talk to about this was R.B. Davenport?

A Yes.

MS. EIFLER: I have nothing further at this time.

THE COURT: Mr. Fenton.

MR. FENTON: Thank you your Honor.

CROSS-EXAMINATION

BY MR. FENTON:

Q Mr. Davenport, now you're not a naive person are you?

A I don't think so.

Q You're not gonna just trust what somebody tells you, are

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you?

A Depend--

Q You don't just trust-

A Depend on who it is.

Q Depends--I'm sorry. Depends who it is?

A Yeah.

Q Well you've testified that you've sold drugs in the past, right?

A Yes.

Q You're not gonna sell somebody drugs unless they give you the money, right?

A No. I give people drug--I gave people drugs all the time.

Q Let's say somebody gave you drugs--you gave somebody drugs without the money. They didn't pay you, they said they would and they wouldn't. You're not gonna give 'em drugs the second time, are you?

A Yeah.

Q Really?

A Yeah.

Q So you're gonna allow yourself to be taken advantage of how many times before you stop giving that person drugs?

A I don't know. Depending on the person.

Q Two, three?

A Depending on who the person is.

Q Well what if they tell you that they'll pay you, and then

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they just never pay you. How many times are you gonna let them get away with that?

A I don't know. Couple times maybe.

Q Couple times, two, three times maybe?

A Couple times maybe.

Q Couple means two?

A Two or three maybe.

Q So after the second or third time, you're not gonna give or sell that person drugs any more, right?

A I'll probably give it to them. I won't sell it to them.

Q Why not?

A Cause if I know I'm not gonna get paid, I'd rather just give it to you then sell it to you.

Q Right. So you don't trust 'em after two or--two times, couple times of being lied to, right?

A It's not a question of trust.

Q It's not?

A No.

Q Okay. Well let's say you're out buying drugs. Some--you think somebody's gonna sell you drugs that you've pimped on two or three prior occasions? You know what I mean by the word pimped, right?

A You're talking--I don't understand that one.

Q You don't understand that word?

A I don't understand what you--what you're trying to say.

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Q Let's say somebody is selling you drugs and you don't pay 'em, and you do that twice, and you know that they're looking for you. You think they're gonna sell you a third time?

A Do I think they're gonna sell me a third time?

Q Yeah, on your word that you'll pay 'em.

A I'm the one that's getting it on credit, what you mean?

Q Let's say you've taken advantage of somebody twice before, getting drugs from somebody without paying for it. Do you think they're gonna sell to you a third time on your word when you--

MS. EIFLER: Objection, calls for speculation.

THE COURT: Overruled.

MR. FENTON: It's a hypothetical.

A Scenario again?

Q Right.

A Okay.

Q Well there's not much to think about it, is there? You know they're not gonna trust you a third time, right?

A I told you it's not a question of trust.

Q Oh it's not?

A No.

Q All right.

A The drug game is not a game of trust when it comes to selling.

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Q Do you believe someone if they've lied to you before?

A Do I believe someone who lied to me before?

Q Yeah.

A Depend on who it is.

Q Do you believe someone if they lied to you several times before?

A Depend on what it is.

Q So you don't necessarily disbelieve--

THE COURT: Hold on a second. You're gonna need to speak up a little bit. I didn't hear.

THE WITNESS: I said it depend on who it is.

THE COURT: Okay thank you.

Q Would you believe someone who's lied to you ten times before?

A Probably not.

Q How about 15?

A Probably not.

Q You're not gonna believe anything that person says, are you?

A Depend on what they saying.

Q What about 20 times? Somebody's lied to you 20 times before on something really important. You're not gonna trust that person, are you?

A Probably not.

Q All right. Let's go through some of the things that you

[Page 1090]

told the police in this case that were lies. First of all, you said, quote, "Andre woke you up early in the morning," that was a lie, wasn't it, yes or no?

A Was it a lie? Yes.

Q You said, quote, "Andre was all buck-eyed, he was crazy looking." You said that too and that was a lie, wasn't it?

A Yes.

Q You said, quote, "Andre said he needed help with something." Didn't you, and that was a lie.

A No.

Q It's on video, we all watched it. Didn't you say that?

A I said no, I said it wasn't a lie.

Q It wasn't a lie?

A No.

Q Andre said that he needed help with something, that wasn't a lie?

A No, that wasn't a lie. It was just different--different instances.

Q I'm sorry?

A It was a different occasion.

Q Ahh. Well you knew that the police were talking to you about Annette White's death, and you said that Andre woke you up and said he needed help with something and that's what got you involved in this. Wasn't that true?

A That's what I--

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Q Isn't that what you said?

A That's what I said to the officer.

Q And that was a lie, wasn't it?

A It was a different occasion that I said that.

Q Was it not a lie when you were telling them that you were asked by Andre to help with something on the night of Anita White's death?

A Some of it was lies and some of it was true.

Q I'm not ask you in general, I'm asking you that specific statement.

A That's my answer though.

MS. EIFLER: Your Honor, I believe he's asked the question. I'm gonna object. He's--

THE COURT: Move on Mr. Fenton.

MR. FENTON: Okay.

Q You said you didn't even help carry the body out to the car. That was a lie, right?

A Say it again.

Q You didn't help carry the body out to the car, do you remember saying that?

A No I don't remember.

Q The body was never taken from the apartment to the car. That was never even part of the scenario, was it?

A That was never part of the scenario?

Q You were telling them--

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A Andre--Andre--the story about Andre was not true.

Q Right. So when you specifically said you didn't help carry the body out to the car, Andre did that, that whole thing was a lie.

A Anything I said about Andre was not true.

Q All right. You also said that you--your only part in this was quote, "that you showed him where to put the body." That was a lie also.

A Anything I said about Andre was not true.

Q So can you just answer my question. That was-

A I just did.

Q That was a lie also.

A Anything I said about Andre was not true.

Q So then you agree that that was a lie also, right?

A Okay. Yeah.

Q Then you said, "I just let him use the car." That was also a lie, right?

A Say that again?

Q "I just let him use the car." That was a lie also, right?

A Anything I said about Andre was true--was not true.

Q You said, "I told him earlier just to leave it alone," in other words trying to talk him out of doing whatever it was that he did. That was a lie, right?

A Anything I said about Andre was not true, sir.

Q Now you said that you never saw the body, quote, "I didn't

[Page 1093]

look at the body," so you didn't know how it was clothed. That was a lie also, wasn't it?

A Everything I said about Andre was not true, sir.

Q So you're agreeing that these are all things that you said about Andre and they're all lies.

A I'm saying that anything I might have said about Andre that night was not true.

Q So then you agree that all these are lies.

MS. EIFLER: Your Honor, I'm gonna object. I think he's doing this just to harass the witness. The witness has clearly said that what he has said about Andre was not true. He's answered that very--very explicitly.

MR. FENTON: But he's not--he's not answering my question, Judge.

THE COURT: Well--

MS. EIFLER: But I believe he's just trying to do this to harass the witness.

THE COURT: It's a little bit of both. So just make sure you're answering the question, Mr. Davenport. Your attorney does have an opportunity to follow up and I think these are basically yes or no questions so.

Go ahead Mr. Fenton.

MR. FENTON: Thank you your Honor.

Q Now you also told the detectives during that interview that you never--other than some passing conversation with Anita

[Page 1094]

(sic) White earlier that day, you never even saw her that night. Isn't that true?

A Say that--say that again.

Q Other than some passing conversation that you had with her earlier that day that you never even saw her that night, isn't that true?

A Who you talking about?

Q Anita White.

A I never saw her that day.

Q You told that to the police during the early stages of this interview, didn't you?

A I don't remember telling them that.

Q If the video shows that, you wouldn't dispute that you were lying about that, right?

A I don't remember telling them that.

Q Okay.

A That's all I can say.

Q You did say--

A We're talking about a year-and-a-half ago.

Q Well we all watched it again, to refresh your memory.

A I know, but we not--I don't remember telling them that.

Q Okay. Now you also told the police at first that you didn't get scratched from her that night. Do you remember that?

A I also told 'em what?

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Q That you did not get scratched on your face from the victim in this case that night. Do you remember that?

A No, I told 'em I got scratched that night.

Q Later, at first you didn't say you get scratched from her.

A Anything I said at first was not true. That was what me and Detective Beauchamp was going with. I said that, I made that clear.

Q So you acknowledge having made that specific statement and that was a lie also.

A I admit at making this first statement to Detective Beauchamp, that I did not sign, I--and that's why I didn't sign it.

Q I'm not even talking about the written statement. I'm just talking about the interview.

A Well that's what I'm talking about.

Q Do you remember--

A I mean I can't--I don't--you know, you want me to say what I said and what I didn't say. Basically all I can do is tell you that it wasn't true.

Q All right.

A Anything that I said about the individual.

Q Well I understand that you want us to think that everything you said at first wasn't true, but I'm entitled to go through some of those details with you, so I'm gonna ask you some details, okay?

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A Okay.

Q Now you also said during that interview, very specifically, when Detective Beauchamp asked you whether she pulled a knife on you, you laughed and said, "No, she didn't pull a knife on me. Do you remember saying that?"

A I don't remember saying that. I don't remember that.

Q Do you remember Detective Beauchamp suggesting the scenarios that this was self defense and that if so you should tell us?

A I remember Detective Beauchamp giving me a bunch of scenarios.

Q And one of them was self defense and that she pulled a knife on you, do you remember that?

A I don't remember that.

Q Okay. You wouldn't dispute it if it was on the video, would you?

A I'm not gonna dispute anything that's on the video, sir.

Q You lied about that when you denied it, right?

A Say that again.

Q You lied about it when you denied it, that it was self defense.

A I lied about what?

Q I'm sorry?

A I lied about what?

Q That she pulled a knife on--when you said she didn't pull a

[Page 1097]

knife on me.

A I don't remember saying that.

Q All right. You also said you didn't touch her. Do you remember saying that?

A I might have said that.

Q That was a lie as well.

A Yes that was a lie.

Q You said you didn't pick her up, remember saying that?

A I didn't pick her up, what you mean?

Q You never picked her up that night, never picked her up to take her to throw her in the woods.

A I didn't pick her up to throw her in the woods, sir.

Q How'd she get there?

A I said I did not pick her up to throw her in the woods.

Q How'd you get her from the car to the woods?

A As you--what is you talking about? See you need to clarify because you saying did I pick her up--when I first picked her up off the--on Westnedge or what is you saying?

Q Literally, sir. You told the detectives you never picked her up, Andre did that. Pick her up, over your shoulder to throw her in the woods. Didn't you tell the detectives you never picked her up?

A I don't know what I--what I might have said and didn't say in that first statement, sir.

Q If it's on the video though, you don't dispute it, if you--

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as you've already said.

A I don't dispute anything that I said at the beginning of the video, sir.

Q Well let's maybe cut to the chase. How many hours would you say that you lied during this interview?

A For long as I was with Detective Beauchamp probably.

Q Four hours?

A For long as I was with Detective Beauchamp.

Q And he--

A Some was true and some was not true.

Q Detective Beauchamp mistreat you in any way?

A Did he mistreat me?

Q Yeah.

A No, he didn't put his hands on me.

Q Did he even raise his voice to you as much as I am now?

A He didn't raise his voice.

Q In fact, he's pretty hard to hear sometimes, isn't he?

A No--

Q What I'd call a low talker.

A You can hear him--you can hear him fit pretty good.

Q All right. You never slept at Tonya's house that night, did you?

A No not that night.

Q So that was a lie too, that you were sleeping at first and that's how this whole thing started, right?

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A No. I was sleeping that day at Tonya's house on the 12th.

Q But obviously Andre didn't come in at wake you up.

A Earlier that day he did when he got out of jail, sir.

Q Okay. Now you also told the police that Andre said he needed to get rid of some stuff, that being the

victim's property, the dehumidifier, stereo, and the boom box, and the food. That was a lie.

A Andre didn't have anything to do with this, sir.

Q So that was a lie, right?

A Yes, that was a lie, sir.

Q Now there was a lot of questioning of you about--that went back and forth about how you actually got her property. And your first statement was that the stereo and the dehumidifier were left out on the porch, right?

A If that's what the video said, I don't know.

Q Well do you remember? I mean you even said that a few minutes ago right here in court. Do you remember saying that?

A I mean that's--that's what--that's what it was, sir.

Q The reason why you said that is because you were worried about being charged with a B and E if you went into her house to get it, right?

A No.

Q That's not right?

A I wasn't worried--too worried about anything except what

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Detective Beauchamp was saying.

Q Well didn't you ask the detectives, whether it be Mallery or Mallery and Beauchamp, "What is that B and E?"

A I might have, sir. I don't know.

Q It's right on the video.

A I said I might, I don't know.

Q Then later you changed your story and admitted going in and taking the property. Do you remember that?

A I don't remember that, sir.

Q And in fact, the property wasn't on the porch, it was in her apartment, wasn't it?

A No.

Q It wasn't?

A No.

Q But you've already testified you had to go into get the food, so you actually went into her house, right?

A Yes I went into her house, sir.

Q And it's you want this jury to believe that her stereo and her dehumidifier are outside in January on the porch.

A That's the truth.

Q Really?

A Yes.

Q Well if you didn't have to go into the apartment to steal those things, why did you have to go in to get food?

A Like I said, sir, I don't even know why I even took the

[Page 1101]

humidifier from where it out--it's not a question of--of why I did go into the house, I really don't know why I even went in the house.

Q You went in the house to get the property to sell for more crack, isn't that the reason why you went in?

A I had crack already, sir.

Q And one can never get enough crack, can they?

A Yes they can.

Q Really?

A Yes.

Q Well didn't you testify that within hours of this murder, you and your friends were out selling her food and getting more crack cocaine and smoking it?

A I--I wasn't selling her food, sir.

Q You said Marvin was selling it.

A I had crack.

Q And all of you--

A I said I gave--I said I had--I told--matter of fact, Marvin testified that I gave the stuff to them. I wasn't selling it myself.

Q You saw the food get sold and you were smoking crack with the proceeds, weren't you?

A No.

Q Isn't that what you told the police later?

A No, I don't remember telling them that but I might have

[Page 1102]

did. Who knows.

Q But you were smoking crack cocaine that morning with Marvin and his friends, weren't you?

A I might have did.

Q Hours after you killed this victim.

A I might have did, sir.

Q And stole her property.

A I might have did, sir.

Q And had it sold for crack cocaine.

A I didn't have it sold for crack cocaine. I gave it to them.

Q But you know that's what happened and you utilized the proceeds to get high.

A No, I didn't utilize the proceeds. I had my own.

Q Okay. You smoked with them though?

A Did I smoke with them?

Q Yeah.

A I don't remember if I smoked with them or not. I basically wasn't trying to be around anyone.

Q Now you also lied about the whole about her being in the backseat. All the statements you made about her being in the backseat were lies, right?

A If I said it in the beginning it was not the truth, sir.

Q Well you went into great detail in those interviews trying to figure out even with Mallery which way she was

[Page 1103]

positioned in the backseat and how you actually got her out of the car with Andre, which came out first, her head or her feet. Do you remember all that?

A Yeah I remember a lot.

Q That was all a lie, wasn't it?

A Yes that was a lie too, sir.

Q Cause she was never in the backseat, was she?

A No she wasn't, sir.

Q Now you testified and it's in the video eventually that you know, you went to Kmart a few days later and exchanged the shoes that you wore that night for some boots, right?

A Yes.

Q And you admit to this jury that you stole those boots, right?

A Yes I--I took the boots,.

Q You told Beauchamp during the interview that you actually bought those boots at Kmart, didn't you?

A Don't remember that, sir.

Q Well if it's in his report, you wouldn't dispute it, would you?

A I don't--I would dispute it if it's not on video.

Q Okay. Well it's on video, the whole interview's on video.

A Okay.

Q You're aware that it was all--

A Like I said, I wouldn't dispute it if it's on video, sir.

[Page 1104]

That's all I'm saying.

Q The police report says:

“I asked Davenport where he bought the boots at and he advised that he bought them at Kmart on South Westnedge. I asked him how much he paid for them and he advised that he paid approximately 30 dollars or something like that.”

Would you dispute that?

A If it's--if it's on video I wouldn't dispute it, sir.

Q So you could have lied about that, you just don't remember.

A No, what I'm saying is I don't trust Detective Beauchamp, so I don't know if he wrote something down whether I be saying it or not.

Q Well it wouldn't be unusual for you to steal boots, would it?

A Did I sign that statement?

Q It wouldn't be unusual for you to steal boots, would it?

A Say what?

Q It wouldn't be unusual for you to steal boots, would it?

A Yes it would be.

MS. EIFLER: Your Honor, I'm gonna object.

A It would be, sir.

MS. EIFLER: I'm gonna object. He's just trying to harass this witness.

MR. FENTON: No, I'm asking him questions about

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his credibility.

THE COURT: I'll overrule.

MS. EIFLER: May we approach.

THE COURT: Yes.

(Bench conference begins at 3:14 p.m. between the Court and counsel, transcribed as follows)

THE COURT: Are you getting into any specific issues here or are you just--

MS. EIFLER: You can't go into this.

THE COURT: Are--are there any past convictions that come in with regards to that?

MR. FENTON: I'm not talking about convictions I'm talking about conduct. I'm not going on 609. I'm talking about how he acted after the murder and whether the jury should believe him. He was acting dishonest or dishonestly.

MS. EIFLER: Well are you going to get into the point of the interview that--

MR. FENTON: Maybe. Seeing how remorseful he is.

THE COURT: Let's not get into that. We're gonna get into some Fifth Amendment issues too on the other crimes so.

MR. FENTON: Fifth Amendment? He's waived his Fifth Amendment by testifying.

THE COURT: Well now--

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MR. FENTON: I mean no Fifth Amendment.

THE COURT: Well on this--well not on other crimes and so forth. Let's just not get into that.

MR. FENTON: I don't think he has. But conduct inconsistent with feeling remorse.

THE COURT: Well you're asking him to admit to a level of theft basically under oath.

MR. FENTON: His credibility is squarely an issue.

THE COURT: You know what, yeah, but I don't think you need to get into asking him a question like that unless there's a specific conviction.

MR. FENTON: All right.

THE COURT: So.

MR. FENTON: We're not--we're not gonna prosecute him for retail fraud.

THE COURT: Okay. Then let--I'll let this one in.

MS. EIFLER: That's not the point. The point is we're getting into at this point it's highly more prejudicial than probative.

THE COURT: Okay. I'll will allow in that one question. Don't ask any more questions about it.

MR. FENTON: Okay.

(Bench conference ends at 3:15 p.m.)

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Q Before you admitted taking the victim's food, you actually denied it when you were asked that question, didn't you?

A Anything I said I before I told Captain Mallery what happened is probably untrue, sir.

Q Well that had nothing to do with self defense, did it?

A Say that again?

Q That had nothing to do with self defense, did it?

A What's that?

Q Taking her food.

A No sir, that has nothing to do with self defense.

Q So why would you lie about that earlier?

A Why would I lie about that earlier?

Q Yeah. You denied--

A The whole conversation would deck--with Detective Beauchamp was a lie, sir.

Q Okay.

A I mean--I mean we both was lying to each other. I knew he was lying to me and I was lying to him.

Q How would you know if he was lying to you?

A How would I know?

Q Yeah.

A Cause just by the things he was saying and how he--how he came at me, sir. It was obvious.

Q You knew he was lying to you because you knew that he killed her--you killed her, right?

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A Say that again?

Q You knew he was lying to you because you knew that you killed her.

A I knew he was lying to me cause he wanted me to say Andre killed her.

Q Right. And you knew Andre didn't do it, you did.

A Like I said I knew he was lying because he wanted me to say Andre killed her.

Q And you sat there and went with that store, and in fact, provided great detail--

A I went--I went--

Q Let me finish, let me finish.

A I went with ever story he came up with, sir.

Q He didn't come up with this story in specific detail that he wrote down as a result of your dictation to him, you came up with this, didn't you?

A I--I didn't sign it, sir.

Q All he suggested was generally that Andre did it and if you only helped afterwards then that would make you less culpable than Andre, right?

A I didn't sign that, sir.

Q That's not my question. He didn't come up with all these specific details in this first statement, you did, didn't you?

A He helped me came up with them specific details, sir.

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Q I'm sorry?

A He helped me.

Q He helped you?

A Yes.

Q He told you that Andre woke you up in the middle of the night because you were sleeping--

A I said he helped me, sir, I ain't say what--what he--how he helped me--

Q Did he--

A I said he helped me.

Q Did he put those words in your mouth that Andre--

A His scenario--his scenarios and information he gave me, just you know it--

Q Did he suggest to you who put the body in the backseat and how it was positioned and all those details?

A He suggested a lot of things, sir.

Q Really?

A That's all I can say.

Q Okay.

A Watch the video.

Q We all watched it.

A Okay, so you already know it. He--he--he's, you know--he suggested things and I went with it.

Q He suggested a general scenario, Mr. Davenport, you're the one who filled in all the details, aren't you?

[Page 1110]

A Say that again.

Q He suggested a general scenario and you're the one who filled in all the details, aren't you?

A I wouldn't say that.

Q You wouldn't say that?

A No.

Q Well the jury can make their own determination.

A Yes.

Q Now you say that you think Marquetta Tarver may have implicated you because of whatever her own issues, she was out on parole--

A I didn't say anything.

Q Or something.

A I didn't say anything.

Q You didn't say anything.

A I didn't--I didn't answer that question I don't think.

Q You don't remember that question from your attorney?

A I said I don't think I answered that question of why she might have said something, sir.

Q Well you were asked of some follow questions about whether or not she was running from the police and all that kind of thing, right?

A Yeah, I answered those questions.

Q She--you said she wanted to go to Detroit. Actually she wanted to go Grand Rapids, isn't that true?

[Page 1111]

A No, she wanted to go to Detroit.

Q Isn't it true you're the one who wanted to go to Detroit?

A No, she wanted to go to Detroit too.

Q Did you want to go to Detroit also?

A I was gonna go to Detroit.

Q Because the police were looking for you.

A No.

Q Why?

A Cause I wanted to go to Detroit.

Q Why?

A Cause I got family in Detroit.

Q So you knew the police were out at Fraction's apartment a couple days earlier, right?

A Say that again.

Q You knew the police were out at Fraction's apartment a couple days earlier, right?

A I knew that they was out there, yes.

Q Looking for you.

A Yes I knew that, sir.

Q That's why you changed the shoes you said, right?

A No, that's not why I was changing shoes, sir.

Q Why'd you change your shoes?

A Cause I wanted some boots.

Q Cause you wanted some boots and that's it.

A Yeah. Yes.

[Page 1112]

Q Okay. Your brother told you the police were looking for you, right?

A Say that again.

Q Your brother told you the police were looking for you, right?

A Yes.

Q Cause you're driving around in a stolen vehicle, that's right what you're thinking, right?

A Say that again.

Q Cause you're driving around in a stolen vehicle, right?

A No, because the woman reported the car stolen.

Q Okay, that's semantics. The point is you think the police are looking for you for a stolen vehicle, right?

A Yes.

Q That's why you wanted to go to Detroit.

A No, I was gonna go to Detroit anyway, with the car or without the car.

Q It's just ironic and coincidental that the timing happened to be just a couple days after this murder and that the car's reported stolen?

A Say that again.

Q It's just coincidental that this just happens to be a couple days after the murder that you've never told anybody about, and the car's reported stolen?

A You said it's quote--coincidental?

[Page 1113]

Q Coincidental that you just want to go to Detroit to visit family?

A I don't--I don't know why you would say it was coincidental.

Q I'm asking you. Is it coincidental, it just happened to be that timing that you decided to go to Detroit to visit family?

MS. EIFLER: Your Honor, I'm gonna object.

A I don't--

MS. EIFLER: This is argumentative.

MR. FENTON: No, it's questioning. He seems confused, I'm restating the question.

THE COURT: Hold on.

THE WITNESS: I'm not confused, sir.

THE COURT: Hold on. Just ask the question. Ask--

MR. FENTON: I've asked him three times.

THE COURT: There are--

MR. FENTON: He hasn't answered it.

THE COURT: There are--hold on, let me--let me finish. There are times where it's getting a little argumentative. Just be careful about that.

MR. FENTON: Thank you your Honor.

THE COURT: Go ahead Mr. Fenton.

MR. FENTON: Appreciate it.

[Page 1114]

Q Was it just coincidental, the timing, that you decided to go to Detroit to visit relatives?

A It wasn't coincidental.

Q Okay, I didn't think so. Now you also said that you went to Max 10 and got a coat and pants that you were wearing at the time of the crime, is that right?

A Say that again.

Q You went to Max 10 to get the coat and the pants that you were wearing at the time of the crime, is that right?

A I don't what you're talking about, sir. You need to clarify that so.

Q You testified that you went to Max 10.

A Yes.

Q And that's where you got the coat and the pants that you were wearing at the time of the crime. You just testified-

A No sir, I did not get no clothes from Max 10-

A Where'd you get them?

A That I was wearing at the time of the crime, sir.

Q Okay, what were you wearing at the time crime?

A I told you earlier I was wearing a winter coat, probably some jeans, some tennis shoes.

Q Didn't you testify just a few minutes ago on direct that what you were wearing at the time of the crime you had just gotten the day before at Max 10?

[Page 1115]

A No sir. I did not testify to that.

Q All right. Well what'd you get at Max 10?

A I got the coat and a matching pair of pants.

Q Which coat?

A This--the fatigue coat.

Q The one that's in evidence?

A Army coat. The Army coat.

Q The one that's in evidence.

A Yes, they it's that same one.

Q But where's your coat that you supposedly got slashed by Annette White?

A Either I left it out to my mother-in-law or it's over at Marvin house, one of the two spots, sir.

Q And that thing has a cut in it?

A Yes it got a cut in it.

Q All right. Mr. Davenport, you want to explain to the jury how after nine hours of interrogation you never told the police about getting cut by Annette White. Can you explain that?

A I never told the police a lot of things, sir.

Q Well why wouldn't you tell them that you got cut by her when you're claiming self defense?

A Probably cause I was being interrupted a lot and probably I just never told them a lot of things, sir.

Q You're being interrupted a lot?

[Page 1116]

A I said I was being cut off a lot when I was telling the officer--

Q Was it--

A Detective Mallery what happened.

Q He was cutting you off?

A He was trying to clarify things, sir.

Q Okay. He wrote out this written statement in your presence, literally taking down exactly what you

were telling him. You signed it, there were corrections made, nothing in here about that jacket. How can you tell this jury that you weren't given every opportunity to tell them about this cutting?

A Say it again? How--how would I not tell?

Q How can you tell this jury that you weren't given the opportunity to tell Mallery about this cutting?

A It wasn't a question of opportunity, I just--it's a lot of things I didn't tell Captain Mallery.

Q Well you just said it was--

A It's a lot of things I'm just not saying today, sir. I mean--

Q You just said--you just said you didn't have the opportunity to tell 'em.

A I said I was being cut off a lot, probably when I was telling them what had happened.

Q Well--

[Page 1117]

A There's a lot of things I didn't tell 'em. That's all I can say.

Q Okay. You really don't have an explanation, do you?

A I don't need an explanation. All I'm trying to do is tell you the truth.

Q And the reason you don't have the explanation is because that's not how it happened, isn't that true?

A It's how it happened, sir. Everything I said is true.

Q Isn't it true also that in nine--

A I don't have no--I don't have no need to admit to--to hurting Anita, and it's not gonna benefit me none to tell or to sign a statement saying that I hurt her.

Q I'm sorry?

A In any way.

Q That you hurt her?

A It's not gonna--it's not gonna help me any to tell the truth. That--that's not gonna help me.

Q Right.

A I mean, you know what I'm saying? I mean--I mean it's not like I'm going to sign a statement that is not true.

Q I know exactly what you're saying, Mr. Davenport.

A You know what I'm saying? It's not--it don't--it don't make no sense.

Q I know what you're saying. What you just said was is it's not going to help you tell the truth, right?

[Page 1118]

A No. What I said was it's not going to help me by instead of saying this happened, and this happened, and it--and that is not what happened.

Q Mr. Davenport--

A That's why I did not sign the statement.

Q The record will reflect--

A I signed the statement that was true.

Q Mr. Davenport, in that signed statement that you claim is true, you didn't say one thing in nine hours of questioning that you were actually cut by her at all, did you?

A I didn't say one thing about going out to my mother-in-law house either.

Q Nor did you say anything about this jacket being in existence that was supposedly cut, right?

A Say that again.

Q Nor did you say anything about this jacket that's allegedly in existence being cut.

A Sir, there's a lot of things I didn't say that night.

Q I'm sorry?

A There's a lot of things I didn't say that night.

Q Why wouldn't you tell Mallery when you're confessing a crime in self defense to him that there's actually a jacket out there that corroborates you cause it got cut by the victim?

A I thought I was telling them enough already.

[Page 1119]

Q Really?

A Yes.

Q Wouldn't that have been pretty important, sir?

A Well I thought the box cutter was important too.

Q Wouldn't it have been important to tell them that you actually got sliced by this razor blade and there's a jacket that evidences it?

A No sir. I thought it was important to tell them about the box cutter and where to find it at.

Q Really?

A Yes.

Q So you didn't think it was important that you have a slice on your jacket from this very victim.

A A lot of things was important. I thought at the time it was important to tell them where the box cutter was at and where it happened.

Q At the time you mean five days later after you're actually--let's see, from the 13th to the 24th, nine

days later when you're arrested on a fleeing and eluding you thought it was important after nine hours of interrogation finally?

A Say that again. I'm--

Q You didn't think it was important on the night of the crime to tell them about the box cutter, did you?

A Sir, I thought it was important to tell--

Q Yes or no.

[Page 1120]

A Them the truth.

Q You didn't tell them the truth on the night of the crime, did you?

A On the night of the crime--

MS. EIFLER: Your Honor, I'm gonna object. This is argumentative.

MR. FENTON: It's a question.

THE COURT: Well hold on a second. Mr. Davenport, you do have to be careful. Most--many of these questions are yes and no questions. So your attorney again has--does have an opportunity to follow up, and other than that try to, again, make sure that your questions are argumentative, Mr. Fenton.

MR. FENTON: Thank you your Honor. I'm trying to ask him questions.

Q You didn't tell them the truth on the date and the night of the crime, did you?

A I didn't talk to anyone on the night of the crime, sir.

Q And you didn't tell them the truth the next day, did you?

A I didn't talk to anyone on--on the next day, sir.

Q And you didn't talk to them on the 15th either, did you?

A I didn't talk to anyone on the 15th, sir.

Q So you didn't tell them the truth on the 16th either.

A I didn't see no detective or captain until what, the 18th, the first time and the 24th the second time.

[Page 1121]

Q After they had to chase you down and arrest you after crashing your vehicle, correct?

A Say that again.

Q After they had to chase you down--they being the police--after you crashed your vehicle, correct?

A Yes that's when I told them, afterwards sir.

Q Okay. So you don't think it's gonna help you to tell the truth, right?

A Yes it's gonna help me.

Q Well the record will reflect that you just said, "It's not gonna help me to tell the truth." You said that about five minutes ago. Are you disputing saying that now?

A No I'm not disputing anything, sir.

Q All right. A few more questions. You said the time was right finally to tell the truth as you've claimed it to be. So the time wasn't right on the night of the crime?

A Say that again.

Q You said the reason why you finally told Mallery the, quote on quote, "truth" is because the time was right. Right?

A Well cause of that and you know, he seemed to be sincere, sir, so that's why I did.

Q The time wasn't right after you had to kill someone in a--in a self defense posture?

A Sir, that night was--it was crazy. I didn't-

Q Okay.

[Page 1122]

A I don't even--you know, half of the stuff is.

Q So after you thought about it for awhile, the time wasn't right the next morning?

A The time was right when I told Captain Mallery, sir, what--what happened.

Q Let's see, was the time right when you were dumping her body in the woods? Obviously the time wasn't right then.

A The time was right when I told Captain Mallery what happened, sir.

Q You've had no explanation to this jury as to why you did that, why did you dispose of her body in the woods?

A I don't have no explanation for that, sir.

Q Cause there isn't one.

A I was scared, I was panicked. That's all I can say. I was scared and I panicked.

Q Cause there isn't an explanation, right?

MS. EIFLER: Your Honor, I'm gonna object. He's answered the question.

THE COURT: Sustained. Next question.

Q You also said that you wanted the family to know what happened. That's just an out an out lie, isn't that true?

A No sir.

Q You didn't go to the family the next day and explain what happened, did you?

A No sir.

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Q You didn't go to the family the day after that and explain what happened, did you?

A No sir.

Q And in fact, what you did do is continued to smoke crack cocaine during that week, correct?

A Off and on, sir.

Q Continued to drive around in a stolen car, correct?

A It wasn't stolen, sir.

Q Continued to steal property such as those shoe--or those boots, correct?

A Say that again.

Q You continued to steal property such as those boots.

A No sir, I didn't continue to steal property, sir.

Q Well you stole those boots on Wednesday, didn't you?

A That was one time, sir.

Q And you're driving around in a stolen vehicle, right?

A It wasn't stolen, sir.

Q Wasn't stolen.

A No.

Q All right, we'll talk about that in a minute. You-- you're committing fleeing and eluding from the police, correct?

A I didn't know it was the police, sir.

Q You laughed when Mallery stopped in the middle of that interview and said to you, "What? You're not gonna look at me, Ervine, with a straight face and claim you didn't know

[Page 1124]

Q the police were behind you, are you?" and you laughed, didn't you?

A Well he laughed, I laughed, sir.

Q You knew the police were behind you, that's why you were fleeing, isn't that true?

A Sir, like I said, he laughed and I laughed. Who was behind me that night, you know I had to assume who it was, but I--I wasn't for sure.

Q Well why'd you crash the vehicle if you weren't running from the police?

A Cause I hit a slick spot.

Q Why were you driving in a position to wipe out and roll a car over on a slick spot?

A Why was I in the position to?

Q Why were you driving the car that way?

A Cause I was driving too fast.

Q Huh?

A Because I was going too fast.

Q Cause the police were chasing you. Right?

A Okay. If you--yeah, the police was chasing me, okay.

Q Okay. So you knew--obviously you knew the police were chasing you, right?

A Yeah, after they turnt on the lights, sir.

Q Okay. All right, let's talk about that stolen car. Excuse me, that car that you claim was not stolen. What you want

[Page 1125]

this jury to believe is that this was a crack rental?

A It was, sir.

Q Now you never met Les--excuse me--you never met the owner of the car before that night, right?

A No.

Q And this happened at Marvin Fraction's house?

A Yes.

Q So she's there and the guy that she's with, right?

A Yes, and a--and another guy who brought her there.

Q All right. Now were they the only white people at this party?

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

Q All right. Now you met this gal and you talked to her correct?

A Yes we communicated.

Q And then you talked to the guy that she was with, right?

A No I didn't talk to him till I went outside.

Q That's what I'm talking about. You talked to him before you left, right?

A No, I didn't talk to him before we left.

Q Well you talked to him to him at some point cause you left with him, didn't you?

A I didn't leave with him.

Q You didn't leave with him?

A No.

[Page 1126]

Q Didn't you drive him to Paw Paw?

A Yeah, I drove him to Paw Paw.

Q So you did leave with him.

A I didn't leave with him from the apartment, sir. He had left already.

Q Well how did you get him to Paw Paw in the car then?

A I took him to Paw Paw.

Q So you did leave with him.

A When I took him to Paw Paw, yes.

Q That's what we're talking about.

A Okay. I thought you said when we left the apartment.

Q Isn't it true that what happened was you told that man that she--being Goltzene--gave you permission to drive him, drop him off, and that you'd bring the car back to her. That's how you got him to Paw Paw, right?

A I told him that she gave me permission to get the car, that she wanted me to drop him off in Paw Paw.

Q Right.

A Yes, I told him that.

Q And ex--and that's exactly--

A I didn't say I had to come back, sir.

Q And that you would get the car back to her, didn't you tell him that?

A Yeah, I told him that I would eventually get the car back to her.

[Page 1127]

Q And that's exactly how he testified in a earlier hearing in your presence, isn't that true?

A Say that again.

Q That's exactly how he testified at an earlier hearing in your presence.

A I don't know, sir.

MS. EIFLER: Your Honor, I'm gonna object, That's--

THE COURT: Hold on a second. Hold on.

MS. EIFLER: That's evidence that's not been presented.

THE COURT: Sustained.

MR. FENTON: All right.

Q In any event, so what you've just told this jury is basically you told him that she gave you permission to take him home.

A She did, sir.

Q She testified not true. You heard that, right?

A Say that again.

Q She testified that was not true. You heard that, right?

A Yeah, I heard that, sir.

Q You never even met her before that night, had-- had you?

A No. No sir.

Q And in fact you never went back there that night and gave her the car back, right?

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A I did go back that night a couple times, sir.

Q You didn't give her the car back though.

A I didn't have to. She didn't want it back, sir, at that time.

Q So your testimony is what? You had her car and you provided her with crack?

A Yes, that's what I did, sir.

Q And we have some open-ended arrangement as to how long you could hold on to the car?

A Well I came back twice and checked on her, and she still wasn't ready so.

Q So that meant you could have the car as long as you wanted?

A After the second time I came back that's what I assumed. To drop it off at--in Patwood when I--when I was done with it.

Q In Patwood.

A Yes.

Q Why--why Patwood?

A Cause that's where I saw her, that's where I got the car from.

Q At--okay. At Fraction's apartment.

A Yes.

Q But you never did drop the car back off there.

A No I didn't, sir.

Q She was left there with no way home, right?

[Page 1129]

A I didn't expect her to be there anyway, sir.

Q Did your cousin--

A She said to--she had told me to drop the car off in Patwood. She didn't say she would still be there.

Q How'd you expect that she was gonna get back to her house?

A I didn't--didn't know how she was gonna do anything, sir.

Q And didn't care either, did you?

A It wasn't--it wasn't for me to figure out, sir. She told me not to worry about it, that.

Q You didn't even know her name, right?

A Say that again?

Q You didn't even know her name, did you?

A Yeah, I know her first name. I didn't remember her last name.

Q Didn't know her last name. Did you know where she lived?

A I figured Paw Paw.

Q Did you have an address?

A No. I just figured Paw Paw where I dropped off the guy at.

Q And when did that happen, like Thursday?

A I don't remember what day it was.

Q Well it was several days. Was it at least a day before you killed Annette White?

A Say that again.

Q Was it at least a day before you killed Annette White?

A I don't remember what day it was, sir.

[Page 1130]

Q Well you held on to the car obviously until you crashed, right?

A Yes sir.

Q You were using the car as your own, right?

A Yes sir.

Q You were driving it around, right?

A Yes.

Q It's not registered to you, is it?

A No.

Q Do you even know if it has insurance?

A Yeah, I figured it had insurance.

Q You figured it did.

A Yes.

Q You didn't see any proof of insurance, did you?

A I didn't look for any.

Q You didn't care, right?

A It's not a question of care. I just didn't look for none.

Q Okay. And eventually you crashed this car. Now are there things in the trunk that are yours?

A When I first got the car?

Q No. Later on during the week when the car crashed.

A Yeah, I put some stuff in the car.

Q Now you saw the photographs in the trunk of that car, right?

A Yes.

[Page 1131]

Q Had three layers of things in there, right?

A I don't know how many layers was in there, sir.

Q Okay. Is the trash can yours?

A No.

Q Okay. Is the big bag of clothes yours in the orange?

A I don't know. I don't even know what's in the club-
-what's in the bag.

Q Could it be yours? Do you remember that big orange wrapper? Want to look closely?

A Yes sir. Is that a wrapper? What is it?

Q I don't know what it is.

A A bag?

Q I'm asking you if you know.

A I don't know what it is, sir.

Q Okay. Could that be yours and you just don't remember?

A It could be, I don't know.

THE COURT: Mr. Fenton, if you're gonna ask a question though, you need to be closer to a microphone please.

MR. FENTON: I'm sorry.

Q What about that tool bag in the bottom? Was that yours?

A The tool bag?

Q Yeah.

A No it wasn't mine, sir.

Q You sure about that?

[Page 1132]

A No. I don't think it was mine, sir.

Q Well you had sole custody of the car for that week or so, didn't you?

A I had access to it.

Q Access? Didn't you have the keys?

A Yes. Keys was--the keys stayed in the car, sir.

Q Well the car wasn't missing at any time during that week, was it?

A Yes. It was parked usually out in Patwood or down the street from Patwood.

Q Oh so people that you don't know used the car?

A No, people that I knew used the car

Q Oh. So you're letting other people use it too?

A It's not my car, sir.

Q Well--

A It was a crack car.

Q It was during that week though, wasn't it?

A It was a crack car.

Q All right. So you don't know anything about this tool bag allegedly?

A Say that again.

Q You don't know anything about this tool bag allegedly.

A I don't remember putting no tool bag in the--in the car, sir.

Q All right. Well if you don't remember anything about a

[Page 1133]

tool bag then, what'd you do with this razor blade that you were supposedly cut with by Annette White?

A I threw (sic) it in the back trunk, sir.

Q Just threw it laying on top.

A No, it wasn't laying on top. It slid down, that's all I remember.

Q I'm sorry?

A It slid down.

Q Slid down?

A Yeah. It was--it landed on the--I think it was a heater or something and it slid down.

Q Was the heater yours?

A No, that was Kenny Cooper's.

Q Kenny Cooper's.

A Yes.

Q So Kenny Cooper had access to the car too?

A No. I--I had picked him up one day before the accident.

Q How did the heater get in there?

A How did the heater get in? I put the heater in there.

Q Okay. So it wasn't yours but you put it in there.

A Yes, I put the heater in there.

Q So you're at least familiar with some of the things that are in this trunk, correct?

A Yes sir.

Q All right. Now you said you would have never talked to

[Page 1134]

Marquetta about this because you--you barely knew her, right?

A Yes, I wouldn't have talked to her, sir.

Q Well you--you used drugs with her during the week, didn't you?

A Yes I used drugs with her.

Q You--

A That Monday I think.

Q You--

A The first time I saw her.

Q You slept near her, right?

A Did I sleep near her?

Q Yeah.

A I think I did one--one night.

Q You went to Meijer's with her, right?

A Did I go to Meijer's with her?

Q Yep.

A I might have did, sir.

Q You went to Kmart with her, right?

A I--yes I went to Kmart with her.

Q You stole the boots at Kmart with her, correct?

A Say that again.

Q You stole the boots at Kmart with her, right?

A With her?

Q Yep.

[Page 1135]

A I don't know if she was in the store at the time or not, sir.

Q Well she's the one who told the police about it and the videotape will speak for itself. You don't remember if she actually went in the store with you?

A She might have did. Sir, we're talking over a year-and-a-half ago. I don't even know.

Q And you fled from the police with her, correct?

A She was in the car along with someone else, sir.

Q And you were gonna go to Detroit or Grand Rapids or somewhere with her, weren't you?

A No. I was going to Detroit that--that week.

Q I'm sorry?

A I was gonna go to Detroit that week.

Q With her?

A Yes, she was gonna go. She wanted to go down to Detroit, said she had to get some money or something.

Q You said you told your mother-in-law about this, Lenora Stuart.

A Yes sir.

Q You're not even legally married, are you?

A Say that again?

Q You're not legally married, are you?

A Not by paper, sir.

Q So she's not even your real mother-in-law, is she?

[Page 1136]

A Yes she is to me.

Q Oh, but she's not legally is she?

A Not by paper, sir.

Q Not by paper. Now you said you never even saw the victim that night until 2:00 a.m.

A Say that again.

Q You never even saw the victim that night until 2:00 a.m. Picked her up on the street.

A I didn't say 2:00 a.m., sir.

Q Well I wrote down 2:00--2:00 a.m. What--what time do you say now?

A I don't know why you wrote down 2:00 a.m., sir.

Q Well I was writing what you said, isn't that what you said?

A No you wasn't, sir. I didn't never say that.

Q All right. Well what time are you saying now that you first saw her?

A What time did I see her? I don't know exactly what time it was. It was way before 12:00 o'clock.

Q Way before 12:00 now.

A I mean, I didn't you know.

Q You don't remember seeing--

A We--we didn't--we didn't leave the Carswell house until 2:00 o'clock, sir.

Q You don't remember saying before on direct exam that you ran into her around 2:00 a.m.?

[Page 1137]

A Sir, I know what I said.

Q What--what did you say?

A I said we left the Carswell house-

Q At what time?

A 2:00 o'clock or after 2:00 o'clock, sir.

Q All right. The jury will have to make up their own minds as to their recollection of what you said.

A No. I'm pretty clear on what I'm saying, sir.

Q You remember Earl Carswell saying that he had to work the next day?

A Do I remember him saying that?

Q Yep.

A He might have said that.

Q How much you weigh?

A Now?

Q Then.

A I don't know.

Q You're probably eating better back then, weren't you, when you were out and about on the streets?

A Probably not, sir.

Q Probably not.

A Probably not.

Q Well roughly, around 300?

A Back then?

Q Yeah.

[Page 1138]

A No.

Q 280?

A I don't know. Maybe 260, 270.

Q Now you weren't scared of Chocolate that night were you?

A Say that again.

Q You weren't scared of Chocolate that night, were you?

A Was I scared of Chocolate that night?

Q Yeah.

A Not till she pulled that box cutter, sir,.

Q Well you told--told the jury about a couple of prior occasions where she supposedly pulled a knife or something on you, right?

A Say that again.

Q You told the jury about a couple of prior occasions where she supposedly pulled a knife on you.

A Yes.

Q Well that didn't stop you from picking her up that night, right?

A No, she always made up. We always, you know, made up. It wasn't--you know, I didn't--Nita, she was alright. She wasn't a bad person to me. She had issues, we all got issues.

Q You weren't scared of her, were you?

A I wasn't scared of her till she pulled the box cutter, sir.

Q You're not scared of any woman, are you?

[Page 1139]

A Yes I am scared of some women, sir.

Q Would you say you're at least twice her size?

A I don't know.

Q Maybe almost three times?

A No, I wouldn't say that, sir.

MR. FENTON: That's all.

THE COURT: Miss Eifler, any further questions?

REDIRECT EXAMINATION

BY MS. EIFLER:

Q Sir, I want to make sure that I understand what you meant. I think Mr. Fenton was asking you a question and you indicated something about not--not going to help me to tell the truth or tell something. What do you mean by that? What--what are you talking about?

A I mean it was--it wouldn't--to sit here and--and tell the jury what happened or to tell Captain Mallery what happened, it was not for the purpose of--of trying to get out of responsibility. I mean had a opportunity to--to say what happened and I took that opportunity. Instead he trying to.

Q So do you think that the telling the truth is, in fact, helpful?

A Yes. Yes.

Q Why is it helpful?

A Like I said, it was a bad situation that shouldn't have

[Page 1140]

never happened. Anita was a good person, she was not a bad person.

Q You said that on the prior occasion when she had pulled a knife on you, that you--you had made up. Is that right?

A Say that again?

Q On the prior occasion when she--when she had pulled a knife on you, you had made up?

A Yes.

Q All right. Did it scare you when she pulled that knife on you then?

A Yes it did. That's why I left.

Q Was she acting differently on the 13th?

A Yeah, yeah.

Q How so? How was she different on that occasion versus when she pulled a knife before.

A She was Anita, you know what I'm saying? Like I say, she's not a bad person.

Q But what was different about her? Is that--if I understand you correctly, you're saying she was different on the 13th then when she previously pulled the knife.

A Oh well it's just--I think she--she just had done too much, you know.

Q I'm sorry, could you repeat that.

A I think she had done too much.

Q Too--had done too much?

[Page 1141]

A Too much drugs.

Q Had you seen her that agitated before?

A No.

Q Mr. Fenton had asked you--

THE COURT: Oh I'm sorry. I did not hear an answer to that last question. I think the question was had you seen her that agitated before.

THE WITNESS: No I haven't.

THE COURT: Thank you. Go on Miss Eifler.

MS. EIFLER: Thank you.

Q Mr. Fenton had asked you some questions about--he'd gone through specifically with you statements on that--that first written out statement. And again, your testimony is that that was basically all a lie, correct?

A Yes. That first part of the interview what they called a ruse, you know what I'm saying? It was--I was going back and forth. It was just not true, you know.

Q He'd also asked you about some specific things and you said, well that had happened. For instance, Andre asking you to help. Did Andre ever ask you to help him do anything that day?

A Yes earlier that day.

Q What--what did--

A We had--me, and Andre, and Tonya had--we was together all that day up until that evening, so you know.

[Page 1142]

Q So--so why did you tell Detective Beauchamp in the context of basically helping after Annette had died, how come you told him that?

A Depect--Detective Beauchamp was already on that--that road. He--I mean like I said before, he the one who brought Andre into this. From this--you know, what he was saying, the scenarios he was giving, the information that he was trying to tell me, you know. You know, it was just a bunch of untruth stuff from both sides, you know, and that was just that.

Q Okay. Mr. Fenton gave you several scenarios of when you when you decide not to believe someone after they had lied to you. Let me ask you this. We know that you gave one statement that was not true, correct?

A Yes.

Q You gave a second statement to Captain Mallery, correct?

A Yes.

Q Were you questioned after you gave that statement to him?

A Was I what?

Q Were you questioned any further after you gave that written statement?

A No. No.

Q Is there any reason why this jury should not believe that that is what happened?

MR. FENTON: I'm gonna object. That's the

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ultimate issue that the jury has to decide. He can't comment on his own credibility.

THE COURT: Sustained. Next question.

MS. EIFLER: I have no more questions.

THE COURT: Anything further, Mr. Fenton?

MR. FENTON: No your Honor.

THE COURT: Counsel, will you approach please.

(Bench conference begins at 3:50 p.m. between the Court and counsel, transcribed as follows)

THE COURT: Do you have any other questions-other witnesses?

MS. EIFLER: I don't have any except for R.B.

THE COURT: I guess have we heard more on R.B. Davenport? Is there--are you gonna follow with rebuttal witnesses? How many?

MR. FENTON: Depends on how many I have.

THE COURT: Because I'm finishing this trial today. How many do you have?

MR. FENTON: Okay. Well I'm not sure. I know I have two or three ready to go quick ones.

THE COURT: How many?

MR. FENTON: Five minutes.

THE COURT: Okay.

MR. FENTON: Possibly five max.

THE COURT: All right.

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MR. FENTON: It'll all be short. I'd like to get Dr. Hunter back here, but I can't. Can't reach him.

THE COURT: All right. Closing arguments are gonna be limited to a half-an-hour, okay?

MR. FENTON: Half-an-hour?

THE COURT: Just so that you know. Yes.

MR. FENTON: It's a capital case.

THE COURT: Pardon?

MR. FENTON: It's a capital case?

THE COURT: How much time do you need?

MR. FENTON: I don't know, but I don't want to be constrained.

THE COURT: Well you're gonna be somewhat constrained because I'm not gonna--we gotta finish tonight.

MR. FENTON: Now wait a minute. Now you gave her a like an hour, two hours--

THE COURT: No, no, no no, no.

MR. FENTON: To find witnesses.

THE COURT: Just--I just--how much time you need?

MR. FENTON: I don't know. An hour, something like that.

THE COURT: We'll discuss that later. Okay.

MS. EIFLER: (Inaudible--whispering)--in the hallway actually. I think that Detective Beauchamp out in the hall--

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THE COURT: Why don't you go check real quick and then we can rest.

MS. EIFLER: Okay.

THE COURT: I'm gonna see if they need a break. If they--if they don't, I'll just have Mr. Davenport--well I'll need have him go sit back down right now. If they don't a break, then we're going on, okay

MR. FENTON: Okay.

THE COURT: Okay.

MR. FENTON: That's fine.

(Bench conference ends at 3:51 p.m.)

THE COURT: Mr. Davenport, you may step down.

THE COURT: Couns--ladies and gentlemen, does anyone need a break right now? You do. Okay

I would like to do whatever I can to get this done tonight. So while we--why don't we take about ten-minute break. If you need to make some phone calls, is there anyone who, for whatever reason, cannot stay past 5:00 today?

UNIDENTIFIED MALE JUROR: How late?

UNIDENTIFIED FEMALE JUROR: Depends on how late.

UNIDENTIFIED MALE JUROR: How late?

THE COURT: My guesses on times have not been good this trial so.

UNIDENTIFIED MALE JUROR: Yes we know.

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UNIDENTIFIED FEMALE JUROR: Yes.

THE COURT: You know, I would hope that we would be out of here by 6:00, 6:30. But let me just tell you what we have to do.

We have some additional witnesses and I think that they would be probably pretty quick. We then have closing arguments and then we have jury instructions. Then we'll select two of you to be the alternate jurors. Those two would then not have to come back tomorrow. You would still be under court order not to speak with anyone, but I'd like to be able to release those two and not have everyone come back tomorrow morning for deliberations. That's why I would like to stay after 5:00. If it's going to be an issue though, please let me know.

We'll take a break right now and then you can let Mr. Brooks know if there's any situations that arise, and that way if you need to make some phone calls, you can do that.

(The jury members exit the courtroom at 4:53 p.m.)

THE COURT: Anything we need to cover right now, counsel? I know there's a number of things we have to put on the record with regards to witnesses still. But anything right now?

MR. FENTON: Well I guess this is my thinking, Judge. It's now 4:00 o'clock.

[Page 1147]

THE COURT: Well just hold on. Do--do we need to put this on the record or can I excuse everyone and let Mr. Davenport--

MR. FENTON: No, it's the record.

THE COURT: Okay go ahead.

MR. FENTON: The Court seems to be wanting to push this trial through today. It's 4:00 o'clock now. I've still got about four or five rebuttal witness. I'd like an opportunity to try to reach Dr. Hunter, call him back to rebut the Defendant's testimony. I've been unable to reach him today.

Between the four or five witnesses that I do have, closings, I mean the jury's not gonna be able to deliberate tonight. So I'm not sure why we're pushing this through. I'd like to have the opportunity to try to get Dr. Hunter back here tomorrow.

I would have been ready to close this morning, but the defense was given most all the morning to locate their witnesses, and I just don't see the big rush to have to finish today.

THE COURT: Miss Eifler.

MS. EIFLER: Your Honor, I don't have any objection to--to going in tomorrow. I don't have any objection to that.

THE COURT: Okay. Well I've already indicated

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what I--what I plan to do. We'll see what happens. Mr. Davenport's been on the stand since this morning. So I assume that you've been making your attempts to get a hold of the doctor, but we'll address that if need be. You've got ten minutes to try to get a hold of him.

I plan to go back on the record at five after 4:00. Court's in recess.

(Court recesses at 3:55 p.m.)

(Court resumes at 4:13 p.m.)

MS. JOHNSON: The court recalls the case of People versus Ervine Lee Davenport, Case Number 07-0165FC. Parties please restate appearances for the record.

MR. FENTON: Stuart Fenton for the People.

MS. EIFLER: Susan Eifler, appearing on behalf of the Defendant, Ervine Davenport. He is present in Court today.

THE COURT: I understand you're come--you're gonna come back to the stand for a few minutes. So when you're done, just retake the stand Mr. Davenport. And just remember please to speak up. The last part of your testimony I think you were talking a little bit softer. So just make sure that you're speaking up please.

MS. EIFLER: Do you think you can roll up your sleeve and will you be able to show it that way, you think?

THE WITNESS: My--

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MS. EIFLER: Okay. Why don't you take your shirt off while we're.

(Sidebar conference between the Court and Ms. Johnson)

(The jury members enter the courtroom at 4:15 p.m.)

THE COURT: Mr. Brooks is not here. Does anyone have any issues with staying late this evening?

UNIDENTIFIED FEMALE JUROR: We just basically took a vote and said that we wanted to be out of here by 6:00, cause there's a lot of issues with either being here-

THE COURT: After 6:00 o'clock?

UNIDENTIFIED FEMALE JUROR: Yes.

THE COURT: We're gonna run into some issues.

UNIDENTIFIED FEMALE JUROR: Yes.

THE COURT: All right. I appreciate that so.

Ms. Eifler, you may continue.

MS. EIFLER: Thank you.

REDIRECT EXAMINATION

BY MS. EIFLER:

Q And Mr. Davenport, you're clothed a little bit differently than you were last time you were in court a few moments ago. Do you have any type of a scar or a mark as a result of the cut that you sustained from Annette White?

[Page 1150]

A Yes.

Q And could you please show us your--this mark.

UNIDENTIFIED MALE JUROR: Is it possible to look at it a little closer?

THE COURT: Can--yeah. Can you--why don't you just walk in front of the--

UNIDENTIFIED MALE JUROR: We can't see it from here.

THE COURT: Jurors if you would, Mr. Davenport. And if you could just show the court too, please. Thank you. You may have a seat. And make sure you move the microphone down please.

Q And to the best of your knowledge, have you ever sustained any type of an injury there prior to that date or since that date?

A No.

Q Is that particular mark or scar, is that an accurate reflection that scar or the wound that you received from Annette White?

A Yes.

MS. EIFLER: I have no further questions.

THE COURT: Mr. Fenton, any questions?

MR. FENTON: Couple.

RECROSS-EXAMINATION

BY MR. FENTON:

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Q So you didn't obtain that injury in the rollover car crash?

A No.

Q And you didn't obtain that injury from your years of drug dealing on the streets?

A No.

Q And in nine hours of interviews with the police, you never showed them that injury?

A No. We never got into that, sir.

MR. FENTON: Thank you.

THE COURT: Anything further, Miss Eifler?

MS. EIFLER: One quick question.

REDIRECT EXAMINATION

BY MS. EIFLER:

Q Were you ever asked about an injury during the interview?

A Say that again. Was I ever asked about injury?

Q Asked about any injuries you may have received from Annette White?

A No. I think I told 'em about the scratch and I--I don't even know how that even came up.

Q Okay. So the scratch on your face?

A Yes.

Q Okay.

A I think that came up when he said something about her nail or something. I don't even remember.

Q Okay.

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A I don't remember.

Q Did they--were you ever asked whether you received a cut from the box cutter?

A No.

MS. EIFLER: I have nothing further.

THE COURT: Anything further, Mr. Fenton?

MR. FENTON: No your Honor.

THE COURT: Okay. Thank you sir. You may step down.

(The witness was excused at 4:19 p.m.)

THE COURT: And obviously Mr. Davenport took his shirt off and we do have screen here. Sir, why don't you just go ahead and put your shirt on before we continue.

MS. EIFLER: We have no further--

THE COURT: I'll give him an opportunity to. There's a screen right there.

MS. EIFLER: Okay thank you.

THE COURT: We won't start until he's done.

MR. FENTON: Are you resting?

THE COURT: Yeah, I was just gonna wait.

MR. FENTON: Oh I'm sorry.

THE COURT: Give him a moment to--

MR. FENTON: I'm sorry. And can we approach?

THE COURT: Yes.

(Bench conference begins at 4:20 p.m. between the

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Court and counsel, transcribed as follows)

MR. FENTON: They want him shackled back up. Apparently he's made comments about you know, about whether deputies are wearing their vests, etcetera. He's working out a ton in the jail, and they're con--they want--they to shackle him back up. I don't know if you want the jury to go back out into hall for a minute or if you're just not gonna order it. I mean it's your call.

I cross-examined him basically. I said is that really necessary? He hasn't done anything in this trial and they said he's talked to people about whether or not you know, were vested up and they want him shackled.

MS. EIFLER: He's not done anything.

THE COURT: Huh?

MS. EIFLER: He's not done anything.

THE COURT: Well he hasn't done anything in the trial. Are they gonna--I'm--I'm gonna go past 5:00 o'clock obviously. I just want to make sure that they're gonna have deputies here. I'll have everyone in the courtroom's gonna remain and then I'm not asking so.

MR. FENTON: Okay.

(Bench conference ends at 4:22 p.m.)

THE COURT: I'm sorry. Miss Eifler, any further questions?

MS. EIFLER: No further questions.

* * *

STATE OF MICHIGAN
9th JUDICIAL CIRCUIT COURT
TRIAL DIVISION
FOR THE COUNTY OF KALAMAZOO

PEOPLE OF THE STATE OF MICHIGAN,
v Case No.:C07-165FC
ERVINE LEE DAVENPORT.
Defendant.

JURY TRIAL - VOLUME VII
BEFORE THE HONORABLE
PAMELA LIGHTVOET
Kalamazoo, Michigan - Thursday, July 17, 2008

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* * *

[Page 1193]

[THE COURT cont.] the truth, so help you God?

MR. HUNTER: Yes.

THE COURT: Please just state your name for the record, sir. And make sure you pull the microphone down towards you, and as you may recall, please make sure you speak right into the microphone.

THE WITNESS: Brian Hunter.

BRIAN HUNTER

(At 9:25 a.m., sworn as a witness, testified as follows)

DIRECT EXAMINATION

BY MR. FENTON:

Q Dr. Hunter, I think I only have two questions for you. The Defendant took the stand in this trial and testified that he never choked the victim. That his hand was flexed and that all he was doing was pushing her against the door. To a reasonable degree of medical certainty, is that even possible?

A No.

Q Explain to the jury why not.

A When you look at the injuries in this case, you--and you can--you can best understand this by touching your own throat. You feel that your larynx is that

voice box, and at the top edge of the voice box, there's a notch and that kind of tells you you're in the right area. So when you're

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looking straight ahead and if I talk--if I start to talk funny, I'm sorry--but as you look straight ahead you'll feel the voice box, on the top edge you'll feel a notch that creates a ridge.

In this case there are areas of hemorrhage on either side of that ridge. Now if you put pressure broadly across that ridge, you should have blood broadly across that ridge. It should span and cut across that ridge. What you have in this case is injury on either side of the ridge, meaning you're putting pressure on either side but not broadly across.

So if you imagine putting, you know, having a ridge--take--take molding clay and you had a ridge. If you put your hand straight across, you would make an indentation straight cross. But in this case if you put your--put your fingers on either side, you would have--you would have indentations on either side but not in the middle. So the injury pattern in this case is not consistent with a broad-force placed across that area, but on either side, which is more consistent with choking than a broad, you know, broad pressure there.

Q Is there any question in your mind that this was a choking and strangulation?

A No.

Q Thank you.

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THE COURT: Miss Eifler.

CROSS-EXAMINATION

BY MS. EIFLER:

Q Good morning.

A Good morning.

Q Doctor, let me ask you this. Depending on the size of the hand used to choke, would you expect to see the hemorrhaging in different locations based on the size of the hand used?

A It's possible but I don't--I don't know that there's been a study which says there's a one-to-one correlation with the size of the hand in the sort of radius or the locations of those hemorrhages in the muscle. I don't--I've never seen a study like that so I can't say for sure.

Q Okay. But there's a possibility?

A Theoretically speaking, yeah.

Q And I'm assuming every neck is different--different size?

A Correct.

Q All right. So a smaller person may have a smaller neck?

A Correct.

Q All right.

MS. EIFLER: I have nothing further.

THE COURT: Thank you. Mr. Fenton, anything further?

MR. FENTON: No your Honor.

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THE COURT: Thank you sir. You may step down.

(The witness was excused at 9:29 a.m.)

MR. FENTON: We have no further rebuttal, your Honor.

THE COURT: Counsel, are you ready for closing arguments?

MR. FENTON: Yes your Honor.

THE COURT: Mr. Fenton.

MR. FENTON: Thank you.

THE COURT: I'm sorry. Miss Eifler, are you ready?

MS. EIFLER: Yes ma'am.

THE COURT: Thank you. Mr. Fenton.

MR. FENTON: Good morning ladies and gentlemen. I'm going to proceed in what I believe to be an

orderly fashion. The first thing I want to talk about is in general. The first thing I want to talk about is this.

In looking at murder cases, the first question usually is who done it. In the vast majority of murder cases the issue is did we prove the Defendant committed the crime. Was there enough circumstantial evidence to prove the Defendant committed the crime.

In almost all cases that is the issue. Do we have enough to convict him. Did we prove that he did it. Because most people don't confess to murder. They know the

* * *

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[MR. FENTON cont.] the right guy. That's 80-percent of the battle right there. When you're looking at beyond a reasonable doubt, you can't measure it in a mathematical certainty, you can't say it's 90-percent or 95 or 89. It doesn't work that way. It's just beyond a reasonable doubt. Well we're almost there already cause we know we got the right guy. Okay?

So then you just have to deal with whether or not you believe the self, quote on quote, "self defense" claim is legitimate. So I'll spend the majority of my closing argument showing you why it's not.

Something that I want you to continue to remember throughout your deliberations is the accessory after the fact theme was not the only one that was thrown out to him at the very beginning. They threw out to him the self defense theme from the very

beginning. That was suggested by Detective Beauchamp at the beginning, as well as the if you only helped Andre than you're less culpable. He said to him, "Was it self defense? Did she come at you with a knife? What is it?" He laughed. He laughed it off. "I didn't have no confrontation with her that night." That's what he said.

So even with them suggesting his ultimate defense up front, at the beginning, he still did not bring that out until what, six-and-a-half hours later, two stories, three stories later after numerous lies. So that's a very

* * *

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[MR. FENTON cont.] that. That's why the standard of proof is only beyond a reasonable doubt, not beyond all doubt, and you all understood that concept. That's why you're on this jury. So lastly I just want to talk about the law for a minute.

Now with the you're gonna have the option of first degree murder and second degree murder. First degree murder, as you heard something about, is with pre-meditation and deliberation and intent to kill. Those are the three key parts about first degree murder, pre-meditation, deliberation, and intent to kill. All right.

(Mr. Fenton picks up a styrofoam cup)

Let's assume this is a neck, and remember it has to be a significant amount of force to cut someone's

oxygen off to the point of suffocating the brain and causing brain death. Do you have a minute hand or a secondhand?

MR. BEAUCHAMP: No.

MR. FENTON: No? Do you have a secondhand? All right. Well let's just count, I'll count silently. I'm squeezing this and we're just gonna remain silent for about 30 seconds. That's only 30 seconds. That's minimum for unconsciousness, three to four minutes for death.

Actions speak louder than words, ladies and gentlemen. Just imagine. Imagine being in that car, if it happened in the car. That's what he says, but do we know that for an absolute certainty, no. Imagine his big huge hand around

[Page 1225]

her neck, squeezing as hard as it takes to kill a human being for that long, and then multiply that by ten. Obviously that's intent to kill. We deduce intent from conduct. We talked about that in the voir dire.

B), the essence of pre-meditation and deliberation is the opportunity to stop, hesitate, think about what you're doing. Stop. Between 30 to 40 seconds and four to six minutes he had to stop. He didn't stop until he literally choked the life right out of her with his bare hands.

Pre-meditation doesn't require preplanning, like Jeremy Russell, as Captain Mallery detailed for you. It doesn't have to have computer research ahead of

time. That's just the extreme example of pre-meditation and deliberation.

Clearly he had the opportunity to hesitate, stop, think about what he was doing, and not kill her. I submit to you there's more than enough evidence of pre-meditation and deliberation for first degree murder, but at the very least obviously this is second degree murder.

Second degree murder only requires either intent to kill, intent to commit great bodily harm, or acting in reckless disregard of human life. Any one of those three prongs: intent to kill, or intent to commit great bodily harm, or acting in reckless disregard of human life, causing death. Obviously that is met. Okay? Clearly this

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No. 20-826

In the Supreme Court of the United States

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MIKE BROWN, ACTING WARDEN, PETITIONER

v.

ERVINE DAVENPORT

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JOINT APPENDIX - VOLUME III OF III

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Petition for Writ of Certiorari Filed Dec. 14, 2020
Certiorari Granted April 5, 2021

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STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE
STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
August 5, 2010

v

No. 287767
Kalamazoo Circuit Court
LC No. 2007-000165-FC

ERVINE LEE DAVENPORT,
Defendant-Appellant.

Before: STEPHENS, P.J., and GLEICHER and M. J.
KELLY, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction of first-degree premeditated murder. MCL 750.316. The trial court sentenced defendant to life in prison without the possibility of parole. Because we conclude that there were no errors warranting relief, we affirm.

Defendant first contends that he was denied his due process rights when the trial court required him to wear shackles during the trial. Although defendant's trial counsel requested that defendant's right hand be freed to enable him to write notes, defendant's trial counsel did not otherwise object to defendant being shackled. Therefore, this issue was not

properly preserved before the trial court. See *People v Stimage*, 202 Mich App 28, 30; 507 NW2d 778 (1993). This Court reviews unpreserved claims of constitutional error for plain error affecting substantial rights. *People v Carines*, 460 Mich 750, 764; 597 NW2d 130 (1999).

Generally, a defendant has a due process right to be free of shackles or handcuffs during trial. *People v Dixon*, 217 Mich App 400, 404; 552 NW2d 663 (1996). However, this right is not absolute; a trial court may order a defendant to be restrained where it “is necessary to prevent escape, injury to persons in the courtroom or to maintain order.” *People v Dunn*, 446 Mich 409, 425; 521 NW2d 255 (1994). Although a trial court may order a defendant to be restrained during trial, it is well settled that a trial court may not do so as a matter of routine. See *Deck v Missouri*, 544 US 622, 627; 125 S Ct 2007; 161 L Ed2d 953 (2005) (“Trial courts may not shackle defendants routinely, but only if there is a particular reason to do so.”). And it is not sufficient that a law enforcement officer has expressed a preference for the use of restraints. *People v Banks*, 249 Mich App 247, 258; 642 NW2d 351 (2002). Instead, before a trial court can order a defendant to be restrained, it must make specific findings—on the record and supported by record evidence—that justify restraining the particular defendant. *Deck*, 544 US at 632 (noting that trial courts must take into account the circumstances of the particular case before ordering a defendant to be restrained). In this case, the trial court failed to make any findings on the record—let alone findings that were supported by record evidence that warranted such an extreme precaution.

Therefore, the trial court plainly erred. See *Dunn*, 446 Mich at 425.

Although it was error for the trial court to order defendant to be restrained without making the requisite findings, in order to warrant relief, defendant must still show that this error prejudiced his trial. *People v Horn*, 279 Mich App 31, 36; 755 NW2d 212 (2008). Typically, a defendant will show prejudice by demonstrating that his restraints were visible to the jury. *Id.* at 36-37; see also *Deck*, 544 US at 635 (stating that shackling is inherently prejudicial and, for that reason, a defendant need not demonstrate actual prejudice in order to warrant relief where the defendant's restraints were visible to the jury).

Here, the trial court took precautions to ensure that the jury did not see the restraints: the trial court had a curtain placed around the defense table, instructed the parties on the procedures for standing, and had the shackles removed before defendant walked to the witness stand. Despite these procedures, defendant argues that the jury must have seen that his left hand was shackled on the basis of a video from the trial that purportedly shows that his wrist shackle was visible. The video does show a visible cuff around defendant's wrist. However, it is also clear that the video was recorded from a height. And there is no record evidence that the video accurately portrays the view from the position of the jurors. Because the video does not appear to portray the view from the jury box, we cannot conclude that the jurors actually saw the restraint on defendant's left wrist. Defendant has not shown that his restraints were visible to the

jury and, for that reason, has not met his burden of showing prejudice. *Horn*, 279 Mich App at 37.

Even if we were to conclude that defendant demonstrated that his restraints were visible to the jury, this would not by itself warrant relief. Where a trial court orders a defendant to be visibly shackled without adequate justification, the error is still subject to harmless error review. *Deck*, 544 US 635. In order to be considered harmless, the prosecution must normally “prove ‘beyond a reasonable doubt that the [shackling] error complained of did not contribute to the verdict obtained.’” *Id.*, quoting *Chapman v California*, 386 US 18, 24; 87 S Ct 824; 17 L Ed 2d 705 (1967); see also *Lakin v Stine*, 431 F3d 959, 966 (CA 6, 2005) (applying the harmless beyond a reasonable doubt standard to a shackling error and concluding that the error did not warrant relief because the error was harmless in light of the overwhelming evidence against the defendant). However, where—as is the case here—the constitutional error is unpreserved, the defendant bears the burden of proving that the shackling error prejudiced his trial. *Carines*, 460 Mich at 764; see also *United States v Miller*, 531 F3d 340, 346 (CA 6, 2008) (examining defendant’s unpreserved claim that he was improperly restrained for plain error).

After carefully reviewing the evidence adduced at trial in light of the shackling error, we conclude that defendant has not demonstrated prejudice. Defendant’s right hand was free throughout the trial and the jury saw defendant walk to the witness stand without restraints. Moreover, the trial court declined the prosecutor’s request to have defendant shackled again

after he testified. Thus, to the extent that the jury might have seen defendant's restraints, the exposure was quite limited. Given the substantial evidence of defendant's guilt, we conclude that any error in shackling defendant was harmless. See *Carines*, 460 Mich at 763-764. For the same reason, we cannot conclude that defendant's trial counsel's failure to properly object to defendant's shackles constitutes the ineffective assistance of counsel warranting relief. Defendant has failed to demonstrate that any deficiency in this regard prejudiced his trial. *People v Carbin*, 463 Mich 590, 600; 623 NW2d 884 (2001) ("To demonstrate prejudice, the defendant must show the existence of a reasonable probability that, but for counsel's error, the result of the proceeding would have been different.").

Next, defendant contends that he was denied his constitutional right to a speedy trial. This Court reviews a defendant's claim of deprivation of speedy trial rights by balancing factors set forth in *Barker v Wingo*, 407 US 514; 92 S Ct 2182; 33 L Ed 2d 101 (1972). See *People v Williams*, 475 Mich 245, 261; 716 NW2d 208 (2006). The following four factors are relevant to determining whether a defendant has been denied the right to a speedy trial: "(1) the length of delay, (2) the reason for delay, (3) the defendant's assertion of the right, and (4) the prejudice to the defendant." *Id.* Where a delay is less than 18 months, the defendant bears the burden of showing prejudice. *Id.* at 262.

In this case, defendant agrees that the delay was approximately 16 months and that he has the burden to show prejudice. *Id.* In examining the reasons for the delay, we note that many delays were the result of scheduling and docket issues, which weigh against the

prosecutor but are given a neutral tint. *Id.* at 263. The remainder of delays—slightly more than six months—are attributable to defendant. On this record, we conclude that the reasons for the delay and the length of the delay do not weigh in favor of concluding that defendant was denied his right to a speedy trial. *Id.* We also do not agree that defendant suffered prejudice as a result of the delays.

Defendant argues that he was prejudiced by this delay given that “a critical defense witness” died. Defendant states that the witness would have testified that, immediately following the victim’s death, she treated the wounds that defendant received when the victim attacked him with a box cutter. On appeal, defendant does not provide details regarding this testimony and how it might have affected his trial. Further, defendant failed to mention the witness during his interview with police and failed to produce the jacket he claimed was cut when the victim stabbed him. Police officers also found the box cutter the victim allegedly used inside a tool bag in the trunk of the vehicle defendant drove and there was no evidence of blood on it. Finally, the medical examiner testified that the victim’s injuries were not consistent with defendant’s testimony. Given the totality of the circumstances, we conclude that defendant was not deprived of his right to a speedy trial. See *Williams*, 475 Mich at 261-265.

Next, defendant contends that there was insufficient evidence to show that he acted with premeditation and deliberation. This Court reviews a challenge to the sufficiency of the evidence *de novo*. *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002).

In determining whether the prosecution has presented sufficient evidence to sustain a conviction, we must examine the evidence presented at trial in a light most favorable to the prosecution and consider whether there was sufficient evidence to justify a rational trier of fact in finding the elements of the crime beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 722-723; 597 NW2d 73 (1999).

In order to prove premeditation, the prosecution must present evidence that there was some time span between the defendant's initial homicidal intent and the defendant's act that caused the victim's death. *People v Gonzalez*, 468 Mich 636, 641; 664 NW2d 159 (2003) (quotations omitted). "The interval between the initial thought and ultimate action should be long enough to afford a reasonable person time to take a 'second look.'" *Id.* (citations omitted). Circumstantial evidence may constitute satisfactory proof of premeditation and deliberation. See *People v Unger*, 278 Mich App 210, 223; 749 NW2d 272 (2008).

In this case, there was sufficient evidence to allow a rational trier of fact to conclude beyond a reasonable doubt that defendant acted with deliberation and premeditation. The medical examiner testified that the victim's injuries were consistent with pressure being applied to both sides of her throat and that it takes approximately 30 seconds to choke a person to unconsciousness and another four to five minutes to strangle a person to death. A rational juror could conclude that defendant had time to take a second look at his actions during the time between the victim's unconsciousness and death. *Gonzalez*, 468 Mich at 641 (noting that "[m]anual strangulation can be used as

evidence that a defendant had an opportunity to take a ‘second look.’”). Thus, there was sufficient evidence from which a reasonable jury could have found the requisite premeditation beyond a reasonable doubt. *Id.*

Next, defendant argues that the trial court abused its discretion when it denied in part his motion to suppress incriminating statements he made during a custodial interrogation. Specifically, defendant argues that he was not properly advised of his rights and that the police officers should have ceased questioning him after he requested an attorney. Based on these violations, he contends that the trial court should have suppressed all his statements rather than just a portion of the statements.

This Court reviews de novo a trial court’s decision to suppress evidence. *People v Akins*, 259 Mich App 545, 563; 675 NW2d 863 (2003). We review a trial court’s factual findings for clear error. *Id.* Review of a trial court’s decision concerning whether a statement was involuntary requires this Court to conduct an independent analysis of the record to determine whether the trial court’s ruling was clearly erroneous. *People v Cipriano*, 431 Mich 315, 339; 429 NW2d 781 (1988). This Court gives “deference to the trial court’s findings, especially where the demeanor of the witnesses is important, as where credibility is a major factor.” *Id.* (quotations omitted).

After defendant’s arrest, several police officers interrogated defendant during a span of more than eight hours. Before the interrogation, a police officer advised defendant of his right to remain silent and have an attorney. A short time into the interview,

defendant stated: “[i]f I need to talk to a lawyer about this to find out what—what I need to do, then that’s what I need to do. But I am not just going to—it’s just crazy.” The interrogating officer, Detective Brian Beauchamp, responded by stating “right” and the interrogation continued for an extensive amount of time wherein defendant admitted to helping dispose of the victim’s body, but denied killing the victim. Beauchamp transcribed defendant’s version of events and asked defendant to sign the statement. Defendant refused and stated: “Okay. I can’t talk to a lawyer first before I sign this stuff, man?” and “I need some legal advice.” Beauchamp then terminated the interrogation and left the interview room. Thereafter, Captain Jim Mallery, entered the interview room and informed defendant he would return to the Kalamazoo County Jail. Mallery left and returned with a cigarette lighter that defendant had been promised, and as Mallery turned to leave the room, defendant stated “[s]o what am I getting charged with?” Mallery again advised defendant of his rights and interrogated defendant for several more hours, during which defendant confessed to killing the victim but stated that he did so in self-defense.

Before trial, defendant moved to suppress the statements made to Beauchamp and Mallery, arguing that he was denied his right to counsel and that his statements were involuntary. The trial court granted in part and denied in part defendant’s motion to suppress. The trial court found that defendant did not make an unequivocal request for an attorney when he stated “[i]f I need to talk to a lawyer ... then that’s what I need to do”, however, the court found that defendant invoked his right to counsel when he refused

Beauchamp's request to sign his first statement. The trial court suppressed the statements from that point until defendant reinitiated contact with Mallery. The trial court also found that defendant's statements were knowingly and voluntarily made.

Police must inform a suspect in custody that he has the right to remain silent and the right to have an attorney present before being questioned. *Miranda v Arizona*, 384 US 436, 479; 86 S Ct 1602; 16 L Ed 2d 694 (1966). To invoke the right to counsel, an accused must make a statement that can, "reasonably be construed to be an expression of a desire for the assistance of an attorney." *Davis v United States*, 512 US 452, 459; 114 S Ct 2350; 129 L Ed 2d 362 (1994) (quotation omitted). An ambiguous reference to an attorney "that a reasonable officer in light of the circumstances would have understood only that the suspect might be invoking the right to counsel," is insufficient. *Id.* Once a suspect invokes his right to counsel, police must cease all interrogation until counsel has been made available unless the suspect initiates further communication. *Edwards v Arizona*, 451 US 477, 484-485; 101 S Ct 1880; 68 L Ed 2d 378 (1981). An accused "initiates" further communication with law enforcement when he makes a statement that evinces a "willingness and a desire for a generalized discussion about the investigation" that could "reasonably have been interpreted by the officer as relating generally to the investigation." *Oregon v Bradshaw*, 462 US 1039, 1045-1046; 103 S Ct 2830; 77 L Ed 2d 405 (1983). However, statements that are merely "a necessary inquiry arising out of the incidents of the custodial relationship" do not amount to an initiation of further

communication with police for purposes of restarting interrogation. *Id.*

The trial court did not err when it determined that defendant did not invoke his right to counsel near the beginning of the interrogation when he stated: “[i]f I need to talk to a lawyer about this to find out what—what I need to do, then that’s what I need to do. But I am not just going to—it’s just crazy.” This statement was not an unequivocal request for an attorney and a reasonable officer would understand that defendant only “might” be invoking or considering his right to counsel. See *Davis*, 512 US at 461-462 (holding that the defendant’s statement that “maybe I should talk to a lawyer” was not an unequivocal request for counsel).

Similarly, the trial court did not err when it concluded that defendant reinitiated contact with Mallery when he asked “[s]o what am I being charged with?” In this case, Mallery entered the interview room and informed defendant that he would be transported back to jail and asked if defendant wanted a “light.” These statements did not amount to “initiation” of further communication with defendant for purposes of *Miranda* because they simply related to the routine incidents of the custodial relationship and did not relate to the criminal investigation. See *Bradshaw*, 462 US at 1045. After Mallery lit defendant’s cigarette and turned to leave the room, defendant asked him “[s]o what am I being charged with.” This statement evinced a “willingness and a desire for a generalized discussion about the investigation” that Mallery could “reasonably have ... interpreted ... as relating generally to the investigation. *Id.* at 1046; see

also *id.* at 1041-1044 (stating that the question “[w]ell, what is going to happen to me now?” initiated contact with police for purposes of *Miranda*). After defendant initiated contact, Mallery properly advised defendant of his rights; defendant’s argument to the contrary lacks merit.

In addition, the trial court did not err when it determined that defendant’s statement to the police was voluntary. *Cipriano*, 431 Mich at 339. An involuntary statement made by a defendant introduced in a criminal trial for any purpose violates that defendant’s due process rights. *Id.* at 331. The determination whether a statement was voluntary “should be whether, considering the totality of all the surrounding circumstances, the confession is ‘the product of an essentially free and unconstrained choice by its maker’ or whether the accused’s ‘will has been overborne and his capacity for self determination critically impaired.’” *Id.* at 333-334, quoting *Culombe v Connecticut*, 367 US 568, 602; 81 S Ct 1860; 6 L Ed 2d 1037 (1961). In making this determination a trial court should consider:

the age of the accused; his lack of education or his intelligence level; the extent of his previous experience with the police; the repeated and prolonged nature of the questioning; the length of the detention of the accused before he gave the statement in question; the lack of any advice to the accused of his constitutional rights; whether there was an unnecessary delay in bringing him before a magistrate before he gave the confession; whether the accused was injured, intoxicated or drugged, or in ill

health when he gave the statement; whether the accused was deprived of food, sleep, or medical attention; whether the accused was physically abused; and whether the suspect was threatened with abuse. [*Cipriano*, 431 Mich at 334.]

The presence or absence of one factor is not dispositive. *Id.* Instead, whether a statement is voluntary depends on the totality of the circumstances surrounding the statement. *Id.*

In this case, the record indicates that, at the time of the interrogation, defendant was a 41-year-old man with an 11th grade education who had numerous prior contacts with police. While the interrogation lasted nearly nine hours, our Supreme Court has held that a statement given in similar circumstances was voluntary. See *People v Sexton (After Remand)*, 461 Mich 746, 748-750, 754; 609 NW2d 822 (2000). And, although defendant was held for several days before his interrogation, he was held on other charges, and delay alone is insufficient to find defendant was coerced. *Cipriano*, 431 Mich at 339. Both Beauchamp and Mallery properly advised defendant of his constitutional rights and defendant waived those rights and agreed to participate in the interview. Beauchamp testified that defendant was given access to a restroom. And, the record supports that defendant was provided cigarettes and something to drink. Beauchamp and Mallery also testified that they took breaks during the interrogation. Defendant was not under the influence of drugs or any other intoxicants, he did not appear tired, and did not ask to stop the interrogation. He also did not indicate that he could not continue or that

he was uncomfortable or sleepy. Defendant did not require immediate medical care and he was not threatened or promised anything. On this record, the trial court did not clearly err in determining that defendant's statements were voluntarily made. *Akins*, 259 Mich App at 563.

Finally, defendant contends that he was denied the effective assistance of trial counsel. Defendant does not provide any analysis as to how his counsel was ineffective and he cites nothing in the record to support his argument. Therefore, he has abandoned this claim of error on appeal. See *People v Kevorkian*, 248 Mich App 373, 388-389; 639 NW2d 291 (2001).

There were no errors warranting relief.

Affirmed.

/s/ Cynthia Diane Stephens

/s/ Michael J. Kelly

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE
STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
August 5, 2010

v

No. 287767
Kalamazoo Circuit Court
LC No. 2007-000165-FC

ERVINE LEE DAVENPORT,
Defendant-Appellant.

Before: STEPHENS, P.J., and GLEICHER and M. J.
KELLY, JJ.

GLEICHER, J. (*concurring*).

I concur in the result reached by the majority, but write separately to elaborate my view of the manner in which the unfounded shackling of defendant during trial, and defense counsel's failure to object to the shackling, qualify as harmless errors.

Explicitly clear due process principles prohibit routine shackling of criminal defendants. "[T]he Fifth and Fourteenth Amendments prohibit the use of physical restraints visible to the jury absent a trial court determination, in the exercise of its discretion, that they are justified by a state interest specific to a particular trial." *Deck v Missouri*, 544 US 622, 629; 125 S Ct 2007; 161 L Ed 2d 953 (2005). More than a decade

before the United States Supreme Court decided *Deck*, the Michigan Supreme Court declared, “The rule is well-established in this and other jurisdictions that a defendant may be shackled only on a finding supported by record evidence that this is necessary to prevent escape, injury to persons in the courtroom or to maintain order.” *People v Dunn*, 446 Mich 409, 425; 521 NW2d 255 (1994) (footnote omitted).

The record in this case reveals that the trial court shackled defendant pursuant to a “policy.” On the first day of trial, outside the jury’s presence, defense counsel stated:

The other thing is I understand the Court’s policy regarding the shackles. However, it’s important that [defendant] and I have an opportunity to communicate back and forth, and generally we use a... method where he would write notes back and forth. I would ask that any handcuffs during trial be removed prior to the jury entering, giving us an opportunity to write back and forth freely.

No record findings justified shackling defendant. Neither the trial court nor counsel explained the basis for the shackling policy or the particular reasons supporting defendant’s shackling in this case.

The trial court’s shackling policy placed in serious jeopardy defendant’s right to a fair trial. The United States Supreme Court explained in *Deck* that visible shackling without cause impugns the integrity of a criminal trial, because it “undermines the presumption of innocence and the related fairness of the fact-finding process,” diminishes the accused’s right to

counsel, and “affronts ... the dignity and decorum of judicial proceedings that the judge is seeking to uphold.” *Id.* at 630-631 (internal quotation omitted). While no reasonable excuse exists for defense counsel’s failure to object to the shackling policy, I believe that the trial court bears equal responsibility for safeguarding the presumption of innocence and the integrity of a criminal trial. Indisputably, the trial court’s decision to shackle defendant constituted plain error.

Defense counsel’s neglect to object to the shackling contributed to the critical gap in the record concerning the visibility of the shackling and abetted the trial court’s denial of defendant’s due process rights.¹ “[I]t has long been recognized that the right to counsel is the right to the effective assistance of counsel.” *United States v Cronin*, 466 US 648, 654; 104 S Ct 2039; 80 L Ed 2d 657 (1984), quoting *McMann v Richardson*, 397 US 759, 777 n 14; 90 S Ct 1441; 25 L Ed 2d 763 (1970). In *Strickland v Washington*, 466 US 668, 687; 104 S Ct 2052; 80 L Ed 2d 674 (1984), the United States Supreme Court held that a convicted defendant’s claim of ineffective assistance of counsel includes two components: “First, the defendant must

¹ Defendant presented to this Court a video record of the trial. As the majority acknowledges, defendant’s wrist shackle is clearly visible on the video. The majority observes that “there is no record evidence that the video accurately portrays the view from the position of the jurors.” *Ante* at 3. However, because defense counsel failed to object to the shackling, the record before this Court contains no accurate information about the jury’s sight lines. Given the record before us, it is simply impossible to determine with any degree of reasonable certainty whether the jurors could observe defendant’s shackled wrist. In my view, this Court should refrain from speculation with regard to video camera angles and the location of the jury box.

show that counsel's performance was deficient.... Second, the defendant must show that the deficient performance prejudiced the defense." To establish the first component, a defendant must show that counsel's performance fell below an objective standard of reasonableness under prevailing professional norms. *People v Solmonson*, 261 Mich App 657, 663; 683 NW2d 761 (2004). With respect to the prejudice aspect of the test for ineffective assistance, the defendant must demonstrate a reasonable probability that but for counsel's errors, the result of the proceedings would have differed. *Id.* at 663-664.

Defense counsel's failure to effectively object to the shackling fell below an objective standard of reasonableness. In the absence of any substantiation that defendant posed a security risk to courtroom personnel, I can conceive of no tactical reason for defense counsel's lack of objection to the shackling. Counsel's failure to object also converted this Court's review from the harmless error standard, under which the prosecution bears the burden of proving beyond a reasonable doubt that the shackling did not contribute to the verdict, to that of plain error, under which defendant must demonstrate a reasonable probability that a more favorable result would have obtained had the court not shackled him. Thus, counsel's silence in the face of unjustified shackling affected a "double whammy"; defendant remained shackled and he forfeited stringent appellate review of this due process violation.

The majority concludes that "[g]iven the substantial evidence of defendant's guilt, we conclude that any error in shackling defendant was harmless." *Ante*

at 4. Because the error was plain and affected defendant's substantial rights, the proper inquiries about the impact of the shackling become whether it (1) "affected the outcome of the lower court proceedings," and (2) either "resulted in the conviction of an actually innocent defendant" or "seriously affected the fairness, integrity or public reputation of judicial proceedings." *People v Borgne*, 483 Mich 178, 196-197; 768 NW2d 290, reh granted in part 485 Mich 868 (2009). With respect to defense counsel's ineffective assistance, this Court must determine whether, but for counsel's error, a reasonable probability exists that the result of the proceedings would have differed.

Defendant claimed self-defense. He testified that while he drove the victim home, the victim threatened him with a box cutter and swung it into defendant's right arm. Defendant admitted that he grabbed the victim and pushed her back, pinning her against the passenger side of the vehicle, but denied that he intended to hurt her. The pathologist who performed an autopsy on the victim rebutted defendant's testimony by explaining that the victim's neck injury appeared inconsistent "with a broad force placed across" the victim's neck, but consistent with "choking." Forensic testing of the box cutter did not reveal any blood. If visible to the jury, the shackles served to emphasize defendant's violent character and to rebut his claim that he acted in self-defense. However, because the record remains unclear as to whether any jurors saw the shackles, and because substantial evidence supported the jury's rejection of defendant's self-defense claim, he has failed to establish that the shackles affected the outcome of his trial.

On the basis of the same “substantial evidence of defendant’s guilt,” the majority holds that defendant did not satisfy the prejudice component of the *Strickland* test. *Ante* at 4. In my view, an analysis under *Strickland* yields a closer result. The prosecution alleged that defendant committed a violent crime, while defendant claimed that he protected himself from an attack by the intoxicated victim wielding a box cutter. As this Court observed in *People v Baskin*, 145 Mich App 526, 546; 378 NW2d 535 (1985),² “This is a situation where actions speak louder than words. The mere shackling of the defendant in this case impinged upon defendant’s credibility by indicating that defendant was not to be trusted and prejudiced his right to a fair trial.” But the record here lacks any evidence tending to affirmatively demonstrate that the jurors saw the shackles. Furthermore, the pathologist’s testimony and the physical evidence completely refuted defendant’s claim that he merely staved off the victim’s attack. Because defendant has not established a reasonable probability that, but for counsel’s errors, the result of his trial would have differed, I agree that his conviction should stand affirmed.

/s/ Elizabeth L. Gleicher

² Superseded by statute on other grounds as noted in *People v O’Quinn*, 185 Mich App 40, 44- 45; 460 NW2d 264 (1990), overruled in *People v Koonce*, 466 Mich 515, 522-523; 648 NW2d 153 (2002).

Order

March 9, 2011

141832

**Michigan Supreme Court
Lansing, Michigan**

Robert P. Young, Jr.,
Chief Justice

Michael F. Cavanagh
Marilyn Kelly
Stephen J. Markman
Diane M. Hathaway
Mary Beth Kelly
Brian K. Zahra,
Justices

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

SC: 141832
COA: 287767
Kalamazoo CC:
2007-000165-FC

ERVINE LEE DAVENPORT,
Defendant-Appellant.

On order of the Court, the application for leave to appeal the August 5, 2010 judgment of the Court of Appeals is considered and, pursuant to MCR 7.302(H)(1), in lieu of granting leave to appeal, we REVERSE the Court of Appeals order denying the defendant's motion to remand for an evidentiary hearing. The defendant should have been permitted to

develop the record on the issue of whether his shackling during trial prejudiced his defense. See *Rhoden v Rowland*, 10 F3d 1457, 1460 (CA 9, 1993). We also REVERSE the Court of Appeals determination that the defendant did not preserve the issue of whether his shackling during trial constituted a due process violation, because defense counsel requested that both of defendant's hands be unshackled to avoid the prejudice that would result if the jury saw the shackles, and the circuit court denied her request. See *Fast Air, Inc v Knight*, 235 Mich App 541, 549 (1999); trial transcript Volume I, p 113. If it is determined that the jury saw the defendant's shackles, the circuit court shall determine whether the prosecution can demonstrate beyond a reasonable doubt that the shackling error did not contribute to the verdict against the defendant. *Deck v Missouri*, 544 US 622, 635; 125 S Ct 2007; 161 L Ed 2d 953 (2005). We REMAND this case to the circuit court for further proceedings consistent with this order. In all other respects, leave to appeal is DENIED, because we are not persuaded that the remaining questions presented should be reviewed by this Court.

We do not retain jurisdiction.

I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

March 9, 2011 Corbin R. Davis
Clerk

STATE OF MICHIGAN
9th JUDICIAL CIRCUIT COURT
TRIAL DIVISION
FOR THE COUNTY OF KALAMAZOO

PEOPLE OF THE STATE OF MICHIGAN,
v Case No.:C2007-0165FC
ERVINE LEE DAVENPORT.
Defendant.

EVIDENTIARY HEARING - VOLUME I OF II
BEFORE THE HONORABLE
PAMELA LIGHTVOET, CIRCUIT JUDGE
Kalamazoo, Michigan – Friday, June 24, 2011

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None

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Kalamazoo, Michigan

Friday, June 24, 2011 at 9:11 a.m.

COURT CLERK: The court calls the matter of People versus Ervine Lee Davenport, case number C07-0165FC.

Parties, please state appearances for the record.

MS. BRUINSMA: Good morning, your Honor, Cheri Bruinsma appearing on behalf of the People.

MS. MEINBERG: Good morning, Susan Meinberg from the State Appellate Defender Office on behalf of Mr. Davenport.

THE COURT: Mr. Davenport is here also.

Counsel, we are here on remand, there is an issue we need to address with regards to the fact that during the trial Mr. Davenport did have a belly chain and his left wrist was connected to the chain. We left his right wrist open for notes and contact with his attorney and so forth during the trial -- and also ankle chains, correct, Counsel?

MS. MEINBERG: That's correct.

THE COURT: And so it has been remanded back to us. Nothing has been placed on the record with regards to the reasons for that, aside from a comment by the Prosecuting Attorney, and I'll get to that in a moment.

So, the issue for the Court right now is whether or not any of the jurors saw any shackles or chains or

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whatnot and whether, depending on what is said -- well, that is the issue right now and we'll move on to the next issue if need be.

We've discussed this, just briefly, in chambers. And I did indicate that I was going to place a few things, comments, on the record and I addressed those with Counsel beforehand, so that you are aware of that. And -- so let me just start by doing that and then I'll turn it over to you Counsel for brief arguments.

You both have submitted some memorandums with regards to this evidentiary hearing; I've reviewed those and we discussed kind of the procedure.

We have subpoenaed the jurors on this case and they are upstairs. Some of them are here and the rest of them will hopefully be checking in and we know that we had issues with a few of them and the Court excused them for the day and we will bring them back, if need be, depending on where we are at. But I think that there are three of them that we have -- that are not coming today; the rest of them should be here.

But let me just say this, I explained to Counsel that my general procedure during trials is when things are discussed in chambers -- I usually take notes and I have a list with me that I then bring out to the bench just to make sure that things are covered.

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I apologize because in this case, obviously, the reasons for the Court's decision were not placed on the record. It is three years later; I certainly don't remember the specifics of the conversation that was had in chambers with Counsel and neither of you were present at the trial, so it wasn't you that I had the conversation with. And certainly if we need to get information from the attorneys, then we can do that later if need be.

I do have a specific recollection that we did discuss whether or not Mr. Davenport should remain in shackles, I guess, during the trial. I don't, certainly, remember all of the specifics of that conversation. It is referenced in the transcript that there was some

concern by; the Sheriff's about a comment made by Mr. Davenport to them and they took that as a threat. That information was passed on to us and I do remember that and that is why it came up in chambers.

And based on that -- I know that we also had discussion about Mr. Davenport's size and the way that the prosecuting attorney was alleging the victim was killed in this case. There was some concern about that.

We -- and that is all I remember about what was discussed and why the Court took the action that it did. And I'll just indicate that it is not something standard that the Court does. If there is an issue or there is a

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security issue or some concern, then the Court makes that decision. That is just a broad statement, not related to this case in general; but I will say that.

And I know that, like -- as I indicated before, Counsel -- defense counsel made a request to let Mr. Davenport be able to write notes to him so that he could be involved with his defense and we allowed that. So, I will state that also.

And -- obviously the record at trial is the record at trial, so I am just indicating my recall three years later, again. And I -- another thing that I told Counsel was that when the Court of Appeals opinion came out and I read the opinion, I do have a specific recollection of thinking, I can't believe we didn't put that on the record. We didn't, obviously, from -- and I will say that I have not reviewed the entirety of the record; Counsel

certainly has, I can tell, from the briefs, so I will say that.

But that is the only thing that I remember with regards to the case, so that is all I can say about that issue.

With that, I am going to turn it over to Ms. Bruinsma first for any arguments, comments, before we start bringing the jurors down.

MS. BRUINSMA: Your Honor, the only thing that I

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would like to have addressed on the record is just the issue with respect to questioning the jurors and the extent of the questioning.

We both filed memorandum on this case; I did do a supplemental one just on the issue of the extent of the questioning of the jurors and I think that it is appropriate, given the issues in the case and the Court's ultimate determination to ask the jurors if they did -- indeed did see the Defendant in shackles and/or leg chains, and whether that affected their verdict. I cited the case law that I believe supports allowing that questioning in my supplemental response and I would -- I would ask that the Court do allow that questioning.

Certainly if the Court of Appeals or subsequent court were to decide that that was not appropriate, they could disregard that, but I think that it makes sense to ask that question given the issues and to

prevent any further need for evidentiary hearing down the road. So, I would ask that the Court allow those questions.

MS. MEINBERG: Your Honor, first of all, for the record and I hate to be ironic, but I am going to need Mr. Davenport's assistance during this hearing. If he could have his right hand unshackled.

THE COURT: That's fine.

MS. MEINBERG: That would be great; he can take

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notes.

As for the extent of the questioning, I would just refer this Court to the Michigan Supreme Court order in this case that says that we are here for a determination as to whether the jurors saw the shackles. And then it says that this Court shall make a determination about whether the Prosecutor has met its burden.

Also, when you look at Deck versus Missouri, the only issue -- shackling is different than extraneous influences on a jury. Shackles is held to a different standard.

And if you look at Deck, which is a 2005 case, the only issue is whether the shackles were visible. Deck doesn't say anything about that we have to remand it back to decide if the jurors, you know, talked about the shackles; whether it affected their verdict. I am not

sure that any juror is going to get on the stand and admit that, yes, it affected their verdict.

And if you look at Budzyn, which is the case cited by the Prosecutor, that deals with general extraneous influences. And it talks about the threshold requirement of the defendant and then how that burden, if it is met, flips to the prosecutor to show -- um -- whether the error was harmless beyond a reasonable doubt.

And the Supreme Court in Budzyn, tells you that

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the only two ways that the prosecutor can meet that burden is to show that the extraneous evidence was duplicative of what was admitted at trial, that can make it harmless; or if evidence of guilt was overwhelming. They didn't -- they don't say anything about the jurors have to come in and say we talked about it or it made a difference, it affected the verdict.

Now definitely Ms. Bruinsma is right, there were jurors that came in, in the case she cited, who made those statements on the record, but it is not part of the burden. So, we would object to the Court opening it up in that manner.

THE COURT: I indicated -- we discussed this in chambers also Counsel, that I was going to allow the jurors to be questioned with regards to whether or not it came up in their deliberations and whether or not it affected their verdict in any way.

The Court is -- my reading of this -- the opinion from the Supreme Court is that the Court is to determine:

Number one, whether the Jury saw the Defendant's shackles and we have -- everyone has been cooperative. We have subpoenaed all of the jurors so we can ask them if they have a recollection of that. And if so, what the recollection is, number one.

The next step, if one of the jurors indicates

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that yes, they did see handcuffs or shackles, the Court also has to decide, as you indicated, whether the prosecution can demonstrate beyond a reasonable doubt that the shackling error did not contribute to the verdict. I wasn't in the room deliberating, certainly, so I think that some of the best evidence that we can get on that issue is asking the jurors themselves.

We have subpoenaed the jurors and taken time out of their busy schedules to be here today and certainly I don't want to have to bring them back again to go to that next step if need be. So, they are here -- I think that it is appropriate given the requirements that the Court needs to decide or potentially needs to decide to ask them those questions. So, I will allow those questions.

We discussed this. Also, procedure wise and I indicated that it is the Prosecuting Attorney's burden, so I am going to let Ms. Bruinsma ask the questions, but I -- I don't expect that it is going to be too long for each juror, but I will allow questioning on:

Number one, do they have a recall as to whether or not they saw shackles or chains or handcuffs and what that recollection is -- they have --

If they remember whether or not there was any discussion about that among the jurors at any point and again, what their recollection is and whether or not that

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influenced their decision or verdict in any way.

So, I will allow those questions to be asked.

Anything else that we need to address, then, Counsel, before we bring the jurors down?

MS. BRUINSMA: I don't believe so, your Honor.

MS. MEINBERG: Your Honor, the shackles.

THE COURT: He does need to -- yeah, if you could just remove his right hand there, yes.

All right.

Also with regards to the procedure, I -- my law clerk, Aaron Van Langevelde, is going to be bringing two jurors down from upstairs at a time. And we did let him know that they are going to be placed under oath; we are going to ask them questions we will have them state their name -- and we are going to ask them questions about an issue that arose during the trial. So, they will be informed about that.

My understanding is that the first juror that comes has a family member who is in critical condition, so we are going to get that juror in and out of here.

So, we will do it that way.

And those of you in the courtroom. Just a reminder that if you have a cell phone or an electronic device to make sure that it is turned off. If it goes off, I will take it until the end of the day. So, double check

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that, there are signs everywhere. Just a reminder.

Ma'am, come right over here. Before you have a seat, I am going to have you raise your right hand. I am going to place you under oath.

Do you solemnly swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth so help you God?

MS. ROSEBOOM: I do.

THE COURT: Please have a seat. I am going to have you state and spell your first and last name. Before I do that, I am just going to let you know that you need to make sure that you speak right in the end of that microphone. If you go to either side, sometimes our recording system does not pick up. So, first of all, I'll let you state your first and last name and spell it please, for the record.

THE WITNESS: Kali Roseboom, R -- or -- K-a-l-i R-o-s-e-b as in boy-o-o-m.

THE COURT: We are going to go through some questions about the trial. I realize that it was three years ago now, back in 2008. If you do not remember something, please let us know that, if you can't answer the question.

THE WITNESS: Okay.

THE COURT: I am going to turn it over to the

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Prosecuting Attorney first to ask you some questions. The Defense Attorney might have some follow up questions. The attorneys are different than the ones at trial. I don't know if you remember that or recognize them, but you are not going to recognize them because they are different.

But I am just going to turn it over to them; we just have some questions about an issue that arose during the trial. All right.

THE WITNESS: Okay.

THE COURT: Ms. Bruinsma.

MS. BRUINSMA: Thank you, your Honor.

KALI ROSEBOOM

**Called to testify at 9:27 a.m.;
testified as follows:**

EXAMINATION BY THE PROSECUTION

BY MS. BRUINSMA:

Q Good morning, Ms. Roseboom.

A Good morning.

Q Do you recall being a juror on this case?

A I do.

Q And this is the Ervine Davenport case?

A Yes.

Q Okay.

And has anybody discussed with you the reason that you are here today?

A No.

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Q Okay.

During the trial, do you recall the Defendant being present in the courtroom?

A Yes.

Q Is there anything about his appearance in court that stands out in your mind?

A He was dressed really nice. The first day he was wearing his prison suit and then the rest of the time he was dressed nice.

Q Is there anything else about his appearance that stands out in your mind?

A No.

Q Anything about how the Defendant presented himself in court stand out in your mind?

A No, he was just sitting there.

Q Do -- did you notice during the course of the trial whether the Defendant was restrained in any way?

A No, because he was always sitting when we came in.

Q Did you ever see the Defendant wearing handcuffs or any restraints on his hands?

A Um, no.

Q During any part of the trial?

A I think maybe the first day when we were doing the jury selection when he was wearing the orange thing; but I don't remember any other time.

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Q And so -- do you recall what it was that you saw?

A On the first day?

Q Yes.

A He was wearing the orange jumpsuit thing on the first day of the jury selection and I think that he was handcuffed. I don't -- I don't recall exactly. But the rest of the time he was just looking normal.

Q So you don't recall any -- any time for his hands being restrained other than that first day?

A No.

THE COURT: Let me just back up.

No, you don't recall or no --

THE WITNESS: I don't recall him ever being handcuffed afterwards --

THE COURT: Okay.

THE WITNESS: -- or any other day.

MS. BRUINSMA: Okay.

BY MS. BRUINSMA:

Q How long, if you recall, did you -- were you able to see the handcuffs?

A I was in the front row right by him on the first day when they were doing the selection and stuff and I only saw him once. And I was one of the first people called up and I didn't see him any other time, I didn't know if he wore them for the rest of the day or not or what was going on

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there.

Q Did seeing the handcuffs make you think anything in particular?

A No.

Q Okay.

Did it make you -- did it have any significance at all to you?

A No, because I just thought that he was just coming from the county wherever he was staying during the trial.

Q Did you assume that to be a routine type of thing?

A Yeah.

Q And did you ever discuss the fact that you saw the handcuffs with any of the other jurors?

A No.

Q Okay.

Was it something that came up during the course of deliberations at all?

A No.

Q Did viewing the Defendant in handcuffs affect your verdict in the case?

A No, I thought that the first day that it was just routine and then I didn't see them any other time, so I didn't think that he was.

Q Did it make you any more inclined to find him guilty?

A No.

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Q Did you see whether the Defendant's legs were restrained in any way?

A No, I didn't, he was always sitting.

Q Do you recall if any any of the other jurors mentioned that fact to you during the course of the case?

A No, the only time that we talked about it was, obviously, when we were deliberating and nobody mentioned anything.

Q Let me just clarify a second. The only time that you talked about it --

A The case.

Q -- you mean the case?

A Yes. I'm sorry.

Q All right.

And to your recollection, the fact that there was, handcuffs was not something that was ever discussed?

A No.

Q You decided the case based on the evidence that you heard at trial?

A Yes. We all did our -- we all wrote down everything and we spoke it over and that is how we decided the verdict.

MS. BRUINSMA: I don't have any further questions.

THE COURT: Counsel.

EXAMINATION BY THE DEFENSE

BY MS. MEINBERG:

Q Good morning.

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A Good morning.

Q Thank you so much for coming.

Do you remember Mr. Davenport testified during trial?

A Yes.

Q And do you remember that the Jury had to go out in the hallway before he testified?

A I don't -- I don't know for sure; but probably.

Q Okay.

And do you remember --

A We went out in the hall a lot.

Q Okay.

And do you remember when you came back in, Mr. Davenport went from being on the -- at the counsel table, he was sitting in the witness chair when you came back in the courtroom?

A Yes.

Q Did -- did you figure out why you had to go out in the hallway?

A No.

Q Okay.

A We had to go out in the hallway a lot.

Q Okay.

And when the Jury took stand and stretch breaks, did you ever look over at the defense table and see a

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Q handcuff on his wrist?

A No.

Q Which seat were you --

A I was number four.

Q Number four.

I'm sorry, I am not from this district, where - where is number four?

THE COURT: Actually -- just -- Counsel, let me just indicate. There would have been 14 jurors. There would have been another chair there which we bring in if there is 14, not 13.

So, that would be -- actually, no --

THE WITNESS: It was one, two, three and then I was four.

THE COURT: Our number system was backwards. We used to start from there and now we are starting from here.

So, she is front row and then fourth row (sic) from that far end, right?

THE WITNESS: Yes.

THE COURT: The fourth chair from the far end?

MS. MEINBERG: Okay, great.

BY MS. MEINBERG:

Q So you said that you saw the cuffs on the first day?

A Yes.

Q And did you notice the deputy standing behind him?

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A I think so; there were a lot of deputies standing around.

Q And what did -- what did you think that meant?
Did you think that he might be dangerous?

A No, I just thought that was routine; I have never
done jury duty before.

Q Okay.

And during voir dire, you were sitting in the
first row?

A Yes.

Q And you said that you saw the cuffs on the first
day?

A I think so, yes.

Q And during voir dire, were you one of the jurors
that went up to the bench and talked to the Judge
about any problem that you had with serving?

A No, I did not have a problem at the time, so --

Q Okay.

Did any of the alternate jurors or anyone else
in the -- in the pool, in the beginning, talk about
the shackles --

A No.

Q Or the cuffs.

Okay.

Did you see anyone else in the courtroom shackled?

A No.

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MS. MEINBERG: Thank you.

THE WITNESS: You're welcome.

THE COURT: Anything further, Counsel.

MS. BRUINSMA: No follow up questions, your Honor.

THE COURT: Let me just clarify for the record.

You pointed, when you were asked a question about coming in with the initial pool and that you were seated in the front row and then you pointed in this direction.

THE WITNESS: Yes.

THE COURT: So if you are looking out at the court in the back of the court, you were sitting on the right side in the front row?

THE WITNESS: Correct.

THE COURT: There is a gentleman in a gray suit sitting down in the very front row there, in front of the double doors that go to the back of the courtroom. Were you sitting where he is or in the row behind him?

THE WITNESS: I was behind the double doors in the row behind him.

THE COURT: So, the first row behind the double swinging doors there.

THE WITNESS: Yes.

THE COURT: Okay.

I appreciate that. Any follow up, Counsel, based on the Court's questions?

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MS. BRUINSMA: No, your Honor.

MS. MEINBERG: No, your Honor.

THE COURT: All right.

Thank you, ma'am.

THE WITNESS: Thank you.

THE COURT: You are excused; you can leave for the day. We appreciate your time. Please don't discuss the testimony with anyone.

THE WITNESS: Okay.

THE COURT: I assume that you are not going to have contact with jurors, but I don't know.

THE WITNESS: No.

THE COURT: So, anyone who has been subpoenaed, don't discuss this with them.

THE WITNESS: Okay.

THE COURT: Thank you, ma'am.

THE WITNESS: Thank you, so much.

(At 9:35 a.m., witness excused)

THE COURT: The next witness should be coming in shortly.

Before you have a seat ma'am, please raise your right hand.

Do you solemnly swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth so help you God?

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MS. DECAMP: Yes.

THE COURT: Please have a seat ma'am.

I am going to have you state your full name, first and last name, and spell it in a moment. But before I do that, just make sure that you speak right into the end of that microphone. If you move to either side, sometimes our recording system doesn't pick up and it is hard for folks to hear.

So, please state and spell your first and last name, if you would, ma'am.

THE WITNESS: Hannah Decamp. H-a-n-n-a-h D-e-c-a-m-p.

HANNAH DECAMP

**Called to testify at 9:35 a.m.;
testified as follows:**

EXAMINATION BY THE PROSECUTION

THE COURT: We are going to ask you questions about an issue that arose during the trial. If you don't remember please feel free to let us know that; I don't want you to guess at anything.

I am going to turn it over to Ms. Bruinsma in a moment, she is with the Prosecuting Attorney's Office. The attorneys are different than the attorneys that were present during the trial, so -- just so that you are aware of that. I don't know if you have any recollection of what the attorneys looked like; but I'll go ahead and turn it

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over to Ms. Bruinsma, she'll have some questions for you.

MS. BRUINSMA: Thank you, your Honor.

BY MS. BRUINSMA:

Q Good morning Ms. Decamp.

Do you recall being a juror on this case?

A Yes.

Q And this would be the Ervine Davenport case, correct?

A Yep.

Q Has anyone discussed the reason that you are here today with you?

A No.

Q Okay.

During the trial, do you recall the Defendant being present in the courtroom?

A Yes.

Q Do you recall anything about his appearance? Is there anything that stands out in your mind?

A No.

Q Do you recall how he was dressed at trial?

A Nice, I think he had nice clothes on, I feel like.

Q Do you remember anything in particular that he was wearing?

A Khaki's and a button up shirt, I feel like.

Q Is there anything about how he presented himself during the course of the trial that stands out in your mind?

A No.

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Q Do you -- did you notice during the trial whether the Defendant was restrained in any way?

A No.

Q Did you ever specifically see the Defendant wearing handcuffs during the trial?

A Not that I remember.

Q All right.

And during the voir dire process as well, when you were being -- when they were selecting the Jury, do you recall seeing the Defendant in handcuffs at all?

A No.

Q What about seeing the Defendant in leg shackles?

A I don't remember -- I don't --

Q You don't recall seeing anything like that?

A I remember him standing up, but I don't remember if he had leg shackles on or not.

Q Okay.

And when he stood up, do you recall seeing anything like handcuffs on him?

A I don't remember, no.

Q Okay.

Is there anything else about the Defendant's appearance during the course of the trial that stands out in your mind?

A No.

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Q During the course of the deliberations, did anybody mention to you or do you recall it being discussed that the Defendant was wearing any type of restraints?

A I remember like when we first started, we came in and we sat down and he had to go right back out and then he was different -- dressed different when we came back in.

Q But when the jurors were discussing things in the room by -- themselves

A Oh, no.

Q -- did anybody ever mention that fact?

A No.

Q Was it something that came up during your discussions at all?

A Yeah, just upstairs, I think -- I don't know.

Q That the Defendant was wearing handcuffs?

A That we had to go out because he had to change.

Q Clothing or --

A Change --

Q -- what was your understanding?

A -- his clothes.

Q Was that something then that you discussed as a group?

A Like --

Q The jurors?

A Yeah. Yeah.

Q Okay.

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So you discussed the fact that you had to go out of the courtroom?

A Right.

Q And did you -- was it specifically discussed that the Defendant was wearing handcuffs?

A No.

Q Was it discussed that he was wearing leg irons or leg shackles?

A No, I think that he was in an orange -- like an orange --

THE COURT: I need you to speak up just a little bit, if you would.

THE WITNESS: I think that he was in an orange suit and then had to change into nice clothes.

BY MS. BRUINSMA:

Q Okay.

And do you recall what the -- what the discussion was then about --

A No.

Q Okay.

A I just remember us having to leave for that.

Q And you remember the jurors having to leave the courtroom, you -- were you told that was because the way he was dressed or that was something that you presumed?

A I guess that I presumed that.

Q Okay.

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And was that something that was discussed with the other jurors?

A That day, yeah.

Q Do you recall what was discussed specifically?

A I mean, I think that we just said that was -- I don't know, it was just like an observation.

Q Okay.

A It wasn't --

Q Oh, we had to in the hall, oh, he must be changing his clothes or something like that.

A Like later that day.

Q Okay.

MS. BRUINSMA: I don't have any further questions from this witness.

EXAMINATION BY THE DEFENSE

BY MS. MEINBERG:

Q Good morning. Thank you, so much for coming.

When you -- on the first day of trial when you first came in, in a big jury pool, can you tell me where you were sitting in the gallery? Do you remember?

A No, I don't remember.

Q Because you sat in the gallery the first day and part of the second day, but you don't remember either day where you were sitting?

A The first day, I feel like I was sitting third or fourth on

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that side.

Q On the right side where the gentleman in the gray is?

A Mmm hmm, but like farther back.

Q Farther back.

A And I think the whole second day I was up here.

Q Okay, second day you were in the jury box?

A Yes.

Q And what do you remember what seat you were sitting in, in the jury box?

A No.

Q Okay.

And so when you were -- during the voir dire when they were picking the jury and you were sitting in the gallery, do you ever remember looking at Mr. Davenport sitting at counsel table?

A Yeah, I mean, I'm sure I did.

Q Did you remember seeing any belly chains or a chain around his waist, especially when his lawyer got up to stand here? Did you notice anything when he was sitting in the chair that was around his waist?

A I don't remember.

Q Okay.

It has been three years since the trial. You are having a hard time remembering details?

A Yes.

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Q So, it is possible that you did see it, but you just don't remember?

A Yep.

Q Okay.

And when you were in the jury box and you stood -- took a stand stretch break or walked in and out, do you ever remember looking over at Mr. Davenport and seeing a handcuff on his wrist?

A No.

Q Okay.

When he turned to look at that screen behind him, do you ever remember seeing a handcuff on his wrist?

A No.

Q No you didn't see it or no, you don't recall?

A I don't remember.

Q Okay.

Did you ever hear the sound of chains clanking or anything you thought that might be handcuffs or foot restraints or leg restraints?

A No.

Q Okay.

You say that you remember having to leave the courtroom for maybe -- what you presumed was change in clothes; do you remember -- right before Mr. Davenport took the stand and testified, the Jury went out in the hallway,

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do you remember that?

A Mmm hmm.

THE COURT: Was that a yes?

THE WITNESS: Yes.

BY MS. MEINBERG:

Q And then you were out there briefly. When you came back in, do you remember that Mr. Davenport was now sitting in the witness stand?

A Yes.

Q And did you ever guess as to why that was that you had to go out in the hallway?

A I didn't. I just remember somebody saying that he had changed.

Q His clothes?

A Right.

Q Okay.

A And I don't even know if that is right, honestly; I don't remember.

Q Okay.

And did you notice every day when the Jury walked in and walked out, the Def -- Mr. Davenport and the lawyers, didn't stand up? Did you ever guess why that was?

A No.

MS. MEINBERG: I have nothing further, thank you.

MS. BRUINSMA: Just a couple of follow up

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questions, your Honor.

**FURTHER EXAMINATION BY THE
PROSECUTION**

BY MS. BRUINSMA:

Q Ms. Decamp, when you were deliberating on the case, did you decide the case based on the evidence that was presented?

A Mmm hmm, yes.

Q And when you were deliberating, do you recall anybody mentioning handcuffs or shackles or anything like that?

A No.

MS. BRUINSMA: No other questions.

THE COURT: Just so I am clear, Ms. Decamp, as you sit here today, you don't ever remember seeing Mr. Davenport in handcuffs or shackles; or you don't have a memory of that one way or the other?

THE WITNESS: I don't have a memory of that one way or the other. Like I remember seeing him, but I don't remember if he had handcuffs or not.

THE COURT: Do you have any memory of anyone bringing up, during deliberations, whether he was shackled or had handcuffs? Did anyone discuss that that you remember?

THE WITNESS: No.

THE COURT: I don't have any further questions, Counsel, any questions based on the Court's line of questioning, Ms. Bruinsma?

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MS. BRUINSMA: No, your Honor.

THE COURT: Ms. Meinberg?

MS. MEINBERG: I have just one.

THE COURT: Yes, go ahead.

FURTHER EXAMINATION BY THE DEFENSE

BY MS. MEINBERG:

Q Okay, so, forgive me, I'm confused. You don't remember whether or not it was brought during deliberations or no it wasn't mentioned during deliberations?

A I honestly don't think it was mentioned. I mean, I remember everything that we discussed was always the evidence.

Q Okay.

So when somebody made a mention about the clothes or having to go out for the clothes, that wasn't during deliberations, that was just during the course of --

A Right.

Q -- talking --

A Right.

Q And you are not guessing, though, about deliberations --

A Right.

Q -- you do or don't have a memory?

Q I remember that -- I don't remember talking about handcuffs or shackles.

MS. MEINBERG: Okay, thank you.

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THE COURT: Thank you, ma'am.

Anything further Ms. Bruinsma?

MS. BRUINSMA: No, your Honor.

THE COURT: You may step down.

Please do not discuss your testimony here, what the issues that were that we asked you questions about with anyone else. Okay.

THE WITNESS: Okay.

THE COURT: Thank you.

(At 9:47 a.m., witness excused)

THE COURT: Before you have a seat, sir, please raise your right hand.

Do you solemnly swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth so help you God?

MR. JANKORD: Yes ma'am.

THE COURT: Please have a seat.

I am just going to let you know that you need to speak right in the end of that microphone. If you move to either side, then the recording system might not pick up what you are saying, so be careful of that.

MR. JANKORD: Okay.

THE COURT: I am going to ask you -- the attorneys are going to ask you some questions in a moment,

I might add a couple, but before we do that, please state

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and spell your first and last names.

THE WITNESS: Robert Jankord, J-a-n-k-o-r-d.

THE COURT: And Robert is spelled, R-o-b

THE WITNESS: R-o-b-e-r-t, yes, sorry.

THE COURT: Go ahead.

I guess that I should indicate. The attorneys are different than those than the attorneys that were handling the case, but they are going to have some questions for you. So, I'll turn it over to Counsel.

ROBERT JANKORD

**Called to testify at 9:48 a.m.;
testified as follows:**

EXAMINATION BY THE PROSECUTION

BY MS. BRUINSMA:

Q Good morning, Mr. Jankord.

A Good morning.

Q Do you recall being a juror on this case?

A Yes ma' am.

Q And that is the Ervine Davenport case, correct?

A Yes ma' am.

Q And has anyone discussed with you the reason you are here today?

A No ma'am.

Q During the trial, do you recall the Defendant being present in the courtroom?

A Yes.

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Q Is there anything about his appearance in court that stands out in your mind?

A Not that I can recall.

Q The trial was about three years ago, is that correct?

A Yes.

Q Okay.

Is there anything about how the Defendant presented himself in court that stands out in your mind?

A No.

Q Do you recall what the Defendant was wearing during the trial?

A Um, I think that he had an orange jumpsuit on at one point when it first began and then later we

came back into the courtroom and he was wearing a dress shirt and I believe dress pants; I couldn't tell you what color they were, though.

Q Okay.

Did the orange jumpsuit have any significance to you?

A No, just meant that he was in the custody of the police or the jail or whatever.

Q And did you notice if he was restrained in any way?

A Well yes, actually. When we -- when when we first came into the room, I did notice that his hands were restrained.

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Q When you say when you first came into the room, can you describe what you are referring to?

A When we first took our seats in the jury box.

Q The jury box being up here by the witness stand or in the back of the courtroom when you first came in?

A I didn't notice anything until I sat down in my chair -- until I called by the prosecutor -- I forget what his name was -- Stuart, I think was his first name.

Q So it was during the voir dire process when he -- when Mr. Fenton was questioning you, that you noticed that?

A Right, he would -- the Defendant was doodling with something and I noticed that one of his hands was cuffed, but --

Q Approximate -- where were you seated in the jury box itself?

A It was towards the end; I can't tell you for sure. I think that it was in the back row. I can't tell you with 100 percent certainty; it was three years ago, so I apologize for that.

Q Okay.

Now, did seeing the handcuff, did that have any significance to you?

A No, it just meant that he was on trial and that he was currently in custody of the County.

Q Do you recall approximately how long of a time period it

[Page 38]

was that you were able to view the handcuff?

A No, I didn't time it. It wasn't -- to me it was of no significance. I didn't even pay attention to it.

Q Did the fact that the Defendant was wearing handcuffs influence you in any way?

A Not at all.

Q Um, did the jurors ever discuss the fact that the Defendant was wearing handcuffs?

A Not that I can recall.

Q Did viewing the Defendant in handcuffs affect your verdict at all?

A No, not at all.

Q Did the handcuffs make you more inclined to find the Defendant guilty?

A No. No.

Q Did you base your verdict on the evidence that you heard?

A Absolutely.

Q And during the course of deliberations, was that a subject that was discussed, the handcuffs?

A Not at all.

Q Now, did you notice whether the Defendant's legs were shackled?

A I don't recall that; I'm not sure.

Q Okay.

You have no recollection at this point of whether

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that was something that you saw or not?

THE COURT: That would be the ankle or leg shackles?

BY MS. BRUINSMA:

Q The ankle, yes, the leg shackles?

A No, I don't remember that. I mean, it is possible that at the time I saw it -- I mean, it was three years ago, so I don't really have a good memory about that, that far back.

Q Would -- would seeing the Defendant in leg shackles have any significance to you?

A No, it just to me an extra measure of security for the people and family and stuff in the courtroom.

Q Would it influence you in any way?

A No, not at all.

Q Okay.

And was that something that the jurors ever discussed, the leg shackles, specifically?

A Not that I was ever a part of or can recall hearing, no.

Q Okay.

Would that have been something that would affect your verdict?

A Not my verdict, no.

Q Okay.

Again, you based your verdict on the evidence that was presented?

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A Yes ma' am.

Q What about the orange jumpsuit, did that have any impact on you whatsoever?

A No, not at all.

Q Okay.

I don't have any further questions.

THE COURT: Ms. Meinberg.

EXAMINATION BY THE DEFENSE

BY MS. MEINBERG:

Q Good morning, thank you so much for coming.

Can you spell your last name for me?

A Yes, J-a-n-k-o-r-d.

Q Uh, thank you.

The first day of trial and part of the second when they were picking the jurors, can you tell me where you were sitting in the gallery; do you remember?

A I was sitting in the one, two -- the second from the back on the right side --

Q The right side behind the gentleman in the gray?

A Not quite as far as over as he is; more towards the end, closer to the middle.

Q Okay.

A But in the second row back there.

Q And when they were picking the Jury and you were sitting back there, did you ever look up at Mr. Davenport and see a

[Page 41]

belly chain around his waist?

A Oh yeah, I did notice because his hands -- his hands were cuffed to it.

Q Okay.

And you said that you saw the cuff from the jury box?

A Right, only when he was, you know, -- he has his hands like this, doodling.

Q And how many times did you see it from the jury box?

A I didn't count, maybe twice -- I don't know. I don't have an exact count, sorry.

Q Okay.

And when he -- when they were showing things on the screen behind Mr. Davenport and he turned, did you see any restraints at that point?

A Not that I was paying attention to.

Q And you said when you were sitting in the jury box, you think you were in the back row but you don't remember where; is that correct?

A I was more towards the end -- actually I think I was in the front row. It was --

Q Front row?

A Yeah, it was either -- it was towards the end, though --honestly I can't remember. But I know that it was towards the end --

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Q You are talking about the right-hand side as I look at the jury box, that --

A Yes ma' am.

Q -- end?

A Yes ma' am.

THE COURT: Further away from the witness box where you are seated?

THE WITNESS: Right.

BY MS. MEINBERG:

Q And when you looked at Mr. Davenport, did you notice that he had limited movement at the table?

A Only when he had his hands up on his legal pad that he was drawing on.

Q Okay.

And when the Jury stood up to take a break, did you were you able to look over at Mr. Davenport -- did you see his handcuff at that point also?

A I don't recall what we were doing -- what I was looking at when we stood up to take breaks. But I mean, I did notice that he had been shackled at one point with his hands. That is pretty much what I can recall.

Q And did you see that every day or you just saw it twice during the entire trial; do you remember?

A I think it was just right at the very beginning during the like -- when they were picking the Jury and that type of

[Page 43]

stuff. Other than that, I am not -- I don't really recall him being handcuffed or anything a whole lot during the trial.

Q Okay.

And -- you noticed that he was shackled and - did you see the deputies in the courtroom during the trial?

A Absolutely.

Q And what did you think the purpose was for him to be shackled and to have depts in the courtroom?

A Security.

Q Did you think that he might be dangerous?

A Absolutely.

Q Did you think that he might be violent?

A I didn't have any knowledge of whether he may be violent.

Q Did you feel safer that he was -- that he was restrained?

A Not necessarily that he was restrained; there was plenty of officers in the room. I wasn't too worried about my safety.

Q And you realized that he was charged with first degree murder, right?

A Yes.

Q Did any of the alternate jurors or any of the jurors in the juror pool, did they ever discuss seeing the cuffs or the restraints?

A No ma'am.

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MS. MEINBERG: I have nothing further.

THE WITNESS: Thank you.

THE COURT: Anything further, Counsel?

MS. BRUINSMA: Yes, your Honor.

**FURTHER EXAMINATION BY THE
PROSECUTION**

BY MS. BRUINSMA:

Q You indicated that you did notice, at one point, that he had the belly chain and that his hands were cuffed to that. At what point was it that you noticed that?

A You know, I don't really recall at what point it was that I noticed that. Like I said, I just noticed that his hands were really close together because he was trying to draw on his legal pad. I couldn't tell you exactly what part of the process that was at.

Q Okay.

Did the -- did the subject of the belly chains come up at any point during deliberations?

A No ma' am.

Q Did seeing him in the belly chains make -- affect your verdict in any way?

A Not at all.

Q Now you indicated that you presumed that the restraints that were used were a security measure?

A Right.

Q Did you think that was anything unusual?

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A No, not at all.

Q Did you -- you indicated that it -- you thought that it might mean that the Defendant was dangerous. Do you presume that was just because of the nature of the case?

A Absolutely.

Q Nothing specific to him?

A No, not at all.

Q Would you assume that most defendants would wear those types of restraints in a courtroom?

A If charged with murder, I would assume, yes.

Q And again, any of the restraints that you viewed, did they have any affect on your verdict whatsoever?

A No ma' am.

Q Did you decide the case based on the evidence?

A Absolutely.

MS. BRUINSMA: I don't have any further questions.

THE COURT: Anything further Ms. Meinberg?

MS. MEINBERG: Nothing, thank you.

THE COURT: Thank you, sir. We appreciate your time and coming back here. Please don't discuss your testimony with any of the other jurors and you are excused.

THE WITNESS: Thank you.

(At 9: 59 a.m., witness excused)

THE COURT: Before you have a seat sir, raise

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your right hand.

Do you solemnly swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth so help you God?

MR. LEWIS: I do.

THE COURT: Please have a seat. In a moment, I am going to ask you to state and spell your name, but before I do that -- just so that you know, the attorneys are obviously different than the attorneys that were present during the trial. They are going to have some questions to you -- for you about an issue or issues that arose during the trial. If you don't know something, please make sure that you let us know; we don't want you to guess at anything.

Okay.

THE WITNESS: Okay.

THE COURT: Please -- you have to speak right in the end of that microphone. If you move to either side, then sometimes our recording system doesn't pick up so well.

So, please state and spell your first and last name for the record if you would, sir.

THE WITNESS: Bradley Lewis, B-r-a-d-l-e-y L-e-w-i-s.

THE COURT: Counsel.

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BRADLEY LEWIS

**Called to testify at 10:01 a.m.;
testified as follows:**

EXAMINATION BY THE PROSECUTION

BY MS. BRUINSMA:

Q Good morning, Mr. Lewis.

A Good morning.

Q Do you recall being a juror in the Ervine Davenport case?

A Yes I do.

Q And has anyone discussed with you the reason that you are here today?

A No, they have not.

Q During the trial, do you recall the Defendant being present in the courtroom?

A Yes.

Q Is there anything about his appearance in court that stands out in your mind?

A No.

Q Anything about how he presented himself stand out in your mind?

A No.

Q Do you recall what the Defendant was wearing during the trial?

A Not to my recollection.

Q Did you --

THE COURT: I'm sorry, I missed it -- not to your

[Page 48]

recollection?

THE WITNESS: Correct.

THE COURT: Go ahead.

BY MS. BRUINSMA:

Q Don't recall how he was dressed at this point?

A Um, no -- it was about three years ago, so it is kind of hard to recall.

Q Did you notice whether the Defendant was restrained in any way?

A I do not remember noticing it. I remember a couple of days in, another juror noticed it and pointed it out.

Q I'm sorry, say that again?

A Another juror noticed it and pointed it out.

Q What exactly was said, do you recall?

A Just -- him saying, oh it looks like he is handcuffed.

Q Do you recall at what point in the trial that comment was made?

A I believe that it was a couple of days in, but I'm not sure.

Q Do you recall where you were when the comment was made?

A I believe that we were actually in the box.

Q In the box.

So you are referring to the jury box inside the courtroom?

A Correct.

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Q And this -- do you recall whether this was during the trial or if there was a break at the time or when the comment was made?

A I do not remember.

Q Okay.

When -- do you recall who it was that mentioned that?

A No, I can't think of it.

Q When that juror mentioned that, did he or she just mention that to you?

A I believe that it was said to a couple of the jurors sitting right next to me.

Q Okay.

And what, if anything, did you do at that point?

A Nothing. I just noticed it and then they came back to talking -- the lawyers.

Q Okay.

So you did notice, after that comment being made, that he was wearing a restraint?

A Yes.

Q And specifically was it a handcuff or -- did you notice anything else?

A Not to my recollection. I just remember that he was restrained.

Q And at what part of his body was it that you noticed was

[Page 50]

restrained?

A I can't think of it off the top of my head. I just remember the comment being made.

Q Okay.

Did -- did that have any significance to you, the Defendant being restrained?

A No.

Q Did you presume that defendants are typically restrained in a courtroom setting?

A I just assumed.

Q That that was just kind of a standard--

A Yes.

Q -- procedure?

A Correct.

Q Okay.

Did you think that there was any special reason that the Defendant would be wearing them?

A No, just that he was in court.

Q Was it anything that you really gave much more attention to other than just making note of it?

A No.

Q And again, do you recall at what point in the trial that took place?

A No, I do not remember.

Q Okay.

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Do you relo -- recall how long of a period it was that you would have noticed that?

A Not to my recollection.

Q Okay.

Did -- other than the discussion that you just described for us in the jury box, did the jurors discuss the Defendant wearing handcuffs when deliberating?

A No.

Q Was it a topic that came up in the jury room at all?

A I believe they discussed it for a minute or two once we got back that day, but nothing after that.

Q Okay.

And what would the discussion have been, do you know?

A No.

Q Was it something that was discussed with the -- all of the jurors as a whole?

A No. It was just a couple of people mentioning it.

Q Okay.

Did that issue affect your verdict at all?

A No.

Q Did it make you more inclined to find the Defendant guilty?

A No.

Q Did it make you think anything about the Defendant in general as a person?

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A No.

Q Okay.

And during the deliberations was that a topic that was discussed?

A No.

Q When you -- when you were -- during the course of deliberations, did you discuss the evidence that was presented -- during the trial?

A Yes.

Q Is that what your verdict was ultimately based on, was the evidence?

A Yes.

Q Okay.

Now, did you -- do you specifically remember the Defendant wearing anything around his waist, a belly chain?

A Not to my recollection.

Q And do you recall anybody making comment about that?

A Not about a belly chain, no.

Q Okay.

And what about any leg shackles. Did you see whether the Defendant's legs were shackled or restrained?

A Not to my recollection.

Q And did anybody make a comment to you regarding that, the leg shackles?

A Not specifically leg shackles, no.

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Q When you say not specifically, are you referring back to what we just discussed a minute ago, the handcuff restraints?

A Yes.

Q And that is the only comment that you recall?

A Yes.

Q Okay.

Do you recall whether the Defendant was wearing an orange jumpsuit at any point during the trial?

A I can't recall.

Q Okay.

I don't have any further questions.

THE COURT: Ms. Meinberg.

EXAMINATION BY THE DEFENSE

BY MS. MEINBERG:

Q Good morning.

A Good morning.

Q Thank you, so much for coming.

During the first and part of the second day when they picked the Jury, can you tell me where you were sitting in the gallery?

A Um, I believe that I was on that side --

Q On the right-hand side behind the officer?

A Correct.

Q Do you remember whether it was towards the front or the

[Page 54]

back?

A I believe it was the second or third row.

Q From the front?

A From the front.

Q Okay.

And at any point during picking the Jury, did you look up at Mr. Davenport and see a belly chain around his waist at that time?

A It is possible, but I don't remember.

Q Okay.

And when you were sitting in the jury box, do you remember where you were sitting in the jury box?

A I was in the second seat in the front.

Q On this end from the right?

A Correct.

Q Okay.

THE COURT: Again, further away from the witness box.

THE WITNESS: Yes.

THE COURT: At the end --

THE WITNESS: At the far end.

THE COURT: Okay.

THE WITNESS: Correct.

BY MS. MEINBERG:

Q And when there was that discussion in the jury box, was it

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during one of those stand up and stretch breaks -- was it just during a lull in the action?

A I believe it was just a lull in the action. I can't remember exactly who it was, but one of the jurors had leaned over and I heard them mention it.

Q So you think that it was a juror that was sitting behind you?

A Behind or to my right.

Q Okay.

THE COURT: I am just going to jump in and clarify.

Did someone mention that to you while you were sitting in the jury box, is that what your testimony is?

THE WITNESS: Correct.

THE COURT: Okay, thank you. Go ahead, Counsel.

BY MS. MEINBERG:

Q And then at that point, you told the Prosecutor that you looked over and saw that he was, indeed, shackled?

A Correct.

Q Okay.

And did you ever hear any sound of chains clanking or anything that might suggest that he had something on his legs?

A Not to my recollection.

Q Okay.

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And you knew that Mr. Davenport was charged with first degree murder, correct?

A Correct.

Q And did you notice the deputies in the courtroom during the trial?

A Yes I did.

Q And you noticed that he was restrained?

A Correct.

Q What did you think that meant? Did you think that he might be dangerous?

A I just assumed that it was part of the procedure.

Q Okay.

Did you think that he had done something wrong?

A I assumed that he was being charged with something wrong.

Q Did you see anyone else in the courtroom shackled?

A No.

Q Okay.

Did any of the alternate jurors or any of the other jurors sitting in the gallery during voir dire, did any one of those jurors mention his shackles?

A No.

Q Thank you, very much.

A No problem.

THE COURT: Anything further, Counsel?

MS. BRUINSMA: No, your Honor.

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THE COURT: Thank you, sir. I am going to go ahead and excuse you. Please don't discuss this testimony with any of the other jurors; but we appreciate your time.

THE WITNESS: Thank you.

(At 10:11 a.m., witness excused)

THE COURT: Before you have a seat ma'am, raise your right hand.

Do you solemnly swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth so help you God?

MS. PADGETT: I do.

THE COURT: Please have a seat.

When you respond, you need to make sure that you speak close to the microphone and right in the end. If you move to either side, sometimes our recording system doesn't pick up.

THE WITNESS: Okay.

THE COURT: The attorneys are going to have some questions for you; the attorneys are different than the attorneys who were present during the trial.

THE WITNESS: Okay.

THE COURT: Just so that is clear.

If you don't understand something or don't remember something, would you please make sure that you tell us, we don't want you to guess at anything. Okay.

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THE WITNESS: Okay.

THE COURT: With that, please state and spell both your first and last name, ma'am.

THE WITNESS: Jennifer Padgett, J-e-n-n-i-f-e-r. Padgett is, P-a-d-g-e-t-t.

JENNIFER PADGETT

**Called to testify at 10:12 a.m.;
testified as follows:**

EXAMINATION BY THE PROSECUTION

BY MS. BRUINSMA:

Q Good morning, Ms. Padgett.

A Good morning.

Q Thank you for being here this morning.

Do you recall being a juror in the Ervine Dav-
enport case?

A Yes.

Q And has anyone discussed with you the reason that you are here today?

A A little bit. We were trying to guess in the witness room, but nothing --

Q Okay.

Nobody has made any specific comments to you?

A No.

Q Okay.

During the trial, do you recall the Defendant being present in the courtroom?

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A Yes.

Q Is there anything about the Defendant's appearance in court that stands out in your mind?

A No.

Q Is there anything about how the Defendant presented himself in court that stands out in your mind?

A No.

Q Do you recall what the Defendant was wearing during the trial?

A I think that when we first came in, before we were selected, I think that he had on jail, orange jumpsuit. And then after that, he had on a suit -- a shirt and tie.

Q Did that jail orange suit have any significance to you?

A No. I mean, I knew why we were here and I assumed that is where he was.

Q Okay.

You would presume that with a murder charge that the Defendant would likely be in custody?

A Right.

Q Okay.

And that is not something that you found unusual or surprising?

A No.

Q Okay.

Do you -- did you notice whether the Defendant

[Page 60]

was restrained in any way during the trial?

A No. I -- when we -- another juror had mentioned something about that and that is why there was a screen or a -- what do you call those things -- a

curtain, I guess that -- before that, it didn't even really factor in -- I just didn't think about it.

Q When that was mentioned to you, at what point in the trial did that occur?

A I -- I really don't know. It was probably in the middle of it at some point, just conversation, lunch time.

Q Okay.

And you -- you recall it being at lunch that this occurred?

A Or jury room -- I don't really remember.

Q Okay.

The comment that was made, did it cause you to then notice whether the Defendant was restrained in the courtroom?

A No, it really didn't factor in to it.

Q Okay.

Do you specifically remember whether you viewed the Defendant wearing handcuffs?

A No.

Q You do not remember or you did not see it?

A I didn't -- I don't recall seeing it.

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Q Okay.

Would it have surprised you for the Defendant to be wearing handcuffs?

A While in the courtroom?

Q Yes.

A No, I guess not. I --

Q Okay.

A I think that it would be uncomfortable.

Q When the juror mentioned that to you, did it have any significance to you, the fact that he would have been wearing handcuffs?

A No.

Q Did the fact that the Defendant wearing handcuffs influence you at all?

A No.

Q You indicated that there was one juror that brought that up with respect -- was it specifically with respect to handcuffs then?

A He just said that he was restrained.

Q Okay.

A And did I notice it and I didn't even know, no.

Q All right.

Was that anything that was discussed amongst all of the jurors?

A I don't think so; I just remember that one comment.

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Q Was that issue, restraints or handcuffs, discussed during deliberations?

A No, not that I recall.

Q Was the fact that the Defendant was wearing handcuffs or restraints -- did that make you more inclined to find him guilty?

A No. The facts of the case did that.

Q So when you were in deliberations, did you rely on the evidence that was presented to reach your verdict?

A Absolutely.

Q Did you specifically notice whether the Defendant's legs were shackled?

A No.

Q And was that an issue that was brought to your attention by anyone?

A No.

Q Did you notice whether the Defendant was wearing a belly chain that the handcuffs would have been attached to?

A I don't -- I don't recall.

Q And was that anything that was specifically mentioned to you?

A No.

Q Was that anything that you recall being discussed by the jurors during deliberations?

A No.

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Q Would any of those restraints make you more inclined to find the Defendant guilty?

A No.

Q You based your verdict on the evidence that you heard?

A Yes.

MS. BRUINSMA: I don't have any other questions.

THE COURT: Ms. Meinberg.

EXAMINATION BY THE DEFENSE

BY MS. MEINBERG:

Q Good morning.

A Good morning.

Q Thank you so much for coming.

When the Jury was picked the first day and part of the second day, can you tell me where in the gallery you were sitting?

A Where was I sitting back here?

Q Yes.

A Uh, I think that I was over -- a couple of rows back on this side, I think.

Q On the left side?

A Yes.

Q Okay.

And in the jury box, do you recall where you were sitting?

A Right here.

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Q Front row.

A Front row.

Q The very end seat?

A Mmm hmm.

Q And was there another seat to your right?

A Oh, maybe I wasn't -- I was right here somewhere.

Q Okay.

A I was here. Yeah.

Q So, when they were picking the Jury, did you ever look over at Mr. Davenport? Could you see whether his wrists were shackled at that point?

Q Um, he was much like he was today. He is taking notes. I never noticed that he was restrained.

Q Okay.

Do you see the handcuff on his wrist now?

A Uh, yes I can.

Q Okay.

A But I did not notice that before. No, he was just -- I noticed that he was taking notes.

Q And were you -- were you ever one of the jurors that had to approach the bench and talk to the Judge about any special problem in serving?

A No.

Q And when the Jury stood up to take its breaks, did you -since you were at this end, near the witness stand, did you

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ever look over and notice that he had a handcuff on his arm at that point?

A No, I never noticed it.

Q And even when he turned around to look at the screen behind him, you didn't notice it at that point?

A No.

Q Okay.

Did you ever hear a clanking noise of chains, possibly on his feet?

A No.

Q And you knew that he was charged with first degree murder, correct?

A Yes.

Q And during trial, did you see the deputies in the courtroom?

A Yes, I did notice them.

Q And after the juror's comment, did -- did you think that he might be dangerous?

A Uh, well I -- I assumed that they were here for our protection, but -- for everyone's protection. But I did not feel threatened by him, no.

Q Okay.

Did you see anyone else shackled in the courtroom?

A I think that there were some witnesses that came in that

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might have been -- I'm trying to remember, it was a while go.

Q And so since you were seated at this end here by the witness stand, were you worried about your safety with regard to those witnesses?

A I do recall one witness who made me a little nervous, but -- but I was very glad that there was a deputy right there.

Q There was a deputy right there?

A Absolutely.

MS. MEINBERG: Thank you.

MS. BRUINSMA: Just a quick follow up.

**FURTHER EXAMINATION BY THE
PROSECUTION**

BY MS. BRUINSMA:

Q Deputies in the courtroom, did you presume that was pretty standard practice for a trial?

A Yes I did.

Q You didn't think that was anything unusual to you on that?

A No.

Q Okay.

MS. BRUINSMA: No other questions.

THE COURT: I have a question.

Do you recall which juror it was that mentioned that the Defendant was restrained or that Mr. Davenport was restrained or where they were seated? That is two questions.

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THE WITNESS: Right.

THE COURT: That's not fair.

THE WITNESS: I know. I am trying to remember. It just seemed like it was -- I remember one saying, well aren't you nervous -- does it make you nervous at all that we have all of these guards or whatever and I said no, I am feeling alright about it.

And they said, well he is restrained and I said, okay. Really, I didn't notice that and they said, that is why there is a curtain there so it doesn't influence what we think.

It was kind of that they were aware of the process; it was not like they necessarily saw anything, it was

just -- I think that it was an assumption that that is why it was there.

THE COURT: The curtain, is that what you are --

THE WITNESS: Yeah, the black curtain.

THE COURT: And you are talking about the black curtain around the table?

THE WITNESS: Right. Right, the skirting, I guess.

THE COURT: Do you recall where you were at when that conversation took place? I don't know if you were seated in the box or if it was during a break or the lunch hour. If you don't remember, then that is fine, but

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THE WITNESS: I don't remember. I just -- I kind of remembered it, just was kind of like, oh, alright then.

THE COURT: Was everyone around or just a few of you during the conversation --

THE WITNESS: I don't remember --

THE COURT: -- do you recall.

THE WITNESS: I don't. I'm sorry.

THE COURT: Did the conversation take place during deliberations?

THE WITNESS: No, it seemed like it was maybe right towards the beginning.

THE COURT: Do you ever recall any conversation during deliberations or anyone mentioning anything about the Defendant being restrained or cuffed or there being chains of any sort?

THE WITNESS: No.

Now, the only thing that I do recall is something about when he testified that they were sure -- there were more guards because he wasn't.

THE COURT: Did somebody make that comment to you or was that an observation?

THE WITNESS: I really -- I -- would really not notice those kinds of things, so I am guessing that somebody probably said something. But it wasn't -- it never really factored in to it to me. I was sitting

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probably the closest of everyone and I think that is why the comment was made was something about, when he actually testified, did that make me nervous and I said, not -- actually I made the comment to me, he actually looks like a big teddy bear, I said, no he doesn't make me nervous.

THE COURT: Do -- what you just discussed then, the comment about there being more guards, maybe, in the courtroom when he testified --

THE WITNESS: Mmm hmm.

THE COURT: Was that during deliberations or was that made some other time, do you know?

THE WITNESS: I think that was probably about the same time that he testified, you know.

THE COURT: Just so that we are clear.

THE WITNESS: No.

THE COURT: Again, I don't want you to guess. If you don't know, let us know. When you say probably, that always concerns us -- do you know if that occurred in deliberations or some other time and if you don't know, let us know. Or when --

THE WITNESS: To my recollection, none of that happened in the deliberations because we were pretty focused -- we were actually really focused on the evidence and what was -- we tried to keep out what we thought was --

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our interpretations. We did want interpretations, we wanted just the evidence and so we were trying to focus on that. So, I really don't think there was any point where we even mentioned -- I don't think -- I am trying to remember.

But it seems to me, and I know that is probably not a good descriptor, but it was just, you know, a little conversation or a little comment that didn't really weigh on my mind.

THE COURT: And just so -- you don't recall who made any of those -- those comments. It sounds like there were a couple of comments to that affect.

THE WITNESS: I -- um -- if I had to guess

THE COURT: I don't want you to guess.

THE WITNESS: I know.

THE COURT: Okay.

THE WITNESS: I won't.

THE COURT: If you don't know, then that is fine.

THE WITNESS: I don't. I didn't have conversations with many of our -- here and there. But there were just a couple that I was more linked to than the others because of the proximity, so --

THE COURT: Where they were seated.

THE WITNESS: Right.

THE COURT: So --

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THE WITNESS: Yeah.

THE COURT: I have asked a lot of questions, so I am going to give the attorneys another opportunity to follow up with anything.

MS. BRUINSMA: Just a couple of things, your Honor, thank you.

BY MS. BRUINSMA:

Q Ms. Padgett, the conversation about the table skirt, just so that I understand, is it your testimony that was not during deliberations?

A No, it was not during deliberations.

Q Okay.

It was at some point other during the trial and it was just -- was it a fairly brief comment then?

A Yes.

Q And once you heard that comment, did that make you think anything in particular about the Defendant himself?

A No. I -- the charges -- the evidence, all the testimony that is what made me think of what I needed to think or make the decision that I need to make. That didn't really influence me.

Q So the issue about the table skirt and the Defendant being restrained, that was not something that impacted your verdict?

A So, I just figured it was procedure.

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MS. BRUINSMA: No other questions.

Thank you.

THE COURT: Ms. Meinberg.

FURTHER EXAMINATION BY THE DEFENSE

BY MS. MEINBERG:

Q Just briefly, just so I understand. There were two separate conversations; one was about the skirt and one was about how close you were when he was testifying?

A Yes.

Q Okay.

Was it more than two discussions or --

A No. No.

Q -- just --

A They were just more like flippant remarks. It wasn't like a lengthy, let's discuss --

Q Okay.

And if you recall, when Mr. Davenport did take the stand, the Jury had to go out in the hallway for a minute?

A Mmm hmm.

Q And then when you came back in he was sitting in the witness stand. Did you guess

THE COURT: Hang on just a second. Yes you recall that?

THE WITNESS: Yes, I recall that.

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THE COURT: Go ahead.

BY MS. MEINBERG:

Q Where there any -- did you think anything or was there any discussion -- oh yeah, they had to take his cuffs off so that he could get up there?

A I think that is when the -- yeah, I think that is when the comment came about. And I don't think that it happened before his testimony; I think it was right after. That is why we had to go out because they needed to move him.

MS. MEINBERG: Okay. Thank you.

THE COURT: Anything further?

MS. BRUINSMA: No, your Honor. Thank you.

THE COURT: We appreciate your time here today ma'am. I am going to go ahead and excuse you. Please don't discuss your testimony with any of the other jurors. Again, we appreciate your time and sorry we had to bring you back.

THE WITNESS: Okay. Thanks.

(At 10:30 a.m., witness excused)

THE COURT: Right over here sir. Before you have a seat, please raise your right hand.

Do you solemnly swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth so help you God?

MR. RUZICK: I do.

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THE COURT: Please have a seat sir.

I am going to ask you to state and spell your first and last name; but before you do that, a reminder that you need to speak right into the end of that microphone. If you move to either side, our recording system doesn't pick you up as well and sometimes it is hard to hear.

The -- I am going to turn it over to the attorneys. The attorneys are different than the attorneys that were present during the trial and when we go through this process of asking you questions, if you don't remember something, please don't guess. Just let us know that you don't remember, we realize that the trial was over years ago.

So, please state and spell your first and last name for the record.

THE WITNESS: Thomas Ruzick. T-h-o-m-a-s R-u-z-i-c-k.

THE COURT: Ms. Bruinsma.

THOMAS RUZICK

Called to testify at 10:31 a.m.;
testified as follows;

EXAMINATION BY THE PROSECUTION

BY MS . BRUINSMA:

Q Good morning, Mr. Ruzick, is it?

A Correct.

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Q Do you recall being a juror on the Ervine Davenport case?

A Yes.

Q Has anybody discussed you the reason that you are here today?

A No.

Q During the trial, do you recall the Defendant being present in the courtroom?

A Yes.

Q Is there anything about his appearance in court that stands out in your mind?

A No.

Q Anything about how he presented himself stand out in your mind?

A No.

Q Do you recall what the Defendant was wearing during the trial?

A Uh, if I -- if I believe correctly, he was wearing different clothes at different times. I remember him wearing a tie -- that is about all I can remember.

Q Did you notice whether the Defendant was restrained in any way during the trial?

A No.

THE COURT: No he wasn't or no you don't remember?

THE WITNESS: Uh --

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THE COURT: I just want to clarify the answers.

THE WITNESS: No, I don't remember him being restrained.

BY MS. BRUINSMA:

Q Did you -- do you remember -- I asked that. Did you see if the Defendant was wearing handcuffs during the trial?

A No.

Q Did anybody -- any of the other jurors mention to you that the Defendant was restrained?

A No.

Q Did you notice whether the Defendant's legs were shackled during the course of the trial?

A No.

Q Do you recall whether the Defendant was wearing an orange jump suit at any point during the trial?

A Now as I recall, I believe that he was always dressed in civilian clothes, I guess you would call it.

MS. BRUINSMA: I don't have any other questions. Thank you.

THE COURT: Ms. Meinberg.

EXAMINATION BY THE DEFENSE

BY MS. MEINBERG:

Q Good morning. Thank you for coming

When you first came into the courtroom on the first day and they were picking the Jury, do you remember

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where in the back rows you were sitting?

A I believe that I was on this side.

Q The left side --

A Yes.

Q -- directly behind me.

A Yes.

Q And when you were in the jury box, do you remember which seat you were in?

A I believe that I was front row, I can't remember which seat, but I believe it was front row.

Q And at any point when you were sitting in the back, did you ever look over at Mr. Davenport and see a handcuff on his -- on his wrist?

A No.

Q And at any point when you took a stand and stretch break or when you came in and out of the box, did you ever look over and see a handcuff on his wrist?

A No.

Q What about when he turned around to look at the screen behind him?

A Nope.

Q Did you notice that he had limited movement at the table? Did you notice that his left hand never moved?

A No.

Q Okay.

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And did you hear anything like chains clanking that might suggest that something was on his feet?

A No.

MS. MEINBERG: Great. Thank you. I have nothing else.

MS. BRUINSMA: I have no additional questions, your Honor.

THE COURT: Do you ever recall any other juror, at any point, bringing up or pointing out that the Defendant was restrained in any way?

THE WITNESS: No.

THE COURT: Did that ever come up during deliberations, to your recollection?

THE WITNESS: No, not to my recollection, no.

THE COURT: I don't have any further questions.

Any follow up questions?

**FURTHER EXAMINATION BY THE
PROSECUTION**

BY MS. BRUINSMA:

Q Was the verdict based on the evidence that you heard?

A Yes.

MS. BRUINSMA: No other questions.

MS. MEINBERG: No other questions.

THE COURT: Thank you, sir. We appreciate your time. Sorry to have had to brought you back in. Please don't discuss your testimony with any of the other jurors

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that have been subpoenaed.

Thank you, sir.

(At 10:36 a.m., witness excused)

THE COURT: Before you have a seat sir, raise your right hand.

Do you solemnly swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth so help you God?

MR. VANDERVEEN: Yes.

THE COURT: Please have a seat sir.

I am going to have you state and spell your first and last name in a moment. Before I do that, make sure that when you respond that you speak right into the end of the microphone. If you move to either side, sometimes our recording system doesn't pick up as well and it is difficult to hear your answer.

The attorneys are different than the attorneys that were present during trial, as you may have noticed. They are going to ask you some questions. I may have a couple of questions.

If you don't remember something or you don't recall something, please make sure that you tell us, we don't want you to guess at anything.

So, please state and spell your first and last name for the record, sir.

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THE WITNESS: James VanderVeen, J-a-m-e-s V-a-n-d-e-r-V-e-e-n.

THE COURT: Go ahead.

MS. BRUINSMA; Thank you, your Honor.

JAMES VANDERVEEN

**Called to testify at 10:38 a.m.;
testified as follows:**

EXAMINATION BY THE PROSECUTION

BY MS. BRUINSMA:

Q Good morning, Mr. Vanderveen.

A Good morning.

Q Do you recall being a juror in the Ervine Davenport case?

A Yes I do.

Q And has anyone discussed with you the reason that you are to testify here today?

A No, they have not.

Q During the trial, do you recall the Defendant being present in the courtroom?

A Can you speak louder, please?

Q I sure can.

During the trial, do you recall the Defendant being present in the courtroom?

A Sure.

Q Is there anything about the Defendant's appearance in -- when he was in court that stands out in your mind?

A In the two week period, I'd say no.

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Q Do you recall what the Defendant was wearing during the course of the trial?

A Maybe somewhat, I could tell somewhat, but I don't know if you want to know that or not. I can kind of guess. Maybe the first time I might have seen him in an orange suit and then a short time after street clothes. I think most of the time street clothes. To be honest, I don't recall 100 percent.

Q Did the orange suit have any significance to you?

A No. Well other than he was incarcerated.

Q Okay.

A I mean --

Q Did you find that unusual for a murder case that the Defendant would be incarcerated?

A No.

Q Did you notice whether the Defendant was restrained in any way during the trial?

A You know, it is possible that first day and whether I actually saw it or remember some of the other jurors discussing it -- we are talking three years ago. But maybe he had some handcuff type things on or ankle bracelets. I recall that might have been that way, but you are talking three years ago.

Q I understand. It is obviously like you said, it has been three years, so is it difficult to remember every

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detail?

A Well I am sure that every detail -- I remember a number of things, but every detail I may not remember exactly.

Q Okay.

Now, you indicate -- it is difficult for you to remember whether it was something you saw or you heard another juror mention. Was there discussion among the jurors about handcuffs?

A I don't know if there was discussion. It might have been -- if there was discussion, it might have been something like, you know, I saw handcuff or

something on him. I—it seems as though he may have had them on, I might have saw them. I am a little fuzzy on that.

Q Okay.

Do you recall at what point during the trial this would have been, that a comment was made?

A No I don't.

Q Was the fact that the Defendant was wearing handcuffs have any significance to you?

A None.

Q Would you presume that defendants typically wear handcuffs during the course of a trial?

A Since I didn't do this every day, I didn't think that it was unusual.

Q Did the fact that the Defendant was wearing handcuffs

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influence you at all as a juror?

A No.

Q You indicated that there was some comments made by other jurors about the handcuffs. Was there discussion about that?

A No, I think -- you know, my guess would be that everyone of us, this was the first time that we had

gone through this type of situation and it is unusual to see that. You are seeing it first hand and you are seeing it as opposed to seeing it on TV or seeing it in real.

Q So while it wasn't something you thought unusual for a courtroom, you are not necessarily used to a courtroom setting and so it was something that was commented on. Is that fair to say?

A I would be guessing so, but that was probably the nature of it.

Q Um, did -- did the comments about handcuffs influence your verdict at all?

A If he did, indeed, have handcuffs on, it was only for a, I think, the first few minutes that I might have saw him; so I would say no, that it didn't influence.

Q Do you recall the handcuffs being discussed by the jurors during deliberations?

A No.

Q Did you notice whether the Defendant was wearing belly

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chains that the handcuffs would have been hooked to?

A You are asking me, did I notice that?

Q Yes. Did you see that?

A I believe that I might have seen that.

Q Do you recall at what point during the trial?

A Well the only time, if I did see anything, was during the first few minutes or the first few hours of the whole process.

Q During voir dire when they were selecting the Jury?

A Oh boy -- I don't recall whether I could have seen that from out there in the seating area back there or not. So, whether I had to say I seen that, I probably would have saw it here if -- I don't know. I can't answer that question with surety.

THE COURT: Let me just jump in -- your recollection is that you don't remember when you saw it, but it was at the beginning of the trial; is that what you are telling us?

THE WITNESS: I believe that is what I remember.

THE COURT: All right.

Then let me also ask a question too, because -- I think that you were asked a question and the question was something in the affect that you indicated that there were comments or conversations about the restraints. And I just want to clarify.

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First of all, do you remember whether -- do you remember whether someone made a comment or

conversation about any type of restraints whether they wore leg or ankle restraints or belly restraints or handcuffs -- first of all, let me ask you that. Do you remember whether a comment was made by any other juror?

THE WITNESS: I believe that there was a comment, but I don't remember any conversation taking place about it. They just, did you see handcuffs, type of deal.

THE COURT: All right.

Let me ask you the next question. Do you remember whether there was more than one comment made or don't you know one way or the other?

THE WITNESS: Say that again, please.

THE COURT: Do you remember if there was more than one comment made?

THE WITNESS: There was little comment made. I just remember a comment or so, it wasn't continuous or ongoing, no.

THE COURT: Do you remember which juror made the comment?

THE WITNESS: No.

THE COURT: All right.

I'm sorry, go ahead Ms. Bruinsma.

MS. BRUINSMA: Thank you, your Honor.

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BY MS. BRUINSMA:

Q Do you recall whether you saw that -- whether the Defendant's legs were shackled?

A You are asking me if I thought I saw that?

Q Do you remember seeing that?

A That his legs were?

Q His legs being shackled.

A I believe that I did, but I am not going to bet my life on it. I don't know. I thought he was, but today there is a curtain there, so how I would have, I don't remember.

Q If his legs were shackled, would that have any significance to you?

A No.

Q Would that have affected your verdict at all?

A No.

Q Was that something, the leg shackles, that was discussed by the jurors?

A Not discussed that I recall, no.

Q Do you recall any comments being made?

THE COURT: About the leg shackles?

BY MS. BRUINSMA:

Q About the leg shackles?

A It is possible that something was commented on maybe when we were walking down the aisle that he had shackles on or that kind of thing. That is pretty much it. There was no

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discussion that I recall taking place to that.

Q Would the fact that the Defendant had leg shackles on, had handcuffs on, had a belly chain on mean anything to you?

A In what way?

Q As far as your verdict? Did that affect your verdict?

A No.

Q Was your verdict based on the evidence that you heard in court?

A That is correct.

Q Do you recall any discussion during deliberations about leg shackles?

A I don't recall any discussion taking place at that time.

Q Do you recall any discussion during deliberations about handcuffs?

A I don't recall any discussion taking place about handcuffs.

Q Do you recall any discussion during deliberations about belly chains?

A No I do not.

Q To your recollection, the deliberations were based solely on the evidence that was presented?

Q That would be correct.

MS. BRUINSMA: I have no other questions.

THE COURT: Ms. Meinberg.

EXAMINATION BY THE DEFENSE

BY MS. MEINBERG:

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Q Good morning.

A Good morning.

Q Thank you so much for coming in.

Now when the Jury was being picked, do you remember where you were sitting in the gallery?

A Yeah, I believe over here -- on my left side towards the back there.

Q All right.

And there were actually three sessions, the morning, the afternoon and a second day?

A I was going to say, I didn't think that it took place on the first day, that is correct.

Q Did you always sit in the same spot?

A I don't recall, but not necessarily.

Q Okay.

When they were picking the Jury, did you ever look over at Mr. Davenport and see the belly chains during voir dire?

A When they were picking the Jury?

Q Yes.

A That is when maybe I seen it from back there. I am not sure, I'd have to go back and look at this point right now, to be honest.

Q Okay.

And when you were sitting in the box, can you

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tell me where you were in the box?

A Yeah, I believe that I was in the back row in the -- second or third chair from your right.

Q Okay.

At the far end, the second or third chair?

A Yeah, I was towards the middle or right side of that upper row.

Q And at any point, did you hear the clanking of chains that might also indicate that he had something on his legs?

A I don't recall that happening, no.

Q And did you notice that there were deputies in the courtroom?

A I do recall that.

Q Do you recall how many deputies?

A It seems like there was one at a door and maybe one sitting over there and maybe one in the back. Seems like there was at least two, possibly three.

Q Okay.

And you knew that Mr. Davenport was charged with murder one, right?

A Yes I did.

Q And given that you saw the restraints at some portions of the trial, did you think that he might be dangerous?

A Well I would assume that, yes.

Q Okay.

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Did you think that he had done something wrong and that is why he was shackled?

A Well it was a murder trial, correct?

Q Yes.

Okay.

Did you see anyone else shackled in the courtroom?

A Not that I recall.

Q Did you feel safer, as a juror, knowing that he was shackled?

MS. BRUINSMA: Your Honor, I guess that I would object to that question. I don't know that it is really relevant to the questions that we are looking --

THE COURT: I'll allow it.

MS. MEINBERG: Thank you.

THE WITNESS: Allow what, an answer?

THE COURT: You can answer.

THE WITNESS: State your question again, please.

BY MS. MEINBERG:

Q Did you feel safer knowing that Mr. Davenport was charged with murder one and knowing that he was shackled?

A I wasn't fearful, but would I have been safer? Yeah.

MS. MEINBERG: Thank very much.

THE COURT: Any further questions.

MS. BRUINSMA: Just a couple of questions.

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**FURTHER EXAMINATION BY THE
PROSECUTION**

BY MS. BRUINSMA:

Q Just a second ago you indicated that you made some assumptions that the Defendant was dangerous. Is that based on the fact that he was charged with murder?

A I would think so, yes.

Q Did the fact that he was shackled impact that assumption?

A State that again, please.

Q The fact that Mr. Davenport was shackled, did that -- did that alone make you think that he was a dangerous person?

A You know, I don't know if it would necessarily make him more dangerous, maybe that was protocol. I guess I would have thought that was protocol.

Q So you wouldn't think it unusual for somebody in the course of a trial to be restrained?

A I wouldn't think so, no, not for -- not for the type of crime you are talking, no.

Q And again, the fact that there was any restraint used on Mr. Davenport, did that influence your verdict in any way?

A No, it did not.

MS. BRUINSMA: No other questions.

THE COURT: Anything further, Counsel?

MS. MEINBERG: Nothing, Judge. Thank you.

THE COURT: We appreciate your time. We are sorry that we had to bring you back in for this. I am

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going to go ahead and excuse you. Just make sure that you don't speak with anyone -- any of the other jurors about your testimony.

THE WITNESS: No.

THE COURT: Thank you, sir.

THE WITNESS: Yep.

(At 10:53 a.m., witness excused)

THE COURT: Before you have a seat sir, please raise your right hand.

Do you solemnly swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth so help you God?

MR. VANDERMEULEN: Yes.

THE COURT: Please have a seat sir.

I am going to ask you to state and spell your first and last name in a moment. But before I do that, just a couple of things.

Make sure that you speak right into the end of that microphone. If you move to either side, sometimes the recording equipment doesn't pick it up so well and the microphone doesn't pick it up and it is difficult to hear. So, just so that you know that.

We are going to ask you some questions. If you don't remember something, please just make sure that you let us know; we don't want you to guess at something.

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THE WITNESS: Mmm hmm.

THE COURT: And you might notice that the attorneys are different than the attorneys that were present during the trial; I'll just point that out.

With that, please state and spell both your first and last name, sir.

THE WITNESS: Thomas VanderMeulen, T-h-o-m-a-s V-a-n-d-e-r-M-e-u-l-e-n.

THE COURT: Ms. Bruinsma.

THOMAS VANDERMEULEN

**Called to testify at 10:55 a.m.;
testified as follows:**

EXAMINATION BY THE PROSECUTION

BY MS. BRUINSMA:

Q Good morning, Mr. VanderMeulen. Do you recall being a juror on the Ervine Davenport case?

A Yes.

Q Has anybody discussed the reason that you are here today?

A No.

Q During the trial, do you recall the Defendant being present in the courtroom?

A Yes.

Q Is there anything about his appearance in court that stands out in your mind?

A Pardon.

Q Is there anything about the Defendant's appearance, when he

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was in court, that stands out in your mind?

A No.

Q Is there anything about how the Defendant presented himself that stands out in your mind?

A No.

Q Do you recall what the Defendant was wearing during the course of the trial?

A No.

Q Do you recall if the Defendant was restrained in any way during the trial?

A No.

Q Did you see whether the Defendant was wearing handcuffs during the trial?

A No.

Q Do you recall any other jurors mentioning handcuffs?

A No.

Q Did you see whether the Defendant was wearing a belly chain that would have been hooked to the handcuffs during the trial?

A No.

Q Do you recall any other jurors mentioning belly chains?

A No.

Q Did you see whether the Defendant was wearing leg shackles during the trial?

A No.

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Q Do you recall any juror mentioning leg shackles?

A No.

Q Did the issue of restraints come up at all during deliberations?

A No.

Q Do you recall there being any comments at all with regard to restraints?

A No.

MS. BRUINSMA: I don't have any other questions.

EXAMINATION BY THE DEFENSE

BY MS. MEINBERG:

Q Good morning.

A Good morning.

Q Thank you very much for coming in.

When they were picking the Jury on the first and part of the second day, can you tell me where you sitting in the back?

A Um, it would have been the second row on the right hand.

Q On the right-hand side behind the officer?

A Yes.

Q Did you ever look over at Mr. Davenport, especially when his lawyer was up here, did you ever see belly chains when he was sitting in the chair?

A No.

Q Where in the jury box were you sitting if you recall?

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A Um, about the third row in the back -- third chair in the back.

Q Third chair in the back, the second row?

A Mmm hmm.

THE COURT: Yes?

THE WITNESS: Yes. I'm sorry.

MS. MEINBERG: Thank you. I have nothing further.

THE COURT: Anything further?

MS. BRUINSMA: No follow up, your Honor.

THE COURT: Thank you, sir. We appreciate your time. Please don't discuss your testimony with any of the other jurors, but you are excused.

THE WITNESS: Thank you.

(At 10:57 a.m., witness excused)

THE COURT: We have one more.

Before you have a seat sir, raise your right hand.

Do you solemnly swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth so help you God?

MR. WHATELY: I do.

THE COURT: Please have a seat sir.

We have some questions that we want to ask you. But before we get into that, just a reminder or just to let

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you know. You need to speak right into the end of that microphone. If you speak -- if you turn to either side, sometimes the recording system doesn't pick it up and it is difficult to hear in this court. So, sometimes the microphone won't pick it up. That is number one.

Number two, the attorneys are going to have some questions. If you don't know or don't remember something, please let us know; we don't want you guessing at anything. We realize that the trial was a number of years ago, so just let us know that.

The attorneys are, obviously, different than those attorneys that were present at the trial, you may have observed that, but I'll turn it over to them in a second.

First, I need you to state and spell both your first and last name for the record, please.

THE WITNESS: Michael Whately. M-i-c-h-a-e-l W-h-a-t-e-l-y.

MS. BRUINSMA: Thank you, your Honor.

MICHAEL WHATELY

Called to testify at 10:59 a.m.;
testified as follows:

EXAMINATION BY THE PROSECUTION

BY MS. BRUINSMA:

Q Good morning, is it Whately?

A Yes ma' am.

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Q Good morning, thanks for being here.

Do you recall being a juror in the Ervine Dav-
enport case?

A Yes ma'am.

Q Has anyone discussed the reason that you have been asked to court today?

A No ma'am.

Q During the trial, was the Defendant present in the courtroom?

A Yes ma' am.

Q Was there anything about his appearance that stands out in your mind?

A He is a big guy, but --

Q Is there anything about how he presented himself that stands out in your mind?

A No ma'am.

Q Do you recall what the Defendant was wearing during the trial?

A Well it depended on the day.

Q Did he change clothes during the course of the trial?

A Yes.

Q Are there any -- anything that he was wearing that stands out in your mind?

A Well he started out in the orange jump suit and then he changed into dress pants, shirt and tie.

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Q All right.

A Then there was the one day when they were showing the scar on his arm, he just had a T-shirt on.

Q Was there anything about the orange jump suit that had significance to you?

A No.

Q Did it mean anything at all to you?

A Well just wearing the orange jump suit just meant that he was a County -- to me he was a person that was in the County Jail.

Q Not anything that you found to be unusual given it was a murder charge?

A No.

Q Okay.

Did you notice whether the Defendant was restrained in any way?

A Yes I did.

Q What did you notice?

A He had something on his feet.

Q Do you know what was on his feet?

A Well it looked like shackles from what I could see.

Q When did you observe this?

A Near the beginning.

THE COURT: I missed it, during the end or --

THE WITNESS: Near the beginning.

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THE COURT: -- end, okay.

BY MS. BRUINSMA:

Q Near the beginning, would that have been during voir dire when the Jury was being selected?

A Yeah, it was more there. I don't recall him being restrained -- having restraints on his feet or anything like the second day or after that.

Q So it was the first day?

A Yes.

Q And where were you in the courtroom when you saw that?

A I am trying to recall. I don't recall if I was sitting back there or if I was in the jury stand.

Q When you say back there, you are referring to the back gallery portion of the courtroom?

A Yeah, before they did the jury selection.

Q Before you would have been placed in the jury box up front?

A Yes.

Q Okay.

And seeing the leg shackles, did that have any significance to you?

A No, just -- I mean, no, it did not. I am used to seeing incarcerated people in -- shackled.

Q When you say that you are used to that; have you been around the courtroom before?

A Not the courtroom, no. One of my previous jobs, I was a

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communications technician and I did a lot of two-way radio work for public safety, the police and fire. And often times I would have to go into the jails to work. So, I would see people shackled in various ways, so it didn't bother me, no.

Q Um, how long of a time period was it that you were able to see the leg shackles?

A Not very long.

Q A brief glimpse or longer than a glimpse?

A Well it was longer than a brief glimpse, yeah. It was -- pretty much -- from where I was sitting and I don't recall where I was sitting that the whole time that I was sitting there I could see the shackles on his feet.

Q Um, did seeing the shackles influence your verdict in any way?

A No.

Q Do you recall any of the other jurors mentioning the shackles, the leg shackles?

A No, none of the other jurors mentioned it to me. I think that I pointed it out to the juror sitting next to me.

Q Was there a discussion about it?

A Not really.

Q Just a comment.

A A comment.

Q Was there ever discussion during the deliberation process

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that the Defendant was wearing leg shackles?

A Not that I recall, no.

Q When the deliberations were going on was it the evidence that was discussed?

A Yes.

Q Was your verdict based on evidence that you heard?

A Yes.

Q Did seeing the Defendant in shackles influence your verdict in any way?

A No ma' am.

Q Now, did you also ever notice whether the Defendant was wearing handcuffs?

A I do recall one time, but I think it was either bringing him in or taking him out. I do recall handcuffs at one time. Exactly when, I don't recall when that was, but --

Q Did seeing handcuffs have particular significance to you?

A No ma'am.

Q Did you attribute any specific meaning to the fact that he was wearing a handcuff?

A Just that he was a County prisoner and --

Q Did you ever discuss -- let me rephrase that.

Did you ever mention to another juror about the handcuffs?

A Not that I recall no.

Q Do you recall there being discussion amongst the jurors

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about the handcuff -- about handcuffs?

A No, I don't.

Q Do you recall handcuffs being discussed during deliberations at all?

A No.

Q Do you recall whether the Defendant was wearing a belly chain around his waist that the handcuffs would have been attached to?

A I do not recall that, no.

Q Do you recall any other jurors mentioning belly chains?

A No.

Q Maybe not that particular term, but that he was restrained around the waist?

A I knew what you meant, yes.

Q And you don't recall any comments about that?

A No.

Q Was that anything that was raised during deliberations?

A No.

Q Were the deliberations focused on the evidence then?

A Yes ma' am.

Q And was your verdict based only on the evidence?

A Yes ma'am.

MS. BRUINSMA: I don't have any other questions.

THE COURT: Ms. Meinberg.

EXAMINATION BY THE DEFENSE

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BY MS. MEINBERG:

Q Good morning.

A Good morning.

Q Thank you very much for coming in.

So you don't -- when they were picking the Jury, they did it the first day and the second day. Do you recall on any of those occasions where you were sitting in the back?

A I sat in the back closer to the window, like -- I think the third one from the back.

Q Third from the back?

A Second or third from the back, yes.

Q Okay.

And do you remember where in the jury box you were sitting?

A One of these two chairs. I was in the front row.

Q The front row.

Okay.

Near the witness stand, but you don't remember which seat exactly?

A No.

Q Do you remember the Defendant, Mr. Davenport, taking the stand and testifying?

A Yes.

Q Do you remember right before then the Jury had to go out in

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the hallway?

A Yes.

Q And do you remember when you came back in that he had gone from counsel table up to the witness stand?

A Yes.

Q And did you ever guess as to why you had to go out in the hallway?

A No, not really.

Q Given that you were sitting close to the witness stand, relatively, close, did you have any safety concerns when he was up there testifying?

A No.

Q Did you realize when he was up there testifying that he was not handcuffed?

A No.

Q No, you did not realize it.

A I did not realize that, no.

Q Was there a deputy standing next to him when he was testifying?

A There was -- I think that there was a deputy right here, but I don't remember for sure.

Q Did that make you feel safer that a deputy was standing right there?

A It didn't have any --

Q You realized that Mr. Davenport was charged with first

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degree murder?

A Yes ma' am.

Q And during the course of the trial, did you see deputies in the courtroom?

A Yes.

Q Do you know how many?

A There was at least three, I think, at all times or more.

Q And you testified that you realized that he was shackled at the legs and the wrist?

A I did see that.

Q Did --

A But not all the time.

Q Did you think that he might be dangerous?

A Based on the charges he could be dangerous, but I didn't think that he would do something in here.

Q And is that because you saw the deputies and the shackles?

A More the deputies.

MS. MEINBERG: I have nothing further.

Thank you.

THE COURT: Any further questions, Counsel?

MS. BRUINSMA: No further questions, your Honor.

Thank you.

THE COURT: Thank you, sir, we appreciate your time.

I am going to excuse you. Please just don't

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discuss your testimony with any of the other jurors, but we appreciate your time. Sorry to have to bring you back here again, sir. Have a good day.

THE WITNESS: Thank you.

(At 11:11 a.m., witness excused)

THE COURT: Counsel, will you approach?

(At 11:12 a.m., bench conference)

THE COURT: We are still on the record, but I guess what I am going to ask you both to do is since he is here, go sit at various places in the jury box. I think that it is clear from the testimony that you can probably see. But I would just like everyone's agreement on the record that you can see the cuffs depending on where you are sitting.

MS. BRUINSMA: (Inaudible, speaking too softly) that we need to do that because I think they can tell us what they saw or didn't see and we are kind of adding more speculation as to what may or may not have been visible.

THE COURT: Okay.

Let me do it this way. If you don't want to, you don't have to. But I am going to put my observations on the record because there has been a request -- by the Defense to bring in an expert. I don't think that is necessary.

I think that for economic reasons and for

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efficiency for time, I would hope that we could agree to it and that it why I am bringing this up and asking you to do that. I can't make you do that, but I would appreciate it if you would just sit and put your observations on the record.

MS. BRUINSMA: Okay.

MS. MEINBERG: Jury box and the back.

THE COURT: I'm sorry.

MS. MEINBERG: Jury box and the back.

THE COURT: That's fine too. Good point. I wasn't going to do that, but good point, given the testimony.

So, with that being said, any objections to doing that?

MS. BRUINSMA: I guess I don't have a specific objection to it.

THE COURT: Again, you don't have to do it, but it sounds like you are willing to do it.

MS. MEINBERG: Yes I will.

THE COURT: I think that it is appropriate under the circumstances. So, if you want to participate you can and if you don't want to, then I guess you don't have to.

MS. BRUINSMA: In that case, if I could just put my rationale on the record and --

THE COURT: You sure can.

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Okay.

(At 11:14 a.m., bench conference concluded)

THE COURT: All right.

Counsel, let's just-do it this way.

Those are the jurors that we had in today. There are three others and for various different reasons, I think that one of them had a preplanned vacation and I think that two had medical issues --

I'm wrong apparently.

One medical and two preplanned vacations per Ms. Johnson who has been speaking with them.

So, we were going to, depending on what happened today and whether we needed them to come back or not. I had excused them for the day, but told them they were still under subpoena and we would work with them another day if we could -- if we needed them.

And I am telling you right now, that based on the testimony, we need them. And so we will try to work with them and Counsel on another day to continue the hearing. I think that it is important to hear what their testimony and recollection is.

We also just had a conversation at the bench. There has been a request by the Defense for -- for

necessary expenditures or amount to be allotted to the Defense for an expert to testify, again, if necessary, with

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regards to the angle of the cameras and whether or not the jurors could see Mr. Davenport's handcuff or shackles or what not.

What I had asked Counsel to do is to just take a moment, since we have Mr. Davenport here, and since he has a cuff --

Do you have a belly shackle on right now, sir?

THE DEFENDANT: Yes.

THE COURT: Yes.

So, similar to what he would have had at the time of trial.

I don't know, does he have ankle shackles on too?

MS. MEINBERG: Yes.

THE COURT: So, I would just ask Counsel to observe Mr. Davenport from where he is at, both from the jury box and Ms. Meinberg made a good point too, from the -- from the galley just to see what observations they could make --

MS. BRUINSMA: And I guess --

THE COURT: -- with regards to the restraints.

MS. BRUINSMA: And if I could just make -- place my position on the record with respect to that.

THE COURT: Yes.

MS. BRUINSMA: I think that is not a necessary step to take because what we are looking at is whether the

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jurors were able to see him and that any determination is going to be made on what the jurors say and not any speculation about what may or may not been able to be viewed throughout the courtroom.

I understand the Court's position with respect to doing that and not wanting to bring in an expert, which I also think would be simply more speculation that it is what the jurors say and nothing more. But that is -- that is my position and objection to that. I just wanted to place that on the record and I understand the Court's ruling.

THE COURT: Okay.

Any objections to doing that Ms. Meinberg?

MS. MEINBERG: No, your Honor.

THE COURT: And we did discuss that objection at the bench and I indicated that because -- based on -- given the testimony that we did have some testimony that different jurors were able to see different restraints, I'll indicate that; and given the Defense's request to have an expert -- possibly have an expert come in and give angles and given expert testimony

with regards to what you could or couldn't see from the jury box or what not.

I indicated to Counsel that they have made that request and I would ask Counsel to just make these observations and see if we could all stipulate to one thing or another; so that I wouldn't necessarily have to address

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that issue or allow costs for that expenditure or to have an expert come in.

So, given that ruling, I think that Counsel is willing to do that, again, over your objections; I understand that.

So, with that, I would just ask that Counsel take a moment and then we will have a brief conversation and see if we can stipulate as to whether or not you can view the restraints -- and I will indicate, Counsel, I don't know whether the curtain -- we now have a black curtain up around the tables, that has been there a number of years now; but I don't know if it was there at the time of the trial. In looking at the photographs, I will say, honestly, it does not appear that the curtain was there. I don't know for sure, without going back and looking at the video; but I did make that observation when I was looking at the photographs. And I know that we had testimony from one juror -- I'll have to go back and look at my notes again, but I believe that there was one juror who indicated that he thought that he could see the ankle restraints from the jury box. Again, I'd have to go back and look at my notes -- I thought that is what he said -- and review

his testimony again on that issue. He may have referenced when he was seated back in the galley, but I thought that is what he said.

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So, with those comments, that is why I am asking Counsel to participate in doing this. We are still on the record and I'll let you just go have a seat in the jury box or take various seats from different perspectives. And we'll address a possible stipulation in a moment.

MS. BRUINSMA: Wow, there is not a lot of room up here.

THE COURT: There is not a lot of room.

And I guess that I'll also indicate that this not typical, but given the request and given the hearing, that is why I am asking you to do this. And I won't ask you to do jumping jacks or pushups or anything like that.

MS. MEINBERG: Thank you, Judge.

THE COURT: They are heavy doors.

Counsel, would you please approach?

(At 11:23 a.m., conference at the bench)

THE COURT: I don't know if you want to go off the record, this is still supposed to be recorded during a bench conference. But do you want to go off the record and discuss that or --

MS. BRUINSMA: What do you --

I don't care whether it is on the record or off the record.

THE COURT: Okay.

Okay.

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So, -- well then let me ask you. Were you able to observe -- I'll ask you first Ms. Bruinsma.

Were you able to observe the --

MS. BRUINSMA: Yeah, the -- yeah, depending on how he is positioned and where the jurors are and the --

THE COURT: And where you are seated.

MS. BRUINSMA: -- podium.

THE COURT: Right.

MS. BRUINSMA: You can -- there are areas of the courtroom --

THE COURT: That you can see.

MS. BRUINSMA: -- and the jury box where you can see.

THE COURT: Right.

MS. BRUINSMA: Same with the gallery, depending on who is sitting in front of you.

THE COURT: Right.

MS. BRUINSMA: All of those factors.

THE COURT: So we can stipulate to that then.

MS. MEINBERG: Yes.

THE COURT: Depending where you are seated and how he is positioned --

MS. MEINBERG: Well and I would also like to stipulate about the aisle because I noticed -- like when you were doing voir dire. If you called a juror and they

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walked up the aisle, you could see -- when his right leg was shackled, you could see the cuff dangling down and you could see the wrist shackle from the aisle.

THE COURT: So, again, depending on who is looking where --

MS. MEINBERG: Right.

THE COURT: And you can certainly indicate for the record. I appreciate that, so we can put that on the record then.

All right.

MS. BRUINSMA: Did we want to put anything on the record about the positions of the video cameras or do we not care about that at this point?

Just that they are not at the same vantage point that --

THE COURT: They (inaudible). I suppose that we could get a tape measure, but I could guess that we could stand -- how tall are you?

MS. BRUINSMA: Five-four.

THE COURT: Why don't you go stand and see if we can --

MS. MEINBERG: Oh, God, I am so bad at that.

THE COURT: Okay.

MS. MEINBERG: What is that, two feet above her head.

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THE COURT: I am going to say eight -- I think it is about three, maybe.

MS. MEINBERG: Okay.

THE COURT: So probably -- again, without measuring -- what would you say?

MS. BRUINSMA: I am very horrible with distances, but I --

THE COURT: I am going to say eight or nine feet.

MS. BRUINSMA: I would think that is a good estimate.

THE COURT: A fair estimate. Again, we could get a tape measure and we could -- I'll also explain where the camera is. I think that the camera probably has a

better angle, but you can certainly see and I think that is really the main issue.

MS. BRUINSMA: Right.

THE COURT: Okay.

(At 11:26 a.m., bench conference concluded)

THE COURT: All right.

Counsel, first of all let me say, I appreciate you participating in that exercise.

We have had some discussions and I think that everyone is in agreement -- and I will indicate to you too that I indicated to you in chambers earlier, that yesterday I did go to the jury box to see if -- what, maybe you could

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see at this end. I only stayed at this end. And I felt that you could probably -- you probably would have been able to see the cuffs depending on where Mr. Davenport was, his seat and so forth. It is one of the reasons why I asked you to see if we could just agree on something too.

And my understanding and I'll let you put anything further on the record, is that everyone is in agreement -- all attorneys are in agreement and the Court is in agreement, that depending on where you are at in the jury box and depending on the position of Mr. Davenport and he is a little bit back from the table now. I certainly think that would have been something that he probably would have done during the

trial is kind of moved up and back, you know, changed his position periodically during the trial. So, I think that he is in a reasonable position here. That depending on where you are at in the jury box, depending if you are standing or sitting and where Mr. Davenport is, that you can observe the handcuff at different places in the jury box I think. I will also indicate too that some of the pictures show that he had files in front of him, but again, those could very well have been moved during the trial.

So, I will state that for the record.

I did not get back to the galley, but I think that Counsel probably -- my understanding is that Counsel

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is going to indicate their observations from the galley and that there is an agreement, again, depending on where you are seated, standing, seated, possibly walking down the aisle, you might be able to see different restraints.

So, with that, I'll -- I'll turn it over to Ms. Bruinsma, first of all, with regards to whether or not that is an accurate statement of what we discussed and anything else that you want to add.

MS. BRUINSMA: Yes, thank you, your Honor.

That is accurate with respect to the back of the courtroom where the jurors would have been seated with voir dire. That depending on where you are sitting and who is sitting in front of you and how the Defendant's chair is positioned, where Defense Counsel

is positioned, where the deputy may have been positioned that there are locations in which you could possibly view the Defendant's handcuffs or belly chains through the side of the chair.

But again, as I indicated earlier, I believe the jurors' testimony is what will be controlling that.

THE COURT: Appreciate that.

Anything else, Ms. Meinberg?

MS. MEINBERG: Yes, your Honor.

He -- right now today he -- his right hand is unshackled and so the hand cuff is dangling down on the right side of his waist. And that side of the chair is

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open.

So yes, depending on if Ms. Eifler was sitting here or standing at the lectern, I noticed that from especially on the right-hand side of the galley, you can see the handcuff dangling and the left hand wrist shackle in every row except for the back row. I could not see it in the back row.

It was more difficult to see on the left-hand side, but there are some places where you could see.

And I noticed, especially walking up the aisle, you had a good view of both the dangling handcuff and the shackle on the left hand.

Do you also want to discuss the jury box?

THE COURT: If you have anything else that you want to indicate with regards to the jury box, go ahead.

MS. MEINBERG: Yes.

I noticed from every seat in the jury box, whether on the far end by the witness stand or the far end by the side of the lectern, depending, of course, whether someone is standing at the lectern, I could see the left wrist shackle. I couldn't see the belly chain, but I could see the left wrist shackle, whether I was standing or sitting.

But again, it depends on whether somebody is standing at the lectern and blocking some juror's views.

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But from every chair I could see it.

MS. BRUINSMA: Your Honor, just with respect to the jury box. I would agree that again, depending on how the Defendant was positioned and how the juror was positioned in the chair and where they are looking and where the podium is positioned or the attorney that is at the podium is positioned, there are spots within the jury box that a juror might be able to view the Defendant's wrist shackles.

I do believe that the record indicates that the black curtain was up during the trial and so from my view in the jury box, the leg shackles is not something that was able to be viewed with the curtain up.

But again, I think that it is going to be the testimony that is controlling.

THE COURT: And I appreciate that. I realize that we are specifically looking for something right now; but I think that those observations by Counsel seem to be consistent with what we have just heard from the jurors, some of them indicated they don't have a recollection of ever seeing it and others pointed out what they observed.

So, I appreciate that and given that exercise and your participation and what was indicated on the record, I am going to deny any request for any expert to have to come in to have to testify about angles and so forth.

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There is one other thing -- because I don't think that it is necessary. I think that everyone agrees that there are locations and depending on, you know sitting, standing or what is going on, files on the desk where Mr. Davenport is and what not that there are places that jurors could see the restraints.

With regards to the camera too, we also need to indicate that for the record.

We just wanted to make a record of the location of the camera or cameras and I'm -- there are -- I guess again for the record, where my bench is, Mr. Davenport would be seated to my right. There is an L-shaped table. There is a camera behind me and to the left, which is right almost above the witness stand, not quite, it is a little bit closer to the wall I'm sorry, the

doorway that the jurors come in and out of the court. But the cameras are higher up than what your general -- I guess what the average person's view would be from looking through their eyes. I think that Counsel, we agreed -- I indicated that we could certainly get a measure -- a tape measure out, but I think we are all in agreement that the cameras are located approximately eight to nine feet up from the floor. So, they are above where the height of the average -- any person that I am aware of. But that is the approximate height of the camera and again, they are a little bit

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closer to the bench, right around where the witness stand is. So, they are looking at Mr. Davenport at a different angle, but I think they show -- in viewing the photographs, the stills that were taken from that camera angle that were attached to the Defendant's memorandum, again, you can certainly see at various times I'm guessing that it is clearer in real life than what is shown in these photographs and I don't know how the video appears -- I have indicated to Counsel that I haven't looked at the video or the DVD yet for purposes of this hearing. I haven't given my opinion yet, we are not finished with the hearing yet.

But you can certainly see what appears to be a metal -- the handcuff. I would say that looking at the photographs, sometimes it looks like a bracelet -- it could be a bracelet, but I think that it is clearer probably in real life than is shown in the still photographs taken from the DVD.

So, -- but that camera angle is certainly higher up than where the jurors would be or what the jurors

would be looking at. So, I'll make that comment for the record too.

Counsel, is everyone in agreement that we estimated that it would be about eight or nine foot from the ground? Yes.

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MS. BRUINSMA: Yes, your Honor.

MS. MEINBERG: Yes, your Honor.

THE COURT: Alright, that is our best estimate on the height.

Um, --

MS. BRUINSMA: And that set, does it do anything?

THE COURT: There is another camera I don't think that that camera -- there are two other cameras in the court. One would be focused on the jury (sic) box, so when Mr. Davenport testified -- the witness box, sorry, that would have picked him up. He didn't have any restraints on when he testified, so I don't know that that is that relevant for purposes of the inquiry that -- the issue that we are here for today.

The other camera is, unfortunately, on the bench, so that is the camera that picks me up when I talk. So, those two cameras are I don't those are actually higher, but I don't think that really matters for our purposes.

So, those are back in the galley, they take a different view of the court.

Anything else that we need to cover -- at this point -- Counsel, I think that we spoke that we do need to bring the other jurors in so we will pick another day and continue the hearing and we will then figure out from there -- why don't we chat a moment or two about whether or not I

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am going to have written arguments or allow you to have written arguments given the fact that we, obviously, are going to have a delay. I'll probably do it that way and give you an opportunity to review everything again or have written -- or just have oral closings or arguments after that hearing.

But anything that we need to place on the record then before we adjourn?

MS. BRUINSMA: Not from the People, your Honor.

MS. MEINBERG: No, your Honor.

THE COURT: Okay.

With that then, the Court will recess and Counsel, I just need to chat with you a few minutes and we'll figure out some dates for the next -- the continuation hearing.

MS. BRUINSMA: Okay.

THE COURT: Court is in recess.

(At 12:37 a.m., court is in recess)

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STATE OF MICHIGAN)

COUNTY OF KALAMAZOO)

I certify that this transcript consisting of 125 pages is a complete, true, and correct transcript of volume I of the evidentiary hearing held in this case on June 24, 2011.

August 6, 2011

Connie L. Branch CER 5624
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STATE OF MICHIGAN
9th JUDICIAL CIRCUIT COURT
TRIAL DIVISION
FOR THE COUNTY OF KALAMAZOO

PEOPLE OF THE STATE OF MICHIGAN,
v Case No.:C2007-0165FC
ERVINE LEE DAVENPORT.
Defendant.

EVIDENTIARY HEARING - VOLUME II OF II
BEFORE THE HONORABLE
PAMELA LIGHTVOET, CIRCUIT JUDGE
Kalamazoo, Michigan – Friday, July 29, 2011

APPEARANCES:

FOR THE PEOPLE:

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[Page 2]

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<u>EXHIBITS</u>	<u>Identified</u>	<u>Admitted</u>
None		

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Kalamazoo, Michigan

Friday, July 29, 2011 at 11:10 a.m.

COURT CLERK: The court calls the matter of the People versus Ervine Lee Davenport, case number C07-0165FC.

Parties, please state appearances for the record.

MS. BRUINSMA: Good morning, your Honor, Cheri Bruinsma appearing on behalf of the People.

MS. MEINBERG: Good morning, your Honor, Susan Meinberg from SADO on behalf of Mr. Davenport.

THE COURT: Mr. Davenport is here also.

Counsel, this is a continuation of the hearing -- evidentiary hearing that we had about a month ago and the three remaining jurors that we need to speak with are out in the hall.

Is there anything that we need to discuss before we bring the first one in?

MS. MEINBERG: Just one thing, Judge.

THE COURT: All right.

MS. MEINBERG: If you could have Mr. Davenport's right hand unshackled so he could take notes that would be great.

THE COURT: If you could do that, please, that would be great.

Are we all set then Counsel?

MS. MEINBERG: Yes, your Honor.

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THE COURT: Before you have seat ma'am, please raise you right hand.

Do you solemnly swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth so help you God?

MS. ENGSTER: I do.

THE COURT: Please have a seat ma'am.

And before we begin -- we have some questions for you with regards to the jury service that you had a couple of years ago -- actually about three years ago now I think it was.

Just so you know, as we go through the process, the attorneys will ask you some questions, you do need to speak up and respond verbally; no mmm hmm and naw huhs and that type of thing. And if you would wait until they are done with their question before you give a response, even though you might kind of know where they are going with their questions. I might have some questions too.

So, before we do that, if you would please just state and spell your first and last name for the record.

THE WITNESS: Sarah Engster; S-a-r-a-h E-n-g-s-t-e-r.

MS. BRUINSMA: Thank you, your Honor.

SARAH ENGSTER

Called to testify at 11:12 a.m.;
testified as follows:

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EXAMINATION BY THE PROSECUTION

BY MS. BRUINSMA:

Q Good morning, thank you for being here.

Ma'am, do you recall being a juror on the Ervine Davenport case?

A Yes I do.

Q And has anyone discussed with you the reason that you are testifying today?

A No, not other than the paper that I received.

Q I'm sorry.

A Not other than the notice I received in the mail.

Q From the court.

A Right.

Q Okay.

Now, when you think back to the trial, is there anything about the Defendant's appearance in court that stands out in your mind?

A Not particularly, no.

Q Do you recall what the Defendant was wearing during the course of the trial?

A Not really.

Q Did you notice if the Defendant was restrained in any way?

A No.

Q Do you recall seeing whether the Defendant was wearing handcuffs of any kind?

[Page 6]

A No.

Q Do you recall seeing whether the Defendant was wearing any kind of leg shackles?

A No.

Q Do you recall any of the other jurors discussing whether the Defendant was restrained?

A No I don't.

Q Was the issue of the Defendant being restrained discussed at all during deliberations, to your recollection?

A No, I don't recall it.

MS. BRUINSMA: I don't have any further questions from this witness.

EXAMINATION BY THE DEFENSE

MS. MEINBERG:

Q Good morning, thank you for coming.

A Mmm hmm.

Q On the first and part of the second day when they were picking the Jury and you were sitting in these

back rows, do you remember where you were sitting on the first day or the second day?

A Oh boy, I believe that I was kind of right directly back from here.

Q On this side without windows?

A Yes.

Q And on the second day, were you sitting in a different

[Page 7]

place?

A Oh boy, you know, I have been called for jury duty since then, so I don't remember exactly where I was; I'm sorry.

Q That's okay.

And when you were picked to sit on the Jury, do you remember where in the box you were sitting?

A I was right here.

Q In the chair that is placed at the end, not even in the box?

A Yes.

Q In the back or in the first row?

A I believe I was in the back.

Q And during the course of the trial when you stood up and took stand and stretch breaks, did you ever look over at Mr. Davenport and notice anything on this wrist?

A Honestly, I don't remember seeing his hands.

Q And when you would come in and out of the courtroom, did you ever see his hands?

A No.

Q What about when he turned around and looked -- I guess that there was a screen behind him; did you ever notice then?

A No.

Q Is it that you don't recall or you know you didn't see --

A I don't recall.

Q And -- at some point during the trial Mr. Davenport

[Page 8]

testified. Do you remember having to go out in the hallway before he took the seat up there?

A Yes I do.

Q Did you ever hazard to guess as to why you had to go out into the hallway before he testified?

Q You know at the time I don't think that we realized that he was going to testify; we were escorted out and when we came back in, he was up here.

Q Okay.

A That is what I recall.

MS. MEINBERG: Great. Thank you; I have no further questions.

THE COURT: I just have one clarification.

When you were describing where you were seated. So you were seated in the back row, the end seat, which is the closest to the bench --

THE WITNESS: Yes.

THE COURT: -- the front of the courtroom as opposed to the back --

THE WITNESS: Yes.

THE COURT: -- of the courtroom. So, I just wanted to clarify that for the record.

Any other questions then, Counsel?

MS. BRUINSMA: No, your Honor.

MS. MEINBERG: No, your Honor.

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THE COURT: So she may be excused?

MS. BRUINSMA: No objection.

THE COURT: Thank you, we appreciate your time today.

THE WITNESS: Thank you.

THE COURT: Sorry to have to call you back and be careful of that step when you exit.

THE WITNESS: Thank you.

(At 11:16 a.m., witness excused)

THE COURT: Before you have a seat sir, please raise your right hand.

Do you solemnly swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth so help you God?

MR. WEISHAAR: I do.

THE COURT: Please have a seat sir.

And before I have you state your name for the record, just so you are aware, we are going to ask you some questions about your experience as a juror during Mr. Davenport's trial.

When the attorneys ask you questions or if I ask you questions, we need a verbal response. Please remember not to give us an mmm hmm or naw huh or that type of response. We are recording everything and there might be a transcript later.

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Also, just make sure that you wait until the question is completed before you give your response.

With -- and make sure that you speak right in the end of that microphone, because if you move to either side sometimes it doesn't pick up your voice.

So, with that, please state and spell both your first and last name for the record, please.

THE WITNESS: Mark Weishaar, M-a-r-k W-e-i-s-h-a-a-r.

MARK WEISHAAR

**Called to testify at 11:17 a.m.;
testified as follows:**

EXAMINATION BY THE PROSECUTION

BY MS. BRUINSMA:

Q Good morning, sir, thank you for being here.

A Do you recall being a juror in the Ervine Davenport case?

A Yes, I do.

Q And has anyone discussed with you the reason that you are here today?

A No.

Q During the trial, do you recall the Defendant being present in the courtroom?

A Yes.

Q Is there anything about his appearance that stands out in your mind?

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A No.

Q Is there anything about how the Defendant presented himself during the course of the trial that stands out in your mind?

A No.

Q Do you recall what the Defendant was wearing during the trial?

A I do not, other than the fact that -- at one point he took off a shirt and he had a T-shirt on when he was on the stand here.

Q Did you notice if the Defendant was restrained in any way during the trial?

A I do not recall that.

Q Did you ever specifically see whether the Defendant was wearing handcuffs?

A I do not recall he was wearing those.

Q Do you recall whether the Defendant was wearing any type of leg shackles?

A I do not.

Q Do you recall whether it was discussed during deliberations that the Defendant was wearing any kind of restraints?

A It -- it was not to the best of my knowledge.

Q And do you recall anybody pointing out handcuffs on the Defendant?

A No, in fact, I remember the Defendant writing with a small

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pencil, so I don't believe that he was in handcuffs of any sort.

MS. BRUINSMA: I don't have any further questions from this witness.

EXAMINATION BY THE DEFENSE

BY MS. MEINBERG:

Q Good morning, thank you for coming in.

A Certainly.

Q During the first and part of the second day when they were picking the Jury and you were all sitting in the back benches, do you remember where you were sitting on the first day?

A I do not, but I recall I was the first person chosen; so I only sat for a very short time.

Q Okay.

And during any point sitting back in the benches, did you notice a handcuff hanging down from Mr. Davenport's waist?

A No.

Q And when you were sitting in the box, do you remember which seat you were in?

A I was in the first seat over there.

Q The front row or the second row?

A First row is my recollection.

Q And at any point during the stand and stretch breaks when

[Page 13]

you stood up in the box to stretch, did you ever look over at Mr. Davenport and notice a handcuff on his left hand?

A I never did note -- I did not notice leg or hand of any sort.

Q Okay.

And at -- at one point when Mr. Davenport took the stand and you all had to go out in the hallway -- do you remember doing that?

A I remember being dismissed in this manner.

Q And did you know why you had to go outside of the courtroom before he took the stand?

A I do not; but he did take his shirt off, as I indicated.

Q He took his shirt off.

MS. MEINBERG: Thank you. I have no further questions.

MS. BRUINSMA: Nothing further, your Honor.

THE COURT: And again, just for clarification.

When you indicated that you were seated -- when you were in the jury box, you were in the first row, first seat. That would be the seat that is closest to the back of the courtroom and furthest away from the bench?

THE WITNESS: That is correct.

THE COURT: Any further follow up questions, Counsel?

MS. BRUINSMA: No, your Honor.

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MS. MEINBERG: No, your Honor.

THE COURT: Any problems with him being excused from his subpoena?

MS. BRUINSMA: No objection.

MS. MEINBERG: No.

THE COURT: Thank you sir, we appreciate your time. Sorry to have to call you back in.

THE WITNESS: Thank you.

THE COURT: Have a good day.

(At 11:21 a.m., witness excused)

THE COURT: Before you have a seat sir, raise your right hand.

Do you solemnly swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth so help you God?

MR. KUCERA: I do.

THE COURT: Please have a seat sir.

Before I have you state your name for the record, when you respond to questions with that particular microphone, you really need to speak right in the end of it. If you move to either side, sometimes the recording system doesn't pick up your voice.

We are going to be asking you some questions about when you served as a juror during Mr. Davenport's trial.

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Please give us a verbal response. Try not to respond with a mmm hmm or a naw huh, because we need a good transcript for later.

Also, please just make sure that you wait until the attorney or myself that we finish our question, even though you might know what the question is, but please just make sure that the question is finished before you give a response; again, that makes for a better transcript later on if needed.

THE WITNESS: Is this the mic. here too or this one?

THE COURT: That is the one that you are going to be speaking into -- yes, that is another microphone, but that one will pick up your voice.

THE WITNESS: Okay.

THE COURT: Go ahead.

MS. BRUINSMA: Thank you.

THE COURT: Oh, I'm sorry, you need to state and spell your first and last name for the record, sir.

THE WITNESS: Shawn Kucera, S-h-a-w-n K-u-c-e-r-a.

SHAWN KUCERA

**Called to testify at 11:23 a.m.;
testified as follows:**

EXAMINATION BY THE PROSECUTION

BY MS. BRUINSMA:

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Q Good morning, sir. Thank you for being here.

Do you recall being a juror on the Ervine Dav-
enport case?

A Yes.

Q And has anyone discussed with you the reason that
you are here for testimony today?

A No.

Q During the trial, do you recall the Defendant being
present in the courtroom?

A Yes.

Q Is there anything about his appearance that
stands out in your mind?

A Not really.

Q Do you recall what the Defendant was wearing
during the course of the trial?

A He seemed to be dressed nice, nicer than I was, I
think. I don't recall exactly what he was wearing,
but --

Q Nothing in particular stands out in your mind
about what he was wearing?

A No.

Q Do -- did you notice if the Defendant was restrained in any way during the trial?

A Myself I did not.

Q Did you see specifically if the Defendant was wearing handcuffs?

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A No.

Q Did you see if he was wearing any type of leg restraints or leg shackles?

A I don't recall.

Q Now you said, myself, I do not. Did you discuss or did somebody else discuss that with you?

A I remember there was -- when he came out to give his own testimony, we were all escorted out of the court and there was -- somebody mentioned that he might have been restrained and that is probably why we had moved out.

Q But other than that comment, was there any other discussion with the other jurors about the Defendant being restrained?

A No.

Q Was it ever mentioned in deliberations?

A No.

Q Okay.

And absent from that comment, you, yourself, did not see the Defendant's handcuffs?

A No. I recall seeing like witnesses come in, in chains and stuff; some of the witnesses I think were, but -

Q But you don't recall seeing any kind of restraints on the Defendant?

A No.

MS. BRUINSMA: I don't have any further questions.

THE COURT: Counsel.

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EXAMINATION BY THE DEFENSE

BY MS. MEINBERG:

Q Good morning, thank you for coming in.

A Good morning.

Q During the first and part of the second day when they were picking the Jury and you were sitting back in these rows, do you remember where you were sitting on the first day?

A Um, I was on this side, probably half way back.

Q The side without the windows?

A Yes.

Q Okay.

What about on the second day, were you still sitting in the back or were you sitting up in the box?

A When we were called to be --

Q When they were still -- sometimes the Jury was still being picked for part of the second day. Were you still sitting in the back for part of that day; do you remember?

A No, I only recall that being one day that we were picked.

Q And when you were called up to sit in the box, to sit on the Jury, do you remember where you were sitting in this jury box?

A I was sitting on the end.

Q Which end? Closest to this officer or closest to the bench?

A I was on the end by the door.

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Q By the door.

A By the door.

Q In the back or front?

A Yes, in the back.

Q In the back.

Okay.

When the jurors were allowed to stand up and stretch, did you ever look over at Mr. Davenport and see any handcuff on his wrist?

A I don't recall that.

Q Did you notice that he was only able to write with one hand during the course of the trial?

A I did notice that.

Q You did notice that.

Okay.

Did you notice how many deputies were in the courtroom during the trial?

A Um, I think that I saw at least two --

Q And you knew --

A It wasn't something that I was -- I wasn't taking inventory of all that.

Q Okay.

After Mr. Davenport finished testifying, did you notice that he didn't have restricted movement anymore?

A Yes, I mean, he walked in front of us all.

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MS. MEINBERG: I have no further questions.

THE WITNESS: Okay.

THE COURT: Let me just clarify again. You were seated in the back row on the end seat, near the side door-- the side of the courtroom, not the door near the front of the courtroom, correct?

THE WITNESS: Correct.

THE COURT: Any follow up questions?

MS. BRUINSMA: No, your Honor.

MS. MEINBERG: No, your Honor.

THE COURT: May the witness be excused then?

MS. BRUINSMA: No objection.

MS. MEINBERG: Yes.

THE COURT: We appreciate your time coming in today; you are excused.

THE WITNESS: Okay.

THE COURT: Be careful as you step down.

(At 11:28 a.m., witness steps down)

THE COURT: I can't see if the door shuts, so you have to let me know.

MS. BRUINSMA: Waiting for a crack. Okay, now.

THE COURT: Counsel, so we have now taken testimony of all of the jurors and I think that what we will do is that I will give you a certain amount of time just to file written responses then, since we had two

[Page 21]

different days. I'll give you an opportunity to review your notes and the transcript, if necessary.

I -- did either of you request the transcript from the last --

MS. BRUINSMA: No, that was something that Susan and I discussed this morning; because we both kind of recalled that -- we weren't sure if the Court was going to ask that it be prepared or if one of us was supposed to do that, so we wanted to clarify.

THE COURT: I think that I'll have both days prepared -- either way we are going to need it, no matter what happens.

So, I will let them know that that needs to be taken care of.

And so, I'll ask them to do that sooner than later.

And as soon as we get copies of the transcripts then, 30 days, is that enough time?

MS. BRUINSMA: Yes, your Honor.

THE COURT: Do you need that much time?

MS. MEINBERG: Twenty-one would be fine.

THE COURT: Do you want to do 21 days?

MS. BRUINSMA: That should work.

THE COURT: Okay, 21 days after the transcript is prepared -- filed in the court, then you need to get your

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closing -- written closing arguments in with regards to the hearing.

Is there anything else that we need to address then?

MS. BRUINSMA: I don't believe so, your Honor.

MS. MEINBERG: I don't believe so either, your Honor.

THE COURT: Okay.

All right, with that, court is in recess.

MS. BRUINSMA: Thank you.

MS. MEINBERG: Thank you, your Honor.

(At 11:29 a.m., court is in recess)

STATE OF MICHIGAN)

COUNTY OF KALAMAZOO)

I certify that this transcript consisting of 22 pages is a complete, true, and correct transcript of volume II of the evidentiary hearing held in this case on July 29, 2011.

August 6, 2011

Connie L. Branch CER 5624
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STATE OF MICHIGAN
NINTH JUDICIAL CIRCUIT COURT
TRIAL DIVISION

PEOPLE OF THE
STATE OF MICHIGAN,
Plaintiff,

v

HON. PAMELA L.
LIGHTVOET P47677

FILE NO. C07-0165FC

ERVIN LEE DAVENPORT,
Defendant.

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**OPINION AFTER REMAND FROM THE
MICHIGAN SUPREME COURT**

At a session of said Court held in the City and County of Kalamazoo, Michigan on this 20 day of October, 2011;

HON. PAMELA L. LIGHTVOET,
CIRCUIT COURT JUDGE.

By an Order dated March 9, 2011, the Michigan Supreme Court remanded this case to determine whether the jury saw the Defendant's shackles during Trial. If this Court determines that the jury did see Defendant's shackles, the Supreme Court ordered this Court to determine whether the prosecution demonstrated beyond a reasonable doubt that the shackling error did not contribute to the verdict against Defendant.

In accordance with the Michigan Supreme Court's Order, this Court held an Evidentiary Hearing at which the twelve jurors who rendered the verdict were subpoenaed to testify. All twelve jurors reported and testified on either June 24, 2011 or June 29, 2011. Subsequently, the parties provided written closing arguments to the Court.

Prior to the hearing, defense counsel objected to questioning jurors about whether the shackles/restraints were discussed during deliberations. However, this Court ruled that such questions were necessary to address the issues raised by the Michigan Supreme Court and for which this Court was ordered to address on remand.

The Court listened to the testimony of the jurors and reviewed the parties' briefs. There is no question that, despite the precautions taken, many of the

jurors were able to observe Defendant's shackles/restraints during the trial.¹ This is clear from the testimony of the jurors and not disputed in the parties' briefs. Therefore, this Court must make a determination as to whether or not the prosecution demonstrated beyond a reasonable doubt that the fact that Defendant was shackled/restrained did not contribute to the jury's guilty verdict.

The Court finds that the Prosecution has met its burden. There was not one juror who testified the shackling issue affected their verdict. They testified the issue was not discussed during deliberations and they confirmed the verdict was based only on the evidence. The jurors who observed the handcuffs or shackles went on to testify that the procedure was not a surprise or unexpected. They understood it to be "routine", "part of the procedure", for "security", not unusual given the charge and/or not unusual in a murder trial.² There was no evidence/testimony that the shackles/restraints was significant to the jurors or made them more inclined to find the Defendant guilty.³ There was no testimony that indicated Defendant's shackles/restraints contributed to the guilty verdict. The Prosecution has met its burden on this issue through the testimony of the jurors.

¹ A number of jurors also recalled that Defendant initially wore an orange jumpsuit, so they knew he was in custody. He then changed his clothing. See Evidentiary Hearing - Volume I, No. 2007-0165FC, pp 36, 59, 98-99.

² See Evidentiary Hearing - Volume I, No. 2007-0165FC, pp 16, 36, 38, 45, 56, 59, 81.

³ *Id.* pp 20, 63, 82.

WHEREFORE, the Court finds beyond a reasonable doubt that the shackling of Defendant during the Trial did not affect the juror's verdict in this case.

IT IS SO ORDERED.

Date: October 20, 2011

Pamela L. Lighvoet

HON. PAMELA L. LIGHTVOET (P47677)

Circuit Court Judge

PROOF OF MAILING

The undersigned certifies that a copy of this Order was sent to the parties listed in the pleadings filed herein by mailing the same to them at their respective last known addresses with 1st class postage fully paid thereon, on 10/21/2011.

Cheryl L. Johnson

Cheryl L. Johnson

Judicial Aide to the Hon. Pamela L. Lightvoet