

COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

E

THE PEOPLE OF THE STATE OF CALIFORNIA,)

PLAINTIFF-RESPONDENT,)

VS.)

CHUCK E. JOHNSON,)

DEFENDANT-APPELLANT.)

FWV 02293

REPORTERS' TRANSCRIPT ON APPEAL

APPEAL FROM THE SUPERIOR COURT OF SAN BERNARDINO
HON. ROBERT E. LAW, JUDGE PRESIDING

APPEARANCES:

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VOL 2 OF 4
PP 201 - 469

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JANE FOLMER, C-2331,
KATHRYNE MCNULTY, C-7651,
OFFICIAL REPORTERS, AND
KARIE MARTIN, C-9428,
REPORTER PRO TEMPORE

COPY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

DEPT. NO. RC 4

HON. ROBERT E. LAW, JUDGE

THE PEOPLE OF THE
STATE OF CALIFORNIA,
PLAINTIFF,
VS.
CHUCK E. JOHNSON,
DEFENDANT.

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) NO. FWV 02293
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REPORTERS' TRANSCRIPT ON APPEAL
OCTOBER 19, 23, 24, 25, 26, 30, 31, 1995;
NOVEMBER 1, 2, 6, 7, 8, 14, 1995;
JUNE 7, 1996

APPEARANCES:

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1 RANCHO CUCAMONGA, CALIFORNIA; THURSDAY, OCTOBER 26, 1995

2 P.M.

3 DEPARTMENT 4

HON. ROBERT E. LAW, JUDGE

4
5 APPEARANCES: SET FORTH ON THE TITLE PAGE.

6
7 (GAIL GREENLEE, C-8647, OFFICIAL REPORTER.)

8 ---###---

9 THE COURT: LET'S SEE. YEP. THEY ARE ALL HERE.

10 MR. ABLARD, YOU READY TO CONTINUE YOUR

11 EXAMINATION?

12 MR. ABLARD: YES. THANK YOU VERY MUCH, YOUR HONOR.

13 JENNIFER RETHORN,

14 HAVING BEEN PREVIOUSLY SWORN, RESUMED THE STAND, WAS
15 EXAMINED, AND TESTIFIED AS FOLLOWS:

16 CROSS-EXAMINATION, RESUMED,

17 BY MR. ABLARD:

18 Q YOU GOT UP AND CHECKED. THE FRONT DOOR WAS
19 LOCKED; CORRECT?

20 A YES.

21 Q THE GARAGE DOOR WAS UNLOCKED; CORRECT?

22 A WRONG. GARAGE DOOR WAS LOCKED.

23 Q DO YOU RECALL ON OCTOBER 14 TELLING OFFICER
24 KELLY THAT THE GARAGE DOOR WAS UNLOCKED?

25 A I DON'T EVEN KNOW WHAT DAY OCTOBER, OCTOBER 14
26 WAS.

27 Q I DON'T BLAME YOU. DO YOU REMEMBER TELLING
28 ANYONE, AN OFFICER, DURING AN INTERVIEW THAT THE GARAGE

1 DOOR WAS UNLOCKED?

2 A WHAT DAY WAS OCTOBER 14?

3 Q OF 1993?

4 A YES.

5 Q LET'S SEE. WELL, WEDNESDAY?

6 A I DIDN'T SPEAK TO THE OFFICERS ON WEDNESDAY,
7 OCTOBER 14TH.

8 Q OKAY. AND THE SLIDER WAS OPEN. SO MR. LOPEZ
9 WAS OUT THERE. SO THAT WAS UNLOCKED?

10 A CORRECT.

11 Q OKAY. WHEN THE POLICE ARRIVED, MR. JOHNSON WAS
12 INSIDE THE HOUSE?

13 A HE WAS IN HIS BEDROOM.

14 Q OKAY. NOW, JUST BRIEFLY, DISCUSSING THE EVENTS
15 WHEN YOU HAD MENTIONED CHECKING BRITTANY'S EARS?

16 A YES.

17 Q WHEN DID THAT OCCUR?

18 A WE CHECKED HER EARS SATURDAY MORNING.

19 Q OKAY. THAT WAS BEFORE OR AFTER HER BATH?

20 A BEFORE.

21 Q OKAY. AND AT THAT TIME, WAS THERE ANY BLOOD IN
22 THE EARS?

23 A NO.

24 Q SO, DO YOU RECALL HAVING AN INTERVIEW WITH
25 OFFICER DEMOET AND OFFICER DONLEY, A TAPE-RECORDED
26 INTERVIEW?

27 A WHICH DAY WAS THAT?

28 Q OCTOBER 12, 1993?

1 A WHICH WAS TUESDAY, YES.

2 Q OKAY. WERE YOU JUST CHECKING THE EARS OR TRYING
3 TO CLEAN THEM OUT AS WELL?

4 A I WAS CHECKING THE EARS AND AT THE SAME TIME, IF
5 THERE WAS ANYTHING THERE, YES, I WOULD HAVE CLEANED IT
6 OUT.

7 Q OKAY. YOU WERE CONCERNED AT THAT TIME THAT SHE
8 WAS EXHIBITING SYMPTOMS OF THE EAR INFECTION?

9 A I WAS CONCERNED THAT SHE MIGHT BE GETTING AN EAR
10 INFECTION, YES.

11 Q OKAY. AND WHAT SYMPTOMS OF BRITTANY CAUSED YOU
12 TO THINK THAT?

13 A PULLING ON HER EAR AND RUBBING AT IT.

14 Q OKAY. DO YOU RECALL TELLING OFFICER DONLEY AND
15 OFFICER DEMOET; AND I NEEDED TO KNOW THAT SO I CAN CONTACT
16 THE DOCTORS IF THERE WAS A SERIOUS PROBLEM. MY DAUGHTER
17 HAS PERFORATED EAR DRUMS IN HER RIGHT EAR. AND IT WAS
18 BLOODY INSIDE OF THE EAR. DO YOU RECALL TELLING HIM THAT?

19 A I RECALL TELLING THEM PART OF THAT, BUT NOT ALL
20 OF THAT.

21 Q OKAY. WHEN MR. JOHNSON FOLLOWED YOU OUTSIDE,
22 DO YOU REMEMBER TESTIFYING ABOUT THAT?

23 A OKAY. YES.

24 Q OKAY. YOU ARE OUT FOR WHAT, ABOUT A MINUTE?

25 A I REALLY COULDN'T SAY HOW LONG.

26 Q WOULD IT HAVE BEEN FIVE MINUTES?

27 A EVERYTHING IS GOING ON AT ONCE. I CAN'T SAY.

28 Q I UNDERSTAND. OKAY. DID YOU TESTIFY EARLIER

1 THIS MORNING ABOUT THAT YOU THOUGHT IT WAS A MINUTE, OR AM
2 I MISTAKEN?

3 A I COULD HAVE SAID ABOUT A MINUTE.

4 Q OKAY. AND I BELIEVE YOU ALSO TESTIFIED, AM I
5 CORRECT, THAT MR. JOHNSON HAD COME BACK INSIDE BEFORE YOU
6 CAME BACK IN?

7 A CORRECT.

8 Q OKAY. NOW, WE HAVE HEARD SOME TESTIMONY THIS
9 MORNING. YOU HAD MENTIONED THAT YOUR DAUGHTER WAS HEALTHY
10 AND ROBUST?

11 A CORRECT.

12 Q AND HAD YOU EVER TOLD ANYONE THAT YOUR DAUGHTER
13 WAS SICK OR SICKLY?

14 MS. SCHMAUSS: OBJECTION; VAGUE AS TO TIME.

15 MR. ABLARD: OKAY. THAT'S FINE.

16 THE COURT: SOUNDS A LITTLE VAGUE AS TO TIME.

17 MR. ABLARD: LET ME STRAIGHTEN THAT OUT.

18 Q BY MR. ABLARD: THE MEETING-- WELL, EXCUSE ME.
19 NOT MEETING.

20 THE GATHERING THAT ON THE 11TH OF OCTOBER, 1993, DO
21 YOU RECALL TELLING ANYONE YOU KNOW WELL, AT LEAST BRITTANY
22 IS IN A BETTER PLACE AND SHE IS NOT HURTING AND SHE IS NOT
23 SICK ANYMORE.

24 DO YOU RECALL TELLING THAT TO ANYONE?

25 A I DON'T RECALL ANYTHING ABOUT THAT DAY, THAT
26 NIGHT.

27 Q SO, YOU DON'T RECALL TELLING THAT TO CHRISTY
28 CROCKER?

1 A NO.

2 Q YOU LIKEWISE DO NOT RECALL TELLING MRS. FERRERA
3 I KNOW SHE IS OKAY. SHE WON'T HAVE TO BE SICK ANY MORE?

4 A I DON'T EVEN REMEMBER SEEING JENNY FERRERA THAT
5 DAY.

6 Q OKAY. YOU REMEMBER SEEING CHRISTY?

7 A YES.

8 MR. ABLARD: I HAVE NOTHING FURTHER RIGHT NOW, YOUR
9 HONOR. THANK YOU.

10 THE COURT: ANY REDIRECT?

11 MS. SCHMAUSS: THANK YOU.

12 REDIRECT EXAMINATION

13 BY MS. SCHMAUSS:

14 Q WE HAVE BEEN TALKING ABOUT THESE EAR PROBLEMS
15 YOUR CHILD HAD. TO YOUR KNOWLEDGE OR ANYTHING YOU
16 OBSERVED, DID BRITTANY SEEM TO HAVE ANY SORT OF HEARING
17 PROBLEM?

18 A NO.

19 Q IF YOU CALLED HER, WOULD SHE RESPOND?

20 A YES.

21 Q AND SPEAKING OF THAT, WAS BRITTANY THE KIND OF
22 CHILD THAT IF YOU CALLED HER, WOULD SHE TEND TO IGNORE YOU
23 OR WOULD SHE COME?

24 A SHE'D COME.

25 Q SO, DID IT STRIKE YOU AS UNUSUAL WHEN YOU WERE
26 HOLLERING HER NAME AND DARIN WAS HOLLERING HER NAME THAT
27 THERE WAS NO RESPONSE?

28 A THAT MEANS SHE WASN'T AROUND.

1 Q AND ON THAT SUBJECT, AFTER YOU DISCOVERED THAT
2 SHE WAS NOT IN THE BATHROOM, NOT IN HER ROOM, AND NOT IN
3 THE LIVING ROOM, WHY DID YOU START TO REALLY PANIC?

4 A THOSE ARE THE ONLY THREE ROOMS SHE'D REALLY BE
5 IN THE HOUSE.

6 Q DID BRITTANY HAVE A HABIT OF GOING OUTSIDE
7 WITHOUT ASKING?

8 A NO.

9 Q WHAT WOULD SHE DO?

10 A SHE WOULD ASK TO GO OUT IN THE PATIO.

11 Q WAS SHE A CHILD THAT WOULD GO OFF BY HERSELF?

12 A NO.

13 Q HOW WOULD YOU CHARACTERIZE HER?

14 A VERY FRIENDLY, VERY OUTGOING, VERY ACTIVE AND
15 WANTING ATTENTION AND WANTING TO BE WITH SOMEONE. SHE
16 WASN'T A LONER.

17 Q OKAY. HOW ABOUT WHEN HER FATHER WAS HOME?

18 A EXCUSE ME.

19 Q HOW DID SHE ACT WHEN HER FATHER WAS HOME?

20 A DADDY'S GIRL. SHE STUCK TO HIM LIKE GLUE.
21 THAT WAS IT. IGNORED MOM, WANTED DAD.

22 Q NOW, YOU SAID THAT THE HOUSE WASN'T VERY BIG.
23 AND THIS IS A ONE-STORY HOUSE; CORRECT?

24 A CORRECT.

25 Q DO YOU HAVE ANY IDEA HOW MANY SQUARE FEET THE
26 HOUSE WAS?

27 A ABOUT FOURTEEN TO SIXTEEN HUNDRED.

28 Q ARE THERE A LOT OF PLACES ONE COULD HIDE?

1 A NO.

2 Q SO, WERE YOU PRETTY CERTAIN AFTER YOU LOOKED
3 AROUND THE HOUSE THAT BRITTANY WAS INDEED GONE?

4 A YES.

5 Q AND YOU HAD ANSWERED EARLIER ON
6 CROSS-EXAMINATION REGARDING THE TWEETY-BIRD TAPE THAT YOU
7 DIDN'T RECALL TELLING THE DEFENDANT HE COULD BORROW THE
8 TAPE. DO YOU EVER REMEMBER ANY DISCUSSION WITH CHUCK
9 JOHNSON ABOUT THE TWEETY-BIRD TAPE?

10 A NEVER. THERE WAS NO DISCUSSION.

11 Q OKAY. SO, IT ISN'T THAT YOU DON'T RECALL; IS
12 IT?

13 A NO. IT IS JUST THAT WE NEVER, IT NEVER CAME UP,
14 NEVER WAS ASKED. AND I PROBABLY WOULD HAVE SAID NO.

15 Q WHY?

16 A BECAUSE IT IS BRITTANY'S TAPE AND BRITTANY LIKES
17 BRITTANY'S THINGS. AND BRITTANY DIDN'T LIKE TO SHARE LIKE
18 A LOT OF KIDS DON'T.

19 Q WOULD THAT BE A PARTICULAR TAPE THAT SHE WOULD
20 CHOOSE TO WATCH A LOT?

21 A YES. OF THE CARTOON ONES.

22 Q REGARDING THAT GARAGE DOOR, WHILE YOU WERE
23 SEARCHING FOR BRITTANY, DID ANYBODY UNLOCK THE DOOR TO
24 LOOK?

25 A I UNLOCKED THE DOOR WHEN I WENT OUT TO THE
26 GARAGE.

27 Q AND YOU THEN LEFT IT UNLOCKED?

28 A FROM THE INSIDE. THE OUTSIDE HAD THE PADLOCK,

1 FROM MY KNOWLEDGE NEVER, WAS OPENED.

2 Q BY THE TIME OFFICER KELLY GOT THERE, WAS THE
3 GARAGE DOOR UNLOCKED, THE DOOR LEADING TO THE GARAGE, WAS
4 THAT UNLOCKED?

5 A I BELIEVE SO.

6 Q SO, YOUR RECOLLECTION WHEN YOU GOT UP AND
7 STARTED CHECKING, THE DOOR WAS LOCKED?

8 A IT WAS LOCKED.

9 Q WAS THAT A KIND OF DOOR YOU NEEDED A KEY TO LOCK
10 AND UNLOCK?

11 A YES.

12 Q SO, BRITTANY WOULDN'T HAVE BEEN ABLE TO OPEN IT
13 HERSELF?

14 A NO. NO.

15 Q WOULD THE KEY BE LEFT IN THE LOCK?

16 A NO.

17 Q DID EVERYBODY HAVE KEYS ON THEIR KEYCHAINS?

18 A YES.

19 MS. SCHMAUSS: NOTHING FURTHER, YOUR HONOR.

20 MR. ABLARD: THANK YOU, YOUR HONOR. I HAVE NOTHING
21 FURTHER AT THIS TIME. I WOULD RESERVE, THOUGH.

22 THE COURT: YOU CAN STEP DOWN.

23 THE WITNESS: THANK YOU.

24 THE COURT: WHAT DO YOU MEAN BY "RESERVE?"

25 MR. ABLARD: I MAY NEED TO CALL MS. RETHORN AS MY OWN
26 WITNESS. THAT'S ALL. THANK YOU.

27 THE COURT: IS THAT YOUR EXPECTATION AT THIS TIME?

28 MR. ABLARD: YES.

1 THE COURT: ALL RIGHT.

2 MS. SCHMAUSS: MY NEXT WITNESS WILL BE MICHELLE
3 PAMPLIN. SHE IS OUTSIDE.

4 THE COURT: DO YOU WANT EDIFICATION ON WHAT THE COURT
5 IS GOING TO DO WITH THE LAST WITNESS? WHEN OTHER PEOPLE
6 TESTIFY ABOUT THE EVENTS OF THAT MORNING, SHE WILL BE
7 EXCLUDED.

8 MR. ABLARD: I AM SORRY.

9 MS. SCHMAUSS: COULD WE APPROACH, PLEASE?

10 THE COURT: CERTAINLY.

11 (SIDE BAR; NOT REPORTED.)

12 THE COURT: COURT MADE RULINGS EARLIER ABOUT THE
13 EXCLUSION OF WITNESSES AND THEIR ABILITY TO RETURN TO THE
14 COURT WHEN THIS TESTIMONY WAS CONCLUDED, INCLUDING THE
15 MOTHER OF THE VICTIM. NOW SHE HAS JUST BEEN SELECTED AS A
16 WITNESS TO BE CALLED BY THE DEFENSE. SO, SHE MAY NOT
17 REMAIN IN COURT AT ANY TIME DURING THE TESTIMONY OF OTHER
18 WITNESSES WHO ARE AT THE HOME ON THE MORNING OF OCTOBER
19 WHATEVER, 10. IS THAT THE DAY?

20 MR. ABLARD: YES.

21 THE COURT: OCTOBER 10TH. FOR OTHER WITNESSES
22 TESTIMONY, SHE MAY REMAIN, HOWEVER.

23 MS. SCHMAUSS: ALL RIGHT. WELL, THIS ONE WASN'T
24 THERE.

25 THE COURT: THEN SHE MAY REMAIN. ALL RIGHT. DURING
26 THEIR TESTIMONY. DOES THAT MAKE SENSE?

27 MS. SCHMAUSS: I THINK I UNDERSTAND YOU NOW.

28 THE COURT: DO YOU UNDERSTAND THE COURT?

1 MR. ABLARD: YES, THANK YOU.

2 THE COURT: THANK YOU.

3

4

MICHELLE PAMPLIN

5 CALLED AS A WITNESS BY THE PLAINTIFF, WAS SWORN AND
6 TESTIFIED AS FOLLOWS:

7 THE CLERK: PLEASE RAISE YOUR RIGHT HAND.

8 YOU DO SOLEMNLY SWEAR THE TESTIMONY YOU
9 MAY GIVE IN THE MATTER NOW PENDING BEFORE THIS COURT
10 SHALL BE THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT
11 THE TRUTH, SO HELP YOU GOD.

12 THE WITNESS: I DO.

13 THE CLERK: THANK YOU. PLEASE BE SEATED. PLEASE STATE
14 YOUR FULL NAME SPELLING YOUR LAST NAME FOR THE RECORD.

15 THE WITNESS: MY FIRST NAME IS MICHELLE; LAST NAME
16 PAMPLIN P-A-M-P-L-I-N.

17 DIRECT EXAMINATION

18 BY MS. SCHMAUSS:

19 Q MS. PAMPLIN, ARE YOU CURRENTLY RELATED TO THE
20 DEFENDANT IN THIS CASE?

21 A YES, HIS MOTHER-IN-LAW.

22 Q YOUR DAUGHTER IS WHO?

23 A ANGELA JOHNSON.

24 Q AND IS SHE CURRENTLY STILL MARRIED TO THE
25 DEFENDANT?

26 A YES.

27 Q I'D LIKE TO DRAW YOUR ATTENTION BACK TO OCTOBER
28 10TH, 1993 AND ASK YOU IF YOU SAW CHUCK JOHNSON ON THAT

1 DATE?

2 A YES, I DID.

3 Q ABOUT WHAT TIME?

4 A POSSIBLY AROUND 11:00.

5 Q AND WHERE DID YOU SEE HIM?

6 A AT MY HOME.

7 Q WERE YOU AWARE THAT HE HAD TELEPHONED YOUR
8 HOUSE?

9 A YES, I WAS.

10 Q AND WHERE YOU AWARE THAT HE WAS GOING TO COME
11 OVER?

12 A YES.

13 Q AT THAT TIME, WAS ANGELA STAYING WITH YOU?

14 A YES.

15 Q SO, THE DEFENDANT ARRIVED WHAT, ABOUT 11:00?

16 A APPROXIMATELY.

17 Q OKAY. AND HAD YOU ALREADY BEEN TOLD ABOUT WHAT
18 HAD HAPPENED?

19 A YES. HE HAD PHONED. HE HAD PHONED THE
20 RESIDENCE. AND WE WERE DOING SOME WORK OUTSIDE OF OUR
21 HOME.

22 MR. ABLARD: YOUR HONOR, GOING BEYOND THE SCOPE,
23 NONRESPONSIVE.

24 THE COURT: THE ANSWER "YES" REMAINS. EVERYTHING
25 ELSE DISREGARD. NEXT QUESTION.

26 Q BY MS. SCHMAUSS: SO, YOU ARE ALREADY AWARE THAT
27 BRITTANY DIED?

28 A YES.

1 Q OKAY. WHEN HE GOT THERE, WHAT WAS HIS EMOTIONAL
2 STATE?

3 A UPSET, CONFUSED.

4 Q DID HE TALK ABOUT WHAT HAD HAPPENED?

5 A YES, HE DID.

6 Q WERE YOU ABLE TO HEAR WHAT HE WAS SAYING?

7 A YES. HE WAS TALKING TO MY DAUGHTER AND I WAS IN
8 THE ROOM.

9 Q WERE YOU EAVESDROPPING OR SPYING?

10 A NOT PARTICULARLY. WE WERE BASICALLY ALL IN A
11 CONVERSATION BEFORE I WALKED BACK OUT OF THE HOUSE.

12 Q OKAY. SO, HE WAS AWARE YOU WERE THERE?

13 A YES.

14 Q OKAY. WHAT DID HE SAY ABOUT WHAT HAPPENED AT
15 THE HOUSE ON EXETER?

16 MR. ABLARD: I AM GOING TO OBJECT; HEARSAY.

17 MS. SCHMAUSS: STATEMENT OF THE DEFENDANT, ADMISSION,
18 YOUR HONOR.

19 MR. ABLARD: NOT ALL--

20 THE COURT: WHAT DID HE SAY? THRESHOLD. IT IS
21 SUBJECT TO THE HEARSAY RULE UNLESS THERE ARE EXCEPTIONS TO
22 IT.

23 MS. SCHMAUSS: ADMISSION OF PARTY TO OPPONENT.

24 MR. ABLARD: YOUR HONOR, NO FOUNDATION OF THAT THEY
25 ARE ADMISSIONS.

26 MS. SCHMAUSS: WELL, DO YOU WANT ME TO LAY IT OUT IN
27 FRONT OF EVERYONE?

28 THE COURT: NO. YOU CAN COME UP HERE AND MAKE ME AN

1 OFFER THEY ARE ADMISSIONS.

2 (SIDE BAR; NOT REPORTED)

3 Q BY MS. SCHMAUSS: MRS. PAMPLIN, WHEN CHUCK WAS
4 TALKING TO ANGELA IN FRONT OF YOU, WAS HE TALKING ABOUT
5 WHAT HAPPENED AT THE EXETER HOUSE?

6 A YES, HE WAS.

7 Q DID HE TALK ABOUT FINDING BRITTANY?

8 A YES.

9 Q WHAT DID HE SAY ABOUT THAT?

10 A HE HAD SAID THERE WERE SEVERAL OF THEM IN THE
11 LIKE THE DINING ROOM, KITCHEN AREA, I BELIEVE. HE SAID
12 THAT JENNY WAS TALKING TO AN OFFICER WITH LIKE HER BACK
13 TURNED TOWARDS THE HALLWAY.

14 MR. ABLARD: YOUR HONOR, EXCUSE ME. OBJECT. GOES
15 BEYOND THE SCOPE, NONRESPONSIVE. THE QUESTION IS WHAT DID
16 HE SAY.

17 THE COURT: WELL, THIS IS WHAT HE SAID.

18 MS. SCHMAUSS: RIGHT.

19 THE COURT: GO AHEAD. OVERRULED.

20 Q BY MS. SCHMAUSS: WHAT DID HE SAY ABOUT-- DID HE
21 SAY BRITTANY WAS FOUND IN THE HOUSE?

22 A YES.

23 Q WHAT DID HE SAY ABOUT WHAT HE SAW REGARDING
24 BRITTANY BEING FOUND?

25 A THAT HE SAW THE POLICE OFFICER RUN OUT OF THE
26 HOUSE WITH HER.

27 Q AND DID HE MAKE A FURTHER STATEMENT ABOUT THAT?

28 A RIGHT AFTER THAT, HE STATED THAT HE HEARD I

1 BELIEVE OVER THE WALKIE-TALKIE ONE OF THE OFFICERS SAID
2 THAT SHE HAD BEEN FOUND IN THE SOUTHEAST BEDROOM CLOSET.

3 Q DID HE SAY ANYTHING MORE?

4 A HE JUST HE SAT DOWN AND HE WAS UPSET. HE SAYS I
5 CAN'T BELIEVE IT. I COULDN'T BELIEVE THEY FOUND HER IN MY
6 CLOSET.

7 Q SO HE DIDN'T SAY I KNEW SHE WAS IN MY CLOSET?

8 A NO.

9 Q ANY TIME WHILE HE WAS AT YOUR HOUSE THAT DAY DID
10 HE TELL YOU OR ANGELA I HAD NOTICED HER IN MY CLOSET?

11 A NO, HE DID NOT.

12 Q WERE YOU PRESENT WITH YOUR DAUGHTER SOMETIME
13 AFTER THIS INCIDENT PACKING UP THE DEFENDANT'S BEDROOM?

14 A YES, I WAS.

15 Q DO YOU REMEMBER HOW MANY DAYS LATER?

16 A FOUR OR FIVE, MAYBE. I AM NOT SURE.

17 Q OKAY. AND DID HE HAVE A VCR IN HIS ROOM?

18 A YES, HE DID.

19 Q WERE YOU HELPING PACK THAT UP?

20 A YES.

21 Q AND DID YOU AND ANGELA DISCOVER SOMETHING IN
22 THAT VCR?

23 A SHE WENT TO HAND ME THE VCR TO TAKE IT OUT OF
24 THE HOUSE. SHE SAID WAIT. THERE'S A TAPE IN IT. AND
25 THAT'S WHEN WE EJECTED IT. AND SHE LOOKED AT IT AND IT
26 WASN'T HERS.

27 Q DID YOU LOOK AT IT?

28 A YES, I DID.

1 Q DO YOU REMEMBER WHAT IT WAS?

2 A IT WAS A CARTOON TYPE OF TWEETY BIRD.

3 Q AND WHAT WAS DONE WITH THAT?

4 A ANGELA TURNED AROUND, LAID IT ON THE BED.

5 BECAUSE IT WASN'T OURS.

6 Q DO YOU HAVE A GRANDSON BY THE NAME OF TRAVIS?

7 A YES, I DO.

8 Q AND HOW OLD WAS TRAVIS AT THE TIME OF THIS
9 INCIDENT?

10 A ALMOST ELEVEN MONTHS.

11 Q DID YOU HAVE A LOT OF CONTACT WITH TRAVIS ABOUT
12 THIS TIME?

13 A YES, I DID. MY DAUGHTER AND THE BOYS LIVE WITH
14 ME AND MY HUSBAND.

15 Q SO, DID YOU TAKE CARE OF HIM A LOT?

16 A A LOT.

17 Q WERE YOU AWARE THAT THERE WAS ONE OCCASION WHERE
18 HE VISITED THE DEFENDANT AT THE EXETER HOUSE?

19 A YES.

20 Q DID HE STAY OVERNIGHT?

21 A HE STAYED OVERNIGHT ONE TIME, UH-HUH.

22 Q WAS THE MOTHER THERE AT THAT TIME?

23 A YES.

24 Q OKAY. AND THEN THERE WAS ANOTHER TIME WHERE
25 MOM WASN'T THERE WHEN HE VISITED THE DEFENDANT?

26 A RIGHT.

27 Q DID YOU EVER NOTICE ANY BLEEDING FROM TRAVIS ON
28 EITHER OF THOSE OCCASIONS?

1 A NONE WHATSOEVER.

2 Q WOULD YOU BE AWARE OF SUCH A THING?

3 A YES, I WOULD.

4 Q AND WHAT WAS THE-- THESE TWO VISITS I AM TALKING
5 ABOUT, DO YOU REMEMBER WHAT TIME PERIOD THAT WAS IN
6 RELATION TO OCTOBER 10, 1993?

7 A THE VISIT IS WHEN TRAVIS STAYED ALONE I BELIEVE
8 TUESDAY OR WEDNESDAY PRIOR TO THE 10TH. AND THEN MY
9 DAUGHTER AND THE TWO BOYS STAYED I BELIEVE IT WAS THE
10 WEEKEND BEFORE THAT.

11 Q DO YOU KNOW WHAT DAY OF THE WEEK THE 10TH WAS?

12 A IT WAS ON A SUNDAY.

13 Q I AM GOING TO SHOW YOU EXHIBIT 4 FOR
14 IDENTIFICATION; ASK YOU TO TAKE IT OUT OF THE BAG, PLEASE,
15 AND ASK YOU IF YOU RECOGNIZE WHAT YOU HAVE TAKEN OUT?

16 A YES, I DO.

17 Q WHAT IS IT?

18 A IT IS A NECKTIE LIKE A FAKE LEATHER WITH AN
19 EMBOSSED DESIGN ON IT.

20 Q HAD YOU EVER SEEN THAT NECKTIE BEFORE?

21 A YES, I HAVE.

22 Q WHERE HAVE YOU SEEN IT BEFORE?

23 A I PURCHASED IT. MY DAUGHTER GAVE IT TO HER
24 HUSBAND.

25 Q AND YOU BOUGHT IT?

26 A YES, MA'AM.

27 Q AND HAD YOU EVER SEEN THE DEFENDANT WITH THAT
28 TIE?

1 A YES.

2 Q HAVE YOU SEEN HIM WEARING IT?

3 A YES, HE'D WEAR IT TO WORK BEFORE.

4 Q AND HOW SOON IN RELATION TO OCTOBER 10TH HAD YOU
5 SEEN HIM WEAR IT?

6 A PROBABLY WITHIN A COUPLE OF WEEKS.

7 MS. SCHMAUSS: THANK YOU. I DON'T HAVE ANYTHING
8 FURTHER.

9 MR. ABLARD: THANK YOU. MY TURN. THANK YOU.

10 CROSS-EXAMINATION

11 BY MR. ABLARD:

12 Q MA'AM YOU MENTIONED THAT CONVERSATION WITH
13 MR. JOHNSON THAT YOU REFERRED TO ABOUT WHAT WAS SAID ABOUT
14 THE CLOSET THAT YOU DIDN'T HEAR HIM SAY ANYTHING ABOUT THE
15 CLOSET?

16 A OTHER THAN THE FACT THAT HE HEARD OVER THE
17 WALKIE-TALKIE THROUGH ONE OF THE POLICE OFFICERS THAT SHE
18 HAD BEEN FOUND IN THE CLOSET OF THE SOUTHEAST BEDROOM.

19 Q RIGHT. OKAY. AND ALL YOU SAID THAT MR. JOHNSON
20 WAS TALKING TO YOUR DAUGHTER, HIS WIFE?

21 A UH-HUH.

22 Q AND YOU WERE SORT OF THERE BUT NOT THERE?

23 A WE WERE IN THE SAME ROOM. IT IS A SMALL FRONT
24 ROOM.

25 Q BUT YOU DIDN'T HEAR THE WHOLE CONVERSATION?

26 A NO, I DIDN'T HEAR ALL OF IT. I STEPPED OUTSIDE
27 AFTER A WHILE.

28 Q AND IS IT TRUE THAT LATER THAT EVENING THAT YOUR

1 DAUGHTER TOLD YOU THAT MR. JOHNSON HAD TOLD YOU THAT HE
2 HAD FOUND THE DAUGHTER IN THE CLOSET?

3 A NO. SHE DIDN'T SAY THAT HE TOLD ME.

4 Q NO, NO. I AM SORRY. THAT HE HAD TOLD HER?

5 A YES.

6 Q RIGHT. OKAY. SO, DURING THAT CONVERSATION--
7 YOU DIDN'T HEAR IT ALL-- HE HAD TOLD HER THAT HE HAD FOUND
8 THE BODY IN THE CLOSET?

9 A HE DIDN'T TELL HER AT THAT TIME.

10 Q NO?

11 A NO.

12 Q WHEN DID HE TELL HER?

13 A HE TOLD HER OUT IN HIS VEHICLE AT THE SIDE OF MY
14 RESIDENCE AFTER HE HAD GOTTEN BACK FROM THE INTERVIEW WITH
15 THE POLICE OFFICERS.

16 Q OKAY. NOW, WHEN WAS THAT EXACTLY?

17 A MAYBE BETWEEN 5 AND 6:00.

18 THE COURT: I DON'T MEAN TO PRESS THE RULES. THIS
19 IS A STATEMENT THAT SOMEBODY ELSE OTHER THAN THE DEFENDANT
20 TOLD HER?

21 MR. ABLARD: YES.

22 THE COURT: DID YOU HEAR THIS FROM MR. JOHNSON OR
23 FROM SOMEBODY ELSE?

24 THE WITNESS: NO, I HEARD THAT THROUGH MY DAUGHTER.

25 THE COURT: MR. ABLARD.

26 MR. ABLARD: YES.

27 THE COURT: THAT HAS A GREAT RING OF HEARSAY.

28 MR. ABLARD: YES, IT DOES.

1 THE COURT: EXCLUDE IT, LADIES AND GENTLEMEN.

2 MR. ABLARD: MAY I, BRIEFLY?

3 THE COURT: YOU MAY. WE ARE GOING TO TRY THIS CASE
4 BY THE RULES AND IF YOU FOLKS GO TO SLEEP WE ARE STILL
5 GOING TO DO IT BY THE RULES. THANK YOU.

6 MR. ABLARD: THANK YOU.

7 THE COURT: IF THE DAUGHTER TESTIFIES, THEN MAYBE WE
8 WILL HEAR ABOUT IT. BUT SOMEBODY SAID SOMEBODY TOLD
9 SOMEBODY WHO SAID SOMEBODY TOLD SOMEBODY JUST ISN'T GOOD
10 ENOUGH FOR OUR CONSIDERATION, FOLKS. NOBODY IS UNDER

11 OATH. YOU DON'T KNOW WHETHER IT'S RELIABLE. CAN'T
12 CROSS-EXAMINE THE PERSON TO ASK THEM. SO WE DON'T PERMIT
13 THAT KIND OF EVIDENCE IN A COURT OF LAW. YOU CAN USE IT
14 AT WORK AND YOU CAN USE IT AT HOME. BUT YOU CAN'T DO IT
15 IN MY COURTROOM. GO AHEAD.

16 MR. ABLARD: THANK YOU. I HAVE NOTHING FURTHER AT
17 THIS TIME.

18 THE COURT: THANK YOU. DO YOU HAVE ANYTHING
19 FURTHER?

20 MS. SCHMAUSS: NO. MAY SHE BE EXCUSED?

21 THE COURT: AS FAR AS I AM CONCERNED, ALL WITNESSES
22 ARE EXCUSED. THEY CAN GO. THEY ARE ALL SUBJECT TO RECALL
23 AS FAR AS I AM CONCERNED.

24 MR. ABLARD: THANK YOU.

25 MS. SCHMAUSS: MY NEXT WITNESS IS DARIN RIGGS.

26 THE COURT: THANK YOU.

27

28 DARIN RIGGS,

1 CALLED AS A WITNESS BY THE PLAINTIFF, WAS SWORN AND
2 TESTIFIED AS FOLLOWS:

3 THE CLERK: PLEASE RAISE YOUR RIGHT HAND.

4 YOU DO SOLEMNLY SWEAR THE TESTIMONY YOU
5 MAY GIVE IN THE MATTER NOW PENDING BEFORE THIS COURT
6 SHALL BE THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT
7 THE TRUTH, SO HELP YOU GOD.

8 THE WITNESS: I DO.

9 THE CLERK: THANK YOU. PLEASE BE SEATED. PLEASE STATE
10 YOUR FULL NAME SPELLING YOUR LAST NAME FOR THE RECORD.

11 THE WITNESS: DARIN RIGGS R-I-G-G-S.

12 DIRECT EXAMINATION

13 BY MS. SCHMAUSS:

14 Q GOOD AFTERNOON, MR. RIGGS.

15 A HI.

16 Q WHAT WAS YOUR RELATIONSHIP TO BRITTANY RIGGS?

17 A I WAS HER FATHER.

18 Q WHAT DO YOU DO FOR A LIVING?

19 A I AM AN ELECTRICIAN.

20 Q WHERE WERE YOU LIVING ON OCTOBER 10, 1993?

21 A IN MONTCLAIR ON EXETER STREET.

22 Q AND WHEN DID YOU MOVE INTO THAT HOUSE?

23 A SIX MONTHS PRIOR TO THE 10TH OF OCTOBER, JUNE
24 LATE JUNE.

25 Q WHEN YOU MOVED INTO THAT HOUSE, DID YOU MOVE IN
26 WITH SOMEONE ELSE?

27 A YES. MOVED IN WITH STEVE LOPEZ.

28 Q AND WHO WAS STEVE LOPEZ?

1 A A GOOD HIGH-SCHOOL FRIEND, A LONGTIME FRIEND.

2 Q DID YOU CHARACTERIZE HIM AS A VERY GOOD FRIEND?

3 A YES.

4 Q BEST FRIEND?

5 A YEAH, ONE OF THEM.

6 Q HAD YOU LIVED WITH STEVE LOPEZ IN THE PAST?

7 A YES, I HAVE.

8 Q HOW MANY YEARS?

9 A GOOD TWO YEARS AT LEAST.

10 Q DID YOUR DAUGHTER, BRITTANY, KNOW STEVE LOPEZ?

11 A YES, SHE DID.

12 Q AND HOW WOULD YOU CHARACTERIZE HER RELATIONSHIP
13 WITH STEVE?

14 A VERY GOOD. SHE WOULD CALL HIM UNCLE STEVE.

15 Q DID STEVE SPEND A LOT OF TIME WITH BRITTANY?

16 A YES.

17 Q HOW ABOUT BEFORE BRITTANY AND JENNIFER MOVED IN
18 WITH YOU?

19 A WE WERE QUITE-- SAW EACH OTHER FREQUENTLY. IT
20 WAS AT A BAPTISM, AT HER BAPTISM, EXCUSE ME, WHEN WE WERE
21 LIVING TOGETHER WHEN BRITTANY WOULD COME OVER. THEY'D
22 PLAY TOGETHER, SPEND TIME TOGETHER.

23 Q WOULD SHE EVER DRAW HIM PICTURES?

24 A YES, FREQUENTLY.

25 Q WHAT WOULD HE DO WITH THOSE PICTURES?

26 A USUALLY HANG THEM ON HIS DOOR IN HIS ROOM OR
27 SOMETHING.

28 Q DID HE EVER BABY-SIT BRITTANY?

1 A YES, HE DID.

2 Q HOW OFTEN?

3 A I CAN GUESS A NUMBER ON IT. BUT NUMEROUS TIMES.

4 Q WAS THIS EVEN BEFORE YOU MOVED, BEFORE BRITTANY
5 AND HER MOM MOVED IN WITH YOU?

6 A YES.

7 Q WHEN YOU WOULD HAVE VISITS?

8 A YES.

9 Q DID YOU TRUST STEVE WITH BRITTANY?

10 A YES, I DID.

11 THE COURT: CAN WE, LIKE WE HAVE A WITNESS UP HERE
12 AND STUFF. YOU KNOW. MAYBE WE OUGHT TO EXAMINE HIM.

13 MS. SCHMAUSS: THANK YOU, YOUR HONOR.

14 THE COURT: GOOD.

15 Q BY MS. SCHMAUSS: MR. RIGGS, I AM GOING TO SHOW
16 YOU SOME PHOTOGRAPHS NOW AND ASK YOU IF YOU RECOGNIZE WHAT
17 IS SHOWN IN THE PHOTOGRAPHS.

18 FIRST OF ALL, SHOW YOU PHOTOGRAPH 13 FOR
19 IDENTIFICATION, ASK IF YOU RECOGNIZE WHOSE ROOM THIS WAS?

20 A YES. THAT'S CHUCK JOHNSON'S ROOM.

21 Q OKAY. AND PHOTOGRAPH 14 FOR IDENTIFICATION?

22 A CHUCK JOHNSON'S ROOM ALSO.

23 Q HOW ABOUT 15?

24 A THAT'S THE CLOSET TO CHUCK JOHNSON'S BEDROOM.

25 Q DOES IT LOOK ANY DIFFERENT THAN WHEN HE RESIDED
26 IN IT?

27 A YES.

28 Q HOW SO?

1 A IT IS CLEAN, EMPTIED OUT.

2 Q AND HOW ABOUT 16?

3 A SAME THING. CLOSET EMPTIED OUT; CHUCK
4 JOHNSON'S.

5 Q CHUCK'S. AND 17?

6 A CHUCK JOHNSON'S CLOSET, EMPTIED.

7 Q 18?

8 A SAME THING, CLOSET EMPTIED OUT.

9 Q WHAT DOES 19 SHOW?

10 A THAT'S THE DOORWAY TO STEVE LOPEZ'S BEDROOM AND
11 BACKGROUND OF HIS BATHROOM.

12 Q WHOSE BATHROOM?

13 A STEVE LOPEZ'S.

14 Q WAS THE BATHROOM IN STEVEN'S ROOM ACTUALLY
15 INSIDE OF HIS ROOM?

16 A YES. HE HAD THE MASTER BEDROOM WITH HIS PRIVATE
17 BATH.

18 Q OKAY. WHAT DOES PHOTOGRAPH 20 FOR
19 IDENTIFICATION SHOW?

20 A STEVE LOPEZ'S BATHROOM, MASTER BATHROOM TO THE
21 HOUSE.

22 Q AND HOW ABOUT 21 FOR IDENTIFICATION?

23 A THAT IS STEVE LOPEZ'S CLOSET.

24 Q AND I NOTICED IT IS EMPTY?

25 A EMPTIED OUT ALSO.

26 Q DID EVERYBODY MOVE OUT AFTER THIS INCIDENT?

27 A YES. THEY MOVED OUT A LOT SOONER THAN JENNIFER
28 AND I DID. BUT WE HAD ALL MOVED OUT WITHIN A TWO-WEEK

1 PERIOD.

2 Q WAS IT BECAUSE OF WHAT HAPPENED?

3 A YES.

4 Q NOW, PHOTOGRAPH 22 FOR IDENTIFICATION, WHAT DOES
5 THAT SHOW?

6 A THAT'S THE LIVING ROOM WITH THE COUCH AND SOME
7 OF OUR ENTERTAINMENT SYSTEM. WE HAD REMOVED SOME OF THE
8 VALUABLES OUT OF THE HOUSE.

9 Q AND 22 FOR IDENTIFICATION, SAME PICTURE THAT'S
10 PASTED ON THIS DIAGRAM MARKED 61 FOR IDENTIFICATION?

11 A YES.

12 Q SO, THE TV USED TO BE HERE?

13 A YES. IT WAS CENTERED UNDER THE WINDOW ON THAT
14 BLACK STAND.

15 Q IN FACT, WHY DON'T YOU WALK OVER TO EXHIBIT 61
16 AND DRAW FOR ME-- GREASE PENCIL, I GUESS-- DRAW FOR ME ON
17 THE PHOTOGRAPH OF THE LIVING ROOM AREA WHERE THE TV WAS
18 SUPPOSED TO BE?

19 A (WITNESS COMPLIES) CIRCLE IT?

20 Q OKAY.

21 A THE TV WOULD BE SITTING RIGHT IN THE MIDDLE
22 THERE STANDING UNDERNEATH IT.

23 Q SO, THAT STAND RIGHT THERE?

24 A YES. THAT WAS THE TV STAND.

25 Q COULD THE RECORD REFLECT THAT HE HAS DRAWN A
26 CIRCLE AND AN ARROW ON EXHIBIT 61 FOR IDENTIFICATION,
27 LITTLE N?

28 THE COURT: IT MAY.

1 Q BY MS. SCHMAUSS: SO, ALL VALUABLES WOULD HAVE
2 BEEN TAKEN OUT?

3 A YES.

4 Q WHAT, TO WARD OFF BURGLARS?

5 A YES. BECAUSE THE ADDRESS WAS IN THE PAPER AND
6 THE PEOPLE KNOW THAT WE HAD MOVED OUT. AND I DIDN'T WANT
7 PEOPLE CRAMMING IN STEALING TV, STEREOS, AND VCRS.

8 Q OKAY. BY THE WAY, THAT TELEVISION SET THAT YOU
9 HAVE DRAWN IN, COULD YOU SEE THAT FROM EITHER COUCH?

10 A YES.

11 Q OKAY. THEN WE HAVE NUMBER 23 FOR
12 IDENTIFICATION. WHAT DOES THAT SHOW?

13 A SAME LIVING ROOM, JUST FROM A DIFFERENT ANGLE.

14 Q AND WITH THE EXCEPTION OF THE TV BEING GONE, IS
15 THAT HOW THE HOUSE LOOKED-- BY THE WAY, I DIDN'T ASK.
16 OTHER, OTHER ONE WITH THE EXCEPTION THAT YOU HAVE TOLD US,
17 PEOPLE MOVED THEIR PROPERTY OUT.

18 IS THIS HOW THE HOUSE LOOKED AS OF OCTOBER 10, 1993?

19 A I DON'T UNDERSTAND YOUR QUESTION.

20 Q THESE PICTURES?

21 A YES. THE WALLS WEREN'T DAMAGED. THAT
22 FURNITURE, THE BEDROOM OR THE BED IN CHUCK JOHNSON'S
23 BEDROOM IS WHERE IT WAS LOCATED.

24 Q RIGHT. EVERYTHING IS WHERE IT WAS EXCEPT
25 VALUABLES AND PERSONAL PROPERTY HAD BEEN REMOVED?

26 A YEAH.

27 Q OKAY. EXHIBIT 24 FOR IDENTIFICATION, WHAT DOES
28 THAT SHOW?

1 A THAT'S SHOWING ONE OF THE COUCHES IN THE LIVING
2 ROOM AND THE LENGTH OF THE HALLWAY DOWN THE HOUSE.

3 Q OKAY. AND 25 IS SHOWING THE HALLWAY--

4 A IS SHOWING THE HALLWAY ALSO.

5 Q AND HOW ABOUT 26?

6 A THAT IS SHOWING THE GUEST BATHROOM WHICH WAS THE
7 BATHROOM FOR JENNIFER, MYSELF, AND CHUCK JOHNSON.

8 Q AND DOES IT LOOK AS IT LOOKED ON OCTOBER 10,
9 1993?

10 A YES, YES.

11 Q AND OKAY. AND THEN THERE'S PHOTOGRAPH NUMBER 27
12 AND 28. WHAT ARE THEY?

13 A OKAY. THAT IS OF MY DAUGHTER'S BEDROOM. THAT'S
14 BRITTANY'S BEDROOM. AND THAT'S NOT HOW IT LOOKED.

15 Q HOW IS IT DIFFERENT?

16 A WE HAD MOVED ALL OF HER BELONGINGS FROM THE
17 PATIO AND EVERYTHING IN THERE JUST SO WE DIDN'T HAVE TO
18 SEE THEM AT THE TIME AFTER SHE HAD PASSED AWAY. AND OUR
19 FRIENDS HAD JUST THROWN EVERYTHING IN THERE. SO IT'S--

20 Q WAS IT PAINFUL TO LOOK AT HER PROPERTY?

21 A YES.

22 Q SO HER ROOM DIDN'T ORDINARILY LOOK DISHEVELED AS
23 IT DID IN THESE PHOTOGRAPHS?

24 A NO.

25 Q OKAY. WHAT DOES PHOTOGRAPH 29 SHOW?

26 A THAT IS THE HALLWAY ALSO AND SHOWING THE DOORWAY
27 OF BRITTANY'S ROOM, MINE AND JENNIFER'S ROOM, AND CHUCK'S
28 ROOM DOWN AT THE FAR END.

1 Q HOW ABOUT NUMBER 30?

2 A SHOWING THE FRONT DOOR AND THE FRONT ENTRYWAY.

3 Q AND NUMBER 31?

4 A IT'S EXTERIOR OF THE FRONT DOOR, THE FURNITURE.

5 Q AND NUMBER 32?

6 A THE KITCHEN NOOK AND DINING ROOM TABLE THAT WE
7 SIT AT.

8 Q AND 33?

9 A THE KITCHEN.

10 Q AND DO THESE LOOK LIKE IT DID?

11 A YES.

12 Q PICTURES LOOK THE SAME WAY THEY DID?

13 A YES, THEY ARE ALL.

14 Q ON THE 10TH?

15 A YEAH.

16 Q AND 34?

17 A ALSO THE KITCHEN.

18 Q AND 35?

19 A THAT'S A DIFFERENT ANGLE OF THE KITCHEN, DINING
20 AREA, AND BRITTANY'S ROOM IN THE BACKGROUND.

21 Q DID YOU EVER HAVE AN OPPORTUNITY ON OR AROUND
22 THE 10TH OF OCTOBER, 1993 TO LOOK INTO CHUCK JOHNSON'S
23 BEDROOM?

24 A NO, I DID NOT.

25 Q YOU HAD NEVER LOOKED INTO HIS ROOM?

26 A BEFORE, I HAD BEEN IN THERE BEFORE TO ASK HIM
27 QUESTIONS AND STUFF. BUT IT WAS HIS PRIVATE ROOM. HE
28 RENTED IT FROM US. SO, I HAD NO BUSINESS GOING IN THERE.

1 IT WAS HIS PRIVATE ROOM.

2 Q WELL, HOW SOON BEFORE THE 10TH HAD YOU AT LEAST
3 BEEN AT HIS DOORWAY?

4 A I CAN'T RECALL. IT'S BEEN TOO LONG AGO. IT'S
5 BEEN--

6 Q WEEK?

7 A WITHIN A WEEK OR SO, I WOULD SAY SO.

8 Q DOES NUMBER 36, DO YOU KNOW WHAT IT DEPICTS?

9 A THAT'S CHUCK'S BEDROOM.

10 Q OKAY. WAS HIS ROOM NORMALLY KEPT IN A
11 DISHEVELED CONDITION?

12 A YES, PRETTY MUCH, YES.

13 Q AND NUMBER 7 WHAT IS THAT?

14 A THAT'S THE FRONT OF THE HOUSE.

15 Q AND HOW ABOUT 8?

16 A THAT BE THE NORTH SIDE OF THE RESIDENCE.

17 Q AND THESE LOOK THE WAY THEY DID ON THE 10TH OF
18 '93?

19 A YES. NORMALLY THAT BRUSH ISN'T BACK THERE. WE
20 HAD JUST DONE SOME TRIMMING ON THE 9TH. AND WE WERE
21 GETTING READY TO TAKE THAT OUT.

22 Q DID YOU LOOK BEHIND THAT BUSHES WHEN YOU WERE
23 LOOKING FOR BRITTANY?

24 A YES, WE DID. WE LOOKED ALL THROUGH THERE.

25 Q AND THEN NUMBER 9?

26 A THAT IS THE EAST SIDE OF THE RESIDENCE. AND YOU
27 CAN SEE THAT THE TREES HAVE BEEN TRIMMED AGAIN, OR STILL I
28 SHOULD SAY.

1 Q OKAY. THANK YOU. DRAWING YOUR ATTENTION TO THE
2 OCTOBER 9, 1993, THE EVENING HOURS?

3 A YES.

4 Q WERE YOU HOME OR WERE YOU SOMEWHERE ELSE?

5 A I WAS VIDEOTAPING A FOOTBALL GAME FOR
6 MT. SAN ANTONIO COLLEGE. I WAS A VIDEOGRAPHER FOR
7 FOOTBALL TEAMS FOR STATS AND RECORDS.

8 Q WHAT TIME DID YOU LEAVE?

9 A I PROBABLY LEFT THE RESIDENCE EARLY AFTERNOON.
10 THE GAME WAS DOWN IN ORANGE COUNTY.

11 Q OKAY. WHAT TIME DID YOU COME HOME?

12 A I GOT HOME AROUND MIDNIGHT.

13 Q WHEN YOU GOT HOME AROUND MIDNIGHT ON THE 9TH
14 BECOMING THE 10TH, WAS ANYBODY ELSE UP?

15 A YES. CHUCK JOHNSON WAS UP. JENNIFER RETHORN
16 WAS UP. AND ONE OF JENNIFER'S FRIENDS WAS OVER, HEATHER
17 HAWKINS.

18 Q WHAT DID YOU DO ONCE YOU GOT HOME?

19 A TALKED TO JENNIFER A LITTLE BIT AND HEATHER.
20 AND THEY WERE GETTING READY TO DO JENNIFER. SO I WENT
21 OUTSIDE TO TALK TO CHUCK FOR A LITTLE BIT, DISCUSS SOME
22 STUFF.

23 Q WHERE DID YOU TALK TO CHUCK?

24 A WE WERE TALKING ON THE PATIO.

25 Q WAS THIS A FRIENDLY OR AN UNFRIENDLY
26 CONVERSATION?

27 A IT WAS FRIENDLY.

28 Q DID YOU GET ALONG WITH CHUCK JOHNSON?

1 A YEAH, FOR THE MOST PART WE GOT ALONG FINE.

2 Q WHAT TIME DID YOU GO TO SLEEP THAT NIGHT?

3 A JENNIFER AND I WENT TO BED ABOUT 2:00. AND WE
4 DISCUSSED SOME STUFF, WENT TO SLEEP ABOUT 2:30.

5 Q DID STEVE COME HOME AT ANY POINT DURING THIS
6 TIME?

7 A MR. LOPEZ CAME HOME AROUND 1:30, I BELIEVE.

8 Q OKAY. AND DID YOU OBSERVE HIM TO GO TO BED?

9 A YES, HE WENT TO BED SAME TIME WE DID.

10 Q WHICH WAS ABOUT 2?

11 A ABOUT 2:00.

12 Q ABOUT 2:00. HOW ABOUT CHUCK JOHNSON?

13 A HE WAS LEAVING THE RESIDENCE AT THE SAME TIME.
14 HE WAS SUPPOSED TO BE TAKING SOME STUFF OVER TO HIS
15 WIFE'S.

16 Q SO, WHAT TIME DID HE LEAVE THE RESIDENCE?

17 A 2:00 ALSO IN THE MORNING.

18 Q SO HE HAD LEFT THE HOUSE BY THE TIME YOU WENT TO
19 BED?

20 A WE WERE-- HE WAS GOING, LEAVING THE HOUSE AT THE
21 SAME TIME WE WERE ALL GOING TO BED.

22 Q WERE YOU AWARE OF WHAT TIME HE CAME BACK?

23 A NO, I WAS NOT.

24 Q HAD THERE BEEN ANY DISCUSSION ABOUT WHAT TIME
25 YOU WERE GETTING UP THE NEXT MORNING?

26 A YES, THERE WAS.

27 Q WAS THAT DISCUSSION IN FRONT OF CHUCK JOHNSON?

28 A I BELIEVE SO. AND IT WASN'T PINPOINTING A TIME.

1 AND HE WAS PROBABLY AROUND US AT THE TIME THAT WE WERE
2 TALKING ABOUT IT.

3 Q WHO WERE YOU TALKING ABOUT IT TO?

4 A JENNIFER.

5 Q AND WHAT TIME WAS PINPOINTED AS THE TIME YOU HAD
6 TO BE UP?

7 A WE HAD DISCUSSED SETTING THE ALARM FOR 9:00
8 BECAUSE WE WERE TAKING BRITTANY TO HER GRANDMOTHER'S AT
9 10.

10 Q DID YOU SHARE A BED OR DID YOU SHARE A BED WITH
11 JENNIFER AT THAT TIME?

12 A YES, WE WERE.

13 Q WHAT SIZE OF BED?

14 A IT'S A KING SIZE.

15 Q WHO WOULD SLEEP AT WHAT PART?

16 A IT WAS UP IN THE CORNER. I SLEPT ON THE
17 OPPOSITE SIDE. SHE SLEPT BETWEEN THE WALL.

18 Q IF SHE GOT UP DURING THE NIGHT, WOULD YOU WAKE
19 UP?

20 A YES.

21 Q WHAT WOULD SHE HAVE TO DO TO GET OUT OF BED?

22 A SHE WOULD HAVE HAD TO HAVE CRAWLED OVER ME.
23 BECAUSE THE DRESSER WAS AT THE FOOT OF THE BED ALSO.

24 Q HAD THIS OCCURRED WHERE SHE GOT UP AND WOKE YOU
25 UP?

26 A A COUPLE OF TIMES.

27 Q WERE YOU AWAKENED BY ANYTHING AFTER GOING TO
28 SLEEP AT AROUND 2:30?

1 A NOT UNTIL ABOUT 7:30-ISH.

2 Q OKAY. WHAT AWAKENED YOU?

3 A MY DAUGHTER HAD COME IN THE ROOM AND GIVEN US A
4 GOOD MORNING HUG AND KISS. AND SHE HAD LONG BROWN HAIR.

5 SO, IT TICKLED MY FACE WHEN SHE WAS GIVING ME A HUG AND
6 JUST SORT OF STARTLED ME. I WOKE UP AND GAVE HER A KISS
7 BACK.

8 Q DID YOU SAY ANYTHING TO BRITTANY?

9 A I ASKED HER TO-- I WAS GOING TO TRY TO SLEEP A
10 LITTLE BIT IF SHE WOULD TRY TO WATCH TV IN THE LIVING
11 ROOM, GO PUT IN A MOVIE OR SOMETHING.

12 Q DID YOU YELL AT HER?

13 A NEVER YELLED AT HER.

14 Q DO YOU REMEMBER SAYING ANYTHING TO HER ABOUT
15 KNOCKING BEFORE SHE COMES IN?

16 A NO.

17 Q AND DID BRITTANY LEAVE THE ROOM?

18 A YES, SHE DID.

19 Q DO YOU RECALL IF BRITTANY CLOSED THE DOOR OR
20 NOT?

21 A SHE WAS. YES, SHE DID. I REMEMBER.

22 Q DID CLOSE THE DOOR?

23 A YES.

24 Q OKAY. WHEN YOU WOKE UP LATER, WAS THE DOOR
25 CLOSED?

26 A YES.

27 Q DID YOU GO BACK TO SLEEP?

28 A YES, WE DID.

1 Q OKAY. AND DID YOU EVER-- WERE YOU EVER AWARE OF
2 JENNIFER GETTING UP PRIOR TO WHEN YOU WOKE UP AGAIN?

3 A NO, SHE DID NOT GET UP.

4 Q DURING THE PERIOD AFTER BRITTANY CLOSED THE DOOR
5 AND THEN YOU WOKE UP FOR THE FINAL TIME, DID JENNIFER EVER
6 GET UP?

7 A NO, SHE DID NOT.

8 Q DID YOU GET UP?

9 A NO.

10 Q DID SOMETHING WAKE YOU UP?

11 A YES.

12 Q WHAT?

13 A A NOISE, A RUSTLE OR A BANGING NOISE WE HAD
14 HEARD.

15 Q CAN YOU DESCRIBE THAT NOISE?

16 A UM, A RUSTLING. I SAID A RUSTLE OR A BANGING,
17 SLIDING, SOMETHING MOVING AROUND, HITTING SOMETHING. I
18 COULDN'T-- IT'S BEST I CAN PROBABLY DESCRIBE IT. I DON'T
19 KNOW.

20 Q WAS IT A LOUD NOISE?

21 A LOUD ENOUGH TO WAKE ME UP AND I WAS WAKING UP
22 ANYWAY. BUT IT STILL WOKE ME UP.

23 Q OKAY. WERE YOU ABLE TO TELL WHERE THAT NOISE
24 WAS COMING FROM?

25 A NOT REALLY. WE ASSUMED AT THE TIME--

26 Q WHAT DID YOU ASSUME?

27 A WE ASSUMED THAT IT WAS COMING FROM THE BATHROOM
28 JUST BECAUSE SHE JUST RECENTLY BEEN CAUGHT PLAYING WITH

1 HER MOM'S MAKEUP AND HAIRSPRAY IN THE BATHROOM. SO THAT
2 IS WHAT WE ASSUMED IT WAS COMING FROM.

3 Q OKAY. SO, THINKING BACK NOW, IT'S BEEN A WHILE.
4 AND I AM SURE YOU HAVE THOUGHT ABOUT IT. COULD YOU SAY
5 EXACTLY FROM WHAT DIRECTION THAT NOISE WAS COMING?

6 A NO.

7 Q OKAY. AND THE REASON THAT YOU THINK SHE WENT IN
8 THE BATHROOM WAS SIMPLY BECAUSE BRITTANY HAD PREVIOUSLY
9 BEEN CAUGHT PLAYING IN THE BATHROOM?

10 A YES.

11 Q WHAT DID YOU DO ONCE YOU HEARD THE NOISE?

12 A I HAD GOTTEN UP AND THROWN ON SOME SHORTS.
13 BECAUSE THEY WERE, THE SHORTS, BY THE FRONT OF THE BED.
14 AND WELL, AND I CHECKED IN THE BATHROOM. AND SHE WASN'T
15 IN THERE.

16 Q CAN YOU PUT ANY SORT OF TIME FRAME, LENGTH OF
17 TIME, OF THE NOISE?

18 A LENGTH OF THE NOISE. BY THE TIME I HAD GOTTEN
19 UP, I THINK IT STOPPED. BUT I DON'T KNOW WHEN IT STARTED.
20 SO, I WOULD SAY PROBABLY FIFTEEN, TWENTY, MAYBE THIRTY
21 SECONDS. I DON'T KNOW. THAT'S JUST A GUESS. AFTER TWO
22 YEARS.

23 Q OKAY. BY THE WAY, DO YOU KNOW EXACTLY WHAT TIME
24 IT WAS THAT YOU WOKE UP?

25 A YES.

26 Q WHAT TIME?

27 A IT WAS 3 MINUTES UNTIL 9.

28 Q HOW DO YOU KNOW THAT EXACT TIME?

1 A BECAUSE WE WERE-- THE ALARM WAS SET FOR 9:00.
2 AND I LOOKED UP AT THE CLOCK AND SAID WELL, GOT TO GET UP
3 IN THREE MINUTES ANYWAY.

4 Q HOW LONG DO YOU THINK IT TOOK YOU TO GET DRESSED
5 AND GET OUT?

6 A FIVE SECONDS, TEN SECONDS AT THE MOST.

7 Q YOU IMMEDIATELY WENT TO THE BATHROOM?

8 A YES.

9 Q AND NO ONE WAS IN THERE?

10 A NO.

11 Q AND THEN WHAT DID YOU DO?

12 A I, AS I WAS WALKING FROM THE BATHROOM TO THE
13 LIVING ROOM, I JUST GLANCED IN HER BEDROOM. I DIDN'T SEE
14 HER ON HER BED. SO, I WENT INTO THE LIVING ROOM. I
15 LOOKED FOR HER IN THERE.

16 Q WHY DID YOU LOOK IN THE LIVING ROOM?

17 A 'CAUSE THAT IS WHERE THE TV WAS AT. WE TOLD HER
18 TO GO WATCH WHEN WE, WHEN SHE CAME IN THE BEDROOM.

19 Q WOULD BRITTANY, WOULD THAT BE A COMMON
20 OCCURRENCE FOR BRITTANY TO GET UP EARLY AND THEN GO WATCH
21 TV AND FALL ASLEEP AGAIN?

22 A YES.

23 Q AND THAT HAPPENED MORE THAN ONE TIME?

24 A YES, IT DID.

25 Q OKAY. AFTER YOU CHECKED THE LIVING ROOM, THEN
26 WHAT OCCURRED?

27 A THEN I, AFTER I CHECKED IN THE LIVING ROOM, I
28 WENT OVER TO THE SLIDING GLASS DOOR, SAW STEVE LOPEZ OUT

1 THERE HAVING HIS MORNING CIGARETTE. AND I TALKED TO HIM
2 FOR A SECOND AND ASKED HIM IF HE HAD SEEN BRITTANY.

3 Q WHEN YOU SAY "HAVING HIS MORNING CIGARETTE," WHY
4 DO YOU SAY THAT?

5 A 'CAUSE THERE'S NO SMOKING ALLOWED IN THE HOUSE.
6 SO, HE WENT OUT.

7 Q YOU HAVE KNOWN STEVE FOR A LOT OF YEARS; RIGHT?

8 A YES.

9 Q IS HE A SMOKER?

10 A YES.

11 Q DO YOU KNOW ANYTHING ABOUT HIS HABIT UPON
12 AWAKENING?

13 A CIGARETTE.

14 Q FIRST THING?

15 A YEP, PRETTY MUCH FIRST THING.

16 Q OKAY. SO, YOU WENT OUT TO STEVE. AND WHAT DID
17 YOU SAY TO STEVE?

18 A I NOTICED HE WAS STILL DEPRESSED. HE HAD JUST
19 GOTTEN AN INHERITANCE CHECK BACK FROM HIS GRANDMOTHER,
20 SORT OF HIS FINAL TIE. AND THEN--

21 MR. ABLARD: YOUR HONOR, I AM GOING TO OBJECT AS
22 HEARSAY; IRRELEVANT.

23 THE COURT: SOUNDS LIKE IT TO ME. DISREGARD IT,
24 FOLKS.

25 Q BY MS. SCHMAUSS: OKAY. WITHOUT GETTING INTO
26 STEVE'S STATE OF MIND--

27 A OKAY.

28 Q -- ABOUT GRANDMA, YOU WENT UP TO STEVE AND STEVE

1 WAS SMOKING. AND DID YOU SAY ANYTHING TO HIM?

2 THE COURT: THAT'S A CAUSE OF DEPRESSION, HOWEVER,
3 DEPRESSING; IS IT NOT.

4 MS. SCHMAUSS: I WOULDN'T KNOW. I DON'T SMOKE.

5 THE COURT: THAT'S WHY YOU HAVE COFFEE WHEN YOU HAVE
6 YOUR FIRST MORNING CIGARETTE. BECAUSE YOU NEED TO
7 BALANCE; RIGHT?

8 IN ANY EVENT, YOU SAW STEVE?

9 THE WITNESS: I HAD HAD SMALL TALK WITH HIM. AND I
10 ASKED HIM IF HE HAD SEEN BRITTANY WHEN HE WAS COMING OUT
11 TO HAVE A CIGARETTE.

12 Q BY MS. SCHMAUSS: AT THIS POINT, WERE YOU
13 WORRIED, CONCERNED?

14 A I WAS STARTING TO GET CONCERNED BECAUSE SHE WAS
15 NOT THE TYPE TO PLAY HIDE-AND-SEEK OR HIDE GAMES.

16 Q AND IS THERE A NORMAL PLACE WHERE YOU CAN PRETTY
17 WELL RELIABLY FIND BRITTANY?

18 A EITHER LIVING ROOM OR HER BEDROOM.

19 Q SO, OKAY. SO YOU ARE STARTING TO GET CONCERNED?

20 A YEAH.

21 Q OKAY. AND YOU ASKED STEVE IF HE HAD SEEN HER?

22 A CORRECT.

23 Q HIS RESPONSE WAS?

24 A NO, HE HAD NOT.

25 Q DID YOU NOTICE ANYTHING UNUSUAL ABOUT STEVE AT
26 THAT POINT? DID HE SEEM OUT OF BREATH OR DISHEVELED OR
27 ANYTHING?

28 A NO.

1 Q SEEM NORMAL?

2 A LIKE I SAID, SLIGHTLY DEPRESSED BECAUSE OF HIS
3 GRANDMOTHER.

4 Q BUT OTHER THAN THAT?

5 A RIGHT. OTHER THAN THAT, NO. HE WAS NORMAL.

6 Q WHAT DID YOU DO AFTER TALKING TO STEVE?

7 A I HAD GONE BACK INTO HER BEDROOM AND LOOKED A
8 LITTLE CLOSER.

9 Q WHERE?

10 A IN BRITTANY'S ROOM.

11 Q OKAY. DID YOU-- YOU HAD ALREADY LOOKED IN
12 THERE. BUT YOU RE-CHECKED IT?

13 A RIGHT. I WENT BACK IN AND RE-CHECKED IT.

14 Q OKAY. THEN WHAT HAPPENED?

15 A I MET JENNIFER IN THE HALLWAY AS I COME OUT OF
16 BRITTANY'S BEDROOM. AND WE DISCUSSED IT. AND I TOLD HER
17 THAT I CAN'T FIND BRITTANY. AND WE STARTED A MORE
18 THOROUGH SEARCH THROUGH THE HOUSE.

19 Q OKAY. WHEN YOU SAYING "WE" WHO ARE YOU TALKING
20 ABOUT?

21 A JENNIFER, STEVE, AND I.

22 Q WHAT ABOUT CHUCK JOHNSON? WAS HE PART OF THIS
23 SEARCH?

24 A NO, HE WAS NOT.

25 Q WERE YOU CALLING HER NAME BY NOW?

26 A YEAH, BY THAT TIME, WE STARTED CALLING HER OUT.

27 Q WHO WAS CALLING HER NAME?

28 A ALL THREE OF US, STEVE, JENNIFER, AND I.

1 Q QUIETLY, LOUDLY?

2 A IT WAS STARTING TO GET MORE AND MORE LOUD.
3 EVERY TIME IT WAS, VOLUME WAS UP, GOING UP, IN OUR VOICES.

4 Q THEN WHAT DID YOU DO?

5 A I SAY WE CHECKED THE LIVING ROOM, FAMILY ROOM,
6 THOSE AREAS, CHECKED THE CLOSETS. STEVE AND I BOTH CHECKED
7 OUTSIDE.

8 Q DO YOU REMEMBER A PHONE CALL DURING ALL THIS,
9 THE PHONE RINGING AND YOU ANSWERING THE PHONE?

10 A YES. THERE WAS A ONE PHONE CALL THAT CAME IN.

11 Q OKAY. WAS THAT AT THIS POINT WHILE YOU ARE
12 STILL RUNNING AROUND CALLING HER NAME?

13 A IT WAS WITHIN THAT TIME. I DON'T KNOW THE EXACT
14 SEQUENCE OF EVERYTHING BECAUSE OF THE STRESS THAT HAD
15 STARTED GOING THROUGH MY BODY AT THE TIME.

16 Q DO YOU REMEMBER WHO HAD CALLED?

17 A IT WAS REINA, HER, BRITTANY'S GODMOTHER THAT WE
18 WERE SUPPOSED TO MEET THAT AFTERNOON.

19 Q OKAY. DO YOU HAVE MORE THAN ONE TELEPHONE IN
20 THAT HOUSE?

21 A YES, WE DO.

22 Q WERE THERE EXTENSIONS IN OTHER PEOPLE'S
23 BEDROOMS?

24 A YES.

25 Q DID THE DEFENDANT HAVE AN EXTENSION IN HIS ROOM?

26 A YES, HE DID.

27 Q SO, IF ONE PERSON WAS ON THE PHONE, YOU COULD
28 PICK UP THE PHONE AND HEAR THE CALL THAT HAD COME IN?

1 A YES.

2 Q DID YOU GO BACK OUT TO THE BACK YARD?

3 A YES, I DID.

4 Q OKAY. AND WHAT HAPPENED OUT THERE?

5 A I HAD THEN BEEN CHECKING AROUND ON THE SIDE OF
6 THE HOUSE, THE BACK OF THE HOUSE CALLING FOR HER, LOOKING
7 UNDER ALL THE BRUSH THAT WE HAD JUST BEEN CUTTING DOWN.
8 AND BY THIS TIME, I WAS STARTING TO REALLY YELL OUT HER
9 NAME. AND I HAD BEEN UNDER THE DEFENDANT'S WINDOW. AND
10 I CALLED OUT HIS NAME, HER NAME.

11 Q HER NAME. DID THE DEFENDANT DO SOMETHING AT
12 THAT POINT?

13 A YES. HE HAD OPENED UP THE BLINDS, JUST STUCK
14 HIS HAND BETWEEN THE TWO COUPLE BLADES AND OPENED UP THIS
15 MINIBLINDS AND STUCK HIS HEAD OUT THROUGH THE WINDOW.

16 Q DID HE SAY SOMETHING TO YOU?

17 A HE ASKED ME WHAT WAS WRONG.

18 Q OKAY. DID YOU SAY SOMETHING BACK?

19 A I RESPONDED SAYING AND I ASKED HIM IF HE HAD
20 SEEN BRITTANY. WE CAN'T FIND HER. SHE IS MISSING.

21 Q OKAY. AND HE SAID-- DID HE ANSWER THAT OR
22 RESPOND TO THAT?

23 A HE RESPONDED THAT HE SAW HER ABOUT TWENTY
24 MINUTES AGO ON THE COUCH WATCHING TV.

25 Q OKAY. AND WAS THAT THE EXTENT OF THE
26 CONVERSATION AT THAT POINT WITH HIM?

27 A I BELIEVE HE SAID GIVE ME A MINUTE. I'LL BE OUT
28 AND HELP YOU. BUT I DON'T--

1 Q DID HE COME OUT IN A MINUTE?

2 A HE EVENTUALLY CAME OUT, I WOULD SAY, OVER A
3 MINUTE OR SO. BUT EVENTUALLY, HE DID COME OUT, TOOK HIM A
4 COUPLE OF THREE OR FOUR MINUTES AT LEAST.

5 Q DID YOU HEAR JENNY YELL AT HIM THROUGH HIS DOOR?

6 A BY THAT TIME, YES. I HAD COME BACK IN. JENNIFER
7 WAS AT HIS DOOR.

8 Q YOU SAW HER?

9 A I DIDN'T SEE HER. BUT BEING IN THE HOUSE, I WAS
10 ABLE TO HEAR HER.

11 Q WHAT DID YOU HEAR HER SAY?

12 A SHE ASKED HIM WHAT WAS SHE WEARING, WHERE DID
13 YOU SEE HER LAST, WHAT AND I AGAIN, REMEMBERING WHAT WAS
14 SHE WEARING.

15 Q DID YOU HEAR HIM RESPOND?

16 A NO. I COULDN'T HEAR HIM RESPOND THROUGH THE
17 DOOR.

18 Q COULD YOU HEAR HIM, HIS VOICE AT ALL? DO YOU
19 KNOW IF HE SAID ANYTHING?

20 A YEAH. I HEARD A RESPONSE. BUT I WOULDN'T TELL
21 YOU WHAT IT WAS BECAUSE OF THE ECHO THROUGH THE DOORWAY.

22 Q WHAT ROOM WERE YOU IN WHILE SHE WAS TALKING TO
23 HIM?

24 A I WAS AGAIN WANDERING THROUGH THE WHOLE HOUSE
25 LOOKING FOR HER. I DON'T KNOW WHAT ROOM I WAS IN AT THE
26 TIME.

27 Q OKAY. OKAY. AFTER YOU HEARD THAT
28 CONVERSATION, YOU DIDN'T KNOW WHAT HE SAID BUT HE SAID

1 SOMETHING. DO YOU HAVE ANY SORT OF ESTIMATE ABOUT HOW
2 MUCH TIME IT TOOK FROM WHEN HE ASKED WHAT WAS SHE WEARING
3 TO WHEN JOHNSON ACTUALLY CAME OUT OF HIS ROOM?

4 A I WOULD ESTIMATE PROBABLY AT THE TIME I WOULD
5 HAVE SAID PROBABLY TEN, FIFTEEN MINUTES. BUT LOOKING
6 BACK, HAVING TWO YEARS, I WOULD HAVE SAID THREE TO FIVE
7 MINUTES.

8 Q THE TIME WAS KIND OF DIFFICULT?

9 A RIGHT.

10 Q TIME WAS GONE?

11 A I HAD NO--

12 Q WAS IT NOTICEABLE TO YOU THOUGH THAT--

13 A YES.

14 Q --HE DIDN'T COME OUT RIGHT AWAY?

15 A YES. IT WAS VERY NOTICEABLE.

16 Q DID YOU-- DID THAT OCCUR TO YOU WHILE YOU ARE
17 RUNNING AROUND THAT HE WASN'T COMING OUT?

18 A IT OCCURRED TO ME. BUT I DIDN'T THINK A WHOLE
19 LOT ABOUT IT. I MEAN--

20 Q DO YOU RECALL HIS APPEARANCE WHEN HE FINALLY DID
21 COME OUT?

22 A DISTRAUGHT SORT OF.

23 Q WAS HE NEATLY GROOMED?

24 A NO. HE WASN'T NEATLY GROOMED. I'D SAY HE WAS A
25 LITTLE DISTRAUGHT AND LOOKED CONFUSED AND DAZED. BUT I
26 DON'T KNOW AFTER TWO YEARS, I HAVE BLACKED OUT A LOT OF
27 THAT TYPE OF STUFF.

28 Q WAS HIS HAIR COMBED?

1 A NO.

2 Q WAS IT DISHEVELLED?

3 A HE LOOK LIKED HE HAD JUST WOKEN UP OR JUST
4 WRESTLED AROUND WITH SOMETHING OR--

5 Q WHAT DID YOU DO AT THIS POINT?

6 A I WAS STILL SEARCHING MOST OF THE HOUSE OR ALL
7 OF THE HOUSE THAT I COULD. I HAD GONE OUTSIDE. I WENT
8 DOWN TO ONE OF THE NEIGHBOR'S HOUSE WHERE THERE WAS SOME
9 PEOPLE OUTSIDE AND ASKED THEM IF THEY HAD SEEN A CHILD
10 OUTSIDE; CAME BACK UP TO THE HOUSE.

11 Q WHEN YOU CAME BACK INTO THE HOUSE AFTER CHECKING
12 OUTSIDE, DID YOU SEE THE DEFENDANT?

13 A YEAH, HE WAS--

14 Q WHERE WAS HE?

15 A AT THAT TIME, I CAME BACK IN. I DON'T KNOW. AT
16 ONE POINT WHEN I HAD CAME BACK IN, HE WAS SITTING AT THE
17 END OF THE HALL. I DON'T KNOW WHEN. BECAUSE I HAD GONE
18 OUT NUMEROUS TIMES.

19 Q OKAY. SO, PHRASE IT ANOTHER WAY.

20 AFTER YOU HAD RETURNED BACK TO THE HOUSE, DID YOU
21 NOTICE THE DEFENDANT AND NOTICE SOMETHING UNUSUAL ABOUT
22 IT?

23 A YES. AT ONE POINT WHEN I CAME BACK IN, HE WAS
24 SITTING AT THE END OF THE HALL ON THE FLOOR AND GRIEVING
25 AND UPSET ABOUT AND LIKE IT WAS HIS CHILD THAT WAS MISSING
26 OR LOST OR--

27 Q WHAT DO YOU MEAN BY GRIEVING?

28 A CRYING, HAND IN HIS FACE.

1 Q AND THIS IS WHILE BRITTANY WAS STILL MISSING?

2 A RIGHT.

3 Q CORRECT?

4 A CORRECT.

5 Q DID THAT REGISTER AS UNUSUAL TO YOU AT THAT
6 POINT?

7 A A LITTLE BIT, YES.

8 Q WAS HE CLOSE TO BRITTANY?

9 A NO.

10 Q WELL, HOW WOULD YOU DESCRIBE THEIR RELATIONSHIP?

11 A UM, HE HAD ONLY MOVED IN ABOUT SIX WEEKS PRIOR.
12 SO, THEY DIDN'T GET A CHANCE TO GET REAL CLOSE. SO, JUST
13 SORT OF ACQUAINTANCES, I GUESS. I DON'T KNOW. I MEAN.

14 Q SO, HE HADN'T SPENT A LOT OF TIME?

15 A NO, HE HAD NOT SPENT MUCH TIME WITH HER.

16 Q BACKING UP A LITTLE WHEN YOU SAID THAT JOHNSON
17 APPEARED WHEN HE CAME OUT OF HIS ROOM, WAS DISHEVELED WAS
18 MY WORD. BUT YOU SAID HE LOOKED LIKE HE HAD JUST WOKEN
19 UP. DID HE LOOK SLEEPY?

20 A NO. HE DIDN'T LOOK SLEEPY.

21 Q WHAT DID YOU MEAN BY JUST WOKEN UP?

22 A HAIR A MESS, CLOTHES AND LIKE HE HAD JUST PICKED
23 THEM UP OFF THE FLOOR AND GOTTEN DRESSED WITH THE FIRST
24 THING HE FOUND. RED-EYED.

25 Q BUT HE DIDN'T HAVE THAT APPEARANCE OF SOMEBODY
26 WHO HAD BEEN WOKEN UP OUT OF A SLEEP?

27 A NO, NOT AT ALL.

28 Q NOW, DURING ALL THIS WHILE YOU WERE RUNNING

1 AROUND THE HOUSE LOOKING FOR BRITTANY, DID STEVE GO
2 ANYWHERE?

3 A YES.

4 Q WHERE DID HE GO?

5 A JUST SHORTLY AFTER AND ACTUALLY RIGHT AFTER WE
6 CAME BACK IN FROM THE BACKYARD LOOKING AROUND, HE HAD WENT
7 BACK INTO HIS ROOM, CHECKED IN THERE, AND GRABBED HIS KEYS
8 AND WALKED AND WENT INTO HIS TRUCK AND WENT LOOKING AROUND
9 THE NEIGHBORHOOD.

10 Q OKAY. SO HE ACTUALLY LEFT THE HOUSE?

11 A YES.

12 Q OKAY. WERE YOU THERE WHEN THE POLICE ARRIVED?

13 A YES, I WAS.

14 Q DID YOU SEE THE DEFENDANT WHEN THE POLICE
15 ARRIVED?

16 A YES.

17 Q WHAT WAS HE DOING?

18 A HE WAS STILL JUST WANDERING AROUND THE HOUSE
19 LIKE HE WAS LOST LIKE AND DIDN'T KNOW WHAT TO DO.

20 Q DID YOU OBSERVE HIM TO BE SEARCHING OR LOOKING
21 IN CABINETS OR UNDER THINGS?

22 A NO.

23 Q EVER?

24 A NO.

25 Q WERE YOU AWARE OF WHETHER THE DEFENDANT HAD A
26 LOCK ON HIS DOOR?

27 A YES, HE DID.

28 Q DO YOU KNOW WHEN THAT LOCK WAS INSTALLED?

1 A HE HAD A LATCH LOCK THAT HE INSTALLED JUST AFTER
2 HE MOVED IN. AND THEN HE PUT A DOORKNOB LOCK ON THE
3 SATURDAY PRIOR.

4 Q OKAY. AND A LATCH. WOULD YOU DESCRIBE THAT A
5 LITTLE MORE KIND OF A LOCK?

6 A JUST A HOOK AND EYE. AND THE HOOK WAS ON THE
7 DOOR FRAME. SO IT CAN ONLY BE LOCKED FROM THE INSIDE OF
8 THE HOUSE OR INSIDE OF THE BEDROOM.

9 Q THAT WAS IN PLACE AS OF OCTOBER 10, 1993?

10 A YES.

11 Q HAD NOT BEEN REMOVED?

12 A NO.

13 Q IN FACT, WAS IT STILL ON THERE WHEN YOU VACATED
14 THE HOUSE LATER?

15 A YES.

16 Q AND THE LOCK, THE LOCK THAT COULD BE LOCKED FROM
17 THE OUTSIDE, HE DID HAVE THAT ON AS OF THE 10TH?

18 A YES.

19 Q WAS HIS PRACTICE TO KEEP HIS DOOR OPEN OR
20 CLOSED?

21 A CLOSED.

22 Q ALWAYS?

23 A YES.

24 Q HAD YOU EVER OBSERVED IT TO BE REMAIN OPEN WHEN
25 HE WAS OUT OF THE HOUSE?

26 A IF HE WAS OUT OF THE HOUSE, NO. IT WAS ALWAYS
27 CLOSED.

28 Q DO YOU RECALL, WHEN YOU WERE FIRST LOOKING FOR

1 BRITTANY, DO YOU RECALL IF YOU CHECKED ANY OF THE DOORS IN
2 THE HOUSE?

3 A YES, WE DID.

4 Q AND I AM ASKING YOU PERSONALLY, YOU, DARIN, DID
5 YOU CHECK ANY OF THE DOORS. BECAUSE YOU SAY WE. WE NEED
6 TO KNOW WHAT YOU DO. DID YOU?

7 A NO. I DON'T BELIEVE I CHECKED THE FRONT DOOR.
8 BECAUSE I WENT OUT INTO THE BACKYARD RIGHT AWAY.

9 Q SO, YOU DON'T KNOW IF THE DOOR WAS LOCKED ON
10 YOUR LOCK?

11 A YEAH, FOR MYSELF PERSONALLY.

12 Q HOW ABOUT THE DOOR LEADING TO THE GARAGE? DID
13 YOU CHECK THAT LOCK OR THAT DOOR?

14 A I THINK I DID. BECAUSE I WAS-- BECAUSE I DID.
15 ANSWER THE PHONE WITH REINA WHICH WAS RIGHT NEXT TO THE
16 DOOR. AND I JUST CHECKED IT SINCE I WAS STANDING RIGHT
17 NEXT TO IT.

18 Q DO YOU REMEMBER IF THAT DOOR LEADING TO THE
19 GARAGE WAS LOCKED OR UNLOCKED?

20 A YES. IT WAS LOCKED.

21 Q HOW ABOUT THE GARAGE DOOR? DID YOU EVER CHECK--
22 FIRST OFF, WHAT KIND OF LOCK DOES THE GARAGE DOOR HAVE?

23 A IT JUST HAD A-- HAS A PADLOCK ON THE OUTSIDE.

24 Q NO GARAGE DOOR OPENER?

25 A NO.

26 Q HAD YOU CHECKED THAT PADLOCK?

27 A NOT IN THE MORNING, NO. I CHECKED IT LATER BUT
28 THE GARAGE DOOR HAD NEVER GOTTEN OPEN.

1 Q WHEN YOU CHECKED IT LATER, WHAT TIME WAS THAT?

2 A LATER IN THE AFTERNOON.

3 Q AFTERNOON. OKAY. BUT IT WAS LOCKED?

4 A YES.

5 Q WHEN YOU CHECKED IT, YOU DON'T KEEP YOUR CAR IN
6 THE GARAGE?

7 A NO.

8 Q NOBODY KEEPS THEIR CAR IN THE GARAGE?

9 A NO. WE'D PUT SOME IN THERE ONCE IN A WHILE TO
10 SERVICE THEM. BUT NO, THERE USUALLY WASN'T ROOM TO KEEP A
11 CAR IN THERE.

12 Q DID ANYBODY NEED TO UNLOCK THE GARAGE TO GET
13 THEIR CARS OUT THAT DAY?

14 A NO.

15 Q THEN AFTER THE POLICE ARRIVED, DID SOMETHING
16 HAPPEN?

17 A A LOT OF THINGS HAPPENED.

18 Q OKAY. WELL WHAT-- I WILL BE SPECIFIC.
19 WHAT HAPPENED AFTER THE POLICE ARRIVED?

20 A I WAS CALLING MY MOTHER TO GET MORE BODIES OVER
21 IN THE NEIGHBORHOOD TO START SEARCHING. AND THEN WE HEARD
22 A BIG RUSTLING DOWN THE HALL. AND JENNIFER CAME AND GOT
23 ME, SAID THAT WE HAD TO GO TO DOCTOR'S HOSPITAL.

24 Q SO, DID YOU EVEN KNOW AT THAT POINT--

25 A NO.

26 Q -- THAT BRITTANY HAD BEEN RECOVERED?

27 A NO, WE DID NOT.

28 Q DID YOU KNOW FROM WHERE BRITTANY HAD BEEN

1 RECOVERED?

2 A NO, WE DID NOT.

3 Q DID YOU EVER CHECK THE DEFENDANT'S BEDROOM
4 DURING YOUR SEARCH OF THE HOUSE?

5 A NO, I DID NOT.

6 Q DURING YOUR SEARCH, WELL, DURING THE ENTIRE TIME
7 BEFORE BRITTANY WAS TAKEN OUT, DID THE DEFENDANT EVER TELL
8 YOU THAT YOUR DAUGHTER WAS IN HIS ROOM?

9 A NO, HE DID NOT.

10 Q DID HE EVER TELL YOU THAT HE HAD TO HAVE HER IN
11 HIS CLOSET?

12 A NO.

13 Q IN FACT, HAS HE EVER TOLD YOU HE DISCOVERED HER
14 IN HIS CLOSET?

15 A NO.

16 Q AFTER THE POLICE RAN OUT WITH HER, DID HE SAY
17 ANYTHING ABOUT I FOUND HER IN MY CLOSET?

18 A NO.

19 Q HE WAS STILL AT THE HOUSE; CORRECT?

20 A CORRECT.

21 Q HAD YOU EVER ACCUSED THE DEFENDANT OF ANYTHING
22 UNTOWARD WITH YOUR DAUGHTER?

23 A NO.

24 Q HAD YOU EVER HAD ANY WORDS WITH HIM CONCERNING
25 BRITTANY?

26 A NO.

27 Q DO YOU REMEMBER AN INCIDENT SATURDAY MORNING,
28 THE DAY BEFORE BRITTANY WAS DISCOVERED DEAD, ABOUT HER

1 GETTING HER EARS CHECKED?

2 A YES.

3 Q WERE YOU HELPING THE EAR-CHECKING PROCEDURE?

4 A YES, I WAS.

5 Q DID SHE BUMP HER HEAD ON ANYTHING AT THAT POINT?

6 A NO, SHE DID NOT.

7 Q DID YOU KNOW OF ANY OCCASION NEAR THE TIME OF
8 BRITTANY'S DEATH WHERE SHE HAD BUMPED HER HEAD?

9 A NO.

10 Q WAS SHE THE TYPE OF CHILD THAT WOULD COMPLAIN IF
11 SHE GOT HURT?

12 A YES, VERY MUCH SO.

13 Q DID YOU NOTICE HER TO HURT HER LEG ANY TIME
14 AROUND--

15 A NO.

16 Q --THIS INCIDENT.

17 MR. RIGGS, DID YOU HAVE ANYTHING WHATSOEVER TO DO
18 WITH HURTING YOUR DAUGHTER, BRITTANY, ON OCTOBER 10, 1993?

19 A NO, I DID NOT.

20 Q DID YOU HAVE ANYTHING TO DO WITH HER DEATH?

21 A NO, I DID NOT.

22 MS. SCHMAUSS: THANK YOU. I HAVE NOTHING FURTHER.

23 MR. ABLARD: THANK YOU, YOUR HONOR.

24 CROSS-EXAMINATION

25 BY MR. ABLARD:

26 Q WHEN YOU GOT UP, YOU SAID MR. LOPEZ WAS ALREADY
27 ON THE PATIO HAVING HIS MORNING CIGARETTE?

28 A CORRECT. CORRECT.

1 Q DIDN'T MR. LOPEZ GET UP AFTER YOU AND JENNIFER
2 WERE YELLING FOR BRITTANY?

3 A NO, HE DID NOT.

4 Q THIS HOOK-AND-EYE LOCK IN MR. JOHNSON'S ROOM,
5 DIDN'T HE TAKE THAT OFF THE DAY THAT HE PUT ON THE DOOR
6 KNOB LOCK?

7 A NO, HE DID NOT.

8 Q HE DID NOT. WHEN DID YOU SAY THE LAST TIME YOU
9 WERE IN THE HOUSE?

10 A AS OF TODAY, IT'S BEEN OVER TWO YEARS. I WOULD
11 HAVE OBVIOUSLY--

12 Q THAT WASN'T A VERY GOOD QUESTION. AFTER THE
13 10TH OF OCTOBER OF 1993, WHEN WAS THE LAST TIME YOU WERE
14 IN THE HOUSE?

15 A PROBABLY AROUND THE END OF OCTOBER. BECAUSE WE
16 HAD ALREADY PAID FOR THAT MONTH OF RENT. SO, WE WERE
17 USING THAT MONTH TO STORE OUR STUFF THERE WHILE WE WERE
18 FINDING ANOTHER PLACE TO LIVE.

19 Q AND WAS THAT HOOK AND THAT LOCK STILL THERE?

20 A YES.

21 Q AND WHO, WHEN, THIS LAST TIME THAT YOU ARE
22 TALKING ABOUT, WHO WAS WITH YOU?

23 A JENNIFER WAS WITH ME, HER FRIENDS, AND I HAD
24 NUMEROUS FRIENDS AND FAMILY WITH ME DOING THE FINAL MOVE
25 OUT.

26 Q AND WHEN WAS THAT AGAIN?

27 A THE END OF OCTOBER. I COULDN'T GIVE YOU A DATE.

28 Q OKAY. SO YOU HAD SOME FRIENDS THERE. ANYBODY

1 ELSE, FAMILY, FRIENDS?

2 A YEAH. AND I CAN PROBABLY READ OFF MOST OF THE
3 NAMES THAT I HAD, BUT.

4 Q ANY POLICE OFFICERS?

5 A NO.

6 Q WERE YOU IN MR. JOHNSON'S ROOM ON THAT DAY, ON
7 FINAL MOVE-OUT DAY?

8 A THE FINAL MOVE-OUT DAY, I PROBABLY WALKED
9 THROUGH WITH THE LANDLORD SHOWING THAT EVERYTHING WAS
10 OKAY. BUT WHEN WE WERE MOVING, DOING THE MAIN MOVING, I
11 TRIED NOT TO GO INTO THAT ROOM.

12 Q RIGHT. BUT I AM TALKING ABOUT THE FINAL
13 MOVE-OUT DAY YOU WERE IN THAT ROOM. THAT'S WHEN YOU SAW
14 THE--

15 A YEAH. THE VERY FINAL DAY, I SAID I WALKED TI
16 WITH THE LANDLORD. I WALKED THE WHOLE HOUSE WITH HIM,
17 YES.

18 Q WERE THERE OTHER PEOPLE IN THE HOUSE AT THE SAME
19 TIME THESE PEOPLE YOU ARE TALKING ABOUT, FRIENDS AND
20 FAMILY, EVER GO IN THE HOUSE SELECTING THINGS AND MOVING
21 AROUND?

22 A ARE WE TALKING THE VERY FINAL DAY I WAS IN THE
23 HOUSE?

24 Q YEAH, THE FINAL MOVE-OUT DATE, IS THAT THE FINAL
25 TIME YOU WERE IN THE HOUSE?

26 A NO, THE FINAL TIME I WAS IN THE HOUSE I WAS
27 THERE WITH THE LANDLORD AFTER EVERYBODY HAD BEEN MOVED OUT
28 AND WE DID A WALK-THROUGH.

1 Q ALL RIGHT. NOW, THE FINAL MOVE-OUT DAY?

2 A OKAY.

3 Q WHAT I AM TALKING ABOUT, HAD YOU GONE IN
4 CHUCK E.'S ROOM ON THAT DAY?

5 A I WAS CALLED IN THERE BY ONE OF MY FRIENDS WHO
6 WAS MOVING STUFF FOR ME.

7 Q OKAY. AND THAT WAS NEAR THE END OF OCTOBER?

8 A YEAH.

9 Q 1993?

10 A YES.

11 Q OKAY. AND WHAT FRIEND WAS THAT?

12 A THAT WAS PETE LOPEZ.

13 Q OKAY. AND WHY WERE YOU CALLED IN THERE?

14 A HE WAS MOVING THE STUFF OUT OF THERE. I LOANED
15 CHUCK JOHNSON A SPARE BED THAT WE HAD. AND SO, WE WERE
16 MOVING THAT OUT AND CLEANING THE ROOM UP. AND HE AND MY
17 COUSIN RACHAEL HAD FOUND ONE OF BRITTANY'S BLANKETS IN HIS
18 ROOM.

19 Q WHERE DID THEY FIND THAT?

20 A BURIED UNDER THE BED.

21 Q WHAT DO YOU MEAN BURIED?

22 A I DIDN'T FIND IT. SO, I DON'T KNOW HOW TO
23 DESCRIBE BURIED.

24 Q WAS IT UNDER THE BED OR BURIED UNDER THE BED?

25 MS. SCHMAUSS: I AM GOING TO OBJECT AS LACK OF
26 PERSONAL KNOWLEDGE. HE DIDN'T FIND IT.

27 THE COURT: SUSTAINED.

28 Q BY MR. ABLARD: SO, YOU DIDN'T KNOW HOW IT WAS

1 UNDER THE BED?

2 A CORRECT.

3 Q AND WHO ELSE WAS IN THE HOUSE AT THAT TIME?

4 A DID YOU WANT THEM READ OFF OF NAMES? AND THERE
5 ARE NUMEROUS PEOPLE IN THERE.

6 Q A BUNCH?

7 A AROUND A DOZEN.

8 Q YOU DON'T HAVE--

9 A A DOZEN FRIENDS AND FAMILY.

10 Q YOU DON'T HAVE TO READ OFF THE NAMES. ALL

11 RIGHT. AND THAT HOOK-AND-EYE LOCK WAS ON AT THAT TIME?

12 A YES.

13 Q RIGHT?

14 A AND IT WAS ALSO ON DURING THE FINAL
15 WALK-THROUGH.

16 Q WITH THE LANDLORD?

17 A YES.

18 Q OKAY. NOW, YOU HAD MENTIONED THAT INITIALLY.
19 YOU FELT THAT MR. JOHNSON WAS IN HIS ROOM TEN OR FIFTEEN
20 MINUTES BEFORE HE CAME OUT; RIGHT?

21 A CORRECT.

22 Q AND OVER THE YEARS, IT WENT DOWN TO TWO OR THREE
23 MINUTES; RIGHT?

24 A CORRECT.

25 Q AND WHAT HAPPENED THAT MADE YOU CONSIDER THAT
26 AMOUNT OF TIME DIFFERENCE?

27 A WE HAD GOTTEN TIME FRAMES OF THE TIME OF DEATH,
28 THE TIME THAT WE HAD WOKEN UP AND ALL THAT STUFF. AND TEN

1 TO FIFTEEN MINUTES WOULD HAVE PUT IT THAT HE WOULD HAVE
2 CAME OUT OF HIS BEDROOM THAT AFTER SHE HAD PASSED AWAY.

3 Q RIGHT. IN OTHER WORDS, YOU WERE SHOWN A TIME
4 LINE AND SHOWN WHAT YOU INITIALLY HAD BEEN TELLING THE
5 POLICE WOULDN'T WORK; RIGHT?

6 A CORRECT.

7 Q OKAY. AND THAT WAS, AM I CORRECT IN SAYING THAT
8 AS YOU WERE INTERVIEWED BY THE POLICE, THAT'S THE STORY
9 THAT YOU ALWAYS GAVE THEM. THERE WAS LIKE TEN OR FIFTEEN
10 MINUTES; CORRECT?

11 A CORRECT. I WAS STILL UNDER A LOT OF STRESS OF
12 MY DAUGHTER PASSING AWAY.

13 Q YES. I UNDERSTAND. AND IT WAS AFTER YOU WERE
14 SHOWN A TIME LINE THAT YOU DECIDED THAT WAS INCORRECT?

15 A THE TIME LINE AND THE TIME TO CALM MY NERVES AND
16 THINK ABOUT THINGS.

17 Q RIGHT. THANK YOU.

18 DID YOU-- DID BOTH-- YOU GOT UP AND THEN JENNIFER GOT
19 UP? DID YOU COME BACK AND GET JENNIFER AT 8:57?

20 A NO, I DID NOT.

21 Q WHEN YOU TOLD JENNIFER THAT BRITTANY WAS MISSING
22 WAS SHE ALREADY UP OR WAS SHE IN BED?

23 A SHE WAS ALREADY UP. I MET HER IN THE HALLWAY.

24 Q OKAY. DO YOU RECALL TELLING OFFICER DONLEY ON
25 OCTOBER THE 12TH-- THAT WOULD HAVE BEEN A COUPLE DAYS
26 AFTER THE DEATH OF BRITTANY-- THAT YOU HAD GOTTEN UP,
27 LOOKED IN BRITTANY'S ROOM AND CAREFULLY LOOKED TO SEE IF
28 SHE WAS POSSIBLY HIDING UNDER THE BED OR BEHIND HER

1 FURNITURE, INDICATED TO JENNY THAT YOU COULDN'T FIND
2 BRITTANY, AND JENNY GOT UP OUT OF BED?

3 A I HAD ALSO STATED I WAS STILL IN BRITTANY'S
4 ROOM. I MADE THAT STATEMENT TO HER.

5 Q RIGHT.

6 A SO, EITHER, YES, AND I WAS AT THAT POINT, I WAS
7 STILL STRESSED AND NO, I DID NOT GO AND GET HER OUT OF OUR
8 BED.

9 Q RIGHT. BUT SHE WAS STILL IN BED?

10 A NO, SHE WAS NOT.

11 Q SO, THIS WAS INCORRECT IN SHE WAS ALREADY UP?

12 A CORRECT.

13 Q YOU RECEIVED A PHONE CALL THAT MORNING FROM THE
14 GODMOTHER OF BRITTANY?

15 A CORRECT.

16 Q OKAY. WAS THERE ANY OTHER PHONE CALL THAT YOU
17 RECEIVED THAT MORNING RIGHT AROUND THE PERIOD OF TIME FROM
18 8:57 TO SAY 9:13?

19 A I DON'T BELIEVE ANOTHER PHONE CALL. AFTER TWO
20 YEARS, IT'S HARD TO REMEMBER. I THINK THERE MAY HAVE BEEN
21 ANOTHER ONE. I DON'T REMEMBER IT NOW.

22 Q THERE WAS, WAS THERE NOT, ONE WHERE THERE WAS A
23 CALLER WHO JUST HUNG UP?

24 A NOT THAT I ANSWERED.

25 Q DID YOU EVER TELL THE POLICE ABOUT THAT A PHONE
26 CALL AND WHOEVER CALLED JUST HUNG UP?

27 A NO.

28 Q NEVER TOLD?

1 A NOT TO MY RECOLLECTION NOW.

2 Q YOU DON'T RECALL THAT?

3 A NO, I DO NOT.

4 Q DO YOU RECALL BEING IN THAT ORIGINAL INTERVIEW

5 WITH OFFICER BALES THAT YOU ANSWERED THE TELEPHONE AND

6 WHOEVER THE CALLER WAS HUNG UP. AND THAT'S WHEN YOU

7 ASKED IF JOHNSON WAS AWAKE AND IF BRITTANY WAS IN HIS ROOM

8 DURING THAT, IT WAS THAT PHONE CALL?

9 A THAT WAS THE PHONE CALL WITH REINA, THE
10 GODMOTHER.

11 Q SO, THIS IS A DIFFERENT PHONE CALL WITH THE
12 CALLER THAT HUNG UP?

13 A I DON'T REMEMBER A HANG-UP CALL. SO, I DON'T
14 KNOW WHICH ONE YOU ARE TALKING ABOUT.

15 Q DO YOU REMEMBER TELLING THE POLICE ABOUT THE
16 HANG-UP CALL?

17 A NO, I DO NOT.

18 Q OKAY. WHEN YOU WERE OUT AT SOME POINT, YOU SAID
19 YOU WERE OUT TALKING ON THE PATIO WITH MR. LOPEZ; CORRECT?

20 A HE WAS ON THE PATIO. I WAS STILL IN THE HOUSE
21 JUST TALKING THROUGH THE SLIDING GLASS DOOR.

22 Q OKAY. BUT HOW LONG DID YOU TALK TO HIM?

23 A PROBABLY THIRTY SECONDS, MAYBE.

24 Q WHERE IN THE LAST TWO YEARS OR ACTUALLY LAST
25 COUPLE OF YEARS WERE YOU INFORMED THAT THE TEN-OR-FIFTEEN
26 MINUTES SCENARIO DIDN'T WORK IN TIME LINE, WHAT ABOUT WHEN
27 WAS THAT? WAS THAT EARLIER OR WAS THAT RECENTLY, IN THE
28 MIDDLE-- WHERE WAS THAT?

1 A IT WAS PROBABLY RIGHT AROUND AND AFTER I HAD
2 GOTTEN TRANSCRIPTS OF THE PRELIMINARY TRIAL AND
3 EVERYTHING. AND SO IT HAD BEEN PRETTY EARLY. AND IT
4 WASN'T THAT I WAS TOLD. I JUST WAS ABLE TO PUT A COUPLE
5 OF NUMBERS TOGETHER AND REALIZE THAT WASN'T GOING TO WORK
6 THAT WAY. I WASN'T TOLD.

7 Q DID YOU AT THAT TIME GO TO THE POLICE AND TELL
8 THEM THAT YOU HAD BEEN MISTAKEN?

9 A NO, I DID NOT.

10 Q DID YOU DISCUSS WITH JENNIFER THAT I HAD BEEN
11 MISTAKEN?

12 A JENNIFER AND I HAD PROBABLY DISCUSSED THE TIME
13 FRAME TOGETHER. BECAUSE WE WERE STILL LIVING TOGETHER AT
14 THE TIME. SO, YES, WE HAD I AM SURE WE HAD DISCUSSED
15 IT.

16 Q AND YOU AND JENNIFER HAD AN OPPORTUNITY TO
17 DISCUSS THE TIME FRAME RECENTLY?

18 A NOT-- I MEAN WE HAVE DISCUSSED THE CASE; BUT NOT
19 JUST THE TIME FRAMES.

20 Q RIGHT. AND YOU DISCUSSED THE CASE SO YOU ALL
21 COULD COME TESTIFY?

22 A WE HAVEN'T COLLABORATED, PUT OUR STORIES
23 TOGETHER, IF THAT IS WHAT YOU ARE ASKING.

24 Q NO, I AM NOT. I AM NOT ASKING THAT. I AM
25 ASKING IF YOU DISCUSSED THE CASE TOGETHER SO YOU CAN COME
26 TESTIFY?

27 A YEAH, WE HAVE DISCUSSED IT WITH OUR DISTRICT
28 ATTORNEY AND EVERYONE ELSE.

1 Q SURE. SURE. OKAY. WAS MR. JOHNSON EVER
2 OUTSIDE OF THE HOUSE ASSISTING LOOKING FOR BRITTANY?

3 A AT ONE POINT I DID SEE HIM OUT IN THE FRONT
4 YARD. AND I AM NOT NECESSARILY SAYING ASSISTING LOOKING.
5 BUT HE WAS OUT IN FRONT AND WALKING AROUND LIKE LOOKING
6 LOST, STILL, LIKE HE WAS IN THE HOUSE.

7 Q WALKING AROUND YOUR FRONT YARD?

8 A YES. I DON'T KNOW IF HE WAS TRYING TO LOOK IN
9 THE BUSHES OR WHAT, BUT.

10 Q THERE ARE BUSHES IN THE FRONT YARD. AND I
11 DIDN'T HEAR. I'M SORRY. SOMETIMES I DON'T HEAR.

12 A YEAH. I DON'T KNOW IF HE WAS TRYING TO LOOK
13 UNDER BUSHES OR NOT. HE WAS OUT IN THE GRASS AREA THOUGH.
14 HE WASN'T PHYSICALLY LOOKING UNDER ANYTHING.

15 Q WHEN JENNIFER WAS OUT THERE?

16 A JENNIFER DIDN'T COME OUT FRONT.

17 Q OH. OKAY. WELL, DIDN'T YOU TELL THE POLICE
18 OFFICERS THAT MR. JOHNSON WENT TO SOME NEIGHBOR'S HOUSE TO
19 LOOK FOR BRITTANY?

20 A I WAS INFORMED BY ONE OF THE NEIGHBORS THAT THEY
21 HAD ALREADY BEEN INFORMED BY ANOTHER PERSON. I DON'T
22 KNOW.

23 Q WELL, OKAY. SO YOU HAVE NO PERSONAL KNOWLEDGE
24 IS WHAT YOU ARE SAYING?

25 A CORRECT. I HAVE NO PERSONAL KNOWLEDGE. I DID
26 NOT SEE CHUCK JOHNSON GO OVER TO A NEIGHBOR'S HOUSE.

27 Q YOU TOLD THE POLICE OFFICERS THAT THAT'S WHAT A
28 NEIGHBOR TOLD YOU; RIGHT?

1 A RIGHT. THE NEIGHBOR TOLD ME SOMEBODY ELSE HAD
2 INFORMED THEM.

3 Q RIGHT. OKAY.

4 THE COURT: ARE YOU ABOUT DONE?

5 MR. ABLARD: I AM JUST ABOUT DONE. BUT I HAVE A
6 COUPLE MORE QUESTIONS. BUT I LOST MY PLACE I HAD MARKED
7 SO I WOULDN'T DELAY OR ANYTHING. AND I PUT THE DARN THING
8 OUT. AND I HAVE GOT TO RE-FIND IT.

9 THE COURT: YOU WILL.

10 MR. ABLARD: THANK YOU.

11 THE COURT: AND WHEN YOU CONCLUDE WITH THIS WITNESS,
12 WE WILL TAKE OUR AFTERNOON RECESS WE ARE ALL PATIENTLY
13 WAITING FOR.

14 Q BY MR. ABLARD: OKAY. DID YOU EVER TELL THE
15 POLICE THAT YOU HAD TOLD JENNIFER THAT YOU SAW C.J. GO TO
16 NEIGHBORS' HOUSES?

17 A I DON'T-- I MAY HAVE TOLD THE OFFICERS THAT. I
18 DON'T KNOW IF I PHYSICALLY SAW HIM GOING OVER THERE OR IF
19 I WAS JUST INFORMED BY THE OTHER NEIGHBORS.

20 Q JUST TO GET IT CORRECT, DID YOU EVER TELL
21 JENNIFER THAT YOU SAW MY CLIENT TO GO TO NEIGHBORS HOUSES?

22 A I VERY EASILY COULD HAVE. I DON'T REMEMBER
23 AFTER, I SAY, AFTER TWO-YEAR TIME FRAME. THINGS HAVE
24 SLIPPED. I HAVE TRIED TO BLOCK A LOT OF THIS OUT. AND IT
25 IS TOUGH FROM MEMORY, TOUGH REMEMBERING THINGS RIGHT.

26 MR. ABLARD: NOW, I HAVE NOTHING FURTHER AT THIS
27 TIME. I WOULD LIKE TO RESERVE.

28 REDIRECT EXAMINATION

1 BY MS. SCHMAUSS:

2 Q WAS THERE ANY PARTICULAR REASON THAT OTHER
3 PEOPLE WERE CLEANING OUT THE DEFENDANT'S ROOM OTHER THAN
4 YOU?

5 A BECAUSE IT WAS TOUGH TO GO IN THERE AFTER MY
6 DAUGHTER WAS FOUND DEAD IN THERE.

7 Q AND DID YOU GO IN THERE AT ALL AFTER YOUR
8 DAUGHTER WAS FOUND DEAD IN THERE?

9 A AFTER PETE LOPEZ CALLED ME IN THERE, I HAD GONE
10 IN.

11 Q THAT WAS THE FIRST TIME YOU HAD BEEN IN THERE
12 EVER SINCE?

13 A PROBABLY. I DON'T REMEMBER GOING BACK IN THERE
14 BEFORE.

15 Q OKAY. AND HAD YOU EVER NOTICED JENNIFER GOING
16 IN THERE?

17 A NO. JENNIFER DID NOT GO IN THERE.

18 Q WAS THE DOOR KEPT OPEN OR CLOSED AFTER THE 10TH?

19 A CLOSED.

20 Q MR. RIGGS, I SHOW YOU EXHIBIT 5 FOR
21 IDENTIFICATION. DO YOU RECOGNIZE IT?

22 A YES, I DO.

23 Q WHAT IS IT?

24 A MY DAUGHTER'S BLANKET.

25 Q AND WAS THIS THE BLANKET THAT PETER LOPEZ
26 BROUGHT TO YOU?

27 A YES, IT IS.

28 Q HAD YOU SEEN THAT BLANKET BEFORE THE 10TH OF

1 OCTOBER?

2 A WE HAD PUT IT AWAY, WASHED IT AND PUT IT AWAY
3 PROBABLY A WEEK TO TWO WEEKS PRIOR. BECAUSE SHE HAD JUST
4 GOTTEN A BIG-GIRL'S BED AND WE HAD GONE TO BIG-GIRL'S
5 SHEETS AND EVERYTHING ELSE. SO WE WERE TRYING TO GET HER
6 TO GROW UP OUT OF THAT STUFF A LITTLE BIT.

7 Q DO YOU REMEMBER WHERE THE BLANKET WAS KEPT?

8 A IT WAS PUT IN THE HALL CLOSET BACK IN THE BACK.

9 Q AND HAD YOU HAD IT OUT AT ALL BEFORE IT WAS
10 BROUGHT TO YOU BY PETE LOPEZ?

11 A NO, I DID NOT.

12 Q HAD YOU SEE IT AROUND THE HOUSE BETWEEN THE 10TH
13 AND THE DAY THAT PETE BROUGHT IT TO YOU?

14 A NO, I HAD NOT.

15 Q DID MR. JOHNSON EVER ASK YOU TO LOAN THIS TO
16 HIM?

17 A NO, HE DID NOT.

18 Q HAD YOU EVER SEEN HIM WITH IT?

19 A NO, I HAD NOT.

20 Q OKAY. AND FINALLY, I WANT TO SHOW YOU EXHIBIT
21 46 FOR IDENTIFICATION. DO YOU KNOW THIS PERSON?

22 A IT IS MY DAUGHTER.

23 Q AND IS THIS SHIRT BY HER, DO YOU RECOGNIZE THE
24 SHIRT?

25 A YES, THAT'S THE SHIRT SHE WENT TO BED IN.

26 MS. SCHMAUSS: THANK YOU. I HAVE NOTHING FURTHER.

27 MR. ABLARD: NOTHING AT THIS TIME, YOUR HONOR. THANK
28 YOU.

1 THE COURT: YOU MAY STEP DOWN. RECESS. DON'T FORM
2 ANY OPINIONS OR CONCLUSIONS, TALK ABOUT THE CASE, PERMIT
3 ANYONE TO TALK TO YOU ABOUT IT. ABOUT TEN MINUTES OR SO,
4 PLEASE.

5 (RECESS)

6 STEVEN LOPEZ
7 CALLED AS A WITNESS BY THE PLAINTIFF, WAS SWORN AND
8 TESTIFIED AS FOLLOWS:

9 THE CLERK: PLEASE RAISE YOUR RIGHT HAND.

10 YOU DO SOLEMNLY SWEAR THE TESTIMONY YOU

11 MAY GIVE IN THE MATTER NOW PENDING BEFORE THIS COURT
12 SHALL BE THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT
13 THE TRUTH, SO HELP YOU GOD.

14 THE WITNESS: I DO.

15 THE CLERK: THANK YOU. PLEASE BE SEATED. PLEASE STATE
16 YOUR FULL NAME SPELLING YOUR LAST NAME FOR THE RECORD.

17 THE WITNESS: STEVEN LOPEZ L-O-P-E-Z.

18 DIRECT EXAMINATION

19 BY MS. SCHMAUSS:

20 Q GOOD AFTERNOON, MR. LOPEZ?

21 A GOOD AFTERNOON.

22 Q MR. LOPEZ, ON OCTOBER 10 OF 1993, WHERE DID YOU
23 LIVE?

24 A 9393 EXETER.

25 Q CITY OF MONTCLAIR?

26 A YES.

27 Q HOW LONG HAD YOU LIVED THERE PRIOR TO OCTOBER
28 10TH?

1 A APPROXIMATELY THREE MONTHS, FOUR MONTHS.

2 Q AND OKAY. AND WHO DID YOU MOVE IN WITH?

3 A DARIN RIGGS.

4 Q DID YOU KNOW DARIN RIGGS PREVIOUSLY?

5 A YES. WE WENT TO HIGH SCHOOL TOGETHER.

6 Q SO AS OF OCTOBER 10, 1993, HOW LONG HAD YOU
7 KNOWN DARIN?

8 A ABOUT NINE YEARS.

9 Q WERE YOU VERY GOOD FRIENDS WITH HIM?

10 A YEAH. HE WAS ONE OF MY BEST FRIENDS.

11 Q IS HE STILL YOUR FRIEND?

12 A YES.

13 Q HAD YOU LIVED WITH DARIN RIGGS ANYWHERE ELSE
14 OTHER THAN EXETER?

15 A YES. WE HAD AN APARTMENT ON SOUTH ONTARIO FOR
16 ABOUT TWO YEARS.

17 Q WHEN WAS THAT?

18 A IMMEDIATELY PRIOR TO LIVING IN MONTCLAIR.

19 Q SO, YOU KNEW HIS DAUGHTER, BRITTANY?

20 A YEAH.

21 Q WOULD YOU SAY YOU KNEW HER WELL?

22 A YEAH, LIKE I'D KNOW A MEMBER OF MY FAMILY OR
23 SOMETHING.

24 Q DID YOU KNOW BRITTANY SINCE SHE WAS BORN?

25 A YEAH.

26 Q DID SHE HAVE A NAME FOR YOU?

27 A SHE USED TO CALL ME UNCLE STEVE.

28 Q HOW DID YOU REGARD HER?

1 A LIKE SHE WAS ONE OF MY OWN NIECES AND NEPHEWS.

2 Q DID YOU LOVE HER?

3 A UH-HUH.

4 Q IS THAT YES?

5 A YES, VERY MUCH SO.

6 Q OKAY. WOULD SHE HUG YOU, KISS YOU?

7 A YEAH. IT SHE WAS, SHE WAS AFFECTIONATE TO ME
8 LIKE I WOULD BE ONE OF HER REAL UNCLES.

9 Q WOULD THERE EVER BE ANY OCCASION IN HER LIFE
10 THAT YOU'D BABY-SIT HER?

11 A THERE WERE A FEW, BOTH WHEN WE LIVED IN SOUTH
12 ONTARIO AND WHEN WE LIVED IN MONTCLAIR.

13 Q OKAY. WOULD SHE EVER DRAW ANYTHING FOR YOU?

14 A YEAH, SHE USED TO COLOR AND DRAW PICTURES AND
15 STUFF. I HAD A PICTURE OF BARNEY ON MY DOOR FOR MONTHS.

16 Q AFTER YOU MOVED INTO THE HOUSE ON EXETER WITH
17 DARIN, DID ANYBODY ELSE JOIN YOU AT THE HOUSE?

18 A JENNY AND BRITTANY DID.

19 Q WHEN WAS THAT?

20 A ABOUT THREE WEEKS TO A MONTH AFTER WE MOVED IN
21 THERE.

22 Q OKAY.

23 A WE HAD A ROOMMATE PRIOR TO THAT.

24 Q EXCUSE ME.

25 A WE HAD HAD A ROOMMATE PRIOR TO THAT THAT WE HAD
26 ASKED TO LEAVE TOO.

27 Q OKAY. AND SO, AFTER JENNIFER AND BRITTANY MOVED
28 IN, THEN YOU HAD A VACANCY AT THE HOUSE?

1 A YES.

2 Q OKAY. DID THERE COME A TIME WHEN ANOTHER
3 PERSON MOVED INTO THE HOUSE?

4 A YEAH.

5 Q AND WHO WAS THAT?

6 A AT ONE TIME, IT WAS-- I DON'T RECALL HER NAME.
7 BUT SHE ALSO WAS NOT--SHE WAS THERE AND GONE.

8 Q OKAY. AND THEN AFTER SHE LEFT?

9 A CHUCK JOHNSON.

10 Q WAS THERE ANOTHER PERSON THAT MOVED INTO THE
11 HOUSE?

12 A CHUCK JOHNSON.

13 Q AND DO YOU SEE HIM IN COURT TODAY?

14 A IT IS THE DEFENDANT.

15 Q OKAY. WHERE IS HE? WHAT IS HE WEARING?

16 A BEIGE SHIRT, DARK PANTS, TIE.

17 Q HOW DID YOU KNOW CHUCK JOHNSON?

18 A HE WAS ONE OF THE STOCKMEN THAT WORK AT MY
19 STORE.

20 Q WHERE WAS THAT?

21 A THRIFTY DRUG STORE.

22 Q HOW LONG HAD YOU KNOW HIM PRIOR TO HIM MOVING
23 INTO THE HOUSE ON EXETER?

24 A A FEW MONTHS, THREE TO SIX MONTHS, RIGHT AROUND
25 THERE. I CAN'T-- AT THIS POINT, I DON'T RECALL WHEN HE
26 STARTED WORKING FOR THRIFTYS.

27 Q NOW, YOU SAID HE WAS ONE OF YOUR STOCKMEN?

28 A YES.

1 Q WHAT DID YOU MEAN BY THAT?

2 A I WAS ASSISTANT MANAGER THERE. AND HE WORKED
3 FOR ME THERE.

4 Q SO DID THERE COME A TIME WHEN YOU OFFERED HIM
5 THE OPPORTUNITY TO BECOME A ROOMMATE?

6 A YES. AFTER IT CAME TO MY KNOWLEDGE THAT HE WAS
7 LIVING IN HIS V.W., AND I FELT KIND OF BAD FOR HIM.

8 Q OKAY. SO, YOU BROUGHT IT UP THAT HE SHOULD COME
9 LIVE AT YOUR RESIDENCE?

10 A YES, I TALKED IT OVER WITH JENNY AND DARIN. AND
11 FIGURED HE WAS HAVING A HARD TIME AND--

12 MR. ABLARD: YOUR HONOR, SORT OF BEYOND THE SCOPE,
13 NONRESPONSIVE.

14 MS. SCHMAUSS: I THINK HE WAS ANSWERING IT, YOUR
15 HONOR.

16 THE COURT: RELEVANCE?

17 MR. ABLARD: NOT PARTICULARLY RELEVANT.

18 Q BY MS. SCHMAUSS: SO, YOU TALKED IT OVER AND HE
19 IN FACT MOVED IN?

20 A YES.

21 Q DO YOU REMEMBER WHEN THAT WAS?

22 A SEPTEMBER, BEING LIKE MID-TO-LATE SEPTEMBER, I
23 BELIEVE IT WAS.

24 Q WAS THERE A HABIT AT THE HOUSE TO KEEP ONE'S
25 BEDROOM DOOR CLOSED?

26 A YEAH.

27 Q AND HOW ABOUT LOCKED?

28 A YEAH, BOTH DARIN, DARIN'S ROOM AND MY ROOM BOTH

1 HAD KEY LOCKS ON THEM BECAUSE WE HAD PROBLEMS BEFORE.

2 Q OKAY. AND TO YOUR KNOWLEDGE, DID THE DEFENDANT
3 HAVE A LOCK?

4 A JUST A LATCH BOLT THAT YOU SLIDE ACROSS AND IT
5 HOOKS INTO A LIKE A CLAMP.

6 Q WAS THAT ON THAT DOOR PRIOR TO HIS MOVING IN?

7 A NO, IT WASN'T.

8 Q DID HE PUT IT UP?

9 A YES.

10 Q AND DID HE ALSO GET A KEY LOCK EVENTUALLY?

11 A NOT TO MY KNOWLEDGE, NOT THAT I KNOW OF.

12 Q OKAY. WERE YOU PRESENT DURING THE DAYTIME HOURS
13 OF SATURDAY, OCTOBER 9, 1993?

14 A NO, I WASN'T.

15 Q WHERE WERE YOU?

16 A I WAS AT WORK.

17 Q SO, IF HE HAD INSTALLED A LOCK ON HIS DOOR
18 DURING THE DAY, YOU WOULDN'T HAVE BEEN THERE TO SEE IT?

19 A NO, NOT AT ALL.

20 Q WHAT ROOM DID YOU OCCUPY AT THE HOUSE ON EXETER?

21 A I HAD THE MASTER BEDROOM.

22 Q DID THAT HAVE ITS OWN BATH?

23 A YES, IT DID.

24 Q ON THE 9TH OF OCTOBER, YOU WERE GONE DURING THE
25 DAY. DID YOU EVER COME BACK TO THE HOUSE DURING THE
26 EVENING?

27 A ONCE I CAME BACK. BECAUSE I WAS WORKING DURING
28 THE DAY. I CAME HOME AND CHANGED AND LEFT AGAIN TO GO TO

1 MY MOTHER'S HOUSE.

2 Q OKAY. AND WHAT TIME DID YOU COME BACK AGAIN ON
3 THE 9TH?

4 A APPROXIMATELY 1 IN THE MORNING.

5 Q SO, THAT WAS ACTUALLY THE 10TH?

6 A YEAH.

7 Q SO, THE 10TH AT 1 IN THE MORNING. AND WHO WAS
8 UP?

9 A EVERYBODY WAS, DARIN, JENNY, CHUCK, ONE OF
10 JENNY'S FRIENDS WAS LEAVING AT THAT POINT AS I PULLED UP.

11 Q WHEN YOU SAY EVERYBODY, WAS BRITTANY UP?

12 A NO.

13 Q DO YOU KNOW WHERE SHE WAS?

14 A I BELIEVE SHE WAS IN BED ASLEEP.

15 Q YOU DIDN'T SEE HER UP AND AROUND?

16 A NO.

17 Q OKAY. WHAT TIME DID YOU GO TO BED?

18 A WITHIN A HALF HOUR. WE, I, DARIN AND I HAD
19 TALKED FOR A FEW MINUTES. AND I ENDED UP GOING TO BED
20 RIGHT AFTER THAT.

21 Q SO, ABOUT WHAT TIME?

22 A APPROXIMATELY 1:15, 1:30.

23 Q SOMEWHERE AROUND THERE?

24 A YEAH.

25 Q OKAY. WAS MR. JOHNSON STILL IN THE HOUSE WHEN
26 YOU WENT TO BED?

27 A YES.

28 Q DID HE LEAVE AT ANY TIME THAT YOU KNOW?

1 A HE WAS GOING TO BE TAKING A SUITCASE OVER TO HIS
2 WIFE. SO I HAD SEEN HIM WALKING DOWN THE HALLWAY WITH A
3 SUITCASE. I DIDN'T SEE HIM LEAVE THE HOUSE. I JUST
4 WENT IN MY ROOM AND SHUT THE DOOR.

5 Q AND DID YOU GO TO SLEEP?

6 A YES.

7 Q WHEN DID YOU AWAKEN?

8 A 9:00 ON SUNDAY MORNING, 10TH.

9 Q DID YOU SET AN ALARM?

10 A NO, I JUST SLEPT ABOUT EIGHT HOURS AND WOKE UP.

11 Q DID YOU HAVE ANY PARTICULAR TIME YOU WANTED TO
12 GET UP?

13 A JUST NOT REALLY. I JUST WOKE UP. I HAD PLANS
14 TO GO TO A STORE THAT DAY SO BEFORE I WENT TO WORK.

15 Q OKAY.

16 A SO, I MEAN I JUST WANTED TO MAKE SURE I WAS UP
17 IN ENOUGH TIME TO BE ABLE TO GO THERE AND STILL COME BACK
18 AND CHANGE AND GO TO WORK.

19 Q WERE YOU GENERALLY AN EARLY OR A LATE RISER?

20 A I GUESS IT WILL BE LATE. I MEAN, I CLOSED MY
21 STORE A LOT. SO, I TEND TO GET OFF WORK LATE AND SLEEP
22 LATE.

23 Q AFTER YOU WOKE UP AT ABOUT 9:00, WHAT DID YOU
24 DO?

25 A GOT DRESSED, GOT A CIGARETTE, WENT OUT TO THE
26 KITCHEN, GOT A CUP OF JUICE, AND WENT OUTSIDE TO SMOKE.

27 Q IS THAT YOUR USUAL PROCEDURE IN THE MORNING?

28 A YEAH.

1 Q YOU WILL HAVE A CIGARETTE FIRST THING IN THE
2 MORNING?

3 A YEAH.

4 Q AND ANY PARTICULAR REASON YOU WENT OUT TO THE
5 WAS IT THE PATIO?

6 A YEAH. THE BACK PORCH AREA PATIO.

7 Q ANY PARTICULAR REASON YOU WENT OUT THERE?

8 A DIDN'T SMOKE IN THE HOUSE. NOBODY ELSE--WELL,
9 DARIN AND JENNY DIDN'T SMOKE. AND THE ENTIRE TIME DARIN
10 AND I LIVED TOGETHER, I NEVER SMOKED IN THE HOUSE WITH
11 HIM. SO, I'D ALWAYS GO OUT ONTO THE BALCONY WHEN WE HAD
12 AN APARTMENT OR OUTSIDE.

13 Q SO, YOU WOKE UP AT 9. YOU DIDN'T TAKE A SHOWER.
14 YOU JUST GOT DRESSED?

15 A NO. I WAS GOING TO GO TO THE STORE, SEE WHAT
16 WAS THERE. AND THEN COME HOME.

17 Q SO HOW LONG DO YOU THINK IT TOOK YOU FROM WAKING
18 UP AT 9 TO GETTING OUT ON THE PORCH?

19 A A COUPLE OF MINUTES.

20 Q NOW, WHEN YOU WENT TO THE KITCHEN AND WALKED
21 BACK OUT, DID THAT TAKE YOU PAST THE LIVING ROOM?

22 A YEAH. I MEAN, YOU COULD SEE THROUGH THE
23 DOORWAY A LITTLE BIT. 'CAUSE THERE WAS LIKE A HALL DOORWAY
24 FROM THE KITCHEN TO THE LIVING ROOM.

25 Q OKAY. AND LET'S SEE. THERE'S A DIAGRAM BEHIND
26 YOU UP THERE, 61. FOR IDENTIFICATION. DO YOU SEE IT.
27 WELL, NOT BEHIND YOU, NEXT TO YOU?

28 A OH, YEAH.

1 Q SO, WHAT'S THE ROUTE THAT YOU TOOK FROM YOUR
2 ROOM TO THE KITCHEN?

3 I KNOW YOU HAVE NEVER SEEN THIS BEFORE. SO, YOU CAN
4 TAKE A LOOK AT IT?

5 A OKAY. JUST--

6 Q YOU WANT TO GET UP.

7 A YEAH. COME OUT THE DOOR, JUST WALKED THIS WAY
8 AND KIND CUT ACROSS THERE THIS STRAIGHT INTO THE KITCHEN.

9 Q WOULD THAT PASS YOU BY THE LIVING ROOM?

10 A YEAH, IT WOULD PASS YOU BY THE OPENING THAT'S
11 RIGHT THERE.

12 Q THEN WHAT DID YOU DO?

13 A THEN I GOT A CUP OF JUICE OUT OF THE FRIDGERATOR
14 AND WENT OUTSIDE.

15 Q DID YOU LOOK IN THE LIVING ROOM TO SEE IF
16 ANYONE WAS THERE?

17 A NO.

18 Q DID YOU HEAR ANYTHING FROM THE LIVING ROOM?

19 A THERE WAS A TV WITH CARTOONS WERE PLAYING ON
20 IT. SO--

21 Q SO YOU COULD SEE THE TV?

22 A YEAH.

23 Q AND DID YOU ASSUME OR THINK ANYBODY WAS IN THE
24 LIVING ROOM?

25 A I ASSUMED BRITTANY WAS BECAUSE SHE WOULD GET UP
26 ANYWHERE FROM YOU KNOW LIKE NORMAL CHILD FROM 7 ON, 6 ON.

27 Q AND DO WHAT?

28 A JUST SHE WAS KNOWN TO BE ABLE TO PUT IN HER OWN

1 VIDEOTAPE OR TURN ON THE TV AND WATCH WHAT SHE WANTED OR
2 IF EVERYBODY WAS UP, YOU KNOW, MAYBE WE'D HAVE BREAKFAST
3 OR--

4 Q AND YOU ASSUMED SHE WAS IN THE LIVING ROOM. BUT
5 YOU DIDN'T LOOK TO SEE IF SHE WAS IN THE LIVING ROOM?

6 A NO.

7 Q OKAY. THERE'S A COUPLE OF COUCHES. IS THIS
8 PROPERLY POSITIONED HOW THE COUCHES WOULD BE IN THE LIVING
9 ROOM?

10 A YES.

11 Q OKAY. BY THE WAY, IF ONE WERE TO WALK IN THE
12 FRONT DOOR, WOULD ONE BE ABLE TO SEE IF A PERSON WAS LYING
13 ON THIS COUCH N PICTURE MARKED ON EXHIBIT 61?

14 MR. ABLARD: YOUR HONOR.

15 A YES.

16 MR. ABLARD: CALLS FOR SPECULATION. AND AGAIN, THE
17 FACTS WILL BE INCOMPLETE DEPENDING ON WHAT SOMEBODY WAS
18 DOING, WALKING IN THE FRONT DOOR.

19 MS. SCHMAUSS: IT IS HIS HOME.

20 THE COURT: OVERRULED. THANK YOU. THE QUESTION IS
21 IF YOU WALKED IN THE FRONT DOOR, CAN YOU SEE THIS COUCH.
22 AND THE ANSWER IS A STATEMENT OF FACT, NOT SPECULATION.

23 MR. ABLARD: THANK YOU.

24 Q BY MS. SCHMAUSS: HOW ABOUT THIS COUCH LABELED
25 M?

26 A YES.

27 Q IF YOU WERE TO WALK IN AND SOMEBODY WERE LAYING
28 ON THE COUCH ON N, COULD YOU SEE THEM?

1 A YEAH. BECAUSE DIRECTLY TOWARDS THE FRONT DOOR
2 OF THE HOUSE.

3 Q SO, THAT ONE EVEN MORE THAN THE COUCH N?

4 A YEAH.

5 Q ON THE OTHER END?

6 A YES.

7 Q OKAY. RIGHT AFTER YOU WENT OUT TO THE PORCH
8 AREA SMOKING YOUR CIGARETTE, WHAT HAPPENED?

9 A I SHUT THE DOOR, LIT THE CIGARETTE, AND DARIN
10 WAS LIKE RIGHT BEHIND ME AFTER THAT ASKING-- AND HE WAS
11 ASKING ME IF I WAS OKAY. BECAUSE I WAS KIND OF UPSET
12 ABOUT SOME THINGS FROM THE NIGHT BEFORE WITH MY FAMILY.
13 AND SOME AND ALSO, I WAS ASKING HIM-- HE ASKED ME IF I HAD
14 SEEN BRITTANY. AND I SAID YES, I HAD SEEN HER OR I
15 HADN'T SEEN HER BUT I THOUGHT SHE WAS IN THE LIVING ROOM
16 'CAUSE THE TV WAS ON WITH CARTOONS.

17 Q SO, YOU SAID ISN'T SHE IN THE LIVING ROOM?

18 A YEAH.

19 Q OR WHAT DID YOU--

20 A I THINK SHE IS IN THE LIVING ROOM, BASICALLY.

21 Q OKAY. THEN WHAT HAPPENED?

22 A HE SAID NO, SHE WASN'T. AND AT THE SAME TIME,
23 THE PHONE RANG. AND DARIN PICKED UP THE PHONE. AND I
24 BELIEVE CHUCK PICKED UP THE PHONE AT THE SAME TIME.
25 BECAUSE DARIN ASKED CHUCK HAVE YOU SEEN BRITTANY.

26 MR. ABLARD: YOUR HONOR, I AM GOING TO OBJECT. THAT
27 CALLS FOR-- IT IS AN ASSUMPTION, NOT A FACT ON THIS
28 WITNESS'S PART; HEARSAY.

1 THE COURT: WELL, IT IS NOT RESPONSIVE, ACTUALLY.

2 MR. ABLARD: THAT TOO.

3 THE COURT: IN ANY EVENT, THAT CONCLUSION THAT HE
4 BELIEVES CHUCK PICKED UP THE PHONE, DISREGARD IT.

5 YOU ONLY CAN CONSIDER HE MADE A MENTAL JUDGMENT BY
6 THINKING THAT HAPPENED. YOU MAY MAKE THAT MENTAL
7 JUDGMENT. BUT DON'T ACCEPT HIS MENTAL JUDGMENT.

8 LET US FIND OUT WHAT THE FACTS ARE. AND YOU MAY DRAW
9 AS I TELL YOU, YOU KNOW, INFERENCES FROM THE
10 CIRCUMSTANTIAL FACTS OR THE EXISTENCE OF OTHER FACTS.

11 BUT SO DISREGARD HIS CONCLUSION. AND WE WILL SEE IF
12 IT IS WARRANTED AFTER WE HEAR ALL THE FACTS.

13 GO AHEAD.

14 Q BY MS. SCHMAUSS: JUST FROM WHAT YOU PERSONALLY
15 HEARD OR SAW RATHER THAN WHAT YOU ASSUME. THE PHONE RANG
16 AND YOU HEARD DARIN SAY WHAT?

17 A CHUCK, HAVE YOU SEEN BRITTANY.

18 Q AND THEN OBVIOUSLY, YOU COULDN'T HEAR THE OTHER
19 END OF THE CONVERSATION?

20 A NO, I COULDN'T.

21 Q OKAY.

22 A AND AT THE SAME TIME AS HE SAID THAT, DARIN

23 OPENED UP THE GARAGE DOOR AND STARTED LOOKING AROUND IN
24 THERE AS HE WAS DOING--

25 Q LET ME STOP YOU THERE. BY OPENING UP THE GARAGE
26 DOOR, WHAT DO YOU MEAN, THE OUTER GARAGE DOOR, OR THE--

27 A THE INNER ONE. WHERE THE FAMILY ROOM WOULD BE.
28 BECAUSE THE PHONE WAS POSITIONED RIGHT NEAR THIS DOOR.

1 Q DO YOU REMEMBER IF THAT WAS LOCKED OR UNLOCKED
2 AT THAT POINT?

3 A I DON'T RECALL.

4 Q THEN WHAT OCCURRED?

5 A I KIND OF CURSORILY LOOKED AROUND THE BACKYARD
6 THERE. AND THEN HEADED INSIDE. AND I WENT INTO THE
7 LIVING ROOM AND LOOKED AROUND ANYWHERE I COULD THINK OF
8 THAT SHE MIGHT BE AND STARTED HEADING DOWN THE HALLWAY.

9 Q OKAY. AND THEN WHAT?

10 A JENNY WAS COMING OUT OF THEIR ROOM. AND I TOLD
11 HER TO GO BACK AND LOOK INSIDER HER ROOM JUST TO MAKE SURE
12 SHE WASN'T IN THERE SOMETHING. I WENT INTO MY ROOM,
13 GRABBED MY KEYS, AND PROCEEDED TO GO OUT THE FRONT DOOR.
14 AND I FIGURED I'D LOOK AROUND THE NEIGHBORHOOD. AND I
15 DROVE AROUND THE NEIGHBORHOOD.

16 Q BEFORE YOU WENT OUT THE DOOR TO DRIVE AROUND THE
17 NEIGHBORHOOD, DID YOU EVER SEE CHUCK COME OUT?

18 A NO.

19 Q WAS HIS DOOR OPEN OR CLOSED?

20 A IT WAS CLOSED.

21 Q OKAY. SO YOU DROVE AROUND THE NEIGHBORHOOD FOR
22 A WHILE?

23 A YEAH. I DROVE AROUND FOR MAYBE TEN OR FIFTEEN
24 MINUTES AROUND THE IMMEDIATE NEIGHBORHOOD AND CAME BACK.

25 Q WHAT WERE YOU LOOKING FOR?

26 A JUST SEE IF YOU KNOW MAYBE SHE HAD FOR SOME
27 REASON OR OTHER SHE HAD WANDERED AROUND OR SOMETHING.
28 SHE WASN'T KNOWN TO DO IT. BUT WITH A CHILD, YOU NEVER

1 KNOW.

2 Q AND DID YOU RETURN TO THE HOUSE?

3 A YES.

4 Q AND WHAT HAPPENED WHEN YOU RETURNED TO THE
5 HOUSE?

6 A DARIN MET ME OUT ON THE STREET AND HE HAD A
7 FIVE-BY SEVEN PICTURE OF HER THAT I THEN TOOK AND SHOWED
8 THE PEOPLE THAT I'D SEEN THAT HAPPENED TO BE AROUND THE
9 NEIGHBORHOOD.

10 Q OKAY. SO, YOU SHOWED THE PICTURE TO VARIOUS
11 NEIGHBORS?

12 A YEAH.

13 Q WERE YOU WALKING OR DRIVING?

14 A DRIVING.

15 Q HOW LONG WERE YOU OUT THE SECOND TIME?

16 A THE TIME FRAME IS KIND OF HARD FOR ME TO GUESS
17 AT. I'D SAY MAYBE ABOUT TWENTY MINUTES TO A HALF HOUR.

18 Q WHEN YOU CAME BACK THAT TIME, THAT DARIN HAD
19 HANDED YOU THE PICTURE, DID YOU SEE CHUCK JOHNSON?

20 A NO, I DIDN'T.

21 Q OKAY. YOU DIDN'T GO INTO THE HOUSE?

22 A NO, I DIDN'T.

23 Q SO, THEN YOU DROVE AROUND SHOWING THE PICTURE,
24 AND CAME BACK AGAIN?

25 A YES.

26 Q AND WHAT HAD HAPPENED WHEN YOU CAME BACK AGAIN?

27 A I SAW THAT DARIN'S TRUCK WAS GONE. SO I FIGURED
28 THAT MAYBE HE WAS GOING AROUND THE NEIGHBORHOOD TOO. SO--

1 THE COURT: JUST TELL US WHAT YOU SAW, NOT WHAT YOU
2 FIGURED. OKAY.

3 THE WITNESS: SURE.

4 Q BY MS. SCHMAUSS: DARIN'S TRUCK WAS GONE. SO
5 YOU DID WHAT?

6 A SO, I PULLED UP IN THE DRIVEWAY AND GOT OUT.
7 AND A POLICEMAN MET ME HALFWAY UP THE FRONT LAWN.

8 Q OKAY. WAS DARIN AND JENNIFER GONE ALREADY?

9 A YES. THEY HAD GONE TO THE HOSPITAL.

10 Q OKAY. AND WHERE WAS CHUCK JOHNSON?

11 A HE WAS BEING INTERVIEWED BY ONE OF THE
12 POLICEMEN.

13 Q WHAT WAS HIS Demeanor?

14 A EDGY.

15 THE COURT: THE POLICEMAN?

16 MS. SCHMAUSS: NO. CHUCK JOHNSON'S.

17 THE COURT: "HIS" COULD REFER TO EITHER ONE.

18 MS. SCHMAUSS: THAT IS CORRECT. I STAND CORRECTED.

19 Q BY MS. SCHMAUSS: WHAT WAS MR. JOHNSON'S
20 Demeanor?

21 A EDGY, FIDGETY, VERY SKETCHY.

22 Q SKETCHY?

23 A YEAH, LIKE NERVOUS OR SOMETHING.

24 Q BEFORE YOU LEFT THE FIRST TIME TO GO OUT AND
25 LOOK FOR BRITTANY, DID YOU HEAR JENNIFER ASK CHUCK JOHNSON
26 ANYTHING?

27 A I HEARD HER CALL OUT WHAT WAS SHE WEARING.
28 THAT'S-- I MEAN, I DIDN'T HEAR HIS SIDE OF THE

1 CONVERSATION, JUST HERS THAT SHE HAD SAID AS I WAS WALKING
2 OUT THE FRONT DOOR.

3 Q WAS HIS DOOR OPEN OR CLOSED WHEN HE DID THAT?

4 A IT WAS CLOSED.

5 Q YOU DIDN'T HEAR HIM RESPOND?

6 A NO.

7 Q OR COULDN'T HEAR WHAT HE SAID?

8 A I COULDN'T HEAR WHAT HE SAID.

9 THE COURT: EXCUSE ME. CAN YOU SEE HIS DOOR FROM THE
10 FRONT DOOR?

11 THE WITNESS: YES.

12 THE COURT: OKAY.

13 Q BY MS. SCHMAUSS: DID HE COME OUT WHEN SHE
14 CALLED?

15 A NO, NOT THAT I KNOW OF.

16 Q WHAT WERE DARIN AND JENNIFER DOING AFTER?

17 A WHEN?

18 Q WELL, CAN YOU DESCRIBE THEIR DEMEANOR?

19 THE COURT: THEY CAN'T.

20 MS. SCHMAUSS: WHEN THEY SEARCHED FOR THE CHILD?

21 THE COURT: THEY CANNOT HAVE A DEMEANOR. EACH MAY
22 HAVE THEIR OWN. BUT THEY CANNOT HAVE A JOINT DEMEANOR.

23 Q BY MS. SCHMAUSS: LET'S START WITH JENNIFER.
24 WHAT WAS HER DEMEANOR LIKE?

25 A UM, SCARED. SHE COULDN'T FIND HER CHILD.

26 Q WAS SHE UPSET?

27 A YEAH.

28 Q DARIN, HOW ABOUT HIS?

1 A FROM WHEN HE WAS ON THE PHONE AND LOOKING IN THE
2 GARAGE WHEN I CAME IN, HE WAS YOU KNOW NERVOUS, LOOKING
3 FOR HIS CHILD. BUT I DIDN'T SEE HIM. BECAUSE HE WENT
4 OUT THE BACK DOOR TO LOOK AROUND ON THE OTHER SIDE OF THE
5 HOUSE.

6 Q FROM YOUR KNOWLEDGE OF BRITTANY, HAVING KNOWN
7 HER SINCE SHE WAS A BABY, DID YOU EVER KNOW HER TO PLAY
8 HIDE AND SEEK?

9 A NO.

10 Q DID YOU EVER KNOW HER TO HIDE FROM HER PARENTS?

11 A NO. SHE WAS USUALLY PRETTY MUCH ACCESSIBLE TO
12 HER PARENTS AT ALL TIMES, IF THEY CALLED HER, SHE CAME.

13 Q WHAT ABOUT HIDING IN DARK PLACES?

14 A NO. SHE DIDN'T LIKE DARK PLACES.

15 Q TO YOUR KNOWLEDGE, WAS SHE AFRAID OF THE DARK?

16 A I BELIEVE SHE WAS. SHE ALWAYS HAD TO HAVE A
17 NIGHT LIGHT OR THE HALL, HER BEDROOM DOOR OPEN AND THE
18 KITCHEN LIGHT ON.

19 Q DID YOU EVER KNOW HER TO GO INTO CHUCK JOHNSON'S
20 ROOM UNINVITED?

21 A NO.

22 Q WOULD CHUCK KEEP HIS DOOR CLOSED WHEN HE WAS IN
23 THE HOUSE?

24 A MOST OF THE TIME.

25 Q AND HOW ABOUT WHEN HE WAS OUT OF THE HOUSE?

26 A FAIRLY MUCH, MOST OF THE TIME.

27 Q MR. LOPEZ, DETECTIVE DONLEY OR OFFICER DONLEY IS
28 BRINGING A TOOL BOX THAT WE HAVE MARKED EXHIBIT SOMETHING

1 FOR IDENTIFICATION. EXHIBIT 1 FOR IDENTIFICATION. DO YOU
2 RECOGNIZE IT?

3 A YES.

4 Q WHAT IS IT?

5 A IT IS CHUCK'S TOOL BOX.

6 Q OKAY. AND HAD YOU EVER SEEN THAT AT THE HOUSE
7 ON EXETER PRIOR TO THE 10TH OF OCTOBER, 1993?

8 A YES.

9 Q WHERE HAD YOU SEEN IT?

10 A IN THE MIDDLE OF HIS ROOM AND IN THE GARAGE AT
11 SOME POINT.

12 Q HAD YOU SEEN IT IN THE DEFENDANT'S CLOSET?

13 A NO.

14 Q NOW, DID YOU HAVE OCCASION TO BE IN HIS ROOM
15 FROM THE TIME WHEN HE LIVED THERE?

16 A MAYBE ONCE OR TWICE. I REALLY DIDN'T GO INTO
17 ANY OF THE ROOMS OTHER THAN MINE.

18 Q WOULD YOU HAVE GONE OVER THERE TO TALK TO HIM?

19 A MOST OF THE TIME, I JUST TALKED TO HIM THROUGH
20 YOU KNOW BY WITH THE DOOR WOULD BE PARTIALLY OPEN OR I
21 TALKED TO HIM THROUGH THE DOOR.

22 Q THE TIME THAT THE DOOR WAS PARTIALLY OPEN, DID
23 YOU NOTICE THE TOOL BOX?

24 A IT WAS IN THE MIDDLE OF THE ROOM.

25 Q WAS HIS ROOM GENERALLY NEAT OR UNTIDY?

26 A UN--

27 Q UNTIDY?

28 A UNTIDY.

1 Q YES?

2 A YES.

3 Q DID YOU, DURING THE SEARCH FOR BRITTANY ON THE
4 10TH, DID YOU NOTICE ANY UNUSUAL BEHAVIOR BY THE DEFENDANT
5 IN THE HALLWAY?

6 A I MYSELF NO. 'CAUSE HE WASN'T WHEN I WAS
7 SEARCHING, HE WAS--

8 THE COURT: THE ANSWER IS NO.

9 THE WITNESS: NO.

10 Q BY MS. SCHMAUSS: THANK YOU. SO, YOU WERE NOT
11 PRESENT?

12 A NO.

13 Q YOU HAD ALREADY LEFT?

14 A YES. I HAD LEFT ALMOST IMMEDIATELY AFTER WE
15 STARTED LOOKING FOR HER.

16 Q MR. LOPEZ, I AM GOING TO SHOW YOU EXHIBIT 5 FOR
17 IDENTIFICATION, ASK YOU IF YOU HAVE EVER SEEN THIS ITEM
18 BEFORE. YOU DON'T NEED TO TAKE IT OUT.

19 A BLANKET. IS THAT BRITTANY'S BLANKET?

20 Q DO YOU RECOGNIZE IT?

21 A UH-HUH.

22 Q WHAT IS IT?

23 A BRITTANY'S BABY BLANKET.

24 Q HAD YOU EVER LOANED THIS TO THE DEFENDANT, CHUCK
25 JOHNSON?

26 A NO. IT WASN'T MINE TO LOAN. SO, I WOULDN'T DO
27 IT.

28 Q YOU NEVER SEEN HIM WITH IT?

1 A NO.

2 Q HAD YOU SEEN THIS BLANKET PRIOR TO THE 10TH OF
3 OCTOBER IN THE HOUSE?

4 A IN BRITTANY'S ROOM.

5 Q HOW SOON BEFORE THE-- ACTUALLY, HOW SOON BEFORE
6 THE MONTH OF-- THE END OF OCTOBER, 1993?

7 A PROBABLY SEPTEMBER SOMETIME.

8 Q OKAY. SO, IT HADN'T BEEN OUT AS FAR AS YOU
9 KNEW?

10 A YEAH.

11 Q MR. LOPEZ, FINALLY, DID YOU DO ANYTHING TO
12 BRITTANY RETHORN RIGGS ON OCTOBER 10, 1993?

13 A NO, NOT AT ALL.

14 Q DID YOU LOVE THAT CHILD?

15 A YES, I LOVED HER DEARLY.

16 MS. SCHMAUSS: THANK YOU. I HAVE NOTHING FURTHER.

17 MR. ABLARD: THANK YOU, YOUR HONOR.

18 CROSS-EXAMINATION

19 BY MR. ABLARD:

20 Q HOW OFTEN, SAY IN THE MONTH OF OCTOBER, WERE YOU
21 IN BRITTANY'S ROOM?

22 A MAYBE ONCE OR TWICE.

23 Q AND YOU DIDN'T NOTICE THAT DISNEY BLANKET THERE
24 THEN; RIGHT?

25 A HUH-UH.

26 Q COULD IT HAVE BEEN THERE AND YOU NOT NOTICED OR
27 WAS IT NOT THERE?

28 A TO BE HONEST WITH YOU, I DON'T KNOW. HER ROOM

1 IS USUALLY AT LEAST SOMEWHAT PICKED UP. BUT I MAY NOT
2 HAVE JUST LOOKED AT IT.

3 Q SO, YOU DON'T KNOW?

4 A I DON'T KNOW.

5 Q ALL RIGHT. AND WHEN, YOU KNOW, YOU WERE OUT,
6 YOU GOT UP. YOU WENT OUTSIDE LOOKING IN THE BACK AT SOME
7 POINT?

8 A UH-HUH, YES.

9 Q THEN YOU CAME BACK IN AND JENNIFER WAS COMING
10 OUT OF HER BEDROOM?

11 A YES.

12 Q OKAY. PRIOR TO THAT, HAD YOU SEEN JENNIFER
13 BEFORE THAT MORNING IN THAT MORNING?

14 A I HAD HEARD HER. SHE WAS IN THE KITCHEN WHEN
15 DARIN AND I WERE TALKING.

16 Q OKAY. AND THEN YOU WENT OUT. YOU WENT IN THE
17 BACK AND LOOKED?

18 A I WENT OFF TO THE OTHER SIDE OF THE HOUSE.

19 Q RIGHT?

20 A AND LOOKED AROUND ON THE SIDE THERE. THAT'D BE
21 THE GARAGE SIDE OF THE HOUSE.

22 Q OKAY. YOU WERE JUST OUT. YOU GOT UP. YOU GOT
23 DRESSED?

24 A YES.

25 Q YOU WENT OUT ON THE PATIO FOR THE CIGARETTE?

26 A YES.

27 Q SHORTLY AFTER THAT, MR. RIGGS CAME OUT?

28 A YES.

1 Q WHAT ARE--

2 A HE DIDN'T COME OUT. HE WAS IN THE FAMILY ROOM.
3 HE WAS ON ONE SIDE OF THE SLIDING--

4 Q RIGHT.

5 A --SCREEN DOOR. AND I WAS ON THE OTHER.

6 Q RIGHT. HE WAS AT THE-- WHAT I AM TRYING TO SAY
7 IS DOOR. I KNOW I AM NOT DOING A VERY GOOD JOB. DOOR.
8 YOU WERE ON THE PATIO?

9 A YES.

10 Q YOU WERE ALL WERE TALKING ABOUT HOW LONG?

11 A IT WAS PRETTY BRIEF, MAYBE A COUPLE OF MINUTES,
12 A COUPLE OF THREE MINUTES BEFORE THE PHONE RANG.

13 Q OKAY. DO YOU RECALL TELLING A POLICE OFFICER--
14 THAT IS OFFICER BALES ACTUALLY. DO YOU RECALL SPEAKING
15 WITH AN OFFICER BALES?

16 A I DON'T HAVE THE OFFICER'S NAME. I WAS KIND OF
17 FRAZZLED AT THE TIME MYSELF.

18 Q RIGHT. AND THIS WAS ON THE SAME DAY ON THE
19 10TH?

20 A OKAY.

21 Q DO YOU REMEMBER SPEAKING WITH AN OFFICER?

22 A YES, INSIDE THE HOUSE.

23 Q OKAY. DO YOU RECALL TELLING HIM THAT YOU
24 SUDDENLY HEARD BOTH JENNIFER AND DARIN, THE PARENTS OF
25 BRITTANY, SCREAMING OUT HER NAME AND THEN IMMEDIATELY GOT
26 DRESSED IN ORDER TO ASSIST THEM?

27 A NO.

28 Q THE COUCH THAT JENNIFER USUALLY WATCHES TV FROM

1 IS WHICH ONE ON THE WALL, THAT NEXT TO THE HALLWAY OR THE
2 ANOTHER WALL IN THE LIVING ROOM?

3 THE COURT: YOU MEAN BRITTANY?

4 THE WITNESS: JENNIFER OR BRITTANY?

5 Q BY MR. ABLARD: YES. I'M SORRY.

6 A WOULD USUALLY BE THE ONE IN FRONT OF THE TV SET
7 WHICH WILL BE THE COUCH MARKED N.

8 Q M?

9 A YES. THAT WAS THE ONE I NORMALLY SAW HER AT.

10 Q WHERE? MAYBE YOU COULD?

11 A THIS ONE N. IT IS SIDEWAYS.

12 Q AND THIS WOODEN THING, IS THAT THE FRONT DOOR
13 ACTUALLY SORT OF SIDEWAYS, BUT? WHAT IS THAT?

14 A THAT'S THE FRONT DOOR.

15 Q OKAY. SO, IT IS THE COUCH IS ACTUALLY WHEN YOU
16 OPEN THE DOOR LIKE THIS, IT SORT OF RIGHT IN FRONT OF THE
17 DOOR?

18 A IT IS TO THE LEFT BY ABOUT A FOOT.

19 Q OKAY.

20 MS. SCHMAUSS: NOT TO SCALE, MR. ABLARD.

21 MR. ABLARD: OH, I KNOW THAT. I AM JUST TRYING TO--
22 IT IS SIDEWAYS. AND I AM TRYING TO GET IT OUT.

23 Q BY MR. ABLARD: THEN THERE'S ANOTHER COUCH ALONG
24 THE HALL WHERE THE HALLWAY WOULD BE?

25 A YES.

26 Q WHEN SHE USUALLY WATCHES THE TV, IS IT THE ONE
27 NEXT TO THE DOOR WHERE YOU WALK, YOU GO AT THE BACK OF THE
28 COUCH?

1 A YES.

2 MR. ABLARD: OKAY. NOTHING FURTHER. THANK YOU.

3 REDIRECT EXAMINATION

4 BY MS. SCHMAUSS:

5 Q MR. LOPEZ, YOU SAID SHE USUALLY SAT THE COUCH
6 MR. ABLARD POINTED TO. I BELIEVE IT WAS N AS IN NANCY?

7 A YES.

8 Q HAD YOU EVER SEEN HER IN THE OTHER COUCH?

9 A YES.

10 Q WITH THE BLUE THROW ON IT?

11 A YES.

12 Q WHAT LETTER IS THAT?

13 A THAT'S THE M.

14 MS. SCHMAUSS: THANK YOU. NOTHING FURTHER.

15 THE COURT: YOU MAY STEP DOWN. MAY THIS WITNESS BE
16 EXCUSED?

17 MR. ABLARD: YES.

18 MS. SCHMAUSS: I THINK I AM OUT FOR THE DAY.

19 THE COURT: WELL, I HAVE EXCUSED THIS WITNESS AS
20 OPPOSED TO EXCUSED SUBJECT TO RECALL UNLESS YOU WANT HIM
21 SUBJECT.

22 MR. ABLARD: THAT WILL BE SUBJECT TO RECALL.

23 THE COURT: ALL RIGHT. SUBJECT TO RECALL. ARE YOU
24 OUT OF WITNESSES?

25 MS. SCHMAUSS: YES.

26 THE COURT: DO WE HAVE SOME FOR MONDAY?

27 MS. SCHMAUSS: OH, WE WILL.

28 THE COURT: OKAY. THAT WILL BE REALLY NICE.

1 LADIES AND GENTLEMEN, THIS IS THE END OF YOUR WEEK IN
2 MY COURTROOM. YOU HAVE NOTICED I HAVE A STACK OF FILES
3 GATHERED HERE FOR ME. THAT'S FOR MY ENTERTAINMENT
4 TOMORROW.

5 BUT I WOULD LIKE YOU FOLKS TO HAVE A NICE WEEKEND.
6 DON'T THINK ABOUT THIS CASE. GIVE YOUR MINDS A BREAK. IT
7 WILL ALL BE RECALLED TO YOU WHEN YOU COME BACK ON MONDAY,
8 9:30, PLEASE. OUTSIDE. WE WILL CALL YOU IN.

9 PLEASE DO NOT DISCUSS THE CASE. DO NOT PERMIT ANYONE
10 TO TALK TO YOU ABOUT IT.

11 IT IS MY FANTASY THAT IF YOU SEE AN ARTICLE IN ANY
12 LOCAL PAPER ABOUT THIS CASE, YOU JUST PASS BY IT AND NOT
13 READ IT. AND WHEN YOUR SIGNIFICANT OTHER SAYS IS THIS THE
14 CASE YOU ARE ON, YOU WILL SAY YES AND I AM NOT READING THE
15 ARTICLE AND I DON'T INTEND TO TALK TO YOU ABOUT IT.
16 PLEASE.

17 THOSE ARE THE PROMISES THAT YOU MADE TO ME AND I
18 EXPECT THAT YOU WILL KEEP THEM. PLEASE DO.

19 HAVE A NICE WEEKEND. DRIVE CAREFULLY. SEE YOU
20 MONDAY. WE ARE IN RECESS.

21 MR. ABLARD: THANK YOU.

22 MS. SCHMAUSS: COULD WE TALK A LITTLE ABOUT
23 SCHEDULING FOR NEXT WEEK?

24 THE COURT: WE ARE GOING TO START MONDAY AT 9:30, GO
25 TO 4:30 AND THEN WE ARE GOING TO GO EVERYDAY.

26 MS. SCHMAUSS: I KNOW. WE ARE GOING TO HAVE A DAY
27 WHERE WE ARE GOING TO TALK ABOUT--

28 THE COURT: UNTIL 4:30. WE WILL RECESS AGAIN UNTIL

1 TUESDAY.

2 MS. SCHMAUSS: I WANT TO ASK YOU HOW MUCH OUR--

3 THE COURT: WELL, I DON'T KNOW. I AM GUESSING TWO.

4 WHAT DO YOU THINK, MR. ABLARD.

5 MR. ABLARD: THAT'S FINE.

6 MS. SCHMAUSS: WHAT DAY? IS THERE A PARTICULAR DAY
7 OR JUST THE DAY THAT I PLAN TO USE HIM. BECAUSE I THINK
8 THAT WILL PROBABLY END UP BEING TUESDAY.

9 THE COURT: THAT'S FINE WITH ME.

10 MS. SCHMAUSS: ALL RIGHT. THAT ALL RIGHT WITH YOU,

11 MR. ABLARD?

12 THE COURT: YOUR WITNESSES. YOU FIGURE OUT HOW TO
13 CALL THEM, WHEN YOU WANT TO CALL THEM BACK SO WE DON'T RUN
14 OUT OF THEM HERE. AND BE PREPARED TO DO WHAT WE ARE GOING
15 TO DO. THAT'S MY PREFERENCE. AS LONG AS YOU UNDERSTAND
16 ME OR TO KEEP CALLING THE WITNESSES AS FAST AS YOU CAN,
17 EXAMINE THEM AS CLOSE TO RELEVANT ISSUES AS YOU CAN, AND
18 THEN TURN THEM OVER TO MR. ABLARD.

19 MS. SCHMAUSS: WE STILL HAVE THE TRANSCRIPT THOUGH TO
20 DEAL WITH. I WONDER WHEN WE ARE GOING TO DO THAT. IF WE
21 ARE GOING TO START REDACTING AND DUBBING TAPES, THAT WILL
22 TAKE TIME. AND I DON'T WANT TO INCONVENIENCE THE JURY.

23 THE COURT: WE WON'T, YOU KNOW FROM THE HOUR OF 4:30
24 WHEN YOU ARE EXCUSED UNTIL THE HOUR OF 9:30 THE NEXT
25 MORNING, THAT GIVES YOU A GREAT DEAL OF TIME TO REDACT,
26 DUB, AND WORK.

27 MS. SCHMAUSS: SO KIND.

28 THE COURT: WELL, I NEVER CONSIDERED WHEN YOU ARE IN

1 TRIAL THAT YOUR HOURS ARE LIMITED TO WHEN YOU WALK IN, YOU
2 START--

3 MS. SCHMAUSS: NO, THEY HAVEN'T BEEN.

4 THE COURT: -- TO WHEN YOU WALK OUT, IT'S OVER.

5 MS. SCHMAUSS: YOU DON'T WANT TO PLAN ANY PARTICULAR
6 TIME?

7 THE COURT: I HAVE VAGUE RECOLLECTION OF MANY, MANY
8 EIGHTEEN HOUR DAYS WHEN I WAS A LAWYER. AND I ASSUME YOU
9 CAN DO THE SAME.

10 MS. SCHMAUSS: ALL RIGHT. WHATEVER YOU SAY.

11 (PROCEEDINGS CONTINUED TO THE FOLLOWING DAY.)
12
13
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1 RANCHO CUCAMONGA, CALIFORNIA; MONDAY, OCTOBER 30, 1995

2 10:35 A.M.

3 DEPARTMENT 4

HON. ROBERT E. LAW, JUDGE

4
5 APPEARANCES: SET FORTH ON THE TITLE PAGE.

6
7 (GAIL GREENLEE, C-8647, OFFICIAL REPORTER.)

8 ---###---

9 THE COURT: GOOD MORNING, LADIES AND GENTLEMEN.

10 MS. SCHMAUSS, DO YOU HAVE ANY WITNESSES FOR US TODAY?

11 MS. SCHMAUSS: I THINK I AM READY, YOUR HONOR.

12 THE COURT: ALL RIGHT. I AM.

13 MS. SCHMAUSS: PEOPLE WILL CALL OFFICER KELLY. ASK
14 THE OTHER OFFICERS TO GO OUT, PLEASE.

15
16 ROBERT KELLY,

17 CALLED AS A WITNESS BY THE PLAINTIFF, WAS SWORN AND
18 TESTIFIED AS FOLLOWS:

19 THE CLERK: PLEASE RAISE YOUR RIGHT HAND.

20 YOU DO SOLEMNLY SWEAR THE TESTIMONY YOU
21 MAY GIVE IN THE MATTER NOW PENDING BEFORE THIS COURT
22 SHALL BE THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT
23 THE TRUTH, SO HELP YOU GOD.

24 THE WITNESS: I DO.

25 THE CLERK: THANK YOU. PLEASE BE SEATED. PLEASE STATE
26 YOUR FULL NAME SPELLING YOUR LAST NAME FOR THE RECORD.

27 THE WITNESS: ROBERT KELLY K-E-L-L-Y.

28 THE COURT: PROCEED.

DIRECT EXAMINATION

BY MS. SCHMAUSS:

Q OFFICER KELLY, ARE YOU A POLICE OFFICER WITH THE
CITY OF MONTCLAIR?

A YES, I AM.

Q HOW LONG HAVE YOU BEEN A POLICE OFFICER?

A A LITTLE OVER FIVE YEARS.

Q WERE YOU EMPLOYED WITH THE MONTCLAIR POLICE
DEPARTMENT ON OCTOBER 10, 1993?

A YES, I WAS.

Q IN WHAT CAPACITY?

A I WAS A POLICE OFFICER.

Q ON PATROL?

A YES.

Q DID YOU GET A CALL REGARDING A MISSING JUVENILE
ON THAT DATE?

A YES, I DID.

Q DO YOU RECALL WHAT TIME YOU RECEIVED THE CALL?

A I BELIEVE IT WAS 9:11 IN THE MORNING.

Q WHERE WERE YOU WHEN YOU RECEIVED THE CALL?

A I WAS AT THE POLICE STATION.

Q IS EXETER CLOSE BY THE POLICE STATION?

A IT WAS APPROXIMATELY A MILE AND A HALF, I
BELIEVE, FROM THE POLICE STATION.

Q DO YOU REMEMBER THE ADDRESS YOU WERE DISPATCHED
TO?

A I BELIEVE IT WAS 9393.

Q EXETER?

1 A YES.

2 Q OKAY. DID YOU GO IMMEDIATELY?

3 A YES, I DID.

4 Q WHEN YOU ARRIVED THERE, WERE THERE ANY OTHER
5 POLICE OFFICERS THERE?

6 A NO, THERE WERE NOT.

7 Q OFFICER KELLY, ARE YOU FAMILIAR WITH A DOCUMENT
8 CALLED A DISPATCH LOG?

9 A YES, I AM.

10 Q OR I GUESS IT IS AN INCIDENT INQUIRY?

11 A YES, I HAVE.

12 Q HAVE YOU EVER DONE DISPATCH AT THE MONTCLAIR
13 POLICE DEPARTMENT?

14 A YES, I HAVE.

15 Q I AM SHOWING YOU EXHIBIT 62 FOR IDENTIFICATION.
16 DO YOU RECOGNIZE IT?

17 A YES, I DO.

18 Q WHAT IS IT?

19 A IT IS A WHAT'S CALLED AN INCIDENT INQUIRY WHERE
20 THE-- WHERE A CALL CAN BE RECALLED FROM THE COMPUTER AND
21 ALL THE TIME STAMPS THAT WHEN OFFICERS ARRIVED, ADVISED
22 THAT THEY ARRIVED ARE PUT ON THE COMPUTER.

23 Q WHERE DID THE TIME STAMPS ORIGINATE FROM?

24 A THEY ARE ELECTRICALLY STAMPED FROM THE COMPUTER
25 AS TO THE DISPATCHER INPUTS IT.

26 Q OKAY. SO WHEN IT SAYS TIME STAMP RECEIVED 9:11,
27 WHAT DOES THAT MEAN?

28 A THAT IS THE TIME THAT THE CALL WAS RECEIVED.

1 Q OKAY. AND THEN IT SAYS DISPATCH 9:12. WHAT
2 DOES THAT MEAN?

3 A THAT MEANS THAT AT 9:12 IS WHEN THE CALL WAS
4 DISPATCHED OR BROADCAST ON THE AIR.

5 Q THEN THERE'S AN ENTRY "IN ROUTE"?

6 A CORRECT.

7 Q AND THEN THERE'S "AT SCENE." WHAT DOES THAT
8 MEAN?

9 A THE FIRST OFFICER THAT ARRIVED ON SCENE, THAT
10 OFFICER BROADCASTS THEY ARE AT THE SCENE. THEN THE
11 DISPATCH WOULD PUT THAT IN THERE FOR THAT WILL BE THE
12 FIRST AT SCENE TIME WHICH WOULD BE YOU IN THIS CASE?

13 A CORRECT.

14 Q WHAT TIME WERE YOU AT SCENE?

15 A 0916 HOURS.

16 Q AND DOES THAT COMPORT WITH YOUR MEMORY THAT YOU
17 GOT THERE WITHIN FOUR MINUTES OF THE DISPATCH?

18 A YES.

19 Q AND THEN THE LAST ENTRY OVER HERE IS "CLOSE."
20 WHAT DOES THAT MEAN?

21 A CASE IS CLOSED. THAT MEANS THAT THAT CALL IS
22 CURRENTLY CLOSED AND IT IS NO LONGER IN THE ACTIVE SCREEN
23 IN THE COMPUTER; THAT THAT WAS SOMETIME LATER THAT DAY.

24 Q WHAT TIME?

25 A IT SHOWS 1855 HOURS WHICH WILL BE 6:55 P.M.

26 Q OKAY. WHEN YOU GOT TO THE HOUSE, WHAT DID YOU
27 DO?

28 A I MET WITH THE PARENTS OF THE CHILD INSIDE THE

1 RESIDENCE.

2 Q OKAY. AND WHERE WERE THEY?

3 A I BELIEVE THEY WERE RIGHT TOWARDS THE FRONT OF
4 THE RESIDENCE WHERE THEY WERE BY THE FRONT DOOR. I DON'T
5 RECALL EXACTLY WHERE THEY WERE AT.

6 Q OKAY. DID YOU START TO INTERVIEW PEOPLE?

7 A I WAS GETTING A DESCRIPTION OF THE CHILD FROM
8 THE MOTHER, AND ALSO GOT A PHOTOGRAPH OF HER.

9 Q OKAY. AND DID SOMEONE ELSE ARRIVE TO ASSIST
10 YOU?

11 A YES.

12 Q WHO WAS THAT?

13 A OFFICER BALES.

14 Q AND HOW SOON AFTER YOU GOT THERE DID OFFICER
15 BALES ARRIVE?

16 A IT WAS APPROXIMATELY TWO OR THREE MINUTES.

17 Q AND HE ARRIVED. DID THE TWO OF YOU DIVIDE UP
18 DUTIES?

19 A YES.

20 Q HOW DID YOU DIVIDE THEM UP?

21 A OFFICER BALES WAS RESPONSIBLE FOR THAT AREA OF
22 PATROL. SO IN ESSENCE HE WOULD BE RESPONSIBLE FOR ANY
23 PAPERWORK THAT OCCURRED ON THAT BEAT. SO, HE WAS TAKING
24 THE INITIAL MISSING PERSON'S REPORT. AND IT WAS MY DUTY
25 TO START SEARCHING FOR THE MISSING PERSON.

26 Q OKAY. DID YOU ASCERTAIN WHAT THE MEMBERS OF THE
27 HOUSEHOLD HAD ALREADY DONE REGARDING THE SEARCH AS YOU
28 ASKED THEM IF THEY HAD LOOKED IN THE VARIOUS ROOMS?

1 A I DON'T RECALL IF I DID OR NOT.

2 Q WOULD THAT MAKE A DIFFERENCE TO YOU IN YOUR
3 SEARCH IF THEY HAD LOOKED ONCE ALREADY?

4 A NO.

5 Q WHY NOT?

6 A THE CALL WAS A CRITICAL MISSING. AND IT WAS
7 SUPPOSED TO BE A THREE-YEAR-OLD GIRL. MY PAST EXPERIENCE
8 IS THAT WHEN CHILDREN ARE MISSING, THIS YOUNG, THEY ARE
9 OFTEN EITHER PLAYING HIDE-AND-SEEK FROM THEIR PARENTS OR
10 FROM FRIENDS, AND THEY WILL OFTEN HIDE INSIDE THE HOUSE,
11 SOMETIMES WHILE PARENTS WILL NOT THINK TO LOOK.

12 Q OKAY. SO, DID YOU START A SEARCH?

13 A YES, I DID.

14 Q WHERE DID YOU LOOK?

15 A I INITIALLY STARTED IN THE BACKYARD AREA OF THE
16 RESIDENCE. BECAUSE I SAW THAT SLIDING DOOR WAS OPEN. I
17 ALSO BELIEVE THE FATHER WAS OUT THERE CALLING HER NAME.
18 SO THERE IS WHERE I WENT TO START MY SEARCH.

19 Q OKAY. AND WHAT DID YOU DO AT THAT POINT AFTER
20 THAT?

21 A ONCE I HAD CLEARED THE BACK YARD, I STARTED
22 SEARCHING THE GARAGE.

23 Q WHAT DO YOU MEAN CLEARED THE BACKYARD?

24 A I SEARCHED AREAS WHERE I BELIEVE THAT SHE COULD
25 BE HIDING OR THAT SHE COULD BE. AND ONCE I HAD CHECKED
26 THE SPACES WHERE I BELIEVE SHE COULD BE AND SHE WASN'T
27 THERE, THEN I STARTED MY SEARCH INSIDE THE HOUSE.

28 Q DID YOU OBSERVE WHAT OFFICER BALES WAS DOING

1 WHEN YOU WENT BACK INTO THE HOUSE?

2 A YES.

3 Q WHAT WAS HE DOING?

4 A HE WAS TALKING TO THE MOTHER AND FATHER.

5 Q OKAY. WHERE DID YOU LOOK IN THE HOUSE AREA?

6 A I BELIEVE I STARTED IN THE GARAGE, THE KITCHEN
7 AREA WHERE THE PARENTS AND OFFICER BALES WERE AT, AND THEN
8 THE LIVING ROOM, AND THEN I STARTED DOWN THE HALL TO THE
9 BEDROOMS.

10 Q OKAY. AND WHICH BEDROOMS DID YOU OR WHICH
11 BEDROOM DID YOU SEARCH FIRST?

12 A I BELIEVE I SEARCHED BRITTANY'S BEDROOM FIRST.

13 Q AND THEN WHERE DID YOU GO?

14 A I BELIEVE I WENT TO THE PARENTS' ROOM NEXT.

15 Q OKAY. AS YOU WERE IN THE BACK AREA OF THE HOUSE
16 OR THE HALLWAY AREA OF THE HOUSE, DID YOU EVER PASS BY THE
17 DEFENDANT IN THIS CASE?

18 A YES, I DID.

19 Q AND DO YOU SEE HIM IN COURT TODAY?

20 A YES, I DO.

21 Q WHERE IS HE?

22 A MR. JOHNSON IS SEATED NEXT TO COUNSEL WEARING A
23 BLUE STRIPED SHIRT.

24 Q OKAY. AND WHERE IN THE HOUSE DID YOU PASS HIM?

25 A HE WAS ALSO IN THE HALLWAY.

26 Q OKAY. DID YOU OBSERVE WHAT HE WAS DOING?

27 A I BELIEVE THAT HE WAS LOOKING IN THE HALL CLOSET
28 AREA.

1 Q WHAT WAS HIS DEMEANOR THAT YOU COULD OBSERVE AT
2 THAT POINT?

3 A TO ME, HE LOOKED LIKE HE WAS NERVOUS. HIS
4 ACTIONS OF LOOKING WERE VERY DELIBERATE.

5 Q WHAT DO YOU MEAN "DELIBERATE"?

6 A HE WAS LOOKING. HE WAS MOVING SLOW AS IF
7 PLANNING EXACTLY WHAT IT WAS THAT HE WAS GOING TO DO,
8 WHETHER HE WAS GOING TO OPEN A DOOR AND THEN LOOK INSIDE.
9 THEY WERE VERY SLOW AND DELIBERATE.

10 Q SO, HE WASN'T SEARCHING FRANTICALLY OR IN A
11 FRENZY OR ANYTHING?

12 A NO.

13 Q DID HE SAY SOMETHING TO YOU AT THAT POINT?

14 A HE HAD MENTIONED THAT THE LAST TIME THAT HE SAW
15 BRITTANY WAS IN THE LIVING ROOM AREA WHERE SHE WAS
16 WATCHING CARTOONS.

17 Q HAD YOU QUESTIONED HIM AT THAT POINT?

18 A NO.

19 Q SO, IT WASN'T YOUR JOB AT THAT TIME TO QUESTION
20 ANYBODY; WAS IT?

21 A CORRECT.

22 Q YOU WERE JUST LOOKING?

23 A CORRECT.

24 Q OKAY. AFTER CHECKING THE PARENTS' ROOM, WHERE
25 DID YOU GO?

26 A I WENT TO THE END OF THE HALLWAY WHERE THERE
27 WERE TWO MORE BEDROOMS. ONE ON THE NORTH SIDE AND ONE ON
28 THE SOUTH. I SAW MR. JOHNSON IN THE SOUTH BEDROOM WHICH

1 WAS LATER DETERMINED TO BE HIS BEDROOM. AND THEN THE NORTH
2 BEDROOM, THE DOOR WAS CLOSED. AND I INQUIRED AS TO WHOSE
3 BEDROOM THAT WAS.

4 Q YOU INQUIRED OF MR. JOHNSON?

5 A YES.

6 Q AND HE SAID WHAT?

7 A THAT WAS MR. LOPEZ'S BEDROOM.

8 Q AND THEN WHAT OCCURRED?

9 A HE TOLD ME THAT MR. LOPEZ WAS CURRENTLY OUTSIDE
10 LOOKING FOR BRITTANY. AND HE TOLD ME TO GO INSIDE HIS
11 BEDROOM AND LOOK.

12 Q IN MR. LOPEZ'S BEDROOM?

13 A YES.

14 Q WHEN YOU WERE SPEAKING TO MR. JOHNSON AT THIS
15 TIME, WHERE WAS MR. JOHNSON?

16 A HE WAS INSIDE HIS BEDROOM STANDING NEXT TO HIS
17 CLOSET.

18 Q AND WERE YOU STILL IN THE HALLWAY?

19 A I WAS IN THE HALLWAY GETTING READY TO GO INTO
20 MR. LOPEZ'S BEDROOM, YES.

21 Q I WANT YOU TO LOOK AT A DIAGRAM. THIS IS
22 EXHIBIT 61 FOR IDENTIFICATION. OKAY. YOU COULD LOOK AT
23 THAT QUICKLY, ORIENT YOURSELF, SEE IF WHAT'S SHOWN THERE.
24 IT IS NOT TO SCALE.

25 A OKAY.

26 Q ALL RIGHT. SO, WHERE APPROXIMATELY WAS THE
27 DEFENDANT, USING THIS POINTER, WHEN YOU WERE TALKING TO
28 HIM?

1 A HE WAS RIGHT IN THIS AREA BY HIS CLOSET
2 (INDICATING) .

3 Q WITH THE DOOR OPEN?

4 A THE CLOSET DOOR OR?

5 Q YEAH.

6 A HIS DOOR.

7 Q WITH THE FRONT DOOR, THE DOOR TO THE ROOM?

8 A OH, YES, HIS DOOR WAS OPEN.

9 Q YOU CAN USE THIS GREASE PENCIL AND PUT A J FOR
10 JOHNSON WHERE YOU SAW HIM?

11 A (WITNESS COMPLIES.)

12 MS. SCHMAUSS: COULD THE RECORD REFLECT THAT THE
13 OFFICER HAS COMPLIED AND PUT A RED "J"?

14 A IT MAY.

15 Q BY MS. SCHMAUSS: OKAY. AND THEN PUT A K FOR
16 KELLY WHERE YOU WERE STANDING WHEN YOU TALKED AT THAT
17 POINT?

18 A (WITNESS COMPLIES.)

19 MS. SCHMAUSS: COULD THE RECORD REFLECT THAT HE HAS
20 COMPLIED WITH MY REQUEST?

21 THE COURT: IT MAY.

22 MS. SCHMAUSS: THANK YOU.

23 Q BY MS. SCHMAUSS: OKAY. SO, WERE YOU ABLE TO
24 SEE EXACTLY WHAT HE WAS DOING IN THIS CLOSET AREA AT THIS
25 POINT?

26 A NO, I WAS NOT.

27 Q CAN YOU DESCRIBE THE KIND OF MOVEMENT THAT YOU
28 SAW HIM MAKING?

1 A HE WAS BENDING DOWN. I COULD SEE HIS HAND
2 MOVING BY THE CLOSET. BUT DUE TO THE OFFSET ANGLE OF THE
3 TWO BEDROOMS, I WAS UNABLE TO SEE EXACTLY WHAT IT WAS THAT
4 HE WAS DOING.

5 Q SO, HE WAS MAKING BENDING-AND
6 MOVING-WITH-HIS-ARM MOTIONS?

7 A YES.

8 Q THIS IS WHEN HE WAS TELLING YOU IT WAS OKAY TO
9 GO INTO LOPEZ'S ROOM?

10 A NO. HE WAS-- HE HAD DONE THAT. HE WAS DOING
11 THIS AFTER HE HAD TOLD ME TO GO INTO LOPEZ'S ROOM.

12 Q DID YOU THINK THAT ODD OR STRANGE, OR SOMETHING
13 YOU SHOULD ADVISE AT THAT POINT?

14 A NO.

15 Q WHY NOT?

16 A I BELIEVED THAT HE WAS ASSISTING WITH THE
17 SEARCH.

18 Q OKAY. SO, DID YOU GO IN, SEARCH MR. LOPEZ'S
19 BEDROOM?

20 A YES, I DID.

21 Q AND THEN AFTER CHECKING MR. LOPEZ'S BEDROOM,
22 WHAT DID YOU DO?

23 A I MONITORED A RADIO BROADCAST THAT THE CHILD,
24 BEING BRITTANY, HAD POSSIBLY BEEN FOUND AT A NEIGHBOR'S
25 RESIDENCE.

26 Q WHEN DID YOU HEAR THIS BROADCAST OR WHERE WERE
27 YOU?

28 A I BELIEVE THAT I HAD COMPLETED MY SEARCH OF

1 LOPEZ'S BEDROOM. SO, I WAS BACK IN THE HALLWAY AREA.

2 Q DID THIS COME OVER YOUR RADIO?

3 A YES, IT DID.

4 Q OKAY. WHAT DID YOU DO AFTER HEARING THIS?

5 A I WENT OUT TO THE FRONT OF THE RESIDENCE WAITING
6 FOR THE ADDRESS WHERE THE CHILD WAS AT SO THAT I COULD GO
7 AND GET HER AND BRING HER BACK HOME.

8 Q WHEN YOU WERE MONITORING THIS BROADCAST, DID YOU
9 SEE THE DEFENDANT?

10 A I DON'T RECALL IF I DID OR NOT.

11 Q SO, YOU DON'T REMEMBER IF HE WAS STILL IN HIS
12 CLOSET AREA OR NOT?

13 A NO, I DON'T.

14 Q OKAY. SO, YOU WENT OUTSIDE. AND HOW LONG DID
15 YOU SPEND OUTSIDE?

16 A IT WAS APPROXIMATELY ONE MINUTE.

17 Q DID YOU GET ANOTHER BROADCAST?

18 A YES, I DID.

19 Q TELLING YOU WHAT?

20 A THAT IT WAS A FALSE CALL, THAT THE CHILD HAD NOT
21 BEEN LOCATED.

22 Q OKAY. AFTER HEARING THAT, WHAT DID YOU DO?

23 A I RECALLED THAT I HAD NOT SEARCHED MR. JOHNSON'S
24 BEDROOM. SO, I WENT BACK INSIDE OF THE RESIDENCE.

25 Q AND WAS HE THERE OR NOT THERE AT HIS BEDROOM
26 AREA AT THIS POINT?

27 A NO, HE WAS NOT.

28 Q WAS THE DOOR OPEN OR CLOSED?

1 A IT WAS OPEN.

2 Q DO YOU KNOW WHERE THE DEFENDANT WAS AT THIS
3 POINT?

4 A HE WAS IN THE KITCHEN.

5 Q DID YOU-- WERE YOU ABLE TO SEE HIS DEMEANOR AT
6 THIS POINT?

7 A I DON'T RECALL WHAT IT WAS.

8 Q OKAY. SO, DID YOU GO BACK TO THE DEFENDANT'S
9 BEDROOM?

10 A YES, I DID.

11 Q OKAY. THERE'S SOME PICTURES ON THE EXHIBIT
12 BEHIND YOU, SOME LARGE BLOWN-UP PICTURES. AND I CAN'T SEE
13 THE EXHIBIT NUMBER. MAYBE IF YOU MOVE THE BIG CHART.

14 A 3.

15 Q OKAY. ON NUMBER 3 FOR IDENTIFICATION ON THE
16 RIGHT HAND SIDE, DO YOU RECOGNIZE THOSE PHOTOS?

17 A YES, I DO.

18 Q WHAT ARE THEY?

19 A PHOTOGRAPHS C AND D ARE OF MR. JOHNSON'S
20 BEDROOM.

21 Q IS THAT HOW MR. JOHNSON'S BEDROOM LOOKED WITH
22 SOME EXCEPTION WHEN YOU SAW THE ROOM ON OCTOBER 10, 1993?

23 A YES, IT WAS.

24 Q AND BY SOME EXCEPTION, HOW ABOUT THE POSITION OF
25 THE TOOL BOX SHOWN IN THOSE PHOTOS?

26 A THE TOOL BOX WAS INSIDE OF THE CLOSET WHEN I
27 INITIALLY ENTERED.

28 Q SO, OTHER THAN THAT, DO THE PICTURES LOOK CLOSE

1 TO HOW IT LOOKED WHEN YOU WALKED?

2 A YES.

3 Q AND BY THAT, I MEAN THE DISARRAY?

4 A YES.

5 Q DID YOU OR ANY OTHER OFFICERS RANSACK HIS
6 BEDROOM?

7 A NO.

8 Q SO, THE ROOM WAS A MESS?

9 A YES.

10 Q OKAY. WHEN YOU WALKED INTO HIS BEDROOM, WHAT
11 DID YOU DO?

12 A I WAS FIRST GOING TO LOOK UNDER THE BED. I
13 PULLED UP THE SHEET AND NOTED THAT IT WAS ONLY MAYBE A
14 COUPLE OF INCHES OFF THE GROUND. KNOWING THAT SHE COULD
15 NOT FIT UNDER THERE, THE ONLY OTHER PLACE WHERE I THOUGHT
16 THAT SHE COULD BE WOULD BE INSIDE THE CLOSET.

17 Q SO, YOU, AFTER YOU NOTICED THAT THE BED DIDN'T
18 HAVE ENOUGH CLEARANCE, YOU DIDN'T LOOK ALL THE WAY UNDER
19 THE BED?

20 A NO.

21 Q OKAY. HOW ABOUT DID YOU TRY MOVING ANY OF THE
22 PILE OF JUNK ON THE FLOOR?

23 A NO.

24 Q OKAY. SO, YOU TURNED YOUR ATTENTION TO THE
25 CLOSET?

26 A CORRECT.

27 Q WHAT DID YOU SEE AT THAT POINT?

28 A I SAW THE TOOL BOX. IT WAS ON TOP OF-- THERE

1 WAS A PLASTIC TUB INSIDE THERE SITTING ON TOP OF THAT.
2 AND I LOOKED UNDERNEATH THE TOOL BOX AND SAW PART OF A
3 LEG.

4 Q OKAY. LET ME STOP YOU THERE. WHEN YOU FIRST
5 LOOKED AT THE CLOSET, WAS ANY PART OF A BODY VISIBLE?

6 A NO.

7 Q WHAT WAS COVERING UP WHAT YOU LATER FOUND TO BE
8 A BODY?

9 A CLOTHES.

10 Q OKAY. AND THE TOOL BOX WAS SITTING ON
11 SOMETHING?

12 A YES.

13 Q WHICH WAS A PLASTIC CONTAINER?

14 A CORRECT.

15 Q SO, YOU MOVED THAT AND YOU SAW WHAT?

16 A A LEG, YES.

17 Q WHAT WERE YOUR IMPRESSIONS AT THAT POINT?

18 A WHEN I SAW THE FIRST LEG, I THOUGHT THAT IT
19 MIGHT BE A DOLL.

20 Q SO WHAT DID YOU DO NEXT?

21 A I STARTED MOVING THE CLOTHING. AND THEN I SAW A
22 SECOND LEG.

23 Q NOW, THIS TOOL BOX, WAS IT ACTUALLY ON THE BODY?

24 A NO.

25 Q SO, HOW WAS IT SITUATED TO THE BODY?

26 A THE BODY WAS LAYING IN A NORTH-SOUTH
27 DIRECTION. THE TOOL BOX WAS SITTING ON TOP OF THE TUB
28 FACING A NORTH-SOUTH DIRECTION. SO, IT WAS LONG ENOUGH

1 TO WHERE IT COULD COVER PART OF THE BODY THAT WERE LATER
2 EXPOSED WHEN I MOVED THE TOOL BOX.

3 Q BUT THE TOOL BOX WAS NEVER ACTUALLY ON TOP OF
4 THE BODY?

5 A NO.

6 Q HOW CLOSE WAS IT IN RELATION TO THE VICTIM'S
7 FOOT?

8 A I DON'T RECALL EXACTLY, MAYBE A COUPLE OF
9 INCHES.

10 Q OKAY. SO, YOU BEGAN MOVING CLOTHES AND THINGS.

11 AND YOU SAW ANOTHER FOOT. THEN WHAT HAPPENED?

12 A WHILE MOVING THE CLOTHES, I BRUSHED A CROSS THE
13 LEG. I FELT THAT IT WAS A HUMAN LEG; THAT IT WAS STILL
14 WARM TO THE TOUCH. AND THEN I MOVED ALL OF THE CLOTHES
15 THAT WERE IN THAT PILE.

16 Q OKAY. AND AT THIS POINT, DID YOU REALIZE WHAT
17 YOU HAD FOUND?

18 A YES.

19 Q OKAY. WHAT DID YOU DO THEN?

20 A ONCE I HAD REMOVED ALL OF THE CLOTHES, I SAW
21 THAT THERE WERE-- THERE WAS A PLASTIC BAG ON THE FACE AREA
22 OF THE CHILD.

23 Q COULD YOU DESCRIBE THAT IN LITTLE MORE DETAIL,
24 HOW IT WAS SITUATED?

25 A IT WAS A BLACK PLASTIC TRASH BAG. AND THE PART
26 AROUND HER HEAD WAS CONTOURED TO HER FACE AS IF IT HAD
27 BEEN SUCKED IN TO THE EXACT CONTOUR OF HER FACE.

28 Q NOW, WAS THE BAG ALL THE WAY OVER HER HEAD?

1 A YES.

2 Q WHAT I MEAN IS LIKE SOMEBODY TOOK A BAG AND
3 PULLED IT OVER THE HEAD. WAS THE BACK OF HER HEAD
4 COVERED?

5 A YES. HER WHOLE HEAD WAS COVERED.

6 Q SO THE BAG WAS OVER THE HEAD?

7 A YES.

8 Q NOT JUST ON TOP OF THE HEAD?

9 A CORRECT.

10 Q COULD YOU-- NOT BELABORING THE POINT. BUT WAS

11 THE BAG FULLY ALL THE WAY OVER THE HEAD OR JUST ACROSS THE
12 FACE AREA, OR DO YOU REMEMBER?

13 A NO, THE BAG WAS OVER HER FACE. IT WAS AS IT HAD
14 BEEN PULLED OVER HER HEAD.

15 Q WHAT DID YOU DO WITH THAT BAG?

16 A I HAD RIPPED IT OPEN.

17 Q PULLED IT OFF OF HER?

18 A YES.

19 Q ALL THE WAY OFF?

20 A INITIALLY I RIPPED IT OPEN SEEING HER FACE. AND
21 THEN THAT'S WHEN I PULLED IT OFF OVER HER HEAD.

22 Q OKAY. DID YOU LATER COLLECT IT FOR EVIDENCE?

23 A YES, I DID.

24 Q SHOWING YOU EXHIBIT 57 FOR IDENTIFICATION AND
25 ASK YOU IF YOU RECOGNIZE THIS?

26 A YES.

27 Q WHAT IS IT?

28 A IT IS AN EVIDENCE SEAL THAT I PLACED ON A PAPER

1 BAG IN WHICH I HAD PLACED THE PLASTIC BAG INSIDE.

2 Q IS THIS MORE THAN ONE PLASTIC BAG IN HERE?

3 A YES.

4 Q WHY DID YOU PUT MORE THAN ONE?

5 A THEY WERE TOGETHER. ONE PLASTIC BAG INSIDE OF
6 ANOTHER.

7 Q SO, THERE WERE TWO PLASTIC BAGS OVER HER HEAD?

8 A YES.

9 Q COULD YOU OPEN THIS FOR US, PLEASE?

10 A (WITNESS COMPLIES.)

11 Q KNOTTED TOGETHER. DID YOU DO THAT? WAS THAT
12 THE WAY THEY WERE?

13 A I BELIEVE THAT'S THE WAY THEY WERE. I DID NOT
14 KNOT THEM.

15 Q SO, DOES THIS-- ARE THESE THE BAGS THAT YOU
16 RECOVERED THAT WERE OVER THE VICTIM, BRITTANY'S, FACE ON
17 THE 10TH OF OCTOBER, 1993?

18 A YES.

19 Q OKAY. AND OTHER THAN WAD THEM UP TO FIT THEM IN
20 THAT BAG, DID YOU DO ANYTHING TO THESE BAGS?

21 A NO.

22 Q WELL, YOU SAID YOU RIPPED IT OFF?

23 A OTHER THAN RIPPING IT.

24 Q OKAY. WHERE IS THE PART THAT YOU RIPPED OFF?

25 A THE BAGS WERE INSIDE OF EACH OTHER LIKE THIS.
26 HER HEAD WAS INSIDE. THAT'S WHEN I HAD RIPPED IT OPEN IN
27 THIS AREA WHERE YOU CAN SEE THE TEARS.

28 Q OKAY. AND THERE AREN'T OTHER RIPS OR TEARS THAT

1 YOU CAN SEE ON THIS BLACK PLASTIC BAG?

2 A NO.

3 Q THESE TWO BAGS. WELL, THERE'S ONE LITTLE ONE
4 RIGHT HERE. WAS THAT ALREADY THERE?

5 A I DON'T KNOW.

6 Q NOW, YOU SAID THAT BRITTANY'S BODY WAS WARM?

7 A YES.

8 Q DID YOU TRY TO FEEL FOR A PULSE?

9 A YES, I DID.

10 Q AND WHAT DID YOU FEEL?

11 A I CHECKED THE PULSE AT HER JUGULAR VEIN ON THE
12 NECK. AND I DID NOT FEEL ONE.

13 Q SO YOU FELT NO PULSE?

14 A CORRECT.

15 Q HAVE YOU BEEN TRAINED IN BASIC FIRST AID, CPR?

16 A YES.

17 Q AND YOU KNEW WHERE TO LOOK FOR A PULSE AND WHAT
18 YOU WERE HOPING TO FIND?

19 A YES.

20 Q AND FOUND NONE?

21 A YES.

22 Q WHEN YOU SAY THE BODY WAS WARM, WHAT PART OF HER
23 BODY WERE YOU FEELING?

24 A HER LEGS.

25 Q HOW ABOUT HER TRUNK?

26 A I HAD, WHEN I HAD FELT HER NECK, I ALSO FELT
27 THAT THAT WAS WARM.

28 Q WAS SHE CLOTHED OR UNCLOTHED?

1 A SHE WAS CLOTHED.

2 Q WEARING WHAT?

3 A I DON'T RECALL WHAT HER OUTFIT WAS.

4 Q SHOWING YOU EXHIBIT 63 FOR IDENTIFICATION, TAKE
5 A PEEK INSIDE. ASK YOU IF THIS LOOKS FAMILIAR TO YOU OR
6 NOT-- PAIR OF SHORTS AND SHIRT?

7 A YES.

8 Q DO YOU RECOGNIZE THESE?

9 A YES.

10 Q WHAT ARE THEY?

11 A THE CLOTHES THAT SHE WAS WEARING.

12 Q SO, THIS REFRESHES YOUR RECOLLECTION?

13 A YES.

14 Q WHAT DID YOU DO WITH HER AT THAT POINT AFTER
15 NOTICING HER AND PULLING THE BAGS OFF HER FACE AND WISHING
16 FOR A PULSE?

17 A I HAD INITIALLY TOLD MY SERGEANT WHO WAS
18 STANDING RIGHT OUTSIDE THE DOOR THAT I HAD FOUND HER.
19 HE--

20 Q DID YOU SAY IT IN A QUIET VOICE OR LOUD VOICE?

21 A I SAID IT IN A QUIET VOICE.

22 Q OKAY. THEN WHAT?

23 A HE THEN SAID LET'S GO TO THE HOSPITAL.

24 Q SO, HE MADE THE DECISION TO IMMEDIATELY GO TO
25 THE HOSPITAL?

26 A YES.

27 Q AND DID YOU?

28 A YES.

1 Q WHAT DID YOU, DID YOU PICK UP THE CHILD OR DID
2 HE?

3 A I DID.

4 Q AND THEN WHAT DID YOU DO?

5 A WE BOTH RAN OUTSIDE TO THE FRONT OF THE
6 RESIDENCE. HE GOT IN THE FRONT OF HIS POLICE CAR, FRONT
7 SIDE. I GOT IN THE BACK SEAT AND HE DROVE US TO DOCTOR'S
8 HOSPITAL OF MONTCLAIR.

9 Q AND AT A SLOW OR FAST RATE OF SPEED?

10 A FAST.

11 Q HOW LONG DO YOU THINK IT TOOK YOU TO GET THERE?

12 A PROBABLY ABOUT THIRTY SECONDS.

13 Q HOW FAR AWAY WAS THE HOSPITAL?

14 A IT'S ABOUT A HALF A MILE.

15 Q OKAY. WERE YOU ABLE TO DO ANY LIFESAVING
16 TECHNIQUES ON THE VICTIM DURING THE RIDE?

17 A NO.

18 Q WHY NOT?

19 A ONE, BECAUSE OF HOW FAST WE WERE DRIVING. THERE
20 WERE ALSO SEVERAL DIPS THAT WE HAD TO SLOW DOWN FOR WHERE
21 I WOULDN'T HAVE BEEN ABLE TO PERFORM PROPER CPR.

22 Q SO, YOU JUST HELD HER?

23 A YES.

24 Q AND WHAT DID YOU DO ONCE YOU GOT TO DOCTOR'S
25 HOSPITAL?

26 A RUSHED HER INSIDE THE EMERGENCY ROOM.

27 Q WERE YOU PRESENT WHEN THE EMERGENCY PERSONNEL
28 WORKED ON HER?

1 A YES, I WAS.

2 Q AND WERE THEY ABLE TO REVIVE HER BACK TO LIFE?

3 A THEY, YES, THEY STARTED GETTING A HEART BEAT ON
4 HER.

5 Q WERE THEY ABLE TO BRING HER BACK TO LIFE?

6 A NO.

7 Q HOW LONG DID YOU STAY AT THE HOSPITAL?

8 A I DON'T REMEMBER IF IT WAS ONE OR TWO HOURS.

9 Q OKAY. AND WERE YOU THERE WHEN BRITTANY WAS
10 PRONOUNCED DEAD?

11 A YES.

12 Q OKAY. WHAT DID YOU DO AFTER THAT?

13 A I DON'T REALLY RECALL.

14 Q DID YOU GO BACK TO THE RESIDENCE?

15 A YES. I WAS RELEASED BY A RESERVE OFFICER WHO
16 STAYED WITH BRITTANY. AND I WENT BACK TO THE RESIDENCE.

17 Q WHEN YOU GOT BACK TO THE RESIDENCE, WERE ANY OF
18 THE HOUSEHOLD MEMBERS STILL THERE?

19 A I DON'T BELIEVE SO. BUT I CAN'T RECALL FOR
20 SURE.

21 Q DO YOU RECALL IF ANYTHING WAS DONE TO SECURE THE
22 CRIME SCENE OR TO KEEP AN EYE ON THE CRIME SCENE?

23 A I WAS PARKED OUT FRONT OF THE RESIDENCE. AND I
24 HAD ASKED A SERGEANT IF ANYBODY WAS ALLOWED INSIDE. HE
25 SAID NO. AND I DIDN'T ALLOW ANYBODY INSIDE.

26 Q OKAY. WAS ANY OTHER OFFICER STILL THERE WHEN
27 YOU GOT BACK TO THE RESIDENCE AFTER BEING AT DOCTOR'S
28 HOSPITAL? WERE ANY POLICE PERSONNEL THERE?

1 A I DON'T THINK SO.

2 Q SO, NO ONE WAS THERE WHEN YOU GOT BACK TO THE
3 HOUSE?

4 A THERE WAS AN OFFICER THAT I RELIEVED. I BELIEVE
5 IT WAS OFFICER CHALLEY.

6 Q SO, THERE WAS AN OFFICER THAT WAS STANDING
7 GUARD. AND THEN YOU WENT AND RELIEVED THAT OFFICER?

8 A CORRECT.

9 MR. ABLARD: MAY WE APPROACH?

10 (SIDE BAR; NOT REPORTED)

11 Q BY MS. SCHMAUSS: OFFICER KELLY, FIST I AM GOING TO
12 SHOW YOU SOME PHOTOGRAPHS-- THANK YOU-- THAT YOU HAVE
13 ALREADY IDENTIFIED THE LARGE PICTURE AS DEFENDANT'S
14 BEDROOM.

15 DID YOU TAKE THESE PICTURES HERE THAT I AM SHOWING
16 YOU? OR IF YOU DIDN'T TAKE THEM, WERE YOU PRESENT WHEN
17 THEY WERE TAKEN?

18 A I DON'T RECALL IF I TOOK THESE OR NOT. BUT YES,
19 I WAS PRESENT.

20 Q OKAY. THEN THESE PHOTOS ARE IDENTIFIED AS
21 EXHIBIT 36, 37, 38, 39, 40, AND 41. DO YOU RECOGNIZE WHAT
22 THIS SERIES OF PHOTOGRAPHS SHOWS?

23 A YES.

24 Q WHAT DOES IT SHOW?

25 A AGAIN, IT SHOWS THE CLOSET. I AM SORRY. THE
26 BEDROOM AS IT APPEARS UP ON THE BOARD UP HERE. IT ALSO
27 SHOWS THE INTERIOR OF THE CLOSETS.

28 Q OKAY. AND DO ANY OF THE PICTURES OF THE

1 INTERIOR OF THE CLOSET FAIRLY ACCURATELY REPRESENT WHAT IT
2 LOOKED LIKE WHEN YOU PULLED ALL THE CLOTHES OFF OF THE
3 VICTIM?

4 A YES.

5 Q WHICH NUMBER?

6 A 39 AND 40.

7 Q THERE'S SOME BLACK PLASTIC BAGS SHOWN IN 39 OR
8 40. ARE THOSE THE SAME BAGS YOU TOOK INTO EVIDENCE?

9 A YES.

10 Q AND THE TOOL BOX THAT WE HAVE SPOKEN ABOUT. IS
11 THAT SHOWN IN THE PICTURE?

12 A YES, IT IS THIS ONE RIGHT HERE.

13 Q WAS THE TOOL BOX FULL?

14 A YES, IT WAS.

15 Q IT WAS HEAVY?

16 A YES.

17 Q ANY ESTIMATE OF HOW MUCH IT WEIGHED?

18 A APPROXIMATELY 25-TO-30 POUNDS.

19 Q NOW, DID YOU PERSONALLY EVER CONDUCT A COMPLETE
20 SEARCH OF THE DEFENDANT'S BEDROOM? AND I MEAN BY
21 COMPLETE, TAKE EVERYTHING OUT AND EXAMINE EVERYTHING?

22 A NO.

23 Q NOW, DOCTOR'S HOSPITAL, DID YOU TAKE SOME
24 PHOTOGRAPHS OF THE VICTIM?

25 A YES.

26 Q OKAY. I AM SHOWING YOU NUMBER OF PICTURES. BY
27 THE WAY, DID DETECTIVE DONLEY EVER JOIN YOU AT DOCTOR'S
28 HOSPITAL?

1 A I THINK HE RESPONDED TO THE RESIDENCE.

2 Q OKAY. SO, THAT HE DIDN'T JOIN YOU AT THE
3 HOSPITAL?

4 A NOT THAT I RECALL.

5 Q OKAY. I AM SHOWING YOU A NUMBER OF PICTURES
6 HERE. NUMBER 42, 43, 44, 45, 46, 47, 48, 49. OKAY.
7 LET'S START WITH THESE, 42 THROUGH 49.

8 DO YOU RECOGNIZE THOSE?

9 A YES.

10 Q WHAT ARE THEY?

11 A THEY ARE THE PICTURES OF THE VICTIM.

12 Q TAKEN WHERE?

13 A AT DOCTOR'S HOSPITAL.

14 Q NOW, WAS THIS ONE HERE, NUMBER 47 AT DOCTOR'S OR
15 NOT? COULD BE THE AUTOPSY PICTURES?

16 A YES, IT COULD BE.

17 Q OKAY. I WILL TAKE THOSE AWAY. ALL RIGHT.
18 PICTURES THAT SHOWING CLOSE UP OF BRITTANY WITH HER FACE
19 TAPE. YOU TOOK THESE AT DOCTOR'S HOSPITAL?

20 A YES.

21 Q WAS AN ITEM, ANOTHER ITEM REMOVED FROM THE
22 VICTIM?

23 A YES.

24 Q WHAT WAS THAT?

25 A A BLACK TIE.

26 Q MR. ABLARD, BLACK TIE.
27 WHERE WAS THE BLACK TIE?

28 A WAS AROUND HER NECK.

1 Q AND HOW WAS IT? WAS IT TIED IN ANY WAY?

2 A IT WAS TIED IN A NORMAL MANNER.

3 Q WHAT DO YOU MEAN "NORMAL MANNER"?

4 A KIND OF LIKE THIS, LIKE A PERSON WOULD NORMALLY
5 TIE A TIE.

6 Q SO, THE WAY, ACTUALLY SECURED AROUND HER NECK?

7 A I DON'T BELIEVE IT WAS TIGHT. IT WAS KIND OF
8 LOOSE.

9 Q OKAY. HOW WAS IT IN RELATION TO THE GARBAGE BAG
10 WHEN YOU FIRST FOUND HER? WHAT I MEAN BY THAT, WAS IT
11 SECURED IN THE GARBAGE BAGS OR WAS IT JUST LOOSE?

12 A NO. IT WAS, IT WAS AROUND HER NECK. BUT I
13 DON'T RECALL AS WHETHER BEING TIGHT. I BELIEVE IT WAS
14 STILL LOOSE.

15 Q OKAY. SHOWING YOU EXHIBIT 4 FOR
16 IDENTIFICATION, ASK YOU IF YOU RECOGNIZE THE EVIDENCE TAG?

17 A YES.

18 Q IS THAT YOUR WRITING?

19 A YES, IT IS.

20 Q DID YOU BOOK THIS INTO EVIDENCE?

21 A YES, I DID.

22 Q WOULD YOU REMOVE IT, PLEASE. TELL US IF YOU
23 RECOGNIZE IT?

24 A YES.

25 Q WHAT IS IT?

26 A IT WAS A BLACK TIE.

27 Q AND I NOTICE THERE IS A-- IT IS TIED IN A KNOT.
28 IS THAT HOW YOU FOUND IT?

1 A TO MY RECOLLECTION, YEAH.

2 Q OKAY. WAS IT AROUND THE VICTIM'S NECK, THIS
3 LOOP PART WAS AROUND THE VICTIM'S NECK?

4 A YES.

5 Q WHAT DID YOU DO WITH THE TIE AFTER YOU PUT IT IN
6 THIS BAG AND WROTE EVIDENCE TAG?

7 A IT WAS PLACED INTO EVIDENCE.

8 Q WAS IT SEALED?

9 A YES.

10 Q WHEN YOU FOUND THE VICTIM AND YOU HAD RAPIDLY

11 TAKEN ALL THE STUFF OFF HER AND YOU PULLED THE PLASTIC BAG
12 OFF OF HER FACE, DESCRIBE THE POSITION OF THE BODY?

13 A SHE WAS LAYING ON HER BACK, HER HEAD WAS FACING
14 IN A SOUTHERLY DIRECTION. HER LEGS IN A NORTHERLY
15 DIRECTION. HER HANDS WERE BACKED UP BY HER SHOULDERS WITH
16 HER PALMS FACING UP.

17 Q OKAY. AND YOU WERE SHOWING US WITH YOUR PALMS
18 UP AND YOUR ARMS. WERE HER ARMS ACTUALLY UP ABOUT LEVEL
19 WITH HER HEAD?

20 A THEY WERE ABOUT SHOULDER HEIGHT THAT I RECALL.

21 Q OFFICER KELLY, I AM BRINGING YOU EXHIBIT 66 FOR
22 IDENTIFICATION. YOU MIGHT RECOGNIZE IT FROM THE
23 PRELIMINARY HEARING?

24 A YES.

25 Q DID YOU DRAW THIS?

26 A YES.

27 Q OKAY. AND CAN YOU TELL US WHAT YOU HAVE
28 ATTEMPTED TO SHOW BY THIS DIAGRAM?

1 A THIS DIRECTION BEING NORTH, THE INTERIOR OF THE
2 CLOSET. THE ARROW HERE IS POINTING SOUTH INDICATING THAT
3 BOTH CLOSET DOORS WERE POINTING SOUTH LEAVING THE NORTH
4 PART OF THE CLOSET OPEN. THERE'S A PURPLE SQUARE HERE
5 WHICH REPRESENTS THE PLASTIC TUB IN WHICH THE TOOK BOX
6 WHICH IS THE RED SQUARE WAS SITTING UPON. THE PINK STICK
7 FIGURE IS BRITTANY WITH HER ARMS FACING A SOUTHERLY
8 DIRECTION. THE PURPLE SQUARE WITH THE CRISSCROSS IS THE
9 PLASTIC BAG COVERING HER FACE. AND THE BLACK STREAKS
10 WERE CLOTHES THAT WERE COVERING HER.

11 Q THANK YOU. WHEN YOU SAW THE DEFENDANT MOVING
12 AROUND AND HOVERING NEAR HIS CLOSET, COULD YOU TELL IF THE
13 CLOSET DOORS WERE OPEN OR CLOSED?

14 A I DON'T RECALL IF THEY WERE OPEN OR NOT.

15 Q DID YOU EVER HEAR HIM ACTUALLY SLIDING THE
16 CLOSET DOORS WHILE YOU WERE DOING YOUR SEARCH?

17 A NO, I DID NOT.

18 Q AND YOU DIDN'T HAVE TO MANIPULATE THE DOORS WHEN
19 YOU SEARCHED FOR BRITTANY? THEY WERE ALREADY OPEN?

20 A YES.

21 MS. SCHMAUSS: THANK YOU. I HAVE NO FURTHER
22 QUESTIONS.

23 MR. ABLARD: THANK YOU VERY MUCH, YOUR HONOR.

24 CROSS-EXAMINATION

25 BY MR. ABLARD:

26 Q OFFICER, I DIDN'T CATCH AT THE TIME OF THE
27 EVENTS OF 10-10-93, HOW LONG HAD YOU BEEN AN OFFICER?

28 A AT THAT TIME, IT WAS A LITTLE OVER THREE YEARS.

1 Q OKAY. AND IN THIS PARTICULAR INCIDENT, HOW MANY
2 REPORTS DID YOU WRITE?

3 A OF THIS INCIDENT HERE?

4 Q YES. I MEAN THE INCIDENT THAT OCCURRED ON
5 OCTOBER 10 OF 1993?

6 A I BELIEVE I WROTE FOUR REPORTS.

7 Q FOUR REPORTS?

8 A YES.

9 Q DID YOU HAVE AN OPPORTUNITY TO REVIEW THOSE
10 REPORTS PRIOR TO YOUR TESTIMONY HERE TODAY?

11 A TWO OF THEM, I DID.

12 Q OKAY. DO YOU HAVE THOSE REPORTS WITH YOU?

13 A I HAVE TWO OF THEM WITH ME.

14 Q THE OTHER TWO ARE?

15 A THEY ARE THE BLOOD WITHDRAWALS OF THE PARENTS.

16 Q THEY ARE--

17 A JUST A ONE, TWO-SENTENCE REPORT.

18 Q OKAY. SO THAT THE OTHER TWO ACTUALLY WERE JUST
19 EVIDENCE, THINGS LIKE DRAWING THE BLOOD; RIGHT?

20 A CORRECT.

21 Q AND THAT ENCOMPASSED BOTH OF THOSE OTHER
22 REPORTS?

23 A CORRECT.

24 Q OKAY. SO, AS TO THE INCIDENT, WHAT YOU DID AT
25 THE INCIDENT, THERE WAS ONLY THE TWO REPORTS; CORRECT?

26 A YES.

27 Q ALL RIGHT. LET ME UNDERSTAND YOU. ARE YOU
28 TELLING US TODAY THAT THIS BAG WAS ACTUALLY OVER THE HEAD

1 OF THE GIRL, BOTH SIDES OF THE HEAD-- OR HEAD WAS ACTUALLY
2 IN IT?

3 A AS I RECALL, YES.

4 Q OKAY. THAT WAS SOMETHING YOU WOULD WRITE IN
5 YOUR REPORT; RIGHT? THE HEAD WAS IN THE BAG?

6 A YES. THAT'S WHAT I RECALL.

7 Q DID YOU WRITE THAT IN YOUR REPORT THAT THE HEAD
8 WAS IN THE BAG?

9 A I DON'T THINK SO.

10 Q YOU WROTE IN YOUR REPORT THAT IT WAS OVER HER
11 FACE; RIGHT?

12 A YES.

13 Q YOU NEVER MENTIONED ANYTHING IN THERE ABOUT
14 RIPPING THE BAG OR TEARING IT; DID YOU?

15 A I DON'T REMEMBER. I'D HAVE TO LOOK AT IT.

16 Q WILL YOU PLEASE DO IT?

17 A IT IS TYPED IN HERE THAT I PULLED THE BAG AWAY
18 FROM HER FACE.

19 Q AND PULLED HER OUT OF THE CLOSET?

20 A YES.

21 Q YOU ALSO MENTIONED IN YOUR TESTIMONY THAT THE
22 BAG COVERING HER FACE. IS IT YOUR RECOLLECTION NOW THAT
23 THE BAG IS THAT HER HEAD WAS IN THE BAG? DOES YOUR REPORT
24 REFRESH YOUR RECOLLECTION ON THE ACTUAL NOMENCLATURE THAT
25 THE BAG WAS JUST LAYING ON TOP OF THE FACE?

26 A YES. LOOKING BACK AT THE REPORT, IT COULD BE
27 THAT IT WAS JUST ON TOP OF HER FACE. I BELIEVE THAT IT
28 WAS INSIDE OF IT; THAT HER HEAD WAS INSIDE OF THE BAG.

1 Q TODAY, YOU BELIEVE THAT THE HEAD WAS INSIDE THE
2 BAG. AND YOU WROTE THE REPORT. YOU DIDN'T BELIEVE IT WAS
3 INSIDE THE BAG?

4 A NO. REVIEWING THE REPORT?

5 Q RIGHT.

6 A OKAY. I CAN SEE THAT IT WAS APPARENT THAT IT
7 WAS JUST COVERING HER FACE, THAT IT WAS NOT FULLY ENCLOSED
8 IN THE BAG.

9 Q IN OTHER WORDS, THE HEAD WAS NOT IN THE BAG?

10 A CORRECT.

11 Q WHY DID YOU TESTIFY THAT IT WAS IN THE BAG?

12 A THAT IS WHAT I BELIEVE THAT I HAD RECALLED.

13 Q OKAY. BUT YOU WERE MISTAKEN?

14 A YES.

15 Q OKAY. NOW, THE TIE THAT YOU SAY I BELIEVE YOU
16 STATED IN YOUR REPORT, CORRECT, THAT IT WAS LOOSELY AROUND
17 THE NECK?

18 A YES.

19 Q IT WAS THE BAG WASN'T ON THE NECK AND THE TIE
20 WASN'T OVER THE BAG. IT WAS THE TIE WAS JUST LOOSELY
21 AROUND HER NECK; RIGHT?

22 A YES.

23 Q ALL RIGHT. NOW, YOU TESTIFIED THAT YOU LEFT THE
24 HOSPITAL AND CAME BACK TO THE SCENE ABOUT AN HOUR OR TWO
25 AFTER YOU HAD INITIALLY LEFT THE SCENE TO TAKE THE GIRL TO
26 THE HOSPITAL?

27 A YES.

28 Q ACTUALLY, DIDN'T YOU ACTUALLY GET RELIEF AT THE

1 HOSPITAL ABOUT 10:30 IN THE MORNING AND THEN COME BACK TO
2 THE HOUSE?

3 A I DON'T KNOW THE EXACT TIME.

4 Q OKAY. WAS THAT SOMETHING YOU HAD PUT IN YOUR
5 REPORT?

6 A I STATED THAT I WAS RELIEVED. I DON'T BELIEVE I
7 PUT THE TIME.

8 Q COULD YOU CHECK, PLEASE?

9 A SURE. IT STATES THAT AT 10:30, I WAS RELIEVED
10 BY RESERVE OFFICER.

11 Q WHERE DID YOU GO?

12 A I WENT BACK TO THE RESIDENCE.

13 Q OKAY. SO, YOU WENT BACK TO THE RESIDENCE ABOUT
14 15 OR SO MINUTES AFTER YOU HAD LEFT THE HOUSE INITIALLY?
15 I MEAN, HALF AN HOUR OR SO?

16 A APPROXIMATELY, YES.

17 Q OKAY. AND AT THAT TIME, YOU SECURED THE
18 RESIDENCE AS A CRIME SCENE; CORRECT?

19 A YES.

20 Q WHAT DID YOU DO?

21 A I HAD CONFIRMED WITH THE SERGEANT THAT NOBODY
22 WAS TO BE ALLOWED BACK INSIDE THE RESIDENCE. I PARKED MY
23 POLICE VEHICLE TO THE FRONT OF THE RESIDENCE. AND I
24 STAYED BY THE FRONT OF MY POLICE VEHICLE ENSURING THAT
25 NOBODY WENT INSIDE THE RESIDENCE.

26 Q HOW LONG DID YOU STAY THERE SECURING THE
27 RESIDENCE?

28 A I DON'T RECALL HOW LONG I WAS THERE. A COUPLE

1 OF HOURS.

2 Q OKAY. SO, FROM 10:30, A COUPLE OF HOURS YOU
3 WERE THERE?

4 A CORRECT.

5 Q ACTUALLY, DID OFFICER DONLEY AND OFFICER KELLY
6 ARRIVE AROUND 2:00 THAT AFTERNOON?

7 A I WAS ALREADY THERE.

8 Q YES, YOU WERE. I AM SORRY. OKAY. DID,
9 OFFICER, YOU WERE ALREADY THERE?

10 A YES.

11 Q DID OFFICER DONLEY ACTUALLY ARRIVE AROUND 2:00
12 THAT AFTERNOON?

13 A I REMEMBER IT WAS LATER IN THE AFTERNOON. I
14 DON'T REMEMBER APPROXIMATELY WHAT TIME.

15 Q ALL RIGHT. NOW, JUST TO SAVE TIME, THE PROCESS,
16 APPROXIMATELY 1400 HOURS WHICH IS 2:00, OFFICER BALES AND
17 DONLEY RETURN TO THE SCENE OKAY. DOES THAT REFRESH YOUR
18 RECOLLECTION?

19 A YES.

20 Q OKAY. NOW, BETWEEN THE TIME THAT YOU WERE
21 THERE, 10:30 UNTIL 2:00 IN THE AFTERNOON, DID YOU GO IN
22 THE RESIDENCE AT ALL?

23 A BETWEEN 10:30 AND 2:00?

24 Q YES, SIR.

25 A NO.

26 Q OKAY. ANYBODY ELSE?

27 A NO.

28 Q OKAY. NOW WHEN OFFICER DONLEY AND OFFICER BALES

1 ARRIVED, WHAT DID YOU DO?

2 A I BELIEVE THAT I ACCOMPANIED THEM BACK INSIDE
3 THE RESIDENCE.

4 Q OKAY. AND DID YOU SHOW THEM ANYTHING PARTICULAR
5 WHEN YOU WENT BACK INTO THE RESIDENCE?

6 A YES.

7 Q WHAT?

8 A I SHOWED OFFICER DONLEY THE BEDROOM AND THE AREA
9 WHERE I HAD FOUND THE VICTIM.

10 Q OKAY. AND YOU AND OFFICER DONLEY DID A THOROUGH
11 SEARCH OF THE BEDROOM AT THAT TIME?

12 A I KNOW A THOROUGH SEARCH WAS DONE BY OFFICER
13 DONLEY. I DON'T REMEMBER EXACTLY WHAT MY, WHAT I WAS
14 DOING, WHETHER I WAS HELPING HIM OR TAKING PHOTOGRAPHS OR
15 WHAT.

16 Q OKAY. HOW DO YOU KNOW A THOROUGH SEARCH WAS
17 DONE BY OFFICER DONLEY?

18 A I WAS IN THE BEDROOM WITH HIM WATCHING.

19 Q OKAY. SO, HE WAS LOOKING EVERYWHERE?

20 A YES.

21 Q OKAY. LOOKED IN THE CLOSET; CORRECT?

22 A YES.

23 Q THE ROOM WAS A MESS. LET ME-- THE ROOM WAS A
24 MESS; IS THAT CORRECT? THIS NUMBER 3 IN THE UPPER-- AS
25 YOU ARE LOOKING AT THE UPPER RIGHT, WAS THAT SORT OF THE
26 CONDITION OF THE ROOM?

27 A WITH THE EXCEPTION OF THE TOOL BOX, YES.

28 Q OKAY. SO, YOU HAD PLACED A TOOL BOX THERE?

1 A YES.

2 Q OKAY. IT WAS A TOOL BOX THAT WAS IN THE CLOSET
3 ON TOP OF THAT PLASTIC TUB OR WHATEVER IT WAS?

4 A YES.

5 Q WAS IT A PLASTIC TUB? WHAT WAS IT?

6 A YES, IT WAS A PLASTIC TUB.

7 Q HOW BIG?

8 A I DON'T KNOW. MAYBE APPROXIMATELY A FOOT IN
9 LENGTH OR SO, FOOT AND A HALF.

10 Q OKAY. IS THAT PICTURE HERE OR--

11 A IT'S DOWN HERE IN THE D RIGHT HERE ?

12 A (INDICATING.)

13 Q OKAY. SO, THAT'S THE TUB IT WAS SITTING ON?

14 A YES.

15 Q TAKE THAT INTO EVIDENCE?

16 A I DID NOT. I DON'T THINK ANYBODY ELSE DID.

17 Q WOULD YOU BE INTERESTED IN PRINTS ON THAT?

18 MS. SCHMAUSS: OBJECTION; CALLING FOR SPECULATION.

19 HE SAID HE DIDN'T TAKE IT.

20 THE COURT: OVERRULED. YOU MAY ANSWER.

21 A WOULD I LIKE FOR PRINTS ON IT OR WOULD BE
22 INTERESTED IT?

23 Q WELL, YES. WOULD YOU BE INTERESTED IN KNOWING IF
24 FINGERPRINTS WERE ON THAT TUB?

25 A I DON'T-- I WOULDN'T KNOW.

26 Q OKAY. SO, ANYWAY, DONLEY IS DOING A SO THOROUGH
27 SEARCH OF THE ROOM. AND DID HE LOOK UNDER ALL THESE
28 CLOTHES AND STUFF?

1 A AS FAR AS I CAN RECALL, YES.

2 Q LOOK UNDER THE BED?

3 A YES.

4 Q NOW, YOU TOOK SOME PICTURES?

5 A YES.

6 Q YOU TOOK PICTURES WHEN, AT THE, WHEN DONLEY-- IT
7 WAS AFTER 2:00 OR BEFORE?

8 A I CAN'T RECALL. I BELIEVE THEY WERE TAKEN WHEN
9 HE WAS THERE. I AM NOT CERTAIN ON THAT POINT.

10 Q WELL, YOU DIDN'T TAKE ANY PICTURES IN THE
11 INITIAL CRITICAL SEARCH?

12 A CORRECT.

13 Q OF COURSE. AND YOU WEREN'T IN THE HOUSE UNTIL
14 DONLEY GOT THERE?

15 A CORRECT.

16 Q BUT YOU DID REMEMBER TAKING PICTURES ON THAT
17 DAY?

18 A YES.

19 Q DID YOU TAKE ANY PICTURES ANY TIME AFTER THAT?

20 A I DON'T BELIEVE SO.

21 Q OKAY. WHAT WAS THE EXTENT OF YOUR INVOLVEMENT
22 IN THIS INVESTIGATION?

23 A I WAS ASSISTING OFFICER BALES IN THE SEARCH FOR
24 THE VICTIM.

25 Q ANYTHING ELSE?

26 A NO.

27 Q AND OF COURSE YOU WERE ASSISTING OFFICER DONLEY
28 AND BALES IN THE ROOM SHOWING THEM WHAT YOU HAD SEEN;

1 CORRECT?

2 A ONCE THE BODY HAD BEEN FOUND, YES.

3 Q YES. WHEN YOU WERE AT THE HOSPITAL, DO YOU
4 RECALL SEEING A DEPUTY CORONER MORROW THERE?

5 A I DON'T KNOW IF HE HAD ARRIVED BY THE TIME I HAD
6 LEFT OR NOT.

7 Q OKAY. DID YOU WITNESS THE RESUSCITATION
8 PROCEDURES?

9 A YES.

10 Q OKAY. WERE THEY THE TYPICAL RESUSCITATION--

11 THAT'S A HARD WORD TOO-- WELL. BUT YOU KNOW WHAT I AM
12 TALKING ABOUT?

13 A RESUSCITATION.

14 Q YES. THANK YOU. AS FOR WHERE THEY PUT LIKE A
15 BACKBOARD, USE A BACKBOARD AND CHEST THING. DID THEY DO
16 THAT? DO YOU RECALL?

17 A I DON'T RECALL IF THE BACKBOARD WAS USED OR NOT.

18 Q OKAY. NOW THE REPORT YOU DID, THE FIRST REPORT
19 THAT DESCRIBES YOU FOUND THE CHILD. AND THAT WAS FROM
20 10-10.

21 WHEN DID YOU ACTUALLY DO THE REPORT?

22 A IT WAS THAT SAME DAY.

23 Q OKAY. AND DID YOU HAVE NOTES AND THINGS LIKE
24 THAT THAT YOU TOOK ANY TIME DURING THAT DAY SO YOU COULD
25 PREPARE YOUR REPORT?

26 A I BELIEVE I TOOK NOTES. I DON'T RECALL IF I DID
27 OR NOT.

28 Q OKAY. ARE THOSE NOTES SOMETHING YOU'D KEEP?

1 A NO.

2 Q OKAY. SO, YOU DID THE REPORT AND YOU ACTUALLY
3 DID THE REPORT THE SAME DAY. IT WAS TYPED UP ON THE NEXT
4 DAY; CORRECT?

5 A IF THAT'S WHAT IT REFLECTS, YES.

6 Q OKAY. AND ABOUT WHAT TIME DID YOU DO YOUR
7 REPORT? AS ACTUALLY SIT DOWN AND WRITE OUT YOUR REPORT?

8 A IT HAD TO HAVE BEEN LATER IN THE AFTERNOON AFTER
9 OFFICER DONLEY HAD COMPLETED HIS INVESTIGATION OF THE
10 RESIDENCE.

11 Q HOW LONG WERE YOU AT THE RESIDENCE FROM 2:00 ON?
12 HOW LONG DID YOU STAY AROUND?

13 A I DON'T RECALL.

14 Q AN HOUR? HALF AN HOUR?

15 A IT WAS PROBABLY TWO HOURS OR SO.

16 Q OKAY. AND DURING THAT TIME, WHAT WAS GOING
17 ON? WAS DONLEY SEARCHING THE BEDROOM?

18 A HE WAS SEARCHING THE BEDROOM.

19 Q JOHNSON'S BEDROOM?

20 A YES.

21 Q OKAY. I DON'T RECALL IF HE WAS-- IF AN INITIAL
22 DIAGRAM OR ANYTHING WAS MADE OF THE RESIDENCE.

23 A I BELIEVE THAT I HAD COVERED ALL AREAS THAT I
24 HAD ALREADY SEARCHED AND EXACTLY WHAT MY ACTIONS WERE, MY
25 ACTIONS WERE UP UNTIL THE POINT WHERE I HAD FOUND THE
26 VICTIM.

27 Q OKAY. BUT WERE YOU ASSISTING IN THIS CRIME
28 SCENE INVESTIGATION?

1 A YES.

2 Q AT THAT TIME?

3 A YES.

4 Q MEASUREMENTS WERE TAKEN?

5 A I-DON'T KNOW IF ANY WERE TAKEN THEN.

6 Q OKAY. PRIOR TO THIS INCIDENT, HAD YOU HAD
7 TRAINING IN CRIME-SCENE INVESTIGATIONS?

8 A YES.

9 Q OKAY. AND COULD YOU TELL US WHAT THAT WAS,
10 PLEASE?

11 A THERE WAS THE INITIAL TRAINING CLASSES THAT WERE
12 TAUGHT AT THE POLICE ACADEMY. I DO NOT KNOW EXACTLY HOW
13 LONG THE COURSES WERE. ALSO, ON-THE-JOB TRAINING THAT WAS
14 PROVIDED ME BY MY FIELD-TRAINING OFFICERS. THAT'S IT.

15 Q THANK YOU. ANY COURSES BY THE DEPARTMENT OF
16 JUSTICE OR THE SHERIFFS'S FORENSIC TEAM, OR CRIME SCENE
17 INVESTIGATING TEAM, ANY OF THOSE?

18 A NOTHING FORMAL, NO.

19 Q NO, OKAY. GREAT. NOW, YOU DID TAKE SOME
20 EVIDENCE; CORRECT?

21 A YES.

22 Q OKAY. AND THAT WAS WHAT, THE VASELINE?

23 A YES. THE BLACK TIE AND A JAR OF VASELINE.

24 Q OKAY. NOW, AT WHOSE DIRECTION DID YOU TAKE THE
25 BAG? DID SOMEBODY SAY TAKE THIS AS EVIDENCE?

26 A I BELIEVE OFFICER DONLEY REQUESTED THAT I TAKE
27 THE BAG.

28 Q OKAY. YOU KNOW, I SHOULD BACK UP. WHO WAS IN

1 CHARGE OF THE INVESTIGATION ACTUALLY?

2 A OFFICER DONLEY.

3 Q OKAY. AND BOTH YOU AND BALES WERE JUST
4 ASSISTING AT THIS POINT?

5 A CORRECT.

6 Q OKAY. OKAY. AND WHEN YOU TOOK THE BAG, WERE
7 YOU WEARING GLOVES?

8 A I DON'T BELIEVE.

9 Q OKAY. AND WERE YOU GIVEN ANY INSTRUCTIONS ON
10 WHAT TO DO WITH THAT BAG, HOW TO PUT IT IN EVIDENCE, HOW
11 TO PRESERVE IT FOR FURTHER TESTING?

12 A NO.

13 Q AT THAT TIME, GIVEN YOUR EXPERIENCE IN
14 CRIME-SCENE INVESTIGATIONS, DID YOU HAVE A NOTION HOW TO
15 PRESERVE THAT BAG FOR FUTURE FORENSIC INVESTIGATIONS?

16 A YES.

17 Q OKAY. AND WHAT WOULD THAT HAVE BEEN?

18 A THEY WOULD HAVE BEEN TO TAKE THE BAG, USING
19 PROTECTIVE GLOVES FOR MYSELF, LATEX GLOVES. AND THEN IT
20 WOULD HAVE BEEN FOLDED AND PLACED INTO A BAG.

21 Q WHEN YOU SAY "FOLDED AND PLACED INTO A BAG," YOU
22 SHOW US WHAT YOU MEAN BY FOLDED AND PLACED INTO A BAG,
23 PLEASE?

24 A (WITNESS COMPLIED.) HOWEVER, I WOULD HAVE
25 FOLDED THE BEST THAT A PLASTIC BAG CAN BE FOLDED AND
26 PLACED INTO A BAG LIKE THIS.

27 Q AND THAT'D BE THE PROPER WAY TO PRESERVE IT FOR
28 FUTURE FORENSIC?

1 A YES.

2 Q WHO PUT IT IN THAT LITTLE BAG THERE, DO YOU
3 KNOW?

4 A I DID.

5 Q YOU DID?

6 A YES.

7 Q SO, DO YOU RECALL, FIRST OF ALL, YOU DON'T
8 RECALL WHETHER OR NOT YOU USED GLOVES?

9 A NO.

10 Q OKAY. BUT YOU DO RECALL--DO YOU RECALL FOLDING
11 THE BAG PROPERLY TO PRESERVE IT FOR FUTURE TESTING?

12 A I BELIEVE THAT I DID, YES.

13 Q AND THEN YOU TOOK IT THAT WAY BACK TO THE POLICE
14 STATION, FOLDED TO PRESERVE IT?

15 A YES.

16 Q WHEN DID YOU WAD IT UP AND PUT IT IN THAT LITTLE
17 BAG?

18 A ACTUALLY, THIS WAS DONE AT THE POLICE STATION
19 THERE. IT WAS OPENED PRIOR TO ME OPENING IT TODAY. SO, I
20 DON'T KNOW.

21 Q DID YOU PUT THAT PLASTIC BAG IN THAT LITTLE-- IN
22 THE PAPER BAG?

23 A YES.

24 Q OKAY. AND IN ORDER FOR IT TO FIT, YOU HAD TO
25 WAD IT UP AND PUT IT IN THERE; RIGHT?

26 A I WOULD HAVE TO SAY SO, YES.

27 Q NOW, BY WADDING IT UP AND PUTTING IT IN THIS
28 LITTLE BAG HERE, WITH YOUR TRAINING AND EXPERIENCE WITH

1 CRIME SCENE INVESTIGATIONS, DOES THAT COMPROMISE THAT
2 PARTICULAR ITEM OF EVIDENCE SO FUTURE ATTEMPTS AT
3 FORENSICS MIGHT NOT WORK?

4 MS. SCHMAUSS: YOUR HONOR, I AM GOING TO OBJECT. I
5 DON'T THINK IT'S BEEN ESTABLISHED THAT HE'S AN EXPERT IN
6 THE PLASTIC BAGS OF FORENSICS. AND HE WASN'T EVEN IN
7 CHARGE OF THIS INVESTIGATION.

8 THE COURT: CAN YOU ANSWER THE QUESTION?

9 THE WITNESS: I'M NOT SURE WHAT FORENSICS WOULD BE
10 USED. SO, I WOULDN'T KNOW WHAT WOULD BE ABLE TO BE
11 PRESERVED OR NOT.

12 Q BY MR. ABLARD: THANK YOU. THAT'S FINE. NOW,
13 DID OFFICER DONLEY GIVE YOU ANY INSTRUCTION ON HOW TO
14 TREAT THAT BAG TO PRESERVE IT SO FORENSICS COULD BE DONE
15 ON IT LATER?

16 A NOT THAT I RECALL.

17 Q NOW, WHEN YOU COLLECTED THAT BAG, DID YOU MAKE
18 ANY NOTES ON THE PROCEDURE THAT YOU USED TO COLLECT IT AND
19 TO PRESERVE IT?

20 A NO.

21 Q OKAY. BY THE WAY, BACKING UP JUST A QUICK
22 SECOND. WHEN YOU FIRST CAME BACK TO SECURE THE CRIME
23 SCENE, DID YOU START A CRIME SCENE LOG AT THAT TIME?

24 A I BELIEVE I DID ON MY NOTEBOOK THAT I HAD.

25 Q OKAY. SO, YOU HAD A LITTLE NOTEBOOK AND YOU
26 STARTED CRIME-SCENE LOG. WHAT IS A CRIME-SCENE LOG, IF
27 YOU WOULD TELL US, PLEASE?

28 A CRIME-SCENE LOG IS A DOCUMENT, WHETHER IT IS ONE

1 PROVIDED BY THE DEPARTMENT OR ONE BY THE OFFICER, THAT
2 ESTABLISHES A TIME FRAME OF WHO ARRIVES AND DEPARTS THE
3 CRIME SCENE, WHETHER IT'S OTHER OFFICERS, MEDICAL
4 PERSONNEL, OR ANYBODY ELSE THAT ENTERS THE CRIME-SCENE
5 AREA.

6 Q AND SO THERE. IF SOMEONE WERE TO ENTER AT THIS
7 POINT, THAT WOULD BE IN THERE IN THE PARTICULAR LOG IF
8 SOMEONE WERE TO CALL AND REQUEST PERMISSION AND SOMEBODY
9 WENT DOWN THERE TO GO INTO THE HOUSE, THOSE ARE SORTS OF
10 THINGS THAT ARE IN THE LOG; RIGHT?

11 A CORRECT.

12 Q OKAY. NOW, DID YOU ULTIMATELY TURN IN--DID YOU
13 EVER ACTUALLY SEE A LOG, AN OFFICIAL CRIME-SCENE LOG IN
14 THIS CASE?

15 A I DID NOT, NO.

16 Q OKAY. AND THE INFORMATION THAT YOU HAD IN YOUR
17 LITTLE BOOK WHICH REFLECTS YOUR SECURING OF THE CRIME
18 SCENE APPROXIMATELY 10:30 IN THE MORNING, DID YOU TURN
19 THAT OVER TO SOMEONE SO THEY COULD PUT THAT IN THE
20 CRIME-SCENE LOG?

21 A I DON'T THINK SO.

22 Q NOW, THE TIE THAT WAS AROUND THE GIRL'S NECK,
23 DID YOU TAKE THE TIE OFF OF HER?

24 A NO.

25 Q THAT WASN'T--WHO TOOK IT OFF OF HER?

26 A THE PHYSICIAN IN THE EMERGENCY ROOM.

27 Q OKAY. NOW, IS THERE ANYWHERE IN YOUR REPORT
28 THAT IN THIS FIRST REPORT, THE ONE THAT YOU ACTUALLY DID

1 LATER ON IN THE AFTERNOON OF 10-10 THAT MR. JOHNSON WAS
2 SEARCHING IN A SLOW AND DELIBERATE PLANNED SORT OF WAY?

3 A NO.

4 Q NO. ANYTHING ABOUT HIM HANGING AROUND LOOKING
5 SUSPICIOUS BY THE CLOSET AND BENDING, ALL THAT, ANYTHING
6 IN THERE ON THIS FIRST REPORT?

7 A I DON'T BELIEVE SO.

8 Q OF THAT NOTION ABOUT BENDING AND BEING AROUND
9 THE CLOSET, THAT DIDN'T COME UNTIL YOUR REPORT OF THE
10 14TH; RIGHT?

11 A CORRECT.

12 Q THAT'S AFTER HE WAS ARRESTED; CORRECT?

13 A CORRECT.

14 Q THAT'S WHEN YOU SORT OF THOUGHT BACK, HELPED
15 INVESTIGATION, TOLD AN OFFICER WHAT YOU HAD SEEN; CORRECT?

16 A CORRECT.

17 Q OKAY. INITIALLY, IT LOOKED RATHER NORMAL TO
18 YOU. YOU DIDN'T PUT IT IN YOUR REPORT?

19 A RIGHT.

20 Q AND STILL COULD BE NORMAL; COULDN'T IT?

21 A YES.

22 Q WERE YOU USING PLASTIC GLOVES WHEN YOU SECURED
23 THE TIE FOR EVIDENCE?

24 A I DON'T BELIEVE SO.

25 Q WELL, YOU HAD SECURED THE TIE FOR EVIDENCE?

26 A AFTER THE DOCTOR HANDED IT TO ME, YES.

27 Q CERTAINLY. HOW ABOUT THIS VASELINE-JAR
28 BUSINESS. YOU SECURED THAT FOR EVIDENCE?

1 A YES.

2 Q AND DID YOU HAVE PLASTIC GLOVES ON?

3 A I DON'T RECALL.

4 Q IS THAT SOMETHING YOU WOULD NORMALLY NOTE DOWN
5 IN COLLECTION OF EVIDENCE LOG OR SOMETHING?

6 A NOT NORMALLY. IF IT'S SOMETHING THAT'S
7 RELEVANT, WHAT I MEAN BY RELEVANT IS I KNOW WHAT'S GOING
8 TO BE DONE WITH IT, THEN I WOULD BE DOING IT. I WASN'T
9 THE INVESTIGATING OFFICER; DIDN'T KNOW WHAT WAS GOING TO
10 BE DONE WITH IT AS FAR AS ANY PROCESSING. SO, THE--

11 Q THE CHIEF INVESTIGATING OFFICER WITH YOU AT THE
12 TIME?

13 A I'M SORRY.

14 Q CHIEF INVESTIGATING OFFICER, OFFICER DONLEY, WAS
15 WITH YOU AT THE TIME; CORRECT?

16 A HE WAS IN THE ROOM, YES.

17 Q DID YOU MAKE AN INQUIRY AS TO HOW THIS
18 PARTICULAR EVIDENCE SHOULD BE HANDLED?

19 A I DON'T RECALL IF HE DID OR NOT.

20 Q NO. I MEAN DID YOU MAKE THE INQUIRY OF OFFICER
21 DONLEY AS TO HOW SHOULD I VIEW THIS EVIDENCE?

22 A I DON'T THINK I DID.

23 Q AND DID HE TELL YOU ANY WAY TO HANDLE THE
24 EVIDENCE?

25 A NOT THAT I RECALL.

26 Q ACTUALLY, AT SOME POINT, YOU GAVE SOME TESTIMONY
27 AT A PRELIMINARY HEARING; CORRECT?

28 A YES.

1 Q AND YOU ACTUALLY SAID IN THAT PRELIMINARY
2 HEARING--DO YOU RECALL GIVING THE PRELIMINARY HEARING?

3 A YES, I DO.

4 Q AT THE TIME, THAT IS YOUR BEST RECOLLECTION;
5 CORRECT?

6 A YES.

7 Q AND YOU WERE UNDER OATH; RIGHT?

8 A YES.

9 Q SO, YOU WERE TRYING TO DO YOUR BEST JOB?

10 A YES.

11 Q LIKE YOU ARE HERE TODAY?

12 A YES.

13 Q AND DO YOU RECALL MENTIONING ANYTHING IN THAT
14 PRELIMINARY HEARING REGARDING ANYTHING ABOUT MY CLIENT
15 SLOWLY AND DELIBERATELY AND PLANNING THIS SORT OF SEARCH
16 THING?

17 A NO.

18 Q IN FACT YOU DIDN'T SAY THAT; DID YOU?

19 A WITHOUT LOOKING AT THE TRANSCRIPT, I WOULDN'T
20 KNOW.

21 Q PAGE 118, LINES 15 THROUGH 23 STARTING WITH:
22 THANK YOU VERY MUCH, OFFICER.

23 THIS IS THE PRELIMINARY HEARING OF OCTOBER 27TH AND
24 29TH, 1993. OKAY. LET'S SEE. SEE NOTICE HERE THAT YOU
25 ARE LISTED AS ONE OF THOSE OFFICERS THAT GAVE TESTIMONY?

26 A YES.

27 Q OKAY. AND THAT STARTS OFF PAGE 115. AND DIRECT
28 EXAMINATION FROM MR. MARTINEZ. IF YOU WOULD PLEASE REFER

1 TO LINES 5 THROUGH 23?

2 A LINE 15 READS:

3 YES. AT SOME POINT IN TIME, THE DEFENDANT
4 ASSISTED YOU IN PART OF THAT SEARCH; IS
5 THAT CORRECT?

6 ANSWER: I REMEMBER HE WAS ALSO SEARCHING.
7 OR I REMEMBER HIM LOOKING IN I BELIEVE THE HALL
8 CLOSET WHILE I WAS LOOKING IN ONE OF THE BEDROOMS.

9 QUESTION: AND DID HE MENTION SOMETHING ABOUT
10 MR. LOPEZ'S ROOM PRIOR TO YOU GOING IN?

11 ANSWER YES, HE DID.

12 QUESTION: WHAT DID HE SAY?

13 THANK YOU. NOW, THE NEXT QUESTION I HAVE FOR YOU IS
14 IN YOUR TESTIMONY HERE THIS MORNING, YOU ARE TALKING ABOUT
15 MR. JOHNSON HAVING TO GO IN MR. LOPEZ'S ROOM?

16 A YES.

17 Q DO YOU RECALL THAT?

18 A YES.

19 Q AND YOU MENTIONED SOMETHING ABOUT A DOOR BEING
20 CLOSED AND OPEN. WAS MR. LOPEZ'S DOOR CLOSED?

21 A YES. HIS BEDROOM DOOR WAS CLOSED.

22 Q MR. JOHNSON'S DOOR WAS OPEN?

23 A YES.

24 Q OKAY. AND DO YOU RECALL TESTIFYING THAT
25 MR. JOHNSON SAID YOU KNOW THERE'S A CLOSED DOOR. HE IS
26 OUTSIDE SEARCHING. YOU HAVE PERMISSION TO GO IN, OR GO ON
27 IN?

28 A YES. HE TOLD ME THAT MR. LOPEZ WAS OUTSIDE

1 SEARCHING, TO GO AHEAD AND GO IN MR. LOPEZ'S BEDROOM.

2 Q YOU FOUND NOTHING SINISTER ABOUT THAT AT THE
3 TIME?

4 MS. SCHMAUSS: OBJECTION; CALLS FOR SPECULATION.
5 OBJECT TO THE USE OF "SINISTER."

6 THE COURT: SUSTAINED.

7 Q BY MR. ABLARD: THANK YOU. YOU TESTIFIED
8 EARLIER-- LET ME ASK YOU THIS: YOU FOUND THAT TO BE
9 PECULIAR?

10 MS. SCHMAUSS: AGAIN CALLS FOR SPECULATION.

11 MR. ABLARD: I WILL WITHDRAW THAT.

12 Q BY MR. ABLARD: HAD YOU SEARCHED MR. LOPEZ'S
13 ROOM YET WHEN MR. JOHNSON SAID WELL, YOU KNOW, HE IS OUT
14 SEARCHING, GO AHEAD AND GO ON IN.

15 A NO, I HAD NOT.

16 Q WERE YOU GOING TO?

17 A YES.

18 Q DO YOU THINK THAT WAS A GOOD TIME TO DO IT?

19 A IT WAS IN THE MATTER OF MY SEARCH.

20 Q SEEMED LIKE A GOOD TIME TO DO IT?

21 A YES.

22 Q YOU WERE STANDING RIGHT AT THE DOOR?

23 A YES.

24 Q AND THEN WHEN, WHEN YOU CAME OUT, THERE WAS A
25 LAPSE OF TIME. THAT'S WHEN YOU GOT THIS CALL WHICH
26 UNFORTUNATELY TURNED OUT TO BE A FALSE ALARM; RIGHT?

27 A YES.

28 Q THEN YOU CALLED BACK AND YOU CONTINUED YOUR

1 SEARCH?

2 A YES.

3 Q CORRECT. NOW WHEN YOU FIRST STARTED YOUR
4 SEARCH, YOU MENTIONED THAT THE SLIDING--WELL, LET ME BACK
5 UP.

6 ONE OF THE FIRST THINGS THAT YOU WANT TO BE ASSURED
7 OF IS IS THAT THE CHILD IS EITHER INSIDE OR OUTSIDE. IN
8 OTHER WORDS, YOU HAVE TO FIND OUT WHAT THE POSSIBILITIES
9 ARE, THE CHILD GO OUTSIDE OR INSIDE; CORRECT?

10 A YES.

11 Q AND SO, GIVEN THAT, YOU CHECKED FIRST TO SEE IF
12 ALL THE DOORS WERE LOCKED-- ASKED SOMEBODY; RIGHT?

13 A DON'T RECALL IF I ASKED OR NOT.

14 Q DO YOU RECALL ASKING JENNIFER, THE MOTHER,
15 WHETHER OR NOT THE DOORS WERE LOCKED IN THE INSIDE OR
16 LOCKED AT ALL?

17 A I MIGHT HAVE.

18 Q OKAY. DO YOU RECALL BEING TOLD THAT THE FRONT
19 DOOR HAD BEEN LOCKED, THE DOOR LEADING TO THE FRONT DOOR
20 WAS UNLOCKED ALONG WITH THE SLIDING DOOR?

21 A THAT SOUNDS FAMILIAR.

22 Q THAT SOMETHING THAT WOULD BE IN YOUR REPORT;
23 WOULD IT? THAT'D BE IMPORTANT; WOULDN'T IT?

24 A YES.

25 Q WOULD YOU CHECK YOUR REPORT AND SEE IF THAT'S IN
26 THERE, PLEASE? MAY I DIRECT YOU TO SUPPLEMENTAL NUMBER 8?

27 A YES. IT READS THAT THE FRONT DOOR HAD BEEN
28 LOCKED. THE DOOR LEADING TO THE GARAGE AREA WAS UNLOCKED

1 AND ALONG WITH THE SLIDING DOOR.

2 Q RIGHT. SO, THAT'S SOMETHING THAT YOU WANT TO
3 KNOW SO YOU WOULD KNOW WHAT DOORS THE CHILD POSSIBLY COULD
4 HAVE GONE OUT OF?

5 A YES.

6 Q RIGHT. OKAY. SO, IS THAT YOU WENT OUT SLIDING
7 DOOR FIRST TO MAKE SURE SHE WASN'T OUT IN THE YARD?

8 A YES.

9 Q AND THAT PROVED FRUITLESS. AND THEN YOU CAME
10 BACK IN AND STARTED SEARCHING INSIDE?

11 A YES.

12 Q OKAY. SHE GAVE YOU A PHYSICAL DESCRIPTION OF
13 THE CHILD AND A PICTURE?

14 A YES.

15 Q AND I UNDERSTAND ALL THIS HAPPENED IN A VERY
16 SHORT PERIOD OF TIME BECAUSE THIS WAS A CRITICAL SEARCH?

17 A CORRECT.

18 Q CORRECT. DID SHE ALSO DESCRIBE TO YOU THE
19 CLOTHES THAT THE CHILD WAS WEARING, CORRECT?

20 A YES, SHE DID.

21 Q OKAY. ALSO IMPORTANT TO YOU WOULD BE TO KNOW
22 WHEN THIS SEARCH STARTED WHEN THE PARENTS STARTED LOOKING;
23 CORRECT?

24 A ACTUALLY, WHEN THEY FIRST NOTICED HER MISSING.

25 Q OKAY.

26 A WOULD PROBABLE BE.

27 Q WHEN WAS THAT?

28 A I BELIEVE IT WAS RIGHT AROUND 9:00.

1 Q UH-HUH. AND YOU GATHERED THAT FROM THE FACT
2 THEY SAID THAT YOU ASKED SOMEBODY WHAT TIME THEY HAD GOT
3 UP AND THEY SAID THEY HAD AWOKEN AT 9 AND WAS UNABLE TO
4 FIND THEIR DAUGHTER; CORRECT?

5 A YES.

6 Q THAT'S IN YOUR REPORT; CORRECT?

7 A I BELIEVE IT IS, YES.

8 Q SUPPLEMENTAL 8?

9 A YES.

10 Q ON 10-14?

11 A YES.

12 Q OKAY. THAT'S THE DAY OF THE REPORT, 10-14?

13 A CORRECT.

14 Q THERE WAS NOTHING MENTIONED ABOUT THEM BEING
15 AWAKENED TO NOISE; WAS THERE?

16 A I DO NOT BELIEVE THERE IS IN MY REPORT.

17 Q YOU WERE NOT TOLD THAT THEY WERE AWAKENED BY
18 NOISE; CORRECT?

19 A I DON'T THINK I WAS, NO.

20 Q NOW, IN THIS ROOM, JOHNSON'S ROOM, WERE THERE A
21 LOT OF PLASTIC BAGS?

22 A NOT THAT I RECALL.

23 Q THE PLASTIC BAG THAT IS NOW DETERMINED WAS OVER
24 HER FACE, WAS THAT ACTUALLY TWO PLASTIC BAGS WE HAVE?

25 A YES.

26 Q OKAY. ONE WAS INSIDE THE OTHER ONE?

27 A YES.

28 Q WAS THERE ANYTHING INSIDE THAT BAG?

1 A YES.

2 Q WHAT WAS IT?

3 A THERE WAS A SWEATER INSIDE.

4 Q OKAY. AND DO YOU HAVE THE SWEATER IN EVIDENCE?

5 A YES.

6 Q YOU DO?

7 A I BELIEVE IT WAS TAKEN. I AM NOT SURE, TO BE
8 HONEST.

9 Q YOU DON'T KNOW?

10 A NO.

11 Q WELL, WERE YOU REQUESTED TO TAKE THAT SWEATER BY
12 OFFICER DONLEY WHEN YOU WERE IN THE CRIME SCENE
13 INVESTIGATION IN THE AFTERNOON?

14 A I DON'T THINK I WAS.

15 Q AND YOU DIDN'T TAKE IT ON YOUR OWN?

16 A NO.

17 Q WHOSE SWEATER WAS IT?

18 A I DON'T KNOW.

19 MR. ABLARD: YOUR HONOR, IF IT WILL BE POSSIBLE, I'D
20 LIKE TO REVIEW SOME OF MY NOTES.

21 THE COURT: YOU WANT TO TAKE A BREAK?

22 MR. ABLARD: I WOULD LIKE TO.

23 THE COURT: OH, ALL RIGHT. IT IS ABOUT THAT TIME.

24 IT'S ABOUT 5-- THAT CLOCK IS NO LONGER CORRECT. WE HAVE
25 CHANGED TO STANDARD TIME, FOLKS. HOPE YOU ALL HAVE YOUR
26 WATCHES PROPERLY SET BY NOW. IT IS MONDAY. TAKE ABOUT
27 TEN OR FIFTEEN MINUTES. WE WILL CALL WHEN WE ARE READY.
28 DON'T DISCUSS THE CASE. DON'T FORM ANY OPINIONS OR

1 CONCLUSIONS, PLEASE.

2 (RECESS)

3 MR. ABLARD: THANK YOU, YOUR HONOR. I HAVE NO MORE
4 QUESTIONS AT THIS TIME. THANK YOU.

5 THE COURT: THANK YOU. ANY REDIRECT?

6 REDIRECT EXAMINATION

7 BY MS. SCHMAUSS:

8 Q OFFICER KELLY, IN RELATION TO WHEN YOU ARRIVED
9 AT THE RESIDENCE AND BEGAN YOUR SEARCH, APPROXIMATELY HOW
10 MUCH TIME PASSED BETWEEN YOUR ARRIVAL AND YOUR FINDING

11 BRITTANY'S BODY?

12 A APPROXIMATELY FIFTEEN TO TWENTY MINUTES.

13 Q NOW, REGARDING THE BAG THAT WAS FOUND ON
14 BRITTANY, WHETHER IT WAS COMPLETELY OVER HER HEAD OR JUST
15 OVER HER FACE, DID YOU DEFINITELY RECALL HAVING TO RIP IT
16 OFF TO GET IT OFF?

17 A YES.

18 Q AND THE SWEATER THAT YOU MENTIONED, IT WAS
19 INSIDE ONE OF THE BAGS?

20 A YES.

21 Q DO YOU REMEMBER IF IT WAS INSIDE THE INNER BAG
22 OR THE OUTER BAG?

23 A I BELIEVE IT WAS THE INNER BAG.

24 Q OKAY. WAS IT-- DID IT FILL UP THE ENTIRE BAG OR
25 WAS IT JUST PART OF THE BAG?

26 A I THINK IT WAS JUST PART OF THE BAG.

27 Q MR. ABLARD ASKED YOU ABOUT YOUR TESTIMONY AT A
28 PRELIMINARY HEARING. AND YOU READ A NUMBER OF LINES THERE

1 ABOUT THE DEFENDANT LOOKING IN THE HALL CLOSET. DO YOU
2 REMEMBER THAT?

3 A YES.

4 Q DID YOU SEE ANY QUESTION IN THAT AREA ASKING YOU
5 TO DESCRIBE HIS DEMEANOR WHILE HE WAS LOOKING IN THE HALL
6 CLOSET?

7 A NO, I DID NOT.

8 Q SO, NO ONE EVEN ASKED YOU THAT; IS THAT CORRECT?

9 A NO, RIGHT.

10 Q HAVE YOU BEEN TRAINED TO ONLY ANSWER THE
11 QUESTION THAT IS POSED TO YOU AND NOT VOLUNTEER ADDITIONAL
12 INFORMATION?

13 A CORRECT.

14 Q IN YOUR REPORT, IT'S SUPP 8, WHERE YOU HAVE A
15 BRIEF DESCRIPTION OF SPEAKING TO JENNIFER RETHORN, DID SHE
16 TELL YOU THAT SHE HAD AWAKENED AT 9:00, OR DOES IT SAY AT
17 APPROXIMATELY 9:00 IN THE MORNING?

18 A I'D HAVE TO REVIEW MY REPORT.

19 Q COULD YOU PLEASE?

20 A STATES THAT SHE WAS-- SHE HAD AWAKENED AT
21 APPROXIMATELY 9:00 IN THE MORNING.

22 Q SO, IF A WITNESS WERE TO TELL YOU THEY AWAKENED
23 AT 8:57, WOULD THAT BE TRANSLATED INTO APPROXIMATELY 9:00?

24 A YES.

25 MS. SCHMAUSS: I HAVE NO FURTHER QUESTIONS AT THIS
26 TIME, YOUR HONOR.

27 THE COURT: THANK YOU. YOU MAY STEP DOWN.

28 MS. SCHMAUSS: HE NEEDS TO BE ON CALL FOR ADDITIONAL

1 EVIDENCE TOMORROW OF A DIFFERENT SUBJECT.

2 THE COURT: YOU MAY STEP DOWN. YOU ARE NOT EXCUSED.

3 MR. ABLARD: EXCUSE ME. I HAVE SOME

4 RECROSS-EXAMINATION

5 THE COURT: I AM SORRY. YOU HAVE SOME RE, RE,

6 RE-WHATEVER?

7 MR. ABLARD: YES. IT WILL BE BRIEF.

8 THE COURT: THANK YOU.

9 MR. ABLARD: I HAVE A QUESTION.

10 RECROSS-EXAMINATION

11 BY MR. ABLARD:

12 Q THE GIRL IN THE CLOSET, THERE WERE CLOTHES ON
13 TOP OF HER. AND I AM TALKING ABOUT THE FACE. AND UNDER
14 THE CLOTHES WAS THIS BAG THAT WAS LAYING ACROSS THE FACE.
15 AND THEN THERE WAS THE FACE; RIGHT?

16 A CORRECT.

17 Q AND YOU TOOK THE CLOTHES OFF; RIGHT?

18 A YES.

19 Q YOU PULLED THE BAG AWAY?

20 A I RIPPED THE BAG AWAY.

21 Q THE BAG WAS NOT UNDER ANYTHING; WAS IT?

22 A I RECALL THE BAG BEING AROUND HER FACE IN A
23 MANNER THAT I HAD TO RIP IT IN ORDER TO GET TO HER FACE.

24 Q IS THERE A REASON THAT IN YOUR REPORT YOU PUT
25 YOU PULLED THE BAG AWAY AND DIDN'T PUT THAT THE BAG WAS
26 WRAPPED AROUND HER FACE IN THE MANNER THAT YOU HAD TO RIP
27 IT?

28 MS. SCHMAUSS: OBJECTION, YOUR HONOR. I BELIEVE WE

1 COVERED THIS ON ORIGINAL CROSS.

2 THE COURT: OH, I WILL PERMIT THIS ADDITIONAL
3 QUESTION. BUT THAT'S IT.

4 THE WITNESS: I NEED THE QUESTION REREAD.

5 MR. ABLARD: COULD YOU, PLEASE?

6 THE COURT: NO. ASK A QUESTION.

7 Q BY MR. ABLARD: OKAY. IS THERE A REASON WHY IN
8 YOUR REPORT YOU PUT YOU JUST PULLED THE BAG AWAY AND
9 MENTIONED NOTHING ABOUT BEING WRAPPED OR SOMETHING, HAD TO
10 RIP IT?

11 A NO.

12 MR. ABLARD: NO FURTHER QUESTIONS.

13 MS. SCHMAUSS: NO. NO, YOUR HONOR.

14 THE COURT: THANK YOU. YOU MAY STEP DOWN NOW. YOU
15 ARE STILL ON CALL.

16 MS. SCHMAUSS: NEXT WITNESS IS OFFICER BALES.

17 THE COURT: ALL RIGHT.

18 MR. ABLARD: HE IS ON RESERVE, YOUR HONOR.

19 THE COURT: HE IS ON RECALL SUBJECT TO EITHER SIDE
20 RECALLING.

21 MR. ABLARD: THANK YOU.

22 BRADLEY JOE BALES

23 CALLED AS A WITNESS BY THE PLAINTIFF, WAS SWORN AND
24 TESTIFIED AS FOLLOWS:

25 THE CLERK: PLEASE RAISE YOUR RIGHT HAND.

26 YOU DO SOLEMNLY SWEAR THE TESTIMONY YOU
27 MAY GIVE IN THE MATTER NOW PENDING BEFORE THIS COURT
28 SHALL BE THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT

1 THE TRUTH, SO HELP YOU GOD.

2 THE WITNESS: I DO.

3 THE CLERK: THANK YOU. PLEASE BE SEATED. PLEASE STATE
4 YOUR FULL NAME SPELLING YOUR LAST NAME FOR THE RECORD.

5 THE WITNESS: BRADLEY JOE BALES B-A-L-E-S.

6 DIRECT EXAMINATION

7 BY MS. SCHMAUSS:

8 Q OFFICER BALES, ARE YOU A POLICE OFFICER WITH THE
9 CITY OF MONTCLAIR?

10 A YES, I AM.

11 Q HOW LONG HAVE YOU BEEN A POLICE OFFICER?

12 A APPROXIMATELY SEVENTEEN YEARS.

13 Q WERE YOU SO EMPLOYED ON OCTOBER 1, 1993?

14 A YES, I WAS.

15 Q ON THAT DATE, DID YOU GET A CALL TO GO TO 9393
16 EXETER?

17 A YES.

18 Q WHAT WAS THE CALL IN CONCERN TO?

19 A POSSIBLE MISSING CHILD.

20 Q WERE YOU A FIRST OFFICER TO ARRIVE THERE OR
21 SOMEBODY BEAT YOU THERE?

22 A OFFICER KELLY WAS THERE FIRST.

23 Q ABOUT HOW LONG AFTER OFFICER KELLY GOT THERE DID
24 YOU GET THERE?

25 A THREE MINUTES.

26 Q AND DID YOU HAVE ANY INFORMATION--HAD YOU
27 RECEIVED ANY INFORMATION ABOUT WHAT YOU WERE INVESTIGATING
28 BY THE TIME YOU GOT THERE?

1 A JUST THAT A CHILD WAS POSSIBLY MISSING FROM
2 INSIDE THE RESIDENCE.

3 Q WHAT WAS YOUR ROLE IN THIS INVESTIGATION?

4 A TO TAKE A MISSING PERSON'S REPORT.

5 Q WERE YOU THE REPORTING OFFICER IN THIS CASE?

6 A YES.

7 Q BECAUSE YOU ARE DIVIDED UP INTO BEATS?

8 A YES. THAT WAS MY BEAT.

9 Q WHEN YOU GOT TO THE RESIDENCE, THE FIRST
10 ENTERED, CAN YOU DESCRIBE WHAT YOU SAW?

11 A THE PARENTS, OBVIOUSLY DISTRAUGHT, COULD NOT
12 FIND THEIR CHILD. ONE, THE FATHER WAS OUTSIDE YELLING FOR
13 HIS DAUGHTER. THE MOTHER WAS NOTABLY CRYING AND UPSET.
14 AND THEY ALSO HAD STATED THERE'S OTHER PEOPLE IN THE HOUSE
15 THAT WERE ALSO LOOKING FOR THE CHILD.

16 Q WHEN YOU FIRST GOT TO THE HOUSE, DID YOU SEE THE
17 DEFENDANT, CHUCK JOHNSON?

18 A YES.

19 Q DO YOU SEE HIM IN COURT TODAY?

20 A YES, I DO.

21 Q WHERE IS HE?

22 A AT THE END OF THE TABLE IN THE LIGHT BLUE
23 STRIPED SHIRT AND TIE.

24 Q WHERE WAS HE WHEN YOU FIRST GOT TO THE
25 RESIDENCE?

26 A HE WAS IN THE KITCHEN.

27 Q OKAY. WHAT WAS HIS Demeanor THAT YOU NOTED WHEN
28 YOU FIRST GOT THERE?

1 A OBVIOUSLY UPSET, SEEMED A LITTLE BIT AGITATED,
2 NERVOUS.

3 Q WHEN YOU SAY AGITATED, WHAT DO YOU MEAN?

4 A TALKING VERY RAPIDLY, IN EXCITED STATE.

5 Q OKAY. DID YOU GET SOME INFORMATION ABOUT THE
6 CIRCUMSTANCES FROM THE VARIETY OF PEOPLE THERE?

7 A YES.

8 Q AND WHERE WERE YOU GETTING YOUR INFORMATION?
9 WHERE WERE YOU SITUATED IN THE HOUSE?

10 A AT FIRST, IN THE KITCHEN. AND EVERYBODY SEEMED
11 TO BE TALKING AT ONCE. AND I TRIED TO SEPARATE THEM AND
12 TO GET STATEMENTS FROM EACH AND EVERY ONE OF THEM.

13 Q OKAY. WHILE YOU WERE TALKING TO THEM, DID
14 SOMETHING OCCUR WITH OTHER OFFICERS?

15 A SERGEANT LEONI ARRIVED AT THE SCENE. THEY WERE
16 INSIDE THE BACK ROOM. AND THEY SUDDENLY RAN OUTSIDE OF
17 THE HOUSE.

18 Q WHO IS "THEY"?

19 A SERGEANT LEONI AND OFFICER KELLY.

20 Q COULD YOU SEE IF THEY HAD ANYTHING IN THEIR
21 HANDS?

22 A AT FIRST, NO. BUT I ASSUMED WITHIN SECONDS WHAT
23 OCCURRED.

24 Q DID ANYBODY INFORM YOU AT SOMETIME?

25 A YES, VIA THE RADIO, THEY WERE IN ROUTE TO THE
26 HOSPITAL WITH THE CHILD.

27 Q DID THEY MOVE SO FAST YOU COULDN'T TELL IF THEY
28 HAD ANYTHING?

1 A NO.

2 Q OKAY. DID YOU CONTINUE TO INTERVIEW THE PEOPLE
3 AFTER SERGEANT LEONI AND OFFICER KELLY LEFT?

4 A YES, I DID.

5 Q WHICH PEOPLE WERE YOU INTERVIEWING?

6 A THE PARENTS, CHUCK JOHNSON, AND ANOTHER
7 RESIDENT, MR. LOPEZ.

8 Q OKAY. NOW, BEFORE WHEN YOU WERE INTERVIEWING
9 CHUCK JOHNSON, WERE THE PARENTS THERE STILL THERE, OR HAD
10 THEY LEFT TO GO SOMEWHERE?

11 A I HAD SPOKEN WITH THEM. BUT WHEN I WAS
12 SPEAKING, THEY HAD GONE TO THE HOSPITAL.

13 Q SO, BY THE TIME YOU GOT TO CHUCK JOHNSON, THEY
14 HAD ALREADY LEFT TO THE HOSPITAL?

15 A YES.

16 Q DID YOU ASK CHUCK JOHNSON WHAT HE HAD SEEN AND
17 HEARD THAT DAY?

18 A YES, I DID.

19 Q DO YOU RECALL WHAT HE TOLD YOU?

20 A YES.

21 Q WHAT DID HE TELL YOU?

22 A THAT HE HAD HEARD BRITTANY MAKING NOISE INSIDE
23 THE HOUSE; THAT HE WENT TO QUIET HER DOWN. HE HAD TAKEN
24 HER OUTSIDE TO WIPE SOME CONDENSATION OFF HIS VOLKSWAGON
25 AS APPARENTLY HE HAD JUST WASHED THE DAY BEFORE. HE THEN
26 HAD GIVEN HER SOME ORANGE JUICE, BRING HER BACK INSIDE THE
27 HOUSE, SET HER IN FRONT OF THE TV TO WATCH CARTOONS, AND
28 HE REENTERED HIS ROOM.

1 Q OKAY. WHAT DID HE SAY HE HAD DONE WHEN HE
2 REENTERED HIS ROOM?

3 A GONES BACK TO SLEEP FOR A SHORT WHILE.

4 Q DID HE SAY HOW LONG?

5 A I BELIEVE HE SAID TWENTY MINUTES.

6 Q AND DID HE SAY WHERE BRITTANY WAS WHILE HE WAS
7 SLEEPING FOR TWENTY MINUTES?

8 A LAST HE HAD KNOWN, SHE WAS IN FRONT OF THE TV IN
9 ANOTHER ROOM.

10 Q OKAY. WHAT DID HE SAY HAPPENED THEN?

11 A HIS PHONE HAD RANG. AND IT WAS DARIN, THE
12 FATHER ON THE PHONE ASKING IF BRITTANY WAS IN HIS ROOM.
13 AND HE COULDN'T FIND HER.

14 Q AND THEN WHAT DID HE SAY?

15 A SAID NO, SHE WASN'T.

16 Q AND THEN WHAT DID HE TELL YOU?

17 A THAT HE HAD TAKEN OR PUT ON SOME OLD CLOTHES, IN
18 HIS WORDS, TO GO OUT AND ASSIST IN LOOKING FOR BRITTANY.

19 Q OKAY. AND THEN WHAT DID HE SAY?

20 A HE HAD GONE OUTSIDE MOMENTARILY, STOPPED A FEW
21 PASSING CARS, ASKED ABOUT BRITTANY IF ANYONE HAD SEEN HER.
22 THAT ABOUT THAT TIME, THE POLICE HAD ARRIVED.

23 Q OKAY. AND THEN WHAT DID HE SAY?

24 A HE HAD MADE A STATEMENT THAT HE FELT BAD THAT AS
25 FAR AS HE KNEW HE WAS THE LAST PERSON TO SEE BRITTANY AT
26 THE RESIDENCE.

27 Q OKAY. NOW, THIS INTERVIEW THAT YOU HAD WITH HIM
28 AT THE RESIDENCE, THIS IS STILL THE EXETER, IT'S SHORTLY

1 AFTER LEONI AND KELLY HAD RUSHED OUT; CORRECT?

2 A YES.

3 Q OKAY. DID HE TELL YOU DURING THIS INITIAL
4 INTERVIEW AT THE RESIDENCE THAT HE HAD GONE BACK OUTSIDE
5 AFTER LEAVING BRITTANY IN FRONT OF THE TV AND DONE
6 SOMETHING WITH HIS CAR?

7 A HE DID NOT TELL ME THAT, NO.

8 Q HE JUST TOLD YOU THAT HE IMMEDIATELY, AFTER
9 PLACING BRITTANY IN FRONT OF THE TV, HE HAD GONE INTO HIS
10 ROOM AND LAID DOWN?

11 A AFTER WIPING OFF THE CAR, STATED HE HAD THEN
12 HAD GONE BACK INSIDE THE RESIDENCE. BUT HE DID NOT TELL
13 ME HE WENT BACK OUTSIDE.

14 Q YOUR UNDERSTANDING OF HIS STATEMENT WAS AFTER
15 RETURNING INTO THE RESIDENCE, TURNED ON THE TV FOR
16 BRITTANY, HE WENT IMMEDIATELY IN HIS ROOM, CLOSED THE
17 DOOR, AND WENT TO BED?

18 A THAT IS CORRECT.

19 Q AND DURING YOUR INTERVIEW AT EXETER HOUSE, THAT
20 INITIAL INTERVIEW, DID HE EVER SAY THAT HE HAD NOTICED
21 BRITTANY'S BODY IN THE CLOSET BEFORE THE POLICE HAD
22 RECOVERED HER?

23 A NO.

24 Q NEVER SAID ANYTHING ABOUT THAT?

25 A LATER ON, HE DID. BUT NOT TO ME.

26 Q RIGHT. I AM TALKING ONLY ABOUT THE EXETER HOUSE
27 INTERVIEW?

28 A NO, HE DID--

1 Q NOT LATER AT THE POLICE STATION?

2 A --DID NOT.

3 Q NOW, YOU WERE-- DID YOU INTERVIEW SOME WITNESSES
4 AFTER YOU INTERVIEWED CHUCK JOHNSON?

5 A I HAD AGAIN SPOKEN WITH THE PARENTS.

6 Q WELL, NO. THERE WAS ANOTHER ROOMMATE,
7 MR. LOPEZ?

8 A RIGHT. THAT'S CORRECT.

9 Q SO, THE PARENTS ARE STILL GONE AT DOCTORS?

10 A YES.

11 Q CHUCK JOHNSON IS THERE. AND STEVE LOPEZ THERE
12 WHO ARRIVED MOMENTARILY. JUST BEFORE, BEFORE THE PARENTS
13 HAD LEFT, HE HAD CAME BACK TO THE HOUSE.

14 Q OKAY. SO WHEN YOU FINISHED TALKING TO CHUCK
15 JOHNSON, THAT'S WHEN YOU INTERVIEWED STEVE?

16 A YES.

17 Q WAS CHUCK JOHNSON STILL THERE WHEN YOU WERE
18 INTERVIEWING STEVE LOPEZ?

19 A YES.

20 Q OKAY. WHILE YOU WERE INTERVIEWING LOPEZ, DID
21 CHUCK JOHNSON INTERRUPT?

22 A SEVERAL TIMES.

23 Q OKAY. AND DO YOU REMEMBER WHAT HE SAID WHEN HE
24 INTERRUPTED?

25 A I'D HAVE TO REFER BACK TO MY ORIGINAL REPORT.

26 Q IF YOU WOULD. I BELIEVE THIS WILL BE SUPP
27 NUMBER 9?

28 A THANK YOU.

1 Q I THINK I WAS LOOKING AT PAGE 9?

2 A NO. THAT'S MY NUMBER.

3 Q IS THAT YOUR I.D. NUMBER. I AM SORRY. FIRST
4 REPORT. YOUR INITIAL REPORT, PAGE 4?

5 A YES.

6 Q DID YOU FIND IT?

7 A YES, I DID. DO YOU WANT ME TO READ IT
8 VERBATIM?

9 Q NO. I AM JUST ASKING YOU WHEN YOU WERE SPEAKING
10 WITH MR. LOPEZ, MR. JOHNSON INTERRUPTED YOU, YOU SAID
11 SEVERAL TIMES. LET'S GO TO THE FIRST TIME. WHAT DID HE
12 HAVE TO SAY TO YOU?

13 A THAT HE WAS GOING TO, THAT MORNING, HE STATED TO
14 ME THAT HE KNEW THAT THE RETHORNS AND DARIN RIGGS WERE
15 HAVING PERSONAL PROBLEMS, AND THAT BRITTANY WAS UP MAKING
16 NOISE, AND THAT HE WAS GOING TO TAKE RESPONSIBILITY FOR
17 HER TO QUIET HER DOWN.

18 HE THEN RESTATED BASICALLY WHAT HE HAD TOLD ME
19 BEFORE. HE HAD TAKEN HER OUTSIDE WHEN HE WAS WASHING OFF
20 HIS VOLKSWAGON, AND THAT HE HAD GIVEN HER SOME JUICE AND
21 SET HER IN FRONT OF THE TV. AND THAT WAS ABOUT IT.

22 Q HE NEVER TOLD YOU HE HAD GONE BACK OUTSIDE,
23 LEAVING HER UNATTENDED?

24 A NO, HE DID NOT.

25 Q YOU SAID HE INTERRUPTED. IS THAT IN YOUR
26 REPORT?

27 A THAT'S ALL DURING THE SAME TIME.

28 Q OKAY. SO, YOU KEPT TRYING TO INTERVIEW STEVE.

1 AND HE WOULD PIPE IN?

2 A YES.

3 Q NEVER ONCE AT THE HOUSE AT EXETER DID HE TELL
4 YOU HE HAD SEEN BRITTANY IN HIS CLOSET?

5 A NEVER.

6 Q NOW, AFTER OFFICER KELLY AND OFFICER LEONI LEFT,
7 WERE YOU THE ONLY OFFICER AT THE SCENE?

8 A YES, I WAS.

9 Q DID ANYBODY EVER JOIN YOU?

10 A I BELIEVE OFFICER RICK CHOLLEY ARRIVED A FEW
11 MINUTES AND LEFT WITHIN A FEW MINUTES.

12 Q WERE YOU IN CHARGE OF SECURING THE CRIME SCENE
13 AT THE HOUSE?

14 A IT WASN'T A CRIME SCENE AT THAT TIME.

15 Q OKAY. WERE YOU IN CHARGE OF SECURING THE
16 RESIDENCE?

17 A YES.

18 Q THE PARENTS ARRIVED BACK AFTER GOING TO DOCTOR'S
19 HOSPITAL?

20 A YES, THEY DID.

21 Q THEY HAD COME BACK?

22 A YES, THEY DID.

23 Q AND THEN DID THEY GO SOMEWHERE ELSE? DID YOU
24 WATCH THEM LEAVE?

25 A YES, I DID.

26 Q DID YOU INFORM THEM TO LEAVE?

27 A THEY WANTED TO LEAVE. I DIDN'T MAKE THEM LEAVE.
28 THEY WANTED TO PICK UP A FEW PERSONAL ITEMS AND THEN LEAVE

1 THE RESIDENCE.

2 Q DID YOU OBSERVE WHAT PERSONAL ITEMS THEY PICKED
3 UP?

4 A NO.

5 Q HOW ABOUT THE ROOM WHERE THE VICTIM WAS FOUND?
6 WAS ANYTHING DONE TO MAKE SURE NO ONE WENT IN THERE AND
7 DISTURBED IT?

8 A WHILE I WAS THERE, NO ONE ELSE HAD GONE INTO
9 THAT ROOM.

10 Q HOW DID YOU MAKE SURE NO ONE ELSE WENT INTO THAT
11 ROOM WHILE YOU WERE THERE THAT DAY?

12 A IT WAS EITHER MYSELF OR DETECTIVE DONLEY HAD PUT
13 WHAT IS CALLED AN EVIDENCE STICKER ON THE DOOR SO THAT IF
14 THE DOOR WAS OPENED, IT WOULD SHOW THAT IT WAS OPEN. IT
15 WOULD RIP.

16 Q OKAY. DO YOU RECALL WHEN THAT EVIDENCE STICKER
17 WAS PLACED ON THE DOOR?

18 A IT WAS AFTER CHUCK JOHNSON LEFT. I AM NOT SURE
19 WHEN.

20 Q OKAY. WHEN DARIN AND JENNIFER CAME BACK TO GET
21 THEIR PERSONAL ITEMS. WAS THERE ANY WAY FOR YOU TO TELL
22 THAT THEY DID NOT GO INTO CHUCK JOHNSON'S ROOM?

23 A I WAS STILL THERE. THEY DID NOT GO INTO HIS
24 ROOM, NOR WAS THE STICKER RIPPED.

25 Q OKAY. SO, WHEN WAS THE STICKER AFFIXED?

26 A THAT WAS AFTER DETECTIVE DONLEY HAD GOTTEN
27 THERE.

28 Q DO YOU REMEMBER WHEN DETECTIVE DONLEY HAD GOT

1 THERE?

2 A 12:00, 12:20, NOON.

3 Q WAS THAT BEFORE JENNIFER AND DARIN CAME BACK
4 FROM DOCTOR'S?

5 A I DON'T RECALL.

6 Q OKAY. WHEN THEY CAME BACK, WERE YOU IN A
7 POSITION IN THE HOUSE THAT YOU COULD SEE THE DEFENDANT'S
8 ROOM?

9 A YES.

10 Q TO BE SURE THEY DID NOT GO IN IT?

11 A YES.

12 Q AND THEY DID NOT GO IN?

13 A THEY DID NOT GO IN IT.

14 Q HOW ABOUT STEVE LOPEZ. HAD HE LEFT THE
15 RESIDENCE?

16 A YES.

17 Q AT WHAT POINT HAD HE LEFT THE RESIDENCE?

18 A ABOUT THE SAME TIME CHUCK JOHNSON LEFT THE
19 RESIDENCE.

20 Q THE WHOLE TIME THAT YOU WERE AT THE HOUSE, DID
21 YOU MAKE SURE THAT NO ONE WENT IN THAT ROOM?

22 A YES.

23 Q OTHER THAN POLICE OFFICERS, WITH YOU?

24 A THAT IS CORRECT.

25 Q SO, YOU CAN SAY FOR CERTAIN THAT NO CIVILIAN
26 PERSONNEL WENT INTO THAT BEDROOM WHILE YOU WERE THERE
27 AFTER THE BABY, AFTER THE CHILD WAS FOUND?

28 A THAT IS CORRECT.

1 Q WHAT TIME DID CHUCK JOHNSON LEAVE?

2 A I'D SAY 10:00.

3 Q AND DID YOU TELL HIM TO LEAVE?

4 A YES.

5 Q AND DID HE TELL YOU WHERE HE WAS GOING?

6 A A FRIEND OR A RELATIVE'S HOUSE. I AM NOT SURE
7 WHICH.

8 Q OKAY. DID HE RETURN AT ALL WHILE YOU WERE AT
9 THE HOUSE ON THE 10TH?

10 A NO.

11 Q YOU SAW HIM AGAIN THAT DAY?

12 A YES.

13 Q WHERE?

14 A AT A RESIDENCE IN ONTARIO.

15 Q IT WAS FOR PURPOSES OF-- WELL, STRIKE THAT.

16 DID YOU GET A MESSAGE THAT CHUCK JOHNSON HAD CALLED
17 THE STATION ASKING FOR YOU?

18 A YES, I DID, THROUGH DISPATCH.

19 Q ABOUT WHAT TIME WAS THAT?

20 A AROUND I BELIEVE 2:00

21 Q AND DID YOU RESPOND OR DID YOU DO SOMETHING IN
22 RELATION TO THAT REQUEST BY HIM?

23 A DETECTIVE DONLEY AND I HAD GONE TO THE RESIDENCE
24 OURSELVES.

25 Q HAD CHUCK JOHNSON LEFT AN ADDRESS WHERE HE WAS
26 AT WITH DISPATCH?

27 A YES.

28 Q WHAT WAS THE MESSAGE THAT YOU HAD GOT?

1 A HE JUST WANTED TO TALK TO ME ABOUT THE INCIDENT.

2 Q OKAY. AND SO, WHEN YOU LEFT THE RESIDENCE ON
3 EXETER, HOW WAS IT SECURED AND HOW WAS THE ROOM THAT
4 BRITTANY WAS FOUND IN SECURED?

5 A THE STICKER HAD BEEN PLACED ON THE INSIDE DOOR.
6 AND THEN THE HOUSE WAS LOCKED UP.

7 Q DID YOU RETURN TO THAT HOUSE AT SOMETIME THE
8 NEXT DAY?

9 A YES.

10 Q THAT WOULD BE THE 11TH?

11 A YES.

12 Q AND DID YOU OBSERVE WHETHER THE STICKER HAD BEEN
13 TAMPERED WITH ON THE BEDROOM DOOR OF CHUCK JOHNSON'S ROOM?

14 A IT HAD NOT.

15 Q OKAY. AND DID YOU SEE MR. JOHNSON AT THE HOUSE
16 THE NEXT DAY?

17 A YES.

18 Q AND WAS THERE A MEETING ARRANGED BETWEEN HIM AND
19 YOU AND DETECTIVE DONLEY?

20 A YES.

21 Q HE WAS ASKED TO COME BACK TO THE HOUSE?

22 A YES.

23 Q OKAY. AND WHO GOT THERE FIRST, THE POLICE OR
24 MR. JOHNSON?

25 A I DID.

26 Q SO, YOU GOT THERE FIRST?

27 A YES, I DID.

28 Q THEN YOU OBSERVED MR. JOHNSON ARRIVE?

1 A YES.

2 Q DID HE HAVE THE OPPORTUNITY TO GO INTO HIS
3 BEDROOM UNESCORTED BY YOU?

4 A NO, HE DID NOT.

5 Q THEN WAS HE TAKEN AWAY AND PLACED UNDER ARREST
6 THAT DAY?

7 A BY DETECTIVE DONLEY.

8 Q SO, HE WAS TAKEN AWAY UNDER ARREST?

9 A YES.

10 Q ON THE 11TH?

11 A YES.

12 MS. SCHMAUSS: NO FURTHER QUESTIONS AT THIS TIME,
13 YOUR HONOR.

14 MR. ABLARD: THANK YOU.

15 CROSS-EXAMINATION

16 BY MR. ABLARD:

17 Q OFFICER, WHEN MS. RETHORN AND MR. RIGGS CAME
18 BACK TO GET SOME PERSONAL ITEMS, WHAT ROOM OR ROOMS DID
19 THEY GO IN?

20 A I BELIEVE THEY TOOK A COUPLE OF ITEMS FROM THE
21 LIVING ROOM AND THEIR BEDROOM. THEY DID NOT GO IN THE
22 DEFENDANT'S BEDROOM. THEY DID NOT GO IN THERE.

23 Q AND SO LIVING ROOM AND THEIR BEDROOM?

24 A AND I BELIEVE IN THE KITCHEN.

25 Q DID YOU GO IN THOSE ROOMS WITH THEM?

26 A DID I?

27 Q YES, SIR.

28 A NO, I DID NOT.

1 Q AND YOU WERE POSITIONED WHERE?

2 A BASICALLY IN THE KITCHEN AREA NEAR THE FRONT
3 DOOR IN THE HALLWAY?

4 A SAME GENERAL ADJACENT AREA, ENTRY WAY.

5 Q THE ENTRY WAY INTO THE LIVING ROOM?

6 A YES.

7 Q BY THE FRONT DOOR?

8 A YES.

9 Q DID YOU ASSIST OFFICER DONLEY IN THE CRIME SCENE
10 INVESTIGATION AND SEARCH THE AFTERNOON OF OCTOBER 10 OF
11 '93?

12 A YES, I DID.

13 Q OTHER OFFICERS WERE PRESENT?

14 A ARE YOU TALKING ABOUT JUST THE DEFENDANT'S ROOM
15 ITSELF?

16 Q WELL, LET ME DESCRIBE IT THIS WAY. CONFUSED
17 YOU. SOMETIME LATER ON IN THE AFTERNOON, OFFICER DONLEY
18 AND YOU ARRIVED BACK AT THE LOCATION; CORRECT?

19 A THAT IS CORRECT.

20 Q AND WAS THERE AN OFFICER THERE WHEN YOU ARRIVED?

21 A I DON'T RECALL.

22 Q OKAY. WAS OFFICER KELLY THERE?

23 A HE WAS PARKED OUT IN FRONT OF THE RESIDENCE.

24 Q SO, HE WAS AT THE RESIDENCE?

25 A YES.

26 Q DID ALL THREE OF YOU GO IN?

27 A I DON'T RECALL.

28 Q OKAY. WOULD THAT BE SOMETHING THAT YOU WOULD

1 NOTE DOWN?

2 A YES.

3 Q DID YOU NOTE IT DOWN?

4 A NO, I DID NOT.

5 Q NOW, WHEN YOU ALL WENT INSIDE, WAS-- WHO WAS THE
6 LEAD INVESTIGATOR?

7 A DETECTIVE DONLEY.

8 Q AND WERE YOU ALL THEN GOING TO CONDUCT A CRIME
9 SCENE INVESTIGATION, TO YOUR KNOWLEDGE?

10 A YES.

11 Q AND WHERE DID YOU ALL START LOOKING FIRST?

12 A CHUCK JOHNSON'S ROOM.

13 Q OKAY. NOW, IN CHUCK JOHNSON'S ROOM, DID YOU
14 ASSIST IN THE INVESTIGATION IN THAT ROOM?

15 A YES.

16 Q AND DID OFFICER DONLEY SEARCH THE ROOM?

17 A YES.

18 Q DID YOU SEARCH THE ROOM?

19 A YES.

20 Q DID YOU THOROUGHLY SEARCH THE ROOM?

21 A YES.

22 Q BEHIND YOU, SIR, IN THE EXHIBIT BOARD, NUMBER 3

23 AS WE ARE LOOKING AT THE TOP, RIGHT-HAND PICTURE, AND THE
24 ONE RIGHT BELOW IT, IS THAT MR. JOHNSON'S ROOM?

25 A YES.

26 Q IS THAT THE WAY THAT YOU FOUND IT WHEN YOU FIRST
27 ENTERED IT COMING BACK WITH OFFICER DONLEY TO THE
28 RESIDENCE AROUND 2:00?

1 A YES.

2 Q OKAY. AND DID-YOU ALL LOOK UNDER ALL THOSE
3 CLOTHES AND THROUGH THE CLOSET IN THE TOOL BOX AND
4 EVERYTHING?

5 A BASICALLY, YES.

6 Q LOOK UNDER THE BED?

7 A YES.

8 Q OKAY. WHAT WAS UNDER THE BED?

9 A AS FAR AS I REMEMBER, A PORNO MAGAZINE.

10 Q IS THAT ALL?

11 A THAT'S ALL I RECALL.

12 Q OKAY. SO, YOU NOTED THAT?

13 A NOT NECESSARILY.

14 Q OKAY. ARE YOU INSTRUCTED TO TAKE ANY EVIDENCE?

15 A I TOOK A BED SHEET, YES.

16 Q ANY OTHER EVIDENCE?

17 A CONTAINER OF ORANGE JUICE AND TWO GLASSES.

18 Q OKAY. DID YOU HAVE PLASTIC GLOVES ON?

19 A I DON'T RECALL.

20 Q OKAY. DID YOU HAPPEN TO MAKE ANY NOTES OF YOUR
21 EVIDENCE-COLLECTION PROCEDURES?

22 A NO.

23 Q WHEN YOU ARRIVED THERE AT 2:00, TAKE-- WELL, LET
24 ME BACK UP.

25 WERE YOU INSTRUCTED TO BAG UP ALL THOSE CLOTHES AND
26 THINGS IN THE ROOM FOR POSSIBLE TESTING?

27 A NO, I WAS NOT, NOR DID I.

28 Q OKAY. DID YOU TAKE ANY PHOTOGRAPHS?

1 A NO.

2 Q OKAY. WAS ANYONE CALLED IN TO TAKE SOME
3 PHOTOGRAPHS AT THAT TIME?

4 A MY RECOLLECTION, DETECTIVE DONLEY TOOK
5 PHOTOGRAPHS.

6 Q AND ALSO I BELIEVE DETECTIVE KELLY MIGHT HAVE.

7 A OFFICER KELLY?

8 Q RIGHT.

9 A POSSIBLY.

10 Q ALL RIGHT. WAS ANYONE CALLED-- WAS OFFICER
11 KELLY, TO YOUR KNOWLEDGE, WAS HE A PHOTOGRAPHER FOR CRIME
12 SCENES?

13 A I DON'T HAVE THAT INFORMATION.

14 Q OKAY. DO YOU KNOW WHAT HIS DUTIES WERE AT THAT
15 TIME? DID YOU HAVE PERSONAL KNOWLEDGE OF WHAT HIS DUTIES
16 WERE AT THAT TIME? WAS HE A PATROLMAN?

17 A HE WAS A PATROLMAN, YES.

18 Q OKAY. TO YOUR KNOWLEDGE, WAS ANYBODY CALLED
19 FROM LET'S SAY THE SHERIFF'S LAB OR THE D.O.J., THE
20 SPECIALIZED, AND TAKE CRIME SCENE PHOTOGRAPHS?

21 A THE ONLY PERSON THAT WAS CALLED THAT HAD CRIME
22 SCENE WAS DETECTIVE DONLEY FROM OUR DEPARTMENT.

23 Q OKAY. WERE YOU PRESENT WHEN THE BAG WAS TAKEN?
24 THERE WAS A PLASTIC BAG SITTING RIGHT IN FRONT OF THE
25 PROSECUTOR.

26 WERE YOU PRESENT WHEN THAT WAS TAKEN INTO EVIDENCE?

27 A POSSIBLY. I DON'T RECALL.

28 Q YOU DON'T RECALL. OKAY. NOW, HOW LONG WERE

1 YOU-ALL IN MR. JOHNSON'S ROOM SEARCHING?

2 A TWENTY MINUTES TO A HALF HOUR.

3 Q AND IS IT A FAIR STATEMENT THAT YOU, OFFICER
4 DONLEY, AND OFFICER KELLY WERE SEARCHING IN THERE FOR
5 TWENTY OR THIRTY MINUTES?

6 A I DON'T RECALL OFFICER KELLY IN THERE. BUT IT'S
7 POSSIBLE HE WAS.

8 Q BUT AS FAR AS THE STATEMENT THAT YOU AND OFFICER
9 DONLEY WERE IN THAT ROOM FOR ABOUT TWENTY, THIRTY MINUTES
10 IN THAT ROOM SEARCHING?

11 A THAT'S CORRECT.

12 Q OKAY. AND AM I ALSO CORRECT IN ASSUMING AS A
13 FAIR STATEMENT THAT ALL THESE CLOTHES AND THINGS THAT WERE
14 THERE AND STUFFED UNDER THE BED, THAT MAGAZINE, ALL OF
15 THIS ACTUALLY TAKEN AND VIEWED AND LOOKED AT TO SEE IF IT
16 WOULD BE ANY EVIDENCE AT ALL; RIGHT? I MEAN, IF THERE WAS
17 ANYTHING TO IT NOTEWORTHY TO POSSIBLE BOOK INTO EVIDENCE?

18 A POSSIBLY, YES.

19 Q IS THAT THE WAY THE SEARCH HAPPENED?

20 A THAT IS CORRECT.

21 Q OKAY. NOW, AFTER THAT THIRTY-MINUTE TIME AND
22 SEARCHING MR. JOHNSON'S ROOM, WHAT DID, WHAT ROOM DID
23 YOU-ALL GO INTO NEXT?

24 A I DON'T RECALL.

25 Q DID YOU GO INTO ANOTHER ROOM, OR WAS THE SEARCH
26 DONE AT THAT TIME?

27 A AS FAR AS I WAS CONCERNED, IT WAS CONCLUDED AT
28 THAT TIME JUST IN THE ROOM ITSELF.

1 Q OKAY. DID YOU AND OFFICER DONLEY AT THAT TIME
2 LEAVE?

3 A YES.

4 Q DID YOU AND OFFICER DONLEY AT ANY TIME SEARCH
5 THE PARENT'S BEDROOM FOR ANY POTENTIAL EVIDENCE?

6 A I DID NOT. AND I CAN'T SPEAK FOR OFFICER
7 DONLEY.

8 Q WHEN YOU WERE IN THE HOUSE AT THAT TIME
9 SEARCHING WITH, YOU KNOW, WITH THE CRIME-SCENE
10 INVESTIGATOR, WITH OFFICER DONLEY, WERE YOU ALL TOGETHER
11 OR WAS HE OFF SEARCHING IN ANOTHER ROOM SOMEWHERE?

12 A I NEVER SAW HIM GO INTO ANY OTHER ROOM.

13 Q THANK YOU. HOW ABOUT OFFICER OR PATROLMAN
14 KELLY?

15 A I DIDN'T SEE HIM GO IN ANYBODY ELSE'S ROOM.

16 Q SO, FAIR STATEMENT YOU-ALL WENT IN THERE TO DO A
17 CRIME-SCENE INVESTIGATION, WENT TO MR. JOHNSON'S ROOM,
18 SEARCHING FOR TWENTY AND THIRTY MINUTES, AND LEFT;
19 CORRECT?

20 A THAT IS CORRECT.

21 Q NOW, JUST BRIEFLY, THIS EVIDENCE STICKER THAT
22 GOES ON THE OUTSIDE OF THE DOOR, CORRECT, YOU THINK
23 OFFICER DONLEY PUT THAT ON THERE?

24 A I CAN'T RECALL WHO PUT IT ON THERE. I CAN'T
25 RECALL MYSELF PUTTING IT ON THERE. BUT IT WAS PLACED ON
26 THE DOOR.

27 Q OKAY. AND WHEN? AGAIN, YOU MAY HAVE MENTIONED.
28 I'M SORRY FOR BELABORING IT. WHEN?

1 A THAT'S WHEN CHUCK JOHNSON ALREADY LEFT AND THE
2 BODY HAD ALREADY BEEN TAKEN OUT OF THE ROOM.

3 Q ABOUT WHAT TIME?

4 A 1:00, SOMEWHERE IN THAT TIME FRAME.

5 Q SO, SOMEWHERE BETWEEN--IS IT FAIR TO SAY
6 SOMEWHERE BETWEEN 12 AND 1 THAT STICKER WAS PUT ON THAT
7 DOOR?

8 A AFTER THE ARRIVAL OF DETECTIVE DONLEY, YES.

9 Q WHEN OTHER STICKERS WERE PUT ON DOORS IN THE
10 HOUSE?

11 A TO MY RECOLLECTION, NONE.

12 Q SO, ANYBODY COULD GO IN THE OTHER ROOMS. JUST
13 MR. JOHNSON'S ROOM, THEY COULDN'T GO IN; RIGHT?

14 A TO MY RECOLLECTION, THAT WAS THE ONLY STICKER
15 WAS PLACED ON MR. JOHNSON'S ROOM.

16 Q OKAY. HOW ABOUT EXTERNALLY?

17 A I DON'T RECALL THAT.

18 Q ANY STICKERS PLACED ON THE FRONT DOOR OF THE
19 SLIDING GLASS DOOR, THE WINDOW?

20 A I DON'T RECALL THAT.

21 Q DID-- WHEN YOU LEFT AFTER SEARCHING, DID YOU
22 SECURE THE HOUSE?

23 A JUST BY LOCKING IT, YES.

24 Q OKAY. AND WHAT DID YOU LOCK EXACTLY?

25 A THE WINDOWS WERE LOCKED AND THE REAR DOOR,
26 SLIDING DOOR, AND ALSO THE FRONT DOOR WERE LOCKED.

27 Q AND YOU LOCKED THOSE?

28 A YES.

1 Q THEY HAD BEEN OPEN BEFORE OR YOU ACTUALLY JUST
2 CHECKED THEM?

3 A JUST CHECKED THEM. THE FRONT DOOR WAS OBVIOUSLY
4 UNLOCKED. WE LOCKED THE FRONT DOOR.

5 Q RIGHT. YOU DON'T KNOW. YOU MENTIONED YOU
6 LOCKED THEM. BUT YOU DON'T KNOW?

7 A I CHECKED THEM, MAKE SURE THEY ARE LOCKED.

8 Q OKAY. GREAT. YOU HAD ASKED MR. JOHNSON'S
9 PERMISSION TO GO INTO HIS ROOM. AND HE NEVER
10 HAD A PROBLEM WITH THAT. THAT'S CORRECT; ISN'T IT?

11 A HE NEVER HAD A PROBLEM WITH THAT AT ANY TIME.

12 Q RIGHT. WERE YOU INSTRUCTED AT ANY PARTICULAR
13 METHOD OF COLLECTING THE EVIDENCE. AND YOU SAID YOU TOOK
14 THE BED SHEET?

15 A YES.

16 Q AND THAT WAS THE ONLY BED SHEET THAT WAS TAKEN
17 FROM THE HOUSE TO YOUR KNOWLEDGE?

18 A THAT IS CORRECT.

19 Q WERE YOU INSTRUCTED BY ANYONE AS TO HOW TO
20 COLLECT THAT TO PRESERVE IT FOR POTENTIAL FUTURE FORENSIC
21 WORK?

22 A NO.

23 Q BUT DID YOU ALREADY KNOW HOW TO PROPERLY COLLECT
24 THAT SO IT COULD BE--

25 MS. SCHMAUSS: I AM GOING TO OBJECT AS IRRELEVANT,
26 YOUR HONOR. WE HAVEN'T INTRODUCED THE BED SHEET. IT IS
27 IRRELEVANT WHETHER IT IS COLLECTED PROPERLY OR NOT.

28 MR. ABLARD: THE REASON I ASK, YOUR HONOR, WAS

1 BECAUSE IT WAS BROUGHT UPON DIRECT THAT HE COLLECTED IT.
2 AND I WAS JUST ASKING HOW HE COLLECTED IT.

3 THE COURT: OVERRULED. YOU MAY ANSWER THE QUESTION.

4 MR. ABLARD: THANK YOU.

5 A I, BASED ON MY TRAINING AS A LAW ENFORCEMENT
6 OFFICER, I PLACED INTO A PAPER SACK AND PLACED IT INTO
7 EVIDENCE.

8 Q OKAY. AND WHAT ELSE DID YOU COLLECT?

9 A AN ORANGE-JUICE CONTAINER, THE CONTAINER OF
10 ORANGE JUICE AND TWO GLASSES, CUPS.

11 Q AND COLLECTION PROCEDURE IS THE SAME, PUT THEM
12 IN LITTLE BAGS, PLASTIC BAGS, PAPER BAGS?

13 A I BELIEVE THOSE WERE PLASTIC. BUT I CAN'T
14 RECALL AT THIS TIME.

15 Q IS THAT SOMETHING YOU'D WRITE DOWN?

16 A YES.

17 Q IF YOU KNOW WHERE THAT IS, WITHOUT TOO MUCH--

18 A I BELIEVE I JUST PLACED IN THERE STATED IN MY
19 REPORT. I CAN CHECK IT, NOW HOW, AND PLACED IT INTO
20 EVIDENCE.

21 Q WERE YOU USING-- WERE YOU USING THE LITTLE
22 PLASTIC GLOVES WHEN YOU COLLECTED ORANGE JUICE AND THE
23 COUPLE OF GLASSES?

24 A I DON'T RECALL.

25 Q HOW MANY REPORTS DID YOU DO IN THIS PARTICULAR
26 CASE, OFFICER?

27 A THE FIRST ONE CONSISTING OF PAGE 1 THROUGH PAGE
28 6, AND A SECOND ONE CONSISTING OF PAGE 1 AND 2. THAT'S

1 IT.

2 Q DO YOU RECALL JUST BRIEFLY HOW MANY--WELL,
3 STRIKE THAT. I IF I MAY JUST A MOMENT, YOUR HONOR.

4 THE COURT: CERTAINLY.

5 Q BY MR. ABLARD: WHAT ARE THE TIMES THAT YOU
6 MENTIONED THAT MR. JOHNSON INTERRUPTED WHEN YOU WERE
7 SPEAKING WITH MR. LOPEZ? DO YOU RECALL THAT?

8 A THE TIMES?

9 Q RIGHT. IN OTHER WORDS, HE, YOU HAD MENTIONED
10 MR. JOHNSON INTERRUPTED SEVERAL TIMES. HE WANTED TO TALK
11 TO YOU.

12 A YES.

13 Q WHEN YOU WERE INTERVIEWING MR. LOPEZ?

14 A YES.

15 Q OKAY. AND YOU WENT THROUGH YOUR REPORT, DID HE
16 ALSO TELL YOU AT THAT TIME THAT, YOU KNOW, APPROXIMATELY 7
17 OR 7:15 ON THAT DATE, THAT HE HAD HEARD BRITTANY ENTER THE
18 ROOM OF HER PARENTS, AND DARIN RIGGS SHOUTED OUT TO
19 BRITTANY THAT SHE SHOULD KNOCK BEFORE ENTERING THE ROOM?

20 A YES.

21 Q NOW, BRIEFLY THIS PHONE CALL THAT YOU WERE
22 TALKING ABOUT, YOU MENTIONED RIGHT WHEN YOU STARTED
23 TESTIFYING TO SOMETHING ABOUT A PHONE CALL?

24 A YES.

25 Q AND WHO TOLD YOU ABOUT THE PHONE CALL?

26 A CHUCK.

27 Q THAT'S MR. JOHNSON?

28 A YES.

1 Q AND NO ONE EVER--HE DIDN'T HEAR ANYONE ON THE
2 OTHER ON THE PHONE EXCEPT FOR MR. RIGGS; RIGHT? DO YOU
3 REMEMBER THAT?

4 A THAT'S CORRECT.

5 Q OKAY. MR. RIGGS HAD TOLD YOU THAT THE PHONE HAD
6 RANG, BUT THE CALLER HAD HUNG UP AND MR. JOHNSON WAS ON
7 THE PHONE?

8 A THAT WAS THEIR ASSUMPTION, YES.

9 Q THEY ASSUMED THAT, YOU ARE SAYING?

10 A WELL, THE PHONE RINGS SIMULTANEOUSLY THE SAME
11 ROOM. IF YOU PICK UP ONE, YOU COULD HEAR SOMEBODY TALKING
12 ON THE OTHER. AND THEY STATED THE CALLER POSSIBLY HUNG
13 UP. SO NOW THEY ARE JUST TALKING TO EACH OTHER ON THE
14 PHONE.

15 Q OKAY. THEY DIDN'T ACTUALLY SAY POSSIBLY. THEY
16 SAID HUNG UP; RIGHT?

17 A THAT PROBABLY BE THE ONLY WAY THEY COULD RING,
18 IF SOMEBODY CALLS.

19 Q BUT THEY HANG UP. THE CALLER HUNG UP?

20 A YES.

21 Q WITHOUT TALKING?

22 A YES.

23 Q OKAY. NOW, YOU MENTIONED ALSO IN YOUR TESTIMONY
24 THAT MR. JOHNSON HAD--CORRECT ME IF I'M WRONG--TAKEN SOME
25 PHOTOS AND MOMENTARILY RAN OUTSIDE. YOU USED THE WORD
26 MOMENTARILY, AS I RECALL?

27 A THAT'S WHAT HE STATED.

28 Q HE STATED TO YOU THAT HE MOMENTARILY WENT OUT?

1 A YES, OUT IN FRONT OF THE RESIDENCE.

2 Q OKAY. AND WHICH REPORT WAS THAT IN?

3 A I HAVE TO REFER BACK TO MY ORIGINAL REPORT.

4 Q OKAY. TO SAVE TIME, BECAUSE I AM JUST ABOUT

5 DONE. OKAY. TO SAVE TIME, YOU MIGHT WANT TO TURN TO

6 YOUR ORIGINAL REPORT, PAGE 3, TOP PARAGRAPH THAT MAY OR

7 MAY NOT BE WHERE YOU ARE REFERRING. BUT YOU MAY WANT TO

8 REVIEW THAT IN CASE IT IS?

9 A YES.

10 Q OKAY. NOW THAT STARTS WITH SHE QUICKLY HANDED

11 HIM A PHOTOGRAPH OF HER DAUGHTER THAT JOHNSON GOING OUT

12 DIRECTLY INTO THE STREET AND STOPPING TWO PASSING VEHICLES

13 IN ORDER TO ASK THEM IF THEY HAD SEEN THE MISSING

14 THREE-YEAR-OLD GIRL.

15 IS THAT THE PART THAT YOU ARE TESTIFYING ABOUT?

16 A THAT IS CORRECT.

17 Q OKAY. IS THERE ANYTHING ABOUT MOMENTARY?

18 A I DON'T SEE THAT.

19 Q IN OTHER WORDS, HE HADN'T TOLD YOU HOW LONG HE

20 WAS GOING IN THE STREET; OR DID HE?

21 A IF HE DID, I DIDN'T NOTE THAT. I DO NOT SEE

22 THAT.

23 Q ALL RIGHT. SO, YOU DON'T KNOW IF HE WAS JUST

24 MOMENTARILY OUT THERE OR HE WAS OUT THERE LONGER; RIGHT?

25 A THAT IS CORRECT.

26 MR. ABLARD: THANK YOU. I HAVE NOTHING FURTHER RIGHT

27 NOW, YOUR HONOR.

28 REDIRECT EXAMINATION

1 BY MS. SCHMAUSS:

2 Q OFFICER BALES, THE PART ABOUT THE CALLER HAD YOU
3 HUNG UP, THAT WAS MR. JOHNSON'S STATEMENT; CORRECT?

4 A YES.

5 Q AND MR. JOHNSON TOLD YOU THAT WHEN HE PICKED UP
6 THE PHONE AND HEARD DARIN, APPARENTLY THE CALLER HAD HUNG
7 UP?

8 A YES.

9 Q WHEN YOU WERE IN THE ENTRYWAY WHEN JENNIFER AND
10 DARIN RETURNED TO THE HOUSE, COULD YOU SEE THE DEFENDANT'S
11 BEDROOM DOOR FROM THE ENTRYWAY WHERE YOU WERE?

12 A YES, YOU CAN.

13 Q SO, YOU COULD SEE THAT NO ONE WENT IN THERE?

14 A THAT'S CORRECT.

15 Q NOW, YOU SAID THAT THE WINDOWS WERE SECURED?

16 A YES.

17 Q WERE THESE ALL THE WINDOWS TO THE HOME OR THE
18 WINDOWS TO THE DEFENDANT'S BEDROOM?

19 A I CHECKED ALL THE WINDOWS TO THE HOME. THEY
20 WERE LOCKED.

21 Q DID YOU ALSO CHECK THE DEFENDANT'S WINDOW?

22 A THAT'S CORRECT.

23 Q AND WAS IT LATCHED AND CLOSED OR LOCKED?

24 A YES, THEY WERE.

25 Q SO, THAT IT COULD NOT BE OPENED FROM THE OUTSIDE
26 WITHOUT EVIDENCE OF TAMPERING?

27 A YES.

28 Q WHEN YOU WENT BACK THE NEXT DAY, DID YOU NOTICE

1 ANY OF TAMPERING TO THE DEFENDANT'S BEDROOM WINDOW?

2 A THERE WAS NO TAMPERING.

3 MS. SCHMAUSS: THANK YOU. I HAVE NOTHING FURTHER.

4 MR. ABLARD: REAL QUICK.

5 RECROSS-EXAMINATION

6 BY MR. ABLARD:

7 Q WHEN DID YOU CHECK FOR THE TAMPERING?

8 A THE NEXT DAY.

9 Q OKAY. DID YOU PUT THAT IN YOUR REPORT, YOU WENT
10 AROUND CHECKING FOR TAMPERING?

11 A I DON'T BELIEVE SO. THAT IS MY MEMORY.

12 Q AND PROSECUTOR ASKED YOU A QUESTION. WAS IT
13 ONLY MR. JOHNSON, I TAKE IT, WHO TOLD YOU THAT THIS OTHER
14 CALLER HUNG UP?

15 A TO MY RECOLLECTION, YES.

16 Q OKAY. DARIN RIGGS DIDN'T MENTION THAT TO YOU?

17 A I DON'T RECALL.

18 Q OKAY. MAYBE IF YOU MIGHT BE SO KIND TURNING TO
19 YOUR ORIGINAL REPORT, PAGE 5, SECOND TO THE LAST
20 PARAGRAPH. AND IF YOU CAN REVIEW THAT JUST BRIEFLY.

21 AND THIS WILL BE THE LAST QUESTION, BASICALLY I HAVE
22 IN THE MORNING.

23 A YES, HE DID STATE THAT.

24 Q AND THE CALLER, PARAGRAPH STARTS I THEN SPOKEN
25 TO DARIN RIGGS; CORRECT?

26 A THAT'S CORRECT.

27 Q YES. AND HAD A PHONE CALL. HOWEVER, THE
28 CALLER HAD HUNG UP. HE ASKED NOW JOHNSON WAS AWAKE. HE

1 ASKED JOHNSON IF BRITTANY WAS IN HER ROOM. AND HE SAID
2 NO; CORRECT?

3 A CORRECT.

4 MR. ABLARD: I HAVE NOTHING FURTHER AT THIS TIME.

5 THANK YOU.

6 MS. SCHMAUSS: NOTHING, YOUR HONOR.

7 THE COURT: YOU MAY STEP DOWN SUBJECT TO RECALL. AND
8 THANK YOU.

9 RECESS, FOLKS. DON'T TALK ABOUT THE CASE. DON'T
10 FORM ANY OPINIONS OR CONCLUSIONS.

11 RETURN OUTSIDE 1:30, PLEASE.

12 (NOON RECESS)

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1 RANCHO CUCAMONGA, CALIFORNIA; MONDAY, OCTOBER 30, 1995

2 1:30 P.M.

3 DEPARTMENT 4

HON. ROBERT E. LAW, JUDGE

4
5 APPEARANCES: SET FORTH ON THE TITLE PAGE.

6
7 (GAIL GREENLEE, C-8647, OFFICIAL REPORTER.)

8 ---###---

9 THE COURT: NOW, WE HAVE EVERYONE. DO YOU HAVE
10 ANOTHER WITNESS FOR US?

11 MS. SCHMAUSS: YES, I DO. I HAVE PETE LOPEZ.

12
13 PETE LOPEZ

14 CALLED AS A WITNESS BY THE PLAINTIFF, WAS SWORN AND
15 TESTIFIED AS FOLLOWS:

16 THE CLERK: PLEASE RAISE YOUR RIGHT HAND.

17 YOU DO SOLEMNLY SWEAR THE TESTIMONY YOU
18 MAY GIVE IN THE MATTER NOW PENDING BEFORE THIS COURT
19 SHALL BE THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT
20 THE TRUTH, SO HELP YOU GOD.

21 THE WITNESS: I DO.

22 THE CLERK: THANK YOU. PLEASE BE SEATED. PLEASE STATE
23 YOUR FULL NAME SPELLING YOUR LAST NAME FOR THE RECORD.

24 THE WITNESS: MY NAME IS PETE LOPEZ L-O-P-E-Z.

25 DIRECT EXAMINATION

26 BY MS. SCHMAUSS:

27 Q THANK YOU. MR. LOPEZ, ARE YOU RELATED TO DARIN
28 RIGGS?

1 A AS A FRIEND, YES.

2 Q YOU ARE NOT A RELATION?

3 A NO.

4 Q OKAY. SO, HOW LONG HAVE YOU KNOWN DARIN RIGGS?

5 A APPROXIMATELY TEN YEARS.

6 Q DID YOU ASSIST DARIN RIGGS IN CLEARING OUT THE
7 HOUSE ON 9393 EXETER IN MONTCLAIR?

8 A YES.

9 Q OKAY. AND WERE YOU ASKED BY HIM TO DO THIS OR
10 DID YOU VOLUNTEER OR WHAT?

11 A I WAS ASKED BY HIM TO--WELLL, YEAH. I WAS
12 ASKED BY HIM TO HELP CLEAN OUT THE HOUSE.

13 Q WAS THERE A SPECIFIC AREA HE WANTED HELP WITH?

14 A I TOLD HIM OR ASKED HIM IF I WOULD BE ANY HELP
15 TO CLEAR OUT THE SUSPECT'S ROOM.

16 Q OKAY. DID HE EXPRESS TO YOU NOT WANTING TO
17 CLEAR IT OUT?

18 A YEAH. AND I DIDN'T WANT HIM OR JENNY TO HAVE
19 TO DO THAT.

20 Q OKAY. SO, YOU SAID YOU WOULD DO THAT JOB?

21 A YES.

22 Q WAS SOMEBODY ELSE ASSISTING YOU?

23 A YES.

24 Q WAS THERE A PARTICULAR REASON THEY WANTED THE
25 ROOM CLEARED?

26 A THEY HAD A BED THAT WAS IN THERE. AND THEY WERE
27 GOING TO CLEAN THE HOUSE OUT SO THAT THEY COULD LEAVE.

28 Q LEAVE THE HOUSE PERMANENTLY?

1 A YES.

2 Q YOUR UNDERSTANDING IT WAS A RENTAL?

3 A YES.

4 Q OKAY. THE BED THAT WAS IN THE SUSPECT'S ROOM
5 WAS THEIR PROPERTY. WAS THERE ANY OTHER PROPERTY
6 BELONGING TO THEM?

7 A THE BED WAS THEIR PROPERTY. THAT I WAS AWARE
8 OF.

9 Q OKAY. HAVE ITEMS BEEN REMOVED FROM THE ROOM
10 BEFORE YOU GOT THERE, TO YOUR KNOWLEDGE?

11 A YES.

12 Q OKAY. NOW, LOOKING BEHIND YOU IS A BOARD THAT
13 IS MARKED EXHIBIT 3 FOR IDENTIFICATION. AND ON THE
14 RIGHT HAND SIDE ARE TWO PHOTOS.

15 DO YOU RECOGNIZE WHAT ROOM THAT IS?

16 A YES. THAT APPEARS TO BE THE ROOM THAT THE
17 SUSPECT WAS IN.

18 Q DID IT LOOK LIKE THAT WHEN YOU CLEARED IT OUT?

19 A NO.

20 Q WHAT WAS MISSING?

21 A QUITE A FEW THINGS WERE MISSING IN THERE.

22 Q WAS THERE STUFF ON THE FLOOR WHEN YOU GOT THERE?

23 A A FEW THINGS. I BELIEVE SOME VIDEO CASSETTES
24 MIGHT HAVE BEEN IN THERE, THAT BEDROOM OR THE BED WAS IN
25 THERE. THE STAND HERE IN THE TOP RIGHT PHOTOGRAPH ON THE
26 TOP RIGHT CORNER OF THAT PHOTOGRAPH WAS IN THERE ALSO.

27 Q WAS ANY CLOTHING OR ANYTHING LEFT ON THE FLOOR?

28 A NOT THAT I WAS AWARE OF, NO.

1 Q DO YOU REMEMBER WHAT DATE IT WAS THAT YOU DID
2 THIS CLEANING OF THE ROOM?

3 A 10-20 OF '93, I BELIEVE.

4 Q THE 20TH OF OCTOBER?

5 A YES.

6 Q OKAY. WERE YOU GOING TO VACUUM AND DUST AND DO
7 THOSE THINGS TOO?

8 A NO.

9 Q JUST CLEAR UP ANY DEBRIS THAT IS LEFT BEHIND?

10 A YES.

11 Q WERE YOU TAKING THE BED OUT?

12 A YES.

13 Q WHO WAS ASSISTING?

14 A RACHAEL HEFNER.

15 Q AND BRITTANY'S PARENTS WERE NOT IN THE ROOM WHEN
16 YOU WERE DOING THIS?

17 A NO, NO. THEY WEREN'T.

18 Q OKAY. DID YOU ACTUALLY TAKE THE BED APART?

19 A YES, WE DID.

20 Q AND HOW DID YOU DO THAT?

21 A WELL, WE STARTED TO REMOVE THE TOP MATTRESS.

22 Q OKAY. THEN WHAT DID YOU DO?

23 A AND THEN WE LIFTED UP THE BOTTOM PART, THE BOX
24 SPRING. I AM ASSUME THAT'S WHAT YOU WOULD CALL IT.

25 Q TOOK IT OFF THE FRAME?

26 A LIFTED IT UP.

27 Q LIFTED WHAT UP?

28 A THE BOX SPRING.

1 Q DID YOU REMOVE IT?

2 A NOT AT THE PARTICULAR--WELL, WE LEFT IT UP. BUT
3 YEAH, WE DID, I BELIEVE, WE DID PICK IT UP AWAY.

4 Q AND DID YOU NOTICE SOMETHING WHEN YOU DID THAT?

5 A YES.

6 Q WHAT?

7 A A BLANKET.

8 Q WHAT KIND OF A BLANKET?

9 A APPEARED TO BE A CHILD'S BLANKET.

10 Q WHERE WAS THIS BLANKET?

11 A AGAINST THE WALL UNDER THE BED.

12 Q OKAY. WAS IT IN THE CENTER OF THE BED OR WHERE
13 WAS IT? HOW WAS IT SITUATED?

14 A IT WAS AGAINST THE WALL.

15 Q ALL THE WAY AGAINST THE WALL?

16 A YES, WHERE THE BED IS AGAINST THE WALL.

17 MS. SCHMAUSS: MR. ABLARD.

18 Q BY MS. SCHMAUSS: MR. LOPEZ, I AM GOING TO SHOW
19 YOU WHAT IS MARKED AS EXHIBIT 5 FOR IDENTIFICATION AND ASK
20 YOU IF YOU RECOGNIZE THE ITEM I AM REMOVING FROM THE
21 ENVELOPE MARKED EXHIBIT 5.

22 DO YOU RECOGNIZE THIS?

23 A YES. THAT APPEARS TO BE THE BLANKET WE HAD
24 FOUND.

25 Q OKAY. AND WAS IT IN A FOLDED CONDITION WHEN YOU
26 FOUND IT OUT? WHAT WAS IT LIKE? MAYBE YOU CAN SHOW US?

27 A IT JUST APPEARED TO BE LENGTHWISE AGAINST THE
28 WALL, JUST BUNCHED UP AGAINST THE WALL IN BUNCHED UP HOW,

1 LENGTHWISE.

2 Q WHY DON'T YOU PUT IT IN THE POSITION YOU CAN
3 REMEMBER?

4 A IT WAS KIND OF LIKE THAT THE BEST I CAN RECALL,
5 IT WAS LIKE THAT SOMETHING SIMILAR TO THAT
6 (DEMONSTRATING).

7 Q OKAY. AND SHOVED UP ALL THE WAY AGAINST THE
8 WALL?

9 A YES.

10 Q SO, IF ONE WERE TO TAKE THE BED AND PULL IT UP
11 AND PUSH IT AGAINST THE WALL, IT WOULD STILL BE COVERED IF
12 YOU LAY THE BED ON ITS SIDE?

13 MR. ABLARD: YOUR HONOR, I AM GOING TO OBJECT;
14 VAGUE. AND I DON'T UNDERSTAND THE QUESTION. MAYBE IT IS
15 JUST ME.

16 MS. SCHMAUSS: MAYBE I CAN RESTATE IT.

17 Q BY MS. SCHMAUSS: IF YOU ENDED THE BED SO THAT
18 IT WAS UP ON ITS EDGE, WOULD IT STILL COVER THE BLANKET?

19 A POSSIBLY IF THEY TURNED THE BED ALL THE WAY UP
20 AGAINST THE WALL.

21 Q AND LEFT IT LYING?

22 A YEAH.

23 Q OR SITTING ON THE FLOOR?

24 A YES.

25 Q AND AFTER YOU NOTICED THIS BLANKET, WHAT DID YOU
26 DO?

27 A I STILL HELD THE BED UP WHILE RACHAEL KICKED IT
28 OUT.

1 Q OKAY. DID YOU NOTICE SOMETHING PECULIAR ABOUT
2 THE BLANKET?

3 A AT THAT POINT, I NOTICED SOME RED SPOTS ON IT.
4 AND THEN I REMEMBERED THAT WE SHOULD NOT TOUCH IT. AND
5 AT FIRST, I WANTED ONE OF THE PARENTS TO IDENTIFY IT.

6 Q OKAY. AND THERE'S SOME HOLES CUT OUT OF THE
7 BLANKET. WAS IT LIKE THIS? DID IT HAVE HOLES CUT OUT OF
8 IT WHEN YOU SAW IT?

9 A NO, IT DIDN'T.

10 Q DO YOU RECALL WHERE THE BLOOD WAS?

11 A THAT, I COULDN'T.

12 Q CAN'T REMEMBER?

13 A I CAN'T REMEMBER THAT.

14 Q OKAY. WOULD IT BE LIKELY THAT THE BLOOD WAS
15 WHERE THE HOLES WERE?

16 A POSSIBLY, YES.

17 Q OKAY. AND YOU SAW RED SPOTS. YOU DIDN'T KNOW
18 IF IT WAS BLOOD OR NOT?

19 A YES.

20 Q YOU THOUGHT IT WAS BLOOD. AND DID YOU CALL ONE
21 OF THE PARENTS OVER?

22 A YES. I WANTED TO HAVE THE FATHER COME OVER AND
23 IDENTIFY IT.

24 Q OKAY. DID THE FATHER THEN DO SOMETHING
25 REGARDING THE POLICE?

26 A YEAH. THEY HAD HIM PHONE THE POLICE, MONTCLAIR
27 POLICE DEPARTMENT.

28 Q WERE YOU PRESENT WHEN THE POLICE CAME?

1 A YES, I WAS.

2 Q AND DID THE POLICE OFFICER TAKE CUSTODY OF THE
3 BLANKET?

4 A YES, HE DID.

5 Q WHEN YOU WERE IN THE ROOM ON THE 20TH, DID YOU
6 NOTICE ANY LIKE POLICE TAPE OR ANYTHING ANYWHERE?

7 A NOT ON THAT PARTICULAR DAY, NO.

8 Q DID YOU NOTICE IT ON ANOTHER DAY?

9 A YES.

10 Q WHAT DAY DID YOU NOTICE?

11 A DAYS LATER WHEN WE CONTINUED TO CLEAN OUT THE
12 HOUSE, WE HAD COME BACK AND WE WERE PUTTING THE SCREENS
13 BACK ON THE WINDOWS. 'CAUSE ALL OF THE SCREENS WERE
14 REMOVED. AND I HAD NOTICED WHAT APPEARED TO BE EVIDENCE
15 TAPE AGAINST THE WINDOWS SEALING.

16 Q THIS WAS TWO DAYS AFTER THE 20TH?

17 A I COULDN'T TELL YOU EXACTLY WHAT DATE IT WAS I
18 WAS THERE TO--

19 Q WAS AFTER YOU FOUND THE BLANKET?

20 A YES, IT WAS AFTERWARDS.

21 Q WAS THAT TAPE ON THE WINDOW? DID THAT INCLUDE
22 THE SUSPECT'S WINDOW?

23 A YES, IT WAS.

24 Q CAN YOU SAY YOU WERE IN CHARGE OF CLEANING THAT
25 ROOM UP?

26 A YES, IT WAS ON MOST OF THE WINDOWS, I BELIEVE.

27 Q THEY WERE TAPED SHUT?

28 A IT WAS ON A SOUTH SIDE AS WE WERE PUTTING THE

1 SCREENS BACK ON.

2 Q OKAY. WAS THE TAPE SEALING THE WINDOW SHUT?

3 A YES, IT WAS.

4 MS. SCHMAUSS: NO FURTHER QUESTIONS, YOUR HONOR.

5 MR. ABLARD: THANK YOU.

6 CROSS-EXAMINATION

7 BY MR. ABLARD:

8 Q HI. MR. LOPEZ, WHO IS RACHAEL HEFNER?

9 A I BELIEVE SHE IS DARIN'S COUSIN.

10 Q NOW, ON THE 20TH, HOW MANY PEOPLE WENT OVER TO
11 THE HOUSE TO FINISH MOVING OUT?

12 A SIX PEOPLE.

13 Q OKAY. THAT WAS MR. RIGGS?

14 A YES.

15 Q MS. RETHORN?

16 A THERE WERE TWO MR. RIGGS THERE AT THE TIME.

17 Q OKAY. DARIN RIGGS?

18 A YES.

19 Q AND THEN SIX FAMILY OR FRIENDS?

20 A YEAH.

21 Q PEOPLE. OKAY. NOW, WHO SAW THE WHAT YOU STATED
22 AS BLOOD ON THE BLANKET FIRST, YOU OR MS. HEFNER?

23 A HEFNER, I BELIEVE IT IS HEFNER.

24 Q OKAY. SHE SPOTTED IT FIRST?

25 A UM, PRETTY MUCH SAW IT AT THE SAME TIME.

26 Q YOU BOTH SAW IT AT THE SAME TIME?

27 A YEAH.

28 Q OKAY. WHEN THE POLICE CAME OUT TO INTERVIEW

1 ABOUT THIS INCIDENT ON THE 20TH, DID THEY INTERVIEW YOU?

2 A YES, HE DID.

3 Q WAS HE TAKING NOTES WHEN HE INTERVIEWED YOU?

4 A YES.

5 Q OKAY. DID HE ASK YOU ABOUT PUTTING THE--WELL,
6 OKAY. DID, NOW, THAT, THE BLANKET, THAT WAS SHUT AGAINST
7 THE WALL AND THE BED, BUT ON THE FLOOR?

8 A ON THE FLOOR, YES.

9 Q THE PROSECUTOR ASKED YOU A QUESTION, SOMETHING
10 ABOUT IF YOU LIFT THE BED UP, COULD YOU SEE THE BLANKET?

11 A UH-HUH.

12 Q OKAY. DO YOU KNOW, DO YOU KNOW IF YOU COULD OR
13 NOT?

14 A NO, I DID SEE IT. I LIFTED IT UP FROM ONE END.

15 Q UH-HUH. OKAY. IT WAS AGAINST THE WALL. BUT
16 IT WAS OUT TO THE FLOOR?

17 A YES.

18 Q SO IF YOU LOOKED UNDER THE BED, YOU COULD SEE
19 IT?

20 A YES.

21 Q NOW, YOU MENTIONED YOU SAW THE BLOOD. WHERE ON
22 THE BLANKET WAS THE BLOOD?

23 A IN ONE OF THE CORNERS, I BELIEVE. IT WAS BY
24 THE HOLES MISSING IN THE BLANKET. I CAN'T RECALL
25 PHYSICALLY WHERE THE BLOOD WAS AT.

26 Q OKAY. WHAT SORT OF LOOKING AT HOLES, FIGURING
27 THAT'S WHERE THE BLOOD WAS?

28 A YEAH.

1 Q OKAY. SINCE THE 10TH OF OCTOBER, FROM THEN ON
2 TO THE 20TH OF OCTOBER, WAS THAT THE FIRST TIME THAT YOU
3 WERE IN THE HOUSE?

4 A I WAS IN ONE TIME EARLIER. AND I CAN'T RECALL
5 EXACTLY WHEN IT WAS IN I DID NOT GO INTO THE SUSPECT'S
6 ROOM AT THAT TIME.

7 Q WHO WERE YOU WITH, IF ANYONE, AT THE TIME THAT
8 YOU WENT IN BETWEEN OCTOBER 10TH AND OCTOBER THE 20TH?

9 A I WAS THERE. MY WIFE, I BELIEVE, WAS THERE.
10 STEVE LOPEZ, I BELIEVE WAS ALSO THERE. AND THE PARENTS
11 WERE THERE.

12 Q OKAY. ANYONE ELSE?

13 A AS FAR AS I CAN RECALL, THAT WAS IT. THERE
14 MIGHT HAVE BEEN MORE.

15 Q OKAY. AND YOU DON'T RECALL WHEN WITHIN THAT
16 TEN-DAY PERIOD IT WAS?

17 A NO.

18 Q RIGHT?

19 A IT WAS I BELIEVE A COUPLE OF DAYS AFTERWARDS.
20 MAYBE THREE DAYS.

21 Q THREE DAYS AFTER THE 10TH?

22 A YES, I BELIEVE. IT MIGHT HAVE BEEN LONGER.

23 Q OKAY. SO, SOMEWHERE IN THERE. ALL RIGHT. AND
24 WAS THESE TAGS ON THE WINDOWS AT THAT TIME WHERE THE SEALS
25 OR WHAT WERE THEY, WHAT DID THEY LOOK AT?

26 A LITTLE EVIDENCE MARKERS THAT IF REMOVED ON, THEY
27 ARE PART LEFT THERE. AND THEY CAN'T BE RE-ATTACHED TO THE
28 WINDOW.

1 Q IS THAT-- WHAT DO THEY LOOK LIKE?

2 A IT'S BEEN A LONG TIME. I CAN'T RECALL EXACTLY.
3 BUT I KNOW THEY ARE EVIDENCE MARKERS.

4 Q OKAY. THAT'S FAIR. WERE THEY, THIS TIME THAT
5 YOU WENT IN BETWEEN THE 10TH AND THE 20TH, WERE THEY ON
6 THE WINDOWS ON THE OUTSIDE; DO YOU REMEMBER?

7 A AT THAT POINT, WE DIDN'T GO.

8 Q OR DID YOU GO OUT THERE?

9 A WALKING AROUND THE HOUSE, WE WERE IN BRIEFLY AND
10 LEFT.

11 Q OKAY. WAS THERE ONE OF THOSE ON ANY OF THE
12 DOORS ON THE INSIDE?

13 A I DIDN'T GO DOWN TO THAT PART IN THE SUSPECT'S
14 ROOM.

15 Q OKAY.

16 A I DIDN'T GO LOOK.

17 Q WERE THERE ANY ON ANY DOORS IN THE-- ON THE
18 INSIDE THAT YOU REMEMBER?

19 A I DON'T RECALL.

20 Q OKAY. AND THERE'S NO POLICE OFFICER WITH YOU ON
21 THIS PARTICULAR VISIT; RIGHT?

22 A NO. I BELIEVE WE HAD CLEARANCE FROM MONTCLAIR
23 POLICE DEPARTMENT TO GO IN AND TAKE SOME ITEMS OF CLOTHING
24 THAT BELONGED TO THE PARENTS.

25 Q OKAY. AND SO, ABOUT HOW MANY OF YOU WERE THERE
26 ON THAT PERIOD OF TIME BETWEEN THE 10TH AND THE 20TH?

27 A I WOULD BE GUESSING ABOUT FOUR.

28 Q OKAY?

1 A FIVE.

2 Q AT ANY TIME, DID YOU-ALL SPLIT UP OR DID YOU GO
3 TO ONE ROOM AT A TIME, OR EACH ONE OF YOU IN A LITTLE
4 GROUP, DO YOU KNOW?

5 A KIND OF STAYED IN A LITTLE GROUP. I WAS KIND OF
6 YOU KNOW WE WENT IN. AND FOR A SPECIFIC REASON TO REMOVE
7 THE CLOTHING. AND THAT WAS ABOUT IT.

8 Q OKAY. AND WHICH ROOM DID YOU-ALL GO IN?

9 A THE PARENTS' ROOM.

10 Q ANY OTHER ROOMS?

11 A I BELIEVE WE MIGHT HAVE GONE INTO OTHER ROOMS,
12 MAYBE STEVE LOPEZ'S ROOM, I BELIEVE.

13 Q BUT YOU ARE NOT SURE?

14 A NO.

15 Q OKAY. THAT'S FINE. OKAY. SO, OTHER THAN
16 THERE'S A ON THE 20TH, YOU RECALL THAT LITTLE STAND WAS IN
17 MR. JOHNSON'S ROOM?

18 A YES.

19 Q THE BED WAS IN MR. JOHNSON'S ROOM; RIGHT?

20 A YES.

21 Q WAS A BED FRAME?

22 A YES.

23 Q OKAY. NO SHEETS ON THE BED?

24 A I DON'T BELIEVE SO.

25 Q OKAY NO CLOTHING THAT YOU RECALL?

26 A NO.

27 Q OKAY. SOME CASSETTES?

28 A I BELIEVE SO, YES.

1 Q AND THAT'S-- YOU REMEMBER ALL OF THAT WAS IN
2 THERE?

3 A YES.

4 Q NOW, HAD YOU GONE IN THIS HOUSE AFTER THE 20TH?

5 A YES, THAT'S--

6 Q AND THAT PURPOSE WAS FOR?

7 A TO MAKE SURE THE HOUSE WAS CLEANED OUT SO THAT
8 THEY CAN RELEASE IT BACK TO THE LANDLORD.

9 Q OKAY. SO, THE PURPOSE OF YOUR TRIP ON THE 20TH
10 BASICALLY WAS JUST TO CLEAR OUT MR. JOHNSON'S ROOM?

11 A AND THE REST OF THE HOUSE TOO. THEY WERE
12 PACKING UP THINGS IN THE KITCHEN AND SO FORTH.

13 Q OKAY. SO, YOU, OKAY. SO, IT TOOK A COUPLE OF
14 DIFFERENT, TWO OR THREE, TIMES TO GET EVERYTHING OUT?

15 A YES.

16 Q OKAY. DO YOU RECALL HOW LONG THE INTERVIEW WAS?
17 AND YOU MAY NOT RECALL-- BEEN A LONG TIME-- HOW LONG THE
18 INTERVIEW WAS THAT YOU HAD WITH THE POLICE OFFICER ON THE
19 20TH?

20 A YES, MY NAME AND WHERE WE FOUND THE BLANKET AT,
21 AND WHO HAD TOUCHED IT.

22 Q DID YOU MENTION TO HIM THAT IT WAS IN THE
23 POSITION THAT IT WAS IN, THAT WAS CRUMPLED LIKE THAT ON
24 THE FLOOR AND UP AGAINST THE WALL UNDER THE BED?

25 A I BELIEVE WE MIGHT HAVE JUST TOLD HIM WE FOUND
26 IT UNDER THE BED AT THAT POINT. I DON'T KNOW IF WE HAD--
27 HOW MUCH WE HAD TOLD HIM.

28 Q YOU DON'T WANT TO TELL HIM-- YOU WANT TO TELL

1 HIM EVERYTHING AT THAT POINT; RIGHT?

2 A YES.

3 Q BUT YOU WERE NOT SURE IF YOU TOLD HIM IT WAS ON
4 THE FLOOR NEXT TO THE WALL?

5 A UNDER THE BED BY THE WALL.

6 MR. ABLARD: I HAVE NOTHING FURTHER.

7 REDIRECT EXAMINATION

8 BY MS. SCHMAUSS:

9 Q DO YOU REMEMBER ABOUT WHAT TIME IT WAS THAT YOU
10 CLEARED OUT THAT ROOM?

11 A IT WAS EVENING TIME. I COULDN'T TELL YOU
12 EXACTLY.

13 Q OKAY MR. LOPEZ, I AM SHOWING YOU PHOTOGRAPH
14 MARKED EXHIBIT 3 FOR IDENTIFICATION; ASK YOU IF YOU
15 RECOGNIZE WHAT IS DEPICTED IN EXHIBIT 13?

16 A YEAH, SUSPECT'S ROOM.

17 Q IS THAT PRETTY MUCH HOW IT LOOKED WHEN YOU WERE
18 CLEANING IT OUT?

19 A YEAH.

20 Q WAS THERE ANY MORE STUFF?

21 A YES.

22 Q DO YOU RECALL THIS, I MEAN, THIS LITTLE BOOK
23 SHELF?

24 A YEAH.

25 Q WHATEVER IT IS. THE BED LOOKED THIS WAY?

26 A YES.

27 Q THAT TIME THAT YOU WENT BACK TO THE HOUSE,
28 BETWEEN THE 10TH AND THE 20TH, YOU SAID THAT DARIN AND

1 JENNIFER WANTED TO GET SOME PERSONAL ITEMS?

2 A YES.

3 Q AND ALL OF YOU STAYED IN A GROUP?

4 A PRETTY MUCH, YES.

5 Q DID YOU EVER SEE ANYBODY ON THAT OCCASION GO
6 INTO THE SUSPECT'S ROOM?

7 A NO.

8 Q DID YOU SEE JENNIFER GO IN THE SUSPECT'S ROOM?

9 A NO.

10 Q DID YOU SEE DARIN?

11 A NO.

12 Q THE ONLY THING THEY DID WAS IN YOUR PRESENCE GO
13 IN THEIR ROOM AND THEN THEY WENT INTO LOPEZ'S ROOM?

14 A HE MIGHT HAVE BEEN WITH US AT THE TIME.

15 Q OKAY. YOU ARE CERTAIN THAT NO ONE WENT INTO THE
16 SUSPECT'S ROOM?

17 A POSITIVE.

18 MS. SCHMAUSS: NOTHING FURTHER.

19 MR. ABLARD: BRIEFLY.

20 RECROSS-EXAMINATION

21 BY MR. ABLARD:

22 Q DID YOU GO INTO MR. LOPEZ'S ROOM ON THAT TIME
23 BETWEEN THE DATE THAT YOU WENT, BETWEEN THE 10TH AND THE
24 20TH?

25 A I BELIEVE I DID.

26 Q YOU BELIEVE THE OTHER GROUP DID TOO, THE OTHER
27 PEOPLE?

28 A NO. I DON'T BELIEVE, I DON'T THINK THEY DID.

1 IT WAS REAL QUICK.

2 Q YOU WENT IN MAYBE AND THEY DIDN'T?

3 A YEAH.

4 Q OKAY. WHEN YOU WENT INTO HIS ROOM, WHAT DID YOU
5 DO?

6 A I RETRIEVED A HANDGUN THAT BELONGED TO STEVE.

7 Q A WHICH-- I AM SORRY?

8 A A HANDGUN.

9 Q OKAY. AND WHERE WAS THIS IN HIS ROOM?

10 MS. SCHMAUSS: OBJECTION; IRRELEVANT.

11 MR. ABLARD: I THOUGHT IT WAS RELEVANT.

12 THE COURT: WHY?

13 MR. ABLARD: BECAUSE I JUST WANT TO KNOW WHAT THEY
14 GOT OUT AND--

15 THE COURT: SUSTAINED.

16 Q BY MR. ABLARD: ANYTHING ELSE?

17 THE COURT: SUSTAINED.

18 MR. ABLARD: FINE.

19 Q BY MR. ABLARD: ONE LAST QUESTION. THE BLANKET
20 WAS UP AGAINST THE WALL AFTER LOOKING AT EXHIBIT-- WAS
21 THAT?

22 A 13.

23 Q YES. NUMBER 13, WAS IT AGAINST THE--WAS IT
24 AGAINST THE HEADBOARD OR THE LONG PART AGAINST THE WALL
25 WITH THE WINDOW?

26 A THE LONG PART AGAINST THE WALL WITH THE WINDOW.

27 Q OKAY. SO, THAT WOULD HAVE BEEN RIGHT DOWN IN
28 HERE. WAS IT IN A BALL OR SORT OF ELONGATED A LITTLE BIT?

1 A KIND OF ABOUT THERE MAYBE, MAYBE. YOU KNOW.
2 IT'S HARD TO TELL. IT WAS AGAINST THAT WALL.

3 Q BUT YOU ARE NOT SURE IF IT WAS IN A BALL OR REAL
4 ELONGATED?

5 A I COULDN'T SAY IT WAS THAT LONG. WE DIDN'T--YOU
6 KNOW, I DIDN'T MEASURE IT OR ANYTHING, SO.

7 MR. ABLARD: OKAY. THAT'S FAIR. I HAVE NO FURTHER
8 QUESTIONS. THANK YOU.

9 MS. SCHMAUSS: NOTHING FURTHER.

10 THE COURT: YOU MAY STEP DOWN. THANK YOU.

11 MS. SCHMAUSS: MAY HE BE EXCUSED?

12 THE COURT: MR. ABLARD?

13 MR. ABLARD: RESERVE, PLEASE.

14 THE COURT: ALL RIGHT.

15 MS. SCHMAUSS: PEOPLE CALL OFFICER CARLOS.

16

17 HENRY CARLOS

18 CALLED AS A WITNESS BY THE PLAINTIFF, WAS SWORN AND
19 TESTIFIED AS FOLLOWS:

20 THE CLERK: PLEASE RAISE YOUR RIGHT HAND.

21 YOU DO SOLEMNLY SWEAR THE TESTIMONY YOU
22 MAY GIVE IN THE MATTER NOW PENDING BEFORE THIS COURT
23 SHALL BE THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT
24 THE TRUTH, SO HELP YOU GOD.

25 THE WITNESS: I DO.

26 THE CLERK: THANK YOU. PLEASE BE SEATED. PLEASE STATE
27 YOUR FULL NAME SPELLING YOUR LAST NAME FOR THE RECORD.

28 THE WITNESS: HENRY CARLOS C-A-R-L-O-S.

DIRECT EXAMINATION

BY MS. SCHMAUSS:

Q OFFICER CARLOS, ARE YOU A POLICE OFFICER WITH
MONTCLAIR POLICE DEPARTMENT?

A YES, I AM.

Q HOW LONG HAVE YOU BEEN SO EMPLOYED?

A SIX YEARS, JANUARY.

Q AND WERE YOU EMPLOYED AS MONTCLAIR POLICE
OFFICER ON OCTOBER 20TH, 1993?

A YES, I WAS.

Q ON THAT DATE, WERE YOU DISPATCHED TO 9393 EXETER
IN MONTCLAIR?

A YES, I WAS.

Q ABOUT WHAT TIME?

A ABOUT 7:13, 7:15.

Q THAT WILL BE 1913 HOURS?

A YES, P.M.

Q OKAY. AND DID YOU CONTACT SOME PERSON THERE?

A YES, I DID.

Q WHO?

A I CONTACTED A RACHAEL F. HEFNER.

Q AND A MR. LOPEZ, THE GENTLEMAN WHO JUST LEFT.
DID YOU SEE HIM?

A I SAW HIM, YES. BUT I DIDN'T RECOGNIZE HIM.

Q OKAY. AND DID THEY HAVE SOMETHING TO SHOW YOU?

A YES, THEY DID.

Q WHAT DID THEY SHOW YOU?

A A BLANKET.

1 Q OKAY. AND DID THEY TELL YOU WHERE THEY FOUND IT?

2 A YES, THEY DID.

3 Q WHERE?

4 A THEY TOLD ME THEY FOUND IT IN MR. JOHNSON'S

5 EX-BEDROOM WHILE THEY ARE CLEANING IT OUT.

6 Q DID YOU TAKE CUSTODY OF IT?

7 A YES, I DID.

8 Q SHOWING YOU EXHIBIT 5 FOR IDENTIFICATION, ASKING
9 YOU IF YOU RECOGNIZE THE WRITING ON THE EXHIBIT TAG?

10 A IT'S MINE.

11 Q OKAY. AND DID YOU PLACE THE ITEM THAT'S INSIDE
12 INSIDE THIS BAG?

13 A YES, I DID.

14 Q DID YOU REMEMBER THE ITEM?

15 A YES, I DID.

16 Q WHAT IS THE ITEM INSIDE?

17 A IT IS A DISNEY CHILD BLANKET.

18 Q IS THIS THE BLANKET THAT MR. LOPEZ AND
19 MS. HEFNER GAVE YOU?

20 A YES.

21 Q AND DID YOU PLACE THE BLANKET INTO INSIDE THIS
22 ENVELOPE?

23 A YES, I DID.

24 Q I MEAN IN THIS BAG?

25 A YES, I DID.

26 Q AND SEALED IT?

27 A YES.

28 Q OKAY. THE BLANKET NOW AND SHOWING IT TO YOU AND

1 ASKING YOU IS ANYTHING DIFFERENT ABOUT IT THAN IT APPEARS
2 NOW?

3 A YES. THERE WAS NO HOLES THEN.

4 Q DO YOU RECALL ANY SUBSTANCE ON THE BLANKET?

5 A IT APPEARED TO BE RED IN COLOR, BLOOD STAINED.

6 Q BASED ON YOUR TRAINING AND EXPERIENCE, WHAT DID
7 IT LOOK LIKE?

8 A BLOOD STAIN.

9 Q AND WHERE THE HOLES ARE, DO YOU RECALL WHAT WAS
10 THAT?

11 A I REMEMBER IT WAS IN THE CORNER, YEAH.

12 Q SO?

13 A IN AROUND THAT AREA.

14 Q APPROXIMATELY WHERE THE HOLES ARE?

15 A YES.

16 Q WHAT DID YOU DO WITH THIS PIECE OF EVIDENCE
17 AFTER YOU RETRIEVED IT, PUT IT IN THE BAG?

18 A I PUT IN THE EVIDENCE LOCKER OF MONTCLAIR POLICE
19 DEPARTMENT.

20 Q THAT'S A LOCKED FACILITY?

21 A YES, IT IS.

22 Q AND IS THAT THE END OF YOUR CONTACT WITH THIS
23 PIECE OF EVIDENCE?

24 A THAT'S IT, YES.

25 MS. SCHMAUSS: I HAVE NO FURTHER QUESTIONS, YOUR
26 HONOR.

27 MR. ABLARD: I HAVE NOTHING FURTHER AT THIS TIME,
28 YOUR HONOR.

1 THE COURT: THANK YOU.

2 MS. SCHMAUSS: MAY HE BE EXCUSED?

3 THE COURT: SURE.

4 MS. SCHMAUSS: I NEED TO SPEAK TO THE NEXT WITNESS

5 FOR JUST MOMENT.

6 THE COURT: WE WILL WAIT.

7 (PAUSE)

8 MS. SCHMAUSS: THANK YOU. MY NEXT WITNESS, YOUR
9 HONOR, IS DR. SHERIDAN.

10 THE COURT: ALL RIGHT.

11 FRANK SHERIDAN, M.D.

12 CALLED AS A WITNESS BY THE PLAINTIFF, WAS SWORN AND
13 TESTIFIED AS FOLLOWS:

14 THE CLERK: PLEASE RAISE YOUR RIGHT HAND.

15 YOU DO SOLEMNLY SWEAR THE TESTIMONY YOU
16 MAY GIVE IN THE MATTER NOW PENDING BEFORE THIS COURT
17 SHALL BE THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT
18 THE TRUTH, SO HELP YOU GOD.

19 THE WITNESS: I DO.

20 THE CLERK: THANK YOU. PLEASE BE SEATED. PLEASE STATE
21 YOUR FULL NAME SPELLING YOUR LAST NAME FOR THE RECORD.

22 THE WITNESS: MY NAME IS FRANK SHERIDAN. LAST NAME IS
23 S-H-E-R-I-D-A-N.

24 MS. SCHMAUSS: YOUR HONOR, BEFORE I START MY INQUIRY,
25 I'D LIKE TO MOVE INTO EVIDENCE A CERTIFIED COPY OF THE
26 VICTIM, BRITTANY LYNN RETHORN RIGGS' DEATH CERTIFICATE
27 MARKED EXHIBIT 6 FOR IDENTIFICATION.

28 MR. ABLARD: I DON'T HAVE A PROBLEM WITH THIS, YOUR

1 HONOR. I WOULD STIPULATE.

2 THE COURT: IT IS RECEIVED.

3 MS. SCHMAUSS: THANK YOU.

4 DIRECT EXAMINATION

5 BY MS. SCHMAUSS:

6 Q DR. SHERIDAN, HOW ARE YOU EMPLOYED?

7 A I AM EMPLOYED BY THE COUNTY OF SAN BERNARDINO IN
8 THE CORONER'S OFFICE. I AM THE CHIEF MEDICAL EXAMINER FOR
9 THE COUNTY OF SAN BERNARDINO.

10 Q SO, YOU ACTUALLY ARE IN CHARGE OF THE CORONER'S
11 OFFICE?

12 A NOT THE ENTIRE OFFICE. I AM IN CHARGE OF THE
13 MEDICAL PART, IN CHARGE ESSENTIALLY OF THE AUTOPSY
14 DEPARTMENT.

15 Q OKAY. SO, THERE'S ACTUALLY THERE'S A CORONER
16 THAT WORKS FOR THE COUNTY. AND THEN YOUR CAPACITY AS
17 CHIEF MEDICAL EXAMINER, YOU OVERSEE ALL THE DOCTORS AND
18 OTHER PERSONNEL THAT PERFORM AUTOPSIES?

19 A THAT IS CORRECT.

20 Q AND YOU SUPERVISE STAFF OF HOW MANY?

21 A STAFF OF THREE OTHER PATHOLOGISTS AND APART FROM
22 MYSELF. AND THEN WE HAVE A MORGUE STAFF OF TWO OR THREE.

23 Q OKAY. AND HOW LONG HAVE YOU BEEN EMPLOYED BY THE
24 COUNTY OF SAN BERNARDINO?

25 A WITH THE CORONER'S OFFICE OF SAN BERNARDINO,
26 SINCE 1988.

27 Q WHAT ARE YOUR DUTIES AS CHIEF MEDICAL DOCTOR FOR
28 THE COUNTY?

1 A WELL, BASICALLY, I SPEND MOST OF MY TIME DOING
2 AUTOPSIES ALONG WITH THE OTHER PATHOLOGISTS. IN OTHER
3 WORDS, WE ALL DO OUR SHARE OF THE REGULAR WORK.

4 AS THE CHIEF MEDICAL EXAMINER, I HAVE SOME ADDITIONAL
5 ADMINISTRATIVE DUTIES, BASICALLY THE GENERAL
6 ADMINISTRATIVE OF THE DEPARTMENT, THE TEACHING PROGRAM WE
7 HAVE, THINGS LIKE THAT.

8 Q ARE YOU A MEDICAL DOCTOR?

9 A YES, I AM.

10 Q AND WHEN DID YOU RECEIVE YOUR MEDICAL LICENSE?

11 A I RECEIVED MY MEDICAL DEGREE IN 1971.

12 Q WHERE DID YOU STUDY?

13 A UNIVERSITY, COLLEGE OF DUBLINE IN IRELAND WHICH
14 IS WHERE I COME FROM.

15 Q AND ONCE YOU GRADUATED FROM MEDICAL SCHOOL, DID
16 YOU DO AN INTERNSHIP?

17 A YES.

18 Q WHERE WAS THAT?

19 A AT THE TEACHING HOSPITAL OF THE UNIVERSITY I
20 HAVE STUDIED AT IN DUBLIN.

21 Q OKAY. AND THERE YOU TREATED PATIENTS?

22 A YES, I DID.

23 Q IN FACT, HOW MANY YEARS OF YOUR CAREER WAS
24 DEVOTED TO TREATING LIVE PATIENTS?

25 A FIVE YEARS PROBABLY CONTINUOUSLY. AND THEN WHEN
26 I WENT INTO THE RESIDENCY PROGRAM AS IT IS CALLED IN
27 PATHOLOGY, I USED TO DO SOME MOONLIGHTING ON THE WEEKENDS
28 IN CLINICS. SO THAT WENT ON FOR A FEW YEARS.

1 Q DID THAT INCLUDE PEDIATRIC PATIENTS?

2 A YES, IT DID.

3 Q DID YOU TREAT QUITE A FEW PEDIATRIC PATIENTS?

4 A YES.

5 Q COULD YOU CONTINUE TO TELL THE JURY ABOUT YOUR
6 BACKGROUND AND YOUR TRAINING AND EXPERIENCE THAT LED YOU
7 TO YOUR CURRENT POSITION?

8 A AS I SAID, I GOT MY MEDICAL DEGREE IN 1971 FROM
9 UNIVERSITY OF DUBLIN. THEN DID AN INTERNSHIP THERE.
10 FOLLOWING THAT, I SPENT THREE YEARS WITH THE BRITISH
11 GOVERNMENT IN AFRICA, MEDICAL OFFICER.

12 I CAME BACK TO IRELAND IN 1976. I THEN SPENT TWO
13 YEARS DOING RESEARCH IN PHARMACOLOGY WHICH IS THE STUDY OF
14 DRUG ACTION IN THE BODY. I DID THAT AT THE SAME
15 UNIVERSITY WHERE I HAD DONE MY MEDICAL SCHOOL TRAINING.

16 IN 1978, I CAME TO THE UNITED STATES, CONTINUED TO DO
17 SOME SIMILAR RESEARCH IN PHARMACOLOGY AND ALSO RELATED
18 ASPECTS OF GENETICS.

19 IN 1981, I STARTED WHAT IS CALLED RESIDENCY PROGRAM
20 ON THE JOB TRAINING IN PATHOLOGY AT LOMA LINDA MEDICAL
21 CENTER HERE IN SOUTHERN CALIFORNIA. IN 198--THE
22 RESIDENCY PROGRAM FOR THE GENERAL PATHOLOGY WAS FROM
23 BETWEEN '82 AND '86. BUT I HAD TO TAKE ONE YEAR OUT IN
24 THE MIDDLE TO WORK IN GENERAL PRACTICE. THIS WAS BECAUSE
25 I WAS GOING THROUGH A CHANGE FROM TEMPORARY VISA IN THE
26 UNITED STATES TO PERMANENT ONE. AND ONE OF THE SIMPLER
27 WAYS OF QUALIFYING FOR THIS WAS TO WORK FOR A WHILE IN AN
28 AREA CONSIDERED TO BE SHORT OF DOCTORS. SO, I DID THAT

1 FOR ONE YEAR DURING MY RESIDENCY.

2 THEN, WENT BACK TO THE RESIDENCY AS IT WERE. IN 1986,
3 WHEN I COMPLETED THE BASIC PATHOLOGY TRAINING AT LOMA
4 LINDA, I WENT TO LOS ANGELES COUNTY, USC MEDICAL CENTER
5 FOR TWO YEARS OF A FELLOWSHIP IN NEUROPATHOLOGY. THAT'S
6 THE PATHOLOGY OF THE BRAIN, BASICALLY.

7 AND THEN IN 1988, CAME TO THE CORONER'S OFFICE IN SAN
8 BERNARDINO. AND I HAVE BEEN THERE SINCE THAT TIME.

9 Q WHAT DOES THE AREA OF FORENSIC MEDICINE, WHAT
10 DOES THAT ENCOMPASS? WHAT DOES THAT MEAN, FOENSIC
11 MEDICINE?

12 A BASICALLY FORENSIC MEDICINE IS BRANCH OF
13 MEDICINE THAT INVESTIGATES LEGAL ASPECTS OF LEGAL ASPECTS
14 OF MEDICINE INCLUDING IN OUR PARTICULAR CASE, THE
15 INVESTIGATION OF DEATHS, DEATHS OF A POTENTIALLY
16 MEDICAL-LEGAL NATURE. FORENSIC PATHOLOGY WILL USUALLY
17 WORK FOR A CORONER'S OFFICE AND DO AUTOPSIES ON THE CASES
18 THAT ARE SENT TO THE CORONER'S OFFICE FOR THE DEATHS TO BE
19 INVESTIGATED.

20 Q IS YOUR TASK TO DETERMINE WHAT THE CAUSE OF
21 DEATH WAS?

22 A YES.

23 Q AND WHETHER OR NOT IT WAS NATURAL, ACCIDENTAL,
24 OR HOMICIDAL?

25 A THAT'S RIGHT.

26 Q AND YOU DID DEVOTE I THINK I HEARD YOU SAY YOU
27 DID DEVOTE PART OF YOUR MEDICAL STUDY TO THE AREA OF
28 PATHOLOGY?

1 A YES.

2 Q INCLUDING COURSE IN FORENSIC PATHOLOGY?

3 A YES. WELL, I MEAN THE FELLOWSHIP, THE RESIDENCY
4 AND FELLOWSHIP PART OF THAT DESCRIPTION I GAVE YOU, THAT
5 WAS ALL BASICALLY STUDIES ON-THE-JOB TRAINING, IF YOU
6 WILL, IN PATHOLOGY.

7 AND THEN AT THE END OF IT ALL, THERE'S AN EXAMINATION
8 SET BY THE AMERICAN BOARD OF PATHOLOGY. I TOOK THAT AND
9 PASSED IT. IN FACT THERE ARE THREE DIFFERENT ONES.
10 BECAUSE THERE'S THE GENERAL PATHOLOGY, NEUROPATHOLOGY, AND
11 FORENSIC, THREE DIFFERENT EXAMS.

12 Q SO, YOU ARE ACTUALLY CERTIFIED IN THE AREA OF
13 PATHOLOGY?

14 A YES, IN THOSE THREE AREAS.

15 Q IS THAT KNOWN AS BOARD CERTIFICATION?

16 A YES.

17 Q THAT'S EXTRA TRAINING AND EXTRA TESTING?

18 A YES.

19 Q YOU HAVE ALSO TAUGHT FORENSIC PATHOLOGY?

20 A YES.

21 Q WHEN DID YOU DO THAT?

22 A WELL, I AM DOING IT NOW ALL THE TIME. BECAUSE
23 WE HAVE WHAT IS WE HAVE OUR OWN CORONER'S OFFICE IN SAN
24 BERNARDINO HAS ITS OWN FELLOWSHIP PROGRAM IN FORENSIC
25 PATHOLOGY AND A PROGRAM SO THAT A PERSON WHO WANTS TO DO
26 FORENSIC PATHOLOGY, AFTER THEY HAVE DONE THE BASIC PART,
27 COMES TO US. AND WE ARE AN ACCREDITED PROGRAM. SO I RUN
28 THAT PROGRAM AND INCLUDING MOST OF THE TEACHING.

1 WE ALSO HAVE MEDICAL STUDENTS FROM TWO UNIVERSITIES
2 AROUND HER, TWO MEDICAL SCHOOLS THAT COME TO THE CORONER'S
3 OFFICE AS A REGULAR PART OF THEIR TRAINING. AND WHEN THEY
4 ARE WITH US, I TEACH THEM AS WELL.

5 Q WOULD THOSE BE STUDENTS FROM LOMA LINDA
6 UNIVERSITY MEDICAL CENTER AND THE COLLEGE OF OSTEOPATHIC
7 MEDICINE OF THE PACIFIC?

8 A THAT'S CORRECT.

9 Q HAVE YOU HAD A PARTICULAR INTEREST IN FOCUS IN
10 YOUR CAREER ON INVESTIGATION, THE ROLE OF PATHOLOGY IN THE
11 INVESTIGATION OF CHILD HOMICIDE?

12 A YES. CHILD HOMICIDE AND ALSO SIDS, SUDDEN
13 INFANT DEATH SYNDROME.

14 Q OKAY. AND HOW MUCH OF YOUR STUDIES HAVE BEEN
15 DEVOTED TO CHILD HOMICIDE?

16 A WELL, BASICALLY WHEN I SAY STUDY, I AM DOING
17 RESEARCH IN THE COURSE OF MY WORK. I AM CHECKING DATA ON
18 THOSE CASES, THESE TYPE OF CASES IN PARTICULAR. AND I AM
19 YOU KNOW TRYING TO ESTABLISH CERTAINLY RELATION TO SIDS.
20 I AM LOOKING FOR CAUSE OF, CAUSES OF SIDS. SO, BASICALLY,
21 I AM EVERY CASE THAT I DO THAT IS RELEVANT TO THESE
22 STUDIES BECOMES PART OF THE STUDY.

23 Q AND HAVE YOU ALSO BEEN ON THE SOUTHERN
24 CALIFORNIA CHILD DEATH REVIEW TEAM?

25 A YES.

26 Q WHAT IS THAT?

27 A THAT IS A TEAM OF PEOPLE FROM VARIOUS DIFFERENT
28 SPECIALTIES, SOCIAL WORKERS, PUBLIC HEALTH PEOPLE,

1 DOCTORS, LAW ENFORCEMENT, THAT MEETS REGULARLY TO
2 BASICALLY LOOK OVER ALL THE CASES OF DEATH INVOLVING
3 CHILDREN AND TO INITIATE ANY FURTHER INVESTIGATION AS SEEN
4 NECESSARY.

5 Q THIS IS CHILDREN FROM AGES WHAT TO WHAT?

6 A THEY ARE-- THEY DEFINE CHILDREN UP TO AGE OF
7 EIGHTEEN, I THINK.

8 Q IN YOUR ROLE AS CHIEF MEDICAL EXAMINER, YOU ALSO
9 DO AUTOPSIES, YOU SAID. SO WERE YOU ON DUTY ON OCTOBER
10 11, 1993 WHEN A CHILD BY THE NAME OF BRITTANY RIGGS WAS
11 BROUGHT IN?

12 A YES.

13 Q ACTUALLY BRITTANY RETHORN RIGGS?

14 A YES.

15 Q OKAY. AND WERE YOU GIVEN ANY SORT OF HISTORY
16 PRIOR TO PERFORMING ANY SORT OF HISTORY PRIOR TO
17 PERFORMING THE AUTOPSY ON BRITTANY?

18 A YES. THE WAY OUR OFFICE WORKS IS THAT WHEN A
19 CASE IS REPORTED TO OUR OFFICE, WE HAVE INVESTIGATORS,
20 DEPUTY CORONERS. AND THEY ARE THE ONES THAT GO TO THE
21 SCENE OF THE DEATH OR WHERE THE BODY IS, WHICHEVER THE
22 CASE MAY BE. THEY GET AS MUCH INFORMATION AS THEY CAN ON
23 THE CIRCUMSTANCES SURROUNDING THE DEATHS. AND THEY WRITE
24 A REPORT.

25 AND BEFORE WE BEGIN AN AUTOPSY, WE ALWAYS HAVE THAT
26 REPORT. WE READ IT. SO, THE INFORMATION THAT I HAD PRIOR
27 TO DOING THIS AUTOPSY CAME FROM PRIMARILY FROM THEM.

28 Q WERE YOU ALSO ASSISTED BY ANY MEMBERS OF THE

1 MONTCLAIR POLICE DEPARTMENT?

2 A YES, DETECTIVE DONLEY WAS PRESENT.

3 Q AND DID HE GIVE YOU WHAT HE KNEW ABOUT THE
4 CIRCUMSTANCES IN THIS CASE?

5 A I THINK SO, ALTHOUGH LOOKING AT MY OWN SUMMARY
6 OF IT, IT APPEARS TO HAVE GOTTEN MOST OF IT FROM DEPUTY
7 CORONER'S REPORT, PERHAPS HE CONFIRMED IT ESSENTIALLY.

8 Q OKAY. WHAT WAS IT THAT YOU KNEW PRIOR TO
9 STARTING THE AUTOPSY ON THE BODY OF BRITTANY?

10 A I KNEW THAT THE CHILD HAD BEEN FOUND IN A
11 RESIDENCE APPARENTLY IN A CLOSET, COVERED WITH PLASTIC, A
12 PLASTIC BAG; THAT THE CHILD WAS BASICALLY BROUGHT TO THE
13 HOSPITAL AND WAS FOUND TO BE DEAD SHORTLY AFTER ARRIVAL;
14 THAT IT WAS PRONOUNCED DEAD SHORTLY AFTER ARRIVAL. AND
15 THIS WAS THE PERHAPS THE ESSENTIAL PART OF WHAT I KNEW.

16 Q OKAY. AND THEN YOU ARE WHAT YOU ARE TRYING TO
17 DO IS AS YOU EXAMINE THE BODY, YOU ARE TRYING TO DETERMINE
18 WHAT KILLED HER?

19 A THAT IS CORRECT.

20 Q WAS THIS PRESENTED TO YOU AS A HOMICIDE OR AS
21 ANY SORT OF CONCLUSION MADE PRIOR TO YOU GETTING THE BODY
22 TO EXAMINE?

23 A I BELIEVE IT WAS PRESENTED TO AS A--LET ME JUST
24 CHECK THE CORONER'S REPORT. THE DEPUTY CORONER PRESENTED
25 AS A PROBABLE HOMICIDE. IN OTHER WORDS, HE CHECKED THE BOX
26 ON THE FORM THAT SAYS INITIAL EXAM, CONFESSION HOMICIDE.

27 Q WHEN THE DEATH CERTIFICATE INITIALLY SAYS
28 PENDING INVESTIGATION, ARE THEY WAITING FOR YOUR AUTOPSY

1 REPORT RESULT?

2 A YES.

3 Q DR. SHERIDAN, I AM SHOWING YOU EXHIBIT 47 AND 48
4 FOR IDENTIFICATION; ASK YOU IF YOU RECOGNIZE THE BODY THAT
5 WAS SHOWN IN THOSE PICTURES?

6 A YES. THESE ARE TWO PHOTOGRAPHS TAKEN AT THE
7 AUTOPSY OF BRITTANY RIGGS.

8 Q PRIOR TO YOU ACTUALLY PERFORMING THE AUTOPSY?

9 A THAT IS CORRECT.

10 Q NOW, THERE'S SOME MEDICAL DEVICES ON THE CHILD.

11 CAN YOU TELL US WHAT THOSE ARE?

12 A YES. THERE WAS AN ENDOTRACHEAL OR AIRWAY TUBE
13 IN THE MOUTH. AND THERE WAS SOME EKG RECORDER PADS
14 AFFIXED TO THE CHEST. AND THERE WAS--I DON'T KNOW IF I
15 CAN SEE IT HERE. BUT THERE WAS AN INTRAVENOUS LINE IN ONE
16 OF THE ARMS.

17 Q SO, THESE LITTLE CIRCULAR THINGS, THAT'S FOR THE
18 EKG?

19 A THAT'S CORRECT.

20 Q DID YOU WEIGH THE BODY?

21 A YES. THE WEIGHT RECORDED WAS--EXCUSE ME. THE
22 WEIGHT IS RECORDED WAS 45 POUNDS.

23 Q DID YOU MEASURE THE BODY?

24 A YES. 43 INCHES LONG.

25 Q NOW, DO YOU COMPARE THE MEASUREMENTS TO THE
26 STATED AGE?

27 A YES.

28 Q OKAY. AND WHAT'S THE PURPOSE OF THAT?

1 A BASICALLY TO SEE IF YOU ARE LOOKING AT A CHILD
2 THAT SEEMED TO BE NORMALLY DEVELOPED. IN OTHER WORDS,
3 SOME CHILDREN MAY BE VERY SMALL FOR THEIR--SMALL AND OF
4 LOW WEIGHT FOR THEIR AGE WHICH MIGHT INDICATE THAT THERE'S
5 SOMETHING WRONG WITH THEM, SOME MEDICAL PROBLEM. THAT'S
6 THE BASIC REASON WE DO IT.

7 Q WHAT WAS THE STATED AGE OF THIS CHILD?

8 A THREE YEARS.

9 Q OKAY. AND HOW DID YOU COMPARE THE MEASUREMENTS
10 TO THE STATED AGE?

11 A I THINK I PROBABLY LOOKED AT THE CHART WE HAVE
12 ON THE WALL SHOWING THE GROWTH CURVE. BUT BASICALLY
13 LOOKING AT THIS CHILD, IT WAS QUITE EVIDENT THAT SHE WAS
14 NORMALLY DEVELOPED AND SHE LOOKED STRONG.

15 Q SO WOULD YOU SAY THAT SHE WAS ON THE LARGE SIDE?

16 A YES, SHE WAS QUITE A LARGE CHILD FOR HER AGE.

17 Q AND THIS IS BASED ON YOUR EXPERIENCE TREATING
18 PEDIATRIC PATIENTS?

19 A YES.

20 Q WHAT DID YOU SAY-- YOU MENTIONED AUTOPSY. WHAT
21 DOES AN AUTOPSY INVOLVE?

22 A AN AUTOPSY INVOLVES POSTMORTAL EXAMINATION OF
23 THE BODY. AND BASICALLY IT HAS TWO MAJOR PARTS TO IT.

24 THE FIRST IS THE EXTERNAL EXAMINATION WHERE ONE LOOKS
25 AT THE BODY WITHOUT MAKING ANY INCISIONS OR CUTS AND
26 DESCRIBES ANYTHING THAT IS PRESENT, ANY ABNORMALITIES,
27 SOME NORMAL FINDINGS ALSO. AND THAT'S THE EXTERNAL EXAM.

28 AND THEN THE INTERNAL EXAM CONSISTS OF MAKING

1 INCISIONS AND OPENING THE CHEST, ABDOMEN, NECK, HEAD, AND
2 DESCRIBING ANY FINDINGS THERE, DESCRIBING THE STATE OF ALL
3 OF THE LUNGS-- THE ORGANS, I SHOULD SAY.

4 AND THEN DURING THE COURSE OF INTERNAL EXAMINATION,
5 SOME SMALL SPECIMEN ARE TAKEN FROM EACH OF THE ORGANS TO
6 BE EXAMINED UNDER MICROSCOPE LATER. AND THAT PART IS DONE
7 SOME DAYS AFTER THE AUTOPSY. BECAUSE THESE TISSUE SAMPLES
8 HAVE TO BE PROCESSED IN GLASS SLIDES TO BE EXAMINED. AND
9 BASICALLY, THAT'S THE MAIN PART OF THE WHOLE AUTOPSY.

10 Q OKAY. AND DID YOU FOLLOW THAT PROCEDURE IN
11 THIS PARTICULAR CASE?

12 A YES, I DID. I SHOULD ALSO MENTION THAT WE ALSO
13 TAKE SPECIMEN FOR TOXICOLOGY LAB DURING THE AUTOPSY AND
14 SEND THOSE TO A LAB FOR TESTING.

15 Q OKAY. SO YOU SAID THE FIRST THING YOU DO AFTER
16 READING THE HISTORY OR REFER THE HISTORY IS CONDUCTING THE
17 EXTERNAL EXAMINATION?

18 A THAT IS CORRECT.

19 Q OKAY. AND WHAT DID YOU FIND OF ANY SIGNIFICANCE
20 ON THE EXTERNAL EXAMINATION?

21 A ON THE EXTERNAL EXAMINATION I NOTED A NUMBER OF
22 THINGS.

23 FIRSTLY, IN THE EYES, IN THE CONJUNCTIVAE, THE BLOOD
24 VESSELS WERE CONGESTED. AND THERE WERE A FEW SMALL
25 HEMORRHAGES, LITTLE PINPOINT HEMORRHAGES, IN THE INNER
26 SIDE OF THE EYELID. THAT'S THE CONJUNCTIVAE. THEY ARE
27 THAT LINING THE EYE ON THE OUTSIDE. SO, THERE WERE LITTLE
28 HEMORRHAGES IN THE EYES IN THIS AREA.

1 THERE WERE ALSO SIMILAR SMALLER HEMORRHAGES ON THE
2 SKIN OF THE FACE.

3 THE NEXT MAJOR FINDING WAS THAT THERE WAS A BRUISE,
4 FRESH BRUISE, OF THE UPPER LIP. AND WHEN THE-- WHEN YOU
5 LIFT IT UP, THE UPPER LIP, YOU COULD SEE THAT THE FRENULUM
6 WAS TORN. THE FRENULUM IS THAT LITTLE FOLD OF THE LINING
7 OF THE MOUTH THAT YOU CAN FEEL WITH YOUR TONGUE BETWEEN
8 THE UPPER LIP AND YOUR UPPER RIGHT IN THE MIDLINE. AND IT
9 WAS TORN, LACERATED. AND THERE WAS BRUISING AND SOME
10 HEMORRHAGE IN THE SMALL AMOUNT OF HEMORRHAGE IN THE MOUTH
11 FROM THAT, AND BRUISING IN THE INSIDE OF THE LIP.

12 THE OTHER FINDING ON EXTERNAL WHICH WAS THERE WAS A
13 SMALL AMOUNT OF DRIED BLOOD IN THE LEFT EAR.

14 AND THOSE WERE THE MAIN FINDINGS, AT LEAST AS FAR AS
15 THE UPPER PART OF THE BODY WAS CONCERNED. THERE WAS A
16 BRUISE ON THE RIGHT SHIN JUST A WHAT APPEARED TO BE A
17 FRESH BRUISE.

18 Q WHY DID IT APPEAR TO BE FRESH?

19 A JUST BASED ON THE GENERAL APPEARANCE, BLuish
20 COLOR.

21 Q IF IT IS AN OLDER BRUISE, WHAT DO YOU EXPECT TO
22 SEE?

23 A WELL, BRUISES AS THEY GET OLDER WILL TEND TO
24 DISCOLOR. THEY BECOME SORT OF A YELLOWISH GREENISH
25 COLOR. AND THEN THEY FADE AWAY COMPLETELY.

26 Q IS THERE ANY WAY TO AGE THIS BRUISE YOU SAW IN
27 THE CHILD'S SHIN?

28 A WELL, I DIDN'T LOOK AT THAT PARTICULAR ONE UNDER

1 THE MICROSCOPE. I DID LOOK AT ALL THE OTHER INJURIES
2 UNDER THE MICROSCOPE. THE ONE ON THE SHIN BASICALLY I
3 JUST FIGURED IT WAS A FAIRLY RECENT, IT WAS A RECENT
4 INJURY. BUT I CAN'T TELL YOU EXACTLY WHEN IT HAPPENED.

5 Q DID THE EXTERNAL EXAMINATION ALSO INCLUDE WHAT
6 YOU HAVE MENTIONED ABOUT THE CHILD'S OVERALL APPEARANCE?

7 A YES.

8 Q WHICH YOU NOTED A WHAT?

9 A I DESCRIBED THE CHILD AS BEING NORMALLY
10 DEVELOPED, WELL NOURISHED. SO FOR JUST GENERAL TERMS
11 INDICATING THAT THE CHILD LOOKED HEALTHY.

12 Q DID YOU NOTICE ANYTHING ON THE EXTERNAL
13 EXAMINATION, ANY OUTWARD INDICATION THAT THIS CHILD HAS
14 BEEN ABUSED, A VICTIM OF CHILD ABUSE?

15 A WELL, IN MY OPINION--WELL, FIRST OF ALL, THESE
16 INJURIES THAT I HAVE JUST DESCRIBED WERE VERY SIGNIFICANT
17 FINDINGS.

18 Q NO. I AM NOT TALKING ABOUT THE CAUSE OF DEATH.
19 I AM TALKING ABOUT A CHILD THAT HAS BEEN REGULARLY BEATEN,
20 CHILDREN THAT ARE VICTIMS OF CHILD ABUSE SYNDROME. DID
21 SHE APPEAR TO BE THAT KIND OF CHILD?

22 A NO.

23 Q AFTER FINISHING THE EXTERNAL EXAMINATION, DID
24 YOU MOVE ON TO THE INTERNAL EXAMINATION?

25 A YES, THAT IS CORRECT.

26 Q AND WHAT DID YOU--WHAT DID YOU FIND?

27 A THE INTERNAL EXAMINATION, THE MAIN FINDINGS WERE
28 FIRST OF ALL IN THE CHEST, THERE WERE LITTLE TINY

1 HEMORRHAGES, SIMILAR TO THE ONES I MENTIONED EARLIER. WE
2 CALL PETECHIAL HEMORRHAGES, LITTLE PINPOINT HEMORRHAGES.
3 THESE ARE PRESENT ON THE SURFACE OF THE HEART, THE LUNGS,
4 AND THE ALSO WHAT IS CALLED THE THYMUS WHICH IS AN ORGAN
5 IN CHILDREN, CENTER OF THE CHEST WHICH USUALLY DISAPPEAR
6 BY THE TIME YOU BECOME AN ADULT. SO, THESE WERE THEY WERE
7 THESE HEMORRHAGES ON THE INSIDE OF THE CHEST BASICALLY.
8 IN THE NECK, THERE WAS SOME HEMORRHAGE IN THE MUSCLE OF
9 THE NECK ON EACH SIDE.

10 AND THEN WHEN I EXAMINED THE HEAD, WHICH I CUT THE
11 SCALP AND REFLECTED IT, THERE WERE THREE, AT LEAST
12 THREE--THERE WERE THREE SEPARATE CONTUSIONS, BRUISES IN
13 THE SCALP. ONE IN THE LEFT FOREHEAD AREA, ONE IN THE BACK
14 OF THE LEFT TEMPORAL AREA, AND THE THIRD ONE WAS AT THE
15 BACK OF THE HEAD IN WHAT WE CALL THE PARIETAL AREA. BUT
16 BASICALLY, THE BACK OF THE HEAD. AND BASICALLY IT WAS
17 TOWARDS NEAR THE MIDLINE. BUT TO THE RIGHT SIDE OF IT.
18 SO, THERE WERE THREE, THREE SEPARATE INJURIES IN THE TO
19 THE SCALP.

20 AND THEN THE ONLY OTHER MAJOR FINDINGS AS FAR AS THE
21 HEAD WAS CONCERNED, THE ONLY OTHER FINDINGS I SHOULD SAY,
22 IS THAT WHEN I EXAMINED THE BRAIN, THE BLOOD VESSELS ON
23 THE SURFACE OF THE BRAIN WERE RATHER CONGESTED. THEY WERE
24 FULLER OF BLOOD THAN YOU'D EXPECT THEM NORMALLY TO BE.

25 THESE ARE BASICALLY THE MAIN FINDINGS.

26 Q DR. SHERIDAN, IN RELATION TO WHAT YOU WERE JUST
27 TALKING ABOUT, I AM GOING TO SHOW YOU SOME PHOTOGRAPHS
28 MARKED EXHIBIT 54, 55, AND 56, ASK YOU IF THE HEMORRHAGING

1 ON THE FOREHEAD OR TEMPLE AREA AND THE BACK OF THE HEAD
2 ARE VISIBLE IN THESE PICTURES?

3 A YES. 54 AND 55 ARE SIMILAR PHOTOGRAPHS. AND
4 THEY BOTH SHOW THE BRUISE ON THE LEFT SIDE OF THE SCALP.

5 Q NOW, WHEN YOU ARE TALKING ABOUT THE LEFT SIDE OF
6 THE SCALP, IS THAT WHAT WE KNOW IN THE VERNACULAR AS THE
7 TEMPLE?

8 A I AM SAYING THE LEFT SIDE GENERALLY. BUT ONE OF
9 THESE INJURIES IS ACTUALLY TOWARDS THE FRONT, PROBABLY
10 CALLED THE FRONTAL AREA.

11 Q SO, WHEN YOU'RE ON YOUR FACE?

12 A RIGHT HERE (INDICATING).

13 Q RIGHT ABOVE THE EYEBROW?

14 A YES. THE OTHER ONE IS FURTHER BACK WHAT WE
15 WOULD CALL THE TEMPLE. IN MEDICAL TERMS WE CALL IT THE
16 TEMPORAL AREA. BUT BASICALLY WE ALL THINK OF THAT AREA AS
17 THE TEMPLE.

18 Q OKAY. HER LEFT SIDE, SHE HAD ONE RIGHT ABOVE
19 THE EYEBROW AND THEN ONE ON THE SIDE OF THE HEAD, THE
20 TEMPLE?

21 A THAT IS CORRECT.

22 Q AND THESE WERE HEMORRHAGES?

23 A BASICALLY BRUISES WHICH A BRUISE IS.

24 Q WHAT DOES HEMORRHAGE MEAN?

25 A BLEEDING.

26 Q OKAY. WOULD THAT BE CONSISTENT WITH SOMEBODY
27 USING PRESSURE FROM THEIR HAND HOLDING THE CHILD'S HEAD
28 DOWN?

1 A POSSIBLE. BUT I THINK BASICALLY IT, IN ORDER TO
2 GET HEMORRHAGE TO THIS EXTENT, ACTUAL BRUISING IN THE
3 TEMPORAL AREA, IT REQUIRES AN IMPACT AGAINST SOMETHING
4 EITHER SOMETHING HIT IN THE HEAD OR THE HEAD HITTING
5 SOMETHING ELSE. I CAN'T TELL WHICH.

6 Q WAS THERE ALSO BRUISING ON THE RIGHT SIDE OF THE
7 FACE?

8 A YES. THAT'S NOT ON THE RIGHT SIDE OF THE FACE
9 THOUGH, BUT ON THE RIGHT SIDE OF THE SCALP AT THE BACK AS
10 SHOWN IN 56. THERE WAS ANOTHER BRUISE.

11 Q OKAY. SO 56 SHOWS A LARGE LOOKS LIKE THREE
12 DIFFERENT ONES. THAT'S NOT THREE DIFFERENT ONES?

13 A YES. ACTUALLY THE ONE IN THE BACK IS SORT OF
14 THE AREAS THAT ARE DISCONTINUOUS. SO IT MAY RESULT A
15 NUMBER OF BLOWS ALMOST SUPERIMPOSED ON ONE ANOTHER.

16 Q YOU CALLED IT ONE. BUT IT COULD BE MORE THAN
17 ONE?

18 A IT IS ONE AREA OF CONTUSION. AND BASICALLY YOU
19 HAVE GOT DIFFERENT AREAS TO THE SCALP. AND ON THE OUTER
20 LAYER, IT IS ESSENTIALLY ONE. BUT IN THE DEEPER PART, IT
21 SORT OF MORE SPOTTED AND SEEMS TO BE AT LEAST TWO OR THREE
22 SEPARATE ONES UNLIKE THE OUTER ONE. BUT THEY ARE ALL PART
23 OF THE ONE. THEY ARE ALL PART OF THE SAME BLOW OR SERIES
24 OF BLOWS TO THAT AREA.

25 Q SO, IN ORDER TO SUSTAIN THE INJURIES THAT YOU
26 SEE IN THESE THREE PHOTOGRAPHS, IT IS YOUR TESTIMONY THAT
27 THE CHILD HAD TO STRIKE HER HEAD AGAINST SOMETHING?

28 A YES, OR AS I SAID HAVE SOMETHING STRUCK AGAINST

1 HER HEAD.

2 Q OKAY. WOULD THAT BE CONSISTENT WITH HER LAYING
3 ON THE GROUND AND HAVE HER HEAD BANGED INTO THE GROUND?

4 A YES, IT WOULD.

5 Q EVEN IF SHE WAS STRUGGLING OR HAVING HER HEAD
6 BANGED AGAINST A WALL PERHAPS?

7 A POSSIBLE. I CANNOT TELL, I CANNOT, FROM MY
8 EXAMINATION, WHAT EXACTLY THE HEAD WAS HIT AGAINST. BUT
9 IT HAD TO BE SOMETHING FAIRLY FIRM. SO IN OTHER WORDS,
10 WALL, WHATEVER.

11 Q CAN YOU TELL WHETHER THESE WERE FRESH INJURIES?

12 A YES, THESE ARE FRESH INJURIES. I EXAMINED
13 THESE ON THE MICROSCOPE. AND THEY APPEAR TO BE COMPLETELY
14 FRESH.

15 Q HOW CAN YOU SAY THAT?

16 A THERE WAS NO WHAT IS CALLED VITAL REACTION. IN
17 OTHER WORDS, NO REACTION ON THE PART OF THE BODY TO THEM.
18 IF YOU SUSTAIN AN INJURY, AND YOU LIVE, THE BODY'S SYSTEM
19 WILL BEGIN TO REACT TO THAT. AND IT WILL CAUSE SOME
20 TISSUE SWELLING AND BLOOD, WHITE BLOOD CELLS WILL GO TO
21 THE AREA. AND THAT WILL BE A NORMAL SERIES OF EVENTS.
22 IF THE PERSON LIVES.

23 BUT IF THE PERSON DIES SHORTLY AFTER THE INJURY
24 HAPPENS, YOU WONT SEE THAT REACTION. BECAUSE THERE HAS
25 BEEN NO TIME FOR IT TO TAKE PLACE.

26 Q SO, YOU SAW NONE OF THAT SWELLING THAT WOULD
27 HAVE BEEN INDICATED HAD THE CHILD CONTINUED TO LIVE AFTER
28 RECEIVING THESE BLOWS?

1 A THAT IS CORRECT.

2 Q OR SHE DIED SHORTLY AFTER RECEIVING?

3 A SHORTLY AFTERWARDS AT LEAST.

4 Q THE BLOWS THEMSELVES, WERE THEY THE CAUSE OF
5 DEATH?

6 A NO.

7 Q HOW ARE YOU ABLE TO SAY THAT?

8 A THE BLOWS ALTHOUGH THEY ARE FAIRLY SIGNIFICANT
9 BLOWS, THEY DIDN'T BREAK-- THEY DIDN'T CRACK THE SKULL.
10 FOR EXAMPLE, THERE WAS NO EVIDENCE OF BLUNT INJURY TO THE
11 BRAIN. SO, THEY WERE NOT THE CAUSE OF DEATH.

12 Q WOULD THESE BE THE TYPE OF INJURIES THAT YOU
13 WOULD EXPECT THE CHILD TO SUSTAIN WHILE PLAYING AND NOT
14 SAY ANYTHING TO ANYONE ABOUT?

15 A NO.

16 Q WHY NOT?

17 A WELL, FIRST OF ALL, AS I SAID, THERE ARE AT
18 LEAST THREE BLOWS THERE. SO, IF YOU ARE GOING TO HAVE AN
19 INJURY IF YOU FALL, FOR EXAMPLE, YOU ARE ONLY GOING TO HIT
20 YOUR HEAD ONE PLACE; CANT HIT IT IN THREE DIFFERENT PLACES
21 ALL AROUND THE HEAD.

22 SECONDLY, EVEN THOUGH THEY WEREN'T FATAL INJURIES,
23 THEY WERE SIGNIFICANT INJURIES. AND I AM SURE ANY CHILD
24 WHO SUSTAINS AN INJURY LIKE THAT WOULD PROBABLE BE DAZED,
25 MAYBE EVEN UNCONSCIOUS FOR A SHORT TIME AND WOULD
26 CERTAINLY FEEL PRETTY BADLY. IN OTHER WORDS, I THINK THEY
27 WOULD-- IT WOULD NOT GO UNNOTICED.

28 Q YOU WOULD EXPECT THAT CHILD IF HE OR SHE COULD

1 TALK TO COMPLAIN ABOUT IT?

2 A YES.

3 Q COULD YOU NEXT EXPLAIN A LITTLE BIT MORE ABOUT
4 THE HEMORRHAGES AND THE MUSCLE OF THE NECK AND WHAT THAT
5 INDICATES?

6 A BASICALLY THERE WAS AS I SAID BEFORE, THERE WAS
7 HEMORRHAGE IN THE MUSCLE ON THE NECK. THE LOWER PART OF
8 THE NECK ON BOTH SIDES.

9 AND THAT INDICATES THAT THERE WAS AT LEAST SOME
10 PRESSURE PROBABLY IN THAT AREA FOR SOMETIME.

11 Q EXTERNAL PRESSURE?

12 A EXTERNALLY-APPLIED PRESSURE.

13 Q DID YOU NOTICE ANYTHING ON THE OUTSIDE OF THE
14 VICTIM'S NECK BEFORE YOU ACTUALLY CUT INTO IT?

15 A NO, I DIDN'T NOTICE ANYTHING.

16 Q PUTTING TOGETHER ALL OF THE EXAMINATIONS THAT
17 YOU DID, DID YOU COME TO A CONCLUSION OF HOW THIS CHILD
18 DIED?

19 A YES, I DID.

20 Q WHAT WAS THAT?

21 A I CONCLUDED THAT SHE DIED OF ASPHYXIA DUE TO
22 SMOTHERING. IN OTHER WORDS, HER AIRWAY WAS BLOCKED BY
23 PRESSURE ON THE MOUTH, MOUTH AND THOSE AREAS; AND THAT
24 THIS WAS THE MAIN CAUSE OF DEATH. AND THAT WAS THE CAUSE
25 OF DEATH AS I LISTED IT.

26 I ALSO FELT HOWEVER THAT THERE WAS AT LEAST SOME
27 DEGREE OF STRANGULATION OR ATTEMPT OF STRANGULATION
28 INVOLVED.

1 I HAD ESSENTIALLY THE FINDINGS THAT I DESCRIBED A FEW
2 MOMENTS AGO, THE INJURIES TO THE MOUTH BEGINNING WITH
3 THESE LITTLE HEMORRHAGES IN THE CHEST IS A VERY STRONG
4 INDICATION OF SMOTHERING.

5 THE LITTLE HEMORRHAGES IN THE CHEST INDICATE THE
6 AIRWAY OBSTRUCTION AND ACUTE INTERRUPTION OF THE MOVEMENT
7 OF AIR INTO THE-- FROM THE UPPER PART OF THE AIRWAY INTO
8 THE LUNGS.

9 AND WHEN COMBINING WITH THE INJURIES TO THE MOUTH AND
10 WITH THIS INJURY TO THE FRENULUM AS I DESCRIBED-- WHICH
11 FRENULUM INJURY OCCURRED FROM PRESSURE ON THAT AREA. THEY
12 DON'T OCCUR FROM BLOWS. THEY OCCUR FROM PRESSURE RIGHT ON
13 THE MOUTH.

14 SO, THOSE FACTORS TAKEN TOGETHER REALLY ADD UP TO A
15 DIAGNOSIS OF SMOTHERING. THE HEMORRHAGE IN THE NECK PLUS
16 THE CONGESTION IN THE HEAD AREA WOULD INDICATE THAT THERE
17 WAS ALSO PRESSURE ON THE NECK.

18 AND THE REASON I SAY THAT IS BECAUSE WHEN YOU PUT
19 PRESSURE ON THE NECK, YOU BLOCK THE VEIN THAT DRAINS THE
20 BLOOD FROM THE NECK FROM THE HEAD DOWN INTO THE CHEST.
21 AND SO, YOU GET CONGESTION OF THE BLOOD VESSELS IN THE
22 UPPER PART-- IN THE HEAD GENERALLY I SHOULD SAY. THIS
23 MEANS IN THE EYES, ON THE SURFACE OF THE BRAIN, AND
24 CAUSING THOSE LITTLE TINY HEMORRHAGES IN THE SKIN OF THE
25 FACE.

26 SO, THERE WAS CERTAINLY SOME DEGREE OF STRANGULATION
27 INVOLVED AS WELL.

28 BUT I THINK OF THE TWO FACTORS, I THINK THE

1 SMOTHERING WAS THE KEY ONE. I THINK THAT WAS THE FATAL
2 PART.

3 Q AND YOU CAN TELL BY YOUR EXAMINATION THE
4 STRANGULATION ITSELF WAS NOT THE CAUSE OF DEATH?

5 A I THINK AS I SAID, OUT OF THE TWO, IT IS THE
6 LESS LIKELY. THE ONLY REASON I SAY THAT ACTUALLY
7 SOMETIMES WHEN YOU HAVE BOTH OF THOSE THINGS OPERATING
8 TOGETHER, THEN THAT CHILD BECAUSE IT IS POSSIBLE TO HAVE
9 IT QUITE EASILY TO DO BOTH AT THE SAME TIME.

10 THE ONLY REASON I FELT THAT THE SMOTHERING WAS THE
11 MORE IMPORTANT OF THE TWO IS THAT THE HEMORRHAGE IN THE
12 NECK WAS NOT INTO THE DEEPER LAYERS.

13 IN THE CASES WHERE I HAVE SEEN WHERE STRANGULATION IS
14 THE PRIMARY CAUSE OF DEATH, THERE'S USUALLY MORE
15 HEMORRHAGE IN THE NECK THAN IN THIS PARTICULAR CASE. SO,
16 I THINK IT WAS OCCURRING AND WAS AND IF IT HAD BEEN
17 SUSTAINED, IT WOULD HAVE KILLED THE CHILD ON ITS OWN. BUT
18 I THINK THAT THE SMOTHER WAS THE KEY THING THAT KILLED THE
19 CHILD.

20 Q SHOW YOU EXHIBIT 53 FOR IDENTIFICATION AND ASK
21 YOU WHAT THIS IS DEPICTING?

22 A 53 IS A PICTURE TAKEN AT THE AUTOPSY SHOWING THE
23 INJURY TO THE FRENULUM OF THE LIP. IN OTHER WORDS, THE
24 LIP HAS BEEN HELD BACK SO YOU CAN SEE THE INNER SURFACE OF
25 THE LIP. AND IT SHOWS THE HEMORRHAGE.

26 Q IS THERE A WAY FOR YOU TO ESTABLISH THAT THIS IS
27 A VERY FRESH INJURY ALSO?

28 A YES. I EXAMINED THIS UNDER THE MICROSCOPE ALSO.

1 AND IT WAS A FRESH INJURY.

2 Q HOW CAN YOU SAY THAT?

3 A FOR THE SAME REASON AS THE OTHER ONE. THERE WAS
4 NO REACTION ON THE PART OF THE BODY TO IT.

5 Q WHAT WOULD YOU EXPECT TO SEE IF THIS WAS AN
6 OLDER INJURY THAT WAS NOT RELATED TO THIS DEATH?

7 A IF IT WAS AN OLDER INJURY, THERE WOULD BE UNDER
8 THE MICROSCOPE, YOU WOULD SEE INFLAMED, IN OTHER WORDS,
9 WHITE BLOOD CELLS INFILTRATING THE INJURY.

10 Q WHY IS IT THAT YOU, IF YOU DIE-- WELL, FIRST OF
11 ALL, LET ME ASK YOU THIS:

12 IS THERE ANY WAY FOR YOU TO TELL THAT THIS INJURY
13 OCCURRED PRE MORTEM, BEFORE DEATH?

14 A YES.

15 Q HOW?

16 A BECAUSE BRUISING, THE BRUISING ASSOCIATED WITH
17 THAT INJURY, BRUISING IS HEMORRHAGE TO THE TISSUES. AND
18 THAT WILL NOT HAPPEN IF A PERSON IS ALREADY DEAD. BECAUSE
19 YOU NEED TO HAVE THE BLOOD PRESSURE OF THE HEART BEAT TO
20 DRIVE THE-- TO DRIVE THE BLOOD AS IT WERE INTO THE TISSUES
21 WHEN AN INJURY OCCURS.

22 IF YOU OPEN A BIG VEIN IN A DEAD PERSON, SOME OF THE
23 BLOOD WILL OOZE OUT CERTAINLY. BUT IT WON'T IF YOU BANG
24 SOMETHING AGAINST THEM, YOU WILL NOT GET BLEEDING INTO THE
25 TISSUE, IN OTHER WORDS, BRUISING. SO THESE, ALL OF THESE
26 INJURIES, OCCURRED BEFORE THE CHILD ACTUALLY DIED.

27 Q AND THEN BECAUSE THERE WAS NO INFLAMMATION, YOU
28 KNEW THAT IT HAD OCCURRED AT OR ABOUT THE TIME SHE DIED?

1 A YES.

2 Q OKAY. NOW YOU HAD MENTIONED THAT THERE WAS A
3 TUBE, A BREATHING TUBE, PUT IN THE CHILD'S MOUTH DURING
4 THAT--

5 A YES.

6 Q AND I WILL SHOW YOU THE PICTURE AGAIN.

7 MR. ABLARD, SAME PICTURE.

8 ARE YOU FAMILIAR WITH THE BREATHING DEVICES THAT
9 HOSPITAL PERSONNEL DO ON PEOPLE?

10 A YES.

11 Q AND IT ALSO SHOWN IN EXHIBIT 48, 49, 45, AND 46.
12 COULD THIS TUBE INSERTED IN THE CHILD'S MOUTH POSSIBLY
13 HAVE CAUSED THAT INJURY TO THE FRENULUM?

14 A NO.

15 Q WHY NOT?

16 A IT REALLY EVEN WHEN PARAMEDICS OR EMERGENCY
17 PEOPLE ARE HAVING DIFFICULTY INTUBATING SOMEBODY, THIS
18 AREA UP HERE WITH THE FRENULUM IS RIGHT UP BELOW THE NOSE.
19 THAT'S NOT GOING TO BE IN THE TRACK OF THE TUBE. IT IS
20 JUST NOT GOING TO GET INJURED. AND I HAVE NEVER IN ALL
21 AUTOPSIES I HAVE DONE, I HAVE NEVER SEEN AN INJURY LIKE
22 THIS CAUSED BY AN ENDOTRACHEAL TUBE. THERE IS NO REASON
23 WHY IT SHOULD BE IF THEY WERE GOING TO HAVE TROUBLE, IF
24 THEY HAVE TROUBLE INTUBATING AND THEY WERE USING AN
25 ENDOSCOPE TO HELP THEM DO IT, THE INJURIES ARE USUALLY TO
26 THE TEETH. THE LOWER TEETH OR IN THAT AREA.

27 Q IS THERE ANY WAY TO TELL FROM THESE PICTURES
28 THAT THE INSTRUMENT IS INSERTED CORRECTLY?

1 A IT WAS-- THIS PICTURE, YOU CAN'T TELL FROM THE
2 PICTURE SO MUCH. BUT FROM THE AUTOPSY, I FOUND THAT IT
3 HAD BEEN INSERTED CORRECTLY. IT WAS WHERE IT SHOULD BE.

4 Q IT WAS STILL IN HER MOUTH WHEN YOU RECEIVED HER?

5 A YES, OH, YES.

6 Q SO, THERE WAS NO EVIDENCE THAT THAT HAD INJURED
7 HER FRENULUM?

8 A NO.

9 Q AND THEN IN THE OVERALL DIAGNOSES AND OVERALL
10 CONCLUSION OF THIS CASE, HOW WAS THE FRENULUM SIGNIFICANT?

11 A IT WAS SIGNIFICANT BECAUSE AS I SAY, THE FIRST
12 OF ALL, THE FRENULUM INJURIES ARE DUE TO PRESSURE, VERY
13 STRONG PRESSURE, IN THAT AREA BETWEEN THE NOSE AND THE
14 BOTH BETWEEN THE NOSE AND THE UPPER LIP. AND BASICALLY
15 HAVE TO BE MOVING AS WELL. IT INDICATES THAT THE VICTIM
16 WAS STRUGGLING TOO. BUT WHEN YOU PUT THAT FACT IN ITS
17 OWN, PUT THAT TOGETHER WITH THE EVIDENCE OF THE AIRWAY
18 OBSTRUCTION, IT REALLY ADDS UP TO SMOTHER.

19 Q NOW, YOU MENTIONED THE VICTIM WAS STRUGGLING.
20 CAN YOU CONCLUDE FROM YOUR EXAMINATION THAT THIS CHILD
21 FOUGHT?

22 A YES.

23 Q WHAT DO YOU BASE THAT ON?

24 A THE INJURY TO THE FRENULUM. AS I SAY IN AN
25 INFANT, FOR EXAMPLE, A SMALL, VERY SMALL BABY, IF SOMEBODY
26 SMOTHERED THEM, THEY PROBABLY WON'T LEAVE THIS TRACE.
27 BECAUSE AN INFANT IS TOO WEAK AND SO FORTH TO STRUGGLE.
28 SO, YOU WON'T SEE THAT.

1 BUT IF THE VICTIM IS OLD ENOUGH TO STRUGGLE AT ALL,
2 YOU WILL GET THIS TEARING, PROBABLY STRUGGLED WHEN YOU
3 APPLIED PRESSURE OVER THE MOUTH.

4 AND THE OTHER INDICATIONS ARE THE SCALP INJURIES.
5 BASICALLY AS I SAID AT LEAST THREE BRUISES TO THE SCALP.

6 AND I WOULD INTERPRET THOSE TOGETHER AS BEING AN
7 INDICATION OF STRUGGLE.

8 THE INJURY ON THE SHIN, THE BRUISE ON THE SHIN MIGHT
9 HAVE BEEN A PART OF IT TOO. BUT I DON'T PAY TOO MUCH
10 ATTENTION TO THAT. BECAUSE CHILDREN ARE OFTEN BRUISING
11 THEIR SHINS WHEN THEY ARE PLAYING. SO, IT MIGHT OR MIGHT
12 NOT HAVE BEEN ASSOCIATED.

13 Q BUT THE FRENULUM TEAR AND THE BRUISING ON THE
14 HEAD INDICATED TO YOU THAT THERE WAS A FIGHT WHILE THE
15 CHILD WAS BEING SMOTHERED?

16 A YES.

17 Q IS THERE ANY INDICATION FROM YOUR EXAMINATION OF
18 THIS CHILD AND PHYSICAL SIGN THAT SHE COULD ACCIDENTALLY
19 HAVE SMOTHERED?

20 A NO.

21 Q WHY?

22 A FIRST OF ALL, AS I SAID, SHE IS A THREE-YEAR-OLD
23 CHILD. SHE LOOKED HEALTHY, STRONG. THERE WAS NO REASON
24 WHY A THREE-YEAR-OLD WOULD SMOTHER UNLESS I MEAN THERE WAS
25 NOTHING ABOUT THE CIRCUMSTANCES SURROUNDING THE
26 DESCRIPTION OF WHAT'S, WHERE THE CHILD WAS FOUND THAT
27 WOULD INDICATE ANY POSSIBILITY TO ME OF SMOTHERING A
28 THREE-YEAR-OLD SMOTHERING. AND AS I SAID, A PART OF THAT,

1 YOU KNOW, IT DOESN'T ACCOUNT AS FAR AS I CAN SEE FOR THE
2 INJURIES EITHER.

3 Q OKAY. A THREE YEAR OLD-- AND THIS CHILD WAS
4 ACTUALLY THREE AND A HALF YEARS OLD-- WOULD NORMALLY BE
5 ABLE TO REMOVE SOMETHING THAT WAS OVER HER FACE; WOULDN'T
6 SHE?

7 A YES, SHE WOULD.

8 Q SO, IF SHE SOMEHOW FELL AND SOMETHING LANDED ON
9 HER, THIS CHILD, WOULD YOU EXPECT SHE COULD REMOVE THE
10 ITEM?

11 A YES, I WOULD.

12 Q DID YOU EXAMINE THE BODY EXTERNALLY AND
13 INTERNALLY TO LOOK AND SEE IF THERE WAS ANY OTHER CAUSE OF
14 DEATH SUCH AS DISEASE?

15 A YES, I DID.

16 Q WHAT DID YOU FIND?

17 A NOTHING.

18 Q WERE ALL HER ORGANS HEALTHY?

19 A YES.

20 Q AT THE TIME OF THE AUTOPSY, YOU DIDN'T HAVE ANY
21 MEDICAL REPORTS OF THIS CHILD AVAILABLE TO YOU?

22 A NO, I DIDN'T.

23 Q AND HAVE I SUBSEQUENTLY SHOWN YOU THE CHILD'S
24 MEDICAL HISTORY?

25 A YES, YOU HAVE.

26 Q AND YOU REVIEWED IT?

27 A I HAVE.

28 Q HAVE YOU FOUND ANY ANYTHING THERE THIS CHILD

1 DIED OF ANYTHING OTHER THAN HOMICIDAL SMOTHERING?

2 A NO, NOTHING AT ALL.

3 Q WHAT DO YOU BASE THAT ON?

4 A WELL, THE MEDICAL RECORDS BASICALLY SHOWED QUITE
5 A NUMBER OF VISITS TO DOCTORS. BUT THEY WERE FOR THINGS
6 LIKE EAR INFECTIONS, SORE THROAT, SOME OF THEM JUST
7 ROUTINE VISITS TO GET SHOTS AND SO FORTH, IMMUNIZATIONS.
8 BUT SHE HAD ONE OR TWO EPISODES WITH BRONCHITIS, ASTHMA,
9 WHATEVER, WHEEZING, IN OTHER WORDS. AND BASICALLY,
10 THOUGH, THERE WAS NOTHING THERE THAT WOULD BE LIKELY TO BE
11 SERIOUS ENOUGH TO CAUSE DEATH.

12 ALL OF THE MEDICAL RECORDS INCLUDING SOME X-RAYS
13 TAKEN NOT VERY LONG BEFORE SHE DIED. ALL INDICATED THAT
14 SHE WAS A HEALTHY CHILD IN SEVERAL OF THE MEDICAL RECORDS,
15 THERE ARE NOTIFICATIONS TO THE EFFECT THAT PLAYFUL,
16 HEALTHY-APPEARING CHILD, ETCETERA. STATEMENTS LIKE THAT.
17 AND THE X-RAYS THERE WAS ONE X-RAY PARTICULARLY WHEN SHE
18 SHOWED ME THE RECORDS OF IT TAKEN ABOUT A MONTH OR SO
19 BEFORE THE CHILD DIED, A CHEST X-RAY AND IT WAS NORMAL.
20 AND AS I SAID, THE AUTOPSY EXAMINATION INCLUDING
21 MICROSCOPIC EXAMINATION OF ALL THE ORGANS SHOWED NO
22 EVIDENCE OF ANY ILLNESS AT ALL ACTUALLY.

23 Q GAUGING FROM THIS CHILD AND HER CONDITION AND
24 YOUR KNOWLEDGE OF THE MECHANISM TO SMOTHERING, HOW LONG
25 WOULD THE CHILD REMAIN CONSCIOUS IF SOMEBODY WAS APPLYING
26 THE PRESSURE OVER HER MOUTH AND NOSE?

27 A IF PRESSURE IS APPLIED TO THE NOSE AND MOUTH
28 SUCH THAT IT COMPLETELY SHUTS OFF THE AIRWAY COMPLETELY

1 AND IF IT IS SUSTAINED STEADILY, YOU WILL HAVE LOSS OF
2 CONSCIOUSNESS PROBABLY WITHIN A MINUTE, AND YOU WILL HAVE
3 THEN IF THE PRESSURE IS CONTINUED TO BE MAINTAINED, YOU
4 WILL GET BRAIN DEATH AFTER ABOUT TWO TO THREE MINUTES.

5 IF HOWEVER, THE PRESSURE IS NOT KEPT UP, IT IS NOT
6 SUSTAINED COMPLETELY, IF THERE ARE INTERRUPTIONS FOR SOME
7 REASON AS FOR EXAMPLE MAY HAPPEN IF THE VICTIM IS
8 STRUGGLING, THEY MAY SOMETIMES STRUGGLE INTO A POSITION
9 WHERE THEY GET AT LEAST SOME OF THE AIRWAY BACK AGAIN,
10 WELL IF THAT IS HAPPENING, THEN THE WHOLE THING JUST TAKES
11 LONGER.

12 Q HOW MUCH PRESSURE WOULD SOMEBODY HAVE TO OR HOW
13 LONG WOULD IT TAKE FOR SOMEONE-- HOW LONG WOULD SOMEBODY
14 HAVE TO APPLY CONTINUOUS PRESSURE TO KILL THIS CHILD BY
15 SUFFOCATION?

16 A IF YOU ARE DOING CONTINUOUSLY WITHOUT
17 INTERRUPTION, TWO AND A HALF TO THREE MINUTES.

18 Q SO, IF YOU ARE TO EASE UP ANY TIME BEFORE THAT
19 TWO AND A HALF TO THREE MINUTES, WHAT WOULD HAPPEN?

20 A WELL, IF YOU EASED UP TO THE EXTENT THAT THE
21 VICTIM WAS ABLE TO TAKE ANY AIR IN AT ALL, THAT WOULD JUST
22 HAVE THE EFFECT OF DELAYING EVERYTHING. IN OTHER WORDS,
23 IF YOU EASED UP PARTIALLY AND WENT BACK TO HER, IT WOULD
24 JUST TAKE LONGER. I CAN'T TELL YOU HOW LONG. IT DEPENDS
25 HOW MUCH THE VICTIM STRUGGLED.

26 Q SO, SHE COULD RECATCH HER BREATH AND THEN START
27 ALL OVER AGAIN?

28 A YES.

1 Q BUT IF THE PERSON-- IF THE ASSAILANT EASED UP
2 BEFORE THE MINIMUM OF TWO AND A HALF MINUTES, THE CHILD
3 WOULD NOT DIE?

4 A NO, WOULDN'T DIE. THE CHILD MIGHT NOT BE NORMAL
5 AFTERWARDS. BUT PROBABLY WOULDN'T DIE.

6 Q OKAY. SO, YOU CAN SAY WITH CERTAINTY THAT THIS
7 KILLER HAD TO MAINTAIN PRESSURE FOR A MINIMUM OF TWO AND A
8 HALF TO THREE MINUTES TO KILL THIS CHILD?

9 A CONTINUOUSLY, YES, CONTINUOUS PRESSURE.

10 Q SO, IF SOMEBODY WERE JUST TRYING TO SILENCE A
11 SCREAMING CHILD AND PUT SOMETHING OVER THE CHILD'S FACE
12 FOR A COUPLE OF SECONDS, THIS WOULDN'T HAVE KILLED THIS
13 CHILD?

14 A NO.

15 Q IT HAD TO BE CONTINUOUS, PROLONGED PRESSURE?

16 A YES.

17 Q NOW, WHEN YOU SAY BRAIN DEAD, WHAT DOES THAT
18 MEAN?

19 A BY BRAIN DEAD, WE MEAN IRREVERSIBLE DAMAGE TO
20 BRAIN CELLS SO THAT THEY IF THE AIRWAY OR IF OXYGEN IS
21 THEN LATER REAPPLIED TO THE BODY, IT IS NO USE. THE
22 BRAIN, THE BRAIN CELLS ARE DEAD. THEY CANNOT RECOVER.

23 Q SO, IF SOMEBODY HAD GOTTEN TO THIS CHILD AND THE
24 CHILD WAS ALREADY BRAIN DEAD, AND THEN IF SHE MANAGED TO
25 REVIVE HER, SHE'D PROBABLY BE A VEGETABLE?

26 A YES. IF THE HEART CAN FUNCTION INDEPENDENTLY OF
27 THE BRAIN, IT CAN GO ON BEATING WITHOUT THE BRAIN'S
28 ASSISTANCE. AND IT IS POSSIBLE THAT YOU--IT IS POSSIBLE

1 THAT DEPENDING AT WHAT POINT THE MEDICAL AID WAS BECOME
2 THAT YOU MIGHT GET A HEART BEAT BACK. BUT NOT IF THE
3 BRAIN WAS DEAD. THE BRAIN IS NOT GOING TO RECOVER. SO
4 YOU COULD END UP IN A VEGETATIVE STATE.

5 Q DID I PROVIDE TO YOU AS PART OF YOUR PREPARATION
6 TO TESTIFY TODAY THE REPORT FROM DOCTOR'S HOSPITAL OF
7 MONTCLAIR WHEN BRITTANY WAS BROUGHT THERE ON THE 10TH?

8 A YES, YOU DID.

9 Q DID YOU NOTICE ANYTHING ABOUT HER INITIAL-- DID
10 YOU NOTICE ANY ATTEMPT TO RESUSCITATE HER?

11 A YES, I DID.

12 Q ANYTHING OF PARTICULAR INTEREST?

13 A BASICALLY, THEY WERE SUPPLYING AIR TO HER.
14 BAGGING, HAND BAGGING, I THINK THE AIR THROUGH THAT
15 ENDOTRACHEAL TUBE INTO THE CHILD. AND THEY UP TO SOME
16 POINT APPARENTLY GOT A HEART BEAT BACK BUT NOT A NORMAL
17 HEART BEAT. IT WAS A VERY SLOW ONE. AND IT WAS WHAT WE
18 REFER TO AS AN AGONAL RESUSCITATION WHEN A PERSON IS
19 DYING, ESSENTIALLY DEAD BUT NOT COMPLETELY DEAD SO TO
20 SPEAK, IN TERMS OF HEART FUNCTION. YOU HAVE A PERIOD
21 DURING WHICH THE HEART MAY GO ON BEATING, USUALLY SLOWLY,
22 USUALLY RATHER IRREGULARLY. THERE MAY EVEN BE IF THE
23 PERSON IS NOT BEING VENTILATED EXTERNALLY, THERE MAY EVEN
24 BE AN OCCASIONAL GASPING TYPE OF RESUSCITATION, WHAT WE
25 WOULD CALL AGONAL RESUSCITATION.

26 THE IMPRESSION THAT I HAD FROM THOSE MEDICAL RECORDS
27 WAS THAT THEY HAD, THEY HAD REVIVED THE HEART TO THE
28 EXTENT THAT IT WAS BEATING SOMEWHAT BUT AS I SAID NOT TO A

1 NORMAL EXTENT.

2 AND THEY ALSO DID SOME BLOOD GAS STUDIES WHICH IS A
3 ROUTINE THING DURING RESUSCITATION IS TO GIVE THE DOCTOR
4 AN INDICATION OF WHAT THE BLOOD GASES ARE LIKE, THE
5 OXYGEN, CARBON DIOXIDE, OR AND THE ACIDITY OR ALKALIDITY
6 OF BLOOD. AND THEY DID TWO OF THEM. I THINK I SAW TWO
7 BLOOD GASSES IN SEQUENCE. AND BASICALLY WHAT THEY SHOWED
8 WAS THE CHILD WHO WAS BEYOND THE POINT OF ANY HELP.

9 Q SO THESE WERE LAST-DITCH DESPERATE ATTEMPTS THAT
10 DIDN'T WORK?

11 A THAT'S CORRECT.

12 Q DOES THAT, THE FACT THAT THEY WERE ABLE TO GET
13 THE HEART TO BEAT AT ALL, DOES THAT HELP YOU IN TIMING THE
14 TIME OF ACTUAL DEATH?

15 A TO A LIMITED EXTENT IT MEANS THAT THE PERSON
16 CANNOT HAVE BEEN DEAD TOO LONG. WHEN YOU HAVE BRAIN DEATH
17 AND THEN AS A RESULT OF THAT, THE BREATHING EITHER, EITHER
18 STOPS COMPLETELY OR BECOMES AGONAL AGAIN, AS I SAY,
19 INADEQUATE, SPORADIC, THE HEART IS INDEPENDENT AS I SAID
20 OF THE BRAIN. AND IT CAN GO ON BEATING. BUT OF COURSE,
21 EVENTUALLY, OR AT LEAST FAIRLY QUICKLY, IF IT IS NOT
22 GETTING OXYGEN BECAUSE THERE IS NOT ENOUGH RESTORATION,
23 THEN THE HEART WILL BEGIN TO WEAKEN AND BECOME IRREGULAR
24 OR WHATEVER BECAUSE OF INADEQUATE OXYGEN.

25 IF THE HEART THEN COMES TO THE POINT WHERE IT STOPS
26 AND THEN SOMEBODY TRIES TO RESUSCITATE SOMEWHERE AFTER
27 THAT, I WOULD NOT EXPECT THAT THEY WOULD EVEN GET BACK
28 WHAT THEY DID GET BACK IF THE CHILD HAS BEEN DEAD FOR ANY

1 PROLONGED PERIOD OF TIME. CERTAINLY, I WOULDN'T EXPECT IT
2 AFTER AN HOUR. IN OTHER WORDS, AN HOUR AFTER DEATH IF YOU
3 TRIED TO DO IT, WOULD NOT HAVE EXPECTED TO GET ANY KIND OF
4 CARDIAC FUNCTION BACK. AND THAT'S BEING-- THAT'S PROBABLY
5 THE LONGEST FIGURE I WOULD GIVE.

6 Q SO, DO YOU FEEL YOU COULD SAY WITH FAIR DEGREE
7 OF CERTAINTY THAT THIS CHILD HAD NOT BEEN DEAD FOR MORE
8 THAN AN HOUR?

9 A I THINK SO, YES. I THINK THAT WILL BE ABOUT THE
10 OUTSIDE.

11 Q OKAY. AND IF YOU NOTED ON THE CHART THAT SHE
12 WAS BROUGHT IN AT 9:50, SHE HAD NO BLOOD PRESSURE AND NO
13 HEAR RATE, AND THEN AT 9:52, THEY GOT A VERY WEAK HEART
14 RATE, WOULD THAT HELP YOU IN YOUR CALCULATION?

15 A YES. AS I SAID, THIS HOUR IS AN APPROXIMATE
16 THING. BUT WHAT I AM REALLY TRYING TO SAY IS THAT THE
17 CHILD COULD NOT HAVE BEEN ALREADY DEAD FOR SAY AN HOUR
18 BEFORE IT WAS BROUGHT TO THE EMERGENCY ROOM. FOR MORE
19 THAN AN HOUR. THAT'S AN OUTSIDE FIGURE, I WOULD SAY.

20 Q HYPOTHETICALLY, IF YOU ARE GIVEN THE FACTS THAT
21 THE PARENTS IN THIS CASE HEARD SOUNDS OF RUSTLING OR
22 STRUGGLE AT 8:57; AND THE POLICE WERE CALLED AND GOT TO
23 THE HOUSE AT 9:16; AND ABOUT FIFTEEN MINUTES LATER
24 DISCOVERED THE BODY OF BRITTANY WHICH WOULD PUT IT ABOUT
25 9:31-- DOES THAT FIT IN YOUR EXAMINATION OF THE CHILD THAT
26 SHE HAD DIED AT OR NEAR THE TIME THE PARENTS HEARD THE
27 STRUGGLE OR THE RUSTLING?

28 A YES, IT IS CONSISTENT WITH THAT.

1 Q ALSO, YOU WERE PROVIDED WITH THE HISTORY THAT A
2 PLASTIC BAG WAS FOUND OVER THE CHILD'S FACE. I LIKE TO
3 SHOW YOU EXHIBIT SOMETHING. TAG FELL OFF. JULIE. TAG
4 IS LOST.

5 BUT I BELIEVE IT IS NUMBER 57 FOR IDENTIFICATION.
6 OH, IT IS RIGHT HERE IN THE MIDDLE OF THE BAG. OKAY. I AM
7 SHOWING YOU A PLASTIC BAG. THIS IS THE BAG THE POLICE
8 RECOVERED FROM THE VICTIM'S FACE. AND IF YOU WERE TOLD
9 ADDITIONALLY THAT WHEN FOUND, THE BAG WAS FORMED OR
10 CONFORMED OVER THE VICTIM'S FACE AS IF SHE HAD BREATHED
11 IN, HOW WOULD THAT FIT IN YOUR EXAMINATION OF THIS CHILD?

12 A WELL, IT WOULD MEAN THAT EITHER THIS BAG WAS IN
13 CONTACT WITH THE FACE DURING THIS STRUGGLE, AND PART OF
14 THE STRUGGLE. OR IT MIGHT HAVE BEEN PUT THERE AFTERWARDS
15 WHILE THE CHILD WAS YOU KNOW BRAIN DEAD BUT STILL PERHAPS
16 HAVING RESPIRATIONS. BASICALLY, THERE MUST HAVE BEEN SOME
17 RESPIRATORY ACTIVITY TO PUMP TO PULL IT IN IF IT IS THE
18 WAY I UNDERSTAND YOU TO MEAN.

19 Q HYPOTHETICALLY, LET'S SAY THAT THE KILLER DIDN'T
20 USE THIS BAG TO KILL THE CHILD, USED SOMETHING ELSE, AND
21 THEN PUT THE CHILD INTO THE CLOSET AND STARTED PILING
22 STUFF ON TOP OF THE CHILD, INCLUDING THIS BAG, AND THE BAG
23 WAS JUST THROWN ON TOP OF THE CHILD-- HOW WOULD YOU EXPECT
24 THAT SHE WOULD BREATHE IN AND ACTUALLY HAVE THIS CONFORMED
25 TO HER FACE?

26 A AS I SAID, IF THERE WAS ANY RESPIRATOR ACTIVITY
27 AT ALL, IF SHE WERE TRYING TO BREATHE AND WOULD PULL IT
28 IN.

1 Q WOULD THIS BE SOME OF THAT AGONAL BREATHING?

2 A IT WOULD BE.

3 Q LIKE A LAST-DITCH GASP?

4 A SOME OF THOSE AGONAL BREATHS ARE ACTUALLY QUITE
5 DEEP, GASPING-TYPE BREATHS, NOT ORDINARILY REGULAR ONES.
6 OFTEN GASP TYPE TO FIT IN WITH THE IDEA THAT THAT MIGHT
7 HAVE HAPPENED THAT WAY.

8 Q IF THIS WERE THE ACTUAL INSTRUMENT OF DEATH USED
9 TO SMOTHER THE CHILD WITH THE DEFENSE OF INJURY OR THE
10 STRUGGLING THAT YOU SAY, WOULD YOU EXPECT THAT BAG TO BE
11 TORN OR BRAIDED OR ANYTHING?

12 A I THINK IT MIGHT BE TORN, CERTAINLY MIGHT BE.

13 Q BECAUSE OF STRUGGLING OVER HER FACE AND TEAR IN
14 HER FRENULUM?

15 A I CAN'T SAY FOR DEFINITELY THAT IT WOULD BE.
16 BUT I SAY OBVIOUSLY IT IS A POSSIBILITY.

17 MS. SCHMAUSS: MR. ABLARD. BLANKET.

18 Q BY MS. SCHMAUSS: SHOWING YOU NOW EXHIBIT 5 FOR
19 IDENTIFICATION WHICH IS A BABY BLANKET. IF THIS WERE USED
20 TO SMOTHER THE CHILD AND IF I TOLD YOU THAT BLOOD STAINS
21 WERE FOUND WHERE THESE HOLES ARE, WOULD THIS ALSO FIT WITH
22 YOUR EXAMINATION AND DIAGNOSIS OF THIS CHILD?

23 A YES, IT WOULD FIT IN WITH IT. BECAUSE THIS
24 CHILD DID HAVE BLOOD IN THE MOUTH FROM THAT TEAR OF THE
25 FRENULUM.

26 Q OKAY. AND THEN I SUPPOSE IT IS PRETTY OBVIOUS
27 THE OBJECT SUCH AS A BLANKET PUT OVER THE CHILD'S FACE
28 WOULD THEN STOP THE CHILD FROM BREATHING IF IT IS HELD

1 FIRMLY THERE?

2 A IF IT IS HELD TIGHTLY ENOUGH, YES.

3 Q THE FACT THAT THE BLOOD STAINS WERE IN THE
4 CORNER, IS THAT OF ANY SIGNIFICANCE?

5 A MIGHT MEAN THAT THE BLANKET WAS BUNCHED UP OR
6 WHATEVER. BUT I DON'T KNOW FURTHER THAN THAT.

7 Q SO, THESE INJURIES THAT YOU SAY AND THE
8 STRANGULATION AND THE SUFFOCATION, THAT COULD HAVE BEEN
9 CAUSED BY A NUMBER OF FACTORS, A NUMBER OF INSTRUMENTS;
10 WOULD YOU AGREE?

11 A YOU MEAN IN THE MOUTH AREA AS TO WHAT WAS OVER
12 THE MOUTH?

13 Q RIGHT?

14 A YES, AS FAR AS I AM CONCERNED, I DON'T KNOW
15 EXACTLY WHAT SUBSTANCE WAS IN CONTACT WITH THE MOUTH. BUT
16 WHATEVER IT WAS, HAD TO BE HELD THERE.

17 Q COULD A HAND HAVE CAUSED THOSE INJURIES?

18 A YES.

19 Q A HAND LIKE AN ADULT'S HAND PLACED OVER THE
20 CHILD'S MOUTH AND NOSE?

21 A YES.

22 Q OKAY. IS THAT-- WHY IS THAT?

23 A BASICALLY AS I SAID, TO GET THIS FRENULUM
24 INJURY, YOU HAVE TO HAVE PRESSURE RIGHT IN THAT AREA. AND
25 QUITE HONESTLY, A HAND IS ABOUT THE ONLY THING I CAN THINK
26 OF THAT WOULD BE ABLE TO GRASP IT HARD ENOUGH AND WHOLE SO
27 THAT THE PRESSURE WOULD BE EXACTLY IN THAT AREA.

28 Q AND THEN THE STRANGULATION, WOULD YOU ALSO

1 EXPECT THAT TO HAVE BEEN CAUSED BY A HAND?

2 A YES, I THINK SO. THERE WAS NO EVIDENCE OF ANY
3 WHAT WE CALL LIGATURE MARKS. NO EVIDENCE THAT ANYTHING HAS
4 BEEN TIED AROUND THE NECK. SO, THE ONLY OTHER POSSIBILITY
5 IS A HAND.

6 Q THERE WAS A NECKTIE. SHOW IT TO YOU FROM HERE,
7 EXHIBIT 4 FOR IDENTIFICATION. THAT WAS FOUND LOOSELY
8 AROUND THE CHILD'S NECK. AND IS THERE ANY EVIDENCE THAT
9 THIS WAS ACTUALLY USED TO STRANGLE HER?

10 A NO, THERE WAS NO MARKS TO INDICATE THAT
11 SOMETHING LIKE THAT WAS USED.

12 Q THAT'S WHERE YOU WOULD EXPECT TO FIND LIGATURE
13 MARKS IF THIS WERE THE DEVICE?

14 A I WOULD EXPECT TO, YES.

15 Q WHAT ARE LIGATURE MARKS?

16 A IMPRINT MARKS LEFT IN THE SKIN FROM SOMETHING
17 BEING TIED TIGHTLY AROUND THE NECK.

18 Q IF THE CHILD, THIS CHILD, BEING SUCH TO INDICATE
19 TRIED TO SCREAM, WOULD YOU EXPECT THIS SOUND TO GET OUT?

20 A NO. NOT IF THE AIRWAY IS BLOCKED BY THE HAND
21 OVER IT, THEN THERE WOULD BE NO SOUND AT ALL. AND IF IT
22 WASN'T A COMPLETE BLOCK, MEANING THERE MIGHT HAVE BEEN
23 SOME MUFFLED SOUND. BUT CERTAINLY NOT VERY LOUD.

24 Q IS THERE ANY SIGNIFICANCE TO THE FACT THAT THE
25 OFFICER THAT RECOVERED THE CHILD OUT OF THE CLOSET AT
26 ABOUT 9:30, 9:31 FOUND THAT THE BODY WAS WARM?

27 A IT JUST SIGNIFIES THAT THE INDIVIDUAL WASN'T
28 DEAD VERY LONG OR INDEED AS WE ARE TALKING ABOUT HERE,

1 MIGHT HAVE BEEN CONSISTENT WITH BEING IN AN AGONAL STATE,
2 A DYING STATE, ESSENTIALLY, DEAD, BUT MAYBE SOME HEARTBEAT
3 OCCASIONALLY.

4 Q WHEN YOU EXAMINED THE CHILD ON THE 11TH, WAS SHE
5 BLUE IN ANY WAY?

6 A NO, SHE WASN'T. BUT THAT'S SOMETHING THAT IS
7 HARD TO DETERMINE. THAT KIND OF-- THE ABSENCE OF BLUE IS
8 HARD FOR US TO DETERMINE. BECAUSE WHEN THEY HAVE BEEN
9 REFRIGERATED, BODIES THAT HAVE BEEN BLuish OFTEN BECOME
10 PINKER AGAIN.

11 Q YOU PERSONALLY DIDN'T SEE HER BLUE?

12 A I DIDN'T SEE HER BLUE, NO.

13 Q YOU MENTIONED YOUR STUDY OF SIDS WHICH IS SUDDEN
14 INFANT DEATH SYNDROME. COULD A THREE-AND-A-HALF YEAR OLD
15 HAVE DIED OF THIS SIDS?

16 A NO, DEFINITELY NOT.

17 Q WHAT'S THE CUTOFF AGE?

18 A OFFICIALLY IT IS UP TO ONE YEAR. BUT IN FACT,
19 IT IS VERY RARE AFTER-- IT IS VERY, VERY RARE AFTER SIX
20 MONTHS. IT TENDS TO OCCUR BETWEEN THE ABOUT THE SECOND
21 AND SIXTH MONTH OF LIFE.

22 Q HYPOTHETICALLY, LET'S SAY, THIS CHILD FELL
23 AGAINST AN OBJECT, STRUCK HER HEAD, WAS RENDERED
24 UNCONSCIOUS, AND THEN IT FELL ON TOP OF HER. WOULD YOU
25 HAVE EXPECTED THAT WAS-- IS THAT POSSIBLE FROM YOUR
26 EXAMINATION OF THE CHILD POSSIBLE EXPLANATION FOR HIS
27 DEATH?

28 A NO.

1 Q WHY NOT?

2 A FIRST OF ALL, YOU HAVE GOT MORE THAN ONE BLOW TO
3 THE HEAD. IF YOU ARE GOING TO FALL, YOU ARE BEING KNOCKED
4 UNCONSCIOUS, YOU ARE GOING TO ONLY GOING TO HAVE ONE.
5 ~~THERE IS NO REASON WHY YOU SHOULD HAVE MORE THAN ONE EVEN~~
6 ~~IN VERY DIFFERENT AREAS OF THE HEAD.~~

7 NUMBER TWO, DEPENDING WHAT YOU ARE TALKING ABOUT
8 THINGS FALLING ON TOP OF HER, ALL IT WOULD TAKE A
9 SUBSTANTIAL AMOUNT OF STUFF TO SMOTHER A KID LIKE THIS.
10 AND AGAIN, IF YOU DID HAVE SOMETHING LIKE THAT, IT WOULD
11 NOT EXPLAIN THE FACT THAT THE PRESSURE WAS APPLIED SO
12 STRONGLY JUST ABOVE THE-- JUST BELOW THE NOSE, IT DOESN'T
13 EXPLAIN THAT FINDING EITHER. IT ALSO DOESN'T SEEM TO ME
14 TO IN ANY WAY EXPLAIN THE INJURY TO THE NECK OR IN OTHER
15 WORDS THE STRANGULATION-TYPE INJURIES TAKING ALL OF THEM
16 TOGETHER.

17 Q WHICH IS WHY YOU DETERMINED THIS HOMICIDAL
18 SMOTHERING WITH EVIDENCE OF STRANGULATION?

19 A THAT'S RIGHT.

20 Q AND IF YOU WERE TOLD THAT THE PLASTIC BAGS ON
21 TOP OF HER, THE ONLY THING THAT ONE OF THEM CONTAINED WAS
22 A SWEATER, WOULD THAT POSSIBLY BE STRONG ENOUGH TO SMOTHER
23 HER?

24 A NO. PLASTIC, OF COURSE, HAS THIS TENDENCY TO
25 CLING TO THE FACE. BUT THAT PARTICULAR PLASTIC IS
26 SOMEWHAT THICKER. THE TYPE THAT DOES TEND TO CLING, THE
27 VERY FLIMSY PLASTIC. BUT IT STICKS EITHER WAY. NO
28 MATTER HOW YOU LOOK AT THAT, IT WOULD NOT ACCOUNT FOR ALL

1 THESE INJURIES, WOULD NOT ACCOUNT FOR STRANGULATION
2 FEATURES.

3 Q NOW, I THINK YOU MENTIONED THAT YOU FOUND A
4 LITTLE BIT OF BLOOD IN THE EAR?

5 A YES.

6 Q IS THERE ANY WAY TO EXPLAIN THAT?

7 A IT COULD BE JUST SOME HEMORRHAGE IN THE EAR FROM
8 THIS GENERALIZED CONGESTION. BUT THE UPPER PART OF THE
9 BODY AS A WHOLE HAD I DID SEE IN HER MEDICAL RECORDS THAT
10 SHE HAD PROBLEMS WITH EAR INFECTIONS INCLUDING WHAT IS
11 CALLED OTITIS EXTERNAL, LIKE SWIMMER'S EAR. AND IT IS
12 POSSIBLE THAT SHE HAD AN AREA OF SOME INFLAMMATION THERE
13 THAT MIGHT HAVE BEEN SUSCEPTIBLE TO BLEEDING EITHER WITH
14 OR WITHOUT THIS ADDITIONAL PRESSURE FROM THE CONGESTION.
15 THE THIRD POSSIBILITY IS THAT THE BLOW, BECAUSE THERE IS
16 HEMORRHAGE ON THAT SIDE, BUT THERE DIDN'T SEEM TO BE
17 ENOUGH IN THE AREA OF THE EAR ITSELF TO INDICATE THAT THE
18 EAR HAD BEEN DIRECTLY HIT AND THAT THIS WAS THE CAUSE OF
19 BLEEDING.

20 THE COURT: THROUGH WITH YOUR ANSWER? THANK YOU.
21 ANY MORE QUESTIONS?

22 MS. SCHMAUSS: I AM ALMOST DONE. I AM WINDING DOWN.

23 THE COURT: FINE. WE WILL TAKE OUR AFTERNOON RECESS.
24 TAKE TEN OR FIFTEEN MINUTES. DON'T DISCUSS THE CASE.
25 DON'T FORM OPINIONS OR CONCLUSIONS.

26 (RECESS)

27 THE COURT: YOU MAY CONTINUE.

28 MS. SCHMAUSS: THANK YOU.

1 DIRECT EXAMINATION, RESUMED

2 BY MS. SCHMAUSS:

3 Q DOCTOR, YOU MENTIONED EARLIER THAT YOU ALSO
4 TURNED THE MICROSCOPIC SPECIMEN IN FOR TOXICOLOGY STUDIES?5 A THE MICROSCOPIC SPECIMEN, NO. BUT I TOOK, I
6 TOOK SAMPLES OF THE BLOOD PRIMARILY FOR TOXICOLOGY.7 Q OKAY. AND THAT'S LOOKING FOR ANY DRUGS OR
8 ANYTHING THAT'S IN HER SYSTEM?

9 A YES.

10 Q AND THE RESULTS OF THAT WERE WHAT?

11 A NEGATIVE. THERE WAS NOTHING FOUND.

12 Q SO SHE WASN'T POISONED IN ANY WAY?

13 A NO.

14 Q YOU ALSO MENTIONED EARLIER THAT YOU SAW NO SIGNS
15 OF CHILD ABUSE. DID YOU ALSO X-RAY THE CHILD?

16 A YES, WE DID.

17 Q DID YOU EXAMINE THOSE X-RAYS?

18 A YES, WE DID. I FORGOT TO MENTION THAT EARLIER.
19 BUT WE JUST AT VERY BEGINNING JUST BEFORE THE AUTOPSY IN
20 FACT, WE X-RAYED THE BODY COMPLETELY. AND THE REASON FOR
21 DOING THAT IS TO LOOK FOR OLD FRACTURES AND THINGS LIKE
22 THAT THAT MIGHT INDICATE A HISTORY OF ONGOING ABUSE. AND
23 THERE WAS NO SUCH--THERE WERE NO SUCH FINDINGS.

24 Q NO FRACTURES AT ALL?

25 A NO.

26 Q SO, OVERALL, OTHER THAN THE FINDINGS THAT YOU
27 TOLD US ABOUT THAT ARE ASSOCIATED WITH THIS HOMICIDE, YOU
28 SAW NO SIGN THAT THIS WAS AN ABUSED CHILD?

1 A THAT'S CORRECT.

2 Q NOW, I DID NOTICE IN YOUR REPORT UNDER EXTERNAL
3 EXAMINATION YOU STATED THERE WAS EQUIVOCAL ERYTHEMA AT THE
4 INTROITUS. WHAT DOES THAT MEAN?

5 A ERYTHEMA IS THE MEDICAL WORD FOR REDNESS. JUST
6 AND WHAT I AM REFERRING TO THERE IS THE-- I WAS EXAMINING
7 THE GENITALIA, THE VAGINA. AND WHEN I LOOKED AT THE
8 VAGINA, THERE WAS AN AREA OF REDNESS JUST AT THE ENTRANCE
9 TO THE VAGINA, BUT I WASN'T SURE REALLY. THAT'S WHY I
10 USED THE WORD EQUIVOCAL. I WASN'T SURE REALLY IT WAS
11 ANYTHING REALLY THERE OR NOT. I DID TAKE A SECTION OF
12 THAT TOO AND I LOOKED AT UNDER THE MICROSCOPE. AND I
13 FOUND NO ABNORMALITY.

14 Q SO, YOU JUST SAW IN INITIAL EXAMINATION THAT THE
15 ENTRANCE TO THE VAGINA LOOKED RED?

16 A YES. AS I SAID, IT LOOKED A LITTLE BIT RED.
17 BUT.

18 Q IRRITATED?

19 A POSSIBLY.

20 MS. SCHMAUSS: THANK YOU. I HAVE NO FURTHER
21 QUESTIONS.

22 MR. ABLARD: THANK YOU, YOUR HONOR.

23 CROSS-EXAMINATION

24 BY MR. ABLARD:

25 Q DOCTOR, WHEN DID YOU RECEIVE BRITTANY'S MEDICAL
26 REPORTS-- MEDICAL RECORDS, I GUESS THEY CALL THEM?

27 A FIRST TIME I HAD A CHANCE TO LOOK AT THOSE WAS
28 TODAY JUST BEFORE I CAME ON THE STAND. BUT I HAD SPOKEN

1 WITH MS. SCHMAUSS-- ISN'T IT.

2 MS. SCHMAUSS: SCHMAUSS.

3 A --YESTERDAY ON THE PHONE OR THE OTHER DAY. AND
4 SHE SORT OF OUTLINED SOME OF IT TO ME.

5 Q OKAY. AND BUT YOU LOOKED AT THE MEDICAL RECORDS
6 TODAY?

7 A YES, I DID LOOK AT THEM TODAY FOR THE FIRST
8 TIME..

9 Q THERE'S A BIG STACK OF THEM?

10 A YES.

11 Q AND YOU RECALL READING WHERE SHE HAD ABOUT THREE
12 EAR OPERATIONS?

13 A YES.

14 Q TUBES IN THE EARS?

15 A I DID, YES.

16 Q OKAY. NOW YOU TALKED ABOUT THE BLOOD IN THE
17 EAR. WERE YOU EVER TOLD BY ANYONE ABOUT AN INCIDENT ON
18 THE 9TH OF OCTOBER? IN OTHER WORDS, WOULD HAVE BEEN THE
19 DAY BEFORE THIS INCIDENT WHERE BRITTANY WAS HELD DOWN BY
20 THREE PEOPLE. THEY WERE TRYING TO CHECK AND CLEAN OUT EARS
21 AND SO ON AND SO FORTH.

22 WERE YOU TOLD ABOUT THAT?

23 A NO, APPARENTLY NOT. I DIDN'T MENTION IT IN MY
24 SUMMARY.

25 Q WERE YOU TOLD THAT AT THAT TIME, THE EAR WAS
26 BLEEDING?

27 A I'M SORRY.

28 Q WERE YOU TOLD AT THAT TIME OF THE 9TH OF OCTOBER

1 THAT THE EAR WAS SOME BLOOD IN THE EAR IS BLEEDING?

2 A NO, I WASN'T. I DON'T BELIEVE I WAS TOLD
3 ANYTHING ABOUT THAT.

4 Q GIVEN THAT INFORMATION, WOULD THAT CHANGE YOUR
5 CAUSE FOR CONSIDERATION OR CHANGE IN YOUR OPINION THAT ANY
6 BLOOD IN HER EAR WOULD BE CAUSED BY SOME SORT OF
7 SUFFOCATION OR BY ANOTHER HAND ON THE 10TH?

8 A YES. I MEAN AS I MENTIONED, WHEN YOU ARE
9 TALKING ABOUT THE BLEEDING EAR, I REALLY WASN'T SURE IT
10 WAS FROM-- AND IT DID LOOK QUITE DRY. SO, I CAN'T TELL
11 FOR CERTAIN WHETHER THAT'S FROM TIME OF DEATH OR SOMETIME
12 BEFORE THAT.

13 Q SURE. AND THE BRUISE ON THE SHIN, IF YOU WERE
14 TOLD THAT ON THE 9TH, SOMEONE HAD ACTUALLY TO HOLD HER
15 LEGS DOWN, WOULD THAT SORT OF HELP MAYBE SET THE TIME THAT
16 BRUISE OCCURRED OR AT LEAST CAUSE FOR CONSIDERATION?

17 A YES. I MEAN I DIDN'T EXAMINE THAT PARTICULAR
18 INJURY UNDER MICROSCOPE. SO I DIDN'T ATTEMPT TO DATE IT
19 WITH ANY ACCURACY. YES, IT COULD HAVE BEEN A DAY OR SO
20 OLD.

21 Q DAY OR SO BE BEFORE THE 10TH OR BEFORE AUTOPSY?

22 A BEFORE DEATH, WHENEVER I AM REFERRING TO
23 ANYTHING, IT IS UP TO THE TIME, I AM DATING IT FROM THE
24 TIME OF DEATH.

25 Q OKAY. NOW, YOU RECALL AT YOUR PRELIMINARY
26 HEARING YOU TESTIFIED AT PRELIMINARY HEARING IN THIS CASE;
27 CORRECT?

28 A THAT'S CORRECT.

1 Q RIGHT. DID YOU HAVE AN OPPORTUNITY TO REVIEW
2 YOUR PRELIMINARY HEARING TESTIMONY IN PREPARATION FOR YOUR
3 TESTIMONY TODAY?

4 A I DID, YES.

5 Q OKAY. DO YOU RECALL STATING THAT THERE WAS NO
6 REASON WHY THIS CHILD SHOULD SUFFOCATE FROM A BAG PLACED
7 IN THE FRONT OF THE FACE LIKE THAT?

8 A I CAN'T REMEMBER THE EXACT PHRASEOLOGY. BUT
9 YES, I AM SURE I DID.

10 Q RIGHT. AND I BELIEVE YOU STATED HERE TODAY AND
11 I AM JUST TRYING TO REVIEW MY NOTES. AND YOU DIDN'T QUITE
12 GET THAT. BUT THERE'S NO REASON IN YOUR MIND THAT THE
13 SUFFOCATION WAS CAUSED FROM THIS BAG UNLESS SOMEBODY WAS
14 HOLDING IT ON WITH THEIR HAND?

15 A THAT'S CORRECT. I MEAN THE BAG MIGHT HAVE BEEN
16 INVOLVED IN THE SENSE THAT IT WAS USED TO PRESS AGAINST
17 HER FACE. BUT I DON'T KNOW WHETHER THAT IS THE CASE OR
18 NOT.

19 Q NOW, DURING AUTOPSY, WAS THERE A CRIMINALIST
20 THERE?

21 A THERE IS NOBODY LISTED HERE, NO CRIMINALIST
22 LISTED AS BEING HERE. AND THEY ARE SUPPOSED TO SIGN ONTO
23 ONE OF THE SHEETS HERE.

24 Q BUT THERE'S NO SUCH SIGNATURE?

25 A NO. JUST DETECTIVE DONLEY.

26 Q WERE ANY REQUESTS MADE OF YOU AT THAT TIME TO DO
27 ANY FORENSIC WORK, OR DID DETECTIVE DONLEY DO ANY LIKE
28 TAPE LIFT THE FACE OR ANY TYPE OF FINGERPRINTS OR FIBERS

1 OR ANYTHING?

2 A NOTHING LIKE THAT WAS DONE DURING THE AUTOPSY.
3 WHEN THAT IS DONE, IT IS USUALLY DONE BEFOREHAND BY THE
4 CRIMINALIST. AND I WAS INFORMED THAT THE BODY HAS BEEN
5 EXAMINED WITH THE FLUORESCENT LIGHT.

6 Q YES?

7 A PRIOR TO AUTOPSY. BUT I AM NOT EXACTLY SURE
8 WHEN THAT WAS.

9 Q DOES IT SHOW WHO DID FLUORESCENT, THE SCOPE YOU
10 JUST REFERRED TO?

11 A NO, I HAVE NO ACTUAL RECORDS. I JUST IN MY OWN
12 SUMMARY OF THE HISTORY, I JUST HAVE A STATEMENT TO THE
13 FACT THAT IT WAS DONE. AND I DON'T KNOW WHO IT WAS DONE
14 BY.

15 Q OKAY. NOW, ONE THING THAT YOU TOLD US THAT YOU
16 RELIED UPON IN YOUR CONCLUSION AND HOW TO PROCEED WITH THE
17 AUTOPSY WAS THE CORONER'S INVESTIGATION; CORRECT?

18 A YES.

19 Q THAT WAS DONE BY MR. MORROW?

20 A THAT IS CORRECT.

21 Q AND IS HE A DOCTOR OR IS HE AN INVESTIGATOR OR
22 BOTH, OR WHAT IS HE?

23 A NO. OUR INVESTIGATORS ARE NOT DOCTORS. THEY
24 ARE BASICALLY INVESTIGATORS.

25 Q AND THEY TRAIN SPECIFICALLY TO GO TO DO WHAT?

26 A I AM SORRY.

27 Q WHAT ARE THEY TRAINED SPECIFICALLY TO DO?

28 A THEY ARE TRAINED BASICALLY TO AS I SAY, WHEN

1 THEY GET A CALL OF A REPORTABLE DEATH TO THE CORONER'S
2 OFFICE, THEY GO TO WHERE THE BODY IS, WHETHER THAT'S AT A
3 HOSPITAL OR AT THE SCENE OF A CRIME OR THE SCENE OF
4 ACCIDENT.

5 AND THEY HAVE JURISDICTION OVER THE BODY FROM THE
6 TIME THAT THEY ARRIVE. THEY ARE ULTIMATELY GOING TO BE
7 RESPONSIBLE FOR THE TRANSPORTING OF THAT BODY, MAKING SURE
8 THAT THE BODY IS NOT TAMPERED WITH IN ANY WAY, ETCETERA.

9 AND THEN THE OTHER PART OF THEIR JOB IS TO FIND OUT
10 AS MUCH AS THEY CAN FROM WHOEVER IS AVAILABLE ABOUT THE
11 CIRCUMSTANCES, THE KNOWN CIRCUMSTANCES, SURROUNDING THE
12 DEATH.

13 THEN FINALLY, THEY HAVE SOME OTHER DUTIES AS WELL
14 THAT WOULD RELATE TO MANAGEMENT OF PROPERTY AND THINGS
15 LIKE THAT.

16 Q OKAY. FINE. NOW, WERE YOU FURNISHED WITH THE
17 RECORDS THAT THE HOSPITAL, DURING THE RESUSCITATION
18 PROCEDURE, FOUND A HEART BEAT? WHAT DOES IT SAY IS A
19 PARTICULAR KIND HEART BEAT?

20 A I USED THE TERM AGONAL. BECAUSE IT WAS VERY,
21 VERY SLOW AND I WOULD SAID PROBABLY IRREGULAR. I WAS
22 INFORMED OF THAT BY MS. SCHMAUSS ON THE PHONE ACTUALLY
23 FIRST DURING THE CONVERSATION. AND AT THE SAME TIME AS
24 SHE NOTIFIED ME OF OTHER RECORDS THAT WAS SATURDAY, I
25 BELIEVE.

26 Q SATURDAY?

27 A YES. AND THEN I SAW THEM TODAY FOR THE FIRST
28 TIME.

1 Q DID YOU THEN RENDER AN OPINION TO HER ABOUT WHAT
2 THAT MEANT?

3 A YES, I DID.

4 Q THAT CHANGE YOUR OPINION WHAT FROM YOUR ORIGINAL
5 DIAGNOSIS OF THIS DEATH, DID IT NOT, AS FAR AS TIME WAS
6 CONCERNED?

7 A NO, NOT REALLY. IT GAVE ME SOME EXTRA
8 PROSPECTIVE ON IT. BUT IT DIDN'T CHANGE ANY.

9 Q WELL, INITIALLY, YOU MADE NO DETERMINATION OF
10 TIME OF DEATH?

11 A I'M SORRY.

12 Q INITIALLY FROM THE ACTUAL BODY, YOU MADE NO
13 DETERMINATION OF TIME OF DEATH; CORRECT?

14 A I DON'T EVER MAKE DETERMINATION OF TIME OF
15 DEATH. BECAUSE I AM NOT AT THE SCENE.

16 Q RIGHT. AND BUT YOU DIDN'T ATTEMPT TO DO
17 ANYTHING TO FIGURE THAT OUT FROM THE BODY INITIALLY? YOU
18 TESTIFIED TO THAT AT ONE POINT?

19 A WELL, I COULDN'T EVEN IF I WANTED TO. BECAUSE
20 BY THE TIME I HAVE THE BODY, IT IS LIKE TWENTY-FOUR HOURS
21 LATER. THE BODY HAS BEEN IN A REFRIGERATOR. ANY OF THE
22 THINGS YOU MIGHT USE TO ESTIMATE THE TIME OF DEATH HAVE
23 ALL BEEN ALTERED.

24 Q RIGHT.

25 A BY THE REFRIGERATION.

26 Q EXACTLY. AND THE RECORDS THAT YOU HAVE OF THIS
27 IRREGULAR SLOW ANGULAR (SIC) HEART BEAT AT WHAT TIME?

28 A I KNOW IT WAS IN THE EMERGENCY ROOM. THERE ARE

1 TIMES ON THAT DOCUMENT. I NOTICED. BUT IN OTHER WORDS,
2 THESE WERE THE RESUSCITATION SHEETS. AND THE MEDICAL
3 RECORDS WERE OBVIOUSLY BETWEEN THE TIME THE CHILD ARRIVED
4 AT THE EMERGENCY ROOM WHICH IS 9:35 AND THEN THE TIME OF
5 BEING PRONOUNCED DEAD AT 10:04. SO, IT IS IN THAT TIME
6 FRAME. THE ACTUAL BLOOD-GAS RESULTS OF THE EXACT TIME ON
7 THEM.

8 Q AND WERE YOU FURNISHED WITH THOSE?

9 A TODAY, YES.

10 Q DO YOU HAVE THAT WITH YOU?

11 A WELL, NO. I JUST LOOKED AT THEM.

12 Q MAY I HAVE IT? AND THE TIME ON THOSE WITH
13 RESPECT TO THE TOPIC WE ARE TALKING ABOUT RIGHT NOW, THE
14 TIME OF THIS ANGULAR (SIC) HEART BEAT, YOU CAN TELL FROM
15 THOSE RECORDS?

16 A AGONAL, BY THE WAY, IS THE WORD.

17 Q PARDON?

18 A AGONAL.

19 Q YEAH. I WILL PUT IT AS THE LOW, IRREGULAR
20 HEARTBEAT.

21 A OKAY. ACTUALLY, THE ON THE BLOOD-GAS REPORT,
22 THEY DON'T ACTUALLY LIST THE HEART, RATE UNFORTUNATELY.
23 JUST THE RESPIRATORY RATE WHICH IS NOT THE CHILD'S OWN
24 RESPIRATION, WAS THE BAGGING. SO, THAT'S NOT A MEASURE OF
25 THE SPEED OF THE CHILD BREATHING. BUT THERE ARE TWO EKG
26 STRIPS HERE INDICATING THIS KIND OF IRREGULAR, AGONAL
27 HEART ACTIVITY.

28 AND I AM NOT SURE QUITE HONESTLY HOW TO READ THE TIME

1 OF THESE. BUT THERE IS OBVIOUSLY SOME REFERENCE TO A
2 TIME. BUT IT DOESN'T MAKE MUCH SENSE TO ME. ANYWAY, VERY
3 SIMPLY, THERE IS EVERYTHING HERE THAT THIS WAS SOME KIND
4 OF AGONAL HEART BEAT ACTIVITY DURING THE TIME IN THE
5 EMERGENCY ROOM. APPARENTLY IT WAS NOT PRESENT INITIALLY
6 THOUGH, ACCORDING TO THE INITIAL EVALUATION, THERE WAS NO
7 HEART BEAT. AND THEN USING YOU KNOW VARIOUS RESUSCITATION
8 TECHNIQUES, THEY OBVIOUSLY GET BACK SOME DEGREE OF HEART
9 ACTIVITY DURING THIS TIME.

10 Q SO, NOW, HOW DID THAT WORK? IF THERE WAS NO
11 HEARTBEAT AT ALL AND THEY GET SOME OF THIS TYPE OF HEART
12 BEAT THROUGH RESUSCITATION, DOES THAT NECESSARILY MEAN
13 THAT THERE WAS THAT SLOW IRREGULAR HEART BEAT WHILE THE
14 CHILD WAS STILL AT THE RESIDENCE?

15 A NO. IT WOULDN'T NECESSARILY MEAN THAT.
16 OBVIOUSLY AT SOME POINT THERE WAS. BUT AT THE TIME THE
17 CHILD HAS BEEN TRANSPORTED WITH REGARDS TO THE HOSPITAL,
18 THERE MAY NOT HAVE BEEN ANY HEART ACTIVITY AT ALL. THE
19 HEART, IN OTHER WORDS, IS BASICALLY STOPPED.

20 Q RIGHT.

21 A STOPPED BEATING. BUT DEATH IS NOT REALLY LIKE
22 YOU KNOW TURN OFF A LIGHT SWITCH. IT TAKES TIME FOR THE
23 TISSUES TO ACTUALLY GET TO THE POINT WHERE THEY WON'T
24 FUNCTION AT ALL. AND IF YOU PROVIDE SOME OXYGEN WITH
25 ARTIFICIAL RESPIRATION AND YOU PROVIDE MEDICATION LIKE
26 SODIUM BICARBONATE WHICH THEY GAVE TO TRY TO ADJUST THE
27 ACIDOSIS, YOU MIGHT GET HER HEART TO GIVE SOME DEGREE OF
28 ACTIVITY. IT MAY BE JUST ELECTRICAL ACTIVITY TOO. IN

1 OTHER WORDS, WITHOUT ANY PROPER PUMPING.

2 Q SO, IN OTHER WORDS, IS MY IMPRESSION WHEN
3 PROSECUTION WAS TALKING TO YOU THAT THERE MIGHT HAVE A
4 CONTINUUM, THIS SHORT OF SLOW, IRREGULAR HEARTBEAT ALL THE
5 WAY FROM THE CLOSET WHERE THE CHILD WAS FOUND AND SO ON,
6 BUT WHAT ACTUALLY WHAT YOU ARE THINKING IS THAT THE HEART
7 HAD ACTUALLY STOPPED, AND THROUGH RESUSCITATION
8 PROCEDURES, THEY GOT THE BEAT OR IT MIGHT BE JUST THROUGH,
9 BECAUSE OF THE ELECTRONICS?

10 A YES. IT IS VERY HARD TO BE VERY EXACT ABOUT
11 THIS.

12 Q SO?

13 A I MEAN, I DO REMEMBER MYSELF WHEN I WAS TREATING
14 PATIENTS, I REMEMBER CHILDREN-- IT WAS CHILDREN TOO. I
15 REMEMBER BEING ASKED, CALLED TO THE WARD SOMETIMES TO
16 PRONOUNCE DEATH OF A CHILD WHO WAS KNOWN TO BE DEAD, BRAIN
17 DEAD, AND BREATHING HAD STOPPED. AND, YOU KNOW, WHEN YOU
18 ARE IN THAT POSITION, YOU LISTEN TO THE HEART. WELL, THIS
19 WAS IN AFRICA WE DIDN'T HAVE MONITORS. WE HAD TO LISTEN.

20 BUT THE HEART, THE ONE CASE IN PARTICULAR, THE CHILD
21 DIED OF MENINGITIS, WAS BRAIN DEAD. THE BREATHING
22 EVENTUALLY STOPPED. THERE WAS SOME AGONAL RESPIRATION.
23 THE HEART BEAT SOMETIMES IT WILL BE GONE FOR A WHILE. THEN
24 IT WILL GIVE A FEW SPONTANEOUS EXTRA BEATS AND THEN FLAT
25 QUIETED DOWN. THAT WENT ON FOR TWENTY, THIRTY MINUTES.

26 Q IN THIS CASE, WE JUST DON'T KNOW?

27 A NO. AS I SAID, THE ONLY CONCLUSION I CAN RECALL
28 COMING TO IS WHAT I WAS ASKED EARLIER IS THAT THE FACT IS

1 THAT THEY WERE ABLE TO GET SOME KIND OF ACTIVITY AT ALL
2 BACK INTO THE HEART INDICATING THAT AT LEAST FROM THE TIME
3 THAT THEY STARTED THE RESUSCITATION, THE CHILD CAN'T HAVE
4 BEEN DEAD MORE THAN AN HOUR AND PROBABLY LESS, PROBABLY
5 QUITE A BIT LESS THAN THAT. BUT THE MOST, AN HOUR.

6 BECAUSE IF A BODY IS LYING THERE, SOMEBODY IS TOTALLY
7 DEAD, AND THEN YOU ATTEMPT TO REVIVE THEM AN HOUR LATER
8 WHEN THEY HAVE HAD NO TREATMENT OF ANY KIND AT ALL, YOU
9 ARE NOT GOING TO GET ANY KIND OF HEART ACTIVITY NO MATTER
10 WHAT YOU DO.

11 Q SO THE HOUR IS SORT OF REALLY ON THE OUTSIDE?

12 A IT IS THE OUTSIDE.

13 Q COULD HAVE BEEN FORTY-FIVE MINUTES. WE DON'T
14 KNOW?

15 A I DON'T KNOW. BUT AN HOUR WOULD BE VERY MUCH
16 THE OUTSIDE.

17 Q AND WE DON'T KNOW EXACTLY OR DO WE, WHETHER THIS
18 HEART BEAT HAPPENED, 9:35, 9:40, 9:45?

19 A WHAT TIME OF YEAR IS THIS? I DON'T KNOW. BUT
20 WHAT'S PUZZLING ME HERE IS ON THE EKG STRIP, SEEMS TO SAY
21 8:57. IT IS AS IF THEY FORGOT TO CHANGE THE CLOCKS, THIS
22 TIME OF YEAR. COULDN'T HAVE BEEN 8:57 FROM EVERYTHING WE
23 UNDERSTAND.

24 Q THAT'S CORRECT. SO WE ARE NOT REALLY SURE?

25 A NO. BUT I SUPPOSE IT IS APPARENTLY IN THE
26 EMERGENCY ROOM. AND THERE WERE NO PARAMEDICS INVOLVED IN
27 THIS CASE. THIS IS EMERGENCY ROOM. SO IT IS SOMEWHERE
28 BETWEEN THE TIME SHE ARRIVED AND THE TIME THEY FIND THE

1 PULSE.

2 Q NOW, DID YOU SEE LIVIDITY MARKS ON THE BODY?

3 A YES. WELL, THERE WAS LIVIDITY PRESENT, YES.

4 Q AND WHERE WAS THAT PRESENT ON THE BODY?

5 A ON THE BACK.

6 Q AND ON THE FACE, I BELIEVE, YOUR REPORT SAID
7 SOMETHING ABOUT ON THE FACE. I WANT TO CLEAR THAT UP.

8 A I HAVE TO REMIND MYSELF. OKAY. THERE WAS
9 LIVIDITY ON THE LEFT SIDE OF THE FACE. LIVIDITY AT THE
10 TIME THAT WE EXAMINED THE BODY IS NOT VERY USEFUL, I AM
11 AFRAID. BECAUSE IT IS GOING TO BE ALWAYS IN THE POSITION.
12 IT IS ALWAYS GOING TO REFLECT THE POSITION IN WHICH THE
13 BODY WAS STORED. SO, BASICALLY THIS CHILD WAS LYING ON
14 HER BACK. AND THE HEAD SLIGHTLY TO THE LEFT SIDE. WE
15 CANNOT ATTACH MUCH SIGNIFICANCE TO IT. IT IS ONLY REALLY
16 VALUABLE WHEN YOU LOOK AT IT AT THE SCENE.

17 Q CORRECT. NOW, YOU MENTIONED ABOUT TAKES THREE
18 MINUTES TO BECOME TO SUFFER BRAIN DEATH; CORRECT?

19 A NO. THREE MINUTES FROM THE TIME THAT THE OXYGEN
20 SUPPLY IS CUT OFF.

21 Q RIGHT?

22 A YEAH.

23 Q RIGHT. AND THAT'S A RULE OF THUMB?

24 A YES.

25 Q THAT SORT OF A CLINICAL OPINION?

26 A YES, IT IS A GENERAL OPINION BASED ON A LOT OF
27 THINGS OVER THE YEARS. THERE ARE SOME EXCEPTIONS TO IT.
28 UNDER EXTREMELY COLD CIRCUMSTANCES, IT CAN BE LONGER.

1 Q RIGHT.

2 A BUT UNDER WHAT YOU MIGHT CALL ORDINARY
3 CIRCUMSTANCES, IT IS A RULE OF THUMB THAT THREE MINUTES
4 TOTAL OXYGEN DEPRIVATION TO THE BRAIN RESULTS IN
5 IRREPARABLE INJURY; IN OTHER WORDS, BRAIN DEATH.

6 Q ANYTHING THAT WOULD AFFECT THAT, ANY BREATHING
7 PROBLEM, ANY SINUS PROBLEM, THINGS LIKE THAT THOUGH?

8 A NO.

9 Q OKAY. SO, AS A RULE OF THUMB, THREE MINUTES
10 TOTAL DEPRIVATION, TOTAL DEPRIVATION?

11 A YES.

12 Q OKAY. AND YOU MENTIONED EARLIER IN YOUR
13 TESTIMONY THAT THE BRUISE ON THE WAS IT THE BACK; RIGHT?

14 A THERE WAS ONE THERE, YES.

15 Q I COULD BE WRONG. THAT'S THE WAY I REMEMBER.
16 COULD HAVE CAUSED UNCONSCIOUSNESS?

17 A IT COULD. I AM NOT SURE. BUT IT COULD.

18 MR. ABLARD: OKAY. I THINK I AM JUST ABOUT DONE. I
19 HAVE NOTHING FURTHER. THANK YOU.

20 REDIRECT EXAMINATION

21 BY MS. SCHMAUSS:

22 Q DR. SHERIDAN, CAN YOU TELL THE JURY WHAT
23 LIVIDITY IS?

24 A LIVIDITY IS POSTMORTEM CHANGE. IT'S BASICALLY
25 AN APPEARANCE IN THE SKIN WHERE WHEN THE BODY IS WHEN THE
26 PERSON IS DEAD, IF THERE'S NO HEART BEAT, THE BLOOD JUST
27 TENDS TO PULL UNDER THE INFLUENCE OF GRAVITY IN THE
28 TISSUE. AND SO THE PARTS THAT ARE LOWER DOWN COLLECT THIS

1 BLOOD. AND YOU CAN SEE IT AS AN AREA OF PINKISH-REDNESS
2 DISCOLORATION OF THE SKIN. AND IT IS THE LOWER, IN WHICH
3 EVERY PART OF THE BODY IS DOWN EXCEPT FOR CERTAIN AREAS
4 WHERE THE BODY IS PRESSING AGAINST SOMETHING. BUT THAT'S
5 BASICALLY WHAT LIVIDITY IS.

6 THE COURT: NEW ISSUE.

7 MS. SCHMAUSS: ON LIVIDITY?

8 THE COURT: IF THERE ISN'T ANY LIVIDITY ON THIS CASE,
9 WHY ARE WE DISCUSSING IT?

10 MS. SCHMAUSS: I JUST WANT TO ASK HIM.

11 THE COURT: WELL, IT IS NOT RELEVANT.

12 MS. SCHMAUSS: I THINK IT IS RELEVANT.

13 THE COURT: LET'S DON'T DEFINE SOMETHING THAT YOU
14 CAN'T FIND. WHY DON'T YOU JUST FOLLOW MY DIRECTION ON
15 WHAT IT WILL TAKE LONG OR NOT. NO LIVIDITY. NO OPINION.
16 SAW THE BODY TOO LATE TO MAKE ANY JUDGMENT. LET'S GO ON
17 TO SOMETHING OTHER COVERED IN CROSS.

18 MS. SCHMAUSS: THANK YOU. WELL, THEN, I HAVE NO
19 OTHER QUESTIONS.

20 THE COURT: THANK YOU.

21 MR. ABLARD: I HAVE NONE. THANK YOU. YOU MAY STEP
22 DOWN. CALL YOUR NEXT WITNESS.

23 MS. SCHMAUSS: WELL, SINCE WE ARE DONE EARLIER THAN I
24 THOUGHT, I CAN BREAK, PLAY THE VIDEO OF THE HOUSE. BUT I
25 HAVE TO GO FETCH THE TV.

26 THE COURT: FETCH.

27 MS. SCHMAUSS: SO, TAKE A MINUTE TO FETCH.

28 THE COURT: ISN'T YOUR INVESTIGATOR.

1 MS. SCHMAUSS: JUST-- I DID FORGET TO ASK ONE
2 QUESTION. SO I ASK THE COURT'S INDULGENCE TO LET ME
3 RECALL HIM FOR JUST ONE QUESTION.

4 THE COURT: ALL RIGHT. HE CAN STAND RIGHT THERE IF
5 YOU ARE SURE IT IS ONLY ONE.

6 MS. SCHMAUSS: OKAY. WELL.

7 THE COURT: RIGHT THERE IS FINE.

8 MS. SCHMAUSS: I DON'T KNOW IF HE NEEDS TO LOOK IN
9 HIS RECORDS.

10 THE WITNESS: I DO NEED TO LOOK AT MY REPORT FOR ONE
11 SECOND.

12 THE COURT: OH, ALL RIGHT. YOU GOT SOMEBODY GETTING
13 YOUR TELEVISION.

14 MS. SCHMAUSS: YES. THEY ARE GETTING IT.

15 REDIRECT EXAMINATION, RESUMED
16 BY MS. SCHMAUSS:

17 Q YOU READY?

18 A YES.

19 Q DOCTOR, IN YOUR EXAMINATION OF THE BODY, DID
20 YOU LOOK AT GASTROINTESTINAL TRACT?

21 A YES, I DID.

22 Q DID YOU EXAMINE THE STOMACH CONTENTS?

23 A YES, I DID.

24 Q WHAT DID YOU FIND?

25 A THERE WEREN'T ANY-- IT WAS EMPTY.

26 Q THE STOMACH WAS EMPTY?

27 A YES.

28 Q IF THE CHILD HAD CONSUMED ORANGE JUICE WOULD YOU

1 EXPECT TO FIND ANY OF THAT?

2 A ORANGE JUICE MIGHT BE DIFFICULT TO NOTICE
3 BECAUSE OF ITS COLOR. AND BY THE TIME IT IS MET UP WITH
4 THE ACIDS IN THE STOMACH, IT MIGHT AND DEPENDING HOW MUCH
5 THERE WAS, IT MIGHT BE POSSIBLE TO NOT NOTICE A VERY SMALL
6 AMOUNT BECAUSE IT'S ABSORBED VERY QUICKLY TOO.

7 Q IF THE CHILD HAD EATEN ANYTHING SUCH AS CEREAL
8 OR TOAST, WOULD YOU EXPECT TO FIND ANY EVIDENCE OF THAT?

9 A IT DEPENDS WHAT YOU MEAN BY IT DEPENDS ON THE
10 TIMING ABOVE ALL.

11 Q JUST BEFORE DEATH?

12 A JUST BEFORE DEATH, YES, WE WOULD EXPECT TO FIND
13 IT IN THE STOMACH.

14 Q AND YOU DID NOT FIND ANYTHING OF THAT SORT?

15 A I DIDN'T FIND ANYTHING AT ALL.

16 MS. SCHMAUSS: OKAY. THANK YOU. NOTHING FURTHER.

17 MS. ABLARD: I HAVE NOTHING.

18 THE COURT: THANK YOU.

19 MS. SCHMAUSS: NOW HE CAN REALLY BE EXCUSED.

20 CAN WE APPROACH QUICKLY ABOUT TOMORROW, ASK YOU A
21 QUESTION?

22 THE COURT: SURE.

23 (SIDE BAR; NOT REPORTED)

24 THE COURT: LADIES AND GENTLEMEN, I WILL TELL YOU
25 NOW. WE ARE GOING TO CONVENE AT, YOU FOLKS AT 11:00
26 TOMORROW. WE HAVE AN HOUR OR SO OF MATTERS THAT HAVE TO
27 BE HEARD BEFORE YOU GET TO HEAR WHAT YOU GET TO HEAR.

28 SO, YOU GET TO HAVE A SECOND OR THIRD CUP OF COFFEE,

1 IF YOU WISH. BUT I EXPECT THAT WE WILL GO MOST OF THE
2 REST OF THE AFTERNOON. I EXPECT THE PROSECUTION TO REST
3 ON WEDNESDAY. SO, WE ARE RUNNING JUST A TAD AHEAD OF
4 SCHEDULE. I HOPE THAT DOESN'T OFFEND YOU EVEN THOUGH I
5 CAN'T GET EVERYONE HERE PROMPTLY.

6 YOU ARE UP.

7 MS. SCHMAUSS: OKAY. HOW DO YOU WANT ME TO DO THIS?
8 DO YOU WANT HIM TO NARRATE IT, THE TV OR WHAT? LAY THE
9 FOUNDATION AT THE WITNESS STAND.

10 THE COURT: HOW DO I WANT IT?

11 MS. SCHMAUSS: YES.

12 THE COURT: WHY DON'T YOU JUST DO WHAT YOU WANT IF
13 THERE'S NO OBJECTION, THAT WILL BE FINE IF THERE IS, I
14 WILL RULE ON IT.

15 MS. SCHMAUSS: OKAY. DETECTIVE DONLEY, WOULD YOU
16 TAKE THE STAND, PLEASE.

17 MICHAEL DONLEY,
18 CALLED AS A WITNESS BY THE PLAINTIFF, WAS SWORN AND
19 TESTIFIED AS FOLLOWS:

20 THE CLERK: PLEASE RAISE YOUR RIGHT HAND.

21 YOU DO SOLEMNLY SWEAR THE TESTIMONY YOU
22 MAY GIVE IN THE MATTER NOW PENDING BEFORE THIS COURT
23 SHALL BE THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT
24 THE TRUTH, SO HELP YOU GOD.

25 THE WITNESS: I DO.

26 THE CLERK: THANK YOU. PLEASE BE SEATED. PLEASE STATE
27 YOUR FULL NAME SPELLING YOUR LAST NAME FOR THE RECORD.

28 THE WITNESS: MICHAEL DONLEY D-O-N-L-E-Y.

DIRECT EXAMINATION

BY MS. SCHMAUSS:

Q DETECTIVE DONLEY, YOU ARE THE CASE INVESTIGATOR
ASSIGNED TO THIS CASE?

A YES.

Q AND YOU ARE A DETECTIVE ASSIGNED TO MONTCLAIR
POLICE DEPARTMENT?

A A POLICE OFFICER WHO HAS WORKED IN THE DETECTIVE
BUREAU. I PREVIOUSLY WAS A DETECTIVE AND ROTATED OUT.

Q OKAY. AND YOU WERE ASSIGNED TO INVESTIGATE THE
THIS HOMICIDE CASE INVOLVING THE VICTIM, BRITTANY RIGGS?

A YES, I WAS.

Q AND IN THE COURSE OF YOUR INVESTIGATION IN THIS
CASE, DID YOU RECORD A VIDEO OF THE HOME AT 9393 EXETER?

A YES.

Q ON WHAT DATE?

A THE 20TH OF OCTOBER, 1993.

Q OKAY. WHAT WERE YOU TRYING TO ACCOMPLISH BY
THIS VIDEO?

A JUST TO SHOW, GET A BETTER IDEA OF WHAT THE
HOUSE, THE LAYOUT OF THE HOUSE THEN WITH JUST STANDARD
PHOTOS.

Q I AM GOING TO SHOW YOU EXHIBIT 2 FOR
IDENTIFICATION; ASK YOU IF YOU RECOGNIZE IT?

A YES, I DO.

Q WHAT IS IT?

A IT IS THE CRIME SCENE VIDEO TAKEN ON THE DATE I
MENTIONED.

1 Q CAN YOU PULL IT OUT, PLEASE?

2 A (WITNESS COMPLIED.)

3 Q IS THIS YOUR WRITING ON THE LITTLE TAG IN THE
4 MIDDLE OF THE VIDEO?

5 A YES.

6 Q AND THIS WAS TAKEN ON OCTOBER 20, 1993?

7 A YES.

8 Q OKAY. I AM GOING TO PLAY IT. AND CAN YOU
9 NARRATE IT AND LET THE JURY KNOW WHAT IT IS THEY ARE
10 LOOKING AT.

11 EVERYBODY SEE? THEY CAN'T SEE OVER THERE. CAN
12 EVERYONE SEE? COUNSEL.

13 MR. ABLARD: I WILL MOVE. THANK YOU.

14 MS. SCHMAUSS: YOUR HONOR, IS THIS ALL RIGHT?

15 THE COURT: SURE.

16 (AT WHICH TIME THE VIDEO WAS PLAYED SANS AUDIO AND
17 SIMULTANEOUS WITH THE FOLLOWING TESTIMONY:)

18 THE WITNESS: THIS IS-- OKAY. THIS IS THE FRONT OF
19 9393 EXETER, CITY OF MONTCLAIR. IT IS LOOKING IN AN EAST
20 DIRECTION.

21 THIS IS WHERE THE RETHORNS OR RETHORN, RIGGS, LOPEZ,
22 AND MR. JOHNSON WERE LIVING ALONG WITH BRITTANY.

23 THAT IS THE HOUSE TO THE SOUTH AND LOOKING IN A
24 SOUTHERLY DIRECTION. FRONT DOOR IS IN THIS AREA RIGHT
25 HERE. THE HOUSE ON THE NORTH. THIS IS THE LIVING ROOM
26 AREA WHICH IS ON THE WEST SIDE. THIS IS LOOKING IN A
27 SOUTHERN DIRECTION, THE WEST SIDE OF THE RESIDENCE, JUST
28 INSIDE OF THE FRONT DOOR. THIS IS ACTUALLY BE TAKEN JUST

1 INSIDE THE FRONT DOOR OF THE RESIDENCE. THIS IS THE
2 WINDOW ON THE SOUTH WALL OF THE LIVING ROOM.

3 Q WHERE WAS THE TV SET? I'M SORRY. THE TV SET?

4 A THE TV SET WAS ON THE STAND THAT WAS THERE THAT
5 WAS ON THAT ROOM. THIS IS LOOKING IN AN EAST DIRECTION
6 DOWN THE HALLWAY. THE FIRST ROOM ON THE RIGHT HERE
7 BELONGS TO BRITTANY. THEN THERE'S ONE IN THE MIDDLE THAT
8 BELONGED TO THE PARENTS. AND THEN MR. JOHNSON'S ROOM IS
9 AT THE END.

10 THIS IS LOOKING IN A NORTH DIRECTION INTO THE DEN OR
11 FAMILY AREA WHICH IS ALSO OFF THE KITCHEN. I AM STANDING
12 ACTUALLY AT THE KITCHEN RIGHT NOW. IF YOU ARE TO LOOK TO
13 MY LEFT, THERE'S THE KITCHEN. THAT'S LOOKING IN THE WEST
14 DIRECTION.

15 THAT'S THE WINDOW YOU SAW FROM THE FRONT. LOOKING
16 BACK NORTH INTO THE DEN AREA, LOOKING OUT OF THE PATIO
17 SLIDER, WHICH IS ON THE EAST SIDE OF THE LIVING ROOM, OUT
18 ONTO THE PATIO AREA, AND THE WOODEN FENCE. THAT'S ON THE
19 EAST SIDE OF THE PROPERTY. WALKING OUT BACK SLIDER,
20 GOING ALONG THE WALKWAY NORTHBOUND, TURN WEST, THAT'S THE
21 FENCE YOU SAW ON THE NORTH SIDE OF THE RESIDENCE FROM THE
22 OTHER SIDE. TURNING BACK AROUND LOOKING EAST ONTO THE
23 PATIO. LOOKING ON THE EAST SIDE OF THE RESIDENCE. THIS
24 IS THE WINDOW TO MR. JOHNSON'S ROOM WHICH WAS ON THE EAST
25 SIDE OF HIS ROOM. WALKING FURTHER SOUTH, GET TO THE WALL
26 AND THEN WE LOOK WEST. AND YOU SEE THE BEDROOM WINDOWS
27 FOR MR. RETHORN. I'M SORRY, MR. RIGGS AND MS. RETHORN FOR
28 BRITTANY AND FOR THE LIVING ROOM. BACK ON THE PATIO AND

1 LOOKING WEST. THAT IS THE WINDOW FOR STEVE LOPEZ'S ROOM
2 WHICH IS ON THE NORTHEAST PORTION OF THE FLOOR PLAN. LOOK
3 IN THE SLIER THAT DOOR YOU SEE IN FRONT OF YOU IS THE DOOR
4 LEADING FROM INSIDE THE DINETTE AREA INTO THE GARAGE.

5 KITCHEN IS ON THE RIGHT OR THE WEST. THAT'S LOOKING INTO
6 BRITTANY'S ROOM. WE ARE LOOKING IN A SOUTHERN DIRECTION.
7 STILL LOOKING INTO BRITTANY'S ROOM. AND THE WINDOW WHICH
8 IS ALSO ON THE SOUTH SIDE. THERE'S THE ROOM. PASSING IT
9 ON THE NORTH SIDE WE ARE NOW LOOKING DOWN THE HALLWAY.

10 MR. LOPEZ'S ROOM. THERE'S THE RESTROOM. THERE AGAIN,
11 THAT'S ON THE NORTH SIDE OF THE RESIDENCE ABUT HALFWAY
12 BETWEEN THE FRONT OF THE HOUSE AND THE BACK OF THE HOUSE.
13 ONCE AGAIN, LOOKING DOWN THE HALL MAKE A RIGHT-HAND TURN
14 HERE TO JENNY AND DARIN'S ROOM. THERE IS THE WINDOW. IT
15 IS ON THE SOUTH WALL. AND THEIR BEDROOM. THAT'S THE
16 CLOSET IN THE MIDDLE BEDROOM WHICH IS MR. RIGGS, MS.
17 RETHORN'S ROOM. THAT'S LOOKING IN AN EAST DIRECTION.
18 EAST SIDE OF THE BEDROOM. WALKING BACK OUT INTO THE
19 HALLWAY IS CUPBOARDS THERE ON THE LEFT. WALKING TO THE
20 END ROOM ON THE EAST SIDE OF THE RESIDENCE. AND THAT'S
21 MR. JOHNSON'S ROOM. THAT'S ACTUALLY THE SOUTHEAST MOST
22 BEDROOM. AND OF COURSE, HIS WINDOW WHICH IS ON THE EAST
23 SIDE.

24 THE CLOSET WHICH IS ON THE EAST SIDE OF THE BEDROOM
25 ACTUALLY THE SOUTHWEST PORTION OF THE BEDROOM, THE DOORS
26 SLIDE ON BOTH, THE CLOSET HERE AND THE CLOSET IN THE
27 PARENT'S ROOM. LOOKING TO THE NORTH IS MR. LOPEZ'S ROOM.
28 THERE ARE SEVERAL PICTURES OR DRAWINGS THERE ON THE DOOR.

1 THIS IS LOOKING IN A EAST DIRECTION. AND INTO THE CLOSET
2 WHICH IS ON THE SOUTH SIDE OF HIS BEDROOM ACTUALLY
3 SOUTHEAST PORTION. AND THE MASTER BATH IS TO THE LEFT OR
4 ON THE WEST SIDE OF THE MASTER BEDROOM.

5 WALKING OUT AND LOOKING BACK IN A WEST DIRECTION
6 TOWARDS THE FRONT DOOR. THAT DOOR YOU CAN SEE RIGHT THERE
7 IS THE FRONT DOOR. THAT'S OPEN. LOOKING ONCE AGAIN IN
8 THAT AT THE BATHROOM AND THE HALLWAY, WALKING, IF YOU ARE
9 IN THE HALLWAY, LOOKING TO THE LEFT, IS THE LIVING ROOM.
10 THIS IS WHERE THE TELEVISION HAD BEEN IS ON THAT STAND.

11 SWINGING IT AROUND LOOKING AT THE SLIDER. THE DEN
12 AREA. AND HERE AGAIN I AM STANDING IN THE KITCHEN AT THIS
13 POINT OR ACTUALLY IN THE DINETTE AREA JUST OFF THE KITCHEN
14 LOOKING IN THE LIVING ROOM. THIS IS THE WEST WINDOW OF
15 THE RESIDENCE LIVING ROOM. AND BACK OUT TO THE FRONT
16 DOOR. AND THAT'S THE CLOSET BEHIND THE FRONT DOOR.
17 LIVING ROOM. AND THE HALLWAY.

18 Q IS THAT WALKING DOWN THE HALLWAY IN AN EAST
19 DIRECTION AND BACK INTO MR. JOHNSON'S ROOM.

20 A THAT'S IT.

21 (WHEREUPON VIDEO WAS TAPE CONCLUDED.)

22 THE COURT: AND WHAT ELSE DO YOU HAVE?

23 MS. SCHMAUSS: I HAVE SOME MORE QUESTIONS FOR OFFICER
24 DONLEY AS LONG AS WE HAVE TIME.

25 THE COURT: WE DO.

26 Q BY MS. SCHMAUSS: ON THE VIDEO, OFFICER DONLEY,
27 WERE THERE ANY CHANGES TO THE HOUSE FROM THE DAY OF THE
28 INCIDENT WHICH WAS ON THE 10TH TO WHEN YOU FILMED THIS ON

1 THE 20TH?

2 A YES. THERE WERE SEVERAL PIECES OF PROPERTY,
3 ITEMS, THAT WERE TAKEN OUT.

4 Q AND IN PARTICULAR, THE FRONT ROOM, THE TV SET
5 WAS GONE?

6 A YES.

7 Q AND HOW ABOUT THE DEFENDANT'S ROOM?

8 A I DIDN'T SEE THE TV IN THERE. I DON'T RECALL IF
9 IT WAS GONE OR NOT. BUT I BELIEVE IT WAS.

10 Q HAD A LOT OF THINGS BEEN REMOVED BY THE
11 DEFENDANT'S ROOM BY THE TIME YOU FILMED THAT?

12 A A LOT OF THINGS.

13 Q DID YOU SUPERVISE OR OVERSEE THE REMOVAL OF
14 PROPERTY FROM THE DEFENDANT'S ROOM DURING THE WEEK OR THE
15 TEN DAYS BETWEEN THE 10TH AND YOU FILMING THAT ON THE
16 20TH?

17 A NO.

18 Q WHO WAS IN CHARGE OF THAT?

19 A WELL, AFTER WE GOT DONE PROCESSING IT, HIS WIFE
20 WENT IN AND TOOK SOME STUFF OUT.

21 Q DID YOU COORDINATE THAT?

22 A I TOLD HER IT WAS ALL RIGHT FOR HER TO GO IN,
23 YES.

24 Q WHAT DATE WAS THAT?

25 A I BELIEVE IT WAS ON THE 13TH.

26 Q OKAY. NOW, YOU HEARD SOME TESTIMONY EARLIER
27 TODAY ABOUT SEALING THE DEFENDANT'S ROOM?

28 A YES.

1 Q OKAY. AND SO WHAT DID THAT-- WHAT KIND OF
2 EFFORTS WERE MADE TO KEEP THE DEFENDANT'S ROOM SECURE SO
3 THAT NO ONE COULD TAMPER WITH IT?

4 A WELL, WHEN WE ORIGINALLY WENT THERE ON THE 10TH,
5 THE ROOM WAS NOT ACTUALLY CONSIDERED A CRIME SCENE. BUT I
6 WANTED TO PRESERVE THE INTEGRITY OF IT. SO WHEN WE LEFT
7 AFTER WE LOOKED THROUGH IT AND RETRIEVED SOME ITEMS, I
8 LOCKED THE DOOR AND I HAD PUT A SEAL ON THE DOOR, AN
9 EVIDENCE SEAL SUCH AS YOU MIGHT FIND ON A PIECE OF
10 EVIDENCE.

11 Q YOU MEAN LIKE THIS LAW ENFORCEMENT SAYS EVIDENCE
12 SEAL, LAW ENFORCEMENT?

13 A WELL, THAT'S JUST TAPE. THE ACTUAL SEAL THAT WE
14 USE IS A PAPER TAPE, IT CAN'T BE PEELED OFF OR COME OFF
15 IN SECTIONS. IF IT IS, IF YOU TRY TO TAMPER WITH IT, YOU
16 CAN SEE IT. YOU CAN SEE WHERE SOMEBODY TRIED TO PEEL IT
17 OFF OR IN FACT BROKEN THE SEAL.

18 Q YOU PUT THAT ON THE DOORKNOB TO THE DEFENDANT'S
19 ROOM?

20 A NO, I PUT IT ON THE DOOR.

21 Q OKAY?

22 A ON THE DOOR SILL.

23 Q OH, WHERE THE DOOR ACTUALLY CLOSES?

24 A WELL, WHERE IT ACTUALLY MEANING THE DOOR SILL, I
25 ACTUALLY PUT IT IN AN L-SHAPE FASHION SO IF THE DOOR WAS
26 OPENED, OBVIOUSLY, THE TAPE WILL BREAK.

27 Q WHEN DID YOU AFFIX THAT TAPE?

28 A THAT WAS ON THE 10TH.

1 Q HAD ALL THE CIVILIANS FROM THE HOUSE LEFT THE
2 HOUSE BY THEN?

3 A I DON'T BELIEVE THERE WERE ANY THERE AT THAT
4 TIME.

5 Q OKAY. WAS THERE ANY POINT IN THE INVESTIGATION
6 WHERE THE HOUSE WAS ON THE 10TH LEFT UNSECURED WITHOUT ANY
7 OFFICERS, MEANING BEFORE YOU PUT THE SEAL ON THE DOOR AND
8 NO OFFICERS TO WATCH OVER?

9 A WELL, I CAN'T ANSWER THAT. THE TIME THAT I WAS
10 THERE, NO. BUT I CAN'T TELL YOU IF SOMEBODY WAS THERE OR
11 NOT. OFFICER KELLY OBVIOUSLY SAID HE WAS.

12 Q OKAY.

13 A THAT'S ABOUT AS FAR AS I CAN GO.

14 Q PERSONALLY, KNOWLEDGE, YOU CAN ONLY TELL US
15 FROM WHEN YOU GOT THERE?

16 A RIGHT.

17 Q SO WHEN DID YOU GET THERE?

18 A I GOT THERE APPROXIMATELY OH, I'D SAY 12:30,
19 QUARTER TO 1.

20 Q WERE ANY OF THE PEOPLE LIVING AT THE HOUSE THERE
21 AT 12:30, QUARTER TO 1?

22 A I DON'T THINK SO. I DON'T RECALL. BUT I DON'T
23 BELIEVE SO.

24 Q OKAY. SO, THEN YOU SEAL THE ROOM, LOCK UP THE
25 HOUSE. AND DO YOU RECALL I THINK THERE WAS TESTIMONY
26 ABOUT OFFICER BALES ABOUT CHECKING ALL THE WINDOWS,
27 LOCKING ALL THE WINDOWS?

28 A YEAH. BALES ACTUALLY WAS CHECKING THE

1 WINDOWS. BUT I WAS KIND OF TAGGING ALONG WITH HIM AS HE
2 WAS DOING IT.

3 Q AND WHEN YOU RETURNED THE NEXT DAY; IS THAT
4 CORRECT-- YOU RETURNED THE NEXT DAY?

5 A ON THE 12TH.

6 Q DID YOU INSPECT?

7 A I'M SORRY. ON THE 11TH.

8 Q DID YOU INSPECT THE SEAL ON THE DOOR TO THE
9 DEFENDANT'S ROOM?

10 A I DON'T RECALL ACTUALLY CHECKING IT. OFFICER
11 BALES CHECKED IT. HE WENT IN ACTUALLY AHEAD OF ME. SO HE
12 CHECKED IT.

13 Q DID HE ALERT YOU TO ANY TAMPERING?

14 A NO.

15 Q HOW ABOUT THE WINDOWS; THEY APPEAR TO HAVE BEEN
16 TAMPERED WITH?

17 A NO.

18 Q OKAY. DO YOU RECALL WHEN YOU TOOK THAT SEAL OFF
19 OF THE DOOR?

20 A I DON'T REMEMBER EVER TAKING IT OFF.

21 Q OKAY?

22 A IT, SOMETIMES WHEN YOU OPEN IT, IT TEARS IT.

23 YOU KNOW IT'S EASY TO PEEL OFF AT THAT POINT. BUT I DON'T
24 REMEMBER TAKING IT OFF.

25 Q AND YOU PUT THE DEFENDANT INTO CUSTODY ON THE
26 12TH?

27 A ON THE 11TH.

28 Q ON THE 11TH?

1 A YES.

2 Q AND TO YOUR KNOWLEDGE, HE DID NOT GET OUT OF
3 CUSTODY AND RETURN TO THE HOUSE ANY TIME BETWEEN THAT DATE
4 AND THE 20TH WHEN THE BLANKET WAS RECOVERED?

5 A NOT TO MY KNOWLEDGE.

6 Q NOW, THERE'S BEEN SOME REFERENCE TO A SEARCH OF
7 THE DEFENDANT'S ROOM?

8 A YES.

9 Q THE TIME THAT YOU LOOKED THROUGH THE DEFENDANT'S
10 ROOM WAS THE SCENE CONSIDERED A CRIME SCENE?

11 A NO, AT THE ORIGINAL TIME THAT WE WERE LOOKING
12 THROUGH THERE, I WAS LOOKING MORE FOR WHAT CAUSE OF DEATH.

13 THE COURT: I THINK THE ANSWER WAS NO. THANK YOU.
14 NEXT QUESTION.

15 Q BY MS. SCHMAUSS: WHAT ARE YOU LOOKING FOR?

16 A ITEMS THAT WOULD HELP US, SOME INFORMATION AS TO
17 WHAT HAD HAPPENED.

18 Q THE CAUSE OF DEATH?

19 A YES.

20 Q OKAY. BEHIND YOU ON EXHIBIT 3 IS A BLOWN UP
21 PHOTOGRAPH OF THE DEFENDANT'S ROOM. IS THAT HOW IT LOOKED
22 WHEN YOU WERE LOOKING THROUGH IT ON THE 10TH?

23 A YES.

24 Q AND WHAT KIND OF ITEMS DO YOU SEE THERE?

25 A I SAW LOTS OF CLOTHES. I SAW THE TOOL BOX. I
26 SAW SOME TOYS. AND ALSO SOME CHILDREN'S-TYPE CLOTHING,
27 SMALL LIKE INFANT-TYPE CLOTHING ON THE FLOOR. AND THEN
28 HIS BED. AND I SAW THE TELEVISION, A VCR. THERE WAS A

1 TAPE IN THERE, SOME CHILD'S TAPE. BUT I DON'T REMEMBER
2 WHAT IT WAS.

3 Q WAS THERE OLD FOOD?

4 A OLD FOOD.

5 Q DIAPERS?

6 A I'M SORRY.

7 Q DIAPER?

8 A DIAPERS.

9 Q CLEAN OR DIRTY?

10 A I DON'T REMEMBER.

11 Q OKAY. DID YOU SEARCH UNDER THE BED ON THE 10TH?

12 A WELL, I LIFTED THE BED UP, YES, LIKE I SAID.

13 Q IN WHAT MANNER?

14 A I STOOD AT THE HEAD OF IT, FOOT OF IT OR HEAD OF
15 IT AND JUST LIFTED IT UP, THE TOP PART AND THE BOX SPRING
16 AREA.

17 Q DID YOU ACTUALLY STAND IT ON ITS SIDE?

18 A I DON'T REMEMBER IF I ACTUALLY STOOD IT ON ITS
19 SIDE. BUT I TURNED IT ALL THE WAY UP AGAINST THE WALL, IF
20 THAT'S WHAT YOU ARE ASKING ME.

21 Q IF YOU UNDERSTAND WHAT I'M ASKING YOU WHEN YOU
22 TURNED THE BED UP, MEANING YOU WOULD TAKE THE BED AS IT IS
23 FLAT AND THEN FLIP IT UP AND IT WOULD STILL BE AGAINST THE
24 WALL. I AM ASKING YOU IF YOU DID THAT?

25 A WELL, HERE AGAIN, I THINK IT SO IT WAS PARTIALLY
26 UP AGAINST THE WALL. I DON'T RECALL EXACTLY HOW FAR
27 WHETHER IT WAS EVER ACTUALLY ON ITS END. BUT IT WAS
28 TURNED.

1 Q DID YOU EVER PULL THE BED COMPLETELY AWAY FROM
2 THE WALL?

3 A NO.

4 Q DID YOU EVER CHECK TO SEE IF ANYTHING WAS
5 AGAINST THE WALL?

6 A NO.

7 Q DID YOU SEE THIS BABY BLANKET WHEN YOU WERE
8 LOOKING THROUGH THE ROOM ON THE 10TH?

9 A I BELIEVE I SAW A BLANKET. I DON'T KNOW IF I
10 SAW THAT. BUT IT DIDN'T REGISTER.

11 Q OKAY. WHY WOULD IT HAVE NOT REGISTERED IF YOU
12 HAD SEEN IT?

13 A WELL, HERE AGAIN, MR. JOHNSON HAD A SMALL BABY
14 OR INFANT CLOTHING IN HIS ROOM. I JUST FIGURED IT WAS
15 PART OF HIS SOMETHING HIS CHILD WOULD USE LIKE I SAID,
16 THERE WAS TOYS AND EVERYTHING ELSE. IT DIDN'T REALLY
17 STAND OUT AT ME.

18 Q AND YOU DIDN'T GO AND PULL EACH OBJECT OUT AND
19 HOLD IT UP AND UNROLL IT?

20 A NO.

21 Q OKAY. DID YOU TRY TO FINGERPRINT THIS PLASTIC
22 BAG WHICH IS EXHIBIT NUMBER 57 FOR IDENTIFICATION?

23 A NO.

24 Q WHY NOT?

25 A BECAUSE IT WOULD BE ALMOST IMPOSSIBLE TO GET
26 FINGERPRINTS OFF THAT. SOMEBODY FROM THE DEFENSE TRIED
27 IT AND THEY COULDN'T GET IT EITHER.

28 Q WERE YOU PRESENT WHEN THE DEFENDANT'S PERSON WAS

1 TRYING TO LIFT PRINTS?

2 A YES. AND HE WAS UNABLE. THAT'S WHAT HE TOLD
3 ME.

4 Q DID YOU SEE HIM LIFT ANY LATENT PRINTS OR
5 PRINTS OFF OF IT?

6 A NO.

7 Q WITHOUT LUGGING IT OUT, YOU HAVE SEEN THE TOOL
8 BOX?

9 A YES.

10 Q THAT WE HAVE MARKED FOR EVIDENCE. DID YOU PUT--
11 PLACED THAT INTO EVIDENCE?

12 A YES.

13 Q AND YOU RECOVERED THAT FROM THE DEFENDANT'S
14 ROOM?

15 A I RECOVERED THAT FROM THE DEFENDANT'S WIFE WHO
16 WAS COMING OUT OF HIS ROOM AFTER SHE WAS CLEANING IT.

17 Q NOW, IS THAT THE SAME TOOL BOX THAT WAS IN THE
18 PHOTOGRAPHS BEHIND YOU?

19 A YES.

20 Q AND DID YOU OBSERVE SOMEBODY TRYING TO
21 FINGERPRINT THAT IN YOUR PRESENCE?

22 A YES.

23 Q WHO WAS THAT?

24 A SOMEBODY FROM THE DEFENSE. I BELIEVE IT WAS
25 ONE OF THEIR INVESTIGATORS.

26 Q WAS HE ABLE TO GET ANY FINGERPRINTS OFF OF IT?

27 A HE TOLD ME HE WASN'T.

28 Q WHEN YOU WERE IN THE DEFENDANT'S ROOM ON THE

1 10TH, DID YOU OBSERVE WHETHER THERE WAS A LOCK ON THE
2 DOOR?

3 A YES.

4 Q WHAT KIND?

5 A THERE WERE TWO KINDS. THERE WAS ONE HOOK AND
6 EYE WHICH WAS ABOVE THE REGULAR DOOR HANDLE. AND THERE
7 WAS ALSO A LOCKING-MECHANISM LOCK, HANDLE.

8 Q OKAY. AND THAT WAS PRESENT WHEN YOU FIRST
9 EXAMINED IT ON THE 10TH AND THEN THROUGHOUT--

10 A YES.

11 Q -- THE REST OF THE TIME YOU ARE IN THE HOUSE?

12 A YES.

13 Q OKAY. AND--

14 A I DON'T RECALL IF IT WAS THERE ON THE 20TH OR
15 NOT WHEN I WAS IN THERE. BUT IT WAS THERE DURING THE
16 FIRST COUPLE OF DAYS.

17 Q DID YOU TAKE SOME PHOTOGRAPHS IN THIS CASE?

18 A YES.

19 Q AND DID YOU TAKE PHOTOGRAPHS AT THE AUTOPSY?

20 A YES.

21 Q NUMBERS 47, 48, 50, AND 52, DID YOU TAKE THESE
22 PICTURES?

23 A YES.

24 Q YOU ARE FAMILIAR WITH THE TERM POSTMORTEM
25 LIVIDITY?

26 A YES.

27 Q YOU HAVE HEARD DR. SHERIDAN TESTIFY ABOUT IT?

28 A YES.

1 Q HAVE YOU BEEN TRAINED IN DETERMINING WHETHER THE
2 BODY IN THE SAME POSITION THAT IT WAS WHEN THE PERSON WAS
3 KILLED BY THE LIVIDITY ON THE BODY?

4 A I HAVE A LIMITED KNOWLEDGE AS TO HOW LIVIDITY
5 WORKS. I CAN'T SAY THAT I HAVE BEEN TRAINED IN DETECTING
6 HOW THE BODY WAS AT THE TIME OF DEATH.

7 Q LOOKING AT PHOTOGRAPH NUMBER 50 WITH THE
8 LIVIDITY IN THE BACK, IS THAT CONSISTENT WITH THE VICTIM
9 BEING KILLED?

10 THE COURT: I'M SORRY. HE JUST TOLD YOU HE DIDN'T
11 KNOW ENOUGH ABOUT LIVIDITY TO EXPRESS AN OPINION IN MY
12 COURT. SO, DON'T ASK HIM ANY QUESTIONS. IT IS A GOOD
13 TIME FOR OUR RECESS. SEE YOU ALL TOMORROW AT 11.
14 REMEMBER 11:00.

15 MR. ABLARD: YOUR HONOR, BEFORE WE DO THAT, MAY WE
16 APPROACH JUST WITH THE TIMING OF IT SINCE WE HAVE A
17 WITNESS HERE THAT MAY HAVE TO BE COMING OVER? TOMORROW,
18 WE HADN'T PLANNED ON THE WITNESS CONTINUING OVER. SO,
19 MIGHT BE A BIT OF A CHANGE. BUT IF NOT, 11 IS FINE.

20 THE COURT: NO. 11:00 IT IS.

21 MR. ABLARD: GREAT.

22 THE COURT: DON'T DISCUSS THE CASE. DON'T FORM ANY
23 OPINIONS OR CONCLUSIONS

24 SEE YOU ALL AT 11.

25 (PROCEEDINGS CONTINUED TO THE FOLLOWING DAY.)

26

27

28