
In the Supreme Court Of The United States

CHAD BENNETT,

Petitioner,

v.

STATE OF WASHINGTON,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS OF WASHINGTON

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether a void for vagueness challenge to statutory aggravating factors is precluded when the upper-end of the sentencing guidelines range is raised by a jury finding of an aggravating circumstance, and the court has full discretion to impose a sentence within or below the sentencing guidelines.

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INTRODUCTION

The petition does not present an issue meriting this Court's review. The question raised by the petition was resolved by *Beckles v. United States*, 137 S. Ct. 886, 892 (2017). *Beckles* provides that sentencing guidelines that allow discretion to impose a sentence within a range are not subject to a void for vagueness challenge under the Fifth Amendment Due Process Clause. Washington's functionally advisory sentencing guidelines fall squarely within the holding of *Beckles*. The State sentencing guidelines allow the sentencing court to impose a sentence within a range. If a jury finds an aggravating factor exists, the court may impose a sentence above the standard range, but a higher sentence is not required. Wash. Rev. Code § 9.94A.535. Rather, the sentencing court has full discretion to impose a sentence within or above the guidelines provided by the standard sentencing range. Thus, a jury determination of an aggravating factor does nothing more than *increase* the court's discretion. Because it does not fix the sentence, the statute addressing aggravating factors is not subject to a void for vagueness challenge. *Beckles*, 137 S. Ct. at 893.

The petition provides no reason for the Court to revisit *Beckles*. Washington's intermediate appellate court properly applied this Court's precedent. No state or federal court has struggled to apply the principles established in *Beckles* governing review of aggravating factors. Therefore, the petition should be denied.

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SUPPLEMENTAL STATEMENT OF THE CASE

I. Washington's sentencing guidelines

Like the federal government, Washington employs sentencing guidelines to guide sentencing decisions. *See* Wash. Rev. Code § 9.94A.010 *et seq.* Washington's Sentencing Reform Act establishes a standard range for presumptive sentences along with statutory guidelines for departures from the standard range. *Id.*; *State v. Blair*, 421 P.3d 937, 943 (Wash. 2018) (McCloud, J., concurring). The guidelines recommend, rather than require, selection of particular sentences in response to differing sets of facts. *United States v. Booker*, 543 U.S. 220, 221 (2005). The sentencing court's options increase if the jury determines that the State has proved aggravating factors beyond a reasonable doubt. Wash. Rev. Code § 9.94A.537(4); *Blakely v. Washington*, 592 U.S. 296 (2004). When there are aggravating factors, the trial court may impose a sentence within the standard range or opt to impose a sentence above the standard range. Wash. Rev. Code § 9.94A.537(6) ("the court *may* sentence the offender to a term of confinement up to the maximum allowed [for the offense of conviction.]") (emphasis added). In other words, the existence of aggravating factors broadens the sentencing court's discretion, rather than fixing or limiting the sentencing options.

II. Under Washington's sentencing guidelines, the jury finding that Mr. Bennett committed murder with aggravating circumstances increased the trial court's sentencing discretion.

Chad Bennett brutally beat his 82-year-old landlord's face and head, stabbed her in the neck, stabbed her chest 17 times, manually strangled her, and slashed

her throat twice. State App. 4a, 10a, 18a-19a, 85a. A jury found Mr. Bennett guilty of second-degree murder. App. 86. The jury also found that the State proved two aggravating circumstances beyond a reasonable doubt: deliberate cruelty and a particularly vulnerable victim. App. 86.

Although Washington's standard range sentence for second-degree murder is 134-234 months, the court imposed an exceptional sentence of 660 months. App. 88. The court concluded that substantial evidence supported the jury's conclusion that the particularly vulnerable, elderly victim was subjected to deliberate cruelty. App. 86-87 (Conclusions of Law 1, 3). The court also concluded that the evidence showed Mr. Bennett "engaged in gratuitous violence which was significantly more serious" than a typical second-degree murder, and "imparted physical, psychological, and emotional pain . . . as an end itself," justifying imposition of the exceptional sentence. App. 86-87.

III. Procedural history on review

The Washington Court of Appeals denied Mr. Bennett's various challenges and affirmed his conviction. App. 78. Addressing Mr. Bennett's vagueness challenge, the Court of Appeals first referred to this Court's decisions in *Johnson v. United States*, 576 U.S. 591 (2015) and *Beckles*, noting the due process vagueness prohibition applies to statutes fixing sentences, which must specify the sentencing range with sufficient clarity. App. 70. Citing *Beckles*, as well as decisions of the Washington Supreme Court, the Court of Appeals concluded that the due process considerations underlying the void for vagueness doctrine did not apply to

Washington's sentencing guidelines because the aggravating factors "merely guide" the court's decision whether to impose an exceptional sentence. App. 71. Finally, the Court of Appeals held that even if Mr. Bennett's vagueness challenge were not foreclosed, "he makes no showing that the deliberate cruelty and victim vulnerability factors were vague as applied to his conduct." App. 75.

The Washington Supreme Court denied review. App. 1.

REASONS FOR DENYING THE PETITION

I. The Court of Appeals correctly applied *Beckles* to Washington's discretionary sentencing scheme.

The Washington Court of Appeals decision properly applies the rule announced in *Beckles*. Under the Fifth Amendment's Due Process Clause, a statute fixing a criminal penalty is "unconstitutionally vague" if it does not sufficiently define proscribed conduct such that it can be understood by ordinary persons, or if it fails to provide standards sufficiently clear to protect against arbitrary enforcement. *Beckles*, 137 S. Ct. at 892.

In *Beckles*, this Court held that sentencing guidelines which "merely guide" a trial court's exercise of discretion are not subject to a void for vagueness challenge under the Fifth Amendment. *Beckles*, 137 S. Ct. at 894. The Court explained that unlike fixed sentencing ranges, advisory guidelines "do not implicate the twin concerns underlying the vagueness doctrine—providing notice and preventing arbitrary enforcement." *Id.* Guidelines do not provide notice that would allow an individual to choose behavior that would prevent application of a mandatory penalty, because the trial court retains sentencing discretion. *Id.*

Like the federal guidelines analyzed in *Beckles*, Washington's Sentencing Reform Act "structures, but does not eliminate, discretionary decisions affecting sentences" Wash. Rev. Code § 9.94A.010. Courts may, but are not required to, impose enhanced sentences up to the statutory maximum upon the jury's unanimous determination of facts supporting an exclusive list of aggravating factors established under Wash. Rev. Code §§ 9.94A.535. Wash. Rev. Code § 9.94A.537(6). The sentencing court must independently determine that the facts underlying any aggravating factor found by the jury "are substantial and compelling reasons justifying an exceptional sentence." *Id.*

Unlike the Armed Career Criminal Act (ACCA) residual clause found unconstitutional by *Johnson*, Washington's upward departure scheme does not fix or otherwise increase the length of minimum sentences. It expands the maximum sentencing range to the maximum term allowed for the class of crime for which the offender is convicted. Wash. Rev. Code § 9.94A.537(6). In Mr. Bennett's case, having been convicted of an A-level felony, the maximum sentence is life. Wash. Rev. Code § 9.20.021(1)(a).

Washington's Supreme Court concluded in 2003 that void-for-vagueness due process considerations are inapplicable in the context of Washington's sentencing guidelines because the statutory aggravators do not specify imposition of a particular sentence or require a fixed sentencing outcome. *State v. Baldwin*, 78 P.3d 1005, 1012 (Wash. 2003). A sentencing court is free to exercise its discretion when considering a sentence outside the standard range, restricted only by the

requirement to articulate a substantial and compelling reason when imposing an enhanced sentence. *Id.*

Under the reasoning stated in *Beckles*, Washington's guidelines and procedures governing aggravating sentencing factors do not implicate vagueness due process concerns because there is no mandatory penalty imposed for the acts comprising statutory aggravating factors. For purposes of the vagueness doctrine, Washington cases do not distinguish between federal and state protections. *State v. Wallmuller*, 449 P.3d 619, 621 (Wash. 2019).

"Mandatory" guidelines and "advisory" guidelines are two ends of a continuum. There is no functional difference between the enhanced sentencing discretion afforded federal judges under the advisory federal guidelines and the discretion conferred on Washington judges by the state Sentencing Reform Act. Under both systems, the judge may decide both whether to impose an aggravated sentence and the length of any sentence imposed. Washington's sentencing guidelines are "mandatory" only in that courts must sentence according to its provisions, provisions which include conferring upon sentencing courts unconstrained discretion in the imposition of enhanced sentences. This Court has "never suggested that unfettered discretion can be void for vagueness." *Beckles*, 137 S. Ct. at 895.

The *Beckles* Court examined whether the federal guidelines authorized a sentencing court to "tak[e] away someone's life, liberty, or property under a criminal law so vague that it fails to give ordinary people fair notice of the conduct it

punishes, or so standardless that it invites arbitrary enforcement.” *Id.* The Court concluded advisory guidelines did not trigger these twin concerns because “they merely guided the [sentencing] court’s discretion. *Id.* at 894. Unlike the residual clause of the ACCA in *Johnson*, the post-*Booker* advisory guidelines did not fix the permissible sentences for criminal offenses such that they could be challenged as vague. *Beckles*, 137 S. Ct. at 894. Due process notice concerns applicable to mandatory guidelines do not apply when the guidelines are advisory. *Id.* Because advisory guidelines are not enforced at all, they cannot be enforced arbitrarily. *Id.* at 895. Justice Thomas noted the Court’s “cases have never suggested that a defendant can successfully challenge as vague a sentencing statute conferring discretion to select an appropriate sentence from within a statutory range, even when that discretion is unfettered.” *Id.* at 893. This interpretation is consistent with this Court’s prior decisions holding that while the guidelines provide the framework for sentencing, courts must also consider the individualized facts presented and other statutory factors. *Id.* at 894 (citing *Gall v. United States*, 552 U.S. 38, 49, 50 (2007)); *Peugh v. United States*, 133 S. Ct. 2072, 2083 (2013) (Thomas, J., dissenting). The present federal system of guided discretion is not unconstitutionally vague. *Id.*

II. No conflicting case law has developed in the wake of *Beckles*.

Mr. Bennett contends there is a split of authority among the States. Not so. He cites only two cases in which state courts of last resort accepted void-for-vagueness aggravator challenges, both of which pre-date *Beckles*. Pet. at 13-14,

citing *State v. Houser*, 768 S.E.2d 626 (N.C. Ct. App. 2015) and *State v. Speedis*, 256 P.3d 1061 (Or. 2011). There is no indication that North Carolina or Oregon would continue to allow a void for vagueness challenge to an aggravator, in conflict with *Beckles*. Indeed, the relevant holdings of each of these cases have not been cited by the courts of North Carolina or Oregon after *Beckles* was issued.

Lacking any indication of a current conflict, Mr. Bennett resorts to citing cases that are simply irrelevant. For example, *State v. Pomianek*, 110 A.3d 841 (N.J. 2015), has nothing to do with sentencing guidelines, addressing instead an unremarkable vagueness challenge to a hate crime statute that allowed conviction based on a victim's "reasonable belief" about the defendant's mental state. *State v. Pomianek* also predates *Beckles* and is only obliquely relevant to the issue before this Court. The defendant challenged a bias intimidation statute for allowing conviction upon proof of a victim's "reasonable belief" the offense was committed because of the victim's race, without inquiry into the defendant's state of mind. *Id.* at 849, 856. The statute's asserted vagueness was tangential to the due process question of whether an offender could receive an enhanced sentence based solely on the "reasonable belief" of another person.

In addition to its irrelevant subject matter, the 2015 *Pomianek* decision cannot be relied upon to establish a current split of authority because it, too, predates *Beckles*.

Bennett's reliance on a dissenting opinion in *State v. Rourke*, 773 N.W.2d 913 (Minn. 2009) is also inapt. It is irrelevant to Mr. Bennett's argument that, unlike

Washington, Minnesota law allows the judge to find the ultimate fact of aggravating factors after a jury has found the necessary predicated facts. *Id.* at 919–21. Mr. Bennett does not challenge that aspect of Washington’s sentencing procedure.

Minnesota, like Washington, disallowed void-for-vagueness challenges to sentencing guidelines long before this court decided *Beckles*. Almost nine years before *Beckles*, the Minnesota Supreme Court concluded that despite this Court’s decisions in *Blakely*¹ and *Apprendi*,² “vagueness challenges do not apply to sentencing guidelines.” *Rourke*, 773 N.W. at 922 (citing *United States v. Idowu*, 520 F.3d 790, 795–96 (7th Cir. 2008)).

Bennett fails to demonstrate that any State has departed from *Beckles*, and for good reason. Following *Beckles*, the States have followed this Court’s opinion. For example, the Alabama Court of Criminal Appeals, citing *Beckles*, held an Alabama statute requiring arrest, prosecution, and trial in adult court for juveniles charged with certain felony offenses was not subject to vagueness and overbreadth challenges. *State v. B.T.D.*, 296 So. 3d 343, 347 (Ala. Crim. App. 2019), *cert. denied*, 140 S. Ct. 1220 (2020). Similarly Illinois, citing *Beckles*, “[did] not see how a vagueness challenge may lie against a permissive statute governing conditions of probation” and denied a vagueness challenge to a discretionary juvenile sentencing statute, noting it neither prohibited or permitted any conduct and was nothing more than an authorizing statute for probation conditions. *In re Jawan S.*, 121 N.E.3d 1002, 1014 (Ill. App. Ct. 2018).

¹ *Blakely v. Washington*, 542 U.S. 296 (2004)

² *Apprendi v. New Jersey*, 530 U.S. 455 (2000)

Maryland recognized the *Beckles* vagueness analysis when it rejected an offender's argument that he suffered a *per se* violation of his due process rights from a Maryland sentencing statute that failed to specify a maximum term. *Johnson v. State*, 201 A.3d 644, 649 (Md. Ct. App. 2019), *aff'd*, 225 A.3d 44 (Md. 2020). The court held the challenged Maryland statute specified both the activity proscribed and the consequences for violation. *Id.*

III. Washington's aggravator sentencing guidelines are functionally advisory, placing this State squarely within *Beckles's* prohibition against aggravator vagueness challenges.

Under the facts of this case, this Court does not need to answer whether aggravating factors imposed under "mandatory" guidelines are subject to appellate review for unconstitutional vagueness. In addition to the functionally-advisory nature of the aggravating factor statutes, review is not warranted merely because one of three judges deciding Mr. Bennett's appeal thought insufficient evidence supported the jury's unanimous conclusion Lucille Moore was killed with deliberate cruelty.

The root of the vagueness doctrine is a rough idea of fairness. It is not a principle designed to convert into a constitutional dilemma the practical difficulties in drawing criminal statutes both general enough to take into account a variety of human conduct and sufficiently specific to provide fair warning that certain kinds of conduct are prohibited.

Colten v. Kentucky, 407 U.S. 104, 110 (1972).

This Court recognizes an "otherwise uncertain" statute satisfies due process when prior judicial decisions have fairly disclosed whether an offender's conduct falls within the statute's scope. *United States v. Lanier*, 520 U.S. 259, 266 (1997).

When an offender's conduct is significantly more serious or egregious than is typical and includes gratuitous violence, an exceptional sentence is justified under Washington's "deliberate cruelty" aggravator. *State v. Dunaway*, 743 P.2d 1237, 1243 (Wash. 1987). Washington's deliberate cruelty aggravator "contemplates acts not usually associated with simply committing the offense." *State v. Payne*, 726 P.2d 997, 999 (Wash. Ct. App. 1986). It concerns "gratuitous violence, or other conduct which inflicts physical, psychological, or emotional pain as an end in itself." *State v. Strauss*, 773 P.2d 898, 903 (Wash. Ct. App. 1989). Washington appellate courts have developed a body of law assessing whether various acts of gratuitous violence supported the jury's finding of deliberate cruelty. "Multiple acts in themselves establish a greater level of culpability than is contemplated by the Legislature in establishing the punishment for a crime that can be committed by a single act." *State v. Vaughn*, 924 P.2d 27, 32 (Wash. Ct. App. 1996) (citing *State v. Herzog*, 849 P.2d 1235, 1238 (Wash. Ct. App. 1993)). Gratuitous infliction of multiple wounds can support an exceptional sentence based on deliberate cruelty. *See, e.g., State v. Buckner*, 876 P.2d 910, 914 (1994) (15 separate stab wounds warrant finding of deliberate cruelty), *rev'd on other grounds*, 800 P.2d 460 (Wash. 1995); *State v. Campas*, 799 P.2d 744, 747 (Wash. Ct. App. 1990) (victim repeatedly bludgeoned and stabbed); *State v. Franklin*, 786 P.2d 795, 798 (Wash. Ct. App. 1989) (multiple stabbings can justify an enhanced sentence).

As the Washington Court of Appeals concluded here, Mr. Bennett made "no showing that the deliberate cruelty and victim vulnerability factors are vague as

applied to his conduct.” *State v. Bennett*, No. 35297-9-III (Wash. Ct. App. 2020), *rev. den.*, 474 P.3d 1049 (2020).

The narrow issue raised by Mr. Bennett’s petition is not whether Washington’s deliberate cruelty aggravator is vague, but whether it can be challenged for unconstitutional vagueness when the sentencing court has full discretion to impose a standard range or exceptional sentence. When the jury finds an aggravating factor beyond a reasonable doubt, the trial court’s unconstrained sentencing discretion places Washington law squarely in alignment with *Beckles*.

Washington’s alignment with *Beckles*, combined with the fact Washington’s deliberate cruelty aggravator is not unconstitutionally vague, makes this a poor vehicle for consideration of the question presented: whether the absolute trial court discretion conferred by Washington’s sentencing guidelines and related aggravating factors precludes a vagueness challenge. The Court of Appeals correctly held in the alternative that the deliberate cruelty aggravator was not vague as applied to Mr. Bennett’s conduct. Washington case law has provided multiple examples of similar conduct sufficient to constitute deliberate cruelty, rendering the primary issue here moot.

While the length of Mr. Bennett’s sentence for aggravated second-degree murder is more than double the high end of the standard range for first-degree murder, Washington courts have repeatedly upheld sentences where aggravated circumstances led to terms of confinement that more than doubled the high end of the offender’s standard range, including a second-degree murder conviction in

which the appellate court upheld a 720 month sentence, five years longer than the term Mr. Bennett received for the same crime. *State v. Creekmore*, 783 P.2d 1068, 1076 (Wash. Ct. App. 1989), *abrogation on other grounds recognized by State v. Ramos*, 101 P.3d 872, 875 n.27 (2004)).³

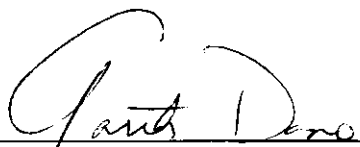
CONCLUSION

The respondent respectfully asks this Court to deny the petition for a writ of certiorari. The Washington Court of Appeals applied established Washington law, law consistent with this Court's decision in *Beckles*. Mr. Bennett has failed to establish any split of authority among the States such that this Court's attention is required.

Dated this 4th day of May, 2021.

Respectfully submitted,

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³ See, also, *State v. Halsey*, 165 P.3d 409, 415–16 (Wash. Ct. App. 2007) (standard range for felony murder 120–160 months; 720 months imposed); *State v. Oxborrow*, 723 P.2d 1123, 1129 (Wash. Ct. App. 1986) (10 year sentence for first degree theft, 15 times more than the standard range); *State v. Harmon*, 750 P.2d 664, 667 rev. den., 110 Wash.2d 1033 (1988) (648 month first degree murder sentence was 315 months longer than standard range); *State v. Smith*, 916 P.2d 960, 968 (Wash. Ct. App. 1996) (upholding sentence three times the standard range).

No. 20-1062

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STATE OF WASHINGTON,

Respondent.

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STATE OF WASHINGTON'S APPENDIX

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1 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

2 IN AND FOR THE COUNTY OF GRANT

3 -----
4 STATE OF WASHINGTON,)

5 Plaintiff,)

6 vs.) No. 14-1-00778-0

7 CHAD GERRIT BENNETT,) Appeal No. 35297-8-III

8 Defendant.)
9 -----

10 VERBATIM REPORT OF PROCEEDINGS

11 BEFORE

12 THE HONORABLE DAVID G. ESTUDILLO

13 TRIAL 2, VOLUME 10
14 -----

15
16 February 22, 2017

17 Grant County Courthouse

18 Ephrata, Washington
19

20 A P P E A R A N C E S

21 FOR THE STATE: EDWARD OWENS

22 GARTH DANO

23 Deputy Prosecuting Attorneys

24 FOR THE DEFENDANT: DAVID BUSTAMANTE

25 Attorney at Law

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WITNESS	D	VD	C	RD	RC
TREVOR ALLEN	4846		4866		
	4871		4878		
	4878		4889	4932	4939
				4940	
JERRY DEAN JASMAN	4951		5002	5009	
CRAIG MORRISON	5011	5025	5031		
KC SHERWOOD	5035		5039		

E X H I B I T S

NUMBER	MARKED	ADMITTED
15		5001
28		4850
32		4847
65		4856
72		4997
73		4997
74		4998
75		4999
76		4999
77		5000
78		5000
79		5001
85		4995

1 or a long, drawn-out fight; is that correct?

2 A. Correct. It didn't appear that there was a fight with
3 furniture being moved and, you know, things being
4 broken within the kitchen, which would indicate a
5 fight.

6 Q. Do you believe that that evidence would be consistent
7 of a victim being taken completely by surprise and
8 basically not knowing what hit her?

9 A. I don't know. I don't know if I could say that or
10 not. I think there's contributing factors to that,
11 you know, the strength of the assailant, if it was a
12 surprise, if she was attacked from behind. I don't
13 know how strong she was. I believe she was 82 years
14 old. I don't know how much fight you can give up at
15 that point.

16 Q. As you were examining the house, did you look for
17 signs of forced entry?

18 A. Yes. We examined the entrances and exits of the
19 residence.

20 Q. And what kind of examination would you typically make
21 of the various possible entrances and exits to the
22 residence in order to determine a likely means of
23 entry?

24 A. So using common sense, the easiest ways to get into
25 and out of a house is through the door. So we start

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8 Defendant.)
9 -----

10 VERBATIM REPORT OF PROCEEDINGS

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12 THE HONORABLE DAVID G. ESTUDILLO

13 TRIAL 2, VOLUMES 11 & 12
14 -----

15
16 February 23 & 27, 2017

17 Grant County Courthouse

18 Ephrata, Washington
19

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I N D E X

WITNESS	D	VD	C	RD	RC
ERIC LEON KIESEL	5063		5112	5128	
KRISTOPHER TODD HUFMAN	5146	5171			
	5173	5173			
	5174	5241			
	5242				

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E X H I B I T S

NUMBER	MARKED	ADMITTED
9		5207
10		5209
11		5210
12		5208
13		5211
14		5212
27		5151
63		5167
88		5244
94		5160
95		5160
96		5160
97		5160

1 BY MR. OWENS:

2 Q. So when they come in wrapped in bags or whatever, the
3 feet and the hands, do you take those off at the
4 autopsy?

5 A. I do, yes.

6 Q. Okay. And when you took the paper bags off the feet,
7 was there anything that you noticed significant
8 evidence-wise for the feet, the bottom of the feet or
9 the top of the feet?

10 A. Well, again, the significance is a lack of findings.
11 There was no blood on the bottom of the feet, no blood
12 on the top of the feet.

13 Q. Okay. Now, did you take fingernail clippings?

14 A. Yes.

15 Q. Why was that?

16 A. It's routinely done in homicide cases, primarily to go
17 to the crime lab for analysis for DNA.

18 Q. I'm going to show you what's been marked as
19 Plaintiff's Exhibit 138.

20 This has already been admitted. I'm going to ask
21 you some questions.

22 MR. OWENS: Permission to publish, your Honor?

23 THE COURT: Yes.

24 MR. OWENS: Ladies and gentlemen, we're going to
25 have some graphic photographs for the rest of the

1 afternoon.

2 BY MR. OWENS:

3 Q. Now, Dr. Kiesel, what's this photograph's significance
4 to you; what are you even looking for?

5 A. Well, this photograph was taken for two reasons. One,
6 it's to document injuries, and the second reason is
7 for possible identification if that was an issue. And
8 those were the reasons it was taken.

9 Q. Okay. And what do we see here on this also?

10 A. Well, this was a photograph of Miss Moore's head and
11 her chest and upper abdomen area.

12 Q. Okay. Did you ever count the injuries? It appears to
13 have some injuries to her chest area, correct?

14 A. I did, yes.

15 Q. And did you ever count those?

16 A. I did, yes.

17 Q. And how many injuries did she have there?

18 A. Well, there's 17 sharp force or stab wounds to the
19 chest.

20 Q. Okay. Now, so you have her unclothed and you're
21 checking the exterior of her body for injuries or
22 significant evidence, I understand, correct?

23 A. Correct.

24 Q. All right. I'm going to show you what's been marked
25 as Plaintiff's Exhibit 128.

1 MR. OWENS: Permission to publish, your Honor?

2 THE COURT: Yes.

3 BY MR. OWENS:

4 Q. Now, I'll try to do that with the numbers for you.

5 What is this a photograph we're looking at, Doctor?

6 A. Well, Plaintiff's Exhibit 128 is a photograph of a
7 wound that is seen on the right hand, an incised wound
8 of the right hand.

9 Q. Okay. Is that -- why is that a significant finding
10 for you, besides it being a wound?

11 A. Well, it's a sharp force wound. The location on the
12 hand, especially in the context of multiple sharp
13 force wounds, suggests that this might be a defensive
14 wound.

15 Q. And what's a defensive wound, Doctor?

16 A. Well, a defensive wound is a wound that's on the
17 extremities, either the upper extremities or the lower
18 extremities, where someone would be trying to ward off
19 an attack with their hands or feet.

20 Q. And so if someone would do that, put their hand out or
21 extend their hand, either laying down or standing up,
22 would it be suggested that that person was alive at
23 the time they received that wound?

24 A. Well, if, indeed, that's what they did, if they're
25 putting their hand out to ward off a wound, that would

1 indicate they're alive. If their hand was in a
2 different position and just inadvertently got in the
3 way and got cut, that's also a possibility. But again
4 on the hands, it suggests it's a defensive wound.

5 Q. I'm going to show you what's been marked as
6 Plaintiff's Exhibit 123. Do you recognize that,
7 Doctor?

8 A. I do, yes.

9 MR. OWENS: All right. Permission to publish,
10 your Honor:

11 THE COURT: Yes.

12 BY MR. OWENS:

13 Q. All right. Now, Plaintiff's Exhibit 123 here, what's
14 this -- why is this a significant photograph?

15 A. Well, this was I believe the official photograph,
16 identification photograph. So if you needed to show
17 it to somebody for identification, it excluded a lot
18 and only has the head. But it also shows a number of
19 blunt force injuries, as well as the sharp force
20 injury of the neck. But there's injuries, abrasions,
21 contusions on both sides of the head, as well as the
22 nose, cheek and the lips.

23 Q. All right. Now, did you go into that detail after
24 this photograph, did you go into a detailed
25 examination of the head area?

1 A. I did do a detailed examination of the head. I'm not
2 sure in relationship to the photographs, because we've
3 got a number of things going on at the same time.

4 Q. Okay.

5 A. So we -- and this is one of our routine photographs
6 that we would take. And in the process, my goal is to
7 document what these injuries are.

8 Q. All right. So you have -- I see injuries to the side
9 of the head, correct?

10 A. To both sides of the head, yes.

11 Q. Both sides. Did you find any injuries to her jaws?

12 A. Well, the maxilla is fractured. It's not really part
13 of the jaw. It's the -- your upper dentures, so your
14 upper teeth are attached to the maxilla part of your
15 face. And there is a fracture across the maxilla. So
16 you can literally grab the teeth and pull and the
17 entire -- all the dentures, the entire denture moves.
18 And that's called a LeFort -- in this particular case,
19 it's a type one fracture, because just the maxilla
20 moves.

21 Q. Okay. Was there any evidence of how that injury was
22 obtained?

23 A. Well, by definition, it's a blunt force injury. So
24 there's got to be a blunt impact of some kind.

25 Q. Okay.

1 A. And so that means either something struck her face,
2 her moving head struck something, or a moving head
3 struck a moving object.

4 Q. And did it appear when you're checking the head there
5 that she had received numerous injuries by blunt
6 force?

7 A. Yes.

8 Q. All right. Did you ever document how many?

9 A. I did, yes, in my report. It's -- you can damage both
10 the external and internal blunt force trauma of the
11 head.

12 Q. Did it appear to you in your findings that it was an
13 extreme amount of blunt force?

14 A. What do you mean by extreme?

15 Q. Well, for this person, for this, I mean if there's --
16 I see one, two, three, four, five already blunt force
17 traumas on her.

18 A. It's -- again, I guess I don't -- I wouldn't use the
19 term extreme, but clearly there's multiple blunt force
20 trauma to her head, and they're significant injuries.
21 So there's internal injury associated with it, there's
22 a fracture of her maxilla. So whether you like the
23 term extreme or significant is what I tend to use.

24 Q. Fine.

25 A. It's significant injury to her head.

1 Q. We'll use your words.

2 A. Okay.

3 Q. Is there a way to tell how those were obtained? Was
4 it from an instrument or hands?

5 A. There's no pattern to the injuries to indicate a
6 specific instrument. So there's no toolmarks. Most
7 likely, this is caused by hands or fists striking her.

8 Q. Would a -- in your professional opinion and
9 examinations you've done throughout these years, would
10 a woman who was in their '80s be more vulnerable to
11 this type of -- receiving these types of injuries
12 than, let's say, a younger person?

13 A. Interesting question. Because I think if you received
14 these injuries, it wouldn't really matter how old you
15 were. These are significant injuries even for a young
16 person.

17 Q. Okay. All right.

18 (Discussion off the record.)

19 BY MR. OWENS:

20 Q. Could those blows to the head like that cause any
21 brain damage or injury to the brain?

22 A. Well, there's clearly injury that we see when we --
23 when I opened her head and looked at the brain. She
24 definitely had injury. She's got what was called
25 subarachnoid hemorrhage. This is hemorrhage around

1 the brain, and it's an indicator of force, an
2 indicator that her brain had been severely shaken up
3 by these impacts.

4 Q. Okay. I'm going to show you next what's marked as
5 Plaintiff's Exhibit 124. Do you recognize that?

6 A. I do, yes.

7 MR. OWENS: All right. Permission to publish,
8 your Honor.

9 THE COURT: Yes.

10 BY MR. OWENS:

11 Q. Doctor, is this another injury that you located on
12 your external exam?

13 A. It is, yes.

14 Q. And what is this, what did you find during your
15 examination?

16 A. These are sharp force injuries of the neck. There are
17 two incised wounds. And I do need to explain. These
18 are not lacerations. These are incised wounds. So
19 it's a cut caused by a sharp instrument. A laceration
20 is caused by blunt force. So these are sharp force
21 injuries. They're complex, so multiple components to
22 it. And in addition, there's also a stab wound on the
23 right side of the neck here.

24 Q. Okay. Now, what do forensic pathologists mean by the
25 word mechanism?

1 A. Well, mechanism has to do with what is occurring
2 physiologically to a person. For instance, if you
3 have a sharp force wound, you might have mechanical
4 disruption of whatever organ that's been injured. You
5 might have bleeding as a cause of exsanguination. So
6 a person might bleed out from these wounds. So those
7 would be two different mechanisms, whereas the cause
8 would still be the incised wounds.

9 Q. Okay. Now, we've seen -- or you've shown us there in
10 your external examination, she had received wounds to
11 the head, the mouth, the chest and now the throat.

12 A. Yes.

13 Q. Were you able to, in your examination, form an opinion
14 of the means by which her wounds were inflicted?

15 A. Well, the means would be some sharp -- well, blunt
16 force and sharp force injuries. The blunt force
17 injuries most likely are being caused by a fist or a
18 hand. There are multiple wounds there. The sharp
19 force injury is most likely something like a knife.
20 Especially considering that we're dealing with stab
21 wounds. So we've got wounds that are longer than they
22 are wide. So it's got to be something that will
23 penetrate. This is based on the scene photographs it
24 was adjacent to a kitchen, so the most likely weapon
25 would be a knife.

1 Q. Okay. So would your determination be that a knife
2 caused those wounds to the chest?

3 A. That would be the most likely instrument that would
4 cause it. I guess if there's another something that
5 is sharp that had the proper dimensions, it could do
6 it. But in my opinion, I think a knife is what caused
7 these wounds.

8 Q. Okay. As well as the throat?

9 A. As well as the throat, yes.

10 Q. Okay. Now, did you -- I'm going to show you here
11 what's marked as Plaintiff's Exhibit 131, 132. Take a
12 look at those for a minute.

13 A. Okay.

14 Q. Now, Doctor, during your examination of the neck area,
15 besides the sharp wounds, incised across there, did
16 you find any other evidence?

17 A. Well, there is evidence of blunt force injury of the
18 neck. There are also some other findings that
19 correlate with the blunt force trauma of the neck.

20 Q. All right. I'm going to show you what's been here
21 marked Plaintiff's Exhibit 131. First, would you
22 describe to the jury what this is a photograph of.

23 A. This is a photograph of Miss Moore's left upper
24 eyelid. These are basically retraction hooks just
25 holding the eyelid up. And on the pink portion, or

1 the conjunctiva of the eyelid, you can see these
2 little red pinpoint hemorrhages.

3 Q. Okay.

4 A. And they're also seen in the other eye.

5 Q. And what's that -- why is that significant?

6 A. Well, petechial hemorrhages by themselves are
7 non-specific. They can be caused by a number of
8 mechanisms. When a forensic pathologist sees
9 petechial hemorrhages, especially in the eyes, it
10 tells us that we have to pay special attention to the
11 neck area, because it's very commonly seen in
12 strangulation cases. It's caused basically by blood
13 flowing up into the head, but something's disrupting
14 that flow back towards the heart. They are
15 non-specific. You can see them in cases of just
16 congestive heart failure where you have your heart
17 being a pump, just terminal pump failure, you can see
18 these. But when I see those, it means I've got to pay
19 very close attention to the neck.

20 THE COURT: Dr. Kiesel, do you want to give me a
21 second?

22 THE WITNESS: Yes.

23 THE COURT: I want to get the jury to make sure
24 that they're all alive right now. Everybody get up
25 and stretch please, now, if you would.

1 MR. OWENS: It's tough in the afternoon.

2 THE COURT: I know. I know. So just take a
3 minute to stretch.

4 (Pause.)

5 THE COURT: Does anybody want to take a break for
6 some coffee or soda? Caffeine, anybody? Nope. I
7 just want to make sure. Okay. Like I said.

8 Sorry to interrupt, Mr. Owens. Go ahead.

9 MR. OWENS: That's all right, your Honor.

10 BY MR. OWENS:

11 Q. Now, what we have shown there was Plaintiff's Exhibit
12 131.

13 I'm going to show you Plaintiff's Exhibit 132.

14 A. Exhibit 132 is -- we're now looking at the other eye,
15 and again we see petechial hemorrhages. This is
16 probably even a better example than the other side.

17 Q. And when you saw that, then did you check for any
18 evidence of strangulation besides what was shown in
19 the eye?

20 A. Yes, definitely.

21 Q. And did you find anything?

22 A. I did find evidence in the neck, in addition to all
23 the sharp force injuries, there was evidence of blunt
24 force trauma. They're fractures of the superior horns
25 of the thyroid cartilage. The thyroid cartilage

1 basically makes up your voice box, your Adam's apple.
2 On the back edge, there are two little projections
3 superiorly that are called the superior horns. Then
4 there's some on the bottom called the inferior horns.
5 Both superior horns are fractured. This is suggestive
6 of a strangulation. There's no evidence of ligature
7 marks on the skin surface. So we're looking at a
8 manual strangulation. It can also be caused purely by
9 a blunt force trauma to the neck. But this is
10 evidence of strangulation.

11 Q. Would the photographs here at 133 or 134 show what you
12 were talking about?

13 A. It would, yes.

14 Q. All right. I'll put up first Plaintiff's Exhibit 133.
15 Again, Doctor, would you share with us what we're
16 looking at there.

17 A. Yes. This is the larynx and the first part of the
18 trachea. So this is the larynx and the trachea.

19 Could you rotate that picture 90 degrees, please?
20 Other direction. There we go.

21 So we're looking at the back side of your voice
22 box, so the right is on your right and the left is on
23 your left in this photograph.

24 THE COURT: And Dr. Kiesel, just so that we
25 orient ourselves, the exhibit number is now being placed

1 on the screen on the right hand top corner.

2 THE WITNESS: That is correct, your Honor.

3 THE COURT: Okay. Thank you.

4 A. So this is the top of your larynx, the part towards
5 your mouth will be towards the top of the photograph,
6 and the bottom part of the trachea towards your lungs
7 is at the bottom. The dark red thing in the middle at
8 the top is the epiglottis. And what we see here, if
9 we follow the contour of the edges, we can see, it
10 juts out on the left side. Similarly, if we follow
11 the right side, it's not a nice, smooth curve, it
12 makes an angle there, and we can see a little bit of a
13 darkness, purple there. That's hemorrhage. These are
14 fractures. So these are fractures of the thyroid
15 cartilage, the superior horns of the thyroid
16 cartilage. And these are -- they can be caused by
17 just a pure blunt force trauma. They're commonly seen
18 when they're in strangulations. When you see this in
19 combination with petechial hemorrhages, it's strongly
20 suggestive that this was strangulation that caused
21 this.

22 But again, it is possible that the -- because the
23 petechial hemorrhages are non-specific, as her heart
24 is failing, she could get petechial hemorrhages and
25 she could have a separate blow to the neck.

1 Strangulation is one unifying theory for that.

2 BY MR. OWENS:

3 Q. Now, there was quite a bit of trauma to the neck area.

4 A. That is correct.

5 Q. And would it make -- because of the cuts in through
6 there, would it make it harder to find any bruising
7 there caused by independent strangulation?

8 A. And indeed, that was part of the problem that I had.
9 Because the other finding we look for in strangulation
10 is hemorrhages in the strap muscles. There is thin
11 muscles on the front edge of the larynx, the voice
12 box. And in strangulation, we look for hemorrhages in
13 those muscles. So if we have hemorrhages in those
14 muscles, you see fractures and then you see petechial
15 hemorrhages, that combination is enough to make a firm
16 diagnosis of strangulation.

17 In this case, there's so much trauma to the neck
18 from the sharp force injuries, and there's hemorrhage
19 just from all the cutting that occurred there, it's
20 impossible to tell if there's independent hemorrhage
21 in those strap muscles.

22 Q. All right. I'm going to show you here the other side
23 of that, on Plaintiff's Exhibit 134. Where again the
24 plaintiff's exhibit number is on the right-hand side.

25 A. So again, we're looking at the larynx. This time

1 we're looking at it from the front. It's as though
2 you're looking at the person. So the left side of the
3 photograph is actually their right side. The right
4 side of the photograph would be their left side. Here
5 we can see the big injury in the larynx, there's
6 another defect down in the trachea at the junction
7 with -- there's another cartilage underneath here
8 called the cricoid cartilage. But if we follow the
9 curvature superiorly along the edges of the thyroid
10 cartilage, you can see it's angulated on the left side
11 of the photo, which would be their right side, and
12 similarly on the left side of the photograph, which
13 is -- excuse me, the right side of the photograph,
14 which is their left side. So those are the fractures.

15 Incised wounds in the previous photograph that we
16 looked at, we had two large cuts, and there was a skin
17 bridge or skin connecting the edges and separating the
18 two wounds. One of those wounds went through the
19 larynx. So this is just below the vocal cords. And
20 the other one cut into the trachea just below the
21 cricoid cartilage.

22 Q. Now, going back to the neck area there, you stated
23 that you also found a stab wound in the neck or
24 possible?

25 A. Well, it was definite. There's a definite stab wound

1 in the right side of the neck.

2 Q. Okay. I'm going to show you what's been marked as
3 Plaintiff's Exhibit 126. Do you recognize that?

4 A. I do, yes.

5 MR. OWENS: All right. Permission to publish,
6 your Honor?

7 THE COURT: Yes.

8 BY MR. OWENS:

9 Q. Now, showing you here with the Plaintiff's Exhibit 126
10 on the bottom right, would you explain to the jury
11 what we're seeing here.

12 A. What we're looking at is the right edge of those big
13 cuts that were on her neck, the big incised wounds.
14 Deep into the muscles of the right neck through that
15 same exterior hole is a stab wound that tracks back
16 through the muscles of the right neck. I put a ruler
17 within the stab wound, so it slipped gently into the
18 wound, and it was just to demonstrate that it's
19 approximately two inches deep at that spot.

20 Q. Okay. So not only did she have two cut incised wounds
21 on her throat, she also had a stab wound in there.

22 A. That's correct.

23 Q. Now, Doctor, during your examination, was there a way
24 for you to find which of those wounds came first
25 before the other one, or in which order?

1 A. There's really no scientific way to sort out which one
2 came first. There's some hints -- as far as the sharp
3 wounds go, there's really no way to sort that out.
4 But we know that she's got to be laying down when they
5 occurred, because we don't have blood dripping down
6 onto the pants. And it does suggest, because of the
7 hemorrhage that I found underneath those wounds of the
8 head, that very likely those came first. But they
9 could have occurred after she was on the ground.

10 Q. The ones to the head?

11 A. The ones to the head, yes.

12 Q. Right. It's possible, she's laying on the ground and
13 someone just on top of her hitting her.

14 A. Correct.

15 Q. All right. And would it take quite a bit of force to
16 break the top part of the mouth?

17 A. It takes a pretty good punch to the mouth to do that.
18 You see that in -- you know, as a boxing injury
19 periodically.

20 Q. Right.

21 A. You see it in car crashes.

22 Q. Right.

23 Now, apart from what you've told us here, were
24 you able to determine whether Lucille was alive when
25 the stab wounds were inflicted?

1 A. Again, there is hemorrhage associated with those
2 wounds. So it does indicate that she was actively
3 bleeding. How much she -- how alive she was at that
4 point, was she in the dying process, it's possible.
5 But I think she was still alive.

6 There's another indicator that suggests at least
7 her heart is still beating while she is being stabbed.
8 There are 17 stab wounds to the chest, and the heart
9 is hit 17 times. Eleven of those actually go through
10 the fat around the heart and into the muscle itself.
11 And that will commonly occur if the heart is still
12 pumping while a knife is there, it can get injured.

13 Q. And again, I may have asked you this, there's no
14 correlation to tell what came first, the stab wounds
15 to the chest or the cut to the throat.

16 A. There really is no real good scientific way to sort
17 that out. Again, the head and neck is going to bleed
18 a lot. But after death, it will still drain some
19 blood. The big indicator that we would look for would
20 be aspiration of blood into the lungs themselves. And
21 there is really no indication of that. And she
22 doesn't have that much blood in her chest cavities.
23 So it does suggest that, again, those are coming after
24 the neck. But there's no scientific way with 100
25 percent certainty to know that.

1 Q. Okay. Did you ever get a chance to look at the
2 T-shirt itself and compare that to the wounds to find
3 out what direction, left to right or right to left,
4 that the instrument was being used?

5 A. Well, you really can't -- I did compare the shirt to
6 the wounds. You really can't determine direction from
7 looking at the shirt. You really have to look at the
8 wounds themselves. The cluster of wounds all have the
9 same general direction, they're clustered in a
10 reasonably tight cluster on her chest. But using a
11 probe, I was able to probe the wounds, and they all
12 had basically the same direction. So they're going
13 from front to back, they're going upward, I believe.

14 Q. Were you able to determine the wounds to the chest if
15 they would have been placed there all about the same
16 time?

17 A. Again, because of the way they were clustered -- I
18 misspoke, I said the wounds were going upward.
19 They're actually going pretty straight in. You really
20 can't tell horizontal or vertical deviation, they're
21 pretty much straight down.

22 I'm sorry, I just lost your question.

23 Q. Yeah, that's all right. Were you able to determine if
24 those wounds -- she received those wounds all about
25 the same time?

1 A. Well, again, the cluster, because they're all the same
2 direction, it suggests that they're all occurring
3 about the same time, and from the same position. So
4 that the knife would go in, it's just slightly moving
5 around.

6 But again, you know, there's really no scientific
7 way, but it would be pretty hard to come back, unless
8 you get in that exact same position, to stab some more
9 to get those stab wounds to all match up like that.

10 Q. I'm going to show you here what's marked as
11 Plaintiff's Exhibit 129.

12 A. Okay.

13 MR. OWENS: Permission to publish, your Honor.

14 THE COURT: Yes.

15 BY MR. OWENS:

16 Q. Is this the direction you like, Doctor?

17 A. That works.

18 Q. Okay. And this one here shows photograph 129 with the
19 exhibit number on the lower right-hand side. What are
20 we looking at here? Obviously it's a brain.

21 A. This is a photograph of Miss Moore's brain. The front
22 of the brain is looking towards -- we're looking at
23 the top of the brain. The front of the brain is
24 towards the left side of the screen, the back of the
25 brain is towards the right side of the screen, and

1 then we can see the cerebellum kind of sticking out in
2 the -- on the back, so on the right side of the screen
3 underneath, it looks a little different.

4 When we look at the surfaces of the brain,
5 there's a very thin membrane that covers the brain
6 itself, the leptomeninges. And we can see these big,
7 dark areas. These big, dark areas are collections of
8 blood underneath the meninges or the arachnoid. This
9 is subarachnoid hemorrhage. This is the indicator
10 that this brain has been shaken up. It's a blunt
11 force injury and the brain has been shaken up within
12 the skull.

13 Q. Now, what are different ways to receive this type of
14 injury?

15 A. Well, the -- you can see subarachnoid hemorrhage from
16 natural disease processes, if somebody had a major
17 hemorrhagic stroke, blood can get out into that area.
18 If somebody ruptures, a berry aneurism, you can get
19 hemorrhage in the subarachnoid space. And then the
20 other reason would be blunt force trauma. She did not
21 have a stroke, she did not have a berry aneurism. I
22 do have evidence of the blunt force trauma to the
23 head, that is the cause in my opinion of the
24 subarachnoid hemorrhage.

25 Q. If she went straight down, if somebody would have just

1 punched her one time and she went just straight, boom,
2 hit the ground, without trying to stop herself or
3 anything, would that injury -- could the injury to the
4 brain be caused by that, just hitting the ground with
5 her -- if she hit it with her head?

6 A. In this case, no. When somebody's punched and they go
7 straight down, the back of the head usually hits the
8 ground. When that happens, the brain sloshes forward.
9 So you get what would be considered a contrecoup type
10 injury.

11 So even though the impact would be the back of
12 the head, the injury is actually on the front. In
13 this case, we've got blows to both the right and left
14 sides of the head, and we've got subarachnoid
15 hemorrhage on both sides of the head. We don't have
16 any -- there's kind of a diffuse discoloration, red
17 discoloration, so we've got a thin film of
18 subarachnoid hemorrhage over the entire brain. But we
19 don't have those focalized, localized collections in
20 the front that you would expect if somebody had been
21 hit in the back of the head and fell -- or hit in the
22 front and went down and hit the back of their head.

23 Q. So are these wounds more consistent with the blunt
24 force trauma we saw on her face and the side of her
25 head?

1 A. It is, yes.

2 Q. All right. If she received no other injuries, such as
3 the injuries to the throat and the stab to the throat
4 and the stabs to the heart, would she have died from
5 this injury, the blunt force to the side of the head,
6 damaging the brain?

7 A. Well, potentially she could have. The problem is
8 somebody needs to live six to eight hours before you
9 can even see the first microscopic signs of change.
10 But I see these, well, injuries on a semi regular
11 basis. Most of the people I see them in are dead, but
12 you can get that and not die from it.

13 Q. Okay.

14 A. So there's no way to say with 100 percent certainty
15 that she would have died purely from the blunt force.
16 I have seen people die with that much blunt force
17 injury to the head, but there are also people who have
18 survived that much.

19 Q. The same question to the blunt force or the cuts to
20 the throat. Would she have died from that injury
21 alone?

22 A. Oh, there's no question, yes, she would have
23 definitely died from the incised wounds.

24 Q. And how about the stabs to the heart?

25 A. The stabs to the heart are not a good thing.

1 Especially when you have 11 penetrating into the
2 muscle. So yes, that would be also a fatal wound.

3 Q. All right.

4 A. Or fatal wounds, I should say.

5 Q. I'm going to show you here what's marked as
6 Plaintiff's Exhibit 140.

7 A. Okay. Like that.

8 MR. OWENS: Permission to publish, your Honor?

9 THE COURT: Yes.

10 BY MR. OWENS:

11 Q. I'll show you up here what's marked as Plaintiff's
12 Exhibit 140 with the exhibit tag number in the upper
13 right-hand corner. Doctor, what are we observing in
14 this photograph here?

15 A. This is a photograph of Miss Moore's heart. And it
16 includes the arch of the aorta, with the vessels that
17 come off that supply the head and upper extremities
18 with blood.

19 Q. Okay. And do we see any injuries to her heart in that
20 photograph?

21 A. There are injuries to the heart, and there's also an
22 injury to the aorta. It's kind of subtle. The heart
23 is surrounded by quite a bit of fat, which is a normal
24 finding. And we can see these faint red areas that
25 are showing up on the surface of the heart. And those

1 are stab wounds of the heart. Again, there were 17 of
2 those that hit the heart, 11 actually went deep enough
3 to actually hit the muscle, heart muscle itself.

4 There's also a stab wound in the aorta near the -- or
5 below the arch, just above the valve.

6 Q. And again, if she received no other injuries, she
7 would have most likely died just from this, receiving
8 these injuries?

9 A. Correct. Yes.

10 Q. I'll show you what's been marked as Plaintiff's
11 Exhibit 141. Up on the screen now is Plaintiff's
12 Exhibit 141. What is this showing, Doctor?

13 A. This photograph is a cross-section of Miss Moore's
14 heart. On the left side of the photograph is the left
15 ventricle of the heart, and on the right side of the
16 photograph is the right ventricle of the heart. As we
17 look at the heart, we can actually see defects all the
18 way through the muscle here in the right ventricle.
19 And so that's actually going into the chamber of the
20 heart itself.

21 Q. And were those defects caused by the stabbings?

22 A. They were, yes.

23 Q. I'll show you Plaintiff's Exhibit 136.

24 A. Okay.

25 Q. I'll show you what's been marked as Plaintiff's

1 Exhibit 136 with the plaintiff's exhibit number on the
2 lower right-hand side. What are we observing here,
3 Doctor?

4 A. What we're looking at is a photograph of the skin or
5 some of the skin of the chest, showing the stab
6 wounds. This photograph was taken because the other
7 photograph showing the stab wounds somehow the ruler
8 was neglected to be put in. So we wanted a ruler,
9 scale put into the photograph with the wounds. Part
10 of the goal is to show the characteristics of the
11 wounds. When you look at a wound, you've got two
12 corners and then you've got the sides, and when you
13 look at it, if you've got a pointed end at one side
14 and a squared off end at the other, it can indicate,
15 are you dealing with a single-edged knife or a
16 double-edged knife. So that's the reason for looking
17 at this.

18 Unfortunately, you can manipulate the skin and
19 make a squared off edge look pointy. In particular,
20 in this photograph, we really can't tell definitively
21 whether or not we're dealing with a single-edged knife
22 or a double-edged.

23 Q. Did you ever come up with a size of knife, such as
24 width of the blade or the depth of the blade?

25 A. If I can take a quick look at the dimensions.

1 Yes, I did. The wounds measure approximately a
2 half an inch, and depending on which wound, they will
3 gape to about a quarter of an inch. Skin has elastic
4 fibers in it, so once they've been cut, the wounds
5 will tend to pull -- pull open. When you put the
6 wounds back together, we're dealing with something
7 that's about a half an inch or so in width, so it
8 would be a blade about a half an inch or so in width.
9 There's really no way to tell with certainty, again,
10 you know, what weapon actually caused it. You would
11 have to do -- find a knife, do DNA on it. If the stab
12 wound goes through cartilage, you can sometimes go
13 back, it would be like putting it a bar of soap, you
14 can actually get toolmarks off of it. And sometimes
15 you can do a toolmark analysis for comparison. But
16 based on what we've got, we're looking at something
17 that's probably got about a half an inch wide blade to
18 it.

19 Q. Now, did you ever take part of the cartilage on that
20 that had wounds on it to save for that purpose?

21 A. I believe I did. But I have to refresh my memory
22 here.

23 It's not marked in my report, so ...

24 Q. Okay.

25 A. So I don't recall. The fact that it's not marked, I

1 probably did not in this case.

2 Q. Did you ever form an opinion of how many weapons could
3 have been used in regards to the injuries to the
4 throat?

5 A. Well, we've got three major wounds, so potentially up
6 to three different weapons could be used. But they
7 could all be caused by one weapon, one knife.

8 Q. Right.

9 Now, during the internal exam of Lucille's body,
10 did you collect samples of her blood?

11 A. I did, yes.

12 Q. And who did you give that to?

13 A. Well, we made -- well, blood was given to the -- sent
14 to the state toxicology lab for toxicology analysis,
15 and we made blood spot cards. It's blood for DNA
16 analysis. And that went into the evidence package
17 which went to law enforcement.

18 Q. Okay. Now, we pretty much completed what we saw here,
19 we pretty much completed the external and internal
20 exam of Lucille Moore?

21 A. Yes.

22 Q. All right. And after completing the autopsy, did you
23 reach a conclusion about the mechanism of Lucille's
24 death?

25 A. I did, yes.

1 Q. And what does it mean by the mechanism?

2 A. Well, excuse me. I made a determination of cause and
3 manner.

4 Q. Okay.

5 A. Mechanism, the most likely mechanism in this case is
6 one of exsanguination. But there is another possible
7 mechanism, because there are stab wounds to the heart,
8 it could disrupt the electrical conduction system in
9 the heart causing the heart to have an arrhythmia and
10 stop. So that would be a competing mechanism. But
11 most likely it's exsanguination.

12 Q. Okay. But it's a little harder on this case, because
13 there are two separate wounds, possibly three, that
14 could have ultimately caused her death. From what I
15 understand. Because you said she could have died from
16 the injuries to the throat alone, just receiving no
17 other injuries.

18 A. Correct.

19 Q. And she could have died, without receiving any other
20 injuries, by the stabs to the heart, correct?

21 A. Correct.

22 Q. So would that make it harder to find the exact, which
23 one killed her?

24 A. Well, in this case, I think it was pretty obvious that
25 it's -- or I mean my opinion is it's the sharp force

1 wounds of the neck and chest. You've got to look at
2 the total picture. You can't isolate one injury from
3 the others. I mean the total picture indicates that
4 it's sharp force wounds, while the blunt force wounds
5 are significant, they're not nearly as significant as
6 the sharp force wounds.

7 Q. All right. After suffering the stab wounds and cuts
8 to the throat, how long -- in your opinion, how long
9 would it have taken for Lucille to bleed out?

10 A. Well, the bleeding out is really going to be coming
11 from the neck wounds. The external jugular vein was
12 cut. When the external jugular vein is cut, it takes
13 between ten and 20 seconds for somebody to lose
14 consciousness. And then it takes a matter of minutes
15 after that to die from it. But I can't give you an
16 exact amount of time.

17 Q. Okay. If there's no struggle taking place in this,
18 when Lucille was receiving her injuries, would it be
19 likely that no blood would have transferred onto
20 whoever was stabbing her?

21 A. That's incorrect.

22 Q. All right.

23 A. With these types of injuries, you would expect a lot
24 of blood to be spattered onto the assailant.

25 Q. Okay. Could that stabber likely to have avoided

1 getting a substantial amount of blood on them?

2 A. I don't -- no, I don't see a way how they could not
3 have gotten blood on them.

4 Q. Now, what is rigor mortis?

5 A. Rigor mortis is a stiffening of the body that occurs
6 after death. It's one of the post-mortem changes that
7 occurs.

8 Q. Okay. Did you see anything, any signs of rigor mortis
9 with Lucille Moore?

10 A. Well, it's something I always check for in a body; the
11 rigor mortis when I saw her was beginning to go away,
12 it was easily broken. That doesn't necessarily really
13 help us, because we know she died before I got here,
14 and was probably dead for a while before I got here.

15 Can I expand on this?

16 Q. Yes, please do.

17 A. Rigor mortis is a stiffening of the body that occurs,
18 again, after death. We can use it sometimes to help
19 when you're trying to narrow down time of death. It
20 usually takes in the neighborhood of six to eight
21 hours for a body to become completely stiff, assuming
22 that you don't have a lot of struggling. If you have
23 a lot of struggling, you can actually see this occur
24 much quicker than that.

25 Once it's formed, whether that's -- you know, it

1 takes six to eight hours or longer, because it depends
2 on what the temperature is. It's chemical reactions,
3 temperature related. It takes about 24 hours for it
4 to go away. And hers, when I saw her, it was starting
5 to go away. But by that time, it was quite a while
6 after the body was found.

7 Q. Okay. Did you ever notice any injuries to Lucille
8 Moore's ribs, that you recall?

9 A. Well, associated with the stab wounds of the chest.

10 Q. Now, I may have interrupted you, Doctor, and I
11 apologize if I did. But you were going to share with
12 us the cause of death of Lucille.

13 A. The cause of death is sharp force injuries of the neck
14 and chest.

15 Q. Have you ever heard, and through your training and
16 experience there and looking at it, have you ever
17 heard of a rage kill?

18 A. I have, yes.

19 Q. And what is that?

20 A. A rage kill sometimes is called overkill. It's when
21 their injuries are inflicted in excess of what it
22 takes to actually kill the person.

23 Q. Okay. Does this -- the injuries to Lucille Moore,
24 does that have the appearance of a rage kill?

25 A. It's clearly with the multiple stab wounds, 17 stab

1 wounds to the chest does seem like it would fit into
2 that definition, yes.

3 Q. And in your studies and experience and training there,
4 what is a causation for a rage kill?

5 A. Well, there are various theories about what causes it.
6 There used to be sexual overtones to the theories and
7 it's kind of been boiled down to usually a smaller or
8 weaker person killing a bigger person. The smaller
9 person can be psychologically smaller. It doesn't
10 have to be physically smaller. It could be a really
11 big person. So a child killing a parent or a young
12 person killing a parental type figure. You can
13 sometimes see this overkill. You do see it sometimes
14 in sexual -- where there are sexual overtones, where
15 somebody just wants somebody dead and they just keep
16 injuring the body, even though it's more than enough
17 to have killed the person.

18 (Discussion off the record.)

19 MR. OWENS: All right. No further questions.

20 Thank you, Doctor.

21 THE COURT: Thank you.

22 Mr. Bustamante.

23 MR. BUSTAMANTE: Thank you.

24 //

25 //

1 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

2 IN AND FOR THE COUNTY OF GRANT

3 -----
4 STATE OF WASHINGTON,)

5 Plaintiff,)

6 vs.) No. 14-1-00778-0

7 CHAD GERRIT BENNETT,) Appeal No. 35297-8-III

8 Defendant.)
9 -----

10 VERBATIM REPORT OF PROCEEDINGS

11 BEFORE

12 THE HONORABLE DAVID G. ESTUDILLO

13 TRIAL 2, VOLUME 17
14 -----

15
16 March 6, 2017

17 Grant County Courthouse

18 Ephrata, Washington
19

20 A P P E A R A N C E S

21 FOR THE STATE: EDWARD OWENS

22 GARTH DANO

23 Deputy Prosecuting Attorneys

24 FOR THE DEFENDANT: DAVID BUSTAMANTE

25 Attorney at Law

I N D E X

WITNESS	D	OOP	VD	C	RD	RC
WILLIAM J. BODZIAK				6117	6128	6132
					6134	
RONALD WHISENHUNT	6147	6153	6156			
	6161			6163		
JEFF COBB	6170			6181	6190	6191
					6192	
NICHOLAS COBB	6194			6198		
TYSON LINDSEY COBB	6211			6215	6215	
MICHAEL ROBERT COBB	6218			6235		
ARLISTA JANENE COBB	6245		6288			
	6290					

E X H I B I T S

NUMBER	MARKED	ADMITTED
318		6283
319		6289
440		6120
444	6176	6178
445	6176	6255
446	6176	6255
447	6176	6249
448	6176	6222
449	6176	

1 Q. Right.

2 A. And Todd.

3 Q. Detective Huffman.

4 A. And Chad Bennett.

5 Q. The defendant, seated at counsel table, for the
6 record, in the middle?

7 A. Yes. Yes.

8 Q. Okay. Thank you. Thank you.

9 Now, I just want to get -- there's just a couple
10 brief areas I want to cover with you. Were you
11 working out on the farm, at the ranch when Chad
12 Bennett came to work in May of 2014?

13 A. Yes.

14 Q. And I understand, what we understand is he worked
15 there from approximately May of 2014 to around
16 September 13 of 2014; does that sound about right?

17 A. That sounds about right.

18 Q. Okay. Did you work with him during that period of
19 time?

20 A. Yes, I did.

21 Q. And what kinds of things would you do with him?

22 A. We raked hay, we -- I don't know if he ran swather or
23 baler or anything like that. He helped me out with
24 the water, with starting and shutting off the
25 irrigation systems that we have, unplugging

1 sprinklers. He helped whenever I was -- I also run
2 the sprayer that we spray our fields with, and
3 occasionally he would run a truck for me that carried
4 the water to where I was spraying, so that I could
5 keep spraying. He put mineral out for our cattle. He
6 built fence, I believe. Pretty well-rounded, just
7 about anything.

8 Q. Okay. And I take it from that response, did you have
9 a -- I know it's difficult to quantify, but could you
10 estimate, would you see him on a daily basis, a few
11 times a week; what's your best estimate about that?

12 A. I believe I probably saw him about every day that he
13 was at work.

14 Q. Okay.

15 A. I could say that.

16 Q. Okay. So I take it you spent a substantial amount of
17 time with him.

18 A. Sure. Yes.

19 Q. Okay. So a couple points. First of all, if you
20 recall, in the farming operation you have,
21 approximately how many circles are you responsible
22 for?

23 A. It changes from year to year.

24 Q. All right.

25 A. But on our farm, it ranges anywhere from 60 to 70, 75