

No. 20-826

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**In the Supreme Court of the United States**

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MIKE BROWN, ACTING WARDEN, PETITIONER

v.

ERVINE DAVENPORT

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

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**JOINT APPENDIX - VOLUME I OF III**

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

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

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

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

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

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

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

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

(Sidebar conversation between the Defendant and Ms. Eifler)

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

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

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

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

THE COURT: Mr. Fenton.

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

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

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

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

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

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

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

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

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

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the opportunity to change this morning, is that right?

THE DEFENDANT: Yes.

THE COURT: And you chose not to?

THE DEFENDANT: Yes.

THE COURT: Was there a particular reason for that?

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

THE COURT: I'm sorry?

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

THE COURT: You knew it was--

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

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

THE DEFENDANT: Yeah, another date that was scheduled.

THE COURT: Okay.

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

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

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

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

THE DEFENDANT: Yes.

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

THE DEFENDANT: Yes.

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

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



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

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

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

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

MR. FENTON: Nothing your Honor.

MS. EIFLER: No ma'am.

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

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

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

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

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

MS. EIFLER: Yes.

\* \* \*

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

MR. FENTON: No your Honor.

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

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

THE COURT: Mr. Fenton.

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

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

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

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

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

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

Anything further, counsel?

MR. FENTON: No your Honor.

MS. EIFLER: No ma'am.

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

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

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

MS. JOHNSON: The court recalls the case of People

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

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

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JURY TRIAL - VOLUME II  
BEFORE THE HONORABLE  
PAMELA LIGHTVOET

Kalamazoo, Michigan - Wednesday, July 9, 2008

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[THE COURT cont.] limits provided by law.

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

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

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

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

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

\* \* \*

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

DR. HUNTER: Yes.

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

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

BRIAN HUNTER

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

DIRECT EXAMINATION

BY MR. FENTON:

Q Can you please state your occupation for the jury.

A I am a forensic pathologist and medical examiner.

Q How long have you been so employed?

A Eight years past fellowship.

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

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

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

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

A Yes.

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

MS. EIFLER: No objection.

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

MR. FENTON: Thank you.

Q What is forensic pathology, doctor?

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



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

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

Q What's the purpose of the autopsy?

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

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

A Yes.

Q Did you weigh the body?

A Yes.

Q What was the weight of Annette White?

A 103 pounds.

Q Was there any obvious trauma to the body exteriorly?

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

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

Q Nothing causing death.

A No.

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

A Yes.

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

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

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

A Correct.

Q Do you know her age or date of birth?

A 48 years.

Q Do you perform an autopsy on her?

A Yes.

Q Did you look at her internal organs?

A Yes.

Q Were you able to find evidence of injury internally?

A Yes.

Q Please describe for the jury what you found.

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

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

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

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

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

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

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

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

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

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

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

A Correct.

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

THE WITNESS: May I stand up?

THE COURT: Yes.

THE WITNESS: Thank you.

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

THE WITNESS: Okay thank you.

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

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

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

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

MR. FENTON: Can se see 13 please.

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

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

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

Q Thank you.

MR. FENTON: You can take that photograph off.

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

A It's a significant force.

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

A Yes.

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

A I'd say a minimum of 30 seconds.

Q A minimum of 30 seconds?

A Yes.

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Q Up to what?

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

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



A Yes.

Q How long?

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

Q Up to what?

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

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

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to first of all, the manner of death?

A It's a homicide.

Q And the cause of death?

A Manual strangulation.

Q Manual strangulation?

A Yes.

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

A Yes.

Q Was that a cause of her death?

A No.

Q Thank you.

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

Q Cause of death, strangulation.

A Correct.

Q Thank you very much.

THE COURT: Miss Eifler.

MS. EIFLER: Thank you.

#### CROSS-EXAMINATION

BY MS. EIFLER:

Q Good afternoon.

A Good afternoon.

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

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such as arms, anything like that?

A No.

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

A No.

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

A Correct.

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

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

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

A Correct.

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

A Correct.

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

A Correct.

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

[Page 406]

portion of her neck, is that correct?

A Correct.

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

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

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

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

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

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

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you can see it in strangulation cases.

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

A Yes you can. Mmm-hmm.

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

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

MS. EIFLER: Oh. If you--

THE COURT: Miss Eifler?

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

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

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

a child using compression around say for instance an arm?

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

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areas where you can see petechiae.

Q Did you notice any petechiae in this case?

A No.

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

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

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

A I don't remember. Perhaps I did.

Q Okay. Very good.

A It's been quite some time ago.

Q Not in this courtroom, maybe downstairs?

A Okay.

Q All right.

A It's possible.

Q Did you have an opportunity to review your notes-

A No.

Q On this case at all?

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

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

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memory if you were able to-

A Sure.

Q Review--

A Yes.

Q Your testimony.

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

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

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

Q Okay.

A But it's been quite-

Q May I approach?

A Quite some time ago?

MS. EIFLER: May I approach?

THE COURT: Yeah.

(Cell phone rings in the courtroom)

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

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



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

A Okay. Okay, that's fine.

Q Did that help to refresh your memory?

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

Q Okay.

A Again, I don't remember testifying so.

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

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

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

A Correct.

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

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

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

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

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

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

THE WITNESS: Okay.

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

THE WITNESS: Okay.

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

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

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

A Yes.

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

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

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

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

A I can't say that, no.

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

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

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

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

A Correct.

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

A Correct.

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

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

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

A That would have been a contributory factor, yes.

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

A Yes.

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

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

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

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

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

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

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

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

A No.

Q Okay. What about related to alcohol consumption?

A No.

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

A Correct.

Q A death to come on.

A Correct.

Q Would that be different for each individual?

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

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

A And for each event.

Q Each event?

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A Right.

Q What do you mean by that?

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

Q Thank you.

MS. EIFLER: I have nothing further.

THE COURT: Mr. Fenton.

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

#### REDIRECT EXAMINATION

BY MR. FENTON:

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

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

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

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

A You can, yes.

Q You can. Would you expect to?

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



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

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

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

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

A Not necessarily.

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

A No.

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

A No.

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

A Correct.

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

A Correct.

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

A Correct.

Q Had she not been choked to death.

A Correct.

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

A Correct.

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

A Correct.

Q Even these amounts that she had?

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A Correct.

Q Same thing with alcohol and cocaine and mixed together?

A Correct.

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

A Correct.

Q That's all I have. Thank you.

THE COURT: Miss Eifler, anything further?

MS. EIFLER: Thank you.

REXCROSS-EXAMINATION

BY MS. EIFLER:

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

A Correct.

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

A Correct.

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

A Correct.

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

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A Correct.

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

A Correct.

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

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

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

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

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

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

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

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

is located. So that should give you some perspective.

Q Okay.

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

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

Q Thank you.

MS. EIFLER: I have nothing further.

REDIRECT EXAMINATION

BY MR. FENTON:

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

A No.

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

A Yes.

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

A No.

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

A I've been told, yes.

Q From what you understand in your training and experience.

A Yes.

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

A Correct. Correct.

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

A No.

MR. FENTON: That's all I have.

THE COURT: Anything further, Miss Eifler?

MS. EIFLER: Yes ma'am.

RECROSS-EXAMINATION

BY MS. EIFLER:

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

aggressive, more physically assaultive, is that correct?

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

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

A Correct.

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

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

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

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

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

A Correct.

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

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

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

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

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

Q Thank you.

MS. EIFLER: I have nothing further.

THE COURT: Mr. Fenton, anything further?



MR. FENTON: No your Honor.

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

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

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

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

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

DR. MOORE: I do.

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

THE WITNESS: I do.

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

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please speak as close to the microphone as possible.

THE WITNESS: Okay.

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

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

CHARLES MOORE

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

DIRECT EXAMINATION

BY MR. FENTON:

Q What is your profession, sir?

A Physician.

Q What type of physician?

A Emergency medicine.

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

A Yes.

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

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

Q Are you licensed in Michigan to practice emergency

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medicine?

A Yes.

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

A 29.

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

MS. EIFLER: No objection.

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

MR. FENTON: Thank you.

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

A Yes.

Q Where'd you see her at?

A In the emergency department, Borgess Medical Center.

Q What did you see her for?

A Injury to her left wrist.

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

A Yes she did.

Q What'd she say?

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

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

Q Did you diagnosis it?

A Yes.

Q What did she have?

A A fracture of her left wrist, distal radius.

Q Did it require treatment?

A Immobilization and follow-up.

Q Immobilization how?

A We used a cock-up splint.

Q What kind of wrist splint?

A It's called a cock-up splint.

Q What's that?

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

Q So it's like a removable cast?

A Yes.

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

A A splint, yes.

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

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

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

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

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

A Six weeks or more.

Q Thank you. That's all I have.

THE COURT: Ms. Eifler.

MS. EIFLER: Thank you.

CROSS-EXAMINATION

BY MS. EIFLER:

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

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

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

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

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

A Yes.

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

A Yes.

Q How about of her shoulder?

A Yes.

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

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wrist and the surrounding hand area?

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

Q She could still use her hand--fingers?

A Yes.

Q Okay.

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

THE COURT: Mr. Fenton.

MR. FENTON: Nothing else.

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

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

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

MR. FENTON: I'd call Gerald Luedecking.

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

MR. LUEDECKING: I do.

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

THE WITNESS: My name is Gerald A. Luedeking.

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

\* \* \*

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A-T-H-A-M.

GARY LATHAM

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

DIRECT EXAMINATION

BY MR. FENTON:

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

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

Q What is a crime lab specialist?

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

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



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

A Yes I did.

Q Did you process the crime scene?

A Yes I did.

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

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A Yes. Lab Technician Neldon took those photographs.

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

A Briefly, yes.

Q And do they accurately depict the scene?

A Yes they do.

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

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

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

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

A Correct.

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

A Yes I did.

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

A Yes it is.

Q And the cast itself has already been introduced into

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

A I certainly did.

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

A Yes I have.

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

A No sir.

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

A Yes sir.

Q He's a specialist also?

A He is.

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

A No he was not.

Q But he participated in the comparisons afterwards.

A Correct.

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

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

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at the time that we were there.

Q All right.

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

MS. EIFLER: No objection.

MR. FENTON: Can we see that please.

THE COURT: 2 is received.

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

MR. FENTON: Thank you.

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

MS. HYBEL: On the cart.

Q Buried under all this evidence.

A Oh here it is.

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

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

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

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

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

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

A That is.

Q Accurately depicted?

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

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

MS. EIFLER: No objection

THE COURT 3 is received.

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

Q Please describe it for the jury.

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

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

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

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

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

A Yes it is.

Q Accurately depicted?

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

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

MS. EIFLER: No objection.

THE COURT: 4 is received.

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

Q Please explain.

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

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

Q That was significant to you why?

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

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

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

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

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MR. FENTON: Move for admission of 5.

MS. EIFLER: No objection.

THE COURT: 5 is received.

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

Q Please describe.

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

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



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

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

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

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

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

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

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

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

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footwear was in that soft ground right there.

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

A Yes it is.

MR. FENTON: Move for admission of 6.

MS. EIFLER: No objection.

THE COURT: 6 is received.

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

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

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

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

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

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would have ventured a guess as being a murder weapon.

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

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

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

A We did.

Q Was there anything significant besides the shoe impressions developed?

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

Q Let me--

A Things--

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

A Nothing relevant, no.

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

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

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

Q Your total station, what's that?

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

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

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

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

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

Q It does.

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

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MS. EIFLER: No objection.

Q Can you--

THE COURT: 25 is received

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

MR. FENTON: Thank you your Honor.

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

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

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

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there.

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

A Correct.

Q Is that the depiction of the body?

A Yes, that's where the body was.

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

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

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

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

Q Or an estimate?

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

Q Sure.

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

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

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the beginning of the trail or into the woods?

A Correct.

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

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

MR. FENTON: Move for admission of 26.

MS. EIFLER: No objection.

THE COURT: 26 is received.

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

Q Can you just briefly describe that for the jury.

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

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



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Defendant's footwear?

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

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

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

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

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

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

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

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

THE COURT: Mr. Fenton.

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

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

A It appeared to be like an athletic shoe.

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

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

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

A I believe it was, yes.

Q And did Officer Luedeking look at those as well?

A He did.

Q Did he make some identifications?

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

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

A Yes sir.

Q Did you photograph that car?

A I most certainly did.

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

A Yes sir.

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

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A That's correct.

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

A Yes they are.

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

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

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

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

MS. EIFLER: No objection.

THE COURT: 14 through 19 are received.

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

MR. FENTON: First can we have 14.

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

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

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

Q What kind of vehicle is it?

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

Q Please, and year on that as well.

A It was a 1991 Buick.

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

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

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

THE COURT: Counsel, will you approach.

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

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

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

THE COURT: Well it's--

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

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

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

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

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

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

THE COURT: You can't hang--

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

MR. FENTON: If--

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

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MR. FENTON: It's harmless.

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

MR. FENTON: But then if--

THE COURT: I don't think--

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

THE COURT: Well--

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

THE COURT: Okay. I'll allow it.

MS. EIFLER: Okay.

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

THE COURT: Mr. Fenton.

Q Please continue officer.

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

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

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

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

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

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

Q Is that in your notes any where?

A I believe it is.

Q Can you take some--

A Sure.

Q Time and see if you can discover that.

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

Q Tracie?

A Correct.

Q Goltzene.

A Sure.

Q All right.

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

MS. HYBEL: 15.

MR. FENTON: 15, thank you.

Q Can you just-

A This is a--

Q Go ahead.



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

MR. FENTON: 16.

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

MR. FENTON: 17 please.

Q What's this?

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

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

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

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

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

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

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

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

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

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

MR. FENTON: Can we see the next photograph.

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This is what, 18?

MS. HYBEL: Yes.

Q What is 18 depict?

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

Q Does 19 depict that?

A Yes it does.

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

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

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

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

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

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

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

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

A Yes. It was about a month ago.

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

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

Q Why not?

A It didn't appear relevant at the time.

Q All right.

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

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

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

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

Q Did you find a box cutter at that point?

A I did.

Q Was that the only thing in there?

A No.

Q What else was in there?

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

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

A No.

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

A No.

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

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

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toolbox.

Q Do you know was the blade open?

A I believe the blade was shut.

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

A Yes I did.

Q Did you find anything?

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

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

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

A That's correct.

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

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

A It has.

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

A That's correct.

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

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

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

MS. EIFLER: No--no objection.

THE COURT: 44 is received.

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

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

A The box cutter is located right here.

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

A Correct.

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

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

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

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



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

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

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

Q Did you notice any orange peels in the car?

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

Q Where was that?

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

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

A I have not.

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

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court, were you not?

A I was.

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

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

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

A Yes I did.

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

A Yes.

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

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

Q Thank you.

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

MS. EIFLER: No objection.

THE COURT: 34 and 35 are received

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

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

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THE COURT: Miss Eifler.

MS. EIFLER: Thank you.

CROSS-EXAMINATION

BY MS. EIFLER:

Q Good afternoon.

A Good afternoon.

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

A That's correct.

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

A That's correct.

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

A Yes I did.

Q All right.

A Actually it was a shirt.

Q A shirt?

A That was kind of utilized as a bag.

Q Okay.

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

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

[Page 477]

A I did.

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

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

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

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

Q Okay. All right.

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

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

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

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

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

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

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

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

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

Q Okay. Did you later learn?

A Yes.

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

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

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

A Blue and gray, correct.

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

A Yes.

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

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

A Correct.

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

A I did.

Q Okay.

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

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

distance is there between this area here and then here.

A From the weed area to where the victim was-

Q Right.

A Or was the trail is?

Q From that--it--

A From you're asking--

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

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

THE COURT: Thank you.

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

A I can give you a general-

Q Okay.

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

[Page 480]

Q 26, sure.

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

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

A Correct, yes.

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

A Yes they had.

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

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

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

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

A There is none to--

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

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



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

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

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

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

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

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

A Correct.

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

A Yes.

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

A Correct.

Q All right.

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A They'll catch your clothing at times.

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

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

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

A The neigh--the person who found the-

Q Correct.

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

Q You never found it.

A No.

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

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

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

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A Correct.

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

A That's correct.

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

A Correct.

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

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

Q Okay.

A But I know she didn't walk there.

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

A No. She was lying quite straight.

MS. EIFLER: I have nothing further.

THE COURT: Mr. Fenton.

REDIRECT EXAMINATION

BY MR. FENTON:

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

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

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

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

THE COURT: Yes.

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

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

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

MS. EIFLER: I understand that.

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

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

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

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

MS. EIFLER: An opinion on.

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

MR. FENTON: Okay. But--

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

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

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

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

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

MR. FENTON: Thank you your Honor.

THE COURT: You can ask some follow up questions.

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

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

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

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

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

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

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

A Yes.

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

A Correct.

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

MS. EIFLER: No objection.

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

MR. FENTON: Thank you.

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

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

Q Show us which one.

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

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

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

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



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

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

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

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

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

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

Q Thank you.

MR. FENTON: That's all.

THE COURT: Miss Eifler, any further questions?

MS. EIFLER: Just one follow up.

REXCROSS-EXAMINATION

BY MS. EIFLER:

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

A Yes.

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

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

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Q Mmm-hmm.

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

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

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

A That's correct.

Q All right.

MS. EIFLER: I have nothing further.

THE COURT: Mr. Fenton.

#### REDIRECT EXAMINATION

BY MR. FENTON:

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

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

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

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

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

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

Q Thank you. That's all.

THE COURT: Miss Eifler, anything further?

MS. EIFLER: No ma'am.

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

THE WITNESS: Thank you.

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

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

THE COURT: Yes you may.

MR. FENTON: Thank you.

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

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

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

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

APPEARANCES:

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\* \* \*

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

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

MR. FULTS: Yes I do.

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

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

THE COURT: Mr. Fenton.

#### RAYMOND FULTS

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

#### DIRECT EXAMINATION

BY MR. FENTON:

Q Mr. Fults, did you know Annette White?

A I was acquainted with her.

Q How were you acquainted with her?

A I spoke to her maybe three or four times.

Q Did you know where she lived?

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A Yes I did.

Q Is that at that apartment on Douglas?

A Yes.

Q Yellow apartment complex?

A (No response)

Q Yellow apartment complex?

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

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

A Yes I do.

Q Which floor?

A She lived down in the basement.

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

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



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

A I believe Andre stayed there.

Q Do you know Andre's last name?

A No I don't, sir.

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

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

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

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

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would.

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

A Yes.

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

A Yes sir, I do.

Q Did you see her, in fact?

A Annette?

Q Yes.

A Yes sir, I did.

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

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

Q The pilot was out on the stove.

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

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

A Yes sir.

Q All right.

A And--

Q Was that inside her apartment?

A That was inside her apartment.

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

A Bottom floor in the basement.

Q Was it just the two of you?

A Yes at that time, yes.

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

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

Q Quick high.

A Yeah.

Q How long does it last? Approximately.

A Probably four or five minutes, if that.

Q Four or five minutes if you smoke one rock?

A Yeah.

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

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A An upper.

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

A An--an upper. Right.

Q Kind of an upper?

A Yeah.

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

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

Q Any idea what time that was?

A 8:00, 8:30 maybe.

Q P.M.?

A Yep.

Q Was that the last you saw of her?

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

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

A I went up to Tonya's.

Q You went up to Tonya.

A Yes.

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

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

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

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A Yes.

Q Did he stay there on occasion?

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

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

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

Q You went to Tonya's.

A Right.

Q Was Andre there?

A Yes.

Q All right.

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

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

A Some more crack cocaine.

Q Some more crack cocaine. All right.

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

Q Who?

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

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

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today?

A No I don't.

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

A Yeah.

Q Ervine Davenport, do you know him?

A Do I know Earl Davenport?

Q Yeah.

A I's--

Q Do you--do you know of him?

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

Q All right. Well is that Earl?

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

Q How changed how?

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

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

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

THE COURT: Well--

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

THE COURT: No--I--

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

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

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THE WITNESS: All right.

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

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

A Well I don't see Earl.

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

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

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

Q All right.

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

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

A Yes. Yes I do.

Q Over six feet tall?

A Yep.

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

A Yes.

Q Picking that person out?

A Yes I did. Yeah.

Q As Earl?



\* \* \*

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A Yep.

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

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

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

A A black man.

Q Black male.

A Yep.

Q And can you describe him in any other way?

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

Q Just a--just a large black male?

A Large black male.

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

A No, Tonya's apartment.

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

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

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

A Hell no I don't.

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

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

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

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

A Yeah.

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

A Yes.

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

A Well Earl left again.

Q Alone or with anybody?

A Alone, left Teresa sit at the table.

Q Did you ever see Earl again that night?

A Yes I did.

Q Where was that?

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

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

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

Q Mostly getting high?

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

Q And this is upstairs in the same apartment complex?

A The third floor, yes.

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Q As Annette White lived in, correct?

A Do--

Q Same apartment complex as Annette White lived in.

A Yes.

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

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

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

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

Q Who introduced you to who?

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

Q Annette did?

A Yes.

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

A Yes, that was my understanding. Yes.

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

THE COURT: Miss Eifler.

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MS. EIFLER: Thank you.

(Sidebar conversation between the Defendant and Ms. Eifler)

CROSS-EXAMINATION

BY MS. EIFLER:

Q Good morning.

A Morning.

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

A Yes ma'am.

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

A Yes.

Q They--they'd had an altercation?

A Yes.

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

A Excuse me?

Q Did you know that Annette White used crack cocaine?

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

Q Okay. How did you know that?

A Because I bought from her.

Q Was that in exchange for a pair of shoes?

A The what?

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

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

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

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

Q And did Tonya come back then with--

A Oh yeah, this a different times though.

Q Okay.

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

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

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

Q Okay.

A A little bit.

Q This was in the past.

A Right.

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

A Yes she did.

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

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

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

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

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

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

Q Okay.

A I really don't, I mean.

Q All right.

MS. EIFLER: I have nothing further.

THE COURT: Mr. Fenton.

REDIRECT EXAMINATION

BY MR. FENTON:

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

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

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

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

Q She had something on it though.

A Yeah.

Q All right. Thanks.

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MR. FENTON: That's all I have.

THE COURT: Anything further, Miss Eifler?

(Sidebar conversation between Miss Eifler and the Defendant)

MS. EIFLER: I have nothing further.

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

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



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

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

MR. BEAUCHAMP: I do.

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

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

BRIAN BEAUCHAMP

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

DIRECT EXAMINATION

BY MR. FENTON:

\* \* \*

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Q Thank you.

MS. EIFLER: I have nothing further.

THE COURT: Mr. Fenton, any further questions?

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

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

THE WITNESS: Thank you.

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

MR. FENTON: I call Earl Carswell.

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

MR. CARSWELL: I do.

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

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

EARL CARSWELL

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

DIRECT EXAMINATION

BY MR. FENTON:

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Q Mr. Carswell, did you know Annette White?

A What was that again?

Q Did you know Annette White?

A Yes I did.

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

A Yes I did.

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

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

Q What time did you get off work?

A 11:00.

Q Where did you work?

A Bowers Corporation out on Sprinkle.

Q Bower what?

A Bowers Incorporated out on Sprinkle.

Q Okay. What do you do there?

A I was what they call a racker packer.

Q What does that consist of?

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

Q What time'd you get home that night?

A About 11:30.

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

A Yes I did.

Q What was your other job?

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A Gazette. Gazette newspaper over here in Kalamazoo.

Q What'd you do there?

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

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

A 7:30.

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

A Yes I did.

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

A Yes.

Q P.M.

A Yep.

Q Is that when you saw Annette White?

A Yes.

Q Where did you live at the time?

A At 309 Cedar Street.

Q Cedar Street?

A Yes.

Q Is that somewhere near here, downtown?

A Yes.

Q Is that an apartment?

A Yes it is.

Q Who are you living there with?

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A My wife.

Q What's her name?

A Derene Carswell

Q Was she there that night?

A Yes she was.

Q Where was she when Annette White came over?

A In the bedroom sleeping.

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

A Yes.

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

A She had somebody else with her at the time.

Q Do you know who that is?

A Hmm?

Q Do you know who that is?

A I believe it was Ervine Davenport.

Q Okay. Do you see him in the courtroom?

A That's the gentleman sitting right over there.

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

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

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

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

Q I'm sorry?

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

Q You just--

A She introduced to us that night so.

Q Met him that night?

A Yep.

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

A Yes I was.

Q And did you gave that information to the detective?

A Yes I did.

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

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

Q I'm sorry, if what?

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

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

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

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

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

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

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

Q What do you--what do you mean?

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

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

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

Q So how long were they there total?

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



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

A Correct.

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

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

Q And what time would you say they left?

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

Q Now did your wife ever leave the bedroom?

A No.

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

A Yes.

Q Tell me what happened.

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

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

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

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

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A Yes, at first.

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

A Yes, a little bit.

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

A Yes.

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

A No.

Q Did you see what they were driving?

A No I didn't.

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

A It gives you a quick rush and a buzz.

Q How long does it last?

A I'd say about ten, 15 minutes.

Q Thank you.

MR. FENTON: That's all I have.

THE COURT: Miss Eifler.

MS. EIFLER: Thank you.

CROSS-EXAMINATION

BY MS. EIFLER:

Q Good morning.

A Mmm.

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

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

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hair for her.

Q Okay.

A For me.

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

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

Q Okay. A friend?

A Yeah.

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

A Sometimes, yes.

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

A It might have been.

Q All right. How long have you known her?

A About a couple years.

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

A Yes.

Q Have you done that in the past?

A Once other time then that.

Q What's that?

A Once or twice other than that.

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

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using crack cocaine, is that correct?

A That's correct.

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

A Yes.

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

A Yes.

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

A Yes.

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

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

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

A Yes.

Q Why'd you do that?

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

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

A Yes.

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

A Yes.

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

A Yes.

Q What was that about?

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

Q I'm sorry. Could you repeat that?

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

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

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

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

A That or been drinking excessively.

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

A Yes.

Q She was disturbing your household?

A Yeah I'd say so.

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

A No.

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

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

Q Like what?

A Oh women types things, you know.

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

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

Q Did you ever go over to her home?

A Once.

Q Did you use crack cocaine with her on that occasion?

A Not on that occasion, no.

Q So if I understand you correctly, she'd been--you'd used crack cocaine with her approximately three times?

A Three or four times.

Q Three or four times. And isn't it true that generally when she uses crack cocaine that you observed she would kind of get crazy, like you said.

A A little bit that--

MR. FENTON: This been asked answered and

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explained several times.

THE COURT: Overruled. I'll allow it. Go ahead.

A Yes, most of the time. You know, get a little agitated and stuff like.

Q Mr. Fenton asked you how you reacted or how the high felt to you. Did you become agitated when you used crack cocaine with her?

A Not really.

Q So her behavior was different than how you reacted to the crack cocaine, is that correct?



A That's correct.

Q Do you know how long she had known your wife?

A Well me and her I think met her about at the same time.

Q Okay. There were other folks who came to your house while Annette and Ervine were there, is that correct?

A That night? No.

Q Do you remember was it your son who came there with a female?

A No not my son.

Q You don't recall that? Okay. Is your recollection that they left around 2:30 in the morning.

A Yes.

Q And at that time Annette had kind of started getting crazy?

A Yes.

Q Did she want her ID back?

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A Yes she did.

Q Did you give it back to her?

A Yes.

Q And did Ervine kind of help resolve the issue with the ID?

A Yes he did.

Q All right. Was--you never had any problems with Ervine while he was at your house, isn't that true?

A No, didn't have no problem with him.

Q There was no fighting going on between Annette and Ervine while they were at your house, is that correct?

A No, no problem.

Q Okay. Mainly the problem was Annette just kind of acting crazy.

A Yes it was.

Q Did you ever know her to carry a knife?

A Not sure.

Q What do you mean by that?

A Well she asked me one night to take a knife from my house.

Q She asked to take a knife from your house?

A Yes.

Q Was that this particular night?

A No.

Q Was that a time when she'd been using crack cocaine?

A Yeah.

Q Did you let her take it?

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A No.

Q Why didn't you let her take it?

A Because I didn't know what she was--what might happened with it and I didn't want have a knife in my house.

Q You're afraid she might do something dangerous with it?

A Didn't know, so you know with her acting at that time like, you know, she was acting, I wasn't gonna give her anything.

Q Now you stated originally the three of you drank a 40-ounce of beer, is that correct?

A Yes.

Q You shared it?

A Yeah.

Q All right. How much--and then you sent them out for more beer and at that time they brought back crack cocaine, correct?

A Yes.

Q And how much beer did they bring with them?

A Three 40s.

Q Three 40s?

A Mmm-hmm.

Q Is that so that each of you would have a 40-ouncer?

A Yeah.

Q Did all of you drink your beers?

A Yes.

Q Any--can you tell us at what time--well let me rephrase

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that please. This smoke--when you were smoking the crack cocaine, how many--how many hits did you have throughout that night?

A Two.

Q And do you know how many hits Annette had while she was at your house?

A I couldn't really say.

Q Did you see her take hits?

A Yes.

Q You think it was more than two?

A Yeah, I'd say so.

Q More than five?

A I don't it was more than that, no.

Q So more than two, but less than five.

A Yeah.

Q Do you have any idea the last time she took a hit off from the crack?

A Other than that night, I couldn't really say.

Q What's that?

A Other than night, I couldn't really say.

Q I'm--that's what I'm talking about. During that night, do you have any idea what time she--while she was at your house, the last time that she took a hit. Do you have any idea what time it was?

A It was say about 15 minutes before left.

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Q Do you know--well let me ask it this way. How long did it take her to consume her 40-ounce of beer after they came back with the beer?

A About 35 minutes or so.

Q What time did they get back from buying the beer?

A From buying the beer, it was about 20 minutes or so.

Q They were out for about 20 minutes.

A Yep.

Q Do you know what time they got back?

A About 1:00--1:00, 1:15.

Q And then so she finished her beer, and then she took hits off from the crack after that, is that correct?

A No she--she'd hit the beer, wait a few minutes, then say then hit the crack, then go back to drinking the beer. Wait and then hit--take another hit.

Q And you're observing her do this, correct?

A Yes.

Q All right. And her mood is changing, is that true?

A Yeah.

Q And I'm sorry, I didn't hear you. Did you say that you asked her to leave that night?

A Yes.

Q And that's consistent to other times she's been at your home, smoking crack cocaine, you've had to ask her to leave, correct?

[Page 553]

A Yes.

Q All right.

MS. EIFLER: I have nothing further.

THE COURT: Mr. Fenton.

REDIRECT EXAMINATION

BY MR. FENTON:

Q Was she violent that evening?

A I wouldn't say violent, but just like I say, went to ranting and raving.

Q Was she a violent person?

A No, she's just what's not called violent, but you know, go off on tantrums, you know talking about like I said different things where like I--she was telling me how one person that was staying with her had jumped on her and broke her hand or something, you know, and things like this here.

Q Okay. So you didn't you ask her to leave because she was being violent, did you?

A No.

Q You just wanted to go to sleep and she was talking.

A I just--yes.

Q Okay. So she was verbally aggressive.

A Yes.

Q She talked a lot when she got high.

A Yeah, right.

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Q How long have you been smoking crack, sir?

A I'd been smoking crack say about almost about eight or nine months.

Q Eight, nine months?

A Mmm-hmm.

Q You mean at that time?

A At that time, yeah.

Q So now for a couple of years have you continued to smoke crack in the interim?

A No.

Q All right. When you smoked for that eight, nine months, was it on a regular basis?

A Ahhh--

Q Couple times a week?

A Maybe once or twice a week.

Q Did it ever keep you high for more than ten or 15 minutes?



A Usually when--if I did it, it was like just before I'm laying down or getting ready, you know, go to sleep or something like this here.

Q You take an upper to go to sleep?

A Well it did the work for me.

Q Ahh.

A I don't know.

Q So it didn't make you more aggressive.

A It didn't make me more aggressive, you so know, relax.

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Q You said it--you said it gave you a quick rush or a buzz though.

A Yes.

Q All right. Did it ever last more than ten or 15 minutes? That's my question?

A No. Like I say, I guess it does different people different ways so.

Q All right. I'm asking about your--yourself.

A About--about--about like with myself, yeah you know, ten, 15 minutes, and just relax me. That's it.

Q Now there's a lot testimony about Annette smoking crack that night. Was the Defendant, Earl

Davenport, also smoking crack and fully partaking in this crack that night?

A Yes.

Q Do you know someone named Andre Randall?

A I don't know that--

Q Anyone named Andre that may or may not have been in Annette White's life?

A Well I'm not really sure so.

Q In any event, was there anybody there besides the two of them, Annette and the Defendant, and you and your wife that evening?

A At that time, no. Just us.

Q And when they came they didn't have a third person with them, did they?

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A No.

Q Thank you. That's all.

THE COURT: Miss Eifler.

MS. EIFLER: Thank you.

RE-CROSS-EXAMINATION

BY MS. EIFLER:

Q Mr. Fenton was just asking you if it was just you, and Anita (sic), and Ervine that night. Do you remember your daughter showing up?

A No.

Q You don't recall that?

A Not that night.

Q Okay. Are you've--Mr. Fenton was also asking you whether Anita--Annette was violent that night, and--but you've had to ask her to leave before. We've already asked you that, correct?

A Right.

Q You don't want her to get violent, correct?

A Correct.

Q And it's--she's--she's talking on this night and you want to go to sleep, correct?

A Correct.

MR. FENTON: This has been asked and answered about three or four times, your Honor.

MS. EIFLER: This is--this is cross-examination

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based on his redirect.

MR. FENTON: This is recross and these issues have already--

THE COURT: Overruled. I'll allow it, go ahead.

MS. EIFLER: Thank you.

Q And she was continually getting more and more agitated, is that correct?

A Yes.

Q Mr. Fenton asked you whether Mr. Davenport had been partaking in using crack cocaine that night and you answered, "Correct," that yes he had, correct?

A Yes.

Q But you did not see Annette becoming agitated with Mr. Davenport at that time, is that correct?

A No I didn't.

Q They were getting along pretty well?

A Yes.

Q Was she sitting on his lap, if you recall?

A She did it a couple times, yeah.

Q Mr. Fenton was asking you about how you respond to using crack cocaine. You--you recognize that's it's--it-different people respond differently, correct?

A Correct.

Q And is that based on your observation of other people using crack cocaine?

[Page 558]

A Yes it is.

Q You were aware that Annette had somehow broken her hand or her wrist, correct?

A Correct.

Q And it was your understanding that that occurred during an altercation with another person?

A Yes.

(Court coughs several times)

THE COURT: Counsel, yeah I need to take a break. Let's recess.

(Court recesses at 10:21 a.m.)

(Court resumes at 10:21 a.m.)

Q Were you aware of the altercation involved anything regarding crack cocaine?

A No.

MS. EIFLER: I have nothing further.

THE COURT: Mr. Fenton.

REDIRECT EXAMINATION

BY MR. FENTON:

Q Do you remember whether she was wearing anything on this broken arm?

A It was a little splint or something that was on--on her hand.

Q That night?

A Yeah.

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Q You saw it?

A Yeah.

Q All right thanks. That's all

THE COURT: Miss Eifler.

MS. EIFLER: I have nothing further

THE COURT: We'll recess. Thank you sir. You may step down.

THE WITNESS: Mmm-hmm.

(The witness was excused at 10:22 a.m.)

THE COURT: We're gonna take about a ten-or 15-minute break. Follow Mr. Brooks out. Court's in recess.

(Court recesses at 10:22 a.m.)

(Court resumes at 10:47 a.m.)

MS. JOHNSON: The court recalls the case of People versus Ervine Lee Davenport, Case Number 07-0165FC. Parties please restate appearances for the record.

MR. FENTON: Stuart Fenton for the People.

MS. EIFLER: Good morning, Susan Eifler, appearing on behalf of the Defendant, Ervine Davenport. He is present in Court today. And Judge, may we approach?

THE COURT: Yes.

(Bench conference begins at 10:47 a.m. between the Court and counsel, transcribed as follows)

MS. EIFLER: And I'm--I'm going to approach you because I see the jury's outside. I do want to address the

\* \* \*

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THE COURT: Yes.

MR. FENTON: Miss Eifler and I have agreed, ladies and gentlemen, that I need not recall to the witness stand, Gary Latham. However, Gary Latham would testify that he found the gloves upon which the DNA samples were later taken and submitted to the Michigan State Police laboratory, that we just heard testimony about, from the backseat of the car that was crashed that the Defendant was in.

So with that, I'll move on to the next witness.

THE COURT: Is that accurate, Miss Eifler?

MS. EIFLER: That is an accurate statement and I've had the chance to confer with Mr. Davenport about that.

THE COURT: Okay, thank you. Go ahead Mr. Fenton.

MARQUETTA TARVER

(At 2:08 p.m., sworn as a witness, testified as follows)

DIRECT EXAMINATION

BY MR. FENTON:

Q Can you please state your name for the jury.



A Marquetta Tarver.

Q You're gonna have to speak up.

A Marquetta Tarver.

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Q Thank you. It's really hard to hear in this court-room, so if you just--

THE COURT: And it is helpful if you speak closer to the microphone like you just did. So I'd appreciate that.

Q Miss Tarver, do you have a nickname?

A Yeah.

Q Do you go by TK sometimes?

A Yes.

Q All right. Now you came into court today in shackles, correct?

A Yes.

Q You're incarcerated somewhere?

A Scotts.

Q Scotts Correctional Facility?

A Yes.

Q That's a prison, correct?

A Right.

Q All right. What are you in there for?

A Credit card.

Q Credit card?

A Mmm-hmm.

Q All right. You used someone's credit card or something like that without their permission?

A Right.

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THE COURT: And you're gonna need to speak up.

Q Can you repeat that answer.

THE WITNESS: Right.

THE COURT: Thank you.

Q I want to take you back, Miss Tarver, to January of 2007. At some point did you meet the Defendant, Earl or Ervine Davenport?

A Yes.

Q How did you meet him?

A At Marvin's house.

Q At Marvin's house?

A Mmm-mmm.

Q How do you know Marvin?

A Through Delisha (phonetic)

Q Delisha?

A Yes.

Q Do you know her last name?

A No.

Q Did you hang out with the Defendant for a week or so at Marvin's house?

A Nah, I didn't hang out for a week.

Q Couple days?

A Yeah.

Q Do you remember what day of the week that would have started?

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A Like Friday night, Saturday.

Q Friday night, Saturday.

A Yeah.

Q Any idea what time you started hanging out with him on Friday night?

A I don't really remember.

Q All right. During--Friday night, Saturday, until when?

A Saturday morning like 5:00, 6:00 in the morning.

Q 5:00, 6:00 in--until when did you stop hanging out with him?

A I left and I didn't meet--see him again until Tuesday.

Q All right. And then where'd you see him at on Tuesday?

A At Marvin's.

Q Saw him again at Marvin's. Did you continue to hang out with him Tuesday into Wednesday?

A Right.

Q Was Wednesday the day that you were involved in a car crash with him?

A Yes.

Q And would that have been the last day that you saw him?

A Yes.

Q So basically you were on and off with him for half a week would you say?

A Right, for those days, yeah.

Q I'm sorry?

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A Yes.

Q I didn't hear what else you said.

A I said for those days, yes.

Q Did you know him before that?

A No.

Q Did you know Annette White?

A No.

Q So you never knew the victim in this case.

A No.

Q The majority of time that you were hanging out with the Defendant for that half a week, were the both of you obtaining crack cocaine and getting high?

A Yep.

Q Did he have a vehicle?

A Yes.

Q Is that the same vehicle that he had when the two of you crashed?

A Yes.

Q Did he have that vehicle, as far as you knew, from the weekend before up through that Wednesday night

A Right.

Q Did you ride in that vehicle on several occasions?

A On Tuesday and Wednesday, yes.

Q Can you describe it? Do you remember it at all?

A Grey, four-door, back window bust out, that's about it.

[Page 632]

Q All right. Do you know how the back window came to be busted out?

A Nope.

Q Did he ever tell you?

A Think he locked--I think he said he locked the keys in the car.

Q Do you know where he got the car from or how he got the car?

A Nah, he said it was his girlfriend's.

Q Who was his girlfriend?

A I never knew her.

Q Did he gave you a name or not?

A No, just girlfriend.

Q All right. Was there a time when you were with him throughout that half a week where he started making statements about having been responsible for the homicide in this case?

A Yes.

Q Tell the jury about that. How'd it come about, where was it at. What'd he say?

A First at Marvin's, sitting on the couch. They were in the-Marvin and whoever else was in the backroom, he was sitting on the corner of the couch. It was like dark, just talking to himself, saying, "I done it," or whatever. I ain't know what he was talking about. Shortly after that

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the news came on about Annette-

Q About Annette?

A Yeah.

Q So you saw on the news the story about her death?

A After--after--after he said he had done it or you know, "It's done." He said it was done. I didn't, you know-that's--that's--that's pretty much it. I just thought he was tripping.

Q Well after the news came on--

MS. EIFLER: Can she repeat that please. I didn't hear that.

THE WITNESS: I just thought he was tripping.

Q After the story came on, did he make any statements about whether or not that was true or whether or not he did it?

A Can't remember.

Q Okay. Well after the story came on, is that the first time you knew anything about Annette White's death?

A Mmm-hmm. Yes.

Q What--what did he say, if anything, after the news story?

A Just kept saying it was done, stuff like that. "It's done."

Q What else.

A "I done it." That's--that's--that's all I can remember.

Q Was he referring to Annette White's death?

A Yeah.

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Q How did you know that?



A Because later on down the line that's when I found out about the whole situation, like that Wednesday afternoon.

Q What do you mean? Tell us about that.

A That Wednesday afternoon--well prior to that Tuesday, that's when I was supposed to been going back to Grand Rapids, and he was like, "No, I was going to Detroit." So I got all my stuff together, we was riding--

Q You gotta slow down. You were supposed to go back to Grand Rapids and he said, "I'm going to Detroit?"

A No, Marvin actually say he have a car, he'll take you, you know so.

Q Marvin--

A My dad had just sent me some money so I was gonna pay--pay for, you know, to get back to Grand Rapids. So instead of going back to Grand Rapids right then, we just around to the different stores, whatever--that was Tuesday. That's when he had told me he had been up like eight days or something like that--

Q He told you that he'd been up for like eight days?

A Yeah.

MS. EIFLER: I'm sorry. I--I can't hear. Could you repeat that.

THE WITNESS: That he had been up for like eight days.

[Page 635]

THE COURT: Who said that?

THE WITNESS: Earl.

THE COURT: Okay.

Q Earl the Defendant here?

A Yeah.

Q All right. Keep going.

A Then that Wednesday we was talking. I don't know who house we was in, it was just we was downstairs, and we was talking about that. What was I supposed to be talk-answering? I forgot.

Q How did you know that when he said, "I done it. It's done,"--

A Oh.

Q He was talking about the murder of Annette White.

A Oh okay. I remember. All right. And so he was talking about it cause when we was talking about going to Detroit and he was saying some things about, "I be surprised to know this and that," that-then he just started talking about her. You know, "I done it. I had to. It got out of hand. I had to off

her,” and that was that. And I asked him what, and he was like, you know, he had did that that Friday.

Q You said he had to do it, things got out of hand.

A Yeah.

Q “I had to off her.”

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A Yep.

Q Why did he have to go to Detroit, according to him?

A He just wanted to get away he said.

Q Did he indicate whether or not he knew the police were looking for him?

A Nah, I told him.

Q What did you say?

A Cause we went back to Marvin house Tuesday or Wednesday, and I went to the door, and Marvin told me to tell him that the detectives had been by looking for him, so--

Q Marvin told you to tell Earl that the detectives had been by looking for him?

A Yeah.

Q All right. I’m just trying to make what you say clear.

A Yeah.

Q So everybody hears you.

A That the police come by looking for him, and so I came back to the car and I told him, and when I--I told him, I asked him, "What the police looking for you for?" He said, "Oh my girlfriend probably reported the car stolen." So you know, I ain't think nothing of it. He had the keys to the car, so you know, tripping you know, relationship thing. I got in the car, we left. Then we went to the store after that.

Q All right. So you told him the police were looking for

[Page 637]

him.

A Mmm-hmm.

Q Because that's what Marvin wanted you to do.

A Right.

Q Did you tell him the police were looking because of the homicide?

A No.

Q Or did you tell him any particular reason?

A Nah, I just told him what Marvin told him when I came to the door.

Q And is that when he said he wanted to get away and go to Detroit?

A Later on that evening, yeah he said that.

Q All right. Now during this half-a-week you spent with him, did he ever talk about choking women?

A Yeah pretty much.

Q Tell the jury about that. How did that come up and what did he say?

A It was just a general conversation as far as how he do or whatever he'd do if, you know, things got out of hand, you know--

Q How he would do, whatever he would do if things got out of hand?

A Yeah, What he would.

Q What?

[Page 638]

A You know, how--you know, just he--

Q Give us some context. How did this come up? What are we talking about?

A It was general conversation and you have to look it too as that at the time that he was talking or we was talking, it was, you know, everybody was under the influence. So I can't specifically say everything we was talking about.

Q I understand.

A You know, it was a general conversation and that's what it was, and you know, he just--he a big guy, flexed his hands all the time. So you know, just talking--

Q He--

A You know, about that this is how he do something, you know.

Q How he do something if what happened?

A As far--like if he got into it, if there was a problem or whatever. You know, he'd choke 'em up, you know.

Q All right. Did he say that on more than one occasion?

A Couple times.

Q Was this conversation with respect to women? How he would deal with women or anybody or you know, what are we talk-put some context on this.

A I think it didn't matter. Women, men, I don't think it mattered.

Q You say he would flex his hands a lot, he had big hands.

A Yeah.

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Q What do you mean by that? How'd that come up?

A That was part of--that's what he would do when he talked.

Q Show the jury. What--I mean what would he say and what would he do.

A Like you know when a person talk, like you know, hand motions, the same thing. Flex your hands while you talking and when you--when you describing something. You know, so at the time he was talking, he was flexing his hands at the same time.

Q And what exactly would he--was he saying to the best of your knowledge?

A You know, stuff like you know, things he ain't have to worry about cause he'd just, you know, just choke 'em, and then you know, that'd be the thing. You know, he'd just squeeze his hands, flex his hands.

Q Why would he have to worry about anything to start with?

A I don't know. I didn't know him.

Q I mean, did--do you remember how the conversation got started or what you were specifically talking about?

A No.

Q Can you give us any more context than that? How this con--what this conversation was about?

A No.

Q All right. You say he talked about choking on more than one occasion.

[Page 640]

A Yes.

Q Did you know how Annette White died?

A No.

Q Did he ever tell you specifically what he did to her?

A No.

Q Just that he had to off her.

A Yeah. That was after--that was like that Wednesday evening before we got into the car accident, when I found out exactly what was going on--not exactly, but that the fact that he had done something, I just didn't know what.

Q When did you find that out?

A Like that Wednesday night right before the accident, you know.

Q What happened, how'd you find out?

A It was right before we went to the Meijers. He was just talking--

MS. EIFLER: Your Honor--



Q No, I just want to know what he said. How--how you found out as to what he did with respect to this murder.

A It's just--it was just that he had done something. He didn't tell me what he did, he just said he had done something.

Q What did he say?

A That I had done something, you know.

Q Well that he had done something--

[Page 641]

A Right.

Q Or that he offed her, that he killed her, what did he say?

A No. That was a different conversation. He said he offed her when he was talking to me in the basement. You know, I'm saying when he was just sitting there in the chair, he was talking about it, and he was like she--she kept coming back at him and it just got out of hand, and that's when he offed her. And I was like, what? He was like, "Yeah, I had to off her."

And we was coming from the store, and I told him--I said it looked like we're being followed. He said, "Yeah I see 'em." And I'm like well what's going on? And he was like, "I done something," so I was fitting to jump out the-the car.

Q All right.

A He was like, "Hold on baby girl, just wait," cause I took my seatbelt off, I was gonna go. And we went down a dead end street, he turned around. The police car come behind us, he took off. We hit about 60 miles, hit the tracks, spint (sic) out of control, hit the pole, and that was that.

Q That was the--that was the crash.

A Mmm-hmm.

Q How were you able to get out of that car and run for it and why did you do that?

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A Actually I came through the back window. I was in the front. I come through the back window, he pulled me out cause I was halfway in, halfway out. I remember coming-coming to, he was pulling me out, saying, "come on baby girl, let's go." So he pulling me up, I'm still dazed, you know, and I'm--and I'm running and then I stopped and I'm just walking. I'm confused cause I'm not from here.

So that's when the police walked up on me and they's-they pulled me over. They saw the blood coming from my head or whatever. So they asked me where was I coming from, I couldn't really tell 'em. They put me in the car, they was taking me somewhere, then I ended up at the hospital.

Q All right. Are you from Grand Rapids?

A I caught my case there.

Q Is that why you were going back there? You have some connection to Grand Rapids?

A Yeah. My parole officer.

Q All right. Why did you run from the car?

A Good question. I--like I said, he helped pull me out the car. I didn't--at that time I was dazed. I just flipped over five times and you know, come from the back--the front seat through the back window. So I was a little dazed and he pulling me up, and like I said, I started running because it was like what am I running for, you know. And

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that's when the police stopped me.

Q Were you on the run from your parole?

A I wasn't on the run, you know. I didn't report, but I hadn't absconded yet. So I wasn't on the run.

Q Okay. So you missed some reporting dates or something.

A One day.

Q One day.

A Yeah.

Q All right. When the Defendant talked about what he did to Annette White, did he ever use the term rob or rape

A Couple times, yeah.

Q Tell the jury about that.

A That's like--ooh. I'm trying to remember which con-  
ver--yeah, it was a conversation at the house.

Q What did he say?

A In the basement about, you know, how he would  
take money, rob 'em, or you know, if he had to if  
they wouldn't give it up, he'll rape 'em or whatever.

Q Who was he talking about?

A I didn't--he didn't say specifically. He was just talk-  
ing.

Q Did he ever relate that, either robbing or raping, to  
the victim in this case?

A I'm not sure.

Q DO you remember telling Detective Beauchamp  
that he said that about her, that he was either  
gonna rob her or rape

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her, and that's what this was all about?

A Probably.

Q Probably. When you talked to Detective Beau-  
champ months ago, in fact over a year ago--do you  
remember talking to Detective Beauchamp shortly  
after the accident?

A Yeah.

Q Was your memory fresher about it then than it is now?

A No.

Q You remember it as well now?

A No, actually I remember it the same.

Q All right. Well in his police report of your interview it indicates that you said that he was talking about robbing and/or raping, and that's what this was all about, this particular victim. Do you remember that?

A You said particular victim. I didn't say particular victim. I said he was talking about robbing or raping. I never said it was toward her.

Q You sure about that?

A You must be surer than I am. I--you got the paper. That's what it is then.

Q All right. So you're not so sure about that or you are sure?

A (No response)

Q Do you remember telling the detective that the reason why the window--

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THE COURT: I didn't hear the response. Was--  
was there--

MR. FENTON: Well I don't think she did respond,  
so I just moved on.

THE WITNESS: I didn't respond.

THE COURT: I'm sorry?

THE WITNESS: I didn't respond.

THE COURT: Do you remember that or not

THE WITNESS: I--I know I said something about  
robbing and raping, but I never said it was anything  
like it was particularly toward her. I don't remember  
that like that. So I said if he had the paper in front of  
him, then that's what--that's what it is.

Q Do you remember the Defendant whether or not he  
told you how he got the body out of the car?

A Did I what?

Q Do you remember him telling you how he got her  
body out his car?

A Nah.

Q Do you remember telling the detective that he had  
to break a window to do that?

A Nah. I told the detective he had to break the win-  
dow to get the--the keys out the car.

Q Never said to get the body out of the car?

A No.

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Q Now you said he talked about choking a couple of times.

A Mmm-hmm.

Q Do you remember telling the detective that he was talking about strangling people and choking all the time. He was always talking about that, seemed to be obsessed by--with it.

A You confusing me. What is you saying?

Q You said a couple of times here. Do you remember saying to the detective that he was always talking about strangling people.

A See there you go emphasizing words. It's the same difference. He talked about it a couple times. You know, I only knew the guy for like four days, on that Friday, Saturday I seen him, and Tuesday and Wednesday I saw him. You know what I'm saying? All the time is all the time, like I know him forever. No.

Q How many times would you estimate he talked about it?

A Say what?

Q How many times would you estimate he talked about it?

A A few times.

Q Three, four?

A I can't be specific.

Q All right. Let me ask you this. Do you remember him telling you about exchanging his shoes?

A Yep.

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Q At Kmart.

A Yep.

Q Tell the jury what he told you.

A What he told me about what?

Q About exchanging the shoes at Kmart.

A He just went in Kmart and changed his shoes.

Q Well all right. They don't have the police report, they've not read anything about this.

A Oh. He said--

Q So you have to tell them the whole thing.

A We got to the store, was in the store, didn't know specifically what we was there for. He changed his shoes, got some socks, left out the store.

Q All right. So you were actually with him when he did that.



A Yeah. I was like--yeah I was with him but not with him with him. We was at the store together, yeah, but not in the same aisle or anything like that. I just knew he came out with different shoes.

Q All right. Did the two of you walk in together?

A I can't remember.

Q The two of you walk out together?

A I'm not sure, probably so.

Q You told the detectives that he actually exchanged his shoes at Kmart, right?

A Yeah.

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Q Left--left his old ones there, and left-

A Yep.

Q With a new pair of boots.

A Right.

Q You were the one who gave them that information.

A Right.

Q How did you know that?

A Because he came out with different shoes on.

Q Did he tell you what he did?

A Yeah, he put 'em in the box.

Q He put the old ones in the box.

A Yeah.

Q And basically walked out with the new ones on, right?

A Right.

Q And did he tell you why he wanted to do that?

A No.

Q You also suggested to the detectives to check under the victim's fingernails, didn't you?

A Right.

Q Why'd you do that?

A Because of the scratch on his face.

Q So he had a scratch on his face?

A Yep. Before the accident.

Q When did you notice that?

A Like late Friday--or Satur--early Saturday morning maybe.

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Late Friday night.

Q Do you have any idea when you first--what time it was when you first hooked up with him that Friday night?

A No.

Q Could it have been late? After midnight?

A It was--it was late the first time, but it wasn't that late.

Q But you don't-

A Cause he left.

Q Were you using crack?

A Yep.

Q Throughout the whole weekend?

A Yeah.

Q So you don't know for sure what time it was, whether it was 12:00, 1:00, 2:00, 3:00, or 4:00 in the morning, right?

A Right.

Q What kind of scratch did you see on his face when you hooked up with him early Saturday morning?

A What kind of scratch?

Q Yeah. I mean how--what did it look like?

A A scratch.

Q All right.

A Like down his face, from under his eye like to his nose like.

Q Do you know--did it heal up throughout the week?  
Did it

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look better on Wednesday when you last saw him  
or-

A I ain't payed attention to him like that.

Q Did he explain it or did you ask him--

A No.

Q Where he got the scratch from?

A No. I was--I figure it come from when he was telling that things had got out of hand, that's where it come from.

Q Do you remember telling the detectives that Ervine told you that they got into it because she didn't want to give him something.

A Right.

Q All right. Did he tell you that?

A Yes.

Q What did he tell you?

A What you just said.

Q They got into it because she didn't want to give him something.

A Right.

Q And you told that to the detectives within a week or so after this happened, right?

A Right.

Q You were interviewed by the detectives after you got out of the hospital, was it?

A Right.

Q You didn't know for sure whether it was money or sex

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though, right?

A Right.

Q Did he ever tell you what he did with the body?

A No.

Q Did he make any comments about where it might be or anything like that?

A No.

Q And do you remember telling the detective that he told you wherever it was, it wasn't right.

A Right.

Q Well is that true?

A Mmm-hmm.

Q Did he--did he tell you that?

A Yeah.

Q What did he say?

A What you just said.

Q Well I don't want to put words in your mouth. I want you to testify.

A That's what--what you just say. Is he-

Q What did--

A He said it--he had to go take care of it because it wasn't right. So I figured it was where somebody could see it.

Q I'm sorry. Say that again.

A He said he had to move it cause it wasn't right, something to that effect. Cause I figured somebody could see it. I

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mean, hey, I wasn't trying to ask no questions for real.

Q Did he ever tell you that she attacked him with a box cutter?

A No.

Q Did he ever tell you that she attacked him with a knife?

A No.

Q Or a razor?

A He just said things got out of hand.

Q And he had to off her.

A Yeah.

Q And that he wanted something for her--from her that she wasn't giving up.

A {No response}

Q Is that right?

A Yep.

Q Let me ask you this. You remember going to Kmart and him changing his shoes that you just testified about, right?

A Right.

Q Was that before or after he was informed that the police were looking for him?

A It was--you said he went to--it was after.

Q Do you remember what day that was? If the crash was Wednesday--

A Yeah. It was Wednesday.

Q You think it was Wednesday that the Kmart exchange

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happened?

A Yeah, Tuesday or Wednesday. I believe it was Wednesday.

Q All right. When was he told that the police were looking for him? If you know.

A I don't know. I think it--it was Tuesday or Wednesday. It was one of them two days, Tuesday or Wednesday, I'm not sure.

Q Are you sure that the shoe switch happened afterwards though?

A Yeah. Yeah, it did happen afterwards.

Q Thanks. That's all I have.

THE COURT: Miss Eifler.

MS. EIFLER: Thank you.

#### CROSS-EXAMINATION

BY MS. EIFLER:

Q Good afternoon. Ma'am, you are--you testified that you are currently incarcerated due to using someone else's credit card, correct?

A Correct.



Q Have you been offered anything by the prosecutor's office in exchange for your testimony?

A No.

Q No? You didn't get anything for your-

A I--what you saying, I could have?

Q What's that?

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A No.

Q You did--you did not?

A No. I'm saying I could have?

Q Are you asking me? I've got to ask questions, you answer 'em okay. All right.

A I'm sitting in prison.

Q What's that?

THE COURT: Repeat what you just said. I'm sorry?

THE WITNESS: I said I wouldn't be sitting in prison.

Q I'd like to get a timeline from you. You met Ervine Davenport at Marvin Fraction's house, is that correct?

A Right.

Q Do you remember what day that was?

A Friday.

Q Friday. Do you know the date?

A No.

Q Approximately how long did you know him?

A I met him Friday, I left that Saturday morning, I seen him Tuesday, and got in the car I said then with him Wednesday.

Q So when was it that you saw the news on the TV about Annette White?

A Like in the middle of the night, what? Friday morn--or Friday night, Saturday morning. You know how they have the

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little late news special on or something they flash on the TV.

Q Like the 11:00 news Friday?

A Nah. Later than that.

Q So would it be Saturday morning?

A It would be like in the morning. Sometimes the news come on like at 2:00, 3:00, 4:00 in the morning, different time.

Q You said you thought he was tripping.

A You smoke crack, you trip.

Q So you thought his statements were because he was tripping.

A Right.

Q Now he didn't do anything to prevent you from going back to Grand Rapids, correct?

A What do you mean?

Q Well I think you testified Marvin had a car and Marvin could have taken you back, correct?

A No. Marvin said he had a car, Earl had a car.

Q All right. But you--you weren't--you could have gone to Grand Rapids on your own, correct?

A Yeah I could have.

Q All right.

A But crack, trip.

Q What's that.

A Nothing.

Q Go ahead and answer. I'm sorry.

[Page 656]

A Nothing.

THE COURT: You need to repeat your answer.

THE WITNESS: Crack, you trip.

Q Okay. So you were tripping too?

A Yeah. I ain't never smoked the stuff before so that was the first time, so yeah I stayed around.

Q That was the first time? When was--when was the first time?

A Nah, I'm saying around that period. That's the first time I ever tried it, like in that--that time, you know, being in Kalamazoo.

Q Can you describe what you mean by you tripping?

A Nah, I can't describe it.

Q What--what--

A You can't describe it. You know, you trip.

Q What'd you mean you--what'd you mean when you said you were tripping?

A No, I'm saying--I'm just saying you don't want to go no where. I could have left at the time, I could have left that morning at 8:00 o'clock in the morning when I first said I was leaving, but I didn't. You know what I'm saying? Because stuff was on the table, so it was like all right, forget it. So I--you know--and actually I brought it to the house and was like hey I'm fitting to be out. And that's when Marvin asked me about the--where was I

[Page 657]

going, and I told him I was fitting to get on the bus and leave. And it was just him and Jerry there, and then he come in like about a half-hour--Earl come in a half-hour later. And you know, just set around and time just passed by. So you get stuck when you start smoking.

Q After this accident you were taken to the hospital, correct?

A Right.

Q Did you give a name of Michelle Jackson at the hospital?

A I gave some name, I don't know which one it was.

Q Do you go by Michelle Jackson?

A I go by a ton of names.

Q These are legal names or are they kind of aliases or?

A They aliases.

Q So your testimony is that Mr. Davenport made some statements such as it got out of hand, is that right?

A Right.

Q You said that she kept coming back at him. Was he referring to Annette White, do you know?

A I guess so.

Q He didn't elaborate what he meant?

A He said it got out of hand. So if, you know, you into with somebody, they keep coming at you wherever you went to or with, then that's--that's it. It got out of hand.

Q Did he tell you he was in a car?

[Page 658]

A Say what?

Q Did he tell you he was in a car at the time?

A Was in the car what?

Q With Annette White when this happened?

A Nah, he ain't say where he was at.

Q Did he tell you that Andre Randall was involved with him?

A I don't remember.

Q You don't remember telling the police that?

A I don't remember.

Q You don't remember the police asking you if--if Ervine was with Andre Randall and you told 'em that--that they were together?

A I don't remember what part you're talking about. I might have--huh?

THE COURT: You need to speak up a little bit. I think you said, "I don't remember what," and I didn't hear the answer.

THE WITNESS: Yeah. I don't remember and I might have told 'em that. If it's down there in writing, then I told 'em that, but I don't--I don't remember. But yeah-yeah I told him--yeah, I remember now. Yeah. I told him that was the guy that--

Q You told him--

A I'd seen him like at Daysha's (phonetic) or something, somewhere around there or driving by something. I told

[Page 659]

'em, yeah.

Q Okay. So you saw them together, correct?

A Right.

Q And this is when you were--I believe you were in the hospital. You were talking with Detective Beauchamp, do you remember that?

A Right.

Q Yeah? And you told Detective Beauchamp that--that the both of them had tried to either rob her or rape her, something with an R. Do you remember telling 'em that?

A That both of 'em--nah. I don't know. I mean I was at, like you said, at the hospital. They had--they

was doping me up even more, so I--hey. I don't remember that part-

Q They were what?

A Saying about both of 'em.

Q They--what was happening at the hospital?

A I said they were doping me up even more. I don't remember telling 'em that part about both of 'em have something to do with robbing or raping 'em. I don't remember that, but I remember saying something about robbing or raping, but I'm not sure as to whom.

Q So if it's in--if it's in the report that you were referring to the both of them, you would agree then that you did tell Detective Beauchamp that?

A Yeah I said that.

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Q Do you remember how long you'd been at the hospital at the time that this interview took place?

A No.

Q But you were being treated for injuries sustained in the accident, correct?

A Right.

Q And you were receiving medication, is that correct?

A Right.



Q Were you under the influence at that time of any other controlled substances?

A Was I what?

Q Under the influence of any other controlled substances at that time?

A What other than the hospital?

Q Correct.

A Yeah.

Q Okay. Well what--what were you under the influence of?

A Crack.

Q Crack. Were you also found to be in possession of heroin at the time?

A Oh no.

Q No?

A No.

Q So based on treated and the fact that you were on crack and also being given medication at the hospital, is it fair to

[Page 661]

say that any statements that you gave while at the hospital may not have been a 100-percent accurate?

A Could have been, could have been not.

Q I mean were you--I mean you were of all your faculties? I mean you knew exactly what you were saying, what was happening?

A I knew what was happening.

Q Okay. Well then why--you brought up the fact that you were on the medication, correct?

A Yeah, you was asking cause I was in the hospital. I mean-

Q Okay. You were doped up?

A Yeah. The question you asked was dumb so I gave you the answer.

Q My question was dumb?

A Yeah.

Q All right. What kind of medications were they giving you?

A I'm not a doctor. I--I really don't know.

Q All right.

A I can't tell you.

Q So what do you mean by doped up?

A You know, for pain?

Q Mmm-hmm, right.

A Stuff like that.

Q Did it work?

A Yeah

[Page 662]

Q All right.

A Had me knocked out.

Q What's that?

A It had me knocked out.

Q Knocked out.

A Mmm-hmm.

Q Okay. So this medication-

A After the questioning.

Q Oh okay. When did they gave you the medication?

A What? I don't know--when I got there.

Q Before the questioning?

A Yeah, but they came somewhere down the line and in fact, I told 'em don't talk to me right now until I to sleep actually, and that was the black guy that was there. Cause I told him that I'm not thinking straight, so I told 'em to stop talking to me. That's why we--they stopped talking to me till that Monday.

Q Okay. So was it on Monday when you were asked whether Ervine and Andre were together when something happened to that girl?

A I don't remember which day it was when they asked that question. I just said I remember seeing them together at once upon a time. I--I don't know who Andre is, so I knew who he was when I saw him when they described him to me. Well I described them to--him to them, and they was like

[Page 663]

okay, so yeah. So I seen him at Daysha's and that was that. I don't remember what day it was.

Q Did--

A And actually I didn't even know really what--why they was questioning me like they was questioning until they came back and picked me up.

Q Daysha, as she someone you had been staying with on and off?

A Who?

Q Daysha.

A Nah, that's a store.

Q Well--Delisha then? Were you staying with someone by the name of Delisha?

A Delisha, yeah.

Q Off and on?

A Nah, not off and on. I stayed with her then I left.

Q You never went to Detroit with Ervine Davenport, correct?

A No.

Q Who else was there when you were--when he was talking about choking people?

A Nobody.

Q You said there was a general conversation going on, it was just between you and Ervine?

A I think so.

Q Well what'd you mean by that?

[Page 664]

A What I mean by what?

Q By, "We were just talking."

A Yeah, we was just talking.

Q It was a general conversation?

A Yeah.

Q All right. Were you tripping then?

A Was I tripping or was he tripping?

Q Either one of you.

A I can't speak for him. I wasn't tripping.

Q All right. You--

THE COURT: I'm sorry. You were or you were not?

THE WITNESS: I weren't.

THE COURT: "I was not?"

THE WITNESS: I was not.

MS. EIFLER: I have nothing further.

THE COURT: Mr. Fenton.

MR. FENTON: Yeah, I'd like to follow up a little bit. Thank you your Honor.

REDIRECT EXAMINATION

BY MR. FENTON:

Q I want to make this very clear. You were interviewed by the detectives at the hospital, correct?

A Right.

Q And at some point you cut off questioning cause you were

[Page 665]

kinda out of it?

A Right.

Q Did they come back and talk to you like six days later?

A Right.

Q When you were out of the hospital?

A Right.

Q How was your state of mind then?

A It was good.

Q Did you tell 'em what you knew?

A Yep.

Q Were you under the influence of any drugs at that point?

A Nah.

Q In fact, you were in jail, weren't you?

A Right.

Q You went from the hospital to jail, right?

A Right.

Q And stayed in jail until they interviewed you, right?

A Right.

Q And continued to stay in jail probably up until this day?

A Well no, actually I got out and went back.

Q You got out, but then you were later--

A Right. Two days later.

Q Caught and went back.

A Right.

Q All right. In any event, were you either in the hospital

[Page 666]

or in jail between the first time they talked to you and-

A Right.

Q The second time?

A Right.

Q All right. I just want to clear something up. You gave statements--you testified that the Defendant basically took responsibility for her death, right?

A Basically.

Q You also said on cross-exam that you may have told the police something about Andre being involved as well. Where--where'd you get that information and is that accurate or do you remember the Defendant telling you that or how'd that come up?

A I really can't say. I--

Q Do you remember the Defendant telling you that Andre was involved as well or not?



A I--I really can't say.

Q All right.

A I really can't say to that.

Q So today as you're sitting here thinking, do you remember the Defendant telling you that Andre was involved?

A I think so. I can be for certain though. I'm not--I can't remember that.

Q You said you had several conversations with him though and you've already testified to those conversations--

[Page 667]

A Yeah.

Q About had to off her and all those sorts of things. Was he talking about just himself during those conversations?

A I believe so.

Q Did you know Andre?

A I ain't know nobody.

Q Have you ever met Andre Randall?

A Not, personally. Not sit down, hey, how ya doing.

Q Well I mean can you quantify this out of all the statements the Defendant made about this

murder? Like on how many of them was he claiming sole responsibility and how many would he have said that Andre might have been involved.

A Nah-uh. He didn't claim sole responsibility like that. No.

Q All right.

A I think in the end is where--where it all came out as far as him taking responsibility because he said it had got out hand. So I figure, hey, that would be taking responsibility at that point. I don't know what happened beforehand though.

Q All right. You said you thought the news was Friday night but you don't really know that for a fact, do you?"

A Right.

Q It could have been Saturday night.

A Yeah.

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Q It could have been Sunday.

A Could have been.

Q Cause you were on crack during that time.

A Sure was.

Q And the last thing you're paying attention to is the day and the time, right?

A Right.

Q Didn't have a job or weren't--

A It was late so that's all I know. It was late.

Q You didn't have a job, you weren't working, right?

A Right.

Q Just basically living on the streets.

A No, I wasn't living on the streets. I was living at Delisha's house.

Q All right. You know Delisha's last name?

A I know her sister's last name if that's the same.

Q Where was this basement at that you were having some of these conversations with the Defendant at?

A I cannot tell you. I do not know. I'm not from here.

Q Was it at some apartment complex?

A It's not--no. It was a house.

Q Okay. Did you--do you remember the color of the house?

A It was dark when we got there, and like I said, I had been up myself for like four or five days and.

Q Do you know anything about a dehumidifier and/or a stereo?

[Page 669]

A No.

Q You didn't see him give any of that stuff to Marvin Fractions?

A No.

Q All right. Thanks. That's all I have.

THE COURT: Miss Eifler.

MS. EIFLER: Thank you.

#### RECROSS-EXAMINATION

BY MS. EIFLER:

Q To the best of your knowledge though, this news that came on, that was somewhere between Friday night and Saturday morning. That's what you told me, correct?

MR. FENTON: That's been asked and answered and covered.

MS. EIFLER: I'm just recovering it on cross.

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

Q That's--that's-

A That weekend, yeah.

Q That's what--sometime that weekend.

A The weekend, mmm-hmm.

Q Is that a yes?

A Yes.

Q Thank you.

MS. EIFLER: I have nothing further.

MR. FENTON: Nothing else.

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THE COURT: Thank you ma'am. You may step down.

(The witness was excused at 2:52 p.m.)

(Sidebar conversation between the Defendant and Ms. Eifler)

MR. FENTON: I call Bill Moorian.

THE COURT: Do you solemnly swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

MR. MOORIAN: I do.

THE COURT: Thank you sir. You may have a seat, and state your first name and your last name for the record please, and also spell both your first and last name.

THE WITNESS: William Moorian, W-I-L-L-I-A-M, MO-O-R-I-A-N.

WILLIAM MOORIAN

(At 2:53 p.m., sworn as a witness, testified as follows)

DIRECT EXAMINATION

BY MR. FENTON:

Q Are you a detective for the Kalamazoo Department of Public Safety?

A Yes.

Q Did you assist in this investigation?

A I did.

Q Did you interview or were you part of an interview

\* \* \*

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whole truth, and nothing but the truth, so help you God?

MR. COOPER: Yes.

THE COURT: Please have a seat. I need you to state your first and last name. Please spell both your first and last name. If you need to pull that microphone down a little bit, you can do that too.

THE WITNESS: Kenneth Cooper, K-E-N-N-E-T-H, C-O-O-P-E-R.

KENNETH COOPER

(At 4:21 p.m., sworn as a witness, testified as follows)

DIRECT EXAMINATION

BY MR. FENTON:

Q Mr. Cooper, are you friends with Leslie Snook?

A Yes.

Q How do you know her?

A She's my girlfriend.

Q I'm gonna take you back to an incident that occurred January 8th of 2007. Do you know the Defendant, Ervine Davenport?

A Yes.

Q Do you see him in court?

A Yes.

Q Is he wearing the striped shirt--plaid shirt, seated at counsel table?

[Page 713]

A Yes.

MR. FENTON: Let the record reflect the witness identified the Defendant.

THE COURT: That is noted for the record.

MR. FENTON: Thank you.

Q Tell the jury what you saw him do to Leslie Snook on January 8th of 2007.

A Well I seen him choke her, pick her off the floor, and I asked him to let her go, and he let her go.

Q You say you saw him choke her.

A Yes.

Q How?

A By his hands were around her throat, picking her up off the floor.

Q Actually picked her up off the floor with his hands?

A Yes.

Q Around her neck?

A Yes.

Q How high?

A I 'm not sure about that.

Q Did she seem to be in pain?

A She was passed out.

Q What did you do to help?

A I just asked him would he let her go.

Q Did you have something in your hand?



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A Well I had a bottle, I had just come from the store.

Q When you came in was this already happening?

A Yes.

Q So it started when you weren't there.

A Right.

Q Do you know why he did it?

A Well they had--had--having an argument all day.  
I--I believe they had some kind of affair going on,  
I'm not sure.

Q All right. Did you see her have any weapon in her hands?

A No.

Q Knife, razor blade, anything else?

A No.

Q Is the Defendant a pretty big man?

A Yes.

Q How big would you say?

A How big is--he's--he's a nice size guy.

Q Over six feet?

A Yes.

Q Over 300?

MR. FENTON: Your Honor, I'm gonna object. I think the witness can testify as to his own impressions. The prosecutor's leading this witness.

MR. FENTON: That's fine. I'll withdraw.

Q Do you know--do you have any guesstimate as to how much he

[Page 715]

weighs?

A No I don't.

Q Is he a lot bigger than you?

A Yes.

Q So you weren't there when it started.

A No.

Q Was it just the two of them alone?

A Yes.

THE COURT: I'm gonna need you to lean up towards the microphone. I'm sorry.

THE WITNESS: Okay.

THE COURT: Thank you.

Q Was Miss Snook in any distress as a result of this, aside from being unconscious?

MS. EIFLER: I'm gonna object again. He can't testify as to her impressions. He can testify about what he saw.

MR. FENTON: That's what I mean.

Q Did you see her under any distress other than the fact that she was unconscious?

A No.

THE COURT: And I'll overrule the objection and you just restated the question. So go ahead.

MR. FENTON: Thank you your Honor.

Q I'm sorry?

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A What was the question please.

Q Did you see her in any distress as a result of this?

A No.

Q When she came to?

A It's hard--when she came to, I'm trying to think of--yes, she was a little distressed when she came to.

Q Was she upset?

Q Yes.

Q Could you tell whether she had urinated on herself?

A I could--

MS. EIFLER: Your Honor, I'm gonna object. I think that the--the prosecutor may call this person to testify about what happened to her. I don't--I think he can get it in through a different witness, not this witness.

THE COURT: If--if he knows, I think that's something he could observe. Go ahead Mr. Fenton.

Q What's your answer? You don't know?

A I don't know.

Q Did she require any medical treatment as a result?

A No.

Q All right. Did the Defendant leave shortly afterwards?

A Yes.

Q Thank you.

MR. FENTON: That's all I have.

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THE COURT: Miss Eifler.

MS. EIFLER: Thank you.

(Sidebar conversation between Ms. Eifler and Mr.

CROSS-EXAMINATION

BY MS. EIFLER:

Q Sir, did I understand you correctly that Miss Snook is your girlfriend?

A At the time.

Q All right. At that time. She's no longer your girlfriend?

A No.

Q All right. When did--when did the two of you break up?

A I'm not sure about that.

Q Was it around the time of this incident?

A Yes.

Q Well was it the day of the incident?

A I'm not sure about that one.

Q Okay. You're--you're testifying that--something's that pretty serious, correct?

A Pardon?

Q This is a pretty serious thing that you observed, is that correct?

A Yes.

Q And you asked--well let me ask you this. Did you ask the Defendant to leave?

[Page 718]

A Yes.

Q Because of what he had done to Leslie Snook?

A Yes.

Q You never called the police though to report this, isn't that true?

A No.

Q In fact, you were--

THE COURT: Wait, hold on a second. Just so we're clear, no you did not call the police or no that's not true?

THE WITNESS: No I did not call the police.

Q You were actually located by the police, is that correct?

A Yes.

MS. EIFLER: I have nothing further.

THE COURT: Mr. Fenton.

MR. FENTON: Just briefly.

REDIRECT EXAMINATION

BY MR. FENTON:

Q She asked you if you were located by the police.  
Does that mean that the police came to talk to you  
about this sometime later on?

A Yes.

Q And did you tell 'em what happened?

A Yes.

Q Did they promise you anything?

[Page 719]

A No.

Q Offer you anything?

A No.

Q Why didn't you report it to the police that day?

A I didn't think it was--at the time I didn't think it  
was that serious.

MR. FENTON: That's all.

THE COURT: Miss Eifler, anything further?

MS. EIFLER: Could we have the witness repeat  
that? I didn't hear it.

THE COURT: Can you repeat that answer, sir.

THE WITNESS: At the time I didn't think it was  
that serious.

MS. EIFLER: I--I don't have any further questions.

MR. FENTON: Just one follow-up.

REDIRECT EXAMINATION

BY MR. FENTON:

Q You didn't think it was that serious even though she was unconscious?

A Well I'm not--I'm not a very medical person and I was a little bit--had been drinking that day.

Q Had you guys been smoking crack too?

A Not that day.

Q Do you know if Leslie Snook and the Defendant were smoking

[Page 720]

crack that day?

A I'm not sure. They was together when I-wasn't around.

Q Was there crack inside the apartment?

A No.

Q Where did this happen at?

A At my house.

Q Where's that?



A 810 Howard.

Q Is that somewhere near downtown?

A On the north side.

Q On the north side. Thank you. That's all

THE COURT: Miss Eifler, anything further?

MS. EIFLER: Just--just one follow-up question.

REXCROSS-EXAMINATION

BY MS. EIFLER:

Q Sir, the only time that you talked to the police about this was on February 15th, 2007, when the police contacted you, correct?

A Yes.

MS. EIFLER: I have nothing further.

MR. FENTON: Nothing else.

THE COURT: Thank you sir. You may step down.

(The witness was excused at 4:29 p.m. )

MR. FENTON: I call Leslie Snook.

THE COURT: Before you have a seat, please raise

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your right hand. Do you solemnly swear or affirm that the testimony you are about to give will be the truth,

the whole truth, and nothing but the truth, so help you God?

MS. SNOOK: Yes.

THE COURT: Please have a seat. Repeat that answer. I don't know if we recorded that.

THE WITNESS: Yes.

THE COURT: Thank you. I need you to state your first name and your last name, and I need you to spell both your first and last name, and why don't you pull that microphone down so that it's even with your mouth if you would.

THE WITNESS: Les--

THE COURT: Right into the microphone.

THE WITNESS: Leslie Snook. I spell it? You said to spell it?

THE COURT: I need you to spell your first and last name.

THE WITNESS: L-E-S-L-I-E, S-N-O-O-K.

LESLIE SNOOK

(At 4: 30 p.m., sworn as a witness, testified as follows)

Q Miss Snook, do you know the Defendant, Mr. Dav-enport?

A Yes.

Q Did you have some kind of relationship with him?

[Page 722]

A Not a relationship, no.

Q Were you--

A He was an associate.

Q An associate of yours. Were you together on January 8th, 2007?

A Yes.

Q Something happen that day?

A Yes.

Q Tell the jury what happened that day.

A That day we'd had a few words, and the--what ended up happening was that he choked me.

MS. EIFLER: I'm sorry. I cannot hear.

THE COURT: You need to speak up if you would.

A I say that day he ended up choking me.

Q He ended up choking you.

A Yes.

Q Can you describe exactly how that came about please for the jury.

A The night before we had been together. I had him drive me to Battle Creek. It was snowing out real bad and he drove me in my car to Battle Creek. I guess in that time there and back--it took quite awhile because of the weather--he ended up getting upset with me. You could tell the atmosphere just changed. So we get back to the house where we had originally started from and I was like well I'm

[Page 723]

going to bed now. And he hung out downstairs with the guy that owns the house, which we both know, that's how we know each other. And I went upstairs and went to bed.

We call him E. E hung out all night to the next night and--

Q Who's E?

A E Davenport.

Q The Defendant here?

A Yes.

Q All right, go ahead.

A And then the guy who owned the house said it was time to go and they left in the car. He took him, dropped him off a few blocks from the house. Well I didn't know they even left together, I just knew the car pulled out of the driveway, and so then I'm upstairs and I hear a knock on the door. Okay, keep on knocking. I--this in the north side, so I was

always told don't let nobody in when he-when the owner's gone, but it was Davenport and he had lived there before. So I let him in. I said okay, shut the door, I'm going back upstairs. Shut and lock the door, I'm going back upstairs.

I go upstairs to my room and I'm on the phone. He comes up to my room in the doorway and asked me if I had some drugs or something or knew where to get some, and I say yeah, I'm on the phone, trying to get some right now.

[Page 724]

He came behind me while I was on the phone in a conversation and said, "You got something in your hair." You know, lint or whatever. And I'm still on the phone. He came back behind me again and did that again. And I look--I shook my head and I said, "Hey dude, don't worry about it, I gotta take a shower," you know. And he--then was behind me and said, "I said you got something in your fucking hair," and snatched me up by neck from behind, and choked me.

Q When you say he snatched you up, what do you mean?

A I mean with both his hands he literally choked me to death.

Q Did he--

A Strangled me.

Q Lift you off of the ground?

A Huh?

Q Did he lift you off of the ground?

A You know, I think so. I don't even know cause I was out.

Q How long--

A I think so, I don't know.

Q Were you out right away or did it take-

A No. No, it wasn't--it wasn't right away.

Q So can you tell us the details of this choking, to the best of your recollection.

A Only--only thing I can tell you that the honest truth I remember, is him doing it from behind, me going--

[Page 725]

(The witness making choking sounds)

A Just could not get no breath, you know. I--I was up off my feet I do believe. And then I was out. You know, my mind had drifted off somewhere and I was on the ground then in front of him, and he was down on top of me, like bent over, and I was on the ground facedown, and that's when I--I-then I was unconscious cause I was having a--some kind of-I wasn't, you know--

(The witness making choking sounds)

A In my--

Q Were you able to breathe when he was-

A No.

Q Choking you?

A No. I had lost my breath totally. I kept--

(The witness making choking sounds )

A Trying to get it and I couldn't get it. And then is when I drifted out of unconsciousness I guess because I pissed my pant--I urinated on myself, and then bit my tongue and stuff.

Q You bit your tongue?

A Yep. And then the guy who owns the house ended up coming upstairs, whatever--thank God he came back--and got him off me somehow.

Q Who's that?

A Ken Cooper.

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Q Were you attacking the Defendant when he did that to you?

A No.

Q Did you have a knife?

A No.

Q Did you have a box cutter?

A No. I didn't have anything in my hand. My cell phone when I was on the phone before when he was behind me, but that's all.

Q Were you posing any threat to him whatsoever?

A No.

Q Now Miss Snook, you didn't report this to the police right away, did you.

A No.

Q In fact, you never made a police report about it until--or did you make a police report about it?

A I didn't make a police report.

Q How did the police come to learn about you and this incident?

A I had warrants, you know, and stuff and I got arrested on February 6th, '07, my birthday, and I was held in the county jail and me--I--me and--me and another girl was in the transport van, going downtown or whatever to court, and he ended up being the guy in the back of the van.

Q He being Ervine Davenport?

A Yeah.



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Q So you were being transported to court on your case and the Defendant was in the transport van as well.

A Yeah.

Q All right. Please continue.

A And that's--that's odd because they don't usually put men and women together, but for some reason they ended up putting him in the back of our van, and I guess it was real odd coincidence.

It's the first time I had seen him since that happened, and I, you know, something came over me like it did--that feeling, you know--

Q What feeling is that?

A Feeling like I'm choking, I can't breathe, you know, just panic attack. And it's the first time I seen him since it happened and he's just sitting back there smirking, and I said--you know, we started going down the road in the van, and I finally said, "Hey dude, why'd you do that to me?" You know? And see I always wanted to know that cause I didn't do nothing to him.

Q What was his response?

A He said cause I was showing my ass the night before or something like that, like acting up or something, whatever that means. Not literally, I think it means like you know, talking to him snotty or

something. And then he said, "You know, you're lucky, I wanted to squish you like a bug."

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Q "You know you're lucky, I wanted to squish you like a bug?"

A Yeah. And that's the whole thing that, you know. I ended up talking to Officer Greenlee at the jail after that, I was really upset, and she's the one that, you know, I guess called Beauchamp or Moorian.

Q Who's that?

A The officer I talked to, the woman at the jail. You know, she talked to me and said I should say something to somebody cause that's--you know, she helped me, and that's when it came about to tell him.

Q Did you know why the Defendant was going to court that day?

A Yeah.

Q Did you talk to him about that at all?

A Yeah. And it just not talk to him about it, but--

Q Was there any conversation at all back and forth about that?

A Yeah.

Q What'd you say?

A He said something about his shoe got him caught up in this stupid shit or something. He--

Q How did it start out?

A I--you know, how--it started out just like I told you about, asking him why he did that to me.

Q And then did it shift to his case?

A Yeah.

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Q Did you ask--

A And the thing is--the thing is he--where he put the girl I guess was just a few blocks from my house.

Q Well I'm not asking you a question about that.

A Oh I'm sorry.

Q I just want to know how the conversation shifted to his case.

A I don't know. He said he--he said he wouldn't have even been caught up in this if it wasn't for shoes. Getting caught by his shoe or something like that. I can't exactly--that's the only thing I remember about that.

Q All right. Why didn't you call the police?

MS. EIFLER: Your Honor, again, I'm gonna--I'm gonna object to the previous response that she gave

which was on the response, and have the Court instruct the jury not to--not to--

THE COURT: What response? Which--

MS. EIFLER: She--she--her statement was, "I guess he put her--"

THE COURT: Oh.

THE WITNESS: Right.

MS. EIFLER: The object is being unresponsive.

THE COURT: Yeah, I--I will instruct the jury to disregard her answer with regards to the effect of, "Where he put her was a few blocks from my house" or something.

[Page 730]

There's no foundation for that. I don't know--there's no indication where she allegedly got that information from. So you are to disregard that answer and ignore it.

Go ahead Mr. Fenton.

MR. FENTON: Thank you your Honor.

Q Miss Snook, at the time that you talked to Detectives Beauchamp and Moorian, did you know how the victim in this case, Annette White, was killed?

A Did I know?

Q Yeah.

A No.

Q Do you know today?

A How she was killed?

Q Yeah.

MS. EIFLER: Your Honor, I'm gonna object. Again, I--I don't know.

THE COURT: Okay. If you want to lay a foundation for it. The objection's sustained. I don't know where she would get the information from. It would be hearsay and--

MR. FENTON: Well it--if the--

THE COURT: Unless you can lay a foundation.

MR. FENTON: It's not relevant in terms of--it's not being offered for the truth of it. It's being offered to reflect on her prior testimony.

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THE COURT: Counsel, why don't you approach.

(Bench conference begins at 4:40 p.m. between the Court and counsel, transcribed as follows)

THE COURT: Her testimony was--I don't know what else she'll--

MR. FENTON: She's talking about him choking her.

THE COURT: Right.

MR. FENTON: It's getting them to know that victim in this case was choked. And she testified a moment ago--today.

THE COURT: Then why did you ask her then-

MS. EIFLER: She's already said that.

MR. FENTON: I just asked her today.

THE COURT: In--in--

MS. EIFLER: She's already said that then.

THE COURT: Well--

MR. FENTON: I don't know if she said that about today.

THE COURT: Can't--why don't you ask-

MS. EIFLER: She said she didn't know.

MR. FENTON: She said that then, she said she didn't know that then when she talked to Beauchamp.

MS. EIFLER: Then why is it relevant that she knows it today? Then you're--

MR. FENTON: What if she doesn't know it, that's

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how it's relevant. She's testifying today.

MS. EIFLER: Okay. Well I thought you asked her does she know now. I think maybe--

MR. FENTON: No. That's what I asked and you objected to.

MS. EIFLER: I don't want--I don't want her to testify--

THE COURT: Listen--

MS. EIFLER: If she knows it.

THE COURT: I think the question is yeah, do you know she was--

MR. FENTON: Killed.

THE COURT: Killed.

MR. FENTON: Today, do you know that today? I'm not asking for hearsay. I don't want to know how she knows.

MS. EIFLER: Well you need--you need to instruct her.

MR. FENTON: I want to know if she knows.

MS. EIFLER: You need to instruct her.

MR. FENTON: I'll just tell her it's a yes or no question.

MS. EIFLER: All right.

MR. FENTON: I--I don't want the hearsay. My point is I don't think she knows.

[Page 733]

THE COURT: If what if known, if she knows that today, okay.

MR. FENTON: Right.

THE COURT: Go ahead.

(Bench conference ends at 4:41 p.m.)

Q Miss Snook, let me rephrase the question. It's--it's a yes or no question, you can answer it yes or no. Do you know today how the victim in this case, Annette White, was killed?

A Do I know?

Q Yeah. Do you know today. The method of--

THE COURT: It's a yes or no. It's a yes or no--

A Yeah. I'm--yeah.

Q All right. I take it you've heard that from somewhere.

A Yeah.

Q All right.

A The whole jail talks about it.

Q All right. At the time you talked to the detectives though, over a year ago, did you know that?



A No.

Q Thank you.

A Not at all.

MR. FENTON: That's all I have.

THE COURT: Miss Eifler.

MS. EIFLER: Thank you.

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CROSS-EXAMINATION

BY MS. EIFLER:

Q Ma'am, you--you talked with Detective Beau-  
champ?

A Yes.

Q All right. This--this detective who is court today,  
correct?

A Yes.

Q All right. And you gave him a full--you gave him a  
full statement, is that correct?

A Yep.

Q Now this is a pretty serious thing that you're re-  
porting to us, correct?

A Yes it's very serious.

Q But you never called the police, correct?

A Correct.

Q You never contacted anyone until you were lodged in the county jail, correct?

A I haven't contacted anyone-

Q Is that a--it's a yes or no?

A Yes.

Q Are you familiar that sometimes folks lodged in the county jail might contact the police to try to get some consideration for why they're lodged?

A Sure.

MS. EIFLER: I have nothing further.

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THE COURT: Mr. Fenton.

REDIRECT EXAMINATION

BY MR. FENTON:

Q Did you get anything for giving the information to the detectives that the Defendant choked you?

A No. I'm still in jail.

Q Thank you.

THE COURT: Anything further, Miss Eifler?

MR. FENTON: You know what I did have one other question if I may.

Q Why didn't you report it to the police when he choked you?

A I was on drugs, I had warrants, you know, just-- that's why.

Q Didn't need police involvement.

A Scared.

Q That's all. No wait a minute.

MS. EIFLER: So you're telling me--

THE COURT: No wait just a minute, Miss Eifler. He--I think he said one moment.

MS. EIFLER: I'm sorry your Honor.

THE COURT: I'm not sure if he's done.

Q Do you remember the first detective that you talked to about what the Defendant did to you was actually Moorian?

A Yeah, Detective Moorian.

Q And then Detective Beauchamp talked to you later.

A Yeah.

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Q All right thanks. That's all I have.

THE COURT: Miss Eifler.

CROSS-EXAMINATION

BY MS. EIFLER:

Q Ma'am, since back in--on February 13th--February 14th of '07, you've--you've been released from the county jail though, isn't that correct?

A Yes.

Q All right. So you did get out, correct?

A That's on my--I was on a parole violation.

Q Okay. But you didn't have any conversation with Detective Beauchamp until he got there, you didn't know what he was gonna do for you, is that correct?

A What who was gonna do for me?

Q The--Detective Beauchamp.

A What'd he do for me? All he did was talk to me.

Q Okay. Thank you.

MS. EIFLER: I have nothing further.

MR. FENTON: Well I need to follow up on that to clarify.

REDIRECT EXAMINATION

BY MR. FENTON:

Q Has anybody done anything for you to get you out of jail?

A No.

Q Did you serve a sentence and were released?

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A Yeah, I've got--when I go to jail it's for something I had did before that has nothing to do with this.

Q All right. And then when you were released did it have anything to do with this?

A No. It's from my PO.

Q Thank you. That's all--PO being who?

A Probation officer. Parole officer.

Q Parole officer, all right. Thank you.

THE COURT: Anything further, Miss Eifler?

MS. EIFLER: No ma'am.

THE COURT: Thank you ma'am. You may step down.

THE WITNESS: Thanks.

(The witness was excused at 4:45 p.m.)

MR. FENTON: Your Honor, I believe I've got three witnesses left, and if we could I'd like to handle that tomorrow.

THE COURT: Okay. Ladies and gentlemen, we had a discussion over the break. We may or we may not finish tomorrow. We won't finish tomorrow morning, I know that for sure. It will depend upon--possibly may finish in the afternoon, and then what happens is I have to instruct you and then you begin your deliberations.

Even if we do finish, there's a possibility we may finish late in the afternoon and then I might--you may need to come back the next week for deliberations. It just

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STATE OF MICHIGAN  
9th JUDICIAL CIRCUIT COURT  
TRIAL DIVISION  
FOR THE COUNTY OF KALAMAZOO

PEOPLE OF THE STATE OF MICHIGAN,  
v Case No.:C07-165FC  
ERVINE LEE DAVENPORT.  
Defendant.

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JURY TRIAL- VOLUME IV  
BEFORE THE HONORABLE  
PAMELA LIGHTVOET  
Kalamazoo, Michigan - Friday, July 11, 2008

APPEARANCES:

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\* \* \*

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Q All right. You're not familiar particularly what type of gloves were back there, if any?

A If they were mine, they would have been like black, fuzzy, mitten type gloves.

Q All right. Girl type of gloves?

A Yes.

Q Female gloves I should say. Smaller and fuzzy.

A Yes.

Q All right. Thank you. That's all.

THE COURT: Anything further, Miss Eifler?

MS. EIFLER: No ma'am.

THE COURT: All right. Thank you ma'am. You may step down.

(The witness was excused at 9:58 a.m.)

MR. FENTON: I call Brian Beauchamp.

THE COURT: I'll place you under oath again. Please raise your right hand. Do you solemnly swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

MR. BEAUCHAMP: I do.



THE COURT: Please have a seat. Just state your name for the record please.

THE WITNESS: Brian Beauchamp.

BRIAN BEAUCHAMP

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(At 9:59 a.m., sworn as a witness, testified as follows)

DIRECT EXAMINATION

BY MR. FENTON:

Q Are you the lead detective in this case?

A Yes I am.

Q Is there anybody that you know of who knows more about this case than you?

A Probably not.

Q How long have you been a police officer?

A For ten-and-a-half, 11 years.

Q Did you spend some time investigating drug crimes in the KVET unit?

A For five years.

Q As a result of that experience, did you learn how to talk to witnesses as well as suspects?

A Yes I did.

Q How long have you been a detective?

A For four years.

Q Have you had some training on the interviewing of suspects?

A Yes I have.

Q Can you describe a little bit of it.

A I attended a training put on by the company--

THE COURT: I'm sorry sir, you 're gonna have to speak up.

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A I attended a training put on by John Reid and Associates. They're a company that goes around the country and interviews--or not--conducts training with different departments, showing officers and detectives how to speak to potential suspects.

Q Can you just give us a general short version of what they train you or what they teach.

A The--the biggest thing is they talk about using--developing a theme with a--with an individual cause it's not--it's not easy for somebody to just come out and tell you that they did something wrong. So they would like you to develop a theme, something, a bond that you have in common with that individual.

Q What other techniques do they train you on?

A Once you can identify that you have this common bond, they would like you to minimize the crime itself, give them an out so to say.

Q What do you mean by give them an out?

A Well if you--for instance if you might have stole some--stole a candy bar from a store, try to make that less--try to make the person less--make them fell less culpable for what they did.

Q How?

A Suggest that they could have--suggest that if they were to admit to the crime that maybe they could be forgiven for

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it, something along those--

THE COURT: I can't hear you.

A Suggest that if they were--if they admitted to the crime that possibly they could apologize for the crime.

Q All right. So is minimization a big theme that Reid teaches when you interview suspects?

A Yes it is.

Q And generally when you're interviewing a suspect, isn't that one of last things you do in an investigation?

A I'm sorry, you repeat that.

Q When you interview a suspect, isn't that one of the last things that you do in an investigation?

A Yes.

Q Have you not usually already developed some other evidence against that person?

A Correct.

Q So you're not going in cold?

A Correct.

Q You generally have a pretty good idea that someone may be involved in a crime before you actually interview them?

A Yes.

Q And can you give us some examples of other minimization techniques that are effective with people.

A If somebody was involved in selling drugs, you would tell-I--I commonly would say, you weren't selling to school

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children, were you? You were just involved in trying to help your family make some extra money, and minimize it in that respect.

Q All right. And is that a common theme that you utilized when you work for KVET?

A Yes.

Q Cause it's easier to admit dealing to your friends than to dealing to school children.

A Correct.

Q That's sounds horrible, dealing to school children?

A Yes.

Q All right. Was that technique generally effective?

A Yes it was.

Q How about something to the effect of you weren't dealing in kilos, you weren't a kingpin were you? You were just making some extra money on the side. Is that another typical example of a Reid type of theme?

A Yes it is.

Q Minimization in terms of drug dealing.

A Correct.

Q Just to give the jury some ideas of what we're talking about here. All right. Well before we get to the Defendant's interviews, can you tell the jury how you proceeded in this investigation. I assume-- were you called out to the scene?

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A Yes I was.

Q Were you familiar with the fact that there were some orange peels found near the scene?

A Yes I was.

Q Where Annette White was found?

A Correct.

Q And later did you find out during your investigation that the Defendant, in fact, liked to eat oranges?

A Yes I did.

Q And did he not even admit that during your interviews with him?

A Yes he did.

Q Later. All right. And you're also familiar with the fact that orange peels were found in the car later as well?

A Orange peels and a--and an orange that was uneaten.

Q All right. Now so you were at the scene, how did you proceed with the investigation? How did you wind up focusing on the Defendant, Ervine Davenport? Tell the jury in general.

A Well I was called at home and responded to the scene on January 13th, probably around 5:00 p.m. We arrived on scene, we didn't know who the victim was. It took several hours to identify who that victim was. Initially it was believed that it was possibly an African-American juvenile. So Captain Mallery had all the detectives that had

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responded to work go back to the office, research all the African-American juvenile--female juveniles we had that were listed as runaways. Because the body at first glance appeared to be very petite and it was on its stomach, so they couldn't--they couldn't identify the face to give it a proper estimate on the age of the individual.

So not--and the crime lab had instructed us that it was gonna be several hours processing the scene going up to the body. They didn't want to lose any potential trace evidence. So instead of just standing around doing nothing for three, four hours, we took that route. We ended up subsequently finding three or four runaways that had actually returned home, just didn't report it to the police department.

And then at a short time--not a short time later, probably about three to four hours later, we were advised that based on the fingerprints, once the lab was able to get to the body, that the body was identified by--of--that of Annette White.

Q So where'd you proceed from there?

A From there we learned where she had resided at, which was a--not too far away from where her body was found, probably five to six city blocks. We researched what type of cases our department had had with her as far as her list--her making police reports or being victims of police reports,

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and learned that on January 9th she was--she reported that she had been in an altercation with an individual by the name of Andre Randall.

So we investigate--well we--we read that report and began the investigation from there as far as looking at Mr. Randall as the first suspect in the investigation.

Q All right. So did you locate Mr. Randall?

A We didn't locate Mr. Randall till Monday the 15th, but yes we did locate him.

Several interviews were conducted prior to that with the victim's family, with people that lived at the apartment building where she lived at. There was four to five apartments at her--at the building she resided at. So we talked to those individuals, trying to piece together a timeline for when she may have last been seen alive.

But when we--we eventually located Mr. Randall on the 15th, in the afternoon on the 15th, and spoke to him at the police department.

Q Now at some point when talking about finding a timeline and who may have last seen her alive, at some point did you interview the Carswells, who testified during this trial?

A I actual--yes. I interviewed them actually after I'd spoke to Mr. Davenport.

Q Okay.



A Based on something he had advised me during the interview.

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Q And as a result of your investigation, do you believe that they were the last people to see her alive?

A Yes I do.

Q Did you find anybody else during the investigation that saw her after the Carswells?

A No one.

Q All right. So let's get back to Mr. Randall. Did you interview him?

A Yes we did.

Q Extensively?

A Quite extensively.

Q You and other detectives as well?

A Me and probably three to four other detectives.

Q And did he acknowledge having caused her broken arm?

A Yes.

Q Did he admit anything having to do with the murder, however?

A He did not.

Q And how lengthy was your interrogation of him?

A Oh we spoke to him I would estimate probably 15 to 16 hours over two separate days.

Q Was he in custody or not?

A He was in custody, yes.

Q On unrelated things or for this?

A On unrelated things.

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Q All right. On other stuff.

A Correct.

Q And did you coerce him in any way, physically or mentally, or did you treat him with respect and dignity?

A No. He was treated with a great amount of respect and dignity. He was provided pizza cause it had been a long time for us to be there as well, and our supervisor had ordered out pizza, and he was provided pizza, pop, and allowed to use the bathroom--the bathroom's right adjacent to the interview room--whenever he was--whenever he requested that.

Q And was this a straight interrogation or were there breaks?

A Oh there were several breaks.

Q All right. In any event, as a result of your questioning of Mr. Randall, did you get any hint whatsoever that he was involved in this crime?

A No I did not.

Q All right. So then what happened? How did you shift focus?

A Something Mr. Randall said at the very end of the interrogation of him was in--he mentioned the name Earl. He had mentioned this in the 15 to 16 hours we had been speaking to him. We'd asked him who was at the apartment that Friday night, the 12th of January, and he went through a list of people, basically people that lived in the

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complex. And he finally at the end of the interview had mentioned the name Ray Fults and Earl. So--

Q Ray Fults, who testified during this trial?

A Correct.

Q Who was one of the last people who saw the victim on Friday night, smoked something with her, and then he left and went upstairs to the party.

A Correct.

Q Just to refresh the jury's recollection. All right.

A That's correct.

Q Did you know who Earl was at that point?

A Didn't know who Earl was.

Q So then what'd you do?

A We--at that point we then went and we spoke to Mr. Fults. Mr. Fults identified--(inaudible--garbled)--well I'm sorry, no that was after we went to Paw Paw. On the 17th we went to Paw Paw and spoke to an Eric McLemore--

Q All right, now to refresh the jury's recollection, Eric McLemore was the individual with Tracie Goltzene at the party where the car was obtained?

A Correct.

Q All right. Please continue.

A I gotta backtrack. On the--in regards to Miss White's broken--broken wrist, she had informed Officer Lisa Moore on January 12th in the afternoon that she saw Mr. Randall.

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She didn't know his name, so when she made the initial police report there was an unlisted suspect. She just had general information. She saw Mr. Randall in a car on Friday the 12th at around 4:00 to 4:30 in the afternoon with the license plate being that of Miss Goltzene's vehicle.

And Officer Moore had reported that to us on the afternoon of this--13th at--oh I'm sorry--on the afternoon of the 14th after she had been at work and learned that the victim of the homicide was Annette White.

So on the 17th we made it out to Paw Paw and spoke to Mr. McLemore and then eventually Miss Goltzene.

Q And then so you interviewed Mr. McLemore and Miss Goltzene?

A Correct.

Q As a result of the interviews of McLemore and Goltzene, what did you learn?

A Miss Goltzene had a phone number for the individuals of the apartment where she had been attending that party at. And I cross-referenced that phone number and it came back to a Marvin--Marvin--the phone company said Marvin Sraction, which is S-R-A-C-T-I-O-N, when in fact it was actually--

(The witness coughs)

A Excuse me--Marvin Fraction. They provided the address in Interfaith Apartments, 1001--

Q So you learned about Marvin Fractions from your interviews with the--Goltzene and McLemore.

[Page 775]

A Correct.

Q Did you also learn about the Defendant, Earl?

A Yes.

Q And did that information come to you from both Tracie and from McLemore?

A Correct.

Q And he was supposedly the last person with the car?

A Correct.

Q All right. And then we won't get into the details of that cause that'd be hearsay. But in any event, where'd you go from there?

A After we conducted that interview in Paw Paw, we drove directly to Interfaith Apartments, 1001 Interfaith, and made contact with Marvin Fraction.

Q Did you learn from your interviews with Marvin Fractions that the Defendant had a--any association with his apartment and with him?

A Yes. Mr. Fraction advised that he was a cousin to an individual by the name of Earl. We asked Mr. Fraction about the incident with the two white people, being that of a Mr. McLemore and Miss Goltzene, where they attended a party approximately a week before. And he--he agreed that they were there, they attended a party, and that Earl may have been there at different times.

Q All right. Was--do you know--when you were there, was the

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Defendant's brother in that apartment as well?

A Yeah. I didn't know anyone else was in the apartment, I was there with Detective Moorian. It's a one-bedroom apartment, it's an upstairs apartment.

Q This is at Patwood or Interfaith?

A Yeah. Correct. And in the back bedroom or in the bedroom was R.B. Davenport, he goes by the nickname of Jerry, and his girlfriend, Charlotte Simmons, who goes by the nickname of Cake or Cupcake.

Q Did Mr. Daven--did you learn at some point that Mr. R.B. Davenport or Jerry was the Defendant's brother?

A Yes I did.

Q Did he take exception to you being there asking questions about the Defendant?

A He would--

MS. EIFLER: Your Honor, I'm gonna object. I think we're gonna--this is hearsay.

MR. FENTON: Well it's not being offered for the truth. I mean somebody taking exception by itself is not important. It's going to the fact that the Defendant was then communicated this information, which is what led to the police chase.

THE COURT: I will allow it and I think he can also probably get it in by way of just testifying with regards as to how he was acting and so forth. But go

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ahead, Mr. Fenton. That's overruled.

Q Please--please continue, detective.

A We had been speaking to Mr. Fraction for probably ten to 15 minutes, and all of a sudden an individual came out from the bedroom who was identified as R.B. Davenport. And he started yelling at us, and came within two to three feet of Detective Moorian and I. We were simply sitting on the couch. Mr. Fraction was sitting across from us, and all of a sudden this gentleman appeared and started screaming at us. I haven't had this feeling too many times in my life, let alone my--let alone my career--

THE COURT: Hold a second. Counsel, will you approach a moment.

(Bench conference begins at 10:15 a.m. between the Court and counsel, transcribed as follows)

THE COURT: Okay, where are we going with this and why do we need to explain--

MR. FENTON: I--

THE COURT: How his feeling is probably scared of R.B., is that right or?

MR. FENTON: Agitated because the police were looking for his brother.

THE COURT: Well I realize that, but how does that relate this. I mean--



MR. FENTON: Well I didn't ask him all these

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details and--

THE COURT: Okay. Yeah, well--

MR. FENTON: He's just explaining the course of the investigation.

THE COURT: Okay. We'll allow that, we can do that.

MR. FENTON: All right.

THE COURT: I will give you that.

MR. FENTON: All right.

(Bench conference ends at 10:15 a.m.)

THE COURT: Next question, Mr. Fenton.

MR. FENTON: Thank you.

Q Detective, the bottom line is, was it made clear to the Defendant's brother that you were asking some questions about the Defendant?

A Yes.

Q And did he take exception to that?

A Yes he did.

Q Specifically referencing questioning my brother or asking questions about my brother--

MS. EIFLER: Your Honor, I'm gonna object as to relevance.

MR. FENTON: Well we've argued this, it's already been overruled.

THE COURT: I'll let him answer it and then

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let's--let's move on. I think he-

MR. FENTON: Thank you.

THE COURT: Already testified a little bit about it so.

A He took exception, he felt we were beating around the bush, trying to gain information.

Q All right. As a result of that conduct, did you leave?

A Yes. We left rather quickly after that contact.

Q All right. So then what happened of relevance to the investigation leading you to the Defendant?

A At that point I went back to the office. We had learned of this name Earl a couple days before and now on the 17th, two other individuals, being Mr. McLemore and Miss Goltzene, had spoke about Earl, and also Mr. Fractions then had identified Earl as his cousin, Mr. Davenport, R.B. Davenport, identified him as his brother. So we started doing research to identify who Earl is and we learned that Earl is actually Ervine Davenport.

Q The Defendant here?

A Correct.

Q So what's the next significant development that happened in the case?

A I put out--I put a--sent an email out--department wide email--and also asked the dispatchers to put it out on the MDTs--the mobile dispatch terminals--to the officers on the

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street to be on the look out or an attempt to locate Mr. Ervine Davenport and this silver or gray Buick Regal.

Q So then what happened? The 18th.

A That evening, the same day--that was on the 17th in the afternoon around 4:00 or 5:00 when I did that--approximately 4:00 in the morning I received a phone call from Lieutenant Merlo, who was a shift lieutenant at the time in charge of the patrol division on then shift shift. He requested that come to work as there had been a pursuit involving Sergeant Brinkman and that with the vehicle that I had put the ATL out on, and that there were two occupants in the vehicle that were tracked and were currently in the hospital.

Q Those two being?

A Marquetta Tarver and Ervine Davenport.

Q Did you proceed to interview either of these individuals.

A Yes. I responded to the hospital with a--first I came into work, met with Detective Johnson and Detective Pittelkow. We went up to the hospital and we made the decision we didn't to speak to Mr. Davenport, we wanted to speak to Miss Tarver first cause we had no idea who she was and we wanted to see what information, if any, we would gain from her.

Q Was she still in the hospital when you talked to her?

A Yes.

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Q Did she provide some information to you incriminating the Defendant?

A Yes she did.

Q In the--in this homicide?

A Correct.

Q All right. Now did she appear to be under medication at that time?

A Yeah, she was definitely under some medication. However, she was emotional to the effect that I saw tears coming out of her eyes when she was talking about this information, info--

Q Information about what the Defendant told you--told her regarding Annette White.

A Correct. And then information she was talking about, just general information. You know, she was not crying, so it was emotional to her, I could tell.

Q All right. Well did you make a determination to cut off interviewing at some point?

A Yes. I--well I actually had to leave for a short time and Detective Johnson and Pittelkow were there, but it was ended I believe at her request because she was telling them that she was under the medication, and just wanted to rest cause she was in pain from being in the accident.

Q So did you subsequently interview her?

A Yes. We waited until--that was on January 18th in the early

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morning hours. It was until the 24th of January, six days later, that we decided to go back and speak to her. We figured enough time had elapsed. We had conducted other follow-up on the--in this investigation and just thought it was time to go speak to her.

When we decided to do that, we learned that she had gone back to the hospital for pain received from the accident. She had been incarcerated at the sheriff's department on a parole violation, and

because she went to the hospital, the determination was that they wanted to keep her at the hospital. So she was accidentally--she accidentally was released from custody. She wasn't returned to the--to the jail.

Q So did you find her?

A We went out and we located her. She went back to Interfaith Apartments and was staying with a friend of hers, and we then contacted her parole officer and took her back into custody.

Q And while you were doing that, did you talk to her about more details of this crime?

A Yes.

Q Did you re-interview her essentially about the information that she had given to you six days before?

A Yes I did.

Q Did she confirm most of that information?

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A Yes she did.

Q Was she lucid?

A Yes she was.

Q Did she appear to be under the influence of drugs or alcohol?

A She did not.

Q Did you drive her around and have her show you certain locations as she was telling you things?

A Correct. Cause she wasn't from Kalamazoo, so we were trying to determine different locations that her and Mr. Davenport may have gone to at another time together.

Q And was one of those Marvin Fraction's apartment?

A Yes.

Q Did she confirm that they had been there together?

A Yes.

Q She actually drive you by there or tell you where to go and point that out to you?

A Correct.

Q All right. So as a result of--strike that, let me go back. When you first went to the hospital, did you eventually interview the Defendant that day as well after you were finished interviewing Marquetta Tarver?

A Yes I did.

Q And he was still in the hospital?

A No. At about 3:00 to 4:00 in the afternoon, he was

[Page 784]

released from the hospital and there was instructions that we wanted to speak to him at that point. So an officer brought him to the detective bureau so we could do an interview.

Q So it wasn't at the hospital, it was at the detective bureau.

A Correct.

Q Was he in custody?

A Yes he was.

Q Did you Mirandize him?

A Yes I did.

Q Did he waive his Miranda rights and agree to speak with you?

A Yes he did.

Q Okay. So what did you talk to him about on that occasion?

A That was a very brief contact with him.

Q Why was it brief?

A Because he had a cast on his left arm and when I was reading him his Miranda rights, he was falling asleep on me, which isn't good if you're reading somebody their Miranda rights, because you want



to make sure that they understand them so there's not a problem later on.

And I--but I had previously been told by the officer that they thought that Mr. Davenport was faking to some respect. So I kind of had that in the back of my mind at

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that point as well.

Q Was this cast or whatever he had on his arm from the accidentally basically?

A Correct.

Q All right. So he's falling asleep during Miranda, did you get a waiver that you were satisfied with that he understood?

A Yeah. It took--it took a few minutes before I was comfortable that he was awake, and he listened to it, and he--and he waived his rights.

Q So you repeated the Miranda more than once?

A Yes I did.

Q Making sure he was awake.

A Correct.

Q Did you go into any kind of details about this case with him that day?

A None whatsoever.

Q Can you just give us a very brief overview of your interview that day.

A Just told him I was wanting to speak to him about the--the crash, and what had transpired in regards to that and to the vehicle.

Q Did you get any substantive information from him on that day? What did he say?

A Nothing substantive, no.

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Q All right. Did he acknowledge having driven the car and crashed it?

A Yeah.

Q Did he say why he was running from the police?

A I don't recall. I'd have to refer to my report.

Q All right. In any event, it wasn't significant to you, didn't stand out.

A Correct.

Q If it had, you would have put it in your report.

A Correct.

Q So why was it a brief interview? Why did you cut off the interview after a short period of time?

A Sergeant Thomas was watching the interview from the viewing room and I took a break and I went out

and spoke to her. I said--I advised her I wasn't comfortable cause I had just learned from Mr. Davenport--cause during the interview he was still falling asleep, nodding off on me. And I--I asked him if he had been--if he had surgery today and he said he did, and I asked him if it was a general or a local anesthesia that was used for the surgery on his hand, and he said he was knocked out, which told me it was a general anesthesia and it was major surgery. So I didn't feel comfortable continuing the interview at that point because if he did tell me anything significant, I--I didn't feel it'd be--be able to be used later on.

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Q In court?

A Correct.

Q Because you'd be taking advantage of his mental state?

A Correct.

Q So a determination was made to end the interview?

Q That's correct.

Q After like how long?

A About 30 minutes, 20 to 30 minutes.

Q Did you even get anything about the homicide?

A No.

Q What was he in custody for?

A For the fleeing and eluding. Fleeing and eluding and I believe some cocaine possession.

Q All right. In any event, he wasn't in custody for the homicide yet.

A Correct.

Q You hadn't charged him yet.

A Correct.

Q He was a suspect, wasn't he?

A Yes he was.

Q You wanted him to talk to him about Annette White's murder, didn't you?

A Yes I did.

Q So after 30 minutes the decision was made not to interview him. So then what happened.

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A We transported him back to the sheriff's department, which was--that was on the 18th. We did further follow-up in between the 18th and the 24th, trying to find out more about Annette White, more about Mr. Davenport. Spoke to several other individuals who provided some insight into both of them.

And then after speaking to Miss Tarver on the 24th, she had indicated that--when we got her back to the police station, that the first thing she said to me when I walked in the interview is, "Did you check the scratch underneath his eye?" And I asked her what scratch. Cause when I had saw him on the 18th, I would have--I attributed everything that was wrong with him physically to the--to the accident that he had been involved in. And she said no, there was a scratch underneath his eye, so that was of significance to me.

And then she also indicated prior to getting back to the police department about the shoes, about him switching the shoes out at Kmart, and Detective Moorian and Detective Johnson went down to Kmart in Portage, and while I was speaking to her, they were contacting me on my Nextel-

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MS. EIFLER: Your Honor, I'm gonna object. He-- I would ask that he just testify to what he has firsthand knowledge of.

MR. FENTON: Well first of all, he does, but

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second of all, it's already been testified to and it's not being offered for the truth. The jury's already heard this. Just putting everything into context as to how the investigation and the course of it went.

THE COURT: Overruled, I'll allow it. Go ahead.

A They were just asking for directions, what she remembered from inside of Kmart, what kind of box. So obviously eventually they ended up locating--or the box was located with the shoes in it.

Q So was a determination then made to interview the Defendant again seriously and about this particular homicide?

A Yes it was.

Q And that was after talking to Miss Tarver again and recovering the shoes.

A Yeah, and then the shoes were taken to lab specialist Luedeking. He conducted his--his evaluation of the shoes and then also provided me a photograph--a color print photograph of the shoe print at the crime scene. And it was after that point, we--we had that, you know, those two objects that I wanted to speak to Mr. Davenport further.

Q So at that point you were pretty convinced that the Defendant was involved in Annette White's death.

A Yes.

Q So did you interview him again then on the 24th?

A Yes I did.

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Q So what time did this interview start?

A About--

Q Approximately.

A Approximately 4:30, 5:00.

Q P.M.?

A P.M.

Q Did you Mirandize him again?

A Yes I did.

Q And for the jury's edification, that means that you read him his Miranda rights from a standard card.

A Correct.

Q The right to remain silent, the right to not answer questions, the right to have a lawyer present before questioning, and a court-appointed lawyer if you can't afford one.

A That's correct.

Q Did he waive all those rights and agree to speak with you?

A Yes he did.

Q So how did you start your interview? What was your technique that you were gonna use to start interviewing Mr. Davenport?

A I wanted him to make him feel at ease in the interview. Obviously I didn't want to get right into the crux of the investigation. So I began speaking to

him about the incident with the car, and wanted to get him to feel

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comfortable with me. And we spoke about the incident with the car, how he came to be in possession of the car. What he did for the last--for that week, for the time he came into possession of the car till the time of the accident. I wanted him to think--I didn't want him to think anything about this homicide. I didn't want him to think I was even looking into that homicide.

Q Did he acknowledge having possession of that car for a week or so?

A Yes.

Q What did he tell you as to how he obtained possession of it?

A That he gave Mr. McLemore a ride home to Paw Paw. Tracie Goltzene--he didn't know her name--he described her as a white female with kind of dirty blonde hair, little larger, and that she was from the--that she was--she had been at the apartment looking for some crack cocaine.

So then he said that Mr. McLemore--she--he said that Goltzene said to give McLemore a ride home. So then he went outside and told McLemore, "Let's go. You're gonna drive back home, and then I'm gonna take the car, and bring it back to her."

Q Did he ever bring it back to her though?



A No he didn't.

Q All right. So he's essentially admitting having gotten the

[Page 792]

car from them that evening.

A Correct.

Q Did he have any justification for it as to how that he would have it legitimately? I mean did he give you a version that sounded valid to him or legal?

A I think so.

Q What--what was his explanation?

A That it was given to him.

Q By who?

A Miss Goltzene.

Q Oh. So he's claiming that she gave him permission to have the car?

A Correct.

Q Did he indicate whether he even knew her before that night?

A No he didn't.

Q No he didn't indicate or no he didn't know her before that night?

A He didn't indicate that he knew her before that night.

Q All right. So he's acknowledged having the car. At some point do you ask him to go through his activities, blow-by-blow, of that weekend.

A Yes.

Q The weekend of the murder?

A Yes.

Q Did he give you a blow-by-blow account of that?

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A Yes.

Q And did it primarily consist of doing a lot crack?

A Yeah. Lot of partying.

Q Lot of partying, eating, and sleeping?

A Yep.

Q Anything else significant that stand out over that weekend?

A No.

Q Was that before you said anything about the murder?

A Yes.

Q So you got his--his supposed alibi or what he was doing that weekend.

A Yeah. He--he became suspicious when I was speaking to him, but yes, I got his supposed alibi. I--I cut him off a couple times. I didn't want to get into it at that point. I wanted to get more information, have him still feel at ease, but he started to ask a question at one point about Annette White, and I--and I cut it off and changed--changed the topic. I was--I wasn't ready to start speaking about that. I wanted to get more information.

Q All right. Why didn't you want to start speaking about Annette White right away?

A Because I wanted to get some more information about where he'd been and what--what his response was.

Q Why? Strategy wise, why?

A Because I wanted to see if he was gonna lie about certain

[Page 794]

things.

Q All right. If you start mentioning a murder victim and a suspect becomes suspicious that you're interrogating him, what's their likely response gonna be?

A They had nothing to do with it.

Q All right. So it's important to try to get a general story first as to their activities?

A Yeah, you want to lock 'em to what they were doing.

Q And when you say lock 'em in, are you trying to trick them in any way?

A No.

Q Are you--

A It's their own words.

Q Just asking them general questions?

A Correct.

Q About what they were doing?

A Correct.

Q All right. So then he gave you an account of his weekend activities.

A Yes.

Q Had nothing to do with Annette White.

A Correct.

Q So how did things shift? How did the interview start changing?

A I took a break. I--I provided him with--cause he was

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getting a little antsy, I provided him with--it came out that the name Annette White had been--the name Andre Randall came out towards the--before I took the first break, and I provided him with some scenarios of things that have happened in prior cases where people have been murdered, and then I--

Q What do you mean?

A And then I took a break.

Q What do you mean? What were you trying to do?

A I was trying to minimize any potential involvement. I wanted him to start thinking about how he may be able minimize what I was going to get into next, even though he didn't know where I was going next.

Q Well can you be specific with the jury? What were you trying to do? Minimize how?

A So he'd be comfortable in telling me his involvement with Miss White.

Q I understand that. But when you say the name Andre Randall came out during the interview, and you started throwing out scenarios at him of other cases, specifically what were you trying to do?

A I was trying--

Q What was your strategy?

A I was trying to get him to think about what he was gonna tell me next.

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Q All right. Well when you say minimize, I'm asking you to try to be specific. I--you're not--you're not following me I guess, but have you had other cases where there were different--strike that. Have you had other murder cases where there was more than one suspect where the roles were not necessarily equal?

A Yes.

Q Where some people were more involved and some people were less involved?

A Correct.

Q That's what I'm trying to get you to explain to the jury. Can you explain that please.

A Yes. I've had a couple different cases like that and I want him to make himself feel like the person that was less involved.

Q All right, thank you. So what happened after the break?

A I came back into the interview room--interview room carrying the box from Kmart with the tennis shoes inside of it, along with a large color photograph of the shoe print from the crime scene as a prop.

Q What do you mean a prop?

A Carried it in, sat it down, and want him to--well I want him to look at it, and think what's gonna happen next.

Q All right. so when you say a prop you mean like a demonstrative exhibit type of thing to get his mind

[Page 797]

thinking and see how he's gonna react to it?

A Correct.

Q All right. Please continue.

A I asked him if he knew what was in the box and we played a game for a minute. He said, "Well tell me what's in the box," and I said, "You tell me what's in the box," and he kind of chuckled a little bit. And eventually I asked him, "Well where did I get this from?" And he said, "Kmart."

Q So he told you where he got it from?

A Correct.

Q He acknowledged that.

A Correct.

Q And was there a discussion about that?

A Yeah. I mean he--he was very uncomfortable about the box.

Q So his demeanor is changing?

A Yes.

Q All right. So do you set a scenario for him using this Reid minimization technique?

A Yeah.

Q At some point?

A Correct.

Q Well first of all, before you do that do you get into a discussion with him about whether or not he was involved in Annette White's death?

A Yes.

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Q What does he say.

A He says he's not involved in Annette's White--Annette White's death.

Q Does he know anything about it at all?

A No.

Q Does he maintain that for a substantial period of time?

A Yes.

Q So he specifically denies being involved in her death on several occasions?

A Yes.



Q During this interview?

A Yes.

Q So then how do you deal with that?

A I inform him that, you know, I--I've spoke to lots of people in this investigation, one of which is Andre Randall, and he--he advises--he acknowledges that he knows Andre Randall--had been picked up at some point over the previous week or two, and I told him that I--I have Andre's Ran--Andre Randall's version of events and I need to get his version of his events.

And I give him a scenario of a train leaving a station, and Andre Randall has given me his version of events, and Andre Randall has dove into this train, trying to help himself out, and I need to get his side of the story and see if he wants to jump on the train.

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Q Do you also explain to him that if he only helped dispose of the body afterwards that that might be something less than murder?

A Yes I did.

Q What's that known as in the law?

A The?

Q The crime of helping someone after the fact.

A Accessory after the fact.

Q And is accessory after the fact a less serious crime than murder?

A Yes.

Q Did you use that theme with him?

A Yes I did.

Q How? Explain to the jury.

A Just telling him that if he was simply contacted by Mr. Randall, if Mr. Randall did this crime, and he simply just helped dispose of the body, that that would be something that would be a lot less--he'd be a lot less culpable for anything that happened to Miss White.

Q So at some point after you ran that theme by him, did he acknowledge having helped Andre Randall get rid of Annette White's body?

A Yes.

Q How long did it take to get to that point with him?

A Approximately.

[Page 800]

A From the beginning of the interview?

Q Yeah. From 4:30 p.m., how long did it take until you got him to acknowledge that?

A Probably 7:30, quarter-to 8:00, 8:00 o'clock.

Q So about four hours later or so?

A I'd say three, three-and-a-half.

Q Three-and-a-half hours?

A Yeah.

Q Now during that time are you--first of all, how do you to talk to your suspects?

A Just in this tone of voice.

Q Do you yell at them?

A No.

Q Do you shout at them?

A No.

Q Do you get in their face?

A No.

Q You've heard the old TV adage, good cop/bad cop?

A Yeah.

Q Are you ever a bad cop?

A I've played bad cop before, yes.

Q Were you ever in this case?

A No.

Q Is being bad cop genuinely an effective way to get someone to confess to a crime?

[Page 801]

A For the good cop.

Q Does the bad cop usually succeed though?

A Not--not usually, no.

Q Did you use any of that technique here?

A No.

Q All right. So after about three-and-a-half hours--now during that time, did you take breaks?

A Yeah. We took probably at that point I think we'd taken two breaks.

Q How long are the breaks roughly?

A Five to 15 minutes.

Q Do--do you ask Mr. Davenport if he was hungry or needed anything to eat?

A Yep the entire time. When I--every time I left the room, if I--you know, do you need anything, you want some water, pop, something to eat.

Q Did you get him pop?

A Yes.

Q Did you ask him if he wanted cigarettes?

A He smoked, yes.

Q Did you--you provided him with cigarettes?

A Yes.

Q Cause he was in custody, right?

A Correct.

Q So he normally wouldn't have access to cigarettes,  
would

[Page 802]

he?

A Correct.

Q All right. At some point did he actually dictate a  
scenario of helping Andre Randall get rid of the  
body afterwards and you wrote it down.

A That's correct.

Q So you took actually a written statement from  
him?

A Yes.

Q And he was telling you what to write and you wrote  
it down?

A Correct.

Q And that involved the scenario that I've just de-  
scribed.

A Yes.

Q Did you--was he willing to sign that?

A No he was not.

Q Did you ask him to sign it?

A Yes I did.

Q Did you write on there anything other than what he told you?

A No.

Q But he still wasn't willing to sign that.

A Correct.

Q Were you convinced that that story was the truth?

A No I wasn't.

Q That he helped Andre Randall only after the fact get rid of the body and that Andre Randall was the killer?

[Page 803]

A Right.

Q Did you have any evidence in this case at all that Andre Randall was the killer?

A No. I--we had Andre Randall's shoes also and we had no--his shoe prints didn't match according to the crime lab. Had no--no evidence whatsoever to show that he was involved in this crime.

Q So did you just stop when you got the Defendant's admission to helping dispose of the body?

A No.

Q What did you do then?

A Well he had provided some information about where some property was at.

Q Some what?

A Property of Annette White's.

Q Who provided that information?

A Mr. Davenport.

Q Told you about what?

A The dehumidifier and the speakers.

Q How--how did he explain that?

A Said simply that they were in the car and he wanted to--and he got rid of 'em.

Q How did they get to be in the car, according to him?

A Umm--

Q If you recall.

[Page 804]

A I don't recall.

Q All right. So what did you do with that information?

A Well when he said he wouldn't sign the--sign the written statement, there was some talk back and forth, and I had to stop the interview. So then I left with Detective Pittelkow, he was left in the interview room, he's being watched. I--

Q Gonna have to speak up a little bit.

A Sorry.

Q You want some water?

A Yeah please. Thank you. We left CID, the detective bureau, Detective Pittelkow and I, and went up to Interfaith Apartments to Marvin's apartment.

Q What'd you do there?

A Recovered the dehumidifier and the speakers.

Q All right. So I'm showing you--I'm showing you People's Exhibit 43. You actually brought this to court, right?

A Correct.

Q And People's Exhibit 42 and 41 are the speakers, correct?

A That's correct.

Q Are all these exhibits what you obtained from Marvin Fraction's apartment?



A Yes.

Q And these were identified as having been taken from the victim's apartment by her family members?

[Page 805]

A Yeah.

MR. FENTON: Move for admission of People's Exhibits 41, 42, and 43.

MS. EIFLER: No objection.

THE COURT: Those are received.

(People's Exhibit 41, People's Exhibit 42, and People's Exhibit 43 are received at 10:43 a.m.)

Q So the Defendant admitted having possession of that property?

A Yes he did.

Q And giving it to Marvin Fractions?

A Yes.

Q And you recovered it shortly there after.

A Short--during the interview, yeah.

Q During the interview.

A Correct.

Q Was he being interviewed by anybody else while you went to recover the property?

A I didn't know he was, but when I came back from recovering the property, Captain Mallery was speaking with him.

Q Who's Captain Mallery?

A He's my--one of my three supervisors. He's in charge of the detective bureau.

Q So Captain Mallery was speaking to the Defendant?

A Correct.

[Page 806]

Q And did he talk to him for a period of time after that?

A Yeah, I watched him speak with him for probably 30 to 45 minutes before--

Q Is it--

A Captain Mallery came back out.

Q And then what happened?

A He informed me how the contact took place, how he was able--well how he was--started speaking with Mr.--

MS. EIFLER: Your Honor, I'm gonna object as to hearsay.

MR. FENTON: Again, it's not being offered for the truth. It's being offered to explain how Captain Mallery came to interview the Defendant.

THE COURT: I'll allow it.

THE DEFENDANT: Cause I asked for an attorney. That's how.

THE COURT: Mr. Davenport, you're not allowed to say anything, sir.

I will allow it. Go ahead.

Q Please continue.

A So he had speak--spoke to him for 30 to 45 minutes that I watched, and then Captain Mallery came out asked that I come back into the room with him.

Q All right. So then did the two of you interview him?

A Yes.

[Page 807]

Q How much longer?

A Probably two hours total.

Q So what time did--

A Two more--two more hours.

Q I'm sorry?

A Two more hours, two-and-a-half.

Q What time did the whole interview end that day?

A Around 2:00 a.m. in the morning on the 25th.

Q So you started about 4:30 p.m. and you went through 2:00 a.m. basically.

A Correct.

Q Were there many breaks during that time?

A Yes there was.

Q And was the Defendant provided with food and/or drink at his request, and/or cigarettes?

A Yes he was.

Q During the portion that you watched Captain Mallery interview the Defendant, did he use any coercive techniques whatsoever?

A No, not at all.

Q Did he speak to him in a friendly, respectful, and dignified manner?

A Very much so.

Q Same thing after you joined Captain Mallery in there, was the same demeanor maintained?

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A Yes.

Q Did any of you--or either you threaten him in any way?

A No, not at all.

Q Or promise him anything in exchange for his statements?

A Not at all.

Q Now at some point did the Defendant's story or version of events change from having helped Andre Randall dispose of a body to actually taking responsibility for the crime solely himself?

A Yes he did.

Q How did that come about?

A When Detective Mallery was speaking to him when I was in the room with him, he changed his story, advised that-

Q How did that come about? Do you--

A Well he was provided with--provided with an out, and-

Q What do you mean by provided with an out?

A We gave him the--the out of self-defense. We-

Q How--how did you do that?

A We--we told him that there was--we knew that he had more involvement than what he had told us so far, and if it was something along the lines of she attacked him, you know, either with a knife or a box cutter, then that could be easily explained and

we portrayed the victim, Miss White, at that point as being an aggressive person.

Q You actually portrayed her as being an aggressive person to

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him?

A Yes.

Q What was the purpose of that?

A To make him use that as part of his--to get him to say what was--what he actually did.

Q Is that part of the minimization strategy?

A Correct.

Q Was it only after that that he then told you what he told you?

A Yes.

Q And what did he tell you?

A He said that they were over at Earl's--Earl and Derene's apartment, they'd been over there smoking some crack. They left there, they were driving back up Douglas coming off of North Street, and he said she started acting crazy, and she came at him with a box cutter. So he had to reach across and hold her back and by her throat, and he said he started holding her by her throat and choking her in the area of Daysha's, which is near North

and Douglas, and stopped up near Ravine Road, which is probably a couple minutes drive on Douglas when you're going north.

Q So then what happened?

A He said she slumped down in the seat. He drove out on Ravine to Nichols, then to Alamo, and then over to Prairie, and then turned on to Blakeslee, and then he took her body,

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and placed it in a woods.

Q Was Andre Randall present during any of that

A No.

Q And was a written statement taken from him a second time?

A Yes.

Q To that effect?

A Yes.

Q Was he willing to sign that one?

A Yes he did.

Q Was all of this being videotaped?

A The entire interview.

Q I've already shown People's Exhibit 34 and 35 to lab tech Latham, and he's identified them as

accurate portions of the entire interview that we've asked to have brought to court today. Have you also reviewed those and do they accurately portray the relevant portions of the interview as set forth that day?

A Yes they do.

(Sidebar conversation between the Defendant and Ms. Eifler)

MR. FENTON: At this point, I'd like to play these video tapes, your Honor. I don't know if you want to take a break before we start them, if anybody needs to, or if we want to just keep going because they're fairly lengthy, but we can get started if you want or however you

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want to handle it.

THE COURT: It's been almost a hour-and-a-half. I think it might be a good idea. We'll take a break first and then we'll come back and hear the interviews.

(Sidebar conversation between the Defendant and Ms. Eifler)

THE COURT: And approximately how long, Mr. Fenton?

MR. FENTON: It's a couple hours worth, two to three hours.

THE COURT: Mr. Brooks should be here shortly.



(The jury members exit the courtroom at 10:50 a.m.)

THE COURT: Counsel, is there anything we need place on the record at this time?

MR. FENTON: No your Honor.

MS. EIFLER: Your Honor, I guess at this time would--I know that the issue regarding Mr. Davenport's request for attorney has been dealt with previously by this Court, but by the fact that Mr. Fenton has asked multiple times going through very explicitly the Miranda process, I believe now he's opened it up where issues regarding Mr. Davenport's request for attorney would be appropriate for the--for the jury to hear. Just because I believe that it's been asked at least two to three times, and I know

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that the--at least one of those times it was very explicit, very specific about the process, making sure that he understood all of his rights, and that he waived those rights when we know that throughout this interview he did request for attorneys.

So now that that can of worms, so to speak, has been opened up, I would say that it's--would be appropriate for the jury to hear--to hear about his request for attorney.

THE COURT: Mr. Fenton.

MR. FENTON: Judge, normally the--well first of all, I'm required to go through the Miranda rights and

the waiver. Often times lawyers don't do it, but the proper procedure is to actually specify the Miranda rights that are waived. So that's a precursor to the confession even coming in. I had to do that.

If they want to open it up to him asking for a lawyer and the detectives explaining how that was waived by him, that's fine. Normally that's a legal issue and it's not brought before a jury because it protects the Defendant. Because when someone asks for a lawyer, that's an incriminating statement or at least that's the inference that is made to a jury. So normally they don't bring that out to protect the Defendant.

The--if the defense wants it out, that's fine with me. I mean the detective can more than explain how the

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Defendant chose to speak with him after that whole thing. But normally that's a legal issue, not a factual issue because it's normally prejudicial to the defense.

THE COURT: Well I don't know what portions of the--of the interview Mr. Fenton plans on playing at this time. I know there were--we had a prior motion with regards to this. Why don't we discuss that, counsel, over the breaks. Then I know exactly what he's--what portions he plans on playing before the jury and then we can discuss that any portions that you might request also, and we can address it at that time.

All right, we'll take a break and then we'll--I'll put my ruling on the motion before we bring the jury back down. Court's in recess.

(Court recesses at 10:53 a.m. )

(Court resumes at 11:26 a.m.)

THE COURT: The court recalls the case of People versus--versus Ervine Davenport, the File Number 07-0165. Counsel, please identify yourselves for the record.

MR. FENTON: Stuart Fenton for the People.

MS. EIFLER: Susan Eifler, appearing on behalf of the Defendant, Ervine Davenport. He is present in Court today.

THE COURT: Counsel, the jury's on the way down. Mr. Davenport, I just want to caution you. Please don't

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speak up again, sir. If you do it again, then I'm gonna have you watch the trial from the--a different room, and I know you've been writing notes and so forth, so I think it's important that you're here, sir. So just be aware of that.

My plan is as follows. I understand the first tape is a little--about 65 minutes. So hopefully we can get through that. We'll take a little bit of a late lunch then, right around 12:30, and then I'll ask them to be back at 1:30.

My understanding is we--that the second tape is about an hour-and-a-half. So we'll watch that after lunch. We'll see where we're at at that point.

I was going to--because it's clear we're going into Tuesday at this point--I might break a little bit early for their sake today at around 4:00 or so, but we'll see where we're at with wit--witnesses. I just want to make sure, Miss Eifler, I understand you've got witnesses coming in, that that won't be a problem for your witnesses either. So that's the plan for the day.

The jury's on the way down. Counsel, is there--we also discussed the handling of the matter that you brought up, Miss Eifler. You're certainly allowed to examine the witness, ask questions of the witness with regards to the Miranda warnings as we discussed, and the other matters I know we discussed potentially may or may not be brought out

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in your--in your portion of your case. So we can address that then on--over the--next Tuesday.

(Jury members enter the courtroom at 11:29 a.m.)

THE COURT: Well the question was brought up, I understand, whether or not you're gonna have to watch the two to three hours of video before lunch, and I certainly would not do that to you or anyone else in the courtroom.

This is the plan. My understanding is that Mr. Fenton wants to show a video. It's going to be I think 65 minutes, is that a good estimate, right around there?

MR. FENTON: I--I'm not exactly sure. I believe something around there.

THE COURT I would like to try to get that first tape in before lunch. So that means we would break right around 12:30 or shortly thereafter, just so that you're aware of that. And then we'll break for the lunch hour and then we'll watch the second tape, which I understanding is-I understand might be about an hour-and-a-half or so.

MR. FENTON: Yeah, maybe a little longer. I'm not sure.

THE COURT: After lunch, then we'll see where we're at with--with witnesses. It's seems clear that we're gonna go into Tuesday. So you won't be coming back on Monday just due to my docket. So hopefully no one had to rearrange any schedules for that, but I will need you to

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come back on Tuesday and we should be able to finish all the testimony and the jury instructions and so forth on Tuesday, so you should be able to begin deliberations then.

My plan is to try to let you go a little bit early today. I know it's been a long week and I do appreciate the fact that it gets a little tiresome too in listening to me coughing and hacking up here too. But so that's the plan for the day, and it'll just kind of depend on where we're at with witnesses.

Mr. Fenton.

MR. FENTON: Thank you your Honor.

(People's DVD Exhibit begins playing at 11:31 a.m.)

(People's Exhibit 34 paused at 11:33 a.m.)

MR. FENTON: Because the tape is hard to hear, your Honor, I'd like to stop at certain portions and just clarify what the detective--what was said. Detective, what was the last question and answer?

THE COURT: Just a minute. Just let me make clear too, you are still under oath, sir.

THE WITNESS: Yes ma'am.

THE COURT: So go ahead, Mr. Fenton.

Q What was the last question and answer?

A Who--he asked who--isn't that girl dead.

Q Isn't that girl dead?

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A Yes.

Q And what did you say.

A I said yes.

Q What that the first discussion about Annette White?

A Yes.

Q And then what did he say about chocolate?

A Her--he referred to her as Chocolate as her nickname, which is a nickname that I heard through the investigation for Annette White.

Q All right.

MR. FENTON: Please continue.

(People's Exhibit 34 resumes playing at 11:33 a.m.)

MR. FENTON: I'm sorry, could you stop that please.

(People's Exhibit 34 paused at 11:44 a.m.)

Q Can you repeat his answer just so it's clear on the record.

A Andre said he needed some help.

Q All right.

MR. FENTON: Please continue)

(People's Exhibit 34 resumes playing at 11:44 a.m.)

MR. FENTON: I'm sorry. Could you stop that.

(People's Exhibit 34 paused at 11:45 a.m.)

Q Repeat that.

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A I asked him if it was Chocolate.

Q Can you go back a sentence or two. What did you say to him? What did he help--need doing?

A Moving--removing--or moving a body.

Q All right. Is that what he said?

A I'd have to hear it again, I--

Q All right. Did you ask him what did he help need doing? Is that what the question was?

A Correct.

Q And was his response Chocolate?

A Yes.

Q All right.

MR. FENTON: Please continue

(People's Exhibit 34 resumes playing at 11:46 a.m.)

(People's Exhibit 34 paused at 11:57 a.m.)

Q What did you say? The prostitute had a history of doing what?

A Pulling knives on her johns.

Q All right thank you.

MR. FENTON: Please continue.

(People's Exhibit 34 resumes playing at 11:57 a.m.)



(People's Exhibit 34 paused at 12:19 p.m.)

MR. FENTON: Before we begin the next one, it's

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about 35 minutes. I don't know, and that will be the last segment of the first tape, but it's longer than the next one that we--

THE COURT: Let--let's stop now. I think that's good.

MR. FENTON: Okay.

THE COURT: We'll play that after lunch so.

Okay, ladies and gentlemen, we will break for lunch. Please remember my prior instructions. Do not discuss this case with anyone, even amongst yourselves. And don't watch any news reports or read any news reports with regards to this case.

I'm gonna ask that you check in upstairs at 1:30. So that gives you a little bit more than an hour-and-a-half, or an hour for lunch. So 1:30, check in upstairs, all right? Have a good lunch.

(The jury members leave the courtroom at 12:20 p. m.)

THE COURT: And those of you in the courtroom, I appreciate you just being patient until the jury has a opportunity to clear out here for the noon hour.

Counsel, is there anything else we need to place on the record at this time before we break for lunch?

MR. FENTON: No your Honor. Just for logistics, we probably got a good two hours of tape left. We've got

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Miss Eifler's cross-exam. Would it be safe for me to instruct Captain Mallery probably Tuesday?

THE COURT: That's kind of what I was thinking, although I am concerned about Miss Eifler's witnesses. I know she does have some witnesses coming in. As long as you can, you know, get those witnesses back next Tuesday, and I think that we talked about that a little bit. My understanding is it probably shouldn't be a problem, but you had somebody that was gonna check in at 1:30 so.

MR. FENTON: And if we finish earlier than I expect, I don't have a problem with her calling them out of order today too.

THE COURT: And--and that might be appropriate too. So we'll let--we'll have to talk to her about that and see how she wants to handle that so.

MR. FENTON: Thank you. So I'll instruct Captain Mallery that he's free this afternoon.

THE COURT: Yeah, I think that that's probably a good plan right now given the length of time.

MR. FENTON: Maybe Tuesday morning.

THE COURT: And then of course we do have cross-examination so.

MR. FENTON: Thank you your Honor.

THE COURT: All right. So around 1:30 or shortly thereafter I plan to begin again. Have a good lunch.

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Court's in recess.

(Court recesses at 12:21 p.m.)

(Court resumes at 1:53 p.m.)

THE COURT: Counsel, I'm gonna call the case. I don't have a way to confirm that this is recording other than the light. I think everything's okay, but when Mr. Brooks gets back in I'll have him see if he can check with the computer to make sure we're--we are recording, but I don't know what--what the code is to get in.

So the Court recalls the case of People versus Davenport, File Number C07-0165. Counsel, please identify yourselves for the record.

MR. FENTON: Stuart Fenton for the People.

MS. EIFLER: Susan Eifler, appearing on behalf of the Defendant, Ervine Davenport. He is present in court today.

THE COURT: And the jury is on the way down. Actually counsel, will you approach please.

(Bench conference begins at 1:54 p.m. between the Court and counsel, transcribed as follows)

THE COURT: Do you have more questions for Beauchamp then?

MR. FENTON: For Beauchamp?

THE COURT: Any additional questions from him.

MR. FENTON: Probably, yeah.

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THE COURT: Would you rather do your cross-exam-how long's your cross-examination gonna be? Any idea?

MS. EIFLER: (No audible response)

THE COURT: Would you rather do that now or come back--

MS. EIFLER: No.

THE COURT: And do it on Tuesday because I'm looking at the time. If you got two-and-a-half hours

MS. EIFLER: Here's what my thought is. I would like time to go back and just kind of check my--you know, I know why--why things were cut out, but I just want to go back in and check what was cut out and--and compare it so I can ask him questions maybe about some stuff that was cut out.

THE COURT: Well I don't think we're gonna get to your cross-examination anyway.

MS. EIFLER: Okay. I would prefer to do that on Tuesday--

THE COURT: Okay.

MS. EIFLER: When I've had a chance to kind of-

MR. FENTON: That's fine. Why don't we just finish the tapes today--

MS. EIFLER: And can--

THE COURT: And then that--

MR. FENTON: And I'll finish my direct, and then

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rest for the day.

THE COURT: Yeah. How much direct do you have?

MR. FENTON: Oh not much. It's just whatever follow-up. I don't know, I was just looking at that now. Whatever I haven't asked him, I'm just trying to see what I've missed if anything. Cause I wasn't looking at my notes when I was questioning him, I was just shooting from the hip. Just tidy up a few things I'm sure.

THE COURT: Yeah. Because--if that's okay with you and that sounds like that is better for you-

MS. EIFLER: Yep.

THE COURT: If we do it that way.

MR. FENTON: That's fine.

MS. EIFLER: It will be, yeah.

THE COURT: Then that's gonna be my plan.

MS. EIFLER: Okay.

THE COURT: It's just better. We've had a long week and I don't want to go after 5:00 o'clock today.

MR. FENTON: No, I don't either.

THE COURT: And so that will give you some time then and you can review the tapes so.

MS. EIFLER: That's perfect.

MR. FENTON: Great.

THE COURT: We'll do it that way. Okay.

MS. EIFLER: Thank you.

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(Bench conference ends at 1:56 p.m.)

(The jury members enter the courtroom at 1:56 p.m.)

THE COURT: Well I must say I don't think I've been this far off with my times every time we take a break in any other trials. So I apologize for that.

What we're gonna do is likely just play the rest of the tapes today and then we'll probably break for--for the weekend and have you return on Monday (sic), just so that you know what the most recent plan is.

So I will turn it over to Mr. Fenton, but I need to wait one moment just to have Mr. Brooks--

MR. FENTON: Thank you your Honor. I'm just gonna shut the lights off. If we can start--

THE COURT: Well give me one moment because I want him to check--

MR. BROOKS: Oh you want to know if we're on the record. I'll see.

THE COURT: Miss Johnson's in a meeting and I just need to double check to make sure that everything is being recorded. It appears as though we're in order but just bear with me a moment.

MR. BROOKS: Yeah it should be on.

THE COURT: Okay. Go ahead Mr. Fenton.

(People's Exhibit 34 resumes playing at 1:58

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p.m.)

(People's Exhibit 34 concludes playing at 2:33 p.m.)

MR. FENTON: For the record that was People's Exhibit 34. Now we're going to start 35.

THE COURT: Before you do that, ladies and gentlemen, if you want to stand and stretch a moment, you can do that. Okay.

(People's Exhibit 35 begins playing at 2:34 p.m.)

THE COURT: Mr. Fenton, can you just stop that a second. Counsel, will you approach a moment.

(People's Exhibit 35 is paused at 3:09 p.m.)

(Bench conference begins at 3:09 p.m. between the Court and counsel, transcribed at follows)

THE COURT: You have this one and then how much is the next one because--

MR. FENTON: I don't know. My notes are over there.

THE COURT: Well if this one--

MR. FENTON: But we've got a substantial amount left. If you feel like taking a break now--

THE COURT: That's what I'm thinking

MR. FENTON: We probably could break because I could go to the john.

THE COURT: Cause that says 34 minutes left on

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this one.

MR. FENTON: Okay.

THE COURT: And I think you're--you might be starting to lose a couple of 'em.

MR. FENTON: Sounds good.



THE COURT: So why don't we take about a ten-minute break and then we'll do this one and then--

MR. FENTON: Okay.

THE COURT: What's--can you check with her real quick and tell me how much the next one is.

MR. FENTON: Okay.

THE COURT: Just let me know.

MR. FENTON: The next one's an hour-and-a-half.

THE COURT: We're not gonna get through all this today.

MR. FENTON: No we may not. But then that's it. So we've got two hours left basically.

THE COURT: Okay.

(Bench conference ends at 3:10 p.m.)

THE COURT: We 're gonna take a break. I think the next segment is about 30 minutes. so it's probably a good time to do that. So Mr. Brooks will bring you back upstairs.

(The jury members exit the courtroom at 3:10 p.m.)

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Those of you in the courtroom, just please patiently sit or you can stand, but just wait for the jury

to exit the hallway, if you would, before you leave the courtroom.

Court's in recess, and counsel, just let me see you in chambers a moment.

(Court recesses at 3:11 p.m.)

(Court resumes at 3:34 p. m.)

MS. JOHNSON: The court recalls the case of People versus Ervine Lee Davenport, Case Number 07-0165FC.

Parties please restate appearances for the record.

MR. FENTON: Stuart Fenton for the People.

MS. EIFLER: Susan Eifler, for the Defendant-(People's Exhibit 35 starts playing)

(People's Exhibit 35 stops playing)

MS. EIFLER: Susan Eifler, for the Defendant, Ervine Davenport. He is present in Court today.

THE COURT: Counsel, the jury's on the way down.

My understanding is you're gonna have a little bit of testimony and then we'll do the next video.

(Sidebar conversation between Mr. Fenton, Ms. Hybel, and Ms. Johnson)

MR. FENTON: The next segment's so minutes apparently. So if you want to stop somewhere through it to--I

THE COURT: The next segment is?

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MR. FENTON: Yeah. I thought it was 37. I thought I saw that on there.

THE COURT: How much testimony do you have?

MR. FENTON: Not long, five--five minutes. Or actually, ten or 15 I forgot when we were up at the witness stand.

MS. EIFLER: The one we're doing right now has how many minutes left?

MR. FENTON: That's what we're talking about.

THE COURT: 50.

MR. FENTON: The next segment's 50 minutes.

MS. EIFLER: Did this just go up? I thought it said at 30--

MR. FENTON: No. This is the start of the next segment.

MS. EIFLER: Okay. All right.

MR. FENTON: Right? Which time you got-

MS. HYBEL: Entitled two.

MR. FENTON: We're starting the next one then.

MS. HYBEL: Entitled two.

MR. FENTON: We're not in the middle of it right now, are we?

MS. HYBEL: No.

MS. EIFLER: Okay.

THE COURT: Well when you get through the

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different titles, I plan to stop around 4:00. So if it switches over, there's usually a break there. So we can stop in between one of those.

MR. FENTON: If we need to, we can always stop and start it.

THE COURT: Yeah. I'll let you know.

(The jury members enters the courtroom at 3:37 p.m.)

Q I'd like to just ask you a couple questions, detective, before we start the next segment. First of all, there was a lot of reference during that interview when Captain Mallery was interviewing the Defendant, about him spending the night at 1137 Douglas at Tonya's apartment. Who's Tonya?

A Tonya is LaTonya Murray. Tonya's Latonya Murray.

Q Who's LaTonya Murray?

A She lives in apartment number four.

Q Same apartment complex as the victim?

A Yeah, it's the same house. It's just the top floor apartment is number four.

Q Was she the person who lived with Andre Randall supposedly?

A Yes.

Q All right. And he stayed there occasionally that we heard some prior testimony about?

A Correct.

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Q So when the Defendant was indicating to Captain Mallery that he was sleeping when Andre approached him at 1137 Douglas, that's the same apartment complex as the victim was living in.

A Yes it is.

Q All right. Next question, were two--the tape where you are brought into the room with Captain Mallery, at this point had you already taken a written statement from him?

A Yes I had.

Q And was that after what we saw earlier when Captain Mallery was telling the Defendant to--that he

wanted to take a written statement because to protect the Defendant as well as to protect the police so that--because of the distrust of the police, etcetera, etcetera, etcetera, it's important to write things down?

A Yes.

Q So had you come in and then taken a written statement from him?

A Yes I did.

Q Did you just basically go through his version of events with him and then write it down?

A Yes I did.

Q Just like the jury's been watching Captain Mallery do with him?

A Correct.

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Q And that took some time, didn't it?

A It took a good hour, maybe hour and 15 minutes.

Q So for the jury's edification, I decided that since it's in writing that the jury didn't need to see that--the tape of it. It's available if necessary, but I'll show what's been marked as People's Exhibit 36. Is this that statement?

A Yes it is.

Q So again, you wrote that out?

A Yes, I wrote it out, my handwriting.

Q As the Defendant was telling you what happened?

A Yes, in his own words.

Q And were you taking it down accurately?

A Yes.

Q All right. Please read to the jury the detailed state-first statement that the Defendant gave you over that course of the hour as to what happened or his involvement in this crime.

THE COURT: Counsel, this is Exhibit--this is proposed Exhibit--

MR. FENTON: Yeah, I'm sorry I didn't even move for it to be admitted and I should have, 36.

MS. EIFLER: I have no objection and--and I--I was having a hard time hearing. I'm gonna object if he's gonna ask the witness to read it because if it's been admitted, the jury can read it on their own.

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MR. FENTON: Well Judge, it's like showing the jury a photograph. Once it's been admitted that's normal procedure. Whether he reads it or I read it, I think they're entitled to hear it and so I'm entitled to ask it. It's in evidence.

THE COURT: Well it doesn't have to be read necessarily. It's two pages long--how long is it?

THE WITNESS: Two-and-a-quarter.

THE COURT: Okay. I will allow him to read it.

Just so I'm clear, Ms. Eifler, do you have any objections to Exhibit--Exhibit 36 as far as--as I--I believe he just moved to admit it.

MR. FENTON: I believe she's already indicated she doesn't have an objection to it.

THE COURT: Well she hasn't said that on the record yet.

MR. FENTON: Oh I thought she did earlier.

MS. EIFLER: Can we approach?

(Bench conference begins at 3:40 p.m. between the Court and counsel, transcribed as follows)

THE COURT: If we're gonna do this, I'm not gonna play another video. All right? At least for you.

MR. FENTON: Okay.

THE COURT: But that's fine.

MS. EIFLER: That was in--he said he wrote it by

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hand and--right?

MR. FENTON: He wrote it by hand-



MS. EIFLER: Right.

MR. FENTON: As he was dictating it to him.

MS. EIFLER: All right. And are you gonna--I mean--okay. You didn't call it his written statement?

MR. FENTON: I'm sorry?

MS. EIFLER: Did you call it his written statement?

MR. FENTON: I don't know what I called it.

THE COURT: Is this the--

MR. FENTON: It's on the record.

THE COURT: Is this the state--can I see the Exhibit 36. Is this the one that's not signed by him?

MR. FENTON: Right.

MS. EIFLER: Right.

MR. FENTON: Which he's already testified about.

MS. EIFLER: But it's not his written statement.

MR. FENTON: Well okay, that's semantics.

THE COURT: Okay. And the other thing--

MR. FENTON: It's--it's his statement that he gave to him.

THE COURT: Okay. Well let's clarify that then for them and let them know it's not his written

statement, it's the written--it's a statement that he was writing

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down. I mean it was never--I--I guess-

MR. FENTON: It is.

THE COURT: It's--

MR. FENTON: I think it's clear, but--

THE COURT: It's his statement that was written I guess at this point.

MS. EIFLER: Mmm-hmm.

MR. FENTON: Right.

THE COURT: We also need to clarify because you indicated for the record that it's available if they want to look at it.

MR. FENTON: Well it's not an exhibit, that's true.

THE COURT: The--this portion of--it's not available.

MR. FENTON: That's true.

THE COURT: We need to let them know that.

MR. FENTON: That's true.

THE COURT: And I can do that too. I'll--let me--that needs to be clarified. It can be introduced but-

MR. FENTON: The prosecution isn't offering the whole thing.

THE COURT: Right, right.

MR. FENTON: That's fine.

THE COURT: So I'm gonna let them know that the

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portion of the video is not available to them unless it's introduced as an exhibit, and at this point you've chosen not to do that so.

MR. FENTON: That's true.

THE COURT: Okay.

MR. FENTON: No objection.

THE COURT: So we'll clarify that this is the statement that--it's not a signed statement of the Defendant, but I'm allowing him to read it that. Do you have any more questions then after this or no?

MR. FENTON: A couple.

THE COURT: Okay. Just checking.

(Bench conference ends at 3:42 p.m.)

THE COURT: Ladies and gentlemen, just a couple things to clarify. This is a statement that was just testified to. It's not signed by the Defendant, as you will see. I am allowing it to be read into evidence.

And I also want to clarify I think there was a statement made by Mr. Fenton that the portion of the DVD I which shows kind of how this statement came--came about--and obviously there was testimony about that just a moment ago--about how this statement was made is available if you want to review it. It's not available because my understanding is that the prosecuting attorney has chosen not to introduce that into evidence. But I think that the

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statement was probably made because if the--if the prosecuting attorney--attorney chose to introduce that portion of--of the DVD into evidence, then they certainly could if there were no objections to it and so forth. But under the circumstances, that's my understanding that it's not gonna be introduced into evidence. So it is not available for you to review the DVD.

But the statement--and I'm sorry, Miss Eifler, any objections to the statement itself, Exhibit 36?

MS. EIFLER: Well--.

THE COURT: It's not--it's not a signed statement of the Defendant, but it's a statement that was made as Mr. Beaucharnp--or Detective Beauchamp just testified to.

MS. EIFLER: And written by--written by this witness.

THE COURT: Right.

MS. EIFLER: Okay.

THE COURT: Not signed by Mr. Davenport.

MS. EIFLER: Then I have no objection.

THE COURT: Okay. So Exhibit 36 is received.

(People's Exhibit 36 is received at 3:43 p. m.)

THE COURT: And I will allow you to read the statement then.

MR. FENTON: Thank you.

THE COURT: At this time.

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Q And remember, just try to keep your voice up and close to the microphone.

THE COURT: And I would urge the same thing please.

A "I was sleeping in Tonya's bed on Saturday, January 13th after midnight, and Andre came and woke me up and said he wanted to get a drink. I told him no at first and he closed the door and stayed in the room.

He said, "I need your help." I said, "What's up," and he said, "I need your help getting rid of something." I said, "What are you talking about?" and he said, "I need your help... 'getting of something' is what I wrote, "... I said, "Give me a minute, the keys are on the table in the bedroom," and he left.

I got up and sat on the bed for a minute and on my clothes and he came back and I got up--got up, went out to the living room and then I went to the living room. We went down to the car and he told me about--he told me what he did. He said he took care of that and he pointed to the back and she--Chocolate--was laying in the back. I was in the driver's seat and her head was on the passenger side. I saw that she had a bra and panties on and I think they were

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white.

We drove out of the parking lot and turned up Alamo, went to the second street to the left and turned left. We went straight until there was a turn area to go down towards North Street, and then I backed up toward the woods and parked it.

I was cussing him out and walked over toward the woods and he was trying to get her out on the driver's side and he was having a problem. I went over to--I went over to the passenger side and reached under her arms and pulled her out, and her arms went around my head, and that was how I got a scratch on my face. I pulled her out and her feet hit the ground and he came around and grabbed her and put her on his back and walked towards the woods.

I got back in the car and I saw him toss her in the woods, like he was getting something off his shoulder--off of his shoulder. He came back and got in the car and I drove him back to the house.

I drove off and came back about 15 to 20 minutes later and he had some stuff that that he needed to get rid of. He had a humidifier, some food, crab legs and chicken, and a boom box and told me to get rid of the stuff. I left and went to Patwood and

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the humidifier is at Marvin's house. I put the humidifier in the front room and I saw it in the last day I was over there before I got chased by the police.

I left and drove around. I left the food and boom box at Marvin's also. Marvin kept the speakers because the rest of it wasn't working. I threw the main part of the boom box in the dumpster at Daysha's in the morning of January 17th, 2007.

I cleaned out the car on Saturday, January 13th. I threw some--I threw out some belongings from the car, including paper and shoes, small brown shoes on Amsterdam Street on the right hand side.

I changed my shoes at Kmart on South West-nedge and I left my other pair of shoes in the box on the top shelf in Kmart. I left my white socks in the box with a hole in the left heel, and I got another pair of socks from the store that are in my property."

Q Now did you make any of that up yourself?

A No I did not.

Q Were you writing it in his presence?

A Yes I was.

Q As he was telling it to you?

A Yes.

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Q So was that statement taken before the last segment of the video that we watched with Captain Mallery interviewing him?

A Yes it was.

Q Where he reiterated many of the same things that he had told you earlier.

A Yes.

Q And that you wrote down.

A Correct.

Q All right. Now when he just--when you just read that statement, he said something about she was wearing bra and panties, correct?

A Correct.

Q Didn't he say earlier in the interview he didn't know how she was dressed?

A Yes he did.

Q Is that only one of numerous statements that changed throughout the interview?



A Yes.

Q Can you give the jury an idea approximately how long it even took him to get to the point of admitting helping Andre get rid of the body. In other words, how long was he maintaining that he had nothing to do with this case whatsoever.

A Approximately two-and-a-half to three hours.

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Q And then how long roughly was it that he went with this second story, which is that he helped Andre get rid of the body?

A Probably around I'll say 7:30 to 8:00 on that evening is when I began taking this statement, and it was about 11:30 that Captain Mallery and I entered the room again--

Q For the next segment?

A For this next segment.

Q That we're about to see.

A Yes. So during that time--during that three-and-a-half hours, I took the statement, I left, went up to Patwood Apartments to Marvin Fraction's apartment. Detective Pittelkow and I retrieved the humid--dehumidifier and the speakers during that time.

Q And Mallery was interviewing him as we just watched.

A When I came back, Captain Mallery was in the room interviewing Ervine.

Q So over what period of time was he maintaining this story about helping Andre dispose of the body only?

A Probably three hours.

Q Next question. When there was a statement made by Captain Mallery to the Defendant or the--excuse me--the conversation back and forth about the way that he came into possession of the car was that he rented it for crack. And I believe the Defendant made the statement that you had

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told him or you agreed with him that that's what the alleged victim, Tracie Goltzene, had told you. Do you remember that part of the conversation?

A Yes I do.

Q Did you tell the Defendant that?

A I minimized what had happened and told him that it wasn't a straight stolen vehicle, and I believe I told him that Goltzene did tell us that it was traded for crack. However, she did not.

Q So was that a lie?

A It was a lie.

Q So when we heard on the tape that this was really a crack rental as to how he got the car, you just represented that to the Defendant.

A Correct.

Q That's not what Tracie Goltzene told you.

A That's correct.

Q In fact, she's never told anybody that, has she?

A No she hasn't.

Q That was part of your minimization technique-to explain how he got the car?

A Yes.

Q All right. And in a similar vein--I believe this will be my last question for the day--did you hear Captain Mallery disparaging the victim and telling the Defendant about how

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you all had talked to numerous people and found out that she was a very violent person, she carried a knife all the time, she pulled knives on people at Daysha's, etcetera, etcetera? Did you hear all that?

A Yes I did.

Q Was that all true?

A No it was not.

MS. EIFLER: Your Honor, I'm gonna object. He's asking questions of another witness and I think that he can get it in through that witness, not this witness.

MR. FENTON: Well I'm--I'm gonna ask Mallery also, but the point is Mallery said, "Our detectives--"

THE COURT: Hold on, hold on. Approach please. Approach.

(Bench conference begins at 3:51 p.m. between the Court and counsel, transcribed as follows)

MR. FENTON: It's a legal argument. I mean we can make it in front of the jury, but Mallery said to him, "Our detectives have talked to numerous people."

THE COURT: I heard that. Yeah.

MR. FENTON: And he's the main detective, so that's why I'm asking him.

MS. EIFLER: Well I think you can ask--I think you can ask about the investigation, but you know, to--

MR. FENTON: I'm just prefacing it by making it

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relevant.

THE COURT: You may--yeah, you have to remind me what the exact question was. It was what? Oh you just asked whether that was true.

MR. FENTON: Right.

THE COURT: And he said no. You were gonna go on and say something else, you didn't finish that question.

MR. FENTON: I was just gonna follow-up a little bit.

THE COURT: He's--

MR. FENTON: Did you--did you talk to anybody who said that, you know, she pulled a knife at Daysha's and all that kind of stuff. You know, what was that basically, another minimization technique.

THE COURT: Okay. You've got rebuttal issue and then that's it.

(Bench conference ends at 3:52 p.m.)

THE COURT: You may ask your next question, Mr. Fenton.

MR. FENTON: Thank you.

Q Was that information true in terms of had you talked to someone at Daysha's who had said that she pulled knives on people regularly and that sort of thing?

A No I had not.

Q What was that represent--

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A It was--it was a minimization technique to make Mr. Davenport feel more at ease, that Mrs.--Miss White was a violent person.

Q All right.

MR. FENTON: I believe that's all I have at this point, your Honor.

THE COURT: Okay. Ladies and gentlemen, it's very close to 4:00 o'clock and I was going let you home--go home a little early today. I'm not going to play the next video, which I understand is longer than what we initially expected, and I think we have at least couple more hours of video to watch. So we'll do that on Tuesday morning.

I'm gonna caution you. We are gonna do our best to get all the evidence in, including closing arguments and jury instructions on Tuesday. Given the length of the videos, I'm a little concerned that we might be going into Wednesday, so just--I need you to be prepared for that.

And of course we never know how long deliberations are going to be. But I do caution to you to please make those arrangements if necessary, and again we will try to push this along as quickly as possible on Tuesday, but we do have quite a bit of video to watch still. So be aware of that.

I'm going to read to you again just a couple instructions just cause I know it's--you're gonna be gone

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