

SFP 02 2011

BY: Carrie Robinson
CARRIE ROBINSON, DEPUTY

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN BERNARDINO

DEPARTMENT NO. V-2 HONORABLE JOHN M. TOMBERLIN, JUDGE

PEOPLE OF THE STATE OF
CALIFORNIA,

Plaintiff,

vs.

JOHN HENRY YABLONSKY,

Defendant.

Case No. FVI900518

APPEAL FROM THE SUPERIOR COURT OF SAN BERNARDINO COUNTY
REPORTER'S TRANSCRIPT OF JURY TRIAL
JANUARY 18, 2011, JANUARY 19, 2011, JANUARY 20, 2011,
JANUARY 24, 2011, JANUARY 25, 2011, JANUARY 27, 2011,
JANUARY 31, 2011, FEBRUARY 2, 2011, and FEBRUARY 3, 2011

APPEARANCES:

MICHAEL A. RAMOS
District Attorney
BY: **John Thomas**
Deputy District Attorney

For the Defendant:

PHYLLIS MORRIS-GREEN
Public Defender
BY: **David Sanders**
Deputy Public Defender

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Reported by: Shawna Manning, CSR No. 12827
Official Reporter
Vol. 2 of 4 Michelle Swal, CSR No. 13580
Pages 267 through 509, incl. Pro Tempore Reporter

1 VICTORVILLE, CALIFORNIA; JANUARY 24, 2011;
2 DEPARTMENT NO. V-2 HONORABLE JOHN M. TOMBERLIN, JUDGE
3 A.M. SESSION
4 (Appearances as heretofore mentioned.)
5 (Shawna Manning, Official Reporter, CSR No. 12827.)

6 -oOo-

7 (Whereupon the following proceedings were held outside
8 the presence of the jury:)

9 THE BAILIFF: Remain seated. Come to order.
10 Court is now in session.

11 THE COURT: Back on the record in the case of
12 People of the State of California versus John Henry
13 Yablonsky without the jury. Mr. Yablonsky's here with
14 Mr. Sanders. Mr. Thomas is here for the People.

15 What is it?

16 MR. THOMAS: Good morning, your Honor. A
17 couple things that we need to put on the record that I
18 was going to put on the record last week but the Court
19 needed to leave. There is another case that happened
20 about two months prior to this where a 63-year-old
21 woman was raped and murdered.

22 THE COURT: We did talk about this some. Is
23 this going to have to do with your opening statement
24 first thing this morning?

25 MR. THOMAS: I don't want to forget about it.
26 It will be quick.

27 THE COURT: I have a jury waiting.

28 MR. THOMAS: I know. Then we have to do

1 another motion regarding --

2 THE COURT: If you're not going to mention
3 this in the opening statement, let's talk about this
4 other murder later.

5 MR. THOMAS: Okay.

6 THE COURT: I don't see why we have to worry
7 about forgetting about it. What's the name of the
8 person?

9 MR. THOMAS: Helen Brooks.

10 THE COURT: What other motion?

11 MR. THOMAS: Then I know Mr. Sanders made a
12 motion last week to have the witnesses excluded from
13 the courtroom prior to their testimony. 1102.6 of the
14 Penal Code --

15 THE COURT: He made a motion to have them
16 excluded period --

17 MR. SANDERS: Right.

18 THE COURT: -- is what he actually moved.
19 Now, the evidence code section?

20 MR. THOMAS: Penal Code Section 1102.6.

21 THE COURT: 1102.6. Did you show that to
22 Mr. Sanders?

23 MR. THOMAS: I know that he's aware -- if you
24 want to look at this --

25 THE COURT: Go ahead.

26 MR. THOMAS: Under that section, it allows
27 two members of the victim's family to be present
28 during the court proceedings. The Court has

1 discretion as to whether or not to exclude them, but
2 as far as the statute goes, there has to be a hearing
3 and the victim's family members are allowed to speak
4 at that hearing. The Court has to go through a
5 weighing or balancing process.

6 In order to speed that up, the People's
7 position on it is we are requesting they be allowed in
8 after opening statements are done and they have gotten
9 up on the stand and testified, and that way there can be
10 no issues as far as the defendant's right to a fair
11 trial because they've already testified by the time
12 they're allowed back into the courtroom.

13 THE COURT: You don't have a problem with
14 that; do you?

15 MR. SANDERS: I don't.

16 THE COURT: That's fine. That's what -- the
17 way you stated it the first time was that he made a
18 motion to exclude them until they testify. That's
19 usually something that happens, and you don't call
20 them before -- excuse me, you don't have them sitting
21 here while you call other witnesses. If they're not
22 going to be here until after they testify, that solves
23 any problems.

24 MR. THOMAS: They're going to be the first
25 two witnesses that I call.

26 MR. SANDERS: They'll be able to stay after
27 they have testified.

28 THE COURT: After what?

1 MR. SANDERS: After they have testified.

2 THE COURT: Right. As far as I'm concerned,
3 there's no reason they shouldn't be here during the
4 opening statement.

5 What are they going to testify to? The fact
6 that she's dead?

7 MR. THOMAS: There's stuff.

8 THE COURT: Is it really going to be an
9 issue, in any event, Mr. Sanders?

10 MR. SANDERS: It's possible that there is,
11 your Honor.

12 MR. THOMAS: I don't want that to be an
13 issue.

14 THE COURT: Then we'll spend no more time on
15 it. Please bring the jury.

16 MR. THOMAS: Can I have five minutes to set
17 up?

18 THE COURT: You can, of course. I'm going to
19 give you that time, but I don't know why you weren't
20 here five minutes ago to set up because the jury was
21 told to be here at 9:00. You were here when I told
22 them to be here at 9:00. It seems that this is not
23 paying much attention to common courtesy that this
24 Court feels it owes the jury. I can't pay the jury
25 that common courtesy without your cooperation.

26 MR. THOMAS: I apologize.

27 (Whereupon there was a
28 pause in proceedings.)

1 (Whereupon the following proceedings were held in open
2 court in the presence of the jury:)

3 THE BAILIFF: Remain seated. Come to order.
4 Court is now in session.

5 THE COURT: Good morning, everyone. I hope
6 you all had a nice weekend. Welcome back to
7 Department 2 where we're going to continue now with
8 the trial. This is the phase of the trial that's
9 called the People's case in chief. We're going to
10 start with the opening statements of the attorneys.

11 Mr. Thomas, I know, will make one. Mr. Thomas
12 is here for the People along with Detective Alexander,
13 his investigating officer. Mr. Sanders may make an
14 opening statement, but as I explained before during jury
15 selection and also during instructions that I started
16 off with, because Mr. Yablonsky -- who's present along
17 with Mr. Sanders -- is presumed innocent, he doesn't
18 have to prove to you that he's not guilty. Mr. Sanders
19 may make an opening statement, but he may not. It will
20 be up to him to decide if he wants to make one. If he
21 does, it will be at this time or at the end of the
22 People's case in chief.

23 Mr. Thomas, you may proceed.

24 (Whereupon opening statements commenced, were reported,
25 but are not transcribed herein.)

26 (Whereupon the following proceedings were held in open
27 court in the presence of the jury:)

28 THE COURT: Call your first witness.

1 MR. THOMAS: The People call Daryl Kraemer.

2 THE CLERK: You do solemnly state that the
3 evidence you shall give in the matter pending before
4 this Court shall be the truth, the whole truth, and
5 nothing but the truth, so help you God?

6 THE WITNESS: I do.

7 THE CLERK: Thank you. Please be seated.

8 THE BAILIFF: Slide yourself forward. Speak
9 directly towards the microphone. Keep your voice up,
10 please. Please state your full name and spell it for
11 the record.

12 THE WITNESS: Daryl B. Kraemer D-a-r-y-l
13 B-r-e-n-t K-r-a-e-m-e-r.

14 THE COURT: Good morning, Mr. Kraemer.

15 THE WITNESS: Good morning.

16 THE COURT: Your witness, Mr. Thomas.

17 MR. THOMAS: Thank you, your Honor.

18

19 **DARYL KRAEMER**, having been duly sworn,

20 testified as follows:

21 **DIRECT EXAMINATION**

22 BY MR. THOMAS:

23 Q Before we get started, I wanted to go over a
24 conviction you suffered in 1992 for a felony.

25 Do you recall that?

26 A Yes, I do.

27 Q It was for possession of a controlled substance
28 or substances with intent to manufacture

1 methamphetamine; is that correct?

2 A That's correct.

3 Q Violation of Health and Safety 11338, and you
4 were convicted of a felony in that case?

5 A Yes, I was.

6 Q That was here in the San Bernardino courts?

7 A Yes.

8 Q Then you were also sentenced to three years
9 state prison?

10 A Yes.

11 Q That's your only conviction that you've
12 suffered?

13 A Yes.

14 Q In this particular case, I'm going to show you
15 a photograph.

16 May I approach the witness, your Honor?

17 THE COURT: You may.

18 BY MR. THOMAS:

19 Q I'm going to show you a photograph. It's been
20 marked Exhibit 35. It's up on the screen.

21 Do you recognize that person?

22 (Whereupon Exhibit 35 was marked
23 for identification.)

24 THE WITNESS: Yes, I do.

25 BY MR. THOMAS:

26 Q Who is that?

27 A This was my mother, Rita Cobb.

28 Q Do you recall your mother's birthday?

1 A February 23rd, I believe, 1930.

2 Q So at the time that your mom was murdered, she
3 was 55 years old?

4 A Yes.

5 Q Take us to the time period just before you
6 found out your mom was murdered. What was your
7 relationship like with your mom at that point?

8 A We had a good relationship. We were the
9 only -- it was her and I. We were originally from
10 Canada. We were the only ones that had each other here.
11 I have no brothers or sisters. We had our good times.
12 We had our bad times, but we always stayed in contact.
13 If we had an argument, sometimes we wouldn't see each
14 other for a little while. Then it would blow over, and
15 we'd get back together. I lived with her a period of
16 time.

17 Q And had you been over to her residence on
18 several occasions?

19 A Yes.

20 Q I'll show you an exhibit that's been marked
21 Exhibit 1.

22 Do you recognize that?

23 (Whereupon Exhibit 1 was marked
24 for identification.)

25 THE WITNESS: I recognize it as the house.

26 BY MR. THOMAS:

27 Q That's the house your mom, Rita, lived in?

28 A Yes.

1 Q And then if you notice, I'm going to point it
2 out with a laser pointer, there appears to be a garage
3 on the right-hand corner of the photograph.

4 Do you see that?

5 A Yes, I do.

6 Q Okay. Do you also see the car that -- what
7 appears to be a vehicle inside the garage?

8 A Yes.

9 Q Is that your mom's vehicle?

10 A Yes, I believe it was her Cadillac.

11 Q Was that the only vehicle that she owned at the
12 time back in 1985?

13 A As I recall, she maybe had a Jeep, an old
14 armory Jeep.

15 Q I think I have that in one of the photographs.
16 Let me pull that up. I'm going to show you what has
17 been marked Exhibit 8.

18 Looking at Exhibit 8, do you see what appears
19 to be a Jeep just to the right of center of the
20 photograph?

21 (Whereupon Exhibit 8 was marked
22 for identification.)

23 THE WITNESS: Yes.

24 BY MR. THOMAS:

25 Q Is that the Jeep that you're talking about?

26 A Yes.

27 Q I'm going to show you another photograph that's
28 been marked Exhibit 2. It might be better for me to

1 bring it up there.

2 May I approach the witness?

3 (Whereupon Exhibit 2 was marked
4 for identification.)

5 THE COURT: You may.

6 BY MR. THOMAS:

7 Q Looking at Exhibit 2, do you notice to the
8 right and behind the main house there appears to be
9 another structure? Do you see that?

10 A Yes.

11 Q And using the laser pointer to point to that
12 structure, is that a second house kind of?

13 A Yes, it was a guest house.

14 Q Back in 1985 when Rita was murdered, did you
15 know if anybody was staying in this guest house?

16 A At that time, no, I don't recall anybody
17 staying there.

18 Q Show you another photograph that's been marked
19 Exhibit 9.

20 Do you recognize this photograph?

21 (Whereupon Exhibit 9 was marked
22 for identification.)

23 THE WITNESS: I recognize it as the guest
24 house.

25 BY MR. THOMAS:

26 Q Is that the front? Rear? From what you can
27 recall.

28 A The part -- that would be the side view. This

1 would be the back, and that would be the front.

2 Q There's a laser pointer up there. Maybe you
3 can use that laser pointer to explain to the jury where
4 the front would be on there.

5 A The front would be on the other side of this.
6 I believe this was a water heater. The front would be
7 around the side there. This was the sliding side door
8 that would face the, I believe it would be the east.

9 Q Just for the record, you used the laser pointer
10 to direct the jury's attention to the right-hand side of
11 the photograph, and on the other side of that right-hand
12 side is where you're indicating that the front of the
13 guest house would have been?

14 A Correct, around that side.

15 Q Okay. Prior to you finding -- prior to you
16 going over to your mom's house and finding your mom's
17 body, when was the last time that you saw your mother?

18 A I believe it was a month, month and a half.

19 Q Had you spoken to your mother prior to that?

20 A Prior to the month and a half?

21 Q During that month and a half that --

22 A I don't recall speaking to her between that
23 month and a half up until the time she was murdered.

24 Q And then as far as any phone calls, did you
25 receive any phone calls from your mother prior to her
26 murder?

27 A I believe over the years, what stays in my
28 mind, there was -- I had a message on an answering

1 machine stating she needed to talk to me. She was
2 worried about something or worried about somebody. I
3 don't recall exactly what it was, but I believe -- it
4 might have been that I talked to her, but what stays in
5 my mind all this time is that there was something on an
6 answering machine.

7 Q And you recall being interviewed by
8 Detective Tuttle (phonetic) back in -- on September 23rd
9 of 1985?

10 A Yes.

11 Q Okay. And this interview took place after you
12 had located your -- or found your mom's body in the
13 residence?

14 A Yes.

15 Q And during that interview -- have you had a
16 chance to look over that interview?

17 A Yes, I have.

18 Q And during that interview, did you ever mention
19 to -- or is it in there that you ever mentioned getting
20 that message?

21 A No.

22 Q So this is something that you're remembering
23 years later?

24 A Yes. It was years later. That's like a
25 concern of why I wanted to talk to her that weekend.

26 Q Okay. Did you attempt to talk to her that
27 weekend prior to September 23rd of 1985?

28 A From what I recall, I was attempting to call

1 her Friday, Saturday -- at least Saturday and Sunday.
2 When there was no answer at her home, I called her work
3 on Monday or called her work on Monday, and she hadn't
4 appeared -- come to work that day.

5 Q That's the reason that you eventually went over
6 to your mom's residence on September 23rd of 1985?

7 A Yes.

8 Q Do you recall approximately what time you went
9 over to the residence?

10 A I believe it was in the morning. It was
11 approximately 11:30 in the morning I arrived there.

12 Q Okay. When you arrived. Do you recall what
13 vehicle you were driving?

14 A I believe we had a Monte Carlo.

15 Q When you say we had a Monte Carlo, who's the we
16 that you're speaking about?

17 A At the time it was my -- my present wife,
18 Marta Kraemer.

19 Q Was she your wife at that time?

20 A No.

21 Q You were boyfriend/girlfriend?

22 A Boyfriend/girlfriend living together.

23 Q So when you showed up at the residence, where
24 exactly did you park at the residence?

25 A I recall parking behind her car that was parked
26 in the garage -- parked in her garage.

27 Q I'm going to show you what has been marked
28 Exhibit 3.

1 Is that about the location where you parked
2 your Monte Carlo?

3 (Whereupon Exhibit 3 was marked
4 for identification.)

5 THE WITNESS: Yes.

6 BY MR. THOMAS:

7 Q It would have been directly -- would it have
8 been directly behind your mom's Cadillac?

9 A I recall being in the driveway, in this area.

10 Q Okay. If you can orientate us, how far away is
11 the house from the main road?

12 A Well, the property was five acres, and the
13 house sat directly at the back of the five acres.

14 Q And then as far as the address of the house, do
15 you recall the address?

16 A Something to the effect of 25435 Highway 18, I
17 believe it was.

18 Q That's in Lucerne?

19 A In Lucerne Valley, yes.

20 Q That's within the county of San Bernardino?

21 A Yes.

22 Q How long had your mom been living there at that
23 residence?

24 A From what I can recall, approximately 1978.

25 Q Was she living there alone as far as you knew?

26 A She was living there with her husband at the
27 time, Jim Cobb.

28 Q Now, fast forward to 1985, was she living there

1 alone or was Jim still living there?

2 A She was living there alone. From what I
3 recall, he died in approximately 1981, 1980.

4 Q So you go to the house. Did you think it was
5 unusual at all that the garage door was open and the car
6 was in the garage?

7 A Well, I thought it was -- it seemed normal that
8 the garage door was open. Sometimes she would close it.
9 From what I can recall, it was open if she was going to
10 be home.

11 Q Okay. So the fact that the garage door was
12 open and her car was in there, that didn't throw up any
13 red flags or anything like that?

14 A No.

15 Q So as far as the garage goes, how did you enter
16 the house?

17 A We entered the house through the door that was
18 right here in the garage that led into the kitchen area.

19 Q I'm going to show you a photograph that's been
20 marked Exhibit 4.

21 Do you recognize the -- what's depicted in
22 Exhibit 4?

23 (Whereupon Exhibit 4 was marked
24 for identification.)

25 THE WITNESS: Yes.

26 BY MR. THOMAS:

27 Q What is that?

28 A That would be the door that entered into the

1 side of the house through the kitchen.

2 Q That's your mom's car that's in the bottom
3 right-hand corner of the photograph?

4 A Yes.

5 Q You were using the laser pointer to point to a
6 door in the center of the photograph?

7 A Yes.

8 Q So when you entered the door, was it closed?
9 Open?

10 A It was closed.

11 Q Do you recall if it was locked? Unlocked?

12 A I don't recall if it was locked or unlocked.
13 From what I recall, it was unlocked.

14 Q Do you recall telling the detectives back in
15 1985 that you don't know if the door was locked or
16 unlocked, but you used your key to enter the residence?

17 A Yes, after reviewing that, yes.

18 Q And your memory of events would have been more
19 fresh in your mind back in 1985, specifically
20 September 23rd of 1985?

21 MR. SANDERS: Objection, your Honor.
22 Leading.

23 THE COURT: It's foundational. It's
24 overruled.

25 BY MR. THOMAS:

26 Q Specifically, September 23rd of 1985, than they
27 are today; right?

28 A Yes, my memory would be better then, yes.

1 Q Okay. So you enter the house. What, if
2 anything, did you observe or hear?

3 A When we went into the house I noticed all the
4 drapes were closed.

5 Q Let's stop right there. You noticed all the
6 drapes were closed. Was that unusual?

7 A Yes, we found that unusual.

8 Q Okay. And why is that?

9 A Because my mother always left the drapes open,
10 the curtains open. She enjoyed the view. Just kind
11 of -- the way she lived. She didn't make a habit of
12 closing curtains before she went to bed.

13 Q So as far as the drapes go, was there anything
14 else that you noticed when you walked into the house?

15 A The first thing was the odor.

16 Q Okay. And this odor that you're speaking of,
17 what did it smell like?

18 A Well, it smelled like the septic tank backing
19 up or something dead.

20 Q Okay. And so that was unusual?

21 A Yes.

22 Q Was there anything else that you noticed when
23 you walked in?

24 A It was very hot, hot room -- the house was very
25 hot.

26 Q This is sometime middle/late September. Do you
27 recall if it was hot outside that day?

28 A The temperature at that time was -- it was like

1 summer. It was very warm.

2 Q Okay. So are we talking like 80 degrees or
3 higher?

4 A Yeah, at least 80 degrees, yes.

5 Q Okay. And then as far as inside the house, did
6 your mom have some air conditioning or some way to cool
7 down the house?

8 A Yes.

9 Q And what was the method that she used?

10 A Swamp cooler.

11 Q Okay. Did you at any point check if the swamp
12 cooler was on or whether or not it was malfunctioning?

13 A The swamp cooler was not on.

14 Q Did you check anything regarding the heat
15 because you said it was really hot? Was it hotter than
16 outside or --

17 A Yes, it was hotter than outside. The heater
18 was on.

19 Q So you actually checked the heater and saw that
20 it was on?

21 A Yes, we had to turn the heater down.

22 Q And when you say we had to, you're referring to
23 Marta?

24 A Correct.

25 Q Okay. When you went inside the house, were you
26 together at that point?

27 A Yes, one -- I believe I was probably the first
28 one to go through, and she was right behind me.

1 Q Okay. Nobody else was with you at that point?

2 A No.

3 Q And then I notice in your interview back in
4 1985 with Detective Tuttle that there was no mention of
5 the heat being on.

6 Did you see that in the report?

7 A Yes.

8 Q Was that something that you told
9 Detective Tuttle back in 1985?

10 A No, it wasn't.

11 Q Okay. That's something you still remember as
12 being in the house?

13 A I remember that this whole time.

14 Q As far as the details that you gave
15 Detective Tuttle, did you give him every single detail
16 when you were interviewed?

17 A Every detail I could remember at that time. I
18 was pretty much in a state of shock.

19 Q You said you were in a state of shock. That's
20 because you discovered your mom's body that same day?
21 In fact, hours before you were interviewed, you
22 discovered your mom's body?

23 A Yes.

24 Q So you walk in. You notice the heat's on. Is
25 that something that you do prior to walking -- or you
26 turn off the heat prior to walking around the house
27 looking for your mom?

28 A We didn't even -- from what I recall, we didn't

1 do that. That was done after we saw her body.

2 Q Okay. When you entered the house, did you call
3 out for your mom?

4 A I don't recall calling out. I recall pretty
5 much walking straight into the -- into the bedroom.

6 Q When you walked in towards the bedroom -- let
7 me see if I can pull up a -- I'm going to show you
8 what's been marked Exhibit 39.

9 May I approach the witness?

10 THE COURT: You may.

11 BY MR. THOMAS:

12 Q Showing you what has been marked Exhibit 39, do
13 you see the door that you entered in Exhibit 39?

14 (Whereupon Exhibit 39 was marked
15 for identification.)

16 THE WITNESS: Yes, it was that door.

17 BY MR. THOMAS:

18 Q You're pointing to a door at the bottom
19 right-hand corner of the exhibit?

20 A Right, from the garage.

21 Q Okay. It's a door leading from the -- what's
22 marked garage to the main residence?

23 A Correct.

24 Q Okay. And then as far as the path that you
25 took to get to your mother's bedroom, what path did you
26 take? Maybe you can use the laser pointer to --

27 A Walked through the kitchen, made a right-hand
28 turn and straight into her bedroom this way.

1 Q You're indicating with the laser pointer you
2 walked, I believe it would be, to the east from the
3 garage. If you look at the bottom of the exhibit, there
4 appears to be north, south, west, east.

5 Do you see that?

6 A Right.

7 Q So you're walking east from the garage area.
8 Then at some point you walk south down that hallway in
9 the center of the exhibit, and then your mother's
10 bedroom is in the right-hand -- upper right-hand corner
11 of the exhibit; is that correct?

12 A Correct.

13 Q So as far as the path that you took, where's
14 the heater and the swamp cooler at?

15 A The swamp cooler would have been -- I believe
16 this area in the living room. The swamp cooler was -- I
17 believe that was probably the swamp cooler.

18 Q You're pointing to a box just outside the
19 portion of the residence in the upper left-hand corner
20 of Exhibit 39; is that correct?

21 A Correct. I'm assuming that's the swamp cooler.

22 Q Then the room that's on the interior of the
23 residence that you described as being a living room
24 area?

25 A Living room area there.

26 Q Where's the heater?

27 A From what I recall, it was -- I believe it
28 would have been this area.

1 Q So it would have been in the hallway area?

2 A From what I recall.

3 Q Okay. And it would have been just north of
4 your mother's bedroom?

5 A Yes.

6 Q So once you get to the bedroom -- prior to
7 getting there, did you notice if anything was disturbed
8 in any way like somebody had been ransacking the
9 residence at some point or did everything appear to be
10 normal to you?

11 A Everything appeared to be normal from what I
12 can recall.

13 Q So you get to your mother's bedroom. What do
14 you see when you get to your mother's bedroom?

15 A I see my mother lying on the bed. From what I
16 recall, leg propped up. I went pretty much into shock
17 at that period of time. It's been really hard for me to
18 visualize what I saw then.

19 Q Did you notice whether or not your mother had
20 any clothing on?

21 A No, I don't remember her having any clothing
22 on.

23 Q Then other than that, was there anything else
24 that you could remember about your mother's body?

25 A Not other than she was laying there, and I saw
26 her dead, appeared to be dead for a period of time. I
27 just pretty much basically went into shock, just broke
28 down.

1 Q When you say you broke down, are you talking
2 about crying?

3 A Crying.

4 Q Did you go into the bedroom at any point to
5 actually see if your mother had a pulse or anything like
6 that?

7 A No, I -- no.

8 Q So you saw her about from the doorway?

9 A I believe I went into the room.

10 Q Did it appear that the room had been ransacked
11 in any way that you can recall?

12 A At that time, no, it didn't appear to be
13 ransacked that I can recall at that point.

14 Q Let me ask you this: Did you touch anything or
15 touch your mom's body?

16 A No, I don't believe I touched her body, no.

17 Q At that point when you saw your mom's body, was
18 Marta there with you?

19 A She was behind me, I believe.

20 Q And then what did you do at that point?

21 A I broke down, and I screamed. I screamed, and
22 I believe, oh, no, she's done it. She's killed herself.

23 Q And as far as your belief that she killed
24 herself, that wasn't based on what you saw at the scene;
25 right?

26 A No.

27 Q That was a belief that you had based on your
28 experiences with your mom?

1 A Yes, because she'd been so lonely and
2 despondent.

3 Q As far as you said you broke down, you
4 screamed, what did you do at that point after?

5 A From what I can recall, I ran out of the
6 residence. From what I can recall, I looked up in the
7 sky and just yelled out, why. That's the -- at that
8 point I was in a state of panic. A lot of things have
9 been blacked out in my mind about that.

10 Q Is it fair to say that a lot of emotions were
11 going through you at that point?

12 A Extremely.

13 Q You were extremely emotional?

14 A Oh, extremely.

15 Q What was Marta doing at that point if you can
16 recall?

17 A Then it was the point that I believe that she
18 had gone in and seen, and at some point -- I don't
19 recall how everything went. She attempted to open up
20 the window because the smell was so overwhelming.

21 Q Did you notice if the windows were opened?
22 Closed?

23 A From what I recall, the windows were closed.

24 Q So you run outside. Does Marta run outside
25 with you?

26 A From what I can recall, I told her to call --
27 call the sheriff's department. Call somebody.

28 Q And at that point you had no idea that your mom

1 had been murdered?

2 A At that point, no.

3 Q And so you call -- or you tell Marta, call the
4 sheriff's department. Call somebody.

5 What did you do at that point?

6 A Well, almost to that point, she came out and --
7 from what I can recall, she came out and said something
8 to the effect that, it's more than that. It appears
9 that somebody's been here.

10 Myself, what I had done is my first thought was
11 having her call somebody, and the first person I could
12 think of is I wanted to go to John Sullivan's house.

13 Q Who is John Sullivan?

14 A John Sullivan is a very close personal family
15 friend, and he -- my mom would associate with him and
16 his wife quite often. He would come down, had for many
17 years, at least the past five years, would come down and
18 help fix the house if she needs something done or -- and
19 he was just the first person I could think of. I jumped
20 in my car, and I was just despondent, and I don't even
21 remember driving up there, but I got in my car and
22 backed out of the driveway, drove around the driveway
23 and drove up to his house.

24 Q Where's his house in relation to your mom's
25 house?

26 A It was a couple miles up the road at a place
27 called Mini Springs Ranch.

28 Q As far as that drive, is it a dirt road? Paved

1 road?

2 A It was a paved road back out on Highway 18
3 towards Big Bear.

4 Q Is it just right off the highway, or do you
5 have to take other side roads?

6 A No. It's pretty much right off the highway.

7 Q So it's kind of like your mom's house?

8 A Right, correct.

9 Q That's about three miles up the road you said?

10 A Approximately.

11 Q So did Marta go with you at that point?

12 A No.

13 Q So you take off. Does she even know where
14 you're going? Did you tell her, I'm going to
15 John Sullivan's?

16 A I told her, I got to find John. I got to go
17 get John. I got to go get John.

18 Q And you said the reason you went to go get John
19 is because John's a close family friend of your mom's?

20 A Yes.

21 Q Did it occur to you at any point during the --
22 this whole incident that there could still be somebody
23 inside the house or was that something that didn't even
24 cross your mind?

25 A Didn't even cross my mind other than just went
26 crazy in shock.

27 Q And then you go over to John Sullivan's house.
28 What did you do over at John Sullivan's once you get

1 there?

2 A He's not home. From what I recall, I was
3 yelling in his yard, still looking up at the sky going,
4 why, and I jump back in the car and went back to the
5 house, which seemed like minutes to me.

6 Q I assume during this time period, you were
7 crying at this point?

8 A Oh, yes.

9 Q You go back to the house. This time where do
10 you park the car when you get back?

11 A From what I recall, I parked in the same
12 location, behind her Cadillac.

13 Q And then once you parked the car, did you go
14 back in the residence? What did you do?

15 A Yes, went back inside the residence.

16 Q Where was Marta at this point?

17 A I don't recall where she was at. I recall
18 asking her if she called, you know, the authorities, and
19 she had called the fire department -- she said the fire
20 department was on their way. I don't recall exact
21 statements.

22 Q Then when you go back inside the house, did you
23 go back to the bedroom area where you discovered your
24 mom's body?

25 A I don't recall. I might have gone back in and
26 looked again. It's hard for me to recall exactly what I
27 did in what order.

28 Q Then let me ask the question I did before. At

1 this point did you ever touch your mom's body the second
2 time when you were at the house?

3 A I don't believe I ever touched her body.

4 Q Did you notice anything about her body the
5 second time that you went into the room that you didn't
6 notice the first time?

7 A Not that I can recall.

8 Q And based on your personalty, would that be
9 something that you would have done or something that you
10 wouldn't want to even do or think about?

11 A About touching her?

12 Q Touching her or looking at her body?

13 A I would have wanted to reach out and hold her,
14 but the visual of her decomposing, dead, she appeared to
15 be days -- it just -- it just -- I just couldn't do it.

16 Q Then as far as the windows, do you recall when
17 you went back to the residence if the windows were open
18 at this point?

19 A I believe maybe Marta had tried to open up a
20 window. I remember trying to open up windows. We
21 opened up a curtain, but the smell was so bad that
22 that's what -- we naturally did that.

23 Q And then you turned the heat off before you
24 left for John Sullivan's house?

25 A I don't recall if it was then or after I got
26 back. I don't recall.

27 Q Okay. But at some point you do recall?

28 A At some point I do recall, yes, we did that.

1 Q Do you recall a radio being on at any point?

2 A I vaguely recall talking with my wife that --
3 that, yeah, the radio was on very loud in the living
4 room and she had to turn it off in order to make phone
5 calls.

6 Q But that's something that you specifically
7 don't have any recollection of, yeah, I remember for
8 sure that the radio was on?

9 A Myself, I don't recall.

10 Q Is that something that Marta recalls?

11 A Yes.

12 Q As far as the swamp cooler being off and the
13 heater being on, that's something that you specifically
14 recall?

15 A I don't recall which manner we did. I believe
16 we started doing that after -- after we -- were making
17 some of the phone calls before anybody arrived.

18 Q Had you ever been over to your mom's place
19 during the summer months where she had the heater on at
20 any point?

21 A In the summertime, at that time, no.

22 Q That's because it's hot outside?

23 A It was hot out.

24 Q When you entered your mother's bedroom the
25 second time that you were at that house, after you went
26 over to John Sullivan's, did you notice anything about
27 the room or the house that you thought, this is strange
28 or unusual?

1 A No, didn't -- didn't -- didn't appear that
2 there was a fight or anything disturbed from what I can
3 recall.

4 Q You didn't see anything that caused you to
5 believe that the house had been ransacked at some point?

6 A No.

7 Q Were there any items of value that you saw just
8 laying out in the open?

9 A I believe we saw -- my wife recalls more than I
10 do. Her purse was there. Her car keys were there. I
11 believe she had a ring that was there.

12 Q Show you a photograph that's been marked
13 Exhibit 10.

14 May I approach the witness?

15 THE COURT: You may.

16 BY MR. THOMAS:

17 Q Show you Exhibit 10. It's also up on the
18 screen.

19 Do you recognize that?

20 (Whereupon Exhibit 10 was marked
21 for identification.)

22 THE WITNESS: Yeah, I recognize it as a ring.

23 BY MR. THOMAS:

24 Q Do you recognize the ring itself?

25 A Well, I recognize it as the ring. I believe my
26 wife wears it now.

27 Q As far as that particular ring, it's on top of
28 what appears to be a table of some sort.

1 Do you see that?

2 A Yes.

3 Q Would that be one of the night stands or night
4 tables next to the bed?

5 A Yes, I believe it was.

6 Q At any point either the first time or the
7 second time when you were going through the house, did
8 you notice if any of the windows, doors, or any opening
9 from the outside were forced open or pried open?

10 A No.

11 Q So you didn't notice any of that?

12 A No. There was nothing -- everything was
13 unlocked.

14 Q Was it unusual for your mom to keep everything
15 unlocked?

16 A Yes, she made a habit of that, not locking the
17 place up.

18 Q Were there any times where she would lock the
19 place up?

20 A When she would leave, go to work, go to town.

21 Q But if she was home, it was not unusual for her
22 to leave everything unlocked?

23 A No, that was not unusual.

24 Q Did your mom have any animals or pets?

25 A Yes, she had a dog.

26 Q Let me ask you about the dog. Was the dog
27 present when you arrived there the first time?

28 A From what I recall, he was there running around

1 outside.

2 Q When you say outside, where are we talking
3 about? Here. I'll put the diagram back up, Exhibit 39.
4 Okay.

5 Looking at that exhibit, Exhibit 39, where was
6 the dog in relation to the residence?

7 A Up in the front porch area where he usually
8 was -- if he was around, he'd be on the front porch by
9 the front door.

10 Q So when you drove up, you saw him on the front
11 porch area?

12 A Yeah, then he would get up, come out barking.

13 Q Okay. And were you familiar with your mother's
14 practices as far as if the dog was allowed inside the
15 house or where the dog was kept during the night hours
16 or anything like that?

17 A She, from what I recall, had the habit of
18 leaving the dog in the house when she was home at night.

19 Q Then when would the dog be outside?

20 A When she went to work or went to town or went
21 somewhere.

22 Q So when you go back inside the house, you go to
23 your mother's bedroom. You look in. What do you do
24 after that?

25 A From what I can recall, I picked up a phone. I
26 asked her if she called.

27 Q When you say you asked her, are you talking
28 about Marta?

1 A Right. If she called the authorities, anybody.
2 She said, yes, she called the fire -- the fire
3 department, or the fire department was on their way.
4 She talked to the -- maybe the sheriff's department. I
5 don't recall exactly how it went down, but I remember
6 then I called -- called them myself and told them what
7 was happening.

8 From what I recall, is that the dispatcher told
9 me to -- asked me if I touched anything. I said, yeah,
10 we opened windows. They said don't touch anything else
11 and get out of the house. That's what we did.

12 Q All right. And you've already explained to us
13 your demeanor as far as you being extremely emotional at
14 that point.

15 Could you describe Marta's demeanor for us?

16 A I think she was holding it together better than
17 I was.

18 Q Was she crying?

19 A Yeah, we were both crying.

20 Q But as far as the emotional aspect, you would
21 characterize yourself as being more emotional than Marta
22 was?

23 A Oh, yes, yes.

24 Q And then -- so you get off the phone. Was it
25 the sheriff's department or you don't remember?

26 A I don't recall.

27 Q And they tell you you have to get out of the
28 house. At that point did you follow what they told you

1 and leave the residence?

2 A Yes. I yelled to Marta to get out of the
3 residence. They told us not to touch anything, to get
4 out. That's what I recall.

5 Q Do you recall how you exited the residence?

6 A I don't recall if we went out the front door or
7 it could have been the garage. I don't recall.

8 Q Just for the record, you pointed to the door
9 that's in the bottom left-hand corner of Exhibit 39.

10 That's the front door that you were pointing
11 to?

12 A Right. I don't recall which door.

13 Q That leads into the living room area?

14 A Yes, this was the living room area.

15 Q Okay. So approximately, if you had to
16 estimate, how long -- or how much time did you spend in
17 the house the first time that you were in there?

18 A Before I --

19 Q Before you went over to John Sullivan's?

20 A -- John Sullivan's. I don't recall. It was
21 seemed like minutes. I just don't recall it.

22 Q Would you estimate that it would be about the
23 same amount of time you spent the second time that you
24 went inside the residence?

25 A I would estimate probably the same. Probably
26 the same.

27 Q Then as far as you leaving the residence,
28 what's the next thing that happened while you're outside

1 the residence?

2 A I believe we moved the car, after reviewing the
3 statement, moved the car down to the highway so they
4 could find out where the house was. We had a hard time
5 giving out an address at that time.

6 Q Okay. This is kind of a rural area. How would
7 you describe it?

8 A Rural area.

9 Q Okay. As far as the car, you're talking about
10 your Monte Carlo?

11 A Correct. I don't remember exactly doing that,
12 but reviewing a little bit of the statement, I guess
13 that's what we did.

14 Q And was it you that did it or was it Marta or
15 you don't remember?

16 A I really don't recall.

17 Q At some point the car's moved. Do people start
18 showing up at some point?

19 A At that point I believe the paramedics showed
20 up.

21 Q And then how long were you outside before the
22 paramedics showed up?

23 A I don't recall. Once that -- once they told us
24 to get out, don't touch anything else, get out of the
25 house, it didn't seem like it was very long after that.

26 Q Matter of minutes?

27 A Yes, from what I can recall.

28 Q When the paramedics show up, where's the dog at

1 this point?

2 A I don't recall.

3 Q As far as your mom's dog goes, if you know, was
4 it aggressive towards strangers?

5 A It would go out if somebody was pulling up or
6 trying to walk up. It would bark, which could be
7 intimidating.

8 Q But it would never attack somebody?

9 A No, never attacked anybody.

10 Q Okay. And as far as the clothing, your mom's
11 clothing was concerned, do you recall what type of
12 hangers she used to hang clothing?

13 A Metal hangers.

14 Q When you say metal hangers, you're talking
15 about wire hangers?

16 A Yeah, the wire hangers.

17 Q She didn't have those plastic hangers or
18 anything?

19 A Not that I recall. I almost recall nothing but
20 wire hangers.

21 Q Then approximately, you said, that it's -- you
22 already told us it's a rural area. Approximately how
23 far away was the closest neighbor to your mom's?

24 A Would have been the one right across
25 the highway.

26 Q So directly across the highway there's another
27 residence?

28 A Yes.

1 Q Do you recall who lived there?

2 A It was Don Stow (phonetic).

3 Q As far as that residence, was it also backed
4 away from highway 18?

5 A Not like my mother's was.

6 Q So your mom's was farther from the highway than
7 Don Stow's?

8 A Yes, it was the back of five acres, and his was
9 pretty much right on the highway.

10 Q So the paramedics showed up. Did you see where
11 they went or what they did?

12 A They went into the residence. They had to go
13 in and check to see if she could possibly be alive.

14 Q Did you go in with them at that point?

15 A No, I didn't.

16 Q Did you see Marta go in with them?

17 A I believe Marta started following them in, and
18 I believe I might have said to get out of the house.
19 Told us not to touch anything, not to go back in.

20 Q And then as far as your mom, you said that she
21 went to work. Do you know where she worked?

22 A Yes, she worked at Spring Valley Country Club.

23 Q That's Spring Valley Lake --

24 A Spring Valley Lake.

25 Q -- over here in Victorville? As far as your
26 mom's eye sight was concerned, did she have to wear
27 glasses or any type of prescription glasses or contacts?

28 A She wore glasses.

1 Q Okay. Is that something she had pretty much
2 every time that you would see her?

3 A Yes, pretty much all the time.

4 Q So if you went over to her house, she would
5 have her glasses on when she met with you?

6 A Yes, from what I can recall.

7 Q Then as far as her normal work hours at the
8 Spring Valley Lake Country Club or Golf Club, did she
9 have a normal work schedule that you knew of?

10 A I believe it was Monday through Friday 8:00 to
11 5:00, 8:00 to 4:00.

12 Q I'm going to ask; do you know that gentleman
13 seated next to the defense attorney, Mr. Sanders, in
14 this case?

15 A I know him now.

16 Q Back in 1985, did you know John Yablonsky?

17 A Not that I can recall.

18 Q Do you know of a person with the last name of
19 Yablonsky?

20 A Yes.

21 Q Who was that?

22 A That was his father.

23 Q That would be George Yablonsky?

24 A Yes.

25 Q And how did you know George?

26 A I've known George since when I first went to
27 Lucerne Valley, 1980 or 1981. Just knew him as a casual
28 relationship through living there.

1 Q So is it more of an acquaintance-type
2 relationship?

3 A It was an acquaintance. We drank together in
4 the bar. I believe we went to the Colorado River once.

5 MR. THOMAS: If I can have just a moment,
6 your Honor?

7 THE COURT: We'll take our morning recess,
8 ladies and gentlemen, 15 minutes. You're admonished
9 that it is your duty not to converse among yourselves
10 or with anyone else about any matter connected with
11 this case nor form or express an opinion on it until
12 it's submitted to you. 15 minutes.

13 (Whereupon a recess was taken.)

14 THE BAILIFF: Remain seated. Come to order.
15 Court is now in session.

16 THE COURT: Counsel approach.

17 (Whereupon the following proceedings were held at the
18 bench out of the hearing of the jury:)

19 THE COURT: Okay. Mr. Sanders.

20 MR. SANDERS: Yes, your Honor.

21 THE COURT: If you want to put something on
22 the record, tell me next time. I told Mr. Thomas in
23 this polite way that I need to have the cooperation of
24 not being rude to this jury. I'm not going to let you
25 or Mr. Thomas cause me to be rude to this jury. If
26 there's something you need to put on the record when
27 we're taking a break, say can we wait before we leave
28 in advance. Give me a heads up so I can tell the jury

1 something. I'm not going to leave them waiting.

2 MR. SANDERS: I'm going to object to the
3 opening statement and ask for a mistrial to be
4 declared on the grounds that Mr. Thomas referred to my
5 client's statement, which was not a statement against
6 interest, but may become a statement against interest
7 and has put me in a position that I have to put my
8 client on the stand.

9 THE COURT: Your client's statement is always
10 a statement against his interest.

11 MR. SANDERS: But it wasn't. It was like we
12 were talking about the other day when I wanted to put
13 in a guy's statement, and he said you want to put his
14 statement in.

15 THE COURT: Your client's a party to this
16 action. Anything he says is admissible against him.

17 MR. SANDERS: Yes, but the way that the DA
18 phrased it, I now have to put him on the stand because
19 of the manner in which he told the jury things.

20 THE COURT: Either he told the jury what your
21 client said or he didn't. If he told the jury your
22 client said something your client didn't say, that's
23 not grounds for a mistrial. That's grounds for you to
24 show he hasn't proven his case. If he told the jury
25 something your client said that your client did say,
26 then it's admissible. It's free game unless there's
27 an issue about admissibility, and I assume that you
28 wouldn't make a motion regarding violation of Miranda

1 at this point in the proceeding without having
2 mentioned it during our opportunity to have motions in
3 limine.

4 Am I wrong about that, the Miranda issue?

5 MR. SANDERS: No.

6 THE COURT: Mr. Sanders, whatever your client
7 said is totally fair game to reference by Mr. Thomas.
8 If he misquotes your client, then that's fodder for
9 you. If he quotes your client, that's what your
10 client has to deal with. If it happens that that
11 requires him to get on the witness stand, that's
12 something that happened long before you had an
13 opportunity to be involved. So your motion for a
14 mistrial is going to be denied.

15 MR. SANDERS: Thank you.

16 (Whereupon the following proceedings were held in open
17 court in the presence of the jury:)

18 THE COURT: Ladies and gentlemen, I'm sure
19 that you recall that I wear glasses and sometimes I
20 leave them in my chambers. I'm sure you recall that
21 we had on occasion during jury selection did things at
22 bench. When we can do something in a brief time, I'd
23 rather do that rather than excuse you and keep you
24 waiting in the hall.

25 Back on the record in the case of People of the
26 State of California versus John Henry Yablonsky, who is
27 here with David Sanders, his attorney. John Thomas is
28 here along with Detective Robert Alexander, and on the

1 witness stand is your first witness, Daryl Kraemer,
2 who's still under oath and still in direct examination.

3 You may continue, Mr. Thomas.

4 MR. THOMAS: Thank you, your Honor.

5 BY MR. THOMAS:

6 Q There was just a couple of questions I forgot
7 to ask you before the break.

8 Did you bring any items over? Did you or Marta
9 bring any items over to your mother's house?

10 A Not that I recall.

11 Q Do you recall some beer cans that were brought
12 over?

13 A I don't recall that.

14 Q I'm going to show you a photograph that's been
15 marked Exhibit 24.

16 Do you recall those beer cans that are depicted
17 in Exhibit 24?

18 (Whereupon Exhibit 24 was marked
19 for identification.)

20 THE WITNESS: No, I don't.

21 BY MR. THOMAS:

22 Q Do you ever recall talking with Detective McCoy
23 or any other detective and telling them that the 12-pack
24 of Coors beer belonged to you or was brought over by
25 you?

26 A I don't recall that.

27 Q Was Coors something that you would drink back
28 then in 1985?

1 A Yes.

2 Q So it may have been one of those situations
3 where you may have brought it over, but you don't
4 remember now?

5 A Yes, I don't recall that.

6 Q Do you recall if Marta brought anything over to
7 the residence?

8 A I don't recall.

9 Q Back in 1985, did you or Marta smoke?

10 A Yes.

11 Q What type of cigarettes did you smoke?

12 A Marlboro regulars.

13 Q What type of cigarettes did Marta smoke?

14 A I believe it was Virginia Slims.

15 Q Do you recall what type of cigarettes your mom
16 smoked if she smoked?

17 A Yeah, she smoked -- I don't recall. Something
18 like Virginia Slims, but I don't recall what it was.

19 Q Do you know if your mom smoked Benson Hedges?

20 A I don't recall what she was smoking at the
21 time.

22 Q Prior to going over to your mother's residence,
23 did you stop anywhere along the way?

24 A I believe it's Marta's recollection that we
25 stopped and she grabbed something to drink.

26 Q But I'm talking about your recollection. You
27 don't have --

28 A I don't recall stopping.

1 MR. THOMAS: Nothing further.

2 THE COURT: You may inquire, Mr. Sanders.

3 MR. SANDERS: Thank you, your Honor.

4 **CROSS-EXAMINATION**

5 BY MR. SANDERS:

6 Q Good morning, Mr. Kraemer.

7 A Good morning.

8 Q This date we're talking about, I believe you
9 said was the 23rd of September?

10 A Correct.

11 Q And that was in 1985?

12 A Yes.

13 Q All right. You had been trying to get ahold of
14 your mother for a couple of days; is that correct?

15 A Yes.

16 THE COURT: Mr. Sanders, will you pull that
17 microphone in front of you, please?

18 MR. SANDERS: Yes, sir. Is that better?

19 THE COURT: Sure. Can't be any worse.

20 BY MR. SANDERS:

21 Q I believe you said that you had not seen your
22 mother for four, five or six weeks, something like that?

23 A Approximately, yes.

24 Q All right.

25 THE BAILIFF: Try it now.

26 MR. SANDERS: Okay.

27 BY MR. SANDERS:

28 Q And my understanding was that you decided --

1 you made some phone calls to her home?

2 A Yes.

3 Q Do you remember the dates that you called her
4 that you were not able to get ahold of her?

5 A I believe it was that Saturday and that Sunday
6 and that Monday when I called her at work.

7 Q Okay. Was she supposed to have gone to work on
8 Sunday that week?

9 A No, her days off were Saturdays and Sundays.

10 Q So do you remember what time it was that you
11 tried -- started trying to call her on Saturday?

12 A I don't recall.

13 Q Could have been in the evening?

14 A I don't recall.

15 Q Okay. And you had not spoken to her before
16 that for four or five weeks?

17 A Yes.

18 Q All right. You indicated that she and you had
19 a good relationship most of the time; is that correct?

20 A Yes.

21 Q All right. I believe you had lived there at
22 that residence for a year or two earlier that decade;
23 correct?

24 A Yes.

25 Q Sometimes you guys would have arguments?

26 A Yes.

27 Q And I believe that the last time you had seen
28 her you and she had had a pretty good argument?

1 A Yes.

2 Q All right. So you'd stayed away a little
3 while, and now you were checking up on her and wanted to
4 talk to her again?

5 A Yes.

6 Q And I believe that you said that she had
7 contacted you at some point before the 20th?

8 A It's just something that stuck in my head. I
9 knew there was some kind of urgency that I call her that
10 weekend, and it's always stuck in my head that there was
11 an answering (sic) on my voice machine. I don't recall
12 how urgent it was, but from what I recall -- it stayed
13 with me all this time that she needed to talk to me;
14 that there was something bothering her or something.
15 She was worried about somebody, and that's what just
16 stayed in my head all these years. I believe there was
17 an urgency of why I wanted to get ahold of her that
18 weekend.

19 Q Do you remember how many days it was before
20 that weekend that you had gotten that call on your voice
21 mail -- on your telephone?

22 A I don't recall.

23 Q And she had -- was it a short message? Long
24 message?

25 A From what I'm thinking, it was a short message.

26 Q Just that she was having a problem or something
27 like that?

28 A Right.

1 Q No names were given?

2 A No.

3 Q You and Marta were together at that time; is
4 that correct?

5 A Yes.

6 Q The two of you got in the car and drove over,
7 and you believe you stopped along the way and Marta got
8 something to drink; is that correct?

9 A What I recall, I don't recall that.

10 Q Okay. And you didn't recall that box of Coors
11 beer; is that correct?

12 A No.

13 Q Okay. When the two of you drove, I understand
14 that your mother's house was a ways off of the road, a
15 hundred yards? Less?

16 A Probably more than that. It was back five
17 acres from the highway.

18 Q But you think it was maybe more than a hundred
19 yards to the house?

20 A Yeah. I would say more than a hundred yards.

21 Q And the driveway up to the house, was there
22 just one or was there a horseshoe, and it went out in
23 two places?

24 A It was a horseshoe drive.

25 Q It entered the road at two locations?

26 A Yes.

27 Q The top of the horseshoe would be in front of
28 the front porch?

1 A Yes.

2 Q So you were driving the Monte Carlo and you
3 pulled up behind her car; is that right?

4 A Yes.

5 Q And then you went into the house, and you
6 discovered what you discovered?

7 A Correct, yes.

8 Q I notice the prosecutor asked you a couple
9 questions about how your mother would use the heater and
10 the swamp cooler, and what she would do with windows and
11 things like that.

12 Are you fairly confident in the things you said
13 that she would have the drapes open every day when she
14 was there?

15 A Yes.

16 Q Okay. There never was a time she didn't do
17 that?

18 A Not when she was -- from what I can recall, she
19 always left them open.

20 Q Do you recall what the temperatures were back
21 then on the 23rd of September in Lucerne Valley?

22 A I recall that they were 75, 80 degrees outside.
23 It was just like summer just coming to an end.

24 Q What about at night?

25 A It wouldn't get -- it wouldn't get -- in my
26 opinion, it wouldn't get cool enough to turn on the
27 heater.

28 Q All right. Some people like the heater on when

1 other people wouldn't. Can you say for sure that your
2 mom wouldn't have turned on the heater?

3 A I don't believe she would turn on the heater
4 high.

5 Q Let me ask you this: Is it -- what was the
6 mechanism to turn the heat up?

7 A It was probably a dial.

8 Q And you turned it to a temperature?

9 A Yes.

10 Q If you wanted, you could set it at 70 or 80 or
11 85?

12 A Correct.

13 Q Do you remember what it was set on when you
14 came in the house?

15 A I don't recall what temperature it was set on,
16 no.

17 Q And you're not the one that turned it down; is
18 that correct?

19 A I don't believe -- it was Marta or I.

20 Q Okay. And did you open any of the windows?

21 A From what I -- I recall -- seems like what I
22 recall I tried to open windows.

23 Q All right. I understand that there are three
24 doors into the house; is that correct?

25 A The garage door, the front door, then there was
26 a sliding door.

27 Q Sliding glass door. Was that at the front or
28 the back?

1 A I know there was one on the side. I know when
2 you looked out towards the highway, you could see the
3 highway out there through like the sliding door, but at
4 this moment I can't recall if there was a sliding door
5 too, unless it was a big window.

6 Q Do you recall checking to see whether the front
7 door or the sliding door were locked when you were
8 there?

9 A From what all I can recall, is that all the
10 doors were unlocked.

11 Q Unlocked? I'm sorry. Were they locked or
12 unlocked?

13 A Unlocked.

14 Q Okay. Mr. Thomas asked you about what you
15 observed when you went into the house.

16 Do you have any recollection of seeing anything
17 that you thought was out of place?

18 A At that time, no. I don't recall seeing
19 anything that was out of place.

20 Q Your mother was a smoker; is that correct?

21 A Yes.

22 Q So it would not be unusual to have a pack of
23 cigarettes or ashtray or something like that?

24 A In the room?

25 Q Right.

26 A Yes, it wouldn't be unusual, no.

27 Q Okay. And when -- when you had lived there,
28 you said you noticed your mother always used the wire

1 hangers; is that correct?

2 A Yes.

3 Q Was she -- it was her habit when she would go
4 to bed -- was she the kind of person that liked to hang
5 her clothes up before she retired or would she put them
6 on the floor and put them away the next day?

7 A From what I can recall, I didn't see her hang
8 her clothes up every day. She dressed professionally to
9 go to work, and she took care of her clothes and hung
10 them up.

11 Q Did you notice any of her clothes on the floor
12 in the bedroom when you went in there?

13 A Not that I can recall.

14 Q Did your mother usually wear pajamas, if you
15 know?

16 A I don't recall.

17 Q Okay. Now, you spoke to the police and they
18 told you to go outside and wait; is that correct?

19 A That's correct.

20 Q You did that until they finished their work?

21 A Right.

22 Q Did you then go back into the house and look
23 around again?

24 A When they left?

25 Q Yes, when they were gone, maybe not that day
26 but --

27 A No, I stayed there in the house.

28 Q Okay. And you had more time and you were a

1 little bit more calm?

2 A Correct.

3 Q At that time did you try to take an inventory
4 to see if anything was missing?

5 A We looked around and nothing seemed -- appeared
6 to have been -- her ring was there, her purse was there.
7 Nothing appeared to be missing.

8 Q I think at some point you called the police and
9 told them that you found -- there was a gold chain that
10 was missing.

11 Do you remember that?

12 A After reviewing, I vaguely remember that.

13 Q When was it that you discovered that the gold
14 chain was missing?

15 A Well, I believe I thought it was a gold chain,
16 and we ended up discovering after this period of time
17 that that was not a gold chain; that it was a watch.

18 Q A watch that was missing?

19 A Yeah.

20 Q Okay. Did you call the police and let them
21 know there was a watch missing?

22 A Well, I believe from reading the statement that
23 it was a chain.

24 Q And you told the police it was a chain that was
25 missing; is that correct?

26 A Correct.

27 Q And then at a later time, after you talked to
28 the police, you determined it was not a chain?

1 A Right. I don't -- down the road a period of
2 time, we ended up finding something missing.

3 Q Okay. So it never was missing in the first
4 place or you found it at another time?

5 A We resolved that it -- the person that it came
6 from, that it wasn't a chain at all. It was a watch.

7 Q All right. So some person had given your
8 mother this watch?

9 A Right.

10 Q Was that Mr. Bidard (phonetic)?

11 A Yes.

12 Q So you spoke to Fred Bidard, and he told you it
13 wasn't a chain?

14 A I don't remember the conversation about it.
15 Yeah, the end result was that it was a watch that he had
16 given her.

17 Q All right. So when you told the detectives
18 that a chain was missing, that's what you are referring
19 to, and that Fred had given it to her, that's what
20 you're referring to?

21 A Right.

22 Q It wasn't a chain. It was a watch, and you
23 found the watch?

24 A Yes. The watch was returned to us from the
25 coroner. She was wearing it at the time.

26 Q And Fred was -- had been a boyfriend of hers at
27 sometime?

28 A Yes.

1 Q I assume that the police questioned you
2 diligently about her social contacts; is that correct?

3 A Yes.

4 Q And you were able to give them information
5 about people that she had dated or spent time with; is
6 that correct?

7 A Yes, the most that I can recall that day,
8 September 23rd.

9 Q The information you gave the police that day,
10 is that what you're saying?

11 A That's when they were talking to me the most
12 about who she, you know, was seeing from what I recall.

13 Q Did you tell the police that you didn't know
14 all the different people that she may have seen?

15 A Yes.

16 Q And you just told them about some of them that
17 you knew?

18 A Correct.

19 Q Okay. Who did you tell the police she had been
20 dating other than Mr. Bidard?

21 MR. THOMAS: Objection. Relevance.

22 THE COURT: Sustained.

23 BY MR. SANDERS:

24 Q You were asked by the district attorney about
25 some of the habits of your mother.

26 Do you know if she would sometimes invite
27 people to come over to her home?

28 A I'm sure she did.

1 Q So she wasn't a person that was just always
2 alone and no one ever came over?

3 A No.

4 Q She had -- she would sometimes invite
5 boyfriends and acquaintances to her house; is that
6 correct?

7 A Yes.

8 MR. THOMAS: Objection. Calls for
9 speculation.

10 THE COURT: If you know the answer, you can
11 answer.

12 THE WITNESS: If she had people come to visit
13 her?

14 BY MR. SANDERS:

15 Q Right.

16 A I'm sure -- I would say so, yes.

17 MR. THOMAS: Same objection. I don't think
18 it's been established that this witness knows for
19 sure.

20 THE COURT: And I don't know why you're
21 whispering, but I did hear what you said with great
22 difficulty.

23 MR. THOMAS: I'll speak up next time, your
24 Honor.

25 THE COURT: I'm going to sustain the
26 objection. Speculation.

27 BY MR. SANDERS:

28 Q Let me ask you: To your personal knowledge,

1 had you seen at times your mother bring friends over to
2 the house?

3 A Yes.

4 Q And on occasion those were boyfriends?

5 A The only boyfriend that I can even recall would
6 have been Mr. Bidard.

7 Q I think you told the police that to your
8 knowledge she had broken up with Mr. Bidard three months
9 prior to September?

10 A Yes, I don't recall the amount of -- three,
11 four months.

12 Q Was your mother someone that would seek social
13 interaction with men?

14 MR. THOMAS: Objection. Relevance.

15 THE COURT: Vague. Sustained.

16 BY MR. SANDERS:

17 Q In the six-month period preceding
18 September 1985, do you have knowledge that your mother
19 would seek social interaction with men?

20 A No -- I don't understand the question.

21 Q Did she like to date?

22 A Sure, she liked to date.

23 Q Okay. And she dated fairly often to your
24 knowledge?

25 A Not -- I don't know how often.

26 Q Would she, to your knowledge, sometimes date
27 people that she had not known for a long time?

28 A That could be possible.

1 MR. THOMAS: Objection. Calls for
2 speculation based on the witness's answer. Move to
3 strike. Do I need to speak up more? I'm sorry.

4 THE COURT: Good idea if you want me to hear
5 anything you say.

6 MR. THOMAS: I objected on the basis that the
7 witness is speculating. I moved to strike the answer
8 that the witness gave based on that.

9 THE COURT: Sustained.

10 MR. SANDERS: Excuse me just a moment, your
11 Honor?

12 BY MR. SANDERS:

13 Q After the police had left, did you take a
14 closer look in your mother's bedroom to determine if
15 there were items of property that were missing?

16 A Yes.

17 Q Did you notice whether or not there were items
18 of property that were in plain sight?

19 A Yes.

20 Q And some of those may have been -- have some
21 value?

22 A Yes.

23 Q You indicated you initially thought that
24 perhaps your mother had killed herself?

25 A Yes.

26 Q That was because you had noted that she was
27 lonely and despondent?

28 A Yes, and I worried about her, yes.

1 Q All right. The district attorney asked you if
2 you thought perhaps someone might still be in the house.

3 Do you remember that question?

4 A Yes.

5 Q At any time when you had your chance, did you
6 look through the house to see if you could find any
7 evidence that someone had come in the house?

8 A No -- no -- I don't -- no.

9 Q When -- when you went in initially and then
10 after you came back from Mr. Sullivan's and went in
11 again, did you move anything inside the house? Pick up
12 anything? Look at anything?

13 A The only thing that -- nothing other than
14 the -- was trying to open the window.

15 Q I think you said the dog was outside when you
16 came?

17 A Correct.

18 Q After you initially drove up behind the
19 Cadillac that was in the garage, I believe that you said
20 that you then went to Mr. Sullivan's; correct?

21 A Yes.

22 Q And to do that, you got back in your car and
23 backed it up a short distance; correct?

24 A Yes.

25 Q And then you drove around the top of the
26 horseshoe drive and out the other side?

27 A Yes.

28 Q For lack of a better term, I'm going to use the

1 side you initially came in as being the west drive and
2 the side you went out as the east drive.

3 Does that make sense to you?

4 A Yes.

5 Q When you came back from Mr. Sullivan's, did you
6 drive all the way up to the house again?

7 A Yes, from what I can recall, yes.

8 Q All right. And do you recall if you came in
9 the west drive again the second time?

10 A Actually, I don't recall which -- what I
11 believe is I backed out and went around the horseshoe,
12 went out and came back in the same way.

13 Q The same way you came in the first time?

14 A I would -- I would guess I came back in the
15 same way I went out.

16 Q I see. Okay.

17 A But I don't recall exactly.

18 Q When you came from your house -- where were you
19 living at the time?

20 A Phelan.

21 Q What is that a 30-, 45-minute drive?

22 A Hour drive, approximately.

23 Q So you came from the west and entered the west
24 driveway the first time?

25 A I guess you could call it the west. I'm
26 thinking the north driveway and south driveway towards
27 the mountains.

28 Q Let's do that then. The one you came in first

1 was the north driveway? The one you went down to see
2 Mr. Sullivan was the south driveway?

3 A Yes.

4 Q All right. And then Mr. Sullivan's house was
5 towards the south?

6 A Right.

7 Q So when you came back from his house, you went
8 to the closest driveway?

9 A That's what I'm thinking. I don't recall
10 exactly -- don't recall exactly. That's what I'm
11 thinking that I did.

12 Q Okay. Then the -- someone told you you should
13 go move your car or you thought you should go move your
14 car by the highway so they could find your house?

15 A I don't recall that. I guess that's what we
16 did. We moved the car down by the highway, so they'd
17 see where the residence was.

18 Q Did you put it by the north or south driveway?

19 A I don't recall.

20 Q All right. So the first people to get there
21 was the fire department?

22 A The paramedics.

23 Q Fire, paramedics. They came in one vehicle?

24 A What I can recall.

25 Q Did they drive all the way up to the house?

26 A From what I can recall, yes.

27 Q After that, police vehicles arrived; is that
28 correct?

1 A Correct.

2 Q And do you know how many of them drove to the
3 house?

4 A I don't recall.

5 Q I guess what I'm wanting to know is: Did you
6 ever notice that there was any distinctive tire prints
7 in the driveway, either one of them, that seemed odd or
8 didn't fit?

9 A At that time I was such an emotional wreck that
10 none of that came into -- I wasn't thinking of anything
11 like that at that moment.

12 Q Okay. Thank you. I believe you said that the
13 nearest neighbor was Mr. Stow and he lived across the
14 highway?

15 A Right.

16 Q So his house was pretty close to the highway,
17 maybe 150 yards from your mother's house?

18 A I'd say it's more than that.

19 Q 200 yards?

20 A At least 200 yards.

21 Q All right. Do you know if he was there that
22 day?

23 A I don't recall. I don't recall if he was there
24 that day.

25 Q You didn't go to his house because you're
26 better friends with Mr. Sullivan than with him?

27 A Correct.

28 Q Okay. And you said you never met my client

1 back in the '80s; correct?

2 A Not that I can recall.

3 Q You did know his father, Mr. Yablonsky?

4 A Yes.

5 Q The gentleman seated by -- behind me in the
6 Hawaiian shirt?

7 A Yes.

8 Q And apparently you guys were pretty good
9 friends; is that correct?

10 A I would consider us friends. We socialized
11 together.

12 Q Went to the river together?

13 A Went to the river once together, if I recall.

14 Q Okay. Sometimes you would go out and you said
15 you'd drink with Mr. Yablonsky?

16 A Yes.

17 Q Did your mom -- was she ever present when the
18 two of you were drinking?

19 A With Mr. Yablonsky?

20 Q Yes.

21 MR. THOMAS: Your Honor, vague as to which
22 Mr. Yablonsky we're talking about.

23 THE COURT: Would you move that microphone in
24 front of you, please? And I'll sustain the objection
25 as vague.

26 BY MR. SANDERS:

27 Q I'm referring to the elder Mr. Yablonsky.

28 Do you recall if when you and he were drinking

1 that your mother was there also?

2 A I would believe there's been occasions, yes.

3 Q Okay. A few occasions?

4 A I would say yes.

5 Q Okay. Now, this all happened a long time ago,
6 and have you had an opportunity -- have you been
7 provided with police reports to help you refresh your
8 recollection?

9 A Yes.

10 Q Okay.

11 A Just --

12 Q When were those reports provided to you?

13 A I believe it was Friday.

14 Q Did you get a chance to read them over the
15 weekend?

16 A Yes.

17 Q Was there things there that you had forgotten?

18 A Yeah -- well, yes.

19 Q Okay. And then did you have to discuss your
20 testimony with anyone prior to testifying?

21 A No, nobody other than with my wife.

22 Q You didn't have to have a conversation with
23 Detective Alexander?

24 A No.

25 Q Mr. Thomas?

26 A No.

27 Q About what questions were going to be asked?

28 A No.

1 MR. SANDERS: Okay. If I might have just a
2 minute, your Honor?

3 THE COURT: You might.

4 MR. SANDERS: Thank you, your Honor. No
5 further questions on cross-examination.

6 THE COURT: Redirect.

7 MR. THOMAS: Thank you, your Honor.

8 **REDIRECT EXAMINATION**

9 BY MR. THOMAS:

10 Q What years did you actually live with your mom
11 at her residence?

12 A I believe it was off and on between 1981, '82,
13 '83.

14 Q Then was it right around '83 that you stopped
15 living over there?

16 A I don't recall the exact date. She used to
17 work down below. I'd be there, watch the house, come up
18 to see her on weekends. I don't recall the specific
19 dates or years. Seems like it was in the early '80s.

20 Q In 1985 were you living with your mom at that
21 point?

22 A No.

23 Q If you had to estimate as to when you stopped
24 living with your mom at her residence, what year would
25 that be, if you had to estimate?

26 A Late '82, early '83.

27 Q On cross-examination Mr. Sanders asked you some
28 questions about a chain, and then you testified that it

1 wasn't a chain that was missing, it was a watch, and
2 that you essentially got that watch back. I think you
3 said it was from the coroner's office; is that correct?

4 A Correct.

5 Q Okay. Could you describe that watch to us?

6 A Just a gold lady's watch. I haven't looked at
7 it in years.

8 Q Thin band? Thick band?

9 A I think thicker band, not like a man's
10 thickness, but maybe (indicating).

11 Q You're holding up your index finger and thumb?

12 A Say maybe half an inch or quarter inch.

13 Q Maybe quarter inch, half inch, somewhere in
14 that neighborhood?

15 A Yes, I haven't looked at it in years.

16 Q When you received it from the coroner's office,
17 was the watch intact? What I mean by intact, was the
18 band still connected to the actual time piece?

19 A From what I recall, yes.

20 Q And then Mr. Sanders asked you when looking
21 around the house after the police left, do you recall
22 that line of questioning?

23 A Yes.

24 Q Do you recall where or if you found your
25 mother's glasses at any point?

26 A Yes, I don't recall.

27 Q And as far as your mother's glasses, would she
28 be the type of person that would throw her glasses on

1 the floor or would she set them down on the table? What
2 would she do with her glasses when she took them off?

3 A Set them on the table.

4 Q She wouldn't just toss them on the floor that
5 you've ever seen?

6 A No, I can't see her doing that.

7 MR. THOMAS: Nothing further.

8 THE COURT: Mr. Sanders.

9 MR. SANDERS: No questions. Thank you, your
10 Honor.

11 THE COURT: May this witness be excused?

12 MR. SANDERS: I'd ask that he remain on call,
13 please.

14 THE COURT: That means you're subject to
15 recall, Mr. Kraemer. It has been determined,
16 nevertheless, that the attorneys are willing to allow
17 you to remain in the court, contrary to the witness
18 exclusion order, while you're on call as a witness.
19 I'll order that you not discuss your testimony with
20 any other witness in this case until the trial is
21 over. You may remain in the gallery.

22 Call your next witness.

23 MR. THOMAS: People would call Marta Kraemer.

24 THE BAILIFF: Remain standing. Raise your
25 right hand and face the clerk to be sworn.

26 THE CLERK: You do solemnly state that the
27 evidence you shall give in the matter pending before
28 this Court shall be the truth, the whole truth, and

1 nothing but the truth, so help you God?

2 THE WITNESS: Yes, I do.

3 THE CLERK: Thank you. Please be seated.

4 THE BAILIFF: Slide yourself forward. Speak
5 directly towards the microphone. Keep your voice up,
6 please. Please state your full name and spell it for
7 the record.

8 THE WITNESS: Marta Kraemer M-a-r-t-a
9 K-r-a-e-m-e-r.

10 THE COURT: Good morning, Ms. Kraemer.

11 THE WITNESS: Good morning.

12 THE COURT: Your witness.

13 MR. THOMAS: Thank you, your Honor.
14

15 **MARTA KRAEMER**, having been duly sworn,
16 testified as follows:

17 **DIRECT EXAMINATION**

18 BY MR. THOMAS:

19 Q I'm going to show you an exhibit I'm putting up
20 on the screen.

21 May I approach the witness?

22 THE COURT: You may.

23 BY MR. THOMAS:

24 Q I'm going to show you Exhibit 35. Do you
25 recognize the person depicted in this photograph?

26 A Yes, I do.

27 Q Who is that?

28 A That's Rita Cobb.

1 Q Okay. And who was Rita Cobb in relation to
2 you?

3 A My mother-in-law.

4 Q And as far as Rita was concerned, how long
5 prior to Rita's murder did you know Rita?

6 A Approximately four years.

7 Q And then as far as Rita was concerned, how did
8 you first meet Rita? Was there a person that you met
9 Rita through?

10 A Yes.

11 Q Who is that?

12 A Through Daryl.

13 Q Okay. And Daryl is your husband?

14 A Yes.

15 Q Back in 1985, specifically September of 1985,
16 were you and Daryl married at that point?

17 A No.

18 Q When was it that you actually got married?

19 A In 1990.

20 Q Going to the events of September 23rd of 1985,
21 prior to that day, when was the last time that you saw
22 Rita?

23 A Approximately a month.

24 Q Where did you see Rita that month prior?

25 A At her home.

26 Q And where was that home located if you can
27 recall?

28 A On Highway 18.

1 Q Okay. Let me give you an address and you can
2 tell me if that address is familiar. Is the address
3 located at the -- the residence located
4 at 35435 Highway 18 in Lucerne Valley, county of
5 San Bernardino?

6 A I can only speculate. I don't recall.

7 Q Okay. So you don't recall the exact address?

8 A No, I never lived there at the time.

9 Q I'm going to show you a photograph that's been
10 marked Exhibit 1.

11 May I approach?

12 THE COURT: You may.

13 BY MR. THOMAS:

14 Q Do you recognize what's depicted in Exhibit 1?

15 A Yes.

16 Q What is that?

17 A That's the residence.

18 Q That's Rita's residence?

19 A Yes.

20 Q Was there another separate residence from the
21 residence that we're looking at in Exhibit 1?

22 A Yes.

23 Q And where was that residence located on the
24 property?

25 A Behind this house.

26 Q I'm going to show you what's been marked
27 Exhibit 2, and if you can use the laser pointer just to
28 point out to the jury where that second residence is in

1 Exhibit 2.

2 You're pointing to a structure just located to
3 the right and behind the main residence that you've
4 described?

5 A That's correct.

6 Q That's on Exhibit 2. Did you ever become aware
7 of anyone else, prior to September 23rd of 1995 (sic),
8 living on this property in this back residence?

9 A Can you repeat the question?

10 Q Prior to September of 1985, did you ever become
11 aware of anyone else, besides Rita, living on that
12 property in that rear residence that you just pointed
13 out?

14 A I don't recall, no.

15 Q Fast forwarding to September 23rd of 1985, that
16 was the day that you found -- you and Daryl found Rita's
17 body inside the residence; is that correct?

18 A Yes.

19 Q Prior to going over to the residence, was there
20 anything that you did? Did you call her? Did you see
21 Daryl call her?

22 A We had tried calling her all weekend.

23 Q When you say we, you're talking about you --
24 yourself and Daryl?

25 A Yes.

26 Q Do you remember -- when you say all weekend,
27 are you including Friday, Saturday, Sunday or --

28 A I remember calling all weekend.

1 Q Do you recall how many times you called or
2 Daryl called?

3 A No, I don't remember the amount of times.

4 Q Somewhere in the neighborhood of two to five or
5 five to ten?

6 A I don't recall.

7 Q Before you arrived at Rita's residence on
8 September 23rd of 1985, did you stop anywhere or do you
9 recall stopping anywhere prior to going to the
10 residence?

11 A I don't recall. It's been a long time.

12 Q As far as how you got to the residence, do you
13 recall how you got to the -- to Rita's residence?

14 A Yes.

15 Q How was that?

16 A We drove in the Monte Carlo.

17 Q That's the Monte Carlo that you and Daryl
18 owned?

19 A Yes.

20 Q Do you recall where you parked the Monte Carlo
21 when you got to the residence?

22 A Yes. We pulled in right behind the Cadillac
23 that was parked in the garage.

24 Q I'm going to show you Exhibit 3. Is that the
25 Cadillac that you just referred to?

26 A Yes.

27 Q And that's the garage area that you just
28 referred to also?

1 A Yes, it is.

2 Q And when you pulled up in the Monte Carlo, did
3 you park it immediately behind there or how far behind
4 the Cadillac?

5 A Just a few feet behind to the -- the Cadillac.

6 Q Do you recall who was driving? Was it you or
7 was it Daryl?

8 A I don't recall.

9 Q And then once you pulled up, was that something
10 that -- strike that.

11 You've been over to Rita's house on several
12 occasions prior to September 23rd, 1985?

13 A Yes.

14 Q During those prior occasions, was it unusual
15 for the garage door to be up and the Cadillac parked
16 inside the garage?

17 A No, that wasn't unusual.

18 Q Was that an indication that Rita was home if
19 you saw that?

20 A That would be correct.

21 Q So at this point you pull up. I assume you and
22 Daryl both get out of the car?

23 A Yes.

24 Q What did you do at that point once you and
25 Daryl get out of the car?

26 A We proceeded to go into the house.

27 Q Do you recall how you got inside the house?

28 A We went -- I followed Daryl. He went in the

1 side door of the garage, inside the garage.

2 Q I'm going to show you a photograph that's been
3 marked Exhibit 4. Looking at Exhibit 4, there appears
4 to be a door in the center of the photograph of
5 Exhibit 4.

6 Do you see that?

7 A Yes, I do.

8 Q Is that the door that you were referring to
9 that you and Daryl went into?

10 A Yes, it is.

11 Q And then once you get inside the house, is
12 there anything that you notice that was unusual?

13 A The smell was terrible. I mean, it was awful.
14 It smelled like the septic system was totally backed up.
15 It was -- it was awful.

16 Q Besides the smell, was there anything else that
17 you noticed that was unusual?

18 A At that time, no.

19 Q Did you notice whether or not it was hot or
20 cold inside the house?

21 A Looking back or at the very -- thinking about
22 it at the time?

23 Q What you can remember today.

24 A It was warm.

25 Q Do you recall whether it was warmer inside the
26 house or outside the house?

27 A Inside the house, but the smell was very
28 gagging. It was overwhelming to where you couldn't

1 breathe.

2 Q So as far as you were concerned, that smell was
3 so overpowering that it prevented you from seeing or
4 observing any other things inside the house at that
5 point?

6 A Yes.

7 Q Did you notice whether or not the door in the
8 garage was locked or unlocked when you went in?

9 A No, I didn't.

10 Q Did you notice whether or not the windows or
11 any other doors to the inside of the residence were open
12 at any point?

13 A I noticed the drapes in the front was -- was
14 closed, which was unusual because the drapes in the
15 front was normally open.

16 Q Was that something that you noticed when you
17 pulled up to the residence or was that something that
18 you noticed once inside -- once you were inside the
19 residence?

20 A Once I was inside the residence.

21 Q That's when you noticed the drapes were pulled
22 shut?

23 A Yes.

24 Q That was unusual because they weren't normally
25 shut like that?

26 A That is correct.

27 Q Had you ever seen them shut like that?

28 A No.

1 Q So you walk in. Do you recall where you went
2 once you walked inside the residence?

3 A I walked towards the table because I believe I
4 had something in my hand.

5 Q Do you recall what you had in your hand?

6 A I believe I had a cigarette in my hand, and I
7 had a drink in my hand.

8 Q Do you recall where the table was inside the
9 residence?

10 A It was the dining room table right there when
11 you walk into the house.

12 Q I'm going to show you an exhibit. It's been
13 marked Exhibit 39.

14 May I approach the witness?

15 THE COURT: You may.

16 BY MR. THOMAS:

17 Q Do you recognize that exhibit or what it
18 appears to be?

19 A Yes, a diagram of the house.

20 Q Okay. That's the interior of Rita's house?

21 A Yes.

22 Q Do you notice on that diagram, Exhibit 39, the
23 garage area? Do you see where that is?

24 A Yes, I do.

25 Q And from there, you entered what appears to be
26 a door leading from the garage area to the interior of
27 the residence.

28 Do you see that?

1 A Yes.

2 Q Where was the table that you said you might
3 have set some stuff down?

4 A This being a desk, this would be the table by
5 the front windows.

6 Q You're indicating a circle that's about in the
7 center of the photograph, a little to the left of
8 center, that's at the bottom of the photograph; is that
9 correct?

10 A Yes.

11 Q Okay. I'm going to show you an exhibit that's
12 been marked Exhibit 25.

13 Do you recognize what's depicted in Exhibit 25?

14 (Whereupon Exhibit 25 was marked
15 for identification.)

16 THE WITNESS: Yes.

17 BY MR. THOMAS:

18 Q What does that exhibit show or depict?

19 A A drink and a pack of cigarettes.

20 Q On this table that you were just speaking to us
21 about?

22 A Yes.

23 Q The drink that's on the table, is that
24 something that you brought over to the residence?

25 A Very possibly.

26 Q Okay. But you don't independently recall
27 bringing that over?

28 A No, I --

1 Q Do you recall telling any of the detectives at
2 the scene that you brought that drink over?

3 A No.

4 Q And have you had an opportunity to review your
5 statements that you made back in 1985 to the detectives?

6 A Yes.

7 Q And back in 1985, your recollection of the
8 events were -- was more fresh in your memory than it is
9 today; right?

10 A Yes.

11 Q Do you remember seeing this in any of the
12 reports about a drink that you had brought over?

13 A Yes.

14 Q Even seeing that didn't refresh your
15 recollection as to bringing the drink over to the house?

16 A No, but the -- definitely the cigarettes.

17 Q What type of cigarettes did you smoke?

18 A Virginia Slims.

19 Q I'm going to show you a photograph that's been
20 marked Exhibit 26.

21 Would that have been the type of cigarettes
22 that you smoked back in September of 1985?

23 (Whereupon Exhibit 26 was marked
24 for identification.)

25 THE WITNESS: Yes.

26 BY MR. THOMAS:

27 Q Those were Virginia Slims lights?

28 A Yes.

1 Q And that was on the table that you just
2 described or earlier described?

3 A Yes.

4 Q I notice there's what appears to be a Slurpee
5 to the left of the pack of cigarettes?

6 A Yes.

7 Q Is that something that you would drink back in
8 September of 1985? Did you have Slurpees every now and
9 then?

10 A Yes.

11 Q Okay. Did Daryl smoke too?

12 A Yes.

13 Q Okay. Do you recall what he smoked back in
14 1985?

15 A I believe Marlboros.

16 Q Okay. Do you recall whether or not Rita
17 smoked?

18 A She did.

19 Q Do you recall what type of cigarettes she would
20 smoke?

21 A I don't recall.

22 Q When you entered the house, you said you went
23 to the table. You put some items down, which included
24 the pack of cigarettes; correct?

25 A Yes.

26 Q Do you recall telling the detective back in
27 September of 1985 that you were carrying a wax cup
28 containing a Slurpee that you had purchased at the local

1 convenience store and the cigarettes and lighter when
2 you entered the residence?

3 A I don't recall that, but I did read that in the
4 statement.

5 Q As far as Daryl was concerned, you said you
6 went to the table.

7 Did you see where Daryl went once you went to
8 the table?

9 A No.

10 Q At some point was there something that was said
11 by Daryl that caused you some concern?

12 A Yes.

13 Q Was that while you were in the general area of
14 that desk and that table?

15 A Yes.

16 Q What was said?

17 A Oh, my God. She's finally done it.

18 Q Do you recall telling the detective back when
19 you were interviewed in 1985 that Daryl stated quote
20 "Oh, my God. She's killed herself"?

21 A That would -- that sounds right.

22 Q And then once you heard this, what did you do?

23 A I immediately turned and went towards him.

24 Q Where was he at at this point when you went
25 towards him?

26 A He was in the hallway. It was only a matter of
27 seconds that all this occurred.

28 Q Putting Exhibit 39 back on the screen there,

1 where was Daryl at the time you met up with him after
2 you heard him say, oh, my God. She's finally done it or
3 she's killed herself?

4 A Right by the post going towards her room.

5 Q If you could use the laser pointer to point
6 that out.

7 A Right here by the wall.

8 Q You're pointing to the area that there's an A24
9 in that area.

10 Do you see that?

11 A Right.

12 Q Then there's what appears to be a door and
13 you're pointing to that general area as to where Daryl
14 was?

15 A Yes.

16 Q Is that correct?

17 A Yes.

18 Q What was Daryl's demeanor when you first made
19 contact with him at the doorway there?

20 A He was in a state of panic, hysteria.

21 Q Was he crying?

22 A He was screaming.

23 Q Okay. Do you recall any of the things he was
24 screaming?

25 A Oh, my God, why?

26 Q At this point did you know what was going on?

27 A No.

28 Q What did you do while he was screaming at this

1 point?

2 A I walked into the bedroom, and --

3 Q When you walked into the bedroom, what, if
4 anything, did you see?

5 A I remember -- this is really hard.

6 Q Take your time.

7 A I remember him saying that he thought she
8 killed herself. I'm sorry. I thought I could do this
9 real easily. It's not that easy.

10 Q Take your time.

11 A I remember her leg being propped up. Thank
12 you. I remember her teeth -- I thought I saw her teeth
13 on the pillow. I thought I saw part of her face, and I
14 just said, she didn't kill herself. Somebody's been
15 here.

16 Q And what caused you to say that? Was there
17 anything in particular that caused you to say that?

18 A I don't know. I think I blocked some things
19 out since then, but I just told him I knew somebody had
20 been there. Nobody could have done this to themselves.
21 Somebody has been here. She could not have killed
22 herself.

23 Q Did you notice whether or not Rita had any
24 clothing on?

25 A No. I could tell her body was twice the size
26 of her normal capacity because of the de- --

27 Q Would you characterize her body as being
28 somewhat bloated?

1 A Quite a bit bloated.

2 Q Okay.

3 A And you got to understand, the smell was still
4 totally overwhelming in the house. It was real hot, and
5 the odor in the house was still really overwhelming.

6 Q You described to us seeing some of the stuff.
7 Was there anything that you haven't already
8 mentioned that you remember observing when you walked
9 into the room?

10 A Such as?

11 Q Anything else. You described seeing some of
12 her, I guess, it would be her dentures on the bed?

13 A Yeah, I thought I saw her dentures on the
14 pillow. I saw her wedding ring over on the night stand.

15 Q I'm going to show you a photograph, and prior
16 to coming to court today, you were never shown any
17 photographs; correct?

18 A That's correct.

19 MR. THOMAS: May I approach?

20 THE COURT: You may.

21 BY MR. THOMAS:

22 Q I'm going to show you Exhibit 10. You
23 described seeing her wedding ring.

24 Is that what you saw that's depicted in
25 Exhibit 10?

26 A Yes, sir.

27 Q And that's the way that you saw the ring was
28 how it's depicted in Exhibit 10?

1 A Yes, sir.

2 Q Did you touch anything when you went into the
3 room at all?

4 A No, not when I first went into the room.

5 Q You just saw Rita, and she was on the bed?

6 A Yes, she was on the bed.

7 Q Okay. You described that you saw her dentures.
8 You described seeing a wedding ring.

9 Was there anything else that you saw that you
10 can remember?

11 A I remember later that I -- after I tried to
12 make the phone call and I was trying to get some air,
13 because I went in and tried to open the bedroom window
14 at one point, when I was coming out, I thought I saw her
15 purse on the bed.

16 Q Okay. So you -- you think you observed her
17 purse laying on the bed area?

18 A Yeah. When I was coming out, that was -- that
19 wasn't the first initial time that I had been in the
20 room.

21 Q Okay. So that was at a later point?

22 A A later point after -- after I -- already tried
23 to make phone calls.

24 Q So let's just focus in on the first time that
25 you go into the room. Did the room appear to be
26 ransacked --

27 A No.

28 Q -- in any way? As far as, did you notice any

1 clothing or anything around the room?

2 A No.

3 Q Do you recall as far as Rita was concerned, are
4 you familiar with how she hung her clothes and
5 specifically what type of hangers she would use?

6 A After we -- after a year and a half, after we
7 went through the room because that took us that long to
8 go through the room, it took us a year and a half, she
9 had metal coat hangers.

10 Q Those were the only types of coat hangers that
11 you remember observing a year and a half later?

12 A Yeah.

13 THE COURT: We're going to take our lunch
14 recess now, ladies and gentlemen. 1:30. You're
15 admonished that it is your duty not to converse among
16 yourselves or with anyone else about any matter
17 connected with this case nor form or express an
18 opinion on it until it's submitted to you.

19 Ms. Kraemer, I'll order you back at 1:30.

20 THE WITNESS: Yes, sir.

21 (Whereupon the lunch recess was taken.)
22
23
24
25
26
27
28

1 VICTORVILLE, CALIFORNIA; JANUARY 24, 2011;
2 DEPARTMENT NO. V-2 HONORABLE JOHN M. TOMBERLIN, JUDGE
3 P.M. SESSION
4 (Appearances as heretofore mentioned.)
5 (Shawna Manning, Official Reporter, CSR No. 12827.)

6 -oOo-

7 (Whereupon the following proceedings were held in open
8 court in the presence of the jury:)

9 THE BAILIFF: Remain seated. Come to order.
10 Court is now in session.

11 THE COURT: Good afternoon. Back on the
12 record in People of the State of California versus
13 John Yablonsky, who is here with his attorney,
14 Dave Sanders. John Thomas is here along with his
15 investigating officer, Detective Robert Alexander.
16 Marta Kraemer is on the witness stand still under oath
17 in cross-examination.

18 You may proceed.

19 MR. THOMAS: Thank you, your Honor.

20 BY MR. THOMAS:

21 Q I believe before we took the lunch break, we
22 were talking about how you were in the room and you were
23 still trying to figure out what you saw in the room the
24 first time that you went in there.

25 Do you recall that?

26 A Yes.

27 Q You've explained to us that you saw Rita's
28 dentures and you saw her wedding ring on the table and

1 then was there anything else that you noticed?

2 A I noticed she was lying on her back, and her
3 leg was propped up.

4 Q As far as whether or not -- correct me if I'm
5 wrong, I think before the lunch hour, you said that you
6 couldn't remember whether or not she had clothing on?

7 A No, she did not have clothing on.

8 Q You remember that?

9 A Yes.

10 Q Now, as far as what you did once you went in
11 the room the first time, was Daryl inside the room with
12 you or was he at the door? Do you recall?

13 A No, he was out of the room at that time.

14 Q What did you do when you went in the room? Did
15 you touch anything or --

16 A No.

17 Q Then you left the room?

18 A Yes.

19 Q What did you do once you left the room?

20 A I remember coming out to find Daryl. I don't
21 remember where he was at that time. I believe he was
22 standing right there in the hallway, and I remember
23 telling him that somebody had been there; that there's
24 no way she could have done that to herself.

25 Q So you knew it wasn't a suicide at that point?

26 A Correct.

27 Q Once you told Daryl that, what was the next
28 thing that you did?

1 A I remember hugging him in the hallway for a
2 moment. It's like everything happened so fast.

3 Q Then after you hugged him, at some point did
4 Daryl leave the house? Did he tell you where he was
5 going?

6 A He was going to go find John Sullivan.

7 Q Who was John Sullivan? Did you know that
8 person?

9 A Yes, I did.

10 Q How did you know John Sullivan?

11 A He was a family friend.

12 Q Did you go with Daryl to find John Sullivan?

13 A No.

14 Q What did you do once Daryl left?

15 A He told me to stay there and call whoever I
16 needed to call.

17 Q Do you remember at that point -- you said
18 earlier that the smell was overwhelming for you, and
19 that was what you were concentrating on. Was there a
20 point after you left the room that you were able to
21 notice other things that were unusual?

22 A It was very hot. It was very warm in the
23 house.

24 Q Did you find out or figure out why it was very
25 warm in the house?

26 A I think at the time I wasn't trying to figure
27 out why it was warm. I was more interested in trying to
28 cool it off, like, turn the swamp cooler on or open a

1 door.

2 Q What did you do to see if you can cool off the
3 house?

4 A I tried to -- I opened the door. I don't
5 remember the exact order that I did it in. It was a
6 long time ago.

7 Q Do you remember whether or not you opened up
8 the drapes?

9 A I did.

10 Q Do you remember opening up any windows or other
11 doors other than the ones that you've already mentioned?

12 A I tried to open only the one in Rita's room and
13 it did not open.

14 Q Were there drapes in Rita's room?

15 A Yes.

16 Q Do you recall whether or not those drapes were
17 open? Shut?

18 A I tried to move the drapes aside -- I don't
19 recall.

20 Q Okay. So you tried to cool off the house by
21 opening the doors.

22 Did you at some point turn on the swamp cooler?

23 A Yes.

24 Q At any point did you notice that the heater was
25 on?

26 A I think Daryl was the one that noticed the
27 heater was turned on.

28 Q That wasn't something you did?

1 A No.

2 Q As far as you turn on the swamp cooler, did you
3 make any attempts at this point to call for help?

4 A Yes.

5 Q What attempts did you make to call for help?

6 A I remember dialing zero, and I got a busy
7 signal, so I dialed 9-1-1.

8 Q Did somebody answer when you dialed 9-1-1?

9 A Yes.

10 Q Yes. At that point were you able to talk to
11 somebody and explain what was happening?

12 A Yes.

13 Q At that point Daryl's already left I assume?

14 A Yes.

15 Q So you're on the phone with the 9-1-1 person.
16 Did they tell you that help was on the way?

17 A Yes.

18 Q How soon after you first entered the residence
19 did you call 9-1-1?

20 A I don't recall. Everything seemed to happen so
21 fast, and it was so long ago.

22 Q If you had to estimate, would it be a period of
23 minutes? Hours?

24 A Minutes.

25 Q It wasn't seconds?

26 A I would say minutes. You could tell she was
27 already deceased.

28 Q Okay. And then at some point when you called

1 9-1-1 or after you called 9-1-1, did Daryl come back?

2 A Yes.

3 Q Were you still on the phone when Daryl came
4 back? Do you recall?

5 A I don't believe I was on the phone still.

6 Q Were you inside the house? Outside the --
7 Rita's house when Daryl came back?

8 A I think I met him on the porch.

9 Q When you met him on the porch, did you hear him
10 pulling up to the driveway and you went out to the porch
11 area or do you recall how this happened or were you
12 standing outside waiting for Daryl to come back?

13 A I don't recall.

14 Q Once he came back, did you and Daryl go back
15 inside the house, either of you? Do you recall doing
16 any of that?

17 A I don't recall.

18 Q Then at some point medical help came to the
19 residence I assume?

20 A Yes.

21 Q When they came to the residence, do you recall
22 what you did, if anything? If you can't remember, you
23 can't remember.

24 A It was a long time ago, John.

25 Q Do you recall telling -- prior to the medical
26 help arriving, did you pull the car out from the
27 driveway area? Do you recall that?

28 A Did I pull the car out?

1 Q Yeah.

2 A I believe that they told me on the phone to put
3 the car down on Highway 18 so they could find -- so they
4 could find the residence.

5 Q So you personally moved the Monte Carlo after
6 Daryl got back from going to John Sullivan's place?

7 A I do recall that now that you mention that.

8 Q And then do you recall telling ^Detective Matt
9 back in 1985 that when the paramedics arrived they
10 entered the residence through the front door going to
11 the victim?

12 A Yes.

13 Q Once they arrived, did you ever go back inside
14 the house that day?

15 A I think they said to stay out of the house.

16 Q You followed their orders and stayed out of the
17 house?

18 A I think I proceeded to go in, but Daryl said
19 not to go in, and the sheriff's office said to stay out
20 of the house.

21 Q At some point did -- after -- I assume the
22 sheriff's department showed up at the scene?

23 A Yes.

24 Q -- is that correct? And at some point after
25 all the personnel, the sheriff, the paramedics, after
26 they all left the scene, did you go look around the
27 house at any point?

28 A Can you repeat the question?

1 Q When you -- when the sheriff's department,
2 paramedics, left Rita's house, did you and Daryl go
3 inside the house afterwards at some point?

4 A At some point, yes.

5 Q Do you recall if it was that day or some later
6 day that you actually went inside the house?

7 A Yes.

8 Q Was it that day or --

9 A Later in the evening, yes.

10 Q Okay. Did you ever look at Rita's car at some
11 point?

12 A Yes.

13 Q What, if anything, did you find in Rita's car?

14 A There was a bag of pistachios in the backseat
15 of her car.

16 Q Do you recall where the car keys for Rita's car
17 were?

18 A I found them on the desk by the phone.

19 Q I'm going to show you a photograph that's been
20 marked Exhibit 29.

21 May I approach the witness?

22 THE COURT: You may.

23 BY MR. THOMAS:

24 Q Show you what has been marked Exhibit 29, do
25 you recognize this?

26 (Whereupon Exhibit 29 was marked
27 for identification.)

28 THE WITNESS: Yes.

1 BY MR. THOMAS:

2 Q There's a set of keys in the exhibit. Are
3 those Rita's keys, if you know?

4 A They appear to be, yes.

5 Q And those were in the desk area that you spoke
6 about earlier this morning?

7 A Yes.

8 Q Do you recall the day that you were -- or that
9 you found Rita's body, do you recall a radio being on?

10 A Yes.

11 Q And is that something that you recall telling
12 the detectives back in 1985 or is that something that
13 you recalled earlier in 2009 when you were again
14 interviewed by Detective Alexander?

15 A In 2009.

16 Q As far as your interview with the detectives
17 back in 1985, could you describe to us your emotional
18 state when you were being interviewed?

19 A In 2009?

20 Q In 1985.

21 A In 1985, my emotional state?

22 Q Yes.

23 A I was very upset.

24 Q Would it be fair to say that you weren't
25 focused in on all the details that you were giving to
26 the police officer or the detective that was
27 interviewing you?

28 A That would be correct.

1 Q Fair to characterize that during that interview
2 you were in a state of shock?

3 A Very much so.

4 Q This interview occurred approximately less than
5 two hours after you had found the body?

6 A Yes.

7 Q As far as this radio being on, tell us about
8 what you remember about the radio.

9 A I had to turn the radio down in order to make
10 the phone call.

11 Q Was it playing loud or was it just on?

12 A It was loud enough that I needed to turn it
13 down in order to make the phone call.

14 Q Do you recall where the radio was?

15 A It was in the living room.

16 Q Now, as far as Rita was concerned and her
17 clothing, you're familiar with the room she was found
18 in, her bedroom?

19 A As far as?

20 Q Had you been in there before?

21 A A couple of times.

22 Q And you were in there afterwards; right?

23 A After that day?

24 Q Yeah.

25 A Yes.

26 Q How would you characterize the clothing
27 situation? Were her clothes spread all over the room or
28 were they nicely hung? How would you characterize the

1 room?

2 A They were nicely hung. I mean, it didn't look
3 like there had been things, like, they had been strung
4 all over the place like there had been an altercation of
5 any type.

6 MR. THOMAS: I have nothing further at this
7 point.

8 THE COURT: Cross.

9 MR. SANDERS: Thank you, your Honor.

10 **CROSS-EXAMINATION**

11 BY MR. SANDERS:

12 Q Good afternoon, Ms. Kraemer.

13 A Good afternoon.

14 Q I think you said you had known Ms. Cobb four
15 years before her death?

16 THE COURT: Move the microphone in front of
17 your face, please.

18 BY MR. SANDERS:

19 Q Had you known Ms. Cobb for about four years
20 before her death; is that correct?

21 A Yes, sir.

22 Q Had you met her before you met Daryl? The
23 reason I ask is I was under the impression that she had
24 been married to your former father-in-law?

25 A That is correct. She had been married to my
26 former father-in-law, but I had not met her until I met
27 Daryl.

28 Q Okay. What was your former father-in-law's

1 name?

2 A Paul Simon, Sr.

3 Q Paul Simon, Sr. That was not the one that she
4 was married to that died in 1979?

5 A I don't know what year -- I don't know which
6 one you're referring to.

7 Q Okay. Daryl had said that she had been married
8 to somebody and that he passed away in, like, 1979, and
9 he lived at that house.

10 A That would probably be Mr. Cobb.

11 Q That was Mr. Cobb. Okay. You didn't know her
12 when she was married to Mr. Simon?

13 A No.

14 Q When you said that you and Daryl had been
15 trying all weekend to call her, was that you trying to
16 call her or Daryl trying to call her?

17 A Daryl.

18 Q You didn't try to call her yourself?

19 A No.

20 Q All right. And the district attorney asked you
21 were you trying to call her on Friday.

22 Do you know if Daryl was trying to call her on
23 Friday the 20th?

24 A I don't recall.

25 Q You don't know what time it was he was trying
26 to call her on Saturday?

27 A I don't recall the times.

28 Q So you and Mr. Kraemer get over there and you

1 park and you go in the back door. I'm going to call the
2 garage door the back door.

3 A That's fine.

4 Q We're on the same page?

5 A Yes.

6 Q You walk through the kitchen and set down your
7 cigarettes; is that correct?

8 A Correct.

9 Q Did you ever smoke a cigarette in the house
10 that day?

11 A I don't recall.

12 Q Okay. Then you heard Daryl, and you also went
13 in the bedroom; is that correct?

14 A Yes.

15 Q Do you remember how much time you spent in the
16 bedroom that first time before you went out?

17 A Seconds.

18 Q All right. And then I believe you said Daryl
19 went off to go to Mr. Sullivan's house?

20 A Correct.

21 Q He told you he was going to do that?

22 A Yes.

23 Q All right. And did he give you any
24 instructions when he left like, call the cops, or
25 something like that?

26 A Yes.

27 Q And you had a cell phone?

28 A No, back then there was no cell phones.

1 Q Okay. What phone did you use then?

2 A The house phone.

3 Q It was working?

4 A Yes.

5 Q You didn't have any trouble getting through?

6 A No.

7 Q Then you said that there was another point when
8 you went into the bedroom; is that correct?

9 A Yes.

10 Q And how long were you in the bedroom the second
11 time?

12 A Probably a matter of seconds.

13 Q Is that because you were trying to open the
14 window?

15 A Yes.

16 Q And it wouldn't open?

17 A That's correct. The odor was so intense. You
18 could not stand to be there very long at all.

19 Q Then you came out?

20 A That's correct.

21 Q And you didn't go back in there a third time?

22 A No, sir.

23 Q Okay. So everything that you observed in that
24 bedroom, you observed in one of those two visits which
25 were each for a very few seconds?

26 A Correct.

27 Q I'm interested in a statement that you told the
28 prosecutor.

1 You said when you looked at her, you felt she
2 could not have done this; correct?

3 A That's correct.

4 Q And do you remember what it was that you saw
5 that made you feel that way?

6 A Like I said, it's a bit -- I think I blocked a
7 lot of things out since then, but I remember seeing her
8 dentures on the pillow.

9 Q Yes.

10 A The way she was lying there with her nude body,
11 and the way she was positioned with her leg up and she
12 was twice her normal size.

13 Q Was it -- I didn't mean to cut you off. Were
14 you finished?

15 A No. There was -- there was -- just appeared to
16 me that somebody had been there, and I didn't feel that
17 she could have done that to herself.

18 Q Thank you. The -- the -- the other question I
19 had on that was: Did you see any particular wound or
20 anything like that that made you feel that way?

21 A The way that she was positioned, it made me
22 feel like somebody had had sex with her to be quite
23 frank.

24 Q All right. When you said you opened the
25 drapes, which drapes were you referring to?

26 A The front drapes to the house.

27 Q Those are the ones that are right there by the
28 dining room table?

1 A That's correct.

2 Q I noticed that in that photograph of your
3 cigarettes and Slurpee cup, the drapes are open.

4 Is that because you had opened them?

5 A Yes.

6 Q I believe that you said that when the police
7 were finished doing what they were doing, it was later
8 in the evening; is that right?

9 A Well, they quickly interviewed me because I had
10 my son I needed to pick up back where I lived in Phelan.

11 Q I see. Then you went to Phelan and came back?

12 A I left Daryl sitting down at the highway.

13 Q Okay. So you had to go back and get Daryl?

14 A No, I had to go back and get our son in Phelan.

15 Q I'm sorry. After you got your son in Phelan,
16 did you then go back out to Lucerne Valley to pick up
17 Daryl?

18 A Yes.

19 Q And is that when you went into the house later
20 that evening?

21 A Yes.

22 Q Okay. And you were discussing with the
23 prosecutor here that you then looked through the
24 Cadillac also?

25 A I don't know if it was that night or not.

26 Q Could have been a different time?

27 A I don't recollect.

28 Q Do you ever recall seeing my client in 1985?

1 A No.

2 Q Did you ever meet Mr. George Yablonsky back in
3 '82, '83, '84 or '85?

4 A Myself, no.

5 Q So you had never socialized with Mr. George
6 Yablonsky at any time that you can recall?

7 A Myself, no.

8 Q I believe you told the police that -- the
9 police asked you of people that had had contact with
10 Ms. Cobb; is that correct?

11 A Yes.

12 Q You told them about a boyfriend she had named
13 Fred?

14 A Yes.

15 Q I believe you also said she was dating a guy
16 from the country club?

17 A Yes, I said that. She told me she had a couple
18 of drinks with a guy from the country club.

19 MR. THOMAS: Objection. Calls for hearsay.
20 Move to strike.

21 THE COURT: Sustained. It will be stricken.

22 BY MR. SANDERS:

23 Q Were you -- were you aware of any other persons
24 that she had been seeing, let's say, six months before
25 her death?

26 MR. THOMAS: Objection. Relevance.

27 THE COURT: Sustained.

28

1 MR. SANDERS: Nothing further. Thank you,
2 your Honor.

3 THE COURT: Cross -- I mean, redirect.

4 MR. THOMAS: Nothing further, your Honor.

5 THE COURT: May this witness be excused?

6 MR. SANDERS: Remain on call please.

7 THE COURT: Subject to recall.

8 MR. SANDERS: Thank you.

9 THE COURT: That's fine. Ms. Kraemer, the
10 attorneys have agreed that, though you're subject to
11 recall, you may remain in the courtroom for the
12 remainder of the trial. I will order that you don't
13 speak to anyone. I know you're here with your
14 husband. Do not speak to him about your testimony
15 today. You may speak to anybody you want to after the
16 trial is over, but until a verdict has been reached,
17 you may speak to no one unless it's either the
18 investigating officer for one of the attorneys or one
19 of the attorneys themselves. Is that okay?

20 THE WITNESS: Thank you.

21 THE COURT: Do you agree?

22 THE WITNESS: Yes.

23 THE COURT: Please have a seat. Call your
24 next witness.

25 MR. THOMAS: People call Diane Flagg.

26 THE BAILIFF: Remain standing. Raise your
27 right hand and face the clerk to be sworn.

28 THE CLERK: You do solemnly state that the

1 evidence you shall give in the matter pending before
2 this Court shall be the truth, the whole truth, and
3 nothing but the truth, so help you God?

4 THE WITNESS: Yes, I do.

5 THE CLERK: Thank you. Please be seated.

6 THE BAILIFF: Slide yourself forward. Speak
7 directly towards the microphone. Keep your voice up,
8 please state your full name and spell it for the
9 record.

10 THE WITNESS: Diane Flagg D-i-a-n-e, also
11 Marie M-a-r-i-e, Flagg F-l-a-g-g.

12 THE COURT: Good afternoon, Ms. Flagg.

13 THE WITNESS: Good afternoon.

14 THE COURT: You know, you've got a nice full
15 voice. You don't have to worry about speaking into
16 that microphone.

17 THE WITNESS: Good. It makes me feel more
18 comfortable when I don't.

19 THE COURT: Just keep your voice up.

20 THE WITNESS: I am.

21 THE COURT: Your witness.

22 MR. THOMAS: Thank you, your Honor.

23

24 **DIANE FLAGG**, having been duly sworn,

25 testified as follows:

26 **DIRECT EXAMINATION**

27 BY MR. THOMAS:

28 Q Back in September of 1985, where were you

1 living?

2 A At 7520 Fairlane in Lucerne Valley at
3 Wolf Mountain Sanctuary.

4 Q And as far as that sanctuary goes, in relation
5 to Highway 18, where is that?

6 A It's a little bit closer -- it's on the way to
7 Big Bear, little bit closer than where Rita Cobb's house
8 was.

9 Q The sanctuary is a little bit closer
10 to Big Bear than Rita Cobb's place?

11 A Correct.

12 Q You knew a person by the name of Rita Cobb?

13 A Yes, I did. I knew of her.

14 Q And at some point were you interviewed by a
15 Detective Roger McCoy from the San Bernardino County
16 Sheriff's Department?

17 A Yes, I was.

18 Q And what was the purpose of that interview?

19 A Well, we actually -- Tonya and I were noticing
20 that there was a lot of police officers over at Rita's
21 house, and we noticed -- we had a conversation like the
22 day before that we had seen --

23 MR. SANDERS: Objection, your Honor. The
24 answer is nonresponsive, and I'd ask that the witness
25 only speak for herself.

26 THE COURT: That's sustained. In other
27 words, you were mentioning a we. I don't know that
28 there's any reason for that so at this point --

1 THE WITNESS: Try to exclude the person that
2 I'm having a conversation with.

3 THE COURT: Yeah. He's not asking you about
4 a conversation. Listen to the question. Start again.

5 THE WITNESS: Go ahead.

6 BY MR. THOMAS:

7 Q You noticed there was police cars outside
8 Rita's house.

9 Do you recall what day that was?

10 A It was either -- I mean, it's been 26 years. I
11 can't say the exact day that it was, but I know it
12 was -- it was -- we had a lot of -- there was a lot of
13 cars and everything. Then the next day, we noticed that
14 there was -- the police were there, and that's when we
15 thought -- I thought that I should go and talk to the
16 police because I had saw something before, you know, the
17 day before when I saw the police cars. We knew
18 something was wrong -- I knew something was wrong. I'm
19 sorry.

20 Q This interview that you had, it looks like it
21 occurred sometime approximately September 26th of 1985?

22 A Yes.

23 Q The time that this interview occurred, the
24 events were fresher in your memory at that point than
25 they are today?

26 A That's correct.

27 Q You've had a chance to look over the police
28 report containing your interview?

1 A Yes.

2 Q And during that interview, you described to
3 Detective McCoy a few things.

4 Do you recall that?

5 A Yes.

6 Q What did you describe to Detective McCoy?

7 A That I saw a man hitchhiking that was between
8 Rita Cobb's house going towards the Big Bear area
9 hitchhiking that way. He was, like, around six feet
10 tall, black hair, mustache, beard, and had jeans on.
11 Then I also recall --

12 Q Let me stop you there. That's one thing that
13 you told Detective McCoy?

14 A Yes.

15 Q Okay. And then you also told Detective McCoy
16 about another thing; is that correct?

17 A Yes.

18 Q What was this other thing that you told
19 Detective McCoy about?

20 A I saw a number of cars there before I seen the
21 police there. I remember seeing a number of cars, and
22 then I saw a Pinto car, silver.

23 Q I'm going to show you what's been marked
24 Exhibit 1, and I'll bring it up there so that you can
25 see it.

26 May I approach the witness?

27 THE COURT: You will -- you can.

28

1 BY MR. THOMAS:

2 Q Do you recognize what's depicted in Exhibit 1?

3 A Yes.

4 Q What's depicted in Exhibit 1?

5 A You see, that's Rita's house where she lived
6 and her car in the garage there.

7 Q And you described that car to Detective McCoy
8 as a Cadillac?

9 A Cadillac, yes.

10 Q What color would you say that car is?

11 A It's -- I don't have my glasses on. From what
12 I can see --

13 MR. SANDERS: Objection, your Honor. The
14 photograph speaks for itself if that's what she's
15 using for identification.

16 THE COURT: Sustained.

17 BY MR. THOMAS:

18 Q Do you recall without looking at the photograph
19 what color Rita's car was, her Cadillac was?

20 A I don't remember the color of her car. Looks
21 like it was blue -- bluish.

22 Q As far as the day where you were describing
23 this to Detective McCoy, do you recall telling
24 Detective McCoy that it was either Friday night or
25 Saturday night?

26 A Yes.

27 Q And you specifically remember another car being
28 there?

1 A Yes.

2 Q What kind of car was that?

3 A A Ford Pinto.

4 Q Was this a Pinto station wagon or was it a
5 regular --

6 A It was a car.

7 Q Okay. Do you recall what color that was?

8 A Silver.

9 Q As far as the color of the vehicle, do you
10 recall what time you saw this?

11 A No.

12 Q Was it evening hours?

13 A No, I don't recall.

14 Q You just recall there was a silver Pinto?

15 A Because I had a conversation with the other
16 person. That's why I recall it.

17 Q That conversation was with this person that you
18 referred to as Tonya?

19 A Yes.

20 Q The color of the Pinto, would that be something
21 that you were positive of back in 1985 or that you could
22 be wrong on the color?

23 A It's like 25, 26 years ago. I know for sure it
24 was a Pinto, and it was a car. I know that for sure.
25 As far as the color, it's a possibility. You know, I
26 mean, it's 26 years later.

27 Q As far as anybody in the area of the Pinto or
28 Rita's Cadillac, did you see anybody outside?

1 A No.

2 Q Do you recall the Cadillac? Was it in the
3 garage? Outside?

4 A No, I don't recall.

5 MR. THOMAS: Nothing further.

6 THE COURT: Mr. Sanders, you may inquire.

7 MR. SANDERS: Thank you, your Honor.

8 **CROSS-EXAMINATION**

9 BY MR. SANDERS:

10 Q Good afternoon, Ms. Flagg.

11 A Good afternoon.

12 Q Have you seen a copy of the police report that
13 has your statement?

14 A Yes.

15 Q Were you able to read over that?

16 A Yes.

17 Q When you read over that, do you remember that
18 that's what you said or could you remember?

19 A The part -- the only thing I was questioning
20 myself was more on the hitchhiker, but cars I kind of
21 like, so our neighbor had a Pinto car. I do remember
22 the car. As far as the hitchhiker, I surely couldn't
23 identify him today.

24 Q Okay. So let me understand, I believe that you
25 said that you lived up Highway 18 from Rita, Ms. Cobb?

26 A Yes.

27 Q And can you see her house from where you live?

28 A No.

1 Q So when you saw these things, it was because
2 you were driving by?

3 A That's correct.

4 Q All right. And you mentioned a person by the
5 name of Tonya.

6 A Yes.

7 Q Who is Tonya?

8 A Tonya Carloni (phonetic). She owns Wolf
9 Mountain Sanctuary. She knows a lot of people in
10 Lucerne, and she had mentioned Rita must have somebody
11 over.

12 Q Ma'am.

13 A I'm just saying. That's how I remember it.

14 Q Okay. I can't ask you what someone else said.

15 A Yes, that's how I remember it though.

16 Q I'm just trying -- you said that Tonya was
17 someone that was riding with you at the time?

18 A Yes.

19 Q Were you going up the hill towards
20 Wolf Mountain?

21 A Yes.

22 Q Were you going towards Wolf Mountain?

23 A Coming back to our home.

24 Q Okay.

25 A Yeah.

26 Q And I think I heard you say that you saw
27 several cars at Rita's house.

28 Then the next day is when you saw the police

1 activity?

2 A Yes.

3 Q So this time that you're driving up the
4 mountain with Tonya, was the day before you saw the
5 police activity?

6 A Yes.

7 Q All right. And I believe that the first thing
8 you said to the police was that as you were driving up
9 towards Wolf Mountain, you saw a hitchhiker going passed
10 Ms. Cobb's residence?

11 A Yes.

12 Q All right. And you gave that description to
13 the police?

14 A Yes.

15 Q And then I believe you said that you also saw
16 several cars parked in front of her house?

17 A Yes.

18 Q And by several, did you mean three or four or
19 six or seven or another number?

20 A It's been a long time, but I would -- I don't
21 think six or seven would be in my head. It would be a
22 lesser amount like three or four.

23 Q Did three or four include the Cadillac?

24 A No.

25 Q Three or four besides the Cadillac?

26 A Yes.

27 Q Do you remember the make or model of any of the
28 other cars?

1 A No.

2 Q When you were interviewed, you may not remember
3 this because, like you said, it was a long time ago --

4 A Um-hmm.

5 Q -- but when you were interviewed, you told this
6 officer that you saw several cars; is that your words?

7 A Yes.

8 Q Okay. And then did the officer ask you was one
9 of them a Pinto?

10 A No, not at all.

11 Q Okay.

12 A Not at all. Didn't know anything about that.
13 He didn't mention it. I mentioned it.

14 Q That was the only make or model other than the
15 Cadillac you can remember?

16 A Yes.

17 Q So the other three or four cars that were
18 there, you don't remember their makes or models?

19 A No.

20 Q All right. Now, when the -- when the
21 prosecutor just asked you that question, he asked you in
22 this way, did you see these things on Friday or Saturday
23 evening, but in your report you said just Friday or
24 Saturday.

25 You didn't use the word evening; did you?

26 A No, I wasn't --

27 Q Is that because your best recollection is you
28 went by there in the daytime?

1 A Yeah, I didn't know what time of day it was. I
2 don't remember the time of day 26 years ago.

3 Q Could it have been morning, noon or --

4 A Yes, that's correct.

5 Q -- or afternoon?

6 A That's correct.

7 MR. SANDERS: Thank you, ma'am. Nothing
8 further on cross-examination.

9 THE COURT: Redirect.

10 **REDIRECT EXAMINATION**

11 BY MR. THOMAS:

12 Q Do you recall what -- where you were coming
13 from when you went by Rita's house?

14 A The market. We always go down to the market.

15 Q When you say we always go down to the market,
16 you're talking about yourself and Tonya?

17 A Yes.

18 Q Did then -- as far as your trips to the market,
19 was there a specific time that would occur?

20 A No.

21 Q Would you go sometimes really late at night?

22 A If we were hungry. It was to get food.

23 Q Okay. And so there were times you would go
24 during the daytime. There were times you would go
25 during the nighttime.

26 You can't narrow it down based on when you went
27 to the market?

28 A No, I can't. I'm sorry.

1 MR. THOMAS: Nothing further.

2 THE COURT: Cross.

3 MR. SANDERS: No, sir. Thank you.

4 THE COURT: May Ms. Flagg be excused?

5 MR. THOMAS: Yes.

6 MR. SANDERS: Yes, your Honor.

7 THE COURT: Thanks for being with us,
8 Ms. Flagg. You're excused. That means you can go or
9 stay, whichever you'd like.

10 THE WITNESS: Thank you.

11 THE COURT: Call your next witness.

12 MR. THOMAS: People call Roger McCoy.

13 THE BAILIFF: Remain standing. Raise your
14 right hand and face the clerk to be sworn.

15 THE CLERK: You do solemnly state that the
16 evidence you shall give in the matter pending before
17 this Court shall be the truth, the whole truth, and
18 nothing but the truth, so help you God?

19 THE WITNESS: I do.

20 THE CLERK: Thank you. Please be seated.

21 THE BAILIFF: Please state your full name and
22 spell it for the record.

23 THE WITNESS: Roger T. McCoy R-o-g-e-r
24 M-c-C-o-y.

25 THE COURT: Hello.

26 THE WITNESS: Hello.

27 THE COURT: Mr. McCoy, I don't know if I
28 remember seeing you before, but you look familiar.

1 THE WITNESS: Well, been a long time I've
2 been around.

3 THE COURT: Your witness, Mr. Thomas.

4 MR. THOMAS: Thank you, your Honor.

5

6 **ROGER McCOY**, having been duly sworn,
7 testified as follows:

8

DIRECT EXAMINATION

9

BY MR. THOMAS:

10 Q Good afternoon, Mr. McCoy.

11 A Hello.

12 Q At some point did you work for the
13 San Bernardino County Sheriff's Department?

14 A Yes.

15 Q How long did you work for the San Bernardino
16 County Sheriff's Department?

17 A I was employed with them for 22 years.

18 Q And do you recall the year that you retired?

19 A 2000.

20 Q Was there a rank that you retired?

21 A Sergeant.

22 Q And at some point did you spend any of your
23 22 years with the San Bernardino County Sheriff's
24 Department as a homicide investigator?

25 A Yes.

26 Q Do you recall the years that you spent as a
27 homicide investigator?

28 A From 1984 to '86.

1 Q So it was approximately two years, a little
2 over two years?

3 A Little bit over two years.

4 Q And as far as your time in homicide, was there
5 a method or way that it would be determined who was
6 going to go out to which homicide scenes?

7 A Generally depends on who had the duty at the
8 time. There were four teams, and the duty was rotated
9 through the teams. If Team 1 was already on a case,
10 Team 2 picked it up and on down the line through Team 4.

11 Q How many people were part of each team that
12 you're talking about?

13 A Four detectives and a sergeant.

14 Q And the team that you were apart of, who was
15 all part of that team?

16 A Dave Baker was the sergeant in charge of it.
17 Gary Woods -- it's hard because they -- we rotated
18 through all the teams. I'm trying to keep track of who
19 was on the specific teams at a specific time.
20 Gary Woods was there. Let's see who else was on that
21 one. I think -- I'm trying to remember. Pepper was on
22 there.

23 Q Do you recall who the sergeant of the team was?

24 A Baker.

25 Q And then, so it was Woods, yourself, and then
26 there were two other people?

27 A Yes.

28 Q Was Peterson part of your team?

1 A It's entirely possible because, like I said, we
2 did not stay in the homogenized team. Depending on who
3 was in court or sick or whatever, you got pulled from
4 one team to another, and the only thing that stayed
5 consistent was the sergeant.

6 Q Okay. And then approximately how many homicide
7 scenes had you -- or did you go to during your time as a
8 deputy sheriff with San Bernardino County?

9 A As a deputy sheriff or as a homicide
10 investigator?

11 Q Specifically, as a deputy sheriff first?

12 A I'd have to guess 20.

13 Q And then as a homicide detective, I'm guessing
14 that was most of those 20 were as a homicide detective?

15 A Well, yeah, I would think the majority of them.

16 Q Do you recall responding to a scene at the
17 address of 35435 Highway 18 in Lucerne Valley, county of
18 San Bernardino?

19 A Yes.

20 Q And specifically back on September 23rd of
21 1985?

22 A Yes.

23 Q Do you recall approximately what time you
24 arrived at the scene?

25 A If I can refer to my notes, it would tell me
26 that.

27 Q The notes you're referring to are the reports
28 that were produced in this case?

1 A Correct.

2 Q Would that refresh your recollection?

3 A Yes.

4 MR. THOMAS: May the witness do so?

5 THE COURT: Yes.

6 THE WITNESS: We arrived at approximately
7 1422 hours on 9/23 of '85.

8 BY MR. THOMAS:

9 Q And 1422 for those of us that don't know
10 military time, that would be 2:22?

11 A Correct.

12 Q In the afternoon?

13 A In the afternoon.

14 Q I'm going to show you some photographs. First
15 I'll show you Exhibit 1.

16 May I approach the witness?

17 THE COURT: You may.

18 BY MR. THOMAS:

19 Q Show you what has been marked Exhibit 1, do you
20 recognize that photograph?

21 A Yes.

22 Q What does that photograph depict?

23 A That's the front yard portion of the victim's
24 residence.

25 Q Showing you another photograph that's been
26 marked Exhibit 2, do you recognize what that photograph
27 depicts?

28 A Appears to be the side of her residence.

1 Q Show you another photograph that's been marked
2 Exhibit 3, do you recognize what that photograph
3 depicts?

4 A The victim's garage and her vehicle.

5 Q As far as your assignment, and -- I forgot to
6 ask this earlier, when you go out to homicide scenes,
7 are certain people assigned certain assignments to do at
8 the scene?

9 A Yes.

10 Q What was your assignment?

11 A I was to do the crime scene.

12 Q When you say you were to do the crime scene,
13 what does that mean?

14 A Basically, you try to locate physically with
15 measurements, the size of the building, where it's
16 located in the building, where the victim is located,
17 any evidence that you may observe or that's located,
18 that type of thing.

19 Q Okay. And I'm going to show you an exhibit
20 that's been marked Exhibit 39.

21 Did you do a crime scene -- what they call a
22 crime scene diagram in this case?

23 A Yes, I did.

24 Q Looking up at the screen there, Exhibit 39's up
25 there.

26 Is that the crime scene diagram that you
27 prepared regarding the case of Rita Cobb?

28 A Yes.

1 Q And I notice on the diagram there's several
2 what appear to be measurements.

3 Do you see those?

4 A Yes.

5 Q Were those measurements taken by you?

6 A Yes.

7 Q And then as far as orientation goes, can you
8 give us some sort of orientation where north and south
9 is? Is that written on the diagram?

10 A It's written on the diagram. Using a compass,
11 we try to get a general direction of where everything's
12 located using a compass as a starting point as a
13 reference.

14 Q You did that in this particular case?

15 A Yes.

16 Q And you put the directions up there in the
17 bottom right-hand corner of Exhibit 39?

18 A Yes.

19 Q Can you describe to us what was the practice
20 back in 1985 as far as when you show up at one of these
21 homicide scenes?

22 You discuss who's going to do what?

23 When does somebody go inside the house and
24 start looking around?

25 A Generally, the sergeant who's in charge of the
26 team will decide you're scene, you're interviews, you're
27 whatever, whatever is appropriate for the incident. I
28 don't know that he uses any particular criteria to

1 choose it. It's just you're it.

2 Q Okay. And you were it for the crime scene?

3 A I was it.

4 Q And then as far as these photographs that I'm
5 showing you, when are these photographs taken?

6 A During the course of the investigation while we
7 were on the scene.

8 Q I'm going to show you another photograph that's
9 been marked Exhibit 4.

10 Do you recognize that photograph?

11 A Only as much as it appears to be the interior
12 of the garage.

13 Q That's the -- in the bottom right-hand corner
14 of the photograph looks -- what appears to be a
15 Cadillac?

16 A Right.

17 Q That's the same car that you see in the other
18 photographs?

19 A Yes.

20 Q Show you what has been marked Exhibit 5, do you
21 recognize this photograph?

22 (Whereupon Exhibit 5 was marked
23 for identification.)

24 THE WITNESS: Yes. That's the back of her
25 house, the back of the victim's home.

26 BY MR. THOMAS:

27 Q And looking at, I believe it's Exhibit -- were
28 there two separate residences on that property?

1 A I do not recall that.

2 Q Show you what has been marked Exhibit 2, do you
3 see the other building in the rear there?

4 A I do.

5 Q Okay. Was that a detached type of structure
6 that possibly could hold people in there?

7 MR. SANDERS: What photo are we looking at?

8 MR. THOMAS: We're looking at a different one
9 right now. He has Exhibit 2 up there.

10 Do you see it in Exhibit 2?

11 THE WITNESS: Yes. I do not recall that
12 building being there, but obviously it was. It's in
13 the photograph.

14 BY MR. THOMAS:

15 Q Okay. Show you what has been marked Exhibit 6,
16 in Exhibit 6, can you see the other building that I was
17 taking to you about?

18 (Whereupon Exhibit 6 was marked
19 for identification.)

20 THE WITNESS: I believe I can -- yes. Yes.

21 BY MR. THOMAS:

22 Q Did you do any investigation in that particular
23 building that you can recall?

24 A I cannot recall other than it was there. We
25 looked at it, but there was no investigative leads that
26 we could find in that building. I'm assuming because it
27 was there. I don't remember the building being there
28 so...

1 Q Show you what has been marked Exhibit 7, do you
2 recognize that?

3 (Whereupon Exhibit 7 was marked
4 for identification.)

5 THE WITNESS: No, I do not.

6 BY MR. THOMAS:

7 Q Now, as far as Exhibit 7, if you look at the
8 previous exhibit, Exhibit 6, can you see what appears to
9 be a metal-type container?

10 A Yes.

11 Q Did you see that in both of the photographs?

12 A Yes.

13 Q As far as that metal type of container, you can
14 see that it's from Exhibit 6 next to what appears to be
15 the smaller residence or the smaller structure on the
16 property.

17 A Yes, yes.

18 Q Okay. So looking at Exhibit 7, do you have any
19 idea what you're looking at as far as the main residence
20 is concerned?

21 A Well, in judging what I'm looking at, I'm
22 assuming you have a water tank with a structure in front
23 of what I'm assuming -- what appears to be the main
24 residence or main structure ahead of it deeper into the
25 picture.

26 Q Okay. Then I'm going to show you Exhibit 8.
27 Do you recall seeing a Jeep at any point on the
28 property?

1 A I do not, no.

2 Q So as far as the exterior of the property, was
3 that one of the things that you were assigned to do or
4 were you assigned to do the interior portion of it?

5 A The interior.

6 Q As far as the exterior portion of the
7 residence, you were never out there to take measurements
8 or anything?

9 A We found some tire tracks on the outside of the
10 residence, but I did not go around the entire structure.

11 Q Since we're speaking of tire tracks, I'm going
12 to show you an exhibit. It's been marked Exhibit 21.

13 Do you recognize that?

14 (Whereupon Exhibit 21 was marked
15 for identification.)

16 THE WITNESS: Well, only in as much as it's
17 tire prints in the dirt. Specifically, I could not
18 tell you where that was located, but we did take
19 measurements of tracks that were out in front of the
20 house and in the general area.

21 BY MR. THOMAS:

22 Q As far as those tire tracks are concerned, you
23 put that in your report?

24 A I did.

25 Q Would looking at your report refresh your
26 recollection as to where those tire tracks were?

27 A I think so.

28 Q Specifically, Page 3 of your report underneath

1 crime scene at the top of the page.

2 A Yeah. Tire prints located on the east side of
3 the structure and tire prints there (indicating).
4 Located on the west side of the structure, there were
5 additional vehicle tire prints.

6 Q So as far as these specific set of tire tracks,
7 you wouldn't be able to tell us if they were the tire
8 tracks on the east side or the west side?

9 A Not from that photograph. It's only been 25
10 years.

11 Q As far as the tire tracks, I notice there
12 appear to be placards in Exhibit 21, Placard 1 and 2.

13 Do you see that in the photograph?

14 A Yes.

15 Q I'm going to show you what has been marked
16 Exhibits 22 and 23, put them up on the screen, 22 being
17 the exhibit up at the top and 23 being the photograph at
18 the bottom. Speaking first about Exhibit 22.

19 What does Exhibit 22 depict?

20 (Whereupon Exhibit 22 was marked
21 for identification.)

22 THE WITNESS: Tire prints.

23 BY MR. THOMAS:

24 Q That's the tire prints that you marked as
25 Placard Number 1?

26 A Yes.

27 Q And then there's another set of tire tracks in
28 Exhibit 23; is that correct?

1 (Whereupon Exhibit 23 was marked
2 for identification.)

3 THE WITNESS: Correct.

4 BY MR. THOMAS:

5 Q You used Placard Number 2 to designate that
6 tire track?

7 A Correct.

8 Q At some point did you see what appears to be a
9 12-pack of Coors at the location?

10 A Yes.

11 Q At the residence?

12 A Yes.

13 Q Where's that located?

14 A On the outside, I believe, the front porch.

15 Q I'm going to show you what's been marked
16 Exhibit 24.

17 Do you recognize that?

18 A Yes.

19 Q Is that the 12-pack of Coors that you spoke
20 about?

21 A Yes.

22 Q That's depicted in the photograph on top of
23 what appears to be some sort of concrete?

24 A Cinder block.

25 Q Cinder block?

26 A Yes.

27 Q At some point did you find out who brought that
28 12-pack to the location?

1 A Yes.

2 Q Who was that?

3 A Rita's son.

4 Q That would have been Daryl Kraemer?

5 A Yes.

6 Q Once you got inside the house, did you look
7 around to see if there's anything of evidentiary value
8 to you?

9 A Other than in the bedroom where the deceased
10 was found?

11 Q Yes.

12 A Yes.

13 Q And just for the record, did you go to -- where
14 did you start your investigation? Did you start out in
15 the bedroom or did you start out at some other location
16 in the house?

17 A Do an overall from the front door. Start from
18 the front door and work our way into the structures.

19 Q And on Exhibit 39, the diagram that you
20 prepared in this case, where is the front door if you
21 can recall?

22 A It's on the northeast corner, I suppose would
23 be the best place to put it.

24 Q On the diagram, if you're looking at it, it's
25 at the bottom left-hand corner and you see what appears
26 to be a door swinging open?

27 A Correct.

28 Q So you started your investigation at that

1 particular location?

2 A Correct.

3 Q And then as far as the investigation
4 progressed, did it go to this room just adjacent to what
5 appears to be a living room where you see the circle
6 table?

7 A Yes.

8 Q Okay. You marked -- did you mark any items in
9 that particular area?

10 A I believe there -- there was another container
11 of beer in that general area.

12 Q As far as that container -- are you sure it was
13 beer?

14 A There was beer located in the house, and I'm
15 thinking that's where it was at.

16 Q Would looking at your report refresh your
17 recollection as to whether or not --

18 A Certainly.

19 Q Specifically, it would be bottom of Page 2?

20 A That's where the ashtray was located.

21 Q Do you recall seeing anything about a mention
22 of beer in this report?

23 A Yeah. It seems there was another 6-pack of
24 beer or something.

25 Q Would that have been indicated in your report?

26 A Should be, yes.

27 Q Do you recall seeing a Slurpee cup?

28 A No.

1 Q I'm going to show you a photograph that's been
2 marked Exhibit 25.

3 Do you recognize that photograph?

4 A In relationship to the Slurpee cup, no. It's
5 part of the interior of the residence, but I don't
6 recall a Slurpee cup.

7 Q Okay. As far as the Slurpee cup was concerned,
8 there's a placard just to the right of the Slurpee cup
9 in the photograph.

10 Do you see that?

11 A Yes.

12 Q That would be Placard Number 6?

13 A It appears to be, yes.

14 Q As far as Placard Number 6, what was contained
15 or designated by Placard Number 6?

16 A I don't readily find that in my report.

17 Q Would looking at a close-up of Placard Number 6
18 help refresh your recollection?

19 A I don't believe so.

20 Q You want to try?

21 A Can't hurt.

22 Q Okay. I'm going to show you what has been
23 marked Exhibit 26.

24 Do you recognize that?

25 A Yes, but it wasn't for the Slurpee cup.

26 Q What was it designating?

27 A The Virginia Slim cigarette pack.

28 Q Okay. Then looking at your report, bottom of

1 Page 2 of your report, you wrote also located in the
2 dining area is a round table which stood soft drink
3 containers and a package of Virginia Slims cigarettes.

4 Do you see that?

5 A Yes.

6 Q The soft drink container, that would have been
7 what you were referring to, the Slurpee cup?

8 A I would assume.

9 Q Okay. Then there were other items that were
10 located in the desk area.

11 Do you recall those items?

12 A Not specifically but --

13 Q Specifically, would referring to your report,
14 specifically Page 2, the last paragraph on Page 2, would
15 that refresh your recollection as to what was found on
16 the desk area?

17 A Well, it indicates the Virginia Slims
18 cigarettes and the soft drink.

19 Q Those were located, according to your report,
20 on the round table; right?

21 A Yes.

22 Q Just above that there's a -- located in the
23 dining area of the residence is a desk, which is located
24 against the south wall of the dining area. Then it
25 talks about items that were found on top of the desk.

26 A Yes.

27 Q Okay. And Placard Number 5 would have been,
28 according to your report, an ashtray?

1 A Correct.

2 Q I'm going to show you what has been marked
3 Exhibit 27.

4 Looking at Exhibit 27, that's the desk that is
5 referred to in your report?

6 (Whereupon Exhibit 27 was marked
7 for identification.)

8 THE WITNESS: Yes.

9 BY MR. THOMAS:

10 Q And then specifically I'll show you Exhibits 28
11 and 29 together, 28 being the one on top, 29 being the
12 one on the bottom.

13 Placard Number 5 appears right behind what
14 appears to be an ashtray with some cigarette butts in
15 there?

16 (Whereupon Exhibits 28 and 29 were marked for
17 identification.)

18 THE WITNESS: Correct.

19 BY MR. THOMAS:

20 Q Then Placard Number 7, what does that
21 designate?

22 A The Benson and Hedges cigarettes.

23 Q Okay. And then did you locate what appeared to
24 be blood stains or blood spots of some sort in the
25 residence?

26 A Yes.

27 Q How were those labeled?

28 THE COURT: Why don't we stop right now and

1 take our afternoon recess and call this the end of a
2 chapter and start up in 15 minutes.

3 Ladies and gentlemen, you're admonished that it
4 is your duty not to converse among yourselves or with
5 anyone else about any matter connected with this case
6 nor form or express an opinion on it until it's
7 submitted to you.

8 (Whereupon a recess was taken.)

9 (Whereupon the following proceedings were held in open
10 court in the presence of the jury:)

11 THE BAILIFF: Remain seated. Come to order.
12 Court is now in session.

13 THE COURT: Good afternoon. Back on the
14 record in the case of People of the State of
15 California versus John Henry Yablonsky. Mr. Yablonsky
16 is here with his attorney, David Sanders, along with
17 his counterpart from the District Attorney's Office,
18 John Thomas, and Detective Robert Alexander.

19 On the witness stand, we have
20 Sergeant Roger McCoy, retired, and continuing in direct
21 examination.

22 MR. THOMAS: Thank you, your Honor.

23 BY MR. THOMAS:

24 Q Before we left for the break, we were about to
25 get into what you -- what appeared to be blood spatter
26 of some sort in the residence; is that correct?

27 A Correct.

28 Q And those were designated how?

1 A A-24 and A-23.

2 Q On the diagram, Exhibit 39 that you see on the
3 screen, if you can use the laser pointer up there, can
4 you point out to us where A-23 is first?

5 A (pointing).

6 Q You're pointing to the hallway to the right
7 center of the screen where it's marked A-23, and then
8 there's an arrow to what appears to be the end of a wall
9 or doorway?

10 A Right.

11 Q Then do you see A-24 on there?

12 A (pointing).

13 Q You're pointing to an area on the diagram to
14 the right of center just before you enter the victim's
15 bedroom where it says A-24, and then there's an arrow
16 pointing to the door where it would hinge open and shut?

17 A Right.

18 Q Then as far as A-23 was concerned, did you do
19 any measurements as far as that particular suspected
20 blood drop?

21 A Yes.

22 Q What were the measurements that you took?

23 A If I can refer to my notes?

24 Q Would that refresh your recollection?

25 A Yes, it will.

26 THE COURT: Don't you think by now it's a
27 better idea to say refer to those and see if it
28 refreshes your recollection because the answer could

1 be no, and you're still going to ask him to look.

2 Go ahead, please.

3 THE WITNESS: A-23 was located approximately
4 35 inches above the floor of the hallway.

5 BY MR. THOMAS:

6 Q I'm going to show you an exhibit that's been
7 marked Exhibit 36.

8 Looking at Exhibit 36, is that the blood spot
9 that you saw that was marked A-23?

10 (Whereupon Exhibit 36 was marked
11 for identification.)

12 THE WITNESS: Yes, I believe it is.

13 BY MR. THOMAS:

14 Q And then as far as A-24 was concerned, what was
15 the description that you gave on A-24?

16 A That was located on the molding in the doorway
17 leading from the hall of the residence into the bedroom
18 where the victim was located.

19 Q How far off the ground was that located?

20 A Located approximately 43 inches from the floor
21 of the hallway.

22 Q I'm going to show you another photograph that's
23 been marked Exhibit 37.

24 Do you recognize that photograph?

25 (Whereupon Exhibit 37 was marked
26 for identification.)

27 THE WITNESS: Yes.

28

1 BY MR. THOMAS:

2 Q Is that the photograph of the blood drop or
3 blood spot marked as A-24?

4 A Yes.

5 Q As far as the exterior of the house, before we
6 get into the victim's bedroom, did you find any
7 cigarette butts?

8 A Yes, I believe there were.

9 Q Okay. I'm going to show you a couple
10 photographs. First, Exhibit 30.

11 Do you recognize what's depicted in Exhibit 30?
12 (Whereupon Exhibit 30 was marked
13 for identification.)

14 THE WITNESS: No, I do not.

15 BY MR. THOMAS:

16 Q As far as Exhibit 30 was concerned, can you see
17 just to the right of Placard 9 there appears to be some
18 cigarette butts?

19 A Yes.

20 Q Does the photograph -- if you look at the front
21 porch photograph that I showed you earlier --

22 A Exhibit 1.

23 Q I think it's Exhibit 1 or 2 or 3.

24 A I have Exhibit 1.

25 Q Do you see any of the items that you see in
26 Exhibit 30 in Exhibit 1?

27 A No, I do not.

28 Q Okay. So you don't recall marking any of the

1 cigarette butts with Placard Number 9?

2 A Those placards were generally set up by the ID
3 tech that was on scene, and they refer to his -- his
4 notes --

5 Q Okay.

6 A -- and the location of which was documented
7 when they're collected, and they're usually collected by
8 the crime lab personnel.

9 Q That would have been Don Jones?

10 A Correct.

11 Q Okay. I'll ask him.

12 Now, as far as the interior of the bedroom or
13 the victim's bedroom inside the house, could you
14 describe what you saw when you walked in there?

15 A There was a woman's body lying on the bed. She
16 was nude. It was a moderate state of decomposition,
17 face was all purple and swollen.

18 Q And then I believe you wrote in your report
19 moderate to advanced state of decomposition?

20 A Correct.

21 Q And then was there anything about her face that
22 you saw that was unusual?

23 A Her head was swollen quite a bit. Her face was
24 purple in color.

25 Q Was there a white cloth at any point that you
26 observed?

27 A Yes.

28 Q Where was that white cloth?

1 A I believe it was on the floor next to her.

2 Q Would referring to your report refresh your
3 recollection?

4 A Sure.

5 Q Page 2, top of the page, first paragraph.

6 A I'm thinking of another situation. This was
7 used as a gag in her mouth. Yes, that was present.

8 Q I'm going to show you what has been marked
9 Exhibit 33.

10 Do you recognize that exhibit?

11 (Whereupon Exhibit 33 was marked
12 for identification.)

13 THE WITNESS: Yes.

14 BY MR. THOMAS:

15 Q What does that exhibit depict?

16 A That depicts the position and the location of
17 the body when I entered the room.

18 Q And I notice there appears to be a white cloth
19 covering the victim's face in Exhibit 33?

20 A Yes.

21 Q And that's the white cloth that you referred to
22 as being used as -- possibly being used as a gag?

23 A I believe so, yes.

24 Q Show you another photograph that's been marked
25 Exhibit 13.

26 Do you recognize that photograph?

27 (Whereupon Exhibit 13 was marked
28 for identification.)

1 THE WITNESS: Yes, it's the same victim from
2 a different angle.

3 BY MR. THOMAS:

4 Q That particular picture, Exhibit 13, is taken
5 from the doorway that would lead out to the hallway?

6 A Correct.

7 Q Okay. In that particular photograph, do you
8 remember there being any clothing?

9 A Yes, there was some clothing on the bed.

10 Q Okay. Was it on the bed or --

11 A In my mind, it's on the bed.

12 Q Would referring to your report refresh your
13 recollection as to where the clothing was located?

14 A Certainly. According to my notes, it was on
15 the floor of the bedroom adjacent to what is the north
16 wall.

17 Q In looking at that photograph, the north wall
18 would be that wall just to the right there in that
19 photograph, Exhibit 13?

20 A Yes.

21 Q So there was clothing on the floor there?

22 A Yes.

23 Q I'm going to show you what's been marked
24 Exhibit 11.

25 Looking at Exhibit 11, do you recognize that --
26 what's depicted in this photograph?

27 (Whereupon Exhibit 11 was marked
28 for identification.)

1 THE WITNESS: No.

2 BY MR. THOMAS:

3 Q As far as that particular photograph, you can
4 see the victim's leg in the bottom left-hand corner of
5 the photograph?

6 A Yes.

7 Q Okay. And so looking at the other photograph,
8 that would be the -- I guess it would be the north side
9 of the bed?

10 A Yes.

11 Q Okay. And then there's what appears to be some
12 sort of item in that photograph depicted?

13 A Yes, cloth or something.

14 Q At the top of the photograph, the top
15 right-hand corner of the photograph, and I'll point it
16 out to you with the laser, there appears to be a set of
17 glasses.

18 Do you see that?

19 A Yes.

20 Q Those glasses, were they there that you can
21 remember?

22 A They're in the photograph, so they were there
23 because nothing was moved. All we were there doing was
24 measurements, and what have you. Nothing gets moved
25 until the crime lab, the ID tech, homicide, we are all
26 satisfied, the coroner comes in and the only thing
27 that's moved is the victim's body.

28 Q Okay. Were you present when the coroner came

1 in to move the victim's body?

2 A Yes.

3 Q And typically what happens when the victim's
4 body's moved?

5 A It's rolled to one side so we can inspect
6 what's under the body directly and for additional
7 evidence or investigative leads.

8 Q Okay. And then as far as the bedding, how
9 would you characterize the bedding? If you look at the
10 photographs I've shown you already, was it -- was the
11 bedding neat?

12 A No, it was -- it had been, in my description,
13 wadded up more or less.

14 Q Okay.

15 A Disturbed.

16 Q When you say wadded up, what part of the bed
17 was wadded up?

18 A If I can use the photograph as an example, it's
19 in the northeast corner of the bed.

20 Q Okay. And then let me show you another
21 photograph that's been marked Exhibit 14.

22 Do you see where the bedding was wadded in this
23 exhibit?

24 (Whereupon Exhibit 14 was marked
25 for identification.)

26 THE WITNESS: Yes, over there.

27 BY MR. THOMAS:

28 Q Then looking at Exhibit 14, that's just from a

1 different angle from the previous exhibit that I showed
2 you?

3 A Right, yes.

4 Q Okay. At any point did you notice a -- I guess
5 it would be a watch pin of some sort?

6 A Yes.

7 Q Do you recall where that was located?

8 A Located up by her head in this general area.

9 Q Show you a photograph that's been marked
10 Exhibit 12.

11 I guess it would be characterized as a
12 watchband pin?

13 (Whereupon Exhibit 12 was marked
14 for identification.)

15 THE WITNESS: Yes.

16 BY MR. THOMAS:

17 Q And so that particular item was just above
18 Rita's head on the right side of the bed?

19 A Yes.

20 Q Did you notice, as far as the bedroom itself
21 was concerned, did you notice if it appeared to be
22 somewhat orderly or was it ransacked or is that
23 something that you can't remember?

24 A The bedroom, like the rest of the house, was
25 not organized. There were things that should have been
26 put away that weren't depending on who your wife is I
27 guess. The whole house had things that were out of
28 place that just were not put away. Either she didn't

1 have a place for them or she had chosen not to put them
2 away.

3 Q As far as some of these items that were out and
4 about, would you characterize some of these items as
5 being items of value?

6 A No, just normal every day things that you'd
7 collect. You go to the store and instead of putting it
8 away, you set it down and that type of thing.

9 Q As far as the bedroom was concerned, were there
10 dressers or anything like that in that bedroom that you
11 can recall?

12 A I do not have it indicated in the diagram, and
13 I don't remember any.

14 Q When you looked through the house, did you see
15 drawers or anything that were left open like somebody
16 had been going through that?

17 A No, the house did not appear to be ransacked.
18 It was not orderly. It hadn't been torn apart.

19 Q And then as far as the victim was concerned,
20 did you notice a murder weapon or anything on the
21 victim?

22 A Yes, she had what appeared to be a coat
23 hanger -- a wire coat hanger wrapped around her neck.
24 At that point she was in a state of decomposition. She
25 was swelling, so it was cutting very deeply into her
26 throat.

27 Q Do you recall whether or not her dentures were
28 inside her mouth?

1 A She -- if I remember, uppers were inside and
2 her lowers were on the bed with her I believe.

3 Q I'm going to show you a couple photographs.
4 First, Exhibit 16.

5 Looking at Exhibit 16, can you see the wire
6 hanger that you were speaking about?

7 (Whereupon Exhibit 16 was marked
8 for identification.)

9 THE WITNESS: Not real well in that picture,
10 but in this picture certainly, yes.

11 BY MR. THOMAS:

12 Q When you say not real well in that picture,
13 you're talking about the picture on the big screen?

14 A The projection picture is not indicating the
15 wire as well as the regular photograph.

16 Q Do you see her upper dentures and lower
17 dentures in that photograph?

18 A Yes.

19 Q Again, if you can just point out to where her
20 upper dentures and lower dentures are in the photograph.

21 A Uppers are still in her mouth.

22 Q Just for the record, you're pointing to the
23 upper center of the photograph, Exhibit 16?

24 A Correct. The lowers were on the bed next to
25 her.

26 Q Then you're pointing to the area on the bottom
27 right-hand corner of the photograph.

28 A Yes.

1 Q Show you what has been marked Exhibit 15.
2 Did you notice whether or not the victim had a
3 bracelet of some sort on?

4 (Whereupon Exhibit 15 was marked
5 for identification.)

6 THE WITNESS: Yes.

7 BY MR. THOMAS:

8 Q And do you see that bracelet in the photograph,
9 Exhibit 15?

10 A Yes.

11 Q Okay. Where is it?

12 A In the projection picture, it's hard to see.
13 It's right in there.

14 Q Did she also have a watch on?

15 A Yes.

16 Q Where is the watch?

17 A Either that -- this portion is the watch and
18 this is the jewelry or it's the other way around. This
19 is probably the bracelet and that's the watch.

20 Q So --

21 A She had them on her wrists.

22 Q Just for the record, you think that the
23 bracelet might be on the right hand -- right wrist area
24 of the victim and the watch on the left wrist area of
25 the victim?

26 A Correct, yes.

27 Q Then as far as the body being rolled, one of
28 the purposes of doing that is so that the coroner

1 investigator can establish lividity and some other
2 things?

3 A Correct.

4 Q And lividity being blood settling?

5 A Blood settling, yes.

6 Q Okay. And that would indicate whether or not a
7 victim had been moved?

8 MR. SANDERS: Objection, your Honor, to the
9 prosecutor testifying.

10 MR. THOMAS: I can ask or rephrase it.

11 THE COURT: In a way that's it's not leading,
12 go ahead.

13 MR. THOMAS: As far as lividity is concerned,
14 do you know other than establishing --

15 THE COURT: Just a second. Counsel, are you
16 going to be asking these same questions of the person
17 who was there --

18 MR. THOMAS: I can ask the pathologist these
19 questions.

20 BY MR. THOMAS:

21 Q I'm going to show you Exhibit 34.

22 Looking at Exhibit 34, is that when the body is
23 being rolled?

24 (Whereupon Exhibit 34 was marked
25 for identification.)

26 THE WITNESS: Yes.

27 BY MR. THOMAS:

28 Q Then afterwards, was there a picture taken of

1 the bed after the body was removed?

2 A Yes.

3 Q I'm going to show you Exhibit 18.

4 Do you recognize that exhibit?

5 (Whereupon Exhibit 18 was marked
6 for identification.)

7 THE WITNESS: Yes.

8 BY MR. THOMAS:

9 Q What does that exhibit depict?

10 A The top of the water bed with the blanket,
11 sheet with body fluids present on the sheet.

12 Q Then as far as all of the photographs that I've
13 shown you that you've been able to identify, so
14 excluding those ones that you said I don't know what's
15 in these photographs, are all those photographs true and
16 accurate depictions of the crime scene as you saw it
17 back on September 23rd, 1985?

18 A Yes.

19 Q Did you do an investigation in the interior of
20 the residence to determine if you could see any signs of
21 forced entry?

22 A Yes.

23 Q Did you find anything to indicate there was a
24 forced entry?

25 A No.

26 Q Did you find any indications that there was a
27 theft or some sort of burglary at the location?

28 A No.

1 MR. THOMAS: Nothing further at this point.

2 THE COURT: Mr. Sanders, do you have any
3 questions?

4 MR. SANDERS: If I may have just a moment,
5 your Honor? No questions. Thank you, your Honor.

6 THE COURT: Okay. May Sergeant McCoy be
7 excused?

8 MR. THOMAS: Yes.

9 MR. SANDERS: If he may remain on call.

10 MR. THOMAS: Can we approach on that?

11 THE COURT: Sure.

12 (Whereupon the following proceedings were held at the
13 bench out of the hearing of the jury:)

14 MR. THOMAS: Sergeant McCoy is from Idaho.
15 The DA's Office had to fly him in here. He's
16 scheduled to leave first thing Wednesday morning to go
17 back to Idaho.

18 MR. SANDERS: Can we agree if there's a
19 statement that I need to corroborate, we can use his
20 report?

21 MR. THOMAS: Yeah.

22 MR. SANDERS: Okay.

23 MR. THOMAS: I don't have any problem with
24 that.

25 THE COURT: In other words, make sure we
26 understand, he said, I don't see anything wrong with
27 that. He's concerned that he's going to have
28 Joe Smith on the stand and Joe Smith is going to

1 testify differently than the report that McCoy made
2 back in 1985.

3 MR. SANDERS: We have an agreement that we
4 can use those reports for that purpose.

5 MR. THOMAS: Okay.

6 THE COURT: So in other words, I can tell him
7 that he's subject to recall, but it's a technicality
8 that he's going to be going; right?

9 MR. THOMAS: Yes.

10 MR. SANDERS: Yes.

11 (Whereupon the following proceedings were held in open
12 court in the presence of the jury:)

13 THE COURT: Or in the alternative, we could
14 simply excuse him subject to the stipulation?

15 MR. SANDERS: Excused.

16 MR. THOMAS: Yes, your Honor.

17 THE COURT: Sergeant McCoy, thank you for
18 being with us, sir. You are excused.

19 THE WITNESS: Thank you.

20 THE COURT: Call your next witness.

21 MR. THOMAS: People call Donald Jones.

22 THE CLERK: You do solemnly state that the
23 evidence you shall give in the matter pending before
24 this Court shall be the truth, the whole truth, and
25 nothing but the truth, so help you God?

26 THE WITNESS: I do.

27 THE CLERK: Thank you. Please be seated.

28 THE BAILIFF: Please state your full name and

1 spell it for the record.

2 THE WITNESS: My name is Donald Thomas Jones
3 D-o-n-a-l-d T-h-o-m-a-s J-o-n-e-s.

4 THE COURT: Good afternoon, Mr. Jones.

5 THE WITNESS: Good afternoon, sir.

6 THE COURT: Your witness, Mr. Thomas.

7 MR. THOMAS: Thank you, your Honor.
8

9 **DONALD JONES**, having been duly sworn,
10 testified as follows:

11 **DIRECT EXAMINATION**

12 BY MR. THOMAS:

13 Q What is your current occupation?

14 A I'm a criminalist with the San Bernardino
15 County Sheriff's Department. Basically a forensic
16 scientist who works in the crime laboratory.

17 Q When you say forensic scientist, what does that
18 mean?

19 A It means someone who has received training with
20 regard to the laws of natural sciences and applies that
21 to physical evidence as it is necessary for
22 investigations for court purposes.

23 Q And how long have you been employed with
24 San Bernardino County as a criminalist?

25 A For about 30 and a half years.

26 Q And as far as your qualifications to be a
27 criminalist, can you briefly describe to the jury what
28 your qualifications are?

1 A It's pretty basic to be a criminalist. You
2 need to have a bachelor of science degree in some sort
3 of natural science. I have a bachelor of science degree
4 in chemistry from California State University at
5 Northridge. I have a -- went back to school to get a
6 master's degree in biology from California State
7 University at San Bernardino.

8 In order to do some of the specialized
9 techniques that we do at the laboratory, we do receive
10 additional training, either in-house practical exams or
11 through additional training that we go to outside
12 agencies, such as, the Federal Bureau of Investigation,
13 California Criminalistics Institute, or there are some
14 private organizations which will train us in various
15 techniques we use in the crime laboratory.

16 Q Then during your 30-plus years as a
17 criminalist, did you continue to be educated and go to
18 different classes that you attend in order to progress
19 in the things that you do as a criminalist?

20 A Yes, sir. There were classes and courses of
21 which I have just got finished talking about. In
22 addition to that, there's a professional organization I
23 belong to, the California Association of Criminalists.
24 We have semiannual meetings. We have study groups in
25 which we can attend to exchange information with other
26 forensic scientists who are either in the same
27 discipline or field that I'm in or in related fields,
28 and we get to exchange information about what's

1 happening in our laboratory, in our region with what's
2 happening in other regions, either of the state or of
3 the country.

4 Q Are there any licenses or certificates that you
5 need to do what you're doing as a criminalist?

6 A There are -- there is a certification program.
7 It is not a requirement. I am not certified. There
8 was, for the individual laboratories, what's called an
9 accreditation program that is required primarily to do
10 forensic DNA work. You must have -- you must be an
11 accredited laboratory. Our laboratory has been
12 accredited through an organization called the American
13 Society of Crime Lab Directors. They're a laboratory
14 accreditation board since 1995.

15 Q And what are some of the things that you've
16 done or fields that you've been in as far as a
17 criminalist and things that you've done as a criminalist
18 in San Bernardino County?

19 A When I was first hired, I primarily worked in
20 the areas of controlled substance analysis, looking at
21 drugs and narcotics and forensic alcohol analysis, doing
22 blood alcohol samples, working with breath alcohol
23 instruments.

24 I also did crime scene investigations. As kind
25 of a subset of crime scene investigations, I did
26 clandestine laboratory investigations, illegal drug
27 labs.

28 I worked a short amount of time on a few cases

1 in what's was called trace analysis, looking at maybe
2 hairs or fibers or paints, shoe prints, and so on, but
3 in about 1984, 1985, I began to specialize in the area
4 that is now called forensic biology. At the time it was
5 called serology. It was the identification of
6 physiological fluids and the characterization -- or
7 comparison of physiological fluids and stains.

8 Q Okay. And now it's forensic biology?

9 A Forensic biology was developed over the years.
10 Right now the primary area that is known in forensic
11 biology is forensic DNA work, and I have been trained in
12 forensic DNA. I went to an FBI course back in 1990. It
13 was one of the initial pushes of our laboratory to put
14 forensic DNA work online. It wound up replacing the
15 conventional serology techniques we used prior to that.

16 Since then, forensic DNA has changed in a
17 number of ways with advances of different technologies
18 that have come along with some of the research projects,
19 the human genome project. Forensic science is kind of
20 an applied science, which is a nice way of saying the
21 techniques that are used in pure research, we steal them
22 and use them to analyze evidence and so forth. We apply
23 the techniques they have developed for these other uses
24 in a specific area of looking at evidence especially
25 evidence in criminal investigations.

26 Q And you said that forensic biology kind of
27 replaced serology. What was some of the major
28 differences between what you did in serology area versus

1 what you're doing now in forensic biology?

2 A To get down to the technical parts, forensic
3 serology most of time you looked at the fluids that were
4 left behind, the liquid part, the blood or say the blood
5 or saliva or semen samples and so on, the fluids.

6 When you get more to forensic DNA work, you're
7 no longer looking at the fluid part of it. You're
8 looking at the cells that are there because that is
9 where the DNA is housed, and so it -- it really shifted
10 the focus from basically the water part of the biology
11 to the cellular part of the biology.

12 In so doing, what it did was it allowed us to
13 become more specific in terms of who could have left a
14 particular sample. It's called the discriminating power
15 of the genetic markers we would get looking at serology.
16 It was not very powerful. We would be -- we'd feel
17 really good if we could get a number that said one in a
18 hundred or one in a thousand people could have left that
19 stain.

20 When you look at DNA, it is much more
21 discriminating because of the markers we look at in DNA
22 and in the relative biology of what these markers are.
23 It allows us to look instead of one in a hundred or one
24 in a thousand, one in a billion, one in a trillion, one
25 in a quadrillion.

26 Q As far as specific training that you received
27 in the area of forensic biology, you already told us
28 that you went to a month-long course by the FBI academy?

1 A Yes, sir.

2 Q What other stuff have you done?

3 A The California Criminalistics Institute has a
4 number of courses that it put on. When a particular
5 technology came out, which uses what's called the
6 polymerase chain reaction, it allowed us to look at
7 smaller amounts of DNA.

8 The initial course I took at the FBI, in order
9 for it to be applied to evidence, you need to have a
10 fairly large stain that had a lot of DNA in it. If the
11 stain was a mixed stain, say of semen and blood or semen
12 and something else, you could separate the semen out,
13 the sperm cells. You could separate them out and get
14 the DNA, but you needed a lot of it in order to get the
15 technology that was in play at that time.

16 With the advances, as I mentioned, with the
17 human genome project and other researching, they
18 developed this process called the polymerase chain
19 reaction, which allows you to take a small amount of
20 DNA, that previously we couldn't do anything with, and
21 it puts it into a molecular Xeroxing mode and copies the
22 information millions of times. In so doing, it then
23 produces enough material for us to actually work with
24 and get an answer.

25 This became really advantageous in forensics
26 where a lot of times the samples that you get are not
27 big stains. They are small stains, and maybe something
28 as a cigarette butt and so forth. Previously we weren't

1 able to do a lot with those. With the advances, we were
2 able to take a look at skin cells that were left on the
3 cigarette butt.

4 The courses that I took then started to train
5 me as to how to apply these technologies, and the kits
6 that were being produced by certain commercial
7 manufacturers, to the analysis of these -- to the
8 analysis of evidence and the DNA that I recovered from
9 evidence.

10 Over the last ten years, the -- the kits and
11 the DNA markers that we look at have pretty much
12 plateaued or stabilized such that we have a set of DNA
13 markers or DNA locations that we look at. That is
14 pretty standard across the nation, so that a -- a sample
15 that I look at in San Bernardino County, and I can do
16 some DNA typing on it, can be compared to samples done
17 in Kansas City or in Tampa or anywhere across the
18 nation.

19 A lot of the western hemisphere uses the same
20 set of DNA markers, so my results can be compared to
21 either offender samples or to crime scene samples that
22 are typed in other laboratories across the country.

23 Q Then you referred to it as polymerase chain
24 reaction. That's also referred to as PCR?

25 A It's much easier to say PCR.

26 Q I'll start referring to it as PCR. PCR is
27 basically the process by which you multiply whatever
28 cells you have and DNA cells and make it into -- where

1 you might have few make it into millions?

2 A Roughly.

3 Q Does that seem accurate?

4 A What the PCR process does is it mimics what our
5 body does. Our body will have a cell that has various
6 organs in it. It has a nucleus, and in order for us to
7 grow, our cells have to divide. In order to divide, the
8 DNA has to duplicate itself, has to replicate itself.

9 Well, this PCR process mimics that replication
10 process. It doesn't do it exactly the same way the cell
11 does because we don't need all of that information. We
12 don't need the entire DNA strand duplicated. We need
13 certain segments.

14 What they've done is they've designed a kit.
15 That kit will look at the specific DNA segments that we
16 are interested in and copy them and copy the
17 information, and they do that the same way the cell does
18 in terms of by what's called division or duplication
19 just again and again and again.

20 It really has assisted us in being able to type
21 more and more forensic samples, some that in times
22 passed we didn't get enough DNA. Now we can process it
23 through this PCR and be able to get results and be able
24 to compare the results then to other results, either
25 other evidentiary samples or from known reference
26 samples.

27 Q As far as the PCR process, is that generally
28 accepted in the scientific community as reliable and

1 accurate?

2 A Yes, sir. It is relied upon.

3 Q Okay. And then as far as your experience --
4 going back to your experience as far as that's
5 concerned, have you testified in court prior to today
6 regarding DNA analysis?

7 A Yes, sir, I have. I've testified twice within
8 the last year. There was a period of time where I was
9 not in forensic DNA. For a period of ten years, I was
10 basically in supervision and so forth. Prior to that,
11 there was a period of about ten years that I was in DNA,
12 and I would say I think I testified probably close to
13 50 times.

14 Q And then as far as publications and
15 presentations that you've done regarding DNA, have you
16 done some of those?

17 A Yes, sir, I have.

18 Q Approximately how many of those presentations
19 or publications have you done?

20 A I should know the exact number of that, but I
21 don't.

22 Q Generally?

23 A Generally, I'd say 10 to 12.

24 Q And then as far as your current assignment,
25 you're currently assigned to the forensic biology area?

26 A Yes, sir. I'm currently assigned to do case
27 work in the forensic biology unit. I've been doing --
28 back doing case work again now for a little over a year.

1 Q Back in September, specifically September 23rd
2 of 1985, what was your assignment then as a criminalist?

3 A I worked in the serology unit at that time, and
4 I also was assigned to crime scene investigations.

5 Q So that meant you went to a lot of crime scenes
6 as part of your job or duty as a criminalist?

7 A Yes, sir. As part of my job, every six weeks
8 or so I was on call for a week. If a major
9 investigation needed my assistance to go out and
10 document the evidence or collect the evidence, then I
11 got paged in the hours of the day and night and would go
12 out to do that. If it were -- if it was a major scene,
13 then sometimes a couple of us would go out and do that
14 work with each other.

15 Q Then as far as going specifically to
16 September 23rd of 1985, did you respond to a homicide
17 location located at 35435 Highway 18 in Lucerne Valley,
18 county of San Bernardino?

19 A Yes, sir, I did.

20 Q When you got to that location, what were you
21 assigned to do?

22 A I was assigned to basically process a homicide
23 scene. There was a single female victim inside the
24 residence. There was some -- there was evidence in --
25 primarily in a bedroom, some other items of evidence of
26 interest in other parts of the house. My partner -- I
27 had a partner working with me at the time,
28 Dave Stockwell (phonetic), and Dave and I processed the

1 scene.

2 Q Then as far as the scene was concerned, do you
3 recall processing the victim's bedroom?

4 A Yes, sir.

5 Q And during processing of the victim's bedroom,
6 did you locate certain items of significance that you
7 noted?

8 A There were a number of items that we -- we
9 noted in the bedroom and collected. Then there were a
10 couple of techniques we used for collecting evidence in
11 there.

12 Q Let's start with there was a watchband pin. Do
13 you recall that?

14 A Yes, sir. There was a watchband pin that was
15 near the victim's head on the bed. The bed was a water
16 bed, and the pin was up just to the side of the victim's
17 head.

18 Q I'm going to show you a photograph that's been
19 marked Exhibit 12.

20 Do you see that particular watchband pin
21 depicted in Exhibit 12?

22 A Yes, sir, I do.

23 Q And that's the pin that looked -- appears in
24 the center of the photograph?

25 A That's correct.

26 Q Just below it there appears to be a ruler.

27 Do you see that?

28 A Yes, sir.

1 Q There appears to be several different lines on
2 that ruler, some longer than others on the top and -- or
3 the top ones are longer than the ones on bottom.

4 Do you see that?

5 A Yes, sir.

6 Q What do the top lines represent, if you know?

7 A If I may use the pointer?

8 Q Yes.

9 A This ruler from end to end is about six inches.
10 Each of these dark lines along the top is one inch.
11 These smaller lines are each a centimeter. You have
12 2.54 centimeters to an inch or so. If you were looking
13 at the watchband, it looks like it's something like
14 probably three quarters of an inch or so.

15 Q Then for those of us that aren't familiar with
16 watchband pins, what are they used for?

17 A Watchband pins are used to hold the watchband
18 on. At the edge of the watch, there are a couple of
19 holes -- the pin itself is spring loaded. It can be
20 depressed inside then put through a sleeve in the
21 watchband and then released and it will expand into two
22 receiving holes at the edge of the watch thereby holding
23 the watchband onto the watch itself.

24 There are usually two of them; one on either
25 side of the watch to hold the band in place so it can be
26 strapped to your wrist or to something else.

27 Q And that particular photograph with the size of
28 that particular watchband pin, did you -- were you able

1 to locate a watch that possibly could have fit that
2 watchband pin or this watchband pin could have fit that
3 watch?

4 A I don't remember seeing a watch or collecting a
5 watch. No, sir.

6 Q Then as far as the bed was concerned, you were
7 in charge of looking over the bed and making sure that
8 you're not missing any items that were located on the
9 bed?

10 A Yes, sir. In fact, we had a systematic way in
11 which we entered the room to start with, starting with
12 vacuuming the floor at the entry part of the door,
13 collecting evidence that was along the, as you looked at
14 the bed, the right side of the bed, then vacuuming the
15 floor there, vacuuming the floor around the other side
16 of the bed. We did a tape lift of the body. We
17 vacuumed the surface of the bed being careful not to
18 scoop that up and collected that. There was some other
19 items, a couple of pillows and some cloth and clothing
20 material that were -- that was on the bed also.

21 Q Then as far as watchband pins, are they all the
22 same length or do they have different lengths?

23 A I believe they have different lengths. It
24 would depend on the size of the receiver of the
25 individual watches. That particular pin looks very
26 similar to the size of one I've got in my watch. I just
27 replaced my watchband yesterday. Interesting that you
28 asked about watchband pins.

1 Q Now, as far as the particular watch that you're
2 wearing, the band itself, how big is the band, would you
3 say?

4 A In terms of the width of the part of the band
5 where the pin would go, probably approximately three
6 quarters of an inch to an inch.

7 Q Then when you were doing your investigation of
8 the bedroom area, you didn't find any watch during your
9 search that could match that watch pin?

10 A Not that I recall, no, sir.

11 Q Okay. Would referring to your report refresh
12 your recollection as to whether or not you collected any
13 watches or --

14 A I referred to my report a lot while I was
15 sitting in the hallway. I referred to my notes also. I
16 don't remember any mention of a watch.

17 Q So there's no mention in any of the reports
18 that you reviewed of a watch being found similar to the
19 size of that watchband?

20 A That's correct.

21 Q Okay.

22 MR. SANDERS: What page are you referring to?

23 MR. THOMAS: 349.

24 MR. SANDERS: Thank you.

25 BY MR. THOMAS:

26 Q As far as photographs were concerned, did you
27 take photographs or were you present when photographs
28 were taken?

1 A I was present when they were taken, but I did
2 not take them. I believe we had two people from the
3 identification division, I believe, Tom Moody and
4 Jeff Bedetti (phonetic) were present at the scene.

5 Q I'm going to show you what's been marked
6 Exhibit 11.

7 Looking at Exhibit 11, can you see what's
8 depicted there?

9 A I see what's depicted. I believe I know what
10 this is. If I could refer to my crime scene notes, I
11 could get a relative idea.

12 Q Would that refresh your recollection?

13 A Yes, sir. Yes, sir. That appears to be a pair
14 of panties that were, as you look at the bed, they were
15 along the right side near the top. They were on the
16 floor actually on the carpeting.

17 Q Then as far as the photograph -- I forget what
18 exhibit that is.

19 A Exhibit 11.

20 Q Exhibit 11, there also appears to be some
21 eyeglasses of some sort?

22 A Yes, sir. There was a pair of eyeglasses that
23 were underneath a table-like area there.

24 Q Were those eyeglasses damaged in any way that
25 you could tell?

26 A I don't remember, and I don't have any notes to
27 that.

28 Q As far as the collection of evidence, did you

1 actually collect any evidence from the victim herself,
2 swabs or anything like that?

3 A Yes. We collected two vaginal swabs and then
4 prepared basically a microscope smear of one of the
5 swabs.

6 Q And when you go to a crime scene and you do
7 something like that, are you familiar with what they
8 call an LR number?

9 A Yes, sir.

10 Q What is that?

11 A An LR number is a number that our crime lab
12 gives each particular investigation we come involved
13 with. This particular investigation was given the LR
14 number of 44659.

15 Q As far as that LR number is concerned, is that
16 a unique number to an individual case?

17 A Yes, it is.

18 Q Excuse me. As far as the particular LR number
19 in this case, what was it?

20 A I did just say it. It was 44659.

21 Q I'm sorry. As far as that number, is that a
22 number that ever changes? Let's say it's given to a
23 case in 1985, in 2011 is that the exact same number?

24 A Yes, sir. When we initially get a case, that
25 particular case is given that number and then any
26 evidence that comes in is associated with that LR
27 number. At the time that we made the collection of
28 evidence on September 23rd, 1985, we collected items,

1 put them into evidence and logged them into this
2 particular case.

3 Subsequent to that, if there were other items
4 that were either submitted to the laboratory or
5 submitted to property, they were all related to this
6 particular LR number. As we progressed through the
7 years, just as recently as a couple of years ago, an
8 item was submitted to the laboratory. It was referenced
9 to this particular LR number since it was part of this
10 investigation.

11 Q Then as far as -- in conjunction with the
12 LR number, there is another -- a DR number that's also
13 assigned to it?

14 A Yes, sir. The DR number will be something that
15 the individual investigating agency has. The reason we
16 don't use the DR number in the crime laboratory is
17 because our crime lab not only works with sheriff's
18 department cases, such as this, we also work with
19 individual police agencies, and they will have their own
20 DR or reporting number system.

21 You can see there's a whole bunch of different
22 types of numbers we would get from different agencies.
23 The laboratory actually instituted its own laboratory
24 report number, the LR number. So then we could readily
25 keep track of individual cases without worrying about
26 whether Colton PD used the same number as Fontana PD and
27 so forth, just lessen the confusion.

28 Q Okay. As far as this particular case, can you

1 give us the DR number that was assigned to it?

2 A The DR number was 1331036 dash 07.

3 Q You said that you collected some vaginal swabs
4 from the victim in this case.

5 That would be Rita Cobb?

6 A That's correct.

7 Q As far as the vaginal swabs, were they given an
8 item number of some sort?

9 A Yes, sir.

10 Q What was the item number?

11 A The item number was A dash 11. When we went to
12 the crime scene, everything that we were to collect at
13 the crime scene was called item A and then in order as
14 we collected them we sub-itemized them. So A-1 was the
15 vacuum sweepings and so forth. A-11, then would be the
16 11th item that we collected at the scene, which were the
17 vaginal swabs from Ms. Cobb.

18 Q As far as the vaginal swabs were concerned, how
19 were those collected by you?

20 A Two swabs were inserted into the vaginal area
21 and swabbed around, withdrawn. One swab was then
22 smearred across a microscope slide. That microscope
23 slide being A dash 12. The swabs were dried and,
24 packaged for later analysis.

25 Q As far as the swabs go, they were taken at the
26 crime scene itself?

27 A This particular set of swabs was taken at the
28 crime scene. There was another set taken later on at

1 the autopsy.

2 Q There was item, a felt pad of some sort, that
3 was collected.

4 Do you recall that?

5 A Yes. That was Item A dash 18. Actually, it
6 was in a group of items that were taken as A dash 18,
7 and the felt pad was further examined and kind of
8 sub-itemized with stains that were on the felt pad.

9 Q Then as far as the felt pad was concerned, I'm
10 going to show you a photograph and then maybe you can
11 point it out to the jury. Show you what's been marked
12 Exhibit 14.

13 Do you see the felt pad in Exhibit 14?
14 A The felt pad in the very lower right-hand
15 corner of the photo, kind of a tan or brownish, light
16 brown colored pad.

17 Q Let me see if I have another photograph. This
18 one might be a better one. Show you what's been marked
19 Exhibit 13.

20 Do you see that felt pad in that particular
21 exhibit?

22 A Right in that area that I'm showing with the
23 laser pointer here, which is somewhat to the lower left
24 center of the photograph.

25 Q And then that particular item was given the
26 designation A-18 along with other items of clothing?

27 A Yes.

28 Q Were there any blood stains that you analyzed

1 or collected?

2 A There were two blood stains that were not part
3 of this particular -- directly within the room that we
4 took -- that we collected. There was a blood stain that
5 actually was on the door frame going into this room, and
6 another blood stain that was on a portion of the hall or
7 end of a wall in the hallway. Those are Items A dash
8 23. That is the one in the hallway, and A dash 24,
9 would be the one on the doorpost of the room.

10 Q Let's start with A dash 24, the one on the
11 doorpost of the room.

12 Did you actually collect a sample of that?

13 A Yes. That would have been swabbed and removed
14 from the doorpost.

15 Q When you swab it, how do you go about that?

16 A I believe at that time -- we've had a couple of
17 different collection techniques. I believe at that time
18 we had small squares of white linen that we moisten with
19 sterile water and then swabbed over the top of the blood
20 stain to collect it.

21 Q Okay. And then so that became A dash 24?

22 A Yes, sir.

23 Q And then I'm going to show you Exhibit 36,
24 which depicts A dash 23.

25 Did you do the same thing regarding A dash 23
26 as you did with A dash 24?

27 A Yes, sir.

28 Q Then at some point did you analyze any of these

1 blood stains, A dash 23 or A dash 24?

2 A Yes, sir. I did not analyze them immediately.
3 It was quite a number of years later that I went back
4 and actually analyzed them using the DNA techniques.
5 Remember at that time in 1985, we were not doing
6 forensic DNA work in our laboratory. We didn't start
7 that until 1992, so it would have been after 1992 that I
8 looked at these with DNA techniques.

9 Q Would looking at your reports and notes refresh
10 your recollection as to when your analysis was done?

11 A Yes, sir. Yes, sir. 1999 was when I took a
12 look at the two blood stains that were on the -- that we
13 previously spoke of.

14 Q When you were taking a look at the two blood
15 stains, did you also look at a profile from the victim
16 in this case?

17 A Yes, sir. Actually, as a matter of fact, there
18 were about 16 different reference profiles that I looked
19 at at that time, which includes the reference sample
20 from the victim.

21 Q Then as far as Item A-23 and A-24, what type of
22 DNA analysis did you do to those specific items?

23 A I used a -- a technique that involved the
24 polymerase chain reaction, PCR process that we spoke of
25 earlier, and it employed a DNA-typing kit, in fact, a
26 couple of kits that we were using at that time in 1999.
27 This is prior to the one that we have employed most
28 recently, but it still was discriminating enough to tell

1 the difference among all of these reference samples, and
2 I was able to distinguish among all of the ones that I
3 looked at and also to determine that that particular --
4 these two particular stains had the same DNA type as the
5 victim and not of any of the other reference samples.

6 Q As far as the -- I guess it would be the random
7 probabily that this same profile was found in another
8 human being, did you also determine what that was?

9 A Yes, sir. What you're looking for is basically
10 a population frequency, how common does this particular
11 set of DNA markers occur in the general population. I
12 did some calculations for what I called three major
13 ethnic groups that we report in our report.

14 Q What were those calculations as far as Items
15 A-23 and A-24?

16 A You would expect that -- that particular DNA
17 type or particular profile to occur in 1 in 27,000
18 Caucasians, 1 in 160,000 Hispanics, and 1 in about
19 610,000 African Americans or blacks as we reported at
20 that time.

21 Q Then as far as that specific testing that you
22 did, was that specific testing generally accepted in the
23 scientific community as reliable and accurate back then?

24 A Yes, sir. It still is today. It's just not as
25 discriminating -- not as powerful as the current
26 technology. So we've moved onto more powerful
27 technologies.

28 Q As far as these specific numbers, I think you

1 talked about it earlier, they're not 1 in 7 billion or
2 trillion or quadrillions?

3 A These numbers are not. They're still fairly
4 specific.

5 Q Then based on your own training and experience,
6 did you have an opinion as to whose blood that was on
7 these stains A-23 and A-24?

8 A My opinion would be that particular blood would
9 be that of the victim.

10 Q That would be Rita Cobb?

11 A That's correct.

12 Q At some point did you extract DNA from Item A
13 dash 11, the vaginal swabs taken from Rita Cobb?

14 A Yes, sir, I did.

15 Q And how did you do that?

16 A The purpose of looking at vaginal swabs is to
17 look to see if there had been a sexual assault, which
18 would mean there could be the -- I shouldn't say sexual
19 assault -- if there had been sexual intercourse, which
20 would mean the possible presence of what are called
21 sperm cells.

22 The samples that contain spermatozoa are
23 handled different than other samples that are extracted
24 for DNA. Something about the spermatozoa cells that
25 make them hardier than non-sperm cells. If you have a
26 mixture, such as, when we take a vaginal swab, you're
27 going to have vaginal epithelial cells from whoever the
28 victim is.

1 Q When you say epithelial cells, what are you
2 referring to?

3 A Upper surface skin-cell type of cells. The
4 soft, soft tissue cells on the inside of the vaginal
5 vault. Those can be broken open and dissected and DNA
6 recovered from them and have the sperm cells stay
7 intact. We have a different extraction process by which
8 we'll take a portion of the vaginal swab, put it in a
9 solution, treat it for a short amount of time with
10 chemicals which will break open these non-sperm cells
11 and allow the DNA to float free in the solution.

12 The sperm cells stay intact. If I take that
13 sample and put it in a centrifuge and spin it really
14 fast, the sperm cells will go to the bottom. The liquid
15 with the DNA from the non-sperm cells floats to the top.
16 I can take my test tube, draw off the liquid on the top.
17 It now has a non-sperm cell DNA, which most would have
18 come from the victim. I expect all of that DNA to be
19 the same as the victim's type.

20 The sperm cells that are at the bottom -- sperm
21 cells did not come from the victim. I can now treat
22 them a little more harshly, which will break open the
23 cells, break open the nucleus in there and get the DNA
24 out of the sperm cells in seconds. I now have separated
25 sperm cell DNA from the non-sperm DNA, and I can
26 individually type them and compare them to reference DNA
27 samples that I get from individuals.

28 Q Okay. Then once you do the extraction from the

1 cells, is that something -- you stated before that there
2 is a different type of technology that you were using or
3 a system that you were using back in 1999?

4 A Back in 1999, there was a different typing --
5 way that we typed the DNA. In fact, I believe when I
6 first started looking at these samples, it was actually
7 in 1997 when I started looking at these samples. The
8 technology that we used, it was what we call typing or
9 comparison part of it toward the end of our DNA work.

10 The initial part of it when we extract the DNA,
11 we digest it, we break it open, that part has maintained
12 and been steady throughout. I still use the same
13 process today as I did when I first started in DNA 20
14 years ago, break open these cells, differentially break
15 open the non-sperm cells and sperm cells. That's the
16 same techniques.

17 Where the advances have come is in the DNA
18 typing itself. The typing I used back in 1997, some of
19 that typing needed a lot of DNA other parts I used the
20 polymerase chain reaction and used a small amount of the
21 DNA that I recovered.

22 What I should tell you is that when we separate
23 out these extractions, and I have non-sperm cells and
24 the sperm cell, I have it in a small volume of water
25 based, like aqueous solution, and I -- first thing I had
26 to do is figure out how much of that is human DNA.
27 There might be some bacterial DNA. So how much is
28 human. After I figure out how much is human, then I

1 know how much of it I can take, and maybe there's a
2 volume of 40 microliters. It might be that I can take
3 five microliters off of that and be able to do all of my
4 DNA testing and still save some of that liquid for
5 someone else to test later if they need it.

6 So this quantitation that I do, determining how
7 much human DNA is there, is rather critical to know how
8 much of the sample I need to use in order to do my
9 typing.

10 It also will then, as I mentioned, let me know
11 if this sample will have something left for future
12 technologies, which may come about.

13 Q As far as the typing procedure that you used,
14 you said that the extraction procedure is basically the
15 same throughout from 1999 to when you did it to today.

16 The typing that's done or that you used in
17 1999, is that different than the typing that was used in
18 2003?

19 A Yes, it is. It's -- the typing is very
20 different. It is -- it uses a totally different set of
21 DNA factors and DNA locations that it looks at. In
22 fact, the results that I got in 1993 --

23 Q '99.

24 A '97, the results that I got in 1997 are not
25 compatible with the DNA typing results that we get now.
26 I can't take these and compare them to the new kit or
27 new set of data. I would need to take a small little
28 bit of that extract and process that with this new

1 typing kit in order to get a new set of data or
2 additional DNA information. I have the -- I hesitate to
3 call it the old DNA information that I got in '97, and
4 then if the sample was retyped to get a new set of DNA
5 information using that more recently developed DNA
6 typing kit.

7 Q So we're clear, as far as the extraction that
8 you did in 1999 of the vaginal swabs labeled A dash 11
9 and LR Number 44659, those being extracted samples,
10 hypothetically, let's say criminalists in 2003 wanted to
11 use the extracted samples that you obtained in 1999 to
12 do the typing that was more advanced in 2003, there's no
13 effect that your extraction would have on that DNA
14 typing that's done in 2003?

15 A That's correct. In fact, one of the reasons
16 that I save the extractions after I have taken my small
17 portion off and typed them, I save them, package them
18 away, if somebody else wants to test, whether to retest
19 my work or to test with an additional DNA typing
20 technique, I put them away to allow them to do that.
21 That's why we save it, so it can be tested again.

22 Q Then once you do the extraction, you said you
23 packaged it up.

24 Is it -- how do you package it up, if you can
25 describe that for us?

26 A Well, the final result that I get is in a tube,
27 a small what they call a cryovial tube, that final
28 extract, and it's from there that I take off a small

1 portion I'm going to use. The amount that remains,
2 there's a screw cap on the top of the cryovial. It then
3 gets -- actually, I package it into several different
4 envelopes, different extracts into different envelopes,
5 put a bar code on them, and submit them for storage in
6 our property unit.

7 Q And as far as the storage, you have been at the
8 crime lab all these years, are they properly stored in
9 accordance with what's generally accepted in the
10 scientific community?

11 A Yes, they were. By procedure, we freeze them.
12 The truth is, the solution that we keep the DNA in, you
13 probably don't truly need to freeze it, but I guess I
14 would call it for appearances sake, we store it in a
15 freezer.

16 Q Then as far as that solution is concerned, is
17 that something that lasts indefinitely or is there a
18 certain number of years you can keep it for?

19 A As far as I know, there is not a shelf life, if
20 you will. It might be somewhat dependent on how strong
21 the DNA selection is. If it's really concentrated DNA,
22 it probably will last longer. If it's weak DNA, I don't
23 know if it will stick to the inside of the plastic of
24 tube and over time become less able to type.

25 In this instance, there was a lot of DNA in
26 these tubes. I think they're going to last a long time
27 as long as you still have the solution in there until
28 you use it up.

1 MR. THOMAS: Nothing further.

2 THE COURT: Do you have questions you want to
3 ask?

4 MR. SANDERS: A couple, your Honor.

5 THE COURT: We'll do that tomorrow.

6 MR. SANDERS: Yes, sir.

7 THE COURT: 10:00, ladies and gentlemen.
8 You're admonished that it is your duty not to converse
9 among yourselves or with anyone else about any matter
10 connected with this case nor form or express an
11 opinion on it until it's submitted to you. See you
12 tomorrow morning at 10:00.

13 Mr. Jones, see you then. You can step down.

14 THE WITNESS: Thank you.

15 (Whereupon the following proceedings were held outside
16 the presence of the jury:)

17 THE COURT: Okay. The jury is gone. You
18 wanted to put something on the record this morning,
19 Mr. Thomas. This is the time to do it.

20 MR. THOMAS: I just wanted to put on the
21 record this morning that we had a case, Helen Brooks.
22 It's an unsolved homicide over at the sheriff's
23 department, and it's still unsolved. There's a
24 different DNA profile that was obtained from the
25 vaginal swabs on that case versus this particular
26 case, but the fact that there was a victim who was
27 similarly aged as Rita Cobb, Helen Brooks was 60 at
28 the time that she was killed, and it was in the same

1 general area, as far as the high desert. She was
2 murdered in Apple Valley, and, in fact, that occurred
3 a few months prior to this murder.

4 My office thought that it would be good for
5 Mr. Sanders to come over and look at the file. I did
6 provide him an opportunity to do so. We gave him access
7 to the entire Helen Brooks file. He spent pretty much
8 an entire day looking through the file and taking notes,
9 but I just had a concern that this might be potential
10 Brady material in the future if I didn't disclose it.

11 THE COURT: I thought we already talked about
12 this.

13 MR. SANDERS: We did not, your Honor.

14 THE COURT: Okay. You have -- you
15 acknowledge that you've had a chance to look at the
16 prosecution's file; right?

17 MR. SANDERS: I have.

18 THE COURT: Anything else to be said on the
19 subject?

20 MR. THOMAS: No.

21 MR. SANDERS: Well, the -- the -- I
22 thought -- I'm sorry. Let me bring up a different
23 point. It would be my intention to ask the
24 criminalist and some of the others about the Brooks
25 case, and the reason is this; your Honor, it is in
26 many respects almost identical to the Rita Cobb case.
27 I can't give you a list right now, but there's so many
28 ways these two cases are similar because of that for

1 the first two or three years after September 23rd of
2 1985, the sheriff's department treated the two cases
3 as if they had been committed by the same person.

4 There were several investigations to determine,
5 you know, who might have done both of these cases, and I
6 think that that's part of the information that's
7 important in this case to -- to demonstrate to the jury.
8 I assume Mr. Thomas was going to object to my
9 questioning along that line, and I thought that that's
10 why we put it off till now, so it would not be mentioned
11 if I chose to give an opening statement at the start of
12 the case.

13 MR. THOMAS: The People -- Mr. Sanders is
14 correct. The People would be objecting based on
15 relevance. We wouldn't be able to bring in evidence
16 that, well, maybe John Yablonsky is responsible for
17 the Helen Brooks murder. He committed this murder.
18 The Court would look at the evidence and say, wait a
19 minute. There's an entirely different DNA profile
20 there. What evidence do you have to link
21 Mr. Yablonsky to the Helen Brooks case?

22 Same thing with this scenario. What evidence
23 does Mr. Sanders have to link somebody else who might
24 have been involved in the Helen Brooks murder to the
25 Rita Cobb murder? There is none. I think that it would
26 confuse the jury. It's an undue waste of court time,
27 and I think that weighing the probative value versus the
28 prejudicial effect or the undue waste of time, I think

1 that the probative value is slim to none.

2 THE COURT: And confusion really.

3 MR. SANDERS: No, in --

4 THE COURT: Just one second. Mr. Sanders,
5 I'm not going to spend anymore time on this now. See
6 me in the morning with whatever authority you have,
7 either one of you. Everybody can bring in authority
8 that would be helpful.

9 MR. SANDERS: Thank you.

10 THE COURT: The fact that Mr. Yablonsky did
11 not kill Helen Brooks does not mean he did not kill
12 Rita.

13 MR. SANDERS: Absolutely, but it -- there's a
14 different -- it's a two-edged sword.

15 THE COURT: Bring me those cases that you
16 find that you think shed light on this if there is
17 such authority. I don't -- I don't know what you'll
18 find, but if there's something there, give it to me
19 tomorrow.

20 MR. SANDERS: Thank you, your Honor.

21 THE COURT: See you tomorrow at 9:45.

22 MR. THOMAS: Thank you, your Honor.

23 (Whereupon proceedings in the above-entitled
24 matter were concluded for the day.)

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1 VICTORVILLE, CALIFORNIA; JANUARY 25, 2011;
2 DEPARTMENT NO. V-2 HONORABLE JOHN M. TOMBERLIN, JUDGE
3 A.M. SESSION
4 (Appearances as heretofore mentioned.)
5 (Shawna Manning, Official Reporter, CSR No. 12827.)

6 -oOo-
7 (Whereupon the following proceedings were held outside
8 the presence of the jury:)

9 THE BAILIFF: Remain seated. Come to order.
10 Court is now in session.

11 THE COURT: Back on the record in the case of
12 People of the State of California versus John Henry
13 Yablonsky who is here with his attorney,
14 David Sanders. Mr. Thomas is here along with his
15 investigating officer, Detective --
16 Detective Alexander.

17 Mr. Sanders.

18 MR. SANDERS: Yes, sir. I had two matters I
19 wanted to address the Court. As I indicated in
20 chambers, the first is; as I indicated yesterday,
21 there is a case of a woman --

22 THE COURT: I don't think we need to
23 reiterate the issues regarding Ms. Brooks. We've gone
24 over this, and the case that you referred to, People
25 versus Hall 41 Cal.3d 826 regarding the issues of
26 third party culpability.

27 MR. SANDERS: Yes, your Honor. My position
28 is that it is relevant evidence. It would assist the

1 jury in understanding the case and the situation that
2 existed back in 1985. For those reasons, I would ask
3 the Court to allow us to introduce that evidence.

4 THE COURT: Mr. Thomas.

5 MR. THOMAS: I think the Court's already
6 dealt with that, in certain aspects, prior to us
7 beginning trial. As far as People versus Hall, I
8 think the case law, if I recall correctly, states that
9 mere motive and opportunity is not enough to bring
10 about third party culpability in a case.

11 Mr. Sanders hasn't even proved mere motive or
12 opportunity. I don't see how Hall even applies or that
13 he can get this under third-party culpability, and I'd
14 ask the Court to prohibit him from going into this line
15 of questioning.

16 THE COURT: 352, it seems like it's likely to
17 lead to confusion. There's no one else that's being
18 tried for this particular crime, but Mr. Yablonsky
19 isn't accused of having killed Ms. Brooks. It's just
20 as likely to lead to prejudice against Mr. Yablonsky
21 as it would be -- it doesn't, in my opinion, tend to
22 exonerate him by any means with the possible exception
23 of leading to confusion. I don't see what the
24 advantage would be to the defense to have this
25 information in, and I'm going to order that it -- find
26 that it is more prejudicial than probative and unduly
27 consumptive of court time and likely to confuse the
28 jury.

1 I know the next thing is -- let's go ahead and
2 put it in the way you put it in chambers. You want to
3 establish the reputation of the victim in this case as a
4 barfly. I don't see it.

5 MR. SANDERS: Actually, what I didn't want to
6 do is try to do that. What I would like to do is just
7 to have the jury understand, as everyone else in
8 those -- in 1985 understood, that Ms. Cobb did have a
9 number of gentleman of different ages, and she
10 entertained them at her residence. She invited them
11 to be there, and it was not uncommon for her to have
12 male guests at home.

13 MR. THOMAS: I would argue it's improper
14 character evidence. What's the relevance of that?
15 It's just to dirty the victim up.

16 THE COURT: I don't see the relevance either.

17 MR. SANDERS: There -- it's one thing if --
18 if we -- if we had -- we had -- if we had a person
19 that never had anybody at her house. Then if you have
20 someone at her house, it means a lot more.

21 THE COURT: You've asked the son of the woman
22 did he know that she dated, did she have people over.

23 MR. SANDERS: Well, there was more. I had
24 additional questions to ask both him and Marta on that
25 subject.

26 THE COURT: I think that you established
27 enough for whatever you needed to. It wasn't like she
28 had no one ever at her home. I haven't allowed

1 Mr. Thomas, nor has Mr. Thomas attempted to, establish
2 as you just put it that she is someone who doesn't
3 engage with any kind of social intercourse was what
4 you called it.

5 MR. SANDERS: Thank you, your Honor.

6 THE COURT: That's -- that's it?

7 MR. THOMAS: The only other matter before we
8 bring the jury is I was going to ask the Court's
9 permission to reopen.

10 THE COURT: That's fine. Bring the jury.

11 MR. SANDERS: No objection.

12 THE COURT: You said that you don't object,
13 Mr. Sanders?

14 MR. SANDERS: Yes, your Honor.

15 (Whereupon the following proceedings were held in open
16 court in the presence of the jury:)

17 THE BAILIFF: Remain seated. Come to order.
18 Court is now in session.

19 THE COURT: Back on the record in the case of
20 People of the State of California versus John Henry
21 Yablonsky who is here with his attorney,
22 David Sanders. John Thomas is here for the People
23 along with Robert Alexander, his investigating
24 officer.

25 Before we get started this morning, I was
26 advised that there was someone in the hallway, not one
27 of the jurors, but someone near the jurors that had a
28 copy of the Daily Press. Apparently it has an article

1 about this case with a photograph of Mr. Yablonsky.

2 No one has seen anything about that; have they?

3 No one's read the article? Stay away from the paper, I
4 suppose, until the case is over.

5 Anything else anyone wants to bring up on this
6 subject, Mr. Thomas or Mr. Sanders?

7 MR. THOMAS: No, your Honor.

8 MR. SANDERS: No, sir, thank you.

9 THE COURT: Donald Jones is still on the
10 witness stand -- he was going to go into
11 cross-examination, and Mr. Thomas has indicated that
12 he had a few questions that he meant to ask that he
13 didn't ask and asked to have an opportunity to reopen
14 his direct examination. Mr. Sanders has not objected.

15 Proceed.

16 MR. THOMAS: Thank you, your Honor.

17

18 **DONALD JONES**, having previously been duly sworn,
19 testified further as follows:

20 **DIRECT EXAMINATION (reopened)**

21 BY MR. THOMAS:

22 Q Good morning, Mr. Jones.

23 A Good morning, sir.

24 Q Yesterday, do you recall me showing you a bunch
25 of photographs?

26 A Yes, sir, I do.

27 Q Okay. And those photographs, each one of those
28 photographs I showed you yesterday, are those all true

1 and accurate depictions of the crime scene as you saw it
2 back on September 23rd of 1985?

3 A To the best of my recollection, yes, sir.

4 Q I was going to ask you about the extraction
5 process.

6 As far as that process is concerned, I think we
7 already went through yesterday that that was done in
8 accordance with the scientific procedures that you were
9 familiar with?

10 A Yes, sir. You're referring to the extraction
11 of DNA from the stains?

12 Q Yes.

13 A Yes, sir.

14 Q As far as that process is concerned, did you do
15 that in accordance with the training that you received?

16 A Yes, sir. In accordance with the training I
17 received in accordance with the procedures that we have
18 established and that have been reviewed as part of our
19 accreditation.

20 Q Was there anything about that process that
21 caused you any concern, anything that happened that was
22 unusual?

23 A Not that I recall and not that I remember
24 looking through and seeing in my notes.

25 Q That would have been something that you would
26 have noted if that had happened?

27 A Yes, sir.

28 Q And then I asked you about item A dash 11

1 yesterday and the extraction that occurred on that item.

2 Did you also do the extractions regarding

3 A dash 18?

4 A Yes, sir. Actually, there were several samples
5 that had been taken from A dash 18, and I took a look
6 at -- I extracted two of them then went on to do some
7 work on one of those two.

8 Q Then as far as the extractions that you did on
9 A dash 18, that was specifically the felt pad?

10 A That's correct, yes, sir.

11 Q When you did the extractions, you were familiar
12 with the felt pad from back when you collected it in --
13 on September 23rd of 1985?

14 A Yes, sir.

15 Q And it appeared to be in the same condition as
16 when you collected it?

17 A Well, actually, the samples that I looked at
18 with regard to the felt pad were samples cut from the
19 felt pad. When we take the samples back to the crime
20 lab, rather than store a gigantic piece of evidence in
21 our freezer, we'll cut out the stains, and then we put
22 the stains in a smaller envelope, and that can be stored
23 in our freezer. The rest of the items then are stored
24 at room temperature.

25 Q The question that I have is, the cutouts that
26 you had, did they appear to be cutouts from the felt pad
27 that you observed back on September 23rd, 1985?

28 A Yes, sir.

1 Q Okay. And then as far as that extraction
2 process went, you did the same process that you did with
3 the felt pad cuttings as you did with A dash 11?

4 A Yes, sir. In terms of separation of the sperm
5 cell and non-sperm cells into two fractions.

6 Q Then you did the same thing as far as being
7 able to -- that you preserved the extracted DNA for
8 future use by other criminalists?

9 A Yes, sir.

10 Q Did you label that in some way?

11 A Yes, sir. I spoke yesterday of some plastic
12 tubes with screw caps on the top called cryovials. Each
13 of those vials would have been then labeled with the
14 LR number and with the item number and with the fraction
15 number. For instance, for the felt pad, it would have
16 said the LR number, 44659, would have had the item
17 number, A dash 18. I believe it was stain B, and then
18 the fraction number would be E-2. E-1 is generally the
19 first extraction. It will have the non-sperm cell DNA,
20 and E-2 is the second extraction, if you will, and that
21 will have the sperm cell DNA.

22 Q Were they labeled A dash 18a and A dash 18b?

23 A I believe, yes, sir. I did extractions on two
24 stains from A dash 18a and b, and they would have been
25 labeled independently.

26 Q Okay. Then was there anything about that --
27 strike that. As far as that extraction process, you did
28 that in accordance with the scientific training

1 procedures that you received?

2 A Yes, sir. There probably is something that I
3 should note also that when we do this extraction
4 procedure, at the time we're doing the sample, working
5 with the samples, and so on, we extract not only the
6 evidential sample from the stain, but I have another
7 tube which has a blank in it. Basically, I put all the
8 reagents in it, all of my enzymes, all of my buffers in
9 this other tube, but it has no stain in it. It should
10 have no DNA. It is what we call a reagent control,
11 something that at the end should show no DNA at all.

12 Also, extract a known positive control, one
13 that I know has DNA in it to show that the extraction
14 works in case all my samples are negative. I want to
15 make sure that the extraction process is working. So I
16 run -- with each set of extractions, I run a negative
17 control and positive control. Those also would have
18 been collected in the small screw-cap vials and stored
19 with the rest of the samples, the positive and negative
20 controls for the extractions that I did.

21 Q Okay. And do you yourself test that
22 afterwards?

23 A In general, I test the negative control. I
24 will test them all to see if there's human DNA. If I
25 find human DNA in the evidential sample, and there's
26 human DNA in the positive extraction control, and
27 there's no DNA in the reagent control, things are coming
28 out as I expect. Then the positive extraction control,

1 I will not type that. I already know what the type of
2 that is. Its purpose is to see if I was able to recover
3 DNA.

4 The negative control, I will go on with the
5 rest of the processes to see if, even though I didn't
6 detect DNA in there, if there's anything in there that
7 would -- would be carried over into the typing process.
8 I expect that to have no DNA typing results.

9 In this particular case, it had no DNA typing
10 results. I also then will save that sample along with
11 the evidential sample, so that if somebody in the future
12 wants to test using a different typing technique or
13 different technology, they can test the known blank to
14 make sure there's something that won't show up in this
15 other type of test in the known blank.

16 Q So you did this with Item A dash 18a and b?

17 A Yes, sir.

18 Q And then you also did it with the item that we
19 spoke of yesterday, A dash 11?

20 A Yes, sir, the vaginal swab that was collected
21 at the crime scene.

22 Q Okay. And later, after you were done, you did
23 all the tests that you just explained as far as testing
24 the negative portion of it and as far as all of the
25 tests were concerned, anything come out that caused you
26 any concern?

27 A Nothing that caused me concern. The results of
28 the DNA typing that I did showed that it was the same

1 semen donor for the felt pad as for the vaginal swab,
2 but it did not match any of the reference samples that
3 had been submitted to the laboratory at the time.

4 At the time I did the testing, I had what we
5 call a semen donor profile, but I had nobody that it
6 matched.

7 Q Okay. As far as the quality control of the
8 testing that you performed on A dash 18a and b and
9 A dash 11, was there any concerns that you had regarding
10 that quality control that you talked about?

11 A No, sir.

12 Q Then the other thing I forgot to ask you
13 yesterday is, you mentioned a pair of panties that were
14 found on the floor next to the bed.

15 Do you recall that?

16 A Yes, sir. I believe we called that Item
17 A dash 3. They were on the -- as you looked from the
18 foot of the bed, they were on the right-hand side up
19 toward the head of the bed near a set of eyeglasses.

20 Q As far as that pair of panties, was there any
21 testing that was done by the crime lab to determine
22 whether or not that contained any serological fluids of
23 any sort?

24 A There was a screening test for semen on the
25 panties. That test was negative.

26 MR. THOMAS: Nothing further.

27 THE COURT: Cross.

28 MR. SANDERS: Thank you, your Honor.

CROSS-EXAMINATION

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BY MR. SANDERS:

Q Good morning, Mr. Jones.

A Good morning, sir.

Q Let me make sure I understand this. Your job back in 1985 was to collect evidence; is that correct?

A Yes, sir.

Q And you were hired by the sheriff's department to do that?

A I was hired for a number of reasons. One of my assigned tasks was crime scene investigation.

Q Then as the years went by, you assumed more responsibilities; is that correct?

A I have had different assignments as the years went by. I came to a point where I specialized. I would characterize it when I first started, I was a generalist. I worked in a number of different areas, but as time went by, I began to specialize in a particular area. In this instance, forensic serology, which became forensic biology or DNA.

This is a necessity that you wind up specializing. It is something that has been forced upon us by our accreditation that they want us to specialize in one particular task or assignment that we perform.

Q Back in 1985, you were called to go out to Highway 18 in Lucerne Valley; is that correct?

A Yes, sir.

Q And do you remember what time you arrived?

1 A I could check the -- my notes if you don't
2 mind.

3 Q Feel free.

4 A Okay. According to my notes, I actually
5 received the call when I was in Rancho Cucamonga at
6 right about 2:00 in the afternoon and went from
7 Rancho Cucamonga to the address at 35435 Highway 18 in
8 Lucerne Valley and got there a little bit after 3:00 in
9 the afternoon.

10 Q When you arrived, was anybody inside the crime
11 scene at that time?

12 A I don't know who was where. I can tell you
13 that the notes I took indicate that Sergeant Dave Baker
14 and two detectives that I have listed here as Gary Wood
15 and Al Long.

16 THE COURT: What was that last name?

17 THE WITNESS: Long L-o-n-g.

18 THE COURT: Thank you.

19 BY MR. SANDERS:

20 Q Do you know if someone had kept a log of people
21 that entered or left the crime scene before you arrived?

22 A I do not know.

23 Q No one showed you a log indicating who had been
24 in and out?

25 A No, sir. My understanding is part of the
26 investigation the homicide detectives kept track of who
27 was at the scene, but in terms of a physical log, I
28 don't remember seeing one or noting one.

1 Q All right. And then you have not seen one
2 since?

3 A That's correct.

4 Q Were you one of the persons responsible for
5 observing or collecting or preserving evidence outside
6 of the house that you went to?

7 A I don't believe we did any physical evidence
8 collection. There probably were photographs that were
9 taken by the identification division. As far as I can
10 recall, the only evidence that I collected was evidence
11 from inside the residence.

12 Q You were not the person responsible for
13 photographing; is that correct?

14 A That was handled by two -- at least -- at least
15 two other people that were there. I believe I mentioned
16 yesterday it was a Tom Moody and Jeff Bedetti. They
17 were from the identification division.

18 Pretty much people from the identification
19 division would do the photography and any latent
20 fingerprint development. People from the crime lab
21 would sketch and document the scene and collect the
22 physical evidence. The homicide investigators pretty
23 much would oversee the scene and make sure it was
24 processed and then handle the interviews and so forth.

25 Q Since you've mentioned it, let me ask you about
26 the fingerprint -- the effort that was made by the
27 sheriff's department to search the residence for
28 fingerprints.

1 Who was it that conducted that search?

2 A My answer to that is based upon procedure. I
3 don't know. I was not involved with the fingerprint
4 aspect of it, but that would have been Tom Moody and
5 Jeff Bedetti who did the fingerprint processing
6 throughout the crime scene.

7 Q As they do that, did they ever draw your
8 attention or show you some fingerprints they found?

9 A I don't remember anything with regard to
10 fingerprints at the scene.

11 Q I know that technology is different today than
12 it was back then, and sometimes we hear that you could
13 pretty much get DNA from anything these days.

14 Let me ask you this; is there -- is it possible
15 to get DNA from the same oil on hands that causes
16 fingerprints?

17 A The way I would answer that, in the continuum
18 of possibilities, it's possible. My experience with
19 what you call touch DNA is that it is -- it's very
20 dependent upon what it is that's being touched. If it's
21 a common object, the chances of getting DNA are good.
22 The chances of you being able to say it came from one
23 individual, not very good. In fact, probably from more
24 than three or four people. Generally, touch DNA on
25 common surfaces really is more confusing than -- than it
26 really is worth while to even attempt. It will give you
27 more questions or not answer any questions at all.

28 If you have something that is restricted in

1 terms of who could touch it, the handle of a tooth
2 brush, maybe a particular individual touches that and
3 nobody else uses the tooth brush. That has a greater
4 potential for showing a single source of DNA that would
5 have come from the touching on the hands that was
6 transferred to the tooth brush.

7 Q What you're saying is you can collect it, but
8 it's often compromised? It's often --

9 A It is what I would call a true forensic sample
10 in that you don't know what you're going to get and a
11 lot of times you're going to get stuff that's not going
12 to mean anything or not be helpful to you.

13 Q You can collect DNA from hair?

14 A Yes, sir.

15 Q You collect it from skin cells?

16 A Yes, sir.

17 Q You can collect it from sweat?

18 A I have done tests on items that pretty much it
19 was in the sweaty area, and I have gotten good results,
20 yes, sir.

21 Q All right. So when you went to the scene then,
22 I think you said you have a protocol of when you enter
23 the front to which way you go and what you do; is that
24 correct?

25 A I don't know that I said that. I said that the
26 way we processed that particular scene, we had a way of
27 entering the primary bedroom. That was a decision we
28 made at the time based upon the information we had about

1 the investigation.

2 Q So there was a decision made not to process
3 other rooms in the house that same way because of the
4 situation you found yourself in?

5 A Yes, sir. It was felt that our greatest
6 probability of finding something that might be related
7 to the perpetrator of the crime would be in this
8 bedroom. The evidence seemed to point that everything
9 happened in that room and, therefore, we should
10 concentrate our efforts on that.

11 Q Let me ask you a question about that. Was
12 there any thought in your mind that perhaps something
13 had happened outside this bedroom causing blood spatter
14 in the hallway?

15 A Well, the actual patterns that were in the
16 hallway aren't what I would call blood spatter. They're
17 probably more transfer. They were on some object and
18 were transferred to the wall or the doorjamb. There was
19 no other evidence outside in the hallway of any sort of
20 blood stain patterns, whether impact or cast off or
21 anything, other than these two what appear to be
22 transfer spots.

23 There were other items in the house that we did
24 collect for potential forensic biology examination.
25 Those are the cigarette butts that were present in
26 various ashtrays, but I think in terms of the rest of
27 the house, that was almost the extent of what we
28 collected.

1 Q What about the car that was out in the carport
2 or the garage, did you process the car to look for
3 evidence?

4 A No, sir.

5 Q Whose decision was that?

6 A That, I don't know. In general, speaking again
7 by procedure, if the vehicle had been requested for
8 processing, it would have been done at the crime
9 laboratory.

10 Q You indicated when you went into the bedroom,
11 the first thing you did was performed a vacuuming
12 operation?

13 A Yes, sir.

14 Q And was that done by yourself?

15 A Both by myself and by my partner,
16 Dave Stockwell.

17 Q Okay. And what, if anything, did you find when
18 you examined the results of the vacuuming?

19 A I did not examine them. Dave Stockwell did,
20 and he has a number of notes that he made with regard to
21 hair and fibers that he pulled from -- from different
22 parts, whether it be the vacuum sweeping or from
23 articles of clothing, so when they were collected and
24 there, but I did not do that examination.

25 Q All right. One of the things that you did was
26 not only did you vacuum the floor, but you vacuumed the
27 clothing?

28 A Actually, the clothing would have been examined

1 back at the laboratory, open it up and do any sort of
2 collection --

3 Q And shake it out?

4 A -- or processing looking for stains and so
5 forth. The vacuuming was on the areas of carpet around
6 the bed and then the surface of the bed itself.

7 Q And I'm assuming you have some kind of a
8 special vacuum cleaner that you --

9 A Yes, sir, we do. It looks like a regular
10 vacuum. The one we used at the time was
11 over-the-shoulder-type vacuum. It had a hose. Then at
12 the hose end, there was a special trap. It was a round
13 filter thing that you could unscrew, place a filter over
14 a screen, screw it back on, and then go through your
15 vacuuming. All the air would pass through and the
16 filter would trap any hairs, fibers, debris, trace
17 evidence and so forth onto the filter.

18 The filter would be taken out, placed in -- I
19 could check my notes. I believe we had Ziploc bags, we
20 placed the filters into. The trap would then be wiped
21 out in terms of any residual dust, put another filter
22 back into this cartridge and go on to the next section.

23 Q So you use a filter for the rug and then
24 switched and used a different one for the bed?

25 A Yes, sir. I think there were two or three
26 areas of the carpet that we did independently. We would
27 have used a separate filter for each of those and then
28 also a separate filter for the bed.

1 Q I'm assuming on the bed you did find hair
2 samples and fibers?

3 A Honestly, I don't know. I did not physically
4 examine the vacuum sweepings. We collect them because
5 you only got one shot. If someone wants to look at them
6 at a later time, I believe Mr. Stockwell may have done
7 that, then at least we have them. In terms of what the
8 sweepings contained, I couldn't tell you.

9 Q What about the -- when you approach the body, I
10 believe you said you took some tapings; is that correct?
11 How do you refer to that?

12 A Tape lifts.

13 Q Tape lifts.

14 A Yes, sir. My notes indicate that we took tape
15 lifts of various sections of the body. The idea is that
16 whatever occurred would be the most resent thing;
17 therefore, any potential evidence would be on the top or
18 the surface.

19 Q And in conjunction with that, you combed
20 through the victim's hair; is that correct?

21 A I don't remember doing that at the scene, and I
22 haven't seen any notes to indicate that we did comb
23 through the hair. That may have been done at the
24 autopsy, but I really can't tell you one way or the
25 other.

26 Q My understanding is sometimes when there's even
27 a suspicion that there was some type of sexual activity,
28 they'll take a combing of pubic hair to see if there's

1 any foreign hair?

2 A That is a common collection technique that is
3 used in sexual assault cases, yes, sir.

4 Q You do not know if that was done in this case?

5 A That's correct. I do not know.

6 Q Did you do any testing to the watch pin that
7 was found close to the victim's head?

8 A No, sir.

9 Q Was that ever examined to see if it had any
10 touch DNA?

11 A To have DNA, no, sir. I don't know if anybody
12 has looked at it again. I did not, and, honestly, if
13 someone requested we do touch DNA on it, I would find a
14 way to convince them that we weren't going to do it.

15 Q Did you examine the victim's fingernails or any
16 scraping from under her fingernails?

17 A I can check the autopsy notes that I have.

18 Q Thank you.

19 A In the notes that I have right here, a couple
20 of things. One is, with regard to fingernail scrapings,
21 no, sir. I don't have an indication of fingernail
22 scrapings.

23 Earlier you asked me with regard to pubic
24 combings. Pubic combings were done as part of a sex kit
25 that was collected at autopsy prior to me arriving
26 there. I received the sex offense kit from one of the
27 detectives that was attending the autopsy,
28 Detective Larry Brown, but there was an item called

1 pubic combings.

2 Q Did you analyze those findings?

3 A No, sir. In fact, the only thing that we
4 really -- with regard to the sex offense kit, the only
5 thing we really made any attempt to type or do anything
6 with was the reference blood sample that was collected,
7 and the blood sample itself was too putrid due to
8 decomposition to do anything meaningful with, so we did
9 not look at any of the other items collected as part of
10 the sex offense kit collected at the autopsy.

11 Q Why would a person be interested in looking at
12 fingernail scrapings?

13 A In general, fingernail scrapings may have
14 potential -- they have the potential of having DNA
15 underneath them if someone were to physically injure or
16 scratch their attacker in a confrontation, some sort of
17 assault.

18 Q In other words, if someone was being strangled
19 or having a coat hanger placed around their neck, they
20 may reach out and scratch the person that was doing
21 that?

22 A That's correct.

23 Q In this case, you said you did not -- no one
24 took any fingernail scrapings?

25 A As far as the notes I have, there were no
26 fingernail scrapings taken.

27 Q Is this something that was uncommon in 1985?

28 A I think it was uncommon. It's hard to go back

1 and take a look at what our common protocols were. At
2 the time, if we took a look at fingernail scrapings,
3 there was no serology that we could do at the time.
4 With the advent of DNA techniques, we have become more
5 aware and cognizant of the idea that you can get
6 meaningful information from underneath the fingernails.

7 Prior to that, using fingernail scrapings were
8 used to give an idea of a location that somebody was in
9 if they had dirt under there, what type of dirt it was,
10 anything else along that line. It was less likely that
11 you were looking at it to do some sort of genetic-marker
12 typing or there wasn't any DNA typing at the time, but
13 no serology typing.

14 I would say in terms of evidence collection,
15 fingernail scrapings were not high on the list with
16 regard to the things that were done all the time. With
17 the advent of the DNA techniques, that has totally
18 changed.

19 Q Did you determine whose fingerprints were found
20 in the residence?

21 A Again, sir, I had nothing to do with
22 fingerprints. I don't know if fingerprints were found.

23 Q Did you -- you said that you collected the
24 panties that were on the floor next to the bed; is that
25 correct?

26 A That's correct, yes, sir.

27 Q Did you examine those panties other than
28 looking for stains?

1 A No, sir.

2 Q For example, can you tell us whether or not
3 those panties were torn in any way?

4 A No, I cannot.

5 Q What about the eyeglasses that were on the
6 floor, was there any way in which they were damaged?
7 Was the lens cracked? Was the rim bent? Anything like
8 that?

9 A I have no notes at all with regard to the
10 condition of the eyeglasses.

11 Q My understanding is there were a number of
12 physical items in the room that you collected and put
13 into paper bags; is that correct?

14 A Yes, sir.

15 Q What would those items be?

16 A Those items would be clothing that was found on
17 the floor, the panties which we've spoken of, the --
18 there were pillows that were on the bed. There was a
19 group of articles we call A dash 18 that were on the bed
20 at the bottom of the bed.

21 Q A dash 18 is -- is the number that you gave to
22 the items that were in a certain bag --

23 A They were in --

24 Q -- placed in a bag?

25 A They were toward the foot of the bed. The
26 primary item was this felt pad.

27 Q Was a blanket included in A dash 18?

28 A Let me --

1 Q I notice there was a blue blanket there in the
2 photographs.

3 A Right. In the report that I generated, I have
4 a general description. It says clothing and cloth
5 items, foot of bed. What I can do is look at any notes
6 that we made in the laboratory in terms of processing to
7 see if there's anything more descriptive.

8 Q Okay.

9 A Okay.

10 THE COURT: Mr. Sanders, is there a question
11 pending?

12 MR. SANDERS: We're waiting for an answer,
13 your Honor.

14 THE COURT: Okay. Sorry.

15 THE WITNESS: In looking at the notes, the
16 only item in the processing that is mentioned
17 regarding A dash 18 is the felt pad.

18 BY MR. SANDERS:

19 Q All right. But in the notes it indicates
20 A dash 18 is a felt pad and --

21 A Some other items, some clothing items, yes,
22 sir.

23 Q Unknown clothing items?

24 A That's correct.

25 Q How many different bags were there that you put
26 these items into, the clothing and the felt pad and
27 whatever else you collected?

28 A The clothing on the floor near the doorway was

1 put into a paper sack. The panties were put into a
2 large envelope. The white shorts that had been stuffed
3 in her mouth were placed in a paper sack. The felt
4 cloth and other things that were related to that were
5 placed in a paper sack, and the bedding itself was
6 placed temporarily in a large plastic bag until we
7 transported it to our drying room.

8 Q Four or five different bags?

9 A At least.

10 Q Now, if you had collected that same evidence in
11 2010, you would not have done it that way; is that
12 correct?

13 A In terms of collecting it and putting it into a
14 paper bag?

15 Q Right, and putting -- having the items together
16 in the paper bag?

17 A I'm not sure why I wouldn't have grouped them
18 the same way. The -- the purpose sometimes of -- in
19 fact, the purpose of putting things into individual bags
20 usually is to keep them from contacting or -- or one
21 thing being transferred to the other. If at the scene
22 they were already sitting on top of each other, that's
23 already happened. So the -- the thought process of
24 preventing any sort of transfer, that has potentially
25 already occurred.

26 The idea of not putting the group of clothes
27 that were found near the doorway in the same bag with
28 the panties, which they were in two separate bags, that

1 would hold because at the scene they're not in contact
2 with each other. The -- the items that were at the foot
3 of the bed, again, were pretty much in contact with each
4 other; therefore, it would have gone into the same bag.
5 I would not fault an investigator or crime scene person
6 if they decided to individually package each one or if
7 they decided to put them, again, in the same container
8 with the same conditions.

9 Q You used the word in contact sometimes. We use
10 the word contaminate. You don't want one item of
11 evidence to contaminate another item of evidence?

12 A That's right. We call it transferring,
13 transfer of evidence from one thing to another.

14 Q The felt pad was placed into a bag with
15 something that you don't remember what it was at this
16 point?

17 A It was some article of clothing, yes, sir.

18 Q All right. You said -- you mention a pair of
19 white shorts?

20 A Yes, sir.

21 Q That is separate from the panties that were on
22 the floor; is that correct?

23 A That's correct.

24 Q I noticed when we were looking at the
25 photographs, there was one photograph where it appeared
26 there was a white cloth over the victim's face.

27 A That would be the pair of shorts.

28 Q You used the term that it was stuck in her

1 mouth?

2 A Yes, sir.

3 Q What portion of the white shorts was inside her
4 mouth?

5 A That, I couldn't tell you exactly which portion
6 it was without looking at the photographs, seeing if
7 it's reflected in a photograph to be able to determine
8 that.

9 Q Did you yourself actually observe the white
10 shorts in her mouth?

11 A I don't have any independent recollection of
12 it. I'm virtually positive I did. See where I might
13 have noted that. In terms of when we collected the
14 sample, Item A dash 17, I listed the description of
15 white shorts; location, victim's mouth. It was packaged
16 in a paper sack.

17 Q The reason I ask is because I know sometimes
18 when one person gets to the scene and maybe they take a
19 guess or they make an assumption, I bet that was a gag.
20 Then someone else might say, yeah, okay. From now on
21 we'll call that the gag.

22 In this case you saw the condition of the
23 victim's face when you went in the room; is that
24 correct?

25 A I saw the condition of the victim's body and
26 how she was laid out.

27 Q Okay.

28 A I --

1 Q You noted that because of decomposition that
2 had gone on one thing that had happened was her tongue
3 was protruding from her mouth because it was large and
4 swollen; correct?

5 A I believe that's true, yes, sir.

6 Q And that her top dentures were protruding from
7 her mouth, and they weren't seated on her gums the way
8 they would normally be?

9 A That's true.

10 Q And her lower dentures had been pushed out of
11 her mouth; is that correct?

12 A I know we collected the lower dentures at the
13 autopsy, so they -- they probably were still with her
14 when they moved the body.

15 Q So my question was, from the condition that her
16 mouth was in from the decomposition, where in her mouth
17 was the shorts?

18 A I -- I don't know that I can tell you without,
19 again, looking at the photographs at the scene.

20 Q Okay. Did you do any swabs of her face?

21 A No, sir.

22 Q Or tape lifts?

23 A Let me check my notes on that one. No, sir, we
24 did -- according to my notes, did five tape lifts, one
25 of each arm, one of each leg, and one of the torso area.

26 Q Was a swab taken of the mouth?

27 A No, sir, not at the scene.

28 Q You, in your career, have collected a number of

1 samples of semen and sperm and tested them for DNA; is
2 that correct?

3 A Yes, sir.

4 Q Is there a window of opportunity to do that
5 where the sperm or the semen has to be collected in a
6 certain amount of time or you're not able to do that
7 type of testing?

8 A It all depends on circumstances. If you're
9 speaking with regard to a homicide victim who is not
10 ambulatory, it is best to collect it as soon as possible
11 to minimize the effect of degradation that could take
12 place. Sperm cells, as I mentioned yesterday with
13 regard to the extraction process, are fairly hardy and
14 seem to be able to survive a period of time through the
15 decomposition process; however, I'm sure they have their
16 limits.

17 When we speak of sexual assault victims who are
18 ambulatory, the major concern there is the ability of
19 the seminal fluid to drain out or flush out during
20 bathing or normal activity, so the presence of seminal
21 fluid and the preservation of it will depend upon a
22 number of different factors.

23 The enzyme that we use or acid phosphatase that
24 we use for detecting the presence of semen and the other
25 protein called pre30, they're fairly stable in terms of
26 in a dry stain or dry state. So an idea, in fact, this
27 is what we do at the crime scenes prior to the
28 autopsies, if we suspect there might be a sexual

1 assault, that's why we take a sample at the time, take
2 it and dry it.

3 Once you dry the sample, the degradation
4 process slows down tremendously and enhances your
5 chances then of being able to detect either the enzymes
6 or the proteins or in this case in years later the DNA.

7 Q So if -- so one of the things that would
8 degrade the semen sample would be moisture?

9 A Yes, sir. In fact, in a biological setting,
10 moisture is absolutely necessary for any sort of
11 biological process to take place. If you can dry a
12 sample out, get the moisture out of there, really about
13 the only thing that will degrade it is if you bombard it
14 with UV light and break up the DNA.

15 If you can stop -- if you can dry it out, the
16 bacterial processes and degradation processes should
17 come to a virtual halt. That and freezing, keeping it
18 cold.

19 Q Okay. So that was my next question.

20 What about heat? Does heat further the
21 degradation process of the sample?

22 A If moisture is present. If moisture is not
23 present, then heat will have a minimum effect on it.

24 Q Let me ask a different question then. Back in
25 1985, you went to the crime scene on Monday afternoon of
26 a woman that was seen alive on Friday afternoon and
27 evening.

28 A Okay.

1 Q You indicated that you were able to collect
2 some samples of semen or sperm?

3 A Yes, sir.

4 Q Now, do you have an opinion as to whether or
5 not you were -- would have been able to collect that --
6 those samples of semen and sperm had you gotten there a
7 week from Monday?

8 THE COURT: Is that a hypothetical question?

9 MR. SANDERS: It is.

10 THE WITNESS: It is.

11 THE COURT: Can you answer it?

12 THE WITNESS: I believe I can. The samples
13 on the vaginal swab, I don't know that we would have
14 been able to do the serological testing on them in
15 terms of being able to identify the presence of an
16 enzyme called acid phosphatase or the P30 protein,
17 which is used to identify seminal fluid.

18 The sperm cells probably still would have been
19 there.

20 BY MR. SANDERS:

21 Q Because of their hardness?

22 A Not only hardness. There were a lot of them.
23 When I looked at the sperm count, I made a slide. There
24 were a lot of sperm cells that were present. The felt
25 pad, that stain may have dried immediately or would
26 definitely not have been subjected to the same moisture.
27 I have no doubt that even today we could possibly go to
28 that as long as it's been kept dry and still get at

1 least the P30 protein detection, definitely the DNA,
2 maybe even the acid phosphatase and it's been 25 years.

3 Q Now, going the other way, from the tests you
4 did, from the examination that you made, do you have the
5 capability of determining how long the sperm had been
6 there before you collected it or before the death of the
7 victim?

8 A Not in terms of the -- of the testing that I
9 did. That would be information that you would need to
10 piece together from other -- other facts that are
11 gathered.

12 Q That you don't have?

13 A That's correct.

14 Q Okay. By the way, your partner, that was
15 Mr. Stockwell?

16 A Yes, sir.

17 Q Did he have the training required for
18 collecting and processing evidence?

19 A Yes, sir. In fact, in many ways, Mr. Stockwell
20 left our laboratory a number of years ago, we lost a
21 great expertise. He was a tremendous, tremendous
22 criminalist.

23 MR. SANDERS: Thank you, your Honor. No
24 further questions on cross-examination.

25 THE COURT: Redirect.

26 MR. THOMAS: Thank you, your Honor.

27

28

REDIRECT EXAMINATION

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BY MR. THOMAS:

Q The blood transfer that you spoke about earlier on cross-examination, is that something that the victim herself could have done where she put that blood transfer on there?

A I have absolutely no information with regard to how that could have gotten there. Pretty much any hypothetical that you put up which has her blood on it and it touched either the doorjamb or the part of the wall would be an explanation. I have nothing I can offer you on that.

Q Okay. So there's all these possibilities out there --

A Yes.

Q -- to explain the blood transfer that you saw on Items A dash 23 and A dash 24?

A That's correct.

Q Okay. You talked about cell analysis, fluids draining out, and a victim that's ambulatory or I guess still alive basically.

A Yes, sir.

Q Okay. When the seminal fluids drain out, do they drain out of the vaginal area?

A Yes, sir. The logical thing would be that there's a gravity flow, and it would slowly drain out if the person is vertical and moving around.

Q So if the victim in that hypothetical is

1 wearing panties, they would drain out on the panties?

2 A It could, yes, sir.

3 Q Okay. And then assuming -- this is another
4 hypothetical. Assume that the victim had sex and
5 there's a pair of panties on the ground that has no
6 seminal fluid or no semen on there.

7 If you had to come to a conclusion as to how
8 soon that victim had sex prior to the discovery of the
9 body, would you have any opinion as far as that goes?

10 MR. SANDERS: Objection, your Honor.
11 Incomplete hypothetical.

12 MR. THOMAS: If I could rephrase it?

13 THE COURT: I can -- I can rule on this
14 before you rephrase it if I can ask Mr. Jones, can you
15 answer that question?

16 THE WITNESS: I'm not sure I truly understand
17 what he was trying to get at.

18 THE COURT: I think so too. I think it may
19 be an incomplete hypothetical, may be vague. You may
20 restate the question.

21 BY MR. THOMAS:

22 Q Okay. What's the significance to you of there
23 being an absence of seminal fluid on the panties that
24 were found by the bed? What did that indicate, if
25 anything, to you?

26 A If there's no seminal fluid on the panties,
27 then the suggestion is that the panties were not worn
28 after there was sexual intercourse.

1 Q And then as far as determining whether or not a
2 person had sex or sexual intercourse with someone, what
3 would you think is the most significant as far as
4 evidence? Do you think it would be a vaginal swab of
5 some sort or pubic hair or some hair found in the pubic
6 area of the victim?

7 A Definitely the vaginal sample. In fact, when
8 we have what we consider sexual assault cases, because
9 of the large back log we have, we want to look at the
10 most probative samples first.

11 THE COURT: Probative?

12 THE WITNESS: Yes, sir.

13 THE COURT: What does that word mean?

14 THE WITNESS: For me, it means the one that
15 would answer the question as succinctly as possible.

16 THE COURT: Thank you.

17 THE WITNESS: And the answer for a sexual
18 assault case would be the vaginal swab. You look at
19 that. If you can identify the presence of semen on
20 it, then do some sort of characterization or DNA
21 typing of that. That will then answer the question
22 with regard to the presence of a semen donor.

23 If nothing was found in regard to semen, then
24 you start looking at other samples. Pubic hair
25 combings, hairs that are collected around the body,
26 things related to the body.

27 If that doesn't pan out, then you start looking
28 at -- we've already -- actually, before that, you look

1 for other stains, such as the one we found on the felt.
2 Then you look for hairs that are found in the pubic
3 combing or on the body.

4 If that doesn't pan out, then you start looking
5 at the vacuum sweepings that you took or you look for
6 things of that nature.

7 If that doesn't pan out, then you start looking
8 at the cigarette butts that were collected out of the
9 living room.

10 It's a progression of things that you want to
11 look at starting with those things that are more closely
12 related to the question you're trying to answer.

13 Q And then as far as the pubic hair is concerned,
14 if you find some other foreign hair in the pubic hair
15 combings, can you do the same type of DNA analysis that
16 you would do on a semen stain or vaginal swab?

17 A It depends on the condition of the hair. If
18 the hair has a good root structure to it, yes, you can.
19 If it does not have a good root structure, then there is
20 ultimate DNA testing that we don't do in our laboratory
21 that really is more comparative testing. You need to
22 have someone that you're going to be directly comparing
23 that type of result to.

24 Q Okay. Then there was discussion about
25 fingernail scrapings that you had with Mr. Sanders.

26 Do you recall that?

27 A Yes, sir.

28 Q As far as fingernail scrapings, just because

1 somebody had a struggle with someone else doesn't
2 necessarily mean that there will be foreign DNA on those
3 fingernail scrapings?

4 A That is true. In terms of the approach that we
5 take now with regard to crime scenes, rather than say
6 there's a chance there isn't DNA, we take the chance
7 there is DNA, and we will take it. We may not get
8 anything. It may be that all the DNA would be the same
9 as the victim's because they scratched themselves.

10 Q As far as -- as far as those fingernail
11 scrapings go back in 1985, it wasn't one of those things
12 where, yeah, 20 years from now we're going to be able to
13 do DNA testing on these fingernail scrapings so we need
14 to start collecting these fingernail scrapings?

15 A The idea of DNA in 1985 was something out of a
16 science fiction magazine. It wasn't even -- for us in
17 the lab, wasn't even on the horizon. We were fully
18 involved in serology, looking at blood and semen and
19 saliva and those types of physiological fluids, trying
20 to do genetic-marker typing on proteins and enzymes and
21 antigens.

22 As I say, the -- the idea of doing DNA typing,
23 when I look at where we've come, I'm absolutely amazed.
24 Absolutely amazed. To think of what we were capable of
25 doing in 1985 and what we're capable of doing today,
26 it's unbelievable.

27 Q So basically any suggestion that we can look at
28 something in 2011 and kind of play Monday-morning

1 quarterback and say, well, 25 years ago you should have
2 done this, you should have collected that, you should
3 have collected this, would be something that would be
4 unfair?

5 MR. SANDERS: Objection, your Honor.
6 Argumentative.

7 THE COURT: Sustained.

8 BY MR. THOMAS:

9 Q As far as the sperm count was concerned, you
10 said that you saw a lot of sperm or the sperm count was
11 a lot on the slide that you looked at?

12 A Yes, sir.

13 Q When an individual is alive, does that sperm
14 count naturally decrease as the hours and minutes go by?

15 A Yes, sir. In sexual assault cases involving a
16 live victim, there's an interval called a post-coital
17 interval from the time the sexual intercourse takes
18 place until the time the kit is collected. In general,
19 the longer the period of time, the less amount of
20 seminal fluid and/or sperm you will find present.

21 There are, of course, exceptions to this, but,
22 in general, as time goes by, you will have less and
23 less. The sooner after a particular incident that you
24 collect a sample, the better off you are.

25 Q And what about in the situation hypothetically
26 of a person who dies shortly after having sexual
27 intercourse?

28 A If there's an opportunity for the -- for this

1 drainage that we talked about, then the post-coital
2 interval between the time of the intercourse and time of
3 collection will be less critical.

4 Q So you would still, in this hypothetical that I
5 just posed to you, you would expect there to be also a
6 lot of sperm or the sperm count to be high?

7 A I would expect it to be -- to decrease less.
8 If there's very little there to start with, I would
9 expect there to be very little there when I collect the
10 sample. If there was a lot there when I started or when
11 it happened, then I expect there to be a lot there when
12 I collect the sample. There would be very little
13 difference. It depends on how much was there to start
14 with.

15 MR. THOMAS: Nothing further.

16 THE COURT: Mr. Sanders.

17 MR. SANDERS: Thank you, your Honor. Couple
18 questions.

19 **RECROSS-EXAMINATION**

20 BY MR. SANDERS:

21 Q Sperm count is relative?

22 A Yes, sir.

23 Q When you say high sperm count, that could mean
24 an individual that had a lot of sperm or an individual
25 that had a larger than average amount of sperm, but it
26 had taken some time.

27 You wouldn't be able to tell which one?

28 A I'm not sure I understand the second part, the

1 larger amount that's taken some time.

2 THE COURT: The Court's going to sustain its
3 own objection to vague. You want to restate?

4 MR. SANDERS: Yes, your Honor. Thank you.

5 BY MR. SANDERS:

6 Q You said you found a large amount of sperm
7 cells.

8 A Relatively large amount compared to other
9 sexual cases that I worked, yes, sir.

10 Q All right. But you have no knowledge of the
11 person that -- that -- the sperm count of the person
12 that made that deposit?

13 A Absolutely. That's correct.

14 Q So it could have been -- you can't tell the
15 time based on just looking at what you looked at?

16 A No, sir.

17 Q Okay. In other words, from the information
18 that you had, the sexual experience of the victim could
19 have been at the time of death, hours before the time of
20 death, or after death?

21 A That's probably true. I would say it probably
22 wasn't days before in terms of she had intercourse,
23 several days passed, and then she died.

24 Q Right.

25 A I'm fairly certain of that.

26 Q Okay.

27 A If you take those days and shrink it down into
28 hours and so forth, I can't tell you.

1 Q All right. And one of the questions I asked
2 you at the preliminary hearing, isn't it true that you
3 would be unable to state that this particular victim had
4 consensual sex or nonconsensual sex before the time she
5 died?

6 A That is true. I have no information at all
7 with regard to the conditions that were present or what
8 circumstances were present. Pretty much all I can do is
9 make an assumption, but I can't tell you how it got
10 there or why it got there.

11 Q The prosecutor just asked about those blood
12 marks in the hallway.

13 A Yes, sir.

14 Q I believe that you said that you took those to
15 the lab and compared them to 16 different profiles; is
16 that correct?

17 A There was -- there were at least 16 different
18 reference blood samples that had been submitted over the
19 course of the investigation to us.

20 Q What do you mean by that?

21 A That have been submitted to us?

22 Q Yes.

23 A There were names and I'm somewhat -- I'm
24 presuming occurred during the course of investigation, a
25 person of interest, somebody for elimination purposes.
26 Those reference blood samples were submitted to the
27 laboratory. As they came in, we would analyze them and
28 compare them to the results we got for the -- initially,

1 for the -- for the stains we looked at, and then later
2 on, we were asked to compare them to these two blood
3 stains.

4 In each of these cases we eliminated the blood
5 stains as coming from the other people whose blood we
6 had received with the exception of the victim. With
7 regard to the blood stains, the typing we got was the
8 same as the victim's type.

9 Q These 16 different profiles, these are like
10 potential suspects?

11 A They could be. I don't know what they truly
12 were in the minds of the investigators.

13 Q All right.

14 A There were at least 16 subjects.

15 MR. SANDERS: Thank you, your Honor. Nothing
16 further on recross.

17 THE COURT: Mr. Thomas.

18 **FURTHER REDIRECT EXAMINATION**

19 BY MR. THOMAS:

20 Q Out of those 16 subjects, none of them matched
21 either the blood stains that you found in the hallway
22 and none of them matched the semen sample that you had?

23 A The blood stain in the hallway matched the
24 victim. That was one of the reference samples that we
25 had. The semen samples, sperm cell fractions of those
26 samples, off the vaginal swab and off the felt pad, that
27 did not match any of those other reference samples that
28 we got that I analyzed.

2
1 Q As far as the other reference samples that you
2 analyzed, did you have names attached to those reference
3 samples?

4 A Yes, sir.

5 Q Did the name Yablonsky ever get examined by
6 you?

7 A No, sir.

8 MR. THOMAS: Nothing further.

9 THE COURT: Mr. Sanders. We'll take a
10 ten-minute recess right now, ladies and gentlemen.
11 You're admonished that it is your duty not to converse
12 among yourselves or with anyone else about any matter
13 connected with this case nor form or express an
14 opinion on it until it's submitted to you.

15 (Whereupon a recess was taken.)

16 (Whereupon the following proceedings were held in open
17 court in the presence of the jury:)

18 THE BAILIFF: Remain seated. Come to order.
19 Court is now in session.

20 THE COURT: Back on the record in the case of
21 People of the State of California versus John Henry
22 Yablonsky who is here with Mr. Sanders. Mr. Thomas is
23 here for the People along with his investigating
24 officer. Donald Jones is on the witness still under
25 oath.

26 MR. SANDERS: I wasn't quite fast enough,
27 your Honor, to say no further questions.

28 THE COURT: You needed to review some things.

NO SUBJECT
TO RECALL

1 That's fine. I thought we would cut -- you're
2 through, both of you? May this witness be excused?

3 MR. THOMAS: Yes, your Honor.

4 MR. SANDERS: Yes, your Honor.

5 THE COURT: Thanks for being with us,
6 Mr. Jones.

7 THE WITNESS: Thank you, sir.

8 THE COURT: Call your next witness.

9 MR. THOMAS: People call Monica Siewertsen.

10 THE CLERK: You do solemnly state that the
11 evidence you shall give in the matter pending before
12 this Court shall be the truth, the whole truth, and
13 nothing but the truth, so help you God?

14 THE WITNESS: I do.

15 THE CLERK: Thank you. Please be seated.

16 THE BAILIFF: Please state your full name and
17 spell it for the record.

18 THE WITNESS: Monica Siewertsen M-o-n-i-c-a
19 S-i-e-w-e-r-t-s-e-n.

20 THE COURT: Good morning, Ms. Siewertsen.

21 THE WITNESS: Good morning.

22 THE COURT: Your witness.

23 MR. THOMAS: Thank you, your Honor.

24

25

26

27

28

1 **MONICA SIEWERTSEN**, having been duly sworn,
2 testified as follows:

3 **DIRECT EXAMINATION**

4 BY MR. THOMAS:

5 Q What's your current occupation?

6 A I'm currently employed as a criminalist with
7 the Washoe County Sheriff's Department in Reno, Nevada.

8 Q How long have you been employed with the Washoe
9 County Sheriff's Department?

10 A Since January of 2009.

11 Q And then prior to that, where did you work?

12 A I was a criminalist in the San Bernardino
13 County Sheriff's Department in San Bernardino.

14 Q Do you remember what years you worked for the
15 San Bernardino County Sheriff's Department?

16 A From 2002 until the end of 2008.

17 Q Prior to working with the sheriff's department
18 in 2002, did you work for any other department as a
19 criminalist?

20 A Yes. I was employed with the Royal Canadian
21 Mounted Police in Edmonton Alberta in Canada as well as
22 the Mesa Police Department in Mesa, Arizona.

23 Q How many years of experience do you have as a
24 criminalist?

25 A Approximately 16.

26 Q Prior to becoming a criminalist, did you have
27 to take special education courses or anything like that?

28 A I have an honors bachelor of science from the

1 University of Waterloo in Waterloo, Canada. I have six
2 years of research experience in the area of molecular
3 biology, which is utilizing DNA, in my instance, to help
4 answer specific research questions.

5 Three of those years were at the Hospital of
6 Sick Children in Toronto, Canada and three years with
7 the King Faisal Specialist Hospital and Research Center
8 in Riyadh, Saudi Arabia.

9 Q As far as your training is concerned, did you
10 have on-the-job training also?

11 A Yes. At each of the police agencies where I
12 worked, I was required to undergo written, oral,
13 practical examinations, as well as demonstrating using
14 training samples and reading articles demonstrating a
15 competency in the area of the analysis that I performed
16 at each of the agencies. That would be mostly DNA
17 typing analysis.

18 Q As far as your current position at
19 Washoe County, what do you do over there as a
20 criminalist?

21 A I work in the forensic biology section. I
22 perform the identification of biological materials.
23 Then I perform DNA typing analysis in an attempt to
24 determine the origin of those biological materials.

25 Q How long have you been doing DNA typing and
26 working in the forensic biology area?

27 A Approximately most of those 16 years.

28 Q Then as far as the 16 years that you've done,

1 primarily working with DNA?

2 A Primarily, yeah.

3 Q And then did you have -- during those 16 years,
4 how many cases have you worked on where you did DNA
5 typing?

6 A I don't have an exact number, but I would say
7 well over a thousand.

8 Q And then as far as your case load is concerned,
9 eventually you had to go into court to testify on some
10 of those cases?

11 A In some, I'm required to testify, yes.

12 Q How many times have you testified in court as
13 an expert in DNA?

14 A I've been required to testify over 80 times.

15 Q As far as testifying in court, you said you've
16 done that before.

17 Is that on different types of DNA or a specific
18 type of DNA testing that you've done?

19 A The actual analysis type?

20 Q Yes.

21 A Yes. I've testified in several different
22 analysis types, yes.

23 Q Then if you can explain to the jury, what is
24 DNA?

25 A DNA stands for deoxyribonucleic acid. It's
26 often referred to as blueprint of life because it does
27 contain the information that allows us to be human,
28 carry on our daily functions, and it also allows us to

1 pass our traits on from one generation to the next.

2 Q What type of items can you find DNA on?

3 A In humans, DNA is located inside all cells
4 except for red blood cells. We're still able to analyze
5 blood in a forensic situation because white blood cells
6 are located in blood. That's where we obtain our DNA
7 from.

8 An important factor for forensic DNA analysis
9 is that no matter what the source of the cells -- the
10 source of the cells, I mean, blood, semen, saliva, the
11 roots of hair or tissue -- if it came from the same
12 individual, it will give the same DNA typing profile.
13 So we're able to compare different kinds of biological
14 material and determine if they came from the same
15 individual.

16 Q Okay. Up on the screen there is Exhibit 41.
17 May I approach?

18 (Whereupon Exhibit 41 was marked
19 for identification.)

20 THE COURT: You may.

21 BY MR. THOMAS:

22 Q Can you explain to the jury what this exhibit
23 depicts, Exhibit 41?

24 A Yes. This is a caricature to basically help to
25 remind me of things to explain about the DNA molecules.
26 As I've mentioned, DNA is located inside the cells in
27 the human body. No matter what the source of those
28 cells, if the cells came from the same individual, they

1 will give the same DNA typing profile.

2 DNA is packaged -- it's a very large molecule,
3 as you can imagine, because it contains a lot of
4 information. It's packaged in structures known as
5 chromosomes. A chromosome is similar to a spool of
6 thread. If you're familiar with a spool of thread, it
7 may contain 10 or 25 or 50 yards of thread in a very
8 small compact package that you could carry around. The
9 large DNA molecule is wound around something similar to
10 that spool of thread so it's able to be packaged in a
11 very small area.

12 The English language has 26 letters or the
13 English alphabet has 26 letters. We organize those
14 letters into words and into sentences. That's how we're
15 able to communicate with each other. The DNA alphabet
16 consists of only four letters or four building blocks
17 for the DNA molecule. They go by the letters A, T, G
18 and C. It's the order of these building blocks along
19 the DNA molecule in a certain stretch that imparts the
20 information, the blueprint that the body follows in
21 order to produce proteins and carry on functions.

22 These base pairs or building blocks pair in the
23 rungs of a ladder. This diagram here is often how a DNA
24 molecule is depicted. That is a double helix or
25 twisted-ladder format. The outsides of the twisted
26 ladder are like the outsides of the ladder -- the
27 outside of the DNA molecule is like the outside of a
28 ladder. The rungs are where those building blocks are

1 located.

2 If you divide those rungs in half, there's a
3 base on each side of that half. Every time there is a
4 T, the other half of the rung will always be an A.
5 Every time there is a C on one half of the rung, the
6 other half will always be a G. Because of that, if you
7 cut a DNA molecule down the center in half and you take
8 away half, you will always be able to reform the DNA
9 molecule because of those base pairing rules.

10 That is in nature how we make more cells in our
11 body, and how we repair injuries, how we grow, and also
12 how we're able to pass our traits from one generation to
13 the next. We use this particular technique in the
14 laboratory in order to make copies of particular areas
15 along the DNA molecule we're interested in during our
16 analysis.

17 Q That's also known as the extraction process or
18 that's done during the extraction process?

19 A That's -- the making of the copies is actually
20 done after the extraction process during the PCR or
21 polymerase chain reaction stage.

22 Q And then in this particular case, did you
23 perform some sort of DNA analysis?

24 A Yes, I did.

25 Q Okay. And what was the LR number of this
26 particular case?

27 THE WITNESS: Your Honor, may I refer to my
28 notes to refresh my recollection?

1 THE COURT: You know, you can do it anytime
2 you want to just do us a favor and just tell us, I'm
3 going to be referring to my notes.

4 THE WITNESS: Okay.

5 THE COURT: Thank you.

6 THE WITNESS: The LR number in this case
7 is 44659.

8 BY MR. THOMAS:

9 Q Was there also a DR number that was attached to
10 this particular case?

11 A Yes.

12 Q What was the DR number?

13 A 1331036 dash 07.

14 Q Were there certain items that you analyzed
15 regarding this particular LR number, LR Number 44659?

16 A Yes.

17 Q What were those items?

18 A Referring to my report, the particular items
19 that I analyzed was A dash 11, which was a vaginal swab
20 from Rita Cobb.

21 Q And then as far as that A dash 11 is concerned,
22 did you have to actually do an extraction of the DNA of
23 that particular item?

24 A I did not. These were actual tubes which
25 contained liquid. That liquid was DNA that had been
26 previously extracted from the vaginal swabs.

27 Q Then you talked about the PCR.

28 Is that done by you after you get a liquid?

1 A Yes. The steps, basically, of the DNA analysis
2 is to remove the DNA from whatever biological material
3 that you're looking at, and then to determine how much
4 you have because DNA analysis is like following a
5 recipe. We want to know how much DNA we have in order
6 to add the correct amount to our recipe.

7 Then we want to make a number of copies of the
8 particular areas of the DNA molecule that we're
9 interested in targeting. Then we want to analyze or
10 determine the differences or results at each of the
11 areas that we look at.

12 Q So you made the copies of the DNA for
13 Item A dash 11?

14 A I did.

15 Q Can you explain whether or not during that
16 process there were any abnormalities that you saw?

17 A The fact that the record is written means that
18 there was no reason to doubt the results at the end of
19 the analysis.

20 At each of the steps, there are positive and
21 negative controls that are carried through that analysis
22 to make sure that the process worked correctly, we
23 obtain the correct results from the positive control,
24 and that no results are obtained from the negative
25 control. That serves to show there's no inadvertent
26 addition of an unknown DNA sample.

27 In this particular case, once I complete my
28 analysis and write a report, my complete file is given

1 to a second individual to go over my analysis and to
2 agree with my conclusions before the report is released.

3 So there's no reason in this particular case to doubt
4 those results.

5 Q Okay. And that copying that you did, that was
6 in accordance to generally accepted scientific
7 procedures in the scientific community?

8 A Yes, as well as being validated within the
9 laboratory before they're used for case work.

10 Q And you did that in accordance with the
11 training that you received?

12 A Yes.

13 Q And then did you eventually obtain a DNA
14 profile or multiple DNA profiles from Item A dash 11?

15 A Yes, I did.

16 Q Can you tell us how, once you develop a DNA
17 profile, how that profile is developed, what you're
18 looking at in order to get that profile?

19 A Yes. As I've mentioned, we target 13 areas
20 along the DNA molecule. The DNA that we have, half of
21 our DNA is inherited from our mother and half of our DNA
22 is inherited from our father.

23 I had mentioned earlier that we have 46
24 chromosomes. We have 23 chromosome pairs. The half
25 inherited from your mother, the half inherited from your
26 father. When we look at any one area on the DNA
27 molecule, there are two copies of that area, the one
28 that you inherited from your mother, the one from your

1 father. When you target that area and do your analysis
2 and look for your result, you actually expect to see two
3 results at that area. The actual result is a length of
4 DNA.

5 The particular analysis that I perform is
6 called short tandem repeat analysis or STR analysis, and
7 what that analysis entails is the particular areas that
8 we're interested in, if we take one of those areas,
9 everyone in the world has the same core order of
10 building blocks at that location. For example, A, A, T,
11 G. That's the order of the building blocks at that
12 location. Everybody has that order.

13 What differs from person to person is the
14 number of times that that core sequence is repeated at
15 that particular location. One individual may have one
16 of their chromosomes that has four of those repeat
17 units, and the other of their chromosome has two of
18 those repeat units. At that one location, that
19 individual's DNA typing result would be a 2, 4. Someone
20 else using that same particular location will have that
21 same core sequence, but they may have three repeat units
22 at one area or one of the chromosomes and two repeat
23 units at the other chromosome. Their DNA typing result
24 at that one location would be a 2, 3.

25 So a DNA typing profile is a accumulation of
26 those numerical results at each of the areas that we
27 look at on the DNA molecule. We attempt to look at 13
28 areas.

1 Q Before we go on to the 13 areas, I'm going to
2 show you what's been marked Exhibit 43.

3 Is that an illustration of what you just
4 discussed as far as a short tandem repeats?

5 (Whereupon Exhibit 43 was marked
6 for identification.)

7 THE WITNESS: Yes.

8 BY MR. THOMAS:

9 Q I notice on Exhibit 43, that there's a group of
10 rectangular blocks with the letters A, G, A, T in there,
11 and then next to it say four alleles and then on the
12 bottom is another group of rectangular boxes with those
13 same letters and next to that is the six allele.

14 A Yes.

15 Q As far as the DNA type, that would be 4 comma
16 6?

17 A Correct.

18 Q What if it was, hypothetically, let's say the
19 second one is also four alleles?

20 A That is possible. Each of the areas that we
21 look at, there is not an infinite number of
22 possibilities or infinite number of links at that
23 particular area. There's a finite number of results.
24 So it is possible that an individual may coincidentally
25 inherit the same result from both parents.

26 The length of the fragment or the number of
27 repeat units would be the same and the result of that
28 location would be written as a 4, 4 or may be written

1 just as a 4.

2 Q So when you only see a single number, that
3 means that that same number is a duplicate and you see a
4 Number 4 all by itself that means there's two 4s there?

5 A That's correct.

6 Q You were about to talk about the 23 chromosomes
7 and the locations. Let me show you an exhibit. I'm
8 going to show you what's been marked Exhibit 42.

9 Can you explain what's depicted in Exhibit 42
10 for the jury?

11 (Whereupon Exhibit 42 was marked
12 for identification.)

13 THE WITNESS: Yes, this is a representation
14 of the 23 chromosome pairs. 22 of the -- of the
15 pairs, each half of the pair is identical to the other
16 half. The 23rd pair, which is demonstrated in the
17 bottom right corner, are the sex determining
18 chromosome. A female will have two Xs and a male an
19 X, Y.

20 We look at 13 areas along the chromosomes
21 labeled 1 to 22, and we look at an area on the X and Y
22 chromosome to determine whether the donor of the
23 biological sample is a female or a male.

24 BY MR. THOMAS:

25 Q I notice on Exhibit 42, there appear to be
26 several chromosomes with no numbers on them.

27 Do you see that?

28 A Yes.

1 Q Are those chromosomes that aren't actually
2 examined?

3 A That's correct. We do not look at areas on
4 those particular chromosomes.

5 Q And each area that you examine is designated,
6 it looks like, with a number?

7 A That's correct. Basically, what that value is
8 in the yellow is a DNA address. If I say to you that an
9 individual lives at 201 Birch Street, if you're familiar
10 with the city we're in, then you would know where
11 201 Birch Street is.

12 These destinations are what microbiologists use
13 to know where a particular piece of DNA is located. For
14 example, on the second row, the number is D13S317.
15 Basically, that means that that's a DNA fragment. It's
16 on the 13th chromosome. It's a single unique sequence
17 that is found only once on the DNA molecule. It was in
18 this particular case the 317th one characterized on the
19 13th chromosome.

20 Q I notice it looks like Chromosome 5 has more
21 than one?

22 A Yes.

23 Q Is that the only chromosome that has more than
24 one?

25 A Yes. They are located on opposite arms of the
26 chromosome. They are far enough apart on the chromosome
27 that they are considered independent of each other.

28 Q How unique are these numbers we're talking

1 about as far as these short tandem repeat numbers? Are
2 they unique to each individual when you look at them all
3 13 loci?

4 A Do you mean the overall DNA typing profile?

5 Q Yes.

6 A The more information you have, the more areas
7 you obtain results for, the more individualizing a DNA
8 typing profile is. As I mentioned earlier, each area
9 only has a certain number of possibilities. One of the
10 areas has eight possibilities. With all the people in
11 the world having to have two of those eight
12 possibilities, obviously lots of people at that one area
13 are going to have the same result.

14 The power of individualization for DNA typing
15 analysis comes in looking at a number of areas. An
16 example for a car would be if I tell you I'm looking for
17 a white vehicle, that's a good piece of information
18 because I'm able to eliminate all other colored vehicles
19 as being the one that I'm looking for. It's -- there's
20 lots of other white vehicles around. If I then tell you
21 that I'm looking for a white vehicle that has two doors,
22 I can now exclude all white vehicles that have more than
23 two doors. For each additional piece of information I
24 give you, it's less likely I'm coincidentally going to
25 find a vehicle that fits that description.

26 For DNA typing analysis, the same is true. If
27 the frequency of occurrence of a result at one area is 1
28 in 10, well, I'm able to exclude nine out of ten people,

1 but there's lots of people out there that are going to
2 have that same result. If I then have a secondary
3 result and the frequency of occurrence of that second
4 area is 1 in 10, because the two areas are totally
5 independent of each other and what I obtain at one area
6 has no affect on what I obtain on the second area, we're
7 able to multiply the frequency of occurrence of the two
8 areas together. So the two results will be found in 1
9 in 100 people.

10 If I then look at a third area, that third area
11 has a frequency of 1 in 10. The combination of those
12 three results would be found in only 1 in 1,000 people.
13 So for each additional piece of information I give, the
14 less likely it is that someone else is going to
15 coincidentally have those results.

16 By looking at all 13 areas, we're going to come
17 up with a DNA profile where it is unlikely that another
18 individual would match that profile.

19 Q So as far as these profiles are concerned, are
20 you able to get a DNA profile with those 13 points in
21 every case?

22 A No.

23 Q In some cases are you limited to maybe three or
24 four or five or six?

25 A Yes. Earlier, I mentioned that performing DNA
26 typing analysis was like following a recipe where we
27 need to add certain amounts of each of the components.
28 There's an optimum amount of DNA that we would like to

1 add to our reactions in order to obtain results at all
2 13 areas; however, it's possible that that much DNA just
3 does not exist from the particular material we isolated
4 it from.

5 It's still worth a try to perform the DNA
6 typing analysis on that less-than-optimum amount because
7 any piece of information that we have gives some
8 information -- any result that we have gives some piece
9 of information. The example of cars, if all I'm able to
10 tell you is that I'm looking for a white vehicle, that's
11 still a piece of information. So it's useful. In DNA
12 typing analysis, if the amount of DNA present is not
13 optimum amount, it's possible we don't obtain results at
14 all 13 areas.

15 If the DNA has been around for a long time and
16 subjected to not optimum conditions, the DNA may be in
17 what we call a degraded form, and we may not obtain
18 results at all areas. If we don't obtain results or
19 when we obtain results, whether those are complete or
20 partial, we attach a statistical significance to that
21 result to give some idea of how common or rare the
22 result that we obtain is in the population.

23 Q As far as this particular case, were you able
24 to obtain a DNA profile from Item A dash 11?

25 A Yes, I was.

26 Q Was it a partial profile or was it a full
27 profile?

28 A Referring to my table summary result, I was

1 able to obtain a full profile from both fractions of
2 this particular sample.

3 Q And you said both fractions, could you explain
4 to the jury what you mean by both fractions?

5 A Yes. In this particular case, the extract that
6 I worked with was from a vaginal swab. Generally, the
7 purpose of examining a vaginal swab is to look for a
8 donor of a semen sample that may be present. A vaginal
9 swab we would expect to have epithelial cells, which are
10 from the vaginal wall of the individual the sample was
11 taken from as well as sperm cells, if there is a semen
12 donor.

13 We do what's called a differential extraction,
14 which helps to attempt to separate those two cell
15 sources. There were two fractions, a non-sperm or
16 female fraction and what we call a sperm fraction or the
17 fraction that is enriched for the male component of any
18 DNA that's present.

19 Q Did you do that separation or was that done for
20 you prior to you looking at Item A dash 11?

21 A That separation was done prior to my analysis.

22 Q Okay. So that would have been done by
23 Don Jones, according to the paperwork that you have?

24 A That's correct.

25 Q Then let me show you what's been marked
26 Exhibit 44.

27 Did the Court want to take the noon recess at
28 this point since this will be a good time to break?

1 THE COURT: If this is a good time for it,
2 we're not quite at noon, but if this is a good pausing
3 point, we'll do that.

4 Ladies and gentlemen, we'll start back at 1:30.
5 You're admonished that it is your duty not to converse
6 among yourselves or with anyone else about any matter
7 connected with this case nor form or express an opinion
8 on it until it's submitted to you.

9 Ms. Siewertsen, see you back at 1:30 as well.
10 (Whereupon the lunch recess was taken.)

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