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IN THE COURT OF CRIMINAL APPEALS
IN THE STATE OF TEXAS
AT AUSTIN

CAUSE NO. 9407130

THE STATE OF TEXAS

Appellee

VS.

CHARLES DOUGLAS RABY

Appellant

APPEAL FROM THE 248TH DISTRICT COURT OF
HARRIS COUNTY, TEXAS
Honorable Woody R. Densen, Judge Presiding

STATEMENT OF FACTS

VOLUME XXVII OF XLI VOLUMES

JUNE 6, 1994

ORIGINAL

GINA BENCH
Certified Court Reporter
Harris County, Texas

FILED IN
COURT OF CRIMINAL APPEALS

FEB 15 1995

Thomas Lowe, Clerk

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JUNE 6, 1994

1
2
3 **THE COURT:** Mr. Cantu, did you want to put
4 something on the record?

5 **MR. CANTU:** Yes, Your Honor. At this time I
6 would like to request that the Court grant us a
7 reset based on failure of co-counsel to appear
8 with me today. He was supposed to be here and he
9 has not been here and I have not heard from him.
10 I have been told by the court coordinator that he
11 spoke with her about his inability to attend, and
12 he's with, I believe, with a doctor. I'm not sure
13 what doctor it is, but he's with some doctor at
14 this time, as far as I know. This is all hearsay
15 that I have heard from the court coordinator.

16 **MR. GUTIERREZ:** I spoke to him yesterday,
17 Judge; I talked with co-counsel at his home. He
18 said he was in a lot of pain.¹ He came in last
19 week and said he had a ruptured disc and that he
20 was in a lot of pain and had been given
21 medication. And I talked with him yesterday and
22 he told me, if memory serves me correctly, that he
23 was going to go by the doctor's office this
24 morning and have him check him out and then try to
25 make it to court. That's just my recollection,

1 but that's as much as I know about it myself.

2 THE COURT: Okay. Anything further?

3 MR. CANTU: Nothing further.

4 THE COURT: Are we ready for the jury?

5 MR. CANTU: Oh, excuse me. Was there a
6 ruling on that? I didn't hear it.

7 THE COURT: What is your request?

8 MR. CANTU: A request that it be reset until
9 co-counsel arrives.

10 THE COURT: That will be denied. 2

11 MR. CANTU: And also there's something else.

12 MR. GUTIERREZ: I would just like the record
13 to reflect, Your Honor, that Mr. Cantu is lead
14 counsel in this case and there have been times
15 during the course of the trial, voir dire, where
16 he has conducted voir dire on his own due to the
17 fact that his co-counsel has not been available.
18 He's done a fine job.

19 MR. CANTU: Thank you. The second thing,
20 Your Honor, question, we would move to ask
21 additional questions, propound additional
22 questions, to the jury, the 13 members of the
23 jury, based on publicity and today's radio, this
24 morning's radio at 9:00 a.m., specifically an AM
25 station, radio 740. There was publicity as to the

CAN we get a copy of that?

1 trial, as to Mr. Raby's past criminal history in a
2 general detail of the accusation and the
3 Complainant in that story line, in that by-line,
4 on the radio, and would ask to ask additional
5 questions of the jury based on that.

6 THE COURT: Mr. Cantu, I have instructed the
7 jury not to listen to, view nor read any coverage
8 of this trial, and I will continue to admonish
9 them throughout the trial in the event there is
10 some coverage, but I will deny your motion.

11 MR. CANTU: Thank you, Your Honor.

12 THE COURT: Is everyone ready? Why don't we
13 swear the witnesses in.

14 All witnesses who expect to be called in The
15 State Vs. Charles Douglas Raby will stand, raise
16 your right hands and be sworn at this time.

17 (Whereupon the witnesses were duly sworn.)

18 THE COURT: Does either or both sides wish to
19 invoke the rule?

20 MR. CANTU: Yes, sir.

21 MR. GUTIERREZ: Yes, Your Honor.

22 THE COURT: Ladies and gentlemen, listen very
23 carefully. The rule has been invoked, which means
24 you cannot discuss your testimony amongst
25 yourselves nor allow any other witnesses who may

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be called to discuss their testimony with you, and you must remain in the hallway until you are called individually. So everyone will be excused to the hallway at this time until you are called.

MR. CANTU: Your Honor, most of my witnesses, may they be excused?

THE COURT: Ladies and gentlemen, wait just a moment. Some of you may not be called until the latter part of the week, so I'm going to put you on call. Can everyone hear me?

Ladies and gentlemen, some of you may be called at a later time during this week or the latter part of the week, so I'm going to put you on call for your convenience, so you don't have to wait here from day-to-day until you are called. So those, whoever is not expected to be called today, and I don't know who you are, but the State may tell you and the Defense may tell you when you're expected to be called, and you will be put on notice, but you are under court order to appear when you're called, and we will try to give you as much notice as possible. So those of you who won't be called today, you are excused until you are notified.

1 (Whereupon the witnesses left the courtroom.)

2 (Whereupon the jury was seated in the jury
3 box.)

4

5 THE COURT: Ladies and gentlemen, I apologize
6 because we are running late. We have a visiting
7 judge who has been handling the regular docket for
8 us, so we are sharing the courtroom. So from time
9 to time, if we are running late, I apologize. We
10 just don't have enough courtrooms in the
11 courthouse.

12 Is the State and Defense ready to proceed?

13 MR. GUTIERREZ: State is ready, Your Honor.

14 THE COURT: Mr. Raby, if you will stand, the
15 State will present the indictment.

16 MR. GUTIERREZ: If it please the Court. "IN
17 THE NAME AND BY THE AUTHORITY OF THE STATE OF
18 TEXAS: The duly organized Grand Jury of Harris
19 County, Texas, presents in the District Court of
20 Harris County, Texas, that in Harris County,
21 Texas, Charles Douglas Raby, hereafter styled the
22 Defendant, heretofore on or about October 15,
23 1992, did then and there unlawfully, while in the
24 course of committing and attempting to commit the
25 robbery of Edna Franklin, hereafter styled the

1 Complainant, intentionally cause the death of the
2 Complainant by stabbing and cutting the
3 Complainant with a deadly weapon, namely, a knife.

4 "It is further presented that in Harris
5 County, Texas, Charles Douglas Raby, hereafter
6 styled the Defendant, heretofore on or about
7 October 15, 1992, did then and there unlawfully,
8 while in the course of committing and attempting
9 to commit the aggravated sexual assault of Edna
10 Franklin, hereafter styled the Complainant,
11 intentionally cause the death of the Complainant
12 by stabbing and cutting the Complainant with a
13 deadly weapon, namely, a knife.

14 "It is further presented that in Harris
15 County, Texas, Charles Douglas Raby, hereafter
16 styled the Defendant, heretofore on or about
17 October 15, 1992, did then and there unlawfully,
18 while in the course of committing and attempting
19 to commit the burglary of a habitation owned by
20 Edna Franklin, hereafter styled the Complainant,
21 intentionally cause the death of the Complainant
22 by stabbing and cutting the Complainant with a
23 deadly weapon, namely, a knife. AGAINST THE PEACE
24 AND DIGNITY OF THE STATE." And that is signed by
25 the Foreman of the 337th Grand Jury, Lawrence

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Newman.

THE COURT: And to the indictment, Mr. Raby,
how do you plead?

THE DEFENDANT: Not guilty. 3

THE COURT: You may be seated.

Does the State wish to make a brief opening
statement?

MR. GUTIERREZ: Yes, Your Honor, if it please
the Court.

THE COURT: All right.

MR. GUTIERREZ: Members of the jury, we know
that all of you have already spent considerable
time dealing with the lawyers during the course of
the voir dire and jury selection, and we
appreciate the time that you're going to spend on
this case. The case perhaps will not be long.
That does not diminish the importance.

The purpose of an opening statement is for
the lawyers from their respective sides to tell
you what he or she anticipates the evidence will
show.

I believe the evidence will show that back in
October of 1992, there lived in the 600 block of
Westford, in Houston, Harris County, Texas, a
little old lady, 71, by the name of Edna Mae

1 Franklin. I believe evidence will show that she
2 had two grandsons who lived with her in her house
3 in that 600 block of Westford. One of those
4 grandsons was Lee Rose and the other grandson was
5 Eric Benge.

6 I believe the evidence will show that both of
7 these young men knew the Defendant, Charles Raby;
8 had known him for years. I believe the evidence
9 will show that from time to time when the
10 Defendant needed a place to stay, the grandsons,
11 without their grandmother's permission, would let
12 the Defendant sneak in through a bedroom window
13 and let him spend the night. Z

14 I believe the evidence will show that the
15 years passed. I believe the evidence will show
16 that a few weeks before her death, Edna Franklin
17 told the Defendant to leave, that she did not want
18 him around.

19 I believe the evidence will show that on the
20 night of October 15th, 1992, the Defendant came
21 back, that the Defendant had been drinking, that
22 the Defendant went in through a window and that
23 the Defendant, in a very brutal, cold-blooded act,
24 stabbed her a multiple number of times and slit
25 her throat, and in the process, he either raped, S

1 sexually assaulted her, or tried to. In the
2 process, he either robbed her or tried to. In the
3 process, he committed a burglary of a habitation.

4 Keep in mind, as you listen to the evidence,
5 the State is not required to prove premeditation,
6 that the State is not required to prove a motive.
7 Lord knows why sometimes people do things. But
8 also keep in mind, as you listen to the evidence,
9 the State's primary piece of evidence is a
10 confession from the Defendant, but even in his
11 confession, the Defendant does not fess up
12 completely to having the intent to kill, the
13 having the intent to committing aggravated sexual
14 assault, to having the intent to rob or to having
15 the intent to commit a burglary of a habitation.
16 Those gaps, I submit to you, will be filled by the
17 evidence.

18 Remember we talked to you during voir dire,
19 at least I did, about whether or not you would
20 look at the physical evidence and determine
21 whether or not a person either committed an
22 aggravated sexual assault or attempted to, or
23 committed a robbery or attempted to. There is no
24 DNA in this case.⁶ There is no physical evidence
25 that can conclusively prove that a sexual assault

1 took place, but the evidence, the physical
2 evidence, the position of the body is consistent
3 with an attempt to commit aggravated sexual
4 assault and it's possible that that attempt was
5 completed. ⁷ It also shows a burglary of a
6 habitation was completed. It also shows that
7 either a robbery was attempted or completed.
8 These are the things that I believe the evidence
9 will show. Thank you.

10 THE COURT: State will call your first
11 witness.

12 MR. GUTIERREZ: Yes, Your Honor. The State
13 would call Dr. Bellas, assistant medical examiner.
14

15 **EDUARDO BELLAS** ⁸

16 was called as a witness by the State, and after having been
17 previously duly sworn, testified under his oath as follows:
18

19 DIRECT EXAMINATION BY MR. GUTIERREZ
20

21 Q Would you please state your name?

22 A First name is Eduardo and the last name Bellas,
23 B-e-l-l-a-s.

24 Q Sir, would you please tell the members of the jury what
25 you do for a living?

1 **A** I'm a medical doctor, specializing in the field of
2 pathology, and am employed with the Harris County
3 Medical Examiner's Office, Houston.

4 **Q** And what qualifications do you have to let you do the
5 job you do?

6 **A** I'm a doctor. I received my medical diploma in 1957,
7 February, with the University of Havana Medical School,
8 and I spent two years in the internship, and then three
9 years' training in pathology.

10 I was associate professor in pathology with the
11 University of Havana Medical School and full-licensed
12 practice in pathology for about ten years.

13 In 1972, I revalidated my medical diploma in the
14 United States. And then during 1973 and 1974, I
15 trained pathology, again, this time in the United
16 States, with the University of Texas Medical School.
17 And I am certified with the American Board of
18 Pathology.

19 **Q** Now, how long have you been employed as assistant
20 medical examiner for Harris County?

21 **A** About 19 years.

22 **Q** And in that time have you performed few or many
23 autopsies?

24 **A** Many.

25 **Q** Would it be hundreds or thousands?

1 **A** Both.

2 **Q** Doctor, in the course of your work -- and we talk about
3 autopsies. What is the purpose of an autopsy?

4 **A** The main purpose of autopsies is to establish the cause
5 of death.

6 **Q** And is it possible to conduct an interior and exterior
7 examination of a body and determine whether or not that
8 person --

9 **A** Yes, it is.

10 **Q** Excuse me. Not whether or not the person died but what
11 the person died of?

12 **A** Yes, sir.

13 **Q** Would you tell the members of the jury under what
14 circumstances in Harris County does the Harris County
15 Medical Examiner's Office perform autopsies? In other
16 words, you all don't perform autopsies on everybody
17 that dies.

18 **A** That is correct. Each medical, legal case is subject
19 to analysis by our office, and we choose autopsies, no
20 autopsies. No autopsy means external examination only.
21 Autopsy means external examination followed by internal
22 examination.

23 **Q** Did you have an occasion back on October 16th, 1992, to
24 perform an autopsy on the body of Edna Franklin?

25 **A** Yes. This was performed under the medical, legal case

1 No. 92-6802.

2 **Q** Would you explain to the members of the jury the
3 significance of the number?

4 **A** The first two digits represent the year 1992, and then
5 the other four digits is the serial case number
6 assigned to the individual, and the combination of both
7 is a unique number for this particular person.

8 **Q** In other words, the "92" represents the year and the
9 "6802" means this was the six thousand eight hundred
10 and second autopsy performed in Harris County?

11 **A** Yes.

12 **Q** How many assistant medical examiners are there in
13 Harris County?

14 **A** Five.

15 **Q** Now, once you did your autopsy -- by the way, how long
16 does it take to perform an autopsy or did this one, if
17 you recall?

18 **A** No. I have it in the record, the beginning time. I
19 don't remember how long it took. This is not an
20 autopsy that you can do very fast. I began at 8:45
21 a.m., October 16th, 1992.

22 **Q** Once you performed the autopsy, did you reach an
23 conclusion as to what caused the death of Edna Mae
24 Franklin?

25 **A** Yes, I did.

1 Q And what was that conclusion?

2 A The conclusion was that the cause of death was five
3 stab wounds of the chest and two cutting wounds of the
4 neck.

5 Q Now, were those cutting and stabbing wounds, is that
6 what they were?

7 A Yes.

8 Q Were they consistent with the types of cuts made by a
9 blade of a knife?

10 A That is correct.

11 Q Would it be possible that those cuts would have been
12 made by the blade of a pocketknife?

13 A It is.

14 Q Would you be able to tell the members of the jury and
15 for the record whether or not a pocketknife, as used in
16 this case, could have been a deadly weapon?

17 A Yes, it is.

18 Q Would you explain to the members of the jury, when you
19 do an autopsy, do you sign off on it?

20 A Yes.

21 Q And who else signs off on it as approving your
22 conclusion?

23 A The chief medical examiner, Dr. Jachimczyk.

24 Q Now, were those the only -- those seven stab wounds,
25 were those the only wounds suffered by Edna Mae

1 Franklin?

2 A Yes.

3 Q Were they the only wounds, Doctor, or were they the
4 only fatal wounds?

5 A The only fatal wounds.

6 Q So that is that five of the wounds to the chest could
7 have been fatal?

8 A Yes.

9 Q And two to the neck could have been fatal; is that
10 correct?

11 A They are, yes.

12 Q Let's look at the first page in your autopsy report,
13 Doctor, if you don't mind. You said you began your
14 autopsy at 8:45 in the morning, October 16th, 1992.
15 Would you explain to the members of the jury what your
16 external examination of Edna Franklin revealed? Can we
17 begin, for example, with her physic?

18 A The external examination revealed a woman that was
19 consistent with 72 years. The body length was 63
20 inches, that is, 5 feet 3 inches in length. And the
21 weight was 72 pounds.

22 The evidence of injury could be classified in
23 blunt force and sharp force. The sharp force is given
24 by or indicated by stab wounds and cutting wounds. The
25 evidence of blunt force or contusions were contusions

1 over the scalp, behind the ear, over the sternum.

2 Q What type of blows were those contusions on the head
3 consistent with?

4 A The blunt force is made with a blunt instrument.

5 Q Could it have been the fist?

6 A Maybe the fist, maybe other things. There's usually a
7 very poor correlation between the injury and the
8 instrument in dealing with blunt force.

9 Q What do you mean by that?

10 A Because in some -- most of the time you don't know what
11 instrument was used.

12 Q For the blunt force?

13 A For the blunt force. The other evidence of bruises or
14 contusions that were made was in the right side of the
15 head over here and a contusion in the upper tip of the
16 right ear.

17 In reference to the sharp force, we had two cuts
18 in the left ear. Then we have a small scratch in the
19 right cheek. Then we have two large cutting wounds in
20 the neck. Then in the front chest, we have four stab
21 wounds in the front; two of them were over the breast
22 area and the other two were close to the midline.

23 Also in addition to these four stab wounds, there
24 were three puncture wounds, that is, something that is
25 being done with the tip of a puncture instrument, maybe

1 a knife or not. It's impossible to say in some
2 occasions. So these punctures were superficial; they
3 involved the skin only. And two of the stab wounds,
4 the ones that I mentioned in the breast area, these two
5 were non-fatal; these two involved the skin and the
6 subcutaneous tissue and the breast tissue; either one
7 penetrated in the chest cavity.

8 Q Let me stop you right there for a second. Based on the
9 weight of Ms. Franklin, was she well-nourished or
10 undernourished?

11 A Undernourished.

12 Q Now, would you consider at 72 pounds and her age, a
13 person might categorize as frail?

14 A Yes.

15 Q Would you expect that person to be able to put up much
16 of a struggle against or have much hope of succeeding
17 in defending herself against, say, for example, a male
18 that may be 150, 170 pounds?

19

20 MR. CANTU: Your Honor, I'm going to object
21 to that. That line of questioning goes beyond his
22 capabilities as a medical doctor.

23 THE COURT: Overruled.

24

25 Q (By Mr. Gutierrez) Doctor, would you answer the

1 question?

2 A Yes.

3 Q Would that person --

4 A Yes, this could be classified as a weak person.

5 Q A what?

6 A In general, a weak person.

7 Q Okay. I'm sorry, Doctor, please continue with your
8 external examination.

9 A So going with the rest of the examination, over the
10 left lateral chest, over this area, there was, in
11 addition, three stab wounds. These three stab wounds,
12 all of them, came into the chest area, into the chest
13 cavity, inside. That's why they were considered fatal,
14 along with the other two in the front chest.

15 In addition, there was a stab wound over here, in
16 the left arm, that was a through and through. This was
17 a superficial stab wound; was not considered a fatal
18 one.

19 In addition, there were two cutting wounds in the
20 back of the decedent, over the middle portion, very
21 close to the midline. In the decedent, there were two
22 cutting wounds. These two were not considered fatal
23 whatsoever, because they were both superficial.

24 Q Were there any defensive wounds, Doctor?

25 A The stab wound that I mentioned over here was maybe

1 considered a defensive wound, but in the left arm there
2 were two superficial cutting wounds that also can be
3 considered defensive-type wounds.

4 Over the elbow, I noticed several contusions or
5 bruises. Bruises and contusions is the same, is a
6 blunt force applied. Any bruise or contusion is a
7 blunt force applied to the body sufficient to produce
8 hemorrhage but not enough to produce tears, to produce
9 laceration.

10 Well, that was essentially the evidence of injury.

11 Q On the outside?

12 A In the outside examination.

13 Q So in a nutshell, would it be fair to say that there
14 was evidence of a beating and stabbing and cutting of
15 the body on the outside?

16 A That is correct.

17 Q Would you explain to the members of the jury now what
18 you found when you did the internal examination?
19 First, would you explain for the jury how you do the
20 internal examination?

21 A The internal examination is performed by doing a Y-
22 shaped incision. As the letter "Y" indicates, the
23 incision began in the shoulders, in the front, and come
24 all the way down to the lower part of the chest, kind
25 of "V". Then the point of that "V" comes all the way

1 down to the pubic area to complete a Y-shaped incision.
2 Then the flaps are reflected to each side. The upper
3 flap is reflected towards the head. And then you
4 approach the abdominal and the thoracic cavities and
5 the thoracic organs.

6 The head is a little bit more complicated because
7 you have to incise the scalp ear to ear, reflected
8 backward and front, and then involve the scalp with an
9 electrical saw and approach the brain inside there.

10 The internal examination could mean that none of
11 the blunt force applies to the head was responsible for
12 death or cause any serious injury to the brain or to
13 produce any skull fracture. The stab wounds of the
14 chest, which were four in the front, and left side on
15 the lateral chest, only two in the front chest, those
16 in the midline, and three in the lateral chest came
17 into the chest. I found about one liter of blood in
18 the left pleural cavity. The right pleural cavity
19 contained a very little amount of blood. I am talking
20 about less than one ounce of blood in the right pleural
21 cavity. The pericardial sac contained some amount of
22 blood, about 200; that is about six ounces of blood,
23 because the heart has been perforated in the course of
24 the stab wounds.

25 In reference to the cutting wounds of the neck,

1 one was -- the one in the top was about more
2 superficial than the other, and there was cutting of
3 the external jugular veins. Those little veins that
4 you can see when people shout or sing or talking too
5 loud, you can see the lateral veins. And also in the
6 external branches of the carotid arteries had been
7 severed. So these two cutting wounds were considered
8 fatal because the broken organs that they involved
9 there.

10 In addition to the air pipe, where remains the
11 larynx, the trachea, the airways, has been cut about 50
12 percent side-to-side.

13 Q Doctor, when you talk about blood being in the pleural
14 cavity, what sort of symptoms may the person who is
15 being inflicted with these injuries feel with the blood
16 going into the cavities like that?

17 A The primary thing is the stab wound. That may produce
18 a little bit of pain, followed by bleeding, which is
19 the mechanism which produces shock, that is, drop of
20 the blood pressure.

21 Q What were your findings insofar as her ribs, in your
22 internal examination?

23 A The ribs and the soft tissues in between the ribs were
24 perforated and lacerated by the blade, and some of the
25 ribs -- many of the ribs were fractured in both sides.

1 Some of the fractures were associated with the
2 contusion, but I couldn't see any evidence of contusion
3 other than the fractures. Some of the fractures were
4 associated with the blade.

5 **Q** So how many of the ribs were broken or fractured?

6 **A** In the right side, ribs 2, 3, 4 and 5 were fractured.

7
8 **MR. GUTIERREZ:** Your Honor, if it please the
9 Court, could we have a demonstration in front of
10 the jury?

11 **THE COURT:** You may step down, Doctor.

12
13 **A** (Complies.)

14 **Q** (By Mr. Gutierrez) Doctor, I want you to bring your
15 autopsy report with you and I want you now to talk
16 about the description of the individual injuries, first
17 using my -- may I take off my coat, Your Honor?

18
19 **THE COURT:** You may.

20
21 **Q** (By Mr. Gutierrez) -- using my torso. Would you
22 explain to the members of the jury where those ribs
23 would be that you're talking about that were fractured?
24 Let's start with that.

25 **A** The ribs are classified --

1 Q Be sure you stand over here so the court reporter can
2 hear you.

3 A One through 12 on each side. So there are two pairs, 1
4 and 1, 2 and 2, 3 and 3, and so on, to 12.

5 As I said before, on the right side, the second,
6 3, 4 and 5 were fractured interiorly. And on the left,
7 3, 4, 5, 6, 7, 8 and 9 were fractured. Three of these
8 fractures were associated with the stab wound, with the
9 blade entrance. Because the bones of a victim like
10 this, 72 years, undernourished, is very brittle, it's
11 very easy to break a bone. 9

12 Q Now, in terms of the stabbing wounds, if you would take
13 the order and your description of the injuries -- by
14 the way, any damage to the heart, that you can see?

15 A Yes. The heart was perforated by the blade, and the
16 pericardial sac that contains the heart was also
17 perforated. 10

18 Q Can you tell the jury or could you tell from your
19 examination whether or not the stab wounds that were
20 done on the body were done after or before the cutting
21 wounds on the neck?

22 A To begin with, I would like to put it very clear in a
23 black and white situation that all the injuries that I
24 mentioned, be it cutting, stabbing or contusions or
25 blunt force, they were all pre-mortem, that is, before

1 death. I found no post-mortem or after-death injury.
2 Because sometimes it happens, but the pathologist would
3 be able to distinguish between the two. I didn't find
4 any.

5 Now, in reference to the cutting wounds in the
6 neck --

7 Q Doctor, before we go there, could we start from like
8 head-to-toe, so to speak? You mentioned some bruising
9 along the head area. Would you point on my head,
10 beginning from the top down, where you found the
11 bruising on the body of Edna Franklin?

12 A The bruising on the left temporal area over here, it
13 was about 2 inches in diameter.

14 Q Was that consistent with perhaps -- you said it was
15 blunt trauma -- perhaps a blow with a fist?

16 A It is possible, yes. Over here in the upper tip of the
17 right ear, there was another contusion that was
18 separated from the other.

19 Q Consistent with what, either cutting or a blunt trauma?

20 A Blunt trauma. And the other one was behind the ear.
21 Behind the ear over here, there was a contusion.

22 Q Was that also consistent with the possibility of using
23 a fist or some sort of blunt instrument?

24 A Correct. And few contusions, small contusions, over
25 the left elbow area. That is also blunt force.

1 Q Okay.

2 A Now, if the two cutting wounds that I found in the
3 autopsy table would be the first event in the case,
4 there wouldn't be opportunity for this victim to bleed
5 one liter of blood into the left pleural cavity,
6 because these cutting wounds are associated with a
7 rapid cut.

8 Q Are you talking about the cutting of the throat, the
9 severing of the windpipe?

10 A Yes.

11 Q Was the windpipe severed once or twice?

12 A Two times. This statement that this wound could be
13 first and then the fatal stab wounds in the chest is
14 based on reasonable medical probability. It's not a
15 black-and-white situation, as I said before. That all
16 the injuries that I found were pre-mortem, before
17 death.

18 Q So are you telling this jury that it's within
19 reasonable medical probability that all of the injuries
20 happened first, including the stab wounds to the chest,
21 the breaking of the ribs, the contusions on the head,
22 before the windpipe was severed?

23 A Correct.

24 Q So that is that the slash -- the cutting of the throat
25 would have been the last thing?

1 A Probably was. If not the last one, the last.

2 Q How can you tell?

3 A Because the bleeding in the inside of the chest one
4 liter would not occur with two cutting wounds of this.
5 You would die before, and after you die, there is no
6 circulation, and if there is no circulation, there's
7 not that amount of bleeding. There is post-mortem
8 bleeding, it does exist, but not of this kind.

9 Q How is that different, the post-mortem bleeding?

10 A What?

11 Q How is the post-mortem bleeding different than when
12 someone bleeds and they're alive?

13 A Well, the post-mortem bleeding requires gravity forces
14 to drain blood, for instance, from the scalp or any
15 open wound. An open wound like the two cutting wounds,
16 for instance, of course, bleed before death, but after
17 death, they can bleed a little bit. U

18 Q Doctor, starting now from the throat, would you explain
19 the number of injuries she had on her body?

20 A One and one. The one in the top was almost in the
21 center and the one in the lower was a little bit larger
22 and deeper.

23 Q What else? What other cutting or stabbing wounds?

24 A Well, the four stabs in the chest. One here and one
25 there, very close to the midline. Two stab wounds in

1 the upper part of the breast and three punctures,
2 superficial puncture wounds, in that area. Three stab
3 wounds in the lateral chest here. And a through and
4 through stab wound over here in the arm, in the left
5 arm, and two cutting wounds in this area, plus two
6 cutting wounds in the middle back, superficial.

7 Q These injuries that you talked about in the chest,
8 which ones would have been fatal?

9 A Two were fatal in the midline, in the front. The other
10 two in the breast were superficial, and the other three
11 in the lateral chest, all of them fatal.

12 Q Okay. Any other injuries?

13 A No.

14 Q Have a seat, please.

15 A (Complies.)

16 Q Doctor, would you explain to the members of the jury
17 how you go about reporting or recording or making notes
18 while you're doing the autopsy?

19 A The procedure, we have a step-control machine that is
20 subject to a rough copy submitted to us later on, and
21 then over that rough copy, along with the pictures, we
22 make corrections and put the case in context for a
23 final form, which is this (indicating).

24 Q When you say "this," you're talking about what you call
25 the protocol or the autopsy report; is that correct?

1 A Yes.

2 Q Do you use a tape recorder when you do that?

3 A Tape recorder. ~~12~~

4 Q How do you get the tape recorder to start and stop?

5 A A step control.

6 Q So there's a step that you step on underneath the table
7 that you use to do the autopsy; is that correct?

8 A Correct.

9 Q Where is the microphone?

10 A The microphone is above the operating table, so you can
11 talk to the microphone very easy.

12 Q And after you conduct the autopsy, does someone reduce
13 those notes to writing, in the form of an autopsy
14 report?

15 A Yes.

16 Q And as an assistant medical examiner for Harris County,
17 are you a custodian of the records for the Harris
18 County Medical Examiner's Office?

19 A Yes, I am.

20 Q And are those records kept in the regular course of
21 business?

22 A Yes.

23 Q Do you have care, custody and control of those records?

24 A Yes.

25 Q Are those records kept by someone who has personal

1 knowledge or are they made by someone who has personal
2 knowledge of the event in question?

3 A Definitely.

4 Q Namely, yourself, as far as autopsy reports go?

5 A Yes.

6 Q And are those notes made at or near the time of the
7 event in question or the autopsy?

8 A Yes, they are.

9 Q They're made at that time; is that correct?

10 A Yes, sir.

11 Q In addition, do you take photographs while you're
12 conducting the autopsy, before you start and sometimes
13 later?

14 A Yes.

15

16 (State Exhibit No. 2 was previously marked
17 for identification purposes.)

18

19 Q Doctor, I show you what has been marked as State's
20 Exhibit No. 2 and I'll ask you if you can tell me
21 whether or not, with the exception of the last page
22 having been removed, the last page containing
23 inadmissible hearsay, ~~is~~ can you tell us whether or not
24 State's Exhibit No. 2 is an exact duplicate or exact
25 xeroxed copy of your original?

1 A Yes, it is.

2 Q Doctor, now, for the record, you have the original with
3 you now; is that correct?

4 A Yes.

5 Q But we are not allowed to submit the original autopsy
6 report in Court; is that correct?

7 A That is correct.

8 Q Would you explain to the members of the jury why?

9 A It is important to keep the original records in our
10 office.

11 Q Now, in addition to the photographs -- excuse me -- to
12 the autopsy report marked State's Exhibit No. 2, I will
13 ask you whether or not these pictures I'm showing you
14 fairly and accurately depict the results of your
15 external examination on the body of Edna Franklin back
16 in October of 1992 and whether they include some of the
17 injuries that you mentioned here today?

18 A Yes, they do.

19 Q Who took these pictures?

20 A Myself.

21

22 (State Exhibit Nos. 3 through 13 were marked
23 for identification purposes.)

24

25 Q Now, both the photographs I have shown you, State's

1 Exhibits 3 through 13, and State's Exhibit No 2, are
2 part of your business records, are they not?

3 A Yes, they are.

4 Q And as such, they are also an official government
5 document in that they're made pursuant to a
6 governmental agency, namely, the Harris County Medical
7 Examiner's Office; is that correct?

8 A Yes.

9 Q And these photographs fit under the same predicate that
10 we talked about before; is that correct?

11 A Yes.

12

13 MR. GUTIERREZ: Your Honor, I would like the
14 record to reflect that I have previously tendered
15 these exhibits to Defense counsel for his
16 inspection and I would like to ask, as I tender
17 them to him again, that State Exhibit 2, a xerox
18 copy of the autopsy report, and the photographs,
19 State's Exhibit 3 -- and I mistakenly said 3
20 through 13. The State had previously agreed not
21 to include State's Exhibit 10, so with the
22 exception of State's Exhibit No. 10, we offer 3
23 through 13, and the autopsy report marked State's
24 Exhibit No. 2.

25 MR. CANTU: We have no objections.

1 THE COURT: State Exhibits 3 through 13, with
2 the exclusion of 10, is admitted into evidence.

3 MR. GUTIERREZ: Your Honor, I would ask that
4 State Exhibits 3, 9 and 11 through 13 be published
5 to the members of the jury.

6 THE COURT: Mr. Bailiff, if you will publish
7 those to the jury.

8 You may proceed. 13

9 Q (By Mr. Gutierrez) Now, Doctor, in terms of the depth
10 of the wounds, what can you tell us about the depth?
11 And specifically, I'm talking about the stab wounds.

12 A The maximum-depth penetration in the body by the stab
13 wounds was 4 inches.

14 Q Would you run through very quickly, with your
15 description of the injuries in your autopsy report, the
16 different depths that you found in terms of the
17 injuries?

18 A Of the two in the front chest, those that were located
19 not far from the midline, one of them penetrated 3
20 inches, the other penetrated 3 and 1/2 inches. One of
21 the lateral chest penetrated 4 inches, and another in
22 the lateral chest, again, 4 inches. The other one in

23 the lateral chest penetrated 4 inches, ¹⁴ again, and then
24 the two on the breast that were superficial, they
25 penetrated just in the skin and the subcutaneous tissue

1 and the breast tissue, the penetration that was one
2 inch. Those were non-fatal.

3 Q What can you tell us about the blade that was used to
4 inflict those injuries in terms of possible length or
5 possible --

6 A I noticed that all these stab wounds had a sharp end
7 and a blunt end. The blunt end was real thin; was not
8 too thick, and that is the type of weapon that is a
9 knife, that is sharp on one side, the other not.

10 Q Would that be consistent with a pocketknife or a knife?

11 A Yes.

12 Q Now, Doctor, in terms of length, I have got a ruler
13 here in front. Would you measure off, if you can see
14 the inside, in terms of what's the smallest size that a
15 blade would have had to have been in order to inflict
16 those injuries?

17 A Maybe 2 inches, maybe longer than that, of course. I
18 found --

19 Q Let's stop for just a second. Would you mark off the
20 2-inch mark? Is that accurate?

21 A (Complies.)

22 Q So you're saying that is the length of a 2-inch blade;
23 is that correct?

24 A That would be 2 inches, correct.

25 Q Now, why do you say that a blade 2 inches long could

1 have caused these injuries?

2 A No, I didn't say that. What happened is that when you
3 have a blade and you put the blade inside a human body,
4 there is some kind of give, give of that particular
5 tissue. For instance, the abdomen has a grade capacity
6 to be depressed by a blade. So a blade can go inside
7 the body two more inches in addition to its length. In
8 other words, a 3-inch length can produce a 5-inch
9 penetration, a 2-inch blade can produce 4. Four here
10 was the maximum depth of penetration that I found, but
11 I didn't find any hilt mark. The hilt mark is a clue
12 in the autopsy table to tell us that that blade in that
13 particular wound came all the way down or all the way
14 in, penetrated in. I found no hilt mark here, so the
15 hilt mark may or may not be present, although the blade
16 penetrated all the way in. ¹⁵

17 Q At any rate, you're not saying the knife blade was 2
18 inches long, but you're saying a blade that small could
19 have caused those injuries; is that correct?

20 A Yes.

21 Q Any doubt in your mind that whatever blade was used on
22 that night, that it was sharp?

23 A It was sharp on one side and not sharp on the other.

24 Q Okay. Now, let's talk a little bit about whether or
25 not you took any swabs to see if Edna Franklin or Edna

1 Mae Franklin had been sexually assaulted. Did you do
2 that?

3 A That is correct, I did that.

4 Q First, would you tell the members of the jury whether
5 or not it is possible that a person may be sexually
6 assaulted and there be no physical evidence of it by
7 way of semen?

8 A People can be molested sexually without any evidence of
9 injury, yes.

10 Q So you're saying, by "injury," you mean that you don't
11 necessarily find trauma to the tissues?

12 A Correct.

13 Q Did you find or did you look to see if there were any
14 indication of semen?

15 A I looked for that, and the swabs were taken for the
16 police laboratory, and I performed spreads under the
17 microscope examination myself from the oral cavity, the
18 vagina cavity and the rectal cavity.

19 Q And did you find any evidence of semen?

20 A Well, in the spreads that I prepared myself, the only
21 thing you can see there is the sperm cells. I didn't
22 see any, either in the oral, the vagina or the rectal
23 cavities.

24 Q That does not mean there was no sexual assault; is that
25 correct?

1 A Correct.

2 Q And you talked about it's possible about a person may
3 be sexually assaulted and there be no trauma. By that,
4 you mean no tearing of the tissues rectally?

5 A Correct.

6 Q Vaginally?

7 A Correct. 16

8 Q Now, did you also take any fingernails from the
9 Complainant at the request of the Police Department?

10 A Fingernail scrapings and fingernails were taken from
11 both hands, right and left. 17

12

13 (State Exhibit Nos. 90, 91, 92, 93 and 94
14 were previously marked for identification
15 purposes.)

16

17 Q Doctor, I'll show you what has been marked, the bag,
18 State's Exhibit No. 90, from which we earlier, outside
19 the presence of the jury, took State Exhibit Nos. 91,
20 92, 93 and 94.

21 First of all, can you tell me what State Exhibit
22 No. 91 is?

23 A 91 represents head hair, pulled head hair. This is
24 done by pulling the hair on the top, on the right, on
25 the left and the back of the head, and put there in

1 these envelopes.

2 Q And whose pulled head hair is that?

3 A Myself. ¹⁸—

4 Q Is that your hair or Edna Franklin's hair?

5 A The victim's hair.

6 Q Is that the hair of Edna Franklin?

7 A Yes.

8 Q And how do you know that pertains to that case?

9 A Well, I labeled that and this is my handwriting. This

10 is the gray hair that I found on her.

11 Q Does each one of these bags contain the autopsy report

12 that we talked about?

13 A Yes.

14 Q The autopsy report number?

15 A Yes, they do.

16 Q Is that correct?

17 A Yes.

18 Q State's Exhibit 92 is a plastic bag containing what?

19 A This is pubic hair, again, pulled from the pubic of the

20 decedent.

21 Q When we talk about the hair, Doctor, for the purpose of

22 the record, the exhibits are on the plastic bags

23 containing the hair; is that correct?

24 A Yes.

25 Q And that is on State Exhibits 91 and 92.

1 Now, State Exhibit No. 93 is a plastic bag
2 containing what type of hair?

3 **A** This is the specimen that you obtain first. Loose
4 hair/fiber. Everything that looked like hair, looked
5 like fiber, and it's loose from the decedent's surface,
6 you pick it up, collect it, and this is it.

7 **Q** State Exhibit No. 94 is a plastic bag containing two
8 plastic cups. What is in those cups?

9 **A** This State Exhibit No. 94, the two plastic containers,
10 contains fingernail scrapings, one from the right hand,
11 the other from the left hand. 19

12

13 (State Exhibit Nos. 85 and 86 were previously
14 marked for identification purposes.)

15

16 **Q** Doctor, I will show you items that are in a bag marked
17 State's Exhibit No. 85, and I will take these items out
18 of State Exhibit 85 and I will show you a plastic bag
19 marked State's Exhibit No. 86, containing things I'm
20 now taking out, look to be like little toothbrush
21 containers. They don't contain toothbrushes, do they?

22 **A** No.

23

24 (State Exhibit Nos. 87, 88 and 89 were
25 previously marked for identification purposes.)

1 Q These are marked State Exhibits 87, 88 and 89, the
2 boxes are. What is in the box marked State Exhibit No.
3 87?
4 A This is, again, my handwriting. I did this myself.
5 This is swabs from the oral cavity, from the mouth.
6 Q Of Edna Mae Franklin?
7 A From the decedent, yes.
8 Q State Exhibit No. 88?
9 A This is vaginal cavity.
10 Q State Exhibit No. 88 is a vaginal swab from the vagina
11 of Edna Franklin; is that correct?
12 A That is correct.
13 Q State Exhibit No. 89, what is that box?
14 A 89 is the rectal cavity.
15 Q That contains the swab from the rectal cavity; is that
16 correct?
17 A Yes.
18 Q Now, in terms of these items, once you get them, what's
19 done with them?
20 A The first thing is to keep them in our facilities for
21 safekeeping until the investigators in charge of the
22 case come to our office and pick them up.
23 Q Now, Doctor, did someone from the Houston Police
24 Department, the investigating agency, pick these items
25 up from you, and if so, when? If not from you, from

1 your office?

2 A Yes. There is a signature here, dated on -- I cannot
3 read --

4 Q Is it possible that's Fred Hale?

5 A It's possible, yes.

6 Q And getting back to the autopsy report, Doctor, did you
7 do any kind of testing on the body of Edna Mae Franklin
8 to determine whether or not she had any drugs or
9 alcohol in her system at the time of her death?

10 A Yes, we did.

11 Q What was the results of that Toxicology report?

12 A The results were negative, no drugs were found.

13 Q In terms of caffeine, any found?

14 A Traces of caffeine. No significance. That was in the
15 stomach.

16 Q So in terms of the total number of stab wounds, would
17 it be fair to say that Edna Mae Franklin was stabbed a
18 total of 12, 13, 14 times?

19 A In total?

20 Q Yes.

21 A Four in the front chest, three in the lateral chest --
22 seven -- and one stab wound in the left arm: eight
23 stabs.

24 Q Now, Doctor --

25 A Cutting wounds in the left ear, we have two. We are

1 not counting scratches, just cuts. Two in the neck or
2 three; two in the left arm; five in between the back:
3 seven.

4 Q Total?

5 A Seven in total. Seven plus eight is 15 injuries
6 associated with sharp force. 20

7 Q Now, Doctor, that knife I think I have already asked
8 you that was used to inflict these injuries, it was
9 capable of causing serious bodily injury or death, was
10 it not?

11 A It was.

12 Q And her death came as a result of not only being cut
13 but being stabbed as well?

14 A Stabbing, yes.

15 Q Well, was it cutting and stabbing both?

16 A Stabbing and cutting both.

17 Q In terms of the injuries caused, looking at the manner
18 in which the injuries were performed, is it your
19 opinion as to whether or not these injuries were
20 conducted with the specific intent to cause death?

21 A Intention?

22 Q To cause death.

23 A Yes.

24 Q And why is that?

25 A There were too many and there are injuries that came

1 into the very, very specific critical areas, such as
2 the heart area, the lungs and mainly the neck.

3

4 MR. GUTIERREZ: May I have just a moment,
5 Your Honor?

6 THE COURT: Yes.

7 MR. GUTIERREZ: I will pass him at this time,
8 Your Honor.

9 THE COURT: Let's take a short recess and
10 then you can have cross-examination.

11 Ladies and gentlemen, let me just excuse you
12 briefly.

13

14 (A recess.)

15

16 (Whereupon the jury was seated in the jury
17 box.)

18

19 THE COURT: Mr. Cantu, you may proceed.

20 MR. CANTU: Thank you, Your Honor.

21

22 CROSS EXAMINATION BY MR. CANTU

23

24 Q Dr. Bellas, good afternoon to you.

25 A Good afternoon.

1 Q We're going to go back a little bit and discuss it
2 again. We're going to discuss the consistencies. You
3 indicated some of the injuries were consistent with
4 blunt instruments, and in particular, let's take it
5 from the top of the head, as the prosecutor did.

6 You indicated that it's consistent with a blunt
7 instrument, generally, specifically, it's consistent
8 with the use of force with a hand or fist? You
9 indicated that?

10 A Or other ways.

11 Q Or other ways. And I could ask you about any number of
12 blunt instruments. If it would be consistent with the
13 size of a bat or a piece of wood or anything that's
14 blunt, what would your answer be to those kinds of
15 questions?

16 A The one behind the ear, I cannot know. However, the
17 one in the right parietal area looked like something
18 that is rather flat.

19 Q Such as a table?

20 A Maybe table, maybe --

21 Q Anything of flat origin?

22 A Anything similar, yes.

23 Q You indicated -- I think you described it as cuts
24 around the left ear?

25 A Yes.

1 Q And you indicated in the ear. And as I understand it,
2 did you mean on the ear?

3 A In the right ear, in the upper tip of the right ear,
4 there was a contusion that was separated from the
5 contusion in the right temporal area, so both were in
6 the right. But this one was very small contusion.

7 Q The bruise on the right ear was much smaller than the
8 bruise on top of the head?

9 A Yes.

10 Q Or to the right side of the head?

11 A Correct.

12 Q The cuts on the left side of the head, near the ear, or
13 on the ear, you indicated were in the ear. Were you --

14 A Yes, the earlobe. One on the top and one on the lower
15 part, two cuts, superficial cuts.

16 Q Let's go to the chest area next.

17 A Yes.

18 Q You indicated that there's approximately 15 to 17
19 cutting wounds or stabbing wounds or wounds made by a
20 small instrument?

21 A Yes.

22 Q That excludes the contusions, the bruises on the head
23 and the ear, the right side of the ear, and bruises on
24 the elbows?

25 A Yes, they are different.

1 Q And when we talk about the cuts in the chest area, the
2 torso, the trunk of the body, you describe those
3 injuries as injuries going from right to left, I
4 believe is the way you described them. There were four
5 injuries in the midline or in the front of the chest.
6 A In the front chest, four stab wounds.
7 Q And those stab wounds went approximately 2 inches, I
8 believe is your position.
9 A Two -- there were a total of four in the front, and two
10 of them were in the upper breast. Those in the upper
11 breast, they penetrate one inch only.
12 Q Those were superficial?
13 A Superficial stab wounds. Not cutting but stab wounds.
14 Q And those in the midline were stab wounds, not cutting
15 wounds, right?
16 A Stab wounds. Those two were fatal, either one.
17 Q Either one?
18 A Uh-huh.
19 Q And we turn the body around, as you described the
20 different cuts and different bruises, strikes me that
21 the body has moved to the back. There's midline, then
22 they go to the -- let's see if I'm correct --
23 A Left.
24 Q -- to the left chest area?
25 A Left chest area.

1 Q And then you describe it as a lateral area?

2 A Yes.

3 Q But for us and the jurors, that means the area behind
4 the left arm? Where the arm would normally lay down
5 would be to the left, behind that left arm?

6

7 THE WITNESS: Your Honor, if I can step down.

8 MR. CANTU: May he step down?

9 THE COURT: Yes, you may step down.

10

11 A (Complies.)

12

13 MR. CANTU: Your Honor, I'm going to take my
14 coat off for demonstration purposes.

15 THE COURT: All right.

16

17 Q (By Mr. Cantu) As I recall, the injuries flow from the
18 midline and now we're at the back. And I was asking
19 you, does that wound that you discussed, the lateral
20 wound, is it behind the left arm, as an arm normally
21 would lay flat down?

22 A It's not behind the -- this line over here is the
23 armpit as you all know, so-called axilla.

24 Q Excuse me, Doctor. Would you speak up just a little
25 louder. I hate to interrupt you, but she can't hear

1 you.

2 **A** Yes. Axilla or armpit is the same. So this line over
3 here on the chest is anterior axillary line and this
4 line here is the posterior axillary line. Everything
5 that I see in the autopsy room, anterior to this line
6 is the chest. So the stab wounds that I saw were here.
7 They were not behind the arm or in front -- a little
8 bit, one of them was a little bit in front of the arm,
9 but actually a cut behind the arm, on the lateral
10 chest.

11 **Q** For laymen's purposes, they were pretty much under the
12 left arm, where the arm would normally lay, pretty
13 much?

14 **A** Correct.

15 **Q** One you indicated might be slightly forward, the other
16 one slightly back. But for our terms, for our need,
17 it's under the arm. Is that a correct statement?

18 **A** Yes.

19 **Q** Would you have a seat, please.

20 **A** (Complies.)

21 **Q** As you were talking, I was trying to establish how the
22 wounds were flowing. Were there any wounds to the
23 anterior or back of the body?

24 **A** There are two superficial cuts in the back.

25 **Q** Let me ask you about those. Those superficial cuts

1 were what part of the posterior or back?

2 **A** Middle back, very close to the midline.

3 **Q** The spinal column?

4 **A** The spinal column.

5 **Q** And they're flowing from the left again -- the wounds
6 are flowing from the left arm. We have got wounds
7 under the left arm. Now we have got wounds, the
8 midline, the spinal column. Is it lower back? And I'm
9 just generally pointing to my lower -- is it this part?

10 **A** That is correct.

11 **Q** The lower back and the midline?

12 **A** Uh-huh.

13 **Q** Any other wounds after that point?

14 **A** No.

15 **Q** And those wounds in the back, were they cutting or were
16 they stabbing?

17 **A** Cut wounds. They were not included in the cause of
18 death.

19 **Q** But they were inclusive in the assault, right? They
20 were all part of the assault; is that correct? Is that
21 a correct statement?

22 **A** Yes.

23 **Q** And could you tell when you looked at the cutting, did
24 you make an analysis or a determination of whether
25 those cuts came from head to toe or were they coming

1 from toe to head, the cuts in the lower back?
2 A The were oblique. They were oblique. They were not
3 superficial, not horizontal. In between.
4 Q Okay. They were oblique and they were at an angle, in
5 other words?
6 A Correct.
7 Q At an angle from -- let's use some geometry here or
8 algebra here, whatever it is. But let's use the spinal
9 column as the line, the line that we know as straight.
10 A It's about a 30-degree angle.
11 Q Knowing that 90 degrees would be over here, so this 30
12 degrees would be somewhere in between that?
13 A Yes. Correct.
14 Q And the closest point would be at the top or at the
15 bottom of that cut?
16 A The closest point to the midline?
17 Q Yes, sir, closest point to the midline.
18 A Sometimes in the cutting wounds you may have an idea if
19 either it first came from this side to the other or
20 vice versa, but in these two stabs, it suggests that
21 the one -- I cannot say for sure.

22
23
24
25

MR. CANTU: May I approach the witness?

THE COURT: Yes.

1 Q You're looking at some photos, and let me see what
2 you're looking at.

3 A There is another picture here that is probably more
4 relevant, and this is a closeup of those two.

5 Q These are photos that you took pursuant to your job
6 performance?

7 A Yes, I took myself.

8

9 MR. CANTU: One minute, Your Honor.

10

11 Q (By Mr. Cantu) I'm sorry, I was getting a little
12 confused about photos. We have so many photos. You
13 were looking at those.

14 Those correspond with the photos, State Exhibit
15 No. 8, State Exhibit No. 12. Is that a correct
16 statement?

17 A Yes.

18 Q The State Exhibit No. 8, of course, looks like about a
19 3-by-5 photo, color photo of the Complainant laying on
20 her chest, and what we're discussing are the wounds on
21 the lower back; is that correct?

22 A Correct.

23 Q Are those the wounds that you discussed?

24 A Yes.

25 Q And State Exhibit No. 12, are those photos or is the

1 photo of the Complainant -- you describe these as
2 stabbing or cutting wounds?
3 A Stabbing.
4 Q Stabbing wounds of the lateral position or the side
5 directly under the arm?
6 A Correct.
7 Q That would be State Exhibit No. 12?
8 A Yes.
9 Q And you indicated also that there's a through-and-
10 through wound in that upper left arm?
11 A Correct.
12 Q Was that wound from the back entering from the back,
13 the back of the arm to the front of the arm, or could
14 you tell?
15 A Enter from the front. The exhibit was in the back. It
16 was in the back of the arm, but it came like this, from
17 the front.
18 Q Do we have a photo of that?
19 A Yes.
20 Q Is this, again, State Exhibit No. 12, is this the stab
21 wound that you're discussing?
22 A Yes.
23 Q The one on this? And this is the left arm of State
24 Exhibit No. 12, and the stab wound, that wound that's
25 in the triceps area?

1 **A** Correct.

2 **Q** Is that the exit or the entry?

3 **A** The exit is in the back.

4 **Q** It was in the triceps area, the back of the arm?

5 **A** Yes. The weapon came like this, from this, from the
6 front, front to back.

7 **Q** Did that wound enter superficially through the front
8 and enter deeper, going into the back of the arm?

9 **A** And exited, yes. Superficial.

10 **Q** Superficially entering and doing more damage as it went
11 through the back?

12 **A** Well, equally. It's one inch apart. The entrance and
13 exit were one inch apart. The damage, no significance,
14 the skin and subcutaneous tissue.

15 **Q** Thank you. We're going to discuss now the wounds
16 around the neck area, the frontal part of the neck.
17 You indicated there were two?

18 **A** Yes.

19 **Q** And you indicated the sequence of injuries and you
20 compared them, the injuries to the neck, the frontal
21 part, and then to the chest, the ones you described as
22 also fatal-type wounds?

23 **A** Yes.

24 **Q** From your experience, your medical experience, can you
25 determine the length of time that occurred between the

1 wounds, the fatal wounds of the neck and the fatal
2 wounds in the chest?

3 **A** No. You don't have that type of --

4 **Q** It's not that clear?

5 **A** No. You determine if it were before death, after
6 death. These things usually happen in a rapid
7 sequence.

8 **Q** And what did happen here, what we have here is, you
9 were able to determine that there was blood that flowed
10 into the chest cavity?

11 **A** Yes.

12 **Q** Blood flowed into the chest cavity because of wounds,
13 two fatal wounds in the chest area?

14 **A** Yes. Three at least.

15 **Q** Two to three in the chest area that would cause blood
16 to flow into the chest cavity?

17 **A** Correct.

18 **Q** And you indicated that the wounds in the neck or you
19 indicated earlier that the wounds in the neck possibly
20 occurred after the wounds in the chest?

21 **A** At least one in the lower portion, that one in the
22 lower portion.

23 **Q** The lower portion of the chest, lower portion of the
24 neck?

25 **A** Yes, because that is clearly where it went, yes.

1 Q Lower portion of the neck?

2 A Of the neck, uh-huh.

3 Q That did not occur -- that occurred after the chest

4 wounds?

5 A It has to occur after the chest.

6 Q And your position is, all this occurred within minutes

7 or seconds?

8 A Very rapidly, yes.

9 Q And from your medical experience, you couldn't tell us

10 exactly and you can't tell us that it couldn't happen

11 not simultaneously, obviously, unless it was cuttings

12 at the very same moment?

13 A Correct.

14 Q But it occurred at some sequence, and you're not sure

15 at this time to tell the jury what that sequence is?

16 A Absolutely.

17 Q Other than there was some blood in the chest cavity,

18 there was some flow of blood there. And in performing

19 your job here in the autopsy, the medical examination,

20 you indicated that you looked and you observed some

21 swabs, cotton swabs?

22 A Yes.

23 Q And you used those swabs to take specimens from Mrs.

24 Flemming -- Franklin, rather, orally, vaginally and

25 rectally?

1 **A** Yes.

2 **Q** And that was for the purpose of determining sexual
3 assault, correct?

4 **A** Yes. It's part of the collection of the evidence.

5 **Q** Based on the fact that it was a woman?

6 **A** Correct.

7 **Q** And there are other tests to take, or are there other
8 tests you could have taken beyond that point to
9 determine sexual assault if those tests or if you
10 determined that they were required based on some
11 inconsistent or inconclusive evidence in the swabs?

12 **A** No. The test examination is chemical, either one, that
13 is submitted to the swabs, is a chemical test, and the
14 spreads over the glass light is a microscopic test.
15 Other than those, there is nothing. No more.

16 **Q** And you took those tests?

17 **A** Yes.

18 **Q** You made the chemical analysis and you made the visual
19 analysis?

20 **A** Yes.

21 **Q** And your conclusion was that there was -- you also
22 observed the vaginal wall, did you not?

23 **A** Yes.

24 **Q** You observed the rectal cavity and you observed the
25 mouth, the oral area?

1 **A** Yes.

2 **Q** There were no contusions of those areas?

3 **A** No.

4 **Q** There was no injury whatsoever of those areas?

5 **A** There is no injury associated with the genitalia or the

6 anus or the rectal or parietal area.

7 **Q** And you concluded your tests as to a State's theory of

8 sexual assault based on that, based on those

9 observations and those analyses?

10 **A** Yes.

11 **Q** Then you also took samples, you took hair samples, you

12 took samples of the pubic area, you took samples of the

13 head, the hair from the head, and then you took samples

14 also of scrapings from under the fingernails of Mrs.

15 Franklin?

16 **A** Yes. 21

17 **Q** And do you recall what your conclusions were to the

18 head, from the hair? Did you make some analysis or

19 some observation from that?

20 **A** No. We collect the evidence. We never study those

21 specimens.

22 **Q** Okay. So the hair from the head, the pubic hair and

23 the fingernail scrapings were given to another agency

24 or someone else other than yourself to make an

25 observation, make determinations?

1 A Yes.

2 Q You were just the conveyor of those samples to someone
3 else then?

4 A Yes.

5 Q Is it from your medical experience that Mrs. Franklin
6 was not assaulted sexually, from those tests that you
7 ran?

8 A I cannot say. I cannot -- may or may not.

9 Q Is it consistent with the findings that you have of
10 non-assault on a person?

11 A They are consistent with no assault.

12 Q Are those other tests that you could have taken that
13 you didn't take to make a determination, a medical
14 determination, as to sexual assault?

15 A No.

16 Q That's all that medical science provides you at this
17 point in time?

18 A Physical examination, chemical test of the swabs and
19 microscopic examination of the spreads.

20

21 MR. CANTU: Your Honor, we'll pass the
22 witness at this time.

23 THE COURT: Any further questions?

24 MR. GUTIERREZ: Just a few questions, Your
25 Honor.

REDIRECT EXAMINATION BY MR. GUTIERREZ

1

2

3 Q Doctor, the Defense asked you whether or not your
4 examination revealed a consistency with no sexual
5 assault. Is it not also consistent with a sexual
6 assault having been completed but where no trauma
7 occurred?

8 A It is possible, yes.

9 Q Is it consistent with that?

10 A It may happen, yes.

11 Q That's not my question. Is it also consistent with
12 that having happened and there being no trauma? Is it
13 consistent with that sort of attack?

14 A With no trauma and no ejaculation?

15 Q Yes, sir. Would it also be consistent with that?

16 A Yes.

17

18 MR. GUTIERREZ: I'll pass the witness, Your
19 Honor.

20 MR. CANTU: No, Your Honor.

21 THE COURT: Dr. Bellas, you may step down,
22 sir.

23 Ladies and gentlemen, I'm going to excuse you
24 for lunch. The bailiff will accompany you to
25 lunch, and you will be recessed to the Jury

1 Deliberation Room at this time.

2

3 (Whereupon a lunch recess was had.)

4 (Whereupon the jury was seated in the jury
5 box.)

6

7 THE COURT: You may be seated. The State
8 will call your next witness.

9 MR. GUTIERREZ: Yes, Your Honor. The State
10 would call Eric Bengé to the stand. That's
11 spelled B-e-n-g-e.

12

13

ERIC BENGÉ

14 was called as a witness by the State, and having been
15 previously duly sworn, testified under his oath as follows:

16

17 THE COURT: You may proceed.

18 MR. GUTIERREZ: Thank you, Your Honor.

19

20

DIRECT EXAMINATION BY MR. GUTIERREZ

21

22 Q State your name, please.

23 A Eric Bengé.

24 Q Did I spell your name correctly for the benefit of the
25 court reporter, B-e-n-g-e?

1 **A** Yes, sir.

2 **Q** Would you tell the members of the jury how old a man
3 you are?

4 **A** I'm 25 years old.

5 **Q** And would you tell us whether or not you knew in life a
6 person by the name of Edna Franklin?

7 **A** Yes, sir, I did.

8 **Q** Would you tell the members of the jury what her
9 relationship to you was?

10 **A** She was my grandmother.

11 **Q** And where did you and she live?

12 **A** At 617 Westford.

13 **Q** Is that in Houston, Harris County, Texas?

14 **A** Yes, sir.

15 **Q** In terms of the 619 Loop, where did you all live?

16 **A** Just on the north side of it.

17 **Q** And would that be close to the intersection of
18 Irvington and Westford?

19 **A** Yes, sir.

20 **Q** And that particular intersection, Irvington and
21 Westford being on the north side, how far is it from
22 the 619 Loop?

23 **A** It's approximately about a mile, mile-and-a-quarter.

24 **Q** How long had you lived in that home?

25 **A** My entire life.

1 Q And who raised you?
2 A My grandmother did raise me.
3 Q Edna Franklin?
4 A Yes, sir.
5 Q And do you have a cousin by the name of Lee Rose?
6 A Yes, sir.
7 Q And is he outside the courtroom at this time?
8 A Yes, he is.

9

10 MR. GUTIERREZ: Your Honor, if it please the
11 Court, I would like to have Mr. Rose brought in
12 for purposes of identification only.

13 THE COURT: Mr. Bailiff.

14

15 (Whereupon an individual entered the
16 courtroom.)

17 (Whereupon an individual left the courtroom.)

18

19 Q (By Mr. Gutierrez) Who is your mother?

20 A Sandra Griffith.

21 Q Is she present in the courtroom right now?

22 A Yes, she is.

23 Q Would you please point her out for the benefit of the
24 jury?

25 A She's wearing the pink dress.

1 MR. GUTIERREZ: Ms. Griffith, if you would
2 please stand. Thank you.

3
4 Q (By Mr. Gutierrez) Who are the other folks with her?

5 A Two of them -- two of them -- all three of them are my
6 friends.

7 Q Did they know Ms. Franklin also?

8 A Yes, sir, they did.

9 Q How about Lee, how many years had he been staying off
10 and on or on a permanent basis with your grandmother?

11 A He's been staying on and off with us pretty much his
12 entire life as well.

13 Q In terms of the Defendant, Charles Raby, did you know
14 him?

15 A Yes, sir, I did.

16 Q Do you know him?

17 A Yes, sir, I do.

18 Q Would you please point him out, and for the record
19 describe what he is wearing today?

20 A He's the man sitting over there in the white shirt,
21 white striped shirt, with the red and blue tie.

22

23 MR. GUTIERREZ: Your Honor, I would like the
24 record to reflect that the witness has identified
25 the Defendant Mr. Charles Raby.

1 THE COURT: The record will so reflect.

2

3 Q Charles Douglas Raby, does he have a nickname?

4 A Buster.

5 Q And how old were you when you met the Defendant or
6 Buster?

7 A How old was I?

8 Q Yes.

9 A Roughly about 18. ²²

10 Q And your grandmother died on October 15th, 1992. How
11 old were you then?

12 A I was 23.

13 Q So from the time you were 18 to 23, off and on did you
14 have contact with the Defendant Charles Raby, also
15 known as Buster?

16 A Yes, sir.

17 Q And did you all have a friendship?

18 A Yes, sir.

19 Q Would you tell us whether or not Charles Raby ever had
20 occasion to be in your grandma's home?

21 A Yes, sir, he sure did.

22 Q On few or many occasions?

23 A Quite a few occasions.

24 Q Was there ever a time when you or your cousin Lee would
25 sneak him into the house through a window and let him

1 sleep the night?

2 A Yes, sir.

3 Q Did you do that on few or many occasions?

4 A Quite a few occasions.

5 Q And in terms of the point of entry that was used on the
6 day of your grandmother being killed, was that bedroom
7 a different one or the same one?

8 A It was pretty much the same one.

9 Q Now, why do you say pretty much the same one?

10 A Because he came in both bedrooms before, different
11 windows. 23

12 Q That's fine. Now, did your grandmother particularly
13 like Buster?

14 A At first she thought he was a nice guy and then later
15 on she didn't like him.

16 Q Did you all have at the time of the death of your
17 grandmother a dog in the house?

18 A Yes, we sure did.

19 Q And what kind of dog was it?

20 A Basically we had three dogs. We had a chow, a little
21 poodle and a labrador. The labrador usually stayed
22 outside all the time, and then the poodle stayed inside
23 all the time, and the chow, he basically came back and
24 forth.

25 Q In terms of the Defendant -- let me withdraw that

1 question.

2 On the day in question, October 15th, 1992, were
3 you working at that time?

4 A Yes, sir.

5 Q Where were you working?

6 A Ace Canine.

7 Q And what were you doing for Ace Canine.

8 A Usually you took dogs out and put them on job sites or
9 picked them up and brought them back to the kennels.

10 Q How many job sites did you have to go to where you had
11 to deliver dogs?

12 A It ranged. Sometimes it might have been 10, sometimes
13 it might have been 30.

14 Q By the way, I forgot to ask you. Your mother, the lady
15 whom you pointed out in the courtroom today, where does
16 she live today?

17 A She lives in Austin, Texas.

18 Q And when you were growing up with your grandmother,
19 specifically on October 15th, 1992, was she living in
20 Houston?

21 A No, sir, she was not.

22 Q Now, let's get back to the time that you left, the day
23 that your grandmother died. Do you recall what time
24 you left?

25 A I left shortly before 4 o'clock.

1 Q And why does that time particularly stand out in your
2 mind?

3 A Because I had to be at work at 4 o'clock.

4 Q Now, within the last couple of weeks had you personally
5 seen Charles Raby at your grandmother's house?

6 A No, sir. 24

7 Q Had you heard that he had been either in or around your
8 grandmother's house?

9 A Yes, sir.

10 Q And you had not seen him yourself?

11 A No, sir. 25

12 Q You said you left at about 4 o'clock in the afternoon;
13 is that correct?

14 A Yes, sir.

15 Q And where did you go?

16 A I went to work.

17 Q And then where did you go?

18 A Well, I did my route and everything, and after that, I
19 went over to a friend of mine's house and took a shower
20 and got cleaned up and went to my girlfriend's house.

21 Q What was your girlfriend's name at the time?

22 A Donna Lynn Paris.

23 Q And how long did you stay with your girlfriend?

24 A Till roughly about 9:45 that night.

25 Q Had you seen Lee Rose earlier that day?

1 A Yes, sir.

2 Q When was the last time you saw Lee, your cousin, that
3 day?

4 A I dropped him off at the store on my way to work.

5 Q Do you remember what store that was?

6 A Sigmor, right at the corner of Crosstimbers and
7 Helmrs.

8 Q Is that close to where your grandmother lived?

9 A Yes, sir.

10 Q Now, you're still living at 617 Westford; is that
11 right?

12 A Yes, sir.

13 Q So you went to your girlfriend's house. How long were
14 you with her?

15 A I got to her house roughly about, I'd say, about 7
16 o'clock, and stayed there, like I said, until about
17 9:45, a little before, before I left.

18 Q What time did you get back home?

19 A Like right before 10 o'clock. Right at 10 o'clock.
20 Somewhere right in there.

21 Q Could you tell us what your habit and your
22 grandmother's habit was in terms of locking doors?

23 A Well, a lot of times I would be in a big hurry and I
24 would forget. But it was routine, she always, no
25 matter what, she'd get up and come make sure the doors



1 were locked, because she was there by herself. ²⁶

2 Q Now, when you got back home, did you notice anything
3 unusual the minute you walked up to the house?

4 A Yes, sir. My dogs were all running around the front
5 yard, my front door was wide open, all the lights in



6 the house were off. ²⁷

7 Q Let's talk about the dogs now. You mentioned the
8 poodle, and what other types of dogs did you have?

9 A I had a chow and a labrador.

10 Q Is your home fenced in the back or in the front?

11 A It's in the back.

12 Q And the labrador, how big a dog was it?

13 A She was approximately about knee-high.

14 Q Did you say you had another type of dog running around
15 the back?

16 A No. Those were the three dogs I had total. All three
17 of them were out in the front yard.

18 Q You said the labrador. What was the other dogs?



19 A A chow and a poodle. ²⁸

20 Q Were those mean, good --

21 A No, sir. They were real friendly dogs.

22 Q I'm going to ask you to wait until I'm through asking
23 the question. Okay?

24 Were they good guard dogs in the sense that they
25 were mean, they would bark at people and bite?

1 A No, sir.

2 Q What kind of temperament did those dogs have?

3 A They were more out to get attention and to be played
4 with than to bite people and growl and bark.

5 Q So you said you walked up to the front, and how many
6 dogs do you see running in the front yard?

7 A All three of them.

8 Q Now, there's no fence in your front yard; is that
9 correct?

10 A No, sir.

11 Q What happened next?

12 A I kind of hollered at the dogs and everything and told
13 them to get back in the house. They ran through the
14 front door and immediately ran straight to the back. I
15 like followed them through, because I was, you know,
16 going to put them outside.

17 Q Just stop just for a second now. When you walked in,
18 it's 10 o'clock in the evening, more or less; is that
19 correct?

20 A Yes, sir.

21 Q Is it light or dark inside the house?

22 A It's very dark.

23 Q And what happened next?

24 A Well, I went walking into the house, I walked in the
25 front door. I walked through the living room, towards

1 the kitchen. I like stumbled. I didn't really think
2 anything of it at the moment.

3 Q When you stumbled on something, what went through your
4 mind, in terms of what you thought it was?

5 A I remember pretty much saying something in the word of,
6 like, "Damn Lee, he's always putting them on the floor
7 right there."

8 Q Now, was it so dark that you couldn't see what was at
9 your feet?

10 A Correct.

11 Q So you stumbled, but you didn't fall?

12 A No, sir.

13 Q And you went into the next room; is that correct?

14 A Yes, sir.

15 Q Now, in between the living room and the kitchen at the
16 time, what kind of divider did you have? Did you have
17 a door or something else?

18 A It was a sheet hanging up.

19 Q From where?

20 A From the ceiling down to the floor.

21 Q And you went into the kitchen area?

22 A Yes, sir.

23 Q And what happened next?

24 A It was still dark as I walked through the kitchen. The
25 only light that was on was in her bedroom, which is

1 directly at the end of the kitchen.

2 Q Let me just pause for a second here.

3

4 (State Exhibit No. 1 was marked for
5 identification purposes.)

6

7 Q Let me show you what has been marked as State Exhibit
8 No. 1, and I'll ask you whether or not you can tell me
9 whether or not this diagram fairly and accurately
10 depicts the scene at your home at 617 Westford back on
11 October 15th, 1992?

12 A Yes, sir.

13 Q Is it drawn to scale, or do you know?

14 A Yes, sir, it's pretty much exactly like it.

15 Q Now, you didn't draw this; is that correct?

16 A No, sir, I did not.

17 Q But that's still a fair and accurate representation of
18 the scene?

19 A Yes, sir.

20

21 MR. GUTIERREZ: I would like the record to
22 reflect that I am tendering State's Exhibit No. 1
23 to Defense for their inspection. I would like
24 that it be admitted into evidence.

25 MR. CANTU: No objection, Your Honor.

1 THE COURT: State Exhibit No. 1 is admitted
2 into evidence.

3
4 Q (By Mr. Gutierrez) Let's take a look at State Exhibit
5 No. 1, and since there are things in it that are kind
6 of small, I don't think the jury can see at all.

7
8 MR. GUTIERREZ: Would the Court have any
9 objections if we did this at counsel table?

10 THE COURT: Okay, you may step down. Do you
11 want the witness to step down?

12 MR. GUTIERREZ: Yes, sir.

13
14 A (Complies.)

15 Q (By Mr. Gutierrez) Now, Mr. Benge, what I want you to
16 do is point things out, but I want to warn you, you
17 have to talk loud enough so the court reporter can hear
18 you. In fact, let's you and I switch places.

19 Now, first of all, back up just a little bit so
20 these jurors can see. State Exhibit No. 1, is it a
21 fair and accurate representation of the house; is that
22 correct?

23 A Yes, sir.

24 Q Now, let me walk you through and you tell me what those
25 rooms are. Tell the members of the jury, what is this

1 right here?

2 A Living room.

3 Q Where is the front yard?

4 A The front yard is all out here.

5 Q So the front entrance would be --

6 A Right there.

7 Q And then this room here is what?

8 A The living room, and that's the kitchen. That's the
9 den. That's the back bedroom.

10 Q Whose bedroom is this?

11 A That's my grandmother's bedroom.

12 Q What is this?

13 A That's our garage.

14 Q What is this?

15 A Front bedroom.

16 Q What's that?

17 A That's the bathroom. That's the back bedroom.

18 Q For purposes of what we're going to discuss, let me
19 point for you, what is that?

20 A I guess that's my grandmother.

21 Q That's where your grandmother was laying?

22 A Yes.

23 Q And in terms of what you believed to be the point of
24 entry, where would that have been?

25 A That bedroom window right there.

1 Q The one I'm pointing to now; is that correct?
2 A Yes, sir.
3 Q And these are the areas we're going to be discussing;
4 is that correct?
5 A Yes, sir.
6 Q Now, you said you walked through and you stumbled on
7 something; is that correct?
8 A Yes, sir.
9 Q Did you later learn what that was?
10 A Yes, sir, I did.
11 Q What did you learn that it was?
12 A It was my grandmother's body.
13 Q At first you thought it was what?
14 A Clothes.
15 Q Now, you said you stumbled over something and you went
16 into the kitchen; is that correct?
17 A Yes, sir.
18 Q Is this right here where I'm pointing where it says
19 "curtain," was that where the curtain was?
20 A Yes, sir.
21 Q Now, once you got in the kitchen, what happened next?
22 What did you do next?
23 A I walked into the back bedroom. I ran my dogs out the
24 back door.
25 Q And where is the back door?

1 **A** The back door is right here, under the deck.

2 **Q** Let's stop right there. You said you ran the dogs out
3 the back door. Was the back door open or was it
4 closed?

5 **A** It was open.

6 **Q** Now, you need to wait until after I finish the
7 question, because she cannot take us both down at the
8 same time.

9 Was the back door open or was it closed?

10 **A** It was open.

11 **Q** Was that normal or abnormal?

12 **A** That was abnormal.

13 **Q** Why?

14 **A** Because she always locked the doors. She kept them all
15 locked. 29

16 **Q** So you said you ran the dogs out the back door. What
17 was your intent insofar as the dogs were concerned?

18 **A** My intent was just to get them out of the house maybe
19 before she noticed.

20 **Q** So by letting them out this back door, you were letting
21 them onto something marked the porch; is that correct?

22 **A** That's our back deck or back porch.

23 **Q** Is there a wall all along the sides covering it, with
24 the exception of the door?

25 **A** Yes, sir.

1 Q So that way they could have access to the back fenced
2 yard; is that correct?

3 A Yes, sir.

4 Q You need to wait until I finish asking the question.
5 That way they could have access to the back yard,
6 which is fenced; is that correct?

7 A Yes, sir.

8 Q Now, once you did that, what, if anything, happened
9 next?

10 A Well, I turned around and I noticed that all of her
11 stuff had been strewn everywhere.

12 Q You said all her stuff had been strewn everywhere?

13 A Yes, sir.

14 Q When you talk about "her," are you talking about Edna
15 Franklin's things?

16 A Yes, sir.

17 Q Would you be more specific? What do you mean?

18 A Well, Edna Franklin's -- her purse had been knocked
19 over. All of her paperwork -- she keeps a lot of
20 paperwork on her bed, and all of it had been knocked
21 off. She had credit cards all over the place.

22 Q Show the members of the jury, using this pen, if you'd
23 like, where her belongings were. Start with the credit
24 cards and her purse. Where was her purse?

25 A First of all, I would like to say there's a table, a

1 little table right here. Her purse was located on the
2 floor right here. All of her paperwork was pretty much
3 scattered all over this. There was like a dresser, I
4 guess this is it right here. A bunch of paperwork was
5 on the back part of the bed, back in here. Stuff had
6 been knocked off the dresser here; dresser drawers were
7 open.

8 Q Her dresser drawers were open; is that correct?

9 A Yes, sir.

10 Q Was that normal or abnormal?

11 A That was abnormal.

12 Q How were they normally kept?

13 A Usually when she wanted to change clothes or something,
14 I would pretty much, you know, help her look for it
15 all. So I would be the one that would get them out of
16 there for her, and I would be the one also that closed
17 the drawers back up. 30

18 Q Would you explain to the members of the jury why it is
19 that you would have to help her do that?

20 A She was getting up in years. She was getting kind of
21 fragile. She couldn't walk too good. For instance,
22 she had to have help to get to the bathroom and back
23 from the bathroom. 31

24 Q So she just couldn't get up out of bed and jump into
25 another room like that?

1 **A** Correct.

2 **Q** When she got up, would she walk quickly or would she
3 have difficulty walking?

4 **A** She had a lot of difficulty walking.

5 **Q** Did she suffer from anything medically, that you know?

6 **A** She had arthritis real bad in both knees and her elbows
7 as well. She had bronchitis, so she lost her breath a
8 lot. She pretty much -- she was just real frail, real
9 skinny. She just -- she couldn't get around too well.

10 **Q** Now, let's talk about the things you said were strewn
11 next to the table and the bed. What kind of things
12 were strewn around the table as you look at the bed,
13 between the bed and the dresser?

14 **A** She had pretty much a lot of credit cards were on the
15 floor, a lot of her bills. Like I said, she kept a lot
16 of her bills right on the edge of her bed. They just
17 pretty much were all over the floor back in here. She
18 had paperwork, a bunch of paperwork everywhere: bills,
19 credit cards, her checkbook.

20 **Q** Where were those things normally kept? I mean, the
21 credit cards, the checkbook, the bills?

22 **A** They were normally kept in her purse.

23 **Q** Have a seat.

24 **A** (Complies.)

25 **Q** So when you saw these things, what did you do?

1 **A** My first reaction was to pick them up off the ground
2 and put them back on her bed.

3 **Q** At that point had you found your grandmother dead?

4 **A** No, sir.

5 **Q** So you picked these things up and put them on the bed,
6 and then what happened?

7 **A** Well, I pretty much thought she might be in her
8 bathroom, because when I walked by, I didn't bother to
9 look to see if the bathroom door was shut or the light
10 was on or anything. Like I said, I picked all her
11 stuff up and stuck it back on the bed as neatly as I
12 could and I started, you know -- I kind of felt like
13 something was wrong, so I went walking back through the
14 house. As I was walking back through the house, I was
15 turning the lights on. I got back in the kitchen,
16 moved the sheet back and at this time I had the kitchen
17 lights on but there's still no lights on in the front
18 room.

19 **Q** Let's stop for a second. When you said you came up and
20 all the lights were off except for the lights to your
21 grandmother's bedroom; is that correct?

22 **A** Yes, sir.

23 **Q** And that would have been the lights back here?

24 **A** Yes, sir.

25 **Q** Was that usual or unusual?

1 A It was pretty much unusual, because she always kept one
2 of the lights on in the kitchen at least.

3 Q So you said as you were coming back, you're turning
4 lights on?

5 A Yes, sir.

6 Q And then what happened once you got to the kitchen?

7 A I turned the kitchen lights on, I walked through, I
8 moved the sheet back and that's when I saw her.

9 Q And what position was your grandmother in when you saw
10 Edna Franklin?

11 A She was laying on her side. 32

12 Q Would you tell the members of the jury what you did
13 next? First of all, what did you think had happened?

14 A Well, I seen her laying there and I saw a bunch of
15 blood laying there. She was laying in a big puddle of
16 blood. I thought she had been shot first. I rolled
17 her over to see if there was anything I could do,
18 because I know CPR, but it was -- you could tell it was
19 too late, because when I rolled her over, that's when I

20 noticed what exactly had been done to her. 34

21 Q Tell the members of the jury what kind of wound you saw
22 on her.

23 A Her throat had been cut.

24 Q What did you do next, as far as you can remember?

25 A I pretty much -- I remember -- it's kind of hard to

1 talk about this, but I remember, like I said, I rolled
2 her over, and she was laying in all that blood, ³⁵ and
3 before I even noticed her throat had really been cut, I
4 was looking for a bullet wound, and that's when I
5 looked up at her. I looked up at her face, and that's
6 when I seen her throat had been cut. About this time I
7 jumped up and I was getting ready to run off into the
8 front bedroom, because there was a phone in there. It
9 was my bedroom at the time. I had the phone in there.
10 I was going to call the police and paramedics. About
11 that time my cousin showed up at the door. ³⁶

12 Q What cousin is that?

13 A Lee, Lee Rose.

14 Q Was he alone or with someone?

15 A He was with another friend of ours.

16 Q What's his name?

17 A John Phillips.

18 Q And what happened next?

19 A He came in and I started hollering at him to go call
20 somebody, and I knelt back down beside her. He went
21 kind of like, I guess, freaked out a little bit, too,
22 but we managed to get to the phone and we, you know,
23 dialed 911 for some help. And pretty much all I can
24 remember is being -- my arms and hands all being
25 covered in blood from trying to find out what was wrong



1

with her. ³⁷

2

Q Do you remember, when you saw her, what her state was, in terms of her dress or undress?

3

4

A She was undressed from the waist down.

5

Q Was that normal for her or abnormal?

6

A That was abnormal.

7

Q Did she normally walk around without her clothes?

8

A No, sir.

9

Q Did she walk around clothed?

10

A Yes, sir.

11

Q Did she, in terms of money, did she normally keep any cash around?

12

13

A She did keep money in her pocket, but it would be small change.

14

15

Q When you say "pocket," what pocket?

16

A Her pants pocket.

17

Q Is there any way of knowing whether or not she had money on her that day?

18

19

A I couldn't tell you that, sir.

20

Q Now, you said you went to the phone. Where, in terms of the diagram, would the phone have been?

21

22

A It was sitting on my dresser right there in the front bedroom.

23

24

Q Would you point it out for the members of the jury?

25

A This right here was the front bedroom -- no, excuse me.

1 This right here. Right here is the dresser. The phone
2 was sitting on top of the dresser.

3 Q Okay. And do you recall how long it was before the
4 police arrived, or do you recall?

5 A I would have to say approximately five minutes.

6 Q And do you remember who the first officer was that
7 arrived?

8 A I can't remember her name, no, sir.

9 Q A female officer?

10 A Yes, sir.

11 Q And what did she do?

12 A She pretty much made everybody get away from the house.

13 Q And did she secure the scene, so to speak, keep anybody
14 from coming in?

15 A Yes, sir.

16 Q At a later time did you come in with a consent, an
17 approval, of one of the officers?

18 A Yes, sir.

19

20 MR. GUTIERREZ: May I have just one moment,
21 Your Honor?

22 THE COURT: All right.

23

24 (State Exhibit No. 40 was previously marked
25 for identification purposes.)

1 Q I'll show you State Exhibit No. 40. I will ask you
2 whether or not you recognize a picture of that person.

3 A Yes.

4 Q And who is that?

5 A That's a picture of my grandmother.

6 Q Is that Edna Franklin as she appeared in life?

7 A Yes, sir.

8 Q In fact, is that picture taken on the same bed that was
9 there and in the same room that you had been discussing
10 in the bedroom that she was in?

11 A Yes, sir.

12

13 MR. GUTIERREZ: I would like to ask the
14 record to reflect that I am tendering State
15 Exhibit No. 40 to the Defense for their
16 inspection. I would like to ask that it be
17 admitted into evidence.

18 MR. CANTU: No objection.

19 THE COURT: State's Exhibit 40 is admitted
20 into evidence.

21

22 Q (By Mr. Gutierrez) Now, in this particular picture you
23 see her doing what?

24 A She's laying on the bed, reading letters.

25 Q At the time that she died, was she married?

1 A She was widowed.

2 Q And your grandfather, what was his name?

3 A John L. Franklin.

4 Q And when did he pass away?

5 A I do believe it was back in '89. ³⁸

6 Q Do you recall whether or not he knew Charles Raby at
7 the time?

8 A Yes, sir, he did.

9 Q Do you know whether or not Charles Raby attended the
10 funeral of your grandfather as a friend of the family?

11 A Yes, he did.

12 Q I've shown you these photographs outside the presence
13 of the jury, and I explained to you you're going to
14 have to identify them; is that correct?

15 A Yes, sir.

16 Q I'll show you State Exhibit Nos. 3, 4, 5, 6, 7, 8, 9,
17 11, 12 and 13, and I'll ask you whether or not this is
18 the same Edna Franklin in these photographs as in State
19 Exhibit No. 40, on the pictures that I'm about to show
20 you where she was found at your house. Are all these
21 the same person named in the indictment as Edna
22 Franklin?

23 A Yes, sir.

24 Q Now, did I have an occasion to go out to your home on
25 Westford Street back in late March of this year?

1 **A** Yes, sir.

2 **Q** Did I have occasion to take some photographs during the
3 daytime?

4 **A** Yes, sir.

5

6 (State Exhibit Nos. 14 through 34 were
7 previously marked for identification purposes.)

8

9 **Q** I'll show you State Exhibits 14, 15, 16, 17, 18, 19,
10 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33
11 and 34. Do these pictures fairly and accurately depict
12 what they purport to depict, namely, the front of your
13 house, the interior of the house, the back yard and the
14 back yard of your neighbor H.L. Truitt and the front of
15 his house?

16 **A** Yes, they do.

17

18 **MR. GUTIERREZ:** Your Honor, I would like the
19 record to reflect I am tendering these exhibits to
20 the Defense, which I have previously done. I
21 would ask that State Exhibits 14 through 34 be
22 admitted into evidence.

23 **MR. CANTU:** We have no objection, Your Honor.

24 **THE COURT:** State Exhibits 14 through 34 will
25 be admitted into evidence.

1 MR. GUTIERREZ: With permission of the Court,
2 may we run through these pictures quickly in front
3 of the jury, Your Honor?

4 THE COURT: You may step down.

5

6 A (Complies.)

7 Q (By Mr. Gutierrez) Please, Mr. Bengé. State's Exhibit
8 No. 14 shows us what?

9 A The front of the house.

10 Q What I want to do here very briefly -- I'll remind you
11 to speak up loud enough and to wait until I'm through
12 asking questions -- I'll mention the number of the
13 exhibit and I want you to tell the jury what it shows.

14 So State Exhibit 14 is the front of the house.

15 Where's the entrance?

16 A The entrance is right through the front, right by the
17 front porch.

18 Q Now, in terms of the point of entry, the window where
19 you believe the person that killed your grandmother
20 entered through, would you point to that with a pen?

21 A Okay, sir. That would be located on the side of the
22 house right here.

23 Q Would that have been the window closest to the street?

24 A Yes, sir.

25 Q Where's the other bedroom window?

1 **A** It's right here at the back, very back.

2 **Q** Now, you previously talked about the fact that Charles

3 Raby oftentimes went in through both of these windows;

4 is that correct?

5 **A** Yes, sir.

6 **Q** State's Exhibit 15, what does that show?

7 **A** It shows another angle of the front of the house. Also

8 a side view as well.

9 **Q** Would you please point to the bedroom windows that

10 we're talking about?

11 **A** This is the one right here. Yeah, this is the one

12 right here where I believe he came in. The other one

13 is in the back, that I talked about as well.

14 **Q** State Exhibit 16?

15 **A** Another view of the side of the house as well; same two

16 windows.

17 **Q** Now, you said this is where you believe he came in, the

18 person that killed your grandmother. Why is it at the

19 time of discovery of the body that you believe that

20 someone had come in through that window?

21 **A** Well, because earlier that same day I had just put that

22 window screen on there.

23 **Q** And?

24 **A** I nailed the screen on there as well. So it had been

25 torn off, and you can see by looking at the bottom of

1 the window itself, it's been torn off where the nails
2 were. 39

3 Q Now, these particular pictures that we're showing,
4 daytime pictures, were taken this past March; is that
5 correct?

6 A Yes, sir.

7 Q What are the differences in terms of how the window
8 appears now compared to the way it appeared back on
9 October 15th, 1992?

10 A The screen had been torn, and like I said, once again,
11 the screen had been nailed on, and it wasn't nailed on
12 any more.

13 Q Let me ask you this: Was the screen torn before you
14 left for work --

15 A No, sir.

16 Q Let me finish now. Before you left for work on October
17 15th, 1992?

18 A No, sir, it was not.

19 Q Was it torn after 10 o'clock when you came back?

20 A Yes, sir, it was.

21 Q Was it nailed shut before 4 o'clock, October 15th,
22 1992, when you left the house?

23 A Yes, sir. 40 

24 Q Was it nailed shut when you came back and after you
25 discovered the body of your grandmother?

1 **A** No, sir.

2 **Q** Now, what about State Exhibit No. 17? I notice that
3 the screen itself is torn. Is it any more torn now
4 than it was after you came back and discovered your
5 grandmother's body?

6 **A** No, sir.

7 **Q** Is it about the same?

8 **A** Yes.

9 **Q** State Exhibit No. 18, what does that show?

10 **A** That shows where the screen had been nailed shut.

11 **Q** When we talk about the screen, you're talking about the
12 screen and not the window itself; is that correct?

13 **A** Yes, sir.

14 **Q** Would you please point to the areas you're talking
15 about where it had been shut?

16 **A** Right here.

17 **Q** And now you're pointing at State Exhibit No. 19; is
18 that correct?

19 **A** Yes, sir.

20 **Q** State Exhibit No. 20, what does that show?

21 **A** That's the screen door on the front porch.

22 **Q** Now, would you tell the members of the jury how many
23 doors do you see in this photograph and how many doors
24 were there back on October 15th, 1992?

25 **A** I see one screen door and one front door as well.

1 That's the same two that were there at the time.

2 Q In terms of the screen door and the wooden door, are

3 they open or closed in this photograph?

4 A They're open.

5 Q Comparing them to the way that you found them when you

6 came back at 10 o'clock, explain, are they any more

7 closed, open, than they were when you came back at 10

8 o'clock on October 15th, 1992?

9 A They're pretty much exactly like that.

10 Q When you left at 4 o'clock, were they open or were they

11 closed?

12 A They were closed.

13 Q State Exhibit No. 21, what does that show?

14 A That is the living room, a view through the kitchen,

15 front door.

16 Q Now, when I went to your home and took these

17 photographs back in March of this year, did you still

18 have that curtain dividing the two rooms from the

19 kitchen and the living room?

20 A No, sir.

21 Q Would you tell us whether or not this particular shot

22 includes the area where your grandmother was found

23 lying?

24 A Yes, sir.

25 Q Would you please point it out to the members of the

1 jury?

2 A Right there.

3 Q Now, there's been some rearranging done?

4 A Yes, sir.

5 Q There was a sofa in this room that's not there now; is
6 that correct?

7 A There were two of them.

8 Q That's State's Exhibit No. 21. State Exhibit No. 22,
9 what does that show?

10 A It's a picture of the back deck, back door.

11 Q Would you please get the diagram and show the members
12 of the jury?

13 A The picture of the back deck right here, looking at the
14 back door from the outside.

15 Q What relevance is it to this case?

16 A I believe that's where he came out at.

17 Q Now, you talked earlier about a door being left open.
18 Do we see that door open now in this picture?

19 A Yes, sir.

20 Q This door that we're seeing in State Exhibit 22, where
21 is that door on State Exhibit No. 21?

22 A Right here. Right here on the back porch.

23 Q Is that the same door that you say you let the dogs out
24 through?

25 A Yes, sir.

1 Q Is that the same door that you said was normally
2 closed --
3 A And locked. ~~40~~
4 Q -- and locked but open when you came back at 10
5 o'clock?
6 A Yes, sir.
7 Q Was that door closed when you left at 4:00?
8 A Yes, sir.
9 Q Was it locked when you left at 4:00?
10 A Yes, sir.
11 Q State Exhibit No. 23, what does that show?
12 A That's also a picture of the back deck, back porch.
13 That's the door leading to the outside.
14 Q Would you tell the members of the jury what perspective
15 it was taken?
16 A It was taken from up against the wall here out.
17 Q And what does it show outside the door?
18 A Pretty much the back. It shows the back yard, the
19 layout of the back yard behind my house.
20 Q Is there a house in the picture off in a distance in
21 the center of this particular picture?
22 A It's not actually a house. It's a garage.
23 Q And whom does that garage belong to?
24 A It belongs to my neighbor right behind me.
25 Q What's his name?

1 A I pretty much call him Leo. I'm not sure of his last
2 name.
3 Q Would that be H.L. Leo Truitt?
4 A Yes, sir.
5 Q I'll show you State Exhibit No. 24.
6 A That's a picture of the back yard looking towards my
7 house, back part of my house.
8 Q State Exhibit No. 25?
9 A Same, from the back, out in the back yard towards the
10 house.
11 Q State Exhibit No. 26?
12 A That's a picture of the back yard. It's on the side of
13 the house, kind of towards the east side of the house,
14 looking out towards the back yard.
15 Q Now, assuming someone were to exit your grandmother's
16 house through that door and walk down through the
17 porch, through the back yard, towards Mr. Truitt's
18 house, that's what these photographs show; is that
19 correct?
20 A Yes, sir.
21 Q State Exhibit No. 21?
22 A It's a picture taken from inside my neighbor's yard, on
23 the east side as well, towards the back of the house as
24 well.
25 Q I notice there's a dog in that picture.

1 A Yes, sir.

2 Q Is that dog as friendly as the dogs you had?

3 A No, sir.

4 Q Was he there when I took the pictures?

5 A Yes, sir.

6 Q Did you remove him at my request?

7 A Yes, sir.

8 Q State Exhibit No. 28?

9 A That's a picture of my back yard, looking, once again,
10 towards my neighbor's house behind me.

11 Q And State Exhibit No. 29?

12 A That's a picture out of my back yard, once again, up
13 next to the fence, looking towards my neighbor's house
14 in the back.

15 Q State Exhibit No. 30?

16 A That's a picture on the next street over, looking
17 towards the front of my neighbor's house.

18 Q And where would your grandmother's house be in these
19 photographs?

20 A My grandmother's house would be directly behind him.

21 Q So this is the lot directly behind your grandmother's
22 house, and that house right there being your
23 grandmother's house; is that correct?

24 A Yes, sir.

25 Q State Exhibit No. 31?

1 **A** Once again, it's the same picture from the street,
2 looking just a little bit further back of my neighbor's
3 house.

4 **Q** Mr. Truitt's house?

5 **A** Yes, sir.

6 **Q** And 32 and 33?

7 **A** Pictures of the fence right there at the very corner.

8 **Q** And 34?

9 **A** That's a picture going down the street.

10 **Q** Towards Irvington?

11 **A** Towards Irvington.

12 **Q** I have previously shown you all these photographs; is
13 that correct?

14 **A** Yes, sir.

15

16 (State Exhibit Nos. 35 through 39 and State
17 Exhibit Nos. 41, 42, 42A, 43, 43A and 44 through
18 54 were previously marked for identification
19 purposes.)

20

21 **Q** I'll show you State Exhibit Nos. 35, 36, 37, 38, 39 --
22 40 is a picture of your grandmother that's already in
23 evidence -- 41, 42, 42A, 43, 43A, 44, 45, 46, 47, 48,
24 49, 50, 51, 52, 53 and 54. I'll ask you whether or not
25 these photographs fairly and accurately depict the way

1 you found the scene the night at 617 Westford when you
2 came home and found your grandmother dead?

3 **A** Yes, they do. 41

4

5 **MR. GUTIERREZ:** Your Honor, I previously have
6 shown these photographs to the Defense for their
7 inspection. I would ask that they be admitted
8 into evidence at this time.

9 **MR. CANTU:** We have some objections outside
10 the presence of the jury.

11 **THE COURT:** Ladies and gentlemen, let me
12 excuse you briefly.

13

14 (Whereupon the jury was excused and the
15 following discussion ensued.)

16

17 **MR. GUTIERREZ:** After he's through objecting,
18 I just want to insert some of these photographs
19 into evidence as indication of good faith of what
20 we're not going to use.

21 **THE COURT:** Okay. You have 35 through 54.
22 Which ones are you not going to offer?

23 **MR. GUTIERREZ:** I'm not offering these.
24 These are other pictures. I don't know which ones
25 he's going to be objecting to. The ones he's

1 going to be objecting to are right here. I wanted
2 to include those in the record, the ones I've
3 handed the Court, to be sealed for appellate
4 purposes, to show that the good faith of the State
5 in not using all this gory, offensive pictures.
6 Those pictures, I find one in particular real
7 offensive, and we're not going to use those.

8
9 THE COURT: So you are offering these to be
10 sealed?

11 MR. GUTIERREZ: Yes.

12 THE COURT: Well, you have no objection to
13 sealing these in the record?

14 MR. CANTU: No, Your Honor.

15 THE COURT: What are those numbers?

16 MR. GUTIERREZ: State Exhibit No. 10. I've
17 got three autopsy photographs which I did not use,
18 marked State Exhibit Nos. 10, 10A, 10B, and we
19 have two 8-by-10's, one marked 10D, which is a
20 shot of the Complainant with her throat ripped
21 out, taken from her feet, showing her nude and --

22 THE COURT: Well, they basically speak for
23 themselves.

24 You have no objections?

25 MR. CANTU: No.

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THE COURT: State Exhibits 10A and 10B are admitted into evidence.

MR. GUTIERREZ: Judge, I'm not offering these into evidence.

THE COURT: You want to seal them in the record?

MR. GUTIERREZ: Yes, that's correct.

THE COURT: All right, they'll be sealed in the record.

MR. GUTIERREZ: Nos. 10A, 10B, 10C and 10D.

THE COURT: Okay. Those are admitted into evidence, to be sealed and not disclosed before the jury.

What objections do you have to the remaining pictures?

MR. CANTU: We're objecting to Nos. 26 --

THE COURT: I have 35 through 54.

MR. CANTU: 35, 38.

THE COURT: You're objecting to the house?

MR. CANTU: 38, Your Honor. I can't read my writing. Some of them have been renumbered.

1 May I make my objection as I come to them?

2

3 **THE COURT:** Yes.

4 **MR. CANTU:** I object to State Exhibit 43, 44,
5 49, 50. And so the record is clear, Your Honor,
6 also to 52, which is repetitive of 53 and Exhibit
7 54, Your Honor.

8 **THE COURT:** Does the State want to respond?

9 **MR. GUTIERREZ:** Could I take a look at the
10 photographs, Your Honor?

11 Your Honor, for purposes of the record, the
12 manner in which the body is found and the physical
13 evidence is very important in this case, because
14 it goes to the aggravating circumstance, namely,
15 either the aggravated sexual assault⁴² or the
16 aggravated robbery portion. These pictures are
17 being displayed, I know, are generally from
18 different angles. State Exhibit 43 is a wider
19 shot of State Exhibit 44. Forty-four more closely
20 shows the fact that she is without clothing from
21 the waist down and is a closer shot of the
22 pants, which are in the background. The wounds
23 themselves, in fact, are not in focus but the
24 bottom part of her body is. But if the Court
25 would like for us to eliminate one, I suppose I

1 could eliminate State's 44. I'd agree to
2 withdraw that.

3 THE COURT: Okay.

4 MR. GUTIERREZ: Out of an abundance of
5 caution, if Defense has objections, I would also
6 agree to withdraw State Exhibit 54, which is a
7 close shot of the bottom of her body, and
8 leaving only for a proffer from the State of 52,
9 53, 43, 49, 50.

10 Now that I've done that, I would like to
11 ask the Defense attorney if they object.

12 MR. CANTU: We still object based on the
13 same grounds, in violation of Rules 401, 403,
14 Rules of Evidence, and that they're repetitive,
15 and they far out weigh any probative value that
16 the photographs might have.

17 THE COURT: They appear to be scenes of the
18 victim?

19 MR. GUTIERREZ: We have to prove an
20 intentional killing.

21 THE COURT: Right.

22 MR. GUTIERREZ: So the nature of the
23 wounds, the struggle, the state of undress, the
24 position of her legs, ⁴³ the lack of clothing, all
25 those, I submit, are important.

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THE COURT: I am going to allow 43, 49,
50, 52 into evidence. 44

MR. GUTIERREZ: Your Honor, the State would
simply ask the Court to make a finding at this
time that the probative value of those pictures
outweighs any prejudicial value.

THE COURT: Well, it probably speaks for
itself by ruling. I believe they're admissible.
Let's take a short five-minute recess.

MR. GUTIERREZ: Could I have the ones we
withdrew also included in the record?

THE COURT: Okay, they'll be sealed.

MR. GUTIERREZ: Thank you, Your Honor.

MR. GUTIERREZ: I'll agree to withdraw 53,
too, in that there's another one that's kind of
repetitive, and I would like to also ask that it
be sealed.

THE COURT: All right. Bring the jury in.

(Whereupon the jury was seated in the jury
box.)

THE COURT: Mr. Gutierrez, you may proceed.

MR. GUTIERREZ: Are the exhibits now in
evidence, Your Honor, the ones we mentioned?

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THE COURT: Yes, sir.

MR. GUTIERREZ: If it please the Court, I would like to ask the witness to step down from the witness stand.

THE COURT: Mr. Bengé, you may step down from the witness stand, sir.

Q (By Mr. Gutierrez) I want to walk us through in a similar fashion as we did on these other exhibits.

Now, these exhibits that we're about to show you -- I think I asked you already -- do they fairly and accurately depict the scene on the night that you found it when your grandmother passed away on October 15th, 1992?

A Yes, sir.

Q We've established that this home, 617 Westford, is in Houston, Harris County, Texas; is that correct?

A Yes, sir.

Q State's Exhibit No. 35, what does it show?

A It's the front of my house as seen at night.

Q State Exhibit No. 36?

A That's the window, the screen, that was on the side of the house.

Q And is that the one that you testified that you had hammered shut earlier that day?

1 A Yes, sir.

2 Q Why in particular did you hammer it shut?

3 A That's my bedroom and I pretty much put the screen
4 up and finished painting.

5 Q State Exhibit 37?

6 A That's the window.

7 Q Now, you testified that screen was not ajar that way;
8 is that correct?

9 A No, sir, it was not.

10 Q When you left at 4 o'clock? I'll show you State
11 Exhibit No. 38. I'll ask you, do these nighttime
12 photos show the tearing of the screen itself as
13 clearly as the daytime pictures?

14 A No, sir, it does not.

15 Q You were there, I was not. Was that screen torn?

16 A That screen was torn.

17 Q After you --

18 A After I came back.

19 Q But not before you left?

20 A No, sir.

21 Q That's State's Exhibit No. 38. State Exhibit No. 39?

22 A That's a picture of the front door. You can see the
23 address of the house.

24 Q 617. State Exhibit No. 41?

25 A That's a picture of the living room.

1 Q Now, by the way, was this home owned by your
2 grandmother, Edna Franklin?
3 A Yes, it was.
4 Q The door in State Exhibit No. 41, what does it show?
5 What door is that?
6 A That's the front door of our house.
7 Q I notice that the inside was brown and the outside
8 was white; is that correct?
9 A Yes, sir.
10 Q State Exhibit No. 42?
11 A That's a picture of the living room.
12 Q Can you begin to see in that photograph the position
13 that your grandmother was in?
14 A Yes, sir.
15 Q And would you point her out, please?
16 A She is laying directly down there at the bottom
17 right, in front of the coffee table.
18 Q State Exhibit No. 42A, what does it show?
19 A That's a picture of the couch. That's also
20 directly -- the couch is directly right here. She's
21 laying down here, directly beside the couch.
22 Q State Exhibit No. 43?
23 A That's another angle right here, walking into the
24 kitchen. This is the same couch. The other couch
25 is sitting up against the other wall.

1 Q Now, does this particular picture show that curtain
2 that you were talking about, having gone through in
3 the kitchen?
4 A Yes, sir.
5 Q And what color is it?
6 A Blue.
7 Q Would you point it out to the members of the jury?
8 A (Indicating.)
9 Q Now, but for the position that you're seeing her in
10 these photographs, I think you said you found her
11 laying face down; is that correct?
12 A She was laying, well, more towards like on her side,
13 but she was facing towards the ground.
14 Q Would you show the members of the jury very quickly,
15 if you could show us, more or less, regardless of
16 what side it was that she was on, show us the
17 position that you found her in so they'll be able
18 to --
19 A Would you like me to lay down?
20 Q Yes, sir. If you could do that right over here.
21 A Basically when I came back out to the kitchen, she
22 was laying more towards pretty much -- I can't tell
23 you pretty much where her hands are. I think they
24 were under her. She was laying more like this when
25 they found her.

1 Q You're indicating her legs were on the side?

2 A Yes, sir.

3 Q Her leg on the side, against the floor, and her

4 torso --

5 A She was like this pretty much.

6 Q So her legs were open some and her torso twisted and

7 on the floor? Okay. And that's State Exhibit 43.

8 Aside from that, this shows where you already

9 turned her over; is that correct?

10 A Yes, sir. ~~43~~

11 Q State Exhibit 43A, how does 43A complement 43?

12 A This is the kitchen itself, and when you walk into

13 the kitchen, this is the first thing you would see.

14 Q That is to say, if we were to use that bag of potato

15 chips in State Exhibit 43 -- I'm sorry, not potato

16 chips, Johnny Cat box.

17 A That's the cat box.

18 Q Cat litter. Using that as a marker, you can see

19 State Exhibit 43A is the next room you walk into; is

20 that correct?

21 A Yes, sir.

22 Q And if you walk in and turn to the left, what do you

23 see?

24 A You have the same icebox and pretty much the back

25 room into her room.

1 Q State Exhibit 45, what does that show?
2 A Those are her pants.
3 Q Did you see her wearing those pants earlier that day?
4 A Yes, sir, I did.
5 Q Now, are the pants different in State Exhibit 45 than
6 what you saw that day?
7 A Well, they've been turned inside out. You see where
8 somebody has pulled them off of her.
9 Q State Exhibit No. 46?
10 A Those are her panties.
11 Q Now, do you recognize her clothing, and if so, how
12 is that?
13 A I recognize them, because I usually did most of the
14 washing for her as well.
15 Q Those are on State Exhibit 46; is that correct?
16 A Yes, sir.
17 Q State Exhibit 47, is that your grandmother's --
18 A That's her hand.
19 Q State Exhibit No. 48, I notice that she has something
20 on her left leg. Would you tell the members of the
21 jury what it is?
22 A It's like a knee brace. She had arthritis in her
23 knees real bad. It was pretty much to help her
24 walk.
25 Q For purposes of the record, where is that knee brace

1 in terms of her body in State Exhibit 48?
2 A It's located around her ankle.
3 Q State Exhibit No. 49?
4 A That's the way I found her.
5 Q State Exhibit 50?
6 A Same thing. That's the way I found her.
7 Q No. 51, I notice that there's some skin missing from
8 her wrist area and her arm. Was it that way that
9 morning?
10 A No, it was not.
11 Q State Exhibit No. 52, does that also fairly and
12 accurately represent the way you found her?
13 A Yes, sir.
14 Q Thank you. Have a seat.
15 A (Complies.)

16
17 MR. GUTIERREZ: Your Honor, for purposes of
18 the record, it's my understanding that State
19 Exhibits 35, 36, 37, 38, 39, 40, which is a
20 picture of Ms. Franklin, 41, 42, 42A, 43, 43A,
21 45, 46, 47, 48, 49, 50, 51 and 52 are all in
22 evidence; is that correct?

23 THE COURT: I believe that is correct.

24
25 Q (By Mr. Gutierrez) Mr. Benge, I'm going to show you

1 some other photographs.

2

3 (State Exhibit Nos. 55 through 59 and 59A,
4 60 through 73 were marked for
5 identification purposes.)

6

7 **Q** (By Mr. Gutierrez) Mr. Benge, I'm going to show you
8 some photographs. I'll show you what has been marked
9 as State Exhibit Nos. 55, 56, 57, 59, 59A, 60,
10 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73,
11 and then I'll ask you whether or not these
12 photographs fairly and accurately depict the way the
13 scene was the night you arrived at your house and
14 Edna Franklin's home.

15 **A** Yes, sir.

16

17 **MR. GUTIERREZ:** I would like the record to
18 reflect that I have previously tendered these
19 pictures to Defense counsel for their inspection
20 and I would tender them again and I would ask
21 that these photographs be admitted into
22 evidence.

23 **MR. CANTU:** Your Honor, I have no
24 objections.

25 **THE COURT:** State Exhibits 55 through 73

1 are admitted into evidence.

2 MR. GUTIERREZ: I would ask leave of the
3 Court, once again, to go through these pictures
4 very quickly in front of the jury.

5 THE COURT: Okay. Mr. Bengé, you may step
6 down.

7

8 A (Complies.)

9 Q (By Mr. Gutierrez) I would ask you, if you don't
10 mind, Mr. Bengé, to please hold up State Exhibit No.
11 1, and as I show you these photographs, explain to
12 the members of the jury the perspective or the point
13 of view that they're taken from and what room and
14 what relevance they have in the case.

15 State Exhibit No. 55?

16 A That was my bedroom, front bedroom right here, this
17 window right here that you see in the picture.

18 Q Now, is there anything particular about the bed?

19

20 MR. FOSHER: Could you stand more to the
21 side?

22 MR. GUTIERREZ: Yes.

23

24 A Yes. You can see where he climbed through the
25 window. The bed was directly in front of the

1 window. It looks like there are two footprints on
2 the bed where he climbed in.

3 Q (By Mr. Gutierrez) Would you please tell us --
4 there are no markings on this photograph at this
5 time, State Exhibit 55; is that correct?

6 A That's correct.

7 Q Would you please mark the indentations you're
8 referring to with a big circle, if that pen will
9 mark.

10 A (Complies.)

11 Q And I need you to put your initials and today's
12 date, which is June 6, 1994.

13 A Initials?

14 Q In the white part.

15 A (Complies.) You said June 6th?

16 Q June 6, 1994, yes, sir.

17 Now, would you point these indentations out to
18 the members of the jury? Specifically, what is it
19 you're talking about when you talk about what you
20 circled?

21 A It looks like a footprint, somebody stepped in on the
22 bed.

23 Q Now, that window was not nailed shut; is that
24 correct?

25 A Yes, sir.

1 Q Were you aware indirectly that your grandmother had
2 told the Defendant she didn't want him around?
3 A Yes, sir.
4 Q Did that have anything to do with your nailing the
5 window?
6 A It really did not.
7 Q When had they stopped painting the house?
8 A A couple days before the incident.
9 Q I'll show you what has been marked as -- by the way,
10 those indentations, the movements or the crumpling of
11 the sheet, if you will, which is really what it is,
12 is it not?
13 A Yes, sir.
14 Q Were they that way before you left at 4 o'clock?
15 A No, sir.
16 Q Now, you're not telling the members of the jury that
17 you're an excellent housekeeper?
18 A No, sir, by far.
19 Q It was not that way?
20 A No, it was not.
21 Q State Exhibit No. 56?
22 A That is a picture of the same bedroom.
23 Q And 57?
24 A Once again, it's the same picture of the same
25 bedroom. It's the same window.

1 Q Are those what you would call venetian blinds, or
2 what kind of blinds are those?
3 A I'm really not sure what they're called.
4 Q Were they that way, lopsided, before you left that
5 day?
6 A No, sir.
7 Q State Exhibit No. 58, that's just another --
8 A Another view of the room.
9 Q State Exhibit No. 59?
10 A That's another view of the same bedroom.
11 Q As you look at it here, using the telephone as a
12 marker or telephone book as a marker, the window
13 would be to the left of that marker, of that
14 telephone book; is that correct?
15 A Yes, sir.
16 Q Now, State Exhibit No. 59A, is this the same room or
17 separate room?
18 A That's a separate room.
19 Q Now, would you explain to the members of the jury
20 what items are in the rest room that belong to your
21 grandmother or that were aid to your grandmother?
22 A She had a special kind of seat that you put on the
23 toilet itself. You can see the bars there that she
24 used to pick herself up to get up. This also made
25 the toilet itself a little bit taller so it was

1 easier for her to get off. She had also had a
2 certain bench in there, right here, where she would
3 sit inside the bathtub itself so she could sit on it
4 as well.

5 Q The bench that you're talking about, would you draw
6 an arrow to it?

7 A (Complies.)

8 Q And your grandmother's inability to get around, her
9 frailty, was that a big secret?

10 A No, it was not.

11 Q Did Charles Raby, did he know? Was he aware of her
12 frailty and her inability to get around?

13 A Yes, he was. 46

14 Q State Exhibit No. 60, would you use Exhibit No. 1
15 and show the members of the jury what we see here?

16 A This is the kitchen of the house itself. It's
17 located right here.

18 Q What perspective is this taken from?

19 A This is taken from the point of view as your coming
20 through here and you're looking down this way,
21 towards the bedroom, the far bedroom of the back den.

22 Q So as you look at the refrigerator, you've just
23 passed the point where your grandmother's body was
24 found and to the left --

25 A Correct.

1 Q -- is her bedroom?
2 A Yes, sir.
3 Q State Exhibit No. 61?
4 A That is a picture of the same kitchen. You can see
5 her bedroom door a little bit better in this picture.
6 Q Now, you testified earlier that that door was open
7 when you walked in; is that correct?
8 A Yes, sir.
9 Q It is closed now; is that correct?
10 A Yes, sir.
11 Q Do you know who closed it before the police arrived?
12 A I'm not sure. I'm not sure, but I think they might
13 have been the ones that closed it themselves so they
14 could take a picture of it.
15 Q The door that is just closed, is that in State
16 Exhibit No. 62?
17 A The door that was just closed? This is the doorway
18 itself right here.
19 Q On the left side of State's Exhibit No. 62; is that
20 correct?
21 A Yes, sir.
22 Q And what we are about to see in terms of
23 photographs, are they what constitute a panoramic
24 shot, so to speak, of your grandmother's bedroom?
25 A Yes, sir.

1 Q So we see on the left side -- do we see the place
2 where she had her clothes, where you see the drawers
3 had been opened?

4 A Yes, sir. It's off in the back right here, behind
5 the bed.

6 Q Now, those drawers are open or closed right now?

7 A They are closed. You can see -- if you look real
8 close, they're still open just a little bit. I
9 closed them myself.

10 Q That's before you found your grandmother?

11 A That's before I found her, correct.

12 Q State Exhibit No. 63?

13 A That is her bed, the back part of her bed, and the
14 same dresser.

15 Q State Exhibit No. 64?

16 A That is her bed.

17 Q State Exhibit No. 65?

18 A That is another picture of her room. It just
19 describes a little bit more of what's in there.

20 Q No. 66?

21 A I can't see 66. That is another picture of her room
22 from one end of it to the other end.

23 Q And No. 67?

24 A That's a picture of the same room. Mantel of the
25 fireplace.

1 Q 68?

2 A That is a picture of her bed as well, and the table
3 is beside it.

4 Q Now, do you see in here her slippers?

5 A Yes, sir, I do.

6 Q Would you tell the members of the jury what her
7 custom was in terms of walking around with or without
8 shoes?

9 A She walked with her shoes. She could not walk
10 without them.

11 Q State Exhibit No. 62, what is in there?

12 A Her belongings, her purse. You can also see one of
13 her shoes right here as well.

14 Q Now, in terms of items, credit cards, purse that you
15 testified to, where credit cards were normally kept
16 along with bills and the checkbook, is that the purse
17 you're talking about?

18 A No, sir, that is not -- that is one of her purses
19 that she kept some stuff in. The one I found laying
20 upside down is a different purse entirely.

21 Q Okay. State Exhibit No. 70?

22 A That's her credit cards laying on the floor.

23 Q 71?

24 A That's a picture of her bed. You can see here how
25 she has some of her stuff that she had laying up

1 here. This is pretty much the stuff that I threw
2 back on top of the bed.

3 Q Where did you find these items?

4 A All over the floor.

5 Q On which side of the bed?

6 A These papers were pretty much -- these papers right
7 here, what you see right here and the credit cards,
8 I found pretty much behind the bed right here.

9 Q 72?

10 A No. 72, that's pretty much -- it's pretty much the
11 same thing: her bed, her cards, stamps and
12 everything.

13 Q And 73?

14 A That's her bed as well. Just more of her stuff upon
15 it.

16 Q Okay. You can have a seat.

17 A (Complies.)

18 Q Could you tell the members of the jury whether or
19 not it appeared from what you saw whether or not
20 someone had gone through it and ransacked?

21 A Yes, sir, it did.

22 Q Did you yourself at any point conduct any kind of
23 inventory of your own items to see if anything was
24 missing?

25 A Yes, I did. I went back into my room to see if any

1 of my stuff had been taken, trying to figure out if
2 I might be able to figure out who did it.

3 Q Did you discover any one particular item that was
4 missing that belonged to you?

5 A Yes. It was my ID.

6 Q What kind of ID was that?

7 A Texas Driver's License.

8 Q Now, I have shown you an item that's in a box that
9 we have not introduced into evidence. Was that the
10 ID we're talking about or a different one?

11 A That was a different one.

12 Q At some point the police asked you if you thought it
13 might have been someone that knew you; is that
14 correct?

15 A That's correct.

16 Q You decided to try something to find out whether or
17 not the person -- who the person might be, and would
18 you tell the members of the jury specifically what it
19 was you were looking for when you went back into the
20 house?

21 A Well, basically I smoke marijuana and everybody that,
22 you know, knows me, knows that. All my friends that
23 are around me know that and they also knew where I
24 kept it.

25 Q And how much marijuana are we talking about that you

1 had?

2 A It might have been a \$20 bag.

3 Q How much is that in terms of --

4 A Maybe 7 ounces -- 7 grams.

5 Q Did you know which of your friends did not know
6 where that marijuana was?

7 A Yeah, I had a good idea. It was just one at the
8 time.

9 Q And who was that?

10 A Mr. Raby. 47

11 Q That did not know where that marijuana was?

12 A He did not know.

13 Q Did you find that marijuana in your home?

14 A Yes, I did.

15 Q And did the police see it?

16 A Yes, they did.

17 Q And you were not arrested for that; is that correct?

18 A No, sir. 48 ~~47 123~~

19

20 (State Exhibit Nos. 76, 77 78, and 79

21 were previously marked for identification

22 purposes.)

23

24 Q I previously have shown you some clothing that I have
25 taken out of a box marked State Exhibit No. 76, out

1 of a bag marked State Exhibit No. 77 that is in 76,
2 and I'll show you this item marked State Exhibit No.
3 78 and I'll ask you to tell the members of the jury
4 if you recognize this particular item.

5 A Yes, I do.

6 Q And what is it?

7 A It's my grandmother's pants.

8 Q And how do you know it is?

9 A Like I said, I did the laundry there quite often and
10 I know.

11 Q I'll show you a bag that's come out of the same box
12 that I retrieved the pants from and I'll show you a
13 bag that's marked State Exhibit No. 79 and I'll ask
14 you whether or not you recognize the contents of
15 State Exhibit 79.

16 A Yes, I do.

17 Q And what are they?

18 A My grandmother's panties.

19 Q And how do you know that?

20 A Pretty much the same way.

21 Q And what is that?

22 A I do the laundry around the house, so I've washed
23 them many times.

24 Q So is State Exhibit No. 78 the same pair of pants
25 that we have seen in the crime scene photograph the

1 jury has seen and the pictures that are already in
2 evidence?

3 A Yes, they are.

4 Q State Exhibit No. 79, or at least the contents of
5 79, the panties, are they the same panties seen in
6 the photographs where your grandmother is lying?

7 A Yes, they are.

8 Q And in the crime scene photos we've been talking
9 about; is that correct?

10 A Yes, they are.

11

12 MR. GUTIERREZ: I would like the record to
13 reflect I have previously tendered some of these
14 to the Defense counsel for their inspection and
15 I would respectfully ask that State Exhibits 78
16 and 79 be admitted into evidence, 79 being the
17 bag and its contents. I would also like to
18 offer the swabs and all the items -- fingernail
19 scrapings, the swabs previously testified to by
20 the medical examiner. I would like to offer
21 them at this time.

22 MR. CANTU: No objection, Your Honor, to
23 the swabs. We haven't seen the pants nor have
24 we seen these undergarments. If we could just
25 look at them for just a second.

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MR. GUTIERREZ: Any objection to the fingernail scrapings?

MR. CANTU: No objections.

THE COURT: Are these numbers 78 and 79?

MR. GUTIERREZ: The State would like to offer -- unless the Defense has any objection to hearsay on any of these bags, I would be happy to withdraw the exhibits upon the Defense's objection, but at this time I would like to offer State Exhibit No. 84, which is a plastic bag with the hair from the Complainant's -- excuse me, State Exhibit No. 85, 86, 87, 88, 89, 90, 91, 92, 93 and 94, those items being 85, being a HPD plastic bag with swabs; 86 being an another plastic bag with swabs; 87 being the oral swab; 88 being the vaginal swab; 89 being the rectal swab; No. 90 being the bag containing the fingernail scrapings and hair; No. 91 being head hair; No. 92 being pubic hair; No. 93 being loose hair and fibers; and 94 being the bag with the containers of the fingernails, all of these items being of the Complainant, Edna Franklin, along with the pants just offered and the bag containing the panties.

THE COURT: Any objections?

1 MR. CANTU: We have no objections other
2 than the hearsay bags, Your Honor, these bags
3 here. We have no objections to the garments
4 themselves or these bags.

5 THE COURT: Okay. Those exhibits named are
6 admitted into evidence, subject to erasing or
7 removing any hearsay that may be on them.

8 MR. GUTIERREZ: For purposes of the record,
9 if there is any objection to the hearsay,
10 perhaps we can, without erasing the hearsay,
11 perhaps remove the items or offer the contents
12 only, but we can work that out, I'm sure.

13 THE COURT: Okay.

14 MR. GUTIERREZ: May we have a moment, Your
15 Honor?

16 THE COURT: Okay.

17

18 Q (By Mr. Gutierrez) When you picked up the phone
19 after you had moved your grandmother over, Mr. Bengé,
20 did your hands have any blood on them?

21 A Yes, sir, they did.

22 Q And when you got on the phone, do you know whether
23 or not you got any blood on the phone?

24 A I'm pretty sure I did.

25 Q Now, the window itself, was the window open or was

1 it closed after you came back at 10 o'clock?

2 A The window was closed.

3

4 MR. GUTIERREZ: I'll pass the witness, Your
5 Honor.

6 THE COURT: Mr. Cantu.

7 MR. CANTU: Thank you, Your Honor

8

9 CROSS EXAMINATION BY MR. CANTU

10

11 Q You have known Mr. Raby since, I think you said,
12 1989. You were both youngsters, attending school in
13 the neighborhood?

14 A No, sir, I never went to school with Mr. Raby.

15 Q You all just met in the neighborhood?

16 A Yes, sir.

17 Q A bunch of you all hung out together, you and Mr.
18 Raby and your cousin Lee Rose?

19 A Yes, sir.

20 Q Along with a fellow by the name of Crawdad?

21 A Yes, sir.

22 Q Anybody else in that group?

23 A There was several others.

24 Q Do you recall their names?

25 A You had James Jordan, you had John Phillips, and

1 there was probably one or two more that aren't coming
2 to mind at the moment.

3 **Q** And all those guys from '89 on would come to your
4 home? Your home is one of those homes that you all
5 attended or went to, gathered?

6 **A** We did gather at my home quite a few times, yes,
7 sir.

8 **Q** And you were smoking marijuana during that period of
9 time, '89?

10 **A** Yes, sir.

11 **Q** So it would be fair to say you all used to hang out
12 in your bedroom or in your home, your grandmother's
13 home, rather, and smoke marijuana with your friends?

14 **A** Well, we have smoked it inside the house before, yes,
15 sir, but it was not permitted to be done there.

16 **Q** I'm not implying that your grandmother was permitting
17 it, but I'm asking whether you were doing it along
18 with your friends.

19 **A** Yes, sir.

20 **Q** And did Lee Rose, your cousin, did he attend school
21 with Charles Raby or some of the other fellows?

22 **A** He did not attend with Charles Raby, no, sir.

23 **Q** And you had a job on that day? You were supposed
24 to, as I recall, go to work around 4:00 p.m. You
25 did a lot of other things around your home, a lot of

1 errands. Do you recall leaving your home around 4:00
2 p.m., going to work; is that a correct statement?
3 A Correct.
4 Q Do you recall whether your grandmother was awake or
5 not on that particular afternoon?
6 A She was awake.
7 Q Do you recall whether she was in her bedroom or
8 outside of her bedroom?
9 A She was in her bedroom.
10 Q Do you recall whether you went to her bedroom to let
11 her know that you were leaving the home on that day?
12 A Yes, sir, I did.
13 Q And do you recall what you said or did to let her
14 know this?
15 A Yes, I do.
16 Q What did you say to her?
17 A I asked her if she could get up and lock the door,
18 because we were leaving. I told her I was going to
19 work and I was dropping Lee off at the store.
20 Q And do you recall her getting up at all at that
21 point in time?
22 A Yes, sir. She was getting up when I left.
23 Q Was she ahead of you or behind you as you left?
24 A She was behind me.
25 Q Did you leave the door before she got to the front

1 door?

2 A I'd walked outside before she reached the front door,
3 yes, sir. ⁴⁴

4 Q Do you recall the manner of dress that she had or
5 was in at that point in time?

6 A Yes, I do.

7 Q Do you recall what it was?

8 A She had on a blouse with like purplish flowers on it
9 and she had the same blue pants on.

10 Q Do you recall looking at some of those photos of
11 your grandmother and you noticed there was a blue-
12 type garment, looked like -- would you describe that
13 as being sort of a nightgown or a day-dress?

14 A Which garment are you talking about?

15 Q Well, those photos that we have looked at on numerous
16 occasions.

17

18 MR. CANTU: May I approach the witness,
19 Your Honor?

20 THE COURT: Yes.

21

22 Q (By Mr. Cantu) But in particular, this item. Would
23 you describe that as a day-dress or a nightgown?

24 A It was neither one, sir. It was just a regular old
25 like T-shirt that she would put on, a blouse.

1 Q But we're looking at State Exhibit 52. You describe
2 that as a blouse or an outer garment?
3 A Yes, sir.
4 Q You had indicated earlier that your grandmother had
5 taken a disliking to Charles sometime prior to this
6 afternoon, but it's true, in fact, Charles kept
7 coming to your home even after that? ~~no~~
8 A She had made it known that she didn't want him
9 there, and he didn't come back until this incident, I
10 don't think.
11 Q Had your cousin Lee, had Lee ever invited him over
12 while you weren't there, or did you find that out
13 later?
14 A You mean the incident?
15 Q Prior to the incident, had Lee, Lee Rose, your
16 cousin, had he ever brought Charles Raby over to your
17 home?
18 A Yes, sir. 50
19 Q Without your knowledge?
20 A Yes, sir.
21 Q Let me take you back to this day. You left at 4:00.
22 You left out the front door. Did you get in your
23 car? Did you leave in a car?
24 A Yes, I did.
25 Q Do you recall anything -- do you recall whether you

1 went to the back door of this house, your house?

2 **A** Yes, I did.

3 **Q** Do you recall whether you went to the side of the

4 house?

5 **A** I went to the side of the house right before I came

6 home from work that morning. I went around to the

7 side of the house and put the screen on the side of

8 the house.

9 **Q** What time of day was this?

10 **A** This was approximately about 11:30.

11 **Q** Do you recall why the screen had been taken off the

12 side of the house?

13 **A** Yes, sir. I just had my house painted.

14 **Q** And who was it that had painted the house?

15 **A** A man. I can't remember his name. For the life of

16 me I can't remember his name.

17 **Q** Was it, in fact, one of your buddies, one of your

18 friends, that painted it along with you?

19 **A** I had not painted it myself, no, sir, but it was one

20 of my friends.

21 **Q** And he had painted the windows?

22 **A** Oh, I do know his name. His name was Edward Banks.

23 **Q** And he had painted the windows?

24 **A** He had painted the entire house.

25 **Q** And do you recall whether you had nailed shut the

1 actual pane windows?

2 A I did not nail the pane windows shut, no.

3 Q Had they ever been nailed shut?

4 A They had been nailed shut before, yes.

5 Q Were they nailed shut on this particular day?

6 A Not that particular window, no, sir.

7 Q Were the other windows nailed shut?

8 A There are a few of them that are still nailed shut,
9 yes, sir.

10 Q Do you recall the last time that you or your friends
11 had entered your home through your bedroom window?

12 A I do recall the last time I did it, yes, sir.

13 Q When was the last time you did it?

14 A About three days ago.

15 Q But prior to this incident -- let's just talk about
16 this incident -- prior to this incident, when was the
17 last time that you or your friends had entered your
18 home through your window?

19 A I can't remember that.

20 Q It was a common practice for you or your friends to
21 go through -- get into your home through your bedroom
22 window, was it not?

23 A No, sir.

24 Q Was it common practice for Lee Rose to enter your
25 home or his room through the bedroom window?

1 **A** He has done it on several occasions if he came in
2 real late or something and didn't have his key.

3 **Q** You were talking about some things you saw in your
4 bedroom, photos that were presented earlier, and
5 there was mention about a footprint, and I forget
6 which exhibit.

7

8 **MR. CANTU:** May I approach the witness,
9 Your Honor?

10 **THE COURT:** Yes.

11

12 **Q** (By Mr. Cantu) They were all in reference to your
13 bedroom, of course. Here it is, State Exhibit 55.
14 State Exhibit 55, you're able to decipher, I think
15 your testimony is, two footprints on the sheets?

16 **A** Yes, sir.

17 **Q** Did you bring this to the attention of the police
18 officers?

19 **A** Yes, sir.

20 **Q** And were they able or did they do any investigation
21 on the sheets or take any evidence from the sheets?

22 **A** I thought they did, yes, sir.

23 **Q** And you found the window shade cover, covering this
24 bedroom window, State Exhibit 55, the same as it is
25 here presently?

1 A Yes, sir.

2 Q And you also found the window itself closed. Did
3 you test the window to see whether the window could
4 be opened on this day?

5 A No, sir, I did not.

6 Q Do you recall whether the police officers attempted
7 to take fingerprints from the window or from your
8 bed?

9 A Yes, sir.

10 Q And did they?

11 A They did attempt to take fingerprints, yes, sir.

12 Q Do you recall -- you testified that you had lost
13 your Texas Driver's License, right?

14 A Yes, sir.

15 Q But the real question is, do you know or do you
16 recall whether anything of your grandmother's was
17 missing?

18 A She had -- her stuff was strewn so much, I couldn't
19 tell if there was anything missing or not.

20 Q Well, you have had an opportunity to speak with the
21 credit card companies in reference to the credit
22 cards that you mentioned to this jury and you have
23 had ample time -- it's been two years at least -- to
24 determine whether credit cards or there had been
25 charges, unauthorized charges, on any credit cards

1 that might have belonged to your grandmother.

2 **A** As far as we knew, nothing had been taken.

3 **Q** Did you have any idea or did you know how much money

4 your grandmother had on this particular day?

5 **A** No, I did not.

6 **Q** If she had any?

7 **A** I knew she had some money, yes, sir.

8 **Q** I'm looking at State Exhibits 62, 63, 64. They all

9 seem to be glossy pictures, 8-by-10, of the bed that

10 you described that belonged to your grandmother, and

11 behind it and to the side, over a fireplace, in

12 State Exhibit 62, there's a number of items laid on

13 top of each other.

14 Is this the normal course or the normal manner

15 in which your grandmother kept her items?

16 **A** Pretty much, yes, sir. She didn't believe in

17 throwing anything away.

18 **Q** And she looks like she kept most of her things on

19 her dresser and on the mantle place of the fireplace.

20 **A** She kept quite a bit of it. All the important stuff

21 she would keep on her bed.

22 **Q** And also you testified to a chest of drawers. Is

23 this the one you're talking about in State Exhibit

24 63?

25 **A** Yeah. There were two dresser drawers that were left

1 open.

2 Q They seem to be tilted a little bit back on State
3 Exhibit 63. Do you see that? The bottom part seems
4 to be.

5 A That's just the way they're made.

6 Q You're saying to the jury that the top drawers kind
7 of lean back a little bit, the bottom of them
8 leaning back, causing the front to stick out a little
9 bit?

10 A The bottom stuck out just a little bit. They're in
11 like an incline, like a tilt. They're pushed in
12 like this (indicating.)

13 Q But the other drawers were not? That's just a
14 design --

15 A Those are not pushed in all the way, no, sir.

16 Q Well, isn't it in fact that they're pushed in all
17 the way from the top?

18 A No, sir. They go in a lot further. I just push them
19 in and lift. When they're completely in, you cannot
20 see any of it.

21 Q Well, you walked in the house that day, about 10:00
22 p.m. You walked to the front door. The front door
23 had been closed, had it not?

24 A No, sir, the front door was open.

25 Q You mean it was unlocked or that it was in fact open?

1 A The front door was unlocked and open.

2 Q Let's see if I can find a picture of that front
3 door. That front door had some locking mechanism,
4 did it not?

5 A Yes, sir.

6 Q Double lock?

7 A It was a dead bolt and then there's a lock on the
8 door handle as well.

9 Q Okay. State Exhibit 39, the front of your home,
10 closeup of the door and the screen door is pulled
11 back to show the door. The double lock or double-
12 bolt lock, is that one that's painted white?

13 A Yes, the dead bolt, and there's another lock on the
14 handle itself.

15 Q When they painted, they painted over the lock itself,
16 right?

17 A Yes, sir.

18 Q The inside of the door on State Exhibit 41, the dead
19 bolt could be locked with a twist of a wrist, could
20 it not?

21 A Yes, sir.

22 Q And do you recall how to lock the knob itself?

23 A The knob itself did not lock. You could lock it,
24 but it wouldn't work for some reason. The lock
25 itself would not work on the handle.

1 Q Okay. It just wasn't working, but it does have a
2 locking mechanism?

3 A Yes, sir.

4 Q But on this day the only thing that locked was a
5 dead-bolt lock that locked the door?

6 A Yes, sir.

7 Q And when you walked in on this date, you walked
8 through this door and this door was unlocked?

9 A You mean that evening when I got home?

10 Q Yes. You said it was unlocked and open.

11 A The door was open, yes, sir.

12 Q And unlocked?

13 A Yes, sir. It had been unlocked.

14 Q As you enter the house, in finding your grandmother
15 in that darkened house on this night, what seems to
16 be the key as to how you found her, you testified
17 that you found her partially on her stomach, on her
18 side. The doctor, medical examiner, indicated
19 earlier that would be the lateral or the side of her
20 body. You indicated that she was laying on her
21 right side.

22 A Yes, sir.

23 Q By you demonstrating it, that's what I understood,
24 that she was laying on her right side with her face
25 down to the floor?

1 **A** Yes, sir.

2 **Q** With one arm, her left arm, I believe you indicated,
3 was kind of swung over and to her front rather than
4 pulled back. It was pulled forward, was it not?

5 **A** Yes, sir.

6 **Q** And the palm of her hand was, if you recall, was
7 that laying on the floor?

8 **A** I don't recall, sir.

9 **Q** But you do recall that her feet, her legs were in a
10 spread eagle position?

11 **A** Yes, sir.

12 **Q** And her feet, as you indicated by your demonstration,
13 were pointed down, in other words, her toes were
14 touching the floor?

15 **A** I couldn't tell you that for sure.

16 **Q** Well, you don't need to tell us, because you
17 demonstrated.

18

19 **MR. CANTU:** May I demonstrate, Your Honor,
20 please?

21 **THE COURT:** Yes.

22

23 **Q** I'm going to get on the floor. I think what you
24 indicated was her feet were spread eagle, were they
25 not?

1 A Yes, just like that.

2 Q You indicated you don't recall the right arm, the
3 position of the right arm?

4 A I don't recall that.

5 Q It could be anywhere. But that's not the important
6 issue. The issue is that her left arm was in the
7 forward position, right?

8 A Yes, sir.

9 Q And her body was laying down, face down?

10 A Just exactly like that. Pretty much like that.

11 Q So her feet must have been in this position if
12 they're spread eagle, right?

13 A Yes, sir.

14 Q They wouldn't have been heel first, in other words,
15 with her heels on the floor but her toes on the
16 floor?

17 A Yes, sir.

18 Q Or to be more correctly, her toes or side of her
19 feet but not her heels, right?

20 A Yes, sir.

21 Q Because you said that you turned her over?

22 A Yes, sir.

23 Q You recall that. And you called the police, along
24 with your cousin Lee, did you not?

25 A No, sir.

1 Q Did Lee call the police?

2 A We pretty much both did. We were both in there at
3 the same time.

4 Q And you demonstrated that your emotional state at
5 that time, was, to say the least, very anxious, and
6 to be more correct, probably in a feeling of shock?

7 A Yes, sir.

8 Q And a feeling of disbelief. You indicated that you
9 thought it was just a rag on the floor. You said
10 that you thought Lee had thrown or left his laundry
11 on the floor?

12 A Yes, sir.

13 Q One incident, and it might have been before or after,
14 and I'm not sure, and you can correct me on this,
15 but you went to the back of the house and you
16 noticed that the back door was also unlocked?

17 A Yes, sir.

18 Q And open?

19 A Yes, sir.

20 Q You indicated that you had in this house at least
21 three dogs: a chow, a poodle, and I forget -- a
22 labrador?

23 A Yes, sir.

24 Q You indicated when you got there, the -- let me
25 strike that. One of the dogs was an inside dog, a

1 dog that always stayed in the house?

2 A Yes, sir.

3 Q One was a dog that stayed in the house some of the
4 times and some of the times he stayed out?

5 A Yes, sir.

6 Q And then there was another dog that stayed outside
7 all the time?

8 A Yes, sir.

9 Q Now, the dog that stayed out all the time, I would
10 venture to say, stayed in the back yard? You
11 indicated that was the only fenced portion.

12 A She stayed in the back yard all the time, yes, sir.

13 Q And you indicated that when you got there, all the
14 animals were in the front yard?

15 A Yes, sir.

16 Q Do you recall anything about the cats that lived in
17 the house?

18 A I had one cat, sir.

19 Q And do you recall where that cat was?

20 A No, I cannot.

21 Q Do you recall the position of the door, the back
22 door, when you got there?

23 A Do I recall how far open it was?

24 Q If open, yes, sir.

25 A Yes, sir.

1 Q How open was it?

2 A I'd say it was open approximately about a quarter of
3 the way. *IN POLICE REPORT HE ONLY SAID IT WAS*
4 *unlocked*.

4 Q Quarter of the way?

5 A Quarter of the way being open from being closed.

6 Q Well, let's just take it -- well, for more graphic
7 sense, could a dog have entered or exited through
8 that front door the way it was open?

9 A Yes, sir.

10 Q And was that a free-swinging door, in other words,
11 did it swing fairly easily?

12 A No, sir, it did not.

13 Q If that door was open, then the door would have
14 stayed open at that position?

15 A Yes, it would.

16 Q And could a dog have opened it further?

17 A Could a dog open it further than what it was?

18 Q Yes, sir.

19 A Well, I guess they could have, yes, sir.

20 Q Okay.

21 A But they would have had to push that door pretty
22 hard, because that door was that square. It would
23 not open. You had to pull on the door to get it
24 open.

25 Q But when you left that dog, you had two dogs outside

1 and one inside?

2 **A** Yes, sir.

3 **Q** The obvious is when you arrived, you had all three

4 dogs in the front?

5 **A** Yes, sir.

6 **Q** When you got to your grandmother's bedroom, you

7 found, as you described it, you found many of the

8 objects, many of her personal objects, on the floor?

9 **A** Yes, sir, I did.

10 **Q** Those objects that you found on the floor, you put

11 on her bed?

12 **A** Most of them I did, yes, sir.

13 **Q** Those objects that you put on her bed, are those

14 objects that can be found in the photographs, State

15 Exhibit 71, 72 and 73?

16 **A** Can I see them, please?

17 **Q** Sure you can.

18 **A** Yes, this is pretty much all the stuff that I picked

19 up that's there: her checkbook, all of her paperwork,

20 her inhaler.

21 **Q** Did she spend most of her time, your grandmother,

22 that is, in this bed?

23 **A** Yes, she did.

24 **Q** Did she spend most of her time in her bedroom?

25 **A** Yes, she did.

1 Q And I have got an exhibit here, State Exhibit 70, a
2 photograph of a Montgomery Ward credit card. Do you
3 recall that credit card being on the floor?
4 A Yes, I do.
5 Q This credit card belonged to your grandmother?
6 A Yes, it did.
7 Q It's got her name on it. State Exhibit No. 69 is a
8 photograph of a purse, and that purse would be your
9 grandmother's?
10 A Yes, it was.
11 Q A photograph of some slippers. Do those slippers
12 belong to your grandmother?
13 A Yes, they do.
14 Q Did your grandmother have any other ailments other
15 than what we've spoken about? And I think you said
16 it was arthritis.
17 A She had arthritis real bad. She had an arch to her
18 foot, too. That's why she wore the shoes, the kind
19 of shoes she wore. It hurt her real bad to walk
20 without them. In my opinion, I never seen her walk
21 without her shoes.
22 Q Okay. But in your opinion, these are not prescribed
23 medically, medically prescribed shoes, are they?
24 A No, they are not.
25 Q These pretty much look like normal everyday slippers?

1 **A** Yes, sir.

2 **Q** Nothing unique about the shoes?

3 **A** No, sir.

4 **Q** And State Exhibit 68, one shoe seems to be under the
5 bed and the other shoe seems to be out, outside of
6 the bed. Would you agree with that?

7 **A** Yes, sir.

8 **Q** The entrance that you speculated that someone entered
9 into a window, your window, you told this jury that
10 window, when you left, it was closed and when you
11 arrived, it was closed on this day, was it not?

12 **A** Yes, sir.

13 **Q** And you do recall that that window and that house
14 had been recently painted?

15 **A** Yes, sir.

16 **Q** And that frame, the frame of the window itself, was
17 recently painted, was it not?

18 **A** Yes, sir, but the window had been up since the house
19 had been painted.

20 **Q** But let's talk about that day, though. Okay? But
21 on this day that window was down?

22 **A** Yes, sir.

23 **Q** State Exhibit 55 doesn't indicate that that window is
24 open or has been opened. You have no evidence of
25 that from that photograph, do you?

1 A No, sir.

2 Q What struck me was like in State Exhibit 18, which
3 is a closeup of a screen, I believe, and 19. Again,
4 so it's clear, this is the window that you have been
5 referring to?

6 A Yes, sir.

7 Q This is your bedroom window?

8 A Yes, sir.

9 Q This is a screen that had been nailed shut?

10 A Yes, sir.

11 Q This is a screen that you had personally nailed?

12 A Yes, sir.

13 Q And when do you recall these photographs being taken?

14 A Latter part of March.

15 Q What year?

16 A Of this year, sir.

17 Q '94?

18 A Yes, sir.

19 Q And there's a photograph of a screwdriver inside. Do
20 you recall that photograph?

21 A I recall the photograph, yes, sir.

22 Q It's an 8-by-10 glossy. I believe it's been admitted
23 into evidence. The photo depicts a screwdriver on
24 the other side of the screen, on the ledge of the
25 window. That photograph was also taken this year, in

1 March; is that a correct statement?

2 **A** I do not believe it has been.

3 **Q** Let me find it for a second.

4

5 **MR. GUTIERREZ:** Your Honor, may I approach
6 the bench?

7 **THE COURT:** Ladies and gentlemen, we're
8 going to take a five-minute recess.

9

10 (A recess.)

11

12 (Whereupon the jury was seated in the jury
13 box.)

14 **THE COURT:** Mr. Cantu, you may proceed.

15 **MR. CANTU:** Thank you, Your Honor.

16

17 **Q** Mr. Benge, you were talking about the window, and you
18 indicated earlier the house had just been painted by
19 a friend of yours, painted white, obviously, from the
20 photographs we have here, and the windows were also
21 painted?

22 **A** Yes, sir.

23 **Q** Including the screens?

24 **A** No, sir, the screens had not been painted.

25 **Q** The frames?

1 **A** Yes, the frames in the windows had, yes, sir.
2
3 **MR. CANTU:** If I may approach the witness,
4 Your Honor?
5 **THE COURT:** Okay.
6
7 **Q** Now, you indicated that you had nailed the screens
8 down yourself?
9 **A** Yes, sir.
10 **Q** Some time after your friend had painted the house for
11 you?
12 **A** Yes, sir.
13 **Q** Would you indicate on this exhibit, State Exhibit 37,
14 whether you nailed the screen approximately where the
15 nails were placed?
16 **A** The nails are in the end of the screens.
17 **Q** The bottom?
18 **A** Yes, sir.
19 **Q** As in State Exhibit No. 36?
20 **A** They're in the bottoms.
21 **Q** From this picture, could the jury see those nails?
22 **A** It doesn't look like they could, no, sir.
23 **Q** State Exhibit No. 37 is a photo, again, of the
24 screen. It shows the railing of the window slopes
25 down to the outside of the exterior of the house

1 that's freshly painted, is it not?

2 A Yes, sir.

3 Q Painted white, is it not?

4 A Yes, sir.

5 Q And it shows, there seems to be, a screwdriver? 51

6 A Yes, sir.

7 Q Did that screwdriver belong to you?

8 A Yes, sir.

9 Q When did you put that screwdriver there?

10 A The screwdriver was on the inside.

11 Q I understand that. We can see that it's on the

12 inside. But the question is, when did you place

13 that screwdriver there?

14 A I don't exactly understand what you're saying.

15 Q When was that screwdriver placed there?

16 A Where it is located right now?

17 Q Yes.

18 A I did not place it there, no, sir.

19 Q This screwdriver belongs to you?

20 A Yes, sir.

21 Q But it was not placed there by you?

22 A No, sir. It was on the inside of the window.

23 Q It wasn't placed there by you?

24 A No, sir.

25 Q Did your friend who painted the house, did he have

1 access to your tools?

2 A Yes, sir.

3 Q State Exhibit 58, which is a photo of the interior,
4 the inside of your home, the inside of your bedroom?

5 A Yes, sir.

6 Q And the majority of the photo is a picture of your
7 bed?

8 A Yes, sir.

9 Q It's a waterbed, is it not?

10 A No, sir.

11 Q Is it a box spring?

12 A It's a waterbed frame with just a regular mattress in
13 it.

14 Q What size mattress is it?

15 A It's a super single.

16 Q What's the width of a super single?

17 A I couldn't tell you.

18 Q This box spring, this mattress, it is not larger than
19 a standard mattress, is it?

20 A Yes, it is.

21 Q It's larger than a standard mattress? Is it larger
22 than a queen-sized mattress?

23 A No, it's not.

24 Q So it's larger than a standard mattress but smaller
25 than a queen-sized mattress?

1 **A** Correct.

2 **Q** And your position is that there are footprints, at
3 least in the center of that mattress, maybe a little
4 bit more beyond that?

5 **A** Yeah. It's a little bit more towards the top of the
6 bed there.

7 **Q** There was a photo where you indicated those prints
8 might be or were. Let me ask you this question and
9 see if we can get an answer as to the size of the
10 mattress. It's important if we're talking about the
11 distance from the window. You have this window, and
12 it looks like to me this window -- or, excuse me. I
13 don't mean to say window but bed -- that this bed is
14 up against the wall?

15 **A** Yes, it is.

16 **Q** And the only thing separating the mattress from the
17 wall is the frame of the bed; is that correct?

18 **A** Correct.

19 **Q** And the size of this mattress is a -- what did you
20 call it again?

21 **A** It's called a super single.

22 **Q** -- super single, which is larger than a standard bed,
23 standard mattress, but smaller than a queen?

24 **A** It's a special-made mattress.

25 **Q** Tell us, why is it specially made?

1 **A** We had to order that mattress because -- well, it
2 was a waterbed originally, but it hurt my back to
3 sleep on it, so we ordered a mattress to fit that
4 frame. They had to specially make it.

5 **Q** If I laid on that mattress, could I reach both ends
6 laying long ways? Could I reach both sides of that
7 mattress with my arms?

8 **A** Yes, sir.

9 **Q** Let me just lay on the floor for this demonstration.
10 If I was laying on your mattress and it was up
11 against the wall and if I laid both arms like this,
12 this would be the center of that mattress, then the
13 footprints would be over to my right leg?

14 **A** Basically the way you're laying, the footprints would
15 end up pretty much right in the middle of you.

16 **Q** In the middle? So we're talking about the distance
17 from the midline of my body to the tip of my arms?

18 **A** Yes.

19 **Q** My hand? What would you consider that to be the
20 distance?

21 **A** From one end of your hand to the other?

22 **Q** No, to the midline.

23 **A** From the midline to the end of your hand, about 2
24 foot.

25 **Q** Two feet would be approximately about like this,

1 right?

2 A Approximately, yes, sir.

3 Q So your position is, someone stepped out from the
4 window onto the mattress, stepped 2 feet from the
5 window, this window, stepped forward 2 feet onto the
6 mattress?

7 A Yes, sir.

8

9 MR. CANTU: We'll pass the witness at this
10 time, Your Honor.

11 THE COURT: Any further questions?

12 MR. GUTIERREZ: A few questions, Your
13 Honor.

14

15 REDIRECT EXAMINATION BY MR. GUTIERREZ

16

17 Q The gentleman that painted the house, what's his
18 name?

19 A Edward Banks.

20 Q And compared to the Defendant, is he bigger or
21 smaller?

22 A He's bigger.

23 Q About how big is Mr. Banks?

24 A I'd say he's about -- from Mr. Raby himself, he's
25 probably about 4 inches taller.

1 Q How big is Mr. Banks?
2 A He's a big person. He's ever bit as big as I am.
3 Q And how tall are you?
4 A I'm 6-1.
5 Q Now, for the record, how tall is Mr. Raby, if you
6 know?
7 A I don't know. I'd say approximately maybe 5-11.
8
9 MR. GUTIERREZ: Your Honor, can we have
10 both men stand facing each other?
11 THE COURT: Okay. Gentlemen, why don't you
12 stand up.
13
14 Q (By Mr. Gutierrez) How much taller than he would
15 you say you are, Mr. Bengé?
16 A I'd say probably about 3 inches, 4 inches taller than
17 he is.
18 Q Okay. You can have a seat.
19 A (Complies.)
20 Q And how much do you weigh?
21 A I weight 255.
22 Q For the record, would you agree with me that Mr.
23 Raby is considerably lighter than you?
24 A Yes, sir.
25 Q Assuming that the police found a condom wrapper in

1 your home, in Edna Franklin's home, when they did the
2 investigation, who would the condom wrapper have been
3 used by?

4 A It was used by me.

5 Q About how many days before your grandmother's death?

6 A Approximately about three.

7

8 MR. GUTIERREZ: I'll pass the witness at
9 this time.

10 THE COURT: Any further questions?

11 MR. CANTU: No, Your Honor.

12 THE COURT: Mr. Bengé, you may step down.

13 MR. GUTIERREZ: State would call Lee Rose.

14

15 LEE ROSE

16 was called as a witness by the State, and after having
17 been previously duly sworn, testified under his oath as
18 follows:

19

20 DIRECT EXAMINATION BY MR. GUTIERREZ

21

22 Q State your name for the record, please.

23 A Lee Rose.

24 Q Mr. Rose, how old a man are you?

25 A I'm 22.

1 Q And what's your relationship to Eric Benge, who just
2 walked out of the courtroom?
3 A We're cousins.
4 Q And, Mr. Rose, what was your relationship with Edna
5 Franklin?
6 A She was my grandmother.
7 Q Where did you used to live back in October of 1992?
8 A I lived in my grandmother's house.
9 Q How long had you lived there?
10 A On and off for about 22 years.
11 Q Did you know a person or do you know a person by the
12 name of Charles Raby?
13 A Yes, I do.
14 Q Do you see that person in the courtroom today?
15 A Yes, I do.
16 Q Would you please point him out for the record and
17 tell us what he's wearing today?
18 A He's that white man over there. He's wearing a
19 white-striped shirt and brown khakis.

20
21 MR. GUTIERREZ: I would like the record to
22 reflect the witness has identified the
23 Defendant, Your Honor.

24 THE COURT: The record will so reflect.
25

1 Q How long did you know Charles Raby? How old were
2 you when you met him?
3 A I was about 15.
4 Q And how old were you the last time you saw him?
5 A I was 20.
6 Q And in that time, were you friends with Charles Raby
7 up until this incident?
8 A Yes, I was.
9 Q Would you tell the members of the jury whether or
10 not in the days before your grandmother's death,
11 several weeks, two, three weeks or maybe a couple of
12 months, had Charles Raby, after an absence of some
13 time, had he come back to visit? 52
14 A Yes, he did.
15 Q Did he have an occasion to be in your grandmother's
16 home at 617 Westford?
17 A Yes, he did.
18 Q And how many times would you say he was in that
19 house before your grandmother's death, immediately
20 before her death?
21 A Twice. *This is wrong! IT WAS ONLY ONCE - 53*
22 Q And was he there at your invitation?
23 A No, he wasn't. 54
24 Q How was it that he came over?
25 A He just came over.

1 Q Did you let him in the house?

2 A Yes, sir. ⁵⁵

3 Q At some point after those two visits, were you
4 present when your grandmother, Edna Franklin, told
5 the Defendant, in no uncertain terms, that she didn't
6 want him there any more?

7 A Yes, I was.

8 Q How many days before Edna Franklin's death was that,
9 approximately?

10 A I'd say it was a week, sir.

11 Q Would you tell the members of the jury where that
12 conversation between your grandmother, Edna Franklin,
13 and the Defendant, Charles Raby, took place?

14 A It took place in the front yard.

15 Q And what were the circumstances? What time of day
16 or night was it?

17 A It was about, I'd say, 8:30.

18 Q In the evening or in the morning?

19 A In the evening.

20 Q Do you know if your grandmother -- was she outside
21 at first or inside?

22 A She was inside.

23 Q Did she become aware at some point that Charles Raby
24 was there?

25 A Yes, she did.

1 Q Was Charles Raby inside or was he outside?

2 A He was outside.

3 Q Did the Defendant, Charles Raby, have anything in his

4 hand?

5 A Yes, he did.

6 Q What was that?

7 A It was a quart bottle of beer.

8 Q And did your grandmother tell the Defendant to leave?

9 A Yes, she did.

10 Q Was she real definite about that?

11 A Yes, she was.

12 Q In terms of him leaving, did she tell him to leave?

13 A Yes, she did.

14 Q How did the Defendant react when your grandmother

15 told him to leave?

16 A He got real mad and he threw the bottle of beer on

17 the ground.

18 Q And what happened to the bottle?

19 A It broke.

20 Q Was that in the presence of your grandmother?

21 A Yes, it was.

22 Q Did your grandmother tell him that he was not

23 welcomed at her house?

24 A Yes, she did.

25 Q During the time you were friends with Charles Raby,

1 did you have an occasion to let him in your
2 grandmother's house through a particular bedroom
3 window?

4 A Yes, I did.

5 Q Did he have an occasion to go in through -- I'll
6 show you what has been marked as State Exhibit No.
7 15. Did he have occasion at times to go in the
8 bedroom window closest to the street?

9 A Yes, he did. 56

10 Q On few or many occasions?

11 A Many occasions.

12 Q What about the back bedroom, did he ever enter
13 through there?

14 A Yes, sir.

15 Q On few or many occasions?

16 A Many.

17 Q At the time of her death, at the time that your
18 grandmother told the Defendant he was not welcomed,
19 did she make it clear she did not like him?

20 A Yes, she did.

21

22 MR. GUTIERREZ: I'll pass the witness

23 THE COURT: Mr. Cantu.

24 MR. CANTU: Thank you, Your Honor.

25

CROSS EXAMINATION BY MR. CANTU

1

2

3 Q Mr. Rose, it's true that Charles Raby, along with a
4 number of your friends and your mates in the area,
5 entered, or you allowed to enter, in your home
6 through windows of your grandmother's house?



7 A No, it's not. 57

8 Q Well, isn't it true that a fellow by the name of
9 Crawdad, another one of your friends, entered your
10 house through a window?



11 A No, it's not. 58

12 Q Isn't it true that James Jordan entered your home
13 through the window?



14 A No, it's not. 59

15 Q Isn't it, in fact, true that you have entered your
16 home through your windows?

17 A Yes, sir.

18 Q Isn't it, in fact, true that your cousin entered your
19 grandmother's house through those same windows?

20 A Yes, sir.

21 Q The window that you're referring to or that we're
22 talking about, I believe it happens to be your
23 cousin's window, the front bedroom window?

24 A Yes, sir.

25 Q The other window that you were implying that entry

1 had been made, that was your bedroom window; is that
2 correct?

3 A Yes, sir.

4 Q Have you allowed or have you let other people enter
5 the house through other windows of this house?

6 A No, sir.


7 Q You indicated you're 22. You and Charles have known
8 each other for the last seven years, eight years?

9 A Yes, sir.

10 Q And during that period of time, Charles has been to
11 your home on many occasions, has he not?

12 A Yes, sir.


13 Q During that period of time, you've allowed Charles to
14 enter not only through your door, your front door,
15 your back door, but through the windows, have you
16 not?

 17 A Yes, sir. 60

18 Q And when you enter through the windows or you allowed
19 people to enter through the windows, people like
20 Charles, that was for the sole purpose of smoking
21 marijuana with your friends and your cousin?

22 A No, sir.

23 Q It's, in fact, true that you and your cousin had
24 control of marijuana and other drugs in the house?

 25 A No, sir. 61

1 MR. GUTIERREZ: May we approach the bench,
2 Your Honor?

3
4 (Whereupon counsel approached the bench.)

5
6 Q (By Mr. Cantu) Let's talk about the argument that
7 your grandmother, Mrs. Franklin, had with Charles, in
8 which you described her as demanding that he leave
9 her home and he threw a beer bottle down. Would you
10 tell us -- because maybe it slipped my mind, because
11 so many things have been said -- when did this
12 occur, if you can remember?

13 A It occurred about, I'd say, October the 7th.

14 Q Well, did you say that was about two weeks, wasn't
15 it?

16 A A week.

17 Q A week prior to the incident? And during that
18 period of time, of course you recall that your house
19 was being painted, was it not?

20 A Yes, it was.

21 Q And who do you recall painting this home?

22 A A fellow by the name of Edward.

23 Q Do you recall the windows and the screens also being
24 painted?

25 A Yes, I do.

1 Q Do you recall whether, in fact, the windows had been
2 nailed shut?
3 A No, they wasn't.
4 Q Do you recall that you entered the house on that
5 evening a little after 10:00 p.m.?
6 A Yes, sir.
7 Q Do you recall anything other than the immediate
8 connection or contact with your cousin, then seeing
9 your grandmother on the ground, on the floor, rather,
10 and then calling the police?
11 A I walked in the house and I seen her laying there,
12 and that was it.
13 Q That's all that you recall?
14 A Yes, sir.
15 Q I'm going to show you State's Exhibit -- it's a
16 photograph, and there's photographs of your
17 grandmother's bedroom. Your grandmother's bedroom
18 was, as I understand, was a bedroom where she
19 generally occupied over the rest of the house. She
20 stayed in that one bedroom most of the time?
21 A That's correct.
22 Q And State Exhibit No. 66, I guess, pretty much
23 depicts the manner of cleanliness that your
24 grandmother kept in that room?
25 A That's right.

1 Q It was in fairly much disarray, was it not? Things
2 were fairly much thrown around?
3 A Yes, sir.
4 Q How many dogs did she keep in that one bedroom?
5 A Just one, sir.
6 Q Was that the poodle?
7 A Yes, it was.
8 Q And State Exhibit 63, there's a number of items,
9 including her bed, vacuum cleaner, a number of items,
10 including, I guess, the poodle that we're talking
11 about. But this chest, did that chest at one time
12 belong to you? Was that in your room at any time
13 prior to being --
14 A No.
15 Q Has that always been in her room?
16 A Yes.
17 Q What do you recall, after seeing your grandmother,
18 that you did? Do you recall entering any of the
19 other rooms?
20 A No, I didn't. Just the room where the telephone
21 was. 62
22 Q And you stayed there and you waited for the police?
23 A I called 911 and they told me to go and see if she
24 was breathing and all this. She wasn't.
25 Q Tell me about yourself now. You're 22. Do you have

1 any prior criminal history at all? Have you ever
2 been handled by the police in any manner?

3

4 MR. GUTIERREZ: I object to the question as
5 phrased. It's improper.

6 THE COURT: Sustained.

7 MR. GUTIERREZ: We stipulate he is on
8 felony deferred adjudication. I don't mind him
9 asking about that. I object to the way he
10 phrases that question.

11

12 Q (By Mr. Cantu) Where did you get this felony
13 deferred adjudication? Would you describe to the
14 jury what you got?

15 A Unauthorized use of a motor vehicle.

16 Q And what county did you get it?

17 A Harris County.

18 Q And when did you get this?

19 A I got it in, I'd say, September of '92.

20 Q And at this time are there any other outstanding
21 warrants based on this conviction?

22 A No, sir.

23

24 MR. CANTU: May I have a moment with the
25 prosecutor, Your Honor?

1 THE COURT: All right.

2 MR. CANTU: I'll pass the witness at this
3 time, Your Honor.

4 THE COURT: Any further questions?

5 MR. GUTIERREZ: If it please the Court,
6 just a few questions.

7

8 REDIRECT EXAMINATION BY MR. GUTIERREZ

9

10 Q Mr. Rose, the Defense attorney asked you whether or
11 not --I'm not sure what the phrasing of the question
12 was, but you don't mean to suggest to this jury that
13 you never used drugs before?

14 A No, sir.

15 Q And you don't mean to suggest to this jury that you
16 and your friends didn't use dope, drugs and alcohol?
17 Because you did.

18 A That's right, sir.

19 Q And at some of those occasions, did you use some of
20 those drugs or marijuana in your grandmother's house
21 without her knowledge?

22 A Yes, sir.

23 Q And do you know how many years you were on for
24 deferred adjudication?

25 A I had five years.

1 Q In fact, your drug use is one of the things that you
2 blame as a reason why you ended up getting on that
3 felony deferred adjudication for driving an
4 unauthorized use of a motor vehicle; is that correct?

5 A That's correct.

6 Q Driving a stolen car, in other words? 63

7

8 MR. GUTIERREZ: I'll pass the witness, Your
9 Honor.

10 THE COURT: Any further questions?

11 MR. CANTU: One further question.

12

13 RE CROSS EXAMINATION BY MR. CANTU

14

15 Q What type of drug use do you attribute to your
16 criminal problems?

17 A I was doing crack cocaine.

18 Q As opposed to marijuana? Were you doing marijuana
19 also?

20 A Occasionally.

21 Q But your choice of drugs is crack cocaine?

22 A Was crack cocaine.

23

24 MR. CANTU: I have nothing further, Your
25 Honor.

1 FURTHER REDIRECT EXAMINATION BY MR. GUTIERREZ

2

3 Q Do you consider yourself to be an alcoholic?

4 A Yes, sir.

5 Q And how long have you been straight?

6 A Since January 27th of '93.

7 Q As part of your probation, do they make any
8 requirements of you during drug testing or anything
9 like that?

10 A Yes, sir. Urinalysis.

11 Q How often is that?

12 A Maybe once every two months.

13

14 MR. GUTIERREZ: I'll pass the witness, Your
15 Honor.

16 THE COURT: Any further questions?

17 MR. CANTU: No.

18 THE COURT: Mr. Rose, you may step down,
19 sir.

20 Do you have a short witness?

21 MR. GUTIERREZ: No, Judge. I sent all the
22 short witnesses home.

23 THE COURT: Ladies and gentlemen, I'm going
24 to recess you until 10:00 a.m. And let me,
25 again, briefly admonish you, don't discuss the


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case nor make any independent investigations as
to any matters or facts related to the case.
And I don't anticipate there's going to be any
news coverage, but in the event there is, don't
read it, view it or listen to it. At this time
you are excused until 10:00 a.m. tomorrow.

THE STATE OF TEXAS *
*
COUNTY OF HARRIS *

I, GINA BENCH, Certified Court Reporter for the 248th District Court of Harris County, Texas, do hereby certify that the foregoing pages of typewritten material contain a true and correct transcript of all evidence adduced and admitted at the STATEMENT OF FACTS in the case shown in the caption hereof; that I was present in open court and reported said testimony in shorthand, and that later I transcribed same into typewriting.

IN TESTIMONY WHEREOF, witness my official signature on this the 22nd day of November, 1994.


GINA BENCH
Certified Court Reporter
248th District Court
Harris County, Texas

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71938

IN THE COURT OF CRIMINAL APPEALS
IN THE STATE OF TEXAS
AT AUSTIN

CAUSE NO. 9407130

THE STATE OF TEXAS

Appellee

VS.

CHARLES DOUGLAS RABY

Appellant

APPEAL FROM THE 248TH DISTRICT COURT OF
HARRIS COUNTY, TEXAS
Honorable Woody R. Densen, Judge Presiding

STATEMENT OF FACTS

MOTION TO SUPPRESS

VOLUME XXV OF XLI VOLUMES

MAY 18, 1994

ORIGINAL

GINA BENCH
Certified Court Reporter
Harris County, Texas

FILED IN
COURT OF CRIMINAL APPEALS

753 15 1995

Thomas Lowe, Clerk

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12	SX-97	Voluntary consent	214	214	216	216	XXVIII
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14	SX-99	Consent to	329	329	330	331	XXVIII
		Search					
14	SX-100	Paper bag	217	217			XXVIII
15	SX-101	Pulled pubic hair	217	219			XXVIII
	SX-102	Pulled head hair	217	219			XXVIII
16	SX-103	Loose head hair	217	219			XXVIII
	SX-104	Loose pubic hair	217	219			XXVIII
17	SX-105	Property bag	217	217			XXVIII
	SX-106	Hair in hand	217	219	268	268	XXVIII
18	SX-107	Loose head hair	217	220			XXVIII
	SX-108	Pulled head hair	217	220			XXVIII
19	SX-109	TV Guide	282	282	283	283	XXVIII
	SX-110	Jacket	309	309			XXVIII
20	SX-111	Photos	330	330	30	331	XXVIII

DEFENSE EXHIBITS

22	DX-1	Photograph	249	249	249	249	XXVIII
23	DX-2	Tray	250	250	251	251	XXVIII

CAUSE NO. 9407130

THE STATE OF TEXAS * IN THE 248th DISTRICT COURT
 *
VS. *
 *
CHARLES DOUGLAS RABY * HARRIS COUNTY, T E X A S

A P P E A R A N C E S

FOR THE STATE OF TEXAS:

Mr. Roberto Gutierrez
District Attorney's Office
201 Fannin
Houston, Texas

FOR THE DEFENDANT:

Mr. Felix Cantu
Attorney at Law
618 East 28
Houston, Texas 77008
And
Mr. Michael P. Fosher
Attorney at Law
440 Louisiana
Houston, Texas 77002

BE IT REMEMBERED, that upon this 7th day of June, 1994, the above entitled and numbered cause came for STATEMENT OF FACTS before Woody R. Densen, Judge of the 248th District Court of Harris County, Texas; and the State appearing by counsel and the Defendant appearing in person and by counsel announced ready to proceed; and all preliminaries having been disposed of, the following proceedings were had, viz:

JUNE 7, 1994

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THE COURT: I'll take judicial notice that Mr. Fosher did appear yesterday. He was a little late, but he did appear at trial.

MR. GUTIERREZ: I know the record was silent on it, Judge, and I appreciate the opportunity to put that on the record. My recollection is that Mr. Fosher walked in in the first part of Dr. Bellas' testimony, when I was in front of the jury with him, explaining some of the injuries, and Mr. Fosher remained in Court yesterday for most of the day up until about 4:30 in the afternoon. And he's back now today.

THE COURT: And I have given Mr. Fosher leave to leave early because he's in a little bit of pain.

MR. FOSHER: Thank you, Judge.

THE COURT: Let's bring the jury out.

(Whereupon the jury was seated in the jury box.)

THE COURT: You may be seated.

The State will call your next witness.

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MR. GUTIERREZ: State calls Fred Hale, Your Honor.

THE COURT: You have not been sworn?

THE WITNESS: No.

THE COURT: Are there any other witnesses here who have not been sworn?

MR. CANTU: I don't have any. 64

FRED HALE

was called as a witness by the State, and after having been first duly sworn, testified under his oath as follows:

THE COURT: The rule has been invoked. You understand you are not to discuss your testimony with the other witnesses nor allow them to discuss their testimony with you. You may be seated.

MR. GUTIERREZ: Thank you, Your Honor.

DIRECT EXAMINATION BY MR. GUTIERREZ

Q State your name for the members of the jury, please.

A I'm Officer Fred Hale.

Q How long have you been a peace officer?

A A little over 18 years.

Q And whom do you work for?

1 **A** City of Houston Police Department.

2 **Q** Have you worked for the City of Houston Police

3 Department all of those 18 years?

4 **A** Yes, I have.

5 **Q** To what divisions have you been assigned?

6 **A** Patrol for five years, and in August of '82, I went to

7 the Crime Scene Section, which is now a section of the

8 Homicide Division.

9 **Q** Would you explain to the members of this jury what a

10 Crime Scene Section officer is supposed to do?

11 **A** The primary function is to photograph the scene and

12 recover physical evidence, preserve the evidence. The

13 evidence is then tagged in various divisions to be

14 processed later.

15 **Q** One of those duties of a Crime Scene Unit, does that

16 include making what we refer to as morgue runs?

17 **A** Yes. Each officer is assigned once a month to make a

18 run to the morgue to recover personal property, which

19 also includes evidence which was recovered by the

20 doctors performing the autopsies. This evidence is

21 subsequently tagged in our Property Room and later

22 analyzed in our Crime Lab.

23 **Q** You go, you don't pick up evidence pertaining to one

24 case; you pick up evidence pertaining to a bunch of

25 cases?

1 **A** Yes.

2 **Q** Did you happen to make a morgue run in this case, in
3 the case of The State Vs. Charles Raby, picking up some
4 items at the morgue back in October of 1992, more
5 specifically, October 30th, 1992?

6 **A** Yes, I did.

7 **Q** Did you take the items sitting in front of you and
8 enclose in a bag marked State's Exhibit No. 85 from the
9 morgue somewhere?

10 **A** Yes, I did.

11 **Q** And where did you take the items in there?

12 **A** This was taken and tagged in our Property Room, Police
13 Property Room freezer.

14 **Q** Now, would you explain to the members of the jury, who
15 has access to the Police Property Room?

16 **A** Just the officers tagging the property, and the
17 Property Room is sealed off, which is just the
18 employees who work in the Property Room itself are
19 allowed access to that area.

20 **Q** When you say they're sealed off, what kind of barriers
21 are there?

22 **A** The inside section of the Property Room has a mesh,
23 steel cage with a small area that you can pass the
24 property in, the evidence through, and then they have a
25 caged door that they enter.

1 Q Now, you know that's the envelope that's marked State
2 Exhibit No. 85, because it has whose writing on it?
3 A It's my handwriting on it.
4 Q Would you tell the members of the jury specifically
5 what it was that you took from the morgue to the
6 Houston Police Department Property Room?
7 A Listed described on the property is fingernails, three
8 swabs, three plastic bags containing hairs.
9 Q And I'll show you what has been marked as State Exhibit
10 90, a plastic bag containing several items in there,
11 and I'll ask you whether or not those items that you
12 took include the exhibits in there that I am now
13 setting out before you.
14 A Yes, sir, they are.
15 Q Are they two containers containing fingernails and
16 then, of course, a plastic bag marked State Exhibit No.
17 94?
18 A Yes, sir.
19 Q And the plastic bag marked State Exhibit No. 92,
20 containing hair, pubic hair, and 93, loose fiber and
21 hair, and 91, pulled head hair, and State Exhibit 89,
22 87 and 88, all of them being boxes of swabs; is that
23 correct?
24 A Yes.
25 Q Is that all you did in this case?

1 A Yes, it is.

2 Q Did you up until recently have a co-worker by the name
3 of Jim Norris, also jokingly referred to as Chuck
4 Norris?

5 A Yes.

6 Q How long had he worked in the Crime Scene Unit
7 Division?

8 A He was probably over there seven years.

9 Q Did he recently quit to leave the state to raise emus?

10 A Within the last month

11 Q Was it an expected termination on his part? I mean,
12 did he leave voluntarily?

13 A Yes, he left voluntarily.

14 Q But was his announcement very sudden?

15 A Very sudden, yes.

16 Q Do you know what state he went to?

17 A No, I'm not really sure.

18 Q Thank you. 65

19

20 MR. GUTIERREZ: I'll pass the witness.

21 THE COURT: Mr. Cantu.

22

23 CROSS EXAMINATION BY MR. CANTU

24

25 Q Officer Hale, did you do anything with these exhibits

1 other than convey them or bring them from the Medical
2 Examiner's Office to the HPD station?

3 A They were just basically transported from the ME's
4 office to the Property Room.

5 Q And any analysis was done by someone else other than
6 yourself?

7 A Correct, yes, sir.

8

9 MR. CANTU: I'll pass the witness.

10 THE COURT: Any further questions?

11 MR. GUTIERREZ: Not at this time, Your Honor.

12 THE COURT: Mr. Hale, you may step down.

13 State will call your next witness.

14 MR. GUTIERREZ: State would call Waymon

15 Allen.

16

17

WAYMON ALLEN

18 was called as a witness, and after having been previously
19 duly sworn, testified under his oath as follows:

20

21 DIRECT EXAMINATION BY MR. GUTIERREZ

22

23 Q Would you state your name, please.

24 A Waymon Allen, Junior.

25 Q Would you please tell the members of the jury what you

1 do for a living?

2 A I'm a sergeant with the City of Houston Police
3 Department, Homicide Division.

4 Q And are you a police officer?

5 A Yes, sir.

6 Q How long have you been a police officer?

7 A Nineteen-and-a-half years.

8 Q And during those 19-and-a-half years, what divisions
9 have you been assigned to?

10 A I worked patrol and uniform for eight years, and
11 promoted in 1982 to the rank of detective. Worked
12 burglary and theft, robbery, and transferred to
13 Internal Affairs Division 14 months, and came to the
14 Homicide Division in 1986.

15 Q That means as of today, you have been there how many
16 years exactly?

17 A About seven years.

18 Q What shift are you working right now?

19 A Working the evening shift.

20 Q And what hours are those?

21 A From 4:00 p.m. to midnight.

22 Q Did you work last night?

23 A Yes, sir.

24 Q What hours were you working back in October of 1992?

25 A I was working the day shift at that time. It's from

1 7:00 a.m. to 3:00 p.m.

2 Q Can you explain to the members, first of all, did you
3 get a call -- were you assigned to work a case
4 involving a killing of a lady by the name of Edna
5 Franklin, in the 600 block of Westford, in Houston,
6 Harris County, Texas?

7 A Yes, sir, I was assigned to that case.

8 Q About what time did you receive the call?

9 A About 10:15 p.m.

10 Q Would you please explain to the members of the jury, if
11 your shift was from 7:00 in the morning until 3:00 in
12 the morning -- excuse me, until 3:00 in the afternoon,
13 how could it be possible that you get a call at ten
14 o'clock in the evening to go work a case?

15 A Yes, sir. The Homicide Division has squads that are on
16 call, teams that respond to homicides in the evening
17 time and especially in the later morning hours to
18 assist. At that time the night shift division had very
19 few personnel.

20 Q And about how many teams were on duty at the time, do
21 you recall? How many teams were available?

22 A On the night shift?

23 Q On any shift, right.

24 A I have no idea what the manpower strength was on that
25 particular day, on October 15th of 1992. I received a

1 call from the night shift Lieutenant, who was
2 Lieutenant Gaford at that time, and he assigned myself
3 and my partner, Sergeant Wendel, to make the scene.

4 Q Would you explain to the members of the jury what it is
5 that each detective does on a crime scene, a homicide
6 scene, when there are two detectives? How do you
7 divide your duties?

8 A Primarily we divide the crime scene investigations into
9 two areas: one, the Sergeant will assume the
10 responsibility for the crime scene investigation, the
11 other Sergeant interviews witnesses and canvasses the
12 neighborhood for photo witnesses and things like that.
13 He may do a hospital investigation, if one is
14 warranted, if the person is injured and transported to
15 the hospital, and that Sergeant would be responsible
16 for getting that information. Mainly he is developing
17 the details as to what happened while the other
18 investigator is focusing his attention on the crime
19 scene itself.

20 Q In this case, what did Wendel do and what did you do?

21 A I conducted the crime scene investigation, which was
22 located on Westford. My partner interviewed witnesses
23 and talked with neighbors.

24 Q Who was the crime scene unit officer?

25 A It was Officer Norris.

1 Q And Jim Norris no longer works for the Houston Police
2 Department; is that correct?

3 A That's correct.

4 Q He stopped working a couple weeks ago?

5 A That's right.

6 Q Now, would you tell the members of the jury what the
7 function of a Crime Scene Unit officer is and how it
8 overlaps, if it does, with what you do?

9 A The Crime Scene Unit assists the homicide sergeants
10 with processing the scene. The Crime Scene Unit
11 officer's function is to photograph the scene. It's
12 done normally with a 35 millimeter camera. He can also
13 video record the crime scene. ⁶⁶ He takes measurements so
14 that a crime scene diagram can be prepared, and he
15 collects any evidence that I would direct him to
16 recover.

17 Q And would you be there when the recovery takes place,
18 or at least was that the case in this case?

19 A Yes, sir. Well, in all crime scenes we don't have
20 anything moved until I have an opportunity to examine
21 and document the crime scene.

22 Q And, of course, one way of making sure nothing is moved
23 is to have the first officer on the scene to secure the
24 scene, move everyone away from the scene and not let
25 anybody go on there; is that correct?

1 **A** Yes, sir.

2 **Q** In this particular case, there's a lot of photographs
3 in evidence. You and I have gone over them outside the
4 presence of the jury. And at least the nighttime
5 photographs that are in these pictures were taken by
6 whom?

7 **A** The nighttime photos of the crime scene were taken by
8 Officer Norris.

9 **Q** And I don't know if you have had an opportunity to look
10 at the blowup of the diagram, but is this the type of
11 diagram that a crime scene officer would draw?

12 **A** Yes, sir, it is. That's an enlargement of Officer
13 Norris' diagram.

14 **Q** Now, when you arrived at the scene, would you tell us
15 what evidence, if any, you found that was consistent
16 with an aggravated sexual assault or an attempt to
17 commit an aggravated sexual assault?

18 **A** Well, in examining the scene itself, of course, the
19 victim in this case, Ms. Franklin, was lying in the
20 living room floor. She was nude from the waist down.
21 Her blue jean pants had been turned inside out and
22 pulled off of the body and discarded a couple feet from
23 the body. Her panties had been ripped off and
24 discarded. Obviously in these type of scenes, when
25 someone has been disrobed in that manner, the pants

1 turned inside out, that would be indicative of an
2 attempted sexual assault or possible sexual assault.

3 Q What evidence, if any, did you find that was consistent
4 with a robbery that was committed or attempted?

5 A Well, there was what appeared to be forced entry in the
6 southeast bedroom of this residence. A window screen
7 had been dislodged from the window that was located in
8 the southeast corner of the room. There was a
9 screwdriver lying in this window, ^{b-7} on the ledge. On
10 closer examination, there was a fresh wood chip lying
11 in there. It looked like it had just been pried loose
12 recently. In the Complainant's bedroom, Ms. Franklin's
13 bedroom, the contents of her purse had been dumped out
14 onto the bed and articles scattered onto the floor.

15 When you talk about a robbery, this would be under
16 the elements, under the law, it would be a burglary
17 based on the type of entry that was there; however,
18 with an individual injured or in this case a victim
19 murdered, a burglary would then constitute a robbery.

20 Q Now, the details of the findings of the physical
21 evidence, I mean, you were aware that Eric had entered
22 the house and removed some of the items, gathered some
23 of the items together, before he found his grandmother
24 dead. But when you arrived, there was still some
25 disarray in terms of the items having been moved or

1 taken out of the purse; is that correct?

2 A As I testified, the contents of the purse was dumped
3 out on the bed and there were some credit cards on the
4 floor, underneath the bed. I believe that Mr. Bengé
5 told us that he had gone into the room because there
6 was some running water in the bathroom and that he had
7 washed his hands, because he had attempted to revive
8 the victim, Ms. Franklin. ~~the~~

9 Q Let me ask you this. In terms of physical evidence,
10 what was it that was recovered at the scene by Jim
11 Norris, in your presence, that would have been
12 significant? First of all, did you observe anything at
13 the scene that was consistent with someone maybe having
14 cleaned their hands?

15 A Yes, sir. Adjacent to the victim, Ms. Franklin, there
16 was a towel on the floor that had some blood smears on
17 it. ⁶⁸ It was my opinion that the suspect had wiped his
18 hands or cleaned his hands, because there was no blood
19 found on the items that were scattered on the bed. The
20 purse itself had no blood on it. There was no blood on
21 any of the papers, credit cards or anything within the
22 bedroom area. Additionally, the exit at this crime
23 scene, the exit, meaning that the door we felt that the
24 suspect had left the residence, was the rear door of
25 Ms. Franklin's bedroom. There was no blood located at

1 this exit point.

2 Q In terms of the point of exit, what was your belief, in
3 terms of where the person had exited the house?

4 A Again, that would have been the rear door that was from
5 Ms. Franklin's bedroom and into the back yard.

6 Q I'm going to show you these exhibits that I believe I
7 have gotten in some sort of order. Would you look
8 through these exhibits, which are already in evidence,
9 and point out to us the item that you believe the
10 assailant used to clean his or her hands?

11 A Exhibit 42 shows the towel that I referred to, just to
12 the southwest of Ms. Franklin's head. Also Exhibit 43,
13 you can see --

14 Q Would you raise it and point out to the members of the
15 jury now?

16 A This towel right here (indicating).

17 Q That means that the towel above the head; is that
18 correct?

19 A That's correct.

20 Q Did you see anything on the Complainant's body that
21 drew your attention, that you asked Mr. Norris to
22 collect?

23 A Yes, sir. There was some hair clumped in the victim's
24 hands. There was quite a bit of hair in the right
25 hand. There was some hair, loose hair, on the left



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hand, and a couple other hairs on the body.

68
NO MENTION OF
Blood.

Q Were you aware there was a dog in the house?

A Yes, sir, I was.

Q But you had some of those collected, at least some of those collected anyway; is that correct?

A That's correct.

Q Are you familiar with Jim Norris' handwriting?

A Yes.

Q I'll show you what has been marked as State Exhibit 84 and ask you whether or not you recognize that to be the handwriting of Jim Norris and whether or not that particular content of that exhibit has relevance to this case?

A Yes, sir. Well, this is printing that was done by Officer Norris of the crime scene, and he has noted that it was recovered by himself, and it's loose hairs that was taken from the Complaint's left hand in this particular package.

Q And did you observe him recover the hair, put it in the bag and marked the bag?

A Yes, sir.

Q Where would that hair have come from? Which hand, if you know?

A The left hand.

1 **MR. GUTIERREZ:** Now, I would like to have the
2 record reflect I am tendering State Exhibit No. 84
3 to the Defense for his inspection. We would ask
4 that the contents of that exhibit be admitted into
5 evidence.

6 **MR. CANTU:** We have no objections to the
7 contents of this package being admitted into
8 evidence, Your Honor.

9 **THE COURT:** State Exhibit 84 is admitted into
10 evidence.

11 **MR. CANTU:** We would object to the package
12 itself, the hearsay.

13 **THE COURT:** Well, we can exclude the hearsay.
14

15 **Q** (By Mr. Gutierrez) I'll show you a plastic bag marked
16 State Exhibit No. 77, the pants in it, pants already
17 being in evidence. I'll ask you whether or not you can
18 identify the bag and the pants marked State Exhibit No.
19 78.

20 **A** Yes, sir. This is a bag that Officer Norris placed Ms.
21 Franklin's pants from the crime scene in so it could be
22 sent for testing at a later time.

23 **Q** What specifically -- what kind of tests were you
24 looking for?

25 **A** We were looking for, of course, blood, semen, anything,

1 hairs, anything that would have been part of this crime
2 scene.

3 **Q** I'll show you the bag marked State Exhibit No. 77 and
4 its contents. Can you tell us what the bag marked
5 State Exhibit 77 is?

6 **A** Yes, sir. This bag contains a piece of carpet from the
7 living room floor that was in very close proximity to
8 the body of Ms. Franklin. We brought in an ultraviolet
9 light in an attempt to see if we could locate any
10 stains, seminal stains in the carpet. Officer Norris
11 felt like there was some indication there was some
12 fluid there, so the carpet was cut out and placed in
13 the bag. ¹⁰

14 **Q** This carpet in State Exhibit No. 77 came from the home
15 of Edna Franklin; is that correct?

16 **A** Yes, sir, it did.

17 **Q** Specifically, do you remember what part in proximity to
18 her body?

19 **A** It was in the living room. Again, that's where the
20 body was located. It was just to the northeast of the
21 body.

22 **Q** I'll show you what has been marked as State Exhibit No.
23 79, the bag and the contents I have just taken out, and
24 ask you whether or not you can identify these?

25 **A** Yes, sir. That is a pair of panties that were

1 collected from the crime scene in close proximity to
2 the body of the deceased.

3 Q Now, you said you felt that the panties had been ripped
4 off. For the record, would you describe what you see
5 here in terms of, first of all, the panties torn off
6 the, I guess you would say, the elastic that goes
7 around the waist?

8 A Yes, sir, that's correct.

9 Q For the record, does that look like to you it's
10 consistent with a sharp cut with a knife or a ripping?

11 A Well, it's possible. Actually, they could have been
12 done either way. It appears to be ripped because of
13 the way it is frayed.

14 Q Now, you mean by the threads just that are hanging from
15 the end; is that correct?

16 A Yes, sir.

17 Q Now, assuming someone were to tear this or pull it off
18 someone, would it take a certain amount of force?

19 A Yes, sir, it would. Because of the elastic, there is
20 going to have some give.

21 Q Now, for the record, does there appear to be what
22 appears to be blood on those panties? ⁷¹

23 A Yes, sir, there is.

24 Q And were those the panties that were found next to the
25 body of Edna Franklin?

1 **A** Yes, sir, they were.

2

3 (State Exhibit No. 75 was previously marked
4 for identification purposes.)

5

6 **Q** Now, did you have an occasion to see State Exhibit No.
7 75, an item which is, for purposes of the record, a
8 purse, a lady's purse, would you agree with me?

9 **A** Yes, sir, I agree with you, and I did see it.

10 **Q** Was this item recovered at the scene as well?

11 **A** Yes, it was.

12 **Q** Would you please look to see if the contents come from
13 the home of Edna Franklin as well?

14 **A** Yes, sir. This is the purse and contents that were in
15 there.

16

17 (State Exhibit No. 74 was previously marked
18 for identification purposes.)

19

20 **Q** I'll show you what's been marked as State Exhibit No.
21 74, a box, and a tag on it from which I took the
22 purse that you have just been examining. By the
23 way, does that purse contain assorted credit cards
24 and different items?

25 **A** Yes, sir, it does contain some different items.

1 Q And this particular tag that's been attached to State
2 Exhibit No. 74, do you recognize the handwriting on
3 that one?

4 A Yes, sir, I do. This was completed by a latent
5 examiner, W.C. Sheldon. He was called to the scene
6 to assist and processing for any fingerprints that
7 could possibly be lifted at the scene, and I
8 requested that he take the purse and the contents,
9 along with some other articles that are in this box.

10 Q Now, for the record, there are several plastic bags
11 in the box and there are assorted papers, several
12 bags, some containing checks, things like that,
13 including a TV Guide from the home of Edna Franklin;
14 is that correct?

15 A Yes, sir.

16 Q Now, whose idea was it to call Chuck Sheldon, the
17 fingerprint examiner, out to the scene?

18 A It was mine.

19 Q And did you ask him to try and take fingerprints?

20 A Yes, sir. That's why we collected these articles.

21 Q Assuming someone had been in a house, is there any
22 way in determining when fingerprints appeared,
23 whether the fingerprints had been placed there that
24 day, two weeks before or a month before?

25 A No, sir. Well, it's very difficult to take

1 fingerprints. Fingerprints, you indicated, could
2 have been left on prior occasions. That is correct.
3 Sometimes we're able to date fingerprints. For
4 example, if that fingerprint were in blood, then we
5 would have known that that print was left the date
6 of this offense most likely. Still, it could have
7 been left at another occasion if it were of a
8 different blood type that wasn't of Edna Franklin's
9 or if it wasn't human blood.

10 Q But to your knowledge, none of that type of
11 fingerprint was found; is that correct?

12 A That's correct.

13 Q During the course of your investigation, was the name
14 of Charles Douglas Raby mentioned as a suspect?

15 A Yes, sir.

16 Q As a result of further investigation, did you obtain
17 an arrest warrant for Charles Raby?

18 A Yes, sir.

19 Q Did you yourself either head the investigation or
20 were you one of the main detectives assigned to the
21 investigation?

22 A Yes, sir.

23 Q Were you present when Charles Raby was arrested?

24 A Yes, sir, I was.

25 Q And what day was the arrest?

1 **A** On October the 19th, 1992.

2 **Q** Had that been the first attempt to arrest Charles

3 Raby by the police?

4 **A** No, sir.

5 **Q** In terms of numbers of attempts, I mean, of actually

6 trying to run the warrant or arrest him, what number

7 was it on October 19th? First, second, third?

8 **A** On the morning of the 19th?

9 **Q** Yes, sir.

10 **A** As far as when you use the term "running" or

11 "executing the warrant," we weren't running any

12 particular location per se to execute the warrant.

13 We were attempting to locate him. We had several

14 addresses: We had his mother's address, a

15 girlfriend's address, and some information that he

16 might be with another relative at a trucking company.

17 Those locations had been checked.

18 **Q** Did you have an occasion on October 19th -- how many

19 places did you go to on October 19th before Charles

20 Raby was arrested?

21 **A** I personally went to three different locations.

22 **Q** Did you receive information that he might be staying

23 at another location?

24 **A** Yes, sir, I did.

25 **Q** And did an individual lead you to the place where he

1 might be staying?

2 A Yes, sir.

3 Q And who was that individual?

4 A It was the Defendant's girlfriend's sister.

5 Q So the sister of the Defendant's girlfriend; is that

6 correct?

7 A Yes, sir.

8 Q What was the name of the Defendant's girlfriend at

9 the time?

10 A Mary Gomez.

11 Q And where did that lady direct you to, what address?

12 A 706 Reid Street.

13 Q And for purposes of the record, how do you spell

14 Reid Street?

15 A It's R-e-i-d.

16 Q Before I get back to this address, had you checked

17 by his mother's house?

18 A I had not personally been by his mother's house that

19 morning. Other investigators working this case had

20 been to the mother's house.

21 Q Did the Defendant have a permanent address when you

22 began the investigation that you went to first?

23 A He was living with his grandmother. It's my

24 understanding he stayed with his grandmother. ⁷²

25 Q But he was not there when the police went to look

1 for him; is that correct?

2 **A** That's correct.

3 **Q** What other places did you all go to look for him

4 where he was not at?

5 **A** The other sergeants, my partner Sergeant Wendel and

6 other investigators working this case had also been

7 to Ms. Gomez' house in an attempt to locate him

8 there. They had information that he was there, and

9 they had gone there, I believe, on Saturday, which

10 would have been the 17th, in an effort to arrest

11 him.

12 **Q** In terms of the 19th, whose home was it, if you

13 recall? The address was what?

14 **A** 706 Reid Street.

15 **Q** And that's in Houston, Harris County, Texas?

16 **A** Yes, it is.

17 **Q** Do you recall whose address that was?

18 **A** It's the Defendant's stepfather.

19 **Q** And do you recall his name?

20 **A** No, I don't.

21 **Q** Would you explain to the members of the jury how it

22 was that Charles Douglas Raby came to be arrested?

23 **A** As it's been testified to, we had gone by the

24 Defendant's girlfriend's home that morning in an

25 effort to locate him there or to develop other

1 information as to where he might could be located.
2 It was with negative results our first time. We
3 returned to that address a couple hours later. We
4 were told that Ms. Gomez had left with the Defendant
5 Sunday night, the night before, and that the sister
6 could lead us to the location that they were staying.
7 She accompanied myself in my marked vehicle to the
8 700 block of Reid Street and pointed out a house
9 there, and the address was 706 Reid.

10 Q Regarding the Defendant, did you have any information
11 as to whether or not the Defendant knew that you
12 were looking for him?

13 A Yes, sir, I did. ⁷³

14 Q Was that a reason that you believe he left that
15 location and had gone to the Reid Street address?

16 A Well, I can't say why he had gone to the Reid Street
17 itself. ⁷⁴

18

19 MR. CANTU: I object to speculation.

20 MR. GUTIERREZ: I'll withdraw the question.

21

22 Q (By Mr. Gutierrez) At any rate, you went to the
23 Reid Street address. Did you all have to knock on
24 the door? Did you go in the house? Did you knock
25 the door down or did the Defendant come out and

1 greet you?

2 A Well, in response --

3 Q I realize that's several parts of the question.

4 A Well, what happens is, we went to the Reid address
5 and it was approximately 11:10 a.m. on the morning of
6 the 19th, and I went up to the front door and the
7 Defendant came out of the front door.

8 Q And he greeted you; is that correct?

9 A That's correct.

10 Q He knew you were coming?

11

12 MR. CANTU: I'm going to object to that.

13 That calls for speculation.

14 THE COURT: If he knows.

15 MR. GUTIERREZ: Let me rephrase the
16 question.

17

18 Q (By Mr. Gutierrez) He was aware that you were there
19 to see him?

20

21 MR. CANTU: I'm going to object. That also
22 calls for speculation.

23 THE COURT: Counsel, if he was there and he
24 knows, he can answer.

25 If you don't know, don't speculate.

1 **A** He was aware that we were police officers outside.
2 There were several officers that had gone around to
3 the back of the house. Myself and Sergeant Shirley
4 were approaching the front door. We were working in
5 plainclothes, as we are now, however, I was not
6 wearing a coat and I did have a gun and badge on.
7 **Q** Did you have your gun drawn?
8 **A** No, sir.
9 **Q** At any rate, you took Mr. Raby into custody; is that
10 correct?
11 **A** Yes, sir.
12 **Q** Without any problem? He didn't give you any
13 problems?
14 **A** That's right.
15 **Q** Did you talk to him about whether or not he would be
16 willing to sign a consent to search for the residence
17 he was staying at?
18 **A** Yes, sir.
19 **Q** Would you explain to the members of the jury what
20 the purpose for that was?
21 **A** I asked Mr. Raby, the Defendant, if he would consent
22 to a search of that residence in an effort to
23 recover any evidence, specifically, any clothing or
24 weapons or anything that would connect it to this
25 homicide.

1 (State Exhibit No. 95 was previously marked
2 for identification purposes.)
3

4 Q I'll show you what has been marked as State Exhibit
5 No. 95. I'll ask you whether or not you can
6 identify that.

7 A Yes, I can.

8 Q What is that?

9 A It's a voluntary consent for search and seizure.

10 Q And who is it signed by?

11 A Signed by the Defendant, Charles Raby.

12 Q By the way, for the record, would you please identify
13 Mr. Raby, the person that you arrested back on
14 October 19th, 1992?

15 A The Defendant is to my right, between the two
16 counselors. He's wearing a white-striped shirt, tie,
17 light-colored slacks.

18 Q You're referring to the man who's got his arms
19 folded?

20 A That's correct.
21

22 MR. GUTIERREZ: I would like the record to
23 reflect the witness has identified the
24 Defendant, Your Honor.

25 THE COURT: The record will so reflect.

1 MR. GUTIERREZ: I would like to ask that it
2 be admitted into evidence, this last exhibit,
3 the consent to search.

4 MR. CANTU: No objections, Your Honor.

5 THE COURT: What is the number?

6 MR. GUTIERREZ: 95, Your Honor.

7 THE COURT: State Exhibit 95 is admitted
8 into evidence.

9

10 Q (By Mr. Gutierrez) Now, did Mr. Raby sign this
11 voluntarily?

12 A Yes.

13 Q Did he have an opportunity to read it?

14 A Yes, sir, he did.

15 Q Now, I notice in this particular case there's a
16 language, permission to conduct a complete search of
17 "my residence." Why is it necessary to write in
18 there that it's his residence?

19 A The reason we put "my residence" is because we had
20 reason to believe it was his stepfather's residence,
21 he having permission to be there by the stepfather or
22 possibly could be living there on occasion, have his
23 own room at that location. ¹⁵ It was necessary to put
24 "my residence," because he would have a right to
25 privacy if he was staying there.

1 Q Did you have occasion after that to take Mr. Raby
2 somewhere?

3 A Yes, sir. He was taken to the Houston Police
4 Department. ⁷⁶

5 Q And how far from the Reid location was that?

6 A From the 700 block of Reid to the police station is
7 probably six, seven miles maybe.

8 Q And what happened at the police station?

9 A He was interviewed by me, and subsequently from that
10 interview, he agreed to give a written statement.

11

12 MR. CANTU: Your Honor, I'm going to object
13 to the answer of that question. I would like
14 for all these answers to be in reference to the
15 questions that are propounded by the prosecutor.

16 MR. GUTIERREZ: I'm sorry. I thought I
17 asked him what happened there exactly is the
18 answer I was looking for.

19 THE COURT: Okay.

20

21 Q (By Mr. Gutierrez) Did you ask the Defendant whether
22 or not he would talk to you?

23 A Yes, I did.

24 Q Now, let's backtrack just a second. Did you at some
25 point read the Defendant his warnings?

1 A Yes, sir, I did.

2 Q When was the first time you read him his warnings?

3 A It was prior to the Defendant signing this consent
4 for search and seizure, I read the Defendant a
5 Miranda Warning from a blue card that's issued by the
6 District Attorney's Office.

7 Q Do you have a blue card with you now?

8 A Yes, sir.

9 Q Would you please pull it out and just for the record
10 and benefit of the jury, would you read to the jury
11 and for the record just the way you read it for the
12 Defendant back on October 19th, 1992? This would
13 have been at the Reid address; is that correct?

14 A Yes, sir. "Warning to be given before taking any
15 oral or written confession: You have the right to
16 remain silent and not make any statement at all and
17 any statement you make may be used against you and
18 probably will be used against you at your trial.
19 Any statement you make may be used as evidence
20 against you in court; you have the right to have a
21 lawyer present to advise you prior to and during any
22 questioning. If you are unable to employ a lawyer,
23 you have a right to have a lawyer appointed to
24 advise you prior to and during any questioning; you
25 have the right to terminate this interview at any

1 time."

2 Q Did you ask the Defendant at some point whether he
3 understood his rights and whether he was willing to
4 waive them?

5 A Yes, sir, I did.

6 Q And you said he voluntarily signed that consent to
7 search. You took him down to the police station,
8 and did you ever read him his rights again?

9 A Yes, sir, I did.

10

11 (State Exhibit No. 96 was previously marked
12 for identification purposes.)

13

14 Q I'll show you what has been marked as State Exhibit
15 No. 96 and ask you whether or not you can identify
16 that exhibit.

17 A Yes, I can.

18 Q What is it?

19 A This is Statement of Person in Custody form. It has
20 a magistrate -- or, excuse me -- a legal warning at
21 the top of this form.

22 Q And tell us what happens in regards to that exhibit
23 and when.

24 A Well, again, this exhibit, this form, was completed
25 by myself on October the 19th, 1992. I noted the

1 time; it was 12:00 noon. I filled in the blank
2 there at the top of the page, with the Defendant's
3 name, Charles Douglas Raby, and wrote my name, myself
4 at the top of the page, indicating that I'm Sergeant
5 W.O. Allen with the Houston Police Department, and I
6 then at that time administered the Defendant another
7 legal warning.

8 Q Would you tell us, first of all, if you haven't
9 already, what the top of that page says? I know you
10 used the words, but for clarity's sake, in terms of
11 the record, is there some typing at the top of that
12 page?

13 A Yes, sir, there is.

14 Q What does it say?

15 A "Statement of Person in Custody."

16 Q And underneath it has some warnings; is that correct?

17 A Yes, sir.

18

19 MR. GUTIERREZ: I would like the record to
20 reflect I am tendering this exhibit also to the
21 Defense for their inspection and I would ask
22 that it be admitted into evidence at this time.

23 MR. CANTU: We would reurge our previous
24 objection to the statement, Your Honor.

25 THE COURT: Subject to objection, State

1 Exhibit No. 96 is admitted into evidence.

2

3 Q (By Mr. Gutierrez) Officer, let me ask this before
4 it's published to the jury. Is this particular
5 document signed by anyone? State Exhibit No. 96?

6 A Yes, sir, it is.

7 Q And who is it signed by?

8 A It's signed by the Defendant, Charles Raby. It's
9 also signed by Sergeant John Swaim and investigator
10 Allen Brown, both of the Homicide Division.

11 Q Now, this is not what anyone would term a confession
12 or a full written statement; is that correct?

13 A No, sir, it's not a confession at all.

14 Q What do you call it?

15 A This has the legal warnings on the document. I
16 asked the Defendant, Charles Raby, if he understood
17 his rights, and if he did so, to sign the form to
18 indicate it, and I asked him if he fully understood
19 his rights, and he said that he did, and he wrote on
20 the form that "I fully understand my rights, that I
21 will talk to Sergeant Allen," that he was in
22 agreement to talk to me.

23 Q Now, let's talk about how you asked him to sign it.
24 First of all, did you read him the warnings at the
25 top of State Exhibit No. 96?

1 **A** Yes, sir, I did.

2 **Q** Would you please read to the jury the warnings as
3 you read them to Charles Raby back on October 19th?
4 Now, what time is this that you're doing this second
5 set of warnings for the Defendant?

6 **A** This is at 12:00 noon.

7 **Q** And would you read those warnings, please?

8 **A** Yes, sir. "Statement of Charles Douglas Raby, taken
9 in Harris County, Texas. Prior to making this
10 statement, I have been warned by Sergeant W.O. Allen
11 of the Houston Police Department, the person to whom
12 this statement is made, that I have the right to
13 remain silent and not make any statement at all and
14 any statement I make may and probably will be used
15 against me at my trial. Any statement I make may be
16 used as evidence against me in court. I have the
17 right to have a lawyer present to advise me prior to
18 and during any questioning; If I am unable to employ
19 a lawyer, I have the right to have a lawyer
20 appointed to advise me prior to and during any
21 questioning. I have the right to terminate the
22 interview at any time. Prior to and during the
23 making of this statement, I knowingly, intelligently
24 and voluntarily waive the rights set out above and
25 make the following voluntary statement."

1 Q Did the Defendant acknowledge that he understood what
2 you read him?
3 A Yes, sir, he did.
4 Q Did you ask him to do anything regarding the warnings
5 themselves in terms of writing anything next to them
6 to indicate that he understood them?
7 A I asked him to initial the warnings as an indicator
8 only that they had been read to him and that he
9 understood them.
10 Q And did he acknowledge that he understood them?
11 A Yes, sir, he did.
12 Q Did the Defendant, Charles Douglas Raby, at your
13 request then write something on that page?
14 A Yes, sir.
15 Q And what was it that he wrote?
16 A He wrote, "I fully understand my rights and I will
17 talk to Sergeant Allen." I had drawn a slash across
18 the form, across the center of the document, had him
19 write his name across that, requested that he sign
20 his name across that so that no one could come in at
21 a later point and add anything to that document.
22 Q Did you ask the Defendant to sign it and other
23 people to witness him signing that statement?
24 A Yes, sir.
25 Q And who witnesses the Defendant signing that

1 statement?

2 A Sergeant Swaim and Investigator Brown.

3 Q And you yourself also saw the Defendant sign this
4 statement; is that correct?

5 A Yes, sir.

6

7 MR. GUTIERREZ: After the additional
8 predicate, Your Honor, I would now like to ask
9 that the exhibit, which I believe is already in
10 evidence, I would like to reoffer it, if not,
11 and ask that it be published to the jury.

12 THE COURT: You may do so.

13 Mr. Bailiff, if you will just pass it to
14 them.

15

16 Q (By Mr. Gutierrez) At some point did you talk to
17 the Defendant about whether he would be willing to
18 volunteer to submit samples of his blood, urine or
19 hair to the Houston Police Department for tests?

20 A Yes, sir, I did.

21

22 (State Exhibit No. 97 was previously marked
23 for identification purposes.)

24

25 Q And did you ask him to sign State Exhibit No. 97?

1 **A** Yes, sir.
2 **Q** And did he read it?
3 **A** I read it to him and then had him to read over the
4 form and sign it if he would consent to giving the
5 blood or hair.
6 **Q** Did he indicate that he understood?
7 **A** Yes, sir, he did.
8 **Q** Did he have any trouble understanding your language?
9 **A** No, sir.
10 **Q** Did he know what was going on about him?
11 **A** Yes, sir, he did.
12 **Q** And was that also witnessed by some other officers?
13 **A** Yes, sir. It was witnessed by the same two officers
14 that witnessed the other documents, Sergeant Swaim
15 and Investigator Allen Brown.
16 **Q** What time did the Defendant sign State Exhibit No.
17 97?
18 **A** At 12:12 p.m.

19
20
21
22
23
24
25

MR. GUTIERREZ: Your Honor, I would ask
that State Exhibit No. 97 be admitted into
evidence. I believe 95 is already into
evidence, but if not, I would like to reoffer it
if I have not offered it.

THE COURT: 95 is in evidence.

1 MR. GUTIERREZ: And I would like to offer
2 State Exhibit 97.

3 MR. CANTU: I don't have any objection to
4 95 or 97.

5 THE COURT: Both are admitted into
6 evidence.

7 MR. GUTIERREZ: I would ask that these two
8 exhibits be published to the jury, Your Honor.

9 THE COURT: Mr. Bailiff.

10

11 Q (By Mr. Gutierrez) Did you have an occasion at some
12 point that day, either immediately after that was
13 signed or a later time, to accompany the Defendant
14 somewhere where his hair was pulled?

15 A Well, in response to the question, he wasn't
16 accompanied anywhere. The people that took the hair
17 came to us.

18 Q Now, explain what happened.

19 A I requested that the Crime Lab be contacted and
20 requested to come to the Homicide Office. They did
21 at a later point during the interview process, and
22 blood and hair samples were taken.

23

24 (State Exhibit No. 100 was previously
25 marked for identification purposes.)

1 Q Let me show you what has been marked as State
2 Exhibit 100, and before I get into this, let me ask
3 you this: Were you present when the Defendant's
4 blood was drawn from his body?

5 A Yes, sir.

6 Q Do you know where that vial is right now?

7 A Yes, sir, I do.

8 Q Would you tell the members of the jury where that
9 is?

10 A It's in the refrigerator at the Houston Police
11 Department Homicide -- at the Houston Police
12 Department Property Room.

13

14 (State Exhibit No. 105 was previously
15 marked for identification purposes.)

16

17 Q I'll show you the bag from which I have taken
18 another bag marked State Exhibit 105, the paper bag I
19 handed you as being State Exhibit No. 100. Can you
20 tell us what that is?

21 A This is a property bag that has the description of
22 the contents that was placed and sealed in this bag.

23 Q And does it have the writing of anyone whom you
24 recognize?

25 A Yes, it does.

1 Q And who is that?

2 A Sergeant W.I. Stephens' handwriting is on here and
3 there's also an indication that Raydun Hilleman from
4 the Crime Lab has written on this form along with
5 the payroll number.

6 Q Who is Raydun Hilleman? And for the record, that's
7 spelled, R-a-y-d-u-n; is that correct?

8 A Yes, sir.

9 Q Who is she?

10 A She works in the Crime Lab for the Houston Police
11 Department.

12 Q And is she a chemist?

13 A Yes, sir.

14 Q I'll show you the contents of State Exhibit 105 and
15 I'll ask you whether or not you see any handwriting
16 on the items I'm showing you now.

17 A Yes.

18 (State Exhibit Nos. 101, 102, 103, 104,
19 106, 107, 108, 109 and 110 were previously
20 marked for identification purposes.)

21

22 Q I'll show you now 101, 102, 103, 104, 106, 107, 108,
23 109 and 110. Do you recognize the writing on any of
24 these exhibits?

25 A Yes, sir.

1 Q Which ones?

2 A The first plastic bag here is dated October 16th,
3 1992. It's initialed by Sergeant W. Stephens. It's
4 hair that was removed from the victim's hand at the
5 Harris County Morgue, and a small piece of paper, and
6 the hair was placed in that and turned over to
7 Sergeant Ted Thomas and submitted to the Crime Lab,
8 and there's a number on here, L92-10848, RH, which is
9 Raydun Hilleman's initials.

10 Q Whose hair was that?

11 A This was the victim's, the Complainant in the case
12 that was murdered, Edna Franklin.

13 Q Now, do you have personal knowledge -- I'm sorry,
14 were you going to say something else?

15 A Yes, sir. You asked me whose hair it was. I had no
16 idea whose hair it was, but it came from the
17 victim's hand.

18 Q Do you recognize the handwriting on any of the other
19 exhibits?

20 A There are initials on all of these exhibits -- pardon
21 me, on the first four here, Raydun Hilleman's. These
22 are hair samples that was taken from the Defendant,
23 Charles Douglas Raby.

24 Q 101 through 104; is that correct?

25 A That's correct.

1 Q At a later time were loose head hairs recovered from
2 Eric Bengé and Lee Rose?
3 A Yes, sir.
4 Q And those exhibits now marked 107, 108, in terms of
5 Eric Bengé, and 109 and 110, in terms of Lee Rose,
6 is that correct?
7 A Yes, sir, they are.
8 Q And all these things were submitted for testing; is
9 that correct?
10 A Yes, sir.
11 Q But in terms of physical evidence, to your knowledge,
12 there's no DNA in this case? ⁷⁷
13 A That's correct.
14 Q No semen in the body of the Complainant?
15 A That's right.
16 Q Nothing physical to connect the Defendant to the
17 crime; is that correct?
18 A That's correct. ⁷⁸
19 Q At the time that you were obtaining all these things,
20 you were doing it in hopes of obtaining that sort of
21 evidence; is that correct?
22 A Yes, sir.
23 Q And up to this point the Defendant had been
24 cooperative? He agreed to talk to you?
25 A Yes, sir, he was cooperative.

1 (State Exhibit No. 98 was previously marked
2 for identification purposes.)
3

4 Q Now, I will show you what has been marked as State
5 Exhibit No. 98. I will ask you whether or not you
6 can identify this exhibit.

7 A Yes, sir, I can.

8 Q Would you tell the members of the jury what it is?

9 A This is a 3-page document, and this is the statement
10 of Charles Raby that I took on October the 19th,
11 1992.

12 Q Now, what time did you start to take that statement?

13 A At 1:24 p.m.

14 Q And was this after that long legal-sized sheet that
15 has all the warnings on top had been read to him?

16 A Yes, sir.

17 Q Did you read him his warnings another time?

18 A Yes, sir, I did.

19 Q At what point was that?

20 A Prior to the interview, the statement is taken in a
21 question-and-answer narrative fashion. The warnings
22 are displayed on a computer, on a monitor. The
23 Defendant, Charles Raby, was seated next to me, to
24 the right of me. He could view the warnings on the
25 monitor. I read them to him at that time.

1 Q Before we get into that, could we talk a little bit
2 about the Defendant's treatment, in terms of his
3 creature comforts, if you will? Did he make requests
4 for anything? Did you provide him with anything?
5 What was going on immediately before he gave you that
6 written statement?

7 A Well, immediately on our arrival to the Homicide
8 Division, the Defendant was placed in the Interview
9 Room within the Homicide Office. He was unhandcuffed
10 by me. I asked him if he wanted anything to drink
11 or if he wanted coffee. He said, yes, that he did.
12 We both had coffee. We had coffee again through the
13 interview process. He was taken to the rest room.
14 He was also provided with a hamburger and Coke.

15 Q And who paid for that hamburger and Coke?

16 A Sergeant Shirley.

17 Q And when you all paid, is this uncommon for you all
18 to buy food, maybe provide cigarettes or coffee for
19 the folks that you are asking questions of,
20 interviewing?

21 A No, sir, it's not uncommon.

22 Q Does the City provide you with a special budget for
23 that? Where does that money come from?

24 A Out of our pockets.

25 Q Do you ever get it back?

1 A No, sir.

2 Q At the time the Defendant sat down with you to
3 dictate the statement, you provided him with some of
4 the things you're talking about now; is that correct?

5 A All of the things I'm talking about.

6 Q Didn't say, "If you give me a statement, I'll let
7 you go to the bathroom"? None of that?

8 A No, sir. ⁸⁰

9 Q Would you explain to the members of the jury, first
10 of all, did you read the Defendant his warnings for
11 a third time?

12 A Yes, sir, I did.

13 Q And would you please read for the members of the
14 jury those warnings just like you did to the
15 Defendant?

16 A Yes, sir. This third warning is pretty consistent
17 with the other warnings. There's slightly some
18 differentiation, and I'll point that out.

19 Q Okay.

20 A "Statement of Person in Custody, Monday, October
21 19th, 1992." It began at 13:24 hours, which is
22 military time, 1:24 p.m. Statement of Charles
23 Douglas Raby, taken in Harris County, Texas.

24 "Prior to making this statement, I was warned by
25 Sergeant W.O. Allen of the Houston Police Homicide

1 Division, the person to whom the statement was made,
2 I have the right to remain silent and not make any
3 statement at all and any statement I make may and
4 probably will be used against me at my trial."

5 There is a response underneath each of these
6 warnings that is given, and the Defendant responded
7 yes, that he did understand.

8 "Any statement I make may be used as evidence
9 against me in court. Response: Yes.

10 "I have the right to have a lawyer present to
11 advise me prior to and during any questioning.

12 Response: Yes, sir.

13 "If I am unable to employ a lawyer, I have the
14 right to have a lawyer appointed to advise me prior
15 to and during any questioning. Response: Yes, sir.

16 "I have the right to terminate or stop this
17 interview at any time. Response: Yes, sir.

18 "Prior to and during the making of this
19 statement, I knowingly, intelligently and voluntarily
20 waived or gave up the rights set out above and made
21 the following voluntary statement. Response: Yes,
22 sir."

23 Q The Defendant understood his warnings and voluntarily
24 waived his rights then and talked to you voluntarily;
25 is that correct?

1 **A** That is correct.

2 **Q** And would you explain to the members of the jury --

3 you mentioned a screen. What did you take the

4 confession on? What type of instrument? Typewriter

5 or something else?

6 **A** It was taken on a PC computer that was located in my

7 office. The statement is typed and then printed out

8 on a printer.

9 **Q** I believe you said at one point the Defendant was

10 sitting in close proximity to you where he could see

11 the screen?

12 **A** That's correct.

13 **Q** Would you explain to the members of the jury what

14 your technique is in terms of taking down the

15 statement? Do you have the person tell you the

16 whole thing, his whole version first and then sit

17 down and organize it and go line-by-line? Exactly

18 how do you do it?

19 **A** Well, as I stated, it's a question-and-answer

20 narrative fashion. In the beginning of the

21 statement, a lot of times you're basically including

22 just biographical information, how many years of

23 formal education they had, where they went to school,

24 where they lived, things of that nature, and I'm

25 asking those questions.

1 This particular statement, it notes where we
2 are, where the statement is being taken, that the
3 fact that the statement was voluntary, that there was
4 no threats or promises of any kind, and where he was
5 living, again, background information. It's
6 information that he would have to provide me with and
7 then I ask him to tell me about his activities on
8 the date of this offense.

9 Q And as he tells them to you, you type them down?

10 A That's correct.

11 Q Does he or she have an opportunity to read what
12 you're typing?

13 A Yes, sir.

14 Q Do you double-check with them to make sure it's
15 right?

16 A Yes, sir.

17 Q Would you tell the members of the jury what a self-
18 serving statement is?

19 A Well, a self-serving statement would be one that an
20 individual giving that statement provides information
21 that would not entirely be indicative of his guilt.

22 Q Something that wouldn't necessarily inculcate him; is
23 that right?

24 A That's right.

25 Q Has it been your experience that of human nature,

1 people always give you the truth?

2 A They do not.

3 Q Do they sometimes or generally try to put themselves
4 in a better light than maybe other witnesses or the
5 facts may have been?

6 A That's correct, they do.

7 Q Do you have the luxury of saying, "Well, I don't
8 believe you, Mr. Smith, and I'm going to put in this
9 statement what I want, not what you want"?

10 A Well, it's a double question. I do have the luxury
11 of saying, "I don't believe," but I don't change the
12 statement. It's their statement. Whatever they want
13 to say, they can put in their statement. 8/

14 Q So if you put in what you want, you run the risk of
15 that person saying, as he should, "Hey, that's not my
16 statement. I ain't going to sign it"?

17 A That's correct.

18 Q So whatever they tell you, you put it down whether
19 you think it's true or not; is that correct?

20 A Yes, sir.

21 Q In this particular case, did you take down the
22 statement as given to you by the Defendant, Charles
23 Raby?

24 A Yes, sir.

25 Q And did you type the whole thing out, at least on

1 the screen, and did he have the opportunity to read
2 it?

3 A Yes, sir, he had the opportunity to read it
4 throughout the entire process that the statement is
5 taken, and once the statement is completed, it's
6 printed out, provided to the individual that is
7 giving the statement and asked to read the statement,
8 and if he wants to make any additions or changes, he
9 can.

10 Q Was that done in this case?

11 A Yes, sir.

12 Q When you say, "printed out," for those folks who may
13 not be familiar with computers, you have a computer,
14 and once you're ready to print out the document on
15 the screen, then it is printed out on a printer; is
16 that correct?

17 A Yes, sir.

18 Q And that was done in this case; is that correct?

19 A Yes, sir.

20 Q And at least the first page -- is it only the first
21 page that has a warning attached to it?

22 A Yes, sir.

23 Q That's a requirement of Texas law; is that correct?

24 A Yes, sir.

25 Q This 3-page document was given to the Defendant; is

1 that correct?

2 **A** Yes, sir, it was.

3 **Q** And he was asked to make corrections if he wanted

4 to?

5 **A** He was advised that if he wanted to make any

6 **Q** additions or deletions, that he could. ⁸²

7 **Q** Did he make any?

8 **A** May I see the document? From the statement content

9 itself, no, sir. The only editions are the initials

10 that were made by the Defendant and signatures.

11 **Q** During the course of the taking of a statement or

12 when you take a statement that's being dictated, are

13 there occasions when a person says, "Wait a second.

14 That part is not right. That isn't exactly what I

15 want to say. This is what I want to say," to where

16 you reword what is on the screen?

17 **A** Yes, sir, that happens.

18 **Q** So you eliminate the need for later on having things

19 be scratched out on to a printed page; is that

20 correct, because he can do that on the screen?

21 **A** Yes, sir, we can do that before it's printed.

22 **Q** In this instance regarding this document, were you

23 present when the Defendant signed it?

24 **A** No, sir.

25 **Q** Would you explain to the members of the jury why you

1 weren't?

2 A This statement is a statement of person in custody
3 and it is the statement of the Defendant. Since
4 going to the Homicide Division in 1986, it's been our
5 procedure that after a statement was taken from a
6 defendant that has the legal warnings on that
7 statement, that the investigator that took the
8 statement would leave the room and have other
9 investigators, other officers, sometimes civilians in
10 the event someone can't read, have them read that to
11 them, if necessary. This is done so that the person
12 giving the statement has the opportunity to talk with
13 other officers if he feels that he has been coerced
14 in any manner or promised or threatened in any manner
15 in return to give a statement.

16 Q For purposes of the record, when was the statement
17 begun, in terms of the time it began, and when did
18 it end?

19 A 1:24 p.m. is when the statement began, and it was
20 witnessed -- when I say "witnessed" -- the
21 investigator that witnessed Charles Raby's signature
22 on this document was at 2:25 p.m.

23 Q So he was arrested about 11:15 and taken down to the
24 police station and signed those other forms and he
25 started to give you this statement at 1:24 and ended

1 at the time you mentioned, 2:25; is that correct?

2

3 MR. GUTIERREZ: Your Honor, I don't know if
4 I have asked that State Exhibit Nos. 77 and 75
5 be admitted. If not, I would ask that the bag
6 containing the rug marked State Exhibit No. 77,
7 the contents of State Exhibit No. 77, be
8 admitted into evidence as well as the purse
9 marked State Exhibit No. 75 and its contents.
10 The State would just like to offer the bag, not
11 necessarily its contents.

12 THE COURT: Any objections?

13 MR. CANTU: No objection.

14 THE COURT: State Exhibits 75 and 77 are
15 admitted into evidence.

16

17 Q (By Mr. Gutierrez) Who were the officers who
18 witnessed the signing of the statement?

19 A Officer Abbondandolo and Officer Drehel.

20

21 MR. GUTIERREZ: I'll pass the witness at
22 this time, Your Honor, and I may recall him
23 later.

24 THE COURT: Okay. Let's take a short
25 recess before we go into cross-examination.

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(A recess.)

(Whereupon the jury was seated in the jury box.)

THE COURT: Officer, if you will take the stand and, Mr. Cantu, you may proceed.

CROSS EXAMINATION BY MR. CANTU

Q Officer, let's go back to the first day that you heard about this incident, either the 15th or 16th of October.

A Yes, sir.

Q You, along with one other officer, were in charge and you requested a number of photographs be taken at the house of Mrs. Franklin. We have got those photographs here and they have been shown to the jury, and one of them that strikes me as peculiar, or, not peculiar, at least -- or if not peculiar, at least some importance in that the photograph depicts a screen window and a freshly painted window, and also you can note the house itself, Mrs. Franklin's house, has been freshly painted. That's all within the photograph. You recall the house, do you not?

A Yes, sir, I do.

1 Q I'm not going to show you the photographs, because I
2 believe that you at least had an opportunity to look
3 at them once before before coming to trial today.

4 A I have seen the photos.

5 Q And you indicated you asked for fingerprints to be
6 taken that morning or that afternoon that you were
7 there initially, the initial time you were there?

8 A Yes, sir, the night of the investigation.

9 Q And those fingerprints were taken, those attempts
10 were made?

11 A Yes, sir.

12 Q And the attempts that were made were at the door, at
13 both doors?

14 A I don't have any personal knowledge exactly what
15 Sheldon attempted to get prints from at the scene.
16 I would agree that should have been done at the
17 points of entry. The articles that Mr. Sheldon
18 collected, he took with him from the scene to the
19 latent lab.

20 Q But aside from what you have personal knowledge of
21 what was done -- that will be addressed later -- but
22 what you yourself as one of the officers in charge
23 or one of the supervising detectives, you requested
24 this to be done?

25 A Yes, sir. 83

1 Q Photographs of the points of entry, doors, both
2 doors. And did you ask photographs to be taken of
3 the window, and not only the screen but inside the
4 window? When I say "the window," the window with
5 the glass --

6 A I understand. What happens in processing this scene,
7 again, the crime scene investigator takes those
8 photos. I asked him to photograph the entire scene
9 as it is found at the time of the investigation. I
10 am personally not taking those photos. I knew that
11 he took photos of the windows, if that's what you're
12 asking me.

13 Q That's what I'm asking you. I know you yourself
14 don't go to a scene with a 35 camera in hand and
15 take pictures. You've got some other people to do
16 that for you.

17 Do you recall instructing one of the officers
18 there, one of the crime scene officers, to take or
19 attempt to take prints off the windows or window
20 panes of the first bedroom, later to be identified as
21 the bedroom of Eric Bengé?

22 A Yes, sir. That's the southeast bedroom. You're
23 correct, it is Eric Bengé's bedroom. It is my
24 understanding or recollection that Mr. Sheldon stated
25 that the window was too dirty and he couldn't get



1

any prints there. ⁸⁴

2

Q Do you recall noticing anything out of the norm other

3

than what you have spoken about as to the screen, in

4

reference to the window itself?

5

A Can you be more specific? Normal as to what?

6

Q Partially pried open, the window, completely pried

7

open?

8

A I believe the window was up a little bit.

9

Q Let me show you a photograph then, because you didn't

10

move anything. You have indicated that. And you

11

asked for no one to move anything that night?

12

A That's correct.

13

Q These are the daytime photos, and those are not the

14

photos we would be referring to. We would be

15

referring to nighttime photos, would we not?

16

A Yes, sir.

17

Q Because those are the ones that your department took?

18

A That's correct.

19

20

MR. CANTU: May I approach the witness?

21

THE COURT: Yes.

22

23

Q This is State Exhibit 35. This is the front of the

24

house, and it shows that front bedroom there at the

25

side, does it not, right by that?

1 **A** Yes, sir. It has the air conditioning unit in that
2 window there of that bedroom.

3 **Q** This is State Exhibit 36. This is a photo of the
4 screen of that bedroom window, again, and it
5 indicates or shows that the screen is partially open
6 and there's a screwdriver that you have testified to
7 finding there.

8 **A** Yes, sir.

9 **Q** Were you able to determine the owner of that
10 screwdriver?

11 **A** I believe the screwdriver belonged to Eric Benge.

12 **Q** Were you able to determine how long ago this house
13 and that window had been painted from your
14 investigation?

15 **A** No, sir, I do not know.

16 **Q** Do you recall whether this window is in the same
17 position as it was on that night that you were
18 there? These were photos taken obviously shortly
19 after you got there and you gave the instructions; is
20 that correct?

21 **A** That's correct.

22 **Q** Did anyone tell you whether they had moved the window
23 or the screen in any manner to further enhance this
24 photograph?

25 **A** No, sir.

1 Q It's your position that nothing was moved in
2 reference to this photograph, this State Exhibit No.
3 36?

4 A Yes, sir. That picture there depicts the way the
5 window -- the way I observed it at the time I was
6 there.

7 Q You would agree with me that window doesn't seem to
8 be open at that point?

9 A That's correct; the window is down. It's the screen
10 itself that is open at the bottom.

11 Q And when you referred to a window being open, you
12 are referring to the screen as opposed to the actual
13 window with the window panes on it?

14 A Yes, sir.

15 Q Sometimes we get the terminology confused as Texans.
16 So it's more correct and this is a closer view of
17 State Exhibit No. 37. I'm going to show it to you
18 and I'm going to turn it around in front of you and
19 show it to the jury. This is a closer view of that
20 particular window on that night, is it not?

21 A Yes, sir, that depicts a closer view of the portion
22 of the window and, of course, of the screwdriver.

23 Q And more specific, the view of the window itself,
24 which is completely shut?

25 A That's correct.

1 Q Did you give instructions to one of your crime scene
2 support staff to take photos of the window with the
3 window panes itself?

4 A Yes, sir.

5 Q And did they?

6 A To my knowledge, he did. ⁸⁵

7 Q Do you have those photographs?

8 A Whatever photographs are here is what was taken.

9 Q Do you recall whether there were fingerprints taken
10 from the window itself? I know you said it was
11 dusty, the window was dusty and dirty.

12 A There was no prints lifted from that window, to my
13 knowledge.

14 Q You stayed through that whole process? I know you
15 didn't actually do it, but you stayed through the
16 whole process while the people with that expertise
17 complied and completed your commands?

18 A That's correct.

19 Q And when you initially arrived there, who was there
20 before you?

21 A An uniformed officer was there, Eric Bengue was
22 present and Lieutenant Gaford.

23 Q What was Lieutenant Gaford's position?

24 A He was the Lieutenant who was the night shift
25 Lieutenant in the Homicide Division.

1 Q He's responsible for that division at that particular
2 evening shift then?

3 A Yes, sir.

4 Q And he would go there normally for any calls?

5 A Well, it depends. From Lieutenant to Lieutenant, I
6 guess it would depend on their own interest, and if
7 they wanted to go out and make a scene in particular
8 cases, they do make the scenes; not all of them.

9 Q He was there on this particular evening for no
10 particular reason that you know of?

11 A He came out to the scene to look at it and to offer
12 any assistance that he could to us.

13 Q And there was no assistance needed to you, because
14 you took over and controlled the investigation at
15 that point?

16 A I took the primary responsibility of the scene and
17 then had Mr. Sheldon come later for latent prints.

18 Q What is the fellow, the officer -- I forget what his
19 name was -- but the officer that was taking
20 photographs, photographs that we have here and
21 presented to us. Was he present there prior to your
22 arriving there?

23 A Officer Norris, I do not believe he was there prior
24 to me arriving. I think he came after.

25 Q He must have arrived shortly after you did?

1 **A** Yes, sir.

2 **Q** And when you arrived there, you noticed that there
3 were dogs inside the house?

4 **A** There was one dog in the house.

5 **Q** I think there has been a photo taken of that dog.
6 That's the poodle, the smaller dog?

7 **A** Yes, sir, it was the poodle that was in the house.

8 **Q** Maybe not a poodle but a smaller dog, right?

9 **A** Well, it was a poodle.

10 **Q** When you arrived there, you initially noticed also
11 there were other dogs, and the other dogs were inside
12 or in front of the yard?

13 **A** They were in the back yard.

14 **Q** And did you notice the door, the back door?

15 **A** Yes, sir.

16 **Q** Did you notice whether it was open or closed or
17 somewhere in between?

18 **A** It was closed.

19 **Q** And did you address the door itself and did you ask
20 for evidence to be secured or taken from the door
21 itself, the back door?

22 **A** Asked, again, for that to be processed for any
23 prints.

24 **Q** And you let the people that do that do their job?

25 **A** That's correct.

1 Q Then you went into -- and I'm assuming this is what
2 you did, and you correct me if this isn't the
3 sequence of events, because I'm just assuming you
4 walked through the front door, that that's the first
5 thing that you do. Obviously the first thing you
6 noticed was the body of Mrs. Franklin there in the
7 living room?

8 A Yes, sir.

9 Q Not to make light of that, I guess that's what I
10 wanted to say. Once you approached Mrs. Franklin's
11 body and you see the gravity of this case and you
12 appoint people different duties that they have to
13 perform for you to establish your investigation and
14 secure your investigation, and you go to the back
15 door. Do you go anywhere else within that house?

16 A I looked in the house entirely, all the rooms.

17 Q Did you specifically go to the bedroom that goes
18 through the kitchen?

19 A Yes, sir. That was Mrs. Franklin's bedroom.

20 Q That would be identified as Mrs. Franklin's bedroom.
21 Did you notice, and we have got photographs,
22 obviously, that depict her room, but did you notice
23 or how would you describe her room, the total room
24 itself and manner of cleanliness, I guess for lack of
25 a better word, her disarray?

1 **A** It was unkept.

2 **Q** You noticed there were many things on the floor,
3 personal items, a dog bed. I think there was one
4 photograph where there seems to be a dog bed or
5 mattress or cover in one corner of her room. You
6 most noticed that, did you not?

7 **A** Yes, sir.

8 **Q** Apparently she kept one of her pets in the bedroom
9 with her, possibly the poodle, and you don't know
10 that, do you?

11 **A** Well, the dog was in that bedroom when I arrived.

12 **Q** You noticed many things on the floor when you arrived
13 there and you noticed things on her bed, did you
14 not?

15 **A** Yes, sir, I did.

16 **Q** Those are things that you testified to today: some
17 credit cards, some personal belongings. There's one
18 photograph that's been admitted that shows some kind
19 of inhalant. I'm not sure what it's for, but it
20 seems to be some kind of prescribed inhalant and
21 other personal items that belonged to Mrs. Franklin
22 on her bed. Is that a correct statement?

23 **A** Yes, sir. I haven't seen that photo, but you're
24 accurate as far as there were a number of articles
25 on the bed.

1 Q And also there were a number of articles such as a
2 credit card near the bed, I think on the side
3 nearest the door that enters into the bed. If my
4 memory serves me correctly, that was a Montgomery
5 Ward, a red credit card.

6 A You are correct. It was a Montgomery Ward credit
7 card, however, the card is going to be on the side
8 of the picture that would show it going to be on the
9 north side of the bed, which would, based on the
10 clutter that was in the southwest corner of the room,
11 would have been the side of the bed that Mrs.
12 Franklin would have been on or off the bed.

13 Q This is a bed that's more like a day bed, right?
14 Because it's got one side that's more difficult to
15 get on the bed from that side than it would be the
16 side where that credit card is found. There's a
17 railing -- I think that would be called a railing --
18 on one side, such as a backing to that bed.

19 A I don't recall specifically if it had a railing.

20 Q Let me show you a photograph so we can get beyond
21 that.

22 A Please.

23 Q Well, this one. This one might jog your memory,
24 State Exhibit 65. You see this mahogany -- not
25 mahogany but maple-colored arm?

1 **A** Yes, sir. That's at the foot of the bed.

2 **Q** You recognize this as being her bed?

3 **A** Yes, sir.

4 **Q** And you recognize this as being part of the bed

5 stand?

6 **A** Yes, sir.

7 **Q** Do you recall whether this bed stand went all the

8 way around?

9 **A** No, I do not recall if it went around.

10 **Q** Here's a better photo for you. Again, this is State

11 Exhibit 68. This is the bed, is it not?

12 **A** Yes, sir.

13 **Q** Obviously it's her bed. You just identified it on

14 State Exhibit 65. And that's the back, the railing

15 that I'm talking about, right?

16 **A** Yes, sir.

17 **Q** So she got on and off the bed obviously from this

18 side where her shoes are, her slippers are, right?

19 **A** That's correct. The direction would have been north.

20 **Q** And there seems to be another mattress underneath

21 maybe that you pull out. I'm not sure. It looks

22 like a trundle-type bed, is it not?

23 **A** Yes, sir.

24 **Q** You took all this property that you found on the

25 bed, you secured it and you took it for the Police

1 Department in their investigation?

2 A No, sir. I had Mr. Sheldon take it.

3 Q But, I mean, that's what I mean. When I say "you,"

4 you had someone in your support staff to take it,

5 and that evidence, you either analyzed or determined

6 certain aspects. The credit cards, you determined

7 whether they had been used without permission, did

8 you not?

9 A To my knowledge, none of those -- well, the cards

10 that were recovered couldn't have been used.

11 Q Well, they could have been used if they had been

12 taken -- if someone had taken a slip and they had

13 used a billing slip to use a credit card. That's

14 always possible.

15 A Yes, sir. Depending on where it was from.

16 Q The real point I'm making is, nothing of her personal

17 items from your investigation you determined were

18 taken, stolen, used without permission?

19 A There was an issue concerning a Shell credit card,

20 however, it was not determined who took that card or

21 who may have used it.

22 Q But you have a card that's missing in some way?

23 A The family thought that there was a Shell credit card

24 missing.

25 Q And has that correction been resolved?

1 **A** Well, it's difficult to answer. We did not determine
2 that the Defendant had used that card, if that's what
3 you're asking me.

4 **Q** Right. That card was not used by Mr. Raby or anyone
5 that you might have suspected on that day?

6 **A** No, sir.

7 **Q** Coming out of this incident?

8 **A** That's correct.

9 **Q** Did you travel or did you walk into the other part
10 of the house? I know there was at least two other
11 bedrooms, as I recall, the makeup of the house. One
12 is Eric Bengé's bedroom. The bedroom that is the
13 front bedroom that has been discussed on numerous
14 occasions, did you go in there?

15 **A** Yes, sir, I did.

16 **Q** And I know you instructed your folks to take
17 photographs of the bed, the walls and different
18 aspects of it. Did you ask your agency, the Houston
19 Police Department, to analyze a blanket that was on
20 Mr. Bengé's bed on this particular night?

21 **A** No, sir.

22 **Q** Did you ask them to analyze sheets that were on the
23 bed on this particular night?

24 **A** No, sir.

25 **Q** Did you do any investigation on blankets or sheets

1 that were on the bed on this particular night?

2 **A** On Mr. Benges' bed?

3 **Q** Mr. Benges' bed, yes, sir.

4 **A** No, sir.

5 **Q** All that you did in Mr. Benges' bed is take

6 photographs of the interior, interior walls, his bed

7 and also the exterior window leading to Mr. Benges'

8 bedroom, right?

9 **A** As far as photographs are concerned, yes, sir.

10 **Q** Did you find any contraband or anything there that

11 was misplaced or out of place?

12 **A** Yes, sir.

13 **Q** What did you find?

14 **A** There was a paring knife and a small ashtray, I

15 believe, flat-topped tray that Eric Benges said did

16 not belong in that room. ⁸⁵

17 **Q** Do we have photos? Did you take photos of that?

18 **A** It should be in the photos. We do have the knife.

19 **Q** That knife that you took, was an analysis made of

20 that knife?

21 **A** It was sent to the latent lab by Mr. Sheldon.

22 **Q** The latent lab made scientific analysis of the handle

23 and the blade?

24 **A** Well; they dusted it for latent prints.

25 **Q** Okay. Then I misunderstood you. Your support person

1 is Mr. Sheldon, right?

2 A Yes, sir.

3 Q He dusted it for prints?

4 A That's correct.

5 Q And did he come to a conclusion as to prints?

6 A There were no prints found on that knife or lifted.

7 Q Was there anything deduced from that blade of that
8 knife, anything in particular, blood?

9 A There was no blood visible on the knife.

10 Q Was that blood further analyzed by any agency?

11 A There was no blood.

12

13 MR. GUTIERREZ: Objection.

14

15 Q (By Mr. Cantu) Is this the ashtray that you're
16 referring to?

17 A No, sir.

18 Q Before we get any more questions --

19

20 MR. GUTIERREZ: Your Honor, I have no
21 objection to counsel using any excess pictures
22 that I didn't use, but I would like him to mark
23 them so the record will reflect what he's
24 referring to.

25

1 (Defense Exhibit No. 1 was marked for
2 identification purposes.)
3

4 Q Officer, at the prosecutor's request, we have had
5 this marked as Defendant Exhibit No. 1. I'm going
6 to ask you whether you recognize that, and if you
7 do, would you state it, state to the jury what it
8 is?

9 A This is a photograph of the living room of Ms.
10 Franklin's home, a portion of the room, of the living
11 room.

12 Q And it accurately depicts the living room as it was
13 that night when you requested the photographs to be
14 taken?

15 A Yes, sir, from that view.

16 MR. CANTU: Your Honor, at this time we
17 would ask that Defense Exhibit No. 1 be admitted
18 into evidence.

19 MR. GUTIERREZ: No objection.

20 THE COURT: Defense Exhibit No. 1 is
21 admitted into evidence.
22

23 Q (By Mr. Cantu) At this time I ask you a primary
24 question. Is this the ashtray we were talking about?

25 A No, sir. The tray I'm referring to is the one that

1 was in Mr. Benges's bedroom.

2

3 MR. GUTIERREZ: I believe those items are
4 in that box at your feet, Mr. Cantu, the paring
5 knife and the ashtray, in one of those plastic
6 bags.

7 MR. CANTU: Your Honor, may I have the
8 prosecutor assist me in finding the ashtray?

9 THE COURT: Mr. Prosecutor, do you want to
10 help Mr. Cantu?

11

12 (Defendant Exhibit No. 2 was marked for
13 identification purposes.)

14

15 Q (By Mr. Cantu) I want to show you what has been
16 marked as Defense Exhibit No. 2. Can you recognize
17 this?

18 A Yes, sir. That's the tray that I referred to.

19 Q That we have been discussing and I have been asking
20 you questions about?

21 A Yes.

22

23 MR. CANTU: At this time, Your Honor, we
24 would ask for this tray to be introduced into
25 evidence.

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MR. GUTIERREZ: No objections.

THE COURT: What number is it?

MR. CANTU: Defendant Exhibit 2.

THE COURT: Defendant Exhibit 2 is admitted
into evidence.

Q (By Mr. Cantu) I know that it's dirty, so we're
going to put it here because it's got latent prints.
This is an item that you found in a bedroom, Mr.
Eric Benge's bedroom; is that correct?

A That's correct.

Q At the time that you spoke with Mr. Benge, right?

A Yes, sir.

Q And you concluded, after discussing with Mr. Benge
the incident, you concluded this ashtray or this tray
did not belong in his bedroom?

A Yes, sir. He indicated at the scene -- I'm talking
about the crime investigation -- that the tray and
the paring knife that we collected was out of place,
that it didn't belong in the location that it was
found.

Q Did you conclude that it was out of place within the
house completely or was it out of place within the
bedroom, or did you make that conclusion?

A No, I don't have any information that he gave that

1 it did not belong in the house somewhere, but since
2 he indicated that was foreign to the room, it's a
3 possibility that it could have been moved. We wanted
4 to cover every avenue and have it processed.

5 Q So your purpose was not conclude that it didn't
6 belong in the house but whether, in fact, it had
7 prints on it that might assist you?

8 A That's correct.

9 Q And your conclusion was... ?

10 A There were no latent prints recovered from those
11 articles.

12 Q And I know then you either went or were informed
13 there were photographs being taken of the outside of
14 the home, and you took photos of the bedroom window,
15 of Mr. Bengé's bedroom window. We discussed that
16 again. And that screwdriver that you photographed
17 and that you have here today, do you recall ordering
18 or asking your support staff to take or attempt to
19 take fingerprints from that screwdriver?

20 A Yes, sir. It was collected by Mr. Sheldon and taken
21 to the latent print lab for that purpose.

22 Q And were there prints taken from that?

23 A No, sir.

24 Q Was their ownership determined of that screwdriver?

25 A It's my understanding that screwdriver belonged to

1 Mr. Bengé.

2 Q In your investigation, were you able to determine
3 whether he had other tools that he kept in the home?

4 A I'm sure there were a number of other tools in the
5 home. I don't recall seeing any. There were some
6 auto parts in a bag behind a television in the
7 living room.

8 Q Shortly after that, you have testified that you
9 attempted to find Mr. Raby and I think you had an
10 arrest warrant on the 19th. Is that a correct
11 statement?

12 A Yes, sir.

13 Q And you had it early in the day?

14 A Yes, sir.

15 Q It was signed by a magistrate early that day. You
16 went looking for Mr. Raby, your testimony would say,
17 about three times, and you were unsuccessful. Then
18 you went to the address at 706 Reid Street, right?

19 A Yes, as to what I did on the 19th.

20 Q Okay. That's all I'm asking is what you did.

21 A Okay.

22 Q But prior to that time, you had not only -- you were
23 investigating and you were trying to determine who
24 you thought might have committed the offense, in your
25 search of the death of Mrs. Franklin. Prior to that

1 time, you didn't have an arrest warrant for anyone
2 else and you were doing a preliminary investigation;
3 is that correct?

4 A I'm sorry, that was a little confusing. Prior to
5 when?

6 Q You didn't have an arrest warrant for anyone else
7 prior to the 19th?

8 A That's correct.

9 Q On the 19th, you received your initial arrest warrant
10 in this case?

11 A No, sir.

12 Q You had another arrest warrant at one time and when?

13 A No, sir. What I'm saying, the warrant was drawn up
14 prior to the 19th and Sergeants Stephens and Wendel
15 and other investigators in the Homicide Division had
16 attempted to arrest the Defendant over the weekend
17 prior to the 19th.

18 Q I understand that. But it wasn't pursuant to an
19 arrest warrant? Are you looking for the arrest
20 warrant?

21 A I'm looking for a copy here. Well, it was formally
22 signed by a magistrate, you're correct, on the 19th.

23 Q That's when you formally were seeking out Mr. Charles
24 Raby?

25 A That's correct. *yle*

1 Q In reference to this case?

2 A That's correct.

3 Q And it was signed sometime in the morning. You made
4 the arrest sometime around 11 o'clock?

5 A 11:15.

6 Q And you arrived at the police station later that day
7 with Mr. Raby in hand and Mary Gomez in hand?

8 A That's correct.

9 Q And through the process you obtained a statement by
10 Mr. Raby?

11 A Yes.

12 Q That was signed sometime later that afternoon,
13 sometime near the hour of two o'clock?

14 A That's correct.

15 Q Mr. Raby spoke with you about the incident? He
16 spoke to you freely about the incident after speaking
17 to him and indicating his desire to speak to you
18 about it?

19 A Yes, sir, he did.

20 Q And he spoke to you about his drinking the previous
21 day and on that same day different alcoholic
22 beverages and drinks?

23 A Yes, sir, he did say that.

24 Q Prior to the episode?

25 A Yes, sir, he said he had been drinking.

1 Q And he indicated to you the drinking continued after
2 the episode?

3 A I can look at the statement. I'm not sure he said
4 he was drinking after the episode or not. He did,
5 as you have indicated, say he had been drinking prior
6 to it actually happening.

7 Q Let me ask you how long the actual statement itself
8 took and not the warnings themselves. You usually
9 time that by the reading of the warnings. But let
10 me ask you, if you recall, how long the statement
11 itself that Mr. Raby gave to you, how long that
12 took.

13 A I would say about 45 minutes.

14 Q When you asked Mr. Raby in those 45 minutes -- you
15 tried to lead him through it initially by asking for
16 some historical background on Mr. Raby. That's a
17 fair statement; is that correct?

18 A Well, yes, sir. We're documenting who's giving the
19 statement.

20 Q Historical background, he states his name, his age
21 and goes from there?

22 A Yes, sir.

23 Q And as I recall, that statement is about a three-
24 paragraph statement, is it not?

25 A It's three pages.

1 Q Three-page statement given to you, and after that 45
2 minutes that he makes a statement, you leave and you
3 allow him to speak with Mary Gomez?

4 A No, sir. He spoke with Mary Gomez prior to this
5 statement being taken. ⁸⁷

6 Q Prior to the statement? Okay. Prior to that 45
7 minutes and after the warning or prior to the warning
8 itself also?

9 A The entire statement, as it's documented here,
10 started at 1:24. It was concluded at 2:25, is when
11 Mr. Raby, the Defendant, was met by the investigators
12 that I testified to. I'm using the term
13 approximately 45 minutes when you exclude warnings
14 and so forth that I gave him. The entire statement
15 process at this time when this was done was an hour.
16 If your question is, when did he talk to Mary Gomez,
17 it was prior to this happening.

18 Q Prior to this hour, he spoke with her. And what did
19 you understand to be his concern or his reason for
20 wanting to speak to Mary Gomez?

21 A He didn't express any concern. ⁸⁸ At the time that he
22 had admitted being present at this crime scene, he
23 asked if he could talk with her, and I allowed that
24 to happen.

25 Q He was made aware that Mary Gomez was still present

1 at the police station? He was made aware of this by
2 you; is that correct?

3 A Well, he knew from -- she was taken to the police
4 station by me, and we followed the Defendant to the
5 police station, I mean, he knew she was there.
6 Obviously if I granted him permission to speak with
7 her, she was still there. ⁸⁹

8 Q And he wanted to speak to her. What did you
9 understand to be the reason he wanted to speak with
10 her?

11 A Well, again --

12 Q If you knew.

13 A Well, I don't really know what his reason was.

14 Q After discussing it with him, did you come to any
15 conclusion why he wanted to speak to her?

16 A After discussing what?

17 Q Mr. Raby's wishes prior to making the statement.

18 A I didn't discuss with him why he wanted to talk to
19 her. He asked to speak to her. She was there. We
20 wanted to interview her as to any knowledge that she
21 may have of this crime. My partner was going to
22 speak to her while I interviewed the Defendant. As
23 I testified as to what happened, he was allowed to
24 use the rest room. He was provided with whatever he
25 wanted. If you are asking my opinion of why he

1 wanted to talk to her, I can tell you that.

2 Q No, not so much that. But if you all had a
3 discussion and he indicated from that and you were
4 able to deduce some reasoning, but you're saying you
5 weren't able to, because he didn't give you any
6 reason other than his desire?

7 A He just indicated that he wanted to talk to her, and
8 I allowed that to happen. ⁹⁰

9 Q I'm going to talk to you about the different items
10 that were collected in the home of Ms. Franklin.
11 The most, I think, clearest one is that carpet. You
12 indicated that that carpet that was confiscated, I
13 think it's State Exhibit 77, a section of carpet to
14 be more precise. You and your agency HPD, found
15 nothing incriminating about that section of carpet
16 that you found?

17 A That's correct. There is no evidence collected from
18 that section of carpet. ✓

19 Q The pants that you found, and I believe you testified
20 to that; is that correct? ✓

21 A Yes, sir.

22 Q Did you make any analysis or run any analysis or run
23 any scientific tests on that garment itself or did
24 you request those tests to be run?

25 A Yes, sir.

1 Q Do you know whether a test had been run on those
2 garments?

3 A Yes, sir, I do.

4 Q Who is the person that would have that information?

5 A It's documented in the police report and there were
6 several chemists involved in analyzing these
7 articles. I testified one was Raydun Hilleman, and I
8 believe she is the one that examined the pants. One
9 of the other chemists, Mr. Chu, I think it's Joseph
10 Chu, tested a number of the articles that were sent
11 to the Crime Lab to be examined, the clothing, for
12 blood.

13 Q And what is your conclusion as to the pants
14 themselves that were there? Is there anything from
15 those pants that you gathered that are incriminating
16 or would be considered foreign to Mrs. Franklin or to
17 the pants themselves?

18

19 MR. GUTIERREZ: I object to that question
20 as being multifarious. There's three parts to
21 it.

22 THE COURT: Well, if you understand it.

23

24 A When you say foreign to the pants, again, unless I
25 reviewed Ms. Hilleman's report, I believe she may

1 have gotten some hair off those pants. As far as
2 incriminating to the Defendant, I don't believe
3 anything was found incriminating as to the Defendant. ✓

4 Q You also collected hair from Mrs. Franklin's hand, as
5 I recall. That hair turned out to be hair belonging
6 to her grandson. Is that a correct statement?

7
8 MR. GUTIERREZ: The State stipulates there
9 was one hair on the hand of Ms. Franklin that
10 came back to Eric Bengé. None came back of the
11 Defendant from the Complainant's hand.

12 THE COURT: Okay.

13
14 Q (By Mr. Cantu) Is that correct?

15 A Yes, sir, that hair, along with some dog hair.

16 Q There was also some dog hair? And we all agree
17 there was a number of dogs that belonged to this
18 family. There was at least one dog in the house
19 when you arrived. And you also took fingernail
20 scrapings or you took fingernail samples from Ms.
21 Franklin, do you recall?

22 A Yes, sir. An autopsy request form was completed and
23 that included fingernail scrapings.

24 Q And what was the conclusion from that, from that
25 analysis or from that sampling or whatever you all do

1 to determine any evidence from that?

2 A To my knowledge, there wasn't anything incriminating
3 from the fingernail scrapings. ✓ 91

4

5 MR. CANTU: Your Honor, at this time we
6 will pass Detective Allen.

7 THE COURT: Okay. Any further questions?

8 MR. GUTIERREZ: Yes, Your Honor.

9

10 REDIRECT EXAMINATION BY MR. GUTIERREZ

11

12 Q Sergeant Allen, let me refer you to -- do you have a
13 copy of the arrest warrant?

14 A No, sir, I do not.

15 Q Let me show you a copy of the offense report and a
16 copy of the arrest warrant. I believe you testified
17 earlier, if I heard you correctly, that the warrant
18 had been issued on the 19th of October. Would you
19 refresh your memory by looking at this and telling me
20 whether or not you would like to reconsider that
21 answer?

22 A Yes, sir, I was correct in that the warrant had been
23 signed prior to the 19th. That Sergeant Stephens had
24 obtained a warrant, and the formal charge, the
25 document that I looked at a while ago was actually

1 the formal charges that had been filed by Sergeant
2 Wendel on the 19th.

3 Q And when we talk about the "formal charge," we're
4 talking about the legal accusation against the
5 Defendant in this case; is that correct?

6 A That's correct. *92*

7 Q Perhaps I misunderstood, and just for clarity's sake,
8 the warrant itself that was the basis of the arrest
9 for the Defendant, that was signed by a judge in the
10 339th District Court on October 16th; is that
11 correct?

12 A That's correct.

13 Q So when you all were searching for the Defendant in
14 different places you also were searching for him
15 pursuant to that warrant?

16 A That's correct.

17 Q You have been to many, many crime scenes, have you
18 not?

19 A Yes, sir.

20 Q Would it be accurate to say that you have been to
21 hundreds of crime scenes as a police officer and a
22 member of the Homicide Division?

23 A Yes, sir, in 19-and-a-half years.

24 Q Have you been to many scenes where people have either
25 been injured or killed with knives?

1 **A** Yes, sir.

2 **Q** Let's assume for purposes of argument that the
3 Complainant was stabbed with a pocketknife. Is it
4 pretty much common knowledge that pocket knives have
5 blades on one side and not on the other?

6 **A** Yes, sir.

7 **Q** When we say "blade," we're talking about a sharp
8 blade. Would it be possible that the injuries on
9 the Complainant, as reflected in the photographs of
10 the crime scene that are already in evidence and the
11 autopsy photographs that are in evidence, could you
12 tell the members of the jury whether or not it would
13 be possible that those injuries could be performed
14 with a small pocketknife?

15 **A** Yes, sir. I know they occurred with a small
16 pocketknife.

17 **Q** Assuming that the blade was, say, two inches in
18 length, would those injuries -- could those injuries
19 have been inflicted with a blade that size?

20 **A** Yes, sir.

21 **Q** And would such a blade of a minimum of two inches,
22 possibly larger, possibly two-and-a-half or three
23 inches if we categorize that as small, be capable of
24 inflicting serious bodily injury or death?

25 **A** Absolutely.

1 Q And as such, would it constitute -- would it be a
2 deadly weapon in the manner of its use or intended
3 use?

4 A Yes, sir.

5 Q I don't know if you have indication, but do you have
6 any indications in your offense report of the
7 Defendant's size and/or weight? And if you don't
8 recall at the moment, that's fine.

9 A There should be a document somewhere that have size
10 and weight on it, yes, sir.

11

12 MR. GUTIERREZ: At this time, Your Honor,
13 I'll pass the witness, but I do intend to recall
14 him.

15 THE COURT: Do you have any further
16 questions at this time, Mr. Cantu?

17 MR. CANTU: No, Your Honor. Thank you.

18 THE COURT: Officer Allen, you may be
19 excused subject to recall. You may step down.

20 Ladies and gentlemen, I am going to recess
21 you for lunch at this time. You will be
22 excused to the Jury Deliberation Room, and the
23 bailiff will make arrangements.

24

25 (Whereupon a lunch recess was had.)

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THE COURT: Gentlemen, if you will raise your right hands and be sworn.

(Whereupon the witnesses were duly sworn.)

THE COURT: The rule has been invoked, which means you cannot discuss your testimony amongst yourselves nor allow the other witnesses to discuss their testimony with you and you must remain in the hallway until you are called in individually. So you will be excused to the hallway at this time.

(Whereupon the witnesses left the courtroom.)

(Whereupon the jury was seated in the jury box.)

THE COURT: You may proceed.

TED THOMAS

was called as a witness by the State, and after having been previously duly sworn, testified under his oath as follows:

DIRECT EXAMINATION BY MR. GUTIERREZ

1

2

3 Q State your name, please.

4 A Ted Thomas.

5 Q Mr. Thomas, would you tell the members of the jury
6 what you do for a living?

7 A I'm a homicide detective for the Houston Police
8 Department.

9 Q And how long have you been so assigned?

10 A Fifteen years.

11 Q Is that how long you have been a police officer or
12 have you been a police officer longer?

13 A I've been a police officer 18 years.

14 Q As part of the Homicide Division, do you from time
15 to time take evidence to the laboratory at the
16 Houston Police Department?

17 A Yes, sir, I do.

18 Q Did you do so back in October of 1992, specifically,
19 on or about October 16th of 1992, regarding evidence
20 in this case which turned out to be styled The State
21 of Texas Vs. Charles Douglas Raby?

22 A Yes, I did.

23 Q I show you State Exhibit No. 106 and I'll ask you
24 whether or not you can identify this plastic bag and
25 its contents.

1 **A** Yes, sir, I can.
2 **Q** Would you tell the members of the jury what this is?
3 **A** This is hair that was taken from the right hand of
4 the deceased at the time of autopsy by Detective Bill
5 Stephens.
6 **Q** What did he do with the hair?
7 **A** He brought the hair to the Homicide Office and asked
8 me if I would take it over to the Crime Lab.
9 **Q** Did you do so?
10 **A** Yes, sir, I did.
11 **Q** Did you do anything else regarding this case?
12 **A** No, sir, I did not.

13
14 **MR. GUTIERREZ:** Your Honor, I would like,
15 if I haven't offered State Exhibit No. 106, I
16 would like to offer it at this point, if there's
17 no objection from the Defense. And I'll pass
18 the witness.

19 **MR. CANTU:** I have no objections, Your
20 Honor.

21 **THE COURT:** State Exhibit No. 106 is
22 admitted into evidence.

23 Do you have any questions?

24 **MR. CANTU:** I don't have any questions.

25 **THE COURT:** Officer Thomas, you may be

1 excused.

2 MR. GUTIERREZ: State would call Officer
3 Abbondondolo as its next witness.

4

5 C.P. ABBONDONDOLO

6 was called as a witness by the State, and having been
7 previously duly sworn, testified under his oath as
8 follows:

9

10 DIRECT EXAMINATION BY MR. GUTIERREZ

11

12 Q State your name, please.

13 A C.P. Abbondondolo.

14 Q Would you spell your last name for the benefit of
15 the court reporter?

16 A It's A-b-b-o-n-d-o-n-d-o-l-o.

17 Q Officer Abbondondolo, would you tell the members of
18 the jury what you do for a living?

19 A I'm a homicide detective with the Houston Police
20 Department.

21 Q How long have you been a police officer?

22 A Thirteen years.

23 Q And have you been a police officer that whole time
24 with the Houston Police Department?

25 A Yes, sir, I have.

1 Q And what different divisions have you been assigned
2 to?

3 A Prior to going to the Homicide Division, I worked in
4 the Tactical Unit, and then prior to that, I was a
5 patrol officer.

6 Q Did you have an occasion back on October 19th, 1992,
7 to witness a statement given by an individual that
8 you came to know as Charles Douglas Raby?

9 A Yes, sir, I did.

10 Q Do you see that individual in the courtroom today?

11 A Yes, sir, I do.

12 Q Would you please point him out and for the record
13 describe what he is wearing today?

14 A Mr. Raby is wearing a white-striped shirt, with a red
15 print tie.

16

17 MR. GUTIERREZ: I would like the record to
18 reflect that the witness has identified the
19 Defendant, Charles Douglas Raby.

20 THE COURT: The record will so reflect.

21

22 Q (By Mr. Gutierrez) Will you tell the members of the
23 jury how it came to be that you came to witness that
24 statement or confession?

25 A Yes, sir. I was in the Homicide Office, which is at

1 the main police station. Sergeant Allen had come out
2 and was looking for a witness, several witnesses, for
3 a statement. We asked, you know, where the
4 individual was, and he pointed him out. We went
5 inside and spoke with Mr. Raby. That's how we got
6 to meet him.

7 Q When you say "we," who are you talking about?

8 A Officer Drehel.

9 Q What's Officer Drehel's first name?

10 A Nick.

11 Q Is he the other individual who witnesses the
12 Defendant sign that statement or confession?

13 A Yes, he is.

14 Q Would you explain to the members of the jury what
15 procedures you followed to assure yourself that the
16 Defendant, Charles Raby, was signing that confession
17 willingly and voluntarily and without coercion?

18 A First we viewed Mr. Raby as he sat in the office.
19 He appeared to be okay. We asked him if he was
20 okay. He said he was okay. He was drinking a Coke.
21 Asked him if Sergeant Allen had threatened or abused
22 him. Asked him if he was --

23 Q What was his response when you asked him if Sergeant
24 Allen had threatened or abused him?

25 A He said he had not been abused.

1 Q Please proceed.

2 A After we asked about whether he had been threatened
3 or abused, we asked if he had read the statement,
4 which he said he had. I asked him to read the first
5 line of the first statement or the first warning so
6 that he could prove to me that he understood the
7 English language and was able to read it, which he
8 read it quite clearly to me. Viewed him as he sat
9 there in a fine state.

10 Q And did you at some point observe him to affix his
11 signature to the exhibit that I'm showing you marked
12 State Exhibit No. 98, a three-page document?

13 A Yes, sir, this is the document.

14 Q Is that the Defendant's signature on the first page?

15 A Yes, sir, it is.

16 Q Where it says, "signature, Charles D. Raby"?

17 A Yes, sir.

18 Q And on the second page?

19 A It's the same.

20 Q And on the third page?

21 A Yes, sir.

22 Q And are those three the signatures of this Defendant,
23 Charles Douglas Raby?

24 A Yes, they are.

25 Q And is it your testimony that the Defendant

1 voluntarily, without any coercion, signed this
2 particular statement?

3 A That's correct.

4 Q And you observed him each time he signed on each
5 page; is that correct?

6 A I did.

7 Q Does your signature appear as a witness in any one
8 or all of those pages?

9 A Yes, sir. Mine is the first signature on all three
10 pages.

11 Q And whose is the second signature where it says
12 "witness" on the bottom?

13 A That's Officer Drehel's.

14 Q On each of the pages; is that correct?

15 A On all three, yes.

16 Q Does it indicate what time you signed as a witness?

17 A We signed it -- I signed it at 2:25 p.m. in the
18 afternoon.

19 Q And did you or anyone else, to your recollection, ask
20 the Defendant to sign or affix his initials to the
21 left of each of the warning?

22 A That's right, I did after I asked him if he
23 understood what his legal warnings were.

24 Q Did the Defendant acknowledge that he understood what
25 those legal warnings were?

1 A Yes, sir, he did.
2 Q During the course of your questioning, were you
3 wearing any handguns?
4 A No, sir, I was not.
5 Q What about Officer Drehel?
6 A No, neither one of us was wearing a weapon.
7 Q Was the Defendant sober?
8 A Yes, sir.
9 Q Did he appear to be of sound mind?
10 A Yes.
11 Q In your opinion, was he of sound mind?
12 A He was.
13
14 MR. GUTIERREZ: Your Honor, at this time
15 State would like to offer what's been marked as
16 State Exhibit No. 98. I would like to offer it
17 into evidence.
18 MR. CANTU: Your Honor, again, we reurge
19 our previous objection.
20 THE COURT: Subject to your objection,
21 State Exhibit 98 is admitted into evidence.
22 MR. GUTIERREZ: Your Honor, at this time I
23 would like to ask permission of the Court to
24 publish it to the jury.
25 THE COURT: You may do so.

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MR. GUTIERREZ: State Exhibit No. 98, omitting the warnings, which are included on the front of State's 98, reads as follows: "My name is Charles Douglas Raby. I am 22 years old. I was born in Houston, Texas, on March 22, 1970. I last went to school at Sam Houston and have a total of ten years of formal education.

"I am at the Houston Police Department Homicide Division. Today is Monday, October 19, 1992, and it is approximately 1:25 p.m., Sergeant Allen read me my rights on two occasions this afternoon. I fully understand my rights and I have gave up my right to remain silent and right to an attorney. I have not been threatened or promised anything in return to make a statement. I told Sergeant Allen that I had not been at Lee's house on Westford Street Thursday night. I was not telling the truth at first, because I was scared. I decided to tell the truth and get this over with.

"I am living with my mother at 3414 Cedar Hill in Houston, Texas. My telephone number is 987-1414 and 987-8869. I am unemployed at the present time. I can read and write the English

1 language. I can see this statement as it is
2 being typed by Sergeant Allen on the monitor.

3 "On Thursday, October 15, 1992 I had gotten
4 up that morning and I had gone over to my
5 little brother, Robert Butler. Robert is living
6 at 3215 Sparks with his father, Bob Butler.
7 Robert's telephone number is 695-6259. Robert
8 was in school and I visited with a friend by
9 the name of Anthony. Anthony is a Hispanic
10 male, about 25-26 years old. Anthony lives next
11 door to Robert. My little brother came home
12 after school and I stayed at his house until
13 some time that afternoon. My little brother,
14 Robert gave me a ride on his bicycle to Jimmie's
15 house. We call Jimmie, 'Crawdead'. Jimmie
16 lives off of Laura Koppe Street. Jimmie was not
17 there. I visited with his mother for a while.
18 I had a little pocket knife and I was cleaning
19 my fingernails on Jimmie's front porch. I
20 believe my pocketknife was an 'old timer'. I
21 stayed there at Jimmie's for an hour. I left
22 there and walked over to my ex-mother-in-law's
23 house. They live at 7719 W. Hardy. I talked
24 to Barbara, Dusty and Blane. I left their house
25 and walked over to a friend of mine named Larry.

1 Larry lives off of Irvington. I had been
2 drinking beer and whiskey. I only talked to
3 Larry for a few minutes. I left Larry's house
4 and walked over to Melody's house on Post
5 Street. I talked to her mother and I left
6 there. I walked over to John Phillips' house on
7 Wainwright Street. I asked John's grandmother
8 if he was at home and she told me, John was not
9 there. I walked over off of Crosstimbers Street
10 to try and locate a friend named Pookie. Pookie
11 had moved.

12 "I went to a little store and bought some
13 wine. I think it was some mad dog 20/20. I
14 drank the bottle of wine and then I walked over
15 to Lee's house on Westford street. Lee lives
16 with his grandmother, Edna and his cousin Eric.
17 There is an old Volkswagen in the driveway at
18 their house I walked up to the front door.
19 The front door has a screen-type door in front
20 of a wooden door. I knocked on the door. I
21 did not hear anyone answer. I just went inside.
22 I sat down for a little bit on the couch. I
23 called out when I got inside but I did not hear
24 anyone say anything. I heard Edna in the
25 kitchen I walked into the kitchen and grabbed

1 Edna. Edna's back was to me and I just grabbed
2 her. I remember struggling with her and I was
3 on top of her. I know I had my knife but I do
4 not remember taking it out We were in the
5 living room when we went to the floor. I saw
6 Edna covered in blood and underneath her. I
7 went to the back of the house and went out the
8 back door that leads into the back yard.

9 "Shortly after I had left Lee's house on
10 Westford I was approached by a man and this man
11 told me something like 'I had better not catch
12 you in my yard', 'jumping his fences'. Or
13 something like that. I woke up later on the
14 ground near the Hardy Toll Road and
15 Crosstimbers. I walked home, on Cedar Hill from
16 there. I remember feeling sticky and I had
17 blood on my hands. I washed my hands off in a
18 water puddle that is near the pipe line by the
19 Hardy Toll Road. I do not remember what I did
20 with the knife.

21 "The next day I knew I had killed Edna. I
22 remembered being at her house and struggling
23 with her and Edna was covered with blood when I
24 left. I think I was wearing a black concert
25 shirt, the blue jeans I'm wearing and my Puma

1 tennis shoes. I also had on a black jacket.

2 "I have read this, my statement, consisting
3 of 3 page/pages, and finished reading it at
4 _____:_____ hours." Signed, Charles D.
5 Raby on all three pages, and it's witnessed by
6 Officer Abbondandolo and Officer Drehel. Signed
7 at 2:25 in the afternoon by the witnesses, dated
8 October 19th, 1992.

9 I believe State Exhibit No. 98 is in
10 evidence, is that correct?

11 THE COURT: That's correct.

12 MR. GUTIERREZ: I pass this witness.

13 THE COURT: Mr. Cantu.

14 MR. CANTU: Thank you, Your Honor.

15

16 CROSS EXAMINATION BY MR. CANTU

17

18 Q Officer, did you participate in the investigation --

19 A No, sir.

20 Q -- prior to this time?

21 A No, sir.

22 Q Your participation in this case is solely as a
23 witness to this statement, which was read by the
24 prosecutor?

25 A That's correct.

1 MR. CANTU: I have nothing further, Your
2 Honor.

3 THE COURT: Okay. Officer Abbondandolo,
4 you may be excused.

5 State will call your next witness.

6 MR. GUTIERREZ: Yes, Your Honor. The State
7 would call Linda McClain as its next witness.

8

9

LINDA MCCLAIN

10 was called as a witness by the State, and after having
11 been previously duly sworn, testified under her oath as
12 follows:

13

14

DIRECT EXAMINATION BY MR. GUTIERREZ

15

16 Q Would you please state your name?

17 A Linda McClain.

18 Q Ms. McClain, are you any relation to either Lee Rose
19 or Eric Bengé?

20 A Yes. Lee's my son and Eric's my nephew.

21 Q Where did you grow up as a child?

22 A In Houston.

23 Q What home?

24 A 617 Westford.

25 Q And who was your mother? Edna Franklin?

1 A Yes, sir.

2 Q Do you recall the last time you talked to your
3 mother?

4 A Yes, sir.

5 Q Was that the day that she was killed?

6 A Yes, sir.

7 Q About what time of the day or night was the last
8 time that you talked to your mother?

9 A I think I called her about probably around 6:20 and
10 talked to her until maybe 6:40 or 6:45.

11 Q Did she or you like a program that was on the air at
12 the time at 6:30?

13 A Yes, sir. She was watching "Wheel of Fortune" and I
14 was watching "A Current Affair."

15 Q During the course of your conversation, did you ever
16 ask her whether or not the doors to the house were
17 locked?

18 A Yes, sir.

19 Q And what did she say?

20 A She said they were.

21 Q Could your mother get around?

22 A No, sir, not very well.

23 Q Why not?

24 A She had arthritis in both knees.

25 Q Was she a strong person?

1 **A** No, sir.

2

3 **MR. GUTIERREZ:** May I have a moment, Your
4 Honor?

5 **THE COURT:** Yes.

6

7 (State Exhibit No. 109 was previously
8 marked for identification purposes.)

9

10 **Q** Ma'am, I show you what I have marked as State
11 Exhibit 109 on the front, and if the Defense has no
12 objection, I would like to replace the tag with one
13 on the front.

14 Do you recognize what this is?

15 **A** Yes, sir.

16 **Q** A TV Guide-type thing that comes in the Houston
17 Chronicle, is that correct?

18 **A** Uh-huh. Yes.

19 **Q** And would you tell us if it shows on Thursday,
20 October 15th, I believe, what time "Wheel of Fortune"
21 came on?

22 **A** 6:30 p.m.

23

24 **MR. GUTIERREZ:** I would like State Exhibit
25 109 to be admitted into evidence if there's no

1 objection from the Defense.

2 MR. CANTU: No objection, Your Honor.

3 THE COURT: State Exhibit 109 is admitted
4 into evidence.

5

6 Q When was the last time -- in other words, when did
7 you hang up?

8 A When did I hang up?

9 Q Yes.

10 A I would say it was probably -- I was probably
11 watching "A Current Affair" for about 15 minutes
12 while I was talking to her on the phone.

13 Q "A Current Affair" came on about the same time?

14 A Right. And I was watching it at the same time I had
15 her on the phone. And then there was a program that
16 came on, "A Current Affair" that I wanted to watch.

17 Q And about what time do you think you hung up?

18 A It was probably around 6:45.

19 Q When did you get the call when you found out
20 something had gone drastically wrong?

21 A I guess it was around 10:30.

22 Q And who called you?

23 A My son Lee.

24

25 MR. GUTIERREZ: I'll pass the witness, Your

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Honor

THE COURT: Mr. Cantu.

MR. CANTU: Thank you, Your Honor.

CROSS EXAMINATION BY MR. CANTU

Q Your mother had lived in this house for at least 10,
15 years; is that correct?

A Yes, sir.

Q And she had lived there with her husband, your
father, during that period of time?

A Yes.

Q And I understand she had arthritic problems?

A That's right. Uh-huh

Q She did some housework in the house?

A Not very much.

Q She did some kitchen work in the house?

A She hardly did anything. She hardly did anything in
the house.

Q Did she cook for herself?

A No. Lee or Eric did.

Q The two boys provided for her, her eating, and they
kept the house clean?

A They straightened the house for her and they did cook
for her. 43

1 Q And when you were talking to her, so it's clear, you
2 were watching a different show than she was?

3 A Right.

4 Q You know this because you discussed the shows that
5 you all were watching on the telephone?

6 A Yes, sir. She always watched "Wheel of Fortune."

7 Q How many televisions did she have in her house?

8 A She may have had two at that time.

9 Q Where are those televisions or where were they in the
10 rooms?

11 A I believe that one of them was in the front bedroom
12 and the other one was in the back bedroom, or what
13 is really referred to as the den, where she was.
14 Now, I'm not sure if she had two televisions or not.

15 Q Let me just look through the photos and let's see.
16 The den being the room where what's recognized as the
17 front door?

18 A The den is the back part of the house where she was.

19 Q Where she was found?

20 A No, sir, where she slept.

21 Q In State Exhibit 68, this has been recognized as her
22 bed where she slept? This is a trundle bed, is it
23 not? In other words, there is a mattress under the
24 mattress that she uses?

25 A That's right.

1 Q This is the den area that you're referring to?

2 A Uh-huh

3 Q And you recall there being a television in that one
4 room where she slept?

5 A Uh-huh.

6 Q Do you recall there being any televisions anywhere
7 else?

8 A I'm not sure, because I didn't go -- when I would go
9 to visit her, I very seldom went in the other rooms.

10 Q You generally went to her bedroom or her den area?

11 A Uh-huh, because Lee and Eric were always in the other
12 two rooms.

13 Q It's fair to say they occupied the rest of the house
14 other than the den/bedroom area that she occupied?

15 A Uh-huh.

16 Q Is that a fair statement?

17 A Yes. yy

18

19 MR. CANTU: I don't have any further
20 questions.

21 MR. GUTIERREZ: Just one, Your Honor

22

23 REDIRECT EXAMINATION BY MR. GUTIERREZ

24

25 Q The Edna Franklin that you said was your mother is

1 the same one that lived at 617 Westford and the same
2 one named in the indictment; is that correct?

3 A Yes.

4 Q Thank you, ma'am.

5

6 MR. GUTIERREZ: I'll pass the witness.

7 THE COURT: Ms. McClain, you may step down,
8 ma'am.

9 State will call your next witness.

10 MR. GUTIERREZ: State Calls Shirley Gunn.

11

12 SHIRLEY GUNN

13 was called as a witness by the State, and having been
14 previously duly sworn, testified under her oath as
15 follows:

16

17 THE COURT: You may proceed.

18

19 DIRECT EXAMINATION BY MR. GUTIERREZ

20

21 Q State your name, ma'am.

22 A Shirley Gunn.

23 Q Would you please spell your name for the benefit of
24 the court reporter?

25 A The last name?

1 Q The whole name.

2 A S-h-i-r-l-e-y, G-u-n-n.

3 Q Ms. Gunn, would you please tell us where you are
4 living now? What's your address?

5 A 9146 Simmons.

6 Q Is that in Houston, Harris County, Texas?

7 A Yes, sir.

8 Q Were you living in the same place back on October
9 15th of 1992?

10 A Yes, sir.

11 Q Do you know now and did you know then a person by
12 the name of Charles Douglas Raby who had a nickname
13 of Buster?

14 A Yes, sir.

15 Q Do you see Buster or Charles Douglas Raby in the
16 courtroom today?

17 A Yes, sir, I do.

18 Q Would you please point him out and today describe
19 what he is wearing for the record.

20 A He's sitting right there and he's got the striped
21 shirt on, in between the two gentlemen there.

22 Q Are you referring to this gentleman here, this man
23 being number one, or this man, being number two?

24 A He's in between those two -- that man right there.

25 Q Right here?

1 **A** That man right there.

2

3 **MR. GUTIERREZ:** I would like the record to
4 reflect the witness has identified the
5 Defendant.

6 **THE COURT:** The record will so reflect.

7

8 **Q** How long had you known Charles Raby or Buster from
9 back on October 15th, 1992?

10 **A** Oh, I'd say between about six years probably, maybe
11 longer.

12 **Q** Did he used to hang around with your son?

13 **A** Yes, sir.

14 **Q** What is your son's name?

15 **A** James Parks.

16 **Q** Does he have a nickname?

17 **A** Yes.

18 **Q** And would you tell the members of the jury what that
19 is?

20 **A** Crawdad.

21 **Q** Is he outside the courtroom right now?

22 **A** Yes.

23

24 **MR. GUTIERREZ:** I would like to have Mr.
25 Parks brought inside the courtroom for

1 identification purposes only.

2 THE COURT: Mr. Bailiff.

3

4 (Whereupon an individual was brought into
5 the courtroom.)

6 (Whereupon the individual left the
7 courtroom.)

8

9 Q (By Mr. Gutierrez) Is that your son Jimmie Parks,
10 also known as Crawdad?

11 A Yes.

12 Q Now, first of all, did you know Edna Franklin?

13 A Yes, sir.

14 Q And they call her grandma; is that correct?

15 A Yes, sir.

16 Q Was your house or is your house and her house within
17 walking distance of one another?

18 A Yes, sir.

19 Q Could you tell us whether or not you had an occasion
20 back on October 15th, 1992, to see Buster anywhere?

21 A Yes, sir.

22 Q Where did you see him?

23 A He came to my house.

24 Q Once or twice?

25 A Twice.

1 Q What time did he come to your house the first time?
2 A The first time, it was three o'clock.
3 Q In the morning or afternoon?
4 A Afternoon.
5 Q Was he alone or was he with someone else?
6 A He said he was with his brother.
7 Q Did you see his brother?
8 A Yes, sir.
9 Q How old was his brother?
10 A I couldn't tell you for sure. Maybe 15, 16,
11 something like that.
12 Q Did either one of them have a bicycle?
13 A Yes.
14 Q Which one?
15 A I don't know which one had the bicycle, but they had
16 one.
17 Q What did Buster come to your home for the first
18 time?
19 A He was looking for Kenneth and my son James.
20 Q When you talk about Kenneth, you're talking about
21 what Kenneth?
22 A Kenneth Gaddis.
23 Q And the last name is spelled G-a-d-d-i-s; is that
24 correct?
25 A I think so.

1 Q Is he another friend of your son's?

2 A I think so.

3 Q Are you related to him in any way?

4 A No.

5 Q Were Kenneth Gaddis and your son Jimmie Parks at your
6 home at three o'clock the first time Charles Raby
7 came over that day, October 15th, 1992?

8 A No, they weren't.

9 Q How long did Buster or Charles Raby stay at your
10 house?

11 A Not very long. About five minutes maybe and then
12 they took off.

13 Q Did he come into your home or did he wait outside?

14 A No, they was out on the porch.

15 Q And then they left?

16 A Yes, sir.

17 Q When did you see Charles Raby again that day, October
18 15th, 1992?

19 A He came back at five o'clock. ⁹⁵

20 Q Did you see anybody else with him at that time?

21 A No. He was alone.

22 Q Did you see any bicycle?

23 A No.

24 Q Did you go to the door and talk to him through the
25 door or what, or were you outside your home?

1 A I was inside, but we went outside.

2 Q Who is "we"?

3 A Me and Buster.

4 Q Did Buster come into your house?

5 A Not that time.

6 Q Did he come in the first time?

7 A No.

8 Q So Buster came up to the door and you went outside

9 and talked to him?

10 A Yes, sir.

11 Q Would you tell the members of the jury what you

12 noticed about Buster the second time he came?

13 A I don't understand what you mean, "noticed."

14 Q Did you smell any alcohol on his breath?

15 A Oh, yes. When we started talking, I smelled it.

16 Q Was it strong, medium or weak?

17 A Well, you could tell he had been drinking, because,

18 you know, you could smell it on his breath.

19 Q Did you see him do anything while he was there?

20 A Yes. We was sitting on the porch and it got hot and

21 he took his jacket off and he was sitting on the

22 steps and I was in the rocking chair and he pulled

23 out a pocketknife out of his pocket and he opened it

24 up and he was cleaning his fingernails.

25 Q Did you have an opportunity to look at the

1 pocketknife?

2 A Yeah, I was looking at it.

3 Q I'm going to show you this ruler that I've got and
4 I'm going to ask you if you can tell us about how
5 long you estimate that blade was, just the blade.

6 A I'd say between two and three inches. 90

7 Q So you're saying it's somewhere between two and three
8 inches long?

9 A Yes.

10 Q And was it the typical pocketknife with the blade on
11 one side and no blade on the other?

12 A Yes, sir.

13 Q Did Buster stay at your house a long time?

14 A He stayed about an hour. Well, it was six o'clock
15 when he left. 47

16 Q How do you know?

17 A Because "Roseanne" was just coming on.

18 Q Thank you.

19

20 MR. GUTIERREZ: I'll pass the witness.

21 THE COURT: Mr. Cantu.

22 MR. CANTU: Thank you, Your Honor.

23

24

25

CROSS EXAMINATION BY MR. CANTU

1

2

3 Q Ms. Gunn, let me take you back to 3:00 p.m., the
4 initial meeting with Charles that day.

5 A Yes, sir.

6 Q You spoke with him outside of your home along with
7 his brother. Do you recall what his brother's name
8 was?

9 A No, I don't.

10 Q Do you recall whether it was an older or younger
11 brother?

12 A He was younger than Buster or, excuse me, Charles.
13 That's all I know him by is Buster.

14 Q And do you recall at that initial meeting, that 3:00
15 p.m. meeting, whether you could smell alcohol on his
16 breath?

17 A I didn't really talk to him that much. He just
18 asked if Jimmie was home and I said no and he left.

19 Q The 3:00 p.m. meeting was just minutes?

20 A Yes, it was just a few minutes that he was there.

21 Q Just long enough to ask you that question?

22 A Yes, sir.

23 Q Would you agree with me the second time he came
24 back, that he was in a state of high intoxication?

25 A He wasn't roaring drunk, but when he talked, I could

1 smell whiskey on his breath.

2 Q Had you seen him previously or at different times to
3 be intoxicated?

4 A What do you mean?

5 Q Well, had you seen him before drunk?

6 A A long time ago when he used to come to the house. 48

7 Q When he used to come to your home?

8 A Yes. Sometimes maybe they were drinking in the back.
9 I don't know. I didn't go out back that much when
10 they were all out back.

11

12 MR. CANTU: I'll pass the witness, Your
13 Honor.

14

15 REDIRECT EXAMINATION BY MR. GUTIERREZ

16

17 Q I'm sorry, Ms. Gunn, I forgot to ask you some
18 questions. Before Buster left, before Charles Raby
19 left your house the second time, did he ask any
20 questions about where Kenneth and Jimmie Parks may
21 have gone?

22 A Yes, he did.

23 Q What did he ask you specifically? Had they gone
24 where?

25 A He asked me if I thought maybe they were over at

1 grandma's.

2 Q Is that one of the last things he asked you before
3 he left?

4 A Oh, it was probably maybe about 15 minutes before he
5 left that he said that.

6 Q Do you ever recall him saying or did he say whether
7 or not he was going over to Lee's house for sure?
8 Just if you remember.

9 A No, that I remember. ~~98~~

10

11 MR. GUTIERREZ: I'll pass the witness.

12 MR. CANTU: Your Honor, I would like to ask
13 a couple questions. Thank you.

14

15 RE CROSS EXAMINATION BY MR. CANTU

16

17 Q Mrs. Gunn, you knew the lady you call grandma, Mrs.
18 Franklin?

19 A Yes, sir.

20 Q And I'm assuming you knew her, because it's in the
21 same neighborhood?

22 A Yeah, we wasn't that far apart. ~~99~~

23 Q Let me ask you about, if you know, did you know of
24 grandma's health or were you familiar with her
25 health?

1 A No, not that much.

2 Q Had you visited her at her home any time recently

3 prior to that day?

4 A No, sir.

5 Q When was the last time you had seen Mrs. Franklin?

6 A It probably had been a year or so, maybe longer.

7 Q And that year or so when you saw her, what was her

8 health at that point?

9 A Well, she seemed fine to me. She was driving and

10 everything. She used to come over and get Eric,

11 pick him up.

12 Q She would drive in her car?

13 A Yes, sir.

14 Q To pick Eric up or get him from your home?

15 A Yes, sir.

16 Q What kind of car did she drive?

17 A I couldn't tell you for sure what kind. I knew it

18 was a big car. That's all I know.

19 Q A sedan, four-door car?

20 A I couldn't tell you for sure.

21 Q Do you recall whether it was American-made or

22 foreign-made?

23 A It wasn't -- American would be like a Ford or

24 Chevrolet. I'd say American. I couldn't tell you

25 for sure.

1 Q Thank you very much.

2

3 MR. CANTU: Nothing further, Your Honor.

4 THE COURT: Ms. Gunn, you may step down,
5 ma'am.

6 State will call your next witness.

7 MR. GUTIERREZ: Mary Scott.

8

9 MARY ALICE SCOTT

10 was called as a witness by the State, and having been
11 previously duly sworn, testified under her oath as
12 follows:

13

14 THE COURT: You may proceed.

15

16 DIRECT EXAMINATION BY MR. GUTIERREZ

17

18 Q State your name, please.

19 A Mary Alice Scott.

20 Q Ms. Scott, where do you live?

21 A 607 Wainwright.

22 Q And is that in Houston, Harris County, Texas?

23 A Yes, northeast.

24 Q Did you know when she was living a person by the
25 name of Edna Franklin?

1 **A** Yes, I did.

2 **Q** The same Edna Franklin that lived at 617 Westford, in
3 Houston, Harris County, Texas?

4 **A** Yes, same one.

5 **Q** Where is your house in relation to the 600 block of
6 Westford?

7 **A** It's one street north on Westford, about 200 foot
8 from her house.

9 **Q** I'll show you what has been marked as State Exhibit
10 No. 14 and already admitted into evidence. Would you
11 agree with me that is the front of Edna Franklin's
12 home at 617 Westford?

13 **A** Yes.

14 **Q** You need to speak in the microphone, if you don't
15 mind.

16 **A** Yes, it is.

17 **Q** Do you know the man whose home sets directly behind
18 Edna Franklin's house?

19 **A** Yes. His name is Leo.

20 **Q** And would you agree with me that is the back to
21 Leo's house?

22 **A** Yes, sir.

23 **Q** And would Leo's name be initials H.L. Truitt, T-r-u-
24 i-t-t?

25 **A** Well, I really don't know his full name. Leo is all

1 I know.

2

3 MR. GUTIERREZ: State would like to have
4 Mr. Truitt brought into the courtroom for
5 identification purposes, H.L. or Leo Truitt.

6

7 Q (By Mr. Gutierrez) Would you agree with me that
8 State's Exhibit No. 31, the house in there, is the
9 front of Leo Truitt's house; is that correct?

10 A Yes, that is.

11

12 (Whereupon an individual was brought into
13 the courtroom.)

14

15 Q (By Mr. Gutierrez) Is that the man you call Leo?

16 A Yes, sir.

17

18 MR. GUTIERREZ: Thank you, Mr. Truitt. You
19 can step outside.

20 (Whereupon the individual left the
21 courtroom.)

22

23 Q (By Mr. Gutierrez) Now, as you face Leo Truitt's
24 house, do you agree with me that this house you see
25 in the distance would be the home of Edna Franklin,

1 behind Leo Truitt's house?

2 A It's directly behind it.

3 Q Now, would you tell the members of the jury that as
4 you -- let me move over here, Ms. Scott -- as you
5 look at Leo Truitt's home, which direction do you
6 live?

7 A I live right across the street, left of it, one
8 block -- one lot.

9 Q So as we look at this photograph then, you live to
10 the right; is that correct? Let me put it another
11 way. As you come out of Leo Truitt's house, you
12 live across the street and to the left?

13 A And to the left, uh-huh.

14 Q How many houses down?

15 A One.

16 Q Do you know or have you ever known a person by the
17 name of Charles Douglas Raby, also known as Buster?

18 A I know him by Buster is all.

19 Q Do you see Buster in the courtroom today?

20 A Yes, sir.

21 Q Would you please point him out and for the record
22 describe what he is wearing today?

23 A Well, he's wearing a striped shirt, black-colored
24 pants.

25 Q Are you talking about this man I'm standing behind?

1 **A** And a tie.

2

3 **MR. GUTIERREZ:** Your Honor, I would like
4 the record to reflect that the witness has
5 identified the Defendant, Charles Douglas Raby,
6 also known as Buster.

7 **THE COURT:** The record will so reflect.

8

9 **Q** (By Mr. Gutierrez) Now, how do you know Buster?
10 Does he hang around with somebody you know?

11 **A** He ran around with my grandson.

12 **Q** What's your grandson's name?

13 **A** John Allen Phillips.

14 **Q** Mr. Phillips is outside, is he not?

15 **A** Yes.

16

17 **MR. GUTIERREZ:** I would like Mr. Phillips
18 brought into the courtroom for identification
19 purposes only, Your Honor.

20

21 (Whereupon an individual was brought into
22 the courtroom.)

23 (Whereupon the individual left the
24 courtroom.)

25

1 Q (By Mr. Gutierrez) How old is your grandson John
2 Phillips?
3 A Twenty-three.
4 Q Back in October of 1992, did he ever hang out, hang
5 around, run around, with Lee Rose? ¹⁰⁰
6 A Yes. All the time.
7 Q Do you recall specifically whether or not on October
8 15th, 1992, was your grandson John Phillips living
9 with you?
10 A Yes.
11 Q Do you recall whether or not you ever saw him in the
12 company of Lee Rose that day?
13 A They were together, running in and out.
14 Q Do you recall whether or not the Defendant Buster or
15 Charles Douglas Raby ever came to your house on
16 October 15th, 1992?
17 A Just before dark, I heard a knock on the back door
18 and I looked, I went and looked out the glass and I
19 didn't see anybody, so I opened the door and looked
20 out and he was stepping up on the pavement out on
21 the driveway.
22 Q Out your front or your back?
23 A Well, my back door opens on the driveway side, and I
24 looked down the driveway and saw him just stepping up
25 on the pavement, on the street.

1 Q And what was Buster or Charles Douglas Raby doing
2 when you looked through the door?
3 A I didn't see him. I had to open the door and peep
4 out to see him. He was just walking up on the --
5 off the driveway onto the street.
6 Q Did you call his name and ask him what he wanted?
7 A No, I didn't. I just shut my door.
8 Q And that was about what time of day?
9 A Oh, I'd say between 7:30 or 7:00 to 7:45, somewhere
10 in that neighborhood.
11 Q Just before dark?
12 A Just before dark.
13 Q And in terms of your house, if someone wanted to get
14 to Edna Franklin's home, all they would have to do
15 is walk around the block; is that correct?
16 A That's all.
17 Q Thank you, ma'am.

18

19 MR. GUTIERREZ: I'll pass the witness.

20 THE COURT: Mr. Cantu.

21 MR. CANTU: Thank you, Your Honor.

22

23 CROSS EXAMINATION BY MR. CANTU

24

25 Q Ms. Scott, on this particular day that you answered

1 the door, how long did it take after you heard the
2 knock that you went to the door?

3 A I don't know. I had my TV on and I really wasn't
4 sure I heard something, and I finally decided I think
5 I heard somebody at the back door.

6 Q At the back door?

7 A Uh-huh.

8 Q And what did you do?

9 A I got up and I went to the back door and I looked
10 out the little glass and I didn't see anybody, so
11 then I opened my door and peeped out the driveway
12 and I saw him stepping up on the pavement in the
13 driveway.

14 Q What exactly did you see? Did you see the back of a
15 person or did you see the front of a person?

16 A No, I just saw the back.

17 Q So for demonstration purposes, let me just stand up
18 against you. Let's assume you're at your door now.
19 Okay?

20 A Alright.

21 Q And let's for demonstration purposes -- it's about
22 7:00 p.m., right?

23 A Right.

24 Q You tell me when to stop when you saw this person
25 near your drive. You tell me when to stop, if this

1 is near your drive.

2 I can't go any further.

3 A All right. It's about that far.

4 Q You saw the back of the person's head?

5 A Uh-huh.

6 Q This was in the afternoon or evening, it was dark?

7 A It was dusk. It wasn't completely dark.

8 Q It wasn't light?

9 A No, it wasn't light and it wasn't dark.

10 Q And you were in your home watching television that

11 evening, that afternoon, that early evening?

12 A Yeah.

13 Q Had you known Mrs. Franklin for a long time?

14 A About 30-something years.

15 Q Now, what was Mrs. Franklin's husband's name?

16 A John.

17 Q And they had lived there those 35 years in that same

18 house?

19 A Yeah.

20 Q Where had Mrs. Franklin worked during that period of

21 time?

22 A At a bank.

23 Q And when was the last time that Mrs. Franklin worked

24 or worked anywhere outside of her home?

25 A Mr. Franklin or Mrs. Franklin?

1 Q Mrs. Franklin.

2 A Oh, it had been about two years that she had retired
3 from the bank.

4 Q She had held a job at that same bank?

5 A I think so.

6 Q What's the name of that bank?

7 A I really don't recall.

8 Q A neighborhood bank?

9 A Oh, I never was at the bank. It's across town.

10 Q What I meant, it was not a neighborhood bank where
11 she worked?

12 A Oh, no.

13 Q You're saying it was at some bank outside your
14 neighborhood?

15 A Oh, yeah.

16 Q And she had worked there up until the last two
17 years, right?

18 A I think so. Uh-huh.

19 Q And what type of car did she drive?

20 A She drove a navy blue Oldsmobile, I believe.

21 Q Four-door, two-door?

22 A I really don't know.

23 Q Did she do her own shopping or did you assist her?

24 A No, she didn't in the last year or so. One of her
25 daughters usually went with her if she went out the

1 last year.

2

3 MR. CANTU: I'll pass the witness, Your
4 Honor.

5 MR. GUTIERREZ: A few questions, Your
6 Honor.

7

8 REDIRECT EXAMINATION BY MR. GUTIERREZ

9

10 Q Had you seen Buster on few or many occasions?



11 A Oh, not too many. 101

12 Q No doubt in your mind that was Buster who was
13 walking away from your --

14 A No doubt. I knew it was him.

15 Q And do you recall more or less what he was wearing?

16 A He was wearing blue jeans and a dark jacket.

17

18 (State Exhibit 110 was previously marked
19 for identification purposes.)

20

21 Q Let me show you what has been marked now as State
22 Exhibit 110 and I'll ask you whether this jacket is
23 similar to the one that you saw him wearing that
24 day.

25 A Well, yes.

1 Q Can you tell us how it is that if you saw him at
2 such a long distance, you're sure it was him?

3 A Just his profile. None of those boys were built
4 exactly like Buster.

5 Q When you say "profile," are you talking about the
6 side view?

7 A I'm talking about his size and his legs, the way he
8 walks, low-built in the back end.

9 Q Thank you.

10

11 MR. GUTIERREZ: I'll pass the witness.

12 MR. CANTU: Let me ask a couple more
13 questions.

14

15 RE CROSS EXAMINATION BY MR. CANTU

16

17 Q Mrs. Scott, on this particular day, your testimony is
18 that at least the distance of this courtroom, you saw
19 someone, the back of their head, and you want to
20 tell this jury for certain you could tell who that
21 person was by looking at that person?

22 A Well, I immediately said to myself, "That's Buster."
23 The minute I peered over at their house, I told them
24 it was Buster, Buster had been there earlier.

25 Q Do you want this jury to believe you, that you could

1 tell?

2 A Well, I did know it was him.

3 Q Okay.

4 A No doubt.

5 Q When was the last time that you had seen Buster

6 prior to your testimony?

7 A About a week or two before this happened.

8 Q And where did you see him?

9 A He come in my living room where I was sitting.

10 Q How many times had he been in your living room where

11 you were sitting?

12 A Well, now, I really don't know.

13 Q You do recall once?

14 A I know he had been there just a week or two before

15 all this incident. ^{1 & 2}

16 Q And when was the last time before then, that you

17 recall?

18 A It had been a good while.

19 Q Let the jury know how long that was.

20 A Well, I really couldn't say.

21 Q Was it days, weeks, months?

22 A Months.

23 Q Twelve months?

24 A Yeah. More than that.

25 Q Twenty-four months?

1 **A** Maybe.

2 **Q** Thirty-six months?

3 **A** No, not no 36.

4 **Q** Thirty-six to 24 months was the last time prior --

5 **A** It had been a couple of years.

6

7 **MR. CANTU:** I'll pass the witness, Your
8 Honor.

9 **MR. GUTIERREZ:** Thank you, Ms. Scott.

10 **THE COURT:** Ms. Scott, you may step down.
11 State will call your next witness.

12 **MR. GUTIERREZ:** Martin Doyle.

13

14

MARTIN DOYLE

15 was called as a witness by the State, and having been
16 previously duly sworn, testified under his oath as
17 follows:

18

19 **THE COURT:** You may proceed.

20

21 **DIRECT EXAMINATION BY MR. GUTIERREZ**

22

23 **Q** State your name, please.

24 **A** Martin Doyle.

25 **Q** Mr. Doyle, would you tell us how old a man you are?

1 A I'm 54.

2 Q Mr. Doyle, are you any relation to a person by the
3 name of H.L. Truitt?

4 A Yes.

5 Q Is that the man that's standing outside the
6 courtroom, also known as Leo?

7 A Right. My brother-in-law.

8 Q What's his address?

9 A 616 Wainwright.

10 Q Is that in Houston, Harris County, Texas?

11 A Right.

12 Q Is that directly behind the 600 block of Westford, in
13 Houston, Harris County, Texas?

14 A I'm not familiar with Westford.

15 Q You don't live in that neighborhood; is that correct?

16 A No, sir.

17 Q You had occasion to be there on the evening of
18 October the 15th, 1992, however?

19 A That's correct.

20 Q Would you tell the members of the jury what your
21 relationship is with H.L. Truitt?

22 A He's my brother-in-law.

23 Q Who's married to whom?

24 A He's my wife's brother.

25 Q Would you tell the members of the jury what it was

1 that brought you over to Leo's house back on October
2 15th, 1992?

3 **A** Okay. My mother-in-law had broken her leg and she
4 was staying with my brother-in-law at that time. She
5 was put in the Northwest Memorial Hospital, in the
6 Loop there. So after I got off of work that
7 evening, we went by the hospital to visit her, then
8 afterwards, we went over to Leo's to retrieve an
9 automobile that we had left over there earlier.

10 **Q** Was it light or was it dark when you went?

11 **A** When we got there, it was dark.

12 **Q** About what time of day or night was it?

13 **A** It was around eight o'clock.

14 **Q** Anything unusual happen while you were outside Leo's
15 home?

16 **A** Right. As we pulled up into the front of his
17 driveway, he has a gate, so someone had to get out
18 and open the gate. So my wife got out while I was
19 in the car, and just as she got out, immediately to
20 my left there's a chain-link fence in front of his
21 house, I noticed a man walk through his yard and
22 then jump over the fence and walk out into the
23 ditch, onto the road and start walking east towards
24 Irvington.

25 **Q** Let's stop right there.

1 MR. GUTIERREZ: May I ask the witness to
2 step off the witness stand?

3 THE COURT: You may step down.
4

5 A (Complies.)

6 Q (By Mr. Gutierrez) I'm going to show you some
7 exhibits that are already in evidence: State Exhibit
8 Nos. 31, 32, 33 and 34. Some of these I have
9 already shown you outside the presence of the jury;
10 is that correct?

11 A Yes. ~~to 3~~

12 Q Now, let me turn you around here so the court
13 reporter can hear what you're saying.

14 First of all, whose home is it that we're seeing
15 here in State Exhibit No. 31?

16 A This is my brother-in-law's house here.

17 Q And that is the front of Leo Truitt's home; is that
18 correct?

19 A That's correct.

20 Q You are sitting where in relation to this picture?

21 A Okay. The driveway is over on the right side.

22 Q That part is not visible?

23 A That's not visible in this photo.

24 Q I'm going to ask you to hold on, Mr. Doyle. I need
25 you to wait until I'm through asking the question

1 before you answer. That will make her life a lot
2 easier and mine, too, in the long run.

3 Would you tell the members of the jury whether
4 the spot where you saw the man jump is in this
5 picture?

6 A Yes, it is in this picture.

7 Q Would you show the members of the jury what part of
8 the fence the man jumped over?

9 A From this area, he would be approximately in here.

10 Q Off the corner a little bit, more towards the corner
11 of the house; is that correct?

12 A Right.

13 Q Which direction was the man coming from, if you know?

14 A He was coming from the rear to the front.

15 Q From the rear of Leo Truitt's property to the front?

16 A Right.

17 Q Was this man a black male, a Mexican male or a white
18 male?

19 A He was a white male.

20 Q And about what size was he?

21 A I would estimate 6 feet or shortly under possibly.

22 Q 6 feet or shortly under?

23 A That means, you know, maybe 5-10 or something like
24 that. 103

25 Q How tall are you?



1

A 5-6. ¹⁰⁴

2

Q In terms of his build, would you categorize it as medium, heavy, large or what?

4

A Medium.

5

Q Now, I would ask you to look at this man sitting right over here and I would ask the Court to instruct the Defendant to stand face-to-face with Mr.

7



8

Doyle. ¹⁰⁵

9

10

THE DEFENDANT: (Complies.)

11

MR. GUTIERREZ: Okay. Thank you, sir.

12

Have a seat.

13

14

Q (By Mr. Gutierrez) Now, in relation to your build and his build, how tall are you in relation to the Defendant, to this man here?

15

16

17

A I don't understand the question.

18

Q For the record, how tall is this man in comparison to you?

19

20

A He's probably about 5-9.

21

Q Is he about the same size as you, is what I'm asking?

22

23

A Oh, yes. Right.

24

Q How tall are you?

25

A 5-6.

1 Q You're saying this man is 3 inches taller than you?

2 A Yes. 106

3

4

MR. GUTIERREZ: Could we have Mr. Raby stand back-to-back with this man again, please?

5

6

THE DEFENDANT: (Complies.)

7

8

MR. GUTIERREZ: Okay, if you could press your backs together.

9

10

Okay. Now, if you would turn around and face him.

11

12

Okay. Thank you. Have a seat.

13

Q (By Mr. Gutierrez) In terms of general build compared to this man, how did the man that jumped the fence compare?

14

15

16

A Favorably.

17

Q What do you mean by that?

18

A Same build.

19

Q As this man here?

20

A Right.

21

Q And in terms of height, how would you compare it to this man here?

22

23

A It would be about the same.

24

Q Now, you're not telling this jury that this is the

25

man, because you cannot positively identify anybody;

1 is that correct?

2 A That's right. 137

3 Q And why is that?

4 A Because of the lighting and at the time, you know,
5 the distance, and he was facing the other direction.

6 Q So you saw a man jump over the fence; is that
7 correct?

8 A Right.

9 Q And then State Exhibit No. 34 shows what?

10 A Okay. This should be -- well, you can't see his
11 house, but this is the driveway.

12 Q Well, if you don't recognize it, just have a seat.
13 Don't worry about it.

14 Let me ask you the question this way. After
15 you saw the man jump over the fence, did you see him
16 head or walk in a particular direction?

17 A After he jumped over the fence, he walked straight
18 out to Wainwright and started walking east.

19 Q In the direction of what major intersection?

20 A Irvington.

21 Q About how many blocks away was that, if you recall?
22 Just an estimate.

23 A Well, there's no street in between there on
24 Irvington.

25 Q What happened next?

1 **A** Okay. Of course I perceived this as an unusual
2 event. My brother-in-law -- it was dark and we were
3 concerned that the man might have done something
4 there.

5 **Q** So what did you and your brother-in-law decide to do?

6 **A** My brother-in-law at the time, of course, he was not
7 out there. He was in the house. So we started
8 yelling out for him to see if he was okay, and he
9 came out. I told him I had seen a man just jump
10 over his fence and start walking down the road here.
11 So we decided to go down and see, you know, why he
12 had come through the yard. So he got into my truck
13 with me. We drove down the street, and he was quite
14 a ways down by then, but the area was not well-lit
15 where we stopped him, so we pulled up slightly ahead
16 of him. He was on the left side of the road, on the
17 very edge of it. We pulled up slightly ahead and
18 stopped my automobile. At that time my brother-in-
19 law opened his door and he went across my car and he
20 asked the man what he was doing coming through his
21 yard. 108

22 **Q** And they had a conversation about that?

23 **A** Correct.

24 **Q** And what happened next?

25 **A** Okay. After the conversation, my brother-in-law got

1 back in the car and we sat there just a second. The
2 man started walking on down the road, and just as he
3 got in front of my car, he moved his head slightly
4 towards me and made some remark. I don't know what
5 it was, but at that time I could see half his face
6 but not the whole face.

7 Q And the man walked off; is that correct?

8 A And the man walked off.

9 Q In relation to that, when did you hear that the lady
10 behind Leo's house had been murdered?

11 A It was the next day.

12

13 MR. GUTIERREZ: I'll pass the witness.

14 THE COURT: Mr. Cantu.

15 MR. CANTU: I have nothing, Your Honor.

16 THE COURT: Thank you, Mr. Doyle. You may
17 step down, sir.

18 MR. GUTIERREZ: May we approach the bench,
19 Your Honor?

20 THE COURT: Okay.

21

22 (Whereupon counsel approached the bench.)

23

24 THE COURT: Ladies and gentlemen, we're
25 going to take a brief recess at this time. You

1 will be excused to the Jury Deliberation Room.

2

3

(A recess.)

4

5

(Whereupon the jury was seated in the jury

6

box.)

7

8

THE COURT: You may be seated.

9

State will call your next witness.

10

MR. GUTIERREZ: Yes. State would call Mary

11

Alice Gomez.

12

13

MARY ALICE GOMEZ

14

was called as a witness by the State, and having been

15

previously duly sworn, testified under her oath as

16

follows:

17

18

DIRECT EXAMINATION BY MR. GUTIERREZ

19

20

Q Would you please state your name, ma'am?

21

A Mary Alice Gomez.

22

Q Ms. Gomez, do you know a person by the name of

23

Charles Raby?

24

A Yes.

25

Q Do you know him as Buster or just Charles?

1 A Charles.

2 Q Do you see him in the courtroom today?

3 A Yes.

4 Q Is that him sitting between those two men at counsel
5 table?

6 A Yes.

7

8 MR. GUTIERREZ: Your Honor, I would like
9 the record to reflect the fact that the witness
10 has identified the Defendant.

11 THE COURT: The record will so reflect.

12

13 Q Do you recall whether or not back in October of
14 1992, how long it was that you had known Charles
15 Raby?

16 A I met him in November of '92.

17 Q When?

18 A November '92.

19 Q November of '92? Well, did you meet him before or
20 after he was arrested?

21 A Before.

22 Q How many months before he was arrested on this case
23 did you meet him?

24 A Can you repeat the question?

25 Q Sure. Do you agree with the fact that as of the day

1 he was arrested, if that is October 15th, 1992, that
2 you had known him for about two months?

3 A Yes.

4 Q And you had a friendly relationship with him; is that
5 correct?

6 A Uh-huh. Yes.

7 Q Now, for the record, you are pregnant now; is that
8 correct?

9 A Yes, sir.

10 Q And that is not the child of Charles Raby that
11 you're carrying?

12 A No, sir.

13 Q And back in October of 1992, you had a baby that you
14 were carrying in your arms?

15 A Yes.

16 Q How old was that child?

17 A About five, five-and-a-half weeks.

18 Q And she was not the child or that child was not the
19 child of Charles Raby either?

20 A No, sir.

21 Q However, would it be accurate to say that you and
22 Charles Raby started dating at some point after you
23 met him?

24 A Yes.

25 Q Was there an occasion when he was staying at your

1 home?

2 A No.

3 Q Were you together at one point when you became aware
4 and he became aware that the police wanted to talk
5 to him about the killing of a lady by the name of
6 Edna Franklin? 109

7 A Yes.

8 Q And where were you and he staying or where were you
9 and he when you both heard about that?

10 A We were in my living room and his mother had called
11 to let him know.

12 Q Essentially the Defendant told you that his mother
13 had let him know that the police wanted him for
14 questioning or wanted to question him regarding the
15 death of Edna Franklin; is that correct?

16 A Yes. 110

17 Q Within a few minutes after that phone call did the
18 police arrive at your home?

19 A Yes.

20 Q And what was that address?

21 A 1201 East 26th.

22 Q And did the Defendant Charles Raby tell you whether
23 he was going to stay and talk to the police or leave
24 out the back door?

25 A He was going to leave.

1 Q And did he in fact leave out the back door before
2 the police could come up to your front door and ask
3 for him?
4 A Yes.
5 Q I'll show you this jacket marked State Exhibit 110
6 and I'll ask you whether it is the same or similar
7 jacket that you told the police that Charles was
8 wearing on the day that the police arrived at your
9 home to look for it.
10 A It's the same.
11 Q Same one? And you gave the police permission to
12 take that; is that correct?
13 A Not really. My sister's boyfriend that was there
14 told them that he was there before the cops had even
15 talked to me. He told them that he was wearing a
16 jacket.
17 Q But Charles left that jacket in your home?
18 A Yes.
19 Q And you let the police take the jacket; is that
20 correct?
21 A Yes.
22 Q How long did the police stay there at your address
23 the night that Charles fled?
24 A About 15 minutes.
25 Q And do you remember how many days or how much time

1 passed once the police left that Charles came back?
2 A An hour-and-a-half.
3 Q As a result of the police coming to your home and
4 looking for you, did Charles ask you to go stay
5 somewhere else with him?
6 A No, not that day that he ran.
7 Q Where did you spend the night the day he ran?
8 A At my house, at my mom's house.
9 Q And did you all spend the next day there, too?
10 A He wasn't there. I was there by myself.
11 Q So maybe I'm confused. Did you say that Charles
12 came back about an hour-and-a-half after the police
13 left?
14 A After he ran Friday night.
15 Q And he came back an hour-and-a-half later? *111*
16 A Yes. *IT WAS ABOUT 2 1/2 3 HRS LATER.*
17 Q Did he ask you about the police being there?
18 A Yes. *112*
19 Q Before he left, did he look out the window and tell
20 you that the police were there?
21 A Yes.
22 Q And that's why he ran; is that correct?
23 A Yes.
24 Q I guess my question is, did Charles spend the night
25 at your house that night?

1 A No.

2 Q What about the night after that?

3 A No.

4 Q How many days was it before you all spent the night
5 together again, if you recall?

6 A Sunday night.

7 Q And did you all spend it at your house or somewhere
8 else?

9 A No, at the house on Reid Street.

10 Q And that's the same place the police came to and the
11 same place they arrested Charles at and took him down
12 to the police station; is that correct?

13 A Yes.

14 Q And you are the Mary Alice Gomez that went down to
15 the police station and talked to the police about
16 what you knew about this case; is that correct?

17 A Yes.

18

19 MR. GUTIERREZ: I'll pass the witness, Your
20 Honor.

21 THE COURT: Mr. Cantu.

22 MR. CANTU: I don't have any questions,
23 Your Honor.

24 THE COURT: Thank you, Ms. Gomez. You may
25 step down.

1 State will call your next witness.

2 MR. GUTIERREZ: Yes. State would like to
3 recall Sergeant Allen.

4

5

WAYMON ALLEN

6 was recalled as a witness by the State, and having been
7 previously duly sworn, testified under his oath as
8 follows:

9

10 DIRECT EXAMINATION BY MR. GUTIERREZ

11

12 Q State your name, please.

13 A Waymon Allen, Junior.

14 Q Are you the same Waymon Allen who's testified
15 previously in this case?

16 A Yes, sir.

17

18 (State Exhibit No. 99 was previously marked
19 for identification purposes.)

20

21 Q Sergeant Allen, I failed to show you what's been
22 marked as State's Exhibit No. 99. Can you tell us
23 what that is?

24 A This is an additional voluntary consent to search and
25 seizure form that was completed on October 19th,

1 1992.

2 Q In terms of the sequence of events and sequence of
3 documents that you previously testified about, when
4 was that document signed?

5 A Approximately 3:05 p.m. on October the 19th.

6 Q And who signed it?

7 A The Defendant, Charles Raby.

8 Q And what did you ask him to sign that for?

9 A This was a consent to search for the residence over
10 on Reid Street so that we could go back and conduct
11 an additional search, if necessary.

12

13 (State Exhibit No. 111 was previously
14 marked for identification purposes.)

15

16 Q (By Mr. Gutierrez) Now, I'll show you what's been
17 marked as State Exhibit 111. I'll ask you if you
18 can tell us what that is.

19 A These are the Polaroid photos taken of the Defendant
20 on the date of his arrest, October 19th, 1992.

21 Q Then and now in terms of build, how would you
22 describe the Defendant? Burly, medium, small?

23 A I'd say that he's medium build. He's approximately
24 5-7 in height and he looks a little slimmer on these
25 photos on the 19th than he does today. 113

1 MR. GUTIERREZ: I would like the record to
2 reflect I am tendering State Exhibits 99 and
3 111, which, by the way, for the record, contains
4 three photographs of Mr. Raby.

5

6 Q (By Mr. Gutierrez) Is that correct?

7 A Yes, sir, it does.

8

9 MR. GUTIERREZ: I would ask that these
10 photographs be admitted into evidence.

11 MR. CANTU: No objections, Your Honor.

12 THE COURT: State Exhibits 99 and 111 are
13 admitted into evidence.

14

15 Q (By Mr. Gutierrez) Now, if you can tell us
16 approximately -- if you haven't already said it, and
17 if you have, I apologize -- about how much would you
18 say he weighed in the photographs marked State
19 Exhibit No. 111?

20 A I'd guesstimate his weight is somewhere between 150
21 and 160 pounds.

22 Q In terms of the complaining witness, would you
23 categorize her as frail?

24 A Very frail.

25 Q Would it take much energy or strength of a person

1 the size of the Defendant to overpower someone of
2 Edna Franklin's stature and size?

3 A No, sir.

4 Q Is there anything else that pertains to this case
5 that you did that I haven't asked you about?

6 A I think you pretty much covered it.

7 Q Would you think about it overnight and if I failed
8 to ask you something, would you be free to come back
9 tomorrow?

10 A Yes, sir.

11

12 MR. GUTIERREZ: Your Honor, I've just run
13 out of witnesses for the day.

14 THE COURT: Mr. Cantu, do you have any
15 questions?

16 MR. CANTU: We'll wait, and if he's ever
17 called again, we'll ask him some questions then,
18 Your Honor.

19 THE COURT: Okay. Officer, you will be
20 excused subject to recall.

21 Ladies and gentlemen, the State having no
22 witnesses scheduled, I'm going to excuse you
23 again until 10:00 a.m. Let me, again, briefly
24 admonish you, don't make any independent
25 investigations as to any matters or facts

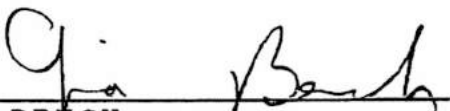
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related to the case nor discuss the case nor
read, listen or view any coverage in the event
there is coverage. So you are excused until
10:00 a.m. tomorrow.

THE STATE OF TEXAS *
*
COUNTY OF HARRIS *

I, GINA BENCH, Certified Court Reporter for the 248th District Court of Harris County, Texas, do hereby certify that the foregoing pages of typewritten material contain a true and correct transcript of all evidence adduced and admitted at the STATEMENT OF FACTS in the case shown in the caption hereof; that I was present in open court and reported said testimony in shorthand, and that later I transcribed same into typewriting.

IN TESTIMONY WHEREOF, witness my official signature on this the 1st day of December, 1994.


GINA BENCH
Certified Court Reporter
248th District Court
Harris County, Texas

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71938

IN THE COURT OF CRIMINAL APPEALS
IN THE STATE OF TEXAS
AT AUSTIN

CAUSE NO. 9407130

THE STATE OF TEXAS

Appellee

VS.

CHARLES DOUGLAS RABY

Appellant

APPEAL FROM THE 248TH DISTRICT COURT OF
HARRIS COUNTY, TEXAS
Honorable Woody R. Densen, Judge Presiding

STATEMENT OF FACTS

VOLUME XXIX OF XLI VOLUMES

JUNE 8, 1994

ORIGINAL

GINA BENCH
Certified Court Reporter
Harris County, Texas

FILED IN
COURT OF CRIMINAL APPEALS
FEB 15 1995
Thomas Lowe, Clerk

71938

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<u>EXHIBIT NUMBER</u>	<u>DESCRIPTION</u>	<u>MARKED</u>	<u>IDENT-IFIED</u>	<u>OFFERED</u>	<u>REC'D</u>
SX-96	Consent to Search Form			413	413
SX-98	Consent to Search Form			413	413
SX-101	Pulled pubic hair		397	397	398
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CAUSE NO. 9407130

1
2 THE STATE OF TEXAS * IN THE 248th DISTRICT COURT
3 VS. *
4 CHARLES DOUGLAS RABY * HARRIS COUNTY, T E X A S

5
6 A P P E A R A N C E S

7 FOR THE STATE OF TEXAS:

8 Mr. Roberto Gutierrez
9 District Attorney's Office
201 Fannin
Houston, Texas

10 FOR THE DEFENDANT:

11 Mr. Felix Cantu
12 Attorney at Law
618 East 28
Houston, Texas 77008
13 And
14 Mr. Michael P. Fosher
Attorney at Law
440 Louisiana
15 Houston, Texas 77002

16
17 BE IT REMEMBERED, that upon this 8th day
18 of June, 1994, the above entitled and numbered cause came
19 for STATEMENT OF FACTS before Woody R. Densen, Judge of
20 the 248th District Court of Harris County, Texas; and the
21 State appearing by counsel and the Defendant appearing in
22 person and by counsel announced ready to proceed; and all
23 preliminaries having been disposed of, the following
24 proceedings were had, viz:
25

1 JUNE 8, 1994

2
3 (Whereupon the jury was seated in the jury
4 box.)

5
6 WESLEY C. SHELDON

7 was called by the State, and having been previously duly
8 sworn, testified under his oath as follows:

9
10 DIRECT EXAMINATION BY MR. GUTIERREZ

11
12 Q Please state your name.

13 A Wesley Charles Sheldon.

14 Q Mr. Sheldon, would you tell the members of the jury
15 what you do for a living?

16 A I'm a latent print examiner with the Houston Police
17 Department.

18 Q And how long have you been so employed?

19 A I have been with the department 22 years. I've been
20 a latent fingerprint examiner for the past 17 years.

21 Q Would you explain to the members of the jury what
22 qualifications you have that qualify you for the job
23 that you do?

24 A Previously I worked in the Identification Division
25 for the past 20 years. I have attended numerous

1 schools in my field, both locally with HPD, with DPS
2 in Austin, and with the FBI in Quantico, Virginia.
3 I've worked with numerous experts in this field and
4 trained with them. I am a member of several
5 professional organizations, of which the International
6 Association of Identification has certified me as a
7 latent fingerprint examiner.

8 Q Are you what is commonly referred to as a fingerprint
9 expert?

10 A Yes, I am.

11 Q Would you tell the members of the jury what division
12 you are assigned to, if you haven't already?

13 A It's the Identification Division.

14 Q Would you explain to them what you do there on a
15 daily basis?

16 A Basically my job is to compare prints from crime
17 scenes that are lifted from scenes to known suspects
18 that we have prints on file. I also examine
19 evidence that cannot be examined at the crime scene
20 completely. We do that in the lab also. And on
21 major cases, I may be called to the scene myself to
22 process it. I also testify to my findings.

23 Q Would it be fair to say that you have compared
24 hundred of thousands of prints in your career?

25 A That would be very fair.

1 Q Now, did you have an occasion back in 1992 to be
2 called to the 600 block of Westford, in Houston,
3 Harris County, Texas, to process the scene, so to
4 speak?

5 A Yes, I did.

6 Q Would you tell the members of the jury what time you
7 got there and what you did?

8 A It was in the early morning hours. I was briefed by
9 the Crime Scene Unit on the scene and the homicide
10 detectives. I walked through the scene. Then I
11 started my crime scene search from suspected point of
12 entry throughout the entire house and the exterior of
13 the premises also.

14 Q When you talk about the early morning hours, are you
15 talking about October 15th, past midnight, namely,
16 October 16th of 1992?

17 A That is correct.

18 Q Would you tell us specifically, when you talk about
19 point of entry, what did you look at?

20 A Well, first we look at the front door, I mean, the
21 easiest access to the house or premises, whatever it
22 might be. I'm going to examine that area very
23 thoroughly. I'm also going to examine any other
24 suspected points of entries, which may be windows,
25 back doors, things like this. All suspected points

1 of entry, whether it's obvious or not, will be
2 examined, and basically checked for prints.

3 Q And you did that in this case?

4 A Yes, I did.

5 Q Did you find any prints?

6 A No, I did not.

7 Q Is that unusual?

8 A No, it is not.

9 Q Would you explain to the members of the jury, first
10 of all, do we always leave a fingerprint or a thumb
11 print in all surfaces no matter what we touch?

12 A Basically a latent print is the chance impression, a
13 friction ridge formation of your fingers, palms and
14 soles of your feet on some surfaces. There are many
15 criteria that come into the evolution of that print
16 and retention of that print on the surface: from
17 the person themselves, whether their hands are clean
18 or dirty, whether they're sweating or not, whether
19 they touched something greasy, something dry,
20 powdery. The surface itself, whether it's clean,
21 dirty, oily, porous or non-porous. The relative
22 humidity, the temperature, the wind, if the wind is
23 blowing. All these factors come into play on the
24 print and its evolution on a surface and retention of
25 that print on the surface.

1 Q I've asked you to look at the photographs that are
2 in evidence in this case. Would you go through them
3 very briefly and pick out some of the photographs and
4 show some of the places that you checked?

5 Before I forget, let's assume for a moment that
6 a person had been inside a home for weeks, days,
7 before a crime was committed and that person became a
8 suspect in the killing of an individual in the house.
9 Would you, if you did lift prints off things inside
10 the house, be able to determine whether or not the
11 prints were lifted two weeks before as opposed to --
12 not lifted, but were put there either two weeks
13 before or the night of the killing?

14 A Generally that cannot be determined, the age of a
15 print. Some circumstances might come into play, say,
16 if we know that the surface was cleaned at 10:00
17 a.m. this morning and I dusted it at 10:15 and I got
18 a print on it, we can say, well, this print was put
19 between 10:00 and 10:15.

20 As far as saying a print is ten minutes old or
21 two weeks old, that cannot be readily determined
22 normally. It just has to be special circumstances,
23 like the surface has been cleaned or that item wasn't
24 at that particular location at the time; it was
25 somewhere else. All these would have to be

1 considered in the age of a latent print.

2 Q Would it be fair to say that you have processed
3 hundreds of scenes?

4 A Yes, I have.

5 Q Now, in your experience, what percentage of the time
6 that you actually are able to lift prints that are
7 usable?

8 A Well, I myself am in charge of statistics for our
9 division, and from prints lifted from crime scenes,
10 generally 15 percent are suitable for identification.
11 That means 85 percent are no good. Of the 15
12 percent that are deemed identifiable, 2 percent are
13 ultimately identified through our examination of
14 suspects.

15 Q I'm sorry, I interrupted you in terms of going
16 through the photographs. Please continue.

17 A Of course, this doesn't start from the outside, at
18 least this one doesn't. This is a living area right
19 here.

20 Q If you don't mind, let me stand by you, and as you
21 begin to talk about the particular exhibits, I'll
22 rattle off the picture exhibit. That's Defense
23 Exhibit No. 1; is that correct?

24 A I guess this starts with 14. This is a picture of
25 the house from across the street. Let me zoom in a

1 little bit more. Right here is going to be the
2 front door area. I've got another picture that's
3 closer. And this is the side of the house right
4 here. This is the side of the house, front bedroom,
5 the window that has some kind of activity added at
6 some point in time.

7 Q Why do you say that?

8 A Well, again, I could not determine when the screen
9 was ripped, or, there's some pry marks on the window.
10 Nothing looked fresh, like hours old. It could have
11 been at any point in time.

12 Q Now, the evening pictures being the crime scene
13 photos, and those are pictures I took during the
14 daytime. You're welcome to use all the exhibits you
15 want.

16 Would you raise up that particular exhibit you
17 have and would you talk about the porous nature of
18 the wood of the screen frame and the window itself?
19 What effect, if any, does that have?

20 A This is a wooden home. It had been painted.
21 There's many layers of paint on this that are many
22 years old. It is extremely old. The surface is
23 cracking. The surfaces are dirty. These are very
24 poor surfaces to recover a latent print. Although it
25 is not impossible, this is not a good surface to

1 recover one from.

2 Q Do you have yourself any recollection, if you do,
3 about whether or not during the course of your taking
4 prints or trying to take prints off of that window
5 or that area, whether or not at some point you or
6 anybody else raised that window?

7 A I do not recall specifically. I think we did, but I
8 cannot say for sure.

9 Q Okay. Please proceed.

10 A The front door area here, I examined it around the
11 door frame. The door frame itself is an aluminum
12 door frame. This is a highly oxidized kind of
13 surface and it's not good for retaining prints, but I
14 would have dusted around this, these edges of the
15 chairs here just for a chance impression that someone
16 might have been walking by that might have touched
17 it. These are things that I'm also going to
18 examine.

19 Q That would be State Exhibit No. 20?

20 A Yes.

21 Q And now you have got State Exhibit No. 21?

22 A 21 --

23 Q Those photographs were taken later by me. If you
24 want, you can look at the crime scene photos taken
25 that night, which would be the dark ones.

1 **A** Sure. Well, this is one of the rooms towards the
2 back of the house that is more for storage than
3 living. There was nothing really to identify here.
4 This is another shot of the outside window that had
5 some kind of activity at it. This is another
6 closeup of the window molding around the glass panes,
7 how uneven and how rough that kind of surface is.
8 Another shot of the front door area. This is the
9 front living area. The coffee table is slightly
10 ajar. There is some papers around that here that I
11 recovered and removed to the labs, so the paper
12 articles were examined at the lab. The table legs
13 and whatnot were examined by myself there at the
14 scene. Here's another little bit closer shot of it.

15 Here's the kitchen area. Again, examined any
16 articles that looked like they might have been
17 disrupted or out of the ordinary. This was not a
18 very neat house. It was very cluttered and dirty
19 and not too tidy.

20 This is the front bedroom opposite of the window
21 that we showed where we had the screen pried back.
22 The blinds were all the way down. I examined this
23 area and the blinds themselves for prints. Again,
24 this is a filthy area. Here's another shot in this
25 front bedroom over the dresser area. There's a

1 telephone here. This room was not neat, but it
2 wasn't ransacked or anything like that. But, again,
3 I examined the surfaces that could have been touched
4 by someone proceeding through that room.

5 Q And that was 56, and you're now going to look at 57?

6 A 57, yes. This is another shot of the window on the
7 side of the house, showing the blinds again. I did
8 examine those for prints. They were very dusty.
9 This is the bed area next to that blind in the front
10 bedroom. This is the other corner of the bedroom,
11 showing some trash on the floor and whatnot. This
12 is the bathroom area. I examined the sink area and
13 the tub area in case of chance impression of someone
14 touching it.

15 This is the kitchen area. You can see how
16 dirty the surfaces are. They are not very clean and
17 not easily -- prints are not easily obtainable from
18 those. This is the doorway from the kitchen back to
19 the day room area, where the room is not actually a
20 bedroom but the room, I believe, she was living. I
21 examined that door surface and the frame around it,
22 and the kitchen stove area and this dishwashing
23 machine.

24 Q Let's stop just a second. Would you explain to the
25 members of the jury what happens when a person goes

1 up to a door and twists a doorknob? What happens
2 with the oils of the hands?

3 A Well, hopefully the impression of the finger or palm
4 might be left on that surface. Normally that surface
5 is handled many, many times. We're looking at prints
6 on top of prints on top of prints. The more dirty a
7 surface is, the more it would attract dust and film
8 and items like this. So that's not an easy surface
9 to recover an identifiable print from.

10 Q Would you specifically tell them what a smear is?

11 A Well, again, when we're talking about the friction
12 ridge formation, within this friction ridge formation
13 are characteristics, and based on the amount of these
14 characteristics compared to an unknown latent print
15 with a known print, I can identify and say that
16 print is him or her or isn't him or her. If we
17 don't have a clear impression of the fingerprint, it
18 is smudged or there is obliteration from one's print
19 on top of the other, I cannot say, fine, the amount
20 of characteristics I need to say that print is or
21 isn't a person.

22 Q What number of characteristics or distinguishing
23 points do you look for when comparing fingerprints
24 before you're satisfied that the prints you're
25 looking at that was lifted from the scene, in fact,

1 belongs to someone?

2 A Okay. There is no set amount by the FBI or the
3 International Identification per se. Myself
4 personally, my number is seven. That's generally the
5 accepted number by most experts in my field. Within
6 the fingerprint itself, we have up to 150
7 characteristics, and a palm print, we can have up to
8 1500 points of identification or characteristics. So
9 we don't need the full finger impression left on a
10 surface. We just need a part of the fingerprint
11 impression to find a sufficient amount of these
12 characteristics to identify a latent print.

13 Q Please proceed.

14 A We're looking in this back room area now, day room.
15 This was the door off the kitchen area. Again, you
16 can see it's highly cluttered and there's papers and
17 everything stacked all over the place. This is
18 another shot in this back day room area. Again,
19 highly cluttered. Another shot of the area. It's
20 hard to tell, you know, what was normal and what was
21 out of normal there. There are some articles here
22 that are strewn about the room, but, again, it's hard
23 to say what was normal and what wasn't. Again,
24 another shot of that room.

25 This is on top of the fake fireplace area.

1 This is the day bed in that back room. On the bed
2 there's a lot of papers and credit cards and items
3 that possibly had fallen out of the purse or taken
4 out of the purse, maybe if they were looking for
5 something. The purse is on the floor right here
6 next to the bed.

7 Q Now, a purse was recovered. And let me show you
8 what has been marked as State Exhibit No. 75.
9 Assuming that this were the purse containing some
10 items, what kind of material would you say that
11 material is?

12 A Well, this is some kind of vinyl. This is a highly
13 porous and not a smooth surface. It's strictly for
14 cosmetic reasons. That is not a surface that would
15 yield a latent print very readily.

16 Q So if I grabbed this purse and opened its contents
17 and threw them on the table or some other surface,
18 would the chances be good that I would have left my
19 fingerprints on them?

20 A They wouldn't be good, but it wouldn't be impossible
21 either.

22 Q Okay. Please proceed.

23 A Again, this is a picture of the purse on the foyer
24 area next to the fan, as we saw the fan in this
25 picture. There's an Entex bill, I believe, halfway

1 hanging out of the purse. These are some of the
2 articles that I retained and brought back to the lab
3 to examine for prints.

4 Q About how many -- let's stop there for a second.
5 Would it be fair to say you tried to get
6 fingerprints of the whole house?

7 A Yes, I did.

8 Q And you didn't come up with any legible prints? Am
9 I using the correct language?

10 A Any identifiable prints, that is correct.

11 Q Did you take some items and fingerprint them as well,
12 and if so, what were those items?

13 A Yes, I did. Basically I recovered from the scene,
14 the purse, a small paring knife, a screwdriver, a
15 plastic tray and assorted paper articles from the
16 areas I'm going to show you here in a second.

17 Q No blood on the knife?

18 A No blood on the knife. *117*

19 Q And what did you find when you looked for those
20 items?

21 A I did not find any prints on the articles I
22 examined.

23 Q I'm sorry, I didn't mean to interrupt.

24 A Next to the bed area here, we're looking at the
25 purse and we see a credit card on the floor. This

1 is another article I retained and returned to the lab
2 to examine.

3 Q Would you talk about the surface of credit cards?

4 A A credit card is a plastic, non-porous surface. It
5 is good for leaving a print on, but, again, the more
6 it's handled, the less the chances are of seeing an
7 identifiable print can be retained from it. It's not
8 something that's clean or anything like that, so the
9 more you handle a credit card, the more prints will
10 be on it.

11 Again, on this day bed area you see some paper
12 articles and a Visa card and some stamps and keys
13 and an inhaler. These articles were strewn about the
14 bed. Again, it's hard to tell if it was normal or
15 not. This is another shot of the bed area there of
16 those articles. And the last one here is also the
17 bed area.

18 Q Does that conclude what you did in this case?

19 A Yes, it does.

20 Q Now, there was also an ashtray. You found nothing
21 on that, correct?

22 A That is correct.

23

24 MR. GUTIERREZ: I'll pass him, Your Honor.

25 THE COURT: Mr. Cantu.

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MR. CANTU: Thank you, Your Honor.

CROSS EXAMINATION BY MR. CANTU

Q Mr. Sheldon, I know that you're in charge of the Identification Division. How long have you been a police officer?

A 22 years and 4 months.

Q Just over two decades then, right?

A Yes.

Q When you arrived at the scene that night, were you met by Officer Allen or Detective Allen?

A I believe so.

Q And also one of his partners? I forget his name, but another detective that was there?

A Bill Stephens, I believe.

Q Bill Stephens. And you took instructions from them in what you were supposed to fingerprint or do to take fingerprints, right?

A Sure.

Q You indicated, of course, the first point, without instruction, would have been the doors?

A Sure.

Q That's the most obvious. But prior to that time, or, let me ask you this. You took all the prints

1 and you took them back to your lab and analyzed them
2 and compared them with other prints. Is that a
3 correct statement?

4 **A** I did not even retain any prints. I mean, it's
5 highly unusual. I mean, it's not that unusual, but
6 I pride myself in recovering prints from scenes.
7 This scene was extremely filthy and I did not recover
8 any suitable prints from the scene. Hopefully when I
9 recovered the evidence that I retained back to the
10 lab, I would develop some prints on that.
11 Unfortunately I did not either.

12 **Q** So to cut to the chase, you went in there, and your
13 sole purpose with the Police Department is to take
14 prints and identify them. You attempted to take
15 prints off the doors, front and back doors, right?

16 **A** That is correct.

17 **Q** Found none?

18 **A** That is correct.

19 **Q** You found not even a smear?

20 **A** That is correct.

21 **Q** Then went to a window, a window that you identified
22 as the front bedroom window?

23 **A** That is correct.

24 **Q** You took prints of a screen. You took prints of a
25 screwdriver that's been identified. You found

1 nothing there?

2 A That is correct.

3 Q Behind the screen, on the other side of the screen
4 was, of course, the window and the window pane. Did
5 you attempt to take prints off the window or the
6 window pane?

7 A Yes, I did.

8 Q What did you find?

9 A Again, unsuccessful. This surface was extremely
10 dirty from weather and dust and everything else and I
11 did not recover any prints from that location.

12 Q And you describe this as a freshly painted area?

13 A No, not freshly, but it had been painted many times.
14 There were layers of paint, it crackled and cracked
15 and flaked off and was extremely dirty.

16 Q Extremely dirty, but you found no prints on the
17 windows or the window panes?

18 A That is correct.

19 Q You found no prints because of the dust on the
20 window panes?

21 A Again, there were many factors that I listed off
22 earlier. All these come into fact there.

23 Q Those factors that you identified earlier were
24 weather factors, conditions of the weather,
25 conditions of the room, conditions of the surface.

1 What was the weather like on this particular day, or
2 was that a factor in taking prints on this evening?
3 **A** I do not recall. I know it wasn't raining, but
4 that's all I can remember.
5 **Q** After you attempted to take prints of the screen and
6 the window and all surfaces near that window, as you
7 say, you got no prints of any kind, and you went
8 into the bedroom, into that interior room, which is
9 the bedroom, and you got no prints, not even a smear
10 from that area?
11 **A** That is correct.
12 **Q** Then you went into the bathroom. You did all you
13 could with the two decades of experience and you got
14 no prints from there?
15 **A** That is correct.
16 **Q** Then, of course, you were in the living room area
17 and you attempted to take prints from the furniture
18 there, table, and you got no prints?
19 **A** That is correct.
20 **Q** In fact, you did not even get a smear that you could
21 identify or take with you on this particular night?
22 **A** That is correct.
23 **Q** Then you went into the kitchen and attempted to take
24 prints or smears of that area?
25 **A** That is correct.

1 Q And, again, none were taken.

2 A That is correct.

3

4 MR. CANTU: May I approach the witness,
5 Your Honor?

6 THE COURT: Yes.

7

8 Q (By Mr. Cantu) We're going to discuss what's been
9 previously identified as Mrs. Franklin's bedroom area
10 or den area. I don't know that you identified it as
11 such.

12 A I call it a day room.

13 Q It's been identified by others --

14 A Sure.

15 Q Let's see if we both agree. State Exhibit 68, is
16 that what you would consider the day room?

17 A Sure. This is what I call it.

18 Q You attempted to take prints from all the back and
19 the railings of this bed?

20 A That is correct.

21 Q And you got none?

22 A That is correct.

23 Q You attempted to take prints off the sofa, this hard,
24 plastic -- I believe it's a plastic sofa. It's
25 either plastic or leather, right?

1 A We examined the arm areas here but not the whole
2 surface.
3 Q What would normally be touched?
4 A Yes.
5 Q And you found none?
6 A That is correct.
7 Q In this room there was also some furniture there.
8 It looks like, from State Exhibit 66, two televisions
9 that are off.
10 A A couple of televisions, some more chairs, coffee
11 tables, another door.
12 Q You examined all that area, all that furniture, and
13 you found no prints?
14 A That is correct.
15 Q You examined all of her belongings, or, excuse me,
16 all the belongings that were on the bed. Of course,
17 you didn't know at the time they belonged to her or
18 to whomever, all your job there, of course, was to
19 take prints?
20 A Yes.
21 Q And what did you find?
22 A I did not find anything.
23 Q You indicated in your testimony that you took
24 pictures -- or, excuse me, you took a knife back
25 with you to be examined?

1 A Yes.

2 Q Did you examine it personally yourself?

3 A Yes, I did.

4 Q You indicated you have an expertise in fingerprint
5 analysis. Did you take an analysis -- and I know
6 you did. You took analysis if the prints and you
7 found none, right?

8 A Correct.

9 Q You indicated that you determined there was no blood
10 on this knife?

11 A I did not personally determine that. There did not
12 appear to be any blood on the knife.

13 Q Did you analyze this knife?

14 A I personally, for fingerprints, that is my extent of
15 the analyzation.

16 Q What you testified to, if you said anything about
17 anything other than fingerprints, you have no
18 professional experience or expertise in that,
19 including the blood analysis?

20 A Correct. 115

21 Q This is State Exhibit No. 37. This is a closeup.
22 It's an 8-by-10 glossy closeup of a screen that you
23 have identified. That's the screwdriver that you
24 identified; is that correct?

25 A That is correct.

1 Q And you got nothing from that. Did you take that
2 speck with you? I can't identify it myself.

3 A I really don't know what that speck is either. It's
4 something I retained. But that surface I examined
5 with finger powder and dust, and dusted.

6 Q When you say "that area," you're not only talking
7 about the outside of this frame, this window frame,
8 but also the base of this area?

9 A That is correct.

10 Q And also the window panes, the window panes showing
11 more precisely on State Exhibit No. 36, all those
12 window panes, you examined those window panes for
13 possible entry? 116

14 A Yes, I did.

15 Q Or actually for possible prints?

16 A Yes.

17 Q And would you look at State Exhibit No. 36 and tell
18 me what that white protrusion is on top of the top
19 window?

20 A I really couldn't answer that.

21 Q Does that look like it's sticking into the lumber
22 there or the wood of that window?

23 A It does.

24

25 MR. CANTU: May I show this to the jury,

1 Your Honor?

2 **THE COURT:** Yes.

3

4 **Q** (By Mr. Cantu) You found no prints on top of this
5 window? I forget how you would identify it, but the
6 top part of this lower portion of this window, you
7 found no prints on this top?

8 **A** The screen, that is correct.

9 **Q** Or the window pane itself?

10 **A** That is correct.

11 **Q** And you applied the factors that you indicated, that
12 you rely on seven -- I'm not sure you use factors.

13 **A** Seven points of identification.

14 **Q** Seven points of identification out of a possible
15 hundred or so, but you found none, nothing, no prints
16 to apply that expertise?

17 **A** That is correct.

18 **Q** Then on the doors, again, you took prints on the
19 inside and outside doorknobs. Is that a correct
20 statement?

21 **A** That is correct.

22 **Q** And you found no prints, actually is what I meant to
23 say.

24 **A** That is correct.

25 **Q** Did you go so far as to take or attempt to take

1 prints from the fence or the side fence and the back
2 fence of this house?

3 A I did not attempt it. I did examine this area. I'm
4 also the -- my expertise is in footprints and tire
5 prints, and I also examined all possible areas around
6 the crime scene for anything like this. So I would
7 have looked at the fence. We were also looking for
8 prints that might be in blood, so possibly the
9 individual suspect could have blood on their hands
10 and touch a surface and may leave a bloody
11 impression. So I would also be looking for these
12 kinds of prints in this area.

13 Q And you found none?

14 A That is correct.

15 Q And you found none in the house?

16 A That is correct.

17 Q You found no footprints or blood prints as such.
18 The obvious would be, of course, someone stepping in
19 a pool of blood, but you found no kind of prints, no
20 kind of footprints or hand prints, inside this house?

21 A That is correct.

22

23 MR. CANTU: I'll pass the witness.

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REDIRECT EXAMINATION BY MR. GUTIERREZ

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Q Mr. Sheldon, when you talk about not having found any prints, we're talking about any useful prints; is that correct?

A That is correct. I did not find anything that would be of any value to me to identify. Did not contain these points of identification that are required to identify that print.

Q And when we talk about that, not the prints of any intruders, not the prints of the complaining witness, Edna Franklin, not the prints of her grandsons, anybody; is that correct?

A That is correct.

Q Now, the Defense attorney asked you whether or not you had looked at a knife. When you go to a crime scene, is there any magic to -- let's say a knife is used to stab somebody. Is blood visible with the naked eye?

A Normally it is, yes. There's always a possibility that components of blood, serum, albumin, which is not red in color, can be retained, say, on the surface of your hand or, say, you start with a bloody film on your hand and you make several

1 impressions, well, eventually this liquid on your
2 hand is going to dissipate and is going to go away,
3 but part of the components of blood can still remain
4 and can still be visible to the eye.

5 Q And do you have to make a judgment call when you go
6 out there, based on your experience, as to whether
7 it's submitted to be examined for blood first or
8 prints first?

9 A Yes. *117*

10
11 (State Exhibit No. 112 was marked for
12 identification purposes.)
13

14 Q I'll show you this bag that I'm marking as State
15 Exhibit No. 112, and it contains an ashtray, the
16 screwdriver the Defense lawyer showed you, and credit
17 cards, and, I believe, a kitchen knife.

18 A Yes, this is a small steak knife, what's called a
19 steak knife.

20 Q Pretty fragile knife, as knives go?

21 A Sure.

22 Q Did you see any blood on it when you picked it up?

23 A No, I did not.

24 Q Is that why you did the prints?

25 A Again, this is part of my job. I'm looking for

1 anything that could be -- could contain a print,
2 whether by accident or by purpose. So this was out
3 in the kitchen area, and I'm looking for possible
4 prints on it if it would be handled, whether it be
5 by the suspect or by the Complainant.

6 Q Many times when you go out to a scene, you don't
7 know what may turn out to be important. That's why
8 you gather up as much as you can; is that correct?

9 A That is correct.

10 Q Thank you.

11

12 MR. GUTIERREZ: I'll pass the witness.

13 THE COURT: Any further questions?

14 MR. CANTU: Yes, Your Honor. May I
15 approach the witness, Your Honor?

16 THE COURT: Yes.

17

18 RE-CROSS EXAMINATION BY MR. CANTU

19

20 Q You were in that one bedroom, not Mrs. Franklin's
21 bedroom but the one bedroom you discussed, where you
22 took a picture of the window. I don't know that you
23 know whose bedroom it is, but I'll show it to you.
24 I know that you will recall, once I show it to you,
25 once I find it. It's not always easy to find things

1 when you're looking for them.

2 **A** That's right.

3 **Q** Let it be on the floor, be walking around barefoot

4 and you'll step on it.

5 **A** It's not here.

6 **Q** Do you recall being in that bedroom?

7 **A** Yes.

8 **Q** You identify part of it here. I've got it here.

9 You recall, of course, this is State Exhibit 58.

10 You recall attempting to take prints and lift prints

11 from that, using all the expertise that you've

12 obtained in the two decades that you've worked for

13 the Police Department. Of course, your answer has

14 been that you got none, smears or prints, nothing to

15 take home to the office for identification?

16 **A** Correct.

17 **Q** Did you take anything else other than prints from

18 there?

19 **A** From the bedroom area?

20 **Q** Yes, sir.

21 **A** This is where I received this tray.

22 **Q** This was given to you by whom, if you can recall?

23 **A** The crime scene unit. Norris.

24 **Q** And they asked you to apply your expertise to this

25 tray and find any evidence that might be worthy for

1 this case or appropriate for this case?

2 A Sure.

3 Q And you found none?

4 A Correct.

5 Q Did you take any other physical evidence from there,
6 using all your skills?

7 A That is all I can recall.

8 Q Did you take this mattress or this cover or these
9 sheets with you?

10 A No, I did not.

11 Q Did you attempt to look at them at all?

12 A We examined them, yes.

13 Q And your examination showed what?

14 A Well, looking for something that might be underneath
15 them. I'm not looking at the --

16 Q What did you find?

17 A I did not find anything. *118*

18

19 MR. CANTU: I'll pass the witness, Your

20 Honor.

21 THE COURT: Any further questions?

22

23 FURTHER REDIRECT EXAMINATION BY MR. GUTIERREZ

24

25 Q Did anyone in particular draw your attention, if you

1 recall, to possible indentations on the bed,
2 specifically, Eric Bengé? Did he ever talk to you
3 in person and mention to you that someone might have
4 stepped on the bed and made those wrinkles on the
5 bed?

6 A Now that you mention it, I believe it was brought
7 up. Again, I do not really specifically recall.

8 Q Now, you said you were an expert in fingerprints.
9 Do shoes have unique prints like fingerprints?

10 A Yes, they can.

11 Q But they're a lot harder to trace than fingerprints,
12 aren't they?

13 A Yes, they are.

14 Q What is the frequency of someone stepping on a sheet
15 or the likelihood of them leaving a print that might
16 be used later compared to the fingerprints which were
17 already --

18 A Again, there are many circumstances that factor into
19 this. The shoe itself, whether it's clean or dirty,
20 was it stepped in, how often it's been stepped in
21 something. The surface itself, whether it's porous,
22 nonporous, hard or soft, all these factor in. Just
23 an impression in an area may look like a shoe
24 impression. On closer examination, if it doesn't
25 reveal the characteristics we're looking for, like in

1 our fingers, shoes can have characteristics.
2 Unfortunately from the factory they're all the same
3 and from everyday use, you know, they create their
4 own individual characteristics. These are what we
5 would be looking for in a shoe impression. If an
6 impression, faint or however it may be, does not
7 contain these characteristics that can be compared to
8 identify then, again, it's something no good, nothing
9 we can do anything with.

10 Q Thank you, sir.

11

12 MR. GUTIERREZ: I'll pass him.

13 MR. CANTU: I have another question.

14

15 FURTHER RECROSS EXAMINATION BY MR. CANTU

16

17 Q After saying all of that, what seems to be clear is
18 you're saying you looked at it and you found no
19 foreign matter on this mattress or this cover to take
20 home with you, take to your office to analyze, such
21 as dirt, grass, gravel, anything that might indicate
22 someone stepping on this mattress? Did you take
23 anything back to your office?

24 A No, I did not.

25 Q Thank you. 119

1 MR. CANTU: Your Honor, I have nothing
2 further.

3 MR. GUTIERREZ: Thank you, sir.
4 State would call W.I. Stephens.

5
6 W.I. STEPHENS
7 was called as a witness by the State, and having been
8 previously duly sworn, testified under his oath as
9 follows:

10
11 THE COURT: You may proceed.

12
13 DIRECT EXAMINATION BY MR. GUTIERREZ

14
15 Q Please state your name for the record.

16 A Bill Stephens.

17 Q Mr. Stephens, would you please tell the members of
18 the jury what you do for a living?

19 A I'm a sergeant with the Houston Police Department,
20 assigned to the Homicide Division.

21 Q How long have you been a police officer?

22 A For 14 years.

23 Q And would you tell the members of the jury what
24 different divisions you have been assigned to in that
25 time?

1 **A** I was in patrol initially and then did a rotation
2 through the jail for a short time. I promoted in
3 1984 and went to Central Patrol as a supervisor and
4 then went to burglary and theft for about six months
5 and then went to Homicide.

6 **Q** Back in October of 1992, did you have an occasion to
7 be assigned to an investigation that resulted in
8 charges being filed against a person by the name of
9 Charles Douglas Raby?

10 **A** Yes, I did.

11 **Q** Do you see Mr. Raby in the courtroom today?

12 **A** Yes, I do.

13 **Q** Would you point him out for the record and describe
14 what he is wearing today?

15 **A** He's wearing a blue shirt, with a red tie, seated
16 next to the Defense counselors.

17

18 **MR. GUTIERREZ:** Your Honor, I would like
19 the record to reflect that the witness has
20 identified the Defendant.

21 **THE COURT:** The record will so reflect.

22

23 **Q** Sergeant, did you have an occasion to obtain a
24 warrant that was signed by a judge in the 339th
25 District Court on or about October 16th, 1992?

1 A Yes, I did.

2 Q And was that warrant for the arrest of Charles

3 Douglas Raby?

4 A It was.

5 Q Would you tell the members of the jury if you had

6 occasion to try to serve that warrant or arrest

7 Charles Douglas Raby once you got that warrant

8 signed?

9 A Yes.

10 Q How many locations did you go to, if you recall?

11 A At least three locations.

12 Q Did one of those locations happen to be a place

13 where a lady by the name of Mary Alice Gomez lived?

14 A Yes.

15 Q Do you recall offhand what the location was?

16 A It was in the 1200 block of East 26th.

17 Q Did you learn that the Defendant had been there

18 moments before you arrived?

19 A Yes.

20 Q Did you retrieve a piece of evidence from there?

21 A Yes.

22 Q What was that?

23 A A black jacket.

24 Q You're pointing to it. I've shown this to you

25 outside the presence of the jury; is that correct?

1 **A** That's correct.

2 **Q** And this is the jacket that I have previously marked
3 and from which the exhibit number has fallen off of.
4 For the record, I believe that jacket has been
5 previously marked as State Exhibit 110. I would like
6 to remark it on the record.

7 What did you do with that jacket?

8 **A** Well, the jacket was tagged by Sergeant Wendel in the
9 HPD Property Room.

10 **Q** Did you have an occasion to do something else
11 involving this case?

12 **A** Yes, sir.

13 **Q** And what was that?

14 **A** I went to the Harris County Morgue and attended the
15 autopsy of the Complainant.

16 **Q** Of Edna Franklin?

17 **A** That's correct.

18 **Q** And would you tell the members of the jury what
19 happened there?

20 **A** I observed while the medical examiner conducted the
21 first portion of the autopsy. He was called away
22 for court and didn't finish while I was there. But
23 while I was there at the autopsy, I collected some
24 hairs from Mrs. Franklin's right hand.

25 **Q** And why was that significant to you at the time?

1 **A** Because the hairs were clutched in her hand and they
2 were consistent with the hairs of some possible
3 suspects in the case.

4 **Q** What did you do with those hairs?

5 **A** I took them back to the Homicide Division after
6 making a crude druggist envelope out of my note pad
7 and turned them over to Sergeant Ted Thomas and asked
8 him to take them directly to the Crime Lab so they
9 could be looked at by the chemist and the analyst
10 there so we could have an idea of what type of
11 suspect or what type of hair we were looking at.

12 **Q** I'll show you a bag marked State Exhibit 106 and ask
13 you whether or not you recognize the bag and its
14 contents.

15 **A** Yes, I do.

16 **Q** Is that the bag containing the hair that you asked
17 Sergeant Thomas to take to the Crime Lab?

18 **A** Yes, sir, it is.

19 **Q** Sergeant Stephens, how many years did you say you
20 have been in the Homicide Division?

21 **A** For 10 years.

22 **Q** And before that, you were a police officer for how
23 long?

24 **A** Four additional years.

25 **Q** During that time, those 14 years, have you had

1 occasion to go to few or many crime scenes?

2 A Many crime scenes.

3 Q And in the course of your investigations as a
4 homicide detective, is it uncommon in your experience
5 to not find physical evidence that ties a suspect to
6 a crime? Is it uncommon not to have it?

7 A It's not uncommon to not have any physical evidence
8 that directly links a person to a crime. ¹²⁰

9 Q Assuming a person gives a voluntary confession to a
10 crime, is it uncommon to not find any physical
11 evidence to tie that person to the crime other than
12 the confession?

13 A That's correct, it's not uncommon.

14 Q Now, assuming that I were to or someone were to
15 enter a home to commit a burglary, would there be a
16 requirement that they not use the front door?

17 A No.

18 Q May a person still commit a burglary of a habitation
19 by walking into a door and committing a felony or a
20 theft?

21

22 MR. CANTU: I'm going to object to that as
23 outside the ability of this person to testify.
24 It intervenes with the purview of the jury.

25 THE COURT: Is that your objection?

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MR. CANTU: Yes.

THE COURT: I'll sustain it on some other grounds.

Q (By Mr. Gutierrez) Let me ask you this. Is an attack with a knife an aggravated assault?

A Yes, sir.

MR. GUTIERREZ: I don't know if I previously offered this to be hair or the jacket, Your Honor, but if not, I would like to offer these at this time, State Exhibits 110 and the hair, State Exhibit No. 106. And I'll pass the witness.

THE COURT: Any objections?

MR. CANTU: I'm sorry, I didn't hear it. I was writing.

THE COURT: He's offering the hair and jacket, 110 and 106.

MR. CANTU: No, Your Honor, no objections.

THE COURT: State Exhibits 110 and 106 are admitted into evidence.

Mr. Cantu.

CROSS EXAMINATION BY MR. CANTU

1

2

3 Q Sergeant, good morning to you. Those samples or that
4 hair that you took and you gave to Police Officer
5 Thomas, you all have come to some conclusion as to
6 what that hair is, and the conclusion is what?

7 A That it's human hair. As far as whether it's been
8 matched to any particular person, I don't know the
9 answer to that.

10 Q Is it only human hair or is it anything else other
11 than human hair?

12 A Of the sample that I submitted from the clutched
13 hand, as memory serves me, it's only human hair.
14 There were some other samples collected during the
15 autopsy that I observed the doctor collect.

16 Q And what happened to those collections?

17 A He collected those and then submitted them as part of
18 the medical examiner's kit that they submit following
19 an autopsy.

20 Q When you had that signed arrest warrant on the 16th
21 of October, was that arrest warrant, in fact, for
22 your -- you testified obviously it was for the arrest
23 of Charles Raby, but it was for the arrest of
24 Charles Raby for what type of offense?

25 A For a trespassing offense. 121

1 Q Later there was a second arrest warrant, or was that
2 the only arrest warrant that you had or any police
3 officer had for Charles Raby for that particular day?
4 A That's the only one I'm aware of for that day. ✓
5 Q Did you have any further arrest warrants on October
6 17th, 18th or 19th?
7 A Not to my knowledge.
8 Q And you indicated you went to three locations on the
9 16th of October. Is that a correct statement?
10 A That's what I remember. I remember going to Mr.
11 Raby's home, where his mother was located, and then
12 that address on 26, and I believe an address on
13 Reid. Those are the only three that I remember.
14 Q What time frame did that take place? Obviously
15 within that 24-hour period after you got your arrest
16 warrant, but how long did it take you to go to these
17 different areas?
18 A It was all done that one day, as far as going to the
19 mother's house and going to the Reid location and
20 going to 26, was all done either on the 16th or the
21 very early morning of the 17th.
22 Q But you did it all in one trip? I guess that's the
23 real question I'm asking.
24 A I don't remember if it was all one trip. I know we
25 went to locations on that day.

1 Q Who was with you?

2 A My partner, Sergeant D.D. Shirley. We were also
3 accompanied by Sergeants Allen and Wendel, and I
4 don't remember if anybody else was with us or not.

5 Q In one car or separate cars?

6 A Separate cars.

7 Q How many cars?

8 A At least two. There could have been more.

9 Q And you all finally located -- did you participate in
10 the arrest of Charles Raby?

11 A I was present, yes, sir.

12

13 MR. CANTU: I'll pass the witness, Your
14 Honor.

15 THE COURT: Any further questions?

16 MR. GUTIERREZ: A few questions, Your
17 Honor.

18

19 REDIRECT EXAMINATION BY MR. GUTIERREZ

20

21 Q Officer Stephens, the Defendant was not arrested
22 until October 19th; is that correct?

23 A That's correct.

24 Q Now, the Defense attorney was asking you about a
25 warrant. He asked you about the warrant for criminal

1 trespass. Was that criminal trespass on the property
2 of H.L. Leo Truitt?

3 A Yes, it was. ¹²²

4 Q Then he asked you if there were any other warrants.
5 If a person has been arrested and they're in custody
6 and charges are filed, how are they filed? Would
7 you explain to the members of the jury?

8 A Well, it's considered an in-custody warrant. There's
9 a difference in a to-be warrant and an in-custody
10 warrant. To-be means the person is not under arrest
11 and an in-custody warrant, when we file that, we
12 don't actually have to be present to file the charge;
13 we can do that over a computer, whereas a to-be, we
14 have to take it to a magistrate to sign.

15 Q And it's called a to-be warrant because that means to
16 be arrested; is that correct?

17 A That's correct.

18 Q When you have someone in custody, it's actually
19 termed a commitment, because you are actually
20 committing someone to a jail or some jail facility;
21 is that correct?

22 A Yes, sir.

23

24 MR. GUTIERREZ: I'll pass him.

25 THE COURT: Any further questions?

1 MR. CANTU: No, Your Honor.

2 THE COURT: Officer Stephens, you may step
3 down, sir.

4 State may call your next witness.

5 MR. GUTIERREZ: Barbara Wright.

6

7

BARBARA WRIGHT

8 was called as a witness by the State, and having been
9 previously duly sworn, testified under her oath as
10 follows:

11

12

DIRECT EXAMINATION BY MR. GUTIERREZ

13

14 Q For the record, would you please state your full
15 name?

16 A Barbara Anne Wright.

17 Q Ms. Wright, would you tell us where you live?

18 A 7719 West Hardy.

19 Q Is that in Houston, Harris County, Texas?

20 A Yes, it is.

21 Q How close is that to the home of Edna Franklin or
22 where Edna Franklin used to live, while she was
23 living?

24 A I'd say 10, 12 blocks.

25 Q And when we talk about Edna Franklin, we're talking

1 about the same Edna Franklin who is the Complainant
2 in this case, who's listed in this indictment, who
3 lived at 617 Westford; is that correct?

4 A Yes.

5 Q Did you know her personally?

6 A No. I only met her one time.

7 Q Do you know a person by the name of Charles Douglas
8 Raby?

9 A Yes, I do.

10 Q Do you see him in the courtroom today?

11 A Yes, I do.

12 Q Would you please point him out and describe what he
13 is wearing today?

14 A He's right there. He's wearing a blue shirt and red
15 tie.

16

17 MR. GUTIERREZ: I would like the record to
18 reflect the witness has identified the
19 Defendant.

20 THE COURT: The record will so reflect.

21

22 Q (By Mr. Gutierrez) Do you have relationship by
23 blood, so to speak, with the Defendant, and if so,
24 what is that?

25 A I'm his daughter's grandmother.

1 Q That is, one of your daughters had a child by him;
2 is that correct?
3 A Right.
4 Q And what is the name of that child?
5 A Amber.
6 Q And how old is Amber?
7 A Five.
8 Q And who is the mother of Amber?
9 A Karianne Wright.
10 Q And how old is she?
11 A Twenty-one.
12 Q Ms. Wright, do you have a son?
13 A Yes, I do.
14 Q What is his name?
15 A Blaine Wright, Junior.
16 Q How old is he?
17 A He's 24.
18 Q Ms. Wright, I'll ask you whether or not you had an
19 occasion back on October 15th, 1992, the day Ms.
20 Franklin was killed, to see Charles Douglas Raby.
21 A Yes, I did.
22 Q You all also knew him as Buster; is that correct?
23 A That's right.
24 Q Where was Buster or Charles Douglas Raby the first
25 time you saw him on October 15th, 1992?

1 A At my house.

2 Q About what time of day or night was he there?

3 A I think it was around 5:00 in the afternoon. ¹²³

4 Q Sometime late in the afternoon?

5 A Well, yeah, it was late in the afternoon.

6 Q By that, I mean, it wasn't morning, it wasn't noon?

7 A No, it was late in the afternoon.

8 Q And did he come into your home? Explain to the

9 members of the jury how you saw him.

10 A No, he didn't. He was just passing. We have a

11 shortcut that goes behind our house to get to another

12 street, and he was just passing through.

13 Q And when he saw you, what did he say?

14 A He said, "Don't worry, I'm just passing through."

15 Q And was he alone or was he with someone else?

16 A He was alone.

17 Q And later on did you have an occasion to see him

18 again?

19 A Yes.

20 Q Would you tell the members of the jury what time you

21 saw him and where?

22 A It must have been between 6:00 and 6:30, because it

23 was right after he just passed through and it was on

24 the corner of Caperton and Irvington, because there's

25 a little flower shop there. We had stopped there to

1 buy flowers to take to my daughter in the hospital.
2 Q And how many blocks from the 600 block of Westford
3 would you turn off to go to Edna Franklin's house?
4 A It must have been about seven blocks.
5 Q Would he have been walking from your home towards --
6 in that direction, would he be walking towards the
7 Loop or away from the Loop?
8 A Towards the Loop.
9 Q Did you see whether or not he was wearing anything
10 or had any particular type of clothing with him, that
11 you remember?
12 A A black jacket slung over his shoulder.
13 Q Was that both times that you saw him?
14 A Yes.
15 Q I'll show you what's been marked and already admitted
16 into evidence as State Exhibit 110. I'll ask you
17 whether or not this is similar to the one he had
18 that day?
19 A Yes.
20 Q Thank you, Ms. Wright.

21

22 MR. GUTIERREZ: I'll pass the witness.

23 THE COURT: Mr. Cantu.

24 MR. CANTU: Thank you, Your Honor. May I
25 approach the witness, Your Honor?

1 THE COURT: Yes.

2 MR. GUTIERREZ: Excuse me. Before I pass
3 her, may I ask her one last question?

4 THE COURT: All right.

5

6 Q (Continued by Mr. Gutierrez) When you saw him -- I
7 don't know if I asked you this question -- how many
8 blocks would he have been from Ms. Franklin's house?

9 A About seven.

10

11 MR. GUTIERREZ: I'll pass her.

12

13 CROSS EXAMINATION BY MR. CANTU

14

15 Q Mrs. Wright, you're very familiar with that location
16 in your neighborhood, right?

17 A Yes.

18 Q Let me sketch out what I believe to be the area and
19 I want you to correct whatever mistakes I might make
20 and then we'll discuss it. Okay?

21 A Okay.

22 Q Let's make this the Toll Road. That's called --

23 A Hardy.

24 Q -- Hardy Toll Road. Let's call this the 610 Loop.
25 Okay? The name of your street, again, is East

1 Hardy, right?

2 A West Hardy.

3 Q You lived on this side, within this triangle, right?

4 A Right.

5 Q Irvington, for argument's sake, let's say that it's
6 here. You live on West Hardy, a small street that
7 abuts to the toll road. Is that a correct
8 statement?

9 A Right.

10 Q There is a feeder road, a road that runs parallel,
11 that runs with the toll road, right?

12 A Right.

13 Q What's your number again?

14 A 7719.

15 Q Describe this area. Is this the area you spoke
16 about that you saw Charles in?

17 A At my house?

18 Q Yes, ma'am, when you testified he was passing
19 through.

20 A At my house.

21 Q And he passed by your house on this street and was
22 going in this direction, going up towards Irvington
23 Street?

24 A Uh-huh.

25 Q This was approximately at 5:00 p.m. Where is Reid

1 Street?

2 A Reid?

3 Q Yes, ma'am, the 700 block of Reid, if you know.

4 A I don't know. *she didn't know I lived there.*

5 Q Do you know where Reid Street is at all?

6 A No. *129*

7 Q Where is Ms. Franklin's street in this drawing,

8 approximately?

9 A Westford?

10 Q Yes, ma'am.

11 A It's down Irvington on the right.

12 Q To the right?

13 A Before you get to the Loop.

14 Q Before you get to this direction, Mrs. Franklin's

15 house?

16 A Uh-huh.

17 Q I'm facing you, and that's to the right, my right

18 arm. It's going towards the 610 Loop, and her house

19 and her street, do they run the same direction as

20 yours?

21 A Yes.

22 Q So it went up to the Toll Road also?

23 A Her street?

24 Q Yes, ma'am.

25 A Well, I don't think so.

1 Q Okay. Does it come to Irvington?
2 A Yes.
3 Q Does it come closer to 610 and Irvington?
4 A It's not as far down as 610.
5 Q How many blocks from 610, approximately? You were
6 able to describe the distance from your home to her
7 home, and you said it's seven blocks.
8 A No. Not from my house to her house wasn't seven
9 blocks.
10 Q What is it?
11 A I said about 12 blocks.
12 Q Okay, 12 blocks. Now, from your house -- where is
13 your house in reference to this diagram? Would you
14 like to stand up and point to the area if the Court
15 will allow?
16
17 THE COURT: Sure, if she wants.
18
19 Q If you want to.
20 A (Complies.)
21 Q Please speak up so the court reporter can hear you
22 and the jury can hear you also.
23 A This is my house, and the shortcut goes to Irvington
24 and then --
25 Q May I stop you for a second? Is this a vacant lot?

1 **A** Uh-huh.

2 **Q** Is this undeveloped property?

3 **A** Wooded area, uh-huh.

4 **Q** In other words, a lot of trees in this area, right?

5 **A** Uh-huh. And then you go to Irvington and then you

6 turn left to go to Westford, and it's about seven

7 blocks from that street that you come out of the

8 wooded area to Irvington.

9 **Q** From Irvington, you drive seven blocks? 4 Blocks.

10 **A** And turn right and that would be Westford.

11 **Q** You go seven blocks and then you turn right towards

12 your property, your area?

13 **A** No, the other way.

14 **Q** Towards Irvington, excuse me. Towards the 610 Loop,

15 right?

16 **A** No. You go through the woods and you come out on

17 Irvington. And from where I saw him was

18 approximately seven blocks on Westford, straight down

19 Irvington to Westford, and turn right to go to her

20 house.

21 **Q** You saw him on Irvington near Westford Street?

22 **A** And Caperton.

23 **Q** And Caperton?

24 **A** Right. 125

25 **Q** And where is Mrs. Franklin's home, is the question

1 really? Where is Mrs. Franklin's home in the
2 diagram, if you know.

3 A I know. It's on Westford, at the end of the street.

4 Q Would you draw it here? Would you like the chalk?

5 A Okay. Well, is this supposed to be Westford?

6 Q Yes, ma'am.

7 A And I'm turning right and I go up the street to her
8 house, and it's there.

9 Q So it's on the other side of Irvington, right where
10 you are? You're on the lower side of Irvington on
11 this diagram and she's on the other side, just a few
12 streets up?

13 A Yes.

14 Q You can go ahead and sit back on the witness stand.

15 A (Complies.)

16 Q And you saw -- strike that.

17

18 MR. CANTU: I'll pass the witness, Your
19 Honor.

20

21 REDIRECT EXAMINATION BY MR. GUTIERREZ

22

23 Q The last time you saw him in terms of light or dark,
24 how close was it to sunset?

25 A It was around dusk.

1 MR. GUTIERREZ: I'll pass the witness.

2 THE COURT: Ms. Wright, you may step down.

3 State will call your next witness.

4 MR. GUTIERREZ: State would call Deetrice
5 Wallace.

6

7

DEETRICE WALLACE

8 was called as a witness by the State, and having been
9 previously duly sworn, testified under her oath as
10 follows:

11

12

DIRECT EXAMINATION BY MR. GUTIERREZ

13

14 Q State your name, please.

15 A Deetrice Wallace.

16 Q Ma'am, would you tell the members of the jury what
17 you do for a living?

18 A I'm a chemist with the Houston Police Department
19 Crime Laboratory.

20 Q And how long have you been so employed?

21 A Approximately four years.

22 Q And what qualifications do you have that qualify you
23 to be a chemist and have that job?

24 A I have a bachelor's degree from Sam Houston State
25 University in chemistry. I have gone through

1 extensive on-the-job training. I have been to the
2 FBI Academy in Quantico, Virginia, on forensic
3 serology, and I have attended several workshops and
4 seminars on forensic serology.

5 Q Did you have an occasion at my request to examine
6 some panties to determine whether or not the elastic
7 had been cut off possibly with a knife or ripped off
8 by force?

9 A Yes, I did.

10 Q And are those panties contained in State Exhibit No.
11 79?

12 A Yes, they are.

13 Q And would you tell the members of the jury what you
14 found?

15 A I found the elastic on the panties had been torn and
16 not cut.

17 Q How can you tell the difference? Naked eye, same
18 way anybody else would?

19 A The naked eye as well as examining it under a
20 microscope.

21 Q So you found nothing consistent with someone having
22 used a sharp knife to cut them?

23 A That is correct.

24 Q More consistent with someone pulling by force and
25 breaking that elastic around the panties; is that

1 correct?

2 A That is correct.

3 Q Thank you, ma'am.

4

5 MR. GUTIERREZ: I'll pass the witness.

6 THE COURT: Mr. Cantu.

7 MR. CANTU: I don't have anything. Thank
8 you.

9 THE COURT: Ms. Wallace, you may step down.
10 Thank you.

11 MR. GUTIERREZ: State would call Joseph
12 Chu.

13

14

JOSEPH CHU

15 was called as a witness by the State, and after having
16 been previously duly sworn, testified under his oath as
17 follows:

18

19

DIRECT EXAMINATION BY MR. GUTIERREZ

20 Q State your name, please.

21 A My name is Joseph Chu.

22 Q Would you tell the members of the jury what you do
23 for a living?

24 A I'm an employee at the Houston Police Department
25 Crime Laboratory.

1 Q Would you tell them specifically what you do?
2 A I'm the forensic chemist. My major responsibility is
3 doing the human body fluid analysis, which include
4 DNA analysis.
5 Q I'll ask you whether or not you had an occasion
6 sometime back in October of 1992, perhaps on or about
7 October 19th, 1992, to take some hair samples from an
8 individual by the name of Charles Douglas Raby.
9 A May I read my --
10 Q Yes, sir.
11 A Yes, I did.
12 Q Do you see that individual in the courtroom today?
13 A Yes, I do.
14 Q Would you please point him out?
15 A He's sitting in the middle.
16 Q For the record, you have a photograph as part of
17 your records to help you remember who it is; is that
18 correct?
19 A Yes, I have a photograph with me.
20 Q And the person you pointed out that you took those
21 hair samples from is not this man here?
22 A No.
23 Q But this man here?
24 A That's correct.
25 Q And that's whose photograph appears in your records;

1 is that correct?

2 A Yes.

3

4 MR. GUTIERREZ: Your Honor, I would like
5 the record to reflect the witness has identified
6 the Defendant Mr. Raby.

7 THE COURT: The record will so reflect.

8

9 Q (By Mr. Gutierrez) Now, explain to the members of
10 the jury the process you went through in taking hair
11 samples.

12 A Actually the hair sample, I just collect it.

13 Q What instructions do you give an individual or did
14 you give Mr. Raby in terms of giving hair samples?

15 A Excuse me?

16 Q What did you tell him to do?

17 A Oh, what did I tell him to do? For the hair
18 comparison, they need the whole hairs, which include
19 inner roots. So my instructions said that you have
20 to pull your hair with the roots and they can be
21 analyzed.

22 Q When it comes to pulling pubic hair, you would much
23 rather let the individual do it himself so it might
24 not be as painful as if someone else did it, right?

25 A That's correct.

1 Q I'll show you what's contained in the bag marked
2 State's 105. I'll show you State Exhibit No. 101
3 through 110. Let me show you first 101, 102, 103
4 and 104, and I'll ask you whether or not these
5 envelopes or pieces of paper that I'm holding contain
6 the hair samples from the Defendant, Mr. Charles
7 Raby?

8 A Yes, this hair comes from Mr. Charles Raby.

9 Q Do your initials appear there?

10 A Yes. All them have my initials.

11 Q Let's talk a little bit about the procedure. For
12 example, this one, 101 says "pulled pubic hair."
13 What areas of the pubic area would those have been
14 pulled from?

15 A Usually it will come from four, five parts from his
16 private area, is from front, both sides and bottom.

17 Q Is that what was done in this case?

18 A Yes.

19 Q And is that what is contained in State Exhibit 101?

20 A Yes, sir.

21 Q State Exhibit 102, "pulled head hair." What's the
22 procedure for getting those?

23 A It's the same way. What we did is, pubic hairs come
24 from five different areas, from top, front and both
25 sides.

1 Q State's Exhibit 103?
2 A That's loose hairs.
3 Q And how do you obtain loose hair?
4 A Usually before he pulls his head hairs or pubic
5 hairs, we have them to rub their area, head hair
6 area or pubic hair area.
7 Q State Exhibit No. 103 pertains to loose head hair; is
8 that correct?
9 A That's correct.
10 Q And those are obtained by letting the individual run
11 his fingers through his hair and letting whatever
12 loose hair has fallen onto a piece of paper; is that
13 correct?
14 A That's correct.
15 Q And the same is true as to State Exhibit 104, loose
16 pubic hair. A person has to run their own fingers
17 through their own pubic hair and whatever loose hairs
18 fall, fall on a piece of paper, and that is what a
19 loose pubic hair is; is that correct?
20 A That's correct.

21
22 MR. GUTIERREZ: Your Honor, I would like
23 the record to reflect I am tendering State
24 Exhibits 101, 102, 103, 104 into evidence and
25 ask that they be admitted into evidence.

1 MR. CANTU: We have no objections.

2 THE COURT: State Exhibits 101, 102, 103,
3 104 are admitted into evidence.

4 MR. GUTIERREZ: I'll pass the witness.

5 THE COURT: Mr. Cantu.

6

7 CROSS EXAMINATION BY MR. CANTU

8

9 Q Dr. Chu, let me ask you, how long have you worked
10 for HPD?

11 A First I want to mention, I'm not a doctor. I have
12 worked for HPD for approximately five years.

13 Q You're not a doctor yet?

14 A No, I'm not a doctor.

15 Q Let me ask you this. When was it that Charles --
16 you either went to Charles or Charles went to you?

17 A That particular day we went to the Homicide Division.

18 Q You were called in?

19 A Yes, we were called.

20 Q Approximately what time?

21 A Afternoon, I'm pretty sure.

22 Q More specifically, what time in the afternoon?

23 A On the record, it's approximately around 1:00, two
24 o'clock.

25 Q 1:00 to 2:00? What date?

1 **A** On November 19th, 1992 -- I'm sorry, October 19th.
2 **Q** October 19th, 1992, at approximately 1:00 to 2:00
3 p.m.?
4 **A** Yes.
5 **Q** Is that notation taken at the time that you arrived
6 at the police station? Let me strike that.
7 Where are you located in reference to the police
8 station, the downtown police station?
9 **A** Our laboratory is located at 33 Artesian.
10 **Q** In walking distance from where the Homicide Division
11 is?
12 **A** Yes. Approximately 5 minutes' walking distance.
13 **Q** So the 1:00 to 2:00 p.m. is the time you arrived
14 there to start the process?
15 **A** Approximately, I should say.
16 **Q** Do you recall what Charles Raby was wearing on this
17 day?
18 **A** He was wearing -- I have his picture. It's a white
19 T-shirt without sleeves.
20 **Q** What type of pants was he wearing?
21 **A** I really don't recall. Probably some kind of jeans.
22 **Q** Do you recall whether you were asked to take samples
23 or attempt to obtain hairs from his clothing?
24 **A** Yes, it was requested.
25 **Q** And did you make that attempt?

1 **A** In the laboratory, yes, we did.

2 **Q** That implies you took Mr. Raby's clothing with you to

3 your laboratory; is that correct?

4 **A** I don't think so, no.

5 **Q** You left him with his clothing?

6 **A** That particular day we didn't take any clothes with

7 us.

8 **Q** Okay. But you did take samples from his body; is

9 that correct?

10 **A** Yes, sir.

11 **Q** We know that you took five samples of pubic hair and

12 we know you took five samples of hair from the head.

13 **A** Samples from five areas.

14 **Q** And we know that you took samples of loose hair.

15 Did you comb it or did you have Mr. Raby comb it?

16 **A** He combed it himself.

17 **Q** And were you present when he was doing this?

18 **A** Yes, I was present.

19 **Q** The reason you were present was to make sure that he

20 complied with the order of the Police Department?

21 **A** To make sure that he did.

22 **Q** That he did what he was told?

23 **A** Yes, he did.

24 **Q** And he did do this, didn't he?

25 **A** Yes, he did.

1 Q And you got all these loose hairs and you analyzed
2 them at a later time; is that correct?

3 A Not me analyzing. I transferred it to the trace
4 chemist.

5 Q Did you do any analysis on the hairs themselves?

6 A Hair comparison?

7 Q Yes, sir.

8 A No, I didn't.

9 Q Do you have anything to report about the hair other
10 than the collection of the hair?

11 A Other than the hairs, yes. I do the body fluid and
12 I see some of the evidence.

13 Q Well, you didn't do a body fluid analysis at this
14 time, did you, on Mr. Raby?

15 A On this particular case?

16 Q Yes.

17 A Yes, I did some.

18 Q On Mr. Raby?

19 A On Mr. Raby, yes, I typed his blood.

20 Q You analyzed his blood with what?

21 A It's only for -- it's a known sample for the
22 comparison to the evidence.

23 Q And what have you done with this blood? You
24 determined the type blood obviously, right?

25 A Yes, I did.

1 Q And you have compared it with whose blood?
2 A I compared it to the evidence.
3 Q And your conclusions from that analysis?
4 A Actually from the evidence, it is inconclusive test
5 results, so I cannot do any comparison.
6 Q So it was inconclusive results?
7 A Yes, you can say that.
8 Q Well, what would you say?
9 A Well, it's inconclusive. ¹²⁶
10 Q Okay. Same thing then?
11 A That's correct.
12 Q And the loose hairs and all the hairs you collected,
13 you're not here to tell the jury that you made some
14 analysis and are here to report that? Do you have
15 that type of report with you?
16 A It's another chemist. She did the hair comparisons.
17 Q What's the person's name?
18 A Raydun Hilleman.
19 Q You took all these hairs with you and took it to
20 this other person, did you not?
21 A Yes, I personally transferred it to her.
22 Q And she's in the same office with you?
23 A Yes, we're in the same laboratory.
24 Q So you personally handed it to her to run the tests
25 that she needed to run?

1 A That's correct.

2

3 MR. CANTU: I'll pass the witness, Your
4 Honor.

5 THE COURT: Any further questions?

6

7 REDIRECT EXAMINATION BY MR. GUTIERREZ

8

9 Q Did you at a later time process some of the clothing
10 of the Defendant so it could be analyzed for hair
11 samples, anything like that?

12 A Yes, I did.

13 Q Now, how many times have you testified, Mr. Chu?

14 A I believe more than 30 or 40 times.

15 Q Thank you. *127*

16

17 MR. GUTIERREZ: I'll pass him.

18 MR. CANTU: I have nothing further. Thank
19 you.

20 THE COURT: Mr. Chu, you may step down,
21 sir.

22 THE WITNESS: May I be excused?

23 MR. GUTIERREZ: I would like for him to
24 wait outside, if it please the Court.

25 THE COURT: If you'll wait outside.

1 MR. GUTIERREZ: And the State would call
2 Raydun Hilleman.

3
4 RAYDUN HILLEMAN
5 was called as a witness by the State, and having been
6 previously duly sworn, testified under her oath as
7 follows:

8
9 DIRECT EXAMINATION BY MR. GUTIERREZ

10
11 Q State your name, please.
12 A My name is Raydun Hilleman.
13 Q Ms. Hilleman, would you please tell the jury what you
14 do for a living?
15 A I am a chemist for the Houston Police Department
16 Laboratory.
17 Q And how long have you been so employed?
18 A For eleven-and-a-half years.
19 Q Would you tell the members of the jury where you got
20 your education and what your qualifications are to be
21 a chemist?
22 A I have a bachelor of science degree in chemistry from
23 Texas Lutheran College and I have been trained
24 extensively on the job, in the laboratory, and I also
25 have attended several courses in the analysis of hair

1 and fibers and other kinds of trace evidence.

2 Q Did you have occasion to do a bunch of comparisons
3 in this particular case, that is, for court purposes,
4 at least styled The State of Texas Vs. Charles Raby?

5 A Yes, I did.

6 Q Would you run through the list of things you did?

7 A I examined several articles of clothing and a piece
8 of carpet and some hairs collected from the
9 Complainant's hands and collected hairs from those
10 articles of clothing and the carpet and then did
11 comparisons of those hairs to known samples that I
12 had from Charles Raby and also from Edna Franklin.

13 Q Did you also do a comparison of hairs that had been
14 collected from Eric Bengé and Lee Rose?

15 A Yes, I did.

16 Q I'll show you State Exhibit No. 108, 109, 110 --
17 excuse me -- 107. Are these the hairs of Eric Bengé
18 in the case of State Exhibit 107 and 108, and State
19 Exhibit 109 and 110, those of Lee Rose?

20 A Yes.

21 Q To cut right to the chase, so to speak, did you find
22 anything from the crime scene in terms of hair of
23 the Complainant that could be tied to Charles Raby?

24 A From the crime scene, I did not find any hairs that
25 were consistent with Charles Raby.

1 Q Did you find his hair somewhere?

2 A Yes, I did.

3 Q And where was that?

4 A On his own clothing.

5 Q And we're talking about clothing he was wearing that

6 was turned in after his arrest on October 19th, 1992;

7 is that correct?

8 A That's correct.

9 Q And was one of those a black jacket?

10 A Yes.

11 Q Anything unusual about finding a person's hair on

12 your own clothing?

13 A Nothing unusual.

14 Q In terms of the hands of the Complainant, the hair

15 that was taken from the hand of Edna Franklin, what

16 did you find there? Let me start by asking you what

17 different types of hair did you find?

18 A From her right hand, there was a hair that was

19 consistent with her own hair. There were also some

20 hair fragments and body fragments which were

21 unsuitable for any kind of comparison. There was

22 also some animal hair and one head hair which was

23 consistent with the hair of Eric Bengé.

24 Q Now, would it be unusual if a person lives somewhere,

25 for his hair to fall off and land on carpet or the

1 floor?

2 A No, it wouldn't be.

3 Q Could we expect to find, if we have carpets, all of
4 us, some of our own hair on the carpet?

5 A Yes.

6 Q Would it be unusual if a person were being attacked,
7 for that person to fall on the floor and that person
8 to grasp hair that may be on the carpet?

9 A No, it wouldn't be.

10 Q The animal hair that you found, would they have been
11 consistent with hair of a dog?

12 A They could have been. I didn't actually make the
13 determination whether they were a dog or a cat, but
14 they were animal hairs.

15 Q Now, in terms of -- you said there was some hair
16 that was unsuitable for comparison. Would you
17 explain to the members of the jury what you mean by
18 that?

19 A Well, in the hair comparison, I'm looking at an
20 entire hair. I need to see the root in order to
21 compare the characteristics of that hair to root
22 characteristics from an unknown source. So I need an
23 entire hair. If I've got a fragment with no root,
24 then I don't really know how long that hair was. I
25 can't make any kind of approximation of how long it

1 was and/or make any kind of speculation as to what
2 is missing, what it looks like. So, therefore, if
3 hair doesn't have a root, we can't do any kind of
4 comparison.

5 Q Just because a hair is found in the hand of a dead
6 person who is lying on the floor, that does not mean
7 that the hair she's holding belongs to an attacker?

8 A That's correct.

9 Q And if so, we could probably surmise that Ms.
10 Franklin was attacked by both her grandsons and an
11 animal.

12 A You could surmise that.

13 Q It would be a pretty ridiculous conclusion, in terms
14 of the dog, at least; is that correct?

15 A Yes.

16 Q Did you also use as a point of comparison, when
17 we're talking about the Defendant's hair, the hair
18 contained in State's Exhibit 101, 102, 103 and 104?

19 A Yes, I did.

20

21 MR. GUTIERREZ: I failed to offer before,
22 Your Honor, State Exhibit Nos. 107, 108, 109 and
23 110, the hair of Eric Bengé and Lee Rose.

24 THE COURT: Any objections?

25 MR. CANTU: No, Your Honor, there are none.

1 THE COURT: They are admitted into
2 evidence.

3 MR. GUTIERREZ: Thank you, Your Honor.
4

5 Q (By Mr. Gutierrez) Now, let's talk a little bit
6 about the loose hair, head hair, pubic hair. In
7 terms of Mr. Raby's hair, did you look at his
8 container or do your notes reflect anything
9 documented how many loose hairs there were either on
10 his pubic hair or his head hair, if any?

11 A The loose pubic hair from Mr. Raby consisted of one
12 pubic hair, which was consistent with his own pubic
13 hairs, and there were no loose head hairs in the
14 exhibit marked loose head hairs.

15 Q That is to say, that if a person is asked to
16 contribute loose hairs, run his fingers through his
17 head and his pubic hairs, in terms of his head, no
18 loose hairs was present?

19 A That's correct, none fell out.

20 Q In terms of his pubic hair, one fell out?

21 A One fell out. ¹²⁸

22 Q Would you tell the members of the jury, in a sexual
23 assault case, in other words, did you find, for
24 example, any foreign, loose pubic hair on the body of
25 the Complainant in this case? I should say, loose,

1 foreign pubic hair.

2 A No, I did not.

3 Q Is it unusual in a sexual assault if it is completed
4 to not find pubic hair, foreign pubic hair?

5 A In my experience over the past few years in cases
6 where evidence is submitted in a sexual assault, I
7 rarely find foreign pubic hairs which match the
8 suspect.

9 Q What are the factors in all of us that dictate
10 whether we have loose hair or not?

11 A Well, in general, most people lose 50 to 100 hairs a
12 day, but most of them are washed down the drain as
13 we bathe.

14 Q Or shower?

15 A Or shower. So you're not walking around with 50 to
16 100 loose hairs on your body at a single time. Most
17 of them are in your brush or down the drain. So the
18 chances of transfers occurring are cut down greatly
19 because most loose hairs are gone, plus when you look
20 down on your clothing and you notice hairs, a lot of
21 times you brush them off. You just don't walk
22 around with that many to transfer.

23 Q In terms of your experience, what percentage of the
24 time in your cases do you find foreign pubic hair,
25 if you know?

1 **A** Well, transferred hairs, head or pubic, I would say
2 less than 5 percent of the time.

3 **Q** So that means it is not a requirement that foreign
4 hair be deposited if a sexual assault actually does
5 take place?

6 **A** That's correct.

7 **Q** Is the same true of semen, no requirement that there
8 be a climax of --

9

10 **MR. CANTU:** Your Honor, I object. That
11 goes beyond this witness' expertise.

12

13 **Q** (By Mr. Gutierrez) Well, have you in the course of
14 being a chemist also examined clothing for semen, if
15 you know?

16 **A** Not personally. I have been present when it's been
17 examined.

18 **MR. GUTIERREZ:** Well, I'll withdraw the
19 question.

20

21 **Q** Did you do anything else regarding this case?

22 **A** I did not.

23

24 **MR. GUTIERREZ:** I'll pass the witness, Your
25 Honor.

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THE COURT: Mr. Cantu.

CROSS EXAMINATION BY MR. CANTU

Q Ms. Hilleman, so it's clear to me and hopefully it's clear to the jury, you have known hair from Mr. Raby, pubic and head and his loose hair. You compared it with hair, and you had no hair from Ms. Franklin?

A Yes.

Q Did you find in your search as a chemist hair belonging to Ms. Franklin on Mr. Raby?

A No, I did not.

MR. CANTU: I'll pass the witness.

THE COURT: Any further questions?

MR. GUTIERREZ: That's all I have, Your Honor. No further questions of this witness.

THE COURT: Ms. Hilleman, you may step down, ma'am. You may be excused.

Will the attorneys approach the bench?

(Whereupon the attorneys approached the bench.)

1 THE COURT: Ladies and gentlemen, let me
2 excuse you momentarily to the Jury Deliberation
3 Room.

4
5 (Whereupon the jury was excused to the Jury
6 Deliberation Room and the following discussion
7 ensued.)

8
9 MR. GUTIERREZ: Out of an abundance of
10 caution --

11 THE COURT: Well, how many copies do you
12 want in the record then?

13 MR. GUTIERREZ: Of the confession? I would
14 like to make sure I offer State Exhibit No. 98,
15 that's the confession, as well as all the
16 consents to search that have been referred to in
17 State Exhibit No. 96.

18 Mr. Cantu?

19 THE COURT: No objections?

20 MR. CANTU: No objections.

21 THE COURT: State Exhibits 96 and 98 are
22 admitted into evidence for the second time.

23 MR. GUTIERREZ: Thank you, Your Honor. I
24 understand that Mr. Cantu just said no
25 objections. I think he's --

1 THE COURT: Well, subject to his previous
2 motions.

3 MR. CANTU: Yes, subject to our previous
4 motions, Your Honor.

5 THE COURT: Let's go off the record again.

6
7 (Whereupon an off-the-record discussion was
8 had.)

9
10 CHARLES DOUGLAS RABY
11 was called as a witness by the Defense, and having been
12 previously duly sworn, testified, out of the presence of
13 the jury, in his own behalf as follows:

14
15 DIRECT EXAMINATION BY MR. CANTU

16
17 Q State your name.

18 A Charles Douglas Raby.

19 Q Mr. Raby, you and I have discussed your right to
20 testify in this case?

21 A Yes, we have.

22 Q And I have indicated to you my opinion as to this
23 case and advised you not to testify?

24 A Yes.

25 Q And you have spoken to Mr. Foshier, co-counsel, and

1 he's indicated to you his advice is that you not
2 testify?

3 A Right.

4 Q And you know that you can testify if you choose?
5 You can testify against our wishes.

6 A Yes, sir.

7 Q And what are your wishes at this time?

8 A Not to testify. ¹²⁹

9

10 MR. CANTU: Thank you.

11 THE COURT: Do you want to make a motion
12 outside the presence of the jury for any reason
13 at this time and then you can redo it in the
14 presence of the jury, or we can do it when we
15 excuse them.

16 MR. CANTU: I want to make it after he
17 rests.

18 THE COURT: Okay. Outside the presence of
19 the jury, does the State rest at this time?

20 MR. GUTIERREZ: Yes, sir, the State rests
21 at this time.

22 MR. CANTU: And we would make a motion for
23 instructed verdict at this time, Your Honor.

24 THE COURT: That will be denied.

25 I will allow you to rest, and then the

1 Defense will rest, and you'll close and you'll
2 close, and then I'll excuse them until 10:00
3 tomorrow and we'll do the arguments, and we'll
4 work on the charge this afternoon.

5

6 (Whereupon the jury was seated in the jury
7 box.)

8

9 THE COURT: What says the State?

10 MR. GUTIERREZ: Your Honor, at this time
11 the State would rest its case.

12 THE COURT: The Defense?

13 MR. CANTU: The Defense would also rest.

14 THE COURT: State closes?

15 MR. GUTIERREZ: State would close, Your
16 Honor.

17 THE COURT: Does the Defense close?

18 MR. CANTU: Defense closes.

19 THE COURT: Ladies and gentlemen, both
20 sides having rested and closed on the issue of
21 guilt or innocence, I am going to recess you
22 until 10:00 a.m. in the morning. The Court will
23 prepare the charge for you, and in the morning
24 you will be presented the Court's charge and you
25 will hear the closing argument of counsel.

1 Let me, again, admonish you, do not make
2 any independent investigations as to any matters
3 or facts related to the case. You are not
4 going to be together, but don't deliberate or
5 discuss the case. And I don't anticipate any
6 publicity, but in the event there is, don't
7 read, view it, listen to it. And we will see
8 you here at 10 o'clock tomorrow, and at that
9 time we will present the charge and you will
10 hear the closing arguments of counsel. So you
11 are excused until 10:00 a.m. in the morning.

12
13 (Whereupon the jury was excused and the
14 following discussion ensued.)

15
16 **THE COURT:** Is there any objection to the
17 Court's proposed charge from the State?

18 **MR. GUTIERREZ:** No, sir.

19 **THE COURT:** From the Defense?

20 **MR. CANTU:** No, sir.

21 **THE COURT:** I believe you have requested a
22 lesser included offense, an instruction of
23 felony murder and memorandum of law in support
24 thereof. Do you want to be heard on this?

25 **MR. CANTU:** Yes, Your Honor.

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MR. FOSHER: Judge, we would like to request that that motion is -- request an instruction be included in the charge, the intoxication going to mitigate the intent to commit specific -- excuse me -- going to negate the intent to the specific intent of capital murder, capital murder being a specific intent crime.

THE COURT: Does the State want to respond?

MR. GUTIERREZ: State objects. That's contrary to Texas law. It's outlined in their charge, their requested charge, and we would object.

THE COURT: I'll deny your requested charge.

MR. FOSHER: Thank you, Judge.

THE COURT: Off the record.

(Whereupon an off-the-record discussion was had.)

THE COURT: Are there any further objections? I believe there was one page that everyone agreed to take out regarding extraneous offenses.

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MR. GUTIERREZ: Page 9.

THE COURT: Let the record reflect the parties have agreed to exclude the limiting instructions on prior convicted offenses or other offenses. That is the agreement of the Defense and the State?

MR. GUTIERREZ: Yes, sir.

MR. CANTU: Yes, Your Honor.

MR. GUTIERREZ: Your Honor, I do want the record to reflect that the Defendant is requesting --

THE COURT: Is Mr. Raby back there?

MR. CANTU: No, sir.

THE COURT: They've already taken him back?

MR. CANTU: Yes, sir.

THE COURT: Well, in the morning we'll get on the record that he has an objection to the charge, too.

MR. GUTIERREZ: I just would like the record to reflect, Your Honor, that the Defense is asking that the third theory of murder appear on the charge, and if they want it, I have no objection to including it, that is, committing or attempting to commit a felony in the course of and in furtherance of the commission or

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attempt, et cetera, et cetera -- committing or attempting to commit an act clearly dangerous to human life. Now, we're going to have to work on the wording that you guys may want.

THE COURT: Why don't all of you work on that this afternoon and see if you can come up with an agreement and we'll include that, and that should do it.

THE STATE OF TEXAS *
*
COUNTY OF HARRIS *

I, GINA BENCH, Certified Court Reporter for the 248th District Court of Harris County, Texas, do hereby certify that the foregoing pages of typewritten material contain a true and correct transcript of all evidence adduced and admitted at the **STATEMENT OF FACTS** in the case shown in the caption hereof; that I was present in open court and reported said testimony in shorthand, and that later I transcribed same into typewriting.

IN TESTIMONY WHEREOF, witness my official signature on this the 6th day of December, 1994.



GINA BENCH
Certified Court Reporter
248th District Court
Harris County, Texas

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71938

IN THE COURT OF CRIMINAL APPEALS

IN THE STATE OF TEXAS

AT AUSTIN

CAUSE NO. 9407130

THE STATE OF TEXAS

Appellee

VS.

CHARLES DOUGLAS RABY

Appellant

APPEAL FROM THE 248TH DISTRICT COURT OF

HARRIS COUNTY, TEXAS

Honorable Woody R. Densen, Judge Presiding

STATEMENT OF FACTS

VOLUME XXX OF XIV VOLUMES

JUNE 9, 1994

ORIGINAL

GINA BENCH
Certified Court Reporter
Harris County, Texas

FILED IN
COURT OF CRIMINAL APPEALS

FEB 15 1995

Thomas Lowe, Clerk

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CAUSE NO. 9407130

THE STATE OF TEXAS * IN THE 248th DISTRICT COURT
 *
VS. *
 *
CHARLES DOUGLAS RABY * HARRIS COUNTY, T E X A S

A P P E A R A N C E S

FOR THE STATE OF TEXAS:

Mr. Roberto Gutierrez
District Attorney's Office
201 Fannin
Houston, Texas

FOR THE DEFENDANT:

Mr. Felix Cantu
Attorney at Law
618 East 28
Houston, Texas 77008
And
Mr. Michael P. Fosher
Attorney at Law
440 Louisiana
Houston, Texas 77002

BE IT REMEMBERED, that upon this 9th day of June, 1994, the above entitled and numbered cause came for STATEMENT OF FACTS before Woody R. Densen, Judge of the 248th District Court of Harris County, Texas; and the State appearing by counsel and the Defendant appearing in person and by counsel announced ready to proceed; and all preliminaries having been disposed of, the following proceedings were had, viz:

1 JUNE 9, 1994

2
3 THE COURT: Is there any problem with the
4 charge?

5 MR. GUTIERREZ: Not from my view, Judge.

6 THE COURT: No objections?

7 MR. FOSHER: I don't, but on the record,
8 we'll let Felix answer if he has any objections,
9 since he's lead counsel.

10 THE COURT: On the record, is there any
11 objection to the charge from the State?

12 MR. GUTIERREZ: No, Your Honor. I would like
13 the record to reflect, Mr. Cantu and I worked at
14 the charge bank yesterday on the charge and we
15 have added the third theory of murder in the
16 lesser included offense portion of it as well as
17 the definitions of voluntary and involuntary
18 manslaughter. That will be on Page 6, I believe.

19 MR. FOSHER: Right.

20 THE COURT: Mr. Foshier, is there any
21 objection?

22 MR. FOSHER: No objection, Your Honor.

23 THE COURT: Is there any objection from you,
24 Mr. Cantu, from the charge?

25 MR. CANTU: No, Your Honor.

1 THE COURT: From you, Mr. Raby?

2 THE DEFENDANT: No, sir.

3 THE COURT: Let's bring the jury in and I'll
4 give you both -- I assume you're going to open and
5 close?

6 MR. GUTIERREZ: No, sir. I gave the Defense
7 notice yesterday that I was not going to open.

8 MR. FOSHER: Not real notice.

9 MR. GUTIERREZ: It was verbal.

10 THE COURT: I'll probably give you five- or
11 two-minute notice or both.

12 MR. GUTIERREZ: I would respectfully ask for
13 five and one minute, if you don't mind.

14 THE COURT: Okay.

15

16 (Whereupon the jury was seated in the jury
17 box.)

18

19 THE COURT: You may be seated. Good morning,
20 Ladies and Gentlemen. I apologize again. We're
21 splitting the courtroom, so we couldn't get to you
22 any sooner.

23

24 At this time I will present the Court's
25 charge to you, then you will hear the closing
arguments of counsel, then you will retire to the

1 Jury Deliberation Room and select one of your
2 members as your foreperson and then you will
3 deliberate.

4

5 (Whereupon the Court's charge was read to the
6 jury.)

7

8 THE COURT: Mr. Gutierrez, are you waiving
9 opening statement?

10 MR. GUTIERREZ: Yes, Your Honor. State would
11 like to waive its right to opening statement but
12 respectfully retain my right to close.

13 THE COURT: Okay.

14 Mr. Fosher, are you starting opening?

15 MR. FOSHER: Yes, Your Honor.

16 THE COURT: You may proceed.

17

18 CLOSING ARGUMENTS

19

20 BY MR. FOSHER:

21 May it please the Court, Mr. Gutierrez.

22

23 MR. CANTU: Your Honor, prior to Mr. Fosher
24 starting argument, may I have a word with the
25 Court in front of the bench?

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THE COURT: Okay.

(Whereupon counsel approached the bench.)

THE COURT: Ladies and Gentlemen, I am going to at this time excuse you to the Jury Deliberation, and do not deliberate at this time. I am excusing you briefly to the Jury Deliberation Room.

(Whereupon the jury was excused to the Jury Deliberation Room.)

THE COURT: Bring the juror out and we'll ask him some questions.

(Whereupon Juror, Ageel Rizvi, was brought into the courtroom.)

THE COURT: Good morning. Would you approach the bench? For the record, would you state your name?

MR. RIZVI: Ageel Rizvi.

THE COURT: Ageel Rizvi, I'm trying to identify you. How do you spell your last name?

MR. RIZVI: R-i-z-v-i.

1 THE COURT: Mr. Rizvi, of course, you're a
2 juror in this case and you were here yesterday for
3 the trial; is that right?
4 MR. RIZVI: Right.
5 THE COURT: That was on the 8th, and you
6 recall the Court released you all early. I
7 believe it was around noon; is that correct?
8 MR. RIZVI: Correct.
9 THE COURT: And what time did you leave?
10 MR. RIZVI: The building or the Court?
11 THE COURT: The Court, this floor.
12 MR. RIZVI: This floor, about a half hour
13 later.
14 THE COURT: Did you have an opportunity to
15 see the Defendant?
16 MR. RIZVI: Yes. I saw the Defendant by the
17 elevator.
18 THE COURT: Would you describe what you saw?
19 MR. RIZVI: I was in the hallway and I was
20 coming out and I saw the bailiff and the Defendant
21 standing there by the elevators and I saw them and
22 looked, and so I said, "Uh-oh," and kind of turned
23 my face, because obviously I sensed it was
24 something not proper for me to see in terms of the
25 procedures. So I just kind of turned around and

1 they walked off and I didn't see them walking off,
2 but then I just punched the elevator button for
3 the elevator and caught the elevator and headed
4 home.

5 THE COURT: So did you see anything further
6 than the elevator and them?

7 MR. RIZVI: No.

8 THE COURT: Let me ask you, because of that,
9 does that in any way in your mind create any
10 presumption of guilt or would that in any way
11 prejudice you against the Defendant?

12 MR. RIZVI: No.

13 THE COURT: The bottom line is, would it
14 affect you in any way? Has it changed anything
15 that you said or have done prior to being chosen
16 as a juror?

17 MR. RIZVI: No. All I saw was the
18 Defendant -- I couldn't see the Defendant very
19 well because his body was -- he was in front, and
20 all I saw was his head. He was kind of looking
21 that way, and that's all I saw. And the minute I
22 saw his facial expression, I just knew whatever it
23 was, so I just changed and turned my head the
24 other way.

25 THE COURT: You promise this Court and you

1 said it already wouldn't affect you, but you swear
2 and promise that you wouldn't hold it against the
3 Defendant in any way on deliberations on the
4 guilt/innocence or punishment if you got to that
5 part of the trial?

6 MR. RIZVI: Absolutely.

7 MR. GUTIERREZ: The State would simply ask
8 the Court to instruct the juror not to mention
9 this incident to the rest of the jurors.

10 THE COURT: Furthermore, don't mention it to
11 the other jurors. Don't discuss it with them.

12 Anything from either attorney?

13 MR. GUTIERREZ: Nothing from the State. I
14 just want the record to reflect that when the
15 juror was pointing to the individual who was with
16 the Defendant, he was referring to Deputy R.F.
17 Rosenkranz. That's spelled R-o-s-e-n-k-r-a-n-z.

18 MR. RIZVI: Can I add something more to that?

19 MR. CANTU: Sure.

20 THE COURT: Yes.

21 MR. RIZVI: How it all transpired is that he
22 was escorting us out. I had a cellular phone in
23 my briefcase and it rang, so I answered the phone
24 and sat down on the bench over there. As I was
25 sitting down on the bench, Mr. Prosecutor came out

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of the courtroom and --

MR. GUTIERREZ: For the record, I was going to the rest room at the time.

MR. RIZVI: He came out of the courtroom, so I just wanted to be sure nobody -- that I would not land up hearing any conversation, because I know there are families and witnesses out there that I would not accidentally overhear any portion of the conversation. I walked away, to the end of the hallway, away from where I could hear or understand anything they were saying, again, recognizing the protection that the Defendant needs.

THE COURT: Very good.

Any questions or any matters of Mr. Rizvi?

MR. GUTIERREZ: Nothing from the State.

THE COURT: You may join the other jurors at this time.

MR. CANTU: Thank you, Your Honor.

THE COURT: Let's take about a two-minute recess since the jury is back there.

(A recess.)

(Whereupon the jury was seated in the jury

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box.)

THE COURT: You may be seated.
Mr. Fosher, you may proceed.

CLOSING ARGUMENT BY MR. FOSHER

May it please the Court, Mr. Gutierrez,
Ladies and Gentlemen of the jury.

First of all, I would like to apologize for
the way I look. When we picked the jury on voir
dire I didn't look like this. In February I fell
and hurt my ribs and ended up having medical
problems, so this last weekend was real tough and
so I ended up getting this collar, which is very
uncomfortable, very hot and makes me sweat and
everything. So I apologize for my appearance.

First of all, I would like to speak to you
for a few minutes and then Mr. Cantu will speak
to you. What I say to you, what Mr. Cantu says
to you and what Mr. Gutierrez says to you is
not evidence. We're just telling you what we
think that the evidence shows you, what the
facts really are, what we believe the facts
really are and what are the reasonable

1 inferences you can develop from those facts.

2 Now, the State has in all criminal cases,
3 as you understood on voir dire, the burden of
4 proof in all cases. Mr. Raby doesn't have to
5 do anything. The Defense never has to prove
6 their innocence. The burden is completely on
7 the State.

8 Now, the State, they have offered you a
9 theory of this case, their theory of what they
10 believe the facts are. They have alleged three
11 different types of ways that they think this
12 crime occurred.

13 They claim in one, there was a murder,
14 there was a robbery, there was an aggravated
15 sexual assault, which in the normal term or
16 common term is rape, but in the Penal Code we
17 call it aggravated sexual assault, or that there
18 was a burglary. Those are theories that the
19 State has brought to you, because they're
20 trying -- what they're saying here, they're
21 saying there was a murder. But this was not
22 only a murder. That one of these other crimes
23 was committed or attempted to be committed and
24 this brought this -- elevated this case to what
25 we call a capital murder case, which changes the

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range of punishment.

Now, the State has claimed that this is a capital murder case, and they have done this -- they're claiming that, one, either he committed a robbery and he was attempting to -- or attempting to commit a robbery. Now, attempt is defined for you on the first page of the jury charge. It says, "Attempt to commit an offense occurs if with specific intent to commit an offense, a person does an act amounting to more than mere preparation that tends but fails to effect the commission of the offense intended."

Now, you can't just automatically assume that happened. Well, gee, there was a killing. And we admit -- you can look at the pictures, it was a brutal killing, and we're sorry for that, but the point is here, that is not just was there a killing but does this amount to a capital murder?

Now, first off, the State has alleged, and they chose the types of evidence, types of theories they wanted to present to you. They made a choice. They chose robbery. Now, was anything taken? There's no evidence of anything taken. Eric Bengel said nothing was taken.

1 Is there an attempt here? Is there an
2 attempt? They're claiming that the stuff strewn
3 around the house, that the purse on the bed or
4 the purse on the floor, the credit cards,
5 whatever, there had to be a robbery. I mean,
6 there was nothing there. Now, if there was a
7 robbery, if there was an attempt, wouldn't there
8 be some evidence of that? Wouldn't they have
9 some fingerprints? Something? I mean, these
10 experts get on the stand.

11 Officer Sheldon went through detail,
12 everything, checked everything. He said this
13 house was very messy, very unkept, that it was
14 hard to tell what was normal, what was abnormal.
15 They couldn't find any fingerprints. If Mr.
16 Raby was trying to rob Ms. Franklin and if he
17 went through that purse, wouldn't they have
18 found something with his fingerprints on there?
19 Wouldn't they have found something that would
20 identify him to that? No, they didn't. They
21 admitted, they said, "We didn't find anything,
22 and it's not unusual for us to not find that
23 evidence to link the person to the crime."
24 Well, if they don't, you can't hold that against
25 Mr. Raby. So I submit to you that the State

1 has not proven to you that he committed a
2 robbery or that there was an attempt to commit a
3 robbery.

4 Now, the second allegation, they claim, is
5 an aggravated sexual assault. And I'm sure Mr.
6 Gutierrez will show you these panties. There
7 were panties found next to the victim. You can
8 look at the pictures. Now, he's going to say
9 that it's obvious those pictures show that
10 panties had been torn off the victim and Mr.
11 Raby tried to rape her. That's one thing that
12 could happen. But there's other logical
13 conclusions from that. If you look at the
14 pictures, if you look how unkept the house was,
15 that there was dirty laundry around, laundry
16 spread out all over. Eric testified that when
17 he came in, he ran into his grandmother, the
18 body, what did he think, the first thing? "Lee
19 has left clothing in the house, on the floor."
20 So it's not unusual for there to be clothing.
21 And it could be a coincident that those panties
22 just happened to be there. Because I'm sure
23 there was a struggle, there was a struggle
24 throughout this house, and that just may have
25 been where the body ended up.

1 Then they bring in an expert. Well, gee,
2 they had to be torn. They had to be torn.
3 Panties can be torn. They could have been torn
4 by Ms. Franklin, they could have been torn by
5 washing, they could have got snagged. There's
6 other ways. There's nothing to show that Mr.
7 Raby touched them.

8 If Mr. Raby was raping this woman and he
9 was stabbing her and blood was everywhere, why
10 wasn't there blood on those panties? Why wasn't
11 there Mr. Raby's blood? Why wasn't there some
12 blood found on those panties? Why wasn't there
13 any hairs, any pubic hairs, any hairs of Mr.
14 Raby found to show that he was attacking this
15 woman sexually? Because there isn't any.

16 The medical examiner testified there was no
17 indication of sexual assault. He's the expert.
18 He's the one who did the autopsy. No indication
19 of sexual assault. There was no abrasions, no
20 bruises on her body, no pubic hairs from Mr.
21 Raby, no penetration. Granted, she didn't have
22 any underwear on. It's not unusual for people
23 to be in their home and may not have underwear
24 on. And if they happen to struggle with
25 somebody and the dress she had on or long shirt

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or whatever, could have gotten pushed up.

I'm telling you, you just can't assume that a person has committed a crime without valid proof. I submit to you there's not valid proof that he committed an aggravated sexual assault.

Now, the State would have loved to have some DNA samples, samples of semen, something to show that there was a sexual assault, but they didn't have any of that. You can't say, "Well, we're sorry, State, we're just going to agree with you anyway." You can't do that. You have a solemn oath. Your oath is to follow the law. The charge says you are to decide this case beyond proof of each element -- beyond proof -- beyond proof beyond a reasonable doubt as to each element.

They're alleging there was a robbery, they're alleging there was a sexual assault, and that doesn't buy. Now they're alleging there was a burglary. Well, there's a burglary, forced entry, meaning that they're claiming the house was locked. If you look at Mr. Raby's statement, he said he went in the front door. It was unlocked. If he had forced his way in, there would have been some indication.

1 Officer Sheldon testified that the
2 screen -- he couldn't tell when that was torn.
3 He said everything was old. The pry marks were
4 old. There was no forced entry into this home.

5 It's probably true what he said in his
6 confession, that he went in the front door. He
7 went in the front door and he sat down. And
8 what happened after that, maybe he doesn't even
9 really know.

10 So here's another point. The State wants
11 you to accept the parts in Mr. Raby's
12 confession, Exhibit 98, which helped their case,
13 but disregard everything else. They want you to
14 say, "Well, gee, agree and accept he admits he
15 killed this woman. Accept that. But Mr. Raby
16 doesn't admit that he committed a robbery, he
17 doesn't admit he committed a sexual assault, he
18 doesn't admit he committed a burglary. Well,
19 then he must be lying about everything else."

20 Look at what all he drank. He had drank
21 beer, whiskey, Mad Dog Wine. He could have had
22 a blackout; he couldn't remember what happened.
23 That doesn't mean the person committed a capital
24 offense. In other words, he did not commit
25 murder along with committing the other criminal

1 act, the other felony.

2 On the burglary, if he would have broke in,
3 there would have been some type of forced entry.
4 If he had unlocked the door, they would have
5 found his fingerprints. I mean, nobody claimed
6 this guy had gloves on or anything. They would
7 have found something if he would have done that.
8 The door was probably open and he just went in.
9 There was no forced entry.

10 I mean, the State has the burden here.
11 It's not your job just to say, "Well, hey, there
12 was a killing, so, man, this person deserves the
13 maximum punishment" or "We're going to find him
14 guilty of everything we can because there was a
15 killing." That is not your job. That's not
16 the way the system is based on. It's based on,
17 did the State prove its case to you beyond a
18 reasonable doubt as to each element. Not only
19 that there was a murder, but this other crime
20 was committed or there was an attempt to commit
21 it. And they've got to provide proof of that.
22 They just can't pull it out of the air and say,
23 "Well, we think this happened." But here these
24 witnesses get up and testify, "We didn't find
25 anything and it's not unusual for us not to find

1 anything." One guy said 85 percent we can't get
2 any prints. One said five percent -- only five
3 percent can we use. So that happens. So what
4 are you supposed to do? You're supposed to hold
5 that against Mr. Raby. That's not right.
6 That's not right. That's not justice. That's
7 not determining the truth. The truth is, the
8 State didn't prove this to you beyond a
9 reasonable doubt as to each element. I submit
10 that they haven't. They haven't proven the
11 burglary, they haven't proven the robbery, they
12 haven't proven the aggravated sexual assault.

13 Now, as I said on the confession, they want
14 you to believe parts of that. And you heard
15 that on voir dire: a person will admit parts
16 of things but then they don't admit the rest of
17 it. Read his confession. Go over it. He
18 says, "I was intoxicated" and he says he killed
19 this woman, but there's no evidence of the other
20 felony. There's no evidence of that. The State
21 wants you to assume stuff that they can't prove.
22 They want you to look at these pictures. And
23 they are gruesome pictures. I mean, any person
24 being killed is gruesome. And this one is
25 gruesome. I admit that, and I'm sorry, and

1 we're all sorry. But your job here is to
2 decide the case on the facts, and the State has
3 to prove to you that he did this with the other
4 felony. It's not just claiming that they make a
5 statement, pulling it out of the air that he did
6 this other crime.

7 Now, what happened out there, I don't know
8 if anybody can tell you what really happened
9 completely. We know that Ms. Franklin was
10 killed and Mr. Raby has admitted killing her.
11 We know that. But whether he committed it,
12 there's a big question of whether he attempted
13 to commit either the burglary, sexual assault or
14 the robbery.

15 Now, the State wants you to believe that
16 this was a capital murder because it was a
17 brutal killing. That raises it to the level of
18 capital murder. But they can't do that. They
19 have to provide proof of the other felony. I
20 submit to you, they have not done that.

21 Now, they must prove their case to you by
22 proof beyond a reasonable doubt. Officer
23 Sheldon, the print man, he collected the prints.
24 Officer Stephens collected the hair. He found
25 the hair at the autopsy from her hand. And

1 Officer Hilleman, that was a hair comparison.
2 All said it was not unusual to not find any
3 evidence which would link a person to a crime.
4 I mean, why would they come in here and say
5 that? Because they didn't find any. If they
6 had found something, do you think they would
7 have come in here and said, "Well, it's very
8 unusual for us to find evidence that links
9 somebody to a crime"? I mean, use your common
10 sense. But when they come here and say they
11 don't, it's because they didn't find anything.
12 They just don't want to face it; they don't have
13 it. They don't have the evidence to prove their
14 case, that this person committed the other crime
15 or attempted to commit this other crime.

16
17 THE COURT: You have about five minutes.

18 MR. FOSHER: Thank you, Judge. I'm just
19 about through.

20 I submit to you, look at the jury charge,
21 look at Page 10 on reasonable doubt. "A
22 reasonable doubt is a doubt based on reason and
23 common sense after a careful and impartial
24 consideration of all of the evidence in the
25 case. It is the kind of doubt that would make

1 a reasonable person hesitate to act in the most
2 important of his own affairs. Proof beyond a
3 reasonable doubt, therefore, must be proof of
4 such a convincing character, that you would be
5 willing to rely and act upon it without
6 hesitation in the most important of your own
7 affairs."

8 What I'm saying here, what I am submitting
9 to you, is that the State has proved there was
10 a killing, they have proved that Mr. Raby
11 committed this killing, but they have not proved
12 to you beyond a reasonable doubt that Mr. Raby
13 either committed or attempted to commit the
14 robbery, the aggravated sexual assault or the
15 burglary. And I submit to you, after reviewing
16 all the evidence and on your sworn oath, I think
17 if you consider the evidence in all its light
18 and everything, that you return a verdict of the
19 lesser included offense of murder. And I thank
20 you for your attention.

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THE COURT: Mr. Cantu.

MR. CANTU: Thank you.

1 CLOSING ARGUMENT BY MR. CANTU

2
3 Your Honor, Mr. Fosher, Mr. Gutierrez.

4 Well, we have had what is it, four days of
5 testimony? Some of it interesting, some not.
6 Some of it revealing, some not so. But what we
7 do have, of course, is a confession. We have a
8 confession given and, of course, let me just say
9 that what I say are deductions that I concluded,
10 are observations that I have made. As Mr.
11 Fosher said, what I say, of course, is not
12 evidence and don't take it as such, but take it
13 as I would hope reasonable deductions from what
14 I have heard and from what I have seen.

15 Based on that, Mr. Bellas gets up here.
16 He's the first witness. He's a fellow -- he's
17 the medical examiner, the doctor. And he talks
18 about the examination and what he concludes or
19 what he observes is multiple cuts, 16, 17 cuts,
20 stab wounds, on the body. And you all recall
21 that he was quizzed on that, and he indicated
22 that those cuts started about the midline, upper
23 part of the body, and they travelled to the
24 side, and there were two distinctive cuts in the
25 lower part of Mrs. Franklin's back. And my

1 deduction, my observation, is that this is some
2 indication of a struggle, a person struggling,
3 started being cut on the top portion of the
4 body, the torso, and as they were either being
5 turned or turning themselves -- we obviously
6 don't know, but just think about it. If you
7 will recall -- if I may take my coat off -- the
8 stabbing, the cuts started right about here. Of
9 course, we grant there were cuts of the neck,
10 and we don't know what the sequence of events
11 were. But we do know there were cuts here, and
12 the cuts go from the top, middle of the top,
13 all the way to the back. And we do know that
14 the body is found in the living area, a few
15 steps from the door, very near the table. And,
16 of course, we know that she got some bruises on
17 the head. The doctor said that. And that
18 could have been from any number of things, but
19 we know that he concluded that it was a flat
20 object, could have been a table, a floor, could
21 have been any number of things. It wasn't,
22 obviously, a knife. He wasn't saying that. But
23 it was something other than that. Something
24 flat, something that caused a bruise.

25 The real point of that is, the real point

1 of this observation, were the multiple wounds,
2 in almost a circular fashion around the body.
3 And also another point, another observation he
4 made, the wounds, the stabs, were of such an
5 intensity, such an intensity, that it broke the
6 ribs of Mrs. Franklin. And I don't say that to
7 talk about the gruesomeness, but I want to say
8 that because it indicates the level of
9 intensity, the level of just the madness and the
10 craziness of that moment for somebody to stab
11 another person. Not only to stab, penetrate the
12 skin, but to stab hard enough to break the ribs.

13 And we do know where the body ended. We
14 know that the body was at the time it was first
15 observed, Mrs. Franklin's body, it was facing
16 down with her legs spread eagle, with her feet,
17 toes, partially towards the floor and the heels
18 partially up. We know that the left arm was
19 kind of over her body, with her head down
20 towards the floor, the carpet area.

21 And he says, Dr. Bellas says on direct, and
22 I know for sure on cross, "There's no sexual
23 assault here. I didn't find anything. I
24 searched. I have been a doctor of many years,
25 working for Harris County, doing this type of

1 work. I searched and I found none."

2 What he didn't say but what should even be
3 clearer to you, as you think about that, is that
4 he didn't say, "Well, I found bruises on the
5 arm, indicating a struggle of someone being held
6 down in this intense moment. Arms being held,
7 bruises on the arms as they were held down,
8 bruises on the legs as they were spread open and
9 held there. Someone struggling." He didn't say
10 that, did he? Because it didn't occur. It did
11 not occur.

12 And there's no evidence of an attempt of a
13 sexual assault. You don't hear that from Dr.
14 Bellas. The fact that he doesn't say that
15 someone attempted, tried to hold another person
16 down, a female person, Mrs. Franklin, the fact
17 that he didn't say that, just to hold her down,
18 to lead you past the assault and into the sexual
19 arena, the fact that he doesn't say it, you can
20 only conclude one thing from that: that it
21 didn't occur, that aspect, that theory.

22 It would be argument, of course, to be
23 made, well, Mrs. Franklin's photos are of a
24 woman laying on the ground, cut, stabbed, her
25 body there, her upper garment twisted up,

1 bloody, twisted up around her waist, beyond her
2 hips.

3 One detective -- and I forget who it is,
4 but you all can get together and identify the
5 person -- one chemist -- and they're all fine
6 individuals, fine scientists that have been
7 selected by the Houston Police Department to
8 testify, and they have testified on many
9 occasions. But one detective, one chemist says,
10 "I examined the garment. I examined the
11 panties." That chemist said, "That elastic was
12 broken." That chemist, with years of
13 experience, years of time of testifying, can
14 only say that. Could not conclude beyond that,
15 because there is no conclusion beyond that. The
16 pants that they photographed, blue pants -- and
17 I forget where they are. Let me see if I can
18 find them quickly. I believe these are in
19 evidence. These are elasticized pants. The
20 State would say that they belong to Mrs.
21 Franklin. I don't know that they do or they
22 don't. They were obviously in her home. These
23 pants were found near a wall in that same room
24 as many other things, many objects or personal
25 items could have been found there. These were

1 found there and nothing more. There seems to be
2 something here, grass or something, but this
3 doesn't give you a clue as to what occurred.
4 This could possibly inflame your mind, but it
5 doesn't give you a clue to make that conclusion,
6 that logical conclusion, that takes you beyond
7 the assault and beyond the death of Mrs.
8 Franklin.

9 And soon thereafter, Eric Bengé gets there,
10 arrives. And, of course, Mr. Fosher said that
11 the body of Mrs. Franklin is found, and they
12 take photos. Later, I think after Mr. Bengé's
13 assistance, and they take photographs of a
14 window. And many witnesses testified to a
15 window.

16 Mr. Bengé tells you, of course, he
17 concludes someone entered into that window, that
18 freshly painted window, freshly painted white,
19 freshly painted screen. What do we know about
20 that window? That window might be open or not.
21 He doesn't know that it can be open. He does
22 know it was freshly painted. You have pictures
23 of that. You can look at the pictures. You
24 recall that I pointed out nails or what looks
25 like to be nails on top of the window. I point

1 this out only to tell you, to reiterate your
2 observation and deduction, that this window
3 could not have possibly been open, or at least
4 Eric Bengé did not know whether it could be open
5 or not. We know it was closed when everyone
6 got there. We know that no one says that they
7 handled the window and they concluded that
8 window could be opened.

9 Detective Allen, who was in charge, and I
10 think he's got 22 years, two decades, over two
11 decades of experience, and he's a fair,
12 reasonable man. He didn't come in here and tell
13 you that that was an observation made and that
14 he further the investigation by looking at that
15 piece of evidence, that possibility of a point
16 of entry. He didn't tell you that. He did not
17 tell you that.

18 They do have a picture of a closed window
19 with a screen. They do have a picture of a
20 screwdriver that belongs to Eric Bengé. I would
21 conclude, I would deduct from that, that whoever
22 painted the house left the screwdriver there.
23 You can look at the window. You can tell there
24 are no scrapings. There has been no scrapings.
25 No one has testified there was dust knocked off

1 the window. We know it was very dusty. No
2 dust was knocked off. There's no point of
3 entry. No one came in here and said, "You
4 know, we looked at those windows as police
5 officers, with many, many years of experience,
6 and what did we find? We can't find
7 fingerprints. No, we can't find fingerprints.
8 And I wish we could, because it would be much
9 easier. But we did find dust knocked off the
10 windows. We didn't find smudges on the window
11 to indicate entry." There is no entry through
12 the window. There's no such testimony about
13 entry through the window. So what do we have?
14 We go back to the 19th of October, 1992, when
15 Charles made a confession: entry through the
16 door. How do we know that?

17 Mr. Eric Bengé says what? "When I left, I
18 left the puppy dogs in the back yard. When I
19 arrived, the puppy dogs were in the front yard."
20 What does that tell you? And he said what?
21 The doors were closed. And he believed what?
22 That they might have been locked. He doesn't
23 know that, because he wasn't there to determine
24 that, but he believes that.

25 The doors will tell you they were open if

1 those dogs got from the back of the yard to the
2 front. No one says all three of them hopped
3 over a fence. And we know that the door was
4 open, the back door, because he said it was
5 open. And the dogs were in the front, and he
6 came in through the front door, and the front
7 door was partially closed, then what can you
8 deduct from that? The dogs came from the back
9 through the front. Two points of entry and
10 egression, right? That's all that it can be.

11 Property. We have got a place in some
12 disarray. These two boys take care of their
13 grandma, and not very well. We go in the area
14 where she sleeps. She sleeps on a trundle bed.
15 A 72-year-old woman that weighs 72 pounds sleeps
16 on a trundle bed. Her life belongings in that
17 room. We find Eric Bengé says he put the purse
18 on her bed after he found his grandmother dead
19 in the living area. Things come out. He sees
20 things, but what does he really say? "Nothing
21 was stolen. Nothing's been taken. We do not
22 know of anything taken." We know that nothing's
23 been spent that belongs to Mrs. Franklin. We
24 know the credit cards have not been spent. We
25 know all of this. How do we know all of this?

1 Because no one says they have been spent, so you
2 can't conclude that they were, right? The
3 easiest thing would be, "Someone took that
4 credit card that afternoon and used it." That
5 evidence isn't here.

6 Detective Allen, 18 years of experience.
7 He says it's consistent. He was talking about
8 the consistency of the sexual assault. What
9 consistent sexual assault? Well, consistent,
10 his impression, that it must be a woman and she
11 must be nude. If you have those, then it's
12 consistent with sexual assault. Possibly. I
13 wouldn't argue with that. But what would be
14 more consistent with sexual assault? All those
15 elements that I talked about.

16 We know that in the backs of people's minds
17 people do many awful and horrible things, that
18 we have seen people paralyzed, cut up, we read
19 it, we see it, and we wonder why. And you can
20 take that and you see bodies of poor women, how
21 people devastate the body, and you wonder why.

22 I submit that if every time you found a
23 dead person that was nude, you couldn't conclude
24 that. You would have to ask for more. That
25 would be the sound and reasonable thing to ask.

1 He also indicated or spoke about the
2 consistency of burglaries. Okay, he spoke
3 specifically. He said that the screen was
4 dislodged. Well, the screen is obviously pulled
5 from the main window frame, but if you look at
6 the evidence, and you have got these pictures
7 here, it doesn't show to the eye there's any
8 scratches or pry marks from the window that
9 would indicate that. It doesn't indicate
10 there's been entry through the window. And you
11 have got all those photos. Take them back.
12 See if you can find scratches on the window or
13 pries on the panes. Look for that. I would
14 submit the person entering a window that's very
15 dusty would leave something behind, something
16 that would indicate an entry through that point.

17 Fresh wood chips. I think we found -- you
18 all got the photo, and I think I have shown it
19 until ad nauseam. There's the screwdriver, the
20 closeup, the screwdriver and the shot kind of
21 taken at an angle, and you can see beyond on
22 the other side of the screen, you can see the
23 screwdriver and you can see a little object. I
24 believe that's what he's talking about. We
25 don't have it here. I believe that's what he

1 might be talking about, a chip of wood. I
2 don't know. I haven't seen it, but maybe that's
3 it.

4 They have got years of experience. Police
5 officers have testified and said, "You know, we
6 looked at that bed. We took photos of the bed,
7 but there's nothing there. There's nothing
8 there on that mattress." There's nothing there
9 to indicate that there was a burglary or an
10 attempt to enter through that point. There's
11 nothing there.

12 And we know about the hair found in Mrs.
13 Franklin's hand. We know that. One of the
14 officers went to the autopsy, and that followed
15 a chain of custody and it ended up in a noted
16 chemist's hands and they determined, after doing
17 the analysis and comparisons, that it belonged
18 to Eric and one of the three dogs that were
19 there. That's not evidence. I mean, I don't
20 ask you to disregard anything, but just think
21 about it. I mean, that's fine, it's good you
22 want to know what all the circumstances are, but
23 the one we grasp, I would assume the ground, the
24 floor, and that's what she came up with. That
25 doesn't say anything in my mind.

1 **THE COURT:** Excuse me. You have five
2 minutes, Mr. Cantu.

3 **MR. CANTU:** Thank you, Your Honor.
4

5 Charles is arrested on the 19th. But on
6 the 16th, I believe, the following day, they get
7 to one of the houses. We know where the houses
8 are. It's either Charles' residence, and they
9 don't find Charles there. Charles' female
10 friend, Mary Gomez, is not there. Or the Reid
11 Street -- they talked about going to three
12 different places.

13 On the 16th, that morning, that afternoon,
14 they get this jacket. They give it to the
15 chemist. The chemist goes through this jacket
16 looking for the evidence, as they ought to. And
17 they find no evidence. They find no evidence of
18 hairs, wood chips, screwdrivers. There's
19 nothing in this jacket, on this jacket, near
20 this jacket.

21 Charles, on the 19th of October, gets
22 arrested. Eleven o'clock in the morning, at 706
23 Reid, and he's driven by Officer Allen, along
24 with Mary, along with some other police officers
25 that are there. They're all escorted to the

1 police station. We can assume that takes from
2 the address on Reid Street, which I believe they
3 said was off the 610 Loop, and they drove from
4 there to town, we can assume that it took
5 anywhere from five minutes to fifteen minutes
6 depending on the range of speed. We can assume
7 then when he got there, it took a few minutes
8 to park the car, to enter into the Homicide
9 Division. Let's assume that happens all in
10 about 30 minutes. We're into about 11:30.

11 At 12:00, I believe -- and I'm hurried now,
12 but at 12:00 he signs a document that indicates
13 that he's going to make a confession. He and
14 Officer Allen get along and Charles wants to get
15 this off his chest, and then he makes a
16 confession. He makes a confession and he signs
17 it an hour later, after everything is done. He
18 signs it, it's been done, typed, gone through
19 the computer. It's done.

20 Now, people might say, "Well, he had time
21 to reflect on that. He had time to think about
22 what he was going to say." And then on the
23 other hand, "Yeah, he sure was dumb. He made a
24 confession. There's no evidence." But he
25 wanted to get it off his chest. That's what it

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was.

You have seen this young fellow. You have seen him sit here beside me for the last four days. You have seen him -- as a matter of fact, you have seen him longer than that. All of you all sat and listened to Mr. Gutierrez and myself talk to you about the promise that you had to make and your answers were that you would fulfill your obligations as jurors, that you would do whatever was required by law and whatever the guidelines of the Court dictated, that you would follow those. You would not divert from that. You would not forget the rights, not only of the victim but the accused, and all accused and all victims, because they're all our rights and we're all victims. And when people don't do right, when we think, "Well, we as people really need to hammer those," we have to hold ourselves and say, "This is the United States of America. We have rights for all. We have responsibilities. If a person fails in their responsibility, then they must be tried, and they must be tried under certain guidelines so that it's fair, decent, truthful and impartial." And once we hear all the evidence,

1 being all of that, all of that that you promised
2 me then, and I know that you promise me now,
3 after listening to all of that, based on those
4 promises, based on the guidelines of the Court,
5 you can only conclude one thing, that at 11
6 o'clock or 11:30 or 12:00 noon on the 19th of
7 October, three days later, four days later,
8 Charles Raby made a confession. He made a
9 confession about a very horrible thing that he
10 had done. He made a confession about doing
11 something to a lady that he had known almost all
12 his life. Known the boys all his life. Lived
13 there in that community. Known everybody in
14 that area. Known, I think, Mrs. Wright. I
15 think a lot of people knew him in that area,
16 older people. Older people came in here and
17 said, "We all knew him. We saw him, as a
18 matter of fact. We saw him in the area,
19 intoxicated, smelling of alcohol."
20

21 THE COURT: Excuse me. You have run out
22 of time, Mr. Cantu.

23 MR. CANTU: I want to thank everyone for
24 listening to me. Mr. Gutierrez will speak next.
25 We have no opportunity to speak after this.

1 This is the last opportunity. I know I have
2 forgotten something. I invariably always forget
3 something, and it's always the most important
4 thing that I should have said and I never say
5 it. I don't know why. But it happens. But I
6 ask all of you all, you all heard the evidence,
7 you all are reasonable, decent, kind human
8 beings. Take all the evidence, all the photos,
9 look at it, take all the demonstrative evidence
10 and make your conclusion based on the evidence
11 alone. And if you do that, you look at all the
12 evidence that's been given to you and make those
13 reasonable conclusions that you have, because
14 all of you all are real people of common sense,
15 and you can conclude only one thing, that
16 Charles made a confession, confessed to a
17 horrible thing that he did on the 16th of
18 October. And we can't search the depth of his
19 mind today or tomorrow. Maybe a psychiatrist
20 can. Who knows why people do the things they
21 do to each other. Who knows. Maybe they can't
22 be articulated. Maybe they're so far deep in
23 the recesses of a person's mind and soul and
24 heart, that we don't know. But all we do know
25 is what occurred. We have the evidence, and I

1 know you will make a conclusion and I think you
2 will conclude with us is that the truth is that
3 Charles Raby killed Mrs. Franklin and nothing
4 more. ¹³⁰

5 Thank you, Your Honor.

6 THE COURT: Mr. Gutierrez.

7
8 CLOSING ARGUMENT BY MR. GUTIERREZ

9
10 If it please the Court, Mr. Cantu, Mr.
11 Foshier, Ladies and Gentlemen.

12 I'm real sorry that I can't give you a
13 blow-by-blow account of everything Charles Raby
14 did to that poor little old lady. We have a
15 saying in Spanish, and it applies to this case.
16 It says that people don't talk. And, you know,
17 I'm real sorry we can't do that, you see,
18 Charles Raby made sure she couldn't come here
19 and tell you what happened. And as I listened
20 to the arguments of counsel, I started thinking,
21 you know, is it any wonder -- is it any wonder
22 that a person who would attack a helpless,
23 fragile, arthritic little old lady and stab her
24 as many times as he did, brutalize, slit her
25 throat, ripped her clothes off, ripped her

1 panties, anyone who would do something so
2 cowardly, is it any wonder that when he runs,
3 that he is silent after he runs? He doesn't go
4 to the police. He isn't filled with remorse.
5 When he gets the call that the police are
6 coming, when he gets that call from his mother,
7 he flees, indicating guilty knowledge. Is it
8 any wonder that that type of coward would not
9 fess up to all the details of his confession to
10 the police? Of course not.

11 You know, you look at his confession and
12 counsel -- both of them -- talked about how he
13 confessed to the murder. You look at that
14 confession. He doesn't confess to much about
15 what he did to her. He speaks in vague terms
16 about he struggles with her and he realizes he
17 has the knife in his hand. That he runs away
18 and he realizes his hands are covered with
19 blood. And then the next day, he realizes that
20 he has killed her.

21 Well, folks, there's no law that requires
22 you to swallow every bit of that lie.
23 Thankfully you can look at the physical evidence
24 and look at the way her pants were ripped off,
25 her panties were ripped off. What is that

1 consistent with? It is consistent with
2 humiliation and degradation of a man who wants
3 to sexually assault a woman. It wasn't enough
4 for him to kill her, but before he did so, he
5 had to degrade her and humiliate her, and all
6 that's part of a sexual assault. And that's
7 common knowledge.

8 Now, Defense counsel wants you to say,
9 "Well, you know, he didn't give you all those
10 details when he confessed, so find him guilty.
11 Reward him with a lesser included offense of
12 murder." Now, I'm absolutely in total
13 agreement, a brutal crime does not a capital
14 murder case make. But, folks, this wonderful
15 law that is in our charge ain't worth spit if
16 you don't make it work. And if you don't give
17 someone the label of a capital murder when he
18 deserves it based on the evidence, then what are
19 you saying? That Charles Raby and other people
20 like him, "Buster, you did good. You did damn
21 good. You slit that little old lady's throat.
22 You threw away the murder weapon. And because
23 the jury believed everything you said, or at
24 least didn't want to look at the other evidence
25 that was there, you get off with a lesser

1 crime and a lesser sentence." Boy, ain't that a
2 good signal to send out. Well, I don't think
3 you'll do that, because there's one thing both
4 sides agree on, that each one of you is an
5 honest person, intellectually honest, and whether
6 you all realized it or not at the time, I felt
7 that each one of you had the intestinal
8 fortitude to make the right decision based on
9 the evidence.

10 You are blessed in this case. There's no
11 argument, have you got the right guy. There
12 isn't. And if you ignore all the evidence at
13 the scene and you swallow only what the Defense
14 wants you to, then you have got a murder. But
15 what about everything else?

16 What all this argument meant about, did he
17 go in through the front door? Did he go in
18 through the window? If you look at the charge,
19 it ain't important, folks. It doesn't matter
20 whether he went in through a window or the front
21 door. How do you know that? Well, I feel as a
22 prosecutor I've got a duty to present the
23 evidence as the witnesses perceive it. At the
24 time they felt the point of entry, Eric Bengé,
25 who had been there before, was through the

1 window. The police investigated that part. And
2 I brought those witnesses in to show you that at
3 least they tried.

4 And why all this evidence about, "Well,
5 it's not unusual to find it"? Because, folks,
6 we are all children of the television
7 generation, and if you watch enough Quincys and
8 Matlocks, some folks on some juries might think
9 that any time you touch something, there's going
10 to be a fingerprint, and some folks might expect
11 us to bring DNA in all cases, and that just
12 ain't realistic. ¹³ⁱ It isn't. But don't you know
13 that if I brought you evidence that there were
14 fingerprints anyhow, these two fine lawyers
15 would have been arguing, "Well, it doesn't
16 matter, because Charles Raby had been in the
17 house." It wouldn't matter. Fingerprints
18 didn't matter, but, you see, the police officers
19 told you they didn't even find fingerprints of
20 the grandsons who lived there every day or the
21 lady who died in the house. Did that mean she
22 never lived there? Of course not.

23 So what are we left with? With the
24 physical evidence. And look at the pictures.
25 What's it consistent with?

1 Let's talk about the charge very briefly.
2 You'll see about 12 pages. The last page is
3 what we call the verdict form. Hereafter you
4 select your foreperson, you are to sign it
5 according to what your unanimous verdict is.

6 The first one says, "We, the Jury, find the
7 Defendant, Charles Douglas Raby, not guilty." I
8 submit based on the evidence that would be
9 outrageous. I have X'd it out. That's not the
10 one you want to sign.

11 The third one says, "We, the Jury, find the
12 Defendant, Charles Douglas Raby, guilty of
13 murder." That I submit would be a gross
14 miscarriage of justice, and if you're going to
15 do that one, if you're going to find him guilty
16 of a lesser offense based on the evidence, hey,
17 just let him go. Find him not guilty, because
18 it would be so outrageous based on the evidence.
19 And I don't mean to insult you all, but, folks,
20 there's one beautiful -- two words in the
21 charge, and the page before that that talks
22 about what a reasonable doubt is. Two beautiful
23 words: common sense. Use your common sense.
24 This is a simple case. Once you find him
25 guilty of capital murder, then you are to please

1 sign that part where it says "Foreperson".
2 Now, let's talk about the charge. In here
3 you will find all of the law that is pertinent
4 to this case. Please don't let it mislead you.
5 It's real, real simple. In the first page you
6 will also hear some of the same things we have
7 been talking about in voir dire. What is
8 capital murder? Well, we talked to you in the
9 beginning about what I had to prove. I had to
10 prove one of three theories of capital murder.
11 Let's find out if I did that.

12 We have to prove that this occurred while
13 the Defendant was either committing or
14 attempting to commit one of those three
15 felonies. There doesn't have to be any
16 penetration. There doesn't have to be any
17 semen.

18 Now, I know counsel for the Defense was
19 quoting the medical examiner and saying
20 something about, "Well, I examined it and there
21 was no sexual assault here." Boy, maybe we were
22 on different channels, but that sounded like a
23 totally different program than what I was
24 listening to when I was sitting here. I
25 remember the medical examiner saying that it is

1 not uncommon in a sexual assault to not find any
2 semen or any trauma. He did say he found
3 nothing, no semen, no trauma. Fine, that
4 doesn't mean a sexual assault didn't take
5 place. That also doesn't mean that I have to
6 prove to you that it actually took place. It's
7 very easy to conclude what the Defendant was
8 trying to do with her while he ripped her pants
9 off, when he ripped her panties off.

10 One of the attorneys said, well, maybe
11 they were being washed or something. They're in
12 evidence. You look at them. You decide if
13 they're clean panties or not. I mean, look at
14 the pictures and how they were found. Of course
15 they're her panties. They sure ain't Eric's,
16 they sure ain't Lee's, and those pants don't fit
17 either one of those boys, because they're like
18 giants. And you can see those pants lying next
19 to her.

20 So while in the course of committing a
21 robbery, Eric Bengé testified, "I know she kept
22 some money. I don't know if anything was
23 taken." Again, we are at the mercy of the
24 people who were there. One of them is dead,
25 the other one confessed to the police but didn't

1 tell the whole truth. Now, can you imagine
2 where we would be in our society if we had to
3 prove property was taken in order to prove there
4 was a robbery that occurred? That means people
5 could go in and kill ten people in a bank and
6 leave, and if nothing was taken, then we
7 couldn't prosecute them. Now, that's
8 ridiculous. Nothing has to be taken. The theft
9 does not have to be complete.

10 Eric told you that when he came home, her
11 belongings were strewn all over the place. He
12 picked them up. If that's not a reasonable
13 deduction that someone is looking through a
14 purse for something, I don't know what is. And
15 I don't know about you gentlemen, but when I go
16 looking for my underwear, if it please the
17 members of the jury, in the morning and I
18 rummage through the drawers, I mean, I'm
19 rummaging through the drawers because I'm
20 looking for them. And that's what the evidence
21 is consistent with when those drawers were open.
22 He looked for something. We don't know what.
23 It doesn't matter if he found anything or not.
24 It doesn't matter if we can prove anything was
25 taken or not, because the evidence shows that he

1 looked for something, to try and take something.
2 And that's what's important.

3 Now, let's talk about that window versus
4 that door. The State has to prove burglary of
5 a habitation. On Page 2 you will see the
6 definition, that our law provides that a person
7 commits or attempts to commit a burglary of a
8 habitation if without the effective consent of
9 the owner he enters the habitation.

10 Now, let's go back a few days. The
11 Defendant had notice that he was to leave and
12 not come back. That's what the evidence shows
13 of the testimony of Lee Rose. Edna Franklin ran
14 him off her property. She said she didn't want
15 him there. That's notice. He is not to come
16 back or in.

17 He entered the habitation with intent to
18 commit a felony or theft. It doesn't matter if
19 he came in through the window. It doesn't
20 matter if he came in through the front door.
21 If he entered with intent to commit a felony or
22 aggravated assault or theft or whatever, he is
23 guilty of the burglary of a habitation, whether
24 any theft occurs or not.

25 The second possibility for a burglary of a

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habitation, if he remains concealed with intent to commit a felony or theft. And the third theory is, if he enters a habitation and commits or attempts to commit a felony or a theft.

So even if you believe his confession, that he walked in the front door and sat down, if you believe that he also, after he entered, formed the intent to commit theft at some point, at any point, that's part of the burden, and I submit we have proven each and every element of each and every paragraph of each and every theory in this case if you use common sense and if you don't put on blinders and ignore it. And I submit that it would be an injustice if you ignore all that.

Now, going on to the third part, third page of the definition of aggravated sexual assault. One thing I do want to emphasize, there is no question, based on the physical evidence, that the Defendant intended to kill the complaining witness. Just look where the wounds are. But for a capital murder, that's what we have to prove. So on Page 4 it has certain definitions at the top: intentionally and knowingly. Page No. 5 is what contains what we call the charging

1 paragraph. Now, the charging paragraph starts
2 with the word "Now." It is the paragraph that
3 will allow you to convict the Defendant of
4 capital murder. Basically it says that if you
5 believe the State proves one theory or another
6 and he intentionally killed the Complainant,
7 then you will find him guilty of capital murder.
8 Now, that's the larger charge.

9 Page No. 6, underneath that, it will talk
10 to you about, if you have a reasonable doubt
11 about whether or not he's guilty of capital
12 murder, consider the lesser included offense of
13 murder. Now, don't be confused just because the
14 elements are meant for murder in some of these
15 different theories. Of course we're saying he
16 killed her. Of course we're saying he intended
17 to kill her, but he just didn't intend to do
18 it. Those are three theories set out in Page
19 No. 6.

20 The third theory might seem a little
21 confusing. It talks about while in the course
22 of committing a felony. Those cases involve a
23 situation where a person is committing one
24 felony and does not necessarily intend to kill
25 someone but commits an act clearly dangerous to

1 human life. We have all that, but we have
2 more. We have a higher culpable mental state in
3 this case.

4 There's talk about sudden passion,
5 involuntary manslaughter. Those are just things
6 that are mentioned in the third theory of
7 murder. Don't be confused by them. Read
8 through them. It's really fairly simple.

9 So what do we have? The bottom line is,
10 it's a simple case and all you've got to do is
11 go back there, review the evidence, obviously
12 take your time, read the charge, but for God's
13 sake, don't ignore the evidence as the Defense
14 is asking you to do. Look at it. And there's
15 no doubt, I submit, based on the evidence, that
16 the Defendant killed her. And what you have got
17 to decide is whether or not the State has proven
18 the rest of the theories or one of the theories
19 to your satisfaction beyond a reasonable doubt.
20 After careful consideration and honest
21 consideration of the evidence, I submit you will
22 promptly return with a verdict of capital
23 murder. Thank you very much.

24
25 THE COURT: Ladies and Gentlemen, because

1 of the hour, I am going to recess you for
2 lunch. Now, listen carefully. Of course you
3 are not to separate under any circumstances.
4 The bailiff will accompany you to lunch. Do not
5 deliberate during your lunch break. Enjoy your
6 lunch. When you come back, when all twelve of
7 you are in the Jury Deliberation Room, select
8 one of your members as your foreperson and then
9 you will deliberate until you have reached a
10 unanimous verdict. You can work briefly while
11 they're preparing for your lunch, but it will
12 probably be shortly before they take you out.
13 You are excused to the Jury Deliberation Room at
14 this time.

15

16 (Whereupon a lunch recess was had.)

17 (Whereupon the jury began deliberations.)

18

19 **THE COURT:** Any objection to giving them
20 all the evidence from either side when they come
21 back, in case they request any?

22 **MR. GUTIERREZ:** No.

23 **MR. CANTU:** No, Judge.

24 **THE COURT:** Mr. Harris, the Court wants to
25 thank you for participating as an alternate, and

1 you are free to go at this time, and I have an
2 excuse here for you if you need it. Thanks
3 again.

4
5 (Whereupon the jury was seated in the jury
6 box.)

7
8 **THE COURT:** Mr. Raby, if you will remain
9 standing.

10 Ladies and Gentlemen, have you reached a
11 verdict?

12 **THE FOREPERSON:** Yes, Your Honor, we have.

13 **THE COURT:** Mr. Foreperson, if you will
14 give your verdict to the bailiff, please.

15 **MR. FOREPERSON:** (Complies.)

16 **THE COURT:** "We, the Jury, find the
17 Defendant, Charles Douglas Raby, guilty of
18 capital murder, as charged in the indictment."
19 Signed David Gibson, Foreperson of the Jury.

20 Ladies and Gentlemen, if this is your
21 individual verdict, will you indicate by saying
22 aye?

23 (Whereupon the jury answered in the
24 affirmative.)

25 **THE COURT:** Does either side wish to have

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the jury individually polled?

MR. CANTU: Yes, Your Honor.

THE COURT: Ladies and Gentlemen, as your names are called individually, if this is your verdict, will you indicate by saying aye?


(Whereupon the jury was individually polled.)

THE COURT: Is the State and Defense ready to proceed on the punishment phase of the trial?

1 THE STATE OF TEXAS *
2 COUNTY OF HARRIS *

3
4 I, GINA BENCH, Certified Court
5 Reporter for the 248th District Court of Harris
6 County, Texas, do hereby certify that the
7 foregoing pages of typewritten material contain
8 a true and correct transcript of all evidence
9 adduced and admitted at the STATEMENT OF FACTS
10 in the case shown in the caption hereof; that I
11 was present in open court and reported said
12 testimony in shorthand, and that later I
13 transcribed same into typewriting.

14 IN TESTIMONY WHEREOF, witness my
15 official signature on this the 6th day of
16 December, 1994.

17
18 
19 _____
20 GINA BENCH
21 Certified Court Reporter
248th District Court
Harris County, Texas

22 Certification Number: 221
23 Certification Expires: 12-31-94
24 Business Address: 248th District Court
301 San Jacinto
Houston, Texas 77002
25 Telephone Number: (713) 755-7094

THE STATE OF TEXAS	:	IN THE DISTRICT COURT OF
	:	
vs.	:	HARRIS COUNTY, T E X A S
	:	
CHARLES DOUGLAS RABY	:	248TH JUDICIAL DISTRICT

MOTION FOR DISCOVERY AND INSPECTION

TO THE HONORABLE JUDGE OF SAID COURT:

Pursuant to the authority of Article 28.01 and 39.14, V.A.C.C.P., comes the Defendant, CHARLES DOUGLAS RABY, by and through Defendant's attorneys of record, and respectfully moves this Honorable Court to order the District Attorney to produce and/or allow defense counsel to inspect and copy and/or photograph the following items in which are in the possession and/or within the knowledge of the State of Texas or an agency thereof:

STATEMENTS BY DEFENDANT

1. Any statement, including Grand Jury testimony, made by Defendant to the police, District Attorney, or any of his employees, any law enforcement officials, State agency, or any private citizen within the knowledge of the police or the District Attorney, or any of his employees, any law enforcement official or State agency, whether under arrest or not, or whether written or oral.

GRANTED _____

DENIED _____

14/969W

EXCULPATORY/INCULPATORY STATEMENTS

2. Any and all exculpatory or inculpatory written and/or oral statements, confessions or admissions (whether or not reduced to writing) presently in the possession, custody or under the control of the State, its agents, or agencies, made by the Defendant to any witness or person the State intends to call to testify in this cause of action.

GRANTED _____

DENIED _____

PHOTOGRAPHS

3. Any photographs, drawings or charts made by the police, the District Attorney's Office or anyone else which were made with references to this case, which are in the possession of the police, District Attorney, law enforcement official, State agency or private citizen within the knowledge of the police, District Attorney, any of his employees, any law enforcement official, State agency, or employee or representative of same.

GRANTED _____

DENIED _____

SCENE PHOTOGRAPHS

4. Any and all photographs of the scene that relate to the alleged offense, including but not limited to the interior and exterior of the premises, appurtenances thereto, the curtilage, the street, or surrounding vicinity, including the names and addresses of the individuals who took said photographs and the date said photographs were taken.

GRANTED _____

DENIED _____

PHOTOGRAPHS OF COMPLAINANT

5. Any and all photographs taken of the complainant by or at the request of, or within the knowledge of the police, District Attorney or any of his employees, any law enforcement official, State agency or agents thereof.

GRANTED _____

DENIED _____

PHOTOGRAPHS OF DEFENDANT

6. Any and all photographs which may have been made of the Defendant while in custody and control of the police, District Attorney, their employees, or an agency of the State of Texas.

GRANTED _____

DENIED _____

IDENTIFICATION

7. Information regarding the identification of the Defendant whether by photographs, films, line-ups, or show-ups as follows:

- a. Names and addresses of persons identifying the Defendant, specifying the crime for which the Defendant was identified and the corresponding date of the identification and the date of the alleged offense for which the Defendant was identified;
- b. Photographs used in any photographic identification;
- c. Identify and description of persons participating in any and all line-ups or show-ups with the Defendant;
- d. The names and their particular participation of all officers conducting any and all line-ups or show-ups in which the Defendant was placed for the purpose of identification wherein the Defendant was identified, the corresponding offense and date said offense for which Defendant was identified;

MOTION FOR DISCOVERY AND INSPECTION, Page 3

- e. The dates, times and locations of any and all line-ups or show-ups which were conducted wherein the Defendant was identified; and
- f. Any and all waivers of Defendant's right to have counsel present at any line-up or show-up which were signed by the Defendant.

GRANTED _____

DENIED _____

WITNESSES-INJURIES

8. The names and addresses of any and all persons relating to or connected with the making of any notes, medical reports or other reports of the complainant's alleged injuries that allegedly resulted from this offense and this is to include any statements made by any complainant to, or in the presence of, any such person in connection with said injuries or the occurrence of the alleged offense.

GRANTED _____

DENIED _____

EXCULPATORY EVIDENCE

9. Any and all favorable evidence which is in the possession, custody, or control of the State, or investigating body of the State of Texas, or any police department or any of their agencies including, but not limited to the following:

- a. Any prior inconsistent statements of witnesses for the State which are favorable to Defendant or are exculpatory in nature regarding any alleged offense by the Defendant;
- b. The names and addresses of any eyewitnesses to the offenses alleged which are favorable to the Defendant or are exculpatory in nature;
- c. Failure of any witness to identify Defendant either from photographs, films, or in person while in a line-up or show-up; and

MOTION FOR DISCOVERY AND INSPECTION, Page 4

- d. Results of any scientific tests conducted which are favorable to the Defendant or exculpatory in nature including, but not limited to ballistic tests or fingerprints at the site of the offense or on other tangible evidence.

GRANTED _____

DENIED _____

REAL EVIDENCE

10. Any papers, objects or real evidence that is in the possession of the police, the District Attorney's Office or their employees or State agencies which may in any way be material to the guilt or innocence of this Defendant.

GRANTED _____

DENIED _____

SCIENTIFIC TEST RESULTS

11. Any written report of any test that is a biological, microscopic or scientific analysis of any items which was conducted pursuant to the investigation of the instant case regardless of whether said test was prepared or conducted at the request of any law enforcement official, by the State of Texas or its agents, State agency or any private citizen, within the knowledge of the police or the District Attorney, or any of his employees, together with any descriptions, test dates, and any determinations as well as the name and address of the individuals who conducted such tests or analysis.

GRANTED _____

DENIED _____

TEST ON COMPLAINANT

12. The results of any and all blood tests, electrocardiogram, chemical, or other medical or biological tests run on complainant and/or deceased by whomsoever made.

GRANTED _____

DENIED _____

MOTION FOR DISCOVERY AND INSPECTION, Page 5

*Here is the motion for test results
but they with held it.*

EVIDENCE OF SCENE

13. Any and all tests, records, diagrams, charts, or written reports relating to the actual scene of the alleged offense, e.g., diagrams of where any complainant was or where any person was allegedly located at the time of the alleged offense.

GRANTED _____

DENIED _____

POLICE INFORMATION

14. The names, rank and badge number of all police officers of the State or County law enforcement agents and all employees of the Criminal District Attorney who participated in any way in the investigation of this case, whether at the scene, the police station, county jail or elsewhere.

GRANTED _____

DENIED _____

FINGERPRINT

15. Any and all fingerprint impressions obtained by whatever means and process from the scene of the alleged offense in question, found as a result of the investigation of this offense, whether such fingerprints were fingerprints of the Defendant or were fingerprints from some other person or persons known or unknown.

GRANTED _____

DENIED _____

CONVICTION RECORD

16. The criminal arrest and/or conviction record of the complainant, together with any juvenile record complainant may have.

GRANTED _____

DENIED _____

MOTION FOR DISCOVERY AND INSPECTION, Page 6

WEAPON

17. The weapon or weapons which the State of Texas alleged or may allege was or were used in the commission of the alleged offense.

GRANTED _____

DENIED _____

EVIDENCE FROM DEFENDANT

18. Any and all objects of evidence the State intends to use which was found on Defendant's person at the time of his apprehension or arrest.

GRANTED _____

DENIED _____

19. At least five (5) days prior to trial the "pen packets" which will be relied on in order to enhance this Defendant, if any. This is necessary so that defense counsel may have adequate time to review these documents which will be the basis of the State's case on punishment, if any.

As a basis for this Motion, the Defendant states that the objects requested are vital and material to the issue of the Defendant's innocence for the following reasons:

That the items requested are material to the issue of Defendant's attorney to render effective counsel as is guaranteed to the Defendant by the Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States of America and by Sections 10, 19 and 29 of Article I of the Constitution of the State of Texas and are needed in order that the Defendant may be informed of the nature and causes of the accusation against Defendant.

This Motion is made in good faith and not for the purpose of delay.

WHEREFORE PREMISES CONSIDERED, the Defendant respectfully prays that this Honorable Court order:

MOTION FOR DISCOVERY AND INSPECTION, Page 7

- (1) The District Attorney to permit the Defendant to inspect, copy or photograph the above set out tangible objects prior to the trial in this cause which are in the possession or subject to the control of the State of Texas or any agency thereof pursuant to Articles 39.14, 28.01, 1.03, 1.04 and 1.05 of the Texas Code of Criminal Procedure, Article I, Sections 10 and 19 of the Constitution of the State of Texas and pursuant to the Defendant's right to due process of the law, the effective assistance of Counsel as guaranteed to Defendant by the Fourteenth and Sixth Amendments to the Constitution of the United States respectively;
- (2) That a timely hearing on said Motion be had;
- (3) That an "in camera" inspection of all evidence sought to be discovered but withheld by the prosecution be had;
- (4) That an inquiry be made of the prosecutors and agents of the State of Texas to determine the extent of compliance with any discovery that is Ordered by this Honorable Court; and
- (5) That any and all evidence requested but not Ordered subject to discovery by this Honorable Court be included in the Appellate record of this cause for review by the Appellate Court; and for any and all further relief to which this Court may deem the Defendant entitled.

Respectfully submitted,




FELIX CANTU
State Bar No. 03767300
848 Heights Blvd.
Suite 202
Houston, Texas 77007
Telephone: (713)868-0968

FILED
KATHERINE TYRA
District Clerk

APR 1 1994
Time: 10:00 AM
March County Texas
By: [Signature]

MOTION FOR DISCOVERY AND INSPECTION, Page 8

By:


MICHAEL P. FOSHER
State Bar No. 07280300
440 Louisiana Street
Suite 2100
Houston, Texas 77002
Telephone: (713)221-1810

ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing instrument has been furnished to counsel for the State by hand-delivery of a copy of same

this the 8 day of April, 1994.


FELIX CANTU

MOTION FOR DISCOVERY AND INSPECTION, Page 9

NO. 9407130

LB/13/1957e

THE STATE OF TEXAS	:	IN THE DISTRICT COURT OF
vs.	:	HARRIS COUNTY, TEXAS
CHARLES DOUGLAS RABY	:	248TH JUDICIAL DISTRICT

ORDER ON DEFENDANT'S MOTION FOR DISCOVERY AND INSPECTION OF EVIDENCE

MAY 19 1994

On this ___ day of _____, 199___, came on to be heard the Defendant's Motion For Discovery And Inspection of Evidence, and after due consideration, the Court is of the opinion, and it is hereby ORDERED, that said Motion is:

GRANTED as to item numbers

DENIED as to item numbers

SIGNED this the ___ day of _____, 199___.

W. Dancem

JUDGE PRESIDING

RECORDER'S MEMORANDUM:
This instrument is of poor quality and not satisfactory for photographic recordation; and/or alterations were present at the time of filming.

ORDER FOR DISCOVERY AND INSPECTION, Page 1

V1230 P0394

*Here the judge granted my P
Motion, yet it was still with held.
That is a violation Brady v. Maryland*

THE STATE OF TEXAS	:	IN THE DISTRICT COURT OF
	:	
vs.	:	HARRIS COUNTY, T E X A S
	:	
CHARLES DOUGLAS RABY	:	248TH JUDICIAL DISTRICT

MOTION FOR DISCOVERY AND INSPECTION
OF ALLEGED DEADLY WEAPON

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, CHARLES DOUGLAS RABY, Defendant, and files this Motion for Discovery and Inspection of Alleged Deadly Weapon, and in support thereof would show the following:

I.

The Defendant stands charged by indictment with the offense of capital murder.

II.

Counsel for the Defendant seeks permission to be allowed to inspect and subject to analysis the alleged deadly weapon.

III.

Without the requested inspection of the alleged deadly weapon, defense counsel will not be able to provide the Defendant with the effective assistance of counsel as

MOTION FOR DISCOVERY AND
INSPECTION OF ALLEGED DEADLY WEAPON, Page 1

DW/958

guaranteed under the Sixth and Fourteenth Amendments of the United States Constitution and Article I, Section 10 of the Constitution of the State of Texas, in order to develop and prepare a defense to the allegations herein.

WHEREFORE, PREMISES CONSIDERED, Defendant requests that this Motion be granted and that Defendant's counsel have permission to inspect and subject to analysis the alleged deadly weapon.

Respectfully submitted,




FELIX CANTU
State Bar No. 03767300
848 Heights Blvd.
Suite 202
Houston, Texas 77007
Telephone: (713)868-0968

FILED
KATHERINE TYRA
District Clerk

APR 11 1994

Time: _____
Harris County, Texas
By:  Deputy



MICHAEL P. FOSHER
State Bar No. 07280300
440 Louisiana Street
Suite 2100
Houston, Texas 77002
Telephone: (713)221-1810

ATTORNEYS FOR DEFENDANT

MOTION FOR DISCOVERY AND
INSPECTION OF ALLEGED DEADLY WEAPON, Page 2

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing instrument has been furnished to counsel for the State by hand-delivery of a copy of same this the 8 day of April, 1994.



FELIX CANTU

MOTION FOR DISCOVERY AND
INSPECTION OF ALLEGED DEADLY WEAPON, Page 3

RB/13/952a

NO. 9407130

THE STATE OF TEXAS . : IN THE DISTRICT COURT OF
vs. : : HARRIS COUNTY, T E X A S
CHARLES DOUGLAS RABY : : 248TH JUDICIAL DISTRICT

ORDER ON DEFENDANT'S
MOTION FOR DISCOVERY AND INSPECTION
OF ALLEGED DEADLY WEAPON

On this the 19 day of MAY 19 1994, 1994, came on to be heard the Defendant's Motion for Discovery and Inspection of Alleged Deadly Weapon, and after due consideration, the Court is of the opinion, and it is hereby ORDERED, that said Motion is:

X GRANTED
_____ DENIED, to which ruling Defendant timely excepts.

SIGNED this the _____ day of MAY 19 1994, 1994.

W. D. Jones
JUDGE PRESIDING

RECORDER'S MEMORANDUM:
This instrument is of poor quality and not satisfactory for photographic recordation; and/or alterations were present at the time of filming.

ORDER ON DEFENDANT'S MOTION FOR DISCOVERY
AND INSPECTION OF ALLEGED DEADLY WEAPON, Page 1

V 1230 P0400

8/15/1978
L

NO. 9407130

THE STATE OF TEXAS : IN THE DISTRICT COURT OF
vs. : HARRIS COUNTY, T E X A S
CHARLES DOUGLAS RABY : 248TH JUDICIAL DISTRICT

DEFENDANT'S MOTION TO PRESENT
WRITTEN QUESTIONS TO JURY PANEL

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, CHARLES DOUGLAS RABY, Defendant in the above cause, by and through Defendant's attorneys, and presents this Motion to Present Written Questions to Jury Panel, and in support thereof respectfully show the Court as follows:

I.


The Defendant stands charged by indictment with the offense of capital murder and will be allowed to conduct individual voir dire on each jury panel member. In order to conduct this individual voir dire in the most complete manner but also to avoid lengthy and repetitious questioning, the Defendant has prepared a list of written questions that Defendant would ask each and every jury panel member. By allowing the panel to fill out these questions prior to their individual examination, the Court could save valuable court time and still provide the Defendant and the State with the information essential to a Defendant in a capital murder case. The questions are attached hereto and made a part of this Motion.

DEFENDANT'S MOTION TO PRESENT
WRITTEN QUESTIONS TO JURY PANEL, Page 1

To deny this information to the Defendant would be to deny Defendant's rights to a fair and impartial jury as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article I, Section 10 of the Texas Constitution.

WHEREFORE, PREMISES CONSIDERED, Defendant prays that this Court allow Defendant to submit the attached written questions to the jury panel prior to their individual voir dire.

Respectfully submitted,



FELIX CANTU
State Bar No. 03767300
848 Heights Blvd.
Suite 202
Houston, Texas 77007
Telephone: (713)868-0968

By:



MICHAEL P. FOSHER
State Bar No. 07280300
440 Louisiana Street
Suite 2100
Houston, Texas 77002
Telephone: (713)221-1810

ATTORNEYS FOR DEFENDANT

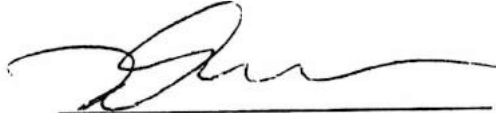
FILED
KATIE
District Clerk

Time: 10:00 AM
Filed: [Signature]
By: [Signature]

DEFENDANT'S MOTION TO PRESENT
WRITTEN QUESTIONS TO JURY PANEL, Page 2

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing instrument has been furnished to counsel for the State by hand-delivery of a copy of same this the 4 day of April, 1994.



FELIX CANTU

DEFENDANT'S MOTION TO PRESENT
WRITTEN QUESTIONS TO JURY PANEL, Page 3

CB/13/1966

NO. 9407130

THE STATE OF TEXAS	:	IN THE DISTRICT COURT OF
	:	
vs.	:	HARRIS COUNTY, T E X A S
	:	
CHARLES DOUGLAS RABY	:	248TH JUDICIAL DISTRICT

**ORDER ON DEFENDANT'S MOTION TO PRESENT
WRITTEN QUESTIONS TO JURY PANEL**

On this ___ day of MAY 19 1994, 199___, came on to be heard the Defendant's Motion to Present Written Questions to Jury Panel, and after due consideration, the Court is of the opinion, and it is hereby ORDERED, that said Motion is:

X GRANTED

_____ DENIED, to which ruling Defendant timely excepts.

SIGNED this the ___ day of MAY 19 1994, 199___.

W. Danson

 JUDGE PRESIDING

RECORDER'S MEMORANDUM:
This instrument is of poor quality and not satisfactory for photographic recordation; and/or alterations were present at the time of filming.

MB

ORDER ON DEFENDANT'S MOTION TO
PRESENT WRITTEN QUESTIONS TO JURY PANEL, Page 1

V 1230 P0385

THE STATE OF TEXAS	:	IN THE DISTRICT COURT OF
	:	
vs.	:	HARRIS COUNTY, TEXAS
	:	
CHARLES DOUGLAS RABY	:	248TH JUDICIAL DISTRICT

MOTION TO COMPEL DISCLOSURE OF EVIDENCE FAVORABLE TO THE DEFENDANT

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, CHARLES DOUGLAS RABY, Defendant in the above-entitled and numbered cause, by and through Defendant's attorneys, and requests that the Court compel the State to disclose any and all evidence favorable to the Defendant including the following:

1. Any and all evidence showing the Defendant's lack of culpability; and
2. Any and all evidence reflecting on the issue of punishment.

WHEREFORE PREMISES CONSIDERED, the Defendant prays and requests that the Court grant Items 1 and 2.

Respectfully submitted,

RECORDER'S MEMORANDUM:
This instrument is of poor quality and not satisfactory for photographic recordation; and/or alterations were present at the time of filming.



FELIX CANTU
State Bar No. 03767300
848 Heights Blvd.
Suite 202
Houston, Texas 77007
Telephone: (713)868-0968

FILED

CLERK OF DISTRICT COURT

HARRIS COUNTY, TEXAS

By: 


RECORDER'S MEMORANDUM:
This instrument is of poor quality and not satisfactory for photographic recordation; and/or alterations were present at the time of filming.

MOTION TO COMPEL DISCLOSURE OF EVIDENCE FAVORABLE TO DEFENDANT, Page 1

14/9/63 PW

V1230 P0363


By:


MICHAEL P. FOSHER
State Bar No. 07280300
440 Louisiana Street
Suite 2100
Houston, Texas 77002
Telephone: (713)221-1810

ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing instrument has been furnished to counsel for the State by hand-delivery of a copy of same this the 8 day of April, 1994.


FELIX CANTU

V 1230 P 0364

MOTION TO COMPEL DISCLOSURE OF EVIDENCE FAVORABLE TO DEFENDANT, Page 2

LB 1/3/979c

NO. 9407130

THE STATE OF TEXAS	:	IN THE DISTRICT COURT OF
	:	
vs.	:	HARRIS COUNTY, T E X A S
	:	
CHARLES DOUGLAS RABY	:	248TH JUDICIAL DISTRICT

**ORDER ON DEFENDANT'S
MOTION TO COMPEL DISCLOSURE OF
EVIDENCE FAVORABLE TO THE DEFENDANT**

On this the ___ day of MAY 19 1994, 199___, came on to be heard the Defendant's Motion to Compel Disclosure of Evidence Favorable to the Defendant, and after due consideration, the Court is of the opinion, and it is hereby ORDERED that:

Item 1 is hereby: X GRANTED
 _____ DENIED, to which ruling Defendant timely excepts.

Item 2 is hereby: X GRANTED
 _____ DENIED, to which ruling Defendant timely excepts.

SIGNED this the ___ day of MAY 19 1994, 199___.

W D [Signature]
JUDGE PRESIDING

**ORDER ON DEFENDANT'S MOTION TO COMPEL
DISCLOSURE OF EVIDENCE FAVORABLE TO DEFENDANT, Page 1**

V 1230 P0365

JB/14/95/ Ym

CAUSE NUMBER 9407130

THE STATE OF TEXAS IN THE 248TH DISTRICT COURT
VS. OF
CHARLES D. RABY HARRIS COUNTY, TEXAS

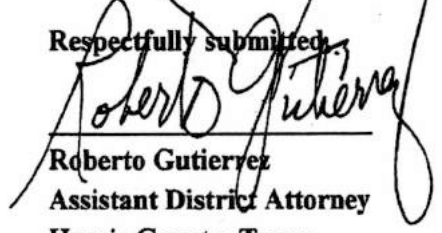
STATE'S MOTION TO HAVE CLERK MAKE ENTRY OF AFFIRMATIVE FINDING OF DEADLY WEAPON

Comes now the State of Texas by and through her undersigned Assistant District Attorney, Roberto Gutierrez, and asks the court to note that the State is alleging in its indictment that the defendant in the above styled and numbered cause used a deadly weapon in the commission of this offense. As such the defendant and his/her attorney have been given notice of the State's intent to seek an affirmative finding of a deadly weapon.

The State respectfully asks the court to instruct the clerk through the signing of the attached order, that in the event that the jury finds the defendant guilty "as alleged in the indictment", or in the alternative, in the event that the defendant is found guilty of a lesser included offense and a special issue is submitted to the jury regarding the use of a deadly weapon by this defendant and the jury returns a finding that the defendant did use and/or exhibit a deadly weapon during the course of the offense, that the clerk is ORDERED to make an entry in the judgment of the above styled and numbered cause that there has been a finding that the defendant did in fact use a deadly weapon.

This request is made in the interest of justice, to ensure that an entry of a deadly weapon be entered in the judgment if such a finding is made by a fact finder, and to avoid the necessity of a judgment nunc pro tunc in the future.

Respectfully submitted,



Roberto Gutierrez
Assistant District Attorney
Harris County, Texas

FILED
KATHERINE TYRA
District Clerk

MAY 16 1994

Time: 9:10 AM
Harris County, Texas

By: [Signature] Deputy

LB/13/956u

CAUSE NUMBER 9407130

THE STATE OF TEXAS . IN THE 248TH DISTRICT COURT
VS. OF
CHARLES D. RABY HARRIS COUNTY, TEXAS

ORDER ON
STATE'S MOTION TO HAVE CLERK MAKE ENTRY OF
AFFIRMATIVE FINDING OF DEADLY WEAPON

Having read the foregoing STATE'S MOTION TO HAVE CLERK MAKE ENTRY OF AFFIRMATIVE FINDING OF DEADLY WEAPON, which is hereto attached and hereby incorporated by reference for all purposes, it is the order of this court that the State's Motion is HEREBY (GRANTED) (DENIED).

Accordingly, it is the ORDER of this Court that, in the event that the fact finder (jurdge or jury) make a finding of "guilty, as alleged in the indictment", or in the alternative, if a the jury finds the defendant guilty of a lesser included offense, a special issue is submitted to a jury on the issue of a deadly weapon, and the jury makes an affirmative finding of such, that the Clerk of this court make an entry in the judgement of the above styled and numbered cause, towit: that the defendant did in fact use a deadly weapon during the commission of the offense for which he has been convicted.

RECORDER'S MEMORANDUM:
This instrument is of poor quality and not satisfactory for photographic recordation; and/or alterations were present at the time of filming.

V 1230 P0395

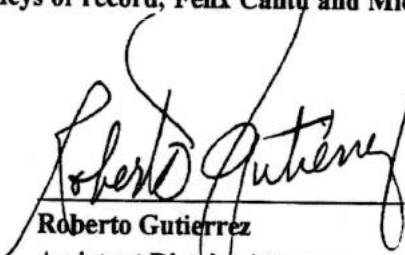
MAY 19 1994

W Densen

**Honorable Woody Densen
Presiding Judge
248th District Court
Harris County, Texas**

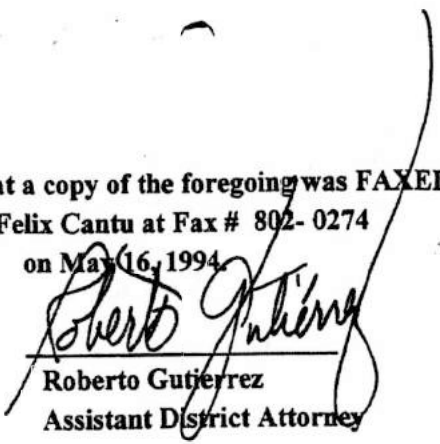
V1230 P0396

I, Roberto Gutierrez, hereby certify that a copy of the foregoing was HAND DELIVERED to the defendant's attorneys of record, Felix Cantu and Michael Fosher on May 16, 1994.



Roberto Gutierrez
Assistant District Attorney

I, Roberto Gutierrez, hereby certify that a copy of the foregoing was FAXED
to the defendant's attorneys of record, Felix Cantu at Fax # 802- 0274
~~and Michael Eosher at Fax # 237-1498~~ on May 16, 1994.


Roberto Gutierrez
Assistant District Attorney