IN THE CIRCUIT COURT FOR BALTIMORE CITY, MARYLAND

STATE OF MARYLAND,

vs. Indictment No. 199103042-46

ADNAN MASUD SYED,

Defendant.

_____/

REPORTER'S OFFICIAL TRANSCRIPT OF PROCEEDINGS
(Trial on the Merits)

Baltimore, Maryland

Wednesday, February 2, 2000

BEFORE:

HONORABLE WANDA KEYES HEARD, ASSOCIATE JUDGE
(and a jury)

APPEARANCES:

For the State:

KEVIN URICK, ESQ.
and
KATHLEEN C. MURPHY, ESQ.

For the Defendant:

M. CRISTINA GUTIERREZ, ESQ.

BRENDA D. TROWBRIDGE
Official Court Reporter
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PROCEEDINGS

(2:10 p.m.)

(Jury not present upon reconvening.)

THE CLERK: All rise. The Circuit Court for Baltimore City, Part 9, resumes in session, the Honorable Wanda Keyes Heard presiding.

THE COURT: Thank you. Please be seated.

Before we bring the jury out, I do have a scheduling issue for one of the jurors. Alternate Juror Number One contacted my chambers. It says, "I never received a response regarding the weekend trip starting Friday, 2/11, through 2/13. This was Juror Number Six, Alternate Number One.

MS. GUTIERREZ: And that would be Friday, a week?

THE COURT: Right, Friday, the 11th, through Sunday, the 13th. I had indicated in the past I would find out what time she wants to leave on Friday, the 11th. Clearly, she returns on Sunday. So that is not a problem for us for Monday. In fact, knowing me, I'm sure I have a docket on Monday, the 14th. So we would start sometime either in the late morning or after lunch. But I would need to find out from her what time. So what I will do is at the time we are approaching that particular time, probably Thursday, the 10th, I'll find out what

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time she is scheduled to leave.

MS. GUTIERREZ: That's fine.

THE COURT: Is there a problem with that, Mr. Urick?

MR. URICK: Well, I just take that note to mean that she would like a quicker response than the day before. It sounds like she may want to make some arrangements.

THE COURT: That is possible. We can ask her to stay at the end of today and find out what time she is scheduled to leave if you don't have a problem with that.

MS. GUTIERREZ: I have a problem with that. I would just suggest that we at least reassure her that, of course, we will work it out. Frankly, I think we might be finished before it becomes an issue.

THE COURT: We might be.

MS. GUTIERREZ: So we won't have to address it.

THE COURT: Sure.

MS. GUTIERREZ: And obviously if we lose no other jurors and we finish and they are deliberating, then she is not an issue either.

THE COURT: Right.

MS. GUTIERREZ: But maybe just reassure her that we will address it and work it out and she will be allowed to go on her trip.

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THE COURT: Also, my concern is that there is a difference in catching a plane somewhere where she has actually reservations versus driving where you might want to leave at 2:00 but you don't get to leave until 6:00.

MS. GUTIERREZ: Right.

THE COURT: Again, that is something that we can work out, but I did want to bring that to your attention since we did get that through our voice mail system. Okay. With that said, are you prepared for your next witness?

MR. URICK: Yes, we are.

THE COURT: Perhaps you could have that witness come in and sit down, because I see you have equipment set up, and then we can bring the jury in.

MR. URICK: Okay.

(Brief pause.)

THE COURT: Just have a seat in the witness box for a second. We are just getting situated since we have some equipment. Ms. Gutierrez, you are welcome to move. I know there has been a seat on the other side of that wall. Is there a chair still sitting in that corner?

MS. GUTIERREZ: No.

THE COURT: No?

MS. GUTIERREZ: No.

THE COURT: All right.

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MS. GUTIERREZ: I think they had moved it up here.

THE COURT: We may have. Well, you are welcome to move those chairs back so that you can view the screen.

MS. GUTIERREZ: Fine, Judge.

THE COURT: Okay. Thank you. Let's go off the record.

(Whereupon, discussion was had off the record.)

THE COURT: All right. We can go back on the record. Will you bring our jury in, please.

THE CLERK: Yes, Your Honor.

(Brief pause.)

(The jury returned to the courtroom.)

THE COURT: Please be seated. Ladies and gentlemen, welcome back to Part 9. We are going to proceed with this case. What we are going to do is ask that Mr. Urick formally call the case just because we are back on the record and the stenographer can note it, and then your first witness' name.

MR. URICK: Good afternoon, Your Honor. Calling the State of Maryland versus Adnan Syed, Case Numbers 199103042 through 46. Kevin Urick and Kathleen Murphy for the State.

MS. GUTIERREZ: Good afternoon, Your Honor.

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Cristina Gutierrez on behalf of Mr. Syed.

THE COURT: Good afternoon. And your next witness?

MR. URICK: The State at this time would call Theresa Long to the stand.

THE COURT: Ms. Long, I need you to stand up, please, raise your right hand, and listen to Mr. White as he provides for you the oath.

THERESA MARIE LONG

a witness produced on call of the State, having first been duly sworn according to law, was examined and testified as follows:

THE CLERK: You may be seated. Please keep your voice up and state your name and your assignment for the record?

THE WITNESS: My name is Theresa Marie Long, L-O-N-G. I'm a Forensic Chemist with the Maryland State Police Crime Laboratory.

THE CLERK: Thank you.

MR. URICK: Good afternoon, Ms. Long.

THE WITNESS: Good afternoon.

DIRECT EXAMINATION

BY MR. URICK:

Q How long have you been employed by the Maryland State Crime Laboratory?

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A It will be nineteen years this March.

Q And what is your current job position there?

A Currently I'm a Forensic Chemist Manager of the Biology Section.

Q And what are your job duties in that position?

A Generally speaking, my job duties are to oversee the everyday operations of the different units of that section. Those units are that of Serology. Serology is the study of blood and other body fluids. That's the unit in which the gross evidence is screened and the presence of stains are detected. I oversee the operations of the DNA typing units. We are currently running two different types of DNA testing. And I oversee the DNA database of convicted offenders.

MR. URICK: Would the defense be willing to stipulate to this witness' expertise and training in the area --

MS. GUTIERREZ: We were always willing to so stipulate.

THE COURT: Very well. And the expertise will be as?

MR. URICK: In the field of Forensic DNA Profiling.

THE COURT: Let her be accepted then as an expert in the area of Forensic DNA Profiling. Is it

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typing or profiling?

MR. URICK: Profiling. That's the correct term?

THE WITNESS: That would be correct.

THE COURT: All right. Very well. You may proceed.

BY MR. URICK:

Q What is DNA?

A DNA is an abbreviation for the word deoxyribonucleic acid. This is a molecule that is found in the center of every cell of your body. The DNA is contained within your chromosomes. You get fifty percent of your DNA from mom in the egg cell, and fifty percent of your DNA from dad in the sperm cell.

Q And where can DNA be found in humans?

A As I stated earlier, it is in the center of all of your cells and it's packaged within your chromosomes.

Q Is it a generally accepted fact that everyone, other than identical siblings, will have a different DNA?

A Yes, it is.

Q If you can explain briefly, what is Forensic DNA Profiling?

A Ninety-nine percent of human DNA is the same. That is why everyone has two eyes, one nose, one mouth. There is one percent of DNA that differs between

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individuals. What we want to do in forensics is actually look at that one percent of DNA that differs between individuals. We have a chemical way of removing the DNA from the cell and determining what we have obtained. What we do is we obtain a pattern or a profile from the question evidence and we compare that to known standards that we have obtained in that case.

What we are looking to do in general is to make a conclusion, could the DNA from the question stains or the evidence come from this donor or come from that donor? Can I include someone as being the donor or can I exclude someone from being the donor of that DNA?

Q Is this a new technology?

A No, it is not.

Q Okay. If you could, explain what RFLP analysis is, and answer that question whether other fields use it as well?

A RFLP, again, is an abbreviation for restriction fragment length polymorphism. Restriction means to cut. Fragment length is what we are looking at. Polymorphism means that different forms exist in the population. With RFLP, that one percent of DNA that differs between individuals is actually the fact that the DNA has repeated sections. And how individuals differ is the number of repeats. I may have ten repeat units. Someone

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else may have 100. Someone else may have 200. So we restrict or we go in and we cut out these repeated units. Then we are able to separate them out according to size. We place them in a jell and we hook the jell to electric current, and the jell is able to push these fragments out and separate them. The smaller fragments can move faster through the jell than the larger ones.

The ending result from that is a DNA profile that sort of looks like a UPC code in the grocery store. From that, we compare these patterns. Again, we are seeing whether or not the known standard for one person is matching the question evidence.

Other fields use this technology. In medical fields, it's to diagnose diseases. In zoos, they want to test animals to see whether or not they are related before they breed them together, so that they generate a viable stock of new animal. It's also used in paternity testing and several other clinical aspects.

Q What other types of laboratories use RFLP analysis?

A Again, medical, clinical, zoology. I previously worked at the Armed Forces Institute of Pathology, and they used a different type of DNA testing, but, yet, it was DNA testing, to identify the war remains from the Vietnam war.

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Q Have you successfully completed any proficiency tests at the Maryland State Police?

A We are required by the national standards and also by Maryland legislation to perform two DNA tests every year.

Q And if you would, explain what T-W-G-D-A-M is, and answer whether or not the Maryland State Police Crime Laboratory DNA unit adheres to its guidelines?

A That abbreviation has been called Twgdam, or the Technical Working Group on DNA Analysis Methods. I am currently a member of that group. What that is, is an organization. When DNA was new, members from different labs in this country and Canada and England got together to write guidelines for how forensic labs should run DNA testing, to develop protocols, and to oversee audit procedures.

So this working group has a set of guidelines for how to validate new technologies, how to run new technologies, what types of training your personnel should receive, and what types of operations you should have in a forensic lab. And, yes, we currently follow those guidelines, and we are audited yearly to ensure that we do that.

Q Did there come a time when you and your laboratory were requested to conduct DNA profiling

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testing in the investigation of Adnan Syed?

A Yes.

Q Can you tell the court what samples were submitted for your analysis?

A There was a blood sample from Hae Min Lee, a blood sample from Adnan Syed, a blood sample from Jay Wilds, and a blood sample from a shirt.

Q And who submitted that evidence to you?

A That was brought into the Maryland State Police Crime Laboratory by a representative from the Baltimore City Crime Laboratory.

Q And when was that evidence submitted for analysis?

A It was submitted on September 24th, 1999.

MR. URICK: If I may approach the witness at this time.

THE COURT: Yes, you may.

BY MR. URICK:

Q Now, at this time I'm going to show you what is already in as evidence as State's Exhibit 28 and ask you if you can identify that?

A Yes, I can.

Q And what is that?

A This is our Form 67 which is a chain-of-custody form for the Maryland State Police. It has a list of the

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items that I just stated on it.

Q And is that the form that was used to submit the samples in this case?

A It is a copy of that form, yes.

Q Can you explain the procedures that are used by your laboratory to conduct your testing? In short, can you explain DNA and the testing performed? You might use the overhead, if you need to, at this time.

A I stated briefly earlier a few of the steps but I will go through it again. We obtain evidence. We will take a small cutting of that evidence. We will place it in a tube and we add chemicals to that. What will happen then is that the cells will be broken open and the DNA will be exposed. We will then do a test to see if the DNA is in good quality. What I mean by that is, because we want to cut out fragments of interest of that DNA, we want to make sure the DNA hasn't already broken down by exposure to sunlight or chemicals or radiation. So if the DNA is still in a nice long strand, we will continue on with the test. What we do then is we use biological scissors or restriction enzymes and we go in and we cut out those repeated units, those fragments that we are interesed in. Then we take those fragments and we place them on a jell and we separate them out using a current, electrical field, and we will take that jell and transfer

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that information onto a membrane, which is like a piece of paper, and it just makes a permanent record. We then take a probe, which is a piece of DNA of interest that has been tagged with a chemoluminescence tag. Chemoluminescence is a light energy. It's similar to that found in fireflys that causes the light from the fireflys. It will tag those fragments of interest. We then take that membrane and we sandwich it in between two pieces of X-ray film. That light energy will form bands on the X-ray film where those fragments of interest are. Then we use that final X-ray film as a way of doing our comparison. That final film is called a lumigraph. I can show you some of those.

MR. URICK: May the witness use the audiovisual equipment?

THE COURT: Yes.

(Brief pause.)

THE COURT: Ladies and gentlemen, if you cannot see the overhead, please raise your hand.

MR. URICK: It might be easier, Ms. Long, if you came around on this side of the table.

THE WITNESS: Sure.

THE COURT: There is a light switch.

MS. MURPHY: Your Honor, may we use the laser again?

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THE COURT: Yes, you may.

SHERIFF: Judge, do you need the light switch turned off?

THE COURT: Yes, the light switch is back here (indicating).

SHERIFF: Okay. (Indicating.)

THE COURT: Thank you. That will work.

THE WITNESS: What I have put up here is a lumigraph from this particular case. It has the case numbers on it. It also has what I haven't mentioned to you before, is we are looking at six different locations, six different chromosomes, in order to try to individualize these stains. So this particular lumigraph is for D10S28. The "D" stands for DNA. The "10" stands for chromosome number ten, and then section 28.

In this particular lumigraph, you can see four lanes -- it probably would be easier for me just to point -- four lanes that have what looks like a ruler or ladder on those. We use those to help us measure how long those fragments are. In these ladder lanes are bands of known sizes. I know, you know, that this size, for example, could be 2,000, and this size could be 1,000, and the computer can help tell me that this one is, you know, 1,800 base pairs long.

What we have on here also for an AC and MS,

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those are two controls that we run within our laboratory. Those pieces of DNA must generate a certain banding pattern with bands in a certain location in order for this jell or these results to be valid. In this particular case, all the controls worked properly. You can see here that you have a banding pattern for the victim. There is a band right here (indicating) and a second band here (indicating). There is one for suspect Syed, which has two bands right here, one right here (indicating) and one here (indicating). Then there is one for suspect Wilds, a band here (indicating) and a band here (indicating). Then if you go across here, this is the shirt, 4Q2/23, and you can see that this banding pattern has bands in a similar location as that to the victim. It's not similar to either one of the suspects and, therefore, those two people are excluded as being a possible donor of that DNA.

We go on to computer size these to actually determine what the lengths of these are according to the rulers, and the computer sizing also indicates that the shirt matches the blood standard from the victim. That's for chromosome number ten.

Now, I'll just show you a couple other ones. This one is chromosome number one, section number seven. Again, the controls worked properly. You can see the

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victim's banding pattern, a band here (indicating) and one here (indicating). Here is one suspect (indicating) and here is the other suspect (indicating). They are excluded from the shirt's banding pattern. Again, these bands are lining up in similar locations. The victim cannot be excluded as being a donor of that stain.

For chromosome number four, again, all the controls worked properly. Here is the victim's banding pattern, these two bands here (indicating). You can see it matches the shirt here (indicating). It does not match either one of the suspects. The suspects are excluded. The victim is still included.

And then we have three more of these for three other chromosomes where, again, it matched the victim's blood standard.

BY MR. URICK:

Q And based on all six analyses, were you able to reach a conclusion?

A Yes, I was.

Q And what was that conclusion?

A That the victim cannot be excluded as being a possible donor of the blood from the shirt.

Q And have you explained the basis for that conclusion through showing those lumigraphs?

A Yes, I have.

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Q And can you tell the court whether you reached a conclusion concerning the frequency of this DNA profile occurring in the population?

A Yes, I did.

Q What is that frequency?

A I would need to refer to the report again.

Q Okay.

A Thank you. The chance of finding or the probability of selecting an unrelated individual at random from a caucasion population having a DNA profile that matches that on the shirt would be one in 1.7 billion, with a "B", and for an African-American it would be one in 4.1 billion, with a "B".

Q Are all the procedures that you just described generally accepted in the scientific community?

A Yes, they are.

Q If any of the steps in this analyses had not worked properly, what result would have been obtained?

A There are generally two results that are obtained when something is not working properly. It is a no result or we get no banding pattern or an inconclusive one where it smears so much that you can see some smearing occurring in the victim's blood standard but not to the point that there wasn't a band there. We will get a smearing where we will have to call that result

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inconclusive.

Q Is this case work and the conclusions drawn from it subject to peer review?

A Yes, they are.

Q How does that process work?

A In our standard procedures at the Maryland State Police Crime Laboratory, it is required that a second qualified analyst go through the whole case folder, all the procedures, all the notes and the report, and must agree to that conclusion also.

Q Again, to a reasonable degree of scientific certainty, what are your opinions concerning the conclusions of this case?

A That the blood stain from the shirt, the victim cannot be excluded as being a donor for that blood stain, and that Adnan Syed and Jay Wilds can be excluded as possible donors of that blood stain.

MR. URICK: Thank you. Witness with the defense.

CROSS-EXAMINATION

BY MS. GUTIERREZ:

Q Ms. Long, you didn't perform this analysis, did you?

A No, I did not.

Q And you were not the second qualified analyst?

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A Yes, I was.

Q Okay. So you looked over these results after the person who performed them got them, right?

A That's correct.

Q All right. Now, in layman's terms, when you say can't be excluded, that's not the same as saying that is the blood of that person; is it?

A No, it is not. We give a probability if it's a chance of being someone else.

Q And that's that one point whatever?

A That's correct.

Q One point some billion?

A Billion, in the billions.

Q All right. Now, you gave those probabilities as to a caucasion population, correct?

A Correct.

Q And that probability for the caucasion population is different than the probability for an African-American, correct?

A Yes.

Q Were you aware that the victim in this case was an Asian?

A I am aware now, yes.

Q But you weren't at the time this was done?

A I did not generate this report.

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Q You just reviewed it?

A It is standard Maryland State Police Crime Laboratory procedures to give statistics on these two racial groups because they are the highest racial groups in the State of Maryland, and what we are reporting is not a chance of finding it for that person that we are matching it to, it's what is the chance of finding it in someone else.

Q Okay. And you were aware or you have become aware that one of the so-called suspects was also an Asian?

A That's correct.

Q And you are aware that an Asian is a different racial classification than either a caucasion or an African-American?

A That's true.

Q Now, your records indicate that the blood samples of the four that you mentioned, the blood sample of the victim, of Adnan Syed, of Jay Wilds, and the retrieved blood sample from the shirt, were all submitted to your lab on September 24th?

A That's correct.

Q September 24th, 1999?

A Yes.

Q This fall?

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A Yes.

Q Were you aware that the victim's blood sample was collected back in February on February 10th, 1999?

A No, I was not aware of that.

Q And were you aware that the defendant's blood was collected on March 21st, 1999?

A No, I had no knowledge.

Q Or that Jay Wilds blood was collected sometime in later March, 1999?

A No, I did not know.

Q Or that the blood sample that is identified as coming from the shirt, that that shirt was collected by the police on February 28th, 1999?

A I believe that that may have been stated in our cover letter. I would have to refer back to that.

Q Okay. Now, when those blood samples were gotten really wouldn't impact on what your lab did, correct?

A No, that does not have an effect.

Q But your lab is capable of conducting the analysis that you describe at anytime that samples are submitted to it by a police agency; are you not?

A As long as they are of suitable quality and quantity, yes.

Q And these blood samples were of suitable

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quantity and quality, correct?

A Yes, that's correct.

Q And if they had been submitted to you at the time that they had been collected or sooner thereto, your lab would have been able to conduct the same kind of analysis?

A Yes.

Q Now, the blood that is identified as coming from a shirt, were you given that shirt?

A No.

Q You were only given a sample of blood that had been collected by someone from the Baltimore City Crime Lab, correct?

A That's correct. They have their own screening unit.

Q Okay. And there is nothing abnormal about that, correct?

A No, it is not.

Q All right. And you were not submitted a sample from anywhere else that was identified as something other than blood?

A No, these were the four samples in total that we received.

Q All right. Were you ever made aware that there was another suspected stain on the very same shirt that

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at least was suspected of being biological fluid from the victim though perhaps not blood?

A Now, let me refer to my notes.

Q Yes.

(Brief pause.)

A It states in the notes that what was received labeled as blood samples from shirt were actually three cuttings, two of which were used to perform the DNA testing and one we saved in case additional testing was needed.

Q Okay. So the only thing that was submitted to you was that which some other analyst had already determined to be blood?

A Correct.

Q And when you got that blood, you, of course, also confirmed that, in fact, it was blood; did you not?

A No, I did not.

Q Are you secure that your testing would reveal if, in fact, it wasn't blood?

A It is not my purpose to determine that. My purpose is to determine that human DNA is there.

Q Okay.

A It could be from blood or something else.

Q And you determined that, correct?

A Yes.

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Q But there was no sample ever submitted to you that was indicated to be some other bodily fluid from this victim?

A No. As I stated before, we received these four samples only.

Q Okay. And your lab is, of course, capable of conducting DNA analysis on biological evidence other than blood; is it not?

A That's correct.

Q It is capable of conducting the same kind of analysis, say, on something suspected to be another bodily fluid such as semen?

A Yes.

Q Or mucous from the body?

A As long as there are cells there.

Q And you would expect there to be cells in a quantity of mucous that is expelled from the body; would you not?

A You would expect it if it was in good quality and quantity, yes.

Q And good condition?

A Yes.

Q And if it was put on the same source, i.e. the shirt from which the blood was extracted, at the same time, you would expect it to be in good condition; would

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you not?

A I really can't state that. Different areas of an item could have different contaminants on there or whatnot.

Q Okay.

A So I really can't say that for sure.

Q But in any event, no other biological sample of any fluid of any kind was ever submitted to you to identify in any way?

A No, just the four previously stated items.

Q Now, Ms. Long, you said the fundamental question that you start out with is could the DNA in this evidence, relating to the evidence that was submitted to you that came from the shirt, come from any of the samples that were also submitted to you, correct?

A Correct.

Q And to answer that question in regard to Adnan Syed, after you conducted your testing, your answer is an unequivocal no; is it not?

A That's correct, he is excluded.

Q Meaning the blood that was identified and tested as coming from a shirt could not have come from Adnan?

A That is correct.

Q All right. And you also answered that question

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absolutely in the negative in regard to Jay Wilds; is that correct?

A That's correct.

Q And although you phrase your answer differently saying that the victim could not be excluded, given the probabilities that you have expressed, it is likely, is it not, that the blood on that shirt came from the victim identified to you by blood?

A Yes, it's highly likely.

MS. GUTIERREZ: Okay. All right. I have nothing further.

THE COURT: Anything further from the State?

MR. URICK: Extremely briefly.

REDIRECT EXAMINATION

BY MR. URICK:

Q Do your signatures appear on the reports as one of the original signatories of the report?

A My initials appear on each page.

Q And you stated that there was a sufficient sample left of the stain such that if any independent test had been requested, it could have been done?

A Yes, that's correct.

Q And how many analyses a year does your laboratory perform?

A We receive about 600 cases a year. Depending

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on the items, I believe we did about ninety RFLP cases last year.

Q And what criteria do you use in terms of determining priority for performing these tests?

A Priority is given to the severity of the test, whether the case is a homicide, sexual assault, child abuse case, whether or not it has a court date. We try to ensure that every case is done in time for the court date.

(Brief pause.)

MR. URICK: No further questions.

THE COURT: Recross.

RECROSS-EXAMINATION

BY MS. GUTIERREZ:

Q Ms. Long, you were aware that the very first time that you were asked to look at any evidence from this case to make any kind of identification was on September 24th, 1999, correct?

A That's correct.

Q Prior to that date, no evidence was submitted to you; was it?

A That's correct.

Q And nobody asked your lab to conduct any type of analysis; is that correct?

A We had not received the case by then, no.

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Q Okay. And were you aware that when you received the case on 9/24 that the very first trial date in this case involving Adnan Syed was just about a week away? Were you aware of that?

A Yes, I was aware of that.

Q All right. And when did you complete the tests that you initialed?

A This case was completed and signed back into the evidence vault on November 15th.

Q November 15th. And were you aware that that date was months beyond the first trial date in the Adnan Syed case?

A According to my notes, it was one month beyond.

MS. GUTIERREZ: Thank you.

RE-REDIRECT EXAMINATION

BY MR. URICK:

Q And do the notes reflect that Melissa Stangroom had completed the initial results before the prior trial date and was prepared to testify orally without a written report at the first trial date?

MS. GUTIERREZ: Objection.

THE COURT: Sustained. Where are we going with this? I mean, at this point, you know, are there any further questions, Mr. Urick?

MR. URICK: No.

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THE COURT: Ms. Gutierrez?

MS. GUTIERREZ: No, Your Honor.

THE COURT: May this witness be excused?

MR. URICK: Yes, Your Honor.

MS. GUTIERREZ: Yes.

THE COURT: May she be released from the subpoenas?

MS. GUTIERREZ: Yes.

THE COURT: Mr. Urick?

MR. URICK: Yes.

THE COURT: Very well. Thank you very much.

THE WITNESS: Thank you, Your Honor.

THE COURT: You are released from your subpoena at this time but I must remind you that you are still technically a sequestered witness, which means that you cannot discuss your testimony with anyone who is yet to be a witness in this case. You may, if you would like, remain in the courtroom and observe the trial in that you are now released from your subpoenas, or you are free to go.

THE WITNESS: I need to go.

THE COURT: Very well.

THE WITNESS: Thank you.

MR. URICK: Might the court be willing to take about a five or ten minute recess at this time while we

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take down the audio-visual equipment and get the next witness?

THE COURT: You certainly may do that. While you are doing that -- well, is it going to take a little while, do you think?

MR. URICK: We also want to check on the witness and make sure that she is here from the Medical Examiner's office.

THE COURT: All right. Why don't we then let the jury take a walk, and not a long walk. I am just going to ask Deputy Sheriff Church just to walk you around to the jury room, and you can stretch your legs and use the facilities, but he is going to bring you right back. When I say a short recess, Mr. Urick, I mean a short recess. Okay?

MR. URICK: Yes.

THE COURT: Okay. You can leave your note pads face down. As I have told you, until the end of this case, do not discuss the testimony. We are going to bring you right back. I am not leaving the bench, but my staff, the stenographer and the courtroom clerk, if you would also like to stretch your legs, you are welcome to do so, and counsel as well. Mr. Church, thank you very much.

(The jury was excused from the courtroom.)

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THE COURT: Well, actually I am going to leave the bench for a moment. Mr. White.

THE CLERK: All rise. This court will take a brief recess at this time.

(Brief recess.)

-o0o-

(Jury not present upon reconvening.)

THE CLERK: All rise. This court now resumes in session.

THE COURT: Please be seated. Are we ready to proceed with the next witness?

MS. MURPHY: Yes, Your Honor.

THE COURT: Oh, I see we are. Very well. Have a seat. Mr. Church is going to bring the jury back.

(Brief pause.)

(The jury returned to the courtroom.)

THE COURT: Please be seated. Okay. Your next witness.

MS. MURPHY: Thank you, Your Honor. At this time, the State calls Doctor Korell.

THE COURT: Doctor Korell, please stand, raise your right hand, and listen to Mr. White as he provides the oath.

MARGARITA KORELL

a witness produced on call of the State, having first

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been duly sworn according to law, was examined and testified as follows:

THE CLERK: You may be seated.

THE WITNESS: Thank you.

THE CLERK: You're welcome. Please keep your voice up and state your name for the record?

THE WITNESS: I'm Doctor Margarita Korell, K-O-R-E-L-L.

THE CLERK: And state your business address for the record?

THE WITNESS: 111 Penn Street, P-E-N-N, Baltimore, Maryland, 21201.

THE CLERK: Thank you.

THE COURT: You may proceed.

MS. MURPHY: Thank you, Your Honor. Good afternoon, Doctor Korell.

THE WITNESS: Good afternoon.

DIRECT EXAMINATION

BY MS. MURPHY:

Q Could you please state your title for the ladies and gentlemen of the jury?

A I'm an Assistant Medical Examiner at the Office of the Chief Medical Examiner in Baltimore.

Q What are the duties of the Office of the Chief Medical Examiner?

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A The duties are to determine the cause of death in people who have died suddenly, unexpectedly, violently, like in homicides, suicides, accidents, or in cases in which somebody dies while not under the care of a physician. That means an unattended death.

Q What are your duties as an Assistant Medical Examiner?

A My duties are to determine the cause of death in homicides, suicides, accidents and unattended deaths.

Q And your work includes the performance of autopsies?

A Yes, ma'am.

Q How long have you been practicing in this field?

A As an Assistant Medical Examiner, since October of '78. Before that, I was three years an Associate Pathologist -- that's a training type job -- at the same office. Before that, I was an Associate Pathologist also at the Coroner's Office in Pittsburgh, Pennsylvania. Then I have been doing forensic pathology all that time. Then before that, I did training in anatomical and clinical pathology -- that's hospital type pathology -- at Fordham and Collier (phonetic) Hospitals in the Bronx, New York.

Q What type of education do you have to be an

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Assistant Medical Examiner?

A Well, I'm a physician, and I became a physician at the University of Buenos Aires, Argentina. Then I did a rotating internship at Fordham Hospital in the Bronx, New York. Rotating means going through the several specialties available at that hospital. Then I did my forensic pathology in Pittsburgh, Baltimore and then as an Assistant Medical Examiner since October of '78. And I'm licensed to practice medicine in this State.

Q During your career in the Office of the Chief Medical Examiner, how many autopsies, if you can approximate, have you performed?

A By now, thousands.

Q Can you explain what the term forensic pathology means?

A Well, forensic pathology is a sub-specialty of pathology that essentially deals in determining the cause of death in homicides, suicides, accidents, sudden deaths and unattended deaths. And this is done by doing an external examination of the body to determine the general appearance of the body, any injuries, and then through an internal examination we know as as an autopsy, we determine the extent of the injuries or extent of any diseases that may be present at that moment. We also take body fluids, blood, bile and/or urine, if available, for toxicological

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tests. If there is any evidence still in the body, we will retrieve that. Evidence would be in a gunshot wound the bullet still in the body.

Then we will summarize it in an autopsy report, and we write out a death certificate with the cause and manner of death.

Q Thank you, Dr. Korell. During your years of experience with the Office of the Chief Medical Examiner, have you had occasion to observe many cases in which the cause of death was strangulation?

A Yes.

MS. MURPHY: Your Honor, at this time, I would inquire as to whether the defense will stipulate to Dr. Korell's testimony as an expert in pathology.

MS. GUTIERREZ: We would certainly stipulate to Dr. Korell's expertise.

THE COURT: Very well. And the expertise is as an expert in forensic pathology. Is that correct?

MS. MURPHY: That's correct, Your Honor.

THE COURT: Very well. Let her be accepted as an expert in forensic pathology.

MS. MURPHY: Thank you, Your Honor, and thank you, Counsel.

BY MS. MURPHY:

Q Dr. Korell, did you have occasion to perform an

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autopsy on a M's Hae Min Lee on February 10th, 1999?

A Yes. Yes.

Q And where did that occur?

A At the Medical Examiner's Office in Baltimore, 111 Penn Street.

MS. MURPHY: May I approach the witness, Your Honor?

THE COURT: Yes, you may.

MS. MURPHY: Thank you.

BY MS. MURPHY:

Q Dr. Korell, I'm showing you what's been pre-marked as State's Exhibit 3, and also what's in evidence as State's Exhibit 3-A. Can you please review these documents and tell us if you recognize them?

A (Pause while witness reviewed documents). Yes. This is the notarized copy of the autopsy on M's Hae Min Lee. Our Case Number was 99759-510 with attached photos.

Q Does that document fairly and accurately depict your findings in that autopsy?

A Yes.

MS. MURPHY: Your Honor, I would ask that State's Exhibit 3 be admitted into evidence at this time.

THE COURT: Any objection?

MS. GUTIERREZ: None.

THE COURT: Let it be admitted.

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MS. MURPHY: Thank you, Your Honor.

(State's Exhibit Number 3, autopsy protocol, marked and received in evidence).

BY MS. MURPHY:

Q And, Doctor, do you have a copy of this with you?

A Yes. That's the original.

Q Dr. Korell, where was this autopsy performed?

A In the Autopsy Room at the Medical Examiner's Office.

Q And based on your findings, to a reasonable degree of medical certainty, have you formed an expert opinion concerning the death of M's Lee?

A Yes.

Q Can you please explain?

A Well, the cause of death was strangulation.

Q Okay. And the manner of death?

A Homicide.

Q Can you explain the basis for your finding?

A Well, the signs of strangulation consisted in petechial hemorrhages in the eyes, petechial hemorrhages of tiny, minute areas of bleeding, smaller than pinpoint, or pinpoint size. They were located in the conjunctiva of the eyelids, the lining of the eyelids on the left side of the left eye, and on the surfaces of the eyeballs on both eyes. Now, on the surfaces of the eyeballs the bleeding was

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larger than petechial, and there were hemorrhages there.

Then on the neck, she had a bruise on the right side of the neck, and on dissection of the neck -- now, dissection of the neck means going, doing an incision on the upper part of the chest reflecting the skin and muscles up to the chin, and then examining each and every muscle and blood vessel in the neck. These are called the strap muscles. Some of them you can feel them on the neck, and then examining them. The voice box, and the hyoid bone, which is a bone in the shape of a small horseshoe that is part of the back of the tongue. That's what the tongue is attached to.

Now, on dissection of the neck, we found hemorrhages. That means bleeding on the upper aspects or segments of the strap muscles of the neck, which are the muscles that go from the jaw to the sternum, and to the clavicle, and into the trachea, and the ones that were affected were the sterno hyoid and sterno thyroid muscles. Sterno means the breast bone. Hyoid is the hyoid bone. Sterno thyroid, that's the muscle that goes from the breast bone to the thyroid cartilage. That's the Adam's Apple in the male.

Then on looking at the hyoid bone, which is in the shape of a horseshoe, this little horseshoe has a middle portion that's the body, and then two little horns,

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one on the right and one on the left, and at the junction of the left horn with the body, it was dislocated with an area of hemorrhage, that means bleeding, into the surrounding tissue.

These are all indications of pressure applied to the skin and on the neck with bleeding. That's not normal to have bleeding in the strap muscles of the neck, plus this location in the hyoid bone with bleeding on it.

Q So, the hyoid bone that you've described, Doctor, is it fair to say that that bone was actually broken?

A Yes.

Q Dr. Korell, are you able to pinpoint in this case a specific time of death?

A No.

Q Are your observations consistent in this case with the victim being murdered and buried on January 13th of that year?

A Well, I did the autopsy, that was February 10th. Yes. Yes, I don't see anything inconsistent of having occurred around that time, yes.

Q What observations did you make in this case that would be consistent with the victim having been dead for several weeks?

A First of all, she had fixed livor. That means -- l-i-v-o-r, is the settling of the blood after somebody

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dies, and it settles on the part in which the person lies on the longest. It's bluish discoloration, and it's due to the settling of the blood in the blood vessels after a certain amount of time, that varies. The blood vessels break, and you have blood in the surrounding tissues.

So, you have livor mortis, m-o-r-t-i-s. The first couple of hours it's unfixed because the blood is still in the blood vessels, and when you apply pressure on the skin, the area where you apply the pressure blanches. Now, several hours later it starts, no matter how much pressure you apply, the area stays blue-grey in color.

Then there was also decomposition by, you know evidence of decomposition on the body in the form of skin slippage and losing of skin. The body was cold. The rigor mortis was easily broken in this case. Rigor mortis is the stiffness that occurs after death. Easily broken means that at the first couple of hours the body is flaccid. After a few more hours they start, the joints start getting, begin to become stiff. Then after a certain amount of hours, the stiffness disappears also. But there was evidence of decomposition, and so --

Q Thank you, Doctor.

A But I cannot approximate the time of death, no.

Q Based on your experience, how long approximately would it take for someone to die of strangulation?

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A Well, it depends on how long the pressure is applied. Now, if somebody applies pressure on the neck for ten seconds or so, and then the person becomes unconscious, then unconsciousness leads into death a couple of minutes later.

Now, if I may say, somebody dies of strangulation because of the pressure applied to the blood vessels of the neck, not really applying pressure on the voice box or on the trachea, just the pressure applied to the arteries that you can feel here in the neck and the adjacent vein, together or separate, that's what kills a person.

Q Is it fair to say, Doctor, then that ten to fifteen seconds would suffice to bring about the death of a person by strangulation?

A Ten seconds would be unconsciousness. Then it takes several more seconds to continue unconsciousness, and then into death.

Q Do you have an opinion, Dr. Korell, as to whether strangulation in this case occurred manually, by hand, or by some other means?

A I don't have any indication that a cord or any other implement was used. There is only a bruise on the front of the neck. It doesn't have any particular shape or anything like that. So, in my opinion, it's manual strangulation.

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Q Dr. Korell, in your findings in this case, did you observe any cuts, lacerations, any other visible signs of bleeding on the victim's body?

A No. I only saw something under the skin on the head.

Q Okay. We'll get to that in a moment. Can you define the term pulmonary edema, please?

A Pulmonary edema is non-specific, but it's fluid that accumulates in the lungs essentially, and it's made out of watery fluids mixed with red cells.

Q Is this fluid, does this fluid escape the body at or around the time of death?

A It may, yes.

Q And how would it do so?

A Well, it would come up, sort of bubbling up through the trachea -- that's the windpipe -- through the voice box, and then into the mouth.

Q Is it possible, Dr. Korell, in a case of strangulation that this bloody fluid would come from the mouth or nose?

A Then you also, with the pressure applied to the neck, the same way you get petechial hemorrhages in the eyes due to the lack of oxygen, other little blood vessels break in the nose and on the mouth, and you may get fluid, bloody fluid coming from there also.

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Q Now, does this occur -- when did this occur in relation to the time of death? Is it something that happens right away or much later? Do you have an opinion as to that?

A Well, it should happen almost right away, you know.

Q Now, you mentioned bruises, Dr. Korell, on M's Lee's head and neck.

A Yes.

Q Can you describe those for the jury, please?

A Yes. The one on the head was in the part of the head that we call the subgaleal. Subgaleal hemorrhages or bleeding is bleeding right on the surfaces of the skull bone, and that was in the right occipital area. Occipital is in the back of the head, and right temporalis muscle hemorrhage.

Now, on the right temple, and on the left temple, underneath the skin, we have a muscle called the temporalis muscle, and there was bleeding in that area. This was all under the skin.

Q And this bruising you've described was on the right side of the victim's head?

A Yes. Yes.

Q This type of bruising, does it occur when the heart is pumping or not?

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A Oh, yes. To become a contusion, a contusion is a bruise, the heart has to be pumping, yes.

MS. MURPHY: May I approach the witness, Your Honor?

THE COURT: Yes, you may.

BY MS. MURPHY:

Q Dr. Korell, I'll show you what's in evidence as State's Exhibit 13, which depicts a blood stained tee shirt.

A Yes.

Q The stain depicted in this photograph, in your opinion, is that consistent with the type of fluid you've described in pulmonary edema?

MS. GUTIERREZ: Objection.

THE WITNESS: Yes, it's --

THE COURT: Overruled. Well, sustained as to the question at this point. If you would lay a foundation of her knowledge of what that may look like, and then you can ask her the question.

BY MS. MURPHY:

Q Thank you, Your Honor. Dr. Korell, can you describe the fluid as it would appear?

A You know, pulmonary edema fluid is sort of light pink in color, and if some little blood vessels in the nose break up because of the lack of oxygen to the blood

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vessels, the capillaries break, there may be small, a little bit darker type of bloody fluid.

Q Now, can I ask you, Dr. Korell, the fluid you have just described, is it consistent with what is depicted here in these photos?

MS. GUTIERREZ: Objection.

THE COURT: Overruled.

THE WITNESS: Yes. It's like what we see in the photos. It's light pink in color. That's more consistent with being pulmonary edema.

MS. MURPHY: Thank you, Dr. Korell. Court's indulgence, please.

THE COURT: Yes.

(Brief pause).

MS. MURPHY: No other questions, Your Honor.

THE COURT: Thank you. Witness with you.

MS. GUTIERREZ: Thank you.

CROSS EXAMINATION

BY MS. GUTIERREZ:

Q Dr. Korell, the pulmonary edema that you spoke of is actually a fluid. Is that correct?

A Yes.

Q Now, during your autopsy that you performed on February 10th, did you determine whether or not there was pulmonary edema visible, either to the naked eye or through

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your analysis, that appeared on the body of Hae Min Lee that you conducted a pathological examination on?

A Yes. Both lungs, especially. The right lung weighed 540 grams, the left 380. That means that they were heavy, and the cut section, you know, on the cut -- cut section means when we cut with a knife through --

Q That's after you open up the body?

A Right.

Q Okay.

A After we take the whole body, the body organs out. There was a type of bloody fluid on the cut section.

Q And there's nothing unusual about the appearance of pulmonary edema on somebody who has been strangled, is there?

A No.

Q Okay. Now, you, of course, can only tell us what your examination reveals, and that is the evidence of injuries that you saw on her body underneath her skin.

A Yes, and then she had that bruise on the right side of the neck.

Q She had the bruise on the right side of her neck.

A Yeah. That measured one and a quarter by a quarter, yes.

Q Okay. And that was consistent with what the findings from inside her body --

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A Yes.

Q -- appeared to you, correct?

A Yes. Yes.

Q All right. And you, of course, looked for that once you saw the petechial, the petechial, because that's sort of the classic indicator of the strangulation.

A Right.

Q Is that correct?

A Yes.

Q And that's because of the pressure that the cut-off -- is it the cut-off of the blood flow?

A Yes.

Q That causes death, not necessarily the cut-off of the air flow?

A No. That was --

Q Although cut-off of the air flow may also happen at the same time?

A No. It's just the pressure on the blood vessels, because you really can't cut off the air at the windpipe --

Q There from the outside --

A -- because it's very, very firm.

Q Okay. Now, Dr. Korell, one doesn't need a specific training in order to prepare to strangle another human being, do they?

A Training?

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Q Yes. Does one need to be trained to strangle another human being, if you know?

A May I say I don't think that you need training for that.

Q Okay. And, in fact, as you've described it, if somebody applies sufficient pressure for as little time as ten seconds, that is in the right place --

A Uh-huh.

Q -- that that is sufficient to cause unconsciousness.

A Yes.

Q That if that person is not then revived, would within a matter, a short time then become dead.

A Right.

Q Is that correct?

A Yes, ma'am.

Q All right. And so by ten seconds you really mean ten seconds.

A Yes.

Q Okay. And that if now, for instance, if in ten seconds one cuts off the blood flow and it causes unconsciousness, unless there is revival, that unconsciousness would remain.

A Correct, yes.

Q And if that unconsciousness --

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A I mean, if you would stop at ten seconds, the person may come back.

Q Well, if you pause?

A Yes.

Q But --

THE COURT: Wait a minute. I'm not sure I understand. Your answer was, if you pause?

THE WITNESS: I think at ten seconds a person becomes unconscious, or may become unconscious.

BY MS. GUTIERREZ:

Q Let me for my question assume that ten seconds is enough, and it causes unconsciousness.

A Yes.

Q Unconsciousness in a human body to somebody untrained might appear to be death, might it not?

A Yes.

Q If someone is unconscious, there doesn't appear to be visible signs of life, right?

A Right. Correct.

Q And so for somebody untrained, they might assume that they have already caused death.

A Yes.

Q Okay. And if there --

A Now, if the person doesn't know how to check respirations or blood, you know --

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Q Right.
A -- pulse or something like that.
Q Or to do anything to cause the person to revive?
A Right.
Q Like CPR.
A Right.
Q Or manipulating that person in some way, correct?
A Right.
Q Then the unconsciousness, because if you've cut off the blood supply, ends up being death.
A Uh-huh.
Q That's part of a process.
A Right.
Q That if there isn't any intervention or something else doesn't occur, will automatically lead to death.
A Yes.
Q All right. Now, you, of course, once you see those particular hemorrhages, you look very carefully on the skin for evidence that there was some tool that helped cause the strangulation, do you not?
A Right.
Q Because the skin would bear marks if there was a rope or a line or something else that might help apply equal pressure around the neck, correct?
A Correct.

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Q That would assist in cutting off the blood supply.

A Yes.

Q Correct?

A Correct.

Q And in your careful examination, you found nothing?

A Right.

Q Now, before you opened up the body to look inside, you examined fully the body itself?

A Yes.

Q Completely?

A Yes.

Q Both your carefully observing it overall, and then observing each portion of the body, correct?

A Correct.

Q And you notated all of your findings, correct?

A Yes.

Q There was no breakage of skin, was there?

A No. I mean, except for the decompositional changes.

Q And by the decompositional changes you were talking about, there are some loss of skin because what happens to the skin as a result of death itself.

A Yes.

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Q After death, is that correct?
A Right.
Q But there was nothing that you observed that indicated that there was any injuries to the body that broke the skin prior to death.
A Correct.
Q There was no blood producing injury anywhere on that body.
A Correct.
Q Was there?
A Correct.
Q And no blood producing injury occurring before death, up until the moment of death.
A Correct.
Q Or occurring at the time the strangulation took place on that young girl's body.
A Correct.
Q No place on the face.
A Right.
Q Or the head, anywhere, anywhere at all on the body, no injury at all.
A Correct.
Q No breakage of skin other than that which you attributed, based on your expertise, that was due to the decomposition of the skin that had occurred after death.

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A Correct.
Q Correct?
A Correct.
Q The hemorrhages that you -- and lay people, we talk about hemorrhages, essentially means bleeding.
A Bleeding, yes.
Q Does it not?
A Yes.
Q All the hemorrhages that you've described occurred under the skin, did they not?
A Correct.
Q Okay. And that included the, I guess it's on the right side, on the back of the head?
A Yeah. Yes.
Q Okay.
A Back and side.
Q That bruising appeared under the skin, correct?
A Correct.
Q And that bruising, because it produced blood, you know occurred before death, correct?
A Correct.
Q You don't know when it occurred?
A Well, it was fresh. You know, it was -- you know, it was bright bleeding, so it was fresh, yes.
Q Okay. And by fresh could include how much time

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before death?

A A couple of minutes.

Q A couple of minutes?

A Yes.

Q Okay. But you have no opinion as to the bruising occurred at the time of death, do you?

A No.

Q No. And that also includes the bruise above, the right --

A Temporal, temple, in the right temporal.

Q -- temporal, and would that be sort of at the edge of the eyebrow, back?

A You see the temple is up here, and the temporalis muscle occupies all of this, this whole side there.

Q Okay. And that evidence of injury also, you only observed once you peeled back the skin, and you looked underneath.

A Correct.

Q Is that correct?

A Correct.

Q That injury did not produce any breakage of the skin.

A No.

Q Okay. And there was no evidence of blood outside of the body related to that injury.

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A Correct.

Q And there was no evidence of any blood producing injury anywhere from that point to any part of the frontal lobe of the face.

A Correct.

Q Correct? And if there was, you certainly would have notated it in your report, would you have not?

A Yes.

Q The pulmonary edema that you've described, you said it contains red blood cells?

A Yes.

Q And as containing red blood cells, it would contain a DNA of the person whose pulmonary edema it was, would it not?

A Yes.

Q All right. And like any other bodily fluid, you are aware that bodily fluids can be subjected to DNA analysis to type and identify them. Is that correct?

A Uh-huh. Yes.

Q You don't do that --

A No.

Q -- but you're often privy to that being done on biological fluids retrieved from bodies you autopsy.

A Yes.

Q All right. And, Dr. Korell, when you examined

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the body, again, you examined all the cavities, did you not?

A Yes.

Q And one of the things you look for anytime you have a female victim is recent sexual activity. Isn't that correct?

A Yes.

Q Especially when a body is brought to you under circumstances that in and of themselves don't reveal what happened to the body, correct?

A Um --

Q Readily. If it's a female victim.

A Oh, yes. Yes.

Q Okay. You would always look to see if there had been recent sexual activity.

A Oh, certainly. Yes.

Q Is that correct?

A Right. Yes. Yes.

Q And one of the things that you look for is the presence in, anywhere in the body, including its cavities, of semen or spermatozoa. Is that correct?

A Right.

Q And you conducted all those tests on this body, did you not?

A Yes.

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Q And you found no evidence of spermatozoa, correct?

A Correct?

Q Anywhere?

A Anywhere.

Q Under any condition.

A Right.

Q Because if you had, you would have collected and then sent it off for identification, would you have not?

MS. MURPHY: Objection.

THE WITNESS: When we --

THE COURT: Overruled.

THE WITNESS: We do --

BY MS. GUTIERREZ:

Q You do a quick test?

A -- smears. No, it's not that quick, but smears, and then they have to be stained, and then we look at them under the microscope to see if there is any sperm cells.

Q Okay. And that's a normal part of an autopsy, is it not?

A Yes.

Q So, you didn't do anything different in this case?

A Right.

Q Is that correct?

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A Uh-huh.

Q Now, when you autopsy a body, it is naked, correct?

A Yes.

Q All right. And you were aware that this body was found clothed.

A Yes.

Q Do you examine that clothing?

A Yes. We describe it and then give it over to police evidence.

Q Okay. And that, again, is your normal procedure, is it not?

A Certainly, yes.

Q If you had noticed blood or any fluid on this clothing during your examination, would you have checked to see if it corresponded to any specific portion of the body?

A Yes. If she had had any cuts or bullet holes or something like that, then we would look at the clothing to see if they corresponded the same way.

Q And if there was something on the body that matched that, correct?

A Right. Yes.

Q And you found no such correspondence, correct?

A Correct.

Q And your report notes no such correspondence.

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A Correct.

Q Correct? And she appeared to be, in the autopsy photos taken by your office when she was brought to your office, to be fully clothed. Is that correct?

A Yes.

Q There appeared to be some evidence on her body, particularly around her knees, that there were scratches or holes in the stockings?

A In the pantyhose. Yeah, in the stockings.

Q In the pantyhose. She had full pantyhose on her body, did she not?

A Yes.

Q And that meant pulled up through the crotch, up to the waist.

A Yes.

Q All right.

A The normal location.

Q All right. And your report notes that, does it not?

A Yes.

Q Dr. Korell, the shirt that you examined, the picture of which you examined, the one that you were asked about, I think it's State's Exhibit 13.

A Yes.

Q Were you ever given that shirt to examine?

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A I saw the photos.

Q Just the photos?

A Yeah, yeah, yeah.

Q Were you ever brought the shirt?

A No.

Q Were you ever asked to compare the shirt with anything recovered from the body?

A No.

Q Did you take any samples from the body that indicated that there was nasal fluid that came out of the body as a result or related to the strangulation that caused death?

A No.

Q At any time were you ever asked to do that?

A No.

Q And at any time were you ever asked to examine the shirt for the presence of any nasal fluid?

A No.

Q Could you recognize nasal fluid as distinguished from any other biological fluid by observation alone?

A Well, nasal fluid, if it is mixed with mucous, you may say, well, it's consistent with.

Q It has a certain consistency --

A Yes.

Q -- because of the mucous --

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A Right.

Q -- quality of it.

A Yes. Yes.

Q Is that correct?

A Yes.

Q And you've examined nasal fluid in the course of your expert pathological experience, have you not?

A Yes.

Q And you know what it looks like and what it's supposed to look like.

A Yes.

Q And you would have been able to render an opinion as to whether or not something shown to you resembled nasal fluid, would you have not?

A Yes.

Q And you have examined and observed and seen the biological fluid called pulmonary edema in your previous experience, have you not?

A Yes.

Q Both from the pathology of examining bodies and in your hospital clinical pathology, correct?

A Right. I've seen patients with it, yes.

Q And you would be able to recognize what it is on a body, would you not?

A Yes.

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Q And pulmonary edema is a biological fluid not necessarily caused by death. Isn't that correct?

A Yes. It's non-specific. It occurs in multiple other circumstances.

Q Okay. In living lungs, is that correct?

A Oh, yes. I've seen that, yes, in people with heart attacks or something.

Q It doesn't just appear in dead lungs.

A No.

Q Is that correct?

A Right. Yes.

Q Depending on the condition of the body.

A Yes, yes.

Q Okay. Now, the other, all the questions that you were asked, did you render any opinion in your report that there was pulmonary edema on this body?

A Under the respiratory system, I described a pulmonary parenchyma. That's the pulmonary tissue.

Q Which means the tissue from the lungs?

A Yes.

Q Okay.

A I said, extreme amount of bloody fluid; no focal lesions were noted. By focal lesions we mean a tumor or pneumonia, that sort of thing.

Q Okay. But nowhere under that particular portion

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of the autopsy protocol that's entitled Respiratory System or, in fact, anywhere else do you note the existence or presence of pulmonary edema?

A Now, if I may say so, when we describe, we don't -- we say bloody fluid or bloody, foamy fluid. We describe --

Q Okay.

A We don't say pulmonary edema.

Q Edema. Well, do you describe bloody, foamy fluid?

A I described it as bloody fluid.

Q Okay. And as you're describing the appearance of the respiratory system, is that correct?

A Yes.

Q Now, when you were asked, you said that that fluid if it existed, may escape at the time of death.

A Yes.

Q It doesn't necessarily have to.

A It may, because, you know, the pulmonary edema starts foaming up --

MS. MURPHY: Objection.

A -- and changing in the body, and comes out.

Q Okay. And it can come out --

THE COURT: One moment. One moment. Counsel, I need you to allow the witness to finish her answer before

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you ask the next question because, as I said, the stenographer has to get it down, and I also would like to hear the answer. And what is happening is that I'm hearing the end of, or the beginning of your next question before the answer is completed. So, I would ask that you allow the witness to finish.

MS. GUTIERREZ: I'm sorry, Dr. Korell.

THE COURT: You were just saying about the foamy fluid in the lungs.

THE WITNESS: Yes.

THE COURT: If you would finish your answer.

THE WITNESS: Yes. It may come up naturally. I've seen it in live patients. It comes through the mouth and nose, the light pink fluid, and also it comes out when the body is moved, when the body also starts -- you know, it's not uncommon that it comes out through the nose and mouth, yes.

BY MS. GUTIERREZ:

Q My question, though, is you chose the word --

MS. MURPHY: Objection.

Q -- may, did you not?

THE COURT: Sustained. And I'm going to ask again if you will allow the witness to finish her answer before you ask the question. And she was, I think, finishing a few words, and I would ask that you do that.

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BY MS. GUTIERREZ:

Q Did you have anything else to add to your answer, Dr. Korell?

A No.

Q Okay. Dr. Korell, twice now you've chosen to use the word "may."

A Uh-huh.

Q Have you not?

A Yes.

Q And may, the use of it, implies that something may happen but it not necessarily does.

A Correct.

Q Does it not?

A Yes.

Q And is that how you utilized the word may?

A Yes.

Q Do you have any opinion as to whether or not pulmonary edema in amounts of any type whatsoever escaped from this body that you examined on February 10th at or near the time of death?

A Well, I don't know a hundred percent. Of course, I don't know a hundred percent, but now the shirt that was, or the implement that was shown to me has very light pink color. That's consistent with pulmonary edema.

Q And were you aware that a trace evidence expert

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examined that and declared it to be blood?

A Well, pulmonary edema has red cells, and she may, this person may call it blood, yes.

Q I didn't ask you that, Dr. Korell. I only asked you, were you aware.

A No, I wasn't aware.

Q Okay. And were you ever again, ever asked to examine that shirt?

A No.

Q Or to compare it with any findings that you determined from this body that you examined --

MS. MURPHY: Objection.

Q -- on February 10th?

THE COURT: Overruled. You may answer the question. Were you ever asked to do that?

THE WITNESS: No, no. No, I was not.

BY MS. GUTIERREZ:

Q And are you aware of any of the circumstances of this shirt?

A No. The whereabouts of the shirt? No.

Q Any of the circumstances of the shirt.

A No.

Q Where it was found?

A I'm -- no, I'm not sure where it was found.

Q Okay. And --

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A I was told once upon a time where it was, but I don't remember.

Q But you don't remember?

A Yes.

Q But of your own personal knowledge, were you made aware of all of the circumstances of the location of this shirt when it came into police custody?

MS. MURPHY: Objection.

THE COURT: Overruled. At any time were you told where that shirt was found?

THE WITNESS: If I remember, I think I was told where it was found.

BY MS. GUTIERREZ:

Q And when were you so told?

A Well, that was when we discussed the case once the autopsy was finished and all of that.

Q So, after you had issued --

A Yes, after, yes.

Q -- your autopsy report.

A Yes, that was after.

Q And at time you were told that, were you asked not just to examine the shirt, but to alter your opinion in any way based on information that you were told?

A No.

Q Were you asked to render an additional opinion in

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any way based on what you were told?

A No.

Q Was there any purpose based in any way relative to your opinion that you were given the information you were given, whatever it was, about the shirt?

A No.

Q No. Now, Dr. Korell, it is your opinion based on the absence of any evidence that suggested a tool, that this girl was strangled manually?

A Yes. I don't have any indication that any cord or anything like that was used.

Q Right. There's nothing like that, that appears on the body.

A Correct.

Q Correct? So, now by manually, can you render an opinion as to whether or not the hands that strangled her, if there were hands, came from in front of her or behind her?

A I cannot say.

Q And do you have any opinion based on your observations of the body as to who strangled her?

A No, of course not.

Q Or how big the hands were?

A No.

Q Or to what body they were attached?

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A No.

Q Whether it was a male or a female?

A No.

Q Or where the body was when it was strangled?

A No.

Q And do you have any opinion, Dr. Korell, based on your expert examination of this young girl's body what, if any, time lapsed between the strangulation and the burial from which the body was excavated on February 9th?

A No, I don't have any time span of when it could have occurred.

Q And, Dr. Korell, you said, you answered the questions of M's Murphy as to, well, was the time -- was the appearance of the body consistent with her having been murdered and buried on the 13th of January, and you answered, yes, it was consistent with, correct?

A Yes.

Q You, in your autopsy protocol, never rendered, you left blank the space that is left for you to determine the time of death, did you not?

A Right.

Q And you have no opinion as to what the time of death was, do you?

A Correct.

Q In fact, the appearance of this young woman's

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body and your examination of her on February 10th in no way led you to render an opinion that, in fact, her death by strangulation and her burial occurred together.

A Correct.

Q Correct? So, in fact, you can't tell us how long after her death she was buried.

A Correct.

Q And there's nothing in her body that gives you any indication to render any opinion as to that, correct?

A Correct, ma'am.

Q She could have been strangled one day and buried several days later. Could she not?

A Correct.

Q And that would be consistent with everything you saw about this body, correct?

A Correct.

Q And if she had been murdered, strangled, the victim of a homicide, that would be consistent with that having occurred on the 14th of January as readily as it would be consistent with it having occurred on the 13th, would it not?

A Yes.

Q It would be as readily consistent with it having occurred on the 15th of January as it would be the 13th.

A Correct.

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Q It would be as readily consistent if she were murdered on the 14th but buried on the 15th.

A Correct.

Q And, in fact, it would be as consistent if she were buried whatever day she was murdered, on the 20th of January, correct?

A Correct.

Q All you could say from the appearance of the body was that she had been dead for some time.

A Yes.

Q Is that correct?

A Yes.

Q And you based that on the appearance of her body and the amount of decomposition. Is that correct?

A Yes.

Q And decomposition is a biological process that occurs to everybody post-death, does it not?

A Yes.

Q Unless it's arrested by something else, like cremation?

A Or embalming.

Q Or embalming.

A Yes.

Q Is that correct?

A Yes, yes.

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Q Those processes stop further decomposition.
A Yes.
Q Correct? But otherwise a body decomposes, correct?
A Correct.
Q But bodies don't decompose at the same rate.
A Correct.
Q That the rate at which they decompose depends upon a number of factors, does it not?
A Yes.
Q And those include the outside temperature.
A Certainly.
Q And the temperature at which the body is kept.
A Certainly.
Q So, if the body is kept in a closed space, but which is cold, it would decompose less rapidly than if it were hot.
A Correct.
Q Is that correct?
A Of course.
Q Hot speeds up decomposition.
A Certainly.
Q Is that correct?
A Yes.
Q And that means the hot around the body whatever

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the circumstances are would speed it up.

A Certainly.

Q Correct?

A Yes.

Q Cold slows down decomposition, correct?

A Correct.

Q And that's both because cold slows down the biological process, but cold also surrounding the body slows down other biological processes, such as insects --

A Yes.

Q -- or bugs that feed on the body.

A Yes.

Q And bugs or insects speed up decomposition, do they not?

A Well, bugs or insects really work on the body and they feed on the body.

Q And the evidence of bugs would be visible, would it not?

A Oh, yes.

Q All right. And did you ever at the time of your autopsy check the temperature chart in Baltimore City around the area where this body was disinterred?

A No.

Q You were aware, however, were you not, that in February, that January and February had had some major days

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of cold weather?

A Yes.

Q Were you not?

A Yes.

Q And that there had been snow that occurred between or before the body was found?

A Yes.

Q Incidentally, Dr. Korell, you described some of the processes post-death, and you referred to livor, which is really the blood, related to the blood in the body?

A The settling of the blood, yes.

Q The settling. And when we are alive, because our heart pumps, our blood circulates, correct?

A Right.

Q But after we're dead, there's no more pumping, so the blood settles essentially on the lowest point?

A Right.

Q Is that correct?

A Yes.

Q And that's for all bodies, right?

A Yes.

Q And once the livor, once the blood settles, it remains there, does it not?

A Yes.

Q Unless the body is moved?

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A Well, there is a span of time in which the livor is unfixed. That's the time when the body is moved, then the livor moves also.

Q Okay.

A Now, after several hours, the livor gets fixed and it --

Q Then it gets fixed --

A -- doesn't --

Q -- no matter what you do.

MS. MURPHY: Objection.

THE COURT: Overruled.

MS. GUTIERREZ: I'm sorry, Dr. Korell.

THE WITNESS: Then once it's fixed, no matter how you position the body, it stays on the same spot.

BY MS. GUTIERREZ:

Q By fixed you just mean it settles.

A Yes.

Q And the blood then --

A Doesn't move.

Q -- stays where it is, right?

A That's correct.

Q So that even if you take a dead body and you remove it from where it is, and you turn it upside down, the blood would remain where it became fixed.

A Yes.

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Q Isn't that right?

A Correct.

Q Because the internal organs no longer move the blood, right?

A Correct. Right.

Q Because there's nothing pumping the blood, correct?

A Yes. And the blood vessels, the blood in the blood vessels, the blood vessels break up, and then the red cells go into the tissue, and then it becomes completely fixed.

Q Now, could you tell from your examination if the grave from which this young girl was removed the day before you autopsied her was the only resting place she had been in?

A The only thing I can say is that she had frontal livor, and that means in the front. I don't know where she was before she was buried. No, I don't know.

Q Okay. And so based on your observations, it would be possible for this young girl post-death, whenever that may have occurred, to have been held somewhere, the body held somewhere prior to it being interred when it was found, from whence it was found.

A Yes.

Q And there's nothing in your observation that

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excludes that possibility.

A Correct.

Q Or tells you whether that happened or didn't happen, right?

A Correct.

Q Because you are limited to the observations that you could make from the body when it was presented to you.

A Correct.

Q Is that correct? And there was nothing other than telling at the time that the body was disinterred that the livor you said was frontal?

A Yes.

Q And by frontal you literally mean the front of the body.

A Yes.

Q Is that correct?

A Yes.

Q So that, that would tell you that the body was face down when the livor was fixed.

A Right.

Q Would it not?

A Yes.

Q Okay. Because that would mean the blood would pool on the front of the body.

A Correct.

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Q And that wouldn't happen if the body post-death were on its side.

A Correct.

Q Or on its back. Is that correct?

A Unless, again, the body was moved while the livor mortis was unfixed.

Q Was unfixed?

A Yes.

Q Because then the movement itself would upset where the blood went.

A Correct.

Q Is that correct?

A Yes.

Q And you couldn't tell whether or not that happened.

A Right.

Q You can't tell us whether that body was moved before or after livor was fixed.

A Correct.

Q From your observations.

A Correct.

Q You can only tell us that livor fixed on the front of the body.

A Correct.

Q Which would indicate that at the time livor

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fixed, sometime post-death, that she was laid frontally.

A Yes.

Q Is that right?

A Yes.

Q And that's all you can tell us.

A Correct.

Q You also examined the body of M's Hae Min Lee to determine whether or not she was pregnant?

A Correct.

Q And you discovered no evidence indicating any pregnancy.

A Correct.

Q Is that correct?

A Correct.

Q And that's very easy to test for, is it not?

A Well, we just look at the uterus.

Q You can tell --

A Yes.

Q -- a pregnant uterus.

A Right.

Q Is that correct?

A Correct.

Q And there's no doubt that she was not pregnant.

A Correct.

Q All right. And can you tell us when was,

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although you saw no presence of spermatozoa, was there any evidence of recent sexual activity?

A No.

Q Is there any way that you can tell that?

A Well, first, because of the spermatozoa, and then the amount of acid phosphatase. That's an enzyme.

Q And what does that come from?

A That comes from red cells and prosthetic fluid.

Q And that has to come from a penis, does it not?

A Right.

Q All right. And if she had recent sexual activity that utilized a condom to prevent any fluid from the male penis from entering her, would you be able to tell that?

A No.

Q No. So, in any event, your report indicates no indication of when her most recent sexual activity was, does it?

A Correct.

Q Your report indicates no signs of a struggle that were evidenced on her body.

A By that you mean, injuries to the arms or legs or someplace?

Q Yes, any defensive wounds or --

A No.

Q And no other bruising on any other part of her

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body.

A Correct.

Q Not of her hands.

A Correct.

Q Not on her forearms, not on her legs.

A Correct.

Q No bruising to any part of her leg that would indicate that she kicked something or someone during a struggle to save her life.

A Correct.

Q And your examination of the body, of course, Dr. Korell, reveals no indication of where her body was when it was strangled.

A Correct.

Q Or in what position she was when she was strangled.

A Correct.

Q Much less what was her position relative to the person who manually strangled her.

A Correct.

Q You were asked about the horseshoe bone. I forget what that's called.

A Hyoid bone.

Q Hyoid bone.

A H-y-o-i-d.

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Q That was broken, correct?

A Yes.

Q Would it take much pressure to break that?

A Yes, because it's quite hidden. It's the back, it's in the back of the tongue. It's behind the voice box, so it's rather protected. So, to get there you need quite a bit of force.

Q Okay.

A Especially in a young person.

Q The fact that that was broken, did that tell you anything different than is in your report about the circumstances of this young woman's death?

A No. It indicates that the cause of death was strangulation.

Q Okay. And the actual strangulation had to have been caused by pressure --

A Yes.

Q -- on the neck.

A Correct.

Q And was that pressure, based on your observation, spread equally on either side?

A Actually, the area of the broken hyoid was only on one side.

Q Okay. And does that indicate to you that the pressure applied to strangle this young woman was unevenly

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applied --

A It may.

Q -- between the right and the left?

A It may.

Q Did you render an opinion as to that?

A No.

Q Okay. And could she have been --

A Most often it's one side of the hyoid bone that's broken, not both sides.

Q Okay. And so, there's nothing unusual about that?

A Correct.

Q And she still could have been strangled by the application of pressure, whether it came from the front or from the back of her, that could have caused unconsciousness in ten seconds or less.

A Correct.

MS. GUTIERREZ: If you will just give me a minute, Judge. I think I've covered --

BY MS. GUTIERREZ:

Q In the petechial --

A Petechial.

Q Petechial hemorrhages, you described they're on the inside of the eyelid, right?

A Let me be -- on the left --

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Q And the eyeball, but --

A On the left palpebral conjunctiva, that's the lining of the eyelid on the left side.

Q Okay. So that --

A And both bulbar conjunctiva. Bulbar is the eyeball itself. The eyeball itself is lined by a thin membrane called the conjunctiva. In fact, both of them had bleeding.

Q Okay. Now, when you say the bleeding, would the bleeding have produced blood running?

A No. It's also on the membrane.

Q It's underneath the membrane?

A Yes. It's not free blood, no.

Q Again, just like the bruising that causes the hemorrhages underneath, this bleeding would not have produced any rivulet of blood.

A No.

Q From the outside.

A No.

Q From the corners of the eye.

A No.

Q From anyplace in the eye.

A Correct.

Q And it would not have produced blood or fluid running on her face.

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A Correct.

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

THE COURT: Witness with you. Any re-direct?

MS. MURPHY: Just briefly, Your Honor.

RE-DIRECT EXAMINATION

BY MS. MURPHY:

Q Dr. Korell, do you personally conduct DNA analysis?

A No.

Q So, is it fair to say that if the police wanted that done, they would have to utilize labs for that purpose?

A Yes. We don't do it in our lab, either. We provide them with blood or something, whatever they need, but not, we don't do the test.

Q Now, you were asked on cross examination if a person would necessarily be able to tell whether unconsciousness -- would be able to differentiate between unconsciousness and death.

A And death.

Q In your experience, would a person with training as an emergency medical technician be able to tell the difference between unconsciousness and death?

MS. GUTIERREZ: Objection.

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THE COURT: Overruled.

THE WITNESS: A -- I'm sorry.

BY MS. MURPHY:

Q You may answer that.

A A person trained like that, yes, he should be able. She should be able.

MS. MURPHY: Thank you, Dr. Korell.

THE COURT: Anything further?

MS. MURPHY: Nothing further from the State, Your Honor.

RE-CROSS EXAMINATION

BY MS. GUTIERREZ:

Q Dr. Korell, what is it that you would determine to be an emergency medical personnel?

A Well, these are people that work in ambulances, and at the scene of an accident, or injury or in natural problems. They check on the person to see how much injury they may have, what diseases may be being affected and causing the person to need their assistance. And they do resuscitation. They check for pulse. They do all of this, and they intubate.

Q So, determining the difference --

A Yes.

Q -- between unconsciousness and death would involve an emergency medical personnel actually checking

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out the person.

A Certainly.

Q By seeing if they had a pulse.

A Right.

Q And checking the breathing rate.

A Right.

Q And doing other things that would determine whether or not the person were dead or alive.

A Correct.

MS. GUTIERREZ: Thank you. Nothing further.

THE COURT: May this witness be excused?

MS. MURPHY: Yes, Your Honor.

MS. GUTIERREZ: Yes.

THE COURT: And may this witness be released from all subpoenaes and summonses?

MS. GUTIERREZ: Yes.

THE COURT: Very well. You are excused at this time. Let me advise you that you may not discuss your testimony with anyone who may be a witness in this case.

THE WITNESS: Certainly.

THE COURT: And I also advise you that you are now released from the summonses, and you may, if you choose, have a seat in the courtroom if you would like because at this time you are released and you're free to go.

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THE WITNESS: Thank you very much.

(The witness was excused and left the courtroom).

MR. URICK: Does the court wish to do another witness at this time?

THE COURT: Yes, I would. I would like to go till 4:30.

MR. URICK: May we have just a second to get the witness?

THE COURT: Yes.

(Brief pause).

THE COURT: While we're waiting for this witness, do you want to have a discussion with regard to that one scheduling issue for Friday or not that generated a note?

MS. GUTIERREZ: Oh! It's next Friday?

THE COURT: Next Friday.

MS. GUTIERREZ: Oh! Yeah, we can.

MR. URICK: I thought our final suggestion resolved it.

THE COURT: Just wait until --

MR. URICK: Yes.

THE COURT: Okay. Very well. Perhaps you can give us an idea, Mr. Urick, about how many more witnesses would you say the State has?

MR. URICK: We have one more.

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THE COURT: This is the last witness?

MR. URICK: Yes.

THE COURT: All right. Very well.

MR. URICK: I think the court indicated it wanted to end about 4:00 or 4:30 today?

THE COURT: No. I mean for the entire case.

MR. URICK: Oh! No, no. For the entire case, I'm guessing around eight to ten.

THE COURT: Eight to ten more witnesses?

MR. URICK: Yes.

THE COURT: Very well. You may proceed. Please step up to the witness stand. I'd ask that you remain standing. Raise your right hand, and listen to Mr. White as he renders the oath to you.

IRRA LYNETTE WOODLEY,

a witness produced on call of the State, after having been first duly sworn, was examined and testified as follows:

THE CLERK: You may be seated. Please keep your voice up. State your name for the record.

THE WITNESS: Irra Lynette Woodley.

THE CLERK: State your address for the record.

THE WITNESS: 9932 Linden Hill Road.

THE COURT: Your first name again?

THE WITNESS: Irra, two r's. I-r-r-a.

THE COURT: Woodley.

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THE WITNESS: Woodley, W-o-o-d-l-e-y.

THE COURT: Thank you. You may proceed.

MR. URICK: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. URICK:

Q Good afternoon, M's Woodley.

A Good afternoon.

Q Where are you employed?

A Woodlawn Senior High School.

Q And how long have you been employed there?

A This is my second year.

Q And what is your position there this year?

A Principal.

Q Drawing your attention back to the prior school year, the 1998/1999 school year, what was your position at Woodlawn High School?

A Assistant Principal.

Q And drawing your attention now to the Homecoming Dance in the fall of 1998, did you have occasion to attend that?

A Yes.

Q Do you recall the date of that?

A I just know it was in October.

Q And what were your duties at the Homecoming Dance?

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A I had to supervise. I was on the door. I walked through the dance to make sure that everything was going well.

Q And did you know the defendant at that time?

A Yes.

Q And did you know Hae Min Lee?

A Yes.

Q Did there come a time when your attention was drawn to the two of them?

A Yes.

Q How did that come about?

A Adnan's parents came to the dance, and at first they were standing outside looking in. They --

Q Where were you at this time?

A At the door. It's a big glass window. The dance was in the cafeteria, and it's a big glass window, and you can see right out this big glass window. And I was standing right at that entranceway.

Q Why did that draw your attention?

A Because they were just standing there looking in through the window.

Q Was anyone else doing that?

A No, not at the time.

Q What happened next?

A They came in, and they asked for their son. And

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I went through the dance to find their son. And we found their son, and he came out, and they talked. They were talking over to the side. I couldn't hear their conversation at that time.

Q Did you notice any gestures or anything of that sort?

A I really let them talk. I was not trying to get involved with that. It was their son, and I let them talk. Then Adnan left and went inside the party, the dance, excuse me, and he came back with Hae Lee. And at that time he went over, they went over to where the parents were, and that's when the voice, the mother's voice, I could hear the mother's voice. I don't remember everything that she said, but I remember something to the effect of, "Do you know what you're doing to our family or to our house?" I don't -- and her voice was raised.

So, at that time, I walked over to them, and I took Hae Lee. I told the parents, I said, "I can't let you talk to this child like this. Her parents aren't here," and I sent Hae Lee back to the dance. And I left him with his parents, and they walked out the door.

Q Did you have occasion to speak to M's Lee that night?

A No.

Q Or about that night at any time after that?

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A I just, I mentioned something to her, were they still -- did she get things straight. You know, I didn't dig into it, because I was not trying -- because it wasn't really a school issue, so I did not dig into that situation.

Q Now, back on the night of the Homecoming Dance, did anything further happen?

A I don't know -- I did not see him after he left. Another administrator, who was outside, said that he left, but I don't know the details of that. Left and came back, I'm sorry. But I don't know the details of that.

MR. URICK: Thank you. Witness with the defense.

CROSS EXAMINATION

BY MS. GUTIERREZ:

Q M's Woodley, was it any violation of any school policy for Adnan Syed's parents to show up at the dance?

A Not to show up.

Q Were there other parents there at the dance?

A Other parents had -- some -- there were a couple of parents that had come to help supervise or had --

Q The dance?

A Yes.

Q Okay.

A The dance itself. Some parents came. They took pictures, and they left.

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Q And was there anything, was there any criminal violation that occurred when they came up and asked to see their son?

A No, ma'am.

Q Did you know who they were by sighting them?

A I knew -- other students told me that was their parents, his parents.

Q That was his parents.

A Yes.

Q Now, you knew Adnan Syed before that night, correct?

A Yes.

Q And you knew that he was a student, a senior at Woodlawn.

A Correct.

Q And that he was a good student.

A I assumed that part. I assumed that he was a good -- I know you're not supposed to assume, but I assumed that he was good student. He hadn't been sent to the office or anything like that.

Q Okay. So you had not had any bad interaction with him.

A No, I did not.

Q Is that correct? And were you aware prior to the point where his parents asked you to get him that he was

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dating Hae Min Lee?

A I saw them walk together. That's about it.

Q In the school itself.

A I saw them walk into the dance together.

Q Oh, okay, as if they were a date?

A As if they were a date.

Q Okay. And had you interacted with either of them before the parents showed up?

A Just when they -- I spoke when they came through.

Q When they came through to come to the dance?

A To come to the dance.

Q Okay. Now, the dance was a Homecoming Dance. Did that include all four grades?

A Yes.

Q All right. And a lot of the students came?

A It was a good number. It wasn't a very large turn-out.

Q Did a lot of the students come in couples as dates?

A A good number of them, yes.

Q And were you aware prior to that evening that Adnan Syed and his family were Moslems?

A No.

Q And that going to dances was forbidden for Moslems?

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A No.

Q And dating was forbidden for Moslems.

A No.

Q And when his parents asked you to get him, did they explain to you why they wanted to see him?

A No.

Q Did they ask politely?

A Yes.

Q And when they identified themselves, did they identify themselves as his parents?

A Other students informed me that they were his parents.

Q So, when you -- you actually went over to them?

A They were standing there. They were asking for their son. I asked who they were looking for, and the students told me. I went inside, and I got Adnan.

Q Okay. So, you were responding to their request to see their son.

A Correct.

Q And at the time that you were responding, you didn't see anything wrong with that request, did you?

A No.

Q You, in fact, went and got their son, correct?

A Yes.

Q And when you went and got him, was he with Hae

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Min Lee?

A I don't recall seeing them together at that time, but I really don't know.

Q Okay. And he came right with you.

A Yes.

Q Did he not?

A Yes.

Q You told him that his parents were there.

A Correct.

Q Didn't you? And he willingly came with you.

A Correct.

Q Is that correct? And then when he got to where they were, I assume that was outside the room where the dance was being held?

A Yes.

Q They went and were talking to each other, you said, off to the side.

A Correct.

Q They weren't making a scene.

A At that point, no.

Q The parents didn't make a scene.

A Not at that point.

Q And Adnan didn't make a scene.

A No.

Q Okay. There was no hitting.

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A No.

Q Or throwing of things.

A No.

Q Or stomping.

A No.

Q No assaults of any kind.

A No.

Q And they didn't involve anybody else in their discussion.

A Correct.

Q You were still out where they were, correct?

A Correct.

Q Because you were keeping an eye on the whole dance, correct?

A Correct.

Q And it was sort of unusual for the parents to come up and ask to see one of their children, wasn't it?

A It was unusual for them to ask to see their child.

Q Okay.

A Oh! I was repeating what you asked me.

Q Oh! I asked the question, was it unusual?

A For a parent to ask for their child, no.

Q No. And you saw Adnan go in to where the dance was, did you not?

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A Yes.
Q And he came back out with Hae.
A Correct.
Q Did he not?
A Yes.
Q He didn't appear to be forcing her to come out.
A No.
Q He wasn't dragging her, was he?
A No.
Q Didn't appear to be assaulting her?
A No.
Q And she didn't appear to be protesting.
A No.
Q And then Hae went to where his parents were.
A Yes.
Q And you weren't part of that conversation.
A Initially, no.
Q No. And nobody asked you to become involved in that conversation.
A No.
Q Hae Min Lee never sought your help.
A Correct.
Q And from what you could observe, she never sought anybody's help, did she?
A Correct.

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Q She never screamed.
A No. She didn't say anything.
Q And she didn't walk away of her own volition.
A No.
Q Whatever conversation she was having, she appeared to be participating in it.
A Participating in that she stood there?
Q Yes.
A She stood there.
Q And she did not walk away.
A Correct.
Q You, during that conversation, did you receive any other information from anyone else, a student, a teacher, a parent, anyone at all, that let you know why Adnan's parents were upset?
A No.
Q And did they do anything to explain to you why they were upset?
A The only thing that I know is when the parents, the mother's voice got loud, and she was -- her voice, she was raising her voice, and it brought my attention because she was raising her voice at Hae Lee.
Q Okay. And that's when you decided to intervene.
A Correct.
Q And stop the conversation.

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A Correct.
Q Hae Min Lee didn't stop the conversation.
A No.
Q And Adnan Syed didn't stop the conversation.
A No.
Q And then from what you observed, Adnan left with his parents.
A Yes.
Q You were told later by another school administrator that Adnan later came back.
A Yes.
Q And remained at the dance.
A He said he saw him back on the school property.
Q Okay. And the only function, this was in the evening, was it not?
A Correct.
Q There wasn't any other function happening outside on the property, --
A Correct.
Q -- was there?
A No.
Q The only function that was happening was the Homecoming Dance.
A Correct.
Q Now, you don't remember quite the exact date of

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the Homecoming, but would you agree it happened in October of 1998?

A Yes.

Q And that would be the fall.

A Yes.

Q Did you see Hae Min Lee and Adnan Syed after the date of the Homecoming?

A In school, yes.

Q And did you observe them interacting with each other?

A No.

Q Did you ever become aware that they remained after that date girlfriend and boyfriend?

A No.

Q Did you ever become aware that they, in fact, remained girlfriend and boyfriend almost up until Christmas of 1998?

A No.

Q Some two months after the Homecoming Dance?

A No.

Q Did you receive any complaint from Hae Min Lee about his parents asking, apparently asking to see her?

A We didn't discuss the situation.

Q And was there any formal complaint filed in the school by anyone, including Hae Min Lee, about anything

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that occurred at the Homecoming?

A No.

Q Was there any policy change made by Woodlawn, by any administrator, related to the conduct of students or parents at any function, including a dance, as a result of what you observed on Homecoming sometime in October, 1998, as between Adnan Syed, his parents and Hae Min Lee?

A As a policy, we don't have students being approached by other parents without a parent being there. Did I say that clearly enough?

Q I think so.

A Okay.

Q And that policy existed before that dance.

A Correct.

Q And that's why you intervened, correct?

A Correct.

Q My question is, as a result of whatever it is that you observed occurring between Adnan Syed, his parents and Hae Min Lee, was there any policy change initiated by anyone concerning the conduct of anyone at any school function including a dance?

A No.

Q Not in -- excuse me. Not in 1998?

A A policy change?

Q Yes.

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A Not to my knowledge.

Q And none in 1999.

A Not to my knowledge.

Q And in addition to there being no complaint made by Hae Min Lee, was there a complaint filed by her parents?

A No.

Q And after that date, did you have any interaction, formal or informal, with Adnan Syed's parents?

A No.

Q You said that what focused your attention was Adnan Syed's mother's voice raising.

A Yes.

Q Is that correct?

A Yes.

Q Did you observe any other conduct, other than that?

A As she was -- she didn't do anything physically to the young lady.

Q Okay. She didn't move towards her?

A She did move toward her but she didn't touch her.

Q And she didn't appear to be making any attempt to touch her.

A She moved toward her.

Q Okay.

A And her voice, it was getting louder.

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Q Did you ever see her make any physical move of any kind that you perceived to be a threat to Hae Min Lee's safety?

A Just the movement toward her.

Q Okay. And at that time that you saw that movement, did Hae Min Lee move?

A Not that I recall.

Q Where this was taking place was right outside the room where the dance was taking place?

A Yes.

Q And was there music at the dance?

A Yes.

Q And was it loud?

A Yes.

Q Was it audible from where you were standing?

A Could I hear the music? Yes.

Q And did it appear to be audible to anyone capable of hearing, who might be standing where the parents, Adnan and Hae Min Lee were?

A Yes, they could hear.

Q Did the loudness of the music change in any way?

A No.

Q Were there times when it was louder, and times when it was softer?

A It was the same, that I can recall.

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Q It was the same loudness the whole time?
A They play music loud.
Q And so, it was always loud.
A Yes.
Q It was never soft.
A Not that I can recall.
MS. GUTIERREZ: Thank you. I have nothing further.
THE COURT: Anything further?
MR. URICK: Yes, just very briefly.

RE-DIRECT EXAMINATION

BY MR. URICK:

Q Based on that incident that you saw that night what, if any, advice did you give Hae Min Lee?
A That she should consider her relationships, that she shouldn't put herself in situations, that it may not be the best for her.
MR. URICK: Thank you.

RE-CROSS EXAMINATION

BY MS. GUTIERREZ:

Q Had Hae Min Lee come to you for advice?
A No, she did not.
Q Had she ever indicated to you that she thought the relationship was not the best for her?
A She later told me that she had ended it, but it

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wasn't until later/later.

Q Okay. And by later/later you mean long after the dance?

A Yes, ma'am.

Q And, in fact, that was after the middle of December.

A Yes.

Q Okay. And prior to that, did she seek your guidance in any way?

A No.

Q Could she have if she had so desired?

A She sure could have.

Q Okay. But she did not.

A Correct.

MS. GUTIERREZ: Thank you.

THE COURT: Anything further?

MR. URICK: No. Thank you, Your Honor.

THE COURT: May this witness be released?

MR. URICK: Yes.

MS. GUTIERREZ: Yes.

THE COURT: And is she released from summonses?

MS. GUTIERREZ: Yes.

MR. URICK: Yes.

THE COURT: You may leave. I also advise you that you are a sequestered witness. You may not discuss

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your testimony with anyone, anyone that is yet to testify. By doing so, you could exclude them from being able to testify. However, because you're released from summonses, you're welcome to sit in the courtroom if you would like.

THE WITNESS: Thank you.

THE COURT: Very well. Your next witness.

MR. URICK: Your Honor, this was our last witness for the day.

THE COURT: All right. And you have no one else that you could call?

MR. URICK: No one that we could get here. We thought you wanted it to end between 4:00 and 4:30 today.

THE COURT: 4:30 and a quarter of, but this is fine. We can end today at this time. Ladies and gentlemen, I am going to tell you that once again that you should leave your notepads face-down on your chairs, that you are not to discuss the testimony with anyone. You haven't heard the entire case. You haven't heard closing arguments, and you haven't been instructed as to the law.

I must also advise you that if you were to turn on the television or pick up a newspaper, you are not to read anything about this case or discuss anything about this case with anyone, or read anything, or listen to anything about this case.

I also advise you that tomorrow, which is

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Wednesday -- let me make sure.

THE JURORS: Thursday.

MS. MURPHY: Thursday.

THE COURT: Tomorrow is Thursday, and I think I gave a little note about tomorrow. We are supposed to start at 9:00. That is, you are going to be paid between 9:00 and 9:30, to return to the jury room around the corner. You have the little note? Very good.

9:30, and somewhere about a quarter of 10:00 or 10:00 o'clock, I will start this case. I have, I understand, one case on my docket for tomorrow, and I should be able to dispose -- I see your fingers. Are you telling me there are more in?

THE CLERK: Well, unless the computers change it. The computer says three for tomorrow and one for Friday.

THE COURT: Okay. The computer says three, but in any event, somewhere about 10:00 o'clock I hope to start this case once again.

Ladies and gentlemen, I would like to advise you as you're going home, please have a safe journey. Plan to sit tomorrow until 5:00 o'clock. And the State, 5:00 or 5:30 I think you said for tomorrow. I think, in fact, I said 5:30 because I was thinking about more or less 5:00 for Friday, 5:30. And again, I'm trying to get as much as we can get in on the days when my dockets are light, so

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that we can try to move the case along.

It is our expectation to try to move this case along, to perhaps even finish the case by early next week. I know some of you have some concerns about scheduling, and please be advised that if any of you are thinking about Friday of next week as a possible day when they might not want the court to sit, that that is something we are all aware of, and we are trying our best to resolve this case a little earlier in the week. But we will not, in any way, let you know because we do not know how things will pan out, but we will tell you that we are trying our best and ask that you be patient with us.

And, in any event, please go with Mr. Church, who will take you back to your jury room. Leave your notepads face-down, and they will be secured by Mr. White. And I will see you tomorrow at about 9:45 or 10:00 o'clock. Have a good evening.

(The jury was excused and left the courtroom).

MS. GUTIERREZ: Judge, can I again leave my bag here?

THE COURT: Yes, you can again leave your bag. We will be locking the courtroom. I ask counsel to return -- I would also ask, I know this is a little early on, but if by chance you have voir dire --

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MS. GUTIERREZ: Instructions?

THE COURT: Yes. I'm sorry. Jury instructions and a verdict sheet, a sample verdict sheet, I would be happy to take a look at them.

MR. URICK: Also, at this time, Your Honor, pursuant to the court's written opinion on the motion in limine concerning Sharon Watts, the State would request a voir dire of Sharon Watts as to her expertise, and we will be bringing her in tomorrow for that purpose. Do you wish to do that outside the presence of the jury?

THE COURT: Yes. That would be fine.

MR. URICK: Do you want to do it the first thing in the morning before we call the witness, or should we do it just before --

THE COURT: Why don't we do it before the jury comes out. It's too bad she's not here today. I know. Listen, there's no way for you to anticipate each and every day.

MR. URICK: We did have two witnesses yesterday. We brought in three today.

THE COURT: I know. It depends on the witnesses, and it depends on cross, and there's no way to know. But why don't we just plan on taking her -- are you expecting that there's some additional information that she can provide that would change my ruling in some way?

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MR. URICK: I believe she can.

THE COURT: In terms of her background?

MR. URICK: Yes. In terms of the --

THE COURT: The clinical nature of her background?

MR. URICK: Yes.

THE COURT: Okay. If you have some more information, has that information been provided to the defense?

MS. GUTIERREZ: No.

MR. URICK: I'll be happy to make a copy.

THE COURT: Do you have a resume or a vitae --

MR. URICK: No. I just have --

THE COURT: -- that includes something additional about her that we did not know before?

MR. URICK: I just interviewed her and have my notes of that interview.

THE COURT: Well, perhaps you could proffer to the court what that is since we're all here.

MS. GUTIERREZ: While he's finding those notes, Your Honor, do you want requests for all instructions or just instructions that are --

THE COURT: All instructions, but if you just give me the number. If it's a MICPEL Pattern instruction --

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MS. GUTIERREZ: If it's in the Pattern? Okay.

THE COURT: -- just the number is fine. You know, just a caption, State's request, Defense's request and the number. Some are standard instructions that I would normally give, and where my instruction alters or is a little different than the standard instruction, I'll read it to you so that you can know exactly where it's a little different.

I have a compilation of Judge Angeletti's, Judge Hammerman's, Judge Mitchell's, Judge Gordy's instructions, and Judge Friedman's, O'Ferrall Friedman's, and I've found that some of them are particularly good, and what many of them do is, they are the same as the MICPEL, but they personalize it a little bit. So, I have taken it and tweaked it to the point where it's comfortable for me, and so to the extent that it differs a little bit, I'll read it.

For example, the reasonable doubt instruction, it's exactly as MICPEL says, but I do interject a paragraph that reiterates that this is not a civil case, that this is a criminal case, and that the burden is with the State just to make sure that it refocuses them as to where they need to be, that this isn't one of those slight tilting of the scales.

Again, to the extent that that's a little

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different, it is an addition not instead of, in that instruction. And most of the other ones are the same. I can tell you that some of them are combined together. For example, I will read the verdict sheet. I will read each of the questions. And I will then say that before you can answer the questions, your verdict must be unanimous. You must consider each of these questions individually before you can reach a verdict, and you must all agree, which is exactly what the Maryland Pattern Instruction says, but they have it as a separate instruction. So the sum and substance of that instruction is given, but it's given in the context of me having read the verdict sheet to them. So, those are the types of things.

And I would also tell you that I have an instruction that I give at the end, which has to do with what I call the working well and playing well with others instruction, the instruction asking them -- it's more of a modified Allen. That is, you're supposed to be working well and playing well with others. That is, you're supposed to be listening to one another. You're not supposed to make up your mind before you go into the deliberation room, and announcing at the door of a particular verdict. I mean, again, if you try cases with Judge Angeletti, that's his instruction almost verbatim. In other words, the instructions tend to be the Maryland

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Pattern Instructions, or widely accepted instructions.

I have the Maryland Pattern Instructions book sitting here upon my bench. If during the breaks you want to pick it up and thumb through it, all the numbers are listed in the table of contents on the front page. And I literally use it when I am asked to give a particular instruction. And, of course, I have a bench book that has them all in there, in the order I give them.

So, that's why I asked if you would just give me the numbers. If you have a particular instruction that you have fine tuned just for this case, that you think based on some case that it's particularly important, I'll be happy to look it over, and read it and consider it. I can tell you, though, I tend to stick pretty much to the Maryland Pattern Instructions since the Court of Appeals has sort of blessed most of them if not all of them. Yes?

MR. URICK: Just a proffer to the court. First, I would refer the court to Crews v. Director, 245 Md. 174.

MS. GUTIERREZ: I'm sorry. I wasn't --

THE COURT: Can you give me that again?

MR. URICK: That's Crews v. Director.

THE COURT: Crews v. Director?

MR. URICK: C-r-e-w-s v. Director of the Patuxent Institution.

THE COURT: C-r-u-w-s?

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MR. URICK: C-r-e-w-s.

THE COURT: C-r-e-w-s. Okay. And not C-r-u-z?

MR. URICK: No. It's C-r-e-w-s v. Director of the Patuxent Institution, 245 Md. 174.

THE COURT: For the proposition?

MR. URICK: At 178, and I'll just read it briefly. "In his sixth contention, the Applicant claims that the Circuit Court erred in permitting Dr. Croce, the Assistant Director of Patuxent and the Chief of its Psychiatric Department, to testify as an expert witness concerning the Applicant's mental condition. The basis of the Applicant's objection is that Dr. Croce was not licensed to practice medicine in the State of Maryland. We hold that the trial court did not abuse its discretion in admitting the opinion testimony of Dr. Croce. The common law does not require that an expert witness on a medical subject shall be a person licensed to practice medicine. Cites omitted.

"In Maryland this requirement has not been introduced by statute in respect to defective delinquent proceedings. We believe the Court of Appeals for the District of Columbia Circuit aptly stated the proper view concerning the competency of medical experts in Jenkins v. United States, 113 U.S. Appellate VC 300. The kinds of witnesses whose opinions courts have received even though

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they lacked medical training and would not be permitted by law to treat the conditions they described are legion. The principle to be distilled from the cases is plain. If experience or training enables a proffered expert witness to form an opinion which would aid the jury, in the absence of some contravening consideration, his testimony will be received. Our predecessors agreed with this principle when they defined medical experts merely as persons possessing technical knowledge in relation to matters with which the mass of mankind are supposed not to be acquainted."

THE COURT: Counsel, let me focus your attention. I'm not concerned about whether or not she's licensed in the State to carry out a particular assessment. My concern is whether she has ever carried out the assessment before. That is, the DSM provides a technical medical -- strike that -- a clinical procedure that is utilized to determine malingering or faking. If she's not certified in the State of Maryland, if she is not licensed in the State of Maryland to use that technique but she has, in fact, in some clinical manner done the testing, then that would be testimony directly at the heart of the court's concern.

MR. URICK: If I may now proffer her experience in doing that?

THE COURT: Very well.

MR. URICK: Her expertise and training is in the

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identification and symptomatology of medical deviation or medical abnormality. And let me go --

MS. GUTIERREZ: Can I have that repeated?

THE COURT: Yes, and I would ask that you do it slowly.

MR. URICK: Her expertise would be in the identification --

THE COURT: Identification.

MR. URICK: -- of the symptomatology of medical deviation or medical abnormality. Her particular --

THE COURT: Okay. When you say medical deviation or medical abnormality, a specific medical deviation and a specific abnormality or medical deviations and abnormalities generally?

MR. URICK: Generally. Specifically she's allowed to do nursing assessments, nursing diagnoses. Her experience, she has about 25 years in pediatric nursing, and she would testify that all 25 years involved clinical observations in a clinical setting. She specialized in the delivery of healthcare services to persons up to 19 years of age. That's what pediatric means. It means young people. She's in healthcare services. She has a bachelor's degree. She's a professional nurse.

THE COURT: Bachelor's degree in?

MR. URICK: Nursing.

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THE COURT: Uh-huh.

MR. URICK: She's a professional nurse by classification. She does nursing assessments, and she is allowed to make nursing diagnoses. A nursing assessment is an evaluation, she would explain, of a client according to their systems. Their mental health, their central nervous, their genital, their urinary, their digestive, their cardiovascular being the five systems. That is, they can evaluate someone from the top of their head to their toes.

THE COURT: And that is physical and mental?

MR. URICK: And mental, yes.

Her training and education, as I said, first she has the BS in nursing from the University of Maryland. She also had two years of clinical psychiatric at Sheppard Pratt Hospital -- or pardon me. She had two years of clinical, which included three months of psychiatric clinic at Sheppard Pratt Hospital. She had three months of OBY/GYN, et cetera. The clinic included a rotation through all the specialties.

THE COURT: That is the three months clinical?

MR. URICK: It was part of the two years. That's just within that. She went through a rotation of all the specialties in that two years. It included a three-month unit in psychiatric at Sheppard Pratt Hospital.

THE COURT: Okay.

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MR. URICK: And she can testify that she has direct experience. She has seen catatonics. She has worked in pediatric nursing. She saw schizophrenic catatonia at Sheppard Pratt. She's seen situational catatonia when she was assessing a father who had run over a two-year old offspring.

THE COURT: When you say she's seen it, is she going to testify that she has diagnosed it?

MR. URICK: She can evaluate it and assess it.

THE COURT: Oh, but that was not my question. I asked you whether or not she will testify that she has diagnosed.

MR. URICK: I believe if I give all the qualifications, I'll answer that question, if I could give her full range to explain what she does, how she does it, what she does. She can give the medical -- in questioning her, off the top of her head, she could give me clearly the medical definition, and could give me the DSM definition as well.

THE COURT: And she has used the DSM before?

MR. URICK: In her clinical setting, and I will explain that. She would say she got a master's in guidance counseling because she wanted to specialize in clinic work in pediatric nursing, and that included a component in counseling. She is certified in elementary and middle and

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high school counseling. She is certified in crisis counseling and grief counseling, and putting in her college portfolio substance abuse.

She has been the certified Maryland Substance Abuse Coordinator for nine or ten years. She has continuing education credits that are appropriate for pediatric nursing, for crisis management, for grief management. She got her master's in counseling so she could identify and help pediatric populations with their problems, which include substance use and abuse, guidance and counseling.

As indicated, her expertise has been in identification of the symptomatology of medical deviation or medical abnormality. She's allowed to do an assessment and a nursing diagnosis. This allows her to state that a patient has a deviation. She's made clinical observations. She worked for 25 years, and has always made these clinical observations. She's made mental assessments for eleven years in school. Part of the adolescent assessment, she would testify, is psychosocial.

Her position is as head of the clinic in the Baltimore County Schools. In fact, she started the clinic in the high schools. She was the one who saw the need and got it approved. She founded it. She is the manager of it. In that position, she supervises physicians, nurse

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practitioners, social workers, secretaries, Health Department Nurses under her. Everyone who gets referred within there goes through her. She makes her medical assessment/diagnosis and then refers them to the appropriate person to see after that, and she's the one who supervises these other professionals in the clinic setting.

She is familiar with the DSM. She has them. She would testify they are really in their setting more of a classification for billing. Once you have identified the particular abnormality, then it allows you to bill it. This became very important, she said, in 1997 because of Medicaid reimbursement. I asked her, "Have you used DSM's." "Yes, since I had a clinic. That's ten years." I asked her, "How familiar?" She said how she's familiar with them through the process at the clinic and extended education units that she has had in them.

THE COURT: Before you go any further, and I'll allow the defense to respond. Assuming that I say that she is qualified to render such an opinion, has she and would you be able to proffer the amount of time that she spent with the defendant, and the opportunity she had to make the observations for which she would be rendering an opinion. If so, are we talking about a fleeting moment, ten minutes, an hour, a couple of days? What would be her --

MR. URICK: She actually brought him into her

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office, where she examined him. I'm not certain of the length of time. I know that she would state that she had an adequate time to do an assessment. She would state that her assessment was that the patient, in terms of the deviation that she saw, was that the defendant displayed inappropriate affect for the symptoms that he was displaying overtly.

THE COURT: I'm not sure I understand what that means.

MR. URICK: In other words, there was a contradiction between the symptoms he appeared to be displaying and how he was actually responding. That it was not, that there was an inconsistency there.

THE COURT: And did she render such a diagnosis in some written form or report?

MR. URICK: No.

THE COURT: As far as her responsibility in her employment?

MR. URICK: No.

THE COURT: At what point did she render this opinion?

MS. GUITERREZ: I don't understand.

THE COURT: M's Gutierrez, I told you I would give you a chance. I just want to know his best case proffer so that I can understand exactly what he wants, and

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then you can tell me why he should or should not have it. But I'm asking my questions --

MS. GUTIERREZ: Well, I didn't mean to interrupt, Judge. I obviously want to know that information, and I have yet to hear him answer a single posed question.

THE COURT: My question is a good question then.

MR. URICK: She revealed that opinion when I interviewed her about what had happened on that occasion.

THE COURT: Okay. And so it was not something that she had provided to any authority prior to your asking the question?

MR. URICK: That's correct.

THE COURT: Okay. Very well. Now, with that, is there anything else that she would say or offer that you have not covered?

MR. URICK: I believe that would adequately cover her experience in doing this sort of evaluation, to allow her to give her assessment that what she saw were contrived symptoms on the part of the defendant.

THE COURT: Okay. Very well. And I would tell you that is much more than what you initially gave me in the information that was provided about her as a witness and her background. That is a lot different than what I initially responded to in my written order. And so, with

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all of that said, thank you very much, Mr. Urick.

MR. URICK: I would just like to say that we appreciate the court giving us the opportunity in your opinion to follow up with a new voir dire.

THE COURT: Right. And I had no problem with doing that. My concern was that if it was as you said, that my opinion stood. If it was different, I wanted to know about it. And now that we've heard what the State has, I'll hear from the defense.

MS. GUTIERREZ: Well, Judge, I'm not prepared to respond to this. It's amazing to me that we get this at 4:30 on an afternoon. You know, if there was information, although with this prosecutor, I don't expect to get any information ahead of time, but I'm certainly not prepared to respond to it now.

THE COURT: Very well.

MS. GUTIERREZ: Particularly since he's attempting to cite law, although that law pre-dates my admission to the bar since the Defective Delinquent's Act, which established Patuxent, was repealed before I got admitted. So, that makes it at least 25 years old. And I believe Crews v. Director, which is a fairly substantial case in establishing defective delinquent in juvenile court jurisdictions, stands for entirely different propositions, and I obviously have not looked at it for awhile.

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I would demand an answer to the question that the court posed; how long is she alleged to have examined the defendant. Since all of this was new to us at the first trial, she testified as to a minimal time. We have been provided no other information. I want an answer to that question before I'm even asked to respond as to the circumstances, to give both this witness and Mr. Urick the minimum amount of wiggle room to make it up as you go, and I think we're entitled to that.

THE COURT: Before you go any further.

MS. GUTIERREZ: The other, as to what inappropriate --

THE COURT: Stop right there. I think that's a fair question. How long would you say that this, your witness, had to see, examine, or in any way make an assessment of the defendant? I need an approximation of how long she met with him.

MR. URICK: I never try to put words in a person's mouth.

THE COURT: Mr. Urick, I'm not asking you that. I'm asking you -- the court is asking you, do you know how long of a time, yes or no?

MR. URICK: No, I don't.

THE COURT: Okay. You have to talk to your witness to ask her that question.

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witness to ask her that question.

MR. URICK: Yes.

THE COURT: And you haven't asked her that question yet.

MR. URICK: Correct.

THE COURT: Very well. Your next question?

MS. GUTIERREZ: And I'd like to know if there's any documentation of the fact that she saw him and for any length of time, from any source, anywhere.

THE COURT: That's a fair question, and I believe you have already answered me. There's no written report, and no notes. She only made the summary after talking to you. Is that correct?

MR. URICK: That's my belief. I can ask her that point again.

THE COURT: Okay.

MS. GUTIERREZ: And when is the point in time when she spoke to Mr. Urick.

THE COURT: Right. If you were to talk to her, and I will direct you to talk to her between now and the time that we start this case tomorrow morning, for the sole purpose of obtaining the answer to the first question, how long did she meet with the defendant, and secondly, to determine what, if any, notes or records she may have made independently, on her own or even as a result of talking to

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you. If she made some kind of a report as a result of talking to you, I'd like to know that as well. And, if she did, be prepared to answer that tomorrow morning, because I would like to know what that information is.

That's a fair, I think a fair bit of information that the defense would be entitled to know if I'm going to accept her as an expert. The next question, M's Gutierrez?

MS. GUTIERREZ: Well, I'd like to know information regarding this so-called three-months rotation in psychiatry at Sheppard Pratt, what did it involve, what was the course work, who were the psychiatrists and/or medical doctors who she worked with during that. I'd like to --

THE COURT: I will allow you to cross examine her on that or voir dire her on it. But I have a question. Was the vitae of this witness provided to the defense?

MS. GUTIERREZ: No.

MR. URICK: I have never asked the witness for a vitae.

THE COURT: Isn't that normal, that when you have an expert witness, that you provide the background or am I --

MR. URICK: The rule says to disclose the name of the witness. I disclosed who she was, her address, her telephone number, what her, you know, specialty was, and

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what the conclusions were that she would be testifying to.

THE COURT: Very well.

MS. GUTIERREZ: I'm sorry, Judge. For the record, I would dispute that any specialty, or what she is going to testify as classified as any expertise has ever been disclosed.

THE COURT: Well, M's Gutierrez, first of all, I haven't established that she has an expertise for which she could testify. I have not made that determination. As far as I'm concerned, as we stand here today, my order still remains, and until I hear such information from the witness -- counsel has only provided a proffer -- that will make me change my opinion, my ruling stands.

I would note, however, that if Mr. Urick has in his possession a vitae on his witness, the court would appreciate your providing a copy of that to the defense.

MR. URICK: I have none tonight. If the court wishes me to have the witness bring one in tomorrow, I can do that.

THE COURT: I would ask that you do that.

MR. URICK: Thank you.

MS. GUTIERREZ: Judge, I would --

THE COURT: And I would also tell you that if I do allow her to testify as a witness under these circumstances, I may allow there to be a delay in her

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testimony to afford counsel an opportunity to check this witness out. And to that end, I would ask that you have another witness that you can call in the event I choose to do that. And I would let you know that.

MS. GUTIERREZ: That's what I was going to ask for.

THE COURT: M's Gutierrez, I have been on the other side of the table, and --

MS. GUTIERREZ: Frankly, I've lined up appointments tonight. I can't --

THE COURT: -- I would just let you know that my intention is not to give the State a hard time or give the defense a hard time, but to do the kinds of things that I believe that would dictate a fair trial. And you know me well enough to know that I'm not going to bend over backwards to favor the defense nor am I going to bend over backwards to favor the State. I am going to do my best to keep the playing field as level as possible. To that end you would, if you had had her name, done what I would have done if I had her name, and that would be to check her out. Check her background out and make sure.

Now, having her name, I understand you already had that. Having her background from her vitae would have told you where she went to school, and would have told you a little bit about her so that you would be able to do

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get that. Well, this isn't Federal Court. For whatever that is and until --

MS. GUTIERREZ: Every other case I've ever handled in the Circuit Court, I've gotten it.

THE COURT: Well, until the Maryland Legislature adds that in as something that's required, or until a Court of Appeals says that that's what the discovery means, you don't have to give that information. But as the judge, in my discretion, I can ask that counsel provide that to you, and I'm asking counsel to do that.

And, again, I will tell you both, or all three of you, I have not decided whether or not to allow this witness to testify yet. I am interested in what the State is proffering at this point. It is new and additional information. And I will hear from the defense with regard to your opposition on all levels. One, as to her expertise. Two, assuming she has expertise, whether it is for the very area that she will be rendering an opinion And, three, whether she was in any way afforded the opportunity or had the opportunity to observe your client, and enough time to make such an evaluation, and I see that there are three different things.

And last but not least, assuming that she's qualified, she has the expertise, she could make the assessment and had the opportunity to observe the

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defendant, whether or not what she would say is so prejudiced as to outweigh the probative value, which will be the fourth hurdle, which I haven't gotten to.

MS. GUTIERREZ: And the other would be the relevance and --

THE COURT: And then we can throw in relevance as the fifth hurdle, but I haven't gotten there yet.

MS. GUTIERREZ: Judge, I do have a couple of requests based on the information just given us. If, in fact, she's ever made diagnoses before of this particular or any other so-called mental disorder, then I would request the production and the identification of every such instance, records thereof, for what purposes such diagnosis was accepted. For instance, any occasion which this person's diagnosis was sufficient to gain insurance payment for the treatment or lack thereof for any mental disorder.

THE COURT: Okay. I will not grant that. I will tell you right now that that will not be a request that will be granted.

MS. GUTIERREZ: Okay. Well, I'm making it.

THE COURT: However, I will allow you to voir dire the witness on that issue. And as, of course, you know, she will be under oath at the time she's voir dired, and then you can ask her whether or not she has done that and how many times, and under what circumstances, and has

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she ever been paid, et cetera. But I won't require the production of any records in that regard. It would violate, I believe, the confidentiality of the patient that would be involved.

But I do clearly understand your concern, and for that reason, during any voir dire, I will certainly allow you to voir dire in detail as to the number of times. And I'll tell you both right now if you didn't ask the question, when you were finished asking, I would ask the question, because if I point it out and try to direct you, that is where the heart of my concern is with regard to her expertise. That's the first hurdle.

I do not want someone who happens to be a nurse in a school setting who doesn't know anything about making diagnoses or doesn't have the authority or the expertise or the training, to come into court and make one, because malingering and faking and those types of things are clearly medical in nature, and require observations and other types of things that the court has indicated in its order concerns it such that I don't want a person without the adequate expertise coming in.

And also, the reason why she's an expert is because she has or she must have some type of extra training or expertise for which a lay person, like the ladies and gentlemen of the jury, does not possess. And

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ladies and gentlemen of the jury, does not possess. And for that reason, it isn't a matter of whether or not she has a hunch, she has a feeling that as a mother, a mom, a nurse, a teacher thinks someone is lying. You know, I have a 13 year old, and I could tell you much about 13 year olds, but whether that would qualify me as an expert as to whether a 13 year old will tell you the truth or not is another issue. And I would ask that you focus your attentions on that part of the court's concerns.

And I think if that's done, M's Gutierrez, you will have plenty of latitude to question the witness in the fashion that you've indicated that you need to do in order to adequately represent your client.

MS. GUTIERREZ: Judge, since I believe that any voir dire would necessarily involve testimony regarding medical terminology and symptomatology, that I would ask to be provided -- Mr. Urick has obviously got to speak to this witness tonight -- sometime tonight with an exact list of what, if any, inappropriate affects that this witness is going to testify were exhibited by Mr. Syed during whatever time that she allegedly examined or observed him.

THE COURT: Mr. Urick, the statement provided by the summary of the statement of this witness, which was provided in discovery, in supplemental discovery right before the trial, included what the witness would say she

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it describe affect or lack thereof? Did it describe bodily movements, behavior or other characteristics specifically?

MR. URICK: No, it did not.

THE COURT: All right. Then I would ask that in light of the fact that this witness is clearly going to render an opinion for which if it were in writing the defense would be entitled to, I'd ask that you ask that witness that question. And, again, I will do two things in light of what is coming out.

Please be prepared for two things. First, an opportunity of voir diring the witness outside the presence of the jury, followed by which there may be a delay, and when that witness will be allowed to testify. If I'm satisfied that she could provide testimony as an expert, be prepared for the fact that I may allow the defense some time to examine the information that has been provided so that she can adequately prepare her cross. Or that I put the witness on, let her testify, and then after she's finished, there will be a break so that you can prepare your cross, however you would like to do it.

MS. GUTIERREZ: Well, I'm going to give Mr. Urick my home number, and home fax --

THE COURT: I'm not going to require --

MS. GUTIERREZ: -- so that in the event that he does get this, --

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does get this, --

THE COURT: That's right. I'm not --

MS. GUTIERREZ: -- that he could provide it tonight because some of this can be checked out. That, you know, we may be able to do that --

THE COURT: At one time.

MS. GUTIERREZ: -- tonight or tomorrow morning before she gets here.

MR. URICK: I have no home fax, and I don't anticipate getting this information before this evening, but I'll have it in the morning.

THE COURT: Well, Mr. Urick, I understand that. But, you know Kinko's is open all night, 24 hours. I'm not requiring that you go there. I'm just letting you know. If you might be so inclined to do as counsel has asked, there is a way you can get the information. I'm not suggesting that you do it. I'm not ordering that you do it. But, you know, I'm just asking that we try our best to move along this case.

I know that we have some witnesses that have scheduling problems. I know that we have a juror that has a problem. So to the extent that we might be able to do anything to expedite this case, moving along in an efficient manner, the court readily appreciates both the defense and the State.

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And with that said --

MR. URICK: We have one other matter. I believe M's Murphy wanted to address that.

MS. MURPHY: A brief matter, Your Honor. At this time we just would like to call the court's attention to something. It's nothing that Mr. Urick or I personally observed, but a witness has expressed to me a concern, that when this witness testified previously, this witness was distracted and upset by gestures that the defendant made at this witness throughout the course of this person's testimony.

THE COURT: Who is this witness?

MS. MURPHY: This witness is M's Inez Butler. And like I said --

THE COURT: And who is M's Butler?

MS. MURPHY: She is a teacher at Woodlawn High School.

THE COURT: And what were the gestures?

MS. MURPHY: She believes the defendant was waving at her throughout her testimony.

THE COURT: Waving at her, like saying, hi, waving?

MS. MURPHY: She didn't know what the purpose of it was, but she was distracted and called it to my attention, and asked if there was anything that could be

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done to prevent this.

THE COURT: For the record, I have not noted Mr. Syed --

MS. MURPHY: And neither has Mr. Urick or myself.

THE COURT: -- doing anything in the course of this trial that has been inappropriate. He has been a gentleman. He has conducted himself in a fine fashion, and at no time have I observed -- and I would note that some of my observations were when all counsel were present, and when all counsel were gone, and the jail was waiting for the hall to clear to take him. He was always polite and courteous. And so I would just say, Mr. Syed, I'd ask you to keep doing what it is that you've been doing, and you will have no problem with this court.

MS. MURPHY: Again, Your Honor --

THE COURT: And I would tell M's Gutierrez for the record, your client has conducted himself in a fine fashion. And, M's Murphy and Mr. Urick, if you would let your witness know that this court has been very conscious about the gestures of not only witnesses, but of the spectators, and I have found when I have asked people to be mindful of their behavior, they have done so. And I don't believe anyone could say they have been mistreated or treated in any negative fashion since this case has begun. And if they have, I certainly would like to know about it.

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MS. MURPHY: Your Honor, again, it's nothing that we personally observed. I'm only bringing it to your attention because this witness is concerned.

THE COURT: I understand. Would you tell that witness what I have told you?

MS. MURPHY: I will.

THE COURT: And I ask that if anyone tries to approach her or does anything contrary to what I just said, that you let me know.

MS. MURPHY: Thank you, Your Honor.

THE COURT: Very well. And with that said, I will see you all tomorrow.

(The court took up an unrelated matter).

(CONCLUSION OF PROCEEDINGS)

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REPORTER'S CERTIFICATE

I, Brenda D. Trowbridge, an Official Court Reporter of the Circuit Court for Baltimore City, do hereby certify that I recorded the proceedings in the matter of State of Maryland v. Adnan Masud Syed, Case Numbers 199103041-46, on Wednesday, February 2nd, 2000.

I further certify that the foregoing pages constitute the official transcript as transcribed under my direction in a complete and accurate manner.

In witness whereof, I have hereunto set my hand this 28th day of February, 2001.

Brenda D. Trowbridge

BRENDA D. TROWBRIDGE, OFFICIAL COURT REPORTER

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