

1 IN THE CIRCUIT COURT OF THE
2 FOURTH JUDICIAL CIRCUIT, IN
AND FOR DUVAL COUNTY, FLORIDA
3 CASE NO: 16-2015-CF-007825-AXXX-MA
4 DIVISION: CR-E
5

6 STATE OF FLORIDA

7 -vs-

8 MICHAEL RAY HAIM,

9 Defendant.

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12 STATE OF FLORIDA)

13 COUNTY OF DUVAL)

14

15 Trial before the Honorable Steven B. Whittington,
16 Judge of the Circuit Court, Division CR-E, as cause in
17 this matter came to be heard on the 10th of
18 April, 2019, before Karen Waugerman, a Notary Public in
19 and for the State of Florida at Large and Registered
20 Professional Reporter.

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23 OFFICIAL REPORTERS, INC.
24 421 WEST CHURCH STREET, SUITE 703
JACKSONVILLE, FL 32202
(904) 358-2090
25

Official Reporters, Inc.

1 APPEARANCES:

2

3 ALAN SETH MIZRAHI, MAC DEVON HEAVENER and SAMUEL
4 BRETT FRIEDMAN, Esquires, Office of the State Attorney,
5 appearing on behalf of the State of Florida.

6

7 THOMAS GEORGE FALLIS and JANIS MARGARET WARREN,
8 Esquires, Private Attorneys, appearing on behalf of the
9 Defendant.

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1 P R O C E E D I N G S

2 (April 10, 2019) (9:02 a.m.)

3 (Defendant present.)

4 MS. WARREN: Your Honor, if I may, we
5 have added three photos to the list, defense
6 witness list. And we've given an amended
7 defense exhibit list to the clerk and the
8 State has agreed.

9 THE COURT: All right. What are those
10 numbers?

11 THE CLERK: 46 through 49, Judge.

12 THE COURT: Without objection?

13 MR. MIZRAHI: Yes, Your Honor, without
14 objection.

15 THE COURT: Defense Exhibit 46 through
16 49 will be admitted into evidence.

17 (The items last above referred to were
18 received into evidence as Defendant's Exhibit
19 Nos. 46 through 49.)

20 MS. WARREN: Thank you, Your Honor.

21 MR. MIZRAHI: One more thing, Your
22 Honor. Previously, the defense -- I have not
23 mentioned this to them. I'm sorry. I
24 forgot. The defense objected to two of the
25 State's pictures, and the Court ruled them

1 inadmissible, 17 and 18, which were the
2 photographs of the unknown stain.

3 THE COURT: I remember.

4 MR. MIZRAHI: But pursuant to the
5 defendant's opening as well as a significant
6 amount of their cross examination about what
7 the searchers were looking for, I wanted to
8 at least bring it up again to Your Honor to
9 see if that has now opened the door to the
10 admissibility of those photographs because
11 repeatedly, Miss Warren and Mr. Fallis,
12 through their cross and in opening, said the
13 police were looking for things like blood.

14 So I wanted to show that they did see
15 something. They took a picture of it, and
16 obviously, the defense can cross on that
17 there was no determination as to what that
18 was. But I do think they've opened the door,
19 based on their arguments, to the
20 admissibility of those pictures.

21 THE COURT: Those thoughts crossed my
22 mind during those questions.

23 MR. FALLIS: Your Honor, they're
24 irrelevant. There's no doors being opened.
25 They're completely irrelevant. There was

1 testimony yesterday that we looked at it. It
2 turned out not to be blood. Their own
3 witness even said that, Judge. I mean,
4 there's no relevance of bringing in something
5 that isn't anything and that's what we have
6 here. It still has to be relevant, Judge,
7 for them to be admitted.

8 THE COURT: Right. Their argument is
9 it's relevant based on your questions that
10 they were looking for stains and didn't find
11 anything or didn't even -- didn't thoroughly
12 look to see if they found anything, and
13 point, in fact, they did find something, took
14 a picture of it. It's turned out not to be
15 or --

16 MR. MIZRAHI: They just took a picture
17 of it.

18 THE COURT: Those two pictures. It was
19 never tested one way or another.

20 MR. MIZRAHI: Correct. They just took
21 picture of it. This is 1993. There is no
22 DNA.

23 THE COURT: Well, they could have tested
24 whether or not it was blood or not.

25 MR. MIZRAHI: They could have tested

1 whether or not it's blood. Again, it's her
2 house.

3 MR. FALLIS: Your Honor --

4 THE COURT: Well, that's the difference,
5 though, as I'm thinking through, Mr. Fallis.
6 I did not allow it in because I said the
7 danger of -- I found it to be relevant, but
8 the danger of unfair prejudice was greater
9 than the relevance because we're all going to
10 think -- and even as I was thinking it
11 through, I kept, in my own mind, referring to
12 it as the bloodstain. Well, that's part of
13 the problem. We don't know whether it was a
14 bloodstain.

15 So I -- I said it's not coming in. But
16 you asked a lot of questions about you didn't
17 do a thorough -- you didn't find anything
18 during your search. The fact is they did.
19 We just don't know what it is.

20 I'm going to take it under advisement
21 for the time being, Mr. Mizrahi. I'm going
22 to be thinking about it a little bit more.
23 Right now I'm keeping it out but I understand
24 the State's argument. As I said, I was
25 thinking the same thing during those

1 questions and I might revisit the issue.

2 MR. MIZRAHI: Our next witness is that
3 witness.

4 THE COURT: Oh.

5 MR. MIZRAHI: For whatever that's worth.
6 I don't have it here yet. I actually left it
7 in my office, but I think I have it
8 digitally. I could publish it if it was
9 admitted.

10 THE COURT: Well, I have some -- I have
11 some concerns about it still. Those concerns
12 are going to weigh me in favor of keeping it
13 out so I'll make that decision. It stays
14 out.

15 MR. MIZRAHI: Yes, sir.

16 THE COURT: But I appreciate the
17 argument.

18 MR. MIZRAHI: Yes, sir.

19 We're ready.

20 THE COURT: And, of course, I could
21 always revisit it again. I mean, again, when
22 you were asking those questions, I was up
23 here thinking this may -- this may come back
24 up.

25 MR. MIZRAHI: Yes, sir.

1 THE COURT: Okay. Are we ready for the
2 jury?

3 MR. MIZRAHI: We are.

4 THE COURT: Bring them in.

5 (Jury present.)

6 THE COURT: And welcome back. I hope
7 everybody had a good night's rest and are
8 ready to get back to work again this morning.

9 Was everybody again able to follow my
10 instructions about not talking about the case
11 or watching any media coverage?

12 THE JURORS: Yes.

13 THE COURT: Everybody said yes. Very
14 good.

15 We'll continue on with the State's case.
16 Mr. Mizrahi, you may call your next witness.

17 MR. MIZRAHI: Thank you, Your Honor.
18 State calls Allen Miller.

19 (Witness sworn by the clerk.)

20 ALLEN MILLER,
21 having been produced and first duly sworn as a witness
22 on behalf of the State, testified as follows:

23 DIRECT EXAMINATION

24 BY MR. MIZRAHI:

25 Q Please introduce yourself to the jury.

1 A My name's Allen Miller.

2 Q What do you do for a living, sir?

3 A I'm a product manager for the Farland Group.

4 Q And how long have you been a product manager
5 for that group?

6 A 17 years.

7 Q Did you have any employment prior to that?

8 A I did.

9 Q What did you do?

10 A I was a senior crime scene analyst for the
11 Florida Department of Law Enforcement.

12 Q How long were you employed there?

13 A 21 years.

14 Q What is a senior crime laboratory analyst?

15 A A senior crime laboratory analyst is
16 basically just a crime -- is an analyst for the State
17 crime laboratory. I was assigned to the crime scene
18 section and was responsible for processing crime
19 scenes.

20 Q Were you essentially a crime scene
21 investigator?

22 A Yes, sir.

23 Q CSI, kind of like the television show?

24 A Yes, sir.

25 Q How did your job at FDLE differ from your TV

1 counterparts?

2 A Oh, there's a laundry list of things I can go
3 on about, but we don't solve crimes in 45 minutes.

4 Q Yes, sir.

5 Did you have -- well, what is FDLE, first?

6 A Florida Department of Law Enforcement.

7 Q And what -- what agency is that?

8 A It's a State agency that reports to the
9 governor.

10 Q And is it independent of the Jacksonville
11 Sheriff's Office?

12 A Yes.

13 Q Back in 1993, was it common for the Florida
14 Department of Law Enforcement to provide crime scene
15 investigation on behalf of agencies like the
16 Jacksonville Sheriff's Office?

17 A Yes. We covered 14 counties in Northeast
18 Florida, providing services to all of them.

19 Q Does that still continue today?

20 A Yes.

21 Q Is it continued in a lesser degree than it
22 used to be? In other words FDLE, does less crime scene
23 work for bigger counties than it used to?

24 A It -- it kind of ebbs and flows.

25 Q Yes, sir.

1 I want to turn your attention back to 1993.

2 How long had you been a crime scene investigator at
3 that point?

4 A 13 years.

5 Q And so you were familiar with the processing
6 of homicide scenes?

7 A Yes, sir.

8 Q And missing person scenes?

9 A Yes.

10 Q Were you called out to process the scene in a
11 Red Roof Inn on January 7th of 1993?

12 A I was.

13 Q Did you personally have anything to do with a
14 purse that was recovered in that dumpster?

15 A Not the purse itself.

16 Q And why was that?

17 A It was already -- had already been retrieved
18 from a dumpster in the back of the property.

19 Q And so you did not process that in any way.

20 A No.

21 Q Will you explain to the jury why in certain
22 situations, processing would not be critical for your
23 job because a piece of evidence has already been
24 handled by multiple people that are not suspects?

25 A I'm sorry.

1 Q Would you necessarily process something that
2 had already been handled by multiple people, in other
3 words, had already been compromised?

4 A Yes. It still should be processed.

5 Q But you didn't make that decision one way or
6 another?

7 A No.

8 Q I want to turn your attention to Red Roof
9 Inn. Did you actually take a series of photographs?

10 A Yes.

11 Q Why is photography important for your job?

12 A It captures the scene as it was the time that
13 you were there for a living history of what was
14 represented.

15 Q I'm going to show you what's been introduced
16 as State's Exhibit 5. Is this an aerial photograph of
17 the Red Roof Inn? Touch your screen and it should come
18 up.

19 A Oh, thank you. All right.

20 Q Is that aerial photograph of the Red Roof
21 Inn?

22 A Yes.

23 Q And do we see the dumpster here in the back?

24 A Yes.

25 Q And we have State's Exhibit 6. And, again,

1 you can see the dumpster in the back?

2 A Yes.

3 Q State's Exhibit 8 is a Google Map to show
4 that the Red Roof Inn is relatively close proximity to
5 the airport. Is that your memory of where the Red Roof
6 Inn is in relation to the airport?

7 A Yes, sir.

8 Q State's Exhibit 9, what's the jury looking at
9 here?

10 A This is a photograph of the dumpster, the one
11 with all the debris in it and the second dumpster that
12 we brought in to transfer that debris as we searched
13 the dumpster.

14 Q So the dumpster to the left of the photograph
15 was actually just brought in to hold the garbage.

16 A Correct.

17 Q What was the purpose of going through that
18 dumpster?

19 A We were looking for any additional evidence,
20 for any remains that might be possible.

21 Q State's Exhibit No. 10, did you have anything
22 to do with the photography that took place with regard
23 to the purse?

24 A No, sir.

25 Q What was your next involvement in the case?

1 A The next day, January 8th, we were called to
2 2439 Dolphin Avenue.

3 Q I guess I need to follow up the last
4 question, which I think assumed, which is when you
5 looked in the dumpster, you did not find a body.

6 A Correct. We didn't find anything additional.

7 Q So you were called out to Dolphin Avenue. In
8 the interim, had a car that had been found at the
9 airport been towed to the Florida Department of Law
10 Enforcement?

11 A Yes.

12 Q And did you take photographs of that vehicle?

13 A We did.

14 Q I want to show you a few of those photographs
15 before we get to Dolphin Avenue. Because, Mr. Miller,
16 when you were at Dolphin Avenue, you kind of knew what
17 you were looking for, is that correct?

18 A Yes, sir.

19 Q What were you looking for?

20 A We were looking for a specific pair of shoes.

21 Q And why was that?

22 A On the driver's floor mat of the Toyota that
23 was towed to the laboratory, the one in the photograph
24 here, there was a debris shoe impression left on the
25 floor mat.

1 Q And so when you went to the house, that was
2 one of the things you were looking for, to see if a
3 shoe could match that.

4 A Yes.

5 Q Okay. Well, let's start first with the car
6 because you processed that car on the morning of the
7 8th before you went to Dolphin Avenue.

8 A Yes.

9 Q Okay. So State's Exhibit 138, is that a
10 picture of the rear of the car?

11 A Yes, it is.

12 Q State's Exhibit 139, what is that a picture
13 of, the side?

14 A This is just overall from the back side of
15 the car.

16 Q Okay. And is this at the Florida Department
17 of Law Enforcement's garage, I guess?

18 A Yes.

19 Q State's Exhibit 140, what's the jury looking
20 at here?

21 A This is a photograph of the driver's
22 interior.

23 Q Can you kind of circle the area in which you
24 found that debris print?

25 A There was debris -- if I just touch, does it

1 work or --

2 Q Yeah. It's like a Monday night football
3 Telestrator. If you use your finger, it should write
4 out --

5 A Okay. There's a debris mark here and there
6 was a debris mark here.

7 Q Was this the way the car was when you found
8 it?

9 A Yes.

10 Q 'Cause we see -- and we'll see a better
11 picture in a minute. But we see that the car seat is
12 in the front seat?

13 A Yes.

14 Q And then we see that the glove box has been
15 opened.

16 A Correct.

17 Q Then we have the other side. State's
18 Exhibit 41, again, is this the way that the car was?

19 A This is the way -- yeah, the condition it was
20 when it was towed to the laboratory. Yes.

21 Q Did you end up processing some of those items
22 that were, with the glove box open, on the ground?

23 A Some of the items were collected, yes.

24 Q Okay. But you did not do that processing.

25 A No. No, sir.

1 Q Someone from JSO did that.

2 A No, sir, Florida Department of Law
3 Enforcement.

4 Q Oh. So a fellow latent fingerprint examiner
5 did that processing.

6 A Yes.

7 Q State's Exhibit 142, is this a close-up of
8 the driver's side floor mat?

9 A It is.

10 Q And, again, could you show the jury the areas
11 where you saw that shoe print impression?

12 A There were shoe prints in this area here, and
13 there was some remnants in that area there.

14 Q State's Exhibit 143, what's the jury looking
15 at here?

16 A This is the rear passenger floorboard.

17 Q And did you notice some sand in there as
18 well?

19 A Yes.

20 Q Was there also perhaps some shoe prints but
21 you couldn't really tell?

22 A There's an outline that hinted at being a
23 shoe mark.

24 Q Now, State's Exhibit 144, what's the jury
25 looking at here?

1 A This is the floor mat from the driver's side.

2 Q And how are you photographing this?

3 A This was -- this was laid out on the floor in
4 the crime laboratory, and a static image was taken of
5 it.

6 Q What does static image mean?

7 A The camera's placed on a tripod so that it
8 doesn't move, directed by an image to show detail.

9 Q We have a couple other photographs that will
10 explain. State's Exhibit 145?

11 A This is just a close-up of one of the marks.

12 Q State's Exhibit 146?

13 A A little closer shot.

14 Q And can we see a little bit of tread markings
15 on that floorboard?

16 A You can. It's -- is it okay to touch?

17 Q Yes, sir.

18 A Okay. In this area here, the overall shoe
19 mark -- I guess the overall shoe mark kind of runs like
20 this, and then the detail areas are roughly in this
21 area here.

22 Q Is the overall shoe mark important for
23 potential comparison in addition to any tread?

24 A Yes. It gives a rough indication of size and
25 direction of the shoe or direction as in whether it's

1 pointing forward or backwards or -- or such. And an
2 overall mark would give a rough indication of size of
3 the shoe.

4 Q So having photographed and processed these
5 items, did you know roughly the kind of shoe you were
6 looking for?

7 A Well, we had done some research on it. And
8 we were looking for a specific shoe that had a herring
9 bone design, which is basically an up-and-down angular
10 pattern. And so we were looking for something along
11 those lines, yes.

12 Q What type of shoe would that be, like, a
13 cowboy boot or a sandal or what kind of shoe?

14 A No. It was more indicative of a running-type
15 shoe.

16 Q A tennis shoe or a running shoe?

17 A Yes.

18 Q Okay. So that's what your were looking for?

19 A Yes.

20 Q Did you have an approximate size or idea?

21 A Not at the time, no.

22 Q So let's now fast-forward to the 8th, when
23 you went to Dolphin Avenue. Did you respond in your
24 FDLE truck?

25 A Yes.

1 Q Again, is photography important?

2 A Yes, sir.

3 Q Now, at that time, you just had a consent to
4 search, not a search warrant, correct?

5 A As far as I know. Those -- those types of
6 matters are more handled -- are more easily handled by
7 the Sheriff's Office, the investigating detective.
8 We're just directed to be here and do that.

9 Q And did you take a limited number of
10 photographs on January 8th?

11 A Yes. There was not a complete search done of
12 the property in a typical crime scene fashion. We did
13 go in and shoot some record photographs of the interior
14 of the house and of the items that we collected.

15 Q Did you take one photograph of the outside of
16 the house, except for what's been entered into evidence
17 as State's Exhibit 12 is the only picture you took of
18 the outside of the house?

19 A I believe so, yes.

20 Q Does that indicate -- is that the work truck
21 that was parked in the driveway on January 8th?

22 A Yes.

23 Q Was that work truck eventually seized and
24 processed by the Florida Department of Law Enforcement?

25 A Yes.

1 Q Does it indicate that it was raining on
2 January 8th, 1993?

3 A The ground's wet and so is the truck, yes.

4 Q Showing you State's Exhibit 13, what is --
5 what is the jury looking at here?

6 A This is a photograph of the laundry room.

7 Q Are there some contents in the right-hand
8 side of that laundry room?

9 A There was a pile of blankets and towels and
10 stuff.

11 Q State's Exhibit 14, did you take a close-up
12 of that?

13 A Yes.

14 Q And did you end up seizing that item?

15 A Yes, we did.

16 Q State's Exhibit 15, what's the jury looking
17 at here?

18 A This was a stack of towels in the bedroom
19 closet, I believe.

20 Q Do you have a recollection of these items,
21 either the laundry room items or the towel items,
22 smelling of bleach?

23 A Yes. These towels in particular in this
24 photograph were damp and did have a chlorine odor to
25 them, yes.

1 Q Now, did you do any kind of testing on those
2 items?

3 A No.

4 Q That would be other members of your lab?

5 A That test is something that's not readily
6 available but yes.

7 Q Showing you what's been entered into evidence
8 as State's Exhibit 16, what is the jury looking at
9 here?

10 A This is a pair of Nike tennis shoes or
11 running shoes.

12 Q And was that of interest to you based on your
13 processing of the Toyota Camry?

14 A Yes.

15 Q Did you seize those?

16 A Yes, we did.

17 Q Is this the way the Nike shoes were on
18 January 8th, 1993?

19 A They were found underneath this coffee table,
20 yes.

21 Q Fast-forwarding to State's 147, is this a
22 photograph in your lab of those same shoes?

23 A It is, yes.

24 Q And State's Exhibit 148, what's the jury
25 looking at here?

1 A This is a photograph of the outsole, the part
2 that contacts the ground, of the shoe.

3 Q And did that sand appear to be consistent
4 with the sand that was located in the Toyota Camry?

5 A It had the same coloration, yes.

6 Q And then 149, is that the work truck that was
7 processed?

8 A Yes.

9 Q State's Exhibit 150, did you document any
10 sandy shoe prints in State's Exhibit 150, which is the
11 work truck?

12 A No.

13 Q State's Exhibit 151, is that a close-up of
14 that front floorboard?

15 A It is.

16 Q No sandy footprints.

17 A No, sir.

18 Q So you have the suspect shoes that have sand
19 that generally matches the sand in the Toyota. How do
20 you go about doing a comparison to see if there's any
21 similarity between the shoes that were seized and the
22 footprint that was left behind in that Toyota?

23 A That's part of a subsequent investigation and
24 analysis within the laboratory. The -- well, prior to
25 any work done on the shoes, the sand debris would have

1 been collected out of the shoes, as to keep that in
2 evidentiary form. After that was done, then obviously
3 the shoes are photographed in a more static manner than
4 what they are here, something more for comparison
5 photographs. After that's done, a visual examination
6 is done against the subject -- suspect track, in this
7 case, the track that was on the -- the floor mat.

8 After that, overlays can be made of the shoe
9 for direct comparison to the -- to the photographs to
10 see if the patterns line up, if the class
11 characteristics are in concert with each other, and it
12 continues on that way until an opinion is rendered.

13 Q And were you, in 1993, in the process of
14 training to be able to do those types of comparisons?

15 A I was.

16 Q And who was training you?

17 A Ernie Hamm.

18 Q And is Mr. Hamm here today?

19 A He's out in the lobby, yes.

20 Q So we'll let Mr. Hamm talk a lot about that
21 'cause you were in the process of training. He was
22 kind of teaching you how to do all that stuff.

23 But did you submit the dirt to soil experts
24 in this case?

25 A We did.

1 Q And was there any dissimilarity in that
2 comparison?

3 MR. FALLIS: Objection, Your Honor,
4 calls for hearsay.

5 THE COURT: Overruled.

6 BY MR. MIZRAHI:

7 Q Was there anything dissimilar?

8 A Not that I recall.

9 Q So when you're doing a shoe print comparison,
10 is it common to not get -- is it different from a
11 fingerprint comparison? Explain the difference and
12 likelihood of getting a perfect match from fingerprints
13 versus shoe prints.

14 A Well, the fingerprint comparison is a
15 comparison of the ridge detail of the friction surfaces
16 of your -- of your fingers and in some cases, your
17 feet. Those are done by matching patterns, whether
18 it's a whorl or a loop, an arch, general class
19 characteristics like that. And then it breaks down
20 into individual characteristics of bifurcations and
21 islands and ending ridges and so on and so forth.
22 There's lots of different things that go into that.

23 As far as comparisons on shoe prints, you're
24 looking for, again, class characteristics. You want to
25 have a pattern that matches the pattern that you're

1 looking for obviously. If this shoe had a bunch of
2 pegs in it, it wouldn't match in class characteristics
3 to the chevron detail that we found in the -- in the
4 shoe print on the floor mat.

5 Once you go past that, then you look at some
6 general measurements. You do the -- an overlay to see
7 if the class characteristics match up. If they are
8 close enough for an examination, then you continue on
9 from there, looking for individual characteristics that
10 may be possible -- may be present. And then you look
11 at the suspect shoe to see if those individual
12 characteristics have transferred over to the suspect
13 print.

14 Q Is it common in shoe print comparisons to not
15 have a definitive identification, as this is the shoe
16 that left this shoe print?

17 A Oh, yes, quite regularly.

18 Q And in fingerprints, typically, if you're
19 able to do a comparison, you're able to match it.

20 A Yes.

21 Q Okay. Is that because shoes generally are
22 the same, and there has to be some specific defect to a
23 particular shoe to make it identifiable as the
24 particular shoe that left the print?

25 A Shoe manufacturers unfortunately don't make

1 just one shoe. They make thousands and thousands of
2 shoes, and those shoes are then distributed throughout
3 the country, the world, wherever they happen to go.
4 Finding those shoes, the vast majority of them is
5 something that's difficult to do. They don't keep
6 records of who sells a Size 9 or 10 Nike or whatever it
7 happens to be. So you just go on and use population
8 frequencies and things like that to try to narrow
9 things down.

10 Because there's so many different shoes -- or
11 so many of the same type of shoe that come out of a
12 specific mold, you have to then rely on individual
13 characteristics to help effect your identification, if
14 possible.

15 Q And did you do research on the rarity of this
16 particular brand of shoe, Nike Air Advantage?

17 A We contacted Nike back in 1993 about the
18 population of this shoe in the United States.

19 Q And approximately how many of those shoes
20 were manufactured?

21 A A little more than 8,000 total for around the
22 world. Of those, a little over 3,000 were distributed
23 within the United States.

24 Q Is that considered a rare shoe then?

25 A In Nike's opinion, it was, yes.

1 Q I want to talk a little bit about the print,
2 the unknown shoe print in the car. Is this the kind of
3 print that is fragile or easily disturbed if someone
4 were to step on top of that print?

5 A Yes, I believe so.

6 Q And did you take special care in the
7 processing not to disturb it?

8 A Oh, of course, yes.

9 Q And even with your slight processing, I think
10 we see that the print -- the amount of dirt that's
11 there from 142 to the close-up picture in 145 shows
12 that there's some missing parts of the dirt.

13 A Can you go back to the other?

14 Q Sure. So in 142, we see it appears to be
15 more sand than what we see in 145.

16 A Well, 145 is a -- more of a close-up of
17 the -- of the area of interest so --

18 Q Is it a close-up of where that ruler is?

19 A Correct, correct.

20 Q Okay. Now, in addition to the Nike Air
21 Advantage and the contents of the washing machine and
22 towels that you've indicated that you collected, did
23 you also collect a Smith & Wesson revolver on
24 January 8th? If you need to refer to your report,
25 that's fine.

1 A Yes. There was -- a Smith & Wesson Airweight
2 was recovered.

3 Q Is that a firearm?

4 A Yes, sir. It's a revolver.

5 Q Now, did you also in the course of your
6 investigation do a series of searches out in the woods
7 to collect dirt and things like that?

8 A Yes. We -- from the examination that was
9 done on the -- on the sand debris from both the shoe
10 and the -- the floor mat, it was determined that a
11 certain type of sand which is common to North Florida
12 was a -- was an area of interest that we were looking
13 for. So we searched a good part of northern Duval
14 County looking for these sand upwellings.

15 Q During the course of your search, did you
16 ever take a sand sample from underneath the shower,
17 outdoor shower, at the Haim residence?

18 A Did not.

19 Q I want to now fast-forward to your next role
20 in the case. Let me ask you this: During the course
21 up until March 17th, did you employ the use of any kind
22 of cadaver dogs?

23 A No, sir.

24 Q Now turning to March 17th, were you the crime
25 scene investigator that searched the Dolphin address

1 again on March 17th of 1993?

2 A Yes.

3 Q Was that pursuant to a search warrant?

4 A That was pursuant to a search warrant, I
5 believe.

6 Q Was that a much more thorough, invasive
7 search and than the search on the 8th?

8 A Yes.

9 Q And did you photograph both the inside and
10 the outside of the Dolphin Avenue address?

11 A We did.

12 Q Did you also take a video camera to that
13 scene so you could film the scene with VHS?

14 A Yes.

15 Q All right. And, again, although these may
16 not be all that forensically important, do you always
17 document the areas that you're looking at and how the
18 scene looked generally before you get to any specific
19 findings?

20 A Yes.

21 Q Because you don't know what's important
22 later.

23 A Correct.

24 Q So you just want to document the scene.

25 A Correct.

1 Q And you try to take as many photographs as is
2 reasonable to document that scene.

3 A Yes.

4 Q And in your career, have you missed taking
5 photographs that you wish in hindsight you would have
6 taken?

7 A Oh, of course.

8 Q Have you ever processed a perfect scene?

9 A I'd like to think so but no.

10 Q State's Exhibit 19 is going to be the front
11 yard?

12 A Yes, sir.

13 Q We'll just run through them. For the record
14 purposes, I'll just say what it is, and you just
15 confirm that's what it is.

16 State's Exhibit 19 is going to be the other
17 side of the yard, where you're looking at the fence
18 area, the gate area back where the outdoor shower is?

19 A Yes.

20 Q State's Exhibit 21 is a closer-up of that?

21 A Yes, sir.

22 Q And do we see, Mr. Miller, actually a little
23 part of the showerhead right there?

24 A We do, yes.

25 Q State's Exhibit 22 now, there's a couple of

1 still shots that we took from the actual VHS camera
2 because they show a little bit closer than what the
3 photographs show.

4 A Okay.

5 Q So is this a still shot from that video.

6 A Appears to be, yes.

7 Q You can see the graininess is a little
8 different.

9 State's Exhibit 23, what is this area?

10 A This is the shower area on the inside of the
11 fence.

12 Q And is this a still shot from the video?

13 A Yes.

14 Q Now, Mr. Miller, did you ever lift up that
15 pallet?

16 A No, sir.

17 Q Did you ever move those chlorine bottles?

18 A No, sir.

19 Q Did you ever identify what's on top of this
20 pallet here?

21 A No, sir.

22 Q Did you ever measure the pallet?

23 A No.

24 Q Is that the closest photograph that we have
25 of the pallet?

1 A Yes, sir.

2 Q State's Exhibit 24 and 25 are just going to
3 be close-ups of those same pictures.

4 A Okay.

5 Q State's Exhibit 26, is this other parts of
6 the yard?

7 A Yes.

8 Q State's Exhibit 27, is that going to be
9 another part of the yard?

10 A Yes, sir, showing the shed in the back.

11 Q And we see the shed.

12 28, is that going to be behind the shed?

13 A Correct.

14 Q And do we see a wheelbarrow back there?

15 A We do.

16 Q State's Exhibit 29 is a close-up of that
17 area?

18 A Yes.

19 Q State's Exhibit 30 is another corner of the
20 yard?

21 A Yes.

22 Q State's Exhibit 31 is from the rear of the
23 yard to the front of the house?

24 A Correct.

25 Q State's Exhibit 32 is from the side of the

1 yard, looking into the pool?

2 A Correct.

3 Q 33 is another picture of the yard?

4 A Correct.

5 Q 34, is this a picture of the pool from the
6 shed area?

7 A Yes.

8 Q State's Exhibit 35 is another picture of the
9 pool?

10 A Correct.

11 Q 36 is another picture of the pool area?

12 A Yes.

13 Q 37 is another picture of the shed from the
14 pool area?

15 A Yes.

16 Q State's Exhibit 38 is a picture to the rear
17 door of the house?

18 A Yes.

19 Q Leading to the outdoor pool?

20 MR. FALLIS: Your Honor, at this time, I
21 would object to all leading questions. I
22 really --

23 THE COURT: Overruled. I'll overrule.

24 MR. FALLIS: He's giving him the answer
25 to his questions.

1 THE COURT: I understand. I overruled.

2 BY MR. MIZRAHI:

3 Q State's Exhibit 39, what is this?

4 A This is a view of the inside of the shed.

5 Q State's Exhibit 40, what is this?

6 A It's in the family room, I believe, of the
7 house.

8 Q State's Exhibit 41?

9 A Shot of the same room.

10 Q State's Exhibit 42?

11 A The view of the living room.

12 Q Is this going to be the coffee table in
13 State's Exhibit 42, where the shoes were found?

14 A Yes.

15 Q Obviously, this is going to be nine weeks
16 later.

17 A Correct.

18 Q State's Exhibit 43?

19 A Another view of the living room.

20 Q State's Exhibit 44, is that a close-up of the
21 photograph that's in State's Exhibit 43?

22 A Yes.

23 Q State's Exhibit 45?

24 A The kitchen.

25 Q State's Exhibit 46?

1 A The dining room.

2 Q State's Exhibit 47?

3 A The spare room with workout equipment in it.

4 Q And do we see firearms in that photograph?

5 A Yes.

6 Q Now, on the 8th, you seized one .38-caliber

7 firearm. On the 17th, did your go and seize the other

8 firearm?

9 A Yes. Everything on the wall was taken.

10 Q And was one of those firearms a .22-caliber

11 rifle?

12 A Yes.

13 Q And you were retired from FDLE when

14 Miss Haim's remains were found?

15 A Yes.

16 Q On the 17th, did you ever have cadaver dogs

17 at that residence?

18 A Did not.

19 Q And you were the chief crime scene

20 investigator.

21 A Yes.

22 Q You never lifted and looked under the shower.

23 MR. FALLIS: Objection, leading, Judge.

24 THE COURT: Re-ask the question,

25 Mr. Mizrahi.

1 MR. MIZRAHI: Yes, sir.

2 BY MR. MIZRAHI:

3 Q Did you ever look under that shower?

4 A Did not.

5 Q Did you see any ground disturbance out there
6 that day?

7 A No. The grass around the pallet or whatever
8 was on the ground looked normal. All the items on the
9 top of the pallet looked normal in regards to having a
10 pool and having debris around or containers around,
11 dealing with the pool.

12 Q Now, do you -- are you able, as you sit here
13 today, to say that the body was not in the yard on
14 March 17th when you did that search?

15 A I can't say that, no.

16 Q Is it significantly possible that you missed
17 her?

18 A Oh, yes.

19 Q And why do you say that?

20 A Well, for one, she was found under the
21 pallet. Her remains were found under the pallet and we
22 didn't search under that. There was nothing about that
23 that led us to believe that it had ever been moved.

24 Q Were you aware at the time that you did the
25 search that the pallet was relatively easy to remove?

1 A Oh, it would have been something just to lift
2 up, yes.

3 MR. MIZRAHI: Thank you. That's all the
4 questions I have.

5 THE COURT: Any cross?

6 CROSS EXAMINATION

7 BY MR. FALLIS:

8 Q Good morning, Mr. Miller.

9 A Good morning.

10 Q Where we just left off, go into a little more
11 detail. You said, quote, the pallet would have been
12 easy to lift up. You never even tried to lift it up,
13 did you?

14 A No, sir.

15 Q So you wouldn't know how easy it was unless
16 you tried.

17 A Well, that would be correct, yes.

18 Q Correct?

19 A Right.

20 Q So you can't say that it would be easy
21 without having tried it to determine, isn't that
22 correct?

23 A That would be correct.

24 Q And you said you didn't see anything
25 disturbed. Now --

1 (Brief interruption.)

2 THE COURT: What is going on?

3 UNIDENTIFIED SPEAKER: She's having an
4 anxiety attack.

5 THE COURT: All right. Ladies and
6 gentlemen, let's take a short recess. Go
7 back in the jury room until we get this
8 addressed, and we'll be right back with you.

9 (Jury excused.)

10 THE COURT: Let the record reflect the
11 jury has left the courtroom.

12 Y'all please address that and let me
13 know when we're ready to proceed.

14 Are we ready to proceed?

15 MR. MIZRAHI: State's ready.

16 THE COURT: Just so the record is clear
17 as to why we stopped, one of the members of
18 the gallery must have had some issue,
19 physical maybe but she had to leave. But a
20 very slight disturbance, nothing, I think,
21 was more than that.

22 So we'll bring the jury back in and
23 continue on with the cross examination.

24 MR. MIZRAHI: Thank you, Your Honor.

25 THE COURT: I just wanted to make sure

1 she was okay. Apparently she is. We wanted
2 to get her out of the courtroom.

3 Okay. Let's bring in the jury.

4 (Jury present.)

5 THE COURT: Welcome back, folks. Y'all
6 can take your seats. Sorry for that short
7 break. You'll have a full break in a little
8 while. Somebody had a little bit of an issue
9 and had to leave the courtroom. Everything's
10 okay and we're ready to start back.

11 Mr. Fallis?

12 MR. FALLIS: Thank you, Your Honor.

13 BY MR. FALLIS:

14 Q Would you look again at State's Exhibit 23,
15 which you just testified about?

16 A Yes, sir.

17 Q Okay. Would you agree you didn't find
18 anything unusual there as far as chlorine bottles and
19 having a pool, correct?

20 A Correct.

21 Q And nothing looked like it was disturbed,
22 isn't that correct?

23 A Correct.

24 Q As a matter of fact, in that area where
25 there's a pallet, there's grass growing up and out of

1 it, isn't there?

2 A Yes, sir.

3 Q And that's how it was in -- I guess that was
4 on the -- was that on the 8th that you took that
5 picture?

6 A No. This would have been in March.

7 Q In March. Okay. So grass is growing all the
8 way around it and through, correct?

9 A Correct.

10 Q Okay. So if that had been disturbed, you
11 would expect not to see it in that condition, isn't
12 that correct?

13 A Not necessarily.

14 Q Well, if it had been moved --

15 A Well, this is three months later.

16 Q Well, I understand that. But we're talking
17 about wintertime here, right?

18 A Grass still grows in Florida in the
19 wintertime.

20 Q I'm sorry. I understand that. But we're
21 talking about the condition and the length. That grass
22 looks like it had -- it needed some mowing, right?

23 A I can't comment on that.

24 Q Okay. Anyway, let's go back to what we --
25 you talked about earlier. Okay? When you got that

1 vehicle, the Camry, at FDLE, you don't have any idea
2 who else had been in that vehicle before you got it,
3 correct?

4 A Correct.

5 Q Could have been the people who towed it in,
6 could have been in there, right?

7 A No, sir. They wouldn't have sat in it.

8 Q Well, you don't know that. You weren't
9 there, were you?

10 A I was not there, correct.

11 Q Correct. So how do you know they wouldn't
12 have? You don't know that. They could very well have
13 sat in there to either try to use the steering wheel to
14 disengage it or something else like that. And you
15 don't know that. You're just speculating that they
16 hadn't been in there.

17 A Normal protocol is that wrecker drivers don't
18 climb into the vehicles.

19 Q You're telling me wrecker drivers have
20 protocol now?

21 A Well, when they're -- when they're
22 accompanied by the Sheriff's Office, yes.

23 Q Okay. Now, so once again, you don't know
24 whether or not for sure if anybody else had been in
25 there, right?

1 A Correct.

2 Q Now, you agree that you looked in there, and
3 you saw that other contents had been disturbed, right?

4 A Correct.

5 Q That State's exhibit shows you there was a
6 radar unit missing, right?

7 A It was pulled out of the power socket, yes.

8 Q Okay. The only thing that was there was the
9 cord, right?

10 A I believe so.

11 Q The actual instrument was not there.

12 A I don't recall.

13 Q You don't recall?

14 And you saw that there were -- the console
15 was open and the glove compartment.

16 A Yes.

17 Q It would appear that somebody had rifled
18 through the car, isn't that true?

19 A Somebody had gone through it, yes.

20 Q And threw the stuff all over the car, right?

21 A Well, it was out of the glove compartment,
22 yes.

23 Q Well, I mean, it didn't get out there by
24 itself, right?

25 A I would think not, yes.

1 Q Okay. So why -- you would agree that
2 somebody had to go through there, rifle it and throw
3 the stuff on the floor.

4 A Yes, sir.

5 Q Okay. Now, there also were some fingerprints
6 on the trunk of the car, correct?

7 A I believe we lifted some off of there, yes.

8 Q And nail marks. Nail marks.

9 A Yes. There were nail marks noted.

10 Q Now, that was never processed, was it?

11 A They were dusted, yes.

12 Q But it was never processed for any -- to
13 determine any identity or anything else, was it?

14 A Oh, I don't know.

15 Q So your knowledge, it was never processed.

16 A I just submit the stuff to the laboratory.
17 What's examined after that is not my responsibility.

18 Q Well, I understand that. But to your
19 knowledge, to this day, you don't know if it's ever
20 been processed.

21 A I -- I don't know that.

22 Q Now, shoe prints were not just on the front
23 mat. There were shoe prints on the rear floor mats,
24 correct?

25 A Correct.

1 Q And do you know if -- well, let's go back to
2 the driver --

3 MR. FALLIS: Can you put the (inaudible)
4 again, State's Exhibit -- I'll give it to you
5 in a second.

6 (Off-record discussion.)

7 BY MR. FALLIS:

8 Q Would you look at State's Exhibit 140? Do
9 you see it?

10 A Yes, sir.

11 Q Let's talk about the position of the seat.
12 All right? The driver's seat is a lot closer to the
13 steering wheel than the passenger seat, isn't that
14 correct?

15 A It appears to be, yes.

16 Q As a matter of fact, it's pretty much in a
17 close position as opposed to on the -- where it could
18 be adjusted. It's pretty almost much all the way up
19 front, isn't it?

20 A I couldn't tell you how far up front it is.
21 But it is close -- closer to the steering wheel.

22 Q Which means that whoever was driving that car
23 would be, I would say, a shorter person than somebody
24 who would have had to move the seat back, correct?

25 A Correct.

1 Q Now, you talked about trying to match the
2 footprint. I say shoe print, not footprint. I'm
3 sorry. I'll correct myself -- with that of the
4 sneaker -- Nike shoes that were taken out of Mr. Haim's
5 home. And you talked about, quote, the classification.
6 Okay? Now, I'm sure we're going to get this from
7 Mr. Haim -- Mr. Hamm because you said he was outside,
8 right?

9 Now, just doing what you call the
10 classification is not determinative -- listen to me
11 closely -- that that, in fact, was the same shoe that
12 made that print, is it?

13 A It was determined that it came from the
14 same -- the same mold.

15 Q Correct. But you cannot say, bottom line,
16 sitting here today, that that shoe that you took out of
17 Dolphin is the exact shoe that made that print with any
18 certainty, can you?

19 A Not to an identifiable certainty, no.

20 Q Right. So you can't say is what I'm saying,
21 right? You can't, under oath, say that is the shoe.

22 A No, cannot say that is the shoe.

23 Q Because there's two other things that you
24 need to make that kind of determination, right?

25 A There's a few things you need, yes.

1 Q And what are they?

2 A Individual characteristics would be a
3 wonderful thing to have.

4 Q Right. And what else?

5 A Well, we have class characteristics.

6 Q Correct.

7 A So -- and we have general size.

8 Q Right.

9 A So those are two strong class
10 characteristics, but what we don't have is individual
11 characteristics.

12 Q So the bottom line is you're not going to --
13 you're not telling this jury -- and I'm not saying
14 you're implying. But want to make it clear that that,
15 in fact, you cannot say is the same exact shoe that
16 made that print.

17 A Not the same exact shoe, correct.

18 Q And by the same token, you can't say, quote,
19 how long that print has been on there, can you?

20 A No, I can't say that.

21 Q That print could have been on there for at
22 least a week?

23 A That would depend if the car was stationary
24 for that week.

25 Q Well, no. Even if it wasn't stationary, I

1 mean, it could have been on there.

2 MR. MIZRAHI: Your Honor, I need to
3 object now. We need to approach.

4 THE COURT: All right.

5 (The following sidebar conference was had out
6 of the hearing of the jury:)

7 MR. MIZRAHI: Your Honor, there was --
8 this witness performed an experiment at the
9 Florida Department of Law Enforcement where
10 he had 20 people sit in that car, replicating
11 the shoe print to see if that shoe print
12 would remain after somebody had sat in the
13 car. And it never did. And so his
14 determination was that whoever left that
15 print was the last person to sit in the car.

16 In discussions with Mr. Fallis, I said I
17 didn't want to have a Frye hearing. I don't
18 think that I need to litigate this issue.
19 Although I think it may be Frye, I agreed
20 with Mr. Fallis that I'm not going to elicit
21 from this witness that he performed that
22 experiment.

23 He just opened the door to it by asking
24 his opinion how long that print was there.
25 He hasn't answered it yet but I'd certainly

1 redirect him and say, isn't it true that your
2 opinion is that this print is the last print
3 in there because you did a 20-person
4 experiment that verified that conclusion?

5 MR. FALLIS: We already determined, Your
6 Honor, that so-called homemade experiment has
7 absolutely no scientific value. I went
8 through that already and they agreed it would
9 have to be subject to if he wants the
10 conclusion he wants. Okay? So we had agreed
11 that it's not scientific. He will tell you
12 it was not scientific, something he just
13 thought of, and it has to pass the Frye test.
14 If you want to continue the trial and have a
15 Frye test, I'll guarantee, Your Honor, it
16 won't pass Frye. So it would not be
17 admissible.

18 THE COURT: Was there an understanding
19 that we're not going to do that, and we're
20 not going to go into this line of
21 questioning?

22 MR. FALLIS: Correct.

23 THE COURT: And you're specifically
24 asking him. He hasn't answered. But you're
25 not going to let him answer it.

1 MR. FALLIS: I didn't say that. I said
2 you cannot determine how long it's been
3 there. Okay? And he agreed.

4 THE COURT: No. He hasn't agreed,
5 right?

6 MR. MIZRAHI: He agreed only because I
7 specifically instructed the witness not to
8 talk about these things so I don't get a
9 mistrial.

10 THE COURT: If you go down the road,
11 he's going to be able to ask about it. If
12 you don't want to go down the road, move on
13 to another topic.

14 MR. FALLIS: How long it's been there,
15 Judge, does not have anything to do with
16 whether it was disturbed or not. Okay?

17 THE COURT: Why?

18 MR. FALLIS: Hamm will tell you --

19 MR. MIZRAHI: I didn't object to that
20 question. I didn't object to the question
21 how long the print has been there. He asked
22 the second question which --

23 MR. FALLIS: This next witness, Judge,
24 is going to tell you -- okay? -- that's only
25 (inaudible). And, in fact, unless it was

1 disturbed -- okay? -- and he cannot tell you
2 how long it's been there. So we're not --
3 you know, what he's trying to do is try get
4 in something that has no scientific
5 background, something that is completely -- I
6 agree it's going to be reversible error if
7 he's allowed to do this because there's no --
8 he's not laying the predicate for it.

9 So I don't know how it could possibly be
10 admissible if it isn't valid evidence to
11 begin with, and it's not -- not valid the way
12 he wants to present it. It has to have some
13 validity, Judge. You just can't let him make
14 homemade experiments and offer it as
15 scientific proof.

16 THE COURT: Let me hear from
17 Mr. Mizrahi.

18 MR. MIZRAHI: We had an agreement --

19 MR. FALLIS: Correct.

20 MR. MIZRAHI: -- that I would not
21 introduce this experiment. Then he goes up
22 on cross examine and specifically asks
23 questions with which the answer is going to
24 be what he already knows. And so I don't see
25 any other way to remedy this situation other

1 than to allow him to answer the question
2 truthfully.

3 THE COURT: No, no. Done. I've made my
4 decision. If you go down that path, he gets
5 to ask.

6 MR. FALLIS: I wanted to make the record
7 even clearer, right?

8 THE COURT: It doesn't need to be any
9 clearer.

10 MR. FALLIS: I think it does, Judge. I
11 have right to make the record.

12 THE COURT: Go ahead, Mr. Fallis.

13 MR. FALLIS: Okay. He intends to argue,
14 quote, use your common sense (inaudible) if
15 that has to be the last print there. You
16 understand what I'm saying? I don't think he
17 should be able to say that without having the
18 kind of -- kind of proof that's necessary.

19 THE COURT: Mr. Mizrahi?

20 MR. MIZRAHI: Sorry.

21 MR. FALLIS: If that's his intention,
22 Judge, then I have to cover it here 'cause I
23 know that's his intention. He even mentioned
24 to me he was going to argue, use your common
25 sense; that had to be the last print there,

1 without having any legal or evidentiary basis
2 for it. You understand the position I'm in
3 here now.

4 THE COURT: You can make that argument.
5 But if -- if your questions to his witness
6 are the questions that you've been asking,
7 this witness has an answer. Now, you've
8 agreed -- apparently, there's an agreement
9 not to go into that, but if you want to go
10 into that, then that's what will happen.

11 MR. FALLIS: So I get to argue then that
12 it could have been there for a week, two
13 weeks, three weeks.

14 THE COURT: You can make the argument.

15 MR. FALLIS: If he's going to argue that
16 it's -- that had to be the last print without
17 any evidentiary basis to it, 'cause that's
18 what he doesn't have, which I would be
19 objecting to. Of course, if he tries to
20 argue that, I hate to break up your closing,
21 but I will do it in closing if I had to.
22 Because that isn't anything in evidence.

23 THE COURT: I made my decision.
24 Anything else?

25 MR. MIZRAHI: I wanted to ask that the

1 last series of questions with regard to the
2 timing of the print be stricken.

3 MR. FALLIS: Which -- you didn't get an
4 answer to that. What are you striking?

5 MR. MIZRAHI: I would have to go back
6 and hear the question and answer to
7 articulate about whether --

8 THE COURT: Let's do this: I'm going to
9 send the jury out. Y'all stay here.

10 (At the conclusion of the sidebar conference,
11 the following further proceedings were had in the
12 presence of the jury:)

13 THE COURT: All right, folks. We're
14 going to take our morning break actually
15 right now. So why don't we -- be back at
16 10:15. Do enjoy the break. We'll see you at
17 10:15.

18 (Jury excused.)

19 THE COURT: All right. Let's go through
20 this, Mr. Mizrahi, go through make sure that
21 we're clear on the record. I think I have an
22 understanding but tell me your -- your
23 concern.

24 MR. MIZRAHI: Yes, Your Honor, part
25 of -- the witness performed an experiment

1 with the Florida Department of Law
2 Enforcement to try to determine whether the
3 shoe print would have been able to withstand
4 other people sitting in the car because the
5 evidence presented was that the victim drove
6 her car every day and that the defendant last
7 drove the car approximately seven days before
8 her disappearance. So that was critical --
9 of critical importance to see, if he drove it
10 on New Year's, whether that print would
11 remain by the 7th when the car was found.

12 So he performed an experiment, actually
13 consulted statistical experts from -- I
14 believe it was either JU or UNF to discuss
15 what would make an experiment scientifically
16 valid. He indicated it was -- approximately
17 20 people would make that experiment
18 scientifically valid.

19 So he got 20 people of varying size. He
20 replicated the nature of the shoe print, had
21 different people at FDLE sit into the car and
22 get out of the car. And in every one of the
23 20 instances, the shoe print was disturbed
24 and was no longer of value.

25 That was part of his deposition

1 testimony in the prior case.

2 Mr. -- when I got the case, Mr. Fallis
3 asked me if I intend on introducing that.
4 Although I thought there was a chance I could
5 win Frye, I thought common sense arguments I
6 would make to the jury would be equally
7 compelling. And to streamline the case, I
8 agreed with Mr. Fallis that we would not be
9 going into that particular piece of evidence.

10 Mr. Fallis then -- I did not ask any
11 questions on direct examination and
12 specifically instructed the witness not to
13 talk about the experiment.

14 Then on cross examination, Mr. Fallis
15 asked a series of questions about how long
16 shoe print would have been in the car. I let
17 the first one go. I probably should have
18 objected to that, in hindsight. The first
19 question was, you don't know how long the
20 shoe print had been there. And the answer
21 was, no, I don't. But then Mr. Fallis
22 proceeded to say, you don't know if it was
23 two days, three days, five days, two weeks.
24 I forget the exact numbers he used. And
25 that's when I objected because that implies

1 that the witness doesn't know when, in fact,
2 he did an experiment, which his answer would
3 be, I may not know how long the print has
4 been there, but I certainly know that it was
5 the last print -- the last person to drive
6 the vehicle.

7 I specifically avoided this and
8 Mr. Fallis is asking questions that imply to
9 the jury that he doesn't know the answer
10 when, in fact, in his own mind, he does know
11 the answer. So I would like to be able to
12 explore that on redirect. And that was the
13 point of my objection because we had an
14 agreement.

15 THE COURT: Do you have that agreement?

16 MR. FALLIS: No, Your Honor. We had an
17 agreement that this was not scientific. And
18 this is why we have Frye and Daubert, Judge,
19 so we can avoid having people making up their
20 own evidence which is not valid or relevant.
21 Okay? So he can't -- I mean, why would we
22 have Frye and Daubert? He even told me he
23 just did it randomly. He might have
24 consulted and accepted this kind of evidence.

25 Now, I would like to say, Your Honor,

1 if, in fact, it's going to be a big issue, I
2 will withdraw that question and move on.
3 Okay? But I know he's going to argue, ladies
4 and gentlemen, use your common sense; that
5 had to be the last footprint, without having
6 the basis for it.

7 So if he doesn't argue that, Judge, I'll
8 stop it right now and I won't either. 'Cause
9 I don't think he should being allowed to
10 argue that that was the last person to drive
11 the car, any more than I could if I'm -- if
12 I'm not allowed to say you don't know. Okay?
13 Do you understand what I'm saying, Judge? I
14 think -- so if he agrees that he's not going
15 to argue to the jury that that had to be the
16 last person in the car with that shoe, then
17 I'll stop right here and now. I think that
18 would fulfill our understanding.

19 THE COURT: All right. Mr. Mizrahi, any
20 response to that? Then we'll take a short
21 recess.

22 MR. MIZRAHI: Yeah. I am arguing that.
23 I have no -- the agreement was we weren't
24 going to introduce the piece of evidence, the
25 experiment. I was going to argue, use your

1 common sense; you can use your common sense
2 to deduce that this is most likely the print.
3 It's a fragile print and there's no way after
4 a week worth of driving that the defendant's
5 shoe print would remain when the victim was
6 driving every day, getting in and out, you
7 know, half a dozen times every single day.

8 And Mr. Fallis can get up in his closing
9 and say, there's no evidence to support that.
10 This very well could have been in there. I'm
11 not going to object that. It's a legitimate
12 argument from the evidence.

13 So I am going to argue it. And my
14 request to go into it on redirect remains.

15 THE COURT: All right. 10:15, we'll be
16 back.

17 MR. FALLIS: Your Honor --

18 THE COURT: Everybody gets a recess.

19 MR. FALLIS: -- can we settle this
20 issue, though, before we recess?

21 THE COURT: No. I'm going to think
22 about it.

23 MR. FALLIS: Oh, okay.

24 (Short recess.)

25 (Defendant present.)

1 THE COURT: All right. Mr. Miller was
2 asked on direct about the shoe print in the
3 car. He described it as sandy. It matched
4 the characteristics of the shoe found in
5 Mr. Haim's living room. Then he testified
6 that shoe is 8,000 or so, which is a lot but
7 not probably in terms of Nike athletic shoes.
8 There is no questions during direct about --
9 that I recall and please correct me if I'm
10 wrong. My recollection, that in his opinion,
11 these things would not have lasted more than
12 a day or two. I think Mr. Mizrahi stayed
13 away from eliciting an opinion from
14 Mr. Miller about how long that would have
15 remained in the car.

16 Is that correct?

17 MR. MIZRAHI: That is correct. I did
18 elicit testimony about the fragility of it.
19 He indicated it was a fragile print.

20 THE COURT: Right, made of sand versus
21 clay or mud.

22 MR. MIZRAHI: Right. And so he was
23 careful to preserve it, but I did not ask any
24 opinions about how long it would remain.

25 THE COURT: All right. And then the

1 defense has asked questions fairly pointedly
2 that he doesn't know how long that print
3 would have been in the car, when in point of
4 fact, you guys know he does have an opinion
5 about it.

6 Don't --

7 MR. FALLIS: No. I'm not saying
8 anything, Judge.

9 THE COURT: Well, you were about to.
10 I'm trying to prevent that so I can get my
11 thoughts out.

12 When he knows he has an opinion and it's
13 not just sitting around on the couch,
14 contemplating the universe. This is my
15 opinion. I did something about it to have
16 this opinion.

17 So it is somewhat, to me, a little
18 unfair to ask him those type of questions and
19 then use the lack of a Frye hearing when it's
20 been discussed before the trial to prevent
21 him from giving the answer he would give.

22 So here's what I'm going to do: If,
23 Mr. Fallis, you wish to ask those questions,
24 continue on with those questions
25 specifically -- so we're clear, Mr. Miller,

1 you don't know how long that print was there;
2 you doesn't know whether it was there for
3 24 hours, two days, three days, a week, then
4 I think Mr. Mizrahi will be able to ask -- or
5 Mr. Miller maybe will be able to give in his
6 opinion, based on his training, it would not
7 have been.

8 But I don't want to go into this
9 experiment. So maybe I'm sort of being solid
10 here, trying to cut down the middle, but I
11 think that's the best resolution to this
12 case. Mr. Miller has an opinion. He's going
13 to be able to give his opinion. I don't
14 think it would have been. Now, if you don't
15 want him to give that opinion, then don't ask
16 the question. If you do want him to give an
17 opinion, then he's going to be able to give
18 that. But we're not going to go into the
19 experiment. Okay? 'Cause we're not stopping
20 the trial to have a Frye hearing. That's my
21 ruling.

22 Any questions, Mr. Mizrahi, as to --

23 MR. MIZRAHI: Well, I guess I need to
24 know whether Mr. Fallis is going to ask any
25 more questions on that because if he does

1 not, then I would ask for the Court to tell
2 the jury to disregard the last two or three
3 questions.

4 THE COURT: Mr. Fallis, what's your
5 position?

6 MR. FALLIS: I want to understand your
7 ruling, Judge. Okay?

8 THE COURT: What's that?

9 MR. FALLIS: The ruling is if I ask that
10 question, he can say, in my opinion, it
11 wasn't there a week or more and that's where
12 it ends? Is that what you just said?

13 THE COURT: Yeah. My opinion -- if your
14 question is you don't know whether or not --

15 MR. FALLIS: Okay. You don't --

16 THE COURT: Trying to answer your
17 question -- you don't know whether it had
18 been there a week or a few days, then he can
19 say, in my opinion, it wouldn't have lasted
20 one person getting in that car, one
21 additional person getting in that car.
22 That's my opinion --

23 MR. FALLIS: That's going --

24 THE COURT: -- based on my work and
25 that's the end of it.

1 MR. FALLIS: Okay. Well, that's --
2 first of all, he hasn't been qualified as an
3 expert to give an opinion on novel scientific
4 evidence. But I'll tell you what. For the
5 sake of getting on with this, Judge, I will
6 not ask any other questions on that. Okay?

7 THE COURT: What was the last
8 question -- do you know, Madam Court
9 Reporter, that was asked of Mr. Miller while
10 the jury was present?

11 (The testimony was read back by the court
12 reporter.)

13 THE COURT: All right. Up until the
14 last question, I don't think I'm striking
15 those. The last question, though, is a bit
16 more of a problem 'cause that's where he has
17 the opinion about --

18 MR. FALLIS: I'll withdraw that
19 question, Judge.

20 THE COURT: Okay.

21 MR. MIZRAHI: Well, the problem is the
22 question before as well. I did not object.
23 It's the depends, where he says you don't
24 know how long -- he says it depends. That
25 question, I think that needs to be stricken

1 as well because he doesn't answer it, or we
2 can just leave I guess it depends. But I
3 would, on redirect, say, what does it depend
4 on? 'Cause it's kind of left --

5 THE COURT: Somebody driving the car.

6 MR. MIZRAHI: Right. That would be the
7 answer.

8 THE COURT: All right. Well, then I'm
9 only going to strike the last question. You
10 can redirect on that.

11 So I think I've been clear. I hope I've
12 been clear. If you want to ask him if he has
13 an opinion about -- or if you want to ask
14 whether he has an opinion about it or if you
15 want to lead him and say, you don't know how
16 long -- whether it would have been a day or
17 two, then he's going to be able to give an
18 opinion and say, I don't think it would have
19 lasted more than one person being in that
20 car. That's my opinion.

21 If you don't want him to give that, then
22 I wouldn't ask it.

23 And then you can argue, Mr. Mizrahi, in
24 closing or whenever, it's common sense. It's
25 fragile. It wouldn't have lasted.

1 You can say you don't know that for
2 sure. Plus other people could have got in
3 the car, as in the tow truck driver. I mean,
4 there's lots of things that could have
5 explained that other than Mr. Haim being the
6 person who left it there.

7 MR. FALLIS: We'll go through it with
8 your -- with your ruling, Judge. Okay?

9 THE COURT: Okay.

10 MR. FALLIS: So we're understood.

11 MR. MIZRAHI: So I'm not allowed to ask
12 on redirect what would it depend on.

13 MR. FALLIS: No. Then he's going to --
14 then he's opening for his -- his experiment.

15 MR. MIZRAHI: That's why I wanted --

16 MR. FALLIS: Which you need a Frye.

17 MR. MIZRAHI: That's why I wanted that
18 other question and answer. It was three
19 questions. The first one I didn't object to.
20 I didn't object to the second one either.
21 But he said, it depends. And that's when I
22 saw we were getting into the experiment in
23 the third. So I'd ask for the third question
24 where I objected, which there was no answer
25 given -- I would ask for the previous

1 question and answer to be stricken.

2 THE COURT: Where the answer was, it
3 depends.

4 MR. MIZRAHI: Correct.

5 THE COURT: Okay. I'll strike those
6 two. Stricken from the record. And then
7 we'll go forward.

8 MR. FALLIS: And then we're over.
9 You're not going to redirect and ask him --

10 MR. MIZRAHI: I will not, pursuant to
11 our agreement.

12 THE COURT: Okay.

13 MR. FALLIS: Okay.

14 THE COURT: All right. Very good.
15 Bring in the jury.

16 (Jury present.)

17 THE COURT: Y'all can come in and have a
18 seat. Welcome back. That was a slightly
19 longer break but I hope you don't mind.
20 We're -- we've been working hard while you've
21 been gone.

22 Let me point out by the way, since the
23 beginning, Monday, and all through today,
24 y'all have been punctual and attentive and
25 certainly, I appreciate that. That's

1 important obviously when you have a jury
2 trial that the jury is engaged. And y'all
3 have been.

4 We're going to continue on. Mr. Fallis,
5 do you have more questions?

6 MR. FALLIS: Your Honor, I -- yeah, I
7 have a few more questions.

8 THE COURT: Yes, sir.

9 MR. FALLIS: I'll move to a different
10 area at this point.

11 BY MR. FALLIS:

12 Q We talked about the driver's seat position.
13 Did you move that seat at all at any time?

14 A Yes.

15 Q And did you move it to collect the mat?

16 A Yes.

17 Q Okay. And do you know whether that seat was
18 moved back in the same exact position it was when you
19 first received it? Do you understand my question?

20 A Sort of.

21 Q Let me try to make it clearer if you don't.
22 Okay? You agree that you had moved that seat, correct?

23 A Yes. We moved the seat in order to retrieve
24 the mat out with minimum --

25 Q After you did that, when you put the seat

1 back, do you know if you put it back in the exact place
2 that it was before you moved it?

3 A We use the photographs to approximate its
4 position.

5 Q Okay. So you didn't make note of which notch
6 or whatever it is and try to go back to it?

7 A Oh, no, sir.

8 Q So is that fair to say that's approximately,
9 given the fact that you used a photograph as opposed to
10 measurement, approximately where the seat was when you
11 first got it?

12 A Well, in this photograph, State's 140, this
13 is the position the seat was in.

14 Q Oh. So this was, in fact, the position
15 before you moved it. Is that what you're saying?

16 A Yeah. The floor mat's still in place.

17 Q Okay. So we can look at that and we can make
18 judgment as to how close that is to the steering wheel
19 and infer maybe the size of a driver, correct?

20 A It's possible, yes.

21 Q Okay. That's what I wanted to determine.

22 Now, you had searched that house on -- on two
23 occasions, right, the one on Dolphin?

24 A Yes, sir.

25 Q And you were looking for a buried body in

1 loose soil, right?

2 A Correct.

3 Q And I would imagine, especially on the second
4 one -- you had a search warrant -- given the good work
5 ethic that you have, you exerted every single thing
6 that you could to determine whether or not there was
7 any evidence back there, correct?

8 A Correct.

9 Q Now, back to that dumpster, I see that the
10 contents of the dumpster, meaning the garbage --
11 okay? -- was just emptied into another dumpster, right?

12 A Well, one bag at a time.

13 Q Okay. But those bags were never opened and
14 searched individually, were they?

15 A No, sir.

16 Q So you -- we don't know what could be in
17 those bags, right?

18 A I don't recall but I don't think we opened
19 those bags up, correct.

20 Q That's State's 9. Now, that dumpster is
21 overflowing with garbage bags, isn't it?

22 A Yes, sir.

23 Q All right. So as we sit here today, you
24 don't recall any of those bags being opened up
25 individually.

1 A I don't know.

2 Q But you're saying they were manually taken
3 from that one dumpster as opposed to bringing one of
4 those machines that do it?

5 A Oh, no. We -- we hand moved all those from
6 one dumpster to the other, yes.

7 Q All right. Without opening the individual
8 bags.

9 A I believe so. Yes.

10 Q You believe so or --

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

12 Q Okay. Now, not only was there physical
13 search done on your part. Okay? There was also aerial
14 search, correct?

15 A Yes, sir.

16 Q Now, you said you weren't sure whether or not
17 any dogs were out there, right?

18 A I don't recall any dogs.

19 Q While you were there.

20 A Correct.

21 Q Could have been when you weren't there,
22 correct?

23 A It's possible. I don't know.

24 Q I mean JSO was doing their own investigation
25 with their own technicians as well.

1 A No, sir.

2 Q Are you saying that they -- are you saying
3 that JSO did not search that on their own; they didn't
4 have their own evidence technicians out there as well?

5 A Out where?

6 Q At Dolphin?

7 A No. We -- we did -- the times I was there,
8 we were the only ones there.

9 Q Okay. But there were times you weren't there
10 when -- when they could have been -- the first search
11 and second search, I mean, they could have been out
12 there and you didn't -- and you didn't know it, right?

13 A That would have been --

14 Q JSO. JSO.

15 A No. I understand. Yeah. That would have
16 been information that I wasn't privileged to, yes.

17 Q You were not privileged to.

18 A Yeah. If they had gone out on their own,
19 nobody informed me.

20 Q Okay. Now, let's talk about the aerial.
21 Okay? You're familiar with that, right?

22 A Yes, sir.

23 Q Tell the jury what goes on in those aerial
24 searches. We know that was done on Dolphin, correct,
25 with the helicopter?

1 A Yeah. The aerial searches were -- were in
2 response to some information that we had gotten from
3 the botanist on the type of sand that we were looking
4 for. So instead of driving around the woods aimlessly,
5 we flew around the sky aimlessly, so to speak, looking
6 for upwellings of what was characterized as sugar sand.
7 And when we found those areas, they were noted and then
8 they were subsequently searched.

9 Q I'm talking about the aerial that was done at
10 Dolphin, using infrared whatever it is that they use.

11 A Oh. I am not familiar with that.

12 Q You're not familiar with that?

13 A No, sir.

14 Q Well, let me ask you this: You're not
15 familiar, as -- as an FDLE expert, on how the
16 aerials -- experiments are used to determine whether or
17 not there are any bodies in the ground? You're saying
18 you're not familiar with that?

19 A Oh, no. I'm familiar with the FLIR search as
20 far as looking, infrared --

21 Q Yeah. That's what I'm asking.

22 A I'm familiar with the technique, yes.

23 Q Well, please explain that to the jury.

24 A The Sheriff's Office at the time had a rather
25 large camera on the front of their helicopters that is

1 coined forward-looking infrared, which looks for heat
2 patterns on the ground. That's used for escapee
3 searches, people searches, whatever it happens to be.
4 It also has the ability, if a signature is visible -- a
5 recently buried body would radiate some heat due to
6 decomposition. It is possible for that to detect it
7 under the right circumstances.

8 Q Correct. And that was done in this case,
9 wasn't it?

10 A I don't know.

11 Q Oh, okay. If that was done in this case, as
12 I think there will be evidence that it was, then that
13 would be another way of determining whether or not
14 there were any bodies there at the time, right?

15 A Again, that would depend on the time and
16 place that -- that the search took place.

17 Q That also tries to determine the difference
18 in change of temperature of the soil, correct? Like,
19 if the soil was disturbed --

20 A In some cases.

21 Q -- by digging.

22 A Not always. In some cases, yes.

23 Q Well, that's what it's used for, though,
24 isn't it?

25 A It's not its primary objective, no.

1 Q Now, do you recall -- I don't think you do
2 but just -- I wonder if I could jog your memory since
3 the last time you spoke of it -- having a conversation
4 with Detective Hinson, who was the lead detective in
5 this case, where he claims that you called him 'cause
6 you got this anonymous letter that said -- in February
7 of '96 to your office, saying get out to -- something
8 to the effect, get out to Dolphin; the body is buried
9 under the ground? And it was an anonymous letter and
10 that you, according to Mr. Hinson -- I'm asking you to
11 see if you can recall it now -- had the discussion,
12 well, we're not going to do anything about it because
13 that's impossible. Because, number one, we did a
14 thorough search. We had the dogs. We had the airplane
15 system. And the two of you made the decision you
16 weren't going to follow that up.

17 Do you recall now as we speak that discussion
18 with Hinson?

19 A I do not.

20 Q Okay. He's pretty clear about it but you
21 don't remember. That's because maybe your memory
22 faded?

23 A Very good chance of that, yes.

24 Q Could have had that discussion and you just
25 forgot about it?

1 A Possible.

2 Q Do you think that would be important, though?
3 If you got that kind of a letter, do you think it's
4 something you would have followed up on?

5 A Something we probably should have followed up
6 on, yes.

7 MR. FALLIS: May I have a moment, Judge?

8 THE COURT: Yes, sir.

9 MR. FALLIS: (Conferring with co-counsel
10 and the defendant.)

11 BY MR. FALLIS:

12 Q Mr. Miller, you also searched the trunk of
13 that car, correct, the Camry?

14 A Yes, sir.

15 Q And you also brought in Mr. Haim's truck and
16 had that also gone over, correct?

17 A Yes, sir.

18 Q And you didn't find any evidence of any value
19 in either of those searches, did you, the trunk of the
20 car and also Mr. Haim's --

21 A Oh, the trunk of the car, no, or the truck.

22 Q Now, do you recall when you were out there
23 that area we just showed you earlier where the driveway
24 and there was a gate where the pool, shower was that
25 there was a gate right there, correct?

1 A Yes, sir.

2 Q And do you -- do you recall whether there was
3 a lock on that gate or not?

4 A I do not.

5 Q And that gate, I mean, it's right there,
6 maybe about three or four feet from what's considered
7 now the burial site, correct?

8 A Correct.

9 Q Would you agree, anybody could just get
10 through that gate, put a body there, and they could get
11 out without having to go through the whole backyard?
12 It would be possible?

13 A Based on the photographs, it's just a couple
14 steps away from the gate, yes.

15 Q Okay. Now, you said you found sand on the
16 shoes, correct?

17 A Yes.

18 Q You didn't find any mud, did you?

19 A No.

20 Q Oh, what I was asking about before was
21 (inaudible) --

22 (Brief interruption by the reporter.)

23 BY MR. FALLIS:

24 Q What I said before was called -- it's called
25 a "FLIR unit" with the plane.

1 A Yes, sir.

2 Q Is that what you described to the jury?

3 A Yes, forward-looking infrared.

4 Q Say it I again?

5 A Forward-looking infrared.

6 Q That's it. Thank you.

7 MR. FALLIS: I have no further
8 questions, Judge.

9 THE COURT: Redirect?

10 MR. MIZRAHI: Just one question.

11 REDIRECT EXAMINATION

12 BY MR. MIZRAHI:

13 Q What happens when mud dries?

14 A I'm sorry?

15 Q Does mud turn to sand after it dries?

16 A Depends on its composition.

17 MR. MIZRAHI: Thank you. That's all the
18 questions I have.

19 THE COURT: All right. May this witness
20 be excused?

21 MR. MIZRAHI: He may.

22 THE COURT: All right. Thank you, sir.
23 You're excused.

24 (Witness excused.)

25 THE COURT: State, you may call your

1 next witness.

2 MR. HEAVENER: Your Honor, the State
3 will call Mr. Ernie Hamm.

4 (Witness sworn by the clerk.)

5 MR. HEAVENER: May I proceed, Your
6 Honor?

7 THE COURT: Yes, sir.

8 ERNEST DUANE HAMM,
9 having been produced and first duly sworn as a witness
10 on behalf of the State, testified as follows:

11 VOIR DIRE EXAMINATION

12 BY MR. HEAVENER:

13 Q Would you tell us your name?

14 A Ernest Duane Hamm.

15 Q And do you go by anything other than Ernest?

16 A I have the nickname of Ernie.

17 Q Okay. And, Mr. Hamm, where are you presently
18 working?

19 A I'm retired.

20 Q And how long have you been retired?

21 A I retired from the United States Army in
22 1980, retired from the Florida Department of Law
23 Enforcement in 1999.

24 Q What did you -- what did you do when you were
25 at the Florida Department of Law Enforcement?

1 A I retired as the supervisor of the latent
2 print section in the crime scene sections of the
3 Jacksonville regional crime laboratory.

4 Q And you've used the term "latent print." Can
5 you tell the jury what that means?

6 A Well, a latent print is -- latent means
7 hidden but, of course, it would deal with the
8 fingerprints or palm prints, friction ridge prints of
9 the toes of -- on -- found on evidence to be compared
10 to standards.

11 Q All right. And you said that latent means
12 hidden. Did that unit at FDLE also evaluate and
13 analyze footwear impressions?

14 A Yes, they did.

15 Q I'd like to spend a little bit of time
16 talking about your background, your experience, your
17 training and your education. So let me begin with your
18 education. What is your education, sir?

19 A I have an associate degree in criminal
20 justice and a bachelor's degree in sociology as far as
21 a civilian education. And in the military --

22 MR. FALLIS: Can I ask the witness to
23 speak up a little bit more?

24 THE COURT: If you can pull that
25 microphone maybe a little closer, Mr. Hamm.

1 BY MR. HEAVENER:

2 Q The microphone right in front of you, I think
3 you can pull it towards you.

4 A My -- I have an associate degree, criminal
5 justice from Augusta College, and I have a bachelor's
6 degree in sociology from Augusta College. And I've had
7 training in the Army as a criminal investigator and as
8 a laboratory examiner in the area of latent prints,
9 footwear and tire track examination.

10 Q And, sir, you mentioned the Army. Let me
11 move into your work experience. Can you give us an
12 overview of your work history before you retired -- you
13 finally retired?

14 A In the Army?

15 Q Yes. Let's start with the Army. Tell us
16 what you did in the Army.

17 A Well, I was a military policeman for five
18 years. And then I was accepted into the CID program,
19 special agent. And I completed my training in that
20 field and work as a special agent in the field,
21 criminal investigation, for five years. I was then
22 accepted in the U.S. Army Criminal Investigation
23 Laboratory at Fort Gordon, Georgia, for a two-year
24 program in the area of latent print, footwear and tire
25 track examinations. I completed that training in 1972.

1 And I worked at the army crime laboratories in the
2 United States and Europe until I retired in 1980 to
3 join the Florida Department of Law Enforcement.

4 Q And you used the -- the language CID. What
5 did that mean in the Army?

6 A That's the criminal investigation division.

7 Q Is that the Army version of -- we've heard
8 the phrase NCIS from TV shows. Is that the Army
9 counterpart to NCIS?

10 A Yes, it would be.

11 Q All right, sir. Specifically, once you got
12 to FDLE, can you describe what your career track was
13 with FDLE?

14 A I started as a crime laboratory analyst at
15 the Jacksonville regional crime laboratory and was
16 later promoted to supervisor of the latent print and
17 crime scene sections.

18 Q You had -- you described the training you
19 received to become an examiner for the Army's CID. Did
20 you receive additional training once you got to FDLE?

21 A No, I did not. I was qualified in the areas
22 under which I was hired.

23 Q All right. And can you describe for us,
24 while you were actively engaged in examinations, the
25 types of trainings you received?

1 A In the beginning, we had a two-year program
2 at the Army crime lab, dealt with all the aspects of
3 the examination of crime scenes and the recovery of
4 evidence, both in the area of latent prints and tire.
5 And then I went into the comparison of those, where we
6 would compare any questioned marks or tracks or
7 fingerprints to known standards for identification.

8 Q And over your career -- how many years did
9 you work as a latent print examiner?

10 A Well, when I completed my training in 1972, I
11 worked continuously at that until I retired from the
12 law enforcement in -- from the Florida Department of
13 Law Enforcement in 1999.

14 Q Is that 27 years approximately?

15 A Yes.

16 Q In that 27 years of doing that kind of
17 analysis, do you have an estimate of the number of
18 prints -- let's talk about specifically footprints or
19 footwear impressions that you conducted analysis upon.

20 A Thousands of them.

21 Q At the Florida Department of Law Enforcement,
22 did you engage in training other crime laboratory
23 analysts in footwear impression analysis?

24 A Yes, I did.

25 Q Are you familiar with a person named Allen

1 Miller?

2 A I am.

3 Q Did you train Mr. Miller?

4 A Yes. He was part of our training program.
5 He was a senior crime laboratory analyst, and we were
6 looking for supplemental training field, forensic
7 field, for him. And he started a program in footwear
8 and tire tracks, which had a structured lecture and
9 testing period and then a period of supervised
10 casework.

11 Q And, sir, with regard to -- there's training
12 and there could be informal training. With regard to
13 what I'll call "informal training," have you actually
14 visited various shoe manufacturers in the country or
15 abroad?

16 A Yes, I have. I spent time at the Converse
17 factory in Lumberton, North Carolina for a while, and
18 I've worked cases in which I coordinated with a
19 footwear manufacturer in Switzerland.

20 Q How about -- have you -- have you rendered
21 opinion testimony like that that I'm going to be
22 soliciting from you in other courts around the state or
23 around the country?

24 A I've testified in probably over 230 cases in
25 the area of latent prints, footwear and tire, both in

1 the U.S. Army jurisdictions, Air Force, Navy, republic
2 of Germany, State of Florida and the State of
3 Washington. Of those, 35 or so were in the area of
4 footwear and tire.

5 Q And have you actually -- when you were
6 actively engaged in your career, did you publish
7 publications in the area of footwear and tire track
8 analysis?

9 A I have, oh, 20 articles or papers that have
10 been published in professional journals or forensic
11 journals in the area of -- mainly in -- well, I would
12 say half of them were footwear and tire track
13 examination and identification and the others, matters
14 dealing with latent prints or crime scene operation --
15 or crime laboratory operations.

16 Q And, sir, are there professional associations
17 that one can belong to if they are a footwear or tire
18 track examiner?

19 A Not specifically for that. There are a
20 number of forensic organizations dealing with various
21 aspects of forensic science.

22 Q And what are examples of some of those
23 organizations?

24 A The American Academy of Forensic Sciences,
25 International Association For Identification,

1 Identification Society of Canada, the Canadian
2 identification society, regional organizations of the
3 International Association for Identification, and I
4 belong to a forensic fingerprint association out of
5 England.

6 Q What's the name that association?

7 A The Fingerprint Society.

8 MR. HEAVENER: Your Honor, at this time,
9 I would tender the witness for additional
10 voir dire on his background to the defense.

11 THE COURT: Is there any voir dire?

12 MR. FALLIS: No, Your Honor.

13 THE COURT: You may continue, Mr. --

14 MR. HEAVENER: Thank you.

15 DIRECT EXAMINATION

16 BY MR. HEAVENER:

17 Q All right, Mr. Hamm. I'd like to direct your
18 attention to this whole topic of footwear impressions
19 generally. Can you tell us what a footwear impression
20 is?

21 A Well, a footwear impression actually has a
22 track. An impression would be depressed into a
23 receiving surface, where a track is just a mark made by
24 an object that has passed. Footwear would fall in that
25 category.

1 So anytime footwear can come in contact with
2 an appropriate surface, it can leave a reproduction of
3 the tread features that appear on the outside.

4 Q And with regard to those tread features, are
5 you familiar with the term "class characteristics"?

6 A Yes, I am.

7 Q And explain to us what a class characteristic
8 is?

9 A Well, class characteristic is probably the
10 basic form of characteristics we would look at. It is
11 just showing the features as they appear in the design
12 of the footwear also.

13 Q Okay. Is a class characteristic something
14 that would be common to every particular item, of a
15 particular brand of shoe?

16 A Yes. Class characteristic would be common to
17 a similar style and brand of individual footwear.
18 There are different types of class characteristics
19 involved, though. You can have a general -- what they
20 call "gross design," and then you can have other
21 features of the outsole that are -- in the design, are
22 sort of like a separate class but still a class common
23 to shoes of that design.

24 Q So for each model of shoe, you would expect
25 class characteristics of that particular model and that

1 particular size to be the same.

2 A Yes.

3 Q And why is that?

4 A Explain it again, sir.

5 Q Yes. Why is it that those class
6 characteristic are always the same for particular sizes
7 or particular models in terms of how shoes are
8 manufactured?

9 A Well, that's the way the manufacturers design
10 their footwear with their molds, and they will keep the
11 same pattern for different styles of shoes. And it
12 will change from brand to brand.

13 Q Okay. There's a different kind of
14 characteristic. I'm going to use the term "accidental
15 characteristic." Are you familiar with that term?

16 A Yes. Accidental characteristics are marks
17 and damages done to the outsole, the bottom of the
18 shoe, while it's being worn, and those can be used in a
19 comparison to limit the identification or the
20 association with it.

21 Q Can you give us an example of what an
22 accidental characteristic might be?

23 A Oh, just a gouge. When you are wearing your
24 footwear, you damage it by stepping on things, stones
25 that would -- that would cut it and produce a mark or a

1 cut in the outsole that would later be reproduced in a
2 track.

3 There can also be accidental -- what we call
4 "temporary accidentals," like, for a stone being lodged
5 in features that could be reproduced in a track but yet
6 may be lost. So those are accidental or temporary
7 accidentals because they're only there for a period of
8 time.

9 Q And one last definition I'd like for you to
10 explain to us is the concept of tread wear. How does
11 that impact what you do or what you analyzed?

12 A As an item of footwear is being worn, their
13 surfaces are changed by its constant wearing. So wear
14 will change the outsole features over a period of time,
15 sometimes eliminating them completely or sometimes just
16 damaging them to a point that you have to consider
17 those.

18 Q I'd like to refocus your attention, if I
19 could, to the techniques you would generally use to
20 analyze footwear impressions. Can you describe those
21 for the jury? What would the process you typically
22 used be?

23 A You would first observe it to see if there
24 are features there of value for comparative
25 examination. That would be the first thing. And if

1 there are, can I distinguish those or where I can use
2 those to make a comparison to a known item of footwear.

3 Q And what steps would you take to preserve
4 whatever the print is that you are trying to analyze?

5 A There's various techniques for that but the
6 first one would be photography. You would want to
7 photograph the track in its position. That is the
8 first step that would be taken.

9 You could also cast it by using different
10 casting forms, such as plaster of paris, Denstone.

11 Or you could retrieve it by a lifting
12 process. There are different materials that can be
13 used to lift a track, depending upon the substance that
14 it's made in or made with.

15 And those would be -- you would photograph.
16 You could cast and you can lift.

17 Q Okay. Could you describe for us the level of
18 care -- once investigators discover a track that they
19 want to preserve for comparison, what level of care is
20 typically used with regard to that track?

21 A Well, you have to take care, depending upon
22 the nature of it. If -- if by their estimation that it
23 could be a fragile track, like one in soft soil or
24 something like there's some substance -- sometimes the
25 tracks are found in a substance such as blood at a

1 crime scene. They must be aware of that and take their
2 steps accordingly to make sure that the track is not
3 damaged while they're recovering methods.

4 Q All right, sir. I'd like to direct your
5 attention to potential conclusions that you can draw
6 from your comparison process. Is there a range of
7 conclusions that you're able to give on any particular
8 case?

9 A There are different ranges and they can vary
10 a little bit in their degree. But they start -- like,
11 first footwear track could not have been made is
12 eliminated, or there are features that show they could
13 be made. And then there's probably could be made, and
14 then there's positively could be made. Those in which
15 there is an association, there can be consideration
16 given to other qualities of the track in its comparison
17 to a known.

18 Q If -- if all you can observe in a particular
19 track is class characteristics, can you elaborate for
20 us on what kinds of opinion you can give in that
21 situation?

22 A Well, class characteristics can be an area of
23 a could-have-been association. If it's a common --
24 what I would call a "general class characteristic,"
25 that's about the lowest level. But then there are

1 class characteristics that are limited class that was
2 perhaps special or, like, the wear or features involved
3 in the wear.

4 Q All right, sir. Directing your attention to
5 the case of the State of Florida versus Michael Haim,
6 did you have the opportunity back in 1993 to conduct
7 some analysis on a particular track in a Toyota Camry
8 in that case?

9 A Yes, I did.

10 Q Have you had an opportunity to review the
11 reports that you issued in that case?

12 A Yes, I have.

13 Q Have you had an opportunity to actually go
14 back and review the FDLE file from 1993?

15 A To an extent, yes.

16 Q And have you had an opportunity to review
17 crime scene photos and things of that nature?

18 A I have seen some crime scene photos that were
19 related to that case.

20 Q All right. Let me show you, if I could -- if
21 you could touch the screen, if it's not in front of
22 you -- there's a photograph. It's State's Exhibit 140.
23 Have you seen that picture before?

24 A Yes, I have.

25 Q Were you actually consulted in this case when

1 the vehicle came into FDLE's warehouse?

2 A Yes.

3 Q And how did that process take place? Who
4 consulted you?

5 A I was notified that there was a footwear
6 track on the left driver's seat pad -- floor mat in
7 there that they would like me to look at because it
8 appeared to have sufficient detail for comparative
9 examination.

10 Q And who were you working with at FDLE with
11 regard to this particular track?

12 A Well, the main ones were Allen Miller and
13 Steve Leary and John Holmquist.

14 Q And was Allen Miller -- was he going through
15 the training process to be able to -- to do the kind of
16 analysis that you do?

17 A Yes, he was in that training. But he was our
18 senior crime scene analyst as well.

19 Q And let me show you what's -- I'm going to go
20 through to State's 143 -- 142. Is that a close-up of
21 the floor mat that you had -- that you saw that day?

22 A Yes. It is the floor mat.

23 Q The screen in front of you is -- is active so
24 that you can use your finger to make circles and things
25 like that. Could you -- could you draw a circle around

1 the print that you observed that day when you first
2 analyzed the car?

3 A (Complies.)

4 Q And what's -- there's a white-ish substance.
5 What -- what did that appear to be?

6 A Appears to be sand.

7 Q Okay. And when you observed the print, at
8 this point, you were just looking at it with your naked
9 eye?

10 A Yes, I was.

11 Q Okay. What instructions, if any, did you
12 give with regard to removing this car mat so you could
13 do further analysis?

14 A Well, the mat would have to be removed to be
15 photographed in a -- in our photo lab, where there
16 is -- different lighting techniques are used. So it
17 would have to be removed carefully and then transported
18 to our photo section.

19 Q And why -- why -- why was the need -- why --
20 you used the word "carefully." Why did you use that
21 word?

22 A Because it appeared to be fragile, with some
23 sort of substance.

24 Q All right. And then showing you State's
25 Exhibit 144, what are we looking at in State's 144?

1 A Looks to be, like, the mat has been removed
2 and laid up.

3 Q Okay. And -- and how is this particular
4 photograph generated?

5 A Sir?

6 Q How is this particular photograph generated?
7 In terms of the view that we're looking at the mat,
8 how -- where is the camera? Where -- where is the
9 photo taken from?

10 A It appears that the camera is straight
11 overhead, but I'm not sure about what surface it is on.
12 But directly overhead.

13 Q All right. And the -- there's -- there's a
14 small white line. Is that a ruler?

15 A Yes.

16 Q And why do you use a ruler like that?

17 A We always want scale in any of our
18 comparative examinations dealing with footwear and tire
19 because a scale then gives us a record we can match to
20 an object, either directly by its two sides or by
21 enlarging it to the comparison size.

22 Q Okay. And then showing you State's
23 Exhibit 145, what are we looking at in State's 145?

24 A Again, you're looking at the footwear track
25 we had on the mat.

1 Q Close up?

2 A Yes, it is close up.

3 Q And then State's 146?

4 A A little closer.

5 Q Okay. In State's 146, are you able to see
6 any pattern?

7 A Not as well as I observed on -- on this
8 particular photograph.

9 Q Okay. Let me ask you, with regard to --
10 after -- after photographing this particular track,
11 what other steps were taken to preserve this track?

12 A There was a cast made of Denstone, casts made
13 out of Denstone.

14 Q And do you -- after you made that cast, can
15 you explain to the jury why you make a cast and what
16 the function is?

17 A The cast is another way of preserving it
18 because you then remove it from the surface that it's
19 on, the substrate, the mat, and you have it separate
20 from that. Also, a cast may show features that you do
21 not see of the track in the carpet.

22 Q And then once you've photographed the track
23 and once you've made a cast of it, do you make a
24 determination as to which is going to be your better
25 source to use?

1 A You may use both of them.

2 Q Okay. Do you -- do you have a recollection
3 that shortly after observing this track and documenting
4 it and casting it, you were provided a pair of shoes to
5 conduct an analysis upon?

6 A Yes, I was.

7 Q And showing you State's Exhibit 147, a pair
8 of Nike Air Advantage shoes, is that the shoes that you
9 analyzed?

10 A It would be on the bottom of the photograph.
11 There is a scale, again, because we like scales. Also,
12 there's an evidence identification by a number and with
13 those initials.

14 Q Okay. And explain to the jurors what you did
15 once you have these shoes. You've got this track that
16 you've now photographed and maybe have stuff. What
17 process do you use at that point?

18 A In this case, because the track of the floor
19 mat appeared to be from a heel area, made a transparent
20 overlay of the heel area to be placed on a two-sides
21 photograph to make a comparison with the overlay to the
22 questioned track.

23 Q Okay. And do you use the phrase "transparent
24 overlay" -- going to take you back to 1993. Can you
25 explain that process? What -- what do you do to make a

1 transparent overlay?

2 A The technique I used was what you call roller
3 transport cleanup film. It is a special film designed
4 to work on automatic film processors. It has a
5 gel-type surface but once you wet the surface, it
6 becomes soft. You can apply different powders or
7 substances to the footwear. In my case, I would use
8 probably red powder. You could use white powder, black
9 powder. And then once the gel on the transport film,
10 which is a clear film -- once it's softened, you step
11 on it, and that powder then is adhered to the film --
12 to the film. And it will draw -- it will dry and the
13 powder will be retained in the gel surface.

14 Q And showing you State's Exhibit 148, is that
15 the bottom of the shoes you conducted analysis upon?

16 A Yes, it is. That is the outsole.

17 Q Okay. When you -- when you conducted your
18 analysis, was the white sandy substance present on the
19 shoes?

20 A There was some there. I don't recall
21 specific where it was there because the sand is another
22 form of evidence that would have been collected.

23 Q And that would have been collected before you
24 conducted your analysis?

25 A Yes, it would.

1 Q Okay. So when you were describing making the
2 transparency, you would be using the bottom of these
3 shoes to -- to make that transparency?

4 A Yes, I would.

5 Q All right. And what analysis did you conduct
6 after you did after you made the transparency?

7 A I compared, by overlay technique, what
8 features I had in the transparency to the two-sides
9 photograph of the track.

10 Q And on the track itself that you were
11 analyzing, did you observe anything other than class
12 characteristics?

13 A Well, there's different class characteristics
14 that were observed. First, there was what we call the
15 boost design, the herring bone, which is a series of
16 zigzag lines in the bottom of that shoe. That is --
17 was the main design feature. And there's also a groove
18 around the heel area. And then there's an outside sole
19 area that is clear. So our class characteristics would
20 be, first, the herring bone design.

21 Q Could you -- could you circle that on the
22 prompter in front of you, the herring bone design?

23 A (Complies.)

24 Q That's the first class characteristic?

25 A Yes.

1 Q And then what's the next one?

2 A The next one will be the groove around the
3 heel. It's a thin line.

4 Q And what is the next one, if any?

5 A And then, of course, the overall outsole as
6 well.

7 Q Okay. All right, sir. I'm going to place
8 State's Exhibit 146 on the overhead for you so I can
9 enlarge it.

10 Tell me when to stop. Can you see that?

11 A Yes.

12 Q All right. Can you describe for the jurors
13 where you're observing those same class characteristics
14 that you just described for us on the shoe?

15 A This photograph does not really show the
16 design that well. There were other photographs.

17 Q Which other photograph would you -- let me go
18 to the next picture.

19 Showing you 145. Is that better?

20 A That is a little bit better, yes.

21 Q Okay. So can you just use the teleprompter
22 in front of you to show where you observed the track on
23 the mat?

24 A This would be the outside edge on the
25 footwear, and here, you see angled lines of the herring

1 bone design.

2 Q And those, again, are class characteristics?

3 A Yes, they are.

4 Q Okay. Did you -- after you conducted this --
5 this transparency overlay evaluation, did you do any
6 more evaluation on the cast that you had created?

7 A No, I did not. The cast was made in
8 recovery, but we had the sufficient information in the
9 photographs we had.

10 Q Okay. And -- and after conducting the
11 overlay -- and when you do that, you actually place
12 your transparency on the photograph itself?

13 A Yes, I did.

14 Q Okay. And after doing that, what was your
15 opinion with regard to whether the shoes that you had
16 analyzed -- whether that shoe could have made the
17 particular track in question?

18 A I had agreement in the gross characteristic
19 of the herring bone design, and then I limited class
20 characteristic in how the edges of the herring bone met
21 the groove next to the outsole.

22 So there are actually two different class
23 characteristics involved there, one, the design, one of
24 how the design interacts with other features of the
25 footwear. And I -- so I made that comparison, found

1 that to be in agreement such that I could form the
2 opinion that the footwear, the shoe I had, the Nike
3 Advantage Size 10, definitely made or could have
4 made -- not made, not made -- could have made the
5 footwear track on the -- on the floor mat of the car.

6 Q And -- and your -- you also did a little bit
7 of analysis or Mr. Miller, under your direction, did
8 some analysis on some footprints that were found in the
9 backseat of the vehicle. Did you do any analysis on
10 the backseat footprints?

11 A Just to confirm that his -- his opinion on it
12 that it could have. There was nothing of value for
13 comparative examination that I could recall.

14 Q Okay. And the -- going back to the print
15 that we have on the photograph, you cannot say that
16 those shoes definitely made that particular track, but
17 you -- your opinion is those shoes definitely could
18 have made --

19 MR. FALLIS: Objection, leading, Judge.

20 THE COURT: Sustained.

21 BY MR. HEAVENER:

22 Q Okay. How would you use the word "definite"
23 in terms of your opinion?

24 A The secondary or the class characteristics
25 that I call the "limited one," the second limited

1 characteristics, those are form -- that's where the
2 herring bone design meets the border of the design of
3 the outsole. Those features, how it intersects there
4 is determined a lot of times by the -- the size of the
5 outsole. These outsoles are designed in such a way
6 that they will use different templates for different
7 sizes. In one template, the edges or the angles of the
8 herring bone were different from size to size. In this
9 case, there was an agreement in the herring bone design
10 as it met the edge of the design features such that it
11 was my opinion they were of the same size.

12 This then reduces it, the number of
13 observations with the number of associations we can
14 make. And this is why the term "definitely" was
15 because I believe it to be in the same size category.

16 Q And with regard to that particular shoe, did
17 you or did Mr. Miller, under your direction, do any
18 individual research to determine how many of those
19 particular Nike shoes were created?

20 A I did not. Mr. Miller did, though.

21 Q Okay. And is that -- is that a common
22 practice for one doing shoe print or footwear
23 impression analysis to try to determine what the
24 universe of potential shoes is that could have made
25 that track?

1 A That could be a supplemental-type inquiry,
2 yes.

3 Q Okay. And so -- so Mr. Miller did all of
4 that research?

5 A Yes, he did.

6 MR. HEAVENER: Okay. No further
7 questions, Your Honor.

8 THE COURT: Cross?

9 MR. FALLIS: Yes, Your Honor, very
10 briefly.

11 CROSS EXAMINATION

12 BY MR. FALLIS:

13 Q Mr. Hamm, I want to get back to the forest
14 and get out of the trees a second -- okay? -- and try
15 to get the -- you understand what I mean? I want to
16 get an overall picture here because I think I got lost
17 in the trees, and maybe you can clear that up. Okay?

18 In order to make a definitive examination and
19 definitive conclusion as to whether or not these are,
20 in fact, the shoes that left that imprint on that floor
21 mat, you need more than just the classification, don't
22 you?

23 A Yes, I do.

24 Q I think -- and I want you to go back. And I
25 think there are at least two or three other things that

1 you need as an expert to come to that conclusion. And
2 that would be something you called "accidental"?

3 A That is one term, "accidental" or "damage
4 characteristic."

5 Q And what -- what are the other two terms?
6 Wearer?

7 A Wearer would be the third category.

8 Q Okay. Now, if you have those and a good
9 body, you can probably come to a better conclusion than
10 you had, right? You could come to a better conclusion
11 than you reached if you had those other -- other than
12 classifications, those other characteristics we talked
13 to -- we talked about.

14 A Yes.

15 Q And the rear footprints, I think -- and I
16 just want to get back to that again. I think you said
17 they probably came from the same shoe but you didn't
18 have enough detail. Is that what I heard?

19 A No. The tracks in the rear mat, they could
20 have.

21 Q That's what I meant, could have -- okay? --
22 come from the same shoe that was in the front mat,
23 right?

24 A Yes.

25 Q Okay. I wasn't clear on that. That's why

1 I'm back here. And that term that you used -- I think
2 you had your own terms for the -- how definitive you
3 could be, and I think you said that these shoes -- this
4 print could have been made by the sneakers in question
5 that you have, right?

6 A Yes.

7 Q Now, did you say -- when you say they
8 definitely could have, is that one of your terms, they
9 definitely could have?

10 A Like I explained it before, I mean, when you
11 have a single class characteristic, you can probably
12 say it could have. When I have two different types of
13 class characteristics in the same track, like this
14 time, I would say that definitely it could have.

15 Q That's term of art that you made up on your
16 own, isn't it?

17 A What term is that, sir?

18 Q Definitely could have. I mean, the degree,
19 that's a term of art that you've made up on your own.
20 That's not something that's used in the -- in your
21 community, correct?

22 A Yes. That is a term I use.

23 Q Right. So it's not like -- if we're talking
24 to another expert like you, he might have a different
25 way of making that determination, using different

1 vocabulary, wouldn't he?

2 A Yes, he would.

3 Q Okay.

4 A Or he could.

5 Q And once again, that is strictly the heel
6 portion of the -- of the shoe, correct?

7 A Yes.

8 Q You don't have anything on the sole -- you
9 don't have any other print of the sole, just the heel.

10 A The whole area is called the "outsole." This
11 was the out -- the heel portion of the outsole.

12 Q You did have more than just the heel?

13 A No. I had the heel portion of the outsole.

14 Q Okay. When I say -- correct me. When I say
15 the "sole," I'm talking about the whole shoe in front,
16 all the way down. You didn't have any that, right?

17 A No, I did not.

18 Q Okay.

19 MR. FALLIS: May I have one moment,
20 Judge?

21 THE COURT: Yes, sir.

22 MR. FALLIS: I have no further
23 questions. Judge, no further questions.

24 MR. HEAVENER: Nothing further, Your
25 Honor.

1 THE COURT: May this witness be excused?

2 MR. HEAVENER: He may. All right.

3 Thank you, sir. You're excused.

4 (Witness excused.)

5 THE COURT: State, call your next
6 witness.

7 MR. MIZRAHI: State calls Detective
8 Watson, J. W. Watson.

9 (Witness sworn by the clerk.)

10 MR. MIZRAHI: May it please the Court?

11 THE COURT: Yes, sir.

12 JOHN WATSON,
13 having been produced and first duly sworn as a witness
14 on behalf of the State, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. MIZRAHI:

17 Q Please introduce yourself to the jury.

18 A John Watson, retired detective, JSO.

19 Q And when did you retire from the Jacksonville
20 Sheriff's Office?

21 A November of '96.

22 Q 1996?

23 A I mean 2016. I'm sorry.

24 Q That's fine.

25 How long were you a member of the

1 Jacksonville Sheriff's Office?

2 A 20 years.

3 Q And what did you -- when you retired, what
4 division did you retire from?

5 A The crime scene unit.

6 Q So you're a crime scene investigator?

7 A Correct.

8 Q And how long were you a crime scene
9 investigator?

10 A Roughly 12 years.

11 Q What type of training and background did you
12 have to allow you to perform those duties with the
13 Jacksonville Sheriff's Office?

14 A I attended several classes at the University
15 North Florida's IPTM, such as photography, crime scene
16 photography, basic crime scene, crime scene
17 reconstruction, surface skeleton, buried bodies,
18 shooting classes. Also, I was assigned to the state
19 forensics response team which sent me to Alabama to
20 learn how to handle biological and chemical agents. I
21 was also sent to New Mexico to try to learn how to
22 handle or deal with terrorists bombings and suicide
23 bombers. And I was sent to Nevada to learn how to deal
24 with nuclear incidents.

25 Q Okay. And so I assume most of that training

1 took place either before you became a crime scene
2 investigator or during the early part of your career.
3 Is that fair?

4 A That was during the time that I was a crime
5 scene detective, yes.

6 Q Okay. So since you retired shortly after you
7 performed your work on this case, the majority that
8 training took place before December of 2014.

9 A Correct.

10 Q Okay. And you were the crime scene
11 investigator that performed the excavation of the
12 remains later determined to be Bonnie Haim on
13 December 14th of 2014.

14 A Correct.

15 Q And were you a senior crime scene
16 investigator, meaning that you would do major cases?

17 A Yes.

18 Q And how long had you been doing major cases?

19 A Probably ten years.

20 Q So major cases are, like, homicides as
21 opposed to burglaries and things like that.

22 A Correct.

23 Q The -- and during the course of that -- I
24 guess you said you were a crime scene investigator for
25 12 years? Did I get that right?

1 A Roughly, yes, sir.

2 Q How many times were you the lead investigator
3 on a buried body case?

4 A One.

5 Q And that was this case?

6 A Yes.

7 Q Is it rare with the Jacksonville Sheriff's
8 Office to have a buried body?

9 A Yes.

10 Q How many have you participated in in your
11 12 years as a crime scene investigator?

12 A I'd say three or four.

13 Q But you did attend a class that taught you
14 how to do this.

15 A Yes.

16 Q Is photography important for your job?

17 A Yes.

18 Q Why?

19 A It documents the scenes and the evidence as
20 you find it.

21 Q Did you have a team of fellow crime scene
22 investigators that helped you perform your excavation
23 of Bonnie Haim?

24 A Yes.

25 Q Approximately how many other detectives

1 helped you?

2 A Four or five.

3 Q How many days did this take you?

4 A Four.

5 Q Is this one of the hardest things you'd ever
6 done as crime scene investigator?

7 A I would say it was probably the hardest thing
8 I ever did.

9 Q Did the Medical Examiner's Office come out
10 for a brief period of time to consult?

11 A They came out but they didn't consult.

12 Q Did you also have the occasion to see Heather
13 Walsh-Haney, a forensic anthropologist?

14 A Yes.

15 Q Again, did she come out?

16 A Yes.

17 Q Did she consult?

18 A Yes.

19 Q Okay. Did she coordinate the excavation of
20 that body?

21 A No.

22 Q Who did that?

23 A I did.

24 Q What were some -- before we get into some of
25 the details, what were some of the obstacles that you

1 were facing when you were trying to excavate this body?

2 A Well, the location for one. There was some
3 metal piping that ran across the top of where the --

4 MS. WARREN: I'm sorry, Your Honor.

5 Could you ask the witness to speak up,
6 please, or closer to the microphone?

7 THE WITNESS: Is that better?

8 MR. MIZRAHI: Yes, sir.

9 THE COURT: Yes, sir.

10 THE WITNESS: I'm sorry.

11 BY MR. MIZRAHI:

12 Q Go ahead. You were describing some of the
13 obstacles. You mentioned metal piping?

14 A Yes. There was metal piping that was just
15 under the surface of the ground that was above where
16 the remains were. The remains were pushed up against
17 the foundation or very close to the foundation of the
18 house. The condition was wet. There was a pipe --
19 apparently one of water pipes that was there was
20 leaking entire time so the ground was wet.

21 Q Did you do the best you could --

22 A Yes.

23 Q -- in getting that body out of there?

24 A Yeah. I thought I did the best that I could,
25 that I knew anyway.

1 Q Were there situations where when you were
2 trying to get all the bones out that you discovered
3 that perhaps those bones were essentially
4 disintegrating in your very hands?

5 A Yes.

6 Q Describe that for the jury.

7 A We could find -- we knew where the skull was,
8 and we knew where the legs were due to they were still
9 there with -- or the bones from the legs were still
10 there wrapped in some kind of pink cloth-like material.
11 The torso, I had extreme difficulty locating the torso.
12 And I later found that it was because it was so
13 deteriorated that it had almost turned to, like, clay
14 balls.

15 And we were probably -- during our process,
16 we were probably actually throwing part of the remains
17 away. And when I realized that I couldn't find the
18 torso; I really couldn't locate it, I stopped the
19 excavation on the third day.

20 Want me continue?

21 Q Yeah. You're having such a difficult time
22 getting out. This is on the third day and you still
23 haven't gotten her out.

24 A Right, still haven't really found the torso.
25 So --

1 Q And is it taking this many days because
2 you're being so methodical and trying your best not to
3 destroy the body?

4 A Yes. When you're doing this in this process,
5 you're scraping layers of dirt off at a time. You're
6 talking a half inch maybe, maybe in some areas, just
7 scraping the dirt as you go. When you find, like, a
8 bone or piece of something, you stop, and you work
9 around that to try to determine what it is.

10 But like I said, the torso, I basically
11 couldn't find it. So at the end of the third day, I
12 stopped the excavation, and I told everybody, I've got
13 to figure something else out what to do here 'cause --
14 and then I went home and basically laid there in bed,
15 trying to figure out what to do. And then I decided
16 that I was going to do the pedestal move.

17 Q Is that something that Heather Walsh-Haney
18 consulted on as well, the pedestal?

19 A Yes. On day two, she came and she asked if I
20 would consider pedestaling it, and I said, yeah, I
21 would consider it. And originally, I was going to do
22 that, but it -- it was very difficult where it was
23 located.

24 So when I decided to do it -- well, actually,
25 on the second day when we were going to do this, I

1 actually -- I believe it was the second day -- I
2 took -- there was an excavator there that was being
3 used by whoever owned the house to tear up pool that
4 was in the backyard. I have experience in using those.
5 So I obtained the key and I dug a hole adjacent to the
6 graveside where the remains were. And then we took --
7 after I got the hole deep enough, then we climbed in
8 that hole, and we dug the dirt, methodically moving the
9 dirt toward the remains.

10 And then like I said, at the end of the third
11 day, I made -- well, when I came back on the fourth
12 day, I consulted with Sergeant John, and I told him
13 that the only way we're going to get the remains out of
14 here without losing it was the pedestal.

15 So we prepared the materials we needed and we
16 pedestaled.

17 Q Which means you lifted a large area of dirt
18 on a piece of plywood and shipped that to the Medical
19 Examiner's Office.

20 A Oh, we took out quite a bit of dirt with
21 those remains. It was rather heavy.

22 Q Even after you did that pedestal, were there
23 a significant amount of remains left behind?

24 A There were some remains left behind. There
25 was an arm -- arm bone sticking up out of the ground,

1 which was a concern of mine, that I wasn't going to get
2 it all out at that time. But I was able to -- we were
3 able to excavate and recover the remains after I had
4 taken the big bulk of it. I transported it myself to
5 the Medical Examiner's Office.

6 Q During the course of this methodical process,
7 did you also used sifters to dump sand in to make sure
8 that you're retrieving items of evidence?

9 A Right. As you -- as you remove the dirt from
10 the grave, that dirt is placed in buckets. Those
11 buckets are then handed out of the grave to another
12 person who dumps them on big screens and they -- they
13 sift through it.

14 Q So this is almost like an archaeological dig.

15 A Pretty much, yes.

16 Q The jury's already seen some of these
17 photographs. Did you also take a number of photographs
18 to document your processing just to show the areas of
19 the house you were working and things like that?

20 A Yes.

21 Q The jury's already seen State's 48. I'll
22 just run through them. Are these -- State 48, 49, 50,
23 51, 52, 53, 54, 55, 56, 57 and 58, are all those all
24 pictures that you took of the surrounding area before
25 you began your excavation?

1 A Yes.

2 Q State's Exhibit 58, is this the way that you
3 found the grave site?

4 A I'm sorry.

5 Q That's okay. If you need some water, there
6 may be some up there.

7 A That's okay. I'm good.

8 Q Is this the way you found the grave site when
9 you arrived on December 14th, 2014?

10 A Yes.

11 Q And that's why you take as-is pictures?

12 A Correct.

13 Q So 58, 59, 60, 61 and 62 are all as-is
14 pictures?

15 A Correct.

16 Q And that -- we know that because there's not
17 any marking that you've done anything in those
18 pictures, and the shovel is still in the ground.

19 A That is correct.

20 Q I want to go back just briefly to State's
21 Exhibit 58. Is this the general area that you used
22 that's kind of just dirt? Is that the general area you
23 used to do your excavation?

24 A Yes. Actually, I did an eight-foot grid,
25 which -- can I mark on that?

1 Q Yeah. Go ahead. You went a little bit
2 further, is that --

3 A It actually came probably out in this area.

4 Q Okay. So you went a little bit further, just
5 to be safe.

6 A Right. It was an eight-foot square.

7 Q Okay. So now let's go to the items of
8 evidence that you started. And we'll begin first with
9 State's Exhibit 66. The shovel has been removed so
10 you're now beginning the process of moving things and
11 then photographing it.

12 A Correct.

13 Q And do we see a piece of potential skeletal
14 remains on that shovel?

15 A Yes.

16 Q State's Exhibit 67, what are these flags
17 there that we see in State's Exhibit 67?

18 A What are they doing? They're working --

19 Q Why are they there?

20 A Those are to mark evidence basically.

21 Q And so you're beginning the process of
22 marking, excavating and photographing.

23 A Correct.

24 Q State's Exhibit 68, what's the point of the
25 arrows and the wood stakes?

1 A The arrow is showing north and the wood
2 stakes are showing the corners of the grid I laid out.

3 Q And that grid is eight by eight?

4 A Correct.

5 Q And you actually measured?

6 A Yes.

7 Q So the jury has a pretty good idea of the
8 nature of the outdoor shower area that was covering the
9 body.

10 A Yes.

11 Q So then State's Exhibit 69, what are we
12 looking at here?

13 A That is the hole that was dug prior to my
14 arrival.

15 Q And are you documenting potential skeletal
16 remains in that hole?

17 A Yes.

18 Q State's Exhibit 70, is that, again,
19 documenting potential remains and things like that?

20 A Yes.

21 Q State's Exhibit 71, can you describe for the
22 jury what State's Exhibit 71 is?

23 A That's the area that I now laid down
24 placards. I've removed the flags and now I'm putting a
25 number of placards down to number evidence.

1 Q And what's the purpose of doing that, putting
2 numbers down?

3 A So you can show where it is on -- in the
4 scene.

5 Q Did you prepare a diagram that could assist
6 anyone that came back later in seeing where you find
7 items of evidence?

8 A Yes, I did.

9 Q Go ahead and fast-forward to that. I want to
10 explain to the jury how to use the diagram and using
11 all the numbers associated with that. So I'm
12 fast-forwarding to State's Exhibit 115. So if the jury
13 wanted to see where a particular item of evidence was,
14 could you explain to them how to use the diagram in 115
15 to find it?

16 A Yes. Okay. If you look over on the legend
17 side, you'll have a list of EV1 all the way through
18 EV27. Okay. EV1, which is out here, that tells you
19 what it is up there. It's a piece of plastic.

20 Now, it gets a little more difficult when you
21 get into the grid itself because if I put all the
22 numbers inside that grave, it would be so cluttered,
23 you couldn't read it. So if you look at No. 26, which
24 says ring, depth of 23 inches, the numbers out here,
25 the ring -- the arrow takes you to approximately where

1 the actual ring was found.

2 Q And you provided general depth information
3 with each particular item of evidence that you found.

4 A That were inside the grave, yes.

5 Q And then so the jury is able to understand,
6 what are these measurements, approximately 3.5 and
7 approximately 20 inches and a depth of approximately
8 24?

9 A Okay. I'm sorry. This down here is the
10 approximate from the side of the house, how far out the
11 yard grave wall was. This is the outer grave wall.
12 This measurement here is approximately how long from --
13 the grave was. And you can see where I wrote down here
14 that the grave depth was approximately 24 inches.
15 That's the center of the grave.

16 Q So approximately, it did not go deeper than
17 two feet.

18 A From what I -- from my measurements, no. The
19 deepest point of the grave was approximately 24 inches.

20 Q And we're actually seeing the recovery of the
21 remains as shallow as eight inches.

22 A That's correct.

23 Q So we'll go back and kind of -- those numbers
24 that we see, the EV numbers, we're going to see a
25 series of photographs. I want to explain to the jury

1 how you do the photographs. First far, in State's
2 Exhibit 71, that shows Exhibits 1, 2, 3 and 4. And
3 then in Exhibit 72, is that going to be a close-up of
4 that particular item of evidence?

5 A Correct. Once we put the numbers down -- you
6 have the scene photographed without the numbers, when
7 everything's there. Then you take and put the numbers
8 in where you have found stuff, and then you take a
9 close-up of each item with -- with the number.

10 Q And then you actually collect the item.

11 A That's all done -- that's done before you
12 collect it.

13 Q Okay. And obviously some of those things,
14 when you say "collected," they're actually just shipped
15 to the Medical Examiner's Office 'cause it's the body.

16 A Correct. The bones themselves are then
17 placed on a tarp off to the side, and the medical
18 examiner investigator will come and collect those.

19 Q So State's Exhibit 73 is a close-up of
20 Evidence Placard 2.

21 A Yes.

22 Q State's Exhibit 74 is a close-up of 3, which
23 is parts of the skull.

24 A Correct.

25 Q State's Exhibit 74 is, again, a close-up of

1 Evidence Placard 4.

2 A Yes.

3 Q And then we can see, in State's Exhibit 76, 5
4 and 6 from far away?

5 A Correct.

6 Q And then 5, close in State's Exhibit 77?

7 A Yes.

8 Q And then 6 close in State's Exhibit 78.

9 A Yes.

10 Q We'll try as best we can to go through. I
11 know some is repetitious but just for record purposes,
12 we'll kind of race through these so the jury has an
13 understanding of how to use these photographs.

14 State's Exhibit 79 is Placard 7 from far?

15 A Yes.

16 Q And Placard 7 close is State's Exhibit 80.

17 A Correct.

18 Q State's Exhibit 81 is Placard 8 from far?

19 A Yes.

20 Q And then State's Exhibit 82 is Placard 8
21 close.

22 A Correct.

23 Q State's Exhibit 83 is Placard 9 far?

24 A Yes.

25 Q And State's Exhibit 84 is Placard 9 close.

1 A Yes.

2 Q State's Exhibit 85 is Placard 10 far?

3 A Correct.

4 Q State's Exhibit 86 is Placard 10 close.

5 A Correct.

6 Q State's Exhibit 87 is going to be Placard 11
7 through 14 far?

8 A Yes.

9 Q And what -- why is this blue tarp here in
10 this photograph?

11 A 'Cause now we've reached the grave itself,
12 and the tarp is for us to lay on.

13 Q Okay. You're going to be a little bit more
14 precise when you're digging at that point.

15 A Correct.

16 Q And then we have -- looks like a tape measure
17 over to the left, State's Exhibit 87?

18 A Yes.

19 Q State's Exhibit 88 is going to be a close-up
20 of Placard 11?

21 A Correct.

22 Q State's Exhibit 89 is a close-up of
23 Placard 12.

24 A Correct.

25 Q Do we see what appears to be teeth in that

1 photograph?

2 A Yes.

3 Q State's Exhibit 90 is Placard 13 close?

4 A Correct.

5 Q And State's Exhibit 90 [sic] is Placard 14
6 close.

7 A Correct.

8 Q State's Exhibit 92 is going to be 15,
9 somewhat far away, sort of close?

10 A Yes.

11 Q And then State's Exhibit 93, what's the
12 purpose of this photograph?

13 A That's showing some of the -- that the bones
14 are being collected, parts of the skull.

15 Q And you're putting those bones on red
16 biohazard bags?

17 A Yeah. It's biohazard bag, yes.

18 Q And then what do you do with those?

19 A The medical examiner comes and gets them.

20 Q State's Exhibit 94, is that a close-up of
21 some of those bones?

22 A Yes.

23 Q All right. State's Exhibit 95, you were
24 talking previous about the excavator. Is that what
25 this picture shows?

1 A Yes. That shows the hole that I dug adjacent
2 to the grave.

3 Q 'Cause at this point, you're thinking about
4 doing the pedestal.

5 A Correct.

6 Q State's Exhibit 96, what's the purpose of
7 this photograph? Blue tarp that's covering the grave
8 site?

9 A Correct. That was -- that would have been
10 done before we left the night before or to show that
11 we -- that could have been picture taken that night,
12 showing when we were leaving, we covered the grave with
13 a tarp.

14 Q And so the purpose that photograph is to show
15 each night you're leaving, your protecting the evidence
16 as best you can.

17 A Right, right.

18 Q State's Exhibit 97, is this going to be that
19 filter that you talked about where you dumped the dirt?

20 A Correct, the sifters, yes.

21 Q The sifters.

22 State's Exhibit 98, is this going to be some
23 of the remains you discovered during excavation
24 process?

25 A Yes.

1 Q State's Exhibit 89, if you could explain this
2 to the jury.

3 A This is why I was actually doing the pedestal
4 process. I had -- this is a sheet of four-inch plywood
5 that we had cut to size, and it was shoved down between
6 the remains and the foundation.

7 Q So let's be -- this area right here, it's not
8 the wall. Right there, what is -- where I'm drawing
9 green right there, what is that?

10 A That's part of the foundation.

11 Q So that's actually part of the house.

12 A Yes.

13 Q So go ahead. You were saying you put the
14 plywood there?

15 A Yeah. And this is the other piece of plywood
16 that we cut. The piece of plywood is as close to the
17 bottom of the grave as I could find. This was placed
18 as close to that as I could, and now we are maneuvering
19 it underneath the remains. And this is done until it
20 hits this other board.

21 Once it hit the other board, we -- myself and
22 Sergeant John jiggled it a little bit to loosen it.
23 Then we moved it back and then the remains came with
24 it.

25 Q So this is day four?

1 A This is day four.

2 Q State's Exhibit 100 is going to be an
3 overhead view of that?

4 A Yes.

5 Q It looks like it's more than just you and
6 John. There's a bunch of you crime scene investigators
7 trying to get this done?

8 A Well, actually, they were there but it was
9 mainly me and, I think, Detective Pfister getting the
10 board under it. And once we got the board under it,
11 Detective -- or Sergeant John and I moved it.

12 Now, once we moved it and I know I saw the
13 remains were coming with the board, that I got what
14 I -- when I got what I wanted, then they helped us move
15 it to some -- we put it on some buckets in the hole.
16 Put buckets in the hole and I put two layers of plastic
17 that were cut to size over these buckets. Then the
18 board was placed on top of the buckets with the
19 remains, and it was wrapped with the first layer of
20 plastic and taped, and it was wrapped as tightly as we
21 could get it, the second layer plastic and taped.

22 Q So you tried to keep the body in the position
23 like this until it got to the medical examiner.

24 MS. WARREN: Objection, Your Honor,
25 leading.

1 THE COURT: Sustained. Ask it again.

2 BY MR. MIZRAHI:

3 Q Did you -- what did you try to do to make
4 sure the medical examiner got the body in the best
5 condition possible?

6 A We wrapped the -- I wrapped the remains and
7 all the dirt and everything as tightly as I could with
8 the plastic --

9 Q Now --

10 A -- with two layers.

11 I'm sorry.

12 Q No. That's fine 'cause I interrupted you.

13 So I want to use this picture 'cause it gives
14 us a good shot. You indicated earlier that you were
15 able to find the upper body, the skull, and I think
16 we've already seen pictures of the jaw and the teeth.
17 You also very easily found the leg bones. Could you
18 show the jury where the leg bones are on State's 100?

19 A They're right in here.

20 Q And were they bent?

21 A Yes.

22 Q Like, the feet would be underneath the body?

23 A Yes.

24 Q And can you show the area where the skull and
25 the jaw and things like that were?

1 A That was up here.

2 Q And so the torso area is going to be this
3 area here in the middle that you were having a
4 difficult time finding.

5 A Correct.

6 Q State's Exhibit 101, is that a close-up of
7 the leg area?

8 A Correct.

9 Q And is this this pink clothing that you
10 referred to?

11 A Yes.

12 Q Now, do we also see a lot of roots and things
13 on these remains?

14 A Yes.

15 Q Is that the way it was when you took the body
16 out?

17 A Yes.

18 Q State's Exhibit 102, is that going to be the
19 wrapping that you described?

20 A Yes.

21 Q State's Exhibit 103, what is this photograph?

22 A This is a photograph of one of the doctor or
23 medical examiners who entered the scene and entered the
24 hole and removed one of the bones that were sticking up
25 out of the ground after I removed the remains. That

1 was the arm bone.

2 Q So this -- the pedestal has already been
3 completed.

4 A Correct.

5 Q State's Exhibit 104, are you still finding
6 remains or items of evidence in the grave site even
7 though you've completed the pedestal?

8 A Yes.

9 Q And so you're documenting those now.

10 A Correct.

11 Q State's Exhibit 21 -- excuse me -- which is
12 State's Exhibit 104.

13 Then State's Exhibit 105 is going to 21
14 close.

15 A Correct.

16 Q State's Exhibit 106, is that going to be what
17 appears to be some form of jewelry?

18 A Yes.

19 Q And then State's Exhibit 107, you're putting
20 placards next to that jewelry.

21 A Correct.

22 Q State's Exhibit 108, are you actually
23 photographing the jewelry after you removed it from the
24 grave?

25 A Correct.

1 Q State's Exhibit 109, are you photographing
2 the jewelry after you've removed it from the grave?

3 A Correct.

4 Q State's Exhibit 110 appears to be --
5 Placard 25 appears to be acrylic nails. Did you try to
6 collect all those acrylic nails?

7 A Yes, we did.

8 Q And State's Exhibit 111, I guess that's a
9 little out of order. We already showed the ring after
10 you've taken it now, but this is that green ring while
11 it's in the grave.

12 A Correct.

13 Q State's Exhibit 112, what is this a
14 photograph of?

15 A Photograph of finger bones.

16 Q State's Exhibit 113, what is this?

17 A That's bones that were collected after the --
18 after the pedestal would have been completed and were
19 placed in a box.

20 Q And do we see some of those acrylic
21 fingernails?

22 A Yes.

23 Q State's Exhibit 114, is this another ring
24 with a finger bone?

25 A Yes.

1 Q State's Exhibit 115 we've already seen.
2 That's the diagram.

3 State's Exhibit 116, what's the purpose of
4 this photograph?

5 A That shows the grave after we removed
6 everything that we believe is there.

7 Q And that concrete foundation you were talking
8 about, the jury can see it here?

9 A Correct.

10 Q So at least several inches away from the
11 house is actually concrete.

12 A Yes, three or four inches probably.

13 Q State's Exhibit 117, do we actually see you,
14 your -- the lower part of your face in that photograph?

15 A Yes, that's me.

16 Q This is you right here?

17 A Correct.

18 Q And you're transporting the body to the
19 Medical Examiner's Office?

20 A This is at the Medical Examiner's Office when
21 I was dropping it off, yes, sir.

22 Q So everything else is going to be theirs.

23 MR. MIZRAHI: That's all the questions I
24 have.

25 THE COURT: All right. Cross?

1 MS. WARREN: Thank you, Your Honor.

2 CROSS EXAMINATION

3 BY MS. WARREN:

4 Q Good afternoon, Mr. Watson.

5 A Hello.

6 MS. WARREN: I'm going to have to use
7 your photos.

8 MR. MIZRAHI: Yes, ma'am. They're right
9 here.

10 BY MS. WARREN:

11 Q Mr. Watson, it took you five days to do this
12 excavation, right?

13 A Four.

14 Q Four.

15 And that was a very tedious process, wasn't
16 it?

17 A Yes.

18 Q You went inch by inch through that full
19 eight-foot grid, did you not?

20 A Not the full -- we did -- at the start of the
21 eight-foot grid, once we determined where the grave
22 was, then we only did the grave.

23 Q There were a lot of rocks and pebbles in all
24 that dirt that was sifted, wasn't there?

25 A Yes.

1 Q Did you separate the rocks and the pebbles
2 into a separate pile at the scene, or did you leave it
3 in the dirt?

4 A That was -- through the sifting, it was left
5 there.

6 Q I'm sorry?

7 A It would have been left where the sifting is.

8 Q It was left where the sifting was.

9 A We put -- like I stated before, we would take
10 the dirt, put it in a bucket, and it would be handed up
11 to someone to sift. So the little pebbles and
12 everything would have been found during the sifting.

13 Q But you left it there at the scene. That's
14 what you're saying, correct?

15 A Yes.

16 Q Okay. You said that the medical examiner
17 showed up, correct?

18 A Yes.

19 Q Are you sure that was the medical examiner
20 who showed up?

21 A The lady that was in the white clothing?

22 Q Yes.

23 A Yes. It was one of the doctors from the ME's
24 Office.

25 Q And that doctor actually pulled a bone out of

1 that grave site after you removed the remains. That's
2 what you testified to?

3 A Correct.

4 Q Now, you wrote a five-page report. Sorry.
5 If you take off the diagram, it's a six-page report, is
6 that right?

7 A Five.

8 Q The diagram would be Page 6 that's attached
9 to the back of the report you entered?

10 A The actual report is five. The diagram is
11 actually a separate report. So if you want to call it
12 six, you can.

13 Q Okay. But you actually drew the report --
14 you actually wrote the report, correct?

15 A Correct.

16 Q Okay. And you actually did this diagram to
17 aid whoever was looking at it in explaining where you
18 located certain things in the grave site, correct?

19 A Correct.

20 Q Page 5 of that report -- let me draw your
21 attention to -- do you have it with you?

22 A Yes.

23 Q Okay. Would you please go to the -- to the
24 last page of that report? Now, you would agree,
25 Mr. Watson, that protecting the integrity of this

1 evidence is very important, would you not?

2 A Yes.

3 Q Page 5 of your report, you wrote that there
4 was a bone sticking out of the dirt, and it was handed
5 to the detective. I can't pronounce it. Is that
6 Pfister?

7 A You're on Page 4?

8 Q I apologize. Page 4. At the bottom of that
9 last big paragraph there, it says Dr. Gillespie pulled
10 the bone that was sticking out of the dirt?

11 A Yes.

12 Q Okay. You -- you wrote this report, correct?

13 A Correct.

14 Q These are your words, correct?

15 A Yes.

16 Q Okay. And you put in here that --
17 Dr. Gillespie. Did you later find out it was not
18 Dr. Gillespie?

19 A Correct.

20 Q Okay. So that's just maybe a mistake in
21 identity of the name of the medical examiner, is that
22 right?

23 A That was the name I was given at the scene.

24 Q Okay. But you do know that the medical
25 examiner pulled the bone out of the grave site,

1 correct?

2 A Correct.

3 Q And it bothered you enough that you wrote it
4 in here because you put it does not -- she did not
5 consult with the lead crime scene detective, right?

6 A Correct.

7 Q And you were the lead crime scene detective,
8 right?

9 A Correct.

10 Q And that was a breach of protocol for her to
11 do that, even though she was the -- a physician,
12 correct?

13 A Correct.

14 Q Was anything ever done about that?

15 A That's not up to me.

16 Q I'm sorry?

17 A That's not up to me.

18 Q Okay. So you just put it in your report and
19 that was it, right?

20 A Right.

21 Q Is it customary to wash pieces of evidence at
22 the crime scene?

23 A Some of them, yeah.

24 Q In this case, you actually washed off those
25 pieces of jewelry, did you not?

1 A Correct.

2 Q And you could have potentially destroyed
3 evidence, isn't that true, by doing that?

4 A Possibly.

5 Q But you remember washing -- as a matter of
6 fact, you -- you took a picture. Do you remember the
7 picture of the shiny ring?

8 A Which one? There were several rings.

9 Q Well, I'll have to keep looking for that
10 picture right now.

11 MS. WARREN: I believe it's State's 114.

12 Would you put that up for me, please?

13 MR. MIZRAHI: Sure.

14 MS. WARREN: Thank you.

15 BY MS. WARREN:

16 Q There you go, State's 114. Do you remember
17 that picture, Mr. Watson?

18 A Yes.

19 Q Now, that's a picture of -- appears to be a
20 wedding band, isn't that true, with some diamonds on
21 it, right?

22 A Yes.

23 Q It's pretty shiny, isn't it?

24 A Yes.

25 Q Okay. Now, your testimony was, I believe,

1 that that ring was washed at the excavation site, is
2 that true?

3 A It was rinsed with water, yes.

4 Q And then it was put back by someone, correct,
5 onto what appears to be a bone, is that right?

6 A No.

7 Q Well, what is -- what is that ring on in this
8 picture? Can you tell us?

9 A It is on a bone. It would have been rinsed
10 on the bone.

11 Q Okay. So you rinsed the ring and you rinsed
12 the bone at the same time?

13 A Correct.

14 Q At the crime scene.

15 A Yes.

16 Q At -- I'm sorry -- the excavation scene,
17 right?

18 A Yes.

19 Q Do you know whether or not you rinsed other
20 pieces of evidence?

21 A We rinsed some of the other rings to get the
22 dirt off them so we could get good pictures of them.

23 Q There was a lot of plastic in there, in that
24 grave site, wasn't there?

25 A Yes.

1 Q There was some cloth, a lot of cloth too,
2 wasn't there?

3 A Yes.

4 Q In addition to the rocks and pebbles, you had
5 mentioned there were a lot of roots, correct?

6 A Yes.

7 Q The roots were actually growing through
8 the -- whatever the remains were wrapped in. Is that
9 fair to say?

10 A Yes.

11 Q You said that you dug an eight-foot grid.

12 MS. WARREN: Could you go back to

13 State's 50 for me, please?

14 Thank you.

15 Try 71. I'll do that one.

16 BY MS. WARREN:

17 Q Mr. Watson, do you recognize this picture?

18 A Yes.

19 Q What is that a picture of?

20 A Picture of some concrete that was removed
21 from where the remains were found.

22 Q Was it your understanding that that was
23 removed by Aaron Fraser or Aaron Haim?

24 A Yes.

25 Q Did you measure it? You didn't measure that,

1 though, did you?

2 A No.

3 Q You didn't take any pictures of that, did
4 you?

5 A Of the concrete?

6 Q Correct?

7 A You're looking at one of them.

8 Q That picture was taken by your office.

9 A Yes.

10 Q Okay.

11 MS. WARREN: Next picture, let's go to
12 68.

13 BY MS. WARREN:

14 Q Now, Mr. Watson, this right here, that right
15 here is a piece of plastic, correct?

16 A Yes.

17 Q And that plastic actually came out of this
18 area here where the shovel is, correct?

19 A Yes.

20 Q This post was put there by you, correct?

21 A Yes.

22 Q All four of these posts.

23 A Correct.

24 Q All four of those were to mark your
25 eight-by-eight grid. Isn't that fair to say?

1 A Yes.

2 Q So when you dug out the eight-foot grid, it
3 went from post to post, right?

4 A Yes.

5 Q And you collected dirt from this entire area,
6 isn't that true?

7 A Yes.

8 Q And that dirt was submitted into evidence,
9 wasn't it?

10 A Some of it, yes.

11 Q You didn't find any evidence of shell casings
12 in the dirt that you were sifting, did you?

13 A No.

14 Q Some of that dirt was sent to the
15 anthropologist at a much later date. Are you aware --
16 you're aware of that, aren't you?

17 A No.

18 Q What did you do with the dirt?

19 A The dirt that I took out -- you have to be
20 more specific. Which dirt?

21 Q What did you do with the dirt that you
22 collected from the grave site?

23 A It was placed in the property room.

24 Q I'm sorry?

25 A It was placed in the property room.

1 Q It went to the property room.

2 A Yes.

3 Q When Dr. Stroh, the medical examiner, showed
4 up at the grave site, she did not give you any
5 instructions on how to do your excavation, correct?

6 A No, she did not.

7 Q She did not.

8 The idea to pedestal was your idea from your
9 previous training. Isn't that fair to say?

10 A Originally, it was brought up by
11 Dr. Walsh-Haney on the second day. And then on the
12 last day, I decided to go ahead. I figured that was
13 going to be how we were going to get the remains out,
14 yes.

15 Q Which -- but on the second day, you chose to
16 ignore the advice of the forensic anthropologist to go
17 ahead and pedestal it, right?

18 A I did not ignore her.

19 Q You continued the excavation inch by inch,
20 trying to remove bone by bone on the second day, on the
21 third day, correct?

22 A Yes.

23 Q And then on the fourth day is when you
24 realized you had to pedestal it in order to do the best
25 job you could to remove the remains. That's fair to

1 say, isn't it?

2 A Well, I was actually going to try to do it on
3 the second day, but then I didn't think I could. And I
4 ended up doing it on the fourth day.

5 Q And on the fourth day, you pedestal it.

6 A Correct.

7 Q The Dr. Walsh-Haney or Dr. Wendy Stroh give
8 you instructions whatsoever on removing soil?

9 A No.

10 Q As a matter of fact, Dr. Stroh wasn't even
11 there that long, the medical examiner, was she?

12 A No.

13 Q And Heather Walsh-Haney, she showed up, but
14 she was not there in a professional capacity, was she?

15 A I don't know. She was just there and she
16 showed up is all I know.

17 Q But as far as you know, no one from your
18 office or the State Attorney's Office hired her at that
19 point, correct?

20 A Not that I know of, yeah.

21 Q Okay. There was unknown paper you put in
22 your report in there also, correct?

23 A Unknown paper?

24 Q Pieces of paper.

25 If you look at your report, you list on your

1 report the things that you found in the grave site, did
2 you not?

3 A Correct, yes.

4 Q And if you look at Page 3 of 5, I think you
5 marked it as EV No. 8. That says paper, doesn't it?

6 A Oh, okay. Yes, I see it. Yes.

7 Q Okay. So you found paper, correct?

8 A Yes.

9 Q You found cloth.

10 A Yes.

11 Q You found elastic, pieces of elastic, did you
12 not?

13 A Do you have an EV number for that? I don't
14 recall any elastic.

15 Q Did you ever see the pictures from the
16 Medical Examiner's Office?

17 A I saw a couple of them, yes.

18 Q You don't remember seeing pictures of elastic
19 that were removed from the grave site?

20 A Well, were they removed at the Medical
21 Examiner's Office?

22 Q Yes.

23 A Then I didn't take those pictures. We did
24 not take those pictures.

25 Q But you never saw those pictures?

1 A No.

2 Q Okay. So can I assume that the elastic in
3 the pictures of -- did you see any pictures of -- or
4 any tags, clothing tags, in your sifting or your
5 excavation?

6 A Tags? No.

7 Q All right. Can I assume that those things
8 came out of the wrapped remains that you sent to them?

9 A Correct.

10 Q But you did take plastic out and cloth that
11 were part of the excavation that you did.

12 A Yes.

13 Q And you took out black plastic bags?

14 A It was a black or grayish cover, yes.

15 Q And you took out white plastic bags?

16 A I'd have to look at the report to see.

17 Q Please. Please look at your report as much
18 as you need to. And I can help you. Look at Page 3 of
19 5, where --

20 A I see, yes. There was some plastic from
21 sifting that was white that was found.

22 Q Now, all that plastic, cloth and paper would
23 have gone to the property room from your control,
24 correct?

25 A Yes.

1 Q Do you have any records or knowledge whether
2 any of that evidence that came out of that grave site
3 was ever tested for DNA or fingerprints or anything?

4 A No.

5 Q Mr. Watson, the pictures are hard to decipher
6 what it is. What -- is it your opinion that -- that
7 those remains could have been wrapped in plastic?

8 A Some of it is.

9 Q Yes?

10 A Some of it, yes.

11 Q Is it also your opinion that those pink pants
12 were on the remains as if the person had been wearing
13 them?

14 A Yes.

15 Q Did you identify the black poncho or was that
16 the ME's Office?

17 A It was determined to be a poncho? I don't
18 remember.

19 Q Is it your -- I need to make sure this is
20 clear for the jury to understand. All this black
21 plastic is separate from the black poncho that is --
22 the rain poncho that is found wrapped around the
23 remains, isn't that right?

24 A Say that again?

25 Q The remains were wrapped in a black -- the

1 remains had a Mickey Mouse poncho on them. Are you
2 aware of that?

3 A No.

4 Q When you found the plastic, was there any
5 markings on the plastic that you collected, the black
6 plastic?

7 A Not that I recall.

8 Q You didn't see any Mickey Mouse emblems,
9 right?

10 A Not that I recall, no.

11 Q Okay. You didn't see -- you didn't see any
12 letters. You didn't see anything. It appeared to you
13 to be trash bags.

14 A Appeared to be, yes.

15 Q Okay. Now, you said in this report that the
16 skull was found approximately eight inches deep, is
17 that right?

18 A Yes.

19 Q So that's very, very shallow, correct, you
20 think?

21 A Yeah, I guess.

22 Q You mentioned pipes. There were pipes that
23 ran along the wall there, isn't that true?

24 A Yes. They ran over the top of where some of
25 the remains were, yes.

1 Q I'm sorry?

2 A It ran over the top of where some of the
3 remains were, yes.

4 Q And the remains were underneath those pipes.
5 Is that fair to say?

6 A Yes.

7 Q Did you measure the length of the -- did you
8 measure the width of the actual grave?

9 A Yes.

10 Q And what did you measure the width of the
11 actual grave to be? It was along here, would be the
12 length of the grave. I'll say length. Did you measure
13 this area here?

14 A Yes.

15 Q Did you measure from where you found the
16 skull to the end of the grave site?

17 A I measured from the -- what I believe to be
18 the grave wall here to the grave wall here.

19 Q Is that what is reflected on your diagram as
20 three and a half feet?

21 A Three feet, five inches, yes.

22 Q So the entire length from where the skull was
23 found over here, which is where your marker is, to
24 here, your testimony is that area is three and a half
25 feet?

1 A Yes.

2 Q And how far out into this area where the
3 house foundation stops to -- how far distance was the
4 grave?

5 A The width of the grave was from the wall to
6 the outer -- what we believe to be the outer wall of
7 the grave. So approximately 20 inches.

8 Q 20 inches?

9 A 20 inches.

10 Q It's breaking up.

11 A 20, two zero.

12 Q And two feet deep. Deepest part of the grave
13 is 24 inches, right?

14 A Yes.

15 Q So your testimony is you dug eight feet by
16 eight feet by eight feet for a grave that was three and
17 a half feet by two feet?

18 A No. That's not what I said.

19 Q And I want to make that clear. What was the
20 width and the length of the actual grave, wall to wall?

21 A The length was three feet and five inches
22 approximately, and the width was approximately
23 20 inches.

24 Q So on your diagram on Page 6, you found E5,
25 E4, E3, E9 and E2. All of those pieces of evidence are

1 not within the grave wall. Is that fair to say?

2 A Correct.

3 Q EV21, that's inside the grave wall or outside
4 the grave wall?

5 A That is in the grave.

6 Q There was some unknown material also in the
7 grave site, was there not?

8 A Yes.

9 Q You never sent that off or found out what
10 that unknown material was, did you?

11 A All I do is collect it and preserve it.

12 Q And send it to the property room.

13 A Correct.

14 Q And you did that in this case, didn't you?

15 A Yes.

16 Q Now, you instructed Detective Keeley and
17 Detective Doherty -- is that how you pronounce those
18 names?

19 A Doherty.

20 Q I'm sorry -- on what dirt to remove, did you
21 not?

22 A Yes.

23 Q What did you instruct them? Do you remember?

24 A That was on day four while we were preparing
25 to do the pedestal. I instructed them to remove some

1 of the dirt from between the remains and the wall --
2 the grave wall at the feet and toward where the
3 foundation was, get as much as they could out of there.

4 Q For what purpose?

5 A So that I could see better the width and the
6 length of everything I needed.

7 Q Okay. So you instructed them on what they're
8 to remove to make the job easier for you to excavate
9 the remains, correct?

10 A Yes.

11 Q But you did not instruct them on what soil to
12 remove to preserve for evidentiary value for an
13 anthropologist or a medical examiner to determine any
14 decomposition, for any decomposition value, correct?

15 A No, I did not.

16 Q But in your training, you were aware that
17 sample soils needed to be collected and preserved so
18 that someone could test them for evidentiary value,
19 correct?

20 A Yes.

21 Q And you did do that, did you not?

22 A Yes.

23 Q You took a sample from the surface, right?

24 A Yes.

25 Q And when you say "surface," that's -- that's

1 the top layer of the dirt before you begin anything,
2 isn't that right?

3 A Yes.

4 Q And then you took another sample, about a
5 teacup full, from beneath the remains after they were
6 removed?

7 A After? I didn't take any from the bottom of
8 the grave, no.

9 Q Okay. So don't you think it would have been
10 important, if an expert or an anthropologist is trying
11 to study the decomposition rate of an individual that
12 the soil samples from below the remains would be
13 important?

14 A I felt after pedestaling her and removing as
15 much soil as I did with her, I didn't need to take
16 another sample.

17 Q So you made that decision that you did not
18 take the soil samples from underneath the remains.
19 That was your decision, correct?

20 A Yes.

21 Q What did you do with that soil that you did
22 remove from the top?

23 A The sample?

24 Q The soil sample, yeah.

25 A The soil sample would have been submitted to

1 the property room.

2 Q Property room.

3 A Correct.

4 Q You never sent any soil samples to any expert
5 or anthropologist, correct?

6 A I didn't, no.

7 Q Would that have been your job?

8 A No.

9 Q Whose job would that have been?

10 A That's up to the lead detective.

11 Q At the time, were you aware who the lead
12 detective was in this case?

13 A It was Detective David Meacham.

14 Q So it would have been Detective Meacham's
15 responsibility to send those soil samples off for
16 examination, correct?

17 A Yes.

18 Q Did you ever contact Detective Meacham and
19 tell him you had soil samples that he could pick up?

20 A No. He was there a lot of the time.

21 Q And he never took those soil samples, to your
22 knowledge, correct?

23 A I don't know. No.

24 Q Now, normally the bones would go to the
25 ME's Office. Fair to say?

1 A They did go to the ME's Office.

2 Q And in this case, the fingernails also went
3 to the ME's Office, right?

4 A Yes.

5 Q Do you have any knowledge of washing those
6 acrylic fingernails at the crime -- at the excavation
7 site?

8 A I don't recall, no.

9 Q When you took those soil samples from the
10 excavation site, you didn't know why you were doing it,
11 did you?

12 A That's what we were trained to do.

13 Q Did you know why you were trained to take
14 them, what their purpose was?

15 A For later examination. I knew that.

16 Q Weren't you taught to take samples from
17 different layers of the grave?

18 A Yes.

19 Q But you only took the two samples, correct?

20 A There was also samples taken on -- on the
21 16th, which would have been the third day.

22 Q Sorry?

23 A There were two samples taken on -- on the
24 16th, on the third day.

25 Q Right. That's what I asked you. You only

1 took the two samples, right?

2 A Yes.

3 No. There were also two dirt samples taken
4 from the first day. So it would be four samples taken.

5 Q Well, do you remember giving a deposition?

6 A I do.

7 Q Do you remember swearing to tell the truth,
8 and you were under oath in your deposition?

9 A I do.

10 Q And do you remember being asked that
11 question, how many samples were taken?

12 A No. I don't remember that.

13 MS. WARREN: Page 39. Counsel, Page 39.

14 BY MS. WARREN:

15 Q September 12th of 2018, you came to the State
16 Attorney's Office and we did a deposition. You
17 remember that?

18 A Yes.

19 Q Do you remember me asking you the question:
20 Do you know how far down you dug when you took the
21 second one?

22 No.

23 Did you take any more?

24 Answer: Not that I recall?

25 A Well, that day, I didn't recall.

1 Q Well, you recalled it sometime later that you
2 took another two samples?

3 A Well, I was able -- if you recall that day we
4 did the deposition, I was under the weather too. I was
5 struggling that day with a sinus infection.

6 Q Well, did you call anybody after that
7 deposition to say, oh, I made a mistake; I took four
8 samples?

9 A No.

10 Q But you came in here today, three years
11 later, and you remember now that you took four samples,
12 correct?

13 A I'm going by what the report says, yes.

14 Q Did you submit those extra two samples in to
15 the property room?

16 A Yes.

17 Q And, again, to your knowledge, you don't know
18 whether or not they were ever taken from the property
19 room for any evidentiary -- to be tested for any
20 evidentiary value, do you?

21 A No, I do not.

22 Q You never took soil samples from the bottom
23 of the grave, though, did you?

24 A No.

25 Q And you didn't mark on any report at what

1 level in the grave you took those soil samples from,
2 did you?

3 A According to the report on the 16th, it says
4 sand, top of wall -- it says Sand No. 1, top of wall,
5 day three and then Sand No. 2, middle of wall, day
6 three.

7 Q I'm sorry. I'm not I'm not understanding.
8 You're on Page 3. Where are you?

9 A At the bottom, with the evidence listed,
10 where the evidence is listed.

11 Q Yes. It says: After the scene was
12 photographed, we continued to search the grave by
13 removing layers of dirt.

14 Is that where you're at?

15 A And then go into the list underneath that.
16 Down at the very bottom, it says Sand No. 1, top of
17 wall, day three, Sand No. 2, middle of wall day three.

18 Q That's my question. You didn't write where.
19 You wrote top or middle. You didn't write at what
20 level, correct?

21 A Well, wouldn't the top be a level?

22 Q Mr. Watson, you didn't write any measurements
23 next to -- how deep in the grave wall you took this
24 sample from, did you?

25 A No.

1 Q You didn't measure how far down the samples
2 were coming out of the dirt, did you?

3 A No.

4 Q It was evident to you that whoever put that
5 shovel in the hole had pulled a piece of plastic out,
6 isn't that true?

7 A Yes.

8 Q And that's that piece of plastic that was
9 laying in that photo over here, correct?

10 A Yes.

11 Q And that was -- to you, appeared to be a
12 piece of a trash bag. That's what you said, correct?

13 A Yes.

14 MS. WARREN: I have no further
15 questions, Your Honor.

16 THE COURT: Redirect?

17 REDIRECT EXAMINATION

18 BY MR. MIZRAHI:

19 Q Just to be clear, when you're referring to
20 the report, that's your report?

21 A Yes.

22 Q And that's the report that you authored
23 shortly after completing this excavation?

24 A Correct.

25 Q And that report indicates you took the four

1 samples?

2 A Yes.

3 Q Were you just wrong in your depo?

4 A Yes.

5 MR. MIZRAHI: Thank you. That's all the
6 questions I have.

7 THE COURT: May this witness be excused?

8 MR. MIZRAHI: Yes, Your Honor.

9 THE COURT: All right. Mr. Watson,
10 you're excused.

11 (Witness excused.)

12 THE COURT: All right, ladies and
13 gentlemen. Let's take our lunch break, shall
14 we? It is 12:30 so I'll have you come back
15 at 1:45.

16 Do enjoy your lunch and, of course,
17 don't talk about the case amongst yourselves
18 or with anybody else. We'll see you back
19 then. Okay?

20 (Jury excused.)

21 THE COURT: Let the record reflect the
22 jury has left the courtroom.

23 Y'all can take your seats.

24 I want to make some clarification about
25 the testimony with Mr. Miller and the shoe

1 print. Just at the risk that I wasn't as
2 clear in the past about that, I want to make
3 sure the record is clear as to why I
4 decided -- why -- what I decided. Mr. Miller
5 has an opinion about how long that footprint
6 would have lasted in that car. That opinion
7 is it depends. It would have lasted at least
8 until the next person who -- got into the car
9 and sat in the driver's seat because at that
10 point, it would have been destroyed. That's
11 his opinion.

12 A conscious decision was made prior to
13 trial to not have a Frye hearing. That lack
14 of a Frye hearing essentially acted as a
15 shield. It shielded the jury from hearing
16 Mr. Miller's opinion.

17 On cross, the defense was asking
18 questions designed to elicit an opinion from
19 Mr. Miller on that topic but used the lack of
20 a Frye hearing as a sword to prevent him from
21 giving the answer he wanted to give, in fact,
22 to give an answer he didn't actually want to
23 give or opinion that he didn't really have,
24 which is no, I don't know how long it would
25 have lasted.

1 That's why I thought the question was
2 unfair in light of the circumstances. So I
3 decided if you wish to ask that question,
4 Defense, you would have been able to ask that
5 question, but I would have allowed Mr. Miller
6 to give his opinion. It would have lasted at
7 least until the next person who -- got into
8 the car and sat in the driver's seat. And
9 then it would have been destroyed. That's
10 my -- that's his opinion. That's the opinion
11 he would have gave.

12 And in the abundance of caution, I was
13 going to stop it there and not allow him to
14 go into this experiment. Based on my ruling,
15 I understood the defense to say, never mind,
16 I'll withdraw the question. I'll move on to
17 different topic.

18 Is that fair, Mr. Fallis?

19 MR. FALLIS: Yes, sir.

20 THE COURT: Okay. Then I've made sure
21 I'm clear.

22 All right. I'll see you at 1:45. Enjoy
23 your lunch.

24 (Lunch recess was taken from 12:34 p.m. until
25 1:48 p.m.)

1 (Defendant present.)

2 THE COURT: Are we ready to bring in the
3 jury?

4 MR. MIZRAHI: We are, Your Honor.

5 THE COURT: Bring in the jury.

6 (Jury present.)

7 THE COURT: Welcome back. Take your
8 seats.

9 Thanks for returning. Hope you had a
10 good lunch and are ready to get back to work.

11 All right. Very good.

12 Call your next witness.

13 MR. MIZRAHI: Your Honor, the State
14 calls Liz Peak. She's inside.

15 (Witness sworn by the clerk.)

16 MR. MIZRAHI: Please the Court?

17 THE COURT: You may.

18 LIZ PEAK,
19 having been produced and first duly sworn as a witness
20 on behalf of the State, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. MIZRAHI:

23 Q Please introduce yourself to the jury.

24 A Hi. I'm Liz Peak. I'm Bonnie Haim's big
25 sister.

1 Q And how much older were you than Bonnie?

2 A Three years.

3 Q And you have had the opportunity to sit here
4 and watch this trial?

5 A Yes.

6 Q And that's because Bonnie is your biological
7 sister?

8 A Yes.

9 Q Can you describe for the jury Bonnie's
10 approximate height and weight at the time she died?

11 A May be a little younger than me, but she's
12 about inch taller than I am.

13 Q And how tall are you?

14 A About 102 -- when she disappeared, she was
15 like I am now. But about 115 pounds.

16 Q And approximately how tall?

17 A How tall?

18 Q Yes.

19 A Oh, five-one, five-two, yes.

20 Q I understand you didn't measure. Just to
21 give --

22 A Correct.

23 Q -- the jury a general idea, she was a very
24 small woman.

25 A Yes.

1 Q Thank you.

2 I want to turn your attention now to
3 Saturday, January 10th of 1993. Was Aaron staying with
4 you after his mom's disappearance?

5 A Yes.

6 Q Was there an occasion where the defendant,
7 Michael Haim, made a phone call to you because there
8 was some conversation about you obtaining personal
9 items from Aaron, specifically his insurance card?

10 A Yes, he called me. And that was the day
11 after Aaron came into my care. And he -- he called and
12 I answered the phone. And right off the bat, he just
13 said, I don't want Aaron talking to anybody else.

14 Q So Michael Haim, the person your sister was
15 married to, said he didn't wants Aaron talking to
16 anyone else anymore?

17 A Yes.

18 Q And did he say why? Did you ask him why?

19 A He said -- he said, 'cause Aaron wasn't there
20 for the incident.

21 Q And then you eventually reported that to the
22 detectives.

23 A Yes.

24 MR. MIZRAHI: That's all the questions I
25 have, Your Honor.

1 THE COURT: Cross?

2 MR. FALLIS: Thank you.

3 MR. MIZRAHI: May we have a moment, Your
4 Honor, and I'll do this --

5 THE COURT: You may. If you need a
6 moment, that's all right.

7 Yes, sir.

8 CROSS EXAMINATION

9 BY MR. FALLIS:

10 Q Good afternoon, Miss Peak.

11 Miss Peak, you have -- going back again so
12 many years ago, you were aware of the fact that Michael
13 Haim was having his family and even your own parents
14 searching for Bonnie, aren't you?

15 A That they -- I'm sorry? They were what?

16 Q You were aware of the fact that Michael Haim
17 was out searching with his family as well as your own
18 father during the period that Bonnie was missing,
19 aren't you?

20 A I'm not very aware what they were doing, when
21 they were doing. I saw some news clips but that's it.

22 Q Did you see it on the news?

23 A Yeah. I saw some news. They were walking
24 together.

25 Q Searching, correct?

1 A That's -- that's what the news said, yes.

2 Q Well, what did the news report? They were --

3 MR. MIZRAHI: Objection, Your Honor.

4 It's calling for news report, hearsay.

5 THE COURT: Sustained.

6 BY MR. FALLIS:

7 Q Ma'am, do you recall giving a deposition in
8 this case -- okay? -- and being asked -- well, maybe it
9 would refresh your recollection if I show you your
10 deposition. Okay?

11 A Okay.

12 THE COURT: What is the question that
13 you're asking to refresh her recollection on?

14 MR. FALLIS: Is she aware of the fact
15 that Michael Haim was out doing searches on
16 their own with his family as well as her own
17 family.

18 THE COURT: Okay.

19 MR. MIZRAHI: Your Honor, I object. The
20 answer -- I think she answered yes. She
21 didn't know what they were doing but --

22 THE COURT: Well, maybe ask the question
23 again and then we'll go from there. So ask
24 that last -- that question you just told me,
25 ask that to the witness.

1 MR. FALLIS: Sure.

2 BY MR. FALLIS:

3 Q Are you aware of the fact that Michael Haim
4 was out doing searching -- doing searches with his
5 family as well as your own father during the period of
6 time your sister went missing?

7 A The news media obtained them walking together
8 and said they were searching. I do not know how long
9 they were searching, where they were searching, if it
10 was five minutes just for video. I don't know.

11 Q Okay. But that was wasn't my question. My
12 question, were you aware of the fact that they were
13 searching?

14 A Yes.

15 Q Okay. Let me show you what's been marked as
16 Defendant's Exhibit 49.

17 MR. FALLIS: Approach, Your Honor?

18 THE COURT: You may.

19 BY MR. FALLIS:

20 Q Do you recognize this as a still from that
21 video we were talking about?

22 A Yes.

23 Q Thank you.

24 Now, you don't have any idea what Michael
25 meant when he said, I don't want Aaron talking to

1 anybody, isn't that correct?

2 A He said, I didn't want Aaron talking to
3 anybody. I assumed that meant anybody.

4 Q Okay. So you had no idea what he meant by
5 that, did you?

6 A No.

7 Q No what?

8 A He just said, I don't want Aaron talking to
9 anybody.

10 Q I understand.

11 A So that's -- I took it as that.

12 Q I understand. But my question is you don't
13 know what he meant by that, do you or did you at the
14 time?

15 A I knew that he'd been -- Aaron was
16 interviewed by the Child Protection Team the day
17 before.

18 Q Right.

19 A So I initially assumed what he meant was he
20 didn't want Aaron being interviewed and things like
21 that because Aaron was -- he's three and a half years
22 old. He's going to talk.

23 Q Right. And he had been hounded by a bunch of
24 people, correct, and being asked a whole bunch of
25 questions and --

1 A I'm sorry?

2 Q He was being asked -- badgered by a whole
3 bunch of people at that time, correct?

4 MR. MIZRAHI: Objection, argumentative,
5 Your Honor.

6 THE COURT: Sustained.

7 BY MR. FALLIS:

8 Q Was he not being badgered by people at that
9 time?

10 A No. Aaron was in my house. He was with my
11 two children, my husband and I. He wasn't being
12 badgered by anybody in my house.

13 Q Okay. Now, you said, quote, on the -- on
14 your direct examination that Michael told you that he
15 wasn't there for the, quote, incident.

16 A Right.

17 Q Was that -- you testified earlier that it
18 was --

19 A I'm sorry. Say that again?

20 Q Have you also addressed this issue once
21 before, and your answer was that he couldn't talk to
22 anybody because he wasn't there? There's nothing about
23 an incident.

24 A No. He said he wasn't there for the
25 incident.

1 Q Okay. So that's your testimony today.

2 A Yes.

3 Q So different than your testimony that you
4 gave --

5 MR. MIZRAHI: Objection, Your Honor,
6 argumentative.

7 THE COURT: Sustained.

8 BY MR. FALLIS:

9 Q Does it differ from your testimony, what you
10 gave on the 25th of July of '18?

11 A Did I -- what word did I not say?

12 Q Well, you didn't say anything about incident,
13 ma'am?

14 A I'm sorry?

15 Q You didn't mention anything about incident.
16 That was not what you said back then.

17 A Okay. Well, you were a little intimidating.

18 Q I'm sorry?

19 A You were -- I was a little intimidated that
20 day.

21 Q Oh. Who intimidated you?

22 A I'm sorry?

23 Q Who intimidated you?

24 A You.

25 Q I did? That's not my recollection. I

1 apologize if I intimidated you. I mean --

2 A This is not something that people go through.

3 Q I understand. But you're not saying I was
4 rude to you, are you?

5 A I'm sorry?

6 Q You're not saying I was rude to you, are you?

7 A Rude? No.

8 Q Okay.

9 (Inaudible).

10 (Brief interruption.)

11 MR. FALLIS: I'm not sure if you --

12 MR. MIZRAHI: It's on her screen,

13 Mr. Fallis.

14 THE COURT: It's on the screen.

15 MR. FALLIS: Oh, it's on the screen.

16 BY MR. FALLIS:

17 Q Touch the screen.

18 A I didn't hear what he was saying. I don't
19 think any --

20 Q I'm sorry. Am I not speaking loud enough for
21 you?

22 A No.

23 Q Okay. I might get in trouble for yelling but
24 I'll do it anyway. How's that? Okay?

25 All right. Now, you do agree that it is

1 Michael Haim as you remember him, correct, in that
2 picture?

3 A Yes.

4 Q And you will agree that is, in fact, your
5 father standing next to him, correct?

6 A Yes.

7 Q Thank you.

8 MR. FALLIS: I have no further
9 questions, Judge.

10 MR. MIZRAHI: No questions.

11 THE COURT: May this witness be excused?

12 MR. MIZRAHI: She may.

13 THE COURT: All right. Thank you,
14 ma'am. You can return to your seat.

15 (Witness excused.)

16 THE COURT: Call your next witness.

17 MR. MIZRAHI: Make sure he's ready.

18 Is [REDACTED] ready? [REDACTED]

19 [REDACTED].

20 Your Honor, he's an inmate.

21 (Witness sworn by the clerk.)

22 MR. MIZRAHI: May it please the Court?

23 THE COURT: Yes, sir.

24 [REDACTED]

25 having been produced and first duly sworn as a witness

1 on behalf of the State, testified as follows:

2 DIRECT EXAMINATION

3 BY MR. MIZRAHI:

4 Q Please state your name for the record.

5 A [REDACTED].

6 Q And where are you currently living?

7 A PDF, detention facility.

8 Q Is that the Duval County Jail?

9 A Duval County Jail, yes, sir.

10 Q Are you facing some charges my office, the
11 State Attorney's Office, filed?

12 A Yes, sir.

13 Q Prior to your incarceration on your current
14 charges, [REDACTED] were you previously
15 incarcerated in the Duval County Jail in 2015?

16 A Yes, sir.

17 Q And have you completed that particular
18 sentence that you were incarcerated for in 2015?

19 A Yes, sir.

20 Q With regard to your 2015 sentence,
21 [REDACTED] did I as the Assistant State Attorney
22 give you any benefit as a result of any of the
23 testimony that you're giving here today?

24 A No, sir.

25 Q That seems kind of difficult anyway, right?

1 A Yes, sir.

2 Q Since that -- when did you get out of jail in
3 2015?

4 A When did I get out?

5 Q Yes, sir.

6 A 2017.

7 Q And were you free from that particular case
8 until you were arrested on your current cases?

9 A October 10th of 2018.

10 Q Okay. And that's when you were rearrested.

11 A Yes, sir.

12 Q On different charges.

13 A Yes, sir.

14 Q As you sit here today, has the State of
15 Florida promised you any sentence in order to get you
16 to testify?

17 A No, sir.

18 Q Have you been promised any reward or
19 preferential treatment?

20 A No, sir.

21 Q Okay. Do you hope that you get some benefit
22 for testifying here today?

23 A Yes, sir.

24 Q Is that why you're testifying here today?

25 A Yes and no.

1 Q Okay. Well, explain that to the jury.

2 A Yes and no. I want closure for the person
3 who got killed. And yes, I want a benefit on my
4 behalf.

5 Q Have you been promised any benefit?

6 A No, sir.

7 Q [REDACTED] do you know a person by the
8 name of Michael Haim?

9 A Yes, sir.

10 Q And when did you meet Michael Haim?

11 A I met him September 2015 in the jail, in the
12 PDF, jailhouse, M2 clinic.

13 Q Were you ever housed in the same cell or dorm
14 with Mr. Haim?

15 A No. No, sir.

16 Q Okay. Do you see Mr. Haim here in court?

17 A Yes, sir.

18 Q Could you say where he's seated and what he's
19 wearing, just generally speaking?

20 A Well, I can't really -- I don't have my
21 glasses on. I believe he's sitting over there.

22 Q Do you need to get closer to be able to see?

23 A Yes. He's over there, sir.

24 Q Okay. Is he sitting next to his lawyers --

25 A Yes, sir.

1 Q -- at counsel table?

2 MR. MIZRAHI: Your Honor, may the record
3 reflect the witness has identified the
4 defendant?

5 THE COURT: The record will so reflect.

6 BY MR. MIZRAHI:

7 Q [REDACTED] how many times have you met
8 the defendant?

9 A One time.

10 Q Describe for the jury where you were when you
11 had this conversation with the defendant.

12 A I was in the M2 clinic for my hand. I had a
13 broken hand. And we was in the holding cell with other
14 inmates. And I met him in there. And we was, you
15 know, looking at each other. Well, he was looking at
16 me, and he asked me how long I've been in jail; have I
17 ever been in prison. And, you know, we just made small
18 talk.

19 And he started talking about, you know, how
20 he killed his wife and how he choked her, how his son
21 was mad at him. He buried her in the yard. She was
22 messing with a younger guy. And he was getting her --
23 I think her name was Bonnie, draining a bank account.
24 And he got pissed off and he beat the shit out of her.

25 Q Now, [REDACTED] how -- how -- why did

1 the defendant share this information with you so
2 quickly after you had met?

3 A We was talking and, you know, he asked me,
4 have I been to prison. And I told him yeah. And asked
5 me, I think, about my teardrops and stuff like that.
6 And, you know, he just -- I guess he felt bothered by
7 it. That's what I thought. You know, he felt bothered
8 by what he did. He just came out -- first, he was
9 saying little bits and pieces. Then he just laid it
10 all on the line and I was like, wow.

11 Q So the case that you were in jail on in 2015
12 when you had this conversation, what degree of felony
13 was that crime?

14 A Third-degree felony.

15 Q And a third-degree felony is punishable by a
16 maximum of five years in prison?

17 A Yes, sir.

18 Q Are you facing more serious penalties here
19 today as you sit here in your current cases?

20 A Yes, sir.

21 Q You have actually a second-degree as well as
22 a third-degree.

23 A Yes, sir, about the same thing of five years.

24 Q Okay. Well, a second-degree is as much as
25 15 years.

1 A Okay.

2 Q Okay?

3 But back then, in 2015, when you came forward
4 with this information, you were facing a maximum of
5 five years.

6 A Yes, sir.

7 Q And that was for the third-degree felony.

8 A Yes, sir.

9 Q During the course of your -- your new arrest,
10 October, have you written letters to me, the State
11 Attorney?

12 A Yes, sir.

13 Q And in some of those letters, you were very
14 upset with me, is that correct?

15 A Yes, sir.

16 Q And that was because you didn't want to still
17 be in jail?

18 A Yes, sir.

19 Q Did I ever release you from jail?

20 A No, sir. No, you didn't.

21 Q All right. And you admit that you wrote
22 those letters.

23 A Yes, sir.

24 Q Do you know a person named [REDACTED]

25 [REDACTED]?

1 A No, I don't.

2 Q And have you ever heard, in the course of
3 being in -- let me ask you this: Have you ever
4 cooperated on any other cases?

5 A Yes, sir.

6 Q Okay. So this isn't the first time that
7 you've testified based on things you've heard inside
8 the jailhouse.

9 A No, sir.

10 Q Okay. Have you heard of the concept of
11 having someone's paperwork and being able to read that
12 paperwork and then come to court and regurgitate what's
13 in the police report and attribute it to the defendant
14 to try to help benefit your case? Have you heard of
15 that before?

16 A No, I haven't.

17 Q Okay. In this particular case, did you have
18 the opportunity to see any of Mr. Haim's paperwork?

19 A No, sir.

20 Q And that was because you were not housed with
21 him.

22 A That's correct.

23 Q Okay. You just saw him -- how long were you
24 together waiting to be seen in the clinic?

25 A I'd say about 45 minutes to an hour,

1 somewhere around there. It's not -- you don't just go
2 to M2 clinic and go in and go out. They have other
3 inmates so you have to wait a period.

4 Q And was it just you and the defendant that
5 were talking at that particular time?

6 A It was several other inmates in there, but
7 they was all leaving out, coming in, leaving out. And
8 we was kind of, like, sitting right next to each other.

9 Q So the conversation was just you and --

10 MR. FALLIS: Objection, leading.

11 THE WITNESS: Yes, sir.

12 BY MR. MIZRAHI:

13 Q Who was the conversation between?

14 A Say that again?

15 Q Who was the conversation between?

16 A Me and Mr. Haim.

17 Q Was there any third people involved in that
18 conversation?

19 A No, sir.

20 MR. MIZRAHI: Your Honor, that's all the
21 questions I have.

22 THE COURT: All right. Cross?

23 CROSS EXAMINATION

24 BY MR. FALLIS:

25 Q [REDACTED] do you have any idea how many

1 times you've been convicted of felonies?

2 A About four times.

3 Q How many?

4 A Four.

5 Q You want to reconsider that?

6 MR. MIZRAHI: Your Honor, I object to
7 improper -- objection. Mr. Fallis, this is
8 improper impeachment. The question has to be
9 how many times have you been convicted of a
10 felony?

11 THE COURT: That's true. Sustained.

12 BY MR. FALLIS:

13 Q All right. Or a crime involving dishonesty,
14 including crimes involving dishonesty.

15 A A couple. I'm not -- I'm not really sure.

16 Q Would eight or nine sound about right?

17 A Possible.

18 Q Possible. Okay.

19 Now, this is not the first time that you've
20 ever, as Mr. Mizrahi said, tried to turn State's
21 evidence to get some relief for yourself, is it?

22 A No, sir.

23 Q You've done that in the past very
24 successfully, haven't you?

25 A Yes, sir.

1 Q As a matter of fact, there were times you
2 were looking at 30 years and even life, and you got it
3 down to 15, isn't that right?

4 A Yes, sir.

5 Q With the State's -- by cooperating, correct?

6 A Yes, sir.

7 Q So you got rewarded.

8 A I wouldn't say 15 years rewarded. But yes,
9 sir.

10 Q Well, it was life and then it became 30,
11 right?

12 A No. I was never offered life, sir.

13 Q Well, you were exposed to life, not offered
14 life. Nobody offers you life. You were exposed to
15 life, correct?

16 A I was offered 15 years, a cap.

17 Q All right. Well, no. What happened, sir,
18 wasn't it true you were out on bond on a first-degree
19 felony and you were doing some cooperation? You came
20 for sentencing and before you came for sentencing,
21 while you're out, you committed another crime. And you
22 were supposed to get, I think, ten years. But you
23 committed the other crime. You were offered 30. And
24 then at sentencing, the State Attorney then said you
25 had cooperated, I think, in about eight cases. Sound

1 about right?

2 A About right, yes, sir.

3 Q Right. So then he recommended 30 but your
4 lawyer asked for 15. And that's what you got, right?

5 A Yes, sir.

6 Q And then you came out again and you -- you
7 got rearrested. And you were back in jail. And you
8 were looking at, again, because you were classified as
9 habitual offender, not five years on the third-degree,
10 but ten years at least, isn't that true, as a habitual
11 offender? You know the habitual offender statute.

12 A I was never served HO papers, sir. So five
13 years was the max.

14 Q But you were eligible for HO, were you not?
15 That was up to the State to determine if they were
16 going to file that. But as part of the agreement, they
17 didn't file that because you were cooperating again,
18 isn't that true?

19 A I'm not sure, sir.

20 Q You're not sure. Okay.

21 Now, you said your name is [REDACTED]

22 [REDACTED], right?

23 A Yes, sir.

24 Q Does the name [REDACTED] (phonetic) [REDACTED] mean
25 anything to you?

1 A Yes, sir.

2 Q What is it?

3 A An alias that I used in the past.

4 Q Okay. How about [REDACTED] (phonetic)

5 [REDACTED]?

6 A Yes, sir.

7 Q How about [REDACTED]?

8 A Yes, sir.

9 Q Who are they?

10 A Well, [REDACTED] --

11 Q All aliases?

12 A [REDACTED] is my correct
13 name.

14 Q Which is your correct?

15 A [REDACTED].

16 Q [REDACTED]. How about [REDACTED]? Is
17 that an alias?

18 MR. MIZRAHI: Your Honor, I'm going to
19 object to this line of questioning as being
20 improper.

21 THE COURT: Overruled.

22 BY MR. FALLIS:

23 Q Is that another alias, sir?

24 A I don't believe that I used that name, sir.

25 Q You haven't? How about [REDACTED]?

1 Is that a name that you've used in the past?

2 A Yes, sir.

3 Q How about [REDACTED]? Is that

4 a name you've also used in the past?

5 A Not sure.

6 Q I'm sorry?

7 A I'm not sure if I used that.

8 Q Not sure? You could have?

9 A Possible.

10 Q How about [REDACTED]?

11 A I'm not sure, sir.

12 Q Okay. Why do you have all these aliases,

13 sir? Why do you use all these aliases?

14 A I don't know. If I got stopped by the

15 police, got in trouble, they wanted to know my real

16 name, I guess.

17 Q So you used these aliases to deceive the

18 police, right?

19 A Yes.

20 Q 'Cause you didn't want to go back to jail,

21 right?

22 A I guess you could say that, yes.

23 Q You guess? It's more than a guess, isn't it?

24 Now, were you arrested for three -- in

25 1999 -- I'm sorry. In -- yeah. In '96, when you first

1 got involved here, I guess, in Jacksonville, were you
2 looking at an aggravated assault?

3 MR. MIZRAHI: Judge -- objection, Your
4 Honor.

5 THE COURT: Sustained.

6 BY MR. FALLIS:

7 Q And got convicted --

8 THE COURT: Sustained.

9 MR. FALLIS: All right.

10 BY MR. FALLIS:

11 Q This whole thing about cooperation. Did you
12 cooperate against a Thomas Anderson?

13 A Yes, sir.

14 Q How about Roger Hughes?

15 A Yes, sir.

16 Q How about Adrian Gore?

17 A Yes, sir.

18 Q How about Delaney Holly?

19 A Yes, sir.

20 Q How about Cedric Donawer (phonetic)?

21 A Repeat that again?

22 Q Cedric Donawer?

23 A Yes, sir.

24 Q Okay. How about somebody -- how about
25 Sinclair?

1 A I don't know who you're talking about, sir.

2 Q Okay. How about -- how about Waldon,
3 Sinclair and Waldon? They were police officers.

4 A I don't know.

5 Q You didn't volunteer to cooperate in those
6 cases, said you had information?

7 A Information. I didn't take the stand or
8 nothing like that.

9 Q I'm sorry?

10 A Gave information. That's it.

11 Q You did. Okay. And given that information,
12 you were rewarded in all these cases that we just
13 talked about, weren't you, by not serving life, right?

14 A Yes, sir.

15 Q And not serving 30 years, right?

16 A Yes, sir.

17 Q All right. So you've had a pretty big
18 relationship with the State Attorney's Office here in
19 Jacksonville, haven't you, over the years?

20 A I wouldn't say a big relationship.

21 Q Well, if they came to bat for you at least
22 three or four times in your career, don't you admit
23 that's a pretty good relationship?

24 A No.

25 Q No?

1 A No.

2 Q Well, you cooperate and you get life off your
3 back. You get 30 years off your back, 15 years off
4 your back. You don't consider that being rewarded and
5 having a, quote, relationship?

6 A No, I don't.

7 Q What do you consider it?

8 A People come and tell me about their cases,
9 about committing murder crimes and stuff like that.

10 Q Okay. Just being a good -- good citizen.

11 A Good citizen, yes, sir.

12 Q And you consider yourself a good citizen,
13 don't you?

14 A Yes, sir.

15 Q You do. Okay.

16 Now, you're saying that Mr. Haim, knowing you
17 for maybe 30 minutes or 45 minutes, just spilled his
18 guts to you and gave you some facts concerning the
19 disappearance of his wife. Is that what you're saying?

20 A Yes, sir.

21 Q Okay. You didn't know him before, right?

22 A Didn't know him before.

23 Q You were well-aware of all the media
24 attention that his case got during that period of time,
25 weren't you?

1 A Repeat that again?

2 Q You were aware of all the media attention
3 that his case got during that period of time.

4 A No, I didn't.

5 Q You didn't know about it? There wasn't talk
6 around the inmates and everybody?

7 A No, sir.

8 Q But you didn't want just to help yourself.
9 You also wanted to help somebody called "Redden." Do
10 you know who that is?

11 A Not right offhand.

12 Q You wrote a letter, did you not, saying that
13 you wanted to help in the case of Michael Haim along
14 with somebody else named Redden, a friend of yours.
15 You wanted to get him some relief too?

16 A No. I don't remember that.

17 Q You don't remember that? Okay. Maybe I can
18 refresh your recollection on that. All right?

19 Now, I see you're -- you're back in jail.

20 A Yes, sir.

21 Q Why are you back in jail?

22 A Possession of a firearm, sir.

23 Q I'm sorry?

24 A Possession of a firearm and aggravated
25 assault.

1 Q Okay. That's what you're facing now? Wait a
2 minute. There's only two charges you're facing now?

3 A Four charges.

4 Q All right. What are the other two?

5 A Two possessions of a firearm and two
6 aggravated assault.

7 Q Okay. Now, those aggravated assaults -- and
8 you are -- you agree you're HO status. Okay? They can
9 get you 30 years apiece, couldn't they?

10 A Yes, sir.

11 Q So 60 years and two other -- possibly
12 90 years you -- you could be facing if you're convicted
13 on those -- on those charges, correct?

14 A No, sir.

15 Q Sir?

16 A No, sir.

17 Q Oh, no? How many years do you think you'll
18 get -- you could get?

19 A I was never served HO papers in this matter.

20 Q I'm sorry?

21 A I wasn't served HO papers in this matter.

22 Q You would not do what?

23 A I was not served HO papers in this case.

24 Q No. But even without HO, each of them count.
25 15 years, 30 years. Two 15 and one 30. That's

1 60 years.

2 MR. MIZRAHI: Objection, Your Honor.

3 He's mischaracterizing the nature of the
4 felonies.

5 THE COURT: What are the nature of the
6 felonies?

7 MR. MIZRAHI: He's facing second-degree
8 felonies and third-degree felonies.

9 THE COURT: How many second?

10 MR. MIZRAHI: Two -- according to his
11 testimony, two seconds and two thirds.

12 THE COURT: Okay. That's two times 15,
13 two times 5.

14 BY MR. FALLIS:

15 Q That's 30. That's 40. But if you -- all
16 they have to do is file a piece of paper, saying you're
17 HO, which you're eligible for and you're looking at
18 maybe 80, correct?

19 A I'm not sure, sir, but yes.

20 Q Well, you wouldn't disagree with that, would
21 you? You know the system, don't you?

22 A Somewhat.

23 Q Sir, you've got a lot of experience in the
24 system, don't you?

25 A Somewhat.

1 Q Okay. Now, recently, you've been in touch
2 with Mr. Mizrahi, haven't you?

3 A Yes, sir.

4 Q And you wrote him some letters, right?

5 A Yes, sir.

6 Q You wrote him a letter back on January 15th
7 of -- well, let's go back to October 10th of '18.
8 Okay? You say: Mr. Alan Mizrahi, as you probably
9 know, I was arrested for aggravated assault and having
10 a gun, which is all --

11 MR. MIZRAHI: I'm objecting.

12 BY MR. FALLIS:

13 Q -- bullshit.

14 THE COURT: Sustained.

15 BY MR. FALLIS:

16 Q Did you write this letter?

17 MR. FALLIS: Let me make sure he --

18 THE COURT: Ask him a question about the
19 letter but you're not --

20 BY MR. FALLIS:

21 Q Did you write him and tell him that the cases
22 you were facing are all bullshit, in your words?

23 A I'm not sure, sir. I could have.

24 Q I'm sorry?

25 A I'm not sure if I wrote it. I could have.

1 Q Okay.

2 MR. FALLIS: May I approach, Judge?

3 THE COURT: You may.

4 BY MR. FALLIS:

5 Q I'm going to show you several letters. Okay?

6 And I'll ask you to look at them all. Okay? See if
7 you can authenticate them for me.

8 A Yes, sir.

9 Q Let me show you first what's -- a letter
10 that's been addressed that was dated 10-10-18. See if
11 you recognize that.

12 Is that a letter you wrote, sir?

13 A Yes, sir.

14 Q Let me show you another letter dated
15 December 7th and ask if you wrote that letter as well.

16 A No, I didn't write that.

17 Q You didn't write this letter?

18 A No, sir. That's not even my handwriting.

19 Q Well, this was turned over to me by the State
20 Attorney. And you're saying that somebody else wrote
21 this letter for you?

22 A Yes, sir.

23 THE COURT: Be sure to keep our voices
24 up, [REDACTED] so the jury can hear you.

25 MR. FALLIS: I'm sorry?

1 THE COURT: It may help if you back
2 away, Mr. Fallis, so he -- you're not having
3 a private conversation.

4 MR. FALLIS: Okay.

5 BY MR. FALLIS:

6 Q How about January 30th of 2019, another
7 letter you wrote to Mr. Mizrahi? You recognize that
8 letter?

9 A Yes, sir.

10 Q You wrote that letter. Okay.

11 Let me show you another letter. Doesn't have
12 a date on it, but tell me if you can verify it. This
13 is one that you were writing him concerning -- about a
14 Clay County case that you picked up while you were out,
15 current. As a matter of fact, that -- you still have
16 that warrant out in Clay, don't you?

17 A I have a warrant.

18 Q Okay. And what is that charge for?

19 MR. MIZRAHI: Objection, nature of the
20 charge.

21 THE COURT: Sustained. Sustained,
22 Mr. Fallis. You can't go into that.

23 MR. FALLIS: Could be for impeachment
24 purposes, Judge, his exposure, his bias, for
25 his bias.

1 THE COURT: Talk to him about the
2 degree, not the nature of the charge.

3 MR. FALLIS: Okay.

4 THE COURT: That's the rule.

5 BY MR. FALLIS:

6 Q You wrote that letter too.

7 How about this one on February 3rd, 2019?

8 A Yes, sir.

9 Q You wrote that.

10 How about February 12th of '19?

11 A Yes, sir.

12 Q You wrote that also, right?

13 A Yes, sir.

14 Q How about this one on March 4th of 2019?

15 A Yes, sir.

16 Q Okay. How about January 15th, 2019?

17 A Yes, sir.

18 Q Okay. February 5th of 2019?

19 A Yes, sir.

20 Q Okay. Thank you.

21 Now, we can go through these letters
22 individually, [REDACTED] or we can just talk about
23 generally what the content or the theme of those
24 letters are. Isn't it true, in these letters, you were
25 informing Mr. Mizrahi that you're in jail with some

1 other inmates, and you have information on their cases
2 that you would like to share with him?

3 A Yes, sir.

4 Q Okay. And there's maybe four or five or more
5 people who you want to, quote, give information on,
6 isn't that correct?

7 A Yes, sir.

8 Q And you want to do that because you're just a
9 good American, right?

10 A Yes, sir.

11 Q And not because you're looking for any kind
12 of reward, as you've gotten in the past, right?

13 A Yes, sir.

14 Q Okay. And that's what you're telling this
15 jury.

16 A Yes, sir.

17 Q And that goes -- so you have absolutely
18 nothing to gain by either testifying in this particular
19 case -- okay? -- and whether it's true or not, we're
20 not going to go into that. But you have nothing to
21 gain, and you have nothing to gain as far as rewards
22 for testifying and all of these other people that you
23 want to testify against, right? Is that what you're
24 saying?

25 A What I'm saying is, sir, he confessed to me

1 about killing his wife and burying her in the yard. I
2 think that was wrong for what he did, sir.

3 Q I see. And all these other people, whatever
4 they did was all wrong, right, and you want to make
5 sure that they get punished, right? Because you're a
6 good American.

7 A It's not my judge to punish them, sir.

8 Q Well, you're -- you're trying to offer all
9 the help you can to get them punished, aren't you?

10 A Yes, sir.

11 Q And that's because you're a good American.

12 A I am that.

13 Q You are that. Okay. And a good citizen.

14 A Yes, sir.

15 Q Okay. And you're doing your civic duty
16 today, right?

17 A Yes, sir.

18 Q And you hope to do some more good civic duty,
19 don't you?

20 A Yes, sir.

21 Q With no -- no expectation of reward, right?

22 A Yes, sir.

23 Q Even though you're looking at maybe 80 years.
24 But you don't -- you're not asking the State to come
25 back and do what they've done in the past for you, are

1 you?

2 A Whatever happens, it happens, sir.

3 Q No, no. You're not expecting them or you're
4 not going to ask them or have your attorney ask them to
5 try to help you out in the jam you're in right now, are
6 you?

7 A No, sir.

8 MR. FALLIS: I have no further questions
9 of this witness, Judge.

10 THE COURT: Redirect?

11 MR. MIZRAHI: No, Your Honor.

12 THE COURT: May this witness be excused?

13 MR. MIZRAHI: He may. All right.

14 You're excused, sir.

15 (Witness excused.)

16 THE COURT: State, call your next
17 witness.

18 MR. MIZRAHI: Curt Jolicoeur.

19 (Witness sworn by the clerk.)

20 MR. MIZRAHI: May it please the Court?

21 THE COURT: Yes, sir.

22 CURT JOLICOEUR,
23 having been produced and first duly sworn as a witness
24 on behalf of the State, testified as follows:

25 DIRECT EXAMINATION

1 BY MR. MIZRAHI:

2 Q Please introduce yourself to the jury.

3 A My name is Curt Jolicoeur.

4 Q Spell your last name for the court reporter,
5 please.

6 A J-O-L-I-C-O-E-U-R.

7 Q Mr. Jolicoeur, what do you do for a living?

8 A I'm a consultant for Citadel, design
9 consultant.

10 Q How long have you been employed like that?

11 A Eight years.

12 Q And generally, where in Jacksonville do you
13 live?

14 A Clay County.

15 Q And who do you live there with?

16 A My wife now.

17 Q Do you have any children?

18 A I have two.

19 Q How old are they?

20 A One is 23 and the other one is 20.

21 Q And who is their mother?

22 A Their mother is Robin.

23 Q Is that your ex-wife?

24 A Yes.

25 Q And when were you married to Robin?

1 A Pardon me?

2 Q When were you married to Robin?

3 A I was married to her for 18 years.

4 Q Did you marry sometime in 1992?

5 A Yes, in '92.

6 Q I want to turn your attention back to 1992.

7 Where were you employed?

8 A I was working for Bernie's Tool & Fastener at
9 that time.

10 Q And what was your job at Bernie's Tool &
11 Fastener?

12 A I was an outside sales rep.

13 Q So explain to the jury exactly what that
14 means and what your interaction with the business would
15 have been.

16 A I would go -- I was originally given a
17 territory, and I was to sell, cold call. And there
18 were some accounts given to me at the time.

19 Q So you would essentially go and try to sell
20 Bernie's tools to people that would need the tools.

21 A Correct.

22 Q And you would get a cut of that.

23 A Correct.

24 Q How long did you work for Bernie's Tool &
25 Fastener?

1 A Approximately about a year and a half.

2 Q Did you meet a person by the name of Michael
3 Haim there?

4 A Yes, I did.

5 Q And what was Michael Haim to you in that
6 business?

7 A He was the coordinator inside.

8 Q He was the what?

9 A I believe he was the coordinator inside. He
10 coordinated what was going on in the office area.

11 Q So you didn't have a lot of direct contact
12 with him?

13 A No.

14 Q But you knew him, obviously.

15 A Correct.

16 Q Approximately how many employees were there
17 at that time at Bernie's Tool & Fastener? Just a
18 guess.

19 A Probably 15 to 20.

20 Q And you knew everyone that worked there.

21 A Correct.

22 Q Did you have -- were you close friends with
23 Mr. Haim?

24 A No.

25 Q Ever -- prior to Bonnie's disappearance, in

1 the couple weeks leading up to it, did you have any
2 personal interactions with Michael Haim, where you
3 would go out to dinner or go out hunting together,
4 anything like that?

5 A We attended one dinner at his house.

6 Q And when was that in relation to Bonnie
7 missing generally?

8 A A few months prior to.

9 Q What -- what was your relationship with
10 Bonnie Haim?

11 A She worked inside and -- inside Bernie's and
12 I became friends with her.

13 Q And did you have more direct interaction with
14 Bonnie Haim because you had to go tell her what you
15 were selling?

16 A Correct. And we collected money and,
17 therefore, we would interact with the people in the
18 office to give them the money and collect money for the
19 customers that owed us money.

20 Q So going to the fall and winter of 1992, did
21 your relationship turn a little bit more from friends
22 and more of a flirting, potential dating relationship?

23 A Yes.

24 Q And was that true even though you knew Bonnie
25 Haim was married to Michael Haim?

1 A Yes.

2 Q Was that true even though you were recently
3 married?

4 A Correct.

5 Q Did you eventually end up having sex with
6 Bonnie Haim?

7 A Yes, one time.

8 Q Approximately when was that in relationship
9 to her disappearance on January 7th, 1993?

10 A I believe it was the latter part of December
11 or early January.

12 Q So shortly before her disappearance.

13 A Correct.

14 Q Around this time, did your relationship with
15 Michael Haim change, where Mr. Haim would want you to
16 do things with him personally?

17 A Yes.

18 Q Explain that to the jury.

19 A At times, he would invite me to go work out
20 with him and, you know, go hunting. It was one
21 occasion that he asked me to do that.

22 MS. WARREN: Your Honor, excuse me.

23 Please ask the witness to speak up.

24 THE COURT: If you could make sure you
25 get close to that microphone.

1 THE WITNESS: I'm sorry.

2 BY MR. FALLIS:

3 Q Mr. Jolicoeur, I'll ask you to explain the
4 hunting and working out. I don't know if counsel heard
5 you. Could you explain again?

6 A Yeah. He asked me to attend, you know, a
7 workout with him. And he was -- obviously lived on the
8 north side, and I said, you know, that's not -- you
9 know, you just don't drive an hour to go work out with
10 someone. But he invited me a few times.

11 Q Was he sort of insistent upon it?

12 A At times, yes.

13 Q And was this around the time when your and
14 Bonnie's relationship was becoming romantic?

15 A Yes.

16 Q And in hindsight, do you think that the
17 defendant may have suspected something?

18 MR. FALLIS: Objection, Your Honor,
19 speculation.

20 THE COURT: Overruled.

21 BY MR. MIZRAHI:

22 Q At the time, did you think it was suspicious?

23 A Yes.

24 Q And you still do.

25 A Yes.

1 Q You indicated that you lived far away from
2 the north side. Where did you live on January 6th of
3 1993?

4 A I lived with my wife at the time and my
5 father and my stepmother in Clay County.

6 Q And was that because you were trying to save
7 up, I guess, for a house for your wife?

8 A Correct.

9 MR. FALLIS: Objection, Your Honor.

10 That's leading.

11 THE COURT: It's not. Overruled.

12 BY MR. FALLIS:

13 Q So what was the answer? I'm sorry.

14 A Yes, it was. We were saving money at the
15 time.

16 Q And do you remember what you were doing the
17 night of January 6th, 1993?

18 A Yes. I was with my father, my stepmother
19 that is deceased now and my wife.

20 Q Did you, shortly after the 6th and the 7th,
21 learn of Bonnie's disappearance?

22 A Yes.

23 Q Did Detective Robbie Hinson with the
24 Jacksonville Sheriff's Office contact you?

25 A Yes, sir.

1 Q Did you agree to cooperate in any way that
2 you could?

3 A I cooperated 100 percent. I came in when
4 asked me to come in and did exactly what they asked me
5 to do.

6 Q In fact, did you wear an undercover recording
7 device in this particular case?

8 A Yes, sir.

9 Q When you came forward and discussed this case
10 with the police, did it come to your attention that
11 your ex-wife, who was currently your wife at the
12 time -- was your wife at the time, did not know about
13 your relationship with Bonnie Haim?

14 A Correct.

15 Q And what did you do as a result of coming
16 forward just a day or two after her disappearance?

17 A I told her about what was going on and
18 exactly what Mr. Hinson asked me to do because it
19 was -- you know, there was an issue with Bonnie's
20 disappearance.

21 Q So did you --

22 A I was being honest with everybody.

23 Q So you disclosed that relationship to your
24 wife.

25 A Correct.

1 Q And remained married for 18 years?

2 A Correct.

3 Q Did you help search for Bonnie?

4 A Absolutely.

5 Q And did you do that with members of her
6 family as well as members of Mr. Haim's family?

7 A I believe so, yes. I don't remember
8 everybody that was there. But yes.

9 Q And was that on more than one occasion?

10 A Yes, sir.

11 Q Did you ever search for Bonnie Haim with the
12 defendant, Michael Haim?

13 A Absolutely not.

14 MR. MIZRAHI: Your Honor, that's all the
15 questions I have.

16 THE COURT: All right. Cross?

17 MR. FALLIS: Yes, sir.

18 CROSS EXAMINATION

19 BY MR. FALLIS:

20 Q Sir, the way you've described this
21 relationship, it sounds like it was a one-time shot.
22 Is that what you thought -- is that what it was?

23 A I didn't understand the question.

24 Q The way you described the relationship, it
25 sounded like you just had a one-time shot and that was

1 it. There was no relationship.

2 A I'm not sure of what you mean by one-time
3 shot.

4 Q Well, there was no -- there was no lunches or
5 dinners or anything else before that. Is that -- is
6 that what your testimony is?

7 A No, sir.

8 Q Okay. So there were. Are you saying there
9 were times when you-all would meet for lunch or for
10 dinner?

11 A Yes.

12 Q Okay. And that started about when?

13 A I don't recall when.

14 Q Well, could it have started sometime before
15 Thanksgiving?

16 A Yes. I believe we had lunch with Michael and
17 Bonnie at the time.

18 Q No. I'm talking about just you and Bonnie.

19 A Maybe one time.

20 Q Only once?

21 A I said maybe one time. I don't recall.

22 Q Maybe more?

23 A Yes.

24 Q Okay. And could -- this relationship that
25 you talked about, could it have started sometime before

1 Thanksgiving of '92?

2 A I don't recall before Thanksgiving.

3 Q Well, you mentioned Detective Hinson and how
4 you cooperated. Did you not tell Detective Hinson on
5 Thanksgiving, you got a page from Bonnie, telling her
6 [sic] how much she wanted to be with you? Do you
7 remember telling Detective Hinson that?

8 A I don't recall saying that. That was 25
9 years ago but --

10 Q So you're saying you don't recall telling --

11 A I don't recall saying that.

12 Q You do not recall.

13 Do you recall now as we speak getting a page
14 from Bonnie, saying, I want to be with you, and you
15 saying you want to be with her?

16 A No.

17 Q Now, according to you, Bonnie's the one that
18 came on to you, right? Is that correct?

19 A Correct.

20 Q So she was, quote, the aggressive one -- is
21 that fair to say? -- in this --

22 A Correct.

23 Q -- whatever you want to call relationship?

24 Not you. I mean, you -- at one time, you
25 said to her, don't you understand I'm married? Is that

1 what you -- remember telling her that?

2 A I don't recall saying that.

3 Q Well, do you remember telling me that?

4 A I don't remember telling you that specific
5 words.

6 Q Okay. Well, would it refresh your
7 recollection if I were to show you something?

8 Let me go back to Hinson again. Do you
9 remember telling Hinson that Bonnie actually had got
10 tickets, because she's a big Gator fan, to the Gator
11 Bowl so you two could be together?

12 A I do not recall saying that at all.

13 Q Is that the truth, that that's what happened
14 or you don't recall?

15 A I don't recall saying that.

16 Q You don't recall saying it.

17 A Correct.

18 Q But that could be true, correct? So if
19 Hinson comes in here and says --

20 MR. MIZRAHI: Objection, Your Honor.

21 It's speculating about what Detective Hinson
22 would say.

23 THE COURT: Just ask your question,

24 Mr. Fallis. I don't think you finished it.

25 MR. FALLIS: Okay.

1 BY MR. FALLIS:

2 Q Isn't it true that Bonnie went and got
3 tickets from her husband to the Gator Bowl so you two
4 could be together and go to a hotel together?

5 A I believe I find out after the -- that
6 incident that that's where he was at.

7 Q Okay. And Bonnie had arranged for him to be
8 there so you --

9 A I -- I don't know if that's what she
10 arranged. That was never discussed from -- between her
11 and I at all.

12 Q Okay. And you don't recall telling Hinson
13 that's exactly how it went down?

14 A I don't -- I don't recall.

15 Q In the last over 20 years or so, you've
16 stayed at hotels out at the airport, haven't you?

17 A Pardon me?

18 MR. MIZRAHI: Objection, relevance, Your
19 Honor.

20 THE COURT: Sustained.

21 BY MR. FALLIS:

22 Q Have you ever --

23 MR. FALLIS: Excuse me. The relevance?

24 I'll give you the relevance. That way, you
25 can make a decision then.

1 THE COURT: Sustained. Just ask another
2 question.

3 MR. FALLIS: Well, I'd like to be heard
4 on it, Judge.

5 THE COURT: Well --

6 MR. FALLIS: Outside the presence of the
7 jury.

8 THE COURT: I understand. Ask another
9 question, Mr. Fallis.

10 MR. FALLIS: Okay. Then I'll probably
11 need to proffer it, Judge, which I have the
12 right to do outside the presence of the jury
13 then.

14 THE COURT: Very well.

15 Ladies and gentlemen, we'll take a short
16 recess. We'll be back with you as quickly as
17 we can.

18 (Jury excused.)

19 THE COURT: All right. Let the record
20 reflect the jury has left the courtroom.

21 Perhaps I misunderstood the question. I
22 thought the question was has he stayed at
23 hotels at the airport over the last 20 years.

24 MR. FALLIS: Over the last 20 years,
25 yes, sir.

1 THE COURT: Whether he stayed at a hotel
2 near the airport in the 20 years since --

3 MR. FALLIS: No, not since. During the
4 last 20-some odd years, including the time
5 that --

6 THE COURT: I don't understand the
7 relevance.

8 MR. FALLIS: The relevance, Judge, he
9 was also initially a suspect in this case.
10 You know that this incident happened at the
11 airport. It happened at hotels involved at
12 the airport. He was around at that time. He
13 was frequenting those hotels, Judge, so there
14 is a possibility --

15 THE COURT: Ask the question of the
16 witness. What do you want to proffer?

17 MR. FALLIS: Yes.

18 PROFFER EXAMINATION

19 BY MR. FALLIS:

20 Q Sir, have you stayed at the hotels around the
21 airport in the last 20-some odd years?

22 A No.

23 Q Okay. Do you recall being asked that
24 question back on February 26, 2008, while you were
25 under oath?

1 A Yes.

2 Q Okay.

3 MR. MIZRAHI: Page 55, Line 14.

4 BY MR. FALLIS:

5 Q And how about other hotels around
6 Jacksonville back then? Did you stay in them?

7 Answer was: No.

8 I don't mean with Bonnie. I mean with
9 anybody. Did you go to other hotels?

10 Now your answer was: Not that I recall.

11 If you were seeing women other than Bonnie,
12 where would you go?

13 Answer: I don't know.

14 Then I asked: Have you gone to other hotels
15 for just a few hours?

16 Yes.

17 In Jacksonville?

18 Yes.

19 And I asked you about the purpose.

20 You said: For fun.

21 Do you recall giving -- being asked those
22 questions and giving me those answers? Did you have
23 the opportunity to read your deposition before you came
24 here today?

25 THE COURT: Well, let him ask -- answer

1 the question you just asked him.

2 THE WITNESS: The question that you
3 asked, please say it again. What was the
4 question?

5 BY MR. FALLIS:

6 Q About staying --

7 A I can't hear you.

8 THE COURT: The question was remember
9 giving -- hold on. The question was do you
10 remember giving those answers to those
11 questions.

12 MR. FALLIS: Yes.

13 THE COURT: That's the question that has
14 yet to be answered.

15 MR. FALLIS: That's on the table right
16 now.

17 THE WITNESS: I remember giving the
18 answers to the questions.

19 BY MR. FALLIS:

20 Q Okay. What were the answers?

21 A Which question?

22 THE COURT: You just told him what the
23 answers were. What's the -- the point of
24 this is are you trying to impeach him?

25 MR. FALLIS: Judge, I'm proffering right

1 now. Okay? And we're proffering what he has
2 had said at one time, and then he changed his
3 story two or three times in his own
4 deposition -- okay? -- from I don't know to
5 maybe and that sort of thing.

6 THE COURT: You were asking him
7 different questions. Hotels around the
8 airport, hotels in Jacksonville in general,
9 hotels with Bonnie, hotels with other people.

10 MR. FALLIS: Sir --

11 THE COURT: Each question had a
12 different answer.

13 BY MR. FALLIS:

14 Q All right. The last 22 years or more, did
15 you ever stay at any hotels around the airport?

16 Answer: I may have.

17 You just said no. Now you're saying --

18 MR. MIZRAHI: Your Honor, I would
19 object. This is one of the reasons why the
20 Court orders these things to be filed because
21 two lines above, the direct question, his
22 answer was no. Mr. Fallis asked the question
23 again, and he said: Well, I may have. He
24 was equivocal about it.

25 The question on Line 14 was: Have you

1 ever had cause to stay at hotels out by the
2 airport in Jacksonville?

3 Answer: No.

4 Question: In the last 22 years, did you
5 ever stay at any hotels out around the
6 airport?

7 Answer: I may have.

8 MR. FALLIS: Question: For what
9 purpose?

10 Answer: Pleasure.

11 Your Honor, I think --

12 MR. MIZRAHI: Then the next question is:
13 Are you familiar with hotels around the
14 airport?

15 Answer: No.

16 MR. FALLIS: That's for the jury to
17 determine, whether or not -- what to make of
18 that. But that has to get in front of the
19 jury, Judge, because this man is not being --
20 he's equivocating, then saying no, then
21 saying may have, then saying yeah, for
22 pleasure.

23 Judge --

24 THE COURT: If you wish to ask him
25 questions about whether he stayed at hotels

1 around the airport in the early 1990's, I'm
2 going to say that's relevant.

3 MR. FALLIS: Not early 1990's, Judge.

4 THE COURT: Well, that's -- that's the
5 time period we're speaking of.

6 MR. FALLIS: No. He's --

7 THE COURT: If he stayed at a hotel in
8 the last 20 years by the airport, as in 2015,
9 I'm saying that is not relevant. So if you
10 tailor your question to something that would
11 be relevant, and I'm going to tell you, I
12 find if he's staying in hotels around the
13 airport in the early 1990s, the time frame
14 that we're concerned about, I'm saying that's
15 relevant. And you may ask those questions.

16 So what is your answer, sir?

17 THE WITNESS: I've not stayed at the
18 airport in the early '90s. When I was
19 divorced, I stayed at the airport, I believe,
20 one night with a person that I was dating at
21 the time. She flew in. But that was in
22 2010. Other than that, I've never stayed at
23 the airport.

24 THE COURT: Or hotels around?

25 THE WITNESS: Or hotels around.

1 MR. FALLIS: Defense is ready to bring
2 the jury back, Judge.

3 THE COURT: Mr. Mizrahi, do you have any
4 questions --

5 MR. MIZRAHI: No, Your Honor.

6 THE COURT: -- to proffer?

7 MR. MIZRAHI: My objection was
8 specifically this has nothing to do with the
9 case if the question is for 25 years.

10 THE COURT: All right. Well, I've
11 narrowed it. Do you have any objection to
12 that?

13 MR. MIZRAHI: No, no.

14 THE COURT: So I'm going to allow the
15 defense to ask this witness if he's stayed at
16 hotels around the airport in the early 1990s,
17 the time frame of -- the time that Miss Haim
18 went missing. You may ask that question.
19 That is relevant. And you may get the answer
20 that he wants to give -- or the answer he's
21 going to give. Okay? But beyond that, I
22 don't think it's relevant.

23 MS. WARREN: Excuse me, Your Honor.

24 (Conferring with co-counsel.)

25 THE COURT: All right. Ready to bring

1 in the jury?

2 MR. FALLIS: Well, we're not ready to
3 bring the jury back in because it goes on on
4 Page 56, Judge. All right? I asked him: In
5 the last 26 years, which would bring us back
6 to the time of -- in question, whether you
7 had stayed for an hour or more or had
8 occasion to get a room at a hotel by the
9 airport here in Jacksonville -- how many
10 times you've had occasion, whether it be an
11 hour or more, to stay at a hotel by the
12 airport?

13 What was the question again?

14 The last 26 years. I know.

15 Answer: That's a long time.

16 In the last 26 years, whether for an
17 hour or more, have you had occasion to stay
18 at a hotel at the airport, at Jacksonville
19 airport?

20 MR. MIZRAHI: There were objections
21 during the course of this.

22 MR. FALLIS: Excuse me. Excuse me.

23 THE COURT: No. Here's what we're
24 doing: I've given you my ruling so that's
25 the --

1 MR. FALLIS: I'm giving you a question
2 of where I'm going so we have a pre ruling.
3 That's what I'm --

4 THE COURT: I don't make a pre ruling.
5 I've already made the ruling I'm going to
6 make. You're going to ask questions about
7 early '90s, if you wish, to whether or not he
8 stayed at the airport. That's what I find to
9 be relevant.

10 MR. FALLIS: 26 years.

11 THE COURT: Now, while I've got the jury
12 out of the room, it came to my attention
13 during one of the breaks that when we're at
14 sidebar, what we're saying is being picked up
15 on the microphones even with the white noise.
16 So make sure, Madam, with the news that we
17 turn -- we're not being picked up when we're
18 at the sidebar. Okay? 'Cause that --

19 MR. MIZRAHI: Yes. We're aware of that,
20 Your Honor. I'm speculating but I believe
21 Mr. Fallis will try to impeach this witness
22 with his question and answer, in the last
23 26 years, have you been to the airport, which
24 is not what the Court is ruling. I think
25 he's misinterpreting what the Court's ruling

1 is.

2 THE COURT: Okay. Well, then we're
3 starting afresh. The proffer starts now.
4 Ask the question you wish to ask Mr. Fallis.

5 MR. FALLIS: Okay.

6 BY MR. FALLIS:

7 Q In the last 26 years, have you stayed at an
8 airport hotel for an hour or more?

9 THE COURT: Okay. You misunderstood.

10 BY MR. FALLIS:

11 Q Did you get a room at a hotel by the airport?

12 THE COURT: Mr. Fallis, you
13 misunderstood my ruling. I'm going to allow
14 you to ask whether this witness has stayed at
15 a hotel around the airport in the early
16 1990s, not over the last 26 years.

17 MR. FALLIS: This is not -- this --

18 THE COURT: You made that -- may
19 disagree with my ruling but that's the
20 ruling.

21 MR. FALLIS: I'm just doing incorrect
22 math in my head right now.

23 THE COURT: Okay. We're not talking
24 about the last 26 years. We're talking about
25 26 years ago, did he stay at a hotel, or did

1 he frequent hotels in that time frame.
2 That's relevant. You can ask that question.
3 Well, ask that question. Let's see what he
4 says.

5 MR. FALLIS: One moment, Judge.
6 26 years. This is 2018, Judge. I think it
7 would bring us to the period in question,
8 would it not?

9 THE COURT: Okay. We don't need to do
10 the math. There's no math involved. You can
11 ask the question, did he stay in hotel rooms
12 surrounding the airport in the early 1990s?
13 That's the time period I want to -- I find to
14 be relevant. We don't need to do any math.

15 MR. FALLIS: Okay. Well, to make it
16 26 years, Judge, I think I want to do the
17 math, make sure I'm correct. Okay.

18 THE COURT: Just say the early 1990s.

19 MR. FALLIS: All right.

20 THE COURT: We don't need to figure out
21 how long ago it was. That's the time period
22 that's relevant. After that I don't find to
23 be relevant, whether he's staying in hotels
24 in the 2000s.

25 So ask that question so we can get an

1 answer, so we can bring the jury back and
2 continue with the trial, please.

3 BY MR. FALLIS:

4 Q All right. The last 26 years, sir, have you
5 ever?

6 THE COURT: All right. We're taking a
7 recess.

8 (Short recess.)

9 (Defendant present.)

10 THE COURT: We ready to bring in the
11 jury?

12 MR. FALLIS: We're ready, Your Honor.

13 THE COURT: Bring in the jury.

14 (Jury present.)

15 THE COURT: Welcome back, folks. Have a
16 seat.

17 Before we begin with the -- pr continue
18 with the examination of the witness, it was
19 brought to my attention that one of y'all may
20 be concerned about the camera from the media
21 capturing y'all. It does not. There is a
22 placard that's blocking the camera from view
23 and capturing any of y'all. It gets the
24 witness. Sometimes it gets me and gets Madam
25 Court Reporter but that's it. Okay?

1 And this is the second time we've had a
2 trial in here where there's been a camera,
3 and that was the case back then too. So feel
4 pretty confident about it. Okay?

5 Mr. Fallis, you may continue your
6 questions.

7 CROSS EXAMINATION (CONTINUED)

8 BY MR. FALLIS:

9 Q Mr. Jolicoeur, is it your testimony you don't
10 have a good memory of your -- of the conversations that
11 you had with Detective Hinson? Do you have a good
12 memory of all the conversations you had with Detective
13 Hinson?

14 A I have some recollection of 25 years ago of
15 conversations with him, yes.

16 Q Okay. But you don't recall some of the
17 things that I asked you about you --

18 A Correct.

19 Q -- telling Hinson about.

20 A Correct.

21 Q You have no reason, from your experience with
22 him, to say that he would be writing something that was
23 inaccurate, do you?

24 A I'm sorry. Can you --

25 Q You don't think -- you have no reason to

1 believe that from your relationship with Hinson that he
2 would write something that occurred between the two of
3 you that would be inaccurate, do you?

4 A I wouldn't know what he wrote down.

5 Q Well, I'll give you one example.

6 A Pardon me?

7 Q I'll give you one example of you said you
8 didn't recall that, the one about her paging you on
9 Thanksgiving.

10 A Yeah. I don't recall that one.

11 Q Okay. So what if Hinson were to write
12 something that? You would have no argument that
13 maybe -- that he was fabricating it, would you?

14 A No.

15 MR. FALLIS: Okay. I have no further
16 questions.

17 THE COURT: No more questions?

18 MR. MIZRAHI: No, Your Honor.

19 THE COURT: Okay. No more questions for
20 redirect?

21 MR. MIZRAHI: No. I have no questions,
22 Your Honor.

23 THE COURT: You're excused, sir. Thank
24 you.

25 (Witness excused.)

1 THE COURT: Call your next witness.

2 MR. MIZRAHI: We would call [REDACTED]

3 [REDACTED].

4 (Witness sworn by the clerk.)

5 MR. MIZRAHI: May it please the Court?

6 THE COURT: Yes, sir.

7 [REDACTED]

8 having been produced and first duly sworn as a witness
9 on behalf of the State, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. MIZRAHI:

12 Q Please state your name for the record.

13 A My name is [REDACTED].

14 Q [REDACTED] you're currently living in the
15 Duval County Jail?

16 A Yes, I am, sir.

17 Q And when were you recently arrested?

18 A I was recently arrested on the 8th of March.

19 Q Of 2019?

20 A 2019, sir.

21 Q Were you arrested for a violation of your
22 probation?

23 A Yes, sir.

24 Q So I'll talk a little bit about that case.
25 Were you in the Duval County Jail in 2015 on that

1 particular case?

2 A Yes, sir.

3 Q On that particular case, were you facing a
4 first-degree felony that was actually punishable by up
5 to life in prison?

6 A Yes, sir.

7 Q And were you -- did you eventually plead
8 guilty in that case?

9 A Yes, sir.

10 Q And where are you sentenced to five years
11 Florida State Prison sentence, followed by five years
12 probation?

13 A Yes, sir.

14 Q And that five years of probation, is what you
15 violated?

16 A Yes, sir.

17 Q So as you sit here today, you're facing a
18 potential first-degree felony punishable by up to life
19 in prison.

20 A So I've learned, yes, sir.

21 Q For that violation of probation.

22 A Yes, sir.

23 Q When you were in jail in 2015, did you also
24 cooperate on another case where an inmate provided you
25 information?

1 A Yes, sir.

2 Q And did you get the benefit of that
3 cooperation in the five-plus-five sentence you
4 eventually did on your case?

5 A So I have learned, yes, sir.

6 Q Did you not think the five plus five was a
7 great benefit?

8 A No.

9 Q How were you doing on your probation before
10 you violated?

11 A I was 14 months, no problems. Then I
12 violated one time and five months later, I violated
13 again. And now I'm in chains, sir.

14 Q What were your violations for?

15 A I failed a urinalysis. That's it.

16 Q So you're not facing new charges. It's just
17 the original charge.

18 A Yes, sir.

19 Q Okay. Has --

20 MR. FALLIS: I didn't hear the last
21 question.

22 MR. MIZRAHI: He said yes, no new
23 charges.

24 MR. FALLIS: Oh.

25 MR. MIZRAHI: Violation of probation.

1 BY MR. MIZRAHI:

2 Q As you sit here today, has the State of
3 Florida promised you anything in order to get you to
4 testify?

5 A No, sir.

6 Q Are you aware of any deals that we have made
7 about your -- with regard to your sentence?

8 A No, sir.

9 Q Do you hope that your testimony here will
10 benefit you in some way?

11 A Hopefully.

12 Q Does the State of Florida even decide what
13 your sentence is, or is it going to be the judge that
14 has your probation?

15 A The State of Florida decides nothing. It's
16 totally up to my judge, sir.

17 Q Now, [REDACTED] did you come and give a
18 deposition in this case?

19 A Yes, sir.

20 Q And in that deposition, was that the period
21 of time that you were actually on probation?

22 A Yes. I was a free man when I gave my
23 depositions.

24 Q And your deposition, you came in, and you
25 discussed a conversation that you had with Mr. Haim.

1 A Yes, I did.

2 Q So I want to talk about that conversation
3 that you had with Mr. Haim back in 2015. Do you know a
4 Michael Haim?

5 A Yes, I do know Michael Ray Haim.

6 Q And how did you meet him?

7 A I was housed in 5 West, the fifth floor, west
8 side of the pre-detention facility, Dormitory No. 2, in
9 Cell 33. And at the time, I was the longest standing
10 inmate in there, as I did four calendar years in the
11 county jail.

12 And during that time, Mr. Haim was placed in
13 my cell. I knew him from nowhere, never seen or heard
14 of him before he came in that cell.

15 Q Describe for the jury the cells in the Duval
16 County Jail.

17 A There are four dormitories on each side of
18 the jail. On the fifth floor, there's an east side and
19 there's a west side. On the west side, there's
20 Dormitory 1 through 4 and there are 12 cells on the
21 top, 12 cells on the bottom there. They are two-tier
22 dormitories, three-man cells. So there's 72 inmates
23 per dormitory, three men per cell.

24 Q And these cells, I assume, have three beds in
25 them?

1 A They do.

2 Q And when you are in your cell, especially at
3 night when the doors are closed, it's just the three
4 inmates.

5 A Yes. From -- we eat breakfast at 4:00 a.m.,
6 and that's when the cell doors are unlocked. But at
7 8:30 p.m., we are enclosed in that particular cell with
8 our cell mates.

9 Q And I know the jury has seen your size. But
10 for the record, can you describe your approximate
11 height and weight back in 2015 when you were living in
12 the Duval County Jail?

13 A In 2015, I was 305 pounds. I am right around
14 290 now.

15 Q And approximately how tall are you?

16 A Without shoes, five-eleven. With shoes, six
17 foot flat.

18 Q You're a pretty big guy?

19 A Yes, sir.

20 Q And are you comfortable in the Duval County
21 Jail, meaning that your not person to be messed with?

22 A You can say that. Guys tend to pick on
23 smaller people.

24 Q So during the course of your time in the cell
25 with Michael Haim, did you begin to have personal

1 conversations about your life?

2 A Yes, we did.

3 Q Talk about that a little bit with the jury
4 and how that developed into Mr. Haim discussing his
5 case.

6 A Well, being that Mr. Haim explained to me
7 that this was his first time being arrested -- and I
8 explained to him that I can count on one hand, possibly
9 with two fingers cut off how much times I've been
10 arrested. We ventured into a conversation about what
11 to expect and what not to expect. And I guess he was
12 not worried per se but thinking on who to look out for
13 and what -- you know, just what to expect.

14 And I kind of explained it to him. We get
15 three meals a day. This is what time we lock down.
16 The phones cut on at this time. I am here for this and
17 he said he was there for that. And...

18 Q Did you indicate in your conversations with
19 Mr. -- first of all, do you see him here in court?

20 A That's Mr. Haim sitting in the gray jacket,
21 white undershirt on the left side of me.

22 MR. MIZRAHI: Your Honor, may the record
23 reflect the witness has identified the
24 defendant?

25 THE COURT: The record will so reflect.

1 BY MR. MIZRAHI:

2 Q Did you kind of look out for him and indicate
3 to Mr. Haim, the defendant, listen, if you have any
4 problems, let me know; I've been here a while, that
5 kind of conversation?

6 A Yeah. I mean, it's clear that -- I hate to
7 say it but I was sort of the head of the dorm. I would
8 stop fights. I would solve problems. You know, we --
9 we have something called "commissary." It's corner
10 store items, ramen noodles and Cheetos and Doritos.
11 Guys would gamble. They won't have the money to pay.
12 And it would be five bucks, and I would give it just to
13 stop a fight. Or I would report guys picking on other
14 guys, you know.

15 MR. FALLIS: Objection, at this point,
16 Your Honor. This is a narrative. It's not
17 responsive to the question.

18 THE COURT: You can ask another
19 question. Overruled. But go ahead and ask
20 another question, Mr. Mizrahi.

21 BY MR. MIZRAHI:

22 Q And did you have -- did Mr. Haim see you as
23 being the peacemaker of the dorm?

24 A Yes, he did.

25 Q And did you indicate to him that you would

1 kind of, so to speak, protect him in the Duval County
2 Jail and show him how to act?

3 A Yes. I would do the same for him as any
4 other inmate. I wouldn't let anybody just beat up on
5 him or take anything from him.

6 Q During the course of your living
7 arrangements, did Mr. Haim share with you personal
8 details about his life in this case?

9 A Most definitely.

10 Q Please tell the jury what Mr. Haim told you.

11 A Well, Mr. Haim explained to me that he was
12 incarcerated for the murder of his estranged wife,
13 Bonnie Lynn Haim, and he had a three-year-old son named
14 Aaron Michael Haim. He explained to me that he had a
15 Toyota T1000 pickup truck, a Pontiac Firebird. He also
16 had a boat. He would use his truck to pull his boat.
17 He lived on north side of Jacksonville.

18 He also explained that he -- I hope I'm not
19 out of line here, but he also explained that he did
20 kill his wife. She -- she was having an affair with
21 another man, depleting their finances and that he was
22 under investigation for the better part of two years.

23 Detectives came and confiscated some
24 registered firearms that he had to see if he fired any
25 in his wife's murder. Well, at the time, it wasn't

1 known as a murder, as her body wasn't found yet. But
2 after ballistics testing proved that none of his guns
3 were fired, different items were taken as a part of
4 their investigation. Nothing turned up.

5 They sent botanists to get soil samples, so
6 to say, to see if they match or they didn't match.

7 And he also mentioned about one particular
8 incident where he met this lady named Charlene. And
9 she said she was going to the store one time for milk.
10 And she was a drug addict, crack smoker, so to say,
11 smoked crack cocaine. And Charlene took his truck.
12 No. It was the Pontiac, the Pontiac. She took the
13 Pontiac Firebird and -- no. It was a Pontiac Trans Am.
14 Excuse me. She took the Pontiac Trans Am to go and get
15 milk. And she took an extremely long time to come
16 back.

17 So he then jumped in his Toyota truck, and he
18 took one of his firearms and went through an area of
19 Jacksonville called "the bottom." This is a notorious
20 drug spot in Jacksonville. And when he went there, he
21 stopped, and there was a group of black guys. And the
22 guys said -- he asked them, well, have you seen a white
23 girl driving a Pontiac Trans Am?

24 And they said, well, yeah, but it wasn't a
25 white girl driving it. It was a black guy.

1 And he then called the cops, and there was
2 this big search for his car and Charlene. And on his
3 way back home, he said he saw her, and he blocked off
4 the street and stopped her from driving any further.
5 And the cops then arrested Charlene.

6 And I don't know what charge they gave her,
7 but she did go to jail for this escapade in his vehicle
8 that was supposed to be a milk run to the store. And
9 that was just one thing.

10 He also had a party at the house. There was
11 incident where Charlene stole some weights.

12 MR. FALLIS: Your Honor, I object to
13 this.

14 MR. MIZRAHI: I'll move on.

15 THE COURT: Sustained. You may
16 continue, Mr. Mizrahi.

17 BY MR. MIZRAHI:

18 Q But the point of all of that, [REDACTED],
19 is that you were able to know personal details about
20 Michael Haim's life.

21 A Yes, sir.

22 Q And he shared those with you.

23 A Yes, sir, down to his current wife.

24 Q Okay. Did he describe -- well, did he say
25 where -- at the time that -- right before he was

1 arrested, did he indicate where he was living and who
2 he was married to?

3 A Yes. I hate to bring up Charlene again, but
4 he left Jacksonville with Charlene and moved to
5 Tennessee, thinking he would take her away from the
6 crack cocaine. But she found it there and then he
7 washed his hands with her.

8 And a mutual friend introduced him to a woman
9 named Ann Wright and -- which I think she's a Florida
10 patrol officer or state trooper or something. She's in
11 law enforcement and that's where he met Ann Wright, his
12 current wife. And she was living in North Carolina.
13 And that's where he moved to. They had dogs. They
14 both traded one vehicle apiece in to get a Subaru,
15 whether it was an Outback or a Forester. It was a
16 Subaru, for sure, though. A Toyota RAV4 was traded in
17 and one of his vehicles and then accrued a Subaru.

18 Q [REDACTED] you have lot of details about a
19 man's life. How -- how do you get all those details?
20 Is it just the amount of time you're spending in the
21 cell by yourself just with another man or two other
22 men?

23 A Yeah, just talking, shooting the breeze. And
24 we also have private conversations when the other cell
25 mate wasn't present. And that's why we're here today.

1 Q Okay. Can you -- did the defendant
2 eventually describe for you what happened with regard
3 to his wife's murder?

4 A Yes, he did.

5 Q How did that conversation come up? Did you
6 say, hey, how did you kill your wife?

7 A Oh, no. I guess it was bothering him to a
8 certain degree, and he just started relaying different
9 details about his case. He spoke of, you know, she had
10 a Toyota Corolla that was found with no compromised
11 locks or ignition switches compromised and that was
12 impounded. And there was still a car note to pay on
13 that, and he still had to pay that.

14 He indicated that he wanted to shoot her but
15 that would be too loud. He wanted to stab her. That
16 would be too bloody.

17 He also spoke about the detectives using a
18 chemical called "luminol," that it reveals the presence
19 of bodily fluids. And they luminol'd his whole house
20 and couldn't find anything.

21 And then I asked him, well, how -- how was
22 that possible?

23 He said, well, I strangled her and buried her
24 in the backyard.

25 Q Did -- during this conversation, did the

1 defendant admit anything about his son, Aaron?

2 A Yes. He spoke of the -- Bonnie's family
3 having custody of him. And I asked him, well, does
4 Aaron, you know, remember anything or know, you know,
5 what took place between you and his mother?

6 And he said he didn't know.

7 And I asked him -- I think this was on the
8 recording device. I asked him, I said, well, if Aaron
9 popped up and visited you today, would you accept his
10 visit? Like, what would you say to him?

11 And he said he didn't know.

12 Q What do you say in response to hearing these
13 things?

14 A It crawled my blood. Because I've been
15 locked up for quite some time, and I've seen, you know,
16 different situations where I would sense remorse or
17 sorrow, pity or something coming from an alleged
18 criminal or somebody that transgressed the law. And I
19 didn't sense that from him. So I always kind of felt
20 weird having him around me. I always thought, like,
21 it's just cold.

22 Q Did you let him know that you had those
23 feelings?

24 A Yeah. I actually reported it to -- after I
25 got so much information on a recording device from him,

1 I -- I had him removed out of my cell 'cause I didn't
2 feel safe. I know I'm way bigger than him, but there
3 are things you can do to a human being to incapacitate
4 them. And I don't put it past him, so I had him
5 removed from around me.

6 Q Did he -- did you ever confront him, I guess,
7 was my question, saying, why are you telling me these
8 things; that's horrible, anything like that, or did you
9 let him keep talking?

10 A No. I let him keep talking.

11 Q I want to talk little bit about this
12 recording device. After you had this conversation with
13 the defendant, did you let authorities, the police,
14 know that you had information on this case?

15 A Most definitely did.

16 Q And did they provide you an undercover
17 recording device?

18 A Yes, they did.

19 Q And did you have conversations with Mr. Haim
20 on that device?

21 A Yes, I did.

22 Q Were you trying to get Mr. Haim to speak
23 about the incident again?

24 A Yes. He related information to me one on one
25 without our other cell mate present, and, of course,

1 this would be before the hours of lockdown. Because at
2 lockdown, we have no choice but to be in a confined
3 12-by-8 cell with me and the two other guys. There's
4 three inmates total.

5 And those conversations, private
6 conversations, between me and him took place at the
7 hours that we were not locked down. And at the time
8 that I got the recording device, it was mostly during
9 lockdown. So there was some things that he refrained
10 from talking about because there was the presence of a
11 third party.

12 And at one point, he even asked me, like, why
13 are we speaking about this again? And he looked at me
14 crazy, like you asked me this already, like we spoke
15 about this already, like why are you doing this again?
16 And then, like, he's here now so why? And I backed
17 off.

18 Q And so the wire contains conversations with
19 Mr. Haim -- conversations with Mr. Haim about his --
20 sorry, about his case but nothing with regard to how he
21 killed Bonnie Haim.

22 A Yes.

23 Q And then you turned that back over to the
24 Sheriff's Office.

25 A Yes, sir.

1 Q Now, when were you released from prison -- or
2 when were you sentenced to prison on that case where
3 you did five plus five in relationship as to when you
4 had this conversation with Mr. Haim?

5 A I was sentenced in October of 2016.

6 Q In October of '16, when you were sentenced,
7 had you provided any sworn testimony in this particular
8 case?

9 A No, sir.

10 Q Was the fact -- I think I mentioned it
11 earlier. Was the fact that you testified in another
12 case brought forward to that judge?

13 A Yes, sir.

14 Q But nothing about Mr. Haim's case.

15 A Mr. Haim was not mentioned. I -- I didn't
16 even know he still existed; his case was still going
17 until I got a subpoena asking to come and do
18 depositions. And that was a few months ago.

19 Q That was when you were out on probation.

20 A I was a free man, on probation for 15 months,
21 16 months, out of prison, doing good.

22 Q And, again, can you explain to the jury why
23 you are here testifying the way you're testifying?

24 A Bonnie Lynn Haim's family needs closure,
25 justice. I'm standing here because I transgressed the

1 law. And everyone that does deserves to be punished,
2 including myself.

3 MR. MIZRAHI: Thank you, [REDACTED].

4 That's all the questions I have.

5 THE COURT: Cross?

6 MR. FALLIS: Yes, sir.

7 CROSS EXAMINATION

8 BY MR. FALLIS:

9 Q Hello.

10 A Yes, sir.

11 Q You have violated since you came out the
12 first time. Your violation -- more than once, haven't
13 you?

14 A Yes, sir, for the same thing.

15 Q And you told the prosecutor here that you
16 could be looking up to anything to life for violation
17 of probation, is that correct?

18 A So I've learned, yes, sir.

19 Q All right. So the first time you violated,
20 they just reinstated you, right?

21 A Yes, sir.

22 Q You didn't get -- you didn't get penalized at
23 all, right?

24 A Well, 15 days in the Duval County Jail.

25 Q Oh, 15 days. Okay. I'm sorry. Well, that's

1 serious punishment, isn't it?

2 A For some, yes, sir.

3 Q You consider that serious punishment,
4 15 days?

5 A A lot can happen in 15 days, sir.

6 Q Oh, really? And how about getting 10, 20, 30
7 or life? You think that's -- that's a little severe?

8 A Well, compared to that punishment, 15 days is
9 mediocre.

10 Q Okay. You violated again.

11 A Yes, sir.

12 Q All right. And you haven't been sentenced on
13 this new violation, have you?

14 A No, sir.

15 Q Now, you're waiting for this case to be over
16 before you get to sentencing in that case, isn't that
17 correct?

18 A I'm not fully aware of that but that could
19 possibly be it.

20 Q You're not aware of that?

21 A No, sir.

22 Q Okay. You could have been violated a week
23 ago, two weeks ago. However, you were not violated
24 until this case was over with to get sentenced, isn't
25 that correct?

1 A Could you repeat that question?

2 Q Yeah. You're not going to get sentenced
3 until this case is over on your violation of probation.

4 A Well, I had a court date set for the 22nd
5 of --

6 Q Correct?

7 A -- this month and unbeknownst to me --

8 Q All right. Let's talk about -- let's talk
9 about just something you just said a little while ago.
10 I want to get a little more detail about your history.
11 Okay?

12 A Yes, sir.

13 Q You said that Bonnie's family had custody,
14 that my client told you that Bonnie's family had
15 custody of Aaron. Isn't that what you said?

16 A Well, primarily. There was actually case
17 workers and -- whether it was DCF or whatever.

18 Q No. Who eventually got custody? You said it
19 was Bonnie's family, correct?

20 A I think that's what he told me, yes, sir.

21 Q You think? No. You said that's what he told
22 you.

23 A This was a long time ago, sir.

24 Q Okay. So now you're equivocating a little
25 bit. Maybe that's not what he told you?

1 A If you play the recording, Mr. Haim is on
2 that recording telling me that he had supervised visits
3 with Aaron.

4 Q Back then.

5 A Back then.

6 Q Right. We're talking about now. You asked
7 him afterward and he said that Bonnie's family got
8 custody. Okay? That was your testimony. You're
9 saying that's what he told you.

10 A Yes, sir.

11 Q Right?

12 All right. Let's leave it at that.

13 By the way, you also said that he told you
14 about this Toyota Corolla that Bonnie had, right?

15 A Yes, sir.

16 Q Okay. And that's what he told you. She had
17 a Toyota Corolla?

18 A It might have been a Camry.

19 Q Might have been now. Okay. But you
20 testified it was a Corolla that he told you?

21 A I'm just using the best of my memory, sir.

22 Q Oh, I understand.

23 And then you said he had a Toyota truck --
24 okay? -- a few years ago. Are you aware that he didn't
25 have a Toyota truck at all? It was a work truck that

1 he lost back in 1993? Are you aware of that?

2 A I'm fully aware of that.

3 Q Okay. Are you aware that he did not have
4 that Toyota truck at the time that you said he had it?
5 Are you aware of that?

6 A I didn't give a specific time.

7 Q Are you aware that he did not have the Toyota
8 truck --

9 MR. MIZRAHI: Your Honor, I object to
10 argumentative. Objection, argumentative.

11 THE COURT: Sustained.

12 BY MR. FALLIS:

13 Q All right. Now, this tape --

14 A Yes, sir.

15 Q -- when you were wired --

16 A Yes, sir.

17 Q -- there's absolutely nothing on this tape,
18 and it's -- you have this tape for what, a whole day
19 maybe or more?

20 A A few hours.

21 Q Have you ever listened to this tape?

22 A One time.

23 Q Okay. Did you ever listen to the whole
24 thing?

25 A Just about.

1 Q On this tape, you are talking to other
2 inmates, trying to work cases against them, aren't you?

3 A It's a possibility.

4 Q What do you mean -- well, we can sit here all
5 afternoon, listen to this tape. Are you going to
6 dispute you're not on that tape working again, trying
7 to make cases against other inmates?

8 A It's a possibility. If -- if disturbing
9 information was relayed to me, I would definitely try
10 to get it on there.

11 Q If who?

12 A If disturbing information was relayed to
13 me --

14 Q By anybody.

15 A -- by anyone, it's a very strong possibility
16 that an attempt to get it on that recording is very
17 possible.

18 Q And that's because you're a good American,
19 right?

20 A Yes, sir.

21 Q A good citizen.

22 A Yes, sir.

23 Q And you just want to help law enforcement out
24 with no expectations of any favor, is that correct?

25 A And also to get out of jail possibly.

1 Q Oh, so you would be looking for some favor,
2 wouldn't you?

3 A If --

4 Q To give testimony?

5 A If it's given, I would accept. If not, so be
6 it.

7 Q Wait a minute. It's not just given. It's,
8 quote, earned by doing what you're doing -- trying to
9 do here today, isn't it? That's how it goes. You've
10 been in the jail a long time. You know what a
11 jailhouse snitch is, right?

12 A Yes. You called me that several times. I
13 know exactly what it is.

14 Q If you look in the mirror, what are you going
15 to see?

16 A [REDACTED].

17 Q No. You also told me you'll see a jailhouse
18 snitch, right?

19 A If that's the label --

20 Q Didn't you tell me that?

21 A -- you put on me, sir.

22 THE COURT: Please don't talk over one
23 another.

24 BY MR. FALLIS:

25 Q All right. Now, you said that you helped

1 only in one other case, right?

2 A I testified in one other case.

3 Q Okay. But how about working and giving
4 information on other cases? There's more than that,
5 isn't there?

6 A There was several different cases I attempted
7 to assist with.

8 Q No. That you actually did but you didn't get
9 to testify, though, correct?

10 A Yes, sir.

11 Q And those cases sometimes resolved themselves
12 before you had an opportunity to testify, isn't that
13 true?

14 A Yes, sir.

15 Q But you worked on those cases, trying to do
16 yourself and the State a favor by getting information
17 on these people. So you're -- you're pretty good at
18 it, right?

19 A I don't know how good you would say I am. I
20 only testified in one case.

21 Q Well, that's only because that case happened
22 to go to trial. There were other cases that you
23 prepared to testify against. And let's talk about some
24 of them because you said there's only one but now
25 you're saying only one that you testified in. Okay?

1 Now, you also testified in at least three
2 others besides -- I mean, you gave information on
3 besides Mr. Haim. Okay? Mr. Blizzard is one, right?
4 Correct?

5 A Yes, sir.

6 Q Mr. Blizzard?

7 A Didn't testify. Attempted to assist.

8 Q But you worked like you were doing now,
9 trying to get information, and you gave information to
10 the State on that case, did you not?

11 A You're reiterating exactly what I just said.

12 Q Well, I'm asking you, is that true? Yes?

13 A Yes, sir.

14 Q All right. And then there was a Mr. Lai,
15 L-A-I. You also -- let's call it worked that case,
16 right?

17 A Attempted to assist and not testify.

18 Q Okay. But you attempted to assist. The
19 State was made aware of it, right?

20 A Yes, sir.

21 Q Okay. And then there was a Mr. Sweat,
22 another in -- case where you worked on.

23 A Attempted to assist, did not testify.

24 Q But you worked on it and you provided
25 information to the State. But they didn't need your --

1 your testimony, is that correct?

2 A Correct.

3 Q And also another one, Victor Howell. That's
4 another one that you, quote, worked and --

5 A Did testify in that one.

6 Q You did testify in that one.

7 A The only one.

8 Q So there's two cases that you did, not one
9 but two cases you actually testified in.

10 A Victor Howell, Victor Harris Howell, is the
11 only case that I testified in besides this one that I'm
12 testifying in today.

13 Q Okay. So in other words, sir, you've been
14 working pretty hard because you're a good American and
15 Good Samaritan, right?

16 A Who wants to get out of jail.

17 Q Okay. Now -- and you say you're not looking
18 for any rewards, right?

19 A Well, not in this particular case. I gave my
20 testimony when I was a free man with nothing to gain,
21 sir, and you know that.

22 Q Sir, you were on probation at that time. You
23 wanted to get off probation, didn't you?

24 A There's nothing I could do that would take me
25 off of probation, Mr. Fallis.

1 Q Well, certainly could if you were to give
2 testimony in a case and you go to the State. Listen, I
3 want to get off probation. Okay? If I testify, I want
4 you to make a recommendation to the Court that I get
5 off. You know the Court will do that.

6 MR. MIZRAHI: Objection, Your Honor,
7 calls for speculation.

8 THE WITNESS: Against the law.

9 THE COURT: Sustained.

10 BY MR. FALLIS:

11 Q You know that's how the process works,
12 though.

13 MR. MIZRAHI: Objection.

14 THE COURT: Sustained.

15 BY MR. FALLIS:

16 Q Do you know how the process works?

17 MR. MIZRAHI: Objection.

18 THE COURT: No. That one I'll allow.

19 BY MR. FALLIS:

20 Q Do you know how the process works? The State
21 gets up, makes a recommendation to the Court that
22 somebody gets a certain amount of sentence or have
23 their sentence lessened. You know that, don't you?

24 A Could you repeat the question?

25 Q Yes. You know how the process works when it

1 comes to cooperating snitches, whatever you want to
2 call them. Comes time for sentencing. They make they
3 make the recommendation, correct?

4 A Before I asked -- I was asked one question,
5 it was clearly made to me that nothing is being
6 offered. No deals are being made. I wasn't bribed,
7 coerced or promised anything in exchange for my
8 testimony.

9 Q You weren't promised, blatantly promised.
10 Okay. But there's always that tacit, tacit
11 acknowledgment that you could get relief.

12 MR. MIZRAHI: I'll object to that, Your
13 Honor.

14 THE COURT: Overruled.

15 BY MR. FALLIS:

16 Q That you could get relief. That's always
17 implied and that's tacit, isn't it?

18 A Nothing of the sort was made known to me like
19 that, Mr. Fallis.

20 Q Okay. And you -- even though you got that
21 before, you were looking at a life sentence, sir, and
22 you got -- we said five in and five out, right?

23 A Yes, sir.

24 Q And you didn't think that was fair, did you?
25 You just said you didn't think that was very good,

1 didn't you?

2 A During my deposition, Mr. Fallis, you touched
3 basis on these same things.

4 Q Yeah.

5 A And to my knowledge, my due process was
6 violated. I sat for four years without one deposition
7 in my own case. And I thought that that's what my deal
8 came from. No one sat down and said, oh, because you
9 testified in this case, you're going to get this
10 instead of this. That -- that -- those words were
11 never said to me.

12 Q Now, there were what? You had, at that time,
13 two -- let's see what you were looking at at that time.
14 Okay? You were looking at two aggravated assaults?

15 MR. MIZRAHI: Your Honor --

16 THE COURT: Sustained.

17 MR. FALLIS: We're talking about
18 exposure, Judge, before his exposure.

19 THE COURT: Hold on. The exposure, yes.

20 MR. FALLIS: Okay. I'm sorry.

21 BY MR. FALLIS:

22 Q You know what the exposure is for an
23 aggravated assault?

24 THE COURT: Mr. Fallis, please.

25 BY MR. FALLIS:

1 Q What degree felony is an aggravated assault?
2 Do you know?

3 A From what I learned, it's a felony in the
4 third degree, punishable by five years.

5 Q And you had --

6 A Which I got, five years in prison.

7 Q You had two charges, two third-degrees,
8 correct?

9 MR. MIZRAHI: Your Honor, I need to
10 object and approach.

11 THE COURT: Okay. Please approach.

12 (The following sidebar conference was had out
13 of the hearing of the jury:)

14 MR. MIZRAHI: It's agg assault.

15 MR. FALLIS: I'm sorry?

16 MR. MIZRAHI: Agg assault in his prior
17 record. He was on probation for armed
18 robbery, nothing to do with agg assault.

19 MR. FALLIS: I know. I didn't get to
20 that one yet. He had an aggravated assault
21 too, though.

22 MR. MIZRAHI: I know. You can't ask him
23 that 'cause it --

24 MR. FALLIS: (Inaudible).

25 (Brief interruption by the reporter.)

1 MR. MIZRAHI: Your Honor, the aggravated
2 assaults that he's referring to are his prior
3 record in 2012.

4 THE COURT: Right.

5 MR. MIZRAHI: Right. So he can't go
6 into the exposure on those. He can say he's
7 a prior convicted felon.

8 MR. FALLIS: I mixed it up. It's armed
9 robbery, correct.

10 MR. MIZRAHI: Exposure is it's
11 punishable by life. He cannot go into the
12 fact that it's an armed robbery, but he can
13 go into the fact that he's facing life on the
14 prior robbery and he got five plus five.

15 MR. FALLIS: Thank you.

16 THE COURT: All right. While we're
17 here, the number of felony convictions or
18 crimes involving dishonesty, fair game. You
19 can go into the nature if he gives you the
20 wrong answer. He has not thus far given the
21 wrong answer.

22 MR. FALLIS: I understand.

23 THE COURT: You cannot ask him that he
24 was going to prison for an armed robbery,
25 just that he was facing up to life in prison.

1 But you have. So you cannot bring up, even
2 as a hypothetical, what if it was an armed
3 robbery, how much would you be facing?

4 That's going to suggest to the jury that's,
5 in fact what, it is. They've already heard
6 about an agg assault twice now.

7 Everybody understand? Mr. Fallis, you
8 got that?

9 MR. FALLIS: Yes, sir.

10 THE COURT: Okay.

11 (At the conclusion of the sidebar conference,
12 the following further proceedings were had in the
13 presence of the jury:)

14 THE COURT: You may continue,
15 Mr. Fallis.

16 BY MR. FALLIS:

17 Q Sir, how many felony convictions do you have
18 right now as we speak?

19 A As we speak, two, in my entire life.

20 Q Correct. However, you're facing a
21 first-degree right now, punishable by life, correct?

22 A Yes, sir, which is one of the two that I just
23 mentioned.

24 Q Right. But you're facing that as we speak
25 right now.

1 A Yes, sir.

2 Q Now, we agree, I think, so far. Are there
3 any more cases that you happen to be working on right
4 now that we need to know about --

5 A No, sir.

6 Q -- for the -- for the State? No? Okay.

7 A I gave all of that up.

8 Q When did you give it up?

9 A When I went to prison. I mean, I was
10 sentenced. I was punished for my crimes, did my time,
11 got out. I was doing the rest of it, which was called
12 "probation," and I gave my testimony with nothing to
13 gain or lose on Mr. Haim, as a free man.

14 Q Well, certainly -- well, we'll get into how
15 you felt about your probation in a little bit. Okay?

16 A Yes, sir.

17 Q All right. Whether you had anything to gain
18 or not.

19 Now, we -- excuse me. You said nothing to
20 gain. Being on probation is like being on a leash,
21 isn't it?

22 A That's my first time on probation so --

23 Q It's like being on a leash, isn't it? You
24 have to report?

25 A It's like having a guardian angel to make

1 sure that you always do correct, do right.

2 Q Right. And if you violate, you can go to
3 prison for the rest of your life, correct?

4 A Well, I didn't even know that that was that.
5 It was explained to me. I thought that a technical
6 violation, which is what I violated with, not a new
7 charge. Like, breaking a curfew, failing a urinalysis,
8 going out of the city limits, those are technicals. I
9 thought that technical violation would not warrant my
10 sentence being opened back up and exposing me to life.
11 I did not know that until recently.

12 Q Oh, okay. But you know now.

13 A Now I know.

14 Q Okay. Good. That's important that you know
15 that, right?

16 A Yes, sir.

17 Q Now, are you saying you've only been
18 arrested -- violated probation twice, correct, since
19 you've been on probation?

20 A Yes, sir.

21 Q Were there any misdemeanor arrests during
22 that period of time?

23 A No, sir.

24 Q I think you said you haven't received any --
25 any relief for your wanting to testify for Mr. Haim.

1 Is that what you said?

2 A Repeat the question, please, sir.

3 Q Have you received any benefit or any
4 consideration because you have volunteered to testify
5 against Mr. Haim?

6 A I've received nothing.

7 Q Yet, correct?

8 A I don't know about that yet word but I've
9 received nothing, sir.

10 Mr. Fallis, I've heard stories from other
11 inmates that --

12 Q Excuse me. Nobody's asked you a question,
13 sir.

14 A Okay.

15 THE COURT: Wait for questions.

16 THE WITNESS: Yes, sir.

17 BY MR. FALLIS:

18 Q Did you want to come back here and --

19 THE COURT: Mr. Fallis, no. Proceed
20 with the witness.

21 BY MR. FALLIS:

22 Q Now, during this period of time that you
23 spent with my client, Mr. Haim, there was a great deal
24 of media attention given to his case, wasn't there?

25 A I wouldn't be aware of that, as there are no

1 TVs in the Duval County Jail, only newspapers.

2 Q Correct. But in the newspapers, there was a
3 great deal, was there not?

4 A I saw one article.

5 Q One article?

6 A One article.

7 Q And that gave pretty good detail about --
8 about what was going on in his case?

9 A It simply said --

10 Q Excuse me, sir, until I finish.

11 A Yes, sir.

12 Q Did that give a detailed history of the case
13 and why he was there?

14 A Vaguely.

15 Q Sir?

16 A Yes, sir.

17 Q Is that a "yes"?

18 A Yes, sir.

19 Q Okay. And it talked about some of the facts
20 that were surrounding his case, right?

21 A Two facts.

22 Q Right. Well, they said that he buried his
23 wife under the pool, didn't it?

24 A It said they unearthed skeletal remains from
25 under the pool, and he was apprehended and brought back

1 from North Carolina.

2 Q Correct. And that's what you told the
3 officer who came to see you, that Mr. Haim told you,
4 quote, he buried his wife under the pool, isn't that
5 true?

6 A That was part of what I told them.

7 Q That's part of what you told, but you told
8 him that he buried his wife under the pool, correct?

9 A Those words might have been used.

10 Q They might have been used? Sir, they were
11 used, were they not? As a matter of fact, you wrote
12 down for Detective Meacham. Are you denying that?

13 A I'm not denying it.

14 Q Okay. So you did -- that's -- that's
15 information that probably didn't come from Mr. Haim
16 because if, in fact, that were the truth, that's not
17 where his wife's body was found. So that's something
18 you very well might have gotten out of the media,
19 correct?

20 A Or he could have been trying to mislead me
21 after his antennas went up.

22 Q Okay. He misled you by telling you, I buried
23 my wife under the pool, to mislead you for what
24 purpose?

25 A Every lie has a little bit of truth in it.

1 Q Okay. And according to you, he also told
2 you, quote, they put luminol in his garage, right?

3 A Direct words from Mr. Haim.

4 Q Right. Would it surprise you that Mr. Haim
5 doesn't have a garage?

6 A Well, garage, house. I said they luminol'd
7 his entire house.

8 Q Sir. You said that he told you that he --
9 they put luminol on his garage. You were specific
10 about that, sir. Now I'm telling you, would it
11 surprise you that he didn't have a garage?

12 A Once again, maybe trying to mislead me after
13 his antennas went up.

14 Q He was going to mislead you. While he's
15 confessing his guts out to you, he's trying to mislead
16 you, I see, telling you, quote, he has a garage; he
17 buried his wife under the pool -- okay? -- stuff that
18 unfortunately was reported in the media and it was
19 false. So he was just telling you what was false to
20 mislead you, is that right?

21 A It's a possibility.

22 Q Okay. To mislead you for what purpose, sir?

23 A Well, he could have caught wind that I was
24 one of the inmates assisting the State with cases and
25 chose to go that route. Who knows?

1 Q If he thought that you were somebody who was
2 trying to assist the State in their cases, you think he
3 would -- he was dumb enough to start telling you things
4 about his case?

5 A There's a starting point and an ending point.
6 The media didn't say anything about Charlene,
7 weights --

8 Q Sir --

9 A -- Tennessee, that they have dogs in North
10 Carolina, a RAV4 --

11 Q That's not --

12 A -- nothing about Ann Wright.

13 Q Excuse me. That is not criminal conduct.
14 You're in a cell with somebody for I don't know how
15 long before he got out. But you guys talked about --
16 he told you -- you told me you were a mechanic, right?
17 He told you he had a car. He had this. He had that.
18 Sir, that's not the kind of talk we're talking about.
19 All right? We're talking about somebody confessing to
20 somebody he doesn't even know -- okay? --

21 THE COURT: Mr. Fallis --

22 BY MR. FALLIS:

23 Q -- about a crime, something --

24 THE COURT: Mr. Fallis, if you can ask a
25 question.

1 BY MR. FALLIS:

2 Q Okay. That's what we're talking about here.

3 Okay?

4 MR. FALLIS: Well, he's giving me a

5 dialogue and I want him to --

6 THE COURT: No. You're -- you're making

7 an argument to him. Just ask the question,

8 sir.

9 BY MR. FALLIS:

10 Q Now -- now, in the news, right, you saw the

11 fact that they did an excavation and they found

12 skeletal remains, correct?

13 A Yes, sir. There was one fact in that

14 newspaper clipping.

15 Q Now, you described this cell. 10 by 12, is

16 that what you said it was?

17 A 12 by 8.

18 Q 12 by 8. Okay.

19 Now, in that cell, people had places where

20 they would keep their personal belongings, right?

21 A Yes, sir.

22 Q All right. They would keep their letters

23 that they were getting from their wives or from home,

24 right? That's nature of the things they would keep

25 there.

1 A Any personal belongings.

2 Q Right. As a matter of fact, they would also
3 keep their what's called the "discovery" that they
4 received from the State, like police reports and that
5 sort of thing. They would keep them there too,
6 wouldn't they?

7 A I would imagine, yes, sir.

8 Q You would imagine? You know darn well they
9 did -- they do, right?

10 A Some people don't even have that information
11 in their cell.

12 Q Well, some, they do, right? And they're not
13 always in their cells, are they?

14 A They're not always in there.

15 Q All right. As a matter of fact, if
16 somebody's out of their cell, we'll say going to the
17 medical chapel or whatever it may be, that means it's
18 out there for anybody to go prying, isn't that true?

19 A That's true. Mr. Fallis --

20 Q Excuse me. Is it true, yes or no, that it's
21 available to somebody go prying?

22 A If it ever existed, Mr. Haim's never had
23 discovery while he was in Cell 33 --

24 Q How do you know that?

25 A -- with me.

1 I'm very vigilant and I keep watch.

2 Q You would only know that, sir, if you looked
3 for it, right?

4 A I couldn't close my eyes around the man.
5 After I got the recording, he had to go. He's a
6 murderer.

7 Q I see. So you say that you went -- you know
8 that he didn't have any what's called "discovery" in
9 his personal effects. Is that what you're saying?

10 A I know this for a fact. I do the mail call
11 in the morning. Who brought it, the tooth fairy?

12 Q That doesn't come -- excuse me. That doesn't
13 come -- discovery doesn't come from the tooth fairy.
14 Okay? And it doesn't come in the mail and you know
15 that. You've been --

16 MR. MIZRAHI: Objection, Your Honor.

17 This is just argument.

18 THE COURT: It is just argument. We've
19 got to ask questions and get answers. Okay?

20 BY MR. FALLIS:

21 Q Sir, question --

22 MR. FALLIS: Well, he raised his own
23 question in return. I'm giving it right
24 back.

25 BY MR. FALLIS:

1 Q Sir, that doesn't come in the mail, does it?
2 That's handed by a lawyer to their client. So if you
3 hand it out -- you're not delivering for the lawyer,
4 are you, discovery stuff? No, right?

5 A No, Mr. Fallis. If you can prove to me that
6 Mr. Haim received his discovery within ten days of
7 being in Cell 33, then what you're saying would be
8 valid. And you know that's not the truth. He never
9 had discovery for anyone to have availability to in
10 Cell 33, which is the cell I was housed in with him.

11 Q I'm afraid, sir, that he was in there with
12 you for more than ten days, sir?

13 A That should be part of your closing
14 statements to the jury.

15 THE COURT: Stop.

16 BY MR. FALLIS:

17 Q He was in --

18 THE COURT: Both sides stop.

19 Okay. There's closing argument and
20 there's cross examination.

21 MR. FALLIS: I understand.

22 THE COURT: Got to ask questions and
23 you've got to wait until he's done.

24 THE WITNESS: Yes, sir.

25 THE COURT: Then he can answer the

1 question. And he's going to finish his
2 answer before you can ask another question.

3 BY MR. FALLIS:

4 Q Mr. Haim was in there for more than ten days
5 with you, wasn't he?

6 A I can't remember. That was a long time ago.

7 Q Well, so now you're saying you don't know how
8 many days Mr. Haim was with you?

9 A I just know he didn't have discovery in
10 there, sir.

11 Q You wouldn't know that unless you went
12 through his -- his files.

13 A I never did such a thing, Mr. Fallis.

14 Q Hypothetical. If he had discovery, you would
15 have ability to go in there and look at it, right?

16 A Just like he would have the ability to go
17 look at mine. Yes.

18 Q Right.

19 A The answer is yes.

20 Q Okay. So the -- the ability was there to
21 go -- if he had discovery, to go in there and get some
22 police reports so that you would have a little more to
23 say to the State, right?

24 A Yes, sir.

25 Q Let's talk about your deal. Okay? Now, you

1 didn't think it was very much of a good deal at all,
2 you getting five and five on a life felony, did you?

3 A I didn't think that that was a deal?

4 Q You didn't think it was a good deal.

5 A I thought going home was a deal.

6 Q Okay. So you really wanted -- you expected
7 to go home instead of going to prison for the rest of
8 your life or ten years, right?

9 A Prison is a place.

10 Q That would have been good deal, right?

11 A Good deal would have been going home.

12 Q Right. So five years of probation and five
13 years of incarceration, not a good deal as opposed to
14 life, in your opinion.

15 A If I was in a cell by myself for five years,
16 Mr. Fallis, that would have been a good deal. I've
17 been placed in an environment with crime doors of all
18 sorts -- rapist, murderers, arsonists, kidnappers, home
19 invaders. That's not a deal to me.

20 Q Oh, I see. 'Cause you were a much better
21 person than that -- than they. Is that what you're
22 saying?

23 A We all broke the law to get there. I'm not
24 saying I'm better than anyone.

25 Q You don't want to be around criminals, right?

1 A Ones that hurt people.

2 Q That hurt people.

3 A Yeah.

4 Q And none of the crimes that you have been
5 charged with --

6 MR. MIZRAHI: Objection, Your Honor.

7 BY MR. FALLIS:

8 Q -- hurt people?

9 THE COURT: Sustained. Sustained.

10 BY MR. FALLIS:

11 Q Now, you feel that your attorney,
12 Mr. Holliday, did a terrible job for you, right?

13 MR. MIZRAHI: Objection, relevance.

14 THE COURT: Sustained.

15 BY MR. FALLIS:

16 Q You thought that your sentence was unfair,
17 right?

18 MR. MIZRAHI: Objection, asked and
19 answered.

20 THE COURT: Yeah. That's sustained.

21 We've covered that, Mr. Fallis.

22 MR. FALLIS: Well, I'm just leading to
23 the next question, which you just sustained
24 the objection to which I can --

25 THE COURT: Okay. Please, go to the

1 next question.

2 MR. FALLIS: Sure.

3 BY MR. FALLIS:

4 Q Your dissatisfaction with your sentence have
5 anything to do with the representation you got?

6 A I didn't feel that I received a deal,
7 Mr. Fallis.

8 Q Okay. Now, are you saying you never
9 committed the crime that you --

10 MR. MIZRAHI: Objection, Your Honor.

11 BY MR. FALLIS:

12 Q -- went to prison --

13 THE COURT: Sustained.

14 MR. MIZRAHI: Relevance.

15 MR. FALLIS: Excuse me. We're deciding
16 whether or not, Your Honor --

17 THE COURT: I sustained the objection,
18 Mr. Fallis. So please move on to another
19 question.

20 BY MR. FALLIS:

21 Q Were you guilty of any crime that you --

22 MR. MIZRAHI: Objection.

23 THE COURT: Convictions?

24 MR. FALLIS: No. I didn't say of what,
25 Judge. I just asked him whether or not --

1 THE COURT: I understand.

2 MR. FALLIS: -- he was guilty of a
3 crime.

4 THE COURT: I sustained the objection.
5 That's not relevant.

6 MR. FALLIS: A life crime.

7 BY MR. FALLIS:

8 Q You said that you were not satisfied with
9 your sentence.

10 MR. MIZRAHI: Objection, Your Honor.

11 THE COURT: I think he's not asking a
12 question.

13 MR. MIZRAHI: Correct, just talking.

14 THE COURT: Yes.

15 BY MR. FALLIS:

16 Q Now, all those things you were testifying to
17 on direct examination about who his wife is and that
18 sort of stuff, what was the purpose of that?

19 A Well --

20 Q You volunteered that. Okay? What was the
21 purpose of that?

22 A The purpose of that was to prove that I had
23 conversations beyond the normal scope with Mr. Haim.
24 There's not anyone else in the pre-detention facility
25 that has the information that I relayed on that.

1 Q I see. Now, I think we might -- we might
2 have to listen to this one-hour, whatever-hour tape,
3 unless you're going to concede --

4 A My court date's on the 22nd. I'm not going
5 anywhere. Play it.

6 Q Well, I'm just asking you this: You can see
7 that on this tape you said you heard -- okay? -- that
8 you were there trying to make new cases for the State.

9 MR. MIZRAHI: Objection, asked and
10 answered.

11 MR. FALLIS: Would you -- wrapping it
12 up, Judge.

13 THE COURT: Okay. I'll overrule it.
14 You can ask that one question. I think it's
15 been asked before but go ahead. You can
16 ask --

17 MR. FALLIS: Well, I'm trying to tie it
18 up, sir.

19 BY MR. FALLIS:

20 Q Would you agree?

21 A Can you repeat that question?

22 Q Yes, sir. Would you agree, on this tape,
23 when you were wired for -- how long was it again? A
24 day?

25 A I don't know an approximate time, but it was

1 for a few hours.

2 Q All right. A few hours that you had some
3 conversations with Mr. Haim, where he didn't make any
4 incriminating statements, correct?

5 A Oh, he made incriminating statements.

6 Q On this tape?

7 A Yes, sir.

8 Q You're saying there are incriminating
9 statements on this tape?

10 A They're having party at his house with his
11 wife's dead body in the backyard with another woman.

12 Q Excuse me. That is not -- I'm talking about
13 incriminating statement that had to do with this case,
14 sir. Are there anything on here where he discusses
15 where he had anything to do with his wife's
16 disappearance?

17 A If your definition of incriminating is, yes,
18 I killed my wife and this is how I did it, that's not
19 on that tape.

20 Q Thank you.

21 A But he did tell me that.

22 Q All right. What's on this tape is a
23 conversation about a girlfriend, about cars and that
24 sort of stuff, right?

25 A Yes, sir.

1 Q Nothing more than that, isn't that true?

2 A Nothing more.

3 Q It's not -- well, tell me what's on that tape
4 that concerns Mr. Haim that you would say was
5 incriminating.

6 A I'll repeat again. In the time frame that
7 Bonnie was murdered, he is having parties at his house
8 and sending another woman for milk --

9 Q Okay. Now --

10 A -- with his wife's body in the backyard.

11 Q All right. If, in fact, that were the case.
12 Okay?

13 Now, on this tape, you would agree it's you
14 trying to cultivate and make more -- and help the State
15 with even more cases than the ones we've already talked
16 about.

17 A Repeat?

18 Q On this tape, you were out there trying to
19 cultivate information for the State on other people.

20 A Cultivate is not the word that I would use.
21 I would say --

22 Q What word would you use? What word?

23 A Record --

24 Q Record.

25 A -- information.

1 Q Right.

2 A Cultivate is when you add stuff.

3 Q Oh, I see.

4 A I'm just listening.

5 Q Oh, I see. He was just coming over to you
6 and without you prompting them, is that what you're
7 saying?

8 A They do it all the time. I'm the biggest guy
9 in there. They see me as the head leader of the dorm,
10 protector, problem solver, and they always come up to
11 me talking.

12 Q And one of the cases where you, quote,
13 recorded, you did more than that, didn't you? You
14 actually had somebody send some letters to a relative
15 outside to try to induce -- do you know what I'm
16 talking about?

17 A It's kind of foggy.

18 Q Well, tell me what you remember about that
19 kind of conduct.

20 A Well, if I reached out to a homicide
21 detective or somebody in the children's sex crime unit
22 or something and I didn't get a response quick enough,
23 it's very well possible that I called my fiancée and/or
24 wrote her a letter, asking her to contact them for me
25 if that would get them to come to me quicker. That's

1 the only thing that I can equate with what you're
2 saying, sir.

3 Q I don't think that's what we're talking
4 about, sir. I believe that somebody wanted to get in
5 contact with somebody on the outside so they would not
6 get somebody to testify. And you used that -- you
7 helped or you volunteered them your vehicle in that.

8 A Could you repeat that?

9 Q Sure. If somebody was outside, you had
10 volunteered to have somebody be a vehicle to
11 communicate so somebody would not testify. I've got to
12 look that up, but I know remember reading that in your
13 deposition.

14 A I probably would need you to look it up
15 because it sounds strange to me, and I have a pretty
16 good memory.

17 Q Well, you told me you don't recall quite a
18 few things so far. But your memory's pretty good?

19 A It's not perfect but it's pretty good.

20 Q Okay. So as we sit right now, you have
21 absolutely no -- no concern one way or another whether
22 or not the State steps up again and helps you with the
23 exposure you have now.

24 A I have to face my judge pretty soon, and he
25 is the only one that can render me my punishment.

1 Q Excuse me. The judge is not going to do it
2 by himself. He's going to ask for a recommendation of
3 the State, is that not true?

4 A I don't know exactly how court proceedings
5 take place, as I don't have a Florida Bar license.

6 Q Uh-huh.

7 A But I would imagine that for being on
8 probation for 20 months and only violating two times
9 with a technical violation and not creating any new
10 crimes that my punishment shouldn't be that harsh.

11 Q Well, let's put it this way: It happened
12 before. The State made a recommendation when you were
13 looking at life that you get five and five. That was a
14 State recommendation, sir.

15 A And once again, as I repeated earlier, as I'm
16 going to reiterate, my due process was violated. Can
17 you name an inmate that was incarcerated for four years
18 that didn't have one deposition done on his behalf?

19 Q What -- I don't understand what you mean;
20 your due process was violated.

21 MR. MIZRAHI: Your Honor, this has been
22 asked and answered.

23 MR. FALLIS: Excuse me, Judge.

24 THE COURT: It has been asked and
25 answered. I mean, I know I've heard this.

1 MR. FALLIS: Well, I don't think I got
2 it. He said due process.

3 BY MR. FALLIS:

4 Q What do you mean by --

5 A Speedy trial takes place in 175 days.

6 THE COURT: Hold on.

7 I sustained the objection so ask -- ask
8 another question, please.

9 BY MR. FALLIS:

10 Q I'm trying to understand, sir, why it is that
11 you feel that you should have got no time for a life --

12 MR. MIZRAHI: Your Honor, objection.

13 THE COURT: That wasn't his answer.

14 Sustained.

15 MR. FALLIS: All right. Your Honor, I
16 have no further questions.

17 THE COURT: Any redirect?

18 MR. MIZRAHI: No, Your Honor.

19 THE COURT: May this witness be excused?

20 MR. MIZRAHI: He may.

21 THE COURT: Let's take a short recess,
22 folks, ten minutes. We'll put it down to
23 4:30. Court's in recess.

24 (Witness excused.)

25 (Jury excused.)

1 THE COURT: All right. Let the record
2 reflect the jury has left the courtroom.

3 MR. MIZRAHI: Your Honor, we would like
4 to put on two more witnesses, the medical
5 examiner and the forensic anthropologist.
6 They both traveled from out of town to be
7 here today.

8 THE COURT: We're going to do it. We're
9 going to do them hopefully in an hour. If
10 not, until we're done.

11 MR. MIZRAHI: Yes, sir.

12 THE COURT: Within reason.

13 MR. MIZRAHI: Within reason.

14 MR. FALLIS: I think it will be more
15 than an hour between cross on both of them.

16 MR. MIZRAHI: We're going to be quick on
17 direct. I can't say how long you will be.

18 THE COURT: Okay. Be back at 4:30.
19 We're in recess.

20 (Short recess.)

21 (Defendant present.)

22 THE COURT: Let me see the lawyers at
23 sidebar about scheduling. We don't need the
24 court reporter.

25 (Sidebar conference without the reporter.)

1 THE COURT: Are we ready for the jury?

2 MR. MIZRAHI: Yes, we're ready.

3 THE COURT: Bring in the jury.

4 (Jury present.)

5 THE COURT: Welcome back, ladies and
6 gentlemen.

7 We're going to continue on with the
8 trial.

9 State, call your next witness.

10 MR. MIZRAHI: Dr. Wendy Stroh.

11 (Witness sworn by the clerk.)

12 MR. MIZRAHI: May it please the Court?

13 THE COURT: Yes, sir.

14 WENDY STROH, D.O.,

15 having been produced and first duly sworn as a witness
16 on behalf of the State, testified as follows:

17 VOIR DIRE EXAMINATION

18 BY MR. MIZRAHI:

19 Q Dr. Stroh, please introduce yourself to the
20 jury.

21 A My name is Wendy Stroh.

22 Q What do you do for a living?

23 A I am an autopsy pathologist and a medical
24 examiner.

25 Q Where are you currently employed?

1 A I'm currently employed at the University of
2 Florida in Gainesville and at the medical examiner in
3 Gainesville.

4 Q What is a medical examiner?

5 A Medical examiner in the State of Florida is a
6 physician who has boards in anatomic pathology or
7 anatomic and clinical pathology as well as a forensic
8 pathology fellowship.

9 Q And what are your duties as a medical
10 examiner?

11 A By Florida statutes, we are tasked with
12 identifying legal cause and manner of death.

13 Q How long have you been employed as a medical
14 examiner?

15 A Since 2008.

16 Q Were you previously employed in the
17 District IV Medical Examiner's Office here in
18 Jacksonville, Florida?

19 A I was.

20 Q And were you so employed in December of 2014?

21 A I was.

22 Q Are you board-certified in forensic
23 pathology?

24 A I am.

25 Q Are you board-certified in any other forms of

1 pathology?

2 A Anatomic and clinical pathology.

3 Q What is pathology?

4 A Pathology is the study of abnormal anatomic
5 findings as they pertain to the human body.

6 Q And how does forensics work? What is
7 forensic pathology?

8 A Forensic pathology is the study of bodies
9 that may have undergone unnatural deaths. We are -- we
10 perform autopsies. We read medical records. We read
11 investigative reports. Occasionally, we send
12 toxicology. We call in specialists that can help us to
13 help determine cause and manner of death.

14 Q And you are a medical doctor?

15 A I'm an osteopathic physician.

16 Q When did you receive your medical license?

17 A In 1984.

18 Q When did you become board-certified in
19 forensic pathology?

20 A 2007.

21 Q So what did you do from '80 to 2007 in the
22 field of medicine?

23 A I was at the naval medical center in San
24 Diego, doing an anatomic and clinical pathology
25 residency, and then I practiced surgical pathology and

1 clinical pathology both in San Diego and Jacksonville
2 and Georgia.

3 Q So pathology, would an example of that be
4 that you would examine tissues taken in, let's say, a
5 biopsy to determine if cancer was present?

6 A That's correct.

7 Q And then you took that specialty and went to
8 a further subspecialty of forensic pathology?

9 A That's correct.

10 Q And have you allowed in your field of
11 forensic pathology to come into courts like this and
12 testify?

13 A Yes, I have.

14 Q Approximately how many times?

15 A 30.

16 MR. MIZRAHI: Your Honor, at this time,
17 I would tender the witness as an expert in
18 the field of forensic pathology for any
19 potential voir dire.

20 THE COURT: Any voir dire?

21 MR. FALLIS: No, Your Honor.

22 THE COURT: You may continue.

23 MR. MIZRAHI: Thank you, Your Honor.

24 DIRECT EXAMINATION

25 BY MR. MIZRAHI:

1 Q I want to turn your attention to the Medical
2 Examiner 14-2030. Have you had the opportunity to
3 review your medical file on that case?

4 A The inspection report?

5 Q Yes, Your Honor -- yes, ma'am. I've been
6 saying, yes, Your Honor, all day.

7 A Just got promoted.

8 THE COURT: That's me.

9 BY MR. MIZRAHI:

10 Q And have you also reviewed photographs in
11 regard to that medical examination?

12 A Yes.

13 MR. MIZRAHI: Your Honor, at this time,
14 it would be appropriate to stipulate to the
15 identity.

16 THE COURT: Yes.

17 Mr. McCallister, do you have that
18 stipulation?

19 MS. WARREN: No objection, Your Honor.

20 THE COURT: All right. Ladies and
21 gentlemen of the jury, I'm going to read you
22 a stipulation. Sometimes the parties
23 stipulate to a fact, and if they do so, then
24 you're to accept that fact as having been
25 proven. The weight that you give to it, of

1 course, is up to you, as all -- as are all
2 facts.

3 And the stipulation regarding victim ID
4 is as follows: The State of Florida, by and
5 through the undersigned Assistant State
6 Attorney, and the defendant, by and through
7 the undersigned attorney, hereby agree and
8 stipulate that the human remains found at
9 2439 Dolphin Avenue and examined by the
10 Medical Examiner's Office in ME Case
11 No. 14-2030 were the remains of Bonnie Haim.

12 And that's signed by Mr. Mizrahi and
13 Mr. Fallis.

14 MR. MIZRAHI: Thank you, Your Honor.

15 BY MR. MIZRAHI:

16 Q So, Dr. Stroh, you talked about your
17 statutory duties as a medical examiner. Are some of
18 your statutory duties to determine cause and manner of
19 death?

20 A That's correct.

21 Q Can you explain to the jury what those terms
22 are?

23 A Cause of death would be the anatomic finding
24 that is associated with the demise.

25 Q And what is manner?

1 A Manner is how it happened.

2 Q In Florida, are there certain categories of
3 manner of death, that you are essentially required to
4 find one of the five categories?

5 A Yeah. In Florida, there are five categories.
6 They are homicide, suicide, accident, natural and
7 undetermined.

8 Q Are those decisions of manner of death
9 100 percent medically based?

10 A Manner is an opinion.

11 Q And is that always based on the autopsy, or
12 do you take into account all relevant findings?

13 A My job as a medical examiner is to take
14 information from all different sources and try to come
15 up with a reasonable opinion as to the way that person
16 died.

17 Q You referred to autopsies. And I assume
18 you've been doing autopsies for years, and you've done
19 hundreds, up to thousands. Is that fair?

20 A That's correct.

21 Q Were you able to do an autopsy in this
22 particular case, 14-2030?

23 A What I did was an inspection. Normally, in
24 autopsy, there -- there will be soft tissue, skin and
25 other things on the body. In this case, the -- what I

1 received was -- was basically skeletonized remains.

2 Q And since all you had was skeletonized
3 remains, were there any organs that you could look at?

4 A No.

5 Q Were there any veins or arteries you could
6 examine?

7 A No.

8 Q Did the lack of these things make it
9 impossible to determine what actually ended Bonnie
10 Haim's life?

11 A In this case, yes.

12 Q So you were unable to render a cause of
13 death.

14 A That's correct.

15 Q Now, legally speaking, the statute, are you
16 required to render an opinion on cause of death in
17 order to render an opinion on manner of death?

18 A Not necessarily.

19 Q And are there other occasions besides Bonnie
20 Haim's case where there are not sufficient findings in
21 the examination of the remains to determine cause of
22 death?

23 A Yes.

24 Q What other examples have you had in your
25 career?

1 A Asphyxia due to, say, strangulation.
2 Frequently, it's diagnosis of exclusion. We may see
3 nothing in the neck. We may see no hyoid bone
4 fractures. We may see no contusions. And the opinion
5 is rendered by whatever other evidence comes to light.

6 Q So there are certain -- even when you have
7 tissue and body to autopsy, you cannot be able to
8 render an opinion based on the medical evidence itself
9 as to the cause of death.

10 A That's correct.

11 Q Do you also have situations where your
12 decomposition has gone on so long that you're unable to
13 render those opinions?

14 A Advanced decomposition is problematic because
15 you have animal predation. Things disappear. Things
16 are -- they're in the processes of decomposing. And so
17 you can't say a lot about some of those things.

18 Q In the course of your studies and your
19 career, have you also had the opportunity to examine
20 remains that were in high-Fahrenheit fires, high-degree
21 fires?

22 A Yes.

23 Q And do those also lead to a difficult time in
24 determining what actually led to the death of an
25 individual?

1 A Yes, they can.

2 Q So it's not unusual.

3 A No, it's not.

4 Q When you're talking about burying remains,
5 are there other areas in the fields of forensics that
6 have a little bit more expertise in the study of
7 skeletal remains?

8 A We tend to rely on anthropologists to examine
9 and evaluate skeletal remains because they have a much
10 longer history with understanding bones and various
11 things that will affect bones. They do research in
12 those areas, and we do not, as medical physicians, get
13 that much training in bones. And rather than make a
14 case more difficult, sometimes it's easier just to turn
15 the case over to an anthropologist.

16 Q And did you use an anthropologist in this
17 particular case?

18 A Yes, we did.

19 Q And is that Heather Walsh-Haney?

20 A Yes, it is.

21 Q Have you worked with her in the past or is
22 this the first case?

23 A No. I've worked with her on several cases
24 before.

25 Q And did she render reports that dealt with

1 her specific examination of the remains?

2 A Yes.

3 Q I want to turn your attention to the remains
4 of Bonnie Haim. Did you go to the scene itself?

5 A I did.

6 Q Is that the Dolphin Avenue address?

7 A That's correct.

8 Q And I'm going to show you -- I don't know if
9 your screen's still on -- what's been entered into
10 evidence as Exhibit 103. If it's not on, just press
11 it. Just -- the screen should come up. Do you see it
12 now?

13 A Yes.

14 Q Who's the lady in the white jacket?

15 A The lady with the white hair and the white
16 jacket is me.

17 Q And so you actually went to the scene and
18 examined some of the pieces of evidence, the bones
19 while the excavation was being done.

20 A That's correct.

21 Q I'm going to show you what's been entered
22 into evidence as State's Exhibit 117. Is this how the
23 Medical Examiner's Office received the remains of
24 Bonnie Haim?

25 A Yes.

1 Q So I'm going to go through a few pictures.
2 The remains, was it something that was easy to do to
3 separate all the dirt and rocks and things and
4 determine what was part of the skeleton and what was
5 just dirt and rocks?

6 A It was very difficult, especially considering
7 I am not an anthropologist. So just being able to
8 decide what's a pebble and what's part of a bone can be
9 very difficult.

10 Q Even to your trained eye.

11 A Right. Because bones are not our -- our
12 purview. Plus the bones were embedded in dirt, and
13 there were various fabrics on and around the area. So
14 yes. It took several days.

15 Q So this was not an easy one.

16 A No.

17 Q Is photography important in your job?

18 A Yes. We have a forensic photographer that
19 takes pictures of all of our cases.

20 Q And why is that important?

21 A It's just another way to -- to objectify and
22 to make sure that things get recorded.

23 Q So I'm going to go through some of those
24 photographs with you so you can explain to the jury
25 what they see. And I'll begin with State's

1 Exhibit 118, which is the area of the top of the body
2 that was -- after the plastic wrapping has been taken
3 off. Is that what the jury's looking at here?

4 A Yes. That would be the dirt with some roots
5 growing out of it, and you may be able to see parts of
6 several bones. There are some shredded pieces of
7 plastic and what looks like string.

8 Q And so I can and you can too as well, we see
9 a number, the 2030 number here, identifying this as
10 your autopsy or, I guess, medical examiner review or
11 remains review. So the jury knows this is related to
12 this case.

13 A Yes. That's the identifying number.

14 Q Then we also see here -- you mentioned bones.
15 I think we see some of them pretty obvious in the --
16 State's Exhibit 118, where I'm drawing a green line?

17 A Okay.

18 Q Do we also see what we refer to as the
19 plastic? Is that going to be these items here?

20 A Yes. And also some plastic -- little pieces
21 of plastic that are pink.

22 Q Are you referring to the pink items here?

23 A Yeah.

24 Q And then I think you mentioned string. Is
25 that going to be this item here?

1 A Yes.

2 Q And then you mentioned all the roots, which
3 is going to be here?

4 A That's correct.

5 Q Just to give the jury an idea of what they're
6 looking at.

7 And then going now to State's Exhibit 119, is
8 this going to be the lower portion of the remains of
9 Bonnie Haim?

10 A It looks like it.

11 Q Did you end up removing a pair of pants from
12 these remains?

13 A Yes.

14 Q And were those, like, pink sweatpants?

15 A They were either sweatpants or pajama bottoms
16 or something to that effect.

17 Q And do we see that garment apparently on the
18 legs like this?

19 A Yes. I believe that would be them.

20 Q And this is the way the body came to you when
21 you began the process of unwrapping it and using your
22 forensic photography to take pictures.

23 A Yes.

24 Q State's Exhibit 120, what are they looking at
25 here?

1 A This looks like it's a portion of the cranial
2 vault.

3 Q State's Exhibit 120 [sic], what are they
4 looking at here?

5 A Various pieces of bone and teeth.

6 Q State's Exhibit 122, what are they looking at
7 here?

8 A This is a long bone.

9 Q State's Exhibit 123?

10 A Teeth.

11 Q State's Exhibit 124, what are they looking
12 at?

13 A Mostly pebbles but there may actually be some
14 portion of bone in there.

15 Q And, again, is that going to be more along
16 the lines of a forensic anthropologist being able to
17 identify those kind of things?

18 A Yes.

19 Q State's Exhibit 125, is that going to be that
20 string we referred to earlier?

21 A Yes.

22 Q It actually has a tag on it. Do you see
23 that?

24 A Yes, it does.

25 Q I think you took a close-up of that tag as

1 well?

2 A Yes.

3 Q State's Exhibit 127, are those going to be
4 those pink sweatpants and/or pajama bottoms that you
5 photographed?

6 A That's correct.

7 Q So you photographed these as -- without
8 cleaning them or doing any kind of disruption to them
9 other than taking them -- taking the remains out of
10 them, I guess is the best way to say it.

11 A Right, and laying them on the paper so that
12 they could photograph them.

13 Q Do we actually see some of the remains
14 slightly above those pants?

15 A There are portions of long bones up there and
16 maybe a shoulder. I'm not sure. Some other bones.

17 Q And then did you take a photograph of the tag
18 of those pink garments?

19 A Yes.

20 Q State's Exhibit 129, is this what you
21 referred to as Bonnie Haim's undergarment?

22 A Yes.

23 Q Or underwear?

24 A Yes.

25 Q State's Exhibit 130, what is this?

1 A That, as it turned out, is a black plastic
2 poncho. At the time, we weren't sure whether it was a
3 trash bag or something else, but as we started to look
4 at it more closely, it became more obvious that it was
5 a poncho.

6 Q I know the jury can see. But for the record,
7 so it's on the transcript, the poncho is a Mickey Mouse
8 poncho? The character Mickey Mouse is on the front?

9 A Yeah, somewhere.

10 Q It's right here, if you can't see it.

11 A Probably a portion of it. I'm just having a
12 hard time.

13 Q Yes. The poncho itself was in a fragile
14 condition or was it, like -- it wasn't the way a poncho
15 normally felt.

16 A It was very lightweight plastic material that
17 was very wrinkled.

18 Q And did you -- in State's Exhibit 131, do we
19 see one of the -- the fasteners that you could do to
20 make the poncho fit a little bit better?

21 A Yes.

22 Q State's Exhibit 132, what are we looking at
23 here?

24 A More pebbles and possible bones.

25 Q And we can see a little bit of that poncho

1 here to the right?

2 A That's correct.

3 Q Okay. So I didn't ask you about this poncho.
4 This poncho, this black plastic, is that what we saw in
5 the original pictures, the top of the body?

6 A Yeah, yes.

7 Q The poncho did not cover the entire body.

8 A I don't think it covered the entire body.

9 Q Was it more towards the top?

10 A In some place, yes, not every place.

11 Q State's Exhibit 133, what are we looking at
12 here?

13 A Even smaller pebbles and possible bone
14 fragments.

15 Q State's Exhibit 134?

16 A More of the same, including most of the bones
17 as well as some of the clothing, some of that pink
18 plastic material.

19 Q Thank you, Doctor.

20 I want to show you -- I want to fast-forward
21 now. State's Exhibit 135, is that a photograph that
22 your office took or one that Heather Walsh-Haney took?

23 A I believe that was probably taken by
24 Dr. Haney.

25 Q And she rendered some opinions with regard to

1 that. Do you have any opinions about what that is?

2 A It's a circular defect.

3 Q And nothing more than that? You would defer
4 to Dr. Haney?

5 A Yes.

6 Q During the course of going through the actual
7 body that was on the table, did you find some possible
8 shell casings and projectiles that you collected and
9 eventually gave to the Sheriff's Office?

10 A Yes. I'm not sure whether Dr. Walsh-Haney
11 found them or whether we had found them. I -- I just
12 don't know. I don't remember the sequence of things at
13 this point. But, yeah, this -- this is what we
14 supposed was a metal jacket, a recovered projectile.

15 Q But whether it was you or Dr. Haney, that --
16 those items were recovered from the body itself that
17 was shipped to your office --

18 A They were.

19 Q -- in the dirt area.

20 A They were -- right. They were in and amongst
21 all of the materials that came in on that backboard.

22 Q So I just want to go back. The items
23 contained in 1 -- items contained in 136 would have
24 been located within the items contained in State's
25 Exhibit 117, which is what you received in the Medical

1 Examiner's Office.

2 A Correct.

3 Q And finally, State's Exhibit 137 is going to
4 be a full layout of the skeletal remains, essentially
5 in an anatomically correct position.

6 A Essentially anatomically, correct.

7 Q Were you aware of the fact that Heather
8 Walsh-Haney also briefly came to that scene? Was she
9 there when you were there?

10 A No. She wasn't there when I was there.

11 Q Now, you mentioned briefly in your testimony
12 that strangulation is a cause of death and sometimes
13 difficult to -- to determine because of lack of
14 residual findings. Were you able, in this case, to
15 examine the hyoid bone, bones contained in the deep
16 recesses of the neck?

17 A I didn't -- I don't recall seeing a hyoid
18 bone.

19 Q Now, the mechanism of a strangulation death,
20 could you briefly explain that to the jury about how
21 much time and effort it takes?

22 A If it's a manual strangulation, it involves
23 pressure to the anterior and lateral sides of the neck
24 with vessels being constricted by the hands as well as
25 possible forces directed down on the hyoid bone and

1 thyroid cartilage, causing them to fracture.

2 Q And how does that differ from, like, let's
3 say, a hanging, where that death can be nearly --

4 MS. WARREN: Objection, Your Honor.

5 THE COURT: Grounds? Grounds?

6 MS. WARREN: Relevance.

7 THE COURT: Overruled.

8 MS. WARREN: I need to make a record,
9 Your Honor.

10 THE COURT: Well, make it later.

11 Let's keep going. Ask the question,
12 Mr. Mizrahi.

13 BY MR. MIZRAHI:

14 Q So how -- how does that differ from a
15 hanging, where you say that death would be nearly
16 instantaneous? Does a manual strangulation take more
17 time and effort to accomplish?

18 A It can. It depends on the position of the
19 body of the victim as well as the person that is doing
20 the strangling. There's choke holds and other things
21 that apply pressures in different ways, and so it's not
22 necessarily always the same.

23 Q Sure. Generally speaking, though, in
24 strangulations, would the person that's being strangled
25 be aware of their circumstances?

1 A If they're conscious, yes.

2 Q Absent some other reason for them to be
3 unconscious, they would be aware.

4 A Yes.

5 Q And then that strangulation would require
6 some amount of time before unconsciousness and death
7 resulted.

8 A Some, yes.

9 Q And the time that would result if pressure
10 were released from the neck area, as you've described,
11 would that make the time even longer before
12 unconsciousness?

13 A Possibly.

14 Q Within a reasonable degree of medical
15 certainty, are you able to reach a determination about
16 the manner of death of Bonnie Haim's case?

17 A Given all of the information received from
18 police reports, anthropology and various other sources,
19 I ruled this as a homicide.

20 Q Were you able to determine what the cause of
21 death was?

22 A No. I wasn't actually able to find an
23 anatomic cause of death. But given the circumstances,
24 homicidal violence is an acceptable cause of death in
25 the medical examiner world.

1 Q So we say "homicide." I don't think we
2 defined that for the jury. So let's do that now. What
3 does it mean when you say something is homicide by
4 unspecified means? What is a homicide?

5 A Homicide means death at the hands of another
6 human. Unspecified means -- basically means that there
7 are not obvious signs or anatomic defects to indicate
8 what specifically happened to that body.

9 Q Why are you -- you generally said what things
10 you relied upon to determine this was a homicide. Can
11 you get more specific and tell the jury why you believe
12 within a reasonable degree of medical certainty that
13 this was, in fact, Bonnie Haim died as a result of
14 another human being?

15 A The fact that she was found underneath a
16 cement slab in this pile of dirt and had been in a
17 position that seemed unlikely that she would -- would
18 have put herself there.

19 Q Did you also take into account all the
20 investigation by your office as well as the
21 Jacksonville Sheriff's Office and the Florida
22 Department of Law Enforcement?

23 A Yes.

24 MR. MIZRAHI: Your Honor, that's all the
25 questions I have.

1 THE COURT: Cross?

2 MS. WARREN: Yes, Your Honor. Thank
3 you.

4 CROSS EXAMINATION

5 BY MS. WARREN:

6 Q Doctor, you're not telling this jury there is
7 any evidence of strangulation, are you?

8 A No.

9 Q You're not saying there's any evidence of
10 asphyxiation either, are you?

11 A No. Those are diagnoses of exclusion.

12 Q You didn't have any physical evidence
13 available to you, because of the advanced stages of
14 decomposition, for you to render any opinion on how
15 this woman died, correct?

16 A There were no anatomic defects except for the
17 circular defect that was on the inside of one of the
18 hip bones and an orange metal jacket that were found in
19 that pile of bone and dirt.

20 Q Doctor, from the remains that you examined,
21 can you say with any -- with any degree of medical
22 certainty how she died?

23 A No.

24 Q That's all I'm asking you, Doctor. You can't
25 say. You don't know, right?

1 A I'm using everything that I had available to
2 me to render an opinion.

3 Q Right. You had -- everything that you had
4 available to you, you reviewed, correct?

5 A Yes.

6 Q You reviewed the evidence that the evidence
7 technicians brought to the Medical Examiner's Office,
8 correct?

9 A Yes.

10 Q You went to the scene during the excavation,
11 correct?

12 A Yes.

13 Q We saw your picture. You pulled a bone --
14 pulled a bone out of the grave site, correct?

15 A I was examining a bone.

16 Q You examined clothing, didn't you?

17 A Yes, I did.

18 Q You took those pink pants or pajamas or
19 whatever. You took those off of the remains at the
20 ME's Office, did you not?

21 A That's correct.

22 Q And you examined the poncho, correct?

23 A That's correct.

24 Q And after you did a thorough investigation of
25 that evidence, you still can't tell anyone how the

1 woman died. Isn't that fair to say?

2 A That's why it was listed as unspecified
3 homicidal violence.

4 Q Thank you, Doctor.

5 When you examined those pants, you didn't
6 find any evidence of any bullet holes, did you?

7 A I did not. But the pants may not have been
8 in pristine condition. I don't recall -- there was
9 nothing there that I could say looked like a bullet
10 hole.

11 Q Thank you, Doctor.

12 You didn't -- you did not note anything in
13 your report or your notes that there -- you noticed any
14 tears or blood on those pants either, did you, Doctor?

15 A No.

16 Q How about on the poncho? Did you examine
17 that also, that Mickey Mouse poncho?

18 A Everything was examined in our office before
19 it was given to the police.

20 Q And, Doctor, you examined the panties too
21 that Mr. Mizrahi showed us, I believe.

22 A That's correct.

23 Q You did not make any notations that there
24 were any tears, correct?

25 A No.

1 Q There was no blood, correct?

2 A Not that I could see.

3 Q Right. And -- and there was no evidence of
4 any bullet hole either on the pants.

5 A Right.

6 Q Now, Doctor, you said you collected a lot of
7 pieces of cloth. I'm going to show you what's been
8 marked -- previously marked as Defendant's 37.

9 Now, Doctor, do you recognize that picture?
10 Have you seen that before?

11 A I recognize that it came from the autopsy,
12 2030, and it looks similar to some of the things that
13 we did find in the dirt that we received.

14 Q And, Doctor, can you identify for the jury
15 what these things appear to be that I circled?

16 A Those look like plastic letters.

17 Q And did those actually come out of that
18 encased remains that you received?

19 A It was in and around the dirt and other
20 things. I -- I can't tell you exactly where it was, if
21 it was under or over something. It was just -- they
22 were just strewn about.

23 Q Let me -- let me put it to you this way,
24 Doctor. It's a little confusing. Did you receive
25 anything in addition to the packaged remains that was

1 State's Exhibit -- where it was wrapped up and taped?

2 Did you receive other things from the excavation site?

3 A Yes.

4 Q Okay. Can you tell us what those were?

5 A I believe there was a box that had small
6 bones, small bone fragments, some artificial nails.

7 This -- this excavation went on for several days, so
8 it's possible that stuff came in multiple times during
9 those several days.

10 Q And, Doctor, do you have any knowledge where
11 these things came from or when they came to the Medical
12 Examiner's Office?

13 A Well, they would have been received by
14 someone in our office that would have documented them
15 as having been received.

16 Q Yeah. But, Doctor, you have -- you have no
17 knowledge if they came on day one?

18 A No.

19 Q And, Doctor, you're not sure -- you don't
20 even know if they came out of the encased remains or if
21 they came from the dirt. Is that what you're saying?

22 A It's possible they came from out of the dirt,
23 yes.

24 Q It's possible they came from the dirt.

25 How much dirt do you think that the Medical

1 Examiner's Office received?

2 A Boy, I'm not really good with quantities.
3 I'd say, like, at least a large trash can full.

4 Q When you say "large trash can," Doctor --
5 MS. WARREN: May I approach, Your Honor?

6 THE COURT: You may.

7 BY MS. WARREN:

8 Q Doctor, I'm going to show you a trash can
9 that -- I'm not good either with sizes.

10 A I'm talking about one of the outside ones
11 that the garbage folks pick up.

12 Q Okay. That you put out on the curb?

13 A Yes.

14 Q So those are about --

15 A 40-gallon, 30-gallon.

16 Q 40-gallon, 50-gallon? That's how much dirt
17 you received from the excavation site at the Medical
18 Examiner's Office?

19 A I believe so.

20 Q And your team had to sift through all of
21 that, did they not?

22 A That's correct.

23 Q So you're not sure then where the letters or
24 the plastic or the cloth came from.

25 A Well, some of the cloth we saw in the

1 original picture after the wrapping that had been
2 placed on by excavation had been removed.

3 Q Doctor, let me -- let me show you then what's
4 been marked as Exhibit 26, Defendant's Exhibit 26.
5 And, Doctor, that's a picture of -- of what?

6 A I see there's -- the pink pants is a portion
7 of them at the top, and then there are multiple pieces
8 of pink plastic, black plastic, white plastic, roots
9 and maybe some small bone in the mix there.

10 Q Doctor, are you saying that's pink plastic or
11 is that cloth?

12 A I think that was pink plastic, if I remember
13 correctly.

14 Q Now, what did you do with that pink plastic
15 or the trash bags and the cloth, the fibers, everything
16 that the Medical Examiner's Office found from either
17 sifting or in the wrapped remains? What did you do
18 with it?

19 A I believe most of it went to the police
20 department.

21 Q You believe. I'm sorry that would not have
22 been your responsibility to send it to them?

23 A That would have been whoever was handling the
24 case. They would have filled out an inventory sheet
25 and whoever was claiming use of it would have signed

1 off on that.

2 Q Let me show you, Doctor, Defendant's
3 Exhibit 21. What -- can you tell the jury, Doctor,
4 what is that a picture of?

5 A It looks like thread from a serger machine
6 with a label on it.

7 Q Can you tell me what that label says, Doctor?
8 Can you read that label?

9 A Well, I recognize it as Fruit of the Loom,
10 and I think it says "XL" at the top.

11 Q Okay. And, again, Doctor, can you tell me
12 whether or not that came out of the wrapped remains?

13 A I believe it did.

14 Q Did you ever determine what that was supposed
15 to go to?

16 A I don't know.

17 Q Doctor, let me show you what's been marked as
18 State's Exhibit 48. I'm sorry. Defendant's
19 Exhibit 48. Do you recognize that, Doctor?

20 A That would be a label on the pink pants.

21 Q The pants that were on the remains?

22 A That's correct.

23 Q And, Doctor, that says size medium, does it
24 not?

25 A Yes.

1 Q Doctor, she was five-foot one, 110 pounds,
2 isn't that right?

3 A I believe that that -- that the estimates
4 were that that was roughly her size.

5 Q Okay. And, Doctor, when those bones were
6 found in the ground, they were not in correct
7 anatomical position, were they?

8 A No.

9 Q And the State showed you a picture a few
10 minutes ago and asked you if in that picture that the
11 remains were in almost correct anatomical position,
12 didn't they?

13 A Well, there was a picture that had all the
14 bones after they had been taken out and cleaned that
15 was almost in correct anatomical position.

16 Q Sure.

17 MS. WARREN: Can we go to State's 137,
18 please? Is that possible?

19 MR. MIZRAHI: It's certainly possible.

20 MS. WARREN: Will you put that up?

21 MR. MIZRAHI: State's 137.

22 MS. WARREN: Thank you.

23 BY MS. WARREN:

24 Q Doctor, the State showed you that picture in
25 your direct examination a few minutes ago, didn't they?

1 A Yes.

2 Q And he asked you, does that picture reflect
3 the bones being in correct anatomical position, did he
4 not?

5 A I believe that was the essence of the
6 question.

7 Q And you answered him yes, correct?

8 A Yes.

9 Q And they are in correct anatomical position
10 in that picture, are they not?

11 A More or less, yes.

12 Q Isn't that -- doesn't that picture represent
13 a reconstruction done by Heather Walsh-Haney?

14 A Yes.

15 Q Okay. So the bones were not like that in the
16 ground, correct?

17 A That's correct.

18 Q As a matter of fact, that picture represents
19 a manufactured skull that she built out of something,
20 isn't that true?

21 A I don't know what you're referring to.

22 Q Well, Doctor, the skull, when you received it
23 at the Medical Examiner's Office, was in fragments and
24 pieces, wasn't it?

25 A Yes.

1 Q Let's go back to the nails. Doctor, you say
2 that you received some acrylic nails, right?

3 A Artificial nails, yes.

4 Q Do you remember how many nails you received,
5 Doctor?

6 A Well, I think -- I think they came in at
7 different times. I want to say there were ten.

8 Q And do you remember -- do you remember,
9 Doctor, the condition of the nails when you received
10 them at the Medical Examiner's Office?

11 A They were dirty.

12 Q They had not yet been cleaned?

13 A Correct.

14 Q Would it have been the responsibility of the
15 Medical Examiner's Office to clean them?

16 A Without disrupting anything that the
17 anthropologist might find objectionable, we attempted
18 to clean as carefully as we could.

19 Q And, Doctor, when you have an autopsy to
20 perform and you suspect foul play, isn't it customary
21 to bag the hands of the deceased?

22 A Sometimes, yes.

23 Q And -- and they bagged the hands of the
24 deceased because sometimes there are -- there's
25 evidence underneath the fingernails, isn't that true?

1 A That's correct.

2 Q And if Miss Haim, in this case, had natural
3 fingernails, would they -- what would have happened to
4 them during decomposition?

5 A I'm guessing they probably would have
6 deteriorated to some degree.

7 Q But in this case, the fingernails, we learned
8 were, acrylic, isn't that right?

9 A Yes.

10 Q And they did not decompose, did they?

11 A No. They look pretty much like nails.

12 Q And we got ten -- you received -- Defendant's
13 Exhibit 33, Doctor, is that a picture of nine of the
14 acrylic fingernails that came out of the excavation
15 site?

16 A I'm just waiting for the screen to come up.

17 Yes. I see nine nails.

18 Q Doctor, do you know whether or not the
19 underside of these nails were ever examined for
20 possible trace evidence?

21 A I do not know.

22 Q Doctor, what happened to the nails?

23 A They would have gone into evidence and either
24 went to the police or to Dr. Walsh-Haney.

25 Q But, Doctor, it would have been your

1 responsibility to see if there was any evidence under
2 the nails that could have been useful.

3 A Sometimes we do that examination. Sometimes
4 the police do the examination.

5 Q And, Doctor, that -- you don't know. That
6 was not done in this case, correct?

7 A I don't believe so but I don't know for sure.

8 Q All right. If it had been done, it would
9 have been put in the report, though, wouldn't it?

10 A I assume if it was entered into evidence and
11 submitted for trace, then we would have a report. So
12 the lack of that paperwork leads me to believe that it
13 wasn't submitted.

14 Q And along that same line, let me go to --
15 Doctor, do you know what happens to clothes that have
16 been buried for a very long time?

17 A I believe it depends on the type of fabric,
18 and it depends on what they're buried in and for how
19 long and what -- the conditions of the agent that
20 they're buried in. I don't think there's one answer to
21 that.

22 Q Defendant's 23, Doctor, those are the
23 sweatpants that came off the remains, right?

24 A Yes.

25 Q And, Doctor, did you do any scraping for

1 trace evidence off of those?

2 A I did not.

3 Q Do you know if anyone from your office did?

4 A I do not know. I don't believe so.

5 Q I'm going to ask you the same question about
6 the poncho, the Mickey Mouse poncho. You didn't do any
7 scrapings or look for any evidence of any hairs or
8 fibers, any kind of trace evidence, did you?

9 A No.

10 Q Now, there were -- it was approximately only
11 80 percent of the bones, is that fair to say, Doctor?

12 A It could be. I don't exactly know what the
13 percentage was but it was incomplete.

14 Q Doctor, I'm going to show you -- or refer you
15 to your report. Do you have copy of the one that says
16 inspection report in front of you?

17 A Yes.

18 Q I want to take you to the page that says the
19 anatomic diagnosis. Are you there, Doctor?

20 A Yes.

21 Q Could you read for us, please, what No. 2
22 says?

23 A Fractured left ischium, visceral surface
24 circular, comminuted with radiating fractures
25 perimortem.

1 Q Now, Doctor that's not your observation, is
2 it?

3 A No.

4 Q And as a matter of fact, this report wasn't
5 completed until October of 2015, right?

6 A That's correct.

7 Q And that's -- Doctor, that's because after
8 you did your analysis, the bones and some of the dirt
9 went to Dr. Walsh-Haney -- correct? -- the
10 anthropologist.

11 A That's correct.

12 Q So you did your initial analysis. You
13 examined the bones, did what you needed to do at the
14 Medical Examiner's Office in order to prepare maybe the
15 death certificate, correct?

16 A That's correct.

17 Q And to determine the cause of death and the
18 manner of death, correct?

19 A That's correct.

20 Q That's your job. That's the medical
21 examiner's job, right? That's your responsibility.

22 A That's correct.

23 Q So then you sent the bones off to Heather
24 Walsh-Haney and the dirt. Everything left the Medical
25 Examiner's Office for her to do maybe a further

1 analysis to help you determine how long had that body
2 been in the ground, correct?

3 A That's correct.

4 Q That's the anthropologist's job.

5 A That's correct.

6 Q That's the anthropologist's job to also
7 determine other things related to the length of time
8 the body had been buried, right?

9 A That's correct.

10 Q Whether that was the primary grave site,
11 that's anthropology, correct?

12 A Correct.

13 Q So you can't tell us that body was buried
14 there and decomposed there, correct?

15 A I cannot.

16 Q You can't tell us whether that's the primary
17 or secondary burial site.

18 A That's correct.

19 Q Even tertiary, third, right? You can't tell
20 us.

21 A That's correct.

22 Q That's her job, correct? She can't tell us
23 the cause of death, right?

24 A That's correct.

25 Q So you confer with her and then you write

1 your report. And you issue your report when she's done
2 with her analysis. Is that how it works?

3 A That's correct.

4 Q And you do that in October of 2015.

5 A That's correct.

6 Q And in 2015, you have already conferred with
7 Heather Walsh-Haney, correct?

8 A Yes.

9 Q You have already conferred with her about
10 this fracture of the left ischium. And I'm going to
11 get into that in a minute. Correct?

12 A At some point, yes.

13 Q You -- still, after you did that and had
14 conversations with Heather Walsh-Haney regarding the
15 left ischium -- correct?

16 A Yes.

17 Q And that's the pelvic area, pelvic bone,
18 isn't it?

19 A Yes.

20 Q And after you looked at the photos that she
21 took when she was in your office on January 12th --
22 right?

23 A I believe so.

24 Q You still say unspecified means and not
25 gunshot, correct?

1 A That's correct.

2 Q Okay. So you can't say it's a gunshot.

3 A No.

4 Q Doctor, you didn't see that ischium circular
5 defect when you did your investigation of the remains,
6 correct?

7 A I don't believe I did.

8 Q So where it says No. 2, fracture, left
9 ischium, visceral surface, circular, commuted with
10 radiating fractures perimortem, that information was
11 relayed to you by Heather Walsh-Haney at some time
12 after the bones left your office, correct?

13 A Yes.

14 Q Okay. Doctor, do you remember giving a
15 deposition? You remember giving a depo?

16 A Yes.

17 Q Do you remember having the bones there?

18 A Yes.

19 Q Do you remember the bones were flaking as --
20 as they were touched?

21 A Yes.

22 Q So they -- they were so fragile from the
23 washing, the bones were flaking more, weren't they?

24 A I don't know what Heather Walsh-Haney did
25 with those bones after we gave them to her.

1 Q When you had them, when you had them, they
2 were very fragile. You had to use very special brushes
3 to dust them off, didn't you?

4 A Yes.

5 Q Because of the fragility of them.

6 A Correct.

7 Q Because they were flaking just by touching
8 them, because they were so old, and they were wearing
9 down as -- the more they were being handled, Doctor,
10 isn't it fair to say that they were falling apart?

11 A Yes.

12 Q Thank you.

13 Now, you say the heel right on the fracture
14 consistent with the medical record of Bonnie Haim.

15 A That also came from Dr. Walsh-Haney.

16 Q Right. And that's how Miss -- that's how the
17 remains were -- part of how the remains were identified
18 as Bonnie's.

19 A I believe so, yes.

20 Q Now, Doctor, did there come a time when you
21 learned that that fractured right ulna happened when
22 she was about ten years old?

23 A I don't know what age she had it, that
24 injury. But I understand it was an older injury.

25 Q A much older injury, correct?

1 A Yes.

2 Q Now, Doctor, you said that you took a lot of
3 rocks, pebbles and roots out of this sifting that was
4 done by your office.

5 A That's correct.

6 Q And correct me. I'm sorry. What happened to
7 that, the rocks and the pebbles? Where did that go?

8 A I assume it went with the bones.

9 Q To Heather Walsh-Haney?

10 A Yes.

11 Q Did you -- did you get it back?

12 A Well, there would have been a receipt
13 somewhere that says what we received. As far as I
14 know, we received bones. I don't know if there's
15 anything about the pebbles there.

16 Q Let me show -- okay. Let me show you
17 Defendant's 35. And, Doctor, do you recognize that?

18 A Yes. That's a picture of some of the pebbles
19 that were recovered from that pile of dirt and bone.

20 Q And, Doctor, let me show you Defendant's 36.
21 What is that, Doctor?

22 A I believe it looks like possibly tree bark.

23 Q Thank you.

24 That also came out of that wrapped remains,
25 correct?

1 A Yes.

2 Q How about Defendant's 34? What is that,
3 Doctor?

4 A Those are more small pebbles.

5 Q And, Doctor, didn't you say that one of the
6 possible causes other than a gunshot of that circular
7 defect could have been rocks or pebbles pressing up
8 against the body postmortem?

9 A I thought that that might be reasonable.

10 Q And, Doctor, please tell the jury what
11 postmortem means.

12 MR. MIZRAHI: Your Honor, I'm going to
13 object to outside her field of expertise.
14 She testified earlier that she deferred
15 everything to Heather Walsh-Haney.

16 THE COURT: Sustained.

17 BY MS. WARREN:

18 Q Doctor, you said that, didn't you?

19 A Could you repeat the question?

20 Q That a possible cause for the circular
21 defect --

22 MR. MIZRAHI: Same.

23 BY MS. WARREN:

24 Q -- could have been something that was
25 pressing up against the remains postmortem?

1 MR. MIZRAHI: Objection, Your Honor.

2 THE COURT: Sustained.

3 THE WITNESS: That was?

4 THE COURT: Sustained.

5 MR. MIZRAHI: Same objection.

6 THE COURT: Sustained the objection.

7 BY MR. FALLIS:

8 Q Doctor, do you have to identify fractures in
9 bones?

10 A Yes.

11 Q Do you have to identify breaks in bones?

12 A Sure.

13 Q Isn't one of -- isn't there -- isn't it part
14 of your expertise, Doctor, to identify defects in
15 bones?

16 A As they relate to injuries.

17 Q Sure. So, Doctor, isn't it part of your
18 expertise then to identify what causes something in a
19 bone?

20 A To the degree that I can do that, I try to do
21 it, yes.

22 Q Okay. And you thought that that
23 indentation -- you called it a "circular defect,"
24 correct?

25 A Yes.

1 Q And you thought that that circular defect --
2 one of the things that could have caused that was
3 something pressing on it postmortem.

4 A That's possible.

5 Q And, Doctor, isn't it possible that these
6 rocks, pebbles and everything else that was in there
7 was pressing on that circular defect?

8 A It's possible. But I believe Dr. Walsh-Haney
9 would be able to tell exactly how long that defect had
10 been there, whereas I wouldn't be able to make that
11 determination.

12 Q I understand. Sure. She's the one that's
13 going to tell us the time frame. I understand that.

14 But it is possible, in your expert opinion as
15 a physician, that that could have been caused by
16 something pressing on it.

17 A Yes.

18 Q Thank you.

19 And that circular defect -- I'm going to show
20 you a picture that's marked as Defendant's 27. Now,
21 this is the same picture that the State showed. I just
22 want to make that clear. Isn't it, Doctor?

23 A Yes.

24 Q Okay. That actual width of this appears a
25 lot larger in this picture, doesn't it, than in real

1 life?

2 A Yes.

3 Q Isn't -- do you know what the actual size of
4 this bone fragment is, the entire bone fragment?

5 A Offhand, I don't. I'd have to use the scale
6 that's there and --

7 Q But you agree with me that this picture is a
8 blown-up picture of that part of the ischium.

9 A The whole ischium is blown up, yes, the whole
10 picture.

11 Q Doctor, where on the ischium would the
12 visceral side be?

13 A Visceral are the internal organs. So when we
14 speak about the hip, the visceral side would be that
15 part of the pelvis that's facing in towards the -- the
16 internal organs, the back.

17 Q Correct. And that circular defect did not go
18 all the way through that bone, correct? It stopped.

19 A Correct.

20 Q Okay. And that organ side would be faced --
21 the intestines and the other organs of the abdomen
22 would be pressing up against this visceral side. Is
23 that fair to say?

24 A Yes.

25 Q And you would have tissue there, would you

1 not?

2 A Yes.

3 Q And you have muscle, correct?

4 A That's correct.

5 Q And you'd have intestines, correct?

6 A Yes.

7 Q What else would you have, Doctor? What other
8 organs would be there?

9 A Depends on -- if it's female, you might have
10 your GYN organs, your uterus, your ovaries, fallopian
11 tubes. Mostly, it would be bowel and muscle and
12 vessels, blood vessels, nerves.

13 Q Doctor, doesn't it stand to reason that if
14 that was a gunshot and it had to pass through all of
15 that, there would be evidence of blood somewhere?

16 A I don't know what happens with blood over a
17 long period of time.

18 Q If someone was -- if it wasn't a long period
19 of time, that area of the body, if shot, would bleed,
20 would it not?

21 A If a major vessel was struck, if it went --

22 Q Any vessel -- Doctor, any vessel, in order to
23 shoot someone there, you have to go through flesh and
24 tissue, correct?

25 A Yes.

1 Q Well, wouldn't there be blood?

2 A Yes, some.

3 Q Okay. And, Doctor, you examined all the
4 other bones thoroughly, did you not?

5 A As far as I could recognize them.

6 Q And you did not notice any other evidence of
7 foul play, did you?

8 A No.

9 Q You didn't have any evidence of how this
10 woman died from what you looked at, correct?

11 A That's correct.

12 Q Now, Doctor, did you say that you found
13 that .22 jacket?

14 A I did not say that I found that .22 jacket.
15 I believe that that was probably in and amongst the
16 things that we sifted by Dr. Walsh-Haney's group.

17 Q Thank you.

18 So Dr. Haney found that .22 when all that
19 stuff was sent to her later on, correct?

20 A I believe so.

21 Q And then she told you about it, and you put
22 it in the report. You never saw it.

23 A I've seen it on a picture, but I don't recall
24 seeing it myself.

25 Q Right. And, Doctor, you don't know where in

1 the eight-foot-by-eight-foot grid that was dug by
2 Mr. Watson that came from, do you?

3 A No.

4 Q Doctor, there was white plastic in with the
5 remains, was there not?

6 A There were fragments of white plastic, yes.

7 Q And there was black plastic too in addition
8 to that Mickey Mouse poncho, correct?

9 A Perhaps.

10 Q Doctor, was there also a piece of, like, a
11 tarp that was wrapped around the remains?

12 A Outside of what was put on by the excavation
13 crew?

14 Q Yes. Did you receive --

15 A I don't recall that.

16 Q You don't recall receiving it.

17 A I don't recall there being a tarp.

18 Q Or a piece of a tarp.

19 A I don't recall.

20 Q Isn't one of the things you look to to
21 determine primary burial site whether or not the
22 remains are in correct anatomical position?

23 A Yes.

24 Q No other bones exhibited any fractures,
25 breaks or pulls that gave you reason for concern.

1 A No.

2 MS. WARREN: One moment, please, Your
3 Honor.

4 BY MS. WARREN:

5 Q Now, Doctor, you trace gunshot wounds -- do
6 you not? -- in a normal gunshot autopsy.

7 A Yes.

8 Q You weren't able to trace anything to give
9 you any indication that this was a gunshot, correct?

10 A That's correct.

11 Q And because of the way she was buried in the
12 yard, that's what led you to determine this was a
13 homicide, right?

14 A I think there was other information from the
15 police report and from the medical examiner
16 investigator that suggested that there was some
17 mysterious events that had occurred, but certainly the
18 fact that the body was found underneath the cement slab
19 in the dirt in the yard certainly gave me pause to
20 think this was not a natural death.

21 Q Correct. But, Doctor, this could have been
22 an accident, could it not? You can't rule out her
23 death was an accident, can you?

24 A No. But I don't know why anybody would try
25 to cover an accident up.

1 Q Well, Doctor, let's suppose somebody decided
2 to cover up an accident. You as a medical examiner
3 cannot rule out this was an accidental death with any
4 degree of medical certainty, can you?

5 A No. I'm using my opinion and that's based on
6 the things that I saw and my experience with various
7 cases.

8 Q Right. Doctor, you can't say this -- this
9 death was a result of the intentional act of someone
10 else, can you?

11 A No.

12 Q Doctor, you can't say that it wasn't a
13 suicide, can you?

14 A No. But --

15 Q I'm sorry. Sorry, Doctor.

16 A But in my experience, it would be more likely
17 that it would be a homicide than any of the others.

18 Q No. I understand, but, Doctor, you can't say
19 with any degree of medical certainty that it isn't any
20 of those other things.

21 A Correct.

22 Q Correct?

23 A Yes.

24 MS. WARREN: Thank you, Doctor. I have
25 no further questions.

1 THE COURT: Redirect?

2 REDIRECT EXAMINATION

3 BY MR. MIZRAHI:

4 Q So I'm clear, Doctor, because I asked you the
5 question on direct examination, which was within
6 reasonable degree of medical certainty, what is your
7 opinion? What is your opinion within a reasonable
8 degree of medical certainty?

9 A Yes. Within a reasonable degree of medical
10 certainty, as I understand cases that I have dealt
11 with, my opinion is that it was a homicide. I don't
12 know how it was committed, but I know that the
13 circumstances surrounding this made it appear to be a
14 homicide.

15 Q And some of the circumstances surrounding it
16 were the fact that Bonnie Haim's remains were found in
17 her own backyard under the outdoor shower slab of
18 concrete.

19 A Yes.

20 Q And that her husband didn't know where she
21 was, correct?

22 A Yes.

23 Q Thought she was missing.

24 A That's correct.

25 Q So if this were an accident or a suicide that

1 Mr. Haim would have witnessed and then buried his wife
2 there, that would be inconsistent with the
3 circumstances surrounding her disappearance, correct?

4 A Would be unusual, in my experience.

5 Q And that was one of the things that you took
6 into consideration to determine whether or not this was
7 a homicide or some form of an accident or suicide.

8 A That's correct.

9 Q Okay. There were some questions about the
10 fingernails. We showed you a picture of nine. But you
11 actually collected ten, correct?

12 A I think so.

13 Q And would looking at the photograph -- a
14 different photograph refresh your memory on that?

15 A If there is one there, yes.

16 MR. MIZRAHI: May I approach the
17 witness, Your Honor?

18 THE COURT: You may.

19 BY MR. MIZRAHI:

20 Q And how many do you count there, Dr. Stroh?

21 A Ten.

22 Q And do you also have documentation in your
23 report that indicated ten fingernail -- acrylic
24 fingernails were collected at your office and then
25 given to the Sheriff's Office?

1 A Yes.

2 Q Okay. We refer to -- defense counsel
3 referred us to the concept of correct anatomical
4 position, Doctor, and I'm going to show you State's
5 Exhibit 60. Do you see that?

6 A Yes.

7 Q And, Doctor, if this was testified to earlier
8 as pieces of skull and the rest of the body was
9 excavated here, would you agree that the skull was not
10 in an anatomically correct position?

11 A I would agree.

12 Q And if it was testified that actually that
13 skull came from where the shovel is, which is where the
14 rest of the skull was found, that would be more
15 consistent with the anatomical position.

16 A If I know where the rest of the bones were,
17 yes.

18 Q But one of the reasons why you stated it's
19 not in correct anatomical position is because someone
20 found the body by sticking a shovel in there and taking
21 out parts of the skull, is that fair?

22 A Seems correct.

23 Q Okay. Also, I wanted to show you, again,
24 State's Exhibit 119. In State's Exhibit 119, do we see
25 the -- essentially the upper leg bone, the thighbone

1 and then the tibia and the fibula in the correct
2 anatomical position, meaning that they're adjacent to
3 each other?

4 A The lower extremities actual bent.

5 Q My point exactly.

6 A It's not in correct anatomic position.

7 Q So because the bottom part of her leg is bent
8 under the top part of her leg, that would not be normal
9 anatomic position.

10 A Normal anatomic position is face forward, arms
11 out to the side, legs slightly spread apart.

12 Q Okay. Now, defense counsel asked you
13 questions about the rock possibly causing the circular
14 defect. And you said on -- when I asked you questions
15 that you would defer to Heather Walsh-Haney on matters
16 having to do with the bone. If Heather Walsh-Haney's
17 testimony is that that circular defect was perimortem,
18 meaning at or around the time of death, would it be
19 inconsistent with a pebble pushing against it to create
20 that defect?

21 A Yes. Because there would still be soft
22 tissue in the way.

23 Q And you would defer to her on that particular
24 issue.

25 A I would.

1 Q In regard to everything having to do with
2 graves and bones and things like that, you would defer
3 to Heather Walsh-Haney on those issues.

4 A She's the anthropologist.

5 MR. MIZRAHI: Thank you, Doctor.
6 Appreciate your time. No further questions.

7 MS. WARREN: Briefly, Your Honor.

8 THE COURT: No, that's it, all those
9 questions.

10 Ladies and gentlemen, stand up, feel
11 comfortable, stretch out. I'm going to talk
12 to these lawyers real quick before I send you
13 home for the night. So you're about to go.
14 I've got to talk to them real quick.

15 Come to sidebar.

16 (The following sidebar conference was had out
17 of the hearing of the jury:)

18 THE COURT: All right. How many more
19 witnesses, Mr. Mizrahi?

20 MR. MIZRAHI: I mean, we have Heather
21 Walsh-Haney. She'll be lengthy. She can
22 come back tomorrow.

23 THE COURT: 8:00 o'clock in the morning.
24 I'll see you-all then. There's no way --
25 we're not finishing the evidence tomorrow

1 afternoon, evening. So I want to bring them
2 back Friday for closing arguments.

3 MR. MIZRAHI: We have -- just so the
4 Court knows, we have Heather Walsh-Haney. We
5 have the firearms expert, Tom Pulley.

6 MR. FALLIS: He's quick.

7 MR. MIZRAHI: He should be quick. And
8 then we have Hinson, who will be lengthy.

9 MR. FALLIS: He will be lengthy, three
10 more witnesses.

11 THE COURT: How many more do you have?
12 I'm going to revisit 8:00 o'clock. How many
13 do you have, excluding the defendant?

14 MR. FALLIS: Excluding the defendant, I
15 have one. If I don't need Hinson --

16 Who else do we have?

17 MS. WARREN: I don't know. I don't know
18 if you made your decisions.

19 MR. FALLIS: Probably three at the most,
20 Judge.

21 THE COURT: Can you do the
22 anthropologist and Hinson in the morning from
23 9:00 to noon?

24 MR. MIZRAHI: I believe we'll finish by
25 noon with all of our witnesses. The State

1 will rest by noon.

2 THE COURT: Okay. We'll then just do it
3 at 9:00 o'clock then.

4 MR. FALLIS: I -- I know for sure we can
5 finish in the afternoon.

6 THE COURT: Well, if you only got three
7 witnesses, you're going to finish in the
8 afternoon.

9 MR. FALLIS: I said I'm sure.

10 THE COURT: I don't disagree. I will
11 see you-all in just a second. We'll finish
12 our conversation once I send the jury home.

13 MS. WARREN: I was just going to make it
14 on the record.

15 THE COURT: It's going to be on the
16 record. We're going to do that with this
17 witness here. But right now I'm going to
18 send them home, tell them 9:00. Only reason
19 I kept them is I was thinking 8:00 but --

20 MR. MIZRAHI: I'm relatively confident
21 we'll finish with the evidence tomorrow.

22 MR. FALLIS: Judge Arnold usually likes
23 7:00.

24 THE COURT: Well, don't tempt me,
25 Mr. Fallis.

1 (At the conclusion of the sidebar conference,
2 the following further proceedings were had in the
3 presence of the jury:)

4 THE COURT: All right, ladies and
5 gentlemen. Be back at 9:00 o'clock tomorrow
6 morning we are on track. That's one of the
7 things I wanted to talk to the lawyers about
8 to make sure. I was thinking about starting
9 a little bit earlier, but I don't think we
10 need to. So I'll see you at 9:00 o'clock.
11 Don't talk about the case enjoy your night.
12 We'll see you tomorrow morning.

13 (Jury excused.)

14 THE COURT: You had wanted to proffer
15 something about relevancy with the question
16 concerning hanging versus strangling.

17 MS. WARREN: No, sir. I wanted to
18 follow up --

19 THE COURT: No, no. Earlier,
20 Mr. Mizrahi asked a question during direct
21 and you objected to relevance. And you
22 wanted to make a record, so I was going to
23 give you the chance to make a record.

24 MS. WARREN: No. That's not what I
25 wanted to make a record of, Your Honor. I

1 wanted to make a record that you would not
2 let me get up just now --

3 THE COURT: That's the second thing.

4 MS. WARREN: -- and ask a question.

5 THE COURT: The first thing was during
6 his direct examination, he asked a question
7 about hanging. You objected to relevance and
8 I overruled it. And you said, I want to make
9 a record.

10 So that's the first thing we're going to
11 do, so you can make that record now.

12 MS. WARREN: The record regarding
13 strangulation, asphyxiation and what
14 Dr. Stroh had said is irrelevant because none
15 of those causes of death are applicable in
16 this particular case, and the prejudice of
17 the jury hearing the medical terminology
18 about strangulation and how long it takes and
19 what the victim suffers is totally irrelevant
20 and may prejudice the jury far beyond any
21 probative value that he elicited from that
22 testimony.

23 THE COURT: Okay. Mr. Mizrahi, wish to
24 respond?

25 MR. MIZRAHI: Your Honor, there was

1 testimony elicited in this trial that the
2 victim was strangled. And so the expert
3 opinion about that mechanism of injury is
4 relevant to educate the jury as to the
5 elements of ill will, hatred spite and evil
6 intent.

7 THE COURT: I stand by my ruling that it
8 was relevant.

9 Now, the second thing, you wanted to get
10 back up and ask another question.

11 MS. WARREN: Yes, sir.

12 THE COURT: You can proffer that now.
13 Dr. Stroh's on the stand.

14 PROFFER EXAMINATION

15 BY MS. WARREN:

16 Q Doctor, the only reason you're saying the
17 body was not in proper anatomical position is not just
18 because the skull had been removed from the grave site,
19 correct?

20 A That's correct.

21 Q Thank you.

22 There are other reasons why the body is not
23 in a proper anatomical position, right?

24 A I just said that the lower extremity was bent
25 back on itself so that's not proper anatomical --

1 Q Doctor, the fact -- and also, Doctor, the
2 fact that there are a lot of missing bones, does that
3 add to the proposition that the body is not in proper
4 anatomical position?

5 A To some degree.

6 Q And, Doctor why else would -- what else would
7 cause you to opine that the body was not in proper
8 anatomical position while it was in the grave site?

9 A Because of the way that it was presented to
10 me as I was digging the bones out of the dirt.

11 MS. WARREN: Thank you, Your Honor.

12 THE COURT: All right. All those things
13 were covered during direct and cross. They
14 were brought up. I don't see the need for
15 recross. So I stand on my ruling. But it's
16 the record.

17 See y'all at 9:00 o'clock tomorrow
18 morning. Have a good night.

19 (Whereupon the proceedings were adjourned.)

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