

STATE OF OHIO) IN THE COURT OF COMMON PLEAS
) ss.
COUNTY OF MAHONING)

**CASE NOS. 13-CR-633
14-MA-4**

STATE OF OHIO)

Plaintiff)

-vs-

JAMES P. FERRARA)

Defendant)

DEFENDANT'S

TRANSCRIPT OF PROCEEDINGS

AND EXHIBITS ON APPEAL

APPEARANCES: **Atty. Dawn Cantalamessa**
Atty. Rebecca L. Doherty
On behalf of the State

Atty. Anthony P. Meranto
Atty. Kristie Weibling
On behalf of the Defendant

BE IT REMEMBERED that at the trial of the above-entitled cause, in the Court of Common Pleas, Mahoning County, Ohio, beginning on the **18th** day of **November, 2013**, and continuing thereafter, as hereinafter noted, before **the Honorable R. Scott Krichbaum, and a Jury of 12 members**, the above appearances having been made, the following proceedings were had:

I-N-D-E-X

<u>WITNESSES:</u>		<u>PAGE:</u>
WILLIAM MARSH		
Direct Examination By Ms. Doherty	322	1
FRANK BOYLE		
Direct Examination By Ms. Cantalamessa	335	19
Cross Examination By Mr. Meranto	361	2
MICHAEL FINAMORE		
Direct Examination By Ms. Doherty	366	8
Cross Examination By Mr. Meranto	414	23
Redirect Examination By Ms. Doherty	468	1
Recross Examination By Mr. Meranto	472	20
Further Recross Exam By Mr. Meranto	476	2
DR. JOSEPH OHR		
Direct Examination By Ms. Cantalamessa	484	2
Cross Examination By Ms. Weibling	531	2
ANDREW CHAPPELL		
Direct Examination By Ms. Cantalamessa	533	19

Cross Examination By Mr. Meranto	551	4
Redirect Examination By Ms. Cantalamessa	554	2
Recross Examination By Mr. Meranto	555	2

ROBIN LADD

Direct Examination By Ms. Doherty	557	16
Cross Examination By Mr. Meranto	587	2
Redirect Examination By Ms. Doherty	607	2
Recross Examination By Mr. Meranto	613	2

DEPUTY DEVIN FITZPATRICK

Direct Examination By Ms. Doherty	635	23
Cross Examination By Mr. Meranto	640	6
Redirect Examination By Ms. Doherty	646	2
Recross Examination By Mr. Meranto	648	2

DETECTIVE PATRICK MONDORA

Direct Examination By Ms. Doherty	650	14
Cross Examination By Mr. Meranto	670	3
Redirect Examination By Ms. Doherty	715	4
Recross Examination By Mr. Meranto	727	9
Further Redirect Exam By Ms. Doherty	733	2
Further Recross Exam By Mr. Meranto	734	2

BRENDA GERARDI

Direct Examination By Ms. Weibling	760	18
Cross Examination By Ms. Cantalamessa	773	2
Redirect Examination By Ms. Weibling	780	5
Recross Examination By Ms. Cantalamessa	782	2
Further Redirect Exam By Ms. Weibling	783	3

DETECTIVE PATRICK MONDORA

Rebuttal Direct Examination By Ms. Doherty	809	8
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I-N-D-E-X

STATE'S OPENING STATEMENT - Page	294
DEFENDANT'S OPENING STATEMENT - Page	316
STATE RESTS - Page	735
DEFENDANT RESTS - Page	784
STATE'S CLOSING ARGUMENT - Page	812
DEFENDANT'S CLOSING ARGUMENT - Page	831
STATE'S FINAL CLOSING ARGUMENT - Page	856
VERDICT - Page	919
REPORTER'S CERTIFICATE - Page	925

E-X-H-I-B-I-T-S

STATE'S EXHIBITS IDENTIFIED

<u>NUMBER/DESCRIPTION</u>	<u>IDENTIFIED</u>
1 Photograph	386 5
2 Photograph	386 5
4 Photograph	332 20
5 Photograph	386 5
6 Photograph	386 5
7 Photograph	357 2
8 Photograph	356 11
9 Photograph	386 5
10 Photograph	386 5
11 Photograph	386 5
12 Photograph	357 12
13 Photograph	386 5
14 Photograph	386 5
15 Photograph	386 5
22 Photograph	498 7
23 Photograph	498 7
24 Photograph	358 8
25 Photograph	498 7
26 Photograph	498 7
27 Photograph	498 7

28	Photograph	498	7
29	Photograph	498	7
30	Photograph	515	19
31	Photograph	515	19
32	Photograph	515	19
33	Photograph	518	6
34	Photograph	358	8
35	Photograph	518	6
36	Photograph	518	6
37	Coroner's Report-Ben Marsh	491	22
38	Coroner's Report-Marilyn Marsh	491	22
39	Coroner's Report-Heather Marsh	491	22
40	Bullets	524	7
41A	Boot print	400	23
41B	Boot print	400	23
41C	Bullet Fragments	524	7
41D	Bullet Fragments	524	7
41E	Bullet Fragments	524	7
41F	Bullet Fragments	524	7
42	Photograph	359	11
43A	Fingerprint cards	403	4
43B	Fingerprint cards	403	4
43C	Fingerprint cards	403	4

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MAHONING COUNTY YOUNGSTOWN, OHIO**

43D	Fingerprint cards	403	4
44	Ladd's Report	583	20
45	Chappell's Report	539	10
46	Photograph	408	15
47	Photograph	408	15
48	Photograph	408	15
50	Photograph	408	15
60	Diagram	380	13
61	Ferrara Palm Print	571	10
62	Ferrara Palm Print	571	10
63	BCI Submission Sheet	716	10
64	BCI Submission Sheet	721	11
65	Reward Offer	722	20
66	Binder of Detective Notes	726	5
67	Binder of Detective Notes	726	5
68	Binder of Detective Notes	726	5
70	List of Individuals	722	20
71	List of Individuals	722	20

DEFENDANT'S EXHIBITS IDENTIFIED

<u>NUMBER/DESCRIPTION</u>	<u>IDENTIFIED</u>
O Detective Notes - Nemeth	450 10
S Notes from Ladd's Report	598 18
D Narrative Supplement of Fitzpatrick	641 2
N Detective Notes	678 4
F List of Suspects	682 19
E Suspect List of Prints Submitted	684 15
G Letters to BCI	687 1
U Police Reports	689 5
C Article with Composite Sketch	690 20
R List of People in House	695 6
I Supplemental Reports	705 12
T BCI Submission Sheet	764 11
P BCI Evidence Submission Sheet	766 11
B BCI Report 1/17/75	603 20
A BCI Report 6/10/09	603 20
L Suspect #50	704 12
M Suspect #161 & #167	702 12

E-X-H-I-B-I-T-S

STATE'S EXHIBITS

<u>EXHIBIT</u>	<u>OFFER</u>	<u>OBJECT</u>	<u>RECEIVE</u>	<u>REFUSE</u>	<u>WITHDRAW</u>
1	736	7	743	14	
2	736	7	743	14	
4	736	7	743	14	
5	736	7	743	14	
6	736	7	743	18	744 2
7	736	7	743	18	744 2
8	736	7	744	5	744 13
9	736	7	744	18	
10	736	7	744	18	
11	736	7	744	18	
12	736	7	744	5	744 13
13	736	7	744	18	
14	736	7	744	21	745 4
15	736	7	744	21	745 4
22	736	21	745	4	747 16
23	736	21	745	4	747 16
24	736	21	745	4	747 16
25	736	21	745	4	747 16
26	736	21	745	4	747 16
27	736	21	745	4	747 16
28	736	21	745	4	747 16
29	736	21	745	4	747 16
30	736	21	745	4	747 9
31	736	21	745	4	747 16
32	736	21	745	4	747 16
33	736	21	745	4	747 9
34	736	21	745	4	747 16
35	736	21	745	4	747 16
36	736	21	745	4	747 16
37	736	21	747	22	748 14
38	736	21	747	22	748 14
39	736	21	747	22	748 14
40					737 11
41A					737 11
41B					737 11
41C					737 11
41D					737 11
41E					737 11
41F					737 11
42	737	11	747	2	747 9

42	747	2					
43A						737	11
43B						737	11
43C						737	11
43D						737	11
43E						737	11
43F						737	11
43G						737	11
43H						737	11
43I						737	11
45	751	10	751	20		752	6
46	739	3			750	3	
47	739	3			750	3	
48	739	3			750	3	
50	739	21			750	3	
60	740	4			750	17	
61							741 5
62							741 5
63	741	11	750	19		752	6
64	741	16	752	14		752	22
65							741 21
66							741 21
67							741 21
68							741 21
70	742	5			753	4	
71							742 18

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MAHONING COUNTY YOUNGSTOWN, OHIO**

DEFENDANT'S EXHIBITS

<u>EXHIBIT</u>	<u>OFFER</u>	<u>OBJECT</u>	<u>RECEIVE</u>	<u>REFUSE</u>	<u>WITHDRAW</u>
C	785 21	786 10	788 21		
I	785 21	788 21	789 23		
U	785 21	791 6	792 6		
R	785 21		790 18		

1 **THE COURT:** I have a couple housekeeping
2 things I need to take care of before we
3 begin, so I just wanted to do that before we
4 get a jury down. There is no resolution of
5 this case; is that correct?

6 **MS. DOHERTY:** Correct.

7 **MR. MERANTO:** No, Your Honor.

8 **THE COURT:** Not correct?

9 **MR. MERANTO:** It is correct.

10 **THE COURT:** All right. The court
11 already ruled on the defendant's motion
12 regarding other acts of the defendant, his
13 prior record, that type of thing. Everyone's
14 aware of that; correct?

15 **MS. DOHERTY:** (Nodding head.)

16 **MR. MERANTO:** (Nodding head.)

17 **THE COURT:** Let the record show that
18 they all nodded their head yes, which I guess
19 means yes. Counts Four and Five have been
20 dismissed, the aggravated burglary and
21 aggravated robbery charge; correct?

22 **MS. DOHERTY:** Yes.

23 **MR. MERANTO:** Yes, Your Honor.

1 **THE COURT:** Okay. The other day I was
2 informed the defendant was acting
3 inappropriately in the courtroom by way of
4 reacting to what people were saying while
5 they were testifying or what the lawyers were
6 doing. I confess that I didn't notice that
7 myself, but I was not -- have a seat. But I
8 was not in my ordinary mode because the
9 issues were being tried to me, so I wasn't
10 paying attention to that. The bailiff is to
11 notice that, and if the defendant does not
12 conduct himself appropriately, the court will
13 take immediate and decisive action.

14 I'm not saying that he did or he did
15 not. I am not in any way trying to cause
16 anybody a problem. I'm trying to avoid a
17 problem. So if indeed anything like that did
18 occur, please be aware, Mr. Ferrara, your
19 constitutional rights are going to be
20 protected by this court. I'm going to do
21 everything I can possibly do to make sure
22 that you get a fair trial as you're entitled,
23 but I won't stand for anyone to be acting

1 inappropriately in this courtroom. Is the
2 defendant's name pronounced Ferrara?

3 **THE DEFENDANT:** Yes, sir.

4 **THE COURT:** This is not a case that
5 involves DNA; correct?

6 **MS. CANTALAMESSA:** Correct, Your Honor.

7 **MR. MERANTO:** There's DNA evidence.

8 **MS. CANTALAMESSA:** There's a lack of DNA
9 evidence.

10 **MR. MERANTO:** Which is kind of a big
11 deal, so Ms. Gerardi will be down here to
12 testify.

13 **THE COURT:** Well, there was an attempt
14 to classify DNA?

15 **MS. CANTALAMESSA:** Right.

16 **THE COURT:** All right. I think that's
17 all I have, unless you folks have anything
18 else.

19 **MS. CANTALAMESSA:** Your Honor, may we
20 ask for permission to have Detective Mondora
21 sit at counsel table with us throughout --

22 **THE COURT:** Yes, you're welcome to do
23 that, but I would urge you in the future

1 when -- I don't know what the other judges
2 do, but you do need to ask permission to do
3 that. Please don't presume that things like
4 that are going to happen. You need him there
5 because he's the detective that got this
6 thing going?

7 **MS. CANTALAMESSA:** Correct, Your Honor.

8 **THE COURT:** What's your feeling on that?

9 **MR. MERANTO:** I have no objection. In
10 fact, I think it assists the entire process a
11 lot of times.

12 **THE COURT:** All right. Yes, permission
13 granted.

14 **MS. CANTALAMESSA:** Your Honor, we're
15 also going to ask for permission to use the
16 Elmo, the projector during our case.

17 **THE COURT:** The what?

18 **MS. CANTALAMESSA:** The Elmo. It's a
19 projector. It projects evidence onto a
20 screen, pictures. We find it makes the case
21 go a lot faster.

22 **THE COURT:** Well, that's nice if indeed
23 it is admitted into evidence, but you're not

1 going to show anything to a jury if it's not
2 admitted into evidence. You can use whatever
3 you like, show whatever you like if it's
4 evidence. I'm not going to have you showing
5 things to a jury that's not admitted into
6 evidence.

7 **MS. CANTALAMESSA:** What if there's --

8 **THE COURT:** Everybody's got this thing
9 about standing up. Why are you standing up
10 when I'm talking with her?

11 **MS. DOHERTY:** Because I was going to add
12 something.

13 **THE COURT:** I'm speaking with Attorney
14 Cantalamessa. This is not group
15 participation. There's two lawyers on every
16 side. I want everybody to understand, when
17 somebody's up that's doing whatever you're
18 doing in the case, that's who's involved, not
19 this -- it isn't group participation. So
20 whoever you choose to speak, you do whatever
21 you're supposed to do, but we're not having a
22 town hall meeting. This is a trial.

23 So please proceed. I'm sorry. We were

1 interrupted.

2 **MS. CANTALAMESSA:** Your Honor, I was
3 going to say, what if there's no objection
4 from the defense on a particular piece of
5 evidence that they want to ask questions of
6 that witness and think the display of that
7 piece of evidence is also helpful in their
8 testimony?

9 **THE COURT:** Yeah, if you're agreeing
10 that it's evidence that's admissible to
11 exhibit to the jury, that's fine. I'm not
12 going to have you showing pictures of things
13 that I may not allow into evidence.
14 That's -- that ain't gonna happen. You can
15 use that, certainly, and if you have some
16 agreement that a particular piece of evidence
17 is not going to be objected to, and you're
18 going to offer into evidence, I have no
19 problem with that.

20 **MS. CANTALAMESSA:** Can we approach you
21 if we know ahead of time on that piece of
22 evidence?

23 **THE COURT:** Sure. Sure. That would be

1 the way to do that.

2 **MS. CANTALAMESSA:** Thank you.

3 **THE COURT:** Okay. Anything else from
4 the state?

5 **MS. CANTALAMESSA:** I don't think so.
6 The defense filed a -- well, I don't know if
7 it was a motion, a notice of intent to use a
8 jury instruction this morning, but I think we
9 can address that later.

10 **THE COURT:** Yes. They filed a proposed
11 jury instruction this morning. That's good
12 that they file things; the earlier the
13 better. But we're not going to discuss that
14 at this point.

15 **MS. CANTALAMESSA:** That's what we were
16 hoping, we would discuss it later, Your
17 Honor.

18 **THE COURT:** Okay. What about you? Do
19 you have -- does the defense have anything
20 you wish to bring to the attention of the
21 court before we begin?

22 **MR. MERANTO:** Not at this time, Your
23 Honor.

1 **THE COURT:** Okay. It's the intention of
2 the court to conduct voir dire as the statute
3 sets forth. That the court shall conduct
4 voir dire to determine whether or not jurors
5 can sit as fair and impartial jurors and
6 shall allow reasonable examination of the
7 jurors by the parties to the case. So it's
8 my intention to completely voir dire the jury
9 and then allow probably a half an hour a
10 side. I don't know that I'll allow -- that
11 that will be any different.

12 It depends on how this goes on whether
13 or not we need to individually voir dire
14 jurors regarding any publicity. There was a
15 story in the Vindicator this morning, and
16 that may have informed jurors of this case.
17 People are coming in. So we'll get to those
18 issues.

19 I'm going to ask those issues as we
20 discussed the other day, or get into that
21 little bit with the jurors, and if it's
22 necessary, we'll individually voir dire those
23 people. I'm not sure if we'll do it in the

1 courtroom or chambers. I prefer to do it in
2 chambers while everyone's here. I don't
3 anticipate it being lengthy. But we'll make
4 that call as it develops. So we'll take a
5 couple minutes. Do we have a jury yet?

6 **MR. JACKSON:** Yes, Your Honor, they are
7 all here.

8 **THE COURT:** All right. Everybody ready
9 to go then?

10 **MS. CANTALAMESSA:** Yes, Your Honor.

11 **MR. MERANTO:** Yes, sir.

12 **MS. DOHERTY:** Yes.

13 **THE COURT:** Do you have something?

14 **MS. DOHERTY:** No. If we're going to
15 take a brief break, can I use the restroom?

16 **THE COURT:** Yeah. Take a couple minutes
17 to do that, and we'll start in about five
18 minutes.

19 **(WHEREUPON, a brief recess was had,
20 after which the proceedings continued as
21 follows, in the presence of the prospective
22 jurors:)**

23 **THE COURT:** Good morning, ladies and

1 gentlemen.

2 **PROSPECTIVE PROSPECTIVE JURORS:** Good
3 morning.

4 **THE COURT:** I'm Judge Krichbaum. This
5 is Courtroom No. 3 in the Court of Common
6 Pleas of Mahoning County, Ohio. You are the
7 prospective jurors summonsed here to decide
8 the issues of a criminal case about to begin
9 here. And the first thing I'd like to do is
10 thank you for your willingness to be here.

11 Service as a juror is one of the most
12 important and valuable civic duties which you
13 can perform. Trial by jury is a precious
14 right that each of us possess as citizens of
15 the United States of America. Preservation
16 of this right is strengthened by your
17 willingness to appear here and participate as
18 jurors.

19 We know that each of you may be making
20 some sort of sacrifice to be here. You may
21 rather be somewhere else. You may have
22 talked to your friends about how do I get out
23 of jury duty, had a little conversation about

1 what it's like, and maybe you'd like to do
2 it, you just don't know if you have the time.
3 Well, we can't have a system of justice
4 unless you participate. We can't try cases
5 without you participating. So even though
6 it's something you may not want to do, may
7 not be on your top three this is what I want
8 to do in my lifetime, your bucket list, it is
9 something that you're required to do as a
10 citizen of the United States to preserve this
11 right.

12 So again I'd like to thank you for your
13 public spirited activity for reporting and
14 being here today. As I say that -- and I
15 don't mean this in any way unpleasantly. I
16 just mean it so that you understand that you
17 have an obligation to serve as a juror, and
18 that is a matter of law.

19 In fact, the Ohio Revised Code 2313.29
20 says that no person whose name is drawn and
21 who is notified to attend a term of court
22 shall fail to attend at the time specified
23 from day to day, and that no person whose

1 name is drawn and who's notified shall fail
2 to attend and serve as a juror. So that's
3 your obligation, and because of that, it's my
4 obligation, too, to require you to serve.

5 So you may want out. You probably won't
6 get out. You're going to serve if you can
7 possibly do so, and you should serve if you
8 can possibly do so. It is your opportunity
9 to meaningfully participate in our system of
10 justice.

11 It's not something that you can take
12 lightly. It's not something that you should
13 avoid. It's something you should welcome.

14 As I indicated, this case involves
15 charges of criminal conduct, and you are to
16 decide the factual issues of the case. Each
17 of the parties is entitled to jurors who
18 approach this case with open minds and who
19 agree to keep their minds open until the
20 final verdict is reached. So jurors must be
21 as free as humanly possible from either bias
22 or prejudice or sympathy, and you must not be
23 influenced by any preconceived ideas either

1 as to the law or as to the facts.

2 When I say that, I always offer the
3 editorial on I don't -- again, I don't mean
4 to offend anybody, but there -- I've learned
5 that there are a lot of Judge Judy fans in
6 the world. And Judge Judy's not -- she's a
7 real judge, and all those things are sincere
8 and all of that, but it's a television show
9 is what it is. They pay her \$45 million a
10 year to do that, and the people who appear
11 sign an agreement that the law doesn't count.
12 It's just what she decides is okay.

13 Well, I suppose all of the judges that I
14 know are envious of Judge Judy, because that
15 would be a nice position to be in. The law
16 really does count. This is not a television
17 show. We are bound by the law. The judge is
18 and you are bound by the law and by the
19 rules, and those are going to be followed.
20 So this may be different.

21 The only reason I mention that is not to
22 say anything ill about Judge Judy. It's --
23 it is not what you see on television. It

1 isn't -- certainly isn't any less important
2 what we do. It's just done a little
3 differently than what you've seen or what's
4 been exhibited, either in that show or in the
5 movies that are produced about courtroom
6 proceedings and that type of thing.

7 The court informs you that there is no
8 information about this court that counts
9 until you come into the courtroom. You will
10 receive the facts of this case from the
11 witness stand. People who come in and
12 testify will give you the facts of this case.
13 And the court will give you the law.

14 The law as you know it or you perceive
15 it may not be the law that I will give you.
16 The law I will give you is the State of Ohio.
17 I don't get to make it up. I have to look it
18 up, and then I have to deliver it to you.
19 That law is the law that you must follow in
20 deciding the case. You will apply the
21 instructions of law that I give to you to the
22 facts of the case in order to render your
23 verdict.

1 So has anyone here ever served on a jury
2 before? Will you raise your hands?

3 **PROSPECTIVE PROSPECTIVE JURORS:** (Indica
4 ting.)

5 **THE COURT:** Just a couple. Well, jury
6 service then is strange to some of you, and
7 of course an explanation of what we do is
8 appropriate. Everyone who participates in a
9 lawsuit, in a trial, must do so in accordance
10 with established rules. And that applies to
11 me; it applies to the lawyers; it applies to
12 the witnesses; and it applies to you, the
13 ladies and gentlemen of the jury.

14 The lawyers will present the evidence to
15 you through the questioning of witnesses who
16 are called to testify, and that has to be
17 done according to rules of evidence. Rules
18 of evidence is a volume about that thick, and
19 it tells us all what evidence is and how
20 evidence is or is not to be admitted, whether
21 it's proper or improper. And the lawyers
22 interpret those rules the same as I do.

23 You'll hear throughout the course of the

1 trial objections or challenges to the
2 evidence. I'm supposed to decide those
3 things. That's all based upon the rules of
4 evidence and the law as we know it. So from
5 time to time the court may sustain an
6 objection to certain evidence. The
7 sustaining of an objection means it's my
8 opinion that that's improper evidence, and it
9 will not be admitted. The lawyers will not
10 argue that in front of you. They're not
11 allowed to make speeches to you about what I
12 should do and why I should do it a certain
13 way. They're permitted to say objection, and
14 then I'm required to rule, and they're
15 required to abide by that ruling.

16 Well, you're not to speculate as to what
17 maybe I should've done, or hey, I'd really
18 like to hear that evidence. You have to
19 respect the fact that that's the ruling of
20 the court, and that's the way that it is. If
21 indeed the witness gives an answer that I
22 strike or instruct you to disregard, we're
23 going to ask you to disregard that evidence,

1 to treat it as though you never heard it
2 because it is improper evidence. Of course,
3 the court may overrule an objection, and that
4 means that what the lawyer is trying to get
5 in evidence will be admitted.

6 So during this case I am the judge of
7 the law, and the lawyers and the jury are to
8 abide by the law as given by me. But you,
9 ladies and gentlemen, are also judges. You
10 will be the sole judges of the facts and the
11 credibility or believability of the
12 witnesses, and the weight or the value to
13 give to the evidence that is presented to
14 you. It is your sworn duty to accept the law
15 as it is given to you, and not to apply your
16 own conception of what you think the law is
17 or what you think the law should be.

18 So when we talk about evidence, I should
19 define that for you. Evidence is all of the
20 testimony received from the witnesses who
21 testify. It includes any exhibits that you
22 may have submitted to you. An exhibit is a
23 piece of physical evidence. This gavel, if

1 it was introduced as appropriate evidence in
2 the case, would be an exhibit. And that may
3 go back to the jury room with you for
4 inspection. That's also evidence that you
5 may consider.

6 Evidence may be direct evidence or
7 circumstantial evidence or both.

8 Direct evidence is the testimony given
9 by a witness who has seen or heard or smelled
10 or felt or somehow perceived the things
11 concerning which he or she testifies.

12 Circumstantial evidence is different.
13 Circumstantial evidence is the proof of facts
14 or circumstances by direct evidence from
15 which you may then reasonably infer other
16 related or connected facts which naturally
17 and logically follow, according to common
18 experience of mankind. Now, that's the legal
19 definition of circumstantial evidence, and
20 it's kind of simple.

21 Tonight we're expecting snow. Snow
22 tonight, folks. So if you go to bed at 8:00
23 because you want to be completely rested and

1 ready for your day in court here tomorrow,
2 and there's a fresh blanket of snow across
3 your backyard when you go to bed, and you
4 wake up at 7:00 a.m. so you can be here no
5 later than 8:15 to start, and you notice that
6 there are rabbit tracks across the yard,
7 nobody saw that rabbit track -- that rabbit
8 cross the yard. Nobody heard it. Nobody
9 felt it. But there is evidence that a rabbit
10 crossed the yard after you went to bed,
11 before you woke up in the morning. It
12 doesn't mean you can tell the color of the
13 rabbit, the sex of the rabbit, but you could
14 logically and reasonably conclude a rabbit
15 crossed my yard last night. So that's
16 circumstantial evidence.

17 The direct evidence is the rabbit
18 tracks, and you figuring out a couple other
19 things from the direct evidence is
20 circumstantial evidence. The use of that
21 evidence is, of course, up to you, and the
22 use of that evidence is subject to the burden
23 of proof.

1 Burden of proof in a criminal case is
2 solely upon the State of Ohio, the
3 prosecution, to prove each and every element
4 of the offense beyond a reasonable doubt.
5 You can get to that proof by either direct or
6 by circumstantial evidence or by a
7 combination of the two.

8 In a criminal case the State of Ohio
9 brings the charges, and the defendant has no
10 burden upon him. The sole burden of proof is
11 upon the State of Ohio.

12 In that regard, the defendant is not
13 required to testify. It is his
14 constitutional right not to testify, and
15 you're instructed -- I don't know what's
16 going to happen, whether he is or not, but
17 you're instructed that because of that being
18 a constitutional right, that you may not
19 consider that for any purpose. You're to
20 afford him that constitutional right.

21 So after we select a jury, the trial
22 will begin. And the jury selection is what's
23 called voir dire. We'll get into the

1 description of that in just a moment.

2 But after we select a jury, the lawyers
3 will provide you with opening statements.
4 Opening statements are like the prelude to a
5 book. What you're allowed to do when you
6 open up a book in a book store, you get to
7 read what the book's about and hopefully get
8 enough interest that hopefully you'll buy it.
9 It's not the whole story, otherwise they'd
10 ruin the book and you'd never buy it. It's
11 an introduction. It's an explanation of what
12 the lawyers think the evidence is in the case
13 so that you're tuned in to what the case is
14 all about.

15 After the opening statements are
16 presented to you, the State of Ohio will be
17 called upon to present its case, and they'll
18 do so by calling witnesses to testify and
19 presenting whatever exhibits they may have
20 for submission to the jury. The witnesses
21 called by the state may be cross examined by
22 the defense. The defendant has a right to
23 confront the witnesses against him, and

1 that's done by the questioning of witnesses
2 on cross examination. That is appropriate
3 and encouraged, and that's how we try cases.
4 That's what's supposed to be done.

5 When the state has completed its
6 evidence the defendant may but is not
7 required to present any evidence. If the
8 defendant chooses to present witnesses, then
9 the State of Ohio has the opportunity to
10 confront those witnesses, to challenge them
11 during cross examination.

12 When all of that is completed and the
13 parties rest their case, then the lawyers and
14 I would meet and discuss the instructions of
15 law. After it is agreed upon what the
16 instructions of law should be, then closing
17 arguments will be given to you. Each side
18 will have the opportunity to address you like
19 they did in opening statement, but instead of
20 just telling you what the case is about,
21 they're going to tell you why they feel the
22 case should be decided their way, and they're
23 going to argue that. They're going to try

1 and convince you to see it their way. It's a
2 debate type of a thing, and it will help you
3 decide the factual issues of the case.

4 Only when all of that is done will I
5 give you the law of the case unless there are
6 bits of law I give you during the course of
7 the trial. But the complete instruction of
8 law is given at the end of the case, and so
9 that should impress upon you the importance
10 of keeping an open mind throughout the trial.
11 You won't even know the law that applies to
12 this case until the very end.

13 And then probably the most important
14 part of your function is to then retire to
15 the jury room. You'll be locked in there. I
16 tell people they get locked in, because once
17 I had a juror who once we locked the door
18 disclosed to us that she was claustrophobic
19 and couldn't be locked in a room. In 38
20 years of being involved in this very system,
21 I've never experienced anything like that.
22 But you'll be locked in a room, sequestered,
23 12 jurors, and your duty is to decide this

1 case.

2 You will have to unanimously agree that
3 the defendant is guilty or that the defendant
4 is not guilty. All 12 people have to agree.
5 And so you have to discuss the case, take it
6 apart, do whatever it takes to try and reach
7 a unanimous verdict, if you can possibly do
8 so. If you don't do that, we don't have a
9 verdict, and we have to start all over again.
10 So it's important to understand that the
11 discussion amongst the jurors is very
12 important. It's a big part of it. And it is
13 your solemn duty. Once that is completed you
14 will render verdicts. You'll come back into
15 the courtroom, and different maybe from what
16 you see on TV, the jury doesn't stand and
17 say, the defendant's guilty or not guilty.
18 The verdict form is passed from the jury to
19 the bailiff, and I will announce your verdict
20 here in open court.

21 It's also possible that you may be
22 polled. A jury is polled normally no matter
23 what happens in a case, just to make sure

1 that that's your verdict. We'll have a
2 verdict form with all of your signatures, and
3 I'll say, Juror No. 1, is this your verdict?
4 And you say yes or no. That's what polling
5 the jury is. It's not a big deal. It's just
6 a confirmation of what you agreed upon in
7 open court for the record.

8 The court instructs you that at no time
9 are you to discuss or consider the subject of
10 punishment. That has nothing to do with
11 whether the defendant is guilty or not
12 guilty. What the punishment is had nothing
13 to do with anything as far as the jury is
14 concerned because you're not involved in that
15 process. If the defendant is found guilty,
16 then the duty to decide the punishment is
17 placed upon the judge, not upon the jury.
18 But please keep that in mind.

19 In every criminal case, there are
20 certain basic tenets that apply, and of
21 course they apply in this case as they do in
22 every case, criminal case in the entire
23 United States of America. First, the

1 defendant is presumed to be innocent of any
2 wrongdoing unless or until the state
3 establishes his guilt beyond a reasonable
4 doubt. So the defendant must be found not
5 guilty unless the state produces evidence
6 which convinces you beyond a reasonable doubt
7 of every essential element of the offense or
8 offenses charged in the indictment.

9 Has everyone heard the term proof beyond
10 a reasonable doubt? Is there anyone who's
11 not heard that? I presume everyone has.
12 Proof beyond a reasonable doubt is the burden
13 of proof that the state must meet in this
14 case. Reasonable doubt is present when,
15 after you have considered and compared
16 carefully, considered and compared all of the
17 evidence, you cannot say you are firmly
18 convinced of the truth of the charge.

19 Reasonable doubt is a doubt based on
20 reason and common sense. Reasonable doubt is
21 not mere possible doubt, because everything
22 relating to human affairs or depending upon
23 moral evidence is open to some possible or

1 imaginary doubt. Proof beyond a reasonable
2 doubt is proof of such character that an
3 ordinary person would be willing to rely and
4 act upon it in the most important of his or
5 her own affairs. That's the legal definition
6 of reasonable doubt. That's the burden that
7 you must hold the state to.

8 So in this court -- this is a Court of
9 Common Pleas. It is the highest trial
10 division court in our entire system of
11 justice. We have lower courts, municipal
12 courts, and county courts that decide lower
13 level criminal cases called misdemeanors, and
14 lower level civil cases that involve a
15 smaller -- I don't want to say a meager
16 amount of money, but an amount of money that
17 is legally small.

18 So this court handles cases of unlimited
19 criminal jurisdiction. We handle felony
20 cases. And we also handle civil cases of
21 unlimited jurisdiction.

22 I actually was the judge that decided
23 the Simon DeBartolo merger case when

1 DeBartolo sold to Simon, and the employees of
2 DeBartolo were entitled to compensation,
3 contractual compensation for the demise of
4 the DeBartolo franchise. So that was about a
5 one billion dollar case. That was not tried
6 to a jury. It was tried to me.

7 We do the most serious cases that there
8 are. The only courts above the Court of
9 Common Pleas are appellate courts, and they
10 don't try cases. They don't have juries.
11 They don't rule on objections. They review
12 what trial courts do.

13 So this is the Court of Common Pleas,
14 and in this court a criminal case begins with
15 the filing of an indictment. An indictment
16 is a piece of paper that is delivered to the
17 defendant to inform him that he has been
18 charged with a particular criminal offense or
19 offenses. The fact that an indictment was
20 filed in this case may not be considered by
21 you for any other purpose.

22 When the defendant received that piece
23 of paper informing him that the state charged

1 him with a criminal offense, he came into
2 court with his lawyer and entered a plea of
3 not guilty. That is a denial of the charge
4 or charges against him, and puts into issue
5 all of the essential elements of those
6 offenses. So this is the indictment. See?
7 It's a piece of paper. It was delivered to
8 the defendant, and again he came in and pled
9 not guilty.

10 So as I read this to you, I want you to
11 bear in mind that the defendant is presumed
12 innocent, and that he has pled not guilty.
13 There are charges that have been made against
14 this defendant.

15 Ryan, sit down. He's got it. I don't
16 want a distraction for the jury when somebody
17 comes into the courtroom.

18 All right. We've got to tune back in to
19 what I was saying. So in the indictment the
20 state alleges certain offenses against the
21 defendant. And in Count One, the state
22 alleges that on or about December 14th, 1974,
23 in Mahoning County, Ohio, James P. Ferrara

1 did purposely cause the death of Benjamin
2 Marsh while the said James P. Ferrara was
3 committing or attempting to commit, or in
4 fleeing immediately after committing or
5 attempting to commit aggravated robbery and
6 aggravated burglary.

7 In Count Two, the state alleges that on
8 or about December 14th, 1974, in Mahoning
9 County, Ohio, James P. Ferrara did purposely
10 cause the death of Marilyn Marsh while the
11 said James P. Ferrara was committing or
12 attempting to commit, or in fleeing
13 immediately after committing or attempting to
14 commit aggravated robbery and aggravated
15 burglary.

16 In Count Three the state alleges that on
17 or about December 14th, 1974, in Mahoning
18 County, Ohio, James P. Ferrara did purposely
19 cause the death of Heather Marsh, while the
20 said James P. Ferrara was committing or
21 attempting to commit, or in fleeing
22 immediately after committing or attempting to
23 commit aggravated robbery and aggravated

1 burglary.

2 Those are the offenses that the state
3 has charged against this defendant which he
4 has denied. So has anyone here heard or read
5 or seen anything about this case? Will you
6 raise your hand?

7 **PROSPECTIVE JURORS:** (Indicating.)

8 **THE COURT:** Several of you. There has
9 been media coverage about this case. It is
10 alleged to have occurred in 1974. It hasn't
11 been on my docket that long. It was recently
12 charged against the defendant. In fact, it
13 was charged this year in 2013. So I don't
14 want -- the first thing I want is for
15 everyone here, you are specifically
16 instructed by the court that you are not to
17 discuss with anyone, including your fellow
18 jurors, anything that you may have heard or
19 that you think you know about this case.

20 Is there anyone here who ever served --
21 or who is a potential witness in this case?
22 Any of you? No one.

23 So any information that you may have is

1 from some media source most likely. And
2 we'll get into that a little bit when we talk
3 a little bit further. So you can't talk to
4 anybody at all about anything that you may
5 have heard or learned or read or saw about
6 the case until we conduct inquiry of you
7 concerning that now.

8 All right. So now I'm going to do the
9 introductions. I always introduce my bailiff
10 first. His name is Ryan Martino. He's
11 standing to acknowledge the introduction. He
12 is the right hand man to the court. He'll be
13 your right hand man also. He's the liaison
14 between the court and the jury. He will
15 answer any questions he's authorized to
16 answer. He'll see to your needs. He'll
17 conduct you to and from the jury room. If
18 there are any issues at all that you have,
19 you need to approach him out of the hearing
20 of other jurors, and he'll forward whatever
21 information there is to me, and I'll take
22 care of it.

23 He has been with me for how long, Ryan?

1 Six years?

2 **THE BAILIFF:** Seven years.

3 **THE COURT:** I, too, served as a bailiff.
4 I used to be a bailiff for that fellow, Judge
5 Clyde W. Osborne, and, in fact, sat right
6 where Ryan is sitting and served Judge
7 Osborne when I was a student at Akron
8 University.

9 But the lady who's just appeared in the
10 doorway there, somehow she knows when to show
11 up. It's kind of uncanny. I don't know what
12 it is. Her name is Cheryl Ference. She's my
13 secretary, assistant, and she's the same as
14 Ryan. They're here to serve you, to
15 accommodate you, and to see to your needs.

16 If you can't find Ryan, which is a
17 problem I have all the time, maybe you can
18 find Cheryl and approach her. And she
19 likewise is here to serve you, take care of
20 you, help you in any way she can. She won't
21 be in the courtroom during these proceedings.
22 She's out in the outer office tending to the
23 other 403 cases that I have pending.

1 While I'm doing this, this is the only
2 case I'm going to be involved in, but she's
3 trying to keep the dogs off regarding all
4 those other cases. Please feel free to call
5 upon either of them if you need anything at
6 all in the case.

7 The court reporter in this case is
8 Chastity Feezle. She's taking a record of
9 everything that is being said here. It is
10 her duty to do that and take a complete and
11 accurate record. Pay no attention to that
12 man behind the curtain; okay?

13 Do you want me to wait for you, Ryan?
14 He knows where to go.

15 **PROSPECTIVE JUROR:** Can I ask a
16 question?

17 **THE COURT:** No. Please be seated.

18 See, when I worked for Judge Osborne,
19 whenever he was talking to a jury like I'm
20 talking to you, they locked the door so that
21 you wouldn't be disturbed or interrupted and
22 that you understand the very solemn
23 importance of these instructions. Please

1 forgive the interruption.

2 The court reporter is required to take a
3 complete and accurate record of whatever
4 occurs here in the courtroom. So they like
5 when I'm the one that's talking because I
6 talk so slow, and I talk loud enough for
7 people to hear me.

8 It drives me out of my mind because of
9 the solemnity of the court proceeding that a
10 lot of people don't do that. That they
11 talk -- they're talking like this when
12 somebody's talking to them or -- I don't know
13 what it is, but if indeed you're called
14 forward, you're going to be asked to speak.
15 That's what voir dire is, to see and to
16 speak. So it's very, very important that you
17 talk loud and clear enough for everybody in
18 this room to hear you so she can take a
19 record, so everybody can hear you, and that
20 type of thing.

21 And we realize that you may not
22 ordinarily do that. We just urge you to try
23 and make sure that you do that. If you

1 don't, we're going to have to ask you to
2 repeat what you're saying, and I'd rather not
3 have you have to do that.

4 So a record -- I might as well tell you
5 right now, you know a record is being taken
6 of these proceedings. You're never going to
7 see this record. We're not going to repeat
8 things for you. We're not going to take the
9 record and give it to you in the jury room.
10 You have to pay attention to what's going on
11 the whole time. We're not going to help you
12 in that regard. That's your duty.

13 And the record won't be provided to you.
14 That record is produced so that a proper
15 record of these proceedings is made. It's
16 not for use by the jury. All right?

17 The State of Ohio in this case is
18 represented by two of its prosecuting
19 attorneys. Attorney Dawn Cantalamessa.

20 **MS. CANTALAMESSA:** Good morning.

21 **THE COURT:** And Attorney Becky Doherty.

22 **MS. DOHERTY:** Good morning.

23 **THE COURT:** Seated with them is

1 Attorney -- or I'm sorry, Pat Mondora from
2 the Mahoning County Sheriff's office. He's
3 the investigating officer in this case, and
4 has been granted permission by the court to
5 sit at counsel table and assist the lawyers
6 during the course of the trial.

7 The defendant in this case is
8 represented by Attorney Anthony Meranto.

9 **MR. MERANTO:** Good morning, everybody.

10 **THE COURT:** And Attorney Kristie
11 Weibling.

12 **MS. WEIBLING:** Good morning.

13 **THE COURT:** And the defendant is James
14 P. Ferrara. So is there anyone here who
15 knows any of those persons just introduced?

16 **PROSPECTIVE JURORS:** (Indicating.)

17 **THE COURT:** Okay. Just one or two of
18 you. When you're called forward, I'm going
19 to ask you if you answered yes to any of the
20 questions that we've had. And please remind
21 us of that when you're called forward, and
22 we'll discuss it if indeed you're called
23 forward. If you're not called forward it's

1 silly for us to discuss it with you now.
2 We're not going to waste everybody's time to
3 do something we don't need to do.

4 The courtroom is a traditional
5 courtroom. This building was constructed in
6 1908. So it's got a great deal of majesty
7 and grandeur to it. The area that you are
8 seated in is the spectator area. People are
9 free to come and go and be seated there and
10 watch the proceedings. They're not permitted
11 to be disruptive in this court. If they are,
12 I do bad things to them. They're not
13 supposed to do that. They're not allowed to
14 eat lunch or drink pop or anything at all
15 like that. They're permitted to come in and
16 observe.

17 Likewise, they're not permitted to react
18 to anything that the parties do like you see
19 on TV when the crowd is like the audience,
20 you know, at a play where they approve or
21 disapprove. And they're just not allowed to
22 do that at all. And you need to understand
23 that applies when you render your verdict,

1 they're not going to clap or cheer or jump or
2 shout or do anything at all. It's kind of
3 undramatic, actually, because I don't let
4 them do anything when you render a verdict.

5 They're to respect what you do, but
6 they're free to come and go as they like if
7 they follow the rules. And that will happen
8 throughout the course of the trial.

9 This area here to my right is the jury
10 box. There are 12 seats there, and the first
11 12 of you are going to be called up to this
12 jury box, and the initial questioning will
13 take place that way.

14 The seat next to me is the witness
15 chair. Witnesses will be brought to the
16 podium to be sworn, and then they'll walk up
17 here to the witness chair, close to the court
18 reporter so she can hear and understand
19 everything, and close to you ladies and
20 gentlemen of the jury.

21 The judge is seated in the highest
22 position of authority because the judge is
23 the highest position and in authority in the

1 trial. Below me is the bailiff's seat, and
2 he is to see to order in the courtroom and to
3 see to your needs as they may develop during
4 the course of the case.

5 The railing in front of him is called
6 the bar. When you hear Mahoning County Bar
7 Association or Ohio State Bar Association,
8 that's what we're referring to. That is the
9 bar. It's the area between the court and the
10 lawyers. So this is my courtroom, the entire
11 courtroom.

12 This area where I'm seated, the bench,
13 is unapproachable. That's a bar to their
14 approach. And so their area is beyond that
15 where they're free to move about. Some
16 judges don't let you do that. But that area
17 is for the lawyers to move about and do what
18 they do in a case, and they're free to do
19 that. When they wish to go beyond that, when
20 they want to come and talk to me, they have
21 to ask to approach the bench or to approach
22 the witness, because that's an area they're
23 not free to move.

1 The State of Ohio, the prosecutor, and
2 the plaintiff in a civil case, sit at this
3 table closest to the jury traditionally where
4 they're seated now. The defense
5 traditionally in a criminal or in a civil
6 case sits at that table. And most of the
7 courtrooms are set up pretty much this way.

8 The bench on the side here normally is
9 occupied by what we call friends of the
10 court. So if one of my sons were to come
11 home from Columbus and want to visit, they
12 may come in and sit there to watch, or
13 another judge or lawyers come in and sit
14 there, and sometimes a member of the media
15 may come and sit there. They move in and
16 out. Usually that won't interrupt you in any
17 way.

18 During the proceedings the court
19 requires the lawyers to stand when they
20 object. It requires them to address
21 witnesses by a title. Mr. or Mrs., not Susie
22 or Billy or Jimmy. It's a formal
23 proceedings, and we like to conduct with that

1 appropriate decorum.

2 As I indicated, ladies and gentlemen, it
3 is your duty to serve. It is my duty to
4 impose that upon you. So this is not
5 anything personal. This is something legal
6 that all of us are doing here. And please
7 understand that your job is just as important
8 as my job in this case, and just as important
9 as the jobs of the prosecutors and the
10 defense lawyers in this case. It's a very
11 special thing that we ask of you.

12 As prospective jurors you're going to be
13 placed under oath, and counsel and I will
14 question you to determine your ability to be
15 fair and impartial in this particular case.
16 The questions that are asked of you are not
17 designed to pry into your personal affairs,
18 even though you may think we are prying into
19 your personal affairs. But they are to
20 discover if you have any knowledge of this
21 case or any preconceived ideas about the law
22 or about the facts which you are unable to
23 lay aside, or if you had any personal

1 experiences that make it impossible for you
2 to serve in this case because you may favor
3 one party or another. Questions are
4 necessary to assure each party a fair jury.

5 Is there anyone here who does not take
6 an oath?

7 **(WHEREUPON, the prospective jurors were**
8 **administered the oath or affirmation at 9:19**
9 **a.m., November 18, 2013, after which the**
10 **proceedings continued as follows:)**

11 **THE COURT:** All right. Thank you. You
12 may be seated. Certainly you're qualified to
13 serve as a juror or you wouldn't have made it
14 this far, but this is the fine tuning to
15 determine whether or not you can do this
16 particular job. It's very much like a job
17 interview. Even though you may not have
18 applied for this job, we're going to
19 interview you to see if you can do the job.
20 And it's for us to see and for you to see
21 also.

22 Voir dire is a Latin term which means to
23 speak the truth. You are required to answer

1 fully and completely and honestly. It is
2 also a French term which means to see and to
3 speak. And so we're going to see you and
4 speak to you about your ability to serve as
5 jurors in this case.

6 It's also incumbent upon you to see us
7 and speak to us about your ability to serve
8 in this case. And that decision will be made
9 in that regard.

10 The trial should be completed this week.
11 It should not run beyond this week, so that
12 will be the time commitment that you are
13 involved in. And the voir dire process after
14 I'm done with you, the prosecutors will ask
15 you questions, and then the defense lawyers
16 will ask you questions, and then we will
17 begin the exercise of challenges.

18 There are different ways that you can be
19 challenged. If, for example, you were a
20 witness to this case, you can't serve as a
21 juror. If you were related to anyone
22 introduced here, most likely you could not
23 serve.

1 I want you to understand that there's
2 nothing wrong with you knowing somebody. I
3 know all of these people. I deal with them
4 everyday, all these lawyers, and the police
5 officer. They're friends of mine. They're
6 people I care about, people that I hope do
7 well. But it's not about friendship or what
8 I feel about. It's about the law. The law's
9 just going to tell all of us what's going to
10 happen here.

11 So it's important that you understand,
12 knowing someone or knowing something about
13 the case, big deal. I know a lot about the
14 case, and I try it too. It's just that you
15 have to be able to decide the case based on
16 what you hear in the courtroom, not on what
17 some reporter wrote in a newspaper.

18 So these peremptory challenges -- there
19 are two types of challenges. There are
20 challenges for cause, which I've just
21 described to you. If there's some valid
22 cause for you not to serve, then you can be
23 excused. And there are also peremptory

1 challenges. Those are challenges that are
2 afforded to each side, the prosecution and
3 the defense, and they get four apiece. And
4 they get to decide -- they get to excuse four
5 people, each side, for no reason at all.

6 If, for example, you're a Dallas Cowboys
7 fan, I would probably excuse you because I'm
8 a Washington Redskins fan. I mean, it truly
9 can be that silly. They don't need to
10 explain why you're being excused on a
11 peremptory. If they challenge you for cause,
12 they do need to justify that.

13 So if you are excused for any reason at
14 all, you really shouldn't be offended.
15 That's a meaningful participation by the
16 parties in selecting the jury who will try
17 the case.

18 So these challenges for cause are set
19 forth in the rules of court governing all of
20 the courts of Ohio. I'm going to read them
21 to you. If any of them apply to you when I'm
22 done, I'm going to ask for a show of hands.
23 So please pay attention to this.

1 A person called as a juror may be
2 challenged for cause for any of the
3 following: That you have been convicted of a
4 felony crime that renders you disqualified to
5 serve on a jury. Is there anyone here in
6 that regard?

7 The jurors have not -- apparently no one
8 has been subject to that challenge.

9 That the juror is a chronic alcoholic or
10 drug-dependent person.

11 Again, no takers on -- I don't get a lot
12 of takers on the first two anyhow.

13 Have any of you served on a grand jury
14 in Mahoning County in the last year? No one.

15 Have any of you served on a jury, a
16 regular jury, in Mahoning County in the last
17 year?

18 Is there anyone here who's not a
19 resident of Mahoning County?

20 Okay. The jurors have been silent, so
21 the court will find that those challenges
22 apply to none of them.

23 Is there any juror here who has a

1 lawsuit pending between you or a member of
2 your family and the State of Ohio or this
3 defendant?

4 No one.

5 None of you knew any of the lawyers. I
6 think I asked that before. Is there anyone
7 that knew any of the officers? Someone knew
8 one or two of the lawyers. All right. We'll
9 ask that later.

10 Is there anyone here who's been
11 subpoenaed as a witness in this case?

12 No one.

13 The rest of these, there's several, but
14 they relate to whether or not you're related
15 to anybody. If you don't know them, you're
16 not related to them is what I'm assuming.

17 And is there anyone employed by either
18 of the parties in this case?

19 No one.

20 Is there anyone here who does not speak
21 and understand English?

22 All right. Because we're going to use
23 English as the official language of this

1 trial.

2 All right. Those are the challenges for
3 cause.

4 We're also going to select, in addition
5 to the jury panel, we're going to select
6 alternate jurors. Alternate jurors, we're
7 going to pick one or two; I'm not sure yet.
8 But the alternates are the same as the
9 ordinary jurors. Everything is exactly the
10 same except the alternate may not deliberate
11 the case if nothing happens that causes me to
12 excuse another juror. But the alternates
13 will stay here while the jury is deliberating
14 and may be called upon to take the place of
15 one of the regular jurors if a very highly
16 unusual circumstance would happen to develop.

17 The court instructs you that the law
18 must come to you from the court, not from the
19 lawyers. But I do allow the lawyers to
20 discuss issues of law with you so that they
21 can be satisfied that you understand the law
22 and that you don't reject it or won't accept
23 it. You must accept the law as it is given

1 to you by the court. You can't change it.
2 You can't modify it. You can't tweak it.
3 You have to just swallow it the way it's
4 given to you.

5 When you're asked questions when you're
6 called upon during voir dire, there is no
7 wrong answer as long as your answer is honest
8 and complete. So we're going to call the
9 first 12 jurors to the jury box. Our jury
10 box is here, as I've indicated.

11 The front row is closest to me. Seat
12 No. 1 is closest to the court reporter and
13 proceeds across the front row to Seat No. 6.
14 The back row right behind Seat No. 1 is Seat
15 No. 7 and proceeds across the back row to
16 Seat No. 12.

17 When I was a bailiff like Ryan is the
18 bailiff, Judge Osborne used to have me call
19 the jurors to the -- the first 12 to the jury
20 box and get them seated. I always thought it
21 was so he could help me overcome my shyness
22 in front of a crowd, and also so that he
23 could make me feel important. But when we

1 finally did have a talk about that years
2 after, after I became a lawyer and he retired
3 as a judge, he told me it was so that I would
4 mispronounce the jurors' names rather than
5 the judge do it. So I don't do that to my
6 bailiff. I'll do it myself. And if I do
7 mispronounce your name, first of all, please
8 forgive me, and second, please correct me so
9 that the lawyers don't make the same mistake.

10 Seat No. 1, Anthony Ross, please come
11 forward. Seat No. 2, Billy Jo Catanzarite.

12 **MS. CATANZARITE:** Catanzarite.

13 **THE COURT:** I always thought it should
14 be Catanzarite. All right. Seat No. 3,
15 Darlene Romesburg. Seat No. 4, Florida
16 Crump. Seat No. 5, Craig Dray. You can take
17 the scenic route. Seat No. 6, Jeffrey
18 Frankford. Seat No. 7, Josephine Willison.
19 Seat No. 8, Angela Sotlar. Seat No. 9,
20 Nicholas Bruno. Seat No. 10, Rena Firmstone.
21 Seat No. 11, Kristie Merlo. Seat No. 12,
22 Cynthia Schneider.

23 So those seats are a lot better than

1 those hard benches in the back, huh? All
2 right. Those of you in the rear of the
3 courtroom, it's very important that you pay
4 close attention to the proceedings here at
5 the front of the courtroom, because as I
6 indicated, several of these people may be
7 excused, and you'll be called upon to take
8 their place. If you don't pay attention and
9 we have to repeat everything that we did,
10 then that's no good for anybody. So please
11 try and stay up to date with us as this goes
12 on. So were all of you able to hear the
13 proceedings here at the front of the
14 courtroom?

15 **PROSPECTIVE JURORS:** (Indicating.)

16 **THE COURT:** Everyone. And did any of
17 the challenges for cause apply to any of you?

18 **PROSPECTIVE JURORS:** No.

19 **THE COURT:** And I asked if anyone had
20 heard anything about this case. Did any of
21 you hear anything or know anything or read
22 anything about this case? Please just raise
23 your hands if you did.

1 **PROSPECTIVE JURORS:** (Indicating.)

2 **THE COURT:** One, two, three, four,
3 seven, eight, nine, ten, and eleven. While
4 we're doing this -- and this is for everyone.
5 I don't want you to tell anybody what you saw
6 or heard. In a case that has received some
7 publicity -- and it's not uncommon at all for
8 that to happen. In fact, half of the cases
9 that I have are reported in the newspaper,
10 and I still have to decide them. Because
11 I've done this for so long, that's part of
12 it. Make sure the Vindicator guy isn't here.
13 And because I've learned how inaccurate the
14 Vindicator is on almost all occasions, I read
15 it for entertainment more than I read it for
16 information. But not everyone does that.

17 My mother, in fact, is 90 years old, and
18 believes everything that she reads in the
19 paper is true. It's just the way she's
20 raised, you know, just the way she is. Even
21 if it says bad things about me, she still
22 thinks it's true because it's in the
23 newspaper.

1 So when we talk about this publicity
2 issue, the first thing you need to understand
3 is that it really doesn't matter if you read
4 or heard anything about the case. What
5 matters is whether or not you're able to set
6 that aside and decide this case for yourself
7 based upon evidence that is presented to you
8 here in the courtroom. What has been
9 reported in the newspaper, on television, or
10 otherwise, is not evidence of any kind.
11 Newspaper articles are not evidence.

12 Lauren Lindvig, I see her every morning.
13 What she says is not evidence. Those are
14 people who report in the news about what they
15 heard. Now, certainly this is something that
16 is supposed to have occurred in 1974. Lauren
17 Lindvig wasn't born then, so she doesn't know
18 squat about this case, and neither do any of
19 the other reporters. The witnesses may know
20 something about this case.

21 So without getting into any more detail
22 about that, the court instructs you that you
23 are to set aside any impressions that you may

1 have and any information that you may have
2 outside of the courtroom and decide this case
3 based strictly upon the evidence that you
4 hear here in the courtroom and apply that --
5 apply the law that I give you to those facts.
6 So when I so instruct you, do you feel that
7 you are able to do that and proceed as a
8 juror? Mr. Ross?

9 **MR. ROSS:** Yes.

10 **THE COURT:** You think you can do that,
11 Ms. Catanzarite?

12 **MS. CATANZARITE:** Yes, I do.

13 **THE COURT:** Ms. Romesburg?

14 **MS. ROMESBURG:** Yes.

15 **THE COURT:** Ms. Crump?

16 **MS. CRUMP:** Yes, sir.

17 **THE COURT:** Ms. Willison?

18 **MS. WILLISON:** Yes.

19 **THE COURT:** When I say Ms., I don't know
20 if it's Mrs. or Ms. because it doesn't say
21 here, so I don't want anybody -- I hope
22 you're not offended by that. Because, you
23 know, people are real sensitive anymore.

1 When I grew up you could say most anything to
2 anybody, and people would laugh, but --
3 Ms. Sotlar?

4 **MS. SOTLAR:** Yes.

5 **THE COURT:** Mr. Bruno?

6 **MR. BRUNO:** Yes.

7 **THE COURT:** Ms. Firmstone?

8 **MS. FIRMSTONE:** Yes.

9 **THE COURT:** And Ms. Merlo?

10 **MS. MERLO:** Yes.

11 **THE COURT:** Huh?

12 **MS. MERLO:** Yes.

13 **THE COURT:** You've got to talk loud.

14 Remember I told you you've got to talk loud?

15 **MS. MERLO:** Yes.

16 **THE COURT:** So you've just got an
17 example of how we do things. Somebody will
18 say something, and the first juror answers,
19 somebody, well, that's a good answer. I
20 think I'll use that answer. It's important
21 that you decide this for yourselves. Do you
22 understand the very solemn importance of each
23 and every one of you doing this so that

1 you're satisfied as you're doing it when you
2 leave here and live the rest of your life?
3 But you know what, I did the right thing. I
4 did it the way the judge instructed. I did
5 it the way it should be done, and I'm proud
6 of what I did. And I know that I did the
7 right thing. If you can do that, you'll just
8 love this experience.

9 So setting everything aside is okay; you
10 know? Until you know what's up, the issue,
11 though, is you don't want to use anything
12 that you read in the paper to challenge what
13 some witness has to say. Because what was
14 said in the paper is not before you. It has
15 nothing to do with what we're talking about.
16 So I'm pleased that you feel that you can do
17 that. That's what you're called upon to do.

18 We have a lot of questions to be asked
19 of you. We've been going for a little while
20 now. I think before the state begins its
21 voir dire, we should take a brief recess. It
22 is a little bit cumbersome to do a recess at
23 this stage of the proceedings because there

1 are so many of you in the rear of the
2 courtroom, and we have a prospective jury
3 panel here. But what I would ask is that
4 those of you in the rear of the courtroom,
5 you can exit through the back door, and I
6 would want you back here in the courtroom
7 by -- oh, we'll go 15 minutes because there's
8 so many. So about 5 to 10:00.

9 And those of you in the jury box here,
10 the bailiff will conduct you to the jury
11 room. You, too, can move about wherever you
12 wish, but I want you back in the jury room
13 shortly before five minutes till so he can
14 conduct you back into the jury. Remember the
15 seats that you're in right now. That's where
16 you'll report.

17 During your absence from the courtroom,
18 you are instructed that you are not permitted
19 to discuss this case at all among yourselves
20 or with anyone else. You must not allow
21 anyone to discuss the case with you or in
22 your presence. You are not to form or
23 express any opinion about the case. So if

1 you hear somebody out in the hallway talking
2 about the case, walk away. Again, any
3 information outside of the courtroom is not
4 desirable. It's not a part of what we're
5 supposed to be involved in. All right.
6 We'll be in recess then for 15 minutes.

7 **(WHEREUPON, a brief recess was had,**
8 **after which the proceedings continued as**
9 **follows:)**

10 **(WHEREUPON, the Court, counsel,**
11 **Defendant and court reporter enter the**
12 **chambers of the Court, and the following**
13 **proceedings were had out of the hearing of**
14 **the prospective jurors:)**

15 **THE COURT:** We're in my chambers at the
16 request of the defense.

17 **MR. MERANTO:** Judge, in my opinion, I
18 think when you asked the general question of
19 the entire venire, that I believe there were
20 more than half of the people that raised
21 their hands with regard to having knowledge
22 of this case from media and/or other sources.
23 We've now put the first 12 jurors in the jury

1 box, and 9 of those people have expressed
2 some knowledge. We have no idea what that
3 knowledge is, what the extent of it is.

4 And I appreciate that the court has
5 asked them, and the court's satisfied with
6 the fact that they've said that they can
7 ignore all of that and act fairly, but with
8 all due respect, the court, as you spent some
9 minutes discussing with them, is an imposing
10 thing. The building, the trappings of the
11 court, the fact that most of those people
12 have never served on a jury before.

13 And I would submit to the court, and the
14 court with its vast experience not only from
15 the bench, but in trial, is well aware that
16 these people, they're going to acquiesce.
17 And I refer to it with regard to speaking on
18 how I voir dire, it's nice that they sit
19 there and they nod in unison with regard to
20 yes or no, but it's basically a
21 respectfulness and a deference to the
22 surroundings and the court. And I think
23 without exploring what they actually know

1 about it, I mean, potentially, Judge, nine of
2 the twelve that are seated right now in that
3 box could know that Mr. Ferrara is serving
4 double life in Franklin County. While they
5 say they could put that aside, if they're on
6 the fence, that's going to tip them to the
7 side of a verdict of guilty, and I just think
8 we need a stronger inquiry with regard to
9 that issue.

10 **THE COURT:** Yes? What's the state want
11 to say?

12 **MS. DOHERTY:** Your Honor, I guess I have
13 some concerns as the defense does certainly
14 because we don't know what they know. It's
15 difficult to ascertain whether or not they
16 know that fact that he discussed, or they
17 just know general things about the case. I
18 personally haven't read really any of the
19 articles, so I don't know --

20 **THE COURT:** So what do you want me to
21 do, remind them of these things? Do you want
22 me to read them the newspaper articles and
23 then ask them if they could put this aside?

1 **MR. MERANTO:** Well, no, Judge.

2 **THE COURT:** What do you want me to do?

3 **MR. MERANTO:** I think in a serious --

4 **THE COURT:** I mean, I'm happy that
5 you're willing to come in here and complain,
6 but you're offering no particular solution.

7 **MR. MERANTO:** Well, no. I think if
8 we're allowed to inquire of each of those
9 individuals -- I mean, the court knows part
10 of that is based on experience. It's based
11 on their demeanor when they answer the
12 questions. And you can tell sometimes if a
13 person's just blowing you off or if they're
14 sincere that they can ignore that. Maybe
15 it's just yeah, I read this murder's 40 years
16 old and it was horrible and this and that.
17 But I will tell you after every single
18 pretrial you looked there was something in
19 the paper, and every single one of those
20 articles mentions the fact that Mr. Ferrara
21 is serving double life out of Franklin
22 County.

23 **THE COURT:** Well, then maybe there

1 should've been a request to individually voir
2 dire these jurors or something along those
3 lines instead of what was planned in the
4 case. There's no particular reason in my
5 mind to reinforce or to remind these people
6 of what they may have seen in the newspaper.

7 **MR. MERANTO:** Judge, with all due
8 respect, and certainly with deference to this
9 court, we breached this issue, and we talked
10 about it, and you said that you'd handle it,
11 and you'd see if it was needed to necessarily
12 to individually voir dire. Don't say that I
13 didn't bring it up, because I did.

14 **THE COURT:** I did say that.

15 **MR. MERANTO:** Now, I think it's obvious
16 that I think we need to do that or explore
17 that option.

18 **THE COURT:** Is that what you're saying?
19 You think that's necessary to do that? You,
20 the prosecutor, you're saying you have
21 concerns, too? These jurors have answered
22 each one of them, same as you would seek a
23 juror to answer, can I be fair and impartial,

1 and if they say yes, then somehow that's
2 okay. They've said they can set whatever
3 publicity that they've been exposed to aside
4 and decide the case based on the facts that
5 are presented in the courtroom and the law
6 that the judge gives them.

7 **MS. DOHERTY:** And Judge, that is --

8 **THE COURT:** I'm not sure what else I
9 need to get from them.

10 **MS. DOHERTY:** And that is exactly what I
11 would've asked them. I guess my concern is
12 more that during the voir dire process that
13 the defense and the state engages in, I just
14 don't want somebody to blurt it out. But
15 maybe you could caution them.

16 **THE COURT:** They've been told not to
17 blurt it out.

18 **MS. DOHERTY:** Okay.

19 **THE COURT:** I've told them that three
20 times not to blurt it out.

21 **MS. DOHERTY:** I know. Okay.

22 **THE COURT:** I'm not sure what okay
23 means. Does okay mean that you're satisfied

1 the way that it is, or you're joining in his
2 request to remind these people what they've
3 read in the paper, I guess?

4 **MS. DOHERTY:** No, I guess I'm not
5 joining in that request. I just think we
6 have -- because of the publicity, be very
7 cautious if they appear to be beginning to
8 say something out loud. We certainly don't
9 want to contaminate those jurors who have
10 made that concession that they can set it
11 aside, don't know anything about it.

12 **MR. MERANTO:** And Judge, just for the --
13 we all know what goes on in a jury room
14 sometimes because you find out on these
15 post-relief conviction petitions and things
16 of that sort that, you know -- I mean, we
17 found this out in Bennie Adams, one of the
18 jurors now, one of the issues that's coming
19 up on his post-relief, one of the jurors
20 goes, well, you know, this guy raped somebody
21 18 years ago.

22 That's completely improper and was never
23 before the jury. They never should've known

1 that. And yet it's a relevant topic, and
2 it's absolutely something that happens, I
3 believe, on a regular basis in a jury room.
4 And without exploring it, I mean, I just have
5 to object to going forward with this venire
6 based on their response that they all -- I
7 mean, more than half of them know about this,
8 and we don't know what they know.

9 **THE COURT:** Well, my concern when you
10 talk about vast experience and all of that is
11 all you do is open a can of worms when you
12 start talking to them about what they read in
13 the paper as a -- as a casual observer to now
14 reminding them as a juror, this is what you
15 read in the newspaper.

16 **MR. MERANTO:** Well, here's all I'm
17 saying. It's pretty much this specific
18 issue, Judge, the issue of the fact that he's
19 serving a double life sentence out of
20 Franklin County, and if you ask -- out of
21 that nine, maybe only two of them are going
22 to say that that's what they know. And I
23 think certainly the other seven probably are

1 already rehabilitated with regard to that
2 issue. But the fact remains that if that
3 information is used or brought forth somehow
4 in the jury room, that's going to be an
5 absolute factor if --

6 **THE COURT:** There's no way for a court
7 to stop that. I mean, you tell me what
8 happened in Bennie Adams' case because some
9 juror says that they knew something that they
10 didn't tell the court they knew. That
11 happens all the time. All the time. And
12 there's absolutely no way to stop that.

13 I mean, I've been doing this long enough
14 to know that jurors sometimes either don't
15 remember what it is that they heard, or they
16 don't want to tell you what they heard, but
17 they got something there, or they get
18 something from somebody during the trial that
19 affects the way that they decide the case.
20 There's all kinds of things that happen like
21 that that there's no way you can stop that by
22 voir dire. That's what you're asking me to
23 do, stop something by way of voir dire.

1 The answer that you're looking for is
2 that they can decide the case based on what's
3 presented in the courtroom, the exact answer
4 that all of them gave. And so for me to
5 surrender -- and that's what it would be,
6 surrender, to allow inquiry, you're asking me
7 to make inquiry about whether or not they
8 know about this guy being in the penitentiary
9 for a double murder. Then I'm going to
10 eliminate all the jurors, aren't I?

11 **MR. MERANTO:** No. No. What I'm saying
12 is if you got those nine and said, what do
13 you know, and they said, I know there's a
14 murder. Anything else? Do you know anything
15 about this defendant? And they say no.

16 **THE COURT:** Then you're satisfied?

17 **MR. MERANTO:** Well, yeah. But if they
18 also say, yeah, I know he's already in jail
19 for another murder, I mean, that's a big
20 deal.

21 **THE COURT:** Yeah? Then how do you deal
22 with that if they say that, yeah, they read
23 that, but they're not going to use that

1 against the defendant, like they just told
2 me?

3 **MR. MERANTO:** Well, I've got four
4 peremptories, Judge, and obviously I could at
5 least make up in my mind, and Ms. Weibling
6 and I could discuss and Mr. Ferrara included
7 on, you know what, Juror 1 is full of crap,
8 excuse my French. That you could tell in
9 their voice and their eyes and their
10 inflection that they couldn't put it aside.

11 **THE COURT:** All right. I want everybody
12 in the courtroom.

13 **THE BAILIFF:** Okay.

14 **(WHEREUPON, the Court, counsel,**
15 **Defendant and court reporter returned to the**
16 **court, and the following proceedings were had**
17 **back in the hearing of the prospective**
18 **jurors:)**

19 **THE COURT:** Okay. There are a couple of
20 things that I needed to clear up that came to
21 light while we were on recess. First of all,
22 Mr. Ross, I think you raised your hand when I
23 asked if you knew anyone?

1 **MR. ROSS:** Yes.

2 **THE COURT:** Okay. Who do you know?

3 **MR. ROSS:** Mr. Meranto.

4 **THE COURT:** Okay. How do you know him?

5 **MR. ROSS:** Just as an official, football
6 official.

7 **THE COURT:** Okay. You used to coach
8 football; is that right?

9 **MR. ROSS:** Yes.

10 **THE COURT:** So your relationship with
11 him was in that regard that he was an
12 official and you were a coach?

13 **MR. ROSS:** Yes.

14 **THE COURT:** And would there be anything
15 from that relationship that would cause you
16 to favor or disfavor his position in the
17 case?

18 **MR. ROSS:** No.

19 **THE COURT:** Okay. So the fact that you
20 know him really doesn't matter?

21 **MR. ROSS:** Correct.

22 **THE COURT:** Fair enough. And then
23 Ms. Merlo.

1 **MS. MERLO:** Yes.

2 **THE COURT:** Ms. Ruble-Merlo. Is that
3 what it is, Ruble-Merlo?

4 **MS. RUBLE:** It's Ruble now, yes.

5 **THE COURT:** You see, what happens is --
6 I don't know why they do that. In fact, see,
7 whenever something funny like that happens,
8 we can correct it for the next time, but a
9 jury list just has you as Merlo, and the
10 lawyers have you by another name. So you're
11 the same person, right, Kristi Ruble-Merlo?

12 **MS. RUBLE:** Yes, I am.

13 **THE COURT:** And then Ms. Schneider, you
14 spoke with my bailiff about why I didn't ask
15 you?

16 **MS. RUBLE:** I figured it out, sir.

17 **THE COURT:** Did you raise your hand?

18 **MS. RUBLE:** No, sir.

19 **THE COURT:** Well, that's why I didn't.
20 So are you okay with that?

21 **MS. RUBLE:** Yes.

22 **THE COURT:** All right. Now, there were
23 several of you who indicated that you had

1 heard something about the case or knew
2 something about the case or read something
3 about the case. My inquiry was about your
4 ability to set that aside and to listen to
5 the evidence that's presented to you and
6 decide this case based solely upon that
7 evidence and the law that is given to you.
8 Now that you've had the recess and had that
9 instruction, is there anyone that feels any
10 differently about that? Okay.

11 Now, I hate to do this, but we gotta do
12 it. Everyone's got to remain here in the
13 courtroom, you prospective jurors, and I'm
14 going to conduct a brief inquiry of the
15 jurors who have responded affirmatively in
16 that regard in chambers, one by one, so that
17 what you think you know about the case isn't
18 transferred to somebody else, because, you
19 know, poison is that way. It has a way of
20 finding you.

21 So everyone here in the courtroom is
22 instructed that you're still in the
23 courtroom, and you should behave yourselves.

1 But I will not be present, nor will the
2 parties be present. And we're going to ask
3 these individual jurors as they come forward
4 about that. So it's okay for you to talk.
5 It's okay for you to mingle. Just please
6 keep it to a low roar if you will. We'll be
7 as expeditious in this regard as we can.

8 So I'd like the parties and the reporter
9 and I to retire to chambers, and I'll have
10 the bailiff come out and get you
11 individually. You've got to stay right
12 there, too. I'll try and be quick about
13 this.

14 **(WHEREUPON, the Court, counsel,**
15 **Defendant and court reporter enter the**
16 **chambers of the Court, and the following**
17 **proceedings were had out of the hearing of**
18 **the prospective jurors:)**

19 **(WHEREUPON, Prospective Juror No. 1,**
20 **Anthony Ross, entered the chambers of the**
21 **court.)**

22 **THE COURT:** All right. You're first.
23 That's because you're Juror No. 1.

1 **MR. ROSS:** Yes, sir.

2 **THE COURT:** You, sir, indicated that you
3 knew something about the case or was exposed
4 to some publicity about the case. And I
5 guess the most -- well, the inquiry would
6 simply be, what do you know about the case?

7 **MR. ROSS:** Obviously just, you know,
8 what you read. I remember vaguely --

9 **THE COURT:** I shouldn't say what you
10 know about the case. What information do you
11 have about the case from any source?

12 **MR. ROSS:** That a husband and a wife
13 were murdered along with their daughter back
14 in the '70s. It happened somewhere out on,
15 like, Turner Road. I kind of remember that
16 back living in Canfield, so even when I was
17 younger, I remember vaguely of that place,
18 you know, that case, but that's about it.

19 **THE COURT:** Okay. And what is your
20 source of information? Source or sources?

21 **MR. ROSS:** Vindicator.

22 **THE COURT:** Will you follow the
23 instruction to set all that aside and decide

1 the case based strictly upon what is
2 presented to you in the courtroom?

3 **MR. ROSS:** Yes.

4 **THE COURT:** Do you understand that
5 what's reported in a newspaper article may or
6 may not be accurate? They have a desire to
7 report, but they also have a desire to
8 sensationalize.

9 **MR. ROSS:** Yes.

10 **THE COURT:** And you're satisfied that
11 you can do that?

12 **MR. ROSS:** Yes.

13 **THE COURT:** All right. Thank you.
14 You're excused. Just return to the
15 courtroom. I want Juror No. 2, please,
16 Ms. Catanzarite.

17 **(WHEREUPON, Prospective Juror No. 1,**
18 **Anthony Ross, left the chambers of the**
19 **Court.)**

20 **MR. MERANTO:** Judge, can we just add to
21 the inquiry, do you know anything about
22 Mr. Ferrara?

23 **THE COURT:** Yeah, if you want. Yes,

1 I'll do that.

2 **MR. MERANTO:** Thank you, Judge.

3 **(WHEREUPON, Prospective Juror No. 2,**
4 **Billie Jo Catanzarite, entered the chambers**
5 **of the Court.)**

6 **THE COURT:** Hi. You're Billy Jo
7 Catanzarite?

8 **MS. CATANZARITE:** Yes.

9 **THE COURT:** And you're here just simply
10 to tell us what you have learned about this
11 case from outside sources?

12 **MS. CATANZARITE:** Oh, very little. My
13 husband showed me the paper this morning, and
14 he said, I wonder if that's what you're going
15 to be seeing.

16 **THE COURT:** That's what I thought when I
17 read the paper, why did they do this?
18 They're just -- so did you read the article?

19 **MS. CATANZARITE:** No. I have three
20 kids. I didn't have time to read the article
21 this morning.

22 **THE COURT:** Have you read any other --

23 **MS. CATANZARITE:** I was busy with my

1 referee gear on.

2 **THE COURT:** Is that the first you knew
3 about this?

4 **MS. CATANZARITE:** Yes, that was the
5 first.

6 **THE COURT:** Do you know anything about
7 this defendant at all?

8 **MS. CATANZARITE:** None.

9 **THE COURT:** Do you have the ability to
10 put aside anything you may have learned about
11 this case and decide it strictly upon what's
12 presented to you in the courtroom?

13 **MS. CATANZARITE:** I believe I do.

14 **THE COURT:** Thank you very kindly.

15 **MS. CATANZARITE:** Thank you.

16 **(WHEREUPON, Prospective Juror No. 2,**
17 **Billie Jo Catanzarite, left the chambers of**
18 **the Court.)**

19 **THE COURT:** And I'd like Ms. Romesburg,
20 No. 3.

21 **(WHEREUPON, Prospective Juror No. 3,**
22 **Darlene Romesburg, entered the chambers of**
23 **the Court.)**

1 **THE COURT:** Hi. How are you?

2 **MS. ROMESBURG:** Nice to meet you.

3 **THE COURT:** Well, nice to meet you. So
4 you're Ms. Darlene Romesburg?

5 **MS. ROMESBURG:** That's correct.

6 **THE COURT:** And you told us in the
7 courtroom that you had -- you knew something
8 about this case from outside sources; is that
9 right?

10 **MS. ROMESBURG:** Yes.

11 **THE COURT:** What do you know?

12 **MS. ROMESBURG:** I remember when it
13 happened.

14 **THE COURT:** Oh, do you?

15 **MS. ROMESBURG:** My cousin worked at
16 General Motors, so we used to talk about it.
17 But needless to say, I remember recently it
18 being in the paper and just reading. No
19 further discussion with anybody about that.

20 **THE COURT:** So you read most of what
21 they printed about it because of your earlier
22 interest in the case?

23 **MS. ROMESBURG:** Uh-huh.

1 **THE COURT:** So you're pretty up to date
2 on the news regarding the case?

3 **MS. ROMESBURG:** Yes.

4 **THE COURT:** And that -- in '74 when you
5 talked to people about it, what was that
6 conversation about?

7 **MS. ROMESBURG:** Just how terrible it was
8 and tragic.

9 **THE COURT:** The horror of the whole
10 thing?

11 **MS. ROMESBURG:** Yes. And there was
12 another case, I think in Pennsylvania, was
13 similar, a family like that was murdered.

14 **THE COURT:** Okay.

15 **MS. ROMESBURG:** And it was just -- it
16 was all tragic, terrible.

17 **THE COURT:** So you've read that
18 something like this did occur, and you
19 followed it, and now you know that someone
20 has been charged with this offense?

21 **MS. ROMESBURG:** Yes.

22 **THE COURT:** Do you know anything at all
23 about Mr. Ferrara?

1 **MS. ROMESBURG:** No.

2 **THE COURT:** What have you read about, or
3 do you recall what you read about his -- him
4 being in this case?

5 **MS. ROMESBURG:** DNA, and that he was in
6 jail all this time. That -- that really
7 was -- it's really all -- I'm shocked today
8 that this is what it is, so I really haven't
9 had much time to ponder on it.

10 **THE COURT:** That he was in jail. Do you
11 know for what?

12 **MS. ROMESBURG:** No.

13 **THE COURT:** And do you know for how
14 long?

15 **MS. ROMESBURG:** I just remember it was
16 extended.

17 **THE COURT:** Okay. So I had asked before
18 about the ability to set all that aside. Do
19 you think you have that ability?

20 **MS. ROMESBURG:** I've never had to use it
21 in this type of situation, and I certainly
22 would hope that I could exercise that.

23 **THE COURT:** Well, you understand that

1 what a trial is about is what the truth of
2 the matter is. That's what you're here for,
3 to determine the truth of the matter.

4 **MS. ROMESBURG:** Yes.

5 **THE COURT:** And so that's not determined
6 by what's in the newspaper. It's determined
7 by what's presented in court.

8 **MS. ROMESBURG:** I realize that.

9 **THE COURT:** So given that background,
10 given that understanding, do you see how
11 inappropriate it is to use the newspaper, use
12 the media to help you decide the case?

13 **MS. ROMESBURG:** It is, and I've learned
14 that over the years. There's been just
15 different instances over my lifetime that I
16 have maybe some first-hand knowledge, and I
17 truly know that those weren't the
18 circumstances that were reported in the
19 Vindicator. I know how easy it is to leave a
20 paragraph out and to change the whole persona
21 of the article.

22 **THE COURT:** Well, God bless you. I know
23 it all too well.

1 **MS. ROMESBURG:** It's terrible, isn't it?

2 **THE COURT:** It is. And it would be even
3 more terrible if that type of thing was used
4 to deny someone his -- his liberty, to find
5 someone guilty of an offense that they may
6 not be guilty of. Or vice versa, to let
7 somebody go for an offense they may be guilty
8 of. What's in the media is inappropriate.

9 **MS. ROMESBURG:** Yes.

10 **THE COURT:** So do you think you can do
11 that? Do you think you can put that aside?

12 **MS. ROMESBURG:** Yes.

13 **THE COURT:** Okay. Thank you very much.

14 **MS. ROMESBURG:** You're welcome.

15 **THE COURT:** Okay. Ms. Crump.

16 **(WHEREUPON, Prospective Juror No. 3,**
17 **Darlene Romesburg, left the chambers of the**
18 **Court, and Prospective Juror No. 4, Florida**
19 **Crump, entered.)**

20 **THE COURT:** How do you like the office?

21 **MS. CRUMP:** It's nice. It's scary,
22 though.

23 **THE COURT:** So you're Ms. Crump?

1 **MS. CRUMP:** Yes, sir.

2 **THE COURT:** We had asked -- what this
3 inquiry is about is because you indicated as
4 some of the others have that you know
5 something about this case from the media. Do
6 you know anything about this case from any
7 other source?

8 **MS. CRUMP:** No.

9 **THE COURT:** What do you know about it
10 from the media?

11 **MS. CRUMP:** Basically I heard it on the
12 news, because I don't read the Vindicator,
13 and I just heard about it this summer, but I
14 wasn't occupied with -- my husband had -- I
15 had been going through a lot of stuff
16 personally, so I just didn't dwell on it.

17 **THE COURT:** Well, what do you recall
18 about it?

19 **MS. CRUMP:** Something about a family
20 being murdered years ago, and that the person
21 was in prison now, and they're -- they --
22 something about that they are trying this
23 person; that they figured out that this was

1 the person that supposedly did it.

2 **THE COURT:** So you pretty much know what
3 I told you in court when I read the
4 indictment?

5 **MS. CRUMP:** Right. Yeah.

6 **THE COURT:** That they're charging that
7 this occurred in '74; that these three people
8 were killed and all of that.

9 **MS. CRUMP:** Right.

10 **THE COURT:** You also said you heard
11 something about this person being in prison?

12 **MS. CRUMP:** That's what I think I heard.
13 I can't even remember. I just knew I heard
14 about it once it was brought up in court
15 today. That's about it.

16 **THE COURT:** So do you think any of that
17 would affect your ability to try this case
18 fairly and impartially?

19 **MS. CRUMP:** No.

20 **THE COURT:** Do you think you can set all
21 that aside? That doesn't count, you know.

22 **MS. CRUMP:** Right. I know.

23 **THE COURT:** You can't think that, use

1 that, even imagine that. So just what you
2 hear in the courtroom.

3 **MS. CRUMP:** Right. I understand.

4 **THE COURT:** And -- okay. Thank you.

5 **MS. CRUMP:** Okay.

6 **THE COURT:** Okay. I need Ms. Willison.
7 She's No. 7.

8 **(WHEREUPON, Prospective Juror No. 4,**
9 **Florida Crump, left the chambers of the Court**
10 **and Prospective Juror No. 7, Josephine**
11 **Willison, entered.)**

12 **THE COURT:** Hi.

13 **MS. WILLISON:** Hi.

14 **THE COURT:** So you're Ms. Josephine
15 Willison?

16 **MS. WILLISON:** That's it, yes.

17 **THE COURT:** Nice sweater.

18 **MS. WILLISON:** Thank you.

19 **THE COURT:** Nice and seasonal. We're
20 here in my office just to ask you what it is
21 that you know about this case from outside
22 sources. You indicated that you knew
23 something from the media?

1 **MS. WILLISON:** Yeah. Just the newspaper
2 readings.

3 **THE COURT:** What do you know?

4 **MS. WILLISON:** Well, the -- went to get
5 the newspaper this morning, and it was right
6 on the front page right there. So I just
7 read the accounts of what had supposedly
8 transpired. You know, dates and the other
9 people that could have been -- well, that
10 were --

11 **THE COURT:** That there were other
12 suspects?

13 **MS. WILLISON:** Yeah. There were other
14 suspects, and there were a lot of them, you
15 know, but they just couldn't nail it down to
16 one.

17 **THE COURT:** Okay. So do you know
18 anything about this defendant? Do you
19 remember hearing anything about him or
20 reading anything about him?

21 **MS. WILLISON:** No, nothing, other --

22 **THE COURT:** Other than what he's charged
23 with in this?

1 **MS. WILLISON:** Other than what you read
2 in the newspaper.

3 **THE COURT:** So is there -- I mean, it's
4 a lot to ask of people to ignore what you've
5 already heard and just decide the case based
6 upon the evidence. Put all that Vindicator
7 and Lauren Lindvig stuff aside.

8 **MS. WILLISON:** Yeah.

9 **THE COURT:** Do you think you can do
10 that?

11 **MS. WILLISON:** Which a lot of times you
12 have to and make a judgment on your own, you
13 know, from things that -- because there's a
14 lot of things that -- information that's
15 given, but you have to decide.

16 **THE COURT:** That's not so good.

17 **MS. WILLISON:** Yeah. Uh-huh. Exactly.

18 **THE COURT:** So you're satisfied you can
19 do that? Forget about all that other stuff,
20 not use it at all? You can't test the
21 evidence against that stuff. You've got to
22 just test the evidence against the law.

23 **MS. WILLISON:** What you hear here.

1 **THE COURT:** Are you okay with that?

2 **MS. WILLISON:** Yeah. Yes.

3 **THE COURT:** Okay. Thank you.

4 **MS. WILLISON:** Am I dismissed?

5 **THE COURT:** Yes, you are. Sorry. Next,
6 Ms. Sotlar, Juror No. 8.

7 **(WHEREUPON, Prospective Juror No. 7,**
8 **Josephine Willison, left the chambers of the**
9 **Court and Prospective Juror No. 8, Angela**
10 **Sotlar, entered.)**

11 **THE COURT:** So you're Ms. Sotlar?

12 **MS. SOTLAR:** I am.

13 **THE COURT:** We asked that you come back
14 here and talk to us about what you may know
15 about this case from outside sources. Can
16 you tell me what it is that you know?

17 **MS. SOTLAR:** I just read about it in the
18 Vindicator, that's all.

19 **THE COURT:** Yeah? Well, what do you
20 know from the Vindicator?

21 **MS. SOTLAR:** That it happened in the
22 '70s, and --

23 **THE COURT:** I told you that this morning

1 in court, too, huh?

2 **MS. SOTLAR:** Nothing really, to be
3 honest with you, that I can remember.

4 **THE COURT:** You didn't read today's
5 article?

6 **MS. SOTLAR:** No.

7 **THE COURT:** You know you're not allowed
8 to read it now?

9 **MS. SOTLAR:** Okay. I didn't know that.

10 **THE COURT:** I'm going to tell you that
11 you can't read anything more about the case
12 while we're trying it.

13 **MS. SOTLAR:** Okay.

14 **THE COURT:** Is it fair to say that you
15 know something about this case, that it's
16 familiar to you about the media, but you
17 can't recall any details?

18 **MS. SOTLAR:** Correct.

19 **THE COURT:** So if during the course of
20 the trial some of these details will come
21 back to you, you know, I remember reading in
22 the paper, you know, you can't use that.

23 **MS. SOTLAR:** Correct.

1 **THE COURT:** You can't. It has nothing
2 to do with the evidence.

3 **MS. SOTLAR:** Okay.

4 **THE COURT:** Can you do that, just decide
5 the case on what you hear in here, wipe all
6 that other stuff out?

7 **MS. SOTLAR:** Yes.

8 **THE COURT:** All right. Thank you.

9 **MS. SOTLAR:** I apologize for the
10 coughing.

11 **THE COURT:** It's okay. I doubt that you
12 can help that.

13 **MS. SOTLAR:** I can't.

14 **THE COURT:** Okay. Mr. Bruno, No. 9.

15 **(WHEREUPON, Prospective Juror No. 8,**
16 **Angela Sotlar, left the chambers of Court,**
17 **and Prospective Juror No. 9, Nicholas Bruno,**
18 **entered.)**

19 **THE COURT:** So you're Mr. Bruno?

20 **MR. BRUNO:** That's right.

21 **THE COURT:** All right. So we've asked
22 you to come back here so you can just tell us
23 what you know about this case from outside

1 sources.

2 **MR. BRUNO:** I just saw it in passing on
3 the TV news a couple times. I don't really
4 remember too many details about it. I
5 remember there was a boy left alive at the
6 crime. That's really it. I don't really
7 remember anything else.

8 **THE COURT:** What's the last time you
9 read or heard something about it? Do you
10 remember?

11 **MR. BRUNO:** A couple weeks, maybe a
12 month ago.

13 **THE COURT:** Okay. So -- I mean, it may
14 be that what you read and what's presented in
15 the court appears to be the same thing. But
16 it may be that what you read and what happens
17 in the court is completely different. Do you
18 understand that what you read doesn't mean
19 squat, whether it's the same or it's
20 different? You can't use any of that to
21 decide the issues of this case. And it's
22 kind of a mental gymnastics. You know, I
23 tell you to forget about something that you

1 think you know. But you understand the
2 importance of a jury hearing the evidence and
3 deciding the case on the evidence, not on
4 some newspaper article?

5 **MR. BRUNO:** Yes, I understand.

6 **THE COURT:** Do you feel you have the
7 ability to do that?

8 **MR. BRUNO:** I do.

9 **THE COURT:** Okay. Thank you.

10 **MR. BRUNO:** Thank you.

11 **THE COURT:** Ms. Firmstone, No. 10.

12 **(WHEREUPON, Prospective Juror No. 9,**
13 **Nicholas Bruno, left the chambers of the**
14 **Court.)**

15 **THE COURT:** I didn't ask that juror if
16 he knew Mr. Ferrara or knew about him, but it
17 appeared the guy didn't know much of
18 anything, just was reminded of the case when
19 he was called forward. I'll make sure I ask
20 this other one.

21 **(WHEREUPON, Prospective Juror No. 10,**
22 **Rena Firmstone, entered the chambers of the**
23 **Court.)**

1 **THE COURT:** You're Rena Firmstone?

2 **MS. FIRMSTONE:** Yes.

3 **THE COURT:** So we've asked you back here
4 to tell us what it is that you know about
5 this case from outside sources.

6 **MS. FIRMSTONE:** I read articles that
7 have been in the Vindicator.

8 **THE COURT:** How about today's article?

9 **MS. FIRMSTONE:** Yes.

10 **THE COURT:** I need you to tell me what
11 it is you recall reading in the media.

12 **MS. FIRMSTONE:** There were deaths that
13 took place.

14 **THE COURT:** I told you that this
15 morning.

16 **MS. FIRMSTONE:** Of a woman. I don't
17 know if that was the wife. Small children.
18 And that's pretty much all I remember from
19 that.

20 **THE COURT:** Do you recall anything in
21 the media about this defendant in particular,
22 other than he's been charged with the
23 offenses?

1 **MS. FIRMSTONE:** No. Uh-uh.

2 **THE COURT:** So I asked you twice in the
3 courtroom, and I have to ask you again now,
4 is there -- do you understand the very solemn
5 importance of you deciding this case based on
6 the evidence, not on something else?

7 **MS. FIRMSTONE:** Yes.

8 **THE COURT:** Are you able to set aside
9 anything that you read in the paper just as
10 outside information that you can't consider
11 and decide the case based on what you hear in
12 the courtroom?

13 **MS. FIRMSTONE:** Yes.

14 **THE COURT:** All right. Well, thank you.

15 **MS. FIRMSTONE:** Okay. Thank you.

16 **THE COURT:** Kristie Ruble-Merlo, bring
17 her in, please.

18 **(WHEREUPON, Prospective Juror No. 10,**
19 **Rena Firmstone, entered the chambers of the**
20 **Court, and Prospective Juror No. 11, Kristie**
21 **Ruble, entered.)**

22 **THE COURT:** Okay. So which is it?

23 **MS. RUBLE:** Ruble. Merlo could go.

1 **THE COURT:** Is that what you want -- how
2 you want me to refer to you as, Ms. Ruble?

3 **MS. RUBLE:** Yes, please.

4 **THE COURT:** I'm going to make a note of
5 that.

6 **MR. MERANTO:** Does that mean we were
7 right and the court was wrong, Your Honor?

8 **THE COURT:** No, it doesn't mean anything
9 like that. What it means is you got
10 something different than what I got.

11 **MR. MERANTO:** Okay.

12 **THE COURT:** So Ms. Ruble, we've asked
13 you to come back here because you indicated
14 that you knew something about the case from
15 an outside source. And I don't like to even
16 say it that way, that you know something,
17 because you really don't. You just were
18 exposed to some publicity about the case; is
19 that right?

20 **MS. RUBLE:** Right.

21 **THE COURT:** What do you recall of the
22 publicity? What do you know from the
23 publicity?

1 **MS. RUBLE:** Just that there was three
2 people involved, a family, and that the
3 husband, a wife, and a little girl, and that
4 the baby was left in the crib unharmed.
5 That's basically really all that I heard.

6 **THE COURT:** Did you read the article
7 today?

8 **MS. RUBLE:** No.

9 **THE COURT:** Okay. See, what the
10 Vindicator does when they write an article,
11 they write an article in 1974, and they've
12 been writing the same article ever since.
13 They have no original thought. If you ever
14 read Bertram de Souza, you'd -- you don't
15 read that, do you?

16 **MS. RUBLE:** No.

17 **THE COURT:** God bless you. I have to
18 because of my job, but they never write
19 anything new. It's always regurgitation of
20 the same thing. Anyhow, in this reading that
21 you've done or this exposure to publicity,
22 did you learn anything about this defendant?

23 **MS. RUBLE:** No.

1 **THE COURT:** Okay. And you understand
2 how inappropriate it is to decide the case
3 based on the newspaper?

4 **MS. RUBLE:** Yes.

5 **THE COURT:** Or based on some newspaper's
6 opinion of what you should do. See, I
7 wouldn't have a job if I just did what the
8 Vindicator told me to do, because there's
9 nothing just or proper in that. You know,
10 they're -- they just have an opinion.

11 **MS. RUBLE:** Yes.

12 **THE COURT:** So the evidence in the case
13 is going to be presented to you in the
14 courtroom, and that's how you have to decide
15 the case. Do you trust your ability to set
16 all that other information aside and decide
17 the case based on the evidence from the
18 courtroom and apply the law that I give you
19 to decide?

20 **MS. RUBLE:** Yes, I do.

21 **THE COURT:** All right. Well, thank you
22 very much.

23 **MS. RUBLE:** Thank you.

1 **(WHEREUPON, Prospective Juror No. 11,**
2 **Kristie Ruble, left the chambers of the**
3 **Court.)**

4 **THE COURT:** Okay. So I've questioned
5 all nine of those persons. Does the state
6 wish to address the court concerning that
7 inquiry during the court's -- still during
8 the court's voir dire?

9 **MS. DOHERTY:** No, Your Honor.

10 **THE COURT:** And how about the defense?

11 **MR. MERANTO:** I think Ms. Weibling still
12 has reservation, Your Honor, but I'm
13 satisfied, so I'm going to make that call and
14 say I think we're good, Judge, but I think it
15 was important that we did that, all kidding
16 aside, and I appreciate the court's
17 indulgence. Thank you.

18 **THE COURT:** All right. So when we --
19 we're going to turn this over to the state
20 very shortly, and when you're done, the
21 defense will go, and then we'll probably
22 discuss how we're going to do this with
23 peremptories and satisfying this issue with

1 people who come forward. It's probably one
2 of the first things I ask someone who comes
3 forward. And if they're so exposed to
4 publicity, then we'll bring them back here
5 and ask them that right away before we go on
6 with them.

7 **MS. CANTALAMESSA:** Your Honor, when we
8 started before you talked to Juror No. 12
9 Ms. Schneider, and said that she had asked
10 Ryan a question.

11 **MR. MERANTO:** Yeah. I missed that, too.

12 **MS. CANTALAMESSA:** I didn't understand
13 what that was about.

14 **THE COURT:** I'm sorry. I thought I put
15 that on the record and made it clear, but
16 thank you if I didn't. She asked Ryan why I
17 didn't ask her if she could be fair and
18 impartial.

19 **MS. CANTALAMESSA:** Oh, okay.

20 **THE COURT:** And I said because she
21 didn't -- I told Ryan because she didn't
22 raise her hand. But Ryan said -- Ryan's
23 response to her -- and please understand,

1 when a juror asks a question of my bailiff,
2 he's instructed not to answer them, but to
3 tell them that he'll report that to me and
4 seek an answer, which is what he did with
5 her. And then he told her that he would --
6 after he talked with me that I would deal
7 with that in the courtroom. And so she --
8 that's what she said when she answered, she
9 figured it out that -- why I didn't ask her,
10 it's because she didn't raise her hand.

11 **MS. CANTALAMESSA:** Okay.

12 **THE COURT:** So that was it.

13 **MS. CANTALAMESSA:** We weren't sure if
14 she said that she did raise her hand or
15 something like that.

16 **THE COURT:** Yeah. She did not raise her
17 hand. At least in my interpretation when I
18 talked to her again in there, she confirmed
19 that she didn't raise her hand, and that's
20 why she understood I didn't ask her.

21 **MS. CANTALAMESSA:** Thank you.

22 **(WHEREUPON, the Court, counsel,**
23 **Defendant and court reporter returned to the**

1 **court, and the following proceedings were had**
2 **back in the hearing of the prospective**
3 **jurors:)**

4 **THE COURT:** Okay. The court has already
5 discussed most of the things I need to
6 discuss with you, ladies and gentlemen of the
7 jury. As I indicated, the State of Ohio will
8 have questions for you during voir dire, and
9 the defense will have questions for you
10 during voir dire. Their voir dire should be
11 approximately a half an hour apiece, and
12 we'll proceed from there. So the State of
13 Ohio is called upon now to proceed.

14 **MS. CANTALAMESSA:** Thank you, Your
15 Honor. Good morning, everyone. As the judge
16 said before and introduced me, my name's Dawn
17 Cantalamesa, and I'm sitting with Becky
18 Doherty. We're assistant prosecutors here in
19 Mahoning County. She's the chief of the
20 criminal division, and I'm chief trial
21 counsel in the criminal division. So we get
22 to go around to different courtrooms and try
23 a multitude of cases or a variety of cases in

1 all the different courtrooms. So we get more
2 experience being in front of all the
3 different judges.

4 I've been with our prosecutor's office
5 for over 10 years now, and before that I was
6 prosecuting in Florida in Seminole County,
7 but all my family is from here, and my
8 husband's family, so, you know, you always
9 want to move back where there's family, and
10 plus the great weather we're having. You do
11 miss the seasons when you're in Florida,
12 that's for sure.

13 I have two little kids. I have a five
14 and a six-year-old, so I can understand some
15 people who are trying to get ready in the
16 morning and get all your stuff together and
17 worried about what's going to happen at
18 night. But what we ask and what the court
19 asks as well is that you pay attention to the
20 evidence as it's going on during the day and
21 try to set aside anything that's going on in
22 your life and set that aside and just pay
23 attention and keep track of everything that's

1 going on in the courtroom as it's going on.
2 Can everyone promise to do that?

3 **PROSPECTIVE JURORS:** (Indicating.)

4 **MS. CANTALAMESSA:** Ms. Doherty's been
5 here since '09, and before -- we kind of
6 stole her from the Summit County Prosecutor's
7 office, so she's been prosecuting many years.
8 We won't say how many. And then Detective
9 Mondora's also sitting here. He did not
10 originally investigate this case. The case
11 was originally investigated in 1974, as you
12 heard from the indictment, and none of us
13 were really around then. But we will talk
14 about the evidence, and anybody that we bring
15 in or hopefully some of them, at least some
16 of them, will be from the scene from 1974.
17 There's not a lot of people left. But you
18 might hear some names of people who have
19 passed on, that kind of thing.

20 Now, the judge read you the indictment
21 and has told you that an indictment is simply
22 just a piece of paper informing the defendant
23 of what he's been charged. Has anyone ever

1 gotten a speeding ticket?

2 **PROSPECTIVE JURORS:** (Indicating.)

3 **MS. CANTALAMESSA:** I hope I'm not the
4 only one. Just like that speeding ticket
5 informs you of what you have to do in
6 response to that, an indictment simply
7 informs the defendant of what he has to do,
8 where he has to go to respond to those
9 charges. It simply informs him of the
10 charges and the elements of those charges.

11 In Ohio every criminal offense is made
12 up of elements, just like ingredients to
13 cookies. So for example, everything that
14 happened in Mahoning County, we have to prove
15 happened in Mahoning County. Otherwise we
16 shouldn't be here; right? So it might seem
17 odd during the course of the testimony, but
18 there will be a question here and there
19 about, excuse me, Mr. Witness, is that
20 location, or did this happen in Mahoning
21 County, Ohio? Okay? And that's because we
22 have to meet each and every one of our
23 elements in order to find someone guilty.

1 Does everyone understand that?

2 **PROSPECTIVE JURORS:** (Indicating.)

3 **MS. CANTALAMESSA:** Has anyone ever made
4 chocolate chip cookies? Mrs. Catanzarite,
5 you've made chocolate chip cookies, right,
6 before we had all the stuff you just plop on
7 from the refrigerated dough? Just like those
8 ingredients make up chocolate chip cookies
9 when you read them on the back of the Toll
10 House package or whatever, just like those
11 ingredients make up chocolate chip cookies,
12 elements make up each offense. So if we
13 weren't to put in chocolate chips into those
14 chocolate chip cookies, Mrs. Sotlar, would
15 those be chocolate chip cookies if we didn't
16 add chocolate chips?

17 **MS. SOTLAR:** No.

18 **MS. CANTALAMESSA:** Right. So we have to
19 add each and every element -- we have to
20 prove each and every element of that offense
21 beyond a reasonable doubt. Does everyone
22 understand that?

23 **PROSPECTIVE JURORS:** Yes.

1 **MS. CANTALAMESSA:** Has anyone ever heard
2 the phrase innocent until proven guilty? We
3 watch enough TV; right? Can everyone promise
4 to follow that presumption, that the
5 defendant is presumed innocent until the
6 state proves his guilt beyond a reasonable
7 doubt? Can everyone promise that?

8 **PROSPECTIVE JURORS:** Yes.

9 **MS. CANTALAMESSA:** Is anyone sitting
10 there now because of the nature of these
11 charges and knowing that an indictment's been
12 filed, think that the defendant's
13 automatically guilty now? Anyone?

14 **PROSPECTIVE JURORS:** No.

15 **MS. CANTALAMESSA:** That's all we ask,
16 too, because we want -- we want the burden of
17 proof -- as the State of Ohio, we want the
18 burden of proof to prove each and every
19 element beyond a reasonable doubt of each and
20 every offense. The defendant has no burden
21 whatsoever. The defendant only has rights,
22 and we'll talk about that in a minute.

23 Our burden of proof is beyond a

1 reasonable doubt. Has anyone ever heard that
2 before? They talk about that on TV; right?
3 Sometimes they say beyond a shadow of a
4 doubt, beyond all doubt. The burden of proof
5 is beyond a reasonable doubt; okay? By
6 definition that means not 100 percent,
7 because none of us were there at the time.
8 Unless we have a video of it or were present
9 as it's happening, we can't prove something
10 happened 100 percent. Is everyone
11 comfortable with that?

12 **PROSPECTIVE JURORS:** Yes.

13 **MS. CANTALAMESSA:** This is the same
14 burden we have in every criminal case. It's
15 beyond a reasonable doubt, not beyond all
16 doubt. Everyone's okay with that?

17 **PROSPECTIVE JURORS:** Yes.

18 **MS. CANTALAMESSA:** Mrs. Willison?

19 **MS. WILLISON:** Yes.

20 **MS. CANTALAMESSA:** Did you see the pen I
21 was holding?

22 **MS. WILLISON:** Yes, I saw it.

23 **MS. CANTALAMESSA:** Okay. You saw the

1 pen. Where is that pen now? Do you know?

2 **MS. WILLISON:** On the podium.

3 **MS. CANTALAMESSA:** Let me tell you right
4 now just to help along with the little
5 example I have, the pen's on the floor; okay?
6 Let's say that you have to prove that I
7 dropped that pen on the floor to someone out
8 in the hallway, and they weren't in here when
9 I did it. Do you think you could do that, to
10 prove that pen's on the floor?

11 **MS. WILLISON:** I heard a click, and I
12 thought it clicked on the podium.

13 **MS. CANTALAMESSA:** That's okay. Do you
14 think you could prove that I dropped it on
15 the floor to someone out in the hallway?

16 **MS. WILLISON:** I don't think so.

17 **MS. CANTALAMESSA:** What if I told you
18 you're allowed to call witnesses? You can
19 call witnesses who saw me drop the pen.
20 Mrs. Schneider, did you see me drop that pen?

21 **MS. SCHNEIDER:** Yes.

22 **MS. CANTALAMESSA:** Now, let's say you
23 can call Mrs. Schneider and Mr. Frankford.

1 Mr. Frankford, did you see me drop that pen?

2 **MR. FRANKFORD:** I saw you throw it.

3 **MS. CANTALAMESSA:** Good. New terms. I
4 like that. Let's say, Mrs. Willison, you can
5 go out in the hallway with your two witnesses
6 and prove to somebody out in the hallway that
7 I dropped or threw my pen on the floor. Do
8 you think you can do that now?

9 **MS. WILLISON:** Yes.

10 **MS. CANTALAMESSA:** Okay. That's exactly
11 what we're going to do here in this trial.
12 We're going to call witnesses. We're going
13 to ask that you sit and pay attention to
14 those witnesses, you listen to those
15 witnesses, you judge the credibility of those
16 witnesses and decide what happened. Let's
17 say, Mrs. Willison, you go out in the
18 hallway, and Mrs. Sotlar comes with you;
19 okay? And you're trying to prove to someone
20 out in the hallway that I dropped or I threw
21 my pen on the floor. That pen's on the
22 floor. And someone says to you two, I don't
23 think so. That pen could be anywhere. That

1 pen could've been sucked up by aliens that
2 were flying over the Earth at the time. Do
3 you think that's reasonable that someone
4 would say that?

5 **MS. WILLISON:** No.

6 **MS. CANTALAMESSA:** Mrs. Sotlar?

7 **MS. SOTLAR:** No.

8 **MS. CANTALAMESSA:** That's not
9 reasonable, is it? Do you think that's
10 reasonable, Mrs. Willison?

11 **MS. WILLISON:** No.

12 **MS. CANTALAMESSA:** Proof beyond a
13 reasonable doubt is not proof beyond all
14 doubt or imaginary doubt or beyond an
15 unreasonable doubt; okay? It's proof beyond
16 a reasonable doubt. So we're going to ask
17 you to use your reason and your common sense.
18 Does everyone think they could do that?

19 **PROSPECTIVE JURORS:** Yes.

20 **MS. CANTALAMESSA:** We're going to ask
21 you to test the evidence by asking yourself,
22 is that logical? Does that make sense? Is
23 that person credible? Does everyone think

1 they could do that?

2 **PROSPECTIVE JURORS:** Yes.

3 **MS. CANTALAMESSA:** Let's say you have --
4 you're going to prove that I dropped my pen
5 on the floor, okay, Mrs. Willison? And I'll
6 get other people involved so you don't feel
7 like you're being picked on. Let's ask
8 Mrs. Crump. Do you think that if I called
9 everybody, or if Mrs. Willison called
10 everybody to prove that I dropped the pen on
11 the floor, that everybody would testify in
12 the exact same way?

13 **MS. CRUMP:** No.

14 **MS. CANTALAMESSA:** Why not?

15 **MS. CRUMP:** Because everybody has a
16 different perspective.

17 **MS. CANTALAMESSA:** Right. Do you think
18 they're lying because they have a different
19 perspective or they use different words like
20 Mr. Frankford said throw and Ms. Schneider,
21 we agreed that was dropped? Do you think
22 that they're lying because it's different?

23 **MS. CRUMP:** No.

1 **MS. CANTALAMESSA:** Do you think human
2 inconsistencies are very natural?

3 **MS. CRUMP:** Yes.

4 **MS. CANTALAMESSA:** Let's say it's a year
5 from now. Do you think everybody would
6 testify in the exact same manner again?

7 **MS. CRUMP:** No.

8 **MS. CANTALAMESSA:** Would it be even more
9 different, maybe a wider range of how they
10 would differ?

11 **MS. CRUMP:** I don't know if it would be
12 wider, but it would be different.

13 **MS. CANTALAMESSA:** Okay. Let's say it's
14 39 years from now. Do you think there would
15 be more sway in perspective as to how
16 everyone testifies?

17 **MS. CRUMP:** I don't know.

18 **MS. CANTALAMESSA:** Okay. Do you think
19 you can keep an open mind and listen to
20 everyone's testimony and decide whether it's
21 a slight inconsistency, a big inconsistency,
22 whether they're credible, whether they're
23 telling the truth or whether they're telling

1 what they remember specifically from the
2 case? Can everyone do that? Can everyone
3 keep an open mind?

4 **PROSPECTIVE JURORS:** Yes.

5 **MS. CANTALAMESSA:** Now, when we have to
6 prove something beyond a reasonable doubt,
7 the law says it's proof beyond a reasonable
8 doubt, proof of such evidence that you're
9 firmly convinced of the truth of the charge.
10 It means not 100 percent. Is everyone still
11 comfortable with that? We don't have to
12 prove anything beyond all doubt, because none
13 of us were there. Is everyone okay with
14 that?

15 **PROSPECTIVE JURORS:** Yes.

16 **MS. CANTALAMESSA:** Now, I also talked
17 about it's our burden, and I talked about
18 that the defendant has only rights. We have
19 the burden of proof. We have to prove each
20 and every element of every offense charged
21 beyond a reasonable doubt. The defendant has
22 only rights. Has anyone ever heard on TV you
23 have the right to remain silent, that kind of

1 thing, when they're reading someone their
2 rights on those cop shows? That carries
3 forward throughout the entire trial. A
4 defendant has no burden to prove anything.
5 Okay? He has only rights. He has the right
6 to testify or not to testify. The defense
7 doesn't have to do anything. Is everyone
8 comfortable with that?

9 **PROSPECTIVE JURORS:** Yes.

10 **MS. CANTALAMESSA:** You know, a lot of
11 times we hear, I want to hear both sides to
12 every story. You're not necessarily going to
13 hear that in the courtroom. Is everyone okay
14 with that?

15 **PROSPECTIVE JURORS:** Yes.

16 **MS. CANTALAMESSA:** Now, like I said, the
17 defense has rights. He has a right to
18 testify or not testify. He has a right to
19 all of our evidence. He has the right to
20 subpoena witnesses, if he chooses. And he
21 has the right to a jury trial. It's the same
22 rights we all enjoy as U.S. citizens. Does
23 everyone understand that? I can go up to

1 Mr. Martino right here, and I'm so
2 frustrated, and I punch him in the face, in
3 front of everyone in this room. And I'm sure
4 he would go sign a complaint against me. I
5 could go to my arraignment, plead not guilty,
6 and demand my jury trial, even with all these
7 witnesses. Does everyone understand that?

8 **PROSPECTIVE JURORS:** Yes.

9 **MS. CANTALAMESSA:** The state still has
10 to prove my guilt beyond a reasonable doubt.
11 Now, we are going -- we're going to hope to
12 show you the who, the what, the where, the
13 how, the when, but we don't necessarily know
14 the why. The law says proof of motive is not
15 required. We don't have to prove what the
16 defendant's motive was. We don't necessarily
17 know why anyone commits certain crimes that
18 they commit. Does everyone understand that?
19 And you hear from TV -- does anyone hear from
20 TV they don't have the motive to do that, or
21 they have the motive to do that? Is everyone
22 comfortable with the fact that we don't have
23 to prove motive? Is everyone okay with that?

1 **PROSPECTIVE JURORS:** Yes.

2 **MS. CANTALAMESSA:** Now, from the
3 evidence you might have theories, but it's
4 nothing that we have to prove. It's not
5 included in any of the elements of the crime.
6 Is that okay?

7 **PROSPECTIVE JURORS:** Yes.

8 **MS. CANTALAMESSA:** I told you that you
9 would have to sit and listen to the evidence
10 and judge the credibility of the witnesses;
11 okay? You have to decide who's telling the
12 truth, who's not telling the truth, if
13 they're telling the whole truth, some of the
14 truth, not any truth. It's up to you as each
15 individual juror. Does everyone think they
16 could do that? Mrs. Catanzarite, you have
17 the three kids, which is perfect, and they're
18 all two years apart. So it's perfect with my
19 example. Have you ever had to decide between
20 your three kids who was telling the truth and
21 who wasn't telling the truth?

22 **MS. CATANZARITE:** Yes.

23 **MS. CANTALAMESSA:** Okay. What kind of

1 things do you use in your everyday life in
2 order to do that?

3 **MS. CATANZARITE:** It depends on the
4 situation.

5 **MS. CANTALAMESSA:** Okay.

6 **MS. CATANZARITE:** It depends on what I
7 see, what I hear. And the look of mom
8 whenever -- look them in the eyes and
9 convince them that I know, even though I may
10 not know. And then they tell me.

11 **MS. CANTALAMESSA:** So you're definitely
12 using their body language; right?

13 **MS. CATANZARITE:** Yes.

14 **MS. CANTALAMESSA:** You're using what's
15 logical, what makes sense from the evidence
16 you see; right?

17 **MS. CATANZARITE:** (Nods head.)

18 **MS. CANTALAMESSA:** Do you think you
19 would use those same tools when judging the
20 credibility of the witnesses on the witness
21 stand?

22 **MS. CATANZARITE:** Similarly.

23 **MS. CANTALAMESSA:** Okay. And you're a

1 teacher, too; right?

2 **MS. CATANZARITE:** I am.

3 **MS. CANTALAMESSA:** So you probably use
4 those same tools when you're at school.
5 You're looking for what makes sense. We want
6 you to use your reason and your common sense.
7 We want you to look at the witnesses when
8 they testify. Look at their body language.
9 See if they have any bias. See if those
10 witnesses had the chance to observe what it
11 is they are testifying about. Can everyone
12 do that?

13 **PROSPECTIVE JURORS:** Yes.

14 **MS. CANTALAMESSA:** Can everyone promise,
15 along with that credibility of the witnesses,
16 judging their credibility, that they will
17 start every witness, no matter what they do,
18 whether they're police officers or doctors or
19 scientists, can they start everyone off on an
20 equal level? Can everyone promise to do
21 that?

22 **PROSPECTIVE JURORS:** Yes.

23 **MS. CANTALAMESSA:** Is anyone going to

1 give police officers more credibility just
2 because they're police officer? No one?
3 What about doctors? Is anyone going to give
4 doctors more credibility? What about less
5 credibility? Is anyone going to give them
6 less credibility just because of who they
7 are?

8 **PROSPECTIVE JURORS:** No.

9 **MS. CANTALAMESSA:** That's all we ask.
10 We ask you to keep an open mind throughout
11 the entirety of the case, not to render a
12 decision or a verdict until you've heard all
13 the evidence and to use your reason and your
14 common sense. Can everyone promise to do
15 that?

16 **PROSPECTIVE JURORS:** Yes.

17 **MS. CANTALAMESSA:** Can everyone
18 promise -- even if you don't like a witness,
19 say you're a Steelers fan, and they come in
20 with a Browns shirt on, and you're like, oh,
21 I don't want to listen to this person. Can
22 everyone promise to keep an open mind, at
23 least listen to that witness and judge their

1 credibility, test their evidence with the
2 same tools you would test any other witness?
3 Can everyone promise to do that, even if you
4 don't like the witness?

5 **PROSPECTIVE PROSPECTIVE JURORS:** Yes.

6 **MS. CANTALAMESSA:** There's going to be
7 times as jurors because you are the fact
8 finders. You're going to listen to the
9 evidence. You're going to determine what
10 happened. You're going to determine what the
11 facts are. There's going to be times like we
12 talked about that some people are going to
13 conflict. You might see it as a slight
14 inconsistency. Someone else might see it as
15 not an inconsistency at all. You as
16 individual jurors need to determine what's
17 important and what's not so important. Let's
18 say I made -- or it's been voted into the
19 legislature that eating a BLT in Mahoning
20 County, Ohio is illegal; okay? Not only are
21 we not going to be able to smoke in public,
22 but we're not allowed to eat BLTs. So I
23 charge Mr. Martino -- he charged me with

1 assault, so I'm going to charge him with
2 eating a BLT. And I'm going to bring three
3 witnesses.

4 Now, what happens in the trial is the
5 judge will give you the elements of the crime
6 before the evidence. He's going to tell you
7 that the state has to prove that Mr. Martino
8 had bacon, lettuce, and tomato before he can
9 be found guilty of eating a BLT. Does
10 everyone understand that? So the judge will
11 read to you the elements before, like he does
12 here, and then I present my evidence.

13 I call my first witness, and they say, I
14 saw Mr. Martino eating a BLT sandwich, and he
15 was at the old B Dub's, and he had three
16 strips of hickory smoked bacon and two slices
17 of beefsteak tomato, Boston bib lettuce, and
18 he had that with french fries and a Diet
19 Coke. And I thank that witness.

20 And I bring the next witness, and they
21 say, I saw Mr. Martino eating a BLT, and it
22 had three strips of what I thought was real
23 crispy bacon or peppered bacon, and it had

1 some red tomato, some lettuce. Could've been
2 romaine lettuce. And he had that with some
3 kind of soda and some pretzels. And I thank
4 that witness.

5 The third witness comes on and says, I
6 saw Mr. Martino eating a BLT sandwich. It
7 had four strips of bacon, and I could smell
8 it from across the room, and two slices of
9 the most ripe tomatoes I've ever seen, and
10 some lettuce on there. There was definitely
11 green lettuce, very green lettuce. And he
12 had that with french fries, and I think an
13 iced tea. So I thank that witness.

14 The judge reads you the elements again,
15 and says, the state has proved Mr. Martino
16 has eaten a BLT if they've proven bacon,
17 lettuce, and tomato.

18 Mr. Dray, did you hear evidence of
19 bacon?

20 **MR. DRAY:** Yes.

21 **MS. CANTALAMESSA:** Did you hear evidence
22 of lettuce?

23 **MR. DRAY:** Yes.

1 **MS. CANTALAMESSA:** And did you hear
2 evidence of tomato?

3 **MR. DRAY:** Yes.

4 **MS. CANTALAMESSA:** Did you hear some
5 conflicts in their testimony?

6 **MR. DRAY:** Yes.

7 **MS. CANTALAMESSA:** You as an individual
8 juror need to resolve whether those conflicts
9 go to an important detail or a not so
10 important detail. Do you think you can do
11 that?

12 **MR. DRAY:** Yes.

13 **MS. CANTALAMESSA:** Do you think
14 Mr. Martino ate a BLT?

15 **MR. DRAY:** Yes.

16 **MS. CANTALAMESSA:** Okay. Guilty. I
17 watched the -- at least before I had kids, I
18 used to watch the Food Network a lot. Now
19 it's more cartoons and Disney channel. But a
20 lot of my examples have to do with food. I
21 hope to make you really hungry before lunch,
22 and then the restaurants downtown here should
23 make some money.

1 Now, the law does not require that we
2 present anymore evidence than one witness.
3 There's not a number of witnesses that the
4 law requires. Does anyone think it takes
5 more than one witness to testify about the
6 facts before you can find someone guilty of
7 something, if you believe that witness beyond
8 a reasonable doubt? Does anyone think it
9 takes more than one? Anyone?

10 Want an example? Mrs. Firmstone --
11 Ms. Firmstone, where did you park today?

12 **MS. FIRMSTONE:** In the parking lot the
13 street over from the courthouse.

14 **MS. CANTALAMESSA:** Okay. Was there an
15 attendant there?

16 **MS. FIRMSTONE:** No.

17 **MS. CANTALAMESSA:** Let's pretend there
18 was. It makes it easier for my example. I
19 play with the examples a little bit. Let's
20 say you get excused today, and as you're
21 walking back to your car, you pull out your
22 keys, and you're carrying your purse. The
23 attendant starts to approach you, and you're

1 like, oh, my goodness, what happened? Did I
2 not pay enough money? Did something happen
3 to my car while I was gone? As the attendant
4 approaches you he pulls out a gun and robs
5 you of your keys and your purse.

6 You're the only one around. You're the
7 only witness. You immediately go over to the
8 Youngstown Police Department and report that
9 person, and they find that person. Do you
10 think that person should be found not guilty
11 because you were the only witness to that?
12 You would want a jury to believe you; right?

13 **MS. FIRMSTONE:** Yes.

14 **MS. CANTALAMESSA:** In the law we try to
15 stress quality over quantity. There will be
16 no instruction that's read by the judge that
17 says unless the state's shown by two
18 witnesses, you have to find someone not
19 guilty. There's nothing like that. If a
20 jury were to listen to your statement and
21 believe what you had to say beyond a
22 reasonable doubt, they could find someone
23 guilty of that. Does everyone understand

1 that?

2 **PROSPECTIVE JURORS:** Yes.

3 **MS. CANTALAMESSA:** Mr. Frankford, you
4 have two kids; right?

5 **MR. FRANKFORD:** Yes.

6 **MS. CANTALAMESSA:** I don't want to pick
7 on Ms. Catanzarite the whole time. Let's
8 say -- do your kids like chocolate cake?

9 **MR. FRANKFORD:** Yes.

10 **MS. CANTALAMESSA:** Most kids do; right?
11 Let's say it's the middle of the summer, and
12 you decide you're going to make a delicious
13 dinner for the kids and your wife. And it's
14 a special occasion, and you've gone all out.
15 I don't know if you like the grill or
16 whatever, but you decide you're going to make
17 a chocolate cake as well.

18 You get out the recipe book, and it just
19 ends up being beautiful. It's a beautiful
20 chocolate cake with chocolate icing, and you
21 found a beautiful cake plate to display it
22 on. And you make that, because you always
23 make dessert first, and then you move on to

1 what you're going to make for dinner. Set
2 that aside and say nobody's to touch this
3 chocolate cake. It's for after dinner;
4 right?

5 So you move on to your meal, and you're
6 starting to make that. You discover you've
7 forgotten an ingredient, and you tell your
8 kids, don't touch the cake. I'm going to run
9 to the store. I'll be back in five minutes
10 flat. Nobody touch that. Your wife's not
11 home, but it's okay. You're back in four and
12 a half minutes.

13 When you get back, a slice of cake is
14 cut out of that delicious, beautiful
15 chocolate cake. There's a dirty plate, fork,
16 and knife in the sink. And your kids are
17 sitting at the kitchen table, angelically,
18 trying to find homework to do in the summer.
19 So you ask the kids -- oh, and the little one
20 still has chocolate icing all around their
21 face, but I think it's because the older ones
22 are smart enough to wipe it off.

23 But anyway, you ask the kids, who ate

1 this cake? They say, the dog ate it. So you
2 ask the older one, who ate this cake? And
3 she said, the dog ate it. Do you know what
4 happened to that cake?

5 **MR. FRANKFORD:** Yes.

6 **MS. CANTALAMESSA:** Did you need to have
7 seen them eat the cake in order to know what
8 happened to it?

9 **MR. FRANKFORD:** No.

10 **MS. CANTALAMESSA:** No. That's what's
11 called circumstantial evidence; okay? The
12 law says circumstantial evidence and direct
13 evidence are of equal weight; okay? And
14 circumstantial evidence is evidence that you
15 can infer from that direct evidence. It's
16 facts and circumstances that you can infer
17 from what's presented. Can everyone agree
18 with that, that direct and circumstantial are
19 of equal weight? And circumstantial can be
20 just as heavy. Do you believe that to be
21 true, Mrs. Romesburg?

22 **MS. ROMESBURG:** Sounds like it's true.

23 **MS. CANTALAMESSA:** Yeah. And you've

1 heard that on TV, too; right? Everybody's
2 like, oh, that's just circumstantial. But
3 the law says that circumstantial and direct
4 are of equal weight. Are you all okay with
5 that?

6 **PROSPECTIVE JURORS:** Yes.

7 **THE COURT:** You have about 10 minutes.

8 **MS. CANTALAMESSA:** Okay. Thank you,
9 Judge. I'm almost done anyway. Does anyone
10 have any religious, moral, or ethical reasons
11 why they cannot sit in judgment of someone
12 else? Mrs. Romesburg, you had -- your
13 sister's home was robbed. Was that just this
14 past month?

15 **MS. ROMESBURG:** October.

16 **MS. CANTALAMESSA:** Did they find anybody
17 that did that?

18 **MS. ROMESBURG:** No.

19 **MS. CANTALAMESSA:** Are they still
20 searching? Is it still an open case?

21 **MS. ROMESBURG:** It's still open.

22 **MS. CANTALAMESSA:** What agency
23 investigated that?

1 **MS. ROMESBURG:** Coitsville Township.

2 **MS. CANTALAMESSA:** Okay. Do you know
3 whether or not they had the crime scene out
4 there, the crime lab out there?

5 **MS. ROMESBURG:** Yes.

6 **MS. CANTALAMESSA:** And do you -- because
7 they haven't found anyone yet, do you hold
8 anything against the police or against the
9 justice system because of that?

10 **MS. ROMESBURG:** No.

11 **MS. CANTALAMESSA:** Okay. And that's
12 what I'm going to ask. I'm going to go
13 around and -- some people have mentioned a
14 few cases that they've had in their past. We
15 just want to make sure everyone can set aside
16 any kind of bias you might have for or
17 against somebody, set that aside. And we
18 want everybody to have an open mind and
19 everyone to start off on an equal level. Can
20 everyone do that?

21 **PROSPECTIVE JURORS:** Yes.

22 **MS. CANTALAMESSA:** Is there any reason,
23 Ms. Romesburg, that you couldn't be fair and

1 impartial in this case?

2 **MS. ROMESBURG:** No.

3 **MS. CANTALAMESSA:** And Mrs. Crump, your
4 husband works for the Sheriff's Department?

5 **MS. CRUMP:** Yes.

6 **MS. CANTALAMESSA:** He works in the jail;
7 right?

8 **MS. CRUMP:** Yes.

9 **MS. CANTALAMESSA:** Okay. Anything about
10 your relationship with your husband that
11 would cause you any concern or think that you
12 would side with either the state or the
13 defense, anything like that?

14 **MS. CRUMP:** No.

15 **MS. CANTALAMESSA:** Could you set that
16 all aside and be fair and impartial and
17 render your decision based solely on the
18 evidence?

19 **MS. CRUMP:** Yes.

20 **MS. CANTALAMESSA:** You also had some
21 cousins that were victims. One cousin or
22 more than one?

23 **MS. CRUMP:** Two.

1 **MS. CANTALAMESSA:** Okay. Anything about
2 that cause you any concern that you feel you
3 would -- you couldn't set that aside in
4 rendering a verdict in this case?

5 **MS. CRUMP:** No.

6 **MS. CANTALAMESSA:** Okay. Were people
7 arrested in those situations?

8 **MS. CRUMP:** Yes.

9 **MS. CANTALAMESSA:** And were you involved
10 in the trial or anything like that? Was
11 there a trial?

12 **MS. CRUMP:** Yes.

13 **MS. CANTALAMESSA:** Okay. And how long
14 ago was that?

15 **MS. CRUMP:** It's been a while. It's
16 been a while. I can't even tell you.

17 **MS. CANTALAMESSA:** Do you remember what
18 agency or when that happened?

19 **MS. CRUMP:** Youngstown.

20 **MS. CANTALAMESSA:** This obviously is not
21 a Youngstown case. It happened in Canfield
22 Township. So we have the Sheriff's
23 Department. There might be mention of people

1 from Youngstown coming in and delivering
2 evidence, that kind of thing. Anything to
3 cause you concern about that? Same question.
4 Can you be fair and impartial?

5 **MS. CRUMP:** Yes.

6 **MS. CANTALAMESSA:** Okay. And Mr. Dray,
7 same kind of question. You had a situation
8 with your wife. Is that while you were
9 married?

10 **MR. DRAY:** No. Before I was married to
11 her.

12 **MS. CANTALAMESSA:** Okay. Before you
13 were married. And were you involved?

14 **MR. DRAY:** No.

15 **MS. CANTALAMESSA:** Anything regarding
16 that situation that would cause you to either
17 side with the state or side with the defense
18 because of that?

19 **MR. DRAY:** No.

20 **MS. CANTALAMESSA:** Do you think you
21 could set anything you remember or anything
22 your wife kind of told you about this case,
23 set that aside?

1 **MR. DRAY:** Yes.

2 **MS. CANTALAMESSA:** And Mrs. Ruble, you
3 talked about a situation in your
4 questionnaire as well.

5 **MS. RUBLE:** Yes.

6 **MS. CANTALAMESSA:** Was that -- was your
7 situation investigated by the police?

8 **MS. RUBLE:** Yes.

9 **MS. CANTALAMESSA:** And which agency was
10 that?

11 **MS. RUBLE:** Boardman.

12 **MS. CANTALAMESSA:** Boardman. Was
13 anything -- was anyone ever charged?

14 **MS. RUBLE:** It was all civil.

15 **MS. CANTALAMESSA:** Okay. Anything about
16 that, would that cause you to side with
17 either the state or the defense in this case?

18 **MS. RUBLE:** No.

19 **MS. CANTALAMESSA:** Do you think you can
20 set aside anything that happened in that --
21 considering it's totally different, do you
22 think you can set that aside or listen to the
23 facts in evidence in this case?

1 **MS. RUBLE:** Yes.

2 **MS. CANTALAMESSA:** And Mrs. Schneider,
3 you were on a jury before?

4 **MS. SCHNEIDER:** Yes.

5 **MS. CANTALAMESSA:** Was it criminal,
6 civil?

7 **MS. SCHNEIDER:** It was civil.

8 **MS. CANTALAMESSA:** And that case -- and
9 that was about 10 years ago?

10 **MS. SCHNEIDER:** It's been a while.

11 **MS. CANTALAMESSA:** Was it here in
12 Mahoning County?

13 **MS. SCHNEIDER:** No. I was in Warren.

14 **MS. CANTALAMESSA:** And I'm sure during
15 that case you heard about a different burden
16 of proof than our beyond a reasonable doubt;
17 is that right?

18 **MS. SCHNEIDER:** Yes.

19 **MS. CANTALAMESSA:** Do you think you can
20 set aside anything you remember about the
21 jury instructions, the law, everything like
22 that? Can you set that aside and base your
23 decision on the law as this judge gives it to

1 you?

2 **MS. SCHNEIDER:** Yes.

3 **MS. CANTALAMESSA:** Does anyone,
4 because -- and I think it's better maybe just
5 to ask the whole group. Anything that
6 mentioned either a car being stolen or a
7 house break-in or anything like that, anyone
8 who has a prior case like that think that
9 they wouldn't be able to set that aside and
10 would as they're sitting here right now
11 either siding with the state or siding with
12 the defense? Does anyone have that opinion?

13 **PROSPECTIVE JURORS:** No.

14 **MS. CANTALAMESSA:** Okay. Anyone who sat
15 as a juror before, whether it was a felony or
16 a misdemeanor or criminal, civil, think they
17 couldn't set aside what they learned from
18 their prior jury service and just listen to
19 the law and the definitions as this judge
20 gives it to you? No one? Okay.

21 Does anyone have any questions for me?
22 This is the only time we can really converse
23 back and forth. After we're done with voir

1 dire, we kind of can say hi, good morning,
2 and stuff like that, but we're not allowed to
3 really talk to you. I think that's it,
4 Judge. I'm good. Thank you.

5 **THE COURT:** All right. Thank you
6 kindly. Mr. Meranto.

7 **MR. MERANTO:** Thanks, Judge. Before we
8 start, though, I didn't want to interrupt
9 Ms. Cantalamessa, but I heard Mr. Dray
10 talking, and that stalking case involving
11 your wife, that was you that stalked her?
12 And then you married her?

13 **MR. DRAY:** No. He's in prison.

14 **MR. MERANTO:** That's the power of an
15 accusation, Mr. Dray. I just wanted to --

16 **MR. DRAY:** Oh, okay.

17 **MR. MERANTO:** Before you jumped across
18 and knocked me down there. I wish that bar
19 was here. That's why I --

20 **MR. DRAY:** Okay.

21 **MR. MERANTO:** Good morning, ladies and
22 gentlemen. I'm Tony Meranto as I said
23 before. I didn't say it. The judge said it.

1 This is Ms. Weibling. And Mr. Ferrara over
2 here we're representing. I'm not going to go
3 through my little sordid past because I've
4 been doing defense work pretty much a long
5 time and I'm proud of that. We in the
6 defense bar say we're the last thing between
7 you and tyranny, so remember that when you
8 think about the defense lawyers.

9 I did prosecute when I first started
10 practice. I think I lasted seven months, and
11 it wasn't good for me. It wasn't good for
12 anybody. But I'm happy with what I'm doing
13 now.

14 Appreciate your service, because as the
15 judge stated, and I can't can emphasize it
16 more, without people that are willing to come
17 down here and participate -- this is the most
18 important thing in the world. Think about if
19 someone you cared about or somebody you knew,
20 just was an acquaintance, you would want them
21 to have sincere, thoughtful people to pay
22 attention to what's going on and make sure
23 that they got a fair shake. By the way,

1 that's all we're looking for here.

2 The judge has asked you a number of
3 times, Ms. Cantalamessa has asked you,
4 nobody's in here that has any preconceived
5 notions about this, which way to go with this
6 case; is that true? Everybody?

7 **PROSPECTIVE JURORS:** (Indicating.)

8 **MR. MERANTO:** And as we stand here right
9 now, Mr. Ferrara is not guilty. Everybody's
10 okay with that?

11 **PROSPECTIVE JURORS:** Yes.

12 **MR. MERANTO:** And we talked about this
13 presumption of innocence. Really it's a
14 presumption of not guilty; okay? So
15 Mr. Ross, since you recognized me without my
16 black and white stripes from years ago, if I
17 could talk to the judge and everybody else
18 here into just being done with this right
19 now, and we sent you back to the jury room
20 right now and said you've got to give me a
21 verdict right now, what would your verdict
22 be?

23 **MR. ROSS:** Not guilty.

1 **MR. MERANTO:** Okay. Haven't heard
2 anything. Don't need to hear anything;
3 right? We talked about this indictment. The
4 judge told you it's a piece of paper. And I
5 believe Ms. Willison, you said you had a
6 speeding ticket. You raised your hand?

7 **MS. WILLISON:** Yes. Uh-huh.

8 **MR. MERANTO:** Tell me about how that
9 went with the speeding ticket. What happened
10 with the officer?

11 **MS. WILLISON:** I was coming home from a
12 meeting in a hurry and was given a speeding
13 ticket.

14 **MR. MERANTO:** Did he have any dialogue
15 with you? Did he say, hey, explain to me --

16 **MS. WILLISON:** I said, well, you know,
17 I'm supposed to be home at such and such a
18 time, and I wasn't, so I was in a hurry, and,
19 you know, he says, well, you know, this is
20 what the speed limit was, and I realized it.
21 I said, oh, I was going that fast? And it
22 was just that.

23 **MR. MERANTO:** And he gave you the

1 ticket, and did you pay it? Did you contest
2 it?

3 **MS. WILLISON:** No.

4 **MR. MERANTO:** Anybody ever have a ticket
5 that they contested, speeding ticket or
6 otherwise? No? Okay.

7 Ms. Schneider, you participated I think
8 in that example with regard to
9 Ms. Cantalamessa dropping her pen on the
10 ground; correct?

11 **MS. SCHNEIDER:** Correct.

12 **MR. MERANTO:** And I believe
13 Ms. Cantalamessa asked Ms. Willison, hey,
14 where's your pen? And she said, it's on the
15 podium. Well, we now know it was actually on
16 the floor.

17 **MS. SCHNEIDER:** Right.

18 **MR. MERANTO:** So reasonable minds can
19 differ with regard to those things.

20 Ms. Cantalamessa also used another
21 example. Ms. Firmstone, she said, well, if I
22 punched Mr. Martino right here, and you guys
23 all saw it, and I could still plead not

1 guilty. I want to talk a little bit about
2 that with you.

3 Mr. Ferrara gets this piece of paper,
4 this indictment, and all that's required of
5 him is to come before the bar and say I'm not
6 guilty. Those words. At that point, it's
7 like a big, iron curtain drops down, and all
8 those rights that Ms. Cantalamessa talked
9 about kicked in; okay? Right to remain
10 silent, right to a jury trial. That's why
11 we're all here, all those things.

12 So I want to be clear about this because
13 I think what she's saying is, well, everybody
14 in this room saw her punch Mr. Martino. Why
15 are we having a trial? You know, well, yeah,
16 so the guy says not guilty, and now we have
17 to go through this. Do you understand that
18 every case is not that clear?

19 **MS. FIRMSTONE:** (Nods head.)

20 **MR. MERANTO:** Do you agree with that?

21 **MS. RUBLE:** Yes.

22 **MR. MERANTO:** Ms. Crump, do you agree
23 with that?

1 **MS. CRUMP:** Yes.

2 **MR. MERANTO:** So the fact that there's
3 been a not guilty plea and we're having this
4 trial, that's not just a formality.
5 Mr. Bruno, do you understand that you're the
6 sole judge, collectively, if you're selected
7 to be on a jury, as to whether or not
8 Mr. Ferrara did it or not?

9 **MR. BRUNO:** Yes.

10 **MR. MERANTO:** This was a terrible crime.
11 Some of you said you heard about it. But the
12 reason we're here is that the State of Ohio,
13 they said Mr. Ferrara did it. Ms. Sotlar, do
14 you understand that?

15 **MS. SOTLAR:** (Nods head.)

16 **MR. MERANTO:** And I wanted to ask you a
17 question because Ms. Cantalamessa was talking
18 to you about her burden and the fact that the
19 state, since they charged Mr. Ferrara, they
20 have to prove Mr. Ferrara did it. They have
21 to prove it beyond a reasonable doubt. And
22 she was saying, you understand that we don't
23 have to do anything? We don't have to put on

1 evidence. We don't have to say anything.
2 And you kind of had a puzzled look on your
3 face. So if I were to ask you to go back
4 right now into that jury room and give me a
5 verdict, what would your verdict be?

6 **MS. SOTLAR:** Not guilty.

7 **MR. MERANTO:** Okay. When that big
8 curtain drops down, I love those old movies
9 and everything they used to say, the
10 defendant's cloaked in innocence. And that
11 goes back to this presumption right here.
12 Let's face it, Mr. Ferrara got indicted,
13 Mr. Dray. He's here; right?

14 **MR. DRAY:** Right.

15 **MR. MERANTO:** We all know about the
16 power of an accusation now and how that can
17 be. Some people here were wondering. I
18 mean, how many of you were wondering, what's
19 with Mr. Dray, and did he actually do
20 something? Is that true?

21 **PROSPECTIVE JURORS:** (Indicating.)

22 **MR. MERANTO:** And I did that to you with
23 that one little statement and without any

1 evidence or not one witness. So it's a big
2 thing. You would agree with that?

3 **MR. DRAY:** I would agree.

4 **MR. MERANTO:** Can you tell me honestly
5 that you believe as we're sitting here,
6 because human nature might be, well, the guy
7 got -- he's got to be here for a reason. He
8 must have done something. He got indicted.
9 Can you tell me that you believe in your
10 heart right now, because the judge has
11 instructed you and we've told you that he's
12 not guilty?

13 **MR. DRAY:** Yeah.

14 **MR. MERANTO:** And if you went back right
15 now, you'd say, I didn't hear anything, he's
16 not guilty?

17 **MR. DRAY:** That's correct.

18 **MR. MERANTO:** Now, Mr. Frankford, let's
19 talk about this BLT sandwich and those three
20 witnesses. Because I'll go with that food.
21 I can't stand all the food talk, but we'll
22 talk about it. If you -- did you ever eat a
23 BLT?

1 **MR. FRANKFORD:** Yes.

2 **MR. MERANTO:** Do you like it?

3 **MR. FRANKFORD:** Yes.

4 **MR. MERANTO:** Okay. Well, how do you
5 have your BLT?

6 **MR. FRANKFORD:** Bacon, lettuce, and
7 tomato, mayonnaise, white bread.

8 **MR. MERANTO:** Bacon, lettuce, tomato,
9 mayonnaise, white bread. So if I served you
10 a BLT and it didn't have any mayonnaise on
11 it, would you be less than happy with that
12 BLT?

13 **MR. FRANKFORD:** I'd eat it, especially
14 right now.

15 **MR. MERANTO:** You'd eat it. But you
16 prefer mayonnaise; right?

17 **MR. FRANKFORD:** Yes.

18 **MR. MERANTO:** But as far as the
19 definition goes, it had bacon, it had
20 lettuce, it had tomato, so --

21 **MR. FRANKFORD:** It's a BLT.

22 **MR. MERANTO:** It's a BLT. Could you
23 live without the tomato?

1 **MR. FRANKFORD:** I'm sorry?

2 **MR. MERANTO:** Could you live without the
3 tomato if I didn't have it?

4 **MR. FRANKFORD:** Yes.

5 **MR. MERANTO:** So you could live with
6 bacon, lettuce, mayonnaise; right?

7 **MR. FRANKFORD:** Right.

8 **MR. MERANTO:** But would that make the
9 definition of the BLT according to law?

10 **MR. FRANKFORD:** No, it would not.

11 **MR. MERANTO:** Certainly if there was no
12 bacon --

13 **MR. FRANKFORD:** No.

14 **MR. MERANTO:** -- it's not a BLT at all.
15 I mean, that's whole -- you're not going
16 to -- you go to a restaurant and they go, we
17 have mayonnaise, lettuce, and tomato, but we
18 don't have any bacon.

19 **MR. FRANKFORD:** My wife would be fine
20 with that, but I wouldn't.

21 **MR. MERANTO:** You think you're going to
22 make another choice probably and move on?
23 Mr. Bruno, agree with that?

1 **MR. BRUNO:** I do.

2 **MR. MERANTO:** Now, Ms. Cantalamessa
3 referred to bacon, lettuce, and tomato. It's
4 an analogy to the elements of a crime. And
5 there are certain elements that the state
6 must prove. And they have to prove each and
7 every one of them beyond a reasonable doubt.
8 So Mr. Bruno, if you looked at the sandwich
9 that was served to Mr. Frankford, and all you
10 could see was the lettuce hanging off the --
11 you know, they give you one of those big
12 pieces of lettuce, could you say definitively
13 that it was a BLT?

14 **MR. BRUNO:** No.

15 **MR. MERANTO:** Okay. Even though you
16 heard Mr. Frankford order it, you might want
17 to make that assumption, but if I said, hey,
18 your life depends on it, is that a BLT?

19 **MR. BRUNO:** No.

20 **MR. MERANTO:** Okay. Now, there are
21 going to be a number of elements that the
22 state has to prove beyond a reasonable doubt
23 in this case. And each element, unlike the

1 sandwich scenario with Mr. Frankford, each
2 and every element is equally important. For
3 example, Ms. Sotlar.

4 **MS. SOTLAR:** Yes.

5 **MR. MERANTO:** If the state put on all of
6 its evidence, and you said, man, wow, this is
7 over -- I mean, please, I don't have any
8 doubt. And you went back to the jury room,
9 and you heard the other jurors talking, and
10 they said, you know what, I know I -- I think
11 this was somewhere out near Canfield, but did
12 they ever say where this crime took place?
13 And you go, well, no. Wait a minute. You
14 didn't hear them say Mahoning County or
15 Canfield. And you realize that you believe
16 Mr. Ferrara did it. I mean, there's no doubt
17 in your mind. But you absolutely found out
18 they -- they never put on any evidence about
19 where this took place. What would your
20 verdict have to be?

21 **MS. SOTLAR:** Well, she said you had to
22 have the what, where, when, why, so it would
23 be not guilty.

1 **MR. MERANTO:** So even though you might
2 say, well, come on, we're all in Mahoning
3 County, the judge told us his jurisdiction's
4 based on the fact we're here in Mahoning
5 County, we know it was in Mahoning County.
6 Let's just -- let's -- I mean, that doesn't
7 make -- that's not the important thing here.
8 People died here. I believe Ferrara did it.
9 We gotta convict him. Ms. Ruble, what do you
10 think about that logic?

11 **MS. RUBLE:** I don't know. He would be
12 not guilty.

13 **MR. MERANTO:** Ms. Firmstone?

14 **MS. FIRMSTONE:** Yes. Not guilty.

15 **MR. MERANTO:** You sure?

16 **MS. FIRMSTONE:** Yeah. You said they had
17 to have all the evidence.

18 **MR. MERANTO:** So one element, unlike the
19 sandwich thing, they're all of equal
20 importance. Let's talk about another thing.
21 Ms. Catanzarite, what if you say, well, there
22 was really a lot of bacon on that sandwich.
23 Tons of bacon. I saw lettuce peeking out

1 over the end of that roll, bread, whatever,
2 but, man, I didn't -- I thought I saw
3 something red. I don't know. I'm not too
4 sure. It had to be the tomato because it was
5 a BLT, so it was tomato.

6 And you say, well, you know what, God,
7 the bacon was everywhere. It was falling off
8 the sandwich. And I know there was lettuce,
9 so they're pretty good on lettuce, too. But
10 man, tomato, I think it was tomato, but --
11 well, you know what, I'm gonna say it's a BLT
12 because they were real strong on bacon, and
13 I'm pretty strong on lettuce, so I'm gonna
14 throw in tomato. I'm going to give them
15 tomato. Can you do that with this case?

16 **MS. CATANZARITE:** No.

17 **MR. MERANTO:** Okay. So the state can be
18 strong on one element, but if they don't have
19 them all, like she said, you don't have
20 chocolate chips, you got no chocolate chip
21 cookies; right? Call them something else,
22 Ms. Crump; right?

23 **MS. CRUMP:** Uh-huh.

1 **MR. MERANTO:** Not chocolate chips.

2 **MS. CRUMP:** Yes, sir.

3 **MR. MERANTO:** All right. Ms. Crump,
4 Ms. Cantalamessa asked you about the quality
5 of testimony and how different people might
6 describe things in a different way. And I
7 apologize. I had a little illness, and I get
8 a little dry. But I don't mean to be
9 disrespectful. How about after a year, you
10 might really expect them to -- the testimony
11 might have changed; right? You can
12 understand that?

13 **MS. CRUMP:** Yes, sir.

14 **MR. MERANTO:** And she said, well, how
15 about 39 years? Okay. Because the state
16 chose to bring this case because they chose
17 to bring it. They're the ones who gave
18 Mr. Ferrara the indictment; right? It wasn't
19 me, it wasn't you, was it?

20 **MS. CRUMP:** No.

21 **MR. MERANTO:** Okay. They're stuck with
22 whatever evidence they can produce and the
23 quality of it. So because it's 39 years

1 later, and for example, you may hear
2 something that just doesn't make sense to
3 you, would you be willing to write it off and
4 say, well, God, you can't expect them to
5 remember after 39 years? What do you think
6 about that?

7 **MS. CRUMP:** That's a valid point. It's
8 very human nature to forget things. I don't
9 know what to think about that.

10 **MR. MERANTO:** Well, are the charges
11 against Mr. Ferrara any less serious because
12 it's 39 years later?

13 **MS. CRUMP:** Oh, no.

14 **MR. MERANTO:** Is it fair then to
15 Mr. Ferrara to kind of want to give them a
16 break on how they present the testimony or
17 whatever? I mean, if that happens?

18 **MS. CRUMP:** No.

19 **MR. MERANTO:** Okay. So we're square,
20 whether it happened yesterday, last year, or
21 39 years ago, their burden is exactly the
22 same? Ms. Romesburg?

23 **MS. ROMESBURG:** Yes.

1 **MR. MERANTO:** You with me? You agree
2 with that?

3 **MS. ROMESBURG:** I'm listening, yes.

4 **MR. MERANTO:** I know you're listening,
5 but I'm asking you if you agree with that.

6 **MS. ROMESBURG:** Yes.

7 **MR. MERANTO:** Is there anybody here that
8 thinks, man, it's unfair that the state has
9 got to try and prove this after 39 years?
10 You ought to be happy -- whatever evidence
11 they have, we should be happy with that.
12 Mr. Ross?

13 **MR. ROSS:** No. They would have to --

14 **MR. MERANTO:** You're a teacher; right?

15 **MR. ROSS:** Right.

16 **MR. MERANTO:** I mean, certain things
17 just gotta be done; right? They gotta be
18 done. Details; right?

19 **MR. ROSS:** Yes.

20 **MR. MERANTO:** Okay. Certainly you could
21 understand that over a lapse of time some
22 testimony might differ; right?

23 **MR. ROSS:** Yes.

1 **MR. MERANTO:** But you still understand
2 that they still have to prove all the
3 elements beyond a reasonable doubt to you?

4 **MR. ROSS:** Yes.

5 **MR. MERANTO:** Mr. Bruno, Christmas is
6 coming. You ever shop at the Southern Park
7 Mall, out that area out on South?

8 **MR. BRUNO:** Yes.

9 **MR. MERANTO:** Have you ever been -- do
10 you drive?

11 **MR. BRUNO:** I drive.

12 **MR. MERANTO:** Ever go out to the area of
13 South Avenue and 224 with a passenger in a
14 car?

15 **MR. BRUNO:** I have.

16 **MR. MERANTO:** Okay. Now, it's bad
17 enough during the rest of the year, but
18 Christmas time now is upon us. So you're at
19 that light, and you gotta make a left, and
20 they've done -- it's kind of confusing now
21 because they've changed the traffic patterns.
22 The lights aren't the same. So you're
23 sitting, and you're kind of in a hurry. You

1 got a passenger there, and you're making a
2 left-hand turn any which way onto South from
3 224, onto 224 from South. And it's busy.
4 And you hear the passenger say, okay. You're
5 okay my way. Go ahead and turn. Something
6 like that ever happened to you? Maybe not at
7 that intersection, but --

8 **MR. BRUNO:** Yes.

9 **MR. MERANTO:** Go ahead and turn. You
10 take a look over, make sure, especially, by
11 the way, if they're telling you to turn and
12 it's going to be your door that's facing the
13 oncoming traffic. Is that a reasonable doubt
14 to have?

15 **MR. BRUNO:** Yes.

16 **MR. MERANTO:** And listen, that's not
17 just any doubt, because she's right, you can
18 always have some crazy or imaginary doubt
19 about something. But a reasonable doubt is
20 one based on your common sense and your
21 reason, and pretty much to take that look,
22 that's a reasonable doubt.

23 **THE COURT:** You have about 10 minutes.

1 **MR. MERANTO:** Thank you, Judge. Now, we
2 talked a little about -- I don't know if it
3 was mentioned -- about how you're going to
4 decide this, and that you're going to -- each
5 one of those individual questions I asked
6 you, you're going to make your own decision.
7 But when you actually get the case -- and
8 that's not until all the evidence is in,
9 closing arguments, all that stuff the judge
10 told you about. You're going to go in and
11 collectively discuss it. Now, everybody's
12 committed to me that if I sent -- is there
13 anybody back here that if I sent you to the
14 jury room right now would say anything other
15 than not guilty? Mr. Frankford?

16 **MR. FRANKFORD:** Not guilty.

17 **MR. MERANTO:** All right. Ms. Willison,
18 the state gets done with putting on their
19 evidence and the judge sends you back there,
20 and you say to yourself, I don't know.
21 50/50, but I think he did it. Based on the
22 law, what is your verdict going to have to be
23 at that point?

1 **MS. WILLISON:** If there's any doubt -- I
2 don't think you should have any doubt on what
3 you heard.

4 **MR. MERANTO:** Well, I told you -- I'm
5 getting inside your head for a minute here.
6 I say -- you go back, and you say, I think --
7 I think he -- I think he probably did it. Is
8 that -- in your mind, would that be good
9 enough for you to say that's beyond a
10 reasonable doubt?

11 **MS. WILLISON:** No.

12 **MR. MERANTO:** Okay. So you understand
13 there's a difference?

14 **MS. WILLISON:** Yes.

15 **MR. MERANTO:** Okay. And that beyond a
16 reasonable doubt, it's a tough burden.

17 **MS. WILLISON:** Uh-huh.

18 **MR. MERANTO:** It's not impossible. It
19 happens every day. But the state's gotta do
20 that. Ms. Sotlar, you're not going to hear
21 anything from Mr. Ferrara. Can you say to
22 yourself, well, the judge says I can't even
23 consider that, so I'm not going to consider

1 it? The state's gotta prove their case. I
2 mean, Mr. Ferrara did say something; right?
3 He said not guilty. And do you agree with me
4 that that's the same right you have or I have
5 or anybody has?

6 **MS. SOTLAR:** Yes.

7 **MR. MERANTO:** Do you think that's an
8 important thing?

9 **MS. SOTLAR:** Yes.

10 **MR. MERANTO:** Okay. So you're not going
11 to hold that against Mr. Ferrara because
12 you're not going to hear his side?

13 **MS. SOTLAR:** Right.

14 **MR. MERANTO:** Okay. Ms. Ruble, do you
15 think that's fair?

16 **MS. RUBLE:** No.

17 **MR. MERANTO:** Excuse me? I can't hear
18 you.

19 **MS. RUBLE:** No.

20 **MR. MERANTO:** You don't think that's
21 fair? You don't understand the question?
22 You can ask me. That's okay. I'm not trying
23 to trip anybody up here, seriously. I just

1 want to find out how you feel. Do you think
2 it's fair that the law says Mr. Ferrara
3 doesn't have to say anything, and he's not
4 going to say anything, and you're not going
5 to hear his side? The state has to prove --
6 has to make its burden beyond a reasonable
7 doubt.

8 **MS. RUBLE:** Yes.

9 **MR. MERANTO:** Are you okay with that?

10 **MS. RUBLE:** Yes.

11 **MR. MERANTO:** You're not going to hold
12 it against Mr. Ferrara?

13 **MS. RUBLE:** No.

14 **MR. MERANTO:** Ms. Catanzarite, you have
15 those three kids, and you want to find out
16 what's going on with them. Let me ask you
17 this; you come home, cake's gone, the little
18 one's too dumb to wipe his face, right, and
19 the other two -- because he doesn't know any
20 better. And the other two are sitting there,
21 and they -- all three of them, they even get
22 the little three-year-old to say, I didn't do
23 it. They don't say the dog ate it. They

1 say, what happened to the cake? I don't
2 know. And that's all they say.

3 Now, you've got three kids there. Let's
4 make them all the same age for this story,
5 because you're going to blame the two older
6 ones before the three-year-old. But they're
7 all the same. And one of them has got icing
8 on his face. The other two got nothing. And
9 all you got is I didn't do it. I don't know.
10 I don't know what happened to the cake. What
11 would you do there?

12 **MS. CATANZARITE:** I don't know. I'd
13 probably enlist my husband to help me solve
14 it.

15 **MR. MERANTO:** Oh. Well, if you get
16 selected for this jury, it's on you. And
17 would you be able to make the call based on
18 the instruction the judge gives you, based on
19 all the law we talked about? You could do
20 that?

21 **MS. CATANZARITE:** I believe so.

22 **MR. MERANTO:** Okay. So it might be nice
23 to think you know what happened, but unless

1 you actually know, then you don't know, do
2 you? And ladies and gentlemen, if you don't
3 know, Mr. Bruno, what is your verdict?

4 **MR. BRUNO:** Not guilty.

5 **MR. MERANTO:** Ladies and gentlemen,
6 thank you. Anybody have any questions they
7 want to ask me about anything? No?

8 Just a couple things I'm going to leave
9 you with. When I first became a lawyer, I
10 always -- I was so happy. I was working for
11 some lawyers, and I'd dress up every day to
12 go in before I even became a lawyer. And I
13 always have one of these in my pocket. And
14 one of the lawyers called me aside one day,
15 and he said, you know, we don't wear that.
16 We don't do that. And I go, you know, what
17 do you mean? He said, well, you know, you
18 don't want to be flashy like you're trying to
19 say something; you know? You do your talking
20 in court, and we just don't do that. And I
21 looked around the office, and none of those
22 guys did.

23 Now, what they didn't know is that my

1 dad was a salesman, and all week he wore,
2 like, dark gray and black suits. It was in
3 the '60s, '70s, '80s. And on the weekend
4 when he went out with my mom he always would
5 wear something colorful, and he always had
6 one of these. And a lot of the ones I wear
7 are his.

8 I had another lawyer tell me, don't ever
9 pick a juror that's wearing red because
10 they're over-confident. You shouldn't do it.
11 My point is, we all have those things inside
12 of us that nobody else knows about, and no
13 one's telling you that you gotta leave those
14 at the door when you walk in. You're going
15 to use your reason, your common sense, your
16 background to make those decisions just like
17 I did, because as you notice, I'm still
18 wearing these. You know, my father's
19 probably watching somewhere, so don't hold
20 anything against me.

21 Mr. Ferrara, you might notice him
22 shaking over here. He's got Parkinson's.
23 That's just part of who he is. This is part

1 of who I am.

2 And I think Ms. Cantalamessa mentioned
3 the fact that, you know, we're -- we get
4 along pretty well. And if you see us joking
5 or talking to each other, we can't talk to
6 you anymore, please don't hold that against
7 us. We take this as serious as anything we
8 do, but you know, like they say, if you don't
9 laugh sometimes you're gonna cry. So thank
10 you once again for your time and attention.

11 **THE COURT:** Thank you, Mr. Meranto. All
12 right. On behalf of the state, does this
13 panel pass for cause?

14 **MS. CANTALAMESSA:** Yes, Your Honor.

15 **THE COURT:** On behalf of the defense?

16 **MR. MERANTO:** Pass for cause, Your
17 Honor.

18 **THE COURT:** All right. So we're going
19 to begin the exercise of peremptory
20 challenges. This means that each party gets
21 to exercise four peremptories. They do it
22 alternatively. The state goes first, then
23 the defense, then the state, then the

1 defense, until they exhaust their
2 peremptories or they waive peremptories.
3 They don't have to exercise peremptories.
4 It's the choice they make. If you're excused
5 on a peremptory, the bailiff will give you
6 your card, and you're to take that back up to
7 Mr. Jackson in the jury room, and he'll give
8 you further instructions concerning your
9 service.

10 You should not be offended if you're
11 excused. Again, it's just a judgment call on
12 their part, and it's not a science. It's an
13 art. Sometimes artists can sell their
14 paintings, and sometimes they can't, so don't
15 be offended. All right. We'll call upon the
16 state for the exercise of your first
17 peremptory challenge.

18 **MS. CANTALAMESSA:** Your Honor, the state
19 would like to thank and excuse Juror No. 7,
20 Mrs. Willison.

21 **THE COURT:** All right. Mrs. Willison,
22 thank you very much. Staci Metzinger, please
23 come forward and take Seat No. 7. Good

1 morning.

2 **MS. METZINGER:** Good morning.

3 **THE COURT:** Were you able to hear the
4 proceedings here at the front of the
5 courtroom?

6 **MS. METZINGER:** Yes.

7 **THE COURT:** Okay. Now, give me a
8 critique, will you, because some of the
9 jurors didn't do so well at answering out
10 loud, did they? Well, you may be working
11 with them. Don't answer that. There was a
12 lot of nodding of the head and sometimes very
13 nice and soft, like, type of an answer. But
14 please keep your voice up for us if you will.
15 The lawyers should be making you do that,
16 too, but they don't want to get you mad at
17 them so they don't say anything. They just
18 kind of blow that over. I have to try and
19 make sure you do talk loud enough. The court
20 asked if -- the court asked if there were any
21 of the challenges for cause that were
22 applicable to you, the things that I read.

23 **MS. METZINGER:** No.

1 **THE COURT:** Okay. I also asked if you
2 knew or heard anything about the case.

3 **MS. METZINGER:** I do not.

4 **THE COURT:** Okay. There are several
5 tenets of law that I discussed. The
6 presumption of innocence, the burden of proof
7 beyond a reasonable doubt, the use of the
8 indictment, that type of thing. Do you have
9 any difficulty or any objection to following
10 the law that I've given you so far?

11 **MS. METZINGER:** No, I don't.

12 **THE COURT:** Do you understand the
13 importance of following the law that I give
14 you and applying it to the facts of this
15 case?

16 **MS. METZINGER:** Yes.

17 **THE COURT:** All of us are bound by that
18 same law. We wouldn't have a chance if 12
19 people went back to the jury room and you're
20 all using different laws and trying to
21 unanimously decide what the verdict should
22 be. We all have to use the same law, and we
23 all have to submit to it, whether we agree

1 with it or not. So that's very important.

2 Additionally, you'll be called upon at
3 the appropriate time to deliberate with your
4 fellow jurors. And what that means when you
5 go back to the jury room is you have to tell
6 the other jurors what you think and why you
7 think that way, and you have to be willing to
8 listen to what they say about what they think
9 and why they think that way, and you have to
10 be willing to change what you think or at
11 least allow what they think to influence what
12 you're doing because your initial impression
13 may not be the correct impression. It may be
14 something that someone can show you you
15 should think a different way about them.

16 But you have to be willing to stick to
17 your guns, too, after a fair consideration of
18 everything that you're correct and your
19 position should be maintained. So it takes
20 courage to do the job. It takes certainly a
21 responsibility and a devotion to the effort.
22 Do you feel that you're up to that?

23 **MS. METZINGER:** Yes, I do.

1 **THE COURT:** All right. Well, you
2 hesitated for a moment. You thought that
3 through. That's good.

4 **MS. METZINGER:** I have to examine.

5 **THE COURT:** Pardon?

6 **MS. METZINGER:** Internal examination.

7 **THE COURT:** Good. We all need to do
8 that, because this is something very
9 difficult that we ask. It's something that
10 you're not used to doing. It's something
11 that may be foreign to you, but it's
12 something that people do, something that we
13 call upon people to do all the time. Is
14 there anything asked by the court or by
15 counsel that you need to discuss with us?

16 **MS. METZINGER:** No.

17 **THE COURT:** I mean, anything anybody
18 asked that raises a flag or that type of
19 thing?

20 **MS. METZINGER:** No.

21 **THE COURT:** Okay. Is there any reason
22 that you can think of why you should not sit
23 as a fair and impartial juror in this case?

1 **MS. METZINGER:** No.

2 **THE COURT:** Very well. The state may
3 inquire. The inquiry, of course, is limited
4 to this juror, and should be brief.

5 **MS. CANTALAMESSA:** Thank you, Your
6 Honor. Good morning.

7 **MS. METZINGER:** Good morning.

8 **MS. DOHERTY:** Is there anything that I
9 brought up that you thought you would've had
10 a different opinion than some of the other
11 jurors?

12 **MS. METZINGER:** No.

13 **MS. CANTALAMESSA:** Okay. Are you
14 comfortable with the fact that the law does
15 not require, and the judge won't read you any
16 definition that says the state has to prove
17 by two or more witnesses that this crime
18 occurred? Are you okay with the fact that
19 it's quality over quantity?

20 **MS. METZINGER:** Yes.

21 **MS. CANTALAMESSA:** Do you have anything
22 in your background or -- I know you said your
23 parents were the victims of some thefts and

1 that kind of thing. Anything about that
2 which would cause you to give less or more
3 credibility to any certain type of witnesses,
4 like police?

5 **MS. METZINGER:** No.

6 **MS. CANTALAMESSA:** Can you keep everyone
7 on an equal playing field until you hear
8 their testimony?

9 **MS. METZINGER:** I hope so.

10 **MS. CANTALAMESSA:** And you have five
11 kids?

12 **MS. METZINGER:** Uh-huh.

13 **MS. CANTALAMESSA:** So you have some
14 experience in judging credibility of their
15 stories, that kind of thing?

16 **MS. METZINGER:** Yes, I do.

17 **MS. CANTALAMESSA:** Do you use those same
18 tools that Mrs. Catanzarite -- he kept doing
19 my name wrong, too. Do you use those same
20 tools, body language, logical, all your
21 reasoning? Do you use those same rules when
22 judging your kids' credibility?

23 **MS. METZINGER:** Yes, I do.

1 **MS. CANTALAMESSA:** Do you think you can
2 do that for witnesses who come in and
3 testify?

4 **MS. METZINGER:** Yes.

5 **MS. CANTALAMESSA:** Is there any reason
6 why just as you're sitting here right now
7 that you would be siding with either the
8 state or the defense, not hearing any of the
9 evidence at this point?

10 **MS. METZINGER:** No.

11 **MS. CANTALAMESSA:** Okay. Is there
12 anything that you feel that you have this
13 opinion that DNA is unbelievable or
14 fingerprints are unbelievable? Anything like
15 that?

16 **MS. METZINGER:** No.

17 **MS. CANTALAMESSA:** Okay. Can you keep
18 an open mind with regard to the scientists as
19 well, to listen to their testimony before you
20 decide whether they're credible or not or
21 whether to listen to that evidence?

22 **MS. METZINGER:** Yes.

23 **MS. CANTALAMESSA:** You said in your

1 questionnaire that your parents were the
2 victims of these thefts and vandalism. Did
3 you -- did you write the perpetrators were
4 unfound or not found? They never found who
5 did it?

6 **MS. METZINGER:** Correct.

7 **MS. CANTALAMESSA:** Do you know what kind
8 of evidence they had about that? Just the
9 damage, or did they send the crime lab out?

10 **MS. METZINGER:** No, there was no
11 evidence.

12 **MS. CANTALAMESSA:** They didn't come out
13 and do fingerprints?

14 **MS. METZINGER:** No, none was collected.

15 **MS. CANTALAMESSA:** Do you have any
16 religious, moral, or ethical reasons why you
17 can't sit in judgment of someone else?

18 **MS. METZINGER:** No.

19 **MS. CANTALAMESSA:** Do you have any
20 specialized training as regards to guns or
21 anything like that?

22 **MS. METZINGER:** No.

23 **MS. CANTALAMESSA:** Okay. You had -- you

1 took some nursing classes. Are you in school
2 right now?

3 **MS. METZINGER:** No.

4 **MS. CANTALAMESSA:** But you did go to
5 YSU, right, for a while and studied nursing?
6 Do you have any -- did you take any classes
7 regarding forensic evidence or anything like
8 that?

9 **MS. METZINGER:** No.

10 **MS. CANTALAMESSA:** Are you okay with the
11 law as it's required that direct evidence is
12 of equal weight as circumstantial evidence?
13 Are you okay with that?

14 **MS. METZINGER:** Yes.

15 **MS. CANTALAMESSA:** And can you follow
16 that law as the judge gives it to you?

17 **MS. METZINGER:** Yes.

18 **MS. CANTALAMESSA:** I have nothing
19 further. Thank you.

20 **THE COURT:** Thank you. Mr. Meranto.

21 **MR. MERANTO:** Thank you. Hi,
22 Ms. Metzinger. How are you?

23 **MS. METZINGER:** Fine.

1 **MR. MERANTO:** Obviously because you're
2 sitting here now, you answered -- you don't
3 know myself, you don't know Mr. Ferrara;
4 right?

5 **MS. METZINGER:** Correct.

6 **MR. MERANTO:** Are you comfortable that
7 the law tells you that you need to decide
8 this case like you would decide the most
9 important things in your own life?

10 **MS. METZINGER:** Am I comfortable with
11 that?

12 **MR. MERANTO:** Yeah.

13 **MS. METZINGER:** Yes.

14 **MR. MERANTO:** Can you give us that same
15 deference? Because that's a big deal. I'm
16 sure the most important thing in your life,
17 probably your kids; right?

18 **MS. METZINGER:** Yes.

19 **MR. MERANTO:** You don't know us. You're
20 removed from us. But you're here to do a
21 job. It says, you know, you've got to kind
22 of consider it like you would consider making
23 a decision about your kids. Comfortable with

1 that?

2 **MS. METZINGER:** Yes.

3 **MR. MERANTO:** If I sent you back right
4 now to give me a verdict, what would the
5 verdict be?

6 **MS. METZINGER:** Not guilty.

7 **MR. MERANTO:** Thank you. Nothing else.

8 **THE COURT:** All right. Thank you. Is
9 Ms. Metzinger passed for cause by the state?

10 **MS. CANTALAMESSA:** Yes, Your Honor.

11 **THE COURT:** By the defense?

12 **MR. MERANTO:** Pass for cause, Your
13 Honor.

14 **THE COURT:** All right. Then we'll turn
15 to the defense for the exercise of your first
16 peremptory challenge.

17 **MR. MERANTO:** Your Honor, we would thank
18 and excuse Juror No. 3, Ms. Romesburg.

19 **THE COURT:** All right. Thank you. All
20 right. Michelle Tracy. Good morning.

21 **MS. TRACY:** Good morning.

22 **THE COURT:** How are you today?

23 **MS. TRACY:** I'm good.

1 **THE COURT:** Were you able to hear the
2 proceedings here at the front of the
3 courtroom?

4 **MS. TRACY:** Yes, I was.

5 **THE COURT:** All right. So do you have
6 any questions of me based upon what the court
7 and the lawyers have said so far?

8 **MS. TRACY:** No.

9 **THE COURT:** Were any of the challenges
10 for cause that I read applicable to you?

11 **MS. TRACY:** No.

12 **THE COURT:** Do you know anything about
13 this case from any source outside of the
14 courtroom?

15 **MS. TRACY:** Yes.

16 **THE COURT:** Okay. We're going to
17 discuss that in a moment. I had asked the
18 other jurors about their ability to set
19 information aside and decide the truth of
20 this matter based upon the evidence that's
21 presented here in the courtroom and pursuant
22 to the law that I give you. Do you feel you
23 have the ability to do that?

1 **MS. TRACY:** Yes.

2 **THE COURT:** Okay. Well, I'm going to
3 have you and all of the parties come back to
4 my office with me so we can discuss what you
5 may know about the case.

6 **MS. TRACY:** Okay.

7 **THE COURT:** And so we'll do that at this
8 time.

9 **(WHEREUPON, the Court, counsel,**
10 **Defendant, Prospective Juror No. 3, Michelle**
11 **Tracy, and court reporter enter the chambers**
12 **of the Court, and the following proceedings**
13 **were had out of the hearing of the**
14 **prospective jurors:)**

15 **THE COURT:** So we're in my chambers
16 simply to ask what it is that you have heard
17 about this case or learned about this case
18 outside of the courtroom.

19 **MS. TRACY:** I usually don't watch the
20 news, but you know my husband, so --

21 **THE COURT:** I do?

22 **MS. TRACY:** Yes, you do.

23 **THE COURT:** Oh. That Tracy?

1 **MS. TRACY:** That Tracy, yes. He informs
2 me of all this. The only thing I know so far
3 is he is serving a life sentence for murder,
4 and in '74 something with the DNA that they
5 found, and he's accused of killing a woman
6 and her child.

7 **THE COURT:** Okay. So --

8 **MS. TRACY:** That's all I know.

9 **THE COURT:** So you've actually talked
10 with your husband about this?

11 **MS. TRACY:** Yes.

12 **THE COURT:** You husband is Lee?

13 **MS. TRACY:** Yes.

14 **THE COURT:** And he was an FBI agent?

15 **MS. TRACY:** Secret Service and Air
16 Marshals.

17 **THE COURT:** He's retired now?

18 **MS. TRACY:** And then we have our son is
19 a post commander with the highway patrol.

20 **THE COURT:** So you've actually talked
21 with your husband about it, and he did
22 investigative work and that type of thing, so
23 he's someone that probably knows what he's

1 talking about.

2 **MS. TRACY:** Yeah.

3 **THE COURT:** I mean, I've always
4 respected him. He's a good man and all of
5 that. So of course the conversations that
6 you've had with him, was that any -- any
7 different from what you read in the paper?
8 You watched it on the news?

9 **MS. TRACY:** We don't get the paper, so I
10 didn't read the paper. No. That's basically
11 all that I know about it.

12 **THE COURT:** So in that discussion with
13 him or in the information you gained from the
14 media, do you have an opinion about the
15 outcome of this case that you can't set
16 aside?

17 **MS. TRACY:** Well, they were asking the
18 people if you had to go in right now and give
19 a verdict, I would probably say guilty. Now,
20 I can -- you know, I'd be able to sit and
21 listen, but, you know, that would be my first
22 inclination, coming from a law enforcement
23 background.

1 **THE COURT:** Uh-huh. Well, that's -- you
2 know, there's nothing wrong with that.

3 **MS. TRACY:** I mean, it's --

4 **THE COURT:** That's why we're making
5 inquiry.

6 **MS. TRACY:** Right. I understand.

7 **THE COURT:** It's certainly appropriate.
8 It's good that you say those things to us.
9 At the same time, that doesn't mean that it's
10 inappropriate for you to serve.

11 **MS. TRACY:** Right.

12 **THE COURT:** You're honest about how you
13 feel. But beyond that -- I mean, I'll just
14 tell you, you know, there are rules that can
15 be enforced regarding asking jurors what
16 their verdict would be. There's good reason
17 to do that. That's why I allow it. It's not
18 inappropriate in my mind to do that.

19 **MS. TRACY:** Right.

20 **THE COURT:** And it's a pretty good
21 indicator of where people are coming from.
22 But most of the time, at least in my opinion
23 when people walk into a courtroom and they

1 see a defendant sitting there they don't
2 think what's he wrongly accused of. They
3 think, what did he do wrong.

4 **MS. TRACY:** Uh-huh.

5 **THE COURT:** You're no different from
6 anybody else that walks in a courtroom that
7 way. But when you tell people like you tell
8 the Pittsburgh Steelers if you want to catch
9 a pass that counts, you have to have both
10 feet in bounds, not one foot in bounds. Even
11 though you don't like that, if you're going
12 to play that game, you have to have two feet
13 in bounds for it to count.

14 **MS. TRACY:** Uh-huh.

15 **THE COURT:** So this certainly is not a
16 game, but the rules, they have to be followed
17 when we're doing this. It really doesn't
18 matter what you think or what you feel. It
19 matters that you can set that aside, use the
20 evidence and decide whether someone is
21 legally guilty or not guilty.

22 **MS. TRACY:** Right. Right.

23 **THE COURT:** So --

1 **MS. TRACY:** That I could do. I could
2 listen to all of it, set that aside. But, I
3 mean, if they asked me right now, without
4 hearing any of this evidence, which was one
5 of the questions --

6 **THE COURT:** Well, you can't be called
7 upon to render a verdict right now. That's
8 why it's normally not allowed. It's a
9 fiction; okay?

10 **MS. TRACY:** Well, you know, the examples
11 they were using is what I'm talking about.

12 **THE COURT:** For sure.

13 **MS. TRACY:** Okay.

14 **THE COURT:** But could you, understanding
15 the very solemn importance of this, could you
16 put aside those things, those feelings, and
17 follow the law that I instruct you and
18 consider the case based solely upon the
19 evidence that is presented, not on anything
20 you watched on the news or anything you
21 talked about with your husband?

22 **MS. TRACY:** Right. Yeah, I think I
23 could. Yeah, I could.

1 **THE COURT:** All right. So is there
2 anything else you remember about the case
3 publicity-wise?

4 **MS. TRACY:** Not really. Honestly,
5 that's all I know is that he's serving now
6 and they found with the DNA, and he's being
7 accused of the other two murders now that
8 happened in '74. That's really all I know.
9 I don't even know anything about why -- I
10 mean, I knew it was murder, but why or the
11 circumstances behind the first one.

12 **THE COURT:** All right. Thank you.

13 **MS. TRACY:** I've got you stumped.

14 **THE COURT:** No. That's fine. I just
15 was trying to see if I had anything else I
16 needed to ask.

17 **MS. TRACY:** Okay.

18 **THE COURT:** Thank you.

19 **MS. TRACY:** Go sit back in the jury box?

20 **THE COURT:** Yeah. The bailiff will take
21 you right there.

22 **(WHEREUPON, Prospective Juror No. 3,**
23 **Michelle Tracy, left the chambers of the**

1 **Court, and the proceedings continued as**
2 **follows:)**

3 **THE COURT:** Okay. So I'm ready to go
4 back in. Is there anything else from the
5 state?

6 **MS. CANTALAMESSA:** No.

7 **THE COURT:** The defense?

8 **MR. MERANTO:** No.

9 **THE COURT:** Okay.

10 **(WHEREUPON, the Court, counsel,**
11 **Defendant and court reporter returned to the**
12 **court, and the following proceedings were had**
13 **back in the hearing of the prospective**
14 **jurors:)**

15 **THE COURT:** Ms. Tracy, I instructed the
16 other jurors concerning the presumption of
17 innocence. Presumption of innocence is a
18 legal tenet that has to be followed so that
19 people who are accused are not wrongly
20 convicted. Because it's easy when the
21 government says somebody did something wrong
22 for people to kind of sign up with that. And
23 the presumption of innocence is a shield

1 against that so that when someone is brought
2 to trial, that even though there's an
3 accusation made against him -- which all of
4 us as humans wonder, you know, why there's an
5 accusation against someone.

6 You have to remind yourself of a few
7 things. First of all, not everybody that's
8 accused is guilty. Sometimes the accuser's
9 wrong, not the person accused. Additionally,
10 this is an exercise in law. It's not an
11 exercise in morality where the good Lord may
12 know what happened here, but we don't. So
13 we're stuck with just making a legal
14 decision, not an ultimate and moral decision.

15 So we're all asked to almost view
16 something like this in the abstract where it
17 may not be the way that we normally think,
18 but we have to afford the defendant the
19 presumption of innocence. We have to hold
20 the State of Ohio to this burden of proof
21 beyond a reasonable doubt. We have to follow
22 the law and only use the evidence that we
23 hear here in the courtroom to decide the

1 truth of this matter. And if there are any
2 matters outside of that from the media or
3 from some other source that affect your
4 ability to do that, then you just need to
5 tell us that. And of course you just told us
6 that you're okay with that; that's correct?

7 **MS. TRACY:** Yes.

8 **THE COURT:** You feel you're able to
9 perform this task?

10 **MS. TRACY:** Yes.

11 **THE COURT:** Very well. You understand
12 that if you undertake this responsibility
13 it's -- it's a solemn responsibility, it's a
14 big deal?

15 **MS. TRACY:** Yes.

16 **THE COURT:** So we always -- I did ask
17 you about whether or not any of the
18 challenges for cause applied to you; is that
19 correct?

20 **MS. TRACY:** Right.

21 **THE COURT:** And is there any reason you
22 can think of now that we've talked that you
23 cannot be a fair and impartial juror?

1 **MS. TRACY:** No. I can.

2 **THE COURT:** Very well. The state may
3 inquire.

4 **MS. CANTALAMESSA:** Thank you, Your
5 Honor. Good morning.

6 **MS. TRACY:** Good morning.

7 **MS. CANTALAMESSA:** Mrs. Tracy, do you
8 have any training with guns? I know your
9 husband's retired Secret Service.

10 **MS. TRACY:** No, I don't.

11 **MS. CANTALAMESSA:** He never took you to
12 get CCW or anything?

13 **MS. TRACY:** No.

14 **MS. DOHERTY:** What about did you ever
15 work outside the home?

16 **MS. TRACY:** No.

17 **MS. CANTALAMESSA:** Did you go to
18 college?

19 **MS. TRACY:** No.

20 **MS. CANTALAMESSA:** You also have some
21 children in law enforcement?

22 **MS. TRACY:** Yes.

23 **MS. CANTALAMESSA:** Can you promise just

1 like everyone else has promised to keep all
2 of the witnesses on an equal level until you
3 hear their testimony before deciding how
4 little or how much credibility to give them?

5 **MS. TRACY:** Yes.

6 **MS. CANTALAMESSA:** Can you promise to
7 keep an open mind throughout the entire case
8 before rendering your verdict?

9 **MS. TRACY:** Yes.

10 **MS. CANTALAMESSA:** The example I use for
11 direct and circumstantial evidence, can you
12 follow the law as the judge gives it to you
13 that circumstantial evidence and direct
14 evidence are of equal weight?

15 **MS. TRACY:** Yes.

16 **MS. CANTALAMESSA:** Do you have any
17 religious, moral, or personal reasons why you
18 can't sit in judgment of someone?

19 **MS. TRACY:** No, absolutely not.

20 **MS. CANTALAMESSA:** And I'm sure raising
21 three kids you had to judge their credibility
22 as well and decide who to believe and who not
23 to believe. Can you promise to use those

1 tools you use with your own kids when judging
2 the credibility of the witnesses from the
3 witness stand?

4 **MS. TRACY:** Yes.

5 **MS. CANTALAMESSA:** That's all the
6 questions I have. Thank you.

7 **THE COURT:** Thank you. Mr. Meranto.

8 **MR. MERANTO:** No questions, Your Honor.

9 **THE COURT:** All right. Is Ms. Tracy
10 passed for cause by the state?

11 **MS. CANTALAMESSA:** Yes, Your Honor.

12 **THE COURT:** By the defense?

13 **MR. MERANTO:** Pass for cause.

14 **THE COURT:** Very well. Then we'll
15 return to the state for the exercise of your
16 second peremptory challenge.

17 **MS. DOHERTY:** Your Honor, the state
18 would like to thank and excuse Juror No. 11,
19 Mrs. Ruble.

20 **THE COURT:** All right. Thank you,
21 Ms. Ruble. The court will call Rosemary
22 Morell. Good morning.

23 **MS. MORELL:** Good morning.

1 **THE COURT:** Were you able to hear the
2 proceedings here at the front of the
3 courtroom?

4 **MS. MORELL:** Yes, I was.

5 **THE COURT:** Were any of the challenges
6 for cause that I read applicable to you?

7 **MS. MORELL:** No.

8 **THE COURT:** Are you able to follow the
9 law as it's given to you by the court and
10 apply it to the facts of this case?

11 **MS. MORELL:** Yes, I am.

12 **THE COURT:** Is there anything that --
13 any problem you would have with the
14 instructions I've given so far, the legal
15 tenets that all of us are required to follow?

16 **MS. MORELL:** No, not a problem.

17 **THE COURT:** Okay. I also asked about
18 whether or not you know anything about this
19 case from a source outside of the courtroom.

20 **MS. MORELL:** No, actually, no, I don't.

21 **THE COURT:** Okay. The functions of the
22 jury were also discussed. Of course, as
23 individual jurors you're to view this case

1 individually. All during the case you have
2 to absorb what's going on and take it in for
3 yourself. You're not allowed to discuss what
4 you think or what you feel or hey, that
5 witness was pretty good, or I didn't like --
6 you can't talk to anybody about that, your
7 fellow jurors, at home, or work, or anything.
8 You have to, as 12 individuals, form your own
9 opinion, your own impression of what the
10 evidence is. And then once everything is
11 completed and you go back to deliberate, then
12 you need to share that individual impression
13 with the others and see if you can create and
14 endorse a unanimous group impression so that
15 you can render a verdict. You have to be
16 able to speak your mind but be willing to
17 accept what the others have to say also. Do
18 you feel you can do those things?

19 **MS. MORELL:** Oh, yes. No problem.

20 **THE COURT:** Is there any reason you can
21 think of why you should not sit as a fair and
22 impartial juror in this case?

23 **MS. MORELL:** No, no reason.

1 **THE COURT:** Very well. The state may
2 inquire.

3 **MS. CANTALAMESSA:** Thank you, Your
4 Honor. Good afternoon.

5 **MS. MORELL:** Good afternoon.

6 **MS. CANTALAMESSA:** Mrs. Morell, anything
7 that I brought up that you thought you might
8 have had a different answer than the rest of
9 the jurors on the panel earlier?

10 **MS. MORELL:** No.

11 **MS. CANTALAMESSA:** Comfortable with the
12 fact that it's the quality of the evidence,
13 not necessarily the quantity of the evidence?

14 **MS. MORELL:** Yes.

15 **MS. CANTALAMESSA:** You mention in your
16 questionnaire that your son was shot.

17 **MS. MORELL:** No. He was shot at.

18 **MS. CANTALAMESSA:** Shot at. Was he
19 killed?

20 **MS. MORELL:** No.

21 **MS. CANTALAMESSA:** Okay. Was someone
22 arrested in response to him being shot at?

23 **MS. MORELL:** No.

1 **MS. CANTALAMESSA:** Okay. Did they
2 investigate that?

3 **MS. MORELL:** No. It was just a car
4 followed him into the gas station, and for
5 whatever reason, they just started shooting
6 at the car my son was in, but they left
7 before even police could get there.

8 **MS. CANTALAMESSA:** Okay. And what
9 agency was that?

10 **MS. MORELL:** We were in Campbell, so it
11 would have been Campbell Police Department.

12 **MS. CANTALAMESSA:** Okay. How long ago?

13 **MS. MORELL:** Fifteen years ago.

14 **MS. CANTALAMESSA:** Okay. Any feelings
15 left from that case that you still hold maybe
16 against the police or against whether it
17 would be either for the state or for the
18 defense at this point in time?

19 **MS. MORELL:** No. Just the time element,
20 it just -- it happened so quickly that there
21 was nothing much for the police to do.

22 **MS. CANTALAMESSA:** Okay. But you don't
23 hold that against anyone and can set it aside

1 in listening and judging the evidence in this
2 case?

3 **MS. MORELL:** No.

4 **MS. CANTALAMESSA:** Do you think -- have
5 you been retired from the Department of Job
6 and Family Services for --

7 **MS. MORELL:** Twenty-three years.

8 **MS. CANTALAMESSA:** Okay. So you just
9 retired a little over a year ago?

10 **MS. MORELL:** Yes.

11 **MS. CANTALAMESSA:** Anything, being that
12 you worked for Mahoning County, and now
13 you're retired from Mahoning County, anything
14 cause you concern whether you would side for
15 or against the state, anything like that?

16 **MS. MORELL:** No. It was just a job.

17 **MS. CANTALAMESSA:** Okay. What did you
18 do for them?

19 **MS. MORELL:** I did several things with
20 the last job that I had. I worked in the
21 social services determining eligibility for
22 low income families that can get child care.

23 **MS. CANTALAMESSA:** And you raised four

1 kids?

2 **MS. MORELL:** Right.

3 **MS. CANTALAMESSA:** So you can use those
4 same tools that we've talked about in judging
5 the credibility of the witness?

6 **MS. MORELL:** Right.

7 **MS. CANTALAMESSA:** What about the law as
8 it relates to direct versus circumstantial
9 evidence? Can you follow that rule when it
10 says direct and circumstantial are of equal
11 weight?

12 **MS. MORELL:** Yes.

13 **MS. CANTALAMESSA:** Any specialized gun
14 training, anything like that?

15 **MS. MORELL:** No. As a child my father
16 had guns, and my brothers were hunters, but
17 it's not something that agreed with me.

18 **MS. CANTALAMESSA:** Any reason why you
19 don't think you should sit on this case?

20 **MS. MORELL:** Not that I can think of.

21 **MS. CANTALAMESSA:** Okay. I have nothing
22 further, Your Honor.

23 **THE COURT:** Thank you. Mr. Meranto.

1 **MR. MERANTO:** Thank you. Afternoon,
2 Ms. Morell. You worked at -- what did you do
3 down at the Department of Job and Family
4 Services?

5 **MS. MORELL:** I came on to work at the
6 front desk, worked as an aide, and finished
7 out as a child care worker where I determined
8 eligibility for the low income families who
9 needed child care.

10 **MR. MERANTO:** Okay. So you had some
11 decision-making process toward the end with
12 regard to who got benefits, didn't get
13 benefits, who qualified?

14 **MS. MORELL:** Right.

15 **MR. MERANTO:** And you had to make those
16 decisions. Were you comfortable with that?

17 **MS. MORELL:** Oh, yeah.

18 **MR. MERANTO:** Because sometimes you had
19 to tell people no, and they weren't really
20 happy about it.

21 **MS. MORELL:** I didn't have any problem
22 telling anybody no or yes. I just had to
23 follow the rules. Everybody had to qualify.

1 The rules are the same for everybody, even
2 though a lot of people didn't think they
3 were.

4 **MR. MERANTO:** Very similar here. The
5 judge has rules to follow, and we all gotta
6 follow them; correct?

7 **MS. MORELL:** Right.

8 **MR. MERANTO:** So you were very fair
9 handed?

10 **MS. MORELL:** I thought so.

11 **MR. MERANTO:** Okay. You've been
12 listening to everything we've been talking
13 about, I'm sure. You probably have no
14 problem hearing me. Did you ever find
15 yourself thinking, well, you know, it's not
16 really fair that the state has to present all
17 this evidence and do all this stuff, and
18 Mr. Ferrara, Meranto, and Ms. Weibling, we
19 don't have to do anything? Did that ever
20 cross your mind even for a moment?

21 **MS. MORELL:** No, because you're
22 either -- you have to have a reason to do
23 something, so if you're accused of something,

1 somebody has to prove it.

2 **MR. MERANTO:** So the state brought the
3 charges, and it's only fair that they have to
4 prove it to you?

5 **MS. MORELL:** Right.

6 **MR. MERANTO:** Beyond a reasonable doubt.
7 And this reasonable doubt thing's a pretty
8 serious level. Do you get that impression
9 from all the discussion you have about it?

10 **MS. MORELL:** Oh, yeah.

11 **MR. MERANTO:** That it's not just a
12 feeling like he's guilty. You gotta really
13 believe it in your heart.

14 **MS. MORELL:** Right, because that is
15 what -- nobody knows anything.

16 **MR. MERANTO:** And so right now you
17 believe he's not guilty; correct?

18 **MS. MORELL:** Have to, yes.

19 **MR. MERANTO:** You're a blank slate.
20 You're open to hearing what may or may not
21 come from this courtroom; correct?

22 **MS. MORELL:** Correct.

23 **MR. MERANTO:** Thank you.

1 **THE COURT:** Thank you. Is Ms. Morell
2 passed for cause by the state?

3 **MS. CANTALAMESSA:** Yes, Your Honor.

4 **THE COURT:** By the defense?

5 **MR. MERANTO:** Pass for cause, Your
6 Honor.

7 **THE COURT:** All right. We'll turn to
8 the defendant for the exercise of your second
9 peremptory challenge.

10 **MR. MERANTO:** We would thank and excuse
11 Ms. Tracy, Juror No. 3.

12 **THE COURT:** All right. Ms. Tracy, thank
13 you. William Wright, take Seat No. 3,
14 please. Good afternoon. I guess it's
15 afternoon. I think that's the hint they're
16 trying to give me, that they want to go to
17 lunch. We're going to go pretty soon. So
18 were you able to hear all the proceedings
19 here at the front of the courtroom?

20 **MR. WRIGHT:** Yes, sir.

21 **THE COURT:** Can you tell me from what
22 all you've heard, is there any reason you
23 can't sit as a fair and impartial juror in

1 this case?

2 **MR. WRIGHT:** No.

3 **THE COURT:** Do you know anything about
4 this case from an outside source?

5 **MR. WRIGHT:** No.

6 **THE COURT:** Will you follow the law as
7 it's given to you by the court and apply that
8 law to the facts of this case?

9 **MR. WRIGHT:** Yes.

10 **THE COURT:** Do you understand the facts
11 are simply what's presented to you here in
12 the courtroom, not what somebody else writes
13 or reports or tells you?

14 **MR. WRIGHT:** Yes.

15 **THE COURT:** It's important during the
16 course of the case that you understand that
17 you can't talk with anybody about this case.
18 You can't read any newspaper or anything
19 about it. You have to decide the case
20 strictly upon what's presented here in the
21 court.

22 **MR. WRIGHT:** Yes.

23 **THE COURT:** All right. So you can be

1 fair and impartial, and there's no reason you
2 can't serve; is that correct?

3 **MR. WRIGHT:** Correct.

4 **THE COURT:** All right. So we're going
5 to question this juror. I'm going to let the
6 rest of you in the back go. This instruction
7 is applicable every time that you leave the
8 courtroom, that you are not to discuss the
9 case at all among yourselves or with anyone
10 else. You're not to permit anyone to discuss
11 the case with you or in your presence. You
12 must not form or express any opinion about
13 the case. We're going to ask that you be
14 back in the courtroom no later than 1:30.
15 We're going to resume at 1:30 so you can get
16 something to eat and refresh yourselves, and
17 we'll complete the selection of the jury this
18 afternoon. You're welcome to go to lunch
19 together if you like, but you please can't
20 discuss the case. If anybody's discussing it
21 or talking about it, you have to avoid that
22 conversation. Thank you, folks. See you in
23 a little bit.

1 **(WHEREUPON, some of the prospective**
2 **jurors left the courtroom, some remained, and**
3 **the proceedings continued as follows:)**

4 **THE COURT:** So Ms. Cantalamessa, do you
5 wish to question this prospective juror?

6 **MS. CANTALAMESSA:** Just briefly, Your
7 Honor.

8 **THE COURT:** Thank you.

9 **MS. CANTALAMESSA:** Good afternoon,
10 Mr. Wright.

11 **MR. WRIGHT:** Good afternoon.

12 **MS. CANTALAMESSA:** You were working for
13 a steel mill?

14 **MR. WRIGHT:** Correct.

15 **MS. CANTALAMESSA:** And what one is that?

16 **MR. WRIGHT:** RG Steel.

17 **MS. CANTALAMESSA:** Working there, did
18 you have to be a member of the union?

19 **MR. WRIGHT:** Yes.

20 **MS. CANTALAMESSA:** You have three kids
21 at home. You guys are busy, huh?

22 **MR. WRIGHT:** Uh-huh.

23 **MS. CANTALAMESSA:** And anything going on

1 in your life which would cause you not to be
2 able to pay attention to the evidence and the
3 testimony during this case?

4 **MR. WRIGHT:** No.

5 **MS. CANTALAMESSA:** Anything that I
6 brought up which you felt you would've had a
7 different answer than any other member of the
8 panel?

9 **MR. WRIGHT:** No.

10 **MS. CANTALAMESSA:** Do you think you
11 could follow the law as the judge gives it to
12 you, especially regarding direct versus
13 circumstantial evidence, the fact that
14 they're of equal weight? You're okay with
15 that?

16 **MR. WRIGHT:** Yes.

17 **MS. CANTALAMESSA:** And can you abide by
18 that; it's the quality of the evidence, not
19 necessarily the quantity of the evidence?

20 **MR. WRIGHT:** Yes.

21 **MS. CANTALAMESSA:** Any reason sitting
22 there right now that you would be siding with
23 either the state or the defense before you

1 heard anything?

2 **MR. WRIGHT:** No.

3 **MS. CANTALAMESSA:** I have nothing
4 further. Thank you.

5 **THE COURT:** Thank you. Mr. Meranto.

6 **MR. MERANTO:** Thank you. Hi,
7 Mr. Wright. How are you?

8 **MR. WRIGHT:** Good. How are you?

9 **MR. MERANTO:** Good. Thank you. You
10 ever have to settle any disputes between --
11 12, 12, and 13. I'm not there yet. I can't
12 even imagine. 12, 12, and 13 years old, are
13 those the ages of your kids?

14 **MR. WRIGHT:** Yeah.

15 **MR. MERANTO:** How do you do that?

16 **MR. WRIGHT:** Very carefully.

17 **MR. MERANTO:** Girl, boys?

18 **MR. WRIGHT:** Two girls and a boy.

19 **MR. MERANTO:** Are they twins then?

20 **MR. WRIGHT:** The boy and the girl are
21 twins.

22 **MR. MERANTO:** Do they dig in, I mean,
23 during disputes, or is one easier to roll

1 over for the other one? I mean, how exactly
2 does that work? Because kids are all
3 different. At least that's mine.

4 **MR. WRIGHT:** The girls are pretty
5 straight forward. They'll come out honestly
6 and tell me what's going on. The boy, he's a
7 tough one that -- he wants to argue.

8 **MR. MERANTO:** Send him my way when the
9 time comes.

10 **MR. WRIGHT:** Absolutely.

11 **MR. MERANTO:** When you say argue, is he
12 just -- I mean, does he argue in the face of
13 logic even sometimes?

14 **MR. WRIGHT:** Yeah.

15 **MR. MERANTO:** Because he just wants to
16 keep going?

17 **MR. WRIGHT:** Yeah.

18 **MR. MERANTO:** Have you ever gotten in a
19 situation with him where you go, look, that
20 just is completely ridiculous? Now you gotta
21 go do what I -- I mean, have you ever gotten
22 to that point with him? Like, I heard your
23 argument, and it's ridiculous, it doesn't

1 make sense?

2 **MR. WRIGHT:** Yes.

3 **MR. MERANTO:** I think you did it, that's
4 the way. Do you think you can -- are you
5 comfortable with, like, logically sitting out
6 and reasoning something out, giving somebody
7 the benefit of the doubt but then saying,
8 look, okay, bottom line is here's the way it
9 is, and that's the decision I'm making? Are
10 you comfortable with that?

11 **MR. WRIGHT:** Yeah.

12 **MR. MERANTO:** Okay. Would you be
13 comfortable with that in the face of some
14 people that like your son, differ with your
15 point of view?

16 **MR. WRIGHT:** Well, yeah. I mean, yeah,
17 I wouldn't judge just because he's my son or
18 any other kid that would come to my house.

19 **MR. MERANTO:** Well, I guess what I'm
20 asking you is, let's say you're selected as a
21 juror, and you go back there, and there's
22 some discussion with regard to how a piece of
23 evidence came in --

1 **MR. WRIGHT:** Right.

2 **MR. MERANTO:** -- or didn't. And you're
3 having that discussion, and you have a
4 different point of view than maybe six,
5 seven, eight other jurors.

6 **MR. WRIGHT:** Sure.

7 **MR. MERANTO:** How would you handle that?

8 **MR. WRIGHT:** Well, I think that's the
9 purpose of having all 12 of us together is to
10 be able to discuss it together. We're not
11 all going to see everything the same way.

12 **MR. MERANTO:** I mean, you seem like a
13 calm, kind of soft spoken guy, but you're
14 going to stand up for yourself and make your
15 points in there?

16 **MR. WRIGHT:** Sure.

17 **MR. MERANTO:** Do you have a problem with
18 the fact that the state has to prove this to
19 you and we don't -- Mr. Ferrara and I don't
20 have to do anything but sit there?

21 **MR. WRIGHT:** No.

22 **MR. MERANTO:** You understand, and you're
23 comfortable with that? Do you believe in

1 that?

2 **MR. WRIGHT:** Sure.

3 **MR. MERANTO:** Thank you. Thanks,
4 Mr. Wright.

5 **THE COURT:** All right. Thank you. Is
6 Mr. Wright passed for cause by the state?

7 **MS. CANTALAMESSA:** Yes, Your Honor.

8 **THE COURT:** By the defense?

9 **MR. MERANTO:** Pass for cause.

10 **THE COURT:** All right. Ladies and
11 gentlemen, we're going to recess at this
12 time. I'd like you to go with the bailiff to
13 the jury room and report back there shortly
14 before 1:30 so we can resume at that time.
15 The instruction I gave before the other
16 jurors were excused is the same instruction
17 that you're subject to. Please follow those
18 admonitions and get a nice little stretch,
19 and we'll see you in a little bit. Thank
20 you.

21 **(WHEREUPON, the Court recessed at 12:20**
22 **p.m., November 18, 2013 and reopened at 1:30**
23 **p.m., November 18, 2013 and the proceedings**

1 **continued as follows:)**

2 **THE COURT:** Good afternoon, everyone.
3 Okay. We had completed the voir dire of
4 Mr. Wright. He was passed for cause. And so
5 we would return to the state for the exercise
6 of your third peremptory challenge.

7 **MS. CANTALAMESSA:** Your Honor, the state
8 would like to thank but excuse Juror No. 10,
9 Ms. Firmstone.

10 **THE COURT:** All right. Thank you.
11 Laura Farris, please take Seat No. 10.

12 **MR. MERANTO:** Your Honor, may we
13 approach?

14 **THE COURT:** Yes.

15 **(WHEREUPON, a discussion was had among**
16 **court and counsel off the record and out of**
17 **the hearing of the prospective jurors and**
18 **court reporter, after which the proceedings**
19 **continued as follows:)**

20 **THE COURT:** So Ms. Farris, were you able
21 to hear the proceedings here at the front of
22 the courtroom?

23 **MS. FARRIS:** Yes, I was.

1 **THE COURT:** And there were a lot of
2 questions asked by the court and by counsel.
3 Were there any of those things that raised
4 your attention, raised a red flag or
5 something that indicated something you should
6 talk to us about?

7 **MS. FARRIS:** I've heard about the case.

8 **THE COURT:** Okay. Were any of the
9 challenges for cause applicable to you?

10 **MS. FARRIS:** No.

11 **THE COURT:** And were these news sources
12 from where you heard about the case? Just
13 yes or no?

14 **MS. FARRIS:** Yes, plus.

15 **THE COURT:** And others?

16 **MS. FARRIS:** Uh-huh.

17 **THE COURT:** All right. We're going to
18 have you come back to my office while we
19 discuss that matter. I'll need the parties
20 and the court reporter there, and the bailiff
21 will bring you at the appropriate time.

22 **(WHEREUPON, the Court, counsel,**
23 **Defendant, Prospective Juror No. 10, Laura**

1 **Farris, and court reporter enter the chambers**
2 **of the Court, and the following proceedings**
3 **were had out of the hearing of the**
4 **prospective jurors:)**

5 **THE COURT:** Hi.

6 **MS. FARRIS:** Hi.

7 **THE COURT:** So what is it that you've
8 heard about the case?

9 **MS. FARRIS:** Well, I work at GM, and my
10 girlfriend had told me -- she also works at
11 General Motors. She goes, I got hired in
12 '79. She says, well, maybe the person that
13 you're going to hear the trial on used to be
14 at General Motors. And then that's basically
15 it. And then she told me about the case a
16 little bit, about how it was a security guard
17 and his wife and his daughter that got
18 killed.

19 **THE COURT:** So I read you the indictment
20 this morning describing what crimes the state
21 alleges the defendant committed.

22 **MS. FARRIS:** Okay.

23 **THE COURT:** I named this defendant, and

1 I told you it when I read the indictment. So
2 those are things that are alleged against
3 this defendant.

4 **MS. FARRIS:** Okay.

5 **THE COURT:** Are those the kind of things
6 that you've learned or you've heard, that
7 three people were murdered and that --

8 **MS. FARRIS:** Yes, that's what I heard.

9 **THE COURT:** And that someone is supposed
10 to have done it?

11 **MS. FARRIS:** Correct.

12 **THE COURT:** Well, what else? Is there
13 anything on top of that?

14 **MS. FARRIS:** Just that a baby was
15 crawling around in blood, and --

16 **THE COURT:** I think that was in the
17 newspaper this morning.

18 **MS. FARRIS:** Well, I didn't read the
19 newspaper this morning. This is what --

20 **THE COURT:** See, the newspaper, you
21 know, they want the right to print and have
22 free access and all of that, and then they --
23 they actually impede the right to a fair

1 trial by doing that because what they say in
2 the paper is just bologna.

3 **MS. FARRIS:** Well, I would have to hear
4 the facts before I would make a decision on
5 anything.

6 **THE COURT:** Well, we would hope that,
7 and, you know, any responsible citizen should
8 feel the same way.

9 **MS. FARRIS:** Right.

10 **THE COURT:** You can make up your own
11 mind?

12 **MS. FARRIS:** Right. Absolutely.

13 **THE COURT:** But more difficult than
14 that, because we're human is, once we hear
15 something or we see something or somebody
16 tells us something, then somebody else maybe
17 tells us something different, and it's a
18 little tougher for us.

19 **MS. FARRIS:** Correct. But in life,
20 people always judge other people. Like, oh,
21 don't talk to him because of this. I'm like,
22 well, I don't even know that person so I have
23 to get to know that person before I can judge

1 him myself. That's the way I look at life.
2 I don't really listen to what anybody else --
3 I listen, but I make my own judgment.

4 **THE COURT:** I have friends that I try to
5 get them to listen to me. Yesterday we were
6 talking about one of the rules of golf, and
7 man, it's like you couldn't talk to them.

8 **MS. FARRIS:** Right.

9 **THE COURT:** I suppose it's because the
10 rule worked against him that he didn't like
11 the rule very much.

12 **MS. FARRIS:** Right. But rules are there
13 for a reason. You have to follow them as
14 I --

15 **THE COURT:** My kind of girl.

16 **MS. FARRIS:** Well, 12 years of Catholic
17 education, you are going to follow the rules.

18 **THE COURT:** There you go. So I have
19 another question for you. Your name is
20 Farris. I know Farrises that went to
21 Cardinal Mooney also. Are you a Cardinal
22 Mooney Farris?

23 **MS. FARRIS:** My husband, Johnny. Ed,

1 George, and John.

2 **THE COURT:** Eddie and I went to --

3 **MS. FARRIS:** Okay. Well, I'm married to
4 the little one, to Johnny.

5 **THE COURT:** When did he graduate?

6 **MS. FARRIS:** '77.

7 **THE COURT:** Eddie was '70?

8 **MS. FARRIS:** Correct.

9 **THE COURT:** He graduated with my wife.

10 **MS. FARRIS:** My sympathies.

11 **THE COURT:** So is there anything about
12 what you've learned or heard about the case
13 that you think would affect your ability to
14 be fair and impartial?

15 **MS. FARRIS:** No. I will listen to all
16 the evidence, and whatever it is, then make
17 my decision.

18 **THE COURT:** Have you ever -- you said
19 you talked with your girlfriend about this.
20 Did you ever talk with any members of your
21 family about it that you recall?

22 **MS. FARRIS:** Oh, well, we were out to
23 dinner on Friday night with Ed, Phyllis, my

1 husband, and another couple, and they're
2 like, oh, I hope you don't get on that case.
3 I said, yeah, me, too. But that was it. You
4 know, we were talking a little bit about it;
5 you know? But it was the same stuff that I
6 had heard from my girlfriend earlier.

7 **THE COURT:** Just pretty much what's been
8 in the newspaper?

9 **MS. FARRIS:** Pretty much, yes, because I
10 didn't see it in the paper, so -- I only read
11 the paper at work, and I didn't read it. I
12 was off Friday.

13 **THE COURT:** What you know about it is
14 what other people have told you?

15 **MS. FARRIS:** Right. Hearsay.

16 **THE COURT:** That's exactly what it is.
17 It's even worse than what's in the paper.

18 **MS. FARRIS:** Because you really don't
19 know. It's what every -- you know, other
20 people say.

21 **THE COURT:** Okay. Are you comfortable
22 working on this case?

23 **MS. FARRIS:** I am.

1 **THE COURT:** Maybe comfort's not the
2 right word. Are you able to do this?

3 **MS. FARRIS:** Yeah. I want to be honest.
4 You know what, I'm going to listen to
5 everything and then make my decision on what
6 is presented in front of me, not what I've
7 heard before.

8 **THE COURT:** All right. Thank you.

9 **(WHEREUPON, Prospective Juror No. 10,**
10 **Laura Farris, left the chambers of the**
11 **court.)**

12 **MR. MERANTO:** Judge, she is Ed Farris'
13 daughter-in-law. His name is going to come
14 up in this case.

15 **THE COURT:** Yeah.

16 **MR. MERANTO:** She can't serve.

17 **THE COURT:** Why can't she serve? You
18 don't even know if she knows Ed Farris.

19 **MR. MERANTO:** She said Ed, George and --
20 George and Mary. It's her father-in-law. He
21 just died a couple of years ago.

22 **THE COURT:** She did say that, yeah. You
23 don't know when she got married.

1 **MR. MERANTO:** He only died a couple
2 years ago. She obviously didn't -- she's not
3 a newlywed.

4 **THE COURT:** I didn't ask her those
5 things. I asked her if she knew anything
6 about this, if she talked with her family
7 about it, trying to segue into that which you
8 brought up at side bar, but that has nothing
9 to do with publicity. I'm not going to ask
10 her about that. I'm conducting voir dire on
11 publicity.

12 **MR. MERANTO:** All right, but what
13 happens when it comes up and she raises her
14 hand in the middle of trial?

15 **THE COURT:** She's not going to raise her
16 hand in the middle of trial. If you have a
17 concern about that, then you should ask her
18 about it on voir dire. I don't know what
19 evidence is coming in.

20 **MR. MERANTO:** I know, Judge. All right.
21 I know.

22 **THE COURT:** I mean, you want me to do
23 all of this. I'm trying to accommodate

1 everybody.

2 **MR. MERANTO:** I know. You are. Thank
3 you.

4 **THE COURT:** But I can't do all of this.
5 I don't know the case. I know what I read in
6 the paper. You guys know what witnesses,
7 what evidence is coming in. I truly don't.
8 All I know is what's been brought to my
9 attention.

10 **MR. MERANTO:** Because I've gotta ask
11 her, was that your father-in-law? Did you
12 have a relationship with him? Did you know
13 that there may be evidence with regard to his
14 name?

15 **THE COURT:** Well, what's the problem
16 with you asking that?

17 **MR. MERANTO:** Okay. All right.

18 **MS. DOHERTY:** I wouldn't say evidence.

19 **THE COURT:** I have no information about
20 it.

21 **MR. MERANTO:** Maybe I should have a
22 thicker skin. I called Mary Farris and
23 George Farris when I first got this case and

1 saw those names, and I said, hey, I'm not
2 trying to throw the guy's name out there, but
3 his name comes up prominently in this case.
4 They go, well, we appreciate that, but you do
5 what you have to do.

6 **MS. DOHERTY:** Why don't you just bump
7 her? I mean --

8 **THE COURT:** That's legitimate inquiry.
9 If somebody -- if somebody's name is being
10 mentioned, they're going to get up and say,
11 you know, we got Paul Gains is our
12 prosecutor, and --

13 **MR. MERANTO:** I know. Where do you draw
14 the line?

15 **THE COURT:** There's, like, a million
16 other people that work over there. But they
17 go through that whole list of names and ask,
18 does that make any difference to you? What's
19 the difference with you doing that?

20 **MR. MERANTO:** Okay.

21 **THE COURT:** Okay.

22 **(WHEREUPON, the Court, counsel,**
23 **Defendant and court reporter returned to the**

1 court, and the following proceedings were had
2 back in the hearing of the prospective
3 jurors:)

4 THE COURT: Ms. Farris, you heard all of
5 these things at the front of the courtroom
6 and the instructions of law and how you
7 should conduct yourself as a juror. Are you
8 satisfied that you can perform those tasks as
9 they've been described to you by the court?

10 MS. FARRIS: I do.

11 THE COURT: And will you follow the law
12 that's given to you by the court and apply it
13 to the facts as you hear them here in the
14 courtroom?

15 MS. FARRIS: I will.

16 THE COURT: Is there any reason why you
17 cannot sit as a fair and impartial juror?

18 MS. FARRIS: I don't think so, no.

19 THE COURT: Very well. The state may
20 inquire.

21 MS. CANTALAMESSA: Thank you, Your
22 Honor. Good afternoon, Mrs. Farris.

23 MS. FARRIS: Hello.

1 **MS. CANTALAMESSA:** Is there anything
2 that I brought up that you thought you
3 would've had a different answer than the rest
4 of the panel?

5 **MS. FARRIS:** No.

6 **MS. CANTALAMESSA:** Can you set aside
7 whatever you think aggravated murder should
8 be and just base your decision on the law as
9 the judge gives it to you?

10 **MS. FARRIS:** Yes, I will.

11 **MS. CANTALAMESSA:** How about the law
12 with regard to -- the judge is going to tell
13 you that direct evidence and circumstantial
14 evidence are of equal weight. Can you abide
15 by that?

16 **MS. FARRIS:** Yes.

17 **MS. CANTALAMESSA:** What about when I
18 talked about quality over quantity? It's not
19 necessarily that there's going to be a lot of
20 witnesses, but you have to look at the
21 quality of the evidence. Can you do that?

22 **MS. FARRIS:** I can.

23 **MS. CANTALAMESSA:** Do you have any --

1 you work at General Motors; right?

2 **MS. FARRIS:** Yes.

3 **MS. CANTALAMESSA:** Do you have any
4 training, any gun training, or any scientific
5 training, anything like that?

6 **MS. FARRIS:** No.

7 **MS. CANTALAMESSA:** Do you have any
8 reason to think that fingerprint evidence or
9 DNA evidence is just junk science, anything
10 like that?

11 **MS. FARRIS:** No.

12 **MS. CANTALAMESSA:** Do you watch any of
13 those shows, CSI, Law & Order, anything like
14 that?

15 **MS. FARRIS:** No.

16 **MS. CANTALAMESSA:** It's hard not to
17 because they're on every channel.

18 **MS. FARRIS:** I work afternoons.

19 **MS. CANTALAMESSA:** You get to see that
20 good daytime TV, or at least the morning
21 shows.

22 **MS. FARRIS:** I don't have time.

23 **MS. CANTALAMESSA:** Is there any reason

1 whatsoever that you couldn't start every
2 witness on an equal level until you at least
3 hear their testimony before judging their
4 credibility?

5 **MS. FARRIS:** I can.

6 **MS. CANTALAMESSA:** And can you keep an
7 open mind throughout the entirety of the case
8 and don't make any decision until the
9 evidence is closed?

10 **MS. FARRIS:** Yes.

11 **MS. CANTALAMESSA:** And can you promise
12 to use your reason and your common sense?

13 **MS. FARRIS:** Yes.

14 **MS. CANTALAMESSA:** That's all the
15 questions I have, Your Honor.

16 **THE COURT:** Thank you. Mr. Meranto.

17 **MR. MERANTO:** Thank you, Your Honor.
18 Hi, Mrs. Farris. How are you?

19 **MS. FARRIS:** Hello.

20 **MR. MERANTO:** Now, are you George and
21 Mary's sister-in-law?

22 **MS. FARRIS:** Yes.

23 **MR. MERANTO:** So Mr. Farris, Ed, they

1 call him Papa Farris, was your father-in-law?

2 **MS. FARRIS:** Correct.

3 **MR. MERANTO:** Do you -- I know you're
4 probably not aware, but are you aware that
5 his name was mentioned early on in this case
6 in the '70s?

7 **MS. FARRIS:** No, I'm not.

8 **MR. MERANTO:** Would that cause you a
9 problem to deliberate on this case if there's
10 some evidence about him?

11 **MS. FARRIS:** No.

12 **MR. MERANTO:** It wouldn't at all?

13 **MS. FARRIS:** No.

14 **MR. MERANTO:** Okay. Well, you
15 understand, once again, and I'm sure you were
16 listening to all of this, that you have an
17 obligation with regard to Mr. Ferrara to hear
18 the evidence fairly and decide just based on
19 what you hear in here?

20 **MS. FARRIS:** Correct.

21 **MR. MERANTO:** Okay. While once again we
22 have no obligation to put on any evidence,
23 but obviously -- or certainly to solve the

1 case. I mean, the state charged Mr. Ferrara,
2 and they have to prove their case; correct?

3 **MS. FARRIS:** Correct.

4 **MR. MERANTO:** And you agree with that?

5 **MS. FARRIS:** I do.

6 **MR. MERANTO:** There may be some evidence
7 presented which could lead someone to believe
8 that maybe Mr. Farris Sr. might have been
9 involved, and certainly was a suspect
10 potentially at the time. I mean, absolutely
11 was a suspect at the time. And given that,
12 could you tell me with 100 percent certainty
13 that you won't consider that with regard to,
14 well, you know, if I find Mr. Ferrara guilty,
15 then, you know, then certainly my
16 father-in-law had nothing to do with it? Do
17 you know what I mean?

18 **MS. FARRIS:** Is anything 100 percent?

19 **MR. MERANTO:** Absolutely not. But you
20 have -- you have to be 100 percent with
21 regard to telling me that you're going to
22 give Mr. Ferrara his full and fair day in
23 court, and you're going to hold the state to

1 its burden.

2 **MS. FARRIS:** That I will do.

3 **MR. MERANTO:** And that's not going to
4 cloud your judgment at all?

5 **MS. FARRIS:** No.

6 **MR. MERANTO:** Okay. Nothing else.

7 **THE COURT:** All right. Thank you. Is
8 Ms. Farris passed for cause by the state?

9 **MS. CANTALAMESSA:** Yes, Your Honor.

10 **THE COURT:** By the defense?

11 **MR. MERANTO:** For cause, Your Honor,
12 pass.

13 **THE COURT:** All right. Then we'll
14 return to the defense for the exercise of
15 your third peremptory challenge.

16 **MR. MERANTO:** We would thank and excuse
17 Ms. Farris.

18 **THE COURT:** Okay. Ms. Farris, thank
19 you. Melissa Wheatley, good afternoon to
20 you.

21 **MS. WHEATLEY:** Good afternoon.

22 **THE COURT:** Were you able to hear the
23 proceedings here at the front of the

1 courtroom?

2 **MS. WHEATLEY:** Yes, I was.

3 **THE COURT:** There were several
4 challenges for cause read by the court when
5 we began this morning. Did any of them apply
6 to you?

7 **MS. WHEATLEY:** No, they did not.

8 **THE COURT:** You heard the instructions
9 of law given by the court. Are you okay with
10 the instructions thus far given?

11 **MS. WHEATLEY:** Yes, I am.

12 **THE COURT:** And will you follow the
13 instructions of law I will give you
14 throughout the case, and at the end of the
15 case, and apply that law to the facts of this
16 case?

17 **MS. WHEATLEY:** Yes, I will.

18 **THE COURT:** Do you understand the
19 importance of keeping an open mind until
20 you've heard everything that there is,
21 including the opinion of your fellow jurors
22 when you reach deliberations?

23 **MS. WHEATLEY:** Yes, I will.

1 **THE COURT:** Are you able to tell them
2 what your feelings are? You're not inhibited
3 to talking with other folks about how you
4 feel?

5 **MS. WHEATLEY:** No. I'm perfectly
6 capable of that.

7 **THE COURT:** Okay. Have you heard
8 anything about this case from outside
9 sources?

10 **MS. WHEATLEY:** I have not.

11 **THE COURT:** Pardon?

12 **MS. WHEATLEY:** I have not.

13 **THE COURT:** Okay. Now, everyone is
14 instructed not to view the newspaper or
15 television or attempt to find anything out
16 about the case during the course of the trial
17 from now on. But sometimes things like that
18 happen. You know, if it's on the news and
19 you're eating breakfast, and you hear
20 something, you have to avoid that. You have
21 to -- and the reason for that is we're not
22 interested in the opinion of someone who's
23 not involved in the case. You folks are

1 involved. You're going to hear everything
2 and know everything there is.

3 And you see none of them are here now.
4 They come in and out and act like they're
5 here the whole time and get a lot of their
6 information from others rather than being
7 involved in it themselves. And their opinion
8 means nothing. They don't -- they're not
9 subjected to the same trial that we're
10 putting you folks through to make sure you
11 can do this. So do you understand the
12 importance of deciding this matter for
13 yourself and not letting anyone influence how
14 you decide?

15 **MS. WHEATLEY:** Yes.

16 **THE COURT:** Okay. Is there any reason
17 why you cannot sit as a fair and impartial
18 juror?

19 **MS. WHEATLEY:** No, there's not.

20 **THE COURT:** Very well. State may
21 inquire.

22 **MS. CANTALAMESSA:** Thank you, Your
23 Honor. Good afternoon, Mrs. Wheatley.

1 **MS. WHEATLEY:** Good afternoon.

2 **MS. CANTALAMESSA:** You were a principal?

3 **MS. WHEATLEY:** I was.

4 **MS. CANTALAMESSA:** Of what school?

5 **MS. WHEATLEY:** The Youngstown Academy on
6 the east side.

7 **MS. CANTALAMESSA:** Were you a teacher
8 before that?

9 **MS. WHEATLEY:** I started -- I was there
10 for eight years, and I was a teacher and
11 ended up being the head of the school for
12 four years.

13 **MS. CANTALAMESSA:** What kind of things
14 did you teach?

15 **MS. WHEATLEY:** I was elementary
16 education, so I taught everything.

17 **MS. CANTALAMESSA:** You talk in your
18 questionnaire about your friend or your
19 cousin --

20 **MS. WHEATLEY:** Yes.

21 **MS. CANTALAMESSA:** -- who was in a
22 domestic dispute?

23 **MS. WHEATLEY:** Yes.

1 **MS. CANTALAMESSA:** Was there police
2 involved in that?

3 **MS. WHEATLEY:** Yes.

4 **MS. CANTALAMESSA:** Were you involved in
5 any way in going to court with her or --

6 **MS. WHEATLEY:** It's in Columbiana
7 County, and I was asked to be called as a
8 witness if it did go to that, but it hasn't.
9 It's still pending.

10 **MS. CANTALAMESSA:** Were you present when
11 that happened?

12 **MS. WHEATLEY:** I was not.

13 **MS. CANTALAMESSA:** And all that's going
14 on in Columbiana County?

15 **MS. WHEATLEY:** Yes.

16 **MS. CANTALAMESSA:** Because of that
17 situation and your involvement with your
18 cousin, do you think you would side with one
19 side or the other, being the state or the
20 defense?

21 **MS. WHEATLEY:** No.

22 **MS. CANTALAMESSA:** Can you promise to
23 keep everyone on an equal level until you

1 hear their testimony when judging the
2 credibility of witnesses?

3 **MS. WHEATLEY:** Yes.

4 **MS. CANTALAMESSA:** What about do you
5 have any gun knowledge or training in
6 weapons, anything like that?

7 **MS. WHEATLEY:** I do not. My oldest son
8 is in the Army, and he is a fire support
9 specialist, but that has nothing to do with
10 me.

11 **MS. CANTALAMESSA:** None of that training
12 rubbed off on you?

13 **MS. WHEATLEY:** No.

14 **MS. CANTALAMESSA:** What about are you
15 able to follow the law and the instructions
16 as the judge gives it to you and keep out of
17 your mind what you think the law should be?

18 **MS. WHEATLEY:** Yes.

19 **MS. CANTALAMESSA:** The judge will read
20 you an instruction like I've been saying that
21 circumstantial evidence is to be equally --
22 of equal weight as direct evidence. Are you
23 okay with that?

1 **MS. WHEATLEY:** Yes.

2 **MS. CANTALAMESSA:** What about DNA or
3 fingerprint evidence? Do you have any reason
4 why you don't think that's reliable?

5 **MS. WHEATLEY:** I do not.

6 **MS. CANTALAMESSA:** I have nothing
7 further. Thank you.

8 **THE COURT:** Thank you. Mr. Meranto.

9 **MR. MERANTO:** Thanks. Good afternoon,
10 Ms. Wheatley. How are you?

11 **MS. WHEATLEY:** Fine, thank you.

12 **MR. MERANTO:** You're not getting bored
13 back there, are you?

14 **MS. WHEATLEY:** No.

15 **MR. MERANTO:** Have you ever made, like,
16 a big appliance purchase or something?

17 **MS. WHEATLEY:** Yes.

18 **MR. MERANTO:** You have? Did you shop
19 around, do any research? Or how did you make
20 the purchase?

21 **MS. WHEATLEY:** Definitely did research.

22 **MR. MERANTO:** You did? Okay. Did you
23 ever walk in and have a salesman try and give

1 you the hard sell and trying to get you to
2 walk out that day with something?

3 **MS. WHEATLEY:** Yes.

4 **MR. MERANTO:** And how did you handle it?

5 **MS. WHEATLEY:** If I had already made up
6 my mind, I would listen, but it wouldn't
7 waiver.

8 **MR. MERANTO:** So you want to know
9 something for yourself before you make a
10 decision?

11 **MS. WHEATLEY:** For the most part, yes.
12 I'm an educator. It's important.

13 **MR. MERANTO:** I have one of those in my
14 family, too. So also a rule follower, I
15 would assume?

16 **MS. WHEATLEY:** Yes.

17 **MR. MERANTO:** The judge tells you,
18 that's the way it is, even though you might
19 not quite agree with it?

20 **MS. WHEATLEY:** Yes.

21 **MR. MERANTO:** And you're able to apply
22 those standards, shopping, teaching, to
23 what's going on here?

1 **MS. WHEATLEY:** Yes.

2 **MR. MERANTO:** And right now you've got a
3 blank slate. If we send you back for a
4 verdict, verdict's not guilty; right?

5 **MS. WHEATLEY:** Correct.

6 **MR. MERANTO:** Okay. Thank you,
7 Ms. Wheatley.

8 **THE COURT:** Thank you, Mr. Meranto. Is
9 Ms. Wheatley passed for cause by the state?

10 **MS. CANTALAMESSA:** Yes, Your Honor.

11 **THE COURT:** By the defense?

12 **MR. MERANTO:** For cause, Your Honor,
13 yes.

14 **THE COURT:** All right. Then we'll
15 return to the state for the exercise of your
16 fourth and final peremptory challenge.

17 **MS. CANTALAMESSA:** May I have one
18 second, Your Honor?

19 **THE COURT:** Yes, you may.

20 **MS. CANTALAMESSA:** Your Honor, the state
21 would like to thank but excuse seated in
22 Juror No. 11's seat right now, Mrs. Morell.

23 **THE COURT:** Okay. Ms. Morell, thank

1 you. Joseph Barber. How are you today?

2 **MR. BARBER:** Good, Your Honor. How are
3 you, sir?

4 **THE COURT:** I'm all right. Are you able
5 to hear the proceedings here at the front of
6 the courtroom?

7 **MR. BARBER:** Yes, sir.

8 **THE COURT:** Is there any reason you
9 can't sit as a fair and impartial juror in
10 this case?

11 **MR. BARBER:** I believe there is, yes.

12 **THE COURT:** Okay. I don't want you to
13 disclose what that is at this point. Do you
14 know anything about this case?

15 **MR. BARBER:** I've heard things.

16 **THE COURT:** I can't hear you.

17 **MR. BARBER:** I've heard things.

18 **THE COURT:** All right. Then we'll
19 retire to my chambers to discuss those
20 matters.

21 **(WHEREUPON, the Court, counsel,**
22 **Defendant, Prospective Juror No. 11, Joseph**
23 **Barber, and court reporter enter the chambers**

1 of the Court, and the following proceedings
2 were had.:)

3 **THE COURT:** So what have you heard?

4 **MR. BARBER:** Well, basically just
5 basically what I've read in the papers and
6 stuff like that. But unfortunately or
7 fortunately, whatever way you look at it, I
8 happened to work with Mr. Ferrara for a
9 period of years at GM.

10 **THE COURT:** Yeah? So you know him?

11 **MR. BARBER:** I do.

12 **THE COURT:** When was the last you saw
13 him?

14 **MR. BARBER:** Oh, probably 1983,
15 somewhere in that area, Judge.

16 **THE COURT:** Okay. So your relationship
17 with him before was just work related or
18 social or what?

19 **MR. BARBER:** Work related.

20 **THE COURT:** Why do you think that would
21 cause you trouble in deciding whether he's
22 guilty or not guilty of these offenses?

23 **MR. BARBER:** I just believe it may cloud

1 my judgment working with the fellow. I don't
2 know that I can be fair and honest at that
3 point.

4 **THE COURT:** Well, okay. Will you step
5 out of the room or just outside the door
6 there, Ryan?

7 **THE BAILIFF:** Sure.

8 **THE COURT:** Close the door when you're
9 outside there.

10 **(WHEREUPON, Prospective Juror No. 11,**
11 **Joseph Barber, left the chambers of the**
12 **court, and the proceedings continued as**
13 **follows:)**

14 **THE COURT:** So any objection to excusing
15 this guy?

16 **MS. DOHERTY:** No, Your Honor.

17 **MR. MERANTO:** No objection.

18 **MS. CANTALAMESSA:** No.

19 **THE COURT:** He just doesn't want to do
20 it, obviously. Okay. I'll excuse him for
21 cause.

22 **(WHEREUPON, Prospective Juror No. 11,**
23 **Joseph Barber, returned to the chambers of**

1 **the court, and the proceedings continued as**
2 **follows:)**

3 **THE COURT:** Mr. Barber, the parties and
4 I have discussed that situation, and we're
5 going to excuse you for cause.

6 **MR. BARBER:** Thank you, sir.

7 **THE COURT:** So you can go back upstairs.
8 Ryan will give you a card, and you can take
9 it up to the jury room, and they'll give you
10 further instructions.

11 **(WHEREUPON, the Court, counsel,**
12 **Defendant and court reporter returned to the**
13 **court, and the following proceedings were had**
14 **back in the hearing of the prospective**
15 **jurors:)**

16 **THE COURT:** All right. The court has
17 excused Mr. Barber for cause. Margaret
18 Starkey. Good afternoon.

19 **MS. STARKEY:** Good afternoon.

20 **THE COURT:** You're the one that was
21 standing up when I came in. I like you.

22 **MS. STARKEY:** I was trying to be
23 respectful.

1 **THE COURT:** That was very nice. Were
2 you able to hear the proceedings here at the
3 front of the courtroom?

4 **MS. STARKEY:** Yes, Your Honor.

5 **THE COURT:** And was there anything that
6 I asked regarding challenges for cause that
7 applied to you?

8 **MS. STARKEY:** No, not at all.

9 **THE COURT:** Will you follow the law
10 given to you by the court and apply it to the
11 facts of this case?

12 **MS. STARKEY:** Yes.

13 **THE COURT:** Do you understand your role
14 as a juror, as an individual, and then as a
15 member of the group and what those duties
16 impose upon you?

17 **MS. STARKEY:** Yes, I do.

18 **THE COURT:** Are you able to fulfill
19 those duties?

20 **MS. STARKEY:** I hope so.

21 **THE COURT:** So we've also asked everyone
22 whether or not you were exposed to any
23 publicity or outside knowledge about this

1 case. Were you?

2 **MS. STARKEY:** Not really.

3 **THE COURT:** Okay. When you say not
4 really, that's one of those things that perks
5 up the ears of a lawyer, you know, because
6 it's not like --

7 **MS. STARKEY:** I've never heard of
8 Mr. Ferrara before.

9 **THE COURT:** Okay. What about the case?
10 Have you heard anything about the case?

11 **MS. STARKEY:** No. Just the incident,
12 but not any charges that were brought against
13 anybody.

14 **THE COURT:** Okay. Would the fact that
15 you know about the incident, where is that
16 from? From the paper or from friends, or
17 from the news or what?

18 **MS. STARKEY:** A family member of mine.

19 **THE COURT:** Pardon?

20 **MS. STARKEY:** A family member of mine.

21 **THE COURT:** Okay. All right. Well, we
22 better go back to my office and discuss that.

23 **(WHEREUPON, the Court, counsel,**

1 **Defendant, Prospective Juror No. 11, Margaret**
2 **Starkey, and court reporter enter the**
3 **chambers of the Court, and the following**
4 **proceedings were had:)**

5 **THE COURT:** All right. How are you?

6 **MS. STARKEY:** I'm good. How are you
7 doing?

8 **THE COURT:** Okay. Can you tell me what
9 it is you've heard about the case, please?

10 **MS. STARKEY:** My father worked at the
11 General Motors Lordstown plant, and recently
12 he spoke with somebody he used to work with.
13 They're both retired. They had just said
14 that new evidence had come up in the case.
15 And I looked it up to see what happened, but
16 I really didn't read anything other than
17 Mr. Marsh and his family were killed.

18 **THE COURT:** Okay.

19 **MS. STARKEY:** And I know it happened in
20 Canfield, but other than that, I don't know
21 even how they were killed.

22 **THE COURT:** Do you know anything about
23 Mr. Ferrara?

1 **MS. STARKEY:** I know Mr. Marsh was a
2 security guard at Lordstown, but no.

3 **THE COURT:** You don't know anything
4 about Mr. Ferrara?

5 **MS. STARKEY:** No.

6 **THE COURT:** Okay. So the important
7 inquiry is whether or not what you've learned
8 about it or found out about it outside of the
9 courtroom you can set aside as if you've
10 never heard that and not use that information
11 in any way to decide the issues of this case?

12 **MS. STARKEY:** Right. Yes.

13 **THE COURT:** Can you do that?

14 **MS. STARKEY:** I believe so.

15 **THE COURT:** Okay. It's something you're
16 probably not used to doing. Maybe you are.
17 Maybe I look at that the wrong way. Because
18 sometimes we hear things and find out later
19 on it's a bunch of malarkey. You know,
20 sometimes it's just not accurate. But we
21 can't test what we hear later against that we
22 heard before. Like, you can't test the
23 evidence against what your father-in-law or

1 whoever it is told you.

2 **MS. STARKEY:** Right.

3 **THE COURT:** You've got to forget what
4 anybody told you or what anybody said about
5 the case. Do you think you can do that?

6 **MS. STARKEY:** I can. My dad really
7 didn't say anything other than there was an
8 unsolved case back in the early '70s when he
9 first started working at General Motors, and
10 it was just a big thing out there that they
11 never knew who did it. But he never said
12 that he knew who did or anything like that.

13 **THE COURT:** Okay.

14 **MS. STARKEY:** I just didn't want to tell
15 you I'd never heard of it because I did hear
16 of it happening. I just don't know what
17 happened or who.

18 **THE COURT:** Fair enough. So you feel
19 you can serve as a fair and impartial juror
20 in this case?

21 **MS. STARKEY:** Yeah. I don't know
22 anybody who has anything to gain or not gain
23 from the case.

1 **THE COURT:** Okay. Thank you. You're
2 excused then.

3 **MS. STARKEY:** Okay.

4 **THE COURT:** Back to the courtroom.
5 You're excused.

6 **(WHEREUPON, the Court, counsel,**
7 **Defendant, Prospective Juror No. 11, Margaret**
8 **Starkey, and court reporter returned to the**
9 **court, and the following proceedings were had**
10 **back in the hearing of the prospective**
11 **jurors:)**

12 **THE COURT:** All right, Ms. Starkey. We
13 are again here in the courtroom. Is it fair
14 to say that you can be fair and impartial in
15 your service in this case?

16 **MS. STARKEY:** Yes, Your Honor.

17 **THE COURT:** Very well. The state may
18 inquire.

19 **MS. CANTALAMESSA:** Thank you, Your
20 Honor. Good afternoon, Ms. Starkey.

21 **MS. STARKEY:** Good afternoon.

22 **MS. CANTALAMESSA:** Is there anything or
23 any reason why you think you wouldn't be able

1 to give police officers or doctors or
2 scientists the same consideration when
3 judging their credibility as any other
4 witness?

5 **MS. STARKEY:** No.

6 **MS. CANTALAMESSA:** Can you promise to
7 keep everyone on an equal playing field until
8 you at least hear their testimony?

9 **MS. STARKEY:** Yes.

10 **MS. CANTALAMESSA:** Can you promise to
11 keep an open mind throughout the entirety of
12 the case and not render a decision or a
13 verdict until the close of the evidence?

14 **MS. STARKEY:** Yes.

15 **MS. CANTALAMESSA:** Can you promise to
16 use your reason and your common sense when
17 judging the evidence from the witness stand?

18 **MS. STARKEY:** I will.

19 **MS. CANTALAMESSA:** And you have two
20 kids?

21 **MS. STARKEY:** I do.

22 **MS. CANTALAMESSA:** So you've been able
23 to use the same tools we've been talking

1 about when judging the credibility of, you
2 know, whether or not your kids broke
3 something, you can use those same tools you
4 use with your children with the witnesses on
5 the witness stand, can you not?

6 **MS. STARKEY:** I hope so.

7 **MS. CANTALAMESSA:** Can you think of any
8 reason why you should not sit on this case?

9 **MS. STARKEY:** No.

10 **MS. CANTALAMESSA:** You've already told
11 the judge that you would follow the law as
12 the judge gives it to you. Can you promise
13 as well to follow that rule or that piece
14 of -- that definition that says direct
15 evidence is of equal weight as circumstantial
16 evidence?

17 **MS. STARKEY:** Yes.

18 **MS. CANTALAMESSA:** Okay. I have nothing
19 further. Thank you.

20 **THE COURT:** Thank you. Mr. Meranto.

21 **MR. MERANTO:** Thanks, Judge.

22 Ms. Starkey, how many times have you heard me
23 ask about being fair to Mr. Ferrara? Enough

1 to last you the rest of your life?

2 **MS. STARKEY:** Yeah.

3 **MR. MERANTO:** You get it, though; right?
4 We're supposed to have an equal shake. And
5 just because he's been charged with something
6 doesn't mean anything now.

7 **MS. STARKEY:** Right.

8 **MR. MERANTO:** And you agree with that;
9 right?

10 **MS. STARKEY:** Absolutely. Yeah.

11 **MR. MERANTO:** Okay. Thank you.

12 **MS. STARKEY:** You're welcome.

13 **THE COURT:** All right. Is Ms. Starkey
14 passed for cause by the state?

15 **MS. CANTALAMESSA:** Yes, Your Honor.

16 **THE COURT:** By the defense?

17 **MR. MERANTO:** Pass for cause.

18 **THE COURT:** Thank you. We'll move to
19 the defendant for the exercise of your fourth
20 and final peremptory challenge.

21 **MR. MERANTO:** Your Honor, we're
22 satisfied with the jury as it is composed at
23 this point.

1 **THE COURT:** All right. So I need
2 everyone back in my chambers, and I'd like
3 Juror No. 4, Ms. Crump.

4 **(WHEREUPON, the Court, counsel,**
5 **Defendant, Prospective Juror No. 4, Florida**
6 **Crump, and court reporter enter the chambers**
7 **of the Court, and the following proceedings**
8 **were had:)**

9 **THE COURT:** Ms. Crump, my bailiff
10 informed me that you told him that you have
11 concert plans on Wednesday night?

12 **MS. CRUMP:** Yes.

13 **THE COURT:** And you told him that after
14 lunch or something?

15 **MS. CRUMP:** Right.

16 **THE COURT:** You probably should've told
17 us before that, because when we're picking a
18 jury and exercise of peremptories and
19 determining who should be on, who should not
20 be on and all that, all that changes
21 depending upon who's sitting there. I'll do
22 my best to accommodate you.

23 **MS. CRUMP:** Okay.

1 **THE COURT:** But I can't promise you I
2 can let you go. It's your birthday that day?

3 **MS. CRUMP:** My birthday was Saturday,
4 but my in-laws are -- this is my treat, my
5 birthday present. I tried to contact the
6 office, I asked them what should I do, and I
7 asked someone earlier when I first came in up
8 at the office to, you know, I told them the
9 circumstances. So this was, like, the first
10 time I had a chance to talk to him about it.
11 Because I had called the office, like, last
12 week, and they told me that I would have to
13 speak with you.

14 **THE COURT:** So what's the latest you
15 could be here Wednesday?

16 **MS. CRUMP:** Well, I don't -- they want
17 to have dinner, but if I can't get out to
18 dinner then I just can't. That's not the
19 most important part. The most important part
20 is getting to the concert.

21 **THE COURT:** When's the concert?

22 **MS. CRUMP:** It's at 7:30 in Cleveland.

23 **THE COURT:** Well, normally we go until

1 4:00 or 4:30, and, you know, I don't have a
2 problem trying to accommodate you.
3 Everybody's happy with you sitting as a
4 juror. I just can't promise you that if I
5 have a witness from North Carolina or
6 something that's here, and is here and has to
7 go back that night, I've got to accommodate
8 that. Unfortunately, that's not viewed as an
9 emergency, but we should be able to
10 accommodate you is what I would tell you.

11 **MS. CRUMP:** Okay.

12 **THE COURT:** We should be able to get you
13 out of here probably by 4:00 or so. That's
14 what we'll try and do.

15 **MS. CRUMP:** Okay.

16 **THE COURT:** You're okay with that? I
17 mean, I don't want you being -- that you
18 would hold it against anybody. Or if you're
19 going to hold it against anybody, it's got to
20 be me because I'm the one that's got to make
21 the decisions. It's not either of the
22 parties.

23 **MS. CRUMP:** No, sir. I understood that

1 when I got the jury summons.

2 **THE COURT:** Well, that's fair enough.
3 That's great. Okay. Well, we'll do what we
4 can do.

5 **MS. CRUMP:** Thank you, sir.

6 **THE COURT:** Okay. Thank you.

7 **(WHEREUPON, Prospective Juror No. 4,**
8 **Florida Crump, left the chambers of the**
9 **court, and the proceedings continued as**
10 **follows:)**

11 **THE COURT:** So I plan on keeping her
12 unless there's somebody that feels different
13 about that.

14 **MS. DOHERTY:** I'm fine, Judge.

15 **MR. MERANTO:** I don't have an objection
16 if you wanted to let her off. I mean, I
17 don't.

18 **THE COURT:** I don't want to let her off.

19 **MR. MERANTO:** I know.

20 **THE COURT:** And I'll tell you why,
21 because jurors do this all the time. They
22 don't tell people. I'm the one that's got to
23 decide, and if the jury office told her

1 anything, it's when you go down there, you
2 better let him know that.

3 **MR. MERANTO:** Yeah.

4 **THE COURT:** Because I'm the one who
5 decides who stays on this jury. The fact
6 that she waits until that time to disclose it
7 to my bailiff is -- that's her tough luck as
8 far as I'm concerned. At the same time, I
9 don't want her -- I don't want to deny her.
10 I just know that things don't always go the
11 way you plan them. So --

12 **MS. DOHERTY:** Judge, if it -- if it
13 makes a difference, our out of state
14 witnesses should be done way before that.

15 **THE COURT:** Yeah.

16 **MR. MERANTO:** Okay.

17 **THE COURT:** We should be okay that way.
18 I was planning on keeping her. We're going
19 to pick alternates now anyhow. So push comes
20 to shove, we'll deal with that. So because
21 of her situation, just be aware that the
22 alternate selection is very important.

23 **MR. MERANTO:** Okay.

1 **THE COURT:** I don't think I would excuse
2 her and put an alternate in unless everybody
3 agreed to do that under the circumstances,
4 but you each get a peremptory in the
5 selection of alternates.

6 **MR. MERANTO:** And we may not even be
7 dealing with it is what you're -- okay.

8 **THE COURT:** Exactly.

9 **(WHEREUPON, the Court, counsel,**
10 **Defendant and court reporter returned to the**
11 **court, and the following proceedings were had**
12 **back in the hearing of the prospective**
13 **jurors:)**

14 **THE COURT:** All right, ladies and
15 gentlemen. You've been selected as the jury
16 who will hear the factual issues of this
17 case. Will you all please stand now and
18 raise your right hands?

19 **(WHEREUPON, the prospective jurors were**
20 **administered the oath or affirmation at 2:20**
21 **p.m., November 18, 2013, after which the**
22 **proceedings continued as follows:)**

23 **THE COURT:** Very well. Please be

1 seated. The next order of business is to
2 select an alternate juror. We should be able
3 to select one alternate. Each of the parties
4 is entitled to a peremptory challenge in the
5 selection of an alternate juror.

6 The alternate is like a pinch hitter in
7 a baseball game. You travel with the team.
8 You practice with the team, dress with the
9 team. You attend all the team functions.
10 The only difference is you may not be a part
11 of the group that actually deliberates and
12 decides the case because this jury will be
13 doing that, barring any dire emergency.

14 If a dire emergency does occur and I
15 have to excuse someone, then the alternate
16 would take that person's place and deliberate
17 the case the same as one of the regular panel
18 members. So you need to give us your full
19 and undivided attention throughout the trial
20 and participate as if you will be deciding
21 the case.

22 So we will call Jennifer Makosky. How
23 are you today?

1 **PROSPECTIVE JUROR:** Okay. How are you?

2 **THE COURT:** I'm good, thank you. I
3 think you're the first to ask that. I'm
4 okay. The court would ask if you were able
5 to hear all of the proceedings here at the
6 front of the courtroom?

7 **PROSPECTIVE JUROR:** Yes.

8 **THE COURT:** And did you understand the
9 role of alternate as it's described?

10 **PROSPECTIVE JUROR:** Yes.

11 **THE COURT:** Are you comfortable in that
12 role?

13 **PROSPECTIVE JUROR:** Yes.

14 **THE COURT:** Were there any challenges
15 for cause that were applicable to you?

16 **PROSPECTIVE JUROR:** No.

17 **THE COURT:** There was a lot of
18 discussion about the law and the conduct of
19 jurors and the different things that the
20 lawyers ask about how you should think about
21 the case, how you should evaluate things.

22 **PROSPECTIVE JUROR:** Uh-huh.

23 **THE COURT:** Do you have any issues with

1 those things that have been presented to you?

2 **PROSPECTIVE JUROR:** No.

3 **THE COURT:** There's also discussion
4 about any publicity about the case. Have you
5 been exposed to any publicity or conversation
6 about the case?

7 **PROSPECTIVE JUROR:** No.

8 **THE COURT:** So if that would happen,
9 there's going to be -- I've got people out in
10 the hallway, media out in the hallway waiting
11 to get in. It's kind of fascinating because
12 every case that we try is a big deal. Most
13 important case in the whole world. While
14 we're doing it nothing could be more
15 important. But they don't always show up.
16 Sometimes it's important to them. Sometimes
17 it's not. But they'll be writing stories.
18 They may be in here from day to day, that
19 type of thing.

20 And I should tell all of you here and
21 now, they're not permitted to photograph you.
22 They're not permitted to expose you in any
23 way. And, in fact, it's improper for them to

1 do that. So much so, I'd put them in jail if
2 they did. So they don't mess with you.
3 Don't be concerned about that at all. But
4 they will write and report, as they should.
5 You have to avoid any publicity about the
6 case from now on. You have to make sure that
7 you're not exposed to that influence by that
8 in any way. Can you follow that instruction?

9 **PROSPECTIVE JUROR:** Yes.

10 **THE COURT:** And then as far as
11 deliberating with the other jurors, making
12 your voice heard?

13 **PROSPECTIVE JUROR:** Yes.

14 **THE COURT:** You're okay with that, too?

15 **PROSPECTIVE JUROR:** Yep.

16 **THE COURT:** Can you think of any reason
17 why you should not sit as a fair and
18 impartial juror in this case?

19 **PROSPECTIVE JUROR:** No.

20 **THE COURT:** Very well. The state may
21 inquire.

22 **MS. CANTALAMESSA:** Thank you, Your
23 Honor. Good afternoon.

1 **PROSPECTIVE JUROR:** Good afternoon.

2 **MS. CANTALAMESSA:** Ms. Makosky, you
3 mentioned in your questionnaire that you had
4 your house broken into and your car broken
5 into?

6 **PROSPECTIVE JUROR:** Yeah.

7 **MS. CANTALAMESSA:** Was that both of them
8 two times?

9 **PROSPECTIVE JUROR:** Yeah. Separate
10 occasions.

11 **MS. CANTALAMESSA:** Were those all in
12 Campbell?

13 **PROSPECTIVE JUROR:** No. We were
14 renovating a house in Youngstown. It was
15 broken into. We had two firearms stolen out
16 of the house.

17 **MS. CANTALAMESSA:** Did they ever catch
18 anybody?

19 **PROSPECTIVE JUROR:** No.

20 **MS. CANTALAMESSA:** Do you have a CCW
21 license?

22 **PROSPECTIVE JUROR:** No. My boyfriend
23 does.

1 **MS. CANTALAMESSA:** Do you have any
2 firearm training?

3 **PROSPECTIVE JUROR:** No.

4 **MS. CANTALAMESSA:** Let's go back to the
5 first set of questions. Because they never
6 found anyone in those situations, do you hold
7 any ill will towards the police or the
8 justice system or anything?

9 **PROSPECTIVE JUROR:** No.

10 **MS. CANTALAMESSA:** Do you think sitting
11 there right now that you would tend to side
12 with either the state or the defense because
13 of that?

14 **PROSPECTIVE JUROR:** No.

15 **MS. CANTALAMESSA:** Can you promise to
16 keep the police, doctors, scientists, all on
17 an equal level until you hear their testimony
18 before deciding how much or how little
19 credibility to give them?

20 **PROSPECTIVE JUROR:** Yes.

21 **MS. CANTALAMESSA:** Can you promise to
22 keep an open mind like the judge said
23 throughout the entirety of the case if you

1 were to sit and render a verdict as one of
2 the main jurors before deciding anything?

3 **PROSPECTIVE JUROR:** Yes.

4 **MS. CANTALAMESSA:** Any religious, moral,
5 or ethical reasons why you couldn't sit in
6 judgment of someone else?

7 **PROSPECTIVE JUROR:** No.

8 **MS. CANTALAMESSA:** You can follow the
9 instructions that says direct evidence is of
10 equal weight as circumstantial evidence?

11 **PROSPECTIVE JUROR:** Yes.

12 **MS. CANTALAMESSA:** I have nothing
13 further. Thank you.

14 **THE COURT:** Thank you. The defense may
15 now inquire.

16 **MR. MERANTO:** Thank you, Your Honor.
17 Hi, Ms. Makosky.

18 **PROSPECTIVE JUROR:** Hi.

19 **MR. MERANTO:** Do you work as a nurse?

20 **PROSPECTIVE JUROR:** No. I'm going to
21 school for it.

22 **MR. MERANTO:** You're going to school?

23 **PROSPECTIVE JUROR:** Yes.

1 **MR. MERANTO:** Do you do any -- do they
2 call them clinicals still?

3 **PROSPECTIVE JUROR:** No. I have one more
4 prerequisite, and then I'm going to nursing
5 school.

6 **MR. MERANTO:** Oh, okay. Do you like the
7 sciences?

8 **PROSPECTIVE JUROR:** Yes.

9 **MR. MERANTO:** Is it interesting to you?

10 **PROSPECTIVE JUROR:** Yes.

11 **MR. MERANTO:** Do you watch any of these
12 shows that involve this kind of forensic
13 science or anything?

14 **PROSPECTIVE JUROR:** No. I always miss
15 them. I never catch them.

16 **MR. MERANTO:** Okay. How long have you
17 been in college?

18 **PROSPECTIVE JUROR:** About three years
19 total.

20 **MR. MERANTO:** Doing okay?

21 **PROSPECTIVE JUROR:** Yeah.

22 **MR. MERANTO:** Good, decent grades?

23 **PROSPECTIVE JUROR:** Oh, yeah.

1 **MR. MERANTO:** Some students better than
2 others?

3 **PROSPECTIVE JUROR:** Yeah.

4 **MR. MERANTO:** Pretty much agree that's,
5 you know, that's what makes the world go
6 round; everybody's different, everybody has
7 different talents, different skills?

8 **PROSPECTIVE JUROR:** Yes.

9 **MR. MERANTO:** Okay. Just because
10 somebody comes in, let's say, wearing a
11 uniform, policeman or something, have anymore
12 credibility in your mind than anybody else?

13 **PROSPECTIVE JUROR:** No.

14 **MR. MERANTO:** How about someone
15 that's -- they say, well, I'm a scientist?
16 You still going to listen to what they have
17 to say and analyze it based on what you know
18 and how you do things?

19 **PROSPECTIVE JUROR:** Yeah, I'll listen to
20 what he has to say.

21 **MR. MERANTO:** Okay. So you're not just
22 going to blanketly accept anything that's
23 told to you?

1 **PROSPECTIVE JUROR:** No. I'm going to
2 weigh everything that comes along with it.

3 **MR. MERANTO:** Just because somebody sits
4 on the witness stand, you're not going to
5 believe it's necessarily true; right?

6 **PROSPECTIVE JUROR:** Well, I'm going to
7 listen to what he has to say and take it from
8 there.

9 **MR. MERANTO:** Thank you.

10 **THE COURT:** Is Ms. Makosky passed for
11 cause by the state?

12 **MS. CANTALAMESSA:** Yes, Your Honor.

13 **THE COURT:** And by the defense?

14 **MR. MERANTO:** Pass for cause, Your
15 Honor.

16 **THE COURT:** Does the state have a
17 peremptory challenge?

18 **MS. CANTALAMESSA:** No, Your Honor.

19 **THE COURT:** Does the defense have a
20 peremptory challenge?

21 **MR. MERANTO:** No, Your Honor.

22 **THE COURT:** All right, Ms. Makosky.
23 Will you please stand and raise your right

1 hand?

2 (WHEREUPON, the alternate juror was
3 administered the oath or affirmation at 2:26
4 p.m., November 18, 2013, after which the
5 proceedings continued as follows:)

6 THE COURT: Very well. Please be
7 seated. I have to read that because in 1975
8 when I started as a bailiff, we had an oath
9 that we gave to jurors that I know by heart
10 because we gave it forever. And our
11 legislature decided they're going to change
12 the oath. I don't know why. So that's what
13 we have to do now is read you that oath and
14 have you do that.

15 So those of you ladies and gentlemen in
16 the rear of the courtroom are not going to be
17 needed for service in this case. We would
18 like to thank you kindly for your patience
19 and your service here today. This jury has
20 been selected, so you're excused to go back
21 up to Mr. Jackson's office, and he'll give
22 you further instructions. Thank you kindly.

23 (WHEREUPON, the remaining prospective

PRELIMINARY INSTRUCTIONS

1 **jurors left the courtroom, and the**
2 **proceedings continued as follows:)**

3 **THE COURT:** All right, ladies and
4 gentlemen. I'm going to tell you why you are
5 here. You're here because there are charges
6 made against this defendant by the State of
7 Ohio. You've heard what those charges are,
8 and the defendant has denied the truth of
9 those charges. So you are here to decide
10 what the truth is.

11 In order to do that you should determine
12 the credibility or the believability of the
13 witnesses. And, in fact, I'll give you an
14 instruction on credibility which I'll give
15 you now and I'll give you at the end of the
16 case also. Credibility instruction includes
17 the fact that people may be completely honest
18 in their rendition of what they think
19 occurred, but they could be mistaken. They
20 could be completely accurate. They could be
21 completely inaccurate and untruthful. Those
22 are things you have to decide.

23 And so what the credibility issue for

PRELIMINARY INSTRUCTIONS

1 you to determine is with each person that
2 testifies is whether or not that person
3 should be believed and what weight you should
4 give to their testimony. It's not a
5 scientific thing. It's something that you do
6 every day in deciding whether or not
7 somebody's telling you the truth. You see it
8 in the news all the time where somebody will
9 tell you something one day and something
10 different the next day.

11 So you are the sole judges of the facts
12 of this case and the credibility or
13 believability of the witnesses and the weight
14 to give to the evidence. To weigh the
15 evidence you must consider the credibility of
16 everyone who testifies, and you should apply
17 the tests of truthfulness which you use in
18 your daily lives to determine whether or not
19 someone is telling you the truth. These
20 tests include the actual physical appearance
21 of the witness upon the witness stand; the
22 witness' manner of testifying; the
23 reasonableness of the testimony; the

PRELIMINARY INSTRUCTIONS

1 opportunity that witness had to see and hear
2 and know the things concerning which he or
3 she testifies; the witness' accuracy of
4 memory; frankness, or lack of it;
5 intelligence; interest in the outcome of the
6 case and bias, if any; together with all the
7 facts and circumstances surrounding the
8 testimony.

9 Applying these tests and any tests you
10 normally use to determine whether or not
11 someone is telling you the truth, you will
12 assign to the testimony of each witness such
13 weight or value as you deem proper. You are
14 not required to believe the testimony of any
15 witness simply because he or she was under
16 oath. You may believe all or part or none of
17 the testimony of any witness. It is entirely
18 within your province to determine what
19 testimony is worthy of belief and what
20 testimony is not worthy of belief.

21 So your mission is to find out the truth
22 of this case. It is an adversarial system.
23 These parties obviously disagree, or we

PRELIMINARY INSTRUCTIONS

1 wouldn't be here. You're here to resolve the
2 disagreement.

3 Because it is adversarial, each of them
4 may object to what the other does, and that
5 normally will be done in open court where a
6 lawyer will stand up and say objection. And
7 that calls upon me to make a ruling. An
8 objection has to be made by interrupting
9 what's going on. It's not rude. It's not
10 improper. In fact, if you don't object on
11 time, you blow the objection. You can't just
12 sit there and let it happen and say now I
13 object. You have to object while it's going
14 on, and I have to rule while it's going on.
15 So don't be offended if the lawyers interrupt
16 one another to object.

17 I do not allow speeches on objections.
18 I don't allow, you know, an attempt to
19 influence you by arguing to me what's up. If
20 indeed there is a discussion that has to be
21 made or had about an objection, we'll do it
22 over there at side bar so you can't hear it
23 because that is a legal decision I have to

PRELIMINARY INSTRUCTIONS

1 make. It's not a factual decision that you
2 have to make.

3 The lawyers are well prepared, and
4 they've worked hard on this case already.
5 We've met several times since the case was
6 brought to discuss the various issues of the
7 case. So you can count on them to be
8 prepared and do their job, as you're expected
9 to do your job. Your job is to absorb
10 everything that is presented to you without
11 judging it as you're absorbing it. Take it
12 in. Hold it. Put it together with
13 everything else that you hear, and at the
14 appropriate time, figure out what it is that
15 should happen.

16 So your ability to pay attention is very
17 important. You need to be focused. You need
18 to stay awake. You need to dedicate
19 yourselves for this mission.

20 The court does not allow you to ask
21 questions. So if the witness is up there and
22 the lawyers sit down and say we're done with
23 this witness, and you have a question, you

PRELIMINARY INSTRUCTIONS

1 can't say, hey, I'd like to know this or
2 that. It won't happen, so don't attempt it.
3 Don't think about it. What's presented to
4 you is evidence. What's not presented to you
5 is not evidence. And either one of them can
6 say things to you, production of evidence or
7 the non-production of evidence in determining
8 what happened in this case.

9 Additionally, you're not permitted to
10 take notes. I'm a note taker. I've always
11 done that. And what happens when I'm taking
12 notes, somebody will ask a question, an
13 objection will be made, and I don't know what
14 happened because I'm paying attention to
15 writing the note instead of paying attention
16 to what's going on. You can't do that. You
17 can't be distracted in any way.

18 You need to observe these people,
19 because you have to -- you have to judge a
20 witness' credibility. You can't do that
21 while you're taking notes. You have 12
22 persons here, so if you do miss something
23 that's being presented, your collective

PRELIMINARY INSTRUCTIONS

1 memory will serve to resolve that lapse of
2 memory and is sufficient for you to recall
3 what happened.

4 Again, I repeat that even though we're
5 taking a record of these proceedings, you're
6 not going to get that record. Sometimes
7 juries will go back and say, we want Witness
8 No. 1's testimony written up and sent back
9 here, a transcript. Well, that won't happen,
10 so pay attention as we're doing all of this.

11 It's important that you are on time.
12 And we do respect your time. We will move
13 these matters as expeditiously as possible.
14 There are things that occur during a trial
15 that delay the normal flow of a trial. If a
16 novel issue comes up, if something happens,
17 we have to change plans.

18 We may have to go back into my office to
19 discuss what's up. We may have to take a
20 recess to discuss what's up. And those
21 things normally need to be discussed out of
22 your hearing. But for the most part we'll
23 move pretty well, and you need to hang on.

PRELIMINARY INSTRUCTIONS

1 It's a roller coaster ride when they present
2 everything to you that you need to hear in as
3 efficient a method as possible.

4 The court does have other duties. I
5 have several other cases, as I mentioned
6 before, but those are not going to be
7 addressed while we're in this case. This is
8 what I'm doing. This is the very most
9 important thing in the whole world to me. It
10 should be the very most important thing in
11 the whole world to you. It certainly is to
12 these lawyers and the parties in this case,
13 so please treat it that way.

14 Again, we'd like to thank you for any
15 sacrifice that you're making to be here.
16 It's very important that you serve as jurors
17 and that you are a part of seeing to it that
18 justice is done. It's certainly the most
19 important function you can serve as citizens
20 of this country, short of serving in the
21 United States military.

22 Your conduct is very crucial. Your
23 undivided attention is demanded, so you have

PRELIMINARY INSTRUCTIONS

1 to avoid any distractions. You're here to
2 see to it that justice is done. That's a
3 high calling. That's a big deal. So do your
4 best to do your duty.

5 It's okay to have fun, too. You'll note
6 that I'm sometimes irreverent in my fun and
7 try to have a good time. It does break the
8 tension. It doesn't mean that this isn't a
9 serious matter. It just means that we need
10 to have fun while we're doing it. Usually we
11 do a better job if we can do that.

12 I should also tell you that the lawyers
13 are all fine people. As I indicated, they're
14 friends of mine, but they're not permitted to
15 talk with you now. So if you run into them
16 in the hallway or out at Johnny's restaurant
17 tonight or whatever, they can't talk with
18 you. It's inappropriate for them to do that
19 other than say hello to you, that type of
20 thing. When the case is over, of course, you
21 can spend all the time with them that you
22 like, but not until the case is over.

23 The function of the jury is kind of

PRELIMINARY INSTRUCTIONS

1 fascinating. The goal is to select 12 people
2 from every different type of background and
3 belief and experience and put you all
4 together here, no one known to the other, and
5 have you listen to the evidence of this case
6 and be impressed as you may be individually,
7 12 different ways, 13 different ways, and
8 then to go back into the jury room and be
9 locked in there after we've thrown all this
10 information at you and instructed you in law
11 that it's taken us years and years and years
12 to learn and understand, and tell you make
13 sure that you do the right thing and render
14 justice in this case.

15 And somehow if you do it as we
16 prescribe, that you come here as individuals,
17 you avoid any influences from any source, you
18 pay attention to everything, and you think
19 this through and evaluate it, and then you
20 listen to what the other jurors have to say,
21 and all 12 of you can agree one way or
22 another, then you have to know it's the right
23 thing. You have to know we did it the right

PRELIMINARY INSTRUCTIONS

1 way and that justice is served. So that's
2 the goal. That's what we want from you. And
3 if you fulfill it that way, we'll be very
4 proud of your work in the case, and it will
5 be an experience that you'll remember fondly
6 the rest of your lives.

7 So it's very important that you be fair
8 and attentive throughout the trial. You are
9 not to discuss the case among yourselves or
10 with anyone else. You must not permit anyone
11 to discuss the case with you or in your
12 presence. And you must not form or express
13 any opinion about the case until it is
14 submitted to you.

15 More difficult for you to understand is
16 that you may not discuss this case among
17 yourselves until it's finally submitted to
18 you or with members of your family, or with
19 your friends, your people that you work with,
20 because as we know as human beings, whenever
21 we're talking about something and we talk
22 with someone else about it, what they have to
23 say influences how we think and how we feel.

PRELIMINARY INSTRUCTIONS

1 You have to avoid that during the trial.

2 You should explain this rule to your
3 family and your friends. Tell them you've
4 been instructed not to discuss the case, and
5 I'm sure they'll respect what you're doing.
6 When it's over, you can talk to anybody you
7 like. You could all go to dinner together
8 and talk it over. You could talk to the
9 media about it. You could write a book if
10 you'd like. Anything's okay when it's done.
11 But until that time, you need to follow these
12 instructions.

13 You're not permitted to investigate the
14 case in any way. You can't go to the scene.
15 You can't ask questions about it. You can't
16 do anything at all. It's highly improper for
17 you to do that.

18 Likewise, no one must discuss the matter
19 with you or attempt to influence you in any
20 way. If anyone does, that has to be reported
21 to me immediately. That's a criminal
22 offense, and it has to be dealt with
23 immediately and assuredly.

PRELIMINARY INSTRUCTIONS

1 I've already indicated there may be
2 newspaper, television, radio coverage.
3 Again, you don't need to worry about you or
4 your identity being exposed in any way
5 through the media. You are not to be
6 photographed. You're instructed not to read,
7 view, or listen to any report in the
8 newspaper, radio, or television on the
9 subject of this trial, nor to allow anyone to
10 disclose any of that information to you.

11 We should complete this case this week,
12 and so that's pretty much all that we're
13 asking of you at this time. The lawyers next
14 will present opening statements to you, but
15 we're going to take a recess before we do
16 that.

17 The court instructs you again, please, I
18 have to repeat this, during your absence from
19 the courtroom not to discuss this case at all
20 among yourselves or with anyone else. Please
21 do not allow anyone to discuss the case with
22 you or in your presence. Do not form or
23 express any opinion about the case.

STATE'S OPENING STATEMENT

1 Your headquarters will be the jury room.
2 Mr. Martino will conduct you to and from the
3 jury room. You're okay to move about outside
4 of the jury room out in the hallway.
5 Probably best not to come down this way
6 because the parties are busy. The witnesses
7 are down this way, and the court has business
8 down this way. But if you need something,
9 there's a buzzer in the jury room. You can
10 ring it, and Ryan will magically appear and
11 answer any questions that you may have. All
12 right. We'll be in recess until 3:00.

13 **(WHEREUPON, a brief recess was had,**
14 **after which the proceedings continued as**
15 **follows:)**

16 **THE COURT:** Thank you. Good afternoon,
17 everyone. The trial will now begin with the
18 opening statements of counsel. The lawyers'
19 statements are very helpful, ladies and
20 gentlemen, but they're not evidence. So what
21 they're going to tell you is what they think
22 the evidence will show or what the evidence
23 won't show, and it will help you understand

STATE'S OPENING STATEMENT

1 the case as it is presented to you. But
2 again, what they say to you is not evidence.
3 All right. The state may begin.

4 **MS. DOHERTY:** Thank you, Your Honor.

5 **THE COURT:** Ms. Doherty.

6 **MS. DOHERTY:** May it please the court,
7 counsel, Detective Mondora, ladies and
8 gentlemen of the jury. On December 14th,
9 1974, the bodies of Benjamin Marsh, he was
10 33, Marilyn Marsh, she was 32, Heather Marsh,
11 she was 4 years old, their bodies were found
12 in their home in Canfield, Ohio.

13 You are going to hear and learn a little
14 bit about Ben and Marilyn and their family.
15 You're going to learn that Ben and his
16 brother, his older brother, Bill, grew up in
17 the area. And Ben graduated from high school
18 in 1959. He went to the Navy. He was in the
19 Navy for about four years, and he had planned
20 to go into his father's business, which his
21 dad was a barber.

22 He was going to do that. He started
23 doing that, but it turned into the 1970s, and

STATE'S OPENING STATEMENT

1 quite frankly, hair was getting longer. Late
2 '60s, I should say. Hair was getting longer.
3 The barber business wasn't working out quite
4 as well as it had. So Ben Marsh got a job at
5 GM in Lordstown.

6 In the meantime, in 1964, he married
7 Marilyn. Her last name was Fowler at the
8 time. He married Marilyn. They had two
9 children. Heather was born in 1970.
10 Christopher was born in 1973.

11 Ben, his job at GM was in security. He
12 worked in security. He at the time of his
13 death was a sergeant in the security
14 department at GM. GM employed thousands of
15 people at the time, and they had literally
16 their own security force, and Ben was part of
17 that. That's where he worked.

18 Marilyn was a teacher. She taught at a
19 school for the blind. Once she had the
20 children, she wasn't teaching. She was
21 staying home. They bought a house, and they
22 lived in Canfield at 5540 Turner Road in
23 Canfield.

STATE'S OPENING STATEMENT

1 And at that time, Canfield was certainly
2 less populated. The area where this took
3 place, it was a quiet area, pretty remote.
4 Not a lot of houses around like there are
5 today. So a couple acres, pretty quiet.

6 On the morning of December 13th, 1974,
7 Ben had gotten home from work. He worked
8 midnights. He worked 11:00 to 7:00 in
9 security. And he got home that morning, and
10 that was his routine. He would get home. He
11 would go to sleep. He had been working all
12 night. On that morning, Marilyn had a
13 dentist appointment approximately 10:00,
14 10:30. And because Ben was sleeping, she
15 took the children -- she took Heather, and
16 she took Christopher who was one, just had
17 turned one, to Ben's parents' house who lived
18 about 15 minutes away so that Ben's parents
19 could watch the kids and Marilyn could go to
20 her dentist appointment, which she did.

21 She returned from the dentist, picked up
22 the kids, 11:30 or so, and went home. She
23 was going to go home to see Ben. She had

STATE'S OPENING STATEMENT

1 gotten a few groceries.

2 And you'll hear the house described, but
3 I'll tell you, it's a ranch house. It's a
4 ranch. There is a garage. They had a Genie
5 garage door opener.

6 This is December. There's snow on the
7 ground. December 13th. Quite a bit of snow.
8 And when Marilyn arrived home, 11:30, almost
9 12:00 noon, she pulled into the garage. She
10 drove an orange Vega. Probably don't see
11 those anymore. She pulled into the garage
12 and was going to unload the kids and the
13 groceries.

14 They all had winter coats on. Marilyn,
15 both kids. Christopher was not quite walking
16 yet. He was toddling around a little bit
17 you'll hear, but not really walking on his
18 own much.

19 Marilyn had a few groceries. And it was
20 getting to be lunchtime. She pulled into the
21 garage, probably shut the garage door behind
22 her. The entrance into the house through the
23 garage had a storm door and then a solid

STATE'S OPENING STATEMENT

1 door. There was a back door, a man door,
2 that entered into the garage. But Marilyn,
3 juggling the kids, juggling the groceries,
4 went into the house, which actually led into
5 a dining room, or den kind of room, which
6 then led into the kitchen. Still with the
7 winter coats on, carrying the groceries.

8 She gets into the house. What she
9 didn't know was that Ben was already dead, or
10 being killed at the time. Their bedroom, the
11 bedroom that Marilyn and Ben shared was at
12 the back of the house, down the hallway from
13 the kitchen area where she entered the house.

14 Ben was shot four times. He was beaten.
15 He was beaten so severely that the damage to
16 his head actually affected -- cracked his
17 skull. But he was also shot four times. And
18 his body was in his bedroom.

19 We don't know when Marilyn realized that
20 someone else was in the house with her. But
21 they did not have their -- they didn't have
22 time to take their coats off. Marilyn still
23 had her winter coat on, shoes. Heather, same

STATE'S OPENING STATEMENT

1 thing. Christopher still had his winter coat
2 on.

3 Marilyn was shot once in the back of the
4 head in the foyer area right in front of the
5 front door going into the kitchen. Heather
6 was beaten. The coroner will tell you, it's
7 done with a gun. She wasn't shot, but she
8 was beaten. We know that Ben was shot four
9 times. Marilyn was shot once.

10 And there was a round that went up into
11 the ceiling of that foyer area. This was a
12 .38 that was used, a .38 firearm which held
13 the six bullets. So by the time Marilyn was
14 killed and Ben was dead, there were no
15 bullets left. But Heather was beaten.
16 Christopher was alive. Like I said, he
17 wasn't walking at that point.

18 This would've been around noon of the
19 13th of December. Not in the days of cell
20 phones, people weren't in contact with each
21 other constantly like we're used to now. And
22 the next day on the 14th, when Ben didn't go
23 to work, he hadn't called, GM had been trying

STATE'S OPENING STATEMENT

1 to contact him, the house phone, trying to
2 call the phone, no answer. Throughout that
3 day, they tried to reach Ben.

4 At some point in the early evening of
5 the 14th, about 33 hours later, Frank Boyle,
6 who lived about three quarters of a mile
7 away, who was also an employee at GM, best
8 friends with Ben, their families were
9 together all the time, Frank Boyle received a
10 call that -- from GM asking him to go to the
11 house, see what's going on. Why didn't Ben
12 come to work? Why didn't he call?

13 So early evening, it's dark, deserted
14 kind of area, very quiet, Frank Boyle, who
15 you'll hear from, went to the house on Turner
16 Road. When he arrived, Ben's parents,
17 Mr. and Mrs. Marsh, were also there, because
18 they also had not been able to reach anyone
19 from the family since the day before. The
20 garage door was closed. The garage door
21 going in -- the car garage door was closed.
22 The house was dark. The front door was
23 locked, including the screen door.

STATE'S OPENING STATEMENT

1 Now, Mr. Marsh, Ben's dad, had a key to
2 that front door, but he and Frank Boyle
3 couldn't get through the screen door. So the
4 only thing they could think of to do was take
5 that door off because they knew they had to
6 get into that house. It was dark. They
7 could see movement, but they didn't know what
8 was going on in the house. So they, in fact,
9 took that screen door off of the front of the
10 house, and Mr. Marsh used his key to make
11 entrance.

12 And when they entered, it was the foyer,
13 and the movement that they had seen was
14 Christopher. And he was alive, but he was
15 covered in his mother's blood. And Frank
16 Boyle and Mr. Marsh walked into that scene
17 right in the foyer. Marilyn Marsh was dead.
18 Heather Marsh was dead. Mr. Marsh went to
19 check on Ben, determined that he was dead.

20 Frank Boyle immediately picked up
21 Christopher. They noticed that there were
22 three bottles. Marilyn had apparently been
23 getting bottles ready for Christopher, even

STATE'S OPENING STATEMENT

1 before she took their coats off. It was
2 almost noon, and the bottles were there on
3 the counter.

4 And Mrs. Marsh was actually still
5 outside waiting in the car, but she did come
6 in. Mrs. Marsh and Frank Boyle took
7 Christopher to Mr. Boyle's house to get him
8 away from that scene. They literally had to
9 cut the clothing off of him. He was covered
10 in blood, still had his winter coat on, and
11 it was dried. They could not take his
12 clothes off. But they did. They cut them
13 off, bagged them up.

14 And Mr. Boyle went back to the house on
15 Turner Road, to Ben Marsh's house. The
16 police were called, called from the Marsh's
17 residence. And then, as now, the Mahoning
18 County Sheriff's Department had jurisdiction
19 in Canfield, or had jurisdiction in the outer
20 areas. So the law enforcement agency that
21 responded was the Mahoning County Sheriff's
22 Department, and they did. They responded,
23 arrived at that scene, and learned that they

STATE'S OPENING STATEMENT

1 had a triple homicide.

2 Mr. Marsh and Mr. Boyle gave the police
3 the information that they had at the time
4 that they arrived, what they found. And the
5 Sheriff's Department began their
6 investigation, and it turned out to be a
7 40-year investigation. 1974, a long time
8 ago.

9 Again, as now, the agency BCI, we call
10 it BCI, it is the Bureau of Criminal
11 Investigation and Identification. It is a
12 state agency that provides crime scene
13 processing. They provide fingerprint
14 analysis, DNA analysis for law enforcement
15 agencies for the state, and even back in
16 1974, that was their function. And they did
17 have about 30 agents who went to crime scenes
18 when requested by departments that maybe
19 didn't have as much ability, the good
20 cameras, that kind of thing. So BCI many
21 times was called in to assist in processing
22 the scene, and that's what was done in this
23 case.

STATE'S OPENING STATEMENT

1 A man named Bernie Albert who was an
2 agent of BCI at the time in 1974 responded.
3 He worked this area of the state, and he had
4 responded to that scene. Obviously numerous
5 law enforcement personnel were already there,
6 detectives.

7 And a lot of these names you'll hear,
8 unfortunately, a lot of the investigating
9 officers are deceased. Detective Nemeth was
10 the primary detective investigating this
11 case. He worked for the Sheriff's
12 Department. So it really would've been his
13 job to call in whoever he needed to help
14 assist. One of the deputies who had been
15 with the Sheriff's Department for about a
16 year and a half I think by then is a Mike
17 Finamore, and he responded as well. Again,
18 this wasn't a situation where anyone had cell
19 phones, so it happened that deputies would
20 call in, and they would be told to go out to
21 whatever scene it was.

22 And you'll hear from Deputy Finamore.
23 Actually, he's not a deputy anymore. He's

STATE'S OPENING STATEMENT

1 retired and went on to do other things in law
2 enforcement. He is retired. But he
3 responded to that scene, and he'll walk you
4 through it. He'll tell you what he saw. He
5 will identify the photographs that we have to
6 explain to you just what happened here.

7 One of the things that he was
8 responsible for was to assist Bernie Albert
9 in processing that scene. And he had been
10 working with the Sheriff's Department for
11 some time and had been with detectives at
12 crime scenes. He was trained as all the
13 police officers were at that time through
14 OPATA, which is the Ohio Peace Officer's
15 Training, and he worked with Bernie Albert in
16 collecting evidence. And he'll tell you that
17 he got there around 9:30 p.m. that evening,
18 and that Mr. Albert arrived about 11:00 p.m.
19 He was called in from a little bit farther
20 away.

21 But they began processing the scene, and
22 the first thing that Deputy Finamore did was
23 take Mr. Albert to the point of entry. And

STATE'S OPENING STATEMENT

1 he'll tell you that the back door, that man
2 door I described going into the garage,
3 because there was so much snow, they were
4 able to see that there was one set of
5 footprints that led to that door around the
6 back of the house from the driveway area.
7 And that door had three panes of glass. The
8 bottom pane of glass was broken.

9 The door then going into the house, the
10 one with the storm door, where Marilyn
11 would've entered into the house, had been
12 kicked in. They could see clearly a
13 footprint, shoe print on that door, and the
14 screen door, the storm door, had been propped
15 open, possibly by Marilyn, because when the
16 police arrived, that door was propped open.
17 She had kids. She had groceries. May not
18 have even realized that that door had been
19 opened like that.

20 He took them through the kitchen area,
21 through the foyer area to locate where the
22 bodies were. They began looking for anything
23 that the killer would've left at that scene

STATE'S OPENING STATEMENT

1 to identify who had done this. And starting
2 with that entry door into the garage, Bernie
3 Albert processed that door. You're going to
4 hear about fingerprints. You're going to
5 hear about how fingerprints are lifted.
6 Along with Mike Finamore, who was there with
7 him, Bernie Albert dusted the door.

8 And at this point, Bernie Albert and
9 Mike Finamore are literally just going
10 through the house trying to find anything
11 that they could use to identify who had done
12 this. And they start with that back door.
13 They process the door. Mr. Albert in the
14 presence of Mike Finamore is able to lift a
15 number of prints. And we'll talk to you
16 about that.

17 They'll testify as to how that is done.
18 It literally is a matter of taking those
19 prints from that door. They dust it with
20 powder. They tape over it, lift those
21 prints, which is a piece of evidence, place
22 them on a white piece of cardboard.
23 Mr. Finamore will talk to you about the

STATE'S OPENING STATEMENT

1 process that took place all through the
2 house, other doors that were examined, other
3 doors that had prints lifted.

4 Now, obviously Benjamin Marsh lived in
5 that house. His prints are going to be
6 located in various places on doors, on
7 refrigerators. But they were looking for
8 anything they could find to tell them who did
9 this.

10 They collected one projectile. And
11 you'll hear about ballistics and revolvers
12 and the fact that revolvers do not leave
13 shell casings. But the projectiles, one
14 projectile was found in the bedroom where Ben
15 was, and one projectile, there was a hole in
16 the ceiling, in the foyer area. And
17 Mr. Finamore and Bernie Albert spent hours up
18 in that attic trying to find that bullet,
19 which they did.

20 The processing of that scene probably
21 was a little different than what you would
22 expect to hear today. This was 1974. There
23 wasn't talk of DNA then. There wasn't talk

STATE'S OPENING STATEMENT

1 of touch DNA, anything like that. What those
2 law enforcement officers focused on were
3 fingerprints. Once the entire scene was
4 processed, evidence was collected,
5 fingerprints were lifted.

6 The BCI agents that actually collect the
7 prints and the deputy, this deputy who
8 assisted, they aren't the one who is actually
9 doing the examination and the comparison. So
10 those prints, any prints that were lifted,
11 were ultimately then examined by an agent and
12 an analyst at BCI who would be able to look
13 at prints, latent prints, lift it from a
14 scene, and compare those with known prints.
15 Somebody if they had their prints on file,
16 they would compare them.

17 Autopsies were performed on Ben,
18 Marilyn, and Heather. And from Ben, three
19 bullets, fired rounds were recovered. From
20 Marilyn, a fragment of one fired round was
21 recovered. The cause of death for Ben,
22 obviously multiple gunshot wounds; four. But
23 he was also beaten. The cause of death for

STATE'S OPENING STATEMENT

1 Marilyn was gunshot wound to the head. And
2 Heather was beaten about the head and face.

3 Many law enforcement officers worked on
4 this case at the time. And because there was
5 no computerized system to examine prints, to
6 look at any kind of a database, they just
7 were simply unable to do that. It just
8 didn't exist. So the only option that they
9 had, because they had good prints that they
10 wanted to compare, prints off of that back
11 door, they literally looked at people in the
12 area who had been arrested. They looked at
13 people who had maybe committed a similar
14 crime.

15 And it turned out, there were about 160
16 different times, different people, people
17 that they were interested in maybe because
18 they knew that they had committed some kind
19 of crime in the Mahoning County area. So
20 they compared all of those prints over the
21 next couple years. Never had a match. Of
22 all of the people that they looked at, tried
23 to investigate, never had a match for the

STATE'S OPENING STATEMENT

1 prints.

2 A couple years later, the case went
3 cold. Not the detectives -- not that they
4 gave up, but they literally had no ability to
5 do a larger search. They just didn't have
6 the ability to do it. I don't think it was
7 ever out of their minds, but they literally
8 just ran out of leads.

9 They had those prints. They knew they
10 were significant. They knew they were
11 important. They had a cigarette butt from
12 the scene as well. It was collected probably
13 a couple days later, but again, they just
14 didn't have any leads.

15 In 2009, Detective Mondora and Detective
16 Benigas were asked by the sheriff to open up
17 the cold case. Give it some fresh eyes.
18 Look at the case. See if there is anything
19 that can be done at this point, given that we
20 have more technology now, given that we have
21 a broader scope to be able to examine it.

22 Detective Mondora and Detective Benigas
23 did just that. They contacted BCI. There

STATE'S OPENING STATEMENT

1 are a number of BCI offices. One is in
2 London, Ohio. One is in Richfield. And they
3 determined from reviewing the paperwork of
4 all of the files connected to this case that
5 the evidence, the physical evidence, the
6 fingerprints, had been kept at BCI in London
7 all of this time, because that's where they
8 were taken when they were being compared all
9 through the few years after this occurred.

10 So Detective Mondora and Detective
11 Benigas contacted BCI in London, and they
12 talked to an analyst named Robin Ladd, and
13 she informed them that yes, in fact, we have
14 those prints. This is our system. We have a
15 vault. We kept those prints all of these
16 years secure in the event that maybe someday
17 we may be able to do something with them.

18 Because fingerprints became computerized
19 in the years following these murders, Robin
20 Ladd was able to actually enter the lifted
21 prints from that back door into a database.
22 And what resulted was a match to James
23 Ferrara.

STATE'S OPENING STATEMENT

1 Now, James Ferrara, once the detective
2 started looking, he worked at GM at the time
3 that Benjamin Marsh worked there, about 1970
4 to 1983. He worked at GM. He was a union
5 committeeman. And they decided that their
6 next step should be, talk to James Ferrara,
7 get his actual prints.

8 Now, granted, the computerized system
9 connected those prints to the latent lifts,
10 but BCI, our analyst, wanted his prints
11 lifted, and that's what they did. They
12 contacted James Ferrara. They obtained his
13 fingerprints.

14 And they talked to him about whether or
15 not he knew Benjamin Marsh. He didn't know
16 Ben Marsh, never been to his house. He told
17 them he had never been to his house. He
18 didn't know Ben Marsh. He didn't know the
19 family. Never been there. Never been there.

20 He's charged with three counts of
21 aggravated murder. And the way that the
22 charges read, and I know the judge talked to
23 you a little bit about it, purposely causing

STATE'S OPENING STATEMENT

1 the death while committing or attempting to
2 commit either an aggravated burglary and/or
3 an aggravated robbery. The aggravated
4 burglary obviously is gaining entrance,
5 trespassing into that home to commit a
6 criminal offense. In this case, James
7 Ferrara went in there to kill Ben Marsh,
8 ultimately killed Marilyn and Heather.

9 The aggravated robbery, Detective --
10 Officer Finamore will tell you, as well as
11 Mr. Boyle, nothing was ransacked in that
12 home. The TV was still there. Ben's
13 paycheck was still on the counter. Small
14 amounts of money were still there. But in
15 order to leave that scene, James Ferrara took
16 Marilyn's Vega, her orange Vega. That was
17 the only thing missing from that scene.

18 One set of footprints into that back
19 door. And the conclusion can be that he was
20 either dropped off, or somebody was waiting
21 for him, but for whatever reason, that
22 someone left, and after this entire family
23 was killed, other than Christopher, the only

DEFENDANT'S OPENING STATEMENT

1 way to leave was to take that Vega. The Vega
2 was discovered hours later after the
3 discovery of the bodies, so more than 33
4 hours later at a K-mart in Austintown in the
5 parking lot. That is the aggravated robbery.

6 The judge talked to you a little bit
7 about how you would deliberate in this case.
8 There are 12 of you for a reason. You have
9 to make not only an individual decision about
10 whether or not the defendant is guilty or not
11 guilty based upon all the evidence that you
12 hear, but you have to make a collective
13 decision. And that takes 12 of you, and it
14 has to be unanimous.

15 You are going to hear from a number of
16 witnesses who will describe the scene.
17 They'll describe the people involved. And
18 they'll describe to you the physical evidence
19 that was gathered that connects and puts
20 James Ferrara at that house breaking in and
21 killing that family.

22 We ask you to pay very close attention.
23 Do not make any decisions until you are told

DEFENDANT'S OPENING STATEMENT

1 to do so by the judge when you are all
2 collectively deliberating together. Your
3 common sense. Use your reason. Use the
4 skills that you use every day in evaluating
5 the testimony and the evidence. Attorney
6 Cantalamessa talked to you a lot about
7 credibility, and that's what you're going to
8 determine. Thank you.

9 **THE COURT:** Thank you, Ms. Doherty.
10 Ms. Weibling?

11 **MS. WEIBLING:** May it please the court,
12 counsel, Detective Mondora, ladies and
13 gentlemen of the jury. As you heard before,
14 my name is Kristie Weibling, and I along with
15 Mr. Meranto represent Mr. Ferrara.

16 I think you can now appreciate how
17 important your job is here today and for the
18 rest of this week. And in performing this
19 job, you're going to hear a lot about these
20 horrible crimes that took place. And we are
21 not here today to tell you that these crimes
22 did not take place. We agree, they took
23 place, and it's extremely unfortunate that

DEFENDANT'S OPENING STATEMENT

1 these crimes happened.

2 But it is your job as jurors to put that
3 aside and listen to all the evidence that is
4 presented to you. And at the conclusion of
5 this case, you have to decide whether the
6 state proved to you beyond a reasonable doubt
7 that Mr. Ferrara was involved in these
8 crimes.

9 You're going to hear a lot about
10 fingerprints. You're going to hear about
11 fingerprints that were found on the outside
12 of the garage door. That's a door that leads
13 into the garage. Inside of the garage,
14 there's another set of doors that leads into
15 a house. It is inside that house where these
16 crimes took place. Because in 2009 a
17 computer said, oh, these prints are -- these
18 prints that were found on this outside garage
19 door belonged to Mr. Ferrara, you -- the
20 state wants you to believe that those are, in
21 fact, his prints.

22 As you heard, this investigation went on
23 for several years, 1974, 1975, 1976. During

DEFENDANT'S OPENING STATEMENT

1 this time period, there were a lot of police
2 officers, detectives, and other investigators
3 that worked on this case. And in working on
4 this case, and doing their investigation,
5 they came up with a list of 167 suspects.
6 Mr. Ferrara was never mentioned in that list
7 of 167 suspects.

8 In addition to coming up with this
9 suspect list, these investigators kept
10 detective notes. They kept detailed notes
11 about the investigation, what their thoughts
12 were, why they looked at various pieces of
13 evidence. They also had meetings where the
14 group of them got together, and they
15 discussed the case. They discussed potential
16 theories about the case. And they put all
17 these documents together, and guess what,
18 Mr. Ferrara's name is never mentioned in any
19 of these detective notes, never mentioned in
20 any of these meetings that all these
21 investigators had that got together to
22 discuss this case.

23 You're also going to hear about a key

1 piece of evidence. This piece of evidence is
2 a cigarette. This cigarette was found inside
3 the house where the crimes were committed.
4 You're going to hear that the detectives and
5 investigators on this case felt that the
6 people who were involved in this crime most
7 likely left that cigarette in the home.
8 You're also going to hear that there was a
9 partial print on the cigarette, and that
10 there was some DNA on the cigarette. There
11 has never been a match to the partial prints
12 on the cigarette.

13 Now, back in 1970, there was no ability
14 for the investigators to analyze the DNA that
15 was on the cigarette. In the mid '80s that
16 technology was developed, and in 2010, you
17 know, we got a fingerprint, so why not see if
18 we can get the DNA on this cigarette, and
19 then we've got a slam dunk. So the cigarette
20 is sent to a lab. The DNA is analyzed. And
21 guess what, the DNA on the cigarette is not
22 Mr. Ferrara's.

23 Ladies and gentlemen of the jury, after

1 carefully listening to all of the evidence
2 that's presented to you, you have this very
3 large task of taking a look at all the
4 evidence. Your job here today is not to
5 determine that these crimes were committed.
6 Your job is to determine whether or not the
7 state met its burden and proved to you beyond
8 a reasonable doubt that Mr. Ferrara was
9 involved in these crimes. We would ask that
10 you listen carefully to the evidence, and we
11 appreciate your time and service. Thank you
12 very much.

13 **THE COURT:** Thank you. All right.
14 Let's have the state call your first witness.

15 **MS. DOHERTY:** Your Honor, the state
16 calls Bill Marsh.

17 **THE COURT:** I don't want you to
18 photograph any of these witnesses until I
19 determine whether or not they're willing to
20 be photographed.

21 **THE BAILIFF:** Judge, this witness
22 objects to being photographed.

23 **THE COURT:** This man does not wish to be

DIRECT/MARSH

1 photographed. All right, sir. Good
2 afternoon. Raise your right hand, please.

3 **WHEREUPON, the State called**

4
5 **WILLIAM MARSH,**

6
7 **who, being first duly sworn, testified**
8 **as follows:**

9 **THE COURT:** All right, sir. Walk over
10 this way and come up to the witness stand,
11 please. Thank you. These are the ladies and
12 gentlemen of our jury, and they need to hear
13 and understand everything you have to say.
14 So I'd like you to speak loudly and clearly
15 enough when you answer a question. You're
16 welcome to use the microphone if you care to.

17 **THE WITNESS:** Okay.

18 **THE COURT:** Please answer all the
19 questions out loud.

20 **THE WITNESS:** Okay.

21 **THE COURT:** Thank you, sir.

22 **DIRECT EXAMINATION**

23 **BY MS. DOHERTY:**

DIRECT/MARSH

- 1 **Q** Good afternoon.
- 2 **A** Good afternoon.
- 3 **Q** Could you state your name and spell your
4 first and last name for the record, please?
- 5 **A** William Marsh; W-I-L-L-I-A-M, M-A-R-S-H.
- 6 **Q** All right. Mr. Marsh, I'm going to ask you a
7 few questions. First of all, where did you grow up?
- 8 **A** I grew up here in Youngstown, Ohio.
- 9 **Q** And did you have a brother?
- 10 **A** Yes, I did.
- 11 **Q** What was his name?
- 12 **A** Benjamin.
- 13 **Q** What was the age difference between you and
14 Ben?
- 15 **A** Five years.
- 16 **Q** Your parents, did they work in the area as
17 well?
- 18 **A** My father was a barber. He had a shop on
19 Market Street, corner of Market and Elmwood Avenue. My
20 mother was a school teacher and taught school until my
21 brother and I came along, and then she -- when we got
22 old enough, she substituted.
- 23 **Q** Where did you go to high school, you and your

DIRECT/MARSH

1 brother?

2 **A** South High School.

3 **Q** And what year did your brother graduate from
4 high school?

5 **A** My brother?

6 **Q** Uh-huh.

7 **A** He graduated in 1959.

8 **Q** So that would've made you 19 --

9 **A** '54.

10 **Q** Okay. What did Ben do after high school?

11 **A** After high school, he went into the service,
12 into the Navy.

13 **Q** And primarily, if you recall, where was he
14 stationed?

15 **A** He was stationed out of Rhode Island.

16 **Q** How long was he in the Navy?

17 **A** He was in for four years.

18 **Q** Once he left the service, what did he do
19 then?

20 **A** He returned to Youngstown.

21 **Q** And did he begin working right away?

22 **A** He went to barber college and then went to
23 work for my father.

DIRECT/MARSH

1 **Q** All right. And your dad, had he had that
2 business, that barber shop for a lot of years?

3 **A** As long as I know.

4 **Q** Okay. And was Ben going to take over that
5 business?

6 **A** That was the plan, but it was at the time
7 when hairstyles were starting to change for men, and my
8 dad was nearing the age of retirement, and he didn't
9 want to make a change, and most of his customers were
10 ones who were into that styling. Ben didn't feel that
11 he could support his family on what he was making in
12 the barber shop, and at that time they were hiring at
13 General Motors, and he went over there and put in his
14 application and was hired.

15 **Q** All right. In the meantime, did he get
16 married?

17 **A** Yes, he did.

18 **Q** What year was he married?

19 **A** 1964.

20 **Q** And who did he marry?

21 **A** He married Marilyn.

22 **Q** What was Marilyn's last name prior to
23 marrying Ben?

DIRECT/MARSH

- 1 **A** Fowler.
- 2 **Q** And was she from this area as well?
- 3 **A** She was from up in the Cleveland area.
- 4 **Q** And how did they meet?
- 5 **A** They met through a mutual friend. He was
6 going to Allegheny College, and they met through this
7 friend.
- 8 **Q** Okay. And when they married, did they marry
9 locally in this area?
- 10 **A** Yes, they did, up in North Royalton, Ohio.
- 11 **Q** Now, you said that Ben was hired in at GM.
12 Do you recall approximately what year that was?
- 13 **A** I'm not really sure.
- 14 **Q** Okay. Did Ben and Marilyn have children?
- 15 **A** Yes, they did. They had two.
- 16 **Q** All right. And what were their names, and
17 what year were they each born?
- 18 **A** Heather was born first, and then Christopher.
19 Heather was born in '60, and Christopher was born in
20 '63 I think it was. '63 or '64.
- 21 **Q** Okay. Let me jump you ahead about a decade.
22 Heather would've been four in 1974; correct?
- 23 **A** Right.

DIRECT/MARSH

- 1 **Q** All right. So she would've been born in '70;
2 does that sound right?
- 3 **A** Yes. Yes. Yeah.
- 4 **Q** Okay. And Christopher --
- 5 **A** Was born three years later.
- 6 **Q** Okay. So 1973?
- 7 **A** Right.
- 8 **Q** All right. Where did Ben, Marilyn, and the
9 kids live?
- 10 **A** Well, they were born here in Youngstown. Ben
11 and Marilyn were married, and prior to his getting out
12 of the service, and they lived here in Youngstown and
13 move into their home in --
- 14 **Q** Canfield?
- 15 **A** Canfield.
- 16 **Q** All right. And what was Ben's job at
17 Lordstown at the GM plant?
- 18 **A** He was a security officer.
- 19 **Q** And do you know what rank he attained by
20 1974?
- 21 **A** He -- I don't know whether he ever made
22 permanent sergeant or not, but he filled in as a
23 sergeant on a temporary basis.

DIRECT/MARSH

1 **Q** Okay. And where were you living at the time?

2 **A** At the time I was living out in Fresno,
3 California.

4 **Q** All right. And let's -- I guess let's talk
5 about from, you know, 1970, 1972, where did you and
6 your family move from and to?

7 **A** We moved from Fresno, California, to Toledo,
8 Ohio.

9 **Q** So in 1974, you had -- you had relocated in
10 Toledo?

11 **A** It was either '74 or '75.

12 **Q** All right. The families, your family, Ben's
13 family, your parents were obviously still living in
14 1974; correct?

15 **A** That is correct.

16 **Q** All right. And where did your parents live
17 in relation to Ben's and Marilyn's home in Canfield?

18 **A** They lived over near Mill Creek Park on
19 Gladwae Drive. It was probably maybe a 15, 20-minute
20 ride.

21 **Q** Okay. And even though you were living in
22 Toledo, did the families get together as families do?

23 **A** Yes, we did. In fact, we were down for

DIRECT/MARSH

1 Heather's birthday party.

2 **Q** And approximately when was that?

3 **A** It was just shortly before the --

4 **Q** Okay. Shortly before they were killed?

5 **A** Right.

6 **Q** Okay. All right. At that time, was
7 Christopher -- he was about one year old; is that
8 right?

9 **A** He was one year old, yes.

10 **Q** In December of 1974?

11 **A** Yes.

12 **Q** Was he walking yet?

13 **A** He was just starting to toddle. He, you
14 know, would take a few steps and go down.

15 **Q** Okay. And the birthday party you talked
16 about, where did that take place?

17 **A** At Ben and Marilyn's home.

18 **Q** And was that the last time you actually saw
19 Ben, Marilyn, and the kids?

20 **A** Yes.

21 **Q** You had indicated that Ben worked in
22 security. Did you ever discuss his job with him?

23 **A** No, I didn't, because when I'd ask something

DIRECT/MARSH

1 he'd say that's something I can't talk about.

2 **Q** All right. And at anytime prior to his death
3 did he express concerns about his job?

4 **A** No, not really.

5 **Q** Okay. Concerns about anything going on at
6 work?

7 **MR. MERANTO:** Objection.

8 **THE COURT:** Sustained. Don't answer the
9 question.

10 **BY MS. DOHERTY:**

11 **Q** How did you learn that Ben and Marilyn and
12 Heather had been killed?

13 **A** Telephone call.

14 **Q** And who contacted you?

15 **A** I believe it was Dan Fowler that called me.

16 **Q** And that would've been Marilyn's father?

17 **A** Correct.

18 **Q** And they were still living at that time as
19 well?

20 **A** That is correct.

21 **Q** Were you aware of Marilyn's activities the
22 morning of December 13th?

23 **A** Yes, I was. They -- she had a dental

DIRECT/MARSH

1 appointment, and when she had something like that, she
2 would take the children over to my parents' house, and
3 they'd baby-sit. And then she returned to pick the
4 kids up and stop on the way home, got some groceries.
5 And she was planning on dropping those groceries off
6 and going over to Ben's aunt's house in New Castle.
7 They did things together like craft work or baking
8 cookies or whatever.

9 **Q** Okay. And what shift at the time of his
10 death did Ben work at GM?

11 **A** That I can't tell you.

12 **Q** Okay. That's fine. When you learned that
13 they had been killed, what did you do?

14 **A** I took and made arrangements for my children
15 because we hadn't lived that long in Toledo, and we had
16 neighbors next-door who were older than we were, but
17 they had no children of their own. But we had become
18 friendly with them, and we asked them if they would
19 watch the children while my wife and I drove to
20 Youngstown.

21 **Q** And do you know what day that was? Say it in
22 the context of Marilyn having taken the children to
23 your parents' house on the 13th of December that

DIRECT/MARSH

1 morning for her dentist appointment, and they were
2 found the 14th. When did you arrive?

3 **MR. MERANTO:** Objection.

4 **THE COURT:** Overruled.

5 **BY MS. DOHERTY:**

6 **Q** If you know. You can answer.

7 **A** Would you repeat that, please?

8 **Q** When you learned that they had been killed,
9 do you know when you arrived in Youngstown in relation
10 to when they were found?

11 **A** I would say it was on Saturday afternoon.

12 **Q** All right.

13 **A** Because she -- she had left the children with
14 mom and dad on Friday.

15 **Q** All right.

16 **A** And after -- as soon as we got the call from
17 dad Fowler, we made the arrangements and left
18 immediately.

19 **Q** All right. Tell us about Christopher. Was
20 Christopher injured as a result of this incident?

21 **A** Yes, he was. He had a slight head
22 concussion.

23 **Q** And who raised Christopher after his parents

DIRECT/MARSH

1 were killed?

2 **A** He was raised by a member of the family.

3 **Q** And how old is Christopher today?

4 **A** Forty years old.

5 **Q** Are your parents still living?

6 **A** No, they are not.

7 **Q** How old was Ben at the time of his death?

8 **A** He was 32, I think.

9 **Q** And how old was Marilyn?

10 **A** She was -- I think she was a year or less
11 younger than him.

12 **Q** All right. And what about Heather?

13 **A** Heather was 4.

14 **MS. DOHERTY:** Your Honor, may I
15 approach?

16 **THE COURT:** You may.

17 **(WHEREUPON, State's Exhibit No. 4 was**
18 **marked for identification.)**

19 **BY MS. DOHERTY:**

20 **Q** I'm going to hand you what's been marked as
21 State's Exhibit 4. Could you look at that, please, and
22 tell us if you recognize what is in that photograph?

23 **A** This is a picture of the family. Ben in his

DIRECT/MARSH

1 service uniform, Marilyn, Christopher, and Heather.

2 **Q** And that photograph is actually kind of a
3 collage of all of them; correct?

4 **A** That is correct.

5 **MS. DOHERTY:** Can I have one minute,
6 Judge?

7 **THE COURT:** You may.

8 **(WHEREUPON, a discussion was had among**
9 **counsel off the record and out of the hearing**
10 **of the Court, jury and court reporter, after**
11 **which the proceedings continued as follows:)**

12 **BY MS. DOHERTY:**

13 **Q** Mr. Marsh, you were aware that your father
14 and Mr. Boyle found your brother's body and the family;
15 correct?

16 **A** That's correct.

17 **Q** Did your dad smoke cigarettes ever?

18 **A** Yes, he did.

19 **Q** All right.

20 **MS. DOHERTY:** Your Honor, I don't have
21 any further questions. Thank you.

22 **THE COURT:** Do you have any questions,
23 Mr. Meranto?

1 **MR. MERANTO:** No questions, Your Honor.
2 Sorry for your loss.

3 **THE COURT:** All right, sir. You're
4 excused. Thank you. Leave that right there.
5 Okay. Next witness, please.

6 **MS. CANTALAMESSA:** Your Honor, the state
7 calls Frank Boyle.

8 **THE BAILIFF:** Judge, this witness does
9 not object to being photographed.

10 **THE COURT:** Does not?

11 **THE BAILIFF:** Does not.

12 **THE COURT:** Do you hear that? Does not
13 object. Bring him to the podium. Raise your
14 right hand, please.

15
16
17 * * * * *
18
19
20
21
22
23

DIRECT/BOYLE

1 **WHEREUPON, the State called**

2

3 **FRANK BOYLE,**

4

5 **who, being first duly sworn, testified**

6 **as follows:**

7

8 **THE COURT:** All right, sir. Please be
9 seated up here in the witness chair. So
10 these are the ladies and gentlemen of the
11 jury. They need to hear and understand
12 everything you have to say, so please speak
13 loudly and clearly enough for them to
14 understand you, and please answer all the
15 questions out loud. You can use the
16 microphone if you wish. It will help amplify
17 your voice. Okay?

17

THE WITNESS: Yes.

18

DIRECT EXAMINATION

19

BY MS. CANTALAMESSA:

20

Q Good afternoon. Would you please state your
21 name for the record?

22

A Frank Boyle.

23

Q And Frank, do you live here locally?

DIRECT/BOYLE

- 1 **A** No, I don't.
- 2 **Q** Where do you live?
- 3 **A** Atlanta, Georgia.
- 4 **Q** Did you used to live here?
- 5 **A** Yes.
- 6 **Q** And when was that?
- 7 **A** I lived here -- I knew you was gonna ask me
8 that. I lived here since I guess since the '60s.
- 9 **Q** Okay. Did you live near Youngstown in 1974?
- 10 **A** Yes.
- 11 **Q** Where did you live back then?
- 12 **A** I lived on Herbert Road.
- 13 **Q** And where is that within the county?
- 14 **A** It's just outside of Canfield. It's, I'd
15 say, north of 224.
- 16 **Q** Is that what we consider Canfield Township?
- 17 **A** Actually, I lived in -- where I lived was
18 actually Ellsworth Township. Canfield and Ellsworth
19 join pretty close there, and I lived in Canfield -- or
20 Ellsworth.
- 21 **Q** Okay. And how old are you, Mr. Boyle?
- 22 **A** Pardon?
- 23 **Q** How old are you?

DIRECT/BOYLE

- 1 **A** Seventy-five.
- 2 **Q** And are you married?
- 3 **A** No. My wife's -- I'm widowed.
- 4 **Q** Do you have any children?
- 5 **A** Yes.
- 6 **Q** And did you know Ben Marsh?
- 7 **A** Yes.
- 8 **Q** How did you know him?
- 9 **A** He -- I worked at General Motors, and Ben got
10 hired there a few years after me, and we were in the
11 same department. We was in plant security.
- 12 **Q** When did you start at GM?
- 13 **A** I started in '65.
- 14 **Q** And do you know when Ben started?
- 15 **A** I'm not sure, but maybe four years later. I
16 don't know for sure.
- 17 **Q** Somewhere around '68, '69?
- 18 **A** Yes.
- 19 **Q** Where did Ben Marsh live in relation to where
20 you lived?
- 21 **A** Ben lived approximately anywhere from a half
22 to three-quarters of a mile from where I lived.
- 23 **Q** Okay. Did he live on Turner Road?

DIRECT/BOYLE

- 1 **A** Ben lived on Turner Road. I lived on Herbert
2 Road.
- 3 **Q** Is that house that you went to the evening of
4 December 14th, 1974, was that 5540 South Turner Road?
- 5 **A** Yes.
- 6 **Q** Is that Ben's residence?
- 7 **A** Yes, it is.
- 8 **Q** And who did he live there with?
- 9 **A** With his wife and two children.
- 10 **Q** Okay. Was their house in Mahoning County,
11 Ohio as well?
- 12 **A** Yes.
- 13 **Q** Who was his wife?
- 14 **A** Marilyn.
- 15 **Q** And what were their -- what were their
16 children's names?
- 17 **A** Heather and Christopher.
- 18 **Q** How often would you see Ben and his wife
19 during that time?
- 20 **A** Quite often. Ben was actually my best
21 friend, and we visited back and forth quite often. I
22 worked with Ben all the time.
- 23 **Q** Did your wives get together --

DIRECT/BOYLE

1 **A** Yes.

2 **Q** -- as well?

3 **A** Yes.

4 **Q** So you worked with him, and you got together
5 socially with him?

6 **A** Yes.

7 **Q** Would you ever go to his house and do things,
8 and vice versa, they would come to your house?

9 **A** Yes.

10 **Q** You said Ben came to work with you in
11 security; is that right?

12 **A** Yes.

13 **Q** What kind of things would you do in security
14 at GM?

15 **A** Well, we were responsible for naturally the
16 security and the fire part of the plant. We did fire
17 patrols, and as a security officer you would stand at
18 the door and check people's badges when they came to
19 work. When they left you had to open their lunch
20 bucket, and you checked them and visualized to see if
21 they had anything on them going out, you know, for the
22 theft. And the perimeter of the plant we had to do.

23 **Q** How big of a security force did GM have at

DIRECT/BOYLE

1 that time?

2 **A** I couldn't tell you exactly how many there
3 was of us, but it was probably 30.

4 **Q** And did everyone work different shifts? Was
5 there --

6 **A** Yes. There was three shifts in security.

7 **Q** Did you work the same shift as Ben back then?

8 **A** Sometimes, yes.

9 **Q** Did you also -- were you also a member of any
10 other organizations with Ben?

11 **A** Yes.

12 **Q** And what was that?

13 **A** The Masonic Lodge.

14 **Q** Besides thefts -- obviously people aren't
15 carrying cars out in their lunch box. What kind of
16 thefts are you investigating?

17 **MR. MERANTO:** Objection.

18 **THE COURT:** Hold on. Let me hear the
19 question again once.

20 **(WHEREUPON, the record was read as**
21 **requested.)**

22 **THE COURT:** The objection is sustained.
23 Rephrase the question, please.

DIRECT/BOYLE

1 **BY MS. CANTALAMESSA:**

2 **Q** To investigate these thefts you talked about,
3 what kind -- besides checking people's lunch box, what
4 other things would you do as part of your security job?

5 **MR. MERANTO:** Objection, Judge.

6 **THE COURT:** Overruled.

7 **BY MS. CANTALAMESSA:**

8 **Q** Go ahead.

9 **A** We checked the perimeters and the outside
10 fences where the repair yard was because there has
11 been -- there had been parts and radios and different
12 things like that thrown over the fence and stolen that
13 way.

14 **Q** Was there any kind of illegal activity that
15 you were investigating while working there?

16 **A** No, I wasn't.

17 **MR. MERANTO:** Objection.

18 **THE COURT:** Overruled.

19 **A** I wasn't investigating anything. From time
20 to time we did get, you know, some information on
21 things that we would check out.

22 **Q** I'm going to take you back to December 14th
23 of 1974. You get a phone call; is that right?

DIRECT/BOYLE

- 1 **A** Yes.
- 2 **Q** And who did you get a phone call from?
- 3 **A** Plant security, General Motors.
- 4 **Q** What was the nature of that phone call?
- 5 **A** They said that Ben hadn't come to work. I
6 don't really remember whether it was a couple days or
7 what it was, but he missed his shift, and he didn't
8 call in.
- 9 **Q** Was that unusual for him?
- 10 **A** Oh, yes. Ben wouldn't miss work.
- 11 **Q** What did you do in response to that phone
12 call?
- 13 **A** I told them that I would go to his house.
- 14 **Q** And did you?
- 15 **A** Yes.
- 16 **Q** Did you go immediately after?
- 17 **A** Yes.
- 18 **Q** You got off the phone? You said you lived
19 about a half mile?
- 20 **A** Yes. Half mile to three-quarters.
- 21 **Q** Did you drive to his house?
- 22 **A** Yes.
- 23 **Q** And what time of day was this?

DIRECT/BOYLE

1 **A** It was -- it was dark. It was just in the
2 evening. I don't know the exact time. I would say
3 between 7:00 and 8:00, something like that.

4 **Q** Okay.

5 **A** That area.

6 **Q** Was anyone at the house when you arrived?

7 **A** Yes.

8 **Q** And who was that?

9 **A** Ben's dad and mother had just pulled in just
10 ahead of me, and his dad had just gotten out of the car
11 when I pulled in.

12 **Q** Can you describe Ben's house, the outside and
13 the driveway?

14 **A** Yeah. It was a one floor plan house. The
15 driveway was on the left side of the house.

16 **Q** Did it have a garage?

17 **A** Yes, the garage was on the left. Straight
18 ahead of the drive.

19 **Q** Was it a two-car or one-car garage?

20 **A** Two.

21 **Q** When you arrived there -- how long would you
22 say the driveway was from the street up to the house?

23 **A** Thirty to thirty-five yards, I guess.

DIRECT/BOYLE

1 **Q** Okay. Would you say it's about the length of
2 this courtroom; shorter, longer?

3 **A** It was as long as this courtroom.

4 **Q** Okay. You said that Ben's mom and dad were
5 there. They pulled in just before you; is that right?

6 **A** That's right.

7 **Q** I want to take you right back to that
8 position. What do you notice about the house when you
9 pull up?

10 **A** It was dark. The mercury light outside was
11 on. It's out by the driveway.

12 **Q** Okay.

13 **A** It was on, but no other lights on the house.

14 **Q** And you said this was evening already? It
15 was already dark out?

16 **A** Yes.

17 **Q** Was the garage door opened or closed?

18 **A** Closed.

19 **Q** What do you do next?

20 **A** Ben's dad and I went to the front door. His
21 mother waited in the car. We couldn't get in. Ben's
22 dad had a key for the front door, but he didn't have
23 one for the screen door.

DIRECT/BOYLE

1 **Q** Were you able to -- because it's a ranch
2 house, were you able to see in any of the windows?

3 **A** Yeah. I looked in the windows, and you could
4 see light from the mercury light shined in some, so you
5 could see just a little, and we seen some movement
6 close to the floor.

7 **Q** Could you tell what it was?

8 **A** No, I couldn't tell what it was.

9 **Q** What did you do when you were at the door?

10 **A** We took the -- we had to take the screen door
11 off the house so that Ben could open it, Ben's dad
12 could open the door.

13 **Q** And did you say that was because that screen
14 door was locked?

15 **A** Yes.

16 **Q** It was locked?

17 **A** It was locked.

18 **Q** You didn't have a key to that house; right?

19 **A** No.

20 **Q** Ben's dad did?

21 **A** Ben's dad did.

22 **Q** Tell me what happened once he unlocked that
23 door.

DIRECT/BOYLE

1 **A** We went in, and as soon as we did, the
2 movement we saw was Christopher, he was crawling
3 around. And we saw Marilyn and Heather lying there.

4 **Q** Where was Marilyn laying?

5 **A** She was laying in the foyer. Most of her
6 body was in the foyer, headed, like, in the doorway to
7 the kitchen.

8 **Q** And where was Heather?

9 **A** Heather was a little behind that. Almost
10 straight in front of the doorway, but to the right a
11 little in the door.

12 **Q** When you got Christopher, saw Christopher,
13 where was he in relation?

14 **A** He was close to his mother, Marilyn.

15 **Q** What did you do with Christopher?

16 **A** I picked him up, and at that time Ben's
17 mother came in and Ben's mother -- I went in the living
18 room with Ben's mother and Christopher, and I was with
19 her. And then Ben's dad went looking for Ben.

20 **Q** Did you ever see Ben when you were at that
21 house?

22 **A** No.

23 **Q** During that time, did they have a dog?

DIRECT/BOYLE

- 1 **A** Yes.
- 2 **Q** Where was the dog?
- 3 **A** In the basement.
- 4 **Q** How did you know that?
- 5 **A** Because the dog had -- I don't know if it was
6 mange. It had some kind of infection that they had to
7 have his hair shaved, and they had medicine on him. So
8 they kept him in the basement during this period of
9 time because they didn't want the medicine to get on
10 the furniture.
- 11 **Q** And was there a door from the basement to the
12 upstairs?
- 13 **A** Yes, there was.
- 14 **Q** Was the dog around on the first floor, or was
15 he still in the basement when you got there?
- 16 **A** He was in the basement.
- 17 **Q** Did you ever go around back, to the back of
18 the house that night?
- 19 **A** Later.
- 20 **Q** Okay.
- 21 **A** Later after I came back.
- 22 **Q** Okay. When you have Christopher and you and
23 Mrs. Marsh take him into the living room, what do you

DIRECT/BOYLE

1 guys do with Christopher?

2 **A** Well, I held him most of the time.
3 Mrs. Marsh was pretty upset, and she kept saying,
4 "Why?" And I tried to console her.

5 **Q** And tell me about what -- about Christopher,
6 about his clothing.

7 **A** His clothing was covered in blood, and his --
8 and a lot of it was dried blood. I ended up taking him
9 to my house.

10 **Q** What was he wearing, if you remember?

11 **A** It was like a snowsuit.

12 **Q** And when you're consoling Ben's mom, is --
13 how long do you stay there before you take Christopher
14 to your house?

15 **A** Well, I was there for a little while because
16 Ben's -- Ben's dad went to check for Ben, and then I
17 asked Ben's dad if Ben was there, and he said yes, and
18 he's dead. And the deputies came, and I asked if I
19 could take Christopher down to my house and get the
20 clothes off of him and clean him up, and they allowed
21 me to do that. I took Mrs. Marsh and Christopher down
22 to my house.

23 **Q** Back in December of 1974, did the Marshes

DIRECT/BOYLE

1 have one car or two cars?

2 **A** Ben had a truck, and Marilyn had a car.

3 **Q** Were both of those cars in the garage?

4 **A** No.

5 **Q** When you got there that night?

6 **A** No.

7 **Q** Was either of them in the garage?

8 **A** The truck was there.

9 **Q** Is that the -- was that truck driven
10 primarily by Marilyn or by Ben?

11 **A** Ben.

12 **Q** Back when you would hang out with Marilyn and
13 Ben and their kids, and your wife, you got to know
14 Heather pretty well, didn't you?

15 **A** Yes.

16 **Q** And what -- can you describe Heather, what
17 kind of four-year-old she was?

18 **A** For a four-year-old, Heather was really
19 smart. Everyone always said how smart she was. And
20 she was like a sister to my kids. She was just a sweet
21 little girl.

22 **Q** When Ben's dad comes back up from the back
23 room and tells you about Ben, what do you do next? Who

DIRECT/BOYLE

1 calls the police, if you remember?

2 **A** I did. I first -- I didn't know the police
3 number or anything, so I found a phone book, and I
4 found Canfield Police, and I called Canfield Police,
5 and they told me they can't help me; call the Sheriff's
6 Department. So then I ended up with the Sheriff's
7 Department number, and I called them from the house,
8 kitchen phone.

9 **Q** With the kitchen phone. Do you remember
10 where in the kitchen that phone was?

11 **A** It's on the wall next to the entrance in from
12 the garage.

13 **Q** Okay. You take Christopher to your house.
14 What do you do at that point?

15 **A** At that point, well, we had to cut his
16 shoelaces to get his shoes off because the blood was
17 dried so much on them, and then we got the rest of his
18 clothes off of him. My wife washed him up, and she
19 gave him something to eat, but I don't really remember
20 what it was.

21 **Q** Did you go back to the house?

22 **A** Yes, I did.

23 **Q** And what do you do when you get there?

DIRECT/BOYLE

1 **A** I gave a statement to the Sheriff's
2 Department.

3 **Q** Did you help them walk around and look for
4 anything?

5 **A** I did go around with them, but -- and they
6 went on the roof and looked for a weapon thrown up
7 there or anything. They did that kind of thing, so --

8 **Q** Did you notice anything about the house that
9 you thought was out of place or anything ransacked?

10 **A** No, the house was not ransacked.

11 **Q** How could you tell?

12 **A** Everything was pretty much in its place where
13 it belonged. Marilyn kept her house pretty neat, and
14 it was -- everything was where it belonged.

15 **Q** Was there anything of value left out?

16 **A** I don't really remember anything of value. I
17 know Ben's paycheck was on the counter, the sink, but I
18 don't know of any other valuable things laid out.

19 **Q** Do you know whether or not Ben had any
20 weapons?

21 **A** Yes, he did.

22 **Q** And do you know what kind of weapons?

23 **A** He had purchased a .357 magnum, and I don't

DIRECT/BOYLE

1 know what other guns he had, but I know he had that as
2 a handgun.

3 **Q** You said he purchased a .357. Had he
4 recently purchased it before December?

5 **A** Not too long before that, yes.

6 **Q** Did he express any concern as to why he --

7 **A** Well, he said that if anyone broke in his
8 house, he would have a -- he would be able to defend
9 them.

10 **Q** Do you know where he kept those weapons?

11 **A** Yes. He kept it locked up in a closet, and
12 he kept it locked up.

13 **Q** And where was this closet at?

14 **A** In the bedroom, his bedroom.

15 **Q** After you gave your statement to the police
16 that evening, did you do anything else? You said later
17 on you walked around the back of the house. Is that
18 after the police were done?

19 **A** No. I walked with -- no.

20 **Q** Okay.

21 **A** I was with them.

22 **Q** Tell me what you saw.

23 **A** The back door was -- had the glass broken out

DIRECT/BOYLE

1 of it, and it was open. And then the door from the
2 garage into the kitchen was open.

3 **Q** Did you ever walk back into Ben's bedroom?

4 **A** After he was murdered?

5 **Q** Right.

6 **A** No.

7 **Q** You've been over to his house before that
8 evening; correct?

9 **A** Yes.

10 **Q** So you knew the layout of that house?

11 **A** Yes, pretty much.

12 **Q** You worked at GM for how many years?

13 **A** How many years total?

14 **Q** Yeah.

15 **A** Nineteen.

16 **Q** And you said you started in 1965; is that
17 right?

18 **A** Yes. When I started it was still under
19 construction.

20 **Q** Okay. What shift did you work during the
21 time Ben worked there?

22 **A** Pretty much all three shifts.

23 **Q** Okay. Do you know what shift Ben worked when

DIRECT/BOYLE

1 he was working?

2 **A** He was -- most of the time he was on my
3 shift. Whatever shift that I worked Ben also worked.
4 But then I took the supervisor's job, and Ben stayed in
5 security. And I was a supervisor when this happened.

6 **Q** Do you know what shift Ben was working in
7 December of 1974?

8 **A** Yeah. He was on midnight turn.

9 **Q** What would midnight have been?

10 **A** 11:00 to 7:00.

11 **Q** 11:00 to 7:00. Did you, while working at GM,
12 did you ever know James Ferrara?

13 **A** No, not that I know of.

14 **Q** When you work at GM, do they have union
15 committee people?

16 **A** Yes.

17 **Q** And what do they do?

18 **A** Well, they were to represent the hourly
19 employees, and they would handle committee calls. They
20 would come around if the person on your line had a
21 committee call in, they'd come around, and you'd put an
22 ARO or utility man or someone on the job and let that
23 employee go with his committeeman to a break area or

DIRECT/BOYLE

1 wherever they wanted to talk to him.

2 **Q** Does that have to do with grievances? Does
3 that have to do with if you're filing a grievance?

4 **A** Yes. Most of the time they file grievances.

5 **Q** And did these committeemen, they helped the
6 employees write these grievances? Is that what they
7 were --

8 **MR. MERANTO:** Objection.

9 **THE COURT:** Sustained.

10 **BY MS. CANTALAMESSA:**

11 **Q** How did someone become a committeeman?

12 **MR. MERANTO:** Objection.

13 **THE COURT:** Sustained.

14 **BY MS. CANTALAMESSA:**

15 **Q** Do you remember their dog's name?

16 **A** Thor.

17 **Q** What kind of dog was it?

18 **A** German Shepherd.

19 **MS. CANTALAMESSA:** May I approach the
20 witness, Your Honor?

21 **THE COURT:** You may.

22 **BY MS. CANTALAMESSA:**

23 **Q** Mr. Boyle, I'm going to hand you some

DIRECT/BOYLE

1 pictures that I would like you to identify.

2 **MR. MERANTO:** Excuse me, Your Honor. I
3 don't know what pictures.

4 **MS. CANTALAMESSA:** Oh, I'm sorry.

5 **THE COURT:** Yeah. They should be shown
6 to you before they're shown to the witness.

7 **MR. MERANTO:** They did mention it to me
8 before, Your Honor. Sorry.

9 **(WHEREUPON, State's Exhibit No. 8 was**
10 **marked for identification.)**

11 **BY MS. CANTALAMESSA:**

12 **Q** I'm going to hand you what's been marked as
13 State's Exhibit No. 8. Would you take that for me?
14 Okay. Could you tell me what that is, Mr. Boyle?

15 **A** That's Heather.

16 **Q** Is that a fair and accurate representation of
17 what she looked like when you walked in that foyer?

18 **A** Exactly.

19 **Q** Okay.

20 **MS. CANTALAMESSA:** May I continue to
21 approach, Your Honor?

22 **THE COURT:** You may.

23 **(WHEREUPON, State's Exhibit No. 7 was**

DIRECT/BOYLE

1 **marked for identification.)**

2 **BY MS. CANTALAMESSA:**

3 **Q** I'm going to hand you State's Exhibit No. 7.
4 Can you tell the jury what that is?

5 **A** That's Marilyn.

6 **Q** Okay. Is that a fair and accurate
7 representation of how Marilyn looked laying in the
8 foyer that evening?

9 **A** That's where she was.

10 **(WHEREUPON, State's Exhibit No. 12 was**
11 **marked for identification.)**

12 **BY MS. CANTALAMESSA:**

13 **Q** I'm going to hand you State's Exhibit No. 12.
14 Can you tell us what that is?

15 **A** Again, that's Heather.

16 **Q** Is that a different view of Heather that
17 evening from a different perspective?

18 **A** Yes.

19 **Q** And is that a fair and accurate
20 representation of Heather coming into the foyer?

21 **A** That's where she was.

22 **MS. CANTALAMESSA:** Your Honor, may I
23 approach with the last three?

DIRECT/BOYLE

1 **THE COURT:** Yes. You should just hand
2 them to him and have him pick out the
3 numbers. You don't have to wear yourself
4 out.

5 **MS. CANTALAMESSA:** I need the exercise.

6 **(WHEREUPON, State's Exhibits Nos. 24 &**
7 **34 were marked for identification.)**

8 **BY MS. CANTALAMESSA:**

9 **Q** I'm going to hand you three photographs,
10 State's Exhibits 24, 30, and 34. Okay? The first one,
11 State's Exhibit 24, can you tell us what that is, Mr.
12 Boyle?

13 **A** That's Marilyn.

14 **Q** And that's a fair and accurate picture?

15 **A** Yeah. She's beat up there.

16 **Q** And the next one, State's Exhibit -- can you
17 read the number on the back? I'm sorry.

18 **A** Thirty.

19 **Q** Tell us what that is.

20 **A** That's Marilyn.

21 **Q** And State's Exhibit 34 for us, please.

22 **A** Heather.

23 **MS. CANTALAMESSA:** Can I have one

DIRECT/BOYLE

1 second, Your Honor?

2 (WHEREUPON, a discussion was had among
3 counsel off the record and out of the hearing
4 of the Court, jury and court reporter, after
5 which the proceedings continued as follows:)

6 **MS. CANTALAMESSA:** May I continue to
7 approach, Your Honor?

8 **THE COURT:** You may.

9 (WHEREUPON, State's Exhibit No. 42 was
10 marked for identification.)

11 **BY MS. CANTALAMESSA:**

12 **Q** I'm going to hand you State's Exhibit No. 42.
13 Can you tell me what that is?

14 **A** That's Marilyn.

15 **Q** Is that Marilyn, or is that --

16 **A** Oh, that's Ben. Yeah.

17 **Q** Okay. I'm sorry.

18 **A** I'm sorry, too.

19 **Q** That's all right.

20 **A** That's Ben.

21 **Q** And is that a fair and accurate picture of
22 Ben as he looked back in December after December 14th,
23 1974?

DIRECT/BOYLE

1 **A** Yeah. His face wasn't beat up like that.

2 **Q** Thank you.

3 **MS. CANTALAMESSA:** May I have one
4 second, Your Honor?

5 **(WHEREUPON, a discussion was had among**
6 **counsel off the record and out of the hearing**
7 **of the Court, jury and court reporter, after**
8 **which the proceedings continued as follows:)**

9 **BY MS. CANTALAMESSA:**

10 **Q** When you walked in that foyer back on
11 December 14th, 1974, you said Christopher was in a
12 snowsuit. Was -- were Marilyn and Heather also wearing
13 winter clothing?

14 **A** Yes.

15 **MS. CANTALAMESSA:** Nothing further, Your
16 Honor. Thank you.

17 **THE COURT:** All right. Thank you.
18 Mr. Meranto.

19

20

* * * * *

21

22

23

CROSS/BOYLE

1 **CROSS EXAMINATION**

2 **BY MR. MERANTO:**

3 **Q** Mr. Boyle, my name's Tony Meranto. I'm going
4 to ask you some questions. I'll be pretty brief with
5 you. That dog was a German Shepherd?

6 **A** Yes.

7 **Q** Did you have occasion to be at the house --
8 you said you guys were good friends -- when the dog
9 wasn't ill, whatever?

10 **A** Yes.

11 **Q** Okay. What kind of dog was it? Big German
12 Shepherd?

13 **A** Big.

14 **Q** How was it with people, the German Shepherd,
15 if you know?

16 **A** He was a dog that I would say would protect
17 the family pretty well because he -- he would scare me
18 sometimes.

19 **Q** But he was locked in the basement because of
20 what was going on?

21 **A** Right, because of his --

22 **Q** And you were a friend of Ben's, and you knew
23 that?

CROSS/BOYLE

1 **A** Yes.

2 **Q** In 1974, I'm sure the Sheriff's Department
3 who was investigating this interviewed you, did they
4 not?

5 **A** They -- the Sheriff's Department is the
6 department that was there, yes.

7 **Q** Yes. So they interviewed you about pretty
8 much a lot of what you just told Ms. Cantalamessa;
9 correct?

10 **A** Yes.

11 **Q** Okay. About your -- you went to the scene,
12 and you viewed the scene. Did they talk to you about
13 anything else? Did they ask you, you know, if you had
14 any ideas with regard to the actual crime?

15 **A** No.

16 **Q** They didn't ask you?

17 **A** Well, if they did, I would've answered them
18 no, because I don't know -- I didn't know anything
19 about it.

20 **MR. MERANTO:** Okay. Thank you. That's
21 all.

22 **THE COURT:** Anything else from the
23 state?

1 **MS. CANTALAMESSA:** Nothing, Your Honor.
2 Thank you.

3 **THE COURT:** All right, sir. Thank you.
4 You're excused. Okay. It's probably a good
5 time to call it a day. That all right with
6 everybody? How about you folks? That all
7 right with you?

8 **JURORS:** Yes.

9 **THE COURT:** All right. Thank you for a
10 good day, ladies and gentlemen. It was a
11 busy day for you with a lot of information.
12 We need you to be bright eyed and bushy
13 tailed tomorrow, so please get some rest
14 tonight.

15 Please also follow the instructions I've
16 given you. You have to avoid any publicity
17 about the case. Avoid any conversation with
18 your family or friends about the case.
19 Please let them know you've been instructed
20 by the court not to discuss the case until
21 it's completed. You're not to discuss this
22 case at all among yourselves or with anyone
23 else, nor to allow anyone to discuss the case

1 with you or in your presence. Please do not
2 form or express any opinion about the case.
3 Have a good night. We've see you tomorrow
4 morning, and we'll start at 8:30 a.m. We'll
5 be in adjournment.

6 **(WHEREUPON, the Court recessed at 4:28**
7 **p.m., November 18, 2013 and reopened at 8:29**
8 **a.m., November 19, 2013 and the proceedings**
9 **continued as follows:)**

10 **THE COURT:** Good morning, ladies and
11 gentlemen. We're going to resume the trial
12 now. The state is in the process of
13 presenting its evidence to you. They have
14 several witnesses as I understand, so we
15 might as well get started. Call your next
16 witness, please.

17 **MS. DOHERTY:** Thank you, Your Honor.
18 The state calls Mike Finamore.

19 **THE COURT:** Does he object to being
20 photographed? Did you ask him?

21 **THE BAILIFF:** I did not, Judge.

22 **THE COURT:** There may be media that
23 appears and want to film what goes on in the

DIRECT/FINAMORE

1 courtroom, and you're to be asked whether you
2 object to being photographed or filmed for
3 news media purposes.

4 **THE WITNESS:** I do not, sir.

5 **THE COURT:** Please raise your right
6 hand.

7 **WHEREUPON, the State called**

8
9 **MICHAEL FINAMORE,**

10
11 **who, being first duly sworn, testified**
12 **as follows:**

13 **THE COURT:** Please be seated in the
14 witness chair. These ladies and gentlemen of
15 the jury are seated there. They need to hear
16 and understand everything you have to say, so
17 please speak loudly and clearly enough for
18 them to understand your testimony, and please
19 answer any questions asked of you out loud.

20 **THE WITNESS:** Yes, sir.

21 **THE COURT:** You've got to talk louder
22 than that.

23 **MS. DOHERTY:** That's why I'm standing

DIRECT/FINAMORE

1 back here, Judge.

2 **THE COURT:** I'm here, but I couldn't
3 hear him. He's right next to me. So please
4 make sure he talks loud enough. Maybe you
5 can get him to do it.

6 **MS. DOHERTY:** I will try.

7 **DIRECT EXAMINATION**

8 **BY MS. DOHERTY:**

9 **Q** Tell us your full name and spell your last
10 fame for the record, please.

11 **A** It's Michael W. Finamore. Spelling of last
12 name is F-I-N-A-M-O-R-E.

13 **Q** And Mr. Finamore, where do you reside? Where
14 do you live?

15 **A** Right now in Hertford, North Carolina.

16 **Q** I'm going to ask you I guess career-wise,
17 what did you do? What was your career?

18 **A** Started in the criminal justice program at
19 Youngstown State, went to the sheriff's office on
20 internship in the fall of 1972.

21 **Q** All right. Let me stop you right there.
22 What was that program?

23 **A** I basically worked all functions of the

DIRECT/FINAMORE

1 sheriff's office. I worked a little bit of the
2 investigative bureau. I worked in the record room. I
3 worked in the jail in the process of booking prisoners.
4 In some cases I would accompany a jailer -- bring the
5 prisoners back and forth to court. I rode in the
6 patrol division. So it was just basically to observe
7 all functions of law enforcement.

8 **Q** All right. And you said specifically with
9 the investigative unit. What did you do there?

10 **A** I went out with them on a lot of follow-up
11 investigations and cases. I did a lot of surveillance
12 work with them. They would go out in the evenings and
13 do a lot of follow-up work, and being young and single
14 at that time I spent a lot of time with them.

15 **Q** And what training was required for you to
16 work in the Mahoning County Sheriff's office at that
17 time?

18 **A** At that time I was an intern. When I went to
19 the commission as a deputy I was required to take the
20 Ohio peace officer basic police training program which
21 was a 300-hour program through Youngstown State
22 University.

23 **Q** And what types of course work was required

DIRECT/FINAMORE

1 through the OPATA program?

2 **A** All functions of law enforcement, history of
3 law enforcement starting from history all the way up
4 through the Ohio Revised Code, crime scene processing,
5 the laws of arrests, search and seizure. Just, again,
6 all facets of law enforcement.

7 **Q** Evidence collection and scene processing,
8 what does that mean?

9 **A** That is obviously arriving at a crime scene.
10 It's securing the crime scene, identifying what could
11 be evidence related to the particular crime that you've
12 been called to investigate, and properly securing that
13 evidence, identifying it and turning it into the
14 evidentiary process, which would be either go through
15 the detective bureau or criminal -- BCI, sometimes the
16 FBI lab, depending on the nature of the case.

17 **Q** I'm going to ask you first about evidence
18 collection. What type of specific training through
19 OPATA did you receive in terms of collecting evidence?

20 **A** We received training how to properly secure
21 evidence so it's not damaged or ruined, I guess you
22 would say. How to properly mark it, identify it, date
23 it. We learned how to lift latent prints. We learned

DIRECT/FINAMORE

1 how to take roll paint impressions of fingerprints.
2 Again, we learned how to properly, whether it be
3 ballistics, secure things again, so we have a basic
4 understanding of what analysis was going to be done on
5 that particular piece of evidence and treat it in the
6 manner that you -- basically wouldn't ruin the ability
7 to analyze it.

8 **Q** Okay. How long were you with the Mahoning
9 County Sheriff's Department?

10 **A** From February of '73 until March of 1978.

11 **Q** And throughout that time with the Sheriff's
12 Department, what was your job? You said you started
13 off kind of doing everything. What did you end up
14 doing there?

15 **A** I started off as a special deputy assigned to
16 the investigative bureau. I was the first deputy under
17 21, so the sheriff made me the first deputy under 21.
18 He pretty much limited my commission at that point
19 strictly to work with the investigative bureau. I then
20 went full-time. I worked in the jail as a jailer. I
21 then transferred out to the patrol division. Then I
22 went back into the detective bureau where I retired --
23 I left as a detective/sergeant when I moved on to the

DIRECT/FINAMORE

1 state patrol.

2 **Q** All right. And at that time then you said
3 you went to the state patrol?

4 **A** Correct.

5 **Q** And what did you do there?

6 **A** State patrol I started off as a trooper. I
7 then spent eight years in the training academy where I
8 instructed law enforcement -- basic police training
9 program, both law enforcement and troopers; then
10 proceeded into administration where I served as
11 lieutenant in charge of patrol posts, captain planning
12 analysis. I was a major in charge of all of our policy
13 development, research. In the last six years I retired
14 as a lieutenant colonel, and I was an assistant
15 superintendent over all the administrative functions of
16 the patrol.

17 **Q** All right. And currently what is your job?

18 **A** Right now I serve as director of operations
19 for a company who provides protection and preparedness
20 consulting and those type of functions for both private
21 and public sector companies.

22 **Q** All right. I'm going to specifically ask you
23 about 1974 and what you were doing at that time.

DIRECT/FINAMORE

1 **MR. MERANTO:** Objection, Your Honor.

2 May we approach on the record?

3 **THE COURT:** Yes. You can approach.

4 **(WHEREUPON, a discussion was had among**
5 **Court and counsel out of the hearing of the**
6 **jury and defendant as follows:)**

7 **THE COURT:** Okay. We are on the record
8 at side bar at the defendant's request.

9 **MR. MERANTO:** I would like to object at
10 this time to the testimony of Mr. Finamore.
11 I believe that it's clear from what he just
12 testified to that his qualifications in 1974
13 do not qualify him to testify to what he's
14 about to testify; that is, the fingerprint
15 collection and submission, the individual who
16 actually took the fingerprints not being
17 available. And I would like that objection
18 to be continuing throughout his testimony.

19 **THE COURT:** Do you folks wish to say
20 anything?

21 **MS. DOHERTY:** Judge, only that he has
22 already indicated that he went through the
23 300-hour OPATA course at that time, and that

DIRECT/FINAMORE

1 he was trained specifically in collection of
2 fingerprints.

3 **MR. MERANTO:** Actually, what he said on
4 the record is that he was trained in taking
5 inked rolled fingerprint impressions, which
6 is what they take when you're arrested at the
7 jail. He doesn't say anything about the
8 actual collection of evidence and being
9 trained on lifting latent prints from a crime
10 scene, and that's specifically what he's
11 about to testify to; and I don't think he's
12 qualified to do so.

13 **MS. DOHERTY:** He did say latent prints,
14 just so you know. He did say latent prints
15 as well.

16 **MR. MERANTO:** I didn't hear him say it.

17 **THE COURT:** Well, do you two want to
18 debate somewhere else? This is a hearing on
19 the record, and I don't need to hear all of
20 that. I have an objection, and I have your
21 position. That's what I need. So while all
22 of this is going on, I will state for the
23 record that I'm completely unimpressed with

DIRECT/FINAMORE

1 OPATA training as qualifying him as a
2 fingerprint expert of any kind. However, the
3 case law that I researched, not that was
4 submitted to me by either party, indicates
5 that the objection should be overruled at
6 this time. I don't know what he's going to
7 say here today. I know what he said before,
8 and I know that I made a comment about it
9 before, but the objection at this point's
10 overruled. Now, as far as a continuing
11 objection is concerned, I'm delighted to
12 afford that to you.

13 **MR. MERANTO:** I just don't want to keep
14 interrupting.

15 **THE COURT:** Because I understand how it
16 works in a trial, but our Court of Appeals
17 does not recognize a continuing objection as
18 far as I know, so you just need to be
19 cautious in that regard. I do believe that
20 the record from the other day and your
21 objection now should preserve your entire
22 objection to this, but --

23 **MR. MERANTO:** I understand.

DIRECT/FINAMORE

1 **THE COURT:** -- I don't have the
2 authority to tell you that I will recognize a
3 continuing objection, for what it's worth.

4 **MR. MERANTO:** Thank you, Your Honor.

5 **MS. DOHERTY:** We agree, too, if that
6 matters.

7 **(WHEREUPON, the proceedings continued,**
8 **back in the hearing of the defendant and the**
9 **jury as follows:)**

10 **THE COURT:** All right. The objection's
11 overruled. You may proceed.

12 **MS. DOHERTY:** Thank you, Your Honor.

13 **BY MS. DOHERTY:**

14 **Q** Mr. Finamore, again, back to 1974,
15 specifically December of 1974, what were your duties at
16 that time?

17 **A** I was a road deputy at that time.

18 **Q** And was there a specific area or areas that
19 the Mahoning County Sheriff's office patrolled and had
20 jurisdiction over?

21 **A** Sure. We patrolled all the unincorporated
22 areas of the county. Generally an area like Youngstown
23 that has a large, competent police department, we would

DIRECT/FINAMORE

1 not spend our resources there. We stayed out in the
2 townships where our primary responsibilities were.

3 **Q** And would Canfield have been one of those
4 areas that you patrolled as well?

5 **A** Canfield Township; correct.

6 **Q** Canfield Township. All right. How were you
7 notified or called to the scene at 5540 Turner Road in
8 Canfield on December 14th?

9 **A** In December, '74, we did not have pagers. We
10 did not have cell phones. We would periodically call
11 in. Basically portable radios even somewhat came in to
12 play in the early '70s. Again, being single, many
13 times I would go out with the detectives in the evening
14 and ride, do follow-up work and do additional work. So
15 when I called in that evening I learned that they were
16 on the scene of a triple homicide, and I asked if they
17 needed assistance, and they said yes, go ahead to the
18 scene. I'm sure they could use help.

19 **Q** And for the record, what was the address that
20 you responded to?

21 **A** I believe it was 5540 South Turner Road.

22 **Q** All right. And is that in Canfield Township?

23 **A** Yes.

DIRECT/FINAMORE

1 **Q** Mahoning County, State of Ohio?

2 **A** Yes.

3 **Q** Approximately what time on December 14th,
4 1974 did you arrive, if you recall?

5 **A** Approximately 9:30.

6 **Q** P.M.?

7 **A** Correct.

8 **Q** Describe what was going on at the scene of
9 that home when you arrived.

10 **A** Detective Nemeth was there, Trooper -- or I'm
11 sorry, Deputy Catheline and Deputy Chance, Sergeant
12 Hunt. They were there securing the scene, waiting for
13 BCI to come to process the crime scene, and just
14 collectively discussing the complexity of the case.

15 **Q** All right. And let me ask you, what is BCI,
16 so the jurors know what that is?

17 **A** It would be the Ohio Bureau of Criminal
18 Identification.

19 **Q** And what was the role of BCI and law
20 enforcement at that time?

21 **A** The purpose of the Bureau of Criminal
22 Identification, one, they ran the crime lab, both in
23 Columbus and regional crime labs, which one is in

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1 Richfield that would cover this particular area. They
2 also housed the fingerprints and did the fingerprint
3 analysis in London, Ohio at their main headquarters,
4 and then they would provide field agents to process
5 crime scenes, because the sheriff's office did not have
6 their own crime lab at that point. Many small police
7 departments do not have their own crime lab, so that
8 was a service that was provided by the Bureau of
9 Criminal Identification at the time. Similar to the
10 way the FBI would come out and support local law
11 enforcement as well.

12 **Q** Describe for the jury, please, the scene once
13 you went inside that house. What was in there?

14 **A** Well, the victims were still there. There
15 was a lot of blood, especially around Marilyn Marsh,
16 the female. She was partially laying from the foyer
17 into the kitchen. Obviously after suffering her wounds
18 she bled excessively. I was not there at the time, but
19 the son, Christopher, was in the house by himself for a
20 period of a considerable amount of time. The blood was
21 smeared where Christopher had crawled around his
22 mother. The four-year-old girl, Heather, was laying in
23 the foyer near the entrance to the living room, face

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1 up. Initially we thought she was shot between the
2 eyes. It turned out to be a puncture wound in the
3 autopsy. But obviously signs of being beaten. Again,
4 there was blood where she bled somewhat excessively
5 after receiving her injuries. And then I went down the
6 hall into the bedroom. We found Mr. Marsh where he was
7 shot and obviously beaten. There was a lot of blood.
8 Obviously signs of a severe struggle. And he was laid
9 back on the bed with his feet near the floor.

10 **Q** All right. I'm going to ask you about the
11 outside of the house. Well, first of all, describe, I
12 guess, the structure of the house. What was it?

13 **A** It was a somewhat long, I guess -- at that
14 time it appeared to be just a long ranch home. The
15 garage on the left, you would go from the garage into
16 the family room. They kind of used it as a dining
17 room. There's a table and casual chairs there. It
18 appeared to be added onto the home. You then stepped
19 up into the kitchen. That entryway appeared maybe one
20 time. It was an external entrance. And then they
21 added on and kind of connected the garage and the home.
22 It became an interior door into the kitchen. You would
23 then proceed north through the home through the

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1 kitchen, into the foyer. To the right would be the
2 front door. To the left you went into the living room.
3 You went down the hallway, there was a bath on the
4 right, a bedroom, kind of facing the bedroom door. You
5 made a slight jog in the hallway, there was another
6 bedroom to the left there, and then the hallway dead
7 ended into what would be considered the master bedroom.

8 In the master bedroom of that home it was
9 kind of like a T. The left side was kind of a casual
10 area. It had some, if I remember right, just some
11 sewing equipment, casual chair. Just kind of a
12 sitting, reading area. To the right, that was kind of
13 like an alcove. There was two closets on the right,
14 and then the bed sat back in that alcove.

15 **Q** All right. The closets that you described,
16 tell us more about those.

17 **A** There was a single door closet. It was
18 locked. Mr. Marsh was a -- I don't know if he was an
19 avid hunter or shooter, but he did have sporting arms.
20 That closet was designed to somewhat be a gun closet.
21 It was locked at that time. There were signs where it
22 appeared he was trying to get into that closet. To the
23 left of that was a standard little wire door closet,

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1 which was obviously meant for clothing.

2 **Q** You indicated there were signs that he had
3 tried to get into that closet. What signs were those?

4 **A** There were some blood smears on the door and
5 the lock area.

6 **Q** And was that door still locked, that gun
7 closet? Was it still locked when you arrived?

8 **A** Yes.

9 **MS. DOHERTY:** Judge, may I approach?

10 **THE COURT:** You may.

11 **(WHEREUPON, State's Exhibit No. 60 was**
12 **marked for identification.)**

13 **BY MS. DOHERTY:**

14 **Q** Mr. Finamore, I'm going to hand you what's
15 been marked as State's Exhibit 60. Can you describe
16 what that is for the court, please?

17 **A** Yes. This is a hand drawn sketch, diagram of
18 the home.

19 **Q** All right.

20 **A** With the one exception of it showing the
21 hallway being straight here, and the hallway has a
22 slight jog in it.

23 **Q** Do you recognize that document? Have you

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1 seen that before?

2 **A** I have seen this in the investigative notes.
3 This diagram was used -- it was for a follow-up meeting
4 with a lot of the agencies that were involved in the
5 investigation.

6 **Q** Okay. Well, does it -- does it accurately
7 reflect, other than the slight jog in the hallway, the
8 layout of that home, as well as the positions of
9 Marilyn Marsh, Ben Marsh, and Heather Marsh?

10 **A** Yes, it does.

11 **Q** All right. You described the doorway
12 entering from the garage into the home. Tell us about
13 that. Was it one door, two doors, what?

14 **A** It was a storm door, and then a wood door.
15 And the wood door obviously showed signs that it was
16 kicked in. It even had a partial footprint on that
17 particular door.

18 **Q** And what about the storm door when you
19 arrived?

20 **A** It was ajar.

21 **Q** All right. And you said there were signs it
22 had been kicked in. Anything other than the print, the
23 footprint, bootprint, whatever, on that door?

DIRECT/FINAMORE

1 **A** There was damage to the lock area from the
2 forced entry. Also at that time, not knowing exactly
3 what relevance it had, it appeared to be some tool
4 marks on the door, and those were identified, but,
5 again, that was just at the time not knowing what they
6 were.

7 **Q** Okay. But it did appear that the door had
8 been -- that door had been kicked in?

9 **A** Yes, it was.

10 **Q** Was there an entrance to the home through the
11 garage around the back of the house?

12 **A** Yes, there was.

13 **Q** And describe the weather at that time on
14 December 14th, 1974.

15 **A** There was snow on the ground. It was I guess
16 for Ohio a typical winter day.

17 **Q** And were you able to observe anything in that
18 snow going around to the back of the house?

19 **A** Yes. There was one set of footprints that
20 went from the front driveway area, around to that door.

21 **Q** And tell the jury then about that back door.
22 First of all, does it -- where does it go, that door
23 into the house? Where does it go first?

DIRECT/FINAMORE

1 **A** The back door would've been a walk-through
2 pedestrian door leading into the garage, or if you were
3 in the garage it would take you out to the backyard of
4 the home.

5 **Q** So one set of footprints leading to that
6 door. Describe the condition of that door.

7 **A** The door had three panes of glass. The
8 bottom pane immediately over top of the lock area was
9 broken out to where it appeared that the intruder
10 reached in, opened the door, and then pushed the door
11 open and proceeded into the garage and then forcibly
12 forced the door going into the home by kicking it.

13 **Q** Let me grab that exhibit from you.

14 **MS. DOHERTY:** Judge, can we approach
15 briefly?

16 **THE COURT:** All right.

17 **(WHEREUPON, a discussion was had among**
18 **court and counsel off the record and out of**
19 **the hearing of the jury and court reporter,**
20 **after which the proceedings continued as**
21 **follows:)**

22 **BY MS. DOHERTY:**

23 **Q** All right. Mr. Finamore, displayed on the

DIRECT/FINAMORE

1 screen is State's Exhibit 60. Is that the diagram you
2 just described?

3 **A** Yes, it is.

4 **Q** And do you recognize that diagram as being
5 consistent with the layout of the house, other than the
6 jog in the hallway that you said?

7 **A** Correct.

8 **Q** And describe for the jury, I guess, what
9 they're seeing in terms of the entrances and where the
10 entrances are.

11 **A** You see the driveway down to the lower left,
12 and that would be the front of the garage. And the
13 footprints in the snow came from the front of that home
14 area and went back around. That would be -- I believe
15 it would be the southwest corner of the home. The
16 house kind of ran parallel to Turner Road. The house
17 kind of is from the garage to the bedroom is kind of
18 south to north. That little mark there on the -- I
19 guess it would be that northwest corner of that garage,
20 that is depicting that walk-through pedestrian door.

21 If you come up the driveway and go into the
22 garage, that entryway to the right there, that is the
23 entryway -- it's showing that is an open doorway, but

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1 that was a door -- a storm door and a wood door. That
2 is the door that was kicked in. As you went through
3 the family room from that door towards the kitchen,
4 that door going in the kitchen is probably a little bit
5 more to the right, and it has a little bit of a step
6 up. And then you again proceed through the kitchen.
7 There's the foyer there, the living room. And when you
8 go down the hallway, there is a -- if you slide that
9 bedroom, the bedroom on the east side, if you slide
10 that up a little bit -- one thing also missing in there
11 would be the home's bathroom was right there on the
12 right side of that hallway going down the hallway.

13 **Q** And as I am directing you, what does this
14 represent?

15 **A** That would be the bed where Mr. Marsh was
16 found.

17 **Q** And what does this area represent marked No.
18 2?

19 **A** That would be where Heather was found.

20 **Q** And No. 1 in the foyer area?

21 **A** That would be Marilyn Marsh's location.

22 **MS. DOHERTY:** Can I approach, Judge?

23 **THE COURT:** You may. You should ask

DIRECT/FINAMORE

1 before you start, but you may.

2 **MS. DOHERTY:** I know. I'm sorry.

3 **(WHEREUPON, State's Exhibits Nos. 1, 2 &**
4 **5-15 were marked for identification.)**

5 **BY MS. DOHERTY:**

6 **Q** I'm going to hand you a stack of photographs.
7 And I would like for you to look at the back, tell us
8 what the exhibit number is, and then if you recognize
9 what the photograph depicts, tell the jury what it is.
10 Okay?

11 **A** Yes.

12 **Q** That will just keep me from having to keep
13 walking.

14 **A** Okay. The photo labeled Exhibit 1 is a
15 picture of the back door, that walk-through door from
16 the backyard into the garage.

17 **Q** All right.

18 **A** The photo labeled No. 2 is a photo of that
19 same door showing the broken glass, and it was taken
20 from inside the garage.

21 **Q** Thank you.

22 **A** Exhibit 5 is the pictures of standing in that
23 family room area, looking into the kitchen, that door

DIRECT/FINAMORE

1 relating to the kitchen.

2 Exhibit 9 is a photo of the stove area and
3 the counter area showing where there were a couple baby
4 bottles on the counter.

5 Exhibit 10 is another photo showing the
6 kitchen counter, across from the stove. It would be to
7 the right of the kitchen sink area, and showing the
8 various items that were on the counter at that time.

9 Photo Exhibit 6 is taken from standing in the
10 kitchen, looking out into the foyer, and it is a photo
11 showing the location of Marilyn Marsh.

12 Photo 7 is a photo standing in the foyer,
13 looking into the kitchen door, and that is also showing
14 a photo of the location of Marilyn Marsh of -- from the
15 foyer perspective.

16 I believe this is Exhibit 60. Exhibit 60
17 would be a photo if you were coming out of the kitchen
18 door and starting to walk towards Heather is a picture
19 showing the location of Heather.

20 **THE COURT:** That can't be right.

21 **BY MS. DOHERTY:**

22 **Q** I know. Let me interrupt you for a minute.
23 Look again at that number on the back. Does it say 60?

DIRECT/FINAMORE

1 **A** I'm sorry. I guess it's 12.

2 **Q** Okay. I thought that had to be wrong.

3 **A** Okay. I'm sorry. It is 12.

4 **Q** All right. Tell us again what that is.

5 **A** That is a photo looking from the kitchen door
6 down towards the hallway leading to the bedroom,
7 showing the position of Heather.

8 No. 8, this is a photo of as if you were
9 coming from the master bedroom, walking back towards
10 the kitchen, and showing a picture of the location of
11 Heather from that perspective.

12 Photo 11 is a photo of -- there was a -- a
13 bullet went through the ceiling of the foyer, and this
14 is a photo of that bullet hole in the foyer ceiling.

15 13 is the -- if you go in the master bedroom
16 area, it would be that area to the left, just above the
17 word bedroom, and that is showing just the casual
18 sitting area that the family had there. And also in
19 that photo, or in this photo, it shows a projectile,
20 spent projectile that was found on the bedroom floor
21 near that north wall.

22 **Q** And let me address the diagram, State's
23 Exhibit 60. As far as the photograph that you have in

DIRECT/FINAMORE

1 your hand, would that be in this area of the bedroom?

2 **A** As far as the projectile?

3 **Q** Yes.

4 **A** That's correct, yes.

5 **Q** All right. Go ahead. Sorry.

6 **A** Exhibit 14 is a photo, if you come in the
7 master bedroom and turn right, it is a photo looking at
8 the bed and showing the position of Ben Marsh on the
9 bed.

10 **Q** Is there anything in that photograph
11 specifically on the floor next to Ben Marsh, or can you
12 not see it in that photograph?

13 **A** There is a set of slippers in the photo.

14 **Q** And are you able to see the closet doors in
15 that photograph that you described as well?

16 **A** The photo is taken from -- the person taking
17 the photo would've been standing right in front of that
18 gun closet door. So it's not visible in this photo,
19 but the clothes closet is. The closet doors, the
20 clothes closet.

21 **Q** Okay. Go ahead.

22 **A** And then Exhibit 15 is a close-up view of Ben
23 Marsh as he was laying back on the bed in the master

DIRECT/FINAMORE

1 bedroom.

2 **Q** And what position -- describe for the jury,
3 since they can't see that, what position Ben Marsh was
4 in on that bed.

5 **A** He is laying back on his left side. His feet
6 down on the floor, almost as if sitting in this
7 position and then going over onto his left shoulder
8 with his feet still hanging off the side of the bed
9 towards the floor.

10 **Q** You had indicated that Ben Marsh had been
11 shot; correct?

12 **A** There were signs of bullet wounds, yes.

13 **Q** And you indicated also that he had been
14 beaten?

15 **A** Yes.

16 **Q** Was that visible to you at that time?

17 **A** Yes, it was. Very visible.

18 **Q** Do those photographs, the exhibits that you
19 have just identified, accurately reflect the Marsh home
20 on December 14th, 1974 when you were there?

21 **A** Yes, they do.

22 **Q** All right. BCI, you had mentioned a few
23 minutes ago what BCI is. Was BCI then called to that

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1 scene?

2 **A** Yes, they were.

3 **Q** And who arrived from BCI? What agent
4 arrived?

5 **A** Agent Bernie Albert.

6 **Q** And what was your responsibility at that
7 time?

8 **A** Once Agent Albert got there, Detective
9 Nemeth, Sergeant Hunt, continued to go on taking
10 photos, doing some other things. We walked Mr. Albert
11 through the home, showed him basically the scene, did
12 kind of a total walk through and showed him the
13 complexity of it. Showed him where we thought there
14 was evidence. And then I proceeded to accompany
15 Mr. Albert as he processed the scene and assisted him
16 in any way necessary, whether it be holding the
17 lighting, if he needed equipment, if he needed
18 something moved. So basically just making sure that
19 while Detective Nemeth was tied up with some other
20 things, that all of our interests in the home were met.

21 **Q** All right. And Mr. Albert's -- I mean, he's
22 there to collect evidence; correct?

23 **A** That's his sole responsibility; correct.

DIRECT/FINAMORE

1 **Q** And this may sound silly, but back in 1974,
2 DNA wasn't even a thought to anybody, was it?

3 **A** No. They were just probably then getting
4 into doing some work with blood at that time, but DNA
5 was not even on the charts.

6 **Q** All right. And so what were fingerprints?

7 **A** Well, fingerprints were, you know, because of
8 all the prior court testimony, from time to time were
9 the most conclusive --

10 **MR. MERANTO:** Objection.

11 **THE COURT:** Quit answering when there's
12 an objection, please. Let me hear the
13 question again.

14 **(WHEREUPON, the record was read as**
15 **requested.)**

16 **THE COURT:** He can answer if he knows.
17 The objection's overruled.

18 **A** Fingerprints at that time because of the
19 court cases that were ruled, I mean, they were some of
20 the best and most conclusive evidence that you could
21 have.

22 **MR. MERANTO:** Objection.

23 **THE COURT:** Sustained.

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1 **BY MS. DOHERTY:**

2 **Q** When you were assisting Mr. Albert, where did
3 you begin -- where did you and Mr. Albert begin in that
4 evidence collection process? What part of the house?

5 **A** I remember starting back where Mr. Marsh was
6 and working back to the point of entry because we did
7 find a partial footprint in the bedroom. I remember
8 pointing back to him and recalling that that is
9 somewhat similar to the same print that is on the door.
10 And we went back through the house so that he would
11 then make sure we got that print off the door as well.

12 **Q** Okay. So let me start there then. You had
13 described in one of those photographs that there was a
14 projectile laying in the bedroom on the floor near the
15 sitting area; is that correct?

16 **A** Yes.

17 **Q** And was that projectile collected?

18 **A** Yes, it was.

19 **Q** And did you witness Bernie Albert collecting
20 that projectile?

21 **A** Yes.

22 **Q** All right. The area entering that bedroom,
23 what was done to process that area, the doorways, et

DIRECT/FINAMORE

1 cetera?

2 **A** Those areas were all dusted for latent
3 fingerprints.

4 **Q** And tell the jury what a latent fingerprint
5 is.

6 **A** A latent fingerprint would be a print left
7 that really isn't fully visible to the naked eye. It
8 is revealed by a dusting process where the dusting
9 powder adheres to the oils, sweat, salts, things that
10 are left by sweaty fingers. And then they become --
11 they become revealed by that powder sticking to those.

12 **Q** And then what is done once a print is
13 revealed?

14 **A** The print is then lifted by using an adhesive
15 tape. They are some premade lifters, different sizes,
16 but if you don't have those, just a plain roll of clear
17 tape that you use. You basically put the tape over the
18 ink, or the dusted impression. You pull that back up,
19 and then you place it onto a contrasting card. So if
20 you're using black fingerprint powder you would put it
21 on a card where you could then get contrast. If you
22 were using white powder you would probably put it on a
23 black or a dark gray card.

DIRECT/FINAMORE

1 **Q** And what specific process or color of powder
2 and card were used in the processing of the Marsh home?

3 **A** He was using the standard black powder and
4 standard white card stock backing.

5 **Q** And did you observe Bernie Albert obtaining
6 and lifting those fingerprints from that door area into
7 the bedroom?

8 **A** Yes.

9 **Q** What would Mr. Albert do once a print was
10 lifted and placed on that card?

11 **A** He would initial, identify it, and date it,
12 and he would identify the location where it was removed
13 from.

14 **Q** In the foyer area, you described a bullet
15 hole in the ceiling.

16 **A** Yes.

17 **Q** What was done in order to retrieve any
18 projectile that had gone up there?

19 **A** At the completion of going through the first
20 floor of the home, Agent Albert and I went into the
21 attic and spent several hours going through every
22 little -- the insulation in the home was -- had what
23 they call craft paper facing on it, and the age of the

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1 home, that paper had deteriorated over time and was
2 brittle from being in the unheated attic. So looking
3 at the angle that the projectile had come up through
4 the ceiling, we started from there and started to work
5 our way back through the attic, and every time we saw
6 a -- a cut or a break in that paper, we then would just
7 gradually feel our way in and around that insulation.
8 And we did that for several hours until that projectile
9 was found.

10 **Q** And who were the two persons that were up
11 there looking for that projectile?

12 **A** Agent Albert and I.

13 **Q** The foyer area where the bodies of Heather
14 Marsh and Marilyn Marsh were located, you described
15 those photographs and where their bodies were. Where
16 was that bullet hole in the ceiling in connection to
17 where they were?

18 **A** Probably almost right between them. Maybe as
19 you're looking at the diagram there, where you see
20 Heather, if you would -- just a little bit to the left
21 of Heather's head, you know, above that. And just a
22 short distance off of -- there's a arched entryway into
23 that living room, so it was just -- if you're facing

DIRECT/FINAMORE

1 north again, it would be just to the right of that
2 arched entryway and probably just a foot or so I would
3 estimate this side of Heather's head.

4 **Q** Okay. The kitchen area, do you recall
5 anything -- I think you indicated already that
6 Christopher, the baby, was gone when you arrived;
7 correct?

8 **A** That's correct.

9 **Q** Was there any indication of bottles or
10 anything on that counter?

11 **A** Yes, there was baby bottles over on the small
12 counter to the right of the stove.

13 **Q** And were they full? Did they have formula or
14 whatever in them?

15 **A** They were full.

16 **Q** The doorway then entering into -- and again,
17 I'm kind of working my way back out like you did. Tell
18 us about the doorway entering from the garage into the
19 dining room, family room area.

20 **A** That doorway, it's a wood door. They had at
21 some point taken the glass out of that door and put in
22 apparently a piece of plywood.

23 **Q** So you couldn't see through that door?

DIRECT/FINAMORE

1 **A** No, you could not. They had covered the
2 front -- the inside of that door with paneling that
3 matched the paneling in the room. So if you were in
4 the kitchen and looked at that wall, the door was
5 covered and almost looked like it was part of the
6 paneled wall, but the glass had been replaced with
7 wood.

8 **Q** And as far as any processing by Mr. Albert
9 with you, what was done to that door?

10 **A** He dusted for latent prints on that door and
11 also for the what appeared to be a shoe or boot
12 impression on the door.

13 **Q** And what process was used -- you've already
14 talked about lifting latent fingerprints. What process
15 is used to lift a boot print or shoe print?

16 **A** He was able to get that print to reveal
17 itself using the standard powder that he was using. So
18 it was listed just as if any other fingerprint would be
19 lifted.

20 **Q** And were there prints once the door was being
21 processed, were there prints visible -- fingerprints
22 visible on that door as well?

23 **A** Yes.

DIRECT/FINAMORE

1 **Q** The process used that you've described, was
2 that done in your presence by Bernie Albert to lift the
3 prints off of that door?

4 **A** Yes, it was.

5 **Q** Now moving to the garage door entering from
6 outside, tell us about that door. You've already
7 described the glass was broken. What was done to
8 process that door?

9 **A** Agent Albert dusted that door for prints as
10 well, and those were revealed, again, were lifted and
11 identified, marked and processed as all the lifts in
12 the home were.

13 **Q** And were you watching him do this?

14 **A** I was present with him as the assistant as he
15 was doing things. Yeah, I -- probably in this
16 proximity with him as he was going through the home.

17 **Q** You said this proximity. What proximity?

18 **A** Similar to what I am with the stenographer,
19 just being right next to each other and talking and
20 conversing as he was doing his job.

21 **Q** Okay. And the fingerprints that were lifted
22 from that door, I'm going to call that the door of the
23 garage, did you observe him lift those and place those

DIRECT/FINAMORE

1 prints onto white card stock that you described?

2 **A** Yes, I did.

3 **Q** And what did he do once those prints were
4 placed on that white card stock?

5 **A** He labeled them, dated, initialed them as he
6 did with all the prints that were taken.

7 **Q** All right.

8 **MS. DOHERTY:** Judge, may I approach?

9 **THE COURT:** You may.

10 **MR. MERANTO:** Judge, I'm going to object
11 to this point in regard to --

12 **THE COURT:** I don't know what he's going
13 to say. So you're objecting to the
14 publishing of this exhibit to the jury in any
15 fashion; is that right?

16 **MR. MERANTO:** Correct, Judge, and the
17 identification he would make. Thank you.

18 **THE COURT:** Okay. It's overruled.

19 **MR. MERANTO:** Thank you.

20 **MS. DOHERTY:** Thank you, Judge.

21 **(WHEREUPON, State's Exhibits Nos. 41A &**
22 **41B were marked for identification.)**

23 **BY MS. DOHERTY:**

DIRECT/FINAMORE

1 **Q** I'm going to hand you what I have marked as
2 State's Exhibit 41A and 41B. First of all, if you
3 could look at those and see if you recognize what they
4 are and explain that to the jury.

5 **A** Exhibit 41A would be the partial shoe or boot
6 print taken off of the -- removed from the door going
7 from the garage door into that family room/dining room
8 area.

9 **Q** And how is it that you can recognize what
10 that is?

11 **A** Agent Albert's initials, the date, and also
12 he has labeled it where it came off of was the door of
13 the house.

14 **MR. MERANTO:** Objection. Move to
15 strike.

16 **THE COURT:** Overruled.

17 **BY MS. DOHERTY:**

18 **Q** And specifically how is that door described
19 on that particular item that you're looking at?

20 **A** Door off garage.

21 **Q** And did you watch Mr. Albert put that
22 information, place that information, date, area, his
23 initials, on that particular card?

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1 **A** Yes.

2 **Q** State's Exhibit 41B?

3 **A** 41B is a -- the lifted impression off of what
4 appeared to be a boot or shoe print off of the master
5 bedroom floor.

6 **Q** And again, that appears to be -- if you can
7 describe it, that appears to be on a different type of
8 paper -- or stock. Describe what that is, the
9 difference.

10 **A** He used -- in this particular one he used the
11 standard card stock. On the one coming off the floor
12 he had put this on a clear piece of plastic.

13 **Q** All right. And --

14 **A** That's the only difference.

15 **Q** So just a different way to retrieve that
16 piece of evidence, fair to say?

17 **A** Yes.

18 **Q** And do you recognize that exhibit as well,
19 41B?

20 **A** Yes.

21 **MS. DOHERTY:** Can I approach again,
22 Judge?

23 **THE COURT:** Yes.

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1 **(WHEREUPON, State's Exhibits Nos. 43A,**
2 **43B, 43C & 43D were marked for**
3 **identification.)**

4 **BY MS. DOHERTY:**

5 **Q** I am going to hand you State's Exhibits 43A,
6 43B, 43C, and 43D. And I would ask you to look at
7 those and see if you can identify those for the jury.

8 **A** Yes. All four of these would be the lifts
9 that Agent Albert took as we proceeded through the
10 home.

11 **MR. MERANTO:** Objection. Move to
12 strike.

13 **THE COURT:** Overruled.

14 **MR. MERANTO:** Thank you, Judge.

15 **BY MS. DOHERTY:**

16 **Q** And I'm going to ask you specifically about
17 those. Describe 43A. Is there just one print on --
18 one fingerprint on there, five? What? What is it?

19 **A** 43A actually has seven lifts on this
20 particular card.

21 **Q** And how are those specific lifts and the
22 areas where they came from delineated on that card?

23 **A** They were all labeled and dated and initialed

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1 by Agent Albert.

2 **Q** And was that labeling and initialing done in
3 your presence?

4 **A** Yes, it was.

5 **Q** On 43A, describe where those particular
6 prints were lifted from.

7 **A** One print is on the bedroom door framing.
8 Another print is from the door to the guns, that closet
9 door. There's a print or prints that were taken off of
10 the top bedroom door, the inside of the top bedroom
11 door. The door off of the garage, the storm door off
12 of the garage, the door of the garage, and then another
13 one which is the door off garage.

14 **Q** And just be sure -- or just so you can
15 explain this to the jury, the door off -- described as
16 door off the garage is that back door; correct?

17 **A** That's correct.

18 **Q** Entering from outside into the garage?

19 **A** Yes.

20 **Q** And then the door of the garage is from the
21 garage into the house?

22 **A** Correct.

23 **Q** I flipped that around. You explain it. I'm

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1 wrong.

2 **A** The door off the garage is the door going
3 from the garage out to the backyard.

4 **Q** Okay.

5 **A** And the -- the door off the garage is the
6 storm door and the door going from the garage into the
7 family room.

8 **Q** Okay. And all of the prints that you've
9 described on that card, those were done in your
10 presence, witnessed by you, and placed onto that
11 particular card; correct?

12 **A** Yes, they were.

13 **Q** State's Exhibit --

14 **MS. DOHERTY:** Can I approach again?

15 **THE COURT:** Yes.

16 **BY MS. DOHERTY:**

17 **Q** I think 43B. 43B, what is that?

18 **A** 43B is a lift off of the door with the guns.

19 **Q** All right. 43C.

20 **A** 43C, there are three prints on this card.

21 Bathroom door framing, a lift off of the framing of the
22 hall shelf, and off of the front door frame.

23 **Q** All right. And you have one more exhibit

DIRECT/FINAMORE

1 there; correct? 43D?

2 **A** Yes, 43D.

3 **Q** And what is that one?

4 **A** 43D is a latent, almost a full hand print off
5 of the side of the refrigerator.

6 **Q** All right. And again, State's Exhibits 43B,
7 C, and D, were they done -- were they lifted and taken
8 as evidence in your presence?

9 **A** Yes, they were.

10 **Q** By Bernie Albert? You watched him do it;
11 correct?

12 **A** Correct.

13 **Q** And do they all indicate where they were
14 lifted from?

15 **A** Yes, they do.

16 **Q** I'm going to take you back just for a second
17 to the bedroom. You had talked about -- and that's
18 where Ben Marsh was found. I know that some prints
19 were lifted from that bedroom door. Was there any
20 blood visible on either the outside or the inside of
21 that door going into the bedroom?

22 **A** Yes, there was blood splatter there, and then
23 some of the smearing on the closet door, the gun closet

DIRECT/FINAMORE

1 door.

2 **Q** All right. So the blood spatter, was it on
3 the outside of that bedroom door and the inside?

4 **A** I know it was on the outside.

5 **Q** All right. All right. We've heard that
6 there was a dog in the house.

7 **A** Correct.

8 **Q** Did you ever see the dog?

9 **A** I did not.

10 **Q** Did you know where the dog was during all of
11 this?

12 **A** It was secured in the basement.

13 **Q** The vehicles that the Marshes had, do you
14 know what they were?

15 **A** The family vehicle was a Chevy Vega, and he
16 had a small pickup truck, but I'm not 100 percent sure
17 what the exact make of that was.

18 **Q** And was that truck still located at the
19 residence?

20 **A** The truck was, yes.

21 **Q** And where was it?

22 **A** It was in the garage, and it had a charger on
23 it. He was charging it. He was going to go to work

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1 that night. He was charging that truck battery because
2 he was having problems with it.

3 **Q** All right. And it was still hooked up?

4 **A** Correct.

5 **Q** And what about the Vega? Did you say what
6 color it is? What color was it?

7 **A** The Vega was an orange, kind of a burnt
8 orange.

9 **Q** And was that Vega present at the home?

10 **A** It was not.

11 **MS. DOHERTY:** May I approach, Judge?

12 **THE COURT:** You may.

13 **(WHEREUPON, State's Exhibits Nos. 46-48,**
14 **50 were marked for identification.)**

15 **BY MS. DOHERTY:**

16 **Q** I'm going to show you State's Exhibits 48,
17 46, 47, 50, and 51. Can you tell us, describe for us,
18 please, what those are?

19 **A** These are photos of the Marsh family Vega
20 taken at Utsinger's Towing.

21 **Q** And where was that Vega located subsequent to
22 the homicides?

23 **A** It was located abandoned in the K-mart

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1 parking lot up on Route 18 in Austintown.

2 **Q** And those photographs I think you said were
3 taken after being towed; correct?

4 **A** Correct.

5 **Q** And I guess just briefly describe what each
6 one of those are since the jury can't see them.

7 **A** Photo 48 is the right, front passenger door
8 forward to include the right, front fender portion of
9 the car.

10 46 is standing looking at the front, right
11 headlight near the front, right tire and the license
12 plate which is mounted on the front, right corner of
13 the bumper on that model year.

14 47 is a photo of the interior of the car
15 looking with the driver door open, looking into the car
16 from that perspective.

17 50 is looking into the front passenger area
18 of the car from the open right passenger door.

19 And then 51 is a photo of the right, rear
20 tire, right, rear fender in probably about
21 three-quarters of the right side passenger door.

22 **Q** Okay. And do those photographs accurately
23 reflect, other than that they're in black and white,

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1 that Vega as it was found at the K-mart plaza?

2 **A** Yes, they do.

3 **Q** All right. The blood spatter that was noted
4 in the bedroom area, tell the jury where that was. And
5 I'm not talking about the door this time. I'm talking
6 about the bedroom.

7 **A** There was a lot of spatter on the bed linens,
8 the bed, the ceiling, and again on the closet door,
9 that wall to the right of the bed.

10 **Q** The evidence that was collected from that
11 residence, I think you've already described the
12 projectiles and the fingerprint lifts. Was a weapon
13 found anywhere near Heather?

14 **A** No.

15 **Q** Was a weapon found anywhere near Ben?

16 **A** No.

17 **Q** As you observed the interior of the home, did
18 it appear to be ransacked?

19 **A** No, it did not.

20 **Q** Did it appear that anything was missing, TV,
21 anything like that?

22 **A** No, it did not.

23 **Q** You've talked about the actual collecting of

DIRECT/FINAMORE

1 the fingerprints and the shoe prints. Was any analysis
2 done at that time?

3 **A** At that time, no.

4 **Q** All right. Any comparisons done? I mean,
5 I'm talking about just at the house.

6 **A** Just at the house, probably the only one was
7 the foot impression in the bedroom, visually appeared
8 to be like the foot impression on the door. That
9 was -- that was probably the only discussion of
10 anything being comparable.

11 **Q** Okay. But the whole point of collecting that
12 evidence is that it can then go to BCI to be analyzed
13 by an expert; fair to say?

14 **MR. MERANTO:** Objection.

15 **THE COURT:** That's sustained. You're
16 not testifying.

17 **BY MS. DOHERTY:**

18 **Q** Tell us what the point is.

19 **A** The point of collecting the evidence is to
20 secure it for future analysis, and sometimes you have
21 to wait until you have a known to compare it to. So it
22 is filed. Some things may be analyzed immediately if
23 there is enough comparable evidence there to link one

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1 piece to another, but that is all done from experts in
2 the lab.

3 **Q** All right. And each print that you
4 identified, Agent Albert noted on each one of those
5 individually, correct, where they came from?

6 **A** Yes. Correct.

7 **Q** Have you had the opportunity to see the home
8 and the area in Canfield where this occurred recently?

9 **A** Yes, I have.

10 **Q** How has the area surrounding the home, I
11 guess, changed, if that's a fair question?

12 **A** Well, across the road from the home now there
13 are probably three or four residences that were not
14 there at the time. The home at the time, the south,
15 the west, and the north edge of the properties had pine
16 trees. Those pine trees I would estimate back in
17 the -- at that day were about as high as the wood
18 paneling in this room. Today they're probably as tall
19 as the ceiling in this room with 30 some years of
20 growth. The door to the garage from the -- going out
21 to the backyard there, that door has been -- it's the
22 same door. The glass has been replaced. But it has
23 been sided over. They went ahead and negated that door

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1 when they resided it. So from in the garage, it's
2 basically a door to nowhere. If you would go out to
3 the back of the house, you would just see a garage -- a
4 sided garage wall now.

5 **Q** Let me ask you this; I guess I've sort of
6 described that house as kind of desolate out there
7 where it was in Canfield at that time. Would that be
8 fair to say?

9 **A** Yes, at that time it pretty much was somewhat
10 of a freestanding home with a lot of acreage on both
11 sides of it from across the street.

12 **MS. DOHERTY:** Can I approach, Judge?

13 **THE COURT:** Yes.

14 **BY MS. DOHERTY:**

15 **Q** I'm going to show you what's been marked as
16 State's Exhibit 24. Can you tell the jury what that
17 is?

18 **A** Yes. This would be a photo of Mr. Marsh at
19 the coroner's office.

20 **Q** And State's Exhibit 30.

21 **A** This would be -- 30 would be a photo of
22 Marilyn Marsh at the coroner's office.

23 **Q** And State's Exhibit 34?

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1 **A** 34 is a photo of Heather at the coroner's
2 office.

3 **Q** And do those photographs -- I realize they
4 were just face shots, but do they represent as the same
5 people that you witnessed and saw in that home
6 deceased?

7 **A** Yes, they do.

8 **Q** Other than what you have described in
9 processing the scene, did you further investigate this
10 case in any way?

11 **A** Just about everybody assisted in some way. I
12 mean, for multiple years.

13 **MR. MERANTO:** Objection.

14 **THE COURT:** He isn't really saying
15 anything. The question was -- the answer's
16 not responsive to the question, so the
17 objection's sustained.

18 **MS. DOHERTY:** I'll withdraw it, Judge.
19 Thank you. I have nothing further.

20 **THE COURT:** Mr. Meranto.

21 **MR. MERANTO:** Thank you, Judge.

22 **CROSS EXAMINATION**

23 **BY MR. MERANTO:**

CROSS/FINAMORE

1 **Q** Good morning, Mr. Finamore. You remember I'm
2 Tony Meranto. I'm going to ask you some questions. If
3 you want me to repeat something, straighten it out,
4 just let me know; okay?

5 **A** Yes, sir.

6 **Q** The state pointed out you've had a long law
7 enforcement career; correct?

8 **A** Yes, sir.

9 **Q** But in 1974, just clear it up for me again,
10 what was your training and education at that point?

11 **A** I would've been -- had approximately two
12 years of criminal justice with the Youngstown State
13 University. I had the basic police officer training
14 course.

15 **Q** Okay. And let's talk about that OPATA
16 training. You say it was a 300-hour course?

17 **A** Correct.

18 **Q** That's standard law enforcement course;
19 correct?

20 **A** Correct.

21 **Q** Tell me specifically how many hours involved
22 the collection of evidence at a crime scene.

23 **A** I don't recall exactly the length of that

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1 particular course.

2 **Q** Okay. Tell me specifically how much time was
3 spent training you to process the crime scene
4 specifically for latent prints.

5 **A** Probably several hours, I would guess.

6 **Q** Okay. Any specific training manuals or
7 anything that you recall that they used or that you
8 used specifically in your training regarding those
9 issues?

10 **A** I recall using standard fingerprint supply,
11 fingerprint cards where we both took turns lifting
12 prints, and we took turns rolling each other's prints.

13 **Q** Okay. I believe also you stated that you
14 were an intern for a period of time?

15 **A** College intern from the fall quarter of '72.

16 **Q** So you were interested and wanted to try and
17 learn; is that correct?

18 **A** Yes.

19 **Q** Okay. So on this evening of December 14th,
20 in 1974, you were not called to that scene; correct?

21 **A** No, I was not.

22 **Q** You called and asked if you could go there
23 and assist?

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1 **A** I asked if assistance was needed, correct, in
2 the conversation I had when I called in.

3 **Q** So you basically -- by the way, did you work
4 that day? Tell me about that day and what you did up
5 to that point.

6 **A** No. Actually, March of that year, my parents
7 relocated to Nashville, Tennessee. And that would've
8 been -- it was their first return trip home for the
9 holidays. I was at my grandmother's house with my
10 parents for dinner, and I called in from my
11 grandmother's home in Struthers.

12 **Q** Okay. Were you required to call in?

13 **A** No. I would just call in and see if maybe
14 the detectives were out, and I would join them
15 sometimes just for coffee.

16 **Q** You were an aggressive, anxious guy with
17 regard to law enforcement, you wanted to be in the
18 loop? Fair to say?

19 **A** I was willing to learn, yes.

20 **Q** And you're learning, we agree, at that point?

21 **A** Sure.

22 **Q** So you go out to the scene, and you say
23 Detective Nemeth is running the show pretty much?

CROSS/FINAMORE

- 1 **A** Him and Lieutenant Crater, yes.
- 2 **Q** Okay. So Lieutenant Crater was there also?
- 3 **A** At one point.
- 4 **Q** Tell me everybody that was there at the scene
5 with regard to law enforcement.
- 6 **A** Lieutenant Crater --
- 7 **Q** And their rank, if you know.
- 8 **A** Lieutenant Crater, Detective Nemeth, Sergeant
9 Hunt, and Deputy Catheline and Chance were just --
10 shortly after I got there they went back on patrol.
- 11 **Q** Okay. Do you know how long detective -- or
12 excuse me, Deputies Catheline and Chance had been on
13 the department, if you know?
- 14 **A** At that time I'm gonna say they had three,
15 four years on. They came on the department probably
16 about the same time, early '70s.
- 17 **Q** So is it fair to say you're the person with
18 the least experience there at the crime scene?
- 19 **A** I was there with the least amount of
20 seniority, yes.
- 21 **Q** No rank and the least amount of seniority?
- 22 **A** Correct.
- 23 **Q** Okay. And when you got there, I believe you

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1 recall testifying at another hearing; right?

2 **A** Yes.

3 **Q** And I believe you stated you got briefed on
4 the case. Tell me exactly what that entailed.

5 **A** We just discussed, I mean, just an extremely
6 extensive crime scene. I think it was an extensive
7 crime scene for all of us there. There was just a lot
8 of discussion of what a serious crime this was and
9 how -- and the magnitude. You just don't find three
10 bodies every day. So there was a lot of discussion of
11 motive and how could you beat a four-year-old to death.
12 What would be the motive? So there was just a lot of
13 discussion because of the serious nature of the house.

14 **Q** And your involvement in the discussion, I
15 mean, you're a listener? You provide any information?
16 Are they asking your advice?

17 **A** No. It was just a general discussion.

18 **Q** Now, you arrive at 9:30; correct?

19 **A** Approximately 9:30, yes.

20 **Q** And there's four or five of you guys there.
21 Is anybody beginning to process the crime scene?

22 **A** No.

23 **Q** Why not?

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1 **A** Because my understanding at that time, they
2 were waiting for BCI to come.

3 **Q** Well, your understanding. Let me ask you,
4 are you involved in this, or are you just kind of
5 standing around watching what's going on? Because
6 sometimes you say, well, we did this, and now it seems
7 to me you're saying --

8 **MS. DOHERTY:** Your Honor, I object.

9 **THE COURT:** He can answer the question.

10 It's overruled.

11 **BY MR. MERANTO:**

12 **Q** So, I mean, why are you not processing the
13 crime scene?

14 **A** Because BCI was called to do that.

15 **Q** Okay. Why was BCI called?

16 **A** Because that's what they do.

17 **Q** Okay. You guys don't process crime scenes?

18 **A** Of that magnitude, no.

19 **Q** Well, what magnitude do you process? What
20 level do you process?

21 **A** Not to minimize it, but I would say routine
22 burglaries, property crimes.

23 **Q** So the evidence isn't as important in a

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1 burglary as it is here? Explain the difference.

2 **MS. DOHERTY:** Objection.

3 **THE COURT:** Overruled.

4 **BY MR. MERANTO:**

5 **Q** Go ahead. Explain to me the difference. I
6 don't understand. I mean, evidence is evidence;
7 correct?

8 **A** Correct.

9 **Q** I mean, a fingerprint if I steal this
10 projector is the same as a fingerprint if I stab the
11 bailiff; is it not?

12 **A** Correct.

13 **Q** Okay. So explain to me the difference about
14 why one's serious, why one's not, and why BCI has to
15 come to this crime scene.

16 **A** Because the nature of the crime. The
17 penalties, the seriousness, the amount of analysis. It
18 cuts down the chain of evidence. It puts it directly
19 into the lab's hands. And basically we just allow them
20 to handle and treat it the way they know their lab
21 technicians want to do it.

22 **Q** Okay. Let's stop there. Let's try and
23 handle those things one thing at a time. The

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1 penalties, what in the world -- what are you even
2 talking about, the penalties? How do they affect the
3 decision on whether or not BCI is called to these
4 crimes?

5 **MS. DOHERTY:** I object.

6 **THE COURT:** Overruled.

7 **A** If I have a burglary or a theft from an
8 unoccupied structure or home, that is a -- for maybe
9 lack of better words -- a simple burglary, property
10 crime. We aren't dealing with three deaths.

11 **Q** Okay. So your deputy in 1974 worked for
12 Mahoning County Sheriff's Department; correct?

13 **A** Yes.

14 **Q** And it's your statement that anybody
15 burglarize or theft, not an important crime, not
16 serious enough to call BCI for?

17 **MS. DOHERTY:** I object.

18 **THE COURT:** Overruled.

19 **A** BCI doesn't have the manpower to come out on
20 every single property crime.

21 **Q** So do you guys just ignore them then? Do you
22 just ignore those other crimes?

23 **A** No. We would try to secure the evidence the

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1 best we can and turn that over to the investigative
2 bureau.

3 **Q** But you're not competent to do so; right?
4 You just said that.

5 **MS. DOHERTY:** Objection.

6 **THE COURT:** Overruled.

7 **A** I would be very qualified to take
8 fingerprints.

9 **Q** Okay. You were very qualified to take them.
10 So tell me now why it's 9:30 and you wait till 11:00 to
11 start processing the crime scene.

12 **A** Because the detective and Lieutenant Crater
13 made that decision.

14 **Q** Okay. So they just said we're not going to
15 process these crimes?

16 **A** Correct. They called BCI.

17 **Q** But you're qualified to do it. Why didn't
18 they have you do it?

19 **A** Because they chose to have BCI do it.

20 **Q** Same with Deputy Chance then; right? He's
21 not qualified?

22 **A** He would've been qualified to lift prints,
23 yes.

CROSS/FINAMORE

1 **Q** Deputy Catheline also qualified?

2 **A** Sure.

3 **Q** And what about the sergeant? Sergeant Hunt's
4 there; right?

5 **A** He would've been.

6 **Q** He's qualified, too?

7 **A** He would've been.

8 **Q** And you got a lieutenant and a detective
9 there, they're qualified to do it?

10 **A** That's correct.

11 **Q** But nobody does it?

12 **A** BCI did it.

13 **Q** Nobody from the Sheriff's Department?

14 **A** No, they did not.

15 **Q** Okay. Now -- by the way, how many times have
16 you taken prints in the course of your long year and a
17 half year at that point in time?

18 **A** Well, in our prior discussion, the number
19 that we I guess agreed to last time would've been
20 probably 20 to 30.

21 **Q** I didn't agree to it. Is that what it is?

22 **A** You asked me to make a number. I testified
23 that it would be hard to determine, and you tried to

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1 get me to pin down a number, and I estimated it to be
2 20 to 30.

3 **Q** Well, in that year and a half that you were a
4 deputy, how many times were you called to a crime scene
5 because of your expertise?

6 **A** I was called to a crime scene because I was a
7 deputy certified to respond numerous times.

8 **Q** So does that mean that you were never called
9 to a crime scene to process evidence?

10 **A** We went to crime scenes and processed
11 evidence routinely. We were sent there, and we would
12 make the decision to process the evidence. Sometimes
13 we would call the detective squad. They would come out
14 and process it. And then there's times that BCI would
15 process it.

16 **Q** Okay. Mr. Finamore, I'm going to ask you
17 this question again, please. Listen. How many times
18 during your year and a half leading up to this incident
19 that you were on the Sheriff's Department were you
20 asked to process evidence at a crime scene?

21 **A** By nature of being sent to a crime scene, a
22 burglary, a robbery, a theft, I would be -- I would
23 make numerous decisions to process that evidence on

CROSS/FINAMORE

1 probably a daily basis.

2 **Q** Mr. Finamore, I'm not being -- you are
3 educated and went to college?

4 **A** Yes.

5 **Q** English is your first language; right?

6 **MS. DOHERTY:** Objection.

7 **THE COURT:** Overruled.

8 **Q** Yes?

9 **A** Yes, it is.

10 **Q** Okay. I'm going to ask you this question one
11 more time. How many times in the year and a half that
12 you're a deputy, in the department, up to this
13 incident, were you specifically called to a crime scene
14 to process any evidence?

15 **A** Every time I was sent to a property crime.

16 **THE COURT:** Okay. I want you to answer
17 the question. It's a simple question. How
18 many times were you directed by the
19 department to go to a crime scene and process
20 the scene?

21 **THE WITNESS:** As a deputy I was never
22 asked to come and play the role of a
23 detective or a crime scene agent, no.

CROSS/FINAMORE

1 **BY MR. MERANTO:**

2 **Q** So that would be never; right? Zero?

3 **A** Playing that role, never. Zero.

4 **Q** Because that wasn't your role; correct?
5 You're not a crime scene guy?

6 **A** I would not be considered a crime scene
7 technician, no.

8 **Q** Right. I mean, you've got a three couple
9 hours during your OPATA training, that's it; right?

10 **A** At that point.

11 **Q** You taken -- well, that's the point we're
12 talking about, isn't it, in 1974? I mean, it's great
13 what you did after, but you would agree what you
14 learned after didn't help you in 1974 on December 14th,
15 did it?

16 **A** It would not have, no.

17 **Q** It didn't, not would not have. Didn't help
18 you, did it? Couldn't help you?

19 **A** It did not.

20 **Q** Okay. Lieutenant Crater still alive?

21 **A** No, he's not.

22 **Q** Detective Nemeth still alive?

23 **A** No, he's not.

CROSS/FINAMORE

1 **Q** Sergeant Hunt?

2 **A** No, he is not.

3 **Q** Well, gee, you happen to be the only guy
4 that's alive that happened to be at that crime scene
5 that night; correct?

6 **A** Phil Chance would still be alive.

7 **Q** Phil Chance, wasn't he convicted of a crime?

8 **MS. DOHERTY:** Objection.

9 **THE COURT:** Overruled.

10 **A** Yes, he was.

11 **Q** So you've never been convicted of a crime;
12 right? You've got a pretty good, distinguished law
13 enforcement career, don't you?

14 **A** Uh-huh.

15 **Q** And you were at the crime scene; right?

16 **A** Yes.

17 **Q** And basically you were breathing then, you're
18 still breathing now, and you're here to testify today;
19 correct?

20 **A** Yes.

21 **Q** Okay. So now that you got through all that
22 experience that you have, tell me -- and by the way,
23 you volunteered to go to this crime scene; correct?

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1 **A** I asked if they needed help, and they said
2 sure.

3 **Q** I got you. But your phone didn't ring, and
4 they said, hey, we need some help out here, come on
5 out?

6 **A** No.

7 **Q** Okay. So you volunteered to go out there,
8 and you get there, and it's 9:30, and you guys
9 discussed the crime scene, and you're waiting until
10 11:00 because BCI's coming there; right?

11 **A** Yes, sir.

12 **Q** So can we agree that basically nobody on the
13 Sheriff's Department has got enough experience or
14 qualifications at that point that they don't even want
15 to risk anybody else messing with that crime scene
16 until BCI gets there? Is that fair to say?

17 **MS. DOHERTY:** I object.

18 **THE COURT:** If you're going to object,
19 you need to stand, and you need to quit
20 gesturing when you don't agree with the
21 questions and answers that are given.

22 **MS. DOHERTY:** I object.

23 **THE COURT:** It's overruled. And if you

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1 react again the way that you've been, then
2 I'm going to do something about it. Sorry.
3 Go ahead, Mr. Meranto.

4 **MR. MERANTO:** Thank you, Your Honor.

5 **BY MR. MERANTO:**

6 **Q** So I'm going to ask you again, nobody there
7 at the crime scene is qualified to process this scene,
8 and that's why the decision is made to wait for BCI; is
9 that not correct?

10 **A** I would say that's not correct.

11 **Q** Okay. Well, tell me about everybody else's
12 qualifications, because we've already gone through
13 yours. You admit your qualifications exist of -- or
14 excuse me, consist of a couple hours during OPATA
15 training; is that correct?

16 **A** Yes.

17 **Q** Okay. So those are your qualifications.
18 Tell me about anybody else there at the scene.

19 **A** I mean, they had four -- four or five years
20 on. Sergeant Hunt had numerous years on. Detective
21 Nemeth had numerous years. They've been to a lot of
22 different training, a lot of specialized training as
23 detectives, Lieutenant Crater did.

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1 **Q** Tell me about Detective Crater -- Crater,
2 tell me specifically all the training he had.

3 **A** Well, I just know that they -- we actively
4 sent officers to Youngstown State, Kent State.
5 Subsequent to this event I think I had 30 some
6 certificates from the Northeast Law Enforcement School,
7 Kent State. So how many of those schools they went to,
8 I know the -- I know they actively did in-service type
9 training and those kind of specialized schools. So I
10 can't tell you exactly how many certificates they have.

11 **Q** Well, in your year and a half they're
12 obviously -- are these guys calling you regularly and
13 asking you, like, hey, Deputy Finamore, you think I
14 should take this seminar, you think I should get this
15 training? I mean, are they discussing this with you,
16 their education and all that?

17 **A** We discussed a lot of that over lunch and
18 coffee a lot of times.

19 **Q** Okay. You're the go-to guy there, right, is
20 that it, after a year and a half?

21 **A** I never said that.

22 **Q** Yeah. Okay. So everybody's obviously
23 massively qualified to process this scene, but yet you

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1 guys are all there talking, and you wait for an hour
2 and a half until Bernie Albert arrives; correct?

3 **A** Yes.

4 **Q** And you say that you are specifically
5 requested to assist in the collection of the evidence,
6 huh? Right? Yes?

7 **A** I was asked to go ahead and assist Agent
8 Albert; correct.

9 **Q** And I believe that you said specifically to
10 get his equipment and provide lighting and move stuff
11 if you had to?

12 **A** Correct.

13 **Q** Well, I mean, why -- why didn't -- you know,
14 this is important; right? You only have a year and a
15 half in. Why didn't Detective Nemeth or Lieutenant
16 Crater want to carry the lights or move the furniture
17 for Mr. Albert? Why do you think that is?

18 **MS. DOHERTY:** Objection.

19 **THE COURT:** He can answer if he knows.

20 **A** They were busy doing other things. They
21 were -- at the time they were trying to get information
22 on the car, to attempt to locate on the car out. So
23 they were doing a lot of other investigative actions at

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1 the time.

2 **Q** Let's talk about everything that they were
3 doing. Tell me about what they were doing. Wait.
4 Strike that. You're there from 9:30 until I believe
5 you testified 7:30 or 8:00 a.m. the next morning;
6 correct?

7 **A** That's correct.

8 **Q** Lots of things to do there; right?

9 **A** Yes.

10 **Q** Until 9:30 -- from 9:30 to 11:00 you're
11 really not doing anything. You're talking about, gee,
12 what could've happened, what might have happened;
13 right?

14 **A** Correct.

15 **Q** And by the way, nobody knows what happened;
16 correct?

17 **A** There's probabilities. We discussed
18 probabilities.

19 **Q** There's probabilities. Once again, I'm going
20 to ask you, do you know what happened there?

21 **A** I know three people were beaten and shot.

22 **Q** There you go; okay? That's all you know;
23 correct? Yes?

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1 **A** Yes.

2 **Q** Okay. So from 9:30 to 11:00, nothing much
3 going on; right? What's going on from 9:30 to 11:00?
4 Tell me.

5 **A** A lot of assessment of the crime scene.
6 Again, trying to find information on the car, trying to
7 get -- trying to get a handle on the background
8 information on the family. Trying to get information
9 on the family. They had their coats on. Where would
10 they have been coming from? So they were just starting
11 to do a lot or -- trying to answer a lot of questions
12 that were obvious.

13 **Q** And tell me specifically, what were you doing
14 then from 9:30 to 11:00? Which one of those things,
15 what task, what duties were you given from 9:30 to
16 11:00?

17 **A** Specific duty? None that I can think of.

18 **Q** None. Okay. All right. So at 11:00
19 Mr. Albert arrives, and I believe you say you walked --
20 no. Who walked him through the crime scene?

21 **A** Detective Nemeth and I. I know Sergeant Hunt
22 was still there at the time. We had introduced
23 ourselves, and obviously he wanted to know what we had,

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1 and so we said, well, you know, we'll walk you through,
2 and we'll show you.

3 **Q** You're telling him what you had at the crime
4 scene; is that your testimony?

5 **A** It was collectively.

6 **Q** Collectively?

7 **A** We walked through.

8 **Q** Collectively. Well, collectively, who said
9 specifically what, or were you guys all talking in
10 unison like a choir?

11 **A** I can't recall exactly.

12 **Q** You can't recall?

13 **A** Specifically what -- what every word that
14 Detective Nemeth would say or I would say or Sergeant
15 Hunt would say.

16 **Q** You can't recall specifically; right?

17 **A** No.

18 **Q** So tell me what Mr. Albert did initially.

19 **A** Mr. Albert?

20 **Q** Yes. Because you're with him the whole time;
21 right?

22 **A** He got his equipment out, and he has his
23 fingerprint equipment, his bags, envelopes, things he

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1 put the evidence in, and he started processing the
2 scene.

3 **Q** What's a glassine bag?

4 **A** A plastic bag, like a Ziploc baggie to secure
5 it.

6 **Q** Just a baggie; right? Glassine makes it
7 sound good, but it's just a baggie; right?

8 **A** A clear, plastic bag.

9 **Q** So you start back here and work your way
10 forward; right?

11 **A** Yes.

12 **Q** And he is there from 11:00 until 7:30, 8:00
13 in the morning?

14 **A** He left a little bit before I did. Him and
15 Detective Nemeth went to process the car at Utsinger's
16 Towing.

17 **Q** By the way, let's talk about that. You
18 worked with Mr. Albert all night; correct?

19 **A** Yes.

20 **Q** Okay. Did Mr. Albert work that day?

21 **A** Before he came?

22 **Q** Yeah.

23 **A** My recollection is he came from his home.

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- 1 **Q** Where did he live?
- 2 **A** Northeast Ohio somewhere.
- 3 **Q** Somewhere in northeast Ohio?
- 4 **A** Yes.
- 5 **Q** Okay. Well, had he worked previously to
6 coming from his home? Because he was coming at night.
7 I mean, did he work that day?
- 8 **A** I don't know.
- 9 **Q** Do you know if he took a nap that day?
- 10 **A** Did not.
- 11 **Q** So, I mean, he could've been working 24 hours
12 before he got to that crime scene? You have no idea;
13 right?
- 14 **A** No, I don't.
- 15 **Q** You guys working so closely you obviously got
16 to know each other. You didn't talk the six hours?
- 17 **A** Sure we did.
- 18 **Q** But you don't know any of those questions I
19 just asked you?
- 20 **A** Not that I recall.
- 21 **Q** Okay. So how many cases was Mr. Albert
22 working on at the time he came to that crime scene?
- 23 **A** I would have no idea.

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- 1 **Q** Did he have case files with him in addition
2 to the equipment and stuff?
- 3 **A** Not that I saw.
- 4 **Q** Not that you saw, or you don't know?
- 5 **A** I wouldn't know.
- 6 **Q** Did you look?
- 7 **A** I would not -- I had no reason to look in his
8 car.
- 9 **Q** Did you ask him?
- 10 **A** No.
- 11 **Q** You didn't ask him about any other cases he's
12 working on?
- 13 **A** No.
- 14 **Q** So he could have -- he might be a guy who
15 keeps all his files in the car; you don't even know
16 that?
- 17 **A** No, I do not know that.
- 18 **Q** Do you take him through the crime scene
19 first, or does he get all his equipment?
- 20 **A** No. We had walked through and showed him
21 where everything -- where we thought there was
22 evidence.
- 23 **Q** Once again, you showed him?

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1 **A** Collectively we showed him.

2 **Q** Collectively you showed him. I got you.
3 Collectively. Really, I'm going to ask you this right
4 now, is it fair to say you're basically just tagging
5 along there at the investigation at that point?

6 **A** No.

7 **Q** You're an integral part of this
8 investigation?

9 **A** I was playing the role I was asked to play,
10 and that was to assist Agent Albert as much as I can.

11 **Q** Carry his bag, light the way, and move the
12 furniture?

13 **A** Assist him in any way that he needed, yes.

14 **Q** All right. So you take him through the crime
15 scene collectively, and then did you go out and carry
16 his equipment in for him?

17 **A** No.

18 **Q** You didn't?

19 **A** I don't recall being in his vehicle at all.

20 **Q** Excuse me?

21 **A** No, I don't recall being in his vehicle at
22 all. I had no reason to go in his vehicle.

23 **Q** Okay. So he goes and gets his equipment?

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- 1 **A** Yes.
- 2 **Q** How many trips did it take him to the car to
3 get his equipment?
- 4 **A** Throughout the night he went in and out
5 several times.
- 6 **Q** So you weren't with him the whole time?
- 7 **A** 100 percent of the time, no.
- 8 **Q** Excuse me?
- 9 **A** No, not 100 percent of the time.
- 10 **Q** Okay. So what percent of the time were you
11 with him?
- 12 **A** I'd say probably 85 percent.
- 13 **Q** Eighty-five percent? Sure about that?
- 14 **A** That would be the best I could estimate.
- 15 **Q** Okay. And once again, I haven't been
16 provided -- where are your notes from that night?
- 17 **A** I have no notes.
- 18 **Q** You didn't take any notes?
- 19 **A** No, sir.
- 20 **Q** They teach you that at OPATA, to take notes
21 at a crime scene?
- 22 **A** That wasn't my role at that particular night.
- 23 **Q** Wasn't your role?

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1 **A** No.

2 **Q** Well, I thought your role was to assist in
3 the processing of the crime scene?

4 **A** That's correct.

5 **Q** And you don't think it was proper to take
6 notes or to document anything that you did that night?

7 **A** Detective Nemeth was documenting everything,
8 and Agent Albert documents what he needed to do as his
9 role as the crime scene technician.

10 **Q** So wait a minute now. You're telling me
11 Detective Nemeth documents the entire processing of
12 this crime scene?

13 **A** Detective Nemeth was the lead detective on
14 that case.

15 **Q** I got it. And you just said that he
16 documented everything at the crime scene. Isn't that
17 what you just said?

18 **A** From a note perspective, Detective Nemeth
19 took the notes for that crime scene, for that case.

20 **Q** Well, now, okay, I want to clear this up.
21 This is a serious crime scene. You said it; right?

22 **A** Yes.

23 **Q** Serious. Not like these other -- someone

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1 just gets their house robbed or anything, not a big
2 deal. But this is a big deal; correct?

3 **A** Yes.

4 **Q** So you just said Detective Nemeth took notes
5 at the scene when I asked you that specifically, and
6 now you're saying there are case notes. So explain to
7 me the difference, because I want to know.

8 **A** Detective Nemeth when he was called in as the
9 detective assigned to that case, from the point the
10 officers take the initial complaint and turned it over
11 to Detective Nemeth, he then documented the
12 investigative action.

13 **Q** Okay. So you don't mean he documented
14 specifically what was going on at that scene?

15 **A** He documented what was being done by the
16 Sheriff's Department.

17 **Q** Okay. So I don't have any crime scene notes.
18 So basically what you're saying is the Sheriff's
19 Department then did nothing at that crime scene?

20 **A** As far as processing it, no.

21 **Q** No. Okay. So the Sheriff's Department had
22 nothing to do with processing that crime scene?

23 **A** Other than photos. The only thing was

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1 photos.

2 **Q** Photos. Let's talk about the photos. Take a
3 look at what the state gave you as No. 1 and No. 2.

4 **MS. DOHERTY:** He doesn't still have
5 them, Tony.

6 **MR. MERANTO:** I'm sorry. I apologize.
7 I thought you kept those. Your Honor, may I
8 approach the witness, please?

9 **THE COURT:** You may.

10 **MR. MERANTO:** Thank you.

11 **THE COURT:** We need to take a recess
12 when it's a good time.

13 **MR. MERANTO:** Now would be fine, Your
14 Honor, if it's okay with you.

15 **THE COURT:** All right. That's fine.
16 All right. Ladies and gentlemen, we're going
17 to take a morning recess at this time. I
18 would remind you please during your absence
19 from the courtroom not to discuss the case at
20 all among yourselves or with anyone else.
21 Please do not allow anyone to discuss the
22 case with you or in your presence. You must
23 not form or express any opinion about the

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1 case until it is finally submitted to you.
2 We will be in recess. We'll be back in the
3 courtroom at 10:30.

4 **(WHEREUPON, a brief recess was had,**
5 **after which the proceedings continued as**
6 **follows, outside the presence of the jury:)**

7 **THE COURT:** Defense counsel wishes to
8 make a motion?

9 **MR. MERANTO:** Yes, Judge. At this point
10 in time, this witness, Mr. Finamore, just
11 testified --

12 **THE COURT:** You folks can be seated.
13 There's no reason for you to stand.

14 **MR. MERANTO:** This witness has just
15 testified and answered in the affirmative
16 that nobody at the Sheriff's Department was
17 qualified to process that scene. As such, I
18 believe the state is unable to proceed with
19 regard to laying the proper foundation to
20 testify further and to admit the evidence
21 with regard to the fingerprints into
22 evidence.

23 **THE COURT:** Overruled.

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1 **MR. MERANTO:** Thank you.

2 **THE COURT:** All right. Bring the jury
3 in.

4 **(WHEREUPON, the jury returned to the**
5 **courtroom, and the proceedings continued as**
6 **follows:)**

7 **THE COURT:** Mr. Meranto, you may
8 continue.

9 **MR. MERANTO:** Thank you, Your Honor.

10 **BY MR. MERANTO:**

11 **Q** Okay, Mr. Finamore. I have handed you what
12 have been marked as the State's Exhibits No. 1 and 2.
13 Once again, could you just tell the jury what those
14 are?

15 **A** One is the photo of the door from the
16 backyard into the garage taken from the backyard.
17 Photo 2 is a picture of that same door taken from the
18 inside of the garage.

19 **Q** Okay. And I believe I asked you what the
20 Sheriff's Department did in regard to processing that
21 scene, and that's why the reason these photos came up.
22 I think you said that, well, we took some photographs;
23 right?

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1 **A** Correct.

2 **Q** Did you, in fact, take these photographs?

3 **A** I did not.

4 **Q** Do you know who took them?

5 **A** Detective Nemeth took some photographs, and I
6 also observed Sergeant Hunt taking some photographs.

7 **Q** Okay. So you don't even know who took the
8 photographs?

9 **A** No, I do not.

10 **Q** Okay. Look at that first photo, State's No.
11 1, because I just have a question. I mean, you testify
12 there's, like, one set of footprints going back to that
13 door. Is that what you testified to on direct?

14 **A** Yes.

15 **Q** All right. Well, what's at the bottom, right
16 corner of that picture? That don't look like there's
17 footprints there in the snow?

18 **A** There's impressions. I can't tell what those
19 are.

20 **Q** They look like footprints, though, don't
21 they?

22 **A** I can't say that.

23 **Q** You can't tell. Okay. What about to the

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1 left of that -- I don't know. There's a trench there
2 on your left. It looks like there's footprints over
3 there, too; correct?

4 **A** The snow's disturbed. I can't tell what
5 those are.

6 **Q** The snow's disturbed. You don't recall then
7 actually, do you?

8 **A** No.

9 **Q** Yes? No?

10 **A** No.

11 **Q** Okay. Now, you got another picture, State's
12 Exhibit No. 2, and that's, like, from inside the garage
13 looking at that door, and it's open; correct?

14 **A** Yes, sir.

15 **Q** Okay. Now, let's get into your observations
16 for a little bit before we get into this fingerprint
17 issue. You say there's prints kicking the door in.
18 Where are those? Footprints, rather, not fingerprints.

19 **A** It was on the door going from the garage into
20 the family room.

21 **Q** Okay. So there's nothing out here, just to
22 be clear?

23 **A** That is not the door, no.

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1 **Q** Okay. Now, were you with -- strike that.
2 Can you take me through the crime scene and tell me --
3 once again, we were talking about what equipment
4 Mr. Albert had. Tell me about it.

5 **A** He had his fingerprint brushes, powder.
6 Again, bags, lifting tape, lifting cards, camera.

7 **Q** Okay. And once again, in those couple hours
8 of training, they teach you about different powders,
9 different brushes, what the contents are, or is it fair
10 to say you have no idea what the powder was or what
11 kind of powder?

12 **A** No. There's several different kinds of
13 powder. There's a standard dry powder. There's a
14 magnetic powder. There are fluorescent powders. There
15 are coarser brushes. There are feather brushes.
16 That's the standard fingerprint lifting equipment.

17 **Q** Well, is it horse hair? Was it feather?
18 I've got four or five dozen I can show you. Do you
19 know what kind of brush it was?

20 **A** It was a hair brush rather than the feather
21 type brush.

22 **Q** A hair brush?

23 **A** Yes.

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1 Q What kind of hair? Do you know?

2 A They were generally horse hair. I don't know
3 specifically for that brush he had in his hand at that
4 moment.

5 Q You didn't discuss that with Mr. Albert?

6 A I had no reason to.

7 Q You had no reason to discuss what he was
8 using in the collection of the evidence?

9 A I did not.

10 Q Because you already know all about that stuff
11 from that couple hours in OPATA; right?

12 A It's his equipment.

13 Q All right. So you go through the house
14 and --

15 **MR. MERANTO:** How do I turn this back
16 on? I'm not technical. Thank you.

17 **BY MR. MERANTO:**

18 Q You go through the house collectively, right,
19 with Mr. Albert?

20 A Yes.

21 Q And then you're going to help him out; right?

22 A Yes.

23 Q And you're specifically ordered to assist

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1 him; right?

2 **A** I wasn't ordered. I was just asked to go
3 ahead and work with him.

4 **Q** Okay.

5 **MR. MERANTO:** May I approach the
6 witness, Your Honor?

7 **THE COURT:** You may.

8 **(WHEREUPON, Defendant's Exhibit O was**
9 **marked for identification.)**

10 **BY MR. MERANTO:**

11 **Q** I'm going to hand you what's been marked as
12 Defense Exhibit O. You don't have to look at that for
13 the moment. Did you ever have a chance to review any
14 of the notes or anything in this case?

15 **A** Yes.

16 **Q** And your name appears regarding the
17 extraction of a bullet from the roof -- or from the
18 ceiling; correct?

19 **A** Yes.

20 **Q** And you stated that you guys saw a hole, so
21 you went up into the attic, and you rooted around there
22 for quite a while?

23 **A** Yes.

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1 **Q** And found a slug?

2 **A** Correct.

3 **Q** Anywhere in the stuff you reviewed, anywhere,
4 does it say that you were assigned to assist in the
5 collection of evidence with Mr. Albert, other than what
6 we just talked about?

7 **A** No.

8 **Q** Does it say anywhere in any of the notes that
9 you assisted, not even that you were assigned to, but
10 that you assisted in the collection of evidence
11 anywhere other than where we just said?

12 **A** There was another notation of where several
13 months later we went and recovered bullets that were
14 found in a car out on Route 18. I went out with
15 Sergeant Reichman.

16 **Q** Several months later?

17 **A** Yes. I think it was in March.

18 **Q** Nothing with regard to that night at that
19 crime scene; correct?

20 **A** No, sir.

21 **Q** Okay. So it's your testimony, though, that
22 that was your duty?

23 **A** Correct.

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1 **Q** And we don't have Lieutenant Crater here to
2 verify that; correct?

3 **A** No.

4 **Q** Or Detective Nemeth?

5 **A** No, he's not.

6 **Q** Or Sergeant Hunt?

7 **A** No, he's not.

8 **Q** So we are here presented with you saying that
9 you assisted in the collection of evidence; correct?

10 **A** That's correct.

11 **Q** All right. So now let's go through it. In
12 the bedroom, what did the collection of evidence
13 consist of with regard to fingerprints?

14 **A** He dusted the doorways, the areas that there
15 was potential to have latent prints. He also collected
16 the projectile that was found on the floor near the
17 north wall.

18 **Q** And I don't want to interrupt you, and I
19 asked for too much information. I'm going to make this
20 easier and try and speed things up a little bit.
21 Evidence of fingerprints, fingerprint dusting and
22 everything, whatever he used, standard powder or
23 whatever in the bedroom?

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- 1 **A** Yes.
- 2 **Q** How about here in this bedroom?
- 3 **A** No.
- 4 **Q** Throughout this hallway?
- 5 **A** Yes.
- 6 **Q** In this bedroom?
- 7 **A** No.
- 8 **Q** Throughout the foyer area in this hallway?
- 9 **A** Right at the end in that area above Heather
- 10 there's some bookshelves. That area was dusted. The
- 11 front door also was in that foyer area that was dusted.
- 12 **Q** So nothing in the living room?
- 13 **A** No.
- 14 **Q** Well, there was a cigarette found; correct?
- 15 **A** It was not found that night that I was aware
- 16 of.
- 17 **Q** So you don't know where it was found either?
- 18 **A** No, I do not.
- 19 **Q** So you didn't assist with that part of
- 20 collection of the evidence; right?
- 21 **A** No, I did not.
- 22 **Q** How about this family room area; is this all
- 23 dusted?

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1 **A** Yes.

2 **Q** How about in the garage area?

3 **A** Yes.

4 **Q** Just the door or the whole garage area?

5 **A** The points of entry where it was obvious that
6 the person had come in the home.

7 **Q** And once again, this is serious crime; right?
8 This isn't some nickel crime, some burglary or
9 something. So they're looking everywhere they can;
10 correct? He's dusting everywhere?

11 **A** The refrigerator. The areas where the
12 victims were, where the struggles were, where the
13 points of entry were, yeah.

14 **Q** Well, the entire areas, now, those areas, or,
15 I mean, is he picking and choosing something? What's
16 he doing?

17 **A** No. Just the areas that would -- and some
18 areas aren't conducive to even getting prints off, so
19 if it's rough surfaces, those kind of things. Like the
20 inside of that one door is, like, barn siding, you
21 wouldn't even dust for that because the prints are not
22 going to be available.

23 **Q** You're telling me you can't take a print off

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1 a rough surface?

2 **A** Depending on the rough surface. A lot of
3 rough surfaces no, you can't.

4 **Q** Well, did he not have the correct equipment
5 to try and do that, or what was the problem?

6 **A** It's just not conducive enough to take a
7 print that is clear enough for identification.

8 **Q** You said it's not conducive. Tell me why
9 it's not conducive since you know about that from your
10 training.

11 **A** Because the rough surfaces interfere too much
12 with the lands and grooves that are needed for
13 identification.

14 **Q** The lands and grooves?

15 **A** Uh-huh.

16 **Q** Don't lands and grooves refer to bullets?

17 **A** That as well, but you have ridges and lands
18 and grooves.

19 **Q** You don't have lands and grooves on your
20 fingerprints, do you?

21 **A** The ridges and --

22 **Q** You got ridges. You got swirls.

23 **A** Ridges.

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1 **Q** So you misspoke; right? You didn't know what
2 you were talking about?

3 **MS. DOHERTY:** Objection.

4 **THE COURT:** Overruled.

5 **BY MR. MERANTO:**

6 **Q** You didn't know what you were talking about
7 when you said that, did you?

8 **A** Yes, I did.

9 **Q** You did. Okay. All right. So tell me what
10 surfaces and areas were not tested in those grand areas
11 that you told me about.

12 **A** A lot of painted walls, a lot of the
13 furniture. Things that, again, either were not
14 disturbed, there was no indication that any of the
15 struggles took place there. You know, you had a low
16 probability of having evidence of this particular
17 offense.

18 **Q** So we picked and chose which areas to test
19 based on some kind of probability now?

20 **A** Correct.

21 **Q** Wow. So, I mean, because you just mentioned
22 painted surfaces. Are you telling me you can't get a
23 print off a painted surface?

CROSS/FINAMORE

- 1 **A** Some you can. Some you can't.
- 2 **Q** What was that door made of? Gold? It was a
3 painted surface, wasn't it?
- 4 **A** Sure.
- 5 **Q** Okay. So you can get them off painted
6 surfaces?
- 7 **A** Sure.
- 8 **Q** And correct me if I'm wrong, you don't see
9 prints a lot of times. You said that. You gotta dust
10 and put the stuff down, whatever it is, the standard
11 powder?
- 12 **A** Correct.
- 13 **Q** And they pop up; right?
- 14 **A** They're revealed when the powder sticks to
15 the print, yes.
- 16 **Q** And if the powder doesn't work, there's other
17 agents that you could use to try and raise prints if
18 you think? For example, on non-smooth surfaces; right?
- 19 **A** Correct.
- 20 **Q** Okay. And you know all that because of the
21 training; right?
- 22 **A** Yes.
- 23 **Q** So once again, in the bedroom, what areas

CROSS/FINAMORE

1 were skipped? What areas did you guys decide not to
2 test? And by the way -- strike that. Did Mr. Albert
3 ask you, hey, Mike, what do you think, should we test
4 this area? Did he ask you specific questions like --
5 did he ask you what you thought?

6 **A** It was, again, just discussion.

7 **Q** Okay. Once again, did Mr. Albert ever ask
8 you, hey, Mike, do you think we should test this
9 specific area? I don't know, what did he call you,
10 Detective -- or Deputy Finamore?

11 **A** I can't recall if he asked me a question that
12 specific.

13 **Q** You can't recall. Okay. So what areas in
14 the bedroom did you just decide we're not going to
15 waste our time?

16 **A** A lot of the area over to the left side, the
17 upholstered chair, that whole area in the photo, that
18 whole left side of the room, there was no indication
19 that any part of the interaction with Mr. Marsh took
20 place over there, other than the bullet that was in
21 line in plain view on the floor just kind of off the
22 center of that room.

23 **Q** What do you mean no part of the interaction

CROSS/FINAMORE

1 took place there? What's that have to do with
2 anything?

3 **A** It appeared that Mr. Marsh and the intruder
4 went from the door to the bed area, and no -- there was
5 no sign of struggle taking place on that left -- the
6 whole left side of the room.

7 **Q** Okay. So let me get this straight. Nobody
8 knows what happened there, correct, other than the
9 deaths; yes?

10 **A** Exactly, no, other than the intruder.

11 **Q** Okay. And even though nobody knows what
12 happened, somebody, what, had a vision in their mind
13 and said, well, based on this vision, that's where and
14 how and what we're going to test for evidence; is that
15 what you're saying?

16 **A** Yes.

17 **Q** Wow. So whose vision was it, by the way,
18 that we used, or was it a collective vision again?

19 **A** Collective.

20 **Q** Collective vision. So at any given time
21 then, what, Sergeant Hunt would say jump in and say,
22 don't test that because I don't think they were over
23 there, and then another time it would be Detective

CROSS/FINAMORE

1 Crater? I mean, how did that work exactly, if you
2 recall?

3 **A** Again, there was discussion of how and the
4 path that the intruder took, that the Marsh family
5 people took. So it was the areas that had high
6 probability that would've contained evidence related to
7 the three confrontations.

8 **Q** So I don't want to put words in your mouth,
9 but you correct me if I'm wrong. So what you're saying
10 is you guessed at where you thought evidence might be
11 and you made a probability determination and tested it
12 in those places?

13 **A** Based on probability; correct.

14 **Q** So there could be evidence there, we have no
15 idea of knowing, that you guys didn't even look for or
16 test for?

17 **A** Could there be something overlooked?
18 Absolutely.

19 **Q** All right. Hallway, same thing? Areas that
20 you tested, areas that you didn't test?

21 **A** Sure. The doorways -- the areas that
22 appeared that he possibly would've encountered going
23 down the hall were dusted, and the area there -- that

CROSS/FINAMORE

1 bookshelf area above Heather there was dusted.

2 **Q** So I'm asking you here, and you tell me if
3 I'm wrong; so in the hallway here, we don't know what's
4 going on, but if I bounce off both walls, but there's
5 no visible sign, you guys might have just ignored that,
6 not tested, not looked for prints, not looked for any
7 evidence?

8 **A** If there was nothing obvious there, we would
9 have proceeded to the next area where we felt there
10 would be evidence.

11 **Q** Nothing obvious there. Okay. I'm going to
12 have you pick up those pictures again, Exhibits No. 1
13 and No. 2. You still got those there?

14 **A** Yes.

15 **Q** Based on those pictures, show me where the
16 obvious evidence is. I mean, certainly the broken
17 glass is a big indicator, huh? Go ahead. Tell me
18 about where the obvious evidence is in those pictures.

19 **A** The broken glass.

20 **Q** I gotcha. I give you that one. Broken
21 glass, that's a good sign. Okay. Tell me where on the
22 door, anywhere.

23 **A** These photos were taken before the

CROSS/FINAMORE

1 fingerprints were lifted.

2 **Q** So where are the pictures of the fingerprints
3 that were lifted supposedly from that door?

4 **A** I can't answer that.

5 **Q** You can't answer it. There are none? You
6 don't know of any?

7 **A** They were taken by Mr. Albert and processed
8 by him. I don't have them.

9 **Q** You have no idea. So there's a place where
10 there's clear indication that you want to test; right?

11 **A** Yes.

12 **Q** And you have no glossy photos of any supposed
13 print that might have been there?

14 **A** I don't have them, no.

15 **Q** Okay. Where specifically on that door were
16 the prints taken?

17 **A** If I recall, the prints were taken --

18 **Q** Wait a minute. If you don't recall, then I
19 don't want you to say anything; okay? So it's only if
20 you recall. Do you know where they were taken from?

21 **A** The area above the door knob.

22 **Q** The area above the door knob?

23 **A** On the side rail above the door knob.

CROSS/FINAMORE

- 1 **Q** Inside, outside, what?
- 2 **A** It would be on the outside of the door.
- 3 **Q** On the outside of the door?
- 4 **A** Correct.
- 5 **Q** Okay. And by the way, when were those prints
6 made?
- 7 **A** Excuse me?
- 8 **Q** When were those prints made? When were they
9 put on the outside of that door?
- 10 **A** It would have been at the time of the
11 intrusion.
- 12 **Q** Really? And tell me how you know that.
- 13 **A** Some of the prints that were on there may
14 have been irrelevant. They could've been from the
15 owner. Could've been who knows.
- 16 **Q** Well, whoever they were, you have no idea
17 when they were put there, do you?
- 18 **A** No, I would not.
- 19 **Q** And once again, your training tells you -- I
20 mean, prints could last indefinitely; correct?
- 21 **A** Yeah. There's nothing that interfered with
22 them.
- 23 **Q** I mean, they might come here 10 years from

CROSS/FINAMORE

1 now when I'm famous and say there's Meranto's prints on
2 the bar; right?

3 **A** If they were not disturbed, they could still
4 be there.

5 **Q** Okay. So you selectively check this crime
6 scene for prints, and I can say that now; right?
7 Because you said it, there are specific spots you guys
8 didn't check; right?

9 **A** That's correct.

10 **Q** You have no idea, you said certainly evidence
11 could've been missed in there; right? Yeah?

12 **A** There's always that probability, sure.

13 **Q** Yeah. Yeah. Especially when you don't test
14 it; right? You're not going to find a fingerprint if
15 you don't test an area for it, are you?

16 **A** No.

17 **Q** Okay. And you test the outside of the door
18 near the door knob, and that's where you say you got
19 some prints from, correct, in this case?

20 **A** The area above the door knob.

21 **Q** Above the door knob. And I know when you
22 opened the door, where do you normally touch a door?
23 Around the door knob; right?

CROSS/FINAMORE

1 **A** Depends on the door.

2 **Q** Well, I mean, that's common sense, isn't it?
3 You don't need to be -- have all that OPATA training to
4 know that; right? Okay. So we had all kind of prints
5 in the house, and we got some prints on the garage
6 door, on the outside. And we have no idea when any of
7 those prints were made; correct?

8 **A** Exactly. No.

9 **Q** Now, we already established that you don't
10 know anything about Mr. Albert, even where he lives;
11 right?

12 **A** Other than just the general geographic area
13 was northeast Ohio.

14 **Q** Okay. You don't know if he worked, what he
15 did that day; correct?

16 **A** No, I do not.

17 **Q** You don't know if he was -- did he tell you
18 he was tired? Do you have any conversation about that
19 with him? Didn't sound like it, but tell me if you
20 did.

21 **A** Not that I recall.

22 **Q** You don't know if he worked all day and
23 night, didn't have a break?

CROSS/FINAMORE

1 **A** Did not.

2 **Q** You worked that crime scene from 11:00 with
3 him, 11:00 until 7:30, 8:00 in the morning; correct?
4 Yes?

5 **A** 7:00, 7:30. I had left around 7:30, 8:00.
6 He had left around 7:00 to go do the car.

7 **Q** Once again, you didn't handle, mark, or
8 collect any evidence other than that bullet evidence?

9 **A** Even the bullet up in the attic was taken
10 custody of by Agent Albert.

11 **Q** So you didn't even handle the bullet that
12 they give you credit for in the detective notes.
13 Mr. Albert had it; right?

14 **A** He took custody of every piece of evidence.

15 **Q** And you have no idea where that evidence went
16 from there, do you?

17 **A** Agent Albert -- I mean, other than evidence
18 tracking where it did, in fact, get received at the
19 labs, which would be their process.

20 **Q** So once again, I'm going to ask you, do you
21 have any personal knowledge of where that evidence
22 went?

23 **A** No.

REDIRECT/FINAMORE

1 **Q** Where he put it?

2 **A** When he left the home?

3 **Q** Yeah.

4 **A** No.

5 **Q** Where he stored it?

6 **A** No.

7 **Q** How he carried it?

8 **A** No.

9 **Q** If he took it to his home and looked at it?

10 **A** No.

11 **Q** If he took it to the office and stored it
12 somewhere?

13 **A** No.

14 **Q** If he mixed it up with other files, in other
15 cases?

16 **A** No.

17 **MR. MERANTO:** I've got nothing else,
18 Your Honor.

19 **THE COURT:** All right. Any redirect?

20 **MS. DOHERTY:** Yes, Your Honor. Are the
21 two exhibits still up there?

22 **MR. MERANTO:** Yes.

23 **REDIRECT EXAMINATION**

REDIRECT/FINAMORE

1 **BY MS. DOHERTY:**

2 **Q** Mr. Finamore, you described the fact that
3 there was one set of footprints leading to the back
4 door. I think that's pictured in State's Exhibit 1;
5 correct? Not the -- not the footprints, the door?

6 **A** Okay. What's the question now?

7 **Q** You had described that you observed, along
8 with other law enforcement personnel, one set of
9 footprints leading to that back door; is that correct?

10 **A** Correct.

11 **Q** When you, as a deputy processing a scene, or
12 Agent Albert processing a scene, determine where to
13 look for physical evidence, do you use logic to do
14 that?

15 **A** Sure.

16 **Q** Would points of entry into a home where
17 there's been a home invasion be logical to look for
18 prints?

19 **MR. MERANTO:** Objection.

20 **THE COURT:** Overruled.

21 **BY MS. DOHERTY:**

22 **Q** Would that be logical?

23 **A** Yes.

REDIRECT/FINAMORE

1 **THE COURT:** I don't know that he's an
2 expert on logic or if the question -- it's
3 redirect, and it's argumentative, but it's
4 all right. Just move on with this, please.

5 **BY MS. DOHERTY:**

6 **Q** Every location where -- first of all, let me
7 ask you this, are prints visible to the naked eye
8 generally?

9 **A** Latent prints generally, no.

10 **Q** And once that powder is placed upon it, it
11 makes them visible; correct?

12 **A** Yes.

13 **Q** Were there areas that were processed in that
14 house that were dusted, but no prints were visible?

15 **A** Sure.

16 **Q** Did you watch Bernie Albert lift the prints,
17 the fingerprints that we showed you originally in
18 State's Exhibit 43A?

19 **A** Yes, I did.

20 **MS. DOHERTY:** Can I approach again,
21 Judge?

22 **THE COURT:** Yes.

23 **BY MS. DOHERTY:**

REDIRECT/FINAMORE

1 **Q** I'm going to hand you State's Exhibit 43A.
2 Other than the three prints, three fingerprints
3 indicated on that State's Exhibit 43A that indicate
4 they came from that back door entering into the garage,
5 are there any other prints on that sheet from that
6 door?

7 **A** Yes.

8 **Q** How is that door, that back door, labeled?
9 That's door of garage; correct?

10 **A** Yes.

11 **Q** All right. And did you watch Bernie Albert
12 lift all of those prints and place them on that card?

13 **A** Yes.

14 **Q** Did the Sheriff's Department employ a
15 fingerprint examiner, a fingerprint expert at that
16 time?

17 **A** No.

18 **Q** Where would all prints that were lifted,
19 latent prints lifted from a scene, where would they go
20 to be examined?

21 **MR. MERANTO:** Objection.

22 **THE COURT:** Overruled. If he knows, he
23 can answer.

REDIRECT/FINAMORE

1 **A** They would be sent to the Bureau of Criminal
2 Identification, and possibly sometimes to the FBI
3 laboratory as well.

4 **Q** Because that's where the experts were?

5 **MR. MERANTO:** Objection.

6 **THE COURT:** Sustained.

7 **MS. DOHERTY:** Can I have one second,
8 Judge?

9 **THE COURT:** Yes, you may.

10 **(WHEREUPON, a discussion was had among**
11 **counsel off the record and out of the hearing**
12 **of the Court, jury and court reporter, after**
13 **which the proceedings continued as follows:)**

14 **BY MS. DOHERTY:**

15 **Q** Prior to December 14th, 1974, Attorney
16 Meranto was asking you about other scenes that you had
17 gone to; correct?

18 **A** Yes.

19 **Q** And as a deputy, going to a scene, responding
20 by dispatch or whatever, did you have occasion to
21 process a scene, any scenes, and lift prints?

22 **A** Yes.

23 **Q** Can you put a number on how many times?

RECROSS/FINAMORE

1 **A** The twenty to thirty that we've discussed
2 before.

3 **Q** All right. When decisions were made at the
4 Marsh crime scene as to what role various law
5 enforcement personnel were playing, was that your
6 decision?

7 **A** No.

8 **Q** Whose decision was it?

9 **A** Detective Nemeth and Lieutenant Crater.

10 **Q** I mean, there's a rank there; correct?

11 **A** Yes.

12 **MS. DOHERTY:** I don't have anything
13 further, Judge.

14 **THE COURT:** All right.

15 **MR. MERANTO:** Just a couple, Your Honor.

16 **THE COURT:** Yes, sir.

17

18 * * * * *

19 **RECROSS EXAMINATION**

20 **BY MR. MERANTO:**

21 **Q** Ms. Doherty asked you about you dusted places
22 and didn't get prints. That's true; right?

23 **A** Correct.

RECROSS/FINAMORE

1 **Q** And there's places that you didn't dust;
2 right?

3 **A** Correct.

4 **Q** And if you didn't dust them, you certainly
5 weren't going to get any prints from them, were you?

6 **A** Not latent prints, no.

7 **Q** And you just made a choice not to do that?
8 Yes? No?

9 **A** It was a decision. It wasn't a choice.

10 **Q** It was a decision, not a choice. All right.
11 Now, she asked you this -- I'm sorry. Twenty or thirty
12 times you took prints; right?

13 **A** Yes.

14 **Q** Do you remember testifying at a hearing
15 before?

16 **A** Correct.

17 **Q** And you said you can't remember any case
18 where any one of the prints you ever took was used in a
19 case; is that true?

20 **A** Yeah. I have no way of -- no way of knowing
21 that.

22 **Q** Well, wait a minute. Name me a specific case
23 where they used your prints in evidence.

1 **MS. DOHERTY:** Your Honor, I object.

2 **THE COURT:** Overruled.

3 **A** I can't remember a case.

4 **Q** And that's what you said before, right, that
5 you can't?

6 **A** No.

7 **Q** So there's no case you could say where a
8 print you ever took was used and introduced in
9 evidence, was there?

10 **A** No, I can't name one. No.

11 **MR. MERANTO:** Nothing else. Thank you.

12 **THE COURT:** Anything else?

13 **MS. DOHERTY:** No.

14 **THE COURT:** I do have a question. You
15 testified today that the prints that have
16 been discussed here today were latent prints
17 that were dusted and then lifted with this
18 tape. Isn't proper process to dust and then
19 photograph, and then lift?

20 **THE WITNESS:** You would -- yes, it would
21 be photographed and then lifted; correct.

22 **THE COURT:** You didn't -- you didn't
23 testify that that's what was done here. That

1 it was dusted and then lifted with the tape.
2 There was no talk about photographing the
3 print before it was lifted.

4 **THE WITNESS:** I may not have mentioned
5 that in this particular hearing, but that
6 was, in fact, the process that was done.

7 **THE COURT:** Okay. Anything else?

8 **MS. DOHERTY:** No, Judge.

9 **MR. MERANTO:** Well, just based on that
10 then, Judge, so --

11 **THE COURT:** You have a right to ask a
12 question if I've asked a question.

13
14 * * * * *

FURTHER RECROSS/FINAMORE**FURTHER RECROSS EXAMINATION****BY MR. MERANTO:**

Q The process was not followed then appropriately?

A Yes, it was.

Q Well, where are the photographs? Don't know?

A BCI would have to answer that.

Q And he's dead; right?

A Yes, he is.

MR. MERANTO: Thanks.

THE COURT: Okay. Thank you, sir. Call your next witness, please.

MS. DOHERTY: The state calls Gerry Mroczkowski. I can't pronounce his last name. I'm sorry.

THE COURT: All right.

MS. DOHERTY: Judge, can I approach up there? Is there an exhibit laying there?

THE COURT: Sure.

THE BAILIFF: Judge, this witness does not object to being photographed.

THE COURT: Thank you.

* * * * *

1 **MS. DOHERTY:** I'm sorry, Judge.

2 **THE COURT:** Hey, go sit down.

3 **MR. MERANTO:** Judge, may we approach?

4 **THE COURT:** Just sit down. I'm swearing
5 a witness in. This is a big deal.

6 Everybody's going to respect what's going on
7 in the courtroom, particularly when the court
8 is doing something. I don't want to tell you
9 that again. I'm very sorry, sir.

10 **THE WITNESS:** That's okay.

11 **WHEREUPON, the State called**

12

13 **GERRY MROCZKOWSKI,**

14

15 **who, being first duly sworn, testified**
16 **as follows:**

17 **THE COURT:** All right, sir. Please be
18 seated in the witness seat. All right. You
19 wish to approach side bar?

20 **MR. MERANTO:** Yes, Judge.

21 **(WHEREUPON, a discussion was had among**
22 **court and counsel off the record and out of**
23 **the hearing of the jury and court reporter,**

1 after which the proceedings continued as
2 follows:)

3 (WHEREUPON, a discussion was had among
4 Court and counsel out of the hearing of the
5 jury as follows:)

6 **THE COURT:** Okay. We're at side bar out
7 of the hearing of the jury on defense
8 counsel's motion to prohibit this witness
9 because he's not named on the state's witness
10 list; is that correct?

11 **MR. MERANTO:** Yes, Your Honor.

12 **THE COURT:** Is there anything else you
13 need to say about that at this point?

14 **MR. MERANTO:** No.

15 **THE COURT:** Okay. Then I'll ask the
16 state for its response.

17 **MS. DOHERTY:** Okay. Thank you, Judge.
18 We filed the witness list, and then
19 subsequent to that the state asked for a
20 hearing on defendant's motion in limine to
21 exclude the fingerprints. At that time when
22 the state filed the motion asking for a
23 hearing on that issue, I indicated that not

1 only would I have available to testify and
2 have testify Mike Finamore, but also BCI
3 agent -- a BCI agent who could also
4 authenticate that writing from Bernie Albert,
5 and Robin Ladd who was the print examiner who
6 had custody of -- or who represents BCI and
7 had custody of those prints since 1974. So I
8 had indicated at the time that I would put
9 all of those people on for that purpose.
10 Now, obviously through the course of that
11 hearing the only person I ended up putting on
12 was Mike Finamore because the judge was --
13 the court was satisfied I guess at that
14 point.

15 **THE COURT:** Right. I didn't need
16 anything else.

17 **MS. DOHERTY:** Correct. But the only
18 purpose of this witness is to because he
19 worked with Bernie Albert, he knew Bernie
20 Albert, he worked with him on many scenes, he
21 can recognize his writing, his initials. He
22 can just verify that on State's Exhibit 43A,
23 that that is Bernie Albert's writing.

1 **THE COURT:** Yes?

2 **MR. MERANTO:** I believe they're doing it
3 to try and bolster what is basically a
4 horrible foundation already, and an attempt
5 to authenticate the evidence that was taken
6 at that crime scene.

7 **THE COURT:** I don't care what the
8 purpose is. I care whether or not it's
9 appropriate to disallow this because he
10 hasn't been placed on the witness list.

11 **MR. MERANTO:** And I was not on notice,
12 Judge, and if I was on notice of his
13 qualifications or who he was or could have
14 had the investigator talk to him there might
15 be a lot of questions that I want to ask him
16 for my own purposes. I mean, I have no
17 idea -- we discussed who the witnesses were
18 going to be, and Ms. Weibling and I split
19 them up among each other. I have no idea who
20 this guy was when they said his name. Not at
21 all. I mean, because once again, I --

22 **THE COURT:** Okay.

23 **MR. MERANTO:** I saw what he was for the

1 limine, but I thought it was for the limine.
2 I had no idea.

3 **THE COURT:** Okay. Does the state want
4 to say anything else?

5 **MS. DOHERTY:** Only that he is not a
6 witness who was at the scene, so there isn't
7 any issue with the scene necessarily that --
8 I mean, he wasn't there. Bernie Albert was.
9 But his purpose is only to authenticate the
10 signature and the writing of Bernie Albert.

11 **THE COURT:** The defendant's motion is
12 sustained. Had to be included on the witness
13 list. One of the key pieces of evidence in
14 this case appears to be the fingerprint -- if
15 this guy has anything to do with fingerprint
16 evidence, he has to be properly disclosed on
17 the witness list. For the defense to figure
18 out whether or not somebody's going to be
19 called without him being included on the
20 witness list is beyond that which can be
21 imposed upon the defense. So I'm not going
22 to allow him. Motion's sustained.

23 **(WHEREUPON, the following proceedings**

1 **were had back in the presence of the jury:)**

2 **THE COURT:** Sir, the court's going to
3 excuse you.

4 **THE WITNESS:** Okay.

5 **THE COURT:** Thank you. All right. Will
6 you call your next witness, please?

7 **MS. CANTALAMESSA:** Dr. Joseph Ohr,
8 please.

9 **THE COURT:** What about photographing?

10 **THE WITNESS:** No, that's fine.

11 **THE BAILIFF:** He does not object to
12 being photographed, Judge.

13 **THE COURT:** All right. Will you raise
14 your right hand, please?

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DIRECT/OHR

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WHEREUPON, the State called

DR. JOSEPH OHR,

**who, being first duly sworn, testified
as follows:**

THE COURT: All right, sir. Please be
seated in the witness chair.

THE WITNESS: Thank you.

THE COURT: As you're doing that, I'll
instruct you, these ladies and gentlemen to
your right are the ladies and gentlemen of
the jury. They need to hear and understand
all that you have to say, so please speak
loudly and clearly enough for them to
understand your answer.

THE WITNESS: I understand.

THE COURT: And please answer every
question out loud.

THE WITNESS: Thank you.

THE COURT: Yes, sir. Thank you.

* * * * *

DIRECT/OHR

1 **DIRECT EXAMINATION**

2 **BY MS. CANTALAMESSA:**

3 **Q** Good morning.

4 **A** Good morning.

5 **Q** Would you please introduce yourself to the
6 jury?

7 **A** I'm Dr. Joseph Ohr. I'm the medical examiner
8 and deputy coroner for Mahoning County.

9 **Q** And what is your background for your position
10 there, Dr. Ohr?

11 **A** I'm a physician and surgeon licensed in the
12 State of Ohio, and I am -- well, I graduated from
13 Loyola University in Chicago, Illinois in clinical and
14 anatomical pathology, and after that -- that was a
15 five-year residency. And then after that was a
16 one-year fellowship in forensic pathology at the Miami
17 Dade Medical Examiner's office in Miami, Florida. My
18 first assignment was the Franklin County Coroner's
19 office in Columbus, Ohio where I practiced from 2005 to
20 2009 before coming here to Youngstown.

21 **Q** And you came to Youngstown in 2009?

22 **A** That's right.

23 **Q** How many -- over your career, how many

DIRECT/OHR

1 autopsies have you performed?

2 **A** Well, counselor, I should have that number
3 for you, and I don't. I'm sorry. Easily over 1,000,
4 nearly 2,000 autopsies.

5 **Q** And what -- are you a forensic pathologist?

6 **A** Yes, I am.

7 **Q** Can you tell the jury what that is?

8 **A** Yeah. I think just to back up a little bit,
9 a pathologist is a diagnostic physician. I think
10 everybody knows what a radiologist is. And that's a
11 physician who uses CAT scans and x-rays and so forth
12 and so on to make a diagnosis. You have a broken arm
13 or, you know, an infection in your lung; right? A
14 pathologist is also a diagnostic physician, only the
15 pathologist uses all the laboratory techniques
16 available to him or her to make a diagnosis.

17 Most pathologists work in hospitals. They
18 run all the laboratories, the surgical pathology
19 laboratory, the microbiology, the molecular lab, and so
20 forth and so on. And one laboratory that they run is
21 the autopsy laboratory; right? And they make a
22 diagnosis. A person has a lump in their chest, and
23 that lump is taken out by a surgeon, and goes off to a

DIRECT/OHR

1 pathologist. The pathologist says, aha, you have
2 cancer or you don't, like that.

3 There's a subspecialty of pathology called
4 forensic pathology, and the diagnosis that I make as a
5 forensic pathologist is the cause and manner of death.
6 How and why a person died. Particularly if they died
7 suddenly and unexpectedly. You see? And what I do is
8 I use all of my experience as a physician and a
9 pathologist and all the laboratory techniques in order
10 to make that diagnosis of how and why someone died. A
11 pathologist generally studies disease. The disease
12 that I study is sudden and unexpected death; okay?

13 **Q** Did you have to have specialized training in
14 order to become a forensic pathologist?

15 **A** Yeah. After my residency in general
16 pathology, the -- I spent one year at Miami Dade
17 Medical Examiner in Florida for strictly forensic
18 pathology.

19 **Q** And primarily as a forensic pathologist, what
20 do you do?

21 **A** As a forensic pathologist I study how and why
22 people are injured and how they die from those
23 injuries. That's what I do. I work like every other

DIRECT/OHR

1 physician. I get a history, a background of the
2 person's illnesses or injuries, and then I do an
3 examination. That examination is typically known as
4 the autopsy, and after my examination and all of the
5 background information, I correlate all that
6 information, and I make a diagnosis the person died
7 this way or that way, and so forth.

8 **Q** And at the Mahoning County Coroner's office,
9 what's your duties there?

10 **A** Well, as a deputy coroner I have some
11 administrative duties, obviously. As a medical
12 examiner I do the -- I'm in charge of the
13 investigations of how and why people die here in
14 Mahoning County. I have four investigators who help me
15 out with gathering reports and photography and scene
16 work and so forth and so on, but ultimately I'm
17 responsible for the diagnosis that is -- that comes out
18 of that office.

19 **Q** And what is an autopsy?

20 **A** An autopsy is really a big, involved --
21 surgically involved laboratory test; okay? Let me
22 explain. When you go to the doctor, the doctor doesn't
23 simply put a stethoscope on you and say, okay, breathe

DIRECT/OHR

1 deeply. The doctor gets your history. Well, you've
2 been coughing, and you've had fever, and have you been
3 coughing and so forth; right? Then and only then does
4 the doctor use a stethoscope or any of the other tests,
5 get an x-ray and so forth.

6 Well, the autopsy's the same way. You get
7 the background. You get the history. And then you use
8 the autopsy to confirm or refute kind of what you
9 already found out about the person's history. You see
10 what I mean? And that's how an autopsy goes. And
11 given the story, either by the police or by my
12 investigators, and then the body tells me, yes, that
13 story is consistent, or no, that story is not
14 consistent. And that's how an autopsy is used in my
15 line of work.

16 **Q** As a forensic pathologist, is it helpful for
17 you to go to the scene?

18 **A** Oh, yes, absolutely.

19 **Q** And why is that?

20 **A** Well not to sound funny, but my patients
21 can't talk to me, and so it's important that I get
22 information anywhere and anyhow that I can. And, you
23 know, frankly any other doctor, they do the same.

DIRECT/OHR

1 They're not just talking to you, the patient, but
2 they're looking at you. They want to know how your
3 home life is. They want to know about your background.
4 Well, I work the same way.

5 And one of the ways that I can do that is to
6 go to the scene where the death happened to get an
7 appreciation of how a person lived. Oftentimes how a
8 person lives is how they die, or is related to how they
9 die. I can get an understanding of how the other
10 investigators or the investigative reports, the police
11 reports, this was over here, that was over here, this
12 happened that way. The scene also helps me answer
13 questions that I might anticipate from lawyers, from
14 police officers, from arson investigators.

15 For example, did -- Doctor, could this person
16 have run from here to there after being, I don't know,
17 hit over the head? You see what I mean? And having an
18 appreciation of the scene helps me understand what
19 their questions are for me. See?

20 **Q** Did you work for the Mahoning County
21 Prosecutor's -- or the coroner's office in 1974?

22 **A** I did not.

23 **Q** Did you perform the autopsies on Ben Marsh,

DIRECT/OHR

1 Marilyn Marsh, or Heather Marsh?

2 **A** No, I did not.

3 **Q** Are you here testifying as a substitute
4 witness?

5 **A** Yes, I am.

6 **Q** And what is that?

7 **A** Well, a substitute witness is, in my case, I
8 am stepping into the shoes of the deputy coroner who
9 initially investigated the case because that person can
10 no longer be with us.

11 **Q** And who was it that actually performed those
12 autopsies?

13 **A** This would've been a Dr. Paul Weiss, and I
14 believe that he died in 2009.

15 **Q** What did you review in preparing for your
16 testimony in this case?

17 **A** Well, it makes sense that I would review all
18 of the autopsy reports and pre-history, the history of
19 the case surrounding those reports. I also reviewed
20 the available autopsy photographs and scene
21 photographs, and I also went to the house which still
22 stands on Turner Road and went through the house and
23 went to the scene, if you will.

DIRECT/OHR

1 **Q** How were you able to correlate which
2 photographs go with which patient, or which body that
3 was listed in the report?

4 **A** Well, it's a matter of correlating --
5 correlating is exactly the word -- some of the
6 photographs of the decedent's face. I see a small
7 child, well, that's this person. I see a male, that's
8 that person. Some of the photographs demonstrate
9 injuries. I can tell by the autopsy reports that one
10 decedent had died of a gunshot wound to the head.
11 Another had died of gunshot wounds to the body. So I
12 can see on the body that here are gunshot wounds, but
13 not on the head, and so forth. It allows me to
14 understand the case in that way.

15 **MS. CANTALAMESSA:** Your Honor, may I
16 approach?

17 **THE COURT:** Pardon?

18 **MS. CANTALAMESSA:** May I approach?

19 **THE COURT:** Yes, you may.

20 **(WHEREUPON, State's Exhibits Nos. 37-39**
21 **were marked for identification.)**

22 **BY MS. CANTALAMESSA:**

23 **Q** I'm going to hand you State's Exhibits 37,

DIRECT/OHR

1 38, and 39. Starting with State's Exhibit 37, could
2 you tell us what that is?

3 **A** Yes. I have State's 37, 38, and 39. 37 is
4 the autopsy report of Benjamin Marsh.

5 **Q** Is that the same one you reviewed in
6 preparation for your testimony today?

7 **A** Yes, it is.

8 **Q** And is that autopsy report kept in the
9 ordinary course of business of the Mahoning County
10 Coroner's office?

11 **A** It is.

12 **Q** Is that autopsy report made at or near the
13 time of the actual autopsy?

14 **A** It is.

15 **Q** And I believe that one's a copy of the
16 certified?

17 **A** That's correct.

18 **Q** Can you tell us what State's Exhibit 38 is?

19 **A** Exhibit 38 is a copy of the report from the
20 death of Marilyn Marsh.

21 **Q** And is that also what you reviewed in
22 preparation for your testimony today?

23 **A** Yes, it is.

DIRECT/OHR

1 **Q** And that's also kept in the ordinary course
2 of the Mahoning County Coroner's office?

3 **A** It is.

4 **Q** And State's Exhibit 39, can you tell us what
5 that is?

6 **A** State's 39 is a report on the death of
7 Heather Marsh.

8 **Q** And is that the report you reviewed in
9 preparation for your testimony today?

10 **A** Yes, it is.

11 **Q** And is that report also kept in the ordinary
12 course of business in the Mahoning County Coroner's
13 office?

14 **A** Yes, it is.

15 **Q** And actually, now, are they kept -- since the
16 age of those reports, are they kept at the clerk's
17 office?

18 **A** They are kept under the clerk's office, but
19 they're under our administrative custodianship. In
20 other words, we have access to them, and they're
21 available to others through us.

22 **Q** Let's start with Ben Marsh. In your review
23 of his autopsy, what was his age at death?

DIRECT/OHR

1 **A** Ben was 33 years old.

2 **Q** And how big of a guy was he?

3 **A** He was 6' 5". And I'd have to refer to the
4 report. Maybe 230 pounds. Let me see. Yeah, 6' 5",
5 230.

6 **Q** What injuries were noted on Ben when his
7 autopsy was performed in 1974?

8 **A** Well, he had a number of gunshot wounds on
9 his body. Those wounds included wounds to his chest,
10 his right arm, and his right hip. He also had multiple
11 lacerations, which are cuts in the skin on the left
12 side of his face. When I say a laceration, I'd like to
13 be specific here. A laceration is a cut in the skin
14 made by a blunt object. If I hit you in the mouth and
15 slit your lip, the bluntness of my hand still causes a
16 cut in the skin. You see? That's different than an
17 incised wound. An incised wound is caused by a sharp
18 instrument. A piece of glass, so forth. Okay.

19 **Q** Can you tell us about each of those gunshot
20 wounds that you -- you described three. There were
21 three?

22 **A** There -- yes, there were two on the chest.
23 One was near the left nipple, and one was near the left

DIRECT/OHR

1 collarbone; okay? The one in the left -- near the left
2 collarbone entered the left collarbone, and a bullet
3 was removed from there. Another -- the bullet here
4 near the nipple went into the chest, through the lung,
5 through the heart, and was captured in the right
6 thoracic cavity.

7 Another gunshot wound was through the right
8 forearm here, not exactly near the wrist, but not
9 exactly at the elbow either. It had gone through the
10 forearm, and it started here on the outside and went
11 through to the inside.

12 Finally there was -- there was a gunshot
13 wound here on the back of the hand near the ring finger
14 that left near the index finger, went underneath the
15 skin. You see?

16 And finally there was a gunshot wound here
17 near the right hip. The bullet went in and hit the
18 spine of the -- the spine, not -- I don't believe it
19 was the spinal column in the back, but there's a hip
20 pointer each of us has. It's called the iliac spine.
21 And a bullet was removed from the spine. Okay?

22 **Q** So we actually have evidence of five gunshot
23 wounds, but only three projectiles were recovered; is

DIRECT/OHR

1 that right?

2 **A** He had two. He had -- he had an entrance and
3 an exit wound, three and four. Five and six; you see?

4 **Q** Right.

5 **A** Okay. And seven.

6 **Q** We want to count the holes then; right?

7 **A** If you want to count the holes, yes. Each
8 hole is a wound; okay? He had an entrance wound, and
9 entrance wound, an entrance wound, and an entrance
10 wound and an entrance wound. He had five entrance
11 wounds.

12 **Q** Can you tell whether any of those in the arm
13 was something that went through in the arm and then
14 into his body?

15 **A** Yeah, that's certainly possible.

16 **Q** How can you tell what's an entrance wound
17 versus an exit wound?

18 **A** Well, entrance wounds demonstrate an abrasion
19 around their edge. And let me explain that. When you
20 put your thumb into a plastic bag, right, you're going
21 to go through the plastic, through the wall of the
22 plastic, your thumb kind of stretches that plastic
23 before it punctures through; you know what I mean? You

DIRECT/OHR

1 take your thumb out and you look at the hole, there's
2 kind of a weird edge, a little stretched out edge. You
3 could almost see where the sides of your thumb was
4 against the plastic; right?

5 The same thing happens when a bullet enters
6 the body. The skin stretches, and as the bullet pulls
7 or pushes the skin into the body, the side of the
8 bullet rubs up against that skin, and it leaves a
9 little mark. It's called an abrasion collar, and it's
10 one of the details that lets me know that an entrance
11 wound is -- or that that wound is an entrance wound.
12 Furthermore, entrance wounds, as a rule of thumb, not
13 always, but just generally, have a very punched out,
14 round look to them; okay? And so when I see those two
15 combinations, the abrasion collar it's called, as well
16 as the round, punched out look, I know I'm looking at
17 an entrance wound.

18 **Q** You already testified that you were able to
19 review the photographs made during this autopsy; is
20 that right?

21 **A** Yes, that's right.

22 **Q** Is that how you determined those entrance and
23 exit wounds?

DIRECT/OHR

1 **A** Yes.

2 **MS. CANTALAMESSA:** May I approach the
3 witness again, Your Honor?

4 **THE COURT:** You may.

5 **(WHEREUPON, State's Exhibits Nos. 22-29**
6 **were marked for identification.)**

7 **BY MS. CANTALAMESSA:**

8 **Q** Dr. Ohr, I'm going to hand you State's
9 Exhibits 22 through 28 -- or actually 29, but there is
10 a No. 42 that kind of got mixed up in there.

11 **MS. WEIBLING:** Objection, Your Honor.
12 May we approach at this time?

13 **THE COURT:** Yes.

14 **(WHEREUPON, a discussion was had among**
15 **court and counsel off the record and out of**
16 **the hearing of the jury and court reporter,**
17 **after which the proceedings continued as**
18 **follows:)**

19 **THE COURT:** The objection's overruled.

20 **BY MS. CANTALAMESSA:**

21 **Q** I already gave them to you. Could you
22 describe, stating the State's Exhibit number first,
23 what's contained in each one of those photographs?

DIRECT/OHR

1 **A** Yes. State's Exhibit 22 is a right face-on
2 view of the decedent Benjamin Marsh. On the right side
3 of the head, starting above the right eyebrow, there
4 are multiple angular and curved lacerations above the
5 forehead, above the eyebrow, lateral to the eyebrow,
6 here in the hairline and so forth. And there's also a
7 laceration here on the ear.

8 Exhibit 23 is a -- the same view, the right
9 on -- right half of the head with the head turned
10 slightly away from the camera showing the better detail
11 of the injury to the right ear.

12 Exhibit 24 is a face-on view of Mr. Marsh,
13 and there are, again, lacerations here on the right
14 forehead above the right eyebrow and --

15 **THE COURT:** Doctor, hold on a minute
16 please.

17 **(WHEREUPON, a discussion was had among**
18 **Court and counsel out of the hearing of the**
19 **jury as follows:)**

20 **THE COURT:** At side bar, and previously
21 the defense objected to this witness
22 testifying concerning the -- what is
23 essentially the business record, the

DIRECT/OHR

1 coroner's report regarding the deaths of
2 these three victims and coordinating the
3 admissibility of that report with the
4 photographs that others have testified to.
5 As I understood the objection, the objection
6 was not to the testimony concerning the
7 findings in the reports, but the use of the
8 photographs that connect that in that the
9 photographs, this guy has no idea whose
10 photographs those are. No personal knowledge
11 of that. No basis for doing -- for referring
12 to those photographs as being of a particular
13 person. Am I stating that right?

14 **MS. WEIBLING:** That's correct, Your
15 Honor.

16 **THE COURT:** That's what your objection
17 is?

18 **MR. MERANTO:** Absolutely correct, Judge.

19 **THE COURT:** Okay. And I overruled the
20 objection, but as I'm listening to that and
21 considering that objection still, I don't
22 know how he does that? How does he say
23 that's the photograph of Benjamin Marsh? I

DIRECT/OHR

1 don't understand that.

2 **MS. CANTALAMESSA:** I actually think he
3 can say it's a photograph depicting the
4 injuries that are noted in this report.

5 **THE COURT:** He can do that, but the
6 guy's testifying --

7 **MS. CANTALAMESSA:** Right.

8 **THE COURT:** -- that it's Benjamin
9 Marsh's picture.

10 **MS. DOHERTY:** Because they identified
11 it.

12 **MS. CANTALAMESSA:** And the only reason
13 he knows that is because that's the name on
14 the report.

15 **THE COURT:** I know, but he can't -- he
16 can't say this is a picture of Benjamin
17 Marsh. You know what I mean?

18 **MS. DOHERTY:** Except we had other
19 witnesses testify to that.

20 **THE COURT:** But he doesn't know that.
21 He doesn't know that.

22 **MS. DOHERTY:** They already identified
23 them.

DIRECT/OHR

1 **THE COURT:** But he can't say that's
2 Benjamin Marsh's picture.

3 **MS. CANTALAMESSA:** He can say it's a
4 male victim. A male patient or a male
5 decedent.

6 **THE COURT:** I think I agree with that,
7 but, I mean, you could get a picture of any
8 dead guy with three bullet holes in him and
9 say, well, yeah, this is sort of, like,
10 what's described in the coroner's report.

11 **MS. CANTALAMESSA:** Right.

12 **THE COURT:** But I think the objection's
13 well taken in the respect that he can't refer
14 to these photographs as these are photographs
15 of those particular victims.

16 **MS. CANTALAMESSA:** Right.

17 **MS. DOHERTY:** Do you want us to caution
18 him to not say the names?

19 **THE COURT:** Yeah. Just clean that up,
20 that's all.

21 **MS. CANTALAMESSA:** All right.

22 **THE COURT:** In that regard I think the
23 objection's well taken.

DIRECT/OHR

1 **MS. CANTALAMESSA:** Okay.

2 **MS. WEIBLING:** Thank you, Your Honor.

3 **THE COURT:** He can't identify the
4 particular photographs and coordinate them,
5 but you can do that without the naming the
6 person in those. That's the only thing I see
7 wrong with it.

8 **(WHEREUPON, the following proceedings**
9 **were had back in the presence of the jury:)**

10 **BY MS. CANTALAMESSA:**

11 **Q** Doctor, before we move on, you don't know
12 those photographs are of Ben Marsh specifically? You
13 didn't know Ben Marsh; is that correct?

14 **A** That's correct.

15 **Q** So you -- what you're seeing in your
16 photographs is a male decedent, we can call him, that
17 correlates -- those photographs correlate to the
18 injuries you saw in the report; is that correct?

19 **A** Yes, that's correct.

20 **Q** And if you would just when you're describing
21 each photograph, to name them as the male you had in
22 your report?

23 **A** I understand.

DIRECT/OHR

1 **Q** Okay?

2 **A** Uh-huh.

3 **Q** Thank you. I don't know what number you're
4 on, but if you want to finish.

5 **A** Sure. This is State's Exhibit 42. This is a
6 left face, left shoulder and left chest view of the
7 male decedent. It demonstrates a gunshot wound here,
8 high up on the left chest, near the left collarbone,
9 and also demonstrates a gunshot wound just lateral to
10 the left nipple here on the chest; okay?

11 **Q** And those wounds specifically correlate to
12 the report that you reviewed in this case of the male
13 decedent?

14 **A** Yes. Exhibit 25 is a view of the right
15 forearm of the decedent, the right flank and right hip
16 of the decedent, the male decedent, as well as the
17 dorsum or back side of the left hand. In this
18 particular view there was an entrance gunshot wound
19 here on the right forearm. There is an entrance
20 gunshot wound here on the right hip. And there is also
21 a laceration, a cut on the dorsum of the middle finger
22 of the right hand; okay?

23 Exhibit 26 is a view of the male decedent,

DIRECT/OHR

1 the inner part of the right forearm, and it shows an
2 exit gunshot wound; okay?

3 Twenty-seven is the view of the male decedent
4 showing the right hand, specifically the back of the
5 right hand, and there is a cut. Forgive me. Earlier I
6 said that there was a cut near the middle finger. No.
7 It's out here near the pinky. On the back of the hand
8 there is an entrance gunshot wound here near the base
9 of the pinky and an exit gunshot wound near the base of
10 the index finger. Goes across the hand like so. Okay?

11 Exhibit 28 is the decedent's -- male
12 decedent, the -- this picture demonstrates the --
13 essentially this view, meaning the fingers, the thumb,
14 the heel of the hand, and the wrist of the male
15 decedent; okay? Around the wrist is a plastic band,
16 and in handwriting, it says Benjamin Marsh, Coroner's.
17 On the middle finger of the left hand is a laceration.

18 State's Exhibit 29 is a view of the male
19 decedent as we look down into the skull vault, or the
20 brain vault. This is removing the top of the skull
21 like so, and the brain has been removed for
22 examination, and I can see the walls of the skull here
23 and the floor upon which the brain rests. There are

DIRECT/OHR

1 multiple fractures in the bone here on the right side
2 that extend onto the floor of the brain vault. Okay?
3 And that's what I have.

4 **Q** The photographs that you've reviewed, are
5 those the same photographs you reviewed for your
6 testimony today?

7 **A** Yes, that's correct.

8 **Q** Are those the same photographs you reviewed
9 in connection with that report from 1974, coroner's
10 report?

11 **A** It is.

12 **Q** How many projectiles were taken out of Ben
13 Marsh, and where were they located?

14 **A** There was a projectile taken from the right
15 hip, a projectile taken from the left collarbone, and a
16 projectile taken from the chest. Three.

17 **Q** This injury to his forearm --

18 **A** Yes.

19 **Q** -- was that a fatal injury?

20 **A** No.

21 **Q** The one to his side that went into his flank,
22 you said --

23 **A** Right.

DIRECT/OHR

1 **Q** -- was that a fatal injury?

2 **A** No.

3 **Q** What one would've been fatal or most
4 concerning?

5 **A** The concerning gunshot wound was that lateral
6 to the left nipple. It went in through the lung,
7 through the heart, and -- excuse me. Perhaps both
8 lungs. Let me check. Oh, I beg your pardon. Yes,
9 through the left lung, through the heart, through the
10 right lung, and was removed from the right chest
11 cavity.

12 **Q** What would that projectile have been doing to
13 those body parts as it's going in?

14 **A** Well, a bullet damages in two ways. Number
15 one, it delivers energy to the body, just the same as a
16 punch does. And if you punch a lung or punch a heart,
17 you do damage to those tissues. Those tissues are not
18 used to being punched. In fact, you have an entire
19 ribcage set of muscles, skin and fat around those
20 organs to protect them; okay? So energy is delivered
21 to those organs, bruising them, tearing them, and also
22 causing them to bleed. And so you do damage in two
23 ways. You cause those organs to bleed, and you inflict

DIRECT/OHR

1 a punch type of energy to those organs.

2 **Q** Would that shot have killed him instantly?

3 **A** Not necessarily.

4 **Q** What was -- what would happen -- you said the
5 bleeding would start. Where would that blood go?

6 **A** Well, the blood would go into the chest
7 cavity.

8 **Q** From your review of the report, did they find
9 that blood in the chest cavity?

10 **A** Yes.

11 **Q** You said there was also some other -- some
12 lacerations and skull damage?

13 **A** Yes.

14 **Q** Can you tell us what that would've been
15 doing?

16 **A** Well, the -- essentially when the head is
17 hit, energy is delivered not only to the skin, cutting
18 the skin, but it penetrates to the skull, and in this
19 case breaking the skull. And that energy would
20 continue through the wall of the skull to the brain
21 itself. So there would be injuries to the brain caused
22 by the energy delivered, number one, and also the brain
23 would be injured by the shards or fragments of bone

DIRECT/OHR

1 that would physically cut the surface of the brain.

2 **Q** Does reviewing those photographs of the side
3 of his face and his head help you in determining what
4 was used in order to make --

5 **A** Well, I can't know specifically what was --
6 what was used. It is not consistent with a fist. It
7 is consistent with a tool. Something with an edge to
8 it.

9 **Q** Would it have to be considerably pretty heavy
10 in order to break the skull of an adult male?

11 **A** Your question is fair, counselor. It could
12 be a heavy object that is wielded lightly, or it could
13 be a light object that is wielded with a lot of force.
14 And I can't tell the difference.

15 **Q** Is it consistent with a gun being used?

16 **A** Yes.

17 **Q** The hand wound on his left hand, does that
18 tell you anything as a forensic pathologist?

19 **A** I'm sorry. Could you repeat that?

20 **Q** The hand wound on his left hand?

21 **A** On the left hand?

22 **Q** Yes. Does that tell you anything as a
23 forensic pathologist?

DIRECT/OHR

1 **A** Well, in the context of this case, it
2 would -- it might be related to the wounds of the face.

3 **Q** As a defensive wound?

4 **A** That's fair.

5 **Q** Did you have a chance to review the scene
6 photographs as well?

7 **A** Yes.

8 **MS. CANTALAMESSA:** May I approach again,
9 Your Honor?

10 **THE COURT:** You may.

11 **BY MS. CANTALAMESSA:**

12 **Q** I'm going to hand you State's Exhibits 14 and
13 15.

14 **A** Thank you.

15 **Q** Are those the same photographs you reviewed
16 of the scene --

17 **A** Yes.

18 **Q** -- in relation to this case? What do those
19 photographs tell you when you're investigating your
20 case for forensic pathology purposes?

21 **A** Well, each of the photographs show the male
22 decedent laying on the bed with his left side down, his
23 head on a pillow, his legs off the side of the bed to

DIRECT/OHR

1 the floor; okay? The right arm is over his torso, and
2 his left arm, specifically his left hand, is -- is here
3 near his chin. The injury that counselor just asked
4 about was on his left hand. The injuries, the angular
5 injuries to the face, were on the right side of the
6 face, face up.

7 **Q** Does the location of that blood spatter tell
8 you anything as you're looking at the case?

9 **A** Well, I'm not a blood spatter expert, but
10 yes, the blood would've come from both the gunshot
11 wounds, as well as the injuries to the face and head.

12 **Q** Can you tell by looking at the photographs,
13 the reports, which injury happened first?

14 **A** No, I can't.

15 **Q** Can you tell by looking at the photographs
16 whether the gunshot wounds happened before the beating
17 happened?

18 **A** The injuries to the face are -- the injuries
19 to the face are grouped here. The person would not
20 have been moving while these injuries were being
21 inflicted.

22 **Q** Do those injuries depict that person
23 receiving all of that in that location on the bed?

DIRECT/OHR

1 **A** Yes, that's possible.

2 **Q** What is the cause and manner of the death in
3 this male decedent's case?

4 **A** Well, the decedent died of a gunshot wound.
5 Specifically the one that went into the chest through
6 the left lung, the heart, and the right lung.

7 **Q** And what's the -- is that the cause or the --

8 **A** The cause, yes.

9 **Q** Okay. What is the manner of death?

10 **A** The manner of death is a homicide. Let me
11 explain. A manner is one of five categories in which
12 deaths are categorized. You can have a natural death,
13 obviously, an accidental, a suicidal, a homicidal, or
14 an undetermined type death. And specifically the
15 medical term, death at the hands of another person, is
16 called a homicide. Okay?

17 **Q** On the picture of the male victim, the male
18 decedent, his left eye is swollen?

19 **A** Yes.

20 **Q** Is that an additional injury, or is that what
21 you call an artifact?

22 **A** Well, it's possible that it is an additional
23 injury. However, it could be related to those injuries

DIRECT/OHR

1 that started here on the right side of the head.

2 Remember, energy is delivered not only to the surface,
3 but travels through the head, through the brain, and
4 may cause hemorrhages in the blood vessels underneath
5 the left eye. You see?

6 **Q** I say artifact. Can you tell the jury what
7 that means?

8 **A** Yeah. Artifact means that it could be that
9 it's not injury, but simply the decedent is laying on
10 his left side, and so by gravity, over time, blood
11 starts to travel through the tissues and stain the skin
12 and tissues on the other side of the face, on the
13 opposite side of the head. The side where the head was
14 down as opposed to the side where the head was up. It
15 happens by gravity. It's called lividity, and it's an
16 artifact that happens after death. Okay?

17 **Q** How long with just the gunshot wound to the
18 lung, the heart, and the other lung, how long could
19 this male decedent have lived?

20 **A** I don't have those details from the report
21 that I was given, so I can't know that.

22 **Q** But you said it didn't have to be
23 instantaneously; is that correct?

DIRECT/OHR

1 **A** No. That's correct.

2 **Q** What about those injuries to his skull; is
3 that an instantaneous?

4 **A** Not necessarily. I would've expected the
5 decedent to have been incapacitated, knocked out, and
6 certainly with the injuries -- I've seen injuries like
7 that where they're nearly instantaneously fatal, and
8 I've seen people survive those kind of injuries, so I'm
9 sorry to waffle, but that's the honest truth.

10 **Q** In your review of the reports, the
11 photographs, and going to the crime scene, do you agree
12 with Dr. Weiss's conclusion in cause and manner of
13 death?

14 **A** Yes, I do.

15 **Q** Back then they called it shock and
16 hemorrhage.

17 **A** Yeah.

18 **Q** What does that mean?

19 **A** This is an old term that basically is giving
20 voice to shock, the energy that's delivered to the
21 body, and hemorrhage, which means bleeding. Okay?
22 It's just the formal terms for those two -- two things
23 that happen when a bullet goes into a body.

DIRECT/OHR

1 **Q** And so it doesn't change anything, the fact
2 that he died from gunshot wounds? They just call it
3 shock and hemorrhage from gunshot wounds; is that
4 right?

5 **A** That's correct.

6 **Q** Moving on to Marilyn, or the adult female
7 decedent's report that you reviewed, did you also
8 receive autopsy photographs for review in that report?

9 **A** That's right.

10 **Q** Did those injuries for that adult female
11 decedent, would they correlate to the report for the
12 adult female decedent that you reviewed?

13 **A** Yes.

14 **MS. CANTALAMESSA:** May I approach, Your
15 Honor?

16 **THE COURT:** You may.

17 **(WHEREUPON, State's Exhibits Nos. 30-32**
18 **were marked for identification.)**

19 **BY MS. CANTALAMESSA:**

20 **Q** I'm going to hand you State's Exhibits 30,
21 31, and 32.

22 **A** Yes.

23 **Q** Could you tell us what's in each of those

DIRECT/OHR

1 photographs, stating the State's Exhibit number first?

2 **A** In State's Exhibit 30, I have the face-on
3 view, including the neck and upper part of the chest of
4 the female decedent. There are -- well, she had
5 slightly swollen and discolored eyelids.

6 In 31 I have a right face view of the female
7 decedent, and there is an abrasion here on the right
8 cheek, as well as the discoloration of the right
9 eyelid.

10 Exhibit 32 is the posterior view of the
11 female decedent, and there is an entrance gunshot wound
12 in the back of the head near the midline, here.

13 **Q** And what was the age of the female decedent
14 at her time of death?

15 **A** She was 32.

16 **Q** And how big was she?

17 **A** She was 5 foot 9 and 270 pounds.

18 **Q** And what were her injuries as noted in
19 Dr. Weiss's coroner's report?

20 **A** Well, she had lacerations of the brain due to
21 a gunshot wound to the back of the head.

22 **Q** And that was consistent with what you saw
23 both in the photographs and the report?

DIRECT/OHR

- 1 **A** Yes.
- 2 **Q** You mentioned she had an injury on her face?
- 3 **A** Yeah. It's not uncommon in people who have
4 gunshot wounds to their head, there will -- small
5 fractures will occur on the floor of the brain vault,
6 and those fractures will cause small injuries to the
7 eyelids. It will cause the eyelids to discolor.
- 8 **Q** And what was her cause and manner of death?
- 9 **A** Well, she died as a result of a gunshot wound
10 to the back of the head.
- 11 **Q** Can you determine how many -- whether it was
12 seconds to minutes, any time that it took for her?
- 13 **A** Yeah. She could've died within seconds to a
14 couple of minutes.
- 15 **Q** Do you agree with Dr. Weiss's conclusion in
16 that cause and manner of death?
- 17 **A** Yes.
- 18 **Q** And what was -- did you say what manner of
19 death that was?
- 20 **A** Yes. This is also a homicide.
- 21 **Q** Moving on to the third report that you
22 reviewed, it was a female juvenile?
- 23 **A** Correct.

DIRECT/OHR

1 **MS. CANTALAMESSA:** May I approach one
2 last time, Your Honor?

3 **THE COURT:** You may.

4 **(WHEREUPON, State's Exhibits Nos. 33-36**
5 **were marked for identification.)**

6 **BY MS. CANTALAMESSA:**

7 **Q** Dr. Ohr, I'm going to hand you State's
8 Exhibits 33 through 36. Would you do the same thing
9 for me with those photographs?

10 **A** Yes. I have State's 33 through 36. State's
11 33 is a left face view of the juvenile decedent. And
12 on the face and within the hairline, there are multiple
13 lacerations. One here at the -- excuse me, the left
14 side of the nose. One here at the outer edge of the
15 left orbit, around the eye. One on the left cheek.
16 There are one here, the left hairline, one near the
17 midline, and then there are multiple within the hair
18 itself.

19 **Q** Can you say exactly how many wounds she has?

20 **A** Well, from this picture I can see eight in
21 this particular exhibit. The next photograph is a more
22 face-on view of the female juvenile, and it's really
23 showing that there are no injuries to the right side of

DIRECT/OHR

1 the face.

2 **Q** What number is that? I'm sorry.

3 **A** This is State's 34. State's 35 is the
4 juvenile decedent, and we're looking at the top of the
5 head. The hair has been combed left and right, and
6 there are multiple lacerations here near the midline in
7 the front and along the left side to the midline of the
8 back. Perhaps one, two, three, four, five -- five,
9 possibly six injuries to the top of the head.

10 **Q** And how old was that female juvenile at the
11 time of autopsy?

12 **A** She was four.

13 **Q** And how much did she weigh?

14 **A** She weighed 35 pounds.

15 **Q** What can you tell us about those injuries to
16 her head? Was it more force than would've been on the
17 adult male? Was it less force? Anything you could say
18 about that?

19 **A** Well, no. The -- the injuries did break the
20 skull. A child's skull tends to be thinner and more
21 flexible than that of an adult. Would it take more or
22 less force to break the child's skull? It's -- I
23 really can't tell. The flexibility makes it less

DIRECT/OHR

1 likely that the skull would break. The thinness of the
2 skull makes it more likely that the skull would break.
3 You see? The point is is that the skull was broken.

4 **Q** Can you tell what kind of object made those
5 lacerations?

6 **A** Well, no, not specifically. The laceration,
7 the wounds themselves, do have an angular appearance to
8 them. Some of them have kind of a 90-degree edge to
9 them. This is not consistent with a fist unless maybe
10 the fist was wearing, you know, a large, angular ring
11 or something like that. It's consistent with a tool.
12 I don't know what tool.

13 **Q** Is it consistent with the injuries that were
14 on the adult male?

15 **A** Yes.

16 **Q** And those -- you've already testified those
17 are consistent with a gun?

18 **A** Well, yes, a gun is possible here.

19 **Q** The report talks about the injury to the
20 skull, the crushing or the fracture of the skull. Is
21 there anything to note about that?

22 **A** Not really. The term I believe you're
23 looking for is comminuted. Comminuted simply means

DIRECT/OHR

1 that it's not broken across like a stick or like if you
2 break your arm, you get a linear break. Comminuted
3 means more spiderweb like or like an eggshell. You
4 know, many pieces, like that.

5 **Q** Would the heavier the type of tool that was
6 used cause that effect?

7 **A** Well, no. I really can't -- I can't really
8 tell.

9 **Q** And what, according to the report and your
10 review of all the evidence in the case, what was the
11 female juvenile decedent's cause and manner of death?

12 **A** Well, she died as a result of these injuries
13 to the face and head. The fracturing the skull, again,
14 leads to laceration or cuts in the brain itself, as
15 well as the force or energy that comes from the blow,
16 through the skin, through the skull, to the brain
17 itself.

18 **Q** And what is her manner of death?

19 **A** The manner of death here is that of a
20 homicide.

21 **Q** Do you agree with all the conclusions that
22 were made back in 1974 in these coroner's reports?

23 **A** Well, yes. I agree to the findings of the

DIRECT/OHR

1 autopsy reports in correlation with the photographs
2 that I've been shown.

3 **Q** Okay. And do you come to that conclusion
4 based on a reasonable degree of medical certainty?

5 **A** Yes, I do.

6 **THE COURT:** Are you going to be a while?
7 It's time for -- over time for the jury to go
8 to lunch.

9 **MS. CANTALAMESSA:** I have one more thing
10 to ask.

11 **THE COURT:** Are you going to have
12 something, too?

13 **MS. WEIBLING:** Yes, Your Honor, I do
14 have a cross.

15 **THE COURT:** Okay. Then we're going to
16 recess. Ladies and gentlemen, during your
17 absence from the courtroom, I would remind
18 you, please, not to discuss this case at all
19 among yourselves or with anyone else. Please
20 do not allow anyone to discuss the case with
21 you or in your presence. You should not form
22 or express any opinion about the case.
23 Again, you're free to go wherever you like

DIRECT/OHR

1 for lunch. Return to the jury room shortly
2 before 1:30 so we can begin at that time.
3 Please avoid any publicity about the case or
4 anyone discussing the case. Thank you.

5 **(WHEREUPON, the Court recessed at 12:17**
6 **p.m., November 19, 2013 and reopened at 1:33**
7 **p.m., November 19, 2013 and the proceedings**
8 **continued as follows:)**

9 **THE COURT:** Thank you. Please continue.

10 **MS. CANTALAMESSA:** Thank you, Your
11 Honor.

12 **BY MS. CANTALAMESSA:**

13 **Q** Dr. Ohr, do you know where they used to do
14 the autopsies in Mahoning County?

15 **A** Yes. It's now called the Oak Hill
16 Renaissance Center. It's -- it's government offices,
17 including our office. It was the old South Side
18 Hospital. South Side Hospital, of course, had a
19 hospital morgue, and that's where autopsies were done.

20 **Q** And did those coroner's reports reflect that
21 those autopsies in this case were all done at the South
22 Side Hospital?

23 **A** Yes.

DIRECT/OHR

1 **MS. CANTALAMESSA:** May I approach the
2 witness, Your Honor?

3 **THE COURT:** Yes.

4 **(WHEREUPON, State's Exhibits Nos. 40,**
5 **41C, 41D, 41E, 41F were marked for**
6 **identification.)**

7 **BY MS. CANTALAMESSA:**

8 **Q** I'm going to hand you State's Exhibit 40 and
9 then 41C, D, E, and F. When you do an autopsy, Dr.
10 Ohr, every projectile that is collected, do you keep
11 that and give it over to the police in any way?

12 **A** Yes.

13 **Q** And how is that done?

14 **A** Well, the bullets -- in my practice the
15 projectiles are removed, they are cleaned, and they are
16 photographed, they are packaged. And a -- and an
17 evidence sheet or evidence trail sheet is attached to
18 the projectiles. This lets the person who receives the
19 projectiles know what's on the list, what bullets are
20 there, to double check those and sign off on them.

21 **Q** And do you normally, if there's multiple
22 projectiles found, mark where you found each one?

23 **A** Yes. Yes, I do.

DIRECT/OHR

1 **Q** Did you have a chance to review the actual
2 evidence taken from the coroner's office back in 1974?

3 **A** Yes, I did.

4 **Q** Did they mark those projectiles in the same
5 manner in that you mark them today?

6 **A** The slight difference is this; back then
7 projectiles were actually marked on. The butt of the
8 bullet was marked on it. I don't do that personally.
9 We photograph them today. But yes, essentially,
10 correct, they are labeled, and they're correlated with
11 the autopsy report.

12 **Q** And were those labeled, and were you able to
13 correlate those with the autopsy reports?

14 **A** Yes.

15 **Q** And how were you able to do that?

16 **A** Well, the -- as part of the autopsy findings,
17 the autopsy report will list, for example, projectile
18 removed from the right chest cavity like that, and then
19 they'll put a number next to it, No. 3, and then No. 3
20 will go on the box of the package in which the bullet
21 is stored and would go on an evidence log as well.

22 **Q** Is the doctor who removed that projectile, is
23 their name indicated on the label?

DIRECT/OHR

1 **A** Yes, it is.

2 **Q** And can you tell us what State's Exhibit 40
3 is, please? You could open it if that assists you.
4 And those are open as well.

5 **A** Yeah. Exhibit 40 contains two packages, each
6 with a cardboard box in them. The package is labeled
7 Shelf No. 66. The box has no labeling, but within the
8 box is a round tin, and the tin has labeling that
9 identifies the date of the autopsy, the decedent's
10 name, and Dr. Weiss who was the coroner involved with
11 this case.

12 **Q** Is that for the female decedent or the male
13 decedent?

14 **A** This is for the male decedent.

15 **Q** And since there were three projectiles from
16 him, does that indicate which one that that correlates
17 to?

18 **A** Yes. This one says anterior clavicle.
19 Anterior means front. Clavicle means collarbone. And
20 it has the No. 1 associated with it. I go to the
21 autopsy report, and on the autopsy report it says No. 1
22 from the clavicle.

23 **Q** Could you open the other box from Exhibit

DIRECT/OHR

1 No. 40?

2 **A** Sure. Also a box, no labeling on it, and
3 inside a small metal tin. The tin also that of the
4 male decedent, the date. The tin also says South Side
5 Hospital on it, and it says bullet marked No. 2. And
6 forgive me, I can't read this little smudged part here.
7 Bullet No. 2.

8 **Q** And there was a No. 2 in the coroner's
9 report?

10 **A** Yes.

11 **Q** And could you look at 41C for us?

12 **A** Uh-huh.

13 **Q** They have a sticker on the bottom, if that
14 helps.

15 **A** Yeah. Thank you. This again is the male
16 decedent. The date of the autopsy, South Side
17 Hospital. Then this one says spine, and it says Bullet
18 No. 3 on it.

19 **Q** And that's the one you describe before as the
20 iliac --

21 **A** Iliac spine. Correct.

22 **Q** And could you do 41D for us?

23 **A** Uh-huh. Another tin. 41D is another metal

DIRECT/OHR

1 tin, and this one says -- this is of the female
2 decedent, the adult. It has the date of the autopsy,
3 and the South Side Hospital. It has Dr. Weiss's name
4 on it, and it's marked head.

5 **Q** And what are the other two, 41E and F?

6 **A** 41E is a clear, plastic capsule taped closed,
7 and it says -- there's a small piece of gauze or paper
8 inside that wraps what is apparently -- it's labeled
9 fragment removed from the head of the female decedent,
10 and it says by Dr. Weiss.

11 **Q** Okay.

12 **A** 41F, it says hair sample of -- and this is
13 the male decedent, and it has the date of the autopsy
14 on it.

15 **Q** Do all that, 40 and 41C, D, E, and F, all
16 reflect the same date that's on the coroner's report?

17 **A** They do.

18 **Q** As a deputy coroner for Mahoning County, do
19 you, or is it commonplace for coroners to take
20 fingerprints as well of decedents?

21 **A** In my practice, yes, I take the fingerprints
22 of all homicide victims.

23 **Q** And for one minute before I sit down, we

DIRECT/OHR

1 talked before about three projectiles in the male adult
2 decedent?

3 **A** Yes.

4 **Q** But seven wounds?

5 **A** I understand.

6 **Q** Could all seven of those wounds be from those
7 three projectiles, or --

8 **A** Yes.

9 **Q** Okay. Could there be even a fourth
10 projectile that caused one of the other wounds on the
11 arm or the hand?

12 **A** Oh, sure, yeah. There's a wound here on the
13 hand and one through the forearm that has both an
14 entrance and an exit. So it could've gone through the
15 body and be lost to the room or in the wall or
16 something like this.

17 **Q** And you said before that it was possible that
18 the forearm wound could've went in the forearm, out the
19 forearm, then in the side; is that correct? That's
20 possible?

21 **A** Well, yes, it's possible that it happened
22 either at the forearm or, you know, the hand also has
23 an entrance and an exit. Could've gone entrance, exit,

DIRECT/OHR

1 and then back into the hip. That's certainly possible.

2 **MS. CANTALAMESSA:** Can I have one
3 second, Your Honor?

4 **THE COURT:** All right.

5 **(WHEREUPON, a discussion was had among**
6 **counsel off the record and out of the hearing**
7 **of the Court, jury and court reporter, after**
8 **which the proceedings continued as follows:)**

9 **MS. CANTALAMESSA:** I have nothing
10 further, Your Honor. Thank you.

11 **THE COURT:** Any cross examination?

12 **MS. WEIBLING:** Yes, Your Honor.

13

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CROSS/OHR

1 **CROSS EXAMINATION**

2 **BY MS. WEIBLING:**

3 **Q** Dr. Ohr, I'm Attorney Kristie Weibling. I'm
4 going to ask you some questions. If you need me to
5 repeat anything, just let me know.

6 **A** Thank you.

7 **Q** Just for clarification purposes, the exhibits
8 that you were referencing that are in front of you,
9 those are projectiles; correct?

10 **A** Projectiles, and then one is a hair sample,
11 and one is a fragment of a projectile.

12 **Q** Did you remove any of those projectiles from
13 the decedent, the male decedent?

14 **A** No, I did not.

15 **Q** And did you take the hair sample that is
16 contained there?

17 **A** I did not.

18 **Q** Dr. Ohr, it's evident that you are a highly
19 skilled physician and are very knowledgeable on this
20 subject matter. You previously testified that you
21 reviewed autopsy photographs, the autopsy report,
22 reviewed the scene where these incidents allegedly had
23 taken place. Based upon your review of all of that

CROSS/OHR

1 information, as you sit here today, can you tell us who
2 caused the injuries that are referenced in those
3 autopsy reports?

4 **A** No, I can't.

5 **MS. WEIBLING:** Thank you, Your Honor.
6 No further questions.

7 **THE COURT:** Anything else from the
8 state?

9 **MS. CANTALAMESSA:** No, Your Honor.
10 Thank you.

11 **THE COURT:** All right, sir. Thank you.

12 **THE WITNESS:** Thank you, Your Honor.

13 **THE COURT:** Your next witness, please.

14 **MS. CANTALAMESSA:** Your Honor, the state
15 calls Andrew Chappell.

16 **THE BAILIFF:** Judge, this witness does
17 not object to being photographed.

DIRECT/CHAPPELL

1 **THE COURT:** Okay. Raise your right
2 hand, please.

3 **WHEREUPON, the State called**

4
5 **ANDREW CHAPPELL,**

6
7 **who, being first duly sworn, testified**
8 **as follows:**

9 **THE COURT:** Please be seated in the
10 witness chair. You testified before,
11 Mr. Chappell?

12 **THE WITNESS:** Yes, sir.

13 **THE COURT:** All right. Please keep your
14 voice up and answer all the questions out
15 loud. Thank you.

16 **MS. CANTALAMESSA:** Thank you, Your
17 Honor.

18 **DIRECT EXAMINATION**

19 **BY MS. CANTALAMESSA:**

20 **Q** Good afternoon.

21 **A** Good afternoon.

22 **Q** Would you please introduce yourself to the
23 jury?

DIRECT/CHAPPELL

1 **A** Andrew Chappell, C-H-A-P-P-E-L-L.

2 **Q** And Mr. Chappell, what do you do for a
3 living?

4 **A** I am a forensic scientist assigned to the
5 firearm section at the Ohio Bureau of Criminal
6 Investigation, commonly referred to as BCI.

7 **Q** And what kind of education do you have in
8 order to work at BCI?

9 **A** I have a bachelor's degree in chemistry from
10 Hampden-Sydney College. A master's degree in forensic
11 science from the University of Alabama at Birmingham.
12 I completed an internship with the firearms section of
13 the Virginia Division of Forensic Sciences. I
14 completed a year of on-the-job training at BCI and have
15 continued to attend classes and seminars that's
16 available since then.

17 **Q** How long have you worked at BCI?

18 **A** Twelve years.

19 **Q** Did you work anywhere prior to that?

20 **A** No, I did not.

21 **Q** You said what division you work at at BCI.
22 What do you do in that division?

23 **A** I examine submitted firearms to determine if

DIRECT/CHAPPELL

1 they function as designed. I examine fired ammunition
2 components comparing them to each other to determine if
3 they were fired from the same firearm or multiple. I
4 compare those also to test fires I take from submitted
5 firearms to determine if they were fired from that
6 particular gun. I examine victim clothing for patterns
7 of gunshot residue in order to estimate the distance a
8 shooter was from the victim at the time the gun was
9 fired. I restore serial numbers that have been ground
10 off of firearms or pretty much any metal surface that
11 once had a unique identifier stamped into it that has
12 since been removed. And I do something that's called
13 NIBIN database entry. And NIBIN is a national database
14 that we enter both evidence and test fired cartridge
15 cases into in order to determine if there is a link
16 between previously unassociated crimes.

17 **Q** Do you have any specialized training through
18 BCI for your position there?

19 **A** Yes, I do.

20 **Q** Do you have to keep up with so many hours?

21 **A** No, we do not.

22 **Q** What kind of specialized training for BCI
23 have you had?

DIRECT/CHAPPELL

1 **A** Training in the examination of firearms in
2 the comparison of ammunition components with reference
3 to being able to identify them as having come from a
4 specific firearm. Examination of gunshot residue
5 patterns and restoration of serial numbers.

6 **Q** Okay. And are you a member of any
7 professional organizations?

8 **A** No, I'm not.

9 **Q** Is BCI an accredited laboratory?

10 **A** Yes, it is.

11 **Q** Okay. And how is it accredited?

12 **A** It is accredited through the American Society
13 of Crime Laboratory Directors.

14 **Q** Do you have -- while you work at BCI, do you
15 have to undergo proficiency testing in order to
16 maintain your employment?

17 **A** Yes, I do.

18 **Q** And what is that?

19 **A** Proficiency testing is we take a test
20 designed to make sure that our skill level is
21 maintained and that we are competent in the area that
22 we work. We take at least two external proficiencies
23 each year and currently do additional three internal

DIRECT/CHAPPELL

1 reworkings of someone else's case work.

2 **Q** And then firearms comparison cases, do you
3 get proficiency testing in that as well?

4 **A** Yes, we do.

5 **Q** Tell us, when you're comparing firearms as
6 you compared projectiles or lead bullets from this
7 case, what are you looking for?

8 **A** First I'm looking at the class
9 characteristics, which for a bullet is going to be the
10 caliber, which refers to the diameter of the bullet.
11 I'm looking at the number of lands and grooves that are
12 carved into the bullet, as well as the direction that
13 they twist, and their widths. Lands and grooves are
14 kind of like the rumble strip down the side of the
15 highway, cut into a barrel with a twist by the
16 manufacturer. And they are put there in order to put a
17 spin on the bullet, which gives you greater accuracy at
18 longer distances. Much like throwing a football. If
19 you don't get a nice tight spiral, it tips end over end
20 and doesn't go as far and hit the intended receiver.
21 Same applies with the lands and grooves in the barrel
22 of a gun.

23 **Q** And is there a database kept that you know

DIRECT/CHAPPELL

1 which guns have which type of lands and grooves?

2 **A** Yes. The FBI maintains a database of general
3 rifling characteristics.

4 **Q** What do you do when you get these
5 projectiles? Do you look at them with your naked eye,
6 or how do you do this?

7 **A** We examine them using a comparison
8 microscope. And a comparison microscope is essentially
9 two microscopes connected by an optical bridge that
10 allows you to look at two objects side by side at the
11 same time.

12 **Q** You received some evidence from this case; is
13 that correct?

14 **A** Yes, it is.

15 **Q** All right. When did you receive evidence to
16 compare in this case?

17 **A** May I refer to my notes?

18 **MS. CANTALAMESSA:** Your Honor, may he
19 refer to his notes?

20 **THE COURT:** Fine by me.

21 **A** Evidence was submitted for my examination in
22 July of this year.

23 **Q** What did you receive that you were going to

DIRECT/CHAPPELL

1 compare?

2 **A** I examined four fired bullets and three lead
3 fragments that were recovered from the bodies of
4 Benjamin and Marilyn Marsh.

5 **MS. CANTALAMESSA:** Your Honor, may I
6 approach?

7 **THE COURT:** You may.

8 **(WHEREUPON, State's Exhibit No. 45 was**
9 **marked for identification.)**

10 **BY MS. CANTALAMESSA:**

11 **Q** Before I do that, though, so I can bring you
12 two things at once, did you write a report in reference
13 to your comparison in this case?

14 **A** Yes, I did.

15 **Q** I'm going to hand you State's Exhibit 41,
16 State's Exhibit 40, and then there's 41C, D, E, and F,
17 and State's Exhibit 45. And I'll ask you some
18 questions. Let's start with State's Exhibit 45. Could
19 you tell us what that is?

20 **A** This is a copy of the report that I issued
21 stating my findings.

22 **Q** And is that a fair and accurate copy of your
23 original report?

DIRECT/CHAPPELL

1 **A** Yes, it is.

2 **Q** What date did you sign that report or finish
3 your analysis?

4 **A** August 28th of this year.

5 **Q** You said you received four projectiles and
6 three bullet fragments?

7 **A** Yes.

8 **Q** Okay. Are those contained in any of those
9 exhibits you have up there?

10 **A** Yes, they are.

11 **Q** Okay. How do you know?

12 **A** When evidence is submitted to the laboratory,
13 it receives a case number unique to that particular
14 incident, and each package of evidence receives an item
15 number unique to that. And those are printed along
16 with a bar code label and affixed to the packaging, and
17 we use that label for tracking purposes of the evidence
18 within the laboratory. And the evidence also bears my
19 initials and the date that I sealed the packaging.

20 **Q** And is that also true for State's Exhibit 40?
21 I think there's two bags inside.

22 **A** Yes, it is.

23 **Q** Okay. And what were BCI numbers on State's

DIRECT/CHAPPELL

1 Exhibit 40 and 41?

2 **A** 11 and 12.

3 **Q** Did you -- was this the first time that this
4 evidence was submitted to BCI?

5 **A** No, it was not.

6 **Q** How do you know that?

7 **A** The evidence was originally submitted in
8 1974, and that is indicated by the case number, as well
9 as submission sheets from the initial submission.

10 **Q** Do you have an old case file going back that
11 long ago?

12 **A** Yes, I do.

13 **Q** Do you have all the old submission sheets
14 throughout the years?

15 **A** I have several of them, yes.

16 **Q** Is this case also given a 1974 case number
17 because of the original date of it?

18 **A** Yes, it is.

19 **Q** When you made your comparison, you looked at
20 them through a comparison microscope?

21 **A** Yes, I did.

22 **Q** And how were you able to do that? I mean,
23 which ones did you take out? Did you take out all four

DIRECT/CHAPPELL

1 of them and do them all four at one time, or was it a
2 one-to-one basis?

3 **A** It is a one-to-one comparison.

4 **Q** Did you find -- did you make any conclusions
5 in regards to those four projectiles that you had?

6 **A** Yes, I did.

7 **Q** And what was that?

8 **A** All four of the bullets have the same general
9 rifling characteristics, and two of those bullets have
10 matching individual barrel engraved striations, meaning
11 that those two were fired from the same firearm. The
12 remaining two bullets did not exhibit sufficient
13 individual detail in order to identify or eliminate
14 them as having been fired from the same firearm as the
15 other two.

16 **Q** Okay. Let's go back to how is a bullet --
17 how are you able to just take the projectile and not
18 the full bullet and tell where that bullet comes from?

19 **A** People commonly refer to a cartridge as a
20 bullet. In order to explain the terminology, it helps
21 if you think of it like a champagne bottle. The
22 overall cartridge is similar to an unopened bottle.
23 The cartridge case corresponds to the bottle itself.

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1 The bullet which sits in the top, corresponds to the
2 cork. And then the powder, which is inside,
3 corresponds to the actual champagne. Both the bullet
4 and the cartridge case are identifiable to a particular
5 firearm, and so you don't need both in order to make an
6 identification. Either one is identifiable on its own.

7 **Q** What is the problem with only doing the lead
8 or the projectile from the bullet? Is there anything
9 about that lead piece that isn't desirable over time?

10 **A** Lead is very soft, and over time from rolling
11 around in the container, being handled during
12 additional comparisons, the lead wears down and gets
13 smooth, and it becomes much more difficult to make an
14 identification.

15 **Q** You said you were, though, able to match two
16 of the bullets you had -- or two of the projectiles you
17 had; is that right?

18 **A** That's correct.

19 **Q** Okay. The four projectiles that you have,
20 where did they come from?

21 **A** They were recovered from the bodies.

22 **Q** Okay. You didn't have any of the projectiles
23 from the scene in Canfield?

DIRECT/CHAPPELL

1 **A** No, I did not.

2 **Q** Were all the projectiles you tested marked
3 accordingly as from those bodies?

4 **A** Yes, they were.

5 **Q** Do you note that in your report as well as
6 how each projectile was marked so that you can keep the
7 same identification?

8 **A** Yes, I did.

9 **Q** What are you able to say about those --
10 besides being from the .38 caliber classification,
11 about those two bullets you were able to identify?

12 **A** Based on the general rifling characteristics,
13 the class characteristics that I mentioned earlier, I
14 entered those into the database that's maintained by
15 the FBI, and was able to provide a list of firearms
16 that have those same general characteristics, and
17 therefore could have fired those bullets.

18 **Q** What kind of characteristics did you find?
19 Did you find the lands and grooves that we've talked
20 about?

21 **A** The characteristics that I'm using for this
22 search are the caliber family, the number of lands and
23 grooves, their direction of twist, and the widths of

DIRECT/CHAPPELL

1 the lands and grooves.

2 **Q** Do you know how many lands and grooves were
3 on these?

4 **A** There were six.

5 **Q** Do you know the direction of twist?

6 **A** Left.

7 **Q** And that information you put into your
8 database?

9 **A** Yes, I did.

10 **Q** And what did you come up with?

11 **A** I came up with a list of possible firearms.

12 **Q** And you've also included that in your report;
13 is that right?

14 **A** Yes, I did.

15 **Q** Does your conclusion include weapons that are
16 considered or called .38 specials?

17 **A** Yes, it does.

18 **Q** Out of the 12 guns you've listed, how many of
19 those guns are .38 specials?

20 **A** Eight.

21 **Q** Can you talk about the difference between a
22 revolver and a semiautomatic for us?

23 **A** A revolver is the old fashioned kind of gun

DIRECT/CHAPPELL

1 you used to see in the old westerns. Cartridges are
2 loaded into a round cylinder that revolves or turns
3 when the hammer is cocked to move each cartridge in
4 line with the firing pin. When a revolver is fired,
5 the cartridge cases stay in the cylinder until they are
6 manually removed by someone.

7 With a semiautomatic, cartridges are loaded
8 into a magazine, which is a box-like structure with a
9 spring loaded follower, functions like a PEZ dispenser.
10 It constantly pushes everything to the top. That gets
11 inserted into the pistol, and the slide is pulled
12 rearward, and when that -- and as it moves forward
13 again under spring tension it takes the top cartridge
14 in the magazine and loads it into the chamber, ready to
15 be fired.

16 Once the gun is fired, the pressure from
17 detonating the cartridge forces the bullet down the
18 barrel, but it also causes the slide to move rearward
19 again. And as it moves rearward, there's a small metal
20 hook that catches under the rim of the now fired
21 cartridge case and pulls it out of the chamber until it
22 hits another little metal piece called an ejector that
23 kicks it out of the gun. Then the slide will move

DIRECT/CHAPPELL

1 forward again under spring tension and load the next
2 cartridge from the magazine.

3 **MR. MERANTO:** Judge, excuse me. May we
4 approach?

5 **THE COURT:** All right.

6 **(WHEREUPON, a discussion was had among**
7 **court and counsel off the record and out of**
8 **the hearing of the jury and court reporter,**
9 **after which the proceedings continued as**
10 **follows:)**

11 **MS. CANTALAMESSA:** Can I keep going?

12 **MR. MERANTO:** Yeah.

13 **MS. CANTALAMESSA:** Thank you.

14 **THE COURT:** Yes, please.

15 **MS. CANTALAMESSA:** Thank you.

16 **BY MS. CANTALAMESSA:**

17 **Q** Mr. Chappell, you talked about matching two
18 bullets to that list of guns, and eight out of the
19 twelve are .38 specials. Which two bullets have you
20 identified that matched the .38 special?

21 **A** One -- I didn't identify any to a particular
22 firearm.

23 **Q** Right.

DIRECT/CHAPPELL

1 **A** The two that I matched to each other, one was
2 recovered from Mr. Marsh's clavicle, and the other was
3 recovered from his spine.

4 **Q** You also mentioned having three bullet
5 fragments from Mrs. Marsh. Were you able to do
6 anything with those bullet fragments?

7 **A** Unfortunately, no. The bullet fragments did
8 not exhibit any class or individual characteristics,
9 and that prevented any further analysis.

10 **Q** When you knew that it was resubmitted because
11 it had been submitted in 1974, were more projectiles
12 submitted back in 1974?

13 **A** Yes, there were.

14 **Q** How many were submitted back then?

15 **A** A total of six were initially submitted in
16 1974.

17 **Q** Were they able to match those six bullets
18 back in 1974?

19 **A** According to the original case notes, all six
20 bullets were matched to each other.

21 **Q** Did they ever do the same thing you do today
22 in making this list of potential weapons?

23 **A** I honestly don't know if they had that

DIRECT/CHAPPELL

1 capability in 1974.

2 **Q** That's fine. Do you come to all these
3 conclusions based on a reasonable degree of scientific
4 certainty?

5 **A** Yes, I do.

6 **Q** And do you base that, your opinion, on all
7 your training and experience and your work at BCI?

8 **A** Yes, I do.

9 **MS. CANTALAMESSA:** Can I have one
10 second, Your Honor?

11 **(WHEREUPON, a discussion was had among**
12 **counsel off the record and out of the hearing**
13 **of the Court, jury and court reporter, after**
14 **which the proceedings continued as follows:)**

15 **BY MS. CANTALAMESSA:**

16 **Q** When we talk about fragments, how is a bullet
17 caused to be fragmented? What causes that, if you
18 know?

19 **A** Impact with a harder object.

20 **Q** When you're talking about the two bullets
21 that you weren't able to match to the other two, you
22 were able to say that they were of a certain class,
23 though; right?

DIRECT/CHAPPELL

1 **A** Yes. They have the same class
2 characteristics as the two that I matched to each
3 other.

4 **Q** And when you're saying class characteristics
5 is that because you're taking a measurement of how big
6 they are?

7 **A** Yes. That's referring to their diameter, the
8 number of lands and grooves, the direction of twist,
9 and the land and groove measurements.

10 **Q** Okay. The manner in which these bullets are
11 kept in these -- in these tins, did that affect your
12 ability to match those two the other two bullets?

13 **A** As I said, over time because the lead is so
14 soft, it will break down as it moves within the
15 containers or when it's handled for further
16 examination.

17 **Q** Have you ever done a case of this age?

18 **A** No, I have not.

19 **MS. CANTALAMESSA:** Nothing further, Your
20 Honor. Thank you.

21 **THE COURT:** Do you folks wish to cross
22 examine this witness?

23 **MR. MERANTO:** Yes, Your Honor.

CROSS/CHAPPELL

1 **THE COURT:** Please do so.

2 **MR. MERANTO:** Thank you.

3 **CROSS EXAMINATION**

4 **BY MR. MERANTO:**

5 **Q** Good afternoon, Mr. Chappell.

6 **A** Good afternoon.

7 **Q** You've been there 12 years?

8 **A** Yes, I have.

9 **Q** In 12 years, did they ever ask you to do
10 anything with those fragments you have in front of you?

11 **A** When they were submitted.

12 **Q** In July of this year?

13 **A** In July of this year.

14 **Q** So that's the first time in the last 12
15 years; right?

16 **A** That's correct.

17 **Q** And you may have been able to -- I mean, from
18 what I'm hearing from your direct, you may have been
19 able to provide more information if they were submitted
20 at an earlier time; correct?

21 **A** It is possible that the bullets may not have
22 been as degraded at that time.

23 **Q** Okay. But as we stand here today, you have

CROSS/CHAPPELL

1 four bullets that you were able to analyze; right?

2 **A** That's correct.

3 **Q** Two that you believe were from the same
4 weapon?

5 **A** Yes. Two were fired from the same weapon.

6 **Q** Okay. The other two, what kind of weapon
7 fired those?

8 **A** They have the same general characteristics,
9 which means they could've been fired from the same
10 weapon. Then again, because they do not have the
11 individual characteristics, they may not have been.

12 **Q** Do they match each other?

13 **A** I cannot match them to each other.

14 **Q** Okay. So potentially there's three weapons
15 that may have been involved here, correct, based on
16 your analysis?

17 **A** I can only determine that the two were fired
18 from one firearm. With the other two, I can't say
19 whether or not they were fired from the same firearm or
20 multiple.

21 **Q** Okay. So would that be a yes then?
22 Potentially, at most, three weapons here; right?

23 **A** At most, three.

CROSS/CHAPPELL

1 **Q** And by the way, I see you keep using that
2 lands and grooves term; right? That's a gun term to
3 analyze bullets; right?

4 **A** Yes, it is.

5 **Q** You ever use that lands and grooves term to
6 analyze fingerprints, or ever heard it used like that?

7 **A** No, I have not.

8 **MR. MERANTO:** Thank you.

9

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REDIRECT/CHAPPELL

1 **REDIRECT EXAMINATION**

2 **BY MS. CANTALAMESSA:**

3 **Q** Mr. Chappell, you can't include or exclude
4 those other two bullets because they were too worn; is
5 that correct?

6 **A** That is correct.

7 **Q** But back in 1974 or '75 era, someone at BCI
8 matched all six; is that correct?

9 **A** That is correct.

10 **MS. CANTALAMESSA:** No further questions,
11 Your Honor.

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RECROSS/CHAPPELL

RECROSS EXAMINATION

BY MR. MERANTO:

1 **Q** Well, you're here today, though. Whoever
2 analyzed them is not around; right?

3 **A** No, they are not.

4 **Q** Okay. So you don't know what they did, how
5 they analyzed them, what techniques they used, do you?

6 **A** All I can do is refer to their notes.

7 **Q** Okay. You don't have -- you've got a lot of
8 education there, a lot of seminars, and you keep up on
9 your hours?

10 **A** Yes, I do.

11 **Q** Did you ever do any weapons study with regard
12 to weaponry prior to the semiautomatic era?

13 **A** I have not conducted any research on that,
14 no.

15 **Q** Well, have you been to any seminars where
16 they talked about common uses of weapons or what
17 weapons were commonly used in that period of time? For
18 example, in the early '70s?

19 **A** No, I have not.

20 **Q** Okay. Anything, by the way, in all that
21 stuff that you analyzed and all that testimony you gave
22
23

RECROSS/CHAPPELL

1 tells you about who fired those weapons, those three
2 different weapons?

3 **MS. CANTALAMESSA:** Objection, Your
4 Honor.

5 **THE COURT:** Overruled.

6 **A** There's nothing in my analysis that indicates
7 who fired a firearm.

8 **MR. MERANTO:** Thank you.

9 **THE COURT:** Anything else?

10 **MS. CANTALAMESSA:** Nothing, Your Honor.
11 Thank you.

12 **THE COURT:** Thank you, sir. You're
13 excused. Next?

14 **MS. DOHERTY:** The state calls Robin
15 Ladd, Judge.

16 **THE BAILIFF:** Judge, this witness
17 objects to being photographed.

18 **THE COURT:** This witness is not to be
19 photographed. Hi. Raise your right hand,
20 please.

21
22
23 * * * * *

DIRECT/LADD

1 **WHEREUPON, the State called**

2

3 **ROBIN LADD,**

4

5 **who, being first duly sworn, testified**

6 **as follows:**

7

8 **THE COURT:** All right. Please be seated
9 in the witness chair. These are the ladies
10 and gentlemen of our jury, and they're here
11 to hear and understand everything you have to
12 say, so please speak loudly and clearly
13 enough for them to understand your testimony.
14 Thank you. All right.

15

16 **MS. DOHERTY:** Thank you, Your Honor.

17

DIRECT EXAMINATION

18

BY MS. DOHERTY:

19

Q Good afternoon.

20

A Good afternoon.

21

Q Can you tell us your name and spell your
22 first and last name for the record?

23

A Robin Ladd, R-O-B-I-N, L-A-D-D.

24

Q And where are you employed?

25

A I work for the Bureau of Criminal

DIRECT/LADD

1 Investigation in London, Ohio.

2 **Q** And what is the Bureau of Criminal
3 Investigation?

4 **A** It is a division of the Attorney General's
5 office. We are the crime lab for the State of Ohio.

6 **Q** How many individual divisions are there of
7 BCI across the state?

8 **A** We have three labs. London is headquarters,
9 and we have two regional labs.

10 **Q** And we refer to it as BCI; right?

11 **A** Yes.

12 **Q** And if you know, how long has BCI been in
13 existence?

14 **A** I honestly don't know. It's been at least
15 since the 1930s.

16 **Q** All right. What is the function of BCI kind
17 of in general?

18 **A** We are an assisting agency. We assist other
19 law enforcement agencies with the processing and
20 analysis of evidence. We also help to process some
21 crime scenes, and we also have our fingerprint
22 identification unit. So we have different areas of
23 investigation, and the crime lab, and also

DIRECT/LADD

1 identification area of fingerprints that are submitted
2 into our database.

3 **Q** And is there a division of BCI or at least a
4 department in BCI that does DNA analysis?

5 **A** Yes.

6 **Q** And trace evidence analysis, that kind of
7 thing?

8 **A** Yes.

9 **Q** All right. You talked about a division of
10 BCI that actually goes out to crime scenes. Tell us
11 about that.

12 **A** Our crime scene agents will assist other
13 agencies that do not have the manpower to take on a
14 particular crime, or they might need assistance just
15 because they don't have the capability or equipment to
16 process some of the scenes. So they will contact BCI
17 and request one of our agents to help them with the
18 scene.

19 **Q** And are those agents trained then in evidence
20 collection?

21 **A** Yes.

22 **Q** Tell the jury, please, about your educational
23 background and training that allows you to work at BCI.

DIRECT/LADD

1 **A** I have a bachelor's of science, and I also
2 have taken several classes in the different processing
3 techniques for latent fingerprints, friction ridge
4 detail. Also in the distortion of prints and the
5 different comparison methods that we use for latent
6 prints.

7 **Q** How long have you been employed with BCI in
8 total?

9 **A** Approximately 14 years. I'm about a month
10 and a half short of 14 years.

11 **Q** And what is your position and your job at
12 BCI?

13 **A** I am a forensic scientist in the latent print
14 division.

15 **Q** What about prior to working at BCI, did you
16 work in the same field?

17 **A** Yes.

18 **Q** Where?

19 **A** I worked for the Orange County Sheriff's
20 office in Orlando, Florida.

21 **Q** And how long were you there?

22 **A** Approximately 12 years.

23 **Q** And were your job responsibilities the same

DIRECT/LADD

1 or similar to those you have at BCI as what you did in
2 Florida?

3 **A** Yes.

4 **Q** Can you tell the jury, when you say latent
5 prints or fingerprints, tell them what they are.

6 **A** A latent print -- first of all, the ridges
7 that are found on the underside of the hands and the
8 underside of the feet, the skin is different from other
9 parts of the human body. These ridges are raised.
10 They're corrugated and they're very porous. They're
11 friction ridges, meaning that different items or
12 different things can stick to, or we can grab things,
13 and we can rip them. So different substances can
14 adhere to this ridge detail, and then when an item is
15 touched a recreation of that ridge detail may be left.
16 It might be visible such as on glass or a mirror, or it
17 could be invisible such as on a piece of paper in which
18 further chemical processing would be needed. And
19 that's an example of what a latent print is.

20 **Q** Go ahead.

21 **A** A known print would be -- or an inked
22 fingerprint is where you're basically taking this
23 friction ridge skin and applying, like, black printer's

DIRECT/LADD

1 ink and then applying that to a contrasting item such
2 as a white fingerprint card. That's an example of what
3 an inked print would be or a known print.

4 **Q** And latent prints, how do those come into
5 play as far as a crime scene?

6 **A** When somebody touches a surface, they may
7 leave a friction ridge detail. So basically when
8 you're touching an item, you're leaving a recreation of
9 this friction ridge detail on a surface. It is left
10 there by whatever the substance is on this friction
11 ridge skin. So if I have oil or perspiration on the
12 skin, and I touch an item, I'm going to leave a
13 recreation of that ridge detail on that surface. It
14 may be something that can be retrieved, sometimes not.
15 And it may be sufficient, meaning there's enough ridge
16 detail to make a possible identification and sometimes
17 again not enough information.

18 **Q** How are those latent prints collected,
19 retrieved?

20 **A** When a person has a piece of evidence that
21 they are going to process, they will use whatever
22 method is best. So if you're -- if we're looking at a
23 non-porous item, like this area, we could use a powder.

DIRECT/LADD

1 And when you apply the powder, it will adhere to this
2 area that any contaminants are on, and you'll be able
3 to visualize what is on that surface. So if there is a
4 fingerprint, and you use the powder on that area, you
5 will be able to see that there is possible ridge detail
6 for possible identification. So then you would
7 apply -- you would take clear tape or you could
8 photograph, and you would lift this area. You could
9 put the lift on a card, some kind of card stock or
10 acetate sheet. And if you need to photograph it,
11 meaning that this surface is not conducive to lifting
12 the print off, if it's got grooves in it, then
13 photography is used.

14 **Q** And how does the surface of an object, an
15 item, affect the collector's ability to lift a print
16 that can be used?

17 **A** There are some surfaces that are not really
18 conducive to leaving good latent prints, meaning that a
19 person may have touched the surface, but we might not
20 be able to retrieve any friction ridge detail that is
21 useable. So if we have -- some of the items would be,
22 like, leathers. Leathers are not very good conducive
23 surfaces. They seem like they're nice and smooth, but

DIRECT/LADD

1 the prints do not lay clearly across or evenly across
2 that surface. Bricks, concrete, very porous. If you
3 look at it, it actually looks like the print would be
4 sitting on a bunch of needle tops, the tips of needles.
5 So again, you're not getting flow of ridges, so you're
6 not able to get a clear print, and it would not be
7 useable information for any identifications.

8 **Q** As a fingerprint examiner, a forensic
9 analyst, what do you look for when you're comparing a
10 latent print lifted from a crime scene and a known
11 print? What are you looking for?

12 **A** Basically when we're comparing a latent print
13 to the known inked impressions, we are comparing the --
14 we're examining the characteristics that are found on
15 these two separate impressions to see if the -- if
16 they're in the same position and area. An
17 identification can be affected by viewing these
18 characteristics, keeping in mind that they are the same
19 type of characteristic, the same number of
20 characteristics in the same position and area of that
21 hand, foot, or finger.

22 **Q** When items, collected evidence comes to BCI
23 for analysis, how do -- how do items, evidence come to

DIRECT/LADD

1 you, come to BCI in general?

2 **A** Evidence is submitted by any law enforcement
3 agency. It has to be a law enforcement agency that has
4 to bring the evidence in. So it can be either an
5 external agency, agencies from other areas in the
6 United States, or even foreign countries, or by our own
7 agents. They will bring evidence in to us for
8 analysis, because they are law enforcement.

9 **Q** Once a piece of evidence is submitted to BCI,
10 what happens to it?

11 **A** When the evidence is submitted, it is
12 assigned a lab case number, and anything that is
13 associated with that case will be assigned that number,
14 but then it is also assigned an item number. So every
15 piece of evidence that comes in or bag of evidence will
16 be assigned an item number, along with the BCI lab
17 number. And then the evidence is placed into a sealed
18 and secured property room, and then the submission
19 sheets are submitted to the associating departments or
20 disciplines that will need it. So if latent prints
21 need to analyze some evidence, we will get a submission
22 sheet showing that we need -- that we have evidence now
23 on a certain case and showing which items we would need

DIRECT/LADD

1 to analyze.

2 **Q** So in other words, every piece of evidence,
3 whether it's a latent print, something to be examined
4 for trace evidence, DNA, that is all going to have, at
5 least, go back to that same BCI submission number?

6 **A** Yes.

7 **Q** And are the agents -- you said that agents
8 from BCI are also those who submit evidence for
9 analysis to BCI; correct?

10 **A** Yes.

11 **Q** Are those agents trained in collection of
12 evidence in terms of collecting fingerprints?

13 **A** Yes.

14 **Q** Why is fingerprint analysis a forensic tool
15 used by law enforcement?

16 **A** Fingerprints are permanent. They're
17 unchanging, barring accident or injury from before
18 you're born, like the 12th week of gestation, until
19 after death and total decomposition. They are also
20 unique, meaning that the configuration of all these
21 different characteristics are unique to each
22 individual. Not only that individual, but also each
23 area of your friction ridge skin. So every fingerprint

DIRECT/LADD

1 that you have is going to be unique to you alone.

2 **Q** And I think you said that those fingerprints,
3 they don't even change after death until there's
4 decomposition; correct?

5 **A** Correct.

6 **Q** This particular case, is there a BC number --
7 BCI number assigned to any analysis done in this case?

8 **A** Yes.

9 **Q** And what is that BCI number?

10 **A** 7435791.

11 **Q** And what does the 74 indicate?

12 **A** That is the year of the case or the year that
13 it was originally submitted to BCI.

14 **Q** And you work out of the London office;
15 correct?

16 **A** Yes.

17 **Q** The items that you analyzed in connection
18 with this case, where were they housed from 1974 until
19 you actually looked at them?

20 **A** These were kept in our old file room, which
21 is the secured, locked room that's in the back area of
22 our lab area. So only lab personnel and lab management
23 have access to this area.

DIRECT/LADD

1 **Q** I think you indicated that at least back to
2 the 1930s, BCI existed; correct?

3 **A** Yes.

4 **Q** Was there a certain area where major case
5 evidence was kept in London?

6 **A** From the 1930s?

7 **Q** Up until --

8 **A** Yes. All old case evidence that we had, if
9 it was large evidence, would most likely be returned to
10 the agency that submitted it. Other than that, like
11 latent prints, smaller evidence from very old cases
12 were kept with the files in that locked room in the
13 back.

14 **Q** And the evidence that -- the fingerprints
15 that we're talking about in this case, were they kept
16 in that same area with all the major case evidence?

17 **A** Yes.

18 **Q** All right. The collection process for latent
19 prints, you talked about a powder being used, correct,
20 a black powder?

21 **A** Yes.

22 **Q** Can you tell the jury about what that
23 consists of? Why do you use powder to do it?

DIRECT/LADD

1 **A** The powders that we use, a lot of them are
2 basically -- they use volcanic ash in some of them.
3 There's different types of powders that are used, but
4 basically all it is is a small particulate matter that
5 will adhere to any residue that is left on a surface.
6 We could use baby powder if we wanted to use powder.
7 It is just brushed on. It does not matter what kind of
8 brush we're using. There's squirrel hair, camel hair.
9 There's fiberglass brushes. These different brushes we
10 will use with the powder. The powder adheres to the
11 brush, and then it is transferred as we brush it across
12 to that surface type. That's pretty much it.

13 **Q** Okay. Has that process, that actually
14 lifting that evidence, those latent prints, has that
15 changed over the years?

16 **A** No. We actually have kits still in our
17 office that are just for display, but the powders, even
18 from the 1940s, can still be used that we have on
19 display. We could still use them this day, and they
20 would be fine.

21 **Q** This case in particular, approximately when
22 were you asked to look at the evidence that still
23 existed at BCI?

DIRECT/LADD

1 **A** We started going through old case file
2 evidence back in 2009, trying to send all this case
3 evidence to the submitting -- the original submitting
4 agencies since we are now starting a process of sending
5 old case files off for outside storage. We can't have
6 evidence in any of these case files. So as we go
7 through these case files, if we find any latent print
8 cases, since that's my area, any latent print evidence
9 that has not been basically resolved, and we find that
10 there are sufficient prints on this evidence, then we
11 will reexamine the evidence, re-compare, and we will
12 enter any sufficient prints into our AFIS and do a
13 search since that technology was not available back in
14 those earlier years.

15 **Q** All right. And can you tell the jury what
16 AFIS is and why it wasn't available in the 1970s?

17 **A** AFIS stands for Automated Fingerprint
18 Identification System, and what it is is a database of
19 known finger and palm print cards. This technology
20 didn't come into play until the 1980s. More towards
21 the late '80s. And it has been refined and still being
22 refined through the years. So it is a major database
23 that is being used by the FBI to prove that no two

DIRECT/LADD

1 fingerprints can be the same. It is also being used
2 for us as a tool so that we can identify prints that
3 maybe could not have been identified many years ago.

4 **Q** What items -- well, let me back up for a
5 minute.

6 **MS. DOHERTY:** May I approach, Judge?

7 **THE COURT:** You may.

8 **(WHEREUPON, State's Exhibits Nos. 61 &**
9 **62 were marked for identification.)**

10 **BY MS. DOHERTY:**

11 **Q** All right. I'm going to hand you a bunch of
12 stuff probably. First of all, let me hand you State's
13 Exhibit 61 and 62. I actually took them out of this
14 envelope, if you can just keep those with it. Tell us
15 what those are.

16 **A** These are the known palm and fingers of an
17 individual by the name of James Ferrara, and they were
18 taken by Sergeant Cappabianca.

19 **Q** All right. And that's State's Exhibit 61 and
20 62; correct?

21 **A** Yes.

22 **Q** Now I'm going to hand you -- this envelope is
23 actually marked State's Exhibit 43, and then there are

DIRECT/LADD

1 a number of 43A through I, if you could look at those
2 and tell us what those are?

3 **A** Okay. First Exhibit 43B, C, D, A, these are
4 latent lifts. These are lift cards and then the latent
5 lifts that they used a powder, lifted the lift, put it
6 on this card as backing, and then wrote on the -- wrote
7 the information as to where the prints were originally
8 taken from.

9 **MR. MERANTO:** Objection, Your Honor.

10 **THE COURT:** Overruled.

11 **MR. MERANTO:** Thank you.

12 **A** And then State's Exhibit 43E through I, these
13 are known palm prints of Benjamin Marsh and Marilyn
14 Marsh, the victim -- adult victims on this case.

15 **Q** Okay. And I have each one of those marked
16 with a separate exhibit sticker; right?

17 **A** Yes.

18 **Q** So when you begin looking, the prints located
19 in State's Exhibit 43A through I, those were located in
20 BCI London; correct?

21 **A** Yes.

22 **Q** And what is the first thing that you do or
23 did with those prints as part of this case study?

DIRECT/LADD

1 **A** When I received this case file and I reviewed
2 them, I found these latent lifts. I will analyze these
3 latent lifts to see if I agree with how many prints
4 were sufficient. If I find any other prints that may
5 be sufficient, I then will compare what prints were in
6 the file, meaning the known prints of the victims that
7 were in this case file. I made comparisons to these
8 prints to the unknown questioned prints of the latent
9 prints to see if any of them matched.

10 **Q** And you did that in this case; correct?

11 **A** I did.

12 **Q** And initially when you compared the known
13 prints of Marilyn Marsh and Ben Marsh to the latent
14 lifts from the scene, what did you determine?

15 **A** I determined that there were approximately --
16 hold on a minute. Five identifications that were made
17 to Benjamin Marsh, the male victim on this case.

18 **Q** And tell the jury, please, about the known
19 prints of Ben and Marilyn -- I can't talk -- Ben and
20 Marilyn Marsh that you were able to use to compare?

21 **A** The quality of these prints, they were not
22 the best quality. Obviously you can see that they're
23 very faint. There's areas that are missing. So for

DIRECT/LADD

1 the palmar areas of the prints, the latent prints that
2 were sufficient, could not be identified. So that
3 leaves some of the prints unidentified that may indeed
4 be from the victims. There are some fingerprints also
5 that were not clear enough on the victims' prints in
6 order to make a complete comparison. So there again
7 could be unidentified prints on this case that do match
8 the victims.

9 **Q** What is the next step you took after
10 confirming that at least some of those prints
11 originally submitted belonged to Ben Marsh? What did
12 you do next?

13 **A** The unidentified latent fingerprints that
14 were on this case, if they were of sufficient quality
15 to enter into our AFIS database to complete a search,
16 were entered. Three fingerprints that were sufficient
17 quality were entered into our AFIS database, and a
18 search was completed. And three AFIS hits were made.

19 **Q** All right. And if you can refer to the
20 specific prints on the card and the exhibit number that
21 you're referring to?

22 **A** This is State's Exhibit 43A, and it would be
23 what I have marked as Lift No. 2, which says it came

DIRECT/LADD

1 from door of garage dated 12/14/74, and initials BLA.

2 **Q** And how do you know that those are the latent
3 lifts that you examined and submitted to AFIS?

4 **A** These are marked. We'll mark them A, B, C,
5 and the lift number, and when I enter the information
6 into our AFIS to do a search, I will put the BCI lab
7 number, the lift number, and then which ones it would
8 be, A, B, or C. That way I can identify exactly what
9 print individually is going to -- was hit, made a hit.

10 **Q** And your initials are on there as well
11 confirming that; correct?

12 **A** Yes.

13 **Q** There is a -- I'm going to call it a bar
14 code, with an item number and a BCI number. What is
15 that?

16 **A** We did not have bar codes back in 1974, but
17 when we open these cases and we find evidence that is
18 sufficient that can be -- more work can be done, more
19 analysis or entry into AFIS, we will then enter the
20 case. We backlog the case into our LIM system, which
21 is basically an electronic system so that we can track
22 our evidence now, and everything is given a bar code.
23 So bar codes were created for all the items that we had

DIRECT/LADD

1 still at BCI.

2 **Q** Would you, on that exhibit you have in your
3 hand, State's Exhibit 43A, of the prints lifted on that
4 card, could you describe for the jury where they were
5 lifted from according to that card and what comparison
6 and confirmations you were able to make?

7 **A** Yes. Lift No. 1 at the top has two
8 sufficient partial latent fingerprints. The lift says
9 it came from storm door off garage dated 12/14/74, the
10 initials BLA. Comparison was made. One identification
11 was made to the left middle finger of the male victim,
12 Benjamin Marsh. The finger next to this left middle
13 could possibly be that of Benjamin Marsh, but there was
14 not enough of his fingerprints on that particular card
15 to make -- to complete this comparison. So this
16 additional print is left unidentified at this time.

17 Item 2, which I went over, it was the door of
18 garage dated 12/14/74. Three sufficient partial latent
19 fingerprints. These three were searched through AFIS,
20 and AFIS hit was made on each one identified to the
21 left middle, left ring, and left little finger of the
22 card bearing a name of James Ferrara.

23 Item 3 -- or Lift 3, excuse me, was a lift

DIRECT/LADD

1 from door off garage, and this was identified to the
2 right index finger of the male victim, Benjamin Marsh.

3 Lift 4 was the door off garage, and this was
4 insufficient. There was nothing of comparable quality
5 on that lift.

6 Lift 5 came from door to guns, and this was
7 identified to the left index finger of the card bearing
8 the name of Benjamin Marsh, the male victim on this
9 case.

10 And No. 6, top bedroom door inside, dated
11 12/14/74. There's one sufficient print on this. Even
12 though it looks like there are others, these are not
13 sufficient quality. This was identified to the left
14 little finger of Benjamin Marsh.

15 And the last one, Lift No. 7, is from the
16 inside bedroom door frame, and it, too, was
17 insufficient.

18 **Q** The remaining print latent lift cards that
19 you have there, 43B through D, I think, can you go
20 through the same description of those?

21 **A** Yes. State's Exhibit 43B is one card with
22 one latent lift. This was lift -- I labeled it Lift 8.
23 It came from door with guns. This has one sufficient

DIRECT/LADD

1 print. This is not of sufficient quality to make a
2 comparison on this one. The sufficient print was
3 identified to the left middle finger of the card
4 bearing the name of Benjamin Marsh, the male victim on
5 this case.

6 43C, there are three lifts on this case, or
7 on this card. No. 9 is a partial palm print that is of
8 sufficient quality. It came from the bathroom door
9 framing.

10 And No. 10 which is in the center is
11 basically two palms. Came from left side off framing
12 of hall shelves.

13 And then No. 11, which is a partial palm
14 print, came from off front, right side door frame.

15 43D is a single lift. It is a partial palm
16 print with some sufficient fingers. There are three
17 sufficient fingers at the top, and the palm itself is
18 of sufficient quality. This was from the -- off the
19 side of the refrigerator. This is not identified.

20 **Q** All right. The three fingers identified on
21 State's Exhibit 43A, the three latent prints identified
22 as those of James Ferrara, can you tell the jury about
23 the quality of those lifts and your ability to use them

DIRECT/LADD

1 to compare?

2 **A** These are very good quality, actually. The
3 ridge detail itself is very clear. You can tell that
4 there is some background noise, which would come from
5 the surface itself. There is -- this middle, which is
6 actually the left ring finger is more of the tip of the
7 finger, but on the left middle and left little, you
8 have areas of the core, which is the center of your
9 print, and then going up to the tip of the print. So
10 these are very good quality prints.

11 **Q** If a latent print is lifted poorly, smudged,
12 would you be able to make that comparison?

13 **A** It would depend on how much distortion was
14 present in that print. If it was completely smudged --
15 like several of these prints, you can see that it looks
16 like there's an area that was touched. It looks like a
17 fingerprint should be there, but there's so much
18 distortion and smudging in that area, that it is not of
19 sufficient quality. No identification could be made on
20 these prints.

21 **Q** And would that be due to the print that is
22 left being smudged, or the lift taken, or both?

23 **A** It could be both. If you have too much

DIRECT/LADD

1 pressure on a surface, you're not going to leave good
2 ridge detail because you're pressing the ridges into
3 the furrows making it more of a flat surface, so you're
4 not leaving good ridge detail for any kind of a
5 comparison. If the lift was moved while they were
6 trying to take the lift, they could smear the print,
7 smear the powders through and destroy the actual latent
8 lift. So it could be both.

9 **Q** But those three prints you were able, because
10 they were good quality, to make the comparison?

11 **A** Yes.

12 **Q** Once the AFIS match was determined, what do
13 you do then?

14 **A** Once we get a hit through AFIS, we pull the
15 original card. We make the comparison to verify that
16 this is, indeed, a hit, and then it is the policy of
17 the Bureau to have another qualified examiner do an
18 independent verification and comparison of all the
19 prints, unidentified and identified.

20 **Q** And I think we've always kind of referred to
21 that as peer review, but it's an internal quality
22 control or something like that?

23 **A** Yes.

DIRECT/LADD

1 **Q** Okay. Would a poor lift make a fingerprint
2 change into somebody else's?

3 **A** No.

4 **Q** The determination was made, you said, by
5 another employee as well, another analyst that
6 confirmed the AFIS hit to James Ferrara; correct?

7 **A** Yes.

8 **Q** What did you do then?

9 **A** Then I would report my findings to the
10 submitting local law enforcement agency.

11 **Q** Were --

12 **MS. DOHERTY:** Can I approach again?

13 **THE COURT:** Yeah. Maybe I better talk
14 to counsel over here.

15 **MS. DOHERTY:** Okay.

16 **(WHEREUPON, a discussion was had among**
17 **court and counsel off the record and out of**
18 **the hearing of the jury and court reporter,**
19 **after which the proceedings continued as**
20 **follows:)**

21 **BY MS. DOHERTY:**

22 **Q** You talked about an AFIS hit that leads you
23 to known prints to compare; correct?

DIRECT/LADD

1 **A** Yes.

2 **Q** All right. And was that done in this case?
3 Were known prints of James Ferrara obtained then to
4 compare to Exhibit 43A that you had?

5 **A** Yes.

6 **Q** And what was your determination with that
7 comparison?

8 **A** The identifications were made and confirmed
9 on the Lift No. 2.

10 **MR. MERANTO:** Objection to confirmation,
11 Judge.

12 **THE COURT:** That's overruled. Go ahead.

13 **A** They were identified to the left middle, left
14 ring, and left little of James Ferrara.

15 **THE COURT:** By you?

16 **THE WITNESS:** Yes.

17 **BY MS. DOHERTY:**

18 **Q** And the verification process that you
19 described where another analyst confirms your
20 identification, that was done in this case as well;
21 correct?

22 **A** Yes.

23 **Q** All right. The opinion that you have given

DIRECT/LADD

1 that the prints, three of the prints located on 43A,
2 State's Exhibit, belonged to James Ferrara, is that
3 within a reasonable degree of scientific certainty?

4 **A** Yes.

5 **Q** Were those prints also compared to -- and I
6 don't know what exhibit it is -- the full hand print
7 including the palm and the fingers of James Ferrara?
8 And I don't know what exhibit that is. 61 maybe, 62?

9 **A** Sixty-one and sixty-two, yes.

10 **Q** Okay. And you prepared a report indicating
11 those findings; correct?

12 **A** Yes.

13 **Q** And is that report kept in the ordinary
14 course of business at BCI?

15 **A** Yes.

16 **MS. DOHERTY:** Judge, can I approach?

17 **THE COURT:** Yes.

18 **(WHEREUPON, State's Exhibit No. 44 was**
19 **marked for identification.)**

20 **BY MS. DOHERTY:**

21 **Q** I'm going to hand you what's been marked as
22 State's Exhibit 44. Can you look at that and tell us
23 if you recognize what it is?

DIRECT/LADD

1 **A** Yes. This is a copy of the report that I
2 issued on this case, 7435791, involving a homicide with
3 the victims Benjamin Marsh, Marilyn Marsh, and Heather
4 Marsh. This shows the items that were within the case
5 file that I examined and my findings, and my initials,
6 and my information for contact.

7 **Q** When -- you are a fingerprint examiner. The
8 usefulness forensically of fingerprints, how would you
9 describe that?

10 **A** Fingerprints, like I said, are unique to
11 every individual and every finger and area of your
12 friction ridge detail, to each individual. Even
13 identical twins who have the same DNA do not have the
14 same fingerprints, so they are unique. It is the --
15 basically how nature works, that no two pieces of
16 anything in this world will be created exactly the same
17 by nature, and that is exactly the same as
18 fingerprints. We have external conditions and internal
19 conditions that are what create your fingerprints in
20 the characteristics and the blueprint pattern types
21 that you have.

22 **Q** Throughout your career, both in Florida, as
23 well as at BCI, how many prints have you compared and

DIRECT/LADD

1 examined?

2 **A** Millions. Millions.

3 **Q** And although BCI has been in existence since
4 at least the 1930s, DNA evidence has not come into play
5 until much after 1974; fair to say?

6 **A** Yes.

7 **MS. DOHERTY:** Can I have just one
8 minute, Judge?

9 **THE COURT:** Yes.

10 **(WHEREUPON, a discussion was had among**
11 **counsel off the record and out of the hearing**
12 **of the Court, jury and court reporter, after**
13 **which the proceedings continued as follows:)**

14 **BY MS. DOHERTY:**

15 **Q** You indicated that the location, that those
16 prints that you've been discussing, all those exhibits,
17 that they were kept at BCI in London since 1974?

18 **A** As far as I know, yes.

19 **Q** Okay. And that location, that London office,
20 that has not changed; correct?

21 **A** Correct.

22 **Q** That's been the same location --

23 **A** London office was at the prison, but

DIRECT/LADD

1 everything has been kept secured and moved securely,
2 yes.

3 **Q** Okay.

4 **MS. DOHERTY:** I don't have anything
5 further, Judge.

6 **THE COURT:** All right. Ladies and
7 gentlemen, we're going to take the afternoon
8 recess at this time. During your absence
9 from the courtroom, please don't discuss the
10 case at all among yourselves or with anyone
11 else. Please do not allow anyone to discuss
12 the case with you or in your presence.
13 Please do not form or express any opinion
14 about the case. We'll be in recess until
15 3:15.

16 **(WHEREUPON, a brief recess was had,
17 after which the proceedings continued as
18 follows:)**

19 **THE COURT:** All right. You may cross
20 examine, Mr. Meranto.

21 **MR. MERANTO:** Thank you, Your Honor.
22

23 * * * * *

CROSS/LADD

1 **CROSS EXAMINATION**

2 **BY MR. MERANTO:**

3 **Q** Good afternoon, Ms. Ladd. I'm Tony Meranto.
4 I'm going to ask you some questions. We met briefly.
5 If you want me to repeat something, just let me know;
6 okay? Let's start off, first of all, you stated to the
7 jury, I believe, that no two people's fingerprints are
8 exactly alike; correct?

9 **A** Based on the science of fingerprints and the
10 science of nature itself, no two fingerprints have ever
11 been found to be from two -- being the same
12 fingerprint, from two separate individuals.

13 **Q** So they've never been found to be the same;
14 right?

15 **A** That's correct.

16 **Q** You're not saying that you checked every
17 single individual on the planet and done that?

18 **A** That would be impossible.

19 **Q** In fact, you stated that the FBI is
20 currently -- that's why they're putting these databases
21 together, to try and maybe get closer to proving that?

22 **A** Yes, and they have --

23 **Q** But it's not been proven?

CROSS/LADD

1 **A** They basically have proven that. They can't
2 do comparisons to every person that was past or in the
3 future or even currently right now. There's billions
4 of people on the planet. But from everything they've
5 looked at, from the different configurations of the
6 characteristics, the shapes of the ridges, the pores,
7 based on the science of nature itself, no two
8 fingerprints or no two areas of friction ridge skin
9 could possibly be made from two separate impressions or
10 two separate people.

11 **Q** So once again I'm telling you, you said they
12 haven't done that, they haven't tested everybody or
13 checked everybody?

14 **A** Correct.

15 **Q** So your belief is you're satisfied with
16 making that statement; correct?

17 **A** I am.

18 **Q** But you also said the FBI is still putting
19 data together to try and make that more exact; correct?

20 **A** Yes.

21 **Q** Now, tell me about -- first of all, you work
22 for the Orange County Sheriff's Department for 12
23 years?

CROSS/LADD

1 **A** Yes.

2 **Q** And you were a fingerprint examiner? Were
3 you a -- in the evidence lab? What were you then?

4 **A** I was a latent print examiner.

5 **Q** Okay. So you didn't actually go out to the
6 crime scenes? You examined them afterwards, or what?

7 **A** Correct.

8 **Q** Okay. Let's talk first about where you got
9 these. You say they were in an old file room and
10 locked in the London facility. But you also said, I
11 believe, the London facility was moved?

12 **A** Yes.

13 **Q** When was that?

14 **A** Back in I believe October of 1999, they moved
15 from the jail building that they were in, which is just
16 behind them, to the facility that we are currently
17 located in.

18 **Q** Were you there in 1999 when they made that
19 move?

20 **A** No.

21 **Q** Okay. So you saw these in that file room
22 back there. What was that date?

23 **A** In 2009 is when I started going through these

CROSS/LADD

1 old files.

2 **Q** Okay. So fair to say prior to 2009, you have
3 no idea where those were?

4 **A** I could make an assumption, but no, I do not
5 know exactly where they were.

6 **Q** Well, unless I ask you to based on your
7 scientific knowledge, I'd appreciate if you don't make
8 an assumption. Just tell me just the facts, ma'am, as
9 they say; okay?

10 **A** Yes.

11 **Q** So you don't know where they were prior to
12 the day you looked at them; correct?

13 **A** Correct.

14 **Q** You have no idea how they got there in that
15 room, who placed them there?

16 **A** Correct.

17 **Q** You have no idea back in '74 where and how
18 they were placed there; correct?

19 **A** Correct.

20 **Q** Did you know Bernie Albert?

21 **A** No.

22 **Q** Okay. So the guy that supposedly took these
23 prints, not around, and you never spoke to him about

CROSS/LADD

1 this either now obviously?

2 **A** Correct.

3 **Q** Now, were you trained then in what they call
4 the Henry system?

5 **A** Yes.

6 **Q** Would you explain that to the jury?

7 **A** It's been many years since I've used the
8 Henry classification system. What the Henry system is
9 is a classification system of an inked fingerprint card
10 classifying each finger by the ridge count, the pattern
11 type, and that is how they used to do the filing system
12 for fingerprint cards.

13 **Q** Okay. And what do you use -- what three
14 types of -- well, there's a bunch of types of
15 characteristics of a fingerprint, but give us some just
16 as an example if you would?

17 **A** The different characteristic types, basically
18 there is an ending ridge which is a ridge that flows
19 and abruptly stops. There's short ridges which is
20 basically just a short ridge, an enclosure or an island
21 where two ridges come together forming -- they
22 bifurcate, and then they come back together, forming
23 basically a little island between the ridge, or a

CROSS/LADD

1 bifurcation where a ridge flows and then separates or
2 bifurcates into two separate ridges.

3 **Q** Okay. And how many sets of prints did you
4 analyze over the course of your career using the Henry
5 system?

6 **A** Probably thousands. I worked for a very
7 large agency.

8 **Q** Thousands?

9 **A** Yes.

10 **Q** Were these analyzed in that fashion?

11 **A** Using the Henry classification?

12 **Q** Right.

13 **A** Yes, that's -- that's what I thought you
14 asked was -- yes, we did the Henry classification. We
15 classified the fingerprint card. We then would search
16 the files and then file them.

17 **Q** Just so we're clear, that's you get that
18 little magnifying glass, right, and you analyze the
19 prints and do them that way?

20 **A** The Henry classification is not the same as a
21 latent print. What we're looking at is basically a
22 count of ridges from one point to another and the
23 different pattern types. The pattern types being the

CROSS/LADD

1 whorls, arches, or loops. We're determining what kind
2 of pattern it is, and then you're counting from an area
3 which is called a delta formation where it's a
4 triradius to the core. And that will give us a ridge
5 count. Again, it will give us a number, and that
6 fingerprint is assigned a number, and that gives us
7 just a classifying of those prints. Now, this is only
8 on known fingerprint cards, not latent prints. We do
9 not use a classification system for latents.

10 **Q** Okay. Now, why don't you classify latents?

11 **A** Latent prints are just partial prints. We
12 normally don't get a fully rolled or controlled print
13 when you're looking at a known print that is in a
14 controlled environment where somebody's actually
15 controlling the flow of the ridge. So basically
16 they're rolling your finger or they're placing the palm
17 down nice and neatly so that they know that they're
18 getting all the information that they possibly can on
19 those prints. A latent print is just a touch print, so
20 normally we don't roll all our fingers when we touch a
21 surface. We can leave beautiful prints on surfaces,
22 but we don't necessarily have every piece of
23 information on that print.

CROSS/LADD

1 **Q** Okay. So once again, that's why you prefer,
2 like, an intact print in order to -- I mean, obviously
3 it's easier to examine than with regard to a latent,
4 with a partial print? It's harder to match in other
5 words?

6 **A** A latent print?

7 **Q** Yes.

8 **A** It can be.

9 **Q** Okay. So in this case these latent prints,
10 were they matches the old fashioned way, for lack of a
11 better way to put it?

12 **A** Yes.

13 **Q** Okay. And who did that?

14 **A** I did that comparison when we got the AFIS
15 hit, I have to do a visual comparison, manual
16 comparison the same way that they've been doing it for
17 over 100 years. We use a little magnifier. We compare
18 the prints side by side, making sure that they are --
19 all the characteristics are the same, same number, same
20 position, same area, and no dissimilarities that could
21 not be explained.

22 **Q** Okay. Tell me about AFIS and what exactly it
23 does.

CROSS/LADD

1 **A** AFIS is the Automated Fingerprint
2 Identification System. It is basically a database of
3 known finger and palm print cards of individuals. We
4 then -- we can -- new people that are entered into the
5 system are searched against that database to see if
6 they have presently been entered into that database, or
7 latent prints for our side, the latent prints that are
8 unknown questioned prints are searched against that
9 database to see if maybe it's made by an individual who
10 has a fingerprint or palm print in our system. And
11 then we can -- if we get a hit, we have to pull the
12 original cards, and we have to do a manual comparison.

13 **Q** Okay. When you talk about hits, you get a
14 range of hits, do you not, normally?

15 **A** Yes.

16 **Q** Okay. And basically AFIS prints you out or
17 gives you -- issues a score?

18 **A** Yes.

19 **Q** And tell me about that score and how it's
20 derived and what the range of the score is.

21 **A** The score's done on algorithms. I am not an
22 IT person. I do not set up the system. All I know is
23 that based on the score that we have, the higher the

CROSS/LADD

1 score, they say the higher the probability is that this
2 is an actual match through the AFIS system. We look at
3 every print that is brought up as a candidate side by
4 side on the screen to see if there is a possible match.
5 If there is a possible match like there was in this
6 case, we will then pull the original cards to confirm
7 that yes, that is a hit or an actual match.

8 **Q** So you then physically match it using points
9 of comparison?

10 **A** We look at more than just points. We look at
11 the entirety of the print that we have. All the
12 visible detail that we have, the ridge formation, the
13 flow of the ridges, the number of characteristics.
14 We're looking at all this information to make sure that
15 these are, indeed, made by the same individual as that
16 of the fingerprint card that we're looking at.

17 **Q** So that's a no, you don't use points of
18 comparison?

19 **A** That's part of it.

20 **Q** Okay, but let's talk about that for a minute.
21 The points of comparison thing -- like, on a finger,
22 there's how many points of comparison on average?

23 **A** It depends on how big the finger is. There

CROSS/LADD

1 could be a hundred. There could be a couple hundred.

2 **Q** Okay. So it depends?

3 **A** It depends.

4 **Q** They're different. At least most of them are
5 different, as far as we know; right?

6 **A** Yes.

7 **Q** And used to be the old fashioned way, you'd
8 check for points of comparison on a fingerprint. And
9 when would you declare it a match when you were working
10 back the old fashioned way in Orange County, how many
11 points?

12 **A** There has not been a point system in the
13 United States since the 1970s when the FBI decided that
14 points were not a necessary way of looking at an
15 identification. Points meaning the different
16 characteristics that we're looking at. So, like, the
17 ending ridge, when we find an ending ridge, that would
18 be considered a point. So we're actually -- we could
19 have our own set standards, what we feel comfortable
20 with, but we're looking at everything. We're looking
21 at three levels of detail, basically, to say that this
22 is a sufficient print, has enough information to make
23 an identification or individualization.

CROSS/LADD

1 **Q** So you didn't count any points in this case?

2 **A** We do count characteristics, along with the
3 other information.

4 **Q** And how many points of comparison did you
5 find on all three of those prints, if you know?

6 **A** For the left little finger there are 15
7 points plus. I stopped counting. 18 points plus on
8 the left ring finger, and 14 plus points on the left
9 middle finger.

10 **Q** And once again, that's out of a possible
11 hundred, 200, whatever; right?

12 **A** Sure.

13 **MR. MERANTO:** Your Honor, may I
14 approach?

15 **THE COURT:** Yes.

16 **(WHEREUPON, Defendant's Exhibit S was**
17 **marked for identification.)**

18 **BY MR. MERANTO:**

19 **Q** Ms. Ladd, take a look at that if you would.
20 Do you recognize that?

21 **A** Yes. Give me a moment, please. I'm sorry.

22 **Q** Take your time.

23 **A** Yes.

CROSS/LADD

1 **Q** Okay. That's what's been marked as Defense
2 Exhibit S. What is that?

3 **A** This is a copy of the information from my
4 report. These are copies of the fingerprints that were
5 compared, copies of my notes, and copies of the AFIS
6 printouts.

7 **THE COURT:** I don't want you showing
8 that to the jury. You're just testifying to
9 his question. I don't want you showing
10 anything to the jury.

11 **THE WITNESS:** Yes, sir.

12 **MR. MERANTO:** Thank you, Your Honor.

13 **BY MR. MERANTO:**

14 **Q** And I'm looking through your notes, if you
15 can flip back through your notes. I think there's
16 three pages; right? Two pages?

17 **A** I find at least three.

18 **Q** Okay. And basically those are on --
19 basically your report that you issued just kind of
20 regurgitates your notes; right? There's no additional
21 information?

22 **A** Correct.

23 **Q** So you don't detail the process which you go

CROSS/LADD

1 through in any fashion when you say you found 15 points
2 of comparison and you stopped? That's not documented
3 anywhere, is it?

4 **A** It's on the actual lift.

5 **Q** Okay. You wrote it?

6 **A** Yes.

7 **Q** Okay. Tell me about these scores.

8 **A** The scores on the AFIS?

9 **Q** Yes, because they seem to be different scores
10 up and down the range. And tell me what those scores
11 represent.

12 **A** The scores just mean that that is the score
13 that the computer system is giving this -- showing the
14 strength of the possible match.

15 **Q** Okay. And I get that. What's the range of
16 scores? Do you know? No, I don't mean the range of
17 scores that it spit out. I mean what's the range of
18 scores that you could possibly get?

19 **A** They could go -- depending on how much
20 information you had, they could be currently 4,000 down
21 to probably 600.

22 **Q** So as in anything that's run by a computer,
23 it kind of depends on what you put in it, doesn't it?

CROSS/LADD

1 **A** Yes.

2 **Q** So if there's any errors or any missteps with
3 regard to the entering of the information, that could
4 drastically affect the scores; correct?

5 **A** Meaning?

6 **Q** I mean if you enter bad information, you get
7 bad information out? Garbage in, garbage out?

8 **A** You're talking about just the scanned image,
9 the fingerprint image itself? That's where the score
10 comes from.

11 **Q** I got you. But once again, you said the
12 scores could vary based on different information that
13 could be entered into the system; right?

14 **A** Yes.

15 **Q** And you have no idea what makes that system
16 run or what that algorithm is, do you?

17 **A** I don't understand it, no.

18 **Q** Okay. So basically now you've been trained
19 to basically slip a piece of paper into the computer,
20 and the computer spits out some data, and based on that
21 data you decide how to proceed; correct?

22 **A** Yes.

23 **Q** Kind of like going on a dating match; right?

CROSS/LADD

1 I mean, you put characteristics down, and you plug them
2 into a computer, and the computer pops out people;
3 right?

4 **A** It pops out people -- I think it's a little
5 bit more involved than dating.

6 **Q** And I get it. I am simplifying it. I agree
7 with you. But my point is, depending on what you put
8 in, that can vary greatly what gets popped out?

9 **A** Yes.

10 **Q** All right. So just to --

11 **MR. MERANTO:** One moment, Your Honor,
12 please.

13 **(WHEREUPON, a discussion was had among**
14 **counsel off the record and out of the hearing**
15 **of the Court, jury and court reporter, after**
16 **which the proceedings continued as follows:)**

17 **BY MR. MERANTO:**

18 **Q** Okay. Just to sum up, did you get a call, or
19 were you -- did you go check this information on your
20 own?

21 **A** As far as I remember, I checked this
22 information since we were going through those case
23 files at that time.

CROSS/LADD

1 **Q** Okay. Because they're so old you were taking
2 them out, moving some of that stuff?

3 **A** We are.

4 **Q** All right. You have no idea how they got
5 there or how they were collected at the scene, any of
6 that stuff at all?

7 **A** Correct.

8 **Q** And you were never able to discuss or talk to
9 anybody about how or when they were collected? You
10 just found them in a box, and they correspond at this
11 point with that number; right?

12 **A** Correct.

13 **Q** I'm going to show you what's been marked
14 Defendant's Exhibit B.

15 **MR. MERANTO:** May I approach, Your
16 Honor?

17 **THE COURT:** Yes.

18 **(WHEREUPON, Defendant's Exhibits A & B**
19 **were marked for identification.)**

20 **BY MR. MERANTO:**

21 **Q** I'm going to hand you what's been marked as
22 Defendant's A and Defendant's B. What is -- I'm sorry.
23 I handed you both of them. I've got to come back

CROSS/LADD

1 again. I'm sorry.

2 **THE COURT:** These are your exhibits?

3 **MR. MERANTO:** Yes, Your Honor.

4 **BY MR. MERANTO:**

5 **Q** Okay. What is A?

6 **A** A is a copy of -- it's the first page of a
7 report that I issued on June 10th of 2009.

8 **Q** Okay. And that's the one you referred to
9 it's the same as the state submitted; correct?

10 **A** Correct.

11 **Q** The results of your examination?

12 **A** Yes.

13 **Q** All right. And where your findings are --
14 those first two paragraphs seem to indicate there's a
15 discrepancy there.

16 **A** Yes.

17 **Q** Explain to me what that was.

18 **A** The original examiner on this case, David
19 Nibert, did his original evaluation of the latent
20 prints and found that there were 10 partial latent
21 fingerprints in his opinion and 4 partial latent palm
22 prints of sufficient quality. My opinion differs from
23 his that I found not only the ones that he found to be

CROSS/LADD

1 sufficient, but also two additional partial latent
2 fingerprints and one additional partial palm print. I
3 also found that he said that in his opinion that the
4 inked impressions of the victims were not of clear
5 enough quality to make an accurate comparison with the
6 latent prints, and I differed that I could find five
7 prints of identifiable quality that matched Benjamin
8 Marsh.

9 **Q** Okay. So I just want to be straight. You
10 never collected the prints, you don't know how they got
11 there, when they were put there? You found them in
12 '09; correct?

13 **A** Correct.

14 **Q** And you say there's two additional prints
15 there than the guy in 1974 that analyzed them found?

16 **A** The lifts are the same amount. What I found
17 on those lifts that he originally looked at, I found
18 what I believe to be more prints of sufficient quality.

19 **Q** So I guess this isn't as exact as you make it
20 sound maybe; is that hard to characterize? I mean, you
21 got two different opinions here; right?

22 **A** That's the subjective part on what is
23 considered to be sufficient.

CROSS/LADD

1 **Q** Subjectivity. So this is still a subjective
2 thing; correct?

3 **A** This part of it. The identification process
4 is objective. It is not a subjective part.

5 **Q** Well, it's objective, but once again, only to
6 the extent that you plug into a computer and you get
7 out a bunch of numbers and you move based on those
8 numbers.

9 **A** Not all our cases are run through AFIS. This
10 particular case we entered unidentifieds through AFIS.
11 The original identifications to the victims were not
12 put into AFIS. No computers were used in any part of
13 that identification. That was only done by the old
14 manual system of looking side by side, known print to
15 latent print.

16 **Q** I guess we'll just agree to disagree. Thank
17 you.

18 **THE COURT:** Any redirect?

19 **MS. DOHERTY:** Yes, Your Honor.

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REDIRECT/LADD

REDIRECT EXAMINATION

BY MS. DOHERTY:

Q You have had the opportunity to review reports of comparisons back to 1974, correct, relating to this case?

MR. MERANTO: Objection.

THE COURT: Overruled.

A Yes.

Q And until the time that you made the identification to James Ferrara, no identification had been made to those three prints from the door of the garage located on State's Exhibit 43A; correct?

A Correct.

Q I'm trying to remember how Attorney Meranto compared AFIS to dating, but when you are specifically -- we talked about AFIS, you're not putting data in, you're putting the print in; correct?

A Correct.

Q This isn't like you punch in a bunch of numbers, points of comparison. You actually put the latent print into the program?

A We put the latent print in, but we are marking information on that print itself to do the

REDIRECT/LADD

1 search.

2 **Q** All right. AFIS would then lead you to
3 potentially individuals for you to manually compare; is
4 that fair to say?

5 **A** Yes.

6 **Q** And is that what you did here?

7 **A** Yes.

8 **Q** AFIS led you to a possible hit, or a hit for
9 James Ferrara?

10 **A** Correct.

11 **Q** Among other people?

12 **A** Yes.

13 **Q** You then manually compared the latent prints
14 lifted from the scene to those of James Ferrara?

15 **A** Yes.

16 **Q** And you made that identification that those
17 prints belonged to James Ferrara?

18 **A** Yes.

19 **Q** All right. And that was confirmed by someone
20 else, some other expert in fingerprint examination in
21 your office?

22 **A** Yes.

23 **Q** And I don't know what exhibit it is either.

REDIRECT/LADD

1 It's late. Attorney Meranto showed you an old report
2 from Nibert?

3 **A** Yes.

4 **Q** And there is not a difference in the number
5 of latent prints that he examined versus what you
6 examined; correct?

7 **A** Correct.

8 **Q** Your opinion of whether or not those prints
9 were useable, sufficient for comparison, differed from
10 his; correct?

11 **A** Correct.

12 **Q** There are other experts besides yourself who
13 compare fingerprints; correct?

14 **A** Yes.

15 **Q** Have you ever had someone hired by the
16 defense examine your results?

17 **A** Yes.

18 **Q** Your opinions?

19 **A** Yes.

20 **Q** And that can be done; correct?

21 **A** Absolutely.

22 **Q** You talked about the process in which
23 evidence is kept at BCI at London; correct?

REDIRECT/LADD

1 **A** Yes.

2 **Q** At anytime is evidence accessible to other
3 than anyone other than lab personnel?

4 **A** No.

5 **Q** And these prints as well, were they ever
6 accessible to anyone other than lab personnel?

7 **A** Not that I'm aware of.

8 **Q** Okay. And in that you have reviewed reports
9 of other examiners back to the 1970s, 1974, did all
10 those reports indicate the same BCI number that exists
11 now, '74 whatever?

12 **A** Everything in this case file that had that
13 case number on it that was exactly what went with that
14 case file. Other cases had their own original case
15 numbers along with any evidence that was found with
16 those case files.

17 **Q** And the reports themselves would also carry
18 that 74-35791 as well; correct?

19 **A** Yes.

20 **Q** So everything can be taken back to those
21 original submissions?

22 **A** Yes.

23 **Q** Do you still have State's Exhibit 43A up

REDIRECT/LADD

1 there, the latent lifts?

2 **A** I do.

3 **Q** Okay. And I may have already asked you this.
4 I apologize. The prints, latent prints that you have
5 identified having belonged to James Ferrara on that
6 card, other lifts exist on that card belonging to Ben
7 Marsh; correct?

8 **A** Yes.

9 **Q** And they're all on the same card?

10 **A** Yes.

11 **Q** If a fingerprint is unsuitable for
12 comparison, can you even put it into AFIS for a
13 potential hit?

14 **A** No.

15 **Q** Why not?

16 **A** There's not enough information. It would
17 come back with nothing basically. There's not enough
18 information for the system to even compare against
19 anything. It would come with numbers because it would
20 just start plotting its own minutia everywhere.

21 **Q** And in your examination of those three
22 fingerprints from James Ferrara, they were sufficient
23 to put into AFIS to lead you to him; correct?

REDIRECT/LADD

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A Yes.

MS. DOHERTY: I don't have anything
else, Judge.

* * * * *

RECROSS/LADD

RECROSS EXAMINATION

BY MR. MERANTO:

1 **Q** Is that card 43A that you're looking at right
2 there?

3 **A** It is.

4 **Q** Does that look exactly the same as it did
5 December 14th, 1974?

6 **A** I could only assume, but it would have --

7 **Q** Yeah, because you weren't there; right?

8 **A** Right. And I've added information, my
9 markings, the bar code, my initials.

10 **Q** And you added that stuff in 2009 or '10?

11 **A** 2009, yes.

12 **Q** Okay. So you have no idea how that was
13 created, when it was created, what was on it the day it
14 was created; right?

15 **A** Correct.

16 **Q** Okay. And once again, Defense Exhibit A and
17 B, got the same 74-35791; right?

18 **A** Yes.

19 **Q** Both of them?

20 **A** Yes.

21 **Q** And the findings are different on both of
22
23

1 them; is that not true?

2 **A** Yes.

3 **MR. MERANTO:** Thank you.

4 **THE COURT:** Anything else from the
5 state?

6 **MS. DOHERTY:** I don't have anything
7 else, Judge.

8 **THE COURT:** All right. Thank you.
9 You're excused. What else does the state
10 have to present?

11 **MS. DOHERTY:** The state has two more
12 witnesses, Judge, and then that's it.

13 **THE COURT:** Well, let me see counsel
14 over here.

15 **(WHEREUPON, a discussion was had among**
16 **court and counsel off the record and out of**
17 **the hearing of the jury and court reporter,**
18 **after which the proceedings continued as**
19 **follows:)**

20 **THE COURT:** So it's been a long day for
21 everybody, and we could trudge onward, but
22 you reach a point where you probably lose
23 some of your focus, and I don't want you to

1 do that. So we're going to recess as far as
2 the jury is concerned. I should say -- see,
3 when we're done for the day, it's adjourn.
4 When we take a break, it's a recess. So I
5 want you to follow the admonitions that I've
6 given to you previously about your conduct
7 outside of the courtroom. You should not
8 investigate the case or view any publicity
9 about the case in addition to the other
10 admonitions I've given you. You don't want
11 me to start repeating stuff like the lawyers
12 are doing, do you? All right then. Just
13 remember the admonitions and follow them,
14 please. We'll see you at 8:30 in the
15 morning. Have a great night, folks.

16 **(WHEREUPON, the jury left the courtroom,**
17 **and the proceedings continued as follows:)**

18 **THE COURT:** Okay. So I asked at side
19 bar what we had left, and the state has a
20 couple of other witnesses, and the defense
21 may have some witnesses. And the state then
22 objected, so I said I'd hear that.

23 **MS. DOHERTY:** Judge, Attorney Meranto

1 indicated at side bar that he may put on
2 Brenda Gerardi from BCI. What she did in
3 regards to this case was examine a cigarette
4 that is unclear where it came from. It
5 wasn't -- are you going to laugh? Really?

6 **MR. MERANTO:** Yep.

7 **MS. DOHERTY:** It wasn't clear where it
8 came from. It wasn't submitted by either
9 Bernie Albert or Deputy Finamore. In any
10 event --

11 **THE COURT:** Who's Deputy Finamore? I
12 don't know that name.

13 **MS. DOHERTY:** Mr. Finamore. I'm sorry.
14 He was a deputy then.

15 **THE COURT:** Well, he didn't submit any
16 evidence.

17 **MS. DOHERTY:** No, he did not, but he
18 also didn't observe Bernie Albert collect a
19 cigarette butt, or a -- not butt, a
20 cigarette. In any event, that is, I assume,
21 the purpose of putting on Brenda Gerardi,
22 that James Ferrara was excluded as being the
23 DNA donor on that cigarette. He also

1 indicated that he is going to put on the
2 defendant's brother. Again, Judge, we
3 received witnesses from him yesterday. When
4 I indicated to him that we just received the
5 witness yesterday, he said, they're out in
6 the hall. Go talk to 'em. So quite frankly,
7 I have no idea what the brother would be
8 saying. I'm assuming -- I don't know. So
9 we're objecting. We have two more witnesses
10 left.

11 **THE COURT:** Are these people disclosed
12 to you on a witness list?

13 **MR. MERANTO:** It was filed, Judge.

14 **THE COURT:** Huh?

15 **MR. MERANTO:** Yes, it was filed and
16 disclosed.

17 **MS. DOHERTY:** The two remaining, you
18 mean? Yeah.

19 **MR. MERANTO:** Yes, the two witnesses.

20 **THE COURT:** Yesterday?

21 **MR. MERANTO:** Yes.

22 **MS. DOHERTY:** No, I didn't tell you
23 yesterday.

1 **MR. MERANTO:** Excuse me. I'm sorry,
2 Judge, with this hearing -- I apologize. I
3 didn't hear exactly what you said.

4 **THE COURT:** They were on the witness
5 list. When did you file the witness list?

6 **MR. MERANTO:** It was yesterday morning,
7 yes.

8 **THE COURT:** Why so late?

9 **MR. MERANTO:** Well, Judge --

10 **THE COURT:** I don't get that.

11 **MR. MERANTO:** With regard to
12 Ms. Gerardi, I'm sure the state can't say
13 they weren't on notice. They submitted the
14 evidence, and that's how we got the report
15 with regard to Mr. Ferrara.

16 **THE COURT:** Gerardi made the report from
17 the state?

18 **MR. MERANTO:** Yes. I was provided --

19 **THE COURT:** Where is he from?

20 **MR. MERANTO:** Brenda Gerardi from BCI.

21 **THE COURT:** She?

22 **MR. MERANTO:** Yes.

23 **THE COURT:** I have a report from BCI?

1 **MR. MERANTO:** Yeah.

2 **THE COURT:** Okay. The objection's
3 overruled as regards Gerardi. What is this
4 other objection? To the defendant's brother?
5 Is that what you said?

6 **MR. MERANTO:** Yes, Judge. I foresee
7 some evidence maybe coming in with regards to
8 Mr. Mondora that there were basically two
9 ways that these people were excluded, all
10 these suspects. They were excluded by
11 fingerprint or by photo I.D. based on a
12 composite that was done and was then even
13 printed in the paper, in fact. And there's
14 hoards of information about how they were
15 excluded in that fashion. And I have some
16 suspects that I want to talk to Mr. Mondora
17 about that seem to resemble that person that
18 would then ignore by way of fingerprints, for
19 example.

20 But then I have a picture of Mr. Ferrara
21 in 1975. That's the only way I can identify
22 that is by having his brother identify it
23 just to basically show what he looked like

1 close to the time of the alleged crime.

2 **THE COURT:** When you filed the witness
3 list? Yesterday morning?

4 **MR. MERANTO:** Yes, sir.

5 **THE COURT:** And now I'm hearing an
6 objection for the first time?

7 **MR. MERANTO:** Well, Judge, I actually
8 mentioned to them this morning --

9 **THE COURT:** That's not your problem on
10 the objection. I'd like to know.

11 **MR. MERANTO:** I did want to add
12 something before you inquired of them. I
13 also mentioned the fact that I may be adding
14 a witness that I talked to, and Ms. Doherty
15 told me, well, why don't you wait and see
16 what happens with regard to Mr. Fitzpatrick,
17 and then we can deal with that, and you can
18 then potentially call that witness. So I
19 just wanted to let the court know that
20 because we were advised, at least the state
21 was, not to put on Mr. Fitzpatrick until that
22 was discussed with the court, the court would
23 make the final decision at that time. At

1 least that's the way I understood it.

2 **THE COURT:** Okay.

3 **MS. DOHERTY:** Judge, regarding
4 Mr. Ferrara, the brother testifying, yes,
5 Attorney Meranto filed a witness list
6 yesterday. I am objecting now because we are
7 getting to that point. I had no idea what
8 Mr. Ferrara would be testifying to. Attorney
9 Meranto is referring to a composite sketch.
10 We have no idea who put it together, who drew
11 it, who gave the information. It was
12 something to do with somebody at the K-mart
13 parking lot I think saw someone near the
14 orange Vega in 1974, and they somehow came up
15 with a composite sketch.

16 **THE COURT:** Sounds like you do know
17 something about it.

18 **MS. DOHERTY:** We don't know who did it.
19 We have absolutely no idea. That person
20 certainly can't come in and testify. And
21 Detective Mondora --

22 **THE COURT:** There's a lot of that going
23 on in this case.

1 **MS. DOHERTY:** Detective Mondora
2 certainly can't testify to it. I wasn't
3 anticipating him testifying to any of that
4 investigation because he wasn't there. He
5 was four.

6 **THE COURT:** At this point the motion's
7 overruled, so if you want to get out and talk
8 to this guy or Mr. Meranto has him here now
9 or can have him here tomorrow, you can take
10 some time to talk to him tomorrow if you have
11 him here early. Doesn't sound like a big
12 deal.

13 **MR. MERANTO:** And Your Honor, by the
14 way, just to -- here's 15 pages of
15 information about a person they referred to
16 as Mrs. Informer because she wanted to remain
17 anonymous who worked on four or five
18 different days to put forth this composite,
19 which, by the way, is attached to the
20 discovery that the state gave me. The actual
21 first initial pictures of this guy, and then
22 how they went back, and she said no, and they
23 modified it, and here's the picture, and it

1 was then printed in the paper.

2 **THE COURT:** Well, I think everybody
3 better stop and think about what this whole
4 case is about. This is a case where the
5 evidence against the defendant is a
6 fingerprint on the door of the outside of the
7 building, an identification of that
8 fingerprint as his, and apparently some more
9 evidence about statements that he made that
10 are not confessions, but are viewed by the
11 state as possibly incriminating. And a lot
12 of this is due to the nature of the case and
13 the age of the case.

14 The court's concern is that the
15 defendant have the right to defend himself.
16 As difficult as it is to prosecute, it's that
17 difficult to defend also. That's why I feel
18 compelled to let the defense do pretty much
19 what they need to do to defend this case. Of
20 course, within the rules of evidence. Of
21 course, within what is allowable. But I
22 don't know what I'm going to do with a
23 composite or with whatever else the state --

1 or the defense may have to offer. But at
2 this point the court has ruled on the
3 Gerardi, is that --

4 **MR. MERANTO:** Brenda Gerardi, Your
5 Honor.

6 **THE COURT:** Brenda Gerardi thing.
7 That's a state produced police report in the
8 eyes of the court regarding this case. I
9 don't know how that could not be admissible.

10 **MR. MERANTO:** Your Honor, then along
11 those lines, with regard to all these other
12 reports, they are, in fact, police reports
13 and statements of the police, and my -- I
14 mean, my understanding at least is that 803.8
15 allows me to get them into evidence. I know
16 they're hearsay, but if I want to get them
17 in, I believe I'm allowed to.

18 **THE COURT:** If indeed that's what they
19 are, I've pretty well made that clear that
20 you're entitled to get them in. The
21 defendant's always been allowed to introduce
22 police reports. The police and the state
23 aren't allowed to introduce police reports.

1 That's just basic criminal law. So that's
2 the court's ruling at this time regarding
3 these other issues. I'm prepared to take
4 argument on these other issues if you want to
5 do that now, or we can do that in the
6 morning. I'll give you time to prepare.

7 **MS. DOHERTY:** The other issues being the
8 composite, et cetera?

9 **THE COURT:** I guess. I just learned
10 about that now, too. I'm kind of, like,
11 trying this in the dark; you know?
12 Everything's just surprising me. Who the
13 next witness is, what they might testify to,
14 how many witnesses are left. I have no
15 witness list from the State of Ohio. I got
16 no idea what's going on. And it's kind of
17 foreign to me. I'm just used to it being
18 done a little bit differently, I guess.

19 So yes, I just found that out, too,
20 about this composite, although I do -- I did
21 note, and I've noted for a long time, I might
22 as well show you, because it's unusual, to
23 have something like this in the file. But I

1 have that in the court file. So it's not
2 something that everybody didn't know about.
3 I saw it in the court file before. I don't
4 know how it got there or who put it there,
5 but it's there. There's nothing attached to
6 it.

7 **MR. MERANTO:** Judge, I believe it was
8 attached to one of my motions. It may have
9 ripped off. It was the last page.

10 **THE COURT:** It may have been. So do you
11 want to talk about that now, or do you want
12 to prepare something for that, or what? I
13 don't care.

14 **MS. DOHERTY:** Judge, I prefer to talk
15 about that in the morning. I guess the only
16 thing -- if Attorney Meranto agrees, I don't
17 know, since I just found out about it. The
18 only other thing I would like, I don't think
19 we made a record earlier because I think we
20 just did it at side bar. The state called
21 Jerry Mroczkowski to --

22 **THE COURT:** Yeah, we did not make a
23 record, and I did indicate that I would give

1 the parties the opportunity to address that
2 and make it a matter of record, so please do
3 so.

4 **MS. DOHERTY:** Okay. Thank you, Judge.
5 I didn't think we did it. The state
6 anticipated calling this gentleman. He was a
7 former BCI employee, crime scene agent who
8 worked with Bernie Albert for many years. He
9 could recognize his writing. He had worked
10 many scenes with him. He was present at the
11 motion in limine hearing, and defense counsel
12 was put on notice at that time that we were
13 going to use him for purposes of that hearing
14 because of some issues regarding the
15 authentication, as well as the actual prints
16 being lifted.

17 The state wanted to put him on today for
18 that same reason because he can authenticate
19 or could authenticate the writing,
20 handwriting of Bernie Albert. And defense
21 counsel objected, indicating that
22 Mr. Mroczkowski -- don't ask me how to spell
23 it -- was not on the state's witness list. I

1 guess I didn't suggest at the time that
2 Attorney Meranto be given the opportunity to
3 speak to him so that we could still use him,
4 but in any event, that was his objection. I
5 just wanted to put it on the record.

6 **THE COURT:** Do you want to address that?
7 You're the one who objected to him
8 testifying.

9 **MR. MERANTO:** Yeah, Judge. And I think
10 it's unfortunate, but once again, we were put
11 on notice with regard to the hearing on the
12 motion in limine with regard to the potential
13 exclusion of the fingerprints, and I
14 certainly knew they were calling him then. I
15 didn't prepare for him that day, because
16 quite frankly, I didn't think it was relevant
17 to the issue, and evidently the court and the
18 state agreed, because he was never called.

19 As far as calling him at trial, I had no
20 idea. This isn't a trial. I had no clue the
21 guy was coming. When she called his name I
22 turned to Ms. Weibling and said, who is that,
23 because I did not even know who he was,

1 because I didn't review that motion because
2 it was involving the hearing I think on
3 November 12th.

4 **THE COURT:** Well, there's two reasons
5 that I sustained your motion, so the record's
6 clear. Number one, his name was not included
7 on the state's witness list, and the state
8 has to do that. Whatever the reason is,
9 inadvertence, or mistake, or confusion or
10 whatever, a misunderstanding. I can't
11 forgive that. The rules don't forgive that.
12 Secondly, the other witness that you called,
13 I'm sorry that I don't really remember his
14 name.

15 **MR. MERANTO:** Judge, I think if I may,
16 you're referring to the witness with
17 regard -- I think it was Dr. Ohr.

18 **THE COURT:** No. I'm talking about Mike
19 Finamore.

20 **MR. MERANTO:** Excuse me, Judge.

21 **THE COURT:** Who testified both at the
22 motion in limine and at this trial that he
23 saw that witness put those marks on that

1 card. So I'm not sure why anybody else would
2 have to do that. I guess I'm not a big fan
3 of overkill. I think that's already been
4 done.

5 So I didn't see why it was necessary
6 anyhow. He does not satisfy any problems
7 with the chain of custody of the evidence as
8 was explained to me at side bar when I made
9 the ruling, so that's why I'm making the
10 ruling.

11 **MS. DOHERTY:** Okay.

12 **THE COURT:** So the record's clear. So
13 is there anything else?

14 **MS. DOHERTY:** No, Your Honor.

15 **THE COURT:** Okay. Then we need to be
16 prepared to discuss this issue of the
17 admissibility of the composite. We can do
18 that before we begin, or we can do that at
19 the time that the state rests its case.
20 Whatever time allows.

21 **MS. DOHERTY:** Okay.

22 **THE COURT:** Okay?

23 **MS. DOHERTY:** Okay.

1 **MR. MERANTO:** Thank you, Your Honor.

2 **THE COURT:** Anything else?

3 **MS. DOHERTY:** No, Your Honor.

4 **THE COURT:** Thank you, folks.

5 **(WHEREUPON, the Court recessed at 4:09**
6 **p.m., November 19, 2013 and reopened at 8:37**
7 **a.m., November 20, 2013 and the proceedings**
8 **continued as follows:)**

9 **THE COURT:** Good morning, ladies and
10 gentlemen. Came in this morning and saw the
11 cup of coffee, and we had coffee, and I
12 poured it into the cup, and it was cold. And
13 the lovely Ms. Ference indicated to me that
14 was because she had made coffee for the jury
15 and ran another batch through, and that's why
16 it was cold. So I hope yours was nice and
17 hot. I hope you got to enjoy it.

18 This is near the end of November, and I
19 give my dog a shower. Like, he's a boxer
20 dog. He's a big dog. So I've got to take
21 him into the shower with me. You know, you
22 can't put him in a bathtub or a wash tub or
23 anything like that.

1 So my wife, of course, keeps a very nice
2 house, and she said it's time for the dog --
3 I don't like when she calls him the dog.
4 Charlie, he's precious to me. But she called
5 him the dog today. And she said it's time
6 that the dog gets his shower. So I had to
7 get up early this morning and do that before
8 court. So we're both nice and clean today,
9 and ready for action.

10 All right. The state is still in the
11 process of presenting its case, and it has
12 additional witnesses to call as I understand;
13 is that correct?

14 **MS. CANTALAMESSA:** Yes, Your Honor.

15 **THE COURT:** All right. Call your next
16 witness, please. Let me see you at side bar,
17 please.

18 **(WHEREUPON, a discussion was had among
19 Court and counsel out of the hearing of the
20 jury as follows:)**

21 **THE COURT:** We're at side bar, and the
22 parties have approached the court. This was
23 a subject matter that was brought to the

1 court's attention via a motion in limine that
2 is the testimony of this proposed witness
3 regarding a conversation that he had with the
4 defendant. The state appropriately addressed
5 the court, indicated that was their next
6 witness, and I asked them to do that if they
7 intend to present his testimony. And the
8 defense indicated that it was maintaining its
9 objection due to the relevance of the
10 testimony; is that correct?

11 **MR. MERANTO:** Yeah, and the fact that
12 even if it's relevant that the probative
13 value is certainly outweighed by the
14 prejudice that it could cause to this
15 defendant.

16 **MS. CANTALAMESSA:** I think you mean the
17 other way around.

18 **THE COURT:** Huh?

19 **MS. CANTALAMESSA:** I think you mean that
20 the probative value is outweighed.

21 **MR. MERANTO:** By the prejudice to the
22 defendant.

23 **MS. CANTALAMESSA:** Oh, okay. I'm sorry.

1 **THE COURT:** He said it right.

2 **MS. CANTALAMESSA:** I'm sorry.

3 **THE COURT:** You've gotta tune in now.
4 There is a -- it's a close call on relevance,
5 for sure, and of course the relevance is
6 something that could be argued, but I believe
7 its admissible, and the motion is overruled
8 over the objection of -- the motion's
9 overruled over the objection of the defense.

10 **(WHEREUPON, the following proceedings**
11 **were had back in the presence of the jury:)**

12 **THE BAILIFF:** Judge, this witness does
13 not object to being photographed.

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DIRECT/FITZPATRICK

1 **WHEREUPON, the State called**

2
3 **DEPUTY DEVIN FITZPATRICK,**

4
5 **who, being first duly sworn, testified**
6 **as follows:**

7 **THE COURT:** These ladies and gentlemen
8 of the jury here need to hear everything that
9 you have to say, so I want you to speak
10 loudly and clearly enough as you're taught in
11 OPATA and make sure that they understand
12 everything that you have to say. Please
13 answer the questions out loud.

14 **THE WITNESS:** (Nods head.) Yes, sir.

15 **THE COURT:** Okay. So first of all, you
16 nodded. That wasn't out loud. And second,
17 you didn't talk so anybody could hear you.
18 So now we're cool; okay?

19 **THE WITNESS:** Yes, sir.

20 **THE COURT:** Thank you very much. All
21 right.

22 **DIRECT EXAMINATION**

23 **BY MS. DOHERTY:**

DIRECT/FITZPATRICK

1 **Q** Thank you. Much better. I can even hear
2 you. Tell us your name and spell your first and last
3 name for the record, please.

4 **A** Devin Fitzpatrick, D-E-V-I-N,
5 F-I-T-Z-P-A-T-R-I-C-K.

6 **Q** And where are you employed?

7 **A** Mahoning County Sheriff's office.

8 **Q** What do you do for the Mahoning County
9 Sheriff's office?

10 **A** I'm currently assigned to the corrections
11 division.

12 **Q** All right. And you have recently had a
13 terrible cold; correct?

14 **A** Correct.

15 **Q** I can -- I am having a little bit of trouble
16 hearing you. I know it's hard. Just try to keep your
17 voice up a little bit. What is your job at the
18 correctional facility?

19 **A** I'm a pod deputy, so I'm responsible for
20 inmates, their requests, maintaining security.

21 **Q** Okay. And how long have you been with the
22 Sheriff's Department?

23 **A** It'll be five years in January.

DIRECT/FITZPATRICK

1 **Q** And are you familiar with James Ferrara?

2 **A** Yes, I am.

3 **Q** And have you had conversations with him?

4 **A** Yes, I have.

5 **Q** And I'm going to specifically ask you about
6 October 7th, 2013. What shift do you work?

7 **A** I work day shift, 7:00 a.m. to 7:00 p.m.

8 **Q** And were you approached by Mr. Ferrara that
9 day?

10 **A** Yes, I was.

11 **Q** And what was the context, I guess, of how
12 your conversation with him began?

13 **A** I had just returned from our department's
14 annual firearms qualifications, and he approached the
15 podium and inquired about my performance on the firing
16 range.

17 **Q** And had you discussed with him his knowledge
18 of firearms?

19 **A** Yes. We discussed his military experience,
20 the various levels of marksmanship assigned to military
21 personnel by their skill level. He asked about the
22 weapon that we carry at the Sheriff's Department, which
23 is a Glock .40 caliber, Model 23. And we had a brief

DIRECT/FITZPATRICK

1 discussion on the pros and cons of semiautomatic
2 pistols and revolvers.

3 **Q** All right. And what is the difference
4 between a semiautomatic pistol and a revolver?

5 **A** One squeeze of a trigger on the semiautomatic
6 pistol, the round is discharged, and the next round is
7 chambered; whereas, a revolver you squeeze the trigger
8 and the chamber turns.

9 **Q** And what happens to the casings in the case
10 of a revolver versus a semiautomatic?

11 **A** With a semiautomatic the casings are
12 discharged out of the side of the firearm. With a
13 revolver the casings will remain in the firearm.

14 **Q** And during this discussion with Mr. Ferrara
15 regarding the pros and cons of semiautomatics versus
16 revolvers, tell the jury the remainder of that
17 conversation.

18 **A** He made a statement, he said it was a
19 question -- he framed it as a question. He says, "Do
20 you know what my weapon of choice is?" And before I
21 had a chance to answer, he responded himself by saying,
22 "A .38 detective special." And then he said, "Do you
23 know why?" And again, before I had a chance to answer,

DIRECT/FITZPATRICK

1 he said, "No brass. No brass." And he says, "You're
2 not gonna get any ballistics off of brass."

3 **Q** And what is brass?

4 **A** It would be the cartridge that would be
5 discharged from the -- from a semiautomatic, or
6 maintained in the revolver.

7 **Q** All right. So casings that are discharged in
8 a semiautomatic wouldn't be discharged in a revolver?

9 **A** Correct.

10 **Q** And a detective .38 special is a revolver?

11 **A** Yes, it is.

12 **Q** And Deputy Fitzpatrick, the person that you
13 just described having that conversation on October 7th,
14 2013, do you see that person in the courtroom today?

15 **A** I do.

16 **Q** And where is he seated, and describe what
17 he's wearing, please?

18 **A** He's seated at the defense table in the black
19 shirt, white stripes.

20 **MS. DOHERTY:** All right. Your Honor,
21 I'd ask the record to reflect that he's
22 identified James Ferrara?

23 **THE COURT:** The record will so indicate.

CROSS/FITZPATRICK

1 **MS. DOHERTY:** Thank you, Your Honor.
2 Judge, I have nothing further.

3 **THE COURT:** All right.

4 **MR. MERANTO:** Thank you, Your Honor.

5 **CROSS EXAMINATION**

6 **BY MR. MERANTO:**

7 **Q** Good morning, Deputy Fitzpatrick.

8 **A** Good morning.

9 **Q** You've been on the department five years?

10 **A** It'll be five years in January.

11 **Q** Have you ever worked the road, or are you
12 always in the jail?

13 **A** I'm in the jail, sir.

14 **Q** Do you ever write reports?

15 **A** Yes, sir.

16 **Q** How often do you write reports?

17 **A** We write jail reports on a fairly regular
18 basis, but actual police reports, not too often. Not
19 as much as guys on the road.

20 **MR. MERANTO:** Okay. May I approach the
21 witness, Your Honor?

22 **THE COURT:** You may.

23 **(WHEREUPON, Defendant's Exhibit D was**

CROSS/FITZPATRICK

1 **marked for identification.)**

2 **BY MR. MERANTO:**

3 **Q** I'm going to show you what's been marked as
4 Defendant's Exhibit D. Do you know what that is?

5 **A** Yes.

6 **Q** Okay. What is it?

7 **A** It's a copy of my report, my supplemental
8 report.

9 **Q** You wrote it; right?

10 **A** I did.

11 **Q** You work 7:00 to 7:00 in the jail. You wrote
12 it?

13 **A** October 7th.

14 **Q** I mean, you normally work 7:00 to 7:00 in the
15 jail; right?

16 **A** Yes, sir.

17 **Q** And I want you to go down where you're
18 talking about -- you have some things in quotes there;
19 right?

20 **A** I've got to get my glasses.

21 **Q** You and me both.

22 **A** This is a recent addition for me, so I'm
23 still adjusting.

CROSS/FITZPATRICK

1 **Q** Get used to it, trust me. It only gets
2 worse.

3 **A** Okay.

4 **Q** Okay. I believe you just said on direct that
5 he came up to you and said, do you know what my weapon
6 of choice is? That's what you just said on direct;
7 correct?

8 **A** Yes, sir.

9 **Q** Well, there you got a quotation there, and it
10 says, "My weapon of choice has always been a .38
11 special." So you would agree that those are two
12 different statements?

13 **A** No, I wouldn't.

14 **Q** Well, you put it in quotes. I didn't put it
15 in quotes. What does a quote designate to you when you
16 write something in quotations?

17 **A** That it was stated by the person.

18 **Q** It's exactly what they stated; right?

19 **A** Correct.

20 **Q** So which was it? Did he ask you, do you know
21 what my weapon of choice is, or did he say my weapon of
22 choice is?

23 **A** I don't recall.

CROSS/FITZPATRICK

1 **Q** Well, then why did you put it in quotations
2 like you knew exactly what it was?

3 **A** Well, I do remember that that is exactly what
4 he said.

5 **Q** Which was exactly what he said? What you
6 testified to, or what's in the report?

7 **A** He framed it as a question, a rhetorical
8 question.

9 **Q** So then your report is wrong; correct?

10 **A** No, it's not.

11 **Q** Well, is that a question? There's no
12 question mark after that sentence, is it? You put in
13 quotation, "My weapon of choice has always been a .38
14 detective special," period; right?

15 **A** Correct.

16 **Q** No question mark there, is it?

17 **A** No.

18 **Q** So I'm going to ask you again, did he say it
19 like you testified to, or did he say it like it's in
20 the report?

21 **A** I believe he said it like it's in the report,
22 and then he asked the question afterwards, "Do you want
23 to know why?"

CROSS/FITZPATRICK

1 **Q** Okay. By the way, this incident allegedly
2 happened on October 7th, 2013; right?

3 **A** Yes.

4 **Q** At 1:30 in the afternoon?

5 **A** Correct.

6 **Q** Do you want to tell me why you waited until
7 October 15th at 10:00 at night to write this report?

8 **A** Well, I had written it down, and this -- I
9 dated it when I gave it to Detective Mondora.

10 **Q** You wrote it down somewhere else?

11 **A** No. No. I didn't sign -- I don't date my
12 reports until I sign them, and I did not sign it until
13 I gave it to Detective Mondora.

14 **Q** Well, I wouldn't know that by looking at this
15 report, would I? It looks to me like you wrote it on
16 the 15th. You sure about that?

17 **A** Yeah.

18 **Q** Okay. So this guy's charged with triple
19 murder, and out of the clear blue he talks to you and
20 tells you his weapon of choice is a .38; right?

21 **A** Uh-huh.

22 **Q** And you wait a week to submit a report about
23 it?

CROSS/FITZPATRICK

1 **A** It was the first opportunity I had.

2 **MR. MERANTO:** Thank you. Nothing
3 further.

4 **MS. DOHERTY:** Your Honor, I'd ask he be
5 allowed to finish his answer.

6 **MR. MERANTO:** My apology, Your Honor.
7 Go ahead and finish your answer.

8 **MS. DOHERTY:** Object.

9 **THE COURT:** If you want him to finish,
10 he can finish. If you don't, that's fine.

11 **MR. MERANTO:** Yeah, I don't. I'm done.
12 Thank you.

13 **THE COURT:** So do you want to redirect?

14 **MS. DOHERTY:** I would, Judge.

15 **THE COURT:** All right. Then redirect.

16 **MS. DOHERTY:** Thank you.

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REDIRECT/FITZPATRICK

REDIRECT EXAMINATION

BY MS. DOHERTY:

Q The report that you have in front of you,
what is it marked?

A October 7th.

Q No. I mean what exhibit?

A D.

MR. MERANTO: D.

BY MS. DOHERTY:

Q Okay. So I'm going to refer to Defense
Exhibit D. Do you indicate anywhere in the body of
that report, and at the top, when you wrote that
information down? What's the date on there?
October 7th?

A October 7th.

Q Okay. And when you provided that -- this
report to Detective Mondora was what date?

A October 15th.

Q Okay. And you have it signed at the bottom;
correct?

A Yes, ma'am.

Q And I think you indicated you signed it when
you gave it to a detective?

REDIRECT/FITZPATRICK

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A Correct.

Q Okay.

MS. DOHERTY: I don't have anything
else, Judge.

* * * * *

RECROSS/FITZPATRICK

1 **RECROSS EXAMINATION**

2 **BY MR. MERANTO:**

3 **Q** I might be a little slow. Do you want to
4 show me anywhere in that report where it says you wrote
5 this down on October 7th?

6 **A** Well, at the top it's indicated 10/7, the
7 incident date and time.

8 **Q** It says the incident. That's when the
9 incident happened. Ms. Doherty just asked you, does it
10 say in there that you wrote it down on October 7th?
11 I'm telling you, because I'm missing it, you show me in
12 there where it says you wrote this down on October 7th.

13 **A** I dated it October 15th when I signed it to
14 give to Detective Mondora, which is our department
15 policy.

16 **Q** Okay. I'm going to ask you this again.
17 English is your first language; right? I'm not having
18 a problem with the translation here; correct?

19 **A** No.

20 **Q** Okay. I'm going to ask you again,
21 Ms. Doherty just asked you, didn't you write down when
22 you wrote the report and it's in there? I'm telling
23 you, show me where it's in there.

RECROSS/FITZPATRICK

1 **A** It's not in the body of the report.

2 **MR. MERANTO:** Thank you very much.

3 Nothing else.

4 **THE COURT:** Anything else?

5 **MS. DOHERTY:** No, Your Honor.

6 **THE COURT:** Thank you, sir. You're
7 excused. Your next witness, please?

8 **MS. DOHERTY:** Your Honor, the state
9 would call Detective Mondora.

10 **THE COURT:** All right. Raise your right
11 hand.

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DIRECT/MONDORA

1 **WHEREUPON, the State called**

2

3 **DETECTIVE PATRICK MONDORA,**

4

5 **who, being first duly sworn, testified**

6 **as follows:**

7

8 **THE COURT:** Please be seated in the
9 witness chair. You've heard the instructions
10 given to the other witnesses. Please follow
11 them.

11

THE WITNESS: I will.

12

THE COURT: Thank you.

13

DIRECT EXAMINATION

14

BY MS. DOHERTY:

15

Q Good morning.

16

A Good morning.

17

Q Can you please state your full name for the
18 record and spell your last name for the court reporter?

19

A My name's Patrick Mondora, M-O-N-D-O-R-A.

20

Q And where are you employed?

21

A Mahoning County Sheriff's office.

22

Q How long have you been employed with the

23

Mahoning County Sheriff's Department?

DIRECT/MONDORA

1 **A** Thirteen years.

2 **Q** During your course of employment with
3 Mahoning County, what divisions in the office have you
4 worked for?

5 **A** I started in the jail, worked records, and
6 then I worked the patrol. And then in 2005 I was
7 assigned to detectives.

8 **Q** And your training that allows you to work as
9 a detective and a deputy with the Sheriff's Department
10 is what?

11 **A** Well, I originally had OPATA to start off,
12 and then prior to being assigned to detectives, I
13 submitted a request to go to entry level detective
14 school, which I went to for a week, and after being
15 assigned to the detectives, I've been to numerous
16 schools for homicide, fingerprint, latent prints,
17 interviews, stuff like that.

18 **Q** Okay. And back when you were a new deputy
19 and you talked about OPATA, what type of training as a
20 deputy did you receive through OPATA?

21 **A** Once assigned to the detectives, I went to a
22 latent print school where we would learn how to lift
23 prints off of different materials, different items,

DIRECT/MONDORA

1 stuff like that. It was a week class.

2 **Q** Okay. And you -- when you were on the road,
3 I think you said that you were a deputy on the road,
4 what was your -- what were your duties at that time?

5 **A** Well, nowadays we respond to a crime when I
6 was on patrol, and if it was a crime needing evidence
7 collection as far as fingerprints or stuff like that, a
8 detective would be called.

9 **Q** Okay. So now you're a detective and you've
10 been through detective training more appropriate for a
11 detective, in 2009, was there a cold case that existed
12 regarding this homicide?

13 **A** Yes.

14 **Q** And -- or these homicides. I'm sorry. And
15 tell us how you became involved in this case.

16 **A** In 2009, I became aware of the Marsh case,
17 and I asked my commander, Lenny Sliwinski, you know,
18 what's this about the Marsh case? He says, you guys
19 need to -- you guys, being myself and my partner, Dave
20 Benigas, he says, you guys need to become familiar with
21 this just in case something should ever happen. You
22 guys should have a knowledge of what happened back in
23 '74. So my partner, Benigas, he reviewed it for a

DIRECT/MONDORA

1 week. I reviewed it for a week. And we started
2 looking for evidence.

3 **Q** And when you say you reviewed this case, tell
4 the jury what you reviewed.

5 **A** All those binders there on the table, the
6 prosecutor's table, photographs.

7 **Q** What do those binders include?

8 **A** Two of those binders I believe include 150
9 plus suspects at the time that back in '74 they
10 submitted criminals, known criminals back then that
11 were either committing burglaries or robberies, or were
12 capable of committing that crime. They submitted those
13 fingerprints of those known criminals to prints that
14 were lifted at the Marsh house.

15 **Q** And what about any detective notes, reports
16 of the scene, BCI reports? Did you also review all of
17 those?

18 **A** Yes.

19 **Q** And tips that were made through either
20 anonymous sources or psychics, were those included as
21 well in there?

22 **A** Yes.

23 **Q** Who were the lead investigators at the time?

DIRECT/MONDORA

1 **A** Detective Nemeth, Sergeant Hunt, Crater
2 Deputy Finamore was there, Phil Chance, Deputy Phil
3 Chance, and Catheline were the responding officers that
4 night in '74.

5 **Q** First of all, how old were you in 1974?

6 **A** I was four.

7 **Q** So obviously you weren't there?

8 **A** Correct.

9 **Q** You were looking at all of this information
10 almost 40 years later?

11 **A** Yes, ma'am.

12 **Q** In your review of all of those reports,
13 including the BCI reports, was there ever an
14 identification made through the fingerprints that were
15 submitted to a perpetrator?

16 **A** No.

17 **Q** Was there ever an arrest made as the
18 perpetrator of these crimes?

19 **A** No, there was not. As a matter of fact,
20 two -- even two sheriffs later, those sheriffs were
21 still submitting fingerprints to the case, to no avail.
22 No one ever got a hit.

23 **Q** Were you ever able to speak to Detective

DIRECT/MONDORA

1 Nemeth?

2 **A** Yes.

3 **Q** And this would've been subsequent to 2009?

4 **A** Prior to -- after -- yeah, after 2009, prior
5 to his death.

6 **Q** And when did he pass away?

7 **A** I don't know the date of that.

8 **Q** All right, but he is -- he has passed since
9 then?

10 **A** Yes.

11 **Q** What about Floyd Crater?

12 **A** Never had a chance to talk to him either.

13 **Q** He's passed away?

14 **A** Yes, ma'am.

15 **Q** And Lieutenant Hunt?

16 **A** I don't know his status.

17 **Q** And Bernie Albert, I don't know if you
18 mentioned Bernie Albert. Is he listed in the paperwork
19 in your review of the case?

20 **A** Yes, he is. He's a BCI agent.

21 **Q** All right. And has he passed away since that
22 time?

23 **A** Yes.

DIRECT/MONDORA

1 **Q** Did you ever have the opportunity to even
2 talk to him?

3 **A** No, ma'am.

4 **Q** You have reviewed all of the information, you
5 and Detective Benigas. So what do you do next?

6 **A** Well, when we started looking for our
7 evidence, we knew that BCI was called to the crime
8 scene, Bernie Albert, and he's the one that processed
9 the crime scene that night. So we called down to BCI
10 London to see if they had any of our evidence. And I
11 had spoken to Robin Ladd. I think her name was
12 Robinette back then.

13 **Q** She's been married since then; right?

14 **A** Yes. And she advised that they were in the
15 process of going through all the cases, and she would
16 see what she can find for me.

17 **Q** And were you alerted by her at some point
18 that she had obtained --

19 **MR. MERANTO:** Objection.

20 **THE COURT:** Don't answer the question.

21 Let me hear the question.

22 **(WHEREUPON, the record was read as**
23 **requested.)**

DIRECT/MONDORA

1 **THE COURT:** What's the rest of the
2 question?

3 **MS. DOHERTY:** The --

4 **THE COURT:** Why don't you just ask it
5 again. The objection's sustained.

6 **BY MS. DOHERTY:**

7 **Q** Were you contacted in 2009 by Robin Ladd
8 regarding the existence of latent prints lifted from
9 the Marsh homicide scene?

10 **MR. MERANTO:** Objection.

11 **THE COURT:** He can answer that.

12 **BY MS. DOHERTY:**

13 **Q** You can answer.

14 **A** Yes, I was.

15 **Q** And were you given at that time the name of
16 James Ferrara?

17 **A** Yes, I was.

18 **Q** What did you and Detective Benigas do then?
19 And let me clarify that. This was still back in 2009;
20 correct?

21 **A** Correct.

22 **Q** Okay.

23 **A** And then we just started on a background

DIRECT/MONDORA

1 investigation of Mr. Ferrara, you know, his address,
2 where he lived, where he worked, how he knew the
3 victims, stuff like that.

4 **Q** If he knew the victims?

5 **A** Yeah. Even if he knew the victims.

6 **Q** Okay. And were you making efforts to track
7 down any law enforcement personnel who may have been at
8 the scene, responsible for any of the investigation?

9 **A** Yes.

10 **Q** And were you able to contact Mike Finamore?

11 **A** Yes.

12 **Q** And how did you know that Mike Finamore had
13 even been part of this case?

14 **MR. MERANTO:** Judge, objection.

15 **THE COURT:** Overruled.

16 **A** His name appears in -- he was one of the off
17 deputies that -- he recovered the slug from the ceiling
18 at the crime scene that night in '74.

19 **Q** All right. So his name was in the paperwork,
20 and that caused you to contact him?

21 **A** Yes, ma'am.

22 **Q** And he lived out of state?

23 **A** Yes.

DIRECT/MONDORA

1 **Q** Were you able to contact Frank Boyle?

2 **A** Yes, I was.

3 **Q** And was his information included within the
4 investigative notes?

5 **A** Yes. He was one of the individuals that
6 found the bodies that night.

7 **Q** All right. So in your investigation into
8 James Ferrara, were you able to determine any location
9 that he had lived prior I guess to 2009?

10 **MR. MERANTO:** Objection.

11 **THE COURT:** He can answer yes or no. I
12 don't know what the heck that has to do with
13 anything.

14 **A** Yes.

15 **Q** Did you attempt to recover car titles?

16 **A** Yes.

17 **Q** And did you find a car title that listed an
18 address?

19 **A** Yes.

20 **Q** And where was that address?

21 **MR. MERANTO:** Objection.

22 **THE COURT:** Sustained.

23 **BY MS. DOHERTY:**

DIRECT/MONDORA

1 **Q** The car title that you obtained, where did
2 you get it from? Let me -- no, stop that -- or strike
3 that. When you're reviewing, back in the '70s and
4 '80s, to try to gather this information, how difficult
5 was it to obtain documents, et cetera, from the Bureau
6 of Motor Vehicles or anywhere else?

7 **A** Numerous subpoenas were sent out for
8 Mr. Ferrara's information. Post office, IRS, military,
9 GM payroll, GM records, and what we were coming to find
10 is that most documents were purged after so long. They
11 were just throwing them out.

12 **Q** Even the BMV and IRS; correct?

13 **A** Correct.

14 **Q** So I guess what I'm asking is even though you
15 had information from BCI regarding Robin Ladd's
16 identification of James Ferrara as the contributor of
17 these prints, you didn't just immediately act upon it;
18 correct?

19 **A** No, ma'am.

20 **Q** Okay. You took your time to look into
21 everything you could?

22 **A** Yes.

23 **Q** Did you contact and speak to James Ferrara?

DIRECT/MONDORA

1 **A** Yes, we did.

2 **THE COURT:** All right. Let me see
3 counsel at side bar here.

4 **(WHEREUPON, a discussion was had among**
5 **court and counsel off the record and out of**
6 **the hearing of the jury and court reporter,**
7 **after which the proceedings continued as**
8 **follows:)**

9 **BY MS. DOHERTY:**

10 **Q** You worked with Detective Benigas during this
11 time as well; correct?

12 **A** Yes.

13 **Q** So you and Detective Benigas -- where is
14 Detective Benigas now?

15 **A** He's retired.

16 **Q** Okay. On what date did you and Detective
17 Benigas speak to James Ferrara?

18 **A** I believe it was February 11th, 2010.

19 **Q** And were you able to determine from your
20 conversation with him whether he had ever served in the
21 military?

22 **A** Yes, he had said that he served in the Marine
23 Corps in '68.

DIRECT/MONDORA

1 **Q** And were you able to determine the dates that
2 he worked -- well, first of all, were you able to
3 determine from him whether or not he worked at GM ever?

4 **A** Yes, he advised that he worked at General
5 Motors in the van plant, materials plant, from '70 to
6 '83.

7 **Q** From 1970 to 1983?

8 **A** Correct.

9 **Q** And you were able to determine through your
10 investigation and reading of the reports that Ben Marsh
11 had worked at GM until the time of his death in '74;
12 correct?

13 **A** Correct.

14 **Q** Were you able to determine, or did you talk
15 to Mr. Ferrara about any addresses or locations that he
16 had lived in Mahoning County?

17 **A** Yes. He had said in '74 he lived in Trumbull
18 County, and then in '76 he had moved to Westchester
19 Apartments in Austintown.

20 **Q** And where are the Westchester Apartments in
21 Austintown?

22 **A** Westchester Drive, located between Raccoon
23 and Mahoning Avenue.

DIRECT/MONDORA

1 **Q** And the orange Vega was located at the K-mart
2 plaza in Austintown?

3 **MR. MERANTO:** Objection.

4 **THE COURT:** Sustained.

5 **BY MS. DOHERTY:**

6 **Q** In your review of the reports, and the
7 witnesses, where was Mrs. Marsh's vehicle discovered
8 after the homicide?

9 **A** In the parking lot of the K-mart in
10 Austintown at the corner of Raccoon Road and Mahoning
11 Avenue.

12 **Q** Approximately how far is that location to
13 Westchester Apartments?

14 **A** About a mile.

15 **Q** Did you make efforts to speak to the owner or
16 landlord or anyone from the Westchester Apartments
17 regarding records from 1974 or '76?

18 **A** Yes, we did.

19 **Q** And what did you determine?

20 **A** We found out that the records were purged, so
21 they had no record of him living there.

22 **Q** No records at all? You just couldn't find
23 out if he did, when he did?

DIRECT/MONDORA

1 **A** Right. We didn't know if he stayed there at
2 all, what years they were there.

3 **Q** Okay. Did you discuss with James Ferrara
4 whether or not he knew Ben Marsh?

5 **A** Yes, we did.

6 **Q** And what did you ask him, and what did he
7 say?

8 **A** We had asked him if he -- if he was familiar
9 with Ben Marsh. He advised to us -- it's in two
10 separate interviews. We interviewed him on the 11th,
11 and then we interviewed him again on the 12th. And
12 both times, he said, "I didn't know Ben Marsh. I
13 wasn't friends with Ben Marsh. I didn't talk to Ben
14 Marsh. I didn't know where Ben Marsh lived. I don't
15 even know where that house is." He even asked us at
16 one point, he said, "Where is Canfield?" We told him.
17 He said, "I don't know where that house was." He
18 says --

19 **Q** Go ahead.

20 **A** Just that he didn't know the family. He
21 didn't know anything. He only knew that he was a
22 supervisor at the plant -- or security at the plant.

23 **Q** Did he indicate to you that he had never been

DIRECT/MONDORA

1 to Ben Marsh's house?

2 **A** Correct.

3 **Q** And did he indicate to you that he didn't
4 even know where Canfield was?

5 **A** Correct.

6 **Q** You said you interviewed him then the next
7 day as well; correct?

8 **A** Yes.

9 **Q** And did he tell you he had never been inside
10 that house?

11 **A** No, he did not.

12 **Q** On the second time -- during the second time
13 that you interviewed James Ferrara, did you tell him at
14 that time that his fingerprints --

15 **MR. MERANTO:** Objection. Can we
16 approach?

17 **THE COURT:** Yes.

18 **(WHEREUPON, a discussion was had among**
19 **court and counsel off the record and out of**
20 **the hearing of the jury and court reporter,**
21 **after which the proceedings continued as**
22 **follows:)**

23 **BY MS. DOHERTY:**

DIRECT/MONDORA

1 **Q** Did you discuss with Mr. Ferrara the fact
2 that you had his fingerprints at the scene?

3 **MR. MERANTO:** Objection.

4 **THE COURT:** Sustained.

5 **BY MS. DOHERTY:**

6 **Q** What was your discussion about the
7 fingerprints?

8 **MR. MERANTO:** Objection.

9 **THE COURT:** Sustained. What was your
10 discussion with Mr. Ferrara?

11 **THE WITNESS:** On the second day of the
12 interview we advised Mr. Ferrara that we had
13 his prints at the crime scene.

14 **Q** And what was his response?

15 **A** "That's impossible." He elaborated that, "I
16 didn't know Ben. I wasn't friends with him. I didn't
17 hang out with him. If people said I was talking to him
18 or hanging out with him, they are lying. He said, I
19 didn't know the family." And then he just said,
20 "That's impossible."

21 **Q** Okay. Once you spoke to Mr. Ferrara, were
22 his fingerprints and palm prints collected in your
23 presence?

DIRECT/MONDORA

1 **A** Yes. The first interview after we were done
2 with him, we obtained fresh fingerprints and also took
3 a buccal swab of his mouth.

4 **MS. DOHERTY:** All right. Can I
5 approach, Judge?

6 **THE COURT:** Yes.

7 **BY MS. DOHERTY:**

8 **Q** I have these marked as State's Exhibit 61 and
9 62 already. I'm just keeping them with that envelope.
10 Can you look at those and tell us what they are and
11 what date they were collected?

12 **A** On -- these are -- these are whole hand
13 prints of James Ferrara taken by Sergeant William
14 Cappabianca of the Mahoning County Sheriff's office,
15 and signed by James Ferrara on February 11th, 2010.
16 Left and right hand.

17 **Q** Okay. And what was done then with those
18 prints lifted from James Ferrara?

19 **A** Those prints after we collected them were
20 sent to BCI to Robin Ladd for comparison to the prints
21 lifted at the crime scene in '74.

22 **Q** All right. And did you receive confirmation
23 from Robin Ladd regarding the prints?

DIRECT/MONDORA

1 **MR. MERANTO:** Objection.

2 **THE COURT:** Let me hear the question
3 again.

4 **(WHEREUPON, the record was read as**
5 **requested.)**

6 **THE COURT:** Sustained.

7 **BY MS. DOHERTY:**

8 **Q** Did you receive a report from Robin Ladd?

9 **A** Yes, I did.

10 **Q** All right. Did you arrest James Ferrara?

11 **A** No.

12 **Q** When did you arrest James Ferrara?

13 **A** He was indicted in June of 2013.

14 **Q** Detective Mondora, do you see James Ferrara
15 in the courtroom today?

16 **A** Yes, ma'am. He's sitting at the defense
17 table wearing glasses, a black shirt, white stripes.

18 **MS. DOHERTY:** Your Honor, I'd ask the
19 record reflect he's identified James Ferrara?

20 **THE COURT:** Yes, the record will so
21 indicate.

22 **BY MS. DOHERTY:**

23 **Q** Detective Mondora, the prints that have

DIRECT/MONDORA

1 been -- the fingerprint lifts, latent lifts from the
2 crime scene at the Marsh residence that Robin Ladd
3 testified to, since 1974 until the time she ran her
4 tests, did the Mahoning County Sheriff's Department
5 ever have possession of those?

6 **A** No, we did not.

7 **Q** And when you began investigating this case,
8 where were those prints?

9 **A** After they had confirmation, they sent them
10 back to us, and they went into our evidence room.

11 **Q** I mean before that.

12 **A** Prior to Robin?

13 **Q** Yes.

14 **A** She retained them.

15 **Q** Okay. In your review of all of the reports
16 connected to this case, was James Ferrara's name ever
17 mentioned?

18 **A** No, ma'am.

19 **Q** Until 2009?

20 **A** Correct.

21 **MS. DOHERTY:** I don't have anything
22 further, Judge. Thank you.

23 **THE COURT:** All right. Mr. Meranto.

CROSS/MONDORA

1 **MR. MERANTO:** Thank you, Your Honor.

2 **CROSS EXAMINATION**

3 **BY MR. MERANTO:**

4 **Q** Good morning, Mr. Mondora. How are you?

5 **A** Good morning, sir.

6 **Q** This was a difficult case to even be involved
7 with, wasn't it, after 39, 40 years?

8 **A** Yes, sir.

9 **Q** And what you had, what you're referring to, I
10 think, fair to say this, all this, and what's on my
11 desk, that's the stuff you had to review; correct?

12 **A** Looks about right.

13 **Q** And you talked to Detective Nemeth, but
14 pretty much everybody involved in this case is
15 deceased; right?

16 **A** Yes, sir.

17 **Q** In going through this. Did you have any
18 reason to doubt the trustworthiness of the stuff that's
19 contained in all these reports and all of this
20 documentation?

21 **A** No, I did not.

22 **Q** Okay. So you proceeded in that fashion,
23 assuming that everything was done at least as well as

CROSS/MONDORA

1 it could be?

2 **A** Correct.

3 **Q** Okay. Now, let's clear a few things up
4 before we get into this case. You've been present in
5 the courtroom, you've heard all the testimony; correct?

6 **A** Yes, sir.

7 **Q** You know -- you heard the testimony of
8 detective -- or excuse me, Deputy Fitzpatrick just now;
9 right?

10 **A** Yes.

11 **Q** And you guys sent ballistics down -- or
12 ballistics were done in this case; correct? Ballistics
13 with regard to the bullets and stuff that were found?

14 **A** Yes.

15 **Q** And you heard Mr. Chappell testify?

16 **A** Correct.

17 **Q** And he said they were from a .38, and he
18 actually issued a report and gave a list of guns, a
19 .38; correct?

20 **A** Correct.

21 **Q** Do you remember when he issued his report?

22 **A** No, sir, I do not.

23 **MR. MERANTO:** May I approach, Judge?

CROSS/MONDORA

1 **THE COURT:** You may.

2 **BY MR. MERANTO:**

3 **Q** I think this is State's 45. I'm referring to
4 that date. Tell me what date that was issued.

5 **A** August 28th, 2013.

6 **Q** So just a few months ago; right?

7 **A** Yes, sir.

8 **Q** After this case was indicted; right?

9 **A** Yes, sir.

10 **Q** And that's when Detective -- or Deputy
11 Fitzpatrick came forward with this supposed statement
12 of Mr. Ferrara?

13 **A** His was in October.

14 **Q** Right. So after that?

15 **A** Yes.

16 **Q** After you guys assume it's a .38?

17 **A** Well, we know it's a .38 from the ballistic
18 report.

19 **Q** Right. You know. Okay. Now, let's talk
20 about this statement, too. You talked to Mr. Ferrara.
21 He talked to you willingly; right?

22 **A** Yes.

23 **Q** In fact, you wanted him to waive his right,

CROSS/MONDORA

1 he said I know my right, don't worry about it?

2 **A** Correct.

3 **Q** And he talked to you for how long?

4 **A** I believe it was about an hour.

5 **Q** The first time or both times?

6 **A** An hour the first time, maybe a half hour the
7 second time.

8 **Q** Okay. And you asked him a number of
9 questions; right?

10 **A** Correct.

11 **Q** It's going on and on for, like you said, a
12 couple hours both days, two days?

13 **A** Correct.

14 **Q** And he says to you, "I don't know the guy, I
15 never been there. I've never been in that house, I
16 don't even know where Canfield is?"

17 **A** Correct.

18 **Q** How long have you been doing this with regard
19 to being a detective specifically?

20 **A** Eight years.

21 **Q** And over the course of those eight years, how
22 many suspects have you spoken to, would you say? I'm
23 not going to hold you to this.

CROSS/MONDORA

1 **A** Suspects in a murder case or --

2 **Q** Suspects -- well, you know what, let me stop
3 you there for a minute. Let me stop you there for a
4 minute, because we had this problem with Mr. Finamore.
5 What is the difference whether it's a murder case or a
6 burglary case or a robbery case?

7 **A** You're correct. There's no difference.

8 **Q** Okay. So you treat them all just as serious,
9 don't you?

10 **A** Correct.

11 **Q** So tell me again how many suspects you think
12 you talked to in the course of your eight years?

13 **A** A hundred.

14 **Q** A hundred. Fair number. Okay. And some of
15 those go on to get charged, some of them don't, I would
16 presume?

17 **A** Correct.

18 **Q** And I'm not going to ask you for that number,
19 because who knows. And you've got somebody who you're
20 asking about a crime?

21 **A** Correct.

22 **Q** And if they didn't do it, what do they say to
23 you?

CROSS/MONDORA

1 **A** I wasn't there. I didn't do it.

2 **Q** And if you got somebody that down the road
3 maybe gets charged, gets maybe proven guilty, what do
4 they say to you?

5 **A** I wasn't there. I didn't do it.

6 **Q** Thank you. You were four in 1974?

7 **A** Correct.

8 **Q** Where did you grow up?

9 **A** New Middletown.

10 **Q** New Middletown. Okay. I know where New
11 Middletown is; okay? What street did you live on in
12 New Middletown?

13 **A** Woodland Drive.

14 **Q** Took you a little while to remember that, and
15 you lived there; right?

16 **A** I knew. I just didn't want to give the
17 address out.

18 **Q** I apologize. I didn't have any clandestine
19 purpose. I didn't want to get that information out. I
20 apologize.

21 **A** Thank you.

22 **Q** Let's try a little different angle. You go
23 to high school at Springfield?

CROSS/MONDORA

1 **A** Yes.

2 **Q** All right. Did you know people from other
3 sides of town, other parts of town?

4 **A** Absolutely.

5 **Q** All right. You graduated high school what
6 year?

7 **A** '89.

8 **Q** That's not a secret, right, '89? Ever have
9 occasion to ride with buddies, go with buddies, friends
10 or relatives to other people's houses, other locations?

11 **A** Yes.

12 **Q** Can you tell me -- let's just use -- you
13 graduated in '89. Let's use '88. Tell me every place
14 you went to with every friend or every relative in
15 1988.

16 **A** I couldn't tell you that.

17 **Q** Okay. Couldn't do it, could you?

18 **A** No.

19 **Q** Are there places you think you went to that,
20 you know, if I told you, remember going to meet
21 so-and-so's cousin over in Niles, and you might go, oh,
22 yeah, right; isn't that fair to say?

23 **A** Correct.

CROSS/MONDORA

1 **Q** All right. And you talked to Mr. Ferrara in
2 2009, 2010?

3 **A** 2010.

4 **Q** Okay. So at the time it was only 36 years?

5 **A** Correct.

6 **Q** And I asked you when you graduated, how long
7 have you been out of school, or high school. How many
8 years?

9 **A** Twenty plus.

10 **Q** So twenty plus. So 10 or 15 years extra
11 added by the time you talked to Mr. Ferrara. And you
12 didn't tell Mr. Ferrara up front you had his print, did
13 you?

14 **A** No, I did not.

15 **Q** So you talk to him, you interview him, and
16 then the next day you tell him that?

17 **A** Correct.

18 **Q** Now that we cleared that up, let's get on to
19 this case. By the way, you talked about contacting
20 Deputy Finamore?

21 **A** Yes.

22 **MR. MERANTO:** May I approach, Your
23 Honor?

CROSS/MONDORA

1 **THE COURT:** Yes, you may.

2 **(WHEREUPON, Defendant's Exhibit N was**
3 **marked for identification.)**

4 **BY MR. MERANTO:**

5 **Q** I'm going to show you what's been marked as
6 Defense Exhibit N. Do you recognize that?

7 **A** Yes.

8 **Q** What are those?

9 **A** This is our investigation.

10 **Q** Your -- this is actually your detective
11 notes? You wrote these?

12 **A** Mine and Detective Benigas, yes.

13 **Q** Okay. Collaboration?

14 **A** Correct.

15 **Q** I want you to look at the first page of this,
16 I believe. Well, I'm not even going to do that.

17 Mr. Finamore's name anywhere in there?

18 **A** I don't know. I'd have to review it and see.

19 **Q** You want to review it, or do you want me to
20 just save you the time? Would you doubt me if I say
21 his name's nowhere in those detective notes?

22 **A** I wouldn't doubt you.

23 **Q** You said that Bernie Albert processed the

CROSS/MONDORA

1 scene?

2 **A** Correct.

3 **Q** You didn't say Bernie Albert with assistance
4 from Deputy Finamore, did you?

5 **A** No.

6 **Q** In fact, once again, nowhere in there, is it?

7 **A** We didn't know Finamore assisted him until we
8 talked to him on the phone.

9 **Q** Well, his name does appear in the -- early on
10 in the detective notes digging that slug out; right?

11 **A** Correct.

12 **Q** And once again, you would agree with me that
13 even in all these detective notes and everything else,
14 his name's never mentioned anywhere other than digging
15 that slug out of the ceiling?

16 **A** Correct.

17 **Q** Now, I want to clear something up that
18 happened on direct also with regard to this fingerprint
19 issue. Ms. Doherty asked you if you -- Ms. Doherty
20 asked you if you had OPATA training; right?

21 **A** Yes.

22 **Q** And then she asked you about fingerprint, and
23 I didn't want to object because I've been being a

CROSS/MONDORA

1 little maybe grumpy or something, but she asked you
2 about whether you had OPATA training with regard to
3 fingerprints, and you answered that when you went to be
4 a detective, that you got some specialized training in
5 fingerprints?

6 **A** Correct.

7 **Q** So I'm going to ask you again about OPATA.
8 What training did you have in fingerprints?

9 **A** The training in OPATA is, you know, back when
10 I went to the academy in '91, it was a night school.
11 So we went from 6:00 to 10:00. So our training for
12 fingerprints probably would've been maybe 8 hours, 2
13 nights, over 2 nights.

14 **Q** Would you call that cursory? I mean, not --
15 not intense?

16 **A** Right. Not intense. Just basic how to throw
17 the -- how to put the fingerprint dust on, apply it,
18 lift it, preserve it, document it.

19 **Q** Okay. And I notice that in this case when
20 you wanted to get Mr. Ferrara's prints, is it Deputy
21 Cappabianca, or does he have rank now?

22 **A** He's a major now.

23 **Q** Major Cappabianca. I thought so. That's why

CROSS/MONDORA

1 I wanted to clear that up. Why did he take the prints?

2 **A** He walked in the room after our interview,
3 and we were getting ready to fingerprint, and he asked
4 if he could assist.

5 **Q** Okay. So you -- but you take those -- you
6 guys take those anytime somebody's booked into the
7 jail, too; right?

8 **A** Correct.

9 **Q** So people are designated to do that; correct?

10 **A** Correct.

11 **Q** And I believe that you stated that now when
12 someone goes out to a crime scene from the Sheriff's
13 Department, if there's any evidence to be processed,
14 they call the detective unit; right?

15 **A** They call me, yes.

16 **Q** They call you?

17 **A** Yes.

18 **Q** You are the man. Was that different in '74
19 that you know of?

20 **A** Not that I know of. They didn't have a
21 specialized crime scene unit to go out to those.

22 **Q** At all?

23 **A** At all.

CROSS/MONDORA

1 **Q** And let me ask you something, because you're
2 a detective now eight years; right? Would you --
3 because you said if there's evidence to be processed,
4 they call you?

5 **A** Correct.

6 **Q** You ever had cause to call a deputy off the
7 road to say I need you to process this crime scene?

8 **A** They didn't call Finamore to. I would never
9 call a deputy off the road to process it. But they
10 didn't call Finamore to process the crime scene either.

11 **Q** Yeah. He just volunteered; right?

12 **A** Correct.

13 **Q** Went out there. Okay. All right.

14 **MR. MERANTO:** May I approach the
15 witness, Your Honor?

16 **THE COURT:** Yes, sir.

17 **(WHEREUPON, Defendant's Exhibit F was**
18 **marked for identification.)**

19 **BY MR. MERANTO:**

20 **Q** I'm going to show you what has been marked as
21 Defendant's Exhibit F. Take a look at that and go
22 through it if you would. You know what that -- you're
23 familiar with this stuff, you went through it, didn't

CROSS/MONDORA

1 you?

2 **A** Absolutely.

3 **Q** Did you read through all this?

4 **A** Yes.

5 **Q** Okay. Good. All right. What is that?

6 **A** This is a list of 167 individuals that were
7 looked at for the Marsh homicide.

8 **Q** Okay. Let me show you another one.

9 **THE COURT:** Tell me what's going on
10 here.

11 **MR. MERANTO:** I handed her a document I
12 wanted to show --

13 **THE COURT:** What?

14 **MR. MERANTO:** I handed her a document I
15 wanted to show the deputy, and I guess she's
16 trying to verify whether I got it from them.

17 **MS. DOHERTY:** Your Honor, I'm actually
18 just looking at.

19 **THE COURT:** I can't hear you when you're
20 sitting down.

21 **MS. DOHERTY:** I said I'm actually trying
22 to look at it to make sure that I can find
23 it.

CROSS/MONDORA

1 **MR. MERANTO:** Oh, okay. I'm sorry.

2 **MS. DOHERTY:** I wasn't trying to verify
3 it.

4 **MR. MERANTO:** I will wait.

5 **MS. DOHERTY:** Okay. I found it.

6 **MR. MERANTO:** Thank you.

7 **BY MR. MERANTO:**

8 **Q** I'm going to also --

9 **MR. MERANTO:** I think I asked if I can
10 approach?

11 **THE COURT:** You did.

12 **MR. MERANTO:** Thank you, Your Honor.

13 **(WHEREUPON, Defendant's Exhibit E was**
14 **marked for identification.)**

15 **BY MR. MERANTO:**

16 **Q** I think that is Defense Exhibit E, is it not?

17 **A** Yes.

18 **Q** And what is that list of?

19 **A** It's another list of 34 individuals.

20 **Q** And what's it say up on top there?

21 **A** "Subjects and others who have had prints
22 submitted for elimination."

23 **Q** Okay. So they submitted prints for

CROSS/MONDORA

1 elimination, too; correct?

2 **A** Correct.

3 **Q** And correct me if I'm wrong, that first list,
4 which is Exhibit F, the list of the 167 people, it says
5 list of suspects, but up at the top they eliminated
6 people; correct?

7 **A** Yes.

8 **Q** I mean, through their investigation they
9 eliminated people?

10 **A** Correct.

11 **Q** Listen, I can go all day through 167 people
12 because they investigated all of them, and you would
13 agree with me, there's paperwork on all of them;
14 correct?

15 **A** Correct.

16 **Q** Some of them, 20, 30 pages?

17 **A** These were -- these were known criminals in
18 the area at that time, yes.

19 **Q** Well, wait a minute now. They're only known
20 criminals? You're telling me there were no suspects
21 based on tips in there? You didn't review any?

22 **A** No, there's tips.

23 **Q** Lots of them; right?

CROSS/MONDORA

1 **A** Yes.

2 **Q** So not just known criminals?

3 **A** The majority of these are known criminals in
4 the area.

5 **Q** Okay. We're going to get to that. But
6 rather than go through all of these, I'm going to try
7 and narrow things down a little bit just to give the
8 jury a flavor but, I mean, I don't want to spend all
9 day going through 167. I'm also going to show you --

10 **MR. MERANTO:** Your Honor, may we
11 approach one moment?

12 **THE COURT:** All right.

13 **MR. MERANTO:** Thank you.

14 **(WHEREUPON, a discussion was had among**
15 **court and counsel off the record and out of**
16 **the hearing of the jury and court reporter,**
17 **after which the proceedings continued as**
18 **follows:)**

19 **MR. MERANTO:** Your Honor, may I approach
20 again?

21 **THE COURT:** Yes.

22 **(WHEREUPON, Defendant's Exhibit G was**
23 **marked for identification.)**

CROSS/MONDORA

1 **BY MR. MERANTO:**

2 **Q** I'm going to show you -- I know you're going
3 to have a bunch of exhibits, and I'll try to keep going
4 back. Take a look at Exhibit G of the defense. And
5 you're going to have to look through those pages. The
6 first one you'll see, and then look through them page
7 by page, and I think there's eight or nine pages. And
8 after that we'll go through them.

9 **THE COURT:** Is this all part of his
10 file?

11 **MR. MERANTO:** This is all part of, yes,
12 the detective's file.

13 **THE COURT:** Yeah. The file that he's
14 reviewed and testified he reviewed?

15 **MR. MERANTO:** Yes.

16 **THE COURT:** Okay. Can we move along?

17 **BY MR. MERANTO:**

18 **Q** Okay. Detective Mondora, let's go through
19 this page by page. I mean, well, I'm just going to go
20 through -- the first page is basically something that
21 says we contacted BCI because we want you to check
22 specifically that -- latent prints and the cigarette
23 prints; right?

CROSS/MONDORA

1 **A** Correct.

2 **Q** Because there's a latent print found on the
3 cigarette that's found inside the crime scene; correct?

4 **A** Yes.

5 **Q** The next page -- and I'm not going to go
6 through all of them, but the next five or six, they're
7 basically all the same, correct, letters to BCI
8 requesting exactly the same thing? Hey, here's a
9 couple suspects, and we want you to check them on the
10 latent prints and the print that's on the cigarette;
11 correct?

12 **A** Correct.

13 **Q** The last one is a letter to the FBI basically
14 telling them the same thing; correct?

15 **A** Correct.

16 **Q** And in addition to that, if you look down,
17 Paragraph 3 addresses a composite photo that was
18 created, which they also sent to the FBI; right? They
19 said, hey, we want you to check these latent prints and
20 the print that's on the cigarette, and there's a
21 composite photo that was done by an eyewitness; right?

22 **A** Yes, that's what this says. Yes.

23 **Q** Okay.

CROSS/MONDORA

1 **MR. MERANTO:** May I approach again?

2 **THE COURT:** Yes.

3 **(WHEREUPON, Defendant's Exhibit U was**
4 **marked for identification.)**

5 **BY MR. MERANTO:**

6 **Q** I'm going to show you what's been marked with
7 Defense Exhibit U; okay?

8 **A** Yes, sir.

9 **Q** Take a look through that if you will.

10 **THE COURT:** Defense exhibit what?

11 **MR. MERANTO:** Excuse me? Exhibit U.

12 **THE COURT:** U?

13 **MR. MERANTO:** U as in unicorn.

14 **THE COURT:** I'll have to add that to the
15 list of exhibits.

16 **MR. MERANTO:** Thank you. That's our
17 fault, Judge.

18 **BY MR. MERANTO:**

19 **Q** If you look through there, that is basically
20 a bunch of police reports with regard to this -- they
21 refer to as Mrs. Informer; correct?

22 **A** Correct.

23 **Q** And describe to me if you would who

CROSS/MONDORA

1 Mrs. Informer was based on those notes.

2 **A** Apparently she's someone who saw someone
3 getting out of a vehicle in the K-mart parking lot.

4 **Q** Go ahead.

5 **A** They took her to Youngstown Police
6 Department. They showed her 2,800 -- yeah, 2,800
7 photographs of known criminals in the area that were
8 arrested by Youngstown Police Department to see if she
9 recognized anybody. She did not recognize anyone, and
10 after that they put a composite sketch together.

11 **Q** Okay. So once again, getting out of the
12 car -- getting out of which car?

13 **A** Possibly the victim's vehicle that was parked
14 at the K-mart parking lot.

15 **Q** Well, okay. We'll go with possibly for now.

16 **MR. MERANTO:** May I approach again?

17 **THE COURT:** Yes.

18 **(WHEREUPON, Defendant's Exhibit C was**
19 **marked for identification.)**

20 **BY MR. MERANTO:**

21 **Q** That's Defense Exhibit C. Is that not the
22 composite photo that was then published in the paper in
23 the Youngstown Vindicator?

CROSS/MONDORA

1 **A** This is a composite that was published in the
2 Vindicator dated 12/7 of '80. And this is only in the
3 file because it was a newspaper article about the
4 murders.

5 **Q** Well, hold on. Are you telling me that
6 composite was created in 1980?

7 **A** I don't know when this composite was created,
8 but this composite here that you handed me, Exhibit
9 Union, this is the one that was developed by the
10 detectives' office.

11 **Q** Go ahead to the next to the last page there.
12 There's a sketch there; right?

13 **A** Two sketches, yes.

14 **Q** I want you to go to the next to the last
15 page.

16 **A** This one?

17 **Q** And there's a sketch there?

18 **A** Right, and she corrects herself.

19 **Q** She revises it?

20 **A** Yes.

21 **Q** And the back one's the one they used?

22 **A** Correct.

23 **Q** And you're saying they didn't submit that to

CROSS/MONDORA

1 the newspaper, someone just made that up?

2 **A** I don't know where that came from.

3 **Q** Well, let's go back now that you have those
4 exhibits in front of you to Exhibit F.

5 **A** The list of 34 individuals?

6 **Q** No. That's E. F.

7 **A** Oh, I'm sorry. Okay.

8 **Q** Okay. You got F?

9 **A** Yes, I do.

10 **Q** Now, F is the list of 167 or so suspects;
11 correct?

12 **A** Correct.

13 **Q** And it says that they're eliminated in a
14 number of ways; correct?

15 **A** Correct.

16 **Q** In fact, it says X, eliminated, at the top,
17 and then you go through and you see the X's; right?

18 **A** Correct.

19 **Q** Correct me if I'm wrong, pretty much -- not
20 all of them, but I mean a huge percent of them were
21 either eliminated because their prints didn't match or
22 the photo, they were photo eliminated?

23 **THE COURT:** They were what? What did

CROSS/MONDORA

1 you say?

2 **MR. MERANTO:** They were eliminated by
3 virtue of their photos.

4 **THE COURT:** Photo?

5 **MR. MERANTO:** Their picture. Yes.

6 **THE COURT:** Okay. I'm sorry. Maybe I
7 just didn't hear you.

8 **MS. DOHERTY:** I object.

9 **THE COURT:** Overruled.

10 **BY MR. MERANTO:**

11 **Q** Okay. So now there's a couple thrown out
12 there. For example, No. 7 says too young. And once
13 again, Detective Mondora, you read through all this,
14 right, all of this paperwork? And will you agree with
15 me that in some cases there's a name, and there's no
16 investigation, and you don't know what the heck
17 happened?

18 **A** Yes, there's a name -- we do have -- we do
19 have BCI reports that show some of these names on this
20 list, and in the other list, that their fingerprints
21 were compared to prints at the crime scene, and they
22 were eliminated from as a suspect that way.

23 **Q** I got you. But I don't think you answered my

CROSS/MONDORA

1 question.

2 **THE COURT:** He didn't answer your
3 question. Did you understand his question?

4 **THE WITNESS:** Can you ask me again,
5 please?

6 **BY MR. MERANTO:**

7 **Q** Yeah, I will. Isn't it true that there were,
8 in this vast amount of paperwork you gave me, like a
9 name on a piece of paper, and nothing attached to it?

10 **A** Correct.

11 **Q** So we got no idea if they ever talked to 'em;
12 right?

13 **A** Correct.

14 **Q** Pursued any leads, tried to find out who it
15 is, took prints, took a photo, did anything; is that
16 correct?

17 **A** That's correct.

18 **Q** Okay. But their entire focus in '74 is hey,
19 we got fingerprints, right, we got fingerprints on the
20 cigarette, we got fingerprints on the scene; right?

21 **A** That's all they had back then, yes.

22 **Q** And a composite photo; right?

23 **A** Correct.

CROSS/MONDORA

1 **MR. MERANTO:** May I approach again,
2 Judge?

3 **THE COURT:** You may.

4 **(WHEREUPON, Defendant's Exhibit R was**
5 **marked for identification.)**

6 **BY MR. MERANTO:**

7 **Q** Defense R, tell me what that is, if you will.

8 **A** This is a list of individuals in the house
9 when the officers arrived the night the murders were
10 discovered.

11 **Q** Now, once again, you're -- you know, you
12 didn't prepare this; right?

13 **A** No, sir.

14 **Q** But you've reviewed this whole file. And is
15 this not a list -- what they did is they thought the
16 cigarette and the print on it was a big deal, did they
17 not?

18 **A** Apparently.

19 **Q** Apparently they did. Well, let me tell you
20 something. They were there investigating the case in
21 '74. Do you purport to know more than they do about
22 this case?

23 **A** No.

CROSS/MONDORA

1 **Q** Okay. So apparently they did, because what
2 they did here, right, correct me if I'm wrong, is they
3 found out anybody that they thought, or was in that
4 house, detectives, deputies, policemen, photographers,
5 anybody that they knew was in that house, family
6 members, including the deceased, Mr. Marsh Sr., and
7 they found out if they smoked, if they smoked, what
8 they smoked, and they eliminated them from this list;
9 right?

10 **A** Correct.

11 **Q** Why did they eliminate them, in your opinion?

12 **A** Because they were going to look at the
13 fingerprint on the cigarette.

14 **Q** Fingerprint on the cigarette's a big deal,
15 and they made sure -- they wanted to make sure, hey,
16 we're covering everybody that might have been there,
17 might have touched that cigarette?

18 **A** Correct.

19 **Q** Okay. Now, 1974, fingerprints, big deal;
20 right?

21 **A** Yes.

22 **Q** Because you said that's all you got. You got
23 a washing machine at home now?

CROSS/MONDORA

1 **A** Yes.

2 **Q** You don't send your wife down to the stream
3 to beat her clothes on a rock, do you, because that's
4 the way they used to do it?

5 **A** No.

6 **Q** Okay. So now what do we have now that was
7 not present in 1974? DNA?

8 **A** Yes. Oh, yes.

9 **Q** Okay. So -- by the way, you did all this
10 investigation, and Ms. Doherty made painstaking efforts
11 to show, hey, you didn't just get this one fingerprint
12 and run off to the grand jury to get Mr. Ferrara
13 indicted. You did some additional investigation;
14 right?

15 **A** Yes.

16 **Q** And you talked to him and he said, "I don't
17 know. I ain't been there. I didn't touch anything."
18 And then you went off to the grand jury pretty much;
19 right?

20 **A** A few years later, yes.

21 **Q** Uh-huh. Okay. But you went, and you also
22 said when you got his prints because you wanted to get
23 his whole prints, that you did a buccal swab?

CROSS/MONDORA

- 1 **A** Correct.
- 2 **Q** Tell the jury what a buccal swab is.
- 3 **A** That's a swabbing of the inside of the mouth
4 on both sides.
- 5 **Q** And what do you -- I'm sorry. Go ahead.
- 6 **A** Swabbing of the mouth both sides, and we
7 submitted -- because we had submitted the cigarette, we
8 wanted to see if DNA on the cigarette matched James
9 Ferrara. So we swabbed his mouth, and we submitted the
10 swabs to BCI to see if they matched Mr. Ferrara, his
11 DNA.
- 12 **Q** Well, you had a fingerprint; right?
- 13 **A** Correct.
- 14 **Q** Of course, his name's not mentioned anywhere
15 in all of this amounts of paperwork; right?
- 16 **A** No, he's not.
- 17 **Q** And you got no eyewitnesses or anything;
18 right?
- 19 **A** No.
- 20 **Q** Why did you submit his DNA?
- 21 **A** We wanted to cover all our bases.
- 22 **Q** And gee, DNA, it didn't work out, did it?
- 23 **A** No, sir, his DNA did not come back to

CROSS/MONDORA

1 Mr. Ferrara. It came back to an unknown male.

2 **Q** But you had doubts. You had doubts about the
3 case so you submitted the DNA; right?

4 **MS. DOHERTY:** I object.

5 **THE COURT:** Overruled.

6 **A** I did not have any doubts about the prints.

7 **Q** You had no doubts?

8 **A** No.

9 **Q** That isn't what I said. I said you wanted
10 more; right? You wanted more, so that's why you
11 submitted DNA. So you weren't sure; right?

12 **A** I wanted a complete and thorough
13 investigation.

14 **Q** You did. Okay. Let's talk about that. You
15 specifically said you reviewed all this information;
16 right?

17 **A** Yes.

18 **Q** Yes?

19 **A** Myself and Dave Benigas, yes.

20 **Q** You and Dave Benigas. And on Exhibit F, that
21 list of 167 people?

22 **A** Yes.

23 **Q** How many people did you talk to on that list?

CROSS/MONDORA

1 **A** None.

2 **Q** How many -- oh, so you didn't even try to
3 talk to any of them?

4 **A** No.

5 **Q** Do you know how many of them are alive or
6 dead?

7 **A** No.

8 **Q** Did you do anything with regard to all this
9 paperwork and investigation that was done in '74?

10 **A** That was already completed by the
11 investigators during that time, so I didn't go back on
12 what they already did.

13 **Q** Well, correct me if I'm wrong, you got
14 Mr. Ferrara's, what you believe are Mr. Ferrara's
15 prints, on the outside of the garage door; right?

16 **A** Correct.

17 **Q** Nothing on the interior?

18 **A** No.

19 **Q** But you got DNA now that you found in the
20 house; right?

21 **A** We have a cigarette butt that was found in
22 the house days later.

23 **Q** Well, wait a minute. Wait a minute. Once

CROSS/MONDORA

1 again, see, I love that you're looking back at this 39
2 years later. Exhibit R, pick it up again. Take a look
3 at it. I want to make sure we're clear. They made a
4 big deal about making sure that anybody that could've
5 touched that cigarette was eliminated; right?

6 **A** Correct.

7 **Q** So you don't think it's a big deal now;
8 right? Do you even test for DNA now, or do you just go
9 out and dust for fingerprints these days?

10 **A** No. We do DNA.

11 **Q** It isn't your testimony that you think
12 fingerprints are a bigger deal than DNA right now, do
13 you?

14 **A** I think it's just as good.

15 **Q** Just as good. All right. Did you review the
16 file with regard to Richard Gelbke and Frederick
17 Gelbke?

18 **A** Yes.

19 **Q** You did? Was there not, in fact, a witness
20 who says that these guys came to his house, and one of
21 them put blood on the door the morning of the murder?

22 **MS. DOHERTY:** Objection.

23 **THE COURT:** Let me see counsel.

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1 (WHEREUPON, a discussion was had among
2 court and counsel off the record and out of
3 the hearing of the jury and court reporter,
4 after which the proceedings continued as
5 follows:)

6 **THE COURT:** Objection's overruled.

7 **MR. MERANTO:** Thank you, Your Honor.
8 May I approach again?

9 **THE COURT:** Yes.

10 (WHEREUPON, Defendant's Exhibit M was
11 marked for identification.)

12 **BY MR. MERANTO:**

13 **Q** I'm going to show you what's been marked as
14 Defense Exhibit M. Okay. Do you recall this?

15 **A** Yes.

16 **Q** Okay. So there's an informant that contacts
17 the department, and they say, hey, these Gelbke
18 brothers worked for me, and they showed up at my house
19 in what looked like the victim in this case, Marilyn
20 Marsh's car. And by the way, when they left, there's
21 blood on my door; right?

22 **A** Correct.

23 **Q** And you're telling me you didn't do anything

CROSS/MONDORA

1 to go back and investigate these guys, or submit their
2 DNA or anything like that?

3 **A** No. Gelbke's prints were eliminated as
4 prints found at the crime scene.

5 **Q** Well, eliminated from which one? The ones on
6 the outer door or --

7 **A** The door, yes.

8 **Q** Okay. But they got DNA now. I guess what
9 I'm asking you is, did you ever think about applying
10 today's technology to yesterday's evidence with anybody
11 except Mr. Ferrara?

12 **A** If I'm correct, Gelbkes had a criminal
13 record, so their prints would've been on file, and
14 those prints would've hit on the fingerprint on the
15 cigarette.

16 **Q** So once again, I'm going to ask you the
17 question again.

18 **A** No, I did not apply.

19 **Q** You didn't do any further investigation of
20 these guys?

21 **A** No.

22 **Q** No, not at all. Okay. How about did you
23 hear anything about a robbery -- or excuse me, burglary

CROSS/MONDORA

1 that took place at that house about six years earlier?

2 **A** Yes, I did.

3 **Q** Okay. And some coins were stolen; correct?

4 **A** Correct.

5 **THE COURT:** At that house, at that Marsh
6 house?

7 **MR. MERANTO:** Yes, at the Marsh house,
8 Judge. May I approach?

9 **THE COURT:** You may.

10 **(WHEREUPON, Defendant's Exhibit L was**
11 **marked for identification.)**

12 **BY MR. MERANTO:**

13 **Q** That's Exhibit L, Defense Exhibit L. Is that
14 a guy named Pete Wallace Kithkart?

15 **A** Yes, it is.

16 **Q** And if you looked at the first page, there's
17 a B & E report where the guy broke the glass in the
18 garage door for entry. You see that?

19 **A** Yes.

20 **Q** And do you recall they did an investigation
21 of Mr. Kithkart because someone said he had all kinds
22 of money in his locker at GM, and it was a coin
23 collection, wasn't it?

CROSS/MONDORA

1 **A** I believe so, yes.

2 **Q** Did you do anything with Mr. Kithkart?

3 **A** No, sir.

4 **Q** Did you go check out his DNA, see if it was
5 in that house?

6 **A** No, sir.

7 **MR. MERANTO:** Judge, may I approach
8 again, please?

9 **THE COURT:** Yes.

10 **(WHEREUPON, Defendant's Exhibit I was**
11 **marked for identification.)**

12 **BY MR. MERANTO:**

13 **Q** I'm going to show you Defense Exhibit I.
14 Take a look through that. Once again I apologize to
15 the court and the jury that -- I mean, there's a lot of
16 paperwork here. Do you recall this?

17 **A** Yes.

18 **Q** Okay. And, in fact, in your detective notes,
19 you -- this is actually something you talked to Ed
20 Nemeth about, isn't it?

21 **A** Correct.

22 **Q** Okay. So once again, correct me if I'm
23 wrong, there's all kind of -- by the way, let me set

CROSS/MONDORA

1 the scene a little bit. There's all kind of informants
2 when people call; correct?

3 **A** Correct.

4 **Q** And in fairness that you didn't investigate
5 anybody, there were some, I don't even want to call
6 them crack pot calls, but you had somebody that called
7 and said a psychic told them who did it; right?

8 **A** Yes.

9 **Q** And there probably wasn't much investigation
10 done about that suspect, right, as you recall?

11 **A** As I recall.

12 **Q** And it would probably be the same today. You
13 might make a phone call or something, but you're not
14 going to go spend man hours on something like that;
15 right?

16 **A** Correct.

17 **Q** But in this case, you got an informant,
18 right, that says he overhears a guy at a bar talking
19 about the murders; right?

20 **A** That's what the report says, yes.

21 **Q** Well, once again, do you have any reason to
22 doubt the veracity or the trustworthiness of these
23 reports?

CROSS/MONDORA

1 **A** No, I do not.

2 **Q** So they give you some names. They give these
3 detectives some names; correct? And they say, hey, we
4 think they might have been involved in the burglary six
5 years ago, and you ought to check these people out;
6 correct?

7 **A** Correct.

8 **Q** They heard, well, maybe we went there and
9 thought the same people were living there, we thought
10 we'd make another score on the coin collection, and it
11 was the wrong people, and maybe that's what happened;
12 correct?

13 **A** Yes.

14 **Q** Okay. So General Motors is investigating.
15 They're involved in this, too, aren't they?

16 **A** Correct.

17 **Q** And Ed Nemeth gets a tip from an informant
18 who says, hey, they're gonna steal GM's investigation
19 file of the Marsh murders; correct?

20 **A** Correct.

21 **Q** So Detective Nemeth and GM, they devise a
22 plan; correct?

23 **A** You're correct.

CROSS/MONDORA

- 1 **Q** Where they get GM security to get the actual
2 file and hide it?
- 3 **A** Correct.
- 4 **Q** And make a dummy file and put a dummy witness
5 name in it; correct?
- 6 **A** Correct.
- 7 **Q** And say that that witness is in a room at the
8 Penn-Ohio Motel out in North Lima?
- 9 **A** Correct.
- 10 **Q** Lo and behold, a car's broken into at GM, and
11 that file is, in fact, stolen; is it not?
- 12 **A** Correct.
- 13 **Q** They then -- the Mahoning County Sheriff's
14 Department, and Ed Nemeth, they set up a sting
15 operation at the Penn-Ohio Motel; correct?
- 16 **A** Correct.
- 17 **Q** Wherein Ed Nemeth is in a room, pretending to
18 be the witness, and they have officers all around
19 staking out that hotel?
- 20 **A** Correct.
- 21 **Q** Yes? First day, nothing happens; right?
22 Second day, nothing happens. Third day, they see
23 individuals that match the description of one Bob

CROSS/MONDORA

1 Parks, one Paul Parks, one Ed Farris; correct?

2 **A** Correct.

3 **Q** And those were, in fact, the names that were
4 being thrown around at the Tropics bar, which initially
5 started this whole thing with regard to these suspects?

6 **A** Correct.

7 **Q** So Ed Nemeth gets a call in the room and
8 answers the phone, and whoever it is just hangs up on
9 him?

10 **A** Correct.

11 **Q** Basically trying to verify that he's, in
12 fact, in the room. Uses the witness' name; correct?

13 **A** Correct.

14 **Q** Those guys are going to that room, and the
15 deputies swoop in, and they arrest them; correct?

16 **A** Correct.

17 **Q** And it is Ed Farris, Paul Parks, Bob Parks?

18 **A** Correct.

19 **Q** It's interesting because there's no guns
20 found on those guys; correct?

21 **A** Correct.

22 **Q** But if you look back in those pages, part of
23 this investigation, another informant told them, well,

CROSS/MONDORA

1 William Span, S-P-A-N, William Span was down the street
2 with the guns. He had the guns because they were going
3 to grab this witness and kill them. That's what the
4 informant said; right?

5 **A** Correct.

6 **Q** So they arrest those guys, and I don't know
7 who, someone says you want to take a lie detector test,
8 they say absolutely, yeah, we'll do that; right? And
9 then a famous name appears, Carmen Policy shows up
10 representing somebody; right?

11 **A** I believe so.

12 **Q** And all the sudden, that's the end of it?

13 **A** Yes.

14 **Q** You don't hear anything else about those
15 guys; correct?

16 **A** Correct.

17 **Q** And by the way, you've got another informant
18 there who's a deputy, I believe, that says Farris was
19 at his house with the file in his possession, the
20 stolen file; right?

21 **A** Yes.

22 **Q** And you talked to Ed Nemeth, and Ed Nemeth
23 said to you -- this is a couple years ago?

CROSS/MONDORA

1 **A** Yes.

2 **Q** Ed Nemeth says to you, well, yeah, they
3 said -- they were kind of mad about their names being
4 thrown around, so they just wanted to talk to the
5 witness; right? That's it?

6 **A** Yes, they -- he had said that upon
7 questioning they were mad because their names were
8 being associated with killing a woman and a child, and
9 that's why they were --

10 **Q** So they were just gonna go kill the guy that
11 was saying it about them; is that it?

12 **A** I don't know if they were going to kill him
13 or not.

14 **Q** Well, I mean, I give you some examples of
15 some pretty good -- let's go, once again, back to the
16 '70s. Pretty good evidence against some people; right?
17 Except no fingerprints.

18 **A** I don't know if it's good evidence.

19 **Q** Well, the jury will decide that. I mean, you
20 say what you want.

21 **A** Right.

22 **Q** You think it's -- you think those are bad
23 examples. You want me to use some more examples? Or

CROSS/MONDORA

1 you -- I mean, you think those are bad examples of
2 suspects that could've had something to do with this?

3 **A** Well, I know that the Parks brothers'
4 fingerprints weren't in that house because they were
5 eliminated upon comparison. Mr. Span, his fingerprints
6 were examined and cleared, and his prints weren't in
7 that house. I mean --

8 **Q** And neither were Mr. Ferrara's in that house?

9 **A** Ferrara's were found at the house.

10 **Q** In the house you said. Was his prints found
11 in the house?

12 **A** They were at the house.

13 **Q** Okay. At the house, on the outside door.
14 You say.

15 **A** That he's never been to, yes.

16 **Q** Uh-huh. Tell me about the DNA of Mr. Parks,
17 both Parks brothers.

18 **A** I have no idea about the DNA.

19 **Q** Never checked it; right?

20 **A** No.

21 **Q** Never bothered?

22 **A** No.

23 **Q** That DNA's in the house, though; right?

CROSS/MONDORA

1 Where were the murders committed? In the garage?

2 **A** In the house.

3 **Q** Outside the garage?

4 **A** In the house.

5 **Q** All right. You would agree with me that
6 there's 167 names listed there, but some of these then
7 go on to list associates?

8 **A** Correct.

9 **Q** For example, the Gelbkes that I mentioned,
10 there were another 18, 20 names associated with those
11 guys; right?

12 **A** Right.

13 **Q** Do you know if they were investigated,
14 checked or anything at that time?

15 **A** I have no idea.

16 **Q** And once again, we know you didn't do
17 anything at this time with any of those names?

18 **A** Right.

19 **Q** You didn't make a phone call about any one of
20 those 167 or more people, did you?

21 **A** No.

22 **Q** Because you have a fingerprint, that's it.
23 From time to time, he said he wasn't there?

CROSS/MONDORA

1 **A** Correct.

2 **Q** No DNA, though; right?

3 **A** No DNA.

4 **MR. MERANTO:** All right. Nothing else.
5 Thank you.

6 **THE COURT:** Do you have any redirect?

7 **MS. DOHERTY:** I do.

8 **THE COURT:** All right. We're going to
9 take a recess before that takes place.
10 Ladies and gentlemen, during your absence
11 from the courtroom, please remember the
12 admonitions. You're not to discuss the case
13 at all among yourselves or with anyone else.
14 Please do not allow anyone to discuss the
15 case with you or in your presence. You're
16 not to form or express any opinion about this
17 case until it's finally submitted to you.
18 We'll be in recess until 10:30.

19 **(WHEREUPON, a brief recess was had,**
20 **after which the proceedings continued as**
21 **follows:)**

22 **THE COURT:** All right. Do you still
23 wish to redirect this witness, Ms. Doherty?

REDIRECT/MONDORA

1 **MS. DOHERTY:** Yes, Your Honor. Thank
2 you.

REDIRECT EXAMINATION

4 **BY MS. DOHERTY:**

5 **Q** Detective Mondora, I have some follow-up
6 questions for you.

7 **A** Okay.

8 **Q** Attorney Meranto asked you about the
9 ballistics and the fact that Andy Chappell tested those
10 submissions and indicated that they were from a .38;
11 right?

12 **A** Yes.

13 **Q** In your review of the file and all of the BCI
14 analysis back to 1974, were those items analyzed during
15 that time?

16 **A** Yes.

17 **Q** I'm going to show you what's been marked as
18 State's Exhibit 63.

19 **MS. DOHERTY:** Can I approach?

20 **THE COURT:** Yeah. You should do it
21 before you get up there.

22 **MS. DOHERTY:** I know.

23 **THE COURT:** I'd really like you to

REDIRECT/MONDORA

1 remember the rules of this court.

2 **MS. DOHERTY:** I know, Judge.

3 **THE COURT:** Well, I know's not good
4 enough for me. I want you to follow the
5 rules; okay?

6 **MS. DOHERTY:** I will absolutely do that.

7 **THE COURT:** Thank you.

8 **(WHEREUPON, State's Exhibit No. 63 was**
9 **marked for identification.)**

10 **BY MS. DOHERTY:**

11 **Q** Can you tell us what that exhibit is if you
12 recognize it?

13 **A** This is a BCI submission sheet -- or response
14 sheet from the BCI to O.T. DiLullo who is a
15 investigator for the Sheriff's Department after the
16 Marsh homicide.

17 **Q** All right. And were those projectiles
18 analyzed?

19 **A** Six bullets. They were .38 special, 148
20 grain, lead, Remington wad cutters. They were all
21 fired from the same weapon.

22 **Q** All right. So long prior to Andy Chappell
23 looking at that information, you had information in the

REDIRECT/MONDORA

1 file indicating that they were fired from a .38;
2 correct?

3 **A** Back in the initial investigation, yes, they
4 did that.

5 **Q** And the analyst on that exhibit is who?

6 **A** Henry Dombrowski.

7 **Q** Is he available to testify, or has he passed
8 away?

9 **A** I believe he's passed away, according to
10 Mr. Chappell.

11 **Q** All right. You were asked about a composite
12 that was put together back in 19 -- actually, 1975;
13 correct?

14 **A** Correct.

15 **Q** I'm going to show you Defense Exhibit U. Is
16 that what this is? U?

17 **MR. MERANTO:** Yes.

18 **MS. DOHERTY:** It kind of looks like a 6,
19 but it's a U; right?

20 **MS. WEIBLING:** I'm sorry. It's a U.

21 **MS. DOHERTY:** Can I approach, Judge?

22 **THE COURT:** Yes.

23 **BY MS. DOHERTY:**

REDIRECT/MONDORA

1 **Q** What date was the vehicle, Mrs. Marsh's
2 orange Vega, discovered in the K-mart parking lot?

3 **A** I believe it was the night the victims were
4 found.

5 **Q** So December 13th, 1974?

6 **A** No. It would be the 14th. They were found
7 on the 14th.

8 **Q** Yeah, 14th.

9 **A** I believe -- I believe the car was found
10 either late on the 14th or early morning on the 15th.

11 **Q** All right. And what is the date that
12 Mrs. Informer was interviewed according to that report?

13 **A** January 20th, 1975.

14 **Q** The composite that is -- I guess was created
15 based upon her information, is it included within that
16 exhibit?

17 **A** Yes, it is.

18 **Q** And you were also shown an exhibit with the
19 newspaper article; correct?

20 **A** Yeah. Correct.

21 **Q** From 1980. Are those two composite drawings
22 the same?

23 **A** No. No, they're not.

REDIRECT/MONDORA

1 **Q** Do you know where the one from the newspaper
2 came from?

3 **A** No, I do not.

4 **Q** You were shown the suspect at that time,
5 suspect list, Defense Exhibits F and E. Actually, E is
6 the elimination. I'm going to show you these. I have
7 a couple questions on them.

8 **MS. DOHERTY:** Can I approach?

9 **THE COURT:** You may.

10 **BY MS. DOHERTY:**

11 **Q** Exhibits for the defense, E and F. First of
12 all, I'm going to refer to the -- I think it's E, the
13 one with the suspect list, the thicker one with a lot
14 of pages. Is that the one you have?

15 **A** F is the thicker one.

16 **Q** Okay. That's the one I need then.

17 **A** Okay.

18 **Q** In some -- alongside a lot of those names --
19 that's the list of 160 some names; correct?

20 **A** Correct.

21 **Q** And in your review of the files, and there
22 are voluminous files, were all of those persons
23 eliminated one way or another?

REDIRECT/MONDORA

- 1 **A** There's a -- there's an X next to their names
2 if they're eliminated.
- 3 **Q** Okay. And either through fingerprints;
4 correct?
- 5 **A** Correct.
- 6 **Q** Or some of them in your review of the file
7 are dead?
- 8 **A** I believe so, yes.
- 9 **Q** Some of them incarcerated at the time and
10 couldn't have done this?
- 11 **A** Correct.
- 12 **Q** Okay. Defense Exhibit E that lists the
13 elimination by fingerprints, look at that list.
- 14 **A** E?
- 15 **Q** Yeah. And does that include family members
16 of Marilyn and Ben Marsh?
- 17 **A** Yes.
- 18 **Q** So they're looking at everybody?
- 19 **A** Correct.
- 20 **Q** I mean, at least for elimination purposes
21 because they have latent prints that they don't know
22 who they belong to?
- 23 **A** Correct.

REDIRECT/MONDORA

1 **Q** Okay. The cigarette, the L & M long
2 cigarette, did you have the opportunity to review the
3 submission to BCI and the report from BCI originally
4 when it was submitted back in 1974?

5 **A** Yes.

6 **Q** All right.

7 **MS. DOHERTY:** Can I approach, Judge?

8 **THE COURT:** Yes.

9 **(WHEREUPON, State's Exhibit No. 64 was**
10 **marked for identification.)**

11 **BY MS. DOHERTY:**

12 **Q** I'm going to hand you what's been marked as
13 State's Exhibit 64. Can you tell us if you recognize
14 that and what it is?

15 **A** It's a submission sheet from Detective Nemeth
16 dated 2/25 of '75 including one fingerprint card of a
17 suspect and one L & M long cigarette, and it says here
18 the names of the following for comparison to items
19 previously submitted on 1/23 of '75.

20 **Q** All right. And then the next page, does that
21 analysis eliminate as suspects those people listed?

22 **A** Let's see. It says one fingerprint card of
23 the suspect, John Sirohman and one L & M long

REDIRECT/MONDORA

1 cigarette. The names of the following for comparison
2 previously submitted. And it says the latent print was
3 compared with inked impressions of the above
4 individuals. The results revealed no identification.

5 **Q** All right. And I guess the whole point,
6 unfortunately I took too long to get there, was the
7 date of the submission to BCI of that L & M long
8 cigarette was what?

9 **A** 2/25/75.

10 **Q** All right. So almost a month after the
11 Marshes' bodies were found; correct?

12 **A** Yes.

13 **Q** More than a month?

14 **A** A month and a half.

15 **Q** Okay.

16 **MS. DOHERTY:** Can I approach, Judge?

17 **THE COURT:** You may.

18 **(WHEREUPON, State's Exhibits Nos. 65, 70**
19 **& 71 were marked for identification.)**

20 **BY MS. DOHERTY:**

21 **Q** I'm going to hand you a bunch so I don't have
22 to keep doing this. State's Exhibit 65, 70, and 71.
23 I'm going to have you first look at 65 and tell us what

REDIRECT/MONDORA

1 that is.

2 **A** It's a \$10,000 reward notice that was sent
3 out by the Mahoning County Sheriff's office for
4 information regarding the Marsh murders.

5 **Q** All right. And in your experience as a
6 police officer, does the indication that there is a
7 reward, maybe a monetary reward available, bring a lot
8 of maybe useful, but unuseful tips?

9 **A** Correct.

10 **Q** Okay. And in your review of all of these
11 binders, the police received a lot of tips from
12 psychics and informants and everything else; correct?

13 **A** Correct.

14 **Q** But never was an arrest made?

15 **A** No.

16 **Q** In your review of the files, was there an
17 indication -- and talking to witnesses, was there an
18 indication that the Marshes had had a bridge party the
19 evening before?

20 **A** Yes.

21 **Q** State's Exhibit 70 I believe that I handed
22 you, can you tell us what that is?

23 **A** It's dated 8/18 of '76. Below are listed

REDIRECT/MONDORA

1 persons, comparison for latent prints found on the L &
2 M cigarette.

3 **Q** All right. And what does that list consist
4 of? Even in '76 they were still reviewing that
5 information?

6 **A** Correct. It's a list of individuals who have
7 either been arrested by Youngstown Police Department or
8 the Mahoning County Sheriff's office.

9 **Q** Okay. And the second exhibit I gave you, 71
10 maybe?

11 **A** Yes.

12 **Q** What is that?

13 **A** These are submissions and elimination --
14 these are the names of individuals that were submitted
15 by the Mahoning County Sheriff and then followed up by
16 BCI telling them that the prints did not match the ones
17 found at the crime scene.

18 **Q** All right. And not just the cigarette, but
19 the prints on the back door; correct?

20 **A** Correct.

21 **Q** And I think you said, you know, the prints
22 back then and now were a big deal for a police officer;
23 fair to say?

REDIRECT/MONDORA

1 **A** Correct.

2 **Q** The questions regarding the burglary at the
3 Marshes' home six years prior to this -- these
4 homicides, did the Marshes even live there six years
5 before?

6 **A** No.

7 **Q** Was it concluded by the detectives in your
8 review of the reports and with the elimination of any
9 suspect connected to that crime, that it was unrelated?
10 That burglary six years before was unrelated to these
11 crimes?

12 **MR. MERANTO:** Objection.

13 **THE COURT:** Overruled.

14 **A** Correct.

15 **Q** You were asked about Paul Parks, his brother,
16 and Ed Farris by Attorney Meranto. Were they excluded
17 as well as contributors to the fingerprints on the back
18 door of the residence, as well as the L & M cigarette?

19 **A** All of them have criminal records, so their
20 prints would've been on file, and they were compared to
21 the prints from the scene and the cigarette, and they
22 did not match.

23 **Q** Okay.

RECROSS/MONDORA

1 **MS. DOHERTY:** Can I approach, Judge?

2 **THE COURT:** You may.

3 **(WHEREUPON, State's Exhibits Nos. 66-68**
4 **were marked for identification.)**

5 **BY MS. DOHERTY:**

6 **Q** All right. I'm going to show you State's
7 Exhibits -- you tell me what they are because they're
8 buried now underneath there. What exhibit number is
9 that?

10 **A** 67, 68, and 66.

11 **Q** All right. And have you reviewed the
12 contents of all of those binders?

13 **A** Yes, ma'am. Yes, I have.

14 **Q** And in your review, up until 2009 when the
15 fingerprints located on that back door of the Marshes'
16 residence matched those of James Ferrara, was anyone
17 ever arrested, charged with these crimes?

18 **A** No.

19 **Q** Were they all eliminated in one way or
20 another?

21 **A** Yes.

22 **THE COURT:** What's going on now?

23 **MS. DOHERTY:** Judge, I'm sorry. I'm

RECROSS/MONDORA

1 just making sure I covered all the exhibits
2 and had them right. I don't have anything
3 further, Judge.

4 **THE COURT:** Okay. Thank you. Do you
5 have any recross?

6 **MR. MERANTO:** Yeah, Judge. I'll try to
7 be brief, but I don't know.

RECROSS EXAMINATION

9 **BY MR. MERANTO:**

10 **Q** Ms. Doherty just mentioned a bridge party.
11 She mentioned a bridge party I think to infer that
12 maybe someone else dropped that cigarette. Didn't
13 they, in fact, go talk to one of the people at the
14 bridge party, and she said no, it was a cookie baking
15 party, and nobody smoked? Do you recall that?

16 **A** I don't recall that, no.

17 **Q** You don't recall that. But you recall the
18 bridge party, though?

19 **A** I recall a party. I don't recall if it was
20 cookie or bridge.

21 **Q** And you don't recall them going back and
22 verifying that nobody smoked at that party?

23 **A** No, I do not.

RECROSS/MONDORA

- 1 **Q** Of course. Okay. Grab F if you would,
2 please. Do you got it over there, or did she grab it
3 back? I think you have it up there, Detective. My
4 Defense F.
- 5 **A** No, I don't. Oh, wait. Hold on.
- 6 **Q** Mine would be the blue ones.
- 7 **A** F.
- 8 **Q** Got it?
- 9 **A** E, F. Yes, sir.
- 10 **Q** Okay. Let's go through this. Go down to No.
11 12.
- 12 **A** 12, Paul Cole.
- 13 **Q** Yeah. How was he excluded?
- 14 **A** It doesn't say he was excluded.
- 15 **Q** I thought you just told Ms. Doherty that
16 everybody on this list has been excluded one way or
17 another?
- 18 **A** That's not what I said.
- 19 **Q** So that's not true?
- 20 **A** No.
- 21 **Q** Okay. Let's go down to No. 14, Jeff
22 Fitzpatrick.
- 23 **A** Right. There's no X next to him.

RECROSS/MONDORA

1 **Q** John McGeehen, Mike Cavucci, Mark Cavucci,
2 Joe Colello. You want me to go on?

3 **A** No.

4 **Q** So there's a ton of people that haven't been
5 excluded. You can't tell me anything about that?

6 **A** I can't tell you why they were excluded by
7 the investigator at that too.

8 **Q** You can't tell me anything about it because
9 you didn't do anything further to find out about it,
10 did you?

11 **A** No, I did not.

12 **Q** And once again, the ones that were excluded
13 were excluded by way of either fingerprints or the
14 photo?

15 **A** Well, it just says photo. To me that could
16 mean that they have a photo of that person. That
17 doesn't mean they were excluded by, I would say.

18 **Q** Well, gee, you didn't ask Ed Nemeth that, did
19 you? Because I didn't see that anywhere in the notes.

20 **A** No.

21 **Q** Okay. So you're just speculating at this
22 point?

23 **A** I'm just going by here it doesn't say they

RECROSS/MONDORA

1 were eliminated by photograph. It doesn't say that.
2 It just says that there's a photo.

3 **Q** So you don't think they were eliminated by
4 use of the photo?

5 **A** I don't know that.

6 **Q** Grab Exhibit No. U again if you would. About
7 five lines up, Mrs. Informer says -- describes the
8 suspect that they use in these composites, everything?

9 **A** Correct.

10 **Q** How old does she say he is?

11 **A** I believe it's in his mid 40s to 50s. Yeah,
12 40s to early 50s.

13 **Q** Late 40s to early 50s?

14 **A** It says late 40s, early 50s, slender build.

15 **Q** And in your investigation, what year was
16 Mr. Ferrara born?

17 **A** I don't recall.

18 **Q** 49?

19 **A** Yes.

20 **Q** So he would've been 25 in '74?

21 **A** Correct.

22 **Q** Not late 40s, early 50s?

23 **A** This is just a -- she doesn't know where --

RECROSS/MONDORA

1 **Q** I know. She doesn't know anything. Nobody
2 knows anything except the fingerprint, right, in your
3 estimation?

4 **A** Right.

5 **Q** This is all worthless? Those guys shouldn't
6 even have got paid probably for what they did, huh?

7 **A** The fingerprint didn't come into play until
8 2009.

9 **Q** Okay. Ms. Doherty handed you something that
10 says that that cigarette was submitted in February;
11 right?

12 **A** February 25th.

13 **Q** Okay. Does it say when it was found at the
14 scene?

15 **A** No.

16 **Q** Okay. So you don't think it was found in
17 February and, what, someone grabbed it and drove it
18 right up there that day?

19 **A** I don't believe that, no.

20 **Q** Okay. It's trying to infer maybe that it
21 wasn't found maybe in conjunction with the
22 investigation?

23 **A** No.

RECROSS/MONDORA

1 **Q** You would agree with me that that was found
2 in conjunction with the investigation of this crime?

3 **A** Correct.

4 **Q** Was submitted as a piece of physical
5 evidence; correct?

6 **MS. DOHERTY:** I object.

7 **THE COURT:** Overruled.

8 **Q** Yes?

9 **A** Correct.

10 **Q** And was used extensively. In fact, they took
11 painstaking efforts to exclude anybody who could've
12 been at that scene and touched or smoked or held that
13 cigarette. That was a big deal.

14 **A** Yes.

15 **Q** And it was then tested for DNA in the modern
16 era; right?

17 **A** Correct.

18 **MR. MERANTO:** Okay. Nothing else.

19 **THE COURT:** Anything else from the
20 state?

21

22

* * * * *

23

FURTHER REDIRECT/MONDORA**FURTHER REDIRECT EXAMINATION****BY MS. DOHERTY:**

Q The cigarette, L & M cigarette that was submitted by February 25th, 1975, is there any indication where it was found on that submission?

A No.

Q Any indication who it was found by?

A No.

MS. DOHERTY: I have nothing further.

* * * * *

FURTHER RECROSS/MONDORA**FURTHER RECROSS EXAMINATION****BY MR. MERANTO:**

Q Well, you read through the investigative and detective notes, didn't you?

A Yes.

Q Wasn't it in fact found near a pile of ashes in the front room of the house?

A There were ashes on the floor, yes.

Q Yeah. They thought somebody was smoking, and there was speculation that maybe they got left at the scene, were waiting for a ride or something, and that's where they found it; correct?

A All that's documented is they had found ashes on the floor.

MR. MERANTO: Thank you. Nothing else.

MS. DOHERTY: I don't have anything else, Judge.

THE COURT: All right. Thank you, sir.

THE WITNESS: Thank you.

THE COURT: Do you have any further evidence to present?

MS. CANTALAMESSA: Your Honor, the state rests subject to admission of the exhibits.

1 **THE COURT:** All right. Ladies and
2 gentlemen, the court needs to meet with
3 counsel out of your presence, so I'm going to
4 have you go back to the jury room and remain
5 there on recess. When I say remain there, I
6 want you to be available in case this doesn't
7 take too long. If it's going to take any
8 amount of time, then we'll make some other
9 plan.

10 But please, during your absence from the
11 courtroom, you're not to discuss the case at
12 all among yourselves or with anyone else.
13 You must not discuss the case with any of the
14 other members of the jury. Please don't form
15 or express any opinion about the case. The
16 jury will be in recess.

17 **(WHEREUPON, the jury left the courtroom,**
18 **and the proceedings continued as follows:)**

19 **THE COURT:** All right. Everyone can be
20 seated. So are you going to introduce your
21 exhibits or what?

22 **MS. CANTALAMESSA:** Your Honor, we would
23 move to admit State's Exhibits 1 and 2.

INTRODUCTION OF EXHIBITS

1 **THE COURT:** Just tell me all of the
2 exhibits that you're -- we're not going to do
3 these one by one, because the defense may not
4 object to anything, and then it's stupid to
5 do them one by one. Read the numbers of the
6 exhibits that you're submitting.

7 **MS. CANTALAMESSA:** Okay. I'm going to
8 submit 1 and 2. 3 will be withdrawn because
9 we did not talk about a 3. 4, 5, 6, 7, 8, 9,
10 10, 11, 12, 13, 14, 15. We're going to
11 withdraw 16 through 21 because we didn't talk
12 about those. Those were not introduced.

13 **THE COURT:** They were never introduced,
14 so you're not withdrawing them. They were
15 never --

16 **MS. CANTALAMESSA:** I just want to be
17 clear for the record, we never talked about
18 them.

19 **THE COURT:** Okay. They were never
20 talked about.

21 **MS. CANTALAMESSA:** We move to introduce
22 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32,
23 33, 34, 35, 36, 37, 38, 39. 40 we move to

INTRODUCTION OF EXHIBITS

1 admit, but we don't want it to go to the
2 jury. They're bullets. They're projectiles.
3 And 41, same thing, move to admit but not go
4 back to the jury. 42. 43 we move to admit
5 but not go back to the jury, and that
6 includes -- going back to 41, it includes
7 41A, B, C, D, E, and F, and then 43 has A
8 through I. We move to admit those but not go
9 back to the jury. Your Honor, we move to
10 admit 44 and 45 but not go back to the jury.

11 **THE COURT:** I'm not sure what that
12 means, admit them but not go back to the
13 jury. What purpose is there in that?

14 **MS. CANTALAMESSA:** Well, I want to admit
15 them for legal purposes and for appeals
16 purposes.

17 **THE COURT:** Well, they're -- yeah, if
18 they're not admitted -- if the jury's not
19 going to see them, they're still available
20 for whatever appellate review there is,
21 aren't they?

22 **MS. CANTALAMESSA:** They should be.

23 **MS. DOHERTY:** Yes.

INTRODUCTION OF EXHIBITS

1 **MR. MERANTO:** The ones that aren't
2 admitted aren't, because if you don't admit
3 something, it's going to be there for a
4 purpose.

5 **THE COURT:** The only reason I'm
6 admitting anything is for the jury to see.

7 **MS. CANTALAMESSA:** Okay.

8 **THE COURT:** What is this group
9 participation again? You forgot that part?

10 **MS. DOHERTY:** I'm sorry.

11 **MS. CANTALAMESSA:** Then we'll withdraw
12 those by --

13 **THE COURT:** Man, I'm having trouble.
14 Didn't she get a rule sheet, Ryan?

15 **THE BAILIFF:** They were provided.

16 **THE COURT:** Huh?

17 **THE BAILIFF:** I believe they --

18 **THE COURT:** Answer the question. Was
19 she provided a rule sheet?

20 **THE BAILIFF:** Previously, yes.

21 **THE COURT:** Previously, what does that
22 mean? For this case?

23 **THE BAILIFF:** Not for this case.

INTRODUCTION OF EXHIBITS

1 **THE COURT:** Go get one and give it to
2 her, please.

3 **MS. CANTALAMESSA:** Going back to 46, 47,
4 48. We'll withdraw 49.

5 **THE COURT:** 46, 47, 48 were never
6 testified to; is that right?

7 **MS. CANTALAMESSA:** No. These were
8 testified to.

9 **THE COURT:** They were, but you're
10 withdrawing them?

11 **MS. CANTALAMESSA:** No. We didn't -- 49
12 was never testified to.

13 **THE COURT:** Okay. Let's go back to 46.
14 I'm sorry.

15 **MS. CANTALAMESSA:** That's all right.
16 We'll move to admit, 46, 47, 48.

17 **THE COURT:** Okay.

18 **MS. CANTALAMESSA:** 49 was never
19 testified about.

20 **THE COURT:** Okay. So that's out.

21 **MS. CANTALAMESSA:** We move to admit 50.
22 51, 52, 53, 54, 55 through 59 were never
23 testified about.

INTRODUCTION OF EXHIBITS

1 **THE COURT:** 51 to 59?

2 **MS. CANTALAMESSA:** Right.

3 **THE COURT:** They're out.

4 **MS. CANTALAMESSA:** We move to admit

5 60 --

6 **THE COURT:** Okay. Well, here's where
7 I'm lost because there's nothing listed for
8 what that is. So tell me what that is as we
9 go through the rest of these exhibits,
10 please.

11 **MS. CANTALAMESSA:** No. 60 is the diagram
12 that was shown on the --

13 **THE COURT:** The diagram sketch?

14 **MS. CANTALAMESSA:** Correct, Your Honor.

15 **THE COURT:** Okay.

16 **MS. CANTALAMESSA:** We're moving to admit
17 it, but we're cutting off the portion that
18 has typed notes on it, because that was never
19 shown.

20 **THE COURT:** It has typed what?

21 **MS. CANTALAMESSA:** It has typed notes at
22 the top of it.

23 **THE COURT:** Just the sketch you're

INTRODUCTION OF EXHIBITS

1 moving to admit?

2 **MS. CANTALAMESSA:** Right. We'll redact
3 that top portion.

4 **THE COURT:** All right.

5 **MS. CANTALAMESSA:** Withdrawing 61 and
6 62. Can I have one second, Your Honor?

7 **THE COURT:** Ryan, go back and tell the
8 jury we'll be until 11:30. They can move
9 about. Just be back in the jury room by
10 11:30.

11 **MS. CANTALAMESSA:** 63, move to admit.

12 **THE COURT:** What is it?

13 **MS. CANTALAMESSA:** Oh, I'm sorry. It is
14 a BCI report from 1976.

15 **THE COURT:** Okay.

16 **MS. CANTALAMESSA:** 64, a BCI submission
17 sheet from 1975.

18 **THE COURT:** Okay.

19 **MS. CANTALAMESSA:** 65, the -- we'll
20 withdraw that.

21 **MS. CANTALAMESSA:** Withdraw 66 which is
22 a notebook. 67 is a notebook of suspects.
23 And 68, a notebook of suspects.

INTRODUCTION OF EXHIBITS

1 **THE COURT:** And that's what?

2 **MS. CANTALAMESSA:** Withdrawing those,
3 66, 67, and 68. 69 was never testified
4 about. 70, move to admit.

5 **THE COURT:** What is it?

6 **MS. CANTALAMESSA:** It is a elimination
7 sheet of officers from 1976.

8 **THE COURT:** Eliminated sheet of
9 officers? Is that what you said?

10 **MS. CANTALAMESSA:** Yes, for prints
11 purposes. They eliminated all these
12 officers.

13 **THE COURT:** Oh, okay. Yeah, I remember.
14 71?

15 **MS. CANTALAMESSA:** We're going to
16 withdraw 71. It was BCI submissions over the
17 years.

18 **THE COURT:** Okay.

19 **MS. CANTALAMESSA:** And 72 was never
20 testified about. It's not on your sheet
21 anyway.

22 **THE COURT:** Okay. So there is no 72?

23 **MS. CANTALAMESSA:** No. That's it.

INTRODUCTION OF EXHIBITS

1 **THE COURT:** Okay. So Mr. Meranto, will
2 you go through these and tell me if you have
3 objections to any of them and deal with that.

4 **MR. MERANTO:** I object to 7 and 8. They
5 can have one, not the other.

6 **THE COURT:** Objection to 1 or no?

7 **MR. MERANTO:** No objection to 1, 2, 3 --

8 **MS. CANTALAMESSA:** There's no 3.

9 **THE COURT:** 3's withdrawn.

10 **MS. CANTALAMESSA:** It's 4.

11 **MR. MERANTO:** 4. Excuse me.

12 **THE COURT:** You have no objection to 1,
13 2 and 4?

14 **MR. MERANTO:** Correct. No objection to
15 5. Object to 6 and 7. I think they should
16 get one but not both of them, so I object to
17 both of them.

18 **THE COURT:** Which one do you want?

19 **MS. CANTALAMESSA:** 7, Your Honor.
20 Although, they are different photographs. I
21 mean --

22 **THE COURT:** That's nice. Which one do
23 you want?

INTRODUCTION OF EXHIBITS

1 **MS. CANTALAMESSA:** 7.

2 **THE COURT:** Okay. 8?

3 **MR. MERANTO:** Judge, I object to 8.
4 They're in conjunction with -- 8 and --

5 **THE COURT:** 8 and 12?

6 **MS. CANTALAMESSA:** 8 and 12.

7 **MR. MERANTO:** Once again, I think
8 they're redundant. I would say give them one
9 but not the other.

10 **THE COURT:** Yes, I agree.

11 **MS. CANTALAMESSA:** We'd like 12 then,
12 Your Honor.

13 **THE COURT:** Okay. 8 is out. 12 is in.
14 Okay. 9, 10, 11?

15 **MR. MERANTO:** 9's good. No objection.
16 10's good. No objection. 11.

17 **THE COURT:** Okay.

18 **MR. MERANTO:** 13. Same thing, Judge,
19 with regard to 14 and 15, they're both
20 Mr. Marsh in the bed.

21 **THE COURT:** Okay. Which one do you
22 want?

23 **MS. CANTALAMESSA:** 15, Your Honor, we'll

INTRODUCTION OF EXHIBITS

1 take that.

2 **THE COURT:** Okay. So 14 is out. 15 is
3 in. All right.

4 **MR. MERANTO:** We'd object to 22 through
5 36. These are the autopsy photos, and these
6 are what we had the discussion with regard to
7 Dr. Ohr. Once again, I don't think they're
8 in for any other purpose than to shock the
9 jury.

10 **THE COURT:** Okay. What's the state's
11 response to that?

12 **MS. CANTALAMESSA:** Your Honor, we had
13 them identified by Mr. Boyle, their face
14 shots, to identify who the autopsies were
15 actually performed on, and that's the
16 specific reason we had Mr. Boyle testify to
17 them.

18 **THE COURT:** Yeah, I understand. You
19 have his testimony, and there were autopsies
20 performed on all of them. Why does the jury
21 have to see an autopsy photo?

22 **MS. CANTALAMESSA:** Well, they see the --

23 **THE COURT:** Because they've got these

INTRODUCTION OF EXHIBITS

1 other photos of these folks lying dead.

2 **MS. CANTALAMESSA:** Well, they can see
3 the exact location of the injuries by seeing
4 all the autopsy photos. At least each --

5 **THE COURT:** All that was testified to;
6 correct?

7 **MS. CANTALAMESSA:** Correct.

8 **THE COURT:** I don't want to allow photos
9 in that are going to incite the jury or
10 prejudice the jury, and you should have that
11 same concern. I just -- Mr. Meranto didn't
12 object to the photos of these folks lying
13 dead in the home, one or the other, in each
14 of those situations. But he is objecting to
15 these other photos.

16 So autopsy photos are normally
17 admissible for the probative value to show --
18 or to demonstrate, show the wounds. You do
19 have to prove serious physical harm. All of
20 these matters were questioned by the defense,
21 so I'll allow one autopsy photo of each of
22 these persons for purposes of showing the
23 wounds. So what do you want regarding

INTRODUCTION OF EXHIBITS

1 Mr. Marsh?

2
3 **MR. MERANTO:** Also, Judge, the objection
4 would extend to Exhibit No. 42 which was also
5 one of the autopsy photos.

6 **MS. CANTALAMESSA:** Your Honor, we'll
7 take No. 42 with regard to Mr. Marsh.

8 **THE COURT:** Okay.

9 **MS. CANTALAMESSA:** No. 30 with regard to
10 Marilyn. And No. 33 with regard to Heather.

11 **THE COURT:** So regards Heather, 34, 35,
12 and 36 are out. With regards to Marilyn, 31
13 and 32 are out. And as regards Ben Marsh, 22
14 through 29 are out. Everybody on the same
15 page there?

16 **MS. CANTALAMESSA:** Yeah.

17 **THE COURT:** Okay. So we're into the
18 coroner's report.

19 **MR. MERANTO:** I object to the coroner's
20 reports going in, Judge. Testified to. 37,
21 38, and 39.

22 **THE COURT:** What's the state's response?

23 **MS. CANTALAMESSA:** Your Honor, they are

INTRODUCTION OF EXHIBITS

1 self-authenticating documents. They are
2 business records. They show the injuries.
3 We would, of course, redact the history
4 that's included.

5 **THE COURT:** Yes. The history will be
6 redacted, and the court will want the
7 redaction --

8 **MR. MERANTO:** Thank you, Judge.

9 **THE COURT:** -- to be completed before
10 jury instructions are given and for both
11 sides to approve them with the redactions so
12 we don't have any issues on somebody
13 forgetting to do that.

14 **MS. CANTALAMESSA:** Okay, Your Honor.

15 **THE COURT:** Okay. So we're on 40 and
16 41. You want it admitted but not go back to
17 the jury?

18 **MS. CANTALAMESSA:** Well, they're the
19 bullets. We'll withdraw those, Your Honor,
20 so that they say --

21 **THE COURT:** With the understanding, you
22 can file them with the reporter. They should
23 be a part of the record. My belief in that

INTRODUCTION OF EXHIBITS

1 regard, we're only going to admit them so the
2 jury can see them. If you're not doing
3 that --

4 **MS. CANTALAMESSA:** Yeah. I don't want
5 them to open them.

6 **THE COURT:** Well, you know, given the
7 testimony concerning deterioration of those
8 projectiles, who knows what issues there may
9 be in the future.

10 **MS. CANTALAMESSA:** Right.

11 **THE COURT:** All right. So those are not
12 in. All right. You withdrew 43; is that
13 right?

14 **MS. CANTALAMESSA:** Yes, Your Honor.

15 **THE COURT:** Is that the same thing, same
16 type of thing?

17 **MS. CANTALAMESSA:** Same thing.

18 **THE COURT:** And you have BCI reports,
19 44, 45?

20 **MS. CANTALAMESSA:** Right. I put them
21 over here. Withdrawn.

22 **MR. MERANTO:** Oh, you withdrew them?

23 **THE COURT:** Robin Ladd, Andrew Chappell.

INTRODUCTION OF EXHIBITS

1 **MR. MERANTO:** Okay. Those are out.

2 **THE COURT:** Those are withdrawn.

3 **MR. MERANTO:** 46, 47, 48, and 50 without
4 objection.

5 **THE COURT:** 46, 47, 48. 49 was
6 withdrawn?

7 **MR. MERANTO:** Right.

8 **THE COURT:** And 50 is in. Okay. 51
9 through 59 are out. They were never
10 testified to.

11 **MR. MERANTO:** 60, again, they're going
12 to redact the portion with regard to any
13 notes I guess.

14 **THE COURT:** The diagram, you have no
15 objection to that?

16 **MR. MERANTO:** No.

17 **THE COURT:** Okay. That's in. 61 and 62
18 are out. 63 and 64 are BCI submissions.

19 **MR. MERANTO:** Objecting to 63.

20 **THE COURT:** What is it?

21 **MR. MERANTO:** Where the bullets were
22 tested. Chappell testified to something
23 completely different on the stand. Unless

INTRODUCTION OF EXHIBITS

1 they're going to submit Chappell, too,
2 because Chappell says they only got two
3 identifications. Four of them are .38s. Two
4 are from the same gun. This says it's all
5 six from the same gun. They heard both
6 evidence, so if they want to put them both in
7 they can put them both in, but they're not
8 putting one without the other, with all due
9 respect.

10 **MS. CANTALAMESSA:** Well, I'll move to
11 admit Mr. Chappell's report which is 45 then.

12 **MR. MERANTO:** Let me see if I didn't cut
13 my head off --

14 **THE COURT:** 45 is the report of
15 Chappell. So they're both in?

16 **MR. MERANTO:** No. I'd object to them
17 both, Judge. I'm sorry. I apologize.

18 **THE COURT:** You're moving now to admit
19 45?

20 **MS. CANTALAMESSA:** Well, if he was going
21 to withdraw his objection to 63 if I
22 admitted --

23 **THE COURT:** It was conditional.

INTRODUCTION OF EXHIBITS

1 **MS. CANTALAMESSA:** Right.

2 **MR. MERANTO:** And I can't, Judge, so I'm
3 objecting to both. Testimony I believe was
4 testified to, and I think the jury will have
5 to recall that on their own.

6 **THE COURT:** I agree with that. So 63 is
7 out. The court sustains the objection.
8 Okay. 64 is what? Here's 63 here.

9 **MR. MERANTO:** Oh, I'm sorry, Judge. 64
10 I believe is an example of what was done in
11 167 names, and once again, we talked about
12 this and gave testimony. I would object to
13 this. Do you want to see it?

14 **THE COURT:** Yeah. I haven't seen any of
15 these exhibits. You are objecting to this?

16 **MR. MERANTO:** Yeah.

17 **THE COURT:** This is something that
18 somebody conducted long ago?

19 **MR. MERANTO:** Yes.

20 **THE COURT:** All right. I will sustain
21 the objection.

22 **MR. MERANTO:** No objection to 70.

23 **THE COURT:** All right. 65 through 69

MOTIONS

1 are out; right?

2 **MS. CANTALAMESSA:** Yes, Your Honor. 70
3 there's no objection?

4 **MR. MERANTO:** Yes, Your Honor.

5 **THE COURT:** And 71's withdrawn. Okay.
6 That takes care of exhibits. What else?
7 What else from the state?

8 **MS. CANTALAMESSA:** Nothing, Your Honor.

9 **THE COURT:** Anything from the defense?

10 **MR. MERANTO:** Yes, Judge. At this time,
11 the state having rested and moving for the
12 admission of their exhibits, I would ask that
13 the state grant me a motion for acquittal
14 pursuant to Criminal Rule 29.

15 **THE COURT:** State? They're not going to
16 do it, I can tell you right now.

17 **MR. MERANTO:** The --

18 **THE COURT:** You want me to do it?

19 **MR. MERANTO:** I'd ask the court for -- I
20 already asked them, Judge. You're right.
21 They said no. They were very uncooperative.

22 **THE COURT:** They're not interested in
23 that. Well, tell me why you think this

MOTIONS

1 should be -- you should have a directed
2 verdict of acquittal.

3 **MR. MERANTO:** Judge, unless I missed it,
4 there's testimony that purports to be a
5 fingerprint that was taken from the crime
6 scene on the night in question. Testimony as
7 it came in, even if you were to -- well,
8 strike that. No one can testify as to when
9 that print was placed there, nor is there any
10 direct testimony or evidence linking my
11 client to the scene inside where the crimes
12 took place other than the alleged fingerprint
13 on the outside, which even in a light most
14 favorable to the state, certainly the way in
15 which they were taken, if they were, in fact,
16 taken or observed, and the quality and
17 testimony with regard to that foundation, the
18 authentication is in serious question, from
19 my point of view.

20 Other than that, Judge, I guess the
21 state would argue that Mr. Ferrara stated he
22 was never there. Well, that only goes to the
23 fingerprint evidence. It's not an admission

MOTIONS

1 of any sort. Then you have the fact that he
2 has a predilection, if you believe
3 Detective -- or Deputy Fitzpatrick who
4 testified that he after 40 years decided he
5 wanted to give that information to somebody,
6 so he decided to tell the deputy that he had
7 a predilection for .38 specials, which once
8 again, I would say may be some evidence, and
9 obviously the court didn't exclude it, so
10 believed that somehow it might be relevant,
11 but certainly that is not an admission
12 either.

13 So you are stuck at this point with a
14 fingerprint on the exterior of that
15 residence, taken at the time or about the
16 time when these crimes were alleged -- well,
17 certainly were committed. But no other
18 evidence whatsoever linking Mr. Ferrara to
19 the crime. I mean, as far as -- I know the
20 standard is for you to view it in the light
21 most favorable to the state, and I just find
22 it hard to see how anybody could conclude
23 based on that evidence that Mr. Ferrara is,

MOTIONS

1 in fact, the guy who committed these murders.

2 **THE COURT:** To bridge that gap, to take
3 that leap of faith from the evidence that is
4 presented to finding beyond a reasonable
5 doubt that this man murdered those three
6 people?

7 **MR. MERANTO:** Correct.

8 **THE COURT:** What's the state's response?

9 **MS. CANTALAMESSA:** Your Honor, not --
10 it's not just on any door that his
11 fingerprints are found. His fingerprints are
12 found at the point of entry, where the glass
13 is broken, through another door by which he
14 would have to go to kick in the door from the
15 garage to the house. So he had to make entry
16 at that point. That is an outside door. It
17 gets rained on, snowed on, wind on. His is
18 the only print that's found on that door.
19 And it's his -- not just one finger, not two
20 fingers. Three fingers of his left hand, as
21 if to push open that door when he opened it,
22 when he broke that window. And just like any
23 burglary where we have prints around the

MOTIONS

1 window or prints around a door at the point
2 of entry and stuff stolen, here we have
3 prints on the door at the point of entry, and
4 three people murdered.

5 So this in a light most favorable to the
6 state, the jury could find that the defendant
7 is the only one there that could've committed
8 these murders. He's the only one that's not
9 involved at that scene. He's the only one
10 who says he wasn't there, yet we have three
11 of his left hand fingerprints on the door
12 that was broken in to get entry to that
13 house.

14 **THE COURT:** Rule 29, the court on motion
15 of the defendant or on its own motion after
16 the evidence on either side is closed, shall
17 order the entry of a judgment of acquittal of
18 one or more offenses charged in the
19 indictment, if the evidence is insufficient
20 to sustain a conviction of such offense or
21 offenses. The court may not reserve ruling
22 on a motion for judgment of acquittal made at
23 the close of the state's case. This case is

MOTIONS

1 tried to a jury by choice of the defendant,
2 not tried to the court. So the motion's
3 overruled.

4 **MR. MERANTO:** Thank you, Your Honor.

5 **THE COURT:** So what do you have?

6 **MR. MERANTO:** We have --

7 **THE COURT:** Now I call upon you to
8 present evidence if you have any. Do you
9 have any evidence?

10 **MR. MERANTO:** We do, Your Honor. We
11 would like to call Ms. Gerardi from the BCI
12 laboratory.

13 **THE COURT:** Okay. So let's do that.

14 **(WHEREUPON, the jury returned to the**
15 **courtroom, and the proceedings continued as**
16 **follows:)**

17 **THE COURT:** The state has rested its
18 case. You folks can be seated, please. The
19 state has rested its case, which means it's
20 concluded the presentation of its evidence
21 against the defendant. The defendant is now
22 called upon to present evidence if he
23 chooses. He's not required to present any

MOTIONS

1 evidence, because again, he does not bear any
2 burden of proof. Does the defense wish to
3 present any evidence?

4 **MS. WEIBLING:** Yes, Your Honor. At this
5 time we would like to call Brenda Gerardi
6 from BCI.

7 **THE COURT:** Very well.

8 **THE BAILIFF:** This witness objects to
9 being photographed.

10 **THE COURT:** All right. You've got to
11 stop over at the podium there to get sworn
12 in; okay?

13 **THE WITNESS:** Sure.

14 **THE COURT:** Please raise your right
15 hand.

16
17
18 * * * * *

DIRECT/GERARDI

1 **WHEREUPON, the Defendant called**

2

3 **BRENDA GERARDI,**

4

5 **who, being first duly sworn, testified**

6 **as follows:**

7

THE COURT: All right. Please be seated

8

here in the witness chair. You probably know

9

this, but these are the ladies and gentlemen

10

of the jury. They need to hear and

11

understand everything you have to say, so

12

please speak loudly and clearly enough for

13

them to understand your answers, and please

14

answer your questions out loud; all right?

15

THE WITNESS: All right.

16

THE COURT: Thank you.

17

DIRECT EXAMINATION

18

BY MS. WEIBLING:

19

Q Good morning, Mrs. Gerardi. I'm Attorney

20

Kristie Weibling. I have some questions for you this

21

morning. If you can't hear me or need me to repeat

22

something, just ask. Can you please state your full

23

name for the record?

DIRECT/GERARDI

1 **A** Brenda Gerardi, G-E-R-A-R-D-I.

2 **Q** Are you currently employed, Mrs. Gerardi?

3 **A** Yes.

4 **Q** And where are you employed?

5 **A** I'm employed with the Ohio Attorney General's
6 office, Mike Dewine's office at the Ohio Bureau of
7 Criminal Identification and Investigation, commonly
8 referred to as BCI.

9 **Q** And what is your current position at BCI?

10 **A** My current position is DNA laboratory
11 supervisor.

12 **Q** And what department at BCI do you work in?

13 **A** The DNA section.

14 **Q** Okay. And how long have you been a
15 supervisor at BCI?

16 **A** A year and a half.

17 **Q** What is your function as a supervisor?

18 **A** A supervisor in the DNA section basically
19 oversees all of the quality assurance program to ensure
20 that all cases that go out of our section are reviewed
21 and that the analyst had interpreted the result
22 reliably.

23 **Q** Prior to becoming supervisor, what was your

DIRECT/GERARDI

1 position at BCI?

2 **A** For 15 and a half years I was a forensic
3 scientist in the DNA section.

4 **Q** And as a forensic scientist in the DNA
5 section, what were your job responsibilities?

6 **A** I analyzed physical evidence for the
7 identification of physiological fluid such as blood,
8 urine, feces, semen, and saliva, and I also did
9 subsequent DNA analysis of those samples.

10 **Q** And can you explain for the jury what your
11 educational background is, please?

12 **A** I have an associate of science in biology
13 from Kent State University and a bachelor of science in
14 biology also from Kent State University. I've
15 continued -- I've completed continuing education in the
16 areas of molecular biology, biochemistry, genetics, and
17 statistics.

18 **Q** In order to perform your function as a DNA
19 analyst, did you have to undergo any specialized
20 training?

21 **A** Yes. When I was hired at the Attorney
22 General's office I went through an extensive -- it was
23 about a year training in DNA analysis and

DIRECT/GERARDI

1 interpretation. I also completed a course conducted by
2 the FBI Academy in Quantico, Virginia in the areas of
3 DNA analysis and interpretation.

4 **Q** While you were performing your job as a DNA
5 analyst, were you required to take certain proficiency
6 tests on a regular basis?

7 **A** Yes. Our section was required to take two
8 proficiency tests a year.

9 **Q** Ms. Gerardi, in how many cases have you
10 testified where evidence that you analyzed was used for
11 purposes of trial?

12 **A** I've testified over a hundred times.

13 **Q** Ms. Gerardi, do you remember receiving any
14 evidence related to this case from the Mahoning County
15 Sheriff's Department in June of 2009?

16 **A** Yes.

17 **Q** Do you remember what evidence was received?

18 **A** For our section, the DNA section, a cigarette
19 butt was submitted.

20 **Q** When evidence is submitted to your
21 laboratory, what happens with that evidence?

22 **A** Normal practice is when the evidence is
23 submitted to our laboratory, it goes through our office

DIRECT/GERARDI

1 assistants that takes in that submission from the
2 department. The evidence is tagged with a unique
3 identification number and then placed on a shelf in our
4 locked evidence vault until the DNA analyst or any
5 analyst retrieves it.

6 **MS. WEIBLING:** May I approach, Your
7 Honor?

8 **THE COURT:** You may.

9 **(WHEREUPON, Defendant's Exhibit T was**
10 **marked for identification.)**

11 **BY MS. WEIBLING:**

12 **Q** Ms. Gerardi, I'm going to and you what's been
13 marked as Defendant's Exhibit T. Do you recognize this
14 document?

15 **A** I can recognize State's Exhibit T as being
16 the submission sheet of the items submitted to our
17 laboratory June 23rd, 2009.

18 **Q** Is that State's Exhibit T or Defendant's
19 Exhibit T?

20 **A** Defendant's Exhibit T. Excuse me.

21 **Q** This evidence submit sheet, was this prepared
22 in the ordinary course of business at BCI?

23 **A** Yes.

DIRECT/GERARDI

1 **Q** And does this evidence submission sheet
2 reference the cigarette butt that you spoke of that was
3 uncovered at the victim's residence?

4 **A** Yes.

5 **Q** After you received this evidence in June of
6 2009, did you do anything other than log and store this
7 evidence?

8 **A** The evidence was stored in our what we call a
9 backlog waiting to get worked. Within several months
10 there the -- it was processed.

11 **Q** In February of 2010, did you receive any
12 additional evidence from the Mahoning County Sheriff's
13 Department?

14 **A** Yes.

15 **Q** And what was that evidence that was received?

16 **A** It was a known reference sample from James P.
17 Ferrara.

18 **Q** And can you explain what a known reference
19 sample is?

20 **A** Yes. A known reference sample is typically
21 an oral swab, like a Q-tip oral swab, or a blood draw
22 from an individual that we can ensure that DNA type
23 came from that individual.

DIRECT/GERARDI

1 **Q** And once you received the DNA standard, or
2 sample from Mr. Ferrara, what was done with that piece
3 of -- with that standard?

4 **A** Well, that evidence was also processed for --
5 to develop the DNA profile.

6 **MS. WEIBLING:** May I approach, Your
7 Honor?

8 **THE COURT:** You may.

9 **(WHEREUPON, Defendant's Exhibit P was**
10 **marked for identification.)**

11 **BY MS. WEIBLING:**

12 **Q** At this time I'd like to hand you what has
13 been marked as Defendant's Exhibit P. If you can just
14 look at the first page of that document, do you
15 recognize the first page of Exhibit P?

16 **A** Yes, I do recognize the first page of
17 Defendant's Exhibit P as being another submission sheet
18 that was submitted to our laboratory.

19 **Q** And was this document prepared in the
20 ordinary course of business?

21 **A** Yes.

22 **Q** If you look at the top part of Exhibit P,
23 does that document list the suspects or subjects?

DIRECT/GERARDI

1 **A** Yeah. They're listed as subjects, yes. Two.

2 **Q** And what are the names of the two subjects
3 listed?

4 **A** James Ferrara and Joseph A. Weeks.

5 **Q** Ordinarily when you receive a submission
6 referencing two subjects, do you typically receive a
7 DNA standard for both subjects, both subjects
8 referenced?

9 **A** If we get one, that's okay. We still process
10 the evidence. But if there are two subjects listed, it
11 is common to get both, yes.

12 **Q** And in this particular case, who did you get
13 a DNA standard from?

14 **A** I got a DNA standard from James P. Ferrara.

15 **Q** Joseph Weeks, who's also listed as a subject,
16 did you receive a standard from Mr. Weeks?

17 **A** No.

18 **Q** Once you received the DNA standard from
19 Mr. Ferrara, what did -- for Mr. Ferrara, what did you
20 do next?

21 **A** The DNA analysis will begin. So I can
22 explain that process.

23 **Q** That would be fine.

DIRECT/GERARDI

1 **A** DNA, deoxyribonucleic acid, it is a long
2 string-like molecule which contains the genetic code or
3 the blueprint for life, and it is found in all living
4 cells with the exception of red blood cells, and it's
5 unique to each individual, with the exception of
6 identical twins. So we're looking for the DNA on these
7 items. We have a known reference sample from an
8 individual, and we have an evidence sample. These are
9 processed separately at a different place and time, and
10 once we develop the profile we'll compare the known
11 reference sample to the evidence sample to either
12 include or exclude that individual as being a
13 contributor to the DNA on the evidence. In this
14 particular case I did the processing for the evidence,
15 developed the profile and then compared it to the known
16 reference sample.

17 **Q** So in this case you compared the standard for
18 James Ferrara to the cigarette that was found at the
19 scene?

20 **A** Yes.

21 **Q** And if you could refer to Page 2 of Exhibit
22 P, do you recognize this document?

23 **A** I can recognize State's -- or excuse me,

DIRECT/GERARDI

1 Defendant's Exhibit P as being an accurate copy of the
2 report that I generated with my findings. I can assure
3 you that it's a true and accurate copy by my initials
4 and signature on the second page, as well as the
5 initials of the laboratory supervisor that reviewed
6 this data.

7 **Q** And after you conducted your analysis of the
8 standard of Mr. Ferrara to the cigarette, did you
9 arrive at a conclusion as to whether or not his DNA
10 contributed to the DNA found on the cigarette?

11 **A** Yes.

12 **Q** And what was your conclusion?

13 **A** James P. Ferrara is not a contributor to the
14 DNA from the cigarette recovered inside the victim's
15 residence.

16 **Q** And did you arrive at this conclusion with a
17 reasonable degree of medical certainty? I'm sorry.
18 Did you arrive at this conclusion with a reasonable
19 degree of scientific certainty? I apologize.

20 **A** Yes.

21 **Q** Mrs. Gerardi, were you aware that there were
22 over 167 suspects in this particular case?

23 **A** No.

DIRECT/GERARDI

1 **Q** Did you send your conclusions that
2 Mr. Ferrara was not a contributor to the DNA on the
3 cigarette found inside the residence to the Sheriff's
4 Department?

5 **A** As a normal course of practice at BCI, all
6 reports are mailed, generally within a day or so after
7 the date that's on my report.

8 **Q** And what is the date listed on your report?

9 **A** March 2nd, 2010.

10 **Q** Subsequent to March 2nd, 2010, did you
11 receive any other DNA standards from the Mahoning
12 County Sheriff's Department relative to the cigarette
13 butt that was found inside the Marsh residence?

14 **A** No other standards were submitted under this
15 case number.

16 **Q** Mrs. Gerardi, Attorney Meranto made quite a
17 big deal earlier in this case about exhuming some
18 bodies of potential suspects that he -- that were
19 thought could have possibly contributed to this DNA.
20 In order to get a valid standard for an individual,
21 would you actually need the body to be able to obtain
22 that DNA?

23 **MS. CANTALAMESSA:** Objection, Your

DIRECT/GERARDI

1 Honor.

2 **THE COURT:** Overruled.

3 **A** No, you do not actually need the body.

4 **Q** What can you use to obtain a valid DNA -- or
5 a valid standard from the individual for DNA analysis
6 purposes?

7 **A** There are instances when you can determine
8 when something specifically came from an individual.
9 Mothers keep baby teeth. But you have to ensure that
10 it came from that individual. To be most certain, you
11 can use biological parents or biological children to
12 basically do a reverse paternity to identify whether or
13 not someone could potentially be a contributor to
14 something. So there are other methods.

15 **Q** So for instance, Ed Farris was a potential
16 suspect. If he had a child, could you use swab --
17 could you use DNA found from his child to analyze and
18 compare the cigarettes?

19 **A** You inherit half of your DNA from your mother
20 and half of your DNA from your father, so half of a
21 biological child's DNA would be consistent with the
22 father. So yes, you could use a child to determine
23 whether or not half of the DNA is present on the

DIRECT/GERARDI

1 evidence, and we could make a determination
2 statistically based on that information.

3 **Q** Okay.

4 **MS. WEIBLING:** Nothing further, Your
5 Honor.

6 **THE COURT:** Thank you. Any cross
7 examination?

8 **MS. CANTALAMESSA:** Just briefly, Your
9 Honor.

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CROSS/GERARDI

1 **CROSS EXAMINATION**

2 **BY MS. CANTALAMESSA:**

3 **Q** Hi, Brenda. Do you know what brand of
4 cigarette? Is that in your notes, your bench notes?
5 Do you keep that?

6 **A** I'm afraid I do not have that information.

7 **Q** Do you know whether it was a cigarette butt,
8 or was it a full cigarette?

9 **A** In this particular case when I opened up the
10 evidence, it was -- it became apparent to me that it's
11 not a cigarette butt, per se. The cigarette wasn't
12 technically smoked. If you could picture someone
13 putting a cigarette in their mouth and lighting it,
14 this particular cigarette was lit on the filter end.
15 If you're not a smoker, once that happens -- just so I
16 can explain, you can't smoke the cigarette. So it got
17 basically set back down. So the filter's burnt, and
18 the tobacco end is not. So this was placed wherever.
19 I don't know where it was recovered. Wherever it was.
20 And it was submitted for DNA analysis. And because of
21 that, because of that fact, I took DNA samples from
22 both ends of the cigarette.

23 **Q** Okay. And do you know whether or not this

CROSS/GERARDI

1 cigarette had been submitted to BCI prior to 2009?

2 **A** Yes.

3 **Q** And where -- when was it submitted? Do you
4 know?

5 **A** For the exact date, I can look in my notes.
6 I have some information from the previous years, but
7 I -- it was 1975.

8 **Q** Okay. Do you have in your notes where
9 exactly this cigarette was recovered from?

10 **A** I don't have that in my notes, no.

11 **Q** Do you know who recovered that cigarette?

12 **A** No, I do not.

13 **Q** Back in 1975 when it was submitted, where did
14 this cigarette -- who tested this cigarette at BCI?

15 **A** The cigarette came into BCI for our latent
16 print section. 1974, DNA really wasn't thought of,
17 wasn't handled for DNA. If you're handling an item for
18 DNA, it is totally different than handling it for, say,
19 fingerprints. Fingerprints you're not going to create
20 a fingerprint by -- if you're wearing gloves, you're
21 not going to create a fingerprint. But if you're
22 handling evidence around you or touching things with
23 gloves on, you could transfer DNA. If you handled a

CROSS/GERARDI

1 bloody shirt five minutes ago, and still have those
2 same gloves on, you could transfer to picking up, say,
3 any article; for instance, a cigarette butt. In this
4 particular case, it was submitted to our latent print
5 examiner, and it was processed for latent prints.

6 **Q** Now, in your lab, in your DNA lab, you wear
7 gloves, obviously. Do you wear anything on your face
8 so that you don't get any DNA on this evidence?

9 **A** In our DNA section, we are required to wear
10 protective gear, which is our lab coats. They wear
11 facial masks and gloves. Up until maybe a few years
12 ago, we did not wear facial masks. Now, understanding
13 that the strength and the power of how strong -- just a
14 tiny bit of spit while you're talking over the evidence
15 could basically contaminate the evidence. But we're
16 talking about 1975, and I'm not even aware if they wore
17 gloves at a crime scene, because they didn't think
18 about DNA. They may have wore gloves, but did they
19 handle other things? They may not have put a latent or
20 a fingerprint on it.

21 But the main thing with the cigarette butt
22 that I am concerned about is that when it goes into our
23 latent print section, they use tools like a powder

CROSS/GERARDI

1 brush and other things to dust -- I don't know if this
2 has been explained before, but they will use tools that
3 are not sterile. So any case that they process prior
4 to this could potentially be transferred over to that.
5 So when we look at items of evidence of this nature, we
6 just interpret it with caution.

7 **Q** And you know it had been to latent prints
8 prior to you; right?

9 **A** That is correct. But the request was made,
10 so we do honor those requests.

11 **Q** And you're not aware of whether they wore
12 gloves in the lab back then in the latent print lab; is
13 that right?

14 **A** They probably wore gloves. Whether they
15 changed them frequently between pieces of evidence, I
16 would -- and I can't say, because I wasn't there.

17 **THE COURT:** Well, then don't say.

18 **BY MS. CANTALAMESSA:**

19 **Q** And none of us have a time machine, so --

20 **A** That's right.

21 **Q** And you said you just -- did you say you just
22 started wearing masks in the lab as well?

23 **A** Within the last two years, masks are now

CROSS/GERARDI

1 required. It was voluntary before that, but gloves and
2 lab coats, yes.

3 **Q** Tell us about the security of the evidence at
4 BCI. You track and keep all your evidence secure?

5 **A** Yes. All the evidence that comes into our
6 laboratory, upon submission, it's given a bar code
7 label and placed into a locked evidence vault. The
8 only people that have access to these vaults are the
9 analysts, as well as the supervisors and our office
10 assistant that's bringing in the evidence. So it's
11 pretty secure.

12 Once the evidence is taken out of our
13 evidence vault, it is scanned to the analyst that is
14 handling it. We actually each have our own bar code
15 labels, very similar to the scanners at the grocery
16 stores that we scan the evidence to ourselves. And
17 once it's out of my possession or goes to another
18 section, they scan it to them, and then back to the
19 locked evidence vault until they return it to the
20 department. After it's returned, I don't know the
21 chain of custody.

22 **Q** Now, you're looking for possibly very
23 sensitive DNA, sometimes we call it touch DNA; isn't

CROSS/GERARDI

1 that right?

2 **A** Touch DNA is the term that has been deemed
3 DNA that's not associated with a body fluid. So it
4 could be sweat or things like that, but it's not really
5 something that we're looking for. We're not looking to
6 identify a fluid. We're looking for what we call touch
7 DNA, and that could be anything. If you touch an item,
8 you potentially could transfer your DNA to that item.
9 And it could stay there for a long time, until it's
10 cleaned.

11 **Q** And is that one of the other reasons why you
12 wear the masks, so you won't be confused with that very
13 minimal amount of DNA?

14 **A** The masks are mainly because people talk, and
15 little tiny pieces of spit come -- will come out while
16 they're talking, even if you don't see it, and that
17 potentially could influence the results.

18 **Q** With this cigarette, even if you place it in
19 your mouth, is it possible to put a cigarette in your
20 mouth and never leave DNA, if you don't actually smoke
21 it, if it's lit on the wrong end like this?

22 **A** The paper itself does absorb spit and fluid.
23 Typically lips are a little bit more moist, and I would

CROSS/GERARDI

1 expect to see some transfer, but it is potentially --
2 it's not an absolute to get a full DNA profile, meaning
3 that we may get bits and piece, but maybe not the
4 whole.

5 **Q** And you talked about being very careful these
6 days. Is it possible for an analyst to transfer their
7 own DNA on a piece of evidence if they're not careful
8 with it?

9 **A** Absolutely. We all know our DNA types. We
10 know everybody's type in the lab because there's the
11 potential from even another analyst that's not in our
12 section to maybe transfer to a door knob that
13 transferred to a glove that transferred to the
14 evidence. So we're very aware of the sensitivity, and
15 we keep track of that. We can basically look at the
16 profile and determine whether or not I am a contributor
17 to this.

18 **Q** What about the person who actually collected
19 it, too, if they didn't wear gloves? They could
20 possibly transfer their DNA on it; is that right?

21 **A** I would expect someone handling the evidence,
22 especially without gloves, to transfer their DNA, yes.

23 **MS. CANTALAMESSA:** I have nothing

REDIRECT/GERARDI

1 further. Thank you, Your Honor.

2 **THE COURT:** Any redirect?

3 **MS. WEIBLING:** Just briefly, Your Honor.

4 **REDIRECT EXAMINATION**

5 **BY MS. WEIBLING:**

6 **Q** Mrs. Gerardi, when you add DNA to an item,
7 does that cause other DNA to fall off the item?

8 **A** No, it doesn't.

9 **Q** If you take a look at Exhibit P again, Page
10 2. And once again, your conclusion is what?

11 **A** My conclusion is James P. Ferrara is not a
12 contributor to the DNA from the cigarette recovered
13 inside the victim's residence.

14 **Q** And you -- that conclusion was made by you
15 with a reasonable degree of scientific certainty?

16 **A** Yes.

17 **Q** Is there any way that adding additional DNA
18 to that cigarette would cause you to change your
19 conclusion at this time?

20 **A** Can you repeat it?

21 **Q** Sure. Is there any way -- if you were aware
22 that additional DNA was added to that cigarette, would
23 that cause you to change your conclusion that you came

REDIRECT/GERARDI

1 to in -- strike that. That was my fault. I apologize.
2 If the cigarette had been contaminated, would that
3 cause you to change your conclusion with regards to the
4 standard submitted by -- I'm sorry. Strike that. Once
5 again, can you please review your conclusion with the
6 jury at this time?

7 **MS. CANTALAMESSA:** Objection, Your
8 Honor.

9 **MS. WEIBLING:** I'm sorry.

10 **THE COURT:** Overruled.

11 **BY MS. WEIBLING:**

12 **Q** If you can take a look at Page 3 and just go
13 over your conclusion one time.

14 **A** James P. Ferrara is not a contributor to the
15 DNA from the cigarette recovered inside the victim's
16 residence.

17 **MS. WEIBLING:** Thank you. No further
18 questions.

19 **THE COURT:** Anything else from the
20 state?

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22 * * * * *
23

FURTHER REDIRECT/GERARDI**RE CROSS EXAMINATION****BY MS. CANTALAMESSA:**

Q Ms. Gerardi, you can say there are two DNAs on the cigarette, though; right?

A Yes.

Q At least two?

A At least two.

Q Can you tell anything else about those two DNAs that you did find?

A When you say two DNAs, I -- basically when we have a DNA profile, you get half from your mom, half from your dad, as I explained earlier. So you have two types at every location that we're looking at. When I say location, that means we're looking at several locations. If there's more than two types at a location, that's an indicator to me that there's more than one contributor to this DNA profile that I obtained. So basically what you're referring to is that I have a mixture. I have a mixture of at least two individuals on the cigarette.

MS. CANTALAMESSA: That's it. Thank you.

MS. WEIBLING: Your Honor, I just have

1 one more question.

2 **FURTHER REDIRECT EXAMINATION**

3 **BY MS. WEIBLING:**

4 **Q** Mrs. Gerardi, have you heard the expression,
5 can I bum a cigarette?

6 **A** Yes.

7 **Q** And what does that mean to you?

8 **A** That means I -- if I have a cigarette, I
9 would hand it to somebody.

10 **Q** Have you ever observed two people maybe share
11 the same cigarette?

12 **A** Yes.

13 **Q** You indicated that there were a mixture of
14 two unknowns on this cigarette; is that correct?

15 **A** That's correct.

16 **Q** Are either one of those two knowns
17 Mr. Ferrara's DNA?

18 **A** No.

19 **MS. WEIBLING:** Thank you. I have no
20 further questions.

21 **MS. CANTALAMESSA:** Nothing, Your Honor.
22 Thank you.

23 **THE COURT:** All right. Thank you.

1 You're excused. Do you have other evidence
2 to offer, Mr. Meranto?

3 **MR. MERANTO:** No, Your Honor. Subject
4 to the admission of our exhibits, the defense
5 would rest at this time.

6 **THE COURT:** All right. So ladies and
7 gentlemen, I'm going to adjourn you for
8 lunch, and I would like you to return to the
9 jury room by 1:30. Make it 1:15 if you will.
10 And we'll resume at that time. Please don't
11 discuss the case among yourselves or with
12 anyone else. Don't allow anyone to discuss
13 the case with you or in your presence.
14 Please do not form or express any opinion
15 about the case. See you in the jury room
16 about 1:15.

17 **(WHEREUPON, the jury left the courtroom,
18 and the proceedings continued as follows:)**

19 **THE COURT:** Okay. You folks can be
20 seated. Does the defense have your exhibits
21 in order? Are you going to be a while?

22 **MR. MERANTO:** I'm going to be a couple
23 minutes.

INTRODUCTION OF EXHIBITS

1 **(WHEREUPON, a brief recess was had,**
2 **after which the proceedings continued as**
3 **follows, outside the presence of the jury:)**

4 **MR. MERANTO:** Judge, you don't have all
5 these written in, but we want to move to
6 admit C.

7 **THE COURT:** You want C?

8 **MR. MERANTO:** Yeah. The article with
9 the sketch. I --

10 **THE COURT:** C, I.

11 **MR. MERANTO:** R, which you don't have,
12 which is an exclusion list about the
13 cigarette where they found out who smoked,
14 who didn't.

15 **THE COURT:** R. Yes.

16 **MR. MERANTO:** And then U which is with
17 regard to Mrs. Informer who was a witness to
18 the person that dropped the car off
19 supposedly and then composed the composite
20 sketches.

21 **THE COURT:** Okay. Does the state have
22 any objection? So you're moving to introduce
23 C, I, U and R; is that right?

INTRODUCTION OF EXHIBITS

1 **MR. MERANTO:** Yes.

2 **THE COURT:** Okay. Does the state have
3 any objection? Somebody see if they're
4 listening when the judge asks a question.
5 What in the world is going on here?

6 **MR. MERANTO:** Oh, I'm sorry, Your Honor.
7 She asked me what was -- I apologize.

8 **MS. CANTALAMESSA:** Your Honor, we object
9 to C.

10 **THE COURT:** Let me just urge everybody
11 here participating as a litigant in the
12 courtroom that, you know, maybe I'm old
13 fashioned, you know, maybe I'm egotistical.
14 I'm not sure what the reason is. But I
15 really think that when a judge says
16 something, or demands something, that you
17 people ought to pay attention.

18 **MR. MERANTO:** I apologize, Judge.

19 **THE COURT:** I'm that way. I don't know.
20 And if you're going to be here, you're going
21 to be that way, too. I'm about sick and
22 tired of this crap. So I'm sitting here
23 talking, I'm the judge, and you guys are

INTRODUCTION OF EXHIBITS

1 having some sort of a meeting back there,
2 disrespecting this court, and paying no
3 attention to what I'm doing. So Zena's
4 sitting here, and Lou, and in the old days,
5 I'd have you in jail. I've grown -- I don't
6 know if patient is the right word. I guess I
7 just have been beaten down over the years
8 from this type of disrespect from the bar,
9 but I've had enough. So if it happens again,
10 somebody's head's gonna be taken off.

11 **MR. MERANTO:** I apologize again, Your
12 Honor.

13 **THE COURT:** Let me ask again.

14 **MR. MERANTO:** I wouldn't do well in
15 jail, so I --

16 **THE COURT:** The defense is seeking,
17 moving to introduce its Exhibits C, I, U, and
18 R; is that correct?

19 **MR. MERANTO:** Correct. Yes, Judge.

20 **THE COURT:** No other exhibits?

21 **MR. MERANTO:** No.

22 **THE COURT:** All right. What is the
23 state's position on the defense exhibits?

INTRODUCTION OF EXHIBITS

1 **MS. CANTALAMESSA:** Your Honor, we would
2 object to C as it's a newspaper article. It
3 contains a composite. But it's a newspaper
4 article which --

5 **THE COURT:** What? Newspaper articles
6 are not admissible; is that right?

7 **MS. CANTALAMESSA:** Well, it tells the
8 story of the case. I mean, it's a history.
9 The case that was already testified about.

10 **THE COURT:** Okay. Do you object if the
11 rest of that is removed and just the
12 composite is submitted?

13 **MS. CANTALAMESSA:** No.

14 **THE COURT:** What's your position on
15 that?

16 **MR. MERANTO:** That's great, Judge.
17 That's fine with us.

18 **THE COURT:** All right. Then it's
19 admitted with those redactions. Simply the
20 composite. Okay. Next is I?

21 **MS. CANTALAMESSA:** We object to I, Your
22 Honor.

23 **THE COURT:** What is it?

INTRODUCTION OF EXHIBITS

1 **MR. MERANTO:** I is the complete story,
2 kind of start to finish with regard to the
3 sting operation that was conducted, and
4 wherein the file was stolen from GM, and they
5 set up a sting at the Penn-Ohio Motel. Once
6 again, the reason I included that, that's the
7 only --

8 **THE COURT:** These are police reports?

9 **MR. MERANTO:** That's the only stuff that
10 Mr. Mondora seemed to think was important
11 enough to discuss with Mr. Nemeth. I mean, I
12 was half tempted to try to admit the whole
13 file, but that's ridiculous.

14 **THE COURT:** See, I'm not real big on
15 giving things to the jury that has already
16 been disclosed to the jury. You did a great
17 job of telling that whole story through
18 Mr. Mondora, Pat Mondora -- Detective
19 Mondora, I'm sorry. But my understanding is
20 from the rules that you can do that. You can
21 submit police reports. So the objection's
22 overruled. Next is U, the police reports?

23 **MR. MERANTO:** I thought R comes before

INTRODUCTION OF EXHIBITS

1 U.

2 **THE COURT:** Yes, it does, but you didn't
3 introduce them that way. You had U testified
4 to before R, and so it appears ahead on my
5 list. But we'll go to R. Let's do R first.

6 **MR. MERANTO:** Thank you, Your Honor.

7 **THE COURT:** A list of individuals in the
8 house.

9 **MR. MERANTO:** Yes. This is what we
10 discussed. This is a report prepared to show
11 that they took efforts to exclude everybody
12 that could have possibly touched that
13 cigarette that was found and sent to BCI for
14 purposes --

15 **THE COURT:** What's the state's position?

16 **MS. CANTALAMESSA:** No objection, Your
17 Honor.

18 **THE COURT:** That is received. And U is
19 police reports regarding Ms. Informer?

20 **MR. MERANTO:** Mrs. Informer. That's
21 what they called her.

22 **THE COURT:** This is just a moniker given
23 to a confidential informant or somebody that

INTRODUCTION OF EXHIBITS

1 wanted to --

2 **MR. MERANTO:** Yes.

3 **MS. CANTALAMESSA:** We don't object to
4 the pictures on U, Your Honor, but we object
5 to the report.

6 **MR. MERANTO:** Well, the report is --
7 once again, it's a police report that was
8 prepared, and it gives the details about how
9 this lady, what they went through with regard
10 to scaling down that picture, refining that
11 picture, in order to actually exclude.

12 **THE COURT:** Let me see if I can probably
13 cut through all of that.

14 **MR. MERANTO:** Thank you, Judge.

15 **THE COURT:** These are police reports
16 prepared by Crater and Nemeth?

17 **MR. MERANTO:** Yes, Judge.

18 **MS. CANTALAMESSA:** Does it have the
19 pictures on them?

20 **MR. MERANTO:** Yeah. They're attached.

21 **MS. CANTALAMESSA:** Okay. Just making
22 sure.

23 **THE COURT:** There are two?

MOTION

1 **MS. CANTALAMESSA:** Yes.

2 **THE COURT:** Do you want to see the
3 exhibit?

4 **MS. CANTALAMESSA:** No. I saw it. I
5 just wanted to make sure.

6 **THE COURT:** Okay. So that is all of the
7 Defendant's Exhibits. So is there anything
8 else the defense wishes to present?

9 **MR. MERANTO:** No, Judge. Just at this
10 time we'd like to renew our motion for
11 acquittal pursuant to Criminal Rule 29.
12 Other than what I stated prior to at the end
13 of the state's case, we now have additional
14 evidence with regard to DNA that was found at
15 the scene and excludes this defendant, so
16 that leap, I believe, that we're asking the
17 jury to take from a fingerprint on a --
18 fingerprints on the outside of the door that
19 then leads you to believe that he killed
20 these people and left in the car and all that
21 good stuff, once again, I think it was
22 demonstrated during the case that the
23 investigators at the time believe this was

MOTION

1 critical evidence in that they used it.

2 As I stated with regard to the exhibit
3 that's been admitted, Exhibit R, they went
4 painstakingly through to try and exclude
5 anybody who might have touched that
6 cigarette, and then they checked everybody,
7 and I introduced also a number of letters
8 that were sent to BCI and the FBI saying,
9 hey, check this cigarette out, the latent
10 fingerprints on it. Well, then at the advent
11 of DNA, they found the DNA, and at that point
12 I believe it was sufficiently shown that
13 they -- whatever, they either had some doubts
14 or wanted to make sure or whatever, and they
15 sent that BCI down to BCI and it excluded
16 Mr. Ferrara.

17 **THE COURT:** What is the state's -- were
18 you done? I'm sorry.

19 **MR. MERANTO:** Yes, I am. Thank you,
20 Your Honor.

21 **THE COURT:** What is the state's
22 response?

23 **MS. CANTALAMESSA:** Your Honor, we stand

1 on our same argument with regard to showing
2 that this defendant did this. The defense
3 can't show, and we can't show if it had the
4 defendant's DNA on it, where the cigarette
5 came from, who handled it, where it came from
6 inside the house, when it was collected. We
7 can show it was sent in on -- in February of
8 1975, by Detective Nemeth. We can't show
9 where it's from. So we're as the state kind
10 of happy it doesn't have his DNA on it, so
11 how are we going to show where it was from
12 anyway? So we don't think it disproves any
13 of the state's case at this point.

14 **THE COURT:** So that's your basis for the
15 Rule 29, what you said before and what you
16 just said?

17 **MR. MERANTO:** Yeah, Judge. And
18 basically with regard to that evidence, I
19 mean, I just find it ironic the state's
20 arguing in light of what was presented with
21 regard to those fingerprints and how --

22 **THE COURT:** Well, you're both getting
23 ready for argument. That's why you're both

1 talking that way now, so that's all right.
2 On those bases, the motion for Rule 29 motion
3 is overruled.

4 So we're going to start with argument
5 and charge this afternoon. We do have --
6 we've got one juror who indicated she's --
7 she would like to go to Cleveland tonight.
8 Not knowing how this thing would proceed, I
9 indicated to counsel that we should be
10 careful and that you should be careful in the
11 selection of an alternate. So I'm open to
12 suggestion as to what we're going to do here
13 about how to proceed. What is the state's
14 pleasure regarding argument and charge and
15 what to do with the juror?

16 **MS. CANTALAMESSA:** Your Honor, I think
17 we keep our argument and charge this
18 afternoon, and maybe end at 4:00. She said
19 if she could leave by 4:00 she'd still be
20 fine for a juror.

21 **THE COURT:** What's the defense position?

22 **MR. MERANTO:** I'd defer to the court.
23 If the court would want to let her go now and

1 start tomorrow morning, whatever you want to
2 do, we can work on instructions and that.

3 **THE COURT:** I'm not going to waste all
4 this time today. It would be my intention to
5 at least do argument today, or to do argument
6 and charge and have them deliberate with or
7 without her, or to do argument and do charge
8 in the morning with deliberations tomorrow.
9 Those are the options. So I probably
10 should've said that before I asked you what
11 you wanted to do. Does the state have a
12 preference?

13 **MS. CANTALAMESSA:** Your Honor, I'd still
14 like to do argument and charge -- our
15 preference is tomorrow argument and charge.

16 **THE COURT:** I'm not doing that.

17 **MS. CANTALAMESSA:** Okay.

18 **THE COURT:** I already said that. I try
19 and have everybody listen, but I feel like
20 I'm married to you folks.

21 **MS. CANTALAMESSA:** We'd also like to
22 bring up the fact that the defense has
23 brought up the suspect Weeks on the DNA

1 report which we tiptoed around throughout the
2 testimony of Detective Mondora. We want to
3 put Detective Mondora up to explain why
4 there's a suspect Weeks on that DNA report so
5 that the jury doesn't have any questions
6 about that, just to say that at that point
7 when they got the prints back, they did
8 research and found that a known associate of
9 Mr. Ferrara was Weeks, and that's why at that
10 point before the DNA, they put Mr. Weeks on
11 that DNA suspect list.

12 **THE COURT:** When did you hatch this
13 idea? I'm glad you finally revealed it to
14 me. When was this figured out? Just now?

15 **MS. CANTALAMESSA:** No. We were talking
16 about it while Ms. Gerardi was on the stand.
17 However, we were doing exhibits and that kind
18 of thing, and you were asking about the
19 charge. We didn't want to get too far ahead
20 without telling you.

21 **THE COURT:** Okay. So we'll do that, and
22 I'm going to tell everybody here, we're going
23 to limit it to that, and it's going to be

1 brief, and it's going to be efficient. We're
2 going to try that for a change in this case.
3 Okay. So let's get back to the issue then if
4 that takes five or ten minutes and we're at
5 the same position. We're going to resolve
6 all this other stuff right here and now. So
7 I'll just do it, or I'll allow you to offer
8 your preference. Do you wish to offer a
9 preference as to how we proceed?

10 **MS. CANTALAMESSA:** No, Your Honor.

11 **THE COURT:** Okay. How about you?

12 **MR. MERANTO:** No, Judge. Whatever you
13 prefer.

14 **THE COURT:** Okay. So we have to go
15 through this charge. I'm going to give it
16 today. What do you folks want for argument
17 for the state?

18 **MS. CANTALAMESSA:** Forty-five minutes,
19 Your Honor, both parts.

20 **THE COURT:** How about the defense?

21 **MR. MERANTO:** I think I should be able
22 to handle it in that length of time, Judge.

23 **THE COURT:** Okay. The parties have each

1 submitted requests for charge. The court has
2 reviewed them. The court has prepared its
3 charge to the jury. Nobody's breached the
4 subject, but I think the subject needs to be
5 breached. The indictment is brought in terms
6 of the statute as they exist today, not in
7 terms of the statutes as they existed at the
8 time of these crimes. So what do you want to
9 do about that?

10 **MS. DOHERTY:** Judge, I believe that when
11 we -- we obtained the statute from 1974, and
12 the only difference, I guess, in the way the
13 language is, but it was included in the bill
14 of particulars, is that it's committing
15 robbery and/or burglary, aggravated robbery
16 and/or burglary.

17 **THE COURT:** That's not the only
18 difference.

19 **MS. DOHERTY:** Okay.

20 **THE COURT:** Are you folks aware of that
21 or not? The crimes of aggravated murder are
22 defined as including aggravated robbery
23 and/or aggravated burglary, and those crimes

1 then have to be defined as elements of the
2 aggravated murder. And within Count Five,
3 the aggravated robbery, you include the
4 firearm, which is not a part of the statute
5 at the time. And you also include that the
6 defendant displayed it, brandished it,
7 indicated he possessed it, or used it. Those
8 are all part of the new statute, not the old
9 statute. The burglary -- the burglary charge
10 talks about the commission of a criminal
11 offense, and at the time the law charged
12 commission of a theft offense or any felony.
13 So those are differences that probably need
14 to be resolved before the jury is charged.

15 **MS. DOHERTY:** I agree, Your Honor.
16 Those counts were dismissed due to the
17 statute of limitations, and --

18 **THE COURT:** They're still elements of
19 the charges of aggravated murder?

20 **MS. DOHERTY:** Correct.

21 **THE COURT:** So they still have to be
22 defined by the court in its instruction to
23 the jury.

1 **MS. DOHERTY:** I agree. And I do have
2 copies of the statutes from 1974 for
3 aggravated robbery and aggravated burglary.

4 **THE COURT:** Well, what is that -- I
5 asked you how to resolve this. Having copies
6 of the statutes doesn't mean a whole lot to
7 me. I have copies of the statutes, too.

8 **MS. DOHERTY:** Well, I understand that,
9 but it defines how the instructions should
10 read for the aggravated murder count with
11 having to do with aggravated robbery and
12 aggravated burglary. I mean, obviously we
13 wouldn't give today's definition.

14 **THE COURT:** I don't know if I agree with
15 that. What's the defense have to say?

16 **MR. MERANTO:** With regard to the
17 instruction? I believe he's entitled to the
18 instruction that existed at the time or now,
19 whatever is to his benefit. I think that's
20 clear.

21 **THE COURT:** Okay. So who gets to decide
22 what benefits him?

23 **MR. MERANTO:** You.

1 **THE COURT:** I mean, obviously this is
2 not something that has been thought through
3 by either of you.

4 **MR. MERANTO:** That's true, Judge. I'll
5 tell you that's true. I mean, I thought
6 about it with regard to the instruction and
7 the research with regard to that, because
8 obviously that's a critical issue.

9 **THE COURT:** Well, the state has charged
10 additional elements in each of these charges.
11 Having a firearm and brandishing it,
12 possessing it, using it, inflicting,
13 displaying, all that ridiculous statutory
14 language. And also has diminished the
15 definition in Count Four by claiming any
16 criminal offense rather than theft or any
17 felony. So the court's going to define Count
18 Four as it originally was written, theft or
19 any felony, unless the defense objects.

20 **MR. MERANTO:** No.

21 **THE COURT:** And the court will give the
22 instruction on firearm. The state has to
23 prove its a firearm and also has to prove the

1 displayed, brandishing, possessing or using
2 the weapon as they've charged in the
3 indictment, unless the defense objects.

4 **MR. MERANTO:** No objection.

5 **THE COURT:** All right. The court will
6 give the general OJI instruction, standard
7 instruction. Do you wish an instruction on
8 the defendant not testifying?

9 **MR. MERANTO:** Yes.

10 **THE COURT:** Okay. The court will give
11 an instruction on expert testimony and on
12 exhibits. The court will instruct on felony
13 aggravated murder, including aggravated
14 robbery and aggravated burglary. Define
15 purpose, will include the use of a deadly
16 weapon. It will also include that proof of
17 motive is not required. The court will
18 define causation, what it means while
19 committing or attempting to commit a crime.
20 The court will define knowingly. The court
21 will define aggravated burglary as an element
22 of aggravated murder with all of the
23 attendant definitions, purpose, what a

1 criminal offense is -- I'm sorry, what a
2 felony is, trespass, knowingly, course,
3 stealth, deception, occupied structure,
4 physical harm, capability of a deadly weapon.
5 The court will further define theft and
6 aggravated robbery. The court has to define
7 a firearm since that was specified in the
8 indictment. Again, deadly weapon. Again,
9 theft offense, capability of a deadly weapon.
10 The court has to define serious physical
11 harm. The court has to define firearm. The
12 court will give the general conclusion.

13 I have the jury verdict forms prepared,
14 if you do not have a copy. Ryan, do you want
15 to copy these and make sure each of the
16 lawyers get copies. And then do the common
17 closing remarks. If we have an alternate, I
18 will keep the alternate sequestered
19 individually while the jury is deliberating.

20 And now on to the requested
21 instructions. The state has requested an
22 instruction on consciousness of guilt and
23 requested the court charge on the lesser

1 included offense of murder. No reason to do
2 the lessers. That request is denied. The
3 case wasn't tried that way. It's either this
4 guy did it or didn't do it.

5 Furthermore, the instruction of
6 consciousness of guilt is an instruction that
7 is used when a defendant is present and is
8 identified and is a part of what went on and
9 leaves, and his flight has to be explained.
10 This is -- the question here is whether or
11 not it was this guy at all, not whether or
12 not he fled or whoever it was fled. I don't
13 think under the circumstances of this case
14 that instruction is appropriate. So that's
15 refused, both of those.

16 Defendant's proposed instruction is on
17 circumstantial evidence as it existed at the
18 time when the crime was committed. My -- I
19 hate to try and flatter myself, but my
20 educated and experienced opinion is that this
21 instruction should be given because it was
22 the law that existed at the time. And I
23 believe that instruction is -- can be

1 reconciled with the current instruction that
2 either direct or circumstantial evidence or a
3 combination of the two is sufficient.
4 However, despite my educated and experienced
5 opinion, I'm bound by the law as dictated by
6 the Supreme Court of the State of Ohio that
7 that instruction can't be given anymore, so I
8 refuse that instruction also.

9 So what -- I told you I'm going to give,
10 I'm going to give. The State vs. Webb, 70
11 Ohio St.3d 325, and State vs. Bennie Adams
12 from our own Seventh District Court of
13 Appeals confirmed the court's ruling on that
14 issue. So is there anything else from the
15 state?

16 **MS. DOHERTY:** No, Your Honor.

17 **THE COURT:** Anything else from the
18 defense?

19 **MR. MERANTO:** No. Thank you, Your
20 Honor.

21 **THE COURT:** Okay. So we should probably
22 start about 1:30 to give you guys enough time
23 to get squared away. That all right?

1 **MS. DOHERTY:** That's fine.

2 **MS. CANTALAMESSA:** Yes, Judge.

3 **THE COURT:** Okay. Thank you.

4 **(WHEREUPON, the Court recessed at 12:40**
5 **p.m., November 20, 2013 and reopened at 1:35**
6 **p.m., November 20, 2013 and the proceedings**
7 **continued as follows:)**

8 **THE COURT:** Good afternoon.

9 **PROSPECTIVE PROSPECTIVE JURORS:** Good
10 afternoon.

11 **THE COURT:** That's pretty good. The
12 defense has rested his case, and now the
13 state would like to put on evidence in
14 rebuttal. So you may call your witness,
15 please.

16 **MS. DOHERTY:** Thank you, Your Honor.
17 The state would call Detective Mondora.

18 **THE COURT:** You've already been sworn.
19 You're subject to that same oath. Please
20 follow the same rules, and you can resume the
21 witness stand.

22 **THE WITNESS:** Yes, sir.

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REBUTTAL DIRECT/MONDORA

1 **WHEREUPON, the State called**

2
3 **DETECTIVE PATRICK MONDORA**

4
5 **who, having previously been sworn,**
6 **testified as follows:**

7 **REBUTTAL DIRECT EXAMINATION**

8 **BY MS. DOHERTY:**

9 **Q** Detective Mondora, you heard Brenda Gerardi,
10 the defense witness from BCI mention the name Joseph
11 Weeks; correct?

12 **A** Yes.

13 **Q** And who is Joseph Weeks?

14 **A** After developing Mr. Ferrara as a suspect in
15 this crime, looking into his background and his
16 friends, we came up with the name Joseph Weeks.

17 **Q** As a known associate?

18 **A** Yes. A known associate who worked at GM with
19 him and was also a committeeman with him at the time,
20 GM Lordstown.

21 **MS. DOHERTY:** All right. I don't have
22 anything else, Judge.

23 **MR. MERANTO:** Nothing else.

STATE'S CLOSING ARGUMENT

1 **THE COURT:** Okay, sir. Thank you.

2 **THE WITNESS:** Thank you. Let me see the
3 reporter here with counsel.

4 **(WHEREUPON, a discussion was had among**
5 **Court and counsel out of the hearing of the**
6 **jury as follows:)**

7 **THE COURT:** Okay. We're at side bar out
8 of the hearing of the jury. Does the state
9 have anything else to offer?

10 **MS. DOHERTY:** No, Your Honor.

11 **THE COURT:** Okay. So you're resting?

12 **MS. DOHERTY:** Yes.

13 **THE COURT:** And does the defense have
14 anything else to offer?

15 **MR. MERANTO:** No, Judge. I mean, other
16 than renewing my Rule 29 motion.

17 **THE COURT:** On the same basis?

18 **MR. MERANTO:** Yes, Judge.

19 **THE COURT:** Okay. Overruled. Thank
20 you.

21 **(WHEREUPON, the following proceedings**
22 **were had back in the presence of the jury:)**

23 **THE COURT:** Okay. The state has now

STATE'S CLOSING ARGUMENT

1 rested. I can't talk unless she's ready.
2 The state has now rested its case, and the
3 next order of business is to have the lawyers
4 address you in final argument.

5 Final argument is just that; it's an
6 argument. It's an attempt to persuade you to
7 see the case their way, and they'll tell you
8 why you should see it their way. As I've
9 told you before, the statements of the
10 lawyers during argument, opening statement
11 and otherwise is not evidence of any kind, so
12 they can't -- what they say is not evidence,
13 but they can comment on the evidence and the
14 law and argue the case to you.

15 The State of Ohio is given the
16 opportunity to go first because the State of
17 Ohio has the burden of proof. The defense
18 will then argue, and the state is then given
19 the opportunity to get the last say, to close
20 the argument. At the completion of the
21 closing arguments, the court will instruct
22 you in the law, and then you will begin your
23 deliberations.

STATE'S CLOSING ARGUMENT

1 I am not ignorant of your situation, so
2 I'm aware of that, and you should not be
3 concerned about that. All right. So is the
4 state ready to begin?

5 **MS. DOHERTY:** Yes, Your Honor.

6 **THE COURT:** Okay. Would you please do
7 so? Are you folks splitting the argument?

8 **MS. DOHERTY:** Yes, Judge.

9 **THE COURT:** Okay. Ms. Doherty is going
10 to do the opening, and then Ms. Cantalamessa
11 will do the close?

12 **MS. CANTALAMESSA:** Yes, Your Honor.
13 Thank you.

14 **THE COURT:** Okay. Very well.

15 **MS. DOHERTY:** Thank you, Your Honor.
16 May it please the court, counsel, Detective
17 Mondora, ladies and gentlemen of the jury. I
18 know it seems like we've been here a really
19 long time. It really has only been a couple
20 days. We appreciate your attention that
21 you've paid to this and to all of the
22 witnesses.

23 What I'm going to do now is talk to you

STATE'S CLOSING ARGUMENT

1 a little bit about what the evidence has
2 shown. I'm not going to go over everything
3 everyone said. That's what you've been
4 listening to. You know what the witnesses
5 talked about and what their purpose, what the
6 state's purpose was in putting them on the
7 stand. But I am going to summarize some
8 things that I would like you to consider, the
9 state asks that you consider and think about.

10 But more importantly, the 12 of you when
11 you're deliberating, what's important to you
12 in this case? What witness or witnesses or
13 evidence stood out to you and will help you
14 make this decision? So I'm going to talk to
15 you about some things. But even if you go
16 back there and don't discuss anything I
17 talked about, whatever is most important to
18 you in making this decision, that's what you
19 need to rely on. And you need to do that
20 collectively.

21 We talked originally about an individual
22 decision, but also a collective one. That's
23 what there are 12 of you for. You're going

STATE'S CLOSING ARGUMENT

1 to talk about the evidence in this case.
2 You're going to determine what happened here.
3 And you're going to determine who did this.
4 That's your job.

5 The things that I talk to you about, the
6 judge already said that this part of the
7 trial, the closing arguments, they are not
8 evidence. If I say something that differs
9 from what your recollection is, by all means,
10 go with your recollection. As you can see,
11 Attorney Cantalamessa and I are looking at
12 notes and doing 10 different things, so I
13 certainly don't mean to mislead you. I'm
14 recalling what the testimony was as well.

15 I asked you initially also to look at
16 the demeanor of the witness, listen to their
17 answer, determine whether or not they have
18 any reason to not be truthful with you, if
19 they have any reason, any bias. That's
20 something that you look at when you're making
21 the determination of credibility, who to
22 believe.

23 I'm going to talk to you a little bit

STATE'S CLOSING ARGUMENT

1 about the charges. The judge is going to
2 give you jury instructions. He's going to
3 tell you what constitutes aggravated murder,
4 the three counts that pertain to Ben Marsh,
5 Marilyn Marsh, and Heather Marsh. The judge
6 is going to give you those instructions, but
7 I'm going to talk to you a little bit about
8 that.

9 Aggravated murder in this case is
10 purposely causing the death of another; Ben
11 Marsh, Marilyn Marsh, Heather Marsh.

12 Purpose. And you can tell what purpose
13 is by the manner in which it's done. This
14 wasn't a car accident where someone
15 accidentally ran into someone. This was
16 purpose. This was taking a gun and shooting
17 someone in the back of the head. Taking a
18 gun and shooting Ben Marsh four times.
19 Taking that object or some object and beating
20 Heather Marsh to death. That is purpose.
21 You can infer purpose from the manner used to
22 inflict the injuries. Purposely caused the
23 death. That's what James Ferrara did.

STATE'S CLOSING ARGUMENT

1 In addition to that is whether or not
2 that purposeful murder was committed while
3 committing or after committing aggravated
4 burglary and/or aggravated robbery. Now,
5 aggravated burglary, trespassing, going into
6 somebody else's house by force. Going in
7 that back door of the Marsh house, quiet
8 neighborhood, breaking out that window,
9 leaving your prints as you push open the
10 door, to gain entrance into that house. That
11 is aggravated burglary, because we know that
12 he had a firearm because we know that he
13 killed those people with it. That is
14 aggravated burglary. He had a firearm. He
15 trespassed into that occupied structure.

16 Aggravated robbery. Nothing in that
17 house, by any account, was stolen inside the
18 house. The paycheck was still there. The TV
19 was still there. Didn't appear to be
20 ransacked. But Marilyn Marsh's vehicle was
21 gone. That is a fact. That is an aggravated
22 robbery committed while committing or fleeing
23 after committing and having that firearm

STATE'S CLOSING ARGUMENT

1 again. The judge is going to give you those
2 instructions.

3 I don't mean to confuse you with it. I
4 just wanted you to have in mind what
5 constitutes aggravated murder in those three
6 cases -- or in those three victims.
7 Purposely causing the death in connection
8 with either an aggravated robbery or an
9 aggravated burglary.

10 Each witness that came in here and
11 talked to you had something to say. Whether
12 they had something very personal, this
13 affected their family, or whether or not they
14 collected evidence, saw evidence being
15 collected, analyzed evidence, every one of
16 them, hopefully you realize the purpose in
17 putting them on. We didn't want to waste
18 your time, but everyone had something
19 significant to say. They all added a little
20 bit to the puzzle that makes up this case.

21 Granted, we are hampered by the fact
22 that this took place in 1974. I'm sure the
23 defense is hampered. However, that doesn't

STATE'S CLOSING ARGUMENT

1 change the fact that what we have now is
2 physical evidence putting James Ferrara
3 there. Passage of time does not change that.
4 Passage of time is not changing the fact that
5 his fingerprints are on that door that was
6 broken into to gain entrance into that house.

7 The judge is going to give you an
8 instruction regarding circumstantial and
9 direct evidence. And he talked to you a
10 little bit about it initially. Direct
11 evidence is what someone saw, what someone
12 picked up, what someone collected.

13 You heard from Mike Finamore. He talked
14 about witnessing -- being present at the
15 collection of the evidence. He saw the
16 bodies. He is a direct witness. He's
17 testifying about things that he actually saw.

18 Circumstantial evidence is proof of
19 facts or circumstances by that direct
20 evidence that you can -- by that direct
21 evidence that you can infer what logically
22 flows from that direct evidence. And he'll
23 give you a more specific instruction, but

STATE'S CLOSING ARGUMENT

1 circumstantial evidence, the fingerprints on
2 the door connecting him to the inside of the
3 house where those murders were committed,
4 that is circumstantial evidence. You can
5 reasonably infer, and you're permitted to do
6 that.

7 And circumstantial evidence and direct
8 evidence have the same weight. There is
9 nothing in the law that tells you that, well,
10 direct evidence is a lot more important.
11 They are both of equal weight, and the court
12 will tell you that.

13 Unfortunately, one of the things that
14 the state has to prove is that Ben, Marilyn,
15 and Heather were alive at one point. And
16 although we hate to do it, we had to put
17 Mr. Marsh on to testify about the death of
18 his brother, his sister-in-law, and his
19 niece. And that was really to establish that
20 they did live. They were here, they were on
21 this earth, and now they're not.

22 The testimony from Mr. Boyle, again, he,
23 along with Mr. Marsh Sr., Ben's dad, found

STATE'S CLOSING ARGUMENT

1 their bodies. He described to you not being
2 able to reach them. GM couldn't reach them,
3 couldn't reach Ben. And I'm sure it pained
4 him to go back to that place; but again, we
5 had to put him on for that reason. We had to
6 establish that Ben, Marilyn, and Heather,
7 were found dead, murdered, in that house, and
8 that that house was in Mahoning County, in
9 Canfield.

10 Mr. Boyle described to you the scene.
11 That is significant, because as the jury, you
12 have to know what that house -- what that
13 scene consisted of. You have to know how
14 these people were killed. You have to know
15 where they were. Because they were inside of
16 a house where James Ferrara's fingerprints
17 are on the door that was broken into to get
18 into that house. That's why that is so
19 significant.

20 Mr. Boyle could tell you, he couldn't
21 get in that front door. He couldn't -- the
22 doors were locked. He described for you the
23 screen door on the front of the house was

STATE'S CLOSING ARGUMENT

1 locked. The inside door -- I'm talking about
2 the main entrance into the house. The inside
3 door was locked. So clearly no perpetrator
4 went in through that door. James Ferrara
5 went in through the back door.

6 Mr. Boyle said he and Mr. Marsh had to
7 physically take the screen door off because
8 it was locked. And then Mr. Marsh Sr. used
9 his key because that inside door entering
10 into the foyer was locked as well. I'm not
11 going to put this up high. Hopefully you can
12 at least see.

13 He described going into that house where
14 Marilyn was, what condition Heather was in.
15 He couldn't even go down the hall to see
16 where Ben was, but he learned from Mr. Marsh
17 that he was also killed.

18 And why is it significant that those
19 front doors were locked? And why is it
20 significant that that garage door, the car
21 garage door, was closed? Because we know
22 that James Ferrara entered through that back
23 door, kicked in the door going into the

STATE'S CLOSING ARGUMENT

1 family room kitchen area off the garage.
2 Didn't leave any prints there. He kicked in
3 the door. The only prints found on that door
4 were Ben Marsh's. And we know that he left
5 the same way he came in, through the garage,
6 but he took the car. He took the car out of
7 the garage and left.

8 We know that the garage, from Mr. Boyle,
9 had a Genie garage door opener. So James
10 Ferrara didn't even have to get out of the
11 car to close the garage. Got in the car,
12 opened the garage door, left, closed the
13 garage door, and he's gone, leaving one set
14 of prints going in that back door.

15 Mike Finamore, it seemed like he was on
16 the stand for a really, really long time. It
17 probably wasn't that long. I guess it's
18 fortunate that he's still with us, because
19 through no one's fault, obviously, because
20 James Ferrara's prints were not identified
21 and confirmed until almost 40 years later,
22 most of the investigating officers had passed
23 away. He was kind of criticized on cross for

STATE'S CLOSING ARGUMENT

1 that, for, you know, being the only person
2 around. Well, fortunately he was, because he
3 not only was there and could identify, could
4 talk about the scene, identify the
5 photographs, where these people were located,
6 what kind of injuries they had, but he also
7 was with Bernie Albert, the crime scene agent
8 who came to process the scene.

9 Now, he was cross examined at length
10 about his lack of experience at that time.
11 He was just a deputy for a year and a half.
12 He couldn't have possibly known what he was
13 doing. He observed the crime scene agent
14 from BCI lift those prints. He probably
15 could've lifted them himself, but the
16 protocol at that time was because the
17 Mahoning County Sheriff's Department didn't
18 have a crime scene unit. They had deputies
19 who responded to cases and could collect
20 evidence, but this is a triple aggravated
21 murder.

22 You think it's illogical for a Sheriff's
23 Department to want to call in the state

STATE'S CLOSING ARGUMENT

1 agency who specializes in collecting
2 evidence? That's not illogical at all. Not
3 illogical at all and makes perfect sense. I
4 would be surprised if it wasn't any other
5 way. They still do that to this day you
6 heard testimony. Even when they have -- even
7 when a department has their own crime scene
8 unit, they still call in BCI.

9 So Mike Finamore, for all the criticism,
10 he was a deputy. He had been there for about
11 a year and a half. He told you he was
12 interested. He wanted to become a detective.
13 He wanted to move up in his career. So
14 absolutely he was going to want to be there
15 and help and learn what he could. That's not
16 a fault. That is not a personality fault.
17 That is something that's a good thing, and
18 that's what he did.

19 He paid close attention to what Bernie
20 Albert was doing. He stayed with him while
21 he was collecting evidence. He told you he
22 was there from about 9:30 that night when the
23 bodies were found to sun up the next day,

STATE'S CLOSING ARGUMENT

1 8:00, 7:30. This wasn't just some kid. It
2 was somebody dedicated, even at that time, to
3 make sure that they found if the killer left
4 anything there, that it was found, and that's
5 what they found.

6 They didn't know it then. They didn't
7 know it then. It took almost 40 years to
8 figure that out. They had no idea. Mike
9 Finamore had no idea that those prints that
10 he watched Bernie Albert lift off that back
11 door would someday lead to the killer, but
12 they did it. They covered as many bases as
13 they could.

14 I'll talk to you about I guess the big
15 deal about prints back then. And I don't
16 know how old everybody is, but back in 1974,
17 as you've heard described by a number of
18 witnesses, things were just handled
19 differently. Fingerprints were the gold
20 standard. When you found fingerprints,
21 hallelujah. There was no DNA. There was no
22 swabbing. There were no buccal swabs. So
23 when you found prints that logically were

STATE'S CLOSING ARGUMENT

1 connected to the crime, you knew you had
2 something. And you knew that if you could
3 place those fingerprints, match them to an
4 individual, that you had your guy.

5 That's why the police department, the
6 Mahoning County Sheriff's Department, went
7 through so many volumes. I mean, you saw
8 those volumes of people. Known criminals,
9 anybody they could think of. Tips. They
10 followed up on psychic tips. They followed
11 up on everything just trying to match prints.

12 They had that cigarette as well, but
13 there was no DNA back then. They had it.
14 They collected it. Someone did. We have no
15 idea who. But they knew that those
16 fingerprints on the back door were gonna lead
17 them to who did this. They kept them at BCI
18 all of that time. Nobody gave up on this
19 case.

20 Andy Chappell from BCI, you heard him
21 say that originally when the projectiles were
22 submitted to BCI, they were indicated that
23 they were fired from the same gun, and they

STATE'S CLOSING ARGUMENT

1 were 30 special -- fired from a .38 special.
2 The deterioration of the lead over the years
3 because of the containers that they were in
4 wouldn't allow him to conclusively say that
5 the other fragments and projectiles were
6 fired from the same weapon. But we did have
7 that information originally from BCI.

8 His analysis, because quite frankly the
9 analyst originally who had done it was
10 deceased and it happened so long ago, is
11 significant, and the fact that those
12 projectiles were identified years ago, back
13 in the '70s as having been fired from a .38
14 is also significant. Because you heard from
15 Deputy Fitzpatrick who was cross examined by
16 Attorney Meranto, in some way trying to
17 allege that he made up the statement that
18 James Ferrara had told him about his weapon
19 of choice being a .38 special because it
20 didn't leave any brass.

21 That information that this was a .38
22 that was used in this crime was known years
23 and years and years ago. He didn't make that

STATE'S CLOSING ARGUMENT

1 up. He would have no reason to make that up.
2 Credibility, logic, common sense. We don't
3 know why James Ferrara decided to tell him
4 that, but he did. His weapon of choice. And
5 he's a military guy. He knows.

6 He told Detective Mondora, he knows
7 about guns. And he told Deputy Fitzpatrick
8 that his weapon of choice, specifically, was
9 a .38 special because it did not leave brass.
10 It did not leave casings. Didn't leave
11 casings. And that's huge, because that's
12 exactly what was used here. No casings, just
13 the projectiles.

14 Robin Ladd, the only person in the
15 world -- now, she said, I didn't check
16 everybody's prints in the world, but she sat
17 here and she can tell you -- she told you
18 about fingerprints. They're unique. They
19 are one person. And she identified those
20 prints as belonging to James Ferrara. And he
21 is the only person in the world that has
22 those prints. The only person. And that
23 evidence is uncontroverted. You have heard

STATE'S CLOSING ARGUMENT

1 nothing to the contrary.

2 Like she said, yeah, other people could
3 examine them. If there was any difference,
4 if somebody else thought that those were not
5 his prints, you would've heard about it.
6 They're there. They can be examined. Any
7 fingerprint expert. That evidence is
8 uncontroverted, and you heard nothing else.
9 And that's what you have to rely on. Those
10 are his prints.

11 I'm going to ask you to -- when the
12 judge talks about common sense and logic,
13 that's what you have to do here. You all
14 have life experiences that allow you to make
15 this decision. You may not have wanted to be
16 here. You may not want to have to make this
17 decision, but you are here for a reason.
18 You're intelligent. You can look at the
19 evidence. You can talk to each other. You
20 can determine what happened. And from the
21 evidence, you can determine who did this.

22 You heard a lot about other suspects and
23 DNA and lack of DNA of James Ferrara and the

STATE'S CLOSING ARGUMENT

1 Parks brothers and Ed Farris. The
2 investigation that compiles all of those
3 notebooks. And they tell you that by trying
4 to divert your attention from what's really
5 important here, by trying to divert your
6 attention to lack of DNA on the cigarette
7 from James Ferrara. All of those other
8 suspects; all the other suspects that Pat
9 Mondora didn't go track down. That's just
10 trying to divert your attention from what's
11 really important here.

12 What's really important here are the
13 fingerprints of James Ferrara located on that
14 back door. A house that he told Detective
15 Mondora, I've never been there. I don't even
16 know Ben Marsh. I don't even know where
17 Canfield is. We know he lives in Austintown.
18 He didn't know where Canfield was?

19 Sure, everybody would deny. But you
20 know what? You're especially going to deny
21 knowing anybody or ever being at that house
22 if you killed the three people who lived in
23 it. And that evidence, too, is

DEFENDANT'S CLOSING ARGUMENT

1 uncontroverted. That's what he said. You
2 have heard nothing else. No explanation,
3 nothing. He didn't know Ben Marsh. He had
4 never been to the house. Didn't know where
5 Canfield was. Never met the guy.

6 Talk with each other. Rely on each
7 other. You all heard the evidence. And
8 you're going to make this decision, and
9 you're going to find that James Ferrara
10 killed -- he committed aggravated murder. He
11 beat Heather to death when he ran out of
12 bullets. He shot Ben Marsh four times. And
13 he shot Marilyn Marsh in the back of the
14 head. And he left Christopher there.

15 I guess the only consolation in this
16 case is that Christopher was too young to
17 identify him. But not Heather. You heard
18 Frank Boyle talk about how smart she was, how
19 articulate she was. She could identify him,
20 and that's why she's dead. Thank you.

21 **THE COURT:** Thank you, Ms. Doherty.
22 Mr. Meranto.

23 **MR. MERANTO:** Thank you, Your Honor.

DEFENDANT'S CLOSING ARGUMENT

1 May it please the court and counsel, good
2 afternoon, ladies and gentlemen. Ladies and
3 gentlemen, there is one thing that's
4 uncontroverted here, and that is that the
5 Marshes were killed on the evening of the
6 13th. That's true, and to that extent, I
7 certainly feel sorrow and compassion for the
8 family members and friends that have been
9 present in the courtroom throughout this.

10 And in your heart you gotta feel that,
11 too. But as jurors, that can't play a part.
12 So you've got to separate that part of it
13 from the juror part and decide collectively
14 because it's uncontroverted that this
15 happened, but you got no why, you got no how,
16 and you got no who.

17 What the state wants you to take is not
18 a step like when they were baking a cake in
19 voir dire or baking cookies or a BLT,
20 whatever it is. You know, bacon, lettuce,
21 tomato. What they want you to do is they
22 want you to jump, literally jump from that
23 back garage door all the way into that house.

DEFENDANT'S CLOSING ARGUMENT

1 I don't know what it is. It's the Grand
2 Canyon of leaps with regard to this trial,
3 but they're hoping that they shock you by the
4 who, because this happened, and that you're
5 going to just focus on that and get the only
6 person you can. And that's Jim Ferrara,
7 because he's the only guy sitting there.
8 He's the only guy on trial for this.

9 They want you to ignore all these other
10 suspects. They want you to ignore, well, it
11 wasn't done, because after all, I'm just
12 trying to cloud the issues. So they started
13 out -- because remember, they have the burden
14 of proof in this case. They started out and
15 put on Mr. Marsh, Mr. Boyle. They tell you
16 how terrible it was when they came to the
17 scene, found that, those bodies. And it's
18 horrible, and it is. They didn't tell you
19 anything about Mr. Ferrara.

20 So you got a fingerprint on the outside
21 of a door that's supposedly Mr. Ferrara's,
22 and that leads you to believe that he killed
23 these people. And by the way, just for good

DEFENDANT'S CLOSING ARGUMENT

1 measure, got in the car and drove away from
2 the scene.

3 So let's talk about what evidence there
4 is here. They seem to be hanging on the
5 fingerprint and trying to bolster
6 Mr. Finamore and his testimony. Because he's
7 the only one alive. He's the only warm body
8 they could bring here that happened to be at
9 the scene. And he was there to learn, and
10 that's a good thing. I mean, you know, you
11 shouldn't hold that against him. He's there
12 to learn.

13 You know, I guess, you know, my son's
14 10. He's wants to be a doctor. I should
15 probably go home and let him cut me with a
16 steak knife and take my appendix out. Does
17 that make any sense at all?

18 The guy comes to the courtroom and tries
19 to tell you that based on a couple hours'
20 training he knows how to collect evidence,
21 and he can tell you what was done there.
22 Now, I think over the course of the time he
23 was cross examined, I at least hope, it

DEFENDANT'S CLOSING ARGUMENT

1 became painfully obvious that this guy didn't
2 know anything. He basically showed up at the
3 scene, and they said, hey, carry this guy's
4 lights, move the furniture, do what you can.
5 Help him. It was obvious he doesn't know
6 anything about the taking or collection of
7 evidence, or certainly didn't at that time.
8 And that's right, he was on the deputy -- the
9 Sheriff's Department for about a month and a
10 half -- or a year and a half at that time.
11 But it's the all important fingerprints on
12 the outside of the door. They get you to
13 that big leap into the room where these
14 murders happened.

15 Put Dr. Ohr on. Dr. Ohr was more shock
16 value, because, see, they had a -- they had a
17 break with Mr. Finamore. Once again, the
18 quality of that testimony, so they put on Dr.
19 Ohr to further shock you. Then they put on
20 Andy Chappell and Ms. Ladd from BCI to tell
21 you, well, Chappell says, well, they're .38s.
22 They're from a .38 special which is all going
23 to that statement that he supposedly made to

DEFENDANT'S CLOSING ARGUMENT

1 Deputy Fitzpatrick that you heard this
2 morning. So they tell you that you got .38s,
3 and, well, in '74, '75, that's analyzed, and
4 there's six out of six, and they match, and
5 this and that.

6 Well, today then -- or yesterday he
7 testifies and says, well, there's two that
8 match, and there's another two that don't
9 match, and they don't match each other, and
10 the other two I can't tell you anything
11 about. So once again, they got this exact
12 science and evidence to tell you, but
13 inquiring minds, two people, two different
14 times, they got different opinions about.

15 But that's not a big deal. You're not
16 supposed to -- not supposed to worry about it
17 because you got fingerprints. Ms. Ladd
18 testified about the fingerprints and said
19 they're absolutely only one fingerprint per
20 person on earth. Now, fingerprint evidence,
21 yeah, I get it. Okay? But you can't make a
22 statement like that.

23 Then I asked her, well, why is the FBI

DEFENDANT'S CLOSING ARGUMENT

1 still putting together databases and stuff to
2 try and maybe eventually show that? But she
3 can't show that. She don't know that. Same
4 thing with her. Two reports, two different
5 periods of time, and, well, they're different
6 results, but it's subjective. There's a
7 subjective piece to this. So then it's not
8 an exact science. So I don't know what to
9 believe. I got a guy that said something in
10 '74, and I got her saying this in 2013.

11 Now, Mr. Finamore and Ms. Ladd had
12 something in common. While I believe Mr.
13 Finamore certainly more critical -- because
14 Mr. Finamore's there to try to tell you that
15 the evidence they're hanging their whole case
16 on is really what it purports to be,
17 fingerprints that Ms. Ladd then says are Mr.
18 Ferrara's.

19 Well, ladies and gentlemen, the Judge is
20 going to instruct you about your job, and
21 that is to judge the credibility of the
22 witnesses. And by credibility, it doesn't
23 necessarily mean someone's lying. You judge

DEFENDANT'S CLOSING ARGUMENT

1 credibility about the way they testify, how
2 they act. The opportunity they had to hear
3 and see the things and know the things that
4 they're testifying about.

5 So Mr. Finamore got in, hey, I saw that
6 card. I saw him put some initials on it,
7 this and that. Okay. Well, you're with the
8 guy about eight, nine hours by your own
9 testimony. 11:00 at night until 7:30, 8:00
10 in the morning. Where did Bernie Albert
11 live? I don't know. Well, did he work that
12 day? I don't know. Well, did he -- you
13 know, did he come from another crime scene,
14 work all night, all day?

15 See, because we human beings understand,
16 you can't work 24, 36, 48 hours. That's a
17 big deal. You might miss something. You
18 might screw something up. Can't tell you
19 anything about that. And see, unfortunately
20 for us, Mr. Albert's not here. You can't
21 hold that against Mr. Ferrara. Not his fault
22 that it's 39 years later.

23 So I said, well, did you collect any

DEFENDANT'S CLOSING ARGUMENT

1 evidence? No, I didn't collect any. Well,
2 what did he do with it? I don't know. Put
3 it in a briefcase? I don't know. Put it in
4 his car? I don't know. Were there other
5 cases in his car? I don't know. Where did
6 he live? Did he go home? I could go on for
7 hours. The guy didn't know anything. That
8 goes to the quality of his testimony and the
9 credibility of his testimony. Ms. Ladd, the
10 same thing.

11 Ms. Ladd, where was the evidence? I
12 don't know. Well, you went and got it. When
13 did you go get it? I don't know. 2009 I
14 went and got it. Well, where was it in '74?
15 Well, I assume that was in our lab. Well,
16 that was moved, though, 12 years ago. Well,
17 when they moved it, who moved it? I don't
18 know who moved it. Well, I mean, was it in
19 the same spot? I don't know, but I analyzed
20 it.

21 Then you've got Deputy Fitzpatrick who
22 miraculously gets my client to tell him
23 that -- you almost can see it. Picture it.

DEFENDANT'S CLOSING ARGUMENT

1 Picture the lights dimming, and we're in a
2 corner like one of those old movies, and I
3 say, hey, man, .38 special, that's my weapon
4 of choice. I mean, is this ridiculous? And
5 he doesn't report it for a week.

6 **MS. DOHERTY:** Objection.

7 **THE COURT:** Overruled.

8 **MR. MERANTO:** He says it happened on the
9 7th and reports it on the 13th or the 12th;
10 okay? Ladies and gentlemen, you ever see --
11 maybe you all got -- maybe somebody got
12 stopped by a policeman, whatever. You think
13 they write the report about an incident a
14 week later? No. Once again, they got a
15 fingerprint outside the door where inside all
16 these things happen, see, so they're grabbing
17 at whatever they got.

18 Detective Mondora decides, hey, I got
19 some time to kill. Let me look at these cold
20 cases. Can we look at these cold cases?
21 Noble thing, because certainly the family and
22 friends are entitled to see if there's
23 anything that can be done about this. So he

DEFENDANT'S CLOSING ARGUMENT

1 finds out that supposedly -- now, once again,
2 you gotta keep this in mind, gotta always go
3 back to Mr. Finamore and that crime scene
4 that night. But he says BCI got the prints.
5 Run them, boom, hit, match.

6 They kept using those words. And we
7 cleared that up for you because that don't
8 mean anything. They got the prints and ran
9 them through a computer, and the computer
10 spit out a bunch of people and rated them.
11 That's what Ms. Ladd did. She then analyzed
12 them and says they're Mr. Ferrara.

13 But based on that bit of information,
14 they say, well, let's go find out where
15 Mr. Ferrara is, and let's ask him if he'll
16 talk to us. And he talked to him.
17 Mr. Mondora told you, he talked to him a
18 couple days, a couple hours. They said, do
19 you want to waive your right? I don't want
20 to waive my rights. I know my rights. I'll
21 talk to you.

22 Now, we talked about the quality of
23 memory when you're going back 10, 20, 30

DEFENDANT'S CLOSING ARGUMENT

1 years. I asked Detective Mondora as an
2 example, do you know where you were junior
3 year? Do you know where you went, whose
4 house you went to, what you did, what you
5 touched, who you were hanging out with? I
6 mean, think about it for yourselves. Can any
7 one of you tell me that? So he says, I was
8 never there. I don't know where it is. I
9 don't know what it is. Boom.

10 Mr. Mondora told you, he talks to
11 suspects all the time. Some of whom get
12 charged, some of whom don't. And what do
13 they do? I wasn't there. I didn't do it.
14 You'd say the same thing either way. I mean,
15 that is not out of the realm of possibility
16 if you're thinking about being talked to,
17 being asked about something, and you don't
18 know anything about it, you go, I don't know.
19 I wasn't there.

20 But here's something that's a little
21 crazy to me. They got this fingerprint, and
22 they're telling you, that's it. Ladies and
23 gentlemen, we could go home, because we got a

DEFENDANT'S CLOSING ARGUMENT

1 print and we got Mr. Ferrara saying, I was
2 never there. That's pretty much it.
3 That's -- let's go home.

4 Cigarette, DNA, what? That's --
5 that's -- that's not a big deal. That's not
6 a big deal. They want to tell you now,
7 they're trying to argue that we don't really
8 know where that came from. We don't know
9 where it was. I don't know when it was
10 submitted.

11 Then I asked Detective Mondora, right,
12 remember the pile of ashes, smoking, and the
13 theory was whoever did it was sitting there
14 smoking, waiting to leave, and that's where
15 the ashes were and there's a cigarette?
16 Well, I don't know for sure where it was
17 found. Well, if that evidence isn't
18 important at all, why did they send it to
19 BCI? If they don't want you to consider it,
20 why did they send it to BCI to have it
21 analyzed, to check for DNA?

22 You see, because once again, like I
23 said, we got washing machines now. We don't

DEFENDANT'S CLOSING ARGUMENT

1 go down the stream and beat our clothes on
2 rocks to get them clean. We throw them in
3 the washing machine and do it. They want you
4 to ignore DNA.

5 See, because another big leap. See,
6 while Mr. Ferrara physically, and I don't
7 mean -- I mean, while he left into that house
8 there and killed these people, he made sure
9 he didn't bump a wall, touch anything else;
10 okay? This guy that's so stupid, that he put
11 his prints on a door and then went oh, God, I
12 better put my gloves on now because I'm going
13 to kill people. No prints. And the only DNA
14 found at this scene excludes him. Can't be
15 him.

16 Well, there's mixed DNA. Couldn't have
17 been -- I mean, I'm sitting here watching it.
18 I don't believe it. They're trying to say,
19 well, they could add DNA. Someone at the lab
20 could've touched it. Someone -- you sent it
21 down. You must have thought it was
22 important. You wanted to slam dunk
23 Mr. Ferrara and say his DNA's there, too, and

DEFENDANT'S CLOSING ARGUMENT

1 oops, no DNA. Got some prints, though, now,
2 so forget about the DNA because, see, we got
3 the prints, and here's the prints.

4 Outside door. Outside of the door.
5 Don't know when they were made. Everybody
6 told you that. Don't know when they were
7 made. They could've been made, who knows, 10
8 years before.

9 Well, they want you to also ignore any
10 other suspects. Well, let me just -- let me
11 ask you -- I don't want to go back through
12 all the people I talked about. I'm trying to
13 forget about the guy because there was a
14 robbery there six years earlier, at that same
15 house, and they thought maybe those guys did
16 it again. And there's a guy with a coin
17 collection, which is what's stolen in the
18 robbery, that around that time it is -- they
19 find him at General Motors. They ignore that
20 guy. They ignore the people that they got a
21 suspect and says, hey, they came there in
22 what we believe was the car stolen from the
23 Marsh residence, and by the way, he got blood

DEFENDANT'S CLOSING ARGUMENT

1 on my door. No.

2 You know why? They sent some
3 fingerprints down, and the fingerprints --
4 no, don't worry about that.

5 So let's talk about a couple people.
6 Let's talk about Mr. Ferrara and if you
7 believe these are his prints on the back door
8 here. Because that's what they want you to
9 do. They want you to take a Grand Canyon
10 jump from that to he must have murdered them
11 then, murdered these people. Okay.

12 You got a guy -- not a guy, a group of
13 guys, someone steals the investigative file
14 at GM. Steals it. They find out about it.
15 They got an informant that tells them
16 someone's going to steal a file, so they put
17 a dummy file. They find the file. In the
18 file is a name of a dummy witness, and they
19 put a fake name on the register at the
20 Penn-Ohio Motel in North Lima.

21 Lo and behold, three guys go in, and
22 they're approaching the room. They call the
23 room. Then they approach the room. The

DEFENDANT'S CLOSING ARGUMENT

1 deputies surround them and grab him. They're
2 going to get this witness. In the possession
3 of one of those guys, a few days before, once
4 again, another informant that told them, is
5 the file. So they know one of these guys
6 is -- has the file that was stolen from GM.
7 He's with another two guys, and they're at
8 the Penn-Ohio Motel, gonna go into this room.

9 For what, I don't know. To ask the
10 witness if he wants room service? Because
11 they got another guy that says -- another
12 informant told the police the guy with the
13 gun's right down the street because they're
14 gonna go get that witness and kill him.

15 Okay. I'll stop right there. Think
16 there's more evidence that they were involved
17 in this crime than a fingerprint on an
18 outside of a door that no one knows when was
19 made, when it was made and placed there? So
20 okay, I got it. Let's check their
21 fingerprints. Let's exclude them.

22 But see, once again, we're not beating
23 our clothes on the rocks in the stream

DEFENDANT'S CLOSING ARGUMENT

1 anymore. We got DNA. You thought it was
2 important enough to send it down and check
3 and see if we could slam dunk Mr. Ferrara.
4 But now it excludes him, we'll just tell the
5 jury it's not important, and we'll hang our
6 heads and our hats on this fingerprint. So
7 why even bother to check any of these other
8 people, any of this other evidence to see
9 who's involved?

10 If you remember, Mr. Chappell testified
11 with regard to these bullet fragments from a
12 .38 and said there could be three guns that
13 were involved. That's what Mr. Chappell
14 said. Could be three. But no, see, because
15 we got this guy here. Let's just get him
16 instead of maybe trying to get the person who
17 did this. Got this guy.

18 I'm busting my butt, man, doing this
19 investigation. Well, there's 167 suspects,
20 Mr. Mondora. Did you call any of them?
21 Well, no. Did you know how many of them are
22 alive? Well, no. We got our guy. We got
23 our guy. We got our print. We got a print.

DEFENDANT'S CLOSING ARGUMENT

1 Ladies and gentlemen, this is a search
2 for the truth; okay? You promised me when
3 you were selected as jurors that you would
4 not only be fair to Mr. Ferrara, but that you
5 would hold the state to its burden. Its
6 burden of proving not just that there's a
7 fingerprint, that Mr. Ferrara murdered three
8 people. And you promised me that you would
9 make them prove that to you beyond a
10 reasonable doubt.

11 Now, for a period of time, Ms. Doherty,
12 boy, she was bolstering Mr. Finamore. And I
13 felt bad for the guy. I'll be honest with
14 you. I was worried maybe I was bullying him
15 or something. You know what, but it's a
16 search for the truth here. Answer a
17 question. What color's the carpet? Well, I
18 don't know. Could be orange. Could --
19 answer it. Everybody knows it. Answer the
20 question. No.

21 They wanna fight you. They don't want
22 you to find out the truth here, because this
23 is the only truth they want you to believe.

DEFENDANT'S CLOSING ARGUMENT

1 He did it, Ferrara; convict him. That's what
2 you're supposed to do. Got a fingerprint.
3 Got a fingerprint.

4 So ladies and gentlemen, you're at the
5 light at 224 and South Avenue, and you're
6 about to make a left-hand turn, and
7 Mr. Finamore says, go ahead and drive.
8 Drive, man. Traffic's clear. Ain't nobody
9 here. Are you gonna make that turn without
10 looking? I mean, he might hand you his
11 license and say, hey, next time we'll take my
12 747 because I got a driver's license. I can
13 fly a 747. What's the difference? Anybody
14 can do that.

15 Ladies and gentlemen, this is about not
16 only what was done, but what wasn't done.
17 For the state to tell you now after sending
18 the DNA that it's not important after the
19 detectives in '74 took painstaking efforts to
20 talk to people, everybody that was there to
21 make sure they couldn't have been or left
22 that cigarette, and they were comfortable
23 with that. So comfortable that they were

DEFENDANT'S CLOSING ARGUMENT

1 using that print to also exclude people as
2 suspects.

3 See, when the state starts the case,
4 they tell you they're going to go step by
5 step by step, and you take them at their
6 word. And the problem is, they lead you to
7 the edge of a cliff, and they want you to --
8 rather than jump off, they want you to take
9 the only out that they've offered you,
10 Mr. Ferrara. Think about whether you would
11 rely on this evidence to convict somebody for
12 murder as you would rely on it making any
13 important decisions. I -- I could tell you
14 buying a house, having children, where your
15 children go to school, I can't -- I don't
16 know if I'd rely on this kind of evidence to
17 go decide whether I want to have chicken or
18 turkey. Bottom line is, even if you believe
19 there's a fingerprint at the garage door, and
20 that fingerprint, or fingerprints, belonged
21 to Mr. Ferrara, how do you logically say that
22 means he committed the murder?

23 I'm going to tell you one other thing I

DEFENDANT'S CLOSING ARGUMENT

1 want you to look at, too. You're going to
2 get some evidence sent back with you. And
3 there's a bunch of pictures of that car.
4 Because by the way, I didn't hear anybody
5 testify that, certainly, that he saw
6 Mr. Ferrara, and by the way, they saw
7 Mr. Ferrara drive the car away and all that;
8 you know? They got a composite photo, and
9 you're going to see some of that evidence
10 about who this individual was that dropped
11 off the car after the murders, the night of
12 the murders. And they say he's 40, 50 years
13 old. Okay. Well, let's forget that.

14 But ladies and gentlemen, you're going
15 to get a bunch of photos of this car; okay?
16 Take a look at the photos. The car looks
17 like they just had it detailed inside. I
18 mean, I don't know what the deal is. They'll
19 probably tell you, well, yeah, they probably
20 took it and got it -- I mean, you heard about
21 this crime scene. You heard about this
22 blood. You heard about how terrible
23 everything was. And then whoever did it got

DEFENDANT'S CLOSING ARGUMENT

1 in the car, drove away, dumped the car at
2 K-mart.

3 And you look in there, there ain't a
4 speck of blood. There ain't -- there's
5 nothing there to show anybody even drove the
6 car. I mean, it's insane. And it's not like
7 they drove it to -- into the middle of the
8 woods. They drove it to K-mart and got out
9 of the car and walked past Mrs. Informer who
10 you're gonna see back there in evidence.
11 Then they draw a picture and said some 40,
12 50-year-old guy.

13 And they investigated everybody. They
14 excluded people because they didn't look like
15 this person. Excluded some of these 167
16 suspects because they didn't look like this
17 guy.

18 So I guess here's what you got. You got
19 a fingerprint. Got the fingerprint. And
20 they want you to forget anything that you
21 don't have, any investigation that wasn't
22 done, and just serve it -- here, eat what we
23 got. I know you want steak. I know you want

DEFENDANT'S CLOSING ARGUMENT

1 lobster. But you know what, we got
2 hamburger. Eat it. They want you to eat it.
3 They want you to do what they want you to do
4 because this is 40 years old, and these poor
5 people need some closure, and you gotta give
6 it to them.

7 Well, ladies and gentlemen, that's not
8 your job, and the judge is going to tell you
9 that that's not your job. Your job is that
10 search for the truth. Here it is right here.
11 You 12 people are on a search for the truth.
12 You decide what's the truth or not.

13 And I'm telling you you can't -- you may
14 not know who it is, but you know who it
15 isn't. You can't believe that Mr. Ferrara
16 did this based on a fingerprint outside the
17 door. That is a Grand Canyon of a leap, and
18 you wouldn't make it in any decision you make
19 any day of your life.

20 Now, I'm done here because I've rambled
21 around long enough. Ms. Cantalamessa's going
22 to get up here, and she gets to talk to you
23 last because the state has the burden of

DEFENDANT'S CLOSING ARGUMENT

1 proof here. So she's going to say some
2 stuff, and I bet some of it's going to make
3 me want to jump up and respond, but I can't
4 because the judge will throw me out in the
5 cold weather, and I don't want to have that
6 happen.

7 So you people promised me you'd give me
8 a fair shake, and you believed all those
9 things we talked about beyond a reasonable
10 doubt, and the state's burden of proof. So
11 you're going to have to remember that when
12 you get back there. You're going to have to
13 think about whatever she brings up now and
14 the points that I would make. Say, well,
15 Meranto probably would've said this, and
16 Meranto probably would've said that. I know
17 I can't make you do that, but I'm asking you
18 to.

19 The last thing I want to tell you before
20 I leave you is I did probably get a little
21 testy with some of the witnesses here. And
22 you know what, my philosophy is I'll be nice
23 until it's time not to be nice. I'm

STATE'S FINAL CLOSING ARGUMENT

1 searching for the truth here, and if I want
2 to ask you a simple question, and you don't
3 want to give me a simple answer, then it's
4 going to get ugly, and I apologize for that.
5 You know what, I won't apologize for it. I
6 just hope I didn't offend anybody, because I
7 did my job, under the circumstances, with
8 these people that did not.

9 For some reason they want to hide the
10 truth from you. They don't want you to hear
11 what went on. All I'm asking is that you
12 don't hold it against Mr. Ferrara because he
13 ain't got no control over me.

14 So I thank you for your time and your
15 attention, and please don't fall into the
16 trap of taking what they give you. They
17 didn't give you enough, and that means not
18 guilty, ladies and gentlemen. Thank you.

19 **THE COURT:** Thank you, Mr. Meranto.
20 Ms. Cantalamessa.

21 **MS. CANTALAMESSA:** Thank you, Your
22 Honor. Mr. Meranto keeps asking who's hiding
23 the truth. He's telling us we're hiding the

STATE'S FINAL CLOSING ARGUMENT

1 truth, our witnesses are hiding the truth.
2 We're the only ones presenting people from
3 that time, from who are at the scene who
4 could tell you with first-hand knowledge what
5 that scene was like, with first-hand
6 knowledge where those prints were taken from,
7 with first-hand knowledge of where those
8 projectiles are. We're the only ones
9 presenting that.

10 He wanted to tell you that we haven't
11 proven the why. The judge is going to read
12 you the instruction. I've already told you,
13 proof of motive is not required. We don't
14 know why anyone would do this. No one could
15 know why someone would break into someone's
16 house and murder three people. We don't know
17 why.

18 He wants to tell you that we didn't
19 prove how that person did it. We sure did.
20 We showed you through testimony, through
21 evidence, that Deputy Finamore when he gets
22 there, there's one set of tracks in the snow
23 around that garage. That window to that

STATE'S FINAL CLOSING ARGUMENT

1 garage door is broken open. One set of
2 footprints around the back of that house to
3 that garage door with the window. This
4 garage door that's open to the elements; this
5 garage door that gets rained on, snowed on,
6 wind hitting it.

7 They find fingerprints. Not just one
8 fingerprint. Not just one finger. They find
9 three. Three, all in a line, from
10 Mr. Ferrara. Right above that door knob
11 after he breaks the window, reaches in,
12 unlocked the door, pushes that door open to
13 get through. And by that time he gets into
14 the house, into that -- into the separation
15 between the garage and the family room,
16 kicked that door open.

17 And they lift that shoe print, and they
18 find a matching shoe print in the bedroom.
19 Shoe prints aren't unique, though.
20 Fingerprints are unique. Three fingerprints.

21 We've shown you the who. We've shown
22 you that it's James Ferrara. We've shown you
23 that, yeah, they went through a lot of

STATE'S FINAL CLOSING ARGUMENT

1 suspects. They didn't have any leads back
2 then.

3 So what did they look at? Bad guys; 167
4 of them. They looked at bad guys who didn't
5 even have fingers until they found out
6 they've been amputated. They looked at bad
7 guys whose names came up and didn't know if
8 they were dead at the time, that were in jail
9 at the time, that were in the hospital at the
10 time. They eliminated 167 people. Not just
11 that year. They kept going for the next
12 several years. They kept submitting more
13 fingerprints.

14 But there's only one guy whose
15 fingerprints were there. James Ferrara. And
16 his fingerprints just weren't on a card by
17 themselves like they were slipped into that
18 file. They were on the same card that
19 contained fingerprints of the victims from
20 the other doors. Because Deputy Finamore
21 testified, they dusted a lot of that house.
22 What they lifted is places that they could
23 see the fingerprints pop up.

STATE'S FINAL CLOSING ARGUMENT

1 Robin Ladd even told you, the worst that
2 could happen is that someone lifts a print,
3 it gets smudged, and she can't even use it.
4 But what she found when she looked at those
5 prints, those prints that have been locked up
6 since 1974, at BCI, she found sufficient
7 ridge detail. She found what she thought was
8 more ridge detail than the last guy who did
9 it back in the '70s.

10 So she started looking at it, and now
11 that they have AFIS, she put it in. She put
12 it into the AFIS. And they don't punch in
13 numbers, so it's subjective. It's not what
14 she thinks the fingerprint looks like. It
15 looks like a crown. It looks like a ridge.
16 No. They put it in the computer. It scans
17 it, and it pops out a hit. A hit on James
18 Ferrara.

19 She doesn't then run to the phone and
20 say, hey, it's James Ferrara. No. She has
21 to pull his card and pull that fingerprint
22 again and do a manual comparison. And she
23 doesn't say, okay, now it's James Ferrara.

STATE'S FINAL CLOSING ARGUMENT

1 She tells Detective Mondora, go get James
2 Ferrara's fingerprints. I need to confirm.
3 I need to make sure that AFIS had the right
4 card even.

5 And so he does that, and she does it
6 again. She manually looks at it, and it is
7 him. It's that left hand, that little
8 finger, ring finger, middle finger.

9 I don't see what the defense's argument
10 is that Deputy Finamore doesn't have any
11 experience. He's been trained. But Deputy
12 Finamore's not even the one lifting the
13 prints. He's watching Bernie Albert lift the
14 print. He's watching Bernie Albert put it on
15 that card. He's watching Bernie Albert mark
16 it. And he's there to learn, to experience
17 what it's like.

18 Mr. Meranto wants you to believe that we
19 put Dr. Ohr on for shock value. We have to
20 prove that three people are dead. We have to
21 prove that those people didn't die naturally.
22 We have to prove that their deaths were
23 caused from gunshots, from hemorrhages to

STATE'S FINAL CLOSING ARGUMENT

1 their head by the beating they took through
2 the skull, like Heather, like Ben. We have
3 to prove that to you.

4 Mr. Meranto wants you to believe that
5 Andrew Chappell said it could be three guns.
6 Now, there's only one set of footprints.
7 There's only one set of fingerprints. And
8 back in 1975 when they had all six bullets,
9 brand-new, brand-new from the scene, they all
10 matched the same weapon.

11 Because that person's dead, we have to
12 have them reanalyzed. And the lead's been
13 knocking around. They talked about the lead
14 being soft. And all he could say -- he's
15 honest. We want to represent that to you.
16 Only two he can say matched now that are
17 consistent from the same weapon. But the
18 other two, they're not from a .45 and a .40.
19 He can say that they're from .38s as well.
20 He can still say that.

21 Mr. Meranto wants you to not focus on
22 the prints but focus on the cigarette. We
23 couldn't get that cigarette into evidence.

STATE'S FINAL CLOSING ARGUMENT

1 We didn't have anyone who saw that cigarette
2 on the scene. We didn't have anyone known to
3 collect it. I don't have anyone with a
4 collection tag, where it was found in the
5 house, where are the ashes. Those ashes
6 aren't from that cigarette. It was lit on
7 the wrong end. I don't know where that
8 cigarette's found.

9 And guess what, back in the '70s,
10 they're touching everything, picking up
11 bloody clothes. So they run that risk,
12 because that cigarette was a big deal in the
13 '70s, they run that risk, and they have it
14 tested. And yeah, it's not James Ferrara.
15 We don't know who it is. It could be anybody
16 at the scene. It could be anybody at their
17 party they had from two nights before. And
18 we still don't know where it's from. It
19 wasn't even submitted until February of 1975.

20 When Detective Mondora submits that
21 cigarette -- it's always been the belief that
22 this house is way too remote for this
23 defendant to have just walked there, for

STATE'S FINAL CLOSING ARGUMENT

1 James Ferrara to have walked to Canfield to
2 this house. It's out in the middle of
3 nowhere at the time. Someone would've had to
4 drop him off. They've always been looking
5 for some kind of association. There's still
6 no match. There's still only one set of
7 footprints. There's still only one set of
8 fingerprints. And there's still three dead
9 bodies.

10 This is the same evidence you would use
11 in any type of case, any type of criminal
12 case. The same standard of proof beyond a
13 reasonable doubt.

14 These three fingerprints are found on
15 that back door. The door's kicked into the
16 house, and there's three dead bodies. Six
17 shots fired. Four into Ben, including the
18 one found on the floor of the bedroom, one
19 into the ceiling. One into Marilyn. And
20 then Heather is beaten.

21 It's a revolver. It's a .38 special
22 revolver; one of the ones that are on that
23 list that Andy proposes that could be a match

STATE'S FINAL CLOSING ARGUMENT

1 to one of these gun markings, the markings on
2 the bullets.

3 If it's not his prints, I already told
4 you, the defendant enjoys the same rights we
5 all do. The defendant has the right to
6 subpoena witnesses. He brought in Brenda
7 Gerardi. Fine with us. We can't put the
8 cigarette in. He could've brought in a
9 fingerprint expert as well.

10 But he knows those are his prints. He
11 knows there's no other prints on that door,
12 no other fresh prints from when that door was
13 broken open, that point of entry into the
14 house where three people are murdered.

15 If this is the search for the truth, you
16 need to use your reason and common sense.
17 Use that reasoning. He's the only one that
18 didn't belong. Mr. Ferrara didn't know
19 Mr. Marsh. Mr. Boyle testified he even -- he
20 was Mr. Marsh's best friend. Over at the
21 house all the time. They're over at his
22 house all the time. He didn't know
23 Mr. Ferrara. So Ferrara was not known to

STATE'S FINAL CLOSING ARGUMENT

1 Mr. Marsh. Not a friend. Not someone who
2 would be at the house. Not someone who would
3 leave his fingerprints.

4 You have to make your decision based on
5 only the evidence presented, not rumor, not
6 theories, not conjecture, and certainly our
7 statements aren't evidence. But the defense
8 attorney's statements aren't evidence either.
9 They're just argument.

10 You have that same evidence they had in
11 the 1970s. It's as if we took a time machine
12 and we've traveled back, but now we have the
13 benefit of knowing who did this. We have the
14 benefit of having that technology that we
15 could put those prints into AFIS, and we
16 could get that hit, and we can compare it to
17 Mr. Ferrara and find out that it was him.

18 We don't know why, but we don't have to
19 prove that. We can prove he trespassed in
20 that house. He went in with a weapon, being
21 a gun, a .38, a revolver, and he killed three
22 people. And he left Christopher there, a
23 one-year-old. And Christopher had to sit

1 there with his parents, with his sister,
2 nobody around, for over 24 hours before
3 someone discovered their bodies.

4 James Ferrara was brutal. He didn't let
5 up, and he didn't leave any witnesses. But
6 he did leave something for us. He left a
7 signature, his unique fingerprints on that
8 back door. And that back door isn't by
9 coincidence. That's the point of entry.
10 It's not like we found his fingerprints on
11 some window that wasn't broken. We found his
12 fingerprints on the point of entry. And
13 don't think it's a coincidence that
14 Mr. Ferrara worked for GM at the same time
15 Mr. Marsh did.

16 Please look at the evidence,
17 collectively remember everyone's testimony.
18 Think about it with logic, with your common
19 sense. Talk about what's reasonable. And
20 I'm sure you will find the defendant guilty
21 for all three aggravated murders in this
22 case. Thank you.

23 **THE COURT:** Thank you, Ms. Cantalamessa.

INSTRUCTIONS OF LAW

1 Okay, folks. The next thing is the
2 instructions of law. And we're going to take
3 about a 10-minute recess before I give you
4 all of the instructions so that all these
5 things can be moved out of the way and the
6 exhibits can be gathered and properly
7 assembled for submission to you. So during
8 your absence from the court, please do not
9 discuss the case at all among yourselves or
10 with anyone else. Please do not allow anyone
11 to discuss the case with you or in your
12 presence. You should not form or express any
13 opinion about the case. We'll be in recess
14 for 10 minutes.

15 **(WHEREUPON, a brief recess was had,**
16 **after which the proceedings continued as**
17 **follows:)**

18 **THE COURT:** Those of you in the rear of
19 the courtroom are welcome to stay, but the
20 court will lock the door during instructions
21 so there's no interruption with people moving
22 in and out. The instructions should be a
23 half an hour to forty minutes. So you're

INSTRUCTIONS OF LAW

1 welcome to stay if you wish. Is the door
2 locked? All right. Please give me your
3 close attention. This is the law that will
4 govern you during the course of your
5 deliberations.

6 Members of the jury, you've heard the
7 evidence and the arguments of counsel. The
8 court and the jury have separate functions.
9 You are to decide the disputed facts, and the
10 court provides you with the instructions of
11 law. It is your sworn duty to accept the law
12 as it is given to you. You are not permitted
13 to change the law, nor to apply your own
14 conception of what you think the law is or
15 what you think the law should be. So you
16 must follow these instructions.

17 As you know, a criminal case in the
18 Court of Common Pleas begins with the filing
19 of an indictment. The indictment, a piece of
20 paper, was delivered to the defendant to
21 inform him that he was charged with these
22 crimes. The defendant entered a plea of not
23 guilty to those charges, and that's why

INSTRUCTIONS OF LAW

1 you're here, to decide whether or not the
2 state can meet its burden of proof. You are
3 not to consider the fact that an indictment
4 was filed for any other purpose.

5 The plea of not guilty entered by the
6 defendant is a denial of the charges and puts
7 into issue every essential element of each of
8 the charges.

9 As you know, the defendant is presumed
10 to be innocent unless or until his guilt is
11 established by proof beyond a reasonable
12 doubt. In other words, the defendant must be
13 found not guilty unless the state produces
14 evidence which convinces you beyond a
15 reasonable doubt of every essential element
16 of the offense or offenses charged in the
17 indictment.

18 Reasonable doubt is present when, after
19 you have carefully considered and compared
20 all of the evidence, you cannot say you are
21 firmly convinced of the truth of the charge.
22 Reasonable doubt is a doubt based on reason
23 and common sense. Reasonable doubt is not

INSTRUCTIONS OF LAW

1 mere possible doubt, because everything
2 relating to human affairs or depending upon
3 moral evidence is open to some possible or
4 imaginary doubt. Proof beyond a reasonable
5 doubt is proof of such character that an
6 ordinary person would be willing to rely and
7 act upon it in the most important of his or
8 her own affairs.

9 The case must be decided based upon the
10 evidence that was or was not presented.
11 Evidence is all of the testimony received
12 from the witnesses, and it will include
13 exhibits that you'll have with you in the
14 jury room.

15 You may consider both direct and
16 circumstantial evidence in determining
17 whether or not the state has met its burden
18 of proof. You must decide then from all of
19 the direct and circumstantial evidence taken
20 together whether or not the state has proven
21 all of the elements of the charges herein
22 beyond any reasonable doubt.

23 Direct evidence is the testimony of a

INSTRUCTIONS OF LAW

1 witness who has seen or heard or smelled or
2 felt or somehow perceived the things
3 concerning which he or she testifies. It
4 includes the exhibits you'll have with you in
5 the jury room.

6 Circumstantial evidence is different.
7 Circumstantial evidence is the proof of facts
8 or circumstances by direct evidence from
9 which you may then reasonably infer other
10 related or connected facts which naturally
11 and logically follow, according to the common
12 experience of mankind.

13 You'll remember during voir dire I gave
14 an example of that, and so did the lawyers
15 give examples of what circumstantial evidence
16 is.

17 To infer, or to make an inference, is to
18 reach a reasonable conclusion of fact which
19 you may but are not required to make from
20 other facts that were established by direct
21 evidence. So you may infer a fact or reach a
22 conclusion only from other facts that have
23 been proven by the greater weight of the

INSTRUCTIONS OF LAW

1 evidence. However, whether or not an
2 inference is made rests entirely with you.
3 You don't have to make any inference if you
4 choose not to.

5 The evidence does not include any
6 statements of counsel, nor does it include
7 the indictment in the case as I indicated
8 before. So the opening and closing
9 statements of counsel are not evidence.

10 The evidence does not include any
11 statements that were stricken by the court or
12 that you were instructed to disregard. You
13 must not speculate as to why an objection was
14 sustained to any question or what the answer
15 to that question might have been because the
16 court sustained an objection to that
17 particular question.

18 Furthermore, you're not to consider as
19 evidence anything that was asked in a
20 question asked by one of the lawyers that was
21 then objected to and I sustained it. The
22 lawyers asking a question is not evidence.
23 It's what the witnesses have to say that

INSTRUCTIONS OF LAW

1 provides evidence.

2 So as I am the judge of the law, you,
3 ladies and gentlemen, are the judges of the
4 facts of this case, and the credibility or
5 believability of the witnesses, and what
6 weight or value you should give to the
7 evidence before you.

8 To weigh the evidence you should
9 determine -- to determine the greater weight
10 of the evidence you should consider the
11 credibility or the believability of the
12 witnesses, and you should use the tests of
13 truthfulness that you use in your daily
14 lives.

15 As I indicated to you before, witnesses
16 can be telling you the truth, or they can be
17 lying to you, or they can be mistaken about
18 what they have to say. Those are the types
19 of things that you have to determine.

20 These tests include the actual
21 appearance of that witness upon the witness
22 stand; the way that they acted; their manner
23 of testifying; the reasonableness of their

INSTRUCTIONS OF LAW

1 testimony; the opportunity the witness had to
2 see and hear and know the things concerning
3 which he or she testifies; the witness'
4 accuracy of memory; frankness or lack of it;
5 intelligence; interest in the outcome of this
6 case, and bias, if any; together with all the
7 facts and circumstances surrounding the
8 testimony. Using these tests and any tests
9 you use to determine whether or not someone
10 is worthy of belief, you should assign to the
11 testimony of each witness such weight or
12 value as you deem proper.

13 You are not required to believe the
14 testimony of any witness simply because he or
15 she came in here and swore an oath to tell
16 the truth. You may believe all or part or
17 none of the testimony of any witness. It is
18 entirely within your province to determine
19 what testimony is worthy of belief and what
20 testimony is not worthy of belief.

21 As you were previously instructed, the
22 law of this country provides that it is not
23 necessary that the defendant take the witness

INSTRUCTIONS OF LAW

1 stand in his own defense. He has a
2 constitutional right not to testify. The
3 fact that he chose not to testify may not be
4 considered by you for any purpose whatsoever.

5 Generally a witness is not permitted to
6 express an opinion. However, someone who
7 follows a particular profession or a special
8 line of work or who does something that the
9 rest of us don't do, may express an opinion
10 on that subject because of that person's
11 education, knowledge, and experience. Such
12 testimony was admitted for whatever
13 assistance it may provide to help you arrive
14 at a just verdict.

15 That's the instruction regarding what's
16 called expert testimony. I always like to
17 tell juries that I'm an expert, because I
18 used to be a Roto-Rooter man. I went to
19 college at Youngstown State at night. I went
20 to work seven days a week for Roto-Rooter
21 cleaning people's sewers. So if I was called
22 as a witness to talk about that I would be an
23 expert because I know more about that than I

INSTRUCTIONS OF LAW

1 really like to know, but I sure know a lot
2 more about that than most of the rest of you
3 know. So an expert is someone who knows
4 something about -- something more about a
5 particular subject than the rest of us do.

6 In evaluating that, as with other
7 witnesses, upon you alone rests the duty of
8 deciding what weight should be given to the
9 testimony of an expert, someone who was given
10 the opportunity to express an opinion.

11 In determining its weight, you should
12 take into consideration that person's skill,
13 experience, knowledge, veracity, familiarity
14 with all of the facts of this case, and the
15 usual rules for testing credibility and
16 determining the weight to be given to the
17 testimony.

18 A number of exhibits and the testimony
19 relating to them have been introduced. You
20 may consider whether the exhibits are the
21 same objects and in the same condition as
22 originally taken by the deputies and/or lab
23 agents. You will determine what weight, if

INSTRUCTIONS OF LAW

1 any, the exhibits should receive in light of
2 all of the evidence.

3 So in this case the defendant has been
4 charged with three particular criminal
5 offenses. They are all called aggravated
6 murder.

7 And in Count One, aggravated murder
8 relates to the death of Benjamin Marsh. In
9 Count Two, aggravated murder relates to the
10 death of Marilyn Marsh. And in Count Three,
11 aggravated murder relates to the death of
12 Heather Marsh. So I'm not going to read the
13 definition of aggravated murder three times.
14 I'm going to read it once, but it applies to
15 each of those three counts concurrently and
16 respectively to those victims that I have
17 named.

18 So in Counts One, Two, and Three, the
19 defendant is charged with a crime called
20 aggravated murder. In each of these separate
21 counts, you must determine them separately
22 and independently from one another. Before
23 you can find the defendant guilty, you must

INSTRUCTIONS OF LAW

1 find beyond any reasonable doubt that on or
2 about the 14th day of December, in 1974, in
3 Mahoning County, Ohio, this defendant, James
4 P. Ferrara, did purposely cause the death of
5 another -- again, in Count One, Benjamin
6 Marsh; Count Two, Marilyn Marsh; Count Three,
7 Heather Marsh -- while he was committing or
8 attempting to commit, or in fleeing
9 immediately after committing or attempting to
10 commit the offenses of aggravated robbery
11 and/or aggravated burglary.

12 The state must prove beyond a reasonable
13 doubt that this defendant acted purposely.
14 Purpose is an essential element of the crime
15 of aggravated murder.

16 A person acts purposely when it is his
17 specific intention to cause a certain result.
18 So it must be established in this case that
19 at the time in question there was present in
20 the mind of this defendant a specific
21 intention to cause the death of another human
22 being. In Count One, Benjamin. In Count
23 Two, Marilyn. In Count Three, Heather.

INSTRUCTIONS OF LAW

1 Purpose is a decision of the mind to do
2 an act with a conscious objective of
3 producing a specific result. To do an act
4 purposely is to do it intentionally and not
5 accidentally. So purpose and intent mean the
6 same thing.

7 The purpose with which a person does an
8 act is known only to himself, unless he
9 expresses it to others by telling them what
10 he's going to do, or he indicates it by his
11 conduct. The purpose with which a person
12 does an act can be determined from the manner
13 in which it is done, the means and/or the
14 weapon used, and all the other facts and
15 circumstances in evidence.

16 The court instructs you that if a wound
17 is inflicted upon a person with a deadly
18 weapon in a manner calculated to destroy
19 life, the purpose to cause the death may be,
20 but is not required to be, inferred from the
21 use of the weapon. The inference, if made,
22 is not conclusive.

23 Proof of motive is not required. The

INSTRUCTIONS OF LAW

1 presence or absence of motive is one of the
2 circumstances bearing upon the issue of
3 purpose.

4 The state must also prove beyond a
5 reasonable doubt that the acts of the
6 defendant was a cause of the death of each of
7 those three persons individually and/or
8 collectively. So cause is an essential
9 element of the offense of aggravated murder.

10 Cause is an act which directly produces
11 the death of another, and without which it
12 would not have occurred.

13 The state charges that these aggravated
14 murders occurred while the defendant was
15 committing or attempting to commit, or while
16 fleeing immediately after committing or
17 attempting to commit aggravated burglary
18 and/or aggravated robbery. And that means
19 that the death must occur as a part of the
20 acts leading up to or occurring during, or
21 immediately after the commission of
22 aggravated burglary and/or aggravated
23 robbery, and that the death was directly

INSTRUCTIONS OF LAW

1 associated with the commission of one or both
2 of those crimes, or the flight immediately
3 after committing one or both of those crimes.

4 So the state says this occurred while
5 committing or attempting to commit aggravated
6 robbery or aggravated burglary. And again,
7 by proof beyond a reasonable doubt, the state
8 would have to establish that an attempt was
9 made if the actual crime was not committed.

10 And an attempt occurs when a person
11 purposely engages in conduct that, if
12 successful, would result in the commission of
13 the offense of aggravated murder.

14 So again, the elements that the state
15 has to prove in each of the three counts is
16 that on or about -- and it's proof beyond a
17 reasonable doubt. I'm required to legally
18 say that. It's that important. And
19 sometimes I'll just say to prove it, but to
20 prove it means to prove it beyond a
21 reasonable doubt, each and every time that I
22 say that.

23 So the state does have to prove beyond a

INSTRUCTIONS OF LAW

1 reasonable doubt in each of those three
2 counts, that on or about December 14th, 1974,
3 in Mahoning County, Ohio, this defendant,
4 James P. Ferrara, did purposely cause the
5 death of another while committing or
6 attempting to commit, or while fleeing
7 immediately after committing or attempting to
8 commit aggravated robbery and/or aggravated
9 burglary.

10 So because of the way these charges are
11 brought, aggravated burglary is an essential
12 element of the crime of aggravated murder.
13 So the state must prove aggravated burglary
14 beyond a reasonable doubt.

15 That is, that the defendant, with
16 purpose to commit a theft offense, or any
17 felony, trespassed by force, stealth, or
18 deception, in an occupied structure when
19 another person, other than an accomplice of
20 the defendant, was present in that structure,
21 and the defendant inflicted or attempted to
22 inflict physical harm on that person, and
23 that he had a deadly weapon on or about his

INSTRUCTIONS OF LAW

1 person or under his control.

2 Purpose has already been defined for
3 you.

4 And so the state must prove beyond a
5 reasonable doubt that the defendant had a
6 purpose to commit a theft offense or any
7 felony in the home of the Marshes.

8 The state must also prove a criminal
9 trespass, and that's proved beyond any
10 reasonable doubt, that the defendant, without
11 privilege to do so, knowingly entered or
12 remained on the land or premises of the Marsh
13 family.

14 Privilege is an immunity, license, or
15 right conferred by law or bestowed or
16 expressed by implied grant, or arising out of
17 status, position, office, or relationship, or
18 growing out of necessity. Without privilege
19 is, like, without permission.

20 The state must prove beyond a reasonable
21 doubt that the defendant knowingly trespassed
22 on the land or premises of another, and so
23 they must prove that the defendant acted

INSTRUCTIONS OF LAW

1 knowingly, regardless of his purpose, and
2 that he was aware that his conduct would
3 probably cause a certain result.

4 Since you cannot look into the mind of
5 another, knowledge is determined from all of
6 the facts and circumstances in evidence. And
7 you will determine from these facts and
8 circumstances whether there existed at the
9 time in the mind of the defendant an
10 awareness of the probability that he was
11 trespassing in an occupied structure of
12 another.

13 That trespass would have to be by force,
14 stealth, or deception.

15 Force means any violence, compulsion,
16 effort or constraint exerted or used by any
17 means upon or against a person or thing to
18 gain entrance.

19 Stealth means any secret or sly act to
20 avoid discovery and to gain entrance into or
21 to remain within a structure of another
22 without permission.

23 I didn't make these up. These are

INSTRUCTIONS OF LAW

1 statutory definitions, and they're really not
2 how the rest of us talk.

3 Deception means knowingly deceiving
4 another or causing another to be deceived by
5 any false or misleading representation by
6 withholding information, by preventing
7 another from acquiring information, or by any
8 other conduct, act or omission that creates,
9 confirms, or perpetuates a false impression
10 in another, including a false impression as
11 to law, value, state of mind, or other
12 objective or subjective fact. So force,
13 stealth, or deception.

14 In an occupied structure. That means
15 any house, building, outbuilding, watercraft,
16 aircraft, railroad car, truck, trailer, tent,
17 or other structure, vehicle, or shelter, or
18 any portion thereof which at the time is
19 occupied as the permanent or temporary
20 habitation of any person, whether or not any
21 person is actually present.

22 They must also prove that there was
23 physical harm to persons caused, prove that

INSTRUCTIONS OF LAW

1 beyond a reasonable doubt, that the defendant
2 inflicted or attempted to inflict physical
3 harm to another. And that means any injury,
4 any illness, or any physiological impairment,
5 regardless of its gravity or duration.

6 The state must also prove in order to
7 establish this element of aggravated murder
8 that the defendant had a deadly weapon on or
9 about his person or under his control.

10 A deadly weapon is any instrument,
11 device, or thing, capable of inflicting
12 death, and designed or specially adapted for
13 use as a weapon, or possessed, carried or
14 used as a weapon in this case.

15 A deadly weapon then is any instrument,
16 device, or thing that has two
17 characteristics. The first characteristic is
18 that it is capable of inflicting or causing
19 death. The second characteristic is in the
20 alternative; either the instrument, device,
21 or thing was designed or specially adapted
22 for use as a weapon, or it was possessed,
23 carried, or used as a weapon in this case.

INSTRUCTIONS OF LAW

1 These are questions of fact for you to
2 determine.

3 They must also prove that there was a
4 specific intention, a purpose, to commit a
5 theft offense or any felony. A theft offense
6 is when any person, with purpose to deprive
7 the owner of property or services, knowingly
8 obtains or exerts control over the property
9 or services without the consent of the owner
10 or any person authorized to give consent. So
11 they must prove that it was his intention to
12 commit a theft offense or any felony.

13 This is how strange the law can be. I
14 looked up the definition of felony. A felony
15 is a serious crime, a crime for which someone
16 can be incarcerated in a penitentiary.
17 That's my definition. But the legal
18 definition that our legislatures have written
19 and the Supreme Court has approved is; felony
20 means an offense defined by law as a felony.
21 So go by the definition I gave you.

22 So as one of the elements of aggravated
23 murder, the state must prove beyond a

INSTRUCTIONS OF LAW

1 reasonable doubt an aggravated burglary,
2 which I've just defined for you, and I'll
3 summarize again.

4 The state must prove this element beyond
5 a reasonable doubt, that on or about
6 December 14th, 1974, in Mahoning County,
7 Ohio, this defendant, by force, stealth, or
8 deception, trespassed in an occupied
9 structure with purpose to commit therein any
10 theft offense, or any felony, and that he
11 inflicted or attempted to inflict physical
12 harm on another, and that he had a deadly
13 weapon on or about his person or under his
14 control.

15 In the charge of aggravated murder, in
16 each of those three counts, the state has
17 also charged the commission of an aggravated
18 robbery. So the state must prove as an
19 element of aggravated murder the offense of
20 aggravated robbery.

21 And that is that on or about
22 December 14th, 1974, in Mahoning County,
23 Ohio, the defendant, while committing or

INSTRUCTIONS OF LAW

1 attempting to commit, or in fleeing
2 immediately after committing or attempting to
3 commit a theft offense, had a deadly weapon;
4 to wit, a firearm, on or about his person or
5 under his control, and that he displayed,
6 brandished, indicated that he possessed, or
7 used the weapon, and that he inflicted or
8 attempted to inflict serious physical harm on
9 another.

10 And again, respectively, Benjamin,
11 Marilyn, and Heather Marsh.

12 A criminal attempt occurs when a person
13 purposely engages in conduct that, if
14 successful, would result in the commission of
15 a particular crime. In this case, a theft
16 offense in the aggravated robbery element.
17 So before you can find that the defendant was
18 committing or attempting to commit a theft
19 offense, you must find beyond a reasonable
20 doubt that the defendant, with purpose to
21 deprive the owner of property or services,
22 knowingly obtained or exerted control over
23 the property or services of another without

INSTRUCTIONS OF LAW

1 the consent of the owner or a person
2 authorized to give consent.

3 The act of having the deadly weapon on
4 or about his person or under his control and
5 displaying, brandishing, indicating
6 possession of it, and inflicting or
7 attempting to inflict serious physical harm
8 must occur during or immediately after the
9 theft offense.

10 The state must prove beyond a reasonable
11 doubt, again, that the defendant had a deadly
12 weapon on or about his person or under his
13 control. Again, that is any instrument,
14 device, or thing capable of inflicting death,
15 and designed or specially adapted for use as
16 a weapon, or possessed, carried, or used as a
17 weapon in this case.

18 To brandish means to wave or exhibit in
19 a menacing or challenging way.

20 The state must also prove that the
21 defendant inflicted or attempted to inflict
22 serious physical harm upon another.

23 Serious physical harm means any mental

INSTRUCTIONS OF LAW

1 illness or condition of such gravity as would
2 normally require hospitalization or prolonged
3 psychiatric treatment, or any physical harm
4 that carries a substantial risk of death, or
5 any physical harm that involves some
6 permanent incapacity, whether partial or
7 total, or that involves some temporary,
8 substantial incapacity, or any physical harm
9 that involves some permanent disfigurement,
10 or that involves some temporary serious
11 disfigurement, or any physical harm that
12 involves acute pain of such duration as to
13 result in substantial suffering, or that
14 involves any degree of prolonged or
15 intractable pain.

16 The state must also prove beyond a
17 reasonable doubt that the deadly weapon
18 employed by the defendant was a firearm.

19 A firearm is any deadly weapon capable
20 of expelling or propelling one or more
21 projectiles by the action of an explosive or
22 combustible propellant. Firearm includes an
23 unloaded firearm, and any firearm which is

INSTRUCTIONS OF LAW

1 inoperable, but which can be readily rendered
2 operable.

3 When deciding whether the firearm is
4 capable of expelling or propelling one or
5 more projectiles by the action of an
6 explosive or combustible propellant, you may
7 rely on circumstantial evidence, including
8 but not limited to the actions of the
9 individual exercising control over the
10 firearm.

11 So in this element the state must prove,
12 as the element of the aggravated murder, the
13 state must prove beyond a reasonable doubt
14 that this defendant, in committing -- in
15 attempting or committing a theft offense, or
16 in fleeing immediately after such attempt or
17 offense, did have a deadly weapon; to wit, a
18 firearm, on or about his person or under his
19 control, and did display it, brandish,
20 indicate that he possessed, or used said
21 firearm, to inflict or attempt to inflict
22 serious physical harm on another.

23 So those are the definitions applicable

INSTRUCTIONS OF LAW

1 to the charges in Counts One, Two, and Three,
2 aggravated murder, while in the commission of
3 aggravated burglary and/or aggravated
4 robbery.

5 If you find that the state proved beyond
6 a reasonable doubt all of the essential
7 elements of any one or more of the offenses
8 charged in separate counts of the indictment,
9 your verdict must be guilty as to such
10 offense or offenses, according to your
11 findings.

12 If you find that the state failed to
13 prove any one -- failed to prove beyond a
14 reasonable doubt any one of the essential
15 elements of any one or more of the offenses
16 charged in the separate counts of the
17 indictment, your verdict must be not guilty
18 as to such offense or offenses according to
19 your findings.

20 The charges set forth in each count in
21 the indictment constitute separate and
22 distinct matters. You must consider each
23 count and the evidence applicable to each

INSTRUCTIONS OF LAW

1 count separately, and you must state your
2 finding as to each count, uninfluenced by
3 your verdict as to any other count.

4 The defendant may be found guilty of or
5 not guilty of any one or more of the
6 offenses.

7 So the court has instructed you on all
8 the law necessary for your deliberations.
9 I'll now instruct you on how to conduct your
10 deliberations and prepare your verdict forms.

11 You must not be influenced by any
12 consideration of sympathy or prejudice. It
13 is your duty to carefully weigh the evidence,
14 to decide the disputed questions of fact, to
15 apply the instructions of law to your
16 findings and to render your verdict
17 accordingly. Your duty as jurors is to
18 arrive at a fair and just verdict. So you
19 must consider all of the evidence and make
20 your findings with intelligence, and
21 impartiality, and without any bias or
22 sympathy or prejudice, so that the State of
23 Ohio and this defendant will feel that their

INSTRUCTIONS OF LAW

1 case was fairly and impartially tried.

2 If during the course of this trial this
3 court said or did anything that you feel is
4 an indication of how I think the case should
5 be decided, you're instructed to disregard
6 that. This case is being tried to you.
7 That's your decision, not mine.

8 If you don't remember a portion of these
9 instructions, I'll repeat them for you.
10 Anytime that you communicate with us once
11 you're locked in the jury room is by ringing
12 the buzzer in the jury room, and the bailiff
13 will come up there and retrieve your written
14 question. Any question you ask must be in
15 writing, however. Any questions you have
16 have to be in writing.

17 And when we come up there, after I
18 discuss the question with the lawyers, we'll
19 come up there to answer the question. So
20 we'll knock on the door. We'll enter the
21 jury room with the court reporter and me.
22 I'll read your question and answer after I've
23 consulted with counsel. They'll be at the

INSTRUCTIONS OF LAW

1 jury room door to hear what's going on. They
2 have that right. And I'll answer that
3 question.

4 You can't ask anything out loud. You
5 can't discuss anything with us. We can
6 simply answer a written question if you have
7 one. And that's how you must communicate
8 with us.

9 If you need a portion of the
10 instructions repeated, then that's how you
11 should do that. The instructions now, by
12 law, are to be reproduced for you, but
13 because I do this not from script, the court
14 reporter will have to do that, and it'll take
15 a little while before that will occur. So if
16 you need repetition of any of the
17 instructions before then, please let me know
18 that.

19 You're reminded that you are not to
20 discuss or consider in any way the subject of
21 punishment. Of course, if the defendant is
22 not guilty, then pretty silly to discuss
23 punishment. If he's guilty, it's equally

INSTRUCTIONS OF LAW

1 inappropriate because that is not your
2 business. By law, that is a duty placed upon
3 the court if the defendant is found guilty.

4 Your initial conduct upon commencing
5 deliberations is very important. As I told
6 you during voir dire, each of you is to make
7 your own impression, think about how you
8 feel, and then tell the others what you think
9 and what you feel. But you're also supposed
10 to hear what they have to say before you
11 decide, and let yourself be influenced by
12 what the others say, because they took the
13 same oath you did. They're just as
14 interested in resolving this case as you are.
15 And you should try and work together to reach
16 a unanimous verdict if you're able to do
17 that.

18 That's the only way the case will be
19 decided is if there's a unanimous verdict of
20 guilty or a unanimous verdict of not guilty.

21 So if you do talk about how the case
22 should be decided right away, sometimes your
23 pride gets aroused. Sometimes, you know, you

INSTRUCTIONS OF LAW

1 don't want to listen. Whatever it is, your
2 duty is to agree if you can possibly do so.
3 So that's what you have to work on when you
4 go back there.

5 Respect what the others have to say.
6 Consider their views, and be willing to
7 change your opinion if the others can
8 convince you that you should see it their
9 way. You should not disturb your individual
10 judgment just to be congenial or to get this
11 thing over with. That's not what this is
12 about. This is about the right result in
13 this case.

14 I have prepared verdict forms. There
15 are three of them you'll have with you in the
16 jury room. Each of them says State of Ohio
17 vs. James P. Ferrara. It has the case number
18 and my name. And then it has verdict on
19 Count One, Aggravated murder as it relates to
20 Benjamin Marsh; Count Two as it relates to
21 Marilyn Marsh; and Count Three as it relates
22 to Heather Marsh.

23 And each of them say, "We the jury, duly

INSTRUCTIONS OF LAW

1 impaneled and sworn, find the defendant,
2 James P. Ferrara," blank. In the blank you
3 insert the words "guilty" or the words "not
4 guilty of aggravated murder of" -- and each
5 of these has the name of the particular
6 decedent -- "in the manner and form as he
7 stands charged in Count One of the indictment
8 as it relates to Benjamin Marsh."

9 There are 12 lines for you to sign. You
10 have to sign in ink, and there's a space for
11 you to date the verdict when you do reach a
12 verdict. That likewise has to be filled in
13 in ink.

14 We have an alternate juror here, and as
15 previously instructed, Ms. Makosky, you're
16 going to be held here in a separate room all
17 by yourself, sequestered in case you are
18 called upon to take the place of any of the
19 other jurors.

20 The court wishes to thank all of you for
21 your service in this case. Part of my job is
22 to keep an eye on you, and everyone seemed
23 very alert and attentive, and it seems that

INSTRUCTIONS OF LAW

1 you've honored your obligation admirably to
2 this point. It is quite a burden that we
3 impose upon you. It's a very high calling.
4 You can't worry about what anybody thinks.
5 You have to do what is right based upon what
6 you heard or didn't hear and make that
7 decision. It's a decision of law that you
8 have to make. And if you do it the right
9 way, we're going to thank you for your
10 verdict, no matter what it may be.

11 When you do reach a verdict, you are to
12 fill out the verdict forms completely, and
13 then push the buzzer, and the bailiff will
14 come up and you'll so inform him. And then
15 I'll gather everyone here in the courtroom.
16 That usually takes a little bit of time. And
17 we'll have you down to the courtroom to
18 render your verdict. The foreperson will
19 give the verdict forms to the bailiff when
20 we're here in the courtroom, and I'll read
21 them to the parties. And you may be polled.
22 As I indicated to you, it's not a big deal.
23 And then you'll be released.

INSTRUCTIONS OF LAW

1 You're not permitted to discuss the case
2 at all outside of that jury room, with anyone
3 at all, even if you're with other jurors
4 outside of that jury room. You can't discuss
5 the case unless all 12 of you are together in
6 that jury room.

7 When you go back there you should select
8 a foreperson to preside over your
9 deliberations. We have to say foreperson.
10 We can't say foreman anymore because the
11 ladies get upset about that. And even one
12 time I got criticized for saying foreperson.
13 Everybody's a little too touchy for me, I
14 guess. But anyhow, one of you should be
15 selected by the rest of you to preside over
16 the proceedings there.

17 The foreperson doesn't have any more
18 power than the others. The vote doesn't mean
19 any more. The purpose is simply to allow
20 everyone to be heard and to make sure that
21 the discussions are orderly. Additionally,
22 the foreperson has charge of the exhibits and
23 the verdict forms and will return them to the

INSTRUCTIONS OF LAW

1 court at the appropriate time.

2 So the only other thing when we come
3 back to the jury room, if we do, to answer a
4 question or just to discuss anything with
5 you, we'll knock on the door. Please make
6 sure there's nothing there that would
7 indicate to us the status of your
8 deliberations. It's not our right to know
9 that, what the vote is or which way you're
10 heading or anything like that. So just make
11 sure there's no papers on the table there
12 that anyone could view and find out what's
13 going on there.

14 Okay. May I please see counsel at side
15 bar?

16 **(WHEREUPON, a discussion was had among**
17 **court and counsel off the record and out of**
18 **the hearing of the jury and court reporter,**
19 **after which the proceedings continued as**
20 **follows:)**

21 **THE COURT:** All right. The court has
22 met with counsel at side bar, and there are
23 no additions or deletions for the charge, and

INSTRUCTIONS OF LAW

1 so the court instructs you ladies and
2 gentlemen to retire now and begin your
3 deliberations. Good luck to you.

4 **(WHEREUPON, the jury left the courtroom**
5 **at 3:47 p.m., to begin their deliberations,**
6 **and the proceedings continued as follows:)**

7 **THE COURT:** Okay. As I indicated, Juror
8 No. 4, I think you folks know that she was
9 going to go to Cleveland tonight?

10 **MS. DOHERTY:** Yes.

11 **MR. MERANTO:** Yes.

12 **THE COURT:** So it's 10 to 4:00. She's
13 going to have to get going pretty quick. I
14 don't know if -- sometimes people change
15 their minds. I don't know if she wants to
16 stay or if we're going to have them come back
17 tomorrow or if we just put Ms. Makosky in her
18 place. We did talk about selecting an
19 alternate with Ms. Crump's situation in mind.
20 But before I decide that, I'll allow the
21 state and the defense to offer your opinion
22 as to what you think we should do.

23 **MS. DOHERTY:** Thank you, Judge. I guess

INSTRUCTIONS OF LAW

1 my concern would be if Ms. Crump left and was
2 replaced today with the alternate, if
3 something were to happen this evening and
4 they didn't reach a verdict, tomorrow we
5 would be in big trouble. I mean, not to say
6 they -- I guess if it was early in the
7 morning and she had to leave and the jurors
8 would have the remainder of the day, but I
9 guess at this late time of day, I would be
10 concerned that replacing her now could create
11 a problem. I mean, you never know what could
12 happen to a family member or a juror if we
13 don't have an alternate available.

14 **THE COURT:** Okay. Well, that's a
15 legitimate concern. My counterpoint on that,
16 though, and this is how I've always felt from
17 the time I've started, when you let a jury go
18 at this point, they're subject to outside
19 influence. And so it's always been my
20 preference to keep a jury together until they
21 reach a verdict. So I appreciate what you
22 have to say also. What about the defense?
23 What do you have to say?

INSTRUCTIONS OF LAW

1 **MR. MERANTO:** Judge, I can just say, I
2 mean, I -- I'm a little tired after what's
3 been going on, and they've been putting in
4 the same day, and it's been tight
5 schedule-wise. And I'm concerned, too, just
6 if something happens, and we gotta do this
7 over again.

8 **THE COURT:** You don't like the 8:30 to
9 4:30 routine?

10 **MR. MERANTO:** Pardon me?

11 **THE COURT:** The 8:30 to 4:30, that
12 working you over?

13 **MR. MERANTO:** It's been good, but it's a
14 little more than I'm used to. My wife never
15 worked me that hard ever, not one time.

16 **THE COURT:** So what's your pleasure?

17 **MR. MERANTO:** I think -- I just think
18 you should let them go at 4:00, let them
19 start fresh in the morning. Not only the
20 concern of Ms. Doherty raised, but also -- I
21 mean, it's been a long day. And I understand
22 the outside influence thing, but let's face
23 it, you know, if someone's got that

INSTRUCTIONS OF LAW

1 proclivity that they're going to let
2 themselves hear something or see something,
3 that's probably already happened in the last
4 three days.

5 **THE COURT:** Well, all right. So is the
6 state agreeing to that?

7 **MS. DOHERTY:** Yes, Your Honor.

8 **THE COURT:** Okay. So we'll keep them
9 for a little bit and see what happens. I'd
10 be inclined to honor the joint request of the
11 parties and adjourn for the evening after
12 they've deliberated a little while. Okay.

13 **(WHEREUPON, a brief recess was had,
14 after which the proceedings continued as
15 follows:)**

16 **(WHEREUPON, at 4:42 p.m., November 20,
17 2013, the Court, bailiff and court reporter
18 entered the jury room, and the following
19 proceedings were had in the presence of
20 counsel and the defendant:)**

21 **THE COURT:** I'm in receipt of several
22 communications. The first of which was, "Can
23 we have a large whiteboard or chalkboard?"

INSTRUCTIONS OF LAW

1 That was already taken care of.

2 Then I wanted to know if you wanted to
3 stay or leave, and I got this cursive note,
4 "Leave."

5 And then I got another note, "Change of
6 plans. We will stay a few minutes."

7 And then I got the final note. Well,
8 the last note. "Where do we put the notes?
9 Where do we put evidence? What time do we
10 come back? We are ready to go," question
11 mark. So I guess it's, "We are ready to go?"

12 All the things that you have you can
13 gather and put in a pile. The bailiff will
14 secure those things, and we'll get them to
15 the court reporter. She'll keep them in
16 their evidence area, which is secure. And
17 you're excused for the night. We're going to
18 start again at 8:30 and would like everybody
19 to be here on time. Is the alternate up
20 there?

21 **THE BAILIFF:** She's in the witness room.

22 **THE COURT:** Go get her, please, because
23 I have to give the instructions before you

INSTRUCTIONS OF LAW

1 leave.

2 (WHEREUPON, the alternate juror entered
3 the jury room, and the proceedings continued
4 as follows:)

5 **THE COURT:** Okay. So ladies and
6 gentlemen, we're going to discharge you for
7 the evening. Again, I did tell you this
8 before, when you're outside of the jury room
9 you're not permitted to discuss the case with
10 anyone. Please don't let anyone discuss it
11 with you.

12 In days past what we've done is
13 sequester a jury in this situation, keep you
14 together, put you in a hotel if you can't
15 reach a verdict. In the old days also we
16 used to keep you together until you reached a
17 verdict. It didn't matter how long it took,
18 1:00, 2:00 in the morning. We don't do that
19 anymore because we trust you to do what's
20 right.

21 You have to avoid any publicity at all
22 about this case. You have to avoid any
23 contact with anybody about the case and make

INSTRUCTIONS OF LAW

1 sure that you keep all of this the way that
2 it should be done. Avoid any outside
3 influence.

4 Thank you very kindly for your service
5 today. We look forward to seeing you in the
6 morning. And you can resume your
7 deliberations in the morning, but not until
8 all 12 of you are here. I'll have you,
9 Ms. Makosky, report here. I want to make
10 sure all 13 are here before we start. You
11 can't get started until we say go; all right?
12 So just come in and talk about the Redskins.
13 We're going to make a comeback this year
14 still.

15 **(WHEREUPON, at 4:47 p.m., November 20,**
16 **2013, the Court, bailiff, court reporter,**
17 **counsel and defendant left the jury room, and**
18 **the jury suspended deliberations for the**
19 **evening.)**

20 * * * * *

21 **(WHEREUPON, the jury resumed**
22 **deliberations at 8:37 a.m., November 21,**
23 **2013.)**

INSTRUCTIONS OF LAW

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JURY QUESTION

1 (WHEREUPON, at 10:10 a.m., November 21,
2 2013, the Court, counsel, Defendant and court
3 reporter enter the chambers of the Court, and
4 the following proceedings were had out of the
5 hearing of the jury:)

6 **THE COURT:** We're on the record in
7 chambers. The jury has communicated with the
8 court twice this morning. First of all for
9 coffee that has been supplied to them, and
10 secondly, quote, "Can we get a verbalization
11 of Detective Mondora's testimony regarding
12 the defendant's statements of knowledge of
13 Ben Marsh and/or knowledge of Ben Marsh
14 residence?" The court will ask each side
15 what your proposal is for answering the
16 question.

17 **MS. DOHERTY:** Judge, I believe the
18 answer is no.

19 **THE COURT:** How about the defense?

20 **MR. MERANTO:** I concur.

21 **THE COURT:** Okay. I agree with that
22 completely. I will tell them I will not give
23 them a verbalization, nor will any transcript

JURY QUESTION

1 be provided to them. Okay.

2 **(WHEREUPON, at 10:11 a.m., November 21,**
3 **2013, the Court, bailiff and court reporter**
4 **entered the jury room, and the following**
5 **proceedings were had in the presence of**
6 **counsel and the defendant:)**

7 **THE COURT:** All right. Good morning,
8 ladies and gentlemen.

9 **PROSPECTIVE PROSPECTIVE JURORS:** Good
10 morning.

11 **THE COURT:** We have your question. "Can
12 we get a verbalization of Detective Mondora's
13 testimony regarding the defendant's
14 statements of knowledge of Ben Marsh and/or
15 knowledge of Ben Marsh residence?" No, you
16 will not receive a verbalization, nor any
17 transcript, as you were previously
18 instructed.

19 **(WHEREUPON, at 10:13 a.m., November 21,**
20 **2013, the Court, bailiff, counsel, Defendant,**
21 **and court reporter left the jury room.)**

22 * * * * *

1 (WHEREUPON, at 11:50 a.m., November 21,
2 2013, the Court, counsel, Defendant and court
3 reporter enter the chambers of the Court, and
4 the following proceedings were had out of the
5 hearing of the jury:)

6 **THE COURT:** We're in my office again
7 with a communication from the jury. It's
8 11:50. The inquiry is, "Can we break for
9 lunch? Are we allowed to leave?" I'm not
10 going to respond to them yet. Probably 10 or
11 15 minutes before I respond. My intention is
12 if they're still going and they want to go to
13 lunch is just to properly instruct them and
14 let them go to lunch and give them an hour
15 and come back. Any objection from the state?

16 **MS. DOHERTY:** No.

17 **THE COURT:** From the defense?

18 **MR. MERANTO:** No. Thank you. I wanted
19 to add a little drama of my own, Your Honor.
20 That's why I paused.

21 **THE COURT:** Okay. So that's what we'll
22 do. Probably 10 or 15 minutes, we'll go back
23 there and do that.

1 (WHEREUPON, the Court, counsel,
2 Defendant and court reporter left the
3 chambers of the court.)

4 * * * * *

5 (WHEREUPON, at 12:05 p.m., November 21,
6 2013, the Court, bailiff and court reporter
7 entered the jury room, and the following
8 proceedings were had in the presence of
9 counsel and the defendant:)

10 **THE COURT:** All right. We are in
11 receipt of your latest note. "Can we break
12 for lunch? Are we allowed to leave?" Yes,
13 you can break for lunch. You can lunch
14 together if you wish. You can stay in if you
15 wish. You can go separately if you wish.
16 But you cannot discuss the case at all until
17 you're all back here and we tell you to
18 resume deliberations.

19 If you do go out, please avoid any
20 publicity or any conversation about the case.
21 You know all the other rules, and it's very
22 important that you make sure you're not
23 influenced in any way by any outside source.

1 So an hour should be okay. We'll see you
2 back here about 1:00. Have a good lunch
3 folks.

4 (WHEREUPON, the Court, bailiff, counsel,
5 defendant and court reporter left the jury
6 room, and entered the jury room of the
7 alternate juror, and the following
8 proceedings were had:)

9 THE COURT: Our jury has asked to go to
10 lunch.

11 PROSPECTIVE JUROR: Okay.

12 THE COURT: And I let them go.

13 PROSPECTIVE JUROR: Okay.

14 THE COURT: So you can go, too, for
15 about an hour, and just come back. Be back
16 about 1:00.

17 PROSPECTIVE JUROR: Okay.

18 THE COURT: Please avoid any publicity
19 about the case or any conversation with
20 anyone about the case.

21 PROSPECTIVE JUROR: Okay.

22 THE COURT: And take a break.

23 PROSPECTIVE JUROR: Okay.

1 **THE COURT:** Thank you very much.

2 (WHEREUPON, at 12:08 p.m. November 21,
3 2013, the Court, bailiff, counsel, defendant
4 and court reporter left the jury room of the
5 alternate.)

6 * * * * *

7 (WHEREUPON, the jury took a lunch recess
8 from 12:00 p.m. until 1:00 p.m.)

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VERDICT

1 **(WHEREUPON, the following proceedings**
2 **took place at 1:32 p.m., November 21, 2013,**
3 **in the courtroom, all parties present,**
4 **outside the presence of the jury:)**

5 **THE COURT:** I've been informed that the
6 jury has reached its verdict in this case.
7 I'm about to bring them down to the
8 courtroom. Those of you as spectators here
9 in the courtroom of course are welcome.
10 There hasn't been any difficulty at all. But
11 I do wish to inform you that there is to be
12 absolutely no reaction of any kind whatsoever
13 to whatever this jury does. This jury's been
14 duly impaneled and sworn, selected by the
15 parties, and listened to everything. They've
16 reached a verdict, and that verdict's going
17 to be respected. So if you can't take it,
18 get out, because if you react in any way, I'm
19 going to have the deputies arrest you, and
20 I'll deal with that later. All right. Bring
21 the jury in, please.

22 **(WHEREUPON, the jury returned to the**
23 **courtroom, and the proceedings continued as**

VERDICT

1 **follows:)**

2 **THE COURT:** So, ladies and gentlemen of
3 the jury, I've been informed that you've
4 reached your verdicts; is that correct?

5 **PROSPECTIVE PROSPECTIVE JURORS:** Yes,
6 Your Honor.

7 **THE COURT:** Mr. Ross, you were the
8 foreman of the -- foreperson of the jury?

9 **MR. ROSS:** Yes.

10 **THE COURT:** You may hand the verdict
11 forms to my bailiff, please.

12 **(WHEREUPON, the juror complied.)**

13 **THE COURT:** Thank you.

14 All right. We have three verdicts.
15 Counts One, Two, and Three, dated this 21st
16 day of November, 2013. In each of the
17 verdicts, the jury has unanimously found the
18 defendant guilty of the charge of aggravated
19 murder. Is there anything further from the
20 State of Ohio regarding the jury?

21 **MS. CANTALAMESSA:** No, Your Honor. Just
22 our thanks for their time and attention.

23 **THE COURT:** Anything further by the

VERDICT

1 defense?

2 **MR. MERANTO:** Judge, we would ask the
3 jury be polled, please.

4 **THE COURT:** Very well. All right.
5 Ladies and gentlemen, I'm going to ask you --
6 I've recited that each of the three verdicts
7 on Counts One, Two, and Three, is a finding
8 of guilty, and I'm going to ask you if these
9 are your verdicts. A simple yes or no is the
10 appropriate answer, depending upon what the
11 answer is. So Mr. Ross, are these your
12 verdicts?

13 **MR. ROSS:** Yes.

14 **THE COURT:** Ms. Catanzarite, are these
15 your verdicts?

16 **MS. CATANZARITE:** Yes.

17 **THE COURT:** Mr. Wright, are these your
18 verdicts?

19 **MR. WRIGHT:** Yes.

20 **THE COURT:** Ms. Crump, are these your
21 verdicts?

22 **MS. CRUMP:** Yes.

23 **THE COURT:** Mr. Dray, are these your

VERDICT

1 verdicts?

2 **MR. DRAY:** Yes.

3 **THE COURT:** Mr. Frankford, are these
4 your verdicts?

5 **MR. FRANKFORD:** Yes.

6 **THE COURT:** Ms. Metzinger, are these
7 your verdicts?

8 **MS. METZINGER:** Yes.

9 **THE COURT:** Ms. Sotlar, are these your
10 verdicts?

11 **MS. SOTLAR:** Yes.

12 **THE COURT:** Mr. Bruno, are these your
13 verdicts?

14 **MR. BRUNO:** Yes.

15 **THE COURT:** Ms. Wheatley, are these your
16 verdicts?

17 **MS. WHEATLEY:** Yes.

18 **THE COURT:** Ms. Starkey, are these your
19 verdicts?

20 **MS. STARKEY:** Yes.

21 **THE COURT:** And Ms. Schneider, are these
22 your verdicts?

23 **MS. SCHNEIDER:** Yes.

VERDICT

1 **THE COURT:** All right. Anything else?

2 **MR. MERANTO:** No, Your Honor. Thank
3 you.

4 **THE COURT:** All right. So ladies and
5 gentlemen of the jury, I'd like to thank you
6 on behalf of the parties to this case and our
7 community and this court for your service in
8 this case. It is a difficult task that we
9 impose upon you, but we've observed your
10 conduct throughout, and it appears that you
11 have honored your obligation to serve and to
12 see to it that justice is done. We'd like to
13 thank you for your service in this case.

14 I'm going to have the lawyers review the
15 verdict forms before I do finally release
16 you, but you're released subject to review by
17 the lawyers of the verdict forms. As I
18 indicated to you previously, you can't
19 discuss the case at all up until this point,
20 but now that the case is completed, you are
21 permitted to discuss the case with anyone you
22 choose to discuss it with. You do not have
23 to discuss it with anyone if you choose not

VERDICT

1 to. The lawyers may wish to speak with you.

2 I'm going to come up to the jury room
3 when I'm done here and speak with you. And
4 others may wish to speak with you. It's up
5 to you whether you talk to them or not. No
6 one will insist upon conversation with you.
7 That's improper. So subject to the review of
8 the verdict forms by the parties, you are
9 excused. We thank you for your service in
10 this case.

11 **(WHEREUPON, the jury left the courtroom,
12 and the proceedings continued as follows:)**

13 **THE COURT:** All right. Are they
14 satisfactory as far as their being filled out
15 and completed by the jury?

16 **MS. CANTALAMESSA:** Yes, Your Honor.

17 **MS. DOHERTY:** Yes.

18 **MR. MERANTO:** Yes, Your Honor.

19 **THE COURT:** So then the jury is
20 discharged. What is the pleasure of the
21 parties regarding sentencing?

22 **MS. DOHERTY:** Judge, on behalf of the
23 state, as soon as possible. We have family

VERDICT

1 members and relatives from out of the area,
2 so as soon as we could, even this week yet if
3 that's possible.

4 **THE COURT:** What about the defense?

5 **MR. MERANTO:** Judge, no objection.

6 **THE COURT:** All right. The court will
7 set sentencing for tomorrow morning at 9:00
8 a.m.

9 **MS. DOHERTY:** Thank you, Your Honor.

10 **THE COURT:** All right. The court will
11 enter judgments on the verdicts and order
12 them filed.

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REPORTER'S CERTIFICATE

I HEREBY CERTIFY that the above and foregoing is a true and correct transcript of all evidence introduced and proceedings had in the trial of the within-named case as shown by my stenographic notes taken by me during the trial and at the time the evidence was being introduced.

CHASTITY M. FEEZLE, RPR, CRR
OFFICIAL COURT REPORTER

DATE: _____

REPORTER'S NOTE

THE EXHIBITS IN THIS CASE, BEING TOO CUMBERSOME TO ATTACH TO THIS TRANSCRIPT OF RECORD ON APPEAL ARE HEREBY, UNDER SEPARATE COVER, TRANSMITTED TO THE CLERK OF COURTS AND ARE TO BE CONSIDERED AS A PART OF THIS TRANSCRIPT OF RECORD ON APPEAL AS IF THE SAME WERE PHYSICALLY ATTACHED THERETO.

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STATE OF OHIO) IN THE COURT OF COMMON PLEAS
) ss.
COUNTY OF MAHONING)

**CASE NO. 13-CR-633
14-MA-4**

STATE OF OHIO)

Plaintiff)

-vs-)

JAMES FERRARA)

Defendant)

EXHIBITS

TO THE CLERK OF COURTS:

THE EXHIBITS IN THIS CASE, BEING TOO CUMBERSOME TO ATTACH TO THE TRANSCRIPT OF RECORD ON APPEAL ARE HEREBY, UNDER SEPARATE COVER, TRANSMITTED TO THE CLERK OF COURTS AND ARE TO BE CONSIDERED AS A PART OF THE TRANSCRIPT OF RECORD ON APPEAL AS IF THE SAME WERE PHYSICALLY ATTACHED THERETO