

1 *****BEGINNING OF EXCERPT*****

2 ROBERT JOHN RAFFERTY

3 A Witness herein, having been first duly
4 sworn as provided by law, was examined and
5 testified as follows:

6 - - -

7 DIRECT EXAMINATION

8 BY MS. DOHERTY:

9 Q. Tell us your name, please.
10 A. Robert John Rafferty.
11 Q. And how do you spell your last name?
12 A. R-a-f-f-e-r-t-y.
13 Q. And, Mr. Rafferty, how old are you?
14 A. Twenty-four.
15 Q. And there is a -- you're Junior, correct?
16 A. Correct.
17 Q. And then there's a Senior, and that's your
18 dad?
19 A. Yeah.
20 Q. Can you tell the Court how you are related
21 to Shane Rafferty?
22 A. He's my first cousin.
23 Q. And how is that? What is the relationship
24 between your fathers?
25 A. My father's brother, that's his son.

- 1 Q. Okay. And what is Shane Rafferty's
2 father's name?
- 3 A. Patrick Rafferty.
- 4 Q. And what is your father's name?
- 5 A. Bob Rafferty.
- 6 Q. All right. Just so we're clear with the
7 names. There are a lot of Raffertys.
- 8 Okay. Your relationship with Shane
9 Rafferty, did you grow up basically in the
10 same area?
- 11 A. Yeah. We were pretty close. He lived in
12 Louisiana for a while, and then he moved
13 back here and we were pretty close.
- 14 Q. And then when did, I guess, you stop being
15 that close and hanging out together?
- 16 A. Probably when we were like 10 or 12, maybe
17 a little older. Last time I saw him
18 before that night was when I was 15.
- 19 Q. All right. And you stayed up here. You
20 didn't live out of state?
- 21 A. No.
- 22 Q. So I'll ask you about the contact that you
23 have with him most recently, and when was
24 that?
- 25 A. March 31st.

1 Q. Okay. And I guess I'm going to back up
2 further than that.

3 THE COURT: Are you talking
4 about March 31st of 2005?

5 THE WITNESS: Yes.

6 Q. Okay. I'm going to back you up prior to
7 that. Up until then, you hadn't had --
8 did you -- were you aware he lived in the
9 area?

10 A. Yes.

11 Q. Okay. And at some point, does he contact
12 you?

13 A. Yes, he did.

14 Q. Okay. And tell us about that contact and
15 what that conversation was.

16 A. He called me at 10:30 the night that I was
17 at the house. I was at my house and he
18 asked me about a toilet, that he was doing
19 a remodeling project. He needed a toilet.
20 And I said, it's 10:30, you know. I was
21 doing remodeling at the time. Can't get a
22 toilet at 10:30. And it struck me as kind
23 of odd, but I didn't think nothing of it.
24 So we went on to, you know, say I hadn't
25 seen you in a while. He said, why don't

1 you come on out, hang out for a while.

2 And so that's what I did.

3 Q. And where did you go?

4 A. Voris Street.

5 Q. And who was there when you arrived?

6 A. Lisa, Shane and Derek.

7 MR. WHITAKER: Objection, Your
8 Honor.

9 THE COURT: Overruled.

10 Q. When you go over to that house -- you said
11 you hadn't seen Shane for a long time,
12 correct?

13 A. Correct.

14 Q. What made you go over there at that time
15 at 10:30 at night when he called you?

16 A. I hadn't seen him since I was 15, and we
17 were close when we were little so it's,
18 you know, always nice to have family.

19 Q. Okay. All right. You get to the house.
20 Who is the first person you see?

21 A. Shane.

22 Q. All right. And describe the house. I
23 guess, first of all, where you enter,
24 where did you go?

25 A. Well, it was a red brick house. Drove up

1 to the back of the house. I went around
2 back. We walked through the kitchen and
3 then we walked to the left to the living
4 room. And that's where I first, you know,
5 went in, just started talking about old
6 times and, you know, catching up a little
7 bit.

8 Q. Okay. Derek Shutt, you said he was there.
9 Had you ever met him before?

10 A. No.

11 Q. And you said that Lisa was there. Had you
12 ever met her?

13 A. No.

14 Q. Tell us what you and Shane do.

15 A. Shane said, well, let me show you my
16 project I've got going on. So he takes me
17 downstairs and we start walking down the
18 stairs. And me doing remodeling, I
19 noticed circular grind marks on the wall,
20 which was kind of weird to me. And he led
21 me into the bathroom. Well, to the right
22 was where the toilet was. There wasn't a
23 toilet. And to the left, the sink and
24 counter and shower and all that was back
25 there.

1 Well, we go into the room and he
2 starts telling me about how they're into
3 the meth and everybody's got a certain job
4 and this person does this and this person
5 does this and I get the dirty work.
6 Q. He said that "I get the dirty work"?
7 A. Right.
8 Q. And is it just you and Shane down there at
9 that point?
10 A. Yes.
11 Q. And you're asking him about the strange
12 things you see, the swirl marks
13 everywhere. Is that when he starts
14 talking to you about the business that
15 they're in?
16 A. No. I didn't even mention the swirl
17 marks. I just looked at it and, you know,
18 thought to myself -- I just didn't mention
19 it. I didn't think nothing of it; you
20 know what I mean. That's my cousin.
21 Q. All right. And he's telling you about
22 this meth. Who else is he telling you is
23 involved in that business, I guess?
24 A. All three, Derek, Lisa, my uncle, and
25 there was more people but I didn't know

1 IN THE COURT OF COMMON PLEAS

2 COUNTY OF SUMMIT

3 STATE OF OHIO,) CASE NO. CR 2005-09-3204E
4)
5 Plaintiff,)
6 vs.)
7) JUDGE ELINORE STORMER
8 LISA R. PENIX,)
9 Defendant.) TESTIMONY OF
10) ROBERT J. RAFFERTY

11 APPEARANCES

12 BECKY DOHERTY, Assistant County Prosecutor
13 BRIAN LOPRINZI, Assistant County Prosecutor
14 On behalf of the State of Ohio

15 WILLIAM WHITAKER, Attorney at Law
16 JEFFREY JAMES, Attorney at Law
17 On behalf of the Defendant

18 BE IT REMEMBERED that upon the hearing of
19 the above-entitled matter in the Court of Common
20 Pleas, Summit County, Ohio, before the HONORABLE
21 ELINORE STORMER, Judge Presiding, and a jury duly
22 impaneled and sworn, commencing on February 13,
23 2006, the following proceedings were had, being a
24 Transcript of Proceedings.

25 (TESTIMONY OF ROBERT J. RAFFERTY)

BARBARA J. DAY, RPR
Official Court Reporter
Summit County Courthouse
209 South High Street
Akron, Ohio 44308

1 *****BEGINNING OF EXCERPT*****

2 ROBERT JOHN RAFFERTY

3 A Witness herein, having been first duly
4 sworn as provided by law, was examined and
5 testified as follows:

6 - - -

7 DIRECT EXAMINATION

8 BY MS. DOHERTY:

9 Q. Tell us your name, please.

10 A. Robert John Rafferty.

11 Q. And how do you spell your last name?

12 A. R-a-f-f-e-r-t-y.

13 Q. And, Mr. Rafferty, how old are you?

14 A. Twenty-four.

15 Q. And there is a -- you're Junior, correct?

16 A. Correct.

17 Q. And then there's a Senior, and that's your
18 dad?

19 A. Yeah.

20 Q. Can you tell the Court how you are related
21 to Shane Rafferty?

22 A. He's my first cousin.

23 Q. And how is that? What is the relationship
24 between your fathers?

25 A. My father's brother, that's his son.

- 1 Q. Okay. And what is Shane Rafferty's
2 father's name?
- 3 A. Patrick Rafferty.
- 4 Q. And what is your father's name?
- 5 A. Bob Rafferty.
- 6 Q. All right. Just so we're clear with the
7 names. There are a lot of Raffertys.
- 8 Okay. Your relationship with Shane
9 Rafferty, did you grow up basically in the
10 same area?
- 11 A. Yeah. We were pretty close. He lived in
12 Louisiana for a while, and then he moved
13 back here and we were pretty close.
- 14 Q. And then when did, I guess, you stop being
15 that close and hanging out together?
- 16 A. Probably when we were like 10 or 12, maybe
17 a little older. Last time I saw him
18 before that night was when I was 15.
- 19 Q. All right. And you stayed up here. You
20 didn't live out of state?
- 21 A. No.
- 22 Q. So I'll ask you about the contact that you
23 have with him most recently, and when was
24 that?
- 25 A. March 31st.

1 Q. Okay. And I guess I'm going to back up
2 further than that.

3 THE COURT: Are you talking
4 about March 31st of 2005?

5 THE WITNESS: Yes.

6 Q. Okay. I'm going to back you up prior to
7 that. Up until then, you hadn't had --
8 did you -- were you aware he lived in the
9 area?

10 A. Yes.

11 Q. Okay. And at some point, does he contact
12 you?

13 A. Yes, he did.

14 Q. Okay. And tell us about that contact and
15 what that conversation was.

16 A. He called me at 10:30 the night that I was
17 at the house. I was at my house and he
18 asked me about a toilet, that he was doing
19 a remodeling project. He needed a toilet.
20 And I said, it's 10:30, you know. I was
21 doing remodeling at the time. Can't get a
22 toilet at 10:30. And it struck me as kind
23 of odd, but I didn't think nothing of it.
24 So we went on to, you know, say I hadn't
25 seen you in a while. He said, why don't

1 you come on out, hang out for a while.

2 And so that's what I did.

3 Q. And where did you go?

4 A. Voris Street.

5 Q. And who was there when you arrived?

6 A. Lisa, Shane and Derek.

7 MR. WHITAKER: Objection, Your
8 Honor.

9 THE COURT: Overruled.

10 Q. When you go over to that house -- you said
11 you hadn't seen Shane for a long time,
12 correct?

13 A. Correct.

14 Q. What made you go over there at that time
15 at 10:30 at night when he called you?

16 A. I hadn't seen him since I was 15, and we
17 were close when we were little so it's,
18 you know, always nice to have family.

19 Q. Okay. All right. You get to the house.
20 Who is the first person you see?

21 A. Shane.

22 Q. All right. And describe the house. I
23 guess, first of all, where you enter,
24 where did you go?

25 A. Well, it was a red brick house. Drove up

1 to the back of the house. I went around
2 back. We walked through the kitchen and
3 then we walked to the left to the living
4 room. And that's where I first, you know,
5 went in, just started talking about old
6 times and, you know, catching up a little
7 bit.

8 Q. Okay. Derek Shutt, you said he was there.
9 Had you ever met him before?

10 A. No.

11 Q. And you said that Lisa was there. Had you
12 ever met her?

13 A. No.

14 Q. Tell us what you and Shane do.

15 A. Shane said, well, let me show you my
16 project I've got going on. So he takes me
17 downstairs and we start walking down the
18 stairs. And me doing remodeling, I
19 noticed circular grind marks on the wall,
20 which was kind of weird to me. And he led
21 me into the bathroom. Well, to the right
22 was where the toilet was. There wasn't a
23 toilet. And to the left, the sink and
24 counter and shower and all that was back
25 there.

1 Well, we go into the room and he
2 starts telling me about how they're into
3 the meth and everybody's got a certain job
4 and this person does this and this person
5 does this and I get the dirty work.
6 Q. He said that "I get the dirty work"?
7 A. Right.
8 Q. And is it just you and Shane down there at
9 that point?
10 A. Yes.
11 Q. And you're asking him about the strange
12 things you see, the swirl marks
13 everywhere. Is that when he starts
14 talking to you about the business that
15 they're in?
16 A. No. I didn't even mention the swirl
17 marks. I just looked at it and, you know,
18 thought to myself -- I just didn't mention
19 it. I didn't think nothing of it; you
20 know what I mean. That's my cousin.
21 Q. All right. And he's telling you about
22 this meth. Who else is he telling you is
23 involved in that business, I guess?
24 A. All three, Derek, Lisa, my uncle, and
25 there was more people but I didn't know

- 1 them. I didn't ask names.
- 2 Q. And you said your uncle. That would be
- 3 Shane's father?
- 4 A. Correct.
- 5 Q. And that's Pat?
- 6 A. Correct.
- 7 Q. Does he give you any other detail about
- 8 that business?
- 9 A. No, just that it was like a meth ring and
- 10 he thought it was -- he mentioned, you
- 11 know, that they were part of the Mafia,
- 12 something -- mentioned something towards
- 13 the Mafia and -- but I think he looked
- 14 like he was up for a couple weeks or
- 15 something.
- 16 Q. Your cousin did?
- 17 A. Yeah.
- 18 Q. When you say that, did you think that he
- 19 had been doing any kind of drugs?
- 20 A. Yeah.
- 21 Q. And why did you think that? Describe it.
- 22 A. He was just -- he wasn't like I remembered
- 23 him when I was little. And people change,
- 24 but he was -- he wasn't the same person.
- 25 Q. Okay. Does anyone else join you in the

1 basement when you and Shane are down
2 there?

3 A. Lisa.

4 Q. And you said you hadn't met her before,
5 correct?

6 A. No.

7 MR. WHITAKER: Objection. Same
8 objection. If I can make the same
9 objection, Your Honor.

10 THE COURT: All right.

11 Q. Tell us what happens when you come
12 downstairs -- or when Lisa comes
13 downstairs.

14 A. She came downstairs, and pardon my French,
15 she said, Derek wants to know what the
16 fuck Bob has got to say about what
17 happened. And I said, it's none of Bob's
18 F'ing business.

19 Q. And at that point, did you know what she
20 was talking about?

21 A. At that point in time, when she came down,
22 that was right after my cousin just got
23 done telling me they beat this kid up,
24 beat him up bad. I mean, it was -- I
25 couldn't, you know, really take in what he

- 1 was saying.
- 2 Q. Specifically, what did he tell you they
- 3 did to this person?
- 4 A. He said they needed a new toilet because
- 5 they beat his head in, slammed it on the
- 6 toilet and the back of the toilet broke.
- 7 And they tried to drown him and he
- 8 wouldn't drown.
- 9 Q. So then what did they do?
- 10 A. Derek handed him the gun and then my
- 11 cousin shot him in the head.
- 12 Q. You're down in the basement on Voris with
- 13 your cousin Shane who is telling you this.
- 14 And I think you said as soon as he got
- 15 done telling you that, that's when Lisa
- 16 came down?
- 17 A. Yeah.
- 18 Q. And when she referred to Derek, she --
- 19 where was Derek at that point?
- 20 A. He was upstairs on the couch.
- 21 Q. All right.
- 22 A. As far as I know.
- 23 Q. Did you then talk to Lisa and Shane about
- 24 what Shane had just told you? What else
- 25 did they say?

1 A. Well, afterwards, when -- then Derek came
2 down. Now it's Lisa, Derek and my cousin
3 all surrounding me in the bathroom, and
4 then they all started talking about what
5 happened. And my cousin -- it's -- I've
6 never witnessed some -- he's grabbed the
7 razor knife and he's picking -- from what
8 he said -- brain fragments off of the
9 wall. And him and Lisa and Derek didn't
10 say much. I think he knew to keep his
11 mouth shut. But --

12 Q. What did Lisa say specifically?

13 MR. WHITAKER: Objection.

14 THE COURT: Overruled.

15 A. They're talking about how --

16 MR. WHITAKER: Objection. He's
17 saying "they". She was asking specific.

18 THE COURT: Confine the
19 remarks to what Lisa said, please.

20 A. Lisa said, yeah, he was laying right where
21 you're standing, dead. When we were
22 cleaning up, every time I walked past him,
23 I kicked him in the fucking head.

24 Q. All right. And that area that you're
25 describing, that bathroom area, where was

- 1 Lisa referring to specifically?
- 2 A. Right in front of the door that leads into
- 3 the room that was a dirt floor. It wasn't
- 4 finished.
- 5 Q. Okay. Was there a -- I'm going to say a
- 6 nickname that Derek was referred to as?
- 7 A. Little Boy.
- 8 Q. And who referred to him with that name?
- 9 A. I'm not even sure.
- 10 Q. One of either Lisa or Shane?
- 11 A. Yeah.
- 12 Q. Okay. And you knew that that was a
- 13 nickname that Derek had?
- 14 A. Yeah.
- 15 Q. All right. When you're having this
- 16 conversation with Lisa and with Shane,
- 17 describe Lisa's behavior when she's
- 18 telling you this.
- 19 A. It was kind of like she still had a lot of
- 20 anger built up in her, like.
- 21 MR. WHITAKER: Objection, Your
- 22 Honor.
- 23 THE COURT: Sustained.
- 24 Q. How did she behave?
- 25 A. What was that?

- 1 Q. How did she behave?
- 2 A. Very frustrated and angry still.
- 3 Q. And did she talk about a reason why this
- 4 had happened?
- 5 A. Yeah, because he was a fucking narc.
- 6 Q. Okay. And that was what Lisa said? She
- 7 referred to him as a fucking narc?
- 8 A. Yes.
- 9 Q. Was there ever a name given to you of this
- 10 person that they talked about killing in
- 11 the basement?
- 12 A. No.
- 13 Q. As far as the cleanup that they talked
- 14 about, did either one of them tell you
- 15 specifically what was done in the basement
- 16 area to clean up?
- 17 A. Well, I noticed some grind marks, so that
- 18 was odd. And I really didn't -- I
- 19 didn't -- I knew enough already, you know.
- 20 They told me too much stuff I didn't want
- 21 to know about and I didn't bother asking
- 22 questions. But, you know, I noticed the
- 23 countertop was almost brand new and it was
- 24 ground down with the same circular
- 25 grinder. I noticed that. And they were

1 all talking about how they had replaced
2 the plumbing because they had washed their
3 hands in the sink and there was just blood
4 and hair and all kind of stuff.

5 Q. When you're down in the basement with Lisa
6 and Shane, did she appear frightened in
7 any way?

8 A. Not at all.

9 Q. Did any of them -- and I'm going to --
10 even Derek. Did any of them talk about
11 drug use, methamphetamine?

12 A. Yes.

13 MR. WHITAKER: Objection, Your
14 Honor.

15 THE COURT: As to Lisa,
16 anything about Lisa?

17 A. Yes.

18 THE COURT: Just Lisa.

19 Q. And what was that?

20 A. That they'd been up for weeks cleaning up
21 the mess.

22 Q. And why had they been up?

23 A. Because they had to clean.

24 Q. Why?

25 A. Because of the meth.

- 1 Q. Because they had been using
2 methamphetamine?
- 3 A. Correct.
- 4 Q. All right. Did Lisa or Shane talk about
5 any sunglasses or eyeglasses or money
6 that --
- 7 A. Yeah.
- 8 MR. WHITAKER: Objection, Your
9 Honor.
- 10 THE COURT: It's sustained.
11 That means you have -- she's going to ask
12 the question a different way.
- 13 Q. Did Lisa talk to you about anything
14 specific about any items that the person
15 that they killed may have had?
- 16 A. Yes. We -- we went back upstairs. Lisa
17 and Shane were talking and they were
18 saying --
- 19 MR. WHITAKER: Objection.
- 20 THE COURT: Just Lisa.
- 21 A. Lisa said, well, at least you got \$60 and
22 a pair of sunglasses out of it.
- 23 Q. And who did she say that to?
- 24 A. Shane.
- 25 Q. When you go back upstairs, how long do you

- 1 stay before you leave?
- 2 A. Probably about 20 minutes, maybe.
- 3 Q. All right. And did you ask any of them
- 4 any more questions about what had
- 5 happened?
- 6 A. No.
- 7 Q. Why not?
- 8 A. Scared. I was scared, confused. So many
- 9 thoughts were going through my mind. I
- 10 mean, to find yourself in that kind of
- 11 situation is -- it's horrible.
- 12 Q. All right. And prior to leaving the
- 13 house, did any of them say anything to you
- 14 regarding what you had discussed?
- 15 A. No.
- 16 Q. All right. What did you do when you left?
- 17 A. Got in my van, drove out of there and
- 18 called my sister, told her what I had just
- 19 witnessed and been told; and when I got
- 20 home, woke my mother up, told her. She
- 21 said, call your father and I called him.
- 22 Q. Where was your dad?
- 23 A. He was on the road. He's a truck driver.
- 24 Q. Okay. And did you tell your dad?
- 25 A. Yeah.

- 1 Q. And what timeframe is this all taking
2 place after you get home and wake your mom
3 up and call your dad?
- 4 A. As soon as I got home.
- 5 Q. And this is pretty late at night?
- 6 A. Yeah.
- 7 Q. And do you tell each of them what you
8 learned at this house on Voris?
- 9 A. I told them everything.
- 10 Q. All right. When you left -- what kind of
11 vehicle did you drive there?
- 12 A. Conversion van.
- 13 Q. All right. And when you left that house,
14 you said you called your sister?
- 15 A. Yeah.
- 16 Q. Did you do anything prior to getting into
17 that van?
- 18 A. Yeah. I looked in the inside of it,
19 because, number one, I was thinking, why
20 did they -- why did my cousin call me here
21 and tell me about this. And, number two,
22 you know, I didn't know -- you know, I
23 knew somebody -- they told me they killed
24 somebody. It's not something you hear
25 every day. I didn't know whether to

1 believe it -- I mean, I knew it was true
2 because my heart told me it was true. But
3 I -- I didn't know. I checked my van. I
4 didn't know why they called me over there.
5 And I didn't know if -- you know, did they
6 put a body in my car or -- you know.

7 Q. So there was never a discussion between
8 you and them about what they did with this
9 person that they killed?

10 A. No.

11 Q. So you didn't know where the body was?

12 A. No.

13 Q. That wasn't a question you asked?

14 A. No.

15 Q. When you get home, you call your dad. You
16 talk to your mom and your sister. Do you
17 call the police?

18 A. No, I didn't.

19 Q. Why not?

20 A. Because three people just told me they
21 murdered somebody, and the way that -- the
22 demeanor that they gave me, I mean, I was
23 scared for my life when I was in the
24 house. And, you know, if I was the only
25 one that they told and I went to the cops,

- 1 they'd say, well, you know, this person,
2 it was him. So they killed one time. Why
3 wouldn't they kill me?
- 4 Q. And did you have any specific information
5 as to who the person was?
- 6 A. No.
- 7 Q. All right. And did you see Shane or Pat
8 any time after that, after you told your
9 mom and your dad?
- 10 A. Yes. My -- Pat, my uncle, showed up a
11 couple days after the night I was there.
12 My uncle shows up. My mom looked out the
13 window and she says, he brought Shane over
14 here. Well, Shane's never been to our
15 house, so, you know, probably brought him
16 over to intimidate me or something,
17 because he had no reason to come over. So
18 we went upstairs in my room and my dad
19 talked to him.
- 20 Q. When you say we, you and your mom?
- 21 A. Uh-huh.
- 22 Q. So you didn't have any contact with them
23 that day, with Shane or Pat?
- 24 A. No.
- 25 Q. All right. After that, did Shane or Pat

1 contact you?

2 A. Yes. Pat -- my uncle did.

3 Q. All right. And I'm going to ask you about

4 May specifically. I think it's May 25th.

5 Did you end up speaking to someone from

6 the Akron Police Department?

7 A. Yes, I did.

8 Q. And how did that come about?

9 A. Well, every night -- every day and every

10 second after the night I was at the house,

11 I had that on my mind. I wanted -- I

12 wanted to go to the cops but, you know, I

13 was afraid for my family's life and my

14 life. I didn't know what to do.

15 I was at my shop one day and my

16 buddy, I had told him about it. This is

17 my best friend. And he had -- he had

18 said, hey, does your cousin still need a

19 toilet? And I didn't think nothing of it.

20 And I looked behind my shop and I saw a

21 toilet sitting there. When I started --

22 you know, started replaying in my head.

23 So I said, let's go dump this in the back.

24 And we went in the back and I'm looking,

25 and here sat a toilet just how he

1 explained it. He needed a top piece. The
2 bottom part was perfectly fine. And there
3 sat a toilet, bottom part was fine,
4 sitting there, and the top part was busted
5 right next to it. I'm looking around.
6 There's a mound of carpet, trash bags,
7 license plates, car keys, a cell phone, a
8 shower curtain still on the rod with what
9 looked like a brown stain, maybe a blood
10 stain. And it's just -- it was coming
11 back to me.

12 I just -- I went home; told my dad.
13 He said, let's go take a look at it. So I
14 brought my parents there. They looked at
15 it, and we didn't really find much more,
16 but my mom looked through it a little
17 more. I went home and -- she found a can
18 of muriatic acid, which my cousin asked
19 about the night I was at the house when I
20 was talking to him on the phone. He asked
21 where he could get some. She found a
22 bottle of muriatic acid, half,
23 three-quarters full, and the car keys and
24 just stuff that you wouldn't -- you
25 wouldn't think, you know --

- 1 Q. What did it make you think when you saw
2 this stuff there?
- 3 A. That that was from that house.
- 4 Q. All right. And what did you do?
- 5 A. My parents said, you know, we're behind
6 you 100 percent. And I said, I've got to
7 call the cops.
- 8 Q. And who did you call?
- 9 A. Akron Police.
- 10 Q. And did someone from the Akron Police
11 Department come out and talk to you?
- 12 A. Yes.
- 13 Q. And where did that take place?
- 14 A. 1250 Kelly Avenue, my shop.
- 15 Q. And the date we're talking about is May
16 25th, correct?
- 17 A. Correct.
- 18 Q. And is there a garage area of your shop?
- 19 A. Yeah. We have bay doors on both sides.
- 20 Q. And where did you talk to the police
21 officer who came out?
- 22 A. Inside my garage.
- 23 Q. And did you tell him what you told us
24 today, that information about what your
25 cousin told you and who all you spoke to

- 1 in that house?
- 2 A. Yes.
- 3 Q. And when you were giving that officer the
- 4 information in regards to who was there,
- 5 the three people, did you know all of
- 6 their names?
- 7 A. No.
- 8 Q. And, obviously, you knew Shane Rafferty?
- 9 A. Yes.
- 10 Q. What about Derek, did you know his name?
- 11 A. Yes. *He knew both of his*
- 12 Q. And what about Lisa?
- 13 A. Lisa, I wasn't sure about.
- 14 Q. You weren't sure about her name?
- 15 A. Yeah.
- 16 Q. What did you think her name was at that
- 17 time?
- 18 A. Cindy Lou.
- 19 Q. Why did you think that?
- 20 A. Because I was trying to find out who she
- 21 was and I borrowed my uncle's truck one
- 22 day and I was going through his truck to
- 23 see if I could find anything out. And I
- 24 found a little piece of paper that said
- 25 "Cindy Lou" and it had a cell phone number

1 on it, and that just struck me for some
2 reason. I thought that was the name.

3 Q. And when you say you went through your
4 uncle's truck, is that Pat?

5 A. Correct.

6 Q. So when you gave the information to the
7 officer about the three people you talked
8 to, did you give him the name that you
9 thought was Cindy Lou?

10 A. Over the -- not that -- not that very same
11 day, but, yes, I did, on the phone.

12 Q. When you were at the house, do you
13 remember being told what the girl's name
14 was?

15 A. Yeah.

16 Q. Okay. But when you spoke to the officer
17 and gave him Cindy Lou --

18 A. Yeah, I -- at that point in time, I -- you
19 know, I wasn't sure. It was time --
20 months had passed.

21 Q. Okay. The person that you spoke to down
22 in the basement, other than Shane
23 Rafferty, your cousin, the girl, do you
24 see her in the courtroom?

25 MR. WHITAKER: Objection, Your

1 Honor.

2 THE COURT: It's overruled.

3 A. Right there. It's Lisa (indicating).

4 THE COURT: What seat?

5 Q. What seat is she sitting in?

6 A. Right there, second seat (indicating).

7 MS. DOHERTY: Your Honor, I'd
8 ask the record to reflect he's identified
9 Lisa Penix.

10 THE COURT: So noted. And
11 all the objections are preserved.

12 Go ahead.

13 Q. You told the police -- gave them that
14 information. What happened after that?

15 A. Well, after I told them the information,
16 I -- you know, he said, well, let's go
17 look at this pile of stuff. And we went
18 and looked at it. And from what I told
19 him to what he saw, he called -- he called
20 in his boss and he said, we have a
21 makeshift murder scene here. I mean, he
22 was pretty convinced too. And they got
23 down there and start testing.

24 Well, I went to go get something to
25 drink at the store and I came back and

1 they had went around -- because there's
2 other buildings, went around to see if
3 somebody else, you know, dumped something
4 off there. And here, find out a guy that
5 rented a garage a couple doors down, it
6 was his stuff. Had nothing to do with it.

7 Q. So you learned at that time that it was
8 unrelated to -- things that you had seen
9 were unrelated to Voris and your cousin
10 and Lisa Penix?

11 A. Yes.

12 Q. Contact then with Pat Rafferty, did he
13 continue to try to contact you over the
14 months?

15 A. Yes, he did.

16 Q. And how did he do that?

17 A. He would call my fiancée's cell phone, and
18 he just wanted to talk to me. He wouldn't
19 tell me what he wanted to talk to me
20 about. He'd just say, why don't you swing
21 by. Why don't you -- you're not doing
22 nothing. Why don't you swing by, and, you
23 know, I don't -- it's not normal that --

24 Q. Had you ever had that kind of relationship
25 with him before that he would call you

1 like that?

2 A. No.

3 Q. All right. Did Shane contact you --

4 A. No.

5 Q. -- directly?

6 A. No.

7 Q. And did you ever have any more contact
8 with Lisa Penix after that?

9 A. No.

10 MS. DOHERTY: I don't have
11 anything further.

12 THE COURT: Cross?

13 - - -

14 CROSS-EXAMINATION

15 BY MR. WHITAKER:

16 Q. Mr. Rafferty, you said that sometime
17 between the time you were there at Shane
18 Rafferty's house on Voris and before you
19 went and talked to the police officers,
20 you went through your uncle's truck
21 looking to see if you could figure out
22 what her name was. Is that correct?

23 A. Correct.

24 Q. And you saw that day and you've never --
25 until today, this is the first time you've

1 seen her since then, isn't that correct?

2 A. Other than pictures.

3 Q. The picture -- you saw pictures other than

4 in the paper?

5 A. Yes.

6 Q. When did you see pictures?

7 A. My ex-aunt Denise showed me a picture.

8 Q. And is this before or after you went to

9 the police -- this is after you went to

10 the police, isn't it?

11 A. What, that --

12 Q. That they showed you those pictures?

13 A. Yeah.

14 Q. All right. Well, when you went to the

15 police, you told the -- and you went and

16 saw -- was it Detective Harrah that you

17 saw?

18 A. No. I saw -- I forget his name. He's out

19 there.

20 Q. All right. And in that first statement,

21 you told him that it was Shane that told

22 you that he had -- when he was down there

23 by himself, when he first told you about

24 it, that he had told you that he had done

25 it because the person was a snitch and he

1 was going to tell about the police
2 activities, isn't that correct?

3 A. Correct.

4 Q. And when Lisa came down, she came down
5 because Derek sent her down to find out --
6 apparently heard you talking about it, to
7 find out what you thought, isn't that
8 correct?

9 A. Seems to me.

10 Q. And in that first statement, when you
11 talked to the detectives and you went to
12 tell them everything that happened and you
13 told them that Shane said it was a snitch
14 and drug activities and Derek sent Lisa
15 down or the person you thought to be Cindy
16 Lou, you never once said anything about
17 anybody saying anything about kicking
18 somebody in the head, did you?

19 A. I'm not sure. Do you know how long ago
20 that was?

21 Q. Well, I believe you said it was in May
22 sometime.

23 A. Well, you've got the paper.

24 Q. I'm asking you. You know, you're the one
25 testifying here.

- 1 A. That was in May.
- 2 Q. Right.
- 3 A. What's today? This is another year.
- 4 Q. Yeah. And your point?
- 5 A. My point is you tend to, you know, forget
6 things.
- 7 Q. Okay. Back then, in May, it was closer to
8 the time that you actually heard it, isn't
9 that correct?
- 10 A. Yeah.
- 11 Q. Okay. And at that time, you said nothing
12 about anybody kicking anybody in the head,
13 did you, when you talked to the detective
14 the first time?
- 15 A. I'm -- I don't see why I wouldn't.
- 16 Q. Did you or didn't you, Mr. Rafferty?
- 17 A. I'm -- if I told the whole -- if he
18 listened to me, yes, I did. My story
19 hasn't changed, sir.
- 20 Q. Okay. And if -- well, you don't know
21 whether he wrote that down in his report,
22 do you?
- 23 A. I didn't write it.
- 24 Q. Okay. That's fine. Did you have -- when
25 you were down there that day, did you have

1 a black light in your hand?

2 A. Down where?

3 Q. In the basement when Shane told you what
4 he had done.

5 A. Yeah. He had a black light.

6 Q. And did you hold the black light up to the
7 wall?

8 A. Me, myself, no.

9 Q. Yes. All right. Were you looking at the
10 black light on the wall?

11 A. Yeah.

12 Q. What for?

13 A. Because I was in the bathroom. I had no
14 choice.

15 Q. And as I understand your testimony, then
16 you went back upstairs. Did you have a
17 beer or two when you went back up there?

18 A. No, I didn't. I quit drinking once I got
19 a DUI three years ago.

20 Q. And have you ever been convicted of
21 anything else?

22 MS. DOHERTY: Objection.

23 THE COURT: If you have
24 reason to ask the question. Do you know
25 the answer to that?

1 MR. WHITAKER: I don't know the
2 answer.

3 THE COURT: It's sustained.

4 Q. You've been -- you have been in touch with
5 your Uncle Pat between the time he came
6 over to your house and during that summer,
7 isn't that correct, during the summer of
8 2005?

9 A. Yes.

10 Q. In fact, you borrowed his truck on certain
11 occasions, didn't you?

12 A. It's my grandfather's truck, but he uses
13 it, so --

14 Q. And you called him to -- and that's the
15 truck you looked through to see when you
16 found the Cindy Lou thing?

17 A. Yeah.

18 Q. And how many times do you think you
19 borrowed that -- but you borrowed it from
20 Pat, isn't that correct?

21 A. No. I asked my grandfather because it's
22 his truck.

23 Q. But then you had to call Pat to get the
24 truck?

25 A. No. It was at my grandfather's house.

- 1 Q. Did you ever call Pat and ask him if you
2 could use that truck?
- 3 A. No. It's not his truck.
- 4 Q. Did you ever call Pat and say that
5 something had happened to the truck?
- 6 A. No. What --
- 7 Q. Did you have a flat tire? Did you have
8 anything go wrong with any of the tires
9 when you were using the truck?
- 10 A. No. I don't believe so.
- 11 Q. Now, when Pat came over to the house that
12 day, you were aware that Pat -- it was
13 just Patrick and Shane, wasn't it?
- 14 A. What's that?
- 15 Q. It was just Patrick and Shane that came
16 over to your house?
- 17 A. Correct.
- 18 Q. And both Patrick and Shane talked about
19 the murder to your dad, isn't that
20 correct?
- 21 A. No.
- 22 MS. DOHERTY: Object.
- 23 THE COURT: Well, where was
24 he when this was happening?
- 25 A. Upstairs. You can talk to my father when

1 he comes in.

2 Q. You didn't hear any conversation that day?

3 A. I was upstairs in my room.

4 Q. But as I understood you talking, you said

5 you were afraid of Pat?

6 A. Yeah, I was.

7 Q. And why was that?

8 A. I still am.

9 Q. And why is that?

10 A. Because he's crazy.

11 Q. Okay. Do you know that he deals

12 methamphetamines?

13 A. Yes, I do.

14 Q. All right. Did you ever use any?

15 A. What's that?

16 Q. Did you ever use methamphetamine?

17 A. No.

18 Q. Did you -- but you know that Patrick --

19 that Pat deals it?

20 A. Yeah.

21 Q. And you're afraid of him -- also you're

22 afraid of him because you thought he had

23 some involvement in this, isn't that

24 correct?

25 A. Correct.

- 1 Q. And as I understand your testimony, you
2 were afraid of Shane, isn't that correct?
- 3 A. Correct.
- 4 Q. And you were afraid of what he might do to
5 you?
- 6 A. I was afraid of what all of them might do
7 to me.
- 8 Q. You were afraid of what Derek might do to
9 you as well, isn't that correct?
- 10 A. All of them.
- 11 Q. And did Shane make any threats to you?
- 12 A. No. I only saw him that one night.
- 13 Q. Did Derek make any threats to you?
- 14 A. Nope.
- 15 Q. But you still were afraid because Shane
16 told you about this murder and you were
17 afraid if you reported it that something
18 might happen to you, isn't that correct?
- 19 A. Yeah. Picture --
- 20 Q. I'm just -- the answer is yes?
- 21 A. Yes.
- 22 Q. And that remained true up until you saw
23 the toilet that you thought might have
24 been involved in the crime, isn't that
25 correct?

1 A. Yep.

2 Q. Now, as I understood when you were
3 testifying, you said that you couldn't
4 take it all in when Shane was first
5 telling you all this stuff before anybody
6 else was down there. Is that correct?

7 A. Yeah.

8 Q. All right. Because it freaked you out and
9 it was hard for you to listen?

10 A. It's not every day that you hear about a
11 murder.

12 Q. Right. That's correct. And your dad told
13 you the same thing, about not going to the
14 police because you shouldn't get involved
15 in this because of what might happen,
16 isn't that correct?

17 A. He left it up to me.

18 Q. He never told you, just stay out of it,
19 don't get involved. Don't go to the
20 police?

21 A. He left it up to me.

22 MR. WHITAKER: Nothing further,
23 Your Honor.

24 I'm sorry. Excuse me. I do have
25 one more question.

1 Q. You never said anything to the police
2 officers about the \$60 or the sunglasses
3 either, did you, the first time you talked
4 to them?

5 A. I'm not sure. Is it in the report?

6 Q. Thank you. You don't know. Is that what
7 your answer is?

8 A. Is it in the report? I don't know.

9 - - -

10 REDIRECT EXAMINATION

11 BY MS. DOHERTY:

12 Q. Mr. Rafferty, when you spoke to Sergeant
13 Graham, did you actually write out a
14 report?

15 A. No, I didn't.

16 Q. Was it tape recorded?

17 A. No.

18 Q. Did you give him the information that you
19 could?

20 A. Yes.

21 Q. And you didn't have any involvement with
22 writing out a report or doing anything
23 with that?

24 A. No, I didn't.

25 Q. Describe Derek Shutt.

- 1 A. Describe him?
- 2 Q. Describe Derek Shutt, his appearance.
- 3 A. Scary.
- 4 Q. As far as weight, that kind of thing, is
- 5 he a big guy, little guy?
- 6 A. He's huge.
- 7 Q. Huge?
- 8 A. Huge.
- 9 Q. And your cousin, describe his stature.
- 10 A. My size, just wiry.
- 11 Q. All right. And Lisa, did she appear then
- 12 as she appears now, as far as size-wise
- 13 and that kind of thing?
- 14 A. Yeah. Hair's shorter.
- 15 Q. Okay. Attorney Whitaker asked you about a
- 16 black light. You said that Shane had a
- 17 black light. What was the purpose of the
- 18 black light?
- 19 A. I told them -- I found myself in a
- 20 situation to where I have a 400-plus man
- 21 standing in front of me. I have my cousin
- 22 who just told me he murdered somebody. I
- 23 have Lisa, who was just as involved as
- 24 anybody else.
- 25 MR. WHITAKER: Objection, Your

1 Honor. Move to strike.

2 THE COURT: Sustained.

3 Q. According to what she told you?

4 A. According -- yeah.

5 THE COURT: It's sustained.

6 Confine it to the question, okay, Mr.

7 Rafferty. Thanks.

8 Q. Based upon what you heard from the three
9 of them, did you believe what Lisa had
10 told you about her involvement?

11 A. Yes. Yes.

12 Q. Okay. So you have these three people that
13 you're obviously in fear of. And tell us
14 about the black light.

15 A. Well, I was in fear for my life. In my
16 heart, my heart told me that if I acted
17 scared, if I acted in any other way other
18 than calm and like it was no big deal,
19 they would kill me too.

20 Q. Okay. And the black light, what was the
21 purpose of it?

22 A. Because I mentioned -- I said, I've
23 watched plenty of crime investigation on
24 TV. I said, and if they come in with one
25 of them lights and that stuff, they're

1 going to find something. You can't get
2 away with that.

3 Q. Okay. And did they happen to have a black
4 light type thing that they used?

5 A. Yeah.

6 Q. Okay.

7 MR. WHITAKER: Objection to the
8 "they", Your Honor.

9 THE COURT: Overruled.

10 Q. You said that a photo was shown to you by
11 your aunt. Is that what it was?

12 A. Yeah.

13 Q. Is that -- how's that aunt related to Pat?

14 A. She's -- she married him two or three
15 times.

16 Q. Okay. How many times has Pat been
17 married?

18 A. To her?

19 Q. To anybody.

20 A. You got me.

21 Q. A lot of times?

22 A. Yeah.

23 Q. Okay. And how was it that his ex-wife,
24 whatever, would have talked to you about
25 Lisa?

1 A. She was telling me --

2 Q. You don't have to tell us what she said.
3 But how did that come about that you were
4 looking at a picture of Lisa and realized
5 who it was?

6 A. Because I had mentioned Cindy Lou. Well,
7 she knew Lisa and she knew of Laura, and
8 she had pictures of them. And she showed
9 me the pictures and I said, well, it's not
10 her; it's her.

11 Q. And were you aware of Lisa's relationship
12 with Pat, your uncle?

13 A. No, I wasn't.

14 Q. You weren't made aware of that at all?

15 A. No.

16 Q. You indicated that you were fearful after
17 all this happened, after you talked to the
18 three of them. And that was one of the
19 reasons why you didn't report it, correct?

20 A. Correct, that and I didn't know -- I
21 didn't know who it was.

22 Q. All right. At any time while you were in
23 that basement or upstairs or anywhere
24 else, when you left, when you went
25 outside, did Lisa Penix say anything to

1 you about helping her, getting her out of
2 this situation, anything like that?

3 A. No.

4 Q. And when you talked to the three of
5 them -- I'm going to ask you specifically
6 about what Lisa said to you. The
7 statements you've told us today, those are
8 things that she actually said to you and
9 spoke down in that basement?

10 A. Correct.

11 Q. You weren't present when this murder
12 occurred, correct?

13 A. No, I wasn't. Thank God.

14 MS. DOHERTY: I don't have
15 anything else, Judge.

16 THE COURT: Mr. Whitaker?

17 MR. WHITAKER: Nothing further,
18 Your Honor.

19 THE COURT: Thank you very
20 much, Mr. Rafferty. If you want to send
21 your dad in, I believe he's the next
22 witness.

23 *****END OF EXCERPT*****

24

25