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P R O C E E D I N G S

October 17, 2005

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The following proceedings were held in Boone County, out of the presence of the jury:

THE COURT: Case Number 165368-01, State of Missouri versus Ryan William Ferguson. What says the state?

MR. CRANE: Ready, Your Honor.

THE COURT: And what says the defendant?

MR. ROGERS: Ready, Your Honor.

THE COURT: I don't know if you're aware, there is a mic that's live on that table. If you push the button on the side and it flashes -- no. On the table. Just look underneath. No, no. On the table. Sit down and look in front of you. Right in front of you on the ledge there.

MR. WEIS: Oh, okay.

THE COURT: If it's flashing -- if it's flashing, the mic 's off. And if it is -- if there's no color to it, the mic is on. Just so that you would know that, for confidential matters.

Are there preliminary matters for the state?

MR. CRANE: We gave you and the defense our draft of instructions.

THE COURT: Are they on the bench here? I do see one.

1 And does the defense have a draft instruction at --
2 any draft instructions at this time?

3 MR. ROGERS: We have prepared them, Your Honor, but
4 we don't have them here in hard copy format. Or at least we
5 can't find them in our boxes. But we --

6 THE COURT: Well, you don't have to do it this
7 moment, but if we can do that sometime this morning, that
8 would be fine.

9 MR. WEIS: I've got them on the computer. We can --

10 MR. ROGERS: Print them off during the recess.

11 THE COURT: All right. That would be fine.

12 Other than that, does the state have any matter to
13 take up?

14 MR. CRANE: None that I can think of, Judge.

15 THE COURT: The defense? Is there any --

16 MR. ROGERS: Your Honor, I would ask the Court's
17 leave for Miss Dorrance, our paralegal, to sit over here at
18 this table during the trial, so she can help us with some
19 audiovisual.

20 MR. CRANE: That's all right with me.

21 THE COURT: If that would assist, you may do that.
22 It looks like there -- are all those boxes your boxes?

23 MR. ROGERS: Yes, Your Honor.

24 THE COURT: All right.

25 MR. ROGERS: That's why we can't find our

1 instructions. Too many boxes.

2 THE COURT: All right. Are there any other matters
3 then for the defense?

4 MR. ROGERS: No, Your Honor.

5 THE COURT: I would tell anyone here, if you have a
6 cell phone in any form, whether it's a normal looking cell
7 phone or if it's a PDA, a BlackBerry, turn it off. If your
8 telephone goes off, it will be checked for the rest of the
9 day by our court security staff. And certainly we wouldn't
10 want you to be without it. And that goes for the attorneys
11 too. Because sometimes it happens that attorneys have
12 their's on as well.

13 Where is our -- are you handling court today? The
14 jury is ready to come in?

15 DEPUTY COURT MARSHAL LANE: Yes, Judge.

16 THE COURT: All right. If you would have them come
17 in, please.

18 - - -

19 The following proceedings were held in the presence of
20 the jury:

21 THE COURT: Good morning, ladies and gentlemen.

22 (Court reporter experienced technical difficulties
23 with equipment.)

24 THE COURT: Why don't we start over again.

25 If, ladies and gentlemen, you would answer "here" or

1 "present" as the clerk calls your name. We appreciate your
2 being here and bearing with us with this technical problem.
3 Hopefully it won't happen again.

4 You may start.

5 (Roll call by Sheri Vanderhoof, Deputy Clerk.)

6 THE COURT: Would you stand, ladies and gentlemen,
7 and be sworn.

8 DEPUTY CLERK VANDERHOOF: Please raise your right
9 hands.

10 (Jury panel of 12 jurors and 2 alternates sworn by
11 Sheri Vanderhoof, Deputy Clerk.)

12 THE COURT: Be seated, ladies and gentlemen.

13 MR. ROGERS: Your Honor, at this time defendant
14 would request the rule with regard to exclusion of witnesses
15 be invoked.

16 THE COURT: All right.

17 (Discussion off the record between counsel.)

18 MR. CRANE: Yeah. The defense -- this is something
19 we talked about Friday. The defense doesn't have any
20 objection to investigator -- or prosecutor's investigator
21 Bill Hawes being in the courtroom, although he will testify.

22 Also, Judge, I would ask that the record reflect
23 that the wife of Kent Heitholt is in the courtroom. Pursuant
24 to the victims' rights statute and Missouri Constitution, the
25 state requests that she be allowed to remain in the

1 courtroom, even though she'd be a witness in the case.

2 THE COURT: Are there any other family members that
3 might be called as witnesses?

4 MR. CRANE: There are other family members that are
5 present --

6 THE COURT: But that --

7 MR. CRANE: -- of the Heitholt family, but I do not
8 anticipate any of those would be called as a witness by the
9 state. At least at this juncture.

10 THE COURT: Do you have --

11 MR. ROGERS: We do not anticipate calling any, Your
12 Honor.

13 THE COURT: Do you have an objection?

14 MR. ROGERS: No, Your Honor.

15 THE COURT: All right. Any individual who is in
16 this courtroom who is to be called as a witness, would you
17 please approach the clerk, if you're here. Because I --
18 gentlemen, you know your witnesses. I don't know who they
19 might be. And I'm talking to both sides.

20 MR. ROGERS: We don't have any who are present in
21 the courtroom, Your Honor.

22 THE COURT: All right.

23 I'd ask our marshal then to put a sign outside the
24 door that indicates witnesses are excluded.

25 And you did swear the jury in. Yes. All right.

1 You may be excused then at this time.

2 (Clerk excused.)

3 THE COURT: Ladies and gentlemen, this case will
4 proceed in the following order.

5 First, the Court will read to you two instructions
6 concerning the law applicable to this case and its trial.
7 Next, the attorney for the state must make an opening
8 statement outlining what the attorney expects the state's
9 evidence will be. The attorney for the defendant is not
10 required to make an opening statement then or at any other
11 time. However, if the attorney chooses to do so, he may make
12 an opening statement after that of the state, or the attorney
13 may reserve his opening statement until the conclusion of the
14 state's evidence.

15 Evidence will then be introduced.

16 At the conclusion of all the evidence, further
17 instructions in writing concerning the law will be read to
18 you by the Court, after which the attorneys may make their
19 arguments. You will then be given the written instructions
20 of the Court to take with you to your jury room. You will go
21 to that room, select a foreperson, deliberate, and arrive at
22 your verdict.

23 Sometimes there are delays or conferences out of
24 your hearing with the attorneys about matters of law. There
25 are good reasons for these delays and conferences. The Court

1 is confident that you will be patient and understanding. We
2 will have recesses from time to time.

3 The following two instructions of law are for your
4 guidance in this case. The two of them, along with the other
5 instructions in writing read to you at the close of all the
6 evidence, will be handed to you at that time to take to your
7 jury room.

8 (Instructions 1 and 2 read to the jury.)

9 THE COURT: Mr. Crane.

10 MR. CRANE: Please the Court.

11 THE COURT: You may address the jury.

12 MR. CRANE: Counsel.

13 - - -

14 OPENING STATEMENT

15 BY MR. CRANE:

16 Ladies and gentlemen of the jury, welcome to Boone
17 County.

18 The evidence in this case will be that on October
19 31st, 2001, that's Halloween 2001, Charles, he goes by Chuck,
20 Erickson and the defendant, Ryan Ferguson, both 17-year-old
21 high school students, had been drinking inside a bar called
22 By George here in town. By the early morning hours of
23 November 1, 2001, the two left the bar and walked down the
24 street where the defendant had parked his Mercedes. From the
25 car, the teenagers walked a short distance, when they saw a

1 man on the parking lot of the Columbia Daily Tribune
2 newspaper building. Without warning, they attacked this man,
3 as he stood by the door of his car. The evidence will be
4 that Erickson walked up and struck the victim in the head
5 with a tire tool. Thereafter, the defendant strangled the
6 victim to death. And then both of them left the scene.

7 Now ladies and gentlemen, back in November of last
8 year, 2004, Chuck Erickson pled guilty to murder in the
9 second degree, robbery, acting in concert with Ryan Ferguson
10 to commit that robbery, and a crime called armed criminal
11 action. He pled guilty to those offenses for his part in
12 this crime.

13 Let's go back to the fall of 2001. Chuck Erickson
14 and the defendant had been friends since junior high. They
15 went to the same schools, had some of the same friends, lived
16 in the same part of town, hung out together, ran around
17 together.

18 On the night of Halloween 2001, the defendant and
19 Erickson met out -- met up outside a house party where a lot
20 of other kids their age had gathered. Shortly after the
21 police showed up and broke up this house party, the boys got
22 together and left in the defendant's vehicle. But the night
23 was still young. The defendant drove to Erickson's
24 residence, where Erickson changed clothes and snuck back out,
25 meeting the waiting defendant.

1 They were headed for a bar called, as I mentioned,
2 By George. The 17-year-olds were under age, but the
3 defendant's sister had said that she could get them in. The
4 nightclub was a popular place that night. A lot of people
5 inside; a lot of cars parked outside. So the defendant
6 parked on past the bar, down the street.

7 The two buddies walked to the parking lot and met up
8 with the defendant's older sister and her friend. And this
9 friend was an Asian female. The bar doorman, bouncer,
10 whatever you want to call it, let them right on in, with
11 these two females. And while the defendant and Erickson were
12 in By George bar, they each had several cocktails. They
13 eventually left the bar that night and went back to the
14 defendant's Mercedes.

15 The evidence will be that during this period the
16 defendant made some cell phone calls. Evidence will be that
17 the last cell phone call the defendant made was at 2:09 a.m.,
18 and it was one minute in duration. 2:09 a.m. on November 1,
19 2001. And the evidence will be that these cell phone calls
20 were made right there in the area of the bar.

21 They got to the car, but these two young men still
22 weren't ready to go home. Instead, on a spontaneous whim,
23 they decided to go rob someone.

24 The defendant got a tire tool from his trunk and he
25 gave it to Erickson. Evidence will be they then left the

1 vehicle on foot and walked a short distance to Providence
2 Road. Providence Road. From there, Erickson and the
3 defendant spotted the victim, Kent Heitholt, a sports editor
4 for the Tribune newspaper. And Mr. Heitholt was now the
5 target.

6 Erickson and the defendant walked up to the parking
7 lot.

8 By the way, the bar and the defendant's car are a
9 short distance, a block and a half, from the parking lot at
10 the Tribune building. The evidence will be that, walking at
11 a normal pace, it takes 3 minutes and 20 seconds to get from
12 the area of the car down to this parking lot where
13 Mr. Heitholt was.

14 Evidence will be that Kent Heitholt logged off his
15 computer at work at 2:08 a.m., and he said his goodbyes to
16 the other employees inside, left the building, and walked to
17 his car on the parking lot.

18 He normally worked in the early morning hours,
19 reporting sports news of the day. He was a big man. 315
20 pounds, six foot three inches tall. And he was 48 years old.
21 His work day was over. And now Kent stood at the driver's
22 side of his car, getting ready to leave. He was alone on the
23 parking lot. And ladies and gentlemen, the evidence will be
24 that Chuck Erickson simply walked up and began striking the
25 victim on the head with this tire tool. Heitholt staggered.

1 He moaned. His head began bleeding. And finally he went
2 down on the pavement. Erickson stopped hitting him and sat
3 on a wall at the front end of the vehicle, of Mr. Heitholt's
4 vehicle, and he felt sick. The victim was hurt bad, but he
5 was still alive. After Kent was down, the evidence will be
6 the defendant then pulled off the victim's own belt and used
7 it to strangle him to death.

8 While Chuck Erickson and the defendant were still at
9 the scene, beside the driver's side of the victim's car, a
10 cleaning lady, a night cleaning lady at the Tribune, stepped
11 out onto the lot to smoke a cigarette. And she saw two
12 people ducking behind the driver's side of Kent's car. This
13 scared her. And the cleaning lady went back inside and
14 hollered at another janitor.

15 And then both janitors, one was the cleaning lady
16 and one was a male janitor, looked outside from this dock
17 area out onto the parking lot, and they saw two young white
18 males, not one, but two young white males on the opposite
19 side of Kent Heitholt's car from them.

20 The male janitor yelled out there, "Who's there?"
21 Trying to figure out what's going on. He couldn't see Kent.
22 He was down. And from his location behind the victim's car,
23 the evidence will be that one of these young white males
24 yelled back at him, "Somebody's hurt. Get help." Words to
25 that effect.

1 Ladies and gentlemen, the evidence will be that that
2 young white male that yelled back at those janitors, evidence
3 will be that was Chuck Erickson.

4 When last seen by either of the janitors, the
5 defendant and Erickson were headed out of the parking lot.
6 The evidence will be they made it back to the Mercedes up by
7 the bar, and they got away. The defendant drove Erickson to
8 his residence and drove away himself.

9 The evidence will be that the janitors contacted 911
10 at 2:26 a.m. on November 1, 2001. So the victim, the
11 evidence will be, logs off his computer, finishes his job,
12 leaves, 2:08. The janitors are calling 911 at 2:26 a.m.

13 Other sports writers that were still in the building
14 that night heard that something had happened to their
15 co-worker, Kent. He was their boss. And they ran out onto
16 the lot. And when they got to Kent, he was face down in a
17 pool of his own blood.

18 The two coworkers, of course they were hoping he was
19 still alive, rolled him over from his original position.
20 They rolled him over onto his back. They checked for a
21 pulse. Checked his neck; checked his wrist. Didn't get
22 anything.

23 The first police officers, now responding to the
24 janitor's 911 call, arrive at 2:30 a.m. And soon thereafter
25 numerous other uniform police officers arrive and emergency

1 personnel. Paramedics. The paramedics tore open
2 Mr. Heitholt's sweater that he was wearing, checked his
3 vitals, but he was already dead.

4 After the uniform police arrived and paramedics
5 determined the victim was deceased, evidence detectives were
6 called in from the Columbia Police Department to process the
7 crime scene.

8 It was determined that Kent Heitholt's wrist watch
9 was missing. It was also determined that the keys to Kent
10 Heitholt's vehicle had been stolen. His wallet was in the
11 car, in the center console, under the thing you can raise up
12 and down. Its contents were intact.

13 There was blood spatter on the inside and on the
14 outside of the victim's car. The driver's side of the
15 vehicle was where this spatter was located. The driver's
16 side. And also there was a particularly large amount of
17 blood spatter and blood transfer, we'll talk about what those
18 terms means as the case proceeds, on the rear driver's side
19 wheel of the victim's vehicle. The multiple blows to the
20 victim had produced a large amount of blood pooling on the
21 pavement. Those multiple blows to the victim's head.

22 Loose change lay near the body. The strap, the
23 strap part of the victim's belt, was missing. It wasn't at
24 the scene. But the buckle of Kent Heitholt's belt lay near
25 his head. Two belt loops on the pants of the victim were

1 ripped loose.

2 At the autopsy performed on the body of Kent
3 Heitholt later that same day, we're still on November 1,
4 2001, the medical examiner determined that the victim
5 received multiple blows to the head with a blunt object. He
6 also had wounds inflicted on his arms and hands. The blunt
7 trauma on the head, however, was not what killed Kent
8 Heitholt. On his neck there was visible bruising. In
9 addition, there is an imprint on the right side of Kent
10 Heitholt's neck. And that imprint matches the buckle that
11 was found at the scene.

12 The victim's watch, car keys, belt strap have never
13 been found. The tire tool used to deliver the blows to the
14 victim's head has never been found.

15 I'll tell you right now, ladies and gentlemen, over
16 the course of this investigation, no fingerprints, blood,
17 DNA, or hair at the scene have been identified as the
18 defendant's or Chuck Erickson's.

19 Since this murder on November 1, 2001, the Columbia
20 Police Department worked the case, for the rest of that year,
21 and then they worked the case through 2002, and then they
22 worked the case through 2003. And it remained unsolved.

23 Let's go back now to 2001. That same morning, the
24 Thursday morning -- Wednesday was a school night. It's time
25 for school. Time to go to high school. It's Thursday

1 morning. And ladies and gentlemen, hung over, Chuck Erickson
2 got up and went to school. The evidence will be the
3 defendant did not attend school that day.

4 The evidence will be that Chuck Erickson would not
5 consciously think about what he and Ryan Ferguson had done
6 for two years. He put the horrible things they'd done on the
7 Tribune parking lot out of his conscious memory.

8 He graduated from high school; got a job; was
9 attending junior college classes.

10 But now in October of 2003, coming up on the
11 two-year anniversary of this murder, October of 2003, his
12 memory, Chuck Erickson's memory of these events was
13 triggered. He saw a newspaper article talking about the
14 homicide. He kept it to himself at first, but from then on
15 his memory, his guilt for this crime, began to bother him and
16 to eat at him more and more.

17 Finally at a New Year's Eve party, it was 2003,
18 going into 2004, Erickson confronted Ferguson about these
19 memories that he had. It became confrontational. Ferguson,
20 the defendant, angrily denied it. And Chuck left the party
21 saying, "That's not something you forget."

22 Then in late February, early March, of 2004,
23 Erickson confided in two different friends --

24 MR. ROGERS: Object to this as hearsay, Your Honor.
25 This is not going to be admissible testimony.

1 THE COURT: Do you want to approach the bench?

2 MR. CRANE: I -- yeah, we probably ought to
3 approach.

4 THE COURT: Or do you want to respond? Do you care
5 to respond there, or you want to approach the bench?

6 MR. CRANE: You want to approach on this?

7 - - -

8 Counsel approached the bench and the following
9 proceedings were held:

10 MR. CRANE: Well, first of all, Judge, when we call
11 Mr. Erickson, he'll testify about what he told the two
12 friends. So that's not -- he'll testify about a
13 conversation. So that's not hearsay.

14 MR. ROGERS: Sure, it is. It's the witness
15 testifying about an out-of-court statement he made. It's not
16 only hearsay, it's self-serving hearsay.

17 MR. CRANE: The defendant can testify to things he
18 said.

19 THE COURT: I'm going to overrule your objection.

20 MR. CRANE: And also, now, we do have a motion in
21 limine regarding the testimony of these two individuals,
22 which we I guess we'll approach on that.

23 THE COURT: Yes.

24 MR. CRANE: Okay. Yeah.

25 - - -

1 The following proceedings were held in open court:

2 THE COURT: You may proceed.

3 MR. CRANE: Thank you, Judge.

4 Okay. Then in late February, March, 2004 -- I know
5 I'm skipping around a little bit on dates, but you with me?
6 2004. The -- Chuck Erickson confided in two different
7 friends. Two different buddies. He was hesitant, and he was
8 uncertain, and he said maybe he dreamed it. But he told both
9 of these friends that -- now these were two different
10 conversations with two different guys at different times --
11 that he and Ryan Ferguson, back on Halloween of 2001, had
12 been at George's. Said they had run out of money and they
13 decided to rob somebody. Erickson told these buddies that
14 they attacked the man, and that he then saw Ferguson strangle
15 the reporter.

16 Erickson said he'd seen a cleaning lady, when he was
17 talking to these buddies, at the back of the Tribune
18 building. And Erickson told his buddies he yelled at her and
19 told her they needed help. "Somebody's hurt." Words to that
20 effect. But that the lady had taken off.

21 Now those statements were before Erickson talked to
22 the police. But word about these statements got to the
23 police. There was an anonymous call about that New Year's
24 Eve conversation. Got to the police. And one of the two
25 buddies, that I mentioned a minute ago, he told the police.

1 He told buddies, and then the police found out about it, and
2 they talked to them about what Erickson was saying.

3 On March 10, 2004, the police made contact with
4 Chuck Erickson, here in Columbia. At the station the police
5 told Erickson they'd been hearing he was saying things about
6 the murder to his friends. And with the police, ladies and
7 gentlemen, Chuck Erickson still couldn't remember many
8 details. He was hesitant about what he could remember. And
9 he even said a time or two he wasn't sure that it had
10 happened. But during the very first interview with the
11 detective, Chuck Erickson said he was the one who had beaten
12 the victim and that Ryan Ferguson was the one who strangled
13 him.

14 He said he and Ferguson were at By George, when he
15 talked to the police. He said they'd run out of money.
16 Decided to go rob somebody. He said Ferguson got a tire tool
17 out of his car. And that the car was parked down the street
18 from the bar. That they walked from the car to the Tribune
19 building. Erickson said he, talking about himself, the
20 evidence will be, without warning, hit the victim in the head
21 with this tire tool. He said the victim moaned in pain and
22 was bleeding. Erickson said he felt sick. Thought maybe
23 he'd thrown up after hitting the victim. And he sat down.
24 Said when he looked up, he saw Ferguson, over the victim,
25 strangling him.

1 Erickson said to the police he saw a cleaning lady
2 at the back of the Tribune building. He said he yelled at
3 the cleaning lady: "Somebody's hurt. Go get help." Words
4 to that effect.

5 He said that when they crossed back over
6 Providence -- you got to go across Providence to get to and
7 from the parking lot from George's -- that they saw an
8 acquaintance named Dallas Mallory pulling up to a traffic
9 light.

10 Erickson told the police that he and Ferguson went
11 back inside the bar, after this murder occurred, and that
12 then they left again, and that Ferguson drove Mr. Erickson
13 home to his house, and then the defendant left.

14 After his initial statements to the police, the
15 detectives drove Erickson to the scene and the surrounding
16 area. Erickson continued to be unsure about all that had
17 happened. He'd back off and he'd say maybe he read it in the
18 newspaper.

19 At these interviews there were details, there were
20 details that he couldn't remember. But the essence -- the
21 evidence will be, ladies and gentlemen, that the essence of
22 this homicide was there: He was always with the defendant;
23 he was always the one, Erickson was always the one that
24 started hitting him, hitting the victim; and the defendant
25 was always the one that was strangling him, when he told

1 about that memory.

2 That same day the defendant was located by police in
3 Kansas City. He was transported back here by officers. He
4 was extensively interviewed by the police. And he denied any
5 involvement with the murder.

6 We expect the evidence will be: Mr. Ferguson, the
7 defendant, agreed he was with Erickson that night, and they
8 were at By George bar, and that they left together. Said he
9 dropped Erickson off and went home and got home sometime
10 around 2 to 2:15 a.m.

11 After his arrest on March 10, 2004, Chuck Erickson
12 was taken to jail. His parents hired a criminal defense
13 attorney to represent him.

14 For the next eight months, Erickson talked on the
15 phone to his mom and his dad and his sister. He consulted
16 with his lawyer. He did read the police reports in the case,
17 given to him by his lawyer, that his lawyer had gotten from
18 the prosecutor's office. And he talked to a psychologist
19 that was hired by his attorney.

20 During that time, during that time after his arrest,
21 and up until October 2004, law enforcement didn't have any
22 contact with Chuck Erickson. Nobody from the prosecutor's
23 office, nobody from the Columbia Police Department had access
24 to him. He was represented by counsel. No contact.

25 On October 1st of 2004, Chuck Erickson, through his

1 attorney, entered into what is called a proffer. A proffer.
2 He was taken, with his consent, along with his attorney, his
3 attorney went too, to the police department, where he made a
4 statement outlining what he could remember. And this was
5 done with the potential for an agreement that he testify in
6 this case.

7 At this meeting he did provide more information.
8 Some of the things he talked about he had never been asked
9 before by the police back in March. Some of the information
10 was details about the night of the murder that he'd forgotten
11 and remembered again. And as to some details, he still
12 couldn't remember. But the evidence will be, ladies and
13 gentlemen, that Chuck Erickson had no uncertainty about the
14 essence of this murder. That he beat the victim and the
15 defendant strangled him.

16 After that proffer, after consulting with his
17 attorney, Chuck Erickson and his attorney signed a written
18 agreement to plead guilty to murder in the second degree,
19 robbery, and armed criminal action. As a part of this
20 agreement, Erickson agreed to testify truthfully --

21 MR. ROGERS: Objection, Your Honor.

22 MR. CRANE: -- in this --

23 MR. ROGERS: Argumentative.

24 THE COURT: The objection's overruled.

25 MR. CRANE: As part of the agreement, the evidence

1 will be that Chuck Erickson agreed to testify truthfully at
2 this trial in which you're jurors on today.

3 On November 4, 2004, right in this courtroom, in
4 that witness chair, Chuck Erickson entered his pleas of
5 guilty. After this trial is over, Erickson will be sentenced
6 to 25 years in prison for the murder and robbery of Kent
7 Heitholt.

8 At the close of all the evidence in this case, I'll
9 ask you to find that the defendant is also guilty of the
10 murder and robbery of Kent Heitholt.

11 I appreciate your patience. Thank you.

12 THE COURT: Does defense counsel wish to make an
13 opening statement at this time or reserve your opening
14 statement?

15 MR. ROGERS: We wish to make one, Your Honor.

16 May it please the Court.

17 THE COURT: You may.

18 - - -

19 OPENING STATEMENT

20 BY MR. ROGERS:

21 Good morning.

22 This case is about three different stories. The
23 first two follow one on the other. The third story is
24 connected to the first two only in the imagination of Chuck
25 Erickson.

1 The first story is the tragic, brutal beating and
2 strangulation of Kent Heitholt. There is no question that
3 sometime around a quarter after 2 in the morning, November
4 1st, 2001, Kent Heitholt was attacked in the parking lot
5 behind the building where he worked, the Columbia Daily
6 Tribune building.

7 This will be -- to defy convention, north is at the
8 right end of the picture.

9 This is the Columbia Daily Tribune building. This
10 is the parking lot behind it, where Heitholt was parked.
11 This is By George's, by the way.

12 Here's what we know from credible evidence happened
13 in that parking lot.

14 Kent Heitholt had left the building. There was a
15 stray cat who frequented that area, and Mr. Heitholt was in
16 the habit of feeding that cat. And when the police later
17 processed the scene, they saw that cat food had, in fact,
18 been put on top of a little retaining wall for the cat.

19 Mr. Crane has mentioned the two cleaning people. A
20 woman named Shawna Ornt came outside to smoke a cigarette;
21 stood on the loading dock behind the building, overlooking
22 the parking lot; saw two young men. She described one man,
23 the man who was at the back of the car, the man who said
24 something to her to the effect of, "Somebody needs help
25 here," as a white male, 20 to 21 years of age, six feet tall,

1 with a medium or muscular build, having blond hair, later
2 described as extremely blond hair, spiked in the front. The
3 other man she didn't get a look at at all, but said that he
4 was about the same age, with a much fatter build.

5 The other janitor, Jerry Trump, described those men:
6 The man at the back of the car as a white male, with a stocky
7 build, dark hair, wearing a ball cap, six feet tall, 20 to 21
8 years of age; the other man, by the driver's door, Trump
9 described as a white male, with blond hair, also six feet
10 tall, with a thin build, 19 to 20 years old.

11 Now, keep in mind, they're not looking at the same
12 time necessarily. Ornt is there first; she goes and gets
13 Trump; Trump comes out. So the people could have switched
14 positions.

15 Those are the men that were seen. And what do they
16 do? What are they seen to do by Jerry Trump? They are seen
17 to go east in this alley that leads through the parking lot
18 and to turn right and head south on Fourth Street.

19 Police come. Start processing the scene. And
20 latent fingerprints of value, which are fingerprints which
21 have sufficient detail to be identified, are found on the car
22 of Mr. Heitholt. Those fingerprints are not Ryan Ferguson's,
23 those fingerprints are not Charles Erickson's, and those
24 fingerprints are not Kent Heitholt's, or anybody else's the
25 police have compared them to in connection with this case.

1 A canine unit, police dog, handled by an officer
2 named Todd Alber, comes to the scene. Is brought to the
3 scene. And Officer Alber and the dog -- the dog, under the
4 guidance and control of Officer Alber, follows a scent trail
5 from the Tribune parking lot, east, up the alley, to Fourth
6 Street, south on Fourth Street, across Walnut Street, and
7 across Broadway, which is a main east-west street here in
8 Columbia, down past Cherry and Locust, and it ends up over
9 here roughly on Fifth Street, where the dog loses the trail
10 in front of a building which is student housing for the
11 University of Missouri.

12 Other police come to the scene. They used a
13 substance called luminol. And luminol is a chemical which
14 they can spray and which fluoresces in the presence of blood.
15 And they, with the use of luminol, find some pretty complete
16 bloody footprints there at the scene, and they find a trail
17 of blood -- of -- that -- of this luminescence from the
18 luminol, that goes up the alley, right on Fourth Street,
19 going south down towards Broadway, before the trail
20 decreases, and they basically lose it roughly at Fourth and
21 Broadway.

22 The body of Kent Heitholt is prepared for
23 transportation to the medical examiner's -- or to the morgue,
24 where the medical examiner does the autopsy. And one of the
25 things they do in preparing the body for transportation is

1 they put sterile bags over the hands, so that any items of
2 evidence on the hands of Mr. Heitholt can be maintained and
3 won't be lost during the transportation.

4 At the medical examiner's -- at the autopsy, those
5 bags are removed, and trace evidence is recovered. There are
6 several hairs on the hands of Kent Heitholt. Several hairs
7 and hair fragments, and one what they call limb hair or body
8 hair; not a head hair. Most of those hairs turn out to be
9 those of Mr. Heitholt. There is, however, one hair in the
10 bloody hand of Kent Heitholt which is not his. It has been
11 tested by the FBI laboratory using a process called
12 mitochondrial DNA analysis. And that's a process where the
13 DNA from the mitochondria of the cell are tested.

14 Basically if you think of a cell like a fried egg,
15 you have the yolk, which is the nucleus, and then you have
16 the cytoplasm, which is the white of the egg. And in the
17 cytoplasm are little bodies called mitochondria. And they
18 contain DNA which is different from the nuclear DNA, because
19 it's only derived from the mother. The nuclear DNA is
20 derived from the father's DNA, combines with the mother's
21 DNA, to create life. And so mitochondrial DNA is different
22 than nuclear DNA.

23 But this mitochondrial DNA was tested in the hair.
24 And you'll have that in the hair cells that do not have
25 nuclear materials, so it cannot be tested for nuclear DNA.

1 You can test them for mitochondrial DNA.

2 That hair is not Kent Heitholt's. That hair in the
3 bloody hand of the decedent is not Chuck Erickson's. That
4 hair in the bloody hand of the decedent is not Ryan
5 Ferguson's.

6 The autopsy shows that Mr. Heitholt suffered
7 multiple blunt trauma force injuries to the head. He had
8 what appeared to be defensive wounds on his hands and arms.
9 He had a ligature mark around his neck. He had a very
10 unusual finding: He had a fractured hyoid bone in his neck,
11 which is certainly consistent with and the result of
12 strangulation, but it shows a lot more force than is normally
13 seen. I believe the medical examiner will testify that that
14 is a finding that you might find in somebody who has been
15 hanged as a manner of execution, with a long drop, but you
16 very rarely find in somebody who has committed suicide by
17 hanging themselves, on somebody who is hoisted up to be
18 hanged. Shows a very significant amount of force. And
19 you'll also see the torn belt buckle, which shows a very
20 significant amount of force.

21 That is the story of what happened to Kent Heitholt.

22 The next story, the story that follows from that, is
23 the story of the police investigation. And we've talked
24 about the investigation early that morning.

25 For the next two and a half years the police are

1 following some leads, talking to people, talking to suspects,
2 clearing people, clearing suspects. There are a lot of
3 people that they talk to, there are a lot of reasons to
4 suspect various people, but nobody is ever arrested, nobody
5 is ever charged. There are a lot of people who are asked to
6 give fingerprints; there are a lot of people who are asked to
7 give DNA samples. Nothing.

8 And even though this investigation is not closed,
9 it's definitely on the back burner. But remember who we're
10 talking about here. Kent Heitholt was the sports editor of
11 the Columbia Daily Tribune. Big paper here in town. This is
12 not a story that goes away. This is a story that the local
13 media, including the Tribune, but also the broadcast media,
14 keep on. It's a story that is revived in October of 2002,
15 Halloween of 2002, November of 2002, the one-year anniversary
16 of Mr. Heitholt's death. And it's a story which is revived
17 again on October -- in October and November of 2003. It is
18 at that time that the third story comes into play.

19 And there's really no question that on Halloween
20 night of 2001, Ryan Ferguson and Chuck Erickson ended up at
21 this bar, By George's. They had been -- Chuck had been at a
22 party. The police had come and closed down the party. The
23 guys that Chuck had gone there with had left without him.
24 Ryan had been at that party briefly earlier, but was now
25 coming back. Saw Chuck walking away from the place. Offered

1 him a ride.

2 Ryan had, before -- earlier that evening had talked
3 with his sister Kelly. Ryan had just turned 17 October 19th.
4 And he was an occasional drinker. And he was planning to
5 drink at the party. And he was planning -- he had talked
6 with Kelly about getting into a bar. Getting into By
7 George's.

8 Kelly was 21, 22 years old. She was of legal age.
9 Her roommate, Christine Lo, was of legal age. Her roommate,
10 Christine Lo, was friends with the doorman or bouncer,
11 whatever you call them, at By George's. And she would
12 usually take advantage of that friendship to get in there for
13 free, if they were charging a cover, or to get free drinks.

14 And Kelly knew that if Ryan came with her and
15 Christine, he could get in without having any ID, without
16 being of age or having to prove that he was of age, because
17 the doorman was a friend of Christine's and would let a
18 friend of hers in the bar.

19 So they got -- they had talked earlier that evening
20 at the home where Ryan lived with his parents. Christine did
21 not live there. She lived in an apartment with -- I don't
22 mean Christine. I mean Kelly. Christine didn't live there
23 either. Kelly and Christine and another girl lived in an
24 apartment. They were all students at the University of
25 Missouri. But Kelly had been over there using her parents'

1 computer to work on a paper from school. And she had talked
2 with Ryan and talked about getting together later in the
3 evening and getting into By George's. So they met up, and
4 they got together by phone, and Kelly and Christine got Ryan
5 and Chuck into By George's. And they went there and they
6 drank.

7 You know, By George's is a bar in Columbia. By
8 George's closes, like all bars are supposed to, at 1:30 in
9 the morning. They have what's called "last call," where they
10 turn on the lights; they try to get everybody out of there.
11 The evidence will be that there are almost always police
12 officers out in the parking lot or in front of By George's
13 when it closes, because sometimes there are fights and things
14 when the bar's getting out. It's a, or it used to be, I
15 guess it's closed now, kind of a happening night spot for
16 young people, and they don't want any trouble, so there are
17 usually police officers there watching at closing.

18 You know, earlier at the party Ryan had been talking
19 to a girl named Holly Admire. And Holly was having troubles
20 with her boyfriend. And Ryan thought he was going to take
21 advantage of that situation. Or he'd like to at least. So
22 after By George's closed, Ryan took Chuck home to his house,
23 to Chuck's house, and then Ryan went to his house. And there
24 is a series of telephone calls between Ryan on his cell phone
25 and Holly Admire on her cell phone, Holly Admire at the house

1 of a friend where Holly was staying, and other cell phone
2 calls. Those calls start at about 1:40 and keep going up
3 until after 2:00 in the morning.

4 MR. CRANE: Up until what time?

5 MR. ROGERS: After 2:00 in the morning.

6 MR. CRANE: Okay.

7 MR. ROGERS: So far there's nothing connecting the
8 story of Halloween 2001, from Ryan Ferguson's point of view,
9 with the other two stories.

10 And yet here's Ryan talking on the cell phone after
11 2:00 in the morning, and he skipped school the next day. I'm
12 afraid that the record will show it wasn't all that unusual
13 for Ryan to miss school.

14 There's nothing that connects Ryan's story with the
15 other stories: The death of Kent Heitholt, the investigation
16 of the murder of Kent Heitholt, during 2001, during 2002,
17 most of the way through 2003. But around Halloween of 2003,
18 when the media once again honor the anniversary of
19 Mr. Heitholt's death, Chuck Erickson has a dream. And like
20 dreams are want to do, it combines different elements from
21 waking reality. And one of the elements in waking reality is
22 the fact that Chuck and Ryan were together on Halloween.
23 Another of the element in waking reality is the news media
24 and everything that Chuck has been reading and hearing about
25 Mr. Heitholt's death.

1 Now, keep in mind, Ryan is not reading and hearing
2 these things, because Ryan has gotten out of high school,
3 taken some time off and done some work, and now is going to
4 college in Kansas City. And he and Chuck really don't see
5 each other, because he's in Kansas City and Chuck's here in
6 Columbia.

7 But Chuck has this dream. And the evidence will be
8 that Chuck has symptoms consistent with -- it's called
9 obsessive-compulsive disorder. And Chuck starts obsessing
10 about this dream. And the dream itself is a dream, and he
11 knows it's a dream, and he tells his buddies it's a dream,
12 but he thinks it might be real. He keeps wondering about the
13 dream, he keeps thinking about the dream, and he keeps
14 worrying and obsessing about the dream.

15 And so Chuck and Ryan see each other at a New Year's
16 Eve party, or a party around New Year's Eve, it's not real
17 clear it was actually New Year's Eve, but during the holidays
18 at the end of 2003, beginning of 2004. And they're at a
19 party. And Chuck is drinking; Ryan's drinking. They --
20 Chuck says, "I want to talk to you about something." They go
21 outside, away from the bulk of the party-goers. And Chuck
22 confronts Ryan with this, as Mr. Crane says, and says, "You
23 know, I think we did something really bad, you know, with
24 that Tribune guy." Ryan doesn't know what he's talking
25 about. Denies in no uncertain terms that he ever did

1 anything like that. Chuck kind of drops the subject then.

2 Ryan goes back to school.

3 Chuck, it seems like every time he'd get drunk,
4 would be telling people about this funny dream he's had. And
5 he begins to get more sure that there's something behind it.
6 And he finally tells somebody who tells somebody who calls
7 the police.

8 Now in the meantime, somebody at the party has, in
9 fact, overheard the conversation between Chuck and Ryan,
10 because the police receive an anonymous tip. And as a result
11 of that -- coincidentally, Ryan's car was broken into; some
12 things were taken; he calls the police and reports that.
13 They say, "Okay. We need to get your fingerprints so that we
14 can investigate the theft from your car." Actually, they
15 want fingerprints to compare in this case. They get them.
16 They compare them. Like they've done with so many other
17 leads. Not Ryan's prints on the Heitholt car. So that's the
18 end of that.

19 But a couple of months later, when they hear about
20 Chuck Erickson telling people he might have been involved, or
21 he and Ryan might have been involved, then they go out and
22 they pick up Chuck Erickson. And they interview him on March
23 the 10th a total of four times.

24 The first time he is interviewed by Detective Short.
25 And Detective Short wrote a report of that interview. It's

1 really hard to tell what went on during that interview from
2 the report, but you will hear a lot of details that Chuck
3 supposedly said that are not accurate with regard to what
4 really happened.

5 But then the next three interviews are on videotape.
6 And you will watch, on videotape, right here, on that big
7 screen back there, which I'll move this in a minute, and see
8 how Charles Erickson's memory, so-called, of these events is
9 formed and shaped and given what detail it has by the police.
10 You will see over and over again, both with Detective Short
11 and later with Detective Nichols, Erickson try to say, "Look,
12 I may just be making this up. I may have fantasized this.
13 After all, it's only a dream. I don't really remember doing
14 it." And you'll see their reaction to that.

15 Significantly, Charles Erickson throughout that day,
16 March 10th, all four interviews, says that they assault
17 Mr. Heitholt and that they then leave, going north and west
18 across Providence. It is at this intersection, the
19 intersection of Providence and Ash, that Erickson says on
20 March 10th he encountered Dallas Mallory. That intersection
21 is known as the Break Time, because there's a convenience
22 store and gas station called Break Time right there, that is
23 sort of visible from miles around.

24 Consider that. Consider it. Erickson says, "We go
25 this way." Trump, Ornt, Officer Alber's dog, and the luminol

1 trail all say they went thataway. Opposite directions.

2 First interviews with Detective Short, not recorded.

3 The first videotaped interview is with Detective Short. The
4 second videotaped interview is done in a police car. And
5 they're driving around with -- Detective Nichols is the one
6 who's doing the questioning, and there's another police
7 officer running the videotape, showing the scenery, and
8 they're trying to get Chuck to point out various things. And
9 once again he points out the Break Time. Once again he
10 points out a retaining wall. A wooden retaining wall in this
11 area here that he says he remembers climbing. In fact, over
12 and over again he points out the retaining wall.

13 It's interesting, because when they approach the
14 alley that leads to the parking lot of the Tribune, Chuck
15 asked them, he doesn't tell them, he asks them, "Show me
16 where this actually happened. Show me where it actually
17 happened." Not "I remember doing it and here it was." "Show
18 me where it happened." And Detective Short -- or Detective
19 Nichols, excuse me, obligedly says, "Well, it's right up
20 there where that white Jeep's parked."

21 They drive the route taken by the dog. The trail of
22 blood. And Chuck says, "No, that doesn't look familiar to me
23 at all. Not at all." They try to transform the wooden
24 embankment he claims to remember climbing. And by "wooden
25 embankment," it's a retaining wall made of beams, like

1 railroad ties. They try to say that that must have been this
2 creek here. Flat Branch I believe is its name. And when he
3 keeps saying the Break Time, they tried to say that he must
4 be talking about this Phillips 66 station down here at
5 Providence and Locust. But he says no. "Doesn't look
6 familiar. That's not what I'm talking about."

7 By the way, he says that he saw Dallas Mallory
8 stopped -- or at a stoplight. And he described Dallas
9 Mallory as wearing a Halloween costume of a police officer's
10 uniform. Well, Dallas Mallory had, in fact, been at the
11 party earlier, the one that was closed down by the police,
12 wearing the police officer costume. And he had been with
13 Chuck at that party. But at 2:00 in the morning, this
14 stoplight is flashing yellow. Nobody stops for the flashing
15 yellow. Even this stoplight (indicating) is flashing yellow
16 at 2:00 in the morning.

17 Then you'll see the interview between Chuck and
18 Detective Nichols, after Ryan has been arrested, after Ryan
19 has repeatedly denied having been involved in any type of
20 homicide, after Ryan has told him, "Look, we left By George's
21 when it closed, and I took him home." Once again Chuck tells
22 Nichols, "Well, if Ryan says it didn't happen, I could be
23 making it up." And you'll see Nichols' reaction to that.

24 Chuck's arrested. Nichols is arrested. Chuck gets
25 a lawyer. Chuck's lawyer gets all of the police reports. He

1 gets the videotapes. He gets everything. And shares them
2 with Chuck.

3 And then in October of 2004, six months later, Chuck
4 comes to the police department with his lawyer to give his
5 proffer. And lo and behold, he now remembers, supposedly,
6 going up this way, going down this way, coming across here.
7 It's down here that he says Dallas Mallory. But they still
8 come back here to By George's to drink. Because remember the
9 motive? The motive for this is to get more money --
10 according to Chuck, they're out of money -- for drinking. So
11 we have to get more money so that we can go back to By
12 George's and drink more. But By George's has been closed for
13 an hour by the time Heitholt is dead and the time the people
14 would have had a chance to get away from the scene and back
15 there.

16 So why? Why would Chuck Erickson, having gone to
17 the police with something that he didn't even know was real,
18 now be coming in here and telling you, "Oh, yeah, I remember
19 it plain as day"?

20 Let's see what happened when he tried to tell
21 Detective Nichols in that last interview that he was not
22 sure, that he could have been making it up.

23 MR. CRANE: Judge, I'm going to object at this point
24 to --

25 THE COURT: If you'd turn that off, please.

1 MR. WEIS: Sure.

2 MR. ROGERS: Stop. Thanks.

3 MR. CRANE: We -- we expect that the videotapes may
4 come in. I mean, we were the ones that tendered them to the
5 defense. I don't think that playing a videotape -- I didn't
6 have any objection to the still photograph, but a videotape
7 isn't appropriate for opening statement. The photograph is a
8 static exhibit. The videotape, which I'm confident the jury
9 will see during the trial, is not. And I would object
10 generally to that being -- I may have something else here on
11 top of that.

12 (Discussion off the record between Mr. Crane and
13 Mr. Knight.)

14 MR. CRANE: If -- the exhibits that are used to
15 assist the jury in understanding locations, et cetera, are
16 one thing. But this is evidence that's going to come in as
17 to statements and is not suitable for opening.

18 MR. ROGERS: Your Honor, I believe that any exhibit
19 that I have a good faith basis will be admitted in evidence
20 is proper for opening statement if I want to use it. And
21 that's all I want to do.

22 THE COURT: I'm going to sustain the objection.

23 MR. ROGERS: Watch the tape when you hear it. And
24 you'll hear it more than once. You will see Charles Erickson
25 tell Nichols: "I don't know. I don't remember. It's not

1 something I remember. It's something I might have read in
2 the paper." You'll hear him repeatedly try and say, "Look,
3 I'm not sure." And you'll see Nichols move his chair up, get
4 right in Erickson's face and yell at him, and tell him, "I
5 don't want to hear any of this gibberish. Ryan Ferguson is
6 saying that he didn't do it, and you're out here hanging out.
7 You're the one hanging out. Unless you tell us all the
8 details you can about Ryan Ferguson, you're going down alone.
9 I don't want to hear any of this 'I might have dreamed it.'
10 I don't want to hear it. I don't want to hear it. I don't
11 want to hear it."

12 You know, if the police had done their job --

13 MR. CRANE: Well, Judge, this sounds like argument
14 to me.

15 THE COURT: The objection to the form is sustained.
16 If you'd just tell the jury what the evidence is going to be.

17 MR. ROGERS: You will see from the evidence that
18 Chuck Erickson, when he was questioned by the police on March
19 10, wanted to be reassured that it was just a dream and that
20 he really didn't do anything. But, instead, you will see him
21 be berated, coerced, cajoled, and taught what the police
22 wanted him to say. And then you'll see the differences
23 between what he claimed to remember then and what he claims
24 to remember now. It is not the truth. Ryan Ferguson had
25 nothing to do with the death of Kent Heitholt.

1 At the close of this case I will stand before you
2 again and show you how it is your duty under the law and the
3 evidence in this case to return a verdict of not guilty as to
4 each and every charge.

5 Thank you.

6 THE COURT: Counsel, just a second before you get --
7 are you -- is your witness that you're intending to call
8 now --

9 MR. CRANE: Can we --

10 THE COURT: -- one that is --

11 MR. CRANE: You know, I'm glad you said something.
12 Can we --

13 THE COURT: You can come to the bar.

14 - - -

15 Counsel approached the bench and the following
16 proceedings were held:

17 THE COURT: I'm thinking of taking a break now.
18 They've been here an hour and a half. And I don't want to
19 stop a witness right in the middle of something.

20 MR. CRANE: I was just going to say that. That's
21 fine.

22 THE COURT: And they can order their lunch. And
23 then we'll know a better time on your schedule. That's when
24 I would normally do it if we start at 8:30.

25 MR. ROGERS: That's good for me. I think the

1 defendant needs it worse.

2 THE COURT: Okay. Thank you.

3 - - -

4 The following proceedings were held in open court:

5 THE COURT: Ladies and gentlemen, this seems like it
6 might be a good time to take our mid-morning break, since the
7 next individual called as a witness may be lengthy. And we
8 would take a break anyway around this time.

9 The Court again reminds you of what you were told at
10 the first recess of the Court. Until you retire to consider
11 your verdict, you must not discuss this case among yourselves
12 or with others, or permit anyone to discuss it in your
13 hearing. You should not form or express any opinion about
14 the case until it is finally given to you to decide. Do not
15 read, view, or listen to any newspaper, radio, or television
16 report of the trial.

17 Les, has the jury already ordered their lunch?

18 DEPUTY COURT MARSHAL WERNER: Not yet. We'll
19 probably do that during this break.

20 THE COURT: Maybe you can do that during a break.
21 And then let me know what time it will be delivered so that
22 we can let counsel know about witnesses' scheduling and so
23 forth.

24 DEPUTY COURT MARSHAL WERNER: Yes, ma'am.

25 THE COURT: With that understanding, we'll be in

1 recess.

2 (Recess taken.)

3 - - -

4 The following proceedings were held out of the presence
5 of the jury:

6 THE COURT: Is the state ready to proceed?

7 MR. CRANE: Yes, Your Honor.

8 THE COURT: And the defendant ready to proceed?

9 MR. ROGERS: Yes, Your Honor.

10 THE COURT: All right. You may return the jury to
11 the courtroom.

12 - - -

13 The following proceedings were held in the presence of
14 the jury:

15 THE COURT: State may call its witness.

16 MR. CRANE: State calls Deborah Evangelista.

17 THE COURT: Could you come forward and raise your
18 right hand, please.

19 - - -

20

21

22

23

24

25

1 DEBORAH LYNN EVANGELISTA,
2 being first duly sworn by the Court, testified as follows:

3 THE COURT: Would you take the witness stand,
4 please, ma'am.

5 - - -

6 DIRECT EXAMINATION

7 BY MR. CRANE:

8 Q. Good morning.

9 A. Good morning.

10 Q. Ma'am, would you give us your name, please?

11 A. Deborah Lynn Evangelista.

12 Q. And what was your relationship to the victim in this
13 case, Kent Heitholt?

14 A. I was his wife.

15 Q. And you obvious -- obviously you kept your name;
16 right?

17 A. Yes. My maiden name.

18 Q. Okay. Where are you currently living, ma'am?

19 A. I'm living in Texas.

20 Q. I want to direct your attention to what's marked for
21 identification as State's Exhibit 1, 1A and 1B.

22 MR. CRANE: Charlie.

23 MR. WEIS: That's fine.

24 MR. CRANE: Oh, Jeremy? Okay.

25 Q. Do you recognize the individual, and in this second

1 one, the taller of the two individuals in these two
2 photographs?

3 A. I do.

4 Q. And are these fair and accurate depictions of your
5 late husband, close in time to his death?

6 A. They are.

7 MR. CRANE: Judge, I would offer State's Exhibit 1,
8 1A and 1B.

9 MR. WEIS: No objection, Your Honor.

10 THE COURT: State's Exhibit 1, 1A and 1B, are
11 admitted.

12 - - -

13 State's Exhibits 1, 1A and 1B, admitted into
14 evidence.

15 - - -

16 Q. Okay. Just quickly show these to the jury. The top
17 photograph, 1A, is a picture of your husband walking down the
18 street. Actually he's right out here near the courthouse; is
19 that right?

20 A. That's right.

21 Q. And the lower photograph is a picture of your
22 husband, you've already indicated, with another guy; right?

23 A. Right.

24 Q. Do you recognize who that guy is?

25 A. Yes.

1 Q. Who is it?

2 A. That's Jim Robertson, his boss.

3 Q. So this was his boss at the Columbia Daily Tribune?

4 A. Yes.

5 Q. When, ma'am, were you and Kent married?

6 A. December 21st, 1981.

7 Q. Okay. So you'd been married almost 20 years as of

8 October of 2001?

9 A. That's right.

10 Q. What was Kent's age at the time of his death?

11 A. He was 48.

12 Q. And did you and Kent have children?

13 A. Yes.

14 Q. And who were they -- who are they?

15 A. Vince Heitholt and Kali Heitholt.

16 Q. And Vince is how old now?

17 A. He's 22.

18 Q. And what about Kali?

19 A. She's 18.

20 Q. And does Kali also have a middle name?

21 A. Yeah. Rose.

22 Q. So it's Kali Rose Heitholt?

23 A. Yeah. Rose is actually a family name. Uh-huh.

24 Q. Okay. Where was -- we won't go into a whole lot of

25 background at this juncture with respect to Kent, but where

1 was he from?

2 A. Well, he --

3 Q. Where did he grow up? How about that?

4 A. Oh, he grew up in Creve Coeur, Missouri.

5 Q. Okay. And I believe you mentioned to me before that

6 he -- as he grew up, he wanted to play college football?

7 A. Right.

8 Q. That didn't work out.

9 A. (Nodding head up and down.)

10 Q. So what did he go into?

11 A. Sports writing.

12 Q. Okay.

13 A. Journalism.

14 Q. And he worked at various newspapers in the United

15 States; is that right?

16 A. Yes.

17 Q. All right. And eventually when did Kent move up

18 here to work for the Columbia Daily Tribune?

19 A. In 1996.

20 Q. Okay. And then after you got a place up here and

21 everything, the family came on up soon thereafter?

22 A. A couple months later, yeah. He was looking for the

23 perfect house. He didn't find it, but we felt like it was

24 more important to be together, so we went ahead and moved.

25 Q. So he starts on -- in -- do you remember the day he

1 started in 1996? What the date was?

2 A. Well, he just celebrated, that day of his death, his
3 five-year anniversary.

4 Q. And that was Halloween of 2001.

5 A. Uh-huh.

6 Q. Okay.

7 A. That's right.

8 Q. And, in fact, this second photo, 1B, was a
9 photograph taken of Kent at his fifth anniversary.

10 A. That's right.

11 Q. On October 31st, 2001.

12 A. That's right.

13 Q. And it looks like he got some kind of a gift there
14 or something.

15 A. Right. As I -- I remember correctly, it was golf
16 balls, a whole big box of them, because he liked to play
17 golf.

18 Q. Okay. And what was his position throughout his
19 five-year tenure there at the Tribune?

20 A. He was a sports editor. He also wrote --

21 Q. Okay.

22 A. -- for the paper.

23 Q. What were his normal, if he had normal work hours --
24 how about if I ask you this. When would he typically be at
25 the office?

1 A. Well, he'd go in in the morning, after taking Kali
2 to school, and then he'd come back in the afternoon for a
3 little while and he'd eat dinner and -- we'd eat dinner
4 together and watch a little TV, and then he'd go back to
5 work, and he'd work until early the next morning.

6 Q. Okay. And then get up and do it all again the next
7 day.

8 A. Yeah.

9 Q. Okay. By the way, I should ask, how, if you were
10 employed, how were you employed during the time you all lived
11 here in Columbia?

12 A. I was a case manager. I worked for Central Missouri
13 Regional Center, Department of Mental Health. It was the
14 Division of Mental Retardation and Developmental
15 Disabilities.

16 Q. Where was your daughter Kali, who, by the way, Kali
17 is here with us today.

18 A. That's -- she was sitting next to me.

19 Q. Okay. She's seated right back here behind this
20 first guy?

21 A. Yes.

22 Q. Okay. What school was Kali going to back in October
23 of 2001?

24 A. She was going to Hickman High School.

25 Q. Okay. There 's two high schools in Columbia?

1 A. Yes.

2 Q. One of them's Hickman High School and the other one
3 is?

4 A. Rock Bridge.

5 Q. I want to direct your attention to what's marked for
6 identification State's Exhibit 2.

7 MR. CRANE: And Judge, I'm going to just ask the
8 Court, with the defense counsel's permission, to simply take
9 judicial notice of the calendar year 2001, specifically
10 October and November.

11 MR. WEIS: No objection.

12 THE COURT: Court will judicially notice those
13 months.

14 MR. CRANE: Then I'll offer State's Exhibit 2.

15 THE COURT: Any objection?

16 MR. WEIS: No, Your Honor.

17 THE COURT: Exhibit 2 is admitted.

18 - - -

19 State's Exhibit 2 admitted into evidence.

20 - - -

21 Q. Okay. October 2001 shows that the 31st was a
22 Wednesday. That doesn't sound shocking to you, does it?

23 A. No, it doesn't. Uh-uh.

24 Q. Okay. All right. What about that day was -- you
25 talked about normal work hours. You had a job. Anything

1 abnormal about that day, when you got up and went about your
2 business?

3 A. Yeah. It was a pretty typical day. I came home
4 from work. I got home about a quarter 'til 5. I made sure
5 that the jack-o'-lanterns, all the Halloween decorations were
6 out. Made dinner. And Kent came home for dinner. We ate
7 dinner together and watched television. Ate and watched
8 television. And then he went back to work.

9 Q. Okay. And ma'am, when was the last time you saw
10 your husband alive?

11 A. That evening.

12 Q. Okay. Going -- what you've just described. You
13 watched a little bit of TV -- had dinner with you, watched a
14 little bit of TV, and went on into the office.

15 A. That's right.

16 Q. Did your husband wear a watch?

17 A. Yes.

18 Q. What -- describe that watch, if you would.

19 A. It was -- it was just a cheap watch. It was a
20 Timex. A gold flex band. He was hard on watches, so. I had
21 gotten that for him for Christmas the previous year.

22 Q. And you indicated it was a -- well, I don't want to
23 put words. Was a pocket watch or was it a wrist watch?

24 A. No. It was a wrist watch.

25 Q. Okay. And I'm going to direct your attention back

1 to 1B here. Do you see, on his arm, in this photograph taken
2 earlier on October 31st, '01 --

3 A. Yes.

4 Q. -- what you're describing?

5 A. Yes.

6 Q. Could you point it out for us, please?

7 A. There's his watch (indicating).

8 Q. Okay. Pointing out the wrist watch there, in the
9 arm holding the box. Okay?

10 And -- I think we covered -- I was thinking you --
11 oh. You said it was cheap. But you bought it.

12 A. It was a Timex.

13 Q. What was Kent's practice about carrying money?

14 Cash.

15 A. He never carried very much with him.

16 Q. What about a wallet?

17 A. Yeah, he had a wallet, which he, you know, he kept
18 either in his pocket, or he would keep it in his car.

19 Q. Okay. So if he didn't carry his wallet on him, it's
20 your recollection he'd keep it where?

21 A. In his car.

22 Q. Okay. What vehicle did Kent drive? What was his
23 car?

24 A. It was a Neon -- I mean a Nissan Maxima. A black.

25 Q. Okay. Ma'am, who else had access or used or rode in

1 that car that you're aware of?

2 A. Well, Kali would have, because --

3 Q. Okay. Your-all's daughter?

4 A. -- Kent was teaching her to drive.

5 Q. Okay. How did Kali get to and from school?

6 A. Usually Kent took her.

7 Q. Okay. Are you aware whether anybody else rode in
8 the car on those occasions or any others?

9 A. Maybe some of her friends, because Kent would pick
10 up Kali and, you know, take some of her friends home. And
11 then colleagues.

12 Q. What?

13 A. Colleagues. Maybe --

14 Q. Oh, you mean people he worked with?

15 A. Yeah.

16 Q. So he didn't -- when he was going to a game or
17 something here in town, he didn't have a company car?

18 A. Oh, no.

19 Q. Okay. So he'd ride over maybe with another sports
20 guy in a company car to go to a ball game or something.

21 A. Right.

22 Q. And that was -- he had to keep up with all these
23 sporting events going on --

24 A. Oh, yeah.

25 Q. -- around the area; right? Okay.

1 A. Nothing was too small or -- you know, so. He -- he
2 traveled a lot.

3 Q. What about his car keys? Do you remember what those
4 looked like or may have consisted of?

5 A. That would have been a house key, his car key, then
6 the keys to our other cars.

7 Q. Okay. They didn't have any distinctive key ring,
8 you know, like a -- you know, no decorative thing attached to
9 the keys that you recall? Pretty much keys.

10 A. No. Just keys. Yeah.

11 Q. Okay. Strange question: What did your husband use
12 to hold his pants up?

13 A. Always a belt.

14 Q. All right. And do you recall whether he wore a belt
15 on this day, October 31st, 2001?

16 A. Yes. He definitely wore a belt.

17 Q. Okay. He wasn't a suspenders guy?

18 A. Many -- years ago, but not recently, no.

19 Q. Not during this time period?

20 A. No. Uh-uh.

21 Q. Now in State's Exhibit 1B, his sweater goes over his
22 belt area, but directing your attention here to 1A, what do
23 you see around his midsection there?

24 A. That's his belt right there (indicating).

25 Q. And we see his belt in this top photograph. Okay.

1 Q. After Kent -- after you saw Kent for the last time
2 that night, and he went on into the office, did you have any
3 other conversation with him?

4 A. Yes. I called him to let him know that Kali had
5 lunch money and he didn't need to get her any. He would go
6 to the ATM after work sometimes and get her -- get her her
7 lunch money. And I told him he didn't need to do that.

8 Q. Can you tell us about what time that may have been
9 when you made that phone call?

10 A. Yeah. 10. Around 10.

11 Q. And ma'am, that's the last time you spoke to your
12 husband?

13 A. Yes.

14 Q. Prior to when Chuck Erickson and the defendant in
15 this case were arrested in March of 2004, did you know either
16 one of them?

17 A. No.

18 Q. Okay. And I'm going to show you some photographs.
19 The first two are marked for identification as 17 and 18.
20 And just ask if you recognize either of these two
21 individuals.

22 A. No.

23 Q. Okay. You hadn't seen them before this case --
24 their arrests in March of '04.

25 A. No.

1 Q. Okay. And also, just for the record, let me show
2 you what's marked for identification State's Exhibits 19 and
3 20. Do either of those two photographs of the same guys,
4 more recently, ring a bell? I'm not talking about what you
5 may have seen afterwards.

6 A. Right. No.

7 Q. Okay. Ma'am, how did you find out that Kent had
8 been murdered?

9 A. Around 4:00 in the morning, two police officers came
10 to the door. One of them was a detective and one of them had
11 a uniform on. They knocked on the door and rang the
12 doorbell. And Kali got up. She went down the stairs to open
13 the door. I remember telling her, "Look and see who it is
14 first." She opened the door. It was the two police
15 officers. And the first thing I thought of was that it was
16 just some vandalism. You know, I had pumpkins out and
17 ceramic pumpkins and, you know. It's weird, you know, what
18 goes through your mind. I just thought -- you know. And I
19 just woke up. I was (witness making sound). And they came
20 up the stairs. And I asked them to sit down. And the way
21 they looked, I knew something was very wrong. And I thought
22 at first it was my son. I mean, you just -- you know. I
23 thought, Uh, something's happened to Vince. And I sat down.
24 And Detective McGuire bent down and took my hand, and he
25 said, "There's been a horrific crime." He said they found

1 Kent lying beside his car, dead. And I said, "How did it
2 happen?" And they said that he had been beaten to death.

3 Q. Okay. Let me stop you. After the police delivered
4 that news to you -- and that was November -- early morning
5 November 1; correct?

6 A. Yes.

7 Q. Thereafter, after you had a chance to collect
8 yourself, in the days that followed, did the police come and
9 ask you other questions, follow-up questions about this case?

10 A. Yes.

11 Q. Okay. Let me show you what's marked for
12 identification as State's Exhibit 3.

13 I'm going to ask if you recognize the contents of
14 this bag.

15 A. Yes.

16 Q. Okay. What is that?

17 A. That's Kent's hair brush.

18 Q. Okay.

19 A. Yeah.

20 MR. CRANE: Judge, I'm going to -- could you hear
21 her?

22 MR. WEIS: Yes.

23 MR. CRANE: I'm going to offer State's Exhibit 3.

24 MR. WEIS: No objection, Your Honor.

25 THE COURT: State's Exhibit 3 is admitted.

1

- - -

2

State's Exhibit 3 admitted into evidence.

3

- - -

4

Q. Okay. Ma'am, this item was at your residence, and

5

Kent used it?

6

A. Yes.

7

Q. Okay. And after you found out about his murder, who

8

contacted you, reference hair samples of your husband?

9

A. The police did.

10

Q. Okay. And what did you provide them with?

11

A. The hair brush.

12

Q. Okay. And that's the one.

13

A. Yes.

14

Q. Okay.

15

MR. CRANE: Thank you, ma'am.

16

I don't have any other questions of this witness,

17

Judge.

18

THE COURT: You may inquire.

19

MR. WEIS: Thank you, Your Honor.

20

- - -

21

CROSS-EXAMINATION

22

BY MR. WEIS:

23

Q. Miss Evangelista, my name's Jeremy Weis. I'm one of

24

the attorneys that's representing Mr. Ferguson in this

25

matter. You said that you last saw your husband,

1 Mr. Heitholt, on the evening of October 31st of 2001; is that
2 correct?

3 A. That's correct.

4 Q. And what time was -- did he leave for work again
5 that night?

6 A. I would say 8, 9. Around 8 or 9.

7 Q. Okay. And that's --

8 A. In the evening.

9 Q. And that 8 or 9 in the evening, that's the last time
10 you saw him?

11 A. Yes.

12 Q. And then he went to the office?

13 A. Yes.

14 Q. And you said you were contacted by police officers
15 from the Columbia Police Department. What time of the
16 morning was that?

17 A. Around 4:00.

18 Q. And they came to your house in Columbia?

19 A. Yes.

20 Q. And you said -- I believe your testimony was that
21 your daughter is the one who answered the door?

22 A. She was in front of me. I was right behind her.

23 Q. Okay. The police officers, they just -- they
24 informed you at that time that your husband had died;
25 correct?

1 A. Yes.

2 Q. Did they take a statement from you at that time?

3 A. I don't know if they took a statement. I wouldn't
4 really call it a statement.

5 Q. Okay. Did you have to meet with -- you met with
6 police officers after what would be November 1st of 2001.

7 A. Yes.

8 Q. You met with them on a number of occasions; is that
9 correct?

10 A. Uh-huh. That's right.

11 Q. Okay. And during that investigation -- and this
12 investigation, for the record, went on for several years.

13 A. Right.

14 Q. In fact, they -- the police department didn't have
15 anybody arrested in this case until March of 2004; is that
16 correct?

17 A. That's when I got the phone call that they had found
18 them, yes --

19 Q. Okay.

20 A. -- and they had been arrested.

21 Q. So from October 31st of 2001, when Mr. Heitholt
22 passed away, 'til March of 2004, 26, 27 months, somewhere
23 around there?

24 A. Right.

25 Q. Okay. And during that time, you moved out of the

1 Columbia area; is that correct?

2 A. That's right.

3 Q. Okay. And when did you move out of Columbia?

4 A. August of 2003.

5 Q. And there was a period of time where -- let me ask
6 you this. As I said -- or as you said, there was a long
7 period of time where this crime went un -- there were no
8 arrests made in this crime; is that correct?

9 A. That's correct.

10 Q. Did the police ever talk to you about your
11 relationship with your husband?

12 A. Oh. They wanted to know, yeah, if I had a
13 boyfriend.

14 Q. Did they ever search the house? Your house?

15 A. No. They had asked me that night if Kent took any
16 medication. And we said yes, you know, and told them where
17 it was. And I believe they went and got it and -- but they
18 didn't search the house, no.

19 Q. They didn't ask you to -- they didn't ask to search
20 the house?

21 A. No.

22 Q. They didn't ask to search any of the other vehicles?

23 A. No.

24 Q. Okay. And when they got the medications that you
25 indicated, those were down in Kent's room in the basement; is

1 that correct?

2 A. They were in the bathroom downstairs, uh-huh.

3 Q. And that's the bathroom he used in the house?

4 A. One of them, yeah.

5 Q. Okay. But that was his primary bathroom?

6 A. Well --

7 Q. Where he got ready in the morning?

8 A. Well, actually, it didn't even have a shower, so he

9 had to shower upstairs.

10 Q. And State's Exhibit 47 I believe, the hair brush,

11 was that in the bathroom in the basement?

12 A. Yes, it was.

13 Q. And then the state -- or the police department asked

14 you for some hair samples; is that correct?

15 A. Uh-huh.

16 THE COURT: You need to say yes --

17 A. Oh, I'm sorry. Yes.

18 Q. That's okay. She has trouble taking down the nods.

19 A. Oh, sure.

20 Q. And they called you and asked you for a hair sample

21 from Mr. Heitholt -- of Mr. Heitholt; is that correct?

22 A. That's right.

23 Q. Okay. And that was a phone call that the police

24 department made to you or a police officer made to you?

25 A. I believe so.

1 Q. Okay. And you agreed to provide them with a hair
2 sample?

3 A. Yeah. Right.

4 Q. And by doing so, you grabbed what's been marked and
5 admitted as State's Exhibit 47.

6 A. Right. Kent's --

7 Q. The hair brush?

8 A. -- hair brush. Uh-huh.

9 Q. And you didn't give them -- you didn't personally
10 give the hair brush to the officers, did you?

11 A. If I remember correctly, Kali and I were getting
12 ready to go out of town, and I put it in a bag, at -- and
13 left it in our mailbox for them to get.

14 Q. Okay.

15 A. Come by and get. And so --

16 Q. You didn't drop it off at the police station?

17 A. No. I don't think so, no. Uh-uh. No.

18 Q. And somebody picked up the hair brush from you.

19 A. Right.

20 Q. The one that you left.

21 A. Right.

22 Q. Okay. And back to the period of time where this
23 case was unsolved, or there were no arrests made, the police
24 didn't ask you for financial records, did they?

25 A. No.

1 Q. And you never provided any financial records to the
2 police department.

3 A. No.

4 Q. And the police didn't ask you for your phone
5 records.

6 A. No.

7 Q. And you didn't provide any phone records to the
8 police department in this case.

9 A. No.

10 Q. In fact, you didn't have contact with the police
11 department from I believe April 17th of 2002 until like May
12 21st of 2004. Is that correct?

13 A. That sounds correct.

14 Q. Okay. And I know in State's Exhibit -- if I can
15 find it. The -- I'm sorry. I've been referring wrong.
16 State's Exhibit Number 47 is the belt buckle. State's
17 Exhibit 47, I think you refer --

18 MR. WEIS: May I approach the witness? I'm sorry.

19 THE COURT: Sure.

20 Q. In State's Exhibit Number 1, 1A -- and that's a
21 photograph of Mr. Heitholt wearing his belt.

22 A. Right.

23 Q. Okay. And you've now identified to the jury today
24 that that's the belt -- that was definitely his belt, and
25 that's the one he wore.

1 A. Right.

2 Q. Okay. Do you remember talking to police and being
3 shown the belt buckle around the time of the murder?

4 A. It was -- yeah. It probably was weeks, I'm -- I
5 think --

6 Q. Okay.

7 A. -- when they showed it to me.

8 Q. You were certainly shown the belt buckle by the
9 police department.

10 A. Right.

11 Q. All right. And that's the same one that's now been
12 admitted as State's Exhibit 47.

13 A. Yes.

14 Q. Okay. And at that time, you had actually told the
15 police, "I'm not sure if that's his belt buckle or not";
16 isn't that correct? "It looks like it, but I'm not sure"?

17 A. I really don't remember.

18 Q. Okay. But you believe today that it is.

19 A. Yes.

20 Q. Okay. But you're not saying that you definitely
21 recalled it back in 2001 or whenever it was you were shown
22 it. Shortly after.

23 A. I don't remember that.

24 Q. Okay. And one more thing. In -- again, in State's
25 Exhibit 1, and I'm going to refer to 1B, you said that was a

1 picture of Jim Robertson and your husband, Mr. Heitholt?

2 A. The day of his death, yes.

3 Q. The day of his death. And Mr. Heitholt is
4 wearing -- that's what he wore to work that day?

5 A. Yes. That -- that's what -- would have been what he
6 wore to work that day.

7 Q. Okay. And that's, you know, October 31st. He's
8 wearing a short-sleeved shirt?

9 A. Could -- yeah.

10 Q. Okay. And I'm -- I'm just asking you to identify
11 the picture from the day, picture 1B, short-sleeved shirt.

12 A. Right.

13 Q. Okay. Great.

14 MR. WEIS: That's all the questions I have, Your
15 Honor. Thank you.

16 THE COURT: Redirect?

17 - - -

18 REDIRECT EXAMINATION

19 BY MR. CRANE:

20 Q. Well, just one thing. On that outfit he's got on
21 there in the bottom picture, you said he got up and would
22 come in and work in the day.

23 A. Uh-huh.

24 Q. Is that right?

25 A. That's right.

1 Q. And then he'd come home and leave again.

2 A. Right.

3 Q. Okay. I don't -- I mean, were you even there to see
4 what he had on the morning of the 31st? Or did you leave for
5 work first or did he leave?

6 A. I would have left first, yes.

7 Q. Before he got dressed?

8 A. Right.

9 Q. Okay. So -- well, I mean, I guess you also don't
10 know if he had a short-sleeved shirt on inside there and then
11 put on a jacket.

12 A. That's true.

13 Q. Okay.

14 A. I don't know.

15 Q. But you -- do you have -- and I don't think I've
16 ever -- he changed, or could have changed, after he got home,
17 and then left again for work and stayed late at night; right?

18 A. Right.

19 Q. Okay.

20 A. Uh-huh.

21 MR. CRANE: I think that's all I have, Your Honor.

22 THE COURT: Recross?

23 MR. WEIS: Nothing further.

24 THE COURT: Thank you so much. You may step down.

25 You may call your next witness.

1 MR. CRANE: Your Honor, the state calls Charles
2 Erickson.

3 THE COURT: Would you raise your right hand, please.

4 - - -

5 CHARLES TIMOTHY ERICKSON,
6 being first duly sworn by the Court, testified as follows:

7 THE COURT: Would you take the witness stand,
8 please.

9 - - -

10 DIRECT EXAMINATION

11 BY MR. CRANE:

12 Q. Give us your name, sir.

13 A. Charles Timothy Erickson.

14 Q. Make sure you speak up so even this guy on the jury
15 back farthest from you can hear; okay?

16 A. All right. It's Charles Timothy Erickson.

17 Q. And what's your current age?

18 A. I'm 21 years old.

19 Q. How old were you back on October 31st of 2001?

20 A. I was 17 years old.

21 Q. Mr. Erickson, on the early morning of November 1,
22 2001, what did you do to Kent Heitholt?

23 A. I robbed him and I beat him with a tire tool.

24 Q. And what did the defendant in this case, Ryan
25 Ferguson, do to him?

1 A. He robbed him and he strangled him.

2 Q. Do you see Ryan Ferguson in the courtroom here
3 today?

4 A. He's right there (indicating).

5 MR. CRANE: Judge, I'd ask the record reflect that
6 this witness has identified the -- what is it? A tan jacket?
7 Identified -- is it the individual in the tan jacket?

8 A. Yeah. That's correct.

9 MR. CRANE: Judge, I'd ask the record reflect this
10 witness has identified the defendant.

11 THE COURT: The record will so reflect.

12 Q. Where are you originally from?

13 A. I was born in Normal, Illinois, but I'm originally
14 from Bloomington, Illinois.

15 Q. When did you start living here in Columbia?

16 A. It was my 8th grade year. I believe it was 1998.

17 Q. Okay. And that's, the way our schools work here,
18 that's junior high?

19 A. Yeah. That's correct.

20 Q. Back on Halloween of 2001, where were you going to
21 school?

22 A. I was going to Rockbridge High School.

23 Q. And what year were you at Rockbridge High School?

24 A. I was a junior.

25 Q. And where were you living back then?

1 A. I was living in Columbia.

2 Q. With whom?

3 A. With my parents.

4 Q. Your mom and dad?

5 A. Yeah. That's correct.

6 Q. What's your dad do for a living?

7 A. My dad, he works for Columbia Insurance.

8 Q. At some point did he have a law degree, or what's

9 his -- is that what he does for the insurance company?

10 A. Well, yeah, he was a lawyer. He passed his bar in

11 New York and Illinois. But --

12 Q. What's he do with the insurance company?

13 A. He's the vice president for claims.

14 Q. What about your mom? What's she do?

15 A. My mom's a microbiologist at University Hospital.

16 Q. Here in town?

17 A. Yeah. That's correct.

18 Q. What about brothers and sisters? You got any?

19 A. Yeah. I've got a younger sister named Karen. She's

20 18. She's in her senior year at Rockbridge.

21 Q. So when this all happened, she'd have been 14?

22 A. Yeah. That's correct.

23 Q. Okay. She was living there at home with you and

24 your mom and your dad?

25 A. That's correct. Actually she would have been -- she

1 would have been 15.

2 Q. Okay. Did my math wrong there.

3 How is it you first met the defendant?

4 A. We had a class or two together and we ran track
5 together.

6 Q. Okay. Is that in 8th grade, when you first got
7 here?

8 A. Yeah. That's correct.

9 Q. Okay. And then how would you characterize your
10 relationship with him after that?

11 A. We hung out.

12 Q. You first met in 8th grade?

13 A. Yeah. He'd come to my house; I'd go to his house.
14 We'd just, you know, we'd go and hang out at other people's
15 houses.

16 Q. Okay. You had friends of your own, and he had
17 friends of his own?

18 A. Yeah. A lot of them were mutual friends.

19 Q. Okay. Well, was -- was Ryan Ferguson the only
20 friend you had? I guess is what I'm getting at.

21 A. No.

22 Q. Okay. You'd hang out with him, kind of lived --
23 what about where he lived?

24 A. He lived about -- about two miles away from my
25 house.

1 Q. Okay. Roughly the same part of town?

2 A. Yeah. That's correct.

3 Q. Okay. Did -- I mean, did you date females?

4 A. Yeah.

5 Q. Junior high and high school?

6 A. Yeah. Freshman year, I remember he -- he was kind
7 of with this girl named Stephanie Daily.

8 Q. Well, I mean, I don't know how much specifics we
9 need to go into now. The defense may want to go into that,
10 but. What I'm getting at is: He'd date girls and you dated
11 girls and --

12 A. Yeah.

13 Q. -- what have you.

14 A. Yes.

15 Q. Okay. What -- since you met him, when you were in
16 8th grade, and we'll go up to when this happened in the fall
17 of 2001, what conflicts or problems or big falling-outs or
18 anything did you all have?

19 A. None.

20 Q. Okay. Didn't get mad -- you wanted to date his girl
21 or anything like that?

22 A. No.

23 Q. Okay. Got along okay?

24 A. Yeah. That's correct.

25 Q. All right. How well did you know his parents?

1 A. I knew them okay. Not real well. I think -- I had
2 seen his mom around more than his dad.

3 Q. Okay. Sometimes you'd be over at his house and
4 they'd be there, I guess?

5 A. Yeah. That's correct.

6 Q. Do you see either of them in the courtroom here
7 today?

8 A. Yeah. They're right over here.

9 Q. Okay. Right over here in the front row, to my
10 right?

11 A. That's correct. Yes.

12 Q. Okay. Did you have any conflicts or anything with
13 either of them?

14 A. No.

15 Q. Okay. You said you saw his mom more often. How did
16 you get along with her?

17 A. She's very nice. She's a nice lady.

18 Q. Okay. Sir, I want to direct your attention to
19 October 31st of 2001. We've already shown another witness a
20 calendar there. Shows that was a Wednesday. School night.
21 School day. Correct?

22 A. That's correct, yes.

23 Q. Okay. You don't have any argument with that, do
24 you?

25 A. No, I don't.

1 Q. Okay. That day, do you remember what -- anything
2 eventful that happened? I mean, did you go to school that
3 day?

4 A. Yes, I did.

5 Q. Okay. Anything out of the ordinary? I mean other
6 than it being Halloween --

7 A. No. Nothing.

8 Q. -- that day?

9 A. Nothing I can recall, no.

10 Q. Okay. After you got out of school that day, where
11 did you end up going? What was your plans for the night and
12 what did you end up doing?

13 A. Well, we knew of a party at an individual named Ryan
14 Swilling's house. And before that, I went with David
15 Igleheart and Scott Turner and maybe a couple other people,
16 and we went to my friend Jon Cole's house. And the plan was:
17 We were going to -- his folks had a bunch of retro '70s
18 stuff, and we were going to --

19 Q. Some what?

20 A. Some like retro '70s clothes.

21 Q. Okay.

22 A. And that was -- we were just -- we went over there
23 to look for Halloween costumes.

24 Q. Okay. And so that is -- this -- your buddy Jon
25 Cole's mom and dad's house.

1 A. Yeah. That's correct.

2 Q. And they had some old clothes, some '70s stuff --

3 A. Yeah.

4 Q. -- which I probably got some '70s stuff myself, but

5 that's -- you thought that would be a suitable Halloween --

6 A. Yeah. Well, they had all kinds of stuff. I

7 remember we were just in this kind of storage area. And some

8 people put on military stuff. And there was just a bunch of

9 '70s stuff.

10 Q. Okay.

11 A. I thought that would be the easiest.

12 Q. I'm sorry. I didn't mean to cut you -- did you have

13 a driver's license back then?

14 A. I believe so, yes.

15 Q. Did you have your own car back then?

16 A. No. No, I didn't.

17 Q. So if you drove, whose car did you drive?

18 A. My folks'. My parents'.

19 Q. Okay. But you weren't doing the driving after

20 school --

21 A. No.

22 Q. -- on this -- huh?

23 A. No.

24 Q. Okay. Let me show you what's, if I can here --

25 first of all, let me show it to the defense -- what's marked

1 for identification State's Exhibit 5.

2 Let me first show this to you. This is a drawing.
3 Map. Do you recognize what's generally depicted in this
4 photograph?

5 A. Yes, I do.

6 Q. Does this look like a portion of Columbia, Missouri?

7 A. Yes.

8 Q. Okay. And some of these locations are already
9 marked on here?

10 A. That's correct.

11 Q. Okay.

12 MR. CRANE: Well, let me just see if there -- do
13 you -- Judge, I would offer at this time State's Exhibit 5.

14 MR. ROGERS: No objection, Your Honor.

15 THE COURT: State's Exhibit 5 is admitted.

16 - - -

17 State's Exhibit 5 admitted into evidence.

18 - - -

19 Q. I'm going to turn this around real quick. Let's go
20 back, if we could. And I --

21 MR. CRANE: The jury will have another opportunity
22 to see these, Your Honor, if I'm able to pass them, but at
23 this point I want to cover it with the witness.

24 MR. ROGERS: You want the easel?

25 MR. CRANE: Well, he can't get down at this point.

1 He's got the leg irons on.

2 Q. Let's go back. Your place is marked here at the
3 lower corner here. What's -- what was your address?

4 A. It was 3706 Chinkapin Court.

5 Q. Okay. And then what street was Ferguson on?

6 A. I think it was Lloyd Drive.

7 Q. Okay. Down here?

8 A. Yeah.

9 Q. Okay. Is that -- I mean, I know this isn't to scale
10 or anything, but is this roughly --

11 A. Yeah, that's correct.

12 Q. -- accurate?

13 A. That's correct.

14 Q. And then you said after school you went to Jon
15 Cole's residence?

16 A. That's correct.

17 Q. And do you remember what part of town that was in?

18 A. Northern part of town.

19 Q. And do you remember a street near there or anything
20 like that where Cole lived?

21 A. It was -- I think he lived off of Jackson. And that
22 was off of Texas.

23 Q. Okay. We've got Jon Cole's residence up here.
24 Again, without being just completely accurate on scale, is
25 that roughly where we're talking?

1 A. Yeah.

2 Q. Okay. And then after you got your -- did you --
3 well, did you get something different to wear to the deal?
4 To the party?

5 A. Yeah, I did. I found some bellbottom pants, some
6 jeans, some light blue jeans, and a -- like a button-up
7 shirt, a blue button-up shirt that had a kind of -- had a
8 wide collar on it, and the sleeves were kind of wide. And
9 when it was untucked, it kind of looked '70s I guess. And --

10 Q. What about -- do you remember what you did with the
11 clothes you took -- had on when you got there?

12 A. I can't remember.

13 Q. Okay. What about shoes?

14 A. I had some -- they were kind of like penny loafers.
15 I'm not exactly sure what kind of shoes they were.

16 Q. Well, no, I'm asking, where did you -- what did you
17 wear from the Cole --

18 A. Oh.

19 Q. -- residence to the party?

20 A. Yeah. Yeah. I just wore -- they were like penny
21 loafer shoes.

22 Q. Okay. That you got at -- from Mr. Cole's folks?

23 A. Yeah, that's correct.

24 Q. Okay. All right. Now, you got that getup on. And
25 where did you go?

1 A. From there I went to Ryan Swilling's house.

2 Q. Okay. And was this, again, with a group of the
3 buddies you were with that night? Everybody was going to the
4 party?

5 A. That's correct, yes.

6 Q. How did word get out about this party?

7 A. It was just kind of word around school.

8 Q. Okay. And do you remember the street that the
9 Swilling party was on? If you don't, the area?

10 A. It was across from the Forum Shopping Center. I
11 think it was Highridge.

12 Q. Okay. Well, we don't have Forum Shopping Center on
13 State's Exhibit 5, but, again, "Swilling party,"
14 (indicating). Does that roughly look accurate?

15 A. Yeah. That's correct.

16 Q. Okay.

17 A. It was -- yeah. It was behind Dairy Queen.

18 Q. So it's really not far from your-all's houses.

19 A. No. No.

20 Q. Okay. What was this -- we keep saying "Swilling
21 party." Who's that guy -- who is that guy?

22 A. His name was Ryan Swilling. And he was I think a
23 couple years older than I am. He was at least a couple
24 grades higher than I was. And I just knew him through a
25 friend. I didn't -- I didn't really know him very well.

1 Q. Okay. He's an older guy that had moved out and had
2 his own pad?

3 A. Yeah, with a couple other guys. I think Ryan Alder
4 also lived with him. And I can't -- I can't remember who
5 else.

6 Q. Okay. And let me show you what's marked for
7 identification as 6, 6A and B.

8 MR. ROGERS: No objection.

9 Q. Take a look at these photos. Do you recognize
10 what's in those two photos?

11 A. Yeah. That's Ryan Swilling's house.

12 Q. Okay. Are those fair and accurate depictions of how
13 it looked back then? Although I guess it was dark back then.

14 A. Yeah. That's correct.

15 Q. Okay.

16 MR. CRANE: Judge, I'd offer 6, 6A and 6B.

17 MR. ROGERS: No objection, once again, Your Honor.

18 THE COURT: State's Exhibits 6, 6A and 6B, are
19 admitted.

20 - - -

21 State's Exhibits 6, 6A and 6B, admitted into
22 evidence.

23 - - -

24 Q. Okay. So this is a picture of where the party went
25 down?

1 A. Yeah.

2 Q. Okay. Do you remember exactly when you got there?

3 Or if you don't, can you estimate?

4 A. I think it was around 8:00. Sometime around there.

5 I can't be certain, though.

6 Q. And while you were at this party at the Swilling

7 residence, what were you wearing? The whole time you were at

8 that party.

9 A. I was wearing the bellbottom jeans and the blue

10 button-up shirt and the penny loafers.

11 Q. Okay. The same thing you described you left Jon

12 Cole's in?

13 A. Yeah. That's correct.

14 Q. How big was this thing, this party at Swilling's?

15 A. There were probably between, I don't know, 50 and 75

16 people there. Maybe a hundred. It just changed from time to

17 time. People would come; people would go.

18 Q. What was going on?

19 A. Just a lot of drinking, listening to music. Just

20 standing around for the most part.

21 Q. Okay. Loud music?

22 A. It wasn't real loud.

23 Q. You didn't think it was all that loud?

24 A. No.

25 Q. What about -- what about alcoholic beverages?

1 A. Yeah, there was a keg there.

2 Q. Okay. Did you drink?

3 A. Yes, I did.

4 Q. Okay. What about drugs?

5 A. Yeah, I did -- I did a little bit of cocaine.

6 Q. How much?

7 A. I think one or two lines at the most.

8 Q. And did you that at Swilling's party.

9 A. That's correct.

10 THE COURT: Mr. Crane, just a minute. Are you going
11 to put something on that that's already admitted into
12 evidence?

13 MR. CRANE: No.

14 THE COURT: Well, I suggest that perhaps you want to
15 show it to defense counsel.

16 MR. CRANE: No, I am -- I'm not going to show
17 anything on that until -- well, first until I see if we can
18 operate it. And then I'm going to wait until it's in
19 evidence, yeah.

20 THE COURT: All right. I just want to make sure you
21 didn't put anything on that screen.

22 MR. CRANE: Show counsel 7, 7A and 7B.

23 MR. ROGERS: No objection.

24 Q. I'm going to show you what's marked here for
25 identification as State's Exhibit 7, 7A and 7B. Do you

1 recognize what's in those photographs?

2 A. Yeah. It's a picture of myself.

3 Q. Okay. The top one's a picture of yourself and
4 several other people?

5 A. That's correct, yes.

6 Q. And the bottom one's a picture of you and several
7 other -- and a couple other guys.

8 A. Yeah. Two guys --

9 Q. Don't say too much about it until we get it into
10 evidence. If we get it into evidence. Are those fair and
11 accurate pictures of you and other people at the Swilling
12 party that was going on October 31st, 2001?

13 A. That's correct, yeah.

14 MR. CRANE: Judge, I'd offer 7, 7A and 7B.

15 MR. ROGERS: No objection, Your Honor.

16 THE COURT: State's Exhibits 7A, 7B, and 7 are
17 admitted.

18 - - -

19 State's Exhibits 7, 7A and 7B, admitted into
20 evidence.

21 - - -

22 MR. CRANE: Okay. Judge, we -- the only way you can
23 see this well is if we turn off the second -- the center
24 recessed lights, because there's a shadow on there. It
25 doesn't make it so dark that you can't operate. Would that

1 be all right if we at least try that?

2 THE COURT: You may try it to display the
3 photograph, yes.

4 MR. CRANE: Okay.

5 (Lights turned off.)

6 Q. Mr. Erickson, can you see that from your location?

7 A. Yes, I can.

8 Q. Okay. First of all, I want to direct your attention
9 to I believe this is 7B in the board there. Who's this
10 individual over here on my left?

11 A. That's me.

12 Q. Okay. And you're sure -- is that the one you were
13 describing earlier as the one you put on at Cole's?

14 A. That's correct, yes.

15 Q. Okay. And who are these other two guys?

16 A. That's David Igleheart and -- in the middle is David
17 Igleheart, and then to the right is Scott Turner.

18 Q. Okay. And those were just other buddies of yours?

19 A. Yeah. That's correct.

20 Q. Okay. I'm going to show you now --

21 MR. CRANE: Look on that thing. Does that say "7"
22 on there?

23 MR. ROGERS: 7A.

24 Q. Okay. I'm going to show you what's marked as 7A. I
25 don't know how well this is going to show up. Can you see

1 that, Mr. Erickson?

2 A. Yes, I can.

3 Q. Okay.

4 MR. CRANE: Do you got that laser?

5 Q. Here. One of these laser pointers.

6 A. Yeah.

7 Q. Can you --

8 A. Do you want me to stand up?

9 MR. CRANE: Judge, can -- would the Court have any
10 objection to Mr. Erickson's hands being released from the
11 cuffs?

12 THE COURT: That depends on whether or not the
13 sheriff would have any objection. Perhaps one of his --
14 could one be released? But I'm not saying that you have to.
15 I'm asking if it would be agreeable.

16 SHERIFF'S DEPUTY: (Nodding head up and down.)

17 (Deputy uncuffing one of the witnesses's hands.)

18 MR. CRANE: For the record, the sheriff has
19 indicated -- sheriff's deputy has indicated that it's okay to
20 remove the black box. His hands are going to remain cuffed.

21 THE COURT: All right.

22 MR. CRANE: Okay. Now, I was going to give him this
23 laser pointer, so that he doesn't have to come down and
24 point. May I have the Court's permission to do that?

25 THE COURT: To have him use the laser --

1 MR. CRANE: Yes.

2 THE COURT: -- pointer? That's fine, as long as he
3 doesn't point it at someone's eyes.

4 MR. CRANE: Okay.

5 Q. See that button on there?

6 A. Yeah.

7 Q. Okay.

8 A. That's me right there.

9 Q. Okay. That's you in the photograph?

10 A. That's correct.

11 Q. Okay. And there's some other partiers. Who -- do
12 you remember -- this guy that's got his back to us here.

13 A. I believe that was -- that was Jon Cole. That was
14 the man's -- the man who -- he had the house where we got the
15 clothes from.

16 Q. What about up here?

17 A. That would be Dallas Mallory.

18 Q. That's not a real cop?

19 A. No, it's not a real cop.

20 Q. And that was Dallas Mallory at the party; correct?

21 A. Yes, that's correct.

22 Q. Okay. Do you recognize any of these other people?

23 A. That's -- that's Abbey Atkins. That's Evan Perry.
24 I can't remember her name.

25 Q. Okay. Somebody -- was that -- another kid at the

1 party.

2 A. Yeah.

3 Q. Okay.

4 A. That's correct.

5 Q. All right. Go ahead and -- go ahead and have a
6 seat.

7 Did you see Ryan Ferguson inside or around the
8 Swilling party while -- well, let me ask it this way. Before
9 it broke up, did you see Ryan Ferguson anywhere at the
10 Swilling party that night?

11 A. No, I did not.

12 Q. Okay. Now let me ask you this. Can you say whether
13 or not he was there somewhere in the crowd, or not?

14 A. No, I cannot.

15 Q. Okay.

16 THE COURT: Can we turn the lights back on,
17 Mr. Crane, or are you going to be using that setup?

18 MR. CRANE: Yeah, we can get them started. Probably
19 stay -- it takes a long time for them to get back up. We can
20 start --

21 THE COURT: That is true. These are not normal
22 lights. They take a while to boot up.

23 Q. What broke the party up?

24 A. The police arrived.

25 Q. Okay. And what -- tell us about what you remember

1 when that happened.

2 A. I remember I was kind of in the back of the party,
3 and it was just -- the word got out that the police had shown
4 up, and everyone just started -- just -- just leaving the
5 party.

6 Q. Okay. And what did you do?

7 A. Well, the guys that I came with, I was coming up,
8 and then I came out the front door, and I saw that they were
9 getting in the car real quick and already -- they were
10 already taking off. And so I just -- I just wanted to get
11 away from the house, just because I didn't want to be there
12 when the police came. And so I just -- I just went -- I just
13 started walking down the road. Walking down -- walking down
14 Highridge, away from Forum.

15 Q. Okay. Whatever the street is in front of the
16 Swillings house?

17 A. Yes.

18 Q. Okay. And what happened? You start to walk out,
19 you're walking along the street, and what happened?

20 A. I'm walking down the street, and the cops are behind
21 me, and I'm just -- I'm walking down the street, and I don't
22 know if I was going to ask someone for a ride or just -- I
23 was thinking I might just walk to my house, because it really
24 wasn't that far.

25 Q. Wait. You said the cops are behind you. What do

1 you mean?

2 A. Well, my back is to the police, because -- and
3 Swilling's house would be to the left of me. All right?

4 Q. Okay.

5 A. And then the cops, they came up on the Forum side of
6 Highridge, and they kind of blocked off the street right
7 there.

8 Q. Okay. They're behind -- they're not chasing behind
9 you.

10 A. No. No. No.

11 Q. Okay.

12 A. They're stopped on the street.

13 Q. All right. And then what happened?

14 A. And then -- and I'm walking, and then all of a
15 sudden I hear someone say, "Hey, Chuck. Hey, Chuck." And I
16 look over, and Ryan is at the corner of Highridge and another
17 street. He's kind of -- he's kind of turned and stopped,
18 like, you know, where he's still making a turn a little bit.

19 Q. Okay.

20 A. And says, "Hey, Chuck." And I go over and go,
21 "What's up, man?" And he said, "Man, get in here." You know
22 what I'm saying? So I get into his car.

23 Q. Was there anybody else in his car when you got in
24 there?

25 A. No, there wasn't.

1 Q. What type of a vehicle was Ryan Ferguson driving?

2 A. He drove a Mercedes, I think E320. It was blue.

3 Q. Okay. Had you -- had you seen it before?

4 A. Yes.

5 Q. Was that what he was driving that night?

6 A. That's correct, yes.

7 Q. Do you know how he got that vehicle?

8 A. I believe his dad gave it to him.

9 Q. Okay. And he -- I mean, he had been driving that

10 for -- well, he was 17 at this time, but he had -- do you

11 know how long he had it or anything like that?

12 A. I believe he got it when he was 16, but I'm not --

13 I'm not sure.

14 Q. Okay. So you got in the Mercedes. And it's just

15 you and he in the car at that point.

16 A. Yes.

17 Q. Okay. What happened then?

18 A. We were -- we were trying to figure out something to

19 do. And we were still on Highridge. And he mentioned

20 something about his sister could get us into a club. So I

21 said -- he asked me if I wanted to go, and I said, "Yeah,

22 yeah, that's fine. Let's go to the club."

23 Q. Now when you say "club," what do you mean?

24 A. I mean By George's club.

25 Q. Okay. A club to you is -- do you use the term

1 "club" and "bar" as the same thing?

2 A. Yeah. I mean, I had never been to --

3 Q. I mean, you're not talking about Kiwanis --

4 A. No.

5 Q. -- Rotary.

6 A. No.

7 Q. Okay. I'm sorry.

8 A. It's a, you know, drinking, dancing, just partying

9 club.

10 Q. Okay. All right. By the way, were you carrying a

11 cell phone that night?

12 A. No, I wasn't.

13 Q. Okay. So this issue, this idea of going to the

14 club -- George's specifically?

15 A. Yes. That's correct.

16 Q. -- that was discussed. And then what happened?

17 A. It was also discussed that it was going to be a

18 little while until we could meet up with his sister to get

19 into the club. And I was -- these pants that I was wearing

20 were kind of tight and they were starting to get

21 uncomfortable, and my shoes were starting to get

22 uncomfortable. And since we had some time to kill, I just --

23 I suggested -- I asked him if we could go back to my house

24 real quick and I could change. I also wanted to check in

25 with my parents, to see if my parents were asleep, because I

1 knew they wouldn't want me going to a club on a school night
2 at 11:00.

3 Q. By the way, you testified to what you were wearing,
4 at least at this juncture of the night. When you got into
5 the car with Mr. Ferguson, do you remember what he was
6 wearing?

7 A. Not specifically. I think he may have been wearing
8 a gray shirt and he had -- he had a puffy Ralph Lauren coat
9 on. And I think he had jeans on, but I can't remember.

10 Q. Okay. You don't remember the type of pants? What
11 about shoes?

12 A. I can't remember.

13 Q. Let me ask, was it -- to your recollection, was it a
14 costume of any kind?

15 A. No. He was just wearing street clothes.

16 Q. Regular -- just regular clothes.

17 A. Yeah, that's correct.

18 Q. Where did you guys go from there?

19 A. From my house?

20 Q. Well --

21 A. Or from Swilling's?

22 Q. Yeah.

23 A. We went to my house. And he --

24 Q. Where did he let you off?

25 A. He let me off in front of my house.

1 Q. And what did you do?

2 A. And I went in through the front door, and I saw that
3 my parents were asleep, and so I just went downstairs into my
4 room, and I changed into -- I changed clothes. I changed
5 into a pair of jeans and a gray Tommy Hilfiger shirt and a
6 big blue puffy reversible Nautica coat.

7 Q. Do you remember what kind of shoes you put on?

8 A. No. I just remember that they were more comfortable
9 than the ones I was wearing.

10 Q. Okay. The ones you borrowed?

11 A. Yeah.

12 Q. Okay. And backing up on the cell phone question,
13 before you got to your house, from Swilling's, with the
14 defendant, was there any cell phone conversation?

15 A. I believe I called Scott Turner and asked --

16 Q. On whose phone?

17 A. On Ryan's phone.

18 Q. Okay. What about Ryan? Was he talking on the cell
19 phone?

20 A. Yeah. He talked to his sister.

21 Q. Okay. By the way, what's his sister's name?

22 A. His sister's name is Kelly Ferguson.

23 Q. Did you -- do you or did you know her?

24 A. I'd -- I'd seen her. I met her just when I was over
25 at her house. I didn't really know her, though, you know.

1 Q. Okay. She's older than Mr. Ferguson and older than
2 you.

3 A. Yeah, that's correct.

4 Q. Okay. Now, when you -- you went in to change
5 clothes, what about your folks?

6 A. They were asleep when I went in.

7 Q. Okay. And your sister?

8 A. She was asleep also.

9 Q. Okay. You didn't see them?

10 A. I didn't see any of them, no.

11 Q. And you went downstairs. And how did you then leave
12 your residence?

13 A. I left through the back.

14 Q. Okay. How come?

15 A. I snuck out through the back, so my parents -- the
16 front door, it's louder. And I've got the basement to
17 myself.

18 Q. Okay.

19 A. So no one would have known if I would have went out
20 the back.

21 MR. CRANE: Judge, I'm going to show the witness
22 8 -- State's Exhibit 8 for identification. 8A through 8C.

23 Q. Ask if you recognize what's depicted in that
24 photo -- these three photographs.

25 A. The top one is my house. The middle one is Grant

1 Lane, where Ryan Ferguson parked, where he --

2 Q. All right. Just -- you recognize that photograph as
3 Grant Lane, back of your place?

4 A. Yeah. And then that's the back of my house.

5 Q. Okay. When I show you something like this, don't
6 start talking too much about it until we got it in. Okay?

7 A. All right. Sorry.

8 Q. And we might not get something in, so, you see,
9 you're not suppose to do that. You with me?

10 A. Yeah.

11 Q. Okay.

12 MR. CRANE: Judge, there's no objection, it's my
13 understanding --

14 MR. ROGERS: That's correct.

15 MR. CRANE: I'm offering 8A through 8C.

16 THE COURT: 8A through 8C are admitted without
17 objection.

18 - - -

19 State's Exhibits 8, 8A through 8C, admitted into
20 evidence.

21 - - -

22 Q. So the top photograph now -- now you can talk about
23 it. What's this top photograph of?

24 A. That's the front of my house.

25 Q. Front of your house.

1 A. Yeah. That's correct. That's where Ryan would have
2 dropped me off at, when I first went in.

3 Q. Okay. And then how did you get out?

4 A. I went out the back of my house.

5 Q. Okay.

6 A. And I went --

7 Q. If we look at 8B here, could we see your house
8 somewhere on there or --

9 A. Yeah. It's about the -- it's about the third one
10 down. You can see the roof.

11 Q. Okay.

12 A. And I came back here, behind these houses. After I
13 went out the back like that, I came out here. I met Ryan at
14 Grant, right there.

15 Q. How did he know where to meet you?

16 A. He picked me up there before, when I snuck out.

17 Q. So this wasn't the first time you'd snuck out.

18 A. No, it wasn't.

19 Q. Okay. So that was the spot back there.

20 A. That was the spot, yes.

21 Q. Okay. And you got out -- if we look at 8C, you got
22 out the back door. And your folks were less likely, I guess,
23 to know you were slipping out?

24 A. Yeah, that's correct.

25 Q. Okay. When you got back to the car, what was going

1 on?

2 A. Ryan was on the phone. And he told me he was on the
3 phone with Holly Admire.

4 Q. With whom?

5 A. With Holly. A girl named Holly Admire.

6 Q. Okay. And now you're talking about on the cell
7 phone?

8 A. That's correct, yes.

9 Q. Okay. Do you remember what the defendant told you
10 about that -- what he was talking to her about or anything?

11 A. He said something regarding -- he -- I know he
12 wanted to date her and he wanted to get together with her.
13 And we'd been at a friend's house a couple weekends before
14 that, and he'd seen -- he'd seen Holly Admire's boyfriend,
15 who's a brother of a friend of mine, his name is Dan Dunn, go
16 into room with another girl. And he was going to tell Holly
17 that -- that -- about -- that Dan was messing around on her,
18 because he wanted to get together with her. He thought that
19 that might break it off.

20 Q. Okay. Was that something he told you, or was that
21 something you picked up on the phone call with Holly that
22 night or maybe multiple phone calls that night or both?

23 A. That was something he told me.

24 Q. Okay. So the guy that Holly Admire was dating, that
25 was allegedly cheating on her, was -- what was his name?

1 A. Dan Dunn. Daniel Dunn.

2 Q. Okay. All right. Now -- and you don't know whether
3 he was cheating on her or not. I mean --

4 A. I don't know.

5 Q. -- innocent until proven guilty; right?

6 A. That's correct.

7 Q. Okay. But in any event, that was the topic of the
8 phone call with Holly Admire and the defendant.

9 A. Yes.

10 Q. At some juncture during the night?

11 A. Yes.

12 Q. When you got back out to the vehicle, where did you
13 guys go then?

14 A. We went to By George's.

15 Q. Okay. And what happened when you arrived at that
16 location?

17 A. Well, I remember we had to park up the road. We had
18 to park up the road a little bit, because there -- the
19 parking lot was packed. And it was Halloween. They were
20 having a Halloween party. And there was so many people that
21 we had to park up the road a couple blocks. I can't remember
22 the name. I think -- I can't remember the -- it was First
23 Street, the same road that the club was off of, but I
24 can't -- it was -- it was almost two intersections down after
25 the club.

1 Q. Okay.

2 MR. ROGERS: Your Honor, we have no objection to
3 State's Exhibit 9.

4 THE COURT: That is 9?

5 MR. CRANE: Your Honor, I'm going to -- I'm going to
6 show you what's marked for identification -- or not you.

7 Q. Mr. Erickson, I'm going to show you what's marked
8 for identification State's Exhibit 9. Do you recognize this
9 aerial photograph?

10 A. Yes, I do.

11 Q. Okay. And you're from Columbia. This depicts, from
12 the air, a portion of downtown Columbia; is that right?

13 A. That's correct.

14 Q. Okay.

15 MR. CRANE: And 9's in? Is that -- otherwise --

16 THE COURT: You haven't offered it yet.

17 MR. CRANE: Well, I'd offer 9.

18 MR. ROGERS: No objection.

19 THE COURT: 9 is admitted.

20 - - -

21 State's Exhibit 9 admitted into evidence.

22 - - -

23 MR. CRANE: Okay. Can you all kind of see that? Is
24 there a glare?

25 JUROR: A little bit, but not bad. Better.

1 Q. Okay. For the record here, on State's Exhibit 9 --
2 and Mr. Erickson, can you see this from where you're at?

3 A. Yeah.

4 Q. Okay. The numeral 1 is over what?

5 A. By George's.

6 Q. Okay. We got this legend up here. Now, you were in
7 the middle of testifying to where you recall Mr. Ferguson
8 parked prior to the time you went into the bar.

9 A. That's correct.

10 Q. Can you show the jurors where that location was.

11 A. Yeah. It was right about here (indicating).

12 Q. Okay. So George's -- and you just pointed to this
13 location (indicating).

14 A. Yeah. That's correct.

15 Q. Okay. All right. So it's actually not on the same
16 block, but a block over, closer to what street?

17 A. Ash Street.

18 Q. Okay. All right. Now, from there, where did you
19 and Mr. Ferguson go?

20 A. We went to the club.

21 Q. And before you got in, what happened?

22 A. We had to -- we had to meet up with his sister,
23 Kelly, and a friend of his sister's, because we weren't 21,
24 and you had to be 21 to get into the club that night.

25 Q. Okay. And, I mean, that was the idea that

1 Mr. Ferguson brought up -- had brought up earlier?

2 A. Yeah. She said that she could get us into the club.

3 Q. Okay. So what happened when you got to the parking
4 lot? Tell us.

5 A. We got in the parking lot. And we met up with
6 Ferguson's sister and his friend -- and her friend. I'm
7 sorry. And we got to the front, where there was a bouncer
8 who was admitting people into the building, and --

9 Q. What do you remember about the friend of
10 Mr. Ferguson's sister?

11 A. She was of Asian descent.

12 Q. Did you ever know her name? Did you remember her
13 name?

14 A. No.

15 Q. Okay. I want to show you what's marked for
16 identification as State's Exhibit 4. Ask if you recognize
17 that lady?

18 A. Yes. That's -- that's -- that was Kelly's friend
19 that was there with us that night.

20 Q. Okay.

21 MR. CRANE: Judge, I'd offer State's Exhibit 4.

22 MR. ROGERS: No objection.

23 THE COURT: State's Exhibit 4 is admitted.

24 - - -

25 State's Exhibit 4 admitted into evidence.

1

- - -

2 Q. And let me show you that little thing there. Do you
3 rec -- is this the same photo?

4 A. Yes. I believe so. Yes, it is.

5 Q. Okay.

6 MR. CRANE: Judge, I'd offer State's Exhibit 4A,
7 which is a student --

8 MR. ROGERS: No objection, Your Honor.

9 THE COURT: 4A is admitted.

10

- - -

11 State's Exhibit 4A admitted into evidence.

12

- - -

13 Q. Okay. And you didn't know what her name was.

14 A. No.

15 Q. But Christine Lo, you're not going to argue with
16 that?

17 A. No.

18 Q. Okay. After you met Kelly Ferguson and this female
19 out front, what did you do?

20 A. After that, there was a discussion between Kelly
21 Ferguson and the bouncer. And it went something to the
22 effect of: She -- she said that we were -- that I was her
23 boyfriend and that Ryan was Christine's boyfriend. And
24 basically she just asked if we could get into the club. It
25 was obvious we weren't 21. At least I thought. We didn't

1 have IDs. Most people had to show IDs. And he let us into
2 the club, because we were with these two girls.

3 Q. They let you in?

4 A. Yes.

5 Q. You didn't really have any trouble getting in.

6 A. No, we didn't.

7 Q. Okay. The cover charge, was there one?

8 A. Yeah.

9 Q. And do you remember how much it was?

10 A. I don't remember. It was somewhere in the
11 neighborhood of \$10 or something like that.

12 Q. Okay. If you got in with the cover charge, was
13 there anything like a stamp or anything?

14 A. I know that there was stamps. I think there were
15 bracelets also. I can't be sure about the bracelets, but I
16 know there were stamps.

17 Q. Okay. Can you describe for us the size of the
18 crowd, what was going on in there that night?

19 A. It was pretty packed. There were a lot of people
20 there. There was loud music. A lot of people dancing. A
21 lot of people dressed up --

22 Q. Okay.

23 A. -- for Halloween.

24 Q. All right. Had you been in that bar before?

25 A. Yeah.

1 Q. Tell us about that.

2 A. I went -- it was a teen night, though. They weren't
3 serving alcohol, I don't think. There was an age
4 requirement. And it was just -- it was just a bunch of kids
5 dancing.

6 Q. It was a kid thing?

7 A. Yeah.

8 Q. When -- when was this?

9 A. I believe it was my freshman year.

10 Q. Okay. What grade's that?

11 A. That was 9th grade.

12 Q. 9th grade?

13 A. Yeah.

14 Q. And by now you're a junior?

15 A. Yes.

16 Q. The night we're talking?

17 A. Yeah.

18 Q. Okay. Who did you go with when it was a teeny
19 bopper night?

20 A. My girlfriend wanted me to go, so I went.

21 Q. Okay.

22 MR. ROGERS: I'm sorry. I didn't hear that answer.

23 THE COURT: Would you speak up, please.

24 THE WITNESS: My girlfriend wanted me to go, so I
25 went with her.

1 Q. Back in 9th grade.

2 A. Yeah. I met her there.

3 Q. Okay. But now this night it was wide open, regular
4 old bar.

5 A. Yeah. That's correct.

6 Q. Grown-up deal.

7 A. Yes.

8 Q. Okay. After you got in there, you and Ryan got in,
9 what did you see of Kelly and her friend?

10 A. Not much at all. We kind of just -- we kind of
11 separated. I think that -- she was older than us, so it
12 would have been kind of weird, we were hanging out with
13 someone four years older than us. And she -- I think she had
14 her own friends there, and she was dancing and stuff. And me
15 and Ryan kind of just went off on our own.

16 Q. Okay. What did you and Ryan do then while you were
17 inside?

18 A. For the most part we just sat around. And Ryan
19 would go up to the bar and buy drinks. Sat around. I saw a
20 couple of people I knew. For the most part, though, I didn't
21 -- I didn't really know anyone. We just -- we just sat and
22 drank and watched people dance.

23 Q. Okay. Who paid for the drinks?

24 A. Ryan Ferguson did.

25 Q. And what about money -- what about your money?

1 A. I remember -- I didn't know there was going to be --
2 the cover charge was kind of expensive. I didn't have that
3 much cash on me. And so I -- I remember that I ran out of
4 money with the cover charge, and then Ryan got the rest of
5 the cover charge, and then Ryan was going to pay for the
6 drinks and I was going to pay him back.

7 Q. Do you -- were you aware -- do you recall another
8 source of money that Ryan either indicated or you saw occur?

9 A. Yeah. He told me he was getting money from his
10 sister.

11 Q. He what?

12 A. He told me he was getting money from his sister.

13 Q. Okay. What -- was there -- at any time did you see
14 actually money change hands between the two of them?

15 A. No. I saw him approach his sister. And he would --
16 he would leave, and he told me that he was going to go and
17 get money from his sister, but --

18 Q. Okay.

19 A. -- but I would stay where I was at, just because it
20 would be easier to find each other afterward.

21 Q. What type of drinks were you -- what did you want?
22 What were you drinking?

23 A. I believe he just -- he bought Amaretto Sours and --

24 Q. Amaretto Sours?

25 A. Yeah.

1 Q. Okay.

2 A. And at some point he might have gotten a Rum and
3 Coke for himself. But for the most part I just drank
4 Amaretto Sours.

5 Q. How many of those do you think you consumed?

6 A. Two or three.

7 Q. Did you keep track of how many drinks Ryan had?

8 A. No.

9 Q. Okay.

10 A. He was -- he was paying, so I'm pretty sure he drank
11 more than I did, but I'm not -- I don't know.

12 Q. So you each might have had three or four cocktail
13 type drinks.

14 A. Yeah. At the most.

15 Q. Okay. Not -- you weren't drinking beer?

16 A. No.

17 Q. That was -- that was back at Swilling's party?

18 A. That's correct.

19 Q. Okay. During the time you and Ryan Ferguson were in
20 George's, how often or how long were you two separated from
21 one another?

22 A. Not more than a few minutes. One of us would go to
23 the bathroom. He would get money from his sister. Maybe one
24 of us would step outside and smoke a cigarette.

25 Q. Okay.

1 A. No more than ten minutes.

2 Q. You generally kind of hung around each other?

3 A. Yeah. That's correct.

4 Q. Okay. Did you ever go away from the bar, outside

5 and away, during the time period in George's we're talking

6 about right now?

7 A. No.

8 Q. Okay.

9 A. Other than step outside and smoke a cigarette, no.

10 Q. Okay. Yeah. Out on the parking lot, but you came

11 right back in.

12 A. Yeah, that's correct.

13 Q. Up until this point, did you ever go out, like, to

14 the car and come back?

15 A. No.

16 Q. Or down the street and come back?

17 A. No.

18 Q. Okay. And to your knowledge, did Ryan go outside

19 and come back, to your knowledge?

20 A. No.

21 Q. You don't know whether he did or not?

22 A. I don't know whether he did or not.

23 Q. But if he did, that would have been, as you've

24 already testified, a brief period of separation?

25 A. That's correct.

1 Q. Okay. After you'd been there a while, drinking,
2 what did you want to do?

3 A. I wanted to go home. I wanted to go home. The
4 music was really loud, and I was a little intoxicated, and I
5 was just -- I wasn't really having a good time, you know. I
6 was 17. I never really been in a club. And everyone was
7 older than me. I was -- and I can't dance either, so.

8 Q. Okay. Did you -- I mean, you thought the club was
9 going to be cool, but when you actually got there, it wasn't
10 that great or --

11 A. Yeah, that's correct. Yeah. And I was tired too.

12 Q. Well, eventually what happened? What did you guys
13 do?

14 A. We ran out of money.

15 Q. Okay. And what happened next?

16 A. After that, we left -- we left the bar, we left the
17 club, because there was really no point in sticking around,
18 you know, other than drink, I guess. And I wanted to go
19 home. Ryan wanted to try to find something else to do. So
20 he made a few phone calls in between the club and his car.
21 And we were kind of hesitant --

22 Q. Well, let me stop you right there. Who was on the
23 cell phone?

24 A. Ryan Ferguson.

25 Q. Okay. And after you got outside, you were in the

1 parking lot or walking on the street or at the car?

2 A. Yeah. That's correct.

3 Q. And during that time period, what do you recall, if
4 you do recall, about cell phone usage? Let me ask it in a
5 general --

6 A. He called a few different people.

7 Q. Okay. Were you paying attention to what he was
8 talking about or who he was --

9 A. Just trying -- trying to find something to do, for
10 the most part. I remember he said he was going to call that
11 Brian Dunn. He was going to call Brian Dunn.

12 Q. Okay. Now, you went -- the car was -- the Mercedes
13 was back in the same spot we talked about. Back up there on
14 the --

15 A. On First Street, yeah.

16 Q. Yeah. On down from the bar.

17 A. That's correct.

18 Q. Towards Ash; correct?

19 A. Yes.

20 Q. When you got up to the vehicle, what -- tell us what
21 happened.

22 A. We got into the car. And he stayed on the phone for
23 a little bit. And I told him I wanted to go home. He said,
24 "Well, if we could get some more money, we could get some
25 more drinks. We could buy some more drinks and stay out

1 later." And he proposed that we rob someone in order to get
2 more money to buy more drinks.

3 Q. What were you thinking he was thinking about? What
4 was your impression of that "get more money to buy more
5 alcohol, more drinks"? What --

6 A. I don't know. I never robbed anyone before. And I
7 thought it was just going to amount to a pickpocket, or
8 something of that nature. I wasn't -- I really wasn't sure
9 what -- what -- what he had in mind.

10 Q. But what did you -- what was your reaction?

11 A. At first I was weighing my options, and I was -- you
12 know, I wanted to go home, but he was driving me, and I don't
13 know, I -- it kind of seemed a little, you know, rebellious
14 or whatever.

15 Q. Rebellious. I mean -- what's that mean?

16 A. I mean, there was -- there was -- there was a little
17 bit of attraction to it, just because it was -- I was young
18 and I was stupid and I was a little drunk, and it seemed like
19 it would be something cool to do.

20 Q. Okay. What happened next?

21 A. After that, we got out of the car, and we decided
22 that we should go downtown, in the -- more in the center of
23 downtown, and get away from the club, when we were going to
24 do this robbery. And we decided to leave our jackets and I
25 left my wallet in the car and my keys. I believe he left his

1 cell phone in the car. And if we start to walk --

2 Q. How come -- how come you left this stuff in the car?

3 A. Well, the jacket that I had on, it was blue, and it
4 was reversible, and one side was really shiny and it wasn't
5 very inconspicuous, and I just didn't want to drop anything,
6 if we got into a scuffle or something. And Ryan's coat was
7 puffy too. So we took that off.

8 Q. Okay. And so what did you put on? Do you remember?

9 A. At that point -- I had clothes in the back of his
10 car, because he had taken to me to school a lot, and
11 sometimes I'd just leave stuff in his car. And I had a
12 zip-up -- it was a zip-up Abercrombie sweatshirt. A hooded
13 sweatshirt.

14 Q. Okay. Did you put the hood up?

15 A. At one point, but I didn't keep it up.

16 Q. Okay. What -- so that's what you had on on your
17 top.

18 A. Yeah, that's correct.

19 Q. Okay. Do you remember what he had on?

20 A. No. I'm not sure.

21 Q. Okay. Do you think he took the coat? His coat?

22 A. Yeah. He took his coat off.

23 Q. All right. Back at the car, what else happened,
24 before you left?

25 A. Well, we start -- we start to walk. And he says,

1 "Hold on a second. We need to take something with us." I
2 said, "What do you mean, we need to take something with us?"
3 He said, "We're young, we're not that big, and if something
4 happens, one of us might get -- one of us might get messed
5 up, and we need to take something with us." So he goes back
6 to his trunk, he opens his trunk, he digs around for a little
7 bit, not very long, it was maybe -- not more than a few
8 seconds, and he finds this tire tool. He takes this tire
9 tool out of the trunk and he hands it to me.

10 Q. So now you've got it.

11 A. I've got it.

12 Q. And what did you do with it?

13 A. I've got this tire tool, and I was looking at it,
14 and I saw it had a connection piece, and there was a button
15 to release the connection. And I took the connection piece
16 off and put it back in the trunk and we closed the trunk and
17 we left.

18 Q. Okay. What happened after that?

19 A. After that, I believe we -- we got to First Street
20 and Ash. And we took a right down Ash.

21 Q. Okay. Let me show you what's marked as State's
22 Exhibit 9. Point to the location of the car again.

23 A. His car is right here (indicating).

24 Q. Okay. Up in this area right here (indicating)?

25 A. Yeah.

1 Q. Okay. And then show us where you went.

2 A. Then we went down Ash, toward Providence.

3 Q. Okay. You're indicating Ash. Down this way?

4 A. Towards --

5 Q. Can you see where I'm pointing?

6 A. Yeah. Towards -- towards Providence.

7 Q. Okay. Now, Providence, right here, it runs north
8 and south; correct?

9 A. Yes.

10 Q. Okay. What -- tell us about what you recall about
11 your path after that.

12 A. We took a right on Providence. We got to right
13 here. There's a little alleyway. And that was where we saw
14 Kent Heitholt.

15 Q. Okay. Now point again to the alley.

16 MR. CRANE: Can -- Judge, can we try to get him to
17 come down? We can try it, and if it doesn't work out, he
18 could return to the witness stand.

19 THE COURT: You may.

20 You can step down.

21 MR. CRANE: Okay. Let's see if we can move it up a
22 little closer.

23 How's that on the glare?

24 JUROR: Okay.

25 Q. Okay. Now, why don't you -- see, you're blocking

1 this guy.

2 A. Sorry. Where do you want me?

3 Q. Why don't you show us, first of all, where the car
4 was, now that we got you down here.

5 A. All right. The car was right here (indicating).

6 Q. Okay. And then from the car, where did you and the
7 defendant go?

8 A. We walked, and we took a right on Ash Street. We
9 went down here, until we got to Providence.

10 Q. Okay. And then what did you do?

11 A. Then at Providence we took a right. And we got to
12 this alleyway.

13 Q. Okay. Now at that --

14 A. Right here (indicating).

15 Q. Okay. What did you see from that location you've
16 just taken the jurors to?

17 A. Saw Kent Heitholt.

18 Q. And you didn't know who the guy was, though.

19 A. No, I didn't know who he was at the time.

20 Q. Where was -- now I don't -- are you able to show us
21 where it was generally you saw him at that location?

22 A. Yeah. He was at the Tribune building. He was in
23 between the building and the parking lot, in the alleyway.

24 Q. Okay. I mean, what was he doing? Was he
25 stationary?

1 A. No. He was -- he was walking to the car.

2 Q. Coming out of the building --

3 A. That's correct.

4 Q. -- headed onto the parking lot?

5 A. Yes.

6 Q. Okay. After -- well, what -- let me ask you this.

7 When you saw Mr. Heitholt, what happened? What happened

8 between the two of you or what happened at that point?

9 A. Well, we went down the alley. And we were hiding

10 behind this Dumpster enclosure, that's somewhere in here

11 (indicating). We're hiding behind that Dumpster enclosure,

12 and someone else comes out of the building, and they start

13 talking. And so we hide behind the Dumpster enclosure until

14 the person comes out. Then this person gets in their car and

15 they leave. So after that person left, Ryan and I are behind

16 the Dumpster enclosure.

17 Q. Okay. And it's -- where's this Dumpster thing?

18 A. It's -- if you --

19 Q. Well, you -- just describe it. Is it -- where is it

20 in relation to the parking lot?

21 A. It's -- it's --

22 Q. I mean, is it far away or is it close to the parking

23 lot?

24 A. No, it's close to the parking lot.

25 Q. Okay.

1 A. It's right across the alley from the Tribune
2 building.

3 Q. Now -- go ahead and sit down.

4 A. All right.

5 Q. After you got to the Dumpster spot, what did you
6 say? There was initially, by the time you got up there,
7 there was initially somebody else out there?

8 A. Well, we got up there, and we were behind the
9 Dumpster enclosure, and then someone else came outside.

10 Q. Okay. Let me show you what's marked as State's
11 Exhibit 12 for identification. Do you recognize this
12 diagram?

13 A. Yes, I do.

14 Q. Okay. Is that a diagram of the Tribune building and
15 the parking lot?

16 A. Yes.

17 Q. Okay.

18 MR. CRANE: Judge, I'm going to offer -- I don't
19 think there is an objection -- State's Exhibit 12.

20 MR. ROGERS: No objection, Your Honor.

21 THE COURT: State's Exhibit 12 is admitted.

22 - - -

23 State's Exhibit 12 admitted into evidence.

24 - - -

25 Q. Can you come back?

1 A. Yeah.

2 MR. CRANE: With the Court's leave.

3 THE COURT: You may step down.

4 Q. Mr. Erickson, on this diagram, which way is
5 Providence? If we look at it in connection with this.

6 A. If you're going down the alley this way, it's over
7 here.

8 Q. Okay. And so how did you and Mr. Ferguson approach
9 the parking lot?

10 A. We came down the alley, coming from Providence,
11 coming that way. Then we hid behind the Dumpster enclosure.

12 Q. Okay. After being at that location, what did you
13 do?

14 A. After we got to the Dumpster enclosure, we were
15 sitting there, and we saw the victim go up to his car. He
16 had papers on top of his car. Ryan was to my right. I still
17 had the tire tool. Ryan said, "We need to get this over
18 with. We need to get this over with. Just go do it." So I
19 stand up. I come -- kind of creep around a little bit.
20 There's a wall. It's about that high. I creep around the
21 wall. And I come up to where I'm not in the victim's
22 peripheral vision. I stand up and I go over the wall.

23 Q. What's the victim doing? What's Mr. Heitholt doing?

24 A. He's facing his car.

25 Q. Standing up?

1 A. Yes.

2 Q. Okay.

3 A. His doors are open and he's -- he's messing with
4 stuff in his car. On the roof of his car. On the driver's
5 side.

6 Q. What did you do to him?

7 A. I stepped over the wall, and I walked quickly, and I
8 hit him with the tire tool. I crept up behind him. And as I
9 crept up behind him, he started to turn. That is when I hit
10 him. And I kept hitting him.

11 Q. So he's standing at his car, and you came up -- you
12 said you came up behind him?

13 A. That's correct.

14 Q. Okay.

15 A. On his right side.

16 Q. And what side of the vehicle were you -- his vehicle
17 was Mr. Heitholt?

18 A. He was on the driver's side.

19 Q. And you came from around that way to get in behind
20 him?

21 A. (Nodding head up and down.)

22 Q. And what happened before you hit him?

23 A. He started to turn. And before he -- he started
24 turn, look over his shoulder like that. And before he got
25 around, I hit him, on the top of his head.

1 Q. What happened when you hit him?

2 A. I hit him. He turned around to face me. He put his
3 hands up, like that. And I kept on hitting him. He was in
4 between me and the car. And the open door. And I kept on
5 hitting him. And I hit him until -- at one point he groaned.
6 He groaned and he came to his knees. And I -- I hit him one
7 more time. Then he came to the ground. Then I dropped the
8 tire tool. I -- I just -- when he groaned, that's just -- I
9 don't know. That's just something that I really remember.
10 It was this -- I couldn't believe that a person made that
11 sound because of something I did to them.

12 Q. What about blood?

13 A. There was -- there was blood everywhere. There was
14 blood on the ground, blood on me, blood on the car.

15 Q. And where was Ryan Ferguson during all this? I
16 mean, were you -- could you see him at this point or --

17 A. He was behind me.

18 Q. Okay. And he hadn't had the tire tool in his hand,
19 at least up to this point.

20 A. That's correct.

21 MR. ROGERS: Your Honor, unless they have some more
22 to do with exhibits, I'd request the witness resume the
23 stand.

24 MR. CRANE: Well, not just yet.

25 THE COURT: What are we about to do? Is he going to

1 point out something else?

2 MR. CRANE: I need him to have his -- I would again
3 request -- maybe we -- can we approach?

4 Have a seat I guess.

5 - - -

6 Counsel approached the bench and the following
7 proceedings were held:

8 MR. CRANE: In order for him to show --

9 THE COURT: Their lunch is here too.

10 MR. CRANE: Okay. All right. I guess we could talk
11 about this later. We'll talk about it later. That's fine.

12 THE COURT: Okay.

13 MR. ROGERS: That's a good plan.

14 - - -

15 The following proceedings were held in open court:

16 THE COURT: Ladies and gentlemen, I have been
17 advised that your lunch has arrived, and so we will break for
18 the noon hour.

19 The Court again reminds you of what you were told at
20 the first recess of the Court. Until you retire to consider
21 your verdict, you must not discuss this case among yourselves
22 or with others, or permit anyone to discuss it in your
23 hearing. You should not form or express any opinion about
24 the case until it is finally given to you to decide. Do not
25 read, view, or listen to any newspaper, radio, or television

1 report of the trial.

2 Lunch is actually physically in the courthouse.

3 Yes?

4 DEPUTY COURT MARSHAL WERNER: It's in the room,
5 Judge.

6 THE COURT: In the room. Why don't we take a break
7 for an hour. Come back at, say, 5 after 1.

8 DEPUTY COURT MARSHAL WERNER: Yes, ma'am.

9 THE COURT: And resume.

10 Ladies and gentlemen of the jury, you may step
11 outside.

12 - - -

13 The following proceedings were held out of the presence
14 of the jury:

15 THE COURT: You may step down, Mr. Erickson.

16 May I assume that lunch would be provided for
17 Mr. Erickson and also Mr. Ferguson? Yes?

18 SHERIFF'S DEPUTY: Yes.

19 THE COURT: Okay. We will come back then at 5 past
20 1.

21 Anything further, before we recess?

22 MR. ROGERS: Kevin, we need to talk about why you
23 want him off the stand.

24 MR. CRANE: Huh? Well, I mean -- the -- at some
25 point the -- I talked to the sheriff's department about it.

1 At some point I'm going to ask again that his hands be
2 undone, because --

3 THE COURT: His hands are undone.

4 MR. CRANE: No. He's cuffed. But, you know, if
5 he's going to show us, for instance, describe, either for the
6 defense or the state, the length of the tire tool, he can't
7 do it. So I -- you know, he can go up there for a little
8 while longer with it like that, but at some point I'm going
9 to ask that his hands be undone.

10 I don't think you got a problem with that, do you?

11 MR. ROGERS: I don't have a problem with his hands
12 being undone, although I think he can show us the length of
13 the tire tool from the witness stand as well as can standing
14 down here.

15 MR. CRANE: Well, there may be -- okay. That's
16 fine. But I -- now wasn't saying I was going to have him
17 stand up the whole time.

18 MR. ROGERS: I just wanted him to resume the stand,
19 is all. I got tired of watching him stand.

20 THE COURT: Well, I certainly need to confer with
21 law enforcement, because I leave it to them for the security
22 of any prisoner that's in their custody.

23 MR. CRANE: Yeah. We -- and we can even wait until
24 later before we do that, and then cuff him back up.

25 SHERIFF'S DEPUTY: Judge, it's up to Bill Hawes

1 right now. Bill Hawes has -- technically has custody of him.

2 MR. CRANE: Okay.

3 SHERIFF'S DEPUTY: So if he --

4 MR. CRANE: He's saying it's my -- all right.

5 MR. ROGERS: Bill works for Kevin.

6 MR. CRANE: All right. I'll take it up with --

7 THE COURT: I mean, I assume it's possible -- I've

8 had other inmates --

9 MR. CRANE: No. No. I can -- yeah.

10 THE COURT: -- that had their one -- the cuff on one

11 hand, and the other hand, for example, the writing hand,

12 free.

13 SHERIFF'S DEPUTY: Well, in this case, since the

14 cuffs are already in front, I have to take them both off.

15 He's still got leg irons on.

16 THE COURT: But there's no belt.

17 SHERIFF'S DEPUTY: I can put a waist chain back

18 around.

19 THE COURT: You might -- you might want to do that.

20 You might want to put a waist chain around him so you can

21 cuff one hand and not the other.

22 SHERIFF'S DEPUTY: Yeah. Whatever you want.

23 THE COURT: Okay. Why don't we plan to do that.

24 We'll be in recess then.

25 (Recess taken.)

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The following proceedings were held out of the presence of the jury:

(The defendant not present in the courtroom.)

THE COURT: We need to swear some of the marshals that will be with our jury. And I'm wondering how long it will be before your client is here.

MS. BENSON: That's what we were wondering.

THE COURT: I think -- I saw him in the hall. And I -- maybe Jack will check on...

MR. ROGERS: I think I can waive his presence for the swearing of the marshals.

THE COURT: Do you mind?

MR. ROGERS: I do not mind, Your Honor.

THE COURT: I mean, I don't know that that's a critical part of the proceeding, that the marshals are sworn.

MR. ROGERS: I don't think it is either, but if it is, I'll waive it, and then I'll make a record on it when he gets here.

THE COURT: All right.

Would you then -- it's fine. Come on in.

(Court Marshal Jack Wonneman and Deputy Court Marshals Steve Lake, Jim Purdy, and Angie Lane sworn by Sheri Vanderhoof, Deputy Clerk, to take charge of the jury.)

MR. ROGERS: Your Honor, is -- I mean, that's

1 obviously the oath appropriate to swear in the marshals who
2 will take charge of the deliberations, but in terms of having
3 charge of the jury before that, are they being sworn to do
4 that as well?

5 THE COURT: Yes.

6 MR. ROGERS: I don't think that was necessarily
7 covered with that particular oath, and I don't --

8 THE COURT: Do you have an oath that you would
9 propose?

10 MR. ROGERS: I don't have one, but I would suggest
11 that it be directed to allowing people to communicate with
12 them or allowing them to read or view or watch --

13 THE COURT: To me, this covers everything.

14 MR. ROGERS: Okay.

15 THE COURT: When they're discharged -- I mean,
16 they're not to have any conversation with anyone at any time.

17 MR. ROGERS: All right. Well, that's -- that's okay
18 with me.

19 THE COURT: All right.

20 MR. ROGERS: It is maybe over-inclusive, but that's
21 all right.

22 THE COURT: I'd rather it be over- than
23 under-inclusive.

24 MR. ROGERS: As long as you understand it and they
25 understand it --

1 THE COURT: They certainly do understand it.
2 And I trust that our jurors are all back.
3 DEPUTY COURT MARSHAL WERNER: Yeah.
4 THE COURT: Is Don Claxton here? Dan Claxton?
5 MR. CLAXTON: Yes.
6 THE COURT: I have a media request form from you.
7 And I understand that CBS will provide an audio feed.
8 MR. CLAXTON: Yes. They're doing that.
9 THE COURT: I want to know if they don't.
10 MR. ROGERS: CBS or ABC?
11 THE COURT: It's CBS.
12 MR. ROGERS: Okay. That's good.
13 (Defendant present in the courtroom.)
14 THE COURT: All right. You may return the jury to
15 the courtroom.
16 MR. ROGERS: Your Honor, for the record,
17 Mr. Ferguson is now here. I explained to him that the Court
18 swore the marshals in his absence.
19 And Mr. Ferguson, is that okay with you? You don't
20 need to be here while she swore the marshals.
21 THE DEFENDANT: That's all right.
22 MR. ROGERS: Okay.
23 THE COURT: You may return the jury to the
24 courtroom.
25 So you understand, we will go 'til around 6:30 this

1 evening. We do take breaks during the afternoon. But we
2 will go until approximately that time in the evening. Just
3 so you'll know, if you have anything with your schedule.

4 - - -

5 The following proceedings were held in the presence of
6 the jury:

7 THE COURT: Mr. Erickson, you were sworn before the
8 recess was taken for noontime.

9 THE WITNESS: That's correct.

10 THE COURT: You'll remember you're still under oath.

11 THE WITNESS: Yes.

12 THE COURT: Okay.

13 The clerk may be excused.

14 (Clerk excused.)

15 - - -

16 CHARLES TIMOTHY ERICKSON,
17 resumed the stand and testified further:

18 THE COURT: You may inquire.

19 - - -

20 RESUMED DIRECT EXAMINATION

21 BY MR. CRANE:

22 Q. I wanted to show you also another photograph before
23 we go on with some other things. It's State's Exhibit 10 for
24 identification, 10A through 10E. Mr. Erickson, does this
25 fairly and accurately depict the area around By George's and

1 down the street towards Ash Street, from By George's, in
2 these series of photographs?

3 A. Yes. Yes, it is.

4 MR. CRANE: Judge, I'd offer State's Exhibit 10, 10A
5 through 10E.

6 MR. ROGERS: No objection, Your Honor.

7 THE COURT: Exhibit 10 and 10A through E are
8 admitted.

9 - - -

10 State's Exhibits 10, 10A through 10E, admitted into
11 evidence.

12 - - -

13 Q. Okay. If we look at this, the top photograph is an
14 aerial; correct?

15 A. Yeah.

16 Q. And can you -- can you find By George's on there?

17 A. Yeah. By George's is right here.

18 Q. Okay. Now, the remaining photographs are ground
19 level; correct?

20 A. Yes.

21 Q. Okay. The first photograph over here on my -- to my
22 left is 10B. And what's that showing?

23 A. That's By George's.

24 Q. Okay. That's obviously during the daytime, shot of
25 the bar; right?

1 Okay.

2 THE COURT: I'm sorry. I didn't hear your answer.

3 A. Yes.

4 Q. Is that correct?

5 A. Yeah, that's correct.

6 Q. Now, in 10C and 10D, what's depicted?

7 A. This is First Street, heading away from Broadway.

8 Q. Okay. So in 10C here, can you show us where
9 George's would be?

10 A. George's would be to the left. And this is the
11 drive into the parking lot.

12 Q. Okay. So this is looking on down -- these two
13 photographs are looking on down the street from By George's;
14 is that accurate, sir?

15 A. That's correct.

16 Q. And where do you recall the defendant parked his
17 vehicle?

18 A. The defendant parked his vehicle down the street
19 here, just in front of the corner of First and Ash.

20 Q. Okay. As you've indicated on the larger one, on
21 across that next street and down towards Ash. In this area.
22 Correct?

23 A. That's correct.

24 Q. Where you pointed. Correct?

25 A. That's correct. Right there.

1 Q. Okay. Now 10E, at the bottom, what does that
2 depict?

3 A. This is Ash Street and --

4 Q. This?

5 A. This street right here.

6 Q. Okay.

7 A. And then down here where this moving truck is or
8 this truck right here, that's Providence.

9 Q. Okay. Now, can you see the Tribune parking lot?

10 A. Yeah. The Tribune parking lot is right here.

11 Q. Okay. Let me get around here.

12 A. Right there.

13 Q. Okay. You're pointing right here?

14 A. That's correct, yeah.

15 Q. So that's the view down Ash --

16 A. Yes.

17 Q. -- across Providence, to the parking lot. Okay?

18 A. (Nodding head up and down.)

19 Q. I wanted to ask you also, would you describe for us
20 this -- we've referred to it as a tool, a tire tool. Would
21 you describe for us what it looked like.

22 A. It's probably about -- maybe a little more than a
23 foot long. It was metal. And it had a waffle grip, that was
24 kind of rough on it. And it had -- it went up like this, and
25 then it went off a little bit like that. And then there was

1 a place where you could -- you could connect -- connect
2 pieces to it.

3 Q. Okay. Now I'm going to show you what's marked for
4 identification State's Exhibit 90. Okay? Show you that
5 exhibit. Do you see it?

6 A. Yes, I do.

7 Q. Is that the tire tool?

8 A. No, it's not.

9 Q. That's not the one.

10 A. No, it's not.

11 Q. Okay.

12 MR. CRANE: We're going to -- we're going to
13 actually offer this through another witness, Judge. But that
14 is State's Exhibit 90 there.

15 Okay. Your Honor, at this point I'm going to ask
16 that the defendant again be allowed to step down. And would
17 ask that his handcuffs be removed, at least for this portion
18 of the testimony.

19 MR. ROGERS: That's the witness; not the defendant.

20 MR. CRANE: The witness. I'm sorry. Mr. Erickson.

21 MR. ROGERS: Mr. Erickson.

22 THE COURT: Well, I'm looking -- I don't see the
23 sheriff's deputy here.

24 MR. CRANE: Ben White here, with the prosecutor's
25 office, has been given the key to the cuffs, and he can do

1 it.

2 THE COURT: All right.

3 MR. ROGERS: We have a deputy now.

4 THE COURT: Ah. Here comes the deputy.

5 Is it -- is it -- there's a proposal to remove the
6 handcuffs for a brief period of time. Is that agreeable with
7 you?

8 SHERIFF'S DEPUTY: Yeah.

9 THE COURT: All right.

10 (Witness's handcuffs removed.)

11 Q. Okay. Now you previously testified before our lunch
12 break that -- well, let me ask you this. If we use this
13 as -- this area right in here as the victim's vehicle.

14 A. Yeah.

15 Q. Okay. And you indicated that the victim was
16 standing on which side of the vehicle when you attacked him?

17 A. The driver's side.

18 Q. Okay. May we use this as the driver's side of the
19 vehicle?

20 A. Yes.

21 Q. Okay. Now, was the car door open or closed?

22 A. It was open.

23 Q. All right. And may we use this board as the car
24 door?

25 A. Yes.

1 Q. Okay. Now, where was the victim standing? How was
2 he standing when you approached him?

3 A. He was standing at his car. Right in front of
4 the -- in between the car and the car door a little bit. And
5 he was facing the car. And he had his stuff on top of the
6 car. Papers and whatnot.

7 Q. Okay. So he was standing at the car.

8 A. Yes.

9 Q. And what did you do to him?

10 A. I came around -- came around this side. Came around
11 from behind, from his right side. And he turned, like that,
12 and I hit him.

13 Q. You hit him just like that?

14 A. Well, I hit him harder than that.

15 Q. How did you hit him?

16 A. I hit him like that (indicating). And he turned --
17 after I hit him the first time, he put his hands up, like
18 this, and he turned towards me, like that. And I kept
19 hitting him. And I hit him until --

20 Q. What part of his body were you hitting?

21 A. His head.

22 Q. And how did you do it?

23 A. Just -- just like this (indicating), only faster.
24 And at some point he put his hands up.

25 Q. And what did you keep doing after he put his hands

1 up?

2 A. I hit him.

3 Q. And then what did he do? What did he do from the
4 car? Did he stay at that location? Did he move? What do
5 you remember?

6 A. He staggered. He staggered. He leaned on the car.
7 And then I hit him one time -- at one point I hit him and he
8 groaned, and he came to his knees. And then he was on the
9 ground, on his knees, and I hit him one more time, and then
10 he went down.

11 Q. All the way down?

12 A. Yeah.

13 Q. Okay.

14 A. Yeah.

15 Q. Now, after that -- after that point, when
16 Mr. Heitholt was all the way down on the pavement, what did
17 you do?

18 A. I dropped the tire tool, and I remember -- because
19 after I -- after I hit him the second to the last time and he
20 moaned, I -- I don't know. I just -- I kind of realized what
21 we were doing, you know. Just -- I mean, we were doing this
22 for nothing really. There wasn't any point. And it just --
23 just -- that I could make that sound come from someone, it
24 just -- it made me feel horrible about what I was doing.

25 Q. Did you give him any warning?

1 A. No.

2 Q. Did you say anything to him before you hit him?

3 A. No.

4 Q. Did Ryan say anything to the victim before you hit
5 him?

6 A. No.

7 Q. Do you know how many times you hit him?

8 A. No.

9 MR. ROGERS: Your Honor, if we're done --

10 Q. Let me --

11 MR. ROGERS: -- with the demonstration --

12 MR. CRANE: We're not. We're not quite done with
13 that, but thank you. I assure you, I will not leave him
14 standing for any inordinate period of time.

15 MR. ROGERS: I'm an old guy and I get tired.

16 Q. Okay. Now, I want to show you what's marked for
17 identification as State's Exhibits 13, 13A through 13F.

18 THE COURT: You want to take a look at that, Mr. --

19 (Mr. Crane showing the exhibit to Mr. Rogers.)

20 MR. CRANE: Okay.

21 Q. These are some still photographs taken from the
22 crime scene video. And ask if you recognize what's depicted
23 in these photographs. And let me ask you, if I may indulge
24 the defense, a leading question. Do these appear to be fair
25 and accurate depictions of the parking lot area, with some

1 exceptions. For instance, that police car wouldn't have been
2 there at the time --

3 A. Yeah.

4 Q. -- on night of the homicide?

5 A. That's correct, yeah.

6 Q. Okay.

7 MR. CRANE: Judge, I'm going to offer State's
8 Exhibit 13, 13A through 13F.

9 THE COURT: Does defendant have --

10 MR. ROGERS: No objection.

11 THE COURT: 13 and 13A through F are admitted.

12 - - -

13 State's Exhibits 13, 13A through 13F, admitted into
14 evidence.

15 - - -

16 Q. Okay. Now, sir, if you look there at 13A, you've
17 mentioned your route earlier. You described -- if we look
18 back here at State's Exhibit 9, can you show us again your
19 route from the car. And you may have to keep from blocking
20 the gentleman over here to your right.

21 A. His car was parked right here. And then we took --
22 we took a right on Ash Street and went down Ash Street until
23 we got to Providence. And then when we got to Providence, we
24 took a right until we got to this alley. And that was where
25 we saw the victim. Across the street from Providence. Or --

1 yeah. Well, across Providence from the Tribune building.
2 And then we crossed Providence. Stayed -- went down
3 Providence. And after we got to the other side of
4 Providence, we stayed on that. Right there. And then we
5 kept going down the alley.

6 Q. Okay. Now let me go to the next -- let me go to
7 this one now. Okay. So if you look up here at State's
8 Exhibit 13A, can you show the jury in 13A where the alley is
9 at Providence?

10 A. That's the alley right there.

11 Q. Okay. And what did you and the defendant walk up
12 to?

13 A. We walked up to this Dumpster enclosure.

14 Q. All right. Well, now you're looking at 13B, which a
15 bigger shot of it?

16 A. Yeah. Over here.

17 Q. Is it -- okay. You're pointing out of 13A. It's
18 also in that photograph?

19 A. That's correct, yes.

20 Q. Now what did you do from that location? What did
21 you do from your position up here behind the enclosure?

22 A. From this location?

23 Q. Yeah.

24 A. I came to right here a little bit. And I climbed up
25 this wall. I -- I just stepped over it.

1 Q. And now take a look at 13B. Is that also depicted?

2 A. Yeah. That's correct.

3 Q. Okay. There's a little low wall here?

4 A. That's correct.

5 Q. Okay.

6 A. Then I came over this wall. And I came so I was
7 behind the victim and to his right.

8 Q. Okay. And that's what you just talked about a
9 minute ago; correct?

10 A. Yes, that's correct.

11 Q. Okay.

12 A. And I came -- I came away from the Dumpster
13 enclosure, up over here, across the parking lot, to the
14 victim's car.

15 Q. Okay. Now let me ask you, after you -- the events
16 that you've described, where you started to hit Mr. Heitholt
17 and he went down, what did you do next?

18 A. I -- I dropped the tire tool, and I started to feel
19 sick. And I didn't -- I don't know if it was the blood or --
20 and groaning, I don't know what it was, but --

21 Q. And what did you do then?

22 A. And -- there's a -- there's a -- there's a little
23 wall area behind where the car is, and there's -- behind the
24 parking lot. And I sat back -- sat on the ground, kind of
25 with my head in between my knees.

1 Q. Now when you did that, what side of the victim's
2 vehicle were you on?

3 A. I was on the driver's side.

4 Q. Okay. So you remained on that side of the vehicle.

5 A. That's correct. Yeah.

6 Q. Now, this diagram here, I'm going to show you
7 State's Exhibit 12. There will be some other photographs
8 we'll show in a minute, but if you'll look at that, where's
9 the Dumpster enclosure that you pointed out here on 13?

10 A. Here's the Dumpster enclosure.

11 Q. Okay. All right. And then you went to the victim's
12 car.

13 A. Yeah. That's where -- well, I came around to the
14 right a little bit.

15 Q. Okay.

16 A. And then I went over the wall and came -- so I was
17 on the victim's right.

18 Q. All right. Watch. This guy can't see back here.

19 A. Sorry.

20 Q. Now what I'm asking you now is: After you had
21 beaten the victim, dropped the weapon, where did you sit? On
22 this diagram.

23 A. It was -- it was right about in between here. It
24 was on the edge of this little wall. And it was behind the
25 parking lot.

1 Q. Okay.

2 A. About in here.

3 Q. Okay. You can go ahead and return to the witness
4 stand.

5 What can you tell us, at least at that point, about
6 the victim's condition after you'd beaten him and he was down
7 on the pavement?

8 A. I don't know. I just know that he was down. I
9 wasn't -- I wasn't concentrating on it at that point.

10 Q. Okay. What -- what did you do during this period of
11 time when you're sitting there, after you dropped the tire
12 tool and felt sick?

13 A. I just -- I just sat there. I guess I was kind of
14 in shock at what I had done. I thought I was going to vomit.
15 I didn't really know what --

16 Q. In fact, you told the police you felt maybe you had
17 vomited.

18 A. Yeah.

19 Q. Okay. Did -- what happened next?

20 A. I look up.

21 Q. Well -- so wait a minute. What were you doing while
22 you were on the wall?

23 A. I was just sitting there. I was sitting there like
24 this (indicating).

25 Q. Okay. So you weren't looking out on the parking lot

1 at that point.

2 A. No. I wasn't even -- I wasn't paying attention.

3 Q. Okay. Then what's the next thing you remember?

4 A. I looked up. Ryan was over the victim. His -- his
5 back was to me and he was bent down, with his hands down in
6 this region (indicating).

7 Q. Okay. His back's to you?

8 A. Yes.

9 Q. And he's bent over?

10 A. Yes.

11 Q. Okay. And what else did you see?

12 A. At -- at that point I kind of -- I got up to see
13 what he was doing, because I thought -- we had already done
14 enough. I mean, we were just doing this to get some money
15 for drinks, and -- I mean, I already -- I knocked this guy --
16 I hit this guy until he was on the ground. I got up to see
17 what he was doing.

18 Q. Do you remember whether the victim at that point was
19 face up or face down, or could you tell at that point?

20 A. I couldn't tell at that point.

21 Q. Okay. What happened next?

22 A. I came around to Ryan's right, from behind him and
23 to his right. And he was down here, and he had a belt, and
24 he had his foot on his back, on the victim's back, and he was
25 pulling up on the belt, like this.

1 Q. What did you do?

2 A. I was to his right. And I kind of got upset. And I
3 grabbed Ryan, I grabbed him by his shirt, and I pulled him.
4 And I pulled him back away from the car. And then I started
5 yelling at him. I started, you know, asking him what we were
6 doing. "What are we doing?" I ripped the -- ripped the belt
7 off the victim.

8 Q. How did you do that?

9 A. I grabbed it in between his neck and the belt, and I
10 just -- I just ripped it off. I was really upset. I just
11 ripped it. And I remember I -- I heard the -- I heard the
12 belt buckle, or something, I heard it clink on the ground.

13 Q. Did you ever see it?

14 A. I don't remember. I just remember hearing it.

15 Q. Okay. Well, why don't you -- come down here and
16 show us what you recall seeing the defendant doing when you
17 looked up from your position on the wall.

18 A. I would have been right about here, sitting on the
19 ground.

20 Q. Is this the wall?

21 A. Yeah.

22 Q. Okay.

23 A. Ryan is over here, bent down, like this
24 (indicating), with his back to me.

25 Q. And that's what you first observed when you looked

1 back up?

2 A. That's correct, yes.

3 Q. Okay. And then you got up and approached him?

4 A. I approached him from the right. I came over here.
5 And I couldn't see what he was doing at first. When I got to
6 his right, I kind of looked over his shoulder, and I saw that
7 he was down here like this with a belt, and he was strangling
8 the victim.

9 Q. Okay. At that point were you able to determine
10 whether the victim was face up or face down?

11 A. The victim was face down.

12 Q. You didn't know this guy, Mr. Heitholt, before this,
13 did you?

14 A. No, I didn't.

15 Q. Okay. Now -- you can go back.

16 After that, what happened? I know that's a broad
17 question, but what do you recall happening after that -- the
18 strangling portion?

19 A. I got kind of upset. Started arguing with him.
20 Didn't really know what to do. I felt bad about this man on
21 the ground. At the same time I'm thinking, you know, What am
22 I going to do now? Am I going to sit here and take
23 responsibility for this or --

24 Q. You worried about getting caught?

25 A. Yeah, I was also, but I --

1 Q. Okay.

2 A. -- I was -- I didn't know what to do really. And I
3 sat back down for a second. And Ryan was going through his
4 pockets and he was going through the car. And then someone
5 came outside. I remember I heard someone come outside.

6 Q. Where -- when you say "come outside," tell us what
7 you recall their location being. Come outside of what?

8 A. Came outside the Tribune building.

9 Q. And what do you remember seeing?

10 A. I remember I saw -- I saw a lady, and I saw -- in
11 the door that she came out of, there was a light on inside.
12 And I remember I saw the silhouette of a cord. And I saw her
13 messing with the cord.

14 Q. A what?

15 A. It was like a cord, like to a vacuum cleaner or
16 something. I don't know what it was. But I saw her with
17 this cord. And then I saw her -- she came outside. And then
18 she -- then I crouched down a little bit. And then she went
19 back inside. And then -- I can't remember if I told Ryan I
20 saw her or not. But I remember I'm still -- I'm worried
21 about this man on the ground. I'm worried about what we're
22 going to do; if I'm going to leave. I'm worried about what I
23 touched. I'm worried about --

24 Q. What you touched.

25 A. Well --

1 Q. Fingerprints, you mean?

2 A. Yeah. I'm --

3 Q. Okay.

4 A. -- you know -- and --

5 Q. All right.

6 A. -- and I just didn't --

7 Q. Let me ask you this. When you first saw this female
8 come out and go back in, what did you say to her at that
9 point?

10 A. I didn't say anything to her.

11 Q. And what was said to you by her?

12 A. Nothing was said.

13 Q. Okay. The -- after this female -- you saw this
14 female come out, where was she, to the best of your
15 recollection, when she came out?

16 A. She was just out in front of the building.

17 Q. Okay. So she came actually out onto the lot, or did
18 she stay back --

19 A. No. She stayed back by the building. She didn't
20 come out to the parking lot.

21 Q. All right. But she was by the building then.

22 A. That's correct. Yeah.

23 Q. Okay. Show you what's -- State's Exhibit 12. Can
24 you show us --

25 A. She was right in here.

1 Q. Hold your finger up there so he can -- here. Just
2 touch the board.

3 A. Right there.

4 Q. Right in that area?

5 A. Yeah. Yes.

6 Q. Okay.

7 Okay. After she went back inside, what happened?

8 A. After she went back inside, we were still there.
9 Ryan was still going through his stuff. I was still trying
10 to decide what to pick up and what not to pick up. I
11 remember he said -- I was going to pick something up on the
12 ground, and he said, "That's not ours. Don't touch that."
13 And then a few seconds later, more people came outside.

14 Q. Okay. Did you see where these people were exactly?

15 A. No. I just saw them -- I just saw them up by the
16 building. I didn't see exactly where they were.

17 Q. Okay. And what started going on? What started
18 happening then?

19 A. They started yelling. And I don't remember what
20 they yelled at first, but then I remembered, they yelled
21 something to the extent of, "Hey, what's going on? What's
22 going on?" And I yelled -- I yelled, "This man's hurt. Go
23 get help." But it was more -- I was really upset, so it was
24 more -- I was more --

25 Q. Well, why would you do that?

1 A. Because I didn't -- I didn't want to leave until I
2 knew what had happened. I mean, I didn't want that man to
3 die for no reason, just right there. I didn't know -- I
4 didn't know what else to do. I don't know why I said that.

5 Q. Do you remember how you yelled back?

6 A. Yeah. I was really upset. I was almost on the
7 verge of tears when I yelled. I mean --

8 Q. What -- what did you yell?

9 A. I yelled -- I yelled -- I yelled, "Go get help.
10 This man needs help."

11 Q. Okay. And then what happened?

12 A. And then they went back inside, like they were
13 scared.

14 Q. Okay. And what did you do then?

15 A. After they went back inside, we left. I walked --
16 we kind of walked briskly. I walked in front of the -- in
17 front of the car. And Ryan walked behind the car. And we
18 walked up -- we met in the alley; then we walked up -- walked
19 down the alley --

20 Q. All right. Well, let me show you the diagram. You
21 say you walked around the front end of the vehicle?

22 A. Yeah. That's correct.

23 Q. Okay. And we're -- are we talking about the
24 victim's car?

25 A. That's correct.

1 Q. Okay. I'll show you State's Exhibit 12. Take a
2 look at that. Show us what you remember doing.

3 A. I was here. Ryan was over here.

4 Q. Well, so, for the record, you're saying that Ryan
5 was where? Point that out.

6 A. To the rear of the car.

7 Q. Towards the rear of the car?

8 A. Yeah.

9 Q. And where were you?

10 A. I was towards the front of the car.

11 Q. Towards the front of the car. And after these
12 people -- this exchange, they're yelling and you yelled back
13 and then they left --

14 A. Yes.

15 Q. -- you did what?

16 A. I walked around in front of the parking lot and went
17 into the alley. Ryan went around. We went down the alley.

18 Q. Okay. In this direction? That would be east,
19 towards Fourth Street?

20 A. Towards Fourth Street, yes.

21 Q. Okay. So you went around the front of the car. He
22 was in the rear area. And then you went up the alley towards
23 Fourth Street.

24 A. That's correct.

25 Q. Are you ahead or behind the defendant at that point?

1 A. I'm ahead of the defendant.

2 Q. Okay. Did you -- well, strike that. What did you
3 see of anybody else in the area of the building?

4 A. Well, first I went left down Fourth Street. And
5 then Ryan stopped me. And he grabbed me. And he pulled me
6 back and said, "No, we got to go that way." So we turned
7 around. And I started to go towards Broadway on Fourth
8 Street. And when we're crossing the alley, that's when a lot
9 of people came outside. And a lot of people were yelling.
10 And I saw them out of the corner of my eye. And that's when
11 we really took off.

12 Q. Down?

13 A. Down Fourth Street.

14 Q. Okay.

15 A. We started running.

16 Q. Okay. Look again at State's Exhibit 9. First of
17 all, can you show us the Tribune building there? Number 2;
18 right?

19 A. Yeah. This is the Tribune building. And here's the
20 alley.

21 Q. And which way did you go?

22 A. First I went left. But then he stopped me and
23 turned me around, and then we went right. And we were about
24 right here, we were just back at the alley, when people came
25 out and started yelling. And then we went down Fourth

1 Street. We started running along here.

2 Q. Okay.

3 A. On Fourth Street.

4 Q. Headed towards Broadway.

5 A. Towards Broadway, yeah.

6 Q. What did you take from the crime scene?

7 A. I took the belt.

8 Q. What about the buckle?

9 A. No, I didn't -- I didn't take that.

10 Q. What did you do with the belt? I mean, how did you

11 carry it?

12 A. At -- at some point I put it in my pocket.

13 Q. What else did you take from the crime scene, if

14 anything?

15 A. That was it.

16 Q. Okay. Keys?

17 A. No.

18 Q. Watch?

19 A. No.

20 Q. What about the tire tool?

21 A. No.

22 Q. You didn't take that? After you dropped it, you

23 didn't pick it back up?

24 A. No, I didn't.

25 Q. Okay. What about blood on you or on the pavement?

1 A. I had blood on me. I had blood on my hands.

2 Q. What about around the scene? Do you remember --

3 A. There was blood all over the ground. There was

4 blood on the car.

5 Q. Do you remember what kind of shoes you had on?

6 A. No.

7 Q. Did you have on a pair of Sketchers brand shoes?

8 A. I don't remember.

9 Q. Do you remember what Ryan had on?

10 A. No.

11 Q. What was said, after you guys started heading down

12 Fourth Street? Do you remember?

13 A. We're heading down Fourth Street, and I asked

14 Ryan -- I thought of the tire tool when we were going down

15 Fourth Street. I said, "Ryan, did you get that?" He said,

16 "Yeah." And I didn't see it with him.

17 Q. Did you see him at that point carrying anything?

18 A. No. But he told me he had it.

19 Q. Okay. All right. You went down Fourth Street --

20 MR. CRANE: Judge, I'd ask the witness to step down

21 again.

22 THE COURT: You may.

23 Q. Can you show us on State's Exhibit 9 where you went

24 from there.

25 A. We went down through the Tribune, went down Fourth

1 Street, about here. And we crossed Broadway. Crossed
2 Broadway on Fourth Street. And then we went into the parking
3 lot of the diner. There's a diner right here. I remember
4 they got a fence along the perimeter of the diner.

5 Q. And what kind of a fence?

6 A. Or not a fence. I'm sorry. It's a chain. It's
7 just -- it's about that high. And it's for just parking, to
8 keep I guess other people from parking there. I don't know
9 what it's there for. But it's on the perimeter of the
10 parking lot. And I remember stepping over that, to -- I
11 remember stepping over that. And then I -- we went through
12 the parking lot of the diner, and then we went across Fourth
13 Street again, and we went down into Flat Branch Park.

14 Q. Now what -- tell -- they're not from Columbia.
15 What's down in there?

16 A. There's -- basically it's just a creek. And there's
17 a little park area. It's this grassy area right here. And
18 down here, you can't really see it very well, but there's a
19 creek right in here and a tree line right here.

20 Q. Okay. So you went down Fourth Street?

21 A. We went down Fourth Street. We went through the
22 diner parking lot. Right here. Then we went across Fourth
23 Street. And we went into the park. We went to the creek.
24 We got to the creek, and I washed the blood off my hands in
25 the creek.

1 Q. So there was -- can you describe for us how much
2 water -- or what was the creek like?

3 A. I remember it was about up to my ankles, because
4 when I went back to the club, my pants were wet up -- about
5 up to my ankles. My jeans.

6 Q. Wet feet.

7 A. Well, I mean, my legs were -- about up to my ankles.
8 My pants. I was wearing baggies like this. Well, I did wear
9 them, but. So they would have been wet also.

10 Q. Okay. How did you come up out of the creek then?

11 A. We came up, and there's a -- there's kind of a rock
12 embankment. And we went up the rock embankment, up here,
13 after we crossed the creek, and then there's -- there's a
14 grassy area where there's a lot of tree and foliage and
15 stuff. And I remember Ryan was ahead of me at this point,
16 and I couldn't get up. I couldn't get up after I got on this
17 rock embankment. I was trying to get up, and it was slick,
18 this grassy area. And finally I got up. And then we came
19 around -- we came around here, and we came back behind the
20 Phillips 66 gas station, which is -- which is somewhere -- I
21 think it's right there.

22 Q. Okay. Show them in the photo where you're at now.

23 A. Yeah. It's right here. And we came to the -- we
24 came around behind the gas station, to the right of the gas
25 station. And then we got up to Providence. We came out from

1 the gas station. And right -- when -- right here on
2 Providence, I see this car pull up. And I see it's the same
3 guy that I was at the party with who was wearing a cop suit.
4 His name is Dallas Mallory.

5 Q. Okay. Had you -- we showed a photograph of Dallas
6 Mallory a while ago at the Swilling party in a police
7 uniform. Had you met him, though, before this night? I
8 mean, had you known him before the Swilling party?

9 A. Yeah. I knew him before that.

10 Q. Okay. And when you saw Mallory, what did you do?

11 A. I didn't -- I didn't really know what to do. I was
12 upset. And I didn't know what to do. And I saw him sitting
13 there, and I just told him what we did. I told him that Ryan
14 told me to hit this guy and we beat this guy down back there.
15 I was motioning behind me. And I didn't know what to do. I
16 don't know if I wanted a ride or what, but I just -- I had to
17 tell someone what we did. And so I'm telling -- I'm telling
18 Dallas, and --

19 Q. Was anybody else in the car with him?

20 A. Yeah. There -- there were a couple of girls in the
21 car.

22 Q. Do you know who they were?

23 A. No. I think I did at the time. I can't remember,
24 though.

25 Q. What was Mallory's reaction to all that?

1 A. He didn't really -- he didn't really react. I mean,
2 like -- he didn't -- he didn't understand the gravity of the
3 situation. He knew -- I believe he knew that I was upset,
4 but other than that --

5 Q. Where was Ferguson when you were talking to Mallory?

6 A. He was right behind me. He was about two feet
7 behind me.

8 Q. What did the defendant, Mr. Ferguson, say to
9 Mallory?

10 A. He didn't say anything to Mallory.

11 Q. What was the defendant's reaction, if you remember,
12 to you telling Mallory --

13 A. He was mad about it.

14 Q. About what you'd done?

15 A. About what I told Mallory.

16 Q. Okay. About -- okay. After that -- well, what
17 happened next? You said something to Mallory. What happened
18 next?

19 A. We're setting at Dallas's car, and we see -- we're
20 looking down -- Dallas's car is right here. And down
21 Providence, in the area of the Tribune building -- no. I'm
22 sorry. Dallas's car is right here. Right here. That --
23 about number 3, where this gas station is.

24 Q. Okay.

25 A. And down here --

1 Q. He can't see.

2 A. Right there. And down Providence, at the Tribune
3 building, somewhere on Providence a cop turned his lights on
4 and turned his siren on. I guess he was responding to a
5 call. At that point Dallas, he hit the gas. He about ran me
6 over. And he -- and he just drove off. We ran up --

7 Q. Well, wait. Let me ask you a question. At that
8 point do you remember -- well, strike that. When you went up
9 to Dallas, do you remember, other than driving, what he was
10 doing?

11 A. He was -- he was smoking pot. I remember he was
12 smoking -- he was smoking a zeppelin.

13 Q. What's a zeppelin?

14 A. It's -- it's a little pipe that comes apart, and it
15 looks like -- I guess it looks like a blimp, kind of. That's
16 why they call it a zeppelin. And it's got a top to it. And
17 he was -- he was smoking that.

18 Q. What do you put in there?

19 A. You put marijuana in there.

20 Q. Okay.

21 A. And I remember -- I don't know if I was going to ask
22 him or I asked him for a hit of it, beings I was -- I was
23 just -- I was just out of it. My nerves were shot. I just
24 -- I didn't know what to do.

25 Q. You talked to him. You heard sirens.

1 A. Yeah.

2 Q. He takes off.

3 A. That's correct.

4 Q. And then what happens? Where did you guys go?

5 A. We didn't know if the cops were responding to us or

6 not, but -- so we started -- we didn't know if they seen us

7 or we didn't know -- we didn't know. And so when he took

8 off, we just started running. And we ran -- we were --

9 basically we were standing in the middle of the street,

10 because that's where Dallas was, at this intersection. And

11 then we went across Providence, over this little grassy area,

12 into the Osco parking lot.

13 Q. Okay. And that -- I think we got a number on Osco.

14 A. It's number 4 right here.

15 Q. Okay. And where did you go in that parking lot?

16 A. We came up through here. And then we came up this

17 way. And we came up to the -- right in front of -- in front

18 of this building right here, until we got to Broadway, about

19 here. So it was --

20 Q. And then where did you go from Broadway?

21 A. We walked across Broadway. We walked back up to

22 First Street. We walked back to his car.

23 Q. Okay. Now, so, that -- once you'd gotten up to

24 Broadway, you're back to George's, and then on down is the

25 car?

1 A. Yeah, that's correct.

2 Q. Okay. You can have a seat.

3 Now, while you -- once got back up there to
4 George's, what do you remember going on? Or By George's.
5 What do you remember going on? You're across Broadway. What
6 do you remember?

7 A. I remember -- I remember asking Ryan something
8 about, "What are we going to say to this bouncer?" Because
9 this bouncer's sitting in front of the club still. Just
10 sitting in front of the door. And I'm thinking that this
11 bouncer is going to know that -- he's going to eventually
12 find out that something -- that something happened that night
13 and that we were coming from that direction. I don't know.
14 I was just -- it was a thought. And he said something about,
15 "Don't worry about it. Don't -- it's not a big deal."

16 And we go -- we go past the bouncer, and the club's
17 on our left, and we're on First Street, and we're across the
18 street -- across First Street from By George's. And I
19 remember I'm walking like this, with my hands in front of my
20 sweatshirt, because I've got blood on them. And we're
21 walking down First Street, and we get to his car. To Ryan's
22 car. And we get to Ryan's car --

23 Q. What happened there?

24 A. He opens the trunk. And I was going to put the belt
25 in the trunk, but he said, "No, wait." And he fished around

1 in his trunk and he got out a plastic grocery bag. I don't
2 remember what kind it was, but it was just a regular grocery
3 bag. And he said, "Here, put that -- put this stuff in
4 here."

5 Q. Plastic kind? Not brown paper bag?

6 A. That's correct. Yeah. Yeah. And I remember he
7 put -- he put some stuff in there. I saw him put the tire
8 tool in there. And I put the belt in last. And then he --
9 he -- he -- he twisted it up and he put it back in the trunk,
10 and then we went to the car. I took my sweatshirt off.

11 Q. What do you mean? You were at the car. You mean
12 from the trunk?

13 A. We went from the trunk to the -- to the car.

14 Q. And then what?

15 A. We had our coats in the car. And I can't remember
16 if I took my sweatshirt off and I put my coat on top of it or
17 not, but I know I put my coat on. And he put his coat on.
18 And then we went back into the club.

19 Q. You went back inside.

20 A. That's correct.

21 Q. And from the time you talked to the police back in
22 March '04, you've said you went back inside.

23 A. That's correct.

24 Q. Went in the second time that night.

25 A. Yeah.

1 Q. And what went on inside?

2 A. We went back into the club. And I was -- I was
3 just -- I was really upset. I didn't know -- I'm sitting
4 here thinking, We -- we didn't know if the man was dead yet.
5 We didn't know. I remember I asked Ryan. He said, "Well, I
6 think he's dead." And I remember just sitting there
7 thinking -- we went back to a table, and I'm just sitting
8 there thinking, you know, We really did that for nothing. I
9 mean, that was -- it was -- it was just disgusting. And --

10 Q. Was there -- what about people in there?

11 A. I mean, there was still people in the club. It
12 was -- they were still serving drinks. There were still a
13 lot of people there. People were still dancing.

14 Q. Did you see Kelly -- the defendant's sister, Kelly?

15 A. Not that I can remember.

16 Q. What about her friend, Christine Lo?

17 A. No, not that I can remember.

18 Q. And what did you do in there? Did you drink? What
19 did you do?

20 A. Ryan -- he wanted -- and he got a couple drinks. I
21 remember he got one for me. I didn't really -- I didn't
22 really feel like drinking.

23 Q. Well, I thought you guys were out of money.

24 A. Yeah. Well, I don't know if he got money from the
25 victim or not. But I know when we got back to the bar, he

1 goes in a compartment in his wallet and he takes out this \$20
2 bill, and he -- he says, "Man" -- he's looking at me, he's
3 kind of smiling, and he says, "We just did that for nothing.
4 We just did that for nothing. I had this the entire time and
5 I forgot about it."

6 Q. What did you drink?

7 A. He bought me another -- another -- I believe it was
8 an Amaretto Sour. I didn't drink most of it. I got a glass
9 of water.

10 Q. What did you and him talk about inside the bar?

11 A. I didn't -- I didn't say anything. I was just upset
12 about what we'd done. I really didn't say anything to him.

13 Q. If -- if this murder occurred at -- in between 2 and
14 2:30, roughly, that's certainly after what a normal closing
15 time would be for the bar.

16 A. Yeah. I believe normal closing time is 1:30.

17 Q. But it's your testimony you guys went in there.

18 A. We went in there.

19 Q. When did you leave? What was going on when you
20 left? How did that happen?

21 A. Well, we didn't leave. I remember I wanted to go
22 home. That's all I really wanted to do, was go home. And
23 Ryan would go up to the door. He went up to the door, to the
24 front of the building, and he said, "We can't leave yet.
25 There's a cop outside." And I just -- I was intent on going

1 home. And he would -- periodically he'd go back to the front
2 of the bar, and he'd say, "No, the cop's still there. The
3 cop's still there. We can't leave." And I was just sitting
4 at this table. Finally he came back. And everyone was
5 getting up, and they were making everyone leave. Ryan says
6 to me, "Everyone's leaving. Let's go." So we get out. And
7 we go out with the crowd. We go out the doors of By
8 George's, and there's cop parked on First Street, just
9 standing outside of his car. We go until about -- we get to
10 First Street, and we go left, just not even in the
11 direction -- opposite direction of the cop. And I remember
12 I'm still walking like this. Then we go left. We go back to
13 Ryan's car.

14 Q. Okay. Left is to the car.

15 A. Yeah. Left down First Street.

16 Q. All right. And what happened then?

17 A. Then we got in Ryan's car. At some point he -- he
18 turned around, or he took a right down First Street, and so
19 we were going down Ash, the way that we went when we did the
20 robbery. And he went down --

21 Q. Towards Providence?

22 A. Towards Providence on Ash.

23 Q. Okay. So you're coming from the bar area, First
24 Street, down Ash, to Providence in the car now.

25 A. That's correct.

1 Q. And what -- tell us about what happened.

2 A. We go down Ash. And then we take a right on
3 Providence. And we see that there's -- there's cops
4 everywhere. And I just remember thinking, "We did this.
5 This is all because of us." There's kids running across the
6 street, not knowing what the cops are doing. And we look off
7 to our left, and there's cops everywhere. And there's people
8 walking around. And I -- I saw -- I saw what I thought was a
9 white body bag. And then I just -- at that point I just -- I
10 realized that, you know, that man was dead. That we -- we
11 killed that man. For nothing.

12 Q. Where did you drive to then?

13 A. Well, we're on Providence, and he takes a right onto
14 Broadway. So we go onto Broadway.

15 Q. What were you thinking then?

16 A. Then I'm -- I'm just -- I remember -- I didn't know
17 what to do. I wanted to -- I wanted to turn myself in. And
18 I remember it was -- we were going down Broadway, and I
19 remember the feeling of just -- it was so unreal, that we
20 could just do something like that, and now we're --

21 MR. ROGERS: I'm going to object, Your Honor. It's
22 not responsive to the question.

23 THE COURT: All right. If you'll ask a question,
24 Mr. Crane.

25 Q. Well, when you were driving down Broadway, after

1 you -- you were on Providence, and then you headed on
2 Broadway?

3 A. Yeah. That's correct.

4 Q. And you were leaving the area.

5 A. Yes.

6 Q. What were you thinking?

7 A. I was thinking how -- how unreal it was. How messed
8 up it was that we could just do something like that and then
9 just drive away from it. How we could just -- we could just
10 -- we could just kill this man -- rob this man and kill this
11 man, and we could just drive away and leave it all behind us.

12 (Discussion off the record between counsel.)

13 - - -

14 Counsel approached the bench and the following
15 proceedings were held:

16 MR. CRANE: This is the part where -- subject of the
17 defendant's motion in limine, wherein there's a conversation
18 about the prior -- the one -- the prior -- where a month ago
19 they were together and he had gotten -- Erickson had got
20 arrested. Ferguson was upset about that. Remember that
21 motion in limine?

22 THE COURT: Yes, I remember.

23 MR. CRANE: I've admonished him not to bring it up
24 until such time as we approached.

25 MR. ROGERS: I would renew the motion in limine at

1 this time. Object, Your Honor. It's not relevant to
2 anything.

3 THE COURT: What is its relevance?

4 MR. CRANE: The testimony -- I believe this came up
5 in deposition too. The testimony of this witness would be
6 that he said: If I hadn't gotten arrested, back a month ago,
7 I wouldn't have done this.

8 THE COURT: Purportedly what the defendant said.

9 MR. CRANE: Correct. Correct.

10 THE COURT: The motion in limine is sustained.

11 - - -

12 The following proceedings were held in open court:

13 MR. CRANE: Can I approach the witness and make sure
14 he understands --

15 THE COURT: The ruling of the Court?

16 MR. CRANE: -- the ruling of the Court on that?

17 THE COURT: You may.

18 (Discussion off the record between Mr. Crane and the
19 witness.)

20 MR. CRANE: I've advised the witness of the Court's
21 ruling.

22 THE COURT: Thank you.

23 Q. During this time, as you are leaving the
24 defendant's -- the defendant drove the whole time; correct?

25 A. That's correct.

1 Q. Leaving, headed down Broadway, what conversation do
2 you recall?

3 A. All I remember, a conversation about what we were
4 going to do. Came on the topic of all the stuff in his
5 trunk. He said, "Don't worry. I'm going to take care of
6 it." He said, "You know, it doesn't really matter, man. I
7 always wanted to kill someone before I was 60 anyway, so I
8 just -- I just accomplished that." Like he was just crossing
9 it off his list of goals.

10 Q. Said he always wanted to kill somebody before he was
11 what?

12 A. Before he was 60 anyway.

13 Q. The -- well, let me ask you, he said he was going to
14 take care of the stuff in the trunk. Do you know what
15 happened to the belt?

16 A. No.

17 Q. Do you know what happened to the tire tool?

18 A. No, I don't.

19 Q. The watch?

20 A. No.

21 Q. The keys?

22 A. No.

23 Q. The Kroger bag? Or the grocery bag, you said.

24 A. No, I don't.

25 Q. Okay. Where -- did you go straight home from there

1 or what happened?

2 A. No. We went down Broadway. We took a right onto
3 Stadium. We went in front of the Crossroads Shopping Center
4 and went to a gas station and bought a pack of cigarettes.

5 Q. And then what?

6 A. And then he took me home.

7 Q. Who went in?

8 A. Ryan went in.

9 Q. And what did you do?

10 A. I sat in the car.

11 Q. And then he came back out?

12 A. That's correct.

13 Q. And where did he drive then?

14 A. He drove down -- I believe he drove back down
15 Broadway. I can't remember -- I can't be sure. I can't
16 remember.

17 Q. Well, let me ask you this. Where did you -- where
18 did he drive to?

19 A. Well, we went down Fairview, and then we went down
20 Chapel Hill, and we drove to my house.

21 Q. Okay. And back to Exhibit 5. Back to your
22 residence on Chinkapin?

23 A. Yeah, that's correct.

24 Q. Okay. And what happened there?

25 A. Then he dropped me off in front of my house; I went

1 around back; I went into my basement.

2 Q. You didn't go in the front door; you went around the
3 back?

4 A. I went around back.

5 Q. Okay. So he let you in front -- at the front of the
6 house this occasion?

7 A. That's correct.

8 Q. And what did you do with your clothes?

9 A. I don't remember.

10 Q. Where are they now?

11 A. I know I left my coat that I was wearing that night
12 at Brian Walters' house at some point.

13 Q. Have you seen it since?

14 A. No, I haven't seen it. I don't know what happened
15 to my clothes.

16 Q. Shoes?

17 A. No.

18 Q. What happened the next morning?

19 A. Next morning, I woke up. Completely put it out of
20 my mind. Didn't think about it at all.

21 Q. What woke you up that morning?

22 A. My mom woke me up. She told me that my friend was
23 on the way to pick me up for school.

24 Q. Who was that?

25 A. Scott Turner.

1 Q. What happened?

2 A. Scott Turner picked me up. I got in his car. We
3 drove to school. I went to school. I stayed until about
4 second hour. Started to feel sick from my hangover. I went
5 home. I don't remember who took me home. And I went home
6 and I went to sleep.

7 Q. On that day, that's now Thursday day, November 1,
8 2001, what contact did you have with the defendant?

9 A. At some point I called him that night and I told him
10 that I was going to pay him back for the drinks that he got
11 for me. I asked him if he'd give me a ride to school the
12 next day.

13 Q. Any conversation about this killing?

14 A. No.

15 Q. Did you see Ryan Ferguson at school that Thursday?

16 A. On the 1st?

17 Q. Yeah.

18 A. No.

19 Q. All right. The next morning, this Friday, November
20 2nd, 2001, how did you get to school?

21 A. Ryan Ferguson came to my house and picked me up.

22 Q. And what was he driving?

23 A. He was driving his blue Mercedes. The one that we
24 drove the night of the murder.

25 Q. And before you got in the car with him -- was there

1 anybody else in the car?

2 A. No, there wasn't.

3 Q. Before you got in the car with him that Friday
4 morning, what did you take with you?

5 A. There was a newspaper in front of my house. I don't
6 know if it was from the night before or what, but it was just
7 in front of my house. I picked up the newspaper and I got in
8 his car. So I got in his car. We started driving. He
9 starts taking me to school. I open the newspaper.

10 Q. You what?

11 A. I opened up the newspaper. I didn't -- it was on
12 the front page.

13 MR. ROGERS: I'll object to the narrative.

14 Q. What did you -- without going into any detail as to
15 the, you know, exact contents of the article, what was the
16 article that you opened the newspaper up to about?

17 A. It was about the murder of Kent Heitholt.

18 Q. Okay. And you're riding along with the defendant,
19 with that article out.

20 A. That's correct.

21 Q. What was said?

22 A. I said something to the extent of, "That's messed
23 up. Did -- this happened two blocks away from where we were
24 partying at the other night." He said, "So what?" He got
25 kind of irritated. He said, "So what?" Like I was going to

1 say something else after that. And that's just my opinion.
2 I don't know whether he was going to or not. I said, "Aw,
3 that's just messed up, because it happened a couple blocks
4 away from where we were at." And that was the end of the
5 conversation.

6 Q. What did you do -- what happened to your memory of
7 the murder?

8 A. Best way that I can explain it is I just put it out
9 of my mind. It wasn't something that I would have normally
10 done. It wasn't my normal behavior. I was drunk. It wasn't
11 something I ever wanted to remember again. And for the life
12 of me, I just wanted to just be rid of those memories. There
13 was no way I could go on dealing with my everyday life having
14 to think about that. I couldn't deal with it.

15 Q. How did you and the defendant interact after the
16 murder?

17 A. Less than usual. We stopped hanging out as much.
18 There weren't really any spoken words.

19 Q. Up until New Year's, did you have any direct
20 conflict or arguments?

21 A. We got in a shoving match once. It was just -- it
22 was kind of unspoken stuff. Consciously, I don't know. I --
23 I don't know if I -- if I addressed anything at that point,
24 but I was mad at him. I pushed him; he pushed me back.

25 Q. Did you say anything about the murder on that

1 occasion?

2 A. No. He said something to the extent of, you know,
3 "Friends stop hanging out in high school."

4 Q. Okay.

5 A. And I said, "You know, that's -- I understand. That
6 doesn't bother me."

7 Q. The fact that you didn't associate with Ferguson any
8 more, I mean, did that break your heart?

9 A. No.

10 Q. What happened then? That's 2001. You had the rest
11 of your junior year and senior year in high school.

12 A. That's correct.

13 Q. What did you do? Did you graduate?

14 A. Yes, I did.

15 Q. Went ahead and graduated?

16 A. Yes.

17 Q. What did you do after that? What did you do after
18 you graduated high school?

19 A. Went to college, and I stopped messing around so
20 much, I stopped partying so much.

21 Q. What college did you go to?

22 A. I went to Moberly Area Community College. And I
23 was --

24 Q. In Moberly?

25 A. No. It was in Columbia. I was going to transfer

1 into MU after my second semester there. And --

2 Q. Okay. And how were things going? I mean --

3 A. Pretty good. I stopped partying so much. I started
4 working out a little bit. I started running a little bit.

5 Q. Had a job?

6 A. Had a job.

7 Q. Going to school?

8 A. My grades in college were better than they ever were
9 in high school.

10 Q. But then what started to happen?

11 A. I started to allow myself to remember some of the
12 stuff that I had done. Some of the things that happened that
13 night.

14 Q. What -- can you tell the jury what caused that to
15 happen? What caused you to think about that?

16 A. Well, a lot of it -- a lot of it was: On the second
17 anniversary of the murder, they had something in the
18 newspaper about it. And they talked about it. And they
19 talked about this man and his life and what he had done.
20 They talked about the murder. And they had composite
21 sketches. And I started to think about that night. And
22 before that, there were some memories that -- that I knew
23 that they were significant, but they were just like
24 snapshots, like you pause a movie. And I knew that they were
25 significant. And whenever I thought about it, a kind of

1 buzzer would go off in my head, as that's a defining moment
2 in my life, but I just couldn't put a -- I couldn't put my
3 finger on what it was. I wouldn't address it. It was too --
4 too -- too horrible to address. It was too horrible to
5 contemplate in my mind, that I'd been capable of doing
6 something like that.

7 Q. You saw a psychologist in -- later on in the same
8 month of November of 2001. Do you remember that?

9 A. Yes, I do.

10 Q. How come you went to a psychologist?

11 A. I just -- I had gotten in trouble with -- my parents
12 had found some pot, and my grades weren't good, and I was
13 sneaking out and drinking on the weekends. And my parents
14 thought that I needed someone -- I needed someone to talk to,
15 and so I talked to a psychologist.

16 Q. Okay. And that's the same month, about a month
17 after the murder happened.

18 A. Yeah. She was a -- she was a family counselor, was
19 the title that -- I mean, I'd sit down with my parents and
20 we'd talk about the problems and everything.

21 Q. Well, do you remember talking to a psychologist over
22 at the University of Missouri?

23 A. Yeah.

24 Q. In the -- in November of 2001?

25 A. Yeah.

1 Q. About your grades being bad?

2 A. That was about my grades. That was -- that was for
3 ADD.

4 Q. Did you have ADD?

5 A. No. I just -- I smoked pot and I just didn't -- I
6 did what I liked to do in school and I did what I had to to
7 pass.

8 Q. During that meeting with that psychologist, and I'm
9 talking about the university psychologist, was there any
10 discussion about the murder?

11 A. No. Not at all.

12 Q. Did they do any dream therapy with you?

13 A. No.

14 Q. Did they use any sodium pentathol or truth serum on
15 you or anything?

16 A. No, they didn't.

17 Q. Did he hypnotize you?

18 A. No.

19 Q. Did you bring up anything about the murder? And
20 this is November of 2001; correct?

21 A. That's correct. No, I didn't.

22 Q. After you started to think about it, this murder
23 more in October of 2003, how did that progress? Explain to
24 us what was going on in your head.

25 A. After a while, I was able to start to address these

1 memories. And I started to -- there were a lot of things I
2 always had in the back of my mind. And they were always
3 there. I was just --

4 Q. Like what? What's a snapshot? You mentioned the
5 word "snapshot" a minute ago. What's -- what's something
6 that was there --

7 A. For instance, snapshot was when I -- I remember I
8 saw Dallas. I remember seeing Dallas at that intersection.
9 I don't remember what I did at first, when I was talking to
10 Dallas. I don't remember -- I didn't remember what I did
11 before I talked to him; I didn't remember what I said to him;
12 I didn't remember where I went afterwards. I just remembered
13 seeing him there, and I remembered that something horrible,
14 something life-defining, something -- something -- something
15 just clicked in my mind whenever I thought about that. I
16 might be driving down Providence and driving by that
17 intersection and thinking about, "Well, I saw Dallas there,
18 but why is this important? Why is this relevant to me now?
19 This happened this long ago; why does this matter?"

20 Q. And as it progressed, what about -- did you have any
21 snapshots or memories of the murder itself?

22 A. Yes, I did. Yes, I did.

23 Q. What's an example of that?

24 A. I remember hitting the victim. I remember sitting
25 down. I remember yelling at the cleaning lady to get help.

1 I remember walking by the bouncer with my hands like this. I
2 remember taking my coat off before I went to do the robbery.

3 Q. Is this all something that you dreamed? You're in
4 rapid eye movement, you go to bed one night, and you wake up
5 in the morning and you go, "Gosh, I've got this memory of
6 killing a man"?

7 A. I wish it were a dream.

8 Q. Did you use that word to try to re -- talk -- when
9 you were talking about this? The word "dream"?

10 A. Yes, I did.

11 Q. What did you mean by that?

12 A. What I meant by that was that -- well, I hoped that
13 it was a dream. I did. I did hope that it was a dream. And
14 the memories, they seemed so -- seemed so distant. They were
15 so hard to tap into, that they seemed kind of dream-like.
16 And also --

17 Q. As you sit there right now, did you dream about
18 this? You're using that term "dream."

19 A. No. I never -- I never -- I never dreamt about
20 killing this man.

21 Q. Okay. Let me ask you, Mr. Erickson, have you ever
22 had a dream where you were -- you're asleep, and during the
23 dream you think you're doing something or something bad's
24 happening or whatever, and when you wake up, before you get
25 completely conscious, you think that what you were dreaming

1 was true? Have you ever had that experience?

2 A. Yeah. And -- I mean, I've been in jail for a year
3 and a half now. Over that. I've been dreaming that I've got
4 to get a paper in for class, or I've got to go pick someone
5 up; I'm driving around in my car. And then I'll wake up, and
6 I'm in Boone County Jail, and I don't have a paper I got to
7 turn in; I don't have anyone I got to pick up. I don't have
8 anything I have to do.

9 Q. You don't get up and still try to finish the paper
10 or go find your car keys.

11 A. No.

12 Q. Because you're in jail.

13 A. That's correct.

14 Q. How did you deal with these memories as time
15 progressed? What did you --

16 A. As time progressed, I would allow more memories to
17 surface. And the more that I thought that I was capable of
18 doing something like this, the more I allowed to surface; the
19 more that I remembered; the more accurately I remembered it.
20 Because when I knew that I was capable of this, when I
21 admitted to myself that I was capable of this, that's when I
22 could really -- I could really admit to myself and I could
23 really allow these memories to surface and I could really --

24 Q. So what did you do? Who did you talk to, if
25 anybody, about this?

1 A. The first person I talked to, his name is Korey
2 Iranpour.

3 Q. Korey Iranpour?

4 A. That's correct.

5 Q. Okay. Now, with him, tell us about that
6 conversation.

7 A. We were at his mom's house. It was out in the
8 country. It wasn't in Columbia. We'd been drinking. And
9 this is around November. And I'd been thinking about the
10 murder and thinking about these memories, and deep down I
11 knew that I'd done this. I knew that I -- I knew that I was
12 responsible for this. And I didn't know how to deal with it.
13 I didn't know anyone that had ever been in a situation like
14 that.

15 Q. So what did you say?

16 A. So I said, "Have you ever done anything, just
17 horrible, that you're going to have to live with for the rest
18 of your life?"

19 Q. You told your buddy that?

20 A. Yes.

21 Q. Or asked your buddy that?

22 A. I asked him. And I didn't know what to do. I
23 was -- I didn't know what to do.

24 Q. Now at that point, though, did you go any further?

25 A. No. I didn't get any more specific. I just --

1 Q. Okay.

2 A. -- I said that there was something I had to deal
3 with. And I know I mentioned that I was -- I wanted help,
4 really. I mean, I just -- I didn't know what -- what to do.

5 Q. And who, in -- later on, still in 2003, the end of
6 2003 actually, was the next person that you talked to about
7 the murder?

8 A. The next person I talked to was my friend Nick
9 Gilpin.

10 Q. Before -- let me direct your attention --

11 A. Oh, no. I'm sorry. I'm sorry. The next person I
12 talked to in 2003 was Ryan Ferguson.

13 Q. When was that?

14 A. That was on New Year's of 2003-2004.

15 Q. Okay. And where was this location?

16 A. It was at John Whitworth's house.

17 Q. And there was -- were you -- you two the only two
18 there or --

19 A. No. There was a party. There was a New Year's
20 party. There was a little get-together.

21 Q. All right. And what -- how did you approach him?
22 How did this go?

23 A. There were a lot of people there. And there weren't
24 so many people outside. And I said, "Man, why don't you go
25 outside and smoke a cigarette with me." He said, "Okay." So

1 we stepped outside. We started smoking. I said, "You know
2 what a repressed memory is, man?" He said, "Yeah, I think I
3 do." I said, "Well, I think I've had some of those. I think
4 that the night we went out to that club, that we killed that
5 man. On Halloween." And I said, "You know, I haven't
6 remembered this for a long time, and I really think we did
7 this."

8 Q. And what was the defendant's reaction to you saying,
9 "We're at this club and we killed that guy"?

10 A. He said, "You mean the Tribune guy?"

11 Q. And I said, "Yeah. Yeah." And he said, "No, we
12 didn't do that. We didn't do that. We never done anything
13 like that."

14 Q. How did that conversation end?

15 A. It was kind of continuous conversation. I asked him
16 a couple of things that I remembered. That I could remember
17 then. I said, you know, "Well, why did we sit in the club
18 until closing time, beings there was a cop outside?" He
19 said, "Well, because we weren't 21." And I remember -- I'm
20 sitting there thinking, "So what? What -- are we going to
21 get arrested for trespassing? We didn't have anything on us.
22 What was the big deal?"

23 And also I remember that he called me a few months
24 after the murder and he told me that his dad had woken him up
25 strangling him, because he found a wallet.

1 Q. Now this was a conversation before the New Year's
2 party?

3 A. This was before New Year's. And I said, I said, "So
4 what? What's -- what's the big deal?" He didn't give the
5 detail. He just said, "My dad found a wallet." Like that
6 was supposed to be significant to me. And I said, "So? So
7 what are you -- what are you going at here?" I said, "You
8 know, what's the big deal?" He said, "You know, I -- never
9 mind. Just never mind."

10 Q. And you talked to him about that on New Year's?

11 A. I talked to him about that. And he said -- he said,
12 "Well, that could have been about -- I don't know. My dad
13 woke me up strangling me a bunch of times." Something to
14 that effect.

15 Q. Okay. And what else was said on New Year's?

16 A. He asked me if I was wearing a wire. And we'd been
17 going -- we'd go back outside and back inside.

18 Q. At the party?

19 A. At the party. And he asked me if I was wearing a
20 wire.

21 Q. A wire. Like you were having a recording device on
22 you?

23 A. Yeah. Yeah, that's correct. And I said -- I said,
24 "No." And he'd been going in and out, and I asked him, "You
25 know, are you wearing something?" I was just -- I was

1 curious, because he was walking in and out and he was talking
2 to other people. I didn't know if he was discussing what I
3 said to him. I didn't -- I didn't know.

4 But -- and then at one point, when we come back in,
5 he's still -- he's still saying, "No, man, we didn't do
6 that." And I still know that we did this. And he said, "No,
7 we didn't do that." We get in the kitchen. We come back
8 inside. He said, "You know, though, man, I always did want
9 to kill somebody before I was 60 anyway." I said, "Man,
10 that's not the first time you said that to me." He said,
11 "So? So what?" And he kind of got -- that kind of freaked
12 him out a little bit, because he knew I was starting to
13 remember a lot of stuff that happened that night.

14 Q. And so how did the conversation end?

15 A. And then it just -- it kept going on and on. And
16 then -- I didn't know what to do. And I was -- I was
17 thinking about -- I knew they had DNA in the case. And I was
18 thinking about this man's family. And I was thinking about
19 maybe turning myself in or telling the police what I could
20 remember, or turning my DNA in, so there could be some
21 closure about this. And I told him, I said, "You know, I
22 might go -- I might go and I might say something -- I might
23 go talk to the police about this. You know, if we didn't do
24 this, what's the big deal?"

25 Q. What was his reaction to that?

1 A. He said he'd kill me if I went and told the police
2 about it.

3 Q. And then what was said?

4 A. And then I kept on -- we were in the kitchen at this
5 point. And we're more under hushed tones. And I kept on
6 talking about it. He said -- at some point he said, "Man, we
7 didn't kill anybody." But he said it loud. And I knew other
8 people were hearing it. And at this point, this was
9 something I was trying to take care of with him. This wasn't
10 really anyone else's business. This was something I wanted
11 to take care of on my own. I didn't want the police to come
12 and arrest me for this or something. That if I -- if I took
13 responsibility for this, I wanted to come in and I wanted
14 to -- I want to take responsibility on my own.

15 Q. Well, then, at that point you didn't want to get
16 caught.

17 A. Well, that also, but I also didn't want to get
18 caught by the police. If I was going to get caught, I wanted
19 to get caught on my terms.

20 Q. Okay. And so how did it end?

21 A. And he said -- he yelled and he said, "No, man, we
22 didn't kill him." He said, "No, we didn't kill anybody,
23 man." And he yelled at me. And then I was pretty mad. And
24 I drove to the party. I was the DD that night. And -- I
25 wasn't driving my car, though. And I remember walking away.

1 And I was just mad at this point. I was mad ever since when
2 we were sitting in the kitchen and he said to me the thing
3 about being 60 years old, because I knew he was just messing
4 with me. And I said, "Man, that's not something that
5 somebody can forget, man. That's not something somebody can
6 forget." And I just left.

7 And then I was driving my friend Art's car --

8 Q. Well, let me -- let me stop you right there. After
9 the New Year's confrontation with Mr. Ferguson, who was the
10 next person that you talked to about the murder?

11 A. The next person I talked to was Nick Gilpin.

12 Q. Okay. Now, we got the New Year's Eve party in
13 '03-'04, and now approximately when did you talk to Nick
14 Gilpin?

15 A. I talked to Nick Gilpin early March of 2003. 2004.
16 I'm sorry.

17 Q. How -- so we're into 2004 now?

18 A. That's correct, yeah.

19 Q. How do you know Nick Gilpin?

20 A. I went to school with him. He went to Rockbridge
21 High School with me. We hung out. We knew some of the same
22 people.

23 Q. Where was it that this conversation occurred?

24 A. We were at my friend John Alder's house.

25 Q. Okay. So you're with Gilpin at another buddy's

1 house.

2 A. That's correct.

3 Q. And tell us what happened.

4 A. We just pulled up to John Alder's house. And we're
5 parked in front of his house. Or it's a -- it's a duplex.
6 And I said --

7 MR. ROGERS: Your Honor, may we approach?

8 THE COURT: You may.

9 - - -

10 Counsel approached the bench and the following
11 proceedings were held:

12 MR. ROGERS: I'm going to object, Your Honor. It's
13 self-serving, hearsay, bolstering, out-of-court statements
14 allegedly made by this witness, which he says he made to
15 other people, which are, if they're inconsistent with his
16 trial testimony, I get to impeach them with him. If they're
17 consistent, it's improper bolstering.

18 MR. CRANE: The defense says that, as you heard in
19 opening, that he was inconsistent in his details to the
20 police, that he dreamed this up, that the police basically
21 implanted these memories in his mind. This witness can, A,
22 talk about what he told someone else. That's not hearsay.
23 And it also goes directly to a relevant issue with the case,
24 which is what his memory of this crime is. Because he talks
25 about events in the crime. Now you heard this in my opening.

1 MR. ROGERS: And here's the basis, Your Honor.
2 Hearsay is, by definition, an out-of-court statement offered
3 to prove the truth of the matter asserted in the statement.
4 I'm assuming this is shown to prove that he had these
5 memories and asserted to Nick Gilpin or whoever that he had
6 the memories. So therefore it's hearsay.
7 MR. CRANE: Also that he did it.
8 MR. ROGERS: Well -- and there's two levels of
9 hearsay.
10 MR. CRANE: That's not hearsay.
11 MR. ROGERS: Sure, it is. It's an out-of-court
12 statement.
13 MR. CRANE: But it's his own statement.
14 MR. ROGERS: Doesn't matter. It's still hearsay.
15 THE COURT: I assume that if he's impeached, you
16 would agree that he could be recalled --
17 MR. ROGERS: That's correct.
18 THE COURT: -- to -- or on redirect examination.
19 MR. ROGERS: That's correct.
20 THE COURT: That he can be asked about prior --
21 MR. ROGERS: Consistent --
22 THE COURT: -- consistent statements.
23 MR. ROGERS: Which are basically, my understanding
24 of the law, the evidence law of Missouri, okay, is that, if
25 he's impeached with a prior inconsistent statement, by that I

1 mean, prior to his courtroom testimony today, that he can be
2 rehabilitated with statements which are consistent with his
3 courtroom testimony, but earlier in time than the
4 inconsistent statement with which he's been impeached.
5 That's my understanding.

6 MR. CRANE: Your Honor, he's going to testify --
7 what I was going to elicit from him is a conversation that he
8 had with his buddy, wherein he articulates facts that he
9 recalls about the murder. Now, there's a motion in limine to
10 keep out the buddy, which I think is a consistent statement
11 that comes in after he's been impeached. I don't know why
12 his -- he would be precluded from testifying as to words that
13 came out of his own mouth about the homicide.

14 MR. ROGERS: Until --

15 MR. CRANE: This witness's own mouth.

16 MR. ROGERS: Until he had been impeached about
17 something which is inconsistent with his courtroom testimony,
18 and unless there is some testimony in the earlier statement
19 which is consistent with the courtroom but inconsistent with
20 the impeachment, it's hearsay.

21 MR. CRANE: No, it's not.

22 THE COURT: I agree that under the federal rules it
23 probably would not be hearsay. If we were in the federal
24 court of Boone County. However, we are not in a federal
25 court. I will certainly, depending on what happens on

1 cross-examination, let you revisit it. At this time I would
2 sustain the motion.

3 - - -

4 The following proceedings were held in open court:

5 MR. CRANE: You -- can I -- I hope you'll -- well,
6 we'll see if you'll grant me a little indulgence.

7 Q. You and Nick Gilpin had a conversation -- when --
8 what did you say? Late February, early March of 2004?

9 A. Early March.

10 Q. And you talked to Nick about your memories of the
11 murder.

12 A. That's correct. Yes.

13 Q. When you and Nick -- when you told Nick these
14 memories of the murder, was it just you and him present?

15 A. Yes.

16 Q. I mean, there wasn't anybody else around?

17 A. No.

18 Q. Well, after you talked to Nick, was there someone
19 else that you spoke to about the murder?

20 A. Yeah. I spoke to Art Figueroa.

21 Q. Art?

22 A. Arturo Figueroa.

23 Q. And he goes by Art?

24 A. That's correct.

25 Q. And his last name's what?

1 A. Figueroa.

2 Q. Figueroa. Now, when you talked to Art Figueroa
3 about the murder, when was that? Was that the same night or
4 was it a different night than you talked to Nick?

5 A. It was less than a week later.

6 Q. Okay. And when you talked to Art about the murder,
7 were you with anybody other than Art?

8 A. No, I was not.

9 Q. In either of these conversations about the murder
10 with Nick or Art, who initiated the conversation about the
11 murder?

12 A. I did.

13 Q. Okay.

14 Okay. What were you planning on doing for spring
15 break of 2004?

16 A. I was going to Breckenridge, Colorado, with Art.

17 Q. You get a week off from school; right?

18 A. That's correct. He has some friends in Florida, and
19 they had rented this bed-and-breakfast out. And he told me
20 about it. And so --

21 Q. Did you have occasion to contact Mr. Ferguson prior
22 to spring break of 2004?

23 A. Yes, I did.

24 Q. Tell us about that conversation.

25 A. I called him -- I didn't have his number. I was

1 just at a party. And I wanted to talk to him about the
2 murder. And I called him. And at the time I was in the car
3 with some girls. And I just wanted to let him know that I
4 was going to keep in contact with him.

5 Q. What did you ask him for, though?

6 A. Well, I asked him how he was doing. And I asked
7 him -- I was in the car with a bunch of girls, and so I
8 mentioned something about I was going to Colorado for spring
9 break and I needed a snow board. And I knew he had a snow
10 board. And I asked him if he still had that snow board that
11 he used to have. He said no, he didn't. And at that time I
12 told him that I would call him back.

13 Q. Did you?

14 A. No, I didn't.

15 Q. After those conversations with the defendant --
16 well, your first one -- first time you started to verbalize
17 this was Korey Iranpour. And then in January -- at the
18 January New Year's Eve party, you talked to Mr. Ferguson
19 about your memories, and then Mr. Gilpin, and then
20 Mr. Figueroa. In early March of 2004, who made contact with
21 you?

22 A. On March 10th of 2004, Columbia police, they made
23 contact with me outside of Moberly Area Community College.

24 Q. Okay. You didn't go to them.

25 A. No, I didn't.

1 Q. And they came and found you.

2 A. Yes, they did.

3 Q. And that was after you'd talked to Nick?

4 A. That's correct.

5 Q. And what did they ask you to do?

6 A. They told me they wanted to go talk to me -- a

7 detective came up to me. And I was -- I was outside of my

8 car. I was getting my books out of my trunk. And the

9 detective said -- I didn't even see him coming until he put

10 his badge up. He said, "We want to talk to you -- some

11 detectives downtown want to talk to you about your car." And

12 I knew -- I figured it didn't have anything to do with my

13 car, and I in fact knew what they wanted to talk to me about.

14 I said I had class and "Can we wait?" They said, "Do you

15 have any tests?" I said, "No. We can do this now."

16 Q. Did you go with them voluntarily or --

17 A. Yes, I did.

18 Q. I mean, they didn't wrestle you to the ground?

19 A. No. I put my books in my car, I locked my car, and

20 we left.

21 Q. Keep your voice up so the gentleman over here can

22 hear you.

23 A. Okay.

24 Q. Not that you can't hear well, but he's the farthest

25 away. Okay?

1 A. Yeah. I put my books in my car, and I locked my
2 car, and I left with the police.

3 Q. And you went to the Columbia Police Department.

4 A. That's correct.

5 Q. And who did you talk to there?

6 A. A detective by the name of -- I believe it's John
7 Short.

8 Q. What's he look like?

9 A. He's short. He's balding. Oh, yeah. He wears
10 glasses.

11 Q. All right. Now, how did that -- this is -- so far,
12 nobody from the police department had talked to you about the
13 murder.

14 A. That's correct, yes.

15 Q. Tell us how this first portion of your conversation
16 with Detective Short when you first met him went.

17 A. He just said, "You know, I'm going to be frank with
18 you. We had Nick Gilpin down here this morning. He told us
19 that you told him that you and Ryan Ferguson were responsible
20 for the Kent Heitholt murder."

21 Q. Okay. Did he -- did they give you Miranda?

22 A. Yes, they did.

23 Q. Okay. That's your right to remain silent and all
24 that?

25 A. Yes.

1 Q. And he -- so then you found out, well, Nick had been
2 talking to them.

3 A. Yes, that's correct.

4 Q. Okay. And what happened from there? What was said?

5 A. I told them that there are some things I remembered
6 and that I was -- I thought I had done this. And at the same
7 time -- I wanted -- I wanted to take responsibility for what
8 I had done, but at the same time, it was hard to step over
9 that ledge and just -- and just accept it.

10 Q. Because what did accepting it mean?

11 A. It meant going to prison, for a long time. It meant
12 embarrassing my family. It meant admitting to participating
13 in a murder.

14 Q. When you talked to Detective Short, and thereafter
15 another detective, Nichols, there were things you couldn't
16 remember.

17 A. That's correct, yes.

18 Q. There are things that you still don't remember
19 today.

20 A. That's correct.

21 Q. And there are things that you've remembered that
22 have come back to you since you talked to the police.

23 A. Yes, that's correct.

24 Q. And do you recall telling the police on occasion
25 that you didn't know whether this had happened or not?

1 A. Yes, I do. Yes, I do. That's what I was hoping. I
2 was hoping it hadn't happened. But I knew that it had. I
3 just wouldn't accept it. I was in denial, is the best way I
4 can explain it.

5 Q. Now, the police drove you around the crime scene.

6 A. That's correct.

7 Q. And the surrounding area.

8 A. That's correct.

9 Q. Could you remember that day, March 10th, how you
10 guys had left the scene?

11 A. Yes, I could.

12 Q. Why didn't you explain that to the police?

13 A. Well, I did my best. And I remembered that we'd
14 gone behind the Tribune building. And I remember that we
15 came back across Providence, because I remember seeing Dallas
16 on Providence at the intersection. I just -- at that time I
17 just couldn't remember where we went in between. It was -- I
18 put it out of my mind for so long. For dang near two years I
19 didn't think about it. And so sitting here having these guys
20 ask me questions, I wasn't able to recall everything
21 accurately.

22 Q. Did you, while you were at the police station, did
23 you provide the police with your -- a sample of your saliva
24 for DNA?

25 A. Yes, I did.

1 Q. What about a sample of your hair?

2 A. That's correct, yes.

3 Q. And what about fingerprints?

4 A. Yes.

5 Q. Okay. Eventually, when they were done talking to
6 you that day, March 10th, where were you taken?

7 A. I was taken to the --

8 Q. From the police department.

9 A. I was taken from the police department -- I was
10 taken from the major crimes unit to the police department,
11 where I was charged with second degree murder and first
12 degree robbery. And after that I was taken to Boone County
13 Jail.

14 Q. And where have you been ever since?

15 A. Boone County Jail.

16 Q. You've been in Boone County Jail since March 10th of
17 2004.

18 A. That's correct.

19 Q. Now, after -- let me show you what's marked for
20 identification as State's Exhibit 17 and 18.

21 MR. ROGERS: No objection to 17, Your Honor. I
22 object to 18 as irrelevant. May we approach?

23 THE COURT: You may.

24 - - -

25 Counsel approached the bench and the following

1 proceedings were held:

2 MR. ROGERS: Your Honor, 18 is a photograph of my
3 client, the defendant, Ryan Ferguson, which appears to me to
4 be a blow-up of his high school senior yearbook picture.
5 There is no foundation and no evidence that he looks in that
6 picture like he looked a year earlier at the time of these
7 alleged events. And I don't think there's any relevance to
8 it.

9 THE COURT: Okay. Are you objecting there is an
10 improper foundation? I don't know that the state has
11 actually offered this yet.

12 MR. CRANE: I haven't even inquired with the
13 witness.

14 MR. ROGERS: They are getting ready to offer it.

15 MR. CRANE: Can't lay a foundation until I talk to
16 him, but that will be the objection; right?

17 MR. ROGERS: That will be the objection. And --

18 THE COURT: Well, I'll have to -- I'll have to see
19 what foundation is laid.

20 MR. ROGERS: Great.

21 THE COURT: And it may well be relevant or it may
22 not be, depending on the foundation.

23 MR. ROGERS: I may have jumped the gun with the
24 objection too.

25 - - -

1 The following proceedings were held in open court:

2 Q. Show you what's marked for identification State's
3 Exhibit 17. What's that?

4 A. That's me in my junior year. That's my yearbook
5 picture.

6 Q. Okay. So this was taken your junior year. And what
7 year in school were you when the murder occurred?

8 A. 11th grade.

9 Q. Junior year.

10 A. That's correct.

11 MR. CRANE: Judge, I'd offer State's Exhibit 17.

12 MR. ROGERS: No objection to 17, Your Honor.

13 THE COURT: 17 is admitted.

14 - - -

15 State's Exhibit 17 admitted into evidence.

16 - - -

17 Q. It's an enlargement of your yearbook; right?

18 A. Yes.

19 Q. And also want to show you what's marked for
20 identification as State's Exhibit 18. Do you recognize who's
21 in that photograph?

22 A. That's Ryan Ferguson our junior year. That's his
23 yearbook picture.

24 Q. Okay. And is that a fair and accurate depiction of
25 how he appeared while you were going to high school with him,

1 junior year of high school, 2003?

2 A. Yeah. Usually he didn't look that disheveled.
3 Usually he had his hair -- like if we were going out or
4 something, he had his hair spiked up and had gel in it and
5 usually wouldn't have it that messy.

6 Q. Okay.

7 MR. CRANE: Judge, I'd offer State's Exhibit 18.

8 THE COURT: Do you have an objection at this time?

9 MR. ROGERS: No, Your Honor.

10 THE COURT: State's Exhibit 18 is admitted.

11 - - -

12 State's Exhibit 18 admitted into evidence.

13 - - -

14 Q. I'll also show you what's marked as State's Exhibits
15 19 and 20.

16 THE COURT: Do you want to see those before the
17 witness does?

18 (Mr. Crane showing the exhibits to Mr. Rogers.)

19 THE COURT: All right.

20 Q. Show you State's Exhibit 19. Do you recognize who
21 that is?

22 A. That's me when I got arrested on March 10th of 2004.

23 Q. This is your arrest photo.

24 A. That's correct.

25 Q. Okay.

1 MR. CRANE: Judge, I'd offer State's Exhibit 19.

2 MR. ROGERS: No objection.

3 THE COURT: 19 is admitted.

4 - - -

5 State's Exhibit 19 admitted into evidence.

6 - - -

7 Q. Show you State's Exhibit -- well, let me ask you,
8 before I do this, did you at any time on March 10th have
9 occasion to see -- of '04, have occasion to see the
10 defendant?

11 A. Yes, I did.

12 Q. Did you talk to him, though?

13 A. No, I didn't.

14 Q. Okay. But you did see him that day?

15 A. Yes, I did.

16 Q. Okay. And I want to ask you if you'll take a look
17 at this photograph, State's Exhibit 20 for identification.
18 Is that a fair and accurate depiction of how the defendant
19 appeared on the day of your arrest, March 10, 2004?

20 A. Yes, it is.

21 MR. CRANE: Judge, I'd offer State's Exhibit 20.

22 MR. ROGERS: No objection.

23 THE COURT: State's Exhibit 20 is admitted.

24 - - -

25 State's Exhibit 20 admitted into evidence.

1

- - -

2 Q. Now, from the time you were arrested and put into
3 jail, who did you have contact with up until October of that
4 same year? March '04 to October '04, who did you have -- and
5 I'm not talking about other people in the prison or jail
6 personnel.

7 A. Uh-huh.

8 Q. From outside the jail, who did you have contact
9 with?

10 A. I had contact with Arturo Figueroa.

11 Q. On the phone?

12 A. On visits and on the phone.

13 Q. Okay.

14 A. I had contact with McKya (phonetic) Brown. I had
15 contact with --

16 Q. What about your parents?

17 A. With my parents, with my sister.

18 Q. Okay.

19 A. I had contact with my lawyer.

20 Q. Your what?

21 A. With my lawyer.

22 Q. All right. So who paid for your lawyer?

23 A. My parents paid for my lawyer.

24 Q. Okay. And what's his name?

25 A. His name's Mark Kempton.

1 Q. All right. Do you see him in the courtroom today?

2 A. Right here in the front row.

3 Q. This gentleman right here is your attorney, Mr. Mark
4 Kempton.

5 A. That's correct. Yes.

6 Q. And he was your criminal defense attorney on this
7 case; is that correct?

8 A. That's correct. Yes.

9 Q. Okay. What items -- well, did -- during the course
10 of the prosecution of you, while you're in jail, did
11 Mr. Kempton provide you with some documents?

12 A. Yes. The police reports.

13 Q. Speak up, man.

14 A. The police reports. It was discovery.

15 Q. Okay. How extensively -- or what photographs were
16 you actually given?

17 A. I was -- I was not given any photographs.

18 Q. Okay. You communicated with your lawyer, your
19 parents, some of your -- you mentioned some friends while you
20 were in jail?

21 A. Yes, that's correct.

22 Q. Mr. Erickson, what contact during the time between
23 March of '04 and October '04 did you have with anybody from
24 the Columbia Police Department?

25 A. None.

1 Q. Okay. They can't talk to you while you're
2 represented by an attorney, after you've been taken to the
3 jail; correct?

4 A. That's correct.

5 Q. What about anybody from the prosecutor's office?
6 Anybody at all.

7 A. No one.

8 Q. What contact did you have with anybody from law
9 enforcement during -- from March 10, '04, up until October
10 2004?

11 A. Besides jail staff, no one.

12 Q. Who's Dr. Delaney Dean?

13 A. She was a lady I saw, that my lawyer had come see
14 me, because I was -- I was having some anxiety problems with
15 my case.

16 Q. Okay.

17 A. And I was just -- I was just feeling bad about it.

18 Q. That was a psychologist that your attorney referred
19 you to?

20 A. That's correct.

21 Q. And where did she meet with you?

22 A. At the jail.

23 Q. Okay. And that was, again, in between March and
24 October of 2004?

25 A. That's correct.

1 Q. Okay. While you've been in jail, have you received
2 medication?

3 A. Yes, I have.

4 Q. For what?

5 A. I received Lexapro for anxiety. And I stopped
6 taking that. And I received Prozac for anxiety after that.

7 Q. Okay. Have you been depressed --

8 A. Yes.

9 Q. -- at some points during this?

10 A. I believe so, yes.

11 Q. Why?

12 A. Just because I -- I felt bad about what I'd done. I
13 felt bad about embarrassing my family. I didn't know what
14 was going to happen next. I didn't --

15 Q. You're in jail.

16 A. Yeah.

17 Q. That's not a happy thing?

18 A. No. No, it's not.

19 Q. Now, you mentioned Prozac?

20 A. That's correct.

21 Q. What was that for?

22 A. It was just anxiety. I was having some anxiety
23 problems, like -- I don't know if it was because I've been
24 locked up for so long. I was in the same eight-man tank for
25 so long, I've seen some pretty gross stuff, I wash my hands a

1 lot. And --

2 Q. Did they talk to you about OCD?

3 A. Yeah. They said that it was --

4 Q. What's OCD?

5 A. It's OCD -- it's obsessive-compulsive disorder.

6 It's just like when you worry about germs and stuff like that

7 a lot. And she -- the lady said that some people get that

8 who -- who -- if you're -- if you've got like a lot of

9 freedom taken away from you, if you got a lot of anxiety.

10 Q. Okay. Now Prozac, though, you know, is that --

11 Prozac, does that make you go nuts?

12 A. No. It just --

13 Q. And OCD, I mean, were you a Howard Hughes guy, that

14 couldn't stand to touch anything and --

15 A. No. No.

16 Q. Okay.

17 A. I just -- see, if I played a game of chess or

18 something, I'd wash my hands. After I went to the bathroom,

19 I'd wash my hands. Before I ate, I'd wash my hands.

20 Q. Were you ever diagnosed with OCD prior to when

21 you've been in jail, that you're aware of?

22 A. No. No.

23 Q. Okay. And you talked to this psychologist about

24 maybe having ADD, which you didn't get diagnosed for, after

25 all was said and done anyway.

1 A. Yeah.

2 Q. Did anybody say anything about OCD?

3 A. Before that?

4 Q. Yeah.

5 A. No. No.

6 Q. How you feeling now? I mean, are you seeing
7 elephants floating around the room or --

8 A. No. I feel fine. I feel good.

9 Q. Eventually, after you talked to your attorney,
10 talked to your parents, had been in jail, what did you decide
11 to do?

12 A. I decided to plead guilty and enter on a plea
13 agreement with the state.

14 Q. Now, through negotiations with your -- your attorney
15 was negotiating with my office. Before any plea could be
16 entered, what did you do?

17 A. Well, I decided to do a proffer.

18 Q. A proffer?

19 A. It was a meeting between -- between myself, my
20 attorney, the prosecutor, and the police.

21 Q. So this was the first occasion you talked to law
22 enforcement since your arrest.

23 A. That's correct.

24 Q. And where did we meet?

25 A. We met at the major crimes unit.

1 Q. Over at the Columbia Police Department, right next
2 door here; correct?

3 A. That's correct.

4 Q. And where was your attorney during that meeting?

5 A. He was right next to me.

6 Q. He was there the whole time; correct?

7 A. That's correct.

8 Q. And you talked again about this murder.

9 A. That's correct. Yes.

10 Q. And I guess I can't -- you talked about things that
11 you had already stated you recalled when you spoke back to
12 Nick and Art and the police the first time; correct?

13 A. Yes. That's correct.

14 Q. There were some things that you had remembered since
15 those conversations about the murder; correct?

16 A. That's correct, yes.

17 Q. And there were some things that you still could not
18 remember. Some details you still could not remember.
19 Correct?

20 A. Yes.

21 Q. Now, after that discussion with the police, with
22 your attorney present, then what did you do?

23 A. I decided to take a plea agreement with the state.

24 Q. I'm going to ask you to take a look at what's marked
25 for identification as State's Exhibit 25. Tell me, first of

1 all, without reading its contents, if you recognize that
2 document. Look at both pages.

3 A. Yes, I do.

4 Q. What is that?

5 A. It says that if I --

6 Q. No, I didn't say -- you can't do that yet.

7 A. Oh. Sorry. It's --

8 Q. What --

9 A. -- it's my plea agreement with the state.

10 Q. Okay. And that sets out the terms of the agreement
11 under which you're testifying today.

12 A. Yes.

13 Q. And at the back of -- on the second page, flip it
14 over, of State's Exhibit 25 for identification, whose
15 signatures are they?

16 A. That's your signature, my lawyer's signature --

17 Q. Mark Kempton, seated right there?

18 A. -- and my signature.

19 Q. And what's the date? Turn it over.

20 A. It's November 4th, 2004.

21 Q. Okay.

22 MR. CRANE: Judge, he wants to -- you got -- I would
23 offer State's Exhibit 25.

24 MR. ROGERS: Objection, Your Honor. May we
25 approach?

1 THE COURT: You may.

2 - - -

3 Counsel approached the bench and the following
4 proceedings were held:

5 THE COURT: Let me look at the document before
6 you --

7 (Court reading document.)

8 THE COURT: Yes, sir.

9 MR. ROGERS: Your Honor, we would object to this,
10 based upon our previous motion in limine concerning the
11 prosecuting attorney vouching for the truthfulness of this
12 witness's testimony. That plea agreement contains the term
13 "truthful" at least three times. Sometimes it has "truthful,
14 honest, and complete." Sometimes it has "completely
15 truthful." And it is clearly intended to communicate to the
16 jury that the state, from its font of wisdom and experience,
17 has determined that this witness is credible. Now, I think
18 that that is an improper inference and I object. Or improper
19 vouching, actually. So we object.

20 MR. CRANE: Can I respond?

21 MR. ROGERS: And it is also repetitious.

22 THE COURT: Okay.

23 MR. CRANE: Can I respond?

24 THE COURT: You may respond.

25 MR. CRANE: Judge, this is the same form of

1 agreement that came in in Ringo, when Jones testified. It's
2 been upheld. That's the terms of the agreement. The thing
3 that the motion in limine goes to is me over and over and
4 over saying "truthful," to vouch for the witness. This is
5 the agreement. And that agreement memorializes the
6 obligations of the defendant.

7 THE COURT: You mean of the witness.

8 MR. CRANE: Of the witness. Sorry. He was a
9 defendant then.

10 THE COURT: The objection's overruled. 25 is
11 admitted.

12 - - -

13 The following proceedings were held in open court:

14 MR. CRANE: 25 is admitted, Your Honor?

15 THE COURT: State's Exhibit 25 is admitted.

16 - - -

17 State's Exhibit 25 admitted into evidence.

18 - - -

19 Q. Now, that is the agreement that you and your
20 attorney entered into with me. You said I signed that as
21 well.

22 A. Yes.

23 Q. The State of Missouri.

24 A. Yes.

25 Q. Correct? And in that agreement, first of all --

1 well, actually, I should ask: When did you plead guilty?

2 A. I believe it was the 4th of November.

3 Q. That day.

4 A. Yeah. That's correct.

5 Q. And before you pled guilty, that agreement was
6 entered into; correct?

7 A. That's correct, yes.

8 Q. Okay. And first of all, what did you plead guilty
9 to?

10 A. Pled guilty to second degree murder, first degree
11 robbery, and armed criminal action.

12 Q. Okay. And you had always been charged with second
13 degree murder and armed -- and robbery; correct?

14 A. That's correct.

15 Q. All right. Acting in concert with Ryan Ferguson?

16 A. That's correct.

17 Q. And then a third charge was added?

18 MR. ROGERS: Objection, Your Honor. Excuse me.

19 THE COURT: I'm sorry?

20 MR. ROGERS: May we approach?

21 THE COURT: You may.

22 - - -

23 Counsel approached the bench and the following
24 proceedings were held:

25 MR. ROGERS: I would object to the gratuitous

1 comment of the prosecutor: "Acting in concert with Ryan
2 Ferguson." Certainly this witness's guilty plea cannot be
3 taken as any evidence that Mr. Ferguson is guilty of
4 anything. This witness is responsible for his own guilty
5 plea. And he can make admissions on his own behalf. He
6 certainly can't make admissions on behalf of Mr. Ferguson.

7 MR. CRANE: He's not. I'm only saying that's what
8 he pled guilty to.

9 MR. ROGERS: But you already asked him what he pled
10 guilty to. He had already affirmed that he pled guilty to
11 robbery in the first degree. Then you threw in
12 Mr. Ferguson's name, which had nothing to do with what he
13 pled guilty to.

14 MR. CRANE: Well, golly.

15 MR. ROGERS: Only possible --

16 MR. CRANE: I believe it was felony murder and
17 robbery, acting in concert with Ryan Ferguson.

18 MR. ROGERS: Well --

19 THE COURT: Was that the charge?

20 MR. CRANE: Yeah. The only thing we did was add
21 armed criminal action.

22 MR. ROGERS: My point, Your Honor, is that
23 gratuitous -- to put in the part about Mr. Ferguson, because
24 this witness, pleading guilty to acting in concert with
25 Mr. Ferguson, creates an improper inference based upon the

1 plea that Mr. Ferguson must be guilty of something.

2 THE COURT: I am going to overrule your objection.

3 MR. CRANE: I think it's been asked and answered
4 anyway, hadn't it? I thought he answered the question.

5 MR. ROGERS: I don't know. I was yelling.

6 - - -

7 The following proceedings were held in open court:

8 Q. You pled guilty to murder second, robbery in the
9 first degree, acting in concert with Ryan Ferguson, and a
10 third count of armed criminal action; is that correct?

11 A. Yes.

12 Q. And you pled guilty to those three counts in this
13 courtroom.

14 A. Yes.

15 Q. Is that right?

16 A. Sitting right here.

17 Q. You were sitting right there in that chair.

18 A. Yes.

19 Q. And it wasn't Judge Roper; it was another judge.

20 A. Yes.

21 Q. And your attorney was here.

22 A. Yes.

23 Q. And I was here.

24 A. Yes.

25 Q. And it was on the record; is that correct?

1 A. That's correct.

2 Q. And what is your understanding of that agreement?
3 State's Exhibit 25.

4 A. My understanding is that I have to --

5 MR. ROGERS: Objection, Your Honor. The document
6 speaks for itself.

7 THE COURT: The document does speak for itself,
8 Mr. Crane.

9 MR. CRANE: Okay.

10 THE COURT: The objection is sustained.

11 Q. Sir, what -- if you live up to the terms of the
12 agreement, what is your sentence?

13 A. 25 years.

14 Q. 25 years --

15 A. Yes.

16 Q. -- in the department of corrections.

17 A. Yes.

18 Q. Mr. Erickson, you entered those pleas of guilty on
19 November 4, 2004. You talked to the police in October of
20 2004, knowing that there wasn't any physical evidence to
21 connect you or Ryan Ferguson to the crime scene.

22 A. That's correct.

23 Q. You entered those pleas of guilty, having consulted
24 with your attorney about -- previously talking to your
25 attorney about, without getting into the details of that,

1 conversations with your attorney, but various options that
2 you might have with respect to your case.

3 A. Yes.

4 Q. And do you understand, sir, that you will receive
5 those 25 years, assuming you have honored your part of the
6 agreement, whether Mr. Ferguson is found guilty by this jury
7 or not?

8 A. Yes, I do.

9 Q. Why did you plead guilty?

10 A. Because I am guilty.

11 MR. ROGERS: Objection, Your Honor. Self-serving.

12 THE COURT: The objection --

13 MR. CRANE: Self-serving what?

14 THE COURT: The objection is overruled.

15 You may answer the question.

16 A. Because I am guilty.

17 Q. As the memory of this murder has progressed, you
18 have talked about it to various people we've discussed here
19 today, you expressed uncertainty to friends as you talked
20 about this murder, these memories, and uncertainty to the
21 police. What is your level of certainty today?

22 A. I'm a hundred percent certain that me and Ryan
23 Ferguson committed this crime.

24 Q. And when you pled guilty, sir, what was your level
25 of certainty about your involvement and Ryan Ferguson's

1 involvement in this murder?

2 A. It was a hundred percent.

3 Q. You know, we've met several times prior to today. I
4 mean, we weren't -- we had investigator -- or somebody was
5 with us when we were together. But I'm going to ask you
6 something I asked you before. You know, if you didn't do
7 this, then tell me now. You know, I've told you before, I
8 have no interest in putting anybody that didn't do it in
9 jail.

10 A. Yes, you did.

11 Q. You got an attorney, you know.

12 A. Yes, I do.

13 Q. I guess it's never too late. Tell us now if it was
14 all a dream.

15 A. I did this. He did this. I didn't dream anything.

16 MR. CRANE: No further questions at this time,
17 Judge.

18 THE COURT: We will take our afternoon break at this
19 time.

20 Ladies and gentlemen, the Court again reminds you of
21 what you were told at the first recess of the Court. Until
22 you retire to consider your verdict, you must not discuss
23 this case among yourselves or with others, or permit anyone
24 to discuss it in your hearing. You should not form or
25 express any opinion about the case until it is finally given

1 to you to decide. Do not read, view, or listen to any
2 newspaper, radio, or television report of the trial.

3 If you'll let me know when the jurors have had an
4 opportunity to refresh themselves.

5 Jury may be excused.

6 - - -

7 The following proceedings were held out of the presence
8 of the jury:

9 THE COURT: We'll be in recess then.

10 MR. ROGERS: Your Honor, excuse me. Before the
11 recess, Your Honor, may we be heard a minute?

12 THE COURT: Is there something you need to approach
13 the bench on?

14 MR. ROGERS: Yes.

15 THE COURT: Mr. Crane.

16 MR. ROGERS: Your Honor, I'd ask that Mr. Kempton,
17 who's been sitting here throughout the testimony and the
18 opening statements, not be allowed to consult with the
19 witness during the recess, before cross-examination. The
20 rule has been invoked.

21 THE COURT: Well --

22 MR. ROGERS: And he's not the person on trial. So
23 he has no constitutional right to consult with counsel during
24 his testimony.

25 MR. CRANE: Wait a minute. You're worried about

1 Kempton testifying?

2 MR. ROGERS: I'm worried about Kempton talking to
3 this witness during his testimony before cross-examination.

4 MR. CRANE: Well, I don't know. Is that a big deal?
5 Can you talk to him later?

6 MR. KEMPTON: That's fine.

7 MR. ROGERS: Great. Thank you.

8 THE COURT: No, I don't think that he would have the
9 right to talk to him.

10 MR. CRANE: Okay.

11 THE COURT: Okay.

12 MR. CRANE: Okay. Come back then.

13 (Recess taken.)

14 - - -

15 The following proceedings were held out of the presence
16 of the jury:

17 THE COURT: Before we bring the jury back, if you
18 would swear this marshal as well.

19 (Deputy Court Marshal Misty McKee sworn by Sheri
20 Vanderhoof, Deputy Clerk, to take charge of the jury.)

21 THE COURT: Is state ready to proceed?

22 MR. CRANE: Ready, Your Honor.

23 THE COURT: And the defendant ready to proceed?

24 MR. ROGERS: Yes, Your Honor. I don't know if the
25 Court has a copy of Mr. Erickson's deposition.

1 THE COURT: Our local rules don't require they be
2 filed unless they become at issue in some trial. I assume if
3 you're asking questions relating --

4 MR. ROGERS: I intend to --

5 THE COURT: -- to his deposition, then I assume it
6 becomes at issue. So you're filing the original deposition?

7 MR. ROGERS: I'm filing the original, and the
8 signature page is in the back, but it's not --

9 MR. CRANE: We agreed to sign the signature page.

10 THE COURT: Did he waive? He did waive? Or he
11 signed it?

12 MR. ROGERS: He signed it. And there it is.

13 MR. CRANE: We didn't waive signature, but
14 presentment on everybody, didn't we?

15 THE COURT: I assume that it's somewhere here.

16 All right. Thank you. I'll show that it's filed.

17 Other than that, is the defendant ready to proceed?

18 MR. ROGERS: Yes, Your Honor.

19 THE COURT: Is the jury ready to come into the
20 courtroom?

21 You may be excused.

22 (Clerk excused.)

23 - - -

24 The following proceedings were held in the presence of
25 the jury:

1 THE COURT: Mr. Erickson, you will remember you're
2 still under oath.

3 THE WITNESS: Yes.

4 THE COURT: Although we took a recess, I'm not going
5 to swear you in again. You understand that.

6 THE WITNESS: Yes, I do.

7 THE COURT: All right.

8 - - -

9 CHARLES TIMOTHY ERICKSON,
10 resumed the stand and testified further:

11 THE COURT: Defense counsel may inquire.

12 MR. ROGERS: Thank you, Your Honor.

13 - - -

14 CROSS-EXAMINATION

15 BY MR. ROGERS:

16 Q. Mr. Erickson, would you say that during the end of
17 2003 and the first three months of 2004, Art Figueroa was
18 your best friend?

19 A. Yeah, I'd say so.

20 Q. And are you the kind of guy who would lie to your
21 best friend about something important?

22 A. No.

23 Q. And you told Art Figueroa that you didn't know
24 whether the impressions you were having concerning the death
25 of Mr. Heitholt were memories or dreams, didn't you?

1 A. That's correct.

2 Q. That's what you told Nick Gilpin too, isn't it?

3 A. That's correct.

4 Q. And that's what you told Ryan Ferguson at the New
5 Year's Eve party at John Whitworth's house.

6 A. That's correct.

7 Q. And by the way, did you tell us earlier today,
8 before the recess, that you were the designated driver that
9 night and therefore you were not drinking anything?

10 A. I didn't say I wasn't drinking. I said that I was
11 the designated driver.

12 Q. But you were, in fact, drinking.

13 A. I was drinking, yes.

14 Q. And you were using cocaine.

15 A. That's correct.

16 Q. And so you will agree that your memory of your
17 conversations with Mr. Ferguson might be somewhat impaired.

18 A. No. I wasn't drunk when I talked to Ryan Ferguson.

19 Q. But you were drinking and you were using cocaine.

20 A. That's correct.

21 Q. But that doesn't impair you.

22 A. I -- I wasn't impaired. I wasn't impaired to where
23 I couldn't drive. I wasn't intoxicated, and that's why I was
24 driving my friend's car.

25 Q. All right. Now, after you talked with Gilpin, and

1 after you talked with Figueroa, it wasn't that long until the
2 police arrested you, was it?

3 A. No, it wasn't.

4 Q. And what happened then is: You were leaving your
5 house to go to school; right?

6 A. That's correct.

7 Q. And looking at the state's map, Exhibit 5, you were
8 still living here?

9 A. Yes.

10 Q. On Chinkapin Court?

11 A. That's correct.

12 Q. And the Moberly Area Community College is up here
13 off of Broadway?

14 A. Yes. That's correct.

15 Q. Just to the --

16 A. To the left of Fairview.

17 Q. -- west, left or west of Fairview Road.

18 A. That's correct.

19 Q. Am I correct that the Moberly Area Community College
20 has more than one campus?

21 A. That's correct.

22 Q. Doesn't make sense to have the Moberly Area College
23 in Columbia if there wasn't also one in Moberly; right?

24 A. Yes. That's correct.

25 Q. All right. When you arrived there and parked your

1 car, you got out of your car, you started to get your books
2 out of the trunk, and you were approached by Detective
3 Piester; is that correct?

4 A. I can't remember what his name was.

5 Q. He tells you something about your car; correct?

6 A. He said that the detectives downtown wanted to talk
7 to me in regards to my car.

8 Q. You knew that wasn't true.

9 A. Yes, I do.

10 Q. Did you tell him that?

11 A. No, I didn't.

12 Q. But you did agree to go downtown with him.

13 A. That's correct.

14 Q. When you got there, you talked first with a
15 Detective Short; correct?

16 A. That's correct.

17 Q. And you described him as a short guy.

18 A. Yes.

19 Q. By the way, how tall were you back in October of
20 19 -- excuse me, of 2001?

21 A. Probably five six, five seven.

22 Q. Okay. You were a short guy too.

23 A. Yeah.

24 Q. Have you grown since then?

25 A. I might be five seven, five eight. Maybe an inch or

1 two. Not more than that.

2 Q. Okay. And was Ryan about the same size as you were?

3 A. Yes.

4 Q. Were you husky? Were you skinny? Were you medium?

5 How were you built?

6 A. I was pretty skinny. Skinnier than I am now.

7 Q. Skinnier than you are now.

8 A. Yeah.

9 Q. Okay. And was Ryan's build about the same as he

10 appears to be now?

11 A. I don't know. He's -- he's more muscular than -- he

12 was more muscular than me then. He's more muscular than he

13 was then. Now.

14 Q. He is more muscular now than he was then?

15 A. Yes.

16 Q. Okay. So he was skinnier then than he is now.

17 A. Yes.

18 Q. Okay. The first guy you talked to was Detective

19 Short; is that correct?

20 A. Yes.

21 Q. And that first conversation with Detective Short was

22 not recorded or videotaped, was it?

23 A. I don't believe so.

24 Q. And after that, Detective Short told you he was

25 going to do a videotaped interview of you, didn't he?

1 A. No, I don't think he ever said that he was turning
2 the video camera on. I remember that I saw that there was a
3 video camera on in -- there was a video camera in the room,
4 and so I figured that it was being videotaped, but I don't
5 believe he ever said anything to me about turning on the
6 video camera.

7 Q. Is that a different room than the first conversation
8 we showed?

9 A. No. It was the same room.

10 Q. Same room. Was the video camera on during the first
11 one, as far as you know?

12 A. No. Not that I know of, no.

13 Q. Could you see a little red light when it was on?

14 A. I don't recall if there was a red light or not.

15 Q. Okay. Anyway, there was a second -- you since
16 learned that your second conversation with Mr. Short was
17 videotaped; correct?

18 A. Yeah. Yes.

19 Q. And you viewed that videotape with your lawyer or
20 somebody; correct?

21 A. Yes. That's correct.

22 Q. And then, after that videotape, you went driving
23 around downtown Columbia with Detective Nichols; is that
24 correct?

25 A. Yes.

1 Q. And that trip was also videotaped, even though the
2 video camera was mainly showing what's outside the car and
3 not you; is that right?

4 A. That's correct.

5 Q. And there was -- you've also viewed that videotape.

6 A. Yes, I did.

7 Q. And that's the day you were arrested.

8 A. Yes.

9 Q. And then after that, you went back to the police
10 department, didn't you?

11 A. Yes, I did.

12 Q. Back in the same room.

13 A. Yes.

14 Q. That you had been in with Mr. Short.

15 A. Yes.

16 Q. And at that time you were questioned by Mr. Nichols.

17 A. That's correct.

18 Q. And that was also videotaped, wasn't it?

19 A. Yes, it was.

20 Q. Okay. Have you had an opportunity view that
21 videotape?

22 A. Yes, I have.

23 Q. Now, let's talk, first of all, about the
24 conversation that was not videotaped. When you were first
25 arrested, advised of your rights, and questioned by

1 Mr. Short. The first thing he told you was, "Hey, Nick
2 Gilpin tells us you said you and Ryan did it." Right?

3 A. Yes.

4 Q. And your response to him at that time was, "I don't
5 even remember," wasn't it?

6 A. I believe that was one of the things I said, yes.

7 Q. That was your immediate response to being
8 confrontated -- confronted with the accusation that you had
9 been involved in the murder of Kent Heitholt, wasn't it?

10 A. Yes.

11 Q. Okay. At that time, you wanted to satisfy your own
12 mind as to whether or not you had been involved, didn't you?

13 A. Deep down I always knew that I had done this.

14 Q. I'm not asking about deep down.

15 A. Well, you -- I mean --

16 Q. At that time you wanted --

17 A. In my mind, my conscious mind, maybe.

18 Q. You wanted to satisfy your conscious mind as to
19 whether or not you'd been involved; right?

20 A. Possibly. I don't really know how to explain it,
21 honestly.

22 Q. You were not deliberately lying to the police at any
23 time, were you?

24 A. No, I was not.

25 Q. And you were not deliberately lying to your best

1 friend Art Figueroa when you told him you didn't know if it
2 was a dream or a memory, were you?

3 A. I told them that I had these memories. And I said I
4 might be confusing them with dreams. But honestly, if you
5 want to know the truth, that was more of just wishful
6 thinking.

7 Q. The question is: Were you deliberately lying to Art
8 Figueroa when you said you might be confusing these memories
9 with dreams?

10 A. No, I wasn't. Because I was still in denial at that
11 point.

12 Q. Okay. And I -- if you can listen to the question
13 and answer the question --

14 A. I'm just trying to --

15 MR. CRANE: Judge, I think he responded to the
16 question. If he doesn't like the answer, that's one thing.
17 But he responded to the question.

18 THE COURT: Is there an objection, Mr. Crane?

19 MR. CRANE: Yeah. There's no question on the table.
20 He's commenting on the answer. He responded.

21 Q. Mr. Ferguson, I will ask a question. Please
22 limit --

23 MR. CRANE: This is Mr. Erickson.

24 Q. Excuse me. Mr. Erickson. I'm sorry. Mr. Erickson,
25 I will ask a question. Please limit your answer to the

1 question and not try to explain something that I'm not asking
2 you. Okay?

3 A. Well, I'm just trying to explain my answer.

4 Q. If your answer needs to be explained, Mr. Crane will
5 have a chance to do a redirect examination and explaining. I
6 will ask a question, and I'm entitled to an answer. Okay?

7 A. Yes.

8 Q. Now, the question is: You were not consciously
9 lying to Mr. Figueroa when you said that you didn't know
10 whether they were dreams or memories, were you?

11 A. No. I was hoping they were dreams.

12 Q. And you were not consciously lying to Mr. Gilpin
13 when you said you didn't know if they were dreams or
14 memories, were you?

15 A. No. No, I wasn't.

16 Q. And you were not consciously lying to Detective
17 Short when you said you didn't really remember the murder,
18 were you?

19 A. The best way to explain it --

20 Q. Excuse me. Did you hear the question?

21 A. I don't know. It's hard to explain, because I
22 always had the memories, and they were always --

23 Q. Let me ask you another question.

24 MR. CRANE: Well, Judge, doesn't he get an
25 opportunity to complete his answer?

1 MR. ROGERS: He doesn't get an opportunity to make
2 speeches that are not responsive, Your Honor.

3 THE WITNESS: I'm trying to respond.

4 THE COURT: Excuse me. Pardon me.

5 THE WITNESS: Sorry.

6 THE COURT: Mr. Erickson, when the attorneys are
7 discussing a matter, we don't need a third party. Okay?

8 THE WITNESS: I'm sorry.

9 THE COURT: Thank you.

10 Now, what was your response, sir?

11 Q. My question is: You were not consciously lying to
12 Detective Short when you said, "I -- I don't even remember
13 it," were you?

14 A. No.

15 Q. Okay. Thank you. You did tell Detective Short,
16 during that initial interview, some of the things that you've
17 said here today, didn't you?

18 A. Yes. Yes, I did.

19 Q. And one thing you mentioned to him was the statement
20 that you attributed to Mr. Ferguson, about "I always wanted
21 to kill somebody before I was 60."

22 A. Yes, I included that.

23 Q. And you told that to Detective Short; correct?

24 A. Yes.

25 Q. And today you've told us that's something that he

1 said to you in the car after leaving By George's the second
2 time, on the way home. Correct?

3 A. That's correct.

4 Q. But you told Detective Short back on March the 10th
5 that Ferguson had said that earlier in the evening, before
6 the incident occurred, didn't you?

7 A. I believe I was wrong about that.

8 Q. But you told him, didn't you?

9 A. I suppose I did.

10 Q. And you told us today that Mr. Ferguson parked up
11 near the corner of First and Ash; is that correct?

12 A. That's correct.

13 Q. Can you see where I'm pointing?

14 A. Yeah.

15 Q. But you told Detective Short on March the 10th that
16 Ferguson parked in the restaurant parking lot next to By
17 George's, didn't you?

18 A. No, I didn't say that.

19 Q. You didn't say that you had parked on the restaurant
20 parking lot next to By George.

21 A. No, I don't believe I ever said that.

22 Q. Have you had an opportunity to review Mr. Short's
23 report?

24 A. I don't know if I read it or not.

25 Q. Okay. Well, let me show you it, to see if that will

1 refresh your recollection.

2 MR. ROGERS: May I approach the witness, Your Honor?

3 MR. CRANE: Well, wait a minute, Judge. I'm going
4 to object at this point. He's going to refresh the witness's
5 recollection with what somebody else wrote?

6 MR. ROGERS: Yes.

7 MR. CRANE: That's -- that's improper.

8 MR. ROGERS: I'm attempting to.

9 THE COURT: Well, the objection is sustained. You
10 may refresh his recollection with a writing that he wrote,
11 but not with someone else's writing. It's the author of the
12 subject that you may refresh the recollection with.

13 MR. ROGERS: My understanding, Your Honor, is that
14 anything can be used to attempt to refresh a witness's
15 recollection.

16 THE COURT: I've ruled on the objection. It's
17 sustained.

18 MR. ROGERS: May we approach?

19 THE COURT: You may.

20 - - -

21 Counsel approached the bench and the following
22 proceedings were held:

23 MR. ROGERS: I'm not attempting to introduce this
24 report as evidence, or use it as past recollection recorded,
25 in which case it could only be used with a foundation laid by

1 the person who made the recording. But I think in terms of
2 refreshing recollection, physical objects can be used.
3 Statements of other people can be used. Anything can be
4 used.

5 MR. CRANE: Judge, the other objection I would make
6 is that it's hearsay. I mean, he's giving him a police
7 report, that he didn't write, about what somebody else said
8 he said? Now if he wants to call the author of the report,
9 to refute the witness's statement on the stand now, that's
10 another thing. But if he's going to start giving him other
11 things, like a newspaper -- that means he can give him a
12 newspaper article or a police report --

13 MR. ROGERS: Sure.

14 MR. CRANE: -- and that can be hearsay, and ask him
15 whether or not the person that wrote it got it right?

16 MR. ROGERS: That's not what I'm asking. I'm just
17 going to show it to him and see if that refreshes his
18 recollection. If he says no, then it doesn't, and I'm done
19 with it. But if it does refresh his recollection, then it's
20 present recollection refreshed. That is the evidence.

21 MR. CRANE: But it's what somebody else wrote down
22 that he said. You're trying to bootstrap --

23 MR. ROGERS: We can --

24 THE COURT: One at a time.

25 MR. ROGERS: I'm sorry. I stepped on your --

1 The following proceedings were held in open court:

2 Q. So you deny telling Detective John Short that you,
3 and I'm using "you" in the plural sense, you and
4 Mr. Ferguson, parked on a restaurant parking lot next to By
5 George.

6 A. I don't deny saying it. I don't remember ever
7 saying it, though.

8 Q. Okay. Do you recall telling Detective Short that
9 you vomited there at the scene?

10 A. I remember telling him that I -- that I -- I knew
11 that I vomited, and I thought I may have vomited at the
12 scene, yes.

13 Q. Maybe you're confusing two different places -- two
14 different interviews. During your videotaped interview, you
15 told him what you just told us. "I'm sure I vomited; I just
16 know don't know where." Correct?

17 A. That's correct.

18 Q. During the nonvideotaped interview, the first
19 interview, you told them you vomited, didn't you?

20 A. Yes.

21 Q. At the scene.

22 A. I told them I vomited at the scene, yes.

23 Q. And you asked him if any vomit was, in fact, found
24 at the scene.

25 A. Yes. That's correct.

1 Q. Because the memory of vomiting there at the scene
2 was one of these memories that you had, that you didn't know
3 whether it was accurate or a dream.

4 A. I remember I vomited. I -- no, I never dreamt about
5 vomiting. I remember vomiting. And I couldn't remember
6 where I vomited. But I thought I may have vomited at the
7 scene. I knew I vomited that night, sometime during or after
8 the robbery took place. But I couldn't remember exactly
9 where it was. So that's why I asked Detective Short if there
10 was vomit found at the scene.

11 Q. Now, you came down here right after lunch, and you
12 and Mr. Crane did a little reenactment? Is that correct?

13 A. That's correct.

14 Q. And during the reenactment, the only things that you
15 said that Heitholt did was turned towards you and then
16 attempted to cover himself with his hands in a defensive
17 posture; is that correct?

18 A. That's correct.

19 Q. When you say you were attacking Heitholt, did he do
20 anything to you?

21 A. No, he did not.

22 Q. Did he hit you?

23 A. No.

24 Q. Did he strike at you?

25 A. No.

1 Q. Did he kick you?

2 A. No.

3 Q. You sure of all of that.

4 A. Yes.

5 Q. Okay. And you recall telling Detective John Short

6 during your initial interview that Heitholt had kicked you in

7 your testicles.

8 A. Yeah. I thought he had, yes.

9 Q. You thought he had.

10 A. Yes.

11 Q. You thought you remembered that.

12 A. That's correct.

13 Q. But now you remember that he didn't.

14 A. Yes. I thought it was a -- it was a possibility

15 that he had.

16 Q. Okay. You have told us now, and you have

17 demonstrated with Mr. Crane, striking Mr. Heitholt several

18 times.

19 A. Yes.

20 Q. And during your initial interview, Mr. Short asked

21 you how many times you hit Heitholt, and you said, "Just

22 once"; isn't that true?

23 A. That's correct. Yes.

24 Q. But you were not deliberately lying to Mr. Short.

25 A. No, I wasn't. I wasn't sure -- I remember I -- the

1 first -- I remembered I hit him and he groaned. But before I
2 hit him and he groaned, at first I couldn't remember hitting
3 him more than that. Just the fact that he groaned, that just
4 -- that stood out in my mind. That was what made that stand
5 out in my mind. And that's why --

6 Q. When you were talking to Mr. Short --

7 A. No.

8 Q. -- the first time during the initial interview, were
9 you deliberately lying to him about the number of times that
10 you hit Mr. Heitholt?

11 A. No, I wasn't.

12 Q. You told him, however, that you only hit
13 Mr. Heitholt once.

14 A. Yeah. I told him I thought I only hit him once.

15 Q. Do you recall during the initial interview telling
16 Mr. Short that you thought Ferguson had strangled Heitholt?

17 A. Yes, I do.

18 Q. Do you recall Mr. Short asking you, "What did he
19 strangle him with?"

20 A. I told him that I couldn't remember. I couldn't be
21 sure. I started making presumptions. I remember I told him
22 I saw Ferguson down like this, over the victim, but --

23 Q. Okay. And when you say "down like this," I can see
24 your hands, but the jury can't, so I will copy -- is that the
25 gesture you're making (indicating)?

1 A. That's correct. With his back to me.

2 Q. But you told Short that you thought Ferguson had
3 strangled Heitholt with a shirt.

4 A. I said -- I said maybe. I was asking, "A shirt?" I
5 couldn't remember at first what it was.

6 Q. You were asking for the details.

7 A. That's correct.

8 Q. Of these memories that you had repressed, but
9 recovered.

10 A. Yes, that's correct.

11 Q. And, of course, during that interview, the first
12 interview, not the one videotaped, Mr. Short didn't tell you
13 whether you were right or wrong about the shirt, did he?

14 A. No, he didn't.

15 Q. Okay. And then Mr. Short asked you what had been
16 taken from Heitholt, and you told him you thought it was a
17 wallet, didn't you?

18 A. Yes. That's correct.

19 Q. And you told him that this conversation you claim
20 you had with Ryan Ferguson about a wallet happened a day or
21 two after the incident.

22 A. That's not correct. I said it happened about six
23 months after the incident. At least six months after the
24 incident.

25 Q. Do you then deny telling Detective Short that

1 Ferguson contacted you a couple of days later after this
2 incident and stated Ferguson's father had found a wallet in
3 his residence and Ferguson stated he had gotten in trouble
4 for this?

5 A. Yeah, I don't believe it was a day or two later. I
6 believe that it was months later.

7 Q. The question is: Do you deny --

8 A. And I believe -- I believe that I told him that it
9 was more than a day or two later. I believe that I told him
10 that it was months later.

11 Q. Okay. So you deny telling Detective Short that it
12 was a couple of days later.

13 A. Yeah. I don't think I did. I don't think I did.
14 If I did, I was mistaken.

15 Q. You got some water up there?

16 A. I'm all right. Thank you.

17 Q. Okay. Then you were -- you talked with Detective
18 Short during this initial interview, the one that's not
19 videotaped, about seeing Dallas Mallory, didn't you?

20 A. Yes.

21 Q. And you said that you saw Dallas Mallory by the
22 Break Time, didn't you?

23 A. Yeah. I thought I had.

24 Q. Okay. And the Break Time, on State's Exhibit --
25 whatever this is.

1 THE COURT: It's on the back.

2 MR. ROGERS: Thank you.

3 Q. 9. The Break Time is right here --

4 A. That's correct.

5 Q. -- at the intersection -- the northeast corner of
6 Providence and Ash.

7 A. That's correct, yes.

8 Q. And that's the only Break Time downtown that you
9 know of.

10 A. Yes.

11 Q. You never call the Phillips station down further
12 south at Locust and Providence a Break Time, do you?

13 A. No.

14 Q. And you were not referring to the Phillips station
15 when you told Detective Short it was a Break Time, did you?

16 A. I don't believe so, no.

17 Q. Okay. And you've told us I believe earlier today
18 that you saw Mr. Mallory stopped on Providence at a
19 stoplight? Is that correct?

20 A. Yes, that's correct. At an intersection.

21 Q. Okay. An intersection with a traffic signal.

22 A. Yes.

23 Q. So he stopped for the light when he come up to it.

24 A. I don't know if the light -- I don't know what color
25 the light was. I know that he stopped at that intersection.

1 Q. Okay. And you walked halfway across the street to
2 the middle of Providence, because he's southbound; correct?

3 A. That's correct.

4 Q. And you're crossing from east to west.

5 A. I'm not sure. I'm crossing across Providence.

6 Q. Right. From the east side of Providence, the
7 downtown side, to the west side of Providence, where By
8 George's is.

9 A. I'm going to have to take your word on that, because
10 I'm not sure.

11 Q. Okay. Well, let's look again at the map. And
12 that's Exhibit 5. And it shows Providence Road going north
13 and south; right?

14 A. Right.

15 Q. It shows the Columbia Daily Tribune on the right or
16 east side?

17 A. Yeah. So we went west.

18 Q. Across Providence.

19 A. That's correct. We went west.

20 Q. Okay. And so whatever the color of the light would
21 have been, Mr. Mallory was sitting there long enough for you
22 to cross half of --

23 A. When we got to Providence, he was pulling up to the
24 light. And then I don't know if he was fully stopped when I
25 saw him and I yelled at him or not. But I know when I

1 approached his car, his car was stopped.

2 Q. Okay. And he wasn't looking at you. He was
3 watching the traffic; correct?

4 A. Actually, I think he might have been taking a hit of
5 marijuana, and that's the reason he stopped at the light.

6 Q. We'll get there in a while. Anyway, you told us --
7 told Detective Short back on March 10th, the day you were
8 arrested, it was by the Break Time; correct?

9 A. Yeah. I thought that had it had been at the Break
10 Time.

11 Q. All right. Well, there's a traffic light at that
12 intersection, isn't there?

13 A. I wasn't exactly sure where. I just knew that there
14 was a gas station. And I really wasn't sure which one it
15 was.

16 Q. But you told him Break Time.

17 A. Yeah. That's the one I thought. Because I remember
18 seeing the Break Time. And I remember seeing the Phillips.
19 I knew that we came back across Providence after we committed
20 the robbery and the murder. And I just -- I had all these
21 things in my mind, and I was trying my best to recall them
22 accurately, but when I'm under pressure like that, when I
23 haven't thought about these things for two years, it's hard
24 to recall that stuff accurate.

25 Q. Then you had the videotaped interview with Detective

1 Short, didn't you?

2 A. No. I believe I had a videotaped interview with
3 Detective Nichols. After -- after they drove me around, you
4 mean?

5 Q. No. Here we have the initial interview with
6 Mr. Short. Correct?

7 A. Yes.

8 Q. Then you have a videotaped interview with Mr. Short,
9 after he's already talked to you; right?

10 A. Yeah.

11 Q. So it's actually round two.

12 A. I suppose.

13 Q. Okay. And you've viewed that videotape.

14 A. Yes, I have.

15 Q. You've seen it.

16 MR. ROGERS: Your Honor, at this time we propose to
17 play the video. It's actually a cassette which is -- or a
18 DVD which is made from a videocassette. It's a DVD made from
19 a videocassette of the interview between Detective Short and
20 Mr. Erickson in its entirety.

21 THE COURT: Is it marked as an exhibit?

22 MR. ROGERS: It is not. And I can take it out and
23 mark it and et cetera.

24 THE COURT: I think that would probably be a good
25 idea.

1 MR. CRANE: Judge, assuming that's the -- you
2 transferred it from video to DVD?
3 MR. ROGERS: Right.
4 MR. CRANE: Assuming that's the entire contents of
5 what the state tendered to the defense as to John Short's
6 interview with Mr. Erickson, state has no objection.
7 THE COURT: Is this an edited version or --
8 MR. ROGERS: No. This is the entire version.
9 THE COURT: All right.
10 MR. CRANE: Assuming it's everything that we gave to
11 them --
12 MR. ROGERS: I will make that representation. I
13 probably still need it marked, though.
14 THE COURT: Oh, you do.
15 MR. ROGERS: Your Honor, this -- the defendant would
16 offer Defendant's Exhibit A, which I will represent is an
17 unedited DVD of the videotaped interrogation of Mr. Erickson
18 by Detective Short.
19 THE COURT: And there's no objection by the state?
20 Mr. Crane? No objection?
21 MR. CRANE: Well, no, except one thing. I mean...
22 (Discussion off the record between Mr. Crane and
23 Mr. Rogers.)
24 MR. ROGERS: Can we fast-forward through the --
25 MR. WEIS: Yeah.

1 MR. CRANE: Just one moment, though.
2 Did you provide me a copy of that transcript?
3 MR. WEIS: We --
4 MR. CRANE: Huh?
5 MS. BENSON: I don't know.
6 MR. CRANE: Well, you didn't. I'd like to get a
7 copy of that transcript if you've got it.
8 With that, Judge, I'll shut up.
9 THE COURT: Mr. Rogers?
10 MR. ROGERS: Yes, Your Honor.
11 THE COURT: Would you please approach the bench.
12 MR. ROGERS: Yes.
13 THE COURT: Along with Mr. Crane.

14

- - -

15 Counsel approached the bench and the following
16 proceedings were held:

17 THE COURT: You should be aware that some of the
18 jurors who don't have hearing problems are having trouble
19 hearing you.

20 MR. ROGERS: All right.

21 THE COURT: There is one that is using an assistive
22 hearing device, and he is sitting close enough that he can
23 hear you, but some of the others can't. I would strongly
24 suggest that if you want to be heard, that you raise your
25 voice.

1 MR. ROGERS: I will do my best. Thank you, Judge.

2 THE COURT: And I'm not sure that we can get --
3 maybe we can get you a lapel mic. I don't know if we can
4 look for one. Do you happen to have that bit of technology
5 with you?

6 MR. ROGERS: I can speak up --

7 MR. CRANE: You can yell.

8 MR. ROGERS: -- or I can stand behind the
9 microphone.

10 THE COURT: I don't think that microphone amplifies.
11 There is -- there should be a mic on the jury box that
12 amplifies. If you'll stand there, then the jurors can hear
13 you better.

14 - - -

15 The following proceedings were held in open court:

16 THE COURT: And I would ask the jurors, if you have
17 any trouble in hearing this DVD, let us know, so we can
18 increase the volume.

19 MR. ROGERS: With that, would you please play the
20 video?

21 THE COURT: How long is the DVD?

22 MR. ROGERS: It's 53 minutes, Your Honor. But there
23 are some periods where nothing's being asked or said.

24 THE COURT: And you're going to fast-forward --

25 MR. ROGERS: And we're going to fast-forward through

1 those, if we can figure out how to do it.

2 THE COURT: All right. Okay.

3 (Defendant's Exhibit A playing.)

4 Q. You recognize yourself, Mr. Erickson?

5 A. Yes, I do.

6 THE COURT: Excuse me. The jury is not able to
7 hear.

8 JUROR: It's real -- over here, it's real echoey and
9 real fuzzy. We can't understand what they're saying. Turn
10 it up or take the bass out of it.

11 THE COURT: I don't know if there's a feedback with
12 it or what. I am having the same difficulty and was hoping
13 you were not.

14 JUROR: It's echoing or something.

15 MR. ROGERS: It's probably because it was --

16 JUROR: Better.

17 THE COURT: Is that better?

18 JUROR: Better.

19 (Defendant's Exhibit A played.)

20 Q. And that's the end of the first videotaped
21 interview, the second interview with Mr. Short; is that
22 correct?

23 A. Yes.

24 Q. And when you told him that you might have flipped
25 out, you weren't talking about "I flipped out and hit

1 Heitholt more than once"; you're saying, "I might have
2 flipped out and thought I did something I didn't really do,"
3 weren't you?

4 A. No.

5 Q. That's not what you were trying to communicate to
6 Short at that time during that video?

7 A. I don't believe so, no.

8 Q. Okay.

9 MR. ROGERS: Mr. Weis, could you go back to the part
10 marked "Unsure 2"?

11 (Excerpt played.)

12 Q. Now you're telling us now, here today, under oath,
13 that you were not trying to tell Short that you were unsure
14 about whether or not you were involved in the murder of
15 Mr. Heitholt?

16 A. No.

17 Q. That's what you're telling us. You're not -- you're
18 telling us that you're not --

19 A. I had -- I had told them that, but by saying that I
20 flipped out, I meant I flipped out and hit him more than one
21 time.

22 Q. That's what he said. I'm talking about what you
23 said.

24 A. That's what I meant by saying I flipped out.

25 Q. Okay. But you do agree that you had told him

1 earlier in the conversation, "I mean, I might not even know
2 what I'm talking about now." Right?

3 A. Yeah, I said that.

4 Q. And when you said that, did you mean that you might
5 not even have been there? You might not have been involved
6 in the death of Mr. Heitholt?

7 A. Yeah. At that point I was thinking, I want to take
8 responsibility for what I done, but I was also thinking
9 self-preservation.

10 Q. But you were also thinking maybe you didn't do it.

11 A. I was hoping I hadn't done it.

12 Q. Right.

13 A. Deep down I knew that I had --

14 Q. But --

15 MR. CRANE: Wait a minute. Can he finish his
16 answer?

17 A. I was telling him that because I really hoped that I
18 hadn't been there. And I hoped that I hadn't done that.

19 Q. Right.

20 A. But I did do that.

21 Q. That's what you're telling us now. But what you
22 were telling them then was that you didn't know whether or
23 not you had done it. Isn't that what you were telling him
24 then?

25 A. I was telling him that, but deep down I knew that I

1 had done it. I just was too much of a coward to take
2 responsibility for it.

3 Q. Even though you were there for the express purpose
4 of taking responsibility.

5 A. Yes. But I couldn't take -- I couldn't -- I
6 couldn't step over that ledge, is the best way to explain it.
7 It was hard, after -- after dealing with it by myself, and
8 not thinking about it for two years, and then I'm sitting
9 down here, and it's all just rushing at me. "My God, I
10 killed this man. I got to take responsibility for this now.
11 I've got to go to prison for the rest of my life. I've got
12 to tell them what than man did. I've got to embarrass my
13 family." It was a hard thing to do. And I didn't want to do
14 it. And I was hesitant.

15 Q. Are you done?

16 A. Yeah.

17 Q. Okay. I'll ask a question. Can you see this?

18 A. Yeah.

19 Q. Do you recognize that as an aerial photograph of
20 downtown Columbia, or part of it?

21 A. I can't really tell, to tell you the truth. It's
22 not very dis -- I mean, it's all black and white.

23 Q. It's black and white; correct?

24 A. I mean, it's hard to distinguish --

25 Q. Okay.

1 A. -- what --

2 Q. Let me point out, this is By George's here.

3 A. Okay.

4 Q. First Street. Ash. Break Time. Tribune building.

5 Are you oriented now?

6 A. Yeah.

7 Q. Okay.

8 A. I might -- I might get confused, because it's hard

9 to tell what's going on. So we're going to have to go slow.

10 Q. Okay. I will represent to you that where I'm

11 circling in red, or orangy red, is the parking lot of the

12 Tribune building? Okay?

13 A. Yeah, I believe so. I believe -- yeah.

14 Q. Okay. And that where I'm now circling is the Break

15 Time.

16 A. Yeah. That's correct.

17 Q. Okay. And do you recall in the videotape, when

18 Mr. Short asked you, "Are you sure it's the Break Time and

19 not the Express Lane further south on Providence?" Do you

20 remember that?

21 A. Yes, I do.

22 Q. And the Express Lane is, in fact, the Phillips

23 station down here; correct?

24 A. That's correct. Yes.

25 MR. CRANE: Can I -- does that got an exhibit number

1 on it?

2 MR. ROGERS: I'm sorry.

3 MR. WEIS: No.

4 MR. ROGERS: No. Oops. Let me fix that.

5 MR. CRANE: Was the disk Number 1?

6 MR. ROGERS: It was A. And this is B.

7 Your Honor, at this time I would offer Defendant's
8 Exhibit B.

9 THE COURT: Is there an objection by the state?

10 MR. CRANE: Well, it'd be a little bit late now.

11 MR. ROGERS: That's right.

12 MR. CRANE: No. Have at it.

13 THE COURT: Defendant's Exhibit B is admitted.

14 MR. ROGERS: Thank you.

15 - - -

16 Defendant's Exhibit B admitted into evidence.

17 - - -

18 Q. And what you were telling Short is that you and you
19 say Ferguson left the parking lot and went back across
20 Providence. Is that correct?

21 A. I'm -- I believe I said we went back around the
22 Tribune building. But I -- I told him -- I told him a couple
23 different things, because I couldn't -- I mean, I had
24 different kind of frames in my memory. I remember seeing the
25 Break Time. And I remember going back behind the Tribune

1 building. And I know that we crossed Providence. I was
2 having a hard time trying to remember which gas station we
3 went past before we went back on Providence.

4 Q. But my question to you now is: What you were
5 telling Short during the videotape is that you came back here
6 by the Break Time.

7 A. That was one of the things I said.

8 Q. Yeah. And you told him it was at this intersection
9 here, that I'm drawing in just a solid blur, that you saw
10 Mr. Mallory.

11 A. Yeah. I believe that's correct, yeah.

12 Q. Okay. And this was before you had seen any police
13 reports.

14 A. Yeah. That's correct.

15 Q. But you had read newspaper accounts and seen
16 television broadcasts concerning Mr. Heitholt's death for two
17 and a half years.

18 A. Yeah, I believe so.

19 Q. And when Mr. Short drew your attention to the
20 Express Lane, the Phillips, you said, "No, it's the one right
21 there by the Tribune building. The Break Time."

22 A. Yeah, that's right.

23 Q. All right.

24 A. That's right.

25 Q. Okay. You will agree with me, will you not, that

1 you were certain, during your interviews with Mr. Short, that
2 you had only hit Mr. Heitholt once, until he told you, "Wait
3 a minute. I've seen the autopsy pictures. He was hit
4 multiple times, up to 15 times."

5 A. Yeah. I said -- I remembered hitting him, and then
6 he groaned. I didn't remember hitting him before that.

7 Q. And you kept saying, "I remember the first time I
8 hit him," didn't you?

9 A. I thought it was the first time.

10 Q. That's what you said.

11 A. Well, that's what I thought, yeah.

12 Q. Okay. Now, do you know what kind of shoes you were
13 wearing that night?

14 A. No, I don't.

15 Q. You told Mr. Short that they were Nikes or New
16 Balance?

17 A. I told him the shoes that I wore. And I wore Nike,
18 New Balance, K-Swiss. I also -- I believe I also said that I
19 might have been wearing boots. But I couldn't -- I couldn't
20 remember what I wore.

21 Q. And you might have been wearing boots as well.

22 A. I don't remember what shoes I put on. I just
23 remember that my feet hurt from the shoes I was wearing with
24 the Halloween costume, and I was happy to put something
25 on that wasn't --

1 Q. So what you were wearing with the Halloween costume
2 were penny loafers?

3 A. They were something like that. I mean, they were --
4 they were shoes I wouldn't -- they were like penny loafer
5 adult shoes. They were -- I remember they were too small for
6 me. They just went with my outfit.

7 Q. And they made your feet hurt. What size shoe do you
8 wear, sir?

9 A. About 10, 10 and a half.

10 Q. Is that the size you've always worn, or --

11 A. No.

12 Q. Since you were in high school?

13 A. It varies, just depending on what type of shoes they
14 are. I mean, my shoes have gotten bigger as I've grown. My
15 feet have gotten bigger.

16 Q. Back when you were a junior in high school, what
17 size would you wear?

18 A. Probably around the same thing. My feet haven't
19 grown that much since then. Probably about a 10, 10 and a
20 half.

21 Q. Okay. And whether it was a 10 or a 10 and a half
22 would depend on the kind of shoes.

23 A. That is correct.

24 Q. Okay. And the kinds of shoes that you owned at the
25 time, you owned some boots, you said?

1 A. I owned boots; I owned shoes. And that was really
2 it.

3 Q. In terms of boots, you owned what? Timberland
4 boots?

5 A. Yeah. A pair of Timberland's. I think I had a pair
6 of American Eagle boots. I had some dress shoes. I can't
7 remember what kind of shoes they were.

8 Q. Okay.

9 A. And I word Nikes, New Balances, and K-Swiss.

10 Q. Nikes, New Balances, and what?

11 A. And K-Swiss.

12 Q. K-Swiss?

13 A. Yes.

14 Q. And those are tennis shoes or running shoes or
15 athletic shoes, whatever you want to call it?

16 A. Yeah, that's correct.

17 Q. And are those the only brands that you owned, of
18 tennis shoes, running shoes, athletic shoes? Nikes, New
19 Balance, K-Swiss.

20 A. I believe so. I might have had a pair of something
21 else. I don't know.

22 Q. Okay. Nothing that springs to mind.

23 A. No.

24 Q. Nothing that you --

25 A. In the past I've had all sorts of Reeboks -- I mean,

1 you name it, I probably had that brand of shoe. But I -- I
2 mean, then, the only thing I can think of is probably I --
3 like in high school I wore a lot of K-Swiss. Mostly Nike and
4 New Balance and some K-Swiss. And I wore boots a lot.

5 Q. Okay. During high school, you never owned a pair of
6 Sketchers, did you?

7 A. No.

8 Q. Never had them in your life, have you?

9 A. No, I haven't.

10 Q. And you've never seen Ryan wear Sketchers either,
11 have you?

12 A. I don't -- I don't know if I have or not.

13 Q. Okay. You don't recall ever seeing Ryan wear
14 Sketchers.

15 A. No.

16 Q. You know what they are, though, don't you?

17 A. Yeah, I know what they are.

18 Q. Okay. Now, you told Detective Short in the first
19 interview, the one that wasn't on the videotape, and also on
20 this videotape, that you thought Ryan had strangled Heitholt
21 with a shirt. Is that correct?

22 A. I said I didn't -- I didn't know what it was. I
23 thought it might have been a shirt.

24 Q. Okay. And that's what you told him on the
25 videotape.

1 A. Yeah. I wasn't sure. Honestly.

2 Q. And when you said, "I think it was a shirt or
3 something," you weren't trying to lie to him, were you?

4 A. No, I wasn't. I was just --

5 Q. You were telling what you could remember at that
6 time.

7 A. I wasn't -- it was what I thought. It was what I
8 thought was possible. It wasn't necessarily what I
9 remembered.

10 Q. What you thought was possible.

11 A. Well, I was making presumptions some of the time --

12 Q. Making presumptions some of the time.

13 A. -- because there was some things I couldn't
14 remember.

15 Q. Because you didn't remember; right?

16 A. There was some things I couldn't. And so I was
17 asking him. But if you saw in the video, I'd ask him, "I
18 don't know. Was it a shirt? Was it a bungee cord?" I
19 couldn't remember. And I told him I couldn't remember.

20 Q. Okay. And you said to him, "I think it was a shirt
21 or something." Right? That was your exact words on the
22 videotape?

23 A. I think so. I'm not sure.

24 Q. And he said, "Well, I know it wasn't a shirt,"
25 didn't he?

1 A. Yes, he did.

2 Q. And there was nothing equivocal about him, was

3 there?

4 A. No.

5 Q. You know what equivocal means?

6 A. It means that he was certain that it wasn't a shirt.

7 Q. When I say "nothing equivocal," means he was

8 certain, and he was projecting to you it obviously definitely

9 wasn't a shirt; right?

10 A. Yeah.

11 Q. Correct?

12 A. That's correct. I guess.

13 Q. All right. And that's when you said, "Maybe a

14 bungee cord or something from his car. I don't see why he'd

15 have a rope in his car." Right? Is that correct?

16 A. Yeah.

17 Q. Because you were trying to rule out things that you

18 thought might have been used. Correct?

19 A. That's correct. Yeah.

20 Q. And so you didn't have any memory of a bungee cord.

21 A. (Shaking head from side to side.)

22 Q. You didn't have any memory of a rope.

23 A. No.

24 Q. You were just guessing.

25 A. Yes.

1 Q. Because it certainly never occurred to you that it
2 might be a belt.

3 A. That's correct.

4 Q. Correct? And, in fact, when Short told you it was
5 the belt, you were incredulous, weren't you?

6 A. Yes.

7 Q. And you said, "Oh, really? A belt?"

8 A. Yes. That's correct.

9 Q. And again, later in the same interview, just a
10 little bit later, he talks about -- he, Mr. Short, says, "So
11 it's possible Ryan could have strangled this guy with his
12 belt, got the keys, and you not know about it?" And you
13 again are incredulous. And you say, "The guy -- the man's
14 belt?" Correct?

15 A. That's correct.

16 Q. "His own belt?"

17 A. That's correct.

18 Q. And Short says, "Yes. Does that ring a bell?" And
19 your answer is, "Not at all."

20 A. (Nodding head up and down.) I believe he asked if I
21 had anything in my hand, and I said, "No, I don't remember
22 that at all."

23 Q. Well, wait a minute.

24 MR. ROGERS: Could you play the part marked "belt"?

25 (Excerpt played.)

1 A. All right. Yeah, there are two different instances,
2 though.

3 Q. Two different instances.

4 A. Yeah.

5 Q. In that instance, you're saying that the belt did
6 not ring a bell at all.

7 A. That's correct. Yes.

8 Q. And when he follows up, "But you saw Ryan strangle
9 him, though," you say, "I thought I did." Correct?

10 A. Yes. That's correct.

11 Q. That's, once again, expressing uncertainty as to
12 whether you really remembered being there; right?

13 A. That's correct.

14 Q. Now, do you recall acting out with Mr. Crane what
15 you say happened between you and Mr. Heitholt?

16 A. Yes.

17 Q. And at no time during that demonstration did you
18 demonstrate Mr. Heitholt being thrown to the ground, did you?

19 A. I don't believe so. I believe I said that he came
20 to his knees, and then I hit him one more time, and then he
21 came down.

22 Q. Right. But you didn't say, "I threw him to the
23 ground" or "Ryan threw him to the ground," did you?

24 A. No, I didn't.

25 Q. And that did not happen, did it?

1 A. I don't believe so, no.

2 Q. But you told Detective Short in this videotape that
3 you -- that either you or Ryan threw him down, didn't you?

4 A. I said, "Either that, or he fell." I said I wasn't
5 sure. I said, "Maybe I threw him down. Maybe Ryan threw him
6 down." I wasn't sure.

7 Q. And then he said, "So one of you threw him down,"
8 and your answer was, "Yeah."

9 A. That's what I thought.

10 Q. Okay. That's what you thought there.

11 A. Yes.

12 Q. And that was March the 10th.

13 A. Yes.

14 Q. Before you read the police reports.

15 A. That's correct. Yeah.

16 Q. Before you read the autopsy report.

17 A. Yeah. That's correct.

18 Q. Before you reached your plea agreement.

19 A. That's correct.

20 Q. Before you made your proffer statement.

21 A. Yes.

22 Q. Now, you told us earlier today, in painstaking
23 detail, about seeing Ryan with his back to you while you're
24 sitting on the retaining wall of the parking lot, throwing
25 up, and seeing Ryan reach down, as if strangling

1 Mr. Heitholt. Correct?

2 A. Yes.

3 Q. And you talked about coming around the right side of
4 Ryan, while he's choking Mr. Heitholt.

5 A. Yes.

6 Q. And seeing Mr. Heitholt there lying on his face;
7 correct?

8 A. Yes.

9 Q. But you told Detective Short, the day you were
10 arrested, on the videotape, that when you saw Ryan strangling
11 Mr. Heitholt, that Heitholt was on his back, didn't you?

12 A. I believe so, yes.

13 Q. Any question about it? Would you like to see it?

14 A. That's all right.

15 Q. Was your purpose in talking to your friends about
16 what you thought might have happened, to get their advice
17 about what you should do?

18 A. Yes.

19 Q. And --

20 A. Well, that, and also I needed to -- I needed to -- I
21 had to tell someone. I couldn't deal with it on my own any
22 more.

23 Q. Had to tell someone. Couldn't deal with it on your
24 own.

25 A. Yeah.

1 Q. Between November 1st, 2001, and March 10th, 2004,
2 you lived at your parents' house on Chinkapin Court here in
3 Columbia.

4 A. Yes.

5 Q. Your father, even though he does not practice, is a
6 licensed attorney.

7 A. Yes.

8 Q. You have an uncle who is a licensed attorney and
9 practices criminal defense.

10 A. Yes.

11 Q. You have another uncle who is a licensed attorney
12 and practices law.

13 A. No longer.

14 Q. Used to practice.

15 A. Yes.

16 Q. You have three lawyers in the family, one of whom
17 practices criminal defense.

18 A. Yes.

19 Q. And you didn't ask any of them for advice about what
20 to do in a situation where you were uncertain. Correct?

21 A. That's correct.

22 Q. And during that same time frame, between November
23 1st, 2001, and March 10th, 2004, you saw a family counselor.

24 A. Yes.

25 Q. What was her name?

1 A. I believe her name was Dr. Bauer.

2 Q. Dr. Bauer. And you had private conversations with
3 her.

4 A. Yeah. That's correct.

5 Q. And she told you those conversations were
6 privileged.

7 A. Yes.

8 Q. And you didn't tell her anything about this
9 repressed memory you might have had.

10 A. No, I didn't.

11 Q. And also during that time, in fact, just within
12 weeks of November 1st, during the month of November, 2001,
13 you underwent testing by some psychologists at the University
14 of Missouri; is that correct?

15 A. Yeah.

16 Q. And that testing included memory testing.

17 A. Yeah. Yes.

18 Q. It included another battery of educational type
19 tests.

20 A. That's correct.

21 Q. And they talked to you. And they gave you a chance
22 to say anything that was on your mind. Correct?

23 A. I don't believe that came up. It wasn't -- they
24 weren't counseling me. They were trying to figure out why my
25 grades were bad.

1 Q. Okay. Your grades were bad before Halloween too,
2 weren't they?

3 A. Yeah.

4 Q. They'd been bad for a while.

5 A. Yeah.

6 Q. And they were bad because you did as little as
7 possible.

8 A. Yeah.

9 Q. And bad because you had smoked pot.

10 A. Yeah. I had motivation problems. I smoked pot and
11 I didn't really -- I just, like you said, I just did what
12 I -- what was required, and I just skated by, for the most
13 part. I didn't really take an interest in anything that was
14 in school. But when I did take an interest in, I did well.
15 Other than that, I didn't.

16 Q. And in fact --

17 MR. CRANE: I couldn't hear.

18 When you did take an interest, what?

19 THE WITNESS: In -- in my -- in my classes, in my
20 courses, I'd do well if I -- if I enjoyed learning about
21 something, I'd do well in it, but.

22 MR. CRANE: Sorry.

23 Q. Okay. And your pot smoking had also been addressed
24 professionally, hadn't it?

25 A. Yes. I believe so. Yeah.

1 Q. As a matter of fact, November 1st, 2001, was the day
2 that you officially graduated from an outpatient substance
3 abuse treatment program, wasn't it?

4 A. I believe so. I'm not -- I'm not sure if that was
5 the day before that or not. I don't know.

6 Q. Okay. And during your participation in that
7 program, you continued to smoke pot.

8 A. Yeah.

9 Q. And somehow beat the urine tests.

10 A. That's correct.

11 Q. And how did you do that?

12 A. I would -- I would go downtown, and there's a store
13 called The Peace Nook. I would --

14 Q. Called what?

15 A. It's called The Peace Nook. It's off of Broadway.
16 And they sold bottles of this stuff. And it was actually
17 called "The Stuff." And it was about \$20 a bottle. And it
18 was a detoxifier. And you -- as long as you didn't smoke
19 weed for a couple days, you could drink it, and -- about an
20 hour before you had to take a test, you drank that, and then
21 it would clean out your system.

22 Q. And it would also make the test results look --

23 A. Yeah. For like five or six hours your -- it would
24 appear that you had not been using drugs.

25 Q. And so you did that on a regular basis while you

1 were in the program.

2 A. When I needed to, yes.

3 Q. Let's go back to the day of your arrest, March the
4 10th. After you finished the interview we've seen on
5 videotape, was that when you went driving around with
6 Detective Nichols and others?

7 A. I believe so, yes.

8 Q. And have you seen the videotape of the trip you took
9 with Nichols?

10 A. Yes.

11 Q. You okay?

12 A. I'm fine.

13 Q. You need a cup of coffee or anything?

14 A. Not right now. Thank you.

15 Q. Okay. And you've had an opportunity to review that
16 videotape.

17 A. Yes.

18 MR. ROGERS: Your Honor, I would now offer into
19 evidence Defendant's Exhibit C, which I will represent to the
20 Court and counsel is a DVD copy of the videotape of the car
21 interview of Mr. Erickson.

22 MR. CRANE: Yeah. Judge, assuming that's a complete
23 copy of what we provided to the defense in the normal course
24 of discovery, I don't have any objection to defense playing
25 it with this witness.

1 MR. ROGERS: And this is 27 minutes and 22 seconds?
2 Sound about right?
3 MR. CRANE: Yeah. I think that sounds right.
4 THE COURT: Are you offering --
5 MR. ROGERS: Yes, Your Honor.
6 THE COURT: -- Defendant's C?
7 MR. ROGERS: Defendant's --
8 THE COURT: Exhibit C?
9 MR. ROGERS: Yes.
10 THE COURT: Defendant's Exhibit C is admitted.
11 - - -
12 Defendant's Exhibit C admitted into evidence.
13 - - -
14 MR. ROGERS: And ask leave to publish it to the
15 jury, Your Honor.
16 THE COURT: You may.
17 MR. ROGERS: And once again --
18 THE COURT: How long did you say it was?
19 MR. ROGERS: 27 minutes and 22 seconds.
20 THE COURT: And is it --
21 MR. ROGERS: Mr. Nichols does not jump out of the
22 car. So it goes straight through.
23 THE COURT: All right. Well, hopefully not.
24 MR. CRANE: And once again --
25 THE COURT: Let me just ask, before you turn it on,

1 would the jurors like to take just a brief break before?
2 Because this will be playing 'til probably -- for another 27
3 minutes and 22 seconds. If you need to take a brief break,
4 that's fine. If not, we'll go ahead and play it.

5 MR. ROGERS: Once again, Mr. Erickson, pay
6 attention, because I'm going to ask you questions afterward.

7 THE COURT: And let us know if it's not clear or
8 you're not able to hear.

9 (Defendant's Exhibit C played.)

10 Q. Now, Mr. Erickson, the purpose of you driving around
11 with Detective Nichols was for you to tell him, as best you
12 could, places you remembered being that night; right?

13 A. Yeah.

14 Q. And we're coming back to Defendant's Exhibit B,
15 which is now in evidence. And I'm trying to put it so
16 everybody can see it.

17 MR. ROGERS: Can you guys see it there?

18 Q. Can you see it?

19 A. Yeah.

20 Q. Okay. Basically -- you again start out with the
21 police. You're driving north here on First Street. Correct?

22 A. We're driving?

23 Q. Yeah. North on First Street?

24 A. Well, that's where -- that's where we parked before
25 we went into the club.

1 Q. No. I'm talking about you and Detective Nichols.
2 A. Oh, okay. Yeah. All right.
3 Q. You and Detective Nichols didn't go to the club.
4 A. Yeah. Yeah.
5 Q. If so, it's not on the video.
6 A. Yeah.
7 Q. Okay. You start here by By George's, by the club;
8 right?
9 A. Yeah.
10 Q. All right. And you go north on First Street.
11 A. Yeah.
12 Q. And --
13 A. That's where I told him that Ryan parked.
14 Q. That's where you told him Ryan parked.
15 A. Yeah.
16 Q. That's where you told us today Ryan parked.
17 A. Correct.
18 Q. Then you turned -- let me --
19 A. Took a right on Ash there.
20 Q. Took a right on Ash. And you drive down here, to
21 the intersection of Providence and Ash; correct?
22 A. Yeah. That's correct.
23 Q. And there's the Break Time. We saw it on the
24 videotape; right?
25 A. Yeah.

1 Q. Then you drive on around and back on around east on
2 Ash to Fourth Street, turn, go south on Fourth to Walnut, and
3 back around to Providence?

4 A. Yeah.

5 Q. While you're driving with the policeman.

6 A. Yes.

7 Q. And then come up and come down the alley; correct?

8 A. That's correct.

9 Q. And it's during that little loop that you ask him
10 where the crime happened; right?

11 A. That's right.

12 Q. And he --

13 A. I believe I asked him, "Where exactly did this
14 happen?"

15 Q. Right. And then you drive up the alley, and he
16 shows you where that white or beige jeep with the dark top is
17 parked.

18 A. Yeah.

19 Q. He tells you that's where Heitholt's car was parked;
20 is that correct?

21 A. Yes.

22 Q. You didn't know that before.

23 A. I knew that on the night that we did it. I couldn't
24 remember it before then.

25 Q. You didn't know that during this interview on March

1 the 10th, before that -- before Nichols told you.

2 A. I couldn't -- I couldn't recall it then, no.

3 Q. Okay. And the other thing different about the
4 alleyway was the -- different from March -- different between
5 November 1st and March 10th was that the Dumpster enclosure
6 was not there; correct?

7 A. Yes.

8 Q. So there's no Dumpster enclosure.

9 A. Yes.

10 Q. In fact, some of the shots of the cameras as the car
11 comes up the alleyway look through where the Dumpster
12 enclosure would have been.

13 A. I believe so.

14 Q. That Dumpster enclosure was tall, wasn't it?

15 A. Yeah. I believe so.

16 Q. Taller than you.

17 A. Yes.

18 Q. But when you get up there, and Nichols asks you
19 which way you left, you look north and west; correct?

20 A. Yeah. I looked that way. I couldn't -- I couldn't
21 really remember which way left. I just know that -- I
22 knew that we crossed back across Providence.

23 Q. And you told him, "That way." And when you said
24 "that way," you were looking -- indicating, with the
25 direction of your eyes, north and west, back towards the

1 Break Time; right?

2 A. Yeah -- yeah. Yeah. I suppose that's right.

3 Q. Okay. And then is when he told you, "Well, don't
4 you think you might have gone around the building and then
5 back to the Break Time?"

6 A. I said that was possible too.

7 Q. And you said, "That's possible. I don't remember."
8 Kind of an "anything's possible" kind of deal? Right?

9 A. Not anything's possible. I knew that -- that we
10 went -- we went around and that we went -- we ended up
11 crossing Providence. And I knew -- I saw Dallas at the
12 intersection. I wasn't sure exactly where I saw him, but I
13 knew I saw him at an intersection on Providence, and I saw
14 him after we did the robbery.

15 Q. And you were sure, at the time you were talking to
16 Nichols, driving around in the car, that you saw him at this
17 intersection, the intersection of Providence and Ash, by the
18 Break Time, didn't you?

19 MR. CRANE: Now that misstates the evidence he just
20 testified to. He wasn't sure if he went around the building
21 and saw him or before.

22 THE COURT: Would you rephrase your question,
23 please.

24 Q. My question is: You were sure, when you were
25 driving around with Mr. Nichols, that the intersection where

1 you saw Dallas Mallory was the intersection of Providence and
2 Ash, where the Break Time is.

3 A. I -- I wasn't sure -- completely sure. I thought
4 that's may -- that may have been where I had seen him.
5 Honestly. I mean --

6 Q. Well, he asked you how long it took, and you looked
7 right at the Break Time, and you said, "I don't know. Maybe
8 no time at all. Five seconds? If that's what it takes to
9 run there."

10 A. Well, if that's how -- how far is that? I still
11 hadn't completely confirmed that that's where I saw Dallas.

12 Q. That's what you were trying to do, though, say,
13 "That's where I saw him, and it couldn't have taken very long
14 to get there"; right?

15 A. That's if I saw him there.

16 Q. That's right. And you said you saw him very quickly
17 after leaving the parking lot.

18 A. Yeah. I also said I wasn't completely sure where I
19 saw him.

20 Q. Okay. Now, Detective Nichols said that he was going
21 to familiarize you with the area; right? You heard that?

22 A. Yeah.

23 Q. And that's when he starts going down Fourth Street,
24 past the Broadway Diner. Right?

25 A. Yeah.

1 Q. Now, you have lived in Columbia several years.

2 A. Yes.

3 Q. Were you familiar with that downtown area?

4 A. A little bit. Not -- not real familiar with it,

5 but --

6 Q. Okay.

7 A. -- a little bit.

8 Q. You knew -- had you been in Flat Branch Park before?

9 A. No. No. I had been to Flat Branch Restaurant

10 before, but -- I mean, I couldn't name -- I couldn't tell you

11 probably where Walnut Street was. I couldn't tell you where

12 Ash was. I could tell you where Providence and -- Providence

13 and Broadway were.

14 Q. Okay.

15 A. I didn't spend a lot of time downtown.

16 Q. Had you been in the park before --

17 A. No.

18 Q. -- whatever its name might have been?

19 A. No.

20 Q. Okay. And when you saw the Broadway Diner, nothing

21 looked familiar to you.

22 A. Not at that time, no, it didn't.

23 Q. And when you drove on down further and saw Flat

24 Branch Park, nothing looked familiar to you.

25 A. No.

1 Q. And when you drove over here to Fifth Street, and on
2 down by the campus, nothing looked familiar to you.

3 A. No.

4 Q. And when you drove back across to Locust and
5 Providence, nothing looked familiar to you.

6 A. No.

7 Q. And when you passed the Phillips 66 station, which
8 Nichols referred to as a convenience store, it didn't look
9 familiar.

10 A. No.

11 Q. And you didn't look to the left and see the Osco
12 parking lot and say, "Oh, my, that looks familiar," did you?

13 A. No, I didn't.

14 Q. Even though the Osco parking lot is right across
15 from the Phillips station.

16 A. That's correct, yes.

17 Q. And then you came back, across Broadway, and you
18 were driving around, looking for the -- what you call wooden
19 embankment; is that correct?

20 A. Yeah. I remember I had to climb up something. I
21 remember having a hard time doing it. And I couldn't
22 remember exactly what it was. So we drove by a couple
23 things. They looked a little familiar. And I said, "That
24 may have been what I had to climb up."

25 Q. And when you saw the wooden embankment, where was

1 that?

2 A. I think that was behind the bank. One of them --
3 one of them was behind the car rental place. I think. I
4 don't know. And one of them was behind the bank, I think.
5 I'm not sure.

6 JUROR: Your Honor.

7 THE COURT: Yes, sir.

8 JUROR: Can I clarify where a location is?

9 THE COURT: You may not ask questions, but hopefully
10 the attorneys will make that clear to you.

11 MR. ROGERS: Hopefully I will. I may be able to.

12 THE COURT: If you're not able to see something, do
13 let me know.

14 JUROR: But two exhibits show it two different
15 places.

16 MR. ROGERS: Okay. I might need to clarify that
17 myself.

18 Q. Let me ask you this. By George is at the corner of
19 First and Broadway; is that correct?

20 A. Yeah.

21 Q. Would that be here where I'm putting a red X?

22 JUROR: Okay.

23 Q. And so this labeled "By George" is actually wrong?
24 Is that a fair statement?

25 JUROR: Yes.

1 MR. CRANE: Just for the record --

2 MR. ROGERS: I'm asking the witness. I'm sorry.

3 MR. CRANE: Just so we can make a record of this, am
4 I correct that your exhibit --

5 MR. ROGERS: Exhibit B had the wrong building.

6 MR. CRANE: -- your exhibit, you labeled another
7 building "George's" --

8 MR. ROGERS: Right.

9 MR. CRANE: -- and had that wrong, marked wrong on
10 your exhibit --

11 MR. ROGERS: Right.

12 MR. CRANE: -- all this time.

13 MR. ROGERS: All this time. And I'm now going to
14 have to change it, if I can.

15 (Mr. Rogers marking on Defendant's Exhibit B.)

16 THE COURT: And we're talking about Exhibit B; is
17 that correct?

18 MR. ROGERS: Talking about Exhibit B.

19 MR. CRANE: Defendant's Exhibit B.

20 MR. ROGERS: Defendant's Exhibit B. And I have now
21 removed the label that says "By George" from the wrong place,
22 and I'm going to put it on the right place.

23 Q. Does that square with your recollection?

24 A. Yes. Yes.

25 Q. Okay. I'm going to get something that erases and

1 erase the marks I made.

2 Okay. And you, of course, from where you are, can't
3 even read the little "By George" on the black and white
4 thing, can you?

5 A. I didn't even notice it.

6 Q. Okay. Fair enough.

7 Now, behind what bank is the wooden -- or what
8 building is the wooden fence that you were talking about?

9 A. I believe it's right there, at the corner of
10 Providence and Ash. I think it's the Boone County National
11 Bank. I think that's it.

12 Q. You think it's right here where you see these trees?

13 A. Well --

14 THE COURT: If you need to step down to see, I will
15 permit you to step down.

16 Q. Yeah.

17 A. I mean, like I said, it's hard to tell, because
18 everything's in black and white, and a lot of stuff looks the
19 same, but. Let's see. I think that's the bank right here.
20 And I think that would be the car rental place. So one of
21 them was behind the car rental place. That was that fence
22 right there. And then this retaining wall was -- I think it
23 was -- well, it was somewhere over here.

24 Q. Okay.

25 A. Where the bank is.

1 Q. All right. And let me ask you this. Would it be
2 easier to tell on --

3 THE WITNESS: Shall I go back up there?

4 THE COURT: You can step back up.

5 Q. On government's exhibit 9, do you see -- or State's
6 Exhibit 9, do you see where it might be?

7 MR. CRANE: What are we looking for now?

8 MR. ROGERS: The retaining wall.

9 A. The retaining wall is right here. I think.

10 Q. Okay.

11 A. I think. And that fence I was talking about I think
12 is -- it's on -- it's one of those two. I think it's that
13 one right there.

14 Q. Okay. And so, to put the two together, the fence
15 would be around here someplace?

16 A. Yeah. That's correct.

17 Q. And the retaining wall -- I'm having trouble finding
18 it. Maybe it's not shown on this picture.

19 MR. CRANE: You're welcome to just stick with 9, if
20 you want to.

21 MR. ROGERS: Well, I want to draw on it, though, and
22 I would hate to mess up your beautiful exhibit.

23 MR. CRANE: Yeah, I don't really want the grease
24 pencil on there too bad.

25 Q. Okay. Anyway, basically --

1 A. I mean, I can show you if you need me to.

2 Q. Yes, please.

3 THE WITNESS: Can I get back down?

4 THE COURT: You may step down.

5 A. I think the retaining wall -- well, is this a
6 recent -- a more recent --

7 Q. It's an older picture, I think.

8 A. It's an older picture? It might not have even been
9 there then.

10 Q. Okay.

11 A. But I think it would have been right there.

12 Q. Right around here?

13 A. Yeah.

14 Q. Okay. So basically what you're remembering at the
15 time you're talking to Nichols is coming across Providence up
16 here by Ash, talking to Mallory, and then somehow coming
17 across this direction?

18 A. It was a -- it was a thought. It was feasible. I
19 couldn't really remember which way that I came. And I
20 remember -- there -- like I said before, there were certain
21 frames, like if you pause a movie, I would remember. And
22 other than that, for a long time I couldn't remember anything
23 other than that. And so when I saw things that looked like
24 memories that I had that night, I got confused, and I said,
25 "Well, that might have been in it. I might have gone that

1 way." I knew I had seen Dallas at an intersection. I got
2 confused on that also.

3 Q. And you'll agree that there was nothing down in this
4 area that looked familiar, even though Nichols was pointing
5 it out to you.

6 A. At the time, no.

7 Q. Now after doing the little drive-around with
8 Detective Nichols, you were again interviewed by Detective
9 Nichols back in the videotape room; right?

10 A. That's correct.

11 Q. And you have seen that tape recording of that
12 interview too, haven't you?

13 A. Yes, I have.

14 Q. And you've gone over it with your lawyer.

15 A. Yes.

16 Q. And you've gone over it with Mr. Crane.

17 A. Yes.

18 Q. Now then --

19 MR. CRANE: Judge, we got a juror raising his hand
20 back there.

21 JUROR: Judge, we really need to stand a minute and
22 maybe take a short break, if possible.

23 THE COURT: I will be glad to do that. Why don't --
24 and particularly if you need to take a rest room break or
25 something like that, why don't we take about a five- or

1 ten-minute break and let you go out. And then we'll finish
2 up with this.

3 JUROR: Thank you, Judge.

4 THE COURT: Okay?

5 Ladies and gentlemen, the Court again reminds you of
6 what you were told at the first recess of the Court. Until
7 you retire to consider your verdict, you must not discuss
8 this case among yourselves or with others, or permit anyone
9 to discuss it in your hearing. You should not form or
10 express any opinion about the case until it is finally given
11 to you to decide. Do not read, view, or listen to any
12 newspaper, radio, or television report of the trial.

13 We'll take a really brief recess. And you may be
14 excused at this time.

15 JUROR: Thank you, Judge.

16 THE COURT: Thanks for letting me know.

17 - - -

18 The following proceedings were held out of the presence
19 of the jury:

20 THE COURT: I don't know if the witness needs to be
21 excused or not for this brief --

22 THE WITNESS: I wouldn't mind taking a break, if you
23 don't mind.

24 THE COURT: You may step down. And ask the -- if
25 this witness needs to be excused also, take a break. You may

1 step down.

2 MR. ROGERS: 22:41 on this one. So we're timing it
3 pretty well.

4 THE COURT: I don't know that you'll finish with
5 your cross-examination.

6 MR. ROGERS: I will not finish with my cross, but I
7 can I think finish with his video maybe.

8 THE COURT: All right. That would be good.

9 MR. ROGERS: Does that sound like a plan?

10 THE COURT: That sounds like a good plan. And if
11 counsel wants to take a brief recess --

12 MR. ROGERS: I'm running out there even as we speak.

13 (Recess taken.)

14 - - -

15 The following proceedings were held in the presence of
16 the jury:

17 THE COURT: Quiet, please.

18 You have marked Defendant's D? A video?

19 MR. ROGERS: That's correct, Your Honor.

20 THE COURT: And that is offered, is it?

21 MR. ROGERS: It is now being offered. It's the
22 interview by Jeff Nichols, of March 10th, 2004, 5 p.m.
23 Running time: 22 minutes and 41 seconds.

24 THE COURT: Does the state have an objection?

25 MR. CRANE: Again, for the record, as long as that's

1 the same tape, in it's entirety, that the state tendered to
2 the defense in discovery, I don't have any objection.

3 MR. ROGERS: And yes, it is.

4 THE COURT: Exhibit D will be admitted.

5 - - -

6 Defendant's Exhibit D admitted into evidence.

7 - - -

8 THE COURT: And assuming that the reporter will not
9 have to report this, since it is on a DVD.

10 MR. ROGERS: Right.

11 THE COURT: Available if need be.

12 MR. ROGERS: Thank you.

13 THE COURT: All right. And after this, the
14 understanding is is that the jury will recess for the evening
15 and come back tomorrow morning at 8:30 to begin again. Yes?

16 MR. ROGERS: Fine with me.

17 THE COURT: All right. You may play it then.

18 - - -

19 CHARLES TIMOTHY ERICKSON,

20 resumed the stand and testified further:

21 RESUMED CROSS-EXAMINATION

22 BY MR. ROGERS:

23 Q. Once again, pay attention, Mr. Erickson.

24 (Defendant's Exhibit D playing.)

25 THE COURT: Are there places where there is nothing

1 going on? You might move it along.

2 (Defendant's Exhibit D played.)

3 MR. ROGERS: That's the end of the tape, Your Honor.

4 THE COURT: Is that the end of the -- of this?

5 MR. WEIS: Yes.

6 THE COURT: Ladies and gentlemen, we will take our
7 evening recess at this time.

8 The Court again reminds you of what you were told at
9 the first recess of the Court. Until you retire to consider
10 your verdict, you must not discuss this case among yourselves
11 or with others, or permit anyone to discuss it in your
12 hearing. You should not form or express any opinion about
13 the case until it is finally given to you to decide. Do not
14 read, view, or listen to any newspaper, radio, or television
15 report of the trial.

16 We will reconvene in court at 8:30 in the morning.
17 We'll see you at that time. Have a good supper and a restful
18 night.

19 - - -

20 The following proceedings were held out of the presence
21 of the jury:

22 THE COURT: You may step down.

23 I don't know if we can find --

24 THE WITNESS: There's Bill right there.

25 THE COURT: Kevin? Kevin?

1 MR. CRANE: Yes, ma'am.

2 THE COURT: We need to get a deputy over here for --

3 MR. CRANE: Okay.

4 THE COURT: And we need to make sure that both

5 Mr. Ferguson and Mr. Erickson are here before 8:30 in the

6 morning.

7 MR. HAWES: Yes, Judge.

8 THE COURT: I don't want them to run into the jury,

9 and I want them to be available.

10 MR. HAWES: Yes, Judge.

11 THE COURT: Okay. Anything further that the state

12 needs to discuss then this evening?

13 MR. CRANE: I don't think so.

14 THE COURT: The defense? Anything further this

15 evening?

16 MR. ROGERS: I don't believe so, Your Honor.

17 THE COURT: All right. We will be in recess. This

18 courtroom will be locked, so if there's any equipment that

19 you need to leave here, you may do that. And we'll see you

20 at 8:30 in the morning then.

21 Court will be in recess.

22 (Adjourned for the evening.)

23 - - -

24

25