

Testimony of Alan Brantley (2)

THE COURT: We're back on the record
21 now.

22 MR. GREG DAVIS: Yes, sir.

23 THE COURT: The first witness is Alan

24 Brantley. Call the witness in, please.

25 If you will have a seat right here,
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1 please, sir.

2 All right. Bring the jury in, please.

3 MR. RICHARD C. MOSTY: Before we

4 start, could we inquire as to the nature of his

5 testimony? I think we may have to have a hearing outside
6 of the presence of the jury.

7 MR. TOBY SHOOK: He is Alan Brantley,

8 who is a special agent with the FBI. He is in the
9 behavioral science unit.

10 He is going to testify on criminal

11 investigative analysis and staging.

12 MR. RICHARD C. MOSTY: Profiler?

13 MR. TOBY SHOOK: No, criminal

14 investigative analysis and staging. He is not testifying
15 on profiling.

16 THE COURT: Well, should we need that,

17 we will do it at the appropriate time.

18 MR. RICHARD C. MOSTY: Well, before we

19 get into anything that is expressing opinions about

20 staging, then we are going to have to have a Daubert
21 hearing.

22 THE COURT: Well, first of all, I gave

23 you Daubert the other day. Now, I permitted Daubert.

24 And that Daubert, Robinson hearing was on the

25 qualifying of the State's expert, Mr. Bevel.

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1 Well, the scope of any Daubert

2 hearing, first of all, it's not germane because it's

3 primarily a civil case, it was tried. The Supreme Court

4 brought it out. It's a civil case. Robinson is a civil

5 case. It is adopted in Texas by the Texas Supreme Court,

6 which handles only civil matters.

7 So it has no bearing on a criminal

8 case, and is not controlling. So, it does not control

9 any criminal proceeding.

10 MR. RICHARD C. MOSTY: Of course, I

11 beg to differ. If the Supreme Court of the United States

12 sets a standard of expert testimony in a civil case, then
13 you know for a fact, that that standard is going to be
14 equally applied in a criminal case, where the burden of
15 proof and the presumption of innocence and the
16 constitutional rights of an accused come into play.
17 So, I don't -- there is no sense in
18 arguing with the Court about that, but we do have to make
19 our record because we disagree with the Court, and we
20 want to make sure that any Daubert objection is
21 preserved.

22 THE COURT: Well, I will deny the
23 hearing now. Any error will be preserved by that ruling.

24 MR. RICHARD C. MOSTY: And that
25 continues on, that is running --

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1 THE COURT: Oh, yes, you will have a
2 running objection.

3 MR. RICHARD C. MOSTY: That is
4 actually a denial of even the right to a hearing to
5 determine what this witness is going to testify about, is
6 what you have denied us?

7 THE COURT: Well, if you want to have
8 the hearing itself, that is fine, we will do the hearing.

9 MR. TOBY L. SHOOK: Well, Judge, if he
10 wants to have a 705 hearing, that is how you do it under
11 the Rules.

12 THE COURT: A 705 is the correct way
13 to do it under the Rules. We are not going to have
14 another Daubert hearing like that --

15 MR. TOBY L. SHOOK: That is just to
16 inquire into his opinions and underlying data.

17 THE COURT: -- because we have already
18 been through that, and that doesn't control down here.

19 MR. RICHARD C. MOSTY: 705 doesn't
20 control in Kerr County?

21 THE COURT: 705 does, and we can get
22 on that kind of hearing.

23 These proceedings are being held
24 outside of the presence of the jury, and all parties in
25 the trial are present.

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1 Tell the jury they can be seated in
2 the jury room for a few minutes.

3 Raise your right hand. Do you
4 solemnly swear or affirm that the testimony that you are
5 about to give will be the truth, the whole truth, and

6 nothing but the truth so help you God?

7 THE WITNESS: I do.

8

9 (Whereupon, the witness

10 Was duly sworn by the

11 Court, to speak the truth,

12 The whole truth and

13 Nothing but the truth,

14 After which, the

15 Proceedings were

16 Resumed as follows:)

17

18 THE COURT: You are under the Rule of

19 Evidence, which simply means when you are not testifying,

20 you have to remain outside the courtroom.

21 Don't talk about your testimony to

22 anybody who has testified, in other words, don't compare

23 it. You may talk to the attorneys for either side.

24 If someone tries to talk to you about

25 your testimony, please tell the attorney for the side

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1 that called you.

2 If you will state your name and spell

3 your last name for the court reporter, please.

4 THE WITNESS: My name is Alan

5 Brantley, B-R-A-N-T-L-E-Y.

6 THE COURT: All right. Mr. Shook.

7

8

9 Whereupon,

10

11 **ALAN BRANTLEY,**

12

13 was called as a witness, having been first duly sworn by

14 the Court to speak the truth, the whole truth, and

15 nothing but the truth, testified in open court, as

16 follows:

17

18 MR. TOBY L. SHOOK: Judge, so it's

19 clear, are we doing a 705 hearing? Is that what you are

20 requesting?

21 MR. RICHARD C. MOSTY: Yes, sir.

22 MR. TOBY L. SHOOK: It's my

23 understanding from reading 705, Judge, then for the

24 hearing, it's a voir dire, that the expert will give his

25 opinions, if asked, and then disclose the underlying

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1 facts or data --
2 THE COURT: That is correct.
3 MR. TOBY L. SHOOK: -- so we can get
4 into what those are, and that is all it's limited to and

5 that voir dire is supposed to be conducted, of course, by
6 the defense counsel.
7 THE COURT: That's right. All right.
8 Proceed.

9
10

11 VOIR DIRE EXAMINATION

12
13 BY MR. DOUGLAS MULDER:
14 Q. Mr. Brantley, tell your us your full
15 name, please, sir.
16 A. Alan Brantley.
17 Q. You are an FBI agent; is that correct?
18 A. I'm a supervisory special agent with
19 the FBI, that is correct.
20 Q. All right. And, how many years have
21 you been an FBI agent?
22 A. About 13 and a half years.
23 Q. Okay. Would you acquaint the Court
24 with your educational background and experience?
25

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1 MR. TOBY L. SHOOK: Excuse me, Mr.
2 Mulder. Judge, this is outside the scope of a 705
3 hearing. A 705 hearing is only to elicit his opinions
4 and then what the underlying factors are for those
5 opinions --
6 THE COURT: Sustained. Let's get
7 right into the opinions. Ask what the opinions are and
8 the basis for them, please.
9

10 BY MR. DOUGLAS MULDER:
11 Q. All right. Mr. Brantley, you have
12 apparently -- I don't know why you are here. Are you
13 here to testify with respect to fingerprints?
14 A. My understanding is, I'm here to talk
15 about crime analysis and the analysis of this particular
16 crime scene.
17 Q. All right. Have you analyzed this
18 crime scene?

19 A. I have, yes, sir.

20 Q. And when was that done?

21 A. Well, I first encountered this case

22 back in June of '96. I was in Dallas on another matter

23 and was aware that this had occurred, and was actually

24 assigned this case, September 20th.

25 Q. All right.

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1 A. Which I received a letter from the

2 prosecutors office at the FBI Academy at that time. I

3 received all the case materials on September the 23rd,

4 and began reviewing all of the case materials at that

5 time, and began also formulating my opinion at that time,

6 and certainly continued to do that up until the time that

7 I arrived here this week.

8 Q. When did you arrive here?

9 A. I came in --

10

11 MR. TOBY L. SHOOK: Judge, again, we

12 will object. That is outside of the scope of 705.

13 THE COURT: Sustained. Let's stay

14 right on the point, please.

15

16 BY MR. DOUGLAS MULDER:

17 Q. All right. Well, just tell us what

18 information that you have received from the prosecution.

19

20 MR. TOBY L. SHOOK: Judge, again, this

21 is outside scope of 705.

22 MR. DOUGLAS MULDER: Well, Judge we

23 have a right to look at what he has reviewed.

24 MR. TOBY L. SHOOK: As long as they do

25 it according to 705.

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1 THE COURT: That is right. All we

2 need to do, is elicit from him what his opinions will be,

3 and the underlying basis of them, please.

4 MR. RICHARD C. MOSTY: It's the

5 underlying facts or data upon which he bases his opinion

6 is how the rule says, and that's the question --

7 MR. DOUGLAS MULDER: That's right.

8 THE COURT: Do that, and do that

9 briefly, please.

10 MR. DOUGLAS MULDER: All right.

11

12 BY MR. DOUGLAS MULDER:

13 Q. All right. Well, tell us all of the
14 underlying facts and data upon which you base your --
15 first, tell us what your opinion is.

16 A. My opinion based on a comprehensive
17 review of all the facts and circumstances and information
18 that was provided to me by the prosecutors and
19 investigators, it's my opinion that this crime scene was
20 staged, and that both Devon and Damon were killed by
21 someone that they knew, and someone that they knew very
22 well.

23 Q. Is that the extent of your conclusion?

24 A. That is it in summary form. Of
25 course, I looked at a variety of features at that crime
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1 scene in arriving at that opinion, and certainly have
2 some thoughts on those particular features.

3 Q. Yes, sir. Mr. Brantley, what I would
4 like from you is your -- just give us the entire opinion
5 that you intend to project to the jury?

6 A. That's it.

7 Q. You are not going to flower it up a
8 little bit?

9 A. Well, it depends on your questioning
10 and the questions from the prosecutor, but I also intend,
11 again, to talk about how I arrived at that opinion, and
12 again, the major features that I considered.

13 Q. Have you prepared a report?

14 A. No, I have not.

15 Q. Okay. Well, tell the Court the data
16 that you reviewed, and how you have arrived at that
17 decision?

18 A. If I may refer to my notes?

19 Q. You bet.

20 A. The materials I reviewed included --
21 excuse me -- crime scene photos, crime scene video,
22 autopsy photos, autopsy reports, I looked at aerial
23 photographs, crime scene sketches, also medical reports.

24 Q. Let me -- I'm trying to write these
25 down; crime scene photos, videos, autopsies?
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1 A. That's correct.

2 Q. Aerial photos?

3 A. That's correct.

4 Q. What else? Crime scene diagrams?

5 A. Crime scene sketches or diagrams.
6 Q. Sketches?
7 A. That's right.
8 Q. Okay.
9 A. Medical reports, forensic reports,
10 investigative reports or police reports.
11 Q. All right. Just a second. Forensic
12 reports?
13 A. That's correct.
14 Q. Okay.
15 A. Court documents, affidavits for arrest
16 and search.
17 Q. Okay.
18 A. Newspaper accounts and media accounts
19 of what occurred.
20 Q. All right.
21 A. Witness statements.
22 Q. Witness statements by whom?
23 A. By neighbors, friends and relatives of
24 the defendant, also Mrs. Routier's statement and Mr.
25 Routier's statement.
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1 Q. Okay.
2 A. Transcript of the 911 call that was
3 made, and a variety of consultations with the
4 prosecutors, and the investigators.
5 Also, I visited the residence at 5801
6 Eagle Drive.
7 Q. Okay.
8 A. I looked around in the vicinity of
9 that particular neighborhood. Consulted with forensic
10 experts that have also testified, and also consulted with
11 one of the medical examiners, Dr. Townsend-Parchman, I
12 believe.
13 Q. Did you talk with Mr. Bevel?
14 A. I did, yes, sir.
15 Q. Okay. When did you talk with him?
16 A. This was in October of '96, when I
17 travelled to Dallas for a pretrial consultation with the
18 prosecutors, investigators and forensic experts.
19 Q. Did you testify in their mock court,
20 mock trial?
21 A. No, sir.
22 Q. You didn't? Were you there for that?
23 A. No, sir.
24 Q. Okay. Let me see if I have got the --
25 everything that you tell me you based your opinion on?

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1 Crime scene photos, videos of the crime scene, autopsy
2 protocol, crime scene sketches and diagrams?
3 A. Autopsy photos, also.
4 Q. Crime scene sketches and diagrams?
5 A. That's correct.
6 Q. Aerial photographs?
7 A. That's correct.
8 Q. Medical reports?
9 A. That is also correct.
10 Q. Is that -- would that be the autopsy
11 protocols?
12 A. No. I included in the medical reports
13 reports of Mrs. Routier's injuries and wounds.
14 Q. Okay. Forensic reports?
15 A. That's correct.
16 Q. By whom?
17 A. Mr. Bevel, and I believe, Mr. Linch.
18 Also contained in that would have been, well, some
19 information from the medical examiner's autopsy protocol,
20 and I considered the forensic -- or the toxicology
21 results.
22 Q. Okay. Court documents?
23 A. That's correct.
24 Q. What court documents?
25 A. Well, affidavits for arrest and search
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1 warrant, primarily.
2 Q. Okay.
3 A. And investigative reports or police
4 reports, their entire file.
5 Q. Okay. Media accounts, witness
6 statements, and could you tell me who you had witness
7 statements from?
8 A. Well, they were numerous. I have not
9 listed them out, but for the most part, these were
10 employees of the Routiers' or coworkers, neighbors,
11 relatives.
12 Q. Okay. That would be Basia, or Barbara
13 Jovell?
14 A. Again, I have not delineated any.
15 Q. Okay. You don't remember the names?
16 A. No, sir.
17 Q. The young lady from Poland, that
18 speaks with an accent?
19 A. I am aware of the information that she

20 has provided to the prosecutors and the investigators and
21 that information was relayed to me.

22 Q. So you have not talked to her in
23 person?

24 A. No, I have not.

25 Q. Okay. All right. Friends and
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1 relatives?

2 A. When I'm talking about witness
3 statements and witness interviews, I'm not talking about
4 interviews that I have conducted myself. These are
5 accounts or reports of these interviews.

6 Q. All right. Things that came to you
7 second or third-hand?

8 A. Well, things that came to me from the
9 prosecutor and the investigators.

10 Q. Were these related to you orally or in
11 writing?

12 A. A combination.

13 Q. Okay. I assume you would have made
14 notes as to the oral revelations and the written ones you
15 have in your file?

16 A. That's correct.

17 Q. You have your file with you, don't
18 you?

19 A. Not the complete file, but I brought a
20 considerable amount of the case file information with me
21 to review while I have been here.

22 Q. Where is the complete file?

23 A. Most of it is back at Quantico.

24 Q. Well, I mean, why would you come to
25 Kerrville to testify and leave your file back in
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1 Quantico?

2 A. Well, the information that I left back
3 in Quantico I had finished with, plus I talked to the
4 prosecutor and they had a complete file here.
5 So I had, just to give you an idea of
6 what I have looked at, I had almost a thousand 8 by 10
7 color photographs of the crime scene, and aerial
8 photographs, autopsy reports, that stuff. That is a
9 rather sizable carry, if you will.

10 Q. You had a thousand photographs?

11 A. Well, 975, to be exact.

12

13 MR. DOUGLAS MULDER: Judge, we asked

14 for all of the photographs, and we do not have 975
15 photographs.

16 THE COURT: Fine. Let's continue with
17 the hearing, please.

18

19 BY MR. DOUGLAS MULDER:

20 Q. Would you show me what you brought of
21 your file?

22 A. I certainly can, if the Judge would
23 permit me to step down?

24

25 THE COURT: You may step down, by all
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1 means.

2

3 (Whereupon, the witness

4 Stepped down from the

5 Witness stand, and

6 Approached the jury rail

7 And the proceedings were

8 Resumed as follows:)

9

10 BY MR. DOUGLAS MULDER:

11 Q. Is this the extent of your file?

12 A. This is the extent of what I brought
13 with me here to Kerrville.

14 Q. All right. What about that envelope
15 you have on the --

16 A. These are personal notes.

17 Q. Are these photographs that you
18 selected out to --

19 A. These, I believe, were representative,
20 and very descriptive of some of the features that I
21 focused on.

22 Q. I just -- were these photographs taken
23 according to some FBI protocol?

24 A. No, sir.

25 Q. Are you sure about that?

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1 A. These were taken by the local police
2 department investigators.

3 Q. Okay.

4

5 MR. DOUGLAS MULDER: I'll just need a
6 minute to look this over.

7 THE COURT: All right. Go ahead.

8 MR. DOUGLAS MULDER: Do you want me to
9 do it now?
10 THE COURT: Yes, sir.
11 MR. DOUGLAS MULDER: I was going to do
12 it during the --
13 MR. JOHN HAGLER: Your Honor, while
14 he's looking at those documents, to save some time for
15 the Court, I'd like to go ahead and make some objections
16 now, based on what has been testified to.
17 THE COURT: That will be fine, Mr.
18 Hagler.
19 MR. JOHN HAGLER: Okay, Your Honor.
20 May I just put my book up here?
21 THE COURT: Oh, by all means, Mr.
22 Hagler.
23 MR. JOHN HAGLER: Your Honor, as I
24 understand the witness has already stated that he is
25 going to testify essentially, that in his opinion, that
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1 this is a staged crime scene; and secondly, that whoever
2 the assailant was was apparently well known to the
3 victims in this case.
4 First, your Honor, we would reurge all
5 of our previous objections that were voiced to the
6 testimony of Mr. Bevel, you know, under Daubert and
7 Robinson.
8 And I might also point out to the
9 Court, obviously, Daubert is a Supreme Court case, and
10 Robinson is a Texas Supreme Court case. The significant
11 fact is, your Honor, that they are interpreting Rule 702.
12 And Rule 702, as the Court well knows, applies both to --
13 is virtually identical as far as the civil and criminal
14 codes of evidence.
15 Now, so far, your Honor, this witness,
16 and our objection would be that; one, that under the
17 Daubert and Robinson standards, of course, this Court now
18 has the responsibility of reviewing expert testimony, and
19 determining whether or not it's relevant, whether it's
20 reliable, and whether it's based on a proven scientific
21 and valid principle.
22 In -- and our objection under Rule
23 702, 703 and 705, is the fact that essentially what this
24 witness is going to be testifying to, is that there is no
25 basis under any scientific technique or principle or
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1 theory that would validate his personal opinion. It's
2 simply mere speculation on his part as to what actually
3 happened.
4 Secondly, your Honor, there is no
5 adequate and reliable evidentiary base. In other words,
6 he is stating what he is basing his opinion on. It's
7 basically on various types of matters, documents or
8 photographs interviews, that in many cases are going to
9 be hearsay. Their reliability is unestablished and
10 unproven. We have no idea as to what the source of the
11 underlying facts, upon which he is basing his so-called
12 scientific opinion.
13 Now, in this respect, your Honor, I
14 might also mention that it denies us the opportunity of
15 effectively confronting and cross examining his -- the
16 underlying sources or witnesses that have provided him
17 with the information upon which his expert opinion is
18 based.
19 In that respect, it would constitute a
20 violation of the Sixth Amendment, and Article 1, Section
21 10 of the Texas Constitution.
22 Now, we're fully aware, your Honor,
23 that under Rule 704, that the Courts have liberalized
24 admission of expert testimony to the extent that an
25 expert witness can now, if in fact, he is a proven expert
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1 and his testimony is based on a valid scientific
2 technique or theory, can testify as to all of the
3 conditions of fact.
4 However, there is a close and fine
5 line as to what an ultimate issue in a case is, and what
6 a final issue is. And a final issue, I'm referring to
7 it, as a witness's opinion as to an individual's guilt or
8 innocence.
9 Now, in this case, if this witness
10 testifies, your Honor, we're going to cross that line.
11 He is not here simply to testify as to a particular
12 location of a so-called piece of evidence, or this type
13 of thing.
14 What he is going to be testifying to
15 is, if you objectively and fairly examine his testimony,
16 he is going to testify to this Jury, that the defendant
17 committed the offense. That is what it boils down to.
18 He is going to cross that line, and if
19 that be the case, it goes further than the intent of 704.
20 It's, in effect, -- this witness's expression as to his
21 personal opinion as to the guilt of the defendant.
22 Now, in that respect, again, it's

23 based on -- it's a violation of 702, 703 and 705. We've
24 effectively been denied our right of cross examining the
25 underlying sources of his opinion which, again, goes
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1 beyond the scope of Rule 704.

2 THE COURT: That's it?

3 MR. JOHN HAGLER: Well, we also,

4 obviously, your Honor, we have a 703 situation, a

5 balancing -- I think, even, you know, in the unlikely

6 event the Court would admit this testimony, we would

7 submit that clearly, clearly by -- we have had 13 days of

8 testimony, and now they bring in at the last minute one

9 witness, who says that he has examined a few photographs,

10 and has talked to some neighbors, and looked at a few

11 reports. And in his opinion the defendant is guilty.

12 We would submit that is clearly going

13 to be misleading, confusing and, again, would constitute

14 a violation of the Fourteenth Amendment.

15 THE COURT: Well, I think the opinion

16 is that both Damon and Devin Routier were killed by

17 someone they knew well and the crime scene was staged.

18 I think that is the opinion; is that

19 correct?

20 THE WITNESS: That is correct, your

21 Honor.

22 THE COURT: All right.

23 MR. JOHN HAGLER: One other thing too,

24 your Honor, is that he is again basing -- he has already

25 stated his source of some of those underlying facts, and

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1 again, it's broad. It's going to include hearsay

2 statements from other individuals, that we have been

3 denied our opportunity to confront and cross examine, so

4 his opinion is going to be based on inadmissible or

5 testimony that we would submit would be hearsay testimony

6 and therefore would constitute a violation of the Sixth

7 Amendment, and Article 1, Section 10.

8 THE COURT: All right. Objection

9 overruled, and with the 401, 403 balancing test, the

10 Court feels that it's relevant and the Court feels the

11 prejudicial effect is far outweighed by the probative

12 value and it would help the jury come to a just verdict

13 in this particular case.

14 MR. RICHARD C. MOSTY: Of course,

15 we're not through with our examination of him yet.

16 THE COURT: We understand that, and we

17 likewise understand Mr. Hagler's objections.
18 MR. DOUGLAS MULDER: Judge, this is
19 going to take some time. And, I might point out to the
20 Court, they have reports in here, that we have never seen
21 before. As the Court may well understand, and I am going
22 to need to read these reports.
23 THE COURT: Well, how long do you
24 think it will take you?
25 MR. DOUGLAS MULDER: Well, I don't
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1 know, I'm reading them as I go along, but I don't know
2 how many there are.
3 MR. RICHARD C. MOSTY: Here is
4 information that he has based on -- for instance, on this
5 stack here is the Dallas Morning News, which if I -- my
6 recollection is, that it has not been admitted into
7 evidence, nor will it be, ever in this trial.
8 It is going to take us a while to go
9 through all this stuff.
10 THE COURT: Well, do you think --
11 MR. TOBY L. SHOOK: Well, Judge the
12 basis of the hearing is to go over the underlying facts
13 and data. It's not -- they can read the file before they
14 cross examine him though. We can move forward.
15 THE COURT: Well, I understand that.
16 The hearing is here and what we intend to do is go ahead.
17 Before you cross examine the witness, I certainly will
18 give you time to read the file.
19 MR. RICHARD C. MOSTY: We're entitled
20 in this hearing to direct our examination to the
21 underlying facts and data fully, not partially, but
22 fully. And, we have got to have adequate time to do
23 that.
24 THE COURT: And how long will that
25 take?
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1 MR. DOUGLAS MULDER: Well, I can't --
2 I can't do it until I read the file. And I have -- I got
3 the file about five minutes ago.
4 THE COURT: Well, you are experienced
5 attorneys, and how long do you think it will take you to
6 read it?
7 MR. DOUGLAS MULDER: Judge, I don't
8 know. A couple days? I don't know. Well, you know, it
9 may take me a half hour. I don't know.
10 THE COURT: I'm happy to recess.

11 MR. DOUGLAS MULDER: I don't want to
12 reread stuff I have already read.
13 THE COURT: I understand.
14 MR. DOUGLAS MULDER: But there are
15 things in here that I have never seen before, and I need
16 to read it.
17 THE COURT: Well, if we recess for 30
18 minutes and see what it's like then, is that fair enough?
19 MR. DOUGLAS MULDER: Sure.
20 THE COURT: Fine. Let's do that then.
21 MR. RICHARD C. MOSTY: May we know
22 that we have everything?
23 MR. DOUGLAS MULDER: What do we have
24 up there, Mr. Brantley?
25 THE WITNESS: My notes.
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1 MR. DOUGLAS MULDER: Could we see
2 those too?
3 THE WITNESS: Certainly.
4 THE COURT: All right. We will recess
5 until 10:00 o'clock, and see how it goes at that time.
6 MR. DOUGLAS MULDER: Where can we go
7 to confer?
8 THE COURT: You can go in Judge Proh's
9 office if you want to.
10
11 (Whereupon, a short
12 recess was taken, after
13 which time, the
14 proceedings were
15 resumed in open court,
16 in the presence and
17 hearing of the
18 Defendant, being
19 represented by his
20 Attorney, but outside of
21 the presence of the jury
22 as follows:)
23
24 MR. RICHARD C. MOSTY: Your Honor, we
25 need a few more minutes.
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1 THE COURT: How much longer?
2 MR. RICHARD C. MOSTY: Well, I don't
3 know. Mr. Mulder is trying to read it as fast as he can.
4 You know, this lady is on trial for her life.

5 THE COURT: We understand that, Mr.
6 Mosty. But, I mean, I have been very generous with the
7 time.

8 We can -- how many more minutes can
9 you have? You have how many lawyers back there?

10 MR. RICHARD C. MOSTY: Well, how many
11 are you going to let cross examine the witness, your
12 Honor? If you let all of us cross examine him, I bet we
13 can be ready in just a minute.

14 THE COURT: This is not discovery, and
15 I think that you are entitled after the witness -- how
16 much time do you need?

17 MR. RICHARD C. MOSTY: This gentlemen
18 is coming in with a crystal ball, and we need a little
19 bit of time to do that, and Mr. Mulder is reading as fast
20 as he can. I think he will be done in a few minutes.

21 THE COURT: 15 more minutes.

22

23 (Whereupon, a short

24 Recess was taken,

25 After which time,

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1 The proceedings were

2 Resumed on the record,

3 In the presence and

4 Hearing of the defendant

5 As follows:)

6

7

8

9 THE COURT: All right. Be seated,

10 please, ladies and gentlemen.

11 Bring the -- tell the lawyers to come

12 back in, please.

13 All right. Mr. Brantley, if you will

14 be kind enough to take the stand, please.

15 MR. DOUGLAS MULDER: Judge, we are

16 reporting -- we would like this on the record. We are

17 reporting back, as instructed by the Court.

18 THE COURT: Thank you.

19 MR. DOUGLAS MULDER: We have not had

20 an opportunity to review the files that Mr. Brantley has

21 used to form his opinion, but he has been cooperative

22 with us and has gone through his notes with us and we

23 have been able to decipher his notes.

24 THE COURT: All right. Thank you.

25 The hearing will continue.

1 MR. DOUGLAS MULDER: Judge, excuse me,
2 I am not finished yet. Would you mind if I complete.
3 THE COURT: Oh, by all means.
4 MR. DOUGLAS MULDER: Yes, sir. Did
5 you want to go ahead, Judge? I don't want to interrupt
6 you.
7 THE COURT: Oh, no, Mr. Mulder. I
8 want to hear what you have to say.
9 MR. DOUGLAS MULDER: Okay. Very good.
10 It includes some seven pages, and I have looked through
11 the photographs, but I have not read the reports and
12 there are many reports in there that we have not seen.
13 In fact, there are reports by Cron, that Cron did not
14 furnish us when he testified.
15 So, at any rate, I would like an
16 opportunity to go through these. And let the record
17 reflect that the file is approximately, what, Mr.
18 Brantley? Three or three and a half inches thick?
19 THE WITNESS: Well, if I had to call
20 it, I would say maybe around four.
21 MR. DOUGLAS MULDER: Four inches
22 thick. I stand corrected.
23 THE COURT: Thank you. Well, that is
24 fine. I think at the appropriate time you will have a
25 chance to do that, but for this hearing, is there
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1 anything else for this hearing you want to talk about?
2 MR. DOUGLAS MULDER: Yes.
3 I want to ask Mr. Brantley just briefly.
4
5
6 VOIR DIRE (Continued)
7
8 BY MR. DOUGLAS MULDER:
9 Q. We would like to know -- you have
10 given us, Mr. Brantley, your opinion in this case, and
11 that is the sum and substance of your opinion; is that
12 right?
13 A. That's correct.
14 Q. All right. And if you would just
15 articulate for the Judge the basis upon which that
16 opinion was formed?
17 A. Well, the basis of opinion was
18 formulated on a thorough review of all of the case
19 materials that I have already outlined for you.

20 Q. Is there -- and I'm just asking this
21 for my own edification. The learned Judge probably
22 already knows the answer to this question, but is there
23 any empirical way to check the accuracy of your
24 conclusion?

25 A. The analysis that I --
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1
2 MR. TOBY SHOOK: Judge, we will object
3 again. This is going beyond the scope of 705.
4 THE COURT: Sustained. Let's move on.
5 MR. DOUGLAS MULDER: You don't want to
6 know whether or not there is any way to check the
7 accuracy of his analysis?
8 THE COURT: Please ask your next
9 question, Mr. Mulder.
10 MR. DOUGLAS MULDER: Judge, that was
11 my next question.
12 THE COURT: Fine. It's been objected
13 to. The objection is sustained. Ask the next one.
14 MR. RICHARD C. MOSTY: Your Honor, we
15 would request the ability to go into that under Daubert.
16 That is, under Daubert and Robinson, that is one of the
17 tests as the Court well knows, the Court is the
18 gatekeeper for scientific opinion or speculative opinion,
19 whichever it is, and the Court is the gatekeeper and
20 unless there is some empirical manner of testing the
21 accuracy of it, the testimony should not be allowed.
22 THE COURT: Thank you.
23 MR. RICHARD C. MOSTY: That is a part
24 of this hearing and the Court is telling us we cannot do
25 that, if I understand.
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1 THE COURT: No, I'm just telling Mr.
2 Mulder to ask your next question.
3 MR. DOUGLAS MULDER: Judge, that was
4 my next question. I would think that you, in keeping the
5 gate, that you would want to know whether or not there is
6 any way that -- the accuracy of his conclusion.
7 THE COURT: Well, is there?
8 THE WITNESS: Based on the standards
9 within my profession, again, there has been numerous
10 publications and text books where this information is
11 reported on, and certainly anyone with the background,
12 education and training and experience that I have had,
13 would come to, I believe, the same conclusion.

14 Certainly, the people that I work with at the FBI Academy
15 are all in agreement with my conclusion.

16

17

18 VOIR DIRE (Continued)

19

20 BY MR. DOUGLAS MULDER:

21 Q. Do you traditionally review each
22 other's work before you testify?

23 A. That is correct. Not necessarily
24 before we testify, but it's a collaborative, group
25 process that we engage in. That's correct.

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1 Q. Before you issue some sort of an
2 opinion?

3 A. At times, again, it varies. It's not
4 mandated that we do that, but just as a matter of course,
5 we try to that whenever possible.

6 Q. Do you have a committee?

7

8 MR. TOBY L. SHOOK: Judge, again, I am
9 going to object.

10 THE COURT: Mr. Mulder, can we keep
11 the questions on the basis --

12 MR. DOUGLAS MULDER: Well, I think I
13 am getting into things that I am going to cross examine
14 him on, Judge.

15 THE COURT: Thank you. We can do that
16 at the appropriate time. Anything else for this hearing?

17 MR. DOUGLAS MULDER: Well, Judge, we
18 simply suggest to the Court, and we would like to develop
19 the fact that there is no empirical test upon which the
20 accuracy of his proclamation or his conclusion can be
21 tested and judged.

22 THE COURT: I understand what you are
23 saying. The Court has heard that. Anything else?

24 MR. DOUGLAS MULDER: No, if you are
25 denying me any opportunity to go further on that?

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1 THE COURT: I think he already
2 answered that question.

3 MR. RICHARD C. MOSTY: Well, your
4 Honor, he didn't answer that question. What he said was
5 that there was a lot of literature in the field. And
6 that is not the question. My question is not -- Mr.
7 Mulder's question is not whether or not there is a bunch

8 of literature because there is a lot of literature in all
9 sorts of idiotic fields and drawing idiotic conclusions.
10 The question is -- am I interrupting a conversation?
11 THE COURT: Oh, by no means.
12 MR. RICHARD C. MOSTY: The question is
13 not whether or not there is literature or whether or not
14 there is information on it. The question is whether or
15 not something can be empirically, objectively tested
16 beyond the opinion and say, yes, in 60 percent of these
17 times, this is right; or 95 percent or whatever.
18 There is no method to empirically test
19 whether or not he is accurate. He can just get up there
20 and spout an opinion, based upon non-testimony and
21 non-evidence, and there is no way that anybody can say,
22 is he right or is he wrong?
23 THE COURT: Well, I think you can
24 develop that on cross examination. Anything else for
25 this hearing?
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1 MR. RICHARD C. MOSTY: Judge, that is
2 the gatekeeping that the Court is supposed to do --
3 THE COURT: Mr. Mosty, please, I have
4 already ruled. If I have made an error, I think I (sic)
5 have preserved it, please.
6 MR. DOUGLAS MULDER: Let me ask him
7 this last thing, and as the gatekeeper I would think you
8 would want to know this.
9 THE COURT: Okay.
10 MR. DOUGLAS MULDER: In fact, you may
11 be thinking of it already.
12
13
14 VOIR DIRE (Continued)
15
16 BY MR. DOUGLAS MULDER:
17 Q. But I want to know, Mr. Brantley, if
18 the information upon which you based your opinion and
19 conclusion is totally accurate?
20
21 MR. TOBY SHOOK: Judge, again, we will
22 object, they are going outside of the scope of the
23 hearing.
24 THE COURT: I think that is within the
25 province of the jury. I'll sustain the objection. Let's
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1 move on. Anything else?

2 MR. JOHN HAGLER: Your Honor, could I
3 just wrap this up by finalizing our objections?

4 THE COURT: Oh, yes, by all means, Mr.

5 Hagler. I would encourage that.

6 MR. JOHN HAGLER: Okay. Your Honor,

7 as to the so-called expert opinion testimony, first, we

8 would submit that it's been a failure for the State as

9 the proponent of this expert testimony, to establish --

10 to lay the predicate with the four Daubert factors; and

11 also, the subsequent Robinson factors, that have been

12 incorporated by the Supreme Court. We would submit have

13 been further extended to Rule 702.

14 Secondly, your Honor, there has been

15 no showing of reliability or relevancy of this witness's

16 testimony; and in that connection, there has been a

17 failure of a showing of methodology, in which an opinion

18 could be properly formed, as to whether or not there was

19 in fact staging.

20 I might also point out, your Honor,

21 that the cases have held, that a witness's opinion, his

22 self-serving statements, as to his own methodology, and

23 what have you, fail to establish a proper predicate under

24 Daubert and Robinson.

25 In addition, your Honor, there is a

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1 failure of establishing proper qualifications for this

2 witness to testify as to his opinion, as have been stated

3 to the Court. And, in this respect, your Honor, we would

4 further urge that there has been a total lack of a

5 showing of a evidentiary base, of a reliable evidentiary

6 base.

7 This witness has already advised the

8 Court that his opinion is based on various statements of

9 certain individuals, those individuals, that evidence is

10 not before the Court. It's hearsay on hearsay.

11 And allowing his opinion testimony

12 would constitute a violation of our 6th Amendment right

13 to confront and cross examine those witnesses; and also

14 would be a violation of Article 1, Section 10 of the

15 Texas Constitution.

16 Now, your Honor, in summary, our

17 objection is, that this actually is not expert testimony,

18 it is not valid expert opinion testimony. It's merely

19 speculation, it's a creation of testimony, and that it

20 goes beyond the intent of Rule 704 and the fact that it's

21 an expression of guilt as to the defendant's guilt or

22 innocence, as opposed to a mere ultimate issue in the

23 case.

24 Consequently, the admission of this

25 evidence and this testimony would constitute a violation

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1 of the Fifth and Fourteenth Amendments to the United

2 States Constitution, Article 1, Section 10 of the Texas

3 Constitution; Rules: 701, 702, 703 and 705 of the Texas

4 Rules of Criminal Evidence. And we would also ask for a

5 403 ruling, please.

6 THE COURT: All right. Objection is

7 overruled. The Court -- Mr. Brantley has revealed the

8 underlying basis and facts of his testimony, it will be

9 permitted.

10 The 401 and 403 ruling will be that

11 the Court considers it relevant. The probative value far

12 outweighs any prejudicial effect it might add, in the

13 fact that it might -- it would assist the jury in coming

14 to a just verdict in this particular case.

15 With that in mind, we will bring in

16 the jury and commence the testimony.

17 MR. JOHN HAGLER: Could we have a

18 running objection to all of his testimony, your Honor?

19 THE COURT: Oh, yes, you may.

20 THE COURT: All right.

21

22 (Whereupon, the jury

23 Was returned to the

24 Courtroom, and the

25 Proceedings were

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1 Resumed on the record,

2 In open court, in the

3 Presence and hearing

4 Of the defendant,

5 As follows:)

6

7 THE COURT: Good morning, ladies and

8 gentlemen.

9 Let the record reflect that all of the

10 parties in the trial are present and the jury is seated.

11 Ladies and gentlemen of the jury, this

12 witness has already been sworn outside of your presence.

13 Go ahead, please, Mr. Shook.

14 MR. TOBY L. SHOOK: Thank you, Judge.

15

16

17 Whereupon,

18

19 **ALAN BRANTLEY,**

20

21 was recalled as a witness, for the State of Texas, having

22 been previously duly sworn by the Court to speak the

23 truth, the whole truth, and nothing but the truth,

24 testified further in open court, as follows:

25

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1

2 DIRECT EXAMINATION

3

4 BY MR. TOBY L. SHOOK:

5 Q. State your name, please.

6 A. Alan Brantley.

7 Q. And how are you employed, sir?

8 A. I'm a supervisory special agent with

9 the Federal Bureau of Investigation.

10 Q. And, where are you currently assigned?

11 A. I'm currently assigned to the National

12 Center for the Analysis of Violent Crimes, which is part

13 of the Critical Incident Response Group at Quantico,

14 Virginia.

15 Q. How long have you been with the FBI?

16 A. Approximately 13 and a half years.

17 Q. And, what positions have you held with

18 the FBI?

19 A. Other than being an investigative

20 agent in the field, I have been assigned to the National

21 Center since 1988, and in that position have been

22 responsible for the analysis of violent crimes, and the

23 providing of information of lead value to investigators

24 that are confronted with repetitive violent crimes,

25 unusual and particularly vicious types of violent

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1 offenses as well.

2 Q. And what is your current position?

3 A. I am a supervisory special agent as I

4 have said, but I am also the Program Manager of the

5 Forensic Psychiatry Fellowship in conjunction with the

6 Armed Forces of the United States out of Walter Reed Army

7 Medical Center in Washington D.C.

8 I am also the program manager of the

9 component at the National Center, that addresses

10 individuals that threaten and/or attempt to use weapons
11 of mass destruction. These are primarily weapons
12 involving nuclear, biological and chemical threats or
13 entities.

14 Q. What are your duties with your current
15 position with the FBI?

16 A. Well, I am primarily responsible for
17 supervising others at the National Center in the areas
18 that I have already outlined, and also, working a variety
19 of violent offenses, including homicides and threats
20 against others.

21 Q. Tell the jury your educational
22 background.

23 A. I received a Bachelor's of Arts in
24 1972 from Appalachian State University with an
25 undergraduate degree in psychology.

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1 I completed a Master's degree in
2 counseling and psychology, also at Appalachian State in
3 1976 after I served a tour as an officer in the Marine
4 Corps.

5 From that point, I did post-master's
6 work at Appalachian State, also at North Carolina State
7 University and Virginia Tech.

8 Q. And how were you employed prior to
9 joining the Bureau?

10 A. Prior to my joining the FBI, I was
11 employed as a psychologist in a maximum security prison
12 in the State of North Carolina for about six years.

13 Q. What were your duties there?

14 A. A combination of things, but primarily
15 I evaluated and assessed the inmates in that population,
16 all adult males. I provided evaluations for the court,
17 and presentencing studies, and also did reviews and
18 analysis of inmate cases for consideration of release
19 back into the community and parole.

20 Q. Okay. Do you have any specialized
21 training?

22 A. My specialized training, while in the
23 FBI, is centered on information about violent crime,
24 death investigation, crime scene analysis, forensic
25 pathology, forensic dentistry, almost any type of course
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1 that might help us to understand not only the behavior of
2 violent criminals, but some of the things relating to the
3 forensic evidence that they may leave behind as well.

4 Q. Have you served on any faculties?

5 A. I am on the faculty at the FBI

6 Academy, and also an adjunct faculty member of the

7 University of Virginia.

8 Q. In what particular areas have you

9 lectured or taught?

10 A. Primarily, on the violent crime scene

11 analysis, and the assessment of dangerousness, also,

12 criminal psychology. While at the FBI Academy, I taught

13 a course at the National Academy on applied criminal

14 psychology. Also, I taught the new FBI trainees that

15 same course on applied criminal psychology.

16 Q. Have you made presentations in your

17 field?

18 A. I have.

19 Q. What types?

20 A. Well, again, centering on violent

21 crime, crime scene analysis, and criminal psychology, and

22 we provide presentations in schools, ranging from

23 week-long schools, to one and two-hour presentations, to

24 law enforcement audiences, attorneys and judges, mental

25 health professionals, academics, students, it's just a

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1 very broad range of audiences.

2 Q. And, are you a member of any

3 professional organizations?

4 A. I am. I'm a member of the American

5 Academy of Criminal Justice Sciences, also the

6 International Homicide Investigators Association, Harvard

7 Associates in Police Science and the Association of

8 Threat Assessment Professionals.

9 Q. And what is the Criminal Investigative

10 Analysis Program?

11 A. Well, for the most part, when you talk

12 about criminal investigative analysis, or crime scene

13 analysis, we're talking about the analysis of the

14 behavior displayed at a crime scene by an offender.

15 What we look at, to determine this

16 assessment, is primarily in three areas: Victimology, in

17 other words, what is it about a particular victim that

18 increases his or her risk of becoming a victim of a

19 violent crime. We also look at investigative reports and

20 police reports. And we also concern ourselves and focus

21 on crime scene photos and information about that crime

22 scene.

23 We believe since all crimes are

24 committed by human beings, that some stage along this

25 crime commission process, there is going to be a display

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1 of human behavior, that lends itself to analysis,
2 interpretation, and from that analysis, information of
3 lead value that could be provided to investigators, to
4 prosecutors and to jurors, like yourselves, to hopefully
5 get a little better understanding of the types of
6 criminal behavior that you are not as likely to encounter
7 in your life experiences, as I am to encounter in what I
8 do for a living.

9 Q. Have you personally received case
10 materials to review in regards to a murder that occurred
11 in Rowlett, Texas on June 6th, 1996?

12 A. I have.

13 Q. Involving Devon and Damon Routier?

14 A. That's correct.

15 Q. Okay. What materials did you utilize
16 in your review?

17 A. The materials that I had to review,
18 were crime scene photographs, crime scene video, autopsy
19 photographs, autopsy reports, investigative reports, or
20 police reports, forensic reports, I saw some aerial
21 photographs, I also looked at medical reports. I looked
22 at some legal or court documents, the affidavits for
23 search warrant and arrest. Considered information that I
24 was able to obtain in consultations with investigators
25 and prosecutors.

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1 I also visited 5801 Eagle Drive and
2 did a survey of not only the location of that residence
3 but also the immediate vicinity. I met with some of the
4 forensic experts and also talked with Dr.
5 Parchman-Townsend, one of the medical examiners that did
6 the autopsy on one of the victims.

7 Q. After reviewing all that, were you
8 able to form some opinions about the case?

9 A. I was.

10 Q. Okay. And what is that opinion?

11 A. My opinion is that in this particular
12 case, and this particular crime scene, that this crime
13 scene had been staged, and in all likelihood whoever
14 killed both Devon and Damon, was someone that they knew,
15 and someone that they knew very well.

16 Q. When you say a crime scene is staged,
17 what do you mean?

18 A. What I mean by staging is that the
19 crime scene had been altered. There had been things that

20 had been moved, or things that had been disturbed that
21 you don't ordinarily see disturbed in crime scenes like
22 this. And there are some other things that you would
23 expect to be disturbed that were left alone or left
24 untouched.

25 Q. What is staging?

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1 A. Well, staging is -- when we see
2 staging, it suggests to us a couple or three things.
3 First and foremost, the reason that
4 the offender will stage crime scenes is to divert
5 attention away from the most logical suspect and/or the
6 most logical motive. There are some other occasions when
7 scenes are altered or scenes are staged where there is
8 not necessarily any intent, really, to cover a criminal
9 act, but because of embarrassment to a family, who may
10 have discovered a loved one that has committed suicide,
11 they may move some things, take some things away before
12 discovery, again, just to prevent some embarrassment
13 either to themselves, or to the deceased.

14 Q. Now, what factors did you use in
15 forming your opinion in this particular case?

16 A. Well, I looked at some major features.

17 And generally, when we start looking at these kinds of
18 offenses, we try to incorporate as much information as we
19 can.

20 But first and foremost, at least I do,
21 I always ask the question: Are there any similar or
22 related events in the area? I'm trying to get an
23 assessment of the crime rate; is it a high crime rate
24 area or a low crime rate area?

25 Unless I am able to establish that, in

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1 this case I was informed it was a very low crime rate
2 area. As a matter of fact, certainly no other homicides
3 like this, to my knowledge, ever, and the homicides that
4 had occurred had been resolved, or had been effectively,
5 you know, ruled one way or the other.

6 Also, what I am trying to do with my
7 assessment of the crime rate, I'm trying to determine
8 risk factors; risk factors to the victims, and risk
9 factors for the offender, which is also very important.

10 I think the vast majority of offenders
11 that I have ever encountered do not want to get caught.
12 So, they are going to attempt to commit their crimes in
13 such a way as to prevent that.

14 Well, they are going to take into
15 consideration, for instance, whether there are any
16 witnesses around, for instance.
17 In this particular case, I looked at
18 the location of the home and how it was surrounded by
19 homes on almost every side. I also looked --
20 Q. Did you -- let me just interrupt
21 you -- did you look at photographs, aerial photographs of
22 the neighborhood?
23 A. I did.
24 Q. And you also went to that neighborhood
25 yourself; is that right?
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1 A. That's correct.

2

3 MR. TOBY SHOOK: Okay. Could I have
4 the witness step down for a moment? Please step down.

5 THE COURT: Yes, you may step down.

6

7 (Whereupon, the witness

8 Stepped down from the

9 Witness stand, and

10 Approached the jury rail

11 And the proceedings were

12 Resumed as follows:)

13

14 BY MR. TOBY SHOOK:

15 Q. Let me show you what has been entered

16 into evidence as State's Exhibit 7. Do you recognize

17 this as being one of the aerial photographs?

18 A. I do.

19 Q. Okay. Is the -- turning this to the

20 jury, so we can all see. What is it about the particular

21 neighborhood that you consider as one of the risk -- as

22 you call them risk factors; is that right?

23 A. Well, as I suggested, this victim

24 residence is completely surrounded, actually, by

25 residences on all sides. Certainly, it would increase

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1 the observation of others, and somebody being detected

2 coming in and out of that area. That is certainly

3 something that I think that most criminals are going to

4 take into consideration.

5 Also, I looked at other factors, and

6 considered that the vehicle was in front of the home,

7 suggesting to someone that might have been motivated to

8 burglarize that home, that there may be somebody there.
9 Certainly, that is a deterrent, that is a risk factor for
10 burglars that don't want to get caught, or don't want
11 anyone else to know what they are up to.
12 Also, was able to learn from
13 investigators and from reports, that there were people
14 sleeping downstairs, and there were lights on. So there
15 was light emanating from the inside.
16 Someone coming around to the back of
17 the house certainly would have been able to see that
18 there was light on downstairs. Again, suggesting to an
19 offender motivated to either rob, rape or murder that
20 obviously, from these lights being on, then someone may
21 be down there occupying that space. That is certainly
22 another risk factor.
23 Q. Let me ask you, Agent Brantley, is
24 there anything about the make-up of the neighborhood or
25 the way the streets are constructed that is valuable
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1 information to you, in regards, again, to the risk
2 factors?
3 A. Well, you look at neighborhood
4 permeability, and again, you look at people that live
5 right on a major thoroughfare, certainly that increases
6 their risk of coming into contact with a variety of
7 people, because it is a high trafficked area.
8 But when you consider other areas,
9 like a cul-de-sac, it's a little more secure, and people
10 coming back into that location, they need to be going
11 back there, and are more likely to be observed or
12 contacted.
13 Plus, if an offender is detected in
14 his intention to flee or escape, then his options for
15 escaping successfully are also more limited when he goes
16 into a development which is surrounded by homes and other
17 obstacles and certain access roads. It doesn't
18 necessarily give them a direct access out to a major
19 thoroughfare and escape.
20 Q. Okay. You can go back to your seat.
21
22 (Whereupon, the witness
23 Resumed the witness
24 Stand, and the
25 Proceedings were resumed
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1 On the record, as

2 Follows:)

3

4 BY MR. TOBY L. SHOOK:

5 Q. Now, Agent Brantley, in regards -- you

6 looked at the neighborhood itself, and what type of

7 neighborhood it is. Then do you move, in what you call

8 the risk factors, you look at the home itself where the

9 crime occurred?

10 A. Certainly. And again, I start from a

11 broader, expansive view of the neighborhood and the

12 surrounding area and start moving in and start focusing a

13 little more. Certainly, focusing on the alleged point of

14 entry and escape, that window and that cut screen.

15 As you look at that, and you look at

16 the outside, you see that once someone has negotiated or

17 gotten beyond that 6-foot fence, then you have some other

18 interesting considerations.

19 I think first and foremost, when you

20 look into that garage, what you are confronting almost

21 immediately is an extremely large animal cage, or what

22 one would surmise was the cage of an animal. I think if

23 you were a stranger, and you don't know who lives there,

24 or what you are likely to encounter, you may suspect

25 reasonably, that there may be a rather large animal, or a

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1 large dog.

2 And certainly a dog cannot only

3 confront the would be offender, but can also alert on the

4 fact that someone is there, and cause people to

5 investigate and again identify whoever is trying to gain

6 access.

7 Q. Is that what you call -- what your --

8 in your analysis, called a risk factor?

9 A. A risk indicator, a risk factor,

10 certainly, for the offender, something that would

11 increase his risk.

12 Q. Okay. A person that is going to be

13 trying to get into the house, or commit a crime or

14 whatever?

15 A. Right. I would think so.

16 Q. Now, when you are doing this analysis,

17 again, what are you basing this on? What type of

18 training do you have, when you are conducting this type

19 of analysis?

20 A. Well, primarily, in addition to the

21 all the education, training and specialized course work

22 that I have had, it's just a matter of experience. We

23 are -- we work literally hundreds of violent offenses and
24 homicides annually. And so, based on that database, or
25 that base of experience, that is primarily what we work
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1 from.

2 Q. Okay. So as far as risk factors, you
3 all are looking at things which would worry, I guess,
4 someone that is going to commit an offense?

5 A. Exactly. I might also add, that in my
6 years of experience in the prison setting where I
7 interviewed hundreds of violent felons, we also got into
8 these kinds of issues, and I was able to determine there
9 MO, and some of their rituals.

10 And then since that time, since being
11 at the FBI Academy, we have done a number of research
12 projects, where we go out into the prisons, and we
13 interview offenders that commit violent crimes and
14 homicides, and we ask them these same kinds of questions:
15 "What is it that you consider when you are attempting to
16 assault or when you are planning your assault? What is
17 it you consider while you are there committing the actual
18 homicide? And what do you consider what you do
19 post-offense, once you have exited?"

20 And again based on that body of
21 information and that body of knowledge, we use that to
22 incorporate that into it too.

23 Q. And what you were just saying is, at
24 the point of entry at that window, there was some type of
25 animal cage; is that right?

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1 A. That's correct. And in addition to
2 that, I think on the outside, there are some animal bowls
3 or water and food dishes also, that might suggest to
4 someone motivated to break in, that there in all
5 likelihood is an animal present.

6 Q. Okay. Let me show you what's been
7 marked as State's Exhibit 40-B. Is this a photograph, I
8 guess on the inside, of the large cage that you're
9 talking about?

10 A. That's correct.

11 Q. That is the type of thing, I guess,
12 someone coming in is going to be a little wary of if they
13 see an animal cage?

14 A. I believe so. Someone not familiar
15 with the area, not knowing what kind of animal might be
16 contained in that size of cage is reasonably going to be

17 concerned, I would think.

18 Q. Okay. You said you recall bowls of
19 food on the outside patio?

20 A. That's correct.

21 Q. Okay. For animals?

22 A. Yes. It's reasonable to assume,
23 for -- on the part of an offender, that those are animal
24 dishes.

25 Q. Is that another factor that, again,
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1 you consider about --

2 A. Certainly.

3 Q. Okay. You said, I believe, your
4 information was that the -- that back patio door, that
5 there was a TV visible from the outside?

6 A. Light.

7 Q. Okay. What does that -- is that
8 another risk factor you consider?

9 A. Certainly. Again, for the most part,
10 individuals that are motivated at least to rob or
11 burglarize, they are going to want to go into a residence
12 that no one is home. And when you have these indicators
13 that someone is there, I think for some, not all
14 certainly, they are less likely to select that house.
15 Again, victim selection is important
16 to these people. And what they are keeping in mind, is
17 risk to themselves.

18 Q. What about the point of entry itself,
19 the cut screen? What did that tell you?

20 A. In terms of risk, not anything
21 significant, but, I think it was unusual in the way that
22 it was cut. In our experience when we see screens that
23 are cut, and we have seen screens that have been cut
24 before in the commission of an offense, they are
25 generally small cuts that they use to gain access to a
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1 lock or a latch or something else that they can throw,
2 and then they will gain entry through a window or through
3 a door. But quite often, they will pull the screen off
4 after they have slit the screen to open the lock.

5 Q. So that is not really a risk factor,
6 that is another --

7 A. I didn't consider that so much a risk
8 factor.

9 Q. Okay. I might be getting a little
10 more ahead of myself. Let's stick along these risk

11 factors as to the offender. What else about the crime
12 scene in the house do you feel would be a risk factor?
13 A. I think as you move into the
14 residence, and again, if you are to believe that this is
15 someone that is unfamiliar with the floorplan of the
16 home, and as compressed as it is, and was much, as many
17 personal effects that are in that garage, it's a very
18 narrow route.
19 And again, for someone to come in
20 there and negotiate, through that area and not knock into
21 something or not knock something over, that is a factor.
22 And again, as you proceed on in, again, if you consider
23 that it was dark up until the time that they got into
24 maybe the utility room or the kitchen, and then the Roman
25 room or the den, that is something that was considered.
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1 But I think what becomes more
2 important, from the standpoint of risk, is that the
3 offender in this particular case, which is very
4 contradictive of my experience, focused on the children,
5 went to the children, assaulted them first. And again,
6 their wounds, the nature and severity of their wounds was
7 significantly different than the wounds of Mrs. Routier.
8 Now, what that suggests to us, and
9 what that tells us, is very contradictory, is that for
10 the most part, offenders coming into an environment like
11 that that encounter victims, or potential victims, they
12 generally are attempting to limit their risks, by dealing
13 with, or dispatching the adult members first. Because
14 again, the adults, especially male adults, would
15 represent the greatest threat or greatest risk. In this
16 case, that was not accomplished.
17 Also, after the kids are stabbed, and
18 either dead or dying, and Mrs. Routier is assaulted, here
19 we have an offender who is just, in his own mind, has to
20 believe committed a homicide, a multiple homicide, and
21 then here is a lady, that gets up, and chases or pursues
22 this individual, who has already stabbed two boys, in all
23 likelihood killed these two boys, and assaulted her and
24 armed with this knife.
25 And then he is chased by this lady who
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1 is about 5'2" I understand, certainly not nearly the size
2 that the alleged offender was described to be, and he
3 runs away from her. Which again, increases his risk,
4 because now he has left a living witness, someone that

5 can not only identify him possibly, but also somebody
6 that can sound the alarm, and either get her husband to
7 come downstairs or call the police.
8 That also is a major risk factor, and
9 a major, glaring error in the behavior of criminals that
10 do these kinds of things.
11 And then, proceeds on out of the
12 residence and I think increasing his risk further,
13 because if she continued to pursue, then he throws down
14 this weapon, or drops this weapon. So, he no longer has
15 that to defend himself, or to silence this potential
16 witness, or at least to stop her from continuing to
17 pursue him.
18 That also is something I think that
19 increases his risk and something you don't ordinarily
20 see.
21 Q. Okay. When you are making an
22 assessment of a crime scene, from your standpoint, are
23 you looking at, kind of, contradictions, or what's wrong
24 with this?
25 A. Exactly. And that is what we start
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1 with. I guess, fundamentally is, "What's wrong with this
2 picture?" And what we're looking for, are behavioral
3 contradictions, and forensic contradictions. And things
4 that just don't line up with our experience and what
5 these people have told us in past interviews.
6 Q. Okay. Are there any other risk
7 factors that you took into consideration?
8 A. Well, I think primarily that was all,
9 but what was interesting, and what I did note, was
10 that -- it kind of goes back to the sock that was found.
11 If you are to believe that the offender, after exiting
12 the residence, then proceeds in that direction, instead
13 of running away from the development or getting out of
14 the development in the quickest way, he seems to run back
15 into the development again, which might increase his risk
16 of being seen by others, or confronted by others.
17 Plus, if he is not familiar with that
18 development and those roads, he could get back in there
19 and get turned around and get lost, and again, he
20 increases his risk of maybe being discovered.
21 Q. Okay. Is that primarily all of the
22 risk factors you were considering then?
23 A. I believe so. I believe that is it.
24 Q. Okay. Now, you talked about -- you
25 are looking at the victimology, and that there are high

1 risks or low risks, what do you mean by that? What is
2 victimology?
3 A. Exactly. Victimology, again, is
4 basically, what is it about a particular victim or
5 victims that increases his or her risk of becoming a
6 victim of a violent crime? It's lifestyle kinds of
7 things. It's where are they employed? Who have they
8 angered in the past? Are they having any extramarital
9 affairs, or things that might create friction or conflict
10 with others? Do they abuse alcohol or drugs? Those kind
11 of things, lifestyle questions.
12 When you consider this case, and these
13 victims, I think I would classify them as extremely low
14 risk, probably the most low-risk victims that there are.
15 So for a stranger, or for someone else
16 motivated, for whatever purposes to come into this
17 location, and assault or focus on these two young
18 children, that I think goes directly to motive. That
19 they were obviously the focus of the offender's interest
20 and the offender's assault.
21 And this was a very personal style of
22 assault. No indication of robbery, and again, we start
23 trying to assess motive early on. Nothing is taken,
24 certainly, there were an incredible amount of valuables
25 there for the taking.

1 You had no indication of sexual
2 assault anywhere. So you have to look at that personal
3 motive. When we see personal motive, we start
4 considering, well, what represents personal motive? You
5 are talking about anger, revenge, financial gain, talking
6 about maybe somebody with a serious mental disorder,
7 maybe somebody that just wants to eliminate the victims
8 because they represent some kind of an obstacle to a
9 goal. Those are what we consider in personal kinds of
10 assaults or personal motives.
11 Q. You say that children at that age, 5
12 and 6, almost 7, they are very low-risk victims. Why is
13 that?
14 A. Well, because for the most part, their
15 life experiences, they have got their circle of peers and
16 friends, and they go to school. I mean, they are not
17 involved in a lot of the risky kinds of activities that
18 we consider elevates a victim's risk.
19 I mean, they are not going out into

20 high crime rate neighborhoods at night, going to bars,
21 picking up people for one-night stands, doing those kinds
22 of things, again, that certainly would elevate one's
23 risk.

24 Q. The method that they were killed, the
25 two children, was that important to you; and compared to
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1 the contrast to the injuries that Mrs. Routier received?

2 A. Well, it's basically what we consider
3 the nature and severity of the trauma was incredibly more
4 significant than Mrs. Routier sustained. Certainly, that
5 is a dramatic difference. Also, to us, represented a
6 major contradiction; why she was left alone, seemingly
7 left alive, and the kids were killed.

8 Q. Okay. And you believe, from looking
9 at the crime scene and the method of the killing, that
10 the children were the object of the attack?

11 A. Certainly. There is no question about
12 it. Because again, just the number of wounds, the
13 placement of the wounds, all focused right in the chest
14 area here, almost as if the offender is going for the
15 heart, or going for the most vital regions of the body.

16 The depth of the penetration of the
17 wounds certainly suggests anger and force and a focus.

18 When you look at Mrs. Routier's
19 wounds, you see that they are certainly, obviously,
20 avoiding any of the vital areas, but they've been
21 described as superficial. You have here in the shoulder
22 and the forearm, and a scratch here, and a cut across the
23 neck. Again, very, very, dramatically different from the
24 focus of the wounds that were sustained by the young
25 children.

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1 Q. Okay. Now, you talked about staging,
2 and that you believe this crime scene may have been
3 staged.

4 A. That's correct.

5 Q. What factors do you look at when you
6 are considering that?

7 A. Well, in addition to everything we
8 have described, we're looking for things that have been
9 done or manipulated at the scene. Things that just don't
10 occur, what we consider naturally. And again, as you
11 proceed on in, and we look at what's happened to the
12 children, we look at what's -- what else has been done at
13 the scene. What else is either out of place, missing or

14 has been brought there by the offender.
15 And I think what stands out, what is a
16 stark contrast, is you have a maximum, human devastation
17 and loss here, but an absolute minimum of breakage or
18 property damage. And this is very, very curious to us.
19 It's almost like our offender had no
20 real regard for the children, they just wanted the
21 children eliminated. But yet, when it comes to the
22 protection and preservation of the material items in the
23 home, he was very careful, very cautious not to break
24 anything.
25 Some things were disturbed, but no
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1 real breakage other than this wine glass apparently and
2 this screen being cut. What stranger, motivated to come
3 in there and murder, is going to be concerned with the
4 personal possessions of the residence, unless it's
5 someone that has a vested interest in preserving those
6 items.

7 That is what we refer to as a
8 proprietary interest. And that also suggests to us that
9 that is someone obviously that has got a connection with
10 those items, beyond just being there on that particular
11 occasion.

12 Q. So, it's not only things that may have
13 been disturbed, but things that -- showing the lack of
14 things being disturbed?

15 A. Certainly. And when you consider that
16 you have this violent struggle, the assault and killing
17 of two young children and an adult, you would certainly
18 have expected to see much more in the way of disruption
19 and breakage and damage, and things turned over, and
20 evidence, just evidence that someone else was there,
21 other than the people that live there.

22 Q. What kinds of things did you consider
23 when coming to that opinion, there in the room itself?

24 A. Well, I started to focus on some major
25 features again, not wanting to over analyze or reach, but
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1 I looked at the lamp shade that was off of the lamp, I
2 looked at the coffee table, and the flower arrangement
3 that was on the coffee table, it was turned over. I also
4 looked at the other items in that room, and certainly the
5 glass table tops and the other decorative items that were
6 on top of these glass tables.

7 Certainly, when you look at that room,

8 or that den, the Roman room, I guess it's called, it's
9 very compressed, it's a very small area. And for two
10 adults to be in there fighting and struggling with one
11 another, you would have expected to see some more
12 dislodged.
13 Of course, then you proceed on out of
14 that room, and you get into the kitchen area where the
15 wine rack and the glass was broken. There's some things
16 about the wine rack that certainly seemed to be
17 contradictions.
18 You also look at the vacuum cleaner,
19 and the position of the vacuum cleaner, and the bloody
20 footprints that are found or discovered underneath the
21 vacuum cleaner. Again, very, very, curious from our
22 perspective.
23 Also, the way the cord seemingly is
24 stacked or placed underneath the base of the vacuum
25 cleaner. It certainly indicates or suggests that this is
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1 not something that has been thrown or knocked over in the
2 struggle, but something that has been deliberately placed
3 there and then turned over.
4 Then again, you go further, if you are
5 to assume that the avenue of escape for the offender is
6 through the utility room and out the garage, and then out
7 that cut screen. You look for any other disruption. You
8 look for blood, transfer of blood, or any sign that
9 someone else has been through there, that has just been
10 engaged in a violent struggle. And there is none of
11 that.
12 You look for disruption in the yard,
13 the flower bed and the mulch, any sign of blood, or of
14 fingerprints, or any other scuffs, or tears or material
15 items on the fence, the gate. Nothing.
16 Again, also very, very, curious.
17 Q. Okay. Let's kind of start, I guess,
18 in the room itself.
19 Well, let's look at the bottom
20 right-hand corner here. These are rather large. Here on
21 State's Exhibits 35-A, is this what you are talking
22 about, about the glass table, and the -- I guess, the
23 flower arrangement that is knocked over there?
24 A. Yes, it is.
25 Q. Why is that important to you, again?
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1 A. Well, again, not only that it's there,
2 and it's disrupted, but the severity of the disruption.
3 Again, it's just kind of pushed to the side. This very,
4 light based, papier-mache vessel, and then these dried
5 flowers and things, which is very light, is just kind of
6 tipped over, it's not knocked off at all, and there is
7 nothing broken, none of these stems or these leaves or
8 anything are really out of place.
9 Again, somebody hitting into that
10 during the course of a violent struggle, you would have
11 anticipated more disruption.

12 Q. What about this glass coffee table
13 that it rests upon?

14 A. Well --

15 Q. I think it shows it, maybe not in this
16 photo, maybe clearer in another one, but that was
17 somewhat askewed?

18 A. Yes.

19 Q. Does that, again, does that enter into
20 your indications anyway? Here it is in State's Exhibits
21 47-A and 47-B?

22 A. Well, it's moved, and again, but not
23 dramatically so. Again, when you ask, "What's wrong with
24 this picture?" I mean, are there signs, indications that
25 there has been a tremendous struggle here, and a
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1 homicide, or is it something other than that.

2 Q. Okay. You also mentioned a lamp shade
3 that had been knocked off at the top of the lamp.

4 A. Certainly. The lamp shade was down
5 over the, I guess, the pillar there of the lamp, but as
6 they examined the base of the lamp, the lamp base has not
7 been moved at all.

8 So it looks like this has been hit and
9 the lamp shade falls, but no destruction whatsoever.
10 Now, I understand that there was no clasp or no screw at
11 the top of this lamp shade to hold that in place, so it
12 was just kind of balanced. So, it wouldn't take a lot of
13 force or a lot of energy, at least to knock that lamp
14 shade down.

15 And again, it appears that that is
16 exactly what happened, not a lot of force or energy taken
17 to cause that lamp shade to come down.

18 Q. You described, I believe, you referred
19 to it as the Roman room, that is what some people call
20 it; is that right?

21 A. That's correct.

22 Q. The area where the murders occurred?

23 A. Yes, sir.

24 Q. Were there a lot of items that could

25 be broken in there?

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1 A. Certainly. Especially the -- I guess

2 the sofa table behind one of the sofas there. There were

3 quite a few items on that table that were all in place.

4 And, again, nothing broken or damaged.

5 Q. Okay. Again, the sofa table, are we

6 talking about -- could I have the witness step down for

7 just a moment?

8

9 THE COURT: Please step down.

10

11 (Whereupon, the witness

12 Stepped down from the

13 Witness stand, and

14 Approached the jury rail

15 And the proceedings were

16 Resumed as follows:)

17

18 THE WITNESS: This table right here,

19 with the statuette and the candles, and all of the other

20 decorative items in the photograph, and when you compare

21 that with the activity here, in front of this couch, and

22 if you believe from the statements, that the offender

23 then encounters Mrs. Routier, and exits or leaves the

24 area, he comes from this area, which is very, very,

25 narrow, there are two tables there. There is a table

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1 here with a flower arrangement, and some diapers, and

2 then there is this table. For an adult male to go

3 through there, especially at a high rate of speed and not

4 to have touched or knocked into any of that, it seems,

5 again, strange.

6 However, someone could have gone

7 through there without knocking any of those items, but in

8 doing so, again, someone would have to be careful not to

9 do that. Again, what stranger who has just killed two

10 children and assaulted an adult, is going to be worried

11 about going through that area very carefully.

12

13 BY MR. TOBY L. SHOOK:

14 Q. Then you mentioned, I believe, the

15 wine rack; is that right?

16 A. That's correct.

17 Q. And what is it specifically that you
18 noted about the wine rack?

19 A. Well, again, the contradictions. The
20 wine glass was knocked off and broken, and there is a
21 decanter that is knocked over on its side and the wine
22 bottle is laying on its side. But there are other items
23 there that are more fragile, and I think lighter items
24 that were not disturbed.

25 Q. Okay. If we can hold the exhibit up
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1 for the members of the jury to see?
2

3 THE COURT: Can all the members of the
4 jury see that?

5 THE JURY: Yes, sir.

6 THE COURT: Make sure you can see.
7 All right. Thank you.

8

9 BY MR. TOBY L. SHOOK:

10 Q. Looking here at 36-D and the
11 photographs here in the upper right of the line, is that
12 the wine rack you are talking about?

13 A. This is exactly what I'm talking about
14 here. You see the glass broken here on the floor, and
15 the decanter here that is on its side. But there are
16 some very small glasses up here that are seemingly
17 undisturbed.
18 You have one wine bottle here, leaning
19 in that direction. But what is interesting, and what I
20 believe is a contradiction, is you have got this ice
21 bucket, and you have got some utensils that go along with
22 that ice bucket, that are in place, and not disturbed.

23 Especially down here, you have a
24 corkscrew item, and you have a can opener and a bottle
25 opener and some other device, that is carelessly balanced
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1 on this corkscrew, and they are still sitting there very
2 symmetrical.

3 You also have two glasses on either
4 side of this ice bucket, and they also are very
5 symmetrically placed. And, it looks like they haven't
6 been disturbed at all.

7 So if you are to believe someone hits
8 into this wine rack, with enough force to cause this wine
9 glass to come up over that obvious holder or lip, which
10 is almost like a, I guess, a U-shape, then why wasn't

11 there enough force applied to dislodge some of those
12 other items: Contradiction.

13 Q. Okay. Again, you mentioned the vacuum
14 cleaner that we see here at the bottom of the Exhibit,
15 lying there on the floor.

16 A. Certainly. You look at this vacuum
17 cleaner, and you look at how it's positioned. You notice
18 and you understand that there are bloody footprints
19 underneath. Certainly the bloody footprints were there
20 before the vacuum cleaner was overturned. It's take no
21 behavioral scientist, or no rocket scientist to come in
22 here and talk about those kinds of things.

23 You also have a significant amount of
24 blood up here on the handle, indicating or suggesting
25 that someone grabbed this, transferred that blood, and
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1 placed it over. I looked at the position of the cord,
2 and this doesn't depict it as accurately as some other
3 photos that I have seen. But you can see that the cord
4 is kind of piled up, or stacked underneath the base of
5 this vacuum cleaner.

6 If someone had grabbed this and thrown
7 it in an attempt to create an obstacle for someone
8 pursuing or for any other reason, you would have expected
9 that cord to be in a different position.

10 Q. Okay. Go and ahead and have a seat,
11 Agent Brantley.

12
13 (Whereupon, the witness
14 Resumed the witness
15 Stand, and the
16 Proceedings were resumed
17 On the record, as
18 Follows:)

19
20 BY MR. TOBY L. SHOOK:

21 Q. Were there any other areas in the
22 house that you were looking at as far as this staging
23 that was important to you in your analysis?

24 A. Well, as you come out past the
25 kitchen, and you go to the utility room, and I think
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1 what's noted is there was blood droplets leading up and
2 into that utility room, and they just cease, they stop.
3 And there is no other indication
4 beyond that, at least on escape, that anyone has gone

5 through there, that anyone has disturbed any dust or dirt
6 on the windowsill, that there has been a transfer of
7 blood in the garage, and that there has been a transfer
8 to the outside in the back yard, the mulch or anything
9 else has been disturbed, or that there has been anything
10 touching or disturbing the fence or the gate.

11 Q. Okay. Now, you have looked at some
12 forensic reports involving a bread knife that was in the
13 residence that had some material on it; is that right?

14 A. That's correct.

15 Q. Okay. Did that form any part of your
16 analysis?

17 A. Certainly. That is something else
18 that is an obvious major contradiction.

19 If you are to believe that the
20 offender gains access, and how an offender gains access
21 to a residence is very important to us. How does this
22 offender gain access?

23 If you are to believe that the
24 offender cuts the screen with that particular knife that
25 has microscopic evidence of rubber particles and glass

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1 particles, then that's extremely curious.

2 Why would an offender break into a
3 home, or gain access to this home, and then take that
4 knife and then go back outside and cut the screen, to
5 come back in? That is ludicrous.

6 And certainly, if the offender is
7 already there, and he gets this knife and he is using
8 that to escape, we have seen no cases where an offender
9 breaks out of a residence like that, where they come
10 through and then cut the screen and then go out.

11 And then they go back and replace the
12 knife into the butcher block before they run through it.

13 Again, that is very contradictory, and very unusual.

14 But beyond that, you look at this

15 knife that was used to cut the screen, and then after the
16 cutting of the screen that knife is replaced, and then

17 the offender takes another knife out of this butcher
18 block to use as the murder weapon. Why so much
19 variation? Why are you taking one knife, using it for
20 that purpose, having the time and the forethought to put
21 that back and then use another knife.

22 Something else that is interesting to

23 us from the standpoint of stranger versus someone who may
24 not be a stranger, and that is the proprietary interest I
25 described earlier.

1 We all have patterns of relating to
2 our environment, and patterns of doing things. For
3 instance, people go and they take knives from a certain
4 location, they use that knife and they replace that knife
5 right back into its rightful position or place. What
6 stranger is going to take a knife, and use it, and then
7 go back and be concerned about replacing it in its
8 rightful position?

9 Again, this is suggestive of someone
10 that is used to doing that, and this is just part of
11 their pattern. Because a stranger is not going to have
12 any concern for that. They can throw the knife down, as
13 they did with the other knife, leave it on the counter
14 top, throw it in the garage, take it with them because he
15 may know that this weapon, certainly the knives or
16 anything he touched, it is obvious -- that it has an
17 obvious evidentiary value.

18 And most offenders are cognizant or
19 aware of that fact, and they don't want to leave that
20 behind for the police to discover or use in a court of
21 law.

22 Q. Going back to, from your analysis, it
23 looks as if the children were the object of the attack?

24 A. Yes.

25 Q. Did the fact that a knife, the butcher
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1 knife, a kitchen knife from the home is used to do the
2 killing, is that significant to you?

3 A. It is. And again, weapon selection is
4 important, and another feature that we consider.

5 In our experience, most offenders that
6 go to a residence to commit a homicide, they are going to
7 take a weapon with them, something that they are
8 comfortable with, something that they can use to commit
9 the homicide, or another weapon, take a gun, a ligature.

10 The fact that nothing apparently was taken to the scene,
11 but the offender goes to the scene, obtains a weapon
12 there, uses that weapon, and then leaves it behind, is
13 important.

14 Q. Okay. Let's take the bread knife out
15 of the picture for a moment, the knife that had the
16 microscopic characteristics consistent with the screen.

17 A. Certainly.

18 Q. Okay. Does that change your opinion
19 in any way?

20 A. No.
21 Q. And why is that?
22 A. Well, because that is just one
23 feature. There are many other features that we took into
24 consideration. And what we look at, when we do our
25 assessment and our analysis, is not one individual
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1 feature, or behavior, it's the totality of the
2 circumstances. And an awful lot of these kinds of
3 features are interrelated, they are tied to one another.
4 So you really can't look at one in isolation and
5 determine anything.

6 Q. Okay. Again, you looked at possible
7 motives from an outside party coming in. Robbery, in
8 this case, were you aware of, well, I guess, it was
9 various items left around in the residence; is that
10 right?

11 A. That's correct.

12 Q. Okay. Do you remember what types of
13 items we're talking about?

14 A. Well, primarily, the jewelry, the
15 large amount of jewelry that was left there in plain
16 view, and certainly, this also seemed to be in this path
17 of entry and escape, and so, I mean, it was right there
18 for the taking, and all someone had to do was just reach
19 over and grab it.

20 Also, you looked at the purses that
21 were in the area, and whether they were disturbed, or
22 whether anyone was attempting to steal money, cash or
23 credit cards. And there is no indication that anything
24 like that has occurred.

25 As a matter of fact, nothing was
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1 disturbed. Nothing of value in that home seemed to be of
2 interest whatsoever to the offender in this case.

3 Q. Okay. Well -- I may not can find it,
4 but are you talking about on the island there, there was
5 various rings left?

6 A. That's correct.

7 Q. And, on the table top, I mean?

8 A. Yes, sir.

9 Q. And also, a watch in the kitchen left
10 on the island there?

11 A. That's correct.

12 Q. Okay. Now, we talked about another
13 motive for maybe going in the house is a sexual assault.

14 Will offenders go in, and you have studied, I guess, guys
15 that go in, rapists --

16 A. Yes, sir.

17 Q. -- go in to the homes to sexually
18 assault women?

19 A. Yes.

20 Q. Do they do that when children are
21 present?

22 A. Yes, that is a common practice, as a
23 matter of fact. For a rapist to go in, either they are
24 going to primarily select a female alone in the
25 residence, or a female with young children. And the
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1 reason they select females with young children, is that
2 they can use the threat of violence directed against
3 these children, as a way to control the female victim.
4 For instance, "If you just do what I
5 tell you and you give me what I want, I'll leave your
6 children alone. But if you don't, I'll hurt the
7 children."

8 So that is a very effective control
9 maneuver that they will implement.

10 Q. Looking at it from a standpoint of
11 perhaps maybe this was a party coming in to sexually
12 assault Mrs. Routier, the killing of the children, was
13 that a contradiction from what you are used to seeing?

14 A. It is a major contradiction in that
15 behavior and that belief on their part, because again,
16 they want those children alive. It's the threat of the
17 harm that they use to control the victim. If they have
18 already stabbed and hurt the children and killed the
19 children, they can forget about any cooperation on the
20 part of that female victim, than -- that victim is much
21 more inclined to fight, and to fight for their life.

22 Q. Has that then, from what you have
23 seen, if someone starts harming a mother's children, what
24 is going to happen?

25 A. Well, it depends on that relationship
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1 that the mother has with the children, but most of the
2 mothers that I have known, and I have talked to quite a
3 few surviving mothers that have lost their children, when
4 they have the opportunity, they are going to fight you,
5 and they are going to fight for not only their lives, but
6 the lives of their children.

7 Q. That is just a natural reaction?

8 A. Yes, in my experience, that is what
9 they described.

10 Q. Now, you have been doing this type of
11 crime scene analysis for how long?

12 A. Well, I have been assigned to the unit
13 there since 1988.

14 Q. Okay. And when is the first time you
15 talked to our office in regards to this case?

16 A. I believe this was the 19th of June of
17 1996.

18 Q. Okay. And then you have come to
19 Dallas, and talked with some of the prosecutors; is that
20 right?

21 A. That's correct.

22 Q. How many times have you come to
23 Dallas?

24 A. Besides this time, there was one other
25 time, and that was in October of 1996.

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1 Q. Okay. And then how long were you in
2 Dallas on that particular occasion?

3 A. The first time, I believe, it was two
4 or three days.

5 Q. Okay. You said you went out to the --
6 you didn't, on that occasion you didn't go into the
7 residence itself, did you?

8 A. No, I did not go into the residence,
9 that's correct.

10 Q. Okay. Just outside the residence?

11 A. That's correct.

12 Q. All right. And then, of course, you
13 have spoken on the phone with me numerous times?

14 A. That's correct.

15 Q. Okay. You have been doing this
16 analysis since, you say, 1988?

17 A. 1988, I was assigned to that unit.

18 However, I was one of our field coordinators before that,
19 and was involved in some training, and some work with the
20 unit before I actually was assigned there.

21 Q. Okay. And you assist -- on a daily
22 basis, do these things come into your office?

23 A. Oh, certainly.

24 Q. Okay.

25 A. We literally provide services to
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1 legitimate law enforcement agencies, not only nationally,
2 but from around the world. I have just gotten back from
3 a trip to Israel, and provided training to the Israeli
4 National Police on violent crime scene analysis, so that
5 we get quite a few requests.

6 Q. Okay. So, you don't just concentrate
7 on crimes here in the nation, you do it world-wide also?

8 A. The vast majority of cases are
9 obviously from this nation, but we do take some
10 international cases as well.

11 Q. Okay. And this analysis you do, is
12 usually with law enforcement officials?

13 A. Law enforcement officials and
14 prosecutors, that's correct.

15 Q. Okay. And the opinions, you are
16 basing these on, is your experience and training and
17 everything you have seen throughout the years?

18 A. Certainly.
19

20 MR. TOBY L. SHOOK: Just one moment,
21 Judge.

22 THE COURT: Okay.

23 MR. TOBY L. SHOOK: Judge, that's all
24 of the questions I have at this time.

25 THE COURT: All right. In view of the
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1 time, and this will probably be a lengthy cross
2 examination, let's recess now until 1:15 and be back at
3 that time. In fact, let's make it 10 minutes after so
4 everybody gets back at 1:15. Make it 10 minutes after
5 1:00, and we will pick it up at that time.

6 All right. Will everybody remain
7 seated please while the jury clears the courthouse.
8 Thank you.

9

10 (Whereupon, a short

11 Recess was taken,

12 After which time,

13 The proceedings were

14 Resumed on the record,

15 In the presence and

16 Hearing of the defendant

17 And the jury, as follows:)

18

19 THE COURT: All right. Let's go back

20 on the record. And we're back on the record in the

21 Darlie Routier case.

22 Are both sides ready to bring the jury

23 in and resume this trial?

24 MR. GREG DAVIS: Yes, sir, the State

25 is ready.

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1 MR. DOUGLAS MULDER: The defense is
2 ready.

3 THE COURT: All right. Bring the jury
4 in, please.

5

6 (Whereupon, the jury

7 Was returned to the

8 Courtroom, and the

9 Proceedings were

10 Resumed on the record,

11 In open court, in the

12 Presence and hearing

13 Of the defendant,

14 As follows:)

15

16 THE COURT: Good afternoon, ladies and

17 gentlemen. Let the record reflect that all parties in

18 the trial are present and the jury is seated.

19 All right. Mr. Mulder, will you be

20 cross-examination?

21 MR. DOUGLAS MULDER: Yes, Judge.

22 THE COURT: All right.

23 MR. DOUGLAS MULDER: And I'll try to

24 be brief.

25

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1 CROSS EXAMINATION

2

3 BY MR. DOUGLAS MULDER:

4 Q. Mr. Brantley, did you prepare a
5 report?

6 A. No, I didn't.

7 Q. Mr. Hoover doesn't provide you all
8 with typewriters anymore?

9 A. I don't type, sir, no. Most of my
10 documentation are in the form of personal notes. Now,
11 when I get back to the Academy, what I will do is, I will
12 memorialize the nature of my testimony, and that will be
13 made the matter of our record.

14 Q. I guess you will send us all a copy?

15 A. If you would like a copy --

16

17 MR. TOBY L. SHOOK: Judge, I'll object
18 to the side-bar.
19 THE COURT: Sustain the objection.
20 Let's don't get into any side-bars, Mr. Mulder.
21 MR. DOUGLAS MULDER: Judge, that
22 wasn't a side-bar. That was directed to the witness.
23 THE COURT: Thank you. We understand
24 what you mean.
25
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1 BY MR. DOUGLAS MULDER:
2 Q. Mr. Brantley, you have prepared some
3 notes, I guess, in the course of your work; is that
4 right?
5 A. That's correct.
6 Q. And I believe you, in the Bureau, you
7 have opened a case, opened a file in this particular
8 case, on September the 20th, and you were assigned to the
9 case at that time; is that right?
10 A. Well, in actuality, the case was
11 already opened, but I had it assigned to me in our unit
12 on that date.
13 Q. Well, what I do have, in the way of a
14 report, which is in the form of your personal notes,
15 which I will mark for identification and record purposes
16 as Defendant's Exhibit No. 64. Is this a copy of your
17 notes?
18 A. That is.
19
20 (Whereupon, the above
21 mentioned item was
22 marked for
23 identification only
24 after which time the
25 proceedings were
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1 resumed on the record
2 in open court, as
3 follows:)
4
5 BY MR. DOUGLAS MULDER:
6 Q. They are rather difficult to read, but
7 you have been good enough to translate for us where we
8 needed to, haven't you?
9 A. That's correct.
10 Q. And it says here, 9-20-96, case

11 opened, and assigned to me; is that right?

12 A. That's correct.

13 Q. Okay. That would be September the

14 20th of '96?

15 A. That's correct.

16 Q. All right. And then, it goes on to

17 say, that on September the 30th of 1996, through October

18 the 3rd of 1996, some four days or so, you met with the

19 prosecution, the police, the forensic people and the

20 medical examiner's people; is that correct?

21 A. That's correct.

22 Q. Okay. You didn't go in the house, but

23 you went out and looked at the house?

24 A. That is also correct.

25 Q. Now, I think risk factor was one of

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1 the things that you considered, and you said that you

2 considered the location of the house, and whether it was

3 in a development and the access to, I guess, avenues of

4 escape, that a perpetrator would consider, if they gave a

5 crime like this some thought?

6 A. I looked at not only avenues of escape

7 but avenues of approach also. Those are two

8 considerations that I look at.

9 Q. Okay. And as a matter of fact, it's

10 just a block or two off Dalrock Road, which is a major

11 thoroughfare there in Rowlett, is it not?

12 A. I believe that's fair to say, yes,

13 sir.

14 Q. Okay. And, is it fair to say that

15 it's about two minutes going one way from Highway 66, and

16 going the other way to Interstate 30?

17 A. I believe that's correct.

18 Q. Okay. So anybody interested in

19 getting out of the area could probably, if it took the

20 police two or three minutes to respond, they could be on

21 I-30 or Highway 66 in the same amount of time, couldn't

22 they?

23 A. I believe that's correct, also.

24 Q. It's fair to say, isn't it?

25 A. Yes, sir.

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1 Q. Now, I noticed in your notes, and I

2 still have difficulty reading your notes, but I noticed

3 there, that you had, as one of your considerations -- and

4 let me stop right there.

5 But is it fair to say, that your
6 opinion, for whatever it's worth, is no more valid than
7 the validity of the information that you received?

8 A. Well, I think certainly, it's fair to
9 say that you need to have accurate information or as
10 accurate as possible to come up with an accurate
11 assessment.

12 Q. I mean, it's the old garbage
13 in/garbage out type of deal that we have?

14 A. That is fair to say, certainly.

15 Q. So, if you received misinformation,
16 that could certainly affect the validity of your
17 conclusion?

18 A. It could.

19 Q. And I understand that you have not
20 pointed the finger at anybody in this courtroom, but you
21 have, by what you've said, certainly narrowed things
22 down, haven't you?

23 A. I believe that is accurate, yes, sir.

24 Q. Okay. And you said that the children
25 were killed by someone you felt who knew them, and knew
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1 them well?

2 A. That is what I said, yes, sir.

3 Q. Okay. Now, one of the things that you
4 said -- and you are primarily, Mr. Brantley, a -- what
5 they call a profiler, for lack of a better word?

6 A. They refer to us -- the title is
7 supervisory special agent, but we have been called
8 profilers, we have been called violent crime specialists,
9 crime scene analysts, we go by a variety of terms and
10 labels.

11 Q. Okay. I'm sure you do. I read a book
12 by one of your colleagues, John Douglas. I had no way of
13 anticipating that you would be with us this month, or
14 next month, or however long we are going to be here. But
15 he is -- John Douglas is one of the -- was he the -- I
16 think he calls himself the originator, or what is he?

17 A. I don't know if he calls himself that.

18 He certainly was involved in this program for quite a
19 number of years, but there were people that predated him,
20 certainly.

21 Q. Well, he may have exaggerated his own
22 position. Have you read his book?

23 A. I have, sir.

24 Q. Okay.

25 A. I am cited in it, as I recall.

1 Q. All right. All right. Do you -- you
2 know, I read that thing and it's interesting, because
3 you, as a profiler, you will go and review the
4 information of a particular crime scene or an event, and
5 then, at least Mr. Douglas would -- I don't know whether
6 you have this, well, I'm sure you do, whether you have
7 the ability -- but Mr. Douglas would, after he looked at
8 a crime scene, he would say the victim or the perpetrator
9 is a white male, 21 to 23, lives in the -- within two or
10 three blocks of where the crime was committed, probably
11 stays with some relatives, is dysfunctional in some
12 respects, and will do this again, and drives a
13 Volkswagen, probably red.

14 Do you remember things like that that
15 he would write in this deal, where he would even predict
16 the color of the Volkswagen?

17 A. I don't believe that is accurate, no,
18 sir.

19 Q. Do you remember where he predicted the
20 color of the Volkswagen that the man was driving?

21 A. Well, on occasion what we do, and I
22 can't speak for John or what he has written or account
23 for that, but what we do on occasion, we may talk about
24 the type of vehicle that someone may drive, but as far as
25 I go, and my understanding of the limitations of this
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1 process, we don't get into predicting or assessing
2 vehicle color. I don't.

3 Q. All right. Well, you don't. But if
4 you will go back and reread, you will find that he
5 predicted even the color of the man's car. And I
6 wondered at that time, and I'll ask you, do you all keep
7 statistics as to when you are wrong?

8 A. Well, first of all, I think I know
9 your understanding of this process so far has been based
10 on that one book, but I think a lot of that book is
11 accurate, a lot of it is inaccurate.

12 I think what you have to understand,
13 first of all, I think you are describing a profile, and
14 what we did in this case was not provide a profile.

15 Q. No, I understand, that wasn't an
16 answer, I appreciate the information, that wasn't an
17 answer to my question.

18 What you did in this case, you took
19 the answer and you worked backwards. You came in after

20 Mrs. Routier had been arrested and indicted and her trial
21 was set, and we were fixing to pick a jury, and you
22 worked backwards from the fact, didn't you?
23 A. Well, I did get involved after she had
24 already been identified, that's correct.
25 Q. Yes, sir. You -- let me ask you this:
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1 If you interviewed people who were friends and associates
2 of Mrs. Routier, did you do that?

3 A. No, sir.

4 Q. Did you have reports of people who
5 were friends and associates of hers?

6 A. I did.

7 Q. And who might that be, for example?

8 A. I would have to go back and look, to
9 be exact, several neighbors, as I recall, and coworkers,
10 I believe there was a report, an interview with a
11 housekeeper or maid.

12 Q. Okay. Did you put particular stock in
13 the -- what the coworker said and what the housekeeper
14 said?

15 A. No. And what I did, and again, I was
16 wanting to take in all of the information available,
17 there was obviously some information that I discounted or
18 thought was unimportant from the standpoint of what I do.
19 Primarily, what I was looking at was victimology,
20 information about the victims.

21 Q. Yes, sir, yes, sir, if you would
22 just -- we're going to get through this -- I think your
23 time is very valuable.

24 A. Thank you.

25 Q. And I'm going to go through this just
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1 as quick as I can, and if you will just answer my
2 question instead of giving a dissertation.

3

4 MR. TOBY L. SHOOK: Well, Judge, I'll
5 object to that.

6 THE COURT: Sustain the objection.

7 MR. DOUGLAS MULDER: Well, Judge, if
8 you will caution the witness to just answer my question,
9 we are going to get along fine. I am not going to drag
10 this out.

11 THE COURT: Mr. Mulder, ask your next
12 question, please.

13

14 BY MR. DOUGLAS MULDER:

15 Q. Yes, sir. Did you put any particular
16 credence in what the -- as you have termed her
17 housekeeper or what the coworker said?

18 A. Again, I reviewed it. I took it into
19 consideration. But I didn't -- I don't believe I
20 weighted that quite as much as I did other case
21 materials.

22 Q. Well, before you weighted it at all,
23 would it be important to you the mental health and
24 whether or not either one or both of those women had been
25 institutionalized?

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1 A. Certainly.

2 Q. How would that affect your judgment in
3 evaluating the coworker's information?

4 A. Well, it would be important.

5

6 MR. TOBY L. SHOOK: Judge, I'm going
7 to object here for going into facts not in evidence, and
8 for going way out --

9 THE COURT: I'll sustain the
10 objection.

11 MR. DOUGLAS MULDER: Well, Judge, I'd
12 like to be heard on this then, outside of the presence of
13 the jury. Let me have my exhibit and let him --

14 MR. TOBY L. SHOOK: Judge, could we
15 approach the bench for a moment?

16 THE COURT: Yes, you may. What do you
17 have? Let's see what we have.

18 MR. TOBY L. SHOOK: Could we bring
19 this exhibit with us, please?

20 THE COURT: Would the jury please step
21 outside into the jury room briefly, please.

22 All right.

23

24 (Whereupon, the jury
25 Was excused from the

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1 Courtroom, and the
2 Proceedings were held
3 In the presence of the
4 Defendant, with his
5 Attorney, but outside
6 The presence of jury
7 As follows:)

8

9 THE COURT: Let the record reflect
10 that these proceedings are being held outside the
11 presence of the jury, and all parties in the trial are
12 present.

13 All right, Mr. Mulder, you may

14 proceed.

15 MR. DOUGLAS MULDER: Judge, my
16 position is simple. This man said he had received
17 information, and if this is the woman, and we have not
18 established that yet, but if this is the coworker and he
19 took her information into account, and he said her mental
20 health would be important, then he has a right to know
21 that she is a nut. It is that simple.

22 MR. TOBY L. SHOOK: Judge --

23 MR. DOUGLAS MULDER: She has been
24 diagnosed as having a borderline personality disorder,
25 and he will know this, that one of their characteristics
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1 is that they are untruthful.

2 THE COURT: Let the record reflect,
3 that the Court is holding Defendant's Exhibit 45 which
4 was admitted for record purposes only. It was not
5 admitted earlier in the trial.

6 And, the -- so what you want to do is
7 get it admitted now for all purposes; is that correct?

8 MR. DOUGLAS MULDER: No. I just want
9 the witness to look at it, and I don't want him to take
10 my word for the fact that she has been diagnosed as
11 having a borderline personality disorder. I'll let him
12 look at it himself.

13 THE COURT: All right. I'll sustain

14 your objection, Mr. --

15 MR. TOBY L. SHOOK: Judge, I'll object
16 to him going into any line of questioning about her
17 mental history. You have already ruled directly when the
18 witness was on the stand that that particular exhibit and
19 questions going into that exhibit were not admissible.

20 So you can't bring it in through the
21 back door, through the agent, who just testified that he
22 looked at some witness statements of a coworker and he
23 already --

24 THE COURT: I'll sustain the
25 objection.

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1 MR. RICHARD C. MOSTY: Your Honor,
2 here's a stack six inches thick of things that he has
3 considered, including newspaper clippings that are not in
4 evidence.

5 And he gets to let the State give him
6 evidence, things that are not in evidence, and draw his
7 conclusions, and we're precluded from giving him
8 information that might change his opinion.

9 THE COURT: We're speaking
10 specifically about Exhibit 45. That is my ruling.
11 Please let's proceed.

12 MR. DOUGLAS MULDER: Judge, excuse me,
13 if I just might be heard on this so that my position is
14 clear. May I have permission from the Court to speak?

15 THE COURT: Well, yes.

16 MR. DOUGLAS MULDER: Thank you.

17 THE COURT: By all means.

18 MR. DOUGLAS MULDER: Judge, he has
19 stated that he considered her opinion. He said he would
20 also consider her mental health or lack thereof.

21 You know, they have got to take the
22 bad with the good. If they want to put him up and they
23 want him to consider people like Ms. Jovell, then they
24 have to take the bad along with that. Her baggage comes
25 with her, you know.

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1 THE COURT: Thank you. The Court's
2 ruling remains the same. Objection is sustained. Next
3 question.

4 MR. TOBY L. SHOOK: Judge, if that's
5 all we have along these lines, then we will ask --

6 THE COURT: I guess we will, until we
7 see what the next question is.

8 MR. DOUGLAS MULDER: Well, Judge, I
9 would prefer to question him in front of the jury, if
10 that is all right with the Court?

11 THE COURT: Are you through with this
12 hearing now?

13 MR. DOUGLAS MULDER: Yes, you have cut
14 me off. You won't let me --

15 MR. TOBY L. SHOOK: Well, then, Judge,
16 we will object further to any interrogation along those
17 lines. And you know, if that is what we're going to
18 have, we need to get that hashed out now.

19 THE COURT: Well, I don't think Mr.
20 Mulder will go into those other things.

21 MR. DOUGLAS MULDER: Why don't you
22 just cut me off from all cross examination?

23 THE COURT: Well, no, I can't do that,
24 Mr. Mulder. We'll bring the jury in, you may continue.
25 MR. RICHARD C. MOSTY: We can't
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1 provide him any information that he might use in
2 formulating his opinion?
3 THE COURT: We will go question by
4 question, and Mr. Mulder is handling this, and he will do
5 all the talking for the defense.
6 MR. RICHARD C. MOSTY: Can I make
7 objections outside of the jury's presence and comments
8 for the Court?
9 THE COURT: Right now, you may, yes.
10 MR. RICHARD C. MOSTY: Thank you.
11 MR. DOUGLAS MULDER: So, he can confer
12 with me too, can't he?
13 THE COURT: Oh, yes, he can, as long
14 as it is done in soft tones.
15 MR. DOUGLAS MULDER: We'll confer in
16 sign language, Judge.
17 THE COURT: Well, no, that will not be
18 necessary.
19 Bring the jury back, please.
20
21 (Whereupon, the jury
22 Was returned to the
23 Courtroom, and the
24 Proceedings were
25 Resumed on the record,
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1 In open court, in the
2 Presence and hearing
3 Of the defendant,
4 As follows:)
5
6 THE COURT: Let the record reflect
7 that all parties in the trial are present and the jury is
8 seated.
9 You may continue, Mr. Mulder.
10
11
12 CROSS EXAMINATION (Resumed)
13
14 BY MR. DOUGLAS MULDER:
15 Q. Yes, Mr. Brantley, I believe I had
16 asked you, if you all kept, you, the FBI and the

17 Behavioral Science Unit, if you kept statistics as to how
18 often you're wrong?

19 A. Well, we don't look at it in terms of
20 how often we're wrong. I think we like to consider how
21 often we're accurate or correct, but we do keep
22 statistics, we do keep some figures. We are attempting
23 to collect more and more of those, say over the past year
24 or so, but we do try to do that. That is correct.

25 Q. Is that -- will you translate for me?

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1 Was that a yes or a no?

2 A. Well --

3 Q. Do you keep statistics as to how often
4 you are wrong?

5 A. I don't, but there are people at our
6 unit that do. I guess that is probably the best way to
7 answer that.

8 Q. Okay. And certainly you don't have
9 those with you, do you?

10 A. I do not.

11 Q. Okay. And you don't know what your
12 batting average is, or do you?

13 A. The best way I have of assessing that
14 is the overwhelming amount of requests that we receive
15 for our services on a daily basis. I think the consumers
16 determine that what we do is beneficial.

17 Q. Well, sure. I mean, it's impressive
18 to have an FBI agent come in here and work backwards from
19 the answer, isn't it?

20

21 MR. TOBY L. SHOOK: Judge, I'll
22 object. That is improper questioning, and it's
23 argumentative.

24 THE COURT: I'll sustain the
25 objection.

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1

2 BY MR. DOUGLAS MULDER:

3 Q. Let me ask you this: You said one of
4 the risk factors that you consider, when I looked in your
5 notes, you said there was a car in the Routier garage; is
6 that correct?

7 A. I don't believe I said that.

8 Q. You didn't?

9 A. I said, I believe it was in front of
10 the house.

11 Q. Okay. I'm sure you are right,
12 Professor.
13
14 MR. TOBY L. SHOOK: Judge, again, I'm
15 going to object to the improper questioning and the
16 side-bar comments.
17 THE COURT: I'll sustain your
18 objection.
19 MR. DOUGLAS MULDER: He is a
20 professor. He testified that he teaches at --
21 THE COURT: Mr. Mulder, please cease
22 the side-bar. Ask your next question, please.
23
24 BY MR. DOUGLAS MULDER:
25 Q. What does this say? I'm showing you
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1 what's been marked for identification and record purposes
2 as Defendant's Exhibit No. 64. What does that say?
3 A. You are showing me a copy of my notes
4 and work papers.
5 Q. Yes, sir.
6 A. And I have got this down. Again, a
7 lot of this I was not prepared to testify to, because I
8 later learned that it was inaccurate. The question I had
9 before I arrived here, or wanted to confirm was where the
10 location of the vehicle was. I wanted to know whether it
11 was in the garage or where it was located. I was
12 informed it was located in front of the residence.
13 Q. Okay. When you were so good as to
14 read that -- can I have it back, please?
15 A. Sure.
16 Q. You have got a copy of it right up
17 there, don't you?
18 A. That is my original, yes, sir.
19 Q. When you were so good as to translate
20 this for me because I couldn't read your writing, you
21 didn't tell me that that was one of your questions, did
22 you?
23 A. I don't believe you asked me that. I
24 mean, you were just having me read that for you.
25 Q. Well, you said evidence that occupants
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1 are home, the TV on -- well, let's see what you wrote
2 down. And, when did you make these notes?
3 A. Now that copy -- what I did is I had a
4 lot of other notes that I consolidated.

5 Q. No, no, my question was: When did you
6 make these notes?

7 A. Probably within the last two weeks.

8 Q. Okay. So you knew within the last two
9 weeks your question about the car in the garage had been
10 answered, hadn't it?

11 A. I don't know if I understand your
12 question.

13 Q. Do you think there was a car in the
14 garage right now, as you sit here today?

15 A. My understanding is there was not a
16 car in the garage.

17 Q. Well, why did you -- you put evidence
18 that occupants are home; TV on, light in Roman room, and
19 shades or blinds up, and vehicle in garage. Why did you
20 put that in your consideration?

21 A. Those were things that I wanted to
22 understand, or make sure that I had as accurate
23 information.

24 Q. Matter of fact, the car wasn't in the
25 garage and you now know that, don't you?

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1 A. That is my understanding.

2 Q. Okay. Matter of fact, the vehicle
3 that the -- that Mrs. Routier drove was parked out in
4 front, wasn't it?

5 A. That is -- my understanding was there
6 was a vehicle in front of the house.

7 Q. And the car her husband drove, the
8 Jaguar, the 1987 Jaguar, traditionally was parked not in
9 the garage but in the driveway, wasn't it?

10 A. My understanding was that is also
11 accurate, right.

12 Q. Of course, it had been in that garage
13 for the last two days, that was your understanding too.
14 So for all outward appearances, anyone who knew that
15 house, or knew that area, would think that the wife was
16 home and the husband was gone; is that reasonable?

17 A. All I was looking at, again, not
18 necessarily who specifically was home, but just that
19 there was some indication that someone was home.

20 Q. Well, you quarrel -- of course, the
21 object of the intruders crime in this case could well
22 have been the mother or the woman of the house, couldn't
23 it?

24 A. It could have been.

25 Q. All right. And anyone, like I said,

1 anyone familiar with that house and with the occupants
2 would know or would assume that the husband was gone
3 because his car was gone.
4 A. That's possible.
5 Q. But she was there because her car was
6 there?
7 A. That is possible as well.
8 Q. Okay. You know, you stated, and I
9 wrote it down, that the focus of the assailant was on the
10 children; is that right?
11 A. That's correct.
12 Q. I wrote that down right?
13 A. I'm not sure what you wrote down, but
14 that is what I testified to.
15 Q. Okay. And, how do you know that?
16 A. How do I know that they were the focus
17 of the offender's interest or assault?
18 Q. Yes, sir.
19 A. I think it's fairly obvious from the
20 nature and severity of the trauma they sustained and the
21 location of the trauma. Again, the placement of those
22 wounds for maximum killing efficiency, that pretty much
23 stands out to me.
24 Q. And I think you told us that the
25 children were attacked first?
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1 A. It appears to have been the case,
2 that's correct.
3 Q. Okay. It appears to you but it's not
4 quite as apparent to me. Could you enlighten me as to
5 how you reached that conclusion?
6 A. Well, in part from the witness's
7 description of events.
8 Q. From -- are you talking about Mrs.
9 Routier's?
10 A. That's correct.
11 Q. Oh, she told you the children were
12 attacked first?
13 A. I was able to review her statement.
14 Q. And it says in there the children were
15 attacked first?
16 A. She indicates that, as I recall, that
17 when she awakened that the intruder, a white male, was
18 standing at the foot of her couch and she also had been
19 touched by one of her sons who was already -- had already

20 been wounded, and immediately the intruder started to
21 exit.

22 Q. Okay.

23 A. So I think it's reasonable to assume

24 that the children had already been attacked because that

25 would have left no room for that to have occurred.

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1 Q. If he made his exit, then she had

2 already been attacked to, hadn't she?

3 A. That is reasonable.

4 Q. But I mean, how do you know the

5 children were attacked first?

6 A. Well, again, you wouldn't know for

7 sure and it's tough to accurately or at least

8 specifically reconstruct events, but that is my opinion.

9 Q. All right. Your opinion is that the

10 children were attacked first?

11 A. That's correct.

12 Q. And I'm not going to change your mind,

13 am I?

14 A. Well, if you have additional

15 information that I should consider, I would be willing to

16 entertain that.

17 Q. Consider that. You are not the type

18 of guy who says, I have made up my mind, don't confuse me

19 with the facts, are you?

20 A. I hope not.

21 Q. But you're telling this jury that,

22 based on your expertise, the children were attacked

23 first?

24 A. That's what it appears.

25 Q. Okay. Would you tell the jury the

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1 extent of Mrs. Routier's injuries as you understood them,

2 Mr. Brantley, or Agent Brantley?

3 A. Right. My understanding is she has a

4 wound to the left shoulder, has a wound -- actually two

5 wounds to the right forearm, and she also has a wound to

6 the neck.

7 Q. Okay. And, those were superficial?

8 A. I remember from reading the medical

9 reports that they had been described by the medical

10 professionals as superficial.

11 Q. And what does that mean to you, Mr.

12 Brantley?

13 A. I think they were also qualified

14 further as not life threatening.
15 Q. Is that what that means to you,
16 superficial means not life threatening?
17 A. That certainly was taken into
18 consideration, but I think also, the depth of the wounds,
19 and the amount of structural damage that has been
20 committed.
21 Q. Is the carotid artery, in your
22 vocabulary, a vital organ?
23 A. I would say the carotid is a very
24 important vessel in the body, that's correct.
25 Q. Okay. And you think if the carotid
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1 artery were missed by two millimeters that that is a
2 superficial or a not life threatening or an unimportant
3 injury?

4 A. I certainly looked at that with great
5 interest. And again, relied on the accuracy and
6 reliability of the medical professionals that did the
7 assessment and wrote the reports.

8 Q. Is that where Dr. Parchman-Townsend
9 comes in?

10 A. No, I don't believe so. She was the
11 medical examiner that did the autopsy on Devon, I
12 believe.

13 Q. Did she tell you when she looked at
14 the -- at Mrs. Routier's injuries that they were
15 bandaged?

16 A. I don't recall that we talked as much
17 about the bandaging as we did other issues.

18 Q. Mr. Brantley, can you tell me how many
19 weapons you assumed were involved?

20 A. To my knowledge, based on the facts
21 and circumstances, it looked like two knives in the home
22 were involved. At least those were the only ones that
23 demonstrated through forensics and through examinations
24 that they had come in contact with either blood, fibers,
25 or rubber particles or glass fragments from a window
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1 screen.

2 Q. As a special agent you are no doubt
3 aware of the laboratory that the FBI has in Washington
4 D.C., are you not?

5 A. I am.

6 Q. Okay. Do you know whether or not the
7 bread knife was ever submitted to the laboratory in

8 Washington D.C. that is run by the FBI?

9 A. I don't believe that it was.

10 Q. Okay. And if you talked with Mr.

11 Linch you know that he was only able to make -- because

12 of the minute quantities of the fiberglass and the rubber

13 dust, he was only able to make a visual examination in

14 comparison with the screen. Did you know that?

15 A. I'm not sure I understand your

16 question. The visual --

17 Q. He was only able to eyeball it and say

18 it looks the same.

19 A. Well, my understanding, it was a

20 microscopic examination, if that is what you mean.

21 Q. Well, he had to look through his eyes

22 into a microscope.

23 A. Certainly, but not physical with the

24 naked eye, it was microscopic.

25 Q. It was so minute that you couldn't see

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1 it with the naked eye.

2 A. It was microscopic, yes, sir.

3 Q. Okay. And, did you take into

4 consideration that -- and did Mr. Linch tell you, and I

5 don't know where the knife is, but I'll use this, because

6 it really doesn't make any difference. But did Mr. Linch

7 tell you that he didn't know where on the knife he found

8 the fiberglass rod and where on the knife he found the

9 rubber dust?

10 A. I don't recall if we got that

11 detailed. It was just indicated to me that there was the

12 presence of those items on the knife. He may have,

13 however, he may have told me exactly what the location

14 was.

15 Q. Did you examine that screen?

16 A. Did I examine the screen itself?

17 Q. Um-hum. (Attorney nodding head

18 affirmatively.)

19 A. No, sir.

20 Q. To know that you could just -- it's of

21 such a fabric that you could cut it with relative ease,

22 that doesn't surprise you, does it?

23 A. Well, I really couldn't testify to

24 that. I have not examined the screen. I have been told

25 by others that have that the composition of the screen --

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1 Q. Well, would it, as an FBI agent, would
2 it make a difference to you that if the window wasn't
3 raised all the way up, that the knife when it cut the
4 screen, of course, couldn't go in more than about, what
5 two inches?

6 The screen fit over the window, say an
7 inch or two, and if he found what he found up in here, it
8 has absolutely nothing to do with this case. Are you
9 following me?

10 A. I think so. If you go with your
11 theory that the window is closed, again --

12 Q. Well, do you know whether it was open
13 or closed?

14 A. I do not.

15 Q. But that doesn't make any difference
16 to you, does it?

17 A. Well, it could, as you say if the
18 particles are found further up on the knife, then that
19 would suggest that the window was open possibly, and you
20 didn't have that obstruction for the knife.

21 Q. Because that fits your conclusion?

22 A. No, I haven't testified to anything
23 about the condition of the window.

24 Q. Well, I mean that knife may not be
25 involved in this case?

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1 A. The knife you just showed me?

2 Q. Well, the knife I showed you was not
3 the bread knife.

4 A. That's correct.

5 Q. Did you know that when -- that there
6 has been testimony that this knife does not have the
7 blood of Devon Routier on it?

8 A. You're asking me if I am knowledgeable
9 about the testimony that has gone on about the knife?

10 Q. No, I assume you have not been told
11 what the testimony is.

12 A. I have not.

13 Q. But I assumed the prosecutors shared
14 that with you.

15 A. About the testimony that has occurred
16 about the knife?

17 Q. No, no. I assume they knew ahead of
18 time. But this knife, there has been no testimony that
19 there was -- there has been testimony that no blood of
20 Devon Routier is on this knife.

21 Now, did you form an opinion or did
22 you make an assumption as to how many knives were

23 involved in the assault, in the cutting of the three
24 victims?

25 A. Well, I didn't assume that, no. What
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1 I looked at and what I found to be reasonable was that
2 the butcher-styled knife or chef's knife, whatever you
3 want to call it, that was found saturated with blood was
4 indeed used in some assault there at the residence.

5 Again, it was not until later on when
6 it was processed and they came up with the information
7 about the blood types that we went beyond that.

8 Q. Okay. So you do know what the blood
9 types are on the knife?

10 A. My understanding earlier was that it
11 looked like they had blood types of both boys on the
12 knife.

13 Q. Okay. Well, if you have received
14 information -- well, you know you may not have received
15 the same information that this jury has received, or this
16 jury may have received information that contradicts
17 reports that you have received. Can you appreciate that?

18 A. Well, I have no way of knowing that,
19 sir.

20 Q. No, but can you appreciate that? That
21 maybe the reports that you have seen don't jive with what
22 the witnesses have testified to before the jury?

23 A. That could be possible.

24 Q. Okay. Now, you can't tell, I dare
25 say, which of the youngsters was stabbed first?
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1 A. I wouldn't make that assessment, no,
2 sir.

3 Q. But you are telling this jury that you
4 assumed that the one boy had been stabbed some four
5 times, is that right, in the back?

6 A. As I recall, the -- I believe it was
7 Damon, the youngest, had four stab wounds and two fairly
8 large incised wounds to the back for a total of about six
9 wounds to the back.

10 Q. All right. And the other youngster
11 received two primary wounds to the chest?

12 A. Two deep penetrating stab wounds, and
13 some other --

14 Q. And did you assume that all of those
15 wounds were inflicted with the same weapon?

16 A. I didn't assume that they had been,

17 but I believe from my recollection of information of
18 events, that the wounds appeared to be consistent with
19 having been made by that butcher knife.

20 Q. Okay. Was that a yes or no?

21 A. Well, you'll have to ask me that
22 question again. I'm not sure --

23 Q. I asked you if you assumed that the
24 boys were cut and stabbed with the same weapon?

25 A. Again, you say assumed, I looked at
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1 all the possibilities and considered all the information
2 before I make my determination or assessment.
3 Now, again, early on I'm not going to
4 assume anything. If you have additional information that
5 I can consider, I will consider that.

6 Q. Okay.

7 A. Again, my opinion is not locked up or
8 carved in granite.

9 Q. Well, I would think before you get up
10 here and give a jury some opinion about who might have
11 killed or attacked some children, that you would have
12 some idea as to what went on?

13 A. Well, maybe it's a semantic thing that
14 you are talking about assume. I think I'm relating that
15 to kind of quick to react and quick to or jump to
16 conclusions, and that is not what I'm doing.

17 Q. Are you assuming now as we sit here
18 today, that one weapon was used to assault those
19 children?

20 A. It's my opinion that, again, that that
21 butcher knife was used to kill those children.

22 Q. To the exclusion of all others?

23 A. To the exclusion of the others that
24 were discovered at that scene, covered in blood, and
25 reported to be handled by the offender on his exit.

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1 Q. Okay. I just want to make sure I
2 understand, and -- you're saying that that was the only
3 weapon? You have ruled out any other weapon?

4 A. Again, not -- to my knowledge there
5 was no other weapon discovered at that scene that had on
6 it the victim's blood, and that was reportedly carried
7 and dropped or thrown down by the offender as he exited.

8 Q. Okay. All right. Did you assume that
9 Devon, both Devon and Damon Routier's blood was on this
10 weapon?

11 A. The information that I had available
12 to me was that that is indeed the case.
13 Q. That is the case?
14 A. Yes, sir.
15 Q. All right. Thank you. Now, may we
16 assume further that you don't know which of the boys was
17 stabbed first, but did it make sense to you, based on
18 your vast experience that the six injuries to the one
19 youngster, to Damon, were received at approximately the
20 same time?
21 A. I would say they were coincidental to
22 that event, if you consider the event the assault of the
23 three members of that family.
24 Q. So, in other words, the perpetrator,
25 whoever that might be, stabbed Damon and cut him six
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1 times and then stabbed and cut Devon some two times, and
2 then the knife was turned on Darlie; is that right?
3 A. That is -- if that is the order you
4 believe it. I haven't said that that is the order, no,
5 sir. I can't state that.
6 Q. Well, you know, it could have been
7 Devon first, it could have been Damon first, either one?
8 A. It could have.
9 Q. All right. But the boys were before
10 she was assaulted?
11 A. That is my opinion.
12 Q. Okay. And then, after the boys --
13 after the assault was finished on the boys, then she
14 either herself inflicted those wounds or somebody
15 inflicted the wounds upon her, is that -- are we on the
16 same sheet of music?
17 A. I think that is reasonable.
18 Q. Okay. It doesn't make sense to stab
19 one of the boys and then stab the other boy and then cut
20 her and go back and stab the other boys again, does it?
21 A. I'm not sure I understand what you
22 mean by "make sense."
23 Q. Well, I mean, your -- that is what
24 your whole premise is built on is common sense, isn't it?
25 A. Again, I'm not sure I understand what
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1 you are saying. My opinion is based on a number of years
2 of training and experience and education --
3 Q. No, I know all about that.
4 A. -- and working hundreds of these kinds

5 of cases.

6 Q. Yeah, we know all about your education
7 and your training. But the whole thing is based on
8 common sense, isn't it?

9 A. I'll tell you one of the -- if you
10 will allow me to explain this, I believe in the rule of
11 thumb, but be aware of the obvious. I try not to over
12 interpret or over analyze. And I think, again, what I
13 have testified to are major features, things that I
14 believe, most people, once these things are explained to
15 them, and again things that may be beyond what they
16 encounter in their daily lives, I think it really does
17 make sense to people once they have all of the facts and
18 circumstances.

19 Q. The whole thing is based on common
20 sense, isn't it? I know you have got experience. Have
21 you actually worked murder cases?

22 A. I have, yes, sir.

23 Q. Okay. You weren't a street officer
24 with any PD or anything like that, were you?

25 A. No, I was not.

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1 Q. Okay. And, when I say, worked a
2 murder case, would you work murder cases in the District
3 of Columbia?

4 A. I have not. No, sir, not in the
5 District of Columbia.

6 Q. Okay. I take it it is some place
7 other than the District of Columbia?

8 A. That's correct.

9 Q. What did you do with respect to the
10 particular murder case?

11 A. When I was assigned to our office in
12 Connecticut, there was -- we did a nationwide round up of
13 the Hell's Angels motorcycle gang, and there was a
14 homicide that occurred while we were investigating that
15 group. We had to respond to that scene and do some
16 inventories and some data collection.

17 Q. Okay. Is that the extent of the
18 murder cases that you, yourself, have worked?

19 A. On the scene. However, I have worked
20 hundreds of murder cases at the National Center.

21 Q. Yeah. Well, a lot of that stuff is
22 telephone too, isn't it?

23 A. I'm sorry?

24 Q. Where you talk to somebody on the
25 phone and give them advice.

1 A. Well, we do quite a bit of what we do
2 on the telephone, that's correct. But we also make
3 on-site visits, and we have investigators that come back
4 to the Academy for consultation.

5 Q. Now, in the course of your reviewing
6 the facts, you told us that you read the various reports
7 of the police officers; is that right?

8 A. That's correct.

9 Q. Okay. And I think, you know, one
10 thing that kind of stuck out in my mind, you said you
11 made the inquiry as to whether there had been any similar
12 crimes in the neighborhood?

13 A. That's correct, similar or related
14 offenses.

15 Q. Why is that important?

16 A. Well, if you are trying to consider
17 whether this may be part of a series, that certainly
18 would be important to know.

19 Q. Okay. And I think you also -- I heard
20 you say something but you didn't expound on it, but there
21 was something about a car, a black car that was in front.

22 Do you recall reviewing one of the
23 officer's notes where he questioned the lady directly
24 across the street who said that she was awakened that
25 morning by a scream and thought it was a slumber party

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1 the people next door were having.
2 And she looked out and she saw a small
3 black car out there with dark windows, and she assumed
4 that it was a slumber party, and nothing going on, so she
5 went back to bed.

6 And then she heard the emergency
7 vehicles out there, and then she got up and looked out
8 again, and that vehicle was gone. That small black car
9 with the tinted windows. That didn't belong to anybody
10 in the neighborhood. What did you make of that, Agent
11 Brantley?

12 A. I don't recall reading that.

13 Q. Oh, you don't?

14 A. No.

15 Q. Well, let's see if we can find that
16 for you. Would that make a difference?

17 A. I would certainly take that into
18 consideration.

19 Q. Well, before I go to the trouble of

20 finding it, I want to know if it's going to make a
21 difference.

22 A. A major difference?

23 Q. If not, we'll go on to something else.

24 A. You mean, will I change my opinion?

25 Q. You are not going to change your
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1 opinion, are you?

2 A. Not based on that information, no,
3 sir.

4 Q. All right. I'll just move on to
5 something else then. But you didn't inquire about it or
6 say, "Hey, what is this black car doing at 2:30 in the
7 morning, where it has no business being and nobody knows
8 anything about it? Why is it out there and why does it
9 leave right after the scream for help"?

10 A. I -- not that specific incident or
11 that specific vehicle -- I did ask many, many questions
12 about people that lived in the neighborhood, anybody that
13 might have had a history of problems, or arrests and
14 convictions, I mean, any of that information, certainly,
15 I would want to know ahead of time.

16 Q. Okay. Now, you said you took into
17 consideration this business about no evidence in the den
18 or the Roman room or the family room, call it what you
19 will, of a violent struggle; is that right?

20 A. I don't believe I characterized it
21 quite that way.

22 Q. Well, you were the one that -- I wrote
23 down violent struggle. I mean, I got that from you.

24 A. There was certainly evidence of a
25 violent struggle. Again, whether you -- when you look at
Sandra M. Halsey, CSR, Official Court Reporter
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1 the quality and the nature of that struggle, it would
2 certainly seem to be less than dramatic.

3 Q. Um-hum. (Attorney nodding head
4 affirmatively.)

5 A. Certainly, in the hundreds of cases we
6 have analyzed in the past, when you see a violent
7 struggle between two adults and there is a knife involved
8 as the weapon, and people have been cut, you generally
9 see a considerable amount more of disruption than we saw
10 in that.

11 Q. Hey, I agree with you wholeheartedly.
12 But who told you to look for a violent struggle? You
13 said you read her statement, she didn't say anything

14 about a violent struggle.

15 You just said that she woke up and saw

16 this man walking away from her. She didn't say that she

17 engaged in a violent struggle with him. Why are you

18 looking for a violent struggle?

19 A. Well, I had all of the crime scene

20 photographs. And certainly, they depicted a certain

21 amount of violence. So, it wasn't that I relied on that,

22 but that was obvious, a violent crime scene.

23 And I recall from not only the

24 statement that she had made, but from other interviews

25 and witness statements that she had also talked about

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1 that. So I had gotten that information from them.

2 Q. Okay. I mean because you saw a lot of

3 blood there on the carpet?

4 A. I don't understand your question.

5 Q. I mean, that is why you thought --

6 there was blood on the carpet?

7 A. Because there is a lot of blood on the

8 carpet, did I assume or believe that there had been a

9 violent confrontation there in that location? Is that

10 what you are asking me?

11 Q. Yes.

12 A. Yes, that's reasonable.

13 Q. Okay. You don't know -- and again,

14 you don't know what the first responders, how they may

15 have changed the scene, do you?

16 A. Well, it's certainly a question that I

17 asked.

18 Q. Okay.

19 A. And I wanted to get some information

20 about that, because that is important also to consider.

21 Q. You considered the vacuum cleaner,

22 didn't you?

23 A. I did.

24 Q. Okay. And, I noticed you've made a

25 comment about the cord, didn't you?

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1 A. I did.

2 Q. And you said something about the way

3 the vacuum cleaner cord was coiled up. Didn't you say

4 something about the way the vacuum cleaner cord was

5 coiled up, that gave you some concern?

6 A. I don't know if I said the word

7 coiled, but certainly the way it was underneath the base

8 of the vacuum was of interest, that's correct. It
9 appeared to be more stacked or -- than coiled, I think.

10 Q. And you said it looked like it had
11 been placed in there as part of staging?

12 A. That's correct. I believe that was
13 indicative of the staging that occurred at the scene.

14 Q. Okay.
15

16 (Whereupon, the following
17 mentioned item was
18 marked for
19 identification only
20 after which time the
21 proceedings were
22 resumed on the record
23 in open court, as
24 follows:)

25
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1 BY MR. DOUGLAS MULDER:

2 Q. Let me hand you what's been marked for
3 identification and record purposes as Defendant's Exhibit
4 No. 65. And I'll ask you if that is the photograph that
5 you are talking about?

6 A. No, it's not.

7 Q. Okay.

8
9 (Whereupon, the following
10 mentioned item was
11 marked for
12 identification only
13 after which time the
14 proceedings were
15 resumed on the record
16 in open court, as
17 follows:)

18
19 BY MR. DOUGLAS MULDER:

20 Q. Let me show you what has been marked
21 for identification and record purposes as Defendant's
22 Exhibit No. 61. I'll ask you if that is the photograph?

23 A. No, it's not.

24 Q. Okay. There was another one?

25 A. There are several others.

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1
2 MR. DOUGLAS MULDER: I'll offer into
3 evidence what has been marked for identification record
4 purposes as Defendant's Exhibit 61 and 65.
5 MR. GREG DAVIS: No objection.
6 THE COURT: Defendant's Exhibit 61 and
7 65 are admitted for record purposes.

8
9 (Whereupon, the above
10 mentioned items were
11 received in evidence
12 for record purposes
13 only, after which time,
14 the proceedings were
15 resumed on the record,
16 as follows:)

17
18 BY MR. DOUGLAS MULDER:
19 Q. Well, I'll be happy to -- the cord
20 appears to be in a different position. I don't know
21 whether it's the same or different. Is there another
22 photograph that shows it better?

23 A. There were several of them, yes, sir.

24 Q. Okay.

25
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1 THE COURT: Did you offer that for
2 record purposes only?

3 MR. DOUGLAS MULDER: No, no. I
4 offered for all purposes, but --

5 THE COURT: Any objections?

6 MR. TOBY L. SHOOK: No objection.

7 THE COURT: All right. Both exhibits
8 are admitted for all purposes. Thank you.

9
10 (Whereupon, the above
11 mentioned items were
12 received in evidence
13 as Defendant's Exhibit
14 Nos. 61 and 65,
15 for all purposes, after
16 which time, the
17 proceedings were
18 resumed on the record,
19 in open court,
20 as follows:)

21
22 BY MR. DOUGLAS MULDER:

23 Q. Can you show me the picture that you
24 are talking about?
25 A. Sure, there are 4.
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1 Q. Okay.
2
3 MR. DOUGLAS MULDER: Let me have these
4 marked for identification.
5
6 (Whereupon, the following
7 mentioned items were
8 marked for
9 identification only
10 after which time the
11 proceedings were
12 resumed on the record
13 in open court, as
14 follows:)

15
16 THE COURT: They will be Defendant's
17 Exhibit what, Mr. Mulder?
18 MR. DOUGLAS MULDER: 66, 67 and 68.
19 THE COURT: All right.
20 MR. DOUGLAS MULDER: 69.

21
22 BY MR. DOUGLAS MULDER:
23 Q. Let me show you what has been marked
24 for identification and record purposes as 66, 67, 68 and
25 69. And I'll ask you if those are the photographs that
Sandra M. Halsey, CSR, Official Court Reporter
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1 you were telling us about?
2 A. Yes, they are.
3 Q. Okay. And, what is it that your keen
4 eye caught about the cord?
5 A. I think it's probably best depicted in
6 what you described as Defendant's Exhibit No. 67.

7 Q. Okay.
8 A. Where the cord --
9
10 THE COURT: You may show it to the
11 jury.
12 MR. TOBY L. SHOOK: Judge, so it's
13 clear, are those in evidence?
14 MR. DOUGLAS MULDER: Yeah. I'll offer
15 them into evidence.
16 THE COURT: Are you offering them?

17 All right. Any objection?
18 MR. TOBY L. SHOOK: No objection.
19 THE COURT: All right. Defendant's
20 Exhibit Nos. 66, 67, 68 and 69 are admitted.
21
22 (Whereupon, the items
23 Heretofore mentioned
24 Were received in evidence
25 As Defendant's Exhibit
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1 Nos. 66, 67, 68, and 69,
2 For all purposes,
3 After which time, the
4 Proceedings were resumed
5 As follows:)
6
7 THE WITNESS: Where the cord seems to
8 be underneath the base of the vacuum cleaner and kind of
9 in a focused --
10 THE COURT: You may have to speak a
11 little louder so the end jurors can hear you.
12 THE WITNESS: I'm sorry. Where the
13 cord is underneath the base of the vacuum cleaner and it
14 seems to be focused and kind of stacked on top of one
15 another.
16 It certainly does not present with the
17 appearance that this was been snatched and thrown, or
18 otherwise violently placed in that position.
19 THE COURT: If you could step down and
20 just go down the aisle and show it to all the members of
21 the jury.
22
23 (Whereupon, the witness
24 stepped down from the
25 witness box, and approached
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1 The jury rail, for the
2 purpose of further describing
3 the exhibit to the jury.)
4
5 BY MR. DOUGLAS MULDER:
6 Q. That appears to you that was done with
7 a great deal of concern and design?
8 A. Well, you see here, this cord, seems
9 to be very focused at the bottom of this vacuum cleaner,
10 not stretched out or elongated. As if someone grabbed it

11 or snatched it. You would have anticipated the cord
12 would be elongated, especially if it had been plugged in,
13 obviously.
14 But again, this appears to have been
15 held, placed underneath the vacuum cleaner, the vacuum
16 cleaner base placed on top of it.
17 And then, considering the amount of
18 blood on the handle of the vacuum cleaner, looks like
19 that is the area that was grabbed. So, not thrown off at
20 the top of this.
21 Also again, because of the bloody
22 footprints underneath the vacuum cleaner that were
23 discovered, it was clear that someone had obviously
24 walked through that area just prior to that vacuum
25 cleaner being placed there.
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1 Q. And based on your experience, what you
2 do you make of that? That someone was interrupted while
3 vacuuming?
4 A. Well, in my opinion this vacuum
5 cleaner was placed in this position as part of the
6 staging of the scene.
7 Q. For what?
8 A. To make it look -- I believe that the
9 offender wanted to make it look like a violent struggle
10 had occurred and this had been knocked over during the
11 course of that struggle.
12 But again, because of some things that
13 I have already outlined, this is a major contradiction,
14 of that kind of a theory.
15 Q. Okay. So you think that --
16
17 THE COURT: If you want to have a seat
18 again, please, sir.
19
20 (Whereupon, the witness
21 resumed the witness
22 Stand, and the
23 Proceedings were resumed
24 On the record, in open
25 Court, as follows:)
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1
2 BY MR. DOUGLAS MULDER:
3 Q. You think that the perpetrator wanted
4 somebody to think that there was a fight going on around

5 the -- not over the vacuum cleaner but around the vacuum
6 cleaner? This is close to the kitchen sink, isn't it?

7 A. It is close to the kitchen sink.

8 Q. You said you read her statements. She
9 didn't say anything about a vacuum cleaner, does she?

10 A. I tell you, that was another thing
11 that was considered. What was conspicuously absent was
12 the comment by anyone about the vacuum cleaner. And
13 again, other things were commented on, but there was
14 absolutely no mention made of this vacuum cleaner, it was
15 totally avoided and I thought that was interesting.

16 Q. Well, now, if I -- I don't know as
17 much as you do, obviously, but if I had wanted to find
18 out how that vacuum cleaner got there, Agent Brantley, I
19 would have asked the first officer on the scene if he saw
20 a vacuum cleaner out of place in the kitchen. And if he
21 said no, then I might think that maybe one of the first
22 responders got it out of the way in their emergency. But
23 did you talk to Waddell?

24 A. I did not personally talk to him
25 but --

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1 Q. Didn't think it was necessary?

2 A. I talked to the prosecutors and the
3 other investigators involved and certainly asked that
4 question, I wanted to know if this was discovered in this
5 position and if this photograph accurately depicted that
6 position of the vacuum cleaner. I was advised that that
7 indeed had not been handled by the paramedics or any of
8 the responding officers.

9 Q. Okay. And, of course, you took that
10 at face value, didn't you?

11 A. Well, I considered that to be accurate
12 information at the time, yes, sir.

13 Q. Okay. Now, you are familiar with
14 staged evidence or throw-down evidence, aren't you?

15 A. I am familiar with staging.

16 Q. You have heard the term throw-down
17 evidence, or I guess if you have not been a street cop
18 and haven't worked a lot of these things, you probably
19 haven't heard the term throw-down evidence?

20 A. Well, I have heard the term, yes.

21 Q. All right. If someone -- let's just
22 use planted evidence, does that have a better
23 connotation? I mean is it clearer?

24 A. I have heard that term used as well.

25 Q. Okay. Assuming that someone wants to

1 plant evidence to either divert attention from themselves
2 or avert attention to someone else, what is the first
3 thing and the most important thing that they want to
4 achieve? What is the most important thing to them, if
5 somebody is going to plant evidence?

6 A. You mean besides diverting attention
7 away from themselves?

8 Q. Well, isn't the -- if you are going to
9 plant evidence, you don't want to plant evidence that is
10 so subtle the police might, in their zeal, overlook it,
11 do you, if you are going to plant evidence?

12 So the most important thing to
13 somebody who plants evidence, is that the police find the
14 evidence. They can't very well find it themselves, can
15 they?

16 A. I'm not sure I understand your
17 question.

18 Q. It doesn't do any good to plant
19 evidence if the police don't find it, does it?

20 A. That is a fair statement.

21 Q. Okay. So therefore, it must be very
22 important to somebody who plants evidence to see that the
23 police find it.

24 A. All right. I can go along with that.

25 Q. You can go along with that?

1 A. Yes.

2 Q. Okay. And generally don't you find
3 that planted evidence is overdone?

4 A. I think that is also fair to say,
5 especially with people that don't have a history of
6 committing violent acts. They stage it, they try to make
7 it look like they think it should look, but don't
8 necessarily base that on experience or knowledge of doing
9 it before.

10 Q. Okay. And rather than a sock with a
11 smidgen of blood on it, you find a blood soaked sock at
12 the end of the driveway, or something that is obvious.
13 It's got to be -- of course, for the police to find it,
14 many times it's -- you want something that they are going
15 to find and not something that they are going to
16 overlook. So you want to make it fairly obvious, don't
17 you?

18 A. Well, I have seen that before where
19 people do make things very obvious.

20 Q. Okay.

21 A. Now, if you're saying -- if you are
22 asking me whether I think the sock was placed in an
23 obvious location or not, I could answer that.

24 Q. Well, I know you want to answer it,
25 and I will just wait and let them ask you if you will.

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1 A. All right.

2 Q. I think you have answered it or given
3 us your view on it?

4 A. Well, I --

5 Q. Because you said he had gone back
6 down, you know the perpetrator had gone back down into
7 the development?

8 A. Someone had.

9 Q. Um-hum.

10 A. Whether that was the perpetrator or
11 someone else, I wouldn't be able to make that
12 determination based on the location of the sock.

13 Q. So you are saying that the perpetrator
14 might have been aided by someone else. Is that what you
15 are saying, or there may have been two perpetrators?

16 A. I'm saying that anything is possible.

17 I'm not saying that that is the case either.

18 Q. Okay. Well, let me just ask you this:

19 As an expert, how many perpetrators did you see involved
20 in this event?

21 A. From my review of the case and all the
22 materials, to me it appears that there was only one
23 individual involved in the assault.

24 Q. Okay. In the assault, in the crime,
25 in the planting evidence?

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1 A. Exactly. And again, that was based on
2 my review of the scene and also from the statements from
3 the surviving witness.

4 Q. Can you just give us your -- you say
5 the -- there was one person involved. So the one person
6 killed both of the boys and then cut and slashed Darlie,
7 and then planted this sock, this ruse, this -- as part of
8 the staging?

9 A. It was my opinion that that sock was
10 located out -- and as part of the staging event.

11 Q. Could you please give us, just give
12 the jury a chronology of how this took place, would you
13 please?

14 A. Well, I cannot give you an exact
15 chronology, but what I believe occurred is that the
16 offender in this particular case, I think at some point,
17 at some level realized, hey, this crime scene, for the
18 most part, really does not go beyond the confines of this
19 residence.

20 And maybe I need to leave some sort of
21 a trail to suggest that the intruder, if you will, has
22 come from the outside and again also has exited --

23 Q. I don't want to interrupt you, really,
24 but I want you to tell them at what point this
25 perpetrator realized that? As soon as the two boys were
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1 stabbed, or after her throat was cut, or after her arms
2 were --

3 A. Well, this is after the assault on --

4 Q. Is this after her throat is cut too?

5 A. Well, I couldn't say that.

6 Q. Why not?

7 A. I just don't have enough information
8 to make that call. But I think what I can say is that,
9 that sock was planted after the boys had been stabbed
10 because my understanding is that --

11 Q. Well, that is brilliant, because the
12 boys' blood is on it. I mean, there isn't anybody in
13 this courtroom who couldn't have handled that.

14 A. Great. That was my opinion, also.

15 Q. Well, I mean, it's common sense then,
16 isn't it?

17 A. Well, again, I try to be aware of the
18 obvious.

19 Q. Hey, we know that after the boys'
20 blood was shed the sock was -- it had to be after their
21 blood was shed, we know that?

22 A. That is a fair statement.

23 Q. Okay. All right. Now, tell us,
24 please, sir, what happened next? Was the sock -- when
25 was the sock taken out there?

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1 A. Well, I couldn't say with any degree
2 of certainty exactly when that sock was placed there.

3 Q. When was the window cut?

4 A. I couldn't say exactly when that
5 window was cut.

6 Q. Can you tell us who put the
7 fingerprints right up here? Did they tell you that they

8 had an experiment for the jury here?
9 They had a police officer bigger than
10 you are, squat down and go, and he too -- you know, they
11 said something about the windowsill not being disturbed,
12 the dust on it. You put that in and factored that in,
13 didn't you?
14 A. That combined with the lack of
15 transferring anything outside the house, mulch, grass,
16 moisture, blood going out the other way.
17 Q. Or mud?
18 A. Mud, exactly.
19 Q. Well, it was not muddy, why would you
20 expect to see mud?
21 A. Well, I think with the moisture and
22 the climate at the time is reasonable that some moisture
23 had been picked up and if that came in contact with dust
24 or dirt that may create mud.
25 Q. Well, it rained the next day. It
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1 rained the 7th. There was a thunderstorm the 7th, but
2 the 6th was hot and dry. Why would you expect to see
3 mud?
4 A. Again, moisture from the dew in the
5 evening and from -- you know, that is the moisture I had
6 in mind.
7 Q. Show me where he is going to step in
8 mud. Will you? Show me where the mud is here that you
9 think somebody -- you think he brought some mud with him?
10 A. Mud is your term, I'm not saying mud.
11 Q. No, you said -- there wasn't or you
12 didn't see any muddy footprints or you didn't see any
13 mulch disturbed?
14 A. That's correct.
15 Q. Well, show me where the mud is going
16 to come from.
17 A. Well, I'm considering dirt, it doesn't
18 have to be mud, or a puddle of mud, but there could be
19 some --
20 Q. Well, where is the dirt going to come
21 from, Special Agent?
22 A. Dirt on the outside of a home here in
23 Texas?
24 Q. This is all paved, isn't it?
25 A. Well, but still. See the yard there,
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1 the grassy area, in some areas there is no grass. That
2 is bare exposed dirt.
3 Q. You think this is bare exposed dirt?
4 A. That is mulch. It's my understanding
5 that is mulch.
6 Q. Why would you walk through the mulch
7 when you could walk on the sidewalk?
8 A. You could. You could walk on the
9 sidewalk.
10 Q. I mean why? Tell me. I mean I'm
11 interested in this. Why would you walk across the garden
12 part when you can walk on the sidewalk?
13 A. Well, from interviews of offenders
14 that I have talked to based on my knowledge of that
15 backyard area with the outside lighting and sensor, that
16 one possible reason or explanation is you want to avoid
17 setting off that light or that sensor. So you might want
18 to take as direct, close route to the side of the house,
19 as possible.
20 Q. You know, and that is a good point.
21 A. Yeah, because you actually become more
22 visible or exposed, I think, if you go down the walkway.
23 Q. Yes, sir. And we have a man who
24 performed some tests, but the State hasn't seen fit to
25 bring him yet.
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1 But one of the witnesses, one of the
2 police officers testified --
3
4 MR. TOBY L. SHOOK: Judge, we'll
5 object to the side-bar once again.
6 THE COURT: Sustain the objection. I
7 instruct the jury to disregard the comments made by the
8 attorney.
9
10 BY MR. DOUGLAS MULDER:
11 Q. Well, one of the police officers
12 testified that a Sergeant Nabors did some tests out there
13 and he said that you could walk from this window through
14 here to the gate and not set off that light.
15 A. I believe that is accurate. I saw
16 that same report.
17 Q. So the light doesn't have anything to
18 do with it, does it, unless you are just running around
19 the yard?
20 A. Well, it is something I considered.
21 But if you knew that about the light, you knew the
22 positioning of the light and that cone of sensitivity,

23 then you could reasonably assume that.
24 But if you are a stranger and you are
25 not aware of how that light is positioned, you are not
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1 going to know that that wouldn't come on. So you might
2 want to be a little more cautious and you might want to
3 hug the wall of that home a little more closely than
4 otherwise.

5 Q. Well, who said it was a stranger?

6 A. I'm just saying that is a possibility.

7 Q. Okay.

8 A. And if you believe that, if you
9 believe that it's a stranger, that's certainly something
10 you want --

11 Q. Or if you don't -- you know, not many
12 places have these sensor lights, do they?

13 A. I'm sorry?

14 Q. Not many, probably 99 percent of the
15 places don't have a sensor light that goes on like that.
16 Isn't that fair to say?

17 A. I have no information about that
18 neighborhood, how many people have that light.

19 Q. Any neighborhood?

20 A. It's fairly common in the area that I
21 live in.

22 Q. Well, it would have to be. You live
23 up there by Washington D.C.

24 A. I do.

25 Q. Everybody carries a gun up there,
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1 don't they? Or they need to, probably.

2 But at any rate, why would you expect
3 the mulch to be disturbed?

4 A. If somebody had gone through there it
5 would be reasonable to assume that the mulch had been
6 disturbed.

7 Q. All right. Now, did you say there was
8 nothing in the entrance or exit that was disturbed? Did
9 you say that?

10 A. You are talking about other than the
11 screen being cut?

12 Q. Yes, sir.

13 A. There was certainly a minimum of
14 disturbance if anything at all.

15 Q. Well, when you say a minimum, what are
16 you talking about?

17 A. Well, again, going back to the dust
18 and dirt on the sill, talking about a transfer, talking
19 about any blood evidence being brought back through there
20 on the exit of the offender.

21 Q. Did you know that when that police
22 officer went through that the only place that he touched
23 was the place that they found the unidentified prints?

24 A. I was aware of that.

25 Q. Do you think he just touched it in
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1 front of the jury, just to -- by design? Or do you think
2 it was just a natural place that somebody would touch as
3 they were going through that window?

4

5 MR. TOBY L. SHOOK: Judge, I'm going
6 to object to speculation.

7 THE COURT: Sustained.

8 MR. DOUGLAS MULDER: Well, he
9 speculated, Judge, for two hours.

10 THE COURT: If you know the answer,
11 answer it. If you don't, let's move on to the next
12 question.

13 THE WITNESS: I'm not sure I
14 understand that question.

15

16 BY MR. DOUGLAS MULDER:

17 Q. All right. We will just move on.

18

19 (Whereupon, the following
20 mentioned items were
21 marked for

22 identification only

23 after which time the

24 proceedings were

25 resumed on the record

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1 in open court, as
2 follows:)

3

4 BY MR. DOUGLAS MULDER:

5 Q. Let me show you what has been marked
6 for identification and record purposes as Defendant's
7 Exhibit 62 and 63.

8

9 MR. DOUGLAS MULDER: And I will offer
10 these into evidence.

11 MR. TOBY L. SHOOK: No objection.
12 THE COURT: Defendant's Exhibit 62 and
13 63 are admitted.
14
15 (Whereupon, the above
16 mentioned items were
17 received in evidence
18 as Defendant's Exhibit
19 Nos. 62 and 63,
20 for all purposes, after
21 which time, the
22 proceedings were
23 resumed on the record,
24 in open court,
25 as follows:)
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1
2 BY MR. DOUGLAS MULDER:
3 Q. You can see, it looks like a Dallas
4 Cowboy trash can kicked over there, doesn't it?
5 A. Certainly.
6 Q. And here it looks like another trash
7 can kicked over, doesn't it?
8 A. Yes, sir, a wastebasket.
9 Q. So that would be -- would that be some
10 evidence of somebody going through?
11 A. It could be, and I certainly
12 considered that. And again, what I think that really
13 addresses is you have those things laid down in a fairly
14 conspicuous way.
15 Certainly, there is nothing again
16 damaged. I mean, these are plastic kind of a tin metal
17 wastebasket. No damage, no dent in that wastebasket
18 whatsoever.
19 Again, the question arose, is this
20 something that was knocked over and disturbed as someone
21 was going through there, or as someone is trying to exit?
22 And if it is someone trying to exit, and they got in so
23 well, how come on the exit they knocked into these items?
24 I think what we also considered was whether somebody may
25 have pulled these things behind them to impede someone
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1 chasing them, or delay someone from actually catching up
2 with them. So we looked at those as well.
3 Q. You say we looked at that. That is
4 the guys back at the Behavioral Science Unit?

5 A. Myself and other unit members, that's
6 correct.

7 Q. What did you make of the fact that her
8 underwear was never found?

9 A. I'm sorry?

10 Q. I said, what did you make -- you and
11 the guys back at the unit, what did you make of the fact
12 that her underwear was never found?

13 A. I had no idea that her underwear had
14 been taken.

15 Q. I don't guess that makes any
16 difference though, does it?

17 A. It would, if there had been something
18 taken from the scene that I wasn't aware of, I would want
19 to know that. But again, as far as I know, there had
20 been nothing taken from the scene.

21 Q. All right. You, I guess, have some
22 acquaintanceship with blood spatter evidence, don't you?

23 A. Yes, sir, I do. That is fair to say.

24 Q. And a blood pattern interpretation?

25 A. Well, I am not an expert in that area,
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1 but certainly I have had that kind of information
2 presented to me before.

3 Q. Okay. Now, we're in agreement now
4 that whoever did this thing finished off the boys before
5 Darlie was attacked and her throat cut, stabbed here a
6 couple of times and stabbed in the chest. Are we in
7 agreement?

8 A. I believe that was my opinion, yes,
9 sir. It looks like they were assaulted first, yes, sir.

10 Q. By the way, did you know that her arms
11 had been beaten?

12 A. Well, I knew that there was some
13 bruising to her arms.

14 Q. Okay. What did you make of that?

15 A. Well, they are very interesting. I
16 looked at that when I received the case materials and I
17 asked quite a few questions.

18 Q. Okay.

19 A. I wanted to know whether that was
20 artifact or that was something sustained as a result of
21 the medical procedures or whether that was something
22 else.

23 Q. Okay. And, I assume you are getting
24 ready to tell us that was artifact or that was part of
25 the staging?

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1 A. Well, I'll tell you, it's a good
2 question, because initially I was informed that that may
3 have been the result of the medical procedures that were
4 performed at the hospital. And then later on I
5 understand that that was not the opinion of the medical
6 doctor.

7 When I first looked at them, again,
8 because of the nature and the symmetry, they looked --
9 they certainly didn't look like anything that was
10 coincidental to a struggle or being grabbed. It looked
11 like something had -- either they had been beaten on
12 something, or something had been beaten on to her.

13 Q. Pretty determined individual if they
14 are beating their arms up in the fashion that they are
15 bruised all the way from the wrist to the, virtually, the
16 shoulder, wouldn't you say?

17 A. I recall what was distinctive, it was
18 a very clear line of demarcation where from that line
19 below there was absolute no bruising and then from that
20 line above, there was significant bruising.

21 Q. The doctor says, blunt trauma. What
22 does that mean to you?

23 A. Blunt force? Again, something
24 striking the arm or the arm striking something, something
25 hard.

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1 Q. Okay. And I take it you factored that
2 in?

3 A. I certainly looked at that, yes, sir.

4 Q. Okay. And, you talked to Mr. Bevel,
5 didn't you?

6 A. I did.

7 Q. Okay. And he no doubt told you about
8 the blood that was on her T-shirt?

9 A. He did talk about that, that's
10 correct.

11 Q. Okay. And you found that interesting,
12 did you?

13 A. Certainly, I took that into
14 consideration.

15 Q. Okay. And what consideration did you
16 give that?

17 A. Well, that was not a major feature.

18 And again, as I testified on direct, that was really not
19 anything that I focused on.

20 Q. That didn't mean a whole heck of lot
21 to you?
22 A. Well, based on what I was trying to do
23 and the focus of what I was doing, again, it was
24 certainly not a major feature.
25
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1 MR. DOUGLAS MULDER: Judge, if you
2 will bear with me. I want to get down, like on my knees
3 here.

4

5 BY MR. DOUGLAS MULDER:

6 Q. But, Mr. Bevel had the opinion, that
7 Darlie got the blood on her, by stabbing the boys, and
8 working the knife in this fashion, and the knife came up
9 and spattered or cast off on her shoulder. Did he tell
10 you that?

11 A. He did not tell me that, no.

12 Q. Okay. And, he said that in these
13 areas where you see the multicolored kind of
14 lifesaver-looking deals, you see four of them on there?

15 A. You will have to show me what you are
16 referring to.

17 Q. The two here.

18 A. The yellow and orange?

19 Q. And a couple here?

20 A. Yes, sir.

21 Q. Okay. He said that those were
22 occasioned when the knife was stabbed into the boys and
23 came out and the blood spattered or was cast off on her
24 shoulder. Does that make sense to you?

25 A. Again, if that is Mr. Bevel's
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1 testimony, I can't really speak to that.

2 Q. Okay. Well, as an analyst, I guess my
3 question for you is: And he said that the blood here,
4 and there is going to be testimony, he said initially, it
5 was a mixture. And then he said, well --

6

7 MR. TOBY L. SHOOK: Well, Judge, I'll
8 object to him going into --

9 MR. DOUGLAS MULDER: Well, I'm going
10 to --

11 THE COURT: Sustain the objection.

12 MR. RICHARD C. MOSTY: Excuse me,
13 your Honor, Mr. Bevel testified to that yesterday.

14 MR. TOBY L. SHOOK: Well, Mr. Bevel
15 testified to a whole lot of stuff yesterday.
16 THE COURT: We understand that. Let's
17 don't compare testimony. Let's move on.
18 MR. TOBY L. SHOOK: We'll object to
19 him going into any comparison.
20 THE COURT: Sustained.
21
22 BY MR. DOUGLAS MULDER:
23 Q. All right. Let me ask you this, Mr.
24 Analyst. If, in fact, these represent --
25
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1 THE COURT: His name is Brantley and
2 please address him as such.
3 MR. DOUGLAS MULDER: Mr. Brantley,
4 Agent Brantley.
5 THE COURT: Thank you.
6 MR. DOUGLAS MULDER: Yes, sir.
7
8 BY MR. DOUGLAS MULDER:
9 Q. Mr. Brantley, if, in fact, these are
10 mixtures of Darlie's blood and Devon's blood here, and
11 Darlie's blood and Darin's blood here, the bloods mixed
12 together, and the knife is wet with their blood, right?
13 A. I'm not sure if that is a question, or
14 are you telling me that?
15 Q. It's a mixture.
16 A. Also the court reporter is blocking my
17 view, I can't see what you are referring to.
18 Q. Okay. Now, my question for you, I
19 guess, is, how do you factor that in, to get -- to get
20 this blood, her blood and the boys' blood, her blood and
21 Devon's blood up there on her shoulder, the blood is
22 mixed, that means the knife has to be wet with her blood
23 and Devon's blood.
24
25 MR. TOBY L. SHOOK: Judge, he's going
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1 into a conclusion, and there were two different areas of
2 testimony given on that, and the conclusion that he has
3 given. Two different explanations.
4 THE COURT: Sustained. Let's move on.
5 MR. DOUGLAS MULDER: Well, Judge, are
6 you telling me that I can't ask this analyst this
7 question? These are facts based on evidence.

8 THE COURT: Well, if you will just
9 make a succinct question and if he knows the answer, he
10 can answer it, please.

11 MR. DOUGLAS MULDER: All right.

12

13 BY MR. DOUGLAS MULDER:

14 Q. Well, the knife has to be wet with
15 both of their blood to be able to stab -- to be able to
16 stab, and get that blood on her, if that is how it got on
17 there.

18 It has to have both her blood, and the
19 youngster, Devon's blood, on it at that time. And for
20 that to happen, he must have already -- she has either
21 got to cut her throat first and injure herself first and
22 then stab the boys and do it, or she has got to stab the
23 boys and then cut her throat, and then go back and stab
24 the boys again to do this.

25

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1 MR. TOBY L. SHOOK: Judge, I'll object
2 again as to the misleading nature of the question,
3 because that is only one version of how those stains get
4 there, and he is misleading the witness with that
5 question.

6 MR. DOUGLAS MULDER: No, it's two
7 versions, take your pick.

8 THE COURT: Just a minute, gentlemen,
9 please.

10 If you know the answer, answer it. If
11 you don't know it, please state so.

12 THE WITNESS: Your Honor, I'm not sure
13 I know what the question is now.

14 THE COURT: Well, thank you. That is
15 probably a good answer.

16

17 BY MR. DOUGLAS MULDER:

18 Q. Just a thing or two. Were you aware,
19 Agent Brantley, that there were some suspicious people
20 looking into the Routier garage, the late evening of June
21 the 5th? Were you aware of that?

22 A. I am not aware of that, no, sir.

23 Q. Okay. That doesn't make any
24 difference, does it?

25 A. That would make a difference if I had

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1 that information, but I received no information that that
2 had taken place.

3 Q. What if they were in a black car?

4 Would that make it any more interesting for you?

5 A. Would I take that into consideration?

6 Q. Yes.

7 A. Is that your question? Certainly.

8 Q. Well, what -- are you going to give

9 that any value of any sort?

10 A. Well, any events leading up to these

11 homicides, certainly I would. Again, anything especially

12 in close proximity to that residence.

13 Q. Okay. What does that do for you?

14 What does that tell you?

15 A. Well, I would consider whether maybe

16 that is part of some surveillance that may have been

17 going on.

18 Q. Okay. Let me ask you this: How long

19 would it take, in your judgment, to do all this? To kill

20 both boys, self-inflict the wounds, stage the scene,

21 plant the sock, call 911, how long would all of this

22 take?

23 A. You are saying --

24 Q. I'm saying, how long would it take?

25 A. If the defendant did this, how long

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1 would it take if self-inflicted?

2 Q. Yeah.

3 A. Because I haven't said that.

4 Q. I know you haven't.

5 A. But again, I really have not assessed

6 it. The only thing I base my opinion on is when the call

7 came in, and when the police responded to it. I

8 certainly looked at the time of death from the medical

9 examiner's reports. So, again, I really have made no

10 assessment as -- from the beginning of the event to the

11 end of the event.

12 Q. Well, I'm asking you to do that now.

13 A. I don't know that I can do that, sir.

14 Q. Okay. All right. I mean, now, what

15 if you had the boys back at the Behavioral Science Unit,

16 do y'all sit down and kind of brainstorm, something like

17 that and come up with a factor?

18 A. I think depending on the condition of

19 the victims, and lividity, and rigor, and some other

20 postmortem changes in the body, I mean, you can tell, I

21 think we would probably be able to assess whether the

22 kids had been killed, and were discovered fairly soon

23 after the homicides, or whether they had been there a
24 while before they were discovered.
25 But again, as far as giving you an
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1 exact time, and again, a specific chronology, that is
2 something that we don't do.

3 Q. Well, you see, all that information is
4 available to you.

5

6 MR. TOBY L. SHOOK: Judge, I'll
7 object. He just answered his question.

8 THE COURT: Overruled. I'll let him
9 answer the question.

10

11 BY MR. DOUGLAS MULDER:

12 Q. The majority of it has all been
13 testified to here. I mean we all know.

14 A. Well, I -- but, again, I haven't been
15 here for the testimony.

16 Q. Well, I know it. But I'm asking you,
17 just based on everything that you have received, tell us
18 how long it would take, from start to finish, or from
19 start to the 911 call?

20 A. Well, I would look at a variety of
21 options.

22 Q. I know you would.

23 A. If they were killed and then the
24 perpetrator remained at the scene for some time before
25 any of the other events occurred, like, as you said, the
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1 self-inflicted wound.

2 They could have been killed or
3 assaulted, and it could have been sometime before the
4 other injuries were inflicted.

5 If it occurred coincidental to the
6 children being assaulted, then it would be a relatively
7 short period of time.

8 Q. How many minutes? Just give me your
9 best guess. I'm not going to hold you to it.

10 A. Again, I'm sure you probably will.

11 But again, I really am not comfortable with making that
12 kind of an assessment of chronology or time.

13 Q. Well, I noticed that you -- when you
14 were talking about the broken glass, you told the jury
15 that you said, "Hit the wine rack." Now, where on earth
16 did you get the idea that somebody hit the wine rack?

17 A. Well, I look at the condition of the
18 wine rack and the glass breaking and the statements of
19 hearing the glass breaking, again, somehow that glass
20 became dislodged.
21 And because it was described as being
22 coincidental to the offender escaping, unless the
23 offender went by and knocked it off or hit into that wine
24 rack, there is really no other way that that could have
25 occurred.
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1 Q. Well, now, wait a minute. There are a
2 bunch of different ways that could have occurred, aren't
3 there?

4 A. Well --

5 Q. Okay. Remember, you said you were --
6 I wrote it down -- and you said that you were alarmed or
7 curious that some of the other things on the wine rack
8 were not knocked off?

9 A. Yes, sir, that's correct.

10 Q. You said that when he hit the wine
11 rack?

12 A. Well --

13 Q. I mean, why does somebody have to hit
14 the wine rack to break a glass?

15 A. Well, there would have had to have
16 been some sort of contact with the wine rack for that, I
17 believe, for that glass to become dislodged and for the
18 other items on that wine rack to be moved.

19 Q. Uh-huh. So are you suggesting that
20 somebody took the wine glass, and threw it down on the
21 floor?

22 A. No, I'm not. I didn't say that.

23 Q. And you don't have, we can agree, that
24 you don't have to hit the wine rack to knock a glass off,
25 do you?

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1 In fact, you could come by and just
2 hit it with your arm or shoulder?
3 A. Certainly. You could come by and pick
4 it up off and throw it down. That is a way for it to
5 come off.
6 Q. But if it were thrown down on the
7 floor, you wouldn't expect to find shards up here on the
8 shelf, would you?

9 A. If it were picked up and thrown on the
10 floor, clearing that wine rack completely, that is

11 reasonable to assume. But, of course, if you walked by
12 and just knocked it up and it fell off and hit before it
13 hit the floor, then --

14 Q. Then you would expect to find some
15 shards here?

16 A. That is reasonable.

17 Q. And maybe even in the little ice
18 bucket top as well, if it were broken up here as opposed
19 to being thrown down on the floor? Fair enough?

20 A. That is fair to say.

21 Q. She didn't say in her statement that
22 somebody hit the wine rack, did she?

23 A. Well, my recollection is she heard the
24 sound of breaking glass.

25 Q. Not the sound of somebody hitting the
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1 wine rack?

2 A. No, sir.

3

4 MR. DOUGLAS MULDER: I think that's
5 all. Thank you, Agent Brantley.

6 MR. TOBY L. SHOOK: Nothing further,
7 Judge.

8 THE COURT: You may step down, sir.

9 Thank you for coming.