

COURT REPORTER'S RECORD

VOLUME 44 OF 57 VOLUMES

TRIAL ON GUILT/INNOCENCE

TRIAL CAUSE NO. F97-01215-PJ

THE STATE OF TEXAS VS GREGORY EDWARD WRIGHT

IN THE CRIMINAL DISTRICT COURT NO.3 OF DALLAS COUNTY, TEXAS

APPEARANCES:

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HONORABLE NEIL PASK -SBOT: 15556700

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ATTORNEYS FOR THE DEFENDANT

On the 1st December, A.D., 1997, a Capital Murder Jury Trial with reference to the above-styled and numbered cause came to be heard before THE HONORABLE ROBERT W. FRANCIS, Judge of Criminal District Court No.3, Dallas, Texas, and the following proceedings were held:

(WITNESS ORDER AND EVIDENCE INDEXES OMITTED FROM THIS PRINT
(AVAILABLE LATER AS A SEPARATE FILE))

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PROCEEDINGS
(Juror not present.)

THE COURT: Let the record reflect we're outside the presence of the jury. Today's date's December the 1st, 1997, the date we scheduled for the beginning of testimony in this trial.

Since we concluded the voir dire at November 19th, I suppose, of this year, the defense has filed some motions. Two motions were filed on November the 26th, the motion to quash Indictment, and the motion to suppress evidence, and three motions were filed on December the 1st: Motion for continuance; motion for discovery; and a motion for expert assistance.

Are those all the motions that have been filed since the last time we were here, Mr. Johnson?

MR. JOHNSON: I believe so, Your Honor.

THE COURT: All right. Let's first address the motion to quash the Indictment. Again, that was filed November 26th, of 1997.

MR. JOHNSON: Your Honor, it has come to the defense's attention that the Indictment has been amended. The -- the defense was never given any notice of the State's intent to amend the Indictment, We are of the opinion that under 28.10, that the Indictment cannot be amended until after we have been given
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notice and we -- we were never given notice of -- of the amendment. We were not present when the Indictment was amended. We were never told the Indictment had been amended, and we did not become aware that the Indictment was amended until the very end of the voir dire.

THE COURT: Mr. Davis?

MR. DAVIS: Yes, sir. I believe that the record in the court's file will reflect, Your Honor, that the motion to amend the Indictment was filed on May the 16th of this year, which I believe the docket will show was a first setting after this case was reindicted. I have looked on my copy of that motion. It indicates that I hand delivered that motion to defense counsel on that date. I have no reason whatsoever to believe that I did not hand deliver it on that date. I stand by that certificate of service, in particular, because I believe the record reflects that there were two other motions filed on that date also contained in the file that were also delivered to counsel on that date. So our position is that defense counsel had notice of the amendment of this Indictment on the day that it was amended, which was May the 16th, 1997, prior to beginning of trial in this case.

MR. JOHNSON: Your Honor, if I may respond to that.

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THE COURT: You may.

MR. JOHNSON: The other two motions that he's talking about that he filed on that date was a motion to comply with giving us copies of the audio recordings of Mr. Adams's statement. My investigator, Mr. Monych, was here that day. We received that motion and we also received those cassettes of those recordings.

I believe the other motion was asking us to give the State notice if we intended to use psychiatric testimony in our case, and I -- and I got that motion as well, but I never, ever got the third motion, which was the -- the motion to amend the Indictment, and the defendant was never informed that the Indictment was amended.

In fact, I want to ask Mr. Davis, you -- you've told me that you got down here early that morning, and I assume that -- that -- what is your recollection of the Indictment being amended? Were you there when the Indictment was amended?

MR. DAVIS: Yes, I was. I was present when Judge Francis himself made the necessary amendment to the Indictments, and I was present at that time.

MR. JOHNSON: Okay. And where did that occur?

MR. DAVIS: In my recollection, it occurred back in the Judge's chambers that morning.

MR. JOHNSON: Okay. And clearly, your
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recollection, I suspect, would be that I was not in chambers when that happened.

MR. DAVIS: That's true. My recollection is that that occurred in chambers. You appeared in court later that morning, and I waited for you, or I came back down here to meet with you, and at that time then gave you a copy of the motion to amend the Indictment, giving you notice that, in fact, that had occurred.

MR. JOHNSON: Well, Judge, that clearly shows that the amendment was done prior to notice being given to the defendant, because the -- well, 28.10 says that the Court cannot amend the Indictment until after notice to the defendant. Clearly, the Indictment was amended before notice was given to the amendment, I mean, I'm sorry -- before notice was given to the defendant, which is a violation of 28.10. We did not get notice of it. We certainly didn't get notice of it prior to it being amended, and we have actually never even been given a copy of the motion to amend the Indictment even to this day.

When I gave Mr. Davis the motion to quash the Indictment last week, I'd asked him if he'd ever -- if he had ever filed a motion to amend the Indictment, because I had been through the file and could not find a copy of the -- of the notice to amend, and still -- still have never been given a copy of the notice to amend the Indictment.

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THE COURT: All right. The documents that are -- the motions that the State has indicated are contained in the court's files, are indeed in the court's file, and I will deny your motion to quash the Indictment.

MR. BRAUCHLE: Your Honor, could we make something clear in regard to that, because I searched the court's file myself in regard to looking for that, and it's not inside the -- what would be known as the court's jacket. And we were informed today that there's evidently some sort of Expand-a-File in which other motions, or some motions have been placed, and we were not aware that this had been done, or that the court's file was evidently in two separate places. And I know that there's still not a motion by the State in regard to amending the Indictment inside the court's jacket to this date, and I'm not sure where this -- where this document is located. Could the record be made clear as to where this -- this document was filed, if, in fact, it was filed?

THE COURT: I'm sure the document would have been filed with the court's jacket, without going into the laws of physics, which I think generally go back to common sense. There is a court's jacket. There are several inches of documents. Not that it would take a statistician, or a scientist, or physicist to figure out that they can't all be contained in one folder. They're all together. The folders
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have been here the entire time, so the -- as far as the Court's concerned, the motion to amend the Indictment is contained right in the court's jacket.

MR. JOHNSON: Judge, I have one more bit that I want to put on the record in this regard.

THE COURT: Okay.

MR. JOHNSON: The amendment that's been made to the Indictment is -- is -- in effect, the date of the offense has been changed. The Indictment that was served on my client, the Indictment that we have voir dired the jury on, at least from this table, we had -- we had thought the Indictment said March the 23rd of 1997.

THE COURT: All right. Well, --
MR. JOHNSON: I'm not quite finished

THE COURT: I'm sorry. Go ahead.

MR. JOHNSON: The Indictment clearly had been amended at some point. There's no date on the Indictment showing when the Indictment was made. The -- one of the major points in the defense's voir dire of each prospective juror was in regards to technicalities, loopholes, and problems in the Indictment that would require the jury to return a verdict of not guilty. The evidence would clearly show that Mr. Wright was in custody, police custody, on March 23rd, the date.that
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is originally in the Indictment, and we would tell the Court this: We have relied on the Indictment having the date of March the 23rd on it, because we were never given notice that the Indictment had been changed, and our entire voir dire was done on the assumption that the date in the Indictment was March the 23rd.

MR. DAVIS: Judge, I believe the record will reflect that each and every time that you voir dired a separate panel in this case, that you read the Indictment as amended, and I recall very clearly that on each of those occasions, that you read the offense date being March the 21st. In addition, I'd like for the record to reflect that during the course of the individual questioning of the jurors, that a copy of the amended Indictment was before the jurors as they were being questioned by both sides. So through your own voir dire of the panels and through the document being in open court here and in the presence of each individual jury -- juror, certainly there has been ample notice throughout this voir-dire process of the amendment.

MR. JOHNSON: In response to that, I want to tell the -- put on the record how we found out about the amendment. During the last week of voir dire, evidently Mr. Jordan read the Indictment to one of the jurors during
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voir dire and read the date the 21st. At that time our client asked us why he was saying the 21st instead of the 23rd, and that is when I became aware that the Indictment had been amended.

I will tell the Court that I really can't say that I was paying all that close of attention to the Court's voir dire that they went over many, many times during the course of -- of this trial, and just assumed that when you read the Indictment, you were reading the correct date, or at least the date that I thought was the correct date on the Indictment, and that's how we got to this point, Judge.

THE COURT: All right. I think the record will figure out the date that I read to the jurors starting back on August the 25th of '97.

And so that the record's clear, there was a copy of an amended Indictment placed before the jurors, with the very first juror starting individual voir dire, as well as an additional witness list, as well as a definition of "reasonable doubt".

So the amended date was presented in court to all potential jurors starting, certainly, by August the 25th of '97. And all things considered, I'll still deny your motion to quash.

In regards to the motion to suppress, we talked about this on the record before, and obviously we'll take it

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up before any of this evidence is offered, but it may be this evening.

MR. JOHNSON: Well, Your Honor, I'd also want the motion to suppress be taken up prior to any opening statements that might be made that might make reference to any evidence that might be excluded as fact based on the motion to suppress.

THE COURT: Well, I think that defense counsel and defense have been well-aware of the Court's position on this. I have encouraged y'all to have these heard before today's date, and previously made very clear that we would take it up when the Court was on a break, and otherwise, if not dealing with the jury, so --

MR. JOHNSON: Well, Your Honor, we're certainly in a position to do that today, I believe. I believe that because we have a juror that is unavailable, that we could take up the motions to suppress prior to that juror becoming available.

THE COURT: All right. Well, my -- let's go on to another motion, what we're going to address right now. Not going in any particular order, the three motions of December the 1st, 1997, the defendant's motion for expert assistance, it's my understanding, Mr. Johnson, that based on the conversation you had with the State's attorneys and myself this morning, that what you're asking for at this
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time is a fingerprint expert and a DNA expert; is that correct?

MR. JOHNSON: That's correct, Your Honor.

THE COURT: All right. I'll grant that motion. Obviously, I would appreciate it if you would advise me of what you expect those expenses to be before they're incurred

MR. JOHNSON: Your Honor, I have -- I can tell the Court that I have contacted a fingerprint expert named Tom Ekis, that's E-k-i-s. He works for Forensic Consultants. He has indicated to me that his expenses are \$135 per hour. The DNA expert that I have tried to get ahold of that I've used in the past is a Dr. Benjamin. He is out of Denton. He is a professor at the University of North Texas, and I will continue to try to get ahold of him. I think that he may have been unavailable because of the Thanksgiving

THE COURT: All right. If you get any pertinent information as to how many hours your fingerprint expert believes he's going to need, if you'll just let me know when you find that out, --

MR. JOHNSON: He indicated to me that I should inform the Court that it might be as much as \$2500, but that he would -- he would -- he asked me to ask for that amount, and that it would possibly be a lot less than that, depending on what he had to do.

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THE COURT: Next we have a motion for discovery and inspection, and it appears that -- that the

MR. JOHNSON: I'm sorry to interrupt you, Judge, but before we move on, I need to be able to find out when the photographs can be made available for the fingerprint expert to -- to look at. I did get Mr. Ekis to meet me at SWIFS, Southwest Institute of Forensic Science, on Wednesday of last week, to look at the physical evidence that contains the alleged fingerprint on the pillowcase. But after looking at it, he told me he would -- really could not make any determinations and would need to look at photographs.

THE COURT: Okay. So the photographs you need are not -- let me make sure I understand. The motion for discovery is just the items you will need for your DNA expert.

MR. JOHNSON: That's correct.

THE COURT: The additional items, the photographs that you need for the fingerprint expert are not listed in your motion for discovery.

MR. JOHNSON: That's correct.

THE COURT: Mr. Davis, it's my understanding you had an opportunity to speak with Mr. Johnson about the photographs that are -- are necessary for his expert to look at. Would y'all work out that that be done sometime this evening?

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MR. DAVIS: Yes, sir. I'll call out to Sgt. Jim Howell of the Dallas Sheriff's Office. My understanding is that he still has that photograph in his possession over at Lew Sterrett, and I'll certainly call him today to make certain that he'll give the defense's expert access to those photographs.

MR. JOHNSON: Okay. Thank you

THE COURT: I don't know how much --

MR. JOHNSON: It has been my experience with the DNA discovery that you have before you, Judge, that SWIFS will not make that material available without a Court Order, and if the Court will grant that motion for discovery giving us an order to have that material, then SWIFS will make copies of the asked-for evidence and make it available to my expert.

THE COURT: Mr. Davis, do you have any objection to any of the items, or copies of any of the items? It looks like there's 11 items requested in the motion for discovery and inspection.

MR. DAVIS: No, sir, I have no objection

THE COURT: All right. All right. The motion for discovery and inspection of the order sheet lists 1, 2, 3, 4-A, 4-B, 5, 6, 7, 8, 9, 10 and 11, but the motion itself also lists 4-C and 4-D.

Will you need those as well, Mr. Johnson?

MR. JOHNSON: I'm sorry, Your Honor?

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THE COURT: Well, the order, each individual number is singular except for number 4, and in your -- in your motion, you've got 4-A, 4-B, 4-C, and 4-D.

In your order, there's only 4-A and 4-B. Do you need 4-C and 4-D?

MR. JOHNSON: Yes, I do, Your Honor.

THE COURT: So that the record's clear, I have granted all of your requests in the motion, and I have written in 4-C and 4-D --

MR. JOHNSON: Thank you, Your Honor.

THE COURT: -- as granted.

If you have an extra copy of the motion, I'll sign that now, so that you'll have one to take, and then I'll keep one for sure in the court's jacket.

Mr. Davis, if you'd do me a favor and have somebody call out to y'all's lab and let them know that I have signed this order, and they'll expect someone.

MR. DAVIS: Yes, sir.

THE COURT: And, Mr. Johnson, if you'd let them know what time you expect somebody to go so they'll try to have everything ready.

MR. JOHNSON: Okay.

THE COURT: All right. Finally, it's a motion for continuance.

Mr. Johnson, do you have anything you wish to
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argue on that that's not contained in the motion?

MR. JOHNSON: Yes, Your Honor.

THE COURT: All right. You may proceed.

MR. JOHNSON: Okay. Judge, I want the record to reflect that -- that my client was indicted for an offense that allegedly occurred on March the 21st, 1997. The Court is aware that we commenced voir dire on August the 25th of 1997, and we concluded it on November the 13th of 1997.

On November the 11th, the State, through its attorney, Greg Davis, gave the defense results from the Southwest Institute of Forensic Science that contained the results of their DNA testing.

Further, on -- on November the 25th of 1997, I received a fax transmission from Mr. Davis where he was advising me that he was going to have another testing facility, namely, Gene Screen, to analyze the bloody fingerprint on the pillowcase, and three blood stains found on the crotch of Mr. Wright's blue jeans. I'd like to have this marked and

THE COURT: All right. Call it Court's Exhibit whatever we're at now. We're at 9, or something like that.

THE COURT REPORTER: Are you wanting this added to the X exhibits?

THE COURT: Yes.

(Court's Exhibit No. 9

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was marked for identification purposes.)

THE COURT: Mr. Davis, do you have any --
MR. DAVIS: The State has no objection,
Your Honor.

THE COURT: All right. That will be admitted as
Court's Exhibit Number --
MR. JOHNSON: 9.
THE COURT: 9.

MR. JOHNSON: Furthermore, on or about November
the 19th, 1997, I went to Mr. Davis's office and that was --
at that time he showed me a photograph of the pillowcase that
has this alleged bloody fingerprint on it.
The -- the Court is aware that -- that the Judge
was unavailable -- was not here in court, was outside the
continent of the United States from November the 21st, and
this is the first day that the Court's been back, the Judge
has been back in this court.
The -- I was able to get a fingerprint expert to
try to start comparing the -- the alleged bloody fingerprint.
Again, he was unable to continue his -- or complete his
examination because of the unavailability of access to the
photographs that he needs to look at.
I have attempted to get ahold of a DNA expert
that I had used in the past. His name is Dr. Benjamin. He is
out of the University of North Texas in Denton, and we'll try
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to get ahold of him today to find out about his availability
The State has had eight months since March to analyze their
DNA evidence. The defense had about eight days prior to the
Court's absence to -- to look at the evidence. This is the
first opportunity that we have had since then to request an
expert on the DNA; that the DNA evidence is -- is critical.
We have a constitutional right under AKE to have
experts, and the Court has already granted us our motion to
allow us to have defense experts. They have to have adequate
time to examine and evaluate this evidence, or they are of no
use to us without them.
Our -- our client would be deprived of his
rights to a fair trial. He would not have effective
assistance of counsel, and we would ask that this case be
continued until our experts have had time to analyze this
evidence.
Now, what is significant to me about the State's
request as contained in Court's Exhibit Number 9 is, is that
the State obviously has some interest in continuing the
investigation of this DNA evidence.
Now I will tell the Court that after my
conversation with my fingerprint expert, Mr. Ekis, on the
26th, that Mr. Ekis informed me that he did not think it would
be a good idea to allow the bloody fingerprint itself to be
sent to Gene Screen because the process Gene Screen was going

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to use was going to destroy the evidence in its process. And Mr. -- I informed Mr. Davis of that, and he indicated to me that he would hold off on conducting those tests through Gene Screen.

Furthermore, something that's not contained in the motion for continuance that I just found out last night, Mr. Wright's mother, Carolyn Browning, who I had a telephone conversation with last night, in Tennessee, her mother, Carolyn Browning's mother, my client's grandmother, who's name is Beulah Pask, over the Thanksgiving holidays, evidently had some emergency heart problems and has developed pneumonia while she's in the hospital, and Carolyn Browning is there to try to assist in taking care of her mother who's in the hospital; and, further, to take care of her sister, who's name is Sandra Pask, who lived with Beulah Pask.

Sandra Pask has cerebral palsy and is completely unable to care for herself. And Carolyn Browning, my client's mother, is having to take care of Sandra Pask while Beulah Pask is in the hospital. I was told by Miss Browning that Beulah Pask would probably be in the hospital for another week to two weeks.

Carolyn Browning is an essential, critical witness for the defense, especially in the punishment phase of this trial, and we would ask the Court, based on all of these -- all of these issues, to grant our motion for
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continuance.

I don't think it is fair in a death-penalty case to allow the State to have eight months to examine the evidence and then expect that the defense should only have eight days/ or ten days, or twelve days, but such a small amount of time relative to the time the State has had. And I think it would certainly be unfair in this case not to allow the defendant to have these experts have enough time to conduct the examinations they need to -- to conduct.

I can only tell the Court in the past that the DNA examinations have taken a week to two weeks to be done. Now that is in a situation where after they have reviewed what has been done by the other testing agency, which would be SWIFS in this case, and they have determined that they have done an adequate job.

If -- if they examined the testing that the other agency did and determined that they have not done the testing properly, it may require that our experts do some testing of their own, and I won't know that until after our experts have examined the results of -- of SWIFS.

THE COURT: Mr. Davis?

MR. DAVIS: Well, our position is this: That months ago, I -- I informed Mr. Johnson that -- that there was many items in this case involving blood evidence. I also informed him, and encouraged him, in fact, to speak with

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Carolyn VanWinkle regarding her work on the DNA in this case and the possible results. He was informed long ago, weeks, months ago, that DNA testing was being done on several items I again encouraged him to speak with Miss VanWinkle about what processes that she was going to be using, when he could expect final results from her, and I informed him that normally Miss VanWinkle will not produce a written report until she has all of her findings in, and for that reason, I encouraged him to talk with her directly rather than waiting for a final report in this case. Again, I have throughout the course of -- of voir dire, provided certain reports to Mr. Johnson and Mr. Brauchle as I've received them, and I -- certainly the reports from Katherine Long, who is a serologist at SWIFS, in fact, the report dated September 15th of 1997, indicates numerous items in this case where there was human -- human blood detected, and I had informed Mr. Johnson of the State's intent to have those tested for DNA. So our position is this: That SWIFS has been available now for weeks and weeks. The defense, for whatever -- whatever reason, did not take advantage of the opportunity to go and speak with those people. There's certainly no surprise to the defense that the State intends to use DNA, or blood evidence, in this case. With regards to the fingerprint on the

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pillowcase, I did agree with Mr. Johnson that I would have Miss VanWinkle retain that item for his fingerprint expert that has not been sent to Gene Screen. At this time I have no intent to send it to Gene Screen, so we're certainly not asking for any additional time for any additional tests. We're ready to go today, and we believe that we have provided the defense with more than adequate notice of our intent to use blood and DNA evidence in this case.

MR. JOHNSON: In response to that, Judge, I would say that I agree with everything that Mr. Davis has said. There is no question that the State has indicated to us that they were having DNA testing done, but if -- I will agree that Mr. Davis said that, you know, you can go see the people over at SWIFS whenever you want to. In fact, I talked to the people over at SWIFS and, you know, basically, they said, well, we haven't finished yet. And until they finish doing their testing, there's really nothing for me to talk to them about, and until I find out whether or not their testing is going to be incriminating to my client, there's no reason for me to ask for a DNA expert, and I don't think the Court would want to spend the money to have two people test this evidence unless there's some reason to. There was no reason to have a second expert test this evidence until after the defense got the report from SWIFS, which wasn't until November the 11th, Your Honor, to --

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to say that the defense -- that the State is entitled to eight months to test this, to test this DNA evidence before, you know, while the trial is going on. I mean, to me, you're punishing the defense at a great expense.

The State is the reason that we did not get this evidence until November the 11th. We had no control over SWIFS conducting their testing, how soon they did it, or have any control over when the State was going to give us the results. They, for whatever reason, chose to start this trial before they had this testing done, while we were doing voir dire, and it is certainly improper for this Court to force the defendant to trial because of the delay caused by the State in getting these results to the defendant, and that's basically the situation we're in.

MR. DAVIS: If I could, here, respond to that, I am -- certainly we feel that -- we were certainly not at fault in this case.

The report from Carolyn VanWinkle, she finished her results on or before November the 3rd. That's the date of her results. Now if the defense had kept up with Miss VanWinkle, communications with her, they could have found out just as easily as the State that she had completed her results by November the 3rd. That's four weeks ago. So, you know, again, I don't know that it's our obligation to tell the defense precisely when Miss VanWinkle has finished her

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results. She's available to the defense just as well as she's available to the State.

So our position on that has been that four weeks now have passed since the final DNA results have been in on this case, and that would have given the defense ample opportunity and time to review those findings and have any expert they want to talk with Miss VanWinkle and run any tests in that four-week period to determine whether or not they were accurate or not.

MR. JOHNSON: Your Honor, basically, all that tells the Court is that the State had these results for eight days before they shared them with the -- the defense. They are under a Court order in the discovery to continue to give us discovery as they get it.

MR. DAVIS: That's -- if I can correct that, Mr. Johnson. I received that report by fax myself on November the 10th.

MR. JOHNSON: Well, for whatever reason, according to Mr. Davis, we should have found out about this before he did. Well, the reports were being done for Mr. Davis. The reports were being sent to Mr. Davis. Why SWIFS waited however long they waited to send in the results, I don't know. But for Mr. Davis to suggest that it is the duty of the defendant to obtain these reports, that the State is under an obligation to give to the

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defense as soon as they get it, we were relying on the State to do what they were ordered to do by the Court. So for whatever reason, to try to put the burden on the defense like the State is trying to do, is certainly improper.

THE COURT: All right. Let's take a break for about 20 minutes.

MR. JOHNSON: Your Honor, I've got one more thing I want to put on the record, if I can, before we take our break, --

THE COURT: Okay.

MR. JOHNSON: -- and this goes to our motion to quash the Indictment. Your Honor, it is still our position that we have yet to receive proper notice -- we have yet to receive proper notice of the State's motion to amend the Indictment.

We -- the defendant is entitled to ten days after proper notice, after the amendment has been amended - the Indictment has been amended after proper notice, and we still haven't received that, and we still request our ten days.

THE COURT: All right. We'll be in recess for about 20 minutes.

(Recess taken.)

(Court reconvened; jury not present.)

THE COURT: All right. Back on the record
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Let the record reflect we're still outside the presence of the jury. During the break, there was discussions held between the State and the defense with the Court in regards to another review of the defendant's motion to quash the Indictment. Just let -- start with the State.

Mr. Davis, is there anything you wish to put on the record in regards to your view at this point, or --

MR. DAVIS: Well, I think after further review of the -- of Article 28.10, certainly I've -- I've already stated in open court that my actual notice of that Indictment was not given to the defendant until after the amendment itself was made. My reading of that statute would be that no effective amendment can be had, or be made in this case without prior notice to the defendant. The State's position at this time is that there has been no effective amendment of the Indictment, because I did not give prior notice. Our position would be that given the fact that no amendment has been effectively made in this case, that the original Indictment, the date of March 23rd, 1997, would be the proper date to proceed on. Certainly the defendant has had knowledge of that from the very beginning of this case, as stated by Mr. Johnson. So our position is that we're ready to proceed on the original Indictment of March 23rd, Your Honor.

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THE COURT: Mr. Johnson, or Mr. Brauchle?

MR. BRAUCHLE: Well, in regard to that, Your Honor, we would state that the Court has previously stated that this Indictment has, in fact, been properly amended. As the Court's well-aware, the only way to amend an Indictment is under Article 28.10 of the Code of Criminal Procedure.

Prior to this, the State and the Court have maintained that the Indictment was properly amended, and we would state that at this point in time, since the Indictment has been physically amended on or about May 16th of 1997, that the erasure, or the nullification of that physical amendment, in effect, affects another amendment of the Indictment under 28.10, and the only way that an Indictment can be amended, being Article 28.10, we are now entitled to another ten days' notice of an amendment back to the original status of the Indictment.

We would state that we were not given notice of the original amendment, and we are now entitled to notice of this change of the Indictment that has already been physically altered on May 16th of 1997, and we might add that we're -- we're not given notice properly, as the State concedes at this time, of that amendment, and for the Court to change or alter the Indictment at this point, upon its own motion, back to the date of February 23rd, as I recall, -- March 23rd -- would, in 52

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effect, be another amendment outside of Article 28.10, and we would object to any amendment not done without proper notice to the defendant under the Code of Criminal Procedure.

THE COURT: All right. In regards to your motion to quash the Indictment, as far as the motion itself reads, I'm still denying your motion to quash. In regards to your previously proffered oral request or argument to the Court that the amendment itself is not actually an effective amendment, and that, therefore, the amendment does not exist, I am granting that request that you made previously, I'm calling an hour or so ago, and do agree with your position that there was never an effective amendment made. So we will proceed on the Indictment as it is originally produced from the grand jury.

MR. BRAUCHLE: Well, the Indictment at this time has been physically altered by the Court and has been, according to the testimony of Mr. Davis and the Court, since May 16th of 1997, and we would state that the State can't have it both ways in that regard; that the change that is currently in effect on the Indictment has to be done, once again, through an amendment back to the original state, and that it is no longer in the original state.

THE COURT: All right. Well, as I stated, your motion that the amendment itself is not effective is granted. Therefore, any prior alteration that was not effective and

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improper is remedied at this point in time by saying that, and I've granted your request.

MR. JOHNSON: Your Honor, we'll also point out that all of the voir dire has been conducted on a faulty Indictment. The State has said here in open court that they conducted the amendment improperly. The Court admits that the amendment was done improperly. All the voir dire that's been done in this case has been done on a faulty Indictment, and we ask that the Court grant a mistrial at this time.

THE COURT: Well, any -- any error or harm that will inure to the State, I guess, they'll pay for by not doing it properly. You've already indicated that you voir dired on the 23rd. I would assume that you told me the truth at that time, and I certainly don't have any reason to believe that you would have tried to deceive the Court an hour ago when you told me that's how you conducted your voir dire, so clearly any error might inure to the State based on their failure to get the Indictment amended properly, and I'm not going to give them the benefit of additional time because they've made a mistake that would allow you to proceed on the Indictment today as you've indicated you've voir dired the jury on.

MR. JOHNSON: How is the Court going to correct the physical Indictment at this time?

THE COURT: I'm going to tell the State at this
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time when they arraign the defendant to read it as it came out from the grand jury. I'm going to tell the State when they present the Indictment to the jury to read it as it came out from the grand jury. The record's clear at this point what my position is, and when I produce the Charge, the Charge will say the 23rd.

MR. JOHNSON: And I take it from that, then, Judge, that you are not going to physically alter the Indictment at this time to remove the amendment that's already been made to the Indictment.

THE COURT: Nope. I'm just going to tell you that we'll proceed as though it is not there, because I granted your motion that it was incorrectly amended. In regards to your motion -- yeah, in regards to your motion for continuance, y'all previously argued that. I'm going to deny your motion for continuance. The last issue is a juror has contacted the Court this morning, that would be juror number 2, Audrey Downey, indicated that her mother died in the past couple of days. She left the funeral at 10:30 this morning. She attempted to contact the Court, the district attorney's office, previously to let them know, but with the Thanksgiving holidays, she was unable to do so. I did speak with her this morning. She was obviously upset, by her

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demeanor on the phone, and has gone to the funeral
We have picked an alternate juror for this case
We have twelve jurors here. After having reviewed
Teague V. State, and Nichols V. State, Butler versus State,
Clark versus State, and Marvaiz, M-a-r-v-a-i-z, V. State,
reviewing Articles 35.03, 35.16 and 35.19 of the Code of
Criminal Procedure, taking into consideration the fact that
the jury has not been sworn at this time, what's the State's
position on juror number 2?

MR. DAVIS: If I might inquire, did the Court
inquire of the juror whether or not she felt that she could
continue as a juror on this case?

THE COURT: She made it very clear that she did
not feel that she was in any way, form, or fashion emotionally
in a position to proceed as a juror at any time in the
foreseeable future on this case.

MR. DAVIS: Okay. With that understanding, the
State has no objections to proceeding with the remaining
twelve jurors, Your Honor.

MR. BRAUCHLE: Your Honor, we would state that
the record, as it now stands, does not show that this juror is
disqualified from being a juror. We would state that -- that
certainly there's no provision for her excusal at this time,
as the record now stands, and we would object to the excusal
of this juror and the seating of the alternate, because the
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provisions that would make the alternate a qualified juror are
not at this point in time in place or in the record, and we
would object to any seating of an alternate, or the dismissal,
or excusal of juror number 2, who has not been shown to be
disqualified in any way to this point.
Your Honor, we would request that the Court
conduct a hearing with the juror present at that time in order
that both sides have an opportunity to inquire of the juror as
to what her situation is, and what the juror's situation would
be in the near future, and we would state that certainly
there's been no showing that she has -- she's unavailable to
the Court, or has left town at this point in time, and a
hearing would certainly not delay these proceedings any
further, and would -- would put into the record the position
of the juror, and would also give the defendant the right to
cross-examine and to inquire of the juror as to her present
state and her future state, which at this point in time, the
defendant is denied his right to cross-examine this juror, and
to present or to be confronted with any evidence in that
regard.

THE COURT: Mr. Brauchle, I'm not sure, did you
say that you do or do not agree to excuse the juror?

MR. BRAUCHLE: We do not agree to excuse her.

THE COURT: All right. Based on the case that
I've previously cited in the section of the Code of Criminal

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Procedure, I'm going to excuse juror number 2, Miss Downey

MR. BRAUCHLE: Note our exception.

THE COURT: All right. If the State would arraign the defendant.

MR. BRAUCHLE: Your Honor, there's another matter in regard to -- the -- we anticipate that -- that the State intends to make an opening statement in regard to this case.

We would state that we were previously instructed by the Court that a motion to suppress would be heard before the opening of the case, and that motion has not been heard at this time.

We would state that if the State is allowed to make an opening statement, which we anticipate would refer to items which would be subject to our motion to suppress, that the defendant would be harmed in that it would put before the jury opinions or evidence of matters that would later be excluded by the motion to suppress, and the harm that would entail from that would be impossible to correct, or to in any way reverse, because the -- the State's opening statement would refer to illegally seized matters, so we would ask the Court, before it proceeds any further, to conduct the motion to suppress.

I believe that all of the witnesses that are needed for that motion are present today, as per the Court's 58

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orders, and to allow the defendant to put -- or the State to put matters before the jury of -- of that nature, we would state, would unduly harm the defendant.

THE COURT: All right. Mr. Davis, if you would go ahead and arraign the defendant, please.

MR. BRAUCHLE: Was our motion overruled?

THE COURT: Well, I'll let you know before we start the trial. Before we actually start opening statement, we'll either have motions to suppress, or we won't. At the rate we're going, I don't think we're going to start this in my lifetime, so, Mr. Davis, if you would arraign the defendant, please?

MR. JOHNSON: Your Honor, before he arraigns the defendant, could I inquire if juror number 2 is in Dallas County at this time, is -

THE COURT: I believe she is.

MR. JOHNSON: As far as we know, the funeral that she's attending is in Dallas County?

THE COURT: I believe so.

MR. JOHNSON: And she would be available? She's certainly not out of the jurisdiction of the Court at this time, and would be available to have a hearing if the Court chose to have that hearing, as far as we know.

THE COURT: I have no idea.

MR. JOHNSON: All right. But you have spoken to

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her.

THE COURT: I have.

MR. JOHNSON: You do have a phone number for her. We do have access to her, and she is --

THE COURT: I don't think we have access to her right now.

MR. JOHNSON: Well, we can possibly conduct a hearing this afternoon or in the morning, because she is available.

THE COURT: That is a possibility.

(State's Exhibits Nos. X-8, X-10 through X-13 were marked for record purposes.)

MR. DAVIS: Judge, before I arraign the defendant, I also want to offer Exhibit X-8, which I have provided to Mr. Johnson this morning, and Exhibit X-8 will contain all of the police reports and the police notes in my file. I chose to give that to him at this time just for the sake of time so that they'd have access to them prior to my examination of the witnesses, and I would offer those for record purposes only.

MR. JOHNSON: I will, for the record, state that I have received a great deal of paperwork from Mr. Davis this morning. In fact, I'd say that the stack of papers is well over an inch thick and has been given to me this morning, December the 1st, 1997.

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I have not had a chance to look at these documents prior to this time, I'm assuming. Have I viewed any of this stuff prior to this?

MR. DAVIS: No. And, of course, the originals are with the Court Reporter there in the black notebook

MR. JOHNSON: Okay, Thank you.

MR. DAVIS: "True Bill of Indictment: In the name and by the authority of the State of Texas, the grand jury of Dallas County, State of Texas, duly organized at the January Term, A.D., 1997, of the 203rd Judicial District Court, Dallas County, in said Court at said Term, do present that one Gregory Edward Wright," -- is that your name?

THE DEFENDANT: Yes, sir.

MR. DAVIS: -- "Defendant, on or about the 23rd day of March, A.D., 1997, in the County of Dallas and said State, did unlawfully then and there knowingly and intentionally cause the death of Donna Duncan Vick, an individual, hereinafter called deceased, by stabbing and cutting said Donna Duncan Vick with a knife, a deadly weapon, and the defendant intentionally did cause the death of the deceased while the said defendant was in the course of committing and attempting to commit the offense of robbery of Donna Duncan Vick, against the peace and dignity of the State," signed John Vance, Criminal District Attorney of Dallas County, Texas, and Ed Boyer, Foreman of the Grand Jury

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THE COURT: To that Indictment, Mr. Johnson, how does your client plead?

MR. JOHNSON: He pleads not guilty, Your Honor

THE COURT: Let's take about a five-minute break. If the attorneys will not leave the outer doors of the courtroom.

(Brief recess taken.)

(Court reconvened; jury not present.)

MR. BRAUCHLE: Your Honor, for purposes of the record, at this time is the Indictment -- does it still contain the physical alteration made by the Court on May 16th of 1997?

THE COURT: Without a doubt it still contains that.

MR. BRAUCHLE: Okay. And was -- for purposes of the record, we would -- we would like a copy of the Indictment in its current state made a part of the appellate record, in that that Indictment is the Indictment that our client was just arraigned on, I take it, with the alteration.

THE COURT: Okay.

MR. BRAUCHLE: Has it been altered back, is what we're trying to find out.

THE COURT: No.

MR. BRAUCHLE: It has not?

THE COURT: No. I know of no means of removing

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the ink from the Bic pen that was placed on the Indictment other than white out, which would then alter it again, so my instructions to both sides are the same as they were a few minutes ago. Ignore what we've written in Bic pen by me. Proceed with the Indictment as it came out from the grand jury in typewritten state.

MR. BRAUCHLE: May we have a continuing objection, then, to the Court's ruling in regard to our previous motions made in regard to the present state of the Indictment as it is? I think those were set out in my objections.

THE COURT: I'm not really certain I understand your objection, but if you've made an objection in the record, and I've overruled it or denied it, I will grant you a running objection, to whatever effect your prior objection was

MR. BRAUCHLE: All right. Thank you, Your Honor.

THE COURT: All right. Jan?

MR. BRAUCHLE: Your Honor, for purposes of the record, we would object to the present formation of the jury for the reasons set forth on the record previous to this. We anticipate that the Court intends to swear in the alternate juror, and to dismiss juror number 2; is that correct?

THE COURT: That is correct.

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MR. BRAUCHLE: We would object to the formation of the jury in that -- in that manner.

THE COURT: All right. That objection is overruled.

MR. JOHNSON: Has juror number 2 officially been dismissed at this time?

THE COURT: I think I put on the record that I -- that based on the cases I cited, the section of the Code of Criminal Procedure, that I have dismissed her.

MR. JOHNSON: Okay.

(Jury present)

THE COURT: Y'all -- y'all may be seated. Well, I hope everybody's doing well this morning.

Let me tell you, when you come in, people in the courtroom stand out of respect for the jury. Once you get to your seat, feel free to sit down. There's no specific seat. Just sit in any seat you want. Just when y'all come in, if whoever's first, go to the back row all the way to the end like y'all did so nobody has to crawl over each other. Now if each of you on the jury would once again stand and raise your right hand, please.

(The jury was sworn by the Court.)

THE COURT: All right. Y'all may lower your hands and sit down.

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Let the record reflect that each juror responded in the affirmative.

Ladies and gentlemen, in a minute the State will present the Indictment to you in this case. It's the charging instrument.

At the conclusion, we're going to go ahead and take a lunch break. I realize y'all have been here this morning, but I think that's probably the best way for us to proceed at this point in time. So with that, Mr. Davis?

MR. DAVIS: Yes. May it please the Court. Good morning, again, ladies and gentlemen. It's been some time since I've seen some of you. Again, my name is Greg Davis. I'll be the lead prosecutor on this case. I'll be presenting the evidence to you. At this time I'm going to read to you the True Bill of Indictment, which has been returned by the Dallas County Grand Jury in this case. It reads as follows:

"True Bill of Indictment: In the name and by the authority of the State of Texas, the Grand Jury of Dallas County, State of Texas, duly organized at the January Term, A.D., 1997, of the 203rd Judicial District Court, Dallas County, in said Court at said Term, do present that one Gregory Edward Wright, Defendant, on or about the 23rd day of March, A.D., 1997, in the County of Dallas and said State, did

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unlawfully then and there knowingly and intentionally cause the death of Donna Duncan Vick, an individual, hereinafter called deceased, by stabbing and cutting said Donna Duncan Vick with a knife, a deadly weapon, and the defendant intentionally did cause the death of the deceased while the said defendant was in the course of committing and attempting to commit the offenses of robbery of Donna Duncan Vick." It concludes, "Against the peace and dignity of the State of Texas," signed by John Vance, the Criminal District Attorney of Dallas County, Texas, and by Ed Boyer, the Foreman of the Grand Jury.

THE COURT: Mr. Johnson, to that Indictment, how does your client plead?

THE DEFENDANT: I plead not guilty.

THE COURT: All right. You may be seated.
All right, folks. I was able to get you in the courtroom before noon. We're going to take a break. I probably told y'all before, I always try to give jurors about an hour-and-a-half so that they don't have to eat in the cafeteria in the building. Unfortunately, there's not a whole lot of places real close by.
Probably tomorrow I'll have my bailiff check with you and see if that's more time than you need, and give credit back, if you will. It won't be any less than an hour, to give the attorneys a length of time to go over things
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during lunch as well.
Again, I want to remind you, don't read the paper, watch TV, listen to the radio during the course of this trial, or anything about this trial. Certainly you can read and listen to other things, but once I start the evidence in this case, I want this case to be decided by the evidence presented to you here in the courtroom, all right?
Miss Biggerstaff, show the jury out, and we'll take a break till about 1:00 o'clock.

(11:34 a.m.; jury not present)

THE COURT: All right. Then we're off the record.

(Off-the-record bench conference was had.)

(State's Exhibits Nos. 1 through 84, inclusive, were marked for identification purposes.)

(Court reconvened; jury not present.)

THE COURT: Let the record reflect we're outside the presence of the jury.
So that both sides are aware of the Court's intentions at this time, I intend to bring the jury in in a few minutes; allow the State to make their opening statement. The defense has indicated to me that they do not wish to make an opening statement at this time, and reserve their right to make an opening at their case, and so I'll grant that request. And the State will put on probably two or three

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witnesses, and the defense to cross-examine, depending on the length of time that those witnesses take. Then I'll send the jury home and we'll go over the motions to suppress. Before starting, it's my understanding the first witness the State's going to have is the medical examiner, and they have some photographs which they're going to wish to introduce. The defense has had the opportunity to look at those. Rather than produce them in front of the jury and then make a ruling, we'll go ahead and address that now Mr. Davis, do you have the photographs you intend to introduce?

MR. DAVIS: Yes, sir. They will be State's Exhibits 3-A, 3-B, 3-C, and 3-D, as well as State's Exhibits 4-A, 4-B, 4-C, 4-D, and 4-E.

THE COURT: And it's my understanding that you have slides of those exact photographs.

MR. DAVIS: Yes, sir, I do. The medical examiner and I, prior to the start of trial, have taken the slides that correspond to those photographs only. We now have those on the carousel to be used during her testimony.

THE COURT: Okay. Mr. Johnson, just assuming that the predicate for the photographs is laid correctly and so forth, do you have any objections that you want me to address now before the jury comes in?
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MR. BRAUCHLE: Your Honor, we would object to the admission of the photographs in that they are duplicitous of the medical examiner's anticipated oral testimony; that they are unduly -- that they're unduly prejudicial, and that their showing and display in front of the jury, in addition to the medical examiner's testimony, would be inappropriate under Rules 404, 403, 402 and 401. We would ask that the Court weigh the prejudicial effect of the exhibits that the State has stated that they will attempt to elicit, or to display in front of the jury, and to weigh the probative effect against the prejudicial effect, and we would state that because of that, especially in regard to the slides being shown in a larger manner than the photographs, that the duplication of these two items would be inappropriate under Rules 404, 403, 402 and 401.

We would object to them on those grounds.

THE COURT: All right. Assuming that, again, the proper predicate is laid at the time the items are introduced, the Court would overrule those objections. If you wish to restate them in front of the jury, that's fine. If you simply wish to ask me to reconsider your prior objections at that time, I will do that. It would certainly be your choice on how you wish to state it in front of the jury.

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MR. BRAUCHLE: Rather than that, - and I take it that our objections are overruled at this time.

THE COURT: Well, again, they haven't actually been offered at this point in time, obviously.

MR. BRAUCHLE: Well, we would --we would ask the Court for a running objection to the introduction of any of these items which the State has indicated that they will introduce. I think that's in the record. What are they, items 1 through --

MR. DAVIS: Well, 3-A through 3-D, and 4-A through 4-E, and I do intend to offer those photographs through Dr. Ross.

MR. BRAUCHLE: We would simply ask for a running objection to those as they are introduced, or attempted to be introduced, rather than have to restate the objection in front of the jury at a later time.

THE COURT: All right. I'll grant that request

MR. BRAUCHLE: And certainly the Court has been made aware of what our objection to these items are. Rather than us re-object or re-urge, we would ask permission for a running objection at the time they are presented both through slides and in actual photographs.

THE COURT: All right. Anything else?

MR. BRAUCHLE: Yes, Your Honor. In re - we would renew our objection once again to allowing the State to
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make an opening statement which might in any way allude to items that might have been seized from a residence that might have been located at the 500 or 600 block of North Beckley Avenue in DeSoto, to-wit: Item 1, which is a light brown butcher block containing four kitchen knives with black handles, and one large kitchen fork with a black handle; item two, one single kitchen knife with a black handle bearing the name -- the brand name Chicago Cutlery; item three, is Spirit Filled Life Bible with one knife having a brown wooden handle lying between the pages of the Bible; item four, a small black AM/FM radio bearing the brand name Suntone; item 5, a black portable cassette player/stereo; item 6, a black Holy Bible dictionary-study helps, apparently damaged by fire/flame; item seven, a Blackman's overnight bag containing assorted toiletries; item eight, a small knife with black handle; item nine, a tubular piece of metal; item ten, large white mailing envelope bearing the name Wright, Gregory E., written at the top; item 11, a pair of Umen jeans; item 12, a pair of faded blue jeans; item 13, pair of Lee jeans; item 14, a pair of Wrangler jeans; item 15, gold-colored men's Geneva watch; item 16, kitchen plate/dish decorated with multicolored flowers; and item 17, a pair of Wrangler jeans. We would state that those items, specifically, are the object of our motion to suppress, which the Court has not heard at this time, and for the State to in any way refer

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to any of those items before the Court has ruled on the admissibility of them, would unduly prejudice and hamper the defendant, as well as his attorneys, and we would ask that the Court not allow the State to go into any of those items or to allude to any of those items in their opening statement.

MR. JOHNSON: Your Honor, may I add to that?

THE COURT: You may.

MR. JOHNSON: Judge, we'd further add that we would -- ask that the State not be able to go into any DNA evidence that is a result of blood that was obtained from the defendant, Gregory Wright, unless we -- we have a motion to suppress the blood that was taken from him that was used in that testing.

We also will ask the Court to suppress any evidence that was obtained at Miss Vick's home, which includes the -- the bloody fingerprints.

Furthermore, for purposes of the record, it is -- it is 1:13 in the afternoon on December the 1st. The Court has indicated to us that they intend to have the State put on one or two witnesses, which may take an hour, more or less, and at that time the Court's indicated that they intend to break at that time and conduct these motions to suppress. I would ask the Court that we conduct the motions to suppress now prior to any opening statement by the State; that the hour, or so, that we would save putting on

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testimony, is clearly outweighed by the prejudice that would be caused by the State making an opening statement to evidence that may well not be able to be admitted, and we would again ask that -- that we be allowed to have our motion to suppress before any testimony is put on, before the State makes any statements that what evidence they anticipate will be brought to the jury trial.

THE COURT: All right. That request is denied.

MR. BRAUCHLE: May we have a running objection to them?

THE COURT: You may.

All right. Is the State ready for the jury?

MR. DAVIS: Yes, Your Honor.

THE COURT: Mr. Johnson, is the defense ready for the jury?

MR. JOHNSON: Subject to all of our previous objections, Your Honor,

THE COURT: Okay. All right
(Jury present)

THE COURT: All right. You may be seated.
Mr. Davis, it's my understanding the State wishes to make an opening statement at this time?

THE COURT: Yes, Your Honor.

MR. DAVIS: May it please the Court.
Ladies and gentlemen, the evidence in this case

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will show to you that in the early part of 1997, a man came to DeSoto, Texas. He took up residence in an abandoned shack behind the K-Mart there in DeSoto.

He began panhandling on the street corners of DeSoto and Lancaster; carried a cardboard sign, much like you may have seen here in Dallas. This individual claimed to be homeless. He claimed to be down on his luck.

The evidence in this case will show that in reality, that individual was a streetwise drug abuser from the State of Tennessee, known on the streets of Dallas by the name of Maverick. The evidence will show to you that that individual is this man right over here, Gregory Edward Wright. Now the evidence will show to you that in the middle part of March of 1997, a woman named Donna Duncan Vick, a generous, 52-year-old widow, who lived alone in DeSoto, stopped at the intersection of Pleasant Run Road and Interstate 35 there in Lancaster; that she began talking with Gregory Wright; that she gave him money; struck up a relationship with this individual, and over the next few days, gave more money to Gregory Wright, then food, then clothing, and finally, in the middle to late part of March, finally allowed Gregory Wright to stay in a spare bedroom there in her home there in DeSoto at 1205 Granada.

The evidence will show to you that on the evening of March the 20th, a Thursday evening, Gregory Wright
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was still staying at that residence with Miss Vick when the two of them drove up to the VFW Lodge in Lancaster. They were there that evening. They spoke with some friends. They stayed there till about closing time of 1:00 a.m. to 1:30 a.m., and the evidence will show to you that at that time they left alone together in Miss Vick's 1992 white Chrysler.

Now the evidence is going to show you that once they left the VFW Lodge, they drove north to Oak Cliff, and they went to a location on Denley Street, 614 Denley. That's a dope house. And the evidence will show to you that once there, this individual seated right over here, Gregory Edward Wright, talked with a person by the name of Llewelyn Mosley, and he bought some crack cocaine there at 614 Denley for his own use.

They then left Denley. They then met up with one of Gregory Wright's friends by the name of John Adams, and his street name, as you'll hear, is Zigzag. He's a man that Greg Wright knew from the streets of Dallas.

They picked him up, and the three of them then went back to Miss Vick's house at 1205 Granada. At sometime between 3:00 in the morning, and 4:00 in the morning, and we're down into the early morning hours of Friday, sometime during that time period, Miss Vick cooked meals for Greg Wright and John Adams there at her home. When she finished, she went to her bedroom to

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get ready for bed. She was in her night clothing
And the
evidence will show to you that after she went there, this man
right over here, together with John Adams, went to Miss Vick's
bedroom. They were armed with knives. One of them is going
to be a folding knife. Sort of a pocketknife, if you will.
The other one is going to be a butcher knife, a black handled,
serrated-edged butcher knife from Miss Vick's kitchen.
Armed with those knives, they went to Miss Vick
as she laid in her bed. The evidence will show that they went
there for the purpose of getting money so they could get more
crack cocaine.

For whatever reason that morning, the evidence
will show, Miss Vick either did not give them the money that
they wanted, or could not give them the money that they
wanted, and as a result, this individual right over here, got
up on the bed on top of Miss Vick, straddling her, holding a
knife demanding money that he never got, and as a result,
proceeded, along with John Adams, to cut Miss Vick's throat
and to stab Miss Vick again, and again, and again as she laid
there in her own bed in her own home. And she literally bled
to death in her bed as this individual right over here,
Gregory Edward Wright, and John Adams, went through her home
scooping up her property and her purse and put it into her
Chrysler and drove away.

Now they drove straight back to that dope house

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on Denley, the same dope house that Greg Wright had been to
earlier that morning, and they went there and they unloaded
some of that property. This man over here, along with
John Adams, proceeded to exchange some of Miss Vick's money
and personal belongings for what he wanted,
-- crack cocaine -- and they did that in the early morning
hours of Friday, and they disposed of much of the property
over on Denley.

They stayed there for awhile, and sometime later
that day, or perhaps even the next day, Saturday, they then
drove Miss Vick's Chrysler back down to Lancaster close to the
VFW Lodge again. They abandoned the car back there, and then
went back over to the shack that this man had taken over when
he came to DeSoto behind the K-Mart.

Now we're at Saturday. The evidence will show
to you around 7:00 to 7:30 p.m. on Saturday, the Dallas Police
Department got a 911 call. That call came from John Adams.
He asked to meet with detectives. Detectives Dan Trippel and
Det. Carlton Marshall, went to Industrial Boulevard close to
downtown here, and they met up with John Adams. And as a
result of meeting John Adams and talking with John Adams, they
were led down to Miss Vick's car where it had been abandoned
in Lancaster. It was still down there.

And the detectives will tell you that when they
got there, they could see some personal belongings there in

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the car. What they did is they ran a vehicle check on that car, and they determined that that vehicle did, in fact, belong to Donna Duncan Vick.

As a result, they then called the DeSoto Police Department and asked them to check on the whereabouts of Miss Vick, and you'll hear that the police department went over there to 1205 Granada where they found Miss Vick still laying in bed, soaked in blood, and partially decomposed. Now you'll hear that later that day that the DeSoto Police Department had an opportunity to talk to John Adams, also, and as a result of talking with John Adams, they went over to 614 Denley to search it, and when they went over there, they found some of the property that still belonged to Miss Vick.

You'll also hear that as a result of talking with John Adams, that they went down to that shack behind the K-Mart, the same shack that this individual over here, Gregory Wright, had taken over when he came to DeSoto, and you'll hear them testify that this man was down there by himself at that shack when they went down there to arrest him, what is now Sunday. They made a search of that shack, also, and they'll tell you that they found several items both inside that shack and outside that shack.

Outside the shack they found a butcher block with several knives still in it. About 15 to 20 feet away
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from that butcher block, they found the butcher knife that had been used to kill Miss Vick. It still had blood on it. They retrieved that.

Inside that shack they found a plate, a dinner plate, that belonged to Miss Vick.

They found a Bible, they found other knives inside the residence, and they found several items of clothing. They found, in particular, a pair of Umen jeans, and those jeans had two things on them: They had gold paint, gold metallic paint on them. And you'll hear evidence from individuals during this tes -- during this trial, this person over here, he likes to huff paint. That means he likes to put it in a bag, hold it over his face to get high with gold paint. And on those jeans you found gold paint and you found one other thing: You found blood on those -- on those Umen jeans.

Now, you'll hear from people from the Southwestern --

MR. JOHNSON:

Your Honour, we will object to the statements about our client's sniffing paint. That is suggesting extraneous offenses. We would ask that that be stricken.

THE COURT: All right. I'll overrule your objection.
Ladies and gentlemen, remember what the

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attorneys tell you is not evidence. Evidence comes from the witnesses. The attorneys will speak to you about what they expect the evidence will show.
Go ahead.

MR. DAVIS: You'll hear from scientists, from DNA experts out at the Southwestern Institute of Forensic Sciences, and they'll tell you that first the butcher knife that was found outside this shack, that the blood contained on the knife blade itself matches the DNA type of Donna Duncan Vick.

They'll also tell you that through a subsequent search, there was -- the folding knife was found at Denley, the dope house. They'll tell you that there was blood contained on that knife, also; that that knife also contained the blood of Donna Duncan Vick.

They'll tell you that the blue jeans that were found in the shack where this man was arrested on that Sunday, that that blood belonged to Donna Duncan Vick, and the evidence in this case will show you that that blood got on this individual's jeans as he was straddling on her -- straddling Miss Vick on her bed, and repeatedly cutting and stabbing her to death for money for crack cocaine.

THE COURT: All right. Would the State bring forth all the witnesses they have present to be sworn?

MR. DAVIS:

Yes, sir.

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THE COURT: All right. Would each of you raise your right hand, please?

(Seven State's witnesses were sworn in.)

THE COURT: Let the record reflect that we've just sworn in seven witnesses, and each have answered in the affirmative.

Does either side care to invoke the rule?

MR. JOHNSON: We'll invoke the rule, Your Honor

MR. DAVIS: Yes.

THE COURT: All right. Let the record reflect that both sides herein invoke the rule.

Folks, what that means is that you cannot be in the courtroom while another witness is testifying. You can't wait outside the door and watch.

You can wait in the witness waiting room or out in the hallway, but don't observe any testimony, don't listen to any testimony.

Furthermore, you can't talk to each other about what your questions or testimony was that occurred in court. You may talk to the attorneys for either side, or their investigators, but you cannot talk to each other about the testimony.

MR. DAVIS: Judge, I have additional witnesses who've just come into the courtroom, also.

THE COURT: Okay. If each of y'all would come

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forward.
If y'all would move for me a little bit here.
There's five additional witnesses. If each of
you would raise your right hands, please.

(Witnesses sworn by the Court.)

THE COURT: All right. Each of you may lower
your hand.
Let the record reflect that all five witnesses
answered in the affirmative.
Folks, the rule of evidence has been invoked. I
don't know if you heard what I was just telling the other
witnesses, but what that means is that you can't wait in the
courtroom while somebody else is testifying. You have to wait
outside the courtroom either in the witness waiting room, or
in the hallway. Don't look through the glass, or the windows,
or the door to see what's going on.
You can't discuss your testimony with any of the
other witnesses. You may discuss it with either of the
attorneys for either side, or their investigators, but be sure
not to discuss it in the presence of other witnesses.
Who will the State call as their first witness?

MR. DAVIS: The State will call Dr. Karen Ross,
Your Honor.

THE COURT: Dr. Ross, if you'll remain. The
other witnesses, go back outside the courtroom.
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Dr. Ross, if you'll just do me one favor. That
chair doesn't move a whole lot. You've probably been down
here before, so if you'll just pull that microphone close, and
please speak loudly, clearly, and slowly into that.
THE WITNESS: Yes.

THEREUPON,
DR. KAREN ROSS
was called as a witness by the State, having been previously
first duly sworn by the Court, was examined and testified as
follows:

THE COURT: All right, Mr. Davis, you may
proceed.

MR. DAVIS: Thank you.

DIRECT EXAMINATION
BY MR. DAVIS:

Q. Would you please state your full name for us
A. Dr. Karen Ross.
Q. And you are a medical doctor; is that correct?
A. That's correct.
Q. How are you presently employed?
A. I'm a medical examiner with the Dallas County Medical
Examiner's Office.
Q. How long have you been in that position?
A. Five years, or four and-a-half, five years. I've
been there since 1992, but I also did my fellowship training
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there.

Q-

And do your duties at this present time include performing autopsies?

A.

That's correct.

Q.

Could you briefly tell the members of the jury a little bit about your educational and professional background and training?

Yes. I have a bachelor's of science degree in microbiology from LSU, and I went to medical school at LSU Medical School in New Orleans.

I did a year of training in anatomic and clinical pathology at Parkland Hospital and Southwestern Medical School here in Dallas, and then four additional years of training in anatomic and clinical pathology at LSU and Charity Hospital in New Orleans.

Then I came back here and did a fellowship after the anatomic and clinical pathology training in forensic pathology, and that's with Southwestern Medical School and the Dallas County Medical Examiner's Office, where I'm currently employed.

Q.

Okay. And, briefly, if you could just tell us, what is forensic pathology?

A.

It's a branch of medicine.

It's medicine as it applies to law in legal issues.

Okay. And I believe that you just told us that one

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of your duties is to perform autopsies; is that correct?

A. That's correct.

Q. Dr. Ross, let me ask you if you had an occasion on March the 23rd of 1997, to perform an autopsy on an individual identified to you as Donna Vick?

A. Yes, I did.

Q. As a part of your autopsy, when a body comes in, is it assigned a particular number?

A. Yes, it is.

Q. Okay. And is that number unique to that particular case?

A. Yes.

Q. When you perform an autopsy, do you also prepare a written autopsy report?

A. Yes.

MR. DAVIS: May I approach the witness, Your Honor?

THE COURT: You may

BY MR. DAVIS:

Q. Dr. Ross, if you'll please look at what I have marked as State's Exhibit Number 1, and tell me whether or not that's a true and correct copy of the autopsy report that you prepared in this case?

A. (Examining document.) Yes, it is.

Q. Okay. And, again, it identifies the individual as

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Donna Vick; is that correct?

A.

That's correct.

Q.

Does it bear the Case Number of 0996-97?

A.

Yes, it does.

MR. DAVIS: Your Honor, at this time we'll offer State's Exhibit Number 1.

MR. JOHNSON: Is that for all purposes, or purposes of the record?

MR. DAVIS: All purposes

MR. BRAUCHLE: Your Honor, we would object to the introduction of the document itself in that it's duplicitious of the testimony of the witness, and, also, we would object to it under Rules 404, 403, 402, and 401 in regard to certain aspects of the report which would not be part of this witness's testimony. More -- most of -- in all likelihood, that would be the last page of the report, as well as the next to the last page.

THE COURT: All right. Bring me State's Exhibit Number 1. (Examining document)

All right. Those objections will be overruled

MR. BRAUCHLE: Note our exception.

THE COURT: All right. State's Exhibit Number 1 will be admitted.

BY MR. DAVIS:

Q.

Dr. Ross, also at the time of -- at or near the time

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the autopsy was performed, is a photograph taken, for record purposes, again, of the individual that you're doing the autopsy on?

A. Yes, it is.

Q. Okay. Let me show you State's Exhibit Number 2. Is this, in fact, the photograph that was taken at or near the time that you performed the autopsy on Case Number 0996-97?

A. Yes, it is.

Q. In fact, this photograph, State's Exhibit 2, does contain that number; is that correct?

A. Yes, it does.

MR. DAVIS: Your Honor, at this time, for record purposes only, we will offer State's Exhibit Number 2.

MR. BRAUCHLE: No objection, Your Honor.

THE COURT: All right. State's Exhibit Number 2 will be admitted for record purposes only.

BY MR. DAVIS:

Q. Dr. Ross, let me ask you if, during the course of the autopsy that you performed, whether you noted certain external injuries?

A. Yes, I did

Q. And as a part of the procedure out there at the medical examiner's office, are photographs taken of the injuries that you note during the course of your autopsy?

A. Yes, they are.

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MR. DAVIS: May I approach, Your Honor?
THE COURT: You may.

BY MR. DAVIS:

Q. Dr. Ross, if you'll look at four photographs that have been marked as State's Exhibits 3-A, 3-B, 3-C and 3-D, do these truly and accurately depict some of the external injuries that you noted during your autopsy on Donna Vick?

A. Yes, they do.

Q. Do you believe that these photographs would assist you in your testimony to the jury?

A. Yes.

Q. Do you believe that they would assist the jury in understanding your testimony that you're going to give to them concerning these injuries?

A. Yes, I do.

MR. DAVIS: Your Honor at this time we'd offer State's 3-A, 3-B, 3-C, and 3-D.

MR. BRAUCHLE: We'd renew our objections.

THE COURT: All right. The objections you previously voiced are overruled at this time. State's Exhibits 3-A, B, C, and D will be admitted for all purposes

BY MR. DAVIS:

Q. And, Doctor, just briefly, we see here four photographs of certain injuries to the body of Donna Vick; is
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that correct?

A. Yes.

Q. Okay. Have you also -- do you have slides taken of these injuries at the time that these photographs are taken?

A. Those photographs are actually made from the slides, yes

Q. Okay. And have you brought today some of the slides that correspond to these four photographs?

A. Yes.

Q. Do you think that they would assist you and make it a little bit easier for you to describe some of these injuries?

A. Yes.

Q. Okay. Doctor, as we look at this first slide, this will correspond to State's Exhibit 3-A. Can you describe exactly what we're seeing in this particular slide, what part of the body?

A. I believe this is the -- the left forearm

Q. Okay.

A. May I stand up --

Q. Yes, please.

A. -- so I won't fall off

(The witness came down off the witness stand.)

A. You can see there are sharp force injuries here, here. Just cuts all on the back of the left forearm.

Q. If you'd like, I have a pointer here, if that would

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make it easier for you.

A. Is this in focus?

Okay. Here, here, here, you can see the sharp-force injuries on the back of the left arm.

Q. Okay. I think that's a little bit better now. Okay

A. Are you ready to put in another slide?

Q. Okay. So we're looking at the left forearm; is that correct?

A. That's correct.

Q. All right. What type of injuries do we see?

A. These are cuts, or sharp-force injuries. They're longer on the surface than they are deep into the skin, into the underlying tissue, so that's why they're called cuts, but they're sharp-force injuries, just like stab wounds.

Q. Does there appear to be an area of discoloration toward the upper part of that slide?

A. Here?

Q. Yes.

A. This is a bruise, or a contusion, that's also present in that region.

Q. Okay. We're now looking at what would correspond to State's Exhibit 3-B, and again, if you'll describe, what are we looking at? What type of injuries did you note?

A. This is the right hand and arm, and again, you see similar lesions here: Cuts on the back of the wrist, as well

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as on some of the fingers on the right hand, including this one here between the thumb and index finger.

Q. And again, --

A. This is the left hand, and you can see here, there's a cut on the tip of the thumb, which is not shown to the best view, but you can see it right here in this picture, and then here there are cuts between the thumb and the index finger, and there's also, on the palm of the hand, there are similar lesions. Actually, on the palms of both hands, there were similar lesions.

Q. Okay.

A. And this is the right hand showing the palm, and you can see the cuts here.

Q. Doctor, let me ask you, the cuts that we see here in this last slide that corresponds to State's Exhibit 3-D, would those cuts be consistent with having been produced with a knife?

A. Yes.

Q. Okay. And is it fair to say that the cuts that we've seen are both to the left and the right arm, and the left and the right hand; is that correct?

A. That's correct.

Q. Are you familiar with the term "defensive wounds"?

A. Yes, I am.

Q. Okay. What are "defensive wounds"?

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A. They're wounds produced when someone is trying to defend themselves from an attack, usually with a sharp object, like a struggle to maybe take the knife away, or defend themselves, and it's common on the backs of the arms, and sometimes even the legs and on the palms of the hands.

Q. Okay. The wounds that we've seen in these four slides, would they be consistent with -- with defensive wounds?

A. Yes.

Q. Doctor, let me turn this off for a moment.
(The witness returned to the witness stand.)

Q. And again, the defensive wounds that you've noted are consistent with having been produced with a knife; is that right?

A. That's correct, yes

Q. Is it fair to say that many of these wounds are to the outside of the forearms?

A. Mostly on the outside of the forearms, but on both the backs and the palms of the hands.

Q. And we saw one photograph, and I believe it is the last one, 3-D, where we had certain cuts to the fingers, okay?

A. Yes.

Q. Would that be consistent with Miss Vick, the individual, actually grabbing the -- the blade of a knife?

A. Yes.

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Q. Would that be true, also, for the cuts to the webbing of her hands?

A. Well, I think she may have been attempting, yes, to grab it at that point.

Q. Doctor, besides the -- the injuries that are noted in these four photographs, did you note additional external injuries to the body of Donna Duncan Vick?

A. Yes, I did.

Q. And, briefly, what type of injuries were these additional wounds?

A. They were multiple sharp-force injuries over the trunk or upper chest and neck.

Q. Okay. Would some of them include stab wounds?

A. Yes.

Q. Would others include incised, or what we might refer to as cuts?

A. Yes.

Q. And during the course of your autopsy, did you have photographs, or slides, taken of these injuries, also?

A. Yes, I did.

Q. And during the course of your autopsy, did you make certain determinations about, for instance, the depth of each wound?

A. Yes.

Q. Did you make a determination of the direction of each

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wound?

A. Yes.

Q. Did you make a determination, as best you could, whether or not these stab wounds had sharp or blunt edges to them?

A. Yes, I did.

Q. Okay. And when we talk about blunt and sharp edges, okay, just describe for me, what do we mean by blunt and sharp edge to a stab wound?

A. Well, you see, one edge will be sharp and the other will be blunt, and that's consistent with a single-edge knife, with the sharp edge indicating the sharp side of the knife, and the blunt edge indicating the dull side of the knife, so that would be consistent with a single-edge knife, rather than a double edge, where you would expect to see two sharp edges

Q. Okay. And, also, during the course of your examination, did you note particular internal injuries that you believe may have been caused by these -- these stab or cut -- cut injuries that you noted?

A. Yes, I did.

Q. Now, the condition of the body when -- when it was received by you, how would you describe the -- the condition of the body?

A. She was in an early state of decomposition at the time she arrived at our office.

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Q. Okay. Did that make your job a bit more difficult in any way in trying to make some determinations about these stab and cut wounds?

A. Yes, it did.

Q. How did it -- how did it affect your work?

A. Well, the decomposition is going to occur wherever there's blood sort of leaking out because of the bacteria released from the colon, that's part of the decompositional process, so wherever there's a lot of blood released, then the decomposition is going to proceed faster, and that's what had happened in the neck region.

MR. DAVIS: May I approach, Your Honor?

THE COURT: You may.

BY MR. DAVIS:

Q. Dr. Ross, let me ask you, if you will, to look at the photographs that have been marked as State's Exhibits 4-A, 4-B, 4-C, 4-D and 4 E. Do these photographs truly and accurately depict the injuries that you noted during the autopsy of Donna Duncan Vick?

A. Yes, they do.

Q. Again, do you believe that they will assist you in your testimony, and do you believe that they will assist the jury in -- in understanding some of the testimony that you're about to give about these injuries?

A. Yes, I do.

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MR. DAVIS: Your Honor, at this time I'll offer
4-A, 4-B, 4-C/ 4-D, and 4-E.

MR. BRAUCHLE: We'd renew our objections.

THE COURT: Based on your prior objections, the
Court will overrule those objections.
State's Exhibits 4-A, B, C, D, and E will be
admitted.

BY MR. DAVIS:

Q. Again, Doctor, these photographs actually were taken
from slides that you have of these injuries; is that right?

A. Yes. They were taken at the time of the autopsy.

Q. At first, if we can just simply look at these
photographs, and then we can look at the slides, but if we
look first, State's Exhibit 4-A, that's an overall photograph
of the body of Donna Vick; is that right?

A. That's correct.

Q. 4-B shows the -- basically the right portion of her
face; is that right?

A. That's correct

Q. 4-C is the upper chest and neck area; is that right?

A. Yes.

Q. 4-D would correspond, would it not, to the
left-shoulder area of Donna Vick?

A. Right, And near the armpit, the front of the armpit
and the front of the shoulder.

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Q. And 4-E would correspond to the left-front thigh area
of Donna Vick; is that correct?

A. That's correct.

Q. Doctor, if we could, again, using the slides, if we
could go through that. Just detail each one of these
photographs and injuries.

MR. BRAUCHLE: Your Honor, may we approach the
bench?

(Off-the-record bench conference was had.)

Q. Doctor, first of all, the slide we see here, fair to
say that this depicts the portion of Donna Vick's body; is
that correct?

A. Yes.

Q. And in this photograph, can you show the general area
of the photograph again of the stab wounds and the cut wounds
that you noted in your autopsy?

A. Yes.

Q. Okay. Would you do that, please?

A. This is designated numerically without any regard to
chronology or severity. It's just for record-keeping
purposes, but I designated this spot number 1, number 2,
number 3, number 4, number 5, number 6. Number 7 is more of
an incised wound or cut, and then number 8.

Q. Looking now at the slide that corresponds to the
right portion of Miss Vick's face, if you could, tell us what

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sort of injuries we see in this particular slide.

A. You can see she has a contusion, or bruise around her eye on the right side, and you can see some small incised wounds there are almost punctate here on the chin. There were similar ones beneath the chin, and on the left side of the neck, and then there's also one on the forehead here.

Q. The eye that we see, you say a contusion, is that a bruise?

A. Yes.

Q. Black eye, basically, is what we see?

A. Yes. Yes, it is.

Q. When you look at the coloration of that black eye, Dr. Ross, could you give us a timeframe for when that black eye would have been produced, given the color that you see there?

A. I think it was produced around the time of her death. I mean, there's nothing that leads me to believe it wasn't.

Q. Okay. So consistent with having been produced at the same time that she was stabbed; is that right?

A. Yes.

Q. And is that from the color of the bruise?

A. Yes.

Q. The other marks that we see here underneath her -- her mouth, and on her chin, and also on her forehead, would those be consistent with Miss Vick having been -- having had a
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knife poked into her chin and also into her forehead area?

A. Yes.

Q. Now looking at the slide that shows many of the stab wounds to her -- to her throat area, --

A. Can we -- this is backwards. Could we possibly turn it around?

Q. Yeah. Okay. Well, I'm not sure that I can. I know -- I understand. What you're saying is, we've just -- we've just kind of flipped it around on its side; is that right?

A. That's correct, but this should be on the left side instead of the right side.

Q. Okay. Let's do this, then. Let's just look at the photographs.

A. Okay

Q, That will be a little easier here. If you'd just step down.

MR. DAVIS: If the witness could step down,
Your Honor.

THE COURT: Certainly.
(The witness came down off the witness stand.)

BY MR. DAVIS:

Q. You know, again, we were looking at State's Exhibit 4-C; is that correct?

A. That's correct.

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Q. On this, have we identified each one of these individual stab wounds?

A. Yes.

Q. Okay. And again, 4-D would correspond to the stab wound shown near the left shoulder; is that right?

A. That's correct.

Q. And if we could, Doctor, and if you want to refer to your autopsy notes here, I'd like to go through each one of these stab wounds with you, and I'll ask you certain -- certain details that you found during your examinations. Let's start off first with stab wound number 1 that's shown down here in State's Exhibit 4-D, okay?

A. Okay.

Q. What is the depth of that stab wound, please?

A. It was at least three and-a-half inches.

Q. And did you make a determination about whether there was a sharp edge and a blunt edge on this particular wound?

A. As you can see, this edge appears to be sharp, and that edge appears to be blunt.

Q. Again, if you could stand back --

A. Which, again, the inferior would be sharp, and the anterior would be blunt.

Q. Given the fact that that has a sharp and a blunt edge, would that be consistent with having been produced with a single-edged knife?

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A. Yes.

Q. How about the direction on this particular wound?

A. It was from front to back, upward, and left to right

Q. Can you tell the members of the jury what sort of internal injuries stab wound number 1 would have produced?

A. Well, they were all grouped together because of the close proximity, so --

Q. Okay.

A. --it produces hemorrhage from going through the soft tissue.

Q. And this is generally in the left shoulder, or armpit area; is that right?

A. That's correct

Q. Let's look next at stab wound number 2 here on the chest.

Could you tell us the depth of that wound, please?

A. It was two and-a-quarter inches, at least.

Q. How about edges?

A. The left angle was blunt, which would be the superior edge, and the right inferior is sharp. And, too, there's a small incised wound or cut extending from the inferior angle there.

Q. So again, we have a sharp and a blunt edge; is that correct?

A. That's correct.

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Q. Again, would stab-wound number 2 be consistent with having been produced by a single-edged knife?

A. Yes.

Q. Now, going to stab-wound number 3 here on State's Exhibit 4-C, first of all, can you tell us the depth of that wound?

A. It was at least 5 inches.

Q. And what could you tell about the edges of -- of that particular stab wound?

A. It's almost horizontally oriented, and the left side is blunt, as you can see here; and the right side is sharp with an incisor, or cut, extending downward from that right side.

Q. Again, would State's -- would stab-wound number 3 be consistent again with having been produced by a single-edged knife?

A. Yes.

Q. Stab-wound number 4, please?

A. The depth was at least one and-a-half inches

Q. Okay. And edges on stab-wound number 4?

A. They're indeterminate. Both of them could be blunt or sharp, so it's referred to as indeterminate. I can't be sure.

Q. Would there be anything about that wound that would rule out it having been produced by a single-edged knife?

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A. No.

Q. Possible; maybe not, then.

A. Maybe not. I can't tell, because they're indeterminate.

Q. Stab-wound number 5, again, if you could give us the depth of that wound?

A. Stab-wound number 5 was at least four inches. As you can see, it's somewhat irregular with some sharp-force wounds adjacent to it, but the right side appears blunt, and the left side, which is more superior, appears sharp.

Q. So again, would that be consistent with having been produced by a single-edged knife?

A. Yes, it would.

Q. Stab-wound number 6, what can you tell us about that depth-wise?

A. 6 was approximately one-and-a-half inches

Q. How about the edges?

A. They're indeterminate. Again, as you can see, it's just difficult to tell with certainty.

Q. Okay. Is it possible that it was produced by a single-edged knife?

A. Possible, yes

Q. And possible that another knife might have been used to produce that wound?

A. Yes.

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Q. Stab-wound number 7, again, what can you tell us about the depth?

A. This is the one that was more of a cut. It's longer on the skin than it is deep. It was two and-three-quarter inches deep, and about four -- a little over four inches long

Q. Could you tell anything about the edges on that wound?

A. No. Those are also indeterminate.

Q. And, finally, wound number 8 up here, what can you tell us about the depth there?

A. It was one-and-a-half inches, approximately

Q. What about the edges on stab-wound number 8?

A. They're also indeterminate.

Q. Okay. Looking -- looking for a moment at State's Exhibit Number 4-D that shows stab-wound number 1, is there another injury noted on State's Exhibit 4-D?

A. Yes. There is about a two and-a-half inch area where there were superficial, or parallel oriented abrasions, and that was just above and to the right of the first stab wound in the -- you know, the axillary region.

Q. Okay. Let me ask you, Doctor, if you --do you know, a serrated-edge knife, have you seen a serrated-edge knife before?

A. Yes.

Q. Okay. Let me ask you whether the wounds that are

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shown on State's Exhibit 4-D would be consistent with a serrated-edge knife actually being dragged across the skin of Donna Vick?

A. Yes.

Q. Finally, State's Exhibit 4-E, the bruising down here on the thigh, again, do you have an opinion as to whether or not those bruises could have been produced at the time of Miss Vick's stabbing?

A. Yes, I believe they could have

Q. Okay. Again, what are you basing that on?

A. Even though there's a slight variation in color, it could have to do with the depth, but some of them do have a purple appearance that appear recent.

Q. Okay.

(The witness returned to the witness stand.)

Q. Now you told us that basically you grouped all the internal injuries together; is that right?

A. That's right.

Q. Could you tell us some of the internal injuries that you noted during the course of your autopsy?

A. Yes. They went through the skin and subcutaneous tissue, and through the muscle on both the right and left sides of the neck. More on the left side through the large muscle that goes through the mastoid process down to the sternum. Then it went through the major blood vessels in that

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area, the jugular vein and the carotid artery on the left side.

Also, the left subclavian artery, which the aorta, the large blood vessel that leaves the heart, gives off branches that supply the upper part of the body right as it originated, it was injured, the subclavian artery.

Also, the thyroid cartilage of the larynx, or the Adams Apple, was incised twice. It didn't go into the lumina of the larynx, but it was cut.

There were also cuts in the cervical spine, the front of the spine, or the vertebral body, and again, the spinal cord was not injured, but it did go into the spine. And associated with the injury to the subclavian artery, there was blood in the left side of the chest around the lung.

Q. Did you -- did you note any injuries to the back of Miss Vick?

A. No.

Q. Let me just ask you, then, the injuries that we've seen and the lack of injuries to the back, would those injuries be consistent with Miss Vick actually lying on her back during the time that she was stabbed and cut?

A. Yes, it's consistent with that.

Q. As a part of the autopsies, do you also ask for toxicology to be run?

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Q. Okay. Do you screen for drugs?

A. Yes.

Q. Okay. And was a toxicology screen done on this case on Miss Vick?

A. Yes, it was.

Q. Any drugs found in her system?

A. No drugs. Only alcohol.

Q. Okay. And you had noted, I believe, what, a .04 level of alcohol; is that correct?

A. That's correct.

Q. Just so we can put that in a frame of reference, the legal limit of intoxication in the State of Texas is what, about two and-a-half times that amount; is that right?

A. That's correct.

Q. Let me ask you, you said that this body was in a -- in a slightly decomposed state when it got to you, correct?

A. That's correct.

Q. When a body decomposes, does the body produce alcohol?

A. Yes, it does.

Q. Okay. If this body had been lying for, say, 40 hours or so before it was discovered and brought to you for examination, would that alcohol level of .04 be consistent with decomposition to that degree?

A. Yes, it would, especially due to the absence of

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alcohol in the vitreous fluid from the eye.

Q. Okay. What do you mean there? What are you looking for?

A. If you take in alcohol, you're going to -- also, it will be in the blood, but also in the fluid of the eye. And in this case, it was only in the blood, and not in the vitreous fluid, and, so, that leads me to believe that it was probably from decomposition.

Q. As opposed to drinking?

A. Yes.

Q. Did you also take blood samples from Miss Vick?

A. Yes.

Q. Okay. Hair samples?

A. Yes.

Q. Did you take vaginal and oral swabs?

A. Yes.

Q. Did you take fingernail clippings?

A. Yes.

Q. Those -- those samples that you took, did you then transfer those to other personnel at the Southwestern Institute of Forensic Science for further testing?

A. Yes, I did.

Q. Dr. Ross, in this case, do you have an opinion concerning the cause of death of Donna Duncan Vick?

A. Yes, I do.

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Q. And what is your opinion?

A. Multiple sharp-force injuries.

Q. Okay. Would the injuries that you've noted, would they be consistent with Miss Vick having been killed due to being stabbed with a knife?

A. Yes.

Q. Would they also be consistent with Miss Vick being cut with a knife?

A. Yes.

Q. In this case, can you tell for sure whether a cut was actually the fatal wound, or a stab was the fatal wound, or whether a combination of both was the cause of her death?

A. In my opinion, it was a combination, that's why I called it sharp-force injuries, rather than specifying one or the other.

Q. Okay. So the cause of death would be stabbing and cutting with the knife; is that correct?

A. Yes.

Q. And the knife that would have been used to cut or to stab Miss Vick, would that be a deadly weapon?

A. Yes, it would.

MR. DAVIS: I'll pass the witness, Your Honor

THE COURT: Mr. Johnson, or Mr. Brauchle?

MR. BRAUCHLE: Thank you, Your Honor

CROSS-EXAMINATION

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BY MR. BRAUCHLE:

Q. Dr. Ross, my name is Paul Brauchle and I have a few questions for you in regard to your testimony. In regard to the injuries that you talked about, I believe you -- you stated that there were, what, seven stab wounds, or eight stab wounds; is that correct?

A. Well, I'll say seven stab wounds, and one incised wound or cut --

Q. Okay.

A. -- of the -- of the major ones that I've described individually.

Q. That you testified about here today, right?

A. Yes.

Q. Okay. Now, then, --

MR. BRAUCHLE: May I approach the witness, Your Honor?

THE COURT: You may

BY MR. BRAUCHLE:

Q. Doctor, by the way that our muscles in our body are made up, would somebody that held a weapon, such as a knife in their right hand, stab in a certain direction?

A. No. You can't tell the handedness of an assailant from the wounds.

Q. Well, what I'm asking is, would a -- would a wound delivered by the left hand be always identical to a wound

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delivered by the right hand?

A. No. In my opinion, they wouldn't be identical

Q. Okay. And that's because of the -- the movements in -- in our -- either side of our -- our body -- is that correct? -- the way our muscles are made up on each side?

A. Well, I don't know. Even if you made a wound with the right hand, I don't think it would be identical.

Q. Okay.

A. I'm not sure if I understand your question.

Q. What I'm asking you is, is there a difference in when I lower my hand with my right hand as with my left hand because of the muscle makeup on the different sides of our body?

A. Well, it's different, because it's right hand and left hand.

Q. Okay. Now, then, would that be reflected in sometimes, or in any times, in the direction of travel in a stab wound?

A. It may be different.

Q. Okay.

A. But I can't say for certain.

Q. Okay. In regard to stab-wound number 1, do you have a direction of travel for that?

A. Stab wound number one was from front to back, left to right, and upward.

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Q. Okay. So it was from the front of the body toward the back of the body.

A. That's correct

Q. And it went from the left-hand side of the body toward the right-hand side.

A. That's right.

Q. And it went slightly upward?

A. Yes.

Q. Now, then, in regard to determining which direction, which you say upward or downward, that is the direction that it has in relation to the body at the time the autopsy is taken; is that correct?

A. Yes, and when the body's in the anatomic position.

Q. Okay. So that means that if the body is lying flat on its back while you're performing the autopsy, it's in an upward direction in that position, right?

A. Yes.

Q. But you have no way of knowing what position the body was in when that stab wound, or that wound was inflicted, do you

A. Not with certainty, no.

Q. Okay. So, but you do know that it was from the left to the right; is that correct?

A. Well, yes. Again, when the body's in the anatomic position, yes

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Well, it doesn't make any difference as to what position the body was in when it received that as far as that direction, right? From left to right, or right to left?

Well, I mean, it could be just in any -- if the body is in a different position, yeah, it's going to change the direction.

Q. Okay. Let's go to wound number 2. What direction was that?

Wound number 2 was also from front to back, left to right, and slightly upward.

So it went left to right, also; is that correct?

A. That's correct.

Q. How about wound number 3?

A. Number 3 was front to back and slightly downward and didn't have any obvious deviation from right to left.

Q. So there was no direction from left to right in regard to that wound.

A. It was not apparent, no.

Q. Okay. How about wound number 4?

A. The same. Front to back and slightly downward, without obvious deviation in the right to left axis.

Q. Okay. Wound number 5?

A. All the rest of them were the same. Front to back, slightly downward, without deviation in the right to left axis.

Q. Were the depths on -- the depths of them were different; is that correct?

A. Yes. I would probe each wound to determine the depth.

Q. Did you reach any conclusion as to the size of the blades that may have been used to produce the wounds?

A. No.

Q. So you have no opinion as to that

A. No.

Q. Okay. In regard to the configuration of the blade in regard to these eight wounds, I believe you reached a conclusion that, what, four of them were made with a single-edged instrument; is that correct?

A. They had both a sharp and blunt edge that would be consistent with that, yes, or angled, rather.

Q. Okay. Is that correct, though, that out of the eight that you've testified to, four of them you could say were done with a single-edged blade?

A. Yes.

Q. They all could have been, but you could only say that four were; is that correct?

A. That's correct.

Q. Okay. In regard to the single-edged blade, do you have any opinion as to whether any of these were performed with a serrated edge?

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A. I can't say for certain that the -- that the stab wounds were performed with a serrated blade, but I think a serrated blade was present and may have done some of them because of the area that we looked at on the shoulder where the blade had apparently been drawn across the skin.

Q. Okay. Let's speak to that at this time.

Is that the only way that that area could have been produced, in your opinion, or could it have been produced in other ways?

A. No, it's possible that it could have been produced in some other way, but it's consistent with a serrated edge being drawn across the skin, also.

Q. Okay. So it could have been produced by some other type of injury?

A. It's possible

Q. Is there any showing that it was produced at or about the time of death?

A. I believe it was, yes

Q. But you don't know for certain

A. Not for certain, but in my opinion, it was produced near the time the other ones were produced.

Q. But you have no way of knowing about that

A. I wasn't there. No.

Q. Could that -- could that injury have been produced by an abrasion of some sort, other than what you've testified to?

A. It's possible.

Q. Okay. Were you ever given any weapons, or shown any weapons to compare or contrast, or to try and make any experiments?

A. I examined a couple of knives that had been submitted to the criminal investigation laboratory.

Q. Did you reach any conclusions from those?

A. Well, they could have been used. That's all I can say. I mean, I can't say with certainty that an individual knife was used, but those could have done the wounds.

Q. As could have any number of other weapons?

A. It's possible, yes

Q. So you -- you examined some, but you -- you weren't able to say that some may or may not have done it one way or another; is that a fair statement?

A. That's correct, yes

Q. Were you able to make any determinations as to the thickness of any of the blades that may or may not have been used?

A. You mean the ones that I examined? Yes?

Q. No, I mean, through the wound.

A. Oh, no, because you can't do that because of the skin. There's something called Langer's lines that would cause a wound to gape open, and, so, you can't really judge the thickness of a wound, because it depends on where it's

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made on the body.

Q. It has to do with the elasticity of the skin; is that correct?

A. That's correct, yes

Q. Okay. Does that also -- that also carries over, to some extent, to the size of the -- the blade, also?

A. I'm sorry, I don't understand.

Q. I asked you about the thickness of the blade

A. Uh-huh.

Q. Also, --

A. You mean of the wounds, or the blade?

Q. Well, you weren't able to make any determination or to make any kind of finding as to possible thickness of the blades; is that what you testified to?

A. The blade -- by -- by judging the wounds on the skin?

Q. Yes.

A. That's correct, yes

Q. Okay. And then, also, you weren't -- were you able to make any determinations as to the width of the blade?

A. By looking at the injuries on the skin?

Q. Yes.

A. No.

Q. Okay. So you

A. Well, what I'm saying is like it can be a smaller knife producing a larger injury, because there may be some