

individual and the rate of metabolism of alcohol in the bloodstream?

A. Not from the standpoint of metabolism. There is a relationship between the weight of the deceased and/or size of the deceased and amount of concentration of that alcohol in the bloodstream per unit volume of weight, you might say. The metabolic rate, however, from one individual who is, let's say, small to one individual who is large remains fairly constant. The body metabolizes at a certain rate. That is .015. I would expect, for instance, an adult who would weigh 150, 160, 170 pounds, in that neighborhood, I would expect one can of beer or one six ounce glass of wine or one shot of whiskey to, on the average, produce, following that one drink, about .02 percent alcohol within the system within an hour's time. If one takes an individual the size of the deceased, who was sixty-five pounds, who was roughly four feet five and a half inches, one would expect the concentration of alcohol in the system of the deceased following that same drink to be greater. I would expect, conservatively, that instead of .02, he would have, following that one drink, a point .035. That would be conservatively. Probably more realistically, closer to .04. One can get a greatly accentuated effect from a smaller volume of alcohol on a small individual especially in an individual who, let's say, is not only small and young but is perhaps not used to drinking on a regular basis.

Q And the accentuated effect would be what sort of effect?

A. Okay. Normally, in a normal individual with an alcohol level of, let's say, from .01 up to .09, one would have, the further up the ladder they go, in general, a loss of some inhibition; perhaps a little lightheadedness, but not too much in other activities, generally. I am talking about in terms of an adult now. Then, after one gets at .1, from .1 to .15, one has an accentuation of loss of inhibition. One also has the ability to feel they can do more than they really are able to do. One has a loss of critical mental functioning, being able to think rationally and clearly and rapidly especially in critical areas. One can have memory impairment. One can have some slight increase in sleepiness toward the period or in between the period of .1 and .15. After .15, one goes into a period of loss of muscular coordination, increased sleepiness, slurring of speech, being able to not handle themselves in a walking fashion, in a coordinated manner. This holds true pretty well to .29. From .29 or .30 up to .39 or so, one becomes quite sleepy. One becomes even, in a number of individuals, comatose. After .40, you can have coma and/or death occurring.

Q. You have assumed in your hypothetical we are talking about average size adults?

A. Correct.

Q. What are you saying in terms of a smaller individual, a sixty-five pound individual?

A. A smaller individual is going to be effected because,

remember, the one drink is going to bring in a relationship which is a greater concentration in the body. Secondly, the effect on the metabolism of the individual as far as how he functions, likewise, is going to be somewhat more sensitive, if one is not used to drinking. One is still dealing, however, with the correlation of .02. It may be a lesser amount of alcohol giving .02. The .02 figure is still going to have that effect on his ability to, let's say, be looser in his inhibition. The further you get up the scale, and this becomes important when one back-calculates, then one has a quicker loss of inhibition, especially the mental picture, your ability to think and correlate rapidly. This is decreased even more so.

Q Doctor, during your career, have you seen other cases of homicide involving post-mortem amputation of the male genitalia?

A Yes, sir.

Q Has that been in Montgomery County or other?

A This was -- the last time this occurred was in Los Angeles County where we used to get a fair number of cases.

Q Can you make a general statement as to the sorts of cases this particular sort of injury occurred in?

MR. BOSTICK: We object.

THE COURT: Would you read the question, please.

(Whereupon the previous question was read by the Court Reporter.)

THE COURT: Sustained.

BY MR. LANGER:

Q Rather than a generalized statement, let's try from this angle, Doctor. Based on your own particular experience in those cases in which you observed post-mortem amputation of the male genitalia, how many cases would that have been?

A Approximately ten.

Q Would you then describe the nature of those ten cases?

MR. BOSTICK: Objection.

THE COURT: Is there some relevance in this?

MR. LANGER: Yes. May I approach the Bench?

THE COURT: Yes.

(Whereupon the following was had at the Bench:)

MR. LANGER: The doctor will answer that in those ten cases --

MR. STEPHAN: I don't think we are asking for a proffer at this time.

MR. LANGER: The Judge wants to know the relevance.

MR. STEPHAN: Sorry. I thought we were having a proffer.

MR. LANGER: The doctor will answer that in many of those cases the homicide related to homosexual rape, homosexually motivated.

THE COURT: I will sustain the objection.

(Whereupon Counsel returned to their respective tables.)

BY MR. LANGER:

Q Doctor, in this particular case, were you able to estimate approximately the time of death of David Rowell?

A Yes. The estimated approximate time of death of David Rowell was at 1:00 in the morning on February 6th, 1982, and it is noted on the death certificate as c 1:00 A.M.

Q What does c mean?

A Meaning approximate.

Q Can you give us a range of time during which death in your opinion would have occurred?

A The range of time, and this would be based upon the physical state of the deceased as well as the investigatory background, looking at environmental conditions, et cetera, would be in a range of plus or minus two hours on each side of the 1:00. In other words, it would go from 11:00 the night of February 5 up to 3:00 in the morning of February 6.

Q Did you note the presence or absence of any decomposition in the body itself?

A The only decomposition, and that was strictly the occurrence from the warming process, is the vascularization of the vascular pattern which occurs in the vessels over the shoulder area, backs of hands, feet, and one small area on the right side of the chest. This was secondary to re-warming the body while the body was in the mortuary. This is a fairly common characteristic in an individual that has been exposed to cold environments.

Q Does the insignificant amount of decomposition in any way figure into your estimate of time of death?

A It is certainly consistent with a relatively short period of time. One has to keep in mind, however, that decomposition itself in a body which is subject to cold, especially in a relatively frozen state, causes the factors of decomposition to be greatly delayed.

Q You said you considered environmental factors in making your estimate?

A Yes, sir.

Q What specifically, other than the coldness, what else did you have reference to?

A At the time when the deceased was found, there was snow beneath the deceased. However, there was no snow on top of the deceased we found, and as best our records could obtain our investigation could obtain snow in that particular area had subsided approximately 10:30 P.M. on the 5th of February, 1982.

Q Doctor, I have marked as State's Exhibits 3 and 4, two plastic bags which are stapled together. Let's first go to State's Exhibit Number 3. I will ask you to examine that exhibit and then ask whether you can identify it?

A Yes. This Exhibit 3 would have been and this is the material that we use. This is Case 8C8182. This is a tube that was prepared by one of the autopsy assistants where the blood is placed from the deceased into the tube.

Q Was that tubing then placed in this plastic bag?

A Yes, sir.

Q Was it sealed, also?

A Yes, sir. On the envelope, it is also marked with the case number and it is appropriately sealed and with my initials.

Q Let's look at State's Exhibit 4 which contains numerous vials. I will ask whether you can identify that exhibit?

A Again, this is the plastic bag with numerous materials in it, plastic bags, swabs, there is a portion of plastic bags having hair type material present; also a slip which is one of our slips in reference to materials; and there was a receiving slip made out by our department, a receiver slip, when it was turned over later on to the receiving agency; as well as fingernail clippings and notations on the plastic bag which is also sealed and has the case number; the anal material; anal oral swabs; plucked hair, head hair that was plucked; right and left hand nail clippings; pubic hair which was plucked; loose hair from the leg and from the genitalia, also, of the deceased, and my initials.

Q Let's briefly talk about the anal swabbing that was taken from the decedent, Doctor. Tell us about that.

A Okay. In cases where we suspect trauma to the anal or oral area, we are not sure necessarily of the case to begin with, with our office a routine smear, in the case of a man the anal and in the case of a female the anal, oral, and vaginal swabs are taken. Two things happen. Some of the material is taken

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and submitted in a tube to the crime lab. Other materials are observed and looked at by myself. That is the smears that would be taken from the anal and oral smear in this case looked at by myself for evidence of sperm within the materials. In this case, I took a look at the smear, the anal and oral smears, and saw no evidence of sperm within the anal and oral smear sections.

Q Is that necessarily inconsistent with anal rape?

A No, sir.

Q Would you explain your answer?

A Yes. A couple of things. Number One, if one did not -- on an anal rape type case, if one did not ejaculate into the rectal or anal area, one then would not expect to see sperm material within. Secondly, if one were to ejaculate in a rather superficial nature, that is, not very far within, and one were positioned in a position or placed in a position or remained in a position yourself where the materials instead of remaining within the cavity were to be positioned in such a way the materials would flow out, one would also get and could get very well a negative smear from that, too. So, either way one would get this.

Q You said you examined some of the swabs there under a microscope?

A Yes. These were smeared out and I had them especially stained with a smear, the same one used with looking at cancer cells in females, and I screened these to determine whether or not there was sperm present.

Q You didn't conduct chemical tests?

A No.

Q The swabs that you gathered for the purpose of sending to the crime lab for chemical tests, what happened to those swabs?

A Those particular swab materials were placed in a locker, after being appropriately labeled, and handed over to the investigators, and this happened on a Sunday when this case was done. The crime lab, I believe, came the early part of the next week. There was calling back and forth to see whether or not they got it or they called. I don't remember which. When they picked up the materials, it had already been a significant period of time, I believe in excess of twenty-four hours when they picked them up, and the materials for their purpose, because of the bacterial growth, from my understanding, were of no value.

Q Were those swabs kept at room temperature during that length of period?

A Yes, sir.

Q Have you seen cases in which initially you have observed under a microscope and haven't seen the evidence of sperm and later on at the crime lab their chemical analysis showed the presence of semen or sperm?

A Yes. Primarily because of a couple of things. One would be the sampling. For instance, each time this is taken for smearing out, a swab is taken of the area, if your swab, even though you stroke it around in there, if your swab does not happen to hit

a particular area that has the substance on, you may get a negative swab. If another swab is picked up and makes contact with the area, it may come out positive. Yes, I have seen this.

Q Among the other items contained in State's Exhibit 4 are tubes that contain hairs recovered from the body of David Rowell?

A Yes, sir.

Q And also hairs recovered from the genitals, am I right?

A Yes, sir, and the head area.

Q And the head area?

A The head area.

Q The head of the decedent?

A Yes.

Q You took samples of the head from the decedent?

A Correct.

Q How many hairs did you find in or around the genitals which were in that bag?

A I don't recall making any comment on that. I don't recall the number. I know there were a few of them around. I mentioned earlier there were a few hairs around the pubic area. They were very sparse. And then there were some, likewise, scattered materials about the leg and foot of the deceased.

Q Wasn't there a loose hair?

A Yes.

Q In the bag which contained the genital?

A. Let me go back and look. There were a few other miscellaneous hairs removed from the amputated genitalia area of the body.

Q. You placed that in one of the vials?

A. Yes, sir.

Q. Lastly, Doctor, I will ask you whether or not you found on the legs or leg of Robert Rowell any loose hair?

A. Yes. There was hair removed, long hair removed from the left leg, perineal region of the deceased's left leg area.

Q. What part of the leg?

A. That, I don't recall.

Q. Would the vial indicate more specifically?

A. It may.

Q. Do you want to open that up?

A. I think it would be easier. Okay. This was from the calf region.

Q. The left calf region?

A. Yes, sir.

Q. This reads loose hair, calf, left leg?

A. Correct.

Q. Do you recall how many hairs were recovered?

A. No, sir.

Q. They are not in this vial at this time?

A. No, sir.

Q. What happened to these particular vials after you placed

various items of evidence in them?

A After all the materials were obtained, these were placed in the plastic bag. The bag was sealed. This was turned over to the investigator, stored in the locker, and turned over to the lab, the crime lab.

MR. STEPHAN: I didn't hear the balance.

THE WITNESS: Turned over to the crime lab.

MR. LANGER: I have no other questions.

THE COURT: I think we will take the afternoon recess now. Ladies and Gentlemen, before we resume with cross examination of Doctor Schaffer, we will take about a twenty minute break. I do want to remind you of the instructions that you are under during your break period. Please observe all the details in that. I guess I don't have to go over it with you at this time. We will take a twenty minute recess.

(Whereupon a recess was had.)

(Whereupon Court reconvened.)

(Whereupon State's Exhibit 8 was marked for identification.)

THE COURT: Cross examination, Mr. Bostick?

CROSS EXAMINATION

BY MR. BOSTICK:

Q Doctor, I am going to have just a few questions of you. You won't be on as long as you have been, I assure you. May I assume that in any type of autopsy procedure because of the nature

of the procedure, the time involved, the many procedures going on, that you had help?

A Yes, sir.

Q As a matter of fact, listed on the autopsy report are those from your office who were in attendance, is that true?

A Yes, that is correct.

Q Without getting into any details, of course, I will assume each of those five or six gentlemen, including yourself, you worked together and then perhaps you had individual responsibilities?

A That is not always true. In this particular case, I was the one who conducted the autopsy. The assistant that I had working with me would have been Lou Stange. Obviously, Dave Lett would have been taking the photographs. Jerry Phipps, who is a pathology assistant, and Doctor Davis would have been in the room with me, but they had no active part per se in the autopsy. They wandered in and out.

Q I understand. In all fairness, Doctor, the reason why I brought it up, you have characterized some of your testimony earlier by starting out to say I personally did such and such?

A Yes, sir.

Q That led me to believe at least that maybe somebody else did something else?

A I see what you mean.

Q You were maybe underscoring what you personally did?

A. True.

Q. You testified to multiple type bruises and abrasions. With respect to that testimony, which you have gone through in detail, may I ask you whether any of these abrasions and bruises followed any type of pattern that you could perceive?

A. I suppose the only pattern, if one would consider it a pattern, would be the post-mortem type scratches which would be consistent with brush type markings.

Q. I understand.

A. The appearance of those. The other type of bruises per se, the pre-mortem or pre-death type bruises, did not have a characteristic pattern that would be consistent, let's say, with a particular object or one object causing it as opposed to some other object causing it.

Q. All right. This would apply certainly to all parts of the body? We are talking now about the pre-mortem type of trauma. This would apply to the neck region, certainly?

A. The neck region, in reference to the pattern type mark that was present on the right side of the neck and also then taking into consideration not only that mark but also the underlying areas of hemorrhage which I described within the neck region, would be consistent with a particular type of mark. In other words, a particular type of thing causing that particular trauma. If one were to, let's say, receive a single blow into the neck or even multiple blows, then one would have multiple bruises on the neck.

One could certainly get hemorrhages from multiple blows, but the type of trauma that was present with the pattern marking on the right side of the neck and the soft tissue hemorrhages that were present not only beneath that area but also on the other side of the neck as well as the front area were consistent with a manual strangulation. In other words, that would be the only thing that would be consistent to produce that type of trauma to the area. If one were to use, for instance, a ligature, something wrapped around the neck, one would not get that type of marking.

Q That was going to be my next question.

A One would not get it.

Q With respect to my question about pattern bruises and abrasions, did you find anything significant about the wrists of the victim?

A No, sir. There were on the -- well, I really can't say the wrists. There were post-mortem abrasions on the forearm above the wrists. There was really no evidence of abrasions or markings on the wrists per se, no, sir.

Q How about the ankle regions?

A There was a single purple bruise on the inner aspect of the left ankle. It was not linear in nature. In other words, it did not look like a ligature had been placed around the ankle or a rope had been placed around it. It was not consistent with that. It looked like a single focal area of bruising where that particular portion of skin had come in contact with something or

something came in contact with the skin.

Q With respect to those things that you personally did, and you have explained your characterization of that, you indicated you checked the oral cavity and the anal cavity?

A Yes, sir.

Q For the record, Doctor, what is the oral cavity?

A The oral cavity is that cavity which lies beyond the lip area which we would normally speak of in terms of the mouth, which would include the gums, the teeth, the lining around the mouth, the palate, the tongue area, and back portion of the mouth which we refer to as the oropharynx, the upper portion of the throat area.

Q Of course, the anal cavity or at least the beginning of it was shown by one of the slides?

A That is correct.

Q When you personally checked these areas that we just talked about, did you use any particular procedure?

A Let's start with the oral cavity. The oral cavity is relatively easy to open and expand even with the rigor that is present. One still can get the jaw loose by putting pressure along the margin and opening it up. So, one can get an examination of the oral cavity by illumination via a light as well as normal room illumination quite easily. You move the tongue aside, look into the back areas, look around the tongue, et cetera, to see what areas, if any, there is any evidence of trauma or what might be

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present within the oral cavity. With the anal cavity, in some cases it is necessary to dilate up the anal cavity or spread it open if the anus itself is not patent or dilated up on its own accord. Usually, in a post-mortem state, usually the majority of the times one has the anus in a somewhat expanded, open position. This occurs following death. There is a relaxation and it just opens up. In the case of the deceased here, the anal opening was opened up. In other words, it had already relaxed. One did not have to forcibly open that up to visualize it on the outside and into not only the upper portion of the anus but the lower portion of the rectum. On the other side of the coin, when one gets into the body cavity, the rest of the area of the rectum all the way to the anus and forward up into the intestinal area then was examined by me from the inside to see if there was any other lacerations, bruises, et cetera within the mucosa. There certainly was not.

Q You were looking, as you have indicated, for the presence in these cavities, oral and anal, for sperm and/or foreign substance?

A That is correct.

Q Did you use any kind of procedure where there was a fluoroscopic mechanism used?

A Fluoroscopic?

Q Yes, sir.

A No, sir.

Q What did you use?

A To examine those was visualization with proper lighting and then after visualization, the thing that is done is a swab is taken of those particular areas; the oral cavity by going around inside the oral with applicator swab as well as the anal area, inserting the swab along the margin in a sweeping fashion.

Q Did this then conclude your checking of these areas, what you have just described?

A Yes, sir, except for the reading of the slides later on.

Q And the tests for the sperm and the other foreign type materials were negative?

A That is correct.

Q The Prosecutor asked you a little while before the recess whether or not, and I am not quoting him, Doctor, of course, what you found and if your result was inconsistent with anal rape. Do you recall that question being asked?

A His question, if I remember right, was in reference to the trauma that we were looking at on the slide, the slide that was projected. If I remember the question, it was in reference to trauma coming from without versus coming from within, and he asked me in reference to a cutting or laceration type trauma whether, for instance, a sharp object could do that. I mentioned at that time that the anal opening itself, the force would have come from without rather than from within because if it had come from within and would have caused dilation, then I would have expected to see

the lacerations which were superficial in nature occurring on the inner border of the anus rather than the external border. Number Two was the fact that if this were a sharp object that would have been placed within, causing these lacerations, such as a knife or whatever, then I would expect to see a distinctly different type of laceration than occurred at the anal margin which was present. The type of wound that would have occurred would have been a deeper laceration, whereas these were a stretch, tear type laceration of the anal margin such as one would get with forced expansion of the anus without actually a direct object cutting it per se.

Q All right. And then he asked you, and I will ask you if you remember whether or not no evidence of sperm would be not inconsistent with anal rape.

A Yes. In other words, he was asking whether or not you had to find sperm to say this was anal rape. The answer was, no, you would not have to find it to still have anal rape.

Q Then you went ahead in response to his question and did you not give us at least two instances as you hypothesized where there would be no sperm?

A Yes.

Q That was based upon speculation, was it not?

A Yes, sir.

Q The fact is, you found no sperm?

A Correct.

Q Or other foreign object or substance?

A Correct.

Q And then I think as a follow-up to that series of questioning, you indicated that later on the process of the material or substances through the lab sperm could also become present?

A Yes. What I was saying is that if another swab, and obviously when you take materials, for instance, swabbing the way we do it, we would also take a swab for the crime lab. I said if that particular swab came in contact with an area that perhaps the other swab did not, it is plausible, if that area was positive, to pick up a positive material whereas another swab would not have it on.

Q Would it be fair to say you are merely saying yes, it is possible?

A Sure, definitely.

Q Again, you are speculating?

A Yes, sir.

Q As a matter of fact, Doctor Schaffer, since you performed this autopsy at 9:00 A.M. on February 7, 1982, nothing has come to your attention which would indicate that any later lab tests came up with sperm?

A Correct.

Q And as a matter of fact with respect to the trauma to the anal region that you showed us on the slide, there is any

number of things that could certainly cause that, isn't that true?

A. Yes, sir.

MR. BOSTICK: Thank you very much. You have been very helpful.

THE COURT: Redirect?

MR. LANGER: Yes, Your Honor.

REDIRECT EXAMINATION

BY MR. LANGER:

Q. Doctor Schaffer, regarding those who were in attendance at the autopsy, what sort of apparel do those from the Coroner's Office wear during the conducting of an autopsy?

A. Those who are in direct attendance, in other words, those who are participating in the autopsy, with the exception of the photographer, who is actively participating but coming around and taking pictures, and even in some cases, they dress up, too, depending upon how close they have to get in, the ones who are participating are dressed in a full-length gown, surgical type gown, along with a plastic apron with gloves and, depending upon the kind of case, if it is a contaminated case where one suspects infection, you may have masks and head gear. In general, the surgical gown, plastic apron, and also the gloves.

Q. What about covering the head?

A. No, sir, not except in those cases where there is expected contamination from infectious organisms such as

tuberculosis. Then, we would cover in those cases.

Q The hair that was recovered from the calf of the decedent, do you in any way --

MR. BOSTICK: Forgive me. We are going to object. I don't recall that this is proper redirect examination.

THE COURT: I don't think the matter was gone into on cross.

MR. BOSTICK: Certainly not. We do object.

THE COURT: Sustained.

MR. LANGER: I have no other questions, Your Honor.

THE COURT: Very well.

MR. BOSTICK: We have nothing further. Thank you, Doctor.

THE COURT: You may step down, Doctor. Thank you.

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WHEREUPON:

BOBBY ROWELL

the witness, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HEAD:

Q Sir, tell the Jury your name?

A My name is Bobby Rowell.

Q Are you married, Bobby?

A Yes.

Q What is your wife's name?

A Myrtle.

Q Do you have any kids?

A I have two.

Q What are their names?

A Michael and Krista.

Q Did you have a third child?

A Yes.

Q That is David?

A David.

Q Where do you live now, Bobby?

A Mobile, Alabama.

Q Where did you live back in February?

A I lived in Moraine, Kreitzer Road, 2970 Kreitzer Road.

Q Bobby, were you the person that discovered the body of

your son?

A Yes, I was.

Q What kind of boy was he?

A David was a good boy. He had a few problems in school and it seemed like he had a problem behaving himself in class and also on the bus.

Q Tell me about the bus. Was he ever kicked off the bus? You were talking about the school bus?

A Yes.

Q Was he ever kicked off that bus?

A Yes. He was kicked off the bus in early December and for some reason, I don't know why, but he was told he couldn't ride the bus anymore during that month, so I had to carry him to school every morning and pick him up in the afternoon. This, in turn, pretty well disrupted my whole day because I was looking for work and everything. I was pretty well perturbed.

Q Do you know whether he had any further trouble on the bus?

A I understand the last day he was alive he was kicked off the bus again.

Q What had you told him back in December regarding any more trouble with the bus?

A I told him if he was kicked off the bus again, there was going to be a lot of trouble and God help him.

Q Did you tell him you'd take him to school anymore?

A I really didn't know what I was going to do or what I would have had to do.

Q Do you know whether or not he got his grade card that Friday?

A I understand they got their report cards that day and he had bad grades.

Q Did you see him that morning, that Friday morning?

A Yes, I woke him up. He got up and was getting ready for school.

Q About what time did you return home Friday afternoon?

A Right at 5:00.

Q Who was home when you got there?

A At the time, my wife was home.

Q Did your son, Mike, come home anytime after that?

A He came home right at 6:00; a little after, I guess.

Q Was your son, David, with him?

A No.

Q When did you become concerned for David and start looking for David?

A I asked Michael right away where David was. He said he was over in the trailer park at someone's trailer. I can't recollect whose trailer he said he was in.

Q Did you or -- let me ask it this way. Did you send Michael out after David?

A I gave Michael a talking to. I told him to go get

David. It was going on 7:00; I guess a little after.

Q About what time did Michael return home?

A Well, right after I took a bath and he -- during the time I was taking my bath, he came back. It had to be somewhere between, probably 7:30 and 8:15 or 8:30.

Q All right. Was David with him?

A No.

Q What did you do next?

A At the time, my wife was out looking for him. When she come home and said she --

MR. BOSTICK: Objection to any conversation from this point on, Your Honor.

THE COURT: Sustained as to what the wife may have said.

BY MR. HEAD:

Q Mr. Rowell, just tell us, if you can, to the best of your memory, what you did or what was done in your presence concerning looking for David?

A About 9:00 or a little afterwards my wife came home and said she didn't see David anywhere around the Civic Center.

MR. STEPHAN: Objection.

THE COURT: Sustained. The Jury will disregard the statement of the witness as to the statement made by other persons not in Court.

BY MR. HEAD:

Q Mr. Rowell, did your wife go out looking for David?

A Yes.

Q How did she do that, in a car or on foot?

A In the car.

Q How long was she gone?

A Off and on she was gone from about, I would say 7:30 to around 9:00.

Q Did she return home?

A Yes.

Q Did she have David with her?

A No.

Q What did you do next?

A Well, I put my clothes on, and I told her I was going to go out looking around the Civic Center, the school, and over around the plat. And so I took off, walked around the school yard and Civic Center area, looking around the building there, walked up side the fence, looking for footprints because it just got through snowing, and I looked in the doorways of the school and around the back of the school. I cut across over into the Civic Center field and looked out across that way. Then I cut back over to the Civic Center. I walked completely around the Civic Center looking in the windows. I didn't see him in there. I went to the cook-out area on the north end of the Civic Center, down in that little barbecue pit like thing. He wasn't there. So, I left there, went across through the parking lot over to the field, north of Kreitzer Road. I walked about thirty or forty yards from

the I-75 fence looking along that area, and I walked up, oh, about fifteen or twenty yards past a little clump of trees, and I cut back toward the trees and walked through that little area where the trees were, a little round area of trees.

Q Did you find David?

A No. So, I come out of the trees and went up on the hill toward the north end of the field there, up near the area where there's a line of little small fir trees or pine trees running diagonal with the trailer park. I got about fifteen or twenty yards from there and I turned back and headed back toward the road on the right side of the field, and I didn't see him there anywhere. About three trailers from the end, I cut into the trailer park. I saw a couple trash bags out there. Out of curiosity, I picked them up and shook them. Then I walked on into the trailer park. Then I cut off and went back to my house. By that time, my feet was getting just about frozen.

Q About what time did you return home, do you recall?

A It was probably 10:00 or a little after.

Q Was your wife home at that time?

A Yes.

Q Did you have the occasion to be present when your wife made some phone calls?

A Yes. After I got back home, she called the hospital and checked the emergency room, and she called a few other people. I don't know exactly who they were, but it seemed like somewhere just

about 11:00 she called the police and told them that he was missing. After she done that, by that time, I got warm and everything. I decided to go out and look again. So, I got Michael to double check Lisa Collins' trailer to make sure he wasn't there. So, I followed him over -- well, he was about fifty yards in front of me. So, I met him coming back from her trailer. He said he wasn't over there. About that time, I cut back over toward the field again. I cut back, went out back out on Kreitzer Road, went around and went down a little road, like a little makeshift road. I walked up past a couple cars that was out there, an old white car and an old Mustang, a blue one. I looked in both cars in case he was in there. Then I cut back in the field again. I walked back over to the clump of trees. Then I went back out over near the Civic Center, looked around again. I didn't see him. Then I went back home.

Q About what time was this?

A It was close to 11:30.

Q After you got back home, did you have occasion to look further for David that night?

A Yes. I went to the basement and looked. I looked behind every object I thought he might hide behind. I went in the attic looking for him. I looked in all the closets. I went out and looked in the garage, behind the garage. I looked over in the big building next door. I walked near the hill. I didn't see him. So, I went back in the house, and I told my wife I was

going to go to the Dayton Mall because I understood he had a dollar in his pocket. I thought maybe he might have gotten a bus and went to the Dayton Mall. And so, around 11:45, I went to the Dayton Mall. I got there just about 12:00, I guess. I went inside where the movie theater is, where they had the balcony, right past the Metropolitan Store, right in that area, and I walked upstairs and looked up there. Went back downstairs. I went out to the Mall, the long portion, and looked up and down thinking he might be there, but it was closed. They was mopping the floors. So, I come on back and got in my van and drove around the parking lot of the Mall. I still didn't see him. So, I came on back toward home. On the way back, by this time it was getting close to 1:00. I came up over a hill on Northlawn, over the railroad tracks. I saw a car that looked like it was on fire at an intersection and a lady was standing by it. I stopped, and I told her to get away from the car because it might blow up. We stood there a couple minutes. I finally opened the hood and looked down in there. Whatever was burning, it quit, and so we got the car moved off the side of the road, and she asked me if I would take her on home because she had luggage. She said she just came from the airport.

Q Did you take her home?

A Yes. She asked if I would mind. I told her not really. On the way to her home up Stroop Road, I told her the reason I was out was I was looking for David. She said she hoped I found him.

She had a daughter run away or something.

Q Did you then go back to your home after you dropped this lady off?

A Yes, I came back and I went over and drove around the plat, Holman, Gladstone, and Cadillac Streets. I checked that area one more time. Then I came out and went home and parked my van. I can't remember whether I went in the house or not. I headed back toward the trailer park again, and I walked the complete trailer park, looking in between the trailers and everywhere I thought he might be hiding or something. I made a complete loop and came on back home.

Q This is about what time, 1:00, would you say?

A Close to 1:30.

Q Do you remember being in my office and pointing out some of these places on a map of some kind, a chart?

A Yes.

Q Sir, if you could, come down here and look at this chart which we have marked State's Exhibit 8 for identification purposes.

MR. HEAD: Your Honor, if we could have Alternate Juror Number 14 move so he could see.

THE COURT: What was the Exhibit Number?

MR. HEAD: State's 8.

THE COURT: All right.

BY MR. HEAD:

Q I will hand you a red crayon. Could you circle your

house, the house that you were living in back in February?

A Circle it?

Q Yes.

A Right there.

Q From your knowledge of that neighborhood, in that area, how long had you lived there, by the way?

A I have been there since December of '79.

Q Does that map clearly, accurately, and correctly depict the area where you lived and the trailer park and the field where you found David's body?

A Yes.

Q Could you point out to the Jury the various places that you went looking for David, not with a red crayon, but point them out with your finger.

MR. HEAD: Can everybody in the Jury see the chart? Maybe we can bring it down a little bit.

THE WITNESS: I left my home, which is the rear door, right here, and I came out and went from around the rear of the house and went through the side of the yard, the vacant side of the yard, and went out on Kreitzer Road. I came down beyond the three houses, this last area being a vacant one acre lot. I cut across this lot here and went right approximately here in front of the Civic Center. I looked into the Civic Center. I seen some people, no kids. I didn't see any kids. It looked like people was getting ready to leave, so I stood there a moment or two just

looking in there. Then I took off. I turned around and went behind this baseball diamond. I went right through the center of the baseball diamond, walking this way, over to the other baseball diamond and right here is an old collapsed dugout. I looked into this collapsed dugout. Then I walked on over here, over here, and looked in this area of it, this being like a little playground. It's got a couple slides and a few playthings and swings right here for the kids. What I did here is I just looked here in the doorway and I came out and went back here; looked in the dumpster, which is located right here. I left there and went over here, which is a hill. I have known David to hide out there and smoke cigarettes up on a little hill right here. I looked all back around in there. Then I left there, came back and walked around in front of the school, looking in the doorway because he had been picked up once walking into the school, for whatever reason I don't know. He walked in there once. I checked the door. I walked from here straight across the front of the school over to this, like a picnic area, a little shelter. From there, I looked each direction, which was very clear. It was bright with snow. If he had been laying there somewhere, I would have saw him. So, I left there. I cut up here to the Civic Center, approximately this end. I saw some little footprints. I followed them right around looking through the windows and looked through the windows. I didn't see him. Right here is like a cook-out area, a little barbecue pit. I looked down there because I caught him smoking there once before. I didn't see

him there. I walked out, out here to the parking area. I looked back this way. I left there, went through the main parking lot, across Kreitzer Road, and went approximately in this direction about thirty yards or so from this fence. There is a fence here along I-75. So, I looked across there, which is very clear, too. I didn't see anything. I got about right here in this area, and then I backed down toward the trees. There is a little hole there about two by five. I looked down in it. I walked on down and looked out through these trees. There was a bunch of trash laying down in there. I didn't see him there. So, I went up a hill, went up in this direction. I went up approximately about right here, in this area. Right here is a clump of trees. I believe fir or pine. I got back this far. I could see in that direction. There was bushes or something. I turned and came down this direction, approximately following this path here.

BY MR. HEAD:

Q If I could interrupt you, sir, for a minute, could you point out perhaps once again with that red crayon behind you -- I am jumping ahead a little bit. If you could, point out the clump of bushes you found David's body in on Saturday.

A On this, I would say it must be this one, according to that. There is another bush down here. I am sorry. It is this one. There is another bush right here.

Q Do you recall a field before the open field, a field that looked like it was plowed or used as a garden of some sort

between the trailer park and the field?

A Yes.

Q If these lines here were to indicate --

A Oh. This is a garden. Okay. So, it would be this.

Q Okay.

A That is where I found him.

Q Could you maybe put an X through the circle so we know which one we are talking about?

A (Indicating).

Q When you came back from that long line of trees up to the top part of the chart there and you walked back down, did you walk past that circle with an X through the clump of bushes you found David in?

A I walked right next to that bush.

Q What time was this, the first time you went by that bush?

A The first time must have been 10:00, ten till, somewhere around there.

Q Was it dark outside?

A It was dark, but it was very bright.

Q Why was that?

A I guess from all the lights in the area and the snow. It was just as bright as this.

Q Okay. So then after you walked past those bushes, is that when you went back home?

A No. I walked past these bushes, and I turned right by this bush here, and I went right through here, and I believe I went right between this trailer and this trailer, and I went out into the Cozy Lane here and then I cut -- somewhere there is a path, right here. I took the path and came on back home.

Q You said you went out a second time to that field about 11:00 or 11:30?

A Yes.

Q I will ask you if you walked past the clump of bushes we have marked there with a circle with an X through it? Did you walk past that clump of bushes about 11:30?

A Yes.

Q Did you see David in those bushes at that time?

A No. David was not in that field. No way.

Q The next day, did you have -- what time did you get up the next day, do you remember?

A I got up around 7:00.

Q Did you look for -- did David come home during the night?

A No.

Q Did you look for David when you got up that next day?

A Yes.

Q Did you look over in that field again?

A After I looked in a few other places, I came from the house and went back over in this clump of trees. I looked in there.

I climbed up on that hill and looked in every direction.

Q Did you have the occasion to walk past the clump of bushes?

A No.

Q Where David was found later on?

A No.

Q By the way, do you have a dog or did you have a dog when you lived on Kreitzer?

A Yes.

Q Did you walk the dog in that field a lot?

A Yes.

Q So, you are familiar with the field?

A I knew about every foot of it. I walked it two times a day.

Q So, after you looked through the field Saturday morning, what did you do then?

A After I looked in the field, I went on back home, had coffee, then I came -- it was about 8:45 or 8:30, somewhere in that neighborhood. I noticed a lot of people at the Civic Center, and so I drove my van up to the Civic Center, and they was having a flea market sale inside. I went inside and looked all around the booths. I walked into the rear of the Civic Center, the back rooms, and looked. I didn't see him there. I come on back out. I got in my van and I drove up the road real slow, and I stopped here and looked out that way, but I couldn't make out nothing. So, I left there.

I went on out here and I turned into the trailer park, right here, and I circled the trailer park, this area here. I came back out, and I went up and down these streets here. This is the low end of the trailer park. This is a different trailer park.

Q What is the name of that?

A Gordon's. I didn't see him anywhere around there. I was driving real slow. When I left that trailer park, I went back up Dryden Road and went down into the plat.

Q That is Cadillac Road?

A Yes. I drove around Cadillac, Gladstone, and Holman again. I didn't see him there. I drove over by Frisch's Big Boy on the corner of Central and Springboro. I didn't go inside. I just glanced at the front of it. When I left there, I came back up Springboro, come up over the hill, and turned down -- let me get my bearings. Over here somewhere. Anyways, the same street the Save Mart is on. I drove over and I looked into Save Mart. He wasn't in there. So, I came on out. I came over here to this little road where these trees are, and I drove right about up in here, and I looked down this way. It was clear. I couldn't see him in any of these trees. So, when I left, I backed out and left there. By then, it was after 9:00, about 9:15, probably. I didn't know what to do then. So, I went back home and told my wife I had been out looking for him. She said, well, she was going to call some more places. So, I said, all right. I am going over to Huber Heights for awhile and see my friend. So, I went over there. I

stopped on Brandt Pike and had breakfast and somewhere around 11:00 I got to my friend's TV shop, and I stayed there probably until a little after 1:00. I talked to my wife. I talked to her a long time. She said she still hadn't heard from David. She was going to go to Kettering. I thought somewhere in the neighborhood David had been allowed to spend the night. That was about 12:00. So, I told her --

Q About what time did you get home, do you remember?

A About 1:30, something like that.

Q Did you have the occasion then to go out in that field again?

A At the time, I didn't. I really didn't know where to look anymore. I looked just about everywhere. So, I made me some coffee and went down in my basement and I sit there probably until it was after 3:00, and for some reason I kept visualizing bushes. I said, I'm going to check that field one more time, and about 3:30 I put my coat on and I looked out my front door and I saw these bushes. I thought, I'm going to check them. That's the only place I never looked. So, I just took off right across the road, walked around this bush here, walked along, looked left, and saw that hole. I thought to myself if somebody is going to throw him out, they'd put him in that hole. It was a few seconds later I glanced to the right. I saw something shining. It looked to me like -- I don't know. Things were starting to flash. A doll came to my mind. The closer I got the more it looked like a doll. I finally figured out

why. It was David. He had been covered over the face and top part of his body with a bag. All I could see was the knee sticking up. That is all I could see of him until I moved the bag.

Q Mr. Rowell, do you remember the various times that you went to that bush, did you ever take a path directly from the bush to where that trailer is that is marked with a red crayon, 2753?

A No.

Q Did you ever walk back from that trailer to the bush where you found David at any time during these visits to the field?

A No. When I found David, I just -- I walked over to the outer edge. I saw towels everywhere, a bunch of towels; one on David's bottom, two or three laying on the side of him. I saw one hanging on the bush. The one on the bush caught my eye. I walked over and right below that was a bag that had David's clothes in it.

Q Did you recognize them as David's clothes?

A Yes.

Q What did you do after you found David's body?

A I then walked home and called the police.

Q How long did it take for the police to get there, do you recall?

A Less than eight minutes.

MR. HEAD: You can resume your seat up there on the stand.

BY MR. HEAD:

Q Mr. Rowell, did you permit your son -- how old was David now?

A David had just turned thirteen.

Q Did you ever permit him to drink alcoholic beverages?

A No.

Q Did you ever know him to drink alcoholic beverages?

A No.

MR. HEAD: We don't have any other questions.

THE COURT: Very well. Cross examination?

CROSS EXAMINATION

BY MR. BOSTICK:

Q Mr. Rowell, I am going to ask you a few questions, okay? Did you call your younger son David?

A Yes.

Q Because of David's past actions, as you have described them, may I ask you, sir, if you had to go out and look for him before this occasion on other occasions?

A On two occasions I had to look for him. One night last summer he took off a little after 12:00 and stayed out the rest of the night.

Q When you say a little after 12:00, you mean 12:00 midnight?

A Midnight.

Q Little David stayed out all night?

A Yes.

Q When did he return?

A I think around 9:00 in the morning.

Q You personally don't know where he had been?

A I knew he was in the neighborhood. Every time I'd get close I saw evidence, but for some reason he wanted to stay out all night that night.

Q This was one night last summer, the summer of 1981?

A Right.

Q Was there another occasion, sir, when he just seemed to disappear?

A Well, there was one night I guess he thought he was going to get a whipping and he ran out of the house, but he wasn't gone more than an hour. We found him less than two blocks from the house. He was up near the Save Mart on Springboro.

Q Are you saying Save Mart?

A Save Mart. A little market, a gas station and market on Springboro and Kreitzer Road.

Q Did he have money on his person when he was at Save Mart?

A No.

Q The time he disappeared last summer, do you know whether or not he had money on his person?

A I don't know.

Q Were there other occasions when little David would seem to take off and disappear?

A. No.

Q. Where would he hide, other than the places you have demonstrated on this map? What were some of his hiding places when he would take off?

A. That was it. He never ventured far from home.

Q. On the occasion that he disappeared for the last time, you went as far away as the Dayton Mall to look for him?

A. Right.

Q. Had he been accustomed to going up there?

A. Well, he was allowed to ride the bus only with permission to the Mall to, you know, go into the Mall; not to go anywhere else but the Mall, ride the bus.

Q. What would the boys be there doing, playing machines or something?

A. Right.

Q. I suppose, sir, there were times when you didn't know where he was, he could have been at the Mall or what have you?

A. No. We had good track of the boys. They was either in the plat or the trailer park. I am sure he was not at the Mall without us knowing it.

Q. You said, sir, that on at least a couple occasions David was concerned about getting a whipping. Did you whip him for these goings and comings that he engaged in?

A. No. I didn't know what to do with him. On one occasion I talked to him. I asked him not to do it again. I told him it was

getting dangerous to be out at nighttime. Something could happen to him. He promised me he wouldn't do it again.

Q His going and coming like this personally worried you, didn't it?

A Yes.

Q And worried his mother?

A Yes.

Q The whole family?

A Yes.

Q Mr. Rowell, I want you to think about the next question for a moment if you will. I am going to ask you, sir, if within the last six months to a year before your son disappeared, did your family receive any threats?

MR. HEAD: Objection.

THE COURT: Your grounds?

MR. HEAD: I fail to see the relevancy. Perhaps we could approach the Bench.

THE COURT: You may approach the Bench.

(Whereupon, the following was had at the Bench:)

MR. HEAD: I am not quite sure where Defense Counsel is going, but the fact that his family did or did not receive threats, what relevance does that have to this case?

MR. BOSTICK: It has every relevance, Your Honor.

THE COURT: Could we be more specific about the nature of the threats to tie in relevance in my mind?

MR. BOSTICK: If he doesn't receive any, he will say no. I think he will say yes.

THE COURT: Threats to members of the family?

MR. BOSTICK: Yes.

THE COURT: Maybe if you could rephrase the question that way, threats against the persons or members of the family, then I can understand the relevancy.

MR. BOSTICK: Okay.

(Whereupon, Counsel returned to their respective tables.)

BY MR. BOSTICK:

Q Mr. Rowell, let me rephrase that question if it is not already clear in your mind. I am referring, sir, to any threats that you might have received, you and your family, to family members?

A It would be hearsay from my wife. I have never actually received one myself.

Q I am sorry, sir?

A I never actually received the threats myself.

Q Did you say something about your wife?

MR. HEAD: We will object.

THE WITNESS: I said it would be hearsay from her. She is the one that got the threats, not me.

MR. HEAD: Objection. It is not responsive.

THE COURT: We will overrule the objection. I think he can testify, not on the contents of the conversation, which would be

hearsay, but what he knows about that part of it.

MR. BOSTICK: Certainly, Your Honor.

BY MR. BOSTICK:

Q What you are saying, sir, and what I understand is that this was something personal that your wife had received?

A Right.

Q You weren't there at the time?

A No. It was during the time I was working at night.

Q Is it your understanding, sir, that it was threats or threats made to family members?

A You mean any particular member or all members?

Q Any member, sir?

A That is what she said.

Q The threats were directed at all members of your family, is that right, sir?

A I am trying --

Q I'm sorry?

A I am trying to think how she described it.

MR. HEAD: Your Honor, we are going to object. I believe the question is calling for a hearsay answer.

THE COURT: Well, I think the content is probably based on hearsay. We will sustain the objection.

BY MR. BOSTICK:

Q Based upon what you learned from your wife, as a close-knit family, concerning the threats, were you concerned yourself

about the safety of your family members?

A. Yes.

Q. You were very concerned?

A. Yes. I put a dead bolt lock on the door for her because she was scared.

Q. She was at home a lot by herself, wasn't she?

A. Because I was working nights.

Q. I understand, sir. So, you were concerned about your wife's safety?

A. Yes.

Q. Who else are the family members? You mentioned David. You have a son by the name of Michael?

A. Michael.

Q. Anybody else?

A. A daughter, Krista. She's ten.

Q. What is her name?

A. Krista.

Q. Krista?

A. Yes.

Q. Anybody else in the family?

A. No.

Q. You were concerned about all family members, weren't you?

A. Yes.

Q. Their safety, their personal safety?

A Yes.

Q What else did you do besides double bolt lock the doors?

A First of all, I won't allow the kids out after dark.

Q You won't allow the kids out after dark. That is,
little David --

A Unless they were supervised.

Q David?

A Yes.

Q Krista, his sister?

A Yes.

Q And even Michael?

A Even Michael.

Q How old is Michael?

A He just turned fifteen.

Q What other precautions and safety did you take in view
of these threats to the family members?

A That's about it, I guess.

Q One last question, sir, if I may. In point of time,
when did that occur? When I say in point of time, to the dis-
appearance of little David?

A You mean taking precautions?

Q When the threats came into your household and caused you
great concern?

A I don't understand. You mean when I put the lock on the
door? Is that what you mean?

Q Let's start there. When did you put the locks on the door?

A About a week after I started back to work.

Q That would be when, sir?

A November of '7- -- no. November of '80.

Q Had you gotten the threats before then?

A I am not saying she had threats then. It started while I was working at Chevrolet.

Q Did it continue on?

A Yes, until I got laid off. Then, it stopped. The phone would ring. I picked it up twice. Nobody said anything. They just breathed. This only happened to me twice, but it happened to her every night.

Q Did it happen to her every night at a certain period of time?

A I guess she must have had a few free nights, but it happened, she said, very regularly.

Q Do you, sir, personally know the source of those threats?

A No.

Q You have no idea?

A No. I have an idea. Just kids playing pranks. I don't know. That is what I thought. I have no idea, really.

Q But in any event you put the double bolt lock on the door and kept your kids home?

A The main reason I did that is I knew I was going to be

working nights for the duration because that was second shift work.

Q Even with those restrictions that you put on your youngsters, little David and Krista, his sister, and Michael, who is now fifteen, did little David still get out and about?

A At night?

Q Yes.

A No.

Q He stayed in at that time?

A Yes. I lost sight of David once that night. That was it. Other than those other two times I told you about, he has never been out after dark.

Q And he would always come in before dark?

A Yes. That was a rule I had. When dark came, you be in the house.

MR. BOSTICK: Thank you, Mr. Rowell. Thank you very much.

THE COURT: Redirect?

MR. HEAD: One moment, Judge. No further questions, Judge. Thanks.

THE COURT: You may step down, sir. Thank you.

Ladies and Gentlemen, we are going to conclude the presentation of evidence today and resume again tomorrow morning at 9:00. Before you go home, however, I want to deliver the admonition that I forgot to give you over the lunch hour. Do not discuss this case among yourselves or discuss it with anyone else. Do not permit