

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

NANCY VAN DYN HOVEN

Direct Examination by Mr. Biskupic Page 197

DAVID J. CARNOT

Direct Examination by Mr. Biskupic Page 215

Cross-Examination by Mr. Hudson Page 246

Redirect Examination by Mr. Biskupic Page 254

LISA CARNOT

Direct Examination by Mr. Biskupic Page 255

MIKE BORCHERT

Direct Examination by Mr. Biskupic Page 258

Cross-Examination by Mr. Hudson Page 272

JAMES SPRANGERS

Direct Examination by Mr. Biskupic Page 276

Cross-Examination by Mr. Hudson Page 283

JAMES VANDER LOOP

Direct Examination by Mr. Biskupic Page 285

Cross-Examination by Mr. Hudson Page 290

E X H I B I T S

		<u>IDENT'D</u>	<u>OFR'D</u>	<u>REC'D</u>
1				
2				
3	# A - State Crime Lab report	9	---	---
4	# B - Photo	9	---	---
5	# C - Photo	9	---	---
6	# 1 - Photo	206	215	215
7	# 2 - Photo	206	215	215
8	# 3 - City of Kaukauna map	199	215	215
9	# 4 - Aerial photo	200	215	215
10	# 7 - Photo	220	223	223
11	# 8 - Photo	220	223	223
12	# 9 - Photo	220	223	223
13	# 10 - Photo	220	223	223
14	# 11 - Photo	220	223	223
15	# 12 - Photo	220	223	223
16	# 13 - Photo	232	254	254
17	# 14 - Photo	232	254	254
18	# 15 - Photo	233	254	254
19	# 16 - Photo	233	254	254
20	# 17 - Photo	233	254	254
21	# 18 - Photo	231	---	---
22	# 19 - Photo	245	254	254
23	# 20 - Photo	245	254	254
24	# 21 - Photo	246	254	254
25	# 22 - Photo	244	---	---

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

E X H I B I T S

IDENT'D OFR'D REC'D

# 23 - Photo	244	---	---
# 24 - Photo	244	---	---
# 98 - Photo	229	---	---
# 99 - Photo	229	---	---
#121 - Photo	247	251	251

1 (Closed hearing had in Branch III jury room
2 commencing at 8:10 a.m.)

3 MR. HUDSON: Your Honor, I'd like Peter Roth
4 in here because I'm filing a motion for dismissal of
5 him, and I have --

6 THE COURT: Well, we're here for one reason
7 only, because you told me in one of your motions that
8 I'm requesting a closed meeting, and that's what we're
9 going to cover, and then we're going to go out in the
10 courtroom.

11 MR. HUDSON: I have a few more motions I
12 wanted to file this morning besides those ones,
13 something that came up yesterday and some conflicts.

14 THE COURT: Okay. We're in chambers. Well,
15 we are in the jury room, actually. Why don't we go
16 around the room and state who's here. Judge Froehlich.

17 MR. BISKUPIC: Vince Biskupic for the State
18 with Deputy D. A., Carrie Schneider. Stand-by counsel,
19 Attorney Carns, is here with defense investigator,
20 Peter Roth. The defendant's here in person, as well as
21 members of the CJ unit.

22 THE COURT: The clerk and the court reporter
23 are here.

24 Mr. Hudson, you filed a motion on March 1. It's
25 stamped March 1 at least. I don't know what the --

1 that must be the day you filed it.

2 MR. HUDSON: What motion is that?

3 THE COURT: "I am requesting a closed meeting
4 with you in regards to one of my motions. The things I
5 do need to talk to you about might be better to talk
6 with you prior to hearing. In fact, I'm pretty sure
7 that we need to, for the sake of both sides."

8 MR. HUDSON: Okay. Yes.

9 THE COURT: What is that about?

10 MR. HUDSON: Okay. It pertains to this
11 motion here about evidence that was sent to the Crime
12 Lab report -- Crime Lab and --

13 THE COURT: You mean your second motion.

14 MR. HUDSON: Yes.

15 THE COURT: What's wrong with that being done
16 in open court?

17 MR. HUDSON: Well, I didn't know if the --
18 you know, if the media was going to be there --

19 THE COURT: The media is going to be wherever
20 you are.

21 MR. HUDSON: Well, I didn't want that
22 evidence to come out -- or I didn't, you know, because
23 last time he said that he didn't want the media in the
24 courtroom when I talked about it, because the
25 evidence --

1 THE COURT: I didn't --
2 MR. HUDSON: -- when you filed the gag order
3 and stuff.
4 THE COURT: I didn't want you talking to the
5 media. I didn't want him talking to the media. I
6 didn't want to create anymore stories in the paper than
7 we had.
8 MR. HUDSON: And if there were people in the
9 courtroom that pertain to this evidence that's missing
10 evidence or, you know, things to that nature, I didn't
11 know if the people in the courtroom should hear that
12 stuff.
13 THE COURT: Well, go ahead --
14 MR. HUDSON: All right.
15 THE COURT: -- on that one motion.
16 MR. HUDSON: This is on -- "Dear Judge
17 Froehlich: I am writing to you to file a motion for
18 you to order the State Crime Lab in Madison to do tests
19 on the fingernail scrapings taken from Shanna Van Dyn
20 Hoven and myself, Kenneth A. Hudson."
21 Okay. Now, just on that, on Dr. Coffey's
22 report -- and she's a state-appointed doctor -- on page
23 nine, in the last paragraph of that report, this
24 Collateral Information, this is what she states:
25 "While Mr. Hudson reports that he drank an excessive

1 amount of beer on the day of the crime, emergency room
2 records after his offense indicate that his blood
3 alcohol level was .04, not legally intoxicated. This
4 does not support his reports of drinking a case of
5 beer, however he did have Diazepam and THC in his
6 system. The records from the emergency room also
7 indicate that he had slight scratches on his right
8 elbow as the only obvious signs of injury. This is
9 inconsistent with his report that while he had his
10 shirt off the victim dug her fingernails in his arms
11 and shoulders. He indicates that this attack by the
12 victim triggered the image of his mother that he
13 reports led to his believing that he was stabbing his
14 mother."

15 This is a State Laboratory report of what they
16 took from the victim. I'd like to enter that in as
17 evidence.

18 THE COURT: Do you want to mark it?

19 THE CLERK: I didn't bring any stickers.

20 MR. BISKUPIC: Just mark it Exhibit A for the
21 motion here.

22 THE COURT: Yeah, Exhibit A.

23 MR. BISKUPIC: We've got numbers for the
24 trial Exhibits 1 through 120.

25 MR. HUDSON: I have --

1 THE COURT: Okay. This is a Wisconsin
2 Department of Justice, Division of Law Enforcement
3 Services, Crime -- State Crime Lab, Madison.
4 Submission comments: One sealed WSCL sexual assault
5 kit purported to contain fingernail clippings recovered
6 from Kenneth A. Hudson; one sealed paper bag containing
7 fingernail swabbings purportedly recovered from Shanna
8 M. Van Dyn Hoven; one sealed paper bag containing
9 fingernail swabbings and scrapings purportedly
10 recovered from Shanna M. Van Dyn Hoven. Okay.

11 MR. HUDSON: Okay. Now, I have pictures here
12 that I received from the investigator, from Mr. Ed
13 Carns, and on my right cheek are dig marks, and you can
14 barely see it, but up on the left shoulder you can see
15 a beginning of a scratch mark. And you could see the
16 mark on my cheek, my right cheek here. I'd like to
17 enter those in.

18 MR. BISKUPIC: Call those B and C?

19 THE COURT: Exhibit B and C.

20 MR. HUDSON: I'd like to also enter -- these
21 are the day that I was brought into jail and booked,
22 and it clearly shows the dig marks on my face.

23 THE COURT: That's not your shoulder or
24 your --

25 MR. HUDSON: Well, I got that on there, so it

1 isn't showing that, but the hospital says that there
2 was no other marks besides the scratch on my elbow.
3 Now, that clearly shows that there was another injury
4 to me. You can see on the elbow there that mark. Why
5 didn't the hospital put in their report about the dig
6 mark on my face? And when the police officers took me
7 in, they asked me where I got the -- where I got the
8 dig marks on my shoulders and on my face. And if the
9 dig marks are on the back of my shoulder, they wouldn't
10 show up on that because I'm wearing that gown that they
11 had on me.

12 And in Dr. --

13 MR. BISKUPIC: That's fine.

14 MR. HUDSON: -- Coffey's report, you know, it
15 said again, The records from the emergency room also
16 indicate that he had slight scratches on his right
17 shoulder -- or his right elbow as the only obvious
18 signs of injury. This is inconsistent with Mr.
19 Hudson's report.

20 Now, she's -- obviously, they didn't give her all
21 the information. And then it goes on to say that,
22 While Mr. Hudson reports that he drank an excessive
23 amount of beer on the day of the crime, emergency room
24 records after his offense indicate that his blood
25 alcohol level was .04, not legally intoxicated.

1 This is Dr. Ralph Baker, medical doctor, report to
2 Vince Biskupic. It's his appointed doctor. And on
3 page nine, at the bottom of the page, this is what the
4 doctor states: Drug and blood alcohol levels were
5 drawn at St. Elizabeth Hospital approximately five to
6 six hours after the alleged criminal activity.
7 Projecting those levels back in time would indicate Mr.
8 Hudson had a significantly higher blood alcohol level
9 and level of the drug Diazepam. However, it is also
10 possible he was using crack cocaine at the time of the
11 alleged criminal activity, and it would not necessarily
12 show up in the drug screen. Thus, by his own admission
13 and by the blood levels, there is every indication that
14 his mental functioning was impaired by drugs at the
15 time of the alleged criminal activity.

16 Now, in Dr. Coffey's report, she believes that I'm
17 lying about this stuff. She was never told -- or,
18 obviously, she's thinking that, that these were taken
19 six hours earlier from the time of the hospital. And
20 she thinks that I was lying about the dig marks because
21 there was no medical report stating that there was.
22 And she believes I was lying through this interview,
23 and I believe that affected that interview.

24 And then I have a problem with -- on page ten of
25 Dr. Coffey's report, The fact that he reported more

1 memories of the event to police when he first -- when
2 he was first apprehended, inconsistent with his current
3 reports, suggests that he may be attempting to use a
4 lack of recall of events as an excuse for his behavior.

5 Now, there's a lot of things in the police reports
6 that they're saying I stated at the time of my
7 confession are not true.

8 Now, this is a report from the Kaukauna Police
9 Department, case number 0006279; date, 6/25/2000.
10 Officer Sergeant Patschke, Joe Rosche, Rex Swanson,
11 Manion and Shepardson.

12 On page 15 of 34, at the bottom, last paragraph,
13 at approximately 11:00 p.m., I did read Hudson his
14 Miranda warnings from a card. After I was done reading
15 the card to him, I asked him if he understood what I
16 just read to him. Page 16: Did acknowledge me by
17 saying yes. I then asked him if he was willing to
18 answer questions that we had, and he again stated yes.

19 At 11:08 p.m., eight minutes later, Officer
20 Krueger did read the Informing the Accused form to
21 Hudson in pursuit of an operating while intoxicated
22 procedure. Hudson refused at this time to give a
23 sample of his blood at this time, and it was indicated
24 on the form.

25 At this point Hudson says, Don't I have a right to

1 talk to an attorney? What's going on here? Officer
2 Sanderfoot responds, saying, Not at this time.

3 The procedure then continues.

4 Well, eight minutes earlier when he read me my
5 Miranda warnings, he said, you have a right to an
6 attorney.

7 MR. BISKUPIC: Judge, that's beyond the scope
8 of his motions. I mean, just to cut to the chase, he's
9 arguing factual issues that are disputes between
10 witnesses, and those are what cross-examination is for.
11 If we're going to cut to his motions on the fingernail
12 scrapings, our response is, is that if they were sent
13 to the Crime Lab, he has the ability to cross-examine
14 the analyst that handled those, whether there was any
15 material that was actually tested or not, and that's a
16 cross-examination issue regarding contradictory
17 statements between Dr. Coffey and Dr. Baker. I mean,
18 once again, that's an issue for him to
19 cross-examination -- cross-examine those witnesses on.

20 THE COURT: Correct.

21 MR. BISKUPIC: And argue to the jury, hey,
22 give them little credibility or no credibility because
23 of these inconsistencies.

24 Regarding the blood alcohol test, the person that
25 did the test for the .04, or the .037 from the State

1 Crime Lab, can be asked questions about figuring
2 backwards in time per hours, and I see the defendant
3 has a chart that is consistent with the State
4 Department of Transportation chart to say, wouldn't it
5 have been a higher level four or five hours earlier?
6 Those are fair game questions for those witnesses and
7 don't, you know, necessarily have to be the subject of
8 a motion. You know, they're factual disputes. They're
9 not motions to exclude type of material. And to
10 belabor this motion hearing when we're waiting to pick
11 a jury with a recitation of what's in the report versus
12 what's in the doctor's report is, I believe, a waste of
13 time.

14 MR. HUDSON: Your Honor, the thing that I'm
15 trying to get at is, I want my statement to the police
16 squashed (sic). Obviously, the -- the recording of my
17 interview is gone. They said it was erased. It's
18 their responsibility to make sure that those procedures
19 are handled properly. In here it says the interview of
20 Kenneth A. Hudson at 1:35 a.m., 6/26/2000. Prior to us
21 starting to ask questions to Hudson, I did remind him
22 of his Miranda warnings and asked him if he remembered
23 them from when I read them to him earlier at the
24 hospital.

25 Well, from my -- I asked him, Do I have the right

1 to an attorney? And from when they stated earlier at
2 11:08, when he said I did not have the right to talk to
3 an attorney, but eight minutes earlier he read me my
4 Miranda warnings, saying that you have a right to an
5 attorney. And I was under intoxication at the time of
6 the confession? I would ask that the Court have that
7 squashed from the -- you know, from the record.

8 MR. BISKUPIC: Well, Your Honor, there were
9 prior counsel on these issues that evaluated the
10 record, and any ambiguous inquiry regarding an attorney
11 is not an indication of rights. There's case law,
12 including State v. Long, wherein a person inquires, do
13 you think I need an attorney, issues along those lines,
14 and I think in this particular case, the records bear
15 out that there was no unambiguous request for an
16 attorney.

17 And regarding the taking of the blood, that was
18 pursuant to a search warrant, so it was unnecessary
19 even to read the Informing the Accused on that because
20 it technically wasn't a drunk driving case. So to try
21 and revisit these things at the eleventh hour is simply
22 a delay tactic. I mean, if the officers -- regarding
23 the statement, if you need to have a foundation laid
24 for that, I suggest right before they testify, the jury
25 be excused and that be brought up. But this should

1 have been the subject of motions earlier.

2 I remember talking to at least Attorney Bartman
3 about that, and he indicated that, from their review of
4 the record, they weren't going to seek a suppression.
5 Obviously, the defendant's in a position of
6 representing himself now, but I still think the records
7 are the same. The reports he refers to show an
8 unambiguous inquiry regarding an attorney and, in fact,
9 in follow-up questions by Shepardson and Manion, it's
10 made clear that the defendant wanted to talk to them.
11 So he's revisiting issues that have already been
12 evaluated by his prior counsel on the eve of trial.
13 And if the Court thinks at some point there needs to be
14 a record made on that potential issue, I suggest that
15 it be prior to those officers testifying.

16 THE COURT: Well, I'm going to deny the
17 motion to quash the confession and deny the motion to
18 require something to be done now regarding the
19 fingernail scrapings of both parties. That can be
20 handled on cross-examination.

21 MR. HUDSON: Excuse me, Your Honor. When I
22 was in court last week, I -- I've been asking for these
23 results now for a long time, the Breathalyzer test, the
24 fingernail scrapings, the blood and alcohol test on
25 Shanna Van Dyn Hoven.

1 MR. BISKUPIC: There was no Breathalyzer
2 test.

3 MR. HUDSON: Hold on a second.

4 THE COURT: On him?

5 MR. BISKUPIC: No, if he blew into a PBT,
6 PBT's aren't admissible anyhow.

7 THE COURT: That's correct.

8 MR. HUDSON: The coroner's report on Shanna
9 Van Dyn Hoven, blood alcohol pending, drug screen
10 pending. I have been asking the D.A. for that. So he
11 sent me this blood/urine analysis, specimen collection
12 6/26/2000, but only the urine, and it did show up some
13 type of Doxylamine, sinus medication for allergies.
14 But why didn't they do the blood test? Because the
15 blood test shows up -- would show up drugs other than
16 that would be in the urine. They did these tests.
17 They sent them there. Why isn't this Crime Lab doing
18 these things? I'm charged with --

19 THE COURT: You're going to have to ask the
20 Crime Lab that during cross-examination.

21 MR. HUDSON: Okay. I just want to state
22 something. Wisconsin 1998, First consideration in
23 assessing relevance is whether evidence relates to a
24 fact or proposition that is of consequence to
25 determination of action. Wisconsin State Appeals,

1 904.01, State versus Sullivan, 576 N.W.2d 30, 217
2 Wis.2d 768.

3 I'm charged with first degree intentional
4 homicide, and when Dr. Coffey did her reports, she's
5 stating that she -- she's indicating that because there
6 was no records done in the hospital of any fingernail
7 scrapings or any injuries on me, it -- it has to
8 pertain to my intent at the time of the crime.

9 Now, I'm stating that the victim had attacked me
10 and scratched me and dug me, and that's what caused me
11 to react in that way. And I have a right to present
12 that evidence. As a constitutional right, whether a
13 defendant's right to present a defense was violated is
14 a question of constitutional fact that we review as de
15 novo. State versus Heft, 185 Wis. 2d 288, 517 N.W.2d
16 494, 498 (1994). The due process rights of a criminal
17 defendant are, in essence, the right to fair
18 opportunity to defend against the state's accusations.

19 Now, I have a right to defend myself against this
20 intent part, and with those fingernail scrapings and
21 with her -- my skin, if they were under there, they
22 sent them to the Crime Lab, and then he goes and says
23 last week, oh, well. They never did the testing. Why?
24 You know.

25 THE COURT: You're going to have to ask the

1 Crime Lab people that when they're here, and you can
2 make your argument based upon their answers at final
3 argument.

4 You also have a motion to -- to -- something to do
5 with Carns?

6 MR. HUDSON: Yes.

7 THE COURT: You said you do not believe --

8 MR. HUDSON: I would like to --

9 THE COURT: -- do not believe you can get
10 effective advice from him as a stand-by counsel. Any
11 comments?

12 MR. HUDSON: Could I address this motion
13 first, Your Honor?

14 THE COURT: What motion?

15 MR. HUDSON: It's filed -- it's --

16 THE COURT: I don't know what motion you're
17 talking about. What does it relate to?

18 MR. HUDSON: It relates to for a continuance
19 on -- for me to get expert witnesses.

20 THE COURT: Any motion for continuance at
21 this point with the jury waiting is denied.

22 MR. HUDSON: Can I -- can I read --

23 THE COURT: Your motion is in the record.

24 MR. HUDSON: Okay. But I want to have -- I
25 want to talk about this, why I need these experts.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE COURT: You put that in your motion.

MR. HUDSON: Okay. But I want to go over a lot of the reports that I have that I want to enter in as evidence as why I want that done. I have considerable research on the drugs that I was using before and how it affects a person's brain and tests that were going to be done.

This is from Nila Robinson to Ed Carns. I obtained authorization to get an MRI and neuropsychological examination in order to determine whether Ken was suffering from something on the order of an organic brain disorder or frontal lobe trauma. The -- that diagnosis would not depend on his credibility.

And then it goes on to state, But the authority is there to use if you wish. Dr. Kaplan would remain available to do the work and is qualified. And this has to do with the crack cocaine issue.

I have -- these are all places where I went to for the substance abuse issue, and it's dated -- these are dated back from 1990, 1992. I had drug overdose; almost died from the crack cocaine use and -- from having such a long, extensive history.

And Dr. Patricia Coffey's report on the bipolar disorder, this is what she states, at the second

1 paragraph. The defendant's claim that some of his
2 family members have bipolar disorder would not affect
3 my diagnosis on the defendant in this case. He did not
4 report these symptoms during the evaluation. However,
5 it should be noted that he has such an extensive
6 substance dependency history that it would be difficult
7 to completely rule out the possibility of a mood
8 disorder. Individuals with substance abuse issues
9 frequently display mood swings associated with the use
10 of substances and withdrawal from those substances.
11 This evaluator does not have evidence of bipolar
12 disorder symptoms during the time period he has been
13 incarcerated and not abusing substances.

14 Now, at the time of the crime, I was in a
15 withdrawal state. I have -- I have evidence -- and
16 this is from the State Supreme Court ruling. A
17 voluntary induced state of intoxication by drugs or
18 alcohol or both does not constitute a mental disease.
19 A temporary mental state, which is brought into
20 existence by the voluntary taking of drugs or alcohol,
21 does not constitute a mental disease. However, chronic
22 use of drugs or alcohol may produce a condition that
23 can constitute a mental disease if the condition has
24 become permanent.

25 Now, there is some research that was done by Deb

1 Cudworth. She's a social worker that was on the case
2 for Brian Figy and Eugene Bartman, and then later she
3 was working for Nila for a period of time. And this is
4 from the Indiana Prevention Resource Center. And it
5 talks about the effects that cocaine has on long-term
6 use. The use of cocaine may cause psychological
7 changes in user. These effects may be a sense of
8 increased self-esteem, confidence, depression, intense
9 anxiety, confusion, hallucinations, irritability,
10 repetition of tasks and a tendency to withdraw from
11 normal activities. Cocaine psychosis is paranoid
12 behavior that occurs as a result of overstimulation of
13 the fright centers of the brain. Irrational violence
14 can occur at even the slightest provocation.

15 And then this one is from National Institute on
16 Drug Abuse, Research Report Series, Cocaine Abuse and
17 Addiction. And it goes on to show the effects that it
18 has on a person's brain over the long-term. Here it
19 says, short-term effects of cocaine, and then here it
20 says, what are the long-term effects of cocaine use?
21 Cocaine is a powerful, addictive drug. Once having
22 tried cocaine, an individual may have difficulty
23 predicting or controlling the extent to which he or she
24 will continue the use of the drug. Cocaine stimulant
25 and addictive effects are thought to be primarily a

1 result of its ability to inhibit the re-absorption of
2 dopamine by nerve cells. Dopamine is released as a
3 part of the brain's reward system and is either
4 directly or indirectly involved in addictive properties
5 with the major drug of abuse.

6 Long-term effects of cocaine: Addiction,
7 irritability and mood disturbances, restlessness,
8 paranoia, auditory, hallucinations.

9 Now, at the time of the crime, I was in a
10 withdrawal state from cocaine. And that's why Nila
11 Robinson wanted to do this test. She had an
12 authorization to have this test done on my brain. And
13 that would -- I have a right to that defense under the
14 State Crime -- or under Supreme Court ruling; that
15 chronic use of drugs or alcohol may produce a condition
16 that can constitute a mental disease if the condition
17 has become permanent.

18 Now, I had -- when I was 14 years old, my family
19 had gotten me doing drugs. My father got me into
20 selling drugs, and there is evidence to that. And if I
21 was, at that age, 14, as a minor, and I was addicted at
22 that time -- because there's all kinds of reports that
23 I was being taken care of from these situations -- that
24 over 18 years of the use of cocaine, it had to have
25 some kind of effect on my brain. There's considerable

were
talking
about
Plea?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

research, and I have a lot more than that, too, and that I have a right to this expert on crack cocaine.

I talked to Dr. Lewis. He said he had some background on cocaine, but he said you need an expert on the crack cocaine issue. I don't know if his -- any of his -- I'm not an expert, and I don't know if -- I -- you know, the Court or any of their doctors are experts specifically on crack cocaine and what it does to the brain.

THE COURT: You can make those inquiries on cross-examination, and you can -- you can use those two documents as expert -- as information in the field -- writings in the field.

MR. HUDSON: But, Your Honor, I --

THE COURT: We're not going to continue this case. We are not going to stop to get experts. We are going to go out there and do the case now. Do you have any other motions? That motion is denied.

MR. HUDSON: I have a couple other things I'd like to discuss. I'm not pleased -- once I'm done saying what I got to, I will not disturb the Court any whatsoever during the whole trial.

THE COURT: Are you going to stand mute or are you going to participate?

MR. HUDSON: No, I'm going to talk, but I

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

won't give anymore disturbances.

THE COURT: Okay.

MR. HUDSON: I'm not trying to prolong this. I just want to state my facts, and that's all, Your Honor.

THE COURT: Go ahead.

MR. HUDSON: Please.

THE COURT: Go ahead.

MR. HUDSON: This is Wisconsin Appellate 1999, for a voluntary intoxication defense, the intoxication must be such as to render the defendant incapable of forming the specific intent to commit the crime, Wisconsin State Appeal, 939.42(2), slash, State versus Gardner, 601 N.W.2d 670. Now --

(Pause)

MR. HUDSON: This is a report where they did my toxicology report. It shows ethanol in my system. It shows Diazepam in my system, and to -- according to their therapeutic range, there was approximately 18 milligrams of Valium in my system six hours later.

Now in Dr. Baker's report, he said it would have been significantly higher, and then there is carbon THC, and it doesn't give a therapeutic range. What are the effects? Now, I know, because I used to get prescription Valium, that the alcohol intensifies (sic)

1 the -- the effect of the Valium.

2 Now, with these three drugs in my system at that
3 time of the crime, how does it affect a person's brain?
4 That's why I wanted to hire the expert, because of the
5 intent part. And I have a right to that defense under
6 a voluntary intoxication defense. If I don't have
7 these experts -- now I talked to Ed Carns about these
8 experts a long time ago, and he wasn't telling me
9 anything about it. So I called my appeal attorney in
10 Madison. His name is Michael Yovovich. He said, I'll
11 call Carns and find out what's going on with those
12 experts.

13 Now, when I called that attorney back, he said, I
14 talked to Ed Carns, and Ed Carns has gotten two doctors
15 that he had talked to that they're going to be -- he
16 was going to be checking into getting those doctors for
17 me.

18 When I talked to Ed Carns, it was before the
19 February 8 hearing, and I asked him, where are these
20 experts? He says, well, I called them and I left a
21 message. They never got back to me. And I said, well,
22 look. I need these experts. I have a right to this
23 defense by constitutional right. And he said, well, I
24 don't know where they are, and I'm done with that.

25 And that's when I filed the motion to have him

1 withdrawn. I said, well, my attorney in Madison talked
2 to you, and you told him that you had these -- these
3 experts. And when I addressed the Court on February 21
4 on these experts and I needed to know this information
5 about those doctors, you had told Vince Biskupic that
6 you find out who those doctors are and get those to Mr.
7 Hudson so he can find out.

8 Now, yesterday Mr. Peter Roth came to see me, and
9 this is one day before trial, Your Honor. I've been
10 talking to Peter Roth about getting these doctors
11 because he was ordered to help me with any information
12 that I need to get. You ordered that in court. Right?

13 THE COURT: Right.

14 MR. HUDSON: I've been asking him, where are
15 these doctors? I want to get in touch with these
16 doctors so I can have this neurological test done on my
17 brain to see if there's a mental defect. It wouldn't
18 have anything to do with these tests or anything. And
19 he says, I called some -- and this was a couple weeks
20 ago -- and I'm waiting for them to get back to me.
21 Now, this is two weeks ago.

22 Yesterday I come -- he comes and sees me, date
23 given, 3/4/01. Did you give me this yesterday?

24 MR. PETER ROTH: Yes, I did.

25 MR. HUDSON: There's three doctors on here.

1 No area codes, nothing. He just says, I talked to
2 these doctors and I'm waiting for them to get back to
3 me.

4 I don't believe he even ever contacted these
5 doctors. He just hands this to me a day before trial.
6 I'm in a cell where I can't have access to get in touch
7 with these doctors. That's why you ordered him and
8 Vince Biskupic to find out what these doctors' names
9 were and everything so I can contact these people.
10 And -- and I haven't -- I haven't been able to do that.

11 I have a right to expert witnesses on my defense.
12 And he told that lawyer a long time ago, and I could
13 subpoena that lawyer to court to testify. He did talk
14 to Ed Carns, and Ed Carns told him he had contacted
15 these doctors.

16 Did you have a conversation with that lawyer and
17 tell him that?

18 MR. CARNs: Do you want me to comment here?

19 THE COURT: You have his permission. Go
20 ahead.

21 MR. CARNs: Well, the attorney did call me,
22 and we did talk about this case. Again there is some
23 lawyer-client privilege here, but what we talked about
24 was, at that time I felt that there were two experts
25 that may help Mr. Hudson. One was Dr. Lewis on Mr.

1 Hudson's case in chief. And I talked to Dr. Lewis
2 about it. Dr. Lewis reserved the time, and he was
3 willing to testify during the case in chief, if the
4 Court thought it was relevant, as to the post-traumatic
5 stress and his diagnosis and how that affected Mr.
6 Hudson's state of mind. As far as I know, Dr. Lewis is
7 still available. I had given that information to Mr.
8 Hudson.

9 As to another expert, I suggested to him that I
10 was looking for an expert in terms of long-term effects
11 of cocaine, crack cocaine, as Mr. Hudson's explained.
12 I never did in fact -- I did talk to a couple experts
13 that were unavailable for this trial, and I was on
14 the -- I had placed a call to Bellin Hospital, and the
15 person wasn't there that I needed to talk to because I
16 felt that we could find an expert on the long-term
17 effects of crack cocaine out of some drug rehab center,
18 AODA center, Bellin Hospital, whoever has a good
19 rehabilitation center. He did call me back a couple
20 days later. It was on my answering machine. At that
21 point I was relieved of the responsibility.

22 I gave that information to Mr. Hudson. This was
23 whenever this -- this withdrawal/firing episode began.
24 So that's where it was left. I gave him what
25 information I did have. And the other expert is Dr.

1 Lewis. And as far as I know, he's still on tap so --
2 MR. HUDSON: Your Honor, I do have Dr.
3 Lewis's report, and he said this: I will testify to
4 the following: Based on interview and psychological
5 tests, Mr. Hudson has long-term chemical dependency to
6 multiple substances, including alcohol, benzodiazepines
7 and crack cocaine, and that he suffers from
8 post-traumatic stress disorder, post-traumatic stress
9 disorder secondary to childhood abuse by his mother and
10 brother.

11 And I talked to him if he had, because he stated
12 to me about Dr. Lewis had background in cocaine; that I
13 could just have him talk about the effects of cocaine.
14 Then when I got -- they had arranged for me to use the
15 pay phone, and I called Dr. Lewis -- or as a matter of
16 fact, Dr. Lewis called the jail at a specific time, at
17 eleven o'clock one day, and I talked to him about this
18 long-term effect of cocaine and if he was qualified as
19 an expert in that area, and he says, no, I'm not. You
20 would have to hire an expert that specifies in that
21 area. And he said that Ed Carns just said that, you
22 know, I needed this expert. And now it's a day before
23 trial.

24 THE COURT: No, it's the day of trial.

25 MR. HUDSON: Okay. The day of trial. I'm

1 sorry. And I have never been able to get in touch with
2 these experts to my defense. Okay?

3 And there's one other issue that I would like to
4 address, and that will be it, Your Honor.

5 THE COURT: Okay. Go ahead. Do you want to
6 respond to this one at all?

7 MR. BISKUPIC: That one, yeah. Specifically
8 case law, State versus Guiden, G-U-I-D-E-N, and Gibson
9 v. State, he wouldn't even, under the offer of proof,
10 qualify for a voluntarily intoxication instruction.
11 Those cases make it clear that it's not enough for a
12 defendant to establish that he was under the influence
13 of a beverage or even a drug. It must be shown by the
14 offer of proof that he was utterly incapable of forming
15 the intent requisite to the commission of the crime.
16 That's under Guiden.

17 But more importantly, under Gibson, it does not --
18 that instruction is not afforded where a defendant
19 voluntarily takes drugs or -- and I would include
20 alcohol also and that the facts demonstrate that there
21 was an intent to conceal a crime.

22 When you look at the number of stab wounds, the
23 efforts for concealment and flight in a calculated
24 fashion, this is a case where that type of instruction
25 would not even be relevant. So he can go on and on

1 about speculation as to things when he was 14 or 15 or
2 16. The fact is that the state of the law and the
3 relevant case law that exists wouldn't even afford the
4 jury being instructed under 939.42, the voluntary
5 intoxication defense.

6 So he's made his record. We believe the Court
7 should deny the request for a continuance to get that
8 type of expert. And once again we feel that the facts
9 will establish that he's not even to the position where
10 a voluntary intoxication instruction is appropriate.

11 MR. HUDSON: Your Honor, I just have one
12 comment. On the voluntaryity, again I stated between
13 the ages of 13 and 14, I was under the influence of
14 those drugs from family members, and my mother's coming
15 here and she's going to testify to the fact that my
16 father and my uncle had me doing crack cocaine, acid,
17 at the age of 13 and 14 years old. I'm a minor at that
18 time.

19 Now, from then all the way up until 31, I've never
20 been able to get off this drug. Was that a
21 voluntariness at that age? I got clear evidence dating
22 all the way back into my adolescence age of that; that
23 I was on these drugs all the way up until now. I have
24 doctors here from the jail stating that I have cocaine
25 dependency, alcohol dependency, and --

1 THE COURT: You've made that argument
2 already. We don't have to hear it a second time. Your
3 motion's denied for the reasons stated.

4 MR. HUDSON: You know --

5 THE COURT: Case law provided by the district
6 attorney.

7 MR. HUDSON: Okay. Now, on some other
8 relevance, as to the post-traumatic stress syndrome --

9 MR. BISKUPIC: Your Honor, that's
10 second-phase information, so I'd object to it.

11 MR. HUDSON: But this is evidence that I need
12 that's relevant to my case. Just let me state my fact,
13 please.

14 THE COURT: How long is this going to take?
15 We got a jury out there waiting.

16 MR. HUDSON: I understand this, Your Honor.
17 That's why -- hey, I put in these motions.

18 THE COURT: You put these motions in just
19 before trial.

20 MR. HUDSON: Your Honor, I was only given
21 nine days to prepare for my trial.

22 THE COURT: You made that decision.

23 MR. HUDSON: Yeah, but I have a right to a
24 defense now if I'm representing myself. I'm just
25 stating my facts. I have that constitutional right to

1 state my facts. That's all I'm trying to do.

2 THE COURT: State them.

3 MR. HUDSON: This is a -- page seven of Dr.
4 Kenneth Smail's report, and this is the fourth
5 paragraph, the middle of the paragraph, While he may
6 have had an abusive relationship with his mother and
7 while he may have had considerable emotional conflict
8 about that relationship, there is no other history
9 to -- to substantiate a diagnosis of post-traumatic
10 stress disorder applying to Mr. Hudson at the time of
11 the offense.

12 Back in December I had a couple phone
13 conversations on the phone with my mother here at the
14 jail, and on -- in those conversations she stated facts
15 of why she wanted to kill me when I was younger,
16 because it was my father, and a lot of other graphic
17 details about why she had my brother do the things that
18 he did to me.

19 Now, my brother was arrested when I was the age of
20 19 and 20 for him trying to stab me to death, for him
21 trying to blow me up with bombs. Now, there was a SWAT
22 team -- the FBI was involved in this -- and he was
23 arrested and charged with these crimes that he did
24 against me. Now -- and this is a hearing on the 22nd
25 when I was firing Nila. There are records of just

1 basic light history materials that are pretty
2 significant to the nature of the defense, not all of
3 which are in. Now, when we are talking about the
4 bipolar disorder with my brother and that, but what
5 she's meaning is -- now, those pertain to my brother
6 being arrested, charged with those crimes that he did
7 to me.

8 Now, I just want to -- this is a published
9 opinion, and Mr. Ed Carns had got this. It's a case
10 No. 93-2611-CR, petition for review file, complete
11 title of case: State of Wisconsin, plaintiff-
12 respondent, v. Felicia Morgan, defendant-appellate;
13 submitted on briefs July 7, 1994; oral argument, Court
14 of Appeals of Wisconsin; opinion released June 20,
15 1995; opinion filed June 20, 1995; source of appeal,
16 appeal from a judgment. Full name of judge --

17 THE COURT: Let's get to the facts, not --

18 MR. HUDSON: Okay.

19 THE COURT: -- the boiler plate.

20 MR. HUDSON: The facts: Evidence of
21 Felicia's past experiences with violence was relevant
22 to demonstrate the existence of the post-traumatic
23 stress disorder which caused her to unintentionally act
24 on October 26, 1991. Expert testimony as to the
25 effects of those violent experiences on her conduct was

1 also essential to assist the jury's understanding of
2 how her perceptions have been shaped by the years of
3 violence that she had endured, and not just by the
4 events surrounding the night of the homicide. Again
5 the cumulative effect of the violence caused the
6 post-traumatic stress reaction evidenced on the night
7 of the homicide.

8 And back to Dr. Kenneth Smail, he states, While he
9 may have had an abusive relationship with his mother
10 and while he may have had considerable emotional
11 conflict about that relationship, there is no other
12 history to substantiate a diagnosis of post-traumatic
13 stress disorder applying to Mr. Hudson at the time of
14 the crime. That's why I needed those things that my
15 brother was charged with to prove that he did those
16 kinds of crimes to me. He was charged with this in a
17 court of law. There are records in New York. And when
18 Mr. Peter Roth first came on my case, he said he had
19 talked to Nila and they needed to get those records,
20 and I would like to address Peter Roth, if I may.

21 THE COURT: Go ahead.

22 MR. HUDSON: Did I tell you that there was
23 evidence of those crimes that were committed against me
24 by my brother?

25 MR. PETER ROTH: You said that.

1 MR. HUDSON: You said you would talk to Nila
2 and that there were attorneys in New York that were
3 handling getting that information; correct?

4 MR. PETER ROTH: Not Nila.

5 MR. HUDSON: Who told you?

6 MR. PETER ROTH: Mr. Young.

7 MR. HUDSON: Okay. Mr. Young. Did you ever
8 contact those attorneys to get that information?

9 MR. PETER ROTH: No, I did not.

10 MR. HUDSON: And could you explain to me why
11 you didn't get that information when it pertained to my
12 case, evidence to my case? Because it says right here,
13 evidence of Felicia's past experience with violence was
14 relevant to demonstrate the existence of post-traumatic
15 stress disorder.

16 Dr. Kenneth Smail said that there is no other
17 history to substantiate his thing, and this evidence is
18 relevant to my case.

19 MR. BISKUPIC: Object, Your Honor. This
20 urban psychosis or battered wife syndrome is an expert
21 issue that the Court has the discretion to determine
22 the relevancy on. If he's suggesting back in 1990 or
23 '91 that his brother assaulted him in some way, the
24 issue of that as it relates to homicide of a
25 19-year-old girl in Kaukauna has little or no

1 relevance, and I think the Court, in its discretion,
2 has the ability to weed out alleged expert defenses
3 that have little or no relevance to a case. And what
4 he's trying to present in his offer of proof something
5 ten years ago that may have happened to him is of
6 little or no value to a homicide regarding a
7 19-year-old girl.

8 If this was a domestic case where a wife shot a
9 husband because of years of abuse, maybe that would
10 have a higher relevance value, but the courts are in a
11 position regarding expert testimony or these types of
12 more creative defenses or rare offenses to weed these
13 things out.

14 He's stated his record. I think we should move
15 on, and I'd object to any continuance to try and get
16 any other materials from New York.

17 MR. HUDSON: Your Honor, these reports were
18 done by Investigator Roth. This report prepared and
19 submitted by Terry Young, public defender investigator,
20 Appleton trial office. This was my brother's wife.
21 Okay? And this is what she states: Gregory was
22 physically and mentally abusive to her when the police
23 would be called because he was beating her. She would
24 refuse to press charges in order to avoid being beaten
25 later. He also hid her birth control pills because he

1 wanted to have another child, even though she didn't.
2 When she had become pregnant, she had an abortion.
3 When he wanted to have sexual relations, he would just
4 take it whether she wanted it or not. He beat her
5 constantly. Even through her pregnancy, he was very
6 abusive. He would also hit her with nun-chucks and
7 throw things at her. When Kenneth or anyone, for that
8 matter, would come over, if Gregory didn't want her
9 present for their conversation, he would tell her to
10 go. If she complained or refused, he would hit her and
11 beat her. He was also verbally abusive, and he would
12 call her names and tell her she was no good and that no
13 one else wanted her.

14 Gregory liked weapons, like guns and knives. He
15 was also apparently building bombs. She recalls when
16 he was arrested one time, she was told by the police
17 that they found explosive stuff in a room in a house
18 which was strictly used by him.

19 Now, this is the time that he was arrested for
20 trying to blow me up. I had to sit in my house with a
21 shotgun to protect myself. I had years and years of
22 abuse by my brother, and I was afraid. The doctors say
23 that I never went to doctors and stuff because I was
24 scared to go and talk to anybody. Now, there was tests
25 done and MMPI and that showed that I didn't -- there is

1 high indications that I couldn't trust anybody. Now,
2 because of the extensive abuse that I had by him, I
3 never went to any doctors because I didn't trust
4 anybody.

5 And here's one more report. And this is by my
6 other half-brother. This report prepared and submitted
7 by Terry M. Young, public defender investigator,
8 Appleton trial office. Gregory, also known as Phillip,
9 was another half-brother. He was okay until he went
10 into the US Army Reserves. Then he started collecting
11 weapons. He was aware that Phillip used to carry guns.
12 He had killing on his mind, and he kept homemade bombs
13 in his residence. He also did not like Arnold, Senior.
14 That's my father. Phillip was Lorraine's protector.
15 That's my mother. He recalls one time Phillip put
16 Kenneth in his place for something he did. Kenneth and
17 Phillip didn't get along well. He cannot say if
18 Kenneth -- Phillip involved Kenneth in anything or not.
19 Phillip's wife Valerie was nice and seems she was okay.

20 Now, there's a lot of evidence of the things that
21 he used to do to me, Your Honor, and it is relevant
22 because these doctors didn't have all that information
23 to back up their theory of a post-traumatic stress
24 disorder. At the time of the crime, I stated that
25 after I was attacked -- that I was scratched and dug by

1 the victim, that I got images of my mother because at
2 times when me and my mother would argue, she would call
3 my brother up and he would come over and beat me
4 unconsciously. And --

5 MR. BISKUPIC: Once again, Your Honor, this
6 is not relevant. I mean, he's made his record. If he
7 wants to bring those questions up for the doctors in
8 the second phase regarding mental health issues, I
9 think that's fair game for cross-examination; that if,
10 under a hypothetical, you were to presuppose that the
11 defendant had a history of abuse ten or more years ago,
12 would that change your opinion or could that affect
13 your opinion? You know, those are types of questions
14 that cross-examination can involve. But, you know, he
15 has records from Terry Young. Those were provided
16 through Nila Robinson, and these doctors had access to
17 those things, and he can ask him, did you consider this
18 report? And to belabor that point pre-trial and
19 pre-jury selection really doesn't accomplish much. The
20 time for those questions are during cross-examination.

21 MR. HUDSON: Your Honor, one more report.
22 And this is a doctor report from Dr. Wood, on page
23 three. Psychological testing could not be completed.
24 The results of such testing may have provided
25 additional information regarding the mental state and

1 concomitant capacity that Mr. Hudson alleged he
2 experienced at the time of the murder. That additional
3 information may have supported Mr. Hudson's allegation
4 of mental disorder.

5 And then down here he says, File documents did not
6 reveal any family or personal history of mental
7 illness. You know, he was willing to look at those
8 things, but he didn't have them.

9 And he -- and the only person that did a
10 psychological test, this MMPI, was Patricia Coffey and
11 my doctor, Lewis.

12 Now, when Dr. Fosdal came up to see me one time
13 the first time, he said, I'm going to be doing some
14 psychological tests on you, and we'll be going over the
15 case, but that was when the D.A. had hired the three
16 doctors, and then Nila said, don't talk to them. Then
17 when we went to the hearing, the Court said that he
18 would hire two doctors; and then when Dr. Fosdal came
19 back, he never did those psychological testings. And
20 Dr. Kenneth -- Ed Carns told me that he arranged for
21 Dr. Kenneth Smail to have that psychological test done.
22 And he never did the psychological test either.

23 Doctor --

24 Please give me a minute, Your Honor.

25 MR. BISKUPIC: While he's collecting his

1 thoughts, I guess our response is, once again, he can
2 pick out parts of the doctors' reports that he has
3 gripes with and things that he thinks they should have
4 done and question them, you know, along the lines of,
5 Doctor, wouldn't it have been more appropriate to do
6 this or that so you'd have a more informed decision?

7 And so, once again, at pre-trial, cluttering of
8 the record is -- doesn't really accomplish a lot. He's
9 got the opportunity to question these doctors if we're
10 in a phase two and ask them questions that have to do
11 with materials they considered and whether additional
12 tests could have been done, and I think we're
13 belaboring the process by having him recite different
14 things from those doctors' reports.

15 THE COURT: You can ask all those questions
16 as to why you didn't do this and why you didn't do that
17 to weaken the position of the doctors during
18 cross-examination, but your motion for continuance is
19 denied. Let's go on to the next motion.

20 MR. HUDSON: This is a motion to -- this is
21 dated March 4, 2001. Dear Judge Froehlich: I'm filing
22 this motion with the Court in regards to the Court to
23 hire me a new investigator.

24 Your Honor, I have a witness in the courtroom that
25 I would like to have testify on my behalf right now of

1 some of the things that were said to her by Peter Roth,
2 and it has to do with a conflict of interest, and I
3 would appreciate that the Court would let me call this
4 witness.

5 THE COURT: No, you're not going to call any
6 witness. You just tell me that you have a problem
7 with --

8 MR. HUDSON: Okay. Grounds. He was -- I
9 asked him when he first came and seen me, and I know I
10 addressed this in court before, but these are some of
11 the things that I want to say.

12 THE COURT: Well, if they were addressed
13 before, we don't have to go through it again. I mean,
14 you already wanted to get rid of him once, and I said
15 no. Is that my recollection?

16 MR. HUDSON: No. That was Ed Carns.

17 THE COURT: But wasn't that the investigator
18 also?

19 MR. HUDSON: You didn't specify that.

20 MR. BISKUPIC: I think it was an extension of
21 the position of Mr. Carns as stand-by counsel, and then
22 you did the follow-up order saying that they could
23 continue work at county expense. So in his stand-by
24 role as Mr. Carns is available, thus his investigator,
25 Mr. Roth, was available, and subsequent to that date,

1 Mr. Roth did, to my knowledge, gain additional
2 materials from Investigator Malchow from our office.
3 I'm aware of some visits to the jail, so I believe that
4 there was some activity.

5 MR. HUDSON: Your Honor.

6 THE COURT: Why --

7 MR. HUDSON: The issue was, when -- the issue
8 at the Court when Peter Roth was brought up at that
9 time was in relation to Ed Carns being released. Now,
10 this is an issue between the investigator and -- and me
11 as a conflict. When I first asked him when he came up
12 and to visit me, I asked him if he was related to the
13 victim or -- or was friends with the family.

14 MR. BISKUPIC: This was already addressed.
15 This was that second --

16 MR. HUDSON: Your Honor, please just let me
17 state --

18 THE COURT: This is a cousin or some relative
19 of his that is married to someone. We covered that
20 before. We are not going to cover it again.

21 MR. HUDSON: The point is that I was lied to.

22 THE COURT: Your motion is denied. Let's go
23 on.

24 MR. HUDSON: This was filed for ineffective
25 counsel dated February 28, 2001. Dear Judge Froehlich:

1 I would like to file a motion for ineffective stand-by
2 counsel. While in court on February 8, 2001, Mr.
3 Edmund Carns clearly stated to the Court that if the
4 Court forced him to stay on my case with me for trial,
5 there would be no way he could give me a fair trial.
6 He also stated to the Court that he didn't even want to
7 sit next to me. Plus, him coming up here to the jail
8 and stating to me he didn't want to be on my case in
9 any way whatsoever, and he didn't care what happened
10 with my case anymore.

11 That being said, I don't feel in any way that I
12 can get effective advice from him or have him work on
13 my case without him being prejudiced against me.

14 Now, Mr. Ed Carns came up last week after court,
15 and when I addressed him about the doctor issue, where
16 these experts were and everything, he said, I don't
17 even care anymore. He says, do whatever you got. He
18 said, you got yourself in this position. You're
19 handling it now. And I said, I don't even want to be
20 on this case. And I put my motion in to the Court, and
21 they refused for me -- for me to let me withdraw. And
22 he sat there and laughed at me. He laughed in my face.
23 And he -- and he stated at one time that I would have
24 never got myself in your predicament, and he was --
25 there's a conflict. And now I don't have anybody for

1 advice. He lied to me by -- Peter Roth, that he was
2 never related to the victim. David Carnot's father's a
3 police officer. His wife is first cousins with David
4 Carnot's father, which is a police officer where this
5 crime took police.

6 Now, this witness that I was going to call in was
7 willing to testify that when Peter Roth investigated
8 this person, that he brought up that I'm related to the
9 victim through marriage through my wife, and I have --
10 still have good relations with my wife, and --

11 THE COURT: We have gone through that
12 already. Your motion is on Mr. Carns, stand-by
13 counsel.

14 MR. HUDSON: Okay. And every time I try to
15 talk to Mr. Carns about my case, he just said it's on
16 your own. You know, I can't get any effective advice.
17 You know, he laughs at me. I don't have anybody on my
18 side. Yous (sic) are forcing me into trial without me
19 being able to hire any experts. He contacted the
20 experts. Peter Roth never got the experts. He said he
21 called them. They never called him back. Mr. Ed Carns
22 clearly stated that he didn't even want to work on my
23 case; that if he was forced to, that he couldn't give
24 me a fair trial. Now you're forcing him to stand by
25 as --

1 THE COURT: He's not working on your case.
2 He's not representing you. He's there to advise you as
3 to legal matters during the -- during the trial, and he
4 will do that. He's an officer of the Court. He's a
5 competent attorney, and we will go forward with him
6 there.

7 MR. HUDSON: And, Your Honor --

8 THE COURT: You've made your argument.
9 What's your next motion?

10 MR. HUDSON: Change of venue.

11 THE COURT: I don't believe I have that
12 motion. Do I?

13 MR. HUDSON: Well, no, because I'm filing it
14 now. Because of all the pre-trial publicity that's --
15 it's been all over the news all week; yesterday, as a
16 matter of fact, on the front page two pages long. I'd
17 like to enter these motions.

18 THE COURT: Go ahead.

19 MR. HUDSON: To Honorable Judge Harold
20 Froehlich, from Kenneth A. Hudson, defendant/attorney.
21 Regarding: State versus Kenneth A. Hudson, case No.
22 CF-403. Date: March 4, 2001.

23 Dear Judge Froehlich: I am filing this motion
24 with the Court and asking the Court to reconsider
25 change of venue on these grounds: A. Continuing

1 prejudicial publicity since Nila Robinson was fired.
2 B. My own admissions against my interest. C. Full
3 courtroom of presumed Outagamie citizens sympathetic to
4 the victim with extensive network.

5 Thank you for your special attention to this
6 matter.

7 Then the second motion, to Honorable Judge Harold
8 Froehlich, from Kenneth A. Hudson, defendant/attorney.
9 Regarding: State versus Kenneth A. Hudson, case No.
10 00-CF-403. Date: March 4, 2001.

11 Dear Judge Froehlich: I'm filing this motion with
12 the Court to supplement record. Grounds: Publicity
13 continues. No time to obtain videos or transcript of
14 newspaper articles.

15 So I don't know what those are, you know, and Ed
16 Carns, he gave me all the stuff that he worked on, and
17 I've never seen one newspaper article.

18 Now, I know from the time Nila was fired from the
19 case and to Ed Carns, there was a lot of publicity
20 because I watched it on the news. Why wouldn't he be
21 obtaining these things for me? I can't obtain those
22 from in here to -- here, Your Honor, this is what's
23 being said against me.

24 And of the prejudice that's against me, there's
25 lots and lots of pre-trial publicity right now. I

1 mean, like I said yesterday, there was a two-page
2 article on the front page talking all kinds of things
3 about this case. And I don't have any time to go over
4 them or present them.

5 This is a motion filed by the district attorney,
6 and I would just like to state some things.

7 THE COURT: Let's stay on the motions that
8 you filed.

9 MR. HUDSON: Okay. And I'm just saying, I
10 wanted some of the things the Court can consider
11 reconsidered.

12 MR. BISKUPIC: Regarding the venue issue, as
13 you would in any case, you have a ruling on motion to
14 change venue, and then the days leading up to trial,
15 sometimes there's previous stories; and in this
16 particular case, whether there's one or two on the eve
17 of trial, summarizing the positions of the party is one
18 thing, but the issue as stated in the previous case law
19 in our brief on the original venue motion was the
20 nature of the publicity and, obviously, the Court's
21 remedy is to inquire of jurors, you know.

22 THE COURT: I'll be doing that during the
23 voir dire.

24 MR. BISKUPIC: So I mean, our position is
25 that the motion should be denied; that the judge should

1 do some questioning of the jury regarding media
2 attention and focusing on the fact that their duty is
3 to view the evidence just in the case and set aside
4 things that they may have read in the paper because
5 sometimes media reports aren't even accurate.

6 MR. HUDSON: Your Honor, I'd just like to
7 state one newspaper article that I did receive, and
8 this was a while ago. And this is Mayor John Lambie of
9 Kaukauna stating this in the newspaper. Mayor John
10 Lambie doesn't think this incident will harm the city's
11 reputation of being known as a friendly city. It was
12 just a senseless act, Lambie said. This person came
13 from outside the city to do his dirty work. It's a
14 good thing we caught this scum-bag.

15 Now, I would say that's pretty prejudice.

16 THE COURT: What is the date of that?

17 MR. HUDSON: This is dated Thursday, June 29,
18 2000.

19 THE COURT: All right.

20 MR. HUDSON: Now, with all this other
21 pre-trial publicity and, Your Honor, there's a lot of
22 prejudice that's going on inside this jail by the way
23 I'm being treated; that I have witnesses to the way I'm
24 being treated. I had called one of the witnesses, and
25 he's a well-reputable person in this community, Kurt

1 Hoffman. He's a home-builder. He's been doing work in
2 this community for 30 years. I called him as to --
3 because I used to do roofing for him. I called him the
4 other day as a witness, and I talked to him for about
5 an hour. He stated that, do you know an Officer
6 Kroncke from the Outagamie County Jail? I says, yeah.
7 And he says, yeah. I just built a house for him, and
8 he brought up your name, Mr. Hudson, you know, and he
9 stated that they're giving you real good treatment at
10 the jail, and they're being prejudiced against me. I
11 filed -- this is a county document, a grievance that I
12 filed against one of the state's witnesses, Captain
13 Schmoll, and this is dated back on 7/6/2000, before he
14 was even entered as a witness, and that is what I filed
15 against him.

16 MR. BISKUPIC: Object to the relevance of his
17 treatment in the jail. We are just wasting time.

18 MR. HUDSON: But, Your Honor, it's about the
19 prejudice that's being against me here, not only in the
20 jail but in the community also.

21 THE COURT: The objection is sustained. Go
22 on to your next part -- argument.

23 MR. HUDSON: This is from November 22
24 hearing, and this is you speaking, the Court. Well,
25 there's no question that some of the comments of the

1 defendant as he talked to his attorney may prejudice
2 this case as far as venue was concerned in the future,
3 unless there's some attempt by the media to avoid those
4 comments, but that's their prerogative. I don't
5 have -- I wasn't able to obtain --

6 THE COURT: They avoided the comments after
7 that hearing with -- this is the Robinson hearing.

8 MR. HUDSON: Did you review all the newspaper
9 articles?

10 THE COURT: I did.

11 MR. HUDSON: All the videos that's --

12 THE COURT: I reviewed the newspaper
13 articles.

14 MR. HUDSON: Up to date?

15 THE COURT: I'm talking about the article
16 that arose out of your firing Robinson.

17 MR. HUDSON: Okay.

18 THE COURT: And there was nothing in the
19 newspaper regarding compromising your position.

20 MR. BISKUPIC: I don't know if there's any
21 other defense motions because you've already ruled on
22 the venue issue.

23 THE COURT: Venue at this point is denied.
24 Change of venue is denied. Mr. Carns will be available
25 to assist as he feels he wants assistance. I suspect

1 Mr. Carns will help him as best he can under the
2 circumstances.

3 MR. HUDSON: So all my motions are denied. I
4 can't get any experts.

5 THE COURT: We are going to go pick a jury.

6 MR. HUDSON: We will pick a jury.

7 MR. BISKUPIC: We do have the State's -- we
8 did prepare a premarked list of exhibits, and we also
9 submitted a jury instruction on the kidnapping count.
10 And regarding the convictions of witnesses, we've
11 listed those. Mr. Theis has five, Ms. Schultz has
12 four, and Mr. Borchert has one. These are the
13 originals for the Court.

14 THE COURT: You gave copies to Mr. Hudson?

15 MR. BISKUPIC: Yes.

16 MR. HUDSON: Your Honor, there is one more
17 thing that I just got from the district attorney's
18 office, and this relates to --

19 MR. BISKUPIC: We did file State's pre-trial
20 request under 906.15. Based on the scope of the
21 investigation and up to potentially 60 witnesses, the
22 statute allows an investigator to assist, and in this
23 particular case, it was two investigators, Assistant
24 Chief Manion and Lieutenant Shepardson. We'd ask that
25 they be designated to assist the State in the courtroom

1 throughout the case. And that's our motion under
2 906.15. They have actively been involved in
3 preparation with both prosecutors. They have done the
4 bulk of the interviews of the witnesses, and we
5 anticipate, if they do testify, that it would be the
6 last couple of witnesses in this case. So we would
7 like them to be available to assist us during the
8 course of trial, as permitted by statute.

9 MR. HUDSON: And I object to that, Your
10 Honor, because they are going to be testifying against
11 me. And he just stated that they're going to be one of
12 the last ones to testify against me. And with them
13 listening to all these people and what they're saying
14 on the record, that I can't have any of my witnesses in
15 the courtroom when trial is proceeding and witnesses
16 are being called in and out. Now, their two witnesses,
17 Investigator Assistant Chief Manion and Lieutenant
18 Shepardson, they're the ones that did this
19 investigation. They're working together. And with
20 both of them being in the courtroom at the time all
21 this testimony is being going on, I object to that,
22 Your Honor.

23 MR. BISKUPIC: We don't object to Mr. Roth or
24 any other person, Mr. Young or Mr. Smith, who did
25 investigation for the defense from being in there.

1 This case has a significant scope.

2 We would also point out that if the Court's
3 concerned about the interview that Manion and
4 Shepardson did do with the defendant, when they testify
5 to that, you can excuse one or the other just so
6 they're not in a position where the Court might think
7 that they're lining up their stories, but that wouldn't
8 be till the end of the case and with the proviso, we'd
9 still ask that, under 906.15, that the two be allowed
10 to assist us during the course of the trial.

11 MR. HUDSON: Your Honor, could I just state,
12 now Peter Roth and Edmund Carns, they're our defense.
13 They're not prosecuting me.

14 THE COURT: They're there to -- your
15 investigator can be there, too --

16 MR. HUDSON: Right.

17 THE COURT: -- to assist you in any way that
18 you want assistance.

19 MR. HUDSON: John Manion and Lieutenant
20 Shepardson are for the prosecution. They're
21 prosecuting me.

22 THE COURT: Right.

23 MR. HUDSON: For them to be present in the
24 courtroom and to listen to all the testimony, then
25 being at the end of the trial, to go up on the stand

1 and testify, they're --
2 THE COURT: You've already made that
3 argument.
4 MR. HUDSON: All right.
5 THE COURT: That will be permitted under the
6 circumstances of when one testifies, the other one is
7 gone.
8 MR. BISKUPIC: Okay.
9 MR. PETER ROTH: Your Honor, may I
10 address --
11 THE COURT: Yes.
12 MR. PETER ROTH: Yesterday when I was up to
13 see my client, after about an hour of working on the
14 case, he terminated my --
15 THE COURT: You're back on it if he wants
16 you. I want you to be here. I want you to be
17 available. If he wants you to do something, I want you
18 to cooperate.
19 MR. PETER ROTH: That's what I want to
20 clarify.
21 MR. BISKUPIC: We did have one other matter
22 that's brought to the attention of the Court's finding
23 and the waiver of counsel and the competency issue. We
24 did prepare findings for the Court to review, and I
25 don't know if the Court signed that last --

1 THE COURT: I did.

2 MR. BISKUPIC: -- week. And were copies
3 distributed, as far as you know?

4 THE COURT: I have no idea. All I know, I
5 signed them.

6 MR. BISKUPIC: Okay.

7 MR. HUDSON: Your Honor, as far as -- I
8 didn't --

9 THE COURT: Ed will be available -- Mr. Carns
10 will be available.

11 MR. HUDSON: You're telling him to stay on.

12 THE COURT: Yes, I am.

13 MR. HUDSON: Okay. Can I address an issue
14 off the record?

15 MR. BISKUPIC: We'd object to anything off
16 the record.

17 THE COURT: No. No.

18 MR. HUDSON: All right. That's fine. I
19 will -- I'll address this issue on the record. This is
20 time 8:31, February 3, 2001. This has to do with an
21 inmate, and it has to do with you, Casey Schneider and
22 a jail staff member. Jeramy Gschwind is an inmate at
23 the Outagamie County Jail. He resides in the same
24 block as I do, 4D block. I'm in cell No. 1 on the
25 lower tier. His cell is on the upper tier. Today at

1 around 8:20 to 8:25 a.m., Mr. Gschwind came up to my
2 cell and initiated a conversation with myself. He
3 said, you know that guy that comes in our block to see
4 you? -- and that would be Malchow -- he is from the
5 D.A.'s office. I said, I already knew that. He then
6 said, you know, the other day when Officer Bunker took
7 me out to a nurse's visit? Well, it wasn't to a
8 nurse's visit. It was to talk to the guy who comes and
9 sees you. He said they called him out to see them at
10 least on three different occasions, but he said on the
11 last occasion, Mr. Biskupic asked him if he heard
12 Kenneth Hudson's inmate, Jerry Buchanan and Inmate
13 Bowman, discussing about having people following Judge
14 Froehlich, Casey Schneider and Lieutenant Lillie around
15 and planning to plant bombs under their cars so they
16 could blow them up with their families.

17 He then stated that they were asking him if Hudson
18 was bragging about his case or if he was confessing to
19 his crimes. He told me he didn't have anything that he
20 knew about, me or my case.

21 I then told him that I'm going to subpoena him in
22 front of the judge to find out what's going on with the
23 D.A. saying those things to him. He said, please,
24 Hudson. Don't get me involved. I don't need to be
25 retaliated against by the D.A.'s office. I have

1 charges of obstructing and bail-jumping. His statement
2 is -- and your old attorney, Eugene Bartman, is my
3 lawyer, and I discussed with him about your case, and
4 if I did get any information about Hudson, can you get
5 a deal for me from the D.A.'s office? Mr. Bartman told
6 him he couldn't get involved because of attorney-client
7 confidentiality, and that was it. I then told him I
8 was going to subpoena him now. End of conversation.

9 I do have a witness who is in the cell right next
10 to me, cell two. He heard Jeremy Gschwind talking to
11 me about the D.A.'s office talking with me about my
12 case. And then it's signed.

13 Then I brought this to the attention of Officer
14 Malchow yesterday, and he said, yeah, I asked him, do
15 you have -- have you had discussions with Jeremy
16 Gschwind, and he said, yes, I did, on several
17 occasions.

18 Now, this is some pretty serious accusations that
19 I don't know, if you ask Gschwind if I was planning to
20 plant bombs or having people to plant, but I want to
21 address this issue now, and -- and that's all I have to
22 say because there was never anything ever discussed,
23 anything like that with me or the other inmates, and --

24 THE COURT: It raises a question. And I
25 understand that after Mr. Carns was released, that

1 Malchow went and had delivered stuff and had talked to
2 the defendant rather than an attorney from your office,
3 Mr. Biskupic. I don't know if Mr. Malchow learned
4 anything from that date. What was it? February 8 or
5 9, when you were relieved?

6 MR. CARNS: I think it was about that time.

7 MR. BISKUPIC: He was instructed just to
8 deliver items, and as far as I know, he did so. The
9 only feedback he ever gave me was that the defendant
10 was preparing a list of people to be subpoenaed. This
11 Mr. Gschwind has never spoken to me or any of my
12 prosecutors --

13 MR. HUDSON: Okay. But as far as --

14 MR. BISKUPIC: I'm in the middle of -- Judge,
15 are we going to have decorum in this matter? Because
16 one of us is going to talk.

17 THE COURT: Let him speak.

18 MR. HUDSON: I'm sorry, Your Honor.

19 MR. BISKUPIC: Mr. Malchow did not provide us
20 with any information of relevance to this case
21 regarding any substance other than the delivered
22 materials that Mr. Hudson made requests that we were to
23 forward to Mr. Roth or to arrange for Mr. Roth to be up
24 there. This Mr. Gschwind, I have no personal knowledge
25 of him. I've never met him. And regarding any

1 information that he may have, as far as I know, there's
2 nothing relevant to this case, and he would not be a
3 witness. So any speculation that Mr. Hudson has
4 regarding bombs and things of that sort, I'm not aware
5 of. And in fact, this is the first I'm hearing of any
6 bomb talk.

7 THE COURT: You have Mr. Malchow on your
8 list. You're assuring me that there is nothing that he
9 discovered after February 9 that will be addressed in
10 his testimony.

11 MR. BISKUPIC: Correct.

12 MR. HUDSON: You know, as far as that bomb
13 situation, you know, that this person is saying that
14 Malchow asked him --

15 THE COURT: That's fine. But it's not going
16 to be used. It's not part of the case.

17 MR. HUDSON: All right. That's what I wanted
18 to state. I just wanted to get that on the record.

19 THE COURT: Let's go.

20 MR. HUDSON: Because I did see Malchow's name
21 on that list.

22 (Closed hearing concluded at 9:25 a.m.)

23 * * * * *

24 (In open court commencing at 9:35 a.m.)

25 THE COURT: Please be seated. This is State

1 of Wisconsin versus Kenneth A. Hudson, case No.
2 2000-CF-403. Please state your appearances for the
3 record.

4 MR. BISKUPIC: Vince Biskupic, District
5 Attorney for Outagamie County, for the State; along
6 with Deputy District Attorney, Carrie Schneider. The
7 defendant's present in person. His stand-by counsel,
8 Attorney Ed Carns, is present, as is defense
9 investigator, Peter Roth.

10 THE COURT: Ladies and gentlemen, you've been
11 called here to pick a jury. We will pick 14 people, 12
12 jurors and two alternates. All 14 will be considered
13 jurors until the end of the trial. After instructions,
14 just prior to deliberations, if there are still 14
15 left, there will be two that will be excused at that
16 point. We expect this trial to take perhaps up to
17 eight days. It's hard to tell at this point until we
18 get a feel for the case. If it goes faster and we can
19 get done on Saturday, we may work on Saturday. So
20 that's the parameters of the case.

21 Please follow the directions of the bailiff as
22 you're seated.

23 The cases is entitled, as I indicated, State of
24 Wisconsin versus Kenneth Hudson. I'll tell you the
25 charges as we start the voir dire.

1 Please proceed. Swear the potential jurors.

2 THE CLERK: All jurors please stand and raise

3 your right hand. You and each of you do solemnly swear

4 that you shall true answers make to such questions as

5 shall be put to you, touching upon your qualifications

6 as jurors in this cause, so help you God?

7 (The jury panel is sworn)

8 THE COURT: I don't believe we've got enough

9 chairs in the room. We're going to seat 28 individuals

10 in the panel. And it looks like we're going to have to

11 get some chairs from someplace for a few more jurors.

12 MR. BISKUPIC: Well, if you had 14 in the box

13 and then 14 out, I believe there's eight on the bench

14 and the potential for six on these benches right behind

15 us, so that would be 28. That would be easier to

16 address potential jurors, 14 inside the box and 14

17 along --

18 THE COURT: Yeah, I know, but we got eight or

19 ten in front. I think we still need about four more

20 chairs here.

21 THE BAILIFF: We can get ten on the benches.

22 MR. BISKUPIC: Okay. That's 14. Right.

23 THE BAILIFF: Yeah.

24 THE COURT: I need 28.

25 THE BAILIFF: We'll have to get four chairs.

1 THE COURT: I want them up here. So Mr.
2 Bailiff --
3 MR. BISKUPIC: Get four chairs from Branch VI
4 or Branch V.
5 THE COURT: Okay. We can start while they're
6 getting the chairs.
7 THE CLERK: Terry Turner.
8 THE COURT: Please follow the directions of
9 the bailiff.
10 THE CLERK: Terry Turner, Larry Blohm, Ronald
11 Werner, Joan Martin, Robert Timm, Ronald Roehrborn,
12 James Lecker, Carrie Killian, Carol Micke, Theresa
13 Carpenter, Brian Ziewacz, Sandra Volkman, Joyce
14 Hermann, Jan Obermeier, Lori Bresnahan, Crystal
15 England, Robert Daugherty, Candice Maki, Bethann
16 Welson, Todd Lettau, Sarah Mueller, Patricia Sanders,
17 Joshua Halla, Randall Grunwald, Christine Davis-Lopas,
18 Travis Thede, Shelly Plymesser.
19 Terry Turner.
20 MR. TURNER: Here.
21 THE CLERK: Larry Blohm.
22 MR. BLOHM: Here.
23 THE CLERK: Donald Werner.
24 MR. WERNER: Here.
25 THE CLERK: Joan Martin.

1 MS. MARTIN: Here.
2 THE CLERK; Robert Timm.
3 MR. TIMM: Here.
4 THE CLERK: Donald Roehrborn.
5 MR. BOEHRBORN: Here.
6 THE CLERK: James Lecker.
7 MR. LECKER: Here.
8 THE CLERK: Carrie Killian.
9 MS. KILLIAN: Here.
10 THE CLERK: Carol Micke.
11 MS. MICKE: Here.
12 THE CLERK: Theresa Carpenter.
13 MS. CARPENTER: Here.
14 THE CLERK: Brian Ziewacz.
15 MR. ZIEWACZ: Here.
16 THE CLERK: Sandra Volkman.
17 MS. VOLKMAN: Here.
18 THE CLERK: Joyce Hermann.
19 MS. HERMANN: Here.
20 THE CLERK: Jan Obermeier.
21 MS. OBERMEIER: Here.
22 THE CLERK: Lori Bresnahan.
23 MS. BRESNAHAN: Here.
24 THE CLERK: Crystal England.
25 MS. ENGLAND: Here.

1 THE CLERK: Robert Daugherty.
2 MR. DAUGHERTY: Here.
3 THE CLERK: Candice Maki.
4 MS. MAKI: Here.
5 THE CLERK: Bethann Welson.
6 MS. WELSON: Here.
7 THE CLERK: Todd Lettau.
8 MR. LETTAU: Here.
9 THE CLERK: Jonathan Wood.
10 MR. WOOD: Here.
11 THE COURT: None of us -- he wasn't called.
12 THE CLERK: Oh, he wasn't?
13 THE COURT: No. Well, we're going to put him
14 in last. He's going to go on our list last so we know
15 where he is.
16 THE CLERK: Okay.
17 THE COURT: That's Jonathan Wood.
18 THE CLERK: Jonathan Wood. Shelly Plymesser.
19 MS. PLYMESSER-SCHUH: It's Schuh. It's my
20 married name, Schuh.
21 THE CLERK: Okay. You're not on our list
22 that way.
23 THE COURT: I still didn't get her name.
24 THE CLERK: Shelly Plymesser-Schuh.
25 THE COURT: Ladies and gentlemen, as I

1 indicated, this case is entitled the State of Wisconsin
2 versus Kenneth A. Hudson. The charges are that on or
3 about June 25, 2000, in the City of Kaukauna, Outagamie
4 County, Wisconsin, the defendant did cause the death of
5 another human being, Shanna Marie Van Dyn Hoven, with
6 intent to kill that person, contrary to Wisconsin
7 Statutes 940.01(1)(a) of the statutes.

8 As to each element of this offense, the defendant
9 has entered a plea of not guilty, denying each and
10 every element.

11 Count 2 is that on June 25, 2000, in the City of
12 Kaukauna, Outagamie County, Wisconsin, the defendant
13 did, by force, attempt to seize another, Shanna Marie
14 Van Dyn Hoven, without her consent and with intent to
15 cause her to be secretly confined or to be held to
16 service against her will, contrary to section
17 940.31(1)(b) and 939.32(1) of the Wisconsin Statutes.

18 To this charge, the defendant has entered a plea
19 of not guilty, a denial of all elements of the offense.

20 Count 3: That on or about June 25, 2000, in the
21 City of Kaukauna, Outagamie County, Wisconsin, the
22 defendant did attempt to cause the death of another
23 human being, David Carnot, with intent to kill that
24 person, contrary to 940.01(1)(a) and 939.32(1) of the
25 Wisconsin Statutes.

1 To that charge, the defendant has entered a plea
2 of not guilty, denying each and every element of the
3 offense.

4 Count 4: That on or about June 25, 2000,
5 Outagamie County, Wisconsin, the defendant did
6 recklessly endanger another's safety under
7 circumstances in which utter disregard for human life,
8 to wit: namely, engaged in a high-speed chase over 16
9 miles through various areas of Outagamie County,
10 endangering the safety of Sergeant Patschke and
11 numerous citizens, contrary to section 941.30(1) of the
12 statutes.

13 To this charge, the defendant has entered a plea
14 of not guilty, denying each and every element of the
15 offense.

16 And additionally, the defendant has entered a plea
17 of not guilty by reason of mental defect or illness.

18 Jurors, I will now ask you certain questions
19 pertaining to your qualifications to serve as jurors in
20 this case. After I've completed my questioning,
21 counsel or Mr. Wilson -- Mr. Hudson have the right to
22 ask you additional proper questions pertaining to your
23 qualifications to serve as jurors. These questions are
24 to obtain the most fair and impartial jury possible.
25 Some of the questions might appear to be prying or

1 embarrassing, again though the purpose of the questions
2 are to determine the most fair and impartial jurors.
3 If your answer to any of my questions is yes, will you
4 please raise your hand?

5 Those of you who have been called for jury duty
6 and are not in the preliminary jury panel, please
7 listen carefully to the questions asked and make note
8 of any that you would have answered yes, for if you are
9 called to replace someone in the preliminary panel, I
10 will ask you to tell me what prior questions you would
11 have answered yes to. That may be difficult. Do your
12 best, please.

13 Are there any among you in the preliminary panel
14 who are no longer residents of Outagamie County?

15 (No response)

16 THE COURT: Any of you not residents -- not
17 citizens of the United States.

18 (No response)

19 THE COURT: As I indicated, we don't know the
20 exact length of this trial, but it may last eight days,
21 give or take. Are there any among you that, for any
22 reason, feel you cannot serve for that anticipated
23 time?

24 We'll start in the back row, please, first.
25 Anybody in the back row? Mr. Roehrborn.

1 MR. ROEHRBORN: Yes, the 17th. I have an
2 itinerary for leaving on the 17th. I don't know if it
3 will go that long.

4 THE COURT: The 17th. Today is the 5th. No,
5 I don't think it will go that long.

6 MR. ROEHRBORN: Okay.

7 THE COURT: Anyone else in the back row?

8 (No response)

9 THE COURT: Anyone in the second row? Miss
10 Hermann?

11 MS. HERMANN: Yes. I'm legal guardian for my
12 husband because he's disabled, and if it got to be too
13 long, I'd have to make arrangements for him. I don't
14 know.

15 THE COURT: Well, it could be eight days, so
16 how does that --

17 MS. HERMANN: I imagine it could work out.

18 THE COURT: Pardon me?

19 MS. HERMANN: I could work it out, I imagine.

20 THE COURT: Well, are you -- you say legal
21 guardian for your husband. Does that mean you have to
22 be with him or what?

23 MS. HERMANN: Well, I can get away from him
24 for a couple days, but I don't know a couple weeks.

25 THE COURT: You're excused.

1 MS. HERMANN: Thank you.
2 THE COURT: Call another juror, please.
3 THE CLERK: Barbara Griesbach.
4 THE COURT: Ms. Griesbach, would you have
5 answered yes to any questions I've asked so far?
6 MS. GRIESBACH: Yes.
7 THE COURT: Which one? You're a resident of
8 Outagamie County?
9 MS. GRIESBACH: Yes. Yes.
10 THE COURT: And you're a resident -- you're a
11 citizen of the US.
12 MS. GRIESBACH: Yes.
13 THE COURT: And can you serve here for eight
14 days?
15 MS. GRIESBACH: Yes, I can.
16 THE COURT: Okay. Anyone else in the second
17 row that eight days presents a problem?
18 (No response)
19 THE COURT: The first row then, in front.
20 Oh, wait a minute. I got another hand back here.
21 Carol Micke.
22 MS. MICKE: I have a mother that -- she's in
23 rehab. She's an Alzheimer's patient, and we do meds
24 and we take care of her. She's got to be on
25 supervision 24 hours a day.

1 THE COURT: And you are part of that
2 24-hour-a-day care.
3 MS. MICKE: Yes. Yes.
4 THE COURT: There's no one else that can do
5 that for you?
6 MS. MICKE: For eight days it wouldn't, but
7 if it would go into two weeks. I do all the
8 medication, setting up the pill boxes and things.
9 THE COURT: Okay.
10 MR. BISKUPIC: Judge, just so it's clear, we
11 weren't going to sequester the jury. They could go
12 home after five or six o'clock.
13 THE COURT: That's correct.
14 MR. HUDSON: Your Honor, I was going to ask
15 that the jury be sequestered.
16 THE COURT: This is not the proper time
17 though.
18 MR. HUDSON: Okay.
19 THE COURT: You've already made that decision
20 anyway, but you can make your record at a later time.
21 MR. HUDSON: Okay.
22 THE COURT: You'll be going home each day.
23 MS. MICKE: Okay.
24 THE COURT: Does that have an effect on your
25 problem?

1 MS. MICKE: No. If I can be at home at
2 night, well, then it won't be a problem.

3 THE COURT: Okay. Anyone else in the second
4 row there?

5 (No response)

6 THE COURT: In the row in front. Anyone who
7 can't serve eight days for any reason, the four in
8 front?

9 (No response)

10 THE COURT: Okay. Is there any among you who
11 have any physical problems that would prevent you from
12 sitting here during this length of time that you have
13 to get up, walk around, you have to take medicine,
14 you've got diabetes and you have to eat every hour or
15 something of that nature?

16 (No response)

17 THE COURT: Any among you who have a hearing
18 problem?

19 (No response)

20 THE COURT: Are there any among you that are
21 facing any family business or other problems that would
22 interfere with your ability to concentrate on the
23 testimony given in this case? Joshua Halla?

24 MR. HALLA: Yep. My uncle's in the hospital.
25 He's having heart surgery right now.

1 THE COURT: Your uncle's in the hospital?
2 MR. HALLA: Yep.
3 THE COURT: Having heart surgery.
4 MR. HALLA: Yeah.
5 THE COURT: And that will prevent you from
6 concentrating.
7 MR. HALLA: Yeah, pretty close.
8 THE COURT: You're excused.
9 THE CLERK: Leslie Mc Kee.
10 THE COURT: Ms. Mc Kee, anything you would
11 have raised your hand to so far?
12 MS. MC KEE: Yes, there is.
13 THE COURT: Tell me.
14 MS. MC KEE: The question about my ability to
15 serve for eight days. I wrote a letter to the Court
16 and was already excused for later days because I have a
17 plane ticket in hand leaving on the 15th.
18 THE COURT: That's a Thursday?
19 MS. MC KEE: Yes.
20 THE COURT: What's your best guess, Mr.
21 Biskupic?
22 MR. BISKUPIC: I was thinking Tuesday would
23 be the last day, but --
24 THE COURT: Well, I don't want to compromise
25 the jury, and if you have a ticket, you may -- you're

1 excused.

2 MS. MC KEE: Thank you.

3 THE CLERK: Pamela Rosin.

4 THE COURT: Ms. Rosin, any questions you
5 would have raised your hand on?

6 MS. ROSIN: No.

7 THE COURT: The four in front, eight days,
8 problem?

9 (No response)

10 THE COURT: And the other question was, was
11 there any -- any family business or other problem that
12 would prevent you from concentrating on this case?

13 (No response)

14 THE COURT: It's important that you listen to
15 this -- these questions carefully and answer them
16 honestly. The law presumes every person charged with a
17 crime to be innocent, and this presumption of innocence
18 remains with the defendant throughout the trial and
19 until such time that the jury is convinced and finds,
20 by all the evidence admitted, that the defendant is
21 guilty beyond a reasonable doubt.

22 Are there any members among this panel who cannot,
23 as we start this trial, give to the defendant that
24 presumption of innocence?

25 Okay. Let's go one by one. Terry Turner, you're

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

excused.

We're going to do this one at a time until we get a replacement.

THE CLERK: John Appleton.

THE COURT: Mr. Appleton, would you have raised your hand to any questions asked up to this point?

MR. APPLETON: Yes, I would, Your Honor. I had travel plans. I had made the Clerk of Courts aware of it. I have a business trip, and I'm flying out of town tomorrow morning.

THE COURT: You're excused. Call another replacement, please.

THE CLERK: Donald Hoelzel.

THE COURT: Mr. Hoelzel, would you have raised your hand to any questions asked up to this point?

MR. HOELZEL: No.

THE COURT: Larry Blohm, you had your hand up. You can't at this point, as we start the trial, give the defendant the presumption of innocence?

MR. BLOHM: I work for Dave Carnot.

THE COURT: You're excused.

THE CLERK: David Rozmarynoski.

THE COURT: David, would you have raised your

1 hand to any questions asked to this point?

2 MR. ROZMARYNOSKI: I do know some of the
3 family that -- an aunt and uncle of Shanna.

4 THE COURT: Do you know them personally? Do
5 you socialize with them or just know who they are?

6 MR. ROZMARYNOSKI: I worked with the aunt for
7 about ten -- or eight years for the city.

8 THE COURT: Are you working with her now?

9 MR. ROZMARYNOSKI: Not now.

10 THE COURT: Do you have any social contact
11 with her?

12 MR. ROZMARYNOSKI: Lately?

13 THE COURT: Now. Now.

14 MR. ROZMARYNOSKI: Not right now, no.

15 THE COURT: Would that relationship affect
16 your ability to be fair and just in this deliberation
17 process?

18 MR. ROZMARYNOSKI: I think I could be a
19 juror.

20 THE COURT: Pardon me?

21 MR. ROZMARYNOSKI: I think I could be a
22 juror.

23 THE COURT: There will be some more questions
24 asked in this regard later on, too.

25 MR. ROZMARYNOSKI: Okay.

1 THE COURT: Who else in the back row? Mr.
2 Timm?
3 MR. TIMM: I don't believe I could. I have a
4 strong opinion.
5 THE COURT: You're excused.
6 THE CLERK: Ray Meyer.
7 THE COURT: Mr. Meyer, would you have raised
8 your hand to any questions asked up to this point?
9 MR. MEYER: No, sir.
10 THE COURT: Mr. Roehrborn?
11 MR. ROEHRBORN: I'm a personal friend of the
12 Van Dyn Hovens sitting here.
13 THE COURT: You are excused.
14 THE CLERK: John Pollack.
15 THE COURT: Mr. Pollack, would you have
16 raised your hand to any questions asked up to this
17 point?
18 MR. POLLACK: No, sir.
19 THE COURT: Mr. Lecker, did you have your
20 hand up?
21 MR. LECKER: No.
22 THE COURT: In the next row down, Ms.
23 Killian.
24 MS. KILLIAN: I've been following the case in
25 the paper and the case through the media, and I don't

1 feel that I could believe he's innocent at any point.
2 THE COURT: Okay. You are excused.
3 THE CLERK: JoAnne Eiting.
4 THE COURT: Ms. Eiting, would you have raised
5 your hand to any questions asked to this point?
6 MS. EITING: No, sir.
7 THE COURT: Anybody else in that row?
8 Theresa Carpenter.
9 MS. CARPENTER: I've been following the
10 newspapers, and I think I have a pre-informed (sic)
11 opinion.
12 THE COURT: You are excused.
13 THE CLERK: Bruce Schmidt.
14 THE COURT: Mr. Schmidt, would you have
15 raised your hand to any questions asked to this point?
16 MR. SCHMIDT: Yes. I have flight plans for
17 the 14th.
18 THE COURT: Flight plans to where?
19 MR. SCHMIDT: Las Vegas to get married on the
20 18th.
21 THE COURT: You are excused.
22 MR. SCHMIDT: Thank you.
23 THE COURT: Good luck.
24 THE CLERK: JoAnne Hoffmann.
25 THE COURT: Ms. Hoffmann, would you have

1 raised your hand to any questions asked to this point?
2 MS. HOFFMANN: No, Your Honor.
3 THE COURT: And next, I believe, Brian, you
4 had your hand up.
5 MR. ZIEWACZ: Yes. I have a strong opinion
6 also about reading the papers.
7 THE COURT: You are excused.
8 THE CLERK: Michael Balthazor.
9 THE COURT: Michael, would you have raised
10 your hand to any questions asked to this point?
11 MR. BALTHAZOR: No.
12 THE COURT: Anyone else in that row? Sandra
13 Volkman.
14 MS. VOLKMAN: I've already made up my mind.
15 THE COURT: You are excused.
16 THE CLERK: Larry Schroeder.
17 THE COURT: Mr. Schroeder, would you have
18 raised your hand to any questions asked to this point?
19 MR. SCHROEDER: No, sir.
20 THE COURT: Anyone else in that row?
21 (No response)
22 THE COURT: The front row. The front row,
23 the ten-person row, starting on that end, first one.
24 MR. DAUGHERTY: I formed an opinion in this
25 case, Your Honor.

1 THE COURT: You are excused.
2 THE CLERK: Darvin Gagnow.
3 THE COURT: Would you have raised your hand
4 to any question asked?
5 MR. GAGNOW: Yes. I work at the quarry right
6 there for MCC, and I also have very weak kidneys.
7 THE COURT: You are excused.
8 THE CLERK: La Vone Schmitz.
9 THE COURT: Ms. Schmitz, would you have
10 raised your hand to any questions asked to this point?
11 MS. SCHMITZ: The last question I have a very
12 strong opinion about.
13 THE COURT: You are excused.
14 THE CLERK: Richard Redman.
15 THE COURT: Mr. Redman, would you have raised
16 your hand to any questions asked to this point?
17 MR. REDMAN: Yes, I do. I have a plane
18 ticket tomorrow for a conference that starts on
19 Wednesday. I intend to go to that.
20 THE COURT: A conference that starts on
21 Wednesday?
22 MR. REDMAN: A conference that starts on
23 Wednesday in New Orleans, a pre-booked conference.
24 THE COURT: This is pertaining with your
25 employment?

1 MR. REDMAN: With my employment, yeah.
2 THE COURT: You are excused.
3 THE CLERK: Karla Repta.
4 THE COURT: Ms. Repta, would you have raised
5 your hand to any question asked to this point?
6 MS. REPTA: No.
7 THE COURT: Anyone else in that row now?
8 Candice Maki.
9 MS. MAKI: I have formed a very strong
10 opinion.
11 THE COURT: You are excused.
12 THE CLERK: Margaret Rueden.
13 THE COURT: Ms. Rueden, would you have raised
14 your hand to any questions asked up to this point?
15 MS. RUEDEN: Yes. I have formed a very
16 strong opinion.
17 THE COURT: You are excused.
18 THE CLERK: Shari Adams.
19 THE COURT: Ms. Adams.
20 MS. ADAMS: Yes. My mother's in the final
21 stages of kidney failure, and she's developed an
22 allergy to her dialysis machine, and we almost lost her
23 last week, and I don't know how long --
24 THE COURT: How can you concentrate on this
25 case when that's happening. You are excused.

1 MS. ADAMS: Yes. Thanks.
2 THE CLERK: Angela Perrine.
3 THE COURT: Who was the last one?
4 THE CLERK: Angela Perrine. Ms. Perrine,
5 would you have raised your hand to any questions asked
6 to this point?
7 MS. PERRINE: Yes. I've got back problems
8 and getting ready for surgery, plus I think he's
9 guilty.
10 THE COURT: You are excused.
11 MS. PERRINE: Thank you.
12 THE CLERK: Jo Ann Schmidt.
13 THE COURT: Ms. Schmidt, would you have
14 raised your hand to any questions asked?
15 MR. SCHMIDT: No.
16 THE COURT: Next, anyone else in that row?
17 Next hand is --
18 MR. BISKUPIC: Ms. Mueller?
19 THE COURT: This is Patricia Sanders.
20 MS. SANDERS: Yes. I've already formed an
21 opinion.
22 THE COURT: You are excused.
23 MR. BISKUPIC: Pardon me, Judge. I think Ms.
24 Mueller raised her hand prior.
25 THE COURT: Oh, she did.

1 MS. MUELLER: Yes.

2 THE COURT: Oh, I didn't see that.

3 MS. MUELLER: I've also formed a very strong
4 opinion.

5 THE COURT: I'm going to ask you one
6 additional question here. Is there any possibility
7 that you can set aside that opinion and listen to the
8 evidence that's brought forth in court and render a
9 fair and just verdict?

10 MS. MUELLER: I have a problem with that.

11 THE COURT: You are excused. That's Sarah
12 Mueller.

13 THE CLERK: Jean Robinson.

14 THE COURT: Ms. Robinson, would you have
15 raised your hand to any questions asked up to this
16 point?

17 MS. ROBINSON: Well, I'm sympathetic with the
18 family. We did the flowers for the funeral.

19 THE COURT: You are excused.

20 THE CLERK: Edward Krueger.

21 THE COURT: Mr. Krueger, would you have
22 raised your hand to any questions asked to this point?

23 MR. KRUEGER: I don't think I'd be able to
24 sit that long, sir.

25 THE COURT: Okay. You are excused.

1 THE CLERK: Angela Agen.
2 THE COURT: Ms. Agen, would you have raised
3 your hand to any questions asked to this point?
4 MS. AGEN: Yes, Your Honor. My son just got
5 out of the hospital, and we have to see a neurosurgeon
6 this week.
7 THE COURT: You won't be able to concentrate.
8 (Ms. Agen nods negatively)
9 THE COURT: Okay. You are excused.
10 MS. AGEN: Thank you.
11 THE CLERK: Gary Kempen.
12 THE COURT: Mr. Kempen, would you have raised
13 your hand to any questions asked to this point?
14 MR. KEMPEN: No, Your Honor.
15 THE COURT: Patricia Sanders.
16 MS. SANDERS: Yes, I have a very strong
17 opinion, already formed.
18 THE COURT: You are excused.
19 THE CLERK: Wanda Zimmer.
20 THE COURT: Ms. Zimmer, would you have raised
21 your hand to any questions asked?
22 MS. ZIMMER: No, no question.
23 THE COURT: Pamela Rosin.
24 MS. ROSIN: I know the Van Dyn Hoven family
25 and Dave Carnot and --

1 THE COURT: And?
2 MS. ROSIN: And David Carnot.
3 THE COURT: Okay. You know them.
4 MS. ROSIN: I don't socialize with them. My
5 daughter went to school with Shanna, and I also think
6 he's guilty.
7 THE COURT: You are excused.
8 THE CLERK: Brian Ambrosius.
9 THE COURT: Mr. Ambrosius, would you have
10 raised your hand to any questions asked?
11 MR. AMBROSIUS: Yes, Your Honor, the last
12 one. I feel he is guilty. I couldn't -- I couldn't --
13 THE COURT: That's enough. You are excused.
14 MR. AMBROSIUS: Thank you, sir.
15 THE CLERK: Tammy Cannon.
16 THE COURT: Ms. Cannon, would you have raised
17 your hand to any questions asked to this point?
18 MS. CANNON: No, Your Honor.
19 THE COURT: Mr. Grunwald, do you have your
20 hand up?
21 MR. GRUNWALD: Yes, Your Honor. I've been
22 following the media coverage, and I've been discussing
23 this with associates at work, and I feel I've already
24 formed an opinion.
25 THE COURT: You can't at this point give him

1 the presumption of innocence.

2 MR. GRUNWALD: No.

3 THE COURT: You are excused.

4 THE CLERK: Duane Hallam.

5 THE COURT: Mr. Hallam, would you have raised
6 your hand to any questions asked to this point?

7 MR. HALLA: No, I would not.

8 THE COURT: Okay. Any -- the two in the back
9 of the two in the front?

10 (No response)

11 THE COURT: And the other two.

12 MS. PLYMESSER-SCHUH: Yeah.

13 THE COURT: And you are, so I can get this
14 right, Ms. --

15 MS. PLYMESSER-SCHUH: Shelly Schuh.

16 THE COURT: Shelly Schuh.

17 MS. PLYMESSER-SCHUH: Yeah.

18 THE COURT: And you can't give him the
19 presumption of innocence at this point.

20 MS. PLYMESSER-SCHUH: Well, I could, but I
21 just thought it was fair that my husband's aunt is
22 married into the Van Dyn Hoven family.

23 THE COURT: Okay. And based upon that
24 relationship, you don't think you can be --

25 MS. PLYMESSER-SCHUH: I could. I could.

1 THE COURT: Then let's go on at this point.

2 MS. PLYMESSER-SCHUH: Okay.

3 THE COURT: You've all had a little time on
4 the question of presumption of innocence. I want to
5 read it one more time. I want to make sure that you
6 understand it and hear it again.

7 The law presumes every person charged with a crime
8 to be innocent, and this presumption of innocence
9 remains with the defendant throughout the trial until
10 such time that the jury is convinced and finds, by all
11 the evidence admitted, that the defendant is guilty
12 beyond a reasonable doubt.

13 Are there any members of the panel who cannot, as
14 we start this trial, give the defendant that
15 presumption of innocence? We have two more that have
16 raised their hand. Mr. Hoelzel.

17 MR. HOELZEL: Brad Gehring is my son-in-law,
18 and I heard a lot about the case already.

19 THE COURT: You are excused.

20 THE CLERK: Todd Bolwerk.

21 THE COURT: Mr. Bolwerk, would you have
22 raised your hand to any questions asked to this point?

23 MR. BOLWERK: No, Your Honor.

24 THE COURT: We had a hand by JoAnne Eiting.

25 MS. EITING: Yes. I don't think I could be

1 fair at this point, Your Honor.

2 THE COURT: You are excused.

3 THE CLERK: What's her name?

4 THE COURT: JoAnne Eiting.

5 THE CLERK: Dale Hanson.

6 THE COURT: Mr. Hanson, would you have raised
7 your hand to any questions asked to this point?

8 MR. HANSON: Yes, I'd definitely find him
9 guilty.

10 THE COURT: You are excused.

11 THE CLERK: Rose Giesbers.

12 THE COURT: Ms. Giesbers, would you have
13 raised your hand to any questions asked to this point?

14 MS. GIESBERS: No.

15 THE COURT: Okay. I believe that was it for
16 that question.

17 Please listen carefully to this question. The
18 defendant is not required to prove his innocence. The
19 burden of proof is upon the State to prove to the
20 satisfaction of the jury, beyond a reasonable doubt,
21 the existence of all elements necessary to constitute
22 the crimes charged. Are there any members of this
23 panel who cannot follow this principle of law?

24 (No response)

25 THE COURT: If selected to serve as a juror

1 in this case, you'll be given instructions by the Court
2 as to the applicable law in this case. Are there any
3 among you who would not follow the law as given to you
4 by this Court and disregard any ideas, notions or
5 belief you might have to the contrary as to what the
6 law ought to be?

7 (No response)

8 THE COURT: For those of you that are still
9 here, have any of you heard any media coverage --
10 that's radio, TV or newspaper -- coverage of this case?

11 Just raise your hand for the information of the
12 parties. We've got the back row. Do you want to mark
13 this down, either of you? In the back row, we've got
14 one, two three, four with hands up.

15 Second row, please. Raise your hands high. Four.

16 Front row, the four in front, two, three.

17 Now, those that raised your hands, do you have any
18 recollection of the factual content of the news items
19 you heard or read? One hand up. Okay. Have any of
20 you become familiar with this case by word of mouth,
21 from talking to others? Okay.

22 You will be instructed that you are only to
23 consider the evidence and testimony presented in the
24 courtroom at the trial, and that any information about
25 this case that you have received outside of the

1 courtroom cannot be considered as part of your
2 consideration or deliberations in this case.

3 Are there any among you that cannot or will not
4 follow this instruction? You must hear the testimony
5 in this case and decide from that testimony, not from
6 what you've heard or read, and can you follow that
7 rule? Anyone that can't follow that rule?

8 (No response)

9 THE COURT: And we've had expressions of some
10 who have formed an opinion. I'm going to ask that
11 question again. Did you at any time, when you've heard
12 or read the news stories of this case, form any opinion
13 as to the guilt or innocence of the defendant?

14 (No response)

15 THE COURT: If you have formed any opinion on
16 any aspect of this case from the news articles or media
17 comment, are you able and willing to set aside such
18 opinion and decide this case solely upon the evidence
19 received during the course of this trial? Anyone not
20 willing to do that?

21 (No response)

22 THE COURT: Having seen media accounts, TV,
23 radio or newspaper, regarding the case, is there any
24 potential juror that feels that he or she cannot put
25 that information aside and impartially decide the

1 issues in this case based solely on the evidence and
2 the testimony presented during the course of the trial?
3 (No response)
4 THE COURT: Are there any among you that have
5 had jury duty before? Just one, two? Okay. That's
6 Crystal England.
7 MS. ENGLAND: Yes.
8 THE COURT: Did you serve on a civil or
9 criminal case?
10 MS. ENGLAND: I was in the jury selection
11 process for a civil case.
12 THE COURT: But you never stayed on for the
13 jury.
14 MS. ENGLAND: No.
15 THE COURT: That's the only experience you
16 had with jury duty.
17 MS. ENGLAND: Yes.
18 THE COURT: And there was another hand.
19 Jo Ann Schmidt?
20 MS. WELSON: Bethann Welson.
21 THE COURT: Okay.
22 MS. WELSON: I served on a federal jury for a
23 criminal case in Milwaukee.
24 THE COURT: Were you the foreperson of that
25 jury?

1 MS. WELSON: No, I was not.
2 THE COURT: Was there a conviction or not?
3 MS. WELSON: Conviction, yes.
4 THE COURT: Have any among you ever
5 participated in a court or jury trial as a witness?
6 Let's start -- well, let's start from the first
7 one down the row in the back row. First hand was John
8 Pollack.
9 MR. POLLACK: I was subpoenaed but never had
10 to serve.
11 THE COURT: As a witness.
12 MR. POLLACK: Right.
13 THE COURT: Okay. Mr. Lecker.
14 MR. LECKER: I was a character witness in
15 a -- one of my friends was on trial.
16 THE COURT: What kind of case was it,
17 criminal or civil?
18 MR. LECKER: Criminal.
19 THE COURT: Okay. Would that experience
20 affect your judgment in any way in this case?
21 MR. LECKER: No.
22 THE COURT: Rose Giesbers.
23 MS. GIESBERS: I was a witness.
24 THE COURT: Would that experience affect your
25 judgment in this case in any way?

1 MS. GIESBERS: No.

2 THE COURT: Another hand in the second row,
3 Mr. Schroeder.

4 MR. SCHROEDER: Yeah. I was subpoenaed for a
5 witness on a land dispute.

6 THE COURT: And did you serve?

7 MR. SCHROEDER: Yeah.

8 THE COURT: Would that experience affect your
9 judgment in this case in any way?

10 MR. SCHROEDER: No.

11 THE COURT: Anyone else in the front row?
12 Karla Repta.

13 MS. REPTA: I had been subpoenaed a couple of
14 times for things related to insurance, both for
15 criminal -- or for civil. One related to a bone marrow
16 transplant and one related to a contract dispute with
17 physicians.

18 THE COURT: And you actually testified in
19 those cases?

20 MS. REPTA: No, I didn't testify either time.

21 THE COURT: You didn't testify. Would that
22 experience affect your judgment in this case in any
23 way?

24 MS. REPTA: I don't believe so.

25 THE COURT: Anyone else? Have anyone in a

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

civil case sued anyone? Tammy?

MS. CANNON: Yes. It was over a car accident, and it was settled out of court.

THE COURT: Okay. Would that experience affect you in any way?

MS. CANNON: No.

THE COURT: We're going to take a brief recess, anyone that has to go to the bathroom at this point. Would the sheriff deputies please take Mr. Hudson out to give him an opportunity, anyone else that needs to go to the bathroom? Stan, would you show them where the bathroom -- take them to the jury room?

MR. BISKUPIC: Just so they know where their seats are when they come back.

THE COURT: Yeah. Just remember where your seats are.

(Recess had from 9:45 a.m. to 10:10 a.m.)

THE COURT: Have we finished the question with everyone as it relates to whether you've been sued or sued someone? Anyone else that answered that question that hasn't responded before? Ms. Giesbers.

MS. GIESBERS: I had to sue an insurance company once, but it doesn't affect my outlook on the case.

THE COURT: Okay. There was another hand.

1 Todd Lettau.

2 MR. LETTAU: I sued an uninsured motorist

3 about ten years ago.

4 THE COURT: And would that affect your --

5 MR. LETTAU: No.

6 THE COURT: -- at all in this case?

7 MR. LETTAU: No.

8 THE COURT: Okay. Anyone else?

9 (No response)

10 THE COURT: Have you or a close relative or

11 friend been the victim of a crime? Ms. Giesbers.

12 MS. GIESBERS: You can call me Rose. I was

13 held up once at gunpoint at a gas station.

14 THE COURT: How long ago?

15 MS. GIESBERS: Seventeen years ago.

16 THE COURT: Did the person that held you up,

17 was he caught?

18 MS. GIESBERS: Yes, he was.

19 THE COURT: Did you participate in that trial

20 at all?

21 MS. GIESBERS: Yes, I did.

22 THE COURT: Would that whole experience

23 affect your judgment in this case in any way?

24 MS. GIESBERS: No, not at all.

25 THE COURT: Okay. Anyone else? Christine

1 Davis-Lopas?

2 MS. DAVIS-LOPAS: Yes. My daughter was a
3 victim in a sexual assault case.

4 THE COURT: How long ago was that?

5 MS. DAVIS-LOPAS: Six months.

6 THE COURT: Is there -- was the perpetrator
7 caught?

8 MS. DAVIS-LOPAS: Yes.

9 THE COURT: Is that process going on through
10 the court system?

11 MS. DAVIS-LOPAS: Yes.

12 THE COURT: Would that experience affect your
13 judgment in this case in any way?

14 MS. DAVIS-LOPAS: No.

15 THE COURT: All right. Anyone else?

16 MS. HOFFMANN: Would you rephrase the
17 question?

18 THE COURT: Have you or a close relative or
19 friend been the victim of a crime?

20 MS. HOFFMANN: My daughter was -- worked at a
21 bank and there was a robbery, and she had to testify.
22 That was about three years ago, and that took place in
23 Madison.

24 THE COURT: And would that affect your
25 judgment in this case in any way?

1 MS. HOFFMANN: No.

2 THE COURT: Okay. And we have Crystal
3 England.

4 MS. ENGLAND: Occasionally I work in a
5 school, and I'm labeled as the victim of a crime that
6 our students may commit, such as damage to property.

7 THE COURT: Okay.

8 MS. ENGLAND: So I have to play the victim in
9 things like that, but it wouldn't affect my judgment
10 here.

11 THE COURT: Okay. Anyone else?

12 (No response)

13 THE COURT: Have anyone on the panel been
14 charged with a crime other than traffic?

15 (No response)

16 THE COURT: Have you or a close friend or
17 relative been the victim of violence? Christine
18 Davis-Lopas?

19 MS. DAVIS-LOPAS: I have.

20 THE COURT: Would that experience --
21 experience have any effect on your looking at this case
22 and rendering a fair and just verdict?

23 MS. DAVIS-LOPAS: I don't believe so. That
24 was 14 years ago.

25 THE COURT: Fourteen years ago?

1 MS. DAVIS-LOPAS: Um-hummm.
2 THE COURT: Okay. Anyone else?
3 (No response)
4 THE COURT: Do any of you or close friend or
5 relative work in police work? Do you work in police
6 work or does a friend or relative work in police work?
7 That's the sheriff's department, FBI, federal agency,
8 Appleton police, Kaukauna police, any police
9 department? Let's see. Here we have Larry Schroeder?
10 MR. SCHROEDER: My niece's husband works for
11 the police department.
12 THE COURT: Where at?
13 MR. SCHROEDER: Outagamie here.
14 THE COURT: Outagamie County --
15 MR. SCHROEDER: Yeah.
16 THE COURT: -- Sheriff's Department.
17 MR. SCHROEDER: Yeah.
18 THE COURT: Have you talked to her about her
19 work?
20 MR. SCHROEDER: I seldom see her.
21 THE COURT: So that relationship and any
22 information you gain from it wouldn't affect your
23 judgment in this case.
24 MR. SCHROEDER: No.
25 THE COURT: And then we have Crystal England,

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I believe.

MS. ENGLAND: Our school police liaison officer is a good friend of mine. She's with Fox Valley Metro Police.

THE COURT: Okay. Would that relationship and the information you gain affect your judgment in any way in this case?

MS. ENGLAND: No.

THE COURT: Okay. Anyone else? Mr. Thede.

MR. THEDE: A friend of mine is a Grand Chute police officer part time.

THE COURT: Would that affect your judgment in any way in this case?

MR. THEDE: No.

THE COURT: That's a no?

MR. THEDE: No. Right. No.

THE COURT: Do any of you hold any religious, moral, philosophical beliefs that forbid you from rendering a judgment upon the innocence or guilt of another person?

(No response)

THE COURT: Have any of you or your immediate family members studied law or practiced law or been employed as lawyers in a law firm or for a law firm?

(No response)

1 THE COURT: I have a long list of witnesses,
2 if I can find them.

3 MR. BISKUPIC: Do you want me to read them?
4 I have mine.

5 THE COURT: Go ahead, slowly. Would you
6 introduce yourself first?

7 MR. BISKUPIC: I'm Vince Biskupic. I'm the
8 district attorney for Outagamie County. The judge, as
9 he does in every trial, usually has one of the
10 attorneys or parties read off potential witnesses. I
11 know we have a list, and you might have a supplemental
12 list.

13 THE COURT: I've got a list of 70 somewhere
14 in here.

15 MR. BISKUPIC: There's also a handwritten one
16 that you received later, too.

17 THE COURT: Yes.

18 MR. BISKUPIC: But first on the typed list
19 that was provided, these are names of people that may
20 be mentioned or may potentially be witnesses in this
21 case. John Manion from the Kaukauna Police Department,
22 who is in the green sport coat there. Kevin Shepardson
23 from the Kaukauna Police Department.

24 THE COURT: As these names are mentioned, if
25 you know any of those individuals, please raise your

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

hand.

MR. BISKUPIC: Donald Krueger from the Kaukauna Police Department, Brad Sanderfoot from the Kaukauna Police Department, Robert Patschke from the Kaukauna Police Department.

The next several names are either scientists or analysts at the State Crime Lab near Madison. Gerald Kotajarvi, Nick Stahlke, John Ertl, Guang Zhang, Robert Block. Those are all employees of the State Crime Lab.

Other potential witnesses is a Dr. Frederick Knoch, K-N-O-C-H, who sometimes works at St. Elizabeth's. The county coroner is Ruth Wulgaert. One of the deputies with the sheriff's department is Dan Pamenter. Some citizen witnesses, potentially, Jeremy Vetter, V-E-T-T-E-R; John Panetti, P-A-N-E-T-T-I; Robert Huss, H-U-S-S; an officer from the Grand Chute police department, Todd Zolkowski; a deputy from the Outagamie County Sheriff's Department, Ron Viane, V-I-A-N-E; an officer, potentially, from Fox Valley Metro, Matt Andres, A-N-D-R-E-S. He's --

THE COURT: Do we have a hand?

MR. BISKUPIC: He took some photographs in this case.

THE COURT: What kind of -- how do you know this individual?

1 MS. ENGLAND: I know Matt Andres just through
2 my association with our police school liaison officer,
3 and he's now a police school liaison officer.
4 THE COURT: So are you a friend.
5 MS. ENGLAND: No.
6 THE COURT: You just know who that person is.
7 MS. ENGLAND: Yes.
8 THE COURT: Does that knowledge have any
9 effect on your judgment in this case?
10 MS. ENGLAND: No.
11 MR. BISKUPIC: There's another person from
12 the State Crime Lab, Ken Olson; citizen witness, Alvin
13 Thies, T-H-I-E-S, who goes by the name, Bud Thies.
14 Potential Wisconsin State Patrol troopers, Trooper
15 Lewis Judge, J-U-D-G-E; Trooper Timothy Austin; and
16 Trooper Jones from the state patrol.
17 Other potential witnesses, deputy coroner, Doug
18 Bartelt, B-A-R-T-E-L-T; some more potential citizen
19 witnesses, Shirley Schultz, David Carnot.
20 THE COURT: One, two, three, four. That's
21 Bethann Welson.
22 MS. WELSON: Yeah. My husband grew up with
23 David. I've never personally met him, and we don't
24 socialize with him or anything.
25 THE COURT: Okay.

1 MS. WELSON: I know the name because he grew
2 up with him.

3 THE COURT: Did your husband bring any
4 information home to you from him?

5 MS. WELSON: No. No, because he doesn't have
6 contact with him anymore.

7 THE COURT: Okay.

8 MR. BISKUPIC: His wife, Lisa Carnot. We
9 have a hand. Barbara Griesbach.

10 MS. GRIESBACH: One of the names that you
11 mentioned, a Mr. Thies.

12 THE COURT: Bud Thies.

13 MR. BISKUPIC: Right. He works at K-Mart.

14 MS. GRIESBACH: That's a gentleman perhaps I
15 knew 20, 25 years ago. My husband and I knew him, but
16 I -- I haven't seen or heard from him for a long time.

17 THE COURT: Now, we have potential here for
18 about 80 or 90 witnesses, and if he's one of them,
19 would you weigh his testimony any greater than any
20 other witness?

21 MS. GRIESBACH: Probably not.

22 THE COURT: Okay.

23 MR. BISKUPIC: Miss Micke had her hand up.

24 THE COURT: Oh, there's another one?

25 MS. MICKE: Yeah, I know Lisa.

1 MR. BISKUPIC: Lisa Carnot is the spouse.
2 THE COURT: That's Crystal England?
3 MS. MICKE: Carol Micke.
4 THE COURT: And your relationship to who?
5 MS. MICKE: I know Lisa. She used to go with
6 my son at one time, but it wouldn't create a problem.
7 THE COURT: Okay.
8 MR. BISKUPIC: James Vander Loop; James
9 Sprangers; Bruce Benotch, B-E-N-O-T-C-H; Melvin
10 Vandembloomer; Mike Borchert; Matt and Amy Brittnacher,
11 from Kaukauna; Diane Vandenberg from Kaukauna.
12 Some other Kaukauna officers, Officer Nejedlo;
13 Officer Megna; Officer Graff, G-R-A-F-F, Kaukauna
14 police officer, Jamie Graff.
15 MS. WELSON: He cut our lawn. That's all I
16 know him by.
17 THE COURT: Pardon me?
18 MS. WELSON: Jamie Graff cut our lawn last
19 summer, but I never talked to him. This was while we
20 were at work.
21 THE COURT: And his testimony wouldn't be
22 weighed more than any other testimony by you.
23 MR. WELSON: No. No.
24 THE COURT: Go ahead.
25 MR. BISKUPIC: Would you hold that against

1 him if he did a bad job?

2 MS. WELSON: He did a good job.

3 MR. BISKUPIC: Officer Bud Nelson of the
4 Kaukauna Police Department; Officer Jorgenson; Officer
5 Momberg; Officer Rosche, R-O-S-C-H-E; and Officer
6 Swanson from Kaukauna.

7 The doctor who -- who is medical examiner for the
8 county is Dr. Michael Chambliss. A New London Medical
9 Center EMT named Cathi Wegener, W-E-G-E-N-E-R. There's
10 also another EMT from New London named Kelly Czarapata,
11 C-Z-A-R-A-P-A-T-A; some county health workers, Michael
12 Kochanek, K-O-C-H-A-N-E-K; Virginia Schuettpelz,
13 S-C-H-U-E-T-T-P-E-L-Z; Kurt Nelson.

14 Some other potential citizen witnesses that will
15 either be named or testify are Danita Scharenbroch from
16 Little Chute; Lorraine Tramontana from Buffalo, New
17 York; Kathryn Moy-Bye. It's a hyphenated last name,
18 M-O-Y-B-Y-E, from Appleton; Kathryn Vance, V-A-N-C-E,
19 from Appleton; Lisa Hull, H-U-L-L, from Kaukauna.

20 THE COURT: Just a minute.

21 MS. CANNON: The name's familiar, but I can't
22 really place it.

23 THE COURT: So there isn't any contact that
24 would affect your judgment or you wouldn't weigh her
25 testimony any greater than any other person.

1 MS. CANNON: No.

2 MR. BISKUPIC: She lives on Florence Street
3 in Kaukauna and, I think, works at Thilmany, Lisa Hull.

4 MS. CANNON: I did the census, and that's
5 just one of the names that I came across.

6 MR. BISKUPIC: Lieutenant David Kiesner from
7 the Outagamie County Sheriff's Department.

8 THE COURT: Just a minute. I don't know if
9 we got that comment -- the name connected with that
10 comment. That's --

11 MS. CANNON: I worked for the census last
12 summer.

13 COURT REPORTER: What's your name, please?

14 MS. CANNON: Oh, Tammy Cannon.

15 THE COURT: Tammy Cannon. Go ahead.
16 Proceed.

17 MR. BISKUPIC: Some potential doctors from
18 mainly out of the area, Dr. Frederick Fosdal,
19 F-O-S-D-A-L; Dr. Ralph Baker, B-A-K-E-R, from Oshkosh;
20 Dr. Ray Wood, W-0-0-D; Dr. Patricia Coffey,
21 C-O-F-F-E-Y, from Madison; a Dr. Kenneth Smail from
22 Milwaukee; a citizen witness, Kevin Czajr, C-Z-A-J-R;
23 Captain Herb Schmoll from the Outagamie County
24 Sheriff's Department; Nancy Van Dyn Hoven, from
25 Kaukauna; Catherine Smith, medical technician at St.

1 Elizabeth's Hospital; another doctor from the health
2 department, Dr. J.R. Musunura from Outagamie County
3 Health.

4 MR. BOLWERK: Go back to Nancy Van Dyn Hoven.

5 THE COURT: Just a minute. That's Todd
6 Bolwerk?

7 MR. BOLWERK: Yes.

8 THE COURT: Would you speak up so we can hear
9 you?

10 MR. BOLWERK: Yeah. I knew her from playing
11 volleyball. She plays volleyball at Tanners, and I
12 play volleyball with them.

13 THE COURT: Do you socialize with them other
14 than at this volleyball court?

15 MR. BOLWERK: No.

16 THE COURT: Would this judgment be weighed
17 heavier by you than by any other person?

18 MR. BOLWERK: No, it wouldn't.

19 MR. BISKUPIC: Investigator Steve Malchow,
20 M-A-L-C-H-O-W, from the district attorney's office;
21 Luella Wilber, W-I-L-B-E-R, from Appleton; Dr. Jonathan
22 Lewis from the Madison area; Mary Schuelke, who works
23 in the 911 center at Outagamie County Sheriff's
24 Department; two Kaukauna officers, Officer Reifsteck,
25 and Officer Jackson from Grand Chute; and Officer

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Zierler, Z-I-E-R-L-E-R, from Kaukauna.

That's the typed list. I know you had some handwritten names.

THE COURT: You don't have that list?

MR. BISKUPIC: I have. I have that list now. The names on the handwritten list that don't overlap include Elmer, E-L-M-E-R, Dowling, D-O-W-L-I-N-G, from Black Creek; Donna Goeser, G-O-E-S-E-R, from Hilbert; Valerie and Robert Sisson, from the Fox Cities area; Charles Tramontana, the husband of Lorraine, from New York; Kurt Hoffmann; Peter Roth, defense investigator; Terry Young, an investigator also; Debra Cudworth, a social worker, C-U-D-W-O-R-T-H; Gary Smith, an investigator.

THE COURT: That's it? Mr. Biskupic, people in your office are whom, attorneys?

MR. BISKUPIC: District attorney and assistant district attorneys in the office include Ms. Schneider and myself, John Truby, Mitch Metropulos, Cathy Huber, Kimberly Tenerelli, Curtis Borsheim, Terry Rebholz, Michael Balskus.

THE COURT: Any of you acquainted with any of those assistant district attorneys?

(No response)

THE COURT: Have any of you had any contact

1 with the district attorney's office at all because of a
2 case or investigation or for some reason?

3 MS. GIESBERS: Are you talking about the
4 district attorney's office here in Outagamie County?

5 THE COURT: Yes. Yes.

6 MS. GIESBERS: Okay. No.

7 THE COURT: And it's Ms. England.

8 MS. ENGLAND: I know Terry Rebholz through
9 human services.

10 THE COURT: Would that affect your judgment
11 in this case in any way?

12 MS. ENGLAND: No.

13 THE COURT: Christine Davis-Lopas?

14 MS. DAVIS-LOPAS: From my daughter's case.

15 THE COURT: Okay. Would that contact with
16 the district attorney's office have any effect on your
17 judgment in this case?

18 MS. DAVIS-LOPAS: No.

19 THE COURT: Those of you that had contact,
20 would you consider it a bad experience, a good
21 experience or just an experience?

22 (No response)

23 THE COURT: No takers. Have any of you had
24 contact with a police agency that you would label a bad
25 experience?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

(No response)

THE COURT: Have any of you had contact with a police agency that you would label a good experience so that it would -- you would provide sympathy toward a police officer or weigh his testimony more than any other person that testifies?

(No response)

THE COURT: Mr. Hudson, do you want to stand up so everybody can see you?

(Defendant complies with request)

THE COURT: This is Kenneth A. Hudson, the defendant in this case. Your family is from New York; is that right?

MR. HUDSON: Correct.

THE COURT: Do you have any cousins or related family here in the area?

MR. HUDSON: I do.

THE COURT: Who would they be?

MR. HUDSON: It would be Valerie Sisson, would be an ex-sister-in-law. She was married to my brother, but he's deceased; and her son, Kevin Chia (phonetic).

THE COURT: I believe those are on the witness list.

MR. HUDSON: Yes.

1 THE COURT: Okay. And that's it?
2 MR. HUDSON: That's it.
3 THE COURT: Thank you. Do any of you know
4 Mr. Hudson or any of his relatives?
5 (No response)
6 THE COURT: Mr. Carns, would you introduce
7 yourself, please?
8 MR. CARNS: Thank you, Your Honor. Good
9 morning. My name is Edmund Carns. I'm acting as
10 stand-by counsel for Mr. Hudson. I've practiced for
11 about 22 years in Oshkosh with Tom Hughes, Henry
12 Matthewson and Frank Slattery, and as of July 1, last
13 year, I opened up my own practice up in the north woods
14 around Mountain, Wisconsin.
15 THE COURT: Any of you know Mr. Carns? Have
16 you had any business with his law firm or his partners?
17 (No response)
18 THE COURT: Thank you, Mr. Carns. And why
19 doesn't the investigator for the defense introduce
20 himself, too.
21 MR. PETER ROTH: My name is Peter Roth. I
22 own and am sole employee of Tracers Investigations in
23 Oshkosh. I've been licensed by the state since 1993.
24 THE COURT: Any of you know Mr. Roth?
25 (No response)

1 THE COURT: Thank you. Ladies and gentlemen,
2 an individual has the absolute right to represent
3 himself in a -- or herself in a criminal case. Do any
4 of you hold anything against Mr. Hudson because he is
5 representing himself?

6 (No response)

7 THE COURT: Mr. Carns is here to consult with
8 the defendant as the defendant seems he needs to ask
9 questions regarding the law. As indicated, this case
10 involves the death of Shanna Van Dyn Hoven, who at the
11 time of her death, resided in the City of Kaukauna.
12 Were any of you acquainted with Shanna?

13 (No response)

14 THE COURT: Are any of you acquainted with
15 Shanna's immediate family, who are father, Steve Van
16 Dyn Hoven; mother, Nancy Van Dyn Hoven; brother, David
17 Van Dyn Hoven?

18 (No response)

19 THE COURT: Any of you acquainted with the
20 grandparents, the paternal grandparents, Al and Ceil
21 Van Dyn Hoven? Maternal grandmother, Barb Abhold?

22 (No response)

23 THE COURT: Are any of you in the panel
24 acquainted with any, to your knowledge, acquainted with
25 any members of Shanna's extended family or friends,

1 cousins, uncles, so forth and so on? Mr. Pollack?
2 MR. POLLACK: I'm employed at the same
3 company as her uncle.
4 THE COURT: Okay. And do you ever associate
5 with the uncle at all?
6 MR. POLLACK: I maybe see him once a year.
7 THE COURT: Okay. Would that distant
8 relationship affect your judgment in this case in any
9 way?
10 MR. POLLACK: No.
11 THE COURT: Okay. And Shelly Plymesser?
12 MS. PLYMESSER-SCHUH: Schuh.
13 THE COURT: Schuh.
14 MS. PLYMESSER-SCHUH: Like I said before, my
15 husband's aunt is related to the brother of Shanna.
16 THE COURT: Okay. Would that relationship
17 or --
18 MS. PLYMESSER-SCHUH: I don't know the
19 family. I've never met any of them.
20 THE COURT: So you could listen to that
21 testimony and be fair and just in your verdict.
22 MS. PLYMESSER-SCHUH: Yes, I could.
23 THE COURT: Okay. Is there anything or any
24 reason at all, however personal or private, that makes
25 you feel you should not serve as a juror in this case

1 that you could not be a fair and impartial juror?

2 (No response)

3 THE COURT: The jurors will be instructed not
4 to read, watch or listen to any news accounts of this
5 trial whatsoever until it is over and not to talk to
6 anyone about the case, not even to one another, until
7 you retire to the jury room to decide your verdict.
8 Are there any of you that would not follow my
9 instruction in that case -- in that area?

10 (No response)

11 THE COURT: Is there any among you who cannot
12 or will not try this case fairly and impartially on the
13 evidence that is given here in court and, under the
14 instruction of the Court, render a true and just
15 verdict?

16 (No response)

17 THE COURT: Mr. Biskupic?

18 MR. BISKUPIC: As mentioned before, my name
19 is Vince Biskupic. I'm the district attorney for
20 Outagamie County. And during the course of the case,
21 I'll be handling some of the witnesses, and so will our
22 Deputy District Attorney, Carrie Schneider. And the
23 State's purpose in being here on behalf of law
24 enforcement and the Van Dyn Hoven family is to just
25 have a fair and impartial jury, and I guess, is there

1 any of you that, knowing our Constitution and the
2 extended laws, just disagree with the concept that
3 cases are to be heard in the courtroom? You're to set
4 aside any media accounts, whether they were fair and
5 accurate or maybe mistaken, and just try the case in
6 the courtroom? Does anybody disagree with that
7 concept?

8 (No response)

9 MR. BISKUPIC: And as the judge has
10 mentioned, based on our Constitution and our extended
11 laws, you know, the State has the burden of proof, and
12 we accept it. That's why we're here. And a defendant
13 doesn't have to prove anything. And they could
14 represent themselves. They can have counsel. They can
15 have stand-by counsel. Does anybody disagree with
16 those concepts; that the State has the burden of proof
17 and the defendant really doesn't have to prove
18 anything?

19 (No response)

20 MR. BISKUPIC: Okay. Now, some of you had
21 mentioned either having somebody close to you or
22 yourself being a victim of a crime. I just want a show
23 of hands, those people that have raised their hand.

24 Were there any of you that felt even discouraged a
25 little bit to agree with the police effort in that

1 case? Maybe they could have done more, whether it's
2 other investigative-type tactics? Do any of you, after
3 those life experiences, whether they lasted 15, 20
4 years, feel that the police didn't do enough for your
5 particular case or your loved one's case?

6 (No response)

7 MR. BISKUPIC: Do any of you disagree with
8 certain police tactics that you maybe heard about on
9 the news, like DNA, fingerprinting, getting search
10 warrants, maybe even taping phone calls, things of that
11 sort? Do any of you have some strong personal feelings
12 against police doing those certain kind of
13 investigative tactics to try and solve a case?

14 (No response)

15 MR. BISKUPIC: Are there any of you that have
16 ever worked in a field where you have provided services
17 to victims of crime, maybe a counselor or somebody in
18 the medical profession, things of that sort, therapist?

19 (No response)

20 MR. BISKUPIC: Do any of you have close
21 friends or family members that work in those types of
22 fields where they provide services to victims of crime?
23 Mr. Schroeder.

24 THE COURT: Mr. Schroeder.

25 MR. SCHROEDER: Yeah. My wife works at

1 social -- human services over here.

2 MR. BISKUPIC: Is she actually a social
3 worker or a clerk?

4 MR. SCHROEDER: No, she's a secretary over
5 there for the social workers, but that's as much as I
6 know.

7 MR. BISKUPIC: So that's not necessarily
8 directly providing the services.

9 MR. SCHROEDER: No.

10 MR. BISKUPIC: Ms. Cannon.

11 MS. CANNON: Yes. My father was a minister.
12 He did do some counseling of people, but I was very
13 young and very little contact personally.

14 MR. BISKUPIC: So it's something that
15 wouldn't affect you as a juror in this case.

16 MS. CANNON: No, not at all.

17 MR. BISKUPIC: Let's see. Mr. Balthazor.

18 MR. BALTHAZOR: Yeah. My wife's an RN at the
19 Outagamie County Health Center.

20 MR. BISKUPIC: What's the title of her job?

21 MR. BALTHAZOR: She's an RN.

22 MR. BISKUPIC: Anything about her work that
23 you feel would affect you in serving as a juror?

24 MR. BALTHAZOR: No, I don't believe so.

25 MR. BISKUPIC: Now, do any of you have

1 experience, either yourself or somebody close to you,
2 working in a field where they provided or you provided
3 services to those either charged or convicted of a
4 crime, either as maybe a probation and parole agent or
5 some sort of counselor after the fact when somebody's
6 been either charged or convicted of a crime?

7 (No response)

8 MR. BISKUPIC: Do any of you that have had
9 experiences with crime, either for you directly or with
10 your family members close to you, can you think if any
11 of that crime was motivated maybe by drug or alcohol
12 use by the perpetrator? We talked about somebody maybe
13 sticking up somebody or robbing somebody, some of the
14 jurors. Do any of you know if the crime against you or
15 your loved one was motivated by alcohol or maybe drugs
16 to at least some degree?

17 MS. GIESBERS: I'm not sure.

18 MR. BISKUPIC: That was over there, Ms.
19 Giesbers?

20 MS. GIESBERS: Yes.

21 MR. BISKUPIC: Am I saying that correctly?

22 MS. GIESBERS: Yeah.

23 MR. BISKUPIC: You were robbed years ago, you
24 said?

25 MS. GIESBERS: Yeah.

1 MR. BISKUPIC: And do you know if maybe the
2 person had some beers in him or anything like that?

3 MS. GIESBERS: I think he did, but I couldn't
4 recall.

5 MR. BISKUPIC: Anybody else with that type of
6 situation where you had a crime close to you where you
7 thought at least some degree of motivation had some
8 alcohol or drugs involved?

9 (No response)

10 MR. BISKUPIC: On the issue of alcohol, are
11 there any of you who, just because your life decisions
12 and personal choices, simply abstain from any alcohol
13 use? Ms. Bresnahan?

14 MS. BRESNAHAN: Um-hummm.

15 MR. BISKUPIC: Anybody else? Are there any
16 of you potential jurors that have very strong feelings
17 about people who use alcohol or would decide to abstain
18 from alcohol because you've expressed opinions, either
19 with your friends or publicly, strong feelings about
20 people who use alcohol or people who abstain from
21 alcohol?

22 (No response)

23 MR. BISKUPIC: Do any of you work or have
24 worked in a field where you deal with people that have
25 alcohol issues in their life, whether it's, you know,

1 excessive social drinking or work with alcoholics?
2 (No response)
3 MR. BISKUPIC: Anybody have somebody close to
4 you who have worked in those fields, maybe as a
5 counselor? Okay. Ms. England.
6 MS. ENGLAND: I worked for two years with
7 the --
8 THE COURT: You have to speak up.
9 MS. ENGLAND: I worked for two years with
10 chronically mentally ill adults in a group home setting
11 as a counselor, and some of those adults have known
12 long drug abuse issues.
13 MR. BISKUPIC: Anything about that life
14 experience that you feel would cause you to be biased
15 towards any side in this case?
16 MS. ENGLAND: No.
17 MR. BISKUPIC: There was another person, I
18 think, who had their hand up. Mr. Balthazor?
19 MR. BALTHAZOR: Yeah, just my wife again, in
20 the setting she works in. There's people that come in
21 like that.
22 MR. BISKUPIC: Okay. And you said your
23 wife's employment would not affect you one way or
24 another in this case.
25 (Nods negatively)

1 MR. BISKUPIC: And I think the judge had
2 mentioned this, but just to follow up so we're clear.
3 Have any of you personally or have somebody close to
4 you that's been charged or convicted of a criminal
5 offense, not traffic but a criminal offense? Ms.
6 Cannon again.

7 MS. CANNON: My husband was convicted of
8 driving after revocation, I think, but that was --

9 MR. BISKUPIC: All right. That's traffic.
10 But anybody non-traffic, criminal offenses? In the
11 back row, we'll start with Mr. Meyer.

12 MR. MEYER: Yes. A friend of mind, Ken
13 Menting, was convicted of drug sales.

14 MR. BISKUPIC: What was the person's name?

15 MR. MEYER: Ken Menting.

16 MR. BISKUPIC: That was just a friend, not a
17 family member.

18 MR. MEYER: No.

19 MR. BISKUPIC: Also Ms. Schuh?

20 MS. PLYMESSER-SCHUH: A brother-in-law.

21 MR. BISKUPIC: Do you remember what type of
22 offense it was?

23 MS. PLYMESSER-SCHUH: It was a bomb threat.

24 MR. BISKUPIC: And was the person convicted
25 or sent --

1 MS. PLYMESSER-SCHUH: Probation.
2 MR. BISKUPIC: Okay. And anything about that
3 person's -- in-law's circumstances that would affect
4 you in this case?
5 MS. PLYMESSER-SCHUH: No.
6 MR. BISKUPIC: How many of you on a regular
7 basis are joggers? Mr. Werner.
8 MR. WERNER: I work out at a gym.
9 MR. BISKUPIC: Like at a club or the Y?
10 MR. WERNER: Yeah. I work out at a gym.
11 MR. BISKUPIC: Anybody else that's like a
12 jogger, regular, maybe runs short races, things of that
13 sort?
14 MS. HOFFMANN: I'm a walker.
15 MR. BISKUPIC: Okay. That's Miss Hoffman.
16 MS. HOFFMANN: Yeah.
17 MR. BISKUPIC: Okay. Any of you years ago
18 used to be a regular jogger or runner? Okay. Ms.
19 Cannon. Anybody else?
20 (No response)
21 MR. BISKUPIC: And for those of you, Mr.
22 Werner and Ms. Hoffmann, when you do your work-out, do
23 you use headphones, things of that sort, a walkman?
24 That's a no for Ms. Hoffmann and a yes for Mr. Werner.
25 MR. WERNER: Yes.

1 MR. BISKUPIC: Any of you that have been
2 joggers in the past or presently, have any of you ever
3 had an incident, either on the road or as part of your
4 routine jog or walk, where maybe you had an incident
5 with a vehicle or another person on the roadway?

6 (No response)

7 MR. BISKUPIC: Do any of you volunteer your
8 time or your resources to crime prevention agencies,
9 things like Mothers Against Drunk Driving or Harbor
10 House, Sexual Assault Crisis Center, things of that
11 sort, either volunteer time or maybe donate financially
12 to those agencies? Miss Hoffmann.

13 MS. HOFFMANN: A few years ago when I worked
14 in the school system, we always collected donations
15 through the school for the abuse center.

16 MR. BISKUPIC: That's Harbor House?

17 MS. HOFFMANN: Yes, Harbor House. And we
18 just donated money to that through the school, people
19 that worked at our -- in our work setting.

20 MR. BISKUPIC: Okay. That was several years
21 ago?

22 MS. HOFFMANN: Two years ago.

23 MR. BISKUPIC: Okay. And Miss Micke, you
24 mentioned something.

25 MS. MICKE: Yeah.

1 MR. BISKUPIC: Was that a few years ago?
2 MS. MICKE: Yeah, about three years ago.
3 MR. BISKUPIC: Are there any of you that
4 participate in a neighborhood watch in your residential
5 area, either as an active member or maybe attend
6 neighborhood watch meetings, things of that sort?
7 (No response)
8 MR. BISKUPIC: Have any of you ever had a
9 situation in your neighborhood over the years where
10 there was a report of a stranger in your neighborhood
11 that you had to be on the lookout for?
12 (No response)
13 MR. BISKUPIC: Maybe you got a police
14 bulletin or a flier passed around in your neighborhood,
15 things of that sort?
16 (No response)
17 MR. BISKUPIC: Have any of you ever received
18 a notice from law enforcement as to an offender of any
19 type moving in your neighborhood? That's Miss
20 Davis-Lopaz?
21 MS. DAVIS-LOPAZ: Um-hummm.
22 MR. BISKUPIC: Do you know how long ago that
23 would have been?
24 MS. DAVIS-LOPAZ: Two years.
25 MR. BISKUPIC: And did you ever have any

1 contact with the person?

2 MS. DAVIS-LOPAZ: No.

3 MR. BISKUPIC: Anybody else have that
4 situation where you were sent a notice regarding that?
5 (No response)

6 MR. BISKUPIC: I think that's all the State
7 has. Thank you.

8 THE COURT: Mr. Hudson, any questions
9 generally to ask the jury?

10 MR. HUDSON: Yes, Your Honor.
11 (Pause)

12 MR. HUDSON: Anybody from the jury panel, is
13 there anyone who would disregard the testimony of the
14 defendant solely because he is charged with a crime?
15 (No response)

16 MR. HUDSON: Is there anyone who does not
17 agree with the fact that our criminal justice system
18 requires you to find the defendant not guilty if you
19 have any reasonable doubt whatsoever considering his
20 guilt?
21 (No response)

22 MR. HUDSON: Is there anyone that feels that
23 the defendant must prove to you that he is innocent?
24 (No response)

25 MR. HUDSON: Is there anyone who does not

1 understand or agree with the fact that the burden of
2 proof in a criminal case is solely on the State and the
3 defendant has no obligation to take the witness stand
4 or offer any evidence on his behalf?

5 (No response)

6 MR. HUDSON: Is there anyone who does not
7 understand what the term, beyond a reasonable doubt,
8 means?

9 (No response)

10 MR. HUDSON: Is there anyone who will not
11 listen to the judge's instructions concerning the
12 State's burden to convince you that the defendant is
13 guilty beyond a reasonable doubt and apply that
14 standard exactly as the judge instructs you?

15 (No response)

16 MR. HUDSON: Is there anyone who cannot
17 honestly promise the defendant that they will find him
18 not guilty if the State fails to meet its burden of
19 proving?

20 (No response)

21 MR. HUDSON: That's it.

22 THE COURT: Is that it?

23 MR. HUDSON: That's it, Your Honor.

24 THE COURT: You may be seated. The bailiff
25 will now circulate the strikes, the strike list.

1 Ladies and gentlemen, those of you who were not
2 seated in the preliminary panel are now excused. Thank
3 you very much for coming.

4 (Pause).

5 THE CLERK: When I call your name, please
6 stand. Joan Martin, John Pollack, Carol Micke --

7 THE COURT: Go a little slower, please.

8 THE CLERK: Sorry.

9 THE COURT: Go ahead.

10 THE CLERK: JoAnne Hoffmann, Rose Giesbers,
11 Barbara Griesbach, Lori Bresnahan, Karla Repta, Jo Ann
12 Schmidt, Bethann Welson, Todd Lettau, Jonathan Wood,
13 Gary Kempen, Travis Thede. Is that 14?

14 THE COURT: Fourteen. Would you please swear
15 the jury?

16 THE CLERK: Please raise your right hand.
17 You and each you do solemnly swear, well and truly to
18 try the issues in the case you are about to decide,
19 unless discharged by the Court and a true verdict give,
20 according to law and to evidence given in court, so
21 help you God?

22 (The jury is sworn)

23 THE COURT: Be seated, please. Those of you
24 who were not just sworn, you are excused. Thank you
25 very much for your participation.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

(Pause)

THE COURT: Ladies and gentlemen, it's now twelve o'clock. We are going to recess for lunch, but perhaps you should go into the jury room, make any telephone calls you need to make. The process is going to be, we're going to start every morning at 8:30. We're going to close sometime around five o'clock, depending on where -- if we're in the middle of a witness or maybe a little earlier if it's going to be a long witness that's coming on. So it's basically 8:30 to 5:00. At noon every noon, the bailiffs will be taking you someplace for lunch. So you're -- once you're here at 8:30, you're here until five o'clock. And so you might want to go make some phone calls, and then they'll take you to lunch.

So take them in the jury room and let them make their phone calls and then take them to lunch.

THE BAILIFF: Okay.

MR. BISKUPIC: What time will we reconvene?

THE COURT: We'll be back here at 1:15 -- not back here -- Branch III. We're in Branch III at 1:15. The bailiffs know that. Go get your coats.

* * * * *

(Outside the presence of the jury)

MR. BISKUPIC: While we're still on the

1 record, is there anything you need from either side
2 before 1:15?

3 THE COURT: No. See you all with 1:15.

4 MR. BISKUPIC: And we'll start with an
5 opening?

6 THE COURT: Start with an opening. Well,
7 I'll give some preliminary instructions.

8 MR. BISKUPIC: Right, regarding the two
9 phases.

10 THE COURT: I don't have an instruction for
11 that. Is there an instruction on it?

12 MS. SCHNEIDER: I filed it. It's 601. Donna
13 should have it or it should be in the file.

14 THE COURT: Okay. And I want to do 50, which
15 is that preliminary instruction. 601, you say?

16 MS. SCHNEIDER: Yes.

17 THE COURT: Okay.

18 (Recess had from 12:05 p.m. to 1:30 p.m.)

19 THE COURT: The record should show the
20 defense is here, stand-by attorney is here, district
21 attorney, and his assistant deputy is here. And we'll
22 bring in the jury.

23 MR. PETER ROTH: Your Honor?

24 THE COURT: Yes. Just a minute.

25 MR. PETER ROTH: He had a couple of things he

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

wanted to make.

MR. HUDSON: I would like to address the Court to? One is, will we be allowed to add to the record on the venue question?

THE COURT: That issue is closed.

MR. HUDSON: I didn't know that you -- all right.

THE COURT: We've addressed it at least twice.

MR. HUDSON: Okay. Another one is motion to strike entire panel on basis of number of people saying I was guilty.

THE COURT: Denied.

MR. HUDSON: Okay. I'd like the jury sequestered.

THE COURT: Denied.

MR. HUDSON: Okay.

THE COURT: Bring in the jury.

* * * * *

(In the presence of the jury)

THE COURT: You may be seated. Just as a matter of housekeeping, when you come in from the jury room, you don't have to sit in the same seat each time. Just come in and fill up the seats, whatever order you are in. It's much more convenient.

1 Ladies and gentlemen of the jury, before the trial
2 begins, there are certain instructions you should have
3 to better understand your functions as jurors and how
4 you should conduct yourself during the trial. Your
5 duty is to decide the case based upon the evidence
6 presented and the law given to you by the Court.

7 Do not let any personal feelings or bias or
8 prejudice about such things as race, religion, national
9 origin, sex or age affect your deliberations. Do not
10 begin your deliberations or discussions in the case
11 until all the evidence is presented and I have
12 instructed you on the law. Do not discuss the case
13 among yourselves or with anyone else until your final
14 deliberations in the jury room. We will stop or recess
15 from time to time during the trial. You may be excused
16 from the courtroom when it is necessary for me to hear
17 legal arguments from the lawyers or the parties. If
18 you come in contact with the parties, the lawyers or
19 witnesses, do not speak with them. For their part, the
20 parties, lawyers and witnesses will not contact or
21 speak with you, the jurors.

22 Do not listen to any conversation about the case.
23 Do not read any newspaper reports or listen to any news
24 reports on the radio or television about this trial.
25 Do not investigate this case on your own or visit the

1 scene. Do not engage in any experimentation or
2 research relating to any issue of facts in this case.
3 Anything you see or hear outside the courtroom is not
4 evidence. You are to decide the case solely on the
5 evidence offered and received at trial.

6 Evidence is, first, the sworn testimony of
7 witnesses, both on direct and cross-examination,
8 regardless of who called the witness; second, the
9 exhibits the Court has received, whether or not an
10 exhibit goes to the jury room; third, any facts to
11 which the lawyers have agreed or stipulated or which
12 the Court has directed you to find.

13 You will not have a copy of the written transcript
14 of the trial testimony available to you for use during
15 deliberations. Therefore, you should pay careful
16 attention to all the testimony because you must rely on
17 your memory of the evidence -- of the evidence and
18 testimony introduced during the trial.

19 It is the duty of the jury to scrutinize and to
20 weigh the testimony of witnesses and determine the
21 effect of the evidence as a whole. You are the sole
22 judges of the credibility, that is, the believability
23 of the witnesses, and of the weight to be given to
24 their testimony.

25 In determining the credibility of each witness and

1 the weight you give to the testimony of each witness,
2 consider these factors: whether the witness has an
3 interest or lack of interest in the result of this
4 trial; the witness's conduct, appearance and demeanor
5 on the witness stand; the clearness or lack of
6 clearness of the witness's recollection; the
7 opportunity the witness had to be observing and for
8 knowing the matters the witness testified about; the
9 reasonableness of the witness's testimony; the apparent
10 intelligence of the witness; bias or prejudice, if any
11 has been shown; possible motives for falsifying
12 testimony; and all other facts and circumstances during
13 the trial which tend either to support or discredit the
14 testimony. Then give to the testimony of each witness
15 the weight you believe it should receive.

16 There is no magic way for you to evaluate the
17 testimony. Instead, you should use your common sense
18 and experience in everyday life. You determine for
19 yourselves the reliability of things people say to you.
20 You should do the same thing here.

21 Mr. Biskupic and Mr. --

22 One more instruction. The defendant, Kenneth
23 Hudson, has entered two pleas to the charges against
24 him, first degree intentional homicide, attempted first
25 degree intentional homicide, attempted kidnapping, and

1 recklessly endangering the safety of another. He has
2 joined the plea of not guilty with a plea of not guilty
3 by reason of mental disease or defect.

4 The law requires that the issues raised by the two
5 pleas be decided in a continuous trial that is
6 separated into two phases. Your verdict will be taken
7 at the end of each phase. You are to consider only the
8 issues presented to you during each phase. You are not
9 to consider any issues other than those presented to
10 you for each verdict.

11 In the first phase of this trial, you will be
12 asked to determine if the defendant is guilty of the
13 charges of first degree intentional homicide, attempted
14 first degree intentional homicide, attempted
15 kidnapping, and reckless endangering safety. You will
16 make this determination solely upon the facts which
17 deal with the actual incident alleged in the
18 information.

19 During the first phase, you will not be asked to
20 determine whether, at the time of the incident, the
21 defendant was suffering from mental disease or defect.
22 If, after the first phase of the trial, you find the
23 defendant not guilty, the trial will be over. If you
24 find the defendant guilty, the trial will then move to
25 the second phase.

1 During the second phase, you'll be asked to
2 determine whether the defendant is responsible for the
3 criminal act. Wisconsin law provides that a person is
4 not responsible for a criminal act if, at the time it
5 was committed, he had a mental disease or defect, as a
6 result of which he lacked substantial capacity, either
7 to appreciate the wrongfulness of his conduct or to
8 confirm his conduct to the requirements of law. If the
9 trial proceeds into the second phase, you will be
10 instructed more fully as to your duties at that time.

11 Evidence will now be received on the first phase
12 of the trial as soon as the opening statements are
13 over. I caution you that this first phase is concerned
14 solely with the question of whether the defendant
15 committed the crimes as set forth in the information.

16 We will now proceed to the opening statements.
17 However, the statements are a guide as to what they
18 believe the evidence will prove. It's not evidence,
19 and it shouldn't be considered by you as evidence.
20 They're just the comments of the parties and the
21 attorneys.

22 You may proceed, Mr. Biskupic.

23 MR. BISKUPIC: Good afternoon. As mentioned
24 this morning, my name is Vince Biskupic. I'm the
25 district attorney for Outagamie County. And during the

1 course of this trial, I'll be assisted by Deputy D. A.
2 Carrie Schneider. You've also been introduced to the
3 defendant, who has stand-by counsel, Attorney Carns,
4 and his investigator, Peter Roth, available to him.

5 Now, as Judge Froehlich has mentioned, the State
6 of Wisconsin, who we represent, has brought four
7 separate charges against the defendant, Kenneth Hudson.
8 However, the evidence will show in this case that all
9 four charges relate to a specific time period, in
10 particular, the early evening hours of Sunday, June 25,
11 2000, starting out on the north side of Kaukauna,
12 Wisconsin, and then continuous offenses going into the
13 western part of our county, Outagamie County.

14 Now, the evidence will show in this case that the
15 defendant's actions relate to his anger, to rage, and
16 ultimately evil, motivated by a specific purpose in
17 mind on that Sunday, June 25. You will learn from all
18 his actions, his words, his demeanor, his behavior on
19 that Sunday, that this is a case that involves anger,
20 rage and evil, anger, rage and evil all for one
21 specific purpose. And the evidence will show that
22 despite the defendant's anger, rage and evil on that
23 day, this is a case that involves specifically
24 intentional acts, acts that are cold and calculated,
25 acts that were thought out and intentional, planned in

1 a particular -- in a particular way with a particular
2 purpose in mind. And you'll learn that this
3 defendant's specific purpose in mind on that Sunday
4 early evening was to vent his frustration, to let out
5 steam, to let out, in fact, anger and rage towards a
6 woman, and not necessarily any particular woman, but
7 the evidence will show he was looking to vent his anger
8 and rage towards any woman he could get his hands on.
9 And you will learn from the evidence and testimony that
10 he wanted to vent his anger and rage as a response, as
11 a response to things that had happened to him in the
12 previous 24 hours; and, in particular, as a response to
13 things that two particular women had caused for him
14 within the previous 24 hours.

15 You will learn from the evidence and testimony
16 that within the previous 24 hours to these crimes, the
17 defendant, Kenneth A. Hudson, had been dealt an
18 emotional blow, an emotional blow from two particular
19 people in his life that were probably two of the
20 closest people to him, two women, in fact, one, his
21 mother, and one, his girlfriend, a lady named Danita
22 Scharenbroch; that both of these ladies, within the
23 previous hours of these crimes and, in fact, overall in
24 the previous 24 hours, had dealt this defendant an
25 emotional blow, and he was going to respond to it.

1 And you will learn that emotional blow was in the
2 form of flat-out rejection. These two women that were
3 important in the defendant's life flat-out rejected him
4 within the previous 24 hours of the crime, his mother
5 first and then later on his girlfriend. And although
6 the evidence will show that at least as of Sunday
7 morning, June 25, 2000, the defendant was able to vent
8 his anger to some degree, you'll learn that that was
9 only verbal venting; that, in fact, as the day went on
10 and his anger boiled up and he was looking to
11 physically vent, his mother was no longer around and
12 his girlfriend was not around either.

13 The evidence will show that later in the day on
14 June 25, 2000, when the defendant's anger and rage
15 peaked and, in fact, it turned to what you'll learn was
16 evil in this case, that the only person around was an
17 innocent bystander.

18 You'll learn from the evidence and testimony that,
19 unfortunately, at the time that the defendant's anger
20 and rage peaked to the point that he wanted to vent
21 physically, the only person that was around was a young
22 woman named Shanna Marie Van Dyn Hoven. You'll learn
23 that this young woman was in an isolated situation, a
24 vulnerable situation, and you'll in fact learn that at
25 the time, she was barely even a woman, age 19 at the

1 time, having just turned 19 about a month earlier.

2 You'll learn some background on Shanna during the
3 testimony, and you'll learn that she was a graduate of
4 Kaukauna High School at the time; that she had just
5 been home from her first year of college at U. W.
6 Madison after her freshman year. And you will learn
7 that at the time of the offenses towards her, that she
8 had no clue whatsoever who this defendant was; that in
9 fact, at this time, at the time of these offenses
10 towards her, she was totally unsuspecting of the
11 defendant, and she was totally unsuspecting of the
12 anger and violence that would await her.

13 THE COURT: Excuse me.

14 (Pause)

15 MR. BISKUPIC: Okay. The evidence will show
16 that on the early evening of June 25, 2000, Shanna Van
17 Dyn Hoven was totally unsuspecting of the anger and the
18 violence that the defendant, Kenneth A. Hudson, had in
19 store for her. The evidence will show that that anger
20 and violence ultimately resulted in acts that ended her
21 life.

22 The evidence will show from the physical evidence,
23 from witness testimony, from statements, that her death
24 was solely at the hands of this defendant, Kenneth A.
25 Hudson. And in fact, that his actions and his actions

1 alone start us on the course, on a path that brings us
2 here today with the four charges that you will sit as
3 jurors on and decide guilt or innocence.

4 The evidence -- and the judge has mentioned this,
5 that there are four specific charges. The first count
6 related to a charge of first degree intentional
7 homicide for the stabbing death of Shanna Van Dyn Hoven
8 on June 25, 2000.

9 There's a second count that also relates to Shanna
10 Van Dyn Hoven and, specifically, the judge will give
11 you all the elements at the end of the case, but it
12 relates to a charge of attempted kidnapping, for the
13 defendant forcing Shanna into his truck to secretly
14 confine her on that same day.

15 You'll learn that the third count relates to
16 another party, and specifically a charge of attempted
17 first degree intentional homicide for acts by the
18 defendant to try to kill a citizen witness named David
19 Carnot, a neighbor near the scene of the original
20 stabbing who was trying to come to Shanna's aid and
21 ended up having to deal with the defendant, the
22 evidence will show.

23 And finally, the fourth count, recklessly
24 endangering the safety of Kaukauna Police Officer
25 Robert Patschke. The evidence will show that that

1 relates to an approximate 16-mile case from the
2 original stabbing scene, through areas north of
3 Kaukauna, then over towards Appleton, and all the way
4 out to the area of Greenville and Hortonville.

5 Now, Judge Froehlich has told you and you heard in
6 jury selection that the State has the burden of proof
7 in this case; that it's our duty to come forward with
8 evidence to prove all four counts and all elements
9 within those counts beyond a reasonable doubt. And
10 based on the evidence and testimony that we will
11 present to you with exhibits, with tests, with witness
12 testimony, we wholeheartedly accept that burden of
13 proof in this case. It's a burden that we won't try
14 and avoid or dodge in any way. It's a burden we won't
15 try and hide from, and it's a burden we won't try and
16 hide behind. Throughout this case, we accept that
17 burden continuously to prove from all the evidence,
18 head on, that this defendant committed all four
19 offenses beyond a reasonable doubt.

20 Now, you have been introduced to the defendant,
21 Kenneth Hudson, and through the testimony and evidence
22 that the State will present to you over the next few
23 days, we'll introduce you to several other people that
24 are important to this case that will describe to you
25 what they observed or what they tested or maybe even

1 photographs or things that they picked up regarding
2 physical evidence; and you'll learn that the State's
3 witnesses come from a variety of backgrounds, a variety
4 of life experiences and specialties regarding their
5 work, and you'll also learn they come to this case by
6 many different paths, many different paths to this
7 courtroom. And you will learn that this case is about
8 these people taking different paths not only to this
9 courtroom but also encountering each other,
10 encountering the defendant, encountering the victim,
11 encountering pieces of physical evidence by many
12 different paths and, obviously, from many different
13 backgrounds.

14 You will learn, regarding the background of these
15 witnesses, that some of them are medical professionals,
16 some of the witnesses are from the law enforcement
17 community, and some of the witnesses come from the
18 scientific community, particularly the State Crime Lab.
19 And then the remainder of the witnesses, you will
20 learn, will be everyday citizens, generally from the
21 Kaukauna community on the north side of the town, but a
22 few citizen witnesses from other areas of our county.

23 Now, it is likely during this first week or first
24 few days of the trial that the State will present to
25 you, probably at a minimum, three to four dozen

1 witnesses. They will be here basically to shepherd in
2 or escort in information to you as the givers of
3 information that you will take in and decide what you
4 want to give great weight or little weight to. But all
5 of that evidence, in aggregate, will prove to you,
6 beyond any reasonable doubt, that this defendant
7 committed all four offenses as charged.

8 Now, I have mentioned to you that the evidence
9 will show that these witnesses came to this case or
10 came to the evidence by many different paths in their
11 life. And you will learn that all of the witnesses in
12 this case, including the defendant, were involved in
13 this case because of the paths they chose, and you will
14 learn from the evidence that the variety of paths
15 involved in this case are some paths that are literal
16 and some that are figurative.

17 You will learn that some of the literal paths of
18 this case involved things such as roads, highways,
19 different streets of Outagamie County that are a part
20 of this case that some of our witnesses traveled on as
21 it relates to the time period, on or about June 5 of
22 2000; but regarding figurative paths, you'll learn that
23 those are probably more important in this case; that
24 the defendant and some of the witnesses in this case
25 went down some figurative paths regarding to their

1 decisions and some of their thought process and choices
2 as it relates to June 25 of 2000.

3 The evidence will show that the key paths in this
4 case for the defendant are the figurative paths that he
5 took leading up to and on June 25 of 2000. Although
6 the evidence will show that on that particular day,
7 June 25, 2000, he traveled many miles in his vehicle,
8 in his pickup truck, and that those are relevant --
9 those travels are relevant to this case, figuratively,
10 it was his decision and choices on that same day that
11 led to his travels down a more important path, his
12 choices and decisions to travel down a path of
13 violence, a path of destruction, a path of evil that
14 ultimately ended the life of an innocent young lady
15 named Shanna Van Dyn Hoven.

16 Although you will hear about Shanna many times
17 throughout this case, one of the earlier important
18 witnesses that you'll hear from that is relevant to
19 this case is a Kaukauna resident up on Grandview Lane
20 named David Carnot. You will learn a lot about David
21 Carnot in this case. He's an important key witness.
22 And you will also learn about David Carnot's
23 neighborhood. The State will present to you a number
24 of maps and photographs, including some aerial
25 photographs to lay out the scene of where many of these

1 activities took place. And you'll be in a position to
2 observe those on either easels or up on the board, and
3 if need be, during the course of the case, you may want
4 to shift seats because it may be harder to see from the
5 back for certain people, but those maps and those
6 diagrams, those pictures, will describe to you the
7 neighborhood of David Carnot.

8 And you'll learn that it's a neighborhood on the
9 north side of Kaukauna, just north of Murphy's Quarry.
10 And by way of example, I'll set up there one of the
11 photo exhibits that we will be presenting into evidence
12 that it's actually a view from north to south, with
13 south on the bottom of Murphy's Quarry; and that the
14 relevant neighborhood in this case, you'll learn from
15 the evidence, is to the bottom of the photo, actually
16 north of the quarry, and it's the neighborhood of David
17 Carnot. And you'll learn that David Carnot and his
18 wife Lisa and their children have lived in that
19 neighborhood for a number of years and also during the
20 time period of June 25, 2000. And you'll really learn
21 quite a bit about that neighborhood in this case; that
22 it's really your typical type of ideal apple pie,
23 all-American type of neighborhood that many families,
24 young families, older families, would dream about
25 living in. It's a nice residential neighborhood, nice

1 homes. There's aspects -- even though it is within the
2 city limits, there's aspects of nature involved in that
3 neighborhood with trees and hills, and also aspects to
4 the south of nature with the river.

5 You'll learn that there's a number of parks
6 nearby. One big one you can see is Grignon Park.
7 There's also Strausberg Park, and there's also a nearby
8 park, City Park, and a number of schools within a
9 reasonable walking distance.

10 And for purposes of parents and people working in
11 the neighborhood, you'll learn that it's a neighborhood
12 that also has easy access to the highways, to go to an
13 industrial park on the north side of the town, and also
14 any other work location via Highway 41. You'll learn a
15 lot about this neighborhood in the State's case through
16 the evidence and testimony.

17 You'll also learn that not only was this
18 all-American, apple pie type of neighborhood the home
19 of David Carnot for a number of years, but it was also
20 the home of Shanna Van Dyn Hoven for all of her 19
21 years, living on Garfield Street, a block or two from
22 Carnot, Garfield Street being down at the very bottom
23 edge of the picture, you'll learn, and you'll learn
24 that Shanna lived there her entire life with her
25 brother David and with her parents, Steve and Nancy Van

1 Dyn Hoven.

2 And you'll learn that up through June 25 of 2000,
3 Shanna and her neighbor, Dave Carnot, who plays such a
4 key role in this case, never really crossed paths in
5 any significant way. They may have seen each other, at
6 best, maybe even waved, but didn't really know each
7 other in any significant way. But you'll learn through
8 the evidence and testimony that that changed quite a
9 bit on the early evening hours of June 25 of 2000, when
10 David Carnot was compelled by concern, by emotion, or
11 just by goodwill to try and come to the aid of a
12 neighbor, and you'll learn that that neighbor was
13 Shanna Van Dyn Hoven. And you will learn that by
14 goodwill, he was compelled to come to her aid when she
15 was in a dire situation and definitely in the need of
16 help.

17 What led to Shanna's need for help on a clear and
18 pleasant day in the early evening of June 25, 2000, in
19 this all-American neighborhood in Kaukauna? The
20 evidence will show that this pleasant neighborhood was
21 something that she took advantage of for her
22 activities, innocent things such as just getting some
23 exercise, going out for a jog. And you will learn that
24 on that pleasant Sunday evening, she decided to go out,
25 after working earlier in that day and taking a nap, she

1 decided to go out for a jog. And the evidence will
2 show that that was something that she had done on
3 somewhat of a regular basis.

4 You'll learn that she had a particular route
5 coming out of Garfield and going more to the west down
6 Lawe Street and around where she could access Augustine
7 Street, which is the street to the top of the quarry,
8 and that was part of her jogging route where she would
9 go down Augustine Street and jog up Plank Road, which
10 is the street down towards the bottom of the quarry
11 where you can see three quarry entrances.

12 The evidence will show that on that particular
13 day, while out for a jog, and with her neighbor, David
14 Carnot, out doing some yard work, Shanna basically had
15 in store for her a pleasant, relaxing thing, to get
16 some exercise. But you'll find out, unfortunately,
17 from the testimony, that she encountered something that
18 was completely unpleasant. And certainly when she
19 encountered a particular person, you'll find out it was
20 someone who didn't have goodwill in mind, didn't have
21 pleasant intentions, and didn't have concern for others
22 on his mind when she encountered this particular
23 individual. That, you'll learn, was the defendant,
24 Kenneth A. Hudson.

25 The evidence will show that shortly after 6:00

1 p.m. on that day when Shanna was on the home stretch of
2 about a two- to three-mile jog on Plank Road near
3 Murphy's Quarry -- and you can see the entrances
4 there -- when she was about a third of a mile from her
5 home and the safety of her family, she was encountered
6 by the defendant and a particular defendant whose rage
7 and whose emotions were ready to boil over.

8 The evidence will show that up to that point on
9 that Sunday, Kenneth A. Hudson was having anything but
10 a pleasant day, you'll learn through some of the
11 testimony and police information regarding Mr. Hudson
12 and his background.

13 The evidence will show that the defendant is
14 originally from Buffalo, New York. He'd been living in
15 our area for about a year to a year-and-a-half and had
16 been employed as a roofer.

17 The evidence will show that during his time here
18 in the Fox Cities, he had basically been living the
19 life of somewhat of a loner, somewhat isolated, as most
20 of his family was back in the New York area.

21 The evidence will show that by the fall of 1999,
22 Hudson, this defendant, ended somewhat of his isolated
23 existence when he hooked up with a girlfriend, and
24 you'll hear about this woman, a woman named Danita
25 Scharenbroch, from Little Chute, Wisconsin.

1 The evidence will show from late 1999 through June
2 of 2000, other than his roofing work, Danita
3 Scharenbroch was the main focus in this defendant's
4 life; and, in fact, by his own words, you'll hear from
5 police officers, that was probably the only thing that
6 he felt positive about in his life, was his girlfriend,
7 Danita.

8 The evidence will show that he carried on this
9 relationship with Danita up through June of 2000 and
10 that a time period towards the end of the month, in
11 particular, the weekend of June 23, June 24, June 25,
12 the key date in question in this case, he decided to at
13 least make another effort to re-establish a tie with a
14 former key woman in his life, and that being his
15 mother, Lorraine.

16 The evidence will show that he, in particular,
17 invited his mother Lorraine to come out from New York
18 for a weekend of camping so he could show her that he
19 had been doing some successful things as a roofer. He
20 had saved some money and wanted to introduce her to his
21 girlfriend, Danita. The evidence will show that, in
22 fact, a weekend was planned in an area near Lakewood,
23 up north on some camping ground that his girlfriend
24 Danita had.

25 The evidence will show that his mother did come up

1 with his stepfather from New York and that a few other
2 people joined this group up at the campground near
3 Lakewood. But the evidence will show, because of
4 friction in the relationship, tumultuous relationship
5 between the defendant and his mother, the weekend was
6 anything but pleasant. And in fact, the tumultuous
7 relationship continued with bickering and arguing on
8 that weekend.

9 In fact, the evidence will show that things got so
10 unpleasant or awkward that weekend that it resulted in
11 some arguments and some blow-ups and, ultimately, his
12 mother Lorraine just decided to pick up and leave and
13 go back to the Fox Cities and, ultimately, make
14 arrangements to go back to New York. And you'll learn
15 that this, in particular, caused an emotional blow to
16 the defendant. In fact, it angered him and it enraged
17 him.

18 The evidence will show that not only did his
19 mother enrage him on that particular weekend, by Sunday
20 morning, the only other important woman in his life,
21 Danita Scharenbroch, also ticked him off, also set him
22 off in regard to his anger.

23 The evidence will show that because of the
24 defendant's hostile behavior up at the campground,
25 Danita also expressed that she had enough with him and

1 that she was going to pack up and leave the campground
2 with her children. You'll learn that she, in
3 particular, told the defendant not only that she was
4 leaving that weekend, but their relationship was over;
5 that that was the end of it; that she was rejecting
6 him. Despite their eight or nine months together,
7 their relationship was over. She packs up and leaves
8 the campground by Sunday morning, leaving this
9 defendant, once again, alone and isolated.

10 Now, because of this rejection by both his mother
11 and his girlfriend, this defendant's anger and rage
12 boiled up, and, in fact, you'll hear testimony from
13 somebody up at that campground, a citizen witness, a
14 lady named Shirley Schultz, a friend of Danita's who
15 was invited to go camping up with them near Lakewood,
16 and you'll hear testimony directly from Shirley Schultz
17 about how she had known Danita for a period of time and
18 also got to know the defendant and got to observe his
19 demeanor and behavior over the eight or nine months
20 that Danita was dating him and that when she was
21 specifically up with him at this campground, she saw a
22 level of anger, a level of rage that she had never seen
23 before, and, in particular, regarding a big argument, a
24 blow-out between the defendant and his girlfriend on
25 that Sunday morning, June 25, and you'll learn from

1 that citizen witness, Shirley Schultz, that the
2 defendant's anger and rage got to such a point that
3 while Shirley was washing up in the shack there, the
4 defendant came in, was in a fit of rage, had just
5 gotten over an argument with Danita and made the
6 comment to Shirley, I could kill her, in reference to
7 his argument that he just had and, in fact, he stormed
8 out, but he particularly made that comment, quote, I
9 could kill her.

10 You'll learn from Shirley that that was a level of
11 anger and range that she had never seen in the
12 defendant before. The evidence will show that people
13 cleared out of the campground, leaving the defendant
14 alone, and before the defendant could do anything
15 physical in the sense of violence, he was left alone at
16 that campground.

17 The evidence will show that by that early Sunday
18 afternoon, he, too, packed up in a frustrated and angry
19 mood. He started back to the Fox Cities, traveling in
20 a very distinct-looking, rusty, beat-up, dark-colored
21 1985 pickup truck with a white cap on the back and
22 pulling a 14-foot boat. You'll hear a lot about that
23 truck and that trailer and that boat throughout this
24 case, but that's what the defendant came back to the
25 Fox Cities in.

1 The evidence will show that during the drive back
2 to the area, the defendant was basically stewing. He
3 was frustrated. He was angry. He had been rejected by
4 the two main people in his life, and he was going to go
5 back to the Fox Valley and vent, in some way, to let
6 out his frustrations.

7 The evidence will show that during that afternoon,
8 he had a few beers to deal with his frustrations to
9 some degree, and you'll learn that once he was back in
10 the Fox Cities, there were a few citizen witnesses that
11 were able to account for his whereabouts on that late
12 Sunday afternoon. In particular, you'll be introduced
13 to some of them.

14 Some of the first ones in regard to time sequence
15 that you'll hear about were two employees of the K-Mart
16 on West College Avenue, and you'll learn that since
17 this case in June of 2000, the K-Mart has moved even
18 farther out west, but when it was at its older location
19 on the south side of College Avenue, west of downtown
20 Appleton, there were two particular employees working
21 there, one, a young cashier, about a 17- or 18-year-old
22 kid name Jeremy Vetter; and then an older guy -- well,
23 older, in his mid forties, named Alvin Thies, who goes
24 by the name Bud; and that Mr. Thies at the time of
25 Sunday, June 25, 2000, was working at that store as the

1 manager of the sporting goods section.

2 Now, you'll learn that at about 4:30 or a little
3 bit later, these two citizens had a chance to observe
4 the defendant, Kenneth A. Hudson, his mood, his
5 demeanor, his actions. And you'll learn first, in
6 particular, Bud Thies saw the defendant basically come
7 into the K-Mart, walk into the sporting goods section,
8 and you'll hear Mr. Thies describe the defendant's
9 demeanor as basically somebody who just exuded
10 hostility or anger; that he basically walked over to
11 the big display case of knives that has all sorts of
12 sporting goods knives, knives you can use for any
13 purposes, including narrow little ones that you fillet
14 a fish with, different types of grips, different types
15 of bigger knives; and, in particular, Mr. Thies saw the
16 defendant look at this big display of knives and pick
17 out one in particular.

18 You will learn that the knife he chose to pick out
19 at about -- between 4:30 and 4:40 p.m., was a hunting
20 knife. And you'll see the wrapper of the particular
21 knife in question, and you will learn that this
22 defendant, in his angry state that Mr. Thies saw,
23 picked out a five-inch blade hunting knife.

24 You'll learn that the defendant ultimately went to
25 a cashier's station where this young Jeremy was

1 working, and Jeremy, in particular, made note of the
2 fact that the defendant seemed a little out of sorts.
3 I think Jeremy describes it as somewhat nervous because
4 Jeremy asked him a question, some identification
5 information, I think, regarding his date of birth or
6 some other background, and the defendant was a little
7 bit rattled by that and seemed nervous.

8 The evidence will show then that probably no later
9 than 4:45, the defendant departed K-Mart with this
10 five-inch bladed hunting knife, and he's next seen by
11 some citizen witnesses on the west side of Appleton, in
12 particular, in another residential neighborhood, the
13 area of Oak Street, kind of by West High School. And
14 you'll learn from a couple of citizen witnesses over
15 there, two ladies, one named Kathryn Moy-Bye, and her
16 neighbor across the street, a lady named Kate Vance,
17 that they were around their neighborhood, either by
18 windows or out in their yards about 5:05, 5:10, in that
19 range; and that, in particular, Miss Moy-Bye was back
20 from a weekend up north and that she had returned home
21 about five o'clock. And that at that time, she had her
22 daughter, 20-year-old daughter, Erin, who is also a
23 UW-Madison student who had been at the house since
24 about four o'clock that day. And you'll learn that
25 Erin had been there after in fact being up north

1 herself with some younger people in a place called Bass
2 Lake, which is actually not too far from where the
3 defendant was camping.

4 You'll learn that Erin was home from about four to
5 five alone; that her mom comes home and is unpacking
6 things and notices this distinctive pickup truck with a
7 trailer on it on their street. And she notices a
8 particular, odd maneuver of the defendant trying to
9 turn the truck around or maneuver it in some fashion
10 right by her neighbor's house. And you'll also learn
11 from Kate Vance that she saw that in particular, saw
12 the distinctive truck, distinctive boat, and the
13 defendant basically maneuvering around a very
14 residential neighborhood in an odd fashion with his
15 truck. The evidence will show that Mrs. Moy-Bye saw
16 him and that he turned around and left the neighborhood
17 at a high rate of speed around 5:11 p.m.

18 Now, in time sequence, the next citizen that sees
19 him is over in Kaukauna, and you'll learn that it's
20 maybe about 15 or 20 minutes from that neighborhood
21 over to the quarry. And you'll learn that sometime
22 after 5:30, probably closer to about 5:50, a citizen
23 from the north side of Kaukauna, a guy named John
24 Panetti, once again spots this distinctive truck, and
25 you'll learn that Panetti, sometime around 5:30 to

1 5:50, is driving around this area of Murphy's Quarry,
2 actually to the south, because he hears that the city
3 may be selling off some land or there's other property,
4 private property for sale; and that he's a businessman
5 and is interested in purchasing some property.

6 So he's out for a drive with one of his company
7 trucks -- I think it's a business called Team Services
8 or Team Industries -- and he's traveling on Augustine
9 Street, so that's from the right to the left of the
10 photo at the top before the quarry, and he makes the
11 turn of Plank Road, which is the intersection at the
12 top left of the photo, three-way intersection; and that
13 when he makes the turn and starts heading to the right
14 of the photo, which is back to the east on Plank Road,
15 he comes upon that first quarry entrance between the
16 trees as you see it go into the quarry; and that
17 knowing that neighborhood and what kind of activity
18 goes on, he thought it was kind of odd when he spotted
19 what you'll learn was the defendant's pickup truck
20 backed in to that first quarry entrance about ten to
21 6:00 p.m., with the boat on it and the truck facing out
22 so it's backed up against the gate in between the woods
23 there on that first entrance. You'll learn that
24 Panetti drove by. He made note of the vehicle;
25 couldn't, in particular, notice if there was a driver

1 in there or not but did notice this distinctive-looking
2 vehicle and thought it was somewhat odd because it was
3 Sunday and the quarry was closed. But he didn't really
4 understand the greater significance of that vehicle
5 being parked there until later on after he found out
6 what happened with Shanna.

7 The evidence will show that up to that point of
8 seeing the defendant's truck shortly before 6:00 p.m.,
9 no other citizen can confirm the whereabouts of this
10 defendant or his truck. You'll learn that, however,
11 despite this lapse of time leading up to six o'clock or
12 shortly before there, the defendant's mood, you'll
13 learn from the evidence and testimony, was still one of
14 anger and one of rage.

15 In time sequence, you'll learn information from
16 other citizen witnesses and one in particular is a guy
17 named Mike Borchert who has basically got the only
18 house at the corner of that intersection of Augustine
19 and Plank Road on the northwest corner.

20 You'll be introduced to Mike Borchert, a long-time
21 Kaukauna resident; had been living on that corner for a
22 number of months, although he had lived in Kaukauna for
23 most of his life. And you will learn that on that
24 evening hours, roughly between 5:30 and 6:00 forward,
25 he had been working out in his yard, working on a

1 go-cart, also doing some other yard work; and that he
2 remembers seeing John Panetti go by, because they work
3 at the same place, and you'll learn that about a good
4 ten minutes or so pass by after Panetti goes by, he
5 sees Shanna Van Dyn Hoven out for a jog, that being a
6 little bit after 6:00, at best. And you'll learn that,
7 although Mike Borchert didn't necessarily know Shanna
8 Van Dyn Hoven personally, he had been aware of her from
9 prior occasions, because that was her jogging route.
10 He would see her go by the same route on a regular
11 basis in the neighborhood and, in particular, in the
12 month or so leading up to these crimes.

13 You'll learn that when Borchert saw Shanna drive
14 by -- or jog by -- pardon me -- she appeared to be in a
15 pleasant mood. She waved in a friendly fashion and
16 smiled at him, and he waved back, as you would expect a
17 friendly neighbor to do.

18 The testimony from Borchert will be that he then
19 saw Shanna with her running clothes on, shorts, a
20 T-shirt, headphones and a walkman, continue her jog up
21 the hill. You'll learn that that's a hill that --
22 region from Augustine, up Plank Road, up to that first
23 quarry residence (sic); that he saw her continue on the
24 right-hand side of the road up Plank Road to the west.

25 You will learn from the evidence and some

1 measurements and approximations that there's really no
2 other houses on Plank Road until you get past those
3 three quarry residence -- or quarry entrances until you
4 get up to the next intersection, which is Florence
5 Street, and different officers and different citizens
6 will point out the particular names of the street. And
7 we will show you a blown-up city map so you can get all
8 your streets straight regarding the evidence in this
9 case.

10 Borchert sees her run up to the right of the road,
11 and you'll learn that it's about, oh, maybe 200 yards
12 or less to the first quarry entrance, over the hill on
13 Plank Road to where Panetti had seen the defendant's
14 truck a good ten minutes earlier on that evening. And
15 you'll learn from the evidence and testimony in this
16 case that, as Shanna continued to jog up the hill, she
17 reached a point just past that first quarry entrance,
18 shortly before that second one, still with trees in
19 front of it where she encountered something that the
20 evidence and testimony will clearly show was nothing
21 short of a surprise attack or, actually, nothing short
22 of an ambush, a point prior to that second gate, no
23 more than about 40 or 50 feet from that second gate at
24 Murphy's Quarry.

25 You will learn from the evidence and testimony

1 that shortly after 6:00 p.m., after Shanna ran by, the
2 defendant pulled his truck onto Plank Road, from the
3 place where he was laying in wait, drove that truck a
4 short distance, that distinctive truck, dark in color
5 with the rust points -- rust spots on the trailer and
6 the boat, and he drove that distinctive truck out of
7 that first entrance, to a key point where his path
8 would cross the path of Shanna Van Dyn Hoven. And
9 you'll learn regarding that key point in the road about
10 40 feet short of that second entrance, and you'll learn
11 from the evidence that at that key point on the road
12 and at that key point in time, as their paths crossed,
13 happiness met anger. A smile met a scowl. At that key
14 point and that key time on the road, you'll learn from
15 the evidence and testimony that peace met anger; that
16 innocence met evil; that flesh was met with a blade;
17 and, ultimately, life met death.

18 The evidence will show that this was an ambush;
19 that the defendant was able to sneak up on Shanna; that
20 the evidence will show that he had subdued his target,
21 the 19-year-old girl, with physical blows, and at least
22 one plunge with a knife, blade to her flesh, in
23 particular, her back at first.

24 The evidence will show that at least one plunge of
25 the knife early on was outside his truck, and then he

1 tried to isolate her even more to do what he --
2 whatever he wanted with her, pushing and pulling her
3 into the passenger's side of a truck. The evidence
4 will show that his efforts, pulling and pushing this
5 struggling, young 19-year-old girl into the truck were
6 done with the specific purpose to confine her and to
7 control her, with the goal in mind of controlling a
8 woman, something that the defendant had failed to do
9 earlier in the day and over the weekend in regard to
10 the frustrations with his mother and with his
11 girlfriend. He couldn't control the women in his life,
12 so he decided to go on a hunt that Sunday afternoon to
13 find a woman that could be easy prey, easier to control
14 and easier to use as he saw fit, the evidence will
15 show, to let out his frustration, to let out his anger,
16 to let out his rage, the evidence will show.

17 The evidence will show that because of the
18 isolated location of the jog at that point, the fact
19 that she had headphones on, operating a walkman that
20 diverted her attention, and the fact that her attacker
21 had a knife on him, Shanna Van Dyn Hoven was an easy
22 target for this defendant.

23 Now, the evidence will show that although she was
24 an easy target for this defendant, because of her
25 physical condition, because of her spirit, because of

1 her will, even though she was surprised, you'll learn
2 that she wasn't going to go down without a fight. She
3 wasn't going to make this attack for this perpetrator
4 an easy and quick ordeal.

5 You'll learn that after the defendant first
6 wounded her, Shanna fought with the defendant. And
7 there was a period of time where she was able to fight
8 free from him and his attack, including, you'll learn
9 from the physical evidence, she was able to fight her
10 way out of the defendant's truck after he had forced
11 her in. You'll learn how this 19-year-old young girl
12 from the north side of Kaukauna waged the fight of her
13 life when dealing with this defendant, to break free
14 from her attacker, to get out of his truck, to prevent
15 his kidnapping attempt, and to try and prevent being
16 stabbed some more.

17 You'll learn that with a knife wound or two to her
18 back and a defensive wound to her left hand she had
19 sustained from trying to block some of the stabs, she
20 valiantly struggled up the road, back towards the last
21 friendly face she had seen, Mike Borchert, the guy she
22 had just waved to and smiled at and he waved back.
23 You'll learn that she physically struggled back down
24 the road on that same right-hand side, and you'll learn
25 about a blood trail and some other more significant

1 blood marks back towards a few 10, 20, 30 feet back
2 towards the first entrance in the direction of
3 Borchert's house.

4 And you will learn that beyond her physical
5 efforts and her fighting to try and break free from
6 this attacker, she tried to summon help, and you'll
7 learn that she screamed and yelled; and even though
8 there's not some houses immediately nearby that there's
9 a buffer with the woods, she tried to cry out to her
10 neighbors to get the attention of them to try and get
11 them to intervene on her behalf, the evidence will
12 show.

13 The evidence will show that, despite her efforts
14 in fighting free of the defendant -- from the
15 defendant, that, from his perspective, the hunt wasn't
16 over. The evidence will show that the defendant had
17 gotten in his car once he had gotten Shanna in there.
18 Once she fought out and started heading back towards
19 Borchert, he put the truck in reverse, backed it up a
20 few feet on the road, to cut off Shanna's path to
21 safety, to cut off her path to help. Then he got out
22 of the car with knife wielded. He continues to pursue
23 his target, to pursue his prey. He goes along that
24 edge of the road after her. There's more stab wounds,
25 and then ultimately she makes her way across the road

1 to the south side of the road towards the quarry in an
2 effort to get away from him, around his truck.

3 You'll learn that he pursues her around the truck.
4 There is some blood spray on the truck. There is some
5 blood spray on the road that confirms that, but he
6 pursues her across the road, ultimately to the south
7 side just outside his driver's side door as his vehicle
8 is still facing to the west, and he comes upon her
9 basically on the ground with the life going out of her,
10 and he comes upon her, basically to finish the hunt, to
11 finish the kill of this 19-year-old girl. And he does
12 it all with the frustration of his mother and his
13 girlfriend on his mind.

14 In the end, the evidence will show that Shanna's
15 physical fight and yells for help weren't able to save
16 her, but you will learn that those efforts clearly put
17 in motion a series of events that would help slow down
18 Kenneth Hudson and, ultimately, help others apprehend
19 him.

20 The evidence will show that Shanna's calls for
21 help did get through to some neighbors and, in
22 particular, a neighbor just through the woods by that
23 second quarry entrance, and you can see two blue
24 swimming pools in the back yards there with the water
25 in them, and you'll learn that one of those particular

1 houses is the house of David Carnot up a hill, through
2 the woods off of Plank Road, and his house is on
3 Grandview. And you will learn that Shanna's calls for
4 help did get through to David Carnot; and that you will
5 hear that Carnot was in his back yard doing some
6 landscaping or yard work, had a rake in his hand moving
7 some dirt, and that his work was interrupted; that he
8 was expecting it to just be a typical, relaxing Sunday
9 late afternoon, early evening, in his backyard doing
10 some work. His wife was off with the kids in the house
11 around other parts of the house. And you will hear
12 from Carnot that his work, his peaceful, quiet Sunday
13 was interrupted by what are generally described as
14 blood-curdling screams that you will learn came from
15 Shanna; and that he's startled by them. He hears some
16 more, and he reacts. He reacts by deciding to go down
17 a path -- physical path in his life in his
18 neighborhood, through those woods, from those blue
19 swimming pools to that second quarry entrance. And
20 you'll learn that there's not an exactly carved-out
21 path, but there is an ability for people to go through
22 those woods. And there is an apple orchard in that
23 open area and that Carnot makes his way down there
24 after hearing those screams. He's not sure exactly
25 what he's going to encounter, but as the screams

1 continue, he knows it's something that's bad and
2 something that involves somebody being in trouble.

3 You'll learn that he goes through the woods
4 basically just in time to come out on Plank Road to see
5 this defendant, Kenneth Hudson, standing over Shanna's
6 body at the point of her resting, in this case, on
7 Plank Road, and the defendant is standing over her just
8 outside his driver's side door on his pickup truck.

9 You'll learn that Carnot jumps out on the road and
10 basically yells over to the defendant something to the
11 effect of, you know, what the hell's going on? He was
12 in a tense situation. He doesn't know what he's
13 encountering. He wants to find out exactly what is
14 going on. He sees the victim on the road. He sees the
15 defendant standing over her, and he makes this verbal
16 inquiry, what the hell's going on? But the evidence
17 will show that this defendant, Kenneth A. Hudson, was
18 in no mood to get in a discussion, let alone a
19 discussion with somebody that could potentially be a
20 key witness against him, David Carnot, who came upon
21 the crime scene.

22 You will learn that this defendant, knowing that
23 this neighbor, this good Samaritan, Dave Carnot, had
24 seen him at a critical point in his crimes, was
25 somebody that could be a key witness against him and

1 that he was not interested at all in talking to him or
2 trying to get some odd explanation, that he knew --
3 this defendant knew at this point that he had to take
4 some drastic action, more physical action towards this
5 potential eyewitness.

6 The evidence will show that, in fact, he needed to
7 engage in more violence to eliminate the key witness
8 against him. So the evidence will show that once
9 Carnot yelled at the defendant, the defendant jumped in
10 his truck, fired up the engine, basically floored the
11 truck directly towards David Carnot right by that
12 second quarry gate, with this particular target in mind
13 to run him over, to eliminate this witness, and you'll
14 learn that in direct, straight pursuit with his truck,
15 he came straight at Carnot. And the evidence will show
16 that the defendant in fact did strike David Carnot with
17 his truck. Carnot, somewhat being able to react
18 saying, basically, oh, my God. This guy's coming at
19 me.

20 He makes an attempt to climb over the gate at the
21 quarry entrance to the middle entrance. He's hit in
22 the leg by the defendant's truck, knocked to the
23 ground, but is able to get up and climb over the fence
24 to some degree of safety, the evidence will show.

25 The evidence will show that the defendant's truck

1 hit the gate, hit the fencing area there, and then he
2 made efforts to back up the truck off the fence to try
3 and ram Carnot a second time. But unexpectedly for the
4 defendant, you'll learn, that his truck got somewhat
5 hung up on the gate, on the fence; that the left front
6 bumper and the left front tire area got caught up on
7 that fence. And the evidence will show, in fact, that
8 because the truck got caught up on there and was
9 temporarily struck, key parts of that truck fell off
10 and evidence was left at the scene, some damage to the
11 tire, some damage to the lighting area, and a metal
12 strip that was on the truck.

13 You will learn from Carnot and the physical
14 evidence in this case that the defendant eventually was
15 able to unhook his truck. He got it unhooked, backed
16 it up with the trailer kind of jackknifing in the
17 street, and then he fled off from the crime scene to
18 the west of Plank Road at a high rate of speed, leaving
19 some tire marks from the scene.

20 The evidence will show that Carnot and other area
21 residents who had heard some of the yells came upon the
22 scene after Carnot then climbs over the fence to try
23 and come to Shanna's aid. They can see that she's
24 laying on the road just to the east of that middle
25 quarry entrance on the south side of the road with her

1 feet out towards the road. The evidence will show that
2 these people, these neighbors, tried to come to the aid
3 of Shanna, but sadly, you will learn from this
4 evidence, that it was basically too late; that they
5 weren't able to do anything for her because of the
6 significance of her injuries. You'll learn three stab
7 wounds, some very deep to her back with this five-inch
8 knife, a stab wound to her stomach right near her belly
9 button, and a deep five-inch defensive cut to her hand
10 between her pointer finger and her thumb and a variety
11 of other bruises and injuries, that it was really too
12 late for them to help, but although they were there to
13 help a neighbor in need, that the activities of the
14 defendant had been to a point where Shanna,
15 unfortunately, was beyond help, the evidence will show.

16 Now, beyond those efforts of the citizens and the
17 neighbors that came upon the scene -- and you'll learn
18 that some people were actually a little farther out of
19 that neighborhood, came down Plank Road and encountered
20 Shanna on their way to take their kids to soccer
21 practice over at Grignon Park -- that these citizens
22 also play a key role in this case because it relates to
23 evidence collection or spotting evidence and even
24 regarding the apprehension of the defendant.

25 The evidence will show that as this defendant fled

1 the scene in that distinctive pickup truck with the
2 damaged tire, he unintentionally started to leave
3 evidence, physical things, along his flight path. And,
4 in particular, just to the west, even up to the last
5 quarry entrance where there's an office, he left --
6 started leaving pieces of evidence, a ring from his
7 left front tire.

8 As he got farther up the road during his escape
9 route, you'll learn that he started to lose something
10 more significant that actually slowed him up for a
11 period of time. You'll learn that the next street up
12 is Florence Street; and that just past Florence Street
13 is Green Bay Road; and that between those two roads, on
14 Plank Road, the defendant's boat started to fall off.
15 And, in fact, you'll hear from some citizen witnesses
16 that observed that taking place, a couple that lives on
17 Florence Street, a younger couple named Matt and Amy
18 Brittnacher, and you'll learn that they were coming
19 back from some family activity eastbound on Plank Road
20 ready to turn onto Florence Street on a left-hand turn,
21 and Matt starts honking because he sees the defendant's
22 distinctive-looking truck losing the boat, and he
23 doesn't know what else has been happening, but he sees
24 somebody on his road losing a boat. So he's honking at
25 him.

1 In fact, a neighbor or two also spots it, but
2 regarding the Brittnachers in particular, the boat's
3 falling off. They -- the defendant realizes it, too.
4 What does he do to solve this problem? Well, in his
5 thought process, he knows he's got to get rid of this
6 problem, so he gets out of his car after pulling it
7 over -- his truck -- and basically makes some minimal
8 efforts to try and get the boat back on the trailer,
9 but realizing it's going to take a little more effort
10 and time than he has, because he's got to get away from
11 this crime scene, he decides just to let the boat
12 loose, to cut it loose or to just unhook it and leave
13 it in the middle of Plank Road.

14 The evidence will show that Matt and Amy
15 Brittnacher observed that. Matt even yelled from a
16 distance, you know, do you need some help? The
17 defendant refused; hops in his truck and tears off at a
18 high rate of speed, continuing west on Plank Road.

19 You will learn, although it's not on this
20 particular photo, there is some other aerial photos
21 that he continues westbound to get away from this crime
22 scene, and as he's doing that, he's also making a
23 conscious effort, some calculated decisions in his mind
24 to start disposing of some of the evidence. And, in
25 fact, he's got the victim's blood on him and makes some

1 efforts with a rag to wipe off the torso of his body,
2 the trunk of his body, his arms, his hands, with a
3 white rag that was in his truck.

4 You'll learn that just short of Lawe Street, which
5 is one or two more up from the intersection of Plank
6 and Green Bay Road, he takes this bloody rag and throws
7 it out the window, and there's a citizen witness, a man
8 name Melvin Vandembloomer, that saw that and pointed
9 that out to the police. You'll learn that
10 Vandembloomer was over by the top part of that park,
11 Grignon Park. There is a frisbee golf area. And he
12 sees that rag being thrown out of the truck and then
13 the truck speeding off at a high rate of speed,
14 continuing west on Plank and actually coming onto a
15 little more peculiar intersection in Kaukauna, the area
16 of Plank Road, Lawe Street and a street called
17 Delanglade, which is actually Highway 55 that goes
18 north out of Kaukauna.

19 The evidence will show that the defendant then
20 sped off through that intersection, through a stop
21 sign, in his desire to get away from that crime scene.
22 You'll learn that the defendant makes a variety of
23 calculated, intentional decisions in maneuvering away
24 from that crime scene to try and get away from what he
25 had done, to try and get away from, in fact, the

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

authorities, you will learn.

And you will learn that as he proceeds north on 55 in the area of Highway 55 going north towards 41 where that old dog park, the greyhound park, is at, he unexpectedly crosses paths with law enforcement.

Now, you will learn through one of the first law enforcement witnesses about who crossed paths with the defendant in regard to the police. And the first person you'll be introduced from law enforcement to is a veteran police officer named Robert Patschke, and you'll learn that, in fact, he's to the level of sergeant with the police department, and that he's got 25 plus years in law enforcement. He's a former Marine. You'll be introduced to him. You'll see his demeanor. He's somewhat rough at the edges, but working on a Sunday shift, doing patrol on the north side of town. He's heading south on 55 and sees something that catches his attention, not knowing the rest of the story at the time.

The evidence will show that Patschke was in an unmarked squad from Kaukauna, plain vehicle, although it does have a siren and a mobile flashing thing on there that he can use if he needs it. He's heading south on 55. The defendant's heading north, basically down to about three wheels because he's popped his

1 front left tire on that fence. He's shooting off some
2 tire pieces, and Patschke makes note of it. He radios
3 and says, I'm going to pull over a pickup truck to the
4 dispatcher. And you'll hear about some of the dispatch
5 tape and radio activity. He makes a U-turn around and
6 tells the dispatcher, I'm going to stop a truck that's
7 going on three wheels.

8 You'll learn that he turns around. The cross
9 street at 55 is either Badger or OO, heading north out
10 of town. And that eventually Patschke realizes that
11 this truck is really a truck that doesn't want somebody
12 to point out, hey, you've got a flat tire or you're
13 losing your tire. I'm here to help you. This is a
14 truck that the man wants no business whatsoever with
15 law enforcement on that Sunday afternoon.

16 You'll learn that Patschke pursues the vehicle
17 north towards the 41 intersection, right by the old dog
18 park there, and that the truck has no intentions of
19 pulling over. You'll learn that eventually, he sees
20 the truck that the defendant, you'll learn, was
21 operating get on the ramp to go on 41 to the south
22 towards Little Chute, down to Appleton, basically in a
23 west direction from that point, but eventually it's
24 called 41 south.

25 You'll learn that during the course of that

1 pursuit, the defendant realizes he was being chased by
2 a police officer. Patschke turns on his siren and is
3 pursuing the defendant on basically late afternoon,
4 early evening traffic on Highway 41 south. And you'll
5 learn from Patschke that it's pretty active. You've
6 got a summer day, nice temperature, people coming back
7 from up north. And you've got a lot of activity on 41
8 south on those two lanes; and that the defendant, in a
9 calculated fashion -- he's just not, like, driving
10 around like a zombie down the middle of the road. He's
11 making calculated maneuvers, in and out of traffic,
12 sparks flying from the wheel of his tire. Some pieces
13 of rubber still remaining, shooting off back at
14 Patschke. Patschke, realizing it's a dangerous
15 situation to the citizens on the road, continues to
16 pursue, and the defendant continues to put that officer
17 in a dangerous situation, endangering his safety by
18 sparks shooting back at the officer, pieces of tire,
19 the metal hitting the concrete, and they go on a
20 pursuit down 41.

21 They cross through the exit in Little Chute -- I
22 believe that's N -- and ultimately, the defendant
23 realizes that this officer is still on his tail. He
24 can't just stay on 41. He's got to do some more
25 drastic maneuvers. And you'll learn that on 41, as

1 Patschke's in high pursuit, the speeds are hitting 70,
2 80, 90 miles an hour. Cars are moving to the side.
3 Some realize it, some don't. The defendant's weaving
4 in and out. The trailer's flopping around, and
5 Patschke's got, you know, like something you'd see out
6 of a movie, a good-old chase scene down 41 on a busy
7 day.

8 He comes upon 441, and you'll hear from the radio
9 dispatch the defendant tries something drastic there.
10 He maneuvers across lanes and tries to get on the off
11 ramp of 441. You'll learn that there was a slower car
12 out there, and the defendant had to slow down quite a
13 bit, a calculated move to avoid hitting a car on the
14 ramp, but you'll learn from a map and other aerial
15 maps -- pardon me -- that 441 only goes basically south
16 heading into the middle of Appleton or the east side of
17 Appleton; and that the defendant gets off onto 441 --
18 Patschke's still in pursuit -- maneuvers around this
19 slow vehicle and then continues his flight from the
20 crime scene at a high rate of speed.

21 He only goes a short distance on 441 and figures,
22 I got to try something else. So he gets off at OO,
23 basically borders the north side of Appleton, you'll
24 learn; gets off at 441. Patschke radioed for some
25 help. It's on the west side of Little Chute,

1 basically, and you've got an Officer Freeman from Fox
2 Valley Metro. There's police assistance, friendly
3 neighborhood police. He comes upon the chasing, too.
4 He and Patschke then continue pursuing this defendant,
5 who has no intentions to stop, no intentions to being
6 apprehended, no intentions to face what he did back in
7 Kaukauna.

8 He continues westbound on OO, and not just for a
9 short period of time. You'll learn that they basically
10 went the full length of OO, through the remainder of
11 Little Chute, into Appleton, crossing a number of
12 intersections, and Patschke will describe that.
13 There's a number of controlled intersections on the
14 north side of Appleton on OO, Northland Avenue. The
15 defendant is still continuing his calculated desire to
16 get away from the crime scene and away from the
17 authorities; high rate of speed down OO, 70, 80 miles
18 an hour, police in pursuit, sirens, lights, blows off
19 seven, eight, nine intersections that have red lights,
20 Ballard Road, Meade Street, Oneida Street, Richmond
21 Street, a couple of lights at the Northland Mall, all
22 red, and this guy blows through them in calculated
23 fashion to try and get away from the police.

24 Grand Chute comes in on the chase as you get to
25 the Northland Mall area. Sergeant Todd Zolkowski plays

1 a key role in this case, starts pursuing. There's some
2 radio talk about maybe let's throw down a strip of
3 spikes to stop this guy who has no intentions of
4 stopping. He's maneuvering away from the police in a
5 calculated fashion, high rate of speed, three tires,
6 and riding on a wheel rim on his left front tire. They
7 continue west. He does catch a green light, I believe,
8 at Mason Street; goes over a hill heading towards
9 Lynndale, and Grand Chute has set up further to the
10 west at Bluemound an officer to throw out a strip of
11 spikes to try and deflate the rest of his tires, to try
12 and subdue the defendant by stopping his truck.

13 You'll learn, as the defendant approached
14 Bluemound, he's still being chased from behind by
15 Patschke, by Zolkowski from Grand Chute, and that he is
16 aware that he's being chased. He is aware that the
17 police want to apprehend him, and now he's also aware
18 from his alert behavior, despite a few beers in his
19 system, that they are going to try something else to
20 stop me, and he does see that they throw this spike out
21 there. And you'll learn that, in calculated fashion,
22 this defendant maneuvers his truck around the spikes.
23 In fact, he goes around a median into the opposite lane
24 of traffic on OO over by Bluemound and Fox Valley Tech
25 out there and is able, in calculated fashion, to avoid

1 those spikes; goes back into his lane on 00, and the
2 pursuit continues. And that's the point where 41
3 curves. It kind of has an overpass, and as you go 00
4 west, it changes to Highway 15 and 45. You start
5 getting out of Grand Chute and get out of the county
6 towards Greenville. And you'll learn that the pursuit
7 continued because the defendant had no intention to
8 stop.

9 The Sheriff's Department gets involved a little
10 bit, more Grand Chute officers. The defendant's
11 heading at a high rate of speed, 70, 80, 90 miles an
12 hour out. At that point it's called Highway 15 and 45
13 to the west. 00 basically ends once you get to the
14 overpass at 41. There's trucks and cars coming in the
15 other direction. The defendant's trying to pass
16 people. He's maneuvering in and out. He's continuing
17 to endanger the safety of Patschke and the other
18 officers, trying to avoid apprehension in a calculated
19 way. He avoids the sticks in the road, the spikes in
20 the road. Patschke radios, and Zolkowski radios that,
21 hey, they're heading up to Greenville. They're heading
22 up to Hortonville. You better warn the people down
23 Main Street, Highway 45 in Hortonville, that this
24 truck's not going to stop.

25 You'll learn that the police realize that this

1 one's going to be difficult to stop, and they have to
2 try something more drastic. And you'll learn that
3 there's a particular, calculated move by Sergeant Todd
4 Zolkowski of the Grand Chute Police Department where he
5 maneuvers his squad eventually around to get in front
6 of the defendant, in front of his truck. He slows down
7 to try and box him in with the other officers, and
8 actually, because of their good police tactics, they
9 are able to force him off the road. But by that time
10 they're already up basically through Greenville, north
11 on 45, heading almost into Hortonville. They
12 eventually get him off the road at an area 45 and
13 Julius Road. There's a church nearby.

14 The evidence will show that Patschke at the time
15 has gotten a few radio signals back from Kaukauna that,
16 hey, we have a young woman down on Plank Road. We are
17 not sure exactly what we got. Some of the neighbors
18 had called 911. A guy name Bruce Benotch, who lives up
19 in the neighborhood, had cell-phoned down on Plank Road
20 because he was driving by, taking his kid to soccer
21 practice. Kaukauna -- some of the other officers are
22 at the scene. They know they have basically a barely
23 breathing or deceased young lady.

24 Patschke gets a radio call that, hey, this may be
25 connected since the chase started generally pretty

1 close to the scene where Shanna was. You'll learn that
2 the defendant's pulled over, knowing that he's
3 basically caught, conscious of what's going on. The
4 police come by him. And he responds by basically
5 sticking his arms out the window to let them apprehend
6 him. He's alert. He knows he's caught, so he sticks
7 his hands out the window, basically, to give up.

8 The evidence will show that when Patschke came
9 upon him, he and other officers took custody of the
10 defendant. You'll learn that he made some physical
11 observations of the vehicle, and one key thing that was
12 in plain view as he approached the driver's side of the
13 vehicle and the defendant's taken out is something on
14 the floor of the driver's side of the vehicle near the
15 pedals, right below the driver's seat, but in plain
16 view, he sees a knife, a distinctive knife, in that
17 it's got something on it. And Patschke can clearly
18 tell it's a bloody knife.

19 And you'll learn that that knife was collected,
20 taken into evidence, transported down to the Crime Lab
21 along with a number of other things taken from that
22 truck, including a receipt from K-Mart, some other
23 physical things from the truck, some physical things
24 from back on Plank Road.

25 And things were done in the form of DNA testing,

1 comparisons of broken headlights found at the scene and
2 broken headlights on the defendant's truck, metal
3 pieces, DNA analysis and scientific analysis that will
4 play a role in this case, you'll learn.

5 And part of this case will be some science, and
6 you'll learn from that science and that analysis that
7 the physical evidence clearly linked this defendant to
8 the crime scene and clearly support his guilt on all
9 four charges. Deputy D.A. Schneider will have a number
10 of witnesses that she will handle from the State Crime
11 Lab that will talk about analysis of blood and other
12 items, and they'll also talk about the blood of the
13 defendant. In fact, that there was some alcohol in his
14 system. There was some therapeutic levels of some
15 drugs in his system, but you'll learn that the levels
16 were such that it didn't really play a huge role in his
17 decision process.

18 The evidence will show that the main motivation
19 for this defendant was anger and rage and frustration
20 that he wanted to vent on that day.

21 The evidence will show from the scientific and
22 medical evidence that was done on this case, the
23 physical exam of the victim, the autopsy by Dr.
24 Chambliss, that it will confirm that this defendant was
25 well aware of his actions, and he committed intentional

1 acts towards Shanna, towards Dave Carnot, and then was
2 extremely reckless with Patschke on his chase.

3 Now, Patschke makes the observations of the knife.
4 He also makes some observations of the defendant. The
5 defendant's hyped up, to some degree, and he's got some
6 blood on him, but physically you look at him and you
7 can't see any significant injuries that would cause the
8 quantity of blood to be on him. It's dripping down his
9 ankles onto his feet with his sandals. There's some on
10 his hands. There is some on his torso. He was able to
11 wipe some of it off on that rag, but Patschke still
12 physically sees blood that was from some source other
13 than the defendant, Mr. Hudson, and makes note of that.

14 He decides that before they do anything further
15 with him, that they'll at least run him quickly to St.
16 E's to check him out to see if there's any source of
17 blood on him, and you'll learn that, other than any
18 minor scratch or a little abrasion on his person,
19 there's no significant injury on him that would cause
20 that quantity of blood, and you'll learn that some of
21 the blood was wiped off then by officers at the
22 hospital and ultimately tested and, in fact, turned out
23 to be the blood of Shanna Van Dyn Hoven.

24 You'll learn that at the hospital, at St. E's,
25 when the defendant was there for a period of time, that

1 they took blood to just confirm his alcohol level and
2 any other drugs in his system. He was observed at the
3 hospital to be alert by the police personnel. He does
4 have some limited conversation with them and agrees, in
5 particular, with one or two officers at the scene that
6 are designated the investigators for the long haul in
7 this case from Kaukauna, to talk to them; that they ask
8 if they can talk to him, Officers Manion and
9 Shepardson, you'll be introduced, and the defendant
10 agrees to do so to give his side of the story, to give
11 his side of his activities on that day and leading up
12 to that day.

13 Now, during the course of the trial, you'll be
14 introduced -- and you did during jury selection -- to
15 Assistant Chief Manion and Lieutenant Shepardson of the
16 Kaukauna Police Department, and you'll learn that after
17 the defendant was at St. E's and checked out for a
18 period of time, that they had an opportunity to
19 interview the defendant at the Kaukauna Police
20 Department for about an hour, hour-and-a-half, shortly
21 after midnight, on the next day, which would be June
22 26; and basically the officers were of the mind-set to
23 give the defendant an opportunity to tell, hey, tell
24 your side of the story, what do you know, what do you
25 remember, things of that sort. And you'll learn that

1 at least the first part of that interview is focusing
2 mainly on background information, where are you from,
3 what have you been doing, who have you been hanging out
4 with, those types of things.

5 And you'll learn that during that part of the
6 interview, the defendant's quite verbal and articulate
7 with the officers. He's coherent and conversational.
8 And he lays out some history. Yes, you know, I'm from
9 New York. My mother was in town. I've got this
10 girlfriend. And he does point out some of the tensions
11 in his life, at least to some degree, at least at that
12 time with the officers. And you will learn that he
13 talks about his awareness of certain things regarding
14 his job; that he's done roofing jobs in the Fox Cities,
15 including, he acknowledged in particular, a roofing job
16 that he did over on Florence Street the first half or
17 so of June of 2000, basically a house at the
18 intersection of Florence and Plank Road; that he was
19 there for a good chunk of the first half of June of
20 2000; indicating to the officers that, yes, he did have
21 some knowledge of that neighborhood in question.

22 But the evidence will show that as that interview
23 went on and the officers tried to pin him down on
24 information as to the particulars of Plank Road, you
25 know, that it had just happened a few hours earlier,

1 the defendant is somewhat selective in his memory. And
2 in fact, on key things early on, he claims a lack of
3 memory.

4 The officers then realize that, because of the
5 defendant's selective memory, that they've got to take
6 a little more tact -- different tactic than just being,
7 hey, tell us what you know. They start to ask
8 questions that are a little more pointed, not like
9 interrogation in his face, but more pointed in saying,
10 hey, we know certain things. We collected things.
11 Other officers have encountered the crime scene, and
12 we've got some physical things that show you were on
13 Plank Road. And in fact, the guy's got blood on him
14 right during the interview.

15 So as they try to pin him down, the defendant is
16 still somewhat selective in his memory as to Plank
17 Road. But eventually, over time, as they pin him down
18 and point out things they know, he makes some
19 acknowledgments. He talks about doing things and
20 having a confrontation with somebody on Plank Road as
21 his first step of acknowledgment. Yes, that he
22 remembers having a confrontation on Plank Road. But
23 throughout these steps he takes -- and you'll learn
24 that he does progress in those steps of information --
25 he always qualifies it and basically says these things

1 are happening not because he's willing to take
2 responsibility, but he wants to point the finger at
3 somebody else, the evidence will show. And the
4 evidence will show that throughout the interview, he
5 continually goes back and says this happened because of
6 my mother, because I had a rough childhood and she
7 wasn't nice to me and I hate her, so that's why this
8 happened, you'll learn.

9 The evidence will show as these steps of progress
10 continue for Manion and Shepardson, the defendant then
11 does admit -- because the officers know there's blood
12 in his truck -- he admits that, yes, he did try to
13 force a young lady in his truck on Plank Road. Then he
14 takes the next step and says -- he does admit at least
15 stabbing her once and says he remembers that at least
16 once in the truck. And the physical evidence will show
17 that there were probably stabs outside the truck and
18 inside the truck.

19 The evidence will show that, although he makes
20 some of those steps in general acknowledgments, he's
21 selective on his memory regarding specifics. The
22 evidence will show that even beyond his general
23 acknowledgments regarding confrontation with Shanna,
24 pulling her into the vehicle or pushing her in the
25 vehicle, stabbing her, he also makes some statements

1 regarding the citizen neighbor, David Carnot, that came
2 upon the scene, and once again you'll learn that the
3 tone of the interview is such that he points the finger
4 at somebody else and says that it's not his fault
5 regarding Carnot. Basically he claims that Carnot --
6 he drove at Carnot just because Carnot had a rake and
7 was coming at him, will be the perspective the
8 defendant tries to portray to the police.

9 The evidence will show that during the course of
10 the interview, there are some emotional points where
11 the defendant's talking about his mother, but
12 throughout the course of the interview, it's a coherent
13 dialogue. The defendant's alert. He has memory, at
14 times although selective, and he's conversational with
15 the officers. There's other times there's
16 contradictions. At one point even after acknowledging
17 the neighborhood from his roofing job, he goes on later
18 and claims that the only reason the confrontation
19 happened was because he didn't know the neighborhood
20 and he was asking Shanna, the young lady, for
21 directions. So you'll get a chance to sort out that
22 interview when those officers testify about it.

23 The evidence will show that towards the end of the
24 interview, as the police are trying to push for more
25 specifics, the defendant's becoming agitated, and they

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

decide to end the interview.

The evidence will show that, as a whole, the defendant was alert and coherent with the officers during the interview. The evidence will show that after they concluded the formal interview, they transported the defendant over to the sheriff's department, but he provided them a few bits of additional information. Unsolicited, he makes some comments to them while they're in the car with them going for a ride from Kaukauna basically to Appleton.

And you will learn that at times during the drive early on, there's some emotional comments. The defendant realizes the police have him. He makes emotional comments about acknowledging stabbing the young lady. He makes a specific comment, quote, this is all because of my mother, unquote. But then beyond a few emotional comments, he does make one calm, inquisitive type of comment that the evidence will show his acknowledgment of consciousness of guilt.

In particular, you'll learn that during the course of this ride, while the defendant's realizing he's caught, he's in trouble, there's going to be some penalty to pay, he calms down, directs his attention to the two officers, and in a calm, inquisitive, alert fashion, starts to try and find out what the penalties

1 are potentially against him. And with this
2 consciousness of guilt in mind, he flat-out says to the
3 officers in calm fashion, after a little bit of
4 emotion, settles down, turns towards them and says,
5 does Wisconsin have the death penalty? And the
6 evidence will show that that particular comment shows
7 his consciousness of guilt, and you'll learn that the
8 officers, knowing that our state doesn't have that
9 penalty, didn't respond to him because they --
10 responded to the defendant because they wanted him to
11 continue with his thoughts regarding the situation, but
12 you'll learn that those comments, as a whole, in the
13 car, the comments at the police department, and a
14 wealth of physical evidence, show his guilt beyond his
15 own consciousness of guilt. The investigation, the
16 physical evidence, the interviews, the whole picture,
17 shows this defendant's guilt beyond a reasonable doubt
18 on all four counts.

19 Now, as I said, towards the beginning of this
20 opening statement, this is a case about a variety of
21 lives, various lives crossing paths, and it's also
22 about the decisions of those traveling those paths.
23 And as we start with the evidence in this case and the
24 testimony from the witnesses, you, too, all 14 of you,
25 will be traveling a path in some particular way, as

1 people listening to witnesses, listening to evidence,
2 and taking a path, as jurors, as part of a community
3 process, the criminal justice process, a government
4 process. And you'll learn that, as you travel down
5 that path, you'll hear evidence, the story of this
6 case, the physical evidence, that will guide you down
7 your path as jurors, and it will guide you to a path
8 that will take you to the truth of the evidence in this
9 case.

10 And when your path as jurors ends, you'll have
11 jury deliberations. And I trust you will realize, from
12 the evidence and the testimony in this case, that
13 although Shanna Van Dyn Hoven's path in life ended with
14 violence and death with that early evening jog on June
15 25 on Plank Road in Kaukauna, Wisconsin, her path in
16 life does not have to end without justice.

17 I trust you, as jurors, and keeping an open mind
18 and considering all the evidence and testimony in this
19 case and all the statements you will hear, you will
20 give Shanna her justice, based on the evidence and
21 testimony, and give her justice with four guilty
22 verdicts, guilty, guilty, guilty, guilty, on all four
23 counts against this defendant, Kenneth A. Hudson.

24 THE COURT: Mr. Hudson, do you have an
25 opening statement, or do you waive it?

1 MR. HUDSON: Your Honor, I'd like to reserve
2 right to opening statement until prior to presenting my
3 defense.

4 THE COURT: You may do so. We'll take a
5 break. Mr. Biskupic, get your first witness ready.
6 Take ten minutes.

7 (Recess had from 2:58 p.m. to 3:15 p.m.)

8 THE COURT: Are you ready with the first
9 witness?

10 MR. BISKUPIC: Yes.

11 THE COURT: Bring in the jury, please.

12 (In the presence of the jury)

13 THE COURT: Be seated, please. You may
14 proceed.

15 MR. BISKUPIC: The State's first witness is
16 Nancy Van Dyn Hoven.

17 THE COURT: Come up to the chair, remain
18 standing and raise your right hand, please.

19 NANCY VAN DYN HOVEN,
20 having been first duly sworn on oath to testify the truth,
21 testified as follows:

22 THE CLERK: State your full name and spell
23 your last name, please.

24 THE WITNESS: Nancy Van Dyn Hoven,
25 V-A-N-D-Y-N-H-O-V-E-N.

1 THE CLERK: Thank you. You may be seated.
2 DIRECT EXAMINATION
3 BY MR. BISKUPIC:
4 Q Ma'am, where is your residence?
5 A 121 Garfield Street in Kaukauna.
6 Q Okay. And that's Outagamie County, Wisconsin; is that
7 correct?
8 A Yes.
9 Q And how long have you lived on Garfield Street?
10 A About 20 years. We rented a duplex down the street
11 from our house, and then a couple years later we moved
12 up the street when a house came up for sale, so about
13 20 years.
14 Q And you're married; is that correct?
15 A Yes.
16 Q And what's your husband's name?
17 A Steven Van Dyn Hoven.
18 Q And how many years have you been married?
19 A Twenty years, just over 20 years.
20 Q And it's correct you have two children; is that
21 correct?
22 A Yes.
23 Q And what are their names?
24 A Shanna Marie Van Dyn Hoven and David Barry Van Dyn
25 Hoven.

1 Q What are their dates of birth?
2 A Shanna's is 5/26/81, and David's 6/11/82.
3 Q Were they a year apart in school?
4 A Yes.
5 Q And did they always reside with you at 121 Garfield
6 Street?
7 A Yes.
8 Q What do you do for work?
9 A I work at Miron Construction. I'm a project
10 coordinator.
11 Q And what type of work does your husband do?
12 A He does electrical work.
13 Q Now, you said you lived at two different locations on
14 Garfield Street; is that correct?
15 A Um-hummm.
16 Q And how many houses apart roughly?
17 A Six or seven, opposite sides of the street.
18 Q And what part of Kaukauna is that in?
19 A It's on the north side.
20 Q I'm going to direct your attention to some diagrams and
21 exhibits, and I'll walk up and show you which ones in
22 particular, with the Court's permission.
23 THE COURT: You may proceed.
24 BY MR. BISKUPIC:
25 Q This is Exhibit 3. Are you familiar with what's

1 depicted in three?

2 A Yes.

3 Q And what is depicted in three?

4 A City of Kaukauna.

5 Q Okay. When I direct your attention to an exhibit, can
6 you tilt your microphone a little bit just so people
7 can hear you? And does this City of Kaukauna map, at
8 least from your observations, appear to fairly and
9 accurately depict the city as you've known it for the
10 last 20 years?

11 A Yes.

12 Q Now, in particular, on this map, can you mark with your
13 initials NV as to where Garfield Street and
14 approximately where your home is with this green
15 marker?

16 (Witness complies with request)

17 A Right there.

18 Q Okay. You can go back to your seat. And is that
19 correct that Garfield ends to the west on Lawe Street
20 and to the east on Green Bay Road?

21 A Yes.

22 Q Now, you were living in that home back at 121 Garfield
23 Street back in June of 2000; is that correct?

24 A Yes.

25 Q And at least as of June of 2000, were both your kids

1 living in the house?

2 A Yes. My daughter was home for -- from college for
3 summer vacation, so yes, they were both living there.

4 Q Now, above Exhibit 3, the city map, is an aerial photo,
5 Exhibit 4. Are you familiar about what's depicted in
6 four?

7 A Yes. It's the quarry, and it's upside down from the
8 map, I believe.

9 Q Okay. So it's -- the top of the photo is to the south;
10 is that correct?

11 A Yes.

12 Q And to the bottom of the photo is north in your
13 neighborhood; is that correct?

14 A Yes.

15 THE COURT: Is there a possibility of
16 changing that around so it squares with the other map?

17 MR. BISKUPIC: Get a headache doing that, but
18 we'll manage.

19 THE COURT: Okay.

20 BY MR. BISKUPIC:

21 Q Regarding this photo four, from your knowledge of the
22 neighborhood and the area of the quarry on there, does
23 that fairly and accurately depict your neighborhood as
24 you knew it in June of 2000?

25 A Yes.

1 Q And at least -- are you familiar with this main road to
2 the south of the quarry?
3 A Yes.
4 Q And what is that?
5 A That is Plank Road and Highway 96.
6 Q Okay. From Plank Road, is it correct that you
7 intersect on Florence Street and then Highway 96?
8 A Yes.
9 Q And do you know which road in from 96 Garfield Street
10 is?
11 A The first one is Washington. No, the -- the other --
12 that's Garfield right there.
13 Q Okay. And would that be consistent with what's on the
14 map, actually Washington, Grant and then Garfield?
15 A Yes.
16 Q And does four fairly and accurately depict at least the
17 entrance to your street from Highway 96, as you knew it
18 back in June of 2000?
19 A Yes.
20 Q Now, back in June of 2000, when your daughter was
21 living with you, did she also work?
22 A Yes, she did.
23 Q And what type of work did she do?
24 A She worked at Blimpie's Subs, a fast-food
25 establishment.

1 Q Okay. And what were her general hours, if you recall?
2 A She worked varied hours. She worked quite a few days,
3 weekends.
4 Q Now, on Sunday, June 25, 2000, do you remember if she
5 worked on that day?
6 A Yes.
7 Q And what shift did she work on that Sunday?
8 A She worked from 8:00 until 2:00.
9 Q And was Blimpie's open that early on that Sunday
10 morning?
11 A No, they don't open until ten, but she was opening
12 herself that day, so she went in and to set things up
13 for when they actually opened for business.
14 Q Now, do you recall after her shift whether -- what time
15 roughly she would have returned home?
16 A It would have been probably around quarter after two,
17 right around there.
18 Q Is Blimpie's on the north side of Kaukauna or the other
19 side?
20 A It's on the south side.
21 Q Okay. And would she normally have use of one of the
22 family cars to go there?
23 A Her own car, yes.
24 Q And on that particular afternoon, do you recall what
25 you were doing at the house on Garfield, if anything?

1 A I was just kind of laying around on the couch. We had
2 the NASCAR race on, and I had kind of gotten into the
3 habit of taking a nap during the races on Sunday
4 afternoons so --

5 Q Did you observe your husband Steve to be around that
6 afternoon?

7 A Yes.

8 Q And what was he doing?

9 A He was watching the race.

10 Q Do you remember any other activities he would have been
11 involved in that afternoon?

12 A Well, he was doing some plumbing repair in our
13 bathroom, our bathtub drain.

14 Q Now, regarding some background on your daughter, do you
15 know approximately how tall and what her weight was
16 back in June 25 of 2000?

17 A Five seven, about 130 to 135, I'd say.

18 Q And at least over the year or so leading up to that
19 time period, was she involved in, over that last year
20 or two, in sports or athletic type of activities?

21 A Yes. She played volleyball through her junior year in
22 high school, and she was involved in a Tae-Bo course at
23 high school. And at college she played intramural
24 volleyball, and she liked to go running. And she was
25 playing volleyball with me. I'm on a volleyball team,

1 and she was going to be doing that that summer, this
2 summer.

3 Q When you mentioned running, did she have a routine for
4 jogging that you were aware of?

5 A Not any specific routine, no.

6 Q How often per week would you be aware that she would go
7 for a jog?

8 A I would say several times a week.

9 Q And were you familiar with the general route she would
10 take on her jogs?

11 A Yes.

12 Q And can you describe to the jury what routes she would
13 take?

14 A Using the map or --

15 Q No, just in general, a description of what areas she
16 would go around.

17 A Running up Lawe Street -- well, actually south on Lawe
18 Street, and turning somewhere in the neighborhood of, I
19 believe, it's Augustine Street.

20 Q That's the road to the south board of the quarry; is
21 that correct, at the top of the photo.

22 A Yes. Actually, turning on -- I'm not sure of the name.
23 Catherine, Catherine Street to John Street, and then
24 that hooks up to Augustine Street, and then coming down
25 that way, and then coming up the hill at Plank Road.

1 Q Plank Road, once you hit Augustine Street, it heads to
2 the west; is that correct?

3 A I'm not sure of directions, but --

4 Q Well, I'll direct your attention to photo Exhibit 4
5 that you've identified. Is it correct that this
6 intersection up to the left of the photo is Augustine
7 and then Plank Road up the hill?

8 A Yes. Yes.

9 Q And once you hit Plank, you're heading back to the
10 west; is that correct?

11 A Yes.

12 Q And does that got somewhat of a hill or is it flat?

13 A It goes up a big hill there.

14 Q And then you have quarry entrances; is that correct?

15 A Um-hummm.

16 Q And are you familiar that there's three different
17 quarry entrances on the south side of Plank Road into
18 Murphy's Quarry?

19 A Yes.

20 Q And is that how it's been for a number of years there?

21 A As far as I know, yes.

22 Q Now physically, did you provide us with some pictures
23 that depict your daughter's approximate size and weight
24 back from June of 2000?

25 A Yes, I did.

1 Q Direct your attention to photo No. 1. Do you know
2 who's depicted in the T-shirt and shorts in photo
3 Exhibit 1?
4 A That's my daughter Shanna.
5 Q And do you know approximately when that photo was
6 taken?
7 A That was at her high school graduation party, so it
8 would have been in about July of '99.
9 Q Okay. About 11 months before this case?
10 A Yes.
11 Q And then you've also provided us with photo Exhibit 2;
12 is that correct?
13 A Yes.
14 Q And is that -- was that a more recent photo?
15 A Yes, much more recent.
16 Q And when approximately was that from?
17 A It would have had to have been in -- in April or May.
18 Q Of 2000?
19 A Yes.
20 Q After she had already been off to school?
21 A Yes.
22 Q And at least physically, heightwise and buildwise, does
23 photo Exhibit 2 depict more of her weight and height?
24 A Yes.
25 Q But then on one, you depict how she would look in a

1 T-shirt and shorts; is that correct?

2 A Yes.

3 Q And do one and two physically and accurately depict the
4 approximate size and height and weight of your daughter
5 as you knew her back in June of 2000?

6 A Yes.

7 MR. BISKUPIC: Ask permission to publish one
8 and two to the jury.

9 THE COURT: You may publish.

10 BY MR. BISKUPIC:

11 Q Did you call your daughter Shanna Marie, or did you
12 have a particular nickname of how you addressed her?

13 A I occasionally called her Shanna Banana, which was her
14 nickname by all her friends. Most of the time I just
15 called her Shanna.

16 Q Now, directing your attention back to Sunday, June 25,
17 2000, do you remember observing the activities of
18 Shanna once she returned from work at Blimpie's?

19 A Yes. She took a nap, and David went up and asked her
20 if she wanted to go to the beach, and she said no. She
21 went back to sleep then for a little while. And then
22 she got up and got ready to go for a run.

23 Q And did you see what kind of clothing she put on?

24 A She always wore shorts and a T-shirt when she went
25 jogging.

1 Q Did she have any other running gear or devices that you
2 were aware of that she would take on a jog?
3 A She always took her walkman.
4 Q With headphones?
5 A Yes.
6 Q And did she have a particular kind of running shoes?
7 A White with blue trim. I'm not sure of the brand name,
8 if they were Nike's or -- I'm not sure.
9 Q Now, directing your attention to the area of 5:30 to
10 5:40 p.m., do you recall observing Shanna with her
11 running gear on within the residence?
12 A Yes.
13 Q What room did you observe her in?
14 A She was in the kitchen. I was in the living room.
15 Q Did you say anything to her as she took off or vice
16 versa?
17 A Yes, I did. I asked her if she wanted to go take a
18 ride with Steve and I out to the lake, take the dog out
19 by the boat landing for a run.
20 Q What lake were you talking about?
21 A Lake Winnebago.
22 Q At a particular park or something?
23 A It's a public boat landing down a ways from High Cliff.
24 Q Okay. Did she agree to go with you, or no?
25 A No. She said she was going to go for a run, and then

1 she wanted to go to Shopko.

2 Q Had you had some activities planned with your daughter
3 to go to Shopko or shopping later that day?

4 A No. It wasn't anything planned. But after she left
5 then, I said -- I told Steve that I would rather wait
6 for her to come back and go to Shopko with her.

7 Q So you didn't go to the lake?

8 A No.

9 Q Did your husband stay around at that point?

10 A He finished fixing the drain in the bathtub, and then
11 he went over to his parents', and then he took a drive
12 over to -- his friends had had a -- we had been at a
13 graduation party earlier, and he went to see if they
14 needed help cleaning up at the park.

15 Q Now, at least from your recollection and by
16 observations, what was the average time that your
17 daughter was usually gone for a jog?

18 A I would guess about a half an hour.

19 Q And after she left in that area of 5:30 to 5:40, about
20 a half hour later, did you observe her come back?

21 A No.

22 Q Where did you see her depart from? What room or what
23 exit from your home?

24 A She left the back -- through the back door, through the
25 kitchen.

1 Q Okay. Does that go out to a driveway or a back yard?
2 A Yes. It goes out to the driveway by our garage.
3 Q And then what did you do at least over the next 20 to
4 30 minutes as she was out for her run?
5 A I just -- nothing really. I got a phone call. I
6 didn't really do much of anything; kind of just
7 half-napped.
8 Q And by routine, she would go for this jog usually
9 several times a week; is that correct?
10 A Yes.
11 Q Now, as it got past six o'clock, into the area of 6:30,
12 did either your daughter or your husband return first?
13 A Yes. Steve came back, and I said, Shanna's not back
14 yet. And so he went to -- took a drive around the
15 block, and then he came back, and he said, there's a --
16 there are a whole bunch of police cars, so --
17 Q In what area?
18 A He said they were down on the -- on Green Bay Road, on
19 the curve. And I jumped in my car and I drove down
20 there.
21 Q And what -- why did you go down there?
22 A I -- I wanted to see what was going on. I knew Shanna
23 should have been back, and I -- I just had to go down
24 there and see what was going on.
25 Q And so where did you go?

1 A I went down Garfield Street and took a right onto Green
2 Bay Road, and I pulled over on the -- on the right-hand
3 side of the road where the Plank Road was blocked off
4 with blockades, and there were some motorcycle police
5 there.

6 Q Which direction were you looking down Plank Road?

7 A To the east.

8 Q Towards the quarry?

9 A Yes.

10 Q And were you able to get down Plank Road?

11 A No.

12 Q Did you make some efforts to go down Plank Road?

13 A With my car, you mean?

14 Q Either on foot or in car.

15 A Yes, I did. I -- I got out of my car and there were a
16 couple of kids standing there that I know, and I said,
17 Kurt, what's going on? And he said, somebody said two
18 joggers got hit by a car. So I crossed the street, and
19 there were some women standing by the blockades. One
20 of them had a camera, I think, and I asked them, what
21 was going on? And they said they didn't know. And I
22 saw a state trooper down blocking off Florence Street,
23 so I started heading that way. I started just running
24 down the street to go get closer and to talk to her and
25 to see if I could find anything out. And I got most of

1 the way there, and --

2 Q Could you see any vehicles or police activity down
3 there?

4 A No, nothing other than her car parked at the end of
5 Florence Street, and -- and one of the policemen on the
6 motorcycles then came up behind me and asked me what I
7 was doing. And I told them, I said, I had to find my
8 daughter. And he said, you can't go down there. He
9 said, you'll have to call the Kaukauna Police
10 Department.

11 Q So what did you do?

12 A I ran back to my car, and my mother lives on Florence
13 Street. So I drove to her house, and I called the
14 police department and explained to them that I was
15 looking for my daughter who was out jogging, and that I
16 knew she jogged there; and that everything was blocked
17 off and that someone had said that two joggers got hit
18 by a car.

19 And they asked me what she was wearing. And I
20 kept saying, I don't know, because I didn't realize I
21 could have just said shorts and a T-shirt. I just kept
22 thinking I was supposed to tell them exactly what she
23 was wearing. And I was getting very upset. And then
24 they asked me if she carried a walkman. And I said
25 yes. And they asked me what her shoes were like. And

1 I said they were white with blue trim. And then they
2 asked me if she had a boyfriend or an ex-boyfriend, and
3 I said no. And then they said -- they asked me for the
4 number -- the telephone number of where I was, and I
5 gave them my mother's telephone number, and they said
6 they would call me back. But then I got off the phone
7 and I -- I went back home, and I told my mother or her
8 fiance, I said, if the police call, tell them I went
9 home.

10 Q So where did you go then?

11 A I went home, and we were just waiting to find anything
12 out. And Police Chief Morse came and got a picture of
13 Shanna, took it with him, and then a while later,
14 someone called and said we should come up to St.
15 Elizabeth Hospital.

16 Q Did you go there?

17 A Yes.

18 Q By yourself or with others?

19 A It was Steve and I and his parents, and his brother and
20 his wife.

21 Q Was that getting later into the evening?

22 A Yes. I'm not sure what time it was. And my mother and
23 her fiance also came.

24 Q When you -- up to the point you were at St. Elizabeth's
25 prior, had you seen Shanna since she had left for the

1 run?

2 A No.

3 Q And once at St. Elizabeth's, did you end up meeting
4 with law enforcement and people from the hospital?

5 A Yes.

6 Q And were you asked to identify your daughter at that
7 scene?

8 A Yes.

9 Q And in fact, was she there?

10 A Yes, she was.

11 Q And did you go in and identify her?

12 A Yes.

13 Q And at least up to that point, she was deceased; is
14 that correct?

15 A Yes.

16 Q Was that the first -- at the hospital the first time
17 you saw her subsequent to her leaving for her run on
18 that night?

19 A Yes.

20 MR. BISKUPIC: That's all I have on direct.

21 THE COURT: Mr. Hudson, any questions?

22 MR. HUDSON: No, Your Honor.

23 THE COURT: You may step down.

24 MR. BISKUPIC: We'd ask that Exhibits 1, 2
25 and 3 be received into evidence; and four, which is the

1 map she's identified.

2 THE COURT: They'll be received.

3 MR. BISKUPIC: Okay. We'd call David Carnot
4 to the stand.

5 THE COURT: Come right up, Mr. Carnot, to the
6 witness stand, remain standing and raise your right
7 hand, please.

8 DAVID J. CARNOT,

9 having been first duly sworn on oath to testify the truth,
10 testified as follows:

11 THE CLERK: State your name and spell your
12 last name, please.

13 THE WITNESS: David J. Carnot, C-A-R-N-O-T.

14 THE CLERK: Thank you. You may be seated.

15 DIRECT EXAMINATION

16 BY MR. BISKUPIC:

17 Q What's your occupation, sir?

18 A I'm a welder/fabricator for Voith Sulzer.

19 Q And how many years have you worked for them?

20 A Three years.

21 Q And how old are you right now?

22 A Thirty-three.

23 Q And are you married?

24 A Yes, I am.

25 Q What's your wife's name?

1 A Lisa.

2 Q Do you have any kids?

3 A One, and a stepdaughter.

4 Q And what's your residence address?

5 A 1806 Grandview Lane.

6 Q Is that in the City of Kaukauna, Outagamie County,
7 Wisconsin?

8 A Yes, it is.

9 Q And how long have you lived at 1806 Grandview Lane?

10 A Six years.

11 Q Other than living in Kaukauna for the last six years,
12 have you lived in Kaukauna your whole life?

13 A I've lived in Kaukauna my whole life.

14 Q Graduate of Kaukauna High School?

15 A Kaukauna High School.

16 Q Now, I direct your attention to some exhibits. First,
17 a map identified as Exhibit 3 that's been received into
18 evidence. Are you familiar with the City of Kaukauna
19 map?

20 A Yes, I am.

21 Q And at least from your observations, does it fairly and
22 accurately depict Kaukauna as you know it?

23 A Very close, yep. Yes, it does.

24 Q And what side of town do you live on?

25 A I live on the north side.

1 Q And it's 1806 Grandview Lane; is that correct?
2 A Yes, it is.
3 Q Can you use this green marker and just put initials
4 where your home would be on Grandview Lane with DC?
5 A DC?
6 Q Correct.
7 (Witness complies with request)
8 Q And where you put that on Grandview Lane, it's on the
9 south side of the street; is that correct?
10 A Yes.
11 Q And does your backyard go up to other houses, or is
12 there something else behind your backyard?
13 A There's houses off of Claribel Street but nothing
14 behind my house.
15 Q What do you encounter when you walk out to your
16 backyard?
17 A A woods.
18 Q Heading towards what direction?
19 A Towards Plank Road.
20 Q Now, direct your attention to photo exhibit, aerial
21 photo four. Are you familiar with what's depicted in
22 four?
23 A Yes, I am.
24 Q And what do you know the aerial view of four to be?
25 A A big percentage is the quarry. Straight up from the

1 quarry, you can see my house and the neighbors'
2 surrounding houses.

3 Q Are you familiar with Murphy's Quarry?
4 A Yes, that's correct.

5 Q And are you familiar with that there's three entrances
6 going to the south into Murphy's Quarry?
7 A Yes.

8 Q At least in relation to your house, which entrance is
9 the closest direction off of Plank Road?
10 A Would be the -- the middle entrance, the second one.

11 Q Now, directing your attention to that middle entrance,
12 is it correct that if you go north, you go into the
13 woods; is that correct?
14 A Correct.

15 Q And then there's a blue swimming pool, at least the
16 first one coming through the woods to the north of the
17 woods. Are you familiar with whose swimming pool that
18 is?
19 A That is my swimming pool.

20 Q And that's in the backyard of your house?
21 A In the back of my house.

22 Q And this kind of darker roof next to it, is that your
23 home?
24 A That is my house.

25 Q At 1806 Grandview?

1 A Yes, it is.

2 Q And at least as it was laid out back in June of 2000,
3 does this fairly and accurately depict your
4 neighborhood on the north side of Kaukauna back in June
5 of 2000?

6 A Perfectly.

7 Q Now, on Sunday, June 25, do you remember what you were
8 doing in the afternoon hours?

9 A Working in my yard doing some yard work.

10 Q And what, in general, were you doing?

11 A I had built a retainer wall, and I was backfilling on
12 the retainer wall.

13 Q Do you remember where your wife or children would have
14 been at that time?

15 A Children were swimming in the pool along with some
16 neighbor kids, and my wife was in the house making
17 supper.

18 Q Now, directing your attention to the area of six
19 o'clock or within the next five or ten minutes after
20 six o'clock, do you recall doing that type of activity
21 at that time?

22 A Yes.

23 Q And show you another photo board. This is photos 7, 8,
24 9, 10, 11 and 12. First starting with seven, can you
25 identify what photo seven is?

1 A Photo seven would be the back of my house, would be
2 right here.

3 Q Is that a view of Plank Road and also up to Grandview?
4 A Yeah, Plank Road. Then it turns into Highway 96. This
5 is Plank and then 96.

6 Q So is it correct that that's a view going up Plank
7 Road?
8 A Yes, it is.

9 Q From Augustine Street?
10 A Yes, it is.

11 Q And to the right of the photo is the pools in your
12 backyard?
13 A Yes, it is.

14 Q Okay. Is seven a fair and accurate depiction of the
15 view of Plank Road heading up the road to the west as
16 you knew it back in June of 2000?
17 A Perfect.

18 Q Photo eight is what?
19 A Photo eight is a lot of the quarry, and then upper half
20 of the picture is the woods behind my house, a little
21 apple orchard and then the back of my house.

22 Q To the top of the photo is the north; correct?
23 A Top of the photo would be northeast, yeah, north,
24 northeast.

25 Q Does this photo fairly and accurately depict Murphy's

1 Quarry and then to the north from the three quarry
2 entrances as you knew it back in June of 2000?

3 A Yes, it does.

4 Q Photo nine is what?

5 A Photo nine, we have the -- it would be everything
6 upside down, but my house would be on the bottom, and
7 then would be the woods behind my house, a little apple
8 orchard, and Plank Road, and then the quarry on the
9 top.

10 Q It shows more of your neighborhood; is that correct?

11 A That is correct.

12 Q Does nine fairly and accurately depict your
13 neighborhood at the bottom and then heading south to
14 the top of the photo as you knew it back in June of
15 2000?

16 A Yes, it does.

17 Q And what's ten?

18 A Ten is way up in the sky. We've got the whole City of
19 Kaukauna.

20 Q Okay. In particular, to the north; is that correct?

21 A No, that wouldn't -- north would be --

22 Q Okay.

23 A It would be like south -- southwest, west.

24 Q Okay. And is it your neighborhood depicted on there
25 with Plank Road also?

1 A Yes, it is.

2 Q And does that fairly and accurately depict a higher
3 view of your neighborhood as you knew it back in June
4 of 2000?

5 A Yes, it does.

6 Q Now, going down to the last two, 11, what's 11?

7 A Eleven is half of my backyard and a lot of my
8 neighbor's backyard, and then the woods and then the
9 road.

10 Q Is that more of a close-up of your backyard where you
11 could see where you were working?

12 A Yeah, it is. You can -- we were standing on the wall
13 there, yeah. Right there we are.

14 Q And to the right of the photo, does it go down to that
15 second gate at the quarry?

16 A Yes, it does.

17 Q Does 11 fairly and accurately depict a close-up of your
18 backyard down to the second gate?

19 A Yes, it does.

20 Q And what's 12?

21 A Twelve is the one corner of my property, and then that
22 corner leading through the woods to Plank Road.

23 Q And it's more of a close-up towards the woods and the
24 gate; is that correct?

25 A Yes, it is.

1 Q And once again, is that photo a fair and accurate
2 depiction --

3 A Yes.

4 Q -- of the edge of your yard down to the gate?

5 A Yes, it is.

6 MR. BISKUPIC: We'd ask that seven through 12
7 be received.

8 THE COURT: Received.

9 MR. BISKUPIC: We'd ask permission to publish
10 to the jury.

11 THE COURT: I don't want to divert their
12 attention from his testimony.

13 MR. BISKUPIC: I'll just turn it up here for
14 now, if that's okay with the Court.

15 THE COURT: Sure.

16 BY MR. BISKUPIC:

17 Q Now, while you were working in the yard on that Sunday
18 early evening, did anything interrupt your work?

19 A I could hear -- I could hear somebody screaming. I
20 could hear a series of screams, a woman screaming.

21 Q And how did you react?

22 A The first one, and it was more or less like it sounded
23 bad, and then the second one was like -- kind of like
24 where it was coming from, and the third one was -- I
25 was on my way down the hill.

1 Q Which direction did you head once you heard those
2 screams?

3 A Out the far corner of my lot, through the woods, past
4 the apple orchard and onto Plank Road.

5 Q Now, directing your attention back to the larger photo,
6 No. 4, can you point with this green pen where you
7 started out when you heard the yells?

8 A I was working on my yard right here backfilling a wall
9 that I just got done putting in.

10 Q To the -- like, the southwest side of your house?

11 A Yes. Yep. And I was standing there. I heard somebody
12 screaming. I found out where it was coming -- I kind
13 of waited to hear where it was coming from. I jumped
14 off the corner of the wall, down my lot, to this
15 corner. From this corner there's a path that goes down
16 to this apple orchard. When I was -- I went from this
17 apple orchard straight towards the road. I ended up on
18 the road right here.

19 Q And you're describing going basically in a south to
20 southwest direction; is that correct?

21 A That is correct.

22 Q And then, in particular, on photo Exhibit 11, can you
23 point out to the jury before you started off on the --
24 by pointing in the direction of your pool?

25 A I was standing right here working on my wall -- or I

1 was standing right here working -- backfilling, and I
2 went off this corner of the wall, jumped off the wall,
3 and then I ran across the backside of my -- my yard,
4 and then it would have been straight this way, I
5 believe is the apple orchard, is right here and then
6 out onto the road.

7 Q You can go back to your seat now.

8 (Witness complies with request)

9 Q As you're going through the woods, are you hearing
10 anything more?

11 A I'm hearing a lot of screams, a lot of like muffled,
12 like it was coming from her, like around -- coming
13 from -- it wasn't coming from the same direction every
14 time, you know, like it was being -- the voice was
15 coming -- was something -- something was going on.

16 Q When you were traveling through the woods, were you
17 responding back or yelling back?

18 A I was hollering, does anybody need any help? What's
19 going on? Should I dial 911? What seems to be the
20 problem?

21 Q What's your mood or demeanor at that time as you're
22 going down the hill?

23 A Pretty scared.

24 Q Did you have anything with you?

25 A I got a garden rake that I was raking the fill out --

1 that I -- I was -- I was digging the fill out of one
2 side of my yard, and I was putting it -- hauling it in
3 a wheelbarrow, and I was spreading it out on top of the
4 wall, backfilling the wall to make the ground level
5 with the top of the wall. So I had the rake in my
6 hand.

7 Q Now, as you're yelling things out as you're traveling
8 through the woods, are you getting any response?

9 A I'm not getting any response.

10 Q Now, when you got down to Plank Road, what did you do?

11 A I got out onto the road, eight or nine steps, and I
12 looked down -- down the road.

13 Q And what -- which direction did you look?

14 A I would have been looking towards -- would have been
15 the third entrance to the quarry in that direction,
16 down the road.

17 Q And did you notice anything?

18 A I saw a guy standing next to his truck, and there was
19 a -- somebody laying down on the ground, and the guy
20 was just standing there hanging onto the door of his
21 truck looking at her.

22 Q Now, in relation to photo Exhibit 4, in the apple
23 orchard that you pointed out, you came out to what
24 area? Can you point on the road?

25 A Would have been right -- would have been right here in

1 this corner of the apple orchard, right to here.

2 Q Okay. Can you put an X with that green pen, just a

3 small X where you first came out on the road?

4 (Witness complies with request)

5 Q Now, from that green mark, is it correct the closest

6 gate to you at that point is the middle gate? Is that

7 correct?

8 A That is the middle gate.

9 Q And did you look to your right or to your left as you

10 were --

11 A I would have been looking left, which would be going

12 down the hill.

13 Q Towards Augustine Street?

14 A Yep.

15 Q Do you know the person who lives on the corner there?

16 A Yes, I do.

17 Q And who's that?

18 A Mike Borchert.

19 Q If you can kind of turn when you talk so the jury can

20 hear you. And have you known Mr. Borchert for a number

21 of years?

22 A Since kids.

23 Q And is it correct that there is one gate farther down?

24 A That closes that road off, yeah.

25 Q So the first gate from Augustine Street is this one; is

1 that correct?

2 A Yes, it is.

3 Q And then the second one is the one nearby; correct?

4 A Yep.

5 Q And the third one is down by the office; is that

6 correct?

7 A Is the office.

8 Q So when you were looking to the left, you were actually

9 looking back towards the first gate; is that correct?

10 A That is correct.

11 Q And can you put an X with this blue pen where you would

12 have seen the man standing by his truck?

13 A Would have been like in here somewhere.

14 Q So that's a blue X.

15 A Yeah.

16 Q Kind of by where the trees overhang; is that correct?

17 A That is correct, or the trees are over the road.

18 Q During the time you were down on the road, did you get

19 a chance to look at the type of truck or get some

20 viewing of the truck?

21 A Yeah. I'm pretty familiar with trucks and -- I'm

22 pretty familiar with vehicles with all the old beaters

23 I've drove, I guess, yeah. It was an old Chevy.

24 Q Okay. Now, here's photos Exhibit 98 and 99. Are you

25 familiar with what's depicted on 98 and 99?

1 A This one here is the pickup truck that I saw on Plank
2 Road.

3 Q Okay. And it has a trailer attached; is that correct?

4 A It has the trailer attached. It's the passenger's side
5 of the truck.

6 Q When you saw the truck on the road on Plank Road, did
7 it have the trailer on it?

8 A Yes, it did.

9 Q And did it have a boat on it at that time?

10 A It also was carrying a boat.

11 Q And that's photo Exhibit 98; is that correct?

12 A That is correct.

13 Q And 99 is a close-up of which side of the truck?

14 A That is a close-up of the driver's side of the truck.

15 Q The same vehicle that you remember seeing?

16 A The same vehicle that I remember seeing.

17 Q Okay.

18 THE COURT: Mr. Biskupic, have you shown that
19 to the defendant?

20 MR. BISKUPIC: They got copies of everything.

21 THE COURT: Okay.

22 BY MR. BISKUPIC:

23 Q Now, how many people did you see by the truck, at least
24 in your first view?

25 A One. There was a man standing there, and there was a

1 girl on the ground.

2 Q To which side of the truck?

3 A On the driver's side of the truck.

4 Q So that would be the -- on the side towards the quarry;
5 is that correct?

6 A That is correct.

7 Q And the man is standing. Is the door open or closed?

8 A He's hanging onto the door, and the door is open.

9 Q And did you notice anything going on between the two of
10 them when you first looked over there?

11 A Nothing. There was nothing going on.

12 Q She was on the ground; is that correct?

13 A Yeah.

14 Q And how did you react to seeing that?

15 A I hollered down to them, hey, what -- what the fuck's
16 going on down there, and -- as I was coming down --
17 coming down the road.

18 Q You started heading down the road?

19 A Yep.

20 Q Towards them?

21 A Towards them.

22 Q As you're getting close towards them, are you going
23 closer to that middle gate?

24 A Yes, I am.

25 Q And did this man react to you at all?

1 A He immediately jumped into the truck, put it into gear
2 and came after me.

3 Q Straight at you or at an angle?

4 A Straight at me.

5 Q Where are you physically at when that vehicle starts
6 coming straight at you?

7 A The middle of the road.

8 Q Now, can you see if -- up to that point, whether the
9 girl on the ground was moving at all?

10 A I could still hear her.

11 Q Did it sound the same as what you heard up the hill?

12 A She was -- she was screaming. I guess up to the point
13 to where -- well, when I was even in the quarry, she
14 was still screaming.

15 Q What happened after this truck came directly towards
16 you?

17 A I -- the truck started coming at me. I ran to the far
18 side of the road on the quarry side, up -- there was a
19 big metal pole there. I tried to climb up the pole,
20 climbing the fence, and he -- he rams the fence.

21 Q Show you another photo board with Exhibits 13 through
22 18. Starting with 13, are you familiar with what's
23 depicted on 13?

24 A Yes, I am familiar with what's depicted.

25 Q And what is depicted on 13?

1 A It's a picture of the gate from the downhill side,
2 probably more so from where the victim was laying in
3 the road, but the victim would have been --
4 Q To the left?
5 A -- more to the left.
6 Q And that's -- 13 is a picture of the gate that you ran
7 up to as his vehicle was coming at you.
8 A Yes, it is.
9 Q Does it fairly and accurately depict the gate as you
10 knew it back on June 25?
11 A Yes, it is.
12 Q What's 14?
13 A Fourteen is a picture of the same -- of the same gate,
14 and it -- but it's more taken from a little bit more of
15 a -- a view from down the road.
16 Q Okay. So you can see at least a portion of Plank Road
17 curving up to the woods?
18 A Yes.
19 Q And does it once again show the entire gate that you
20 ran to as you were being pursued by this truck?
21 A Yes, it does.
22 Q Is that a fair and accurate depiction as you knew it
23 back on June 25 of 2000?
24 A Yes, it is.
25 Q What's 15?

1 A Fifteen is a head-on view of the fence, showing the
2 damage that was done.
3 Q And you said the vehicle did hit you by the gate?
4 A It did hit me by the gate.
5 Q And what's 16?
6 A A different view of the same gate, taken from up the
7 hill looking down the hill at the gate.
8 Q Okay. From --
9 A Plank Road.
10 Q -- west back to the east?
11 A Yeah.
12 Q And 15, what is that a general view of?
13 A That is the picture from the west looking east down the
14 hill.
15 Q Okay.
16 A With the gate to the right.
17 Q And you can also see back down to the east down to
18 Plank Road; is that correct?
19 A Yes, it is.
20 Q And also the location where the girl was; is that
21 correct?
22 A That is correct.
23 Q And do 13 through 17 fairly and accurately depict views
24 you saw on that day?
25 A Yes, they do, perfectly.

1 Q Now, physically can you describe what you did as this
2 vehicle's coming at you by that gate?

3 A I ran up the gate, tried to climb up the fence, and
4 then he hit the fence, he hit me in the hip, and as I
5 was trying to go over the fence, he kind of gave -- it
6 kind of spun me around; and somehow along the line, I
7 ended up on the cap of the truck. When -- when it was
8 all said and done and everything was stopped, I was --
9 I was -- I was sitting on the white cap of his truck.
10 I got up off my -- off -- I got up and I jumped onto
11 the fence, jumped over the fence and into the quarry.

12 Q Could you feel or hear anything from the truck as
13 you're hit the first time?

14 A No, I didn't -- there was -- when it all -- when he
15 stopped, he stopped and I jumped off, and then as I'm
16 running -- as I'm going into the -- as I get over the
17 fence, it almost sounded like he was trying to push the
18 fence in with the truck.

19 Q You said the vehicle stopped. What stopped it?

20 A The fence did.

21 Q And then after you climbed over the fence, did you look
22 back to see what the truck was doing?

23 A It was hung up on the fence, and it seemed -- I didn't
24 know if it was -- if it was going to try to keep
25 plowing into the fence or if it was trying to back up

1 off of the fence.

2 Q What did you observe it to do next?

3 A As a couple seconds went by, he got the truck free from
4 the fence, and he took off up the hill.

5 Q Which direction?

6 A It would be west.

7 Q Up Plank Road toward --

8 A Up Plank Road towards 96.

9 Q How did the truck become unhooked, from your
10 observations?

11 A Just by ramming, ram-rodging it back and forth. He
12 was -- he was just forcing it.

13 Q And could you hear any revving noises?

14 A Revving noises and tires squealing and gravel flying
15 and crunching and --

16 Q As that evening went on, did you notice any rev marks
17 on the road from the tires?

18 A I didn't really look. I come out of the quarry, and I
19 could see some stuff laying on the -- on the road, like
20 a headset, and I think it was like a truck -- a handle
21 out of the truck, and her laying on the road.

22 Q And that's back to your -- the east?

23 A Which would have been back to the east.

24 Q On Plank Road?

25 A On Plank Road.

1 Q Did you wait in the quarry for a while before you came
2 out?

3 A He kind of went -- as he was pulling off up the hill, I
4 watched him leave.

5 Q And then what did you do?

6 A I came out between the crack in the fence where the two
7 gates come together, and then I went over by the victim
8 laying in the road.

9 Q And how was she positioned?

10 A Facing up the hill, laying on the ground, kind of like
11 in a fetal position.

12 Q And did you notice anything about her condition?

13 A She was laying in a lot of blood.

14 Q And did you -- could you hear anything or did you
15 observe her moving in any way?

16 A As I was coming up to her, it was -- as I was coming up
17 to her, but then as I took a closer look, it just --
18 like everything went.

19 Q And what do you mean by everything went?

20 A The movement kind of went out of her. She had stopped
21 screaming, and she went into -- I don't know if it was
22 an unconscious state.

23 Q Did you try and say anything to her to get her
24 attention?

25 A Yeah. I said, can I move you or -- or I said some

1 stuff to her, like where is the bleeding coming from,
2 stuff like that, but I couldn't get any response out of
3 her. And I didn't feel it was safe to move her or try
4 to do anything.

5 Q Were her hands moving or positioned in a certain way?
6 A One arm was out in front of her and that -- that was
7 it.

8 Q And could you hear any noises or breathing at that
9 point?
10 A No.

11 Q And where did you first see the blood coming from on
12 this person?
13 A The majority of the blood was coming from her back.

14 Q And what's your mood or demeanor at that point?
15 A I -- I -- then I figured I better go get help. I stood
16 on the road and I screamed quite a bit and hollered,
17 but nobody came. And then I just -- I ran up the hill,
18 ran up the hill to get help.

19 Q Which way?
20 A I would have went a little bit more down the hill and
21 then up the hill to the neighbor's backyard.

22 Q Okay. Which neighbor?
23 A Would have been Bruce Vandenberg.

24 Q And does he live on Grandview by you or on one of the
25 streets around the corner?

1 A He lives on Claribel Street.

2 Q Okay. Is that that street that is at the end of yours?

3 A Yeah, it's the street at the end of mine, and then the

4 house on the very end of that road is -- that's

5 Claribel, and the house on the right, that's where

6 Bruce and Diane Vandenberg live.

7 Q And is that house also with a pool or does their

8 neighbor have that other pool?

9 A No. He's the house without the pool.

10 Q And does his house go to the dead-end of Claribel up

11 against the woods?

12 A Yes, it does.

13 Q And you came out in their yard; is that correct?

14 A That is correct.

15 Q And did you run into this Mr. Vandenberg or --

16 A I ran into his wife. She was reading the paper in the

17 backyard.

18 Q And that's Diane?

19 A That's Diane.

20 Q And what did you do or say to her?

21 A I hollered to her, dial 911. Get Bruce. I need help

22 now.

23 Q Okay.

24 A And then at that point my wife came out of the back of

25 our house, because she could see me out our back door,

1 and I was hollering to her, bring me some towels. She
2 came running over by me with some beach towels, and I
3 says, go -- go dial 911. Something happened. And then
4 I took the towels. I thought, you know, do something,
5 and took the towels and went back down there.

6 Q Okay. Back down through the woods?

7 A Back down through the woods.

8 Q What's your emotional state at that time?

9 A Shock.

10 Q Do you have injuries that you're aware of at that time?

11 A Not that I'm aware of yet at that time.

12 Q As the evening progressed, did you notice some injuries
13 on you?

14 A When I got back down to the victim and my neighbor,
15 Ham -- Bruce Vandenberg, he come down and said, you
16 better go take care of your knee.

17 Q And what -- did you examine yourself?

18 A And then at that point I did. I had a pretty -- I had
19 a big cut in my knee, and I was bleeding pretty good.

20 Q Did you have that before the vehicle hit you?

21 A No, I did not.

22 Q You made reference to Ham. Is that the guy's nickname?

23 A Ham is Bruce Vandenberg.

24 Q And he was back down on the road eventually with you?

25 A He came down then after -- I came -- I left the yard

1 after I got the towels, and then he came down behind
2 me.

3 Q What instructions had you given your wife Lisa?

4 A To dial 911. There's somebody laying on the road.

5 Q When you got back down the hill, did you go back to
6 this young lady's body?

7 A Yes, I did.

8 Q And were there other people there at that time?

9 A Yes, there was.

10 Q And did you know any of them?

11 A The one guy looked familiar, and I found out who he was
12 later on. And that would have been, I believe, Bruce
13 Benotch.

14 Q Okay.

15 A He had a cell phone, and he had a direct line with 911.

16 Q Did you see eventually any other neighbors that you
17 were away of come up the road?

18 A I see Mike Borchert come up from the corner. When I
19 first got on the road, there was -- there was a guy in
20 a pickup truck with a boat on the back of his truck,
21 Jim Vander Loop, and then we exchanged some words. I
22 asked -- I -- I don't remember exactly what I said,
23 but, you know, then I went down. I seen him, and then
24 I looked up towards Shanna, and then I went towards
25 Shanna.

1 Q This Vander Loop was with Borchert; is that correct?

2 A Yes, that is correct.

3 Q And did you go back to this girl to try and aid with
4 these other people?

5 A Yes, I did.

6 Q Did the condition get any better?

7 A The condition was, it didn't -- from my own opinion, I
8 don't believe she was alive.

9 Q Now, how much time did you and any citizens spend by
10 her until any police or rescue people arrived?

11 A I went over to the side -- then Ham come down, and he
12 said, go look at your knee. There's nothing that you
13 can do. And then I went on -- over up on the north --
14 north side of the gate there. I sat down, and Ham
15 stayed by her for a little bit, and there was some
16 other people that stayed by her. And maybe a minute
17 had passed, and then an Officer Rosche showed up and --

18 Q Okay. And then they took over?

19 A And then they took over.

20 Q And were you -- did you step back from the scene then?

21 A Yes. Then I -- he said that -- he took my name and
22 number, and he said to go get my leg looked at. So
23 then at that time I went home and showered up and went
24 to the hospital.

25 Q Had some stitches in your leg; is that correct?

1 A Yeah, six or seven stitches or something.

2 Q Now, when you saw the person standing by the girl and
3 then also by the -- in the truck, were you able to
4 identify them?

5 A No, I wasn't able to identify her. She looked
6 familiar, but the guy didn't look like anybody that I
7 had noticed.

8 Q Do you know if that person that was in the truck, the
9 guy, is in court here this afternoon?

10 A Yes, I know him.

11 Q And can you point him out for the record if he is?

12 A Sitting right there.

13 THE COURT: Wearing what?

14 THE WITNESS: Wearing -- what's that?

15 THE COURT: What's he wearing?

16 THE WITNESS: He's wearing a black shirt.

17 THE COURT: The record will show
18 identification.

19 BY MR. BISKUPIC:

20 Q Now, at least later in that evening after you had some
21 medical treatment later in the night, were you shown
22 some series of photos?

23 A Yes, I was.

24 Q By the Kaukauna Police Department?

25 A Yes, I was.

1 Q And at least in the series of photos that you were
2 shown by two different officers, were you able to 100
3 percent pick out the --
4 A No, I was not. I was not able to --
5 Q Let me finish the question and then you can answer it.
6 Were you able to, at least in the photo arrays that you
7 were shown that night, able to do a 100 percent
8 identification that night?
9 A No, I was not.
10 Q Were there any features in particular when seeing this
11 person in person that were significant at least
12 regarding your identification?
13 A The way his hair was pulled back and he had a different
14 color. He had more tan versus a black-and-white
15 picture. I guess if you see somebody in person, it's a
16 lot harder to pick him off of a picture and be 100
17 percent sure versus seeing someone in person. Then you
18 know who it is.
19 Q Now, you said you -- an Officer Rosche came by the
20 scene; is that correct?
21 A That is correct.
22 Q And had you generally known him before or just knew who
23 he was?
24 A Just know who he was.
25 Q And did he tend to you at all at the scene?

1 A No.

2 Q Did anybody give you aid at the scene for your leg
3 injury?

4 A No.

5 Q When the vehicle first came at you, the truck, was it
6 moving slowly or quickly, or how would you describe it?

7 A It was moving fast. The engine was squealing tires and
8 he was coming.

9 Q Did you hear any braking?

10 A No, none. He was just flooring it.

11 Q And then it was stopped by the fence or the fence pole?

12 A It was stopped by the fence. It kind of almost like he
13 got -- he tried to swipe me off of the cyclone fence,
14 and it was almost like it pulled him into it and
15 stopped his truck.

16 Q Do you know how much time passed as he's going back and
17 forth trying to get the truck off the fence?

18 A It couldn't have been more than five, ten seconds
19 maybe.

20 Q And how much time did you remain behind the fence until
21 you went out and checked on the victim?

22 A Fifteen seconds.

23 Q I'm going to show you a few more photos, photo board 19
24 through 24. Are you familiar with what 19 depicts?

25 A That's -- yeah.

1 Q And what does 19, in general, depict?

2 A It depicts Shanna Van Dyn Hoven laying on the road.

3 Q But also in reference to where?

4 A In reference to the gate, which would be -- she's

5 laying east of the gate.

6 Q Okay. At the back of the picture; is that correct?

7 A That is correct.

8 Q And this was a view when you were to the west of the

9 gate on Plank Road looking back to the east; is that

10 correct?

11 A That is correct.

12 Q And you said you did see some headphones and a handle;

13 is that correct?

14 A Yeah.

15 Q Directing your attention to Exhibit 20. Are you

16 familiar with what's located on the road on 20?

17 A Yeah. There's some pieces laying in the road next to

18 where Shanna was.

19 Q Okay. Out from the road from her feet; is that

20 correct?

21 A That is correct.

22 Q And does 20 fairly and accurately depict where you

23 observed those items in the road?

24 A Yeah. They were in a very close proximity -- I was

25 unable to really remember exact, but that's about the

1 way it laid.

2 Q Okay. And 21 is a close-up of what?

3 A Looks like the window crank and a headphone set.

4 Q Is there also a walkman in that picture?

5 A There's also a walkman.

6 Q Did you also see any cassette tapes on the road, too?

7 A Not that I remember.

8 Q But regarding 21, the close-up of the walkman, the
9 headphones and the window handle, is 21 also a fair and
10 accurate depiction of where you found those items?

11 A Yes, it is.

12 MR. BISKUPIC: That's all I have on direct
13 for this witness.

14 THE COURT: Mr. Hudson?

15 MR. HUDSON: Yes, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. HUDSON:

18 Q You said when you came out of the woods, you were
19 running down through the orchard from your house; and
20 when you came out onto the road, you looked to the
21 left, and at that time did you see any person attacking
22 the female?

23 A No, I did not.

24 MR. HUDSON: Your Honor, I'd like to approach
25 with this exhibit.

1 THE COURT: Sure.

2 MR. HUDSON: I'd like to make this as an
3 exhibit.

4 THE COURT: Have the officer bring it up.

5 MR. HUDSON: I'd like to point out some
6 specific things to Carnot, please. It won't be no
7 problem, Your Honor.

8 THE COURT: Sure. Go ahead.

9 MR. BISKUPIC: Is it marked?

10 MR. HUDSON: No, it's not marked.

11 THE COURT: Have it marked first. Counsel,
12 do you want to come over, too?

13 BY MR. HUDSON:

14 Q This is Exhibit 121. Is this where you came out of the
15 woods?

16 A That is correct.

17 Q And about where were you?

18 A Right there by that X.

19 Q Right there. And where was the -- the black truck that
20 you seen?

21 A Right there where you got the mark a little bit more
22 down.

23 Q And was that truck headed in the direction of the
24 fence?

25 A Yes, it was.

1 Q So it was already facing the fence?

2 A Yes, it was.

3 Q Okay. Did the person of that truck ever threaten to
4 kill you?

5 A No, he didn't.

6 Q Never said anything to you.

7 A No, he did not.

8 Q As in he was going to harm you in any way?

9 A No, he did not.

10 Q What made you feel that the person that got in that
11 truck was going to harm you?

12 THE COURT: Are you done with the picture?

13 MR. HUDSON: Yes.

14 THE COURT: Then please go back to your seat
15 and ask the questions from there.

16 MR. HUDSON: Okay.

17 Q Now, you just said that when you came out of the woods
18 and you looked down to the left, that you didn't see
19 anybody attacking the female; correct?

20 A That is correct.

21 Q This is a police officer's report that he took -- that
22 a police officer took a statement from David Carnot?

23 MR. BISKUPIC: Object to the form of reading
24 a statement. He can ask him if he said certain things
25 to the police, but he shouldn't be able to read from

1 the report.

2 THE COURT: You can ask questions; not read
3 from the report but ask him questions.

4 BY MR. HUDSON:

5 Q Did you ever tell a police officer that you seen a
6 person attacking the female?

7 A No.

8 Q You never said that? You never said, he heard loud
9 screaming coming from the area below his residence. He
10 told me he ran down to this area and saw a male person
11 engaged in a fight of some kind with a female, and
12 another police officer states in his --

13 THE COURT: Just -- Mr. Hudson.

14 MR. HUDSON: Okay.

15 THE COURT: Is that a question?

16 BY MR. HUDSON:

17 Q So you never ever made that statement to a police
18 officer.

19 A I don't recall it, no.

20 Q Didn't recall it.

21 THE COURT: No comments, please. Just
22 questions.

23 MR. HUDSON: Okay.

24 Q So the person that got into that truck -- and that
25 truck was already facing the gate; correct?

1 A From a distance away, yes, it was.

2 Q So you said when the person got into the truck and
3 gunned it, it was already going towards that fence.

4 A Yeah. You were already coming right at me.

5 MR. HUDSON: That exhibit, Your Honor, he
6 said -- can I approach again, please?

7 THE COURT: Sure.

8 BY MR. HUDSON:

9 Q Again you said you were here; correct? You came out
10 of --

11 A That's where I entered the road.

12 Q Okay. Where were you in that road?

13 A As I took eight or nine steps out to the road, you
14 started coming at me this way. And as I kept running
15 towards the fence, you kept coming right at me.

16 Q Now, if that truck's heading towards the fence, why
17 would you run in the same direction as the fence? Did
18 you run in the same direction the truck was facing?

19 A Did you expect me to run up the road?

20 Q I didn't ask you that, sir. I said, did you --

21 MR. BISKUPIC: Ask that the defendant resume
22 the table if it's just questions at this point.

23 MR. HUDSON: All right.

24 THE COURT: Go ahead.

25 MR. HUDSON: Could I show this to the jury?

1 Could the jury look at this photo?

2 THE COURT: Well, they aren't going to
3 know what you're talking about.

4 MR. HUDSON: To where David Carnot was and
5 the truck.

6 THE COURT: Just show him -- just point out
7 where he was and the truck. Don't circulate it.

8 MR. BISKUPIC: We'd ask that it be offered
9 first.

10 THE COURT: Is it offered into evidence?

11 MR. HUDSON: Yes, it is.

12 THE COURT: It's received. What number is
13 it?

14 THE CLERK: 121.

15 THE COURT: One twenty-one is received. And
16 just point it out. Hold it up and point it out.

17 MR. HUDSON: Okay.

18 Q David Carnot --

19 MR. BISKUPIC: I'd object to him talking to
20 the jury, Your Honor.

21 THE COURT: Point it out. I'm allowing him
22 to do this. Okay?

23 BY MR. HUDSON:

24 Q If Carnot's saying he's here and the truck's here
25 already facing the gate, why would you run in the

1 same --

2 MR. BISKUPIC: Object to him --

3 THE COURT: No. No. No. Questions.

4 MR. HUDSON: Okay.

5 THE COURT: Just tell them what he just told

6 you so they can see the picture.

7 MR. HUDSON: The truck was already facing the

8 gate. Carnot is here, and he ran towards the gate, the

9 same direction the truck was headed in. That's all I

10 have to say --

11 THE COURT: Okay.

12 MR. HUDSON: -- on that question. Your

13 Honor, could I state something out of a preliminary

14 hearing that he testified on the stand?

15 THE COURT: You may ask the question, and if

16 it doesn't compare, then you can ask him if he was

17 asked this question and answered this way --

18 MR. HUDSON: Okay.

19 THE COURT: -- if you get a different answer.

20 MR. HUDSON: On page 49.

21 THE COURT: No. No. No. You have to ask

22 him the question that you want to ask.

23 MR. HUDSON: Okay.

24 THE COURT: If the answer is different than

25 what you get in the -- in that preliminary hearing,

1 then you may ask the question and say, did you give
2 this answer?

3 MR. HUDSON: If it's different?

4 THE COURT: Yes.

5 MR. HUDSON: Okay. It's the same thing.

6 THE COURT: Ask the question.

7 BY MR. HUDSON:

8 Q He said the truck was headed in the same direction and
9 you ran to the gate. The truck was headed in the same
10 direction. So when that person got into the truck and,
11 you say, gunned it, could that person have lost control
12 of that vehicle?

13 MR. BISKUPIC: Object, no foundation to get
14 in the mind of the person flooring the vehicle at him.

15 THE COURT: Objection is sustained. That
16 means he will not answer.

17 BY MR. HUDSON:

18 Q Were you under the influence of any alcohol or drugs
19 that day?

20 A No, I was not.

21 MR. HUDSON: That's all I have, Your Honor.

22 THE COURT: Anything else?

23 MR. BISKUPIC: Yes.

24 REDIRECT EXAMINATION

25 BY MR. BISKUPIC:

1 Q Mr. Carnot, at any point when you saw this vehicle at a
2 high speed coming at you, did it appear to veer off to
3 the side to avoid striking you or the fence?

4 A No, it just kept coming directly at me.

5 Q At any point did it take any evasive action up to the
6 point of striking you up against the fence?

7 A No, it did not.

8 Q And is it correct that from the point it took off at
9 you, that it was a good 20 or 30 feet down the road
10 from that gate?

11 A That is correct.

12 MR. BISKUPIC: That's all I have.

13 THE COURT: Mr. Hudson, anything further?

14 MR. HUDSON: I'm just trying to find
15 something here.

16 THE COURT: Go ahead. Take your time.

17 MR. HUDSON: Please.

18 (Pause)

19 MR. HUDSON: That's all I have, Your Honor.

20 THE COURT: You may step down.

21 MR. BISKUPIC: We'd ask that the ones he
22 identified, 13 through 17, and 19, 20 and 21 be
23 received.

24 THE COURT: They're received.

25 MR. BISKUPIC: Call Lisa Carnot.

1 THE COURT: Come right up to the chair,
2 remain standing and raise your right hand, please.

3 LISA CARNOT,
4 having been first duly sworn on oath to testify the truth,
5 testified as follows:

6 THE CLERK: State your name and spell your
7 last name, please.

8 THE WITNESS: Lisa Carnot, C-A-R-N-O-T.

9 THE CLERK: Thank you. You may be seated.

10 DIRECT EXAMINATION

11 BY MR. BISKUPIC:

12 Q Where do you reside, ma'am?

13 A 1806 Grandview Lane in Kaukauna.

14 Q And who do you live there with?

15 A My husband and my two children, Dave Carnot.

16 Q And how long have you lived there?

17 A Seven years.

18 Q Now, directing your attention to the time period of
19 approximately 6:15 to 6:30 on the night of Sunday, June
20 25, 2000, do you remember what you were doing?

21 A Yes.

22 Q And what were you doing, in general?

23 A The dishes.

24 Q And do you know where your husband and children were
25 at?

1 A My husband was outside working in the yard, and my kids
2 were in the swimming pool.

3 Q Now, at some point in that range of 6:15 to 6:30 p.m.
4 on that Sunday night, did your husband interrupt you or
5 try and get your attention?

6 A Yes.

7 Q Okay. And how did he approach you?

8 A I seen him running up the hill in our backyard.

9 Q From what direction?

10 A From the woods.

11 Q And where do the woods lead to?

12 A Down to Plank Road.

13 Q And at least when you observed your husband coming up
14 out of the woods, did you observe his demeanor or
15 emotional state?

16 A He fell to the ground, out of breath, bleeding.

17 Q And what's his mood or demeanor?

18 A Oh, he was in -- he was frantic.

19 Q And did he say anything to you in this frantic state?

20 A He just screamed, give me some towels. She's dying. I
21 need help. Call 911.

22 Q Did you get him some towels.

23 A I ran, I got him some towels, and then I called 911.

24 Q And where did you see your husband go from there?

25 A He went back down the hill.

1 Q Into the same woods towards Plank Road?
2 A Yes.
3 Q And where did you go?
4 A I went back in the house and I called 911.
5 Q And did you talk to a dispatcher from 911?
6 A Yes.
7 Q And explained where there was a need for some help?
8 A Correct.
9 Q And up to that point on that day, had you or your
10 husband had any alcohol?
11 A No.

12 MR. BISKUPIC: That's all I have on direct.

13 MR. HUDSON: No, Your Honor.

14 THE COURT: You may step down.

15 MR. BISKUPIC: Mike Borchert.

16 (Pause)

17 THE COURT: What's the problem, Mr. Biskupic?

18 MR. BISKUPIC: Apparently he was downstairs
19 in the waiting room.

20 THE COURT: Want to stretch, just stand up
21 and stretch? You may.

22 (Pause)

23 MR. BISKUPIC: Mike Borchert.

24 THE COURT: Come right up to the chair,
25 remain standing and raise your right hand, please.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MIKE BORCHERT,

having been first duly sworn on oath to testify the truth,
testified as follows:

THE CLERK: State your name and spell your
last name, please.

THE WITNESS: Mike Borchert, B-O-R-C-H-E-R-T.

THE CLERK: Thank you. You may be seated

DIRECT EXAMINATION

BY MR. BISKUPIC:

Q What's your occupation, sir?

A Welder.

Q And what is your employer?

A Team Industries.

Q And how long have you worked for Team Industries?

A Around 11, 12 years.

Q And what's your home address?

A 1901 Augustine Street.

Q And is that in the City of Kaukauna, Outagamie County,
Wisconsin?

A Yes.

Q How long have you lived in Kaukauna?

A Basically my whole life. In fact, my whole life, I
should say.

Q And how old are you right now?

A Thirty-two.

1 Q And are you married?

2 A Yes.

3 Q And do you have any kids?

4 A Yes.

5 Q How many kids?

6 A One.

7 Q And did you graduate Kaukauna High School?

8 A Yes.

9 Q And it is correct you have one criminal conviction; is
10 that correct?

11 A Yes.

12 Q That was for a disorderly conduct about seven years
13 ago?

14 A Yes.

15 Q Prior to working at Team Industries, what other type of
16 work did you do?

17 A Been welding my whole life.

18 Q Now, 1901 Augustine Street, is that on the north side
19 of town or south side of town?

20 A It's on the north side.

21 Q Direct your attention up above you to the left, there's
22 a photo Exhibit 4, an aerial photo. Are you familiar
23 with what's depicted in that photo exhibit?

24 A Yes.

25 Q And what do you know that to be a depiction of?

1 A The Grignon -- right there's my house, the Grignon
2 Home. My neighborhood's right there.
3 Q Around Murphy's Quarry; is that correct?
4 A Yes.
5 Q And the neighborhood at the bottom of the photo is to
6 the north of Murphy's Quarry; is that correct?
7 A Yes.
8 Q And is it correct that you live at the intersection of
9 Augustine Street and Plank Road to the left middle of
10 that photo; is that correct?
11 A Yes.
12 Q How long had you lived there prior to today's date?
13 A Somewhere approximately eight months.
14 Q Was that prior to June of 2000 or prior to this date?
15 A Prior to June.
16 Q Okay. And back in June of 2000, directing your
17 attention to that Sunday, June 25, 2000, do you
18 remember being in your yard later in the evening hours
19 after five o'clock?
20 A Yes.
21 Q And do you remember what you were doing out that Sunday
22 early evening?
23 A Yes, washing my go-cart.
24 Q Was anybody else out in the yard with you, at least
25 initially?

1 A No.

2 Q Now, direct your attention to a photo exhibit -- or
3 pardon me -- a map, Exhibit 3. Are you familiar with
4 this City of Kaukauna map?

5 A Yes.

6 Q And at least from your observations, does it fairly and
7 accurately depict Kaukauna, including your north-side
8 neighborhood?

9 A Um-hummm.

10 Q Is that a yes?

11 A Yes.

12 Q Okay. Mr. Borchert, in regard to the intersection of
13 Augustine and Plank Road, is it correct that where I'm
14 pointing is the intersection near your home?

15 A Yes.

16 Q Could you put your initials MB where your home would be
17 on Exhibit 3? And I'll hold it still.

18 (Witness complies with request)

19 Q That would be on the -- roughly the northwest corner as
20 you come up Augustine Street; is that correct?

21 A Yes.

22 Q Is your house -- can you view it on Exhibit 4, the
23 aerial photo?

24 A Right there.

25 Q Okay. So as you make the turn, it's the first house?

1 A Yes.

2 Q Is it a light-colored roof and also garage?

3 A Yes.

4 Q And are you the only house at that corner?

5 A Yes.

6 Q As you come down Augustine Street and make a left onto
7 Plank, is it flat or is it raised at that area?

8 A It's raised.

9 Q And so is your house up on a hill somewhat?

10 A Yes. It's all moated.

11 Q And as you go up Plank Road to the east, is it flat or
12 does it go up a hill?

13 A It goes uphill.

14 Q Are you familiar with the entrances to Murphy's Quarry?

15 A Yes.

16 Q And are you aware of three separate entrances as you
17 travel up Plank Road?

18 A Yes.

19 Q Is it correct this first one is the one closest to your
20 house?

21 A Yes.

22 Q When you're standing out either at the end of your
23 driveway or in your yard, do you see that first
24 entrance?

25 A No.

1 Q And what separates or what prevents you on the road
2 from seeing that entrance?
3 A Actually, it's a hill. It's elevated. It's raised
4 so --
5 Q And is that entrance also surrounded by woods?
6 A Yes.
7 Q Go back to your seat. Direct your attention to the
8 time period shortly before six o'clock that night,
9 roughly quarter to or ten to, in that range, do you
10 recall any of your co-workers or fellow employees at
11 Team going by your home?
12 A Yes.
13 Q And who did you notice?
14 A John Panetti.
15 Q And how do you know John Panetti?
16 A He is, actually, my boss.
17 Q At Team?
18 A Um-hummm.
19 Q And where did you see him?
20 A He was actually driving down the street towards what
21 would be the Marina Bar.
22 Q On Augustine Street?
23 A Yeah.
24 Q And did he -- did you see him turn in your direction?
25 A No.

1 Q Where did you see him?
2 A Actually, he was going down to the Marina Bar at that
3 time.
4 Q Okay. And then where did you see him after that?
5 A That was it. That's -- that's the only time I seen
6 him.
7 Q Did you see him go by your --
8 A Right, down past my house. I seen him go by that, and
9 that's it.
10 Q Right by Plank Road there?
11 A Yep, go down.
12 Q Did you see, after his car went by, any other cars go
13 by for the period of the next 10 to 15 minutes?
14 A No, not at that time.
15 Q Did you see anybody on foot go by after Panetti went
16 by?
17 A When I was washing my go-cart I did. That's when I
18 seen the young lady run by, Shanna. I --
19 Q Was that somebody you had seen prior to that date?
20 A Yes. I seen her before run down there.
21 Q What direction was she running?
22 A She was running up Plank Road.
23 Q Okay. Where was she coming from, what direction?
24 A From Augustine, coming from -- actually, it would be
25 the south. You know, she's running up, actually,

1 north. She came from the south.

2 Q On Augustine?

3 A Right.

4 Q And then made a left onto Plank?

5 A Yep.

6 Q And --

7 A Yes.

8 Q And at least when you saw her, what was her mood or
9 demeanor?

10 A She ran around the corner, and then I -- I waved to her
11 and then she waved to me, and she just kept running up
12 the road.

13 Q You were friendly to each other?

14 A Yep.

15 Q Were there any words exchanged?

16 A No.

17 Q And could you see what, in general, she was wearing?

18 A She had shorts on and a T-shirt and headsets.

19 Q Like a walkman-type thing?

20 A Um-hummm.

21 Q And did you -- as she's coming around the corner by
22 your house in that driveway area, is she on the south
23 edge of the road or in the middle of the road or on the
24 north edge of Plank Road as she's heading up the hill?

25 A As she's running, she was on the right side of the

1 road.

2 Q Closest to your property?

3 A Right.

4 Q And did you see her continue up the hill then?

5 A Yes.

6 Q Now, after she went by, did anybody else come by your

7 house in the immediate time right after that?

8 A Yes.

9 Q Who was that?

10 A Jim Vander Loop.

11 Q And how do you know Jim Vander Loop?

12 A He's my wife's uncle.

13 Q And how much time elapsed after this young lady ran by

14 did your wife's uncle, Jim Vander Loop, come by?

15 A About a minute.

16 Q And was he walking or was he driving or what did --

17 A He was driving a pickup truck and his boat on the back,

18 and he stopped to talk to me.

19 Q You guys talked for a period of time?

20 A Yeah, about four to six minutes.

21 Q And where were you physically at when you were talking

22 with Vander Loop?

23 A I was standing right on the edge of my -- my property

24 there on the south side of the house.

25 Q Towards -- on the edge of Plank Road?

1 A Yeah.

2 Q Did he get out of his truck at all?

3 A Yes.

4 Q Did he go a distance from his truck off the road?

5 A Yeah. His truck was kind of parked, like, not right on
6 the side but right -- right in the traffic, actually,
7 right in the -- you know, right in the middle of the
8 road, actually.

9 Q Did he then come out on the road and talk to you for a
10 period of time?

11 A Yeah.

12 Q Did any other cars pass by him while the two of you
13 talked?

14 A No one passed by.

15 Q So nobody else went up Plank Road the same direction as
16 the lady jogger?

17 A No.

18 Q And you said you talked to him for about, what, five or
19 six minutes?

20 A Yeah, four -- four to six minutes, I'd say, yeah, five.

21 Q As the two of you were talking, did anybody else come
22 by from the other direction?

23 A Yes.

24 Q And what do you remember happening?

25 A A man and his -- a guy and his truck came down with --

1 he had a little boy with him, and he said to call 911.
2 He said it looked like a young lady got hit by a car up
3 the road, so then I ran into the house.

4 Q What did you do in the house?

5 A Then I grabbed the phone, called 911, and I quick ran
6 out, put the dogs in the garage, and I started running
7 down the street because the dispatcher told me, can you
8 see her? Can you get to her from where you're at right
9 there? And I ran up the road then.

10 Q So you actually had a conversation with the 911
11 dispatcher?

12 A Yes.

13 Q And did they ask you questions about the condition of
14 the person on the road?

15 A I can't really --

16 Q Well, were you instructed to go do something then?

17 A Yeah, I was instructed to go run up there and see --
18 see how -- you know, see how bad it was.

19 Q Did you have a cell phone or like a --

20 A I had a home phone, just a regular home phone.

21 Q Did you in fact head up Plank Road?

22 A Yes; started running up there.

23 Q Were you able to keep your phone signal, or did it go
24 fuzzy?

25 A It went fuzzy.

1 Q Did you eventually go up to where a person was in the
2 road?
3 A Yes.
4 Q And in relation to the first and second gates for the
5 quarry as you head up Plank Road to the west, where did
6 you observe the person?
7 A Actually, close to the second gate but back a little
8 bit further, maybe 50 yards, maybe not even that; you
9 know, maybe even a little bit closer in, maybe 30
10 yards.
11 Q From the gate, the second gate?
12 A Yeah, um-hummm.
13 Q Was the person on your side of the road or on the side
14 of the road toward the quarry?
15 A On the side of the road towards the quarry.
16 Q And when you got up there, were there any other people
17 there?
18 A Yes.
19 Q Who?
20 A Jim Vander Loop and Dave Carnot.
21 Q Okay. So your wife's uncle headed up there first?
22 A Yes.
23 Q Do you know if he was on foot or brought his car?
24 A He brought his truck up.
25 Q And when you got up there and Vander Loop was there,

1 who else was there?

2 A Dave Carnot.

3 Q Did some other citizens eventually come by, too?

4 A Yes.

5 Q What did you do up at that scene?

6 A When I ran up to the scene, I seen her laying kind of
7 crouched or whatever, and I -- I seen Dave with the
8 rake walking around in a circle. And I looked at her,
9 and I said, what's going on, Dave? And Dave was really
10 upset walking around and angry that somebody tried
11 running him over. And then I walked back over to that
12 girl, and I -- you know, are you all right? But when I
13 seen her, she was --

14 Q What was her condition?

15 A To be honest, I -- I think she was dead. I mean, she
16 was in bad shape.

17 Q And had you seen a dead person before?

18 A Only in a river once when I was young.

19 Q And did you -- was there any signs of life, at least
20 that you noticed in this young lady?

21 A No.

22 Q Now, direct your attention to some photo boards that
23 have already been identified, in particular, Exhibit
24 19. Are you familiar with what's depicted in 19?

25 A Yes.

1 Q And what is that a view of in 19?
2 A That's her laying there.
3 Q Okay. What is the overall picture of from where on
4 Plank Road?
5 A It's actually coming from the top looking down.
6 Q From the west looking back towards your house?
7 A Right. Right.
8 Q And are you familiar with what's in the right of the
9 photo as you look back down towards your house?
10 A Yes, that's the gate for the quarry.
11 Q The middle gate?
12 A No, that's the -- actually, the second gate.
13 Q Second gate from your home.
14 A Right.
15 Q And --
16 A Middle gate.
17 Q The position in the back of the photo where the person
18 is covered in the road, is that where you encountered
19 that same lady?
20 A Um-hummm.
21 Q Is that correct?
22 A Yes.
23 Q Did you make any observations other than her position
24 and -- to the gate as to things laying around the area?
25 A No.

1 Q And from the time that you saw Panetti go by, no other
2 vehicle came by from your direction onto Plank Road; is
3 that correct?

4 A No.

5 Q Until your wife's uncle came by?

6 A Right.

7 Q And --

8 MR. BISKUPIC: That's all I have on direct.

9 THE COURT: Mr. Hudson.

10 CROSS-EXAMINATION

11 BY MR. HUDSON:

12 Q Did you walk up there to that area or did you drive?

13 A I ran.

14 Q You ran?

15 A Um-hummm.

16 Q And you said Jim Vander Loop, he drove up to that area?

17 A Yes.

18 Q And whereabouts did he park his vehicle? Near the
19 gate, down from the gate?

20 A The right-hand side of the road, actually, kind of back
21 a little bit further than where she was laying.

22 Q So it was below the gate on the right-hand side of the
23 road?

24 A It was -- yeah. I would think that was where it was,
25 but I -- on the side of the road. That's -- all I can

1 really remember is he had it parked on the side of the
2 road. I don't know if it was before or -- I can't
3 really be right exact where the positioning was.

4 Q When you were on the scene, did any police vehicles or
5 ambulances come down into that area?

6 A Yes.

7 Q And could you tell me in relation to where they were?
8 Near the gate, by -- by Jim Vander Loop's truck?

9 A Well, the police officers arrived first.

10 Q And where did they park their vehicles?

11 A Actually, they parked the vehicles before the body.
12 Okay?

13 MR. HUDSON: Your Honor, could I get that
14 exhibit?

15 THE COURT: Your exhibit?

16 MR. HUDSON: Could I go up there, approach?

17 THE COURT: Sure.

18 BY MR. HUDSON:

19 Q That's the gate; correct?

20 A Yep.

21 Q And where about would you say Jim Vander Loop parked
22 his truck?

23 A Like I say, he parked it on the side of the road,
24 somewhere in here. I'm not really sure exactly, but
25 somewhere along in there. I --

1 Q Right in here somewhere?
2 A Yeah, somewhere in there.
3 Q And when --
4 A Police officers stopped right about, you know, in here.
5 Q Right by the gate?
6 A In this direction. Well, maybe even back a little
7 further. I'm not really sure on positioning, but --
8 Q But pretty close though to the gate.
9 A Somewhere in there, yeah.
10 Q Somewhere right in this area.
11 A Yes.
12 Q And did an ambulance come down there?
13 A They came later, a couple, you know --
14 Q And where did they park their vehicle? Or did they
15 drive down here? Did they drive down towards the body?
16 A By then the police officers had us backed up. They had
17 us backed up, so there was a lot of commotion by then.
18 Q So they had the -- had the bystanders backed up.
19 A Yeah.
20 Q They let the ambulance in; right?
21 A Right. Right.
22 Q And where did that ambulance drive to?
23 A Well, down into here somewhere.
24 Q So it drove past the gate then.
25 A I would think so, yeah. I'm not totally sure, but it

1 drove right next to the body.

2 Q So --

3 A Pretty close.

4 Q Past the gate?

5 A Yep.

6 Q So it drove --

7 A Yep.

8 Q -- from down this way. That would be north -- east.

9 A East would be going, yeah, down towards my house,
10 right.

11 Q So it went down that way and past the gate.

12 A Yep.

13 MR. HUDSON: Okay. That's all I have, Your
14 Honor.

15 THE COURT: Okay.

16 MR. BISKUPIC: Nothing else for this witness.

17 THE COURT: You may step down.

18 (Pause)

19 THE COURT: Just come right up to the chair,
20 remain standing and raise your right hand, please.

21 JAMES SPRANGERS,

22 having been first duly sworn on oath to testify the truth,
23 testified as follows:

24 THE CLERK: State your name and spell your
25 last name, please.

1 THE WITNESS: James Sprangers,
2 S-P-R-A-N-G-E-R-S.

3 THE CLERK: Thank you. You may be seated.

4 DIRECT EXAMINATION

5 BY MR. BISKUPIC:

6 Q What's your occupation, sir?

7 A I'm an operating engineer for Oudenhoven Construction.

8 Q And what's your -- where do you live?

9 A On Highway 96, about two miles out of the City of
10 Kaukauna.

11 Q Is that also known as Green Bay Road?

12 A Right.

13 Q And are you married?

14 A Yes.

15 Q And how many kids do you have?

16 A Two.

17 Q Now, directing your attention to Sunday, early evening,
18 approximately 6:20 p.m., did you have occasion to go
19 into the city limits on the north side of Kaukauna on
20 June 25, 2000?

21 A Yes.

22 Q And what did you head into town for?

23 A My son had soccer practice down by the Grignon Home.

24 Q Now, directing your attention to -- there's a photo up
25 to your left, Exhibit 4. The soccer fields where your

1 son has, can you tell where those are in relation to
2 the quarry in the picture?

3 A Yes. They're on the left-hand side of the quarry.

4 Q Okay. Well, as you're facing the photo --

5 A They would be on the right.

6 Q Okay. And --

7 THE COURT: Could you point it out, go up to
8 the map and point it out?

9 THE WITNESS: Sure. Right here.

10 BY MR. BISKUPIC:

11 Q Those soccer fields?

12 A Yes.

13 Q You can go back to your chair.

14 THE COURT: Where is the Grignon Home?

15 THE WITNESS: The Grignon Home is right here,
16 the Grignon Mansion.

17 BY MR. BISKUPIC:

18 Q Just to the right of the quarry also?

19 A Yes.

20 THE COURT: Okay.

21 BY MR. BISKUPIC:

22 Q What route were you heading to -- on to go to those
23 soccer fields, what streets?

24 A Come in on 96, and then I turn on Plank Road.

25 Q And then head east?

1 A Then you're heading pretty well east, yep, past the
2 quarry.
3 Q And then from there where would you normally go to take
4 your son?
5 A Go down to the -- down Plank Road to the river, down by
6 the river, and then you take a right, and that's
7 Augustine Street or Augustine or whatever.
8 Q Okay.
9 A Then you got about a mile to the soccer field there,
10 not even a mile.
11 Q Okay.
12 A Then I drop him off and take the same way back home
13 while he's --
14 Q And that's the route that you had taken prior to June
15 25?
16 A Right.
17 Q And when you came off of 96 onto Plank Road on the
18 evening of June 25, 2000, as you turned onto Plank
19 Road, did you notice anything unusual?
20 A Yeah. There was a boat laying in the opposite lane.
21 Q On what street?
22 A On Plank Road.
23 Q Now --
24 A About a hundred yards up from the corner, I would say.
25 Q From the intersection of Green Bay Road?

1 A Right.

2 Q Direct your attention to the city map, Exhibit 3. Are
3 you familiar with what's depicted on this map, what
4 area that is?

5 A Yep.

6 Q Do you know that to be a city map for Kaukauna?

7 A Um-hummm.

8 Q Is that a yes?

9 A Yep. Yes.

10 Q And is it correct that 96 is this road, Green Bay Road?
11 Is that correct, where I'm pointing to?

12 A Yes, it is.

13 Q And can you mark with a letter B with this green pen
14 where you saw the boat approximately as you turned off
15 of 96? Just mark it on the line on Plank Road where
16 you saw it.

17 (Witness complies with request)

18 A Okay.

19 Q Okay. And can you put a B below the dot?

20 (Witness complies with request)

21 Q You can go back on the stand now. Is it correct that
22 where I'm pointing to, kind of between the intersection
23 of Green Bay Road and Florence, is where you saw the
24 boat?

25 A Yes.

1 Q And directing your attention now back to the photo
2 exhibit, No. 4, are you familiar with the intersection
3 of Green Bay Road on that also?

4 A Yes, I am.

5 Q And as you turn -- you turn left; is that correct?

6 A Correct.

7 Q And Florence would be the next one up; correct?

8 A Yes.

9 Q And you said the boat would have been somewhere right
10 in the middle of the street where I'm pointing?

11 A Yes. It was past that house's driveway that is right
12 there.

13 Q Closer to Florence?

14 A Yeah, about halfway in between, I would say, the
15 driveway and Florence.

16 Q Okay. When you saw the boat, did you stop or did you
17 continue?

18 A We continued. We slowed up a little bit, and we went a
19 little further. We looked at the boat. We thought
20 somebody just lost it. And a little further up the
21 road, about -- not quite Murphy's office was the
22 cowling of the motor laying on the road also.

23 Q Like a cover?

24 A The cover of the motor.

25 Q Now, did you continue to the east on Plank Road?

1 A Yes.

2 Q And are you familiar with the number of quarry
3 entrances on the right-hand side of the road?

4 A Yes, I am.

5 Q And as you approach the middle gate entrance, did you
6 notice anything in the area of the middle gate --
7 middle gate of the quarry that caught your attention?

8 A Well, yes. Actually, before that, as soon as I got up
9 on top of the hill by the Murphy's office, start to
10 come down the hill, and that's when I seen a body
11 laying on the road.

12 Q Did you drive up by it?

13 A Yes. We -- I kind of speeded up even to get down
14 there, you know, and we pulled up to it.

15 Q Who was with you?

16 A My son.

17 Q And how old is he?

18 A He's 12.

19 Q And did you make some observations at least from your
20 truck?

21 A Yes, we did. We stopped and I looked, and from what we
22 could see, she wasn't breathing so first thing I
23 thought of was to get help. And I didn't have no
24 phone, cell phone.

25 Q So where did you head to?

1 A I headed down to the -- down Plank Road to the corner,
2 to Mike's house.

3 Q Right on the corner, Mike Borchert?

4 A Right.

5 Q And did you see anybody else outside that house?

6 A Yes. I forget if he was standing or sitting on the
7 lawn talking to, I think it was his dad. He was
8 talking to his dad. His dad was in his car so --

9 Q Either of those two people that you encountered, did
10 you say something to them?

11 A Yes. I stop and I hollered to Mike to call 911; that
12 there's a woman laying in the road up there, and it
13 appears like she's dead. And then Mike took off
14 running for the house.

15 Q And did you see where the other man went?

16 A He stood there a minute, and then he went up the road
17 as far as I could see. I continued on and I dropped my
18 boy off at the soccer fields because I didn't want him
19 to see anymore.

20 Q And then where did you go?

21 A So then I turned right around and I come back up, and
22 at that time when I made the corner and went back up
23 Plank Road, Mike was about halfway there running, and
24 the man that had the car was there already. So then I
25 stopped, and all three of us were there then.

1 Q And did you stay by the girl for a period of time?

2 A Yes. When I got to the girl, I could see the sirens
3 coming already.

4 Q And did you see some either emergency personnel or
5 police arrive shortly after that?

6 A Right. I would say we were maybe there, us three,
7 maybe five minutes, at the most, you know. And I could
8 not see that she was breathing, you know.

9 MR. BISKUPIC: That's all I have on direct.

10 THE COURT: Any questions?

11 MR. HUDSON: Yes.

12 CROSS-EXAMINATION

13 BY MR. HUDSON:

14 Q You said you came from the west and you were heading
15 down Plank Road; correct?

16 A Yes, I was.

17 Q And when you drove down Plank Road toward Augustine,
18 did you notice anything was laying on the road, tire
19 pieces, pieces from a broken head lamp, tapes on the
20 road, a headset, anything of that nature?

21 A The only thing I can -- that I noticed was her and her
22 headset, and that's about all I can recall right now.

23 Q And where was this headset? On the right-hand side of
24 the road when you were going down the hill or on the
25 left?

1 A It was about in the middle of the road, right dead
2 center.

3 Q So when you drove down through that area, did you run
4 anything over?

5 A No, I didn't.

6 Q Not that you know of.

7 A I -- I saw the headset when I drove down. I swerved
8 around it when I stopped.

9 Q So you would have been almost on the grass on the
10 left-hand side; correct?

11 A Correct.

12 MR. HUDSON: That's all I have, Your Honor.

13 MR. BISKUPIC: No follow-up.

14 THE COURT: You may step down.

15 Is this a good time to recess, Mr. Biskupic, or
16 you got another short witness?

17 MR. BISKUPIC: We can do Mr. Vander Loop. He
18 wasn't there that long.

19 THE COURT: Okay.

20 MR. BISKUPIC: James Vander Loop.

21 THE COURT: Come right up to the chair,
22 remain standing and raise your right hand, please.

23 JAMES VANDER LOOP,

24 having been first duly sworn on oath to testify the truth,
25 testified as follows:

1 THE CLERK: State your name and spell your
2 last name, please.

3 THE WITNESS: James Robert Vander Loop,
4 V-A-N-D-E-R-L-O-O-P.

5 THE CLERK: Thank you. You may be seated.

6 DIRECT EXAMINATION

7 BY MR. BISKUPIC:

8 Q What's your occupation, sir?

9 A Mill worker, shift worker.

10 Q And are you married?

11 A Yes, I am.

12 Q And do you have any kids?

13 A Two.

14 Q And are you related, in some fashion, to a Mike
15 Borchert?

16 A Yes, I am.

17 Q And how are you related to Mike Borchert?

18 A He married my niece.

19 Q Now, directing your attention to June 25 of 2000, last
20 year, do you recall where Mike Borchert and your niece
21 were living?

22 A Down at the bottom of the quarry there on -- I forget
23 the name of the road there.

24 Q Is that Augustine area?

25 A Right.

1 Q And do you know what the cross street is there or the
2 intersection?
3 A Grignon, Grignon Street or --
4 Q I'll show you -- direct your attention to a photo
5 exhibit, four, in relation to the quarry. In
6 particular, Augustine Street. Are you familiar with
7 what's depicted on there?
8 A The quarry is where?
9 (Mr. Biskupic indicates)
10 Q And then you have Plank Road here.
11 A Okay. It's Plank Road on the northwest corner.
12 Q The northwest corner there is Plank and Augustine?
13 A Right. Right.
14 Q And is that where you knew Mike to be living with your
15 niece back then?
16 A Right.
17 Q Now, directing your attention to that day, on Sunday,
18 June 25, did you have occasion to visit with Mike
19 Borchert sometime in the area of six o'clock or later?
20 A Yes, I did.
21 Q And do you remember where you had been coming from?
22 A I had my boat in down to the river doing a little
23 fishing down there.
24 Q And did you then drive over to Mike's house?
25 A Yes, I did.

1 Q And do you remember where you parked?
2 A Right at the bottom of the hill.
3 Q At Plank Road there?
4 A Right.
5 Q And how long do you remember spending time at Mike's
6 house?
7 A An approximately four-and-a-half, five minutes.
8 Q Did you go in the house or just stay outside the house?
9 A Stayed outside the house.
10 Q And who did you deal with or talk with at that
11 location?
12 A Just Mike.
13 Q Do you know what he was doing at the time?
14 A Pushing his dune buggy or go-cart or whatever the heck
15 it was out when I come around the corner.
16 Q Now, at some point as you and your relative, Mike
17 Borchert, were talking, did somebody drive up and ask
18 you to call 911?
19 A An elderly gentleman come down in his pickup truck and
20 mentioned that it looked like there was a girl laying
21 dead in the road.
22 Q And which direction did he come from?
23 A He come down the hill heading towards the river.
24 Q So from the direction of Plank Road from the west to
25 the east towards you guys?

1 A Right.

2 Q And when this man came by, told you to call 911, what
3 did you do?

4 A I immediately told Mike to dial 911, and run to my
5 truck and drove up the hill towards where she was
6 laying.

7 Q And was that up towards the gates to Murphy's Quarry?

8 A Correct.

9 Q And when you got up there, was there anybody else
10 there?

11 A No.

12 Q What did you do?

13 A I pulled my vehicle -- I had my boat on the back
14 completely across the road, and then I got out and ran
15 over to her, and I could see she was -- she was hurting
16 pretty good so --

17 Q Did anybody show up soon after you approached her?

18 A No. I could hear somebody in the woods, and then I
19 just assumed, because they got go-carts and stuff,
20 that, you know, there was possibly an accident up there
21 and that she had crawled down onto the road. So then I
22 went in the woods to find out; maybe I could hear
23 somebody in there making noise, you know.

24 Q Did you see a David Carnot there?

25 A Yeah, I sure did. I got in the woods just a little

1 ways, rather steep hill, and he made a remark,
2 something like, you son of a bitch. You tried to kill
3 me. And he swung a garden rake at me. And at that
4 time I recognized who he was. I told him that, you
5 know, that it wasn't me, and I didn't know what he was
6 talking about at that time. And then he recognized who
7 I was because I knew his older brother so --
8 Q Did he calm down at that point?
9 A Yes, he did.
10 Q And what did the two of you do then?
11 A We went out by the girl. I went out by the girl, and
12 I'm not sure what he did exactly.
13 Q At that point are there any other people arriving on
14 the scene?
15 A No.
16 Q Okay. Shortly after that?
17 A Pretty much, yeah.
18 Q Who came upon the scene that you knew?
19 A There was just several officers showed up and --
20 Q Prior to the officers arriving, did Mike or anybody
21 else you know come back to the scene?
22 A Mike got there, but I'm not exactly sure when he had
23 gotten there.
24 Q And at least when you tended to this young lady, was
25 there any signs of life that you noticed?

1 A Her eyes were moving a little bit and her jaw, but no,
2 not really, no. I think she was just dying.

3 MR. BISKUPIC: That's all I have for this
4 witness.

5 THE COURT: Any questions, Mr. Hudson?

6 MR. HUDSON: Can I approach him with that
7 exhibit, Your Honor?

8 THE COURT: Sure.

9 CROSS-EXAMINATION

10 BY MR. HUDSON:

11 Q You came up this way, would be from Augustine, would be
12 here, up that way to the east.

13 A Um-hummm.

14 Q And you came up the road towards the gate going west.

15 A Where is the river from here?

16 Q The river is down this way to the east.

17 A Okay. Then I come -- this is the bar down this way, I
18 take it?

19 Q The bar would be down here. I don't know, you know,
20 where --

21 A I was going up the hill.

22 Q This road here -- There is a gate here. You couldn't
23 go through there.

24 A This is Mike's house here on the corner? I come around
25 this way then.

1 Q No. This is the quarry here. This road leads into the
2 quarry right here.

3 A Oh, okay. Now, what was the question?

4 Q Just like this right here, this is the same exact
5 photo.

6 A Um-hummm.

7 Q So you came up from this way.

8 A Right.

9 Q Okay. So you're coming from here.

10 A Yep.

11 Q Where in regards did you park your vehicle?

12 A I just swung it completely across the road, just a
13 little ways down from that gate that goes down.

14 Q But right -- right -- can you point out to me exactly
15 where you parked your vehicle? Here's the gate.

16 A Okay.

17 Q Where in regards did you park your vehicle?

18 A Possibly right in here, where the shade comes across
19 the road.

20 Q On the right-hand side of the road?

21 A Completely across it, just about, till the other
22 officers come.

23 Q So you were -- on the left-hand side of the road you
24 parked your vehicle?

25 A On both sides. I had my boat on the back, so I

1 basically just stopped complete traffic so they
2 wouldn't be able to come up the hill and run her over.
3 Q Was it any close to here where these three patches are,
4 would you say?
5 A Sure. Sure.
6 Q So it was maybe right over them three patches?
7 A I doubt that. I think it was back a little bit.
8 Q But just right in that same area?
9 A Sure.

10 MR. HUDSON: Okay. That's all, Your Honor.

11 MR. BISKUPIC: No follow-up questions.

12 THE COURT: You may step down. That will
13 take care of it for the day?

14 MR. BISKUPIC: Yeah, I think so.

15 THE COURT: Ladies and gentlemen of the jury,
16 we'll now recess till 8:30 tomorrow morning. As we
17 recess, I want to remind you about some instructions.

18 Do not discuss this case among yourselves or with
19 anyone else until your final deliberations in the jury
20 room. Do not listen to any conversation about this
21 case. Do not read any newspaper reports or listen to
22 any news reports on the radio or television about this
23 trial. Do not investigate this case on your own or
24 visit the scene. Do not engage in any experimentation
25 or research relating to issues of fact in this case.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

If you come in contact with the parties, the lawyers or witnesses, do not speak with them. On their part, they are not to speak with you.

Have a good evening and we'll see you tomorrow at 8:30. The bailiff will take you to the jury room.

(The jury is excused)

THE COURT: You may be seated. We're adjourned.

(Proceedings concluded at 5:05 p.m.)

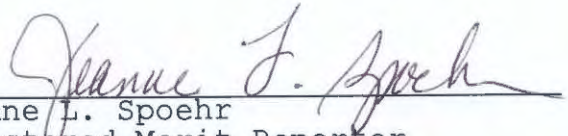
* * * * *

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF WISCONSIN)
OUTAGAMIE COUNTY) ss.

I, Jeanne L. Spoehr, certify that I am the official court reporter for Branch IV of the Circuit Court of Outagamie County; and as such court reporter, I made full and accurate stenographic notes of the foregoing proceedings; that the same was later reduced to typewritten form; and that the foregoing is a full and accurate transcript of my stenographic notes so taken.

Dated and signed in the City of Appleton on the 13th day of July, 2001.



Jeanne L. Spoehr
Registered Merit Reporter
Certified Realtime Reporter
Outagamie County Justice Center