

No. 20-826

In the Supreme Court of the United States

MIKE BROWN, ACTING WARDEN, PETITIONER

v.

ERVINE DAVENPORT

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JOINT APPENDIX - VOLUME II OF III

Catherine M.A. Carroll
Wilmer Cutler Pickering
Hale and Dorr LLP
1875 Pennsylvania Ave., NW
Washington, DC 20006

Dana Nessel
Michigan Attorney General

Tasha Bahal
Counsel of Record
Reuven Dashevsky
Gary B. Howell-Walton
Wilmer Cutler Pickering
Hale and Dorr LLP
60 State Street
Boston, MA 02109
Tasha.Bahal@
wilmerhale.com
(617) 526-6000

Fadwa A. Hammoud
Solicitor General
Counsel of Record
P.O. Box 30212
Lansing, MI 48909
HammoudF1@
michigan.gov
(517) 335-7628

Attorneys for Petitioner

Attorneys for Respondent

Petition for Writ of Certiorari Filed Dec. 14, 2020
Certiorari Granted April 5, 2021

TABLE OF CONTENTS
VOLUME I OF III

Relevant Docket Entries

Relevant Docket Entries from the
Ninth Circuit Court for the County of Kalamazoo
Docket No. C07-0165FC..... 1–2

Relevant Docket Entries from the
Michigan Court of Appeals
Docket No. 287767..... 2

Relevant Docket Entries from the
Michigan Supreme Court
Docket No. 141832..... 2

Relevant Docket Entries from the
Michigan Court of Appeals
Docket No. 306868..... 2

Relevant Docket Entries from the
Michigan Supreme Court
Docket No. 146652..... 2

Relevant Docket Entries from the
United States District Court
for the Western District of Michigan
Docket No. 1:14-cv-01012-JTN-SJB..... 3

Relevant Docket Entries from the
United States Court of Appeals
for the Sixth Circuit
Docket No. 17-2267..... 3–4

Transcripts and Orders in Chronological Order

Ninth Circuit Court for the County of Kalamazoo
Docket No. C07-0165FC
Jury Trial – Volume I
Pages 19 to 24, 113 to 114
July 8, 2008.....5–14

Ninth Circuit Court for the County of Kalamazoo
Docket No. C07-0165FC
Jury Trial – Volume II
Pages 356, 394 to 429; 445 to 491
July 9, 2008.....15–111

Ninth Circuit Court for the County of Kalamazoo
Docket No. C07-0165FC
Jury Trial – Volume III
Pages 518 to 532; 536 to 559;
627 to 670; 712 to 737
July 10, 2008.....112–248

Ninth Circuit Court for the County of Kalamazoo
Docket No. C07-0165FC
Jury Trial – Volume IV
Pages 763 to 845
July 11, 2008.....249–344

VOLUME II OF III

Ninth Circuit Court for the County of Kalamazoo
Docket No. C07-0165FC
Jury Trial – Volume V
Pages 857 to 931; 960 to 988
July 15, 2008.....345–469

Ninth Circuit Court for the County of Kalamazoo
Docket No. C07-0165FC
Jury Trial – Volume VI
Pages 1001 to 1153
July 16, 2008.....470–657

Ninth Circuit Court for the County of Kalamazoo
Docket No. C07-0165FC
Jury Trial – Volume VII
Pages 1193 to 1196, 1199, 1224 to 1225
July 17, 2008.....658–666

VOLUME III OF III

Michigan Court of Appeals
Case No. 287767
Order (Per Curiam)
Dated August 5, 2010.....667–680

Michigan Court of Appeals
Case No. 287767
Order (Gleicher, J. (concurring))
Dated August 5, 2010.....681–686

Michigan Supreme Court
Case No. 141832
Order
Dated March 9, 2011.....687–688

Ninth Circuit Court for the County of Kalamazoo
Docket No. C07-0165FC
Evidentiary Hearing – Volume I
All pages (1-125)
June 24, 2011.....689–833

Ninth Circuit Court for the County of Kalamazoo
Docket No. C07-0165FC
Evidentiary Hearing – Volume II of II
All pages (1-22)
July 29, 2011.....834–859

Ninth Circuit Court of Kalamazoo
Docket No. C07-0165FC
Opinion after Remand
Dated October 20, 2011.....860–863

The following opinions and order have been omitted
in printing this Joint Appendix because they appear
on the following pages in the appendix to the Petition
for a Writ of Certiorari:

Michigan Court of Appeals
Case No. 306868
Opinion
Issued December 13, 2012..... 95a–100a

Michigan Supreme Court
Case No. 146652
Order
Issued July 3, 2013 93a–94a

United States District Court
Western District of Michigan
Case No. 1:14-cv-1012
Report and Recommendation
Issued November 7, 2016 78a–92a

United States District Court
Western District of Michigan
Case No. 1:14-cv-1012
Opinion and Order
Issued September 26, 2017..... 71a–76a

United States District Court
Western District of Michigan
Case No. 1:14-cv-1012
Judgment
Issued September 26, 2017..... 77a

United States Court of Appeals
for the Sixth Circuit
Case No. 17-2267
Opinion
Issued June 30, 2020 1a–69a

United States Court of Appeals
for the Sixth Circuit
Case No. 17-2267
Judgment
Issued June 30, 2020 70a

United States Court of Appeals
for the Sixth Circuit
Case No. 17-2267,
Order Denying Petition for Rehearing En Banc
Issued September 15, 2020..... 101a–137a

STATE OF MICHIGAN
9th JUDICIAL CIRCUIT COURT
TRIAL DIVISION
FOR THE COUNTY OF KALAMAZOO

PEOPLE OF THE STATE OF MICHIGAN,
v Case No.:C07-165FC
ERVINE LEE DAVENPORT.
Defendant.

JURY TRIAL - VOLUME V
BEFORE THE HONORABLE
PAMELA LIGHTVOET
Kalamazoo, Michigan - Tuesday, July 15, 2008

APPEARANCES:

For the People:
ATTORNEY STUART L. FENTON P40970
Kalamazoo County Prosecutor's Office
227 West Michigan Avenue
Kalamazoo, Michigan 49007
(269) 383-8900

For the Defendant:
ATTORNEY SUSAN M. EIFLER P57222
Downing, Glaser, and Eifler Associates
2510 Capital Avenue Southwest, Suite 102
Battle Creek, Michigan 49017
(269) 964-9035

VIDEO RECORDED
TRANSCRIBED BY:
DAWN MORSE CER 4727
1400 Gull Road
Kalamazoo, Michigan (269) 385-6000

* * *

[Page 857]

[MR. FENTON cont.] Miss Eifler and I have agreed that apparently there's approximately 50 minutes of tape left. However, that's not necessary to watch it. It's in evidence, if the jury wants to watch it later they can. The sum and substance of this statement has already been produced, so we're gonna just move on.

THE COURT: Just so I'm clear then, Mr. Fenton, that is Exhibit--which exhibit is that?

MR. FENTON: 35.

THE COURT: Miss Eifler, is that accurate?

MS. EIFLER: Yes ma'am.

THE COURT: Okay. And I did previously admit Exhibit 35 and you will be given all the exhibits after the close of proofs and after the attorneys give their closing arguments. So you will be provided and you'll have the ability to--to watch the remaining portion of that in the deliberation room.

Mr. Fenton.

MR. FENTON: Thank you. I just have a few last questions for Detective Beauchamp

DIRECT EXAMINATION

BY MR. FENTON:

Q First of all, do you independently recall, Detective Beauchamp, the sum and summary of whatever's left on that tape, what happened after that?

[Page 858]

A We speak to him for probably another--well obviously 50 minutes, but it's--it's small talk.

Q All right. And then was he bought some dinner or something, some food?

A Captain Mallery, when he--at the end of the interview told him that he would bring him back the following day on the 25th in the afternoon, and buy him whatever he wanted for lunch. At the end of the interview he told them that.

Q Was that--was whatever he wanted for lunch provided for him the next day?

A Yes it was.

Q What was that?

A He ordered lunch from Applebee's.

Q All right. I think you may have testified to this earlier, but just to clarify, did you obtain Andre Randall's shoes for comparison purposes?

A Yes I did.

Q And his D--DNA was also obtained, was it not?

A Yes it was.

Q And submitted to the Michigan State Police?

A Yes.

Q Do you have an approximation on the Defendant's height and weight?

A Mr. Davenport's approximately six foot five, approximately 300 pounds.

[Page 859]

Q Can't remember if I asked you this before or not, did you go over the Defendant's jacket and look at it, the one that was taken from the hospital, to see if it had any cuts on it?

Q Yes. I--I actually packaged that into the plastic material that was presented here in court, and went through the--went through the entire jacket and did not observe any cuts of any--or any marks on the jacket.

Q Now that's the camouflage jacket that's packaged with one of the boots that was taken from the hospital, right?

A That's correct.

Q Is there some apparent blood on there, correct?

A Yes.

Q And is that from the Defendant from the accident?

A Correct.

MR. FENTON: I believe that's all I have of this witness. Oh let me just get this in.

Q I'll show you what's been marked as People's proposed Exhibit 37. Is that the written statement, the second one taken from the Defendant that the jury just heard on the videotape that he signed, Captain Mallery signed, and you signed?

A Yes it is.

MR. FENTON: Move for admission of People's Exhibit 37

[Page 860]

MS. EIFLER: No objection.

THE COURT: 37 is received.

(People's Exhibit 37 is received at 11:41 a.m.)

MR. FENTON: With that I have no further questions.

THE COURT: Miss Eifler.

MS. EIFLER: Your Honor, may we approach.

THE COURT: Yes.

(Bench conference begins at 11:41 a.m. between the Court and counsel, transcribed as follows)

MS. EIFLER: I have fairly lengthy cross-exam.

THE COURT: Okay.

MS. EIFLER: I think you know, if I could just do it all in one--

THE COURT: You want to just do it after the noon break?

MS. EIFLER: Yes.

MR. FENTON: Why the half turn now?

THE COURT: Well she wants to--

MS. EIFLER: After, you got 15 minutes.

MR. FENTON: Cause it's wasting a half-hour of time.

THE COURT: Well it doesn't matter whether they're gonna go to lunch right now or we go to lunch later so. And the deputies would probably prefer it this way

[Page 861]

anyway so that they know, they can bring him back and so forth.

Well all right, if that's the case then--what are we looking at here? Do we think we're gonna get this done today or not?

MR. FENTON: Hopefully.

THE COURT: Because we need to at some point we'll need the jury instructions then. If we break now, should I tell them to come back at 1:15, 1:30 then, so we can do jury instruction?

MR. FENTON: Well if she's got fairly lengthy cross and we're not even gonna start now, that's gonna make it more difficult to finish today.

THE COURT: Well that's not gonna matter. The timing isn't gonna matter whether she starts now and we break it up and then--I mean, they're still gonna get the same amount of time for lunch.

MR. FENTON: Well I was just thinking if we get done with the cross--

THE COURT: Well then you're gonna go--

MR. FENTON: Then there's only one witness left after lunch.

THE COURT: But either way, Stuart, you're gonna get--either way they're gonna get an hour-and-a-half or so for lunch. So it doesn't matter if we take it now--

[Page 862]

MR. FENTON: But if--I don't know.

THE COURT: Or we take it later.

MR. FENTON: It's hard--

THE COURT: Anyway, we're gonna take a break now.

MR. FENTON: It just seems it's gonna take longer if we break now, but I don't know. I can't tell.

THE COURT: Okay. Then you got Mallery. Any idea how long he's gonna be?

MR. FENTON: I'm not gonna have him on more than ten, 15 minutes.

MS. EIFLER: And I'm not sure how long the cross-examination's gonna be on Beauchamp.

THE COURT: Right now what are you thinking as far as your witnesses are concerned?

MS. EIFLER: Well it might just be Diane out there, there are none out there, but they've been instructed to come back at 1:00. So hopefully they'll be here ready to go.

THE COURT: So we very--okay. Depending on--and they shouldn't be that long.

MS. EIFLER: Right.

THE COURT: So we very well may be able to finish it today then.

MS. EIFLER: Right.

THE COURT: So we could potentially take a break

[Page 863]

after all the witnesses then and do jury instructions and then don't worry about during the noon hour. Yes?

MR. FENTON: Sure. We can do jury instructions whenever.

THE COURT: Okay.

MR. FENTON: It shouldn't be a big deal.

THE COURT: No, it shouldn't be.

MR. FENTON: You've reviewed them, right?

MS. EIFLER: Correct.

MR. FENTON: Do you have any objections to anything?

MS. EIFLER: I don't.

MR. FENTON: I even added a couple for her this morning.

MS. EIFLER: The only thing--

THE COURT: Okay. Well then we'll plan on doing that over the break so that you can get some stuff taken care of too.

All right. I'm gonna tell 'em to come back then at 1:15. Okay?

MR. FENTON: Okay.

THE COURT: All right. And that'll give you time to voir dire with Johnson too so.

MR. FENTON: Okay. The only thing I was gonna say is Mallery's on vacation. I've been putting him off

[Page 864]

and told him to be here at 1:30. Now if she's got lengthy cross-exam--

MS. EIFLER: So?

MR. FENTON: We may not get to him till 3:00 or something.

THE COURT: Oh well.

MR. FENTON: That's what I was thinking.

THE COURT: Oh well.

MR. FENTON: If we could get that double for a break but whatever, you're the boss.

(Bench conference ends at 11:43 a.m.)

THE COURT: Ladies and gentlemen, we're gonna break now for the noon hour since the--obviously since they're not gonna play the video we don't have to worry about that. So I'm gonna ask that you check in upstairs at 1:15. Mr. Brooks should be here in a moment.

Please remember my prior instructions about not discussing this case with anyone and not reviewing any media coverage with regards to this matter, and not speaking about the case amongst yourselves either.

I think Mr. Brooks will be here momentarily. Okay.

(The jury members exit the courtroom at 11:45 a.m.)

THE COURT: Counsel, is there anything else we need to address then at this time?

[Page 865]

MR. FENTON: No your Honor.

MS. EIFLER: No ma'am.

THE COURT: Court's in recess.

(Court recesses at 11:45 a.m.)

(Court resumes at 1:27 p.m.)

MS. JOHNSON: The court recalls the case of People versus Ervine Lee Davenport, Case Number 07-0165FC. Parties please state appearances for the record.

MR. FENTON: Stuart Fenton for the People.

MS. EIFLER: Susan Eifler, appearing on behalf of the Defendant, Ervine Davenport. He is present in Court today.

THE COURT: Good afternoon counsel, the jury's on the way down.

MR. FENTON: Thank you.

(Sidebar conversation between the Defendant and Ms. Eifler)

(Sidebar conversation between Mr. Fenton and the witness}

(The jury members enter the courtroom at 1:30 p.m.)

THE COURT: We will continue with Detective Beauchamp, and Mr. Fenton, I believe you are done with your questioning, is that correct?

MR. FENTON: Yes.

[Page 866]

THE COURT: Okay. Miss Eifler.

MS. EIFLER: Thank you.

THE COURT: And remember you're still under oath.

THE WITNESS: Thank you.

MS. EIFLER: Thank you.

CROSS-EXAMINATION

BY MS. EIFLER:

Q Good afternoon.

A Afternoon.

Q Sir, were you involved in the investigation regarding Leslie Snook?

A Yes I was.

Q All right. And did you meet with Mr. Davenport for that incident?

A Yes I did.

Q And Mr. Davenport, in fact, denied involvement in that incident, is that correct?

A Yes he did.

Q All right. He had told you that he recognized her as being one of Kenneth Cooper's girls, correct?

A Yes he did.

Q What did you take that to mean?

A Took it to mean that she was a friend of Kenneth Cooper's.

Q Mr. Davenport told you that he does not--he never remembered going to Battle Creek with Leslie Snook, is that

[Page 867]

correct?

A That's correct.

Q Did you speak with Leslie Snook about this incident?

A Not initially.

Q To the best of your knowledge, this was an incident that allegedly occurred back on January 7th, 2007, is that correct?

A Correct.

Q When did you talk to her?

A Talked to her couple times since Detective Moorian initially spoke to her. In February of '07 and last summer, I don't remember when. Last summer and then again this past spring.

Q Okay. So the first time you became aware these allegations was in February of '07?

A Yes, after Detective Moorian informed me of it.

Q And that's--and your understanding that Leslie Snook had been informed or--or had gotten word to your office while she was incarcerated, correct?

A Correct.

Q You've testified that you've talked with her a couple of times since February, correct?

A Correct.

Q And do you have any reason to doubt her testimony that she had been out of--out of the county jail on occasions up to

[Page 868]

this date?

A Well she was, in fact, arrested a couple times and then reincarcerated.

Q Thank you. So you are--you're the lead detective on this case. So is it your job then to talk with all the other officers and detectives to gather the information from your office?

A Yes.

Q All right. And did you personally speak with several--several people in regards to this incident?

A Yeah, several.

Q When you first found out the identity of the victim, it was important to know some things about her like where she lived, is that correct?

A Correct.

Q You're also trying to figure out who would have wanted to do this to Annette White, correct?

A Correct.

Q So part of what you're trying to figure out is who's had problems with Annette White in the past, correct?

A Yes, that's correct.

Q And so we've heard quite a bit of testimony about persons having problems with Annette White in the past, and is it your understanding based on conversations you've had with others during the investigation, that that, in fact is

[Page 869]

true?

A Correct.

Q Is it your understanding that often she is the aggressor in situations?

MR. FENTON: I'm gonna object to that. That's pure speculation and/or hearsay.

THE COURT: Miss Eifler.

MS. EIFLER: Well I believe that it has been testified to and I believe that he can testify about this based on the fact that he has gathered all the information as the lead detective.

THE COURT: Overruled, go ahead.

Q Is it your understanding in meeting with others that she often is the aggressor in a situation?

A No that is not correct.

Q Then it's not true?

A Correct.

Q Did you meet with Andre Randall?

A Yes I did.

Q Did Detective Johnson also meet with Andre Randall if you can recall?

A Yes he did.

Q Did you observe any of that interview while-

A Yes.

Q Okay.

[Page 870]

A Yes I did.

Q Did Andre Randall report that there were lots of run-ins?

MR. FENTON: I'm gonna object. That's blatant hearsay.

THE COURT: Miss Eifler.

MS. EIFLER: Your Honor, may we approach.

THE COURT: Yes.

(Bench conference begins at 1:38 p.m. between the Court and counsel, transcribed as follows)

MS. EIFLER: This is a witness who apparently was served--served by the prosecutor. We also had him listed as a witness and he's not located so.

MR. FENTON: Regardless, it's still blatant hearsay. That has nothing to do with the hearsay analysis.

MS. EIFLER: Well he's an unavailable witness.

MR. FENTON: And what's your exception under the court rules?

MS. EIFLER: I don't know, let me look at that.

THE COURT: Well--

MR. FENTON: There isn't one.

THE COURT: I'm trying to remember if he's--I don't think he has testified specifically about any conversations that he's had with Andre.

MR. FENTON: He can't.

MS. EIFLER: Well then I guess I'm gonna need

[Page 871]

Andre Randall here because he--

MR. FENTON: Well he's on the run.

MS. EIFLER: Okay I know that.

MR. FENTON: We served him a subpoena to be here, he's not here.

MS. EIFLER: Fine, well we'll need it.

MR. FENTON: Well--

MS. EIFLER: You know--

MR. FENTON: I need a lot of things, it doesn't mean I can have 'em.

THE COURT: Well--

MR. FENTON: If he's on the run, he was served a subpoena to be here, and nothing I can do about that.

THE COURT: What have you done with it?

MR. FENTON: There's warrants for him is my understanding. He's on probation and he's not reporting to his probation officer.

THE COURT: Well can we notify someone that they need to be on the lookout for him today?

MR. FENTON: Sure.

MS. EIFLER: Okay. I'll move on that. That's fine.

THE COURT: And then we'll move on right now and address it--

MR. FENTON: Okay.

[Page 872]

THE COURT: And if we need to wait a night and see if they find him, then we'll do it.

MR. FENTON: Okay.

THE COURT: You want to do that right now? You want to--

MR. FENTON: Yeah.

(Bench conference ends at 1:39 p.m.)

THE COURT: Just wait one moment while he leaves the courtroom for a moment.

(Mr. Fenton exits the courtroom)

(Mr. Fenton enters the courtroom)

THE COURT: You may continue, Miss Eifler.

MS. EIFLER: Thank you.

Q Now you were--you were involved though too with the interview on Andre Randall, correct?

A Yes I was.

Q And this interview lasted--this occurred on more than one day, correct?

A Two consecutive days.

Q And did he also come in for some period on January 24th?

A He may have. I don't recall.

Q You testified earlier that you had ordered pizza and pop for Andre, is that correct?

A Pizza and pop were--well the pizza was already ordered, but he was provided some.

[Page 873]

Q Okay.

A That was there.

Q And he was allowed to use the bathroom, correct?

A Correct.

Q But for the most part he was mainly in a room at your station used for conducting interviews, is that correct?

A The same room Mr. Davenport was in.

Q All right. And that--and that's a--well we--it's--we've seen on the--on the DVD, it's a room where basically the individual is locked in that room, correct?

A Yeah, you need a card key to gain access in and out.

Q Okay. Now Andre Randall at one point was the main suspect, isn't that correct?

A Yes he was.

Q That was based on the fact that Annette White had had a broken arm, that she had reported Andre Randall had broken her wrist, correct?

A Based on--it was based on the initial part of the investigation when we did--started to do the victimology on Miss White and discovered the previous Monday she'd reported it, aggravated assault, and on that Friday the 12th she had informed an officer that responded to her house, that she had summoned, that she had the name of the person who had assaulted her and also a license plate on the vehicle, which subsequently was the vehicle owned by Miss

[Page 874]

Goltzene that Mr. Davenport had taken. And that was all placed in that initial aggravated assault report.

Q Was your--during the investigation, you spoke with others who live--lived at the Douglas Street address, correct?

A We spoke with the residents and everyone in the apartments there.

Q And was it your understanding during the investigation that there was some kind of problem between Andre Randall and Annette White, correct?

A Yeah, on that--on that Monday, the 9th I believe it was.

Q On the 9th, and then you--you asked him questions or interviewed about him about that during the interview process, correct?

A Yes.

Q There was information that Annette White's relatives had visited Andre Randall, did you follow up on that?

A Yes.

Q Did you learn that they in fact had visited Andre Randall?

MR. FENTON: Objection. This is all irrelevant. Whether or not the victim's relatives visited Andre Randall has nothing to do with the ultimate issues that we're here to decide.

THE COURT: Miss Eifler.

MS. EIFLER: Judge, I believe it does. I believe it does because it--it all goes to the form of

[Page 875]

interrogation that was used for both Andre Randall and Ervine Davenport.

THE COURT: Overruled, go ahead.

Q Did you learn whether or not her relatives had-- had visited Andre Randall?

A We were not able to confirm that.

Q Was--was it your understanding that there was some kind of problem about--over some money?

A Between who?

Q Between Andre Randall and Annette White.

MR. FENTON: Same objection, irrelevant.

THE COURT: Overruled, go ahead.

A I don't recall if that was what the argument was over.

Q Now during the interview process with Andre Randall, Andre Randall gave some names of individuals that he had been with, correct?

MR. FENTON: Objection, this is hearsay and irrelevant.

THE COURT: Miss Eifler.

MS. EIFLER: You--it is--Judge, I would say it is not irrelevant. It goes--I'm not offering it for the truth of the matter asserted. If witness can answer, it will be what would--what his office did following the answer.

THE COURT: Overruled, go ahead.

A During the investigation Andre Randall gave some
[Page 876]

information about some individuals he had been with, correct?

A On which day?

Q On--during--from the time following the assault on Annette White up until the time of her death.

A Yes he did. He informed me that he had been incarcerated for three days and he got out of jail on midnight, turning into January 12th.

MR. FENTON: Again, I'm gonna have to object to this narrative of what somebody else said out of court. The jury doesn't need to hear this in order to know what he did as a result of that, that's hearsay.

THE COURT: The question I believe was whether he provided some names, so that's the question that needs to be answered.

THE WITNESS: Yes he did.

THE COURT: Not--not necessarily who they are, but just whether he provided that information.

THE WITNESS: Yes he did.

Q And he gave a name of Devin Cole, correct?

A Yes.

Q And Devin Cole's daughter, Brittany, correct?

A Correct.

Q All right. And after he gave those names, did someone then from your office go out to interview Devin Cole?

[Page 877]

A Yes they did.

Q And did someone also reach Brittany?

A I believe they did.

Q He also gave the name of a--of a female named Jackie, having a birthday party?

A Yes he did.

Q And did anyone reach Jackie?

A That I don't recall.

Q So was Devin Cole then interviewed?

A Yes she was.

Q And then based on that interview, your interview and Andre Randall continued, correct?

A Correct.

Q He was still the main suspect, correct?

A Yes he was.

Q And that interview with Devin Cole I believe was on January 16th, 2007?

A That sounds correct.

Q The timelines weren't matching up, is that correct?

A What timelines?

Q The--that Andre Randall had provided versus what Devin Cole had told you.

A They matched up, but it still was after the--his timeline was for that weekend.

Q Now Mr. Fenton had asked you earlier, sometimes you want to

[Page 878]

see how a person will react if you're--if they're told that they're responsible for a particular incident or action?

A Yes.

Q Even if it's not true.

A Yes.

MR. FENTON: Your Honor, may we approach.

THE COURT: Yes.

(Bench conference begins at 1:48 p.m. between the Court and counsel, transcribed as follows)

MR. FENTON: He's gonna try to get in his fake DNA report that they used with Andre Randall. That has nothing to do with this case. She just wants to smear the police. She can comment on any tactics that they used with Mr. Davenport, that's relevant, but what they did on somebody else who's not before this court or this jury is irrelevant.

THE COURT: Miss Eifler.

MR. FENTON: I don't need them hearing the questioning of it. It's more prejudicial than probative, even if it's marginally relevant, it's certainly more prejudicial than probative under 403.

MS. EIFLER: Well actually I wasn't going to get into that at this point, but it's my understanding that that DNA--that fake DNA was presented to Ervine Davenport too.

[Page 879]

MR. FENTON: I'm sorry?

MS. EIFLER: I think that was presented to him too.

MR. FENTON: There was no testimony on this record about that.

MS. EIFLER: Well but if for hours and hours-

MR. FENTON: You can ask--you can ask him if they showed a fake DNA report to Ervine.

MS. EIFLER: Okay. But I wasn't getting into that.

MR. FENTON: All right. Well I objected ahead of time so the jury doesn't hear it. If you want to ask him about what they showed to Andre, this fake DNA report. We talked about that earlier and I said I was giving you heads up--

MS. EIFLER: Mmm-hmm.

MR. FENTON: That I wanted to object before you got to it.

THE COURT: Okay. You're not going there anyway at this point.

MS. EIFLER: Well not at this time, but at some point I was going to.

THE COURT: Well are you gonna--are you gonna--just so I'm clear, well was it presented to Davenport too or don't you know?

[Page 880]

MR. FENTON: I--I don't think it was. Nothing in the report about that.

MS. EIFLER: That was my understanding.

THE COURT: Okay. Well if it was, then it comes in obviously.

MR. FENTON: Yeah to Davenport but not to Randall.

THE COURT: So.

MR. FENTON: And this--this whole line of questioning about Andre Randall isn't relevant.

THE COURT: Well you know, Stuart, she's allowed to put on her defense.

MR. FENTON: But that's not the defense, what they did with Andre Randall.

THE COURT: But yes she--I mean, you know what? It may very well be that there's involvement or whatever. I don't know how she's gonna wrap this up.

MR. FENTON: Well can we at least get an offer of proof, where we going with this? I mean we're wasting time.

MS. EIFLER: We're not wasting time. You're gonna say in your closing argument that my guy lied. Well it was for basically after hour of umpteen hours of forcing it to demonstrate what they think he did. You know, we could either not say anything and get life and if this--

[Page 881]

MR. FENTON: What does that have do with Andre Randall's questioning? Nothing. That's my point. She can comment--you can comment on all that. Was that 11-hour interview or whatever, and of course he was gonna but--

MS. EIFLER: When Ervine Davenport was--when they were conducting the interview, in my opinion, he initially--Andre Randall was still the suspect.

MR. FENTON: That's on the record.

MS. EIFLER: Okay.

MR. FENTON: But to go into all the details of Andre Randall, that's just wasting time, Judge.

MS. EIFLER: I don't think that it changed until the 24th.

MR. FENTON: Ask him, did it change until 20--you know, ask him. But to go through all the details--it's just wasting time--of Andre Randall's interview.

THE COURT: Well--

MS. EIFLER: Okay. If you--if he will admit to it, then I don't need to do all that. That's fine.

THE COURT: If you want?

MS. EIFLER: If he admits that Andre Randall was still a suspect as of the 24th--

MR. FENTON: Ask him.

MS. EIFLER: You know what, probably--

MR. FENTON: Ask him what changed.

[Page 882]

MS. EIFLER: But I think---

MR. FENTON: But to go through all the details of Andre Randall's interview--

MS. EIFLER: Sure, sure.

MR. FENTON: We're just spinning our wheels, we'll be here all day.

MS. EIFLER: I understand that. But I think you already--he's basically saying that they wrapped up Andre back on the 16th, and I don't think that's the case.

MR. FENTON: Well, I mean ask him the question.

THE COURT: Well it's her cross-examination. She can do it whatever way she wants to.

MR. FENTON: If you let her.

THE COURT: If she wants to kind of pin him into it, then she can do it that way. I don't know what he's gonna say either so.

MR. FENTON: Well if you let her.

THE COURT: I have a question too. I can't remember, was there--there was a preliminary examination here or was that waived?

MS. EIFLER: No I don't think so.

MR. FENTON: No there was one.

THE COURT: There as a preliminary. Did Andre testify there?

MR. FENTON: I doubt it. I don't--I don't-

[Page 883]

truthfully, I don't think so.

MS. EIFLER: If he did--

THE COURT: I don't have that transcript. I gotta go get that. I gotta have--

MR. FENTON: I'll check. I've got it.

THE COURT: But I--I'm--

MR. FENTON: But I don't think he would have testified.

THE COURT: Then I must be missing a portion of the file. I gotta have it up here, then I'll do it but all right. She can cross-examine him the--any way she wants to. I mean it's--if she wants to lay it out first and then ask him, you know, depending on--and lay out some things first, she can do it that way. I mean it's up to her.

MR. FENTON: And you have a right to control the proceedings too.

THE COURT: So well she's just started. She hasn't gone all that far.

MR. FENTON: Well I--

MS. EIFLER: Stuart, Stuart I'll ask him right now.

MR. FENTON: Okay.

MS. EIFLER: As of January 24th, was Andre Randall still a suspect.

MR. FENTON: Okay.

[Page 884]

MS. EIFLER: If not, then I'm gonna need to get into this, Stuart, all right?

MR. FENTON: Thank you.

(Bench conference ends at 1:52 p.m.)

Q Let me ask you this. January 24th, 2007, during the timeframe when you were interviewing Ervine Davenport, isn't it true that Andre Randall was still a suspect?

A No he was not.

Q He was not. When was he ruled out?

A He was ruled on January 16th at the conclusion of our interview into January 17th.

Q And you talked with Marquetta Tarver on January 18th?

A Correct.

Q And at that time she told you that--or she told someone from your office that Andre Randall was involving--involved in some form of this incident, correct?

A In this incident?

Q Correct.

A I don't recall her saying that. His name came up, but I don't think it was in regards to this incident.

Q Do you--were you present when Captain Mallery--were you aware that Captain Mallery spoke with Ervine Davenport?

A Yes.

Q Were you aware of Captain Mallery advising him that they were gonna put Andre Randall up on one board and Ervine

[Page 885]

Davenport on the other board and look at all of the facts?

A Yes I was.

Q And that interview was on January 24th, 2007, correct?

A That's correct.

Q So that was not true, then?

A No.

Q That was never gonna happen?

A No, that was not going to happen.

Q That was not gonna happen. Now you were the first person to meet with Ervine Davenport, correct?

A Yes, on January 18th.

Q January 18th. You knew he had been in the hospital, correct?

A Correct.

Q All right. And you knew he'd had surgery on his hand?

A I learned that during the interview.

Q Okay. You learned that because he was nodding off and not acting as though he was with it, correct?

A Correct.

Q And is it your understanding that he was transported directly from the hospital to your office?

A Correct.

Q Were you aware that he was taking medications at that time for his treatment at the hospital?

A No I was not.

[Page 886]

Q You'd been at the hospital, correct?

A I was at the hospital from probably 5:00 a.m. till 7:00 a.m., and he was brought over around 3:30 I believe.

Q Do you know what time the surgery was?

A I do not.

Q In the meanwhile, did you have contact with the officers who were at the hospital guarding Ervine Davenport?

A I had contact with the initial officers that were there, and then because of the time change--well because of the shift change at 7:00 a.m.--our patrol officers change shifts at 7:00 a.m. and 7:00 p.m.--and I had contact with the officer who brought him back over at 3:30, who had informed me that they felt Mr. Davenport was trying to--was faking an illness, in their opinion, and that was a determining factor when I began the interview with him.

Q Okay. But he really wasn't faking it, correct?

A No he was not.

Q All right. He was still under the effects of having surgery.

A He was.

Q All right. In fact, he was fairly cooperative throughout this whole entire process, isn't that correct?

A Yes.

Q He told you about being involved in the crash even while under the effects of the surgery, correct?

[Page 887]

A Correct.

Q Now on January 24th, 2007, then you had an opportunity again to interview Mr. Davenport, correct?

A That's correct.

Q Mr. Fenton has talked to you about different methods that are used to make someone feel more at ease or comfortable in talking, correct?

A Yes.

Q Do you remember giving scenarios to Mr. Davenport?

A For what?

Q All different scenarios. If he was to admit to one thing, this might happen. If he didn't cooperate, then this might happen.

A Yes I do.

Q Isn't it true that your examples that you gave to him were geared toward him being a helper or an assistant in this situation, is that correct?

A That is correct.

Q And what time do you recall beginning that interview?

A I believe it was around 4:45 p.m. on the 24th.

Q 4:45 p.m., and eventually there was a written statement, is that correct?

A There was two.

Q Okay. Well the first written statement.

A Yes.

[Page 888]

Q All right. Do you know what time that was written?

A I--because it wasn't signed, I'm guessing, but I believe it was in the area of 7:30 to 8:00 o'clock.

Q And you wrote that out for him, is that correct?

A That's correct.

Q You gave him examples of different cases that your agency had worked on, correct?

A Yes.

Q And in those examples, there were situations where there was one person who was primarily responsible for the death of an individual, is that correct?

A That's correct.

Q And then there were--and then also in those same situations there were others who helped the person, correct?

A Correct.

Q And you gave him several of those scenarios, correct?

A I gave him two I believe.

Q Two, okay. When you interviewed Andre Randall, you did not give him any scenarios as to being a helper, isn't that correct?

A That's correct.

Q And that was back at a time where he was the primary suspect, correct?

A Yes.

THE COURT: Just a minute. Mr. Brooks. I think

[Page 889]

they went--

MR. BROOKS: Oh.

THE COURT: Sorry, go ahead Miss Eifler.

MS. EIFLER: Thank you.

Q You gave a third scenario in regards to someone pulling a knife, a prostitute pulling a knife on--on her johns, correct?

A That--yes. You are correct. There was a third example.

Q And this--and that example, you knew nothing about a box cutter at that point from Mr. Davenport, is that correct?

A That's correct.

Q Why did you bring up an example of--involving a knife?

A That was the facts of that case.

Q But your testimony today is is that Annette White was not the aggressor in most of those incidences, but yet in this situation you brought up pulling a knife. Didn't you do that because it would fit the information that you had learned about Annette White?

A No it would not.

Q So how come you used that scenario?

A To make Mr. Davenport feel at ease and give him an out to help himself confess to the crime.

Q You talked to Mr. Davenport about his DNA being on Annette White's fingernails, is that correct?

A Yes I did.

[Page 890]

Q But you didn't have that information back from the laboratory at that point, did you?

A I don't think we received that until April or May of 2007.

Q Now let me go to the incident revolve--involving Tracie Goltzene, the car incident. Ervine Davenport told you that he--the reason--or the way he got that car is because Tracie Goltzene wanted to use crack cocaine and wanted to use his car--or her car--trade her car for crack cocaine, correct?

A Yes he did.

Q And you testified in court in regards to that, correct?

A Yes I did.

Q And it was referred to several times during the interview process, that it was a crack car or car exchanged for crack, correct?

A Correct.

Q What is a crack car?

A A crack--a vehicle traded for crack?

Q Right.

A Just that. It's--the owner of the car loans their car out for some crack cocaine.

Q So that is something that is done within the community of drug users?

A Yes it is.

Q And to the best of your knowledge, Tracie Goltzene had come

[Page 891]

from Paw Paw to Kalamazoo to see if she could get crack cocaine, correct?

A That's correct.

Q And it's your understanding that she flagged down someone or some unknown person flagged her down and got a ride from her, correct?

A Correct.

Q And took her to a party with other people she didn't know, correct?

A Correct.

Q Is that behavior also indicative of a person who uses crack cocaine, if you know.

A Yes it is.

Q After the first written statement, when you and Mr. Davenport are discussing that particular written statement, how long did you talk to him about signing that statement?

A Maybe a few minutes.

Q Few minutes. Did Captain Mallery also talk to him about signing that statement?

A Yes he did.

Q And how long did it take for Captain Mallery to talk to him about that?

A I think he was in the room for five to ten minutes, to my best recollection.

(Sidebar conversation between Ms. Eifler and Mr.

[Page 892]

Fenton)

Q Regarding that first written statement, Mr. Dav-enport asked to see an attorney, didn't he?

MR. FENTON: Your Honor, I'm--I'd like to place an objection on the record. Whether or not someone asks for an attorney is a legal issue, not a jury issue, and it's my understanding that the Court has already made a ruling in this regard, and that the statements were in fact admissible.

THE COURT: Counsel, will you approach a mo-ment.

(Bench conference begins at 2:06 p.m. between the Court and counsel, transcribed as follows)

THE COURT: You're planning to go with this and-

MS. EIFLER: What I'm gonna ask him is there approximately 13 times that he asked for an attorney. I'm not doing it because of legal issue. I know that that's already been decided. It's just this goes to--well you know, again, this guy has told one version because this is what is given to him by the police, help yourself

out here, help yourself out. And they really want him to sign this statement.

THE COURT: Okay.

MR. FENTON: So she wants it in, and usually they don't want it in. So we had talked about this in chambers.

THE COURT: Right. So I'm gonna let them know

[Page 893]

that I've already made a ruling.

MR. FENTON: You've determined the statement's admissible, but you're gonna allow--

THE COURT: Tell the jury that I'll allow--the statements are admissible, and obviously they heard portions. Yeah, so if--

MR. FENTON: But the defense has requested this to come in, so you're gonna allow them to--to hear it, but that they shouldn't be concerned with it. They're not the statements admissible because you've already ruled on that.

THE COURT: Right. Right.

MR. FENTON: How's that?

MS. EIFLER: That's fine.

THE COURT: Yeah. So I'll just let 'em know that, you know, there's been some testimony about the fact

that he received his Miranda rights and so forth, and I've already made a ruling on that, and we--

MR. FENTON: Well we're not talking about the Miranda though, we're talking about later he claims he wants an attorney.

THE COURT: Well he asked for his attorney, yeah so.

MR. FENTON: Yeah.

MS. EIFLER: Right, well.

THE COURT: Okay.

[Page 894]

MR. FENTON: All right.

THE COURT: Thank you.

(Bench conference ends at 2:07 p.m.)

THE COURT: Ladies and gentlemen, you're gonna hear some questioning with regards to the Defendant's request for an attorney during the interview process. I've already made a ruling with regards to the statements and obviously we've heard some testimony or--or we--some of the portions of the interview have been admitted and we watched that.

So you are not to worry about or look at this in light of whether or not, you know, the statements should come in or not. That's already been ruled on by this court. So I am allowing Miss Eifler to continue with regards to this line of questioning, but you should

not worry about whether or not this is--or his request affect whether or not you should consider these statements cause I've already ruled on that, okay?

Go ahead Miss Eifler.

MS. EIFLER: Thank you.

Q And sir, again Mr. Davenport did not want to sign that initial statement, isn't that true?

A That's correct.

Q All right. And he asked for an attorney, correct?

A He did not ask for an attorney, no.

[Page 895]

Q Well what did he ask for?

A He asked a question, "Should I consult with an attorney?," not should I, can I have an attorney.

Q Did he basically about 13 times say something to that essence, "I need an attorney. I would like to talk with an attorney. I need some legal advice," and you told him that you were not an attorney and you couldn't give him legal advice, correct?

A I think your number of 13 times is very inaccurate.

Q Okay.

A I believe it was around four.

Q Four times? Okay.

A Correct.

Q All right. So this--you--if I go back to your previous testimony, you said that--that it was about between three to four minutes when you were talking with him, correct?

A To my best recollection, yes.

Q And Captain Mallery was in there for about five to ten minutes?

A To my best recollection, yes.

Q So do you recall what time that would have been?

A In the evening you mean?

Q Correct.

A No I don't.

Q Well what time did the second statement then take place?

[Page 896]

How much time span?

A I left the detective bureau with Detective Pit-telkow, to the best of my recollection, in the area of 8:30 to 9:00 I believe. I was gone for about an hour to an hour and 15 minutes to go up to Patwood to retrieve the dehumidifier and speakers, and when I came back Captain Mallery was speaking to Mr. Davenport. It was around 11:20 to 11:30 when I came back in the room with Captain Mallery and

it was probably about an hour after that, so probably around 12:30 when the second wricken--written statement was taken.

Q So this first written statement that Ervine Davenport gave was not correct, is that true?

A Parts of it were correct.

Q Well about him assisting Andre Randall, that was not true, correct?

A Correct.

Q What you eventually learned during this interview process was that Ervine Davenport was, in fact, responsible for Annette White's death, correct?

A Yes.

Q And he described the scenario, we--we've heard--we've heard the DVDs, correct?

A Correct.

Q And you've already told us he's been--he was very cooperative during on--during all this process, correct?

[Page 897]

A Yes he was.

Q Even during points where he had asked for an attorney he was still cooperative, correct?

A You keep saying that he asked for an attorney several times.

Q Or yet he suggested he may need some legal assistance.

A Correct.

Q Is that--is that a better way to phrase it?

A Correct.

Q Okay. Even during that, he was cooperative, correct?

A Yes.

Q Now did you go out to Patwood to look for the clothing?

A He indicated that the clothing he threw in the--in the dumpsters, but yes we did go out there and look for it and I also went to Woodward and Shakespeare, the intersection where he indicated he had a friend that lived there, and I think he even said there was a burn barrel in his friend's yard. So we walked in the snow, Detective Pittelkow and I, looking for some of the items of clothing that--to see if there was possibly in his friend's yard or in that burn barrel area.

Q Well I think we just heard today, and I certainly could be corrected if I'm wrong, that he said he just dumped the clothes at Patwood.

A Some of it, yes.

[Page 898]

Q All right. Now this--this incident took place between Ervine Davenport and Annette White on Annette White--excuse me--that took place between January 12th, January 13th, correct?

A Yeah. The late evening of the 12th into the early morning of the 13th.

Q And no one had contact with Ervine Davenport from your office until January 18th early in the morning hours, correct?

A Correct.

Q So you don't have any idea what he was wearing on the 12th or the 13th, is that correct?

A No I don't.

Q You testified today that you took a look at a coat that Mr. Davenport was wearing when he was picked up, but you don't have any way to know that--if that was the coat that he was wearing on the 12th or 13th, correct?

A No I don't.

Q So let's back up. He told you that he got the car from Tracie Goltzene, correct?

A Yes.

Q And he told you that Tracie Goltzene had been to Marvin Fraction's apartment, correct?

A Correct.

Q And you confirmed, you'd already actually known that to be

[Page 899]

true, correct?

A That's correct. We confirmed that story.

Q He told you that he had been with LaTonya Murray or Tonya Murray, is that correct?

A At different points, yes.

Q Okay. Would this have been around January 12th, 2007?

A In the--I'll call it the early evening as that's what he said.

Q And did you confirm that with Ms. Bar--Ms. Murray?

A Yes and no. She had a hard time recalling dates and times due to her excessive drug use.

Q Okay. Did you talk with others who were present at the--at the Douglas Street address on January 12th, 2007?

A Yes I did.

Q And you confirmed that, in fact, Mr. Davenport had been there that day.

A Yes.

Q In fact, when you spoke with Andre Randall, he also advised that Mr. Davenport had been to the Doug--Douglas Street address that day, correct?

A Yes he did.

Q Mr. Davenport also told you that he had picked up Annette White, was--who flagged him down on Westnedge, correct?

A In the--the last--the latest version of his story, yes.

Q Okay. And at that point he also told you that they went to

[Page 900]

Uncle Earl's, is that correct?

A Earl Carswell, yes.

Q Earl Carswell. And at that point you had not talked with Earl Carswell, is that correct?

A No. That was the first time we'd heard his name.

Q So then did you speak with Earl Carswell or someone from your office?

A Detective Moorian and I did.

Q Okay. And you confirmed that, in fact, Ervine Davenport and Annette White had been to their residence, correct?

A Yes we did.

Q Mr. Davenport told you that when they got back into the vehicle after being at the Carswells for some period of time to leave their place, that as they were driving along she became crazier and much--and more agitated, correct?

A Yes he did.

Q And he told you that she brought out a box cutter, correct?

A Yes he did.

Q A gray or blue box cutter, correct?

A Correct.

Q And you were present in court when it was testified that in May of 2008 that a box cutter was located in the trunk of this silver gray Regal, correct?

A Correct.

Q Did you know who this transvestite person, the friend of

[Page 901]

Todd's, that Mr. Davenport told you about? Did you know who that was?

A Friend of Marvin you mean?

Q Or excuse me, you're right, friend of Marvin, Todd's a transvestite?

A Yes I did.

Q Did--were you able to contact him?

A No.

Q Did you--

A He was a parole absconder.

Q Okay. So did you look for him?

A Yes we did.

Q All right. Mr. Davenport told you--I think it came up many times--that he likes oranges, correct?

A Yes he did.

Q And even when his first version where he was telling that you that he helped Andre Randall he admitted that that may be how the peach--or excuse me--the apple--let me go through all my fruits here--how the orange peels may have been located at the--at the place where her body was located.

A Yes.

Q And then on the last final version, again, he admitted that's how the orange peels may have been located there.

A Correct.

[Page 902]

Q He told you the whole scenario about hiding his shoes at Kmart.

A Yes he did.

Q In fact, he already knew that you knew about that because during the interview process you'd already told him about the shoes, correct?

A Correct.

Q He told that after he had disposed of Annette White's body that he returned to Douglas Street, correct?

A Yes he did.

Q And that's where he located the humidifier and the--the speakers, and the stereo, and the food, correct?

A Correct.

Q And he told you that--that he had taken that over to Marvin Fraction's, correct?

A Yes he did.

Q Now during this--this final version, Mr. Davenport signed that, correct?

A Yes he did.

Q And you--you followed up by checking with the Carswells, that sort of thing, correct?

A Yes we did.

Q Did you look in the trunk of the car?

A I did not search the trunk of the car. I saw a bunch of belongings in there and the crime lab were the ones that

[Page 903]

were instructed to process it. We didn't want--

THE COURT: I--I didn't hear the last part.

THE WITNESS: The crime lab were--were the ones that were instructed to process the vehicle, and we were not to touch it so we didn't harm any potential evidence.

Q Did you tell Officer Latham to--or specialist Latham to look for the box cutter?

A I did not. I believe he was instructed to do that by one of our command officers.

Q Okay. Who was that?

A One of three at the time. I don't know which one.

Q Okay. You felt--is it fair to say that Ervine Davenport gave that final statement and he signed it, you felt that he had finally given you the full version of what had occurred, is that correct?

A Not the full version, no.

Q Well what did you think happened?

A I--I don't know 100-percent positive where she was killed at, if it was in the car or some where else.

Q Did you have the car checked for DNA?

A Yes, it was swabbed by the crime lab.

THE COURT: I didn't hear that.

THE WITNESS: It--

THE COURT: Yes it was?

THE WITNESS: It was swabbed by the crime lab.

[Page 904]

Q And did you confirm that Annette White was in that vehicle?

A They were not able to confirm that.

Q You have witnesses that placed her in the vehicle, is that correct?

A I don't think anybody saw her in that vehicle that evening. The Carswells couldn't say that that was the car that she had left in.

Q They had told you that--or at least Mr. Carswell told you--that she had been with Ervine Davenport, correct?

Q Correct.

Q So based on everything that he told you during that final version, he was being honest, isn't that correct?

MR. FENTON: I'm gonna object. The witness can't testify as to whether somebody else is being honest. That's--that's argument to be made from the inferences.

MS. EIFLER: Well I'll withdraw the question. I'll--I'll ask it a different way.

THE COURT: Thank you Miss Eifler.

Q He told you about a box cutter and that was found in the trunk, correct?

A Yeah at the bottom of a tool bag.

Q In the trunk, correct?

A At--yeah, underneath three layers of things.

Q Was it in the trunk or not?

A Yes it was.

[Page 905]

Q All right thank you. He told you about the humidifier, and the speakers, and the food, correct?

A Yes he did.

Q And in fact, that is where you had already located those things, at Marvin Fraction's, correct?

A Not the food, but the humidifier and speakers, yes.

Q All right. He told you they had been to Carswells, correct?

A Yes he did.

Q And that was the first that you knew anything about either of them being at Carswells, correct?

A Correct.

Q When Mr. Davenport was in this room, he too was locked in the room, correct?

A Yes. In the interview room you're saying, correct?

Q What's that?

A You meant the interview room?

Q The interview room, correct.

A Yes.

Q All right.

MS. EIFLER: If I may have just a moment.

(Sidebar conversation between Ms. Eifler and the Defendant)

MS. EIFLER: Your Honor, may we approach?

THE COURT: Yes.

[Page 906]

(Bench conference begins at 2:25 p.m. between the Court and counsel)

MS. EIFLER: We may--we may not have to be doing this, but again in going over the DNA--

THE COURT: I can't hear you.

MS. EIFLER: I'm gonna bring up the DNA part and as it relates to the interview with him.

THE COURT: You're going to use this?

MS. EIFLER: Yeah. I'm running a neutral line and I need to tell you, the next witness, the DNA, I don't think that the DNA results--

MR. FENTON: I don't have any problem with her questioning him about interview techniques that he used with the Defendant.

MS. EIFLER: Okay.

THE COURT: If--now--

MR. FENTON: I only object to interview things--

THE COURT: Are you planning on following up with the fact that that was brought in in the interview with Rod--Andre?

MR. FENTON: That's the only thing I object to.

MS. EIFLER: Mmm-hmm.

THE COURT: And if so how--

MS. EIFLER: No. No, because my only purpose in doing this is because of the Andre Randall questioning, and

[Page 907]

it was just to show that-

THE COURT: Yeah.

MS. EIFLER: That they were still looking at Andre Randall as a suspect.

THE COURT: Okay. Then--

MR. FENTON: Oh. Then in that case I object because we've already covered that. That's all been--he's already clarified when one person sees things specify-

THE COURT: Well just because he's testifies doesn't mean that she's not allowed to argue it otherwise. So you can--

MR. FENTON: But what's the relevance? It--I mean it's obvious--

THE COURT: Well the relevance is it goes against his credibility then.

MS. EIFLER: Yeah. Well-

THE COURT: I mean he's trying to get--downplay his credibility and say no, when he's saying in this situation it's not accurate. So she's allowed to do that.

MS. EIFLER: But well I mean--

MR. FENTON: But I don't think that's why she's doing it.

MS. EIFLER: This is the part where it's just more of the--the fact that why did this guy make these statements because they were looking real hard and Andre

[Page 908]

Randall was a suspect.

THE COURT: I can't hear you. Because they were what?

MS. EIFLER: They were having him think that Andre Randall was a suspect, and then withheld the news, well then Andre Randall in fact was a suspect.

THE COURT: Well you can go ahead and--you can go ahead and ask him about that.

MR. FENTON: Okay.

(Bench conference ends at 2:27 p.m.)

Q Now prior to this--this written statement, you had presented Mr. Davenport with some--some information, correct? In other words, you had given him a picture of Andre Randall to look at.

A Yes I believe so.

Q You brought--you brought in a file and it had a picture of Andre Randall?

A Yes.

Q All right. And in--in that file also next to it, isn't it true, that you had a copy of a DNA report and suggesting that Andre Randall was somehow linked to Annette White?

A I could have. I don't recall if it was there or not.

Q Okay. Do you recall having that sort of a report during the investigation?

A Yes I do.

[Page 909]

Q And you--again, did you have any sort of a report back from the DNA specialist?

A No.

Q And how was it that that DNA came to be produced?

A Sergeant Kari--

MR. FENTON: I'm gonna object as to relevance. If he can link it to this Defendant, that it was used with this Defendant, fine, but I would ask that that question be asked first before he goes on to what may have been done in an interview with Andre Randall.

MS. EIFLER: Well I think he's already--

THE COURT: Hold on a second. Just so that we're clear, you're not denying that that was used during

the interview. You just don't recall, is that right? The interview with Mr. Davenport?

THE WITNESS: I don't recall if it was or it wasn't.

THE COURT: Go ahead Miss Eifler.

MS. EIFLER: I'm sorry. Could the Court give its response one more time please.

THE COURT: I'm gonna allow you to continue.

MS. EIFLER: Thank you.

THE COURT: Just--we've had a number of discussions about we're--what can't--you can and cannot go into so.

[Page 910]

MS. EIFLER: Thank you.

THE COURT: But you can continue.

MS. EIFLER: Thank you.

Q And sir, do you know how that report came about?

A During the investigation you mean?

Q Correct.

A Sergeant Thomas authored the report.

Q And was this a--sort of a tactic in having Mr. Davenport talk about the incident?

A Not for Mr. Davenport, no.

MR. FENTON: I'm gonna renew my objection then. If it wasn't utilized in Davenport's interview, it's irrelevant and I'd ask that jury be instructed not to even consider any of the last couple of questions and answers.

THE COURT: Well he's already indicated he's not sure it was--he--he's not denying that it was not used. So I'm not going to give that instruction. Your objection's noted for the record. Go ahead Miss Eifler.

MS. EIFLER: Thank you.

Q Now sir, you had a--you're agreeing though that there was a file that Andre Randall's picture in it, correct?

A Yes.

Q All right. And at some point you brought that and talked to Mr. Davenport about that, correct?

A I brought in a lot of pictures, yes.

[Page 911]

Q Okay. All right.

THE COURT: Just so the record's clear, did you bring in a file with that picture also at some point?

THE WITNESS: Of Mr. Randall?

THE COURT: Yes.

THE WITNESS: Yes.

THE COURT: Okay. Sorry. Go ahead.

Q Was that on January 24th?

A Yes.

Q And according to your testimony, Andre Randall had already been ruled out, is that correct?

A Correct.

Q He was no longer a suspect on January 24th.

A That's correct.

Q Sir, how many homicide investigations have you been involved in in your career?

A Involved in probably 20 at least.

Q And sometimes you get a statement from a suspect, sometimes you don't, is that correct?

A Correct.

Q You've also talked about different techniques that the police will use to make someone feel comfortable, correct?

A Correct.

Q And do you remember talking with Mr. Davenport about a situation that you had been involved in when you were a

[Page 912]

private investigator up in Racine, Wisconsin?

A Yes.

Q All right. And you had told him about a guy basically getting angry when you were an investigator and he chased you down the highway.

A Correct.

Q Okay. And that--that chase occurred for several miles, is that correct?

A Correct.

Q Now to the best of your knowledge, there--there were never--there were no signs of any rape, is that correct?

A Correct.

Q You don't believe that Annette White was raped by Mr. Davenport, correct?

A No I don't.

Q Did you ever observe her body?

A No I did not. Not--just except for pictures.

Q You saw pictures you said?

A Correct.

Q And there--there was no injury to her body that you could notice, is that correct?

A Correct.

Q Let me ask you this. Back on January 24th, '07, do you know whether or not Mr. Davenport was taking any medication following his surgery?

[Page 913]

Q I do not know.

Q Did--did you--you didn't ask him?

A I don't recall if I asked him or not.

Q Do you recall if Mr. Davenport told you anything about pain?

A I don't recall.

Q Do you believe Mr. Davenport is responsible for Annette White's death?

A Yes I do.

Q Do you believe that that was done by cutting off her oxygen?

MR. FENTON: I'm gonna object. You can't ask somebody what they believe. We've had testimony from the pathologist. What he believes is irrelevant and speculative in any event.

MS. EIFLER: Well let me rephrase the question.

THE COURT: Thank you.

Q Does your investigation lead to the fact that Annette White died from having her oxygen cut off?

A From strangulation, yes.

Q And her body was found in a field, correct? Or in a-around some briar bushes?

A In some woods, yes.

Q And that Mr. Davenport's shoe print was found in that general area, is that correct?

[Page 914]

MR. FENTON: Judge, she's just reiterating fact which she can argue in closing. These aren't-

THE COURT: Overruled, go ahead.

MR. FENTON: Firsthand facts that he's observed.

THE COURT: Overruled, go ahead.

MS. EIFLER: Thank you.

Q His shoe print was found in a field near where her body was at, is that correct?

A In the grassy area near the bod--near where the body was found.

Q And there were orange peels located near where the car had parked, is that correct?

A Yeah. I believe they were located in the roadway.

Q And you verified and Mr. Davenport and Annette White had been to the Carswells' apartment, correct?

A Yes.

Q Is it your understanding that they had been smoking crack cocaine there?

MR. FENTON: Objection. Once again, 602, lack of personal knowledge. These are all facts that have been testified to by other witnesses. She can't just go through every fact that somebody else has testified about.

THE COURT: Okay. You know what, counsel approach. Hold on. Counsel, approach please.

(Bench conference begins at 2:37 p.m. between the

[Page 915]

Court and counsel, transcribed as follows)

THE COURT: She--you've presented a lot of testimony about what the investigation has--

MR. FENTON: Firsthand.

THE COURT: Indicated--well no, not necessarily.

MR. FENTON: I called witnesses to establish all those things.

THE COURT: Well I realize that. She's entitled to do her cross-examination--

MR. FENTON: Of the witnesses with personal knowledge.

THE COURT: Any way--any way that she wants to do that.

MR. FENTON: Personal knowledge. That's all hearsay, what other people have said, what other people have done. This is a closing argument. She can cross examine him on things he did firsthand.

THE COURT: Just a minute.

(Bench conference ends at 2:37 p.m.)

THE COURT: You can stretch a moment if you want to.

(Bench conference begins at 2:37 p.m. between the Court and counsel, transcribed as follows)

MS. EIFLER: We've gotten into quite a bit of testimony about--and the same--the same realm that he's

[Page 916]

given under on direct examination.

THE COURT: Yeah.

MR. FENTON: That's 602 or it's 403. She's reiterating things that have already been testified to firsthand by other witnesses. It's a waste of time.

THE COURT: Well--

MR. FENTON: You can control this.

THE COURT: You know what, Stuart? I am in control of this.

MR. FENTON: Well I know you're in control.

THE COURT: And you and I disagree with this because I let the defense put on their defense any way they want to. This is not a waste of time.

MR. FENTON: That's not a rule of evidence, any way they want to. It's got to be within the bounds and the rules of evidence.

THE COURT: Well it is.

MR. FENTON: Okay.

THE COURT: I'm allowing it.

MR. FENTON: All right.

THE COURT: Okay. Go ahead.

(Bench conference ends at 2:38 p.m.)

Q It's your understanding that they had been smoking crack cocaine at the Carswells, correct?

A From--

[Page 917]

MR. FENTON: Objection. Lack of personal knowledge, MRE 602.

MS. EIFLER: Well let me rephrase it.

Q Did the investigation--

THE COURT: Hold on a second. The Court's already made a ruling on that. So you may continue, Miss Eifler.

MS. EIFLER: Thank you.

Q Is it your understanding that they had been smoking crack cocaine at the Carswells?

A Based on interviews that were conducted, yes.

Q And did the investigation suggest that Mr. Davenport had picked up Annette White on North West-nedge just prior to going to the Carswells?

MR. FENTON: Same objection. No personal knowledge, hearsay.

MS. EIFLER: Judge, he's already test--

THE COURT: The Court's--the Court's ruled on it already. Go ahead Miss Eifler.

MS. EIFLER: Thank you.

Q Did the investigation suggest that Mr. Davenport had just picked Annette White up on North West-nedge prior to going to the Carswells?

A That's what Mr. Davenport said.

Q Okay.

[Page 918]

THE COURT: I--I didn't hear the answer.

THE WITNESS: That's what Mr. Davenport advised us.

Q And of the other witnesses that you talked to, other than Mr. Davenport, when was the last time that Annette White had been seen?

A The last time she was seen was by the Carswells to my-based on our interview with them.

Q Okay. Then going backwards, other than what Mr. Davenport had told you, when was the last time that Annette White had been seen?

A I believe--well you have to--you have Teresa--I can't think of her last name, Holiday I believe--and LaTonya Murray who said they saw her earlier in that evening, and then Officer Lisa Hendricks saw her at 5:00 p.m. on the 12th also.

Q You talked with Ervine Davenport or Captain Mallery talked to Mr. Davenport about why he took her body to the field, correct?

A Yes I believe so.

Q He indicated he was scared, correct?

A Correct.

Q He indicated he did not mean to hurt her, is that correct?

A Correct.

Q He wanted Captain Mallery to talk with her family and tell her family what happened, is that correct?

[Page 919]

A Yeah. Captain Mallery suggested it, yes.

Q And he agreed for Captain Mallery to do that, correct?

A Correct.

MS. EIFLER: I have nothing further.

REDIRECT EXAMINATION

BY MR. FENTON:

Q Detective, do you have any personal knowledge of any of the facts that you didn't observe with your own eyes?

A No.

Q Just going based on what other people told you, correct?

A Correct.

Q Lot of questions about what the Defendant told you during the interview, right?

A Correct.

Q How common is it for a Defendant to just out and out admit killing somebody without some excuse?

A Not very common at all.

Q Working backwards from the defense questioning, there was a question about on the 24th was the

Defendant's--on any medication. Hadn't he been in jail for about a week already?

A Yes.

Q Out of the hospital?

A Correct.

Q Did he appear to be under the influence of drugs at all?

[Page 920]

A Not at all.

Q If he had been and he wasn't lucid, would you have continued the questioning?

A No. I--like I did on the 18th, I stopped the questioning.

Q Did he indicate at any point that he didn't feel like he could continue?

A No he did not.

Q That he was uncomfortable?

A No.

Q Or sleepy?

A No.

Q You testified that you didn't see the body of the victim, then Miss Eifler asked you well were there

any injuries. Well did you ever see the body up close and personal?

A Not in person.

Q You only saw photographs later?

Q Correct.

Q So do you think you're the best person to give an opinion as to whether or not there were injuries on the body?

A No I'm not.

Q Now there was some questions about this DNA report that was eluded to. We didn't have an actual DNA report for a couple months, right?

A Correct.

Q What--explain to the jury, I don't think they know what

[Page 921]

that's all about. What--what are you talking about?

A For what?

Q Well there was some testimony about a DNA report that may have been in your possession at the time you interviewed the Defendant. That's what you testified, right?

A Correct.

Q What was that?

A That was authored by Sergeant Thomas during the interview of Andre Randall to use as a tool to try to get him to speak further about the crime cause at that point he was the number one suspect.

Q So it was basically a doctored DNA report.

A Correct.

Q It was used with Andre Randall to try to get him to confess.

A Correct.

Q And you said that may have been in the room with you. Do you know if you used that in your interview of the Defendant?

A I don't think I did but I'm not positive.

Q Did you ever doctor up a false DNA report saying that the Defendant was--that the Defendant's DNA was on the victim?

A No.

Q Did you ever tell him as a matter of fact your DNA is on her?

[Page 922]

A No.

Q You suggested that it might be and that science might prove that.

A Correct.

Q Miss Eifler said several times the Defendant was locked in the room. Did you lock him in the room, Detective?

A The room locks--

Q Was--

A But I didn't lock him in there.

Q Did he ask to leave?

A No he did not.

Q Was he being held against his will?

A He--well he was in custody on other charges.

Q He was in custody in general because of the fleeing and eluding, correct?

A Correct.

Q So he wasn't free to walk out onto the street, right?

A Correct.

Q Was he there in the interview room voluntarily?

A Yes.

Q Did you ask him if he would speak with you?

A Yes.

Q Read him a full set of Miranda.

A Yes I did.

Q Did he waive it and agree to talk to you?

[Page 923]

A Yes he did.

Q If he had unequivocally said at any time during this interview this interview is done, I don't want to talk to you any more, let me go, would you have let him go?

A I would have taken him back to jail.

Q Well that's what I mean.

A Yes.

Q Out of that room.

A Correct.

Q So was he being held in that room against his will in any way?

A No.

Q One of the things that the Defendant told you was that he got the car from Tracie Goltzene, right?

A Correct.

Q But he told you it was in a crack rental, right?

A Yes he did.

Q That wasn't accurate information, was it?

A Not from what Mrs. Golt--Miss Goltzene told me.

Q You had spoke to Mr. McCellom (sic) as well, right?

A McElmore, yes.

Q Or McElmore I mean. That was her passenger that night at the party?

A Correct.

Q You weren't able to confirm that information that he gave

[Page 924]

you, were you?

A That--

Q That it was a crack rental?

A That who gave me? Davenport or McElmore?

Q Yeah, that Davenport gave you.

A Correct.

Q In fact, they told you the opposite, that it wasn't a crack rental, right?

A That's correct.

Q And in fact, we know the car was reported stolen.

A Correct. There's a report on that.

Q All right. There was some talk about at some point during this interview he made some comment about whether or not he should talk to a lawyer, correct?

A Correct.

Q Now I don't want to get too much into this because it's more of a matter of law, but when someone unequivocally indicates to you that they want to talk to a lawyer and they're in custody, what do you have to do?

A Stop.

Q And what?

A Cease questioning.

Q All right. Was any unequivocal request for a lawyer made in this case?

A At the end of the second--after the second break.

[Page 925]

Q Then what? Did you cease questioning?

A Yes I did.

Q Who reinitiated questioning?

A Ervine Davenport did.

Q And does the law not say if the suspect reinitiates conversation that you can then listen to him and continue talking to him?

A Correct.

Q When he reinitiated conversation, did you not or did not Captain Mallery read him his Miranda rights again?

A Yes, they were read to him again.

Q Did he waive them and continue to agree to speak to you?

A To Captain Mallery, Yes.

Q All right. So did anything that you did or Captain Mallery did during this interview violate the law in any way as you understand it?

A No.

Q Now the defense attorney asked you a couple times wasn't the Defendant cooperative with you. What's your definition of cooperative?

A Not arguing or wanting to be loud.

Q Not belligerent?

A Correct.

Q Do you normally find interviewees in this type of a setting to be belligerent?

[Page 926]

A No.

Q When they're in custody and there's one or two detectives with them and in handcuffs?

A No.

Q It took eight hours to get him to admit to his involvement, didn't it?

A Yes it did.

Q There were a whole lot of lies that were told, weren't there?

A Yes there was.

Q Would you consider that to be cooperative?

A Not necessarily, no.

Q So you have a pretty broad definition of cooperative when you say he was cooperative, don't you?

A Yes.

Q Didn't you tell him from the very beginning you were looking for the truth?

A Yes I did.

Q He didn't give you the truth for a long time, did he?

A No he did not.

Q And you don't even know to this day whether his last statement is the truth, do you?

A No we don't.

Q There's some questions about that first written statement that he would not sign. Did you write it out the same way

[Page 927]

as the jury saw the second statement dictated to by the Defendant to Detective--or to Captain Mallery?

A Yes I did.

Q Same slow, painstaking manner, he's saying what's going on and you writing it down?

A Yes.

Q He didn't disagree with anything that was on there, did he?

A No he did not.

Q Just refused to sign it.

A Correct.

Q I believe you said that Miss Snook was assaulted by the Defendant on January 7th. Could that have been January 8th if the police report indicates so?

A Yes.

Q Same thing with the victim being assaulted by Andre Randall. Would that not have been the 8th?

A Yes.

Q Now the first question defense counsel asked you I believe was isn't it true that the Defendant denied any involvement in Miss Snook's incident, right?

A Yes.

Q You didn't spend hours interviewing him like you did on this murder case, did you?

A No we did not.

Q How long was your interview with him regarding Miss Snook?

[Page 928]

A I believe less than an hour.

Q So he denied his involvement assaulting Miss Snook, just like he denied his involvement in assaulting Annette White, for several hours, didn't he?

A Yes.

Q And an aggravated assault case isn't as serious as a murder, is it?

A Correct.

Q So you didn't spend nearly as much time with him on that as you did with this, right?

A That's correct.

Q Thank you. That's all I have.

THE COURT: Miss Eifler.

MS. EIFLER: Thank you.

RECROSS-EXAMINATION

BY MS. EIFLER:

Q Mr. Fenton just asked you, you don't even know to this day if the statements that Ervine Davenport gave you were true, correct? His final statements?

A That's correct.

Q Did you conduct any more interviews with him about this particular incident after January 24th, 2007?

A No.

Q Mr. Fenton also asked you about the DNA report. Do you recall asking Mr. Davenport why would Andre Randall's DNA

[Page 929]

be found on Annette White's neck?

A I don't recall asking him that question.

Q If you had asked that, would that be part of the investigation or your--your invest--the--your investigation tools?

A If I had asked him why would his DNA be around her neck?

Q Andre Randall's, correct.

A I wouldn't call that a tool, no.

Q What--what would you call it?

A A question.

Q What's that?

A A question.

Q A question? Okay. Miss--you wouldn't expect to Mr. Davenport to know why Andre Randall's DNA would be on Annette White.

A No.

Q So why would you ask Mr. Davenport that?

A You're gonna have to back up. What was the question before that?

Q Why would--the question before that is whether you would expect Mr. Davenport to know that answer. To know whether Andre--

A It's just part of a line of questioning during a lengthy interview. There were lots of questions that were asked that were inconsequential to the case.

[Page 930]

MS. EIFLER: I have nothing further.

THE COURT: Mr.--

MR. FENTON: Just one question.

REDIRECT EXAMINATION

BY MR. FENTON:

Q You said there were no more questioning of the Defendant after you said 1/24, but you meant after it turned over into the early morning hours of 1/25, right?

A Yes.

Q Wouldn't the Defendant have been charged with murder that day?

A That day was a Thursday. He was charged I think on the 26th.

Q All right.

A Cause we needed--we needed time to do all our reports.

Q You'd already interviewed him for how long?

Q Eight hours. We left work about--

Q Did you feel any further questioning was necessary at that point?

A No.

Q Once someone's charged, are you allowed to continue interviewing them?

A No you're not.

Q Thank you. That's all.

THE COURT: Miss Eifler, any further questions?

[Page 931]

MS. EIFLER: No ma'am.

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

THE WITNESS: Thank you.

(The witness was excused at 2:53 p.m.)

MR. FENTON: Last witness

THE COURT: How are we doing, ladies and gentlemen? Does anyone need a break now? If so, raise your hand. All right, we'll continue.

MR. FENTON: I call Jim Mallery.

THE COURT: Please raise your right hand. Do you solemnly swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

MR. MALLERY: I do.

THE COURT: Please have a seat. State your full name or first and last name, and spell both your first and last name for the record please.

THE WITNESS: Jim Mallery, J-I-M, M-A-L-L-E-R-Y.

JIM MALLERY

(At 2:54 p.m., sworn as a witness, testified as follows)

DIRECT EXAMINATION

BY MR. FENTON:

Q What's your position in the police department?

A I'm the captain of the criminal investigation division.

* * *

[Page 960]

Court's attention.

THE COURT: Appreciate that.

MR. FENTON: It's been brought to my attention that Andre Randall has been located and apparently he's gonna be brought to court so.

THE COURT: Okay. We'll address that in a moment then. Mr. Fenton, are you planning on--are you done? Are you resting now?

MR. FENTON: Yes, I'm-

THE COURT: Okay.

MR. FENTON: I'm gonna rest when we come back.

THE COURT: Okay. Then counsel, we'll take a break for about ten or 15 minutes, and--and I just

want to-we need to touch base on jury instructions and additional witnesses then right before we come back from the break, all right?

MR. FENTON: All right. Thank you.

THE COURT: Court's in recess.

(Court recesses at 3:33 p.m.)

(Court resumes at 4:14 p.m.)

MS. JOHNSON: The court recalls the case of People versus Ervine Lee Davenport, Case Number 07-0165FC.

(Court coughs)

THE COURT: Sorry.

MS. JOHNSON: Parties please restate appearances

[Page 961]

for the record.

MR. FENTON: Stuart Fenton for the People.

MS. EIFLER: Susan Eifler, appearing on behalf of the Defendant, Ervine Davenport, who is present in Court today.

THE COURT: Counsel, the jury's on the way down and I have in--my office is going to be contacting Marcina West, also known as Marcina--

MR. FENTON: Potter.

MS. EIFLER: Potter.

THE COURT: Potter.

MR. FENTON: Did we reach her?

THE COURT: We're gonna try to get a hold of her.

MR. FENTON: Oh, trying.

THE COURT: Anything else we need to address before the jury comes down, counsel?

MR. FENTON: No your Honor.

(Sidebar conversation between the Defendant and Ms. Eifler)

(The jury members enter the courtroom at 4:17 p.m.)

THE COURT: Mr. Fenton.

MR. FENTON: Your Honor, the People rest.

THE COURT: Miss Eifler, are you ready to proceed?

[Page 962]

MS. EIFLER: Yes. At this time I will give an opening statement.

Thank you for going through this process with us. We really appreciate it, we appreciate your attentiveness, and we have all noticed that you've been very

involved in--in listening to the witnesses, and we do appreciate this. It's been a long process.

At this point the prosecution has rested and the defense intends on calling witnesses. As you all recall, you agreed that the defense did not need to call witnesses if it chose not to do so, and that the defense has no burden of proof in this case, that the burden of proof rests solely on the prosecution.

Ladies and gentlemen, we believe that the testimony that has come in and the testimony that you will hear from defense witnesses, however, will clearly show that Ervine Davenport is not responsible for the death of Annette White because he used self defense.

He was put into a situation where he had to use self defense to protect himself, that he was being attacked by a woman who had a box cutter, and that he was at danger himself of being severely injured or even death because he was facing a woman who was out of control. She'd been using crack cocaine, that she wanted more crack cocaine, that she was becoming more and more aggressive because

[Page 963]

Ervine Davenport would not allow her to get more crack cocaine, that he was trying to deliver her back to Douglas Street when she went berserk essentially, whipped out a box cutter, and starting slashing at him.

In that situation, in that moment, in that time, he reacted. He reacted by choosing to hold her, to hold her back as far away from him as possible. That he did

that by holding her by the neck, by pressing her against the back of the car door, the passenger side door. This woman who is whip-whipping a knife at him, getting her as far away from him as possible to protect himself from grave danger or even the possibility of being killed himself.

That she even, after dropping the box cutter, continued to hit him, to kick at him, to assault him, to go berserk in that vehicle, and that he was trying to get her under control. That in the course of doing this that he had essentially choked her. He did that because he needed to protect himself, that he did not necessarily want to hurt Annette White, he had no reason to hurt Annette White, but he did this to protect himself, to use what was lawfully available to him to protect himself, that is self defense.

The defense also intends to show you that Ervine Davenport, as of January 24th, 2007, was not the only suspect, that Andre Randall had been a suspect for an

[Page 964]

incident that had occurred involving Annette White, a physical altercation in which she had a broken wrist, and which Mr. Randall was in fact charged.

That he was questioned by the police on the 15th or 16th of 2007, and that he was later, after being taken into custody for something unrelated to this case, was brought over on January 24th, 2007, and was further questioned by Detective Beauchamp, and by Captain Mallery, and those involved in the investigation. That as of January 24th, when Ervine

Davenport gave his first statement to the detectives, he was not the only suspect in this case.

And finally, it is important for you to know that this is a not--this is not about making Annette White look like a bad person. You are not to use sympathy for the Defendant, for the victim, but we do intend to show you that she had a character, she had a reputation in the community for having an aggressive trait after she had used crack cocaine, and that would be consistent to her behavior on the evening of January 12th, early hours of January 13th, 2007, when she essentially went crazy and attacked Ervine Davenport with a box cutter. And at that point in time, to protect himself, which he was lawfully able to do according to the law, as the judge will instruct you, he used self defense.

Thank you.

[Page 965]

THE COURT: You may call your first witness, Miss Eifler.

MS. EIFLER: Yes. Go ahead and stand by the witness stand. Thank you.

THE COURT: Please raise your right hand. Do you solemnly swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

MR. RANDALL: Yes I do.

THE COURT: Please have a seat, sir. I need you to state your first and last name, and I need you to spell both your first and last name for the record. And please pull that microphone down as close to your mouth as possible.

THE WITNESS: Andre Randall. A-N-D-R-E, R-A-N-D-A-L-L.

ANDRE RANDALL

(At 4:23 p.m., sworn as a witness, testified as follows)

DIRECT EXAMINATION

BY MS. EIFLER:

Q Thank you. Mr. Randall, you're doing a really nice job. It's--this is a hard room to hear in, so if you can talk as much into the mics as possible, that'd be great, then we can hear everything.

[Page 966]

A All right.

Q Sir, did you know Annette White?

A Yes.

Q And how did you know Annette White?

A We stayed in the same apartment building.

Q And at some point in January of 2007, was there an altercation between you and Annette White?

A Yes.

Q Now how long had you known Annette as of January 2007?

A Probably about six months, six to nine months, something like that.

Q And were you aware whether she had a reputation in--in the community?

A I don't know about the community, but at--at the apartment building, yes.

Q And what was that reputation?

A Being a spitfire.

MR. FENTON: I'm sorry?

THE WITNESS: A spitfire.

Q What do you mean by that?

A Always in conflict with somebody in the building.

Q Did this involve physical conflicts?

A I know of two and then the--

MR. FENTON: I'm gonna object to specific incidences. That's improper use of character evidence.

[Page 967]

MS. EIFLER: Well I'm--I'm asking him about the reputation in the community, or at least in the apartment building, and so I will--I will requestion Mr.

Randall, but I believe he can--he can testify whether he knows of a reputation for physical conflicts.

THE COURT: I'm going to allow it. Go ahead.

MS. EIFLER: Thank you.

Q And sir, I don't want you to talk about specific incidences, but regarding her reputation at least in the apartment building community, do you know whether she had a reputation for physical conflicts?

A Yes.

Q Do you know whether during these physical conflicts, do you know that had anything to do with her using crack cocaine?

A I don't know.

Q Okay. Thank you. Sir, were you at some point charged with an assault on Annette White?

A Yes.

Q When were you charged?

A It--it was after I was locked up.

Q Were you questioned by the police regarding this matter?

A Yes.

Q Do you recall what dates you were questioned?

A No I do not.

Q Were you questioned prior to being locked up?

[Page 968]

A No.

Q At some point did you arrive off from a bus to I think the Drop In Center?

A The Plasma Center.

Q What's that?

A The Plasma Center.

Q At the Plasma Center.

A Yeah.

Q Okay. Were you taken into custody at that time?

A Yes.

Q Okay. So when you appeared for an interview were you in street clothes?

A Well when they took me from the Plasma Center, they told me they was just taking me for questioning.

Q Okay. So you were not in custody at that time.

A No. Not--not when I was first questioned.

Q Okay.

A No.

Q Do you recall the day?

A I think it was--I don't--I know--know it's the first week of January '06.

Q Would it be helpful--

A '07, I'm sorry.

Q Okay.

A All right.

[Page 969]

Q Were you later interviewed, do you know, on January 15th of 2007?

A I--I don't recall any of the dates cause I was in jail.

Q Okay. The date that you were taken from the Plasma Center that you were not in custody, do you recall how long you were questioned?

A About ten hours.

Q Were you allowed to leave?

A No. But they said they were, but I--I wasn't.

Q Was it your understanding that you were a suspect for the death of Annette White?

A That's what I came--I came to learn. I didn't know that until after they took me into question--questioning.

Q Well how did you come to learn that?

A That's what they told me.

Q Who's that?

A The detectives.

Q At the conclusion of the interview, were you told that you were ruled out as a suspect?

A No.

Q Was it your understanding that you were still a suspect for the death of Annette White?

A I--not--I didn't--I didn't know cause I didn't--I didn't know what was going on at the time. All I know when they let me out, then they--the police came and arrested me for

[Page 970]

a probation violation.

Q Okay. When they let you out, what do you mean?

A When--when they got--they say they was through questioning me, that's 2:00 o'clock in the morning, and as soon as I walked through the door, a police car pulled up and arrest me.

Q Now were you presented with different scenarios from the police as to your potential involvement in this case?

A Yes.

Q And you can tell us about those different scenarios?

MR. FENTON: Objection as to relevance.

THE COURT: Counsel, will you approach a moment.

(Bench conference begins at 4:30 p.m. between the Court and counsel, transcribed as follows)

THE COURT: First of all, I just want to make clear that specific instances are allowed with regards to the victim's character under 405(b)

MR. FENTON: Only if he knows about them under the case law, not against--

THE COURT: Well I think that he was about ready to get into that so--

MR. FENTON: No, if--if he--if he, Ervine Davenport, knows about them.

THE COURT: No. If it goes to a defense.

MR. FENTON: He's gotta know about specific

[Page 971]

incidences under the case law in order for it to be admissible.

THE COURT: Well that's what the rule says, 404-well on (b), (c)'s--

MR. FENTON: I don't--it's little bit more complicated than this.

THE COURT: So--

MR. FENTON: It's a complicated case law.

THE COURT: Just so that we're clear on that one. And it would--

MR. FENTON: Well we're not clear yet. I'd like to be heard on that if she's gonna try to get into that. I've got a case I'm playing.

THE COURT: Well then we can do that and--and take a break.

MR. FENTON: Okay.

THE COURT: If that--what's the case? Do you have it handy?

MR. FENTON: Mmm-hmm.

THE COURT: Okay. What--

MR. FENTON: Got it in my manual.

THE COURT: Why don't you go get and I'll--you have it--okay.

MR. FENTON: Want me to grab it right now?

THE COURT: Yeah. Now your objection is--so I'll

[Page 972]

let you know if we need to get back into this, you can, and now I forgot what the question was. That--

MR. FENTON: About--she's asking him about specific interview techniques--

MS. EIFLER: Techniques.

THE COURT: Oh that's right.

MR. FENTON: On him.

THE COURT: Okay.

MR. FENTON: And themes that were thrown at him. That's not relevant.

MS. EIFLER: And again I think it is because clearly he was not left as a suspect.

MR. FENTON: So what?

MS. EIFLER: So--

MR. FENTON: You can make that point without getting into--

THE COURT: Yeah. I'm gonna allow it. It goes to the--it goes to her whole theory about the defense.

MR. FENTON: Which is?

THE COURT: Well which is the reason that he--

MR. FENTON: Substantives?

THE COURT: Was not--was giving different stories was because the--the police were leading him down that road, and under the circum--I mean it--

MR. FENTON: Right. But what does that have to

[Page 973]

do with them questioning him, Andre Randall?

THE COURT: Well they--they gave him the same tactics. So it's--

MR. FENTON: Oh come on.

THE COURT: They're--

MR. FENTON: It's some where not relevant than probative. I mean it's marginally relevant.

MS. EIFLER: It--it is--it is not. I mean you, aren't you in your closing argument gonna say gee, ladies and gentlemen, he had every opportunity in the world-

MR. FENTON: Yeah.

MS. EIFLER: To tell the truth.

MR. FENTON: And what is--

MS. EIFLER: It is relevant.

MR. FENTON: Andre Randall's questioning have to do with that?

MS. EIFLER: Because when they are questioning-

THE COURT: I'm gonna allow it.

MR. FENTON: Doesn't matter, she's gonna allow it so.

THE COURT: Now hold on, let me read this.

MR. FENTON: It's not--it's not an easy case to understand.

THE COURT: The actual violent character of the deceased, even though is unknown to the defendant, is

[Page 974]

admissible as evidencing the deceased probable of correction to the defendant.

MR. FENTON: By opinion and reputation. Specific instances, however, have to be known to the defendant.

THE COURT: Then it says in contrast what about--that's what she's getting out, opinion and reputation.

MR. FENTON: No he--no, the objection was to specific instances.

THE COURT: Right. But that's allowed under 4--it's--

MR. FENTON: That's what this--you haven't gone far enough apparently. Opinion and reputation is general--

THE COURT: Okay. Hold on, let me continue.

MR. FENTON: That's okay

THE COURT: All right. Seems to me like it's both.

MR. FENTON: My understanding of the law is that if he doesn't know about specific instances, that's not relevant. You can't just disparage a victim. You can talk about their general character.

THE COURT: This said--I mean depending on the circumstances, if I'm--if I'm reading this, my reading is that you can do it either way.

MR. FENTON: That's not how I understood it.

[Page 975]

THE COURT: For--

MR. FENTON: Specific instances only--

THE COURT: Sure, well for self defense--

MR. FENTON: Known to the defense.

THE COURT: He--the--he's got to know about it.

MR. FENTON: Right. Right.

THE COURT: However, if you're going to, as far as her reputation is concerned, her reputation for being the aggressor; i.e.--

MR. FENTON: That's just opinion.

THE COURT: Did she pull a knife out, then it would be allowed. So arguably, they've got both cases here.

MR. FENTON: Well I disagree but-

THE COURT: So--okay.

MR. FENTON: It's un as clear as mud I think. But that was my--I read it and reread it, talked about it with other people, and that was the general consensus.

THE COURT: Well it--it does give the distinction in here between both types, whether it's reputation or whether we're looking at it for self defense. But she's asking what her reputation is of the victim--

MR. FENTON: Right. Generally that's fine.

THE COURT: Generally.

MR. FENTON: But when you start getting on

[Page 976]

specific instances, that's highly prejudicial unless it's known to him, it's not relevant. It's more prejudicial than probative.

THE COURT: Well okay. Well anyway, what's your-

MS. EIFLER: I--

THE COURT: Anything else that you have to say with regards to that?

MR. FENTON: I mean anybody could talk about someone's specific instances of bad conduct all over the place. It's not really probative, it's not really narrowed down, focused relevant unless it's known to him in a self defense claim.

MS. EIFLER: I don't know the case so.

THE COURT: Okay. I'm gonna allow it. Go ahead.

(Bench conference ends at 4:39 p.m.)

MS. EIFLER: Thank you.

THE COURT: And the objection's overruled.

Q Now sir, I believe I was just asking you about some different scenarios that the detectives gave you while you were being interviewed. Do you remember having different scenarios described to you?

A Yes.

Q And what were those scenarios?

A One was I was the murderer and I had a accomplice, and one

[Page 977]

was I was the accomplice and helped somebody else murder.

Q At some point did--were you advised that you were no longer a suspect in this case?

A When I--when they let me out--out of the jail that's when I found out.

Q And do you recall when that was?

A The middle of February, the end of February.

Q And would that have been in the year 2007?

A Yes ma'am.

Q Were you ever aware that Mr. Davenport had been charged in this case?

A No I wasn't.

Q And--so you--if I get your--if I understand correctly, the day you went to the Plasma Center, you were picked up but you were not under arrest that day, is that correct?

A That's correct.

Q Okay. And then that is the day that you were taken over to the police station and questioned at length, correct?

A Yes.

Q At any point were you advised that there was DNA evidence in this case?

A Yes.

MR. FENTON: Objection. Same objection, irrelevant, more prejudicial than probative. It's already been discussed, asked and answered on--with other

[Page 978]

witnesses, for what marginal relevance it is.

THE COURT: Overruled, I have gone over this before and the Court has found that it is relevant number one, and number two, there were questions also asked of Detective Mallery with regards to the DNA evidence being presented to this witness. So I'm allow--the door's been opened, go ahead Miss Eifler.

MR. FENTON: Well just for the record--

THE COURT: That's the rule--that's the Court's ruling, Mr. Fenton. Go ahead Miss Eifler.

MS. EIFLER: Thank you.

Q Sir, were you advised that there was--there were DNA results in this case?

A Yes.

Q And was it your understanding that your DNA had apparently been confirmed to have been located on Annette White?

A Yes.

Q Was that on this same day that you were taken from the Plasma Center?

A Yes.

Q All right. And for the record, what is the Plasma Center?

A Where you donate plasma, they take out your blood.

Q Were you later questioned by the police about this same incident?

A Yes.

[Page 979]

Q All right. And at that point do you recall whether you were in custody or out of custody?

A I was in custody.

Q Do you recall the day?

A I have no idea what day it was.

Q Was it a week or so after your initial questioning?

A I got questioned like four or five times, so I don't recall exactly.

Q On different days?

A Yes.

Q Do you know whether you were ever questioned at the same time that Ervine Davenport was being questioned at the police station in another room?

A I was told I was.

Q At that particular time did you still believe that you were a suspect in the homicide of Annette White?

A Yes.

Q Why's that?

A Because they was still questioning me about what was going-how did she get murdered, or what was my part in it.

Q Let's go back to the incident involving you and Annette White. Do you recall her coming to your apartment around January 8th of 2007?

A Yeah, it was some where around in there.

Q What happened?

[Page 980]

A She pushed her way in and started throwing pots around, and so I-I grabbed her by her shirt or something and pushed her outside the door.

Q Did she touch you while she was at the apartment?

A Yeah.

Q What'd she do?

A She was--she was hitting me, trying to hit me with the pots, and I just had to get her, and get her out the house so I could close the door.

Q Did she ever poke you, do you recall?

A Not that I recall.

Q How many pots did she throw at you?

A Three.

MS. EIFLER: I have nothing further.

THE COURT: Mr. Fenton.

MR. FENTON: If I could just have a moment, your Honor.

CROSS-EXAMINATION

BY MR. FENTON:

Q All right. Mr. Randall, first of all did you see the Defendant, Ervine Davenport, over at Douglas at the same apartment complex as Annette White lived in on Friday night, the night that she wound up being murdered?

A Yes.

Q In what context did you see him there?

[Page 981]

A Just in passing. I had came in and he was with my roommate.

Q You were with a roommate?

A No, he was.

Q He was with your roommate?

A Yes.

Q What was her name?

A Tonya.

Q Tonya.

A Mmm-hmm.

Q You know Tonya's last name?

A Murray.

Q I'm sorry?

A Murray.

Q Murray?

A Yeah.

Q She use crack?

A Maybe.

Q I'm sorry?

A I said maybe.

Q So you saw him just in passing.

A Yes.

Q Was he leaving or coming, and what were you doing?

A I was getting ready to lay down and I think they were in the room together, and then I seen them leave out.

[Page 982]

Q Any idea what time that was?

A No I don't.

Q Did you see Annette White that night?

A No I didn't.

Q Did you see the Defendant later on that evening?

A No.

Q Did he ever come there and, quote on quote, "lay his head down and go to sleep?"

A That night?

Q Yeah, Friday night.

A I--I can't say cause I was in there asleep. I don't-

Q You were asleep.

A Not that I know of. I don't know.

Q So you didn't wake him up and ask him to help you do something?

A No.

Q Did you tell him that you needed his help at all that night?

A No.

Q Did you ask him to drive you some where?

A No.

Q Did you ask him to help you dispose of a body?

A No.

Q Did you put a body in a car that night?

A No.

[Page 983]

Q Did you have him drive you to a location to dispose of a body?

A No.

Q Did you load Annette White into the backseat of a car?

A No.

Q Did you ever ride in the Defendant's Buick Regal?

A No.

Q Did you see that he had a Buick Regal, gray Buick Regal around that time?

A No.

Q Were you friends with the Defendant?

A We were associates.

Q How?

A He talked to my roommate and that's how I knew him.

Q Did you drive him to the--

THE COURT: I'm sorry. I missed the last part. I'm sorry. He talked to your roommate---

THE WITNESS: You know, they were seeing each other I guess.

THE COURT: You have to speak into the microphone.

THE WITNESS: They was seeing each other and that's how I knew him.

Q They being who?

A Him and Tonya.

[Page 984]

Q All right. Did you drive with the Defendant to a wooded area around Blakeslee and Prairie and unload Annette White's dead body at that location?

A No.

Q Did you have anything to do whatsoever with Annette White's murder?

A No.

Q Now you've never seen Annette White with a knife or a blade, have you?

A No.

Q And you've never seen her pull a knife or a blade on anyone, have you?

A No.

Q Now during part of the interviews of you, you were actually in custody on other matters, right?

A Yes.

Q Traffic matters?

A After--after they questioned me the first time, they took me into custody for a probation violation. So while they were questioning me they had me--my probation violated, and then I was took into custody.

Q So when you say you weren't allowed to leave, you were actually in custody on some other matters, right?

A No.

Q You were not?

[Page 985]

A I was--I was not in custody until they finished questioning me.

Q All right.

A Soon as I left out the building, a police car comes up, talking about he has warrant for me.

Q But they did tell you during the questioning at first that you were free to leave, didn't they?

A They let me walk out the--like let me open the door, and that was about it.

Q But at the beginning, they told you you were free to leave, right? That you weren't under arrest?

A Oh yeah.

Q All right.

MR. FENTON: I don't believe I have any further questions, but if I could just have a moment.

THE COURT: Yes you may.

MR. FENTON: Thank you.

Q Do you remember smoking crack with the Defendant on that Friday night?

A No.

Q Is it possible that it happened, that you just don't remember it?

A No.

Q You remember telling a detective that way back in January of '07?

[Page 986]

A I--well that's a mistake cause I came in, I had--had drunk some beer and I went to bed.

Q Do you know Ray?

A Yes.

Q Ray Fults.

A Yes.

Q Do you remember smoking crack with him and the Defendant that night?

A No.

MR. FENTON: That's all I have. Thank you.

THE COURT: Miss Eifler.

REDIRECT EXAMINATION

BY MS. EIFLER:

Q Sir, Mr. Fenton just asked you if you remembered seeing Annette White that night. Do you remember talking about a situation where you had seen her at the gas station and you--

A That night?

Q Some time that--that day or that night.

A I had just had got out--out of jail that Friday.

Q Okay. Well did there come a point in time where you had seen her at the gas station?

A Yes.

Q And do you remember when that was?

A That was early in the week, maybe Wednesday or so.

[Page 987]

Q And what happened?

A She was telling me what she gonna have somebody do to me.

Q Was--was she--how was she saying that to you?

A How--

MR. FENTON: I'm gonna object. Hearsay, irrelevant.

THE COURT: Sustained. Go ahead, Miss Eifler, move on.

Q Sir, were you provided a report about the DNA?

MR. FENTON: Asked and answered. Same objection as previously made several times.

THE COURT: Overruled, go ahead.

A Just they brought a letter in.

Q Okay. Did you have an opportunity to examine that?

A Yes.

Q Did you--how long did you have to examine that?

A I don't know. Ten--ten minutes I guess, I don't know. They left it in on the table, but--

Q What's that?

A I said they left it on the table where they were questioning me at.

Q Okay.

MS. EIFLER: Your Honor, may we approach.

(Bench conference begins at 4:53 p.m. between the Court and counsel, transcribed as follows)

[Page 988]

MR. FENTON: Okay, now she wants to admit this fake DNA report. This is like so far off field already-

THE COURT: Yeah, I'm not gonna allow that.

MS. EIFLER: Okay. Very well.

THE COURT: I mean you've got the testimony, they've got the evidence on it.

MS. EIFLER: Very well. Very good.

(Bench conference ends at 4:53 p.m.)

MS. EIFLER: I have no further questions.

MR. FENTON: Nothing further.

THE COURT: Thank you sir. You may step down. You are excused.

THE WITNESS: All right thanks.

(The witness was excused at 4:53 p.m.)

THE COURT: It's five to 5:00. We will end for the day. I would ask that you check in upstairs tomorrow at 9:00 o'clock in the morning please.

Please remember my prior instructions. Don't watch or read any news coverage with regards to this case. Make sure you're not speaking with anybody about the case, and have a good evening.

(The jury members exit the courtroom at 4:54 p.m.)

(Sidebar conversation between the Defendant and Ms. Eifler)

STATE OF MICHIGAN
9th JUDICIAL CIRCUIT COURT
TRIAL DIVISION
FOR THE COUNTY OF KALAMAZOO

PEOPLE OF THE STATE OF MICHIGAN,
v Case No.:C07-165FC
ERVINE LEE DAVENPORT.
Defendant.

JURY TRIAL - VOLUME VI
BEFORE THE HONORABLE
PAMELA LIGHTVOET
Kalamazoo, Michigan - Wednesday, July 16, 2008

APPEARANCES:

For the People:
ATTORNEY STUART L. FENTON P40970
Kalamazoo County Prosecutor's Office
227 West Michigan Avenue
Kalamazoo, Michigan 49007
(269) 383-8900

For the Defendant:
ATTORNEY SUSAN M. EIFLER P57222
Downing, Glaser, and Eifler Associates
2510 Capital Avenue Southwest, Suite 102
Battle Creek, Michigan 49017
(269) 964-9035

VIDEO RECORDED
TRANSCRIBED BY:
DAWN MORSE CER 4727
1400 Gull Road
Kalamazoo, Michigan (269) 385-6000

* * *

[Page 1001]

THE WITNESS: S-P-A-N-N.

THE COURT: Two N's okay. Thank you sir.

MS. EIFLER: Thank you.

ARTHUR SPANN

(At 11:19 a.m., sworn as a witness, testified as follows)

DIRECT EXAMINATION

BY MS. EIFLER:

Q Mr. Spann, this is a really hard room to hear. It echoes and it's just hard to get the sound across. So if you could really try to project your voice back to me, then hopefully everyone will be able to hear you real well. And if you'll just lean up and talk into the microphone as well, okay?

A Yep.

Q Okay.

THE COURT: And I think you can move your chair. I--I think you can scoot that forward. There you go, great. Thanks.

Go ahead Miss Eifler.

MS. EIFLER: Thank you.

Q And sir, you are presently in--located in the county jail, is that correct?

A Yes.

Q All right. And sir, can you just tell us briefly why you

[Page 1002]

are currently lodged at the jail.

A I'm in jail for delivering cocaine.

Q Okay. Thank you. Sir, have you had in your lifetime a fair amount of contact with the legal justice system?

A Yes.

Q All right. But you understand that you are under oath and you are to testify truthfully today.

A Yes.

Q All right. Sir, did you just recently--just today as a matter of fact--had a chance to speak with me regarding Annette White?

A Yes.

Q All right. Let me ask you this. Do you--did you know Annette White?

A Yes.

Q All right. And for how long did you know Annette White?

A Years. I knewed (sic) her a couple years.

Q And did you have as--did you happen to know whether she had a reputation in the community?

A Yes she had a reputation.

Q And what was that reputation?

A Get angry sometimes when she smoke or you know. I had a little incident with her before in a hotel.

MR. FENTON: I'm gonna object as to little incidents that this witness can testify about that the

[Page 1003]

Defendant doesn't know about. That's irrelevant.

THE COURT: I missed the first part of what you said before you referenced this--the little incident in the hotel. What was your answer before that?

THE WITNESS: That I knew her, that she had a reputation.

THE COURT: And--okay. What was that reputation?

THE WITNESS: She get angry and stuff when she get high.

THE COURT: Okay.

MR. FENTON: I didn't hear what he said.

THE COURT: Can you repeat that a little bit louder and right into the microphone.

THE WITNESS: She get angry when she get high off crack.

THE COURT: And the jury is to disregard any--the reference to any incident that this--this witness had with her in the hotel.

Q And sir, what the judge is--is telling you is that you have--what I would just be asking you is to go by what you understand her--her reputation in the community to be.

A Okay.

Q You've testified that she would get--she had a reputation for becoming angry when she smoked crack cocaine, correct?

A Yes.

[Page 1004]

Q All right. Would--do you know whether she had a reputation or a trait for doing anything else while she was under the influence?

A Yeah. She just--just have a different personality when she smoked. She just get loud with people, say things that were--things that, you know, just inordinary (sic).

Q I'm sorry, could you repeat that.

A She just say things to, you know, offend people and stuff like that. You know.

Q Say things to offend people?

A Yeah, you know, just start talking about people when she's getting high.

Q Now I'm gonna ask you this question because if I don't I'm sure Mr. Fenton, the prosecutor, will. Based on the fact that you've had contact with the legal justice system, do you have any--any--I mean you're basically telling us what her character is when perhaps your character is not as high as what--what one might expect. Do you have any--do you have any reason to--to get up here and lie about Annette White?

A No I don't.

Q Okay. Are you trying to pass any type of judgement on her?

A No I'm not.

Q Okay. And you're not hiding from--from things that you've done, is that correct?

[Page 1005]

A No I ain't hiding nothing from 'em.

Q All right. And is there anything else regarding her reputation that you are aware of or any traits that she may have in the community that you may--that you're aware of?

A No.

Q Okay.

MS. EIFLER: I have nothing further. Thank you.

THE COURT: Mr. Fenton.

MR. FENTON: No questions.

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

(The witness was excused at 11:24 a.m.)

THE COURT: Miss Eifler.

MS. EIFLER: May we approach.

THE COURT: Yes.

(Bench conference begins at 11:24 a.m. between the Court and counsel, transcribed as follows)

MS. EIFLER: I need--I'm prepared to call my client. He wants his other witness called to first, and I don't mind doing that necessarily in front of the jury. I-I don't know if it's time now that we shouldn't--

THE COURT: I thought about what I would do is just indicate that the Defendant's going to testify and I'm just gonna put him under oath where he's at, and he can raise his right hand from there.

MS. EIFLER: Okay.

[Page 1006]

THE COURT: And that way they won't see that he's in chains.

MR. FENTON: He's not gonna take the witness stand?

THE COURT: No. Can I have him testify from the table?

MS. EIFLER: I think that that's gonna be more prejudicial.

MR. FENTON: I don't think so.

THE COURT: You think so? Okay.

MS. EIFLER: I think so. Maybe we can address the other witness issues outside of the jury. Get that and whatever that ends up being and then--then meet and then I would call him to testify.

THE COURT: Okay. So he--they're gonna be able to see that he is--

MR. FENTON: I have a better idea?

MS. EIFLER: What's that?

MR. FENTON: Let's send the jury in the hallway, have the deputies uncuff his feet or whatever needs to be uncuffed, his hands, whatever.

THE COURT: Have him sit there.

MR. FENTON: And have them--then--then bring the jury back in and have him walk to the witness stand. We can put all this other stuff on the record later.

[Page 1007]

THE COURT: Yeah we can do that later.

MS. EIFLER: Okay fine.

MR. FENTON: But to send them back upstairs is--is ridiculous.

THE COURT: No, I'm not gonna do that.

MS. EIFLER: Fair enough. Fair enough.

THE COURT: Okay. So we're just gonna have his feet cuffed. We can keep the cuff around his--around his feet uncuffed. We can keep the cuff around his right--

MS. EIFLER: What if I--I mean I don't know him if I'm gonna have him--well I probably won't have him stand. If he's gonna walk to the witness stand, he's gonna need to have the belly chain off.

MR. FENTON: That's fine.

THE COURT: No I was--

MR. FENTON: I want him to walk to the witness stand. I want them to see how large he is. Otherwise I'm gonna have him stand up at some point in closing or something. Now would be the time I would think.

MS. EIFLER: I'd rather have him do that now then during the closing.

MR. FENTON: Yeah.

THE COURT: You want to--the whole--have the whole thing, you want him uncuffed then completely?

MS. EIFLER: Mmm-hmm.

[Page 1008]

MR. FENTON: Probably need to talk to the deputies about that. But why don't we just send the jury in the hallway for five minutes so we can accomplish that.

THE COURT: Just a minute.

(Bench conference ends at 11:26 a.m.)

(Bench conference begins at 11:27 between the Court and Mr. Brooks, transcribed as follows)

THE COURT: We're trying to decide the--how we're gonna handle--the Defendant's gonna testify. But we're trying to figure out how to uncuff him at this time. I'm just gonna have you put them out in the hallway for about five minutes or so, not all the way up. You can't hear anything out in the hallway can you?

MR. BROOKS: No.

THE COURT: That we do in here? I just wanted to make sure of that. So they can just go wait out in the hallway and then I'll have Cherie come and get you.

MR. BROOKS: All right.

(Bench conference ends at 11:27 a.m.)

THE COURT: Mr. Brooks is just going to bring you out to the hallway for a moment. We have something real quick that we just need to take care of, and then he'll bring you back in here when we're--when we're ready.

(The jury members exit the courtroom at 11:27 a.m.)

[Page 1009]

(Sidebar conversation between Ms. Eifler and the Defendant)

(Bench conference begins at 11:28 a.m. between the Court and Sheriff's Deputy, transcribed as follows)

THE COURT: Are there any issues that you're aware of? I'm gonna--he's gonna testify. I'd like to have him uncuffed so that they can't see anything, just so that you're aware of that. I don't know if you want to bring anyone else in or not, but my plan is--

SHERIFF'S DEPUTY: I don't think it would be a problem, if you want him up here. You want the restraints off as well?

THE COURT: Yeah. Yeah, because he's gonna walk to the witness stand.

SHERIFF'S DEPUTY: Okay.

THE COURT: All right. So just--I don't-

SHERIFF'S DEPUTY: We can do it right here.

THE COURT: Yeah. I don't know if you want--and you'll probably gonna need somebody--

SHERIFF'S DEPUTY: I'll call down just to let them know what we're doing.

THE COURT: Yeah, why don't you do that real quick before I go back on the record.

SHERIFF'S DEPUTY: All right.

THE COURT: Because I don't if he wants--

[Page 1010]

(Sheriff Deputy contacts the holding center)

SHERIFF DEPUTY: Go ahead ma'am. The officer will be up here in a few minutes.

THE COURT: Okay.

(Bench conference ends at 11:28 a.m.)

THE COURT: Okay. My understanding, Miss Eifler, is that you're gonna have Mr. Davenport testify. So we are going to remove the restraints.

MS. EIFLER: That is correct.

THE COURT: Then we'll let the jury come back in and then Mr. Davenport can take the stand at that time and then we'll--I'll swear you in from there so.

MS. EIFLER: Your Honor, this may be the appropriate--

THE COURT: I'm sorry?

MS. EIFLER: This may be the appropriate time, however, to talk about the witnesses. I'm talking with Mr. Davenport about him testifying, which he has--he has made that--that individual choice to do that at this time. However, it--he would like--

THE COURT: Okay.

MS. EIFLER: He would like to testify after all the defense witnesses have testified. So I don't know-

THE COURT: Okay hold on a moment.

MR. FENTON: Apparently they've discovered a

[Page 1011]

location where R.B. Davenport is supposedly residing. However, he's not there, is that correct?

UNIDENTIFIED MALE: Correct.

MR. FENTON: They've spent the last hour-and-a-half looking for him. Apparently there's warrants out for his arrest, apparently he's on the run.

THE COURT: Okay.

MR. FENTON: So there's no luck in trying to have the Defendant's brother, R.B. Davenport, brought to court today.

THE COURT: All right. I'm not gonna delay the trial any more as far as the witnesses are concerned. So we'll put--my understanding is you don't have any other witnesses that are ready at this point to testify, other than Mr. Davenport. We'll--we will address what's happened with the other witnesses then after we're done with Mr. Davenport's testimony and depending on time and so forth after possibly--possibly after jury instructions and closing arguments.

So he needs his chair back. Go ahead and have a seat, counsel and Mr. Davenport, and then we'll bring the jury back in and we'll address the other issues at this time. But I'm not--I'm not gonna delay the--the trial any further. We'll continue and if there's no other witnesses, then we'll go into closing arguments and jury instructions

[Page 1012]

so.

Okay. We'll bring the jury back in. Excuse me.

And Mr. Davenport, you've heard the prior information--Mr. Davenport? Just remember to scoot your chair up as close as possible when you--when you have a seat here.

THE DEFENDANT: Yep.

THE COURT: And as you know, make sure you're talking right into the microphone too.

(The jury members enter the courtroom at 11:31 a.m.)

THE COURT: Okay. Miss Eifler, are you now ready to proceed?

MS. EIFLER: Yes ma'am. At this time I would call Ervine Davenport.

THE COURT: Mr. Davenport, if you would just-- before you have a seat, raise your right hand. Closer to the microphone, sir. Do you solemnly swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

THE DEFENDANT: I do.

(Cell phone rings in the courtroom)

THE COURT: Okay. Please have a seat. Just state your name for the record. And it sounds like somebody has a cell phone. I'll give her a moment to turn that off. All set.

[Page 1013]

Okay. Please state your name for the record, sir.

THE WITNESS: Ervine Lee Davenport.

THE COURT: Go ahead.

MS. EIFLER: Thank you.

ERVINE LEE DAVENPORT

(At 11:32 a.m., sworn as a witness, testified as follows)

DIRECT EXAMINATION

BY MS. EIFLER:

Q You're doing a nice job. I can hear you well, I don't have to give you the instruction.

A Hmm.

Q Sir, you--as you've obviously been present during all of this proceeding, and you understand that you have a right to remain silent, that you would not need to testify in this case. Is that correct?

A Yes.

Q And you, however, have made that decision to testify, correct?

A Yes I have.

Q And can you just very briefly tell us why it is that you want to testify?

MR. FENTON: I'm gonna object. That's not relevant. He can state what he needs to state, but that would be improper bolstering or attempted bolstering of his

[Page 1014]

credibility.

THE COURT: Sustained. Next question, Miss Eifler.

MS. EIFLER: Thank you.

Q Sir, did you know Annette White?

A Yes I did.

Q And how long did you know Annette White?

A For about--about six months.

Q How did you meet her?

A Through LaTonya.

Q Okay. Now--now I'm losing you a little bit. Can you maybe move the--

A Through LaTonya.

Q Okay. And who's LaTonya?

A She was a friend who stayed on Douglas Street.

Q Would that LaTonya Murray that we've been hearing about?

A Yes.

Q Okay. And can you--prior to the January 12th, January 13th, 2007, incident, can you describe your relationship with Annette White.

A I knew Annette basically on passing at first. Tonya had introduced me to her, she took me down to her--to her apartment and introduced me. That was it the first time. The second time Annette wanted to purchase something and we had that occasion.

[Page 1015]

Q Okay. Purchase something from whom?

A From me.

Q Okay. And what was it she was purchasing?

A Drugs.

Q Okay. Were there other times that you had occasion to see Annette White?

A Yes. Another time she wanted to purchase something and I went to her apartment, and she had a problem with paying for it.

Q What do you mean by that?

A Well she--she used the drugs and then didn't want to pay for it. And then when I confronted her about getting paid for it, she proceeded to try to kick me out the house.

Q Where were you at when this occurred?

A In her apartment.

Q And what did she do to proceed to kick you out of the house?

A She grabbed a knife and told me to get out.

Q Did you contact the police about that?

A No.

Q Why not?

A Cause we was doing something illegal.

Q How long did that whole altercation or incident occur when--from the time you asked her to pay for the drugs until the time that you left her apartment?

[Page 1016]

A About two minutes. Once she pulled the knife I left.

Q Did you have any opportunity to--to watch Annette White when you came to see LaTonya Murray or times that you were at that address?

A Yes.

Q And for--and for the record, I don't know if you told me but, what--what address is that?

A I don't know the address, I just know the street and the apartment.

Q Okay. And that's on Douglas Street?

A Yes.

Q All right. Now do you know Andre Randall?

A Yes I do.

Q And how is that you know Mr. Randall?

A He stayed with LaTonya.

Q How long had you known him?

A About the long--about the same amount of time as I knew LaTonya.

Q Let me take you now to January 12th or January 13th. Can you tell us approximately what time it was that you can first remember being at the Douglas Street address?

A The first time I was there was that early morning on the 12th.

Q And had you spent the night there or how'd you come--how'd it come about that you were there?

[Page 1017]

A Yes. I had stayed the night there.

Q Now on the day of January 12th, did you see Annette White during the daytime hours?

A Yes, I saw her when Andre returned. She was downstairs yelling up at Andre.

Q Do you know what that was about?

A About the broken arm.

Q Were you aware that Annette White had a broken arm as of January 12th, '07?

A I was made aware of what happened with that incident when Andre told me what happened. When--after she had hollered upstairs.

Q You've described an incident where she pulled a knife on you.

A Yes.

Q You've also described this incident where she was yelling at Andre on January 12th.

A Yes.

Q Had you had any other instances where you observed her in this kind of a behavior or state?

A Yes. Another time was when she came into the apartment upstairs where Tonya stayed, and no one--no one was there but me. I was in the bedroom laying down and she came into the bedroom, and I asked her what was she doing there. She said looking for Tonya and I told her Tonya wasn't here.

[Page 1018]

So she proceeded to go through some of Tonya's stuff and I told her she's--she got to leave. She refused to leave. I grabbed her by the arm and proceeded to try to take her to the door. She grabbed a pot off the stove and started swinging it at me.

Q Did she eventually then leave Tonya's?

A Yeah, after I got the pot out of her hand and she left.

Q Now approximately what time of day was it on January 12th, 2007, when you saw Annette downstairs yelling at Andre?

A It was around noon time.

Q Now let me ask you this. Can you tell us what kind of relationship you had with Tonya Murray?

A We was off and on, off and on a couple. You know.

Q Off and on. So you had a romantic relationship with her?

A Yes.

Q Okay. But off and on meaning sometimes you were together, sometimes not.

A Yeah. Yeah, it was one of those type of relationship, off and on. You know.

Q Okay. Do you recall a time on January 12th where you left with some others from Douglas Street to go and obtain money?

A Yes.

Q All right. And who all went?

A Me, Tonya, some girl in a wheelchair, I can't think of her

[Page 1019]

name.

Q Some girl? I'm sorry I didn't hear that.

A Some girl that was in a wheelchair.

Q Had you met her before?

A Yes.

Q And how did you know her?

A Through Tonya.

Q Okay. Did she also live at the Douglas Street address, if you know?

A No.

Q Okay.

A And Andre was in the car also.

Q And what did you do?

A Took 'em out to--I think I first took 'em to--out to the store, and then I took 'em downtown.

Q What'd you do there?

A I waited in the car. They went in and I guess to purchase something or to do something. To get some money, that's all I knew.

Q Okay.

A I was just driving.

Q What store was this?

A Meijer's.

Q And where was that Meijer located?

A West Main.

[Page 1020]

Q Approximately what time of day was that?

A Around 3:00 maybe.

Q Do you know a person by the name of Ray Fults?

A Sound familiar like I heard it before. Not for sure.

Q Do you remember Mr. Fults testifying in court earlier?

A Oh yes.

Q Okay.

A Yes.

Q And--and did you know him prior to him testifying in court?

A When I saw him over to Tonya's that time.

Q Okay. How many times had he been to Tonya's, if you know.

A A couple times.

Q What--and what on January 12th, 2007, what was Ray doing at the--at the Douglas Street address?

A Waiting for Tonya.

Q Okay. Let me speed this ahead. Did there come a point on January 12th where you and Annette were in a car together?

A Yes.

Q And do you know what time that was?

A It had to be after 2:00.

Q After 2:00 in the morning or the-

A After 2:00 in the morning.

Q And that was on January 12th?

A Yeah--no that was on January 13th. I picked Annette up on Westnedge, coming down Westnedge. It was raining that day.

[Page 1021]

Q Okay. And we've heard testimony about North Westnedge, is that--is that accurate?

A Yes.

Q Okay. And how come you picked her up?

A Cause it was raining and she flagged me down.

Q Then what happened, where'd you go?

A She got in the car and she asked me did I have anything, and I told her no at the time. And she asked me where could she get--get something from, and I told her of a couple spots, and she said to take her over to Woodbury.

Q Let me stop you for a minute. When you say get something, are you referring to purchasing drugs?

A Yes.

Q Okay. All right. All right. So if you would continue.
You said Wood--Woodward?

A Woodbury.

Q Woodbury, thank you.

A Instead of taking her to Woodbury I took her over
to Rose--Church Street, Rose and Church. And
from there we went to Woodbury.

Q Okay. And this is all in a--an attempt or a search
to find drugs?

A Yes.

Q Now did you get out at Rose and Church?

A I got out at--on Church Street.

[Page 1022]

Q And was there anyone else there?

A On Church? Yeah, there's people on Church Street.

Q Okay. What happened over on Church Street?

A I purchase--I purchased something and Anita (sic)
wasn't happy with what she saw, so we went to
Woodbury.

Q What happened over on Woodbury?

A She purchased something and we left Woodbury. While we was on Woodbury, she got into it with one of the individuals who stay on Woodbury.

Q Do you know who that person is?

A Only by nickname or I don't know if it's his real name or not.

Q Okay. What the nickname you--do you know

A Todd.

THE COURT: Ty or Todd?

THE WITNESS: Todd.

THE COURT: Ty?

THE WITNESS: Todd.

Q Did you ever tell the detectives about Todd?

A Yes.

Q And how did you describe Todd to the detectives?

A A homosexual. They know him, they knew him.

Q Did Todd have an unusual manner of dress?

A Yes.

Q Okay. What--what did you--I mean what's your understanding

[Page 1023]

of his manner of dress?

A He dress in fem--in ladies clothes.

Q And what was going on between Anita or Annette and Todd?

A Nita--he wanted Anita to get off his porch, that's all I heard. She was waiting for someone to come out of the house and he didn't want her to be on her--on the porch and told her to get off the porch. And they got to arguing and eventually she came off the porch and stood in the middle of the street, and they was hollering back and forth at each other.

Q Did you have to intervene in that situation?

A No. Someone finally came out the house and told Todd to let it go and he came back in. He went back in the house, and him and Anita and the individual went and talked.

Q All right. And then at some point did you go to the Carswells?

A Yes. After we left Woodbury.

Q And did you know the Carswells?

A No.

Q When's the first time you met them?

A That night.

Q Do you know--going back to Woodbury--do you know whether Annette purchased any drugs at Woodbury?

A Yes she did.

Q Why did you go to the Carswells?

[Page 1024]

A Cause Annette wanted to go there and that's where she said she had came from. She had told me that she had gotten some money from Earl and was taking his part back.

Q Okay. So how long were you there?

A For--for awhile,.

Q I mean can you gives us an estimate? Was it longer than hour?

A Yes.

Q Was it longer than two hours?

A Yes.

Q What did you do while you were there?

A Talked, drunk beer, smoked.

Q When you say smoked, are you referring to smoking crack cocaine?

A Yes.

Q And there came a point in time where you left, correct?

A Yes.

Q Okay. Why did you leave?

A The first time?

Q Yes.

A The first time we left to go get more--Nita wanted more drugs. She didn't want what I had, so we left.

Q Okay. Did you go and purchase any alcohol during that time?

A Some beer.

[Page 1025]

Q Do you know--did you get any money from Earl Carswell or do you know whether Annette got any money from him?

A Annette did, I didn't. I had my own money.

Q Okay. How long were you gone during that time?

A Maybe about 20, 30 minutes, if that.

Q And then I assume then you went back to the Carswells.

A Yes.

Q All right. Then what did you when you were there?

A Just sit and talked, and listened to them arguing.

Q What were they arguing about?

A Everything me, to her credit cards, and her IDs, to her and Miss--Mrs. Carswell got into it about--I think Miss Carswell attempted to give me a hug and Anita didn't like it, so they got into it about that and.

Q When you said that they were arguing about--about you, is that what you're talking about?

A Yes.

Q All right. And when you said Mrs. Carswell, is that Derene Carswell?

A Yes.

Q And she testified in court earlier?

A Yes.

Q And any point did you notice a change in Annette White's mood?

A Well it'd go back and forth depending on what she was

[Page 1026]

doing. She was more calmer when she was sitting on--sitting on--sitting on my knee. She--she sit on my knee most of the night. So she just, you know, depended on what she was doing.

Q Okay. So then if she wasn't sitting on your knee, then what happened?

A She was running around the house, acting a fool.

Q I'm sorry. I didn't catch that.

A She was running the house acting a fool, you know, clowning.

Q Like trying to make jokes?

A No. Arguing with Mrs. Carswell and Mr. Carswell, debating about the amount that he received, and you know, just one thing after another.

Q Was she--you've testified that you have sold drugs, that you have used drugs. Do you know how much she was supposed to purchase for Mr. Carswell?

A Yes I know.

Q Did she try to give him the correct amount?

A No.

Q Did he have any item belonging to her that he was holding in exchange for the drugs?

A Yes.

Q And what was that?

A Her IDs and Bridge card and all her personal identification

[Page 1027]

stuff.

Q And I'm assuming she wanted those back.

A Yes.

Q All right. Well at some point then did you leave a second time?

A Yes.

Q And why's that?

A Cause she was--well basically cause she was fighting with Mr. Carswell again, and he told her to get out.

Q Had she been fighting with him when you first arrived during this get together, whatever you want to call it?

A Yeah, they was arguing about the amount he received and.

Q Okay. So he's asked you now or asked Annette now to--to leave. Did you have any problems with Mr. Carswell while you were there?

A No.

Q How about with Mrs. Carswell?

A No.

Q All right. Were there others who came to the Carswells residence while you were there?

A Yes.

Q And do you recall who that was?

A It was I think Mrs. Carswell, Mr. Carswell daughter and her boyfriend.

Q All right. So when you leave, where are you going?

[Page 1028]

A I'm fitting to take Anita home.

Q Where are you planning on staying that night or that early hour morning?

A More than likely I was gonna go by Marvin's and check on them.

Q And when you say Marvin, you're talking about Marvin Fractions, who testified previously.

A Yes.

Q And he is your cousin, is that correct?

A Yes.

Q All right. But you never made it to Annette's with Annette, correct?

A No.

Q Tell us what happened.

A Well we came out the house, we got in the car. It was--it was kind of--it was crazy by the way that we had left anyway because Earl was trying to shove us--push us out the door, and Annette was trying to get another drink from Earl's daughter who had brought a--brought some liquor in and we was just--it was raining that night also. Me trying to calm her down from--from the argument with Earl, and I just told her to get in the car--

Q I'm gonna--

A And she got in the car, put her coat--

Q All right. Let me stop you for a minute. Let's talk about

[Page 1029]

the car. What car were you in?

A I was in a Regal.

Q What color?

A I think it was silver or gray.

Q Let me ask you this. Were you the registered owner of that vehicle?

A No.

Q How'd you get that car?

A A girl came over to Marvin house and I gave her some crack to use the car.

Q Was that the same girl, Tracie Goltzene, who testified previously?

A Yes.

Q Do you recall--going back to that incident--do you recall approximately what time of day or night that that exchange took place?

A In the morning time, early in the morning.

Q Who else was present when that happened?

A My brother, R.B., a couple other people that I can't remember they name.

Q Was Eric McElmore present when that happened?

A Eric McElmore?

Q That would be the friend of Miss Goltzene.

A No, he was down in the car.

Q Did she tell you how to get a hold of her or when she'd

[Page 1030]

need her car back, or how was that gonna all take place?

A No. She just told me to come back and make the--make sure she was okay.

Q Come back where?

A Come back to Marvin house.

Q Did you do that?

A Yes.

Q When did you do that?

A After I dropped her friend off in Paw Paw.

Q Okay. So was she okay?

A Yes.

Q And then how was it that you came to be able to-- that you came to have the car after that?

A I gave her some more drugs when I came back, and her and my brother hung out together.

Q Okay. When you came back to check on her, see if she was okay, gave her more drugs, did--did she then say hey, I need my car back or I need a ride back home or anything like that?

A No. She--she didn't say nothing like that. She told me to come back again and check on her when I get done, and I did.

Q When was that?

A Early in the morning around--when the sun came up really.

Q So you checked on her again. Was she still there?

[Page 1031]

A Yes.

Q All right. Then what happened.

A Then I left.

Q Okay. What was the agreement at that point?

A Nothing. She just said to--if she's not there, to--to leave the car there and she'll come back and get it.

Q Did you ever at any point leave the car there?

A No. I wasn't done with it.

Q Okay. So was it your understanding this agreement that you had with her that you would keep it as long as you needed it, and then you would return it back to Marvin's and she'd pick it up.

A Yes.

Q Did she give you a way to reach her?

A No. She just--I just knew she stayed in Paw Paw and I knew where the guy stayed if I--you know. Back then I--I knew cause I remembered where I took him to. It wasn't no address on the keys or anything like that. I didn't--I didn't go through her--through her car and look for address or nothing.

Q Okay. Do you--did there come a point in time where you thought perhaps you'd kept it longer than she had anticipated?

A Yes.

Q When was that?

[Page 1032]

A When I came over to Marvin house and I was informed that the police was looking for me for a stolen vehicle.

Q So let's go back January 13th and you're telling us about getting in the car, in this Regal, and Annette getting in this car, okay?

A Yes.

MR. FENTON: Can we--can we approach at this point?

THE COURT: Yes.

(Bench conference begins at 12:00 p.m. between the Court and counsel, transcribed as follows)

MR. FENTON: Before he starts getting into the details, I've really got to hit the john, and it's noon, and I don't know if you want to keep going through the lunch hour or if you're gonna break for lunch.

THE COURT: I was planning on going till about 12:30 or so. How long--how much longer do you--

MR. FENTON: I'll never make it that long.

THE COURT: How much longer do you have?

MS. EIFLER: Well--(Inaudible--whispering)

THE COURT: Yeah, I was planning on getting through her direct.

MR. FENTON: Can we just take a five-minute potty break or?

THE COURT: Why don't you just leave real quick

[Page 1033]

and then come back.

MR. FENTON: Fine okay. Okay thanks.

(Bench conference ends at 12:00 p.m.)

MS. EIFLER: Your Honor, may I approach the witness?

THE COURT: Yes. Just move that microphone for a second.

(Sidebar conversation between the witness and Ms. Eifler)

THE COURT: Sir, you're not allowed to--oh I'm sorry. I thought you had a cell phone. You're jus grabbing your ear, sorry.

Ladies and gentlemen, it's noon right now. I would like to continue with Mr. Davenport's testimony until around 12:30 or so. Does anyone need a break right now? If so, raise your hand. I know we didn't get on the record until around 11:00 but raise your hand. All right we'll continue. Go ahead Miss Eifler.

MS. EIFLER: Thank you.

Q Okay sir, going back to when you and Annette are getting into the car, tell us what's going on then.

A I'm trying to calm Annette down, telling her that I'm fitting to take her to her house.

Q Do you recall what she was wearing at that time?

A No.

[Page 1034]

Q At any point did she give you any articles of clothing?

A She had gave me her big coat before we left the Carswells.

Q What do you mean big coat?

A Winter coat.

Q What'd it look like?

A Just big, like a ski jacket, ski coat.

Q Okay.

A You know, puffy.

Q Do you know if she had on jeans or slacks or anything like that?

A All I remember is the coat and I think she had on another jacket up under that, and shirt.

Q Why did she give you the big coat?

A Cause she was going through some things upstairs at the Carswells. She was getting hot and just wanted me to hold on to it.

Q Okay. All right. So you got her in the car or she got in the car, and you tried to calm her down.

A Yes.

Q Then what happens?

A I started the car up, she fumbled around in her--in her clothes, her jacket that she had on. Pulled out a--pulled out her hitter, her pipe, whatever you want to call it, tried to hit it. I proceeded to leave and came down Park Street I think it was, headed towards the north side.

[Page 1035]

Q Headed toward the north side?

A Yeah, north side.

Q Okay. She--she was agitated cause she wasn't getting what she wanted.

Q What'd she want?

A I guess a hit.

Q Did she ask you to go anywhere or do anything?

A Not at that time. She--she didn't ask me nothing until we-we got over by Douglas Street. We was on North and--North coming up on Douglas.

Q You were on North coming up on Douglas?

A Coming up on Douglas.

Q Okay.

A By the time we made it down to Douglas, I guess it--I guess she figured out that I was taking her home, and she told me she wanted to go Alamo. I told her I wasn't taking her to Alamo.

Q Okay. Let me stop you there. Take--she wanted you to take her to Alamo.

A Alamo.

Q What--what is that--what does that mean?

A That's an apartments--

Q Okay.

A Apartment building up on Alamo Hill.

Q All right. And you told her no, you weren't gonna take her

[Page 1036]

there. Is that what you just said?

A Yes.

Q All right. Then what happened?

A I proceeded down Douglas. She kept telling me to take her to Alamo, I told her no. She tried to grab the wheel and turn the car. I pushed her back, proceeded down Douglas. There was cars coming towards me as well as in the back of me and in front of me. So I'm--

Q Do you recall how many cars you saw?

A I don't know how many cars was coming at me, but it was lights coming towards me and it was lights in front of me, and I saw the lights in the back of me.

Q All right. Then what happens.

A She tried to grab the wheel again. I pushed her back again.

Q When you say you pushed her back, can you show us what you mean? Can you show us what you did.

A Well if she's--she was to my right and she grabbed the wheel and I pushed her back.

Q Oh you gotta keep your--I'm sorry you gotta keep your--your voice--you gotta talk right in the microphone.

A Okay. She's--she's to my right, so I just took my hand and pushed her back. You know, pushed her back from the wheel.

Q Okay. Did you hurt her at the time?

A No, I wasn't trying to hurt her. I was just trying to push

[Page 1037]

her back. Hopefully she would have stopped trying to grab the wheel.

Q Then what happened?

A She started yelling and kicking. She went to her side, pulled out a box cutter, and I grabbed her.

Q Okay. She went to her side, is that what you said?

A Yes.

Q Okay. Did you get a--I mean you--you--at what point did you know she had a box cutter?

A When she pulled it out.

Q Did you get a good look at it?

A Not really. I thought it was a knife at first.

Q Okay. What was she doing with this object?

A Swinging it at me.

Q Okay. Did she ever touch me with it?

A She hit my arm.

Q Can you show us which arm?

A My--this arm right here.

Q That's be your right arm?

A Yes.

Q Okay. And you were just showing us where she hit you in the arm, is that correct?

A Yes.

Q Can you show us again?

A Right here, up in here.

[Page 1038]

Q Okay. So that would be your upper right arm.

A Yes.

MS. EIFLER: If the record may reflect.

Q What were you wearing at that time?

A I had on a coat.

Q What kind of coat?

A I think it was like a winter coat but you know.

Q Okay. What else were you wearing?

A Jeans probably.

Q If you know. You can't testify if you don't recall.

A I really can't recall. I know I had--I know I had a coat and probably tennis shoes, something.

Q Okay. You've just described for us that she had struck you or hit you in the arm?

A Yes.

Q Was that--was that with the knife?

A Yes.

Q And did anything happen to your coat?

A Yes, it--it was--it was cut. I didn't know it, notice it till after.

Q And do you know did it touch your arm at all?

A Not at the time I didn't.

Q Okay. Afterwards did you realize that it'd done something to your arm?

A Yeah after.

[Page 1039]

Q What happened, what'd you realize?

A I didn't realize until really way after.

Q Okay. Then what'd you realize?

A That I was cut a little bit.

Q Okay. So let's go back. Now she has this box cutter out. At some point did you get a good--good look at it or a chance to see what it was?

A I--like I say, I thought it was a knife at first.

Q Okay.

A I really didn't know it was a box cutter until I picked it up off the floor.

Q Okay. And can you describe that box cutter for us?

A It was a box cutter, blue, gray. You know, a box cutter.

Q Okay. So let's go back to you've just been struck in the-in the arm by this box cutter.

A Yes.

Q Then tell us what's going on, what is happening in that car?

A We was already--it was already--it was already crazy before we even got to Douglas. I mean she was already angry. Before we had even got to Douglas she was already took-tooken (sic) off most of her clothes.

Q What do you mean by that?

A I mean when we left the Carswell house, she was still saying she was getting hot. I rolled down the window a

[Page 1040]

little bit, cracked the window, and she was starting saying she was hot. So she was taking off her clothes.

Q Was she doing--what was she doing with the clothes?

A Just throwing 'em down, throwing 'em to her side, throwing 'em down. Just taking 'em off. I've seen other people do it, so I didn't--I didn't--it wasn't no alarm or nothing cause I seen other people do the same thing after they-

Q She wasn't neatly folding them or anything like that.

A No.

Q Okay.

A No, no.

Q All right. Let me ask you this. You see her bring out this object that you think at the time is a knife. What is going on in your head?

A Keep her up off me.

Q Why?

THE COURT: I--I didn't hear the answer. Keep her?

THE WITNESS: Keep her up off me.

THE COURT: Oh.

Q Why's that?

A Cause I didn't want to get cut.

Q Were you afraid of that object?

A Of course, yes.

Q Were you afraid of Annette White with that object?

[Page 1041]

A Oh yeah.

Q Why were you afraid?

A Because she got a knife in her hand. I don't want her to hit me, I don't want her to hit my neck or the--hit--or you know, to hit me period with it.

Q Is this all going through your head?

A Yeah, at the same time I'm trying to stay on the road and keep from hitting somebody or keep from hitting another car.

Q Let me ask you this. You're trying to keep her away from you with this knife, you're also trying to keep on the road. At any point did it occur to you to pull over?

A Well I had cars coming at me, I had a car in front of me, and a car in the back of me. I had up--when she grabbed the wheel I almost had hit a car then. I was only a few--well not even a block away from her house--so I was basically trying to get her to the house.

Q Okay. So she is now swinging at you with this knife. What else is going on? Tell us what happens next.

A She hit my arm, she pulled back again and hit the dashboard.

Q What do you mean she hit the dashboard? Was she aiming at the dashboard?

A No. She just--when she was reaching back I guess the--to try to swipe at me again.

[Page 1042]

Q Okay. Then what else.

A When she hit the dashboard, the knife fell. I had her pinned up against the other side of the car.

Q Let me--let me ask you about that. Do you recall at what point you pinned her up against the car?

A Do I know what point?

Q Yes.

A When I grabbed her.

Q Okay. Was this before or after she hit you with the knife or with the box cutter?

A Soon as I noticed the box cutter, I grabbed her.

Q Okay.

A And pushed her over towards the other side of the car, far away from me as I could.

Q Did that stop her from swinging at you?

A No.

Q And in fact, you've testified that she even struck you why--would this have been while you had her pinned up?

A Yes.

Q Can you show us what you mean by pinned up.

A Like you jack somebody up.

Q Well we all don't now what that means. So show us if you could please.

A Oh okay. Like holding somebody back.

Q Okay.

[Page 1043]

A Pinned up.

Q So you had your arm out, fully extended, is that correct?

A Yes.

Q And you had--you were showing your hand was I guess in a flexed position?

A Yeah I didn't--

Q Is that right?

A I didn't have to grab her because I had her pinned up.

Q Okay.

A I mean, you know, just holding her towards the--you know, I didn't have my hand around her neck.

Q At what--what part of her body was your hand located?

A Right up under her chin, right up under there.

Q Okay.

A On her chest, like right here.

Q All right. Was that something you thought out? Gee, I'm gonna press her up against the car by her neck or how did that happen?

A No. That was the only spot that I could really--you know, the extinct, just grab, just push, get her far away as possible. It wasn't a matter of something that I thought about. It was more impulse than anything.

Q Okay. So let's move to the point. You said that she has struck the dashboard and now the knife falls, right?

A Yes.

[Page 1044]

Q Okay. Then what--then what happens?

A I'm holding her there and she started kicking and trying to reach at--trying to reach at me. She--when I--when I let up, when I was about to let up, she reached over and scratched me on my face. And I pinned her back up against the other side of the car.

Q Okay.

A Down like towards--

Q Let me stop you there for a minute. Where did she scratch you?

A On the face. Right here.

Q And that would be on your--underneath your--your left eye, on your left cheek, is that correct?

A Yes. Yes.

Q Do you recall how--what size person Annette was?

A She was small.

Q Okay. And how tall are you?

A I'm 6'5".

Q You didn't think that you could get that small person under control?

A Yeah, whenever I--when I grabbed her, she couldn't--she can barely reach me, you know what I mean? So I knew I had her under control then, but then I let go or I was about to let go. And that's when I--you know, re--repositioned her back in the same spot.

[Page 1045]

Q Do you believe she was attacking you?

A Oh she was attacking me.

Q How long did this go on?

A It happened quick but it seemed like it took forever.

Q Did you mean to hurt her when you were doing this?

A No, no.

Q What was your purpose in--in holding her?

A Just holding her back, keeping her down, keeping her up off me until I can pull over at least, until I can get her to the house. My intention was to get her to the house, but we went past the house. Someone was calling me, I think it was Tonya. I heard her calling me when we got up by the house. So I'm, you know, trying to hold her, trying to make sure she don't get the knife again, and trying to keep from hitting something. Just--

Q How come you didn't go to Tonya, drive over there so she could help you?

A Like I say, that's where I was headed, but I was--I couldn't turn right into the driveway. I'm coming--going I think--the house is to your--your left. It's a wide street. I got traffic coming towards me, traffic in the back of me, traffic in the front of me. All I could do at that point really is just hope--make sure I keep her head up.

Q At some point did you realize she's no longer struggling?

[Page 1046]

A When we got past the house, little ways past the house.

Q What was going on?

- A I thought she had calmed down. I really was just trying to focus on driving. When I got up to where Deja Vu at, I pulled over and let her go, and at first I thought she was just passed out. I didn't know that she--she wasn't breathing. If I would have known that I--I don't know.
- Q So at that point you realized she's not breathing. What--what did you do then?
- A Sit there for a minute. I don't know how long. Not for--not for long. I--I panicked. I, you know, just got scared and panicked. Didn't know what to do.
- Q Let me ask you this. Let's go back to when you first initially pushed her back. From that time forward, do you know how long you had had her pushed back?
- A No. I--it's--it seemed like it happened so fast but getting from--from Alamo and Douglas to down there is--it is not--I don't think it's--I don't think you can make it, you know, in that span fast. But it seemed like it--everything happened fast, but I really don't know the time, you know.
- Q Okay. So let's go then back up to where you're at. Are you in a parking lot by Deja Vu?
- A No, I'm just to the side of the road.
- Q All right. Then--then what happens? What do you do then?

[Page 1047]

Q I drive off, continue to go down--I don't know which road that is. I continued to drive and came up on Alamo again, coming from the backside somehow. I mean--I don't even really remember how I got to that--that area, back up on top of the hill. Came down Alamo, trying to figure out what to do. Drove up--

Q Did you--let me ask you this. Did you think at that point to contact the police?

A I don't know if I thought about contacting the police or not. I mean me and the police is not--not friends.

Q Okay. So as you're driving down Alamo, I mean describe for us--describe for us how you're feeling.

A You can't describe it. Fear, panic, confused, you know what I'm saying? Trying to figure out what just happened. It's--it's undescrivable.

Q What about any feelings for--for Annette?

A Just a bad situation. That's all. Just a bad situation.

Q Okay. Okay. Let me ask you this. You're driving down Alamo, then what happens?

A Just--just a bad situation. All I can do is just try to figure out what to do, and I couldn't figure out what to do.

Q So where'd you go?

A I parked the car and got out of the car. And went out to my--my mother-in-law.

[Page 1048]

THE COURT: I--I didn't hear that, you-

THE WITNESS: Went out to my mother-in-law.

Q Went out to your mother's house?

A My mother-in-law.

Q Okay. Where's that at?

A Out in Portage.

Q Okay. At this point was--where was Annette White? Where was her body?

A Where I left it.

Q Okay. And that was in the field that we've heard about, correct?

A Yes.

Q All right. How did it--how did you--why there? How did that come about?

A I don't even know. Like I say, I panicked.

Q I'm sorry. I didn't hear that.

A Like I said, I panicked.

Q Okay. Now we've heard--we've heard testimony about oranges. Do you know whether there were any orange peels in your car at that time?

A I don't know nothing about no oranges.

Q Okay.

A Yes, I eat oranges but you know.

Q All right. So it's very possible that that's how orange peels got there, is that right?

[Page 1049]

A That night anything is possible.

Q Okay. How much had you had to drink at that point?

A Not that much.

Q Okay.

A Not that much.

Q But had you been smoking crack cocaine?

A Say what.

Q Had you been smoking crack cocaine?

A Yes.

Q Now we've heard testimony from others as to how it affects--affects others. What does crack cocaine, if anything, do to you?

A What it does to me?

Q Yeah.

A Make me hungry.

Q What's that?

A Make me hungry.

Q Horny?

A Hungry.

Q Hungry, thank you. Okay. I'm sorry, I didn't understand you. Makes you hungry, okay. All right. All right. Did you give it a lot of thought as to where you were going to Annette's body?

A No.

Q We've heard some speculation that her body was tossed in

[Page 1050]

this area. Do you remember anything about placing her body or tossing her body in that location?

A No. No.

Q Do you remember seeing anyone at that location?

A No, no.

Q Do you know whether--I mean anybody--any neighbor's dogs barking, anything like that?

A I might have heard a dog. I don't really even remember.

Q Did you see any other cars?

A No.

Q All right. Now you've testified that you go out to your mother-in-law's, is that right?

A Yes.

Q And what's her name?

A Lenora Stuart.

THE COURT: I missed the first name.

THE WITNESS: Lenora.

THE COURT: Lenora Stuart.

Q And it--has Miss Stuart since passed away?

A Yes.

Q And when did she pass away?

A The end of last year.

Q The end of '07?

A Yes.

Q Why'd you go out there?

[Page 1051]

A I wanted to talk to her.

Q Is she someone that you have confided in in the past?

A Yes.

Q Did she--did she help you out in anyway?

A Yes, she wrapped my arm and we talked for a minute.

Q You said she wrapped your arm?

A Yeah, she wrapped my arm.

Q Okay. Was there anyone else there?

A Her stepson--I mean her son, Jimmy.

Q Do you know Jimmy's last name?

A Henry.

Q I'm sorry, what was that?

A Henry.

Q Can you spell that, if you know?

A H-E-N-R-Y I think.

Q Henry, okay. And did you talk with Jimmy at all?

A No not really.

Q Did Jimmy see you there?

A Yeah.

Q And do you know whether Jimmy is still alive today?

A No he passed. He was hitting on a car accident.

Q When was that?

A Last year.

Q Again back in 2007?

A Yes.

[Page 1052]

Q How long were you at at this location.

A I don't think that long. Short.

Q Then what'd you do?

A Went back--back towards the north side.

Q Tell us what's happening in your head?

A I really can't tell you. It's--it was crazy. Just-

Q Did you--did you eventually go to Marvin's?

A Yes.

Q All right. At some point did you come in contact with Marquetta Tarver?

A Yes, that Monday.

Q So this would have been after January 13th, 2007?

A Yes.

Q And had you known Marquetta Tarver previously?

A No.

Q How did you meet her?

A Through Marvin.

Q Do you remember seeing anything come on to the television in regards to Annette White's body being located?

A No. My sister said something that--that Monday. That was about it.

Q Okay. And what's your sister's name?

A Patricia.

Q Where--where was that at that Patricia said this?

A Marvin's house.

[Page 1053]

Q Was she staying there at the time?

A No.

Q Did she stay in that general area?

A She stay out in Patwood.

Q Patwood?

A Yeah.

Q Okay. Did you ever talk to Marquette Tarver about anything you saw on the news?

A No.

Q Do you--

A I don't even know her.

Q What's that?

A I don't know--I don't know her like that. I don't even know that--know her.

Q What--can you describe for us what you mean by, "I don't know her like that."

A I mean I met her at Marvin's in passing. It wasn't like we was friends, it wasn't--I didn't know her like that. I didn't--I didn't tell no one except for Lenora and I didn't really even tell her everything. I just--you know. I wouldn't tell Miss Tarver nothing, I mean I don't know her.

Q Do you remember what you told Lenora Stuart?

A Just told her it was a bad situation and.

Q Now did you see your brother after this occurred?

A Yeah.

[Page 1054]

Q Okay. Did you talk to--and what's your brother's name again?

A R.B.

Q R.B. Davenport. Did you talk to R.B.?

A Yes.

Q Did you tell him what happened?

A No.

Q So you didn't--did you tell Patricia what happened?

A No.

Q Who's the first person or persons that you can remember telling what exactly happened? Who was--who was it that you first told?

A Lenora.

Q Okay. You told her everything that happened?

A Not everything.

Q Okay. Who was it that you told everything to?

A Captain Mallery.

Q So how did it come about that you and Marquette hung out? How'd that happen?

A She wanted a ride to Detroit and we hung out over at Marvin's that Monday I think, Tuesday. And

me, her, and another girl hung out for--for awhile. Like I said, I didn't know her that well. I just--she was someone that came over to Marvin's and we hung out.

Q Okay. We've heard testimony about your shoes found at

[Page 1055]

Kmart. When did you go to Kmart?

A That Wednesday I think.

Q Wednesday?

A Tuesday or Wednesday.

Q Did you do that because you knew that that was going to link you to where Annette's body was?

A No.

Q Why did you go there?

A Get some boots. The shoes wasn't mine no ways, so they was--they was 11. I wear like 13.

Q Whose shoes where they?

A My brother's.

Q R.B.'s?

A No. My--my youngest brother.

Q Okay. There came a point in time, January 18th, where you were in--in an accident, is that correct?

A Yes.

Q All right. And tell us about that accident. Did you see the police?

A Did I see 'em?

Q Yes.

A When I came down Portage Street I saw 'em, passed me. I think I seent (sic) 'em turnt (sic), I wasn't for sure if they was coming at me or not. I really wasn't even.

Q Okay. But you had reason to believe if they were coming

[Page 1056]

for you, you kind of knew why?

A Yeah. Pretty--I--I had a idea, you know.

Q So what'd you do when you saw the police?

A Continued down Portage.

Q At any point did you speed up?

A On Portage?

Q Yes. Or during that occasion.

A I think I did.

Q Okay.

A Turnt down a dead end street.

Q And you--did you speed up on that dead end street?

A Yeah.

Q How fast were you going?

A Not that fast. It takes a while for it to I mean.

Q Okay. Did you lose control of the vehicle?

A Later on.

Q Okay. Where were you at at that point?

A Downtown area, right cross from the power plant I think.

Q And were--were the police following you at this point?

A Yes I think they was.

Q So you recall having the accident.

A Yeah.

Q Were you injured in the accident?

A Yes.

Q What happened to you?

[Page 1057]

A Lost part of my hand, some meat off my hand, and some cuts.

THE COURT: I missed it. You lost what off your hand?

THE WITNESS: Some meat off my hand.

Q Okay. So and what happened to the vehicle?

A It flipped.

Q Do you know if the trunk opened up?

A I don't know. They say stuff was every where, so that's all I remember.

Q But you don't recall.

A I didn't.

Q Okay.

A I didn't.

Q Then what's your reaction at this point?

A At that point?

Q Yeah. Did you get--you got out and ran, correct?

A Yeah I got out the car.

Q Why did you do that?

A Number one cause I was just on the high speed chase with the police, and that was basically it.

Q Did you--

THE COURT: I missed the last part of that. And the--I'm sorry?

THE WITNESS: I said that was basically it. I was-

[Page 1058]

THE COURT: That was basically it.

THE WITNESS: Yeah.

THE COURT: Okay.

THE WITNESS: Yeah.

Q Did you have reason to believe that you no longer had use of that car?

A When my brother told me that they was looking or me, yes.

Q Okay. And when was that that your brother told you?

A I don't know the date. I don't know the date.

Q Was it that day or before?

A Before that day I think.

Q Okay. All right.

A I think it was like that Tuesday or Monday, not for sure.

Q And do you know whether anyone was looking for you to talk to you about Annette White?

A No. No. I thought the whole--I thought they was looking for me about the car.

Q Did you end up then having surgery on your hand?

A Yes.

Q All right. And did you talk with the police after you had surgery?

A I remember being taken over to the station.

THE COURT: You need to scoot up towards the-

THE WITNESS: I said I remember--I remember being taken over to the station at--when I came out of--when I

[Page 1059]

woke up.

Q Okay. Do you know what time your surgery was by any chance?

A No.

Q Okay. Did this--did this accident occur during the early morning hours?

A Yes.

Q All right. And do you know if your surgery was later on in the day?

A Yeah, I think it was done in the morning.

Q Early in the morning?

A Early in--like late in the morning.

Q And were you--were you put fully out with anesthetic or was it--

A Yes.

Q Okay. Do you recall what time you were released from the hospital?

A Had to be the afternoon, I'm not for sure.

Q Tell us how you were feeling at that time?

A Doped up.

Q What's that?

A Doped up.

Q Dope--

A I was tired, sleep.

Q Okay.

[Page 1060]

A I was in and out really.

Q So you remember being taken over to the police station, correct?

A Yeah. I remember giving--being given some oranges, some jail clothes and--

Q Is that what you mean by oranges?

A Yeah.

Q Okay.

A Some jail clothes and told to put 'em on and hand cuffed-

Q Was this while you were still at the hospital?

A Yes while I was in the hospital.

Q Okay.

A Handcuffed and put in a squad car.

Q Do you remember meeting with Detective Beauchamp?

A I remember--I remember going into--going into a room and him saying something to me. I really don't remember that--that whole thing. I saw the--saw the DVD, a lot of that I don't remember.

Q Okay. A lot of what you saw on the DVD during that interview, you do not remember?

A No. I don't remember. I was kind of surprised at what--what I did in the video so.

Q Okay. You were nodding off, that sort of thing.

A Yeah, I was nodding off and I had got up and used the garbage can as a--as a toilet I guess. I urinated in it,

[Page 1061]

so I don't even remember none of that.

Q You didn't even know you did that until you watched the DVD?

A No. I didn't, I didn't--I wasn't aware of that.

Q Now did you talk with the police several days later.

A Yes.

Q And that was on January 24th, 2007?

A Yes.

Q All right. And at that point--I mean we watched this video. We've seen you on it. Do you believe you were being cooperative?

A Yes I was in a way.

Q Did you want to tell the police what happened?

A I--I don't know if I'd say I wanted to. I think the way Detective Beauchamp came at me, I wasn't--I knew he wasn't there to help me. So you know, he talked and I listened and--

Q Now we've heard about some of these techniques, some of it is to try to make you feel more comfortable or to establish a bond. Did you--did you--were you getting that sense? Were you--you and Detective Beauchamp establishing a bond?

A No, no. His first--his first--his--the way he--he approached it was he showed me some--some pictures and--of Andre and Nita, and some--some other people, and after I had requested an attorney, I kind of much just listened and

[Page 1062]

tried to figure out his angle.

Q Okay. So I mean this--this went on for quite some time, is that right?

A Yeah a long time.

Q Okay. And initially it--it even started out more in relation to the car, correct?

A Yeah that's how it all started.

Q All right. But then--

A They switched up to do you know this person and do you know that person.

Q And you figured out this is more than just about the car.

A Yes.

Q All right. Do you remember telling Detective Beauchamp that the car was a--was a crack car or that the owner had traded it for crack cocaine?

A Yes.

Q So what was your understanding of--of Andre Randall's involvement with Annette White?

A What was my understanding?

Q Right.

A At that time, talking to him, he--

THE COURT: Just a minute. Mr. Fenton?

MR. FENTON: Yes?

THE COURT: Can you maybe talk in a different spot or out in the hallway?

[Page 1063]

MR. FENTON: I'm sorry, of course.

THE COURT: Thank you.

MR. FENTON: Fine.

THE COURT: Go ahead Miss Eifler.

Q Okay. What was your understanding of Andre Randall's involvement with Annette White?

A That they believe Andre Randall done it.

Q And based on this--based on how this conversation's gong, how this interview is going, are you getting a sense of how they feel that you were involved in this?

A Yeah, I figured out what he was going at, what he was--what he wanted me to say any way.

Q Okay. Well how do you think--I mean based on what they're saying to you or what he's saying to you, I mean were there mon--more than one--there was more than one detective coming in talking to you.

A Well no. First it was just Beauchamp.

Q Okay.

A And--

Q Okay.

A Captain Mallery came in for a minute while we--while we was in there. But for the--for the most part it was Beauchamp.

Q Well we've talked about these different scenarios, these different cases where there was somebody primarily responsible and then someone who helped after the fact.

[Page 1064]

A Yeah.

Q Okay. What did you--why do you think he--I mean what was going through your head as to why he was telling you that?

A He wanted me to say that Ron--Andre done it.

THE COURT: I missed it. That he wanted--

THE WITNESS: He wanted me to say that Andre done it and that I was--I was either a witness or--or something. I knew Andre done it basically.

Q We--we watched these DVDs at length here in court. How long, in your mind, do you recall this going on where the line of questioning was going as Andre being the main suspect or the main person responsible for Annette's death?

A How long?

Q Yeah.

A Up until Mallery came in.

Q The first time or the second time?

A The second time.

Q I mean--

A And even after awhile, I mean he was on that same tip too until after awhile.

Q Okay. You at some point told Detective Beauchamp that you had assisted Andre Randall, is that right?

A Yes.

Q And that--that was not true, right?

A No. That was--that was a scenario that he--that he came up

[Page 1065]

with, that he put out there.

Q Why--why'd you do it? Not what he did, but why--why did you do that? Why did you say that?

A Why did I say it?

Q Yeah.

A Fear. Not so much fear of--of--of--of him, fear of what could happen.

Q You mean fear what could happen to you?

A Yeah.

Q How long were you interviewed until Captain Malley then changed it where the focus was more on you. I mean can you give us an estimate how many hours?

A No. I--I was in there so long and.

Q They were nice to you, weren't they?

A They was nice to me? No, they had the room zero below zero and--

Q They had what now?

A They had the room, the room that I was in, they had the air conditioning on. My hand was hurting and I told 'em this. I told 'em that they wasn't giving me anything out there in the jail for it.

Q Did you have any medication for your hand?

A I didn't have none with me, no.

Q Okay. Did--was anything prescribed for you from the hospital, if you know.

[Page 1066]

A Yes.

Q Okay. And were you getting that medication while you were at the jail?

A No.

Q Did you eventually get that medication?

A No.

Q Was it some sort of a painkiller, if you know? Do you-

A Yes.

Q What was it, do you know?

A Vicodin.

Q Okay.

A And Motrins I think.

Q Vicodin or Motrin?

A Vicodins and Motrins.

Q And Motrin, okay. Were you given any type of pain relief medication at the jail?

A No.

Q Did you talk to Detective Beauchamp about that?

A Yes.

Q This come up more than once?

A I think twice maybe.

Q Okay. Did you tell him--complain about the temperature in the room?

A I said something about it. I think that's when he said something about coffee.

[Page 1067]

Q Okay.

A And I don't drink coffee, so I didn't want any of it.

Q But if we watched this DVD, it's--it's coming across as-

A That's cause it's not a complete DVD.

Q Okay. But what we've seen on the DVD, I mean it--it looks like it's pretty civilized conversation.

A But it's what you don't see.

Q Okay. Well just as--answer me about what we do see. It's civilized on that portion.

A Is it civilized?

Q Right.

A Well I guess it's civilized.

Q Okay.

A But it's--

Q Well did there come a point in time where it was not--I--I don't know--I chose the word civilized--that it wasn't--didn't have that--that sense?

A Well it, you know, you got to realize it wasn't about--at that point it wasn't about what was--what was true. They wasn't trying to get the truth. They wasn't--they wasn't trying to hear the truth.

Q Well did you--did you say hey, hey, this isn't true?

A No, I listened. It's not.

Q Okay. There came a point in time where there was a first written statement that was prepared, and you were asked to

[Page 1068]

sign it after it was read to you, is that correct?

A Yes.

Q All right. You--you never signed it, right?

A Yes I never signed it.

Q Why not?

A One cause it wasn't the truth and two, they wouldn't let me talk to an attorney.

Q Did that--in that first written statement, jury's going to see that. It--it implicates Andre Randall, correct?

A Yes.

Q Were you at any point concerned about implicating Andre Randall?

A That's why I didn't sign it.

Q He wasn't involved in this at all, was he?

A No.

Q All right. Do you know how many times you were asked to sign that?

A A bunch.

Q Were you talked to by Captain Mallery also about signing it?

A Yes.

Q We know that there came a point in time where Captain Mallery came to you and said, "Hey, we think you are primarily responsible for Annette White's death." You recall that?

[Page 1069]

A Yes.

Q All right. And then eventually you told Captain Mallery what happened, correct?

A Yes.

Q Okay. How did you feel then after you told him?

A How did I feel after?

Q Yes.

A At peace.

Q He told you that he was going to be a messenger to the jury. Did you think that that was necessarily true?

A At the time.

Q Did you have a problem with him talking to Annette's family?

A No.

Q Did you know other members of her family at that time?

A Yes I think I did. I think I do.

Q Now at some point you were asked about what happened with Annette White's property that was in the car, her clothing.

A Yeah.

Q I think you said that her clothing was--you took it to Patwood?

A Yes.

Q You also told the detectives a couple of different things about her clothes, is that correct?

A Say that again.

[Page 1070]

Q You--you had previously told them a couple different things about her clothes?

A No.

Q No?

A No.

Q Okay. Where did you take her clothes?

A When I made it out to Patwood, I just--I remember balling up some clothes and taking 'em out the car.

Q And at some point did you clean up the car?

A Yes, later on that--later on that morning.

Q That would have been on the 13th of January?

A Yes.

Q Okay. What did you do with the box cutter?

A When I--when I found it, I put it in the trunk with the rest of some stuff that was in the car.

Q A lot--we've heard Tracie Goltzene testify about the contents of that trunk. Her testimony has been

that a lot of that stuff wasn't hers. Do you know how that--that stuff got in her trunk?

A Some of it I put in there. Some of it Ken put in there, Kenny Cooper. As far as I know.

Q Okay. What were you gonna do with it?

A I don't remember all that stuff being in there really.

Q Okay. Why was it in the trunk?

A Like I said, I don't remember all that stuff being in

[Page 1071]

there.

Q Okay.

A The heater--the heater was in there. Kenny put that in there that--to take over to his son along with some other stuff.

Q Now Ken Cooper, he testified in this case also, is that correct?

A Yes.

Q And he advise--talked to us about Leslie Snook.

A Yes.

Q You--you know Leslie Snook.

A I know her, but don't know her.

Q Okay.

A You know, we--we ain't.

Q Tell me--she told us that there came a point in time about a week prior to Annette White's death where you had choked her.

A No.

Q Did you ever have any physical altercation with her?

A Only--not--I wouldn't even say altercation.

Q Well what--how would say it? What would you describe it?

A Flirting and--the altercation she's talking about never occurred.

Q Okay.

Q The only time I--only time I even test--touched Miss Snook

[Page 1072]

is when I washed her back one day while I was over to Kenny Cooper's.

Q You washed her back?

A Yeah, she wanted me to wash her back.

Q So there was some flirting going on.

A Yeah.

Q Okay. Did you and she ever have any type of intimate relations?

A Not intercourse. She--she was--she was--she was a prostitute. So she, you know. It wasn't no intercourse or nothing like that. She was one of his girls and she did things around the--around the house, that's all.

Q Okay. So you--do you remember telling--talking to Detective Beauchamp about Leslie Snook?

A Yes.

Q Okay. Do you remember when that was?

A No.

Q Was that after Annette White's death?

A Yes.

Q You were in custody at that time?

A Yes. This was after I had saw her in a van. We rode over here in the van, and we was in the--downstairs in the same area when my attorney came to talk to me, but that was it.

A That's the last I had saw of her until they brought her back up again.

[Page 1073]

Q Did you ever--did you ever tell her that you could squish her like a bug?

A No.

Q Now you told Detective Beauchamp that she was one of Ken Cooper's girls. What do you mean by that?

A He had a bunch of girls, you know.

Q That lived at his house or what?

A Some did.

THE COURT: Counsel, will you approach please.

(Bench conference begins at 12:57 p.m. between the Court and counsel, transcribed as follows)

THE COURT: I don't know how much you have left. We've had--it's 1:00 o'clock. If you've got a ways, then I'm tempted to take a break until about 1:15 or so.

MS. EIFLER: Why don't we take a 1:15.

THE COURT: About 15 minutes or so.

MR. FENTON: And we're not taking lunch?

THE COURT: Oh I'm sorry, it's 1:00 o'clock.

MR. FENTON: Yeah.

THE COURT: So 2:15.

MS. EIFLER: Okay. And where we going on that one? Where are we going? I mean are we just gonna say it's more prejudicial than probative--

THE COURT: All right. Why don't we-

MS. EIFLER: I mean right now we're at--

[Page 1074]

(Inaudible--whispering) and coming in?

THE COURT: Yeah. Yeah. All right. Let's--let's take a break. We'll take an--I'll take an hour-and-15 minute lunch quick then. All right? And then I'll call back.

Did you receive notification about Davenport? Is that what--were any of your notes with regards to his brother or no?

MR. FENTON: I'm not following your question.

THE COURT: Well you've had a couple contacts-

MR. FENTON: Well that wasn't about--nothing about it.

THE COURT: Well located him I guess, okay. Let's have lunch now. Well alright I'll have them back here at 2:15.

MR. FENTON: All right thanks.

(Bench conference ends at 12:59 p.m.)

THE COURT: Counsel, I'm gonna take a lunch break at this time--or ladies and gentlemen. It's 1:00 o'clock and so we'll do it that way. I would ask that you check in upstairs at 2:15. Mr. Brooks should be here shortly.

Please remember my prior instructions and make sure you turn your notepads over on your seat.

(The jury members exit the courtroom at 12:59 p.m.)

[Page 1075]

THE COURT: All right counsel, I know we've got some witness issues to address too at some point, but it's 1:00 o'clock and we've gone through the lunch hour. So we'll do that at a later time.

I'll see everyone at 1:15 (sic). Court's in recess.

(Court recessed at 1:00 p.m.)

(Court resumed at 2:35 p.m.)

MS. JOHNSON: The court calls the case of People versus Ervine Lee Davenport, Case Number 07-0165FC. Parties please restate appearances for the record.

MR. FENTON: Stuart Fenton for the People.

MS. EIFLER: Susan Eifler, appearing on behalf of the Defendant, Ervine Davenport. He is present in Court today.

THE COURT: And the jury's on the way down. As soon as Mr. Davenport's done, why don't you just re-take the witness stand. Just remember when you begin to testify again, make sure you pull that microphone towards you.

(The jury members enter the courtroom at 2:39 p.m.)

THE COURT: All right, we're ready to continue. Mr. Davenport, please remember you are still under oath.

Q Remember to speak right into the mic please. I think when we broke we were talking about your talking with Captain Mallery. Why did you tell Captain Mallery what happened?

[Page 1076]

A Basically I was told by my--by mother-in-law that when the time is right to tell somebody what's--what happened, I'll know--

THE COURT: I missed what you said. When the time is right?

THE WITNESS: When the time is right, I--I'll know when to tell someone what--what happened.

A I didn't--I felt that you know, he was sincere at the time and I definitely wanted the family to know what had happened. So that's what he said he would do.

Q He asked you about any remorse that you felt. Were you being truthful with him regarding the remorse?

A Yes. I was--I was truceful--truthful with him. I been truthful ever since I told him what happened.

Q Now I'd asked you about talking with anyone else and you told us that you'd had--you'd told your mother-in-law a little bit about what happened but not the whole story, is that correct?

A That's correct.

Q If--if there was a member of your family that you would have told, who would it have been?

A My brother.

Q And--and which brother is that?

A R.B.

Q Why's that?

[Page 1077]

A He's my oldest brother and he probably closest thing that I'm to. We spent a lot of time together.

Q At any point when you were at the police station on January 24th, 2007, were you--did you--were you ever aware that Andre Randall was there?

A Yes. I--I thought I heard him next door and I think one of the--the captain or the detective mentioned that he was there. So I assumed, plus I thought I was told that.

Q Now let me ask you this. We've seen some clothes that you were wearing at the time of the accident. Were those the same clothes that you were wearing on that night?

A No.

Q I've asked you what you were wearing, you said you were wearing a winter coat. Can you describe it for us?

A I don't know if it was--I don't know which one it probably was. I can't remember that far back.

Q Okay.

A I just know that I--when I got to my mother-in-law's I took it of so that she could look at the--at the cut and I don't think I left it there but I might have did. I'm not for sure.

Q Do you--so you don't know what specifically what you did with that coat?

A No, but.

Q This camouflage coat that we--we've seen here in court, do

[Page 1078]

you know where you got that coat?

A Max 10.

Q When did you get that?

A That Tuesday.

THE COURT: I'm sorry, I didn't hear the answer.

THE WITNESS: That Tuesday, the day before I was arrested.

A I also got some pants to match it.

Q At Max 10?

A Yeah. I got both the set.

Q Okay. There were some pants that went with the coat?

A Yes.

Q All right. Now after you left your mother-in-law's home, did you return to Douglas Street?

A Yes.

Q Do you recall what time that was?

A No.

Q Okay. And what's the reasoning for doing that?

A I really don't know. I--I really don't know why.

Q At some point in time you had Annette's dehumidifier, and her speakers, and her stereo, is that correct?

A Yes.

Q And this was after her death.

A Yes.

Q And also some food?

[Page 1079]

A Yes.

Q All right. How--how'd you get that stuff?

A The--the humidifiers and the speakers were outside. I don't know how they got out there, I don't know who put 'em out there. Like I said, I--it--it was a crazy night. I don't know--I don't even know why I even took the stuff or put the stuff in the car.

Q Did--did Annette owe you any money?

A No. No.

Q So we later heard that that stuff was taken over to Marvin's, is that correct?

A Yes.

Q Do you have any good reason why you took it?

A No. I--I wasn't even--I wasn't even thinking really. I was--

Q Were you at that point--

THE COURT: Hold on a second. You're gonna have to speak up. I didn't hear.

THE WITNESS: I really wasn't even--I don't know.

A I saw Tonya, said something to her. I don't--like I said, I don't even know how it got out there. I don't know. They had to have it cause going to each

other's houses. So like I said, I don't know, but I said something to her and left there. I left.

Q Did--do you remember telling I think Captain Mal-
lery that

[Page 1080]

you put the cat in--it was it the bedroom or the
backroom?

A Yes, yes.

Q All right. Do you remember why you did that?

A No.

Q Were you mad at Annette at this point?

A No, no.

Q Did you ever tell Marquette Tarver that you and
Andre were involved in robbing Annette?

A No, no.

Q How about raping Annette?

A No.

Q Had you ever had sexual intercourse with Annette
before?

A No.

Q Did--is that what this is all about? Did she resist
you, were you trying to--

A No.

Q Have intercourse with her?

A No.

Q Is there any reason that you are aware of why Mar-
quetta Tarver would come in and--and testify
against you?

MR. FENTON: I'm gonna object to that. That's to-
tally speculative.

MS. EIFLER: Well I'm asking what he knows of.

MR. FENTON: Calls--

MS. EIFLER: If there's any reason he knows.

[Page 1081]

MR. FENTON: Calls for speculation.

THE COURT: I'll sustain the objection. You can
reword the question, but that question--the objection
is sustained.

Q Do you know whether or not Marquetta Tarver
was taken into custody following the accident?

A Yes.

Q Were you aware at the time that she was in the car
with you, were you aware that she was on parole?

A Yes.

Q Were you aware that she was due to report and had missed a report date in Grand Rapids?

A Yes.

Q Now what about Miss Snook?

MR. FENTON: Same objection, speculation.

MS. EIFLER: I haven't even asked the question. Let me ask the question.

THE COURT: Finish your question.

MS. EIFLER: Thank you.

Q At that time you were questioned by Detective Beauchamp about Leslie Snook situation, did you know where she was located?

A Yes. She was in the county jail.

Q Was she having any type of a romantic relationship with Kenneth Cooper, if you know?

[Page 1082]

A Yes.

Q Okay. Would that have been back around January 8th, 2007?

A Yes.

Q Do you know--are you aware of whether or not Mr. Cooper was upset with her, thinking that the two of you were having an affair?

A I didn't know that. That was something new to me when he said that.

Q When he testified in court?

A Yeah. I didn't know he thought we was having an affair. And I didn't think that it--even if we was, I didn't think that it would have mattered to him. I mean-

Q Why's that?

A Cause I didn't think he had feelings for her like that. I mean I didn't think it was that type of a relationship where, you know, he consider her his woman or girlfriend or something like that. I knew that they had--they was involved. I knew that they, you know, did business, but that was it.

Q Now you've told us that you went over to Lenora Stuart's house after the incident and talked with her and she treated your arm, correct?

A Yes.

Q Did anyone else see your arm after she had treated it?

A My brother did later on. I think it was that Monday maybe,

[Page 1083]

Tuesday.

Q And did you show him a cut or--or what did he see if you know.

A No, he seen my arm wrapped up and asked me what happened.

Q And what'd you tell him?

A I told him I talk to him later on, that I need to talk to him about something.

Q So you did have intentions of talking to him at some point?

A Yes.

Q But you didn't get that opportunity, is that correct?

A No.

Q All right. Well we've got two statements here. We've got one statement saying one thing where you're helping Andre Randall, and you've got another statement stating that you did this. How do we know what to believe when we've got two different statements?

A How we to know?

Q Yeah, how are we to know which of your statements to believe?

A Well one I refused to sign and the other one I signed. I was told a long time the truth will set you free. So there you have the truth. I wasn't fitting to sign a state--statement saying that someone else had did something just because someone else wanted me to sign it. Just wasn't gonna do it.

[Page 1084]

Q Do you believe during the interview process that you had every opportunity to come right out with truth?

A No.

Q Why's that?

A Basically the first person wasn't looking for the truth. It was obvious from the--from the start. I didn't bring up Andre, I didn't bring up no scenarios. I didn't--I didn't, you know, offer any information. When I saw an opportunity to--to get it right, to--to do the right thing, that's when I stepped forward, you know. It was a big difference between the two--

Q Between the two?

A So I thought.

Q What do you mean between the two?

A Between the two officers. You know, I wasn't comfortable with the first one, and didn't feel that he was--he had my best interests at heart or really cared what happened. Even though he might have cared, he--I didn't--I didn't get that so.

Q If you hadn't have held Anita (sic) White back, what do you think would have happened?

A Say that again.

Q If you had not held Anita White back while you were in this car, what do you think would have happened?

A She would have cut me up.

[Page 1085]

Q You don't think that you, this big man, could have stopped that little woman?

A I could have hit her, but I wasn't trying to hit her. Trying to drive and at the same time keep her off me was all I could do at the time, and all I could do was just grab. I wasn't--I didn't want to hit her, so I just grabbed her.

Q I believe it came out that at some point when you were driving you saw Tonya Murray, is that correct?

A Yes.

Q Okay. Did you see Tonya any later on in the evening or-

A Yeah, I saw her later on when I came back over.

Q Did you want to tell Tonya what happened?

A No.

Q Is it fair to say that the person you wanted to talk to about this was R.B. Davenport?

A Yes.

MS. EIFLER: I have nothing further at this time.

THE COURT: Mr. Fenton.

MR. FENTON: Thank you your Honor.

CROSS-EXAMINATION

BY MR. FENTON:

Q Mr. Davenport, now you're not a naive person are you?

A I don't think so.

Q You're not gonna just trust what somebody tells you, are

[Page 1086]

you?

A Depend--

Q You don't just trust-

A Depend on who it is.

Q Depends--I'm sorry. Depends who it is?

A Yeah.

Q Well you've testified that you've sold drugs in the past, right?

A Yes.

Q You're not gonna sell somebody drugs unless they give you the money, right?

A No. I give people drug--I gave people drugs all the time.

Q Let's say somebody gave you drugs--you gave somebody drugs without the money. They didn't pay you, they said they would and they wouldn't. You're not gonna give 'em drugs the second time, are you?

A Yeah.

Q Really?

A Yeah.

Q So you're gonna allow yourself to be taken advantage of how many times before you stop giving that person drugs?

A I don't know. Depending on the person.

Q Two, three?

A Depending on who the person is.

Q Well what if they tell you that they'll pay you, and then

[Page 1087]

they just never pay you. How many times are you gonna let them get away with that?

A I don't know. Couple times maybe.

- Q Couple times, two, three times maybe?
- A Couple times maybe.
- Q Couple means two?
- A Two or three maybe.
- Q So after the second or third time, you're not gonna give or sell that person drugs any more, right?
- A I'll probably give it to them. I won't sell it to them.
- Q Why not?
- A Cause if I know I'm not gonna get paid, I'd rather just give it to you then sell it to you.
- Q Right. So you don't trust 'em after two or--two times, couple times of being lied to, right?
- A It's not a question of trust.
- Q It's not?
- A No.
- Q Okay. Well let's say you're out buying drugs. Some--you think somebody's gonna sell you drugs that you've pimped on two or three prior occasions? You know what I mean by the word pimped, right?
- A You're talking--I don't understand that one.
- Q You don't understand that word?
- A I don't understand what you--what you're trying to say.

[Page 1088]

Q Let's say somebody is selling you drugs and you don't pay 'em, and you do that twice, and you know that they're looking for you. You think they're gonna sell you a third time?

A Do I think they're gonna sell me a third time?

Q Yeah, on your word that you'll pay 'em.

A I'm the one that's getting it on credit, what you mean?

Q Let's say you've taken advantage of somebody twice before, getting drugs from somebody without paying for it. Do you think they're gonna sell to you a third time on your word when you--

MS. EIFLER: Objection, calls for speculation.

THE COURT: Overruled.

MR. FENTON: It's a hypothetical.

A Scenario again?

Q Right.

A Okay.

Q Well there's not much to think about it, is there? You know they're not gonna trust you a third time, right?

A I told you it's not a question of trust.

Q Oh it's not?

A No.

Q All right.

A The drug game is not a game of trust when it comes to selling.

[Page 1089]

Q Do you believe someone if they've lied to you before?

A Do I believe someone who lied to me before?

Q Yeah.

A Depend on who it is.

Q Do you believe someone if they lied to you several times before?

A Depend on what it is.

Q So you don't necessarily disbelieve--

THE COURT: Hold on a second. You're gonna need to speak up a little bit. I didn't hear.

THE WITNESS: I said it depend on who it is.

THE COURT: Okay thank you.

Q Would you believe someone who's lied to you ten times before?

A Probably not.

Q How about 15?

A Probably not.

Q You're not gonna believe anything that person says, are you?

A Depend on what they saying.

Q What about 20 times? Somebody's lied to you 20 times before on something really important. You're not gonna trust that person, are you?

A Probably not.

Q All right. Let's go through some of the things that you

[Page 1090]

told the police in this case that were lies. First of all, you said, quote, "Andre woke you up early in the morning," that was a lie, wasn't it, yes or no?

A Was it a lie? Yes.

Q You said, quote, "Andre was all buck-eyed, he was crazy looking." You said that too and that was a lie, wasn't it?

A Yes.

Q You said, quote, "Andre said he needed help with something." Didn't you, and that was a lie.

A No.

Q It's on video, we all watched it. Didn't you say that?

A I said no, I said it wasn't a lie.

Q It wasn't a lie?

A No.

Q Andre said that he needed help with something, that wasn't a lie?

A No, that wasn't a lie. It was just different--different instances.

Q I'm sorry?

A It was a different occasion.

Q Ahh. Well you knew that the police were talking to you about Annette White's death, and you said that Andre woke you up and said he needed help with something and that's what got you involved in this. Wasn't that true?

A That's what I--

[Page 1091]

Q Isn't that what you said?

A That's what I said to the officer.

Q And that was a lie, wasn't it?

A It was a different occasion that I said that.

Q Was it not a lie when you were telling them that you were asked by Andre to help with something on the night of Anita White's death?

A Some of it was lies and some of it was true.

Q I'm not ask you in general, I'm asking you that specific statement.

A That's my answer though.

MS. EIFLER: Your Honor, I believe he's asked the question. I'm gonna object. He's--

THE COURT: Move on Mr. Fenton.

MR. FENTON: Okay.

Q You said you didn't even help carry the body out to the car. That was a lie, right?

A Say it again.

Q You didn't help carry the body out to the car, do you remember saying that?

A No I don't remember.

Q The body was never taken from the apartment to the car. That was never even part of the scenario, was it?

A That was never part of the scenario?

Q You were telling them--

[Page 1092]

A Andre--Andre--the story about Andre was not true.

Q Right. So when you specifically said you didn't help carry the body out to the car, Andre did that, that whole thing was a lie.

A Anything I said about Andre was not true.

Q All right. You also said that you--your only part in this was quote, "that you showed him where to put the body." That was a lie also.

A Anything I said about Andre was not true.

Q So can you just answer my question. That was-

A I just did.

Q That was a lie also.

A Anything I said about Andre was not true.

Q So then you agree that that was a lie also, right?

A Okay. Yeah.

Q Then you said, "I just let him use the car." That was also a lie, right?

A Say that again?

Q "I just let him use the car." That was a lie also, right?

A Anything I said about Andre was true--was not true.

Q You said, "I told him earlier just to leave it alone," in other words trying to talk him out of doing whatever it was that he did. That was a lie, right?

A Anything I said about Andre was not true, sir.

Q Now you said that you never saw the body, quote, "I didn't

[Page 1093]

look at the body," so you didn't know how it was clothed. That was a lie also, wasn't it?

A Everything I said about Andre was not true, sir.

Q So you're agreeing that these are all things that you said about Andre and they're all lies.

A I'm saying that anything I might have said about Andre that night was not true.

Q So then you agree that all these are lies.

MS. EIFLER: Your Honor, I'm gonna object. I think he's doing this just to harass the witness. The witness has clearly said that what he has said about Andre was not true. He's answered that very--very explicitly.

MR. FENTON: But he's not--he's not answering my question, Judge.

THE COURT: Well--

MS. EIFLER: But I believe he's just trying to do this to harass the witness.

THE COURT: It's a little bit of both. So just make sure you're answering the question, Mr. Davenport. Your attorney does have an opportunity to follow up and I think these are basically yes or no questions so.

Go ahead Mr. Fenton.

MR. FENTON: Thank you your Honor.

Q Now you also told the detectives during that interview that you never--other than some passing conversation with Anita

[Page 1094]

(sic) White earlier that day, you never even saw her that night. Isn't that true?

A Say that--say that again.

Q Other than some passing conversation that you had with her earlier that day that you never even saw her that night, isn't that true?

A Who you talking about?

Q Anita White.

A I never saw her that day.

Q You told that to the police during the early stages of this interview, didn't you?

A I don't remember telling them that.

Q If the video shows that, you wouldn't dispute that you were lying about that, right?

A I don't remember telling them that.

Q Okay.

A That's all I can say.

Q You did say--

A We're talking about a year-and-a-half ago.

Q Well we all watched it again, to refresh your memory.

A I know, but we not--I don't remember telling them that.

Q Okay. Now you also told the police at first that you didn't get scratched from her that night. Do you remember that?

A I also told 'em what?

[Page 1095]

Q That you did not get scratched on your face from the victim in this case that night. Do you remember that?

A No, I told 'em I got scratched that night.

Q Later, at first you didn't say you get scratched from her.

A Anything I said at first was not true. That was what me and Detective Beauchamp was going with. I said that, I made that clear.

Q So you acknowledge having made that specific statement and that was a lie also.

A I admit at making this first statement to Detective Beauchamp, that I did not sign, I--and that's why I didn't sign it.

Q I'm not even talking about the written statement. I'm just talking about the interview.

A Well that's what I'm talking about.

Q Do you remember--

A I mean I can't--I don't--you know, you want me to say what I said and what I didn't say. Basically all I can do is tell you that it wasn't true.

Q All right.

A Anything that I said about the individual.

Q Well I understand that you want us to think that everything you said at first wasn't true, but I'm entitled to go through some of those details with you, so I'm gonna ask you some details, okay?

[Page 1096]

A Okay.

Q Now you also said during that interview, very specifically, when Detective Beauchamp asked you whether she pulled a knife on you, you laughed and said, "No, she didn't pull a knife on me. Do you remember saying that?"

A I don't remember saying that. I don't remember that.

Q Do you remember Detective Beauchamp suggesting the scenarios that this was self defense and that if so you should tell us?

A I remember Detective Beauchamp giving me a bunch of scenarios.

Q And one of them was self defense and that she pulled a knife on you, do you remember that?

A I don't remember that.

Q Okay. You wouldn't dispute it if it was on the video, would you?

A I'm not gonna dispute anything that's on the video, sir.

Q You lied about that when you denied it, right?

A Say that again.

Q You lied about it when you denied it, that it was self defense.

A I lied about what?

Q I'm sorry?

A I lied about what?

Q That she pulled a knife on--when you said she didn't pull a

[Page 1097]

knife on me.

A I don't remember saying that.

Q All right. You also said you didn't touch her. Do you remember saying that?

A I might have said that.

Q That was a lie as well.

A Yes that was a lie.

Q You said you didn't pick her up, remember saying that?

A I didn't pick her up, what you mean?

Q You never picked her up that night, never picked her up to take her to throw her in the woods.

A I didn't pick her up to throw her in the woods, sir.

Q How'd she get there?

A I said I did not pick her up to throw her in the woods.

Q How'd you get her from the car to the woods?

A As you--what is you talking about? See you need to clarify because you saying did I pick her up--when I first picked her up off the--on Westnedge or what is you saying?

Q Literally, sir. You told the detectives you never picked her up, Andre did that. Pick her up, over your shoulder to throw her in the woods. Didn't you tell the detectives you never picked her up?

A I don't know what I--what I might have said and didn't say in that first statement, sir.

Q If it's on the video though, you don't dispute it, if you--

[Page 1098]

as you've already said.

A I don't dispute anything that I said at the beginning of the video, sir.

Q Well let's maybe cut to the chase. How many hours would you say that you lied during this interview?

A For long as I was with Detective Beauchamp probably.

Q Four hours?

A For long as I was with Detective Beauchamp.

Q And he--

A Some was true and some was not true.

Q Detective Beauchamp mistreat you in any way?

A Did he mistreat me?

Q Yeah.

A No, he didn't put his hands on me.

Q Did he even raise his voice to you as much as I am now?

A He didn't raise his voice.

Q In fact, he's pretty hard to hear sometimes, isn't he?

A No--

Q What I'd call a low talker.

A You can hear him--you can hear him fit pretty good.

Q All right. You never slept at Tonya's house that night, did you?

A No not that night.

Q So that was a lie too, that you were sleeping at first and that's how this whole thing started, right?

[Page 1099]

A No. I was sleeping that day at Tonya's house on the 12th.

Q But obviously Andre didn't come in at wake you up.

A Earlier that day he did when he got out of jail, sir.

Q Okay. Now you also told the police that Andre said he needed to get rid of some stuff, that being the

victim's property, the dehumidifier, stereo, and the boom box, and the food. That was a lie.

A Andre didn't have anything to do with this, sir.

Q So that was a lie, right?

A Yes, that was a lie, sir.

Q Now there was a lot of questioning of you about--that went back and forth about how you actually got her property. And your first statement was that the stereo and the dehumidifier were left out on the porch, right?

A If that's what the video said, I don't know.

Q Well do you remember? I mean you even said that a few minutes ago right here in court. Do you remember saying that?

A I mean that's--that's what--that's what it was, sir.

Q The reason why you said that is because you were worried about being charged with a B and E if you went into her house to get it, right?

A No.

Q That's not right?

A I wasn't worried--too worried about anything except what

[Page 1100]

Detective Beauchamp was saying.

Q Well didn't you ask the detectives, whether it be Mallery or Mallery and Beauchamp, "What is that B and E?"

A I might have, sir. I don't know.

Q It's right on the video.

A I said I might, I don't know.

Q Then later you changed your story and admitted going in and taking the property. Do you remember that?

A I don't remember that, sir.

Q And in fact, the property wasn't on the porch, it was in her apartment, wasn't it?

A No.

Q It wasn't?

A No.

Q But you've already testified you had to go into get the food, so you actually went into her house, right?

A Yes I went into her house, sir.

Q And it's you want this jury to believe that her stereo and her dehumidifier are outside in January on the porch.

A That's the truth.

Q Really?

A Yes.

Q Well if you didn't have to go into the apartment to steal those things, why did you have to go in to get food?

A Like I said, sir, I don't even know why I even took the

[Page 1101]

humidifier from where it out--it's not a question of--of why I did go into the house, I really don't know why I even went in the house.

Q You went in the house to get the property to sell for more crack, isn't that the reason why you went in?

A I had crack already, sir.

Q And one can never get enough crack, can they?

A Yes they can.

Q Really?

A Yes.

Q Well didn't you testify that within hours of this murder, you and your friends were out selling her food and getting more crack cocaine and smoking it?

A I--I wasn't selling her food, sir.

Q You said Marvin was selling it.

A I had crack.

Q And all of you--

A I said I gave--I said I had--I told--matter of fact, Marvin testified that I gave the stuff to them. I wasn't selling it myself.

Q You saw the food get sold and you were smoking crack with the proceeds, weren't you?

A No.

Q Isn't that what you told the police later?

A No, I don't remember telling them that but I might have

[Page 1102]

did. Who knows.

Q But you were smoking crack cocaine that morning with Marvin and his friends, weren't you?

A I might have did.

Q Hours after you killed this victim.

A I might have did, sir.

Q And stole her property.

A I might have did, sir.

Q And had it sold for crack cocaine.

A I didn't have it sold for crack cocaine. I gave it to them.

Q But you know that's what happened and you utilized the proceeds to get high.

A No, I didn't utilize the proceeds. I had my own.

Q Okay. You smoked with them though?

A Did I smoke with them?

Q Yeah.

A I don't remember if I smoked with them or not. I basically wasn't trying to be around anyone.

Q Now you also lied about the whole about her being in the backseat. All the statements you made about her being in the backseat were lies, right?

A If I said it in the beginning it was not the truth, sir.

Q Well you went into great detail in those interviews trying to figure out even with Mallery which way she was

[Page 1103]

positioned in the backseat and how you actually got her out of the car with Andre, which came out first, her head or her feet. Do you remember all that?

A Yeah I remember a lot.

Q That was all a lie, wasn't it?

A Yes that was a lie too, sir.

Q Cause she was never in the backseat, was she?

A No she wasn't, sir.

Q Now you testified and it's in the video eventually that you know, you went to Kmart a few days later and exchanged the shoes that you wore that night for some boots, right?

A Yes.

Q And you admit to this jury that you stole those boots, right?

A Yes I--I took the boots,.

Q You told Beauchamp during the interview that you actually bought those boots at Kmart, didn't you?

A Don't remember that, sir.

Q Well if it's in his report, you wouldn't dispute it, would you?

A I don't--I would dispute it if it's not on video.

Q Okay. Well it's on video, the whole interview's on video.

A Okay.

Q You're aware that it was all--

A Like I said, I wouldn't dispute it if it's on video, sir.

[Page 1104]

That's all I'm saying.

Q The police report says:

“I asked Davenport where he bought the boots at and he advised that he bought them at Kmart on South Westnedge. I asked him how much he paid for them and he advised that he paid approximately 30 dollars or something like that.”

Would you dispute that?

A If it's--if it's on video I wouldn't dispute it, sir.

Q So you could have lied about that, you just don't remember.

A No, what I'm saying is I don't trust Detective Beauchamp, so I don't know if he wrote something down whether I be saying it or not.

Q Well it wouldn't be unusual for you to steal boots, would it?

A Did I sign that statement?

Q It wouldn't be unusual for you to steal boots, would it?

A Say what?

Q It wouldn't be unusual for you to steal boots, would it?

A Yes it would be.

MS. EIFLER: Your Honor, I'm gonna object.

A It would be, sir.

MS. EIFLER: I'm gonna object. He's just trying to harass this witness.

MR. FENTON: No, I'm asking him questions about

[Page 1105]

his credibility.

THE COURT: I'll overrule.

MS. EIFLER: May we approach.

THE COURT: Yes.

(Bench conference begins at 3:14 p.m. between the Court and counsel, transcribed as follows)

THE COURT: Are you getting into any specific issues here or are you just--

MS. EIFLER: You can't go into this.

THE COURT: Are--are there any past convictions that come in with regards to that?

MR. FENTON: I'm not talking about convictions I'm talking about conduct. I'm not going on 609. I'm talking about how he acted after the murder and whether the jury should believe him. He was acting dishonest or dishonestly.

MS. EIFLER: Well are you going to get into the point of the interview that--

MR. FENTON: Maybe. Seeing how remorseful he is.

THE COURT: Let's not get into that. We're gonna get into some Fifth Amendment issues too on the other crimes so.

MR. FENTON: Fifth Amendment? He's waived his Fifth Amendment by testifying.

THE COURT: Well now--

[Page 1106]

MR. FENTON: I mean no Fifth Amendment.

THE COURT: Well on this--well not on other crimes and so forth. Let's just not get into that.

MR. FENTON: I don't think he has. But conduct inconsistent with feeling remorse.

THE COURT: Well you're asking him to admit to a level of theft basically under oath.

MR. FENTON: His credibility is squarely an issue.

THE COURT: You know what, yeah, but I don't think you need to get into asking him a question like that unless there's a specific conviction.

MR. FENTON: All right.

THE COURT: So.

MR. FENTON: We're not--we're not gonna prosecute him for retail fraud.

THE COURT: Okay. Then let--I'll let this one in.

MS. EIFLER: That's not the point. The point is we're getting into at this point it's highly more prejudicial than probative.

THE COURT: Okay. I'll will allow in that one question. Don't ask any more questions about it.

MR. FENTON: Okay.

(Bench conference ends at 3:15 p.m.)

[Page 1107]

Q Before you admitted taking the victim's food, you actually denied it when you were asked that question, didn't you?

A Anything I said I before I told Captain Mallery what happened is probably untrue, sir.

Q Well that had nothing to do with self defense, did it?

A Say that again?

Q That had nothing to do with self defense, did it?

A What's that?

Q Taking her food.

A No sir, that has nothing to do with self defense.

Q So why would you lie about that earlier?

A Why would I lie about that earlier?

Q Yeah. You denied--

A The whole conversation would deck--with Detective Beauchamp was a lie, sir.

Q Okay.

A I mean--I mean we both was lying to each other. I knew he was lying to me and I was lying to him.

Q How would you know if he was lying to you?

A How would I know?

Q Yeah.

A Cause just by the things he was saying and how he--how he came at me, sir. It was obvious.

Q You knew he was lying to you because you knew that he killed her--you killed her, right?

[Page 1108]

A Say that again?

Q You knew he was lying to you because you knew that you killed her.

A I knew he was lying to me cause he wanted me to say Andre killed her.

Q Right. And you knew Andre didn't do it, you did.

A Like I said I knew he was lying because he wanted me to say Andre killed her.

Q And you sat there and went with that store, and in fact, provided great detail--

A I went--I went--

Q Let me finish, let me finish.

A I went with ever story he came up with, sir.

Q He didn't come up with this story in specific detail that he wrote down as a result of your dictation to him, you came up with this, didn't you?

A I--I didn't sign it, sir.

Q All he suggested was generally that Andre did it and if you only helped afterwards then that would make you less culpable than Andre, right?

A I didn't sign that, sir.

Q That's not my question. He didn't come up with all these specific details in this first statement, you did, didn't you?

A He helped me came up with them specific details, sir.

[Page 1109]

Q I'm sorry?

A He helped me.

Q He helped you?

A Yes.

Q He told you that Andre woke you up in the middle of the night because you were sleeping--

A I said he helped me, sir, I ain't say what--what he--how he helped me--

Q Did he--

A I said he helped me.

Q Did he put those words in your mouth that Andre--

A His scenario--his scenarios and information he gave me, just you know it--

Q Did he suggest to you who put the body in the backseat and how it was positioned and all those details?

A He suggested a lot of things, sir.

Q Really?

A That's all I can say.

Q Okay.

A Watch the video.

Q We all watched it.

A Okay, so you already know it. He--he--he's, you know--he suggested things and I went with it.

Q He suggested a general scenario, Mr. Davenport, you're the one who filled in all the details, aren't you?

[Page 1110]

A Say that again.

Q He suggested a general scenario and you're the one who filled in all the details, aren't you?

A I wouldn't say that.

Q You wouldn't say that?

A No.

Q Well the jury can make their own determination.

A Yes.

Q Now you say that you think Marquetta Tarver may have implicated you because of whatever her own issues, she was out on parole--

A I didn't say anything.

Q Or something.

A I didn't say anything.

Q You didn't say anything.

A I didn't--I didn't answer that question I don't think.

Q You don't remember that question from your attorney?

A I said I don't think I answered that question of why she might have said something, sir.

Q Well you were asked of some follow questions about whether or not she was running from the police and all that kind of thing, right?

A Yeah, I answered those questions.

Q She--you said she wanted to go to Detroit. Actually she wanted to go Grand Rapids, isn't that true?

[Page 1111]

A No, she wanted to go to Detroit.

Q Isn't it true you're the one who wanted to go to Detroit?

A No, she wanted to go to Detroit too.

Q Did you want to go to Detroit also?

A I was gonna go to Detroit.

Q Because the police were looking for you.

A No.

Q Why?

A Cause I wanted to go to Detroit.

Q Why?

A Cause I got family in Detroit.

Q So you knew the police were out at Fraction's apartment a couple days earlier, right?

A Say that again.

Q You knew the police were out at Fraction's apartment a couple days earlier, right?

A I knew that they was out there, yes.

Q Looking for you.

A Yes I knew that, sir.

Q That's why you changed the shoes you said, right?

A No, that's not why I was changing shoes, sir.

Q Why'd you change your shoes?

A Cause I wanted some boots.

Q Cause you wanted some boots and that's it.

A Yeah. Yes.

[Page 1112]

Q Okay. Your brother told you the police were looking for you, right?

A Say that again.

Q Your brother told you the police were looking for you, right?

A Yes.

Q Cause you're driving around in a stolen vehicle, that's right what you're thinking, right?

A Say that again.

Q Cause you're driving around in a stolen vehicle, right?

A No, because the woman reported the car stolen.

Q Okay, that's semantics. The point is you think the police are looking for you for a stolen vehicle, right?

A Yes.

Q That's why you wanted to go to Detroit.

A No, I was gonna go to Detroit anyway, with the car or without the car.

Q It's just ironic and coincidental that the timing happened to be just a couple days after this murder and that the car's reported stolen?

A Say that again.

Q It's just coincidental that this just happens to be a couple days after the murder that you've never told anybody about, and the car's reported stolen?

A You said it's quote--coincidental?

[Page 1113]

Q Coincidental that you just want to go to Detroit to visit family?

A I don't--I don't know why you would say it was coincidental.

Q I'm asking you. Is it coincidental, it just happened to be that timing that you decided to go to Detroit to visit family?

MS. EIFLER: Your Honor, I'm gonna object.

A I don't--

MS. EIFLER: This is argumentative.

MR. FENTON: No, it's questioning. He seems confused, I'm restating the question.

THE COURT: Hold on.

THE WITNESS: I'm not confused, sir.

THE COURT: Hold on. Just ask the question. Ask--

MR. FENTON: I've asked him three times.

THE COURT: There are--

MR. FENTON: He hasn't answered it.

THE COURT: There are--hold on, let me--let me finish. There are times where it's getting a little argumentative. Just be careful about that.

MR. FENTON: Thank you your Honor.

THE COURT: Go ahead Mr. Fenton.

MR. FENTON: Appreciate it.

[Page 1114]

Q Was it just coincidental, the timing, that you decided to go to Detroit to visit relatives?

A It wasn't coincidental.

Q Okay, I didn't think so. Now you also said that you went to Max 10 and got a coat and pants that you were wearing at the time of the crime, is that right?

A Say that again.

Q You went to Max 10 to get the coat and the pants that you were wearing at the time of the crime, is that right?

A I don't what you're talking about, sir. You need to clarify that so.

Q You testified that you went to Max 10.

A Yes.

Q And that's where you got the coat and the pants that you were wearing at the time of the crime. You just testified-

A No sir, I did not get no clothes from Max 10-

A Where'd you get them?

A That I was wearing at the time of the crime, sir.

Q Okay, what were you wearing at the time crime?

A I told you earlier I was wearing a winter coat, probably some jeans, some tennis shoes.

Q Didn't you testify just a few minutes ago on direct that what you were wearing at the time of the crime you had just gotten the day before at Max 10?

[Page 1115]

A No sir. I did not testify to that.

Q All right. Well what'd you get at Max 10?

A I got the coat and a matching pair of pants.

Q Which coat?

A This--the fatigue coat.

Q The one that's in evidence?

A Army coat. The Army coat.

Q The one that's in evidence.

A Yes, they it's that same one.

Q But where's your coat that you supposedly got slashed by Annette White?

A Either I left it out to my mother-in-law or it's over at Marvin house, one of the two spots, sir.

Q And that thing has a cut in it?

A Yes it got a cut in it.

Q All right. Mr. Davenport, you want to explain to the jury how after nine hours of interrogation you never told the police about getting cut by Annette White. Can you explain that?

A I never told the police a lot of things, sir.

Q Well why wouldn't you tell them that you got cut by her when you're claiming self defense?

A Probably cause I was being interrupted a lot and probably I just never told them a lot of things, sir.

Q You're being interrupted a lot?

[Page 1116]

A I said I was being cut off a lot when I was telling the officer--

Q Was it--

A Detective Mallery what happened.

Q He was cutting you off?

A He was trying to clarify things, sir.

Q Okay. He wrote out this written statement in your presence, literally taking down exactly what you

were telling him. You signed it, there were corrections made, nothing in here about that jacket. How can you tell this jury that you weren't given every opportunity to tell them about this cutting?

A Say it again? How--how would I not tell?

Q How can you tell this jury that you weren't given the opportunity to tell Mallery about this cutting?

A It wasn't a question of opportunity, I just--it's a lot of things I didn't tell Captain Mallery.

Q Well you just said it was--

A It's a lot of things I'm just not saying today, sir. I mean--

Q You just said--you just said you didn't have the opportunity to tell 'em.

A I said I was being cut off a lot, probably when I was telling them what had happened.

Q Well--

[Page 1117]

A There's a lot of things I didn't tell 'em. That's all I can say.

Q Okay. You really don't have an explanation, do you?

A I don't need an explanation. All I'm trying to do is tell you the truth.

Q And the reason you don't have the explanation is because that's not how it happened, isn't that true?

A It's how it happened, sir. Everything I said is true.

Q Isn't it true also that in nine--

A I don't have no--I don't have no need to admit to--to hurting Anita, and it's not gonna benefit me none to tell or to sign a statement saying that I hurt her.

Q I'm sorry?

A In any way.

Q That you hurt her?

A It's not gonna--it's not gonna help me any to tell the truth. That--that's not gonna help me.

Q Right.

A I mean, you know what I'm saying? I mean--I mean it's not like I'm going to sign a statement that is not true.

Q I know exactly what you're saying, Mr. Davenport.

A You know what I'm saying? It's not--it don't--it don't make no sense.

Q I know what you're saying. What you just said was is it's not going to help you tell the truth, right?

[Page 1118]

A No. What I said was it's not going to help me by instead of saying this happened, and this happened, and it--and that is not what happened.

Q Mr. Davenport--

A That's why I did not sign the statement.

Q The record will reflect--

A I signed the statement that was true.

Q Mr. Davenport, in that signed statement that you claim is true, you didn't say one thing in nine hours of questioning that you were actually cut by her at all, did you?

A I didn't say one thing about going out to my mother-in-law house either.

Q Nor did you say anything about this jacket being in existence that was supposedly cut, right?

A Say that again.

Q Nor did you say anything about this jacket that's allegedly in existence being cut.

A Sir, there's a lot of things I didn't say that night.

Q I'm sorry?

A There's a lot of things I didn't say that night.

Q Why wouldn't you tell Mallery when you're confessing a crime in self defense to him that there's actually a jacket out there that corroborates you cause it got cut by the victim?

A I thought I was telling them enough already.

[Page 1119]

Q Really?

A Yes.

Q Wouldn't that have been pretty important, sir?

A Well I thought the box cutter was important too.

Q Wouldn't it have been important to tell them that you actually got sliced by this razor blade and there's a jacket that evidences it?

A No sir. I thought it was important to tell them about the box cutter and where to find it at.

Q Really?

A Yes.

Q So you didn't think it was important that you have a slice on your jacket from this very victim.

A A lot of things was important. I thought at the time it was important to tell them where the box cutter was at and where it happened.

Q At the time you mean five days later after you're actually--let's see, from the 13th to the 24th, nine

days later when you're arrested on a fleeing and eluding you thought it was important after nine hours of interrogation finally?

A Say that again. I'm--

Q You didn't think it was important on the night of the crime to tell them about the box cutter, did you?

A Sir, I thought it was important to tell--

Q Yes or no.

[Page 1120]

A Them the truth.

Q You didn't tell them the truth on the night of the crime, did you?

A On the night of the crime--

MS. EIFLER: Your Honor, I'm gonna object. This is argumentative.

MR. FENTON: It's a question.

THE COURT: Well hold on a second. Mr. Davenport, you do have to be careful. Most--many of these questions are yes and no questions. So your attorney again has--does have an opportunity to follow up, and other than that try to, again, make sure that your questions are argumentative, Mr. Fenton.

MR. FENTON: Thank you your Honor. I'm trying to ask him questions.

Q You didn't tell them the truth on the date and the night of the crime, did you?

A I didn't talk to anyone on the night of the crime, sir.

Q And you didn't tell them the truth the next day, did you?

A I didn't talk to anyone on--on the next day, sir.

Q And you didn't talk to them on the 15th either, did you?

A I didn't talk to anyone on the 15th, sir.

Q So you didn't tell them the truth on the 16th either.

A I didn't see no detective or captain until what, the 18th, the first time and the 24th the second time.

[Page 1121]

Q After they had to chase you down and arrest you after crashing your vehicle, correct?

A Say that again.

Q After they had to chase you down--they being the police--after you crashed your vehicle, correct?

A Yes that's when I told them, afterwards sir.

Q Okay. So you don't think it's gonna help you to tell the truth, right?

A Yes it's gonna help me.

Q Well the record will reflect that you just said, "It's not gonna help me to tell the truth." You said that about five minutes ago. Are you disputing saying that now?

A No I'm not disputing anything, sir.

Q All right. A few more questions. You said the time was right finally to tell the truth as you've claimed it to be. So the time wasn't right on the night of the crime?

A Say that again.

Q You said the reason why you finally told Mallery the, quote on quote, "truth" is because the time was right. Right?

A Well cause of that and you know, he seemed to be sincere, sir, so that's why I did.

Q The time wasn't right after you had to kill someone in a--in a self defense posture?

A Sir, that night was--it was crazy. I didn't-

Q Okay.

[Page 1122]

A I don't even--you know, half of the stuff is.

Q So after you thought about it for awhile, the time wasn't right the next morning?

A The time was right when I told Captain Mallery, sir, what--what happened.

Q Let's see, was the time right when you were dumping her body in the woods? Obviously the time wasn't right then.

A The time was right when I told Captain Mallery what happened, sir.

Q You've had no explanation to this jury as to why you did that, why did you dispose of her body in the woods?

A I don't have no explanation for that, sir.

Q Cause there isn't one.

A I was scared, I was panicked. That's all I can say. I was scared and I panicked.

Q Cause there isn't an explanation, right?

MS. EIFLER: Your Honor, I'm gonna object. He's answered the question.

THE COURT: Sustained. Next question.

Q You also said that you wanted the family to know what happened. That's just an out an out lie, isn't that true?

A No sir.

Q You didn't go to the family the next day and explain what happened, did you?

A No sir.

[Page 1123]

Q You didn't go to the family the day after that and explain what happened, did you?

A No sir.

Q And in fact, what you did do is continued to smoke crack cocaine during that week, correct?

A Off and on, sir.

Q Continued to drive around in a stolen car, correct?

A It wasn't stolen, sir.

Q Continued to steal property such as those shoe--or those boots, correct?

A Say that again.

Q You continued to steal property such as those boots.

A No sir, I didn't continue to steal property, sir.

Q Well you stole those boots on Wednesday, didn't you?

A That was one time, sir.

Q And you're driving around in a stolen vehicle, right?

A It wasn't stolen, sir.

Q Wasn't stolen.

A No.

Q All right, we'll talk about that in a minute. You-- you're committing fleeing and eluding from the police, correct?

A I didn't know it was the police, sir.

Q You laughed when Mallery stopped in the middle of that interview and said to you, "What? You're not gonna look at me, Ervine, with a straight face and claim you didn't know

[Page 1124]

Q the police were behind you, are you?" and you laughed, didn't you?

A Well he laughed, I laughed, sir.

Q You knew the police were behind you, that's why you were fleeing, isn't that true?

A Sir, like I said, he laughed and I laughed. Who was behind me that night, you know I had to assume who it was, but I--I wasn't for sure.

Q Well why'd you crash the vehicle if you weren't running from the police?

A Cause I hit a slick spot.

Q Why were you driving in a position to wipe out and roll a car over on a slick spot?

A Why was I in the position to?

Q Why were you driving the car that way?

A Cause I was driving too fast.

Q Huh?

A Because I was going too fast.

Q Cause the police were chasing you. Right?

A Okay. If you--yeah, the police was chasing me, okay.

Q Okay. So you knew--obviously you knew the police were chasing you, right?

A Yeah, after they turnt on the lights, sir.

Q Okay. All right, let's talk about that stolen car. Excuse me, that car that you claim was not stolen. What you want

[Page 1125]

this jury to believe is that this was a crack rental?

A It was, sir.

Q Now you never met Les--excuse me--you never met the owner of the car before that night, right?

A No.

Q And this happened at Marvin Fraction's house?

A Yes.

Q So she's there and the guy that she's with, right?

A Yes, and a--and another guy who brought her there.

Q All right. Now were they the only white people at this party?

A I don't remember, I don't think so.

Q All right. Now you met this gal and you talked to her correct?

A Yes we communicated.

Q And then you talked to the guy that she was with, right?

A No I didn't talk to him till I went outside.

Q That's what I'm talking about. You talked to him before you left, right?

A No, I didn't talk to him before we left.

Q Well you talked to him to him at some point cause you left with him, didn't you?

A I didn't leave with him.

Q You didn't leave with him?

A No.

[Page 1126]

Q Didn't you drive him to Paw Paw?

A Yeah, I drove him to Paw Paw.

Q So you did leave with him.

A I didn't leave with him from the apartment, sir. He had left already.

Q Well how did you get him to Paw Paw in the car then?

A I took him to Paw Paw.

Q So you did leave with him.

A When I took him to Paw Paw, yes.

Q That's what we're talking about.

A Okay. I thought you said when we left the apartment.

Q Isn't it true that what happened was you told that man that she--being Goltzene--gave you permission to drive him, drop him off, and that you'd bring the car back to her. That's how you got him to Paw Paw, right?

A I told him that she gave me permission to get the car, that she wanted me to drop him off in Paw Paw.

Q Right.

A Yes, I told him that.

Q And ex--and that's exactly--

A I didn't say I had to come back, sir.

Q And that you would get the car back to her, didn't you tell him that?

A Yeah, I told him that I would eventually get the car back to her.

[Page 1127]

Q And that's exactly how he testified in a earlier hearing in your presence, isn't that true?

A Say that again.

Q That's exactly how he testified at an earlier hearing in your presence.

A I don't know, sir.

MS. EIFLER: Your Honor, I'm gonna object, That's--

THE COURT: Hold on a second. Hold on.

MS. EIFLER: That's evidence that's not been presented.

THE COURT: Sustained.

MR. FENTON: All right.

Q In any event, so what you've just told this jury is basically you told him that she gave you permission to take him home.

A She did, sir.

Q She testified not true. You heard that, right?

A Say that again.

Q She testified that was not true. You heard that, right?

A Yeah, I heard that, sir.

Q You never even met her before that night, had-- had you?

A No. No sir.

Q And in fact you never went back there that night and gave her the car back, right?

[Page 1128]

A I did go back that night a couple times, sir.

Q You didn't give her the car back though.

A I didn't have to. She didn't want it back, sir, at that time.

Q So your testimony is what? You had her car and you provided her with crack?

A Yes, that's what I did, sir.

Q And we have some open-ended arrangement as to how long you could hold on to the car?

A Well I came back twice and checked on her, and she still wasn't ready so.

Q So that meant you could have the car as long as you wanted?

A After the second time I came back that's what I assumed. To drop it off at--in Patwood when I--when I was done with it.

Q In Patwood.

A Yes.

Q Why--why Patwood?

A Cause that's where I saw her, that's where I got the car from.

Q At--okay. At Fraction's apartment.

A Yes.

Q But you never did drop the car back off there.

A No I didn't, sir.

Q She was left there with no way home, right?

[Page 1129]

A I didn't expect her to be there anyway, sir.

Q Did your cousin--

A She said to--she had told me to drop the car off in Patwood. She didn't say she would still be there.

Q How'd you expect that she was gonna get back to her house?

A I didn't--didn't know how she was gonna do anything, sir.

Q And didn't care either, did you?

A It wasn't--it wasn't for me to figure out, sir. She told me not to worry about it, that.

Q You didn't even know her name, right?

A Say that again?

Q You didn't even know her name, did you?

A Yeah, I know her first name. I didn't remember her last name.

Q Didn't know her last name. Did you know where she lived?

A I figured Paw Paw.

Q Did you have an address?

A No. I just figured Paw Paw where I dropped off the guy at.

Q And when did that happen, like Thursday?

A I don't remember what day it was.

Q Well it was several days. Was it at least a day before you killed Annette White?

A Say that again.

Q Was it at least a day before you killed Annette White?

A I don't remember what day it was, sir.

[Page 1130]

Q Well you held on to the car obviously until you crashed, right?

A Yes sir.

Q You were using the car as your own, right?

A Yes sir.

Q You were driving it around, right?

A Yes.

Q It's not registered to you, is it?

A No.

Q Do you even know if it has insurance?

A Yeah, I figured it had insurance.

Q You figured it did.

A Yes.

Q You didn't see any proof of insurance, did you?

A I didn't look for any.

Q You didn't care, right?

A It's not a question of care. I just didn't look for none.

Q Okay. And eventually you crashed this car. Now are there things in the trunk that are yours?

A When I first got the car?

Q No. Later on during the week when the car crashed.

A Yeah, I put some stuff in the car.

Q Now you saw the photographs in the trunk of that car, right?

A Yes.

[Page 1131]

Q Had three layers of things in there, right?

A I don't know how many layers was in there, sir.

Q Okay. Is the trash can yours?

A No.

Q Okay. Is the big bag of clothes yours in the orange?

A I don't know. I don't even know what's in the club-
-what's in the bag.

Q Could it be yours? Do you remember that big orange wrapper? Want to look closely?

A Yes sir. Is that a wrapper? What is it?

Q I don't know what it is.

A A bag?

Q I'm asking you if you know.

A I don't know what it is, sir.

Q Okay. Could that be yours and you just don't remember?

A It could be, I don't know.

THE COURT: Mr. Fenton, if you're gonna ask a question though, you need to be closer to a microphone please.

MR. FENTON: I'm sorry.

Q What about that tool bag in the bottom? Was that yours?

A The tool bag?

Q Yeah.

A No it wasn't mine, sir.

Q You sure about that?

[Page 1132]

A No. I don't think it was mine, sir.

Q Well you had sole custody of the car for that week or so, didn't you?

A I had access to it.

Q Access? Didn't you have the keys?

A Yes. Keys was--the keys stayed in the car, sir.

Q Well the car wasn't missing at any time during that week, was it?

A Yes. It was parked usually out in Patwood or down the street from Patwood.

Q Oh so people that you don't know used the car?

A No, people that I knew used the car

Q Oh. So you're letting other people use it too?

A It's not my car, sir.

Q Well--

A It was a crack car.

Q It was during that week though, wasn't it?

A It was a crack car.

Q All right. So you don't know anything about this tool bag allegedly?

A Say that again.

Q You don't know anything about this tool bag allegedly.

A I don't remember putting no tool bag in the--in the car, sir.

Q All right. Well if you don't remember anything about a

[Page 1133]

tool bag then, what'd you do with this razor blade that you were supposedly cut with by Annette White?

A I threw (sic) it in the back trunk, sir.

Q Just threw it laying on top.

A No, it wasn't laying on top. It slid down, that's all I remember.

Q I'm sorry?

A It slid down.

Q Slid down?

A Yeah. It was--it landed on the--I think it was a heater or something and it slid down.

Q Was the heater yours?

A No, that was Kenny Cooper's.

Q Kenny Cooper's.

A Yes.

Q So Kenny Cooper had access to the car too?

A No. I--I had picked him up one day before the accident.

Q How did the heater get in there?

A How did the heater get in? I put the heater in there.

Q Okay. So it wasn't yours but you put it in there.

A Yes, I put the heater in there.

Q So you're at least familiar with some of the things that are in this trunk, correct?

A Yes sir.

Q All right. Now you said you would have never talked to

[Page 1134]

Marquetta about this because you--you barely knew her, right?

A Yes, I wouldn't have talked to her, sir.

Q Well you--you used drugs with her during the week, didn't you?

A Yes I used drugs with her.

Q You--

A That Monday I think.

Q You--

A The first time I saw her.

Q You slept near her, right?

A Did I sleep near her?

Q Yeah.

A I think I did one--one night.

Q You went to Meijer's with her, right?

A Did I go to Meijer's with her?

Q Yep.

A I might have did, sir.

Q You went to Kmart with her, right?

A I--yes I went to Kmart with her.

Q You stole the boots at Kmart with her, correct?

A Say that again.

Q You stole the boots at Kmart with her, right?

A With her?

Q Yep.

[Page 1135]

A I don't know if she was in the store at the time or not, sir.

Q Well she's the one who told the police about it and the videotape will speak for itself. You don't remember if she actually went in the store with you?

A She might have did. Sir, we're talking over a year-and-a-half ago. I don't even know.

Q And you fled from the police with her, correct?

A She was in the car along with someone else, sir.

Q And you were gonna go to Detroit or Grand Rapids or somewhere with her, weren't you?

A No. I was going to Detroit that--that week.

Q I'm sorry?

A I was gonna go to Detroit that week.

Q With her?

A Yes, she was gonna go. She wanted to go down to Detroit, said she had to get some money or something.

Q You said you told your mother-in-law about this, Lenora Stuart.

A Yes sir.

Q You're not even legally married, are you?

A Say that again?

Q You're not legally married, are you?

A Not by paper, sir.

Q So she's not even your real mother-in-law, is she?

[Page 1136]

A Yes she is to me.

Q Oh, but she's not legally is she?

A Not by paper, sir.

Q Not by paper. Now you said you never even saw the victim that night until 2:00 a.m.

A Say that again.

Q You never even saw the victim that night until 2:00 a.m. Picked her up on the street.

A I didn't say 2:00 a.m., sir.

Q Well I wrote down 2:00--2:00 a.m. What--what time do you say now?

A I don't know why you wrote down 2:00 a.m., sir.

Q Well I was writing what you said, isn't that what you said?

A No you wasn't, sir. I didn't never say that.

Q All right. Well what time are you saying now that you first saw her?

A What time did I see her? I don't know exactly what time it was. It was way before 12:00 o'clock.

Q Way before 12:00 now.

A I mean, I didn't you know.

Q You don't remember seeing--

A We--we didn't--we didn't leave the Carswell house until 2:00 o'clock, sir.

Q You don't remember saying before on direct exam that you ran into her around 2:00 a.m.?

[Page 1137]

A Sir, I know what I said.

Q What--what did you say?

A I said we left the Carswell house-

Q At what time?

A 2:00 o'clock or after 2:00 o'clock, sir.

Q All right. The jury will have to make up their own minds as to their recollection of what you said.

A No. I'm pretty clear on what I'm saying, sir.

Q You remember Earl Carswell saying that he had to work the next day?

A Do I remember him saying that?

Q Yep.

A He might have said that.

Q How much you weigh?

A Now?

Q Then.

A I don't know.

Q You're probably eating better back then, weren't you, when you were out and about on the streets?

A Probably not, sir.

Q Probably not.

A Probably not.

Q Well roughly, around 300?

A Back then?

Q Yeah.

[Page 1138]

A No.

Q 280?

A I don't know. Maybe 260, 270.

Q Now you weren't scared of Chocolate that night were you?

A Say that again.

Q You weren't scared of Chocolate that night, were you?

A Was I scared of Chocolate that night?

Q Yeah.

A Not till she pulled that box cutter, sir,.

Q Well you told--told the jury about a couple of prior occasions where she supposedly pulled a knife or something on you, right?

A Say that again.

Q You told the jury about a couple of prior occasions where she supposedly pulled a knife on you.

A Yes.

Q Well that didn't stop you from picking her up that night, right?

A No, she always made up. We always, you know, made up. It wasn't--you know, I didn't--Nita, she was alright. She wasn't a bad person to me. She had issues, we all got issues.

Q You weren't scared of her, were you?

A I wasn't scared of her till she pulled the box cutter, sir.

Q You're not scared of any woman, are you?

[Page 1139]

A Yes I am scared of some women, sir.

Q Would you say you're at least twice her size?

A I don't know.

Q Maybe almost three times?

A No, I wouldn't say that, sir.

MR. FENTON: That's all.

THE COURT: Miss Eifler, any further questions?

REDIRECT EXAMINATION

BY MS. EIFLER:

Q Sir, I want to make sure that I understand what you meant. I think Mr. Fenton was asking you a question and you indicated something about not--not going to help me to tell the truth or tell something. What do you mean by that? What--what are you talking about?

A I mean it was--it wouldn't--to sit here and--and tell the jury what happened or to tell Captain Mallery what happened, it was not for the purpose of--of trying to get out of responsibility. I mean had a opportunity to--to say what happened and I took that opportunity. Instead he trying to.

Q So do you think that the telling the truth is, in fact, helpful?

A Yes. Yes.

Q Why is it helpful?

A Like I said, it was a bad situation that shouldn't have

[Page 1140]

never happened. Anita was a good person, she was not a bad person.

Q You said that on the prior occasion when she had pulled a knife on you, that you--you had made up. Is that right?

A Say that again?

Q On the prior occasion when she--when she had pulled a knife on you, you had made up?

A Yes.

Q All right. Did it scare you when she pulled that knife on you then?

A Yes it did. That's why I left.

Q Was she acting differently on the 13th?

A Yeah, yeah.

Q How so? How was she different on that occasion versus when she pulled a knife before.

A She was Anita, you know what I'm saying? Like I say, she's not a bad person.

Q But what was different about her? Is that--if I understand you correctly, you're saying she was different on the 13th then when she previously pulled the knife.

A Oh well it's just--I think she--she just had done too much, you know.

Q I'm sorry, could you repeat that.

A I think she had done too much.

Q Too--had done too much?

[Page 1141]

A Too much drugs.

Q Had you seen her that agitated before?

A No.

Q Mr. Fenton had asked you--

THE COURT: Oh I'm sorry. I did not hear an answer to that last question. I think the question was had you seen her that agitated before.

THE WITNESS: No I haven't.

THE COURT: Thank you. Go on Miss Eifler.

MS. EIFLER: Thank you.

Q Mr. Fenton had asked you some questions about--he'd gone through specifically with you statements on that--that first written out statement. And again, your testimony is that that was basically all a lie, correct?

A Yes. That first part of the interview what they called a ruse, you know what I'm saying? It was--I was going back and forth. It was just not true, you know.

Q He'd also asked you about some specific things and you said, well that had happened. For instance, Andre asking you to help. Did Andre ever ask you to help him do anything that day?

A Yes earlier that day.

Q What--what did--

A We had--me, and Andre, and Tonya had--we was together all that day up until that evening, so you know.

[Page 1142]

Q So--so why did you tell Detective Beauchamp in the context of basically helping after Annette had died, how come you told him that?

A Depect--Detective Beauchamp was already on that--that road. He--I mean like I said before, he the one who brought Andre into this. From this--you know, what he was saying, the scenarios he was giving, the information that he was trying to tell me, you know. You know, it was just a bunch of untruth stuff from both sides, you know, and that was just that.

Q Okay. Mr. Fenton gave you several scenarios of when you when you decide not to believe someone after they had lied to you. Let me ask you this. We know that you gave one statement that was not true, correct?

A Yes.

Q You gave a second statement to Captain Mallery, correct?

A Yes.

Q Were you questioned after you gave that statement to him?

A Was I what?

Q Were you questioned any further after you gave that written statement?

A No. No.

Q Is there any reason why this jury should not believe that that is what happened?

MR. FENTON: I'm gonna object. That's the

[Page 1143]

ultimate issue that the jury has to decide. He can't comment on his own credibility.

THE COURT: Sustained. Next question.

MS. EIFLER: I have no more questions.

THE COURT: Anything further, Mr. Fenton?

MR. FENTON: No your Honor.

THE COURT: Counsel, will you approach please.

(Bench conference begins at 3:50 p.m. between the Court and counsel, transcribed as follows)

THE COURT: Do you have any other questions-other witnesses?

MS. EIFLER: I don't have any except for R.B.

THE COURT: I guess have we heard more on R.B. Davenport? Is there--are you gonna follow with rebuttal witnesses? How many?

MR. FENTON: Depends on how many I have.

THE COURT: Because I'm finishing this trial today. How many do you have?

MR. FENTON: Okay. Well I'm not sure. I know I have two or three ready to go quick ones.

THE COURT: How many?

MR. FENTON: Five minutes.

THE COURT: Okay.

MR. FENTON: Possibly five max.

THE COURT: All right.

[Page 1144]

MR. FENTON: It'll all be short. I'd like to get Dr. Hunter back here, but I can't. Can't reach him.

THE COURT: All right. Closing arguments are gonna be limited to a half-an-hour, okay?

MR. FENTON: Half-an-hour?

THE COURT: Just so that you know. Yes.

MR. FENTON: It's a capital case.

THE COURT: Pardon?

MR. FENTON: It's a capital case?

THE COURT: How much time do you need?

MR. FENTON: I don't know, but I don't want to be constrained.

THE COURT: Well you're gonna be somewhat constrained because I'm not gonna--we gotta finish tonight.

MR. FENTON: Now wait a minute. Now you gave her a like an hour, two hours--

THE COURT: No, no, no no, no.

MR. FENTON: To find witnesses.

THE COURT: Just--I just--how much time you need?

MR. FENTON: I don't know. An hour, something like that.

THE COURT: We'll discuss that later. Okay.

MS. EIFLER: (Inaudible--whispering)--in the hallway actually. I think that Detective Beauchamp out in the hall--

[Page 1145]

THE COURT: Why don't you go check real quick and then we can rest.

MS. EIFLER: Okay.

THE COURT: I'm gonna see if they need a break. If they--if they don't, I'll just have Mr. Davenport--well I'll need have him go sit back down right now. If they don't a break, then we're going on, okay

MR. FENTON: Okay.

THE COURT: Okay.

MR. FENTON: That's fine.

(Bench conference ends at 3:51 p.m.)

THE COURT: Mr. Davenport, you may step down.

THE COURT: Couns--ladies and gentlemen, does anyone need a break right now? You do. Okay

I would like to do whatever I can to get this done tonight. So while we--why don't we take about ten-minute break. If you need to make some phone calls, is there anyone who, for whatever reason, cannot stay past 5:00 today?

UNIDENTIFIED MALE JUROR: How late?

UNIDENTIFIED FEMALE JUROR: Depends on how late.

UNIDENTIFIED MALE JUROR: How late?

THE COURT: My guesses on times have not been good this trial so.

UNIDENTIFIED MALE JUROR: Yes we know.

[Page 1146]

UNIDENTIFIED FEMALE JUROR: Yes.

THE COURT: You know, I would hope that we would be out of here by 6:00, 6:30. But let me just tell you what we have to do.

We have some additional witnesses and I think that they would be probably pretty quick. We then have closing arguments and then we have jury instructions. Then we'll select two of you to be the alternate jurors. Those two would then not have to come back tomorrow. You would still be under court order not to speak with anyone, but I'd like to be able to release those two and not have everyone come back tomorrow morning for deliberations. That's why I would like to stay after 5:00. If it's going to be an issue though, please let me know.

We'll take a break right now and then you can let Mr. Brooks know if there's any situations that arise, and that way if you need to make some phone calls, you can do that.

(The jury members exit the courtroom at 4:53 p.m.)

THE COURT: Anything we need to cover right now, counsel? I know there's a number of things we have to put on the record with regards to witnesses still. But anything right now?

MR. FENTON: Well I guess this is my thinking, Judge. It's now 4:00 o'clock.

[Page 1147]

THE COURT: Well just hold on. Do--do we need to put this on the record or can I excuse everyone and let Mr. Davenport--

MR. FENTON: No, it's the record.

THE COURT: Okay go ahead.

MR. FENTON: The Court seems to be wanting to push this trial through today. It's 4:00 o'clock now. I've still got about four or five rebuttal witness. I'd like an opportunity to try to reach Dr. Hunter, call him back to rebut the Defendant's testimony. I've been unable to reach him today.

Between the four or five witnesses that I do have, closings, I mean the jury's not gonna be able to deliberate tonight. So I'm not sure why we're pushing this through. I'd like to have the opportunity to try to get Dr. Hunter back here tomorrow.

I would have been ready to close this morning, but the defense was given most all the morning to locate their witnesses, and I just don't see the big rush to have to finish today.

THE COURT: Miss Eifler.

MS. EIFLER: Your Honor, I don't have any objection to--to going in tomorrow. I don't have any objection to that.

THE COURT: Okay. Well I've already indicated

[Page 1148]

what I--what I plan to do. We'll see what happens. Mr. Davenport's been on the stand since this morning. So I assume that you've been making your attempts to get a hold of the doctor, but we'll address that if need be. You've got ten minutes to try to get a hold of him.

I plan to go back on the record at five after 4:00. Court's in recess.

(Court recesses at 3:55 p.m.)

(Court resumes at 4:13 p.m.)

MS. JOHNSON: The court recalls the case of People versus Ervine Lee Davenport, Case Number 07-0165FC. Parties please restate appearances for the record.

MR. FENTON: Stuart Fenton for the People.

MS. EIFLER: Susan Eifler, appearing on behalf of the Defendant, Ervine Davenport. He is present in Court today.

THE COURT: I understand you're come--you're gonna come back to the stand for a few minutes. So when you're done, just retake the stand Mr. Davenport. And just remember please to speak up. The last part of your testimony I think you were talking a little bit softer. So just make sure that you're speaking up please.

MS. EIFLER: Do you think you can roll up your sleeve and will you be able to show it that way, you think?

THE WITNESS: My--

[Page 1149]

MS. EIFLER: Okay. Why don't you take your shirt off while we're.

(Sidebar conference between the Court and Ms. Johnson)

(The jury members enter the courtroom at 4:15 p.m.)

THE COURT: Mr. Brooks is not here. Does anyone have any issues with staying late this evening?

UNIDENTIFIED FEMALE JUROR: We just basically took a vote and said that we wanted to be out of here by 6:00, cause there's a lot of issues with either being here-

THE COURT: After 6:00 o'clock?

UNIDENTIFIED FEMALE JUROR: Yes.

THE COURT: We're gonna run into some issues.

UNIDENTIFIED FEMALE JUROR: Yes.

THE COURT: All right. I appreciate that so.

Ms. Eifler, you may continue.

MS. EIFLER: Thank you.

REDIRECT EXAMINATION

BY MS. EIFLER:

Q And Mr. Davenport, you're clothed a little bit differently than you were last time you were in court a few moments ago. Do you have any type of a scar or a mark as a result of the cut that you sustained from Annette White?

[Page 1150]

A Yes.

Q And could you please show us your--this mark.

UNIDENTIFIED MALE JUROR: Is it possible to look at it a little closer?

THE COURT: Can--yeah. Can you--why don't you just walk in front of the--

UNIDENTIFIED MALE JUROR: We can't see it from here.

THE COURT: Jurors if you would, Mr. Davenport. And if you could just show the court too, please. Thank you. You may have a seat. And make sure you move the microphone down please.

Q And to the best of your knowledge, have you ever sustained any type of an injury there prior to that date or since that date?

A No.

Q Is that particular mark or scar, is that an accurate reflection that scar or the wound that you received from Annette White?

A Yes.

MS. EIFLER: I have no further questions.

THE COURT: Mr. Fenton, any questions?

MR. FENTON: Couple.

RECROSS-EXAMINATION

BY MR. FENTON:

[Page 1151]

Q So you didn't obtain that injury in the rollover car crash?

A No.

Q And you didn't obtain that injury from your years of drug dealing on the streets?

A No.

Q And in nine hours of interviews with the police, you never showed them that injury?

A No. We never got into that, sir.

MR. FENTON: Thank you.

THE COURT: Anything further, Miss Eifler?

MS. EIFLER: One quick question.

REDIRECT EXAMINATION

BY MS. EIFLER:

Q Were you ever asked about an injury during the interview?

A Say that again. Was I ever asked about injury?

Q Asked about any injuries you may have received from Annette White?

A No. I think I told 'em about the scratch and I--I don't even know how that even came up.

Q Okay. So the scratch on your face?

A Yes.

Q Okay.

A I think that came up when he said something about her nail or something. I don't even remember.

Q Okay.

[Page 1152]

A I don't remember.

Q Did they--were you ever asked whether you received a cut from the box cutter?

A No.

MS. EIFLER: I have nothing further.

THE COURT: Anything further, Mr. Fenton?

MR. FENTON: No your Honor.

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

(The witness was excused at 4:19 p.m.)

THE COURT: And obviously Mr. Davenport took his shirt off and we do have screen here. Sir, why don't you just go ahead and put your shirt on before we continue.

MS. EIFLER: We have no further--

THE COURT: I'll give him an opportunity to. There's a screen right there.

MS. EIFLER: Okay thank you.

THE COURT: We won't start until he's done.

MR. FENTON: Are you resting?

THE COURT: Yeah, I was just gonna wait.

MR. FENTON: Oh I'm sorry.

THE COURT: Give him a moment to--

MR. FENTON: I'm sorry. And can we approach?

THE COURT: Yes.

(Bench conference begins at 4:20 p.m. between the

[Page 1153]

Court and counsel, transcribed as follows)

MR. FENTON: They want him shackled back up. Apparently he's made comments about you know, about whether deputies are wearing their vests, etcetera. He's working out a ton in the jail, and they're con--they want--they to shackle him back up. I don't know if you want the jury to go back out into hall for a minute or if you're just not gonna order it. I mean it's your call.

I cross-examined him basically. I said is that really necessary? He hasn't done anything in this trial and they said he's talked to people about whether or not you know, were vested up and they want him shackled.

MS. EIFLER: He's not done anything.

THE COURT: Huh?

MS. EIFLER: He's not done anything.

THE COURT: Well he hasn't done anything in the trial. Are they gonna--I'm--I'm gonna go past 5:00 o'clock obviously. I just want to make sure that they're gonna have deputies here. I'll have everyone in the courtroom's gonna remain and then I'm not asking so.

MR. FENTON: Okay.

(Bench conference ends at 4:22 p.m.)

THE COURT: I'm sorry. Miss Eifler, any further questions?

MS. EIFLER: No further questions.

* * *

STATE OF MICHIGAN
9th JUDICIAL CIRCUIT COURT
TRIAL DIVISION
FOR THE COUNTY OF KALAMAZOO

PEOPLE OF THE STATE OF MICHIGAN,
v Case No.:C07-165FC
ERVINE LEE DAVENPORT.
Defendant.

JURY TRIAL - VOLUME VII
BEFORE THE HONORABLE
PAMELA LIGHTVOET
Kalamazoo, Michigan - Thursday, July 17, 2008

APPEARANCES:

For the People:
ATTORNEY STUART L. FENTON P40970
Kalamazoo County Prosecutor's Office
227 West Michigan Avenue
Kalamazoo, Michigan 49007
(269) 383-8900

For the Defendant:
ATTORNEY SUSAN M. EIFLER P57222
Downing, Glaser, and Eifler Associates
2510 Capital Avenue Southwest, Suite 102
Battle Creek, Michigan 49017
(269) 964-9035

VIDEO RECORDED
TRANSCRIBED BY:
DAWN MORSE CER 4727
1400 Gull Road
Kalamazoo, Michigan 49048

* * *

[Page 1193]

[THE COURT cont.] the truth, so help you God?

MR. HUNTER: Yes.

THE COURT: Please just state your name for the record, sir. And make sure you pull the microphone down towards you, and as you may recall, please make sure you speak right into the microphone.

THE WITNESS: Brian Hunter.

BRIAN HUNTER

(At 9:25 a.m., sworn as a witness, testified as follows)

DIRECT EXAMINATION

BY MR. FENTON:

Q Dr. Hunter, I think I only have two questions for you. The Defendant took the stand in this trial and testified that he never choked the victim. That his hand was flexed and that all he was doing was pushing her against the door. To a reasonable degree of medical certainty, is that even possible?

A No.

Q Explain to the jury why not.

A When you look at the injuries in this case, you--and you can--you can best understand this by touching your own throat. You feel that your larynx is that

voice box, and at the top edge of the voice box, there's a notch and that kind of tells you you're in the right area. So when you're

[Page 1194]

looking straight ahead and if I talk--if I start to talk funny, I'm sorry--but as you look straight ahead you'll feel the voice box, on the top edge you'll feel a notch that creates a ridge.

In this case there are areas of hemorrhage on either side of that ridge. Now if you put pressure broadly across that ridge, you should have blood broadly across that ridge. It should span and cut across that ridge. What you have in this case is injury on either side of the ridge, meaning you're putting pressure on either side but not broadly across.

So if you imagine putting, you know, having a ridge--take--take molding clay and you had a ridge. If you put your hand straight across, you would make an indentation straight cross. But in this case if you put your--put your fingers on either side, you would have--you would have indentations on either side but not in the middle. So the injury pattern in this case is not consistent with a broad-force placed across that area, but on either side, which is more consistent with choking than a broad, you know, broad pressure there.

Q Is there any question in your mind that this was a choking and strangulation?

A No.

Q Thank you.

[Page 1195]

THE COURT: Miss Eifler.

CROSS-EXAMINATION

BY MS. EIFLER:

Q Good morning.

A Good morning.

Q Doctor, let me ask you this. Depending on the size of the hand used to choke, would you expect to see the hemorrhaging in different locations based on the size of the hand used?

A It's possible but I don't--I don't know that there's been a study which says there's a one-to-one correlation with the size of the hand in the sort of radius or the locations of those hemorrhages in the muscle. I don't--I've never seen a study like that so I can't say for sure.

Q Okay. But there's a possibility?

A Theoretically speaking, yeah.

Q And I'm assuming every neck is different--different size?

A Correct.

Q All right. So a smaller person may have a smaller neck?

A Correct.

Q All right.

MS. EIFLER: I have nothing further.

THE COURT: Thank you. Mr. Fenton, anything further?

MR. FENTON: No your Honor.

[Page 1196]

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

(The witness was excused at 9:29 a.m.)

MR. FENTON: We have no further rebuttal, your Honor.

THE COURT: Counsel, are you ready for closing arguments?

MR. FENTON: Yes your Honor.

THE COURT: Mr. Fenton.

MR. FENTON: Thank you.

THE COURT: I'm sorry. Miss Eifler, are you ready?

MS. EIFLER: Yes ma'am.

THE COURT: Thank you. Mr. Fenton.

MR. FENTON: Good morning ladies and gentlemen. I'm going to proceed in what I believe to be an

orderly fashion. The first thing I want to talk about is in general. The first thing I want to talk about is this.

In looking at murder cases, the first question usually is who done it. In the vast majority of murder cases the issue is did we prove the Defendant committed the crime. Was there enough circumstantial evidence to prove the Defendant committed the crime.

In almost all cases that is the issue. Do we have enough to convict him. Did we prove that he did it. Because most people don't confess to murder. They know the

* * *

[Page 1199]

[MR. FENTON cont.] the right guy. That's 80-percent of the battle right there. When you're looking at beyond a reasonable doubt, you can't measure it in a mathematical certainty, you can't say it's 90-percent or 95 or 89. It doesn't work that way. It's just beyond a reasonable doubt. Well we're almost there already cause we know we got the right guy. Okay?

So then you just have to deal with whether or not you believe the self, quote on quote, "self defense" claim is legitimate. So I'll spend the majority of my closing argument showing you why it's not.

Something that I want you to continue to remember throughout your deliberations is the accessory after the fact theme was not the only one that was thrown out to him at the very beginning. They threw out to him the self defense theme from the very

beginning. That was suggested by Detective Beauchamp at the beginning, as well as the if you only helped Andre than you're less culpable. He said to him, "Was it self defense? Did she come at you with a knife? What is it?" He laughed. He laughed it off. "I didn't have no confrontation with her that night." That's what he said.

So even with them suggesting his ultimate defense up front, at the beginning, he still did not bring that out until what, six-and-a-half hours later, two stories, three stories later after numerous lies. So that's a very

* * *

[Page 1224]

[MR. FENTON cont.] that. That's why the standard of proof is only beyond a reasonable doubt, not beyond all doubt, and you all understood that concept. That's why you're on this jury. So lastly I just want to talk about the law for a minute.

Now with the you're gonna have the option of first degree murder and second degree murder. First degree murder, as you heard something about, is with pre-mediation and deliberation and intent to kill. Those are the three key parts about first degree murder, pre-mediation, deliberation, and intent to kill. All right.

(Mr. Fenton picks up a styrofoam cup)

Let's assume this is a neck, and remember it has to be a significant amount of force to cut someone's

oxygen off to the point of suffocating the brain and causing brain death. Do you have a minute hand or a secondhand?

MR. BEAUCHAMP: No.

MR. FENTON: No? Do you have a secondhand? All right. Well let's just count, I'll count silently. I'm squeezing this and we're just gonna remain silent for about 30 seconds. That's only 30 seconds. That's minimum for unconsciousness, three to four minutes for death.

Actions speak louder than words, ladies and gentlemen. Just imagine. Imagine being in that car, if it happened in the car. That's what he says, but do we know that for an absolute certainty, no. Imagine his big huge hand around

[Page 1225]

her neck, squeezing as hard as it takes to kill a human being for that long, and then multiply that by ten. Obviously that's intent to kill. We deduce intent from conduct. We talked about that in the voir dire.

B), the essence of pre-meditation and deliberation is the opportunity to stop, hesitate, think about what you're doing. Stop. Between 30 to 40 seconds and four to six minutes he had to stop. He didn't stop until he literally choked the life right out of her with his bare hands.

Pre-meditation doesn't require preplanning, like Jeremy Russell, as Captain Mallery detailed for you. It doesn't have to have computer research ahead of

time. That's just the extreme example of pre-meditation and deliberation.

Clearly he had the opportunity to hesitate, stop, think about what he was doing, and not kill her. I submit to you there's more than enough evidence of pre-meditation and deliberation for first degree murder, but at the very least obviously this is second degree murder.

Second degree murder only requires either intent to kill, intent to commit great bodily harm, or acting in reckless disregard of human life. Any one of those three prongs: intent to kill, or intent to commit great bodily harm, or acting in reckless disregard of human life, causing death. Obviously that is met. Okay? Clearly this

* * *