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1 CASE NO. CRIM 24552

2 SUPREME COURT OF THE STATE OF CALIFORNIA

3
4 THE PEOPLE OF THE STATE)
OF CALIFORNIA,)

5 PLAINTIFF,)

6 -VS-)

7 KEVIN COOPER,)

8 DEFENDANT.)
9

SUPERIOR COURT
NO. CR-72787
MOTIONS

10 APPEAL FROM THE SUPERIOR COURT OF SAN DIEGO COUNTY

11 HONORABLE RICHARD C. GARNER, JUDGE PRESIDING

12 REPORTERS' TRANSCRIPT ON APPEAL

13
14 APPEARANCES:

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IN PROPRIA PERSONA

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21 REPORTED BY:

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C.S.R. NO. 2400
OFFICIAL REPORTERS

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JUDITH L. MORRIS
Official Reporter
C.S.R. No. 2400

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1 SAN BERNARDINO, CALIFORNIA; TUESDAY, MAY 15, 1984; 10:30 A.M.

2 DEPARTMENT NO. 10 HON. RICHARD C. GARNER, JUDGE

3 APPEARANCES:

4 The Defendant with his Counsel, DAVID NEGUS,
5 Deputy Public Defender of San Bernardino
6 County; DENNIS KOTTMEIER, District Attorney
7 of San Bernardino County, and JOHN P. KOCHIS,
8 Deputy District Attorney of San Bernardino
9 County, representing the People of the State
10 of California.

11 (Leonard D. Gunn, C.S.R., Official Reporter, C-1109,
12 Judith L. Morris, C.S.R., Official Reporter, C-2400.)
13

14 THE COURT: Good morning everybody. I'm sorry that
15 we've taken so long this morning, but I had a matter that
16 required a decision.

17 You were previously sworn, sir.

18 THE WITNESS: Yes, sir.

19 THE COURT: State your name again for the record.

20 THE WITNESS: Ervin Dale Sharp, S-h-a-r-p.

21 THE COURT: Thank you.
22

23 E R V I N D A L E S H A R P, having been previously duly
24 sworn, resumed the stand and testified further as follows:

25 / / / /

26 / / / /

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DIRECT EXAMINATION (Resumed)

1
2 BY MR. NEGUS:

3 Q Mr. Sharp, I think we neglected to do this yesterday.
4 How do you spell your first name?

5 A E-r-v-i-n.

6 Q After Josh left the emergency room, did you follow the
7 gurney that was taking him to the CAT scan room or was
8 there a period of time when you lost contact with him?

9 A I proceeded with the gurney.

10 Q How far from the emergency room is the CAT scan room?

11 A I can't say for sure. It seemed like we went up an
12 elevator or something. Not all that far.

13 Q When you got to the CAT scan room, you just waited for
14 like 45 minutes or something like that before you were
15 allowed to question Josh again?

16 A They put him in the scan itself and were doing things
17 around him, and I just laid off asking him any questions
18 or anything approximately 45 minutes during that time,
19 the testing time.

20 Q During that period of time were the same people in the
21 CAT scan room who were down below in the emergency room,
22 or did the personnel change?

23 A The personnel changed.

24 Q Do you know if any people from the emergency room
25 followed him up to the CAT scan room?

26 A No, sir, I do not know.

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24 A. There was a point there that Josh had already arrived
25 and was there and then I walked in. At this point the,
26 I believe, female had the clipboard.

1 Q You arrived at Loma Linda at 1:44 p.m.; is that correct?

2 A I believe it was around there, yes, sir.

3 Q That's the time that you put in your report.

4 A Do you want me to check my report?

5 Q If you don't remember, yes.

6 A Yes, sir.

7 Q And when you arrived, did you just park your car right
8 outside the emergency room?

9 A Yes, sir.

10 Q You went in, made a phone call to your dispatch?

11 A Yes.

12 Q And were told that there was a young victim being flown
13 in whose family had been murdered?

14 A Yes, sir.

15 Q How long did it take you from the time that you arrived
16 at 1:44 to actually get into the emergency room?

17 A I would say approximately 10 minutes, sometime around
18 there.

19 Q You couldn't just go out to your car and pick up your
20 tape recorder in that 10 minutes?

21 A I could have, yes, sir.

22 Q Why didn't you?

23 A Because it is not my normal routine to interview a
24 victim of a crime. I have never interviewed a victim as
25 far as using a tape recorder. I've never taped a victim
26 to interview. As a patrolman, I probably never will.

25 A. No, sir. I made contact with the paramedics that had
26 flown him in trying to get some information as to what

1 had happened, so if I was going to ask any questions I
2 would have an idea of what to ask, what to stay away
3 from. I did not know how much the victim knew. I found
4 out his condition, these types of things.

5 Q That paramedic was a Mr. Guerrero from the Chino Fire
6 Department?

7 A I do not know the name, no, sir. I'm not sure who it
8 was. It was a paramedic that had flown him in.

9 Q Do you know if he's from the Chino Fire Department or not?

10 A I believe he is, yes, sir.

11 Q Did he indicate that he hadn't talked to Joshua about
12 what had happened when he was flying in?

13 A No, sir. I had asked him about the crime scene.

14 Q Did you put that information in your report?

15 A No, sir.

16 Q Why not?

17 A I didn't see it being relative to what I was doing there
18 on my assignment.

19 Q What was the first question that you asked Joshua when
20 you began your questioning?

21 A In referring back to my report, it would have been
22 something to do with anyone being in the residence.

23 Q Is that the way you asked it? Was anybody in the
24 residence?

25 A I would have probably asked something similar to was
26 there anyone that he remembered -- that you remember

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1 being in the residence or in the house, this type of
2 thing.

3 Q In your report you wrote down, did you not, that
4 "the victim first advised me that there were three
5 white male subjects in the residence and he had been
6 asleep"?

7 A Yes, sir.

8 Q How did you obtain that particular piece of information?

9 A That would have been done by asking a number of questions,
10 such as: Do you remember anyone being in your house?
11 I would have gotten an affirmative answer. Were they
12 white males? I would have gotten an affirmative answer.
13 Were they older people? I would have gotten an
14 affirmative answer. And at this time I may have gotten
15 some negative answers. Was it light out? Was it dark
16 out? Were you awake? Were you asleep? This type of
17 thing.

18 The bases or the basic thing behind all those
19 questions was that he advised me there was three white
20 male subjects in the residence and he had been asleep.

21 (No omissions.)
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1 Q You next put that he was awakened in the early morning,
2 approximately four or five o'clock, and it was still
3 dark at that time that the crime occurred. That would
4 have been obtained in the same fashion?

5 A Yes, sir.

6 Q And you put down that the victim, meaning Josh, did
7 not know who the suspects were. How did you obtain that
8 particular piece of information?

9 A I had asked him if he knew these people.

10 Q When you were talking to Josh, were you taking notes?

11 A Yes, sir.

12 Q Did you take note of the questions that you asked?

13 A Yes, sir.

14 Q Why didn't you put those questions that you asked into
15 the report?

16 A In asking if I took note of those questions, what I
17 took was the answers that I got with my questions.
18 It would have been written very much to the same as
19 it is written on the report. In other words, I would
20 not have written down every question that I asked and
21 his answer to that question, no, sir.

22 Q Prior to going to interview Josh, had you had any
23 training about any special techniques of interviewing
24 children as witnesses?

25 A Yes, sir.

26 Q What was that?

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26 | A Yes, sir.

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- 1 Q Is that all the information that you got in that 15
2 minutes that you were talking to him?
- 3 A All the information that pertained to that, yes, sir.
- 4 Q What do you mean all the information that pertained to
5 that? What other information that didn't pertain to
6 it?
- 7 A I got information that he liked the Angels baseball team.
8 I have taken a great deal of time in asking the questions
9 due to the condition of the victim. That's about it.
- 10 Q When you got to the CAT scan room 45 minutes or an hour
11 later, did you vary your manner of asking questions in
12 any way?
- 13 A No, sir. I kept them the same.
- 14 Q When was Josh answering questions by blinking his
15 eyes?
- 16 A I believe that was when the nurse was asking the
17 questions.
- 18 Q You didn't put that in your report, did you?
- 19 A I stated that I believed that. In looking at my report
20 now, I'm not sure.
- 21 Q In your report you said nothing about blinking?
- 22 A Let me check. I don't believe so. No, sir. I apparently
23 had gotten that mixed up.
- 24 Q While you were in the emergency room, were medical
25 people also asking Josh questions or was it just you?
- 26 A At the time that I started my questioning, it was just

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1 me. They were talking, and as far as I remember, it
2 was just me, and that was the only questions that I
3 was interested in was the ones that I was asking.

4 Q Do you recall Josh ever holding up three fingers when
5 asked how many people attacked him?

6 A No, sir, I do not.

7 Q When you got the information from the paramedic, did
8 he mention to you something about a machete and a
9 bullet wound?

10 MR. KOCHIS: Again, I would be interposing a hearsay
11 objection, an additional hearsay objection to the one I have
12 running, to that particular question. And then unless it's
13 offered for the truth of the matter asserted, how would that
14 be relevant?

15 THE COURT: Read the question, please.

16 (Whereupon the record was read as requested.)

17 THE COURT: I don't understand the question. You
18 want to rephrase it? Are you asking about information the
19 boy might have given to the paramedic or given to this
20 witness?

21 MR. NEGUS: I believe we have already established
22 that Josh didn't say that when -- he didn't get any informa-
23 tion from the paramedic about any statements that Josh
24 made. He also indicated that he got some information from
25 the paramedic about the crime scene. The reason I'm asking
26 this is because what we are dealing with here is the

1 confusion of the record caused by improper notekeeping.
2 In the hospital records there are statements about machetes
3 and gunshot wounds. I believe that the confusion came from
4 this man rather than from Joshua, and I wish to try and
5 clear it up.

6 THE COURT: I don't see the relevancy of that.

7 MR. NEGUS: Well, the problem we have is that you
8 will be hearing more evidence that other people have quite
9 different memories of things than this man, and it was his
10 duty to try and take note of it.

11 THE COURT: Are you asking Mr. Sharp now about what
12 Joshua might have told the paramedics?

13 MR. NEGUS: No. In the hospital charts there are
14 statements about machete and a bullet wound. I don't believe
15 those statements came from Joshua. I believe they came
16 from Mr. Sharp. I'm trying to elicit the chain of his
17 understanding, what the paramedic told him, and he related
18 that to the officer.

19 THE COURT: I will sustain the objection. You can
20 ask him directly if he knows the source or something like
21 that.

22 Q (BY MR. NEGUS:) Did you make any statements to the
23 people at the hospital concerning machete and gunshot?

24 A No, sir, I did not.

25 Q Did you hear any such statements made?

26 A No, sir, I did not.

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1 Q While Josh was in the emergency room, did he appear
2 oriented and alert?

3 MR. KOCHIS: I'm going to object. There is no
4 foundation on his part to give that type of opinion.

5 THE COURT: Even a lay person can give an opinion
6 on such matters. Nobody is claiming he is a medical doctor.
7 Overruled.

8 THE WITNESS: At times I thought he was and at
9 times I thought he wasn't.

10 Q (BY MR. NEGUS:) In the emergency room?

11 A Yes, sir.

12 Q In response to your questions he exhibited no confusion
13 while he was in the emergency room, is that correct?

14 A That's correct.

15 Q While you were in the emergency room, you asked him two
16 questions about his prior contacts with these three
17 white males he described, is that correct, two sets of
18 questions?

19 A Can you clarify that?

20 Q Did you ask Joshua while he was in the emergency room,
21 "Do you know the suspects"?

22 A Yes, sir.

23 Q And did he respond, "No."

24 A Yes, sir.

25 Q Did you also ask him, "Had you seen the suspects before"?

26 A I don't believe I asked that in the emergency room. The

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1 only question I did ask, and it came out that the victim
2 did not know who they suspects were.

3 Q That's just your conclusion about what he was saying,
4 is that correct?

5 A After asking the questions and the hand-squeezing,
6 yes, sir.

7 Q Do you remember asking him the question, "Have you
8 seen the suspects before?" And Josh answering, "Yes,"
9 in the emergency room?

10 A No, sir, not in the emergency room.

11 Q In the CAT scan room did Josh appear more drowsy than
12 he was in the emergency room?

13 A No, sir.

14 Q Did he appear more confused than he was in the emergency
15 room?

16 A At one particular time, yes, sir.

17 Q What particular time was that?

18 A I asked him several questions about the -- I again
19 asked the victim if he was sure it was the three Mexicans
20 rather than three white male adults. The victim advised
21 the Mexicans. The victim then moved up his shoulders
22 and appeared to be confused at that question there at
23 that time. He moved his shoulders in a way that a person
24 would show them being confused.

25 Q Could it be that he just didn't understand the questions
26 the way you were asking them?

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1 MR. KOCHIS: Objection. That calls for speculation.

2 THE COURT: Yes. Sustained.

3 Q (BY MR. NEGUS:) When you say "confused," other than
4 shrugging his shoulders, after you had asked him repeated
5 questions, did he show any signs of confusion?

6 A Not at that time, no, sir.

7 Q While you were in the CAT scan room, you asked Josh
8 if he lived in the house where he was found, is that
9 correct?

10 A Yes, sir, I did.

11 Q And he answered yes?

12 A Yes, sir.

13 Q You then asked him if his house had been burglarized
14 recently or if anything had been stolen?

15 A Yes, sir.

16 Q And his answer was no?

17 A Yes, sir.

18 Q And you asked him again if there was anybody around
19 his house yesterday that didn't belong there and he
20 answered yes?

21 A Yes, sir.

22 Q As to those three questions, did you put them in your
23 report more or less in the same words that you asked
24 the questions, as you stated what the question and
25 answer was?

26 A More or less, yes, sir.

(No omissions.)

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1 Q After that, you changed the format of your report back
2 to reporting what you thought his answers were; is that
3 correct?

4 A Yes, sir.

5 Q Why did you do that?

6 A It became easier to describe what was being talked
7 about. For instance, you'll see that I asked a couple
8 other specific questions coming down a little later on in
9 the report. It just makes it easier rather than going
10 through the vehicle description and the suspect
11 description, these types of things, to go back to that
12 type of format.

13 Q When you asked Josh if there was anybody around the
14 house -- excuse me -- yes, around the house yesterday,
15 meaning Saturday, that didn't belong there, that's when
16 he gave you the statement about three Mexicans; is that
17 correct?

18 A Yes, sir.

19 Q And he described three Mexicans arriving at the house
20 as his family was leaving for a party who had a conversa-
21 tion with his father; is that correct?

22 A Yes, sir.

23 Q As he was describing that, Joshua didn't say that the
24 three Mexicans were his attackers; is that correct?

25 A Not at that point, no, sir.

26 Q And when you found out about the three Mexicans being at

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1 the house, you got a rather complete description of
2 height, weight, clothing, that sort of thing, from
3 Joshua?

4 A Yes, sir.

5 Q You put down in the report that Joshua gave you a height
6 of one of the people of five foot eight. How did you get
7 that information from him?

8 A I advised him that we would start with the number one
9 guy in his mind and that we were going to see how tall
10 he was. Okay. And I went five foot one, five foot two,
11 on up to five foot eight, after which I got the hand
12 squeeze at five foot eight.

13 Realizing the age of the victim, I showed him close
14 to what five foot eight was, and I asked him if that's
15 how tall the guy was, to which I got a hand squeeze.

16 Q You then found out about his build. How did you do that?
17 How did you find out?

18 A Same manner. Was he fat? Was he skinny? This type of
19 thing.

20 Q So doing that for all of the three people you got
21 height, weight, hair length, hair color, what they were
22 wearing, ages, and ethnicity; is that basically true?

23 A Yes, sir.

24 Q How long did that process take?

25 A It took quite some time. I can't give you minute wise
26 or anything like that due to it being so long ago. But

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1 it took a while I remember.

2 Q Any time during this process did Josh show signs of
3 being tired?

4 A Yes, sir, he did.

5 Q At what point?

6 A During the whole process he showed signs of what I
7 thought were going to go into unconsciousness or being
8 tired, this type of thing. That's when at that point,
9 in order to get him a little more aware, and I'm not
10 sure how much aware he was, but in order to get him more
11 aware that's when we would talk about the Angel's base-
12 ball team and the fact that he liked baseball.

13 Q Back at the emergency room when the initial description
14 was being elicited, were the same questions asked maybe
15 three different times to make sure he gave consistent
16 responses?

17 A You mean each question being asked three times?

18 Q Well, confirming that there were three suspects, that they
19 were white, that they were male, asked multiple times;
20 that is, not just asking the question once, but repeating
21 it in different ways to make sure that he understood
22 the question.

23 A Not at that time, no, sir.

24 Q Any time during the emergency room?

25 A Not during the emergency room, no, sir.

26 Q Toward the end of your time with Joshua in the CAT scan

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1 room, did you ask him to describe the vehicle that these
2 three Mexicans were in?

3 A At one point in there, I did.

4 Q Did he give you a description using the same method,
5 going through the colors and years and models and that
6 sort of thing?

7 A Yes, sir.

8 Q After that, did you ask him whether his family owned a
9 white station wagon?

10 A Yes, sir.

11 Q Where did you get the idea to ask him that question?

12 A From Sergeant Arthur.

13 Q Did Sergeant Arthur describe the missing vehicle as a
14 white station wagon?

15 A He asked me to ask Josh if his family had owned a white
16 station wagon, I believe.

17 Q Nothing was said about like dark side paneling with wood
18 on it when you asked the question; is that correct?

19 A No, sir.

20 Q Toward the end do you go back into your report repeating
21 the questions more or less as you asked them rather than
22 just giving your summary of Josh's answers?

23 A Yes, sir, if that is a question. Yes, sir, apparently
24 I do.

25 Q I guess I thought I said "did you." You did sort of
26 toward -- at the end of your report you returned to your

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1 practice at the beginning of reciting the question and
2 his answer; is that correct?

3 A Yes, sir.

4 Q At the point in time when you began to feel he became
5 confused you asked him if he felt that these people,
6 these were the people that were in his house this
7 morning when everything went crazy?

8 A Yes, sir.

9 Q And he answered that question yes?

10 A Yes, sir.

11 Q You then asked him if he felt he could identify either
12 one or all of the suspects, and he answered yes; is that
13 correct?

14 A Yes, sir.

15 Q And you then asked him if he was sure it was the three
16 Mexicans rather than the white male adults, and then he
17 said apparently -- how did you get the answer to that?

18 A He squeezed my hand for affirmative, and then he raised
19 his shoulders up after that.

20 Q At that point in time the questioning was terminated;
21 is that right?

22 A Yes, sir.

23 Q So you got no chance to ask any more questions of Joshua
24 after he shrugged his shoulders; is that correct?

25 A After what, sir?

26 Q After he shrugged his shoulders.

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1 A No, sir. I didn't ask any more questions. That was it.

2 Q After you testified at the Preliminary Hearing, did you
3 give a statement to the press that you thought that
4 Joshua was so confused he didn't know what he was
5 saying?

6 A No, sir, I did not.

7 Q Did you give any statement to the press about Joshua's
8 mental condition in the hospital?

9 A The press asked me questions, and I referred them to
10 what I had said on the stand. I don't remember what the
11 exact questions were, but I told them it would be some-
12 thing like I said on the stand. I don't believe I was
13 asked about that in the prelim, and therefore I would
14 not have told them anything about it.

15 I was exceptionally watchful of what I said to the
16 press, referring them back to what I had said in court,
17 due to the fact that it was the press, the state of this
18 case and the fact that Mr. Forbush was standing next
19 to them.

20 Q Mr. Smith, the man in the white shirt in the front row
21 there, do you know -- have you seen Mr. Smith before?

22 A I do not recall him, no, sir.

23 Q Do you recall whether Mr. Smith was one of the people
24 that spoke to you?

25 A I do not recall.

26 Q Did you note the time that you completed your interview?

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1 A No, sir, I did not.

2 Q Is that standard practice not to note the time when the

3 interview is concluded?

4 A I never have, no, sir.

5 Q You contacted Sergeant Arthur three times during the

6 time that you were interviewing Josh; is that right?

7 A Yes, sir.

8 Q And that was by telephone?

9 A Yes, sir.

10 Q And was that telephone in the room where you were

11 talking to Josh?

12 A No, sir.

13 Q How many of those three times that you contacted

14 Sergeant Arthur was it while Josh was in the emergency

15 room?

16 A One time.

17 Q One time?

18 A Yes, sir.

19 Q And for how long did you leave the room when you did

20 that?

21 A Can I use this?

22 Q Sure.

23 A The phone at the reception desk is there, so I would

24 have walked out and called from there, advised dispatch

25 to have Sergeant Arthur call me. Subsequently he called

26 me back at that desk and I talked to him there. So you're

1 talking anywhere from three to five minutes total.

2 Q Was that after you got through with your questioning of
3 Josh in the emergency room or in the middle of it or --

4 A That was prior.

5 (No omissions.)

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1 Q Before you had any conversation with Josh whatsoever?

2 A Yes, sir.

3 Q And when did you first report to Sergeant Arthur about
4 the conversation you had with Josh? Was that when you
5 were in the CAT scan room?

6 A Yes, sir.

7 Q Was that during the 45 minutes that you were waiting?

8 A Yes, sir.

9 Q And at that point in time did you relay to him the
10 information about the three white males?

11 A Yes, sir.

12 Q At that point in time you had received no information
13 about any Mexicans being at the house before they went
14 to the party?

15 A I had not, no, sir.

16 Q When was the third conversation, after you finished
17 talking to Josh in the CAT scan room or during the
18 time that you were in there?

19 A After I had finished, I believe, talking to him in
20 the CAT scan room, they took him up to surgery. I
21 went with him. When he went into the surgery room,
22 I remained behind at that time and placed another phone
23 call.

24 Q You never interrupted your interviews with Josh in
25 order to call Sergeant Arthur?

26 A No, sir.

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1 Q When you called Sergeant Arthur after Josh had gone
2 into the operating room, did you then tell him that you
3 now had a description of three male Mexican subjects?

4 A Yes, sir.

5 Q Did you ever attempt to get a description of like height
6 weight, that sort of thing, of the three white persons?

7 A No, sir.

8 Q The clipboard or the paper on the clipboard that had
9 been used by the nurse in questioning Josh in which he
10 attempted to write his name, did you attempt to preserve
11 that clipboard as evidence?

12 A No, sir, I did not.

13 Q Did you ever look at it?

14 A No, sir, I did not.

15 Q The notes that you took were destroyed, is that correct?

16 A Yes, sir.

17 Q And you never took those notes and compared them with
18 your written report to see if everything in the notes
19 had been incorporated into the report, is that correct?

20 A As I did my report, I had the notes right there. I'm
21 reading and taping. And at that point I know everything
22 is on there. After getting it back from the typist
23 and checking this to my notes, no, sir, I never did that.

24 Q Did you ever play the tape of your dictation over to
25 see that the typist had gotten everything?

26 A No, sir, I did not.

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- 1 Q Has that tape been destroyed?
- 2 A Yes, sir. It has been used over and over or destroyed.
- 3 I would not even have an idea what tape it was.
- 4 Q Other than those questions which you have written into
- 5 your report, you don't remember the precise questions
- 6 that you asked Josh, is that correct?
- 7 A The exact precise questions, no, sir.
- 8 Q Joshua never said that three Mexican attacked him and
- 9 his family, is that correct?
- 10 A Not in those words, no, sir.
- 11 Q The only thing that you interpreted as a statement to
- 12 that effect was your question about the three Mexicans
- 13 there when everything went crazy, is that correct?
- 14 A Yes, sir.
- 15 Q Joshua did, however, say that he was attacked by three
- 16 white males, is that correct?
- 17 A Not in those words, no, sir.
- 18 Q Well, the question was asked, "How many attackers were
- 19 there," right?
- 20 A I do not recall the exact question, whether it was how
- 21 many attackers or how many people were in your house,
- 22 this type of thing. I would have probably been asking
- 23 the question, recalling my state of mind that day, it
- 24 would have been "People." I tried to stay away as much
- 25 as possible from anything like attackers, this type of
- 26 thing. I didn't want him to go into shock or all of

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1 sudden remember something that happened that night,
2 this type of thing that would have been very hard on
3 him as far as a medical standpoint. I was very careful
4 with my questions, and this is part of the problem I
5 had in doing the interview.

6 Q Joshua did tell you that three white males had been
7 inside his house, is that correct?

8 A Yes, sir.

9 Q He made the statement -- did he ever make a statement
10 that three Mexicans were inside the house?

11 A The question that was asked was if he felt that these
12 were the people, referring to the Mexicans, that were
13 in his house when everything went crazy.

14 Q You put in your report -- correct me if I'm wrong --
15 how did you connect these were the people in his house
16 when everything went crazy with the three Mexicans?

17 A Because we had just finished talking about them and
18 describing them.

19 Q The question before that you have is the question about
20 the white station wagon, right?

21 A Yes, sir.

22 Q During the time that you were getting the description
23 of the three Mexicans from Joshua, he was coherent in
24 his description, correct?

25 A Appeared to be, yes, sir.

26 Q When you asked the question about, "Are you sure it was

008387

1 the three Mexicans rather than the three white males,"
2 you did not put any words to the effect "that were in
3 the house at the time of the attack," is that correct?

4 A That's correct.

5 Q You asked Josh no questions about any weapons that had
6 been used, is that correct?

7 A No, sir, I did not.

8 Q On June the 6th, did you attend the briefing that was
9 held at the West End Substation with reference to this
10 case?

11 A Yes, sir.

12 Q Did you report to the people at the briefing about your
13 conversations with Josh?

14 A Yes, I did.

15 Q Was Sergeant Arthur there?

16 A Yes, he was.

17 Q Was Mr. Clifford from Homicide there?

18 A I believe so, yes, sir.

19 Q And Mr. Wilson from Homicide?

20 A I'm not if Mr. Wilson was there.

21 Q Phil Danna from the West End?

22 A Phil was there, yes, sir.

23 Q After that briefing on that date, you were assigned
24 to work with Mr. Danna, is that correct?

25 A Not during that day, no, sir. I was still working
26 patrol. I arrived at the Substation. After the briefing

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1 I left and went back to the Central area and continued
2 working. After I got off of patrol, I went back out
3 there and at that time it would be 4:00 or 5:00 in the
4 afternoon.

5 Q At that point in time you were starting working with
6 Mr. Danna?

7 A Yes, sir.

8 Q And then you continued to work with Mr. Danna on June
9 the 8th, is that correct, which would have been
10 Wednesday?

11 A Yes, sir.

12 Q On June the 8th, did you interview a woman named
13 Kathy Royals who lived in Whirlaway in the City of
14 Chino, Chino Hills, whatever it is, who was a barmaid
15 at the Canyon Corral Bar?

16 A I was there when she was being interviewed, yes, sir.

17 Q Who was doing the interviewing?

18 A Detective Danna, I believe.

19 Q Were you taking any notes of that interview?

20 A No, sir, I was not.

21 Q That was not basically -- you were what, just watching
22 Detective Danna or just being there? What were you
23 doing?

24 A That was about it. On that particular interview, I
25 didn't ask any questions at all. I just sat there and
26 I'm not sure of the lady's name, the street or anything

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3-7

1 like that. It's the bar that I can put together with
2 some lady that we talked to. Who that lady was, I have
3 no idea. I don't recall. I do not have any reports
4 on it.

5 Q You went then with Mr. Danna to the Canyon Corral Bar,
6 is that correct?

7 A Which one is the Canyon Corral Bar?

8 Q Peyton and Carbon Canyon, within looking distance of
9 the Ryen house.

10 MR. KOCHIS: Objection. That assumes a fact not
11 in evidence. No witness has testified that you can see
12 the house from the bar.

13 THE COURT: Sustained.

14 Q (BY MR. NEGUS:) The one that's closest to the Ryen
15 house at the corner of Peyton and Carbon Canyon?

16 A Yes, it was that bar.

17 Q Did you also go with him to the La Vida Bar at the other
18 end of the canyon?

19 A Yes, sir.

20 Q Then to the house, wherever it was, in the Chino Hills
21 area, or that would have been more in the flats?

22 A I don't know the area. It seemed to me like it was
23 in the hills, but I would have no idea at this time.

24 Q But you went to the house of a barmaid?

25 A Yes.

26 Q You don't recall anything about any of the descriptions

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1 that anybody gave?

2 A No, sir, I don't.

3 Q Do you recall if there were any questions about black
4 people asked?

5 A No, sir, I don't.

6 Q Do you recall the people from the Canyon Corral Bar,
7 the one at Carbon Canyon and Peyton Drive, describing
8 three unusual white males who had been in the bar?

9 A No, sir, I don't.

10 Q Do you wish to clarify?

11 A Yes. While Detective Danna was inside at that particular
12 bar, I was outside talking to Deputy Hoops who had come
13 by in a patrol unit.

14 Q What about when you went inside the residence of the
15 barmaid, do you recall the description of the three
16 white males at that point in time?

17 A No, sir, I do not.

18 Q Did you ever connect in your mind the descriptions
19 obtained by Detective Danna with the three white males
20 that Joshua described?

21 A No, sir, I did not. I remember that they had had a
22 disturbance at the bar on that particular night and
23 that's all that I remember.

24 Q And did you do one interview yourself on that date,
25 the man from the liquor store at Pipeline and Carbon
26 Canyon?

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1 A Yes, sir.

2 (No omissions.)

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26 A. Not at that time. They subsequently did come in while

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1 I was there, though.

2 Q You never asked Joshua any questions about what happened
3 in his parent's home at that time, did you?

4 | A. No, sir.

5 Q Did you hear Detective O'Campo ask him any questions
6 about what took place the night of the homicides on that
7 day?

8 | A. No, sir.

9 Q Did you see on that day Joshua write anything for
10 Detective O'Campo on a piece of paper?

11 | A. No, sir.

12 Q Directing your attention, then, back to the first
13 Sunday, Sunday the 5th, that you saw Joshua at the
14 hospital, when you first saw him in the emergency room
15 did he appear to be injured?

16 A. Yes, sir.

17 Q. Did he have wounds on his head and throat?

18 A. Yes, sir, he did.

19 Q Did he appear to be seriously injured?

20 A. Yes, sir, he did.

21 Q Were you concerned about his physical condition when
22 you interviewed him?

23 A. Yes, sir, I was.

24 Q Now, Mr. Negus asked you a number of questions about
25 statements that Joshua made. Do you recall that?
26 Do you recall Mr. Negus asking you?

26 Q Was the clipboard pointed toward Joshua's face, his eyes?

008396

1 A Yes, it was.

2 Q Did his eyes appear to be open?

3 A Yes, they did.

4 Q Was he engaging in any type of movement with either
5 eyes or his head when the hospital personnel would point
6 to various things on the clipboard?

7 A I did not -- I don't recall that. And at that point I
8 was writing on my notebook and I would ask the name and
9 they would get the name and age, and this is how I got
10 that information, more they told me. As far as sitting
11 there watching him do it, I can vaguely recall a few
12 things and that's about it. I don't remember that.

13 Q Then initially the procedures in terms of Joshua's name
14 and the basic information is you would request the
15 hospital personnel to obtain a particular piece of
16 information?

17 A Yeah. They were obtaining it and I was just writing it
18 down.

19 Q How were they relaying the information to you? Verbally?

20 A Yes.

21 Q Now, at some point did you then move next to Joshua and
22 attempt to communicate with Joshua?

23 A Yes, sir, I did.

24 Q And were you the closest person to Joshua at that point?

25 A From that side of the bed, yes. There was somebody
26 standing directly across from me on the other side of

008397

- 1 the bed.
- 2 Q Did you explain to him the method you were going to
- 3 attempt to use in communicating with Joshua?
- 4 A Yes, I did.
- 5 Q What did you tell him?
- 6 A I told him that I was going to ask him some questions
- 7 and if the answer was yes to squeeze my hand. If they
- 8 weren't, don't squeeze my hand.
- 9 Q Did you then take one of his hands?
- 10 A Yes, I did.
- 11 Q Do you recall which one?
- 12 A It would have been the right hand.
- 13 Q Which hand did you hold? Which one of your hands?
- 14 A I would have held him also with my right hand.
- 15 Q Is that your writing hand?
- 16 A I'm left handed.
- 17 Q Now, when he squeezed, was that movement making any
- 18 sound?
- 19 A No, sir, it was not.
- 20 Q Were you essentially keeping track of the reactions
- 21 in terms of pressure, whether he closed his hand around
- 22 yours or not?
- 23 A Yes, sir, I was.
- 24 Q So in terms of recording his response, there was nothing
- 25 to record in terms of response to your question with the
- 26 tape recorder?

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1 A No, sir, there was not.

2 Q And that was a rather short question period; is that
3 true?

4 A The period in the emergency room, yes, it was not too
5 long.

6 Q Now, is there a reason you did not at that point ask
7 him any questions, specifically, for example, about his
8 family?

9 A Yes, sir.

10 Q What was your reason?

11 A I was in fear of his going into some type of shock.
12 I didn't want to cause something that perhaps he wasn't
13 remembering at that time. I was in great concern for
14 his welfare, and I felt that he was in serious condition.
15 I did not feel it was a dying declaration. I had to do
16 what I could do with him laying there and being cut up
17 and everything. I did what I felt was best for Josh
18 first and the investigation second.

19 Q Did you attempt to establish any rapport with Joshua
20 in the period of time that you had?

21 A Yes, sir, I did.

22 Q Why?

23 A I didn't know if I scared Josh. I've got an eight-year-
24 old boy that's been cut. I don't know what he remembers.
25 I don't know if he remembers anything about his family.
26 I don't know what he saw that night. And all of a

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1 sudden here's some great big guy with a badge and a gun
2 on. I didn't know if I scared him. I wanted to let
3 Josh know that I cared for him, that I was his friend,
4 so that any information we could get out, we could get
5 out easily.

6 Q Had you ever seen Joshua before?

7 A No, sir.

8 Q On that day were you basically strangers?

9 A Yes, sir.

10 Q And did you eventually attempt to talk to him about
11 baseball?

12 A Yes, sir.

13 Q And was that to gain some rapport with Joshua?

14 A Yes, sir.

15 Q Were you concerned about to the best of your ability
16 putting him at ease when you talked to him?

17 A Yes, sir.

18 Q In the condition under which you interviewed him, was
19 that a situation where you had an unlimited amount of
20 time to conduct the interview?

21 A No, sir.

22 Q At that point was one of the most important aspects to
23 make sure that Joshua received the proper medical
24 attention so that he would survive?

25 A Yes, sir.

26 Q Do you have a copy in front of you of the report that

008400

3 A Yes, sir. Let me find the second page here. Yes, sir.
4 I have it.

7 A. Yes, sir, I did.

11 | A. Thirty to forty minutes.

14 A. I went with him up to the emergency room, had a phone
15 contact with Sergeant Arthur. At that point I left the
16 hospital, drove to central patrol, which is in the court-
17 house, and dictated this report.

21 | A. Yes, I did.

23 | A. No, sir, I did not.

26 | A. Yes, I did.

008401

- 1 Q And basically what is that?
- 2 A It is a Handy-Talkie type radio.
- 3 Q Did you use that device to communicate to any other law
4 enforcement officer the information you'd received from
5 Joshua?
- 6 A No, sir. It's impossible.
- 7 Q Is there some procedure about or rule against using that
8 in a hospital?
- 9 A No, sir. There's no rule that I know of. It's just
10 that the hospital is made in such a manner that you
11 can't get out of there on an H.T. nor receive any
12 information on an H.T.
- 13 Q When you went back to your office after talking with
14 Sergeant Arthur over the telephone, did you then dictate
15 at that time your written report?
- 16 A Yes, sir, I did.
- 17 Q Did you have your notes in front of you when you dictated
18 it into the dictaphone?
- 19 A Yes, sir, I did.
- 20 Q Was the report typed the following day, June the 6th?
- 21 A Yes, yes, it was.
- 22 Q Did you review the typewritten report on that day?
- 23 A I reviewed it approximately a day after that.
- 24 Q Would that have been on approximately June the 7th of
25 1983?
- 26 A Yes, sir.

00004002

1 Q And at that time did you read your report to see if you
2 had included within your report the substance of your
3 interview with Joshua Ryen?

4 A Yes, I did.

5 Q And did you read the report to see if you had included
6 on the dictaphone the substance of the notes that you
7 had taken during the interview?

8 A Yes, sir.

9 Q Mr. Sharp, was this the first time you'd ever
10 interviewed?

11 A No, sir.

12 Q Have you interviewed persons in the past who have been
13 victims of crimes?

14 A Yes, sir.

15 Q When you interview someone who is a victim of a crime,
16 do you often attempt to get a description of an assailant
17 or an attacker?

18 A Yes, sir.

19 Q When you take that description, do you write in your
20 report the questions you ask or the information you
21 receive?

22 A I write the information I receive.

23 Q Does that traditionally include the sex of the suspect,
24 his race, his height, weight, and any identifiable
25 physical characteristics, such as facial hair?

26 A Yes, sir.

0008403

1 Q Is it true that when you obtain that information and
2 place it in the report you do not go back and specify
3 each question that was asked to obtain that description?

4 A Yes, sir.

5 Q Directing your attention to the first page of your
6 typewritten report, which was typed on June the 6th,
7 the section "further information," do you see that?

8 A Yes, sir.

9 Q And you noted on that report that the victim could not
10 talk at the time of the interview; is that true?

11 A Yes, sir.

12 Q Then the next sentence you indicate that the interview
13 was conducted by having the victim write his name, point
14 to numbers for his home phone and date of birth, et
15 cetera. Do you see that sentence?

16 A Yes, sir.

17 Q Was that information that you gathered through statements
18 with other hospital personnel, or did you actually see
19 that take place?

20 A That was with the clipboard which I partially saw,
21 but mostly from information I received from them.

22 (No omissions.)
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000404

1 Q Now, Joshua Ryen never indicated in any conversation,
2 including by hand-squeeze, that he saw his attackers,
3 did he? He never told you that he saw his attackers?

4 A No, sir.

5 Q He never told you with a hand-squeeze that his attackers
6 were three white males, did he?

7 A No. I wouldn't have asked that type of question.

8 Q He did squeeze your hand indicating affirmative response
9 to the question of whether there were people in the
10 house earlier that morning, is that true?

11 A Yes, sir.

12 Q And he again through hand-squeezes described those
13 as three white males, is that true?

14 A Yes, sir.

15 Q When you asked Joshua if his family owned a white
16 station wagon, what was his response?

17 A Negative.

18 Q He did not squeeze your hand?

19 A No, sir, he did not.

20 Q Indicating, with your communication system, that his
21 family did not own a white station wagon, is that true?

22 A Yes, sir, that's true.

23 Q Then in the CAT scan room at one point you asked
24 Joshua Ryen if there was anyone around his house
25 yesterday that did not belong there, is that correct?

26 A Yes, sir.

008405

1 Q And he in some fashion squeezed hour hand, is that true?

2 A Yes, sir.

3 Q You noted in your report, did you not, that Joshua
4 appeared to be more alert in that particular room, in
5 the CT scan room?

6 A Yes, sir.

7 Q Did that appear to you to be Joshua's condition, that
8 he was more alert when you got into that second location?

9 A Yes, sir.

10 Q Did you then obtain from him a description of the
11 car that he had seen at his house earlier that evening?

12 A Yes, sir.

13 Q And did you likewise obtain descriptions for each of the
14 three persons he saw in that car?

15 A Yes, sir.

16 Q And did he describe all those persons as being Hispanic?

17 A Yes, sir.

18 Q Did you then ask him if he thought these were the people
19 in his house this morning when everything went crazy?

20 A Yes, sir.

21 Q You didn't ask him if he saw the people in the house
22 when everything went crazy, did you?

23 A No, sir.

24 Q You asked him his opinion as to whether he thought these
25 people were in the house?

26 A That's right.

008406

- 1 Q At that point he squeezed your hand in an affirmative
2 reply?
- 3 A Yes, sir.
- 4 Q Did you then ask him if he felt he could identify either
5 of the suspects?
- 6 A I believe the way I put it was that if he could identify
7 one or all of these suspects, and it was affirmative.
- 8 Q He didn't shrug his shoulders at that point, did he?
- 9 A No, sir.
- 10 Q And the question you asked prior to that as to whether
11 or not he felt these were the people in the house when
12 everything went crazy, he didn't shrug his shoulders
13 at that time, either, did he?
- 14 A No, sir.
- 15 Q Then you asked him an additional question, if he was
16 sure it was three Mexicans rather than three white
17 males. Do you recall that?
- 18 A Yes, sir.
- 19 Q Did he again squeeze your hand?
- 20 A Yes, sir.
- 21 Q And then was it at that point that he raised his shoulders?
- 22 A Yes, sir.
- 23 Q Is there a reason why in the CT room you didn't specifically
24 ask Joshua questions about his injuries?
- 25 A Yes, sir.
- 26 Q What was your reason?

008407

1 A Again, it was for his own welfare.

2 Q Now, is this the first time you had ever used this
3 method of communicating with somebody?

4 A Yes, sir.

5 Q Is it fair to say that most of your interviews are
6 conducted with people who have the ability to verbalize
7 their response and observations to you?

8 A Yes, sir.

9 Q Were you more or less doing the best you could with
10 what you had at hand?

11 A Yes, sir.

12 Q Directing your attention to the briefing meetings that
13 you attended, did you keep written notes of who was at
14 the briefing meetings in the West End when you attended?

15 A No, sir.

16 Q You know Sergeant Arthur was the sergeant assigned to
17 this case?

18 A Yes, sir.

19 Q You know that Detective Hall was also assigned as one
20 of the detectives on this particular case?

21 A I did not know that, no, sir.

22 MR. KOCHIS: I have no further questions.

23

24

REDIRECT EXAMINATION

25 BY MR. NEGUS:

26 Q What time was it that you left the hospital to go back

0000400

1 and write your report?

2 A I believe it was around 1800.

3 Q That's 6:00 civilian time?

4 A Yes, sir.

5 Q So you had been at the hospital for something over
6 four hours?

7 A I believe that's right around what it was, yes, sir.

8 Q And as soon as Josh went into the operating room, that's
9 when you left?

10 A After receiving a phone call from Sergeant Arthur, yes,
11 sir.

12 Q How many witnesses have you interviewed who couldn't
13 speak?

14 A Three.

15 Q And in what manner did you communicate with the other
16 two?

17 A The other two were deaf. I had them write.

18 Q In a situation where a person is neither writing nor
19 can the person speak, do you think that the form of
20 the question might be more important than when the
21 person does speak and articulate an answer as far as
22 reporting what the person did?

23 MR. KOCHIS: I object. Argumentative.

24 THE COURT: It is. Sustained.

25 Q (BY MR. NEGUS:) Mr. Kochis asked you if it was your
26 custom when you wrote reports to put down in the report

0000409

1 the questions you asked or the answers you received.
2 Do you think there is any difference in the procedures
3 that you should use when the person that you are inter-
4 viewing can't talk?

5 A Not in my interview with Joshua, no, sir, I don't believe
6 so.

7 Q Were you at all concerned about whether your questions
8 were leading and suggestive?

9 A In a manner, yes, sir.

10 Q What did you do to prevent that from happening?

11 A I thought about the questions prior to asking them, and
12 in the fact that I didn't want them to be leading or
13 anything, I didn't want them to get Joshua to a point
14 where he would go into shock or something like this.
15 I had very little to go on and it would have been very
16 hard for me to ask any leading questions. I just didn't
17 have the knowledge.

18 Q Did you think it was important not to ask ambiguous
19 questions?

20 A Yes, sir.

21 Q What did you do to prevent that?

22 A Again I didn't want to ask any kind of questions that
23 would confuse Joshua, so I would try to make it very
24 clear.

25 Q Do you think a question such as, "Do you feel that these
26 were the people that were in the house at the time that

0008410

1 everything went crazy" might have a tendency to confuse
2 somebody?

3 MR. KOCHIS: Objection. That calls for speculation on
4 his part.

5 MR. NEGUS: He indicated it's what he thinks.

6 THE COURT: I will overrule the objection.

7 THE WITNESS: At that point with Joshua lying there,
8 being an 8-year-old boy, no, sir, I do not feel that.

9 Q (BY MR. NEGUS:) When you asked Joshua about the station
10 wagon and he didn't squeeze your hand, did you try and
11 turn the question around and ask the question so you
12 would get an affirmative response that they don't have
13 a white station wagon?

14 A No, sir, I did not.

15 Q At what point in time did you decide that there was no
16 danger of Josh dying?

17 A I can't tell you.

18 Q Was it after Josh went in the CAT scan room?

19 A No. It was before then.

20 Q Was it based on your observations or on something that
21 the hospital staff told you?

22 A I would have asked the hospital staff his condition.
23 I would have looked at Joshua. And in looking at
24 Joshua, putting it all together, I did not feel that
25 he was going to die, no, sir.

26 Q Was that after the neurological testing and the CAT scan?

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1 SAN BERNARDINO, CALIFORNIA; TUESDAY, MAY 15, 1984; 1:31 P.M.

2 DEPARTMENT NO. 10

HON. RICHARD C. GARNER, JUDGE

3 (Appearances as heretofore noted.)

4

5 THE COURT: Who is next, Counsel?

6 MR. NEGUS: Calvin Fischer.

7 THE BAILIFF: Follow me, please. Please step up
8 to the witness stand and raise your right hand to be sworn in.

9 THE CLERK: Raise your right hand, please. Raise
10 your right hand.

11

12 C A L V I N F I S C H E R, called as a witness by and on
13 behalf of the Defendant, was sworn and testified as
14 follows:

15 THE CLERK: You do solemnly swear the testimony you
16 are about to give in the action now pending before this
17 Court shall be the truth, the whole truth, and nothing but
18 the truth, so help you God.

19 THE WITNESS: That's right.

20 THE CLERK: Be seated. State your name, please, for
21 the record, and spell your last name.

22 THE WITNESS: First name is Calvin, Fischer,
23 F-i-s-c-h-e-r.

24 THE CLERK: Could you spell your first name, please.

25 THE WITNESS: C-a-l-v-i-n.

26 THE CLERK: Thank you.

008413

1 DIRECT EXAMINATION

2 BY MR. NEGUS:

3 Q Mr. Fischer, what's your occupation?

4 A Registered nurse.

5 Q And in June of this year, were you affiliated with any
6 particular hospital?

7 A Loma Linda University Medical Center.

8 Q What particular assignment did you have with Loma Linda
9 University Medical Center on June the 5th?

10 A It would have been emergency room staff nurse.

11 Q And what are your duties in the emergency room as a staff
12 nurse?

13 A Taking care of the critically ill and injured.

14 Q What sort of background and training does it take to be
15 a registered nurse?

16 A Two years of -- two years of college level --

17 THE COURT: I'm having trouble hearing you, Mr.
18 Fischer. Could you get a little closer to the microphone,
19 please.20 THE WITNESS: Sure. That better? Two years of
21 college level class work.22 Q (BY MR. NEGUS:) Are you licensed by the State of
23 California?

24 A Yes.

25 Q As one of your duties as a registered nurse, do you
26 administer medication?

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1 A I do, yes.

2 Q And in administering that medication, have you been
3 trained as to the effects the different medications will
4 have?

5 A Sure have.

6 Q With respect to June the 5th, did you have a patient on
7 that date by the name of Joshua Ryen?

8 A Sometime in June. I don't remember the exact date.

9 Q I have here Exhibit H-1, which are some documents from --
10 excuse me. I may have said June of 1984 rather than
11 June of 1983. When you had Joshua Ryen in as a patient,
12 that was in June of 1983?

13 A That's right. I wasn't born in '04. I wasn't in
14 existence then.

15 Q Let me just see if I can find for you, taking from
16 Exhibit H-1 and showing -- just remove one page called
17 a Trauma Room Record. Would that be the chart -- do you
18 have anything to do with the preparing of that
19 particular chart, the Trauma Room Record?

20 A Yes. This would be a flow-type sheet that we keep record
21 of our treatment and patient's condition on.

22 Q This particular document, which is a Xerox, did you
23 prepare the original of that?

24 A Yes, sir, I did.

25 Q And does that reflect the date that you first came in
26 contact with Josh Ryen?

008415

- 1 A It would, sir.
- 2 Q And when was that?
- 3 A It says 6-5-83 up on top.
- 4 Q As part of your duties in the emergency room, do you
- 5 keep track of the times that certain operations are done,
- 6 like the arrival of the patient and various other
- 7 medical operations?
- 8 A Certainly try to.
- 9 Q If you look on the second page of this particular --
- 10 the back side here, is there a space there for nursing
- 11 notes?
- 12 A Yes, additional notes that would not be covered in the
- 13 flow section of the record.
- 14 Q So in the flow section of the record, you'll be making
- 15 notes of certain things that the form specifies, and in
- 16 the nursing notes you'll be making notes of other things
- 17 which may be significant about the patient while you're
- 18 treating him?
- 19 A That's right.
- 20 Q Do your nursing notes reflect the time that Josh Ryen
- 21 arrived in the emergency room?
- 22 A Yes, sir. It's indicated at the top of this sheet that
- 23 it was 1346 hours.
- 24 Q 1346 is military time, so it would be 1:46 standard time
- 25 in the afternoon?
- 26 A That's right.

0008416

1 Q On that chart at that point in time it indicates that
2 there were apparent knife and gunshot wounds. Do you
3 know the source of that particular information?

4 A No, sir, I don't.

5 Q Was that just something that was reported to you, or is
6 that based on your observations, or --

7 A It would have been reported to me. Am I able to give a
8 certain amount of explanation with that?

9 Q Sure.

10 A If you notice at the top of the record it says trauma
11 team activated time is 1325, and the reason that time is
12 before the actual arrival of the patient is because by
13 use of our emergency room system we had knowledge that
14 this injured person was coming to us prior to his arrival.
15 And somewhere -- I don't recall if it was during that
16 radio -- during those radio transmissions or just where
17 that -- somewhere the impression was given to us that
18 it was a -- had been a victim of apparent gunshot or
19 knife or some such as that.

20 Q So that information would not have been based on any
21 information that you got from the patient Joshua himself?

22 A That's right.

23 Q Is this trauma room record, is this the complete notes
24 that you take as far as the treatment of a patient in
25 the emergency room?

26 A Yes, sir.

008417

1 Q What time did Joshua leave the emergency room?

2 A Says here in my record that he left about 1500 hours,
3 but he went to another department.

4 Q Is that an approximate time?

5 A I would have to say that it is.

6 Q And what other department did he go to at approximately
7 that time?

8 A It's written here, means CT scan or CAT scan.

9 Q Would you have accompanied Joshua when he went to the
10 CAT scan, or did you accompany him?

11 A My impression is that I must have, the way I have it
12 worded in the notes.

13 Q What gives you that impression?

14 A Well, it says patient set up in CT scan, anesthesia
15 assuming patient care, which leaves me with the feeling
16 that I did go over there and turn the patient care over
17 to the anesthesiologist.

18 Q That note that you made about he being set up in the
19 CAT scan, that's the note that's stated 1500 hours; is
20 that right?

21 A Right.

22 Q Now, you'll notice that it says -- your last sentence
23 there indicates that Joshua was actually taken to the
24 CAT scan at 1445. That would be 2:45?

25 MR. KOCHIS: Your Honor, at this point I'm going to
26 interpose an objection. The questions are leading and

008418

1 suggestive. It is his witness. It's not a law enforcement
2 officer, and there's no justification for him to be leading
3 his witness.

4 THE COURT: All you have to do is object. Sustained.

5 Q (BY MR. NEGUS:) Do you have on your chart any -- would
6 you look at the last sentence on the nursing notes.
7 Does that last sentence indicate to you a more precise
8 time that Joshua was taken to the CAT scan?

9 MR. KOCHIS: Same objection.

10 THE COURT: Overruled. You may answer. Does it?

11 THE WITNESS: I'm not quite -- I guess I'm getting
12 confused as to what your question is. Sorry.

13 Q (BY MR. NEGUS:) What was the last sentence that you
14 wrote on your nursing notes?

15 A Okay. I wrote -- let me just read the whole entry for
16 1500 hours.

17 Q Okay.

18 A Patient set up in --

19 MR. KOCHIS: Your Honor, I'm going to object. It's
20 hearsay absent some foundation.

21 THE COURT: You can ask him directly, Mr. Negus.
22 You can refresh his memory. But just to have him read the
23 subject of the hearsay, objection sustained.

24 Q (BY MR. NEGUS:) Mr. Fischer, did you write that Joshua
25 was taken to the CAT scan at approximately 2:45 p.m.?

26 MR. KOCHIS: It's the same objection --

008419

1 MR. NEGUS: It's a prior inconsistent statement,
2 Your Honor, and I think I am entitled to ask if he made that
3 statement.

4 THE COURT: All right. It was previously quoted
5 he indicated approximately 1500 hours, and now he's indicated
6 a different time. Overruled.

7 Go ahead. Did you write that, sir?

8 THE WITNESS: Okay. I understand now what you're
9 asking. I'm sorry. I believe what I had done here was I
10 had, at 1500 hours I made that note, and the way I have it
11 written, taken to CT scan at 1445 would then indicate that
12 the patient did indeed go to CT scan at 1445. But I made
13 the note at 1500 hours. Is that what you were trying to
14 clarify?

15 Q (BY MR. NEGUS:) Was that in fact the way it happened?

16 A Yeah. That's right.

17 Q Now, during the time that Joshua was in the emergency
18 room, did you administer to him any medication?

19 A There was medication given to him. I cannot --

20 MR. KOCHIS: Excuse me. At this point I'm going to
21 object. It's non-responsive to the question. The question
22 called for a yes or no answer, if he saw anything in the
23 emergency room.

24 THE COURT: Sustained. Try and answer the question
25 directly, please. Did you see them administer any medication?

26 THE WITNESS: I can't answer that yes or no.

0000420

1 THE COURT: Your next question.

2 MR. NEGUS: I'd like to have him answer it. If he
3 can't answer yes or no, he can answer the question.

4 THE COURT: Is it that you don't recall one way or
5 another?

6 THE WITNESS: That would be part of it.

7 THE COURT: If you can, answer it yes or no. Then
8 if you want to explain your answer, you will be permitted.
9 I see no reason -- did you see something. If you can answer
10 it yes or no first then I'll let you explain.

11 THE WITNESS: Well, in retrospect, in retrospect I
12 don't remember anything being given. I only have the document
13 in front of me.

14 THE COURT: Your answer is "I don't recall."

15 THE WITNESS: Okay.

16 THE COURT: Next question.

17 (No omissions.)
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000421

- 1 Q When you were in the emergency room, was it your job
2 to record the medication that was given to Joshua?
- 3 A Again I can't answer that yes or no.
- 4 Q How would you answer it?
- 5 A I would answer it that I'm at least responsible for
6 making sure that someone has documented the medications
7 that he got, whoever gave that, whether it was myself
8 or someone else.
- 9 Q Did you yourself make some notes as to medication given
10 to Joshua?
- 11 A I don't recall.
- 12 Q Are these trauma room charts prepared in the course of
13 treatment of Josh?
- 14 A That's right.
- 15 Q And are they prepared in such a way that it's important
16 to make sure that there is an excellent record of what
17 medications are given to Joshua?
- 18 A Yes, sir.
- 19 Q And do people in the hospital rely upon the trauma room
20 record as a record of the medications given to him during
21 the time that he is in the emergency room?
- 22 A Right, they do.
- 23 Q On the particular trauma room record that you have, was
24 that record prepared in the normal course of treatment
25 of Joshua in the emergency room, that document that you
26 have in your hand?

0000422

7-2

1 A Yes, sir, it was.

2 MR. NEGUS: At this point in time, your Honor, I intro-
3 duce the trauma room record which is a part of Exhibit H-1
4 into evidence.

5 THE COURT: Any objection?

6 MR. KOCHIS: No.

7 THE COURT: It will be received. What will that be,
8 H-1-2?

9 MR. NEGUS: There is only one trauma room record in
10 those documents. We probably will eventually get all of
11 them.

12 THE COURT: It should be separately marked.

13 Q (BY MR. NEGUS:) Under medications in this document H-1-A
14 there are listed times that the medications are given,
15 is that correct?

16 A That's right.

17 Q Again by military time?

18 A Right.

19 Q And is it also part of your standard practice in the
20 hospital to record accurately the time at which medications
21 are given?

22 A As accurate as possible.

23 Q Do people rely upon the accuracy of those times in
24 treating the patient?

25 A That's true.

26 Q Does it indicate on that record that at 1430 hours a

0000423

- 1 medication was given?
- 2 A It does, yes.
- 3 Q What is that medication?
- 4 A Sodium Bicarbonate.
- 5 Q What is the function of Sodium Bicarbonate?
- 6 A It's a base -- on a chemistry level, it's a base to
- 7 help counteract acidosis.
- 8 Q So the purpose of administering that would be to change
- 9 the pH of the patient's body fluids?
- 10 A That's right.
- 11 Q Does Sodium Bicarbonate have any hallucinogenic or
- 12 pain-killing effect?
- 13 MR. KOCHIS: Objection. It's compound.
- 14 THE COURT: Break it down.
- 15 Q (BY MR. NEGUS:) Does it have any hallucinogenic effect?
- 16 A I can't be sure.
- 17 Q Does it have any pain-killing effect?
- 18 A Not that I'm aware of.
- 19 Q The chart indicates that at 1420 hours Mefoxin was admin-
- 20 istered. Is that correct?
- 21 A That's correct.
- 22 Q Mefoxin is an antibiotic?
- 23 A Yes, sir.
- 24 Q Does it have any hallucinogenic effects?
- 25 A Not that I'm aware of.
- 26 Q Does it have any pain-killing effect?

0008424

- 1 A Again, not that I'm aware of.
- 2 Q The chart also indicates that at 1435 hours, Chloromycetin
- 3 was administered, is that correct?
- 4 A Yes, sir.
- 5 Q Is that also an antibiotic?
- 6 A Right.
- 7 Q To your knowledge, does it have any hallucinogenic
- 8 effects?
- 9 A Not to my knowledge.
- 10 Q To your knowledge, does it have any pain-killing effects?
- 11 A Not to my knowledge.
- 12 Q During the time that Joshua was in the emergency room,
- 13 do you have any records that he was administered any
- 14 anesthetics?
- 15 A No, sir.
- 16 Q Do you have any records that he was administered any
- 17 pain-killers?
- 18 A No, sir.
- 19 Q Or any drugs that are hallucinogenic?
- 20 A No, sir.
- 21 Q Do you recall a uniformed Sheriff's Deputy being present
- 22 in the emergency room?
- 23 A Vaguely.
- 24 Q Did you make any notes about any activities that the
- 25 uniformed Sheriff's Deputy did in the emergency room?
- 26 A That's a hard one to answer, sir.

0008425

1 Q Did you make any notes about questioning of Joshua by
2 a uniformed Sheriff's Deputy?

3 A Can I make a clarification?

4 Q Sure.

5 A As I recall, there were very well some uniformed Sheriffs
6 How many I don't recall. But there were also plain-
7 clothes. As far as who was doing the questioning, at
8 this point it's too vague for me to say whether it was
9 uniformed or it was plain clothes.

10 Q Did at some point in time a Sheriff's officer ask Joshua
11 some questions?

12 A Yes.

13 Q How long did he question Joshua in the emergency room?

14 A Referring to this document, I wrote in there that the
15 Sheriff's officer talked to him for about 20 minutes.

16 Q Was Joshua able to speak?

17 A No.

18 Q How did the Sheriff's officer talk to Joshua?

19 A I was able to ascertain that Joshua was able to write
20 and some of us, our staff made available to him a clip-
21 board with some paper on it for him to write to communi-
22 cate to us back and forth. He also answered many yes
23 and no questions by nodding or shaking of his head.

24 Q The yes and no questions that he was being asked, were
25 those by both staff and police?

26 A Yes.

0000429

1 Q Did you note a time when Joshua first began to write?

2 A oh, at 1423, I have written that he wrote the name
3 "Josh Ryen" on a sheet of paper but I did not say
4 whether that was his first writing, so I can't be sure
5 whether that was the first writing or not.

6 Q You have noted that Joshua tried to write his name.
7 Did he also write his date of birth?

8 A That's what I have written in my note.

9 Q Do you have an independent recollection of that?

10 A No, sir, I don't.

11 Q So you are just going based on the notes that you took
12 at the time that this was happening?

13 A That's right.

14 Q At any time before Joshua wrote his name and date of
15 birth, did he attempt to speak?

16 A Yes. At 1357 I in fact documented that he was attempting
17 to verbalize.

18 Q How did he do that?

19 A Movement of his lips. And I could tell by his breathing
20 that he was putting forth every effort to move air to
21 talk.

22 Q Was he being treated by any particular physician at that
23 point in time?

24 A Are you referring to the time of his attempting
25 verbalization?

26 Q Yes.

0000427

- 1 A Not any one physician in particular.
- 2 Q Was there a Dr. Shahhal treating Joshua?
- 3 A I can't go by recollection, but all I can go by is my
- 4 note and that will be true.
- 5 Q According to your note, Dr. Shahhal was treating Joshua?
- 6 A Yes.
- 7 Q What specialty within the hospital is he?
- 8 A His specialty is neurosurgery.
- 9 Q Do you recall what wounds Joshua had when he arrived
- 10 at the emergency room?
- 11 A Yes, I do.
- 12 Q What were they?
- 13 A I won't say that I know what all of them were.
- 14 Q Okay.
- 15 A But the two that I was aware of at least at the time was
- 16 a scalp laceration and a laceration in his neck region.
- 17 Q The neurosurgeon, Dr. Shahhal, would be treating which
- 18 of those wounds?
- 19 A He would have been more concerned with the scalp lacera-
- 20 tion and underlying structures in the scalp.
- 21 Q In testing for the effect of scalp lacerations on
- 22 underlying structures, does Dr. Shahhal ask questions?
- 23 A I'm not sure what you are asking.
- 24 Q When a neurosurgeon is attempting to determine whether
- 25 or not a blow to the scalp has caused any --
- 26 THE COURT: Counsel, I wish you would confine the

0008428

7-8

1 question to what he may have done on this particular occasion.

2 Q (BY MR. NEGUS:) On this particular occasion, was Dr.
3 Shahhal, in order to determine what effect the laceration
4 had on Joshua, asking Joshua any questions?

5 A I don't have any documentation of that and I don't
6 have any direct recall of that.

7 Q Did you attempt, according to the chart, to document
8 whether or not Joshua was alert and aware?

9 A Yes, sir.

10 Q And was he?

11 A Yes, sir, he was.

12 Q For example, did he appear to have control over his
13 eyes, his eye movements?

14 A I can't answer that with a yes or no.

15 Q Answer as best you can.

16 A Okay. In that he had spontaneous eye opening without
17 any painful stimuli to cause him to be alarmed or what
18 have you, he did seem to have control, according to my
19 note here.

20 Q What about his motor responses, were they also consistent
21 with him being alert and conscious?

22 A There again, yes, and they were obedient in terms of
23 instructions given to him, what have you.

24 Q When you went with Joshua to the CAT scan room, did
25 the police officers go with you?

26 A I don't recall, sir.

(No omissions.)

00004207

- 1 Q When Joshua wrote his name, can you recall whether or
2 not it was legible?
- 3 A No, sir, I can't.
- 4 Q During the time that Joshua was being questioned, was
5 he asked how many people had attacked him?
- 6 A I don't recall.
- 7 Q Were you interviewed by Mr. Forbush here, the gentleman
8 with the grey hair in the middle, in October of this year?
- 9 A I know -- I know it was sometime last fall, but I don't
10 remember the exact date. I don't even remember the
11 exact month.
- 12 Q At that point in time, was your memory of this event in
13 June clearer than it is now?
- 14 A I would suspect it probably was.
- 15 Q I note you're -- it would appear you're taking care to
16 be very precise in your answers now, is that correct,
17 about what you remember, what you don't remember?
- 18 A Sure.
- 19 Q Were you taking equal care when Mr. Forbush was talking
20 to you back in the fall?
- 21 A I'd like to think I was.
- 22 Q When Mr. Forbush talked to you, did he provide you a
23 copy of your Trauma Room Record for you to consult?
- 24 A Yes, he did. I didn't sit there with it and answer each
25 question in relation to it, though.
- 26 Q But he gave it to you to look at and you had it available

008430

1 to you if you needed to consult it?

2 A I didn't feel as free to use it at that time. It was
3 in a folder. It was not removed from the rest of the
4 papers. And when I first walked into the room, it was --
5 as I recall, it was presented to me in the folder, and I
6 don't know whether the folder was even left laying on
7 the table or not. But I didn't have quite the freedom
8 to use it as I do here.

9 Q Okay. So at that point in time, you were relying more
10 on your memory than on the chart when you were talking
11 with Mr. Forbush?

12 MR. KOCHIS: Your Honor, again, I'm going to object.
13 That's leading and suggestive.

14 THE COURT: Sustained. Don't answer.

15 Q (BY MR. NEGUS:) When you were talking to Mr. Forbush,
16 were you relying more on your memory or more on the
17 chart?

18 A Obviously more on my memory.

19 Q Do you recall telling Mr. Forbush that Joshua was asked
20 a question?

21 MR. KOCHIS: Your Honor, at this point I'd be
22 interposing a hearsay objection. It's not going to be a
23 prior inconsistent statement, because the witness says he
24 simply cannot recall. I think under People vs. Green there
25 has to be a further foundation that he's being evasive or
26 whatever.

0000431

1 THE COURT: I think he's correct as far as the Green
2 case is concerned.

3 MR. NEGUS: The Green case, if I recall correctly,
4 had to do with confrontation problems, which I don't think
5 the Prosecution has any standing to raise.

6 THE COURT: It specifically talks about the answer
7 "I don't recall" being equivalent to a refusal or a denial,
8 but only where there's first a preliminary finding that the
9 witness is being deliberately evasive or misleading or vague.

10 MR. NEGUS: What I was suggesting is -- maybe I don't
11 have the Green case in front of me and --

12 THE COURT: There's Green 1 and Green 2.

13 MR. NEGUS: I don't have either in front of me. It's
14 been some time. But my recollection was that the problem
15 in that particular case was one of confrontation, and if
16 that is -- if I'm correct about that, I don't think the
17 Prosecution has a confrontation, and so that problem may
18 not exist.

19 THE COURT: Counsel, if you think it important enough,
20 we can save it until the recess and look it up. But right
21 now I think I should sustain the objection. We can come back
22 to it.

23 MR. NEGUS: Can I just articulate the question
24 before we have the objection sustained?

25 THE COURT: Yes.

26 MR. NEGUS: I was interrupted before.

0000472

1 THE COURT: All right.

2 Q (BY MR. NEGUS:) Do you recall telling Mr. Forbush that
3 Joshua was asked the question how many people attacked
4 you and answering that Joshua held up three fingers?

5 THE COURT: Don't answer.

6 MR. KOCHIS: There's an objection to that question.

7 THE COURT: All right. We'll pass that and come back
8 to it later, perhaps.

9 Q (BY MR. NEGUS:) Does my asking you that question refresh
10 your recollection as to your conversation with Mr.
11 Forbush?

12 A Yes, it does.

13 Q Does it refresh your recollection as to whether or not
14 Joshua was asked the question how many people attacked
15 you?

16 A It's getting pretty vague.

17 Q Do you remember telling Mr. Forbush that -- is your
18 recollection now refreshed so that you can remember
19 telling that to Mr. Forbush?

20 A Yes.

21 MR. KOCHIS: Your Honor, I'm going to object. It's
22 leading and suggestive and calls for a hearsay foundation.

23 MR. NEGUS: He's already testified that he was being
24 as accurate as he possibly could with Mr. Forbush and that
25 he now remembers telling that to Mr. Forbush and that he
26 was describing --

000433

1 THE COURT: It's still leading and suggestive,
2 Mr. Negus.

3 MR. NEGUS: Well, Your Honor, I think with respect
4 to leading questions, when witnesses have problems, one's
5 allowed to refresh their recollection using any means.

6 THE COURT: I'm not permitted that. The objection
7 was not to that. Now, you're specifically asking do you
8 recall telling him such and such. That's sustained.

9 Q (BY MR. NEGUS:) What did you tell Mr. Forbush about
10 Joshua's answer to a question about attackers and how
11 many there were?

12 MR. KOCHIS: I would object to that. That calls for
13 hearsay. If he can recall now apparently what Joshua said,
14 that's one thing, or communicated. But his statements out
15 of court at an earlier period of time are hearsay.

16 THE COURT: Overruled. Go ahead.

17 THE WITNESS: I can't recall accurately what I told
18 in numbers to Mr. Forbush at the time.

19 Q (BY MR. NEGUS:) Do you recall whether or not Joshua
20 was asked how many attackers there were?

21 A Vaguely.

22 Q And do you recall whether or not Joshua described the
23 race of the attackers?

24 A He described them as being just three white males. Can
25 I further explain how --

26 Q Sure.

0000444

26 Q Do you have some documents? What documents do you want

1 to refer to?

2 A It's a Xerox copy of an interview that I had with
3 somebody, and after my interview with Mr. Forbush.
4 But as far as their names, I don't recall their names.
5 I was going to refer to the document to see if there
6 was that name.

7 Q Did the sheriff's office provide you with a Xerox of that
8 document?

9 A Yes.

10 Q All right. Go right ahead.

11 A You mentioned the name O'Campo?

12 Q Yes.

13 A Yes, that name is here. And Woods?

14 Q Yes.

15 A The last name Woods is indicated. I don't see -- the
16 first name is hard to read in the copy.

17 Q So would your recollection be refreshed it was sheriff's
18 officers on January 4th, and you remember the name O'Campo?

19 A I don't remember the name. I only saw it written.

20 Q Okay.

21 A And in that sense only.

22 Q When you spoke to Mr. O'Campo and Mr. Woods, did you
23 likewise describe to them Joshua's statement that his
24 attackers were three white males?

25 A I believe I probably did.

26 Q Did that interview with the two detectives from the

0000436

1 sheriff's department get tape recorded?

2 A Yes, sir.

3 Q Did Joshua describe the approximate time that he was
4 attacked?

5 A Seems that he did, yes.

6 Q Do you recall whether it was, for example, during the
7 day or during the night?

8 A As I recall -- you want me to answer directly as you
9 asked it?

10 Q Sure.

11 A Yes. He indicated it was night.

12 Q Then did he give an approximate time?

13 A He was -- as I recall his impression was that it was
14 sometime early a.m., early morning.

15 Q At the time that Joshua was being questioned in the
16 emergency room, did you and the medical staff know whether
17 or not he was going to be able to remain conscious?

18 A I don't recall anything occurring that would have been
19 suggested of his -- of physical condition resulting in
20 impending unconsciousness.

21 (No omissions.)

22

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008437

- 1 Q Were you and the medical staff attempting to get informa-
- 2 tion from Joshua to make sure that you got information
- 3 in case he did go unconscious?
- 4 A I would say that would be true.
- 5 Q Did that include information about the persons responsible
- 6 for his injuries?
- 7 A Can I give an explanation of that?
- 8 Q Sure.
- 9 A Frequently what we try to do, and as I recall the
- 10 situation with Joshua, is that it helps us as medical
- 11 staff, especially the physicians and surgeons, to have
- 12 kind of an environmental picture of how injuries may have
- 13 occurred, and by that it gives them some idea as to the
- 14 extent of injuries that they might be suspecting, and
- 15 so by asking Joshua questions pertinent to how he was
- 16 injured, it would be to try to get a total picture
- 17 of what injuries he might have sustained that they would
- 18 be interested in treating.
- 19 Q Were those questions asked then of Joshua?
- 20 A I don't remember specifically, but my experience in the
- 21 profession is that it frequently occurs, it occurs with
- 22 practically every patient to try to get a total picture.
- 23 Q Did Joshua give any details about the attack?
- 24 A I don't recall any.
- 25 Q Do you recall Joshua indicating he was wakened by noise
- 26 or commotion?

000438

1 MR. KOCHIS: I again object. It's leading and sugges-
2 tive.

3 THE COURT: Sustained.

4 Q (BY MR. NEGUS:) Did that question refresh your recollec-
5 tion as to any details Joshua may have given?

6 A Yes, it does.

7 MR. KOCHIS: Excuse me, your Honor. He has answered
8 the question. At this point I would interpose an objection.
9 It's an improper method of refreshing someone's recollection
10 to suggest to them and then ask them if it refreshes their
11 memory.

12 THE COURT: You can refresh recollection with any
13 kind of writing.

14 MR. NEGUS: Or any means, I believe.

15 THE COURT: I'm not sure if it can be done orally.
16 I can't recall a prohibition on it. And he answered yes.
17 Ask another question.

18 Q (BY MR. NEGUS:) What details do you recall?

19 THE COURT: What does it refresh in your mind now
20 about details?

21 THE WITNESS: I can't think of anything further that
22 we haven't already covered, and that was that he was awakened
23 by noise and he perceived that it was still dark, and he
24 estimated that it was -- as I recall, it seems the time
25 frame that he gave was somewhere around four or five in the
26 morning, before the sun had come up, and at this point I don't

0000439

1 recall any further details.

2 Q (BY MR. NEGUS:) Did Josh ask any questions about his
3 parents?

4 A There again that question brings to mind, yes, he did.

5 Q What did he ask?

6 A He asked how his mother and father were. I don't remember
7 specifically how he worded it.

8 Q Was he told anything by this medical staff?

9 A I don't recall.

10 Q Do you recall any reaction by Josh which suggested
11 knowledge or lack of knowledge as to the condition of
12 his parents?

13 A I know I vaguely remember we gave him an answer. I
14 don't recall what the answer was. I vaguely remember
15 that it didn't generate any surprise, whatever the
16 answer was that was given, that he emotionally appeared
17 to be -- he appeared to remain stable emotionally after
18 that information was given.

19 Q When you talked to Mr. Forbush in October, was your
20 memory more precise on that issue?

21 A I can't help but say yes, it had to have been.

22 Q Do you remember discussing that particular issue with
23 Mr. Forbush at that time?

24 A No, sir.

25 Q Since you talked to the Sheriff's detectives in January,
26 have you discussed the subject of your testimony here

008440

1 today with anybody?

2 A Not in any detail.

3 Q What do you mean by that, just that you were going to
4 testify but nobody went over any charts with you or any-
5 thing of that nature?

6 A That's as far as it went.

7 Q Who was that that you talked to?

8 A I don't know.

9 Q Mr. Forbush hasn't come back to reinterview you or talk
10 to you?

11 A No, sir.

12 Q And I haven't had any contact with you except to say "Hi,"
13 in the hall, is that right?

14 A That's right.

15 Q Today was the first time I ever met you?

16 A That's right.

17 Q And you haven't had any contact with Mr. Arthur or
18 Mr. Kochis, either?

19 A No, sir.

20 Q Are you still employed at Loma Linda Hospital?

21 A Yes, I am.

22 Q When you talked to the Sheriff's officers in January,
23 was your memory likewise clearer than it is now?

24 A I have to say yes to that.

25 Q Do you recall approximately how long that that interview
26 took?

008441

1 A No, I don't.

2 Q Could have been half an hour or more?

3 A It could have been.

4 Q And did they ask you many of the same questions that
5 I'm asking you here today?

6 A I don't recall the details.

7 Q Did they ask you about the same general subject matter
8 as I have been asking you about today?

9 A That's true, yes.

10 MR. NEGUS: Nothing further.

11

12 CROSS-EXAMINATION

13 BY MR. KOCHIS:

14 Q Mr. Fischer, does Mr. Gamundoy still work at the
15 hospital in Loma Linda?

16 A Yes, he does.

17 Q He is outside the courtroom right now?

18 A That's true.

19 Q Did the two of you come over here together today?

20 A Come over to where?

21 Q The courthouse.

22 A No, we didn't.

23 Q Have the two of you talked in the last week or so since
24 you have received your subpoenas from Mr. Negus about
25 the fact that you will be coming to court to testify?

26 A Yes, we have.

008442

1 Q Did you at all touch base with each other about what you
2 recall taking place back on June the 5th, 1983, in the
3 emergency room?

4 A No. We both mutually agreed that we wouldn't discuss
5 it between ourselves.

6 Q It appeared, and correct me if I'm wrong, that through
7 each of Mr. Negus' questioning of what took place in
8 the emergency room, you had to rely on the trauma room
9 chart that you have in front of you on the witness stand,
10 is that correct?

11 A Ask it again, please.

12 Q YOu have your trauma room chart in front of you on the
13 witness stand, is that correct?

14 A That's right.

15 Q And when Mr. Negus asked you a number of questions about
16 what took place on June the 5th with Joshua, you could
17 not recall without looking at the chart itself, is that
18 correct?

19 A That's correct.

20 Q Is it fair to say that much of what you testified to here
21 today is limited by what may be typed on that document?

22 A That's true.

23 Q Directing your attention to what appears to be the back-
24 side of that document, the notation that appears
25 adjacent to the time of 1346, do you recognize that
26 printing?

008443

1 A Yes, I do.

2 Q Is that your printing?

3 A Yes, it is.

4 Q The printing that is adjacent to the entry of 1357, is
5 that your handwriting and the handwriting of another
6 person?

7 A That's my handwriting.

8 Q Are the other entries on that particular page under
9 nursing notes, are all of those yours or are any of
10 those from another person?

11 A They are all mine.

12 Q Do you make any effort when you place notes in the
13 nursing note column to ascertain if the information is
14 correct or not?

15 A That's a hard one to answer with a yes or no.

16 Q Well, let me ask it this way. The notations that you --

17 MR. NEGUS: Could we -- I don't believe the witness
18 is under any obligation to answer questions yes or no. I
19 mean it's like --

20 THE COURT: There is no dispute pending, Mr. Negus.

21 MR. NEGUS: I think he is under that misapprehension
22 that he has to answer yes or no.

23 THE COURT: I have to some extent instructed him, and
24 I think it's usual and the best policy to answer questions
25 yes or no if he can, and if he needs to explain, he can
26 explain. Particularly with expert witnesses, they are generally

0008444

1 permitted it. In any event, there is no question pending.

2 MR. NEGUS: To the last question he was asked, he
3 said, "I don't think I could answer yes or no."

4 MR. KOCHIS: Your Honor, I'm going to go into that.
5 If Mr. Negus isn't satisfied with it, he will have some
6 redirect, I'm sure.

7 THE COURT: Would you please proceed.

8 Q (BY MR. KOCHIS:) What type of information do you put
9 in the nursing note column?

10 A It would be further information that the flow sheet
11 itself would not cover, the chart, the graph, filling
12 in the spaces, that type of thing.

13 Q For example, directing your attention to the entry that
14 appears next to the time 1346, apparently you printed
15 four lines of words. Do you see those?

16 A Yes.

17 Q In response to Mr. Negus' questions apparently you
18 received that information from someone other Joshua
19 Ryen, is that correct?

20 A That's correct.

21 Q You would not have made any attempt to ascertain whether
22 or not that information was in fact correct? You would
23 simply write it on the chart, is that correct?

24 A Yes, that's true.

25 Q For example, you wrote on the chart in regard to patient
26 was assaulted, apparent knife and gunshot. Do you see

008445

1 that?

2 A Right.

3 Q And you had a chance to look at Joshua Ryen when he was

4 in front of you on the bed, isn't that true?

5 A That's true, I did have.

6 Q And you had treated people before who had gunshot

7 wounds?

8 A Right.

9 Q And you didn't see on Joshua a gunshot wound?

10 A Keep in mind, too, that I had not seen all gunshot wounds

11 and so I don't know all the natures of the kinds of wounds

12 that they can leave.

13 Q What I'm getting at is when you made this entry, you

14 weren't doing an independent check, for example, that

15 you had some information, you looked at the patient and

16 it wasn't consistent?

17 A Can I explain that from my recollection of the situation?

18 Q About why you put the entry down?

19 A Right. Where that information may have come from.

20 Q Do you recall where the information came from? Mr. Negus

21 asked you and you said you don't at this point recall

22 where the information came from.

23 A I don't recall specifically, yes, but I don't know whether

24 it came from a radio transmission previous to his

25 arrival or whether it was a paramedic that had come on

26 the scene and that's what they were expecting and that's

008446

1 the picture that we had been given, or, you know, for
2 whatever reason. Certainly I'll try to make my record
3 as accurate as possible, but one of the things that
4 I try to do in the nurse's notes is to try to draw
5 a mental, or draw some kind of a picture as to how this
6 person received these injuries, and at that point from
7 the information that we were getting, it was suspected
8 of being either knife or gunshot or both, and that's
9 why that entry was made.

10 (No omissions.)
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1 Q But my question would be when you make an entry you
2 don't then do any independent investigation on your own
3 to determine whether or not this information is correct;
4 you more or less take it at face value and put it down
5 in the chart?

6 A That's right.

7 Q Then you also noted under that that the patient attempted
8 to verbalize but he in fact never spoke a word during
9 the time you saw him that day; is that correct?

10 A That's correct.

11 Q So, for example, when Mr. Negus asked you if Joshua has
12 asked about his parents, whatever impression you got from
13 Joshua was not any type of verbal communication; is that
14 true?

15 A That's true.

16 Q Now, when you first saw Joshua, was he already in the
17 operating room -- in the emergency room?

18 A Yes, he was.

19 Q Was Mr. Gamundoy in there as well?

20 A I don't recall just when he arrived.

21 Q Was Joshua on a bed when you first saw him?

22 A Yes, he was on one of our emergency room gurneys.

23 Q And was there someone close to him who was attempting
24 to establish a method of communicating with Joshua?

25 A I don't recall.

26 Q Were you present when anyone attempted to communicate

0000440

- 1 with Joshua using a system of blinking their eyes?
- 2 A That rings a bell, but I couldn't spontaneously recall
- 3 that.
- 4 Q In any event, you did not attempt to communicate with
- 5 Joshua by an eyeblinking system, did you?
- 6 A I don't recall that I did.
- 7 Q Let me ask you this, Mr. Fischer. Do you recall were
- 8 you personally, if you can think back now, were you
- 9 involved with Joshua directly trying to get information
- 10 out of him through whatever method or were other people
- 11 actually involved in that?
- 12 A Other people were actually involved in that, and I was
- 13 overhearing.
- 14 Q How far away from Joshua would you have been where you
- 15 were standing when people were trying to communicate with
- 16 Joshua?
- 17 A That would have varied.
- 18 Q What's the furthest away from Joshua you ever got?
- 19 A Completely out of the room.
- 20 Q What's the closest to Joshua?
- 21 A At his bedside.
- 22 Q Were there times when you could not see Joshua's face
- 23 when people were trying to get information from Joshua?
- 24 A There would have been, yes.
- 25 Q Now, do you remember who was trying to get information
- 26 from Joshua by having Joshua use something to write with?

0008449

1 A I may have had some part possibly in that. I'm not sure.
2 As I recall, Mr. Gamundoy may have gotten the pen and
3 paper. He may have been the one that had gotten that.
4 Whether it was him that was standing there prompting him,
5 I can't be sure.

6 Q Did you ever yourself speak to Joshua while he was in
7 the emergency room?

8 A I'm sure I must have.

9 Q Do you recall, were you just assuring him or were you
10 talking about treatment that he was going to receive or
11 were you asking him questions about what had happened
12 before he arrived at the hospital?

13 A My questions would have been concerned with the treatment
14 that he may be getting and where he may be hurting at
15 the time or that type of thing rather than what went on
16 before his arrival.

17 Q To treat him, did you ask him questions about the type
18 of injuries he had received, where on his body he was
19 injured?

20 A I don't remember specifically, but that's certainly with-
21 in the realm of my duty.

22 Q Did you note anywhere on the trauma room chart that you
23 asked Joshua questions about where on his body he was
24 injured?

25 A No, sir. It doesn't seem to be indicated.

26 Q Did you note anywhere on the trauma room chart any of

008450

1 the questions that you heard persons ask Joshua about
2 what had happened to him at the house?

3 A. No, sir.

4 Q. Did you write anywhere on the chart any of the information
5 that people might have interpreted as coming from Joshua
6 as to what took place at the house?

7 A. Could you ask that again?

8 Q. I can try. On the trauma room chart, for example, do you
9 include anywhere on the chart a description of the
10 attack?

11 A. Not routinely, and I certainly don't see anything in
12 my notes here.

13 Q. Did you include in this case on Joshua's trauma room
14 chart anything in writing about description of any
15 suspect or suspects?

16 A. No.

17 Q. Did you include on the chart any notations about the
18 time in which the incident allegedly occurred?

19 A. No. I have no indication of that.

20 Q. Is it fair to say that in your capacity you're there
21 to assist in treating an injured person?

22 A. That's fair to say.

23 Q. You don't function as a quasi law enforcement officer
24 in gathering details of suspect descriptions, do you?

25 A. No.

26 Q. Do you recall if Joshua was seated up or if he was laying

000451

1 down when he was handed whatever writing instrument he
2 was handed to communicate with?

3 A As I vaguely recall, he wasn't sitting completely upright.
4 He was at about a 45-degree, sitting at about a 45-degree
5 angle.

6 Q Is it true that although an attempt was made to get Joshua
7 to communicate by writing, they were unable to do that?
8 He was unable to write legibly? Do you recall that?

9 A I vaguely recall that there was -- that we had difficulty
10 making out his name as being Josh because of the --
11 because it was hard to read his writing.

12 Q It was not legible?

13 A Yeah.

14 Q Then was it decided that another method of communication
15 would be attempted?

16 A I don't recall.

17 Q Do you remember someone using a clipboard with letters
18 on it?

19 A Not right off.

20 Q Do you remember a system that was devised under which
21 Joshua was to nod or shake his head if someone pointed
22 to a correct piece of information? Do you remember
23 that at all?

24 A As I recall, that method was certainly used.

25 Q Was that used by the hospital staff as opposed to the
26 sheriff's personnel that were there?

0000452

- 1 A I don't remember accurately. At this point I would say
2 it was probably used by both.
- 3 Q Do you remember a deputy sheriff by the name of Dale
4 Sharp being in the emergency room and talking to Joshua?
- 5 A No, sir.
- 6 Q Do you remember a deputy sheriff being present who used
7 a hand squeeze system to attempt to communicate with
8 Joshua?
- 9 A No, sir, I don't.
- 10 Q Did you see anyone holding Joshua's hand and asking
11 Joshua questions?
- 12 A I sure don't remember.
- 13 Q Did you yourself ask Joshua any question about suspect
14 description or was that done by other people?
- 15 A As I recall, it was done by other people. I don't recall
16 getting involved with asking him those types of questions.
- 17 Q Then the information you've given to Mr. Negus, the
18 information you recall coming from Joshua about possible
19 suspect description, would it be fair to say that that
20 came to you not from Joshua himself but from other people
21 who may have been talking to Joshua and interpreting
22 signs he was making back to them?
- 23 A That sounds fair to say, yeah.
- 24 Q For example, you weren't sitting next to the deputy
25 sheriff that interviewed Joshua and taking notes of the
26 method he was using to communicate with Joshua; that's

008453

1 true, isn't it?

2 A That's right.

3 Q And if you can't recall what method he used to communicate
4 with Joshua, you can't recall what responses Joshua
5 was giving to the questions he was asking. Would that
6 be fair to say?

7 A That would be fair. It just seems that vaguely what I
8 would overhear would be a yes or no response from him
9 and they would ask him a question to verify what he had
10 communicated to them, and they, you know -- type of
11 thing, are you saying this and this, and they would say
12 is that yes or no, and he would either nod or shake his
13 head, that type of thing. As I recall this, that's
14 how I overheard what they were learning.

15 Q Now, you started on your explanation by saying basically
16 I would overhear a yes or no response from him, but he
17 wasn't making any yes or no verbal responses; isn't that
18 true?

19 A Yeah, that's true.

20 Q So what you may hear is you may hear another person
21 asking the question, for example?

22 A That's right.

23 Q And then you may overhear an interpretation of what
24 response Joshua had given back to the person. Is that
25 fair to say?

26 A That's fair to say.

0008454

1 Q But you weren't actually involved in that information-
2 getting process from Joshua yourself?

3 A No, sir, I was not.

4 Q You apparently do recall somehow in the emergency room
5 three white males, that description coming out?

6 A Yes, I do somehow recall that.

7 Q Were you in the room when that took place, or was that
8 something someone later told you?

9 A As I recall I was in the room.

10 Q Is it possible you were out of the room when that took
11 place?

12 A It's vague enough now I couldn't put a finger on it and
13 say where I was.

14 Q Do you recall what method was being used to attempt to
15 communicate with Joshua when that description was arrived
16 at?

17 A Ask it again? I'm sorry.

18 Q Do you recall when that description came up, the three
19 white males, if they were using the eyeblink method with
20 Joshua, if they were using the hand squeeze method with
21 Joshua, if they were pointing to letters, if they were
22 having Joshua point to letters?

23 A I see.

24 Q Do you recall what they were doing to try to communicate
25 with Joshua at that time?

26 A No, sir, I don't.

00004555

1 Q So you don't know between Joshua and the hospital
2 personnel how that description was arrived at basically?

3 A That's right.

4 THE COURT: Counsel, he's been there quite a while.
5 Why don't we take a 15-minute recess and resume.

6 Mr. Fischer, give you a break.

7 (Recess.)

8 (No omissions.)

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008456

1 THE COURT: All right.

2 Q (BY MR. KOCHIS:) Mr. Fischer, again directing your
3 attention to the back page of ^{the} trauma room record,
4 specifically to the nursing notes that appear in the
5 right-hand portion of that page, is there any chrono-
6 logy to the notes themselves in addition to the times
7 that appear in the left column under time?

8 A Are you referring to this approximation of 1445?

9 Q No. I'm referring from the line at the top of the page
10 under nursing notes where it says, "Patient brought in"
11 through the last line which has the time of 1445. Are
12 they written in a chronological sequence or not?

13 A Yes, I would say they are.

14 Q For example, would your observations about what took
15 place on the first four lines adjacent to the 1346 time
16 have been the first entry you made on that particular
17 chart?

18 A That's right.

19 Q And then would the seven-line entry that you made
20 adjacent to the 1500 time, would that have been the
21 last entry that you made on that particular page?

22 A That's right.

23 Q As a matter of practice, when do you make the notations
24 under the nursing note column in relationship to when
25 you obtain the information?

26 A As soon as possible.

0008457

11-2

1 Q For example, in this case, was the first thing that would
2 have occurred in terms of chronological sequence be that
3 you would have received that information that ~~a~~ patient
4 was being brought in from a residence and that a -- from
5 a residence in which there had been a multiple homicide?

6 A That's right.

7 Q Then you would have made that notation?

8 A Right.

9 Q In terms of chronology, after that took place, would
10 you have received some information that the patient
11 was attempting to verbalize in response to questions?

12 A That's right.

13 Q And you would have made that notation?

14 A Yes, indeed I did.

15 Q And then there was a note that some medical procedures
16 had been performed on Joshua Ryen, that he had had
17 his head shaved, for example?

18 A Right.

19 Q And then after that took place, after Josh had his head
20 shaved, you received some information that he had
21 attempted to write his name and his date of birth and
22 noted that on the chart, is that true?

23 A That's true.

24 Q Then after that took place, you noted that Josh was
25 set up in the CT scan room?

26 A That's right. That's the way I wrote it.

00004500

1 Q Now, does it appear from your notes that you actually
2 accompanied Josh to the scan room?

3 A Yes.

4 Q Then the next thing that appears in your notes on the
5 chart after Josh being set up in the scan room is the
6 information that you noted on the chart about Josh
7 being asked a number of questions by a Deputy Sheriff,
8 is that fair to say?

9 A Yes. That's what was written next.

10 Q Is it also fair to say that at this point, without the
11 chart you can't recall independently whether or not
12 you went to the scan room?

13 A That's true.

14 Q But in terms of when you made the notations, you noted
15 on the chart at least in terms of the chronological
16 sequence on the chart that the questioning you described
17 took place after he was set up in the scan room?

18 A The questioning by the Sheriff's officer?

19 Q Right.

20 A From my recollection, the Sheriff's officers did their
21 questioning before he went to CT scan.

22 Q That's what you recall at this point?

23 A That's what I recall at this point.

24 Q From the chart in front of you, in terms of the
25 chronological sequence, it appears that the questioning
26 took place in the scan room or after he had been set up

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1 in the scan room, doesn't it?

2 A Yes, it does.

3 MR. KOCHIS: I don't have anything further.

4

5 REDIRECT EXAMINATION

6 BY MR. NEGUS:

7 Q The portion of the record which describes the patient
8 answered via nodding of the head many questions for
9 Sheriff's office for plus or minus 20 minutes, that
10 occurs just prior to your notation "taken to CAT scan
11 room at 1445 hours, is that correct?

12 A That's correct.

13 Q So in terms of chronology, the only thing that's out
14 of chronology is the 1500 notation about when he was
15 set up in the CAT scan, is that correct?

16 A Yes. I perceive that what I did here was after returning
17 from the CT scan at 1600 hours, I made this additional
18 note, and that's why at the tail end of the note I said
19 "Patient to CT scan at about 1445 hours." But that
20 whole seven line note was made at 1500 hours.

21 Q And there is nothing in your note itself other than --
22 there is nothing in the note as to where the questioning
23 took place, is that correct?

24 A That's true.

25 Q Is it normal procedures for officers to go into the
26 CT scan room?

0008460

- 1 A No, sir, it's not normal.
- 2 Q When you say "anesthesia assumed patient care," do you
3 remember who it was?
- 4 A No, I don't.
- 5 Q Is there a Dr. Wilkinson that works at Loma Linda Hospital
6 who is an anesthesiologist?
- 7 A I'm not aware of a Dr. Wilkinson.
- 8 Q Is there a Wilkinson that works there?
- 9 A I know of a nurse by the name of Wilkinson and he did
10 in fact go into nurse anesthesia, which in some cases
11 he can function as an anesthesiologist with the special
12 training he has gotten.
- 13 Q Showing you from the chart a document which is dated
14 6/5/83 and indicates that it's an anesthesia record,
15 is that again a record that's kept in the course of
16 business at Loma Linda Hospital?
- 17 A Yes, that would be true.
- 18 Q And does that indicate that that is for the patient
19 Josh Ryen?
- 20 A Yes, that would be true, too.
- 21 Q Can you tell from that record who it was that you
22 contacted when you got to the CAT scan room and met
23 the person there?
- 24 A I see a signature but I can't read it. That would be
25 my only clue.
- 26 Q There is a signature on it?

008461

- 1 A Under the anesthesiologist's box, his box where he would
2 sign.
- 3 Q Do you recall an anesthesiologist named Hildebrandt being
4 with you back in the trauma room?
- 5 A No, sir.
- 6 Q Do you have a record of an anesthesiologist named
7 Hildebrandt being with you in the trauma room on your
8 trauma room record?
- 9 A Yes, I do.
- 10 Q Would that anesthesiologist have gone with Josh to the
11 CAT scan room?
- 12 A That's possible. Yes, that would be possible that he
13 had gone, but I don't recall whether it was the same
14 anesthesiologist in the emergency room that was also
15 there at the scan. I don't recall.
- 16 Q Does the --
- 17 A You had asked about the name Wilkinson earlier.
- 18 Q Right.
- 19 A I happen to see his signature here. At least that
20 appears that that may be Wilkinson.
- 21 Q That would indicate that Wilkinson came there in relief
22 at some point in time during the operation?
- 23 A Right.
- 24 Q But he would not have been the person that you met?
- 25 A Could have been. I don't recall whether it was him or
26 who it was.

008462

- 1 Q Does that record indicate when the anesthesia was first
2 administered to Josh?
- 3 A You may be asking the wrong person. I don't have a
4 working relationship with this record.
- 5 Q If you don't know, then you don't have to answer, so the
6 answer is you don't really know.
- 7 A That's right, I don't know.
- 8 Q When Josh came into the emergency room, was he being
9 treated as if he were in danger of dying?
- 10 A I would say so, yes.
- 11 Q At some point in time did it appear that he was no
12 longer in danger of dying?
- 13 A Yeah, I would have that impression.
- 14 Q Approximately what point in time was that, if you can
15 tell?
- 16 A It would be unclear. Our initial concern would be,
17 first of all, is the status of his heart to maintain
18 adequate blood pressure and his breathing status for
19 oxygenation, and according to the record here, he was --
20 a breathing tube was placed for him and I would say that
21 once that breathing tube was placed and we knew that we
22 had control of his breathing status, that that would
23 alleviate some of our anxiety as far as knowing that
24 we had more control of his condition. At least his
25 breathing status would not be a problem for him at that
26 point.

(No omissions.)

008463

1 Q That was done at 1:50?

2 A It's documented here at 1350. That's right, 1:50.
3 That's right.

4 Q When you were talking to Mr. Kochis you indicated that
5 in the questioning of Josh, the same question was asked
6 in various different forms; that is, more than one way
7 to verify the answers. Did I understand you correctly?

8 A Yeah, yeah. I would say that that's true.

9 Q Some care was taken not just to go on one answer but to
10 repeat the question?

11 A To verify that the answer that they got was what they'd
12 understood they'd gotten.

13 Q So, for example, would they say the answer is yes and
14 then Josh would answer yes or no?

15 A Right.

16 Q So in essence the follow-up questions were communicating
17 to you Josh's previous answers?

18 A That's right.

19 MR. KOCHIS: Your Honor, at this point I think I'm
20 going to interpose an objection, no foundation. He's
21 testified that he wasn't involved in the questioning and
22 answer procedure with Josh Ryen. He doesn't know what
23 responses Josh was giving other than some hearsay information
24 that may be based on other people in the room. He's not in
25 a position to know what was taking place between Josh and
26 someone questioning Josh.

000464

1 THE COURT: Well, he could get part of it, at least.
2 It's like hearing one end of a telephone conversation.

3 I'm not precisely sure how your question was worded.
4 Do you want to ask it or another one again, please?

5 MR. NEGUS: Could I just ask, did the court reporter
6 get the question and the response of the witness?

7 THE REPORTER: Yes.

8 THE COURT: Read it back, if you would.

9 MR. NEGUS: I'm sorry. I don't like to do the read
10 back, but I don't remember exactly what I said and what he
11 said.

12 (Record read.)

13 THE COURT: It may remain.

14 MR. NEGUS: Nothing further.

15
16 RECROSS-EXAMINATION

17 BY MR. KOCHIS:

18 Q Mr. Fischer, the breathing tube that was placed in
19 Joshua's throat, was that done while he was still in the
20 emergency room?

21 A Yes.

22 Q And when you told Mr. Negus that normally peace officers
23 don't accompany victims to the CT scan room, do you
24 recall that exchange between you and Mr. Negus?

25 A Right, I do.

26 Q Was this a normal case, Joshua Ryen's case?

0000465

1 A As far as I recall.

2 Q Were there any unusual steps that were taken in this
3 case that weren't normally followed?

4 A In terms of his transfer to the CT department?

5 Q In terms of who went with him to the CT department.

6 A I don't recall anything abnormal taking place.

7 Q And you don't recall any peace officer in the scan room?

8 A I don't recall that, no.

9 MR. KOCHIS: I have nothing further.

10 MR. NEGUS: Nothing further.

11 THE COURT: Mr. Fischer, thank you very much for
12 your patience. You may step down.

13 MR. NEGUS: Don Gamundoy.

14 THE COURT: While we're waiting, for logistical
15 planning purposes, on Thursday I must break between 12:00
16 and 2:00 instead of 1:30. I hope that won't disturb your
17 plans too much.

18 THE BAILIFF: Please face the clerk, raise your
19 right hand.

20
21 D O N G A M U N D O Y, called as a witness by and on behalf
22 of the Defense, was sworn and testified as follows:

23 THE CLERK: You do solemnly swear that the testimony
24 you are about to give in the action now pending before this
25 Court shall be the truth, the whole truth, and nothing but
26 the truth, so help you God.

0088466

1 THE WITNESS: Yes.

2 THE CLERK: Be seated, please. State your name,
3 please, for the record and spell your last name.

4 THE WITNESS: First name of Don, middle name of
5 Danes, last name is spelled G-a-m-u-n-d-o-y, pronounced
6 Gamundoy.

7

8 DIRECT EXAMINATION

9 BY MR. NEGUS:

10 Q Mr. Gamundoy, what's your occupation?

11 A I'm a clinical social worker.

12 Q What does a clinical social worker do?

13 A In specific or general?

14 Q General.

15 A Render direct services to patient, family, and to
16 community.

17 Q Were you so employed in June of 1983?

18 A Yes.

19 Q With which hospital?

20 A Loma Linda University Medical Center.

21 Q On June 5th, 1983, did you receive a call to go to the
22 hospital to attend to a person who later became
23 identified to you as Joshua Ryen?

24 A Yes.

25 Q Approximately what time did you arrive at the hospital?

26 A I can't remember.

008467

1 Q Do you have any notes which would help you to remember?

2 A Not with me. But except what's been --

3 Q Showing you Exhibit H-1 and two sets of progress notes,
4 one indicating a social work note with 6-5-83, no time,
5 and then another social work note 6-5-83 at 1700 hours.

6 A Uh-huh.

7 Q Are those the documentation that you did of your work
8 with Josh Ryen?

9 A Yes.

10 Q Does that indicate approximately what time you arrived
11 at the hospital?

12 A On one of them it does.

13 Q What time was that?

14 A At 1700.

15 Q That's when the note was written?

16 A The second note I would assume.

17 Q It doesn't tell you what time you arrived for the first
18 one?

19 A No, it doesn't say.

20 Q Were you present at the hospital when Josh Ryen arrived
21 in the emergency room?

22 A When he arrived?

23 Q Yes, when he was --

24 A No.

25 Q Were you in the hospital at that time?

26 A No.

008468

- 1 Q When you got to the hospital, did you go directly to the
2 emergency room?
- 3 A Yes.
- 4 Q Do you remember what procedure was being performed on
5 Josh Ryen when you arrived in the emergency room?
- 6 A They were taking X-rays.
- 7 Q Had his head been shaved at the time?
- 8 A I don't know.
- 9 Q You couldn't see or don't remember?
- 10 A When I went in his head was bandaged, so I don't know if
11 it was shaven or hair was still there. Couldn't tell.
- 12 Q Were there any uniformed sheriff's deputies in the room
13 when you arrived?
- 14 A In the room? When you say in the room, you mean in the
15 emergency department or do you mean that specific room
16 where Josh Ryen was at?
- 17 Q Let's start with the specific room where Josh Ryen was
18 at. Was there anybody in there?
- 19 A No, not that I saw initially.
- 20 Q Were there any deputies in the wider area of the emergency
21 room?
- 22 A Yes.
- 23 Q Where were they?
- 24 A They were right outside of the room, the opening of the
25 door into the room.
- 26 Q When you arrived there, was Josh's name known? Do you

008469

- 1 know --
- 2 A Not to my knowledge.
- 3 Q Did you do anything to try and ascertain what his name
- 4 was?
- 5 A Yeah.
- 6 Q What did you do?
- 7 A First of all, when I came into the emergency department,
- 8 I wanted to get a report, report from the charge nurse
- 9 who had called me earlier saying that, you know, "Don,
- 10 we have a victim coming in by helicopter, possibly a
- 11 victim of a multi-murder."
- 12 Q Who was that charge nurse?
- 13 A Marian -- well, Marian Gamundoy.
- 14 Q Was she married to you?
- 15 A Yes.
- 16 Q I think I interrupted you. You were explaining how you
- 17 were going to find out the person's name.
- 18 A Okay. When I went into the room after I had gotten what
- 19 the scenario was, because he was already there, and just
- 20 seeing what his medical status was, if he was awake, if
- 21 he was alert, you know, is he in any condition to
- 22 communicate, first of all.
- 23 Q Was he?
- 24 A Verbally, no.
- 25 Q Was he able to communicate in some other fashion?
- 26 A Yes, he was. Okay. At that -- yes.

008470

1 Q How?

2 A The questions I asked or was beginning to ask, I was
3 thinking of a way in which he could respond, and that
4 was through blinking.

5 Q Did you explain that method to Josh?

6 A Yes.

7 Q And did he attempt to follow those instructions?

8 A Okay. My instructions were I want you to answer yes or no,
9 because that's the only thing that he could respond to
10 as opposed to open-ended questions. So, you know, I
11 said meaning if the answer is yes, blink your eyes.

12 Q Did he do that?

13 A Yes, he did do that.

14 Q Was there any drawback to that particular system?

15 A Yes, there was.

16 Q What was that?

17 A I began to notice that he was becoming fatigued and
18 maybe out of dryness of his eyes began to blink at
19 certain times, so that at that point I felt that, well,
20 you know, this wasn't going to work.

21 Q What alternative solutions did you come up with?

22 A I came up with a solution where on a piece of paper
23 attached to a clipboard wrote out the letters A to Z
24 and numbers 1 through 10 -- well, 1 to, you know, 10,
25 using zero.

26 Q How did that enable communication?

008471

1 A I told Josh -- well, I didn't know he was Josh at that
2 time. I said I want you to point out the letters, okay.
3 Specifically the first thing I asked was what is your
4 first name.

5 Q And what did he do?

6 A He pointed to the letter J.

7 Q And then what?

8 A And then he went on from o-s-h.

9 Let me back up a bit. Let me back up. Before I
10 developed a system of the letters, we gave him just a
11 plain piece of paper on a clipboard to write. Okay.
12 As I see in terms of part of my responsibility was to
13 identify the patient as well as to get a birthday so
14 we can begin paper work, you know, for numbers, et cetera.

15 Anyway, when we first did that, began to write and
16 when I took the clipboard from him, I couldn't read it.
17 It wasn't legible to me. Neither was the numbers for
18 birthday. So at that time I said, well, let me think of
19 something else. That was when I developed the letters
20 and the 1 through 10.

21 So when he first said, well -- I said Josh, is this
22 short for Joshua? And he said yes. I said, okay, spell
23 me your last name. And at that time he went and
24 R-y-e-n.

25 Q Did he then go on and give you a date of birth?

26 A Yes, through the same method.

008472

- 1 Q And through the same method did you also get his
2 telephone number?
- 3 A I think so, I think so.
- 4 Q Did you then go on to try and obtain the other information
5 from him?
- 6 A Yes, I did.
- 7 Q What other information were you trying to get?
- 8 A The time of day that this happened.
- 9 Q What information did you get about that?
- 10 A The information that I got using that same method of
11 pointing to the -- here again, I'm asking yes or no.
12 I said was it in the day and he pointed to no.
- 13 Q Okay.
- 14 A I said was it in the evening, and he pointed to yes.
15 I said, well, try to narrow it down. I said was it after
16 12:00, and he pointed to yes again. So we tried to
17 narrow it down. Was it still dark? And he pointed to
18 yes. And as far as I could recall I went down from
19 was it 1:00, 2:00, 3:00, 4:00. And I think he landed
20 somewhere in the area of 4:00 to 5:00 a.m., early
21 morning, when it was still dark.
- 22 Q Did you then go on and try to determine -- go ahead.
- 23 A Yes. In terms -- I'm assuming you're going to ask
24 me what other information.
- 25 Q Right.
- 26 A Okay. Determined how many people.

0088473

1 Q How many were there?

2 A I asked him and he said -- well, not said. He pointed
3 to three.

4 Q Any other information?

5 A In terms of nationality, I began to go through and say,
6 well, were they black? He pointed to no. Did they look
7 like me? He said no. And were they white? And then
8 he pointed to yes. I said okay. So we have three
9 white. I said okay. Were they female? And he pointed
10 no. And were they male? And he said -- I mean pointed
11 to yes. Okay.

12 The next question was have you seen these people
13 before.

14 Q Okay.

15 A And he pointed to yes, and then I asked him do you know
16 these people, and he pointed to no.

17 (No omissions.)
18
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0000474

1 Q At that point in time did Josh indicate any difficulty
2 following your instructions and pointing to them?
3 A No.
4 Q Did he show any puzzlement about your questions or
5 anything?
6 A He showed puzzlement, yes, he did. It was hard to
7 assess whether it was the questions in particular or
8 because of the pain or the cassette going under his
9 bottom or what, you know, so it was hard in terms of
10 that.
11 Q Did you ask any questions after that?
12 A I don't recall. I don't remember. I think that was it.
13 Q How were you dressed during this procedure? Did you
14 have scrubs on?
15 A I would say dress slacks, shirt, tie with a lab coat.
16 Q You were not dressed in medical scrubs or anything of
17 that nature?
18 A No. No.
19 Q Do you recall which other people were in the room as
20 you were going through this procedure?
21 A I know Calvin was there.
22 Q That would be Calvin Fischer who just got through
23 testifying?
24 A Calvin Fischer. A uniformed officer was also there,
25 but not at my side. He was at the end of the bed. I
26 don't remember what he looked like. There was a respiratory

008475

1 therapist and I don't know who, you know, names also.

2 ~ And the trauma team, and I don't know who specifically
3 the physicians on that team were.

4 Q Did you observe any person other than yourself to be
5 communicating with Josh through the use of the clipboard?

6 A Yes.

7 Q Who was that?

8 A She was as student physician and I don't know her name.

9 Q What sort of information was she getting from Josh?

10 A None at all. I mean she was there and she witnessed
11 me taking all this information or asking the questions.

12 Q But did she hold the clipboard or anything?

13 A I don't think so because I had the clipboard in my
14 hand as he pointed.

15 Q In what fashion was she communicating with Josh through
16 the clipboard?

17 A Allergies.

18 Q So basically she was asking questions and he was pointing
19 to the answers while you held the clipboard?

20 A Uh-huh.

21 Q You have to say yes or no.

22 A Oh. Yes.

23 Q Did you stay in the room with Josh during the entire
24 time that he was in the trauma room or the emergency
25 room?

26 A No.

008476

- 1 Q At what point in time did you leave?
- 2 A After my questioning, after I got his name and birthdate
3 and the other information that I had gotten, I left at
4 that point. I mean, I left outside the room and let
5 everybody else do their service.
- 6 Q And did you basically make a note, a social work note
7 of the information about Josh and about his attackers
8 that you had received?
- 9 A Would you repeat that again? As you were saying it,
10 I was reading, and I shouldn't have done that.
- 11 Q In the social work note that has the date but no time,
12 on the third paragraph, did you note the information
13 in that social work note that you had received from
14 Joshua about his name, date of birth, his phone number,
15 and his description of his attackers?
- 16 A Yes.
- 17 Q Did you have communication with a Sergeant Bill Arthur?
- 18 A No.
- 19 Q Did you have communication with somebody in the Sheriff's
20 Department about instructions as to who should ask what
21 kind of questions of Josh?
- 22 A Not specifically that.
- 23 Q What kind of communications did you have about instruc-
24 tions about Josh?
- 25 A Who would be -- I mean should the media call, you know,
26 that kind of thing, who would be the one person I could

008477

1 direct any calls or any information regarding this case
2 to, and there is the name that that officer gave me.

3 Q So the uniformed officer gave you the name of Bill
4 Arthur?

5 A Uh-huh.

6 Q You have to say yes.

7 A Yes.

8 Q After you left the emergency room, or the trauma room,
9 did you have any other contact with Josh?

10 A No.

11 MR. NEGUS: Thank you. I have nothing further.

12

13

CROSS-EXAMINATION

14 BY MR. KOCHIS:

15 Q Mr. Gamundoy, when you first saw this young man, what
16 type of injuries did you observe?

17 A I think the most obvious one was the laceration from
18 his throat extending toward I think the right side,
19 heading downward toward his clavical area.

20 Q Did you observe any other injuries?

21 A No.

22 Q Could you tell whether or not he was injured in the
23 head?

24 A Yes.

25 Q Was that because his head was bandaged?

26 A Yes.

008478

- 1 Q And did it appear to you that he had been bleeding,
2 recently suffered some blood loss?
- 3 A Yes.
- 4 Q And did it appear that his condition affected his
5 ability to communicate with you?
- 6 A Yes.
- 7 Q For example, he wasn't able to write his own name?
- 8 A Yes.
- 9 Q And did you learn at some point that for whatever reason
10 he could not communicate with you through this eye-blinking
11 system?
- 12 A Yes.
- 13 Q You weren't able to tell whether he just didn't under-
14 stand the procedure or whether his injuries were affecting
15 his control over his eyelids?
- 16 A Right.
- 17 Q Were you present when Deputy Sharp asked Joshua a number
18 of questions?
- 19 A Present in the sense that I wasn't standing right there.
20 I mean he moved in and began to ask more questions and
21 I just left.
- 22 Q You weren't there then when the Sheriff's Deputy attempted
23 to communicate with Josh through a hand-squeeze system?
- 24 A No.
- 25 Q You had left the room at that time?
- 26 A I had left the room.

008479

- 1 Q Now, on the chart there were other things written
2 besides A to Z and 1 to 10, is that true?
- 3 A Yes.
- 4 Q Would one of those be the last words you just spoke?
- 5 A Yes.
- 6 Q What was the other word on the chart?
- 7 A No.
- 8 Q And you would hold the chart in front of Joshua, is
9 that correct?
- 10 A Yes.
- 11 Q Did you ask any preliminary questions to understand --
12 excuse me. Did you ask any preliminary questions to
13 ascertain if Joshua understood this method of communi-
14 cating with you?
- 15 A Repeat that again, please.
- 16 Q Did you ask some preliminary questions so you would
17 satisfied in your mind that he wasn't, for example,
18 pointing at random, that he understood what he was
19 supposed to do?
- 20 A Yes.
- 21 Q Now, did you write any notes of what -- did you take
22 any handwritten notes of your observations of Josh
23 or did you later, relying on your memory, prepare a
24 typewritten report?
- 25 A I relied on my memory.
- 26 Q The paper that Mr. Negus has placed in front of you,

008480

1 the paper that has the date 6/5/83, is that a document
2 that you yourself typed or that you had someone type
3 at your direction?

4 A I typed it myself.

5 Q And that would have been from your memory, not from
6 any written notes?

7 A From my memory.

8 Q Is it fair to say that you didn't place anywhere on that
9 document the questions that you actually asked Joshua?

10 A No. It's a different sheet.

11 Q Well, now I'm confused. Did you actually write the
12 questions out?

13 A No. I asked.

14 Q Did you keep a record of the questions you asked?

15 A No.

16 Q The paper that's in front of you, is that a brief summary
17 of what took place in the room between you and Josh?

18 A Yes. More so in the sense of when I was called, what
19 information did I get and what information that I got
20 from the charge nurse and officers in that room as well
21 as physicians, then my questioning with Joshn and my
22 recommendations or plans.

23 Q The first full paragraph that starts with the word
24 "patient" and ends with the word "wounds," do you
25 recall your source of that information?

26 A I think it's from the Sheriff that I talked with.

008481

- 1 Q Do you remember his name?
- 2 A No, I don't.
- 3 Q Was he in uniform or was he --
- 4 A He was in uniform.
- 5 Q The second paragraph that follows starting with the
6 word "it" and ending with the word "siblings," do you
7 recall your source of that information?
- 8 A It was also the officer, that same officer as well as
9 the charge nurse.
- 10 Q Did you get any of the information in the first paragraph
11 from the charge nurse who I presume is your wife?
- 12 A No.
- 13 Q Is the information that you obtained from Joshua
14 essentially limited to the three lines that appear in
15 the third paragraph?
- 16 A Pardon me?
- 17 Q The information you obtained -- you obtained some
18 information from Josh Ryen himself?
- 19 A Right.
- 20 Q And is that on the paper that's dated 6/5/83, is that
21 essentially limited to the three typewritten lines that
22 appear in the third paragraph on that page?
- 23 A Yes.
- 24 Q Starting with "patient"?
- 25 A Yes.
- 26 Q You didn't put the word "attackers" or "assailants"

0000402

1 anywhere in that paragraph, is that true?

2 A That's true.

3 Q Do you recall a question you asked Joshua after you
4 asked him what time the attack took place -- let me
5 withdraw the question and approach it this way. You
6 at some point questioned him as to when he recalled this
7 event occurring, is that true?

8 A Yes.

9 Q When you finished with that series of questions, did
10 you then move to an area as to whether or not he observed
11 anybody in the house and the assailant, for example?

12 A No.

13 Q Do you recall what type of question you asked Joshua
14 when you started having him point to numbers of persons?

15 A Do I remember the questions?

16 Q Right.

17 A Yes.

18 Q Do you recall what the first question would have been?

19 A In terms of the assailants?

20 Q Yes.

21 A How many, what time of the day.

22 Q From what time of day would you have asked if there
23 was anyone in the house early in the morning, for
24 example, that didn't live there?

25 A Would I have asked?

26 Q Did you ask?

008483

1 A Yes, I did.

2 Q And when you asked that, did he give a positive response
3 or a negative response?

4 A A positive response.

5 Q And after he gave a response to that type of question,
6 did you then move to, for example, number?

7 A Yes.

8 Q Sex?

9 A Yes.

10 Q Race?

11 A Yes.

12 Q Did you at any time talk to him specifically about the
13 wounds that you observed on him?

14 A No.

15 Q Did you at any time, for example, attempt to ascertain
16 in communicating with Josh whether those wounds were
17 received from a hatchet or a gunshot wound?

18 A No.

19 Q Then you at no time asked him how he specifically got
20 those, is that fair to say?

21 A That's true.

22 MR. KOCHIS: I don't have anything else.

23 THE COURT: Mr. Negus?

24 MR. NEGUS: Just a second.

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REDIRECT EXAMINATION

BY MR. NEGUS:

Q Did you ask Joshua the question if he knew who the people were that attacked himself and his parents?

A not that question.

(No omissions.)

0000405

1 Q What was the precise question you asked?

2 A Did you know these people?

3 Q Did you ever use the word "attack"?

4 A No, not to my knowledge.

5 Q Did you ever use the words "did this to you"?

6 THE COURT: I'm sorry. What was the last?

7 Q (BY MR. NEGUS:) "Did this to you," "do you know who
8 did this to you"?

9 A Yes.

10 Q At that point in time, you were indicating his injuries?

11 A No.

12 Q What were you indicating?

13 A I'm confused there.

14 Q When you asked Joshua "do you know who did this to you" --

15 A Oh, I was referring to if he had known these people.

16 Q Did you specify what you meant by "did this"?

17 A The injuries.

18 Q Have you been interviewed by anybody about your
19 conversations with Joshua?

20 A Yes.

21 Q By whom?

22 A Detective Forbush, and there were several other
23 detectives. I can't remember their names.

24 Q Were the other detectives all on one occasion or more
25 than one occasion?

26 A They were on separate occasions. I think like maybe a

000406

1 couple weeks apart, a week to a month apart.

2 Q So that would have been sometime after your interview
3 with Mr. Forbush you had a second interview?

4 A After.

5 Q Did you ever have a third interview?

6 A No.

7 MR. NEGUS: Nothing further.

8 MR. KOCHIS: No recross.

9 THE COURT: We thank you very much, sir.

10 I think we'll break for today. On Thursday I can
11 go later, however, to 4:30.

12 MR. NEGUS: I was not shedding tears.

13 THE COURT: Anything further for today?

14 MR. KOCHIS: No.

15 THE COURT: 9:30 tomorrow morning, please.

16 (The proceedings for the day concluded
17 at 3:56 p.m.)
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008487