

1 of course, the voluminous nature of the case;
2 secondly, the particular schedulings, uh, the time for
3 that sixty days will fall and we will really need to
4 use that sixty. For instance, I'm going to be in a
5 capital case that's going to go close to October, I
6 think.

7 THE COURT: Okay, well, I mean, we can do that.
8 We'll finish it up on the 2nd of October and then sixty
9 days later your simultaneous briefs and proposed
10 findings. All right, court will be in recess until
11 October 1.

12 (WHEREUPON, on August 14th, 2009, a recess was taken until October
13 1, 2009.

14 **OCTOBER 1, 2009**

15 THE COURT: All right, are we ready?

16 MR. HOLT: Yes, Your Honor.

17 THE COURT: All right, call your witness.

18 MR. HOLT: Before we start with witnesses, though,
19 we did have one issue that we wanted to deal with.

20 THE COURT: All right.

21 MR. HOLT: During the course of looking at the
22 evidence in this case, in preparation of the State's
23 rebuttal case, uh, one of the things that came to our
24 attention was the fact that pursuant to the testimony
25 at trial and the exhibits that were introduced, there

1 were five (5) tennis shoes, I mean, six (6) tennis
2 shoes that were recovered in the ditch.

3 Five of those tennis shoes have laces that would
4 have been removed and one still had the lace remaining
5 in it. That evidence was introduced and the remaining
6 shoe laces, uh, it was alleged, were used as ligatures
7 by the three boys in the manner that they were tied
8 up.

9 And over the course of that criminalist, Lisa
10 Sakevicius, who has passed away, who examined the shoe
11 laces, determined that one of the shoe laces appeared
12 to have been cut and, you know, the obvious point that
13 the State was trying to make as part of it's rebuttal
14 case was the fact that in order to cut a shoe lace to
15 use it as a ligature to bind someone up, you would
16 have to have a knife.

17 And so it would indicate that there was at the
18 crime scene the presence of a knife.

19 The State then contacted the Crime Lab and be-
20 cause those ligatures were, you know, they were first
21 seen by Dr. Peretti when he did a gross examination of
22 the body, he cut the ligatures in the standard
23 operating procedure was to cut the bindings in a place
24 that was unobtrusive so he could remove them, and then
25 mark that place and tie it back and submit it to trace

1 evidence.

2 Those ligatures were subsequently, as Lisa Sake-
3 vicius testified, as to certain characteristics of
4 them, and she made notes to effect, as well.

5 And when we, uh, the notes are, in reviewing her
6 testimony, she didn't necessarily mention the fact
7 that one of the bindings appeared to have been a cut
8 binding.

9 Well, as part of what we wanted to do with that
10 was, we took the existing lace that was still in the
11 shoe, measured it at forty-eight (48) inches and
12 attempted to locate those ligatures to determine if
13 those shoe laces in fact matched up even more than we
14 suspected they did in that if you cut one, you have
15 six, and there were six bindings, or six ligatures.

16 At that point the Crime Lab determined that
17 pursuant to the agreed upon order in the DNA test,
18 which I believe involves all three parties that the,
19 uh, that certain materials with the agreed upon
20 testing, were sent to Boady Technology, the DNA lab.

21 As part of that, uh, that was sent to Boady
22 Technology was in fact those ligatures. So we
23 requested to the Crime Lab that they obtain those
24 particular ligatures.

25 They made those inquiries and they determined

1 that Boady, which, you know, I have every reason,
2 every confidence, believe it's a very competent
3 organization, they do good work and all of that, but
4 they were directed by Mr. Horgan, who represents
5 Echols, to forward those ligatures to another
6 organization, a laboratory called Micro Trace, and
7 it's the State's belief that that particular, uh,
8 having done so, that that's outside the, uh, in
9 several instances, that that's outside of the agreed
10 upon order.

11 And the evidence in the DNA case was closed, uh,
12 there was never any authorization that we know of, or
13 I can't speak for Mr. Burt and Mr. Phillipsborn, but I
14 think they would agree, they did not authorize those
15 to be forwarded to this Micro Trace.

16 We did some further checking and Micro Trace is
17 not an accredited laboratory and part of the protocol
18 for doing the DNA habeas testing, is the use of
19 accredited laboratories.

20 THE COURT: Where are the ligatures?

21 MR. HOLT: As far as we know still at this point,
22 the ligatures are in the custody of Micro Trace,
23 pursuant to a directive by Mr. Horgan, Echols'
24 attorney, to Boady Technologies.

25 And, you know, I think that, uh, I mentioned this

1 to counsel here and I think that for purposes of this,
2 we can come up with either a stipulation or an entry
3 of the note that talks about the ligature being cut,
4 uh, but we want the ligatures back.

5 THE COURT: Well, I'll enter an order to have them
6 return them. As far as I know, the Court wasn't even
7 aware that some other agency had them.

8 MR. HOLT: Well, that was the problem.

9 THE COURT: Do you have a stipulation that you
10 want to put in the record?

11 MR. HOLT: Not yet, in terms of this
12 particular...

13 THE COURT: ...do you want to reduce it to a
14 written stipulation?

15 MR. HOLT: Yes, sir.

16 THE COURT: You can stipulate, I take it?

17 MR. HOLT: Sure.

18 THE COURT: Okay.

19 MR. HOLT: Do you have anything you want to say?

20 MR. PHILLIPSBORN: Your Honor, good morning, first
21 of all, sir.

22 THE COURT: Good morning.

23 MR. PHILLIPSBORN: And Your Honor, Mr. Holt
24 brought this matter to our attention and as both Mr.
25 Burt and I and all counsel here indicated to him as

1 the first leader of it was through him and, you know,
2 our, we have concerns even though obviously we share
3 some of the same interests as the Echols defense does,
4 but part of our concern was that we wanted to make
5 sure that the Court orders were obeyed as they were
6 issued, and we request that, and the other was we were
7 as concerned about the integrity of the evidence as
8 was the State.

9 So with those remarks, we will obviously join the
10 State in putting together whatever necessary
11 stipulation exists, but for any proceedings that may
12 occur down the line, uh, we just wanted the Court to
13 know that we too were completely unaware of the
14 situation. We received no notice.

15 THE COURT: As I recall, the order that I entered
16 to submit the evidence for analysis was basically an
17 agreed order.

18 MR. HOLT: It was; yes.

19 THE COURT: So how it got out of that loop or that
20 chain, I don't know but apparently Mr. Holt has
21 explained what happened, so if you can stipulate on
22 the notes of Lisa Sakevicius and stipulate on the
23 other matters that might come up, it's fine with the
24 Court.

25 Just give me a written stipulation and we'll

1 include it as part of the evidence.

2 MR. HOLT: Okay. And we would like to have,
3 maybe, agree on an order as well from the Court to
4 either Boady or to Micro Trace to follow that, to get
5 it back where it needs to be, which is essentially the
6 Crime Lab.

7 THE COURT That's fine. I mean, I'm prepared to
8 enter that order right now.

9 MR. HOLT: We'll get you something to sign.

10 THE COURT: Okay.

11 MR. PHILLIPSBORN: Your Honor, there's one other
12 preliminary matter and this is really a matter of
13 making a record of the communications that have been
14 exchanged between the State and the Defense. We asked
15 since our last appearance whether there were any
16 additional materials that might be furnished to the
17 Defense.

18 There were two specific areas we had in mind. We
19 had some information that the State had done some
20 interviews between the last action and, uh, today and
21 our view was that if there was any, uh, either
22 exculpatory evidence or other evidence that would fit
23 generally in the realm of, uh, information that would
24 be relevant to the Court's determination, the
25 credibility of anybody who has testified that, uh,

1 that evidence should be produced, as it's in the hands
2 of the State.

3 One of the persons we had understood had been
4 contacted was actually somebody who was in custody
5 with Mr. Baldwin at the state prison that he is housed
6 in.

7 The other thing was that there was some
8 indication when we were last in court that in addition
9 to some of the experts, that the State, I believe, is
10 calling in its rebuttal case, the State has made
11 contact with an expert who is among those who had
12 contributed to Dr. Spitz's book and, uh, we were
13 requesting, uh, whether the State had obtained any,
14 again, any information that would fall within the, uh,
15 within the ambient that I outlined; in other words,
16 you know, some information or evidence that bears on
17 the merits of the issues before this Court and on the
18 credibility of voracity of any witnesses who testify.

19 THE COURT: Okay. I'm not sure I know what
20 you're talking about.

21 MR. RAUPP: I'm not sure I know exactly what Mr.
22 Phillipsborn is talking about, but I think what he's
23 talking about is the State's continuing our obligation
24 on the constitution to disclose exculpatory
25 information.

1 THE COURT: If there's any exculpatory information
2 you gentlemen know that you make that available. If
3 there is any other evidence that might be relevant,
4 then it might not fall under that particular
5 provision.

6 MR. RAUPP: That obligation continues under the
7 constitution, without respect to these procedures. I
8 don't think Mr. Phillipsborn is suggesting this, but
9 obviously, the Rule 37 proceedings in the state of
10 Arkansas don't admit a discovery or the use of "gravey
11 claims" by way of discovery of the State's case in a
12 Rule 37.

13 As for our constitutional obligations, of course,
14 we are going to maintain our obligations that produce
15 exculpatory evidence and the State's duty is
16 continuing, and is aware of that.

17 THE COURT: Okay.

18 MR. PHILLIPSBORN: Thank you, Your Honor.

19 THE COURT: All right, who are the witnesses?

20 MR. HOLT: Well, can I call my first one?

21 THE COURT: All right, go ahead.

22 MR. HOLT: Mike Allen.

23 THE COURT: Raise your right hand and be sworn.

24 (Witness sworn.)

25 THEREUPON,

1 A] I was, uh, we were in our morning meeting, or getting ready
2 for our morning meeting around eight o'clock that particular
3 morning and, uh, Inspector Gitchell advised us that we had three
4 eight-year-old boys that were missing and advised us to get out
5 in that portion of town where they lived and start looking for
6 them.

7 Q] And what did you do?

8 A] We, uh, left the police department and went out and started
9 - - my particular duty was to start checking vacant houses in
10 that particular area.

11 Q] I don't have a particular diagram of that, uh, of the city
12 that was used at trial. Can you kind of describe where that
13 was, where you were initially?

14 A] The area is, is the northeast section of West Memphis.
15 West Memphis is, well, within the police department, we're set
16 up on wards and that particularly is the northeast, uh, yeah,
17 the northeast region - - ward - - basically, from 7th Street
18 going north and south, uh, Broadway from 7th Street all of the
19 way to the city limits, uh, everything northeast of that is
20 considered the northeast ward. My understanding, uh, that these
21 individuals lived closer in the vicinity of 14th and Barton,
22 which, of course, one of the individual missing children lived
23 in the corner of 14th and Barton. And we were searching in and
24 around that particular area. There had been mention that some-
25 times they had played in the Robin Hood Hills area, which is an

1 area located between the Interstate and, I believe that's W. E.
2 Catt, uh, west McAuley. West McAuley actually kind of dead ends
3 to what they call the Ten Mile Bayou. And at the Ten Mile Bayou
4 there is a pipe that runs across the Ten Mile Bayou in the
5 section of what they call Robin Hood Hills, uh, is an area in-
6 between the Interstate and W. E. Catt, north of the Ten Mile
7 Bayou.

8 MR. HOLT: For purposes of this hearing, and I
9 think that Mr. Rosenzweig may have mentioned at one
10 point over the course of this, that pursuant to the
11 *Drymon* case, that the records in the trial of
12 Misskelley and the records in the trial of Baldwin are
13 a part of the records in their Rule 37 cases. And in
14 both of those particular cases, there were certain
15 evidentiary exhibits, for instance, there was a grid
16 map and I want to make sure that those maps and other
17 exhibits with those particular records are
18 acknowledged as being part of this record.

19 THE COURT: All right. Any objection?

20 MR. BURT: No.

21 MR. ROSENZWEIG: Judge, he accurately stated the
22 holding with the *Drymon* case that everything,
23 including the trial record, is automatically part of
24 this hearing.

25 MR. HOLT: I'm one-for-one so far. May I approach

1 the witness?

2 THE COURT: Yes.

3 DIRECT-EXAMINATION, continuing:

4 Q] I want to show you a series of photographs. This photo-
5 graph is marked as State's Exhibit #15 and it appears to be an
6 aerial photograph of a portion of that neighborhood. If you
7 could, describe that for the record, please?

8 A] (Witness examining same.) I'm getting reference to this
9 photograph from knowing that this (indicating) here appears to
10 be East Junior High.

11 Q] And is that in the right-hand corner?

12 A] This is in the right upper corner. Yes. It appears to be
13 East Junior High, which Barton Street would be running through
14 this corner this way (indicating) here. This would be Goodwin,
15 uh, this would be W. E. Catt.

16 Q] Now does W. E. Catt, does it sort of - - is it depicted in
17 the central portion of the picture?

18 A] Yes, this is the street, uh, if you were holding it up this
19 way, this is the street that runs from Goodwin, along these
20 houses here, the back of these houses, uh, the Ten Mile Bayou
21 runs in this area. The Interstate is back, I guess you could
22 say, to the bottom of this particular photograph. The bottom of
23 this photograph is out of the scene, and it appears to have been
24 taken from an airplane.

25 Q] Is that Ten Mile Bayou from the left-hand top corner to the

1 right-hand lower corner?

2 A] This is kind of in the curve, uh, this street actually
3 curves down and around, and dead-ends into West McAuley, where
4 West McAuley would kind of dead-end to the Ten Mile Bayou. So
5 this street actually is not, I mean, there's another section of
6 this street that actually dead-ends into the Ten Mile Bayou.

7 Q] And were these photographs taken pursuant to the investiga-
8 tion?

9 A] Yes, sir.

10 Q] And did it accurately portray that particular area at the
11 time that it was taken?

12 A] Yes, sir.

13 Q] I show you what's been marked as State's Exhibit #16 and
14 ask if you recognize that photograph?

15 A] (Witness examining same.) This is a photograph of the Ten
16 Mile Bayou. To the bottom of this section, this is a, some kind
17 of a pipe, uh, some type of utility pipe that runs across the
18 Ten Mile Bayou here (indicating). To the bottom portion of this
19 photograph would be where West Barton, I mean, West McAuley
20 would dead-end near its intersection of W. E. Catt. This here
21 (indicating) is a retention pond, I assume, built for the truck
22 stop area, which is back to the west, uh, Blue Beacon Truck Wash
23 that is here. This is a wooded area here that is, I assume,
24 they call Robin Hood Hills.

25 Q] Did you ever hear of it called Robin Hood Woods?

1 A] Robin Hood Hills, Robin Hood Woods, it's just a kind of,
2 uh, I didn't grow up in that particular neighborhood, but that's
3 what individuals in that area that grew up in that area, it
4 didn't have, it wasn't named by the city or anything; it's just
5 of a local, what individuals in that area call that area.

6 Q] I see.

7 A] This is the Ten Mile Bayou here, uh, these are trails that
8 kind of go in different directions, would kind of go back into
9 the woods.

10 Q] Were there open spaces, as well as wooded spaces in this
11 patch of land?

12 A] Yes, there's farm fields between the Interstate and here,
13 and now we're back in this area (indicating).

14 Q] And when you say "back in this area," do you mean to the
15 east?

16 A] Back to the east; yes, uh, where they actually farm some of
17 the fields there beside the Interstate. And, you know, you can
18 see little open areas in the trees and there's actually a ditch
19 that runs through this wooded area that drains out into the Ten
20 Mile Bayou here (indicating).

21 Q] Can you see where that ditch drains, from that picture?

22 A] I know it's back to the east of this pipe and I believe
23 it's right in this area right here, by what shows in this photo-
24 graph.

25 Q] So you're indicating on Exhibit #16, the right of the pipe

1 that crosses the bayou?

2 A] Right; in this particular area here. And of course, this
3 ditch bank goes up and goes through this wooded area and
4 actually, with the pipe going under the Interstate and comes
5 from the north, there.

6 Q] I see. Do you recall a scale drawing having been made of
7 that particular area?

8 A] I haven't seen it in some time, but I believe there was
9 one.

10 Q] Did it also include the scale of the pipe itself?

11 A] I believe so.

12 Q] Was the pipe capable of being crossed?

13 A] Yes, you could actually walk across the pipe, like a walk-
14 ing bridge; I mean, that's how I actually entered that par-
15 ticular day.

16 Q] Okay.

17 A] You didn't have to, uh, it was wide enough that you could
18 walk it without fear of falling off. It was almost like a walk-
19 ing bridge, but it was a pipe.

20 Q] Okay. I show you what's been marked as State's Exhibit #17
21 and ask if you recognize that?

22 A] (Witness examining same.) Yes, this is just another angle
23 from what I was just explaining: the retention pond here, the
24 Blue Beacon truck wash here.

25 Q] And when you say "here," do you mean the left side of that

1 exhibit?

2 A] Yes, sir. The left top part of this exhibit, kind of a
3 couple of inches off from the corner.

4 THE COURT: You need to refer to the exhibit
5 number.

6 DIRECT-EXAMINATION, continuing:

7 Q] State Exhibit #17, uh, this, towards the center of the
8 bottom of this, there is a street that goes from the bottom of
9 this photograph up to where you can see there's a barrier here
10 to end this dead-end street. This is West McAuley here.

11 Q] And you say going from north to south?

12 A] Yeah, going from the bottom of this photograph up to the
13 dead-end, this is West McAuley here.

14 Q] And what street forms the T there in the right hand corner
15 of the photograph?

16 A] Going up from the bottom this street here taking a right,
17 uh, this is W. E. Catt.

18 Q] Okay. In the central portion of that photograph, at the
19 top, is that what was known commonly as Robin Hood Hills or
20 Robin Hood woods?

21 A] That is my understanding; yes, sir, this particular area.

22 Q] Okay. And in that patch of woods over to the right,
23 there's a flat clearing. Is that the pasture land that you were
24 referring to?

25 A] That's the area that's actually farmed.

1 Q] Farmed. And on the left, you said that that was the, I
2 guess, even it's painted blue, is it not, uh, what is that?

3 A] At the top of this, uh, this to the very top edge of the
4 photograph is actually Interstate 40/55. Interstate 40 and 55
5 actually come into one, uh, there's an east split and there's a
6 west split. This is Interstate 40/55.

7 Q] And you can actually see the Interstate from left to right
8 in the top of that picture?

9 A] In this photo. Yes, sir.

10 Q] Okay.

11 A] Here in the left-hand portion of State's Exhibit #17, uh,
12 it appears that there is a circular driveway around the back of
13 this. This is the Blue Beacon truck wash. And in the very
14 center of this photograph going from left to right, uh, is the
15 ditch or bayou, called Ten Mile Bayou. And in the very center
16 of this photograph is that same utility pipe or whatever that
17 runs across this particular Ten Mile Bayou.

18 Q] What was it, you know, you said that you started in the
19 northeast ward as searching houses that were vacant. Was this
20 area in the northeast ward?

21 A] Yes, this particular area is in the northeast ward. It is
22 actually back east of 7th Street and north of Broadway. This is
23 in the northeast area.

24 Q] Was that the first area that you were searching?

25 A] I was not actually searching or assigned this particular

1 area to search. I was actually searching, uh, houses in the
2 northeast ward, actually searching, checking vacant houses. I
3 got with Utilities that particular morning and got a list of
4 vacant houses, that type of thing; we were actually checking
5 vacant houses. I was actually called to this particular scene
6 after another searcher in that particular area had found some-
7 thing of possible evidentiary value.

8 Q] Did you, uh, who was that?

9 A] Someone with the Crittenden County Search and Rescue who
10 had contacted the West Memphis Police Department to have an
11 officer come by there. And I happened to have heard that over
12 the radio and actually drove to this particular location as a
13 result of that.

14 Q] Okay. So other law enforcement agencies were also assigned
15 as part of the search?

16 A] We had, yes, members of the Crittenden County sheriff's
17 department search and rescue squad were assisting us that
18 particular morning.

19 Q] I see. We'll come back to that. This is State's Exhibit
20 #18, and ask if you recognize that?

21 A] (Witness examining same.) This is a photograph of the Ten
22 Mile Bayou.

23 Q] Okay?

24 A] And it appears from this photograph that it was taken from,
25 uh, this is State's Exhibit #18, uh, in State's Exhibit #16

1 where I referred to the utility pipe that runs across, this
2 would have been taken, uh, what's shown in this photograph would
3 have been taken, uh, that would have been in an easterly
4 direction.

5 Q] Looking east, down the bayou?

6 A] Yes, sir. Probably taken, I would assume, from the pipe
7 area.

8 Q] The pipe not being in the picture, but being in the fore-
9 ground?

10 A] Right.

11 Q] And once you were called to the scene, what did you do?

12 A] I drove, of course, West McAuley to the dead-end, got out
13 of the vehicle, was met by, I believe it was Denver Reid, with
14 the Crittenden County search and rescue, uh, who had stated that
15 they had located what they thought was a tennis shoe, uh, float-
16 ing in a ditch in the wooded area.

17 Q] I see. I show you what's been marked as State's Exhibit
18 #19 and ask if you recognize that?

19 A] (Witness examining same.) That is, of course, when I first
20 looked at it, it was from a, uh, there was a cliff-like area and
21 I was on the, I guess, between the Interstate and this particu-
22 lar ditch and was looking down and I did observe a tennis shoe
23 from up on a little cliff area at that particular time. And
24 later, you know, by looking at this photograph, it appears to be
25 a Boy Scout or a Cub Scout hat in this particular photograph,

1 but when I first got to this particular scene, I did notice that
2 particular, that particular hat at that particular time, but I
3 did observe this particular tennis shoe floating in the water.

4 Q] And was that the shoe that had triggered the response from
5 Search and Rescue?

6 A] Yes, sir.

7 Q] Okay. And did you make an attempt to recover that shoe?

8 A] Yes, sir, I did. That tennis shoe is in State's Exhibit
9 #19 is what I'm referring to.

10 Q] State's Exhibit #23?

11 A] (Witness examining same.) This is again is just to the
12 west in State's Exhibit #19, uh, if I can hold these particular
13 pictures up like this.

14 Q] You're holding what?

15 A] Number 19 and 23.

16 Q] Okay?

17 A] This particular tennis shoe, uh, the bank, this is actually
18 where I had to cross this particular ditch in order to get on
19 the other side to go around to where this particular tennis shoe
20 was at, because where it was at, uh, there was a steep embank-
21 ment almost like a small cliff area on the bank that the
22 officer, uh, Denver Reid, actually when he saw the tennis shoe,
23 was standing up on top of a small bluff or looking down at this
24 particular ditch.

25 Q] Was he on the east or west side?

1 A] He would have been on the, uh, well, in-between the Inter-
2 state and this particular ditch that kind of went at an angle.

3 Q] Okay?

4 A] So it would have been, uh, I'd almost have to look at a map
5 per se, but it was in-between the Interstate and this particular
6 ditch that ran down into the Ten Mile Bayou.

7 Q] Okay. And that picture, is State's exhibit 23, is that a
8 picture of you attempting to cross that ditch?

9 A] Yes. My original intentions was to, uh, of course, try to
10 pull myself over to that ditch without falling in the water at
11 that particular time.

12 Q] Now in terms of where the Interstate is in relationship to
13 where you are in that picture?

14 A] The Interstate would be, uh, if I can, and I'm referring to
15 State's Exhibit #17, the Interstate is - - and when I say kind
16 of to the north of here - - uh, this ditch right here ran kind
17 of to the, I guess you could say it ran from the Interstate down
18 southwest, in a southwesterly direction, uh, back into the Ten
19 Mile Bayou here.

20 Q] Okay.

21 A] So it had kind of a, uh, I would have actually been on the
22 northwest side of this particular ditch at this particular time.

23 Q] So going from McAuley over the drainage pipe and going to
24 the northwest side of the creek, you had not yet crossed back
25 over the creek?

1 A] Exactly. I actually went across the pipe here, in State's
2 Exhibit #17, went up a trail, went down into the woods and I was
3 actually on the northwest side of this particular ditch. This
4 is where I had to cross over to get to this...

5 Q] ...when you say "this," say where, exactly, and depicted in
6 state's exhibit what?

7 A] 23.

8 Q] 23.

9 A] I had to cross from this side of the bank over to here to
10 get over to where the tennis shoe was, because of the bank.

11 Q] So you are facing in some southerly direction?

12 A] Yes, sir.

13 Q] In that particular exhibit?

14 A] Exactly.

15 Q] Did you notice anything unusual about the bank in that par-
16 ticular area?

17 A] In this particular area?

18 Q] Yes, and that may not be the one, but I'm just asking?

19 A] Not so much in this particular area.

20 Q] Was there an area of the bank of that ditch in that
21 immediate vicinity that was different than other areas?

22 A] It was not clean; it was kind of scuffed up, but it didn't
23 have a lot of leaf debris, that type of thing.

24 Q] Did other officers also make certain observations with re-
25 gard to those banks?

1 A] I'm sure they did; yes.

2 Q] Did you testify in either the case against Jason Baldwin or
3 Jessie Misskelley with regard to the crime scene in this par-
4 ticular case?

5 A] Yes, sir.

6 Q] Okay. State's Exhibit #21, could you identify that?

7 A] (Witness examining same.) Number 21 shows the area, I guess,
8 probably as good as any of these particular photographs, uh, it
9 kind of shows you the layout of the ditch that I'm referring to
10 in State's Exhibit #21, uh, in this particular photograph which
11 is marked State's Exhibit #23, uh, this is near where I actually
12 crossed the bank, but there is another tree here.

13 Q] In which photo?

14 A] In State's Exhibit #21, uh, where you can see several trees
15 together here. This is where I actually crossed the bank was
16 actually between this particular tree here and this particular
17 tree here, is where I actually crossed the bank here.

18 Q] Okay. So you crossed the bank somewhere in the foreground
19 of State's Exhibit #21?

20 A] Yes, sir, to the left of this particular photograph, look-
21 ing at it straight on.

22 Q] Okay. And I think you said that you - - what happened when
23 you tried to cross the bank?

24 A] I actually fell into the water at that particular time and
25 then came around, you know, climbed up the bank and came around

1 to where the tennis shoe was at.

2 Q] Okay. And did you retrieve the tennis shoe at that time?

3 A] I was in the process of retrieving that particular tennis
4 shoe one time when I entered down into the water, and actually
5 discovered the very first body that we located on that particu-
6 lar day.

7 Q] Could you, could you see that particular body when you were
8 in the water?

9 A] No, sir. No, I was, I mean, I was actually in the water
10 and, you know, water probably up a little bit above my knees,
11 between my crotch area and my knee area, and I'm standing, you
12 know, here and the tennis shoe, I'm trying to reach into the
13 water across to the tennis shoe when I actually felt with my leg
14 or my feet, the, a something in the water and I kind of lifted
15 my leg up and the body kind of floated to the top. But the body
16 was not visible just because of the murky water, from the top of
17 the bank.

18 Q] Was the water flowing at all, that you could tell?

19 A] If it was flowing, it was - - no, not any type of stream,
20 per se.

21 Q] Okay?

22 A] It may have been, you know, it may have been flowing a
23 little bit, but nothing, you know, I could kind of tell what was
24 up-stream and what was down-stream, but there wasn't any kind
25 of, you know, I guess if a leaf had fallen in it, probably if it

1 moved, it wouldn't move very fast.

2 Q] Okay. Did you feel, when you fell in, did you land feet
3 first?

4 A] Yes, sir.

5 Q] Were you able to feel the bottom of the ditch?

6 A] Yes, sir.

7 Q] And what was the bottom of the ditch like, as far as where
8 you were walking?

9 A] Kind of mucky, but not extremely, you know what I mean, uh,
10 I don't think I lost my shoes. I believe I had slip-on dress
11 shoes, but you know, the bottom of the ditch was muddy.

12 Q] When you were there at that ditch before you crossed, did
13 you see any signs of any kind of wild life?

14 A] No, sir.

15 Q] At that time of the day, uh, approximately what time was
16 this that this happened?

17 A] This was, uh, I believe we received the call about 1:30
18 that particular day to go down in regards to the tennis shoe, so
19 this would have been roughly 1:30 or thereafter.

20 Q] As you crossed or attempted to cross, did you see any kind
21 of aquatic life in that ditch?

22 A] No, sir.

23 Q] Any tadpoles?

24 A] No, sir.

25 Q] Snails?

1 A] No, sir.

2 Q] Minnows?

3 A] Nothing that I can recall. No, sir.

4 Q] When that body came to the surface, uh, what did you do
5 then?

6 A] There had been a, of course, Dianne Hester had come in be-
7 hind me, Lt. Hester, and of course, she radioed for - - I
8 basically backed out of the water and stood there on the bank
9 until other investigators and Inspector Gitchell got there. And
10 we decided where we were going to go from there.

11 Q] Did you pull the shoe out at the time, or did you, was it
12 left in the water?

13 A] I believe that the shoe was the furthestest thing from my
14 mind at that particular time, and it stayed there until we later
15 got it out.

16 Q] Okay. Did it, I mean, when you did subsequently recover
17 it, did it appear to have gone anywhere - - did it flow down
18 into the, was there danger of it going down into the pipe?

19 A] No, sir. The water was pretty much calm, I mean, if it
20 receded downward or whatever, but the water wasn't, like I said,
21 it wasn't moving. There wasn't any fear of, uh, it's more of a
22 ditch and not a stream.

23 Q] Okay. I show you what's been marked as State's Exhibit #26
24 and ask if you recognize that?

25 A] (Witness examining same.) If I can refer back to State's

1 Exhibit #21 and I'm looking at State's Exhibit #26, uh, where I
2 was referring to as the three, group of what appears to be a
3 group of three trees together, uh, at the bottom of it with a,
4 uh, it looks like a hole or a...

5 Q] ...a knot?

6 A] A knothole, I guess you could say, uh, this is actually the
7 area that in State's Exhibit #26, uh, where if I can refer back
8 to State's Exhibit #23, uh, this is actually the tree that I
9 leaned over on to try to cross this particular ditch here.

10 Q] Would you mark that?

11 A] Mark?

12 Q] Mark the tree that you leaned on and that is depicted in
13 State's Exhibit #23.

14 A] Is there any particular marking you want?

15 Q] Just an "X."

16 A] "X," okay.

17 Q] And the record will reflect that you're marking on State's
18 Exhibit #26.

19 A] Yes, sir. And this is the area where I actually crossed,
20 uh, and came up after, of course, I fell in the water here, but
21 came up on this particular bank, came around and this particular
22 area is the area that, uh, there's a, probably a ten-foot cliff
23 area here or a ditch area here and there's a bank over on this
24 particular side and in this particular photograph, number 26,
25 uh, this is the area about where the, back to the east I guess

1 you would say, the northeast of this particular, where I marked
2 this tree, is the area where the tennis shoe was located.

3 Q] If you would, mark that with an "O" where you found the
4 tennis shoe?

5 A] And I'm not sure because of the contour of where this pic-
6 ture was taken up on this ditch bank, but it would have been
7 back in this particular area here.

8 Q] In the foreground of the picture?

9 A] Well, yes, where I marked the "O".

10 Q] Okay?

11 A] And this is around the area where I came down and actually,
12 uh, stepped into the water here, reaching for this particular
13 tennis shoe, and discovered the body of the individual that I
14 believe was Michael Moore.

15 Q] Now, so just to orient, for the record, to orient that pic-
16 ture, you crossed, in that picture, you would have crossed the
17 creek from left to right - - I mean, from right to left?

18 A] Yes, sir.

19 Q] And then you proceeded, after you fell in, you proceeded to
20 the opposite bank?

21 A] To this opposite bank, yes, sir.

22 Q] And then went down into the water from that side and
23 attempted to retrieve the tennis shoe, and that's when you
24 found, dislodged the first body?

25 A] Yes, sir.

1 Q] Okay. Now you said that after you made the discovery of
2 the first body that you alerted Inspector Gitchell?

3 A] Uh, Dianne Hester had actually got on her portable hand-
4 held radio and notified them to contact Inspector Gitchell and
5 other investigators. I think before he actually showed up, uh,
6 I believe Detective Ridge actually showed up before he showed up
7 and actually came and crossed over there with me.

8 Q] What did you do then?

9 A] We actually, uh, Detective Ridge, at that particular time,
10 he's now a captain, but we actually, he actually got in the
11 water and actually searched downstream and actually located two
12 of the other bodies.

13 Q] And he was in the water itself?

14 A] Yes.

15 Q] He did that?

16 A] Yes, sir.

17 Q] How long were you at the crime scene at that time - - well,
18 were any other measures taken to secure that scene?

19 A] Other investigators and Inspector Gitchell, they actually
20 roped the whole area off with crime scene tape.

21 Q] Was there a log kept of people in and out of that particu-
22 lar area?

23 A] Yes.

24 Q] What process did you and other members of West Memphis
25 police department go through in recovering those three bodies,

1 after the first one was discovered?

2 A] Recovering those bodies, we actually removed the bodies
3 from the water and put them on the bank, which would be the, uh,
4 I guess south, uh, what I would call the south bank or the south
5 east bank where I was standing.

6 Q] Originally - - no - - I mean, where you were standing after
7 you crossed?

8 A] Yeah, and the bodies were actually taken out of the water
9 and placed on the bank on this particular side where I'm stand-
10 ing in this particular photograph marked State's Exhibit #26.

11 Q] And that's you on the left?

12 A] Yes, sir, this is me in this photograph here, uh, it
13 appears to be Inspector Gitchell here; yes, so he's here at this
14 particular time.

15 Q] In addition to the three bodies, was other evidence
16 recovered there in the ditch?

17 A] Yes, there were, of course, uh, three sets of tennis shoes,
18 uh, clothing items, pants and shirts, a hat, other clothing
19 items that were found near where the tennis shoe was found
20 floating.

21 Q] Do you recall how that was found, how the other additional
22 clothing was found?

23 A] I believe Detective Ridge found that other clothing.

24 Q] Okay. Was it floating in the ditch?

25 A] No, it was actually down, kind of in the mud; I think stuck

1 down in the mud with some sticks or some branches.

2 Q] I see. Were attempts made to drain a particular area of
3 this ditch in order to look for additional evidence?

4 A] Yes, there was an area, if I can refer back to State's Ex-
5 hibit #26, uh, this whole ditch for, say, a seventy-five yard,
6 uh, there was actually sandbags put in this ditch down towards
7 the Ten Mile Bayou and there were actually sandbags put in this
8 particular ditch back to the northeast of this, of where the
9 crime scene at, this ditch was sandbagged off, basically, and we
10 used a pump to pump the water out of this particular ditch, over
11 the sandbags.

12 Q] I see. Was anything used, uh, when that water was pumped
13 through there was there anything that was used in order to trap
14 anything that might be in the water?

15 A] There were screens that were used, my understanding, on
16 both sides of the pump.

17 Q] And were any items of clothing items, or anything like
18 that, were they trapped in the screen?

19 A] No.

20 Q] Did you or anyone else notice any aquatic wild life that
21 had gotten sucked up by the pump and deposited on the screen?

22 A] No, I was there during that particular process, from the
23 point of the water level being as it was in these particular
24 photographs, until the water level was dropped down to where you
25 could actually see the muddy bottom of that particular ditch.

1 Q] I show you what's been marked as State's Exhibit #20 and
2 State's Exhibit #25 and ask if you can identify those?

3 A] (Witness examining same.) This is, uh, these photographs
4 were taken of this particular bottom of this particular ditch
5 after the water had been pumped out of it, the ditch that we're
6 referring to in regards to the area of what I've been talking
7 about in State's Exhibit #26, this particular ditch area where
8 the bodies were found.

9 Q] And along the course of where that water had been pumped
10 out, did you, uh, was it searched subsequent to that for evi-
11 dentiary items?

12 A] We were, yes, we were looking, uh, sifting through mud,
13 looking for any type of weapon, uh, any type of evidence what-so
14 ever that might have been involved in this particular crime.

15 Q] Did you see any aquatic life remaining in that ditch; any
16 crayfish or any minnows that had been trapped between the two
17 sets of sandbags?

18 A] I did not notice and did not see any type of marine-type
19 life, or anything of that nature; no turtles, no tadpoles, uh,
20 anything like that flopping around or whatever, and we were, I
21 mean, we were actually looking in the mud for any type of
22 evidentiary items, and did not notice any type of marine type
23 life, as you would say.

24 Q] Approximately how long were you and members of the West
25 Memphis police department there at the crime scene that day?

1 A] It was from a little after 1:30 until probably seven or
2 eight o'clock or later that particular night.

3 Q] Did the mosquitoes eventually come out?

4 A] I'll be perfectly honest with you; they did not bother me
5 or I did not notice it but I didn't, uh, there were, you know,
6 there were mosquitoes - - of course, where I live near rice
7 fields, mosquitoes are really, really bad. But I'll be perfect-
8 ly honest with you; I do not remember the mosquitoes being
9 terribly bad, working that particular day. I would imagine
10 after dark, you know, it might be worse, but they weren't.

11 Q] Well, what about on May 6th, what kind of day was it weather
12 wise on May 6th?

13 A] Uh, it was...

14 Q] ...I notice you're in short sleeves?

15 A] Yes, sir. It was a mild day that particular day; no rain
16 or anything like that.

17 Q] And if you would, the next photograph is State's Exhibit
18 #22, if you could identify that photograph?

19 A] (Witness examining same.) This is the area which is the,
20 uh, it appears this is the Ten Mile Bayou here (indicating).

21 Q] In the top portion of the photo?

22 A] Yes, in the top right-hand portion of the photograph, uh,
23 and where the ditch that we're referring to drained out into the
24 Ten Mile Bayou. This is where it was sandbagged so that we
25 could actually pump this water out and over, of course, to drain

1 this particular ditch, looking for any type of evidentiary value
2 evidence.

3 Q] I see. I show you what's been marked as State's Exhibit
4 #24, if you can identify that?

5 A] (Witness examining same.) In this particular photograph
6 that is Detective Bryn Ridge.

7 Q] At the top of the photograph?

8 A] At the top of the photograph on the back side of the sand
9 bags, where they're pumping the water over the sand bags, pump-
10 ing the water out of this particular ditch.

11 Q] Now is the water flowing towards him, or away from him in
12 that photograph?

13 A] In this water, the water would be flowing downward towards
14 him.

15 Q] Okay. So this is essentially the same photograph as
16 State's Exhibit #24 and State's Exhibit #22; they're just dif-
17 ferent angles of that lower sand bag?

18 A] Yes, sir. And it just kind of shows you some of the
19 terrain, but that is the, or appears to be - - yeah, it is.
20 That is the same area.

21 Q] With the tree on the left in both photographs?

22 A] Right. It just shows some of the same things, just kind of
23 different angles, and a different location taken.

24 Q] Are all of these photographs accurate depictions of the
25 scene, as you recall it during that time?

1 A] Yes, sir.

2 Q] If you would, please identify Exhibit #27?

3 A] (Witness examining same.) This is the, uh, in the center
4 of this particular photograph is in State's Exhibit #27, this is
5 the pipe that I was referring to that, uh, as you can see, it's
6 kind of a walking trail where people cross this particular pipe.
7 It's a utility-type pipe that goes across the Ten Mile Bayou
8 that's used kind of as a pathway, uh, but this would have been
9 coming from between the Interstate to the bottom of this partic-
10 ular photograph, kind of in a southerly direction towards the
11 dead-end of West McAuley.

12 Q] Okay. So he is on what side, uh, what side is he on?

13 A] It appears he's on the side, uh, the Interstate side of
14 this particular area.

15 Q] Okay.

16 A] But that is the way I'm looking at it.

17 Q] Does that photograph show the, uh, does it show the foot
18 bridge that accompanies that utility pipe, or I guess, the rails
19 along the side?

20 A] Yes, sir.

21 Q] Is that the one that you used to cross over?

22 A] Yes, sir. I walked across it and not any fear of falling
23 off, I mean, it's something that's commonly used to cross.

24 Q] And the trail, did you, how did you know where to go once
25 you got into that patch of woods?

1 A] There was a trail kind of leading up; I think Denver Reid
2 actually met me, you know, in that particular area and kind of
3 showed me to the area where he found the tennis shoe. But there
4 was a trail, I think, that actually lead down into that area.

5 Q] Okay. Were there other trails in the area?

6 A] Yeah, there were several other trails running around and
7 through that particular wooded area.

8 Q] Subsequent to working that crime scene, did you participate
9 in a grid search of that patch of woods?

10 A] Yes, sir, I believe that was done the very next day. Yes,
11 sir.

12 Q] Do you know how many participated in that?

13 A] No, not without referring to some notes or something in
14 regards to that. I know there were numerous, uh, we were numer-
15 ous detectives and officers that actually conducted that
16 particular grid search. And that consisted of walking,
17 basically, just like taking ten people or whatever in this par-
18 ticular room and walking those particular woods in a group,
19 fanned out together, uh, kind of looking for any particular,
20 anything of evidentiary value.

21 Q] Approximately how many - - what's the area we're dealing
22 with when we talk about the Robin Hood woods?

23 A] It's not a real large area, but it's that area, as you can
24 see in State's Exhibit #17, uh, it's a patch of woods inbetween
25 the Interstate, the Ten Mile Bayou to the south, uh, the Blue

1 Beacon truck wash and this particular farm field up over here.
2 It's not a very large patch of woods, but you can see that in
3 State's Exhibit #17 what I'm referring to.

4 Q] Okay.

5 MR. HOLT: Can I have just a second, Your Honor?

6 THE COURT: Yes.

7 (Pause.)

8 MR. HOLT: I pass the witness.

9 CROSS-EXAMINATION

10 BY MR. HENDRIX:

11 Q] Good morning, Detective.

12 A] Good morning.

13 Q] And I basically want to cover the same ground, hopefully,
14 not redundantly that Mr. Holt just did. And I want to start out
15 with that morning, I think is May 6th of 1993 with the original
16 meeting I think y'all had at eight o'clock in the morning of the
17 detective division and work our way up through the day. If I've
18 understood it correctly, there was, generally, the detectives
19 get together at eight o'clock in the morning every morning and
20 hear reports from the previous night; is that right?

21 A] That's correct.

22 Q] And coming into the meeting of May 6th of '93, you hadn't
23 heard anything about this case or missing boys; is that right?

24 A] No, sir, not until I got there that next morning for the
25 meeting.

1 Q] And I guess it's Investigator Gitchell that runs the
2 meeting?

3 A] Yes, sir, he was the inspector over the criminal investi-
4 gation division at that particular time.

5 Q] And, and do you remember what he told you all that morning?

6 A] Uh, just basic, uh, that we had three eight-year-old boys
7 that were missing and had been missing all night long, and "get
8 your butts out there and look for them." And kind of instruct-
9 ed me to, uh, one of my tasks was to check vacant houses.

10 Q] And you, you and maybe another officer got the assignment
11 to go to the area; I think you described it as the northeast
12 quarter and that's the area that you understood where the three
13 little boys lived?

14 A] Yes, sir.

15 Q] And, and the idea was, your assignment was to go to that
16 area, search vacant houses and see if something, you know, had
17 gotten lost in the houses in that area?

18 A] Yeah, or spent the night in a vacant house or something of
19 that nature; yes.

20 Q] Did, did you remember how long you were involved in looking
21 through vacant houses in that general search from your original
22 assignment?

23 A] From roughly, before, probably right at eight o'clock that
24 morning until I was called at 1:30 that afternoon, or sometime
25 around 1:30 that afternoon in regards to the tennis shoe that

1 led me to that area.

2 Q] When you got that call at 1:30, had you received any other
3 information relevant to, to the case?

4 A] No, I mean, that particular day I had, uh, no, I mean, we
5 had checked, gotten with some utility workers and we had checked
6 some storm drains and different things, but we were just looking
7 that particular morning.

8 Q] And, and at about 1:30 you get this call and, and I take it
9 the call is about somebody has been in Robin Hood Hills, Robin
10 Hood Woods and seen a tennis shoe; is that right?

11 A] Yes, sir. I think, uh, I don't remember exactly the way
12 the call came out, but that they, someone had found a tennis
13 shoe, uh, in a ditch over there; yes, sir.

14 Q] And do you know who that was?

15 A] I don't know. It came over the West Memphis police depart-
16 ment radio, uh, to meet someone with the Search and Rescue over
17 there. I was in that particular area and I proceeded to that
18 area and I was the first person over to that particular area.

19 Q] And were you alone, by-the-way, when you were searching the
20 vacant houses, or was somebody else in that area?

21 A] Lt. Hester was, and I don't remember us being in the same
22 vehicle, but we were kind of looking, working together, I think
23 that particular morning.

24 Q] Probably different vehicles, you think?

25 A] I'm thinking different vehicles, but I'll be perfectly

1 honest with you: I think it was different vehicles, but I
2 couldn't say for sure.

3 Q] Do, do you recollect, did Officer Hester, was she at the
4 scene when you got there, or did you guys arrive simultaneously?

5 A] I don't think so. I think she showed up after I was there.

6 Q] Okay. I assume in a short period of time?

7 A] Right.

8 Q] When you got out there, you, you, you come and park your
9 vehicle - - are you in a squad car or a detective's car, or your
10 personal car?

11 A] Probably at that particular time I'm in an unmarked Crown -
12 - an LTD or something of that nature. I think that's what the
13 detectives drove at that particular time.

14 Q] Right. Okay. And, and I gather you kind of parked there
15 on West McAuley where the trail goes in?

16 A] The dead end by the pipe; yes, sir.

17 Q] Do you remember who first greeted you when you got there?

18 A] No, I'm thinking it was Denver Reid and there was a juve-
19 nile officer there by the name of Steve Jones.

20 Q] And Denver Reid is the Search and Rescue guy?

21 A] Yes, sir, Denver Reid is with the Crittenden County Search
22 and Rescue.

23 Q] Okay. On, so when you first got there then, did you, did
24 you first have contact with them on what I guess is the south
25 side of the pipe that leads into the area?

1 A] I may have walked across the pipe and met them on the north
2 side of the pipe, I'm thinking.

3 Q] So when you first got there, how many, how many people were
4 there?

5 A] When I first got there I want to say there was Denver Reid,
6 Steve Jones, me, and I think Dianne Hester came in just right
7 after me.

8 Q] Okay. Were any civilians in there?

9 A] Not that I can remember.

10 Q] All right. When you first got there, were any of the
11 people on the scene in the water in the ditch?

12 A] No, sir.

13 Q] Okay. Did you ever learn afterwards, well, you didn't see
14 anybody in the ditch before you got there; I assume you think
15 you're the first person that got into the ditch?

16 A] I think I'm the first person that was - - yeah, after they
17 discovered the tennis shoe, I'm the first person that crossed
18 the ditch and was the only person that crossed the ditch that
19 particular day, I mean, Ridge, Bryn Ridge actually came across
20 and then later some other officers to do some casting and some
21 stuff.

22 Q] But to your knowledge, you're the first to actually get
23 into the water?

24 A] That is my understanding.

25 Q] And that was my next question. Did you ever find out later

1 had anybody gone into the water to get the shoe or anything?

2 A] No.

3 Q] And you understood you're the first to be in the water?

4 A] Right.

5 Q] All right. Gottcha. Now if I can approach, we got the
6 investigative files in the case and I wanted to be able to go
7 over these, because these are just maps and layouts, and I'm not
8 sure, Mike, if you did these or not; do you know?

9 A] (Witness examining same.)

10 Q] And while you're looking at them, what I was going to do is
11 the photographs are helpful, but these are kind of scenes that
12 will help me visual where you all were and what was going on?

13 THE COURT: Let's take a ten-minute recess. Court
14 will be in recess for ten minutes.

15 (WHEREUPON, a recess was taken; proceedings resumed as follows,
16 to-wit:)

17 THE COURT: All right, go ahead.

18 MR. HENDRIX: Thank you, Judge.

19 CROSS-EXAMINATION, continuing:

20 Q] And, and Detective, where we were is I had handed you what
21 I have now marked as Petitioner's Exhibit #73 and #74 and those
22 are diagrams made of the scene that you were talking about
23 earlier and that are described in the photographs; is that
24 right?

25 A] (Witness examining same.) Yes, sir. It appears to be; I

1 don't know if this is the scale or not, but yes, sir.

2 Q] In, in the photo?

3 A] Yes, sir.

4 Q] And the point is, all I really want to do is use that as a
5 diagram for you and me to go through and to see where all of the
6 events were actually happening. Can we do that with those two
7 exhibits?

8 A] Sure.

9 MR. HENDRIX: May I move to have them introduced?

10 THE COURT: All right, they may be received.

11 (WHEREUPON, Petitioner's Exhibits #73 and #74 were admitted and
12 received into evidence and are appended on pages and .)

13 CROSS-EXAMINATION, continuing:

14 Q] I've also handed you a stack of papers that are crime scene
15 notes that I actually just handed that to you for you to, to be
16 able to review or refresh your recollection. All right, let's
17 start with Petitioner's #73, and it's going to be a little bit
18 awkward; I couldn't get that elbow working. But just to go
19 through it, here's the pipe and that's, that's what you crossed
20 first; right?

21 A] (Witness examining same.) Yes, this is West McAuley Drive,
22 uh, W. E. Catt there at the intersection and there's a little
23 foot path. That's where the utility pipe, uh, went across the
24 Ten Mile Bayou and where we crossed; yes, sir, a foot path that
25 goes up into the woods.

1 Q] And there were already folks on the scene when you arrived.
2 Where were they when you first had contact with them?

3 A] Uh, then again, I don't, I, I know that they would have had
4 to direct me into this particular scene because I was, you know,
5 hadn't searched in that particular area and wasn't familiar with
6 this particular area. So I'm just assuming that, that they
7 would have met me on, uh, in this particular area at the pipe
8 where I got out of the car and went to the pipe and would have
9 shown me where this location was.

10 Q] And then there is a foot trail that leads to the ditch;
11 right?

12 A] There's a trail that leads down into the area where the
13 tennis shoe was recovered.

14 Q] And, and you followed that trail to the ditch?

15 A] Yes, sir.

16 Q] Okay. And if I've understood you correctly, you first
17 crossed the creek where - - go ahead and mark on this and show
18 your trail?

19 A] Uh, the foot path, you know, I'll just "X" it down through
20 here. This is kind of, you know, I crossed the utility pipe
21 here and went in this direction to ultimately getting to the
22 ditch.

23 Q] And so you first crossed the ditch on what would be the
24 northwest bank of the ditch?

25 A] Uh, yeah, it would actually be the, yeah, it would be the

1 north - - well, the north bank, basically, the northwest, I
2 guess you could - - if this ditch ran this way, would be the
3 northwest side. Yes, sir.

4 Q] And, and then is that where you fall in?

5 A] In-between, like I showed you in those photographs earlier,
6 uh, in-between that area was, uh, I'm going to mark this with an
7 "X" right here. I crossed kind of in-between where they show in
8 this diagram where they located body number one, number two and
9 number three, kind of cross this ditch bank in-between this
10 area, between one and two here.

11 Q] Okay. And here's where I got confused in the sequence of
12 events. I know you, you first crossed the ditch and then stand-
13 ing on the opposite bank and are recovering the shoe that you
14 had seen; right?

15 A] Yes.

16 Q] Where in that sequence did you fall into the creek?

17 A] I did that while crossing, and this was, I, I actually fell
18 in the creek here while trying to cross to get on the other
19 side.

20 Q] Okay?

21 A] Once I had already gotten wet and I actually came up the
22 bank and came back around and got back into the water, uh,
23 again, reaching for the tennis shoe. So that was the second
24 time I had been in the water. And the first time was in-between
25 here, uh, which would be body one and number two. I crossed in-

1 between there's a, uh, I think there's a tree, like three
2 different, uh, a close group of trees growing. I think there's
3 three and then there's another little tree that I actually show-
4 ed in those last exhibits.

5 Q] Yes?

6 A] And I actually crossed there, got wet, fell in, not fell
7 in, uh, my legs actually got wet and then I came up on the bank
8 and came up on the other side, uh, and had gotten back into the
9 water when I discovered the body of number one, trying to reach
10 for the tennis shoe.

11 Q] So when you crossed the creek the first time, how deep is
12 the water?

13 A] Uh, standing up, I would say, you know, I believe it was
14 maybe my knees, a little bit above my knees.

15 Q] Maybe two; maybe three feet?

16 A] Somewhere like that. It was, you know, I wasn't waist deep
17 in water at that particular time, so it was kind of in between
18 my knees and my crotch area.

19 Q] And, and so you go across the creek, get on the bank and
20 then is the sequence of events when you're going for the tennis
21 shoe that you fall in? Did I get that right?

22 A] No, I had actually tried to cross the creek leaning over
23 against the tree and I fell into the water there. Uh, I
24 actually then just got over on the other side, I went around the
25 tree and got into the water across from the steep bank on the,

1 uh, where the tennis shoe was located and got into the water and
2 tried to reach and get the tennis shoe, is when I felt the first
3 body.

4 Q] Okay. Going back to the fall in the water. What caused
5 you to fall? Did you slip because it's, uh, slick or trip, or
6 what?

7 A] No, I mean, I was trying to get across and when I - - I was
8 trying, gonna try and hold on and swing myself from that tree,
9 and physics just didn't work out; I just fell in the water.

10 Q] Did you fall full body?

11 A] No, I mean, I just went in the water with my legs.

12 Q] You created a splash?

13 A] I mean, I landed in the water. Yes.

14 Q] Well, I mean, and Dianne Hester is taking a picture of that
15 so my sense is it's a little bit dramatic, kind of slipping and
16 falling and creating some, some activity there in the water;
17 right?

18 A] I ended up in the water; yes, sir.

19 Q] Okay. Now then you end up back in the water to recover the
20 shoe; correct?

21 A] Correct.

22 Q] Okay. Uh, and, and it's at that point you're, you're in
23 the water and you feel something and you lift your leg up and
24 one of the boys' remains floats to the surface; right?

25 A] Yes, sir.

1 Q] Now at that point you could not see the remains in the
2 water; is that right?

3 A] No, I mean, once I lifted the body up, but no, getting into
4 the water, it was, uh, the water was just a dirty brown and you
5 could not see, uh, or when I was up on the bank, could I look
6 down and see the body that was - - you could see the tennis shoe
7 that was floating on the top of the water, but you could not see
8 the body that would have been within inches of the tennis shoe.

9 Q] And, and the reason I ask, Detective, is that you were
10 asked on direct-examination at this juncture "did you see any
11 marine life in the creek" and I'm assuming if you couldn't see
12 the body, you couldn't see any marine life, either; right?

13 A] Well, yeah, I think he was referring to whether or not it
14 was, you know, uh, whether there were snakes or turtles or some-
15 thing of that nature under the surface, I mean, on top of the
16 surface, or whatever. We actually, uh, once they drained the
17 ditch, we didn't see any marine type life or anything, once they
18 had drained it, flopping around at the bottom of that particular
19 ditch.

20 Q] Now when you recovered the remains of, of the first boy,
21 describe that a little bit in more detail for us; were you the
22 sole person who removed the remains from the water, or did other
23 officers come to your aid at that point?

24 A] When we first discovered the body, the body remained in the
25 water until we got other personnel to that area, uh, I backed

1 out and got on the, on the bank.

2 Q] And, and my, I, I gather at that point this is a
3 significant crime scene; you're cordoning everything off and
4 you're calling in personnel to assist; right?

5 A] Correct.

6 Q] And when you found the first body, we know, I guess, that
7 there were four personnel on site; is that right?

8 A] It was at least Dianne Hester, uh, Steve Jones and Denver
9 Reid, yes, and myself.

10 Q] And then after the first remains are found, I gather there
11 is an increasing presence at the scene. I know ultimately we
12 have city workers at the pump, we have Officer Ridge who is now
13 on site?

14 A] Yeah, the city workers for the pump, uh, didn't, weren't in
15 I would say the general area of the crime scene. They were kind
16 of back up on a hill, uh, they were kind of back up on the hill
17 setting up the generator and the pump and everything, and I
18 think Ridge actually, actually orchestrated putting the pump in
19 the water and they were handing sand bags from that particular
20 area off - - wasn't right in the crime scene area itself. Yes,
21 sir.

22 Q] Let's go back to the sequence of events. You find the
23 remains of the first body. Let me take a detour here real
24 quick. Now in 1993 I want to talk about your experience and
25 training up to that point. Did I understand right, you had be-

1 come a law enforcement officer in 1978?

2 A] Actually, I worked for Johnson County Sheriff's Department
3 for a short period of time, for eleven months. I actually came
4 to the Crittenden County Sheriff's office in 1981. I worked
5 there as radio dispatcher/jailer for a period of time and then
6 became a criminal investigator probably in '84.

7 Q] And so it was '78 when you started in Johnson County. Was
8 that Clarksville?

9 A] Yes, it wasn't, per se, police. I mean, I worked the jail
10 and dispatching.

11 Q] Okay. But you weren't getting training as an investigator?

12 A] No, sir.

13 Q] All right, come to Crittenden County in '81 and, and I
14 guess sort of the same thing; are you training at that point
15 between '81 and '84 as a law enforcement officer and an investi-
16 gator?

17 A] Uh, as a law enforcement officer. '81 through, uh, in '81
18 I worked three days a week in the jail, three days a week in
19 dispatch, uh, you know, up until, uh, probably '84 when I
20 actually started working in the criminal investigation field.

21 Q] And, and my experience is, is the first significant amount
22 of training that an officer gets is down at Camden at ALETA,
23 Arkansas Law Enforcement Training Academy?

24 A] Yes, sir.

25 Q] Is that the same with your experience?

1 A] Yes, sir.

2 Q] Okay. So when, when did you go to ALETA?

3 A] In 1984.

4 Q] In '84?

5 A] Yes, sir.

6 Q] And you received training in homicide investigations; to
7 the extent ALETA does have; right?

8 A] No, I, uh, well, over the course of my career, I've, uh,
9 I'd probably have to look back at training records, but I've
10 received homicide investigation training from the FBI through
11 different schools, uh, throughout my career.

12 Q] And, and let's stop that at 1993. So by 1993 when you
13 first discovered the remains of the first boy, what homicide
14 investigative training had you had?

15 A] Without looking at my file, I'd have to actually look
16 through my training file and be able to tell you at that parti-
17 cular time. I would, uh, I had been with the West Memphis
18 police department since 1988, uh, as an investigator and at that
19 particular time on-the-job training at that particular time, we
20 had twelve, thirteen homicides a year that I was directly in-
21 volved in, in investigating. So a lot of on-the-job training
22 and also, uh, but as far as schooling, I would have to, uh, I
23 would actually have to, uh, look at my file, and which I don't
24 have available with me.

25 Q] And, and that was actually the next line that I was going

1 to ask is, how many homicide investigations had you actually
2 worked, uh, by 1993, and let me begin with as lead investigator?
3 A] Uh, well, we have a, we, we, you know, our, our department,
4 you know, as far as calling yourself a lead investigator, I
5 mean, we had a homicide pretty much the majority of the detec-
6 ives worked on that particular homicide. We weren't a large
7 department, uh, but we had probably, uh, roughly ten, twelve,
8 maybe fourteen, sixteen, depending on the year, uh, homicides
9 per year, uh, for several years in the late '80s and '90s. So
10 '88, '89. '90, '91, '92, '93, uh, you can pretty much figure al-
11 most one a month, uh, for six years.

12 Q] So by 1993 had you had any investigative training exper-
13 ience training, particularly with child homicides?

14 A] That, that, I mean, I know I've had homicide training with,
15 with different, different type of schooling, uh, different type
16 of, uh, I had several homicide trainings, but I couldn't tell
17 you exactly - - like I said, I just couldn't tell you.

18 Q] And then also, any training or experience in homicides
19 where bodies were recovered from bodies of water?

20 A] Uh, no, sir.

21 Q] Uh, now back to the body of the first boy is found and the
22 remains stay there until other officers come on site; is that
23 right?

24 A] Yes, sir.

25 Q] Okay. And then kind of go through now the sequence of

1 events from there. First of all, who does come to the scene
2 after, after you discover the first body, and those notes may
3 help you out a little?

4 A] I know Bryn Ridge did come to the scene and he actually
5 came down and crossed the ditch and actually assisted me, uh,
6 during the day. Detective Bill Durham; uh, Detective Tony
7 Anderson, who actually did at some point during the day cross
8 the ditch, uh, he was a retired Memphis police department crime
9 scene man, uh, and he actually is the one that did the casting;
10 uh, Detective Burch, he stayed up on the bank; uh, Lt. Hester
11 stayed up on the bank; Captain Miller stayed up on the bank; uh,
12 and I think when we were doing measurements, I don't see it in
13 the notes, but I saw in one of the photographs, uh, Shane
14 Griffin was in one of the photographs. He was the one with the
15 black gloves on that was helping us doing some, I think, doing
16 some measuring at one point.

17 Q] Generally what happens, I mean, this becomes a crime scene
18 that I'm assuming like all crime scenes, becomes fairly hectic,
19 uh, and are a lot of people on the scene. At its height when
20 the most people were on the scene, do you have an estimation of
21 how many people are out there?

22 A] Like I say, me and Ridge, uh, according to these notes, uh,
23 about ten individuals with the West Memphis police department
24 were up on the, what I call the bank, which is above the, the
25 heel that's kind of a, a slope or a cliff, per se; they're kind

1 of up on the bank down from the trail. There were very few of
2 those individuals that actually entered into what I call the
3 immediate crime scene where the bodies were found, and that
4 would have been myself, uh, now Captain, Ridge and Tony Anderson
5 that would have actually crossed and have been over in the
6 immediate crime scene area, I mean, the whole wooded area was
7 basically a crime scene, but I'm talking about the immediate
8 area where the bodies were found.

9 Q] And ultimately where I want to get to is, is let's try to
10 identify who all gets in the water at some point, but let's kind
11 of go through it by sequence. After the recovery of the first
12 remains, there is a waiting period for other officers to get
13 there. Does anybody get in the water at that point?

14 A] There was Captain Ridge, uh, at some point assisted me in
15 removing the bodies from the water, and I know he was in the
16 water.

17 Q] Sure?

18 A] But I can't think of anyone else at that particular time
19 that would have been in the water.

20 Q] Okay. So I'm gathering that when the first body is found,
21 there's that waiting period and until other officers arrive, no-
22 body gets in the water during that small period of time; right?

23 A] No, sir.

24 Q] Okay. Then I gather it's then detective, now captain Ridge
25 and other law enforcement personnel show up and an actual search

1 of the water begins; right?

2 A] No, sir. When Captain Ridge gets there, uh, myself and
3 Captain Ridge actually kind of search the water, uh, for the
4 other two victims.

5 Q] And that results in the other two bodies being found;
6 right?

7 A] Right.

8 Q] And so, now how does that search occur. Kind of describe
9 what you and Detective Ridge are doing in the water?

10 A] Detective Ridge actually walked in the water down, uh, back
11 to the south and actually found the other two victims.

12 Q] And can you kind of point where, on this diagram, where
13 would Detective Ridge have begun to search?

14 A] Uh, in this particular area where you see, where number one
15 listed here, where the first victim's body was found, uh, down
16 kind of in a southwesterly direction, uh, to where two and three
17 are here on this diagram.

18 Q] So you sort of begin, to make sure I understand what I'm
19 talking about, that ditch runs, it runs into the bayou; correct?

20 A] Yes.

21 Q] Okay. And so he begins sort of upstream working his way
22 down, essentially going downstream towards the bayou; right, to
23 mouth of the creek into the bayou?

24 A] I don't know how far, I mean, I don't know how far he
25 actually went down after he found the second body, uh, until

1 after we had it sandbagged. But I know he was in the water when
2 they found the second and third body.

3 Q] And, and that's a method that makes sense if you find a
4 body in water and you know which direction the stream is going,
5 you're going to start upstream and start moving down towards, if
6 you're going to find anything; fair enough?

7 A] Well, that's the direction that he went; yes, sir.

8 Q] And so describe - - I was just sort of doing what I thought
9 is probably was his method of searching - - can you describe
10 what he was doing in the water?

11 A] No, sir, I, you know, he can probably describe that for
12 you. I know he found the bodies and I know he found them by,
13 uh, wading down, you know, in the water.

14 Q] And I'm assuming he had his hands in the water trying to
15 feel along there as much as he could; right?

16 A] I mean, I couldn't honestly answer that. I, I, you know,
17 without being, you know, just assuming.

18 Q] Sure. Not a problem. Uh, and so ultimately he discovers
19 the remains of the second boy; is that right?

20 A] That's correct.

21 Q] Okay. Where were you at that time; were you still in the
22 water also?

23 A] I was probably up around where the, where the first victim
24 was found, at that particular time.

25 Q] Okay. So he was down, he had moved past you, down towards

1 the bayou; right?

2 A] Yes, sir.

3 Q] Okay. The second body is found and what action is taken?

4 A] That, uh, and I'm trying to remember back, uh, at some
5 point we remove the bodies from the water and, and I was trying
6 to remember exactly where the bodies were placed on the banks,
7 uh, the body that I first found was found, uh, up on the slick-
8 ed off bank which would have been on the south, uh, the south-
9 east side of the ditch. Uh, and from my memory I'm thinking
10 that, that Ridge placed the other bodies on the, uh, actually,
11 on the northwest side of the ditch. And for some reason or
12 other, I think this morning I may have testified that we put the
13 three victims up on the ditch and I may have said on that, on
14 the side where the one, the first victim was. But it was
15 actually, from my memory now, it was actually two of them was
16 placed on one side and one on the other.

17 Q] The body you found was placed in one position where you had
18 found that body, and Detective Ridge found the other two and
19 placed the bodies?

20 A] Correct.

21 THE COURT: Approximately how far down the ditch
22 were the other two bodies found?

23 THE WITNESS: Just on the - - let me see the photo-
24 graph that would help show, uh, twenty feet, maybe.
25 The first body, and, and I'm referring to State's Ex-

1 hibit #26, uh, where I crossed the, the ditch, made an
2 "X" here on the tree that I grabbed on to, uh, I got
3 to the water there, uh, I came up this bank around
4 this tree where you can see me here, but came up and
5 around and you can probably tell by my pants leg at
6 that particular point, uh, how deep the water was by
7 the water on my leg, uh, which was kind of below the
8 knees there, or around the knee area. I came back
9 around, one of the bodies was found in this area right
10 here; the other two bodies were found right on the
11 other side of these trees, uh, which is not, uh, not a
12 great distance, but probably, uh, if I had to say the
13 distance from this courtroom, probably about three
14 rows back, uh, in pews, uh, from where I am to, say,
15 the gentleman in the green shirt on that row.

16 THE COURT: About thirty feet?

17 MR. HENDRIX: That's what I was thinking; maybe
18 twenty yards, at most?

19 THE WITNESS: Yeah, I would just roughly - - and
20 it may have been...

21 THE COURT: ...fifteen yards?

22 CROSS-EXAMINATION, continuing:

23 Q] And then in that picture - - by-the-way, was that picture
24 taken before or after the bodies the bodies were discovered?

25 A] Well, I didn't take the picture, but I really, I would

1 assume I've already discovered the first body in the water here,
2 because Gitchell and them are here now, so the bodies are still
3 in the water but I had already found that particular body and
4 summonsed them to the area.

5 Q] Okay.

6 A] Uh, but I don't see the body laying on the ditch bank, so
7 they're still in the water at that particular time.

8 Q] Okay. So the second and third bodies were found, I'd say
9 about fifteen yards downstream from the remains of the first
10 body; right?

11 A] And that's, yeah, I mean, without a tape measure or what-
12 ever, and looking at notes, that's my recollection.

13 Q] And the first body is upstream from the second and third
14 bodies?

15 A] Uh, the first body is upstream from the second and third;
16 correct.

17 Q] Right. And so when Detective Ridge got in the water and
18 started searching, he was upstream from first body; yes?

19 A] Yes.

20 Q] And do you have a recollection of how far upstream he
21 started?

22 A] From just near where the first victim was located until
23 where the second and third victims were located.

24 Q] Five feet upstream from the first body - - ten feet?

25 A] Upstream, no, no. I mean, where the first body was, he was

1 right there and went downstream to where he found the second and
2 third body; yes, sir.

3 Q] Gotcha.

4 THE COURT: Was he walking towards the Ten Mile
5 Bayou?

6 THE WITNESS: Yes, sir.

7 THE COURT: Okay.

8 CROSS-EXAMINATION, continuing:

9 Q] Walking downstream with the flow, towards Ten Mile Bayou?

10 A] Yeah, there wasn't a lot of flow, but yeah.

11 Q] That's what it does; it flows into Ten Mile Bayou?

12 A] Right.

13 Q] Okay. And these notes indicate that you found the first
14 body at 2:45 p.m.; does that sound right to you?

15 A] That may have been the time when we removed the body. I
16 would assume if I got there at 1:30, there wasn't that much time
17 from the time I, uh, the body may have removed at 2:45.

18 Q] Yeah, you're exactly right; 2:45.

19 A] Yes, sir. And I think that particular day, uh, I had got-
20 ten there at about 1:30 and it would have been just shortly
21 after 1:30 when we discovered the first body.

22 Q] Understood. So the 2:45 p.m. the first remains are removed
23 from the water, and this indicates that it's 2:56 that Detective
24 Ridge locates the second body approximately twenty-five feet
25 south of the first body; does that sound right?

1 A] That would, yes, that would make more sense because, uh, we
2 did not remove the bodies right away. No, sir.

3 Q] And that's at 2:56 p.m.; 2:59 p.m. Detective Ridge locates
4 the third body five feet south of the second body; is that
5 consistent with your recollection?

6 A] Yes, sir.

7 Q] Okay. Uh, now to the best of your memory throughout this
8 whole - - well, let me move on to the next sequence of events.
9 After, after the bodies were found, uh, a decision was made that
10 there may be items of evidentiary value in that water; right?

11 A] Yes, to be able to sandbag that particular ditch; yes, sir.

12 Q] And so the method is "let's pump this water out and see
13 what we find"; correct?

14 A] Correct.

15 Q] Okay. Now how, uh, tell us about making the arrangements
16 to have this place sandbagged; who does the sandbagging and how?

17 A] Inspector Gitchell, I assume, called somebody with the
18 utilities department and got that set up and had them bring
19 equipment to that location, uh, but, but I don't know who
20 actually set that up.

21 Q] Do you remember who, how many people were used to sandbag
22 the area?

23 A] No, sir. I know some utility workers, but I couldn't tell
24 you how many.

25 Q] Okay. The coroner arrives on the scene at 3:55 p.m. Do

1 you know whether the sandbagging started before or after that?

2 A] I could not tell you; no, sir.

3 Q] Okay. And show on our diagram here what area was sand-
4 bagged?

5 A] Uh, well, I could probably show you a lot better in this
6 photograph, which is State's Exhibit #26, uh, you can see down-
7 stream where, uh, I believe that's Ridge with the sandbags here
8 in this area here, and there's another picture, uh, showing the
9 sandbags. And it's before you get to the Ten Mile Bayou.

10 Q] Hang on - - I saw that, too.

11 A] Uh, the other set of sandbags, as I understand, were some-
12 what distant up this way.

13 Q] Upstream?

14 A] Upstream.

15 Q] So on this, the sandbags were placed close to the mouth of
16 the creek with the Ten Mile Bayou?

17 A] Yes, but I don't know the exact distance to the Ten Mile
18 Bayou, but you can see the Ten Mile Bayou, I think in the back
19 of the other photograph, so it's not too far from the Ten Mile
20 Bayou that these sandbags are put downstream.

21 Q] Okay.

22 A] And then there were some more upstream, uh, and then it was
23 pumped.

24 Q] Pumped almost dry and then you couldn't pump it all the way
25 dry, but you could pump it to where you could clearly see the

1 bottom of it as is shown in those other pictures.

2 Q] Were you using the first body, it's location, as a starting
3 point - - how far upstream was that set of sandbags placed - -
4 I'm trying to think of an area as cordoned off by sandbags?

5 A] Again, uh, again just from my memory, probably, uh, from
6 here to the, well, maybe from the back of the courtroom, uh, to
7 the front of the courtroom.

8 Q] Okay?

9 A] Distance-wise.

10 Q] And that's from the first body?

11 A] Maybe a little bit further up, but close.

12 Q] If that's the, if the first body is the reference point,
13 then twenty feet upstream is where the sandbags are and I guess
14 we know that the bayou is what - - about twenty feet from the
15 first body and we're talking about forty to fifty feet got
16 cordoned off?

17 A] I'm thinking it's probably a bigger area than forty or
18 fifty feet.

19 Q] Okay?

20 A] You know, maybe fifty yards, but there was a pretty good
21 size area of the ditch.

22 Q] So when the sandbagging was actually taking place, people
23 are getting in the water, because the sandbags were put in the
24 water; right?

25 A] No, Captain, or well, Bryn Ridge was actually the person

1 that was placing the sandbags in the water from up on the
2 hillside, or whatever, they were throwing him sandbags and he
3 was the one that was placing the sandbags down into the water.

4 Q] So he's the only person that ever got in the water to place
5 the sandbags on both ends?

6 A] That is my understanding.

7 Q] Okay. You didn't, you, you weren't...

8 A] ...I may have assisted him, but no, me and him were the
9 only ones down in the water. And my mind was limited on, uh, I
10 wasn't in the water when he searched for the second and third
11 body.

12 Q] Okay. And then the city employees come out with the pump
13 to pump the water out; right?

14 A] Correct.

15 Q] And, and I'm assuming it was a fairly, uh, powerful pump,
16 because you're dealing now with forty yards worth of water in
17 the creek?

18 A] Uh-huh.

19 Q] So it takes some effort to get that done; right?

20 A] Yes.

21 Q] I'm assuming it's one - - I've got a pump, a pool, and I
22 know how loud that is - - I assume this is a significantly loud
23 device?

24 A] Yes, a generator-type pump; yes.

25 Q] Where does, where are y'all pumping the water to, by-the-

1 way?

2 A] We're pumping the water through a tube, or a hose and
3 they're pumping the water from inside, uh, of course, we have
4 screens on the hoses, uh, so that it would trap any evidentiary,
5 anything of evidentiary value and they were pumping the water
6 over onto the Ten Mile Bayou side.

7 Q] And does the hose go in one place, or do y'all move it
8 several times?

9 A] Uh, Bryan Ridge could probably answer that question more
10 than me, uh, I was wondering if they had a photograph of that,
11 uh, but it's my recollection that they pumped it, you know,
12 pumped from inside the sandbagged area out over into the Ten
13 Mile Bayou area.

14 Q] And you had never been in this area before?

15 A] Correct.

16 Q] You, you're not familiar with what type of wildlife was out
17 there; I assume, or not out there?

18 A] Well, I mean, I've been in and out of ditch banks in West
19 Memphis before and, you know.

20 Q] And I assume there are turtles in areas like this; right?

21 A] Uh, in the, in some of the bayous in West Memphis, I've
22 seen, you know, seen stuff like, you know, turtles and different
23 things.

24 Q] And, and then I understand the point of your testimony is
25 to try to say "I didn't see any marine life; I didn't see any

1 turtles." That's not to say that they were not there, correct,
2 you just didn't see them under the circumstances?

3 A] Yeah, all I'm saying is that I did not see any type of, you
4 know, uh, you know, I would almost expect to see, you know, you
5 dry something up like that, uh, tadpoles or some type of fish or
6 turtles or something, you know, crawdads or something in there,
7 but there wasn't anything there.

8 Q] Well, you fish, I assuming?

9 A] Yes.

10 Q] Do you fish?

11 A] Yes, sir.

12 Q] And generally, the idea is to remain as still and calm as
13 you can, because fish are going to be frightened by movement,
14 sound and splashing in the water; right?

15 A] Uh-huh.

16 Q] Yes?

17 A] Yeah.

18 Q] And we've got a guy falling in this water; we've got
19 activity in this water and we've got one guy sweeping down-
20 stream; correct?

21 A] Yes, sir.

22 Q] And so isn't it very plausible that any marine life, fish,
23 whatever, had been moving out frightened and when you got into
24 the body, they were gone?

25 A] I guess that's a possibility.

1 Q] Have you heard of an area around here called Turtle Hill?

2 A] No, I saw that on this map while ago, but during this in-
3 vestigation, that's the first I had ever seen that. And I saw
4 that on something you had showed me while ago, but that didn't
5 come into play with anything that I had part of investigating,
6 and I hadn't seen that before.

7 Q] Yeah, you saw the investigative report. Somebody made a
8 diagram of the crime scene and they have a circle here for an
9 area called Turtle Hill. Your definition is you've never heard
10 of Turtle Hill in that area?

11 A] No, sir, not until I saw that on that piece of paper a
12 while ago. Yes, sir.

13 Q] Uh, now the bodies were put on the bank, the first remains
14 on one section and the second and third on another section;
15 right?

16 A] Yes, sir.

17 Q] And, and the bodies, I understood, sort of remained
18 uncovered for an, uh, I think you had to end call somebody to
19 get some plastic?

20 A] I think they had brought some black plastic in, actually,
21 and covered the bodies; yes, sir.

22 Q] And they remained on the bank out there for a bit?

23 A] Yes, sir.

24 Q] And, and were you aware that the Arkansas Crime Lab identi-
25 fied animal hairs as being found at the scene?

1 A] Animal hairs?

2 Q] Yes?

3 A] Uh, no, I haven't read that particular report.

4 Q] All right. Are you aware that animal hairs have been iden-
5 tified as having been found in some of the victims' hair?

6 A] No, sir.

7 Q] Uh, in, in this search and as you know, Detective Allen,
8 one of the issues that came up at trial is an allegation that my
9 client removed one of the boys' scrotum and testes. You did a
10 thorough crime scene search, drained the ditch, searched tho-
11 roughly the land area; did you ever find any pieces of flesh?

12 A] No, sir.

13 MR. HENDRIX: May I have a minute, Judge?

14 (Pause.)

15 MR. HENDRIX: I'll pass the witness.

16 CROSS-EXAMINATION

17 BY MR. BURT:

18 Q] Good morning, sir.

19 A] Good morning.

20 Q] Just a couple of things that you said I wanted to follow-up
21 on. You said that this area that you were observing at about
22 1:30 that day was not cleaned and it was "kind of scrubbed up."
23 Would you elaborate on that - - what you mean by "kind of
24 scrubbed up"?

25 A] Well, there wasn't, uh, what I mean by a cleaned off area,

1 was there wasn't the same, I mean, there wasn't a lot of leaves,
2 uh, in that particular area and it, uh, there wasn't any, well,
3 it would be like an area of dirt that, uh, was kind of roughed
4 up but it wasn't, uh, there wasn't any area where you could see
5 a visible shoe print or something of that nature. But it was
6 different than a lot of the other areas, uh, in the same
7 vicinity because of the lack of, of, you know, leaves and brush
8 and different debris.

9 Q] Do you remember when you testified in the Misskelley trial
10 that you said it "looked like mud had been, it was on top of the
11 grass and it was like smushed down," that's at page 727 from
12 your trial testimony in the Misskelley case. Do you remember
13 saying that?

14 A] Uh, what area are we referring to now; are we referring to
15 the bank area?

16 Q] Yes, the question was "did you notice anything about the
17 grass?"

18 Answer: "Just the mud on the grass."

19 Question: "Was the grass standing up?"

20 Answer: "It was to my best knowledge. It looked like mud had
21 been, it was on top of the grass, it was like smushed down."

22 A] I don't remember that and I don't remember that testimony
23 and I just don't recall the, uh, the grass at that particular
24 point. My memory may have been fresher when I made that testi-
25 mony, but I don't, I'm trying to remember back, you know, six-

1 teen years ago and, uh, I just don't recall. I, I mean, I can
2 remember that, you know, the bank was, uh, you know, I can al-
3 most kind of remember what the bank looked like, but as far as
4 the grass and the mud, uh, but it was, you know, I kept trying
5 to think what would have caused the bank to have been, you know,
6 in the condition that it was in, you know, and it was lower than
7 these other top parts and I'm thinking, well, maybe there's no
8 leaves because of the higher water flow that flowed down through
9 there, but then again, the bank kind of looked kind of like it,
10 it had been, you know, there had been some activity in that par-
11 ticular area but nothing that, you know, tennis shoe print-wise,
12 that type of thing.

13 Q] And you don't know whether, when you say "activity," you
14 don't know whether it was animal activity or human activity;
15 correct?

16 A] That's correct.

17 Q] The only thing you observed as you said this morning was,
18 that the area was scrubbed down - - scuffed up as if there had
19 been some kind of activity in there?

20 A] That's correct.

21 Q] And, and this would have been in an area where you would
22 have had easy access into that ditch; correct?

23 A] Where I would have had easy...

24 Q] ...when you saw the scuffed up area that was on the side
25 of the ditch where it was flatter and close to the steeper side;

1 correct?

2 A] Yes, uh, getting to it from that north side was, of course,
3 uh, for me, not very easily done but, uh, you could actually
4 walk down the, uh, from the other side, could have actually
5 walked, you know, down to that side.

6 Q] Now were you, when you were briefed on this before you went
7 out there, were you told that there were other people that had
8 gone out and searched that area in the morning before you
9 arrived at about 1:30?

10 A] All I remember that particular morning is, is telling me
11 that we had three eight-year-olds missing and I knew that there
12 were other individuals searching other areas and they were going
13 to call Search and Rescue in, and I know that he gave different
14 investigators different duties to go out and do, and I know I
15 was to look at vacant houses. But, uh, I mean, that's what I
16 knew. I mean, I didn't know, you know, I didn't set all of that
17 up so I was just advised to go out do a certain particular duty
18 that day.

19 Q] So you didn't know that at about 7:30 Detective Ridge, 7:30
20 in the morning, Detective Ridge was out there in a three-wheeler
21 buzzing around, trying to look locate the kids?

22 A] No, sir.

23 Q] Would, would you expect to see wildlife under those circum-
24 stances if you arrived after they were out there in a three-
25 wheeler; fifteen people tramping around out there, would you

1 expect you were going to see any wildlife?

2 A] Like I said, I don't know where he was at on a three-wheel-
3 er, uh, and in fact, that I don't, I didn't see him. When he
4 came down after we had called him, I mean, he wasn't in those
5 woods at that particular time, so I don't know what he had been
6 doing that particular morning and what his assignments were or
7 where he was looking.

8 Q] According to this investigative report which you've made
9 reference to, the chronology here indicates that you located the
10 body at 1:45 p.m.; correct?

11 A] I got there at 1:30, uh, I know that those are somebody's
12 notes and I would say shortly there afterwards, yes, I found the
13 body.

14 Q] And the first body was not removed until 2:45 p.m.; right?

15 A] That's correct.

16 Q] And during that time from 1:45 to 2:45, Ridge was in the
17 water moving from north to south?

18 A] From where the first body was found to where the second and
19 third body was found; yes.

20 Q] You were there when he was searching; right - - you
21 actually observed him in the water, searching?

22 A] Yes, sir.

23 Q] Let me read to you this trial testimony. This is from the
24 Misskelley trial and see if this refreshes your memory as to
25 what you saw him do.

1 A] Okay.

2 Q] This is at 754 of the Misskelley trial transcript: Quote:
3 "I got into the water north of the bodies, north of the victim
4 that had been located, who we discovered was Michael Moore. I
5 proceeded to work my way through the water, through the ditch
6 and being careful not to destroy any evidence. I was searching
7 the bottom of the ditch as I made my way to the bodies."

8 Question: "When you say you searching the bottom of the ditch,
9 what do you mean?"

10 Answer: "Okay, obviously, you can't see into this muddy water so
11 the best way to describe it is as I actually do it. From the
12 water level I was raking my hands from one bank of the water to
13 where it came out on the other side along the bottom all the
14 way. That's what I did until I made my way to that body."

15 Question: "After you made your way to Michael Moore, what did
16 you do?"

17 Answer: "We took the body of Michael Moore from the water."

18 Question: "Then what did you do?"

19 Answer: "I continued to search."

20 Question: "In the same manner?"

21 Answer: "Yes, I did. I'm the one that stayed in the ditch the
22 entire time from start to finish, until all of the bodies were
23 found, to as far as I could go in that ditch and reach the
24 bottom. "That's the way I searched it."

25 Question: "And about how many feet would you say that you went

1 in that manner?"

2 Answer: "Probably about forty-five feet."

3 And then at page 763 he says, "I walked through this ditch all
4 the way into Ten Mile Bayou. When it got up to my neck I had to
5 turn and come back out. It was up to my neck in the bayou and
6 we took a boat and got into the bayou itself and drug a large
7 magnet to pick up any metal items that might have been in the
8 bayou."

9 A] Yeah, I didn't go, I wasn't in, I didn't, did not even know
10 that he had gotten into the Ten Mile Bayou, so I would have been
11 still up in the wooded area up on the bank, more than likely,
12 because I don't recall him getting into the Ten Mile Bayou and
13 of course, I wasn't present when they found the bicycles on the
14 Ten Mile Bayou or any of that either.

15 Q] But do you recall him getting in the water north of the
16 first body, moving south, moving his hands from side to side?

17 A] Yeah, I'm trying to remember and I listened when you read
18 that and I'll be perfectly honest with you, I, uh, I don't
19 remember, uh, you know, I remember finding the first body and I
20 remember him going from that area down to find the other two
21 bodies, but as far as what areas he searched with his hands or
22 whatever, that is my recollection that he found the one body and
23 then, I mean, I found the one body and then he went down and
24 found the other two bodies.

25 Q] And all of the searching he did in the water was taking

1 place while there was water in, in the ditch; correct?

2 A] Correct.

3 Q] And the bodies were all discovered and put on the side
4 before the coroner go there; isn't that true?

5 A] The bodies were taken out of the water; yes, sir. And I
6 saw something to where it was around 2:45, something of that
7 nature and I, I heard someone say that the coroner, my notes say
8 that the coroner made it there before four o'clock that
9 particular day.

10 Q] Well, your notes here, the investigative report says 2:59 -
11 - strike that. The report indicates that at 2:56 the second
12 body was located; right?

13 A] Okay.

14 Q] 2:59 the third body was located?

15 A] Okay.

16 Q] And, uh, 3:55 Kent Hale, coroner, arrived on scene; also
17 present were numbers of the West Memphis utility, they brought
18 to the scene a water pump?

19 A] Yes, sir.

20 Q] So the coroner and the people that were doing water pumping
21 didn't get there until 3:55?

22 A] Correct.

23 Q] And all of the searching that Ridge had done was complete
24 while the water was still in the ditch and before the coroner
25 got there; correct?

1 A] That, I don't know. I mean, you'd have to ask Ridge. I
2 don't recall, other than him searching from the first body to
3 the third body, uh, I just don't recall that.

4 Q] But it was while searching through the ditch that he found
5 the second and third bodies; right?

6 A] Correct.

7 Q] And according to this chronology, the third body was found
8 at 2:59?

9 A] Correct.

10 Q] And the coroner didn't get there until an hour later?

11 A] Correct.

12 Q] And the pumping actually started sometime after the coroner
13 arrived; correct?

14 A] In this picture when we were talking about this while ago
15 where Ridge was down here with the sandbagging, uh and I was
16 here...

17 Q] ...you're pointing to a photograph there. What are you
18 pointing to?

19 A] That is State's Exhibit #26, uh, and I stated I did not see
20 the bodies, uh, at this particular location. If you're saying
21 that the pumps didn't get there until four o'clock and they
22 wouldn't have started the sandbagging until then, uh, the bodies
23 may have already been removed from this scene at that particular
24 time.

25 Q] You don't see the bodies in that photograph; right?

1 A] I don't see the bodies in this photograph and I assume that
2 they're pumping the water out or had been pumping the water out
3 for some time, because it looks like to me like Ridge is there
4 with the sandbags and the sandbags are here when this particu-
5 lar photograph was taken. Of course, it doesn't state on here a
6 date and time, I mean, the time when it was actually taken that
7 particular day. But I recall Ridge going into the water near
8 where I found the first victim and went down and found the
9 second and third, and I don't recall him going all the way down
10 to the Ten Mile Bayou. And like I, said, he, I, I just don't
11 recall him doing that but I was probably doing something else
12 during that time period but I didn't actually witness him do
13 that. And I don't know time-wise when that would have been

14 Q] Okay. We'll straighten that out with him. The last area:
15 You said that the shoe that was floating in the water was the
16 furthestest thing from your mind; correct, your prior testimony?

17 A] Once I found the body, yeah, the shoe stayed, though,
18 pretty much where it was at. There wasn't, uh, it didn't like
19 float down the stream or anything of that nature.

20 Q] What was primary in your mind was finding the three bodies
21 at that point; right?

22 A] Well, that and the shock of finding the first one; yes,
23 sir.

24 Q] The furthestest thing from your mind was looking and seeing
25 whether there were turtles or any other aquatic life in the

1 water before it was drained out; would that be fair?

2 A] Well, I would have told you I would have been scared of
3 snakes in the water, uh, and my own safety, and I'm sure that
4 was in my mind also, because, you know, Arkansas is famous for
5 water moccasins and, uh, snakes that will bite you. But I think
6 I was probably...

7 THE COURT: ...they don't bite in California.

8 MR. BURT: I disagree with that.

9 CROSS-EXAMINATION, continuing:

10 A] I was probably aware that there might have been some type
11 of, uh, when I was going to cross that particular ditch that
12 there might have been, you know, some type of poisonous snake or
13 something of that nature in that water.

14 Q] Snapping turtles?

15 A] And I don't recall seeing anything of that nature in that
16 water.

17 Q] In other words, the thought crossed your mind as you were
18 trying to step over that creek that underneath that muddy sur-
19 face in that water you could have a snake or a snapping turtle,
20 or other kinds of animals that you are familiar with that live
21 in that kind of environment; correct?

22 A] My concern, I mean, I was already wet and I stepped down
23 into the water to get that tennis shoe when I discovered the
24 body. When the body raised up and the initial shock of seeing a
25 body floating up at the water, uh, was, you know, at that par-

1 ticular time, the tennis shoe was the furthestest thing from my
2 mind at that particular time, is what I had said. But, you
3 know, I did not see at that particular time any type of turtles.
4 I've been around ditch banks before in West Memphis where, you
5 know, a turtle will jump off of a log but you'll see him pop his
6 head up a little bit downstream or whatever, and I did not see
7 any turtles or any type of fish or that type of thing jumping or
8 anything of that nature in that particular ditch that day.

9 Q] And of course, you couldn't see below the surface to see
10 what was there; right?

11 A] That's correct. I could see the surface, I could see the
12 bank, you know, that type of thing.

13 Q] And, and what you're saying is in that immediate time frame
14 where you're trying to get over the water, you slip and fall in,
15 your feet go to the bottom, you didn't see at that moment any
16 turtles popping their heads up?

17 A] No, sir.

18 MR. BURT: Okay. Thank you. That's all I have.

19 And we would move into evidence...

20 THE COURT: ...they've already been received.

21 MR. BURT: Have they?

22 THE COURT: Yes, you offered them and I them.

23 MR. HENDRIX: I don't think I marked the notes. I
24 did the diagrams, Judge, but not the notes.

25 THE COURT: Oh, the notes. Well, they can be

1 received, too. Are you going to have a whole lot of
2 re-direct?

3 MR. HOLT: No, just a couple.

4 THE COURT: Okay. I want to finish with this
5 witness if we can. I'm getting hungry, too.

6 (WHEREUPON, Petitioners' Exhibit #75 was received into evidence
7 and is appended on page.)

8 RE-DIRECT EXAMINATION

9 BY MR. HOLT:

10 Q] Just a few follow-up questions. Did you have occasion to
11 testify in the Rule 37 hearing involving the third defendant,
12 Damien Echols?

13 A] Was that in Marion? Yes, I believe I did.

14 Q] And I think it was in '98, '99?

15 A] Yes, sir.

16 Q] And at that time you were asked if at that time whether or
17 not once the water was pumped out that if you saw anything like
18 fish or crawdads or anything flopping around in the water, any
19 other type of aquatic animal, dead or alive, in the bottom of
20 that ditch. Do you recall that?

21 A] I don't recall seeing any type of fish. I remember testi-
22 fying in that particular hearing and I don't remember at that
23 particular time seeing any, during my testimony, seeing any type
24 of animals or stuff like that.

25 Q] I guess my point is, you testified in '98 or '99, approxi-

1 mately ten years ago about an event that had occurred approxi-
2 mately three or four years after that, and at that time you said
3 that you didn't see any aquatic animals out there in that ditch,
4 and if that was your testimony, would you agree with it now?

5 A] Yes, sir.

6 Q] And you said that there was an area of the bank that was
7 different and that it had, I believe you said there was mud and
8 it had grass but it was, I think scuffed up may have been the
9 word, but you don't know if that was human or animal, do you,
10 that caused whatever altered the appearance of that bank versus
11 any of the other banks, do you?

12 A] It just looked, yeah, like I said, it just looked
13 different. It wasn't a lot of leaves and that type of thing on
14 that particular, uh, up on the bank.

15 Q] I see. Now when you say "up on the bank," and we're
16 talking on the east side?

17 A] Yes, it's actually, uh, it would be on the southeast side.

18 Q] On the southeast side?

19 A] Yes, sir.

20 Q] Okay. And that's the low side?

21 A] That's the low side. And the other side of that particular
22 plateau area or whatever, would be like a straight drop-off,
23 cliff type area on the side of the bank.

24 Q] Now when you thought you found a place where you could
25 cross without getting wet, you were going northwest to south-

1 east?

2 A] Correct.

3 MR. HOLT: That's all I have.

4 THE COURT: What did you say when you fell in?

5 THE WITNESS: (Pause.)

6 THE COURT: Strike that. Court will be in recess
7 until 1:30.

8 (WHEREUPON, a recess was taken; proceedings resumed as follows,
9 to-wit:)

10 THE COURT: Call your next witness.

11 MR. HOLT: Bryn Ridge.

12 THE COURT: Raise your right hand and be sworn.

13 (Witness sworn.)

14 THEREUPON

15 ANTHONY BRYN RIDGE, WMPD

16 was called as a witness by and on behalf of the Respondent/
17 Defendant and having been duly sworn was examined and testified
18 as follows, to-wit:

19 DIRECT-EXAMINATION

20 BY MR. HOLT:

21 Q] State your name for the record, please?

22 A] Anthony Bryn Ridge.

23 Q] And Mr. Ridge, how are you employed?

24 A] I'm a police officer, captain, of the West Memphis Police
25 Department.