

STATE OF MICHIGAN
IN THE SUPREME COURT

People of the State of Michigan

Plaintiff-Appellee,

v.

Robert Lance Propp

Defendant-Appellant.

MSC No. 160551

COA No. 343255

Saginaw County Circuit Court

Case No. 16-042719-FC

Filed under AO 2019-6

Appellant Robert Lance Propp's

Appendix

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STATE OF MICHIGAN 10TH JUDICIAL CIRCUIT
PEOPLE VS ROBERT PROPP

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CASE:16-042719-FC

OFFENSE: 7/06/2016

ACTIVE: 8/05/2016

JUDGE:DARNELL JACKSON

CLOSED: 3/26/2018

AGENCY:MSP-TRI CITY POST - 31

DEFENDANT
PROPP, ROBERT LANCE
2237 N CAROLINA ST
SAGINAW, MI 48602
DOB: 3/16/1982
PHONE:() -

DEFENSE ATTORNEY
JOHNSON, EDWIN GRIFFIN III
19301 MOUNT ZION ST
CASSOPOLIS, MI 49031 8549
E FINGERPRINTS 7/08/2016 CT APP
CTN:73-16-003762-01 SID:2076985K

DSP	CT	SEQ	MCLA/ORDINANCE	CHARGES	DATE	TYPE
AM	1		750.316-C	MURDER-OPEN	7/08/2016	F
JG	2		750.316-A	MURDER-1ST-PREMED	2/13/2018	F
	99		769.12	HOA 4TH OFFENSE	8/11/2016	F
***				END OF CHARGES	***	

BONDS

#/PD	JUDGE/BONDSMAN	TYP	AMOUNT	CHECK	SET/POST	FORF/REV
1	A.T. FRANK		NO \$		S 7/11/2016	
2	JAMES T. BORCHARD		NO \$NO		S 9/15/2016	

*** END OF BONDS ***

DATE	CODE	ACTIONS, JUDGMENTS, CASE NOTES	JD	CLK
7/08/2016	ECG	PRINT/CHG TRANSMITTED TO MSP/CHR G416205687H/201604157		813
7/08/2016	CF	COMPLAINT FILED		AJB
7/08/2016	WIR	WARRANT ISSUED AND RETURNED		AJB
7/11/2016	FCA	FILE SENT TO COURTROOM FOR ARRAIGNMENT	D4	AJB
7/11/2016	APR	PRE EXAM CONFERENCE SCHD FOR 7/20/2016 AT 3:00 PM	D3	LRB
7/11/2016	APR	PRELIM EXAM SCHD FOR 7/27/2016 AT 10:45 AM	D3	LRB
7/11/2016	MRF	MEDIA REQUEST FILED	D3	LRB
7/11/2016	-	WJRT TV	D3	LRB
7/11/2016	MIT	MITTIMUS	D4	BJB
7/11/2016	ADR	ADVICE OF RIGHTS SHEET SIGNED	D3	KJC
7/11/2016	ARR	ARRAIGNMENT	D4	KJC
7/11/2016	-	S/M, BOND DENIED, REFER OAC, SFPE	D4	KJC
7/11/2016	-	JUDGE STECCO IN FOR JUDGE FRANK	D3	KJC
7/11/2016	*AT	STURTZ, ALEC L. REPLACES PRO PER AS ATTORNEY	D3	VW
7/11/2016	OAC	ORDER APPOINTING COUNSEL	C1	JO
7/13/2016	FPC	FILE PULLED FOR COURTROOM	D3	CJC
7/18/2016	APP	APPEARANCE FILED	D3	CNE
7/18/2016	DFD	DEMAND FOR DISCOVERY	D3	CNE
7/20/2016	*	BEFORE THE HONORABLE KYLE HIGGS TARRANT	D3	VEJ
7/20/2016	-	DEFENDANT PRESENT (IN CUSTODY) ALONG WITH ATTORNEY	D3	VEJ
7/20/2016	-	ALEC L. STURTZ	D3	VEJ
7/20/2016	-	PROSECUTOR ALAN REIMERS	D3	VEJ
7/20/2016	-	PRE-EXAM CONFERENCE HELD	D3	VEJ

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OFFENSE: 7/06/2016

DATE	CODE	ACTIONS, JUDGMENTS, CASE NOTES	JD	CLK
7/20/2016	-	TO CONTINUE TO PRELIMINARY EXAM	D3	VEJ
7/22/2016	MRF	MEDIA REQUEST FILED	D3	JMR
7/22/2016	-	M-LIVE	D3	JMR
7/27/2016	MRF	MEDIA REQUEST FILED	D3	JMR
7/27/2016	-	ABC- TV 12	D3	JMR
7/27/2016	*	BEFORE THE HONORABLE KYLE HIGGS TARRANT	D3	VEJ
7/27/2016	-	DEFENDANT PRESENT (IN CUSTODY) ALONG WITH ATTORNEY	D3	VEJ
7/27/2016	-	ALEC L. STURTZ	D3	VEJ
7/27/2016	-	PROSECUTOR ALAN G REIMERS	D3	VEJ
7/27/2016	-	PRELIMINARY EXAM HELD	D3	VEJ
7/27/2016	-	TO BE CONTINUED ON 7/29/16 AT 3:30 PM	D3	VEJ
7/27/2016	APR	PRELIM EXAM SCHD FOR 7/29/2016 AT 3:30 PM	D3	VEJ
7/27/2016	-	CONTINUATION	D3	VEJ
7/28/2016	ADJ	ADJOURNED PRELIM EXAM ORIG SCHED 7/29/2016 AT 03:30	D3	VEJ
7/28/2016	-	ATTORNEY UNAVAILABLE	D3	VEJ
7/28/2016	ZOT	OTHER (SPECIFY)	D3	VEJ
7/28/2016	APR	PRELIM EXAM SCHD FOR 8/04/2016 AT 11:00 AM	D3	VEJ
7/28/2016	-	CONTINUATION	D3	VEJ
7/28/2016	FPC	FILE PULLED FOR COURTROOM	D3	CJC
8/02/2016	MRF	MEDIA REQUEST FILED	D3	JMR
8/02/2016	-	M-LIVE	D3	JMR
8/04/2016	*	BEFORE THE HONORABLE KYLE HIGGS TARRANT.	D3	VEJ
8/04/2016	-	DEFENDANT PRESENT (IN CUSTODY) ALONG WITH ATTORENY	D3	VEJ
8/04/2016	-	ALEC L. STURTZ	D3	VEJ
8/04/2016	-	PROSECUTOR ALAN REIMERS	D3	VEJ
8/04/2016	-	CONTINUATION OF PRELIMINARY EXAM HELD.	D3	VEJ
8/04/2016	-	CASE BOUND OVER TO CIRCUIT COURT	D3	VEJ
8/04/2016	PEH	PRE-LIMINARY EXAM HELD	D3	KJC
8/04/2016	BOC	CTS 01-00;	D3	KJC
8/05/2016	C	CASE FILED WITH CIRCUIT COURT	C4	BRE
8/08/2016	7CA	FILE PULLED FOR COURT ADMINISTRATOR'S OFFICE	C4	CH
8/08/2016	SCH	COURT ADMIN TO SCHEDULE	C4	PAB
8/08/2016	RCC	REVIEWED BY CRIMINAL ARRAIGNMENTS CLERK	C4	SRM
8/08/2016	RET	FILE RETURNED TO CLERK'S OFFICE	C4	SRM
8/09/2016	PXO	TRANSCRIPT OF PRELIM. EXAM ORDERED	C4	JAR
8/09/2016	RCO	FILE RETURNED FROM COURT TO CLERK'S OFFICE	C4	HLL
8/10/2016	ORT	ORDER FOR TRANSCRIPT FORWARDED TO RECORDER	C4	JMR
8/10/2016	-	K. PRETZER	C4	JMR
8/11/2016	INF	FELONY INFORMATION FILED BY PROSECUTOR	C4	JAR
8/11/2016	RQD	PROSECUTOR'S REQUEST FOR DISCOVERY	C4	JAR
8/11/2016	*	PROOF OF SERVICE OF FELONY INFORMATION AND REQUEST FOR	C4	JAR
8/11/2016	-	DISCOVERY FILED BY PROS. OFFICE	C4	JAR
8/11/2016	*	ADD COUNT 99-00 HOA 4TH OFFENSE	C4	JAR
8/15/2016	APR	TRIAL SCHD FOR 10/11/2016 AT 8:30 AM	C4	PAB
8/17/2016	*	ORIGINAL TRANSCRIPT FILE VIDEO - ARRAIGNMENT (07-11-16)	C4	JMR
8/17/2016	-	BY P. WISE CER 6066	C4	JMR

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DATE	CODE	ACTIONS, JUDGMENTS, CASE NOTES	JD	CLK
8/17/2016	*	TRANSCRIPT OF VIDEO - ARRAIGNMENT DTD 7/11/16 BY P WISE	C4	BRE
8/22/2016	*	PRF OF SVC OF INFORMATION FELONY BY ATTY A LEE STURTZ	C4	BRE
8/29/2016	DM	DEFENSE MOTION	C4	NRS
8/29/2016	-	NTC OF HRG; MOT TO REDUCE BOND; PRF OF SVC, FILED BY	C4	NRS
8/29/2016	-	ATTY A LEE STURTZ	C4	NRS
8/29/2016	APR	MOTION SCHD FOR 9/15/2016 AT 11:00 AM	C4	NRS
8/29/2016	-	MOT TO REDUCE BOND	C4	NRS
9/06/2016	*	PEOPLE'S ANSWER TO MOT TO REDUCE BOND; PRF OF SVC, FILED	C4	NRS
9/06/2016	-	BY ATTY ALAN REIMERS	C4	NRS
9/08/2016	PFC	PULLED FILE FOR COURTROOM	C4	TSB
9/15/2016	H	HEARING HELD	C4	JAR
9/15/2016	-	(MOTION FOR REDUCTION OF BOND) PROS: A. REIMERS; DEFT.	C4	JAR
9/15/2016	-	PRESENT W/ATTY A. LEE STURTZ; ARG. OF COUNSEL; COURT	C4	JAR
9/15/2016	-	RECONSIDERED BOND AND DENIED BOND	C4	JAR
9/15/2016	ORM	CT. REPORTER: C. MIOTTO, CSR-3862	C4	JAR
9/15/2016	RET	FILE RETURNED TO CLERK'S OFFICE	C4	JAR
9/15/2016	RCO	FILE RETURNED FROM COURT TO CLERK'S OFFICE	C4	TSB
9/22/2016	DM	DEFENSE MOTION	C4	BRE
9/22/2016	-	TO ADJOURN TRIAL; NTC OF HRG; PRF OF SVC BY ATTY A LEE	C4	BRE
9/22/2016	-	STURTZ	C4	BRE
9/22/2016	APR	MOTION SCHD FOR 9/29/2016 AT 11:00 AM	C4	BRE
9/22/2016	-	DEFT MTN TO ADJOURN TRIAL	C4	BRE
9/22/2016	PXA	RECORDER ACKNOWLEDGEMENT OF ORDERING P. E. TRANSC.	C4	BRE
9/22/2016	-	BY K PRETZER	C4	BRE
9/22/2016	PXT	PRELIM. EXAM TRANSCRIPT FILED	C4	BRE
9/22/2016	-	VOLUME I OF II DTD 7/27/16 BY K PRETZER	C4	BRE
9/22/2016	PXT	PRELIM. EXAM TRANSCRIPT FILED	C4	BRE
9/22/2016	-	VOLUME II OF II DTD 8/4/16 BY K PRETZER	C4	BRE
9/23/2016	PFC	PULLED FILE FOR COURTROOM	C4	CH
9/28/2016	*	PD K PRETZER \$188.00 PE TRANSCRIPT	C4	PAB
9/29/2016	H	HEARING HELD	C4	JAR
9/29/2016	-	DEFT'S MOTION TO ADJOURN TRIAL; PROS: S. FENNER; DEFT.	C4	JAR
9/29/2016	-	DID NOT APPEAR (COURT ADVISED DEFT. IS IN HOSPITAL);	C4	JAR
9/29/2016	-	ATTY A. LEE STURTZ PRESENT FOR DEFT.; STMTS. OF COUNSEL	C4	JAR
9/29/2016	-	DEFENSE REQUESTED ADJ'MENT AS JUST RECEIVED PRELIM	C4	JAR
9/29/2016	-	TRANSCRIPT AND NEEDS TO FILE ADDITIONAL MOTIONS;	C4	JAR
9/29/2016	-	COURT ADJ'D TRIAL AND MATTER TO BE RESET	C4	JAR
9/29/2016	ORM	CT. REPORTER: C. MIOTTO, CSR-3862	C4	JAR
9/29/2016	ADJ	ADJOURNED TRIAL ORIG SCHED 10/11/2016 AT :	C4	JAR
9/29/2016	SCH	COURT ADMIN TO SCHEDULE	C4	JAR
9/29/2016	-	TRIAL SET OUT UNTIL 1/1/17	C4	JAR
10/04/2016	*	ORDER GRANTING MOTION TO ADJOURN TRIAL OF 10/11/16	C4	JAR
10/04/2016	SCH	COURT ADMIN TO SCHEDULE	C4	JAR
10/04/2016	-	TRIAL	C4	JAR
10/07/2016	APR	TRIAL SCHD FOR 1/04/2017 AT 9:00 AM	C4	PAB
10/07/2016	-	SET PER COURT	C4	PAB

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OFFENSE: 7/06/2016

DATE	CODE	ACTIONS, JUDGMENTS, CASE NOTES	JD	CLK
11/18/2016	DM	DEFENSE MOTION	C4	NRS
11/18/2016	-	MOT FOR IMMEDIATE MEDICAL ATTENTION; NTC OF HRG; PRF OF	C4	NRS
11/18/2016	-	SVC, FILED BY ATTY STURTZ	C4	NRS
11/21/2016	APR	MOTION SCHD FOR 12/01/2016 AT 11:00 AM	C4	NRS
11/21/2016	-	MOT FOR IMMEDIATE MEDICAL ATTENTION	C4	NRS
12/01/2016	H	HEARING HELD	C4	JAR
12/01/2016	-	MOTION FOR IMMEDIATE MEDICAL ATTENTION; PROS: A. REIMERS;	C4	JAR
12/01/2016	-	DEFT. PRESENT W/ATTY A. LEE STURTZ; STMTS. OF COUNSEL;	C4	JAR
12/01/2016	-	COURT ORDER DEPUTIES TO BRING THE ISSUE OF MEDICAL	C4	JAR
12/01/2016	-	TREATMENT TO THE SHERIFF'S ATTENTION	C4	JAR
12/01/2016	ORM	CT. REPORTER: C. MIOTTO, CSR-3862	C4	JAR
12/02/2016	RET	FILE RETURNED TO CLERK'S OFFICE	C4	JAR
12/05/2016	RCO	FILE RETURNED FROM COURT TO CLERK'S OFFICE	C4	TSB
12/09/2016	*	SEARCH WARRANT REC'D FROM DISTRICT COURT	C4	BRE
12/09/2016	*	SEARCH WARRANT REC'D FROM DISTRICT COURT	C4	BRE
12/14/2016	*	SEARCH WARRANT REC'D FROM DISTRICT COURT	C4	BRE
12/14/2016	*	SEARCH WARRANT REC'D FROM DISTRICT COURT	C4	BRE
12/14/2016	*	SEARCH WARRANT REC'D FROM DISTRICT COURT	C4	BRE
12/15/2016	DM	DEFENSE MOTION	C4	KMS
12/15/2016	-	DFNTS MTN TO ADJOURN TRIAL & ORDER TO MEDICAL ATTENTION	C4	KMS
12/15/2016	-	NTC OF HEARING, PRF OF SVC FILED BY ATTY A LEE STURTZ	C4	KMS
12/15/2016	APR	MOTION SCHD FOR 12/22/2016 AT 11:00 AM	C4	KMS
12/15/2016	-	DFNTS MTN ADJOURN TRIAL & ORDER MEDICAL ATTENTION	C4	KMS
12/15/2016	*	SEARCH WARRANT REC'D FROM DISTRICT COURT	C4	BRE
12/16/2016	PFC	PULLED FILE FOR COURTROOM	C4	TSB
12/20/2016	*	PEOPLES AMENDED WITNESS LIST, PRF OF SVC BY ATTY ALAN G	C4	AV
12/20/2016	-	REIMERS	C4	AV
12/20/2016	*	PEOPLES NTC OF OTHER ACTS OF DOMESTIC VIOLENCE EVIDENCE,	C4	AV
12/20/2016	-	PRF OF SVC BY ATTY ALAN G REIMERS	C4	AV
12/22/2016	ORA	ORDER OF REASSIGNMENT ISSUED	C4	PAB
12/22/2016	-	CASE TO BE REASSIGNED	C4	PAB
12/22/2016	*JU	ROBERT L. KACZMAREK REPLACES JAMES T. BORCHARD AS JUDGE	C2	PAB
12/22/2016	SCH	COURT ADMIN TO SCHEDULE	C2	PAB
12/22/2016	ADJ	ADJOURNED TRIAL ORIG SCHED 1/04/2017 AT :	C2	JAR
12/22/2016	H	HEARING HELD	C2	JAR
12/22/2016	-	(DEFT.'S MOTION TO ADJOURN TRIAL AND FOR MEDICAL	C2	JAR
12/22/2016	-	TREATMENT) PROS: A. REIMERS; DEFT. PRESENT W/ATTY	C2	JAR
12/22/2016	-	A. LEE STURTZ; STMTS. OF COUNSEL; STMTS. OF PROSECUTOR;	C2	JAR
12/22/2016	-	DEFT'S WAIVED SPEEDY TRIAL RIGHTS AND COURT ADJ'D	C2	JAR
12/22/2016	-	TRIAL; COURT ADVISED THAT MATTER HAS BEEN REASSIGNED TO	C2	JAR
12/22/2016	-	JUDGE KACZMAREK AND FURTHER ISSUES TO BE TAKEN UP WITH	C2	JAR
12/22/2016	-	JUDGE KACZMAREK; COURT FURTHER ORDERED THAT THE JAIL IS	C2	JAR
12/22/2016	-	TO LOOK INTO DEFT'S MEDICAL CONDITION AND/OR TREATMENT;	C2	JAR
12/22/2016	-	ATTY STURTZ TO PREPARE ORDER	C2	JAR
12/22/2016	05R	CT. REPORTER: E. PRZYBYLSKI, CSR-3789	C2	JAR
12/22/2016	RET	FILE RETURNED TO CLERK'S OFFICE	C2	JAR

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OFFENSE: 7/06/2016

DATE	CODE	ACTIONS, JUDGMENTS, CASE NOTES	JD	CLK
12/27/2016	RCO	FILE RETURNED FROM COURT TO CLERK'S OFFICE	C2	CH
12/27/2016	APR	TRIAL SCHD FOR 3/07/2017 AT 8:30 AM	C2	PAB
1/03/2017	*	ORDER ALLOWING ADJOURNMENT OF TRIAL OF 1/4/17	C2	JAR
1/25/2017	DM	DEFENSE MOTION	C2	AV
1/25/2017	-	FOR IMMEDIATE MEDICAL ATTENTION, NTC OF HRG, PRF OF SVC	C2	AV
1/25/2017	-	BY ATTY A LEE STURTZ	C2	AV
1/25/2017	APR	MOTION SCHD FOR 2/06/2017 AT 10:30 AM	C2	AV
1/25/2017	-	DFNT MOT IMMEDIATE MEDICAL ATTENTION	C2	AV
2/01/2017	PM	PROSECUTION MOTION	C2	AV
2/01/2017	-	IN LIMINE TO ADMIT PRIOR ACTS OF DOMESTIC VIOLENCE, BRIEF	C2	AV
2/01/2017	-	IN SUPPORT, NTC OF HRG, PRF OF SVC BY ATY ALAN G REIMERS	C2	AV
2/02/2017	PFC	PULLED FILE FOR COURTROOM	C2	TSB
2/02/2017	APR	MOTION SCHD FOR 2/06/2017 AT 10:30 AM	C2	AV
2/02/2017	-	PEOPLES MOT IN LIMININE ADMIT PRIOR ACT DOMESTIC VIOLENCE	C2	AV
2/06/2017	04B	COURT REPORTER: D. YURGENS, CSR-3286	C2	LLP
2/06/2017	H	HEARING HELD	C2	LLP
2/06/2017	-	ON DEF'S MOTION FOR IMMEDIATE MEDICAL ATTENTION AND ON	C2	LLP
2/06/2017	-	PEOPLE'S MOTION IN LIMINE TO ADMIT PRIOR ACTS OF DOMESTIC	C2	LLP
2/06/2017	-	VIOLENCE; DEF PRESENT W/ATTY P. STURTZ & PROS A. REIMERS;	C2	LLP
2/06/2017	-	ARGUMENTS OF COUNSEL; COURT ORDERED DEF TO BE EXAMINED BY	C2	LLP
2/06/2017	-	THE JAIL DOCTOR; ATTY STURTZ TO PREPARE ORDER; PEOPLE	C2	LLP
2/06/2017	-	ADJOURNED THEIR MOTION AT THIS TIME	C2	LLP
2/06/2017	RET	FILE RETURNED TO CLERK'S OFFICE	C2	LLP
2/06/2017	RCO	FILE RETURNED FROM COURT TO CLERK'S OFFICE	C2	TSB
2/08/2017	*	ORDER FOR IMMEDIATE MEDICAL ATTENTION	C2	LLP
2/13/2017	*	RE-NTC OF HRG (02-17-17), PRF OF SVC BY ATTY ALAN G	C2	AV
2/13/2017	-	REIMERS	C2	AV
2/14/2017	APR	MOTION SCHD FOR 2/17/2017 AT 10:30 AM	C2	AV
2/14/2017	-	PEOPLES MOT LIMINE ADMIT PRIOR ACT OF DOMESTIC VIOLENCE	C2	AV
2/14/2017	ADJ	ADJOURNED MOTION ORIG SCHED 2/17/2017 AT 10:30	C2	LLP
2/14/2017	-	COURT UNAVAILABLE	C2	LLP
2/14/2017	APR	MOTION SCHD FOR 2/27/2017 AT 10:30 AM	C2	LLP
2/14/2017	-	PEOPLE'S MTN IN LIMINE TO ADMIT PRIOR ACTS OF DOMES VIOL	C2	LLP
2/22/2017	DM	DEFENSE MOTION	C2	AV
2/22/2017	-	TO ADJOURN TRIAL, NTC OF HRG, PRF OF SVC BY ATTY A LEE	C2	AV
2/22/2017	-	STURTZ	C2	AV
2/22/2017	APR	MOTION SCHD FOR 2/27/2017 AT 10:00 AM	C2	AV
2/22/2017	-	DFNT MOT ADJOURN TRIAL	C2	AV
2/23/2017	PFC	PULLED FILE FOR COURTROOM	C2	TSB
2/23/2017	*	DFNT ROBERT PROPP ANS TO MTN IN LIMINE TO ADMIT PRIOR	C2	KMS
2/23/2017	-	ACTS OF DOMESTIC VIOLENCE; RESPONSE BRIEF IN SUPPORT,	C2	KMS
2/23/2017	-	FILED BY ATTY A LEE STURTZ	C2	KMS
2/27/2017	04B	COURT REPORTER: D. YURGENS, CSR-3286	C2	LLP
2/27/2017	H	HEARING HELD	C2	LLP
2/27/2017	-	ON DEF'S MOTION TO ADJOURN TRIAL AND PEOPLE'S MOTION IN	C2	LLP
2/27/2017	-	LIMINE TO ADMIT PRIOR ACTS OF DOMESTIC VIOLENCE; DEF	C2	LLP

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OFFENSE: 7/06/2016

DATE	CODE	ACTIONS, JUDGMENTS, CASE NOTES	JD	CLK
2/27/2017	-	PRESENT W/ATTY A. LEE STURTZ; PROS A. REIMERS PRESENT FOR	C2	LLP
2/27/2017	-	THE PEOPLE; DEFENSE ADVISED DEF HIRING ATTY ED JOHNSON TO	C2	LLP
2/27/2017	-	REPRESENT DEF & REQUESTED THE TRIAL BE ADJOURNED; DEF IN	C2	LLP
2/27/2017	-	AGREEMENT W/ADJOURNMENT; COURT ADJOURNED TRIAL; PEOPLE	C2	LLP
2/27/2017	-	WILL RENOTICE THEIR MOTION IN LIMINE	C2	LLP
2/28/2017	RET	FILE RETURNED TO CLERK'S OFFICE	C2	LLP
3/01/2017	ADJ	ADJOURNED TRIAL ORIG SCHED 3/07/2017 AT 08:30	C2	LLP
3/01/2017	*	NOTICE, CONSENT & ORDER FOR SUBSTITUTION OF ATTORNEY	C2	LLP
3/01/2017	*AT	JOHNSON, EDWIN GRIFFI REPLACES STURTZ, ALEC L. AS ATTORNE	C2	LLP
3/01/2017	SCH	COURT ADMIN TO SCHEDULE	C2	LLP
3/01/2017	-	TRIAL	C2	LLP
3/02/2017	RCO	FILE RETURNED FROM COURT TO CLERK'S OFFICE	C2	TSB
3/08/2017	APR	TRIAL SCHD FOR 5/02/2017 AT 8:30 AM	C2	PAB
3/14/2017	AFR	ATTORNEY FEES PAYMENT REQUESTED	C2	VW
3/15/2017	PAY	DISBURSEMENT VOUCHER/PAYMENT ORDER	C2	CLH
3/15/2017	-	ATTY STURTZ; \$1000.00	C2	CLH
3/21/2017	APR	HEARING SCHD FOR 4/07/2017 AT 9:00 AM	C2	LLP
3/21/2017	-	EVIDENTIARY HEARING	C2	LLP
3/23/2017	ADJ	ADJOURNED HEARING ORIG SCHED 4/07/2017 AT 09:00	C2	LLP
3/23/2017	-	PER BOTH COUNSEL	C2	LLP
4/12/2017	*	STIP/ORDER TO ADJOURN TRIAL (5/2/17)	C2	LLP
4/20/2017	ADJ	ADJOURNED TRIAL ORIG SCHED 5/02/2017 AT 08:30	C2	LLP
4/20/2017	SCH	COURT ADMIN TO SCHEDULE	C2	LLP
4/20/2017	-	TRIAL	C2	LLP
4/25/2017	APR	TRIAL SCHD FOR 7/05/2017 AT 8:30 AM	C2	PAB
5/04/2017	*	RE-NTC (5-26-17); PRF OF SVC, FILED BY ATTY ALAN REIMERS	C2	NRP
5/05/2017	APR	MOTION SCHD FOR 5/26/2017 AT 9:00 AM	C2	NRP
5/05/2017	-	MOT IN LIMINE RE PRIOR ACTS OF DOMESTIC VIOLENCE	C2	NRP
5/18/2017	PFC	PULLED FILE FOR COURTROOM	C2	TSB
5/18/2017	*	RE-NTC (6-16-17); PRF OF SVC, FILED BY ATTY REIMERS	C2	NRP
5/18/2017	ADJ	ADJOURNED MOTION ORIG SCHED 5/26/2017 AT 09:00	C2	NRP
5/18/2017	-	RE-NTCED	C2	NRP
5/18/2017	APR	MOTION SCHD FOR 6/16/2017 AT 1:30 PM	C2	NRP
5/18/2017	-	PEOPLE'S MOT IN LIMINE RE PRIOR ACTS OF DOMESTIC VIOLENCE	C2	NRP
5/19/2017	RET	FILE RETURNED TO CLERK'S OFFICE	C2	LLP
5/19/2017	RCO	FILE RETURNED FROM COURT TO CLERK'S OFFICE	C2	TSB
6/08/2017	PFC	PULLED FILE FOR COURTROOM	C2	TSB
6/15/2017	ADJ	ADJOURNED MOTION ORIG SCHED 6/16/2017 AT 01:30	C2	LLP
6/15/2017	-	COURT UNAVAILABLE	C2	LLP
6/15/2017	RET	FILE RETURNED TO CLERK'S OFFICE	C2	LLP
6/15/2017	RCO	FILE RETURNED FROM COURT TO CLERK'S OFFICE	C2	GEW
6/26/2017	ADJ	ADJOURNED TRIAL ORIG SCHED 7/05/2017 AT 08:30	C2	LLP
6/26/2017	-	COURT UNAVAILABLE - NOTIFIED DEF'S COUNSEL & PROS' OFFICE	C2	LLP
6/26/2017	SCH	COURT ADMIN TO SCHEDULE	C2	LLP
6/26/2017	-	TRIAL	C2	LLP
6/28/2017	APR	TRIAL SCHD FOR 8/08/2017 AT 8:30 AM	C2	PAB

Trial Court Docket Entries

DATE: 4/05/2018

STATE OF MICHIGAN 10TH JUDICIAL CIRCUIT
PEOPLE VS ROBERT PROPP

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CASE:16-042719-FC

OFFENSE: 7/06/2016

DATE	CODE	ACTIONS, JUDGMENTS, CASE NOTES	JD	CLK
7/12/2017	APR	HEARING	C2	LLP
		SCHD FOR 7/28/2017 AT 10:00 AM		
7/12/2017	-	EVIDENTIARY HEARING	C2	LLP
7/20/2017	PFC	PULLED FILE FOR COURTROOM	C2	TSB
7/28/2017	*	REQUEST AND NOTICE FOR FILM AND ELECTRONIC MEDIA COVERAGE	C2	LLP
7/28/2017	-	OF COURT PROCEEDS FROM TV 12	C2	LLP
7/28/2017	OUW	CT. REPORTER: U. WEGERT, CSR-4553	C2	LLP
7/28/2017	H	HEARING HELD	C2	LLP
7/28/2017	-	ON AN EVIDENTIARY HEARING; DEF PRESENT W/ATTY E. JOHNSON	C2	LLP
7/28/2017	-	III AND PROS A. REIMERS; PROOFS FOR THE PEOPLE AND DEF'S	C2	LLP
7/28/2017	-	CROSS EXAMINATION; PEOPLE & DEFENSE REST; COURT ORDERED	C2	LLP
7/28/2017	-	TRANSCRIPT; COUNSEL TO SUBMIT MEMORANDUMS W/IN 30 DAYS OF	C2	LLP
7/28/2017	-	RECEIPT OF TRANSCRIPT; TRIAL SET FOR 8/8/17 ADJOURNED;	C2	LLP
7/28/2017	-	COURT TOOK MATTER UNDER ADVISEMENT	C2	LLP
7/28/2017	TUA	TAKEN UNDER ADVISEMENT	C2	LLP
8/03/2017	ADJ	ADJOURNED TRIAL	C2	LLP
		ORIG SCHED 8/08/2017 AT 08:30		
8/03/2017	SCH	COURT ADMIN TO SCHEDULE	C2	LLP
8/03/2017	-	TRIAL	C2	LLP
8/11/2017	APR	TRIAL	C2	PAB
		SCHD FOR 10/17/2017 AT 8:30 AM		
8/16/2017	*	TRANSCRIPT BY URSULA WEGERT - HEARING ON 7/28/17	C2	LLP
8/23/2017	*	PD WEGERT \$190.35 HRG 7-28-17 TRANSCRIPTS	C2	PAB
9/13/2017	*	PEOPLE'S SUPPLEMENTAL BRIEF IN SUPPORT OF MOT IN LIMINE	C2	NRP
9/13/2017	-	TO ADMIT PRIOR ACTS OF DOMESTIC VIOLENCE; PRF OF SVC,	C2	NRP
9/13/2017	-	FILED BY ATTY ALAN REIMERS	C2	NRP
10/10/2017	*	DFNTS RESPONSE TO PEOPLES SUPPLEMENTAL, BRIEF IN SUPPORT	C2	AV
10/10/2017	-	OF LIMINE TO ADMIT PRIOR ACTS OF DOMESTIC VIOLENCE, PRF	C2	AV
10/10/2017	-	OF SVC BY ATTY EDWIN G JOHNSON III	C2	AV
10/16/2017	*	STIP/ORDER TO ADJOURN TRIAL	C2	LLP
10/16/2017	ADJ	ADJOURNED TRIAL	C2	LLP
		ORIG SCHED 10/17/2017 AT 08:30		
10/16/2017	-	PER STIP/ORDER	C2	LLP
10/16/2017	SCH	COURT ADMIN TO SCHEDULE	C2	LLP
10/16/2017	-	TRIAL	C2	LLP
10/23/2017	APR	TRIAL	C2	PAB
		SCHD FOR 2/06/2018 AT 8:30 AM		
10/24/2017	*	ORDER OF INTERNAL REASSIGNMENT S/BY CHIEF JUDGE TERRY L.	D6	KKF
10/24/2017	-	CLARK.	C2	KKF
10/25/2017	*JU	DARNELL JACKSON REPLACES ROBERT L. KACZMAREK AS JUDGE	C5	KKF
10/25/2017	ORA	ORDER OF REASSIGNMENT ISSUED	C5	PAB
10/25/2017	ADJ	ADJOURNED TRIAL	C5	PAB
		ORIG SCHED 2/06/2018 AT 08:30		
10/25/2017	-	CASE REASSIGNED	C5	PAB
10/25/2017	APR	TRIAL	C5	PAB
		SCHD FOR 1/23/2018 AT 9:00 AM		
10/25/2017	ADJ	ADJOURNED TRIAL	C5	PAB
		ORIG SCHED 1/23/2018 AT 09:00		
10/25/2017	APR	TRIAL	C5	PAB
		SCHD FOR 2/06/2018 AT 9:00 AM		
10/25/2017	-	PLEASE NOTE NEW TIME	C5	PAB
10/26/2017	OPO	OPINION AND ORDER OF THE COURT	C2	LLP
10/26/2017	-	ON PEOPLE'S MOTION IN LIMINE TO ADMIT PRIOR ACTS OF	C2	LLP
10/26/2017	-	DOMESTIC VIOLENCE; COURT GRANTS PEOPLE'S MOTION	C2	LLP
10/26/2017	NUA	NO LONGER UNDER ADVISEMENT	C2	LLP

Trial Court Docket Entries

DATE: 4/05/2018

STATE OF MICHIGAN 10TH JUDICIAL CIRCUIT
PEOPLE VS ROBERT PROPP

PAGE 8

CASE:16-042719-FC

OFFENSE: 7/06/2016

DATE	CODE	ACTIONS, JUDGMENTS, CASE NOTES	JD	CLK
10/26/2017	RET	FILE RETURNED TO CLERK'S OFFICE	C2	LLP
10/26/2017	RCO	FILE RETURNED FROM COURT TO CLERK'S OFFICE	C5	TSB
11/14/2017	PFC	PULLED FILE FOR COURTROOM	C5	CMJ
11/21/2017	APR	HEARING SCHD FOR 12/05/2017 AT 9:00 AM	C5	SMB
11/21/2017	-	STATUS CONF	C5	SMB
12/14/2017	*	ORDER ALLOWING DAY PAROLE FOR FINAL RESPECTS WITH	C5	SMB
12/14/2017	-	POLICE ESCORT ONLY AND NO CONTACT WITH ANY FAMILY MEMBER	C5	SMB
12/14/2017	-	ON 12-15-17/TIME OF VISITATION DETERMINED BY SCSD	C5	SMB
12/14/2017	-	COPY OF ORDER E-MAILED TO H. BEYERLEIN	C5	SMB
12/15/2017	*	TELEPHONE MESSAGE FOR DEFENSE COUNSEL RE ALL PRETRIAL	C5	AAL
12/15/2017	-	MTNS MUST BE FILED BY TUESDAY, 12/19/17, AS DISCUSSED AT	C5	AAL
12/15/2017	-	12/05/17 STATUS CONFERENCE.	C5	AAL
12/20/2017	DM	DEFENSE MOTION	C5	HLL
12/20/2017	-	IN LIMINE/BRIEF/FOR APPOINTMENT & PAYMENT OF EXPERT	C5	HLL
12/20/2017	-	WITNESS IN CRIMINAL CASE & BRIEF FILED BY ATTY JOHNSON	C5	HLL
1/04/2018	APR	MOTION SCHD FOR 1/08/2018 AT 2:30 PM	C5	SMB
1/04/2018	-	DEFNS MOTION IN LIMINE & FOR EXPERT WITNESS	C5	SMB
1/04/2018	*	CORRECTED HEARING NOTICE	C5	SMB
1/08/2018	05R	CT. REPORTER: E. PRZYBYLSKI, CSR-3789	C5	SMB
1/08/2018	H	HEARING HELD	C5	SMB
1/08/2018	-	DEFNT PRESENT W/ATTY JOHNSON; PROSEC. FENNER PRESENT	C5	SMB
1/08/2018	-	AT DATE SET FOR DEFNS MOTION IN LIMINE & FOR EXPERT	C5	SMB
1/08/2018	-	WITNESS; STATMENTS PLACED ON THE RECORD; COURT	C5	SMB
1/08/2018	-	DENIED MOTION; CASE TO CONTINUE TO TRIAL 2-6-18AND CASE	C5	SMB
1/08/2018	-	COURT TO ISSUE AN OPINION	C5	SMB
1/08/2018	*	RESPONSE TO DEFT'S MOT IN LIMINE; BRIEF; PRF OF SVC,	C5	NRP
1/08/2018	-	FILED BY ATTY BLAIR STEVENSON	C5	NRP
1/08/2018	*	RESPONSE TO DEFT'S MOT FOR APPOINTMENT OF EXPERT WITNESS;	C5	NRP
1/08/2018	-	BRIEF; PRF OF SVC, FILED BY ATTY BLAIR STEVENSON	C5	NRP
1/09/2018	OPO	OPINION AND ORDER OF THE COURT	C5	AAL
1/09/2018	-	(DENYING DEFENDANT'S MTN IN LIMINE & MTN FOR APP'T &	C5	AAL
1/09/2018	-	PAYMENT OF EXPERT WITNESS IN CRIMINAL CASE)	C5	AAL
1/10/2018	RET	FILE RETURNED TO CLERK'S OFFICE	C5	SMB
1/10/2018	RCO	FILE RETURNED FROM COURT TO CLERK'S OFFICE	C5	GEW
1/16/2018	PFC	PULLED FILE FOR COURTROOM	C5	CMJ
1/18/2018	RET	FILE RETURNED TO CLERK'S OFFICE	C5	SMB
1/18/2018	RCO	FILE RETURNED FROM COURT TO CLERK'S OFFICE	C5	GEW
2/01/2018	PFC	PULLED FILE FOR COURTROOM	C5	CMJ
2/06/2018	OJS	CT. REPORTER: J. STUPAK, CSR-8314	C5	SMB
2/06/2018	JTB	JURY TRIAL BEGUN	C5	SMB
2/06/2018	-	DEFNT PRESENT W/ATTY JOHNSON; PROSEC. B. STEVENSON	C5	SMB
2/06/2018	-	PRESENT; JURY SELECTION, VOIR DIRE, JURY SELECTED AND	C5	SMB
2/06/2018	-	SWORN, JURY INSTRUCTED; PROSEC & DEFNS OPENING STATMENTS	C5	SMB
2/06/2018	-	BEGUN AND CONCLUDED; PEOPLES PROOFS BEGUN & CONT'D	C5	SMB
2/06/2018	-	COURT IN RECESS 2-7-18 AT 9:00 AM	C5	SMB
2/07/2018	OJS	CT. REPORTER: J. STUPAK, CSR-8314	C5	SMB

Trial Court Docket Entries

DATE: 4/05/2018

STATE OF MICHIGAN 10TH JUDICIAL CIRCUIT
PEOPLE VS ROBERT PROPP

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CASE:16-042719-FC

OFFENSE: 7/06/2016

DATE	CODE	ACTIONS, JUDGMENTS, CASE NOTES	JD	CLK
2/07/2018	JTC	JURY TRIAL CONTINUED	C5	SMB
2/07/2018	-	ALL PRESENT; PEOPLES PROOFS CONTINUED FULL DAY; COURT IN	C5	SMB
2/07/2018	-	RECESS UNTIL 2-8-18 AT 9:00	C5	SMB
2/07/2018	*	REQUEST/NOTICE FOR FILM/ELECTRONIC MEDIA COVERAGE	C5	SMB
2/07/2018	-	WITH SIGNED NOTICE TO PARTIES	C5	SMB
2/08/2018	05R	CT. REPORTER: E. PRZYBYLSKI, CSR-3789	C5	SMB
2/08/2018	JTC	JURY TRIAL CONTINUED	C5	SMB
2/08/2018	-	ALL PRESENT; PEOPLES PROOFS CONTINUED AND CONCLUDED	C5	SMB
2/08/2018	-	PEOPLE REST: DEFNS PROOFS BEGUN & CONCLUDED; DEFENSE REST	C5	SMB
2/08/2018	-	PEOPLE'S REBUTTAL BEGUN & CONCLUDED; PEOPLE REST	C5	SMB
2/08/2018	-	COURT IN RECESS UNTIL 2-13-18 AT 9:00 AM	C5	SMB
2/13/2018	05R	CT. REPORTER: E. PRZYBYLSKI, CSR-3789	C5	SMB
2/13/2018	JTC	JURY TRIAL CONTINUED	C5	SMB
2/13/2018	-	DEFNT PRESENT W/ATTY JOHNSON; PROSEC. B. STEVENTON	C5	SMB
2/13/2018	-	PRESENT; CLOSINGS ARGUMENTS BEGUN AND CONCLUDED	C5	SMB
2/13/2018	-	JURY INSTRUCTED; JURY REDUCED AND SWORN FOR DELIBERATION	C5	SMB
2/13/2018	-	BAILIFF SWORN, DELIBERATION BEGUN	C5	SMB
2/13/2018	JV	JURY VERDICT OF	C5	SMB
2/13/2018	-	DEFNT PRESENT W/ATTY JOHNSON; PROSEC. KANUSZEWSKI PRESENT	C5	SMB
2/13/2018	-	(IN FOR B. STEVENSON); GUILTY OF FIRST-DEGREE PREMEDIATED	C5	SMB
2/13/2018	-	MURDER; JURY POLLED	C5	SMB
2/13/2018	*	ADD COUNT 02-00 MURDER-1ST-PREMED	C5	SMB
2/13/2018	AM	CHARGE AMENDED 01-00 MURDER-OPEN	C5	SMB
2/13/2018	JG	JURY-GUILTY 02-00 MURDER-1ST-PREMED	C5	SMB
2/13/2018	*	ONE JURY NOTE IN FILE	C5	SMB
2/13/2018	DOC	REFERRED TO DEPARTMENT OF CORRECTIONS	C5	SMB
2/13/2018	APR	SENTENCE SCHD FOR 3/26/2018 AT 2:30 PM	C5	SMB
2/13/2018	*	VERDICT FORM IN FILE	C5	SMB
2/13/2018	*	JURY INSTRUCTION IN FILE	C5	SMB
2/13/2018	KJY	ADJUDICATED BY JURY TRIAL	C5	SMB
2/14/2018	*	DEFN INFO CHANGED BY CIRCUIT COURT PROBATION		AW1
3/26/2018	05R	CT. REPORTER: E. PRZYBYLSKI, CSR-3789	C5	SMB
3/26/2018	S	SENTENCED	C5	SMB
3/26/2018	-	DEFNT PRESENT W/ATTY JOHNSON; PROSEC. B. STEVENSON &	C5	SMB
3/26/2018	-	DOC AGENT BEAGLE PRESENT; RESTITUTION \$15,793.00	C5	SMB
3/26/2018	-	PAYABLE TO THE VICTIM'S FAMILY THROUGH THE SAGINAW CTY	C5	SMB
3/26/2018	-	CLERKS OFFICE; SMF 68.00; VRF 130.00 W/I 30 DAYS; DEFNT	C5	SMB
3/26/2018	-	MANDATORY SENTENCE; LIFE WITHOUT PAROLE W/628 DAYS CREDIT	C5	SMB
3/26/2018	SN	COUNT 02-00 SENTENCED	C5	SMB
3/26/2018	RPF	ORDER TO REMIT PRISONER FUNDS, MC288 SENT TO DEFENDANT &	C5	SMB
3/26/2018	-	C. EGELER RECEPTION & GUIDANCE CENTER	C5	SMB
3/26/2018	JOS	JUDGMENT OF SENTENCE	C5	SMB
3/26/2018	FDJ	FINAL DISPOSITION-JURY TRIAL	C5	SMB
3/26/2018	*	REQUEST & NOTICE FOR FILM/ELECTRONIC MEDIA COVERAGE	C5	SMB
3/26/2018	-	BY SAGINAW NEWS, ABC 12 NEWS, WEYI & WSM4	C5	SMB
3/27/2018	RET	FILE RETURNED TO CLERK'S OFFICE	C5	SMB

Trial Court Docket Entries

DATE: 4/05/2018

STATE OF MICHIGAN 10TH JUDICIAL CIRCUIT
PEOPLE VS ROBERT PROPP

PAGE 10

CASE:16-042719-FC

OFFENSE: 7/06/2016

DATE	CODE	ACTIONS, JUDGMENTS, CASE NOTES	JD	CLK
3/27/2018	RCO	FILE RETURNED FROM COURT TO CLERK'S OFFICE	C5	TSB
3/27/2018	*	DEFN INFO CHANGED BY CIRCUIT COURT PROBATION		MJR
3/29/2018	RAC	REQUEST FOR APPELLATE ATTY FORWARDED O-A-C	C5	HLL
4/04/2018	MSP	MSP EJUD COUNT 002 GTY CONFIRMED		943
		*** END OF CASE ***		

Original - 001a

1st copy - Corrections

2nd copy - Corrections (for return)

copy - Michigan State Police CJIC

copy - Defendant

5th copy - Prosecutor

Approved, SCAO

STATE OF MICHIGAN
10th JUDICIAL CIRCUIT
SAGINAW COUNTYJUDGMENT OF SENTENCE
COMMITMENT TO
DEPARTMENT OF CORRECTIONSCASE NO.
16-042719-FC

ORI MI-730015J Court address 111 S. Michigan Ave., Saginaw, Michigan 48602 Court telephone no. (989)790-5471
Police Report No.

THE PEOPLE OF THE STATE OF MICHIGAN

The State of Michigan

v

Defendant's name, address, and telephone no.

Propp, Robert Lance
2237 N Carolina St
Saginaw, MI 48602CTN/TCN
73-16-003762-01SID
2076985 KDOB
3/16/82

Prosecuting attorney's name Blair no.
Blair N. Stevenson P74911

Defendant attorney's name Blair no.
Johnson, Edwin Griffi P74038

THE COURT FINDS:

1. The defendant was found guilty on 2/13/18 of the crime(s) stated below.

Count	CONVICTED BY			DISMISSED BY*	CRIME	CHARGE CODE(S) MCL citation/PACC Code
	Plea*	Court	Jury			
2			X		MURDER-1ST-PREMED	750.316-A
					HOA 4TH OFFENSE	769.12

*Insert "G" for guilty plea, "NC" for nolo contendere, or "MI" for guilty but mentally ill, "D" for dismissed by court, or "NP" for dismissed by prosecutor/plaintiff.

- ☐ 2. The conviction is reportable to the Secretary of State under MCL 257.625(21)(b). P-610-745-488-199
☐ 3. HIV testing and sex offender registration are completed. Defendant's driver's license number
☐ 4. The defendant has been fingerprinted according to MCL 28.243.
☐ 5. A DNA sample is already on file with the Michigan State Police from a previous case. No assessment is required.

IT IS ORDERED:

- ☐ 6. Probation is revoked.
 7. Participating in a special alternative incarceration unit is ☐ prohibited. ☐ permitted.
 8. The defendant is sentenced to custody of the Michigan Department of Corrections. This sentence shall be executed immediately.

Count	SENTENCE DATE	MINIMUM			MAXIMUM			DATE SENTENCE BEGINS	JAIL CREDIT		OTHER INFORMATION
		Years	Mos.	Days	Years	Mos.	Days		Mos.	Days	
2	3/26/18	LIFE						3/26/18		628	WITHOUT PAROLE

- ☐ 9. Sentence(s) to be served consecutively to (If this item is not checked, the sentence is concurrent.)
☐ each other. ☐ case numbers

10. The defendant shall pay:

State Minimum	Crime Victim	Restitution	DNA Assess.	Court Costs	Attorney Fees	Fine	Other Costs	Total
\$68.00	\$130.00	\$15,793.00						\$15,991.00

The due date for payment is 4/26/18. Fine, costs, and fees not paid within 56 days of the due date are subject to a 20% late penalty on the amount owed.

- ☐ 11. The concealed weapon board shall ☐ suspend for _____ days ☐ permanently revoke the concealed weapon license, permit number _____, issued by _____ County.
☐ 12. The defendant is subject to lifetime monitoring under MCL 750.520n.
 13. Court Recommendation:

3/26/18
Date

Darnell Jackson
Judge Darnell Jackson

P34737
Bar no.

I certify that this is a correct and complete abstract from the original court records. The sheriff shall, without needless delay, deliver the defendant to the Michigan Department of Corrections at a place designated by the department.

PRISON SMB

(SEAL)

Sue Bidwell
Deputy court clerk Susan M. Bidwell

MCL 765.15(2), MCL 769.1k, MCL 769.16a, MCL 775.22,

CC 219b (6/15) JUDGMENT OF SENTENCE, COMMITMENT TO DEPARTMENT OF CORRECTIONS

MCL 780.766, MCR 6.427

Case Search

Case Docket Number Search Results - 343255

Appellate Docket Sheet

COA Case Number: 343255**MSC Case Number: 160551**

PEOPLE OF MI V ROBERT LANCE PROPP

1	PEOPLE OF MI Oral Argument: Y Timely: Y	PL-AE	PRS	(80134) FILLMORE CARMEN RAE
2	PROPP ROBERT LANCE Oral Argument: Y Timely: Y	DF-AT	SAD	(78141) HELTON STEVEN DANIEL

COA Status: Case Concluded; File Open **MSC Status:** Pending on Application

04/10/2018 1 Claim of Appeal - Criminal
 Proof of Service Date: 04/09/2018
 Register of Actions: Y
 Fee Code: PI
 Attorney: 1284 - STATE APPELLATE DEFENDER

03/26/2018 2 Order Appealed From
 From: SAGINAW CIRCUIT COURT
 Case Number: 16-042719-FC
 Trial Court Judge: 34737 JACKSON DARNELL
 Nature of Case:
 Murder One
 Habitual Offender 4th or higher, 769.12

04/10/2018 3 Transcript Ordered By Trial Court
 Date: 04/09/2018
 Timely: Y
 Reporter: 3862 - MIOTTO CYNTHIA L
 Hearings:
 09/15/2016
 09/29/2016
 12/01/2016
 Comments: attached to event #1

04/10/2018 4 Transcript Ordered By Trial Court
 Date: 04/09/2018
 Timely: Y
 Reporter: 3789 - PRZYBYLSKI ESTELLE B
 Hearings:
 12/22/2016
 01/08/2018
 02/08/2018
 02/13/2018
 03/26/2018
 Comments: attached to event #1

04/10/2018 5 Transcript Ordered By Trial Court

013a

Court of Appeals Docket Entries

Date: 04/09/2018

Timely: Y

Reporter: 3286 - STEVENS-YURGENS DARLENE S

Hearings:

02/06/2017

02/27/2017

Comments: attached to event #1

04/10/2018 6 Transcript Ordered By Trial Court

Date: 04/09/2018

Timely: Y

Reporter: 4553 - WEGERT URSULA

Hearings:

07/28/2017

Comments: attached to event #1

04/10/2018 7 Transcript Ordered By Trial Court

Date: 04/09/2018

Timely: Y

Reporter: 8314 - STUPAK JEFFREY D

Hearings:

02/06/2018

02/07/2018

Comments: attached to event #1

04/12/2018 8 Appearance - Appellee

Date: 04/12/2018

For Party: 1 PEOPLE OF MI PL-AE

Attorney: 76031 - COLLISON NATHAN J

04/16/2018 9 Notice Of Filing Transcript

Date: 04/11/2018

Timely: Y

Reporter: 8314 - STUPAK JEFFREY D

Hearings:

02/06/2018

02/07/2018

04/17/2018 10 Steno Certificate - Tr Request Received

Date: 04/09/2018

Timely: Y

Reporter: 4553 - WEGERT URSULA

Hearings:

07/28/2017

04/26/2018 11 Notice Of Filing Transcript

Date: 04/19/2018

Timely: Y

Reporter: 3286 - STEVENS-YURGENS DARLENE S

Hearings:

02/06/2017

02/27/2017

04/30/2018 12 Invol Dismissal Warning - No Steno Cert

Attorney: 1284 - STATE APPELLATE DEFENDER

Due Date: 05/21/2018

04/30/2018 13 Steno Certificate - Tr Request Received

Date: 04/09/2018

Timely: Y

Reporter: 3789 - PRZYBYLSKI ESTELLE B

RECEIVED by MSC 1/14/2021 5:26:28 AM

014a

Court of Appeals Docket Entries

Hearings:

12/22/2016
01/08/2018
02/08/2018
02/13/2018
03/26/2018

Comments: steno w/sign in evt #15

05/03/2018 14 Steno Certificate - Tr Request Received

Date: 04/09/2018

Timely: Y

Reporter: 3862 - MIOTTO CYNTHIA L

Hearings:

09/15/2016
09/29/2016
12/01/2016

05/07/2018 15 Other

Date: 05/03/2018

Comments: steno w/sign of crt rep-steno w/no sign in evt #13

05/22/2018 16 Other

Comments: NFT w/incorrect filing date-to file amended NFT

05/29/2018 17 Notice Of Filing Transcript

Date: 05/16/2018

Timely: Y

Reporter: 3862 - MIOTTO CYNTHIA L

Hearings:

09/15/2016
09/29/2016
12/01/2016

Comments: amended NFT w/corr filing date

06/04/2018 18 Notice Of Filing Transcript

Date: 05/31/2018

Timely: Y

Reporter: 4553 - WEGERT URSULA

Hearings:

07/28/2017

07/13/2018 19 Transcript Overdue - Notice to Reporter

Mail Date: 07/13/2018

Reporter: 3789 - PRZYBYLSKI ESTELLE B

Comments: multiple hearing dates

07/13/2018 20 Transcript Overdue - Notice to Reporter

Mail Date: 07/13/2018

Reporter: 8314 - STUPAK JEFFREY D

Comments: hearings held 2/6/18 & 2/7/18

07/30/2018 21 Invol Dismissal Warning - No Transcript

Attorney: 1284 - STATE APPELLATE DEFENDER

Due Date: 08/20/2018

07/30/2018 22 Notice Of Filing Transcript

Date: 07/23/2018

Timely: Y

Reporter: 3789 - PRZYBYLSKI ESTELLE B

Hearings:

015a

Court of Appeals Docket Entries

12/22/2016

01/08/2018

02/08/2018

02/13/2018

03/26/2018

07/30/2018 23 Correspondence Sent
For Party: 2 PROPP ROBERT LANCE DF-AT
Attorney: 1284 - STATE APPELLATE DEFENDER
Comments: copy of NFT sent to attys

09/18/2018 24 Motion: Extend Time - Appellant
Proof of Service Date: 09/18/2018
Filed By Attorney: 49453 - BAKER DOUGLAS W
For Party: 2 PROPP ROBERT LANCE DF-AT
Fee Code: PI
Requested Extension: 11/12/2018
Answer Due: 09/25/2018

09/25/2018 25 Submitted on Administrative Motion Docket
Event: 24 Extend Time - Appellant
District: L

09/28/2018 26 Order: Extend Time - Appellant Brief - Grant
View document in PDF format
Event: 24 Extend Time - Appellant
Panel: MFG
Attorney: 49453 - BAKER DOUGLAS W
Extension Date: 11/12/2018

11/13/2018 27 Brief: Appellant
Proof of Service Date: 11/13/2018
Oral Argument Requested: Y
Timely Filed: Y
Filed By Attorney: 49453 - BAKER DOUGLAS W
For Party: 2 PROPP ROBERT LANCE DF-AT

11/16/2018 28 Oral Arg Advise Ltr Sent
Attorney: 49453 - BAKER DOUGLAS W
Comments: sent in error-see letter in evt #29

11/20/2018 29 Correspondence Sent
For Party: 2 PROPP ROBERT LANCE DF-AT
Attorney: 49453 - BAKER DOUGLAS W
Comments: ltr sent re O/A ltr sent in error

11/28/2018 30 Stips: Extend Time - AE Brief
Extend Until: 01/15/2019
Filed By Attorney: 76031 - COLLISON NATHAN J
For Party: 1 PEOPLE OF MI PL-AE
P/S Date: 11/28/2018

12/14/2018 31 Brief: Appellee
Proof of Service Date: 12/14/2018
Oral Argument Requested: Y
Timely Filed: Y
Filed By Attorney: 74197 - SAWKA JOSEPH F
For Party: 1 PEOPLE OF MI PL-AE

12/14/2018 32 Noticed
Record: REQST
Mail Date: 12/17/2018

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016a

Court of Appeals Docket Entries

- 12/21/2018 33 Brief: Appendices in Support of Brief
 Proof of Service Date: 12/14/2018
 Oral Argument Requested:
 Timely Filed: Y
 Filed By Attorney: 74197 - SAWKA JOSEPH F
 For Party: 1 PEOPLE OF MI PL-AE
 Comments: Appendix I; cd plays using windows media player - open folder view files & play;copies in bf folder
- 01/04/2019 34 Brief: Reply
 Proof of Service Date: 01/04/2019
 Oral Argument Requested:
 Timely Filed: Y
 Filed By Attorney: 78141 - HELTON STEVEN DANIEL
 For Party: 2 PROPP ROBERT LANCE DF-AT
- 01/08/2019 35 Record Request
 Mail Date: 01/08/2019
 Agency: SAGINAW CIRCUIT COURT
- 01/11/2019 36 Record Filed
 File Location:
 Comments: lcf;16 tr--saginaw circ
- 09/03/2019 49 Case Call Update Substitution
 Date: 09/03/2019
 For Party: 1 PEOPLE OF MI PL-AE
 Attorney: 74197 - SAWKA JOSEPH F
 Comments: FILLMORE CARMEN RAE P Number 80134 to appear on behalf of Party 1 . and is placed as attorney of record replacing Joseph F. Sawka
- 09/03/2019 50 Appearance - Appellee
 Date: 09/03/2019
 For Party: 1 PEOPLE OF MI PL-AE
 Attorney: 80134 - FILLMORE CARMEN RAE
- 09/04/2019 46 Submitted on Case Call
 District: L
 Item #: 8
 Panel: CMM,PMM,KFH
- 09/04/2019 51 Case Call Update For Panel
 Date: 09/04/2019
 Comments: Carmen Fillmore replaces Joseph F. Sawka as attorney of record per appearance filed on 9/3
- 09/04/2019 52 Oral Argument Audio
 Listen to audio in MP3 format
- 10/03/2019 55 Opinion - Authored - Published
 View document in PDF format
 Pages: 16
 Panel: CMM,PMM,KFH
 Author: KFH
 Result: L/Ct Judgment/Order Affirmed
- 10/03/2019 56 Opinion - Concurrence
 View document in PDF format
 Pages: 3
 Author: CMM
- 11/18/2019 57 SCT: Application for Leave to SCT
 Supreme Court No: 160551
 Answer Due: 12/16/2019
 Fee: State

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017a

Court of Appeals Docket Entries

For Party: 2
 Attorney: 78141 - HELTON STEVEN DANIEL

11/20/2019 58 Other
 Date: 11/18/2019
 For Party: 2 PROPP ROBERT LANCE DF-AT
 Attorney: 78141 - HELTON STEVEN DANIEL
 Comments: Notice of filing for leave to appeal in the Supreme Court

12/12/2019 59 Supreme Court - Record Sent To
 File Location:
 Comments: sc#160551 lcf;16 tr;dvd(appx to ae bf)

12/12/2019 60 SCt: Trial Court Record Received
 16 tr; 1 exh; 1 files

09/03/2020 63 Michigan Appeals Reports Publication
 330 Mich App 151

10/21/2020 64 SCt Order: Application - Grant
 View document in PDF format
 Comments: 20-mins OA per side. Invited AC=CDAM, PAAM.

12/14/2020 65 SCt Motion: Housekeeping
 Party: 2
 Filed by Attorney: 78141 - HELTON STEVEN DANIEL
 Comments: Mtn to extend the time for filing the DFAT appeal brf to 1-13-2021.

12/16/2020 66 SCt Order: Chief Justice - Grant
 View document in PDF format
 Comments: Grant DFAT mtn to extend time for filing supp brf to 1-13-2021.

Case Listing Complete

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If this opinion indicates that it is "FOR PUBLICATION," it is subject to revision until final publication in the Michigan Appeals Reports.

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT LANCE PROPP,

Defendant-Appellant.

FOR PUBLICATION

October 3, 2019

9:10 a.m.

No. 343255

Saginaw Circuit Court

LC No. 16-042719-FC

Advance Sheets Version

Before: MURRAY, C.J., and METER and FORT HOOD, JJ.

FORT HOOD, J.

Defendant appeals as of right his jury conviction of first-degree premeditated murder, MCL 750.316(a)(1), for which he was sentenced, as a fourth-offense habitual offender, MCL 769.12, to a mandatory term of life in prison without the possibility of parole, MCL 750.316(1). Defendant contends on appeal that (1) the trial court violated defendant's rights to due process and equal protection by denying defendant's motion for the appointment of an expert witness and denying his ability to present a defense, and (2) the trial court abused its discretion by permitting the introduction of hearsay and unduly prejudicial other-acts evidence. We affirm.

I. BACKGROUND

It is undisputed that defendant killed the victim by constricting her airway. The sole issue is whether defendant did so with the intent to kill her, or, as defendant claims, whether the victim's death occurred accidentally while she and defendant were engaged in erotic asphyxiation.¹ On the morning of July 6, 2016, defendant called 911 to report that he had discovered the victim unresponsive in her bed. When emergency responders arrived, they found defendant attempting

¹ This is the first Michigan case to reach this Court dealing with erotic asphyxiation as a defense to a charge of murder. The term has been defined as "the practice of choking during a sexual encounter as a way to restrict oxygen flow and enhance sexual arousal," Boni-Saenz, *Sexual Advance Directives*, 68 Ala L Rev 1, 2 (2016), or "near suffocation . . . that heightens sexual pleasure," Comment, *The "Rough Sex" Defense*, 80 J Crim L & Criminology 557, 559 (1989).

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to administer chest compressions to the victim. The victim's body, however, was stiff and cold to the touch, and the emergency responders informed defendant that the victim was deceased. Defendant proceeded to describe a number of different versions of the events that occurred on the night preceding and the morning of the victim's death.

At defendant's preliminary examination, an officer testified that he responded to defendant's 911 call and testified that when he arrived on the scene, defendant told him that defendant had become concerned when the victim did not answer her phone that morning, so defendant went to the victim's house and discovered that her car was still there when she was supposed to be at work. Defendant stated that he found the back door of the victim's house forced open and found the victim unresponsive in her bed. Defendant made no claims that he had choked the victim at that time. That officer also noted that defendant had a black eye, which defendant explained came from a bar fight the night before.

A second officer also spoke with defendant on the day of the victim's death. Defendant purportedly told that officer that the victim's back door had not been forced open and that defendant himself pried the door open with a crowbar. Defendant told the officer that on the night before the victim died, defendant and the victim were lying in the victim's bed when they began arguing. Defendant stated that the victim elbowed him in the eye, causing his black eye and a physical altercation. During the altercation, the victim fell off the bed, defendant fell on top of her, and then a dresser fell on both of them. Defendant stated that he had his hand on the victim's neck and that he "pressed down" with his weight. When the victim stopped moving, defendant figured she was unconscious, and so he picked her up, put her back on the bed, and left.

Before trial, defendant presented the argument that the victim's death was the accidental result of erotic asphyxiation. Defendant moved for the appointment of a state-funded expert witness on the practice, arguing that such an expert would assist the jury in understanding why people engage in erotic asphyxiation and its associated risks. Defendant noted as a basis for his defense that the victim did not have any defensive wounds or other injuries to suggest that she died during a struggle. The trial court denied defendant's request for appointment of such an expert, however, concluding that there were no facts in the record to support defendant's assertion that the victim died as a result of erotic asphyxiation. The only facts in the record that explained the victim's injuries were defendant's statements to the police that the victim died when she and defendant fell out of bed during a fight while defendant had his hand on her throat.

The prosecution also filed their own pretrial motion, seeking to introduce evidence of defendant's prior acts of domestic violence against the victim as well as stalking behaviors. The prosecution alleged that defendant repeatedly called and texted the victim, drove by her house, and appeared uninvited at places the victim went. The majority of the evidence of defendant's prior acts came in the form of statements the victim made to friends and family members. The prosecution also sought to introduce evidence that defendant sexually abused his ex-wife during their marriage. Defendant argued that the testimony of the victim's friends and family members was inadmissible hearsay and that the testimony of defendant's ex-wife was inadmissible under MRE 403 because it was more prejudicial than probative. The trial court disagreed and granted the prosecution's motion to admit the evidence in its entirety.

Court of Appeals Majority Opinion

At trial, defendant testified that on the night that the victim died, she asked him to choke her while they had sex. In the process of doing so, defendant and the victim fell off the bed and a dresser fell on top of them. Defendant was unsure of how long he and the victim were on the floor with the dresser on top of them and his hand on her throat, but when he got up, the victim was unconscious. Defendant testified that he was not concerned about this because the victim often passed out when they engaged in erotic asphyxiation and defendant believed that she was still alive when he left her house shortly after. Defendant stated that he did not initially tell the police that he choked the victim because he was embarrassed and ashamed. The jury convicted defendant of first-degree premeditated murder, and the trial court sentenced him to mandatory life in prison without the possibility of parole.

II. DUE PROCESS

Defendant first contends that the trial court violated defendant's rights to due process by denying defendant's motion for the appointment of an expert witness and subsequently prohibiting any testimony from that witness. We disagree.

We review de novo, as an issue of constitutional law implicating a defendant's due-process rights, the trial court's grant or denial of a defendant's request for state funds to retain an expert. See *People v Cain*, 238 Mich App 95, 108; 605 NW2d 28 (1999). We must consider whether, in light of defendant's explanation as to why the requested expert was necessary for his defense, the trial court should have determined that state funds were required to afford defendant a fair opportunity to confront the prosecution's evidence and present his defense. See *People v Kennedy*, 502 Mich 206, 226-227; 917 NW2d 355 (2018).²

A. WHETHER DEFENDANT WAS ENTITLED TO A STATE-FUNDED EXPERT WITNESS

At the time that the trial court denied defendant's request for appointment of an expert witness, issues pertaining to the funding of experts at state expense were governed by MCL 775.15³ and *People v Tanner*, 469 Mich 437, 442-443; 671 NW2d 728 (2003), overruled by

² We note the prosecution's assertion that defendant failed to establish indigence for the purpose of retaining a state-funded expert witness. Defendant was originally appointed counsel on the basis of his indigence, and although he later retained counsel, there is no evidence that defendant's financial circumstances changed during the pendency of the case. See *People v Arquette*, 202 Mich App 227, 230; 507 NW2d 824 (1993). We are confident that the mere retention of counsel by an indigent defendant does not deprive that defendant of the ability to seek the funding of an expert at state expense. In any event, whether defendant properly established indigence has no bearing on the outcome of this case.

³ MCL 775.15 provides, in relevant part:

If any person accused of any crime or misdemeanor, and about to be tried therefor in any court of record in this state, shall make it appear to the satisfaction of the judge presiding over the court wherein such trial is to be had, by his own

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Kennedy, 502 Mich at 222-223. *Tanner* held that under MCL 775.15, “to obtain appointment of an expert, an indigent defendant must demonstrate a nexus between the facts of the case and the need for an expert.” *Tanner*, 469 Mich at 442-443 (quotation marks omitted), citing *People v Jacobsen*, 448 Mich 639, 641; 532 NW2d 838 (1995), overruled by *Kennedy*, 502 Mich at 222-223. The *Kennedy* Court recently clarified, however, “that MCL 775.15 does not apply in [the] context” of an indigent defendant’s request for appointment of an expert. *Kennedy*, 502 Mich at 210.

“MCL 775.15, by its express terms, does not provide for the appointment of expert witnesses.” *Id.* at 222. In addition, “the statute, which only contemplates ‘testimony,’ falls short of the constitutional standard set forth in *Ake*,^[4] which clearly requires the assistance of an expert in conducting an appropriate examination and in evaluation, preparation, and presentation of the defense.” *Id.* at 223 (quotation marks, brackets, and citation omitted). We have no doubt that *Kennedy* applies because, although *Kennedy* was decided after defendant’s trial, “it is well-established that a new rule for the conduct of criminal prosecutions that is grounded in the United States Constitution applies retroactively to all cases . . . pending on direct review or not yet final.” *People v Lonsby*, 268 Mich App 375, 389; 707 NW2d 610 (2005).

Following *Kennedy*, an indigent defendant’s entitlement to state funds to pay for an expert is analyzed under the due-process framework outlined in *Ake v Oklahoma*, 470 US 68; 105 S Ct 1087; 84 L Ed 2d 53 (1985). *Kennedy*, 502 Mich at 225. Now, when a trial court analyzes an indigent defendant’s request for government funds to procure an expert, it must consider the following factors:

- (1) “the private interest that will be affected by the action of the State,” (2) “the governmental interest that will be affected if the safeguard is to be provided,” and (3) “the probable value of the additional or substitute procedural safeguards that are sought, and the risk of an erroneous deprivation of the affected interest if those safeguards are not provided.” [*Id.* at 215, quoting *Ake*, 470 US at 77.]

With respect to the first two factors, in criminal cases, both defendants and the government share an interest in “fair and accurate adjudication.” *Kennedy*, 502 Mich at 215-216 (quotation

oath, or otherwise, that there is a material witness in his favor within the jurisdiction of the court, without whose testimony he cannot safely proceed to a trial . . . and that such accused person is poor and has not and cannot obtain the means to procure the attendance of such witness at the place of trial, the judge in his discretion may . . . make an order that a subpoena be issued from such court for such witness in his favor, and that it be served by the proper officer of the court. And it shall be the duty of such officer to serve such subpoena, and of the witness or witnesses named therein to attend the trial, and the officer serving such subpoena shall be paid therefor, and the witness therein named shall be paid for attending such trial, in the same manner as if such witness or witnesses had been subpoenaed in behalf of the people.

⁴ *Ake v Oklahoma*, 470 US 68; 105 S Ct 1087; 84 L Ed 2d 53 (1985).

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marks and citation omitted). Accordingly, in such cases, the third factor, regarding the probable value of the requested safeguard, is typically the determinative factor as to whether the defendant is entitled to government funds to obtain an expert. See *id.* at 216-220. In terms of the showing that the defendant must make under this factor, *Kennedy* adopted the reasonable-probability standard articulated in *Moore v Kemp*, 809 F2d 702 (CA 11, 1987). *Id.* at 226. *Moore* held:

[I]f a defendant wants an expert to assist his attorney in confronting the prosecution's proof—by preparing counsel to cross-examine the prosecution's experts or by providing rebuttal testimony—he must inform the court of the nature of the prosecution's case and how the requested expert would be useful. At the very least, he must inform the trial court about the nature of the crime and the evidence linking him to the crime. *By the same token, if the defendant desires the appointment of an expert so that he can present an affirmative defense, such as insanity, he must demonstrate a substantial basis for the defense . . .* In each instance, the defendant's showing must also include a specific description of the expert or experts desired; without this basic information, the court would be unable to grant the defendant's motion, because the court would not know what type of expert was needed. In addition, the defendant should inform the court why the particular expert is necessary. [*Moore*, 809 F2d at 712 (emphasis added).]

In particular, *Kennedy* held that in order to be entitled to government funds to obtain an expert, “a defendant must show the trial court that there exists a reasonable probability both that an expert would be of assistance to the defense and that denial of expert assistance would result in a fundamentally unfair trial.” *Kennedy*, 502 Mich at 228 (quotation marks and citation omitted).

In this case, defendant sought appointment of an expert in order to assert the affirmative defense that the victim died accidentally while she and defendant engaged in erotic asphyxiation. Accordingly, defendant was required to demonstrate a “substantial basis for the defense.” See *Moore*, 809 F2d at 712. Defense counsel argued that there was a basis for the defense because, although the victim unequivocally died from neck compression, she did not have defensive wounds indicative of a struggle. Defense counsel further argued that an expert would “give some validity to” defendant's claim that he was not particularly concerned when the victim lost consciousness because people who engage in erotic asphyxiation often lose consciousness during the act.

The trial court determined that defendant failed to demonstrate a factual basis for the defense because there was no evidence that the victim's death occurred as a result of erotic asphyxiation. The record supports that conclusion. At the time that defendant moved for appointment of an expert, the only evidence in the record that defendant had choked the victim came from his statement to Detective Joseph McMillan. In that statement, defendant admitted that he and the victim got into a fight, during which the victim fell off the bed, defendant fell on top of her, and a dresser fell on top of both of them. Defendant did not make any statements during any of his police interviews that the victim's injuries were the result of erotic asphyxiation. Moreover, the testimony of the victim's sister suggested that defendant and the victim were not getting along at the time of the victim's death, that defendant had engaged in stalking behaviors—including coming to the victim's home and knocking on her windows at night—and that defendant's behavior was “escalating very fast.” Another sister of the victim testified that the victim once told

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her that the victim was “going to die young,” and when the sister asked why, the victim responded, “I don’t know, maybe [defendant] will kill me.”

Other testimony in evidence relating to the prosecution’s motion in limine indicated that witnesses had seen multiple altercations between the victim and defendant. Two witnesses testified that they once saw defendant chase the victim down the road in a car, seemingly attempting to run her off the road. One witness observed injuries on the victim’s arms, neck, and face shortly before the victim decided to break up with defendant. Another witness testified that the victim once told her that the defendant “choked [sic] her, and [the victim] didn’t think he was going to stop, [and] she was starting to see spots when he finally let her go.” According to that witness, while defendant was choking the victim, he stated, “[S]ee how easy it would be for me to shut you up[?]”

For the trial court to conclude that there was a substantial basis for the erotic-asphyxiation defense, the trial court would have been required to ignore a significant amount of evidence from other witnesses that supported defendant’s own contradictory statement that he choked the victim while the two were fighting. Given the significant evidence in the record at the time, defendant’s mere assertion that the victim’s death was the result of erotic asphyxiation—an assertion that was made for the first time well over a year after the investigation and proceedings in this case were initiated—was not sufficient to provide a substantial basis for the defense such that a state-funded expert was necessary. See *Kennedy*, 502 Mich at 227, citing *Moore*, 809 F2d at 712. Nevertheless, assuming for the sake of argument that defendant should have been entitled to an expert witness, we note that the denial of an expert did not result in a fundamentally unfair trial.

B. WHETHER BARRING DEFENDANT’S EXPERT RESULTED IN A
FUNDAMENTALLY UNFAIR TRIAL

Defendant contends that denial of his motion for a state-funded expert and the prohibition of testimony from that expert barred defendant from presenting a meaningful defense and resulted in a fundamentally unfair trial. We disagree.

As an initial matter, defendant has arguably waived any suggestion that his trial was unfair because he was denied a meaningful opportunity to present a defense. Waiver is “the intentional relinquishment or abandonment of a known right.” *People v Carter*, 462 Mich 206, 215; 612 NW2d 144 (2000) (quotation marks and citation omitted). Waiver “extinguishe[s] any error,” and “[o]ne who waives his rights . . . may not then seek appellate review of a claimed deprivation of those rights . . .” *Id.* (quotation marks and citation omitted). In this case, the trial court denied defendant’s request for funds to retain an expert witness on the practice of erotic asphyxiation and prohibited defendant from presenting such expert testimony. Before trial began, the prosecution objected to defendant’s proposed witness, Dr. Zubin Mistry, “based on the court’s prior ruling,” and the trial court stated that the witness would not “be allowed to be called at this point in time.” Defense counsel stated, “[W]e understand that we have to develop evidence to justify th[e] expert witness being called, but we are assuming that we will,” and the trial court responded, “We’ll cross that bridge when we get to it.” Thereafter, defendant never sought to call Dr. Mistry or any other expert witnesses.

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By failing to call an expert witness, despite the trial court's indication that it would consider defendant's ability to do so after defendant established a basis for that testimony, defendant waived his claim that he was denied the opportunity to present a defense. See *Carter*, 462 Mich at 215. Despite defendant's apparent waiver, under the circumstances—including the possibility that defendant could not call the expert for financial reasons after state funding was denied, the constitutional implications of this case, and the gravity of the offense—we elect to reach the merits of the argument, and we note that the record establishes that an additional expert was not necessary for defendant to present his claim that the victim died from erotic asphyxiation.

“This Court reviews de novo whether defendant suffered a deprivation of his constitutional right to present a defense.” *People v Steele*, 283 Mich App 472, 480; 769 NW2d 256 (2009). The Due Process Clause of the Fourteenth Amendment “require[s] that criminal defendants be afforded a meaningful opportunity to present a complete defense.” *People v Anstey*, 476 Mich 436, 460; 719 NW2d 579 (2006) (quotation marks and citation omitted). The right to present a defense encompasses “[t]he right to offer the testimony of witnesses,” *Washington v Texas*, 388 US 14, 19; 87 S Ct 1920; 18 L Ed 2d 1019 (1967), as well as defense counsel's ability “to argue a reasonable inference from the evidence adduced at trial,” *People v Stokes*, 312 Mich App 181, 207; 877 NW2d 752 (2015), vacated in part on other grounds 501 Mich 918 (2017). The right to present a defense further protects a defendant's ability to “put before a jury evidence that might influence the determination of guilt” and to have access to exculpatory evidence. *Anstey*, 476 Mich at 460 (quotation marks and citation omitted).

In this case, defendant fails to explain how he was denied a meaningful opportunity to present his defense because defendant was, in fact, able to present the exact defense he sought to introduce through an expert. Defense counsel stated during his opening statement that defendant and the victim engaged in erotic asphyxiation, the victim lost consciousness—which “wasn't unusual for her”—and it appeared to a layperson that the victim was still breathing. Defendant then testified at length to all those things. Defendant testified about the manner in which he and the victim engaged in erotic asphyxiation on the night of her death and why. Defendant also testified that the victim asked him to choke her. Defendant explained that he was not concerned when the victim lost consciousness because it was a “normal” occurrence when defendant and the victim engaged in that form of “extreme sex.” Defendant further explained that he did not tell the police that he and the victim engaged in erotic asphyxiation on the night she died because he “was ashamed,” because he did not want to expose the “sex that [they] had,” because defendant was “very conservative” with respect to talking about his sexual life, and because the victim “wanted it to be that way.”

Moreover, defense counsel was able to continue to present the defense through the prosecution's expert pathologist. When asked by defense counsel whether, under the circumstances, the victim's death could have resulted from erotic asphyxiation, the expert pathologist stated, “Yeah, it's possible.” Defense counsel then referenced the exchange in his closing argument. We note that in his motion for appointment of an expert, defendant claimed that an expert was also necessary to explain to the jury the prevalence of erotic asphyxiation, why a person would engage in it, and the reality of participants passing out or even dying from the practice. However, although defense counsel cross-examined the prosecution's expert pathologist regarding erotic asphyxiation and he testified that he was familiar with the practice, defense counsel notably did not attempt to elicit any testimony from the expert pathologist related to the

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aforementioned ideas. He asked no questions regarding what erotic asphyxiation involves, why people might engage in the activity, how common it is, or how often it results in injury or death.

Defendant does not argue that his trial counsel was ill prepared or ineffective, nor does defendant provide any reason why the prosecution's expert pathologist, who was familiar with erotic asphyxiation, could not explain the practice. Accordingly, we note that defendant has failed to establish that another expert witness would have provided defendant with evidence beyond what was available through the prosecution's expert pathologist. Defendant failed to establish that the trial court's denial of a state-funded expert witness deprived defendant of the opportunity to present his erotic-asphyxiation defense and failed to establish that either the denial of his motion or the initial prohibition of expert testimony on erotic asphyxiation resulted in a fundamentally unfair trial.

III. EQUAL PROTECTION

Defendant also suggests on appeal that the requirement that he establish a substantial basis for his defense in order to be entitled to expert funds violated his right to equal protection because nonindigent defendants are not required to make a similar showing before presenting the testimony of retained experts. We disagree.

"For an issue to be preserved for appellate review, it must be raised, addressed, and decided by the lower court." *People v Danto*, 294 Mich App 596, 605; 822 NW2d 600 (2011) (quotation marks and citation omitted). Defendant raises his equal-protection challenge for the first time on appeal, and, accordingly, his claim is unpreserved. This Court reviews an unpreserved claim of constitutional error for plain error affecting substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). In order to demonstrate error requiring reversal, the defendant must show that an error occurred, that the error was clear and obvious, and that the error prejudiced the defendant such that the error "affected the outcome of the lower court proceedings." *Id.*

Neither this Court nor our Supreme Court has held that requiring an indigent defendant to demonstrate a substantial basis for his defense before he is entitled to state funds to procure an expert violates equal protection. To the contrary, *Kennedy* concluded that "the standard articulated in *Moore* strikes the right balance between requiring too much or too little of a defendant seeking the appointment of an expert . . ." *Kennedy*, 502 Mich at 227-228. Moreover, we note that other than alleging a violation of equal protection in his statement of questions presented on appeal, there is actually no application of the clause or the substantial jurisprudence surrounding it in defendant's brief.

Defendant cites *Ake* for the idea that "simply as a result of his poverty, a defendant [cannot be] denied the opportunity to participate meaningfully in a judicial proceeding in which his liberty is at stake." *Ake*, 470 US at 76. Defendant also cites *People v Leonard*, 224 Mich App 569, 580; 569 NW2d 663 (1997), for the idea that "fundamental fairness requires that the state not deny [indigent defendants] an adequate opportunity to present their claims fairly within the adversary system." (Quotation marks and citation omitted.) Both these statements refer to the Due Process Clause. *Ake*, 470 US at 76; *Leonard*, 224 Mich App 569. And, as noted in *Ake*, although due process and equal protection are related, they involve separate inquiries. *Ake*, 470 US at 76 n 3.

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We also note defendant's single citation of *People v Loyer*, 169 Mich App 105, 123-124; 425 NW2d 714 (1988). We are aware of *Loyer*'s holding that within the context of MCL 775.15, it was a violation of equal protection for a trial court to require an indigent defendant seeking witness fees to disclose, "in the presence of the prosecution, the names and addresses of the witnesses, as well as why such witnesses [were] material to his cause" *Id.* at 124. As explained in detail earlier, MCL 775.15 does not apply to this case, and while we would concede that a defendant is not required to present his case to the prosecution in order to obtain appointment of an expert witness, there is no doubt that a defendant is at least required to establish a substantial basis for his defense. *Kennedy*, 502 Mich at 227.

In any event, "it is not the duty of this Court to discover and rationalize the basis for defendant's claims" *People v Jurewicz*, 329 Mich App 377, 393; 942 NW2d 116 (2019), citing *People v Kelly*, 231 Mich App 627, 640-641; 588 NW2d 480 (1998). "[N]or may [a defendant] give only cursory treatment with little or no citation of supporting authority." *Kelly*, 231 Mich App at 640-641. With all this in mind, defendant has not established plain error with respect to his equal-protection claim, let alone a prejudicial error that affected the outcome of the proceedings, and he is not entitled to relief on equal-protection grounds.

IV. MCL 768.27b AND THE MICHIGAN RULES OF EVIDENCE

Defendant lastly contends that the trial court abused its discretion by permitting the introduction of hearsay and unduly prejudicial other-acts evidence. Defendant challenges the admission of other-acts evidence of domestic violence on two bases: first, he claims that MCL 768.27b(1) does not allow the admission of hearsay evidence; and second, he claims that evidence presented by defendant's ex-wife was substantially more prejudicial than probative. We disagree with defendant's interpretation of MCL 768.27b(1) and conclude that the statute permits the introduction of certain hearsay statements so long as they satisfy the balancing test of MRE 403. We also disagree that the evidence presented by defendant's ex-wife was unduly prejudicial.

With respect to defendant's first argument—that a number of the witnesses' statements at trial were inadmissible hearsay—we conclude that MCL 768.27b allows for such testimony. We review questions of statutory interpretation de novo. *People v Mansour*, 325 Mich App 339, 345; 926 NW2d 26 (2018). "[O]ur goal in interpreting a statute 'is to ascertain and give effect to the intent of the Legislature. The touchstone of legislative intent is the statute's language.'" *People v Hardy*, 494 Mich 430, 439; 835 NW2d 340 (2013), quoting *People v Gardner*, 482 Mich 41, 50; 753 NW2d 78 (2008). "If the language is clear and unambiguous, the plain meaning of the statute reflects the legislative intent and judicial construction is not permitted." *People v Perry*, 317 Mich App 589, 604; 895 NW2d 216 (2016) (quotation marks and citation omitted).

This Court also reviews de novo the "preliminary question of law, which is whether a rule of evidence precludes admissibility" *People v McDaniel*, 469 Mich 409, 412; 670 NW2d 659 (2003). This Court reviews a "trial court's admission of evidence of other bad acts for an abuse of discretion. A trial court abuses its discretion when it fails to select a principled outcome from a range of reasonable and principled outcomes." *People v Kahley*, 277 Mich App 182, 184; 744 NW2d 194 (2008) (citation omitted). In order to be entitled to relief for a preserved nonconstitutional error, the defendant must establish "that it is more probable than not that the error was outcome-determinative." *People v Lukity*, 460 Mich 484, 496; 596 NW2d 607 (1999).

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MCL 768.27b(1) provides, in pertinent part:

[I]n a criminal action in which the defendant is accused of an offense involving domestic violence . . . , evidence of the defendant's commission of other acts of domestic violence or sexual assault is admissible for any purpose for which it is relevant, if it is not otherwise excluded under Michigan rule of evidence 403.

This “prior-bad-acts evidence of domestic violence can be admitted at trial because a full and complete picture of a defendant's history tends to shed light on the likelihood” that a domestic-violence crime was committed. *People v Cameron*, 291 Mich App 599, 610; 806 NW2d 371 (2011) (quotation marks, alterations, and citation omitted). Under MCL 768.27b, evidence of a defendant's prior bad acts of domestic violence is admissible “as long as the evidence satisfies the ‘more probative than prejudicial’ balancing test of MRE 403” *Id.*

Defendant primarily contends that MCL 768.27b must be read *in pari materia* with MCL 768.27a and MCL 768.27c. MCL 768.27a(1) provides, in relevant part, “Notwithstanding [MCL 768.27], in a criminal case in which the defendant is accused of committing a listed offense against a minor, evidence that the defendant committed another listed offense against a minor is admissible and may be considered for its bearing on any matter to which it is relevant.” MCL 768.27c(1), on the other hand, authorizes the admission of hearsay statements related to the “infliction or threat of physical injury upon the declarant” in cases in which the defendant is accused of an offense involving domestic violence. Defendant argues that reading MCL 768.27b in the context of its sister statutes requires a determination that other-acts evidence admissible under MCL 768.27b is still subject—in addition to MRE 403—to hearsay evidentiary rules. Indeed, we have noted that because of the similarities in the language of MCL 768.27a and 768.27b, “we believe that the Michigan Legislature intended the same policy” considerations to underlie both statutes. *Cameron*, 291 Mich App at 610. However, more recently, in holding that evidence admissible under MCL 768.27a—which involves the admission of other-acts offenses committed against minors—was subject to “other ordinary rules of evidence, such as those pertaining to hearsay and privilege,” our Supreme Court specifically distinguished MCL 768.27a from MCL 768.27b. *People v Watkins*, 491 Mich 450, 485; 818 NW2d 296 (2012).

In *Watkins*, the primary issue was whether, like MCL 768.27b, evidence generally admissible under MCL 768.27a was also subject to exclusion under MRE 403. *Id.* at 481. In determining that MCL 768.27a was not only subject to MRE 403 but also to the other rules of evidence, our Supreme Court reasoned:

The argument against applying MRE 403 to evidence admissible under MCL 768.27a comes not from the text of either MRE 403 or MCL 768.27a, but from the text of MCL 768.27b, which pertains to other-acts evidence in domestic violence cases. MCL 768.27b provides that “evidence of the defendant's commission of other acts of domestic violence is admissible for any purpose for which it is relevant, *if it is not otherwise excluded under Michigan rule of evidence 403.*” It is this emphasized portion of the statute that has generated disagreement surrounding whether MRE 403 applies to MCL 768.27a.

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Unlike MCL 768.27b, MCL 768.27a does not explicitly mention MRE 403 Accordingly, it is argued that if the Legislature expressly made other-acts evidence under MCL 768.27b subject to MRE 403 in cases of domestic violence, then the failure to mention MRE 403 in MCL 768.27a indicates that the Legislature did not intend MRE 403 to apply with regard to other-acts evidence in cases involving sexual misconduct against minors. We reject the invitation to draw this inference.

Significantly, the Legislature did not draft these statutes simultaneously. MCL 768.27a was enacted by 2005 PA 135, which became effective January 1, 2006, whereas MCL 768.27b was enacted by 2006 PA 78, which became effective March 24, 2006. The Legislature’s “silence” from which it is urged we draw an inference occurred in the earlier enactment. It is one thing to infer legislative intent through silence in a simultaneous or subsequent enactment, but quite another to infer legislative intent through silence in an earlier enactment, which is only “silent” by virtue of the subsequent enactment. [*Id.* at 481-482 (alterations in original).]

The Court ultimately noted that “because MCL 768.27a makes no specific mention of MRE 403, . . . the Legislature intended that MRE 403 not apply to other-acts evidence admissible under the statute.” *Id.* at 483. Had the Legislature intended otherwise, it “could have expressly exempted evidence admissible under MCL 768.27a from analysis under MRE 403, but it did not.” *Id.* In this case, defendant would have us conclude the same with respect to MCL 768.27b and hold that if the Legislature intended MCL 768.27b to permit the admission of hearsay statements, the Legislature could have expressly exempted evidence admissible under the statute from analysis under the hearsay rules of evidence. As it happens, however, the Legislature did just that.

The *Watkins* Court went on to express additional differences between MCL 768.27a and MCL 768.27b:

First, the Legislature used the permissive term “may” in MCL 768.27a but not in MCL 768.27b. Under MCL 768.27a, “evidence that the defendant committed another listed offense against a minor *is admissible*,” but the statute goes on to provide that such evidence “*may* be considered for its bearing on any matter to which it is relevant.” When the statute is read as a whole, the phrase “is admissible” is qualified by the phrase “may be considered,” thereby indicating that admissibility remains subject to some level of discretion on the part of the trial court. As this Court has explained, “courts should give the ordinary and accepted meaning to . . . the permissive word ‘may’ unless to do so would clearly frustrate legislative intent as evidenced by other statutory language or by reading the statute as a whole.” [*Browder v Int’l Fidelity Ins Co*, 413 Mich 603, 612; 321 NW2d 668 (1982).] Because there is no indication in MCL 768.27a that “may” should be interpreted contrary to its generally accepted meaning, the term is permissive, not mandatory. By providing that evidence admissible under MCL 768.27a “*may* be considered,” the Legislature necessarily contemplated that evidence admissible under the statute need not be considered in all cases and that whether and which evidence would be considered would be a matter of judicial discretion, as guided

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by the rules of evidence. The most obvious rule available to guide courts in exercising this discretion is MRE 403.

By contrast, MCL 768.27b contains no permissive language. MCL 768.27b(1) simply provides that “evidence of the defendant’s commission of other acts of domestic violence is admissible for any purpose for which it is relevant” Perhaps it was [its] choice to omit the permissive language [from MCL 768.27b] that prompted the Legislature to qualify the admissibility of other-acts evidence under MCL 768.27b with the language “if it is not otherwise excluded under Michigan rule of evidence 403.” [*Watkins*, 491 Mich at 483-484.]

In other words, with the language of MCL 768.27a in mind, because MCL 768.27b contains no permissive language, it would seem the Legislature intended to limit the discretion of the trial court to exclude evidence under the statute. The *only* limiting provision of MCL 768.27b is that the evidence is still subject to analysis under MRE 403, and importantly for the purposes of this case, the Legislature explicitly chose to include MRE 403 as a limiting rule of evidence and chose *not* to include any other rules of evidence.

An analogous situation was also true in *Watkins*:

Second, we must give effect to the prefatory clause “[n]otwithstanding [MCL 768.27]” contained in MCL 768.27a but absent from MCL 768.27b. MCL 768.27a provides, “Notwithstanding [MCL 768.27], in a criminal case in which the defendant is accused of committing a listed offense against a minor, evidence that the defendant committed another listed offense against a minor is admissible and may be considered for its bearing on any matter to which it is relevant.” The specific mention of MCL 768.27, and no other rule or principle of evidence, is significant. . . .

* * *

Giving effect to the statute’s reference to MCL 768.27, MCL 768.27a means that other-acts evidence in cases involving sexual misconduct against a minor “may be considered for its bearing on any matter to which it is relevant” *notwithstanding* that MCL 768.27 limits the admissibility of other-acts evidence to consideration for noncharacter purposes. MCL 768.27a does not apply “notwithstanding any rule or principle of evidence,” but only “[n]otwithstanding [MCL 768.27].” Put simply, we cannot interpret the prefatory phrase “[n]otwithstanding [MCL 768.27]” to mean “notwithstanding [MCL 768.27] and MRE 403.” We similarly refuse to read into MCL 768.27a a legislative intent to foreclose the application of other ordinary rules of evidence, such as those pertaining to hearsay and privilege.

In sum, . . . we must give effect to the permissive term “may” and the phrase “[n]otwithstanding [MCL 768.27]” that are present in MCL 768.27a but absent from MCL 768.27b. For all these reasons, we hold that MRE 403 applies to evidence admissible under MCL 768.27a. [*Id.* at 485-486 (alterations in original).]

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In *Watkins*, our Supreme Court was clear that we could not rob the reference in MCL 768.27a to MCL 768.27 of its meaning by holding that while MCL 768.27a was explicitly unaffected by MCL 768.27, it was implicitly unaffected by the rules of evidence. The same logic applies to MCL 768.27b. The statute provides that evidence is admissible unless “otherwise excluded under Michigan rule of evidence 403,” not that evidence is admissible unless “otherwise excluded under any rule of evidence.” Thus, while we agree that MCL 768.27b and MCL 768.27a should be read *in pari materia*, we disagree with defendant’s reading of the statutes.

Defendant also notes that we must consider MCL 768.27b within the context of MCL 768.27c. Defendant contends that our interpretation of the former will render the latter nugatory. We disagree.

MCL 768.27c provides, in pertinent part:

(1) Evidence of a statement by a declarant is admissible if all of the following apply:

(a) The statement purports to narrate, describe, or explain the infliction or threat of physical injury upon the declarant.

(b) The action in which the evidence is offered under this section is an offense involving domestic violence.

(c) The statement was made at or near the time of the infliction or threat of physical injury. Evidence of a statement made more than 5 years before the filing of the current action or proceeding is inadmissible under this section.

(d) The statement was made under circumstances that would indicate the statement’s trustworthiness.

(e) The statement was made to a law enforcement officer. [MCL 768.27c(1).]

Indeed, as defendant notes in his brief on appeal, MCL 768.27c explicitly authorizes the admission of hearsay statements related to “infliction or threat of physical injury upon the declarant” in cases in which the defendant is accused of an offense involving domestic violence. However, unlike MCL 768.27b, for statements to be admissible under MCL 768.27c, the statements must have been made “at or near the time of the infliction or threat of physical injury,” “under circumstances that would indicate [their] trustworthiness,” and “to a law enforcement officer.” MCL 768.27c(1)(c), (d), and (e). Defendant aptly notes that the conditions contained in MCL 768.27c(1) provide safeguards to ensure the trustworthiness of hearsay statements admitted under the statute, while MCL 768.27b(1) provides none of the same precautions. Defendant suggests that if hearsay statements are admissible under MCL 768.27b, then MCL 768.27c serves no purpose.

Defendant ignores an important difference between the two statutes. MCL 768.27b applies in cases of domestic violence to other-acts evidence that *also* involves domestic violence. MCL 768.27b(1). On the other hand, MCL 768.27c permits a wider range of statements to be introduced in domestic-violence cases: statements involving the narration, description, or explanation of “the

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infliction or threat of physical injury upon the declarant.” MCL 768.27c(1)(a). One statute applies to evidence of domestic violence in domestic-violence cases, and one statute applies to evidence of *general physical violence* in domestic-violence cases. There is sound logic in the Legislature’s decision to provide for broad admissibility under the former rule while constraining the latter to assure the reliability of evidence of other acts of *general physical violence* because those acts tend to be less relevant than other acts of *domestic violence* in establishing a defendant’s propensity to commit *acts of domestic violence*. See *People v Railer*, 288 Mich App 213, 219-220; 792 NW2d 776 (2010) (noting that MCL 768.27b supersedes the prohibition in MRE 404(b)(1) on other-acts evidence to show the defendant’s propensity to commit a domestic-violence offense).

We also note that defendant’s argument with respect to MCL 768.27c contains an inherent contradiction. Defendant concedes that general hearsay rules of evidence do not apply to evidence admissible under MCL 768.27c, and he argues that fact as a primary reason MCL 768.27b *should* remain subject to hearsay rules. However, both MCL 768.27b and MCL 768.27c lack the permissive language of MCL 768.27a that might afford a trial court discretion to exclude evidence otherwise admissible under the statutes, and what is more, MCL 768.27c does not contain language to ensure that evidence admissible under the statute is also subject to any other court rule, such as MRE 403. Accepting defendant’s interpretation of MCL 768.27c at face value—that by its plain language, the statute is not subject to hearsay rules—defendant gives no logical explanation of how we could interpret the plain language of MCL 768.27b—which explicitly incorporates *only* MRE 403—any differently.

Given all the above, we conclude that the Legislature intended for evidence to be admissible under MCL 768.27b regardless of whether it might be otherwise inadmissible under the hearsay rules of evidence.⁵ Having concluded that MCL 768.27b permits the admission of a certain category of hearsay statements in cases involving domestic violence, and with defendant raising no other argument with respect to the hearsay statements admitted at his trial, we need not address whether they were admissible under MRE 403. We conclude that the trial court made no errors of law in admitting the statements and did not abuse its discretion.

⁵ As an aside, and although defendant does not raise the issue on appeal, we note that our holding does not render MCL 768.27b unconstitutional pursuant to Const 1963, art 6, § 5 by impeding the Supreme Court’s authority to establish, modify, amend, and simplify the practice and procedure in the courts of this state. In *Watkins*, our Supreme Court noted:

[S]tatutory rules of evidence that reflect policy considerations limited to “the orderly dispatch of judicial business,” i.e., court administration, are procedural and violate Const 1963, art 6, § 5. But statutory rules of evidence that reflect policy considerations “over and beyond matters involving the orderly dispatch of judicial business” are substantive, and in the case of a conflict with a court rule, the legislative enactment prevails. [*Watkins*, 491 Mich at 474.]

With respect to MCL 768.27b, the Legislature clearly had policy concerns relevant to domestic-violence cases that went beyond the orderly dispatch of judicial business, and the statute is therefore constitutional as a substantive rule of evidence. See *id.* at 473-475.

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Defendant does argue, however, that testimony from his ex-wife that defendant sexually assaulted her during the course of their marriage was inadmissible under MRE 403. Defendant claims that this evidence was substantially more prejudicial than probative given the dissimilarity between defendant's assaults on his ex-wife and the facts of this case, particularly in light of the fact that the prosecution did not allege in this case that the victim was sexually assaulted. We disagree.

MRE 403 provides:

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

With respect to specifically analyzing other-acts evidence admitted pursuant to MCL 768.27b under the MRE 403 balancing test, we have held:

[T]his Court must make two distinct inquiries under the balancing test of MRE 403. First, this Court must decide whether introduction of [the defendant's] prior-bad-acts evidence at trial was unfairly prejudicial. Then, this Court must apply the balancing test and weigh the probativeness or relevance of the evidence against the unfair prejudice. Upon completion of this second inquiry, this Court can determine whether the trial court abused its discretion in allowing [the defendant's] prior bad acts into evidence. [*Cameron*, 291 Mich App at 611 (quotation marks and citation omitted).]

Notably, "[e]vidence offered against a criminal defendant is, by its very nature, prejudicial to some extent." *People v Meissner*, 294 Mich App 438, 451; 812 NW2d 37 (2011). Unfair prejudice, however, specifically "refers to the tendency of the proposed evidence to adversely affect the objecting party's position by injecting considerations extraneous to the merits of the lawsuit, e.g., the jury's bias, sympathy, anger, or shock." *Cameron*, 291 Mich App at 611 (quotation marks and citation omitted). This Court has held that while the testimony of a defendant's former girlfriends "about [the] defendant's physical abuse and threats to kill them . . . was certainly damaging and prejudicial," it was also "highly relevant to show [the] defendant's tendency to assault [the victim] as charged" and therefore admissible. *Railer*, 288 Mich App at 220-221.

In this case, the ex-wife's testimony did not inject extraneous considerations and was highly relevant. See *Cameron*, 291 Mich App at 611. The ex-wife testified that at one point in their roughly 11-month relationship, defendant sexually assaulted her on a weekly basis. She testified that defendant was verbally abusive and that after the ex-wife and defendant divorced, defendant began engaging in stalking behaviors, even once attempting to break into the ex-wife's home by prying her basement window open with a knife. These allegations were highly relevant and probative because they spoke directly to defendant's propensity to commit domestic violence against women, particularly women with whom he is in a relationship. See *Railer*, 288 Mich App at 219-220. Moreover, even assuming arguendo that this evidence was unduly prejudicial, there was a substantial amount of other evidence that defendant committed domestic violence against the victim, including defendant's *own admissions* to the police that he choked the victim during a

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fight. In light of all the evidence, defendant has not established that to the extent that his ex-wife's testimony was unduly prejudicial, it was also more probable than not that it was outcome-determinative. Accordingly, defendant is not entitled to relief. See *Lukity*, 460 Mich at 496.

V. CONCLUSION

The trial court did not err by denying defendant's request for appointment of an expert on the practice of erotic asphyxiation because defendant failed to show the trial court that he had a substantial basis for that defense. Defendant further failed to establish that denial of his motion to appoint an expert witness denied him the ability to present a defense and led to a fundamentally unfair trial. With respect to his vague equal-protection claim, defendant failed to flesh out his arguments with citation of appropriate legal authority and failed to establish plain error. We also conclude as a matter of first impression that MCL 768.27b permits the admission of hearsay statements that fall within the scope of the statute, and the trial court therefore did not abuse its discretion by admitting hearsay statements under the same. Finally, the testimony of defendant's ex-wife was highly probative, but even assuming that it was unduly prejudicial, defendant cannot show that it was more probable than not that the error was outcome-determinative.

Affirmed.

/s/ Karen M. Fort Hood

/s/ Patrick M. Meter

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT LANCE PROPP,

Defendant-Appellant.

FOR PUBLICATION

October 3, 2019

No. 343255

Saginaw Circuit Court

LC No. 16-042719-FC

Advance Sheets Version

Before: MURRAY, C.J., and METER and FORT HOOD, JJ.

MURRAY, C.J. (*concurring*).

I concur in the decision to affirm defendant’s conviction and sentence. However, for the reasons explained briefly below, my reasons for doing so are somewhat different than those utilized by the majority.

First, with respect to the appointment of a defense expert witness at the state’s expense, I would conclude that defendant satisfied the first part of the “reasonable probability” standard from *Moore v Kemp*, 809 F2d 702 (CA 11, 1987), adopted by the Supreme Court in *People v Kennedy*, 502 Mich 206, 226-228; 917 NW2d 355 (2018). In adopting the *Moore* reasonable-probability standard, the *Kennedy* Court held that “ ‘a defendant must show the trial court that there exists a reasonable probability both that an expert would be of assistance to the defense and that denial of expert assistance would result in a fundamentally unfair trial.’ ” *Kennedy*, 502 Mich at 227, quoting *Moore*, 809 F2d at 712.

Several courts have recognized that the process of evaluating the “reasonable probability” standard is a “dynamic one” that is, naturally, very case specific. *Moore v State*, 390 Md 343, 369; 889 A2d 325 (2005). This case is neither heavy on the facts nor on the science or legal theories presented. In both defendant’s motion and supporting brief, as well as at the motion hearing, defense counsel informed the trial court about “the nature of the crime and the evidence linking [defendant] to the crime,” *Kennedy*, 502 Mich at 227, quoting *Moore*, 809 F2d at 712 (quotation marks omitted), by indicating that defendant was being prosecuted for murder and that his defense was that he accidentally killed the victim through erotic asphyxiation. Defense counsel also provided a sufficient demonstration of a “substantial basis for the defense,”

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Kennedy, 502 Mich at 227, quoting *Moore*, 809 F2d at 712 (quotation marks omitted), by informing the trial court that the medical examiner's testimony would be that the victim died from strangulation, that defendant and the victim had previously been a couple, that erotic asphyxiation is a somewhat unknown defense in Michigan, that the proposed expert would be able to testify as to the practice of erotic asphyxiation, and that individuals can die through the practice. Although this information is not nearly as detailed as that provided by the defendant in *Ake v Oklahoma*, 470 US 68, 86 & n 12; 105 S Ct 1087; 84 L Ed 2d 53 (1985), the *Ake* Court specifically noted that it was not expressing an "opinion as to whether any of these factors [set forth by defendant], alone or in combination, is necessary to make this finding." Because a reading of *Ake*, *Moore*, and *Kennedy* does not lead to the conclusion that defendant's burden of production is an overly burdensome one, I would hold that defendant satisfied the first portion of the reasonable-probability standard adopted in *Kennedy*.

However, as the majority concluded, in the end it is not reasonably probable that the denial of this expert assistance resulted in a fundamentally unfair trial. *Kennedy*, 502 Mich at 227. As ably recounted by the majority, in front of the jury the prosecution's expert recognized the practice of erotic asphyxiation and that the victim's death could have resulted from that practice. This testimony, in conjunction with defendant's testimony about the circumstances surrounding the victim's death, presented the jury with a full and complete picture regarding the circumstances surrounding the victim's death, or at least defendant's version as to how it occurred. See *Stephens v Kemp*, 846 F2d 642, 646-647 (CA 11, 1988). As a result, no error requiring reversal occurred on this issue.

Second, with respect to whether hearsay evidence is admissible under MCL 768.27b without meeting the requirements of the rules of evidence, I do not read the reference in MCL 768.27b(1) to MRE 403 to mean that all other rules of evidence are inapplicable. There are several reasons for this conclusion. For one, MCL 768.27b(1) not only explicitly invokes MRE 403, but it also implicitly invokes MRE 401 and 402 by stating that "evidence of the defendant's commission of other acts of domestic violence or sexual assault is admissible for any purpose for which it is *relevant*" Of course, relevancy is determined under MRE 401, and relevant evidence is admissible under MRE 402. Thus, contrary to the majority's conclusion, MCL 768.27b(1) does not preclude consideration of *any* rule of evidence other than MRE 403.¹

Additionally, our Court has previously concluded that this very statute did not "lower the . . . value of the evidence needed to convict a defendant" and "does not permit conviction on less evidence or *evidence of a lesser quality*." *People v Schultz*, 278 Mich App 776, 778; 754 NW2d 925 (2008) (emphasis added), quoting *People v Pattison*, 276 Mich App 613, 619; 741

¹ MCL 768.27b(3) specifically states that the section "does not limit or preclude . . . consideration of evidence under any other . . . rule of evidence" This would seem to answer the question presented. Although this provision is written toward ensuring that propensity evidence can still be admitted under other rules, the literal language allows courts to consider other rules of evidence when addressing propensity evidence.

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NW2d 558 (2007). As the *Schultz* Court held, “MCL 768.27b did not change the burden of proof necessary to establish the crime, ease the presumption of innocence, or downgrade the type of evidence necessary to support a conviction.” *Schultz*, 278 Mich App at 778 (emphasis added). The majority’s construction of MCL 768.27b runs contrary to our declaration in *Schultz* that the statute does not downgrade the type of evidence necessary to support a conviction. Instead, what MCL 768.27b does is set forth a substantive legislative policy choice—similar to that in MCL 768.27a—that propensity evidence can and should be used in prosecuting the listed crimes (taking the opposite presumption from that in MRE 404b), subject to an analysis under MRE 403.² See *People v Meissner*, 294 Mich App 438, 451-452; 812 NW2d 37 (2011). But that substantive policy decision does not address—and does not eliminate—the need for courts to test the reliability of the evidence used to prove the defendant’s propensity. Nothing in the statute suggests that the Legislature was requiring courts to dispense with the other rules of evidence that relate to the quality of the evidence admitted at trial. See *People v Watkins*, 491 Mich 450, 487; 818 NW2d 296 (2012); *Schultz*, 278 Mich App at 778. See also *People v Uribe*, 499 Mich 921, 922 (2016).³

Finally, although the *Watkins* Court refused to read additional limitations into the single restriction contained in the introductory section of MCL 768.27a, the Court additionally refused “to read into MCL 768.27a a legislative intent to foreclose the application of other ordinary rules of evidence, such as those pertaining to hearsay and privilege.” *Watkins*, 491 Mich at 485.

The prosecution concedes⁴ on appeal that certain evidence was inadmissible hearsay but also correctly argues that defendant’s conviction should still be affirmed because the evidence otherwise properly admitted was more than adequate for the jury to convict defendant. Defendant’s statements to the police, defendant’s testimony at trial regarding what he claims led to the victim’s death, and the acknowledgment by the prosecution’s expert of the dangers of erotic asphyxiation were all presented to the jury, and in combination that evidence was more

² In other words, this statutory provision was a rejection of the principles of MRE 404(b) by allowing admission of relevant propensity evidence in these types of cases but acceptance of the ability of trial courts to determine whether such evidence was more prejudicial than probative. This, of course, is within the proper power of the Legislature. See, e.g., *People v Babcock*, 244 Mich App 64, 89; 624 NW2d 479 (2001) (HOOD, J., concurring) (recognizing that the Legislature can adopt some portions of caselaw while rejecting other parts), rev’d on other grounds 469 Mich 247 (2003).

³ Although there are certain differences between MCL 768.27a and MCL 768.27b, the two statutes are closely aligned with the same policy considerations. *People v Cameron*, 291 Mich App 599, 609-610; 806 NW2d 371 (2011).

⁴ Indeed, the prosecution does not even argue that MCL 768.27b(1) allows for consideration of hearsay evidence. Instead, the prosecution argues that even setting aside the hearsay presented to the jury, the otherwise admissible evidence was more than enough to convict defendant, so any error in the admission of this evidence was harmless.

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than sufficient for the jury to find defendant guilty beyond a reasonable doubt. For these reasons, I concur in the majority's decision to affirm defendant's conviction and sentence.

/s/ Christopher M. Murray

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Preliminary Examination Transcript, Vol. I, Jordan Englehart Testimony

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1 Saginaw, Michigan

2 Wednesday, July 27, 2016 - 10:49 a.m.

3 (At 10:49 a.m., marked People's Proposed Exhibits
4 PX-1 through PX-9)

5 THE COURT: Court then would take up the case of
6 People versus Robert Propp, Case Number 16-3076. Mr. Propp is
7 here, Mr. Sturtz is here, Mr. Reimers is here. Are the parties
8 ready to proceed?

9 MR. REIMERS: Yes, your Honor.

10 THE COURT: All right.

11 MR. STURTZ: We are, Judge. We would ask for
12 sequestration of witnesses, there could be more than one.

13 THE COURT: All right, that'll be for both sides and
14 I'll let each side direct their witnesses appropriately. You
15 may call your first witness.

16 MR. REIMERS: Thank you, your Honor. Before I do so
17 I would ask to admit People's Proposed Exhibit #1, the autopsy
18 report.

19 THE COURT: Any objections?

20 MR. STURTZ: No, Judge, I have a copy of that and we
21 have no objection.

22 THE COURT: It'll be received.

23 (At 10:50 a.m., People's Exhibit #1 admitted)

24 MR. REIMERS: Your Honor, may I read the, --

25 THE COURT: You may.

Preliminary Examination Transcript, Vol. I, Jordan Englehart Testimony

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1 MR. REIMERS: -- Dr. Virani's findings into the
2 record?

3 THE COURT: All right.

4 MR. REIMERS: *"The autopsy findings indicate neck*
5 *compression with abrasions and contusions on neck, soft tissue*
6 *neck hemorrhage, congestion of face and brain, conjunctival*
7 *petechiae and hemorrhage, pulmonary edema, and superficial*
8 *abrasions and contusions on the extremities.*

9 *Opinion: Melissa Thornton died of neck compression. She*
10 *was found dead at her residence. There are no natural diseases*
11 *contributing to her death. The manner of death is homicide."*

12 THE COURT: All right. That'll be received then.

13 MR. REIMERS: Thank you. I would call Jordan
14 Engelhart.

15 THE COURT: Do you solemnly swear that the testimony
16 you are about to give in the cause here pending be the truth,
17 the whole truth, and nothing but the truth, so help you God?

18 THE WITNESS: Yes.

19 THE COURT: Please be seated.

20 JORDAN ENGELHART

21 (At 10:51 a.m., called by Mr. Reimers and sworn
22 by the Court, testified as follows)

23 DIRECT EXAMINATION

24 BY MR. REIMERS:

25 Q. Can you tell us your name, please?

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- 1 A. My name is Jordan Engelhart.
- 2 Q. And your occupation?
- 3 A. Patrol Officer.
- 4 Q. With which department?
- 5 A. Saginaw City Police Department.
- 6 Q. Okay. And would you have been working as a patrol officer on
- 7 July 6th of 2016?
- 8 A. Yes, I was.
- 9 Q. Okay. Did you receive a dispatch that morning to an address on
- 10 607 South Alexander?
- 11 A. Yes.
- 12 Q. And is that located in the city of Saginaw, Saginaw County,
- 13 Michigan?
- 14 A. It is.
- 15 Q. Okay. Do you recall what the time of the dispatch was?
- 16 A. I believe it was approximately 10 in the morning.
- 17 Q. Okay. And what was the nature of the dispatch?
- 18 A. A 25 year old female not breathing.
- 19 Q. Okay. And did you respond immediately to that location on
- 20 South Alexander?
- 21 A. I did.
- 22 Q. And is it a residence there?
- 23 A. It is.
- 24 Q. Okay. Were any other officers on scene at the time you
- 25 arrived?

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1 A. No, I was the first officer on the scene.

2 Q. Okay. So, what did you observe when you go there?

3 A. Upon my arrival I observed a blue van pulling into the
4 driveway at 607 South Alexander. It was later noted that was
5 Robert Propp's parents. I entered the home through the front
6 door and I went into the bedroom where Melissa Thornton was
7 located. When I entered the room I observed Robert Propp on
8 top of the victim, Melissa Thornton, and he was attempting to
9 do compressions.

10 Q. Okay. You're using the name of Melissa Thornton. Was that the
11 name that identified the 25 year old woman that was --

12 A. Yes.

13 Q. -- the subject of the 911 call?

14 A. Yes.

15 Q. Okay. All right. So, you indicated that you ran across a
16 Robert Propp, who was doing something towards Melissa
17 Thornton?

18 A. Yes.

19 Q. Is Robert Propp present in the courtroom today?

20 A. He is.

21 Q. Can you point to him and describe what he's wearing, please,
22 and where he's at?

23 A. He's sitting over there in the black and gray jumpsuit.

24 MR. REIMERS: Okay, your Honor, may the record
25 reflect the identification of the defendant?

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1 THE COURT: It may.

2 BY MR. REIMERS:

3 Q. Where was Melissa Thornton located within the home?

4 A. She was in her bedroom laying on the bed.

5 Q. Okay. And is that where you encountered Mr. Propp?

6 A. Yes.

7 Q. And what was he doing at that time?

8 A. He was sitting on top of her doing chest compressions.

9 Q. And was that on the bed itself?

10 A. That was on the bed, yes.

11 Q. Okay. And did you try to assist in any way?

12 A. I did. When I first arrived I observed him doing chest
13 compressions. I told him that we needed to get her to the
14 floor to continue with the chest compressions. I then
15 attempted to assist him with moving her to the floor. When I
16 grabbed her arm I noticed it was stiff and she was cold to the
17 touch. At that time I asked Robert to get off and he fell to
18 the ground, he became emotional.

19 Q. Okay. When you felt the, the arm of Melissa Thornton and you
20 felt that it was stiff, did you believe she was deceased at
21 that point?

22 A. I did.

23 Q. Okay, did you inform the defendant of that?

24 A. Okay. Did you note any signs of trauma on her body at that
25 time?

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- 1 A. Initially, no, I didn't observe anything until later when we
2 went back into the room.
- 3 Q. Okay. What did you note at that time?
- 4 A. There was a little bit of like blood possibly coming from her
5 nose.
- 6 Q. Did you observe any sort of gunshot wounds or, or knife
7 wounds, stab wounds or anything of that nature?
- 8 A. No.
- 9 Q. So no obvious signs?
- 10 A. No obvious signs.
- 11 Q. Okay. I'm going to show you three photographs. People's
12 Proposed Exhibit #2, do you recognize what's shown in that
13 photograph?
- 14 A. I do.
- 15 Q. And what is that?
- 16 A. That's the victim laying on the bed with the blanket over her.
- 17 Q. Okay. Most of her body is covered at that time?
- 18 A. Yes.
- 19 Q. Okay. People's Proposed Exhibit #3, what does that photo
20 depict?
- 21 A. That is also the victim, laying on the bed, her head is turned
22 to the left.
- 23 Q. And Exhibit #4, is that a closer view of Melissa Thornton's --
- 24 A. Yes.
- 25 Q. -- head area?

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1 A. Yes, that's a closer view.

2 Q. Okay. And is that how she looked when you arrived at the
3 house?

4 A. That is.

5 MR. REIMERS: I'd move for admission of Exhibits #2
6 through #4.

7 MR. STURTZ: I have no objection to the photos.

8 THE COURT: They'll be received.

9 (At 10:56 a.m., People's Exhibits #2, #3, and #4
10 admitted)

11 BY MR. REIMERS:

12 Q. Did paramedics arrive on scene while you were there?

13 A. Yes.

14 Q. Okay. And was that after you arrived?

15 A. That was after.

16 Q. Okay. And did you observe what they did?

17 A. I did not. I observed them come into the house. At that time I
18 was with Mr. Propp in the living room.

19 Q. Okay. Did you escort him out of the bedroom?

20 A. Mr. Propp, yes.

21 Q. Okay. Other than Melissa Thornton and the defendant, were any
22 other people in the house at the time you arrived or as you
23 were there?

24 A. As I pulled up to the house, Mr. Propp's parents had arrived
25 but when I initially went into the house it was just the two

1 of them.

2 Q. Okay. Did his parents come into the house while you were
3 there?

4 A. They did.

5 Q. Okay. And did you speak with them at all?

6 A. Briefly.

7 Q. Okay. Did you end up speaking with Robert Propp as you were
8 there in the house?

9 A. Yes. After I escorted him into the living room I had him take
10 a seat on the couch and I briefly spoke with him there.

11 Q. Okay. Was he under arrest as you spoke to him at that time?

12 A. No.

13 Q. Okay. And why did you want to speak to him?

14 A. We were trying to determine when Melissa was last seen alive,
15 who she had spoken to last, trying to get any information on
16 her.

17 Q. Did he explain what his relationship to Melissa was?

18 A. I believe he stated he was the boyfriend.

19 Q. Okay. Did he indicate to you that he was the one that found
20 her body?

21 A. Yes.

22 Q. Did he describe those circumstances to you?

23 A. Yes. When I asked Mr. Propp how he came across the body he
24 said he attempted to call Melissa Thornton and she didn't
25 answer, which is unusual for her. He said he was then on his

1 way to work and happened to drive past her house and observed
2 her car sitting out front still, which was odd cause she was
3 supposed to be at work. He said he then went to the house to
4 try to make contact with her. The front door was locked so he
5 went around to the back of the house. At that time he stated
6 the, the back door was forced open and there was a crowbar
7 laying on the ground. I asked him how he got in. He said he
8 couldn't initially get into the house, of the back door, which
9 was already forced open, so he picked up the crowbar and
10 forced it open even more and then went into the house and
11 found her unresponsive in her bedroom.

12 Q. Okay. Did he say whether he was the person that called 911?

13 A. I don't believe he said, however, from what I can recall of
14 the dispatch, it was the male boyfriend in the dispatch notes.

15 Q. Okay. And you indicated that you were the first officer on
16 scene. Did other officers arrive while you were there?

17 A. They did. Shortly after I arrived and had told Mr. Propp to
18 stop compressions and when I began escorting him to the living
19 room, multiple other SPD officers arrived.

20 Q. So at the point that you're talking to him in the living room
21 and he mentions he forced or pried the door open, where any
22 officers in your presence as he made that statement?

23 A. Yes, Officer Delong was also standing by me and when he had
24 mentioned that the door was forced open Officer Delong went to
25 the back door and confirmed there was damage, which was

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1 believed to be forced open.

2 Q. And once law enforcement personnel realized that the back door
3 had been forced open did the course of the investigation
4 change?

5 A. I did. After we notified the sergeants on scene that the back
6 door was forced open they then deemed it a crime scene and
7 everyone was escorted from the home and crime scene tape was
8 placed around the home.

9 Q. Okay. And did that include the defendant and his parents being
10 escorted out of the house?

11 A. Yes, it did.

12 Q. Okay. Did they remain there though?

13 A. They did remain on scene, yes.

14 Q. Okay. And did you continue your conversation with Mr. Propp,
15 the defendant?

16 A. We did.

17 Q. Okay, and that was outside, I take it?

18 A. Yes.

19 Q. Did you ask him when the last time that the knew Melissa being
20 alive was?

21 A. I did.

22 Q. What did he tell you?

23 A. He told me that him and Melissa had went out to the bar. He
24 mentioned the bar, Baywood, and they had a few drinks and she
25 was last talked to at approximately three a.m.

1 Q. Okay. Did he say where that last conversation was with her?

2 A. No.

3 Q. Okay. Did he indicate whether he and Melissa returned back to
4 the house of South Alexander?

5 A. He mentioned that she was in bed at three.

6 Q. Okay. As you were speaking with Robert Propp that morning,
7 both inside the house and outside, did you notice any injuries
8 on his body?

9 A. I did. Mr. Propp had a blackened eye.

10 Q. I'm showing you what's been marked as People's Proposed
11 Exhibit #7. Do you recognize what's in that photograph?

12 A. I do.

13 Q. And who is that person?

14 A. That is Mr. Propp.

15 Q. And does it show the injury to his eye?

16 A. It does.

17 Q. And that would be his right eye?

18 A. Correct.

19 Q. And it appears to be blackened underneath?

20 A. Yes.

21 Q. And is that how he looked on the scene at that time?

22 A. Yes, that picture was taken at the scene.

23 Q. Do you know who took that picture?

24 A. I believe it was Officer Accardo.

25 Q. And were you present for that picture being taken?

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1 A. Yes.

2 MR. REIMERS: I'd move for admission of Exhibit #7.

3 MR. STURTZ: No objection to number seven.

4 THE COURT: It'll be received.

5 (at 11:02 a.m., People's Exhibit #7 admitted)

6 BY MR. REIMERS:

7 Q. Did you ask the defendant about how he received that black
8 eye?

9 A. I did.

10 Q. What did he tell you?

11 A. He told me when he was out at Baywood Bar he had gotten into a
12 fight with a male and he received a black eye during the
13 altercation.

14 Q. Okay. And was he referring to the time that he was at the
15 Baywood Lounge with Melissa that night?

16 A. Yes. He stated that the only people that observed the fight
17 was him, the victim, and the person that was involved in the
18 altercation with him.

19 Q. Okay, you're referring to the victim as Melissa?

20 A. As Melissa, yes.

21 Q. Thank you. Did you note any other injuries on his body?

22 A. I did not.

23 Q. Okay. Did you ask him to remove his shirt or did you inspect
24 him for any further injuries yourself?

25 A. I did not.

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1 Q. So if that was done, possibly by other officers?

2 A. Yes.

3 MR. REIMERS: Okay. I have no further questions.

4 THE COURT: Mr. Sturtz?

5 CROSS-EXAMINATION

6 BY MR. STURTZ:

7 Q. Good morning, Officer. I just want to ask you a couple
8 questions about the --

9 MR. STURTZ: Judge, could I use the exhibits?

10 THE COURT: Certainly.

11 BY MR. STURTZ:

12 Q. The photographs of the victim in the bedroom; Number #2, is
13 that how you initially observed her, covers are on top of her
14 head?

15 A. No, that was not initially. When, when I first arrived on
16 scene the blanket was off and he was doing compressions on her
17 skin.

18 Q. Okay, so when you arrived she had the blanket off of her?

19 A. Yes, it was pulled down.

20 Q. And so would, would #4 and #3 be appropriate as to what was
21 going on -- or that shows a blanket on her too.

22 A. Yes, the blanket was put on after because her shirt was pulled
23 up.

24 Q. Okay.

25 A. So we had placed the blanket over.

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- 1 Q. And there's some sunglasses on the bed?
- 2 A. Yes.
- 3 Q. Do you know anything about that?
- 4 A. I'm not sure where those sunglasses or who they belong to, no.
- 5 Q. Okay. So when you first arrived you came into the house?
- 6 A. Yes.
- 7 Q. And you went right to the bedroom?
- 8 A. Yes.
- 9 Q. And that's when you observed Mr. Propp on top of her trying to
10 do chest compressions?
- 11 A. Correct.
- 12 Q. Okay. And you told him to get off and that you were gonna put
13 her on the floor?
- 14 A. Yeah, I , I asked him to assist me in putting her on the floor
15 so we could do compressions and at that time I noted her arm
16 was stiff and cold to the touch.
- 17 Q. Okay. And that's when you asked him to step out of the
18 bedroom?
- 19 A. Yeah, I told him that she had passed and he immediately fell
20 to the side of the bed.
- 21 Q. How did she get from the floor back onto the bed, as we see
22 here?
- 23 A. We never pulled her to the floor. As soon as I observed her
24 arm to be stiff and cold, I asked him to stop.
- 25 Q. Okay. And then you apparently put some covers on her, as we

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1 see in number two?

2 A. Yes.

3 Q. Okay, all right. I was confused. You indicated you didn't see
4 any markings on her body or any trauma other than a little
5 blood from her nose, is that correct?

6 A. Correct.

7 Q. Okay. And then how soon -- give me a ballpark -- did any other
8 personnel arrive, either the MRI or any other police, from the
9 time that you arrived? Five, 10 minutes, 15?

10 A. It was approximately five minutes, I believe. I'd called
11 dispatch after and they said I arrived at 10:02 --

12 Q. Okay.

13 A. -- and the next officer arrived at 10:08.

14 Q. Okay. So the next person that did arrive was a policeman?

15 A. Yes.

16 Q. And do you know who that was?

17 A. There were several officers that arrived exactly at the same
18 time.

19 Q. Okay. And at that time Mr. Propp was sitting out in the living
20 room?

21 A. At that time when they first arrived he was still at the floor
22 of the bed and then we walked him out, yes.

23 Q. Okay. And then you and he sat out there together?

24 A. Yes.

25 Q. Okay. And he indicated to you that he's the one that came in

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1 and found the body?

2 A. Correct.

3 Q. Was anybody else at home, any other resident?

4 A. Inside the house?

5 Q. Yes.

6 A. No.

7 Q. Okay. And he indicated he's the one that called 911?

8 A. I don't think that he indicated but the dispatch notes said
9 that it was a male boyfriend.

10 Q. Okay. And you had a conversation with him briefly regarding --
11 the victim was in bed at three o'clock in the morning?

12 A. Yes.

13 Q. All right. And that's what he tells you?

14 A. Yes.

15 Q. Okay. Did he tell you that he left that house?

16 A. I did not ask.

17 Q. Okay. So you don't know whether he stayed there or left?

18 A. I'm not sure.

19 Q. Okay. As far as the house itself, the interior, either the
20 bedroom or any other rooms, was there any disruption, broken
21 turned over chairs or anything like that?

22 A. Not in the living room. When I entered the bedroom I noted the
23 bedroom to be in disarray. There was clothes on the floor,
24 there was a lamp that was turned over.

25 Q. Okay. What about a dresser, was there a dresser that was

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1 turned over?

2 A. I don't remember.

3 Q. Just a lamp and some clothes, okay.

4 MR. STURTZ: Nothing further, Judge.

5 REDIRECT EXAMINATION

6 BY MR. REIMERS:

7 Q. Officer, just following up on that line of questioning, I'm
8 going to show you People's Proposed Exhibit #8. Do you
9 recognize what's depicted in that photograph?

10 A. Yes. That's the bedroom where Melissa Thornton was found.

11 Q. And does that show the condition of the bedroom as when you
12 arrived that morning?

13 A. Yes, that's how the bedroom was when I arrived.

14 Q. And can you describe what's shown in that photograph?

15 A. The dresser is open, multiple things thrown all over the
16 floor. I see there's a broken lamp laying next to the bed.
17 Things thrown in the baby crib there, just in disarray.

18 MR. REIMERS: Thank you. I'd move for admission of
19 People's Exhibit #8.

20 THE COURT: Any comment?

21 MR. STURTZ: I'd like to take a look at it. I have
22 no objection to the photograph but I have some questions about
23 it.

24 THE COURT: All right.

25 MR. STURTZ: I don't know if Mr. Reimers is done.

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1 MR. REIMERS: Nothing else.

2 THE COURT: You may step down, thank you. You may
3 call your next witness.

4 (At 11:09 a.m., witness excused)

5 MR. REIMERS: The People call Angela Thornton.

6 THE BAILIFF: Do you solemnly swear the testimony
7 you are about to give in the cause here pending be the truth,
8 the whole truth, and nothing but the truth, so help you God?

9 THE WITNESS: Yes.

10 MR. REIMERS: Can you scoot forward, please.

11 ANGELA THORNTON

12 (At 11:10 a.m., called by Mr. Reimers and sworn
13 by the bailiff, testified as follows)

14 DIRECT EXAMINATION

15 BY MR. REIMERS:

16 Q. Can you tell us your name for the record?

17 A. Angela Renee Thornton.

18 Q. And Angela, how old are you?

19 A. 36.

20 Q. Okay. And where do you reside?

21 A. 607 South Alexander, Saginaw, Michigan, 48602.

22 Q. Thank you. And I understand you're the sister to Melissa
23 Thornton?

24 A. Yes.

25 Q. She was your younger sister?

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1 A. She was my baby sister.

2 Q. And she passed away on July 6th of 2016, correct? You have to
3 answer yes or no.

4 A. Yes.

5 Q. Thank you. And how old was Melissa at the time of her death?

6 A. I believe 24.

7 Q. Okay. Now, do you know a person by the name of Robert Propp?

8 A. Yes.

9 Q. And is he present here in the courtroom today?

10 A. Yes.

11 Q. Can you point to him and describe what he's wearing, please?

12 A. Gray stripes.

13 MR. REIMERS: Okay. Your Honor, may the record
14 reflect the identification of the defendant?

15 THE COURT: It may.

16 MR. REIMERS: Okay.

17 BY MR. REIMERS:

18 Q. And how do you know Robert Propp?

19 A. He lived next door to my grandpa. That's how I first knew Rob.

20 Q. Okay. Did he at one time date your sister, Melissa?

21 A. Oh, yes.

22 Q. And I'm calling her Melissa, did she have a nickname that you
23 called her?

24 A. I called her Missy.

25 Q. Okay.

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1 MR. STURTZ: I'm sorry, what was that?

2 MR. REIMERS: Missy.

3 MR. STURTZ: Missy.

4 BY MR. REIMERS:

5 Q. Do you know how long the defendant and Missy dated?

6 A. I think about four years.

7 Q. And do they have a child in common?

8 A. Yes, they do.

9 Q. And how old is the child today?

10 A. Two and a half.

11 Q. And that's a, a girl?

12 A. Yes.

13 Q. At the time of her death on July 6th, where did Missy reside?

14 A. 607 South Alexander.

15 Q. So she lived with you?

16 A. Yes, she did.

17 Q. And did anybody else live in the house besides you and Missy?

18 A. Willow.

19 Q. Okay, that being the, the daughter?

20 A. The baby, two and a half

21 Q. Okay. Had she lived with -- I'm sorry, had Missy lived with
22 the defendant previously?

23 A. Yes.

24 Q. And was that on North Carolina Street in the city of Saginaw?

25 A. Yes, it was.

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- 1 Q. Okay. So, did she move out of his house and into your house?
- 2 A. Yes, she did.
- 3 Q. Do you know about when that was?
- 4 A. It was around March 3rd.
- 5 Q. Of this year?
- 6 A. Yup.
- 7 Q. Do you have knowledge of the reason why she moved in with you?
- 8 A. Yes.
- 9 Q. And what is that?
- 10 A. They weren't getting along and his drug use.
- 11 Q. Okay. They weren't getting along?
- 12 A. They were not getting along.
- 13 Q. Okay. So what was the status of their relationship at that
- 14 time when she moved in with you?
- 15 A. When she moved in they were cordial..They made plans for Rob's
- 16 visitations for the baby and he was actually happy that she
- 17 was moving out.
- 18 Q. Okay. Was she ending the relationship, however?
- 19 A. Yes.
- 20 Q. Okay.
- 21 A. The relationship ended.
- 22 Q. You indicate that the defendant may be happy that she was
- 23 moving out but was he happy with the relationship being ended?
- 24 A. He seemed to be.
- 25 Q. All right.

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1 A. He was pretty giddy.

2 Q. Prior -- or after that date of March 3rd, the date that she
3 moved in with you, did you notice any particular behavior by
4 the defendant towards Missy?

5 A. A couple weeks after.

6 Q. Okay, and what did you witness yourself?

7 A. He started coming over all the time, burning his tires out in
8 front of, in front of my house, constantly calling.

9 Q. To your knowledge, did he ever make it known that he wanted to
10 renew his relationship with Missy?

11 A. He told me that.

12 Q. Okay. Did you observe any unusual behavior, or, or behavior by
13 him during that period, from March of '16 till her death, that
14 caused you some alarm?

15 A. Yes.

16 Q. And what did you observe?

17 A. Him coming by the house, driving by constantly. Literally, we
18 would be watching a 30 minute program -- on the phone and her
19 phone would ring almost every minute and she'd put it
20 voicemail. One evening, he came by my house and he was
21 knocking on all of my windows and I kept getting up cause the
22 dog woke me up and I kept walking around the house looking out
23 all the windows. And then by the second time I got up, then I
24 made it through my dining room to the doorway going into the
25 living room, and his face was sitting there in my front door

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1 window.

2 Q. Okay, and this was at night time?

3 A. Yup.

4 Q. Okay. Were you concerned that he was engaging a stalking type
5 behavior towards Missy?

6 A. Yes, and I --

7 Q. Okay. Did you --

8 A. -- told her that.

9 MR. STURTZ: Judge, I'm gonna object to that. That's
10 speculation.

11 MR. REIMERS: Well, I guess --

12 BY MR. REIMERS:

13 Q. How would you characterize his behavior, that type of
14 behavior?

15 A. It was a stalking behavior and it was escalating very fast and
16 it alarmed me greatly.

17 Q. Okay. And did you express your concern to Missy about that?

18 A. I did.

19 Q. Okay. And what was her reaction?

20 A. She just -- it's all right.

21 Q. Did she continue to see or do things with Mr. Propp?

22 A. Yes.

23 Q. And do you know whether that was for the benefit of the child
24 or was that something that she wanted to do?

25 A. It was more for the benefit of the child and what she told me

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1 he said to her.

2 Q. Which was what?

3 A. That if she didn't go back with him --

4 MR. STURTZ: I'm gonna object to -- objection.
5 That's hearsay.

6 MR. REIMERS: I'll move on at this point, your
7 honor.

8 THE COURT: All right, thank you.

9 THE WITNESS: Okay.

10 BY MR. REIMERS:

11 Q. Now, between March and July, do you personally know if Missy
12 had a romantic interest in someone else?

13 A. She had a crush on another guy, yes.

14 Q. And can you just give me the first name of that person?

15 A. His name was Cameron.

16 Q. Okay. Do you know if Mr. Propp was aware of her crush on
17 Cameron?

18 A. Yes.

19 Q. Okay. How do you know that?

20 A. Because he kept following her to the -- to LeBoeuf's.

21 Q. And what is unique or particular about LeBoeuf's?

22 A. That's where he was a bartender.

23 Q. Cameron?

24 A. Yes.

25 Q. Okay. Did you witness, yourself, any incident that occurred at

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- 1 LeBoeuf's involving Missy and Robert?
- 2 A. On a couple of occasions we were up there, he showed up.
- 3 Q. Being Mr. Propp?
- 4 A. Mr. Propp showed up.
- 5 Q. Okay, when you and Missy were at the bar?
- 6 A. Yup.
- 7 Q. Okay. Were you present during an incident where he came
- 8 looking for Cameron at the bar?
- 9 A. No.
- 10 Q. Okay. I'd like to now go to the night of -- night before
- 11 Missy's death, which would be the night of July 5th. Did you
- 12 and Missy go out to some area bars in town?
- 13 A. Yes.
- 14 Q. Okay, and was it just the two of you?
- 15 A. Yes, it was.
- 16 Q. And who drove?
- 17 A. Missy drove.
- 18 Q. Okay. And do you know about what time you and Missy went out
- 19 to the first bar?
- 20 A. I'd say around nine-ish.
- 21 Q. Nine p.m.?
- 22 A. Yes, it was starting -- I think it was about nine-thirty.
- 23 Q. And what was the first bar you went to?
- 24 A. We went to White's.
- 25 Q. Okay. Do you recall where you and Missy sat?

- 1 A. Yeah, we were out on the patio.
- 2 Q. Is that behind the bar?
- 3 A. Behind the bar -- in, in front of Dr. Borchard's.
- 4 Q. Do you recall if the defendant showed up at White's Bar while
- 5 you were there?
- 6 A. My -- the tables are round. I was sitting facing Missy,
- 7 Missy's back was to White's and I was looking at her and she
- 8 told me that he drove through the parking lot.
- 9 Q. Being the defendant?
- 10 A. Yes.
- 11 Q. Okay. Did you turn to look yourself?
- 12 A. No, by the time she said that he was in that little alley
- 13 between White's and the alteration place.
- 14 Q. Okay. Did he ever come into the bar that night?
- 15 A. Not White's.
- 16 Q. Right. He, he didn't get out of his car --
- 17 A. No.
- 18 Q. -- and come in?
- 19 A. No.
- 20 Q. Okay. Did you and Missy remain at White's Bar?
- 21 A. No, we left.
- 22 Q. And did you go to another bar?
- 23 A. Yes, we did.
- 24 Q. And what bar was that?
- 25 A. We went to the Big Ugly Fish.

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1 Q. Okay. Did you -- you or Missy have any contact with the
2 defendant while at the Big Ugly Fish?

3 A. No.

4 Q. Okay. Did you and Missy end up going to a bar, the bar you
5 mentioned earlier, LeBoeuf's, that night?

6 A. Yes. We went home first.

7 Q. Okay, and why did you go home?

8 A. Cause we were gonna go home for the night.

9 Q. Okay. And did something change that caused you to go back out

10 A. She wanted to go out and see Cameron.

11 Q. And he's the bartender that works at LeBoeuf's?

12 A. Yup.

13 Q. So, I assume you agreed to that?

14 A. I told her she had 30 minutes. I had to be to work in the
15 morning.

16 Q. Okay.

17 A. But, yeah, I did.

18 Q. So when you and Missy go to LeBoeuf's, is Cameron there?

19 A. No.

20 Q. Okay. Do you stay, however, and have a drink with Missy at the
21 bar?

22 A. I -- she had a drink, I had Vernors.

23 Q. Okay. Did you have any contact with the defendant while at
24 LeBoeuf's?

25 A. Yup.

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1 Q. Describe that for the judge.

2 A. I was filling out my Keno slip and he walked in. He walked up
3 to the bar and he ordered him a drink and her a drink and came
4 and sat down.

5 Q. Okay. So you and Missy were at the LeBoeuf's Bar prior to his
6 arrival?

7 A. Yes.

8 Q. Do you know whether Missy invited him to the bar?

9 A. Not to my knowledge.

10 Q. Okay. In your presence, did Missy invite him to sit down and
11 have a drink with you guys?

12 A. No.

13 Q. Did you?

14 A. No.

15 Q. Okay. Do you recall what Missy's reaction was when he showed
16 up at LeBoeuf's, anything particular about it?

17 A. No.

18 Q. Okay. So did the three of you end up having a drink -- you
19 mentioned you had Vernors but did the defendant sit down and
20 actually have a drink with you?

21 A. He had a drink, she had a half a drink, and I told Missy we
22 had to go home. I had to work in the morning.

23 Q. Okay. Did you and Missy then get up and go to your vehicle and
24 drive back to South Alexander Street?

25 A. Yes, we did.

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1 Q. What did the defendant do?

2 A. He got in his truck and he showed up at my house.

3 Q. Okay. As far as your knowledge, was he invited back over to
4 your house?

5 A. No.

6 Q. Did you hear Missy say come back over to --

7 A. No.

8 Q. Okay. So what occurred once the three of you got back to South
9 Alexander Street, to your house?

10 A. We went to the kitchen. Missy made herself a taco salad, I ate
11 some Doritos and Rob went into my cupboard, grabbed out my
12 Tang, mixed up -- himself up a glass of Tang and put some
13 Vodka in there.

14 Q. Okay. You mentioned that you had to work the next morning. Did
15 you stay awake or did you go to bed?

16 A. I went to bed.

17 Q. Okay. Do you know what the defendant and Missy were doing at
18 the time you went to bed?

19 A. Well, I heard the front door open and close several times so I
20 figured they were out on the front porch having drinks.

21 Q. Okay. And is the front porch located near your bedroom at all?

22 A. Yeah.

23 Q. Okay, how close?

24 A. Close. Like, when you walk in my bedroom door the front door
25 is right there.

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- 1 Q. Okay. I assume you fell asleep at some point?
- 2 A. Yes.
- 3 Q. Okay. Any idea what time it was when you fell asleep?
- 4 A. A little after one.
- 5 Q. And did something awaken you that night?
- 6 A. Yes.
- 7 Q. And what was it that awoke you or what you believe awoke you?
- 8 A. My dog started stirring and I thought I heard car doors.
- 9 Q. Okay, was your dog in your bedroom with you?
- 10 A. Yes.
- 11 Q. Okay. What did you do once you thought you heard car doors?
- 12 A. I picked up my cellphone, I looked at it. I put it down, I
- 13 found my glasses and I exited my room.
- 14 Q. Okay. When you picked up your cellphone did you note what time
- 15 it was?
- 16 A. I believe it was 3:15.
- 17 Q. Okay. So you picked up your glasses --
- 18 A. After the cellphone.
- 19 Q. Okay. Did you walk out of your bedroom?
- 20 A. Yes, I did.
- 21 Q. And why did you do that?
- 22 A. Because I wanted to know if I heard car doors.
- 23 Q. Okay, and so what did you do?
- 24 A. So I looked out the front door and I didn't see anything so
- 25 then I went and stood on my sofa and I looked out the two

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1 windows above my sofa and I saw Rob's truck parked two doors
2 down at the empty house.

3 Q. Is that an unusual place for him to park?

4 A. He could've parked in the driveway.

5 Q. Okay. Has he ever parked down there before?

6 A. Not to my knowledge.

7 Q. Okay. You mentioned that you believed you heard car doors. Did
8 you see anybody coming and going --

9 A. I didn't, --

10 Q. in a car or anything?

11 A. -- didn't see anyone

12 Q. Okay. So what did you do after you looked out the window?

13 A. I believe I went to the bathroom.

14 Q. Okay. And is the bathroom on the same floor as your bedroom?

15 A. Yeah, it's right next to Missy's bedroom.

16 Q. Okay. If I recall correctly from looking at the information,
17 am I correct that your bedroom is towards the front of the
18 house; Then there's a bathroom then Missy's bedroom --

19 A. On that, --

20 Q. -- beyond that?

21 A. -- on that side of the house, yes.

22 Q. Okay. After you used the bathroom what happened next?

23 A. I went back to bed.

24 Q. And did you hear or observe anything when you went back to
25 bed?

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1 A. I thought that my sister was having adult time with Robert.

2 Q. Okay. And what led you to that conclusion?

3 A. I thought I heard the headboard.

4 Q. Okay.

5 THE COURT: I didn't hear exactly what you said. She
6 was having a what time?

7 THE WITNESS: Adult time.

8 THE COURT: Adult time, okay.

9 MR. REIMERS: That's your terminology for having
10 sex?

11 THE WITNESS: Yeah, that's my little sister.

12 MR. REIMERS: Okay.

13 THE WITNESS: I can't say that, sorry.

14 BY MR. REIMERS:

15 Q. Do you recall something occurring with your cat that you have
16 in your house?

17 A. Yup. So the next time I got woke up my cat was howling. It
18 sounded very similar to a cat having kidney stones, it's a
19 painful howl, cry. So I got up and I went downstairs and I
20 still heard noises from the bedroom so I was being pretty
21 ignorant because I had to work in the morning. And I went down
22 there and my cat was on the washer. I was half expecting her
23 to be in the litter box but she was on the washer just
24 howling. So I petted her and I told her, "Cry girl, it's all
25 right," and then I looked and her dishes were half empty so I

- 1 filled her dishes and told her to be quiet and go back to bed.
- 2 Q. Okay.
- 3 A. And I went back to my bedroom, I slammed the door --
- 4 Q. Okay, let me stop you there. While you were downstairs, did
- 5 you hear any noises coming from upstairs at all?
- 6 A. I don't believe so.
- 7 Q. Okay. And just so that we're clear, you woke up cause you
- 8 heard what you believe were car doors. You went and put your
- 9 glasses on, went outside -- or went outside your bedroom,
- 10 looked out the front window of the door and you saw Rob's
- 11 truck there --
- 12 A. No. That was -- when I went onto the couch, I stood on the
- 13 couch and looked out of the two small windows.
- 14 Q. Okay, all right. After that you went and used the bathroom and
- 15 you returned to your bedroom?
- 16 A. Yes.
- 17 Q. Did you fall back asleep when you returned to your bedroom
- 18 that time?
- 19 A. I may or may not have.
- 20 Q. Okay.
- 21 A. But is it at that point then, as you're in your bedroom at
- 22 that point, that you hear these noises that you believe is
- 23 adult time between Missy and Rob?
- 24 A. Please restate that again.
- 25 Q. Okay. After you came back from the bathroom and you went back

1 to your bed, is that when you heard these noises coming from
2 Missy's bedroom?

3 A. No, I believe it was when I exited the bathroom and was in --
4 heading towards the dining room.

5 Q. Okay. All right. Could you hear Missy's voice at all?

6 A. No.

7 Q. Okay. You mentioned that you heard noise like a headboard?

8 A. Yes.

9 Q. Okay. Like a headboard hitting a wall?

10 A. Yes.

11 Q. Okay. Did that happen more than once?

12 A. You mean the headboard --

13 Q. Did you hear that noise more than once or was it just one time
14 you heard that?

15 A. No, it was like a repeated sound while I walking back.

16 Q. Okay. So then you walk back to your bedroom and is that when
17 you start hearing the cat noise?

18 A. No, I was laying in bed. I may have dozed off.

19 Q. Okay. So after you get up and you take care of the cat I
20 assume you return, yet again, to your bedroom?

21 A. Yes.

22 Q. And do you fall back asleep again?

23 A. Yes.

24 Q. Okay. Do you hear any further noises?

25 A. Yes, I got woke up by a loud thump.

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- 1 Q. And where did the thump appear to be coming from, if you could
2 tell?
- 3 A. It came from the back of the house.
- 4 Q. Okay. Did it appear to be coming from inside the house as
5 opposed to outside the house?
- 6 A. It was inside the house.
- 7 Q. And were you happy about hearing that noise?
- 8 A. No.
- 9 Q. Okay. And is that because you had to work the next morning?
- 10 A. Yes, it is.
- 11 Q. And you were awakened again?
- 12 A. Yes.
- 13 Q. Did you get up that time?
- 14 A. Yes, I did.
- 15 Q. What did you do?
- 16 A. I got out of my room. I came through the living room and
17 that's when I started cussing at Robert.
- 18 Q. Okay. How was it that you were able to cuss at Robert?
- 19 A. He was walking out -- I can't say he was walking out. He was -
20 - I wish I could mock it.
- 21 Q. Well, you're free to stand up and do it if you're able to.
- 22 A. He was rounding the, the doorway out of my sister's bedroom,
23 kind of like this, holding onto the wall. And I, I asked him -
24 -
- 25 Q. Okay, what did you ask him?

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- 1 A. Can I say it in the exact words I said it?
- 2 Q. Yes, you may, with the Court's permission.
- 3 A. I said, "What the fuck's going on in here?"
- 4 Q. Okay.
- 5 A. And Robert said, "I fell out of the bed." Then I said, "Why
- 6 don't you try keeping your drunk mother fucking ass in the
- 7 bed, some people have to fucking work in the morning."
- 8 Q. Okay.
- 9 A. And I turned around and I went back to my bedroom.
- 10 Q. Okay. So you were quite upset with him at that point?
- 11 A. Yes.
- 12 Q. All right. And you mentioned when he stumbled out like that,
- 13 where did he go?
- 14 A. Into the bathroom.
- 15 Q. Okay. When he stumbled out of Missy's bedroom, do you know if
- 16 he shut the door?
- 17 A. No. No.
- 18 Q. No, he didn't or no, you don't know?
- 19 A. No, he didn't.
- 20 Q. Okay. Did you, at any point in time while you were upset at
- 21 that point, go into Missy's bedroom?
- 22 A. I figured they were having adult time so I was gonna stay out
- 23 of there.
- 24 Q. Okay. Did you hear any -- anything verbally from Missy at that
- 25 time?

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- 1 A. No.
- 2 Q. Okay. But you had made it known that you weren't happy about
3 being woken up again?
- 4 A. Yes.
- 5 Q. Okay. So after you have those words with Robert and he goes
6 into the bathroom, do you return to your bedroom again?
- 7 A. Yes, I do.
- 8 Q. And were you able to go to sleep?
- 9 A. Yes.
- 10 Q. And did you wake up again, in the morning?
- 11 A. At 6 a.m.
- 12 Q. All right. And was that the normal time for you to get up to
13 go to work?
- 14 A. Yes.
- 15 Q. So were you awakened by an alarm clock?
- 16 A. Yes, I was.
- 17 Q. Okay. When you got up at 6 a.m., did you happen to notice
18 whether Robert's truck was still parked down the street, as
19 you described?
- 20 A. No, I, I woke up -- my morning routine is looking out the
21 front door and then I did look for Rob's truck. I saw that it
22 was gone and I called the dog out of the room to go out to go
23 to the bathroom and --
- 24 Q. And did you let the dog out to go to the bathroom?
- 25 A. Yes, I did.

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1 Q. What door of your house did you let the dog out?

2 A. The back door.

3 Q. Okay. And did you notice anything about the back door when you
4 let the dog out?

5 A. Yup. When I made it through the kitchen and I turned to go
6 down the stairs, the back door was half open.

7 Q. Okay. And did you open it further to allow the dog to go
8 outside?

9 A. Yes.

10 Q. Okay. And do you have a, a fenced gate area --

11 A. Yes.

12 Q. -- in the backyard. Did you notice anything unusual about the
13 gate?

14 A. That he, he -- when he left he left my gate open.

15 Q. When you say he, who are you referring to?

16 A. Robert.

17 Q. Okay. So you believed he had left your house because his truck
18 was gone?

19 A. His truck was gone, the door was open, and the gate was left
20 open.

21 Q. Okay.

22 A. He tends to leave my house, when he leaves out the back, he
23 leaves the gate open.

24 Q. And have you discussed that before?

25 A. Yes.

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- 1 Q. And is that a concern for you?
- 2 A. Yes.
- 3 Q. Why?
- 4 A. So my dog doesn't run away.
- 5 Q. Okay. Now, when you let the dog out and you observed the rear
6 door open, was there any damage to your door or door handle or
7 anything?
- 8 A. No.
- 9 Q. As -- after you let the dog out did you return back inside the
10 house to get ready for work?
- 11 A. Yes, I did.
- 12 Q. Did you happen to know whether Missy's bedroom door was open
13 or closed?
- 14 A. It was cracked open.
- 15 Q. Okay. When you say cracked open are --
- 16 A. It was --
- 17 Q. -- three or four inches open?
- 18 A. Yeah.
- 19 Q. Okay. Did you try to have any contact with her at all at that
20 time?
- 21 A. No.
- 22 Q. Did you just proceed to get ready for work?
- 23 A. Yes.
- 24 Q. And did you leave for work then?
- 25 A. I took my shower, I got dressed, I let the dog out again and

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1 when the dog was in the backyard I moved my car out -- or her
2 car out to the road and then I let the dog back in, put him
3 his kennel and then I left and I locked the back door.

4 Q. Okay. And do you know what time that was?

5 A. I was sitting in my car at 6:53, debating if I was gonna go
6 get coffee and be late for work and I decided I was gonna go
7 get coffee.

8 Q. Okay. So is that when you left your driveway then,--

9 A. At six --

10 Q. -- 6:53?

11 A. Yup.

12 Q. Okay. After you got your coffee I assume you went to work?

13 A. Yup.

14 Q. And obviously later that morning you received a call from
15 somebody to head back home?

16 A. Yes.

17 Q. And is that when you learned of Missy's death, at that time?

18 A. Yes.

19 Q. All right. I'm showing you People's Proposed Exhibit #5. Is
20 that a photograph of the rear door area of your house?

21 A. Yes.

22 Q. People's Exhibit #6, is that a closer look of your rear door,
23 of the knob and of your door?

24 A. That's not how it looked when I left but yes.

25 Q. Right, and that was gonna be my next question. Do you observe

1 the damage that's shown to your door in these photographs?

2 A. Yes.

3 Q. And that damage was not there when you left at 6:53?

4 A. No.

5 Q. Okay. I'd like to show you what's been marked as People's
6 Proposed Exhibit #9. Is that a room in your house?

7 A. That's my bedroom.

8 Q. That's your bedroom. And is that, is that -- that photograph
9 does that show the condition of your bedroom at the time you
10 left at 6:53 or something different?

11 A. Something different.

12 Q. And how is it different from when you left at 6:53?

13 A. These two drawers were pulled open. This drawer here was not
14 pulled out, that drawer wasn't pulled out. This was actually
15 over -- no, this, this stuffing was in my closet. The fan is
16 moved.

17 Q. So is it fair to say that the condition of your bedroom shown
18 in this picture is different than when you left it?

19 A. Yes.

20 Q. Being the drawers are pulled out and the stuffing is --

21 A. Yeah.

22 Q. -- now out of the closet area. I'm showing you what's marked
23 as People's Exhibit #8. Do you recognize the room in that
24 photograph?

25 A. Yes.

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1 Q. And whose room was that?

2 A. Missy and Willow's.

3 Q. And you see the condition of the room --

4 A. Yes.

5 Q. -- as it is in that photograph. Is that how Missy would
6 normally keep her room?

7 A. No.

8 Q. It appears to be quite disarray, is that correct?

9 A. Correct.

10 MR. REIMERS: Okay. I have no further questions.

11 MR. STURTZ: Has #9 been admitted?

12 MR. REIMERS: No, not yet.

13 MR. STURTZ: No?

14 MR. REIMERS: I'll move to admit it at this time.

15 THE COURT: Is that the one of her bedroom?

16 MR. REIMERS: Yes.

17 THE COURT: All right. Any comment?

18 MR. STURTZ: I have no objection.

19 THE COURT: It'll be received.

20 (At 11:37 a.m., People's Exhibit #9 admitted)

21 CROSS-EXAMINATION

22 BY MR. STURTZ:

23 Q. Ms. Thornton, #9, that's a picture of your bedroom?

24 A. Yes.

25 Q. All right. And you're saying that when you left in the

1 morning, about 6:30, 7 o'clock, that was not the condition of
2 it?
3 A. No.
4 Q. What, what is wrong that -- what was not there?
5 A. These two drawers were pulled out cause I was looking for
6 socks.
7 Q. Okay.
8 A. And this drawer was removed. This bottom drawer here was
9 removed.
10 Q. Okay.
11 A. This stuffing actually belonged in my closet, which is right
12 here if we continued on the picture.
13 Q. All right.
14 A. There's just --
15 Q. But the rest of the things on top of the counter and all that,
16 that's normally how you have it?
17 A. They were actually line drying on my mirror.
18 Q. I'm sorry, what?
19 A. I don't use the dryer a lot --
20 Q. Okay.
21 A. -- so I line dry. So they were actually hanging --
22 Q. Oh, you, you hang 'em on a line, okay.
23 A. I hung them on my mirror.
24 Q. Okay. But as far as the other items on top of that chest and
25 off to the left here, that's --

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1 A. Yeah.

2 Q. Okay. And then the picture of your sister's room, you're
3 saying -- what's not right with that?

4 A. Well, there should've been a jewelry box there, a big heart-
5 shaped knickknack, some other things. There was baby stuff up
6 there like lotions and things like that, too.

7 Q. Is any of that items on the floor?

8 A. I know that was on there, I believe that was on there. One
9 lamp was on there. She always kept another lamp on the end
10 table.

11 Q. So somehow those items either fell off or they got knocked off
12 --

13 A. Yeah.

14 Q. -- and on the floor.

15 A. There was a snow globe and some other stuff.

16 Q. Okay, very good. Now, going backwards a little bit, when you
17 left for work in the morning, which would've been July 6th, is
18 that right?

19 A. Yup.

20 Q. You didn't see Robert in the house at that time, is that
21 correct?

22 A. No, and his vehicle was gone.

23 Q. All right. And you don't know what time he left or whatever?

24 A. No.

25 Q. All right. And you had no contact with your sister by the time

1 you left, is that right?

2 A. No.

3 Q. As far as finding the back door half open or half closed, the
4 same with the gate, you don't know how that occurred; You
5 didn't see anybody leaving or going out the back door, rear
6 gate, is that correct?

7 A. Correct.

8 Q. Okay. Now, you indicated that sometime in the morning you
9 heard a big thump --

10 A. Yup.

11 Q. -- and Robert said he fell out of bed, is that right?

12 A. That's correct.

13 Q. And then he stumbled to the bathroom, is that correct?

14 A. Yes.

15 Q. Did he have any clothes on or was he nude or what was his
16 condition?

17 A. I'm not sure if he was clothed or not. I, --

18 Q. Okay.

19 A. -- I believe he had a shirt on.

20 Q. Okay, you don't remember. All right, and you --

21 A. No, the only light that was coming in was through the window
22 over the -- in the bathtub.

23 Q. Okay.

24 A. So it was very dim light.

25 Q. All right. And when you say you saw him he was kind of bent

- 1 over holding his back?
- 2 A. He was -- almost stumble crawling, I guess, as I would
- 3 describe it.
- 4 Q. I'm sorry, what?
- 5 A. Like a stumble crawl.
- 6 Q. Okay. But he was on two feet but bent over?
- 7 A. Yeah.
- 8 Q. He wasn't going --
- 9 A. And he was hanging onto the wall.
- 10 Q. Okay, using the wall for support?
- 11 A. Yeah.
- 12 Q. Then he went into the bathroom and then you went back to your
- 13 bedroom, is that correct?
- 14 A. Yes.
- 15 Q. Okay. And you don't know how long he stayed in there or you
- 16 don't know what time that was?
- 17 A. The exact time, no. I, I assume it was about a half hour after
- 18 the first time I got woke up.
- 19 Q. Okay. And the first time you got woke up was roughly what?
- 20 A. I believe my cellphone said 3:15.
- 21 Q. Okay. And you were woken up because of what?
- 22 A. I thought I heard car doors.
- 23 Q. Pardon me?
- 24 A. I thought I heard car doors and my dog was starting to wrestle
- 25 around.

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- 1 Q. Okay. And that's when you got up and you saw Robert's truck a
2 couple houses down?
- 3 A. Well, I looked out the front door first, didn't see anything
4 and then I stood on the couch and that's when I seen his
5 truck.
- 6 Q. Okay. You didn't see Robert at that time?
- 7 A. No.
- 8 Q. Okay. And the, the truck wasn't running or nothing, it was
9 turned off?
- 10 A. There was no lights on.
- 11 Q. Okay. Then you went to the bathroom and you didn't see Robert
12 or your sister during that time?
- 13 A. No.
- 14 Q. All right. Then you went back to bed, is that correct?
- 15 A. Correct.
- 16 Q. Then how soon after that did you hear some type of, as you
17 call it, adult sounds?
- 18 A. I'd say 15, 20 minutes.
- 19 Q. Okay --
- 20 A. Oh, no, adult sounds?
- 21 Q. Yeah.
- 22 A. I thought you meant the next time I woke up. When I got out of
23 the bathroom before I went back to bed.
- 24 Q. Okay, that's where you heard the, the headboard banging and so
25 forth, repeatedly?

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- 1 A. It's what I thought was a headboard banging, yes.
- 2 Q. Okay. And that was coming from your sister's --
- 3 A. Sister's bedroom.
- 4 Q. Okay. And you don't know who was in that bedroom with her, do
- 5 you?
- 6 A. I thought I was safe to assume that Rob was in there since his
- 7 vehicle was here.
- 8 Q. Okay, but you didn't see him at all?
- 9 A. No.
- 10 Q. And you didn't see him arrive or you didn't see him leave?
- 11 A. No, but I seen him come out of the bedroom the third time I
- 12 got woke up.
- 13 Q. Okay. That's right. Now, as far as your cat howling when did
- 14 that occur?
- 15 A. I would say that was about 15, 20 minutes after I laid back
- 16 down.
- 17 Q. Okay. And then you mentioned something about going downstairs?
- 18 A. Well, that's where my cats reside.
- 19 Q. Okay, so you have a basement?
- 20 A. Yes.
- 21 Q. And your cat lives down there in, in a kennel?
- 22 A. They're antisocial. They're Siamese.
- 23 Q. Okay. And you went down to calm her down or him down?
- 24 A. Her.
- 25 Q. Her down. Then you came back up and went to bed, is that

- 1 right?
- 2 A. Yes.
- 3 Q. And then you were awoken again by a big thump?
- 4 A. Yup.
- 5 Q. Okay. But you heard no voices or anything like that?
- 6 A. No.
- 7 Q. When you went to bed that night was your sister still up?
- 8 A. Yes.
- 9 Q. Okay. And I think you mentioned Mr. Propp was in the house?
- 10 A. Yes.
- 11 Q. And he had sat down and had Tang and vodka or something?
- 12 A. He was standing in the kitchen then he had Tang and vodka.
- 13 Q. Okay. And there was no arguing or any bad words between the
- 14 two of them before you went to bed?
- 15 A. No.
- 16 Q. Okay. And then as far as whether he stayed there or left and
- 17 came back, you don't know for sure?
- 18 A. Please restate that.
- 19 Q. When -- after you went to bed, they were still up, is that
- 20 correct?
- 21 A. Oh, yes.
- 22 Q. And then until you were woken by some car, car doors you don't
- 23 know if he stayed there or left?
- 24 A. Correct.
- 25 Q. Okay. When you got up to go to work in the morning you said

1 your sister's door was open about three or four inches. Could
2 you look in there or was it too dark to see clearly in there

3 A. It was too dark. I installed room darkening curtains and I
4 don't wake her in the morning.

5 MR. STURTZ: Okay. One moment, your Honor. Nothing
6 further, Judge.

7 THE COURT: You may step down, thank you. You may
8 call your next witness.

9 (At 11:45 a.m., witness excused)

10 MR. REIMERS: The People call Joseph McMillan.

11 THE COURT: Do you solemnly swear the testimony you
12 are about to give in the cause here pending be the truth, the
13 whole truth, and nothing but the truth, so help you God?

14 THE WITNESS: I do.

15 THE COURT: Please be seated

16 JOSEPH MCMILLAN

17 (At 11:46 a.m., called by Mr. Reimers and sworn
18 by the Court, testified as follows)

19 DIRECT EXAMINATION

20 BY MR. REIMERS:

21 Q. Can you tell us your name please?

22 A. Sure. Joseph McMillan.

23 Q. And your occupation?

24 A. Trooper with the Michigan State Police.

25 Q. And do you have a present assignment?

Preliminary Examination Transcript, Vol I, Joseph McMillan Testimony

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1 your sister's door was open about three or four inches. Could
2 you look in there or was it too dark to see clearly in there

3 A. It was too dark. I installed room darkening curtains and I
4 don't wake her in the morning.

5 MR. STURTZ: Okay. One moment, your Honor. Nothing
6 further, Judge.

7 THE COURT: You may step down, thank you. You may
8 call your next witness.

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15 THE COURT: Please be seated

16 JOSEPH MCMILLAN

17 (At 11:46 a.m., called by Mr. Reimers and sworn
18 by the Court, testified as follows)

19 DIRECT EXAMINATION

20 BY MR. REIMERS:

21 Q. Can you tell us your name please?

22 A. Sure. Joseph McMillan.

23 Q. And your occupation?

24 A. Trooper with the Michigan State Police.

25 Q. And do you have a present assignment?

- 1 A. I do, I'm with the Major Crimes Unit, --
- 2 Q. And are you --
- 3 A. -- assigned to Saginaw.
- 4 Q. I'm sorry?
- 5 A. Assigned to Saginaw.
- 6 Q. Okay, thank you. Were you so employed on July 6th of 2016?
- 7 A. Yes.
- 8 Q. Did you happen to respond to 607 South Alexander concerning
- 9 the death of Melissa Thornton?
- 10 A. I did.
- 11 Q. Okay. And while you were on scene did you walk around the
- 12 house?
- 13 A. I did.
- 14 Q. And did you walk to the back door area of the house?
- 15 A. Yes.
- 16 Q. And did you take note of the condition of the back door?
- 17 A. Yes. The back door was ajar with a bar or some sort of pry bar
- 18 in the doorway and there was some damage to the door, to the
- 19 major entrance door indicating that the door had been pried
- 20 open.
- 21 Q. Okay. I'm showing you what's been marked as People's Exhibit
- 22 #5. Is that a view of the rear door from the inside of the
- 23 house?
- 24 A. It is.
- 25 Q. And can you see the damage to the door itself in that

Preliminary Examination Transcript, Vol I, Joseph McMillan Testimony

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1 photograph?

2 A. Yes.

3 Q. Okay. And People's Exhibit #6, would that be a closer view of
4 the damage to the door?

5 A. It is.

6 Q. And does that indicate that the door was pried open at some
7 point?

8 A. I believe so, yes.

9 Q. Okay. And that's the damage and the condition of the door that
10 you observed --

11 A. Right.

12 Q. -- on the morning of July 6th?

13 A. Right.

14 MR. REIMERS: I'd move to admit Exhibit #6 -- #5 and
15 #6.

16 THE COURT: Any objections?

17 MR. STURTZ: Just want to take a look at them,
18 Judge. I have no objection.

19 THE COURT: They'll be admitted.

20 (At 11:48 a.m., People's Exhibits #5 and #6
21 admitted)

22 BY MR. REIMERS:

23 Q. Now after you were on scene at the house on South Alexander
24 did you have occasion to go to the police department, the City
25 police department?

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1 A. I did.

2 Q. And did you participate in an interview of Robert Propp?

3 A. Yes.

4 Q. And is Mr. Propp present in the courtroom today?

5 A. He is, he's sitting to your right in the striped jail uniform.

6 MR. REIMERS: Okay. Your Honor, may the record
7 reflect identification of the defendant?

8 THE COURT: It may.

9 MR. REIMERS: Thank you.

10 BY MR. REIMERS:

11 Q. Do you know about what time it was that you interviewed Mr.
12 Propp?

13 A. I'd have to refer back to my notes.

14 Q. Sure.

15 A. About, right around noon on the 6th.

16 Q. Okay.

17 A. Just before noon.

18 Q. So, just a couple hours after the initial 911 call --

19 A. Correct.

20 Q. -- and the investigation is beginning. All right. And who
21 participated in the interview with you?

22 A. Detective Trooper Adam Green.

23 Q. Okay. And was Mr. Propp in custody or under arrest at that
24 point in time?

25 A. No.

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1 Q. Even though he wasn't in custody or under arrest did you or
2 Trooper Green read to him what's known as Miranda Rights?

3 A. We did.

4 Q. Did he appear to understand those rights?

5 A. Yes.

6 Q. Did he agree to talk to you?

7 A. He did.

8 Q. All right. During the course of that interview did the
9 defendant describe his relationship to Melissa Thornton?

10 A. Yes, he did.

11 Q. And did he tell you that those two have a child in common?

12 A. Yes.

13 Q. All right. And while interviewing him did you notice an injury
14 to his eye?

15 A. I did.

16 Q. Okay.

17 A. There was a distinct blackening or a -- and swelling
18 underneath his, underneath his eye.

19 Q. Okay. Did you or Trooper Green ask him how he received that
20 injury?

21 A. Yes, we, we asked him how he received the injury.

22 Q. What did he tell you?

23 A. He stated that the night before -- or it'd be the hours before
24 my contact with him, while he was walking out of Baywood
25 Lounge in Saginaw Township, he was confronted by a person and

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- 1 he was struck.
- 2 Q. Okay.
- 3 A. He got into a fight.
- 4 Q. Did he say whether this other person was male or female?
- 5 A. A male.
- 6 Q. Okay. So, he tells you he got the black eye from a guy hitting
- 7 him, walking out of the Baywood Lounge?
- 8 A. Right.
- 9 Q. All right. Did he admit to you during the course of that
- 10 interview that he had met up earlier that evening with Melissa
- 11 and Angela at LeBoeuf's Bar?
- 12 A. Yes, he did.
- 13 Q. Okay. And then that the three of them ended up going back to
- 14 607 South Alexander?
- 15 A. Right.
- 16 Q. Okay. Did he indicate when it was that he went to Baywood
- 17 Lounge?
- 18 A. He had suggested it was about one a.m.
- 19 Q. Okay. So, would that have been after, after the three of them
- 20 left LeBoeuf's and went to South Alexander?
- 21 A. Correct. They went to LeBoeuf's; he drove separate from the
- 22 other two back to Alexander and then he and Melissa went to
- 23 the Baywood.
- 24 Q. So it was just he and Melissa that went to Baywood Lounge?
- 25 A. Correct.

1 Q. All right. And was it after -- or at the time he was leaving
2 Baywood that he received this black eye, according to him?

3 A. That's what he advised --

4 Q. All right.

5 A. -- the first time, correct.

6 Q. Did you ask him about the events that occurred after Baywood
7 Lounge, after they returned back to 607 South Alexander, he
8 and Melissa?

9 A. Yes.

10 Q. What did he tell you?

11 A. He said they came back to the South Alexander home and he and
12 Melissa had sex and then she fell asleep and then he got up
13 to, to leave and knocked some stuff over and in the process of
14 leaving Melissa's sister Angela had come out and confronted
15 him saying you woke up the dog, kind of what's going on and
16 then he got dressed and then he left the house and went home
17 and went to sleep.

18 Q. All right. Did he indicate whether he returned back to 607
19 South Alexander?

20 A. He did.

21 Q. Did he say when?

22 A. I believe he said it was about, about 8:30 in the morning when
23 he came back to the house.

24 Q. And did he explain the circumstances, what caused him to go
25 back and what he did?

- 1 A. He said that he had woken up about 8:30 and called Melissa,
2 called her cellphone, and she didn't answer and so he, because
3 of that -- it was very odd to him so he went to the house to
4 try to make contact.
- 5 Q. Okay. Did he say what he did once he got back to 607 South
6 Alexander that morning?
- 7 A. He said he had gone to the doors and, you know, knocked on the
8 door to try to make contact, went to Melissa's window, knocked
9 on the window and then that he still couldn't make contact so
10 he went to the, to the back door.
- 11 Q. Did he describe the condition of the back door when he went
12 there?
- 13 A. He did. He said the back door was not damaged, it was not
14 broken, it was not pried open. It was closed and then he said
15 he had just -- he initially said he saw a pry bar on the
16 ground near him and he tried to use that to open the door and
17 then later stated he had to get a bigger pry door from the
18 back of his truck to finish opening the door to gain entrance
19 into the home.
- 20 Q. So did he basically acknowledge that he pried the door open,
21 the rear door?
- 22 A. Right.
- 23 Q. And then he entered the house?
- 24 A. Correct.
- 25 Q. Okay. Did he indicate that he then went to Melissa's bedroom

1 and found her?

2 A. Right.

3 Q. Okay. What did he tell you about that, what did he do once he
4 went into the bedroom?

5 A. He said he went into the bedroom and found her covered up as
6 if she was sleeping and then he, he went to -- eventually he
7 found her to be, you know, not breathing and so he had -- then
8 he began CPR, he stated.

9 Q. Did he make any phone calls at all, if you recall?

10 A. He had called 911.

11 Q. Okay. Do you remember him indicating whether he called anybody
12 else before he called 911?

13 A. Yeah, he had stated he had called his mother.

14 Q. Okay. Did he indicate to you the status of his relationship
15 with Melissa?

16 A. He said that they had been going through some hard times
17 relationally. They were kind of -- had been separated a few
18 months prior because of a cocaine addiction of his and some
19 other personal issues between them and he said they were
20 trying to work it out.

21 Q. Did you ask him or did he indicate whether he knew whether
22 Melissa was seeing anybody else or dating anybody else, if you
23 recall?

24 A. Can you repeat that?

25 Q. Okay. Did he ever indicate whether he knew Melissa was dating

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1 somebody else?

2 A. I don't recall.

3 Q. Okay. Do you have your report in front of you?

4 A. I do.

5 THE COURT: I think we're gonna recess at this time
6 Mr. Reimers, so he can -- we can take up at this point and I
7 have to obtain the attorneys from the jury trial so I have a
8 few more things to do this morning. So we'll reset this.

9 MR. REIMERS: This is my last witness so I'm almost
10 -- I have maybe 10 more minutes with this witness.

11 THE COURT: I have a jury and I have to look for the
12 attorneys. I don't know if Mr. Sturtz has any witnesses today?

13 MR. STURTZ: I have none, Judge.

14 THE COURT: I can't do 10 more minutes at this
15 point.

16 MR. REIMERS: Okay.

17 THE COURT: Cause the jury's been sitting there for
18 two hours waiting for these people and I have to find out what
19 the status is. I could potentially -- the -- I don't know how
20 long 10 minutes is in attorney time, I have to be honest with
21 you. I don't mean to short you in any way but sometimes when
22 people tell me 10 minutes it's longer than that.

23 MR. REIMERS: I understand.

24 THE COURT: I will find you time in a real short
25 period of time where we can continue this. Do you want to

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1 Saginaw, Michigan

2 Thursday, August 4, 2016 - 11:07 a.m.

3 THE COURT: And the Court then would continue with
4 the case of People versus Robert Propp, Case Number 16-3076.
5 And Mr. Reimers is here, Mr. Sturtz is here, and Mr. Propp is
6 here. We already began this preliminary examination and
7 adjourned it to proceed today and if you're ready --

8 MR. REIMERS: Yes, your Honor, I'd ask that Joseph
9 McMillan resume the stand.

10 THE COURT: All right.

11 THE BAILIFF: Do you solemnly swear the testimony
12 you are about to give in the cause here pending be the truth,
13 the whole truth, and nothing but the truth, so help you God?

14 THE WITNESS: I do.

15 JOSEPH MCMILLAN

16 (At 11:07 a.m., called by Mr. Reimers and sworn
17 by the bailiff, testified as follows)

18 DIRECT EXAMINATION

19 BY MR. REIMERS:

20 Q. Can you just state your name for the record again?

21 A. Joseph McMillan.

22 Q. Okay. And just before we ended the last hearing I had asked
23 you a question that I'd like to ask you again at this time.
24 During your interview of Mr. Propp on July 6th of 2016, did
25 you or Detective Green ask him if he knew whether Melissa had

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- 1 been seeing anyone else?
- 2 A. He said he did not.
- 3 Q. Okay.
- 4 A. That she had not been.
- 5 Q. Okay. Now, I'd like to ask if you had an occasion to interview
- 6 Robert Propp a second time?
- 7 A. I did.
- 8 Q. When and where did that take place?
- 9 A. That was the next day, it would be on the 7th, just after
- 10 about 3:51 p.m.
- 11 Q. Okay. And where did that occur?
- 12 A. The Saginaw PD in the interview room one.
- 13 Q. And was he under arrest at that time?
- 14 A. He was.
- 15 Q. Okay. Since he was under arrest and you were gonna interview
- 16 him or attempt to interview him, did you advise him of Miranda
- 17 Rights at that time?
- 18 A. Yes, I read him his Miranda Rights.
- 19 Q. Did he waive those rights and agree to talk to you at that
- 20 time?
- 21 A. He did.
- 22 Q. And prior to that interview on the 7th, had the autopsy of
- 23 Melissa Thornton taken place?
- 24 A. It had.
- 25 Q. And did you receive information from Dr. Virani with regard to

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1 the results of the autopsy?

2 A. Yes.

3 Q And the cause of death?

4 A. Yes.

5 Q. So you had that information prior to you interviewing the
6 defendant a second time?

7 A. Correct.

8 Q. All right. So, I'd like to go into that interview just
9 briefly. Did you ask him questions with regard to the events
10 that occurred at the South Alexander address after he and
11 Melissa returned home from the Baywood Lounge?

12 A. Yes.

13 Q. And did his version of events differ from his first interview?

14 A. They did.

15 Q. Okay. Can you tell the Court what Mr. Propp told you during
16 that second interview about what occurred after they returned
17 home?

18 A. Sure. He had said they came back from Baywood, Baywood Lounge,
19 came inside and went to Melissa's bedroom where they had sex
20 and when they finished having sex they were lying on the bed
21 together and they began to just discuss back and forth. And so
22 during that conversation Melissa had asked what -- who Jen was
23 and that kind of began -- Mr. Propp had told me, "I should've
24 just kept my mouth shut."

25 Q. Okay. Did he further explain who this Jen person was?

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1 A. No, there was no further discussion --

2 THE COURT: Was it Jen or Jed?

3 THE WITNESS: Jen.

4 THE COURT: Jen.

5 THE WITNESS: J-e-n.

6 THE COURT: Jen, a woman. Okay.

7 BY MR. REIMERS:

8 Q. Okay.

9 A. There was no discussion about -- further discussion about who
10 Jen was.

11 Q. Okay, then he said he should've his mouth shut?

12 A. Yes. He actually began with I should've just kept my mouth
13 shut. That was kind of how it started, when he began to
14 disclose that portion, and then I asked about who Jen was and
15 then a little bit more discussion went back and forth and so
16 she said, "You're always mad at me," and then they started to,
17 to fight back and forth.

18 Q. Verbally or physically?

19 A. Well, there was some verbal exchange but then Mr. Propp told
20 me that Melissa kind of reached around and elbowed him in the
21 eye, which is -- then I asked him is that how you got the
22 black eye that I had observed at that time and the day before
23 and he said yes, which is a different version than he first
24 gave which would be -- the first version was he got attacked
25 or punched in the eye by a male at the Baywood. This time he

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1 said that Melissa elbowed him while they were in the bed
2 together which began a physical altercation on the bed which
3 then led to them falling off the bed, first her falling off
4 the bed and then him falling on top of her.

5 Q. Did he say what he physical altercation consisted of on the
6 bed before they fell?

7 A. There was not much discussion about that.

8 Q. Okay. So, he describes them falling off the bed, I assume onto
9 the floor?

10 A. Onto the floor between the dresser and the bed.

11 Q. Which person fell first?

12 A. Melissa did.

13 Q. Okay, and then he fell --

14 A. On top of her.

15 Q. Okay. What did he say happened at that point?

16 A. He said then the dresser -- so, they were lying on the floor
17 between the dresser and the bed. He said then the dresser fell
18 on top of him. And then during that time -- Mr. Propp had said
19 he was, you know, he was kind of seeing stars, he was, he was
20 angry, he forgets things when he's angry; But then as we began
21 to discuss it he said that they were just on the floor and I
22 asked him how long did you have her hands on her throat and he
23 corrected me and said -- as he corrected me he actually
24 motioned with his left hand. He said, "It wasn't hands, it was
25 hand," and he inverted his hand away and pressed, like, in a

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1 downward pressing motion.

2 Q. Did he actually use his hand as a demonstration --

3 A. He did.

4 Q. -- of what he had done?

5 A. Yes.

6 Q. Okay. So what did he say he did with his hand then?

7 A. He pressed down with his weight on her throat.

8 Q. Okay, so he acknowledged that he placed his hand on her throat
9 and pressed down?

10 A. Correct.

11 Q. Did he say what he used to press down with?

12 A. His own weight.

13 Q. Okay, so he used his body weight to press down?

14 A. Right.

15 Q. Onto her throat?

16 A. Right.

17 Q. Okay.

18 A. And I asked him, "Did you squeeze, did you strangle," and he
19 said, "No, I pressed down with my weight."

20 Q. Okay. Did he say whether Melissa was able to move after that?

21 A. He said after that she wasn't moving, he said he just figured
22 she was unconscious and so he picked her back up himself and
23 put her back on the bed that they had just come from and
24 covered up and then he said he left.

25 Q. Okay. Before he made the acknowledgment of him placing his

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1 hand on her throat and, and press -- using his body weight to
2 press down, you were describing part of the interview where
3 she fell on the floor, then he fell on top of her, then the
4 dresser fell on top of him. During that portion of the
5 interview, did he bring up or volunteer the information about
6 him placing his hand on her neck?

7 A. I asked him specifically that question.

8 Q. Okay. But before you asked him that question did he say what
9 happened, did he follow up with that at all, that you recall?

10 A. Specifically about putting his hands on her neck or --

11 Q. After the dresser fell on top of him, do you recall what
12 circumstances occurred right after that?

13 A. I mean, I, I guess -- he, he had just told me that -- what I
14 had said about when I asked about the question.

15 Q. Do you recall him saying whether she was conscious after the
16 dresser fell on top of him?

17 A. He had just said that -- that's kind of when I went into
18 clarification points. But he had said that she, she was
19 unconscious while they were on the floor.

20 Q. Did he indicate whether he did anything with her body at that
21 point, when he believed she was unconscious on the floor?

22 A. That's when he picked her body up --

23 Q. Okay.

24 A. -- and put it back on the bed.

25 Q. But is it true that he failed to mention the part about him

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- 1 putting his hand on her neck as he described that part to you?
- 2 A. Initially, correct.
- 3 Q. Okay. So, that's when you needed to clarify things and ask him
- 4 about placing his hand on her neck?
- 5 A. Right.
- 6 Q. All right. And that's because you knew the information from
- 7 the autopsy?
- 8 A. Correct, right.
- 9 Q. Okay. Had he volunteered any information about anything
- 10 happening to her neck before you confronted him with that
- 11 question?
- 12 A. No.
- 13 MR. REIMERS: Okay. I have no further questions.
- 14 THE COURT: Mr. Sturtz?
- 15 CROSS-EXAMINATION
- 16 BY MR. STURTZ:
- 17 Q. Detective, when you talked to Robert the second time, now you
- 18 indicated you advised him of the Miranda warnings. Did he sign
- 19 a waiver in front of you?
- 20 A. He did.
- 21 Q. Okay. And he did not know that you knew the cause of death of
- 22 Dr. -- by Dr. Virani's report?
- 23 A. I don't think he would've known that.
- 24 Q. Okay. Now, he had indicated to you that he and Melissa had
- 25 been out drinking at different bars before they returned home,

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1 is that correct?

2 A. He had indicated -- in the first interview you're talking
3 about here?

4 Q. Well, total?

5 A. Just in total?

6 Q. Total information. Is that right?

7 A. Yeah, yeah, he had indicated that they were at a couple
8 different establishments.

9 Q. Okay. Then he indicated that -- did he tell you, either in the
10 second or the first interview, that he was pretty loaded, he
11 was drunk?

12 A. He did say that he was drunk.

13 Q. Okay. And did he say that Melissa was drunk too or he didn't
14 mention her?

15 A. He had said that she had been drinking.

16 Q. Okay, all right. And then when they returned home -- in the
17 second interview, he indicated they both went into her
18 bedroom?

19 A. Correct.

20 Q. And then into bed and they had sexual relations, is that
21 correct?

22 A. Right.

23 Q. And then it's after the sexual relations there was some type
24 of a questioning as to who another girl was, I assume Jen is a
25 girl?

Preliminary Examination Transcript, Vol II, Joseph McMillan Testimony

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1 A. Right, that was my understanding, yes.

2 Q. Okay. And then some type of argument took place and did he say
3 that Melissa elbowed him in the eye?

4 A. Right.

5 Q. All right. And then after -- I just want to get the events
6 straight, as far as you know them. After she elbowed him they
7 got into some type of fighting and then that's when they
8 rolled off the bed together?

9 A. First her, then him on top of her.

10 Q. Right. And then this dresser fell on top of him?

11 A. That's the way he described it, yes.

12 Q. Okay. Now, you indicated that he indicated that he had placed
13 his one hand on her neck and then you said he used his left
14 hand?

15 A. Correct.

16 Q. All right. Did he indicate that he was trying to get up at
17 that time or did he indicate what reason he placed his, his
18 hand on her neck or did he say anything?

19 A. He just said he was pressing his weight down on her neck.

20 Q. Okay. And was he -- did he indicate why he was doing that or
21 what the circumstances surrounding that was?

22 A. Not directly, not specifically.

23 Q. Okay. Somewhere in your report, he indicates that after she
24 elbowed him he was seeing stars. Is that something that he
25 said, in your report?

Preliminary Examination Transcript, Vol II, Joseph McMillan Testimony

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1 A. Yes.

2 Q. Okay. And you made a gesture with your arm on the -- hand on
3 the stand that he had placed -- did he demonstrate to you how
4 he placed his left hand on her or did he just say he placed
5 his left hand on her throat, neck?

6 A. There was not an instructional of, of him, you know -- it was
7 while he was describing, as if he were talking with his hands
8 and he, he literally put his hand out, inverted the, the palm
9 away from himself, --

10 Q. Okay.

11 A. -- and pressed down while he was saying it.

12 Q. Okay. And did he describe to you, if you remember, that he did
13 this while he was still laying on top of her or was he off of
14 her, what his position was?

15 A. There was no discussion, it was just he had said he pushed his
16 weight on her.

17 Q. Okay, but was he standing or was he laying, still laying on
18 top of her?

19 A. I don't know.

20 Q. He didn't say?

21 A. No, he didn't say.

22 Q. Okay. And then you indicated that he advised you that she was
23 not moving so he picked her up and put her back in bed, is
24 that correct?

25 A. Right.

Preliminary Examination Transcript, Vol II, Joseph McMillan Testimony

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1 Q. And he assumed that she was still breathing?

2 A. Right.

3 Q. Okay. Then after he placed her back in bed then did he leave?

4 A. That's what he said.

5 Q. Okay. Did you talk to him any further in the second interview
6 about what he did after he left the home?

7 A. There was very little discussion at the end after we got to
8 that point.

9 Q. Okay.

10 A. He just said he drove around, that he didn't go home, that he
11 drove around.

12 Q. All right. And then in your report there's something about,
13 you asked him if he meant to kill her and he said no, is that
14 correct?

15 A. Correct.

16 Q. Okay. Now, he said that after he learned of her death, in the
17 second interview?

18 A. Right.

19 MR. STURTZ: Okay. Judge, I have no further
20 questions. Thank you.

21 MR. REIMERS: No additional questions, your Honor.

22 THE COURT: Thank you, sir, you may step down. Any
23 additional witnesses?

24 (At 11:22 a.m., witness excused)

25 MR. REIMERS: No, your Honor.

Preliminary Examination Transcript, Vol II, Joseph McMillan Testimony

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1 THE COURT: All right. Mr. Sturtz, any witnesses
2 that you intend to call?

3 MR. STURTZ: I do not have any witnesses, Judge.

4 THE COURT: And Mr. Reimers?

5 MR. REIMERS: Yes, your Honor, I do make a motion to
6 bind the defendant over as charged.

7 THE COURT: And Mr. Sturtz?

8 MR. STURTZ: Judge, we'd have no comment.

9 THE COURT: Court, having heard the testimony, is of
10 the opinion that there is probable cause to believe the
11 offense charged was committed, probable cause to believe that
12 the defendant committed that offense. He will be bound over to
13 Circuit Court for trial or other disposition.

14 MR. REIMERS: Thank you, your Honor.

15 MR. STURTZ: Thank you, Judge.

16 THE COURT: You're welcome.

17 (At 11:23 a.m., proceedings concluded)
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Prosecution's Motion in Limine to Admit Other Acts Evidence

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF SAGINAW

PEOPLE OF THE STATE OF MICHIGAN,

Case No. 16-042719 FC2

V

HON. ROBERT L. KACZMAREK

ROBERT LANCE PROPP,
Defendant._____
ALAN G. REIMERS (P43977)
Assistant Prosecuting Attorney
111 S. Michigan Avenue
Saginaw, Michigan 48602_____
ALEC L. STURTZ (P26116)
Attorney for Defendant
608 S. Michigan Avenue
Saginaw, Michigan 48602PEOPLE'S MOTION IN LIMINE TO ADMIT
PRIOR ACTS OF DOMESTIC VIOLENCE

NOW COME the People of the State of Michigan, by Alan G. Reimers, Assistant Prosecuting Attorney for the County of Saginaw, State of Michigan, and hereby moves this Court to admit evidence of prior acts of domestic violence by stating as follows:

1. Defendant is charged in this case with one count of Open Murder for the death of Melissa Thornton on July 6, 2016.
2. That prior to July 6, 2016, Defendant and Melissa Thornton had a dating relationship and had a child in common. They also previously resided together.
3. That during the course of their relationship, Defendant exhibited controlling and abusive behavior toward Melissa Thornton.
4. That on or about March 3, 2016, Melissa Thornton moved out of Defendant's house and moved in with her sister Angela Thornton.
5. That several witnesses in this case will testify that Defendant engaged in several acts of stalking behavior and other acts of domestic violence toward Melissa Thornton prior to and after March 3, 2016.

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Prosecution's Motion in Limine to Admit Other Acts Evidence

- a. Angela Thornton will testify to many instances of stalking, including coming over to the house where Angela and Melissa resided uninvited several times, parking down the street and watching the house, knocking on windows to the house, squealing his tires in front of the house, constantly calling and texting Melissa, and appearing uninvited at locations where Melissa was in order to make contact with her.
- b. Stephanie Thornton will testify that Defendant constantly called or texted Melissa when she left the house, showed up uninvited at locations where Melissa was located, and followed Melissa over to a new beau's residence. Melissa told her that Defendant threatened that if she did not get back together with him she would not like how things would be. That Melissa had to take evasive action, such as hiding her car at Meijer, so Defendant wouldn't be able to follow her to locations. That on one occasion, Defendant physically assaulted Melissa while taking her phone so that he could find out who she was talking to. That prior to their break up, Defendant would steal money from Melissa to support his drug habit, causing Melissa to hide her money.
- c. Barbara Thornton will testify as to the incident where Defendant stole Melissa's phone. While trying to retrieve the phone from Defendant, he refused to return it and told Barbara that Melissa knows what she has to do to get it back.
- d. Vivian Colvin will testify that she was Melissa's co-worker and that around Christmas 2015, Melissa told her that Defendant, during an argument, pushed her against a wall to the point that Melissa was on her toes, and Defendant proceeded to choke her, telling her "see how easy it would be to shut you up". Melissa indicated that she saw black spots when Defendant released his grip from her neck. Melissa also told Vivian that it was common for Defendant to grab her by the hair on the base of her neck to cause her pain. This allowed him to assault Melissa in front of their young child without the child noticing. Vivian will also testify that Defendant would call Melissa non-stop while she worked and that Melissa refused to turn off her phone as she suggested because it would only make Defendant more upset.
- e. Cameron Dietrich, an employee of LeBoef's bar and who briefly dated Melissa after her breakup with Defendant, will testify that in March, 2016 he observed Defendant enter LeBoef's bar and confront Melissa demanding to know why she was there. After Melissa and Defendant walked out of the bar, Dietrich walked outside to check on Melissa and observed her get in her vehicle and drive away. He then saw Defendant get in his vehicle, squeal his tires and drive recklessly after Melissa's car, almost striking it. In April or May, 2016 Melissa was over at Dietrich's house and they looked outside and observed Defendant sitting in his truck across the street watching Dietrich's house, causing Melissa to become distraught and informing Dietrich that Defendant has been stalking her.

Prosecution's Motion in Limine to Admit Other Acts Evidence

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- f. Elizabeth Dupuis, another employee of LeBoeuf's bar, will testify that she witnessed Defendant enter the bar and violently grab Melissa, who ripped her arm away from Defendant and told him "leave me alone, it's over. Stop following me". She will also testify that she observed Melissa running out of the bar, leaving her purse and cellphone behind, in an attempt to get away from Defendant. She has also witnessed Defendant parking outside the bar and flashing his lights when Melissa went outside to smoke, letting Melissa know that he was there, causing Melissa to become scared. Dupuis will also testify that Melissa confided in her about the verbal and physical abuse she endured from Defendant and that she left Defendant because Melissa didn't want her child to see her being hurt. Dupuis will testify that she observed Defendant come in the bar and try to snatch Melissa off her chair. Dupuis intervened and told him never to come back to the bar. Melissa was able to run out the bar and get in her car. Dupuis witnessed Defendant jump in his truck and chase Melissa's car, trying to run her off the road. She received a phone call shortly thereafter from Melissa who was shaken up and scared by the Defendant's actions.
 - g. Erika Bettis will testify that on two occasions she talked to Melissa about how much time she is spending with Defendant after their breakup. Melissa told her that if she didn't go with Defendant on outings, he would make sure she wouldn't see their young child again. Melissa also expressed that she was scared of Defendant and what he might do, so she just went along with him.
- 6. That Defendant engaged in prior acts of domestic violence with his former wife, Deanne Moulton.
 - a. Moulton will testify that she was married to Defendant in 2006 for 9 or 10 months and during the marriage, Defendant would throw items at her during arguments. She will testify that Defendant became more upset with her after she delivered a stillborn baby, telling her that she "needed to die". She will also testify that if she refused sex with Defendant, he would push her down and force sex on her. She indicated this happened many times. She will also testify to Defendant's drug use during their marriage and his behavior towards her while on drugs. Moulton will testify that Defendant would take her cell phone from her and her car keys as part of his controlling behavior. During the divorce, Defendant engaged in stalking behavior toward her, driving by her apartment constantly and calling her cellphone repeatedly. She will testify that Defendant broke into her apartment and stole her medications, that Defendant parked across the street from her residence on a daily basis and waited for her to come outside. On November 10, 2007, she called 911 after hearing scraping noises. She looked outside and saw a male crouched down next to her basement window. Officers responded and saw a male fleeing over Moulton's fence. Defendant was apprehended shortly thereafter in the neighborhood. A knife with a broken tip was found on Defendant. Defendant

Prosecution's Motion in Limine to Admit Other Acts Evidence

was interviewed and claimed to be at his wife's house just checking out the house for her.

- b. Officers Sierras, Harned, May, and Ritchie are subpoenaed to testify regarding the November 10, 2007 incident.

7. That MCL 768.27b allows evidence of the defendant's commission of other acts of domestic violence for any purpose for which it is relevant, including propensity, if not otherwise excluded under MRE 403.

WHEREFORE, the People respectfully request this court find admissible the above-mentioned evidence, as well as any additional prior acts of domestic violence that may come to light either prior to or during trial.

Dated: January 30, 2017

Respectfully submitted,



Alan G. Reimers (P43977)
Assistant Prosecuting Attorney

Prosecution's Motion in Limine to Admit Other Acts Evidence

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF SAGINAW

PEOPLE OF THE STATE OF MICHIGAN,

Case No. 16-042719 FC2

V

HON. ROBERT L. KACZMAREK

ROBERT LANCE PROPP,
Defendant._____
ALAN G. REIMERS (P43977)
Assistant Prosecuting Attorney
111 S. Michigan Avenue
Saginaw, Michigan 48602_____
ALEC L. STURTZ (P26116)
Attorney for Defendant
608 S. Michigan Avenue
Saginaw, Michigan 48602
_____PEOPLE'S BRIEF IN SUPPORT OF MOTION IN LIMINE
TO ADMIT PRIOR ACTS OF DOMESTIC VIOLENCE

At trial, the People intend to present several witnesses to testify to prior acts of domestic violence committed by Defendant. MCLA 768.27b(1) states "in a criminal action in which the defendant is accused of an offense involving domestic violence, evidence of the defendant's commission of other acts of domestic violence is admissible for any purpose for which it is relevant, if it is not otherwise excluded under Michigan rule of evidence 403." The statute defines "domestic violence" or "offense involving domestic violence" as:

"an occurrence of 1 or more of the following acts by a person that is not an act of self-defense: (i) causing or attempting to cause physical or mental harm to a family or household member, (ii) placing a family or household member in fear of physical or mental harm, (iii) causing or attempting to cause a family or household member to engage in involuntary sexual activity by force, threat of force, or duress, (iv) engaging in activity toward a family or household member that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested." MCLA 768.27b(5)(a).

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CLERK OF DISTRICT COURT

Michael J. Harney

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Prosecution's Motion in Limine to Admit Other Acts Evidence

"Family or household member" is defined in MCLA 768.27b(5)(b) as any of the following:

- (i) A spouse or former spouse,
- (ii) An individual with whom the person resides or has resided,
- (iii) An individual with whom the person has or has had a child in common,
- (iv) An individual with whom the person has or has had a dating relationship.

In this case, the victim, Melissa Thornton, qualifies as a "family or household member" under the statute because she and Defendant resided together in the past, had a child in common, and had a previous dating relationship. The July 6, 2016 incident causing the death of Melissa Thornton is "an offense involving domestic violence" because he is accused of killing her, the ultimate crime of domestic violence. An autopsy showed that Melissa died due to neck compression. Thus, MCLA 768.27b applies in this case and evidence of prior acts of domestic violence should be admissible.

The witnesses and their testimony as outlined in the People's motion, meet the requirements of MCL 768.27b(5)(a) because the testimony describes Defendant's actions of causing or attempting to cause physical or mental harm to Melissa Thornton, placing Melissa Thornton in fear of physical or mental harm, and shows activity toward Melissa Thornton that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed or molested.

The testimony of Defendant's ex-wife, Deanne Moulton, is admissible under the statute because she also qualifies as a "family or household member" as a former spouse. Her testimony is relevant for multiple reasons. Her testimony of defendant's stalking behavior corroborates other witnesses' testimony concerning defendant's stalking behavior towards Melissa Thornton, particularly between their breakup and her death. It shows he has a propensity to engage in that type of behavior. Also, Moulton's testimony about Defendant forcing sex on her is also particularly relevant in this case. It is admissible under MCLA 768.27b(5)(a)(iii) since it

Prosecution's Motion in Limine to Admit Other Acts Evidence

involves the act of causing Moulton to engage in involuntary sexual activity by force, threat of force, or coercion. In his interview with police, Defendant claimed he had sex with Melissa prior to some sort of argument leading to a physical tussle and ultimately causing him to place his hand on her neck. Defendant further claimed that while his hand was at Melissa's neck, a dresser fell on top of him, thereby, implying that her death was accidental. The People anticipate the evidence will show that Melissa had an abortion approximately two weeks prior to her death. It is arguable that Defendant wanted sex from Melissa, whether knowing about the abortion or not, and that Melissa refused his request for sex causing Defendant to try to force sex with Melissa. Moulton's testimony shows Defendant has the propensity to engage in that behavior. Supporting this argument is the fact that Defendant was observed to have a black eye from the incident. MCL 768.27b permits the introduction of prior bad acts of domestic violence to prove propensity for such conduct. People v Railer, 288 Mich App 213; 792 NW2d 776 (2010).

MCL 768.27b is a law of inclusion. It states that the evidence of other acts of domestic violence *is admissible for any purpose for which it is relevant*, unless excluded under Michigan rule of evidence 403. In People v Cameron, 291 Mich App 599 (2011), the Court of Appeals found "the statutory language and policy considerations of MCL 768.27b clearly demonstrate the Michigan Legislature's intent to allow prior-bad-acts evidence to be introduced at trial as long as the evidence satisfies the 'more probative than prejudicial' balancing test of MRE 403". The Court in Cameron further explained that prior acts of domestic violence were admissible "because a full and complete picture of a defendant's history tends to shed light on the likelihood that a given crime was committed", at 610.

In this case, Defendant has asserted to police that Melissa's death was accidental. The proffered evidence of prior bad acts is being offered to refute that claim. It will be offered to

Prosecution's Motion in Limine to Admit Other Acts Evidence

show Defendant had the requisite intent to kill Melissa. It will show Defendant has the propensity to stalk women that leave him, including the victim in this case, and be violent toward them. Particularly in one instance, testimony will show that Defendant choked Melissa to the point she saw black spots. During that incident Defendant told Melissa how easy it would be to kill her. Melissa ultimately died as a result of neck compression. The probative value of the prior acts of domestic violence cannot be overstated.

Any prejudicial effect of the prior acts will not substantially outweigh the probative value. The proposed evidence will not cause jury bias, sympathy, anger or shock in this case, or otherwise by inflammatory. The prior acts relating to Defendant's actions toward Melissa Thornton provide a "complete picture" of Defendant's history as contemplated by the Court in Cameron. It also reflects the legislature's intent that such evidence be admissible in cases involving domestic violence. Likewise, the prior acts evidence pertaining to Deanne Moulton is not of an inflammatory nature that would make it substantially more prejudicial than probative. Furthermore, this Court can properly give a limiting instruction to the jury.

Dated: January 30, 2017

Respectfully submitted,


Alan G. Reimers (P43977)
Assistant Prosecuting Attorney

Defense Answer to Prosecution's Motion in Limine to Admit Other Acts Evidence

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF SAGINAW

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

Case No. 16-042719 FC - 4

vs.

Hon. Robert L. Kaczmarek

ROBERT L. PROPP,

Defendant.

STURTZ & STURTZ, P.C.
BY: A. Lee Sturtz P26116
Attorneys for Defendant
608 South Michigan Ave.
Saginaw, MI 48602
Telephone: (989) 799-4701
Facsimile: (989) 799-8563

SAGINAW COUNTY PROSECUTOR
Attorneys for the State of Michigan
111 South Michigan Ave.
Saginaw, MI 48602

**ANSWER TO MOTION IN LIMINE
TO ADMIT PRIOR ACTS OF DOMESTIC VIOLENCE**

NOW COMES the above named Defendant, ROBERT PROPP, by his attorney, A. Lee STURTZ, and hereby files his answer to People's Motion in Limine, stating as follows:

1. In answer to paragraph 1, Defendant admits the allegations.
2. In answer to paragraph 2, Defendant admits the allegations.
3. In answer to paragraph 3, Defendant neither admits nor denies the allegations contained therein and leaves Plaintiff to their proofs.
4. In answer to paragraph 4, Defendant admits the allegations.
5. In answer to paragraph 5, Defendant denies that there were any prior acts of domestic violence against the victim, Melissa Thornton, and statements of any witnesses listed would be prejudicial and not probative as to Defendant's actions and intent in the present case. Defendant affirmatively alleges that he has not been provided with any statements of the alleged witnesses.
 - a. **Angela Thornton.** Her testimony at the Preliminary Examination did not indicate any acts of violence towards the victim, and that stalking is not a conviction of domestic violence.
 - b. **Stephanie Thornton.** Defendant has not been provided with any type of reports

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MICHAEL J. HANLEY
COUNTY CLERK

Defense Answer to Prosecution's Motion in Limine to Admit Other Acts Evidence

or statements from this party, and in reviewing the Motion of the Prosecution it indicates that there was no witnessing of any domestic violence by the Defendant against the victim, and that the majority of what is stated is hearsay.

c. **Barbara Thornton.** It is represented by the Prosecution that the Defendant had taken a phone, but there have been no acts of domestic violence by the Defendant against the victim, and her statement would be highly prejudicial.

d. **Vivian Colvin.** Defendant has not been provided with any statements or reports of this witness. It has been represented in paragraph 5 b it is strictly hearsay as to what Melissa told to Ms. Colvin. It appears that Ms. Colvin is no witness to any type of domestic violence actions.

e. **Cameron Dietrich.** Again, no written reports have been provided. A CD was provided which was of poor quality. In the pleadings as well as the CD there are no representations of witnessing any acts of violence, and solely any testimony would be hearsay of the victim, Melissa.

f. **Elizabeth Dupuis.** At the time preparing this answer no reports or statements have been provided to the defense as to the statements of this witness. After reviewing the allegations there is no testimony of any convictions of domestic violence, and any testimony would be hearsay.

g. **Erika Bettis.** Again defense has not been provided with any reports or statements, and any testimony of this witness will be hearsay in nature and very prejudicial and not probative.

6. In answer to paragraph 6 a, Defendant states that the representation of the testimony to be given does not speak of any domestic violence acts, and at no time was Defendant ever charged or convicted of any domestic violence acts with Deanne Moulton. Any testimony of this witness would be very prejudicial and not probative as to the intent of the Defendant at the time of the incident, and that the incident date of the witness Deanne Moulton is over ten years.

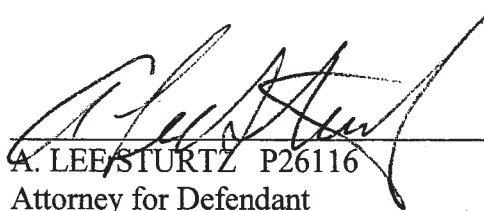
b. As to Officers Sierras, Harned, May and Richie, we have not received any reports or statements regarding this matter as supposedly/allegedly represents the testimony regarding Deanne Moulton. Again, no domestic charges were ever brought against Defendant or any convictions rendered in that matter of 2007, which again is 10 years ago.

7. In answer to paragraph 7, Defendant indicates that MCL 768.27b allows evidence of other domestic violence cases wherein the involved charge is one of domestic violence, the Defendant is charged with Open Murder, the Defendant states that all statements would be highly more prejudicial in hearsay nature than probative.

Defense Answer to Prosecution's Motion in Limine to Admit Other Acts Evidence

WHEREFORE, Defendant prays that this Honorable Court deny the People's Motion in Limine and deny that the requested witnesses be allowed to testify.

STURTZ & STURTZ, P.C.



A. LEE STURTZ P26116

Attorney for Defendant

608 S. Michigan Avenue

Saginaw, Michigan 48602

(989) 799-4701

Dated: February 22, 2017.

Defense Answer to Prosecution's Motion in Limine to Admit Other Acts Evidence

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF SAGINAW

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

Case No. 16-042719 FC - 4

vs.

Hon. Robert L. Kaczmarek

ROBERT L. PROPP,

Defendant.

STURTZ & STURTZ, P.C.
BY: A. Lee Sturtz P26116
Attorneys for Defendant
608 South Michigan Ave.
Saginaw, MI 48602
Telephone: (989) 799-4701
Facsimile: (989) 799-8563

SAGINAW COUNTY PROSECUTOR
Attorneys for the State of Michigan
111 South Michigan Ave.
Saginaw, MI 48602

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2017 FEB 23 2:58
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**RESPONSE BRIEF IN SUPPORT OF ANSWER TO MOTION
IN LIMINE TO ADMIT PRIOR ACTS OF DOMESTIC VIOLENCE**

The People have filed a Motion in Limine for permission to admit certain testimony of alleged witnesses regarding the Defendant's past or present domestic violence cases per MCLA 768.27b(5)(a). Section 27b(1) provides that under a criminal action in which the Defendant is accused of an offensive domestic violence evidence of the Defendant's commission of other acts of domestic violence is admissible for purposes of relevancy, if not excluded under MRE 403.

The Defendant is charged with open murder, and not domestic violence. Defendant would submit that MCLA 768.27b would not apply. Testimony at the Preliminary hearing does not support any acts of domestic violence by the Defendant towards the alleged victim.

The excerpts of testimony presented by the Prosecution in their motion have not been provided to the defense by way of any written reports or statements. CD's provided have been of low quality and difficult to understand.

All submitted witness testimony would be hearsay in nature after speaking with the victim regarding acts of the Defendant. None of the alleged witnesses save Deanne Moulton

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Defense Answer to Prosecution's Motion in Limine to Admit Other Acts Evidence

observed any acts of violence of the Defendant towards the victim. Deanne Moulton the former wife of the Defendant did not file any domestic violence charges against the Defendant, nor was the Defendant convicted of any such charges.

Defense would request the written statements or reports be provided to Court and Counsel as to the intended testimony before a proper decision is made.

In *People v Cameron*, 291 Mich App 599 (2011), the Defendant was charged with domestic violence, and the Prosecution requested prior domestic violence acts by the Defendant against the witness. Two separate female witnesses testified as to the acts committed by the Defendant against them separately. No hearsay testimony was submitted, and only acts of violence were allowed. The Court in *Cameron, supra*, had to apply the balance test of weighing the probativeness of the evidence against the unfair prejudice by injecting considerations extraneous to the merits of the case. Additionally, it must be noted that in *Cameron, supra*, two separate witnesses testified as to acts against them individually by the Defendant.

The Prosecution in the present case requests that testimony be allowed by witnesses who did not observe acts of violence as domestic violence, hearsay statements, and acts not following into the definition of domestic violence, all of which would greatly prejudice the Defendant at trial.

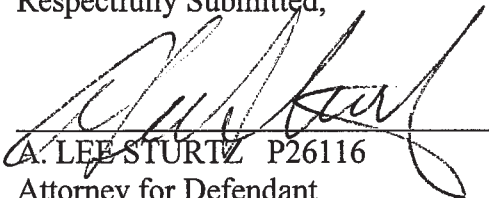
In the case of *People v Railer*, 288 Mich App 213 (2010), the evidence was that of two separate, former girlfriends who testified as to prior acts of violence by the Defendant upon them individually. No hearsay testimony was involved. In the present case, the Prosecution proposes hearsay testimony of witnesses who talked with the victim. Said testimonies would be unfair prejudice towards the Defendant, and carry a tendency that the evidence would be given undue or preemptive weight by the jury. (*People v Miller*, 450 Mich 61 (1995).)

From the short statements included on the People's Motion regarding testimony desired to be admitted at trial, the Defendant would strongly object. Defendant has not been provided full and proper discovery of the witnesses' statements, said statements are hearsay in nature, no eyewitness testimony is presented as to any domestic violence by the Defendant towards the victim, and said testimony would be prejudicial than probative in nature.

Defense Answer to Prosecution's Motion in Limine to Admit Other Acts Evidence

WHEREFORE, Defendant prays that this Honorable Court deny the Prosecution's Motion in Limine.

Respectfully Submitted,



A. LEE STURTZ P26116
Attorney for Defendant
608 S. Michigan Avenue
Saginaw, Michigan 48602
(989) 799-4701

Dated: February 23, 2017.

Prosecution's Supplemental Brief in Support of Motion in Limine to Admit Other Acts Evidence

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STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF SAGINAW

PEOPLE OF THE STATE OF MICHIGAN

Case No. 16-042719 FC2

V

HON. ROBERT L. KACZMAREK

ROBERT LANCE PROPP,
Defendant.

ALAN G. REIMERS (P43977)
Assistant Prosecuting Attorney
111 S. Michigan Avenue
Saginaw, Michigan 48602

EDWIN G. JOHNSON (P74038)
Attorney for Defendant
19301 Mount Zion Street
Cassopolis, Michigan 49031

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COUNTY CLERK
CLERK OF COURT

PEOPLE'S SUPPLEMENTAL BRIEF IN SUPPORT OF MOTION IN LIMINE
TO ADMIT PRIOR ACTS OF DOMESTIC VIOLENCE

At the conclusion of the Evidentiary Hearing on July 28, 2017, this Court requested briefs by the parties regarding admissibility of testimony presented at the hearing. The People will categorize the testimony in two ways: testimony of prior domestic violence acts based on personal knowledge of the witness, and testimony of prior domestic violence acts based on statements the victim, Melissa Thornton, made to the witness. There were also several statements presented at the hearing which fall under the state of mind exception to the hearsay rule and will not be addressed in this brief.

DEANNE HOLLINGSHEAD

Deanne Hollingshead testified she was previously married to Defendant from May 20, 2006 to November 26, 2007. Melissa Thornton was killed on July 6, 2016. Thus, all but six weeks of Defendant's marriage to Deanne Hollingshead was within a ten year period of Melissa Thornton's death. MCL 768.27b allows for testimony of prior acts of domestic violence occurring within a ten year period. It also allows testimony of prior acts outside the ten year period where the court finds it admissible in the interest of justice. MCL 768.27b(4).

Deanne Hollingshead testified based on personal knowledge to prior acts of domestic violence that Defendant committed upon her during their marriage. She testified that Defendant was physically abusive to her by pushing her around and throwing things at her, such as shoes, plates and wrenches (Evid. Hrg Transcript pp.6-7). She also testified to Defendant's assaultive behavior in forcing her to have sex by pushing her onto the bed and holding her down by her wrists and that this behavior occurred weekly during their nine month marriage (EvT pp.7-8). These prior acts of physical domestic violence are clearly admissible under MCL 768.27b. The testimony about acts of forced sex is admissible under MCL 768.27b(5)(a)(iii) since it involves acts of causing Hollingshead to "engage in involuntary sexual activity by force, threat of force, or coercion". Additionally, in his statement to police, Defendant claimed a dresser fell on him while he had his hand at victim's neck implying her death was accidental. Through statements of defense counsel, Defendant may now claim at trial that the victim was accidentally killed while they were engaged in rough sex. In either scenario, the testimony of the prior physical acts toward Deanne Hollingshead is admissible as relevant evidence to refute the claim of an

Prosecution's Supplemental Brief in Support of Motion in Limine to Admit Other Acts Evidence

accidental death by showing that Defendant has the propensity to be violent toward his female partners.

MCL 768.27b is one of the few statutes that specifically allows the People to admit propensity evidence. People v Watkins, 491 Mich 450, 818 NW2d 296 (2012); and People v Mack 493 Mich 1, 825 NW2d 541 (2012). The statute specifically states that “evidence of the defendant’s commission of other acts of domestic violence *is admissible* for any purpose for which it is relevant, if it is not otherwise excluded under the Michigan rule of evidence 403” (emphasis added). When applying MRE 403, “courts must weigh the propensity inference in favor of the evidence’s probative value rather than its prejudice effect” Watkins, at 487.

Deanne Hollingshead also testified based on personal knowledge about Defendant’s reaction to the stillbirth of their child. She testified Defendant said it should have been her that died, rather than the baby (EvT p.8). This evidence is being offered to prove Defendant’s intent, as evidence will be introduced at trial that Melissa Thornton had an abortion just ten days prior to her death. It is arguable that Defendant found out about the abortion and killed her out of anger.

Deanne Hollingshead also testified to Defendant’s reaction to her filing for divorce. She testified Defendant was angry (EvT p. 9). She then testified to several acts of stalking behavior committed by Defendant subsequent to her filing for divorce. He took her car keys so she couldn’t leave the relationship. He followed her to work and her family and friends’ houses. He followed her to Chicago and confronted her at a rest stop on the way home. He called her multiple times a day. He broke into her house twice, the second time he was caught by police with a knife with a broken tip (EvT pp.10-15). The prior acts of domestic violence statute specifically allows testimony of prior acts of stalking behavior under MCL 768.27b(5)(a)(iv).

Prosecution's Supplemental Brief in Support of Motion in Limine to Admit Other Acts Evidence

Thus, the testimony regarding the acts of stalking by the Defendant is admissible. The broken knife is particularly relevant because a knife with a broken tip was recovered inside a trash can just outside the door that was busted open at Melissa Thornton's residence on the day of her death. Angela Thornton will testify that knife was not one from her residence.

ANGELA THORNTON

The victim's sister, Angela Thornton, testified based on personal knowledge to several prior acts of domestic violence by Defendant between the time the victim moved in with her in March, 2016 until her death. Most of Angela's testimony described stalking type behavior by Defendant which is admissible under MCL 768.27b(5)(a)(iv) since it shows the Defendant engaged "in activity toward a family or household member that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested". Angela testified that Defendant popped up at her house uninvited at all different times in the day in night, almost daily, and he would drive by or pull in the driveway or sit down the street watching to see if Melissa was leaving. She testified that she encountered Defendant on one occasion with his face pressed up against her front porch window looking in the house and when confronted, Defendant pushed past her and went into the victim's room, grabbed the victim's foot causing her to scream (EvT pp. 20-23).

Angela also testified to Defendant's stalking behavior of showing up uninvited at places where the victim went. "[W]hen we would go out he would always show up, every time, to wherever we went" (EvT p.23). She gave an example by describing an incident where Defendant called the victim on her cell phone to let her know he knew she was at Sam's Club. Angela testified that Melissa did not tell Defendant where she was going and even tried to take

Prosecution's Supplemental Brief in Support of Motion in Limine to Admit Other Acts Evidence

precautions to prevent Defendant knowing where she was, such as hiding her car at a Meijer's store. She testified that Melissa would be shocked that Defendant was able to find out where she was. Clearly, this behavior would cause a reasonable person to feel, terrorized, frightened, intimidated, threatened, harassed or molested and thus, the testimony concerning the behavior is admissible under MCL 768.27b.

Additionally, this evidence is relevant as it is consistent with Defendant's behavior on the night of Melissa's death. Angela testified at the preliminary examination that she and Melissa went out to some local bars that night. Defendant was observed by the victim driving through the parking lot while they were at White's Bar and then eventually approached them later in the night while they were at LeBoef's Bar. This stalking behavior is also consistent with the stalking behavior by Defendant that Deanne Hollingshead testified to.

Angela testified that Defendant repeatedly called and texted Melissa and described one particular night where Defendant called Melissa over 30 times while she and Melissa watched an hour long program. (EvT p.31). This is admissible as evidence of more stalking type behavior under MCL 768.27b.

Angela also testified at the evidentiary hearing that Melissa called her on March 23, 2016 and told her that she and Defendant struggled in the bathroom and Defendant took her phone. Even though the statement of the victim to her sister can be argued as hearsay, it is admissible because it describes a prior act of domestic violence. A "struggle" can be argued to be an act which caused or attempted to cause physical or mental harm to the victim. Even if not, engaging in the struggle with the victim then taking her phone from her is another instance of stalking behavior since it would cause a reasonable person to feel, terrorized, frightened, intimidated, threatened, harassed, or molested. The People rely on People v Gamet, an unpublished opinion,

Prosecution's Supplemental Brief in Support of Motion in Limine to Admit Other Acts Evidence

February 11, 2016, Docket No. 32481 (see attached). In Gamet, the Court of Appeals affirmed the first-degree murder conviction where testimony was introduced by four witnesses of the victim's statements of defendant's prior acts of domestic violence. The Court held that the victim's statements to his doctor were admissible under MRE 803(4), as statements made for purposes of medical treatment. More importantly, the Court held that the victim's statements to his cousin, his aunt, and his social worker describing prior acts where defendant hit him in the head with a hammer, and another incident of defendant stabbing him, were admissible under MCL 768.27b. The People request this Court to follow the Gamet case and find that the plain language of the statute controls, that is, the evidence of prior acts of domestic violence is admissible unless excluded by Michigan "rule" of evidence 403. Since MRE 403 is not the hearsay rule, the People argue that had the Legislature intended to exclude hearsay, the statute would have stated "unless excluded by the Michigan *rules* of evidence", and not singled out MRE 403. Also important, the Michigan Supreme Court denied the defendant's application for leave to appeal in the Gamet case. 500 Mich 865 (2016).

Though it is an unpublished opinion, the holding in Gamet is consistent with holdings in published cases. In People v Cameron, 291 Mich App 599 (2011), the Court of Appeals found "the statutory language and policy considerations of MCL 768.27b clearly demonstrate the Michigan Legislature's intent to allow prior bad acts evidence to be introduced at trial as long as the evidence satisfies the 'more probative than prejudicial' balancing test of MRE 403." The Court in Cameron further explained that prior acts of domestic violence were admissible "because a full and complete picture of a defendant's history tends to shed light on the likelihood that a given crime was committed", at 610.

CAMERON DIETRICH

Cameron Dietrich testified to two incidences based on personal knowledge that involved stalking behavior by Defendant. His testimony regarding both incidences should be admissible under MCL 768.27b since they involve behavior which would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested. The first incident occurred at LeBoef's bar where the Defendant confronted Melissa Thornton asking "what are you doing here?". Melissa walked out of the bar and drove away. Defendant followed her out of the bar and chased after her in his truck. Dietrich described Defendant's manner of driving as "crazy" (EvT p.41).

The second incident occurred at Dietrich's residence while Melissa was visiting. He described Melissa being "freaked out a little bit" when she observed Defendant outside the house. Her statement about Defendant being outside is admissible as a present sense impression and testimony regarding the entirety of the incident is admissible as stalking behavior under MCL 768.27b.

ELIZABETH DUPUIS

Elizabeth Dupuis, a bartender at LeBoef's Bar, testified to two incidents of prior domestic violence acts by Defendant that she personally observed at the bar. On the first occasion, she witnessed Defendant come into the bar and confront Melissa Thornton as she sat on a barstool. According to Dupuis, Defendant "gave her hell" then grabbed her arm forcefully almost pulling her off the bar stool, and told her "it's time to go". Melissa told Defendant to leave her alone and that she didn't want to talk to him. Melissa then ran out of the bar and got in her car leaving her purse behind. Defendant then drove his vehicle after her in a reckless manner, "trying to run her off the road" (EvT pp.46-48). Dupuis indicated she was fearful for

Prosecution's Supplemental Brief in Support of Motion in Limine to Admit Other Acts Evidence

Melissa's safety during the incident. Testimony regarding this incident is admissible under MCL 768.27b as both a physical assault on Melissa and as stalking behavior that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested.

On the second occasion, Dupuis was outside the bar smoking with Melissa and discussing Melissa's relationship with Defendant. During the discussion, they observed a vehicle down the block flash its lights. Dupuis testified she could tell it was Defendant's truck. They went back inside the bar and approximately ten minutes later Defendant drove past the bar window. Dupuis indicated that Melissa was scared and shaking (EvT pp.48-49). Testimony regarding this incident is admissible under 768.27b as stalking behavior.

Elizabeth Dupuis also testified that she personally observed injuries on Melissa on multiple occasions. She then testified to two incidences of prior domestic violence acts that Melissa Thornton told her about. In explaining the bruising to her face, Melissa told Dupuis that Defendant put her head through the living room wall. On another occasion, Melissa explained she received choke marks on her neck when Defendant snapped and grabbed her by the throat telling her "if I can't have you, nobody will" (EvT pp.50-51). Again, the People argue that the statements of the victim, Melissa Thornton, should be admissible under MCL 768.27b since they describe incidents of prior domestic violence acts, according to Gamet.

VIVIAN COLVIN

Vivian Colvin, a co-worker of the victim, testified based on personal knowledge of stalking behavior by the Defendant. She testified that Defendant would make "phone call after phone call or text after text" to Melissa's phone while she was at work, and that Vivian sometimes would take Melissa's phone from her and put it on a shelf so Melissa could do her

Prosecution's Supplemental Brief in Support of Motion in Limine to Admit Other Acts Evidence

job. She described Melissa's reaction to the calls and texts from Defendant as being annoyed and angry, and indicated Melissa sometimes would have to "go downstairs and pull herself together" (EvT pp.56-57). This testimony regarding Defendant's stalking behavior is admissible under MCL 768.27b.

Vivian Colvin also testified to statements Melissa told her about physical violence Defendant committed upon her. The People argue these statements are admissible under MCL 768.27b per Gamet since they describe prior acts of domestic violence which caused or attempted to cause physical or mental harm to a family or household member. Melissa described an incident to Vivian in November or early December, 2015 where Defendant choked her in her sister's bathroom. Vivian testified that Melissa demonstrated how Defendant placed his hands on her neck to choke her and told her "see how easy it would be for me to shut you up?" (EvT pp.58-59).

On another occasion, Melissa told Vivian how Defendant would grab her in the back of the hair and hold her where he wanted to so he could tell her what he wanted to and that he used this manner so that their young daughter, Willow, could not see him assault her mother.

These statements to Vivian are admissible because they are highly probative of Defendant's propensity to be assaultive, especially in a choking manner. This testimony also provides a full and complete picture of that Defendant's history, tending to shed light on the likelihood that Defendant's actions were intentional, rather than accidental, which is consistent with the holding in Cameron. The evidence will not be unfairly prejudicial as the testimony will be brief, substantially less than the testimony of the circumstances of the days surrounding Melissa Thornton's death. Furthermore, this Court can give a limiting instruction to the jury regarding the prior acts evidence.

Prosecution's Supplemental Brief in Support of Motion in Limine to Admit Other Acts Evidence

STEPHANIE THORNTON

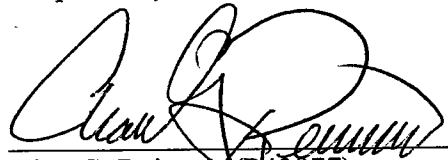
Stephanie Thornton testified based on personal knowledge that she lived across the street from her sister, Melissa and Defendant and on two occasions she observed Defendant throw Melissa's phone and keys in the street during arguments. She also observed other harassing/controlling/stalking type behavior by the Defendant toward Melissa, such as Defendant showing up uninvited at places where Melissa was and constantly calling and texting Melissa. She also testified that when she tried to retrieve Melissa's phone from Defendant after he had taken it from her on March 23rd, that Defendant refused to give it to her unless Melissa gave him the password first. This testimony, again, is admissible under MCL 768.27b.

BARBARA THORNTON

The victim's mother, Barbara Thornton, testified to one instance of controlling/harassing/stalking type behavior by Defendant, which should be admissible under MCL 768.27b. She described how she also tried to retrieve Melissa's phone from Defendant on March 23rd, and Defendant refused to return it, telling Barbara "Missy knows what she has to do to get the phone back" (EvT pp.68-69).

Dated: September 13, 2017

Respectfully submitted,



Alan G. Reimers (P43977)
Assistant Prosecuting Attorney

Defense Supplemental Brief Regarding Motion in Limine to Admit Other Acts Evidence

STATE OF MICHIGAN
IN THE 10th CIRCUIT COURT FOR THE COUNTY OF SAGINAW
111 S. Michigan, Saginaw, Michigan 48602. (989) 790-5473

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

V

ROBERT L. PROPP,

Defendant.

Case No. 16-042719-FC-4

Hon. ROBERT L. KACZMAREK

EDWIN G. JOHNSON, III (P74038)
Attorney for Defendant
19301 Mt. Zion
Cassopolis, MI 49031
(269) 476-2435

ALAN G. REIMERS (P43977)
Assistant Prosecuting Attorney
111 S. Michigan Avenue
Saginaw, Michigan 48602
(989) 790-5375

**DEFENDANT'S RESPONSE TO PEOPLES SUPPLEMENTAL BRIEF IN SUPPORT OF
MOTION IN LIMINE TO ADMIT PRIOR ACTS OF DOMESTIC VIOLENCE**

The People filed a supplemental brief in support of their motion to admit prior acts of domestic violence, categorizing the testimony in two ways: testimony of prior domestic violence, based on personal knowledge of the witness, and testimony of prior domestic violence, based on statements the victim allegedly, made to the witness. Defendant objects to the admission of the proposed testimony based on personal knowledge of the witnesses, as in our view, it violates MRE 403; the testimony is more prejudicial than probative. Defendant also objects to the admission of the proposed testimony, based on statements the Victim allegedly made to witnesses, as in our view, it violates MCL 768.27c(1), which states:

“Evidence of a statement by a declarant is admissible if *all* of the following apply (Italics added):

Defense Supplemental Brief Regarding Motion in Limine to Admit Other Acts Evidence

- (a) The statement purports to narrate, describe, or explain the infliction or threat of physical injury upon the declarant.
- (b) The action in which the evidence is offered under this section is an offense involving domestic violence.
- (c) The statement was made at or near the time of the infliction or threat of physical injury. Evidence of a statement made more than 5 years before the filing of the current action or proceeding is inadmissible under this section.
- (d) The statement was made under circumstances that would indicate the statement's trustworthiness.
- (e) The statement was made to a law enforcement officer."

Not one of the witnesses that testified at the Evidentiary Hearing on July 28, 2017 were law enforcement officers, nor was any evidence presented that suggested these statements were made to law enforcement officers. For this reason Defendant respectfully requests that all statements attributed to the victim, Melissa Thornton be ruled inadmissible.

As it relates to the proposed testimony based on personal knowledge of the witnesses, we will address the witnesses and testimony individually.

DEANNE HOLLINGSHEAD

Ms. Hollingshead made accusations relative to Defendant abusing her by pushing her and throwing things. The People have characterized her testimony as her saying he was "throwing things at her". Ms. Hollingshead never testified that Defendant threw things at her. Rather, the People in questioning added "throw things at you" and "throw at you", but Ms. Hollingshead consistently spoke of Defendant throwing things, but never suggested that items were thrown at her (Evid. Hrg Transcript pp. 7, Lines 2-6, pp. 16, line 25 and pp. 17,

Defense Supplemental Brief Regarding Motion in Limine to Admit Other Acts Evidence lines 1-3). Ms. Hollingshead also testified to Defendant sexually assaulting her by holding her down by her by her wrists and the People seek to admit this testimony despite the fact that the claim is dubious and the charges levied against Defendant include no allegations of sexual misconduct. To the contrary, testimony at the preliminary exam suggested that Defendant and Ms. Thornton were having consensual sex the night of Ms. Thornton's death.

Melissa Thornton died as a result of "Neck Compression" which has been suggested by the People, was a result of strangulation. Ms. Hollingshead testified that Defendant never tried to kill her, choke her, or beat her up (Evid. Hrg Transcript pp. 16, lines 21-25 and pp. 17, line 1-7). The testimony offered is not probative relative to Defendant's case and is prejudicial to the point of inflaming the jury's passions.

The proposed testimony involving Defendant's reaction to the stillborn birth of Ms. Hollingshead's and Defendant's child included no allegation of Domestic Violence. The People state that they intended to introduce evidence of Ms. Thornton having an abortion and that "It is arguable that Defendant found out about the abortion and killed her out of anger." The People have provided no evidence that Defendant knew about the abortion, or if he did know, that he angry about the abortion. This constitutes pure speculation as well as not fitting any description relative to MCL 768.27.

Finally, Ms. Hollingshead's testimony relative to Defendant stalking her is redundant and again not probative of any fact in controversy. Whether or not Defendant was stalking Ms. Thornton is of no consequence as Defendant was invited to Ms. Thornton's residence and her death had nothing to do with "stalking". Defendant asks that Ms. Hollingshead's testimony be excluded as it is substantially more prejudicial than probative.

ANGELA THORNTON

Defense Supplemental Brief Regarding Motion in Limine to Admit Other Acts Evidence

Almost all of Angela Thornton's testimony relates to "stalking" behavior. It is irrelevant whether the victim, Melissa Thornton, felt stalked or not. She took Defendant home with her on the night of her death and this was clearly over the objections of Angela Thornton. There is nothing in this testimony, which would help the trier of fact determine whether Melissa Thornton's death was a murder. Again, this testimony is substantially more prejudicial than probative as this only serves to inflame the jury and gives no guidance as it relates to the night of Melissa Thornton's death. The Peoples claim that the described stalking was consistent with Defendant's behavior on the night of Melissa Thornton's death; this cannot be established as a fact as Angela Thornton cannot say with any certainty that Melissa had not called Defendant to meet her that night. Again, Melissa Thornton invited Defendant back to the home she shared with Angela Thornton and this is not a disputed fact.

Angela Thornton's testimony regarding an alleged telephone call from Melissa, claiming Defendant took her phone during a "Struggle", is inadmissible according to MCL 768.27c(1), as previously discussed.

Angela Thornton testified that she never saw Defendant physically abuse her sister (Evid. Hrg Transcript pp. 29, lines 24-25, pp. 30, lines 1-7)

CAMERON DIETRICH

Mr. Dietrich's testimony is again, regarding alleged stalking behavior. This testimony is redundant and again, more prejudicial than probative, as stalking behavior in this case has nothing to do with whether Ms. Thornton's death was a murder. No matter what stalking took place, Defendant was invited to Ms. Thornton's home and the parties slept together.

Mr. Dietrich also testified that he saw no physical abuse perpetrated by Defendant against Ms. Thornton (Evid. Hrg Transcript pp. 43, 13-19).

Defense Supplemental Brief Regarding Motion in Limine to Admit Other Acts Evidence

ELIZABETH DUPUIS

Ms. Dupuis described two incidents of stalking behavior. She did testify to a physical assault. Her testimony is questionable, particularly since she testified to personally observing injuries on Melissa Thornton, something that no other person, including those who saw her daily, could testify to. As with the other witnesses, Defendant objects to the testimony regarding stalking, as it is clearly not probative as it relates to Melissa Thornton's death.

Ms. Dupuis also testified to what she claims Melissa Thornton told her. Defendant believes this is in violation of MCL 768.27c(1) and Defendant requests that this testimony not be admitted.

VIVIAN COLVIN

Ms. Colvin's testimony relative to alleged stalking behavior is redundant and again not probative relative to the death of Melissa Thornton. This is again substantially prejudicial and intended to inflame the jury in a case that is about whether there was a murder, or an accident. The testimony relative to what Melissa Thornton allegedly told her, is again in violation of MCL 768.27c(1).

STEPHANIE THORNTON

Ms. Stephanie Thornton testified to arguments that she observed between Defendant and the victim, Melissa Thornton. Defendant allegedly threw Ms. Thornton's phone and keys, in anger. She also spoke of stalking behavior and statements that Melissa made that had nothing to do with domestic violence, but she instead worried about losing custody of their common child. Again, stalking behavior cited is not probative relative to the offense charged and the alleged statements from Melissa Thornton violate MCL 768.27c(1). Ms. Thornton testified

Defense Supplemental Brief Regarding Motion in Limine to Admit Other Acts Evidence that she never saw Defendant abuse her sister and never saw any signs of such abuse (Evid. Hrg Transcript pp. 66, lines 3-16).

BARBARA THORNTON

Mrs. Thornton testified relative to a conversation she had with Defendant, about giving a phone to her, that he allegedly took from Melissa Thornton. Defendant believes that this had nothing to do with domestic violence and that it is irrelevant to the question of whether Ms. Melissa Thornton's death was a murder. Mrs. Thornton testified that she never saw Defendant assault her daughter and that she never saw any signs of an assault (Evid. Hrg Transcript pp. 69, lines 21-25, pp. 70, lines 1-4).

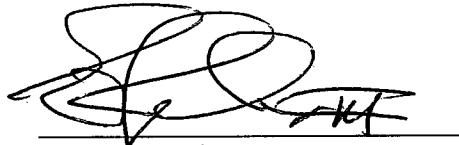
CONCLUSION

The People rely heavily on *People v Gamet*, suggesting that this case directs that the rules of evidence do not apply according to MCL 768.27b's statement that "evidence of the defendant's commission of other acts of domestic violence is admissible for any purpose for which it is relevant, if it is not otherwise excluded under the Michigan rule of evidence 403". A close reading of the case demonstrates that this statement was being compared to the language in MRE 404b, which prohibits the use of prior bad acts for the purpose of establishing evidence of a defendant's character. The notion that the rules of evidence are not in play are belied by *Gamet* itself. On page 11 of the opinion that was supplied by the People, the Court ruled relative to a hearsay objection to testimony from Dr. Karen Gilbert, citing MRE 803(4). Why would they cite the rule if the hearsay rules of evidence were not in play? Never the less, MCL 769.27c(1) puts to rest any perceived ambiguity as to what statements attributed to the Victim are admissible. Not one statement attributed to the Victim was made to a law enforcement officer. These statements are not admissible.

Defense Supplemental Brief Regarding Motion in Limine to Admit Other Acts Evidence

Defendant is charged with Open Murder. The testimony relative to stalking behavior may demonstrate that Defendant was obsessed with Ms. Thornton and wanted to continue their relationship, but it speaks not at all, to any violent tendencies that would predict that Defendant would commit a murder. In fact, the evidence suggests that Defendant was experiencing success in obtaining his objective relative to continuing the relationship; Melissa Thornton and Defendant spent the night together. The People are attempting to buttress an otherwise weak case, as it relates to intent, by attempting to introduce evidence that is not probative relative to the ultimate issue, yet would inflame the Jury and be substantially prejudicial to Defendant. Defendant respectfully requests that this Honorable Court deny the Peoples motion.

Respectfully Submitted

A handwritten signature in black ink, appearing to read 'Edwin G. Johnson III', written over a horizontal line.

Edwin G. Johnson III
Attorney for Defendant

Opinion and Order Granting Prosecution's Motion in Limine

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF SAGINAW

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

v

File No. 16-042719-FC-2

ROBERT L. PROPP,

Defendant.
_____**OPINION AND ORDER OF THE COURT**

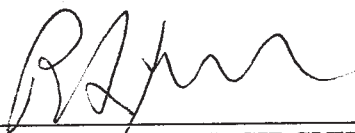
At a session of said Court, held at the Courthouse in the City of Saginaw, County of Saginaw, and State of Michigan, this 26th day of October, 2017.

PRESENT: **HONORABLE ROBERT L. KACZMAREK**, CIRCUIT JUDGE.

This is the People's Motion in Limine to Admit Prior Acts of Domestic Violence.

The Court, after hearing testimony and having reviewed the cases cited by the parties, **GRANTS** the People's motion in its entirety.

IT IS SO ORDERED.



ROBERT L. KACZMAREK, CIRCUIT JUDGE
10TH JUDICIAL CIRCUIT COURT

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BY DEPUTY CLERK

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Defense Motion for Appointment of Expert

STATE OF MICHIGAN
 IN THE 10th CIRCUIT COURT FOR THE COUNTY OF SAGINAW
 111 S. Michigan, Saginaw, Michigan 48602. (989) 790-5473

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

Case No. 16-042719-FC-4

V

Hon. DARNELL JACKSON

ROBERT L. PROPP,

Defendant.

EDWIN G. JOHNSON, III (P74038)
 Attorney for Defendant
 19301 Mt. Zion
 Cassopolis, MI 49031
 (269) 476-2435

BLAIR STEVENSON, (P74911)
 Assistant Prosecuting Attorney
 111 S. Michigan Avenue
 Saginaw, Michigan 48602
 (989) 790-5375

MOTION FOR APPOINTMENT AND PAYMENT OF EXPERT WITNESS IN
 CRIMINAL CASE

Defendant, Robert L. Propp, by his attorney, Edwin G. Johnson III, in this Motion for Appointment of an Expert Witness, pursuant to MCL 775.15 states:

1. On or about July 6, 2016, Defendant was arrested and later charged with Open Murder.
2. A preliminary examination was conducted, the court now has jurisdiction over the case, and a pretrial examination has been conducted in the case.
3. The only issue in this case has to do with Defendant's intent; Defendant maintains that the death of the victim was an accident, resulting from Erotic Asphyxiation, a defense that has been recognized in Michigan, but is not generally known about, indicating the need for the appointment of court-appointed expert witness, and Defendant cannot safely proceed to trial without one. *In re Klevorn*, 185 Mich App 672, 463 NW2d 175 (1990).
4. The frequency, specifics, and dangers associated with this often secretive sexual activity, will need to be explained and will require specialized testimony from a qualified witness.

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Defense Motion for Appointment of Expert

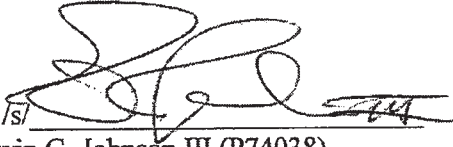
5. Counsel is retained, but is being compensated on a sporadic payment basis; Defendant is indigent and otherwise completely unable to provide funds to retain his own expert. *People v Davis*, 199 Mich App 502, 503 NW2d 457 (1993).

6. Defendant is entitled to present an adequate defense, and the court should authorize the appointment and payment of an expert regarding the sexual phenomenon known as Erotic Asphyxiation.

Defendant asks the court to enter an Order Appointing and Authorizing Payment for an Expert Witness.

Dated: 12/19/2017

By /s/


Edwin G. Johnson III (P74038)

Attorney for Defendant

19301 Mt. Zion St.

Cassopolis, MI 49031

(269) 476-2435

Defense Motion for Appointment of Expert

STATE OF MICHIGAN
 IN THE 10th CIRCUIT COURT FOR THE COUNTY OF SAGINAW
 111 S. Michigan, Saginaw, Michigan 48602. (989) 790-5473

PEOPLE OF THE STATE OF MICHIGAN,

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V

Case No. 16-042719-FC-4

Hon. DARNELL JACKSON

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 (269) 476-2435

BLAIR STEVENSON. (P74911)
 Assistant Prosecuting Attorney
 111 S. Michigan Avenue
 Saginaw, Michigan 48602
 (989) 790-5375

BRIEF IN SUPPORT OF MOTION FOR APPOINTMENT OF EXPERT WITNESS**FACTS**

On July 6, 2016, Melissa Thornton, Defendant Robert L. Propp's estranged significant other, was found dead by Defendant. Defendant was subsequently charged with open murder and has been lodged in the Saginaw County Jail since his arrest. The cause of death was determined to be "neck compression" and the only issue for trial, which has been set for February 6, 2018, is the Defendant's intent. Defendant insists that Ms. Thornton's death was an accident, occurring as a result of a sexual practice, known as Erotic Asphyxiation. This is absolutely a real possibility given the fact that testimony at the preliminary exam, indicated that Ms. Thornton and Defendant were sexually engaged during the evening of her death and the activity was loud enough to awaken Ms. Thornton's sister. There were no injuries suffered by Ms. Thornton, other than the neck compression that would indicate any other violence.

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 MICHAEL J. HANLEY
 COUNTY CLERK
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Defense Motion for Appointment of Expert

Erotic Asphyxiation and Auto Erotic Asphyxiation are little known sexual practices that involve depriving the brain of oxygen during intercourse, to intensify the experience. The defense of accidental death relative to these practices have been recognized in Michigan, most recently in a 2016 case, out of Monroe County, involving the murder of Chelsea Bruck. Defendant, Daniel Clay employed the defense, but was nevertheless convicted in May of 2017..

LAW AND ARGUMENT

MCL 775.15 states as follows:

If any person accused of any crime or misdemeanor, and about to be tried therefor in any court of record in this state, shall make it appear to the satisfaction of the judge presiding over the court wherein such trial is to be had, by his own oath, or otherwise, that there is a material witness in his favor within the jurisdiction of the court, without whose testimony he cannot safely proceed to a trial, giving the name and place of residence of such witness, and that such accused person is poor and has not and cannot obtain the means to procure the attendance of such witness at the place of trial, the judge in his discretion may, at a time when the prosecuting officer of the county is present, make an order that a subpoena be issued from such court for such witness in his favor, and that it be served by the proper officer of the court. And it shall be the duty of such officer to serve such subpoena, and of the witness or witnesses named therein to attend the trial, and the officer serving such subpoena shall be paid therefor, and the witness therein named shall be paid for attending such trial, in the same manner as if such witness or witnesses had been subpoenaed in behalf of the people.

In the instant case, Defendant's counsel is still in the process of identifying the appropriate expert relative to the pertinent issue involved, as potential experts have not fit what is

Defense Motion for Appointment of Expert

needed and only deal with the possibility that erotic asphyxiation could be the cause of death forensically. It is hoped that an appropriate expert will be identified within the next week, as defense counsel has been attempting to contact attorneys that have employed this defense, for help in finding an expert in this field. The lack of identifiable experts points to the importance for Defendant to have one. Jurors need to understand that this activity takes place, and why a person would subject themselves to it. Without this information provided by a creditable expert, the Jury could easily conclude that no such sexual activity exists in real life, robbing Defendant of the opportunity to have his defense considered.

In *People v Tanner*, 469 Mich 437 (2003), Michigan's Supreme Court, citing *People v Jacobsen*, 448 Mich 443639 (1995), stated that an "... indigent defendant must demonstrate a "nexus between the facts of the case and the need for an expert. . . ." and must show "... that expert testimony would likely benefit the defense . . ." Id at 442 . . .". The facts of the instant case are that a young woman died of "neck compression", caused by Defendant. At issue is the intent of the Defendant. An expert explaining the little known and less understood sexual phenomenon of erotic asphyxiation, would certainly "benefit the defense". Moreover, the Defendant is indigent and incapable, at this time, of paying the needed expert, once defense counsel is able to identify an appropriate candidate.

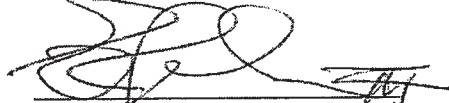
CONCLUSION

Defendant will need an expert to explain that this little known sexual activity, known as erotic asphyxiation, exists, when it is used, the frequency of this practice, the reasons why it is used, and the dangers involved in its use. Without an expert witness Defendant will be at a severe disadvantage, as his defense may not be considered by the Jury, because they don't

Defense Motion for Appointment of Expert

understand what is being claimed. The necessary nexus between the facts of the case and the need for an expert have certainly been satisfied; the victim died from neck compression, erotic asphyxiation involves neck compression, and there was testimony at the preliminary exam that the Victim and Defendant were engaging in sexual activity on the night of the Victim's demise. Defendant is without question indigent. For these reasons and in the interest of Defendant having a fair opportunity to present his defense; Defendant respectfully requests that the Court order the appearance of an identified expert in the area of erotic asphyxiation, and provide funds to help pay for the expert's appearance at trial.

Respectfully submitted;



Edwin G. Johnson III (P74038)
19301 Mt. Zion St.
Cassopolis, MI 49031
(269) 476-2435

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Prosecution's Response to Defense Motion for Appointment of Expert

STATE OF MICHIGAN
IN THE 10TH CIRCUIT COURT FOR THE COUNTY OF SAGINAWPEOPLE OF THE STATE OF MICHIGAN
PlaintiffCase No. 16-042719-FC 4
Hon. DARNELL JACKSON

v

ROBERT L. PROPP
DefendantBLAIR N. STEVENSON (P74911)
Assistant Prosecuting Attorney
111. S. Michigan Ave.
Saginaw, MI 48602
(989) 790-5330EDWIN G. JOHNSON, III (P74038)
Attorney for Defendant
19301 Mt. Zion
Cassopolis, MI 49031
(269) 476-2435FILED
SAGINAW COUNTY, MI
2018 JAN -8 P 1:06
DARNELL J. HANLEY
COUNTY CLERK
MSRESPONSE TO DEFENDANT'S MOTION FOR APPOINTMENT OF EXPERT WITNESS

NOW COME the People of the State of Michigan, by Blair N. Stevenson, Assistant Prosecuting Attorney for the County of Saginaw, State of Michigan and hereby answers Defendant's Motion to Quash/Dismiss by stating as follows:

1. Admitted.
2. Admitted.
3. Neither Admit nor Deny. See brief in Response.
4. Neither Admit nor Deny. See brief in Response.
5. Neither Admit nor Deny. See brief in Response.
6. Neither Admit nor Deny. See berif in Response.

WP

Prosecution's Response to Defense Motion for Appointment of Expert

WHEREFORE, the People respectfully request this Honorable Court deny Defendant's motion for Appointment and Payment of Expert Witness in Criminal Case.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Blair N. Stevenson", with a long horizontal flourish extending to the right. To the right of the signature, the number "P74911" is handwritten.

Blair N. Stevenson (P74911)
Assistant Prosecuting Attorney
111 S. Michigan Ave.
Saginaw, MI 48602
(989) 790-5330

January 8, 2018

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Prosecution's Response to Defense Motion for Appointment of Expert

STATE OF MICHIGAN
IN THE 10TH CIRCUIT COURT FOR THE COUNTY OF SAGINAWPEOPLE OF THE STATE OF MICHIGAN
PlaintiffCase No. 16-042719-FC 4
Hon. DARNELL JACKSON

v

ROBERT L. PROPP
DefendantBLAIR N. STEVENSON (P74911)
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111. S. Michigan Ave.
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(989) 790-5330EDWIN G. JOHNSON, III (P74038)
Attorney for Defendant
19301 Mt. Zion
Cassopolis, MI 49031
(269) 476-2435FILED
CLERK/COUNTY, MI
2018 JAN -8 P 1:06
JOSEPH J. HANLEY
COUNTY CLERK
mBRIEF IN RESPONSE TO DEFENDANT'S BRIEF IN SUPPORT OF MOTION FOR APPOINTMENT OF
EXPERT WITNESSFACTS

On July 6, 2016, Melissa Thornton was found dead at 607 S. Alexander, Saginaw, MI. Victim's boyfriend, Defendant Robert Propp, found the deceased. Det/Tpr. Joseph McMillan interviewed defendant that day at the Saginaw PD. Defendant had a black eye and claimed he got in a fight at Baywood Lounge. (Prelim Exam Vol I. Pg 57, Lines 13 - 25). Defendant, at the first interview, indicated that He and Victim went back to 607 S. Alexander and had sex, then Defendant left the house and on the way out knocked stuff over. (Prelim Exam Vol I. Pg 59,

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Prosecution's Response to Defense Motion for Appointment of Expert
Lines 6-20). Defendant then stated he went back to S. Alexander and pried the back door open with a pry bar, which is inconsistent with his on scene statement. (Prelim Exam Vol I. Pg 59, Lines 6-20). Defendant indicated that he found victim not breathing on the bed. (Prelim Exam Vol I. Pg 61).

After the autopsy indicated that victim died of neck compression, Det/Tpr McMillan interviewed Defendant again on June 7, 2016. (Prelim Exam Vol II. Pg 4). Defendant indicted that he and victim returned from the bar and had sex. (Prelim Exam Vol II. Pg 4, Lines 13 - 25). After having sex, while lying on the bed, Defendant and victim began to argue. (Prelim Exam Vol II. Pg 5). Victim elbowed defendant in the eye while arguing in bed and a physical altercation took place. (Prelim Exam Vol II. Pg 6-7). They both fell off the bed, Victim first and then Defendant on top of Victim. (Prelim Exam Vol II. Pg 7). The dresser fell on top of Defendant and he was kind of seeing stars and was angry. (Prelim Exam Vol II. Pg 7). When Det/Tpr McMillam asked how long he had his hands on victim's throat, the defendant indicated, "It wasn't hands, it was hand." (Prelim Exam Vol II. Pg 7). Defendant indicated that he pressed down with his weight on her throat. (Prelim Exam Vol II. Pg 8). After victim stopped moving, defendant picked her up and placed her on the bed. (Prelim Exam Vol II. Pg 8).

ISSUE

Defendant has requested an expert in Auto Erotic Asphyxiation. However, Defendant has not indicated that this is accepted under Daubert. Defendant indicates a case where this was used as a defense, but does not cite the case. Defendant has not been able to locate an expert in this area, which causes major concerns that this topic is not a recognized area of expertise. In addition since there is no expert, I have no idea what his/her qualifications are or what he/she is even going to testify to.

Prosecution's Response to Defense Motion for Appointment of Expert

This case has been going on since July 8, 2016, and Defendant has not found an expert.

WHEREFORE, the People respectfully request this Honorable Court deny Defendant's motion for Appointment and Payment of Expert Witness in Criminal Case.

Respectfully Submitted,


Blair N. Stevenson (P74911)
Assistant Prosecuting Attorney
111 S. Michigan Ave.
Saginaw, MI 48602
(989) 790-5330

January 8, 2018

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STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF SAGINAW
PEOPLE OF THE STATE OF MICHIGAN
vs. File No. 16-042719-FC-5
ROBERT LANCE PROPP,
Defendant.

MOTIONS IN LIMINE
BEFORE THE HONORABLE DARNELL JACKSON, CIRCUIT JUDGE
Saginaw, Michigan - January 8, 2018
APPEARANCES:
For the People: STEVEN J. FENNER (P29506)
ASSISTANT PROSECUTING ATTORNEY
111 S. Michigan Avenue
Saginaw, MI 48602-2019
(989) 790-5330
For Defendant: EDWIN GRIFFIN JOHNSON, III (P74038)
LAW OFFICE OF EDWIN G. JOHNSON, III
19301 Mount Zion Street
Cassopolis, MI 49031
(269) 476-2435
Reported by: ESTELLE B. PRZYBYLSKI, FCRR, CSR-3789
Official Court Reporter

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I N D E X

WITNESSES: PEOPLE

None.

WITNESSES: DEFENDANT

None.

EXHIBITS:

None.

PAGE

RCVD

* * *

Motion Hearing Transcript

1 Saginaw, Michigan

2 January 8, 2018

3 (Proceedings commenced at 3:48 p.m.)

4 THE COURT: People versus Robert Propp.

5 MR. JOHNSON: Edwin Johnson, III, for
6 Mr. Propp, Your Honor.

7 MR. FENNER: Steve Fenner on behalf of the
8 People.

9 THE COURT: Proceed.

10 MR. JOHNSON: Your Honor, the defense filed
11 two motions, one, a motion in limine to exclude certain
12 evidence. We would argue that this evidence should be
13 excluded as a matter of law as it is hearsay and is --
14 it is not subject to any hearsay exception that's
15 recognized.

16 In fact, as we stated in our motion -- as we
17 stated in our brief, we believe it violates
18 MCL 768.27c(1), which basically lays out what has to
19 happen for this hearsay evidence, and in this case
20 being alleged statements made to others by the victim.
21 And it violates, quite frankly, the last element of
22 this, which is a statement was made to a law
23 enforcement officer. None of the statements that have
24 been attributed to the deceased were made to a law
25 enforcement officer. They've not been able to produce

Motion Hearing Transcript

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1 a law enforcement officer that these statements were
2 made to. We believe that it violates the hearsay --
3 that it is hearsay and shouldn't be allowed.

4 Also, we feel as though it fails even if they
5 claim MRE -- looks like a typo here -- the exception
6 that if a defendant engaged in or encouraged wrongdoing
7 that was intended to and did procure the unavailability
8 of the declarant as a witness. We feel as though this
9 also is in violation of that exception because that's
10 the nature of a trial; what was the intent of this
11 young man when this victim died? There's never been an
12 allegation that he killed her to keep her from saying
13 or testifying to anything.

14 They have argued that we are rearguing a
15 prior motion that was decided by Judge Kaczmarek. When
16 we talked about this in chamber, I acknowledged that
17 this was something that was before Judge Kaczmarek, and
18 that he issued an opinion -- well, he didn't issue an
19 opinion, there was never any hearing on this, and that
20 this wasn't the only thing that we brought in that
21 motion. We also brought in that motion to eliminate
22 some other hearsay testimony or other testimony made by
23 folks who saw things. We thought that it was
24 inappropriate under the court rule. We didn't bring
25 this.

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1 And when the prosecution says we didn't talk
2 about any specific statements, we are talking about
3 specific statements. Any statement that is attributed
4 to the victim by some other witness is what we're
5 objecting to. And we --

6 THE COURT: Wasn't that point covered in
7 front of Judge Kaczmarek, though, Mr. Johnson?

8 MR. JOHNSON: We never had a hearing on it.
9 We wrote a brief. Judge says I'm allowing this
10 before -- I'm allowing the prosecution's motion, and we
11 got -- that was the statement.

12 THE COURT: But wasn't there an evidentiary
13 hearing concerning this --

14 MR. JOHNSON: Absolutely not, Your Honor.

15 THE COURT: -- where witnesses testified?

16 MR. JOHNSON: There was not.

17 THE COURT: No witnesses testified concerning
18 that issue?

19 MR. JOHNSON: No, Your Honor.

20 THE COURT: There were not seven witnesses
21 who testified in front of Judge Kaczmarek on the
22 previous motion?

23 MR. JOHNSON: Not about that issue, Your
24 Honor, no. The issue is whether or not those
25 statements that they testified to --

Motion Hearing Transcript

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1 THE COURT: Right.

2 MR. JOHNSON: It was about those statements.
3 We didn't have -- I filed a motion attacking those
4 statements.

5 THE COURT: Right.

6 MR. JOHNSON: And --

7 THE COURT: What is this motion, though?

8 MR. JOHNSON: This motion is attacking the
9 specific statement as a matter of law.

10 THE COURT: But it's the same statement; is
11 it not?

12 MR. JOHNSON: I'm trying -- I'm trying to
13 remember, Your Honor, what that hearing was about, but
14 it wasn't about whether these statements were
15 admissible or not.

16 THE COURT: Well, that's my understanding
17 after looking at the file, Mr. Johnson. It's the same
18 statements. There are no other statements being
19 attributed to the victim other than the ones that
20 people testified about.

21 MR. JOHNSON: That they testified to at that
22 hearing, yes.

23 THE COURT: Exactly.

24 MR. JOHNSON: All right. Well, we are
25 saying, Your Honor, and that as a matter of law, we

Motion Hearing Transcript

1 filed a motion attacking those statements --

2 THE COURT: Right.

3 MR. JOHNSON: -- after they were made at the
4 hearing. Judge Kaczmarek never had any evidentiary
5 hearing involving our motion attacking those
6 statements. And, in fact, I did not go as far as to
7 attack the statements that I did in my original brief
8 that he decided without a hearing. I'm attacking only
9 the statements made or are attributed to the victim.

10 And, as I said before, evidence of a
11 statement by a declarant is admissible if all of the
12 following apply --

13 THE COURT: I understand.

14 MR. JOHNSON: -- all right? And all of the
15 following don't apply here. So this -- these
16 statements aren't admissible as a matter of law,
17 Your Honor.

18 And the prosecution has not, in response to
19 my motion, presented any law that says otherwise.

20 THE COURT: They're saying that this issue
21 was covered in front of Judge Kaczmarek because we're
22 talking about the same statements.

23 MR. JOHNSON: Your Honor, let me -- let me
24 review what happened.

25 THE COURT: Okay.

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1 MR. JOHNSON: We had a hearing. They made
2 statements that the defense heard for the first time.

3 THE COURT: Okay.

4 MR. JOHNSON: In the context that they made
5 it, we heard for the first time. I filed a motion
6 attacking and asking that those statements be excluded.
7 We never had an evidentiary hearing on that motion.

8 Just before Judge Kaczmarek left the bench,
9 we get an order that says the prosecution's motion is
10 accepted.

11 THE COURT: Okay. We're still talking about
12 the same statements, though, are we not?

13 MR. JOHNSON: We're talking about the same
14 statements, Your Honor, but the prosecution filed a
15 motion that those statements be admitted. We filed a
16 motion in response that those statements not be
17 admitted, and that has never been decided in an
18 evidentiary hearing.

19 THE COURT: Okay. Mr. Fenner?

20 MR. FENNER: Well, our position on this,
21 Judge, is that, first of all, this has been decided
22 already by Judge Kaczmarek.

23 But secondly, this Court indicated on
24 December the 5th that this was not to be a motion for
25 reconsideration, which is basically what's being argued

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1 here right now.

2 Furthermore, this Court indicated at that
3 time that he could file a motion in limine regarding
4 specific statements, not the generalized, all the other
5 statements, which it's basically what's a motion for
6 reconsideration that's being argued here.

7 Judge, our position is that this has been
8 decided already, and that the Court should deny this
9 motion.

10 THE COURT: All right. Let's talk about your
11 other motion, Mr. Johnson.

12 MR. JOHNSON: Okay. May I just -- a couple
13 of words in response to that?

14 THE COURT: All right.

15 MR. JOHNSON: It is specific statements.
16 Every statement made attributed to the victim of this
17 case. It's very specific, none of the others, none of
18 the other hearsay statements, just that one.

19 As far as the other motion, Your Honor, our
20 motion for an appointment of an expert witness, at the
21 time that I filed this motion, we had not identified an
22 expert witness. We have now decided an expert -- found
23 an expert witness.

24 The prosecution's response to our motion is
25 that, basically, we didn't have an expert, therefore,

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1 we didn't need an expert, and seemed to question the
2 existence of this particular phenomena, auto-erotic
3 asphyxiation is what they said in their response. In
4 our case, it's erotic asphyxiation, and both are pretty
5 well recognized scientifically, and we even have seen
6 them in the media. A 1993 movie with Wesley Snipes and
7 Sean Connery called "Rising Sun." Part of the issue
8 was an erotic asphyxiation.

9 Auto-erotic asphyxiation is when people
10 asphyxiate themselves by hanging themselves during
11 masturbation. It's not their intent to die. Their
12 intent is to intensify the experience.

13 Then there's erotic asphyxiation, where
14 partners choke each other to intensify the experience.
15 It's not something that's generally known or
16 understood. I made the mistake of Googling it. I'll
17 never do that again.

18 However, there is history on this. David
19 Carradine died as a result of auto-asphyxiation, the
20 former star of the TV series "Kung Fu." There was a
21 case in Monroe County that I cite in my brief where it
22 was raised as a defense. Unfortunately for the
23 defendant, it didn't explain the broken jaw and the
24 fractured eye socket. But, it was a defense that was
25 raised, and, in fact, the expert that we're calling is

Motion Hearing Transcript

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1 an expert that was consulted as far as that case was
2 concerned.

3 The law says that we have to establish a
4 nexus between the need for that expert and the facts of
5 the case. The facts of the case that are without any
6 argument are that this young woman died as a result of
7 neck compression, and that this young man was involved
8 in that neck compression.

9 What we're saying, there also was no evidence
10 of any defensive wounds that would suggest that there
11 was any fighting or anything going on. This is
12 something that a jury may not understand. Heck, I
13 don't understand it for that matter, and don't feel
14 competent in trying to explain to a jury what happened
15 here.

16 We have a psychologist that can explain it,
17 that it exists as a phenomena in the sexual world like
18 other -- many other things do. And he can explain to
19 us what the reasons are that people do this, why they
20 take this risk, what the risk is. And talking with
21 this gentleman, he told me we have two to three deaths
22 a year here in Michigan on the college campuses as a
23 result of either auto or erotic asphyxiation. So it's
24 something that happens. And the only way we're going
25 to be able to explain to a jury that this happens is to

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1 have an expert sit in front of them and tell them, this
2 is the circumstance, this is the phenomena, this is why
3 they do it, this is what happens as a result, and this
4 is the danger as a result.

5 That's not saying -- telling the jury that
6 that's what happened. That's telling the jury that
7 this is this young man's defense, and this is what he
8 says happened.

9 I'll also tell you that I spoke to Dr. Virani
10 and asked him, under the circumstances of this case,
11 neck compression, could -- could this have been the
12 result of an auto -- or excuse me, erotic asphyxiation?
13 And he said, yes.

14 So, in order for him to be able to present
15 this defense, we got to have someone who can explain it
16 to the trier of fact. And that's not me, Your Honor,
17 and I don't think it's the prosecutor. I think it's a
18 qualified expert who needs to do that. That this is
19 this young man's defense on an open murder charge
20 where, for all practical purposes, his entire life will
21 be affected.

22 THE COURT: All right. Mr. Fenner?

23 MR. FENNER: Well, I'll briefly rely on what
24 Mr. Stevenson's already filed with the Court. But I
25 will indicate that there's nothing I'm aware of that

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1 recognizes it as a defense to murder. So, quite
2 frankly, Judge, this would be brand new territory,
3 nothing that indicates it should be a valid defense.
4 So I suggest this motion is -- should be denied.

5 THE COURT: All right.

6 MR. JOHNSON: Well, Your Honor, I would point
7 out that there was, as I cited in my brief, there was a
8 2016 case out of Monroe County involving Chelsea Bruk,
9 she was the victim, and the defendant was Daniel Clay.
10 He employed this defense, and the jury came back with a
11 guilty plea [sic], and it was just last May of 2017.

12 THE COURT: Mr. Johnson, what's the factual
13 basis in this particular case to allow an expert to
14 testify to something that isn't supported in the record
15 that I've seen?

16 MR. JOHNSON: When you say "not supported in
17 the record," Your Honor, I guess I'm not understanding.

18 THE COURT: You're saying that that's your
19 defendant's defense.

20 MR. JOHNSON: Yes.

21 THE COURT: There's nothing in the record
22 that shows that.

23 MR. JOHNSON: I don't know where in the
24 record he would have laid out that defense, Your Honor.

25 THE COURT: Exactly. There's nothing there

Motion Hearing Transcript

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1 that says that. He gave two statements in this
2 particular case, neither of them mentioned that
3 possibility.

4 MR. JOHNSON: I understand that, Your Honor,
5 but that is what his claim is. In fact, the reason
6 that he gives, Your Honor --

7 THE COURT: Listen to my question, though.
8 That's his claim. And he gave two statements that he
9 didn't claim that in either one of them.

10 MR. JOHNSON: I understand, Your Honor, and
11 he didn't claim it for either one of them because he
12 was embarrassed, and embarrassed for the victim.

13 THE COURT: Okay.

14 MR. JOHNSON: It was only after I sat down
15 and talked to him and said, now, tell me what happened
16 here, here, here. Why? And the big question for me
17 was why, when you laid her on the bed, and that's in
18 the record --

19 THE COURT: Um-hum.

20 MR. JOHNSON: -- and you say that she was
21 breathing, but you laid her on the bed and she was
22 unconscious, why wouldn't you have called the police at
23 that time? And his response to me, Your Honor, and I
24 don't mean to litigate here, was that it wasn't unusual
25 for her to pass out as a result of this. And that's

Motion Hearing Transcript

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1 something that we need this expert -- he's going to
2 testify to -- I'll tell you right up front, and we need
3 this expert to give some validity to, that that happens
4 more often than not in erotic asphyxiation, the person
5 being asphyxiated often passes out.

6 I asked Dr. Virani, when he says he laid her
7 on the bed and she was breathing, was that possible?

8 Dr. Virani's response to that was that the
9 body does some very strange things under these
10 circumstances that would lead a lay person to believe
11 that they were breathing when he laid her on the bed.

12 There are -- I would suggest to you, also,
13 Judge, that while there's no particular thing in the
14 record where he recognized where he did this, there's
15 also nothing in the record that would suggest that
16 there's any evidence of any injuries to this -- to this
17 young woman other than the neck compression that could
18 be attributed to some force or violence.

19 THE COURT: Now, you realize that his
20 statements to police, he indicates that he was -- had
21 his hand around her neck and put his weight on it at
22 the time.

23 MR. JOHNSON: I understand that.

24 THE COURT: That's his statement.

25 MR. JOHNSON: That's his statement to the

Motion Hearing Transcript

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1 police, Your Honor. But his statement to the police
2 was when the dresser fell on them, in getting up, his
3 hand --

4 THE COURT: He didn't say "getting up."

5 MR. JOHNSON: Pardon me?

6 THE COURT: There was no "getting up."

7 MR. JOHNSON: That's not what -- yes, there
8 was, Your Honor.

9 THE COURT: He didn't say "getting up."

10 MR. JOHNSON: He didn't say those words.

11 THE COURT: Right, so you can't say them if
12 he didn't say them.

13 MR. JOHNSON: But he didn't -- what did he
14 say, Your Honor?

15 THE COURT: That his hand was on her neck and
16 he put his weight on it at that time.

17 MR. JOHNSON: And he pushed -- and he pushed
18 up to get up. That's what he said and that's what's in
19 the record, Your Honor.

20 THE COURT: That's right. That's right.
21 Okay.

22 MR. JOHNSON: So, and either way, it's our
23 defense, Your Honor, and we should have a right to
24 present that defense, particularly since there is a
25 nexus between the facts of the case and the need for

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1 this expert witness. And the nexus is that this woman
2 died from neck compression. There's nothing that
3 suggests that there was any violence beyond that.

4 He claims that it was as a result of erotic
5 asphyxiation, and we need an expert that can explain
6 that phenomena to the jury so they can determine
7 whether it's a real issue or not, whether it's a real
8 defense or not. It's not for the prosecutor and not
9 for me.

10 THE COURT: All right. Well, I'll tell you
11 both at this time I'm going to deny both motions, and I
12 can give you a written opinion indicating why I'm
13 denying both motions.

14 MR. JOHNSON: I would appreciate that,
15 Your Honor.

16 THE COURT: That will be coming forthwith.

17 MR. JOHNSON: Thank you, Your Honor.

18 THE COURT: Thank you both.

19 MR. JOHNSON: Now, let me get an explanation,
20 Your Honor. Are you denying not only paying for the
21 expert witness but our ability to call this witness?

22 THE COURT: Yes.

23 MR. JOHNSON: Okay. Thank you, Your Honor.

24 THE COURT: All right.

25 (Proceedings concluded at 4:05 p.m.)

Motion Hearing Transcript

1 STATE OF MICHIGAN)
 2) SS
 3 COUNTY OF SAGINAW)
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 7

8 I certify that this transcript is a complete, true
 9 and correct transcript of the proceedings and testimony
 10 taken in this case before the Honorable Darnell Jackson,
 11 Circuit Judge, in Saginaw, Michigan.
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16 
 17 ESTELLE B. PRZYBYLSKI, CRR, RMR, CSR-3789
 18 Official Court Reporter
 19 111 South Michigan Avenue
 20 Saginaw, MI 48602
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MR. FENNER: [3] 3/7 8/20 12/23 MR. 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Opinion and Order Denying Appointment of Expert

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF SAGINAW

PEOPLE OF THE STATE OF MICHIGAN,

File No. 16-042719-FC-5

Hon. Darnell Jackson

Plaintiff,

V

ROBERT LANCE PROPP,

Defendant.

Blair Stevenson (P74911)
 Assistant Prosecuting Attorney
 Saginaw County Prosecutor's Office
 111 S. Michigan Avenue
 Saginaw, MI 48602

Edwin G. Johnson, III (P74038)
 Attorney for Defendant
 19301 Mt. Zion
 Cassopolis, MI 49031

FILED
 SAGINAW COUNTY COURT
 2018 JAN -9 P 4:23
 MICHAEL J. HANLEY
 COUNTY CLERK
 BY DEPUTY CLERK

OPINION AND ORDER OF THE COURT

At a session of said Court held in the Courthouse located in the City and County of Saginaw, State of Michigan, on this 9th day of January, 2018.

PRESENT: THE HONORABLE DARNELL JACKSON, CIRCUIT JUDGE.

I. INTRODUCTION

This cause is presently before the Court on "Defendant's Motion in Limine," and "Defendant's Motion for Appointment and Payment of Expert Witness in Criminal Case," both filed on December 20, 2017. For the reasons stated herein, the Court will deny both Motions.

II. BACKGROUND

Following a two-part preliminary examination, Defendant was bound over for trial on one count of open murder for the July 6, 2016 death of Melissa Thornton ("the victim"). Prior to her death, the victim had been involved in a tumultuous dating relationship with Defendant which produced a minor child. In March 2016, the victim and the minor child moved out of

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Defendant's residence and began living at 607 S. Alexander with the victim's sister. (PE Trans, Vol I at 22-24). On the morning of the victim's death, Defendant called 911 to report that he had found the victim unresponsive in her bed at 607 S. Alexander. When the police arrived, Defendant was frantically performing CPR on the deceased victim. (PE Trans, Vol I at 5-11). An autopsy revealed that the victim died by homicide from neck compression. (PE Trans, Vol I at 4).

At the preliminary examination, the prosecution offered evidence of statements made by Defendant regarding the victim's death. On the day of the murder, Defendant told police that he had met up with the victim and her sister on the previous evening at a local bar. Defendant stated that he and the victim left the first bar together, and went to a second bar, before eventually returning to 607 S. Alexander where they had sex in the victim's bedroom. Defendant further stated that he left the residence after the victim fell asleep. According to Defendant, he decided to return to the residence the next morning when he could not reach the victim on her cell phone. Defendant told the police that he used a pry bar to gain entry to the residence through a rear door, and then went into the victim's bedroom where he found her unresponsive body. After discovering the victim, Defendant telephoned his mother before calling 911. When the police inquired about a black eye that Defendant had, Defendant indicated that he had gotten into a bar fight with another man the night before. (PE Trans, Vol I at 56-61).

Defendant was also interviewed by police on July 7, 2016, the day after the murder. During this interview, Defendant stated that after he and the victim had sex, they got into a heated verbal argument over another woman. Defendant then told the police that his black eye was caused by the victim elbowing him in the eye while they were still in her bed. (PE Trans, Vol II at 5-7). According to Defendant, he and the victim then engaged in a physical altercation that caused both of them to fall off of the bed onto the floor. (PE Trans, Vol II at 7). Defendant stated that the victim fell first, he fell on top of her, and a dresser fell on top of him. When an investigating officer asked Defendant how long he had his hands on the victim's throat, Defendant responded "[i]t wasn't hands, it was hand[.]" (PE Trans, Vol II at 7). Defendant then admitted that he placed his left hand on the victim's throat and used his body weight to apply pressure. (PE Trans, Vol II at 7-8). Defendant further stated that after he realized the victim was unconscious, he placed her back in her bed, covered her up, and left the residence. (PE Trans, Vol II at 8).

Following bind over, the case was originally assigned to the now retired Judge Robert L. Kaczmarek. On July 28, 2017, the parties appeared before Judge Kaczmarek for an evidentiary hearing on the People's Motion in Limine to Admit Prior Acts of Domestic Violence. During the evidentiary hearing, the prosecution called seven witnesses to testify concerning prior acts of domestic violence perpetrated by Defendant. The first witness, Defendant's former wife, testified about prior acts of domestic violence that Defendant perpetrated against her during the course of

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their marriage and subsequent separation. The other six witnesses testified about prior acts of domestic violence, including many instances of stalking behavior, perpetrated by Defendant towards the victim. The testimony of these six witnesses fell into two categories: testimony of prior domestic violence acts based on the personal knowledge of the witness, and testimony of prior domestic violence acts based on statements the victim made to the witness.

Following the evidentiary hearing, both parties submitted supplemental briefs outlining their respective positions concerning the admission of this evidence at trial. Subsequently, in an Opinion and Order dated October 26, 2017, Judge Kaczmarek granted the People's Motion in Limine to Admit Prior Acts of Domestic Violence in its entirety, including the evidence based on the victim's statements to various witnesses.

Due to Judge Kaczmarek's recent retirement, the case was reassigned to this Court for trial. Following reassignment, Defendant filed the instant pretrial Motions which are discussed below.

III. DISCUSSION

A. Defendant's Motion in Limine

In this Motion, Defendant asks the Court to prohibit the prosecution from offering any evidence at trial related to statements made by the victim concerning prior acts of domestic violence by Defendant. Defendant argues that such statements are inadmissible because they do not meet the statutory criteria set forth in MCL 768.27c.¹

¹ MCL 768.27c provides in relevant part as follows:

- (1) Evidence of a statement by a declarant is admissible if *all* of the following apply:
 - (a) The statement purports to narrate, describe, or explain the infliction or threat of physical injury upon the declarant.
 - (b) The action in which the evidence is offered under this section is an offense involving domestic violence.
 - (c) The statement was made at or near the time of the infliction or threat of physical injury. Evidence of a statement made more than 5 years before the filing of the current action or proceeding is inadmissible under this section.
 - (d) The statement was made under circumstances that would indicate the statement's trustworthiness.
 - (e) *The statement was made to a law enforcement officer.*

(Emphasis added). In this case, it is undisputed that statements at issue were not made to law enforcement.

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As Defendant seemingly acknowledges on the first page of his "Brief in Support of Motion in Limine to Exclude Evidence," Judge Kaczmarek previously decided this issue against Defendant in his October 26, 2017 Opinion and Order which granted the People's Motion in Limine to Admit Prior Acts of Domestic Violence in its entirety. Thus, while entitled "Motion in Limine," Defendant's instant Motion is actually one for reconsideration of Judge Kaczmarek's previous ruling.

A motion for reconsideration in a criminal case is governed by MCR 2.119(F). See *People v Walters*, 266 Mich App 341; 700 NW2d 424 (2005). Pursuant to MCR 2.119(F)(1), "a motion for rehearing or reconsideration of the decision on a motion must be served and filed not more than 21 days after entry of the order deciding the motion." MCR 2.119(F)(3) further provides that "[g]enerally, and without restricting the discretion of the court, a motion for rehearing or reconsideration which merely presents the same issues ruled on by the court, either expressly or by reasonable implication, will not be granted." Instead, it is incumbent upon the moving party to "demonstrate a palpable error by which the court and the parties have been misled and show that a different disposition of the motion must result from correction of the error." MCR 2.119(F)(3). "[T]he 'palpable error' requirement of MCR 2.119(F)(3) merely provides guidance to the trial court in deciding reconsideration motions and does not operate to restrict the trial court's discretion in determining whether a grant of reconsideration is appropriate in a particular case." *Fetz Engineering v Ecco Systems*, 188 Mich App 362, 373; 471 NW2d 85 (1991), vacated on other grounds 439 Mich 977; 483 NW2d 619 (1992).

Pursuant to MCR 2.119(F)(1), Defendant had 21 days from October 26, 2017 to file a motion for reconsideration of Judge Kaczmarek's Opinion and Order. Contrary to the requirements of this rule, Defendant did not file the instant Motion seeking reconsideration until December 20, 2017, 55 days after the date of entry of Judge Kaczmarek's original Opinion and Order. The Michigan court rules do not provide for the filing of delayed motions for rehearing or reconsideration. See *Ramsey v Pontiac*, 164 Mich App 527, 538; 417 NW2d 489 (1987). Accordingly, Defendant's untimely request for reconsideration of Judge Kaczmarek's October 26, 2017 Opinion and Order is barred by MCR 2.119(F)(1).

Moreover, in his instant Motion, Defendant has failed to demonstrate that Judge Kaczmarek's original ruling was based on a palpable error. Instead, in his current Motion, Defendant rehashes the same argument that was previously presented to, and rejected by, Judge Kaczmarek.

In his current Motion, Defendant argues, just as he did in his supplemental brief submitted to Judge Kaczmarek, that the victim's statements regarding prior acts of domestic violence are inadmissible under MCL 768.27c. However, the prosecution has not offered the victim's statements under MCL 768.27c. Instead, the prosecution argues that the victim's

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statements regarding prior acts of domestic violence are admissible at trial under MCL 768.27b.² As support for this position, the prosecution cites *People v Gamet*, unpublished opinion per curiam of the Court of Appeals, issued February 11, 2016 (Docket No. 324181), wherein the Court of Appeals affirmed the trial court's decision to admit the murder victim's statements to relatives and his social worker describing prior domestic violence under MCL 768.27b. After having reviewed the Court of Appeals' analysis in *Gamet*, this Court does not find that Judge Kaczmarek committed a palpable error by ruling in favor of the prosecution on this issue. Accordingly, Defendant's Motion in Limine is denied.

B. Defendant's Motion for Appointment and Payment of Expert Witness in Criminal Case

Defendant's second Motion asks this Court to authorize funds for the appointment of a defense expert witness to testify concerning the subject of erotic asphyxiation. Defendant maintains that such expert testimony is required to support his theory that the victim's death was accidentally caused by this sexual practice.

Defendant's request for appointment of expert is governed by MCL 775.15.³ Pursuant to this statute, the trial court is not required to authorize funds for the appointment of a defense expert on demand. *People v Tanner*, 469 Mich 437, 442; 671 NW2d 728 (2003). Instead, to obtain an appointed expert, an indigent defendant must show a nexus between the facts of the case and the need for an expert. *Id.* at 443. It is not sufficient for the defendant "to show a mere possibility of assistance from the requested expert." *Id.* Thus, where the defense fails to show an indication that expert testimony would likely benefit the defense, the trial court does not abuse its discretion in denying a motion for appointment of an expert. *Id.*

² MCL 768.27b(1) provides that: "[e]xcept as provided in subsection (4), in a criminal action in which the defendant is accused of an offense involving domestic violence, evidence of the defendant's commission of other acts of domestic violence is admissible for any purpose for which it is relevant, if not otherwise excluded under Michigan rule of evidence 403."

³ MCL 775.15 provides:

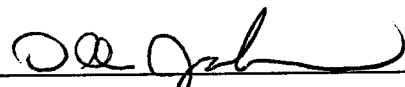
If any person accused of any crime or misdemeanor, and about to be tried therefor in any court of record in this state, shall make it appear to the satisfaction of the judge presiding over the court wherein such trial is to be had, by his own oath, or otherwise, that there is a material witness in his favor within the jurisdiction of the court, without whose testimony he cannot safely proceed to a trial, giving the name and place of residence of such witness, and that such accused person is poor and has not and cannot obtain the means to procure the attendance of such witness at the place of trial, the judge in his discretion may, at a time when the prosecuting officer of the county is present, make an order that a subpoena be issued from such court for such witness in his favor, and that it be served by the proper officer of the court. And it shall be the duty of such officer to serve such subpoena, and of the witness or witnesses named therein to attend the trial, and the officer serving such subpoena shall be paid therefor, and the witness therein named shall be paid for attending such trial, in the same manner as if such witness or witnesses had been subpoenaed in behalf of the people.

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Here, Defendant has failed to establish the requisite nexus between the facts of the case and his purported need for an expert. In order for expert testimony to be admissible, the facts on which an expert bases his or her opinion must be in evidence. See MRE 702 & 703. In this case, Defendant fails to identify facts that would support the admission of expert testimony concerning the subject of erotic asphyxiation at trial. Although there is evidence to indicate that the victim had sex with Defendant prior to her death, there is no evidence that her death occurred in the course of this sexual activity as a result of erotic asphyxiation. On the contrary, in his July 7, 2016 police interview, Defendant admitted that he placed his left hand on the victim's throat and pressed down with his body weight during a physical altercation with the victim that took place after they had sex. Additionally, Defendant's admission that he suffered a black eye during this physical struggle with the victim further undermines his theory that the victim died by erotic asphyxiation during consensual sex. Therefore, on this record, the Court finds that Defendant has failed to show how an expert in the area of erotic asphyxiation "would likely benefit his defense." *Id.* at 443. Accordingly, Defendant's Motion for Appointment and Payment of Expert Witness in Criminal Case is also DENIED.

NOW, THEREFORE, IT IS HEREBY ORDERED that Defendant's Motion in Limine is DENIED;

IT IS FURTHER ORDERED that Defendant's Motion for Appointment and Payment of Expert in Criminal Case is also DENIED.


DARNELL JACKSON
CIRCUIT JUDGE

1 DIRECT EXAMINATION 181a
2 BY MR. STEVENSON:
3 Q Good morning. Can you please state and spell your name
4 for the record?
5 A Good morning. Yes, my first name is Kanu, K-a-n-u, last
6 name is Virani, V-i-r-a-n-i.
7 Q And Dr. Virani, who is your employer and how so are you
8 employed?
9 A I'm employed by the Oakland County Medical Examiner's
10 office, but I also provide the forensic pathology
11 services to the other counties, including Saginaw.
12 Q And have you had any specialized education and training
13 to be a forensic pathologist?
14 A Yes. I finished medical school in India, that was in
15 1979. Did one year of internship in India. Came here in
16 1981, that's in United States, did four years of training
17 in pathology at Northeastern University in Ohio. After
18 that I did one year of special training or fellowship at
19 NYU in New York City Medical Examiner's office, and that
20 was completed in 1987 -- '88, sorry. And since then, I
21 have been working as a forensic pathologist.
22 Q And how many autopsies have you, approximately, performed
23 over the course of your career?
24 A I think last count I had was about 18,000, or so.
25 Q And have you been certified as an expert in forensic

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1 pathology in the 10th Circuit Court, Saginaw County?
2 A Yes.
3 Q Okay.
4 MR. STEVENSON: The People move to qualify
5 Dr. Virani as an expert witness in forensic pathology.
6 MR. JOHNSON: No objection.
7 THE COURT: He will be so recognized.
8 MR. STEVENSON: Thank you, Your Honor.
9 BY MR. STEVENSON:
10 Q Dr. Virani, I want to draw your attention to July 7th of
11 2016. Did you perform an autopsy on a Melissa Thornton?
12 A Yes, I did.
13 Q And can you explain that process to the jury?
14 A Well, the autopsy is a medical procedure which is done by
15 the medical doctor, usually the pathologist, and many a
16 time by forensic pathologists in these kind of cases.
17 The main idea to get the autopsy is to find out the cause
18 of death. At the same time, if there are any additional
19 finding or injuries encountered during the autopsy. So
20 that include the examination of the entire body, outside
21 and inside, including dissection of all the organs. And
22 also drawing the blood and other fluid for toxicology, so
23 that we can find out what person had at the time of death
24 in the blood.
25 Upon getting all those results, a written

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1 report is produced, which is the autopsy report which
2 describe all the findings.
3 Q And what were your findings in this case?
4 A In this particular finding in this case, my main finding
5 were that she had neck compression. She had the small
6 area of injuries which I could see from outside, like a
7 small bruise on the right side of the lower neck -- upper
8 neck. Multiple bruises on the left side of the lower
9 neck. There was a bleeding behind the skin just in the
10 midline of below the chin. There were large area of
11 bleeding behind the larynx, we call it the voice box. So
12 voice box sits in the throat, and vertebrae, the bones
13 are behind. So when there is a bleeding between that
14 soft tissue, that's what she had. And on top of that,
15 she also had some pinpoint bleeding, which are also known
16 as petechial hemorrhage, in both eyes, which are strong
17 indication of asphyxia and death.
18 Other than those areas in the neck and face,
19 she also had some bruises outside on the body, like a
20 bruise on her front of the left upper thigh. There were
21 some scratches on both knees and the right foot, left
22 leg, back of the left wrist, back of the right hand.
23 Q Doctor, were those bruises, could you tell how old they
24 were, if they were healing, if they were fresh, the
25 nature of them?

8

1 A All injuries I encountered were fresh. So there were no
2 healing sign whatsoever.
3 Q And how do you determine that they were fresh?
4 A The way that's how we go through the training in
5 pathology, to learn and understand.
6 Bleeding was all fresh. When the bruises, as
7 they heal, they change the color. You might have
8 encountered sometime that you sustain the bruise, and
9 then it changes the color like green and purple and
10 ultimately the sepia. The person is alive, that healing
11 process goes on and should be able to demonstrate those
12 changes, and none of those changes were identifiable in
13 this case.
14 Q So, essentially, you said, if I understand correctly,
15 since the person is deceased, there's no healing?
16 A That's correct.
17 Q Now can you describe the rigor mortis?
18 A Yes. Rigor mortis is a fancy word for stiffness in the
19 muscles which happens after death. It's a normal
20 phenomenon. Anybody who has a muscle in the body, when
21 person die, there will stiffness in those muscles.
22 Because there are some chemicals which are produced that
23 are already there and produced after death makes the
24 muscle cell to go stiff, and so stiffness starts just
25 after death. But we start appreciating, when we are

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1 examining, in the smallest muscle, like eyelid and lips
2 and fingers, after about two, three hours. And as time
3 goes by, the stiffness progresses toward the bigger
4 muscles, including the forearm and arm muscles and hip,
5 and between about 12 to 14 hours, entire body gets stiff
6 at room temperature. And that stiffness stays there for
7 about two to three days and then start descending because
8 the decomposing begins after the fourth day at room
9 temperature, so the stiffness goes out of it.
10 Q So you indicated room temperature. If a room was
11 approximately 72 degrees and a person was deceased for
12 about six hours, would you anticipate rigor mortis in
13 their arms and limbs?
14 A Yes, definitely. Like I said, two to three hours in the
15 small joint, and then the next hour or so it should
16 progress to the little bigger joints, yes.
17 Q Can you describe livor mortis, please?
18 A Livor mortise is another fancy word for the pooling of
19 the blood by the gravity. When heart stop pumping, blood
20 still in the body remains liquid for a while. And when
21 it stays liquid and person is not moving, the gravity
22 pulls toward the lowest portion of the body. So pooling
23 of that blood is call livor mortis. Timetable again
24 exactly like rigor mortis. It starts after birth -- I'm
25 sorry, after death, and we appreciate it within 2 to 3

10

1 hours. But the livor mortise stays there until body
2 starts decomposing.
3 Q Now you mentioned a term of petechia that you observed in
4 Melissa Thornton's eyes; correct?
5 A Yes.
6 Q And how does petechia occur? What causes that?
7 A Petechial hemorrhage is an indication of asphyxia, like I
8 say. What happens, when the oxygen level start declining
9 in the blood, the end of the blood vessels, we call them
10 capillaries, because of the low oxygen tension, the
11 permeability of the wall, it goes up. That means that
12 some of the red cells start getting out of the capillary
13 into the surrounding tissue. When red cells or blood
14 start getting out at the end of the capillary, it produce
15 a pinpoint bleed. When oxygen level decline in a
16 particular area, particularly in this case that because
17 of the neck compression, the oxygen level decline in the
18 blood on the face and the brain area. And that's why
19 they were present in the eyes, and brain was also a
20 little bit darker appearing when I examined it.
21 Q If someone dies from neck compressions, about how long
22 would it take those -- strike that.
23 If someone is being choked, how long does
24 someone have to be choked to die from that?
25 A Choking, or we call it strangulation, if it is by the

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1 tight ligature mark and there is no escape of the blood
2 at all up or down, then it takes little shorter time.
3 But if the strangulation is done by the other human,
4 human hand or whatever part, then because of the struggle
5 between two humans, there is going to be some increase
6 and decrease pressure around the neck, so some blood
7 escape up and down both ways. That's why it takes about
8 two to three minutes for person to pass out during that
9 part and another minute or so if person held the pressure
10 without releasing it, then the person dies within short
11 time after that.
12 Q So if it was -- if it was a, for lack of a better term,
13 if someone was perfectly strangled, there was no blood
14 flowing back or forth, or air, it would take about how
15 long? One minute? Is that what you indicated?
16 A Minute or so to make -- render person unconscious, and
17 another minute or so to really die from that.
18 Q Now you indicated that just by someone's hand, since
19 blood can go back and forth, it will take over a minute,
20 and then once the person passes out, did you indicate
21 that they still have to be strangled in order to kill
22 that person?
23 A Because of the pressure, person passes out, and pressure
24 is released, the blood flow resumes and then person
25 becomes conscious again. Because brain has about four or

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1 five minutes of oxygen reserve to work on it. During
2 that time, blood flow comes back, then person gets up and
3 would not die.
4 So you have to continue to apply pressure until
5 brain reserve of oxygen is completely depleted so that
6 the brain cannot come back to the normal function.
7 Q Now if someone was being strangled, and it was a fierce
8 jolt, like something fell, did you see signs of that in
9 this situation?
10 A If there is an impact on the neck, just hard impact and
11 nothing, no more pressure, of course you don't see the
12 strangulation. You see the bleeding, either outside or
13 inside or both, or you see the breaking of the cartilage,
14 which is we call it Adam's apples and small bones, but a
15 person is not going to die immediately because of that.
16 There might be some complications coming as a
17 result if there is the fracture of the larynx, it would
18 bleed in the airways and make the airways are not
19 preserved, then person may end up having the blood in the
20 lungs, we call it aspiration, and person may end up dying
21 because of that, but not the strangulation.
22 Q So did you see any evidence of a hard blow, a fracture of
23 the larynx as you spoke of?
24 A No.
25 Q No evidence, okay.

13

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1 When you indicate neck compression, is that
2 another term, a scientific term for choking or
3 strangling?
4 A Yes, it is the pressure. The reason I just call it neck
5 compression, the general term, because I could not
6 identify any ligature mark. I could not identify any
7 particular injuries on the front and side of the neck
8 where normally some people are strangled with the human
9 hand I usually see it. I do not see that specific way of
10 identifying that, yes, this was done by one hand with the
11 pressure in the front and both sides. This was a
12 pressure applied on the neck way up in the front but a
13 little bit on both side and also on the lower part of the
14 neck on the left side.
15 Q Now as a part of your process, do you usually request
16 labs be done?
17 A Yeah, we usually draw the blood and send it to be lab for
18 toxicology, yes.
19 Q And did you have a chance to review that?
20 A Yes.
21 Q And do you recall the results of that?
22 A Yes. In this case, only alcohol was present at the time
23 of her death, and alcohol level was 0.066. None of the
24 drug were found in her system at the time of death.
25 Q No drugs were found in her system?

14

1 A Correct.
2 Q And alcohol at .066, would that -- does that affect your
3 analysis at all?
4 A As far as the cause of death or injuries, no.
5 Q So your cause of death in this case is?
6 A Neck compression.
7 Q And the manner of death?
8 A Homicide.
9 MR. STEVENSON: Thank you. No further
10 questions.
11 THE COURT: Questions, Mr. Johnson.
12 MR. JOHNSON: Thank you, Your Honor.
13 CROSS-EXAMINATION
14 BY MR. JOHNSON:
15 Q Dr. Virani, as I understand your testimony, you said that
16 there were no ligature marks and you didn't see the type
17 of injuries that you would normally see in strangulation
18 when someone is forcibly strangling someone?
19 A Well, yeah, the first part is correct, there were no
20 ligature marks.
21 Second part, I tried to explain that normally
22 when someone is strangling, put the hand on the front and
23 side and try to put the pressure, and on those areas I
24 see the normal pattern of injury, which were not present
25 in this case.

15

1 Q Okay. And that normal pattern that you see is usually
2 because the victim is fighting back and forth; is that
3 correct?
4 A Oh, yes.
5 Q Did you see any signs of what you would characterize as
6 defensive wounds on this young lady?
7 A She did have some scratch marks on back of the right
8 hand.
9 Q Mm-hmm?
10 A There was a little scratch mark on the back of the left
11 wrist. Those are considered, whenever, those injuries
12 are considered as defensive wound. They were minor, but
13 they were present.
14 Q They were minor?
15 A Yes.
16 Q You actually described them as superficial in your
17 report --
18 A Yes.
19 Q -- did you not?
20 A Definitely.
21 Q All right. Are you at all familiar with -- well, let me
22 ask you this first. Is it possible that someone would
23 pick this young lady up and place her on the bed and
24 believe that she is breathing?
25 A After this neck compression?

16

1 Q Yes?
2 A I don't think so. When the process was completed, she
3 should not be breathing.
4 Q She shouldn't be breathing. But doesn't the body do some
5 things sometimes that would cause a layperson to believe
6 that this person is breathing?
7 A Well, there are so many myths in the society that people
8 believe. But normally I don't know what one person
9 perceive as somebody breathing or not, but as a medical
10 person, or as a normal person who would see that person
11 is breathing or not, she should not be breathing. That
12 much I can tell you.
13 Q Are you familiar with a phenomenon called erotic
14 asphyxiation?
15 A Yes.
16 Q Is it possible, and I know you weren't there, but given
17 the circumstances and what you see here, is erotic
18 asphyxiation a possibility in this case?
19 A If during the erotic asphyxiation, when person is
20 undergoing asphyxiation process and passes out, the other
21 person usually releases the pressure and then, like I
22 say, the brain has still reserve energy to come back.
23 Q Mm-hmm.
24 A So if the pressure is not maintained a minute or two
25 after that unconscious state, then person would not die.

17

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1 So most of the time erotic asphyxiation death does not
 2 happen unless person holds the pressure longer than
 3 normally supposed to be.
 4 Q Okay, so let me ask you this. If there is evidence that
 5 they fell out of the bed and something fell on them, and
 6 the person performing the erotic asphyxiation pushed up
 7 with their hands, or their hand on their neck, to get the
 8 dresser off and get them off, would it be possible that
 9 the victim would die as a result?
 10 A If the situation were the pressure cannot be released
 11 because of some external factors like you describe.
 12 Q Mm-hmm?
 13 A Yeah, it's possible.
 14 MR. JOHNSON: Thank you very much. No further
 15 questions.
 16 THE COURT: Anything else, Mr. Stevenson?
 17 MR. STEVENSON: Briefly, Your Honor, pursuant
 18 to a discussion, the People move to admit photos of
 19 injuries that Dr. Virani described as people proposed
 20 Exhibit 26A through I.
 21 THE COURT: Mr. Johnson?
 22 MR. JOHNSON: No objections, Your Honor.
 23 THE COURT: 26A through I will be admitted.
 24 MR. STEVENSON: Thank you. Nothing further.
 25 THE COURT: Thank you, Doctor.

18

1 Call your next witness, Mr. Stevenson.
 2 MR. STEVENSON: People call Angela Thornton.
 3 MS. LEWIS: Please raise your right hand,
 4 ma'am. Do you solemnly swear that the testimony you
 5 shall give in this cause here pending shall be the truth,
 6 the whole truth, and nothing but the truth, so help you
 7 God?
 8 THE WITNESS: Yes, I do.
 9 MS. LEWIS: You can take the witness stand.
 10 ANGELA THORNTON
 11 Being first duly sworn at 9:52 a.m., testified under oath
 12 as follows:
 13 DIRECT EXAMINATION
 14 BY MR. STEVENSON:
 15 Q Good morning. Can you please state and spell your name
 16 for the court?
 17 A Angela Thornton, A-n-g-e-l-a, T-h-o-r-n-t-o-n.
 18 Q And back in 2016, where were you living at around
 19 July 7th, July 6th?
 20 A 607 South Alexander.
 21 Q And it's my understanding you're the sister of Melissa
 22 Thornton?
 23 A Yes.
 24 Q Do you have another sister as well; is that correct?
 25 A Yes, I do. Stefanie.

19

1 Q Okay. Did Melissa have a nickname?
 2 A Missy.
 3 Q Is that what she went by?
 4 A Yes.
 5 Q Do you know a Robert Propp?
 6 A Yes, I do.
 7 Q Do you see him in the court today?
 8 A Yes, I do.
 9 Q Can you please identify him, tell me where he is seated
 10 and what he is wearing?
 11 A He is wearing a suit and a blue shirt and a tie.
 12 MR. STEVENSON: May the record reflect ID of
 13 the defendant, Your Honor?
 14 THE COURT: It shall reflect.
 15 MR. STEVENSON: Thank you.
 16 BY MR. STEVENSON:
 17 Q Now at some point in time, did your sister Missy move in
 18 with you?
 19 A Yes, it was around March 3rd, 2016.
 20 Q And do you recall why she moved in with you around that
 21 time?
 22 A Because her and Robert broke up.
 23 Q What was the nature of the relationship at that time?
 24 A It was troubled. There was money troubles, and he had a
 25 drug addiction, and some issues with his children.

20

1 Q Okay. So she decided to move in with you?
 2 A Yes.
 3 Q When she moved in with you, was the relationship ended at
 4 that point?
 5 A Yes, it was.
 6 Q Who ended the relationship?
 7 A Missy did.
 8 Q How did the defendant react initially?
 9 A He seemed happy about them breaking up.
 10 Q And what do you mean? Why?
 11 A He was laughing, giggling, talked about his newfound
 12 freedom.
 13 Q And would he come over to your house, or would you go
 14 over to his house?
 15 A I would see him at his shop.
 16 Q He had an auto shop; is that correct?
 17 A Yes, he did.
 18 Q Do you recall where that was?
 19 A It was on Bay Road by Jack's.
 20 Q Okay. At some point did that newfound freedom or his
 21 attitude change?
 22 A Yeah, it was almost a week later.
 23 Q And what did you notice at first?
 24 A He started coming over a lot, stating that he wanted to
 25 check on Melissa and Willow's well-being.

21

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2 happen unless person holds the pressure longer than
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21 attitude change?
22 A Yeah, it was almost a week later.
23 Q And what did you notice at first?
24 A He started coming over a lot, stating that he wanted to
25 check on Melissa and Willow's well-being.

21

1 Q Would he come over with permission or unannounced?
 2 A Unannounced.
 3 Q How often?
 4 A A couple of times a week.
 5 Q Okay. What did Melissa think of that?
 6 A She would be highly annoyed.
 7 Q Would she make any comments?
 8 A She would sigh, or huff.
 9 Q Now as time went on, how did the defendant's behavior
 10 adjust to the breakup?
 11 A Um, it escalated quite fast to him coming by the house,
 12 sitting outside the house, squealing his tires by the
 13 house. When we would go away, he would nonstop text, or
 14 call, or show up to where we were.
 15 Q Would he be invited, or just show up?
 16 A No, he would just show up.
 17 Q Was there an instance when you went out to -- you went
 18 out to LeBoeuf's bar with your sister?
 19 A There was a few, numerous times.
 20 Q And can you describe that to me?
 21 A There was after we went to the Brad Paisley concert.
 22 Q If you recall, when was that?
 23 A I believe it was March 11th. We went there after the
 24 Brad Paisley concert, and he drove by a couple of times.
 25 Q And was he invited, or did he just show up?

22

1 A He just showed up. He didn't come into the bar.
 2 Q And what was Melissa's reaction?
 3 A She was annoyed, and we left shortly after that.
 4 Q Where did you go after that?
 5 A Oh, went to Baywood.
 6 Q Okay. And when you went to Baywood, what took place at
 7 that?
 8 A We didn't see him there.
 9 Q You didn't see him there?
 10 A Nope.
 11 Q Do you know if he was calling Melissa during that time?
 12 A He called her the whole time we were out, texting, phone
 13 calls.
 14 Q Was she answering or --
 15 A No.
 16 Q How did she react to it?
 17 A She was very upset.
 18 Q After that, you went to Baywood, did you go anywhere
 19 else?
 20 A Yep, we went to Admiral on Bay and Davenport.
 21 Q The gas station?
 22 A Yes.
 23 Q And what occurred there?
 24 A Rikki-Jo was standing in line to get a pack of
 25 cigarettes, and Missy looked over and saw Rob's truck and

23

1 then saw him get out of the truck, and she started to
 2 wave Rikki-Jo back to the car because she didn't see the
 3 kids in the truck, and she told Rikki-Jo to hurry up and
 4 get back in. And we raced out of Admiral and over to
 5 Rob's house on North Carolina. And at that time he --
 6 Q Let me stop you for a second. Why were you concerned
 7 that the kids weren't with Rob?
 8 A Was Rob had Willow.
 9 Q Okay.
 10 A That night.
 11 Q Sorry.
 12 A For us to go out.
 13 Q So then you went back where?
 14 A To Rob's house on North Carolina.
 15 Q Okay.
 16 A And he had beat us there from Admiral.
 17 Q Okay. Do you know if, after the breakup, if Missy was
 18 romantically involved with anybody else?
 19 A Yes, she was.
 20 Q Do you know who it was?
 21 A His name was Cameron.
 22 Q Do you know where he worked?
 23 A He worked at LeBoeuf's.
 24 Q Okay. Did you ever go up there with him -- with Missy to
 25 see him?

24

1 A Yes.
 2 Q Do you know if she ever hung out with him?
 3 A Yes, she did.
 4 Q Now let me take you to the night before your sister
 5 passed. July 5th.
 6 A Yep.
 7 Q It was my understanding you and Missy were hanging out
 8 that night?
 9 A Yes, we did.
 10 Q Did you go out to some bars, local bars that night?
 11 A Yes, we did.
 12 Q And how did that begin?
 13 A When she got out of work, she came home and she called my
 14 mom, and my mom said since she had to work the next
 15 morning to leave Willow out there. And then she asked me
 16 if I wanted to go out, and I said sure. We went to
 17 White's Bar and we got a drink.
 18 Q About what time was that?
 19 A About 9:15, 9:30.
 20 Q Okay. And when you were having a drink at White's, were
 21 you inside or outside?
 22 A We stayed outside on the patio.
 23 Q Okay. And is that in the back of White's, or is that in
 24 the front of White's?
 25 A That's in the back of White's.

25

1 Q And what occurred while you were sitting on the patio?
 2 A When we were sitting there having our drinks, Missy said,
 3 "Here we go again. He just drove through." And when I
 4 looked up, I could see taillights in the alley, but I
 5 don't know a hundred-percent sure if it was his truck or
 6 not.
 7 Q But Missy indicated it was?
 8 A Yep.
 9 Q Did she indicate whether or not he was invited?
 10 A No.
 11 Q And after she said "here we go," what did you do?
 12 A We continued drinking our drinks before we left.
 13 Q After you left, where did you go to next?
 14 A We went to the Big Ugly Fish.
 15 Q Okay. How long did you stay there?
 16 A I would say it was about an hour or so.
 17 Q Okay. Have another drink there?
 18 A No, we had about a drink and a half, maybe two drinks.
 19 Q Okay. And then nothing eventful occurred?
 20 A Nothing eventful occurred there.
 21 Q What happens after that, where did you two go?
 22 A We went home from there.
 23 Q After you arrived home, what do you do?
 24 A Let the dog out.
 25 Q Okay.

26

1 A And then Missy asked me to go back out with her again to
 2 LeBoeuf's, she wanted to go see Cameron.
 3 Q So did you in fact do that?
 4 A Yeah.
 5 Q Around what time was that?
 6 A Maybe around 11:15. I told her we needed to be home by
 7 midnight because I had to work the next morning.
 8 Q Okay. So you go to LeBoeuf's, and what happens there?
 9 A Oh, we walked in, we ordered a drink, and then Robert
 10 walked in and he went up to the bar, he ordered two
 11 drinks and came and sat down with us.
 12 Q Do you know if he was invited?
 13 A Not to my knowledge.
 14 Q You finish your drinks there?
 15 A Missy finished her drink. I ended up getting a Vernors.
 16 I didn't have my drink.
 17 Q Okay. And at some point you decide to go home?
 18 A Yeah, it was right around midnight.
 19 Q You leave the bar with who?
 20 A I left with Missy.
 21 Q And did Rob follow you guys back to your residence?
 22 A Yeah, when we got there he was behind us.
 23 Q And what were you guys doing when you got back to your
 24 house?
 25 A Me and Missy walked in, and then he came to the door, and

27

1 I let the dog out to go to the bathroom, and Missy made a
 2 taco salad. She asked me if I wanted one, I told her no,
 3 I needed to go to bed. Robert was mixing a vodka drink
 4 in the kitchen and I went to bed.
 5 Q Okay. At some point you awakened?
 6 A Yes.
 7 Q Do you recall what time?
 8 A I believe it was around 3:15.
 9 Q And why do you say 3:15?
 10 A Because I heard what I thought was car doors, and I
 11 grabbed my cell phone and I looked, and then I put my
 12 glasses on and then I went out and looked, so I believe
 13 it was 3:15.
 14 Q And what do you do? After you put your glasses on, what
 15 do you observe?
 16 A I went and looked out the front door. I didn't see
 17 anything. And then I went and looked over the window
 18 over the couch and I saw Robert's truck parked two doors
 19 down at the empty house.
 20 Q Okay. After you make those observations, do you go back
 21 to bed or do you go where somewhere else?
 22 A I went to the bathroom.
 23 Q Okay. And then?
 24 A I went back to bed.
 25 Q Okay. You fall back asleep?

28

1 A I believe, yeah, I did.
 2 Q Are you awakened again?
 3 A Yes, I was.
 4 Q And how were you awakened at this point?
 5 A I heard my cat howling in the basement, so I went down
 6 there to check on her. It sounded -- if you ever heard a
 7 cat with kidney stones, that howl, it's what it sounds
 8 like. She was howling.
 9 Q So it was a unique sound?
 10 A It's a painful cry.
 11 Q So you go see what's up?
 12 A I went to go check on her. I expected to find her in the
 13 litter box, but she wasn't.
 14 Q And what observations did you make?
 15 A I heard what I thought was a headboard sound.
 16 Q Okay. And what did that make you think of?
 17 A I thought that they were having their alone time, adult
 18 time.
 19 Q Okay. Thought they were having sex?
 20 A Yeah.
 21 Q Okay. And since you heard that, did you go back to bed
 22 or what did you do?
 23 A I very loudly talked to my cat, to let them know that I
 24 was awakened.
 25 Q Okay.

29

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1 A And wasn't happy. And I fed her, and then I went back to
2 bed.
3 Q And do you get out of bed another time?
4 A Yes. I would say it was 15, 20 minutes later. I woke up
5 to a big thump on the floor, and I flew out of bed.
6 Q And what did you observe?
7 A When I made it through the living room into the dining
8 room, I observed Robert coming out of my sister's bedroom
9 going into the bathroom. He was stumbling, like hanging
10 on to the walls.
11 Q And did you say anything to him at this point?
12 A I asked what the fuck's going on out here.
13 Q And what did he indicate?
14 A He said, "I fell out of bed."
15 Q Okay. And then what did you see?
16 A I told him to keep his drunk fucking ass in bed, some
17 people have to work in the morning, and I turned around
18 and stomped back to my room and I slammed the door.
19 Q And then do you fall asleep until the next morning?
20 A Yes.
21 Q What time do you wake up?
22 A I wake up at 6:00.
23 Q And do you go through your usual routine?
24 A Yep. Get up, I look outside, I grab the dog, I take him
25 to go potty.

30

1 Q Did you notice anything unusual when you took your dog
2 out?
3 A When I got through the kitchen and took the turn to go
4 down the stairs, I noticed the back door was open.
5 Q And what's significant about that?
6 A That we were sleeping. With the house unlocked.
7 Q Okay. Did you suspect who it was?
8 A I did, because his truck was gone.
9 Q Okay. Did you have issues with that in the past?
10 A Not with that, but with the gate. So when I opened the
11 screen door to let the dog out to go potty, I noticed the
12 gate was open again.
13 Q Okay, what do you do after that?
14 A I shut the gate and he went potty, and I put him back to
15 bed. And then I took my shower and I let the dog out
16 again.
17 Q And did you go to work at some point?
18 A I had to move Missy's car out of the driveway first.
19 Q Okay.
20 A And then I brought her keys back in, put the dog in his
21 kennel, and locked the house up and I went to work.
22 Q At any point in time, from the time you heard the first
23 noise to the time you leave for work, do you see Missy
24 come out of her room or do you hear Missy say anything?
25 A No.

31

1 Q Did you ever check on her?
2 A No.
3 Q Was her door open or closed?
4 A It was cracked open, and it usually was.
5 Q How far cracked open?
6 A It was cracked open about that far.
7 Q It's about, what, 5, 6 inches?
8 A Big enough for the cats to get in and out.
9 Q Okay. Was it dark in her room?
10 A Yeah. There's room darkening curtains.
11 Q Okay. So you go to work. When you leave for work, did
12 you notice anything about your rear door?
13 A There like was -- there was nothing wrong with my rear
14 door.
15 Q What about the door handle?
16 A It worked just fine. I was able to lock it.
17 Q Okay. Was it -- you didn't notice anything significant
18 about the door or the handle?
19 A No.
20 Q So you go to work, and then what?
21 A I had a meeting that morning at the Mackinaw campus, at
22 10:00.
23 Q Yeah?
24 A So I drove up the one-ways to Mackinaw, and when I drove
25 down the road I looked and I saw Missy's car and thought

32

1 it was odd that her car was there. I debated about
2 turning around to go back to check.
3 Q Uh-huh?
4 A But I would have been late for my meeting, so I decided I
5 would go after my meeting, go home and go potty and see
6 why her car was still there.
7 Q Okay. Then what?
8 A I was in my meeting and I had two missed calls from the
9 Covenant trunk line, so I ignored those. And then
10 immediately following that, I got a phone call from
11 Dennis Fowler, the security manager, and I excused myself
12 from the meeting. I told them I think there's something
13 going on at main campus, I need to take this call.
14 Q Okay. And you take that call and learn you have to go
15 home?
16 A Dennis told me that I needed to get home, that MMR and
17 the police were at my house and they called dispatch
18 looking for me.
19 Q And that's -- you go home at that point, correct?
20 A Yep.
21 Q And that's when you learned the news; correct?
22 A (Nodded.)
23 Q Let me back up to a time that you and your sister were
24 watching Grey's Anatomy?
25 A Okay.

33

1 Q Do you remember that?
 2 A Yep, I do.
 3 Q And what was taking place during that time?
 4 A The whole time that we were watching it, her phone kept
 5 ringing on and off. She kept putting it to voicemail.
 6 Q How long?
 7 A I'm sorry?
 8 Q How long did you have until that show was over?
 9 A It was about 30 minutes. And it happened the whole
 10 30 minutes.
 11 Q How often were the calls coming?
 12 A It was one right after another.
 13 Q And who were they coming from?
 14 A They were coming from Robert. And she made the comment
 15 that she was upset. "I can't even watch a TV show."
 16 Q How often did he constantly call her?
 17 A It was every time she went anywhere or was at home.
 18 Q Okay. When you say anywhere, with somebody else or
 19 herself, what do you mean?
 20 A Any time we would go to Meijer, or Sam's Club, her phone
 21 would constantly ring.
 22 Q Would you ever have to leave her car at Meijer?
 23 A We did on one occasion, we did leave her car at Meijer.
 24 Q Describe that?
 25 A One night we were going out, and it was Brian, Justin,

34

1 Stefi and me and Missy, and she asked me to meet her at
 2 Meijer. She wanted to park her car there because she
 3 didn't want him to find out where we were going. So I
 4 met her at Meijer's and picked her up, and then we all
 5 went out.
 6 Q Okay. Now after learning about your sister passing, at
 7 some point did a detective walk you through your house?
 8 A Yes.
 9 Q And did you point out some things that were unusual?
 10 A Yes, my house was ransacked.
 11 Q What do you mean by that?
 12 A It was not in the condition that I left it. There was
 13 drawers pulled out, things strewn all over.
 14 Q What about, in particular, your bedroom?
 15 A I had a dresser drawer that was pulled out and dumped on
 16 the floor. In my bedroom, I had a little nightstand that
 17 I used for my socks and underwear because, after Missy
 18 moved in, I didn't have my two dressers anymore so I put
 19 my socks and underwear in there. And both of those, one
 20 drawer was open and one was pulled out and dumped on the
 21 floor.
 22 Q Okay. Did you also look at Missy's room?
 23 A Yes.
 24 Q Did you notice anything about unusual about her room?
 25 A It was completely destroyed.

35

1 Q Okay. Did you at some point notice that she was missing
 2 a security box?
 3 A Yes, she had a lockbox that she kept under her dresser on
 4 the floor.
 5 Q And do you know what she kept in that?
 6 A She kept some cash, birth certificates, and social
 7 security cards.
 8 Q Did you notice if that was missing or not?
 9 A It was gone.
 10 Q It was gone. And did you inform the detectives of that?
 11 A Yes, I did.
 12 Q Do you recall Missy's phone number?
 13 A 964-9010.
 14 Q 964-9010?
 15 A Yes.
 16 Q Okay. Did you ever find Missy's cell phone?
 17 A No. We looked high and low in the house. We even moved
 18 insulation in the basement, looking.
 19 Q When Missy moved out, was moving out and moving into your
 20 place, did she ever indicate if Robert -- Robert
 21 disappeared?
 22 A Yes.
 23 Q What would she say?
 24 A He would disappear for three, four days at a time. There
 25 was occasions that I went out with Missy looking for him.

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1 Q Was there ever a time that you witnessed an issue with
 2 Missy's phone being taken?
 3 A I didn't witness it, but she called me at work from my
 4 house.
 5 Q Okay?
 6 A She used my house phone and called me and told me that
 7 Rob had came to pick up Willow that morning and he took
 8 her cell phone and he wouldn't give it back to her.
 9 Q Why?
 10 A Because he wanted the passcode. He wanted to go through
 11 her phone.
 12 Q Why, if you know?
 13 A I don't exactly know why.
 14 Q Okay.
 15 A I told her that there was nothing I could do for her. I
 16 was at work.
 17 Q Okay.
 18 A And I called my mom, told my mom, and actually went on to
 19 her iCloud and I tracked her cell phone and I took screen
 20 shots and I sent them to my mom of where her phone was
 21 at.
 22 Q Where was it at?
 23 A It was in Bay City.
 24 Q Okay.
 25 MR. STEVENSON: Thank you.

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1 THE WITNESS: Thank you.
 2 THE COURT: Questions, Mr. Johnson.
 3 MR. JOHNSON: Thank you, Your Honor.
 4 CROSS-EXAMINATION
 5 BY MR. JOHNSON:
 6 Q Good morning.
 7 A Good morning.
 8 Q This was a very traumatic event for you, was it not?
 9 A Yes.
 10 Q And right after, and to this day, you're very angry at
 11 Robert Propp; correct?
 12 A I'm -- my soul is crushed.
 13 Q Now you testified that their relationship ended?
 14 A It did.
 15 Q But they continued to see each other, did they not?
 16 A Melissa felt like she had to.
 17 Q They continued to see each other, did they not?
 18 A They saw each other for him to spend time with Willow.
 19 Q Isn't true that she spent time at his home that she had
 20 moved out of?
 21 A I know that there was one time she couldn't get into the
 22 house and she was sick, and she went there.
 23 Q A couple of weeks before this event, didn't she spend
 24 time at his house for several days?
 25 A I'm sorry, I don't recall.

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1 Q Now you said that she had dated Cameron?
 2 A Yes.
 3 Q But didn't she continue to see Mr. Propp also?
 4 A For Willow.
 5 Q So was Willow in the bedroom when her and Mr. Propp were
 6 having sex?
 7 A On the 6th? Or the 5th?
 8 Q Or the 5th or the 4th?
 9 A Willow was with my mom.
 10 Q So he -- she didn't let him in the house at that point to
 11 see Willow then, did she?
 12 A I'm sorry?
 13 Q She didn't let him in the house at that time for Willow,
 14 did she?
 15 A No.
 16 Q Okay. You're quite angry, and you want to see some
 17 retribution, don't you?
 18 A My sister's life meant something.
 19 Q And you haven't always been truthful, have you?
 20 A I have been truthful. I swear to God.
 21 Q Two days before -- two days after the event, didn't you
 22 apply for a personal protection order against Mr. Propp?
 23 A Yes, I did.
 24 MR. STEVENSON: Objection relevance.
 25 THE COURT: What's the relevance?

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1 MR. JOHNSON: The relevance is her
 2 truthfulness, Your Honor.
 3 THE COURT: And how does that bear on her
 4 truthfulness?
 5 MR. JOHNSON: She made statements in the
 6 application for the personal protection order that
 7 weren't true.
 8 THE COURT: I'll sustain the objection.
 9 BY MR. JOHNSON:
 10 Q Mr. Propp did not break into your house on the 6th, did
 11 he?
 12 A Yes, he did. It wasn't like that when I left.
 13 Q How do you know Mr. Propp broke into your house on the
 14 6th?
 15 A Who else would have done it?
 16 Q Well, didn't you say in a hearing that Mr. Propp was
 17 allowed into your house on the 6th, that he came in with
 18 Melissa?
 19 A He was gone when I left for work on the 6th.
 20 Q Exactly.
 21 A That was the night of the 5th.
 22 Q Exactly. So how do you know he broke into your house on
 23 the 6th and ransacked your house?
 24 A Because the detective showed me my back door. It was
 25 broken into. They asked me if the door was like that

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1 when I left.
 2 Q Uh-huh?
 3 A I was able to lock my door, sir.
 4 Q But you don't know what happened between the time you
 5 left and time you went back, do you?
 6 A No.
 7 Q Okay. It's your testimony that she left Mr. Propp
 8 because of his drug problems?
 9 A Yes.
 10 Q And monetary problems that go with drug problems, and
 11 problems with his children?
 12 A Yes.
 13 Q She didn't leave because of domestic violence, did she?
 14 A She didn't say that to me.
 15 Q Okay. You've never seen Mr. Propp abuse Melissa
 16 physically, have you?
 17 A There was one occasion where he came over, and she yelled
 18 get your F-ing hands off of me, and I did go out the door
 19 that night.
 20 Q So --
 21 A And --
 22 Q If you testified at a hearing that you never saw any
 23 physical abuse and you never saw any signs of physical
 24 abuse, then either you weren't telling the truth then or
 25 you not telling the truth now?

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1 A It wasn't that I wasn't telling the truth, sir. I was so
2 upset and anxious that I drew a blank. My mind went
3 blank.
4 Q Your mind went blank for this particular hearing?
5 A I was very upset for that hearing, sir.
6 Q A year after the event?
7 A Yes. My anxiety has been high since my sister died.
8 Q So when you said at that hearing that you never saw any
9 signs of physical abuse, you weren't telling the truth
10 then?
11 A I did not honestly remember until that day when we left
12 and I realized, what have I done? I just kept saying
13 "no" to every question you asked me, sir.
14 Q So what physical abuse did you see?
15 A He had her -- his hands, he grabbed her to get the keys,
16 and she yelled out, get your fucking hands off of me, and
17 that's when I went outside.
18 Q And then what happened?
19 A Then me and Robert got into it.
20 Q And you saw him grab her hand?
21 A I did. He was standing there in the living room window,
22 sir.
23 Q And how did you and Robert get into it?
24 A Because he was trying to leave with the car seat, and he
25 had her car, and at that point in time -- because he was

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1 fixing an oil leak and it -- and at that time he had the
2 only car seat that we both had, and we both had to work
3 that next morning.
4 Q So how did you and him have confrontation? Did he put
5 his hand on you?
6 A No, he didn't put his hands on me.
7 Q Okay.
8 A He --
9 Q And you've never seen him hit or choke Melissa, have you?
10 A No sir.
11 Q And you've never seen any injuries on Melissa that
12 indicate that had he hit or choked her, have you?
13 A There's been times where I saw bruising, but didn't know
14 where they came from.
15 Q So when you testified contrary to that in the hearing,
16 then that was because you were --
17 A I swear to God, I just -- my mind went blank.
18 Q It's your testimony that you were at a hearing where you
19 were testifying --
20 A And I'm telling you that my mind went blank, sir.
21 Q -- where you were testifying relative to this young man,
22 and you were asked a direct question about seeing
23 physical abuse or seeing signs of physical abuse, and
24 your mind just went blank?
25 A I swear to God, sir, my mind went blank.

43

1 Q When was the last time you saw the lockbox in Melissa's
2 room?
3 A Probably 4th of July. Because Willow's things were in
4 there, so if I needed to go get a diaper or a wipe or a
5 pacifier.
6 Q And you're sure that that lockbox was in Melissa's room
7 on the 4th?
8 A I'm almost positive.
9 MR. JOHNSON: No further questions.
10 THE COURT: Anything else, Mr. Stevenson?
11 MR. STEVENSON: Nothing further, Your Honor.
12 MR. JOHNSON: I ask that this witness not be
13 released, Your Honor, at this point.
14 THE COURT: You may step down.
15 THE WITNESS: Thank you, sir.
16 THE COURT: Call your next witness,
17 Mr. Stevenson.
18 MR. STEVENSON: People call Stefanie Thornton
19 to the stand.
20 MS. LEWIS: Please raise your right hand,
21 ma'am. Do you solemnly swear that the testimony you
22 shall give in this cause here pending shall be the truth,
23 the whole truth, and nothing but the truth, so help you
24 God?
25 THE WITNESS: I do.

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1 MS. LEWIS: You can take the witness stand.
2 STEFANIE THORNTON
3 Being first duly sworn at 10:23 a.m., testified under
4 oath as follows:
5 DIRECT EXAMINATION
6 BY MR. STEVENSON:
7 Q Good morning. Can you please state and spell your name
8 for the court?
9 A Stefanie Thornton. S-t-e-f-a-n-i-e, Thornton,
10 T-h-o-r-n-t-o-n.
11 Q Stefanie, what was your relationship to Melissa Thornton?
12 A She was my younger sister.
13 Q And then you have your older sister, Angie; is that
14 right?
15 A Yes.
16 Q At some point in time, did you live across the street
17 from the defendant and Melissa?
18 A Yes.
19 Q And you know who Robert Propp is; right?
20 A Yes.
21 Q Do you see him in the courtroom today?
22 A Yes.
23 Q Can you please tell me where he's seated and what he's
24 wearing?
25 A He is seated to the left of me, and he's wearing a suit

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1 A It wasn't that I wasn't telling the truth, sir. I was so
2 upset and anxious that I drew a blank. My mind went
3 blank.
4 Q Your mind went blank for this particular hearing?
5 A I was very upset for that hearing, sir.
6 Q A year after the event?
7 A Yes. My anxiety has been high since my sister died.
8 Q So when you said at that hearing that you never saw any
9 signs of physical abuse, you weren't telling the truth
10 then?
11 A I did not honestly remember until that day when we left
12 and I realized, what have I done? I just kept saying
13 "no" to every question you asked me, sir.
14 Q So what physical abuse did you see?
15 A He had her -- his hands, he grabbed her to get the keys,
16 and she yelled out, get your fucking hands off of me, and
17 that's when I went outside.
18 Q And then what happened?
19 A Then me and Robert got into it.
20 Q And you saw him grab her hand?
21 A I did. He was standing there in the living room window,
22 sir.
23 Q And how did you and Robert get into it?
24 A Because he was trying to leave with the car seat, and he
25 had her car, and at that point in time -- because he was

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1 fixing an oil leak and it -- and at that time he had the
2 only car seat that we both had, and we both had to work
3 that next morning.
4 Q So how did you and him have confrontation? Did he put
5 his hand on you?
6 A No, he didn't put his hands on me.
7 Q Okay.
8 A He --
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10 A No sir.
11 Q And you've never seen any injuries on Melissa that
12 indicate that had he hit or choked her, have you?
13 A There's been times where I saw bruising, but didn't know
14 where they came from.
15 Q So when you testified contrary to that in the hearing,
16 then that was because you were --
17 A I swear to God, I just -- my mind went blank.
18 Q It's your testimony that you were at a hearing where you
19 were testifying --
20 A And I'm telling you that my mind went blank, sir.
21 Q -- where you were testifying relative to this young man,
22 and you were asked a direct question about seeing
23 physical abuse or seeing signs of physical abuse, and
24 your mind just went blank?
25 A I swear to God, sir, my mind went blank.

43

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5 pacifier.
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7 on the 4th?
8 A I'm almost positive.
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10 THE COURT: Anything else, Mr. Stevenson?
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10 T-h-o-r-n-t-o-n.
11 Q Stefanie, what was your relationship to Melissa Thornton?
12 A She was my younger sister.
13 Q And then you have your older sister, Angie; is that
14 right?
15 A Yes.
16 Q At some point in time, did you live across the street
17 from the defendant and Melissa?
18 A Yes.
19 Q And you know who Robert Propp is; right?
20 A Yes.
21 Q Do you see him in the courtroom today?
22 A Yes.
23 Q Can you please tell me where he's seated and what he's
24 wearing?
25 A He is seated to the left of me, and he's wearing a suit

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1 with a blue top.
2 MR. STEVENSON: May the record reflect ID, Your
3 Honor?
4 THE COURT: It shall reflect.
5 BY MR. STEVENSON:
6 Q Did you witness unusual behavior between Rob and Melissa
7 while they lived across the street?
8 A Yeah, they fought out in the driveway.
9 Q Would you --
10 A They argued out in the driveway quite a bit.
11 Q And what do you mean by that?
12 A There was -- I wouldn't really hear what they were
13 arguing about, but I would sit on my front porch and
14 watch, and sometimes she would try to leave and he would
15 take her keys and her phone and he wouldn't give them
16 back, and on a couple of occasions, he threw them out in
17 the road.
18 Q Now were you aware that she moved out sometime in March,
19 early March?
20 A Yes.
21 Q Do you know why?
22 A Because he had a drug problem and money problems, and he
23 had stolen from her.
24 Q So then she moved in with who?
25 A My older sister, Angela.

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1 Q Okay. Did you ever witness any unusual calling from
2 Robert to Melissa?
3 A Yes, there was a time on several occasions. But on one
4 occasion me and Melissa went to a bachelorette party in
5 Detroit, and he called her from the time we left until
6 the time we got back.
7 Q What do you mean by that?
8 A He called her cell phone from the time we left.
9 Q Like repeatedly or --
10 A Repeatedly, yes.
11 Q And what was her reaction?
12 A She was upset. She just wanted to be left alone, to be
13 able to have fun for one night.
14 Q Did she ever answer the phone and speak with him, do you
15 know?
16 A Yes.
17 Q Were you able to hear the nature of the conversation?
18 A Yes, he was upset because he thought she was dressed
19 inappropriately.
20 Q How was she dressed?
21 A She had a black dress with thicker straps, there was no
22 cleavage showing, and it probably came up above her knees
23 maybe three, four inches at most.
24 Q And he was upset about that?
25 A Yes.

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1 Q Did you ever witness if there was any incidents within
2 their house when they were living together? If anything
3 was broken at times?
4 A Yeah, one time Melissa called me over because he had
5 broken a bunch of dishes in the kitchen, and Willow had
6 swallowed a piece of glass, and she wanted me to come
7 over. And I came over and I told her take her to the ER,
8 and I had helped her pick up the glass.
9 Q Did you witness any other incidents?
10 A Yes, right after Willow was born, he shook up a bunch of
11 2-liters of pop and he sprayed them all over the house.
12 And she had just had a C-section, so I came over and I
13 cleaned it up.
14 Q And where in the house was it sprayed?
15 A It was mostly in the living room.
16 Q Do you know why?
17 A I don't remember why.
18 Q Any other occasion of things being broken?
19 A Um, not that I seen personally.
20 Q Okay. Do you recall any infinity lights?
21 A Yes.
22 Q What are those?
23 A It was a -- some lights from Party Lite, and there was
24 candles inside and a mirror behind it, and when all the
25 candles are lit, it looks like there was hundreds of

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1 candles behind them. And she had called me and told me
2 she was really upset, crying, because he threw them off
3 of their balcony.
4 Q Did you ever see those infinity lights again after that?
5 A No.
6 Q Were you ever aware if the defendant followed her around?
7 Did you ever witness anything like that?
8 A Yeah, most times when we went out, he would -- we usually
9 went to LeBoeuf's if we went out, he would drive past, or
10 he would sit in the middle of the road and flash his
11 headlights at us if we went outside.
12 Q Did this happen once? More than once?
13 A More than once. I couldn't even tell you how many times.
14 Q More than ten times?
15 A Yeah.
16 Q What would Missy do?
17 A She would usually get upset and we would go back inside,
18 and sometimes we would end up leaving.
19 Q Was there an occasion when you and your sisters went to a
20 Brad Paisley concert?
21 A Yes, on March 11th of '16. We went to a Brad Paisley
22 concert. After we left, we went to LeBoeuf's and we saw
23 him through the window drive past twice, so we ended up
24 leaving and we went to Baywood Lounge for a couple of
25 drinks. We had then left and went to Admiral on Bay and

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1 Davenport, and we pulled up, he had pulled up right after
2 us, and our friend Rikki-Jo went in line to pay for her
3 stuff, and Melissa was trying to signal her to come back
4 to the car because she had feared the kids were left home
5 alone. So Rikki-Jo got back in the car, we went back to
6 the house, he had made it back there before us and he
7 wouldn't let her in the house, and they argued out in the
8 driveway.
9 Q Okay.
10 A Finally he let her in the house and admitted he had left
11 the kids home alone.
12 Q So, clearly, Melissa didn't invite him, since he was
13 watching the kids?
14 A Yeah.
15 Q Was there an occasion that you tried to get Melissa's
16 phone back for her?
17 A Yes, one day I was at work, and my mom called me and said
18 that Rob had took Melissa's phone from her, and Melissa
19 had to go to Delta that night for school, and she was
20 scared that Melissa would be without a phone that in a
21 snowstorm. So I went over there on my breakfast break to
22 try to retrieve the phone from her -- from him, and he
23 cussed at me and he looked like he was really high, and
24 he told me to leave so I left. And he told me that he
25 wouldn't give the phone back until Melissa gave him the

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1 password to the phone so he could look through it.
2 Q Do you know why he wanted to look through it?
3 A Because he feared that she was talking to other people.
4 Q Do you know if he was aware that she was talking to
5 anyone?
6 A I don't think so.
7 Q Do you know why Melissa allowed him in her life?
8 A Because he would tell her that if she didn't, that he
9 would take her to court and get full custody of Willow.
10 Q Did she -- did she believe that threat?
11 A She really believed that.
12 Q Did she tell you that more than one time?
13 A Yes.
14 Q Several times?
15 A Several times.
16 Q Do you know if she had any plans of getting back with
17 Rob?
18 A No, she didn't.
19 Q How do you know that?
20 A Because she wanted, really, nothing to do with him except
21 for making exchanges with Willow.
22 MR. STEVENSON: Thank you, Stefanie. No
23 further questions.
24 THE COURT: Questions, Mr. Johnson.
25 MR. JOHNSON: Thank you, Your Honor.

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1 CROSS-EXAMINATION
2 BY MR. JOHNSON:
3 Q Good morning.
4 A Good morning.
5 Q You lived across the street from where they lived on,
6 what is it?
7 A North Carolina Street.
8 Q North Carolina Street. After she left him, were you
9 aware of her returning there and spending time with him
10 periodically?
11 A Sometimes she did go over there to -- to spend time, but
12 usually it was to drop off Willow and pick up Willow.
13 Q But she did spend time with him other times?
14 A She did occasionally.
15 Q You said that she was done with him.
16 A Yes.
17 Q But you're aware that they continued to be involved?
18 A Yes, they did hang out sometimes.
19 Q You never saw, living across the street, him hitting or
20 punching her, did you?
21 A Not hitting her or punching her, no.
22 Q You never saw him choke her, did you?
23 A No, I did not.
24 Q You never saw any signs, bruises or anything that would
25 indicate that he was physically abusing her, did you?

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1 A No, my sister stayed pretty covered up, and she usually
2 wore scarfs in the middle of the summer, so I wouldn't
3 know.
4 Q So that's a no, you never saw any --
5 A No.
6 Q Okay. You are aware that the night before her death, or
7 the night of her death, that she was with Mr. Propp;
8 correct?
9 A Correct, I know that he showed up to the bar.
10 Q Uh-huh. But you don't know if she invited him or not, do
11 you?
12 A Um, as far as I know, her phone was dead, so no, she
13 didn't invite him.
14 Q As far as you know, her phone was dead?
15 A Yes.
16 Q This would be the night of the 5th?
17 A Yes.
18 Q Would you be surprised to learn that it wasn't dead?
19 A I was not there, so I wouldn't know.
20 Q Okay. You're aware that she took him or allowed him to
21 come home to her and Angela's place?
22 A Yes, I do.
23 Q And that she allowed him to stay the night?
24 A Yes.
25 Q So that wouldn't indicate that she was done with him,

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1 would it?
 2 A Well she -- he told her that they needed to hang out, or
 3 else he was going to take Willow from her.
 4 Q Okay. But realistically, how --
 5 MR. STEVENSON: Objection, Your Honor.
 6 BY MR. JOHNSON:
 7 Q How was he going to accomplish that?
 8 MR. STEVENSON: Asked and answered.
 9 THE COURT: I'll allow it.
 10 BY MR. JOHNSON:
 11 Q How was he to accomplish taking Willow? Was he
 12 threatening to kidnap her?
 13 A He was threatening to take her to court. And she really,
 14 truly believed that he would get full custody of her.
 15 Q Was there something going on with Melissa that would lead
 16 one to believe that that was the case?
 17 A No, she worked and she was a student at Delta College, so
 18 no, I don't believe so.
 19 Q Are you aware of -- you said that she left him because of
 20 his drug use?
 21 A Yes.
 22 Q Disappearing?
 23 A Mm-hmm.
 24 Q Are you aware of her saying that she left him because of
 25 physical abuse?

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1 A No.
 2 Q No further --
 3 A I am aware of a lot of verbal abuse.
 4 Q But not physical abuse?
 5 A No, she didn't tell me things like that.
 6 Q Okay.
 7 MR. JOHNSON: No further questions.
 8 THE COURT: Anything else, Mr. Stevenson?
 9 MR. STEVENSON: No redirect, Your Honor. Thank
 10 you.
 11 THE COURT: You may step down.
 12 Call your next witness, Mr. Stevenson.
 13 MR. STEVENSON: The People call Kenneth Binder
 14 to the stand.
 15 MS. LEWIS: Please raise your right hand. Do
 16 you solemnly swear that the testimony you shall give in
 17 this cause here pending shall be the truth, the whole
 18 truth, and nothing but the truth, so help you God?
 19 THE WITNESS: I do.
 20 MS. LEWIS: You can take the witness stand.
 21 THE WITNESS: Okay.
 22 KENNETH BINDER
 23 Being first duly sworn at 10:35 a.m., testified under
 24 oath as follows:
 25

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1 DIRECT EXAMINATION
 2 BY MR. STEVENSON:
 3 Q Good morning, sir.
 4 A Good morning.
 5 Q Can you please state and spell your name for the record?
 6 A My name is Kenneth Binder, last name B-i-n-d-e-r.
 7 Q And who is your employer, and how so are you employed?
 8 A I'm employed by the Michigan Department of State Police,
 9 currently assigned to the Bridgeport laboratory in the
 10 latent fingerprint unit.
 11 Q And what's your rank and title?
 12 A I'm a Detective Sergeant with the State Police.
 13 Q Let me draw your attention back to July 6th, 2016. Do
 14 you recall being dispatched to 607 South Alexander?
 15 A I do.
 16 Q And how did that occur?
 17 A We got a phone call for assistance in processing a crime
 18 scene of a possible homicide, where we go and help the
 19 agencies process the scene, collect evidence, and look
 20 for evidence that may be available to us.
 21 Q And is it just yourself, or is there a team of you?
 22 A In this particular case, there was a team of four of us
 23 that we work together, and we're all trained in various
 24 aspects that we process the scene completely.
 25 Q And who was your team?

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1 A My team included myself and forensic scientist Shane
 2 Hill, Kaitlyn Germain, and Tyler Torbet.
 3 Q You're the lead on this group, right?
 4 A In this particular case, I was the crew chief, yes.
 5 Q Okay. What do you do when you arrive to the scene?
 6 A When we arrive at the scene, the first thing I would do
 7 is take overall general photographs. We work our way
 8 closer to the house or the vehicle, in this particular
 9 case it was both, take overall photos. In this
 10 particular case there was a search warrant drafted for
 11 the house, so we needed to wait until that was secured
 12 before we entered the house.
 13 Q So do you get the search warrant and then take action?
 14 A Yes.
 15 Q And what action is taken?
 16 A When we go into the house, the first thing that we will
 17 do is we will photograph the scene. That's the very
 18 first thing. And we're aware of possible foot wear
 19 which may be on linoleum floors, or some wood floors will
 20 support a foot wear, so we're very careful of that. So
 21 we photograph first, and then any possible evidence that
 22 might be moved or destroyed we mark and photograph and
 23 collect.
 24 Q Okay. And do you, in fact, do that photograph and
 25 collect all evidence?

57

1 read or watch those as well. Have a good lunch. We'll
2 see you back at 1:30.
3 MS. LEWIS: All rise for the jury, please.
4 (At 12:07 p.m., jury excused.)
5 MS. BIDWELL: You may be seated.
6 THE COURT: The record should reflect the jury
7 is not present at this time.
8 Anything for the record, Mr. Stevenson?
9 MR. STEVENSON: Nothing on behalf of the
10 People.
11 THE COURT: Mr. Johnson?
12 MR. JOHNSON: Nothing, Your Honor.
13 THE COURT: Stand in recess until 1:30.
14 MS. BIDWELL: All rise.
15 (At 12:07, court recessed.)
16 MS. LEWIS: All rise for the jury, please.
17 (At 1:43 p.m., jury returned.)
18 MS. LEWIS: Court is again in session, the
19 Honorable Darnell Jackson presiding.
20 THE COURT: Please be seated.
21 Mr. Stevenson, you may call your next witness.
22 MR. STEVENSON: Thank you, Your Honor. People
23 call Miss Deanne Hollingshead to the stand.
24 MS. LEWIS: Please raise your right hand,
25 ma'am. Do you solemnly swear that the testimony you

98

1 shall give in this cause here pending shall be the truth,
2 the whole truth, and nothing but the truth, so help you
3 God?
4 THE WITNESS: Yes.
5 MS. LEWIS: You can take the witness stand.
6 DEANNE HOLLINGSHEAD
7 Being first duly sworn at 1:45 p.m., testified under oath
8 as follows:
9 DIRECT EXAMINATION
10 BY MR. STEVENSON:
11 Q Good afternoon. Can you please state and spell your name
12 for the court?
13 A Deanne Hollingshead. D-e-a-n-n-e,
14 H-o-l-l-i-n-g-s-h-e-a-d.
15 Q And Miss Hollingshead, back in -- back several years ago,
16 were you married to a Robert Propp?
17 A Yes.
18 Q Is he in the courtroom today?
19 A Yes.
20 Q Where is he seated and what is he wearing?
21 A There with the black suit, the blue tie.
22 MR. STEVENSON: May the record reflect ID, Your
23 Honor?
24 THE COURT: It shall reflect.
25 MR. STEVENSON: Thank you.

99

1 BY MR. STEVENSON:
2 Q How long were you married to Mr. Propp for?
3 A About eleven months.
4 Q And I take it you guys had a few issues along the way;
5 correct?
6 A Yes.
7 Q With respect to -- with respect to the relationship,
8 before you were divorced or filed for divorce, what was,
9 kind of, what was the cause behind that?
10 A We argued a lot and didn't get along. Some drug abuse.
11 Q Was there --
12 THE COURT: Speak a little louder, would you
13 please, so the jury can hear you.
14 THE WITNESS: I'm sorry.
15 BY MR. STEVENSON:
16 Q You said drug abuse?
17 A Yes.
18 Q Verbal abuse?
19 A Yes.
20 Q What do you mean by that?
21 A Just he would not trust me, and blame a lot of things on
22 me.
23 Q Okay. Was there ever any physical abuse?
24 A He would force himself on me sexually by holding my hands
25 down.

100

1 Q What would you do?
2 A At some point I just gave up and let him do it. I
3 stopped fighting it.
4 Q How often would that happen?
5 A It would be weekly.
6 Q Were you ever pregnant with a child in common?
7 A Yes.
8 Q And that --
9 A She was a stillborn.
10 Q And did that increase the verbal abuse?
11 A Yes.
12 Q What would he say?
13 A Just that it was my fault, mostly.
14 Q Did you go to counseling or anything?
15 A We went to counseling at the church. It didn't make any
16 headway in making things better.
17 Q So who filed for divorce?
18 A I did.
19 Q During the relationship, was there any point he would
20 take items from you?
21 A He took my phone and looked through it, and when I was
22 packing to leave he had took my car and crashed it in a
23 field by my parents' house.
24 Q What about keys?
25 A He had made extra sets of keys I didn't know about.

101

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1 Q At some point, do you move out or does he move out?

2 A I moved out.

3 Q And did his behavior change?

4 A No. He followed me and attempted to break into my

5 apartment.

6 Q What do you mean followed you? Can you describe that,

7 please?

8 A He followed me to work, and I saw him in parking lots

9 across from my apartment.

10 Q How often?

11 A A few times that I remember.

12 Q Okay. What about calls or text messages?

13 A Not that I remember.

14 Q Was there a time you took a trip to Chicago?

15 A Yes.

16 Q Tell me about that?

17 A He had called a few times while we were in Chicago,

18 and --

19 Q Did you answer, if you remember?

20 A I don't remember if I did or not. I know on the way

21 home, he had us pull over into a rest area and wouldn't

22 let me get back in my car with my friends.

23 Q Describe that?

24 A He was just yelling.

25 Q Now you said he had you pull over. What did you do?

102

1 A We had pulled over to the rest area, and he was there. I

2 don't remember exact circumstances.

3 Q Now were you close -- I take it you were living in

4 Saginaw at the time?

5 A Mm-hmm.

6 Q Were you close to Saginaw, or were you by Chicago, or

7 where were you?

8 A Most of the way back.

9 Q Most of the way back? About where, if you recall,

10 specifically?

11 A On 127 somewhere around maybe St. Louis area.

12 Q Okay, St. Louis area? And he just happened to be at that

13 rest stop?

14 A Yes.

15 Q And what did he say to you at that rest stop?

16 A I don't remember.

17 Q What was the nature of the conversation? Was he happy?

18 Mad? Sad?

19 A I know he was mad, but.

20 Q Okay.

21 A I don't.

22 Q And then what took place?

23 A He made me ride back to the house with him.

24 Q He made you?

25 A Well, wouldn't let me back in the car with them.

103

1 Q So you decided to get in the car with him?

2 A Yes.

3 Q Would he ever throw anything at you?

4 A Just shoes and things.

5 Q Did you ever get a restraining order or anything like

6 that?

7 A The initial one was denied. After they caught him trying

8 to break into my apartment, they approved it.

9 Q Now you said he tried to break into your apartment. Tell

10 me about that?

11 A I woke up because the dog was barking, and there was

12 someone prying at a basement window. At the time I

13 didn't know it was him until they caught -- the police

14 officer caught him around the block.

15 Q So you see someone trying to pry in, and then what do you

16 do, call 911 or something?

17 A Yes.

18 Q And then what happens?

19 A They responded and saw him around the block and pulled

20 him back to the house and asked if I had known him.

21 Q And it was --

22 A Yes.

23 Q -- Mr. Propp?

24 A (Nodded.)

25 Q Did he have anything on him that you were aware of at

104

1 that time?

2 A They said he had a knife that we had bought on our

3 honeymoon.

4 Q Was there ever a time that he showed up at a track meet

5 uninvited?

6 A I had went to a track meet to watch my cousins and told

7 my mom I was leaving and I had left, and he showed up a

8 few minutes later and picked a fight with my uncle

9 because he wouldn't tell him where I went.

10 Q Would he often show up uninvited to places?

11 A Not that I remember.

12 Q Okay. Was there an incident that took place at your

13 grandma's house?

14 A I know he went there looking for me, and she said I

15 wasn't there and maybe went to Chicago, and he showed up

16 at my aunt's in Chicago looking for me.

17 Q Were you there?

18 A I was not.

19 MR. STEVENSON: Thank you.

20 THE COURT: Questions, Mr. Johnson?

21 MR. JOHNSON: Thank you.

22 CROSS-EXAMINATION

23 BY MR. JOHNSON:

24 Q Good afternoon. The incident at the rest stop, didn't

25 you end up driving your car with him in it, your friends

105

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1 drove his truck?

2 A I don't recall.

3 Q Don't recall?

4 A I just know I left with him.

5 Q Did he ever choke you?

6 A No, sir.

7 Q Did he ever strike you?

8 A No.

9 Q Left no bruises?

10 A No.

11 Q Even after he accused you of being at fault for your

12 stillborn child, he didn't hit you, or strike you, or

13 choke you, or do anything like that?

14 A Just yelling.

15 Q When he was stalking you and -- was he trying to get back

16 with you?

17 A I assume so. I don't really know.

18 MR. JOHNSON: Okay. No further questions.

19 Thank you.

20 THE COURT: Anything else, Mr. Stevenson?

21 MR. STEVENSON: No redirect.

22 THE COURT: You may step down.

23 THE WITNESS: Thank you.

24 THE COURT: Call your next witness,

25 Mr. Stevenson.

106

1 MR. STEVENSON: The people call Vivian Colvin

2 to the stand -- excuse me, Your Honor, strike that.

3 People call Cameron Dietrich to the stand.

4 MS. LEWIS: Please raise your right hand, sir.

5 Do you solemnly swear that the testimony you shall give

6 in this cause here pending shall be the truth, the whole

7 truth, and nothing but the truth, so help you God?

8 THE WITNESS: Yes.

9 MS. LEWIS: You can take the witness stand.

10 THE WITNESS: Thank you.

11 CAMERON DIETRICH

12 Being first duly sworn at 1:54 p.m., testified under oath

13 as follows:

14 DIRECT EXAMINATION

15 BY MR. STEVENSON:

16 Q Good afternoon. Can you please state and spell your name

17 for the court?

18 A Cameron Dietrich. C-a-m-e-r-o-n, D-i-e-t-r-i-c-h.

19 Q And let me take you back to the early months of 2016.

20 Did you become acquainted with a Melissa Thornton?

21 A Yes.

22 Q Did you guys date for a little bit?

23 A Yeah, kind of, you know.

24 Q Were you sexually intimately involved?

25 A Yes.

107

1 Q Yes, okay. Did you work back at LeBoeuf's bar, which is

2 501 North Bond, back in summer of 2016?

3 A Yes.

4 Q And what did you do there?

5 A Bartender.

6 Q Is that where you met Melissa?

7 A Yes.

8 Q Do you recall around the month that you and her became

9 more than friends or more than acquaintances?

10 A I couldn't give you a month.

11 Q Okay. Were there ever any times where she would be in

12 the bar and you were there and the -- well, strike that.

13 Did you become aware that she had a child in

14 common with another man?

15 A Yes.

16 Q Did you know his name?

17 A No.

18 Q What did Melissa refer to him as?

19 A Baby daddy.

20 Q If I ask you to identify him if he is in this courtroom,

21 would you be able to do that?

22 A Yes.

23 Q Can you tell me where he is seated and what he is

24 wearing?

25 A A suit. Right there.

108

1 MR. STEVENSON: May the record reflect ID, Your

2 Honor?

3 THE COURT: What color is the suit?

4 THE WITNESS: Black and blue.

5 THE COURT: The record shall reflect.

6 MR. STEVENSON: Thank you, Your Honor.

7 BY MR. STEVENSON:

8 Q So she referred to him as her baby daddy; correct?

9 A Yes.

10 Q Did you ever see him show up at LeBoeuf's bar when you

11 and Melissa were there?

12 A Yes.

13 Q And tell me about one of those instances, please?

14 A One time we were just hanging out there, and he shows up,

15 and kind of unexpectedly, and she's all flustered, went

16 outside and seen him follow her, and then she hopped in

17 her car and he hopped in his and he chased her down the

18 street, and that was the end of that.

19 Q Now let me slow you down through the process. So he

20 shows up, and she appears unhappy?

21 A Yeah. Yes. Yes.

22 Q She goes out, walks out of the bar. Does she say

23 anything, if you remember?

24 A No. No, I don't remember.

25 Q Does she leave anything behind, if you remember?

109

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1 drove his truck?

2 A I don't recall.

3 Q Don't recall?

4 A I just know I left with him.

5 Q Did he ever choke you?

6 A No, sir.

7 Q Did he ever strike you?

8 A No.

9 Q Left no bruises?

10 A No.

11 Q Even after he accused you of being at fault for your

12 stillborn child, he didn't hit you, or strike you, or

13 choke you, or do anything like that?

14 A Just yelling.

15 Q When he was stalking you and -- was he trying to get back

16 with you?

17 A I assume so. I don't really know.

18 MR. JOHNSON: Okay. No further questions.

19 Thank you.

20 THE COURT: Anything else, Mr. Stevenson?

21 MR. STEVENSON: No redirect.

22 THE COURT: You may step down.

23 THE WITNESS: Thank you.

24 THE COURT: Call your next witness,

25 Mr. Stevenson.

106

1 MR. STEVENSON: The people call Vivian Colvin

2 to the stand -- excuse me, Your Honor, strike that.

3 People call Cameron Dietrich to the stand.

4 MS. LEWIS: Please raise your right hand, sir.

5 Do you solemnly swear that the testimony you shall give

6 in this cause here pending shall be the truth, the whole

7 truth, and nothing but the truth, so help you God?

8 THE WITNESS: Yes.

9 MS. LEWIS: You can take the witness stand.

10 THE WITNESS: Thank you.

11 CAMERON DIETRICH

12 Being first duly sworn at 1:54 p.m., testified under oath

13 as follows:

14 DIRECT EXAMINATION

15 BY MR. STEVENSON:

16 Q Good afternoon. Can you please state and spell your name

17 for the court?

18 A Cameron Dietrich. C-a-m-e-r-o-n, D-i-e-t-r-i-c-h.

19 Q And let me take you back to the early months of 2016.

20 Did you become acquainted with a Melissa Thornton?

21 A Yes.

22 Q Did you guys date for a little bit?

23 A Yeah, kind of, you know.

24 Q Were you sexually intimately involved?

25 A Yes.

107

1 Q Yes, okay. Did you work back at LeBoeuf's bar, which is

2 501 North Bond, back in summer of 2016?

3 A Yes.

4 Q And what did you do there?

5 A Bartender.

6 Q Is that where you met Melissa?

7 A Yes.

8 Q Do you recall around the month that you and her became

9 more than friends or more than acquaintances?

10 A I couldn't give you a month.

11 Q Okay. Were there ever any times where she would be in

12 the bar and you were there and the -- well, strike that.

13 Did you become aware that she had a child in

14 common with another man?

15 A Yes.

16 Q Did you know his name?

17 A No.

18 Q What did Melissa refer to him as?

19 A Baby daddy.

20 Q If I ask you to identify him if he is in this courtroom,

21 would you be able to do that?

22 A Yes.

23 Q Can you tell me where he is seated and what he is

24 wearing?

25 A A suit. Right there.

108

1 MR. STEVENSON: May the record reflect ID, Your

2 Honor?

3 THE COURT: What color is the suit?

4 THE WITNESS: Black and blue.

5 THE COURT: The record shall reflect.

6 MR. STEVENSON: Thank you, Your Honor.

7 BY MR. STEVENSON:

8 Q So she referred to him as her baby daddy; correct?

9 A Yes.

10 Q Did you ever see him show up at LeBoeuf's bar when you

11 and Melissa were there?

12 A Yes.

13 Q And tell me about one of those instances, please?

14 A One time we were just hanging out there, and he shows up,

15 and kind of unexpectedly, and she's all flustered, went

16 outside and seen him follow her, and then she hopped in

17 her car and he hopped in his and he chased her down the

18 street, and that was the end of that.

19 Q Now let me slow you down through the process. So he

20 shows up, and she appears unhappy?

21 A Yeah. Yes. Yes.

22 Q She goes out, walks out of the bar. Does she say

23 anything, if you remember?

24 A No. No, I don't remember.

25 Q Does she leave anything behind, if you remember?

109

200a

1 A Yeah, she left her phone and her purse, and I'm pretty
2 sure that's it.
3 Q And just took off?
4 A Took off.
5 Q Then you go outside as well?
6 A Yes.
7 Q And then Mr. Propp also goes outside?
8 A Yes.
9 Q Do you recall if the defendant -- excuse me, if Melissa
10 gets in her vehicle?
11 A Yes.
12 Q And where does she go?
13 A Down the street.
14 Q Just down the street?
15 A Yeah.
16 Q Do you recall what direction?
17 A Towards Woodbridge.
18 Q Okay. And do you see the defendant get in his vehicle?
19 A Yes.
20 Q Do you remember what kind of vehicle it was? A car or
21 truck?
22 A It was a truck.
23 Q And does he follow her?
24 A Yes.
25 Q How was he driving? Slow? Fast?

110

1 A Pretty fast.
2 Q Does it look like he's close to her? Far away from her?
3 A Pretty close.
4 Q Then was there a time during the course of your
5 relationship with Melissa when she came over to your
6 house and you guys were hanging out?
7 A Yes.
8 Q Tell me about that?
9 A We were just hanging out, watching a movie, and she
10 looked outside and he was waiting outside, and she said,
11 I gotta go, and took off.
12 Q Do you know if he was in his truck? Did she mention his
13 truck, he's standing there?
14 A I have no idea.
15 Q No idea. How did she -- did she seem upset by it, or --
16 A Yeah, she seemed pretty upset.
17 Q Okay. How long were you guys hanging out for, you and
18 Melissa?
19 A Not even an hour.
20 Q Okay. Over the course of your relationship with Melissa,
21 how long did it span? A month? Two months? Weeks?
22 Days?
23 A I couldn't tell you.
24 Q Can't remember?
25 A No.

111

1 Q Okay. Do you recall, after Melissa left, if you guys had
2 any -- if you guys text messaged each other or not about
3 the incident?
4 A Yeah, we did.
5 Q You did?
6 A Yeah.
7 Q Do you remember if it was that morning -- well, strike
8 that.
9 Let me ask you, when did you guys hang out?
10 Was it daytime? Morning time? Nighttime?
11 A It was night.
12 Q Did she text you, do you recall if it was that evening or
13 the next day or --
14 A I don't know if it was that night or the next morning.
15 Q Okay. But you remember --
16 A Texting her, yes, sir.
17 Q And it was about that incident?
18 A Yes.
19 Q What I'm showing you is marked as People's proposed
20 Exhibit 58. Don't read it out loud. Just take a look
21 and it let me know if you recognize that?
22 A Yes.
23 Q And what is it?
24 A A text message talking about him showing up and --
25 THE COURT: Keep your voice up so the jury can

112

1 hear you.
2 THE WITNESS: Oh. Sorry.
3 A Her just saying she's sorry about him stalking her and --
4 MR. STEVENSON: Okay, I'm going to stop you.
5 BY MR. STEVENSON:
6 Q Was that the text message that you had with respect to
7 that incident?
8 A Yeah.
9 Q I'm sorry?
10 A Yes.
11 Q Yes.
12 MR. STEVENSON: The people move to introduce
13 into evidence People's proposed 58.
14 THE COURT: Mr. Johnson?
15 MR. JOHNSON: Your Honor, I'm going to object
16 to that because we don't know if it's relevant date,
17 time, any of that. We don't know when this occurred and
18 what it might have to do with this particular incident.
19 THE COURT: Lay a foundation, Mr. Stevenson.
20 BY MR. STEVENSON:
21 Q After Melissa left, when she indicated Robert Propp was
22 outside her house, did you have a text message
23 conversation about that very incident?
24 A Yes.
25 Q Was there any other time that you had a text-type

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201a

1 dialogue with her about that?

2 A Yes, I'm pretty sure we have.

3 Q So you had more than one conversation?

4 A Besides, yeah.

5 Q About him stalking her?

6 A Yeah.

7 Q Okay.

8 MR. STEVENSON: I'll withdraw it.

9 THE COURT: All right. Objection sustained.

10 MR. STEVENSON: No further questions.

11 THE COURT: Questions, Mr. Johnson?

12 CROSS-EXAMINATION

13 BY MR. JOHNSON:

14 Q Good afternoon. Have you ever met Mr. Propp personally?

15 A No, not personally.

16 Q And you said you and Melissa were in a dating

17 relationship?

18 A Yeah.

19 Q Where you had an exclusive relationship?

20 A No. Like no one knew. We were just friends that hung

21 out, you know.

22 Q Did you ever see any indications of her being assaulted?

23 A No.

24 Q No bruises? No --

25 A No.

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1 Q Thank you.

2 MR. JOHNSON: No further questions.

3 THE COURT: Anything else, Mr. Stevenson?

4 REDIRECT EXAMINATION

5 BY MR. STEVENSON:

6 Q You were intimate with her; correct?

7 A Yes.

8 Q Did she ever asked to be choked? Did you ever choke her?

9 A No.

10 MR. STEVENSON: Nothing further.

11 THE COURT: Anything else, Mr. Johnson?

12 RECROSS-EXAMINATION

13 BY MR. JOHNSON:

14 Q How many times were you intimate with her?

15 A Just once.

16 MR. JOHNSON: No further questions. Thank you.

17 THE COURT: You may step down.

18 THE WITNESS: All right, thank you.

19 THE COURT: You may call your next witness,

20 Mr. Stevenson.

21 MR. STEVENSON: The People would like to call

22 Miss Mary Houlihan.

23 MS. LEWIS: Please raise your right hand. Do

24 you solemnly swear that the testimony you shall give in

25 this cause here pending shall be the truth, the whole

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1 truth, and nothing but the truth, so help you God?

2 THE WITNESS: Yes, I do.

3 MS. LEWIS: You can take the witness stand.

4 THE WITNESS: Thank you.

5 MARY HOULIHAN

6 Being first duly sworn at 2:02 p.m., testified under oath

7 as follows:

8 DIRECT EXAMINATION

9 BY MR. STEVENSON:

10 Q Good afternoon. Can you please state and spell your name

11 for the court?

12 A Mary Houlihan. M-a-r-y, H-o-u-l-i-h-a-n.

13 Q And who is your employer and how so are you employed?

14 A Baywood Lounge. I'm a bartender there.

15 Q Were you so back on July 5th, 2016, into the 6th of 2016?

16 A Yes.

17 Q Do you recall who was working with you that night?

18 A Melissa Spitz.

19 Q Okay. Did you know of a Melissa Thornton?

20 A I knew who she was, but I didn't know her personally.

21 Q Did you know a Robert Propp?

22 A No.

23 Q No. Back to that night, did you see them in Baywood

24 Lounge?

25 A Yes.

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1 Q And did you notice anything unusual between the two of

2 them?

3 A Nothing at all.

4 Q Did you assist them in any way that night?

5 A No.

6 Q Did you help ring them up to cash them out?

7 A I may have rang up the ticket, but Melissa was the one

8 that ultimately cashed them out.

9 Q Okay. At some point, did they leave the bar?

10 A Yes.

11 Q Did you notice anything unusual when they left?

12 A No.

13 Q Were you -- did you know if there was any fight or any

14 altercation that night?

15 A No, I had not heard of any.

16 Q It's my understanding you have surveillance cameras at

17 the bar?

18 A Yes.

19 Q And you did back on that occasion? On that night?

20 A Yes.

21 Q What I'm showing you is marked as People's Exhibit 22.

22 Do you recall a detective coming and you speaking with

23 him to get a surveillance video?

24 A Yes.

25 Q And did you provide that to the detective?

117

202a

1 A Vodka cranberry was one, and the other one may have been
2 vodka soda, I'm not sure.
3 Q Okay. Did you engage in any conversation when they
4 initially arrived?
5 A Mm-hmm. I talked to them, seen where they went that
6 night. We talked a little bit about our kids.
7 THE COURT: Move closer to the mic.
8 A We just talked about, like, our kids and where they went
9 that night.
10 BY MR. STEVENSON:
11 Q Do you have certain questions you ask everybody to find
12 out if they seem intoxicated, whether or not you should
13 serve them?
14 A Yeah, normally it's just, where you been? How's your
15 night going? Just to kind of get people to talk and
16 stuff.
17 Q Okay. Did Robert Propp appear intoxicated?
18 A Not at all.
19 Q Did Melissa Thornton appear intoxicated?
20 A Not at all.
21 Q How were they acting? Were they getting along that
22 night?
23 A Mm-hmm, it was fine.
24 Q Okay. Do you recall if there was any altercations that
25 night?

122

1 A None at all.
2 Q None at all.
3 And what I'm showing you is marked as People's
4 proposed Exhibit 23. Let me know if you recognize that?
5 A That's their slip from their debit card for paying for
6 their drinks.
7 Q And who signed that?
8 A Melissa.
9 Q And is that an accurate copy?
10 A Mm-hmm.
11 MR. STEVENSON: People move to introduce
12 People's proposed 23.
13 MR. JOHNSON: No objections.
14 THE COURT: Exhibit 23 will be admitted.
15 BY MR. STEVENSON:
16 Q And does it say what time that was?
17 A They normally -- oh, yeah, right there. 1:15.
18 Q Thank you.
19 MR. STEVENSON: Thank you.
20 THE COURT: Questions, Mrs. Johnson?
21 MR. JOHNSON: No questions for this witness,
22 Your Honor.
23 THE COURT: You may step down.
24 THE WITNESS: Thank you.
25 THE COURT: Call your next Wednesday,

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1 Mr. Stevenson.
2 MR. STEVENSON: People call Erika Bettis.
3 MS. LEWIS: Please raise your right hand,
4 ma'am. Do you solemnly swear that the testimony you
5 shall give in this cause here pending shall be the truth,
6 the whole truth, and nothing but the truth, so help you
7 God?
8 THE WITNESS: Yes, ma'am.
9 MS. LEWIS: You can take the witness stand.
10 ERIKA BETTIS
11 Being first duly sworn at 2:10 p.m., testified under oath
12 as follows:
13 DIRECT EXAMINATION
14 BY MR. STEVENSON:
15 Q Good afternoon. Can you please state and spell your
16 name?
17 A Erika, E-r-i-k-a, Marie, M-a-r-i-e, Bettis, B-e-t-t-i-s.
18 Q And, Miss Bettis, what was your relationship with Melissa
19 Thornton?
20 A I am her cousin.
21 Q You're her cousin. Were you aware if she was dating a
22 Robert Propp?
23 A Yes.
24 Q Did you ever have an occasion to meet Robert?
25 A Yes.

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1 Q At some point in time, were you concerned about how much
2 time they were spending with one another?
3 A After they had broken up, yes.
4 Q And why?
5 A Well, because I -- I knew that they had broken up and she
6 had moved out. And at the time I was friends with him on
7 Facebook and I was seeing a lot of pictures posted with
8 him and her and their daughter, or his children and --
9 you know, so I had an occasion to speak with her in
10 private and I asked her, I said, Are you and Rob getting
11 back together? And she said no. And I said, I was just
12 noticing a lot of pictures, you know, of the stuff on
13 Facebook. And she told me that, well, yeah, he calls
14 that family time. And, like, if I don't cooperate with
15 him, he threatens me that I won't see my daughter,
16 Willow, again he'll keep her from me, and, you know, I'm
17 afraid of what he might do.
18 Q And did the conversation go on, or was that about it?
19 A No, she -- she went to the restroom, and when she came
20 out she kind of changed the conversation. This was not
21 anything as -- with family, as far as I know, that she
22 would get into a lot of detail or, you know, want to
23 really talk about.
24 Q What I'm showing you has been marked as People's proposed
25 No. 57; do you recognize that?

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203a

1 A Yes.

2 Q And what is that, please?

3 A That is a picture of Melissa and Willow.

4 Q And does that accurately portray them?

5 A Yes.

6 MR. STEVENSON: People move to introduce into

7 evidence People's proposed a 57.

8 THE COURT: Mr. Johnson?

9 MR. JOHNSON: No objections.

10 THE COURT: Exhibit 57 will be admitted.

11 MR. STEVENSON: Thank you, Miss Bettis.

12 THE WITNESS: Uh-huh.

13 THE COURT: Questions, Mr. Johnson.

14 Are you going to use that photo?

15 MR. STEVENSON: You can take it down.

16 CROSS-EXAMINATION

17 BY MR. JOHNSON:

18 Q You saw the picture that was just on the screen?

19 A Yes, sir.

20 Q Was that one of the pictures you saw on Facebook?

21 A On her Facebook page.

22 Q On her Facebook, yeah.

23 A Yes.

24 Q You saw pictures of her and Mr. Propp and the child

25 together?

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1 A After they had broken up, yes.

2 Q Any other people in any of the photos that you saw?

3 A At times his other two children, yes.

4 Q Okay. And when you talked to Miss Thornton, she told you

5 that's what he called family time?

6 A Yes.

7 Q What did she call it?

8 A She called it him threatening her to spend time, or that

9 she would not see her daughter.

10 Q Who had custody of the child?

11 A Melissa.

12 MR. JOHNSON: No further questions.

13 THE COURT: Anything else, Mr. Stevenson?

14 MR. STEVENSON: Nothing further, Your Honor.

15 THE COURT: You may step down.

16 THE WITNESS: Thank you.

17 THE COURT: You may call your next witness,

18 Mr. Stevenson.

19 MR. STEVENSON: People call Vivian Colvin.

20 MS. LEWIS: Please raise your right hand,

21 ma'am. Do you solemnly swear that the testimony you

22 shall give in this cause here pending shall be the truth,

23 the whole truth, and nothing but the truth, so help you

24 God?

25 THE WITNESS: Yes, I do.

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1 MS. LEWIS: You can take the witness stand.

2 VIVIAN COLVIN

3 Being first duly sworn at 2:14 p.m., testified under oath

4 as follows:

5 DIRECT EXAMINATION

6 BY MR. STEVENSON:

7 Q Good afternoon. Can you please state and spell your

8 name?

9 A Vivian J. Colvin, C-o-l-v-i-n.

10 Q Miss Colvin, who is your employer?

11 A I work for James Lafleur, and I also work for the

12 Zehnder's Splash Village Hotel Resort.

13 Q Okay. Did you work for Zehnder's Splash Village Hotel

14 Resort back in the early months of 2016?

15 A Yes.

16 Q Did you get to know a Melissa Thornton?

17 A Yes.

18 Q How so?

19 A She was kind of newer and very soft-spoken, very quiet,

20 and I was noticing how some of the girls who had been

21 there forever were, like, making her do all their side

22 work and stuff. So I kind of noticed that and kind of

23 put a stop to that, kind of took her under my wing. We

24 just became friends.

25 Q Okay. You said other people were kind of making her do

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1 their work. What was her personality at work?

2 A She had a good personality. Very sweet person. Very

3 soft-spoken. Would do whatever anybody asked her to,

4 which is why I think it was easy for them to do that.

5 She never, like, stood up for herself or anything like

6 that, so.

7 Q Okay. So you kind of protected her, would you say?

8 A I would say from those types of issues, absolutely.

9 Q Okay. Did you ever develop a friendship and hang out

10 outside of work?

11 A Yeah.

12 Q Would she ever discuss her boyfriend Robert Propp?

13 A Yes, she did, not at first, but then I think just

14 curiosity and I would ask her, because he would, like,

15 blow up her phone and stuff like that at work, so I would

16 ask her why does he do that, and eventually she started

17 talking to me about him, yes.

18 Q Now what do you mean blow up her phone at work?

19 A I mean just constant phone calls or constant text

20 messages. Constant.

21 Q Like every minute? Every 10 minutes? What do you mean?

22 A Almost like as soon as one would stop, another would

23 start.

24 Q Okay.

25 A You know, and as busy as we get there, it was like

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1 A Yes.

2 Q And what is that, please?

3 A That is a picture of Melissa and Willow.

4 Q And does that accurately portray them?

5 A Yes.

6 MR. STEVENSON: People move to introduce into

7 evidence People's proposed a 57.

8 THE COURT: Mr. Johnson?

9 MR. JOHNSON: No objections.

10 THE COURT: Exhibit 57 will be admitted.

11 MR. STEVENSON: Thank you, Miss Bettis.

12 THE WITNESS: Uh-huh.

13 THE COURT: Questions, Mr. Johnson.

14 Are you going to use that photo?

15 MR. STEVENSON: You can take it down.

16 CROSS-EXAMINATION

17 BY MR. JOHNSON:

18 Q You saw the picture that was just on the screen?

19 A Yes, sir.

20 Q Was that one of the pictures you saw on Facebook?

21 A On her Facebook page.

22 Q On her Facebook, yeah.

23 A Yes.

24 Q You saw pictures of her and Mr. Propp and the child

25 together?

126

1 A After they had broken up, yes.

2 Q Any other people in any of the photos that you saw?

3 A At times his other two children, yes.

4 Q Okay. And when you talked to Miss Thornton, she told you

5 that's what he called family time?

6 A Yes.

7 Q What did she call it?

8 A She called it him threatening her to spend time, or that

9 she would not see her daughter.

10 Q Who had custody of the child?

11 A Melissa.

12 MR. JOHNSON: No further questions.

13 THE COURT: Anything else, Mr. Stevenson?

14 MR. STEVENSON: Nothing further, Your Honor.

15 THE COURT: You may step down.

16 THE WITNESS: Thank you.

17 THE COURT: You may call your next witness,

18 Mr. Stevenson.

19 MR. STEVENSON: People call Vivian Colvin.

20 MS. LEWIS: Please raise your right hand,

21 ma'am. Do you solemnly swear that the testimony you

22 shall give in this cause here pending shall be the truth,

23 the whole truth, and nothing but the truth, so help you

24 God?

25 THE WITNESS: Yes, I do.

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1 MS. LEWIS: You can take the witness stand.

2 VIVIAN COLVIN

3 Being first duly sworn at 2:14 p.m., testified under oath

4 as follows:

5 DIRECT EXAMINATION

6 BY MR. STEVENSON:

7 Q Good afternoon. Can you please state and spell your

8 name?

9 A Vivian J. Colvin, C-o-l-v-i-n.

10 Q Miss Colvin, who is your employer?

11 A I work for James Lafleur, and I also work for the

12 Zehnder's Splash Village Hotel Resort.

13 Q Okay. Did you work for Zehnder's Splash Village Hotel

14 Resort back in the early months of 2016?

15 A Yes.

16 Q Did you get to know a Melissa Thornton?

17 A Yes.

18 Q How so?

19 A She was kind of newer and very soft-spoken, very quiet,

20 and I was noticing how some of the girls who had been

21 there forever were, like, making her do all their side

22 work and stuff. So I kind of noticed that and kind of

23 put a stop to that, kind of took her under my wing. We

24 just became friends.

25 Q Okay. You said other people were kind of making her do

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1 their work. What was her personality at work?

2 A She had a good personality. Very sweet person. Very

3 soft-spoken. Would do whatever anybody asked her to,

4 which is why I think it was easy for them to do that.

5 She never, like, stood up for herself or anything like

6 that, so.

7 Q Okay. So you kind of protected her, would you say?

8 A I would say from those types of issues, absolutely.

9 Q Okay. Did you ever develop a friendship and hang out

10 outside of work?

11 A Yeah.

12 Q Would she ever discuss her boyfriend Robert Propp?

13 A Yes, she did, not at first, but then I think just

14 curiosity and I would ask her, because he would, like,

15 blow up her phone and stuff like that at work, so I would

16 ask her why does he do that, and eventually she started

17 talking to me about him, yes.

18 Q Now what do you mean blow up her phone at work?

19 A I mean just constant phone calls or constant text

20 messages. Constant.

21 Q Like every minute? Every 10 minutes? What do you mean?

22 A Almost like as soon as one would stop, another would

23 start.

24 Q Okay.

25 A You know, and as busy as we get there, it was like

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1 detrimental to her too because, you know, she can't pay
2 attention to what she's doing for fear of this happening
3 and not being able to answer it.
4 Q And what would you do when you saw this occurring?
5 A Sometimes I would take it from her and turn it down and
6 set it on -- and then it would vibrate so I would flip it
7 over and tell her, you know, look at it every 10 or
8 15 minutes if he has the baby.
9 Q Yeah.
10 A You know, you're at work, what are you going to do? So
11 she was worried when she couldn't attend it.
12 Q And did she say why she was worried?
13 A Because he would get mad.
14 Q Okay. Was there a chance that you and her had an
15 opportunity to go have a couple of drinks one night?
16 A Yeah, we did that a couple of times, actually, would go
17 sometimes after work, if it was an extremely busy night
18 or whatever, and have a burger and maybe a couple of
19 beers and go home.
20 Q Okay. Did she ever indicate if there was any abuse in
21 the relationship?
22 A Yeah. Yeah. We were at Grand Central one night, it was
23 late November, early December. I feel like it was
24 holiday season. I remember the Christmas lights being
25 up, it was cold outside, and we had went for a burger and

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1 a beer, and she had told me then that he had choked her
2 in her sister's bathroom.
3 Q Did she describe that?
4 A Yeah. He had her neck like that and had her against the
5 wall, and she had told me that she was afraid she was
6 going to pass out because she was starting to see spots
7 or stars, and he eventually let her go, so.
8 Q Did he say anything to her when that was happening?
9 A She told me that he told her then, See how easy it would
10 be for me to shut you up.
11 Q What was your reaction to this?
12 A I was -- I'm afraid for that. Because I know that if
13 things like that are made okay, it usually will happen
14 again. So I told her to tell her sisters, and she said
15 she could not do that.
16 Q Why?
17 A Because they already didn't like him, and she didn't want
18 to make it worse because they share a daughter.
19 Q Did she indicated if he would ever do anything else to
20 her physically?
21 A You know, a lot of it was done, she stated, where Willow
22 couldn't see, like he would pull the back of her hair,
23 like at the bottom of the back of your hair and say
24 things to her where Willow couldn't see that's what he
25 was doing.

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1 I did another time see bruises on her arm, and
2 jokingly, because I already knew what was going on, I
3 said, what happened there, Melissa? Did you walk into a
4 door? And she rubbed her arm and she said stop it. And
5 I asked my other co-worker, I said what do you think,
6 Charity? What does that look like? And she turned and
7 goes, well, it looks like a handprint, and she put her
8 hand on it. It was a hand print, you know.
9 MR. STEVENSON: Thank you.
10 THE COURT: Questions, Mr. Johnson.
11 CROSS-EXAMINATION
12 BY MR. JOHNSON:
13 Q Good afternoon.
14 A Good afternoon.
15 Q Do you recall testifying at a hearing on July 28th?
16 A I know I have testified one time before.
17 Q Of 2017, uh-huh.
18 And at that hearing, you didn't say anything
19 about asking her or telling her to go and tell her
20 sisters, did you?
21 A I don't remember. But I wouldn't think that I wouldn't
22 have, because that was a fear of mine that she hadn't
23 told any of her family.
24 MR. JOHNSON: May I approach, Your Honor?
25 A So I don't remember.

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1 MR. JOHNSON: I want to refresh her memory.
2 BY MR. JOHNSON:
3 Q Please review, here's where your testimony starts, if you
4 would read through that and it ends right here?
5 MR. STEVENSON: Your Honor, if I may direct the
6 witness and Mr. Johnson to page 58, lines 13 and 14.
7 A Right there where it says I told her she needed to tell
8 her sisters.
9 BY MR. JOHNSON:
10 Q And what was the reason that she said that she didn't
11 tell her sisters?
12 A Because they didn't like him as it was, and they
13 didn't -- she didn't want anything to be worse than it
14 already was between her family and him, because of
15 Willow.
16 Q Okay, because of Willow. You left Willow out, right?
17 A I don't remember. But thanks for trying to refresh my
18 memory.
19 Q Mm-hmm. How long were you and her working together?
20 A Probably about nine months, somewhere around there.
21 Q How many times did you go out together?
22 A Three or four.
23 Q And --
24 A But we also did take brakes while we were at work, we
25 would go outside and smoke together, and I learned a lot

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1 about him then, like his drug abuse, and things that
2 happened then.
3 Q Ma'am, I didn't ask you that question.
4 A Well, okay.
5 Q You have to wait until I ask you a question, okay?
6 And she told you things that she never told
7 anybody else?
8 A I don't know who she told those things to. I just know
9 what she told me.
10 Q Mm-hmm.
11 MR. JOHNSON: No further questions.
12 THE COURT: Anything else, Mr. Stevenson?
13 MR. STEVENSON: Nothing further, Your Honor.
14 THE COURT: You may step down.
15 THE WITNESS: Thank you.
16 THE COURT: You may call your next witness,
17 Mr. Stevenson.
18 MR. STEVENSON: People call Rikki-Jo
19 Cunningham.
20 MS. LEWIS: Please raise your right hand,
21 ma'am. Do you solemnly swear that the testimony you
22 shall give in this cause here pending shall be the truth,
23 the whole truth, and nothing but the truth, so help you
24 God?
25 THE WITNESS: Yes.

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1 MS. LEWIS: You can take the witness stand.
2 RIKKI-JO CUNNINGHAM
3 Being first duly sworn at 2:22 p.m., testified under oath
4 as follows:
5 DIRECT EXAMINATION
6 BY MR. STEVENSON:
7 Q Good afternoon. Can you please state and spell your name
8 for the record?
9 A Rikki-Jo Cunningham. R-i-k-k-i, J-o,
10 C-u-n-n-i-n-g-h-a-m.
11 Q And did you know a Melissa Thornton?
12 A Yes.
13 Q And she was a good friend of yours; is that correct?
14 A Yes.
15 Q Did you know a Robert Propp?
16 A Yes.
17 Q Were you aware of their dating relationship?
18 A Correct, yes.
19 Q Yes. Were you aware that she moved out of their house
20 and moved in with her sister?
21 A Yes.
22 Q Do you know why?
23 A Yes, I do.
24 THE COURT: Please keep your voice up, too, all
25 right?

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1 A Yes, I do.
2 BY MR. STEVENSON:
3 Q And why?
4 A Because I was told that he had a coke problem.
5 Q Once he moved out, did you ever observe if his behavior
6 towards Melissa changed?
7 A Yes.
8 Q And how so?
9 A He would constantly be texting her and calling her
10 nonstop.
11 Q Would you be present when he would be doing this?
12 A Yeah.
13 Q Was there a night when you and Melissa went out to
14 Baywood?
15 A Yes.
16 Q And the defendant showed up? Mr. Propp?
17 A She said that she saw his vehicle.
18 Q Okay. Tell me about that scenario, please?
19 A We went to LeBoeuf's first, and then she said she saw his
20 vehicle pass a couple of times, so we ended up going to
21 Baywood. After that, we stopped to get cigarettes. When
22 we went there, I was told that his vehicle was there, so
23 I hurried up and paid and hopped in the car, and he ended
24 up following us.
25 Q Okay. Were there -- how often would you and Melissa hang

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1 out, approximately?
2 A At least once every two weeks.
3 Q Okay. When you guys would hang out, would he call
4 nonstop then, or would it be something that would happen
5 like once a month or once every couple months?
6 A Almost every time.
7 Q Almost every time?
8 MR. STEVENSON: Thank you.
9 THE COURT: Questions, Mr. Johnson?
10 CROSS-EXAMINATION
11 BY MR. JOHNSON:
12 Q You and Miss Thornton were pretty good friends?
13 A Correct.
14 Q For how long?
15 A Fourteen years.
16 Q So good friends?
17 A Yes.
18 Q She told you that they were breaking up because of his
19 drug problem?
20 A Correct.
21 Q Money problems too?
22 A No.
23 Q No. She didn't mention money problems associated with
24 the drug problems?
25 A No.

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1 about him then, like his drug abuse, and things that 2 happened then. 3 Q Ma'am, I didn't ask you that question. 4 A Well, okay. 5 Q You have to wait until I ask you a question, okay? 6 And she told you things that she never told 7 anybody else? 8 A I don't know who she told those things to. I just know 9 what she told me. 10 Q Mm-hmm. 11 MR. JOHNSON: No further questions. 12 THE COURT: Anything else, Mr. Stevenson? 13 MR. STEVENSON: Nothing further, Your Honor. 14 THE COURT: You may step down. 15 THE WITNESS: Thank you. 16 THE COURT: You may call your next witness, 17 Mr. Stevenson. 18 MR. STEVENSON: People call Rikki-Jo 19 Cunningham. 20 MS. LEWIS: Please raise your right hand, 21 ma'am. Do you solemnly swear that the testimony you 22 shall give in this cause here pending shall be the truth, 23 the whole truth, and nothing but the truth, so help you 24 God? 25 THE WITNESS: Yes. 134	1 A Yes, I do. 2 BY MR. STEVENSON: 3 Q And why? 4 A Because I was told that he had a coke problem. 5 Q Once he moved out, did you ever observe if his behavior 6 towards Melissa changed? 7 A Yes. 8 Q And how so? 9 A He would constantly be texting her and calling her 10 nonstop. 11 Q Would you be present when he would be doing this? 12 A Yeah. 13 Q Was there a night when you and Melissa went out to 14 Baywood? 15 A Yes. 16 Q And the defendant showed up? Mr. Propp? 17 A She said that she saw his vehicle. 18 Q Okay. Tell me about that scenario, please? 19 A We went to LeBoeuf's first, and then she said she saw his 20 vehicle pass a couple of times, so we ended up going to 21 Baywood. After that, we stopped to get cigarettes. When 22 we went there, I was told that his vehicle was there, so 23 I hurried up and paid and hopped in the car, and he ended 24 up following us. 25 Q Okay. Were there -- how often would you and Melissa hang 136
1 MS. LEWIS: You can take the witness stand. 2 RIKKI-JO CUNNINGHAM 3 Being first duly sworn at 2:22 p.m., testified under oath 4 as follows: 5 DIRECT EXAMINATION 6 BY MR. STEVENSON: 7 Q Good afternoon. Can you please state and spell your name 8 for the record? 9 A Rikki-Jo Cunningham. R-i-k-k-i, J-o, 10 C-u-n-n-i-n-g-h-a-m. 11 Q And did you know a Melissa Thornton? 12 A Yes. 13 Q And she was a good friend of yours; is that correct? 14 A Yes. 15 Q Did you know a Robert Propp? 16 A Yes. 17 Q Were you aware of their dating relationship? 18 A Correct, yes. 19 Q Yes. Were you aware that she moved out of their house 20 and moved in with her sister? 21 A Yes. 22 Q Do you know why? 23 A Yes, I do. 24 THE COURT: Please keep your voice up, too, all 25 right? 135	1 out, approximately? 2 A At least once every two weeks. 3 Q Okay. When you guys would hang out, would he call 4 nonstop then, or would it be something that would happen 5 like once a month or once every couple months? 6 A Almost every time. 7 Q Almost every time? 8 MR. STEVENSON: Thank you. 9 THE COURT: Questions, Mr. Johnson? 10 CROSS-EXAMINATION 11 BY MR. JOHNSON: 12 Q You and Miss Thornton were pretty good friends? 13 A Correct. 14 Q For how long? 15 A Fourteen years. 16 Q So good friends? 17 A Yes. 18 Q She told you that they were breaking up because of his 19 drug problem? 20 A Correct. 21 Q Money problems too? 22 A No. 23 Q No. She didn't mention money problems associated with 24 the drug problems? 25 A No. 137

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1 Q Did she talk about him disappearing for days at a time or
2 anything like that?
3 A Yes.
4 Q Did she talk about him beating her up?
5 A No.
6 Q Did you ever see any signs of her being beaten up by him?
7 A No physical abuse.
8 Q No physical abuse. Thank you.
9 MR. JOHNSON: No further questions.
10 THE COURT: Anything else, Mr. Stevenson?
11 MR. STEVENSON: Nothing further.
12 THE COURT: You may step down.
13 You may call your next witness, Mr. Stevenson.
14 MR. STEVENSON: People call Detective Sergeant
15 Rob Scott.
16 MS. LEWIS: Please raise your right hand, sir.
17 Do you solemnly swear that the testimony you shall give
18 in this cause here pending shall be the truth, the whole
19 truth, and nothing but the truth, so help you God?
20 THE WITNESS: Yes, ma'am.
21 MS. LEWIS: You can take the witness stand.
22 THE WITNESS: Thanks.
23 ROBERT SCOTT
24 Being first duly sworn at 2:27 p.m., testified under oath
25 as follows:

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1 DIRECT EXAMINATION
2 BY MR. STEVENSON:
3 Q Good afternoon. Can you please spell -- excuse me, state
4 and spell your name for record?
5 A Good afternoon, sir. My name is Robert Scott.
6 R-o-b-e-r-t, S-c-o-t-t.
7 Q And who is your employer and how so are you employed?
8 A I am employed by the Michigan State Police.
9 Q For how long?
10 A For nine years.
11 Q Let me take you back to July 6 of 2016. Do you recall
12 being dispatched to 607 South Alexander Street in the
13 City of Saginaw?
14 A That's correct, sir.
15 Q And what for?
16 A I was, at that time, I was a part of major case unit,
17 which is a unit here within Saginaw, in the City of
18 Saginaw, that investigates violent crime. There is a
19 Detective Sergeant that's in charge of that unit, his
20 name is Detective Sergeant Bush, and he requested that I
21 respond to that location to assist with an investigation.
22 Q So what was your function when you arrived?
23 A When I arrived on scene as a Detective Trooper, at that
24 time what we would do is just check, originally, check
25 with the officers that first went on scene, check and see

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1 what they had, and what they had reported had been
2 reported, any interviews that they had conducted, and
3 then we would begin our investigation from there.
4 Q Okay. Were you responsible for getting search warrants
5 for some places involving this?
6 A Yes, sir. Detective Sergeant Bush had arrived on scene
7 as well, and he had requested that I complete search
8 warrants to get us started with the investigation.
9 Q And you did so; correct?
10 A That's correct, sir.
11 Q And also a search warrant for Robert Propp's house as
12 well?
13 A Yes, sir.
14 Q And another one for Robert Propp's business as well;
15 correct?
16 A That's correct, sir.
17 Q When you're at the address of 607 South Alexander, did
18 you have an opportunity to go into the defendant's truck?
19 A Yes, sir, I did.
20 Q And did you notice anything in that truck that you
21 seized?
22 A I seized the victim, Melissa Thornton's wallet. It was a
23 pink multicolored wallet located in the center console of
24 his pickup truck.
25 Q What I'm showing you is marked as People's proposed

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1 Exhibit 28. Let me know if you recognize that?
2 A Yes, sir, I recognize this. This is my handwriting, my
3 initials, my badge number. Put my name and what I
4 identified this item to be. And I sealed this as well.
5 And I put my initials on both sides of the seal to show
6 that I sealed this.
7 Q And within that wallet, what was in it?
8 A Was Melissa Thornton's driver's license, a credit card,
9 and some miscellaneous receipts.
10 MR. STEVENSON: The People move to introduce
11 People's proposed 28.
12 MR. JOHNSON: No objection.
13 THE COURT: Exhibit 28 will be admitted.
14 BY MR. STEVENSON:
15 Q I understand you had an opportunity to go through the
16 residence at 607 South Alexander; correct?
17 A That's correct, sir.
18 Q And can you describe what a MagicPlan CSI is?
19 A Yes, sir, the MagicPlan is a program that we utilize at
20 the major case unit, we got it probably six months to --
21 probably six months before this investigation started,
22 and it works on an iPad, and so we are able to take the
23 iPad with us to the scene.
24 What it ends up doing is it sketches out the
25 house, the location, whatever scene that we're currently

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1 MS. LEWIS: You can take the witness stand.

2 THE COURT: Ms. Jolly, you have to keep your
3 voice up so the jury can hear you, and speak into the
4 microphone; all right?

5 THE WITNESS: Okay.

6 THE COURT: You may proceed.

7 JANELLE JOLLY,
8 being first duly sworn at 10:34 a.m., testified under
9 oath as follows:

10 D I R E C T E X A M I N A T I O N

11 BY MR. JOHNSON:

12 Q Good morning, Ms. Jolly. Do you know you a person by
13 the name of Robert Propp?

14 A Yes.

15 Q Do you see him in the courtroom today?

16 A Yes.

17 Q Could you point him out for --

18 A Right there.

19 Q -- the Court? What's he wearing?

20 A Black suit with a --

21 MR. JOHNSON: Your Honor, may the record show
22 that she has identified the defendant?

23 THE COURT: It shall reflect.

24 BY MR. JOHNSON:

25 Q How do you know Mr. Propp?

1 A We dated.

2 Q You dated. So you were -- were you in an exclusive
3 relationship with him during the time that you dated?

4 A Yes.

5 Q How long did you date?

6 A About a year.

7 Q When -- do you remember what year it was that you
8 dated?

9 A Maybe 2011, I believe.

10 Q So for the year 2011, roughly, till 2012?

11 A Yeah, I believe so.

12 Q Eventually, you broke up?

13 A Yes.

14 Q Who initiated the breakup?

15 A Well, I did, because of his drug use.

16 Q Okay. You did because of his drug use?

17 A Yes.

18 Q You became aware of Mr. Propp using some drugs?

19 A Yes.

20 Q Do you know what drug he was using?

21 A Cocaine.

22 Q It became a problem in your relationship; didn't it?

23 A Yes.

24 Q What kind of problems did his drug use present for you?

25 A Just different behavior.

1 Q Can you describe what the behaviors were that you
2 experienced when he was under the influence of drugs?

3 A Sleeping a lot, just not himself.

4 Q Okay. Was he, at any time, violent with you either on
5 drugs or off of drugs?

6 A No.

7 Q Was he abusive in any way to you?

8 A No.

9 Q Do you know who he became involved with after you broke
10 up?

11 A Yes.

12 Q And who was that?

13 A Melissa.

14 Q Melissa Thornton --

15 A Yes.

16 Q -- the victim in this case?

17 A Yes.

18 Q Did Melissa ever reach out to you at all regarding his
19 drug use or any of his behaviors?

20 A No.

21 Q If I can get you to kind of explain a little bit more
22 as far as his behaviors when he was under the influence
23 of drugs. You said he slept a lot and --

24 A He just wasn't his usual self when he wasn't on it, and
25 I could tell there was something going on.

1 Q How was he when he wasn't on it?

2 A Perfect. He was a loving, perfect guy.

3 Q And when he was on it?

4 A He was a little distant, and I knew there was a
5 problem.

6 Q And how did that make you feel?

7 A Well, I didn't -- sad. I didn't know what was going
8 on, and then I found out what the problem was.

9 Q Did he frighten you in any way?

10 A No.

11 Q When you -- after you broke up, were there times when
12 he did things to try to get back together with you?

13 A No.

14 Q Do you have any idea how long after you broke up he
15 became involved with the victim in this case, Melissa
16 Thornton?

17 A No.

18 Q No. If it had not been for the drug use -- did you
19 talk to him about the drug use at all --

20 A Yes.

21 Q -- before your breakup?

22 A Yes.

23 Q And how did he respond?

24 A He didn't think he had a problem.

25 Q So do you feel like he was in denial?

1 A Yes.

2 Q Okay. But you had no indication prior to that of what
3 was going on?

4 A No.

5 MR. JOHNSON: I don't have any further
6 questions.

7 THE COURT: Any questions, Mr. Stevenson?

8 MR. STEVENSON: No questions.

9 THE COURT: You may step down.

10 (Witness excused at 10:38 a.m.)

11 * * *

12 MR. JOHNSON: May we approach, Your Honor?

13 THE COURT: You may.

14 (Bench conference.)

15 THE COURT: You may call your next witness,
16 Mr. Johnson.

17 MR. JOHNSON: The defense calls the
18 Defendant, Robert Propp.

19 MS. LEWIS: Please raise your right hand,
20 sir. Do you solemnly swear that the testimony you
21 shall give in this cause here pending shall be the
22 truth, the whole truth, and nothing but the truth, so
23 help you God?

24 THE DEFENDANT: Yes, ma'am.

25 MS. LEWIS: You can take the witness stand.

1 if I could join them and had a conversation beforehand.

2 THE COURT: You're going to have to speak up
3 a little louder, Mr. Propp.

4 THE WITNESS: And we had -- I asked her if I
5 could come because she was -- I didn't want to come
6 without being invited. And I had -- so I met her at
7 LeBoeuf's. She agreed to it. We met outside. She was
8 smoking. I had a cigarette with her. We went inside,
9 had a -- I went to the bar, I ordered a drink, and
10 ordered her a drink. And she went to the bathroom, and
11 we had a conversation with her sister there.

12 BY MR. JOHNSON:

13 Q What kind of conversation did you have with her sister,
14 and which sister was this?

15 A Angela Thornton.

16 Q Mm-hmm.

17 A She was there with us.

18 Q And what was your conversation with her sister?

19 A Just any normal daily thing, nothing out of -- that you
20 wouldn't speak to somebody you were just at the bar
21 with. I'm not sure what that -- I don't recall the
22 whole conversation, but it was, you know, pleasant, not
23 unpleasant.

24 Q What was your state of mind at that time when you got
25 there? Had you utilized drugs at that point in --

1 A No, I --

2 Q Okay.

3 A I had had some -- you know, I had previously had
4 alcohol. I had some beers. And then, at that time, I,
5 you know, ordered another one, so -- and --

6 Q Okay. So you said that Melissa went to the bathroom
7 and --

8 A Yes.

9 Q And when she returned, what went on from there?

10 A We continued to have conversations, the three of us.
11 Angela -- I mean, after a brief while, her and
12 Angela -- Angela didn't want her drink, she had to work
13 in the morning, which she had said that she, you know,
14 had to be to work early in the morning. So then,
15 eventually, the conversation led to she wanted to leave
16 because, you know, for work in the morning.

17 And I -- she said they were going back to
18 their home, and I asked if I could go with Melissa.
19 She said that would be fine, you know, because we had
20 had drinks the night before and I had left some alcohol
21 there. And so we continued from there out to the outer
22 bar.

23 I left first, and I waited for them when they
24 got to the house. They came behind in Melissa's car,
25 and they parked in the driveway. I parked behind them.

1 We went into the house, went into the kitchen. I
2 prepared a drink. I had a -- I believe it was vodka
3 and Tang or something like that.

4 Q Let me stop you there. You said that you had called
5 her earlier in the evening, and she had told you that
6 she was going to be at the bar?

7 A Yes.

8 Q What bar did she tell you she was going to be at?

9 A LeBoeuf's.

10 Q Where was she when you called?

11 A I don't know offhand.

12 Q We've got some text messages that have been introduced
13 here, you're familiar with that; right?

14 A Yes.

15 Q I'd like to show you a couple of them and see if you
16 can't explain what's going on. Do you know about what
17 time it was that you talked to her on the phone and she
18 told you you could be there?

19 A It was a little bit before midnight, I mean, between
20 11:30 maybe and 12:00. At LeBoeuf's, or before that?

21 Q Had you text her asking her if you were still banned?

22 A Yes, but that was before the conversation.

23 Q That was before the phone conversation?

24 A (Nodding head.)

25 Q Well, hadn't you text her about her not wanting to talk

1 with you or meet with you or something like that?

2 A Something of that nature, yes.

3 Q And you're saying that that was before the
4 conversation, also?

5 A Yes.

6 Q So your testimony is that, ultimately, she said she
7 agreed to meet with you?

8 A Yes.

9 Q Okay. So you get to her house, you fix yourself a
10 drink. What happens from there?

11 A Angela had made --

12 THE COURT: You're going to have to keep your
13 voice up.

14 THE WITNESS: Angela had made like a taco or
15 something and gave me one. And I don't know if Melissa
16 ate anything, I don't think she did. And I had made
17 two drinks, one for me and one for Melissa. I ate
18 that. We did -- you know, we hung out in the kitchen
19 for a little while with her sister and everything. And
20 eventually, she finished, Angela did, and she proceeded
21 to go into her own bedroom.

22 BY MR. JOHNSON:

23 Q Okay. Had you been to the home previously?

24 A I've -- numerous times, actually, the day before.

25 Q You were there the day before?

1 A Yes.

2 Q Did you spend the night the day before?

3 A Yes, I did.

4 Q How about the day before that, on the 3rd?

5 A Third, no, I did not.

6 Q Okay. But you had spent the night there on the 4th?

7 A Yes.

8 Q How did that happen to occur?

9 A We had -- we had agreed to -- or I talked to her about
10 going to the Fourth of July fireworks show. We met at
11 her sister's house. We -- Angela, her sister, her
12 mother, Barbara, Willow, her daughter, and Melissa and
13 I all rode in the car together to the fireworks in
14 Saginaw.

15 And then, after we went to the fireworks
16 show, we all came back because my truck was there and
17 everything. I had had a few things to drink, so she
18 said don't -- a few hours had went by, I had a few
19 drinks. And I wasn't drunk, like, at the beginning of
20 it, you know, but my daughter went to sleep. We hung
21 out, and I drank a few more and she told me not to,
22 Melissa did.

23 And I stayed the night there, agreed to stay
24 until she come home from work at 11:00 in the morning,
25 because Willow would be with -- that would mean she

1 would have to take Willow to her mother's.

2 Q So you were at the home overnight the 4th until around
3 11:00 in the morning on the 5th?

4 A Correct.

5 Q All right. So, getting back to the night of the 5th.
6 Angela goes to bed. What do you all do next?

7 A We, I believe, went on the porch, smoked some
8 cigarettes, and then we -- I went and I think I
9 refilled my drink once more or whatever, but I didn't
10 drink it all. I said something to her about, hey, do
11 you want to go to Baywood, which is another bar. She
12 agreed, and we -- we left from there, went to Baywood.

13 Q What kind of conversations were you having with her at
14 this point?

15 A We had -- we just kind of went over the last week we'd
16 been together. We had -- we'd done a lot of things,
17 went up north -- not up north, but we went to the Bay
18 City and Midland fireworks shows. We went with all the
19 kids. I have two kids and -- three kids all together,
20 and you know, just over things like that. We talked
21 about, you know, just --

22 Q What was the state of your relationship at this point?

23 A We were not together. We were just, you know, being
24 together, trying to work it out.

25 Q How often were you seeing each other?

1 A Daily.

2 Q When you say "daily," under what circumstances were you
3 seeing each other daily?

4 A That prior week, we had, like I had said, we went to
5 multiple events. We went to a monster truck show in
6 Mt. Pleasant, all the kids included, pretty much
7 traveled Sunday back to Friday, which I had my other
8 children from that day, which my two older children, we
9 did everything there together.

10 And then, previous to that, on Thursday, we
11 went to Midland with just her, me, and Willow to Bay
12 City for the fireworks. The entire week before that we
13 had spent time together. Weeks before that, pretty
14 much daily, we did lunch, she would meet with me, you
15 know, we wouldn't meet every day for lunch, but it was
16 pretty frequent.

17 Q Why were you -- you heard testimony earlier today about
18 the amount of telephone calls that you were making to
19 her?

20 A Yes.

21 Q Why?

22 A It would be an evening, and that would be, you know,
23 the time that -- after I was at work or I was at work
24 or at home by myself. And it tended to be when I
25 didn't have my kids. I would -- I had a drug problem.

1 Q You had a what kind of problem?

2 A A drug problem. And I would, you know, I would do that
3 when the kids weren't around and she wasn't around.
4 And I'd get antsy, you know, suspicious, you know, just
5 weird behavior, you know, not -- not what I would do in
6 the normal situation.

7 Q Were you jealous?

8 A No.

9 Q So you're making multiple phone calls --

10 A Well --

11 Q -- serially. Robert, were you jealous?

12 A Yes, I -- I was.

13 Q Were you in love?

14 A Absolutely.

15 Q Were you pursuing her?

16 A Yes.

17 Q Okay. So you go to the bar, Baywood. You have drinks.
18 What happens next? How long were you there?

19 A A short time. We had one drink each. We conversated
20 [sic] with the waitress, and we weren't there very
21 long.

22 Q Okay. When you left, was there an occasion where you
23 had some comments with some gentleman outside of the
24 club, and he hit you in your eye?

25 A No, I did not.

1 Q But you told the police that you did?

2 A Yes, I did.

3 Q And that was a lie?

4 A Yes, it was.

5 Q Okay. So you leave there. What happens from there?

6 A We'd drove to Melissa and Angela's house. She had told
7 me to park in a neighbor's driveway, which was vacant
8 at the time, because her car was in the driveway behind
9 her sister's and didn't want to have multiple vehicles
10 there, or her sister -- we would have to move in the
11 morning. And then we sat on the porch maybe for a
12 minute before we went in the house.

13 We went inside. I had finished the drink I
14 had left there. She had changed her clothes for bed,
15 and we proceeded to go to the bedroom and go to sleep.

16 Q Okay. You went to the bedroom, and you went to sleep.
17 About what time was that?

18 A Offhand, I'm not too sure. I mean, it was, I would
19 say, roughly after one, between two, I'm not sure,
20 though.

21 Q Okay. Did you go to sleep and sleep the entire night
22 or --

23 A No, we didn't.

24 Q What happened from there?

25 A We laid there both awake, we cuddled, and spooned and

1 whatnot, and I proceeded to, you know, kind of, you
2 know, kiss her neck and do things like that. And we
3 initiated, you know, she kissed me back. So we kind
4 of -- we proceeded to have sex. I -- sorry. It's --

5 Q Was there -- you said you proceeded to have sex. Was
6 there anything unconventional?

7 A Yeah. I'm sorry I pause so much. I have a tough time.

8 We had normal, missionary sex, and I had -- I
9 had come. And I rolled over for a minute and laid
10 there, and she kind of looked at me, you know,
11 afterward. We kind of laid there afterward, and she
12 says, well, you had come, now it's my turn. And we
13 proceeded to, you know, get together again. And we
14 had -- I performed fellatio [sic], I'm not sure --

15 Q You had oral sex?

16 A Yes, oral sex. And we changed position on the bed to
17 where she was under me and I was on top of her, and we
18 had -- I did that, the oral sex. And I moved about to
19 her upper body, and we proceeded from there to a
20 position that we call extreme sex.

21 Q You're going to have to speak up.

22 A Sorry. We call it extreme sex. It was where I, you
23 know, she would place her hands -- my hands -- she
24 would place them on her neck so that it would be, you
25 know, pressure on her neck for exhilaration to help

1 her. She had a problem with climaxing, and we
2 proceeded to do that. I'm bigger --

3 Q Okay. You said she placed your hands on her neck?

4 A Yes.

5 Q You didn't resist, I mean, she wasn't forcing you to do
6 this; correct?

7 A No, sir.

8 Q This is something that was happening voluntarily?

9 A Yes, sir.

10 Q Had you had this type of sexual activity before?

11 A Yes, we had.

12 Q Would it be properly described as, you say, placing
13 pressure on her neck, choking?

14 A Yes.

15 Q Had you done this before?

16 A Yes, I had.

17 Q Under what circumstances? How did this come to be?

18 A We had had -- we had been together for four years. We
19 had had -- pretty much from the get-go couldn't keep
20 our hands off each other, you know, we were -- she
21 moved in immediately. And then, after a certain amount
22 of time, we were having, you know, trying to help her
23 with her climaxing problem. We gathered some toys,
24 some videos, you know, things of that nature, adult
25 things.

1 And, one night, we were laying there, and she
2 had condoned or had come to me and told me that, you
3 know, we -- she was -- she wanted to try something
4 different. And she explained it to me, what it was.
5 She had had a prior boyfriend that was a gym nut, I
6 guess she would call it, kind of a steroid kind of guy.

7 MR. STEVENSON: Objection, Your Honor,
8 hearsay.

9 THE COURT: Overrule the objection. Proceed.

10 THE WITNESS: And he was a little rough with
11 her. And he would place -- he would choke her, not
12 like, you know, in the same manner, and she would see
13 stars, and then he would stop. I don't -- as far as
14 that goes. And she -- so she let me know about that,
15 and she let me know about -- there was a cousin's
16 boyfriend that had some -- this was kind of what led up
17 to her explaining to me why she had a hard time
18 climaxing.

19 She had had -- a cousin's boyfriend had
20 touched her at some point beforehand, you know, nothing
21 other than just groping. And so she, you know, we had
22 a conversation about it. I was very attentive to her
23 about it. I wanted to know why, you know? And then,
24 after that, I held her, I comforted her, told her it
25 would be all right, I love you, you know, there's

1 nothing wrong.

2 Later on, I would say probably roughly a year
3 before her passing, we -- around October, I think it
4 was Halloween, maybe a little bit before Halloween, we
5 were going to be engaged -- and I think it was just
6 before that, we were engaged in sex. And she said to
7 me, she said, I want to see stars. And I asked her
8 what that meant, you know, and she related back to me
9 what she had told me. And so we had talked about that,
10 and she -- we tried that. From there, it helped, you
11 know, with the -- with her climax.

12 BY MR. JOHNSON:

13 Q Were you -- were you, during your relationship, feeling
14 a little insufficient because of not being able to
15 satisfy your mate?

16 A Yes, yes.

17 Q But you were also using drugs?

18 A Yes.

19 Q What was the cause of your breakup?

20 A My drug problem.

21 Q Were you beating her up?

22 A No.

23 Q When you were under the influence, were you beating her
24 up?

25 A No.

1 Q Were you abusing her in any way during that period of
2 time?

3 A Absolutely not.

4 Q How did the breakup happen?

5 A She -- we had went back and forth with her telling me
6 that she was going to leave, you know, we need to quit,
7 I'm not taking this shit, she -- very adamant with me
8 about it. And she said one day that we were -- that
9 she was going to leave. And I didn't have -- you know,
10 I didn't have a choice in the matter, and I understood,
11 you know, so I wasn't -- I wasn't happy about it. I
12 was disappointed in myself. I was sad, and -- but I,
13 you know, it happened.

14 Q There was testimony that you were rather giddy about
15 the breakup initially.

16 A I wouldn't say giddy or anything like that. I was -- I
17 was understanding, and just wanted to be supportive and
18 try because I, at multiple times, had tried to stop,
19 and basically reverted back to it, reverted back to it.
20 And this time, she wasn't going to take -- believe it.
21 So I was, again, trying to be pleasant, and I didn't
22 want her to be mad at me when she left.

23 Q Did you ever try to get in any type of drug program,
24 clean yourself up?

25 A I did.

1 Q When did you do that?

2 A It was that summer, I had seen -- I went to a
3 counselor.

4 Q Before or after the breakup?

5 A It was after the breakup.

6 Q Okay. So you were seeing a counselor? Where were you
7 seeing a counselor?

8 A It was on Court Street right in --

9 Q How did that work out for you?

10 A I went and seen him, I believe it was two times, and I
11 did an initial evaluation, and then I talked to him
12 again, and I basically blew it off after that.

13 Q How honest with him were you?

14 A Not very honest.

15 Q Did you tell him the length of time that you'd been
16 dealing with cocaine?

17 A No, I didn't.

18 Q You were actually fooling around with cocaine at the
19 time of your first -- of your marriage; correct?

20 A Yes.

21 Q And we're talking about going back to what years?

22 A Well, it would be nine years ago, so --

23 Q So back to the night. You all were having sex, you had
24 engaged in this choking?

25 A Yes.

1 Q What happens next?

2 A I was on top of her. We were sideways on the bed, and
3 her neck -- her head was tilted over the side because
4 it would -- it would help with the -- with the feeling.
5 And she was -- we were going at it, and my feet were
6 towards the wall. And I don't know if I pushed off
7 from the wall or whatnot, but we fell, her underneath
8 me, me on top of her, my hands still -- still there. I
9 was struck -- it was like a flash, a bang in my face.

10 Q What banged your face?

11 A It was -- come to be the dresser. I don't know if it
12 was one of the drawers or whatnot. When we fell, the
13 rug on the floor pushed the dresser against the wall
14 and it fell on us. And I don't recall how long it was
15 on top of me.

16 Q So what did you do?

17 A I tried to get up.

18 Q How did you try to get up?

19 A I put my hands down to get up, and put my other hand
20 out to get the dresser off, and it was on Melissa. I'm
21 not -- I was fuzzy.

22 Q Whose fault was that?

23 A I don't understand.

24 Q I said who's fault was this?

25 A My fault, our fault, I mean, I don't --

1 Q So do you eventually get the dresser off of you?

2 A Yes.

3 Q And what did you do then?

4 A I had -- I rolled over once the dresser was up against
5 the wall again, and I helped -- Melissa had passed out
6 like she, like I said before, had frequently done. It
7 was what happened. It was part of the -- part of
8 the -- the final climax of it. So I helped her back in
9 bed, placed her in bed.

10 Q You helped her back in the bed. Did she give some
11 assistance in getting back in the bed or did you do it
12 all yourself?

13 A No, it was pretty much myself.

14 Q Okay.

15 A And then, I knew she was -- from what I was seeing, she
16 was okay. I put the cover over her, and I went to the
17 bathroom. And in the process of going to the bathroom,
18 I -- on my way to the bathroom, Angela had -- was in
19 the -- in between, and had some choice words with me.
20 She was very mad, pissed, I don't know what to say. I
21 don't recall exactly the words that she said, but she
22 was mad. She was really mad.

23 And I went to the bathroom, I cleaned myself
24 up. And in the process, I -- I don't know what
25 triggered it in my head, whether it be that -- I don't

1 know. I've had a problem with drugs, and I had, when I
2 drank, I tended to want to use them and --

3 Q So what did you do?

4 A I got it in my head that I wanted to leave while she
5 was sleeping. I went back into the bedroom, and I
6 gathered my things, and quietly, I noticed that she was
7 laying, you know, that she was -- I was trying to be as
8 quiet as possible. I heard a -- her pass gas, and I
9 was still being quiet, and I left -- I left the house.

10 Q You recognize now, however, that she wasn't sleeping;
11 don't you?

12 A Yeah.

13 Q You said she was passed out?

14 A Yeah.

15 Q That didn't cause you any concern?

16 A No.

17 Q Why?

18 A We had had, like I said, we had had extreme sex before,
19 and it was the part of the climax that sometimes she
20 would -- she would pass out, and it would be normal.
21 She wouldn't, you know, I never -- it happened. I
22 didn't think anything otherwise.

23 Q So you say you gathered your belongings and you left;
24 yes?

25 A Yes.

1 Q Where did you go?

2 A I left there, I went to my house. I had had a -- I had
3 left some drugs in my garage, and I gathered them. And
4 I left there, from my house, and I went to -- I have a
5 shop on Bay Road. I went in the parking lot and I
6 opened a beer that had been in the truck from earlier,
7 and I proceeded to use the drugs, the cocaine. I sat
8 there for a little while. I did -- I'm not sure how
9 long I was there. It wasn't very long.

10 I went to -- I was going to go to the store
11 to get cigarettes. And I opened my center console to
12 put the bag of dope in the center console, and
13 Melissa's wallet was in there. And so I went to the
14 store and I purchased two packs of cigarettes, some
15 gas, and some pop with her credit card, and I placed
16 them all back.

17 Q Why would you purchase with her credit card?

18 A To be honest with you, I don't have any reason for it
19 other than --

20 Q Had you done this before?

21 A Not without her consent. This would be the first time.

22 Q You didn't have her consent at this point?

23 A No, I didn't.

24 Q Okay. So then what did you do?

25 A I put everything back in the wallet, and I proceeded to

1 drive. Every time that I did this, Melissa would look
2 for me. She would wonder where I was at, concerned.
3 She pretty much knew where I would go, you know, I'd
4 either be at home, I'd be at the shop, you know, that
5 was where I'd, you know, go to hide. That's what I did
6 when I was under.

7 And so I decided to drive. And, in the
8 process, I went north on Bay Road, and I think I
9 stopped -- I may have stopped before I'd got on the
10 highway and did some more. And then I proceeded on
11 I-75 north.

12 My grandfather has a cabin in Frederick,
13 Michigan, which is up I-75. And I thought in my state
14 of mind that I could stay away, you know, I wouldn't be
15 caught doing this again. I wouldn't be --

16 Q Wouldn't be caught by who?

17 A Melissa.

18 Q Well, that's -- hold on right there. You gave
19 two statements to the police; correct?

20 A Yes.

21 Q One on the 6th, and one on the 7th?

22 A Yes.

23 Q The one on the 6th, you said that you and Melissa had
24 fallen asleep cuddling?

25 A Yes.

1 Q That wasn't true; was it?

2 A No.

3 Q And then, on the 7th, you said that you went home and
4 went to sleep; correct?

5 A Correct.

6 Q Was that true?

7 A No.

8 Q Why did you lie?

9 A I was ashamed. That was what I did when I was -- I
10 tried to hide it as much as I could.

11 Q At the time that you told these lies and you also lied
12 about the black eye; right?

13 A Yes.

14 Q Why did you lie about that?

15 A It was a black eye, it looked horrible, and this was
16 after we had found out she had passed.

17 Q So would it be a true statement that you were
18 protecting yourself?

19 A Yes, I was covering my ass.

20 Q What were you protecting yourself from?

21 A From exposing my drug problem, my -- our sex that we
22 had had. I was -- we never -- nobody else knew about
23 this. It was -- I was very conservative about that.
24 She wanted it to be that way.

25 Q But you were aware by this time that Melissa was gone;

1 were you not?

2 A Yes.

3 Q Okay. So you drive up north to your grandparents'
4 place. What did you do then?

5 A I drove in there -- it's off the main road quite a
6 ways. I had driven in the back to go to the cabin. I
7 drove in. There were some vehicles there, which was
8 really strange. And I've -- other than the -- and then
9 I realized it was Fourth of July weekend, and my aunt
10 and uncle were there. I left there. I drove some back
11 roads. I stopped and did some more.

12 Q Did some more what?

13 A Cocaine, drugs. And I was unaware or unsure what to do
14 from there. I had been gone a little while.

15 Q Were you unsure of what to do from there because you
16 knew Melissa was dead?

17 A No.

18 Q Why were you unsure of what do from there?

19 A Because I didn't have anywhere else to go to hide this,
20 to -- you know, it was getting time to where people
21 were going to be waking up and it was, you know, people
22 were going to start wondering where I was. I managed
23 an automotive shop, and people start showing up and
24 whatnot.

25 Q Did you, at some point in time, send a text basically

1 saying -- explaining to Melissa that you had left, she
2 was asleep?

3 A Yes, I did. And that --

4 Q When did you do that?

5 A I'm not real sure when I did it, but I know it was
6 before I had left Saginaw.

7 Q Did you manipulate the phone some way, the time on the
8 phone to somehow, for some reason, make it a different
9 time?

10 A No.

11 Q Well, if you had, why would you? Can you --

12 A I wouldn't have any idea why.

13 Q So what caused you to head back to Saginaw?

14 A I was -- I had tried calling Melissa, and I was in a
15 remote area, and I couldn't -- my phone wouldn't
16 connect through.

17 I had sent a -- I had called my mother, and
18 it didn't connect, either, on my phone. So I was -- I
19 made my way back to Saginaw to you -- she had to be to
20 work. I hadn't heard from her. I couldn't get in
21 contact with her.

22 Q So when you got back to Saginaw, what did you do?

23 A I went directly to her house, her and her sister's
24 house.

25 Q And when you got there, what did you do?

1 A I knocked on the front door. I knocked on the side
2 window where her bedroom was, pretty loud, both places.
3 I went to the back door and beat on that door, and the
4 dog was going crazy. It was, you know --

5 Q You told the police that when you went to the back
6 door, there was something wrong with the door; is that
7 what you told them?

8 A Yes, I did.

9 Q But that wasn't the truth, either; was it?

10 A No, it wasn't.

11 Q What was wrong with the door was the door was locked?

12 A Correct.

13 Q So what did you do?

14 A I had proceeded to -- because I couldn't get in and she
15 wasn't -- her car was in the driveway -- or in the
16 road, and I was worried, I was frantic. I didn't know,
17 you know, because I was beating the door down, you
18 know, as far as making it noisy, and there was no
19 response.

20 I went to -- I had got a crowbar, and I was
21 going to open the door. I was -- I needed to know what
22 was wrong. There was something wrong.

23 Q Why did you tell the police another lie?

24 A I really don't know. It looked bad, you know, to be
25 breaking into a house.

1 Q So when you broke into the house, then what happened?

2 A I went in the house. I went directly to the bedroom.
3 I called her name. I hollered her name. She didn't
4 answer. I tried to wake her physically. She didn't
5 move.

6 Q Then what did you do?

7 A I got on my phone and I called my mother.

8 Q Did you realize at that time that Melissa was no longer
9 with us?

10 A I was distraught. I -- I gathered she was
11 unresponsive.

12 Q So you called your mother. Why did you call your
13 mother?

14 A My mom is certified in CPR, and she is my first phone
15 call in anything, you know?

16 Q Then what did you do? What did your mother tell you to
17 do -- or strike that, I'm sorry. What did you do?

18 A I was on the phone with her, and my father was, you
19 know, they were both talking to me, and they said, hang
20 up, call 9-1-1.

21 Q What did you do?

22 A I hung up and I called 9-1-1.

23 Q And then what did you do?

24 A I connected with the operator, and he asked me some
25 questions. I don't recall the exact -- everything

1 about it. They asked me where I was. I think I opened
2 the front door to get the address off the front of the
3 house. And then they told me to go back to her and see
4 if I -- you know, what was going on with her, to
5 administer CPR to her, or chest compressions.

6 And I did that for -- it seemed like forever.
7 And in the meantime, they off -- she didn't respond. I
8 didn't get nothing. She was gone, and I couldn't do
9 anything about it.

10 And it -- the paramedics come in, and, you
11 know, asked, you know, I was still on the phone with
12 9-1-1, and they asked me to step aside. He had come up
13 next to me, and he had grabbed her, and he had said
14 something to me about, she's gone, Robert. And I fell
15 to the floor. And --

16 Q Leading up to this tragic death, after the breakup,
17 you've heard testimony that you were stalking. Were
18 you stalking?

19 A Yes.

20 Q Why?

21 A It's hard to hear that term. It's what it is, you
22 know? It's a description of following someone and
23 pursuing someone. I did it because I loved her. I
24 cared for her very deeply.

25 Q What did you hope to accomplish by following her and

1 calling her and texting her and --

2 A I wanted us to get back together. I wanted us to be a
3 family again. I wanted us to continue having good
4 times like we had been having before my -- in between
5 all my crap that I --

6 Q Who's responsible for Melissa Thornton's death?

7 A I am.

8 Q Did you intend to kill Melissa?

9 A No, absolutely not.

10 Q Did you know at the time that it happened that she was
11 dead?

12 A No.

13 Q So we're going to go back to the lies. You lied about
14 the black eye; correct?

15 A Yes.

16 Q Is it true that you first told the police that you got
17 punched in the eye?

18 A Yes.

19 Q And then, the next day, you told the police that
20 Melissa had elbowed you in the eye, we saw it on the
21 video where you said you thought it was an accident.
22 Why -- why did you say that?

23 A The -- the first, the day of it, I spoke with the
24 officers outside, I was devastated. I was emotionally
25 just not there, not -- and when they asked me

1 questions, I didn't have an explanation. And that was
2 what I had came up with was -- on the spot was I got in
3 a fight with somebody, so I had a black eye.

4 Q Okay. And then the next day, what?

5 A I had -- I had left -- after I had left the
6 questioning, I went with the officers that day of to go
7 to the police station, and I talked with them for --
8 for some time. I left there. I was picked up by
9 family.

10 I went -- we had driven around for a little
11 while, and then we ended up at my uncle's house, and
12 they were, you know, consoling me, comforting me,
13 asking me questions.

14 Q Did you disclose to them what had happened?

15 A No.

16 Q Why?

17 A I didn't want -- I didn't want to put -- I didn't want
18 to put it out there. I didn't want my -- our sex life
19 and the things that we did to, you know, I didn't want
20 nobody to look at it like that, to look at us like
21 that, you know, it's something everybody does, it's
22 something you're ashamed of, something because of what
23 other people think.

24 Q So how did you come up with this notion that she had
25 accidentally elbowed you?

1 A I didn't tell them what happened. I spoke with friends
2 and family, and they were like, if it was an accident,
3 it's not your fault, you know. I said, you know, and
4 they said if it was -- I was just listening to what was
5 going on. I had a black eye. I have no way to explain
6 what the black eye is, and the only way to do that was
7 to lie and say that we had got in an argument and I got
8 elbowed, and it would keep her from being exposed.

9 Q Wouldn't telling them that you fell out of the bed and
10 the drawer of the dresser hit you in the eye, wouldn't
11 that have accomplished the same thing?

12 A It was kind of a combined issue.

13 Q Okay. Why did you lie about going back to your house
14 and sleeping?

15 A Because I'd -- back to my drug problem. I knew damn
16 well that when Melissa woke up, Melissa found I wasn't
17 at the house, that's the first place that she was going
18 to go. And --

19 Q But I'm not talking about the text messages. I'm
20 talking about when you spoke to the police and you told
21 them that you'd gone back to your house and slept
22 there. What were you hiding there?

23 A The fact that I had left Saginaw. It looked
24 suspicious.

25 Q So you were -- is it your testimony you were trying to

1 protect yourself and you were trying to protect
2 Melissa's reputation?

3 A Yes.

4 Q Robert, I know this is tough. Whose fault is it that
5 Melissa's dead?

6 A Mine.

7 Q Did you intend for that to happen?

8 A No.

9 Q You admit that you were stalking her?

10 A Yes.

11 Q What was the result of you stalking her?

12 A We spent time together. We -- she -- we came in
13 contact, we did things.

14 Q Did you tell her that if she didn't stay in contact
15 with you, that you were going to take Willow away?

16 A No, never would I do that. I have two other children
17 that I have equal custody with and have had that for 10
18 years and never had a problem, and I would never do
19 that to a mother.

20 Q But you didn't have equal custody with Willow; did you?

21 A No.

22 Q So was there a time -- was Melissa keeping Willow away
23 from you?

24 A Never.

25 Q Who took care of Willow?

1 A Both of us.

2 Q And when you all were working, who babysat Willow?

3 A Grandmothers and sisters, her -- always family.

4 Q Is there anything else that you want this jury to know?

5 A Just because you're ashamed of something, try to hide
6 things when you love someone, they don't care, they
7 don't care at all, and she never did, to the extent we
8 loved each other so much. And I screwed it up, and I
9 tried and I tried.

10 Q And how did you screw it up?

11 A I was persistently relapsing.

12 Q You --

13 A Relapsing.

14 Q Relapsing. And how did you screw up and wind up in
15 that chair today?

16 A I lied. I tried to hide my pride and be -- you know,
17 see how everybody thought about you, you know, they
18 would look at you in a bad light and tell people the
19 things they want to hear. And that's what I did. You
20 know, I've always been that kind of person. I've
21 always liked the way people thought about me.

22 Q Did you ever hit Melissa?

23 A No.

24 Q Did you ever choke Melissa other than in this sexual
25 manner?

1 A No.

2 Q Did you hold your ex-wife down by her wrists and force
3 sex on her?

4 A No.

5 Q Why would she say that?

6 A We left on bad terms, and I wasn't the best person, you
7 know? I just -- I was in the same situation as before
8 as I was on drugs. I was not the person that we had
9 come to be in the beginning, and she resented that.

10 Q And you stalked her?

11 A Yes.

12 Q But you didn't stalk Ms. Jolly?

13 A No.

14 Q What was the difference?

15 A I don't know. I just -- I was married to Deanne, and I
16 was going to marry Melissa. And that was --

17 Q You weren't at the point of going to marry Ms. Jolly?

18 A No.

19 MR. JOHNSON: I don't have any further
20 questions, Your Honor.

21 THE COURT: Questions, Mr. Stevenson.

22 MR. JOHNSON: One other question, just one
23 other question, Your Honor.

24 BY MR. JOHNSON:

25 Q Who's that guy?

1 A That's me.

2 Q You recognize him?

3 A Not really, no. If I looked in the mirror today, I do
4 not see him.

5 Q Did that guy intentionally kill Melissa Thornton?

6 A No.

7 Q You recognize, looking at that guy, that you're in
8 better shape now than you were then?

9 A Yeah, yes, I am.

10 MR. JOHNSON: No further questions.

11 THE COURT: Questions, Mr. Stevenson.

12 MR. STEVENSON: Thank you, Your Honor.

13 C R O S S - E X A M I N A T I O N

14 BY MR. STEVENSON:

15 Q Mr. Propp, if there's anything that you don't
16 understand that I'm asking, just feel free to ask me to
17 rephrase it or just tell me you don't understand
18 because I just want to make sure we're understanding
19 each other correctly; okay?

20 A Okay.

21 Q Now, back on the 6th of July, when you found Melissa,
22 Officer Engelhart responds to the scene; right? And
23 you remember --

24 A Yeah -- I don't know which officer, but yes, I spoke
25 with an officer.

1 Q You spoke with an officer, right? And at that time,
2 you indicated that you called her before you went to
3 her house; correct?

4 A Correct.

5 Q And that wasn't the truth; is that correct?

6 A That -- I did call her.

7 Q You called her right before you went over there?

8 A Yes -- not right before I went over there. I did call
9 her before I went there, like I had stated earlier,
10 about, you know, trying to call when I was up north and
11 I didn't have service.

12 Q Okay. So if your Cellebrite phone records don't show
13 that, then it must be something with the program then?

14 A I'm not sure about programming of the phone.

15 Q You also indicated to the officer that you observed the
16 door was -- looked funny and was partially open; isn't
17 that correct?

18 A Yes.

19 Q And then you told him that you picked up a pry bar and
20 you shoved your way in?

21 A Yes.

22 Q And that wasn't true, either; was it?

23 A No.

24 Q Then you indicated that you found Melissa nonresponsive
25 in her bed; right?

1 A Yes.

2 Q And that you also got a -- that shiner from the night
3 before when you guys went out to Baywood; right?

4 A That's what I had said to them, yes.

5 Q You never mentioned to the officer that you went into
6 the house after Baywood; did you?

7 A I don't recall.

8 Q And you never mentioned about getting in an argument
9 with Melissa that night; did you?

10 A No, I didn't.

11 Q You never mentioned any type of physical tussle with
12 Melissa that night; correct?

13 A No.

14 Q And you never mentioned the dresser in falling on you
15 and Melissa that night, either; did you?

16 A No.

17 Q And never mentioned that you had your hand on her neck
18 that night, either; did you?

19 A No.

20 Q But then came a second interview the very next day.
21 It's my understanding that you went and spoke with
22 Detective McMillan at the Saginaw PD; correct?

23 A Yes. He asked me to come in just like the day before.
24 He just said he would like to speak to me, he had some
25 questions to ask me, and I came in willingly.

1 Q And you actually did that twice, you came in willingly;
2 correct?

3 A Twice, yes.

4 Q So let me back up to the first time you talked to
5 Detective McMillan. You came in voluntarily, and that
6 was after you spoke with Officer Engelhart after you
7 left the scene; right?

8 A Correct.

9 Q And you indicated at this time that you did, in fact,
10 go over to Melissa's house after Baywood; right?

11 A Yes.

12 Q And you also indicated that you had sex with Melissa at
13 that time; correct?

14 A Yes.

15 Q And you've also indicated that Melissa was not on birth
16 control; right?

17 A I don't recall if I said that or not.

18 Q Do you recall telling the officer that you pull out and
19 ejaculate on her?

20 A I don't recall. I had both dates, both days, they kind
21 of ran together.

22 Q Well, do you remember saying that to an officer at some
23 point?

24 A I'm not really sure.

25 Q You're not really sure. What I'm showing you is a

1 police report of a summary of that interview; okay? I
2 want to see if this refreshes your memory. This is
3 page 4 of 9 of Detective Trooper Adam Green's report.
4 If you could read that -- that paragraph.

5 A We have go from Propp.

6 Q Just read it to yourself, okay?

7 A I read more.

8 Q I'm sorry, maybe -- maybe start right there.

9 A Okay. Okay. I see it.

10 Q You see it? Does that refresh your memory now?

11 A I mean I -- I don't really recall if I said direct --
12 them exact words. I may have.

13 Q Okay.

14 A I'm not really sure.

15 Q So is that what you did?

16 A I didn't -- I actually did not come in her, no.

17 Q Would you ejaculate on her?

18 A Yes.

19 Q Yes? So, if the officer had that in his report, that
20 would be true; correct?

21 A Yeah.

22 Q Now, during that first interview with Officer McMillan
23 when you're back at the PD now, you also indicated that
24 after you had sex, you laid on -- laid in the bed with
25 Melissa, and you held her until she fell asleep; isn't

1 that correct?

2 A Yes.

3 Q You never mentioned any physical tussle; isn't that
4 correct?

5 A No, I never did.

6 Q You never mentioned an argument?

7 A No.

8 Q You never mentioned touching her neck?

9 A No.

10 Q You never mentioned a dresser falling; correct?

11 A No.

12 Q But you did tell him that, if I understand correctly,
13 that you went home and slept in your bed; isn't that
14 correct?

15 A Yes.

16 Q And that was a lie; wasn't it?

17 A Yes.

18 Q And then you also indicated that -- again, you
19 indicated that you called the victim, but her phone was
20 off; correct?

21 A Yes.

22 Q You also indicated that you used the bar to open the
23 door, don't worry about that, however, you still
24 indicated that you got the shiner from a fight in
25 Baywood; correct?

1 A Yeah. That was the statement from --

2 Q So that was the second time you told that story;
3 correct? You told it at the scene, and then at the
4 police department; right?

5 A I recall very vividly at the scene, but I don't recall
6 at the --

7 Q And then there was a third time that you spoke with
8 Detective McMillan, and that would have been on the
9 7th of July. Do you remember going in voluntarily and
10 speaking at that point?

11 A Yes.

12 Q And this is the first time that you had -- you
13 mentioned that you -- excuse me. You, again, mentioned
14 that you had sex with Melissa --

15 A Yeah.

16 Q -- correct? But this is the first time you indicated
17 that after sex, she accidentally elbowed you in the
18 eye; correct?

19 A Yes.

20 Q And that's how you got your black eye?

21 A That's what I said.

22 Q Okay. And then after that, you indicated that you got
23 in an argument; correct?

24 A Yeah, somewhere of that nature, yeah, I think. I'm not
25 sure the order of it, but yes.

1 Q Would you like me to play the video for you?

2 A I saw it yesterday.

3 Q So do you recall telling the detectives that you got in
4 an argument; correct?

5 A Yes.

6 Q And then you got into a physical tussle after that. It
7 was kind of unclear for you, but you indicated physical
8 tussle; am I right?

9 A Yes.

10 Q And then, after that, at some point during that tussle,
11 you fell off the bed; correct?

12 A Right.

13 Q And you landed on top of her; correct?

14 A Yes.

15 Q And you picked her up and put her back in the bed?

16 A Yes.

17 Q And you didn't go home, you just drove around for a
18 while, right, after that?

19 A Yeah.

20 Q And then, Detective McMillan pressed you further
21 because he already knew the autopsy results. And he
22 said: How long did you have your hands on her neck?

23 And at that time, you said it was your hand;
24 correct?

25 A Yeah.

1 Q And then you indicated with a hand motion it was your
2 left hand; correct?

3 A Yes.

4 Q And then you said the dresser fell on you, and you
5 ended up lifting it off you; correct?

6 A Correct.

7 Q And then you picked up Melissa and placed her back in
8 the bed; correct?

9 A Yes.

10 Q And you thought she was still alive; right?

11 A Yes.

12 Q So if this whole thing was an accident, why did you
13 have to make up so many stories?

14 A I was a drug abuser. I was a -- every time I did
15 anything, I lied about everything. It was a reflex to
16 do it, to lie.

17 Q So even though the person you claim that you love more
18 than anything is deceased, you continued to lie not one
19 time, not two times, but three different interviews.

20 You weren't on drugs during those interviews; were you?

21 A No.

22 Q But you were still lying; correct?

23 A I was probably coming down from it. It didn't go away
24 for the first day. I also was not trying to disclose
25 any information about Melissa and us.

1 Q But you had no trouble disclosing that you pull out and
2 ejaculate on her; right?

3 A After pressure. But I had talked to the officer prior
4 to that comment that I was uncomfortable.

5 Q The question, sir, is you have no problem disclosing
6 that you pull out and ejaculate on her; correct?

7 A Yes.

8 Q You heard Dr. Virani, you sat through this whole trial;
9 correct?

10 A Correct.

11 Q You heard him say it takes at least a minute to choke
12 somebody out; correct?

13 A Yes.

14 Q You heard him say it takes another minute of continuous
15 pressure after they're choked out to kill them;
16 correct?

17 A Yes.

18 Q Now, you've mentioned that -- if you can tell me again,
19 you were on the bed with Melissa when you were
20 strangling her; correct?

21 A Correct.

22 Q How are you positioned on the bed?

23 MR. JOHNSON: Objection, Your Honor. I don't
24 recall him testifying that he was strangling her.

25 THE COURT: Overrule the objection. Proceed.

1 BY MR. JOHNSON:

2 Q How were you strangling Melissa when you were doing
3 whatever you described?

4 A I was not strangling her.

5 Q What were you doing?

6 A I was choking.

7 Q Oh, choking?

8 A Yes. It's not -- it's --

9 Q Do you want me to use the term "choking"? Does that
10 make you feel more comfortable?

11 A Yes.

12 Q Okay. So, when you're choking Melissa on the bed,
13 where are you positioned? Is her head at the
14 headboard, or is her head at the footboard, or is her
15 head over the side, if you can tell me?

16 A The bed was -- it was a small -- they call twin bed,
17 and we were sideways on the bed. I don't really recall
18 to say what direction.

19 Q Let me do this. Let me bring up a diagram real quick.

20 A Sure.

21 Q If you can scroll down to the bedroom. And,
22 Mr. Propp, if you could please step down for a moment.

23 A Okay.

24 Q Stop there. Thank you.

25 Now, if you could tell me how you're

1 positioned with respect to the bedroom on the bed.

2 A This would be the long way, and this would be the short
3 way.

4 Q Okay.

5 A We were positioned the short way.

6 Q So your feet would be against this wall?

7 A Correct.

8 Q And her head's over the bed; right?

9 A Right.

10 Q Okay. And you're on top of her at this time; correct?

11 A Yes.

12 Q And her head is lying over the -- over the side of the
13 bed; is that correct?

14 A Yeah, on an angle.

15 Q And you're in control of the situation, you're on top
16 of her; correct?

17 A Yes.

18 Q How do you fall off the bed?

19 A It was -- we were having -- we were going back and
20 forth, and I'm not really sure whether my feet against
21 the wall, pushed the wall, pushed us onto the floor, or
22 if it just was the motion.

23 Q But your entire bodies are on the bed, correct, but for
24 her head over the side; right?

25 A Correct.

1 Q Okay. And it's your testimony that you guys just
2 somehow went off the entire bed, even though your whole
3 bodies are on it; correct?

4 A Correct. We went -- the bed's about this high, and
5 you're this way. Then we went off the bed this way,
6 and the bed is up, like I said, about that high off the
7 floor.

8 Q How do you land when had you fell off the bed?

9 A This way.

10 Q Well, wait. How does Melissa land? So if you fall off
11 the bed, you end up here, where is Melissa's feet and
12 where's Melissa's head?

13 A She never ended up over here. It actually, when we
14 went down, we did kind of more of a slide, and then the
15 next thing I remember was getting hit in the head.

16 Q So my question is when you got off the bed, where was
17 Melissa positioned and where were you positioned when
18 you slid off the bed now?

19 A My feet, I believe, were partially on the bed, and part
20 of me was on the floor between -- underneath the
21 dresser.

22 Q And where was Melissa?

23 A Under me.

24 Q Underneath you.

25 A Yes.

1 Q Where was Melissa's head at?

2 A On the floor.

3 Q Where at, about?

4 A It was -- and I mean, it's -- the room's very small, so
5 it would be in this area.

6 Q Was it close to the dresser or was it more close to the
7 bed?

8 A It would be more, I would say, closer to the bed.

9 Q So, like you said, this is a small room, so where was
10 the rest of her body? Was it still on the bed?

11 A As I recall, I think so, yes, part of it. We were kind
12 of right directly on top of each other, so my feet
13 where on the bed.

14 Q So is it now your testimony part of your body and her
15 body is on the bed and part of your body and her body
16 is on the floor?

17 A It's what it is. I mean, I'm not --

18 Q I'm just asking you. I don't know what it is. You
19 tell me.

20 A I don't recall exact body positions and everything.
21 Like I said, I was struck, and I don't recall
22 everything.

23 Q Okay. So if you're partway on the bed and off the bed
24 and so was she, where do you put your hands at that
25 point?

1 A Down.

2 Q Where at?

3 A On her neck.

4 Q On her neck?

5 A Yeah.

6 Q So you used her neck to break your fall?

7 A It was a motion, that quick.

8 Q And how long did you keep your hands on her neck for

9 once you slide off the bed?

10 A I don't know. It was -- I don't know if I blacked out.

11 I seen stars. I'm not real positive on the duration.

12 Q When did the dresser fall on you?

13 A Right directly on the motion going down.

14 Q So you don't even touch the dresser, but it falls on

15 you?

16 A Right. The dresser was on top of the rug that was on

17 the floor. And then the rug pushed the dresser -- or

18 it pushed the bottom of the dresser, and it fell on us.

19 Q So the rug slid against the dresser and knocked it over

20 on top of you?

21 A Pushed it towards the wall, and it came over on top of

22 us.

23 Q Came right over on you. You're familiar with this

24 dresser; right?

25 A Yes.

1 Q You know there's a leg that's missing from the back
2 right side of it; correct?

3 A I'm not familiar with it as far as any of that, but I
4 know what it looked like.

5 Q Oh, okay.

6 A Roughly this height.

7 Q So the dresser falls on you and you're seeing stars;
8 correct?

9 A Right.

10 Q How long did it take for you to get the dresser off
11 you?

12 A I'm not sure. I was down in that position for -- it
13 was an undetermined amount of time. And then, when I
14 kind of got an idea what was going on, I'm not sure.

15 Q Okay. You can have a seat. Could you -- could you
16 estimate, was your -- was that dresser on top of you
17 for 5 seconds, 10 seconds, 15 seconds?

18 A It was a good amount of time, I would say. I'm not
19 exactly sure on the time frame, so I don't want to say
20 anything that's not right.

21 Q Okay. What I'm showing you is marked as People's
22 Proposed Exhibits 59A through E. Do you recognize
23 that?

24 A Yeah. It's been a while, but it's similar, yes.

25 Q Does that look like the dresser, maybe?

1 A I guess it looks a little different in the house,
2 maybe.

3 Q Is that the dresser --

4 A Yeah.

5 Q -- you're referring to?

6 A Yeah. And there's the rug that was under the dresser.

7 Q And does this -- can you see that? Does that look like
8 the same dresser to you?

9 A Roughly, yes.

10 MR. STEVENSON: Okay. People move to
11 introduce People's Proposed 59A through E.

12 THE COURT: Mr. Johnson?

13 MR. JOHNSON: No objection, Your Honor.

14 THE COURT: 59A through E will be admitted.

15 BY MR. STEVENSON:

16 Q Now, if you want, if you need to see this, feel free to
17 step down, okay? You're familiar with the dresser;
18 right?

19 A Yes.

20 Q It's a three-drawer dresser; right?

21 A Yes.

22 Q And would it be fair to say about -- it comes up to
23 your belly button when you're standing there?

24 A I think a little taller than that.

25 Q Because here's the tailgate; right?

1 A Yep.

2 Q Would you say it's a little taller than a tailgate?

3 A I don't see that as a tailgate. Sorry, you guys.

4 Q Okay. Let me show you a different photograph of it.

5 A Please.

6 Q Number B. Now, you can see the dresser; right?

7 A Yes.

8 Q Do you see the bottom -- the bottom right? Go down a

9 little bit. See that gentleman next to it with his

10 hand on it?

11 A Yeah.

12 Q Can you see the part of the truck right here, kind of

13 just shows the bed of the truck, the tailgate?

14 A Right.

15 Q Looks like it's about belly height; would that be fair

16 to say?

17 A From the angle --

18 Q Okay. If you can go down a little bit so I can see the

19 bottom.

20 A They don't -- they don't have an exact measurement?

21 Q No, sir. Can you -- do you see that there's a leg

22 missing on the back right corner?

23 A It's blurry. It looks like maybe. I don't see it.

24 Q That might be easier for you to see.

25 A It may not be there. I --

1 Q Okay. How about that one? Can you see the leg's
2 missing?

3 A It's gone.

4 Q Now -- but if the dresser were to fall over and it's
5 missing a back leg, wouldn't it seem like it would be
6 falling backwards, not forwards?

7 A Not up against the wall.

8 Q This is the dresser in the room. So you claim here --
9 is this the bed right here?

10 A Yeah.

11 Q So you claim you're partway over the bed --

12 A Mm-hmm.

13 Q -- and this rug bunches up against the dresser; right?

14 A It's actually under the dresser.

15 Q It's under the dresser?

16 A It's under the dresser, yes.

17 Q So it bunches up against this dresser is your
18 testimony; correct?

19 A It is under the dresser.

20 Q It's under it right now; correct?

21 A Correct.

22 Q And your testimony is the rug slides against the
23 dresser; correct?

24 A No, the rug slides under the dresser. The rug is under
25 the dresser -- slides under the dresser.

1 Q So it slides under it further?

2 A It gets on top of it, and the dresser would move with
3 the rug.

4 Q So how does it fall over? I'm trying to figure that
5 out.

6 A When it hits the back -- when the bottom hits the
7 bottom wall, the top comes over. It's a top-heavy
8 dresser.

9 Q So you're saying this rug's stiff. It's a stiff rug,
10 huh?

11 A Do we have the rug? I mean it --

12 Q I'm asking you a question. You've been here before;
13 haven't you?

14 A Yes, I have.

15 Q Okay. Is it a stiff rug, that it pushes against the --

16 A I'm not really sure.

17 Q You're not really sure? Okay. So this rug pushes
18 against this dresser and takes the legs right out from
19 underneath it; huh?

20 A Yes.

21 Q And then this comes right over on you?

22 A Yes.

23 Q But you don't remember how long it's on top of you for,
24 that part's a little vague; huh?

25 A Yes.

1 Q So now, your testimony is you're partway on the bed and
2 partway off the bed, not all the way on the floor like
3 you told the detective during the second interview at
4 the PD; is that right?

5 A Mm-hmm.

6 Q You can have a seat.

7 So when you and Melissa were having sex on
8 the bed and you're choking her, she's still conscious;
9 correct?

10 A On the bed, yes.

11 Q Okay. So then, you fall off the bed, and you keep your
12 hands on her neck as you slide down; correct?

13 A I -- repeat that again.

14 Q You indicated as you came down off the bed, your hands
15 were -- your hand was still on her neck; correct?

16 A Yes.

17 Q So if she was conscious when she hit the floor, you
18 would still have to maintain that pressure for one
19 minute according to Dr. Virani; correct?

20 A I didn't say she was conscious on the floor.

21 Q You just told me she was conscious when she was on the
22 bed.

23 A On the bed.

24 Q Correct.

25 A Not on the floor.

1 Q Maybe I need -- I apologize if I'm not communicating
2 effectively. Let me slow down a little bit, okay.

3 She's on the bed, you're choking her;
4 correct?

5 A Yes.

6 Q You slide off the bed, and you're still choking her;
7 correct?

8 A Right, and in the meantime --

9 Q So you just indicated she was conscious when you were
10 on the bed; correct?

11 A Yes.

12 Q So --

13 A There's -- mm-hmm.

14 Q Excuse me. So now, she's on the -- goes from being
15 conscious on the bed to on the floor with your hand on
16 her neck?

17 A Yes.

18 Q So, according to Dr. Virani, you still have to choke
19 her for another minute; correct?

20 A What I stated was that she --

21 Q No. I'm just asking you a question.

22 A Okay.

23 Q Under your story, you would still have to maintain
24 pressure for over one minute once you got off that bed
25 so blood could not flow in order to kill her; correct?

1 A That's the idea of it, yes.

2 Q Right. But that part's a little fuzzy; right?

3 A Yeah.

4 Q Let me take you -- now, when you arrive, you decide to
5 call -- excuse me. When you arrived at the crime scene
6 on the 6th, the first call you make is to your mom;
7 correct?

8 A Yes.

9 Q You see someone unconscious in a bed, and you -- in a
10 house that you just break into, and you call your mom?

11 A That was my first call no matter what, anything that
12 ever happened.

13 Q Now, you're a competent person. You're a business
14 owner; right?

15 A Yes.

16 Q You do your accounting, you run the business; right?

17 A I don't do the accounting. I work and I do the -- I
18 maintain it.

19 Q You maintain it?

20 A Yes.

21 Q You're a grown man; right?

22 A Yeah.

23 Q Your first call's to your mom?

24 A Yeah.

25 Q Okay. Now, back on 6/15 of 2016, you heard testimony

1 you called Melissa 121 times in 21 minutes?

2 A Yes.

3 Q Would you consider yourself obsessive with her at
4 times?

5 A Yeah.

6 Q So, looking at your last version of events, today is
7 the first time you've indicated that Melissa wanted to
8 be strangled during sex; isn't that true?

9 A Repeat that. Today?

10 Q Today is the first time you've mentioned that?

11 A On record?

12 Q Well, let me rephrase it.

13 A Okay.

14 Q You talked to the officers three times previously;
15 right?

16 A Correct.

17 Q Today is the first time you ever mentioned that; isn't
18 it?

19 A To the officer -- or to you, yes.

20 Q Today's the first time that you've told anybody that
21 you were still partway on the bed and still partway off
22 the bed; correct?

23 A Yes.

24 Q Today's the first time you told anybody that a rug
25 sliding underneath the dresser was the cause of it

1 falling over on you; isn't that correct?

2 A Yes.

3 Q So today's your fourth story; is that correct?

4 A Yes. I guess you could put it that way, yeah.

5 Q You mentioned that you were having a good time with
6 Melissa watching some fireworks; right?

7 A Yes.

8 Q Do you remember if she invited you to that or if you
9 invited yourself, how that worked?

10 A We had talked about it before she had left my house.
11 And then I was waiting for a response and I didn't get
12 one.

13 Q So my question is, did you invite yourself or did she
14 invite you?

15 A Originally, she had invited -- we had agreed to go.

16 Q So it was a mutual thing?

17 A Yes.

18 Q What I'm showing is page 4 of 9 of Detective Adam's
19 Green [sic] report. You remember texting her that day;
20 right?

21 A Yes.

22 Q If you can just read from right here down to here, from
23 8:44 p.m. to 9:03 p.m.

24 A Who is these -- would that be me?

25 Q "Sent" is you. If you could just read them to

1 yourself. Take your time.

2 Do you remember inviting yourself to that?

3 A I sent the text message.

4 Q So is that a "yes"?

5 A Yes.

6 Q But you previously just testified that you wouldn't
7 want to show up somewhere uninvited; didn't you?

8 A Yes.

9 Q Interesting.

10 MR. JOHNSON: Pardon me? I didn't hear that.

11 THE WITNESS: My answer was, yes, but I
12 didn't hear it.

13 BY MR. STEVENSON:

14 Q Now, once you hit the -- once you and Melissa slid off
15 onto the ground, I imagine that rug shifted
16 automatically; right? You were the ones that caused
17 that rug to shift; right?

18 A We did, yes.

19 Q So that would be automatic; right?

20 A Not like an automatic door, but yeah, it would be,
21 yeah.

22 Q But pretty quick?

23 A Yes.

24 Q So that thing must have fell over just right after you
25 hit the ground, or close in time; right?

1 A In the process, yeah.

2 Q So wouldn't it be -- your natural reaction would be
3 just to get that dresser off you almost first thing
4 when you hit that floor?

5 A It would generally be if I wasn't in the middle of,
6 like I stated, climaxing along with her.

7 Q Oh, so you're still trying to climax with your hands
8 around her neck on the floor halfway off the bed?

9 A No, we were on the bed, and then that happened.

10 Q So my question to you is, when you slide off the bed,
11 that rug shifts that dresser over onto you, wouldn't it
12 be a natural reaction to get that thing off you
13 immediately?

14 A Yeah, if I was clean sober, yeah, no drugs, not
15 drinking or anything, my reflexes would probably have
16 been better.

17 Q So how long did you wait to get that dresser off you?

18 A I don't know.

19 Q So you just -- so what did you do? Did you just keep
20 your hands around her neck with that dresser on -- on
21 your head?

22 A No, like I said, I -- when it hit me, I don't recall
23 the time frame or how long.

24 Q Because wouldn't you agree that a normal person,
25 something falls on them, they're going to get that

1 thing off them; right? Right?

2 A Like I said, if I was sober, yes.

3 Q So in order for you to have killed her, according to
4 Dr. Virani, that thing had to fall on you, and you
5 strangled her halfway off the bed for another minute;
6 isn't that fair to say?

7 A I guess you could say that.

8 Q So you fall off the bed, strangle her for another
9 minute with that thing falling on you, seeing stars.
10 That's your story that you want this jury to believe.

11 A I didn't say I strangled her.

12 Q Oh, you choked her? Excuse me.

13 A Right. And --

14 (Off-the-record discussion held.)

15 MR. STEVENSON: No further questions.

16 THE COURT: Any redirect, Mr. Johnson?

17 MR. JOHNSON: Yes, Your Honor.

18 R E D I R E C T E X A M I N A T I O N

19 BY MR. JOHNSON:

20 Q Interview No. 1, what did you tell the police as it
21 relates to what you all did and what happened
22 afterwards?

23 A Is this the -- at the scene?

24 Q Yes, at the scene. What did you tell them?

25 A And then --

1 Q What -- what did you tell them as far as what you and
2 Melissa did? Did --

3 A Oh, that we'd hung out.

4 Q That you hung out?

5 A Yeah.

6 Q You didn't mention that you'd been to the Baywood or
7 whatever?

8 A I don't think so. I don't --

9 Q Okay. Interview No. 2, when they took you to the
10 police station. You told the same lie; correct?

11 A Correct.

12 Q Interview No. 3, you disclosed to them that you all had
13 fallen out of the bed having sex and the dresser fell
14 on you; correct?

15 A Yes.

16 Q Incidentally, when the prosecutor was giving the list
17 of things that you said, when you said "correct," were
18 you saying that it was correct that that's what you
19 said, or were you saying that was correct that that's
20 what you did?

21 A What I did.

22 Q So it was correct that you all had had sex and cuddled?

23 A Yes.

24 Q Or was it correct that you said that you had sex and
25 cuddled?

1 A That we had sex and cuddled. I'm sorry. I --

2 Q What I'm asking you is, were you telling the truth when
3 you said that you had sex and then you cuddled until --
4 until she went to sleep?

5 A Right, and this was the second interview, yes, that I
6 said that.

7 Q Is it correct that that's what you did, or is it
8 correct that that's what you said?

9 A No, it's not correct what we did. I misunderstood you.
10 I'm sorry. I was getting both --

11 Q What I'm asking, the first story that you told and the
12 second story that you told, were those the truth?

13 A No.

14 Q Okay. So you didn't have sex and cuddle?

15 A No.

16 Q Okay. The last story you told, you disclosed the
17 dresser fell on you?

18 A Yes.

19 Q Was that the truth?

20 A Yes.

21 Q Now, when the dresser fell on you, did you have time to
22 look up and see it was coming down, and then it hit
23 you, and --

24 A No.

25 Q How fast did this happen?

1 A Quick.

2 Q Okay. Is this when you got the black eye?

3 A Yes.

4 Q What caused you to get the black eye?

5 A I got hit in the face.

6 Q And what effect did that have on you?

7 A I seen stars. I -- I don't know if I blacked out. I

8 was just unaware.

9 Q Were you considering where your hands were at the time?

10 A No.

11 Q What did you do to try to get that to raise up off that

12 dresser?

13 A I pushed down.

14 Q You pushed down?

15 A Yes.

16 Q And what did you push down on?

17 A Melissa.

18 Q Was it your intent at that point in time to be choking

19 her?

20 A No.

21 Q Did you strangle her?

22 A No.

23 Q What was the choking about?

24 A The release off her climax.

25 Q Okay. So, you're having this sex, you're doing this

1 erotic asphyxiation. You fall out of the bed. Are you
2 paying attention to where your hands are or what's
3 going on or are you -- what are you doing?

4 A No. I was in the moment.

5 Q And what you were doing?

6 A Having sex.

7 Q I mean, I'm talking about when you fell off the bed,
8 and the dresser comes down, what are you trying to do?

9 A Finish.

10 Q You're trying to finish having sex?

11 A No, it's --

12 Q What I'm asking you, and I want you to stop and listen
13 to what I'm asking you. When you slid off the bed with
14 Melissa, and the dresser comes down and hits you, what
15 are you trying to do after it falls down and hits you?

16 A Get up.

17 Q Are you paying attention to where your hands are?

18 A No.

19 Q In the interview that you had with the police, did you
20 tell them that you fell out of bed? Did you tell them
21 that you fell out of bed completely, or did you tell
22 them that you fell out of bed partially, or did --

23 A I guess I don't really recall exactly.

24 Q Do you recall them asking you: Were you already all
25 the way on the floor, or were there parts of you on the

1 floor?

2 Do you recall whether they asked you that
3 question or not?

4 A I don't think so.

5 Q No. Why were you pursuing Melissa?

6 MR. STEVENSON: Objection, asked and
7 answered.

8 THE COURT: Sustain the objection.

9 BY MR. JOHNSON:

10 Q When's the last time you talked to police officers
11 about this case?

12 A I believe it was that interview.

13 Q July 7?

14 A Yes.

15 Q So between July 7 and today, you haven't talked to any
16 police officers?

17 A No.

18 Q So, when would you have told the police officers what
19 you testified to today?

20 A Today.

21 Q Did you tell anyone about what you say truly happened?

22 A Yes.

23 Q Who did you tell?

24 A First, I told Sturtz, my first Court-appointed
25 attorney.

1 Q Uh-huh.

2 A And then I told you.

3 Q Did we tell you to go and tell that to the police?

4 A No.

5 Q What did we tell you?

6 A Tell me the truth.

7 Q Okay. But, what did we tell about you talking?

8 A Don't talk to anybody else.

9 MR. JOHNSON: I don't have any further
10 questions.

11 THE COURT: Anything else, Mr. Stevenson?

12 MR. STEVENSON: Briefly.

13 R E C R O S S - E X A M I N A T I O N

14 BY MR. STEVENSON:

15 Q You indicated on direct examination when Mr. Johnson
16 was asking you the question, you indicated that you
17 were trying to cover your ass; isn't that correct?

18 A I said that.

19 Q Do you remember saying that?

20 A Yes.

21 Q Is that what you're trying to do here today?

22 A No.

23 MR. STEVENSON: Nothing further.

24 THE COURT: You may step down.

25 (Witness excused at 12:08 p.m.)

* * *

THE COURT: Ladies and gentlemen, we are going to break for lunch at this time. Caution you once again not to discuss the case amongst yourselves nor with anyone else, nor listen to any news reports concerning this trial. Have a good lunch. We'll see you back at 1:30.

MS. LEWIS: All rise for the jury, please.

(Jury excused at 12:08 p.m.)

MS. BIDWELL: You may be seated.

THE COURT: Record should reflect the jury is not present at this time. Anything for the record? Mr. Stevenson?

MR. STEVENSON: Nothing on behalf of the People, Your Honor.

THE COURT: Mr. Johnson?

MR. JOHNSON: Nothing at this time, Your Honor.

THE COURT: Mr. Johnson, you've indicated you expect to call one more witness?

MR. JOHNSON: Yes. I've not heard back from him. If I haven't heard back from him by the time we come back after lunch, the defense will rest.

THE COURT: All right. I'd like to see counsel in chambers, also. Mr. Stevenson, you had

1 something else you wanted to say?

2 MR. STEVENSON: Not for the record, Your
3 Honor.

4 THE COURT: All right. Stand in recess till
5 1:30.

6 MS. BIDWELL: All rise.

7 (Proceedings adjourned at 12:09 p.m.)

8 * * *

9 MS. LEWIS: All rise for the jury, please.

10 (Jury returned at 1:40 p.m., proceedings
11 reconvened.)

12 MS. LEWIS: Court is again in session, the
13 Honorable Darnell Jackson presiding.

14 THE COURT: Please be seated.

15 Mr. Johnson, you may call your next witness.

16 MR. JOHNSON: Your Honor, at this time, the
17 defense rests.

18 THE COURT: All right. And, Mr. Stevenson,
19 any rebuttal witnesses?

20 MR. STEVENSON: One rebuttal witness. The
21 People would like to call Shane Schneider to the stand.

22 MS. LEWIS: Please raise your right hand,
23 sir. Do you solemnly swear that the testimony you
24 shall give in this cause here pending shall be the
25 truth, the whole truth, and nothing but the truth, so