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COUNTY COURT OF THE STATE OF NEW YORK
COUNTY OF CAYUGA : TRIAL TERM

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THE PEOPLE OF THE STATE OF NEW YORK : Indictment No. 99-13:

-against-

MICHELLE DAVIS,

Defendant. : Hearing Excerpt

-----x

Cayuga County Courthouse
Auburn, New York

March 2nd, 3rd and 6th, 2000

B e f o r e :

HON. PETER E. CORNING,
Justice

A p p e a r a n c e s :

JAMES B. VARGASON, ESQ.
District Attorney, Cayuga County

JAMES S. BAIER, ESQ.
Attorney for Defendant
54 South Street
Auburn, New York 13021
and

DAVID P. ELKOVITCH, ESQ.
Attorney for Defendant
199 Genesee Street
Auburn, New York 13021

Lisa M. Giacona
RPR, RMR, CSR

1 Burgess -- DX

2 MR. VARGASON: They have not been
3 itemized. I don't know what they are.

4 MR. ELKOVITCH: And her curriculum vitae
5 was delivered yesterday. Most of the things are --

6 ANN BURGESS, a witness called on behalf of the Defendant,
7 after having been first duly sworn, took the witness
8 stand and testified as follows:

9 DIRECT EXAMINATION BY MR. ELKOVITCH:

10 Q. Would you state your name again, please?

11 A. Ann Wolbert Burgess.

12 Q. And where do you reside?

13 A. I reside in West Newton, Massachusetts.

14 Q. Okay, and what's your profession?

15 A. I am a Psychiatric Nurse and a Professor of
16 Psychiatric Nursing.

17 Q. And where are you a Professor?

18 A. At the University of Pennsylvania, School of
19 Nursing in Philadelphia, Pennsylvania.

20 Q. And can you go over your educational background?

21 A. I have a Bachelor of Science degree from the
22 Boston University, I have a Master of Science degree from
23 the University of Maryland and I have a Doctor of Nursing
24 Science degree from Boston University.

25 Q. And how long have you been in the nursing

1 Burgess -- DX

2 profession?

3 A. I've been a Registered Nurse my basic profession
4 since 1958.

5 Q. Okay, and how long have you been a Psychiatric
6 Nurse?

7 A. I've been a Psychiatric Nurse, what's called an
8 Advance Practice Nurse since I was certified in 1980.

9 Q. And what has been the nature of your training?

10 A. My training has been at a Baccalaureate level is
11 where I obtained my education for my Registered Nurse and
12 then the, my graduate education in the psychiatric nursing
13 field was at the Master's level at the University of
14 Maryland and then my Doctorate was as a Nurse
15 Psychotherapist in which I trained with Psychiatrists,
16 Psychologists and Social Workers to study Psychotherapy and
17 the psychiatric field and that I graduated from there in
18 1966.

19 Q. Okay, and do you do other training since you
20 left school?

21 A. Oh, since I've left school I have, yes, I've
22 certainly had other training and I also had a lot of
23 research because I was prepared as a researcher.

24 Q. And what are your present professional positions
25 or appointments?

1 Burgess -- DX

2 A. I'm in what's called a Chair position at the
3 University of Pennsylvania. It's the van Ameringen Chair
4 in Psychiatric Nursing. I've held that Chair since 1983.

5 Q. What does that entail?

6 A. What that entails is a, an opportunity to do
7 extra research. It is money that is given to the school
8 for this and then the interest, if you will, is what pays
9 the salary and/or the research assistants for the
10 Professor. So I have that but I also have all of the
11 regular Professor responsibilities that go along with being
12 a Professor.

13 Q. And what level courses do you teach?

14 A. I teach both graduate students, I have doctoral
15 students that I direct their dissertation and the research,
16 I have undergraduate advisees. I also teach courses that
17 cross both undergraduate and graduate level.

18 Q. And what do the courses consist of?

19 A. I teach a course that's call Victimology. I too
20 teach a course that's called Forensic Science and I teach a
21 course that's called Forensic Mental Health.

22 Q. And what do --

23 A. Those are the three.

24 Q. -- they basically pertain to?

25 A. The Victimology is a course that looks at the

1 Burgess -- DX

2 role of a victim in a crime and we go through in a semester
3 a wide variety of types of crimes.

4 The Forensic Science looks at how a case is put
5 together from evidence. Much of that is I, I, I get
6 lecturers in from the Medical Examiner's Office, I have FBI
7 that come in, I have State Police, people whose work does
8 focus on specific aspects. DNA is, of course, a big area
9 now; and then Forensic Mental Health is where we study the
10 offender of a crime so that we focus everything on who has
11 committed the crime.

12 Q. And do you work with any specific organizations
13 or government entities in your positions?

14 A. Yes, I certainly do. One of the main, just at
15 an academic level we -- I work with a variety of agencies
16 within -- to help in the teaching. Some I've already
17 mentioned, the Philadelphia Police Department, the Medical
18 Examiner Office, where now have liaison with the New York
19 City Medical Examiner's Office.

20 These are all agencies that I also can have my
21 students take clinical internships in if they have a
22 particular interest; but at a larger level I've had
23 experience and have consulted with, taught at and done
24 research with the FBI Behavioral Science Unit down at
25 Quantico. That work started in the mid '70's and that

1 Burgess -- DX

2 resulted in a fair amount of research on serial offenders.

3 Q. And what professional organizations do you
4 belong to?

5 A. I belong to American Nurses Association, I
6 belong to Sigma Theta Tau which is the Nursing Honor
7 Society, I belong to the Society for Traumatic Stress, I
8 belong to American Professional Society on Abuse of
9 Children, I belong to International Association of Forensic
10 Nurses. Those are just a few I belong to.

11 Q. Okay, and have you done any studies during your
12 profession?

13 A. Yes. I've done a number of studies, both funded
14 and non-funded. The initial study which was back in the
15 '70s was on a population of rape victims coming into Boston
16 City Hospital and that was a study that was conducted over
17 a year, actually more than a year but we entered all
18 subjects in over a year and then we followed them through
19 the, through the police and Criminal Justice System, the
20 hospital system and did a follow-up of them.

21 Following that I began to get government grants
22 that allowed me to then hire people to help in the
23 collection of data, and several of those studies were, the
24 use of children in pornography was a study that I did for
25 child -- the National Center for Child Abuse and Neglect.

1 Burgess -- DX

2 Then there was a National Institute of Justice
3 study that was with the FBI that looked at serial
4 offenders.

5 Then there was an Office of Juvenile Justice and
6 Delinquency Prevention which is part of National Institute
7 of Justice that looked at child victim, juvenile offender
8 and serial criminal. So it looked over a span of looking
9 at the victim to victimize their cycle.

10 I've had a number of studies that looked at the
11 issue of aids and sexual assault.

12 Also had another study with the FBI that looked
13 at infant abductors because I have jurisdiction over any
14 type of abduction so we study people that stole babies from
15 hospitals, and the most recent study is a study for the
16 whole country with, in which Pennsylvania Coalition Against
17 Rape is the housing, the National Center on Sexual
18 Violence. It's a Sexual Violence Resource Center and
19 School of Nursing and I am directing the research part of
20 that.

21 Q. And have you done work in the criminal field?

22 A. I have done work in the criminal field, both in
23 terms of the consulting but also the research and that
24 would be the work with Behavioral Science Unit out of
25 Quantico where we look at sexual homicide. The agents went

1 Burgess -- DX

2 in and did interviews in the prisons with serial sexual
3 homicide, people convicted of that.

4 We also did a study on serial rapists and then
5 the study on the infant abductors. Those were an
6 autoerotic fatalities. That was a fourth study that we
7 did, and currently I'm on an advisory committee for the
8 Massachusetts State Police for their Behavioral Science
9 Unit.

10 Q. And what do you do if you're on the payroll with
11 say the Massachusetts State Police? What would your --
12 what would they request of you?

13 A. Well, my, my role with Massachusetts State
14 Police is educational and consultation. They have a case
15 and they want to go over they will bring in the advisory
16 committee on that.

17 For education I do seminars. I work with them.
18 When they put together a seminar I'll do speaking on a
19 segment of that. So I'll help them with that.

20 Q. Do you do a lot of speaking?

21 A. I do, yes. I try, I try to limit it but I, I
22 certainly do a lot, yes.

23 Q. And it's all in relation to your Psychiatric
24 Nursing profession?

25 A. Yes.

1 Burgess -- DX

2 Q. And do you ever work with victims --

3 A. Yes.

4 Q. -- of crimes?

5 A. I do.

6 Q. And what kind of victims have you worked with?

7 A. I've worked with rape victims. That was the
8 first study, that I saw on that first year 146 victims that
9 came into Boston City Hospital. The, following that would
10 be again studying and working with children of sexual
11 abuse, children of child maltreatment and that extended
12 work on that and then most recently had been working on the
13 issue of rape in nursing home and when Alzheimer patients
14 are raped and trying to help with that issue.

15 Q. Have you ever been appointed by the Courts to do
16 any work?

17 A. Yes, I have.

18 Q. And can you state the nature of your -- the
19 appointments?

20 A. My appointments have generally been in the area
21 of interviewing children. I -- one case where I was
22 approved by both sides and the Court appointment was the
23 West Point Day Care case back in the '80s.

24 I've also done individual cases where there has
25 been a, an issue that they needed an evaluation of a child.

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2 Q. Okay. So you've done work for both the
3 prosecution and the defense?

4 A. Yes, I have.

5 Q. And do you consult with the prosecution in
6 different states?

7 A. Yes. I do a lot of work with prosecution in
8 various states, yes.

9 Q. What states have you worked with the
10 prosecution?

11 A. Pennsylvania, Massachusetts, New York, done
12 several cases with New York right now and case with
13 Pennsylvania.

14 Q. Okay, and did you have an occasion to examine
15 Michelle Davis?

16 A. I did.

17 Q. And do you remember when that was?

18 A. February 17th of the year 2000.

19 Q. Okay, and where was the examination?

20 A. The examination was done in her home.

21 Q. Okay, and would you describe for us what you
22 did?

23 A. For that examination I met with Michelle Davis.
24 I explained what I would be doing, which was to get
25 information about her life. I wanted information about

1 Burgess -- DX

2 what her life was like and then the incident that we were
3 going to be talking about, as much as she could tell me
4 about that and then the information about how it has been
5 for her since then. So it's in three major areas.

6 So I did that and then I also gave her a, three
7 tests that help with the symptoms that she may or may not
8 be having. So I administered three tests to her and then
9 separately I talked briefly with her husband and her
10 daughter briefly.

11 Q. And which daughter?

12 A. Melissa, the older daughter, had come home from
13 school.

14 Q. And did you take a history of Michelle Davis?

15 A. I did.

16 Q. And what -- were there any other documents and
17 records that you examined before you met with her?

18 A. Yes. I had, I had documents from the, I had the
19 pretrial notice of Cayuga County Sheriff's Department dated
20 November 5th. I had notes from Michelle Davis titled
21 interrogatory feelings, recollections of September 22, 1999
22 and Dr. Hurst's note. I had the Cayuga County Mental
23 Health Center records, file records of Deputy Lukins and
24 Investigator Cornelius and I also listened to the taped
25 interviews of Michelle Davis on 9/8/99 and interrogation

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2 interview of 9/21/99 interview.

3 Q. And did she tell you what happened on September
4 3rd?

5 A. She did.

6 Q. And what did she relate to you?

7 A. She related to me that it had been a, a fairly
8 usual day. She had been out shopping up until about six
9 p.m. with her younger daughter to get her some school
10 clothes, had come back. Her husband had been there
11 watching Daniel. The older daughter was overnight at some --
12 with friends and then what happened after six p.m.

13 There was -- Daniel had become a little bit, had
14 become upset and had struck out at her, had upset the
15 younger daughter Kimmy and she had been able to say, are
16 you going to start this; and he was able to stop and then
17 Kimmy went to a friend's house.

18 Daniel went swimming and Michelle Davis was
19 folding clothes and the next thing she knew that he was,
20 had come up behind her and he was -- when she turned around
21 she realized that he didn't have any clothes on and he
22 began striking at her and she striked -- struck him back.

23 At that point he began fighting quite hard with
24 her. He pulled her hair. He pushed her to the ground. He
25 was able to, and as he pushes her down, he also hits her

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2 with something to the side of the head so that she felt
3 pretty dazed. She is on the floor, he is on top of her.
4 He is able to get her clothes off and he is lying on top of
5 her. He's yelling, making noises and she as a result is
6 raped at that particular point.

7 She then gets him off of her. She's still very
8 dazed and upset. He goes back to his room. She tells him
9 to get dressed, which he does. I think he has a bag of
10 potato chips.

11 She tries to pull herself together. She's
12 pretty upset, she's crying. I think by this time she tries
13 to, she calls and gets the daughter home. She gets them
14 set for bed. I think she gets Daniel's -- she goes for his
15 ritual to get him set for bed and she has Kimmy, the
16 daughter, sleep in the family room which is part of the
17 house.

18 She puts Daniel to bed, and she's also thinking
19 that she needs to do a ritual that is a cleansing type of
20 ritual, and so after the children are in bed she does go
21 through this ritual in this room that she had been painting
22 and she puts a circle of parsley around -- she didn't have
23 whatever you're supposed to have, but anyway, she puts the
24 circle around and she goes into the circle and she kneels
25 and she prays, and there are about four areas that she

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2 prays to. She asks for strength, she prays to -- for the
3 evil spirits to go away, for help for her children; and she
4 lights -- she doesn't remember this at this time but she
5 then goes to bed herself.

6 She lays down with Kimmy and goes to sleep,
7 thinking she was going to get up, this is of course after
8 the fact that we're getting this information, but had
9 planned to get up. Falls asleep.

10 The next thing that she knows is that Kimmy is
11 saying she can't breathe or there's, it's foggy and that
12 turns out to be the smoke.

13 Q. Now she was planning to get up for what reason?

14 A. She was planning to get up for the -- she had
15 lit these candles that are part of this smudging ritual --

16 Q. Okay.

17 A. -- which normally she does. Normally she would
18 go have some coffee. They are supposed to clean the room.
19 There's a purpose to having the candles to clean the room,
20 and she falls asleep. She's exhausted, falls asleep and
21 the next thing that she knows she's awakened with the
22 smoke.

23 She manages to get Kim out. She tries to go, to
24 get upstairs to get Daniel, is unable to get -- find the
25 stairs, goes outside, tries to get up on the porch. By

1 Burgess -- DX

2 this time neighbors are out and the fire fighters get
3 there.

4 She remembers kind of being taken away to
5 another house by the firemen and later I think that morning
6 is told by the coroner that Daniel has died. Then she is
7 in, and that then she's into the making the arrangements
8 for the funeral and going through that part of the
9 aftermath.

10 Q. Can you describe what rape trauma syndrome is?

11 A. Rape trauma syndrome is a, one of the major
12 findings in the study that Lynda Holmstrom and I did in the
13 early '70s, seeing 146 people who had a complaint of rape
14 coming into Boston City Hospital; and so that was the
15 description of the symptom pattern in a two-phase type
16 reaction that women had, adult women had as a result of
17 being raped, and it looked at the emotional demeanor that
18 the victim had, it looked at how disrupt -- in the acute
19 phase how much disruption there was, how their thinking
20 patterns were, and then it went into this phase of where
21 they had to put their life back in order.

22 Acute phase disrupted their lifestyle, disrupted
23 their physical, social and psychological lifestyle.

24 The task in the reorganization phase was to put
25 their life back into some degree of order.

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2 So we identified the symptoms. They were the
3 inability to think, to, to concentrate as they once had, to
4 go to work or to do whatever their normal activities,
5 social activities were. We saw symptoms of nightmares, bad
6 dreams, appetite changes, sleep changes, crying spells,
7 mood changes and, and memory of the traumatic event which
8 would have been the rape, that being one of the specific
9 symptoms as opposed to just anxiety symptoms.

10 Q. Did you find any of these symptoms when you
11 examined Michelle Davis?

12 A. Yes, I found the symptoms when I examined
13 Michelle Davis and I also found them on her self-report
14 when I asked her the test questions, the survey questions.
15 I found the symptoms, yes.

16 Q. What particular symptoms did you find?

17 A. At the time I saw her there were -- she was very
18 depressed. On the inventory she fell into the high range,
19 if you will. You need 17 to be what's called clinically
20 depressed. Her score was 31. So she was clearly
21 depressed.

22 On the impact of events scale which measures how
23 much the intrusive thoughts come into one's mind and then
24 how much they are pushed out of the mind, because that's
25 the natural way if you will that the mind works to try to

1 Burgess -- DX

2 keep upsetting events out of conscious memory, she had a
3 very high score in terms of intense, intrusive thinking and
4 the avoidance; and then on the SCL 90 which measures 90
5 symptoms she scored again as would be scored as a clinical
6 picture of psychological distress. She had what are called
7 extreme symptoms, fours on probably one-third of the 90
8 items.

9 Q. Now this is when you examined her on the 17th?

10 A. Yes.

11 Q. And the rape occurred on the 3rd of September?

12 A. Correct.

13 Q. So these symptoms do you feel in your opinion
14 had been going on since the 3rd of September?

15 A. Yes. From what I had been able to -- she was
16 able to tell me and certainly what was documented in the
17 mental health records, yes.

18 Q. And what causes the symptoms?

19 A. The cause of the symptoms has been something
20 that has been more recently looked at. In the decade of
21 the brain, if you will, a lot of research money was put in
22 to try to understand the way the brain works; and although
23 there had been a lot of studies, Hans Selye back in the
24 '40s and '50s on stress and the effects of stress to really
25 understand where in the brain, what that affects really

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2 started in the '80s; and what they have located, what the
3 researchers have located what's call the limbic system.
4 It's an area in our brain that is our center for alarm and
5 protection. It is what alerts us to danger, and when that
6 danger goes off, when the alarm if you will is sounded, a
7 lot of what we call stress hormones are released through
8 the autonomic nervous system. These are involuntary. They
9 just get released because the person is trying to prepare
10 themselves to defend, and I think the -- we certainly used
11 to know it as the fight/flight phenomenon. When a person
12 is confronted with danger, either they flee or they, they
13 fight.

14 The stress hormones as they have been more
15 carefully studied are, and in the limbic system there's
16 also where we process information. When information comes
17 in through our sensory system it gets processed and, and
18 that's what activates, if you will, any danger.

19 There are also the neurotransmitters that
20 transfer messages back and forth in our brain and this is
21 what gets lower, the serotonin in the brain gets lowered,
22 under stress and trauma and that explains why cognitive
23 symptoms, if you will, the inability to think clearly, the
24 feeling as though you're overwhelmed, you can't get any
25 more information in, you can't make judgments, you can't

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2 spontaneously think clearly, that explains those symptoms
3 because of the trauma that has occurred.

4 It is in traumatic events the person has the
5 capacity to retraumatize themselves because the intrusive
6 symptoms keep coming in. So even though the events
7 happened say on September 3rd, the memory and the reminders
8 keep surging through the, the stress hormones through the body and
9 interfere with the cognition, the thinking patterns, the
10 processing ability to take information in normally, think
11 about it and, and respond.

12 Q. And when you examined Michelle Davis what type
13 of emotional demeanor responses did you find from her?

14 A. When I examined Michelle Davis had -- she had a
15 range. She had external -- there were periods when she was
16 calm, looked totally in control. There were times when she
17 was crying, she was very upset, especially when you talked
18 about very, especially when you talked about anything to do
19 with the rape, certainly things to do with the fire. All
20 of the traumatic events that had occurred were emotionally
21 disruptive. You could almost just see her demeanor change
22 and deteriorate, if you will, her thinking.

23 So I saw all of those and her emotional demeanor
24 certainly during the interview.

25 Q. And what could you tell from the examination of

1 Burgess -- DX

2 her of what daily functions that were affected?

3 A. Well, the daily functions, part of what she was,
4 she described as her lack of motivation, the lack of
5 energy, that's another symptom, if you will, of depression,
6 not being able to kind of get oneself going, not knowing
7 what to do, having no direction. She certainly had those
8 symptoms. The depression is probably the most prominent
9 feature of the rape trauma that, that I saw.

10 Q. What, what about her memory?

11 A. Her memory came back in pieces. What was
12 important about her memory is what we often see in, in
13 traumatized people is it fragments and so it comes back
14 piece by piece. This isn't just in this type of situation
15 but in many situations after, say, even an automobile
16 accident, people as they keep going back over the events
17 begin to remember more and more, and that's essentially
18 what happened.

19 She told me that she hadn't remembered the rape
20 until at least about a week following that and that came
21 back in pieces as she was, as she would think about it, as
22 she had more time alone and as her mind kind of settled
23 down, and the other issues she has had more and more memory
24 over the three weeks. Certainly in those first three to
25 four weeks there was more memory that did come back to her.

1 Burgess -- DX

2 Q. Now how many people have you seen that have had
3 rape trauma syndrome?

4 A. I've now since the early '70s seen thousands of
5 victims, either through examining them, either through the
6 research that I've done or in treatment, that I have
7 treated, certainly I've treated rape victims.

8 Q. And have you testified in any courts as to rape
9 trauma syndrome?

10 A. Yes, I have testified.

11 Q. Where?

12 A. I've testified I think in about 26 states on
13 rape trauma. I've certainly testified here in New York
14 State.

15 THE COURT: You have or have not?

16 THE WITNESS: I have.

17 THE COURT: Okay. Where was that?

18 THE WITNESS: I have testified in
19 Manhattan, in White Plains, in Saratoga Springs.

20 THE COURT: Okay.

21 THE WITNESS: Okay.

22 Q. And, Dr. Burgess, do you have an opinion on the
23 mental state of Michelle Davis from September 3rd up to and
24 including September 22, 1999?

25 A. I do.

1 Burgess -- DX

2 Q. And would you state your opinion based upon
3 reasonable degree of medical certainty as to Michelle
4 Davis's mental state between those two dates, including
5 those two dates?

6 A. It's my opinion that, that Michelle Davis was in
7 the traumatized mental state in those dates between
8 September 3rd to September 22nd. This was evidenced by the
9 thinking patterns, by the altered ability to think, to
10 remember, to organize, to process any kind of information,
11 and it also showed itself in terms of cog, what we call
12 cognitive confusion, being unsure, being able -- unable to
13 finish sentences sometimes, the mood swings, the
14 depression. All of those symptoms contributed from the
15 rape trauma to her traumatized mental state.

16 Q. And are these symptoms similar to the ones that
17 you've seen in the past with the thousands of rape trauma
18 syndrome victims that you've had?

19 A. Yes.

20 Q. Now based upon your examination of Michelle
21 Davis and in your area of expertise, was Michelle Davis
22 able to give a voluntary statement on September 22, 1999?

23 A. It was my opinion she was unable to give a
24 voluntary statement on September 22, 1999.

25 Q. And that's based on your examination and all of

1 Burgess -- DX

2 your research in the field?

3 A. It is, yes.

4 Q. And on September 21, '99 Michelle Davis signed a
5 waiver of her Miranda rights and she did the same thing on
6 September 22, 1999. Now based upon your examination of
7 her, your background and extensive study and what you've
8 testified here today and the area of traumatic stress and
9 rape trauma syndrome, do you have an opinion as to whether
10 she could have voluntarily and knowingly waived her rights
11 to give the statement to the interrogator?

12 A. It's my opinion she could not have voluntarily
13 and knowingly waived her rights, her Miranda rights on that
14 date of September 21, 1999.

15 Q. Okay, and what about the 22nd?

16 A. And the 22nd, yes, both the 21st and the 22nd.

17 Q. Is there anything else you would like to mention
18 to the Court as to what you found about Michelle Davis and
19 her mental state?

20 A. No. I think I've, I've given, entered all that
21 I can at this point.

22 MR. ELKOVITCH: Okay. Thank you. That's
23 all I have.

24 CROSS-EXAMINATION BY MR. VARGASON:

25 Q. Good morning.

1 Burgess -- RDX

2 because that's what keeps intruding into the mind.

3 So that was all present, in addition to the,
4 what we call the hyper arousal symptoms. That's what's,
5 under autonomic nervous system control, the
6 irritability. There was a lot of irritability. There was
7 some anger. There was certainly the sleep, the appetite,
8 lack of concentration was a, it was an important one.

9 Q. Now you had mentioned on cross-examination
10 something about a compounded rape trauma. Can you explain
11 that?

12 A. Yes.

13 THE COURT: What is that word?

14 MR. ELKOVITCH: Compounded.

15 THE COURT: Okay.

16 A. Okay. When we made, when we wrote our paper on
17 rape trauma syndrome we said there were two subcategories.
18 One was called silent rape trauma because we found out that
19 when we interviewed women coming into the hospital, that
20 they had, had prior events in their life that they had
21 never talked about, but then we had a second category
22 called compounded and that's where there were additional
23 kinds of traumas or stressful events that were also at the
24 time in the life of the person, of the victim; and so what
25 I was referring to as compounded is that there was the

1 Burgess -- RDX

2 rape, there was the, the ritual, there was the fire, there
3 was the death of the son and then there was the funeral,
4 all of those within a very short time period that she had
5 to try to deal with from a mental capacity. That's what
6 really overwhelmed her, all of those, the compounded aspect
7 of the rape.

8 Q. So in your study and your research of, you know,
9 these thousands of people that have suffered rape trauma
10 syndrome, is Michelle Davis's case any different from the
11 ones that you have seen --

12 A. No.

13 Q. -- in the past?

14 A. Not of the ones I've seen, especially where
15 there's been the compounded component to it.

16 Q. So besides the rape that allegedly occurred,
17 you're also taking the other factors into consideration and
18 that's what compounds it?

19 A. Oh, yes, and that's what really throws a person
20 from a mental standpoint into being overwhelmed and the
21 information just is too much, just can't be processed.

22 Q. And how was her thinking patterns disrupted due
23 to these events?

24 A. Well, what happens, that's the, the biology, if
25 you will, of trauma, is that the stress hormones do keep

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2 overwhelming the person because they have the flashbacks.
3 It isn't like well, it happened and so they never think
4 about it. If it happened and they never thought about it,
5 they wouldn't have the stress hormones. It's the flashback
6 up to -- of the rape, all of that and she gets flooded
7 again with the, with the -- like, it's like an adrenalin
8 kind of thing or it's, serotonin actually is lowered and so
9 it doesn't help the neurotransmitters to get the
10 information as in somebody not under stress rely on to
11 think clearly, to be able to listen, to understand. When
12 you, when you don't have enough serotonin, you get the
13 fragmentation.

14 Q. Okay. Now when you talked to the people that
15 you interviewed and consulted and treated, the people that
16 you've testified to that have undergone rape trauma
17 syndrome, is this usually a lengthy process?

18 A. The treatment of rape trauma syndrome --

19 Q. Right.

20 A. -- can be a lengthy process in terms of
21 recovery. It can go on. Our study, we looked four to six
22 years after we had seen them and there were still about 25
23 to 30 percent of victims that hadn't recovered to the level
24 they were at prior to the rape. So it, it, it can be.

25 We certainly had some that were recovered within

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2 a year, certainly some that recovered by the time that we
3 saw them, and that matches in the literature that you can
4 have a certain group that it takes an extensive time.

5 Q. And what about the subcategory of compounded
6 rape trauma?

7 A. Well, that's -- yeah. That's the category when
8 you have situations where additional kinds of stressors and
9 traumas occur. It, it, handicaps a person. It's just like
10 one more thing that they have to recover from.

11 Q. So that can take even longer time?

12 A. Yes.

13 MR. ELKOVITCH: Thank you. That's all I
14 have.

15 EXAMINATION BY THE COURT:

16 Q. What is the distinction between being stressed
17 and being traumatized?

18 A. The threshold for trauma is a higher threshold
19 and the studies have looked at what are kind of every day
20 stresses. Not that anybody wants to have them, but a lot
21 of people have them and they get over it. They are able to
22 use social network. They cope with it. You know, they lose
23 a job, they get a job. That, that can recover the person
24 much more.

25 In trauma it's because the flashbacks, they

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2 can't get the thought out of their mind. It hasn't been
3 processed. It really stays in what we call short-term
4 memory and doesn't get processed nicely to long-term
5 memory.

6 You have control over your long-term memory, you
7 don't have control over your short-term memory because it
8 can just keep, these fragments keep coming out and it's
9 because in the environment it's what we call cues. It's
10 like they hear a noise -- found this with combat. They
11 hear a noise, a car backfires and they can think that they
12 are, you know, 20 years ago, have to go in the fox hole or
13 something. That's what happens with the victim. It can be
14 something she smells, something she sees, something she
15 hears. It relates to the event of the rape.

16 Q. We hear about people blocking things out and
17 it's an actual, almost amnesia-type thing. What, what --
18 and traumatic events can cause that. How, how does that
19 happen?

20 A. Yes. Traumatic amnesia actually is one, is, can
21 be a symptom. It's the mind's way of not being able to
22 deal with --

23 Q. Coping?

24 A. -- coping.

25 It's, see, it's under autonomic nervous system.

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2 You can't control your autonomic nervous system and it
3 protects. It's designed to protect, and people can forget
4 things and that's why we say when it then pops up later, it
5 has all the force behind it.

6 Q. Let me ask you this question. From time to time
7 I have people before me who have an extremely low IQ.

8 A. (nodding affirmatively)

9 Q. And one of the norms of that situation is the
10 willingness to please. They'll, they'll almost say
11 anything I want them to say --

12 A. Right.

13 Q. -- and smile about it no matter how devastating
14 it may be to their own personal --

15 A. Right.

16 Q. Does, does a stress or a traumatic state affect
17 that?

18 A. Oh, it certainly, it can affect that. It can
19 make it more exaggerated or it can make it less. You
20 always go for the, you know, is it more or is it less, but
21 sometimes that's because they don't really -- they are
22 processing, takes them much longer to process what's being
23 said and so they know that by complying with, that they
24 think they're doing the right thing.

25 Q. Well, you, you sat through the Dr. Leo's

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2 testimony.

3 THE COURT: Is it Dr. Leo?

4 MR. ELKOVITCH: Yes.

5 A. Yes.

6 THE COURT: Yes.

7 Q. And you heard him state that the, the
8 interviewers here had engaged in certain interrogation
9 techniques, maximization versus minimization, accident,
10 things like that. Is -- how do you -- does that work into
11 your opinion?

12 A. Well, I think what he said, which I think does
13 work into what I'm saying, is that there are -- under
14 certain conditions too, you also have to look at that, and
15 it can be people that either are under, I think he said
16 have lower IQs or have, have cognitive problems or it can
17 be people that are highly stressed or distressed I think he
18 said. Those factors have to be taken in mainly because of
19 the processing, of the ability to take information in and
20 make sense out of it, you know, sort it and, and think
21 about it.

22 Q. So is it basically your opinion that based upon
23 this traumatic state that she was in during that period of
24 time that she would not be able to process information to
25 the extent that she would, could make a voluntary or

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2 reasoned, intelligent decision to make certain statements
3 that might be incriminating?

4 A. Yes. For example, she said she couldn't even
5 read. She wouldn't even be able to, you know, look at
6 something and read it.

7 Q. Keep your voice up.

8 A. Oh, I'm sorry.

9 She wouldn't even be able to read and
10 understand. She was just so overwhelmed. I think she used
11 the word she was just devastated.

12 THE COURT: Okay. Anyone else got
13 anything?

14 MR. VARGASON: Yes.

15 RE-CROSS-EXAMINATION BY MR. VARGASON:

16 Q. Isn't it, isn't it true, though, that the
17 appropriateness of a person's response to an inquiry is
18 evidence of their ability to process the question and their
19 surroundings?

20 A. But there are ways you have to test that. You
21 can't assume that. I mean, that's the important thing, is
22 people can say that they understand or give a response but
23 not necessarily, if I'm understanding your question.

24 Q. Well, you are but my, I guess what I'm saying is
25 that to go where you're going you need to assume certain

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2 facts; isn't that true? You need to make certain
3 assumptions or take certain leaps?

4 A. Well, I look at the -- well, I don't know if I'm
5 taking leaps but I, I'm assuming certain facts, yes.

6 Q. Yeah, okay.

7 All right, and if, if a person is in a
8 particular environment and, for example, a, sitting in a
9 Police Station being asked questions about what by all
10 accounts would be a traumatic event, regardless of whether
11 a person intended the results or not, that individual's
12 appropriate response, in other words, the response to a
13 question would be appropriate to what the question is is
14 some indication that that individual understands their
15 surroundings, isn't it?

16 A. Right, and that, that's what you can look at.

17 Q. Sure.

18 A. And I think that's what we certainly did have
19 available --

20 Q. Sure.

21 A. -- for one of the times, yes, and that's what
22 makes it easier to see how her thinking is, what she's
23 understanding, etc.

24 Q. If, if the defendant were asked this question
25 during the process of the, you know, the interview or.

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2 interrogation, however you want to clarify it, following
3 question: "How would you describe my treatment of you," and
4 the response was, "You were very kind to me," I mean, that
5 would be an indication that the individual understood the,
6 the question that was propounded to her, don't you think?

7 A. Well, she says, you were kind to me. You don't
8 know. Yes, she certainly understood that but she's giving
9 a response. It's an interesting response that she gives,
10 you were kind to me.

11 Q. Okay. Well, I'll take another question: "Why
12 did you even come here to be examined," and if her response
13 was, "To try to find out the truth about this fire," that
14 would be an appropriate response, wouldn't it?

15 A. That's an appropriate response.

16 Q. And it certainly would be an indication that she
17 understood the question?

18 A. Well, yes. You have to look at -- but what you
19 and I think, what we have available on the 21st is very
20 clear because it's all documented, it's all written down.
21 So that we --

22 Q. Well, we could look at this if you like. This
23 is written down as well.

24 A. But that's read -- let me --

25 Q. I'm going to get to you.

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2 A. Okay.

3 Q. Okay. The question is: "After I told you that
4 you didn't have to take the test, why did you continue"; the
5 answer, "Because I wanted to know and I really didn't
6 remember a lot," that would be a -- but it's a response,
7 isn't it?

8 A. But she doesn't remember a lot.

9 Q. Well, that's what she's --

10 A. That's a beginning.

11 THE COURT: Wait a minute. Let her
12 finish.

13 A. But that's the important thing, is the memory
14 piece which is critical. You can have certain questions
15 that a person feels are kind or that she can answer but
16 when you get -- she, she does say that she's having trouble
17 remembering.

18 Q. Well, that, of course, is a question of fact,
19 but I'm just asking you that it is, it's an indication that
20 her response is appropriate to the question and the
21 environment, isn't it?

22 A. Well, yes, in that, those that you gave me, yes,
23 she's --

24 Q. Sure.

25 A. -- trying to do her very best and answer.

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2 Q. Sure. Okay.

3 MR. VARGASON: Thanks a lot.

4 MR. ELKOVITCH: Just a couple more, Judge.
5 Thanks.

6 RE-DIRECT EXAMINATION BY MR. ELKOVITCH:

7 Q. You mentioned to Mr. Vargason that when he
8 mentioned you were kind to me, you said that was
9 interesting. What did you mean by interesting?

10 A. Because she comes back with the response that's
11 more what we call emotional affect so it isn't as a kind of
12 a cognitive -- it's, it's how she perceives people to be
13 towards her. So I just, I think that that tells us a
14 little bit about her, her needs.

15 Q. Okay. So she kind of related to this person?

16 A. Yes.

17 Q. As opposed to someone else who might be in the
18 room?

19 A. Yes, I think that that's what she does, is she
20 does try to find somebody that she can feel good with or,
21 or at emotional level. She's much more at an emotional
22 level than say at a cognitive level.

23 Q. So would you say she was trying to please the
24 people there?

25 A. Well, certainly trying to, she was trying to

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2 comply. She was trying to do what they had asked, yes.

3 Q. Kind of similar to people with lower IQs when
4 they try to please the people they are with?

5 A. Or people, not necessarily that but people, I
6 mean, it could be that but also her experience with people
7 in authority. She wants to comply, she wants to do -- she
8 is to some degree dependent on that. That sometimes is
9 said to be more female than male characteristic of wanting
10 to be liked and so forth. Those needs are important to
11 her.

12 MR. ELKOVITCH: Okay. Thanks.

13 That's all I have.

14 THE COURT: Thank you very much. Nice to
15 meet you.

16 THE WITNESS: Nice to meet you.

17 THE COURT: Let's take our mid-morning
18 recess, be about 15 minutes.

19 (Whereupon court recessed at 10:55 p.m. and resumed at
20 11:20 a.m.; defendant present with counsel.)

21 THE COURT: Call your next, call your next
22 witness.

23 MR. BAIER: Michelle Davis, Your Honor.

24 MICHELLE DAVIS, defendant, called on her own behalf,
25 after having been first duly sworn, took the witness