

1 Davis -- DX

2 stand and testified as follows:

3 DIRECT EXAMINATION BY MR. BAIER:

4 Q. Miss Davis, where were you living on September
5 3, 1999?

6 A. 6012 West Lake Road.

7 Q. And with whom did you live there?

8 A. I lived there with my children, Melissa -- my
9 daughter Melissa, my daughter Kimberly and my son Daniel.

10 Q. Okay. What did you do during the day on
11 September 3rd as best as you can remember?

12 A. During the day of September 3rd the majority of
13 the day I spent school shopping with my daughter.

14 THE COURT: Excuse me. Do you want to
15 bring that chair over?

16 THE WITNESS: This one is okay.

17 THE COURT: Go ahead.

18 A. I spent the day -- I waited, I stayed home
19 during the morning. I do not remember whether we had
20 school or not because I was going to school. I waited for
21 Robert to come over to my house and he came over to -- at
22 approximately eleven or twelve and I proceeded to take my
23 daughter Kimberly with Sue Gatto school shopping, which we
24 did the entire day until six o'clock.

25 Q. Okay, and then you -- where did you go?

1 Davis -- DX

2 A. I went home.

3 Q. Okay. Well, tell us what happened after that.

4 A. Bob left at about 6:15 and I sat on the couch
5 with my daughter Kimberly. We were watching TV and Dan had
6 come in from swinging and he wanted to change the channel
7 on the television and I told him not to, and that
8 escalated, that got Danny aggravated and he came over and
9 punched me a couple times and Kimmy took off running
10 upstairs as she always had.

11 He kicked me, picked up some objects to throw
12 and I looked at my son and I said, Danny, you've been good
13 for a couple of weeks. Do you want to start this shit now?
14 Do you really want to do this now, and he looked at me and
15 stopped and said, but I love you, mom, and he stopped.

16 So with that I got up. I went upstairs and told
17 Kimmy that everything is okay, she could come back
18 downstairs, and I was folding some clothes and Danny went
19 swimming.

20 Q. What, about what time was that?

21 A. Seven, 7:15.

22 Q. Okay, and then what happened next?

23 A. I was continuing to fold the clothes and do the
24 things that I had to do in the house, wash the dishes and
25 that kind of stuff; and around eight o'clock Kimmy asked if

1 Davis -- DX

2 she could go to a, Abby's house to play.

3 Q. Who is Abby?

4 THE COURT: Okay. I'm going to take a
5 short recess. I want to talk to counsel in
6 chambers.

7 (In-chambers conference not on record.)

8 THE COURT: Okay. A, a question of law
9 has been raised that I would like answered
10 before we go much further so we're going to
11 adjourn until two o'clock.

12 Court will stand in recess until 2:00 p.m.
13 (Whereupon court recessed at 11:53 a.m. and resumed at
14 2:01 p.m.; defendant present with counsel.)

15 THE COURT: Good afternoon, everybody.

16 MR. VARGASON: Good afternoon, Judge.

17 THE COURT: Okay. Did you find some case
18 law on this, that question?

19 MR. ELKOVITCH: Judge, I've looked and I
20 couldn't find it so we're going to --

21 THE COURT: No. Let me --

22 MR. ELKOVITCH: Okay.

23 THE COURT: I found a case, People
24 v. Martinez and it held -- you can check the
25 case but it's People v. Betts, Court of

1 Davis -- DX

2 Appeals held "Questioning a defendant about
3 pending charges would chill the defendant's
4 choice whether to testify on his own behalf.
5 The right against self-incrimination could be
6 seriously jeopardized if a defendant's pretrial
7 statements could be introduced into evidence at
8 a subsequent criminal proceeding.
9 Constitutional protections against
10 self-incrimination demand categorical exclusion
11 notwithstanding the broad discretion generally
12 afforded."

13 And what they, the theory is, and they go
14 into the federal cases, is that a, a defendant
15 may testify at a pretrial hearing in connection
16 with his Fourth Amendment rights. The, using
17 the statement against him at a subsequent trial
18 becomes a Fifth Amendment right; and so that's
19 basically what my rule will be, that anything
20 that is said in this hearing will not be used at
21 least on, on direct.

22 Whether or not it's usable on
23 cross-examination or not is questionable. I, I
24 haven't -- I doubt -- go ahead.

25 MR. ELKOVITCH: Okay.

1 Davis -- DX

2 THE COURT: Is that -- do you have any
3 case law to the contrary?

4 MR. VARGASON: I don't, Your Honor. I
5 think it's analogous to the Criminal Procedure
6 Law Section 60.45 that basically states that,
7 for example, during a psychiatric examination
8 the People are not entitled to use her responses
9 during the psychiatric evaluation as part of
10 their case in chief. However, if she elects to
11 waive her Fifth Amendment right and take the
12 stand at trial, the People could
13 cross-examine her about what she said, the,
14 the psychiatric examination, much the same way
15 as she testifies at the pretrial hearing, I
16 would be entitled to cross-examine her about
17 that if she testified at trial; but I don't
18 disagree that it's, it's not admissible as part
19 of the case in chief.

20 THE COURT: Okay.

21 MR. ELKOVITCH: That's what --

22 THE COURT: That was your position?

23 MR. ELKOVITCH: That was our position.

24 THE COURT: Yeah. Well, I just wanted to
25 clarify.

1 Davis -- DX

2 MR. ELKOVITCH: You mentioned the
3 Martinez and it didn't ring a bell but the
4 second case Deitz (sic), Detts (sic), that did
5 ring a bell so --

6 THE COURT: Okay.

7 DIRECT EXAMINATION BY MR. BAIER CONTINUED:

8 Q. Miss Davis, going to direct your attention, if I
9 can, to the date of September 21, 1999, do you recall what
10 you did that day?

11 A. On September 21st I believe I took my
12 mother-in-law to BJ's and then I spent some time doing some
13 errands with Sue and subsequently went to Sue's house and
14 received a phone call from my husband stating that Officer
15 McCloud was looking for me and to get in touch with him.

16 Q. About what time was that, do you remember?

17 A. I believe it was around 1:30 or 2:00 o'clock in
18 the afternoon. I'm not sure.

19 Q. Okay, and when you received that call, what do
20 you do then?

21 A. I believe my -- I think the Officer McCloud
22 called my cell phone. I believe I got an incoming call
23 from him at Sue's house, called my cell phone.

24 Q. And what time was that?

25 A. Between I would think 1:30 and 2:00 o'clock,

1 Davis -- DX

2 somewhere in that area.

3 Q. When did you call him back, if at all?

4 A. I'm not sure I called him back. I think I spoke
5 with him directly on the cell phone when he called the
6 house.

7 Q. Okay, and tell us about the conversation.

8 A. He made a remark that it was difficult to get
9 ahold of me on the cell phone 'cuz he -- we had been having
10 problems with the cell phone.

11 He asked me at that time if I would come down to
12 the Station for questioning that evening, and I told him
13 that I had plans, long overdue plans with my daughters and
14 I asked him if he would be willing to come to Robert's
15 apartment for questioning; and he told me no, that he would
16 prefer I come down to the Station.

17 I also asked him if I could bring my husband
18 with me, and he said no, it would be better if I came alone
19 and he indicated that if I was not able to make it that
20 evening, that it would be a while, two weeks before we
21 could get in to speaking again. That would hold up my
22 insurance claims and everything else so I agreed, told him
23 that I had to pick up my daughter from elementary school
24 and as soon as I picked her up at 3:15, 3:30 and brought
25 her to Bob's and explain to my girls that I would be

1 Davis -- DX

2 delayed, that I would meet him down at the Station at four
3 o'clock.

4 Q. Okay. How long did the conversation last with
5 Mr. McLoud?

6 A. Probably five minutes.

7 Q. Then did you proceed to pick up your daughter
8 and do the things you described?

9 A. Yes. I left the house and -- at Sue's house and
10 went, a little after three and went to pick up my daughter
11 Kimberly and brought her to Robert's apartment, my husband
12 Bob's apartment where I had to tell my girls that we
13 couldn't -- our plans would have to wait until I got home.
14 I only expected to be gone for about an hour.

15 Q. Why did you have that expectation?

16 A. Because I remember saying to Mr. McLoud and
17 telling him that I had plans with my daughters and he
18 assured me that it wouldn't be too long, and to me too long --
19 our first interview had only been an hour, hour-and-a-half
20 so I assumed that maybe another hour, hour-and-a-half. It
21 was an assumption on my part.

22 Q. What, what reasons did Mr. McLoud give you for
23 requesting that the, that the meeting take place at the
24 Sheriff's Department?

25 A. He really didn't go into that specifically. I

1 Davis -- DX

2 asked him if I could -- if he could come to the apartment
3 and he said no, and I asked him if someone could come with
4 me, Bob could come with me, and he said no. It was, he was
5 very insistent that I come down to the Sheriff's Department
6 for this meeting and I felt because I had been through so
7 much and I had just got an apartment for my girls and I had
8 just taken some kind of steps to get normality back, that I
9 wanted this to be done and over with so I agreed to meet
10 him that evening, put my plans --

11 Q. You indicated he spoke something of the
12 insurance --

13 A. Yes.

14 Q. -- matter?

15 A. Yes.

16 Q. What was said?

17 A. He said that in order to clear things up -- I
18 had spoken to him previously. I believe I spoke to
19 Mr. McLoud personally about a letter, or my husband called,
20 I got from the insurance company that was, that confused
21 me, said something about if they deemed something to be
22 arson or, that they weren't going to pay; and so I had,
23 remember speaking with Mr. McLoud about this letter or Bob
24 did and he told me when he called me this time for this
25 meeting that we would be able to clear up stuff for the

1 Davis -- DX

2 insurance company and to come down and, and we'd be able
3 to, to get the facts of the case together.

4 Q. Okay. Did you go there?

5 A. Yes, I did.

6 Q. And how did you get there?

7 A. I drove after I dropped my daughter off and they
8 were quite upset that I was ruining plans with them because
9 I hadn't been with them both, maybe three times, I hadn't
10 been with my daughters in that two-week period because I
11 was trying to get everything else done with the burial and
12 everything.

13 My daughters were quite upset but I assured them
14 that I would be back soon and I went down to Mr. -- I told
15 them I would be there at four o'clock and I arrived ten
16 minutes to four.

17 Q. What affect did your daughters' response have,
18 have on you, if any?

19 A. It upset me. I was upset to have to go down
20 there. I did not want to go down on this day. I really
21 wanted to follow through with my plans with my girls. So
22 when I was breaking plans with them, I was upset about
23 having to go down to the Sheriff's Office as I was
24 previously on the 8th before my son's services, I was upset
25 about having to break my plans or delay them.

1 Davis -- DX

2 At that point I didn't know that it would be as
3 long so, with my girls, but I was, you know, confident that
4 I would only be there an hour, hour-and-a-half. I, and I
5 could do what I planned on doing with them, but they were
6 upset.

7 Q. When you arrived there what did you do?

8 A. I parked. They buzzed me in the doors. I had
9 to get buzzed in the doors and I, I spoke to the man behind
10 the clouded glass and told him that Officer, I was here to
11 see Officer McCloud, Investigator McCloud.

12 Q. Okay. Then --

13 A. I waited in the waiting room for about 15
14 minutes.

15 Q. Okay, and then tell us what happened next.

16 A. Officer McCloud came into the lobby and, and got
17 me and thanked me for coming and brought me into this room.

18 Q. Okay. Now you've heard all the testimony and
19 you're familiar with the tape recordings of that --

20 A. (nodding affirmatively)

21 Q. -- questioning session?

22 A. Um hum, yes.

23 Q. Tell me how you were feeling at that point in
24 time when you went into Mr. McCloud's office.

25 A. The last two-and-a-half weeks were some of the

1 Davis -- DX

2 worst times of my life. I had lost my son, I had lost my
3 home, everything I had had been gone. My girls were split
4 from me. One was here and one was there. Any sense of
5 normality I had was totally gone.

6 Q. Now you say your girls were split from you.
7 Why, why is that?

8 A. My littlest girl Kimberly -- Mel -- okay. My
9 Melissa, my oldest, stayed with Bob. She needed the
10 stability of having a phone and a computer and things she
11 was accustomed to and he had them. He only had a
12 one-bedroom apartment.

13 My youngest daughter Kimberly spent her time
14 with me and then with her father, and when I moved into the
15 camp she couldn't handle being right next to the scene so
16 she spent her time with her father.

17 So I didn't have my girls, nor did I have my
18 son, who to me was my life and my, and the routines that we
19 had with Danny became my, my life. I needed to go to Block
20 Buster once a week, I needed to get pizza, I needed to swim
21 with him. I needed the restrictions Danny put on me.

22 I didn't have those so by the time I got to
23 Mr. McLoud's that -- I had buried my son, I purchased a
24 plot and buried him, his ashes, not even four, five days
25 prior. So by the time I got to Mr. McLoud I was in a very,

1 Davis -- DX

2 very state of -- I was very depressed and I was very
3 anxious.

4 I was also very concerned for my girls' future
5 and I was just trying to do things to get my normalcy back,
6 trying to find a place for them -- us to live, trying to,
7 trying to realize that my son was dead because I had still
8 been looking for him. I would wait at the lake for him. I
9 would wait for his bus to come back, just things like this,
10 and by the time I got to him after that two-and-a-half
11 weeks I was just drained.

12 Q. Okay. He, he read you what he described as your
13 Miranda rights, that your rights --

14 A. He read me my rights as soon as I sat down, and
15 I thought that was, I felt that was very odd and I have
16 never, ever been in front of a law enforcement, an officer
17 before. I have never been stopped, I have never been
18 questioned, I have never been detained; and to me when you
19 read me my rights, it tells me that I am under arrest or
20 detained. That's what it means to me.

21 Q. Okay, and how long were you with him after,
22 after that?

23 A. Four hours.

24 Q. Okay. What did you think of the questions that
25 he, that he was asking you?

1 Davis -- DX

2 A. In the beginning I thought his questions were
3 quite routine, layout of the house and where pieces of
4 furniture were and things like that; and as it progressed
5 his questions started to get very, to me, accusatory and,
6 and he basically made me feel like I was a monster and that
7 I was a liar and that nothing I said was truthful.

8 Q. Describe some of the feelings you were going
9 through at that point in time.

10 A. I became upset, severely upset. I was very
11 angry at him because there were a lot of implications that
12 I could not handle my child because they knew, they knew
13 that I had a, hard times with Dan; but they didn't know
14 about all the good times I had with Dan, so I was very
15 angry at them for the questions they were posing to me
16 about my son.

17 I was terrified because I didn't know what was
18 going to happen next. I was devastated because they were
19 accusing me, me of trying to hurt my son or burn my home
20 down for financial reasons or to protect, he used the word
21 to protect my, my children and I just could not comprehend
22 how you protect your children by burning your home down.
23 These things were -- I was sick. I told him many times
24 that I was sick, that I could not understand what he was
25 saying to me.

1 Davis -- DX

2 Q. What was his response?

3 A. Help -- Michelle, help me to help you, help me
4 to help you. That's all he kept saying.

5 I didn't feel sympathy from him. The only time
6 I felt that maybe he cared at all about me was when he
7 realized how sick I was and got concerned that I couldn't
8 drive home later on.

9 Q. When you say later on, do you remember, do you
10 recall how much later that was?

11 A. Oh, this had been three-and-a-half hours. I, I
12 became sick. I started to get very ill and feel very bad
13 when he started in with the questions that I thought were,
14 were accuse, accusing me -- or not -- or just the way he
15 was approaching me and I was very sick from the time,
16 probably from the second hour, after about two hours,
17 two-and-a-half hours into that I started to, to get very
18 ill.

19 Q. Well, when you say ill and sick, how, how did
20 you show that?

21 A. Oh, I was visually shaken. I was shaking
22 uncontrollably. I was sobbing, crying. I couldn't, I
23 couldn't get my voice to speak sometimes and I remember
24 yelling at him to stop this and I remember yelling to him
25 that I couldn't handle it, I couldn't understand what he

1 Davis -- DX

2 was saying to me, and that's on on the tape so I know I
3 said those things to him.

4 Q. And you, you left there at some point?

5 A. I asked him if I could go.

6 Q. And --

7 A. I didn't know that I could leave. I didn't feel
8 as if I could.

9 Q. And did he let you go?

10 A. He, he let me go only after insisting, being
11 very persistent that he wanted me to take a polygraph that
12 evening. He wanted me to go right from that interview or
13 interrogation to the polygraph place, and I told him that
14 the condition I was in, I could not; and he wanted one of
15 his Sheriffs to drive me home or he would drive me home or
16 he would have someone follow me home because he was
17 concerned about my, my mental status.

18 Q. How did you get home?

19 A. I did drive myself but I, I had to pull over and
20 throw up on the way home.

21 Q. When you got home what did you do?

22 A. I, when I got home I got out of the car and Bob
23 came down for me. He saw me come in and he -- I, I broke
24 down on the lawn outside and told him that, that Officer --
25 Investigator McLoud is accusing me of starting this fire

1 Davis -- DX

2 and that I was sick.

3 He sent me upstairs to my girls and he left to
4 go down -- or he called Officer McLoud. I went upstairs
5 and said I had to call Investigator McLoud because he, he
6 wanted to make sure that I had gotten home.

7 Q. And did you do that?

8 A. Yes, I did.

9 Q. And then what did you do after that?

10 A. I hugged my girls.

11 Q. And then after that what did you do?

12 A. After Bob came home from Investigator McLoud's
13 we went out to the camp, out, Bob took me out to the camp.
14 My girls were in bed where I was staying. I was assuming
15 that Sue would be done with bowling and she would be there.

16 Q. Were the girls with you that night?

17 A. The girls were with me from the time Bob went to
18 talk to Investigator McLoud until they fell asleep. Yes,
19 yeah, Kimberly slept over with Melissa at Bob's house,
20 one-bedroom apartment.

21 Q. So you went back to the camp alone?

22 A. I went back. Bob took me back to the camp. I
23 couldn't drive.

24 Q. Okay. Did you ever speak with anybody else that
25 night --

1 Davis -- DX

2 A. I spoke --

3 Q. -- other than Bob?

4 A. I spoke with my mother on the phone briefly.

5 Q. And what was that conversation about?

6 A. I told my mother -- my mother called up and she
7 could tell something was wrong and I told her what the
8 investigators had put me through; and she told me, honey,
9 don't take that polygraph the next day; and I said, mom, I
10 have nothing to hide and that I would.

11 Q. Was there any other discussions at that time
12 with your mother?

13 A. My mom mentioned that she might want to, she
14 wanted to talk to one of her attorneys down there before I
15 went the next day.

16 Q. What time was that that you spoke with her?

17 A. About quarter to nine. I think between 8:30 and
18 quarter to nine.

19 Q. And where did you spend the night?

20 A. We went back to the camp and I assumed Sue would
21 be there but she wasn't. Sue arrived a little after eleven
22 o'clock and her and Bob spoke and I, and I was at this time
23 crying and, and sobbing and I was sick, I was throwing up
24 all night and it was cold in the camp, there was no heat.

25 So we decided that -- Sue decided to pick up

1 Davis -- DX

2 then Sue drove me over and met Bob.

3 Q. Then where did you go from there?

4 A. Bob and I went down to the Sheriff's Station to
5 meet Investigator McLoud.

6 Q. And then where did you go from there?

7 A. We, we followed them to Canandaigua but I was, I
8 think I had, I slept most of the time in the car. I didn't
9 even talk to my husband. I just remember sleeping.

10 Q. Now so I don't keep interrupting you, tell me
11 what -- you got to Canandaigua. Tell me what -- your own
12 impressions of what went on there and just tell me what
13 happened.

14 A. We got to Canandaigua and we went inside and we,
15 Bob and I was placed in the lobby where we remained for,
16 for quite a while before, his name was D'Aurizio, whatever
17 his name is, polygraph man -- Investigator McLoud and
18 whoever was with him, I don't even remember, they left and
19 went one way and we were put in the lobby where we sat and
20 waited for quite a while before anybody came into us, I
21 would say at least a half an hour; and then Mr. polygraph
22 man came in and gave me a packet of paper and said, you
23 should read this.

24 I did not read it. I just signed where he
25 needed me to sign. I was not able to read anything, and

1 Davis -- DX

2 then he came back in and he gave me another piece of paper
3 to fill out questions which I, I put questions on that
4 piece of paper that I wanted him to ask; and he came back
5 in to get me and I asked him if my husband could come with
6 me and he said no, no one can be in there, not even the
7 detectives will be in there, just you and I.

8 So I went with him to the polygraph room and it
9 was, to me it was very small room. If there was a window,
10 it had a shade on it because I didn't see anything outside.
11 I saw a, just a desk and a chair and a chair in front of
12 there and it was cold in there; and I noticed a mirror
13 behind me but I didn't -- I don't know anything about
14 two-way mirrors. I do now.

15 And he spent some time talking with me about
16 background stuff and I sat in the polygraph chair. He sat
17 in the chair by the door and he went over -- I -- he went
18 over some of my background stuff and he put the blood
19 pressure cuff on me, and I told him that I was very nervous
20 'cuz I was and I was stick to my stomach and I was feeling
21 afraid because I had remembered, a week later I remembered
22 why I had been spotting, sore and I remember Danny's
23 assault but Danny died and I didn't want no one to know.

24 So then after they did that to me on Tuesday
25 night I had flashbacks that night of my candles and I knew

1 Davis -- DX

2 that I wasn't going to tell them about my candles because
3 if I told them about my candles, I'd have to tell them what
4 Danny did and I wanted to protect my son. I didn't want
5 anybody to know that, and they knew.

6 Q. What, what happened next then, Michelle?

7 A. He looked me -- he looked at my questions and he
8 said that my questions were not in dispute: Did I love my
9 son, did I try to save my son? He said, these are not in
10 dispute.

11 How about these questions? I didn't prepare
12 these questions. He wrote them. I would never have wrote
13 a question that said, did you murder Daniel, but he did;
14 and who was Tim Murley? I don't know who Tim Murley was.

15 He wrote those questions and I just let him ask
16 me 'cuz I just, I wanted it all to be done, but I knew that
17 I wasn't going to tell them about my candles because then
18 I'd have to tell them about Danny's rape and I couldn't
19 deal with that. Why you people need to know if my son
20 died?

21 Q. Okay. Michelle, I'm going to show you People's
22 Exhibit Number 13 and ask if -- do you recall that form?

23 A. Yes, I do.

24 Q. And --

25 A. Questions for him to ask me.

1 Davis -- DX

2 Q. Do you remember, is that the form you, you spoke
3 of that you filled out?

4 A. Yes.

5 Q. Okay.

6 A. Yes, it is.

7 Q. Do you remember the types of questions that,
8 that Investigator D'Aurizio asked you during the polygraph
9 examination?

10 A. I remember some of them but the most important
11 one in my mind I can't get out was, did you murder Daniel;
12 and every time I saw my candles. Every time he said that
13 in my mind I saw my candles. I didn't remember blowing
14 them out. I thought, did I cause this, did I murder my
15 son? I would never murder my son, but I left the candles
16 burning and that caused this fire and my son's dead.

17 Q. Michelle, how, how many times did he ask you
18 this set of questions?

19 A. Three times I think.

20 Q. Do you remember how long you were in the
21 polygraph room --

22 A. Oh --

23 Q. -- with the examination going on itself?

24 A. He never unhooked me. At least three hours. He
25 went out between them and I stayed hooked to the machine,

1 Davis -- DX

2 never took it off. I never got out of the room. He went
3 out and --

4 Q. When you were done did he, did he ask you any
5 questions?

6 A. He asked me if I wanted to know the results now
7 or later, and I told him I wanted to know now; and he left
8 me to go do what he had to do and I was hooked to the
9 machine until he came back in and told me.

10 Q. How long was that?

11 Thirty minutes. I remember he came back in. He
12 said, Michelle, you had false reading on some of your
13 questions, and I wanted to know which ones and he wouldn't
14 tell me. He said some of the ones pertaining to Daniel.
15 That's all he would tell me.

16 Q. And then --

17 A. I got -- I asked him to unhook these things 'cuz
18 they were uncomfortable now. He did unhook me from the
19 machine but I got into a conversation with him and he said
20 to me, Michelle, can you tell me -- sometimes I can justify
21 to the officers why something happened. Do you have
22 anything to tell me that would justify to the officers why
23 you had a false reading on these questions, and I said,
24 what questions; and again, he wouldn't tell me specifically
25 what questions; and I asked him, on all three exams and he

1 Davis -- DX

2 said he takes an overall. I could have passed on one but
3 if I failed on the next, and he went into, into that is how
4 they take the standard of all, all of them and formed their
5 opinion.

6 Q. Did you ever, did you ever ask any further
7 questions of Investigator D'Aurizio?

8 A. I believe I did ask him some questions but I
9 know I told him that I, I didn't know where this was going
10 to go and I would like Officer -- him to bring in
11 Investigator McLoud because I told him that I wanted an
12 attorney and I wanted to see my husband.

13 Q. And what did he say?

14 A. He said that he would go get Investigator
15 McLoud.

16 Q. And did you see Investigator McLoud?

17 A. Yes.

18 Q. What did you do then?

19 A. Investigator McLoud came in. I don't know if
20 Mr. Weeks was with him at that time. I don't remember, but
21 I know that I told Investigator McLoud that I wanted to
22 know what was going to happen next, that I felt I needed an
23 attorney and I, I wanted to know if I could have my husband
24 brought to this polygraph room at that time.

25 Q. And what was his response?

1 Davis -- DX

2 A. No. Investigator Weeks came in or was there and
3 they started to ask, ask me questions, questions about the --
4 I asked him, I asked him if he found any cause to this fire
5 and then they just started to question me again.

6 Q. Okay, and now you -- well, you know there came a
7 point in time at approximately five o'clock or a little bit
8 before --

9 A. Yeah.

10 Q. -- before five o'clock that this written
11 statement was given?

12 A. Um hum.

13 Q. How did that come about?

14 A. I remember Investigator Weeks introduced himself
15 and was questioning me and he told -- I, I did tell
16 Investigator Weeks about my daughter Kimberly having
17 auditory processing deficit, ways you need to talk to her
18 because I'm her mother, she's been my daughter and I've
19 been working with the school and I didn't know that he had
20 talked to her the day before my son's services or anything;
21 but he did tell me that he talked to Kimberly.

22 We went back and forth in a, in a
23 confrontational questioning. I asked him if their dogs
24 found accelerant because Officer -- Investigator McLould
25 had told me about accelerants the night before, it's on the

1 Davis -- DX

2 tape; and Investigator McLoud said, yes, Michelle. Do you
3 want to see the lab reports, and I replied, yes, I do.

4 This went back and forth and --

5 Q. Did he show you the lab reports?

6 A. No.

7 Q. Okay. Then what next?

8 A. Investigator Weeks said something to me that,
9 about my daughter Kimberly witnessing Danny hurting his
10 mother and I thought that, that she had come back from the
11 Davis house and seen it, and that's when I told him that
12 Danny raped me; and then after that I don't remember a lot
13 of anything.

14 They said something about accelerants or what's
15 flammable and I told them again for the 50th time cleaning
16 supplies. I had cleaning stuff, I had some nail polish
17 remover, and the only way I know that is because Bob's --
18 Bob smokes at the kitchen table when I'm taking off my nail
19 polish and it says right on the bottle in dark writing,
20 flammable, so that's all I could think of that I had in my
21 house. How my nail polish remover got from I had nail
22 polish remover that I poured it, I don't know. I don't
23 know. I didn't understand them after that. I couldn't --
24 they could have told me that I was green and the sky was
25 pink and I would have agreed with them.

1 Davis -- DX

2 I just wanted to go to my husband and I wanted
3 it to stop, and it had been too long for me.

4 Q. Did Investigator Weeks present this written
5 statement to you at some point in time?

6 A. He wrote it. I could -- I think he wanted me to
7 read it. I told him I couldn't, and not because the
8 statement -- because I was sick. I was very sick. I
9 couldn't read. I couldn't understand to read.

10 Q. Do you remember signing it?

11 A. Yeah, 'cuz they told -- I -- they told me I
12 could see my husband, we were done with this. Now all I
13 wanted was to get to my husband. All I wanted was to get
14 to him so I just signed it, a piece of paper that he wrote
15 to get to my husband.

16 Q. Then what happened after that?

17 A. I don't remember. Obviously the polygraph man
18 came back in. I don't remember any of that, of him -- exit
19 form. I don't have a recollection but it happened.

20 They walked me down the hall to see my husband
21 and I remember Investigator McLoud giving somebody a high
22 five because I turned my back and I saw it before they
23 brought me in to my husband, and that sickened me. It made
24 me sick.

25 Q. Then what happened next?

1 Davis -- DX

2 A. I went into my husband and I said to my husband,
3 Robert, Danny raped me and I think I started this fire and
4 I meant with my candles. I didn't mean starting a fire
5 intentionally, and my husband said -- sat back and I can't
6 even remember. He asked me if Sue knew and I said no
7 because no one was going to know about Danny, and then I
8 don't remember.

9 I remember we went outside to have a cigarette
10 and we came back in. I had to go with the Investigator and
11 he went home to get my girls.

12 Q. Do you remember stopping at McDonald's?

13 A. I remember they stopped at McDonald's, yes.

14 Q. Were you ever left alone at that point?

15 A. No, I don't believe so.

16 Q. Okay. Then you got, you got back to Auburn?

17 A. Yes.

18 Q. And where did you go when you got back to
19 Auburn?

20 A. I think Mr. McLoud or Mr. Weeks, one of, took me
21 in one of their offices, I think it might have been
22 Investigator Weeks' office, where I remained by myself for
23 quite a while.

24 Q. Okay, and then who did you see next after you
25 were in there alone?

1 Davis -- DX

2 A. Investigator Weeks came in I believe and I had
3 been, although all this time I had been asking for my, my
4 children and my husband, I wanted to know when, I kept
5 getting, I'll check, I'll check, I'll check.

6 I know now that they had been there for some
7 time, but Investigator Weeks, I know that -- I don't know
8 whether I saw -- somebody came in and took pictures of
9 scratches and the bruise under my breast that the nurse
10 documented. I don't remember if that was during this time
11 but I sat in his office for quite a while waiting for my
12 family.

13 Q. Okay. Now you've heard that you signed a second
14 statement?

15 A. Um hum.

16 Q. That you're aware of?

17 A. Um hum.

18 Q. Tell me just a little bit about how that came
19 about, if you would.

20 A. Investigator Weeks came in and I wanted my
21 family and I, I don't remember even talking to him. He
22 said something to me about, Shelly, do you remember why you --
23 what -- that you said that you started this fire under the
24 stairs, and I told him, I think I caused this fire with my
25 candles and one was placed in the doorway by the stairs;

1 Davis -- DX

2 and then I said, can I see my family? He goes, I think, I
3 think that they are here, I'll check, but sign this; and I
4 just signed it.

5 Q. Did you read it?

6 A. No. I couldn't read. I did not have the mind
7 to read any more. I'm waiting for my, my girls. It had
8 been, it had been over -- in a 24-hour period I had spent
9 over 12 to 13 hours with these gentlemen and I hadn't even
10 slept or eaten. I just didn't have it any more. I just
11 couldn't between my son, I lost my son and my home, my
12 normal life, I had confrontations with their father, I just --
13 it was just I was just trying to get something back on
14 track. I was trying to find a house for my girls or an
15 apartment. It was just too much. I just wanted the whole
16 thing to be over and I signed things just to get home.

17 MR. BAIER: I have nothing further, Judge.

18 THE COURT: Okay. Let's take a short
19 recess.

20 (Whereupon court recessed at 2:26 p.m. and resumed at
21 2:48 p.m.; defendant present with counsel.)

22 THE COURT: Remain seated. Thank you.

23 Go ahead, Mr. Vargason.

24 I guess you're through, Mr. Baier?

25 MR. BAIER: Yes, I am.

1 Davis -- CX

2 MR. VARGASON: Thank you, Judge.

3 Before I, before I start I just wanted to
4 file with the Court the transcript of the
5 psychiatric examination that I just recently
6 received and I'd like to --

7 THE COURT: Okay.

8 MR. VARGASON: -- give Mr. Elkovitch his.

9 I don't anticipate asking her questions
10 from this, Judge, but it is -- might as well put
11 it on the record at this time.

12 Yours says copy but it's really the
13 original. Guess the reporter was out of
14 original cover things.

15 THE COURT: All right.

16 CROSS-EXAMINATION BY MR. VARGASON:

17 Q. Mrs. Davis -- it's okay if I say Mrs. Davis?

18 A. Yeah.

19 Q. How do you feel right now?

20 A. How do I feel right now? I feel lost and
21 depressed and devastated.

22 Q. You feel about the same right now as you did on
23 February 17th when Dr. Burgess talked with you?

24 A. Yep, yes, sir.

25 Q. Do you feel you have some of the same symptoms

1 Davis -- CX

2 today as you did back on the 17th?

3 A. Yes, sir. I have --

4 MR. ELKOVITCH: I'm going to object to
5 this line of questioning. We didn't get into on
6 direct with her anything about the 17th of
7 September -- I mean of February. It's beyond
8 the scope I think of cross-examination. I don't
9 think that date was brought up on direct.

10 MR. VARGASON: Well, I would like to
11 respond, Judge.

12 THE COURT: All right.

13 MR. VARGASON: I think I'm done with it,
14 but I was asking the questions because the
15 defense witness Dr. Burgess came in and
16 testified that when she examined the defendant
17 that she was in her opinion suffering from a
18 condition that could last for four to six years
19 and would impede and/or affect or interdict her
20 ability to make voluntary decisions about things
21 and defense has now offered her up as a witness
22 to Your Honor and asking the Court and I
23 presumably to accept the witness's testimony as
24 voluntary, etc., and I was just trying to make
25 an inquiry as to whether she felt the same today

1 Davis -- CX

2 as she did on the 17th.

3 THE COURT: All right. I understand.

4 MR. VARGASON: I'm done with that, Judge.

5 Thanks.

6 THE COURT: Okay.

7 Q. Mrs. Davis, you remember going to the Public
8 Safety Building on September 8th, don't you?

9 A. Yes, sir.

10 Q. And you remember that when you got to the Public
11 Safety Building you had to push a button and somebody on an
12 intercom would ask who you were; isn't that correct?

13 A. No, sir. I remember that there was an officer
14 coming in the building when Sue and I got there and they
15 let him in. We followed.

16 Q. Okay. All right. So you, you followed into the
17 building?

18 A. (nodding affirmatively)

19 Q. And after that you had to go in through another
20 locked door, correct?

21 A. You had to tell the person behind the glass that
22 you were there, yes.

23 Q. Right, that you -- and you did that on this
24 occasion, didn't you?

25 A. Yes.

1 Davis -- CX

2 Q. And you told them what your name was?

3 A. Yes.

4 Q. And you indicated that you were there to see
5 Investigator McCloud, correct?

6 A. Yes.

7 Q. Correct, and at some point in time Investigator
8 McCloud came out and greeted you and you went back to his
9 office, right?

10 A. It was quite a wait. It was about 45 minutes
11 and I almost left, but yes, he did come out after about 45
12 minutes.

13 Q. But you were thinking about leaving, right?

14 A. Yes, sir.

15 Q. Okay. Probably a little annoyed over the fact
16 that you were being kept there waiting, so to speak, right?

17 A. And my son's services were the next day, yes.

18 Q. And I understand that, Mrs. Davis, but my point
19 is, is that you were thinking about leaving and you almost
20 did, correct?

21 A. Yes, sir.

22 Q. Okay, but you decided to wait? One of those
23 situations you're like, well, I'll wait a few more minutes
24 and if he isn't out here in a few more minutes, then I'm
25 out of here?

1 Davis -- CX

2 A. Correct.

3 Q. Pretty much the thought process we all go
4 through?

5 A. Yes.

6 Q. Okay, and Investigator McLoud on that date spent
7 some time with you and went over this --

8 MR. VARGASON: May I approach the witness,
9 Judge?

10 THE COURT: Um hum.

11 Q. -- went over this owner/tenant interview form?
12 Would you look at that, please?

13 A. Yes. Um hum.

14 Q. Okay. You do remember him going over that with
15 you?

16 A. I remember that form, filling out the form right
17 there, yes.

18 Q. Right. There is a question and answer format?

19 A. Um hum.

20 Q. In fact, you've indicated that you listened to
21 the tape of September 8th interview, correct?

22 A. Yes, sir.

23 Q. Okay. All right. You provided Investigator
24 McLoud with the responses which are set forth in People's
25 Exhibit 1; isn't that correct?

1 Davis -- CX

2 A. Yes, sir, I believe so.

3 Q. Okay, and, in fact, on the last page there's a
4 place for you to sign it; isn't that correct?

5 A. Yes, sir.

6 Q. Okay. Mrs. Davis, is that your signature there
7 on the bottom of People's Exhibit 1?

8 A. Yes, sir, it is.

9 Q. Okay, and do you, do you feel as you sit here
10 today, Mrs. Davis, that the answers that you gave in
11 response to the questions on People's Exhibit 1 were, were
12 accurate?

13 A. Yes, sir.

14 Q. Okay. Now you testified on direct examination
15 that from the date of the fire up until -- excuse me, up
16 until September 21st that your normal routine had -- was
17 pretty much completely disrupted; isn't that correct?

18 A. Yes, sir.

19 Q. Okay. All right. You had things to do each
20 day, though, didn't you?

21 A. I had things that had to be done, yes.

22 Q. Sure.

23 A. But not every day.

24 Q. Okay, but there were things that needed to be
25 done and that you were responsible for doing; isn't that

1 Davis -- CX

2 correct?

3 A. I -- yes, I would say, yes.

4 Q. And I think you indicated on direct that you
5 were working with your insurance company filing the
6 insurance claim and pursuing your, your loss, your property
7 damage loss, correct?

8 A. That was after my son's services.

9 Q. Okay. So subsequent to the 9th of September?

10 A. The 9th of September.

11 THE COURT: You have to keep your voice
12 up.

13 A. After the 9th of September.

14 Q. Okay. All right, because you went to the PSB on
15 the 8th and Danny's services were on the 9th, correct --

16 A. Correct.

17 Q. -- the following day?

18 So after his services is when you made
19 arrangements to file your claim with the insurance company,
20 correct?

21 A. When they came out to itemize and stuff, yes.

22 Q. Okay, and, in fact, when -- the insurance agent
23 came out and spent some time with you; isn't that correct?

24 A. Yes, sir.

25 Q. Okay, and do you remember what his name was?

1 Davis -- CX

2 A. No.

3 Q. Okay. All right, but in any event he asked you
4 questions about the property; isn't that true?

5 A. I believe so. I had Sue and Bob with me.

6 Q. Okay. Well, you were asked questions about the
7 property?

8 A. I believe so.

9 Q. Okay. All right. You were asked to sign some
10 documents?

11 A. Probably. I couldn't tell you.

12 Q. Okay. You, you indicated, though, that at some
13 point in time you received a letter from the insurance
14 company that upset you?

15 A. Yes, sir.

16 Q. Okay, and that letter upset you because it made
17 reference to arson or an intentionally-set fire, correct?

18 A. Yes, sir.

19 Q. Okay. So you read that letter; isn't that
20 correct?

21 A. I tried to. I brought it to my mother-in-law
22 and got another person to read for me.

23 Q. So you didn't yourself read it?

24 A. I read it but I didn't understand it.

25 Q. Well, you indicated that it upset you?

1 Davis -- CX

2 A. It did upset me.

3 Q. Well, if you didn't understand it why did it
4 upset you?

5 A. Because I read the, I read the letter and it
6 referred to someone was starting a fire intentionally or
7 something like they would have to investigate, postpone.
8 It led me to believe that, that they might be thinking that
9 I did something or somebody in my family did something, but
10 I found out later subsequently that that's a standard
11 letter that they send.

12 Q. Okay, but in any event, when you received that
13 letter --

14 A. Um hum.

15 Q. -- and you understood the contents of the letter
16 to suggest what you have just testified to --

17 A. Um hum.

18 Q. -- that upset you?

19 A. Yes, it did.

20 Q. Okay, all right. So you understood that enough
21 to be upset about the letter?

22 A. I was upset about what the letter implied, yes.

23 Q. Okay. That's fair. All right.

24 Now you also indicated that you had to make
25 arrangements to, you know, get some alternative living;

1 Davis -- CX

2 isn't that correct?

3 A. Yes, sir.

4 Q. Okay. For yourself and also for Melissa?

5 A. And Kimberly.

6 Q. And Kimberly, okay.

7 And you took some steps to do that, didn't you?

8 A. Yes, sir.

9 Q. And would you tell us what those steps were?

10 A. I started to look at apartments and I looked at
11 apartments for my daughters and I, two, maybe two and then
12 a church group offered an apartment for us that I found was
13 a nice place for us to be. So I made arrangements that we
14 would move in there October 1st.

15 Q. Okay. So you had to speak with some people
16 about renting the apartment?

17 A. Um hum.

18 Q. Correct?

19 A. Yes, sir.

20 Q. And did you arrive at some suitable monthly
21 rental cost?

22 A. Yes.

23 Q. Okay, and you understood that you would be
24 responsible for paying the rental while you occupied it,
25 correct?

1 Davis -- CX

2 A. Yes.

3 Q. Okay, and were there any other things that you
4 needed to do in connection with making the new living
5 arrangements?

6 A. I'm not sure what you mean.

7 Q. Well, did you, for example, did you want to make
8 arrangements to get a phone?

9 A. I hadn't done it yet but I would have.

10 Q. Okay. All right, and you recognize, you know a
11 phone is pretty indispensable in today's day and age?

12 A. With a teen-ager, yes.

13 Q. Sure, and you understood that at that time,
14 didn't you?

15 A. Yes, sir.

16 Q. Okay, and especially with a teen-age daughter
17 who would be interested in speaking on the phone, you knew
18 that it -- wanted to accomodate that, you would have to
19 make those arrangements?

20 A. Yes, sir. That would have been done, yes.

21 Q. And did you at some point in time make those
22 arrangements?

23 A. I don't think I ever got to that point to make
24 those arrangements.

25 Q. Okay. All right. How about anything else? Was

1 Davis -- CX

2 it necessary to contact the gas and electric company?

3 A. I believe we did contact the gas and electric
4 company.

5 Q. Okay.

6 A. Yes.

7 Q. And what was the purpose of doing that?

8 A. That when we moved in on the 1st it would be
9 turned on in my name, but most of the arrangements were
10 made through my friend Sue, not from me. She helped me
11 through a lot of this.

12 Q. She helped you with that?

13 A. So did my husband, yes.

14 Q. Okay, good.

15 Now, Mrs. Davis, when you arrived at the Public
16 Safety Building on September 8th Investigator McLoud didn't
17 tell you you were under arrest, did he?

18 A. No.

19 Q. Of course not, and --

20 A. I was quite irritated, though.

21 Q. Yeah.

22 A. I had been -- day before my son's services I
23 thought was very inappropriate.

24 Q. Okay. Well, you, you weren't physically
25 restrained when you were in his office; isn't that correct?

1 Davis -- CX

2 A. No, I wasn't.

3 Q. Right, and you weren't in handcuffs or anything
4 of that nature?

5 A. No, sir.

6 Q. And, in fact, you left that evening?

7 A. Correct.

8 Q. Right, okay.

9 Let me direct your attention up to the 21st of
10 September. You testified, you know, pretty extensively
11 with Mr. Baier about that. You, you arrived at the Public
12 Safety Building about 3:50 p.m., correct?

13 A. To my recollection, yes.

14 Q. Okay, and I think you indicated that you had to
15 drop your daughters off some place?

16 A. At my husband's apartment.

17 Q. Okay, and did you do that?

18 A. I did.

19 Q. Okay, and you then drove yourself from your
20 husband's apartment to the Public Safety Building, correct?

21 A. Yes, sir.

22 Q. Do you remember about how long it took you to
23 get there?

24 A. Takes about ten minutes I think.

25 Q. Okay, and you were alone in the vehicle the

1 Davis -- CX

2 entire time, correct?

3 A. Yes, sir.

4 Q. Okay, and when you got to the Public Safety
5 Building how did you get inside?

6 A. They buzzed you in the doors.

7 Q. Okay. So this time there wasn't the --

8 A. Somebody coming in, no.

9 Q. There wasn't the situation like on the 8th when
10 somebody was there, and, in fact, that's happened to me a
11 few times. Get out there and somebody's coming up, just
12 slip right in; but on the 21st you had to push the button
13 and let them know who you were, correct?

14 A. I had to, yeah, I believe so.

15 Q. Okay, and then they would push a button or you
16 wouldn't see that but they would release the door lock and
17 you could open up the door?

18 A. It makes a big bang and you go through it.

19 Q. And you can hear it, correct?

20 A. Um hum.

21 Q. Okay, and you understood it at that time to mean
22 that the door was unlocked, correct?

23 A. Yes.

24 Q. Okay, and you open the door and you went inside
25 the lobby area?

1 Davis -- CX

2 A. Um hum. Yes, sir.

3 Q. Okay, and did you indicate to anybody that you
4 were, you were there to see Investigator McLoud?

5 A. The man behind the door -- the window.

6 Q. Okay. Did you indicate to him who you were?

7 A. Yes, I believe I did.

8 Q. Okay, and did you also indicate to him at that
9 time that you were there to see Investigator McLoud?

10 A. I believe I did, sir, yes.

11 Q. Okay. How long did you have to wait for
12 Investigator McLoud?

13 A. Fifteen, about 15 minutes.

14 Q. Not near as long as on the 8th?

15 A. Right.

16 Q. Okay. Were you agitated about having to wait
17 the 15 minutes that time?

18 A. Nope, but I was agitated for having to ruin
19 plans with my girls.

20 Q. Okay, and what were those plans?

21 A. We were going to go out to dinner. I was going
22 to probably take them to a movie or bowling or something
23 they would enjoy doing.

24 Q. Okay. You didn't have anything concrete set up
25 but you were thinking about doing something?

1 Davis -- CX

2 A. We were going to do something.

3 Q. Right.

4 A. We hadn't been together like that for a while.

5 Q. But my point is that you hadn't already
6 prearranged the activity, it's just that you knew you were
7 going to get together with them and perhaps do something?

8 A. And do what they wanted to do.

9 Q. Okay. All right. So at some point in time
10 Investigator McLoud came out and got you and took you back
11 to his office?

12 A. Yes, sir.

13 Q. Okay. All right. Now when he greeted you he
14 didn't tell you you were under arrest, did he?

15 A. No, sir.

16 Q. Okay, and he didn't handcuff you or anything of
17 that nature, did he?

18 A. No.

19 Q. All right, and you walked with him to his
20 office, correct?

21 A. Yes, sir.

22 Q. Okay. All right, and you've had an opportunity
23 to listen to the tape, haven't you?

24 A. I have.

25 Q. Right?

1 Davis -- CX

2 A. I don't remember a lot but I have.

3 Q. Okay. All right, but you testified on direct
4 examination that Investigator McLoud read you those
5 so-called Miranda rights?

6 A. Yes, he did.

7 Q. Okay, and as you sit here today you remember
8 that, correct?

9 A. I remember him reading them to me, yes.

10 Q. Okay, and do you remember him asking you --

11 MR. VARGASON: Judge, I'm looking at page
12 six of the transcript and line 15.

13 Q. Do you remember Investigator McLoud saying to
14 you, "Okay. Do you want to talk to me without" and your
15 response to that?

16 A. Do you remember -- can you repeat that, please?

17 Q. Sure. Do you remember -- you indicated that
18 Investigator McLoud read you these Miranda rights and
19 stuff?

20 A. (nodding affirmatively)

21 Q. And after that do you remember Investigator
22 McLoud saying to you, "Okay. Do you want to talk to me
23 without" and then you finished the sentence for him?

24 A. I don't remember, but if it's --

25 Q. Okay. Well, let me refresh your recollection to

1 Davis -- CX

2 see --

3 A. Okay.

4 Q. -- if you remember it this way. Investigator
5 McCloud said, "Okay. Do you want to talk to me without" and
6 the answer was, "I'm fine talking to you."

7 A. Um hum.

8 Q. Does that refresh your recollection?

9 A. I might have said that, yes.

10 Q. Okay. So when you said, "I'm fine talking to
11 you" --

12 A. Um hum.

13 Q. -- weren't you indicating at that point in time
14 that you were comfortable speaking to Investigator McCloud?

15 A. I had nothing to hide from him.

16 Q. Okay. So I guess the response would be yes?

17 A. I, I didn't mind talking to him, no, that's
18 correct.

19 Q. Okay. All right.

20 Okay, and right after that Investigator McCloud
21 asked you the following question: "Super. Okay. If you
22 would give me your signature there and then after each one
23 of this, just place your initial, look them over." Do you
24 remember what your response was to that?

25 A. No, sir.

1 Davis -- CX

2 Q. Your response, "Right here," does that refresh
3 your recollection?

4 A. No.

5 Q. Okay. All right.

6 A. What am I signing?

7 Q. Well, we're making reference --

8 A. Okay.

9 Q. -- to the Miranda warning.

10 A. Oh, okay.

11 Q. Okay. Do you remember that or --

12 A. I remember --

13 Q. -- if you don't, it's okay?

14 A. -- he read them to me and I signed them. I do
15 remember signing them.

16 Q. Okay.

17 MR. VARGASON: Approach the witness, Your
18 Honor?

19 THE COURT: Sure.

20 Q. Mrs. Davis, I'd like to show you what has been
21 marked as People's Exhibit 5 and received into evidence.
22 Could you take a moment and look at that, please?

23 A. Um hum.

24 Q. Do you remember seeing that on September 21st?

25 A. I remember signing this, yes.

1 Davis -- CX

2 Q. Okay. All right, and that is, in fact, your
3 signature on there, right?

4 A. Yes. He explained that he had to read it, my
5 Miranda rights to me.

6 Q. Okay.

7 A. I didn't know why but I signed them.

8 Q. Okay. Well, when, when you signed it --

9 A. Um hum.

10 Q. -- which was on the lower right-hand corner, you
11 signed it after he read you those so-called Miranda rights,
12 correct?

13 A. I believe so, yes.

14 Q. Okay. All right, and you indicated to him that
15 you understood those, didn't you?

16 A. I know what Miranda rights are.

17 Q. Okay. All right.

18 A. I understood them to the degree that if I wanted
19 to invoke them I could.

20 Q. Right.

21 A. But I felt at that point I was detained.

22 Q. Okay, but you did understand that if you wanted
23 to invoke the right to remain silent and not answer any of
24 his questions you could do that at that time, correct?

25 A. I could at that time, yes.

1 Davis -- CX

2 Q. Right, but you didn't?

3 A. I had no problem talking to him. Of course, I
4 didn't know that I would be accused of arson and murder.

5 Q. I understand that.

6 In addition, those rights that you knew that you
7 could invoke also included your right at that time to have
8 an attorney present?

9 A. Um hum.

10 Q. Correct?

11 A. Correct.

12 Q. Okay, but again, at that point in time you
13 didn't feel you needed one; is that right?

14 A. I didn't feel I was being accused of anything at
15 that time.

16 Q. Okay, and, in fact, I believe you indicated on
17 direct examination it wasn't until perhaps two hours into
18 the interview when you felt that it was becoming, I think
19 you used the word accusatory, correct?

20 A. Correct.

21 Q. Okay. All right. So when you signed it and
22 knew that you could avail yourself of those rights and you
23 didn't, and you said you didn't because you hadn't been
24 accused of anything at that point in time --

25 A. Um hum.

1 Davis -- CX

2 Q. -- you also knew later in the interview that you
3 could invoke them at any time you wanted, didn't you?

4 A. I had an understanding that I could. I thought
5 so.

6 Q. Okay. The first time you, you mentioned
7 anything about an attorney was pretty much at the end of
8 the interview with Investigator McCloud, though; isn't that
9 correct?

10 A. Yes, sir.

11 Q. Okay. Now I listened to the tape too,
12 Mrs. Davis, and I could tell the end of the tape sounded
13 like you were, you know, upset pretty much the same as you
14 sounded today in court?

15 A. I beg to disagree with you, sir. I was not more --
16 I was more than visably upset. I was uncontrollably upset
17 where I -- where your investigator wanted to drive me home.

18 Q. Right. Well, I know. That's what I was going
19 to ask you about. He did, in fact, offer to, to give you a
20 ride home, didn't he?

21 A. I believe he knew my mental state was not good.

22 Q. I think my question was --

23 A. Yes, he did.

24 Q. -- that he did; isn't that correct?

25 A. He did.

1 Davis -- CX

2 Q. Right, and, and you denied the request?

3 A. Yes.

4 Q. Okay, and you denied the request because you
5 felt that you could get yourself home?

6 A. I wanted to get home. I didn't want anything to
7 do with police officer's vehicle at that point, correct.

8 Q. But you never said that?

9 A. That's how I felt.

10 Q. Okay, but you didn't say that?

11 A. Right.

12 Q. Okay. Instead, I think you said something to
13 the effect of, no, you could get yourself home?

14 A. I will drive myself home, correct.

15 Q. Right, and, in fact, you did?

16 A. After I asked him if I could go home.

17 Q. Well, you, you did go home?

18 A. After I got permission to leave, yes. I did not
19 feel prior to that that I could.

20 Q. Okay. Do you remember about what point in -- of
21 the interview it was when you asked for permission to, to
22 leave, Mrs. Davis? I don't, I don't remember seeing that
23 or hearing that.

24 A. It's in there, sir. I don't remember. It might
25 be after I tell him to stop it or that I can't or after I

1 Davis -- CX

2 requested my attorney, towards that section.

3 Q. Now for the better part of the interview on the
4 21st or at least let's say for the first couple of hours,
5 that you've indicated that you felt after about two hours
6 the interview started to turn into let's say an
7 interrogation, okay?

8 A. Um hum.

9 Q. Up until that point you were answering
10 Investigator McLoud's question responsively, weren't you?

11 A. I believe I answered his questions, yes.

12 Q. And I believe he even asked you the question
13 about, you know, Danny's condition and you went into quite
14 an explanation as to what autism is, didn't you?

15 A. I needed to, yes.

16 Q. Right. Okay.

17 A. He didn't know.

18 Q. And did you feel at the time that you understood
19 it enough to be able to explain it to Investigator McLoud?

20 A. About autism?

21 Q. Sure.

22 A. I believe, sir, that I have an autistic child, I
23 would know, and he, he indicated he did not know about
24 autism.

25 Q. Right. Okay, and you were able, I read it, you

1 Davis -- CX

2 were able to explain to him quite thoroughly, weren't you?

3 A. I believe so.

4 Q. Okay. All right. I was interested, you
5 indicated on direct examination that that evening you had a
6 conversation with your mother?

7 A. Yes.

8 Q. Okay, and you told her at that time that you had
9 been asked to take a polygraph examination, correct?

10 A. Yes.

11 Q. And she told you not to go do it?

12 A. Right.

13 Q. And you indicated to her that you felt you had
14 nothing to hide and you were willing to go do it?

15 A. That's correct.

16 Q. Okay. I think at that time you, I think you
17 said that your mother indicated that she would be willing
18 to contact an attorney for you and you declined that; isn't
19 that correct?

20 A. She said she was going to speak to her attorney
21 and get back to me the next day, but I had -- we didn't get
22 a call.

23 Q. You didn't get a call from your mother?

24 A. We had left before that.

25 Q. Okay. Do you know if she tried to call you?

1 Davis -- CX

2 A. She says she did but I'm not sure. We weren't
3 there.

4 Q. You don't have a recording device or anything?

5 A. No.

6 Q. Now you also indicated several times that during
7 the course of the interview which ultimately turned into an
8 interrogation on the 21st that you, you were sick to your
9 stomach?

10 A. Correct.

11 Q. Okay. You didn't at any time at the Public
12 Safety Building actually throw up, though, did you?

13 A. No, sir.

14 Q. Okay. It was a feeling you had in your stomach?

15 A. I was extremely nauseous, yes.

16 Q. Especially when you could tell that you were
17 being questioned about whether you had anything to do with
18 the fire, correct?

19 A. I was questioned about my relationship with my
20 husband, I was questioned about trying to protect my girls,
21 I was questioned about my relationship with my son.

22 Q. Okay. Oh, Mrs. Davis, I also want to show you
23 People's Exhibit 2. Do you recognize that?

24 A. Yeah. I, I know I signed this form, yes.

25 Q. Okay. You signed it on what day?

1 Davis -- CX

2 A. On September 8th.

3 Q. Okay.

4 A. Um hum.

5 Q. During the interview with Investigator McCloud,
6 correct?

7 A. Um hum.

8 Q. Okay. That is your signature down there on the,
9 on the bottom?

10 A. Yes.

11 Q. Okay, and he explained to you what that form
12 was, didn't he?

13 A. He told me that he needed my permission for his
14 officers to stay on my property.

15 Q. Okay.

16 A. That's what I think that is. That is that even
17 though they were investigating, he still needed permission
18 to be on my property.

19 Q. And to search your property?

20 A. I didn't really think about the searching
21 property.

22 Q. But it does say permission to search, doesn't
23 it?

24 A. I didn't read it, sir.

25 Q. Okay.

1 Davis -- CX

2 A. I listened to Officer McCloud's explanation and
3 found -- and signed it.

4 Q. Now, Mrs. Davis, you, you indicated that you,
5 when you left the Public Safety Building on the 21st that
6 you were quite upset and you drove, you drove yourself
7 home, correct?

8 A. Yes, sir.

9 Q. Okay, and I believe that you also indicated that
10 at some point in time you ended up at your friend Sue
11 Gatto's house, right?

12 A. After we went back to the camp and she wasn't
13 there and then we came -- she came at eleven and it was too
14 cold to stay there. We went to, back to her, Sue's
15 apartment, yes.

16 Q. Okay, and I think you also indicated again that
17 you, you felt sick to your stomach while you were there?

18 A. I was sick the entire night, yes.

19 Q. Okay. You didn't seek any type of medical
20 attention that evening, did you?

21 A. No.

22 Q. All right. You didn't call your family doctor,
23 did you?

24 A. I took a tranquilizer to go to sleep around
25 three o'clock.

1 Davis -- CX

2 Q. And where did you get the tranquilizer?

3 A. I hate to say but it was Sue's. It wasn't
4 prescribed to me but she had some in her cupboard and I
5 took one without her knowing to sleep because I had been up
6 all night.

7 Q. Okay. Do you know what it was?

8 A. Xanax I believe.

9 Q. Okay, and, and you found that where?

10 A. She has a prescription in her cupboard, in her
11 medicine cupboard.

12 Q. Her medicine cabinet?

13 A. Yes.

14 Q. Okay. You didn't ask her for permission?

15 A. No.

16 Q. You went into her medicine cabinet and took one
17 of her prescribed tranquilizers?

18 A. Yes, I did.

19 Q. Have you told her that since then?

20 A. I think I might have mentioned it to her. I
21 don't know.

22 Q. Is that something that you recall vividly doing?

23 A. I remember I had to sleep.

24 Q. But my question is, do you recall, is that
25 something that's vivid in your memory that you took your

1 Davis -- CX

2 friend's prescription medication?

3 A. I took a pill from Sue's medicine cabinet.

4 Whether it was her Xanax or Tylenol p.m. I don't know but
5 it was a, in a bottle.

6 Q. Okay. Okay.

7 A. I needed to get some sleep before I went through
8 that the next day.

9 Q. Okay, and did you sleep?

10 A. About two-and-a-half hours maybe. I was up at
11 five.

12 Q. Now you, that evening you did call Investigator
13 McCloud, didn't you?

14 A. Which, the --

15 Q. The 21st. I'm sorry.

16 A. Yes, I did when I got home.

17 Q. Right, and you called him to let him know that
18 you had made it safely?

19 A. Correct.

20 Q. Okay. All right. I mean, that was in response
21 to his, his asking you to let, let him know, right?

22 A. Yes. He was concerned about me driving.

23 Q. And you obviously had his phone number?

24 A. Yes, sir.

25 Q. Okay, and did you dial the phone yourself?

1 Davis -- CX

2 A. I don't remember.

3 Q. Okay, but you definitely remember taking some
4 type of prescription medication?

5 A. I took a pill.

6 Q. Okay.

7 A. Could have been Tylenol p.m. I don't know.

8 Q. Now I'm going to show you, Mrs. Davis, what's
9 been marked as People's Exhibit 11. Do you -- 11 and 10.
10 Do you recognize those two? Excuse me.

11 A. Yes, I do.

12 Q. What do you recognize them as?

13 A. These are drawings of the house that Mr. McLoud
14 gave me and it's very upsetting to me because it indicates
15 that my son was not the way I put him to sleep.

16 Q. Okay, but he discussed those diagrams with you,
17 correct?

18 A. Yes.

19 Q. And you drew on it, didn't you?

20 A. Where pieces of furniture was and stuff, yes.

21 Q. Okay, and on both documents you drew; isn't that
22 correct?

23 A. I believe so.

24 Q. Correct.

25 So at that time you were able to recollect the

1 Davis -- CX

2 location of furniture in the house and able to indicate it
3 so he could put it on the diagram, correct?

4 A. Yes.

5 Q. Okay, and I take it that's because he was asking
6 you those questions about where the location of the items
7 were?

8 A. Show me where this was or that was, yes.

9 Q. And you were doing that based upon your
10 recollection of where the items were?

11 A. Of my home, yes.

12 Q. Right.

13 A. I did question him on the position of my son.
14 That was a lie to me.

15 Q. Okay. Well, I'm not going to ask you questions
16 about that unless you feel the need to say something about
17 it, Mrs. Davis.

18 A. No, I don't.

19 Q. Now when you -- you made arrangements on the
20 22nd to go to the Cayuga County Public Safety Building;
21 isn't that correct?

22 A. I had to meet my husband in the morning to take
23 me, I had to meet my husband in the morning to take me
24 there, yeah.

25 Q. Okay, and what arrangements did you make with

1 Davis -- CX

2 him?

3 A. Just that I would meet him at his apartment
4 prior to and we would go down to there, to the Sheriff's
5 Office and meet Investigator McLoud.

6 Q. Right. Did you make those arrangements with him
7 over the phone?

8 A. No, I don't think so.

9 Q. Was that in person at his place?

10 A. He was at the camp with me and I and Sue until
11 one o'clock I think.

12 Q. Okay. So while you were at the camp with, with
13 Mr. Davis and Sue Gatto you talked with him about the fact
14 that you were asked to take a polygraph examination, right?

15 A. I talked to my husband about that before he went
16 down to see Investigator McLoud, yes, and I got home at his
17 apartment.

18 Q. Okay, and so at what point in time did you
19 arrange to meet him the next morning? When did you make
20 those arrangements?

21 A. My husband came back from his meeting with
22 Investigator McLoud. He told me I should take the
23 polygraph exam.

24 Q. Okay.

25 A. So probably when he got home from that.

1 Davis -- CX

2 Q. So Mr. Davis told you that you should take the
3 polygraph exam?

4 A. And he made the arrangements, yes.

5 Q. And he made the arrangements?

6 A. (nodding affirmatively)

7 Q. Okay, and, and you agreed?

8 A. To the best of my knowledge, yes.

9 Q. Okay. So the next morning you met with your
10 husband and you drove together to the Public Safety

11 Building?

12 A. Yes, sir.

13 Q. In fact, you, I believe you arrived there a
14 little early; isn't that correct?

15 A. Before eight o'clock, yes.

16 Q. Yeah. Okay, and from there you traveled in your
17 husband's vehicle, correct?

18 A. I believe Investigator McLoud wanted me to go
19 with him but my husband said I would go with -- ride in our
20 vehicle.

21 Q. Well, what makes you believe that? Why do you
22 remember that?

23 A. My husband told me this.

24 Q. When did he tell you that?

25 A. Told me this several times afterwards, but I

1 Davis -- CX

2 didn't -- wasn't told on that day. I just know that I
3 stayed in the car. Bob went and talked with him.

4 Q. Okay, but you weren't told that on that day on
5 the 22nd?

6 A. No.

7 Q. Okay. All right. So you didn't know allegedly
8 that Investigator McLoud had asked for you to ride with
9 him?

10 A. Correct.

11 Q. Okay.

12 A. That's right.

13 Q. As far as you knew you were in your husband's
14 vehicle and you were going with him?

15 A. Yes.

16 Q. Okay. Now do you remember how -- well, I think
17 you stated on direct examination that you slept most of the
18 way, correct?

19 A. I did.

20 Q. Okay. All right. Do you know how long it took
21 to get there?

22 A. No, sir, I don't.

23 Q. Would it surprise you if I told you it was about
24 an hour ride?

25 A. No, it wouldn't.

1 Davis -- CX

2 Q. Okay. I believe you testified that you met
3 with, I think you referred to him as the polygraph man?

4 A. Yeah. I don't remember his name.

5 Q. Okay, and he greeted you in the lobby at the
6 Canandaigue Troop E Headquarters?

7 A. After about 30 minutes, yes.

8 Q. Okay. So for about 30 minutes you were in the
9 lobby of the Troop E Headquarters alone with your husband,
10 correct?

11 A. Yes, sir.

12 Q. And isn't it true that you can walk right into
13 that lobby?

14 A. I believe so.

15 Q. Yeah. Didn't require you to buzz anybody to let
16 you in; isn't that right?

17 A. I believe so. I don't know the layout, sir.

18 Q. Okay. All right. So for about 30 minutes you
19 were, you were there with your husband Bob, correct, or
20 Robert --

21 A. Yes.

22 Q. -- I believe he goes by?

23 Now no other police officers were sitting there
24 with you while you were waiting, were they?

25 A. No.

1 Davis -- CX

2 Q. Okay. So if you wanted to get up and walk out
3 of the building you could have, couldn't you?

4 A. I believe so, yes.

5 Q. Did you feel as though your husband Robert
6 wanted you to stay there?

7 A. I don't know what Robert wanted.

8 Q. Okay, but you indicated the day before that he,
9 he told you he thought it would be a good idea and wanted
10 you to take the test?

11 A. Correct.

12 Q. Okay. So did you still have pretty much the
13 same feeling on that morning?

14 A. I was not afraid to take this test. I was only
15 afraid of what, what I knew. I didn't want to tell about
16 my son and candles.

17 Q. Okay, but my question is, and I don't think I
18 made it very clear, I'll try to do it better, was that when
19 you were waiting at the Troop E Headquarters in Canandaigua
20 with your husband Robert, is it a fair statement to say
21 that you were under the impression still at that time that
22 he thought it would be a good idea for you to take the
23 examination?

24 A. I guess that's fair. I don't understand what
25 you're trying to say. I don't know. I can't speak for

1 Davis -- CX

2 Q. Oh, okay. All right.

3 You do recall him asking you then if you were
4 done with the papers?

5 A. With the papers.

6 Q. Okay. All right, and you indicated to him that
7 you were?

8 A. Yes.

9 Q. Okay. You didn't tell him at that time that you
10 hadn't read them, though?

11 A. No.

12 Q. Okay, and he also at some point in time took you
13 back to the polygraph room and proceeded to spend some time
14 with you and advise you of, of certain things, didn't he?

15 A. I believe so. I don't recall. I had to write
16 questions, is that what you're referring to?

17 Q. Yeah. We can get to that if you want to.

18 I want to show you this green form, okay? It's
19 People's Exhibit 14 received into evidence. Do you
20 recognize that?

21 A. I don't remember this form. I signed it so
22 obviously it was presented to me, but I don't remember.
23 This isn't my writing here.

24 Q. Well, I'd ask you if you would just turn this
25 document sideways like that (indicating) --

1 Davis -- CX

2 A. Um hum.

3 Q. -- and look. Do you see your signature on that
4 any place?

5 A. Yes, sir.

6 Q. Okay. Do you, do you -- as you sit here now,
7 does that help refresh your recollection that you signed
8 that document?

9 A. I have no doubt I signed things. I signed
10 whatever they gave me to sign.

11 Q. I see. Now you indicated that you actually
12 wrote out some questions; isn't that correct?

13 A. Yes, sir, I did.

14 Q. Okay, and I'm going to show you People's Exhibit
15 13 received into evidence. Do you recognize that?

16 A. Yes.

17 Q. Okay. Is that your writing?

18 A. Yes, this is my writing. These are my
19 questions.

20 Q. Okay. So the writing on the front of that
21 document as well as the back is your writing?

22 A. This is correct.

23 Q. The blue ink?

24 A. Yes, sir.

25 Q. Okay. So, for example, the very first question

1 Davis -- CX

2 there, would you read that for me?

3 A. "I am a nervous wreck. Will this interfere with
4 my exam?"

5 Q. You formulated that question and wrote it on the
6 paper, correct?

7 A. Yes.

8 Q. Okay, and I think there's a second question too,
9 isn't there?

10 A. "If I start to cry during this exam will it
11 affect the results?"

12 Q. Okay. Again, you, you formulated that question
13 and wrote it down on the paper; isn't that correct?

14 A. Yes.

15 Q. Okay, and polygraph man didn't write those --

16 A. No.

17 Q. -- or tell you to write that, did he?

18 A. He asked me to write questions to him about the
19 polygraph --

20 Q. Right.

21 A. -- and this is what I came up with.

22 Q. Concerns that you may have had about the
23 examination?

24 A. Yes.

25 Q. Okay. All right.

1 Davis -- CX

2 Okay, and likewise, there are some questions on
3 the back of, I believe there are four of them; isn't that
4 correct, Mrs. Davis?

5 A. Yes, sir.

6 Q. And again, question number one, that's a
7 question that you formulated and wrote on that document,
8 right?

9 A. Yes, sir.

10 Q. Okay, and question number two, same thing?

11 A. Yes, sir.

12 Q. And question number three?

13 A. Yes.

14 Q. And question number four?

15 A. Yes.

16 Q. Okay, and did you at that time feel that those
17 were appropriate questions to write in response to the
18 polygraph man's request of you to fill out this form?

19 A. I wanted these questions read, yes -- asked.
20 They weren't but I wanted these questions read.

21 Q. But those were the ones that you wanted to go
22 over?

23 A. Yeah.

24 Q. Okay. All right, and nobody else told you to
25 write these --

1 Davis -- CX

2 A. No.

3 Q. -- questions?

4 Okay. Now, Mrs. Davis, I want to ask you, do
5 you remember this document, People's exhibit 15 received
6 into evidence?

7 A. No.

8 Q. Well, let me ask you, does your signature appear
9 anywhere on that document?

10 A. Yes, my signature is on there.

11 Q. In more than one place?

12 A. Yes.

13 Q. Okay, and you recognize that as your signature?

14 A. Yes, sir.

15 Q. Okay. As you sit here today, is it your
16 testimony that no recollection of signing that document?

17 A. No. I completely agree that I signed the
18 document. What I'm telling you is as law enforcement
19 personnel presented it to me, I would sign anything to
20 somebody in authority. I would not question what they
21 wanted me to sign.

22 Q. I see, okay.

23 You understood the gravity of what it -- what
24 you were there for, right, you understood the seriousness
25 of why you were there?

1 Davis -- CX

2 A. I thought I was there to take a polygraph so
3 that I would be okay with the insurance company.

4 Q. Okay, but the night before you said you were
5 pretty upset because Investigator McLoud --

6 A. Um hum.

7 Q. -- had made some accusatory statements to you
8 about what you may have done?

9 A. Yes.

10 Q. Isn't that correct?

11 A. Um hum.

12 Q. And he specifically said to you that, you know,
13 you take the polygraph examination, could shed some light
14 on whether you're being truthful about this?

15 A. And I'll back you one hundred percent, right.

16 Q. That would be a pretty serious allegation,
17 wouldn't it?

18 A. Yes.

19 Q. Okay, and you understood it, didn't you, to be a
20 very serious situation?

21 A. Yes, I did. I wasn't afraid of it, but I did.

22 Q. Now you didn't prior to this time --

23 MR. VARGASON: Strike that.

24 Q. Now I'm not going to go through the whole exam
25 with you, but in any event you were asked a series of.

1 Davis -- CX

2 questions by the polygraph man, correct?

3 A. Horrible questions, yes.

4 Q. Well, they were questions related to the fire
5 and death of Daniel, correct?

6 A. The murder of Daniel.

7 Q. Murder of Daniel?

8 A. Yes.

9 Q. Whatever, however you want to say.

10 A. That's, that's not how I want to say it, but
11 yes.

12 Q. Okay. All right, and there came a point in time
13 when the interview concluded, correct?

14 A. Yes.

15 Q. Okay. All right, and you did, in fact, meet
16 with Investigator McLoud and Investigator Weeks?

17 A. Yes.

18 Q. Okay, and again, I, I just want to show you a
19 document, People's Exhibit 18. I just want you to -- you
20 don't have to read it unless you want to. I --

21 A. I don't want to read this.

22 Q. Look at it.

23 A. Okay.

24 Q. Okay. I just want you to look at the document
25 and tell me if you see your signature on there any place?

1 Davis -- CX

2 A. Yes, I do.

3 Q. Okay. Do you see it on the front page there?

4 A. Yes.

5 Q. Is your signature on the front page there
6 because you wrote your signature on there?

7 A. Yes, I did.

8 Q. Okay, and do your initials appear any place on
9 the front of that document?

10 A. They are on the bottom of these pages.

11 Q. Okay. Did you on each of the pages?

12 A. Yes.

13 Q. Okay, and did you initial each of those pages?

14 A. Yes, I did.

15 Q. Okay, and did you sign that last page?

16 A. Yes, I did.

17 Q. Okay.

18 A. I don't want to read it, thank you.

19 Q. Now, Mrs. Davis, when the polygraph man was
20 interviewing you, he didn't at any time tell you that you
21 were under arrest, did he?

22 A. No.

23 Q. And, in fact, you weren't at any time --

24 THE COURT: I'm going to take a recess,
25 Mr. Vargason. Been a while here.

1 Davis -- CX

2 (Whereupon court recessed at 3:35 p.m. and resumed at
3 3:41 p.m.)

4 THE COURT: Okay. Go ahead, Mr. Vargason.

5 MR. VARGASON: Thank you, Judge.

6 Q. Mrs. Davis, I want to show you another green
7 form. It's People's Exhibit 17 received into evidence.
8 Would you look at that and see if you recognize that?

9 A. I don't remember or recognize it but I signed
10 it, so --

11 Q. How is it that you know that you signed it but
12 you don't remember or recognize it?

13 A. I didn't -- this is not my writing. It's just
14 my signature.

15 Q. Okay. You recognize your signature?

16 A. I recognize my signature, yes.

17 Q. Okay. Do you, do you know when you signed that?

18 A. It says September 22, 1999.

19 Q. Right, but do you -- okay, thanks.

20 I want to show you another green form, People's
21 Exhibit 14. I want you to look at the bottom of that. Do
22 you recognize anything on the bottom?

23 A. My signature, the date and the time and I
24 believe I tried to spell the gentleman's name.

25 Q. All right.

1 Davis -- CX

2 A. And my signature.

3 Q. So when you said that you tried to spell the
4 gentleman's name --

5 A. Um hum.

6 Q. -- what gentleman is that?

7 A. It says Frank -- forgive me if I'm wrong but
8 D'Aurizio.

9 Q. Okay, and when you did that, when you spelled
10 his name, who did you know that individual to be?

11 A. The poly -- is this the polygraph man, the
12 polygraph gentleman, the operator?

13 Q. I can't answer it for you. I need you, you to
14 tell me.

15 A. I would assume it would be the polygraph
16 gentleman.

17 Q. Okay. All right.

18 A. He was here the other day.

19 Q. Okay. You saw him the -- would have been --

20 A. Wednesday.

21 Q. Wednesday?

22 A. Um hum.

23 Q. Okay. Now do you remember leaving the State
24 Police Headquarters in Canandaigua on the 21st?

25 A. No.

1 Davis -- CX

2 Q. Or I mean, on the 22nd, excuse me.

3 A. Do I remember when we left, yes.

4 Q. Okay. Do you remember who you were with when
5 you left?

6 A. I believe that I was in the police car and I
7 think that Mr. Weeks was driving.

8 Q. Okay. Do you remember going to McDonald's?

9 A. I remember they stopped there.

10 Q. Do you remember somebody providing you with a
11 soda?

12 A. They gave me a soda, yeah.

13 Q. You didn't want to eat anything?

14 A. Yes.

15 Q. Do you remember that?

16 A. Not wanting to eat, yeah.

17 Q. Again, because you felt like you had an upset
18 stomach?

19 A. Because I was sick, yeah.

20 Q. Okay. When you say you were sick, you hadn't
21 thrown up, had you?

22 A. No.

23 Q. Okay, but your stomach was upset?

24 A. My, my mind was gone. Yes, I was sick.

25 Q. Okay. You made it back to the Public Safety

1 Davis -- CX

2 Building here in Cayuga County, correct?

3 A. Yes, sir.

4 Q. Okay, and you were, I think you indicated you
5 went to Investigator Weeks' office?

6 A. They put me -- I think it might have been his or
7 Investigator McLoud's. I'm not sure which office I was put
8 in.

9 Q. Okay. Do you remember that they, they had a
10 Deputy Sheriff stand outside the door where you were, do
11 you remember that?

12 A. No.

13 Q. Okay.

14 A. Oh, I remember someone being in the room with
15 me.

16 Q. Somebody was in the room with you?

17 A. I think so.

18 Q. Okay. All right.

19 A. I don't -- I'm not clear to be honest with you,
20 Mr. Vargason.

21 Q. Okay. I just want to show you People's Exhibit
22 19 and received into evidence. I'm not going to ask you to
23 read it. I just want you to look at it and see if you
24 remember that.

25 A. I remember -- this is my signature and I

21 MR. ELKOVITCH: I did hear -- I didn't
22 hear from Mr. Leo but one of the people who were
23 transporting to the airport back and forth said
24 he got a call from Dr. Leo. His plane is to
25 arrive on Monday at 8:40 so he, I know he can't

1 Davis -- CX

2 remember Mr. Weeks coming in again.

3 Q. Okay, and you said your signature. I think your
4 signature is on there in two places, is it?

5 A. Wherever he told me to sign, yes.

6 Q. Now --

7 MR. VARGASON: I have no further
8 questions, Judge.

9 THE COURT: You have no further questions?

10 MR. BAIER: No.

11 MR. ELKOVITCH: No.

12 THE COURT: You're excused, Ma'am. Thank
13 you.

14 All right. We have the cross-examination
15 of Mr. Leo and you have one other witness?

16 MR. ELKOVITCH: I have one witness who is
17 here today, Judge.

18 THE COURT: I'm not going to do it today.

19 MR. ELKOVITCH: Okay.

20 THE COURT: I think we've had enough.

21 MR. ELKOVITCH: I did hear -- I didn't
22 hear from Mr. Leo but one of the people who were
23 transporting to the airport back and forth said
24 he got a call from Dr. Leo. His plane is to
25 arrive on Monday at 8:40 so he, I know he can't