

REPORTER'S RECORD

VOLUME 4 OF 6 VOLUMES

TRIAL COURT CAUSE NO. 380-81972-07

COURT OF CRIMINAL APPEALS NO. WR-78,107-02

STATE OF TEXAS)	IN THE DISTRICT COURT
)	
vs.)	COLLIN COUNTY, TEXAS
)	
KOSOUL CHANTHAKOUMMANE)	380TH JUDICIAL DISTRICT

WRIT OF HABEAS CORPUS HEARING

On the 1st day of November, 2018, the following came on to be heard in the above-titled and numbered cause, and the following was had before the Honorable Benjamin N. Smith, Judge Presiding, held in McKinney, Collin County, Texas.

Proceedings reported by computerized stenotype machine; Reporter's Record produced by Computer-Assisted Transcription.

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1 (Open court; Defendant present)

2 **PROCEEDINGS**

3 THE COURT: All right. This is the
4 Application for Writ of Habeas Corpus pursuant to Article
5 11.071, Section 5, Code of Criminal Procedure, for
6 Mr. Chanthakoummane, 380-81972-07. This is a
7 continuation of our evidentiary hearing from July 16.

8 Mr. Chanthakoummane is present in the
9 courtroom with counsel. Also present, counsel for the
10 State.

11 How many witnesses does either side have?

12 **MS. SMITH:** Your Honor, the State has two
13 witnesses, Dr. David Spiegel and Lt. A.P. Davidson.

14 THE COURT: Any witnesses on behalf of the
15 Applicant?

16 **MR. ALLEN:** No, Your Honor.

17 THE COURT: Please call your first
18 witness.

19 **MS. SMITH:** State will call Dr. David
20 Spiegel.

21 THE COURT: Sir, could you please come up
22 to this table so I can swear you in.

23 Please raise your right hand for me.

24 (Witness sworn)

25 THE COURT: Thank you. Please have a

1 seat.

2 whenever you're ready.

3 **DAVID SPIEGEL, MD,**

4 having been first duly sworn, testified as follows:

5 **DIRECT EXAMINATION**

6 **BY MS. SMITH:**

7 Q. Doctor, would you state your name for the
8 record and spell your last name for the court reporter?

9 A. David Spiegel, S-p-i-e-g-e-l, M.D.

10 Q. What is your profession?

11 A. I'm a psychiatrist.

12 Q. Where are you currently employed?

13 A. I'm a professor of psychiatry and behavioral
14 sciences at Stanford University School of Medicine.

15 Q. And in that role, what duties do you perform?

16 A. I'm a full-time tenured member of the faculty.
17 I'm a research psychiatrist and about two-thirds of my
18 time is spent doing research, about 25 percent is spent
19 seeing patients regularly, and the rest is
20 administrative work.

21 MS. SMITH: May I approach, Your Honor?

22 THE COURT: Yes.

23 Q. Dr. Spiegel, I'm showing you what's labeled as
24 State's Exhibit 16, do you recognize this document?

25 A. I do. That's my curriculum vitae.

1 MS. SMITH: Let the record reflect the
2 State has previously tendered this document to opposing
3 counsel.

4 Q. Dr. Spiegel, does your CV accurately reflect
5 your education, your employment, your publications,
6 awards, professional organizations and such?

7 A. It does that with one exception that I noticed
8 late last night, which is that all of my chapters were
9 somehow surgically removed from it, so I have 170
10 chapters that are not in this copy of the CV, otherwise
11 it's accurate and correct.

12 Q. Now, as a psychiatrist, obviously you have
13 some expertise in a variety of mental health areas. **Do**
14 **you have expertise in the area of hypnosis?**

15 A. I do, indeed, yes.

16 Q. Do you have any awards that particularly
17 relate to that work?

18 A. Yes, I do. Just last month I received the
19 Raginski Award from the Society for Clinical and
20 Experimental Hypnosis for global leadership in clinical
21 and research hypnosis. That society is the leading
22 research and clinical society on hypnosis in the United
23 States.

24 Q. Are you associated with any professional
25 organizations that are geared toward the area of

1 hypnosis?

2 A. Yes. I'm a fellow of the Society for Clinical
3 and Experimental Hypnosis, of the American Society for
4 Clinical Hypnosis, and I'm a member of the International
5 Society of Hypnosis as well, and I gave a keynote talk
6 at their last meeting in Toronto in August.

7 Q. Those awards and your memberships in those
8 organizations are reflected in your CV?

9 A. Yes, they are.

10 MS. SMITH: State will offer State's
11 Exhibit 16.

12 MR. ALLEN: No objection.

13 THE COURT: It's admitted.

14 Q. Doctor, did you also participate in a work
15 group on the DSM-IV and DSM-V?

16 A. Yes, I did.

17 Q. What was that work group organized to do?

18 A. It was -- I was in charge of the -- the DSM is
19 the Diagnostic and Statistical Manual of mental
20 disorders published by the American Psychiatric
21 Association, so it's sometimes called the Bible of
22 psychiatric diagnosis. I was in charge of the
23 dissociative disorders section in both cases, and it was
24 related to trauma and stressor related disorders, so I
25 was responsible for those aspects of the diagnosis and

1 for formulating the diagnosis of post traumatic and
2 acute stress disorder as well.

3 Q. In the area of hypnosis, have you been
4 involved in many studies?

5 A. I have. I have run eight major studies on
6 hypnosis in my laboratory clinical trials of effects of
7 hypnosis for large numbers of patients in pain, both
8 adults and children, neuro-imaging studies of what
9 happens in the brain when people are hypnotized, or what
10 distinguishes high from low hypnotizable individuals,
11 the effects of hypnosis on brain activity and hypnotic
12 interventions that involve pain, controlled and altering
13 visual perception. I currently have a study that's
14 funded by the National Institutes of Health looking at
15 the effect of trans-cranial magnetic stimulation, it's a
16 relatively new psychiatric treatment in enhancing
17 hypnotic performance in controlling pain.

18 Q. In addition to the studies, have you authored
19 several articles?

20 A. Yes, I've authored about 75 research articles
21 in scientific journals on hypnosis, about 45 chapters on
22 hypnosis and one major textbook on hypnosis.

23 Q. Are any of those recent publications?

24 A. Yes. The most recent one was published in
25 cerebral cortex last year, 2017, showing the effects on

1 the brain of people entering into a hypnotic state.

2 Q. Over the course of your career, how many
3 subjects have you hypnotized?

4 A. I estimate somewhere between 7000 and 8000
5 patients and research subjects in my career.

6 Q. Have you previously been qualified as an
7 expert in Texas in the area of hypnosis?

8 A. I have, yes.

9 Q. Your most recent experience testifying as an
10 expert, was that last year?

11 A. Yes, I believe it was.

12 Q. In the Charles Flores case out of Dallas
13 County?

14 A. That's correct.

15 Q. And you testified as to hypnosis in particular
16 in that case; is that correct?

17 A. That's correct.

18 Q. Doctor, I'm showing you what's marked as
19 State's Exhibit 17, do you recognize that document?

20 A. Yes, this is a listing of my forensic
21 psychiatric experience from 1985 to 2018.

22 MS. SMITH: Let the record reflect the
23 state previously tendered a copy of this document to
24 opposing counsel as well.

25 Q. So that document accurately reflects your

1 experience practicing in the forensic field, correct?

2 A. That is correct.

3 Q. And it covers things other than hypnosis,
4 right?

5 A. That's also correct.

6 Q. Are there many cases on that that relate to
7 hypnosis?

8 A. Yes, there are.

9 Q. What percentage of your work is forensic work?

10 A. I would guess it's about 10 percent of my
11 time.

12 MS. SMITH: At this time, the State will
13 offer Dr. Spiegel as an expert in the area of hypnosis.

14 THE COURT: Any objection?

15 MR. ALLEN: No, Your Honor.

16 THE COURT: All right. He's accepted by
17 the court.

18 Q. Dr. Spiegel, would you characterize yourself
19 as a clinician or researcher or both?

20 A. Both.

21 Q. And how does being both a clinician and
22 researcher give you a unique perspective?

23 A. Well, I spend much of my career doing
24 research, it's very important. We need to see things in
25 a broad, highly controlled way, which is how research

1 moves ahead, but at the same time, I think it's very
2 important to see person by person what the effects of,
3 in this case, hypnotic experience are, on the way they
4 think and feel, on helping them deal with problems like
5 traumatic stress, pain, controlling habits, so it gives
6 me a kind of face-to-face, hands-on experience with
7 patients every day that I can use to inform the research
8 questions I ask, and to better understand the research
9 findings.

10 Q. Now, we've talked a little bit about, or
11 you've referred a little bit about the use of hypnosis
12 for therapeutic purposes, has hypnosis been used for a
13 long time as a therapeutic device?

14 A. Yes. Hypnosis is actually the oldest western
15 conception of psychotherapy. It's been in use for about
16 250 years.

17 Q. Is there really any controversy about its use
18 in that setting?

19 A. No. It's been approved as a treatment by the
20 American Psychiatric Association, by the American
21 Medical Association, so there's no controversy about
22 that.

23 Q. As to its use in the forensic setting, and by
24 that I mean its use to assist witnesses to recall
25 memories, is there controversy in its use?

1 A. Yes, there is.

2 Q. Would you say there's something of a
3 professional divide about its use?

4 A. Yes.

5 Q. Can you talk about that a little bit?

6 A. Well, the earlier idea was that hypnosis would
7 be uniquely helpful in uncovering memories. The later
8 concern is that it's uniquely harmful. And I would say
9 that -- we've become more modest about both points of
10 view is what's happened. So there have been situations
11 in which hypnosis has been useful in uncovering
12 information that previously did not seem to be
13 available. The most dramatic case, I think, was the
14 Chowchilla school bus kidnapping. About 40 years ago, a
15 whole school bus full of children was hijacked and
16 kidnapped and buried in an abandoned yard, and the kids
17 were there for something like two days before they dug
18 their way out. Police were desperate to find who had
19 done this, but the bus driver, who was the only adult
20 there, could not remember the license plate of the car.
21 So a physician named Bill Kroger hypnotized the bus
22 driver, and he recalled all of the letters and numbers
23 on the license plate, in the wrong order, but it was
24 enough to lead to an arrest and eventually a conviction.
25 So there are situations where people have tried

1 everything else and it didn't work and it did seem to
2 help them. There has lately been controversy about
3 whether hypnotizing witnesses or victims may render them
4 vulnerable to either confabulation, that is, just making
5 something up that isn't true, or to what's been called
6 concreting, to becoming artificially certain that their
7 memories must be true because they remembered them under
8 hypnosis, and, therefore, rendering them relatively
9 invulnerable to cross-examination. So that's been a
10 major debate. I was a member of a panel that the
11 American Medical Association convened in 1985 to examine
12 the evidence regarding hypnosis in its use in the
13 forensic setting. And the conclusion was that hypnosis
14 can be helpful in certain circumstances, what it seems
15 to do is increase productivity. What we know about
16 memory in general is the more times you try to recall
17 something, the more likely you are to come up with new
18 information. You don't get your best recollection the
19 first time you try, and that's why the police frequently
20 question people over and over about the same crime, take
21 them to the crime scene, do things to try to stimulate
22 further recollection. Hypnosis seems to increase
23 productivity, but it doesn't increase accuracy. That
24 was our decision eventually. What you get from hypnosis
25 is more information, more correct and more incorrect

1 information and the ratio is about the same.

2 Q. You mentioned you participated in this study.
3 I'm showing you what's marked as State's Exhibit 2. Is
4 this an article that refers to the work that council
5 did?

6 A. That's correct. This is the report of the
7 council that was purchased in the Journal of the
8 American Medical Association.

9 Q. What year was that published?

10 A. 1985.

11 Q. So the concerns discussed in that article that
12 you've studied, they've been public knowledge for a
13 substantial amount of time now, correct?

14 A. That's correct.

15 Q. Before we talk about hypnosis particularly,
16 would it be helpful to first talk about how memory
17 works?

18 A. Sure.

19 Q. Can you explain what the different types of
20 memory are?

21 A. Well, memory is reconstructive in nature, but
22 there are two fundamental types of memory. There's
23 episodic memory, so if you remember that you went to a
24 bar last weekend and who you met with and what you did,
25 that's an episode of memory that you recollect with

1 specific details about who you saw, what you did when
2 you were there. There's then what's called procedural
3 memory, and that's memory for things like riding a
4 bicycle, typing, where you may not remember a single
5 episode where somebody taught you how to ride a bike or
6 type but you know how to do it. So we're used, in our
7 memory system, to being able to recall things without
8 remembering how or where we recall them. They're
9 actually processed in different parts of the brain. So
10 episodic memory is in the hippocampus, which is a deep
11 structure at the bottom of the brain. Procedural memory
12 is stored in the parts of the brain that do the work, so
13 in your motor cortex if it's something like riding a
14 bicycle or typing, and your parietal cortex if it has to
15 do with where things are located. So, for example,
16 people with Alzheimer's Disease, who can't learn new
17 information, who can't remember where they had
18 breakfast, can still find their way around their
19 hometown, but if you move them somewhere else, they
20 couldn't learn the new information. So those are the
21 two fundamental kinds of memory we have.

22 Q. Is all memory subconscious?

23 A. virtually all memory is subconscious because
24 while you were conscious, consciously aware of
25 everything you know and remember, you couldn't do

1 anything, you would be overwhelmed with information. So
2 by definition, memories are stored outside of
3 consciousness, and every day term for that is they are
4 subconscious because you're not conscious of them when
5 you're thinking about something else.

6 Q. So how do we as human beings recover the
7 memories stored in our brain?

8 A. Well, there's three processes in memory
9 storage and retrieval, there's encoding storage and
10 retrieval. So when you learn something new, you see
11 something new, you see the faces of the people in this
12 room right now, you're encoding that information, you
13 store it initially in the hippocampus, and then you
14 retrieve it. And the way you retrieve it is by a
15 network of associations, somebody asks you a question,
16 have you ever been in a courtroom, what's it like to be
17 in it, you start filing through your courtroom
18 experiences and reconnecting with memories that might be
19 related to being in a courtroom. So you reconstruct
20 recollection from what is stored in the brain, and then
21 through the network of associations, you come up with
22 the memories. One example I like to give of that is if
23 you've ever gone back to your old elementary school, you
24 may not have been there for decades, you look around, it
25 looks a little different, it looks smaller, the lockers

1 look smaller than you remember when you were a kid, but
2 the other thing is you start having memories of events
3 that occurred when you were a kid in grade school that
4 you haven't thought about in many, many years, because
5 you create associations just by being in the same
6 environment, so that's how memory retrieval works.

7 Q. What factors can affect the accuracy or can
8 influence memory?

9 A. Well, obviously first is encoding. Were you
10 paying attention at the time it happened and if you
11 encode less, you're less likely to recall it. Retrieval
12 efforts is another thing I mentioned, so the more times
13 you try to recall something that is not easily coming to
14 mind, the more information about it you're likely to
15 come up with. A third is the nature of the questioning,
16 and this is an issue that has also become a topic of
17 some contention, and that is the way questions are asked
18 may influence the nature of what people remember or say
19 they remember. And so Elizabeth Loftus, whom Dr. Lynn
20 has referred to in his testimony, has done studies where
21 if you show people a video of a traffic accident and
22 there's a yield sign and you ask them did you see a
23 yield sign, some will say yes, some will say no. If you
24 ask them did they see a stop sign, some will say yes and
25 some will say no, but if you say did you see the stop

1 sign, the question is implying that there really was a
2 stop sign, not a yield sign there, and a certain
3 percentage of people will say that they saw a stop sign
4 rather than the yield sign that was actually there. So
5 the message here is the way people are interrogated can
6 also influence what they report as memories.

7 Q. Can repeated recall improve memory?

8 A. Yes, repeated recall clearly does improve
9 memory.

10 Q. Is it possible though that over time memories
11 can decay?

12 A. Yes, memories do decay over time, so things
13 that are very long ago may be harder to retrieve than
14 things that are more recent, especially if you haven't
15 thought about them in a long time.

16 Q. How do you define hypnosis?

17 A. I define hypnosis as a state of highly focused
18 attention coupled with a reduction in peripheral
19 awareness and an enhanced responsiveness to social cues,
20 suggestibility.

21 Q. Is that the APA's definition of --

22 A. That is the official definition of hypnosis
23 from Division 30, which is the hypnosis division of the
24 American Psychological Association, yes.

25 Q. Is that consistent with the definition of

1 hypnosis Dr. Lynn used?

2 A. No, it is not. Dr. Lynn talked about in
3 response to imaginative suggestions. And hypnosis can
4 involve imagination, but it can involve perception, it
5 can involve reflection, it can involve a lot of things,
6 so imaginative is not a standard part of the current
7 official definition of what hypnosis is, and I think his
8 definition gives a kind of pejorative spin on the use of
9 hypnosis in the forensic setting because it implies by
10 using hypnosis, you're automatically instructing people
11 to imagine rather than perceive or remember or reflect.

12 Q. And that's not accurate?

13 A. I'm sorry?

14 Q. That's not accurate?

15 A. That is not accurate, no.

16 Q. There are risks or dangers with using hypnosis
17 to recover memories, correct?

18 A. Yes.

19 Q. What -- just generally speaking, what are
20 those risks?

21 A. Well, because the person in hypnosis is
22 focusing more on the central content. Hypnosis is like
23 looking through a telephoto lens in a camera. What you
24 see you see with great detail, but you're less aware of
25 the context. So you're less likely to evaluate what the

1 instructions are that you're being given, you're more
2 likely to just go along with what you're focusing on.
3 So this means that if someone using hypnosis is trying
4 to get you to create a memory rather than recover a
5 memory, it's possible that they could get you to falsely
6 report something that isn't true, that is possible.

7 It's also possible that just the idea of going through
8 hypnosis may falsely enhance your certainty that the
9 memory is right. Remember the literature suggests that
10 you produce more information, more accurate, more
11 inaccurate information as anybody does when they're
12 trying to recall something. The ratio is not different,
13 so you're not automatically creating more false
14 information, but the -- you might become artificially
15 certain that what you recall is correct because you've
16 gone through hypnosis. I think this is not unlike what
17 happens when people go through a polygraph test. If
18 they pass the polygraph test, they become more convinced
19 that what they're telling is the truth and is an honest
20 representation of what happened.

21 Q. Would another way to characterize that be
22 called concreting?

23 A. Yes, that's been called concreting.

24 Q. So the dangers are, and correct me if I'm
25 leaving anything out, would be the concreting, the

1 suggestibility, confabulating and loss of critical
2 judgment, did I leave anything out?

3 A. Yeah, no. There was an article, very
4 influential article published by Bernard Diamond in the
5 California Law Review, and he said -- it was a rather
6 extreme article, and I don't agree with its conclusions,
7 but the two major things he pointed out were the dangers
8 of confabulation and concreting.

9 Q. Doctor, I'm showing you what's marked as
10 State's Exhibit 1, is that the Bernard Diamond article
11 you're referring to?

12 A. Yes, it is, that's right.

13 Q. Just to reiterate, these dangers are risks
14 that we've discussed of using hypnosis to recall
15 memories, they've been known for a long time?

16 A. A very long time. This article was published
17 in 1980.

18 Q. Now, is -- does hypnosis increase or decrease
19 the accuracy of memories?

20 A. No, it doesn't change it one way or the other,
21 although there were a couple of studies that Dr. Lynn
22 referred to in his affidavit published by Scoboria,
23 Mazzoni and Irv Kirsch, who has done a lot of work on
24 the social psychology of hypnosis, it showed actually
25 that hypnosis was less likely to contaminate memories

1 than leading questions, so they did a comparison of the
2 two. So the people in hypnosis actually were less
3 likely to incorporate incorrect information than people
4 who were just given leading questions, so it's not
5 automatic that you have that danger. And clearly, the
6 issue is how is the hypnosis used, what instructions are
7 actually given to people, is the person conducting the
8 interview inserting information rather than requesting
9 information and that can have an effect on people
10 whether or not they're formally hypnotized.

11 Q. So just because there are these risks, that
12 these risks could have influenced memory call doesn't
13 necessarily mean they did influence memory recall, is
14 that an accurate statement?

15 A. That is correct.

16 Q. Not all states allow testimony from witnesses
17 who have undergone hypnosis, correct?

18 A. Right.

19 Q. There are some states that allow it, some
20 states that disallow it, and some states that allow it
21 on a case by case basis, right?

22 A. That's correct. There's a federal ruling,
23 Rock v Arkansas, that does allow testimony by a witness
24 who has been hypnotized.

25 Q. You're aware in Texas that we allow the

1 admissibility of such testimony on a case-by-case basis?

2 A. Yes.

3 Q. You're familiar with the Zani case, Z-a-n-i?

4 A. Yes, I am.

5 Q. That's the case that sets out numerous
6 procedural guidelines to use to determine whether or not
7 the testimony was influenced or not, correct?

8 A. That's correct.

9 Q. Other states use similar factors, correct?

10 A. Yes, not always the same but similar.

11 Q. These factors were derived in part from the
12 research that you did and the council did back in the
13 mid 1980s, correct?

14 A. That's correct.

15 Q. They're designed to be responsive to the
16 concerns, the risks that are possible from the use of
17 hypnosis in this setting?

18 A. Yes.

19 Q. Now, I've provided you a list of all of the
20 factors listed in Zani, there's 10. We don't need to go
21 through them and identify them, but I've provided them
22 up there for you just in case you need to reference
23 them.

24 A. Thank you.

25 Q. Now, can you explain why in your opinion a

1 case-by-case analysis is a good method to use to
2 determine whether or not we should admit testimony of a
3 witness who has been hypnotized?

4 A. Well, first of all, I think the guidelines in
5 the Zani case are reasonable. And, particularly, the
6 concern in a case like this is not what might have
7 happened but what actually did happen. So the way to do
8 it, to start with, is to take a look at whether or not
9 these guidelines were actually followed in the way that
10 the hypnosis was used in examining the two witnesses in
11 this case. So it would have to do with the level of
12 training of the person using hypnosis, whether that
13 person injected or simply inquired about information,
14 whether he put undue pressure on the subject to come up
15 with more information no matter what, which would tend
16 to push people toward confabulation, having a complete
17 electronic record of all contact with the subjects
18 before as well as during and after the hypnosis is
19 important. That was done. The induction was a
20 reasonable relaxation induction of hypnosis and then you
21 can evaluate their response. So you can look at what
22 additional information they did or did not provide, and
23 what I'm particularly interested in also is whether
24 they're able to say, no, I don't remember anything new,
25 I don't see anything more than I did at the time. So it

1 provides a series of guidelines that I think can help
2 the court decide whether or not the dangers of hypnosis
3 in fact occurred and whether there's evidence that is
4 sufficiently serious to warrant the use of hypnosis and
5 the testimony of that witness be excluded.

6 Q. So just to generally summarize, just because a
7 person has been hypnotized doesn't mean their memories
8 are inaccurate or false, correct?

9 A. That's correct. For starters, about one-third
10 of the adult population is just not hypnotizable. I've
11 testified in cases where there was concern that the
12 memory had been contaminated, the person's response
13 didn't look like that of a hypnotized person. I tested
14 their hypnotizability, they were a flat zero on the
15 scale 0-10 scale of our standard measure of
16 hypnotizability, so I was able to testify that I don't
17 care what the hypnotist thought, this person did not
18 experience hypnosis. So in some cases it doesn't
19 happen, even if the subject expects it and the hypnotist
20 thinks they're doing it. So sometimes hypnosis just
21 doesn't happen even if people think it did. But, in
22 other cases, the person's response may not be that
23 extreme or they may be very hypnotizable, but you can
24 document whether or not there were changes in their
25 testimony before and after the hypnosis and whether

1 there was evidence of concreting or confabulation.

2 Q. Now, in this case, I asked you to review a
3 long list of items, correct?

4 A. Yes, a very long list.

5 Q. And you and I worked together to prepare an
6 actual list of all of the items you looked at, correct?

7 A. That's correct.

8 Q. And you have that with you there?

9 A. I do.

10 Q. I don't want to go through each item because
11 there's over 20 things there, but just to focus on a few
12 things, you looked at Mamie Sharpless' and Nelson
13 Villavicencio's written statements, you reviewed the
14 hypnosis video recordings, the hypnosis transcripts.
15 And those are the two witnesses in this case that were
16 hypnotized, correct?

17 A. That's correct.

18 Q. You've also reviewed Dr. Lynn's affidavit
19 tendered by the defense in this case; is that correct?

20 A. Yes, I have.

21 Q. Are there things you agree with Dr. Lynn on?

22 A. Well, I agree with him that there are dangers
23 to record retrieval techniques of witnesses in the legal
24 setting, and that many things can influence the nature
25 of what people say and can sometimes contaminate the

1 nature of what they say, and that has to do with leading
2 questions, with suggestive interviewing of the kind I
3 talked about from the Loftus experiment, and potentially
4 with the use of hypnosis as well. So memory,
5 altogether, is fallible, as he says, memory is
6 reconstructive, memories aren't stored like videotapes
7 in a file cabinet. And so I agree with him about that.
8 I think that the problems that he tries to highlight
9 with hypnosis are actually much more general problems as
10 much of the research that he cited indicates with the
11 processing of retrieving memory altogether with or
12 without hypnosis.

13 Q. Okay. So you've mentioned that's an area you
14 disagree with him on, and you previously discussed how
15 you disagree with the definition of hypnosis that he
16 uses, correct?

17 A. Yes, his definition is wrong.

18 Q. Do you feel that he overestimates the dangers
19 of suggestibility and confabulation?

20 A. Yes, I think he does. I think the thing that
21 troubled me as a clinician, as well as a researcher, is
22 he doesn't actually evaluate, and he says that in his
23 testimony, the actual consequences of the use of
24 hypnosis in these particular cases. So he said he would
25 leave that to other people to evaluate that, but I think

1 if you're trying -- if you're asking the court to
2 consider whether or not these witnesses were
3 contaminated by the experience of hypnosis, the least
4 one can do is look at what actually happened before,
5 during and after the hypnosis to see whether there's
6 evidence that, in fact, the quality of their memories is
7 impaired by the hypnotic experience.

8 Q. You're referring to also corroboration,
9 correct?

10 A. Yes, corroboration is a part of that, correct.

11 Q. Do you agree with Dr. Lynn's opinion that
12 Ranger Shing's use of the term "mind's eye" during these
13 hypnosis sessions was the equivalent of the video
14 recorder analogy that has been disputed?

15 A. Not at all. I think the mind's eye, you know,
16 it's sort of an every day term, but it's not a bad term
17 because what mind's eye implies is that you're looking
18 inward to see what you remember, not what you saw. So
19 if you use the video recorder image, which is what was
20 used a lot in the L.A. Police Department some decades
21 ago when they were doing a lot of forensic hypnosis, it
22 does imply that everything is stored in your mind just
23 the way a videotape would be and you can just pull out
24 the videotape and rewind it and play it and see things
25 exactly as you saw them at the time. Mind's eye implies

1 that you're looking inward to see what you can remember
2 now from what it is you're able to recall. And keep in
3 mind that our with whole visual processing system, which
4 is very complex, is a matter of matching raw input to
5 programs that we have that give you an idea of what it
6 is you're likely looking at. So when I'm looking at you
7 right now, I'm not from the ground up building up an
8 image of a woman district attorney behind a desk asking
9 me a question, I'm matching images that I've stored in
10 my mind to tell me what someone of that size and shape
11 in that position is likely to be, you can't do it on the
12 fly. We have stores of images in our brain that we can
13 call up. So if you close your eyes, you can picture an
14 image of what your house looks like because you're
15 familiar with it as an object. So that's using what
16 Ranger Shing called the mind's eye and it's not a bad
17 approximation of what the brain actually does.

18 Q. So to paraphrase when using the phrase "mind's
19 eye," it doesn't suggest you've got more information in
20 your brain that you can remember?

21 A. No. It's just saying try and get a visual
22 impression of whatever it is you have got stored in your
23 brain.

24 Q. And then again, all of the science, the
25 studies that Dr. Lynn has relied on and cited, they all

1 contain information that has been previously available
2 for quite sometime, correct?

3 A. Right. And, in fact, you know one thing that
4 was not available at the time of this original trial is
5 Dr. Lynn's study, which was published, I think, in 2015,
6 examining the memories of people who were asked to see
7 emotional and boring movies and they were either
8 hypnotized or not. And the interesting thing was
9 hypnosis had no effect on the quality, the accuracy of
10 their recollections, so what was not available was the
11 study by the expert for the defense here, who
12 demonstrated in this well-conducted study that hypnosis
13 had no adverse effect on recollection.

14 Q. Doctor, I'm showing you what's marked as
15 State's Exhibit 3, is that an article about the study
16 Dr. Lynn participated in?

17 A. Yes, it is.

18 Q. So would it be accurate to say then that the
19 risks and the concerns we've known about with hypnosis
20 and its effects on recall of memory, our information
21 about that really hasn't changed in any way since the
22 mid 1980s?

23 A. No. I would say, if anything, what has
24 changed is there's more information about the
25 fallibility of memory in general, and so what we're

1 finding is some of the concerns that earlier on were
2 raised about hypnosis are now being raised by memory
3 researchers, about memory altogether retrieved by
4 completely different means, like just interrogation of
5 one kind or another.

6 Q. In your opinion, were the safeguards that are
7 set out in Zani and that are referred to in that study
8 you participated in in the 1980s, were they followed in
9 this case, in particular?

10 A. First of all, the thing we did in the 1980s
11 was a review of the literature and report, it was not
12 actually a study, we didn't generate new data. I don't
13 believe in that study we recommended safeguards. We
14 talked about what benefits could come and what the risks
15 were, so that study itself did not recommend specific
16 safeguards, that came somewhat later.

17 Q. So then in relation to the zani procedural
18 safeguards -- and also the zani procedural guidelines
19 are also basically reiterated in the Texas Ranger
20 guidelines for how to conduct hypnosis sessions; is that
21 correct?

22 A. That's correct.

23 Q. In your opinion, did Ranger Shing follow those
24 safeguards in this case?

25 A. Yes, he did.

1 Q. Do you feel like his questioning of either
2 Mamie or Nelson was suggestive?

3 A. No, I do not think it was suggestive.

4 Q. Do you feel like he exerted any pressure on
5 them to recall?

6 A. No, I think he offered them an opportunity,
7 but he explicitly said to them I don't want you to feel
8 pressure and if you recall something, fine, if you
9 don't, that's okay.

10 Q. What, if any, other characteristics about his
11 sessions with them do you feel support that he followed
12 guidelines?

13 A. Well, he was very careful about the guideline
14 regarding all contact. You know at first what people
15 used to do was they would record the hypnotic interview
16 itself, but they wouldn't record the pre-hypnotic
17 instructions or any other discussion that the person
18 doing the hypnosis had with the subject, which could
19 have been highly suggestive, or put pressure on them to
20 come up with new information no matter what, so he was
21 so careful about that that he had someone else bring
22 them to the office that he was in, and he would
23 discharge them from the office after the videotaping was
24 over and say someone else will have to take you to the
25 bathroom or something. So he was very meticulous about

1 following the guideline of recording all contact with
2 the subjects. Particularly with Mamie, he questioned
3 her in detail before as well as after about what her
4 recollections were, and he was, I think, in his
5 questioning and asking them to look in their mind's eye
6 and see what they could recall. He was trying to help
7 them get access to whatever memories they had, he would
8 take no for an answer. She would say, no, I can't see
9 anything more. She was particularly interested in the
10 license plate and wondering if it was North Carolina or
11 Texas license plate, she said I still can't see any of
12 the numbers or letters, maybe I see a T for Texas on the
13 license plate, so she was pretty sure it was a Texas
14 license plate. He asked her a whole bunch of
15 information about the Mustang, what style it was, what
16 the taillights were like, and she said I really can't,
17 the only thing I can remember is this round lock cover,
18 this chrome lock cover that was pretty big in the trunk,
19 I don't see anything else, and he didn't push her about
20 that. He asked her but he didn't say you must be able
21 to see more, there must be more information in your
22 mind's eye, he didn't do that. He just asked her what
23 she remembered and accepted it.

24 Q. He did the same thing with Nelson, correct?

25 A. That's correct.

1 Q. Both Mamie and Nelson's refusal to provide
2 information when prompted, if they didn't have it
3 available to them, does that not indicate they are not
4 confabulating?

5 A. It certainly does.

6 Q. Also, at the time Ranger Shing conducted the
7 sessions, you're aware that Mr. Chanthakoummane was not
8 a suspect in this case, correct?

9 A. Yes, Ranger Shing had no idea who the possible
10 subject might be.

11 Q. So that would have made it impossible for him
12 to suggest Mr. Chanthakoummane or someone who looked
13 like Mr. Chanthakoummane to them, correct?

14 A. Yes.

15 Q. Now, you've used the term hypnotizability a
16 couple of times now, what are you referring to?

17 A. People differ in their ability to experience
18 hypnosis. As we know from experience and the street
19 last night, most eight-year-old kids are very
20 hypnotizable. They get into these costumes, they get
21 into who they are, and they don't hear you when you call
22 them, all eight year olds are in trances all the time,
23 which makes being eight a lot of fun. But throughout
24 adolescence, we start to lose our hypnotic ability, some
25 of us, so by the time you're in your early 20s, some of

1 us remain very hypnotizable but some of us become not
2 hypnotizable at all. And that ability to experience
3 hypnosis is as stable of a trait as IQ starting in young
4 adulthood. So the test-retest correlation in that study
5 that was done over a 25-year interval is .7, which is
6 more stable than IQ, which is about .6, so it's a very
7 stable trait. We've studied people who were high and
8 low hypnotizables in the FMRI scanner and we see
9 differences in brain activity in people at rest who are
10 highly versus not hypnotizable, so it's a stable trait
11 with a neurophysiological basis.

12 Q. Do you feel like Mamie and Nelson's
13 hypnotizability was assessed by Ranger Shing?

14 A. He did not do a formal hypnotizability test.
15 So I tried, based on their response, to his induction
16 and what they talked about during it to get a rough idea
17 of how hypnotizable they were. He did one thing that
18 was something of an assessment, he asked them how long
19 they thought the hypnotic experience was. Mamie had a
20 distortion, it was about 30 minutes and she said about
21 10. So that happens when people get so absorbed in the
22 hypnotic experience, they are not monitoring the passage
23 of time, so they're more likely to guess less time
24 passed than really did. So I'm not -- I'm guessing that
25 she was a low to moderate hypnotizable person. Nelson

1 guessed pretty accurately about how long the time was.
2 And other things I looked for was the nature of the
3 movement. So one of the things that Ranger Shing did
4 was he said when you feel you've got this episode in
5 your mind's eye, let me know by raising your index
6 finger, we call it ideomotor signaling in the hypnosis
7 world. Rather than having them engage in the
8 discussion, you ask them to show you a physical signal.
9 And so he asked them to raise their index finger when
10 they thought they had the image in place, and it took a
11 while in both cases, but I'm used to seeing people when
12 they're experiencing deep hypnosis that the finger moves
13 very slowly, or the hand moves very slowly, and it looks
14 as though they don't feel that they're entirely
15 controlling the movement, which is what can happen in
16 hypnosis. In both cases they just raised their finger,
17 just went up, so didn't look like someone to me who was
18 profoundly hypnotized.

19 Q. What about -- both of them mentioned some
20 tingling, is that --

21 A. Yes, they did have a sensory alteration, and
22 that is consistent with having some degree of hypnotic
23 response.

24 Q. You reviewed their written statements and you
25 watched the video and read the transcripts of the

1 hypnosis sessions, did their descriptions of the suspect
2 vary after hypnosis?

3 A. I didn't see much of any change in their
4 description. Again, they were quite free with saying I
5 don't see anything more, I don't recognize anything
6 more. And what I noticed about Norman after his -- so
7 then the police artist came in. One of the concerns
8 Professor Lynn had about whether the hypnosis was
9 suggestive was that Ranger Shing had raised the
10 concern -- had raised the issue of an Asian face and
11 does his face look like an Asian person, and Lynn was
12 afraid that that would then be a suggestion that would
13 influence his recollection. On the other hand, the
14 first thing the police artist did when he came in was
15 say was the guy Asian, did he look Asian, so that's
16 something that's a standard part of performing the
17 sketch when you're trying to get some description of
18 what the person looks like. So I did not see what he
19 did as in any way particularly suggestive. And it
20 struck me also that when Nelson was working with the
21 police artist right after the hypnosis, it took him a
22 very long time to come up with even the most abstract
23 image that he had a book he was going through to look at
24 different facial structures, and I think it took him
25 about 10 minutes before he was able to come up with

1 something that he felt approximated the man that he had
2 seen, which would suggest to me that he wasn't given
3 this instant instruction, you will see somebody who
4 looks like that, he still had a good deal of difficulty
5 finding an image that he thought matched with what he
6 remembered.

7 Q. I just wanted to clarify something. Earlier
8 in your response, you mentioned Norman, were you
9 referring to Nelson?

10 A. Nelson, I'm sorry.

11 Q. That's okay, I just wanted to make sure.

12 A. Yes, thank you.

13 Q. So, Doctor, in your opinion, did hypnosis
14 render either Mamie or Nelson's identification of
15 Mr. Chanthakoummane unreliable and untrustworthy?

16 A. No, it did not.

17 Q. Is it possible, Dr. Spiegel, that when Mamie
18 Sharpless and Nelson Villavicencio appeared in court for
19 Mr. Chanthakoummane's trial and saw him, that that
20 triggered, trigger may not be the best word, but
21 triggered a memory of Mr. Chanthakoummane?

22 A. Yes, I think it's entirely possible it did.

23 Q. That is related to what you discussed earlier
24 about how memory works, it's a network of associations,
25 correct?

1 A. That's correct. So when they saw him there,
2 they were searching in their memories for either a match
3 or a mismatch, so it doesn't surprise me that they
4 experienced it as a match.

5 Q. Now, one of the Zani factors that we've
6 previously mentioned is corroboration?

7 A. Yes.

8 Q. And I believe you've already mentioned it, but
9 Dr. Lynn did not consider corroboration when he rendered
10 his opinion, correct?

11 A. He did not.

12 Q. You've previously addressed why you think
13 corroboration is important?

14 A. Yes.

15 Q. Among the materials I provided to you, did you
16 find information that you felt was corroborative of
17 Mamie and Nelson's identifications of
18 Mr. Chanthakoummane?

19 A. Yes, in Mr. Chanthakoummane's interview with
20 the police, which I reviewed the video and read the
21 transcript, I think around Page 44 or 45, he talks about
22 having seen a couple in a car, he said a blue or green
23 Toyota or Camry that he could only have seen if he saw
24 them, they had a car like that, it was a man and woman
25 he said, and they did report seeing him, so he's

1 reported seeing them. So I would take that as
2 corroboration that the event happened.

3 Q. So in his interrogation, he not only put
4 himself at the scene he also acknowledged that he
5 encountered two people like Mamie and Nelson in a car
6 driven by -- I'm sorry, a car like what was driven by
7 Mamie and Nelson, correct?

8 A. That's correct.

9 Q. So this corroborates what Mamie and Nelson saw
10 was actually Mr. Chanthakoummane, correct?

11 A. Yes, it does.

12 MS. SMITH: Pass the witness.

13 THE COURT: Cross.

14 **CROSS EXAMINATION**

15 **BY MR. ALLEN:**

16 Q. Dr. Spiegel, my name is **Eric Allen**. I
17 represent Mr. Chanthakoummane. I have some questions.
18 I'm not trying to trip you up or anything, if you have
19 any confusion about what I'm asking, just ask me and
20 I'll do my best to clarify.

21 A. Thank you.

22 Q. What is the scientific method, just basically
23 summarize that?

24 A. **Scientific method involves falsifiability**. So
25 you make a hypothesis about a phenomenon, you set up a

1 study that allows you to either confirm or reject the
2 hypothesis.

3 Q. Why is it important to test the hypothesis in
4 science?

5 A. Because if you don't, it isn't science. You
6 can have a belief, you can have an idea, but if you
7 don't test it, you're not doing science and you don't
8 know ultimately whether it's true or not.

9 Q. Okay. Okay. Now, you've stated on Direct
10 that the studies you've done, and you can correct me if
11 you'd like, they relate to the management of pain as it
12 relates to hypnosis?

13 A. That's part of it. They relate to perceptual
14 alteration that includes management of pain. They
15 relate to what happens in the brain when people undergo
16 hypnosis, and what goes on in the brain that
17 distinguishes high from low hypnotizable people.

18 Q. You mentioned on direct that about 10 percent
19 of your, I won't say practice, but your work is
20 forensic?

21 A. Yes.

22 Q. Would it be safe to say that between you and
23 Mr. Lynn, or Dr. Lynn, there's sort of a divide as to
24 the fallibility of hypnosis, you would disagree with Dr.
25 Lynn on a number of things?

1 A. Well, yeah, the fallibility of hypnosis,
2 that's not the phrase I would use, but yeah, we disagree
3 about -- I would say the risk to benefit ratio of using
4 hypnosis in the forensic setting.

5 Q. It's fair to say you're on one end of that and
6 Dr. Lynn is on the other?

7 A. Well, I think there are probably people more
8 extreme on both sides than either Dr. Lynn or myself.

9 Q. So you're closer than --

10 A. Yeah, we agree about a lot of things. He's a
11 colleague, I've seen him at meetings for 30 years.

12 Q. Now, you talked a little bit on Direct about
13 repeated recall, that's where you keep -- I'm going to
14 try and define it in my terms, so if it's confusing,
15 just say that's not what I meant. But you keep trying
16 to remember something, would that be repeated recall or
17 someone --

18 A. It's repeated recall efforts, so it's the same
19 thing you're trying to remember, but you don't just try
20 once and say that's it, you try again and again. And
21 the idea is that since memory is associative in nature
22 that you may come up with a new association that gives
23 you a neuro-pathway to retrieve more information about
24 that event.

25 Q. So if you didn't think about it for a long

1 time, and then you tried to remember it, that's not the
2 same thing?

3 A. As repeatedly trying during that time?

4 Q. Right.

5 A. That's correct.

6 Q. Now, the fact that you had stated that when
7 someone is hypnotized it doesn't mean it's inaccurate,
8 would you agree that the opposite is true, just because
9 someone is hypnotized, doesn't mean their statement is
10 accurate?

11 A. That's correct.

12 Q. And you had stated that something that has
13 changed is sort of the fallibility of memory, and that's
14 Dr. Loftus and these other people that test --

15 A. Yeah, I'd say there's more -- what's happened
16 is that the concerns that have been raised for a while
17 about hypnosis are also being raised about memory in
18 general.

19 Q. Can you -- would it be fair to say that the
20 two are probably linked together?

21 A. Yes, many of the people who are -- study
22 memory fallibility in general, some of them are studying
23 hypnosis in particular in that regard.

24 Q. Because in fact you are trying to get at a
25 memory when you're being hypnotized or not hypnotized,

1 you're testing whether or not someone can remember
2 something?

3 A. Well, that's not always what you do in
4 hypnosis, but sometimes it is, yes. In the context in
5 which we're discussing this, you can be trying to get a
6 memory with the exclusive use of hypnosis or without it,
7 but I would add what complicates things further is even
8 if we would like, we thought it was a good idea to
9 eliminate hypnosis completely from the legal system, we
10 couldn't do it, because highly hypnotizable people will
11 go into hypnotic like states whether or not there's a
12 formal hypnotic induction. So they are more sensitive
13 to being influenced by other factors in an interview
14 even if there's no formal hypnosis.

15 Q. So they're easily lead, so somebody would be
16 suggestible to, say, leading questions or things like
17 that?

18 A. That's correct. One of my highly hypnotizable
19 patients described herself as a disciple in search of a
20 teacher.

21 Q. You had stated on Direct that memory is not
22 like a videotape?

23 A. That's right.

24 Q. Now, the mind's eye, you had said that it's
25 sort of an anecdotal way to look at memory, would that

1 be a fair way to summarize?

2 A. Yeah, it's sort of a commonly used phrase,
3 it's not something we use professionally, but I think
4 it's not a bad representation of what you do when you
5 turn inward and reflect on what you can remember
6 visually.

7 Q. Now, certainly, the mind's eye, can you fast
8 forward the memory?

9 A. You could add that to the image of the mind's
10 eye, and that is more of a video recorder kind of image
11 than just talking about the mind's eye, but his
12 fundamental premise was you're looking at the mind's
13 eye.

14 Q. But it's not like a video recorder?

15 A. What's not like a video recorder?

16 Q. The mind's eye.

17 A. No.

18 Q. You can't pause it or rewind it?

19 A. No, he tried, I think, with Mamie once or
20 twice to add that image to the mind's eye image and she
21 said she couldn't do it.

22 Q. And the person's memory, you talked about this
23 a little bit, can be influenced by a number of things,
24 post-event information, a person's life experience, that
25 would affect your memory?

1 A. Yes.

2 Q. And you also mentioned associations. If the
3 association, I think is important, you talked about the
4 two eyewitnesses picking out Mr. Chanthakoummane at
5 counsel table, would the fact that they met with the
6 police a number of times enhance that association? Does
7 that question make sense?

8 A. Well, not quite. In a generic sense they knew
9 the police were looking for somebody, but I don't quite
10 follow the drift of your question.

11 Q. If seeing the Defendant at Defense table, is
12 that suggestible?

13 A. Well, it does convey the idea that enough
14 people thought it likely he might have committed the
15 crime that they brought him in for a trial.

16 Q. Certainly, the fact that the Defendant is
17 Asian and his counsel is white, that would enhance
18 the --

19 A. Well, unless the counsel is another defendant
20 in the case, no, I don't think the counsel being white
21 would have much to do with it.

22 Q. But him being the only Asian person at counsel
23 table definitely raises the suggestibility?

24 A. I hear this commonly in cases, but one thing,
25 if I were a witness to a terrible crime or something

1 related to it and somebody I knew had been brutally
2 murdered, I would want the right person to get convicted
3 because if you convict the wrong person, then the guy
4 who did it is still out there. So I don't think all the
5 motivation is just to say, oh, yeah, they got him, this
6 is him. Obviously -- whether he was Asian or not I
7 think didn't matter, the fact that he was the defendant
8 in the case meant there was serious suspicion about him.

9 Q. Sure. And you would agree that there's been a
10 lot of studies done about cross-racial identification
11 and their issues with suggestibility?

12 A. There have been studies that suggest that some
13 people will more easily identify someone of a given
14 racial make up with someone who might well have
15 committed a crime if they were a victim or witness.

16 Q. In fact, people that do not engage with people
17 of different racial groups on a daily basis will sort of
18 put them all in one group, sort of associates -- they
19 won't be able to differentiate one black person from
20 another black person or one Asian from another Asian?

21 A. well, I think you're overstating it a little,
22 but they may have more difficulty, yes.

23 Q. In terms of memory you stated on Direct that
24 memories over time will fade or degrade; is that
25 correct?

1 A. They may.

2 Q. And they became less powerful to the person?

3 A. I'm not -- that language doesn't fit somehow.

4 Q. Okay. So over time memories become less
5 fresh, is that a better way to put it?

6 A. Yeah, less fresh, and you're less used to
7 accessing them, so it may take more work to create the
8 associative chain necessary to retrieve a memory that
9 you haven't thought about for a long time.

10 Q. Is it fair to say that the system in our
11 brain, and I'm trying to get this straight in my mind,
12 so I can remember it later, it's sort of like a big
13 storage facility, and in terms of the -- how far removed
14 the memory is, the further back it goes in the storage
15 facility, is that a fair way to put it, or no?

16 A. Well, I think maybe the best example I can
17 give is this, if I ask you what you had for breakfast
18 this morning, you'll probably remember it and tell me
19 what it was.

20 Q. Right.

21 A. If I ask you what you had for breakfast a week
22 ago, you might remember it, but you start thinking --
23 you create an algorithm, what do I usually have for
24 breakfast on a workday and was my wife home or not or
25 whatever. If I ask you what you had for breakfast six

1 months ago on this day, you probably wouldn't remember
2 and you'd get an algorithm -- so the less recent a
3 memory is, the more likely it is you have to engage in a
4 strategy that involves probabilities, what was likely,
5 what was sensible that I might have had on that
6 particular day. So memories, they're not like little
7 objects stored on a shelf, they're traces that get
8 reactivated based on a network of associations that
9 helps to make sense of them and what they are.

10 Q. And that process is called encoding?

11 A. Well, what I'm talking about is retrieval,
12 they're encoded in a certain way, they're stored in a
13 certain way. To retrieve it, you have to create a
14 network of associations, it helps you make sense of what
15 is stored.

16 Q. Okay. Now, let me jump back. When you're
17 encoding something, there are certain things that can
18 make the encoding of that memory less reliable or not as
19 good as something else?

20 A. That's correct.

21 Q. Like weapons focus, if someone pulled a
22 weapon?

23 A. Right.

24 Q. Or if something -- you don't see it as
25 important?

1 A. Well, yes, but the weapon focus, let me
2 clarify, because there's two sides to that. Loftus did
3 the original study on weapon focus, and what she found
4 is part of your memory is extremely good, and part of it
5 is rather bad. So in those studies, people could give a
6 brilliant description of the gun, what color it was, was
7 it a revolver, was it cocked, all kinds of things about
8 the gun, and then she said so what did the guy look like
9 and they didn't have a clue because they were so
10 focused, the weapon focus was so intense that they were
11 not paying attention to other aspects of the situation.

12 Q. Now, some of these studies deal with a
13 traumatic experience. If the episode wasn't traumatic,
14 if someone viewed something that wasn't traumatic, is it
15 likely that they're going to encode a lot of
16 information, for example, if it was just sort of an
17 every day occurrence?

18 A. They might encode less. The evidence with
19 traumatic experiences is that up to a certain point you
20 tend to encode more because you have all of this
21 emotional arousal and you think your survival may depend
22 on remembering some aspect. Beyond that point, you
23 actually start to remember less because it's so
24 overwhelming and painful that it's hard to think about.
25 But most of the things we encode and store and retrieve

1 in our life are not traumatic and yet we remember
2 things. So if you are just bored or not interested or
3 not paying attention, you're less likely to record
4 things that aren't traumatic, otherwise, you record them
5 like we do most memories.

6 Q. In terms of retrieval, what effect does
7 someone pressuring you to remember have on it?

8 A. Well, that can sometimes, pressure can
9 sometimes get you to retrieve more. And a perfect
10 example of that was the interrogation of the Defendant,
11 took a long time of repeated questioning to get him to
12 remember that the car had been in that neighborhood and
13 that he had gone into that particular house, so pressure
14 can get you to report more. Pressure depending on how
15 it's applied can also get you to provide information,
16 even if you're not sure it's true. What it can do is
17 shift what we call a response criteria, so how willing
18 are you to report a thought as an actual memory.

19 Q. Now pressure, if someone were to praise, let's
20 say, the witness, for doing something, what effect would
21 that have on...

22 A. Certainly, positive reinforcement is one way
23 to get people to keep doing what they've been doing, so
24 it can reinforce either their coming up with more new
25 information, or it could encourage them to report more

1 stuff even if they're not sure that it's true.

2 Q. Would you agree that that would increase
3 confabulation?

4 A. It could, doesn't mean it does, but it could.

5 Q. I mean science doesn't necessarily work in
6 absolutes, these are not going to be -- you can't say
7 that hundred percent that that would occur, correct?

8 A. In any given case, yeah, you can't say whether
9 or not that's what's going on. You can do studies of it
10 in which you can falsify a belief, but in a given
11 individual situation, you can't be absolutely certain
12 one way or the other, yes.

13 Q. So by mentioning, by the trooper mentioning
14 this person is Asian, that certainly can raise the
15 probability that there's confabulation in this case?

16 A. well, but in this case, that's not relevant
17 because the first contact with the Defendant was
18 somebody on the phone saying his name was Chan Lee,
19 that's an Asian name, so Asian was introduced by the
20 person who called maybe on the phone long before any
21 interrogation happened.

22 Q. You had mentioned one of the risks with
23 hypnosis is sort of overconfidence?

24 A. Yes.

25 Q. And so if I were to cross-examine this witness

1 and they've sort of created this new memory through the
2 hypnosis, they would have hundred percent believe that
3 that's what happened?

4 A. Now you're overstating it.

5 Q. Okay.

6 A. It would increase the likelihood that they
7 would remain confident in the belief, but -- the other
8 thing about highly hypnotizable people who are
9 vulnerable to this is they could probably change their
10 mind in a hurry under withering cross-examination, so if
11 they're vulnerable to being programmed in one direction,
12 they're vulnerable to being influenced in the other as
13 well.

14 Q. But if they're given positive reinforcement
15 from the police and positive reinforcement from the
16 prosecutor and they've seen information on the news
17 media that sort of corroborates in their mind their
18 testimony, that would be unlikely wouldn't it?

19 A. No, depends on the particular person. That
20 happens in all cases whether or not hypnosis has been
21 involved. And hypnotizable people are very responsive
22 to social cues in either direction.

23 Q. I'm trying to think of a nice way -- would you
24 say those people are gullible or naive or --

25 A. They're more willing to take in external input

1 and see it as something that makes sense to them, even
2 if later on they might think, oh, wait a minute, it
3 really doesn't.

4 Q. Would you agree that hypnosis in terms of
5 using it as a forensic tool to try and solve a crime
6 should be a last resort?

7 A. Yeah, I think it should never be, and this is
8 something that is in the zani guidelines, it should
9 never be a substitute for good police work.

10 Q. Now, the hypnosis itself, is it safe to say
11 that this is something that removes the anxiety of the
12 event?

13 A. It can. Hypnosis can create anxiety too. I
14 have had patients who go back and relive a traumatic
15 experience and they get very anxious while they're
16 thinking about what happened again, so hypnosis can be
17 used to alter one's perception of anxiety, one way or
18 the other, depends on how it's used.

19 Q. It's sort of, I don't want to oversimplify it,
20 you don't want me to overstate it, but I don't want to
21 oversimplify it, but it's sort of putting someone in a
22 relaxed state?

23 A. They can be physically relaxed and
24 comfortable, and that certainly is what the induction
25 that Ranger Shing did was try to make them feel

1 physically comfortable. You can still be facing things
2 that make you psychologically uncomfortable, and, for
3 example, what came out was that Nelson was -- Norman,
4 did I -- I'm sorry --

5 Q. Nelson.

6 A. Nelson, I'm sorry -- was anxious about what
7 was going on. He was rather suspicious about the phone
8 call, and that's why he drove Mamie out there. He
9 didn't usually do that routine. And he reported
10 experiencing some anxiety as he remembered what was
11 going on and how concerned he was about it.

12 Q. You would agree the event itself, seeing this
13 Asian guy in this neighborhood itself wasn't a traumatic
14 experience?

15 A. Yeah, no, I think it was anxiety-inducing but
16 not traumatic.

17 Q. There was a lot of post-event information like
18 finding out Ms. Walker was murdered, that they were
19 looking for this individual, there was a lot of
20 post-event information that they got after this event;
21 is that correct?

22 A. Yes.

23 Q. And also there was a number of times that they
24 met with the police and met with the prosecutor and were
25 able to see news accounts of the event, or at least the

1 coverage of the event?

2 A. I presume they did, I don't know, but I
3 presume so.

4 Q. And, certainly, you're not saying that
5 hypnosis or putting someone in a hypnotic state makes
6 them a better witness?

7 A. No. I'm just saying I don't think it makes
8 them a worse witness by definition either.

9 Q. So there's really no benefit, one or the
10 other, to hypnosis?

11 A. Well, there can be. I described a case where
12 it broke open a case and they got a conviction that they
13 otherwise would not have gotten, so that can happen.
14 But I'd say that just by the fact that someone has
15 undergone hypnosis doesn't automatically make them a
16 better witness and doesn't automatically make them a
17 worse witness.

18 Q. And, certainly, the hypnosis, it can lead to
19 the confabulation and the -- you'll have to say it, con
20 --

21 A. Concreting.

22 Q. -- concreting, that that can lead to that
23 where it's not necessarily found and some of it is not
24 hypnotized?

25 A. No, I don't entirely agree with that. That's

1 where I vigorously disagreed with Diamond when he wrote
2 the article, is that the fact that something happens
3 that involves a formal induction of hypnosis doesn't
4 mean, A, that hypnosis really happened because a witness
5 may not be hypnotizable, and, B, he's doing this kind of
6 all or none, once you start that hypnotic induction,
7 you've contaminated this witness forever, what they
8 produce is always confabulation, or they're artificially
9 certain of their recollection. well, there are
10 witnesses who have lied 10 times on the stand, they're
11 allowed to testify. There are witnesses whose families
12 have been threatened if they say something, they're
13 allowed to testify, and the job of juries is to evaluate
14 their testimony and what else they know about them. The
15 original judge in the Flores case made a very wise
16 decision, he said, yes, these are concerns, concreting
17 and confabulation, and the jury should consider them
18 with all the other things they consider and reach a
19 decision on how reliable the witnesses were, and I
20 thought that was a very reasonable instruction to the
21 jury.

22 Q. And in this case you had talked a little bit
23 with Smith about finding out the hip --

24 A. Hypnotizability.

25 Q. I didn't have breakfast this morning.

1 A. But you remembered that.

2 Q. I do remember that. You said that really
3 wasn't done here. But certainly, that's an important
4 factor to look at in terms of --

5 A. It would be. I would agree based on what I
6 saw, and I've seen a lot of people undergoing hypnotic
7 inductions that I'm quite convinced that they are not
8 highly hypnotizable. I'm fairly convinced that they're
9 not non-hypnotizable, so their performance was in the
10 low to mid-range of hypnotic responsiveness.

11 Q. I'm going to use an example that both you and
12 Dr. Lynn don't like, but it's sort of the **stage**
13 **hypnotist**, they go through very quickly to determine who
14 is hypnotizable and who is not hypnotizable?

15 A. That's correct. That's one of their tricks
16 actually that people don't get. At the beginning of the
17 show, they invite people up or they move back and forth
18 and they look to see who is moving back and forth with
19 the audience, and **they filter through the audience** until
20 they get 5 or 10 people who are on the extremely high
21 end of hypnotizability and then they start doing their
22 show.

23 Q. Certainly, if you're trying to hypnotize a
24 witness, you would want to go through and make a
25 determination if this person is hypnotizable or not

1 hypnotizable?

2 A. That's correct. I do that every time I do
3 forensic hypnosis.

4 MR. ALLEN: If I can have a moment, Your
5 Honor.

6 THE COURT: All right.

7 MR. ALLEN: Pass the witness, Your Honor.

8 **REDIRECT EXAMINATION**

9 **BY MS. SMITH:**

10 Q. I just have one question, Dr. Spiegel, I
11 forgot to ask it to you on Direct, and its reflected on
12 your forensic work summary. How much of your work,
13 forensic work, is related to work for the defense versus
14 work for the State in the criminal context?

15 A. In the criminal context, I've done 30 criminal
16 cases, 18 are for the defense, have been for the
17 defense, and 12 for the prosecution, so more for the
18 defense than prosecution.

19 Q. So roughly two-thirds to one-third ratio?

20 A. That's correct.

21 MS. SMITH: Pass the witness.

22 THE COURT: Anything else?

23 MR. ALLEN: Just based on that question, I
24 have no --

25

RECROSS-EXAMINATION

1
2 BY MR. ALLEN:

3 Q. Well, when is the last time you testified for
4 the defense?

5 A. In a criminal case?

6 Q. Yes.

7 A. It would have been in a Florida case, I see
8 one in 2005 -- no, a New York case in 2012, so I guess
9 in a criminal case, I guess that was the last time --
10 nope, there was one -- I reviewed records in a case for
11 a case in Israel last year for the defense in a criminal
12 murder trial. I didn't testify.

13 MR. ALLEN: No further questions.

14 THE COURT: Is the witness released?

15 MS. SMITH: He is, Your Honor.

16 THE COURT: Sir, you are released. You're
17 free to stay or go, whatever you'd like to do.

18 THE WITNESS: Thank you, Your Honor.

19 MS. SMITH: May we have a short, like,
20 five minute recess, Judge?

21 THE COURT: Let's take 10. Please be back
22 in 10.

23 (Short recess)

24 THE COURT: Can we get Lt. Davidson in
25 here.

1 Sir, could you please come up to this
2 table to be sworn.

3 (Witness sworn)

4 THE COURT: Thank you. Please have a
5 seat.

6 **A. P. DAVIDSON,**

7 having been first duly sworn, testified as follows:

8 **DIRECT EXAMINATION**

9 **BY MS. SMITH:**

10 Q. Lieutenant, would you state your name for the
11 record?

12 A. A. P. Davidson.

13 Q. Could you spell your last name for the court
14 reporter?

15 A. D-a-v-i-d-s-o-n.

16 Q. How are you employed, sir?

17 A. I'm a lieutenant with the Texas Rangers.

18 Q. How long have you been employed by the Texas
19 Rangers?

20 A. Approximately 16 years.

21 Q. And as of today, how many rangers are there?

22 A. Approximately 150 across the state.

23 Q. Obviously, you didn't start out as a
24 lieutenant, correct?

25 A. Correct.

1 Q. What -- what were you doing, what were your
2 duties back in 2006?

3 A. I was the Texas Ranger stationed in McKinney.

4 Q. As that stationed Ranger, what was your job?

5 A. We assist local law enforcement in
6 investigation of major crimes.

7 Q. Is that common for the Texas Rangers to assist
8 other agencies?

9 A. Yes, ma'am, it's one of our primary duties.

10 Q. Why is it you offer that assistance?

11 A. As a state agency, we have quite a few
12 resources that we bring to bear and make those resources
13 available for law enforcement agencies they may not
14 necessarily have what we can bring.

15 Q. Were you involved in the investigation into
16 the murder of Sarah Walker back in 2006?

17 A. Yes, ma'am.

18 Q. Obviously, it's been quite a while since 2006,
19 correct?

20 A. Yes, ma'am.

21 Q. Did you have to use any information to refresh
22 your recollections about your work on this case?

23 A. Yes.

24 Q. What did you use to refresh your
25 recollections?

1 A. The report I prepared, I watched a video...

2 Q. That video would be the Forensic Files video?

3 A. Yes, ma'am.

4 Q. And you have up there with you your file,
5 correct?

6 A. Yes.

7 Q. As well as a copy of your report?

8 A. Yes, ma'am.

9 Q. And when I contacted you, one of the things
10 you provided me with was -- I'm going to show you what's
11 identified as State's Exhibit 20 and ask you if you
12 recognize this document?

13 A. Yes, ma'am.

14 Q. What is that?

15 A. That is a report prepared by Texas Ranger
16 Richard Shing regarding the hypnosis session of a
17 witness.

18 Q. This obtained through the records maintained
19 by your department?

20 A. Yes, ma'am.

21 MS. SMITH: State has previously tendered
22 a copy of the exhibit to opposing counsel. State will
23 offer it for all purposes at this time.

24 MR. ALLEN: No objection.

25 THE COURT: It's admitted.

1 Q. Aside from the Texas Rangers, what other
2 agencies participated in the investigation into the
3 murder?

4 A. The Collin County Sheriff's Office, Allen
5 Police Department, U.S. Marshals and DPS.

6 Q. You assisted, you weren't the lead
7 investigator, correct?

8 A. Correct.

9 Q. How were duties or responsibilities delegated
10 amongst the various individuals working on the case?

11 A. We had periodic meetings, typically, daily,
12 every other day, during the large part of this
13 investigation. And as leads would come in and things
14 would develop, we would make assignments at those
15 meetings.

16 Q. Would you say you were one of the members of
17 the core team of investigators on this case?

18 A. Yes, ma'am.

19 Q. So you had pretty extensive knowledge of the
20 investigation as it was unfolding?

21 A. Somewhat.

22 Q. What were some of the tasks that were
23 delegated to you, generally speaking?

24 A. Generally speaking, I followed up on tips as
25 they would come in from the general public, make

1 telephone calls, go and meet potential witnesses, take
2 statements and interview people.

3 Q. Were you involved at all in arranging for the
4 hypnosis sessions by Ranger Shing of Mamie Sharpless and
5 Nelson Villavicencio?

6 A. Yes, ma'am.

7 Q. And that's one of the services that the
8 Rangers provide, correct?

9 A. Yes.

10 Q. That's a common resource you provide?

11 A. Yes.

12 Q. Now, based on your recollection of the
13 investigation, the murder occurred on July 8th, 2006,
14 correct?

15 A. Yes, ma'am.

16 Q. The next day, did you receive information from
17 Mamie and Nelson?

18 A. Yes.

19 Q. They contacted McKinney P.D.?

20 A. Yes, ma'am.

21 Q. And they gave a description of both a car and
22 a suspect, correct?

23 A. Correct.

24 Q. Do you recall the description of the car?

25 A. It was a white Mustang.

1 Q. What about the description of the suspect?

2 A. It was an Asian male. They gave a range of
3 height between five-seven and five-eleven, athletic
4 build, wearing a blue shirt.

5 Q. And did you say muscular --

6 A. Yes.

7 Q. -- did they describe him as muscular? You're
8 familiar with Mamie's encounter on the phone with Chan
9 Lee, correct?

10 A. Yes, ma'am.

11 Q. She reported that to the officers
12 investigating as well?

13 A. Yes.

14 Q. How did she describe the individual Chan Lee's
15 voice, what did it sound like?

16 A. She described the voice as being similar to a
17 black male, African-American male voice.

18 Q. She thought perhaps Chan Lee might have been
19 an Asian individual based on the name?

20 A. Yes, ma'am.

21 Q. Now, on July 11, Mamie Nelson -- Mamie
22 Sharpless was hypnotized by Ranger Shing, correct?

23 A. Correct.

24 Q. During that hypnosis session, she provided
25 another description of both the car and the suspect,

1 correct?

2 A. Yes.

3 Q. Did that vary at all from the initial
4 information she gave when she contacted the department
5 the day after the offense?

6 A. **No, it was the same.**

7 Q. Now, you actually spoke with Mamie yourself,
8 correct?

9 A. Yes.

10 Q. And would that have been on July 17th?

11 A. Yes, ma'am.

12 Q. Was that in person?

13 A. Over the telephone.

14 Q. And why did you speak with Mamie?

15 A. I wanted to visit with her about her
16 recollection of the car.

17 Q. And what information did you glean from that
18 conversation?

19 A. She was not real strong on a year model. We
20 looked at several on the Internet together, separate
21 locations, of course, as we spoke on the telephone. She
22 was solid on the color of white and solid on the fact
23 that it was a Mustang.

24 Q. Did you also do some investigation related to
25 Mamie's report of Chan Lee?

1 A. Yes.

2 Q. Can you describe the work you did to try to
3 track down another suspect with a name similar to that?

4 A. We ran several **offline checks** through our
5 various databases and headquarters in Austin
6 cross-referencing Asian males with that similar name,
7 Chan Lee, in various forms of spelling and Mustangs and
8 came up with a possibility in the city of Arlington.

9 Q. And what work did you do to follow that lead?

10 A. I drove to that location in Arlington, by the
11 University of Texas at Arlington, and found the car, and
12 it was the wrong color, silver, went to the apartment
13 that was associated with that license plate, knocked on
14 the door, was met by a young Asian male, introduced
15 myself, he asked me to come into his apartment. He
16 spoke with a very thick accent, and I told him who I was
17 looking for, and he told me that was his brother and he
18 was not home. I asked him if his brother had a mobile
19 telephone, he indicated the brother did have one, and I
20 asked the young man if he would mind calling the brother
21 on his phone and allow me to speak with him, which he
22 did.

23 Q. Now, his name was similar to Chan Lee but it
24 wasn't Chan Lee, correct?

25 A. Correct.

1 Q. Do you recall what his name was?

2 A. I believe it was Chen Lee.

3 Q. And, obviously, he did not speak with an
4 African-American accent, correct?

5 A. No, ma'am.

6 Q. So based on the fact that his car did not
7 match the color of the car Mamie described and based on
8 his voice, you concluded that this was probably a dead
9 end, correct?

10 A. Yes. Once I got the brother on the phone,
11 spoke with him and had a difficult time conversing due
12 to the fact that he spoke with a very thick Asian
13 accent.

14 Q. Now, a month later, about August 11, 2006,
15 Nelson villavicencio underwent hypnosis, correct?

16 A. Yes, ma'am.

17 Q. You're familiar with his statement, his
18 written statement, as well as the statements he made in
19 that hypnosis session, correct?

20 A. Yes.

21 Q. Like Mamie did his description of the suspect
22 vary at all after hypnosis?

23 A. No, the description that he gave and the
24 information he provided was virtually the same as the
25 information we received the day after the murder.

1 Q. But he actually participated in the generation
2 of a sketch of the suspect, correct?

3 A. Yes, ma'am.

4 Q. That sketch was released in the media,
5 correct?

6 A. Yes.

7 Q. Now do you recall a woman named Barbara
8 Johnson?

9 A. Yes, ma'am.

10 Q. Who is Barbara Johnson?

11 A. Barbara Johnson is a realtor who called in a
12 tip to the police department after the murder.

13 Q. She called that in because she had an
14 experience with an individual matching the description
15 of the suspect, correct?

16 A. Yes, ma'am.

17 Q. And that would have been on August 19 that she
18 first contacted McKinney P.D., correct?

19 A. Yes, just after the media release of the
20 sketch and the vehicle description.

21 Q. She was not immediately contacted and
22 interviewed by McKinney P.D. like that day, right?

23 A. I don't believe so.

24 Q. You had a lot of tips come in on this case,
25 right?

1 A. Several hundred.

2 Q. So it takes a while to process those, right?

3 A. Yes, ma'am.

4 Q. And hers was one of several hundred?

5 A. Yes.

6 Q. When did you first get news that there was a
7 CODIS hit in the case?

8 A. I believe it was on the 30th.

9 Q. August 30th?

10 A. Yes, ma'am.

11 Q. That would have been around a holiday weekend,
12 right?

13 A. Labor Day. Wednesday or Thursday before the
14 holiday weekend.

15 Q. So when you first got news of the CODIS hit,
16 did you get a name and everything?

17 A. No, ma'am. We were told that the CODIS hit
18 was generated from North Carolina.

19 Q. So on August 30, you knew that the DNA found
20 at your scene matched that of an inmate in North
21 carolina?

22 A. Yes.

23 Q. And then on September 1st, did you get a
24 little bit more information about the CODIS hit?

25 A. Yes, ma'am.

1 Q. What did you learn?

2 A. We were told that the suspect had a last known
3 address in the city of Carrollton, Texas.

4 Q. So, now you know you've got a North Carolina
5 connection and a Carrollton connection, what did the
6 investigative team do in response to that information?

7 A. We started pouring through our leads trying to
8 find anything that linked North Carolina and Carrollton.

9 Q. Did that lead you back to Barbara Johnson?

10 A. Yes, ma'am.

11 Q. How did that lead you back to Barbara Johnson?

12 A. She had an incident at her house the evening
13 prior to the murder.

14 MR. ALLEN: Objection, Your Honor,
15 relevance.

16 MS. SMITH: It's just contextual, Judge,
17 it'll take just a second.

18 THE COURT: All right. I'll overrule the
19 objection.

20 A. Incident at her home prior to the murder in
21 which she met the Defendant and saw his white Mustang at
22 her house.

23 Q. As a result of that contact, she actually
24 contacted the police, correct?

25 A. Carrollton police responded.

1 Q. They came out and they actually identified
2 that individual, correct?

3 A. Yes, as the Defendant.

4 Q. As the Defendant. So at that point when you
5 get this -- you see this connection to Barbara Johnson,
6 did somebody on the investigative team contact Barbara
7 Johnson and interview her?

8 A. Yes.

9 Q. And she relayed the incident that happened at
10 her house the day before Sarah Walker's murder?

11 A. Yes.

12 Q. And as a result of that, she was asked to go
13 back and review some paperwork because she too is a
14 realtor, right?

15 A. Correct.

16 Q. She found paperwork that identified
17 Mr. Chanthakoummane, correct?

18 A. Yes, she had actually rented him an apartment.

19 Q. So you have the police report and you now have
20 Barbara Johnson's documentation connecting you back to
21 Kosoul Chanthakoummane?

22 A. Correct.

23 Q. So you still haven't actually got confirmation
24 that the CODIS hit relates to a particular named
25 individual, but do you now feel you have a pretty good

1 idea of who your suspect is?

2 A. Yes, ma'am, we're pretty confident.

3 Q. So on September 5th, are you at the suspect's
4 address?

5 A. Yes, ma'am.

6 Q. You're at Mr. Chanthakoummane's apartment?

7 A. Yes.

8 Q. Did you do surveillance on the apartment
9 before he was taken into custody?

10 A. Yes, for a great length of time.

11 Q. Did you observe his vehicle?

12 A. I did.

13 Q. His white Mustang?

14 A. Yes, ma'am.

15 Q. So on September 5th, did you finally receive
16 specific information about the CODIS hit that related to
17 Mr. Chanthakoummane?

18 A. Yes, ma'am. We were informed that it was a
19 match.

20 Q. And at that time, did you take
21 Mr. Chanthakoummane into custody?

22 A. Yes.

23 Q. What did you specifically do in that respect?

24 A. I actually placed the handcuffs on him in the
25 breezeway of his apartment.

1 MR. ALLEN: Your Honor, if I could, move
2 to strike the evidence from the Ranger regarding
3 Ms. Johnson, that was evidence that was brought in during
4 the sentencing phase of Mr. Chanthakoummane's trial, not
5 during the trial phase.

6 MS. SMITH: Your Honor, I've offered it
7 only for contextual purposes. I agree what she observed
8 at her home that night is reflected in the record, but
9 all of the information about Barbara Johnson is not
10 reflected in the record. I am only offering through Lt.
11 Davidson the facts related to the investigation that are
12 not otherwise reflected in the record of this case.

13 THE COURT: Based on that, is there a
14 different objection, or any other objection?

15 MR. ALLEN: Yes, Your Honor. We would
16 note the same objection. We believe that it's improper
17 to introduce that evidence into the record at this point,
18 and we would ask that you sustain the objection and
19 strike it from the record.

20 THE COURT: On what basis can the trial
21 court consider evidence that was not in the record of the
22 trial?

23 MS. SMITH: Your Honor, the claims they
24 have raised in the writ relate to actual innocence.
25 Also, the scientific evidence claims relate to did we

1 identify the right person. The information about how
2 Mr. Chanthakoummane was identified as a suspect and how
3 all of that information kind of coalesced is relevant to
4 whether or not we got the right person or not. It also
5 expounds upon the work that was done by the Rangers, the
6 Ranger in particular, as to Mr. Chanthakoummane. It's
7 extrinsic evidence, which is regularly offered in these
8 writ proceedings, and it is pertinent to particular
9 claims raised in the writ.

10 MR. ALLEN: Your Honor, if I may. The
11 Court of Criminal Appeals remanded this for a specific
12 purpose which is to test the junk science bringing in
13 this information regarding Ms. Johnson. Without bringing
14 in Ms. Johnson, I don't think it's proper, it doesn't
15 relate to the junk science that's being attacked here,
16 which is the hypnosis as well as the bite mark to the
17 lesser degree, so we don't think that that information is
18 proper to put into the record, one, for you to consider
19 and, two, it goes back up to the Court of Criminal
20 Appeals for them to consider, so I just don't think it's
21 proper.

22 MS. SMITH: Your Honor, there's actually
23 not just junk science claims, there's an actual innocence
24 claim here, and whether or not we got the right person is
25 at the core of the claims that are raised, and all of the

1 information that lead to Mr. Chanthakoummane's
2 apprehension is relevant to that point.

3 THE COURT: I'll overrule the objection.
4 Please continue.

5 MS. SMITH: Actually, I have nothing
6 further. I pass the witness.

7 THE COURT: Cross.

8 MR. ALLEN: Thank you.

9 **CROSS EXAMINATION**

10 **BY MR. ALLEN:**

11 Q. Ranger, were you able to visit the crime
12 scene?

13 A. Yes, sir.

14 Q. There was a lot of blood?

15 A. Yes, sir.

16 Q. I think you had testified before that
17 Ms. Walker had been stabbed repeatedly?

18 A. Yes, sir.

19 Q. Hit with a plant stand?

20 A. Most likely.

21 Q. Did you ever send that to the crime lab to be
22 tested?

23 A. I did not.

24 Q. Do you know if anybody else sent it to the
25 crime lab?

1 A. Send exactly what to the crime lab?

2 Q. The plant stand.

3 A. I'm not sure.

4 Q. Now, let me see if I have the series of
5 events. Was the stabbing before or after Ms. Walker was
6 knocked out by the plant stand?

7 A. Not something I have knowledge of.

8 Q. Okay. Fair enough. And you would agree that
9 there was a good amount of blood in the dining room area
10 and the kitchen?

11 A. Yes, sir.

12 Q. And you collected this as part of the crime
13 scene?

14 A. It was collected, not by me personally.

15 Q. Did you direct this? I'm trying to figure out
16 who did what.

17 A. I didn't direct it, I was involved in the
18 investigation. The McKinney police has their own crime
19 scene unit that handled the actual collection of that
20 evidence.

21 Q. But beyond the area where the murder occurred,
22 everything seemed to be in place?

23 A. Yes, sir.

24 Q. Would you categorize it as sort of immaculate?

25 A. The upstairs was.

1 Q. And did you ever process Mr. Chanthakoummane's
2 car?

3 A. No, sir.

4 Q. Did you direct anyone to do that?

5 A. No, sir.

6 Q. Did you ever go outside and see if you could
7 find a blood trail?

8 A. Yes.

9 Q. Did you find one?

10 A. No, sir.

11 Q. Did you look around the area where the car --
12 the Mustang was supposedly parked for blood?

13 A. Yes.

14 Q. Did you find any?

15 A. No.

16 Q. Did you ever find a murder weapon?

17 A. No, sir.

18 Q. And where did you look for the murder weapon?

19 A. We looked for the murder weapon all through
20 the neighborhood, looked in trash cans, under cars,
21 behind bushes, rain gutters, every place we could think
22 of that the murder weapon could have been thrown or
23 hidden.

24 Q. And in that search, you didn't find a blood
25 trail?

1 A. Correct.

2 Q. And directly outside this model home, did you
3 find any blood?

4 A. Outside, no.

5 Q. You said that you had talked with a person
6 named Chen Lee on the phone?

7 A. Yes.

8 Q. You said that they didn't sound black?

9 A. Correct.

10 Q. At that point you dropped it?

11 A. We've closed the lead.

12 Q. Has anybody ever pretended to be somebody they
13 weren't when you were talking to them?

14 A. I'm not sure.

15 Q. Has anybody ever lied to you?

16 A. Yes.

17 Q. Anybody ever misled you?

18 A. Yes.

19 Q. Did you ever run down any leads related to the
20 ex-husband?

21 A. Yes.

22 Q. And were there any incidents of violence
23 between the two?

24 A. No.

25 Q. Did you ever find a Sprite bottle at the crime

1 scene?

2 A. Pardon me?

3 Q. Sprite bottle?

4 A. Spray bottle?

5 Q. Yeah.

6 A. No.

7 Q. Or pop bottle, soda bottle, whatever you call

8 them?

9 A. I didn't, no.

10 Q. Did you ever find any unknown DNA at the crime

11 scene?

12 A. I did not.

13 Q. Were you aware of any of those things, either

14 in your meetings --

15 A. I don't recall. I don't recall that.

16 Q. Did -- when the -- were you part of the arrest

17 of Mr. Chanthakoummane?

18 A. Yes, sir.

19 Q. Did you ever find a Rolex watch?

20 A. No.

21 Q. Ever find a ring?

22 A. No, sir.

23 Q. Ever do a photo lineup?

24 A. On this case?

25 Q. Yes.

1 A. I don't think so.

2 Q. Ever talk to any coworkers of
3 Mr. Chanthakoummane's?

4 A. I didn't.

5 Q. Did anybody from the investigative team ever
6 do that?

7 A. Possibly.

8 Q. Possibly.

9 MR. ALLEN: Pass the witness, Your Honor.

10 **REDIRECT EXAMINATION**

11 BY MS. SMITH:

12 Q. Ranger Davidson, do you recall where
13 Mr. Chanthakoummane's blood was found at the scene?

14 A. Yes.

15 Q. It was found on the deadbolt to the front
16 door?

17 A. Yes.

18 Q. It was found on a pull cord to the blinds in a
19 window by the front door?

20 A. Yes.

21 Q. On the floor?

22 A. Yes.

23 Q. In the kitchen?

24 A. Yes.

25 Q. And under the victim's nails?

1 A. Yes.

2 MS. SMITH: Pass the witness.

3 **RECROSS-EXAMINATION**

4 BY MR. ALLEN:

5 Q. How do you remember that?

6 A. That was big news, not something I'm going to
7 forget, and I've also read it in reports since.

8 Q. And you said that there was -- you found DNA
9 on the floor?

10 A. Yes.

11 Q. But not anywhere else, either inside the model
12 home or outside the model home?

13 A. Just the places that we spoke of a second ago.

14 MR. ALLEN: Pass the witness.

15 MS. SMITH: Nothing further.

16 THE COURT: Is the witness released?

17 MS. SMITH: State releases him.

18 THE COURT: Lieutenant, you are released.

19 You are free to stay or go, whatever you would like to
20 do.

21 THE WITNESS: Yes, sir.

22 MS. SMITH: Your Honor, that's the last
23 witness the State has. The rest of what I have is mostly
24 housekeeping. I'm happy to address that now, if you
25 want?

1 THE COURT: Yes.

2 MS. SMITH: At the last hearing in July,
3 the State had offered for demonstrative purposes only,
4 State's Exhibit 13, which was a timeline I had prepared
5 in preparation for the hearing. Since then I've learned
6 there's additional information plus some incorrect
7 information in that particular timeline. I'd like to
8 withdraw that demonstrative exhibit.

9 THE COURT: Any objection?

10 MR. ALLEN: To her withdrawing it? No.

11 THE COURT: All right. It's withdrawn.

12 MS. SMITH: May I retrieve it?

13 THE COURT: Yes.

14 MS. SMITH: Also, State would ask that the
15 court take judicial notice of the Reporter's Record from
16 the trial and the Clerk's record from the trial.

17 THE COURT: So noticed.

18 MS. SMITH: I don't remember if we
19 addressed this in July, but when it comes to Nelson
20 Villavicencio's hypnosis session, the video recording has
21 a couple of gaps in it where you can see but you can't
22 hear what's being said. It's reflected in the
23 transcript. I wanted to make sure though the Court is
24 aware, if you're starting to listen to it and you run
25 across a gap, it's not a bad recording, that's the

1 original, that's how it appears in the original. And
2 that's all I have, Your Honor.

3 THE COURT: All right. Both sides
4 resting?

5 MR. ALLEN: Yes, Your Honor.

6 THE COURT: All right. Would each side
7 like an opportunity to prepare proposed findings?

8 MS. SMITH: Yes, Your Honor.

9 MR. ALLEN: Your Honor, if we could have
10 60 days after we get the transcript to do that, that
11 would be appreciated, or as much time --

12 MS. SMITH: It's actually controlled by
13 statute. I believe we have 30 days after we receive the
14 transcript to generate findings.

15 MR. ALLEN: That's fine.

16 THE COURT: All right. 30 days after
17 receipt. All right. Thank you. We're adjourned.

18 MS. SMITH: Thank you, Judge.

19 THE COURT: Can I get an announcement on
20 the record of all the attorneys who made an appearance?

21 MR. D'ANGELO: Carlo D'Angelo on behalf of
22 the Petitioner.

23 MR. GARDNER: Gregory Gardner also on
24 behalf of the Applicant.

25 MR. ALLEN: Eric Allen on behalf of the

1 Applicant, Mr. Chanthakoummane.

2 MR. ROLATER: John Rolater for the State
3 of Texas.

4 MS. SMITH: And Lisa Smith for the State
5 of Texas.

6 THE COURT: All right. Thank you.

7 (End of hearing)

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1 STATE OF TEXAS

2 COUNTY OF COLLIN

3 I, Karla Kimbrell, Official Court Reporter in and
4 for the 380th District Court of Collin, State of Texas,
5 do hereby certify that the above and foregoing contains
6 a true and correct transcription of all portions of
7 evidence and other proceedings requested in writing by
8 counsel for the parties to be included in this volume of
9 the Reporter's Record, in the above-styled and numbered
10 cause, all of which occurred in open court or in
11 chambers and were reported by me.

12 I further certify that this Reporter's Record of the
13 proceedings truly and correctly reflects the exhibits,
14 if any, offered by the respective parties.

15 I further certify that the total cost for the
16 preparation of this Reporter's Record is reflected in
17 the first volume and will be paid by Collin County.

18 WITNESS MY OFFICIAL HAND this the 14th day of
19 December, 2018.

21 /s/Karla Kimbrell

22 Karla Kimbrell, Texas CSR 3790
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Expiration: 12/31/2019

KARLA KIMBRELL, COURT REPORTER, 380TH DISTRICT COURT