

STATE OF NEW HAMPSHIRE

ROCKINGHAM, S.S.

SUPERIOR COURT

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STATE OF NEW HAMPSHIRE
v.
JOHN A. BROOKS
* * * * *

07-S-1028-1031

DEPOSITION OF FREDERICK LULKA

Deposition taken at the Office of the Attorney
General, 33 Capitol Street, Concord, New
Hampshire, on Tuesday, June 17, 2008,
commencing at 9:37 a.m.

Court Reporter:

Michele R. York, LCR, RPR
New Hampshire LCR No. 126 (RSA 310-A:169)

1 Q. Can you tell me, sir, what -- what is
2 your general practice for preparing a report when you
3 attend a witness interview?

4 A. Basically, could either be taking notes
5 and generating a report, or taking notes and
6 recording an interview and then doing a transcript,
7 and then attending it and putting it into a report.

8 Q. Okay. In this case -- in this case,
9 fair to say that no recording was made of the
10 interview?

11 A. Yes.

12 Q. And why was that, sir?

13 A. It wasn't up to me.

14 Q. Who made the decision not to record the
15 interview, to your knowledge?

16 A. Attorney Huntress.

17 Q. And was there a discussion about that
18 in your presence?

19 A. Yes.

20 Q. And could you tell us what the
21 discussion was?

22 A. Basically that it was going to be
23 handwritten notes to record the interview.

1 Q. Was there any discussion about the pros
2 and cons?

3 A. No.

4 Q. Generally speaking, does the New
5 Hampshire State Police have a policy about when it
6 records interviews with witnesses?

7 A. Not that I know of a policy. It's
8 basically a judgment call.

9 Q. And have you received any training
10 about when it's a good idea to exercise your judgment
11 in favor of taping or recording rather than not
12 taping or recording?

13 A. Not that I can recall. I suppose there
14 may have been some in the interview interrogation
15 school, but --

16 Q. Generally speaking, in your -- in your
17 experience, do most of the interviews that get done
18 in a homicide investigation in New Hampshire get
19 recorded?

20 A. My understanding is if our agency's
1 running an interview or a meeting, most of them are,
22 but, again, my function here was to take notes at
23 this meeting so --

1 Q. But --

2 A. -- I didn't make that call.

3 Q. Sure. I understand that.

4 It's your understanding that when the
5 New Hampshire State Police is conducting an
6 investigation, most of the interviews are recorded?

7 A. Yes.

8 Q. And do you understand the reason for
9 that?

10 A. Yes.

11 Q. And what is that?

12 A. It's basically to -- for one, relieve
13 the interviewer of taking notes and having to pay
14 attention to the notes and letting the discussion
15 flow. And then also just having recorded as
16 accurately as best what's being said.

17 Q. And do you have a personal preference
18 as to whether interviews are recorded or not?

19 A. Personal preference, I'd rather record
20 it.

21 Q. And why that, sir?

22 A. Well, it's -- for me, I can pay
23 attention to the subject I'm interviewing as opposed

1 to taking notes.

2 Q. And do you find that -- that when an
3 interview is recorded, that that's a better way to
4 obtain an accurate record of what the person being
5 interviewed actually said?

6 A. Yes, for me it is.

7 Q. So what did you do to generate the
8 report that's been marked as Exhibit 16?

9 A. Basically I took notes with the idea of
10 things that were supposed to be any possibly -- any
11 new information and just took -- basically took notes
12 throughout the whole discussion or witness prep
13 session, as it were, and just took everything that I
14 thought would be pertinent, and then set down and put
15 it in a report form.

16 Q. Did you use any other material to
17 generate your report?

18 A. No.

19 Q. Did you prepare a draft of your report
20 before you -- let me strike that question.

21 Did you submit a draft of your report
22 to anyone before you submitted a final report?

23 A. No.

1 Q. The report at the bottom, it's got --
 2 it's dated, and this is Exhibit 16, it's dated May
 3 24th, 2008.
 4 A. Yes.
 5 Q. And I've also noticed that the date of
 6 the report at the top is 6/27/05.
 7 A. That's an incident date.
 8 Q. Okay. So that's the date of report of
 9 crime?
 10 A. As it should be, yes.
 11 Q. Okay. And the signature that -- where
 12 you're -- that's above your name, do you guys have
 13 electronic signature capability?
 14 A. Yes.
 15 Q. And how does that work?
 16 A. You sign on a pad, much like a credit
 17 card, then it gets scanned in through IT, then they
 18 send it to you, then you have an icon on the
 19 computer. Click and drag, or whatever the process
 20 is.
 21 Q. And when do you put that -- when do you
 22 affix the signature on the report?
 23 A. Just before you print it and hand it --

1 before you print it and hand it in.
 2 Q. Okay. And who do you hand it in to?
 3 A. The lead.
 4 Q. Okay. And that -- so the -- and so the
 5 initials in the bottom left-hand corner are Sergeant
 6 White's?
 7 A. Yes.
 8 Q. And is that the purpose of that box in
 9 the left hand corner?
 10 A. Yes.
 11 Q. Who is Trooper Larcome?
 12 A. Larcome, I think it is. He's a Troop A
 13 patrol trooper.
 14 Q. And what was the purpose of him being
 15 at this interview?
 16 A. Transport and security of Michael
 17 Benton.
 18 Q. Okay. And why was security of Mr.
 19 Benton required?
 20 A. He's incarcerated.
 21 Q. In addition to you, who else at the
 22 meeting was taking notes?
 23 A. I remember Attorney Huntress taking

1 notes. I don't specifically remember who else.
 2 Q. Was she taking notes on a computer, or
 3 on a pad?
 4 A. I believe a pad.
 5 Q. Did Attorney Samdperil take notes?
 6 A. I don't remember.
 7 Q. Let me direct your attention to page
 8 29358 --
 9 A. Okay.
 10 Q. -- of your report.
 11 A. Yes.
 12 Q. And I think that I probably marked the
 13 highlighted version.
 14 MR. MURPHY: Off the record.
 15 (Discussion off the record.)
 16 (Exhibit Lulka 15 was remarked.)
 17 BY MR. MURPHY:
 18 Q. And before I ask that, do you know how
 19 you were drafted to attend this meeting?
 20 A. How I was?
 21 Q. Yes.
 22 A. No.
 23 Q. Okay. Is it fair to say that you

1 hadn't been attending witness interviews, for the
 2 most part, in this case before May 22nd, 2008?
 3 A. Yes.
 4 Q. Was someone on vacation, or was there
 5 someone -- was it a manpower issue, do you know?
 6 A. I don't know about vacation. I don't
 7 know. I was sent to do major case prints and then
 8 sit in and do notes on anything new that came up.
 9 Q. Did you review Mr. Benton's prior
 10 statements before the meeting?
 11 A. No.
 12 Q. So how did you know whether something
 13 was new?
 14 A. I didn't know really.
 15 Q. Okay.
 16 A. I mean, I was trying to go by what I
 17 generally knew from the case from discussions with
 18 other troopers, but --
 19 Q. The -- there's a few times in the left
 20 margin of the -- of your notes, the ones that have
 21 been marked exhibit -- what are the notes?
 22 A. 15.
 23 Q. 15. Where it says "new".

1 A. Umm-hmm.
 2 Q. And was it again the way you've just
 3 described, that was something that sort of you had
 4 not heard before? Is that why you would write "new"
 5 there?
 6 A. This was Attorney Huntress indicating
 7 to me to capture some notes on that.
 8 Q. Yeah.
 9 A. Sitting right next to me.
 10 Q. Okay.
 11 A. I mean, I hadn't really heard any --
 12 much of this at all, so --
 13 Q. Okay. So back, I'm sorry, to 29358 --
 14 A. Okay.
 15 Q. -- and 29359-I.
 16 A. (Deponent complies.)
 17 Q. There's a discussion in the middle of
 18 the last paragraph on 29358.
 19 A. Okay.
 20 Q. And your report reads: Vrooman pushes
 21 Reid.
 22 A. Yep.
 23 Q. Reid falls into the closet area.

1 A. Yeah.
 2 Q. Benton is right handed.
 3 A. Yeah.
 4 Q. Benton hits Reid with a hammer two
 5 times, maybe three. Then two to three times in the
 6 forehead.
 7 A. Umm-hmm.
 8 Q. And your notes, again at 29359 --
 9 A. Okay. I.
 10 Q. I. Sorry.
 11 A. Okay. Okay.
 12 Q. And sort of the -- about a third of the
 13 way down --
 14 A. Yep.
 15 Q. -- state: Joe Vrooman pushes Jack and
 16 Jack falls. Mike is right-handed. He hits Jack with
 17 a hammer. Mike hit him two times, maybe three times.
 18 Then two to three times in the forehead.
 19 A. Yeah.
 20 Q. Did I read those notes correctly?
 1 A. I believe so.
 22 Q. Were those Mr. Benton's words?
 23 A. Yes.

1 Q. And the -- if you go back to your
 2 report at 29358 --
 3 A. Yeah.
 4 Q. -- your report continues: Benton walks
 5 out and drops the hammer.
 6 A. Umm-hmm.
 7 Q. Vrooman is trying to zip tie Reid's
 8 legs.
 9 A. Yes.
 10 Q. Knight was over by the garage/barn
 11 door.
 12 A. Yeah.
 13 Q. Jay Brooks was by the stairs.
 14 A. Yes.
 15 Q. Knight speaks up and says: Reid is not
 16 dead yet. Benton comes back and picks up the hammer
 17 with his left hand, and he hits Reid with the hammer
 18 in his left hand.
 19 Were those Mr. Benton's words as well?
 20 A. Yes.
 21 Q. Was it your -- so if we go back and
 22 look at the passage that I first read --
 23 A. Yes.

1 Q. -- where your report states: And Mr.
 2 Benton said Benton hits Reid with the hammer two
 3 times, maybe three, then two to three times in the
 4 forehead.
 5 So that's a total of between four to six
 6 blows?
 7 A. The way I understand it.
 8 Q. And did Mr. Benton say that those four
 9 to six blows were struck before the event that
 10 follows in your report, namely Knight speaking up and
 11 saying Reid is not dead yet?
 12 A. Yes, that's my understanding.
 13 Q. And when Mr. Benton said that Mr. Reid
 14 was -- I'm sorry, when Mr. Benton said that he hit
 15 Reid with the hammer two times, maybe three, then two
 16 to three times in the forehead, did he say where the
 17 first two or three times -- where the blow was
 18 struck?
 19 A. No.
 20 Q. And when he went on to say that he came
 21 back in after Mr. Knight saying that Reid is not dead
 22 yet, he came back in and he hits Reid with the hammer
 23 in his left hand, did he say where the blow was