

1 MR. HOOPES: Well, from the defense perspective, Your
2 Honor.

3 THE COURT: Okay.

4 MR. HOOPES: I had one issue which is this, the State
5 on September the 12th of 2008 approximately -- today is the 29th,
6 so something like two weeks ago, caused Mr. Vrooman to undergo a
7 polygraph exam that the Manchester officer led nicely at the
8 Manchester Police Department and it's on video.

9 Now there are two sections to the polygraph, there's a
10 -- at least. There's a -- or to the whole interview section.
11 One is sort of a pre-interview and section two is the actual
12 exam. In the pre-interview there are questions and answers.
13 It's on video. We have a transcript; a transcript has been
14 provided to the State because they gave us the DVD.

15 There are two pieces of that that I would like to admit
16 stripped of the fact that it was a polygraph exam. In other
17 words, it's designated as an interview of September 12th of 2008.

18 In the first part, critically, he's asked about this
19 issue of the rocks. And he gives a demo on the video but the
20 second thing he says, he's asked this question, "So, based on
21 what you saw and what you did, did you think that the rocks had
22 any impact -- that they could have caused the injury?" And his
23 answer is, "No."

1 Now, that's material in at least two respects. The
2 first is that, you know, his opinion as to the strength and the
3 manner of which he did this particular, given what the State has
4 said in representative questions to the ME, I think has some
5 bearing.

6 And secondly, the ME testified, Dr. Evans, that he
7 received material from the State. It was a bunch of statements;
8 it was ten or more days before his testimony which was on
9 September the 19th. I have a letter with all the materials that
10 they provided him. And so clearly he was not either provided
11 this nor was he provided with the information that this man
12 discussed on September 12th, nor was he provided with this man's
13 opinion which all which I assume would have had material bearing
14 on his opinion.

15 The second piece that's in there is there's a sort of,
16 I'm not sure quite how to describe it, but there's a statement by
17 the Manchester detective, a Detective Willard, I believe.
18 There's a recitation of events and they get to the part where
19 Vrooman says that he's got Mr. Reid with his head in his lap, so
20 to speak, and he's describing the saran wrap and then the
21 plastic. And just about that point, the detective says to him
22 words -- and pardon me for using the words -- but words to the
23 effect of sounds like everything went to shit in a hurry. And

1 Mr. Vrooman says, well, shit in a handbasket in a hurry would be,
2 essentially, his opinion, which is contrary to -- I would, but
3 the defense which is contrary to this thing about there was a
4 plan, there was a plan, there was a plan. And it's more
5 consistent with an assumption that they were there to confront
6 and everything went to, as Mr. Vrooman's own words, would be shit
7 in a handbasket in a hurry.

8 And so clearly the polygraph itself is inadmissible,
9 but respectfully, I think I'm happy to provide you with a
10 transcript. These two statements occurred during the first
11 section, so the preliminary interview. And the whole thing can
12 be done, clearly, without any reference to polygraph.

13 Now, I'm very mindful that with this witness, anything
14 can be said. So I want to go through it with great care. But I
15 would ask your authority and permission to --

16 THE COURT: Okay. All right. Let's deal with that
17 first. What does the State say about that?

18 MS. RUNDLES: Well, Your Honor, the polygraph interview
19 was certainly one of the issues that I wanted to raise with the
20 Court. And let me first explain that the reason that the State
21 decided to do this with this witness, and at such a late date,
22 was because of the fact that we had litigated the exclusion of
23 reference to polygraph with the Court and although the Court had

1 not made a final ruling on it, the Court had indicated from the
2 bench that you were inclined to allow the defense to ask
3 witnesses whether they had offered to take a polygraph and
4 whether they had been taken up on that offer by the State or not.
5 And that desire on the part of the defense, we felt, was really
6 directed towards this witness who had offered to take a polygraph
7 on the chest stomping issue and had not been taken up on it prior
8 to that by the State. And we felt that the risk of him being
9 asked those questions was unacceptable so therefore we decided to
10 actually schedule the polygraph, which Mr. Vrooman passed.

11 I don't know what counsel means by he was led nicely
12 through it by the Manchester detective, but he did pass the
13 polygraph.

14 Now, on these two issues, if these are the only two
15 that the defense wants to raise, then I don't think I am going to
16 have any other issue I need to raise with the Court because I was
17 concerned about, you know, how are issues going to be raised with
18 regard to this polygraph, how is it going to be referred to, you
19 know, how are we going to do excerpts, if excerpts are going to
20 be played on the screen, et cetera.

21 But here's what I think about the two points that have
22 been raised by the defense. The witness said, as to the
23 statement as to whether he believe the rocks caused any injuries,

1 he said the same thing on the stand here in the Court, as I
2 recall it. He said he didn't think that that caused the injuries.
3 If I'm remembering his direct incorrectly, then I must be
4 remembering something he said before --

5 THE COURT: I'm not -- I do remember him sort of
6 describing how the rocks were placed and he didn't indicated that
7 he -- I think he was actually standing up and sort of going like
8 this. He didn't indicate that the rocks were sort of thrown with
9 any particular force. So...

10 MS. RUNDLES: All right. So I am remembering it from a
11 previous interview. But my point is, Your Honor, that I believe
12 that's what he will say. I mean, I don't believe there's any
13 need to go into the fact that he said it September the 12th
14 during this interview with the Manchester detective. Because if
15 he's asked --

16 THE COURT: Well, what's the harm of having him do
17 that? I mean, has he said that that's another occasion when he
18 said that? I mean --

19 MS. RUNDLES: Okay. However, if they want to show that
20 excerpt, I mean, I don't think there's any basis to show that
21 excerpt of the interview, first of all. Unless, the witness
22 should testify contrary. If he should testify contrary, then I
23 think that it would be fine to show that excerpt of the September

1 12th interview, but I think that he should be asked the question
2 first. And if he said consistent with that then he can also be
3 asked well, and you also said that during an interview on
4 September 12th, right? And that's all we need to do.

5 Because I think once you start -- if they're going to
6 start showing excerpts, then I need to see what they're showing,
7 I need to review it and the transcript, because I don't know what
8 they're cutting out. Because throughout the interview there's --
9 I mean, it was a polygraph, a pre-polygraph interview. So it's
10 not your standard interview and so I would need to review what's
11 been cut out to remove the references to the polygraph.

12 THE COURT: Okay.

13 MS. RUNDLES: And my point on the other -- the second
14 point they want to raise is exactly the same. For the witness to
15 say -- I believe that's what the witness will say if he's asked
16 that. Did everything kind of go to shit or go to hell? Yes.
17 Because there was more blood than anybody expected there to be
18 and it was a panic situation.

19 So once again, it's the same situation. I think that
20 that's what he will say if he's asked that question and there
21 will be no need to show it up on the screen. But if they're
22 going to show it up on the screen then I'd like a page reference
23 and I'd like to --

1 THE COURT: Well, what do you say about that? I mean,
2 you know, if you ask him, didn't you say on, you know, September
3 -- in an interview on September 12th, weren't you asked these
4 questions and didn't you give these answers, and he says, yes, I
5 did. What do you need to play anything for? He's admitted that.
6 There's no -- there's nothing to impeach him on.

7 MR. HOOPES: Well, that's one view but I would have two
8 things, if I can. One is the power of the statement in the
9 following context is important. There's less an impeachment
10 issue of him here than impeachment of the State's manner of
11 handling things with the medical examiner. And the suggestion in
12 front of the jury, either that or the leaving that piece of
13 information out, is any foundation or any discussion when Dr.
14 Evans is on the stand. So that the issue is in part this
15 witness, but also in part this witness' regarding Dr. Evans and
16 for the jury to see him actually say that on September 12th, has,
17 I think, extra power. And I have no problem with Ms. Rundles
18 looking at the section and the precise quotes.

19 THE COURT: But what -- I guess the thing, I mean, he -
20 - the jury -- under my scenario the jury is going to see him say
21 it right here, right in front of them. I said that on September
22 12th. So, I mean, I guess I don't, you know, what value does
23 that have then once he said, you've got him. He's admitted that

1 he said it. You can make whatever argument you need to make to
2 the jury based upon that and he will have said that right in
3 front of the jury.

4 MR. HOOPES: And I can't add anything to what I just
5 said.

6 THE COURT: Okay. All right. So and as far as the --
7 I mean, you can certainly -- I frankly don't recall right now,
8 maybe somebody will refresh my memory but, I mean if I understand
9 the scenario, when the doctor testified, were you aware that he
10 had taken the polygraph at the time the doctor testified?

11 MR. HOOPES: Well, it's time for candor to the Court
12 which is, we had gotten the polygraph disc and we had gotten the
13 report and the report said he had passed. And in the midst of
14 everything else, that's what we heard and thought was going to
15 happen. And I personally had not reviewed the disc at that point
16 --

17 THE COURT: Well --

18 MR. HOOPES: -- to see all its content.

19 THE COURT: All right. Well, I guess what I would say
20 on that is, I think you're pointing out to the extent that you
21 want to make the point that the State didn't show the doctor this
22 -- what Vrooman said on September 12th, I suppose, if, you know,
23 and I accept what you said, this comes pretty late. I don't

1 fault you for not being aware. If you want to call the doctor
2 back and ask him that, I'd probably let you do that.

3 To, you know -- to make that point that the doctor
4 wasn't -- that he was given all this information by the State,
5 the reports and whatever. He wasn't given this report of
6 September 12th.

7 MR. HOOPES: But I think on the foundation, I don't
8 think that we need, respectfully, to call him back to make that
9 point. He's testified that two things happened with regard to
10 his opinion other than everything else.

11 Number one, he got a letter with material and he
12 thought it was ten or more days. We have a copy of the letter so
13 that this interview of September 12th is not in there.

14 And secondly, two days before he testified, he talked
15 to the State and the State indicated that they wanted to ask him
16 this question about the rocks. So that the predicate for being
17 able to argue that to the jury has already come out of his mouth.

18 THE COURT: Okay. All right. Well, now I'm going to
19 stick to my ruling. If he -- if the witness -- I mean,
20 obviously, if the witness, if he hedges at all, I would certainly
21 permit you to present the -- to play the tape. I mean, I think
22 it has to be, you know, you need to talk with the State and make
23 sure it's redacted so there's not some reference to the

1 polygraph. But if he hedges at all, I certainly would allow you
2 to impeach him with what he said. But if he admits, you know, if
3 he says, yes, it's all true, I did say that. Here's what the
4 police officer said to me and here's my answer and it's
5 consistent with what you said. Then I don't see how you get some
6 extrinsic evidence in because he's already admitted it.

7 MS. RUNDLES: And the last thing I would say about
8 that, Your Honor, is that I think it's a little bit far fetched
9 to suggest that it would have made a difference to Dr. Evans to
10 learn that the witness who put the rocks on the victim didn't
11 think it caused any damage. I mean, you know, he's the medical
12 examiner --

13 THE COURT: Well, suppose that Vrooman had said
14 something different. I mean, I suppose that would be something
15 that he would take into -- I mean, you know, if Vrooman had said,
16 you know, I picked up a rock and I was really angry at this
17 whole, I don't know, the way this turned out and so I just, you
18 know, really slammed the rocks down. I suppose that might have a
19 --

20 MR. HOOPES: Well, if I can -- you know, I guess as I'm
21 recalling events, we were able to watch snippets just before the
22 crux began of Dr. Evans and so Mr. Murphy, as I'm recalling this
23 now, Mr. Murphy asked him, would you have liked to have known the

1 force, what things were on him, in other words the branches,
2 those kinds of things before you -- yes, I would, those all would
3 effect my opinion. So all of those factors would have made a
4 difference and all of those are discussed in the video.

5 In other words, if the -- all of that is discussed in
6 the video. He was not made aware of factors that he would have
7 liked to have known that might impact his opinion as to whether
8 or not the rocks might have caused the chest injury.

9 THE COURT: And I -- well, I guess the thing I'm not
10 clear on is how -- let's assume you got to play the video in
11 front of the jury.

12 MR. HOOPES: I'm sorry. I'm not going there anymore as
13 to the video. I hear what you're saying.

14 THE COURT: I guess the thing I'm not clear on is this,
15 just so I make it very clear, if you think that you have -- that
16 there is some added value of exposing what Mr. Vrooman said in
17 this interview by the police and polygraph -- that there's some
18 added value that you have not already been able to make with the
19 doctor so that you want to bring the doctor back and expose that
20 to him that, you know, I'm not -- I guess all I'm saying is, I'm
21 not -- maybe you do have enough that you can argue that now
22 without anything further.

23 But if you think that you want to bring the doctor back

1 and expose that Vrooman said in this interview or that Vrooman
2 says now, if you ask him and he says it, that Vrooman said now
3 that, you know, he didn't think that the way he placed the rocks
4 on the body could have caused any injury. And, you know, you
5 wanted to make the point through the doctor that the State didn't
6 tell him that, didn't give him the information from what Vrooman
7 said at the time they talked to him, I would permit you to bring
8 the doctor back to make that point. But I don't think it changes
9 in terms of Vrooman. I don't think it changes anything.

10 MR. HOOPES: I understand.

11 MS. RUNDLES: Your Honor, the references to the
12 testimony of Dr. Evans bring up another issue that I wanted to
13 raise. It's our understanding that the defense has requested the
14 CDs for the testimony of Dr. Evans and also for the direct given
15 by Mr. Vrooman in phase -- last week. And I don't know whether
16 they intend to make any use of those in the cross-examination,
17 but we would object to that.

18 I think it's inappropriate for trial testimony, you
19 know, given at this trial to be put up on the screen or played
20 for a witness and to have a witness confronted with that, if
21 that's the intention.

22 MR. HOOPES: I would suggest, respectfully, that we
23 should be permitted if we had it, but it was not able to be done

1 over the weekend in sufficient time to use it. So we cannot use
2 it now. We may get to another point where I'd like to address
3 that issue with the Court.

4 THE COURT: Well, okay. Are you talking about -- in
5 other words, you're talking about not asking that an official
6 transcript be prepared but that you get, in other words, I guess
7 you can buy -- either side can buy the CD for, what is it,
8 twenty-five bucks or something.

9 MR. HOOPES: And send it out and have a court reporter
10 turn it into a transcript, not this court reporter, but turn it
11 into a transcript and it was not able to be done in time
12 sufficient to use it with this witness.

13 THE COURT: Okay. All right. So what's the State's
14 position on that?

15 MS. RUNDLES: Well, the State's position is that it
16 would be improper to do that because it's not an official
17 transcript of the proceeding. And, you know, certainly a witness
18 can be confronted with what he said on direct, there's no problem
19 with that, but not through --

20 THE COURT: I -- in other words, here's what I say on
21 this, if either side had wanted to make arrangements to get some
22 kind of daily transcript in this case, and it would have cost --
23 it would have cost, probably, both sides a fortune but you could

1 have done that. And I -- presumably there we have a new contract
2 with this outfit in New York and New Jersey that says they can do
3 this kind of stuff. They will charge you an arm and a leg to do
4 it, but they can do it. If either side wanted to do that, I
5 would have permitted it. But that needed to be worked out at the
6 beginning of the trial. I'm not going to have a situation now
7 with an unofficial transcript where either side is able to use
8 the unofficial transcript. So, the answer to that is no.
9 Neither side will be permitted to do that.

10 MS. RUNDLES: Thank you, Your Honor. I also received a
11 new exhibit today and I'm not sure at all what it -- what the
12 meaning of it might be, but I move to exclude it for late
13 disclosure. It appears to be some sort of gift certificate -- a
14 couple of gift certificates to a dining establishment called
15 Charlie Palmer Steak and appears to have come in an envelope that
16 says to the Brooks family and then there's receipt for a
17 Bertolini's dinner that took -- or some meal that took place on
18 5/22/05 and a copy of a Bertolini's gift card. And I've been
19 told that the intention is to use this exhibit with this witness,
20 but I would move to exclude it for late disclosure.

21 THE COURT: Well, what is --

22 MR. HOOPES: Well, first of all, throughout the trial
23 we have gotten material as they've gotten it -- with the letters,