

1 A Yes, sir, it was.

2 Q Okay. Was that like the other carpet that was on the
3 pad?

4 A Yes, sir. The carpet that we moved over there was
5 placed on the same padding as the carpet that we took out.
6 We did not disturb the pad when we removed the original
7 piece of carpet.

8 Q And did we try to get as close as we could --

9 MR. CORGAN: Judge, it's beyond the scope
10 of recross and it's leading.

11 THE COURT: Sustained.

12 MR. CARLSON: That's all we have, Your
13 Honor.

14 THE COURT: Thank you, Mr. Rouw. Call your
15 next witness.

16 -----

17 JERRY HORTON

18 having been first duly sworn to tell the truth, the whole
19 truth, and nothing but the truth, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. BUCHANAN:

22 Q Could you state your name please?

23 A Jerry Horton.

24 Q Mr. Horton, where do you live?

25 A Broken Arrow, Oklahoma.

1 Q And what is your occupation or profession at this
2 time?

3 A I'm working for a construction company.

4 Q All right. And how long have you done that?

5 A About approximately six years.

6 Q Prior to that what was your occupation or profession?

7 A I retired from the Oklahoma Highway Patrol.

8 Q And what was your rank at the time of your
9 retirement?

10 A Captain.

11 Q And can you tell me how long you were with the
12 Highway Patrol?

13 A I was with the Highway Patrol 18 years.

14 Q Okay. And what did you start out as in the Highway
15 Patrol?

16 A Started out as patrol trooper.

17 Q How did you make it to captain?

18 A Oh, you take tests at periodic times after four years
19 and you progress in rank from trooper to supervisor to
20 lieutenant to captain.

21 Q Okay. All right. And that was the method that you
22 -- that's how you got there?

23 A Yes, sir.

24 Q Okay. Prior to your employment with the Oklahoma
25 Highway Patrol what did you do?

1 A Well, I -- when I graduated out of high school I went
2 into the Marine Corps. Got out of the Marine Corps and
3 stayed in California five years and worked for a
4 contractor until I became 25 and then came back to
5 Oklahoma and went on the patrol.

6 Q Okay. And what was your rank when you were
7 discharged from the Marine Corps, was that right?

8 A Yes. Sergeant.

9 Q Okay. Now, Mr. Horton, how did you first become
10 acquainted with or involved in this case?

11 A Mr. Barry Rouw, who I've known for a number of years,
12 asked me if I would come up and help him out and do a
13 couple of things in this case.

14 Q All right. And do you recall approximately when you
15 first then came up and worked with Mr. Rouw?

16 A Yes. It was on June 11th of '91.

17 Q Okay. And what was it that you were asked to do in
18 regard to this case?

19 A I was asked to drive between -- from point to point
20 and establish the time that it took if I was driving in a
21 normal speed with normal traffic flow and establish the
22 time that it took to drive from that one point to another.

23 Q When you said you drove from point to point, what
24 determined the points you drive from and to?

25 A From the information submitted by the defendant and

1 counsel.

2 Q Okay. Who was present when you made these drives?

3 A You were, and the defendant, Mr. Allen.

4 Q All right. What else were you asked to do?

5 A I was asked to open a screen door and knock the
6 window out with a tire tool.

7 Q Okay. And do you recall approximately how many times
8 you did that?

9 A We did that approximately five times.

10 Q Anything else you were asked to do?

11 A No, sir. Not that I can recall.

12 Q Okay.

13 A I was also -- excuse me. I was also asked to drive
14 Mr. Allen's vehicle into his driveway to see if I could
15 observe anyone running or observe a person or an object
16 from the corner of the house adjacent to the driveway.

17 Q Okay. And did you do that?

18 A Yes, sir, I did.

19 Q All right. And was that memorialized in any fashion
20 to your knowledge?

21 A Was it what, sir?

22 Q Well, was that recorded or memorialized?

23 A Yes. We took a video of it.

24 Q And that was on what date?

25 A On the 11th of June.

1 Q All right. And do you know approximately what time
2 that was done?

3 A Approximately at 9:30.

4 Q And a.m. or p.m.?

5 A P.M.

6 Q Okay. Let me hand you what I've marked as
7 Defendant's Exhibit No. 23. Can you tell us what that is
8 you're holding in your hand first?

9 A It's a video tape.

10 Q All right. And do you know what that is a video tape
11 of or what is depicted on that particular tape?

12 A It was at 1808 Jefferson Road, which is Mr. Allen's
13 residence. It's of the driveway going into the driveway.

14 Q Can you tell me in what vehicle you were driving when
15 you did this?

16 A Yes. I was driving a 1984 Oldsmobile which belonged
17 to Mr. Allen.

18 Q Do you remember what color it was?

19 A Grayish/blue.

20 MR. BUCHANAN: Okay. And, Your Honor, at
21 this point we would move the admission of Defendant's
22 Exhibit 23 and ask that we be allowed to show that tape.

23 THE COURT: Defendant 23 allowed.

24 (AT WHICH TIME DEFENDANT'S EXHIBIT NO. 23
25 WAS SHOWN TO THE JURY.)

1 Q (By Mr. Buchanan) Now, Mr. Horton, at the beginning
2 of that tape I saw a figure.

3 A Yes.

4 Q Now, you've had a chance to view this tape obviously
5 before today, is that correct?

6 A Yes, sir.

7 Q And on the occasions that you've had to view the
8 tape, have you or can you tell us in your opinion what
9 difference, if any, there is between what you saw as you
10 were driving the car and the video tape you just saw?

11 A Well, basically there wasn't any difference. The
12 tape showed exactly the same things as I saw as I drove
13 Mr. Allen's car into the driveway and the headlights
14 depicted a subject at the southeast corner of the house
15 running away in a northeasterly direction.

16 Q Now, were you asked to do anything else that was
17 video taped in any way?

18 A Yes. I was asked to see if I could pull open a
19 screen door.

20 Q Okay. Can you tell us -- let me show you a diagram
21 here which is the floor plan of the Allen residence, okay?
22 Can you tell us where -- it may take you a little bit to
23 orient yourself, but can you tell us where that door is
24 that you --

25 MR. CORGAN: Judge, we'll stipulate that

1 we're talking about the patio door.

2 Q (By Mr. Buchanan) Okay. So it was what type of
3 door?

4 A An aluminum screen door.

5 Q All right. And can you tell us what, if any,
6 observations you made about the frame of the door, the
7 aluminum door?

8 A Well, I noticed that -- and I also saw a picture of
9 it -- that where a screw had been put in two inches above
10 where an old screw had been to reinforce the doorjamb.

11 Q Okay. And that was on this June 11th, 1991?

12 A Yes, sir.

13 Q And when you say an old screw, where was that old
14 screw?

15 A Below the new screw.

16 Q Was the old one still there?

17 A Yes, sir. I believe it was.

18 Q Okay. All right. And if you know, what was the
19 reason for the additional screw being added?

20 A Trying to secure the door so nobody can get in there
21 -- could open it.

22 Q Okay. And do you have an opinion as to whether or
23 not that additional screw added to the aluminum frame
24 would make that more secure or less secure?

25 A Surely it would make it more secure.

1 Q Okay. Let me show you what I've marked as
2 Defendant's Exhibit 24. Can you tell us what this is?

3 A This is a video tape showing the screen door being
4 opened.

5 Q All right. And can you tell us briefly what you did
6 prior to opening the door? Did you check the condition of
7 the door at all?

8 A Yes. I went up and made sure that the door was
9 locked by gently trying to open it and then I jerked on it
10 and it came open.

11 Q And what determinations did you make as to it being
12 locked or unlocked?

13 A Because I couldn't gently pull it open -- the handle
14 wouldn't turn.

15 Q Okay. All right

16 MR. BUCHANAN: Your Honor, we would move
17 admission of Defendant's 24 and ask it be displayed to the
18 jury.

19 THE COURT: 24 allowed.

20 (AT WHICH TIME DEFENDANT'S EXHIBIT NO. 24
21 WAS SHOWN TO THE JURY.)

22 Q (By Mr. Buchanan) Now, Mr. Horton, you made
23 reference to some driving times, is that right?

24 A Yes.

25 Q Okay. Now, can you tell us, Mr. Horton, where you

1 start -- your starting or beginning point and ending
2 point? Where did you start for your driving time?

3 A We started at Dillard's to the church.

4 Q Okay. Tell us which church first of all you're
5 talking about.

6 A Assembly of God Church.

7 Q All right. And what path did you take to get there?

8 A Went from Dillard's west entrance north on Highway 75
9 to Wayside, then west on Jefferson Street, North to Nowata
10 Road, then west to Silver Lake Road, then north to Adams
11 Road, then south on Osage to 9th Street and on the south
12 side of the First Assembly of God Church.

13 Q Okay. Approximately what distance, if you know, is
14 that to drive?

15 A 4.6 miles.

16 Q Okay. And approximately how much time did it take to
17 get there?

18 A 11 minutes and 56 seconds.

19 Q Okay. Now, Mr. Horton, was there anything along the
20 path of that route of travel that could alter your driving
21 time?

22 A Well, none other than your normal traffic flow and
23 stop signs.

24 Q Okay. Would those, in your opinion, possibly alter
25 driving time?

1 A Sure, it could slow you down.

2 Q All right. So when you say -- what was it, 11
3 minutes and 56 seconds?

4 A Yes, sir.

5 Q Would that -- would you expect that to be the driving
6 time every time you drove that --

7 MR. CORGAN: Excuse me Judge. I'm going to
8 object to counsel's leading the witness.

9 THE COURT: Sustained.

10 MR. CORGAN: Excuse me, Your Honor. I
11 believe that the witness is referring to something. We'd
12 ask maybe if that could be furnished to the bailiff for a
13 copy and we'd like to be able to review that prior to
14 cross-examination. I'm just trying to save some time.

15 MR. BUCHANAN: Judge, I have a copy I'll
16 provide counsel here in just a second.

17 Q (By Mr. Buchanan) Now, Mr. Horton, we've put
18 together an exhibit that sets out the travel and path of
19 travel you just indicated, do we not?

20 A Yes, sir.

21 Q Does it also indicate the time and distance of
22 travel?

23 A Yes.

24 Q All right. And does it also indicate a relationship
25 to some times on June 11th, 1990?

1 A Yes, it does.

2 Q Mr. Horton, let me show you what I'm going to mark a
3 Defendant's Exhibit -- I believe it's 25. And can you
4 tell me what that document is?

5 A Yes. This is an outlay of the two times that we
6 drove this route all combined into one -- on one sheet of
7 paper.

8 Q Is that what you had in your lap and were referring
9 to?

10 A Yes, sir.

11 Q Now, you've testified and told us what the first
12 travel -- route of travel was and how long it took, is
13 that right?

14 A Yes.

15 Q Does that first -- did that first -- or what, if any,
16 important locations to this case did that first route of
17 travel include?

18 MR. CORGAN: Judge, I'm going to object to
19 the form of the question. He can testify as to where they
20 went, but what's important is up to the jury.

21 THE COURT: Sustained.

22 Q (By Mr. Buchanan) Mr. Horton, would 1808 Jefferson
23 Road be important in this case to your opinion?

24 MR. CORGAN: Judge, again, I'm going to
25 object to the form of the question.

1 MR. BUCHANAN: Well, Judge, that's the
2 scene of the crime. I would think it's important.

3 MR. CORGAN: Judge, I mean, I will
4 stipulate that the scene of the crime is important.

5 THE COURT: Go ahead.

6 Q (By Mr. Buchanan) Would you agree with that?

7 A That the defendant's residence is the scene of the
8 crime?

9 Q Yes.

10 A Yes, sir.

11 Q And did that first route of travel go anywhere near
12 the defendant's home?

13 A Went by -- in front of his house.

14 Q Okay. And from what direction going which -- from
15 what direction to what direction would he --

16 MR. CORGAN: Judge, again, it's been asked
17 and answered. This witness has given the route that he
18 went.

19 THE COURT: You may repeat it.

20 A Go ahead and answer it? Coming from the south to the
21 north on Jefferson Road.

22 Q (By Mr. Buchanan) Okay. Now, after the stopping at
23 the First Assembly of God Church, what route did you next
24 take?

25 A When we left the church we went to the Sonic

1 Drive-In. Went down 9th Street south of the First
2 Assembly of God Church to Dewey, then north to Adams
3 Boulevard, and west to Virginia Street, then north to
4 Frank Phillips Boulevard, then west to Sonic.

5 Q All right. What was the distance in that route?

6 A 1.3 miles.

7 Q And how long did it take to drive?

8 A 4 minutes and 48 seconds.

9 Q Okay. Again, as to that particular route, was there
10 anything that you saw or made observations of that would
11 affect the driving time?

12 A Stop signs and average traffic.

13 Q Okay. Following Sonic what route of travel did you
14 take, if any?

15 A Went from the Sonic back to Dillard's. Left Sonic to
16 Frank Phillips Boulevard, then east to Virginia, then
17 south to Adams, then east on Cherokee, south to Price
18 Road, east to Washington Park Mall to the far eastern
19 parking lot in Dillard's.

20 Q All right. And approximately how -- what distance
21 would that cover?

22 A 5.6 miles.

23 Q And, if you know, what was the time it took to cover
24 that?

25 A 12 minutes and 48 seconds.

1 Q Okay. And did you drive any other distances?

2 A Yes. We didn't stop in the parking lot. Drove
3 through the parking lot and left Dillard's parking lot and
4 went to the residence, 1808 Jefferson Road. East parking
5 lot of Dillard's and northwesterly to the northern most
6 mall entrance, then north on Highway 75, then west on
7 Wayside, then north on Jefferson Road to the Allen
8 residence.

9 Q What distance did that cover?

10 A 1.5 miles.

11 Q And approximately how long did it take?

12 A Four minutes and 50 seconds.

13 Q Now, Mr. Horton, what, if any, observations did you
14 make as to the speed of travel while you were driving
15 these routes?

16 A Well, speed of travel was just your normal traffic
17 flow. We stayed within the speed limit, observed all
18 traffic signs, stop signs, yield signs.

19 MR. BUCHANAN: I believe that's all,
20 Judge. I'm sorry. One second.

21 Q (By Mr. Buchanan) Mr. Horton, in your experience and
22 specifically in the experience in driving Mr. Allen's car,
23 what, if any -- well, I don't know how to phrase this.
24 What, if any, observations can you give us of the manner
25 in which that car will heat up as it's being driven and

1 cool down once stopped?

2 A It's probably no different than any other car. You
3 drive one 30 or 45 minutes or an hour and stop it and in
4 15 or 20 minutes the car is going to cool down or the
5 hoods going to cool down, particularly at that time of the
6 evening.

7 Q Okay. What was approximately the total driving time
8 that this encompassed?

9 A 34 minutes and 22 seconds.

10 MR. BUCHANAN: Okay. That's all, Your
11 Honor.

12 -----

13 CROSS-EXAMINATION

14 BY MR. CORGAN:

15 Q Mr. Horton, could I see the exhibit for just a second
16 please, sir?

17 A Yes, sir.

18 Q No. Go ahead and keep your notes there. Okay. Now,
19 Mr. Horton, if Mr. Rouw referred to you as a retired chief
20 of the O.H.P. he gave you a promotion, is that right?

21 A Well, no. I was chief for a year while the existing
22 chief was in F.B.I. school in Washington, DC. Then when he
23 came back then I went back to Tulsa as captain.

24 Q Okay. Now, did I understand the purpose of your June
25 11th drive into the driveway was to simulate, hopefully,

- 1 what Steve Allen could or couldn't of seen a year before?
- 2 A Yes, sir. To see if you could see somebody at the
3 corner of the house.
- 4 Q When you did your experiment did you have someone
5 running?
- 6 A Had someone standing at the southeast corner of the
7 house, yes, sir.
- 8 Q Okay. That's in your video?
- 9 A Yes, sir.
- 10 Q Who was that?
- 11 A That was Mr. Carlson.
- 12 Q Mr. Carlson was standing there?
- 13 A Yes, sir.
- 14 Q But he was just standing there? We didn't have him
15 running?
- 16 A No. He was running in a northeasterly direction. He
17 was turning around at that time.
- 18 Q And you could see him?
- 19 A No, I could see a person.
- 20 Q You could see a person running in a northeasterly
21 direction?
- 22 A Yes, sir.
- 23 Q But you just knew that to be Mr. Carlson?
- 24 A Yes, I knew it was him.
- 25 Q Okay. Now, when did you do these drive times?

1 A It was done on the 11th, 6-11.

2 Q Well, if it says on the exhibit drive times and
3 distance, July 29th of '91, that's incorrect?

4 A No, we did do one last night depicting -- to get
5 mileage.

6 Q Okay. So this is a combination?

7 A It's a combination of the two, yes.

8 Q On June 11th you did times, right?

9 A No. On June 11th -- yes, we done times and drive
10 throughs.

11 Q And on June the -- July the 29th you did distance, is
12 that correct?

13 A Yes, we did distance and also went from Dillard's to
14 the church and the church to the Sonic.

15 Q Okay. On the 11th you didn't do Dillard's to the
16 church and the church to Sonic?

17 A No. We done this on the 11th. We done Sonic to
18 Dillard's and Dillard's to home.

19 Q But that was just times?

20 A Yes.

21 Q And then last night -- is that right, last night?

22 A Yes.

23 Q You did all -- you did the two as to times and all
24 four as to miles?

25 A Yes.

1 Q As to distance, is that right?

2 A Yes, sir.

3 Q And did I understand you to say that as you did that
4 you and Mr. Buchanan and Mr. Allen drove that?

5 A That is correct.

6 Q And who furnished you the information about where to
7 drive?

8 A Mr. Allen.

9 Q And all that information came from him?

10 A Yes, sir.

11 Q Now, I assume, Mr. Horton, that as a result of your
12 work that you are entitled to some type of compensation
13 for your assistance, is that correct?

14 A That is correct.

15 Q What is your fee or compensation arrangements in that
16 regard?

17 A \$50 an hour.

18 Q And how many hours do you have in this case?

19 A Up to now probably 8 hours.

20 Q And do you anticipate more hours after today?

21 A No, sir.

22 Q Now, when you say up to today, does that include your
23 time to testify?

24 A No, sir.

25 Q Okay. Do you have a separate fee for that?

1 A No, sir. It's the same thing.

2 Q Okay. So when you're here today testifying are you
3 charging \$50 an hour?

4 A Yes, sir, I am.

5 Q And when did that start?

6 A That started at nine o'clock this morning.

7 Q So you're charging for another 8 hours today?

8 A Yes, sir.

9 Q And so your total time in this case for compensation
10 will be 16 hours?

11 A Yes, sir. Somewhere around there.

12 Q Well, have I missed something?

13 A No, sir.

14 Q Okay. Is there other compensation? Are you provided
15 mileage, those type things?

16 A Yes, sir. Mileage.

17 Q And what is that?

18 A 35 cents a mile.

19 Q And how many miles would you say you have?

20 A It's approximately 45 miles from Tulsa to
21 Bartlesville.

22 Q Well, you live in Broken Arrow, don't you?

23 A Yes.

24 Q How far from Broken Arrow?

25 A Oh, Broken Arrow is 10 miles east of Tulsa.

1 Q So it would be 55 miles?

2 A Yeah. I usually leave from Tulsa though.

3 Q Okay. 45 miles.

4 A Yes.

5 Q 90 miles round trip.

6 A Yes, sir.

7 Q How many round trips would you say you have made?

8 A I've made two.

9 Q So your 16 hours and your mileage time would be it as
10 far as compensation?

11 A Yes.

12 MR. CORGAN: That's all. Thank you, sir.

13 MR. CARLSON: Nothing further.

14 THE COURT: Thank you, Mr. Horton. Again,
15 I think as we discussed Monday, we're going to take --
16 tomorrow is Wednesday, isn't it? We're going to take
17 tomorrow off. And as I discussed with you Monday, you're
18 still on the payroll and you're still serving tomorrow.
19 Some of you may have the ability to be paid while you're
20 not, quote, working, and some of you may not have that
21 luxury. If you do feel that you need to go to the job
22 site, necessarily be particularly careful and admonish
23 those who might even ask questions about discussing the
24 matter. We'll be in recess until nine.

25 (THE EVENING RECESS WAS HAD. AFTER WHICH