

anyone to discuss this case with you or to discuss it in your presence. Do not form or express any opinion on this case until it is finally submitted to you. You must explain this rule to your family and to your friends. When the trial is over and your Jury duty is completed, you will be released from this instruction. At that time, you may discuss the case and your experiences as a Juror with anyone who you wish to, but, of course, you are not required to do that. Until that moment, you are to control any desire that you have to discuss the case both here and at home. Do not talk to the attorneys, the parties, or the witnesses during the trial of this case. Likewise, those individuals must not talk with you. If anyone does attempt to discuss the case with you, you are to report the incident at your earliest opportunity to Mr. Findlay or Mrs. Maynard. Do not investigate or attempt to obtain any additional information about this case outside this courtroom. It is highly improper for anyone to attempt to do that. As you know, it is quite likely that the subject of this trial will be the subject of news broadcasts or news writings, and I instruct you that you are not to read, view, or listen to any report in the newspaper, on the radio, or on the television about the subject of this trial. Further, do not let anyone read to you, or comment to you about any news account. If you should acquire any information in this manner, again, please report that at your earliest opportunity to Mr. Findlay or to Mrs. Maynard. Again, if any personal problems arise during the recess period, please report

those in the same manner.

Anything further by counsel?

MR. HEAD: No, Your Honor.

MR. BOSTICK: No, Your Honor.

THE COURT: You are excused for the evening. We will see you back at 9:00 in the morning.

(Whereupon a recess was had.)

July 22, 1982

(Whereupon Court reconvened.)

THE COURT: Good morning, Ladies and Gentlemen. We will check you over to make sure you are all feeling well this morning. You look pretty good. All right. Mr. Head, you may proceed.

MR. HEAD: Your Honor, before we do, could we approach the bench?

(Whereupon the following was had at the Bench:)

MR. HEAD: Pursuant to the requests of the representatives of the media, we are putting on record that the witness, the last witness we had, Bobby Rowell, objected to be televised. Further, all of our witnesses today do also object to being televised, Judge.

THE COURT: Very well.

MR. HEAD: Do you want the list?

THE COURT: Yes.

MR. HEAD: We anticipate for the morning session Mike Rowell will testify and Peggy Bond.

MR. LANGER: Mike Rowell, Dave Miller, Peggy Bond,

Martha Smith.

MR. HEAD: Jim and Joey Shipman. Jim Shipman, Sr.
Ellen Purvis. Ted and Jean Ritchie. Judy Tabor. Darrell Doan.
Andy Choate. And Sherry Gilbert.

THE COURT: Very well. The objection will be
sustained.

(Whereupon Counsel returned to their respective tables.)

MR. LANGER: The State calls Michael Rowell, Your Honor.

THE COURT: Very well.

* * * * *

WHEREUPON:MICHAEL PATRICK ROWELL

the witness, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATIONBY MR. LANGER:

Q Mike, you talk softly. Try to keep your voice up.
First, tell the Jury your full name?

A Michael Patrick Rowell.

Q It has to be louder.

A Michael Patrick Rowell.

Q Mike, your age, please?

A Fifteen.

Q You are the brother of David Rowell, are you not?

A Yes, sir.

Q Do you know Keith Wampler?

A Yes.

Q Is he in the courtroom this morning?

A Yes.

Q Where is he and what is he wearing? Point him out for the Jury?

A (Indicating). In the blue shirt.

MR. LANGER: May the record show he has identified the Defendant?

THE COURT: It may so indicate.

BY MR. LANGER:

Q Prior to this morning, when was the last time you saw the Defendant?

A About four months ago.

Q When you last saw him, did he look different than he looks today?

A His hair was longer.

Q How long was his hair at the time you last saw him?

A About to the bottom of the ear.

Q When did you meet the Defendant? Where and when did you first meet the Defendant, approximately?

A About five months ago at Andy Choate's house.

Q Are you talking about this year, 1982, or last year?

A Last year.

Q Last year. Was it summer, fall?

A Winter.

Q Winter?

A (Indicating yes).

Q You say you met him at Andy Choate's house?

A Yes.

Q Where does Andy Choate live?

A West Moraine Plat, Home Street.

Q Tell us about that particular occasion?

A He came over with Jim Shipman.

Q Who did?

A. Keith.

Q. Keith did?

A. Yes.

Q. All right.

A. He had some kind of long sword.

Q. How long was the sword?

A. About four feet long. About that big (indicating), and him and Andrew and Jim was talking in some room. Then they decided to leave. They went down the street, and I went home.

Q. When the Defendant and Andrew and Jim were talking in this room, where were you at the time?

A. I was in the living room.

Q. Could you hear what they were talking about?

A. No.

Q. Okay. After that occasion, did you develop a kind of friendship or acquaintance with the Defendant here?

A. (Indicating yes).

Q. Tell us about that. Did you become his friend? Would that be fair to say?

A. No. I was with James Combs one day. We went to his house.

Q. How many times have you been to the Defendant's house or trailer?

A. About eight times.

Q. Eight times or so?

A Yes.

Q Tell us generally what you would do on those eight occasions when you went to the Defendant's trailer?

A Just watch TV or listen to stereo.

Q Did the Defendant ever come to your house?

A No.

Q Did you ever drink inside the Defendant's trailer with the Defendant?

A Yes.

Q If you can tell us, of the eight times you went there, how many times did you drink there?

A Once or twice.

Q Of the eight times that you went over there, Mike, on any of those eight occasions did your little brother, David, go with you?

A About four times.

Q Four times. How did David and Keith get along?

A Not too well. Keith didn't like him too much.

Q Did you ever hear Keith make any statements regarding your brother, David?

A He called him smart ass and stuff like that; names and stuff.

MR. BOSTICK: I can't hear the witness.

THE COURT: Would you keep your voice up.

BY MR. LANGER:

Q You said he called him some names?

A Yes.

Q Was there ever a particular incident that upset Keith regarding David?

MR. BOSTICK: We object to the characterization upset.

THE COURT: Overruled. You may answer.

THE WITNESS: One time my little sister came and got us. I was with Keith and my brother, and she said they was --

MR. BOSTICK: We object.

THE COURT: Sustained.

THE WITNESS: There was some guns --

MR. BOSTICK: Objection.

THE COURT: Sustained.

BY MR. LANGER:

Q As a result of what your sister told you, what did you do, you and your brother do?

A We went out to the field to look for some guns she said was out there, and there was some traps.

Q There were traps?

A Yes.

Q What kind of traps?

A Homemade, wooden, rabbit traps.

Q You say the field. What field are we talking about?

A Across the street from our house.

Q Where is that field in relationship to Keith's trailer?

A Right next to it.

Q You went out to these traps, and who else went out to these traps?

A Keith, my sister, my brother, and me.

Q Did you say Keith?

A Keith Petry.

Q Your brother, your sister, and yourself, the four of you?

A Yes.

Q If I might ask, Michael, how long before David's death on February 6th, how long before that was this particular incident?

A About a week.

Q A week. You go out to the field. What happens out at the field?

A There is some traps with carrots and lettuce in it. Keith and my brother started dumping them out. I starting kicking them around. I pushed some stuff back into one. Then we left.

Q Had you or your brother ever done something like this before regarding traps?

A A few years ago we did, at my other home.

Q Your other home. Okay. As a result of what you did up there in the field with those traps, what if anything did Keith say or do?

A We was at his house the next day, and he had his whip. He

was just, you know, hitting us with it and saying that -- he was accusing us of messing them up and everything.

Q How is it you went to the Defendant's trailer the next day? Did you just go there or did he call you or why did you go to the trailer?

A They was snowmobiling, him and John. I seen them and went over there.

Q You used the name John. Who is that?

A His next door neighbor.

Q John McGarvey?

A Yes.

Q You saw them snowmobiling?

A Yes.

Q Pick it up from there.

A Me and my brother walked on over to the house. We went in, and they started in about the traps.

Q Who said what? What did John say and what did Keith say and what did the two of them do?

A Keith was just hitting us with a whip, my brother and me, and pointing his finger at my brother, saying, he did it. He said that John had a shotgun. He was going to shoot anybody there if he seen them.

Q Did John at anytime have anything in his hand?

A He had a pair of nunchaku.

Q Nunchaku. What is a nunchaku?

A Like two pieces of wood with a chain between them.

Q Do you know where he got the nunchaku from?

A I think his brother or something.

Q What was he doing with the nunchaku?

A Swinging them around saying how bad he could hurt somebody with them.

Q Did you ever see Keith with nunchaku?

A He had a pair of homemade ones, a small piece of chain with two pieces of wood on them.

Q You said Keith was whipping you. What was this whip?

A It was just a piece of leather about four or five feet long.

Q You say whipping you. What do you mean by that?

A He was just swinging it, popping it.

Q Popping it sort of?

A Yes. Hitting, sort of.

Q Well, what was David saying or doing when Keith was saying you did it?

A He was just sitting there. Keith hit him, and he started to cry.

Q Did anything else happen here or is anything else said at this particular occasion?

A Keith pointed his finger and called him smart-ass and said he knew he did it.

Q How long did you remain there? Did you stay there for

a further period of time or did you leave?

A. We left right after that.

Q. Where did you go, you and your brother?

A. Home.

Q. On that occasion, Michael, did David at anytime go into Keith's bedroom?

A. No.

Q. How many bedrooms are in that trailer?

A. Two.

Q. Which bedroom is Keith's bedroom, if you know?

A. The one on the side.

Q. The one on the side. What about the room to the back of the trailer?

A. That's his father's.

Q. Who lived in the trailer with the Defendant?

A. Keith and his father.

Q. I want to take you up to February 5. That is a Friday. Friday, February 5. Between the incidents when you were in the trailer and Keith had that whip February 5, okay, that Friday, were you, between those two days, did you go to Keith's trailer?

A. I don't think so.

Q. On Friday, February 5, did you go to Keith's trailer?

A. Yes.

Q. About what time?

A. About 4:00.

Q Did you go there alone?

A Yes.

Q What happened there when you arrived?

A We was sitting in the living room and he was telling about a party he was going to have, his dad and next door neighbor. He got out Vodka and we started drinking.

Q Who got out the Vodka?

A Keith.

Q Did you make drinks?

A We had grapefruit juice.

Q Who had the drinks?

A Me and Keith.

Q How many drinks did you have, you yourself?

A Four or five.

Q What about Keith?

A A little more. I think he drank beer before I got there.

Q What did you do as you were there having drinks?

A For awhile, we just sat there watching TV and then started wrestling.

Q Did your brother come at some point in time?

A He came about 5:20.

Q Tell us about that.

A He knocked on the door. Keith opened the door. He came in, picked up my glass, smelled it, took a sip out of it. I took it away from him.

Q Little David took a sip out of your drink?

A Yes.

Q You took it away from him?

A Yes.

Q Did he ask you for more or not?

A No. He just asked us what we was drinking.

Q What does David do once he arrived?

A He just sits down in the chair.

Q In which room?

A Living room.

Q What happens now while David is there seated in the living room?

A Me and Keith start wrestling on the couch. We went to the kitchen. He hits me.

Q Pardon me?

A He hit me.

Q Where?

A In the groin.

Q In the groin area?

A Yes.

Q What did you do?

A I got up and left.

Q Where did you go?

A Toward Lisa Collins' house.

Q Lisa Collins' house?

A Yes.

Q Who is Lisa Collins?

A She is a girl I know who lives in the trailer court.

Q Is she your girl friend?

A No, just a friend.

Q Did you walk or run to Lisa Collins' house?

A Keith chased me out the door and told me not to come back to his house. He chased me about halfway.

Q He ran out of the house? What was he wearing?

A Just his pants and his boots.

Q You know where Jim Shipman's trailer is, don't you?

A Yes.

Q Where would Lisa Collins' trailer be in relationship to the Shipman trailer?

A Straight across from it.

Q Pardon me?

A A couple trailers in front, straight across from it.

Q To get to Lisa's trailer, did you have to run past the Shipman trailer?

A Yes.

Q When you left or when you went to Lisa's, what did David do?

A I never seen him after that.

Q The last time you saw your brother alive where was he?

A In Keith's house.

Q Where in Keith's house?

A In his living room.

Q What was he doing in the living room the last time you saw him?

A Sitting in the chair.

Q Here is State's Exhibit Number 5, Michael, which is a plastic bag containing items of clothing which I want to pull out, all right? Do you see these items of clothing?

A Yes.

Q Can you identify whose clothing that would be?

A My brothers.

Q Your little brother, David?

A Yes.

Q Was your brother wearing these items of clothing on the last day that you saw him?

A Right.

Q Are these his socks or your socks?

A They are mine.

Q Your socks. You pointed out something about this jacket to me. What was it that you particularly noted about the jacket here?

A The sleeves come out.

Q The sleeves unzip and you can wear it like a vest?

A Yes.

Q State's Exhibit Number 6. It is in a plastic bag which

I am not unsealing. I will have you look at this particular exhibit.

Can you identify it?

A. My brother's boots.

Q. Your brother's boots. Do you know for a fact whether or not he was wearing that pair of boots on the last day you saw him alive?

A. He was.

THE COURT: What was the exhibit number on the clothes?

MR. LANGER: Number 5.

THE COURT: And the other one?

MR. LANGER: Number 6.

BY MR. LANGER:

Q. Here is State's Exhibit 7 which is in a sealed plastic bag which I will rip open, and I will ask you to look at these boots, Michael. Do you know who those boots belong to?

A. Keith.

Q. The Defendant?

A. Yes.

Q. Have you seen the Defendant wear these on one occasion or more than one occasion?

A. All the time.

Q. He wore them all the time?

A. Yes.

Q. Do you recall whether or not on this day, February 5, he was wearing that pair of boots?

A. He was wearing them.

Q. What time did you get home after having been to Lisa's house?

A. If I recall, it was about 7:00.

Q. One other question. The last time you saw your brother alive, did he have any bruises on his face or body that you saw?

A. No.

Q. You said on that earlier occasion that David was in the Defendant's trailer, you didn't go into the back bedroom. On this particular day, the day of the wrestling match, at anytime while you were there did David go back into Keith's bedroom?

A. No.

Q. Did he go anywhere to the back of the trailer?

A. No.

Q. You say you got home at what time?

A. About 7:00.

Q. What happened when you got home?

A. I was talking to my dad for about an hour.

Q. He was talking to you?

A. Yes.

Q. About what?

MR. BOSTICK: Objection, Your Honor.

THE COURT: Sustained.

BY MR. LANGER:

Q. Well, after you talked to him, what did you and your

father and mother proceed to do?

A Mom asked me to go look for my brother.

Q Did you start looking for your brother?

A Yes.

Q Where did you go to look for your brother?

A I walked over to Keith's house.

Q This is about what time that you walked to Keith's house?

A About 7:30, 8:00.

Q Do you wear a watch? Are you wearing a watch today?

A No.

Q Did you wear a watch at that time?

A No.

Q You went over to Keith's trailer. When you got there, did you knock on the door?

A Yes.

Q How many times did you have to knock on the door before it was answered?

A About three times.

Q Who answered the door?

A Keith.

Q Did Keith let you into the trailer?

A Yes.

Q You walked into the trailer, did you?

A Yes.

Q What lights were on inside the trailer at that time?

MR. BOSTICK: Your Honor, we see no reason for the Prosecutor to lead the witness. I think he is doing fine on his own.

THE COURT: We are going to permit some leading because of the age of the witness. Overruled at this time.

BY MR. LANGER:

Q What lights were on inside the trailer?

A Just the kitchen light.

Q Pardon me?

A Just the kitchen light.

Q Was the TV on or the stereo on?

A No.

Q Describe Keith's appearance as you saw him then?

A He had on a silk shirt and blue like disco pants and boots. His hair was wet.

Q Wet?

A Yes.

Q Was the shirt buttoned or unbuttoned?

A Unbuttoned.

Q Did he say anything regarding his wet hair?

A I asked if he took a shower. He said, no, I just washed my hair.

Q What did you say or ask of Keith?

A I asked if he had seen my brother. He said, no.

Q When you are inside the trailer, are you seated down somewhere?

A No, I am standing in front of him.

Q Just standing there?

A Yes.

Q How long were you inside the trailer?

A About two minutes.

Q How far into the trailer did you get?

A I was near the far end, the opposite way of the kitchen.

Q Where the kitchen is?

A No. Going the other way.

Q Did Keith say anything else at this time?

A No.

Q Where did you go after you left the trailer?

A I walked through the field and over to the Civic Center.

Q Did you go inside?

A I went in and asked Lansing McQuinn if he seen my brother. He said, no. I asked the lady. She said, no. I went to the school.

Q What school is that?

A Moraine Meadows. I got there and I asked about six people if they'd seen him. They said, no. After about ten minutes, I left with Randy Hendricks.

Q Then where did you go?

A We walked back to the Civic Center to see if he was there.

We messed around in the snow. Then I went home.

Q What time did you get home? You didn't have a watch on, but about what time?

A About 10:00.

Q What happens when you get home about 10:00?

A They asked if I found him. I said, no. My dad went outside to look for him.

Q Did you stay home or go out with your dad?

A I stayed home.

Q How long was your dad gone before he came back?

A He was gone a pretty long time.

Q Where was your mother at this time?

A She was in the kitchen.

Q When your dad returned, what are you doing inside your house?

A I was probably asleep.

Q Did you stay asleep for the rest of the night?

A No. I got up about 11:00. Me and Mom went driving around, looking for him.

Q Where did you look for him?

A Through the plat, through the trailer court, just over around by the Holiday Inn.

Q Did you find your brother?

A No.

Q Did you look anywhere else?

A. We come home and left again about 2:00 in the morning.

Q. Where did you go at 2:00?

A. About the same places.

Q. When did you finally come home to go to sleep, about?

A. About 2:30.

Q. What did you do the next day after you awoke?

A. I got up about 9:30. I went over to Keith's house.

It was about 10:00. I knocked on the door. I seen two spots of blood on his door, and I asked his dad about it. He said he just talked to Keith about it. Then I left.

Q. Let's hold it up there for a second. You went to Keith's trailer and which door are you referring to regarding the two spots of blood?

A. Outside of the house door; not the screen door.

Q. What color is the door?

A. White.

Q. Where were these two spots of blood on the door?

A. About a foot from the door knob, then about half a foot up.

Q. Just show with your finger how large were these spots of blood?

A. (Indicating).

Q. Were they both about the same size?

A. One was a little bit smaller than the other.

Q. You held your finger up. Hold it up again.

MR. LANGER: I would estimate that is about an inch,
Your Honor.

THE COURT: Fair enough.

BY MR. LANGER:

Q Was Keith home at the time you were over there?

A No. He was with James, I think. He was with James.

Q What did his dad say?

A He said he talked to Keith about it.

Q You left the trailer. Then where did you go? What did
you do the rest of the day?

A I walked through the field again and went to the Civic
Center.

Q What did you do there?

A I talked to some of my friends. They was going to help
me look for him. Some had to go. Me and Kenneth went to Lisa
Collins' house.

Q How long did you stay at Lisa Collins' house?

A Forty-five minutes or an hour.

Q After that, where did you go?

A Then, I went on home. My sister -- no. I stopped at
Doug's house.

Q Doug who?

A Perry. Then I was there a few minutes. I went home.
My dad was on the telephone, calling the police.

Q What was he telling the police?

A I don't know. My sister just told me he was dead.

Q What did you do when you heard that?

A I just walked out the door and walked around the house. Then I started to go to the field. Some policemen there --

Q When you walked over to the field, were you able to walk into the field?

A I got a little ways in. Then they called me back.

Q When you started walking into the field, where were you walking from?

A The house.

Q Your house?

A Yes.

Q Come down here, Mike, and look at this. See if you can understand this diagram.

(Whereupon the witness went to the pedestal.)

BY MR. LANGER:

Q Do you see where your house is on that diagram?

A (Indicating).

Q Step over here. You began to walk into the field. I want to be very clear. How is it you walked into the field?

A I walked through here and over in here. Then I got here. The police called me back.

Q Okay. Did you ever get up near Keith's trailer while the police were in that area protecting the scene?

A Yes. I was there about --

Q Say that louder.

A When they was recovering the body, I was somewhere in front of his trailer.

Q Was Keith -- you can take your seat again, Mike.

(Whereupon the witness returned to the witness stand.)

BY MR. LANGER:

Q Did you see Keith at that time?

A Not for an hour. Then he came outside and came over to me and asked me what was going on.

Q And you told him what?

A I told him my brother was out in the field.

Q What did he say to that?

A He just said, Man, that's gross.

Q Repeat that.

A He said, Man, that's gross; how can anybody do that.

Q You used the term gross?

A Gross, yes.

Q When you saw Keith at that point in time, who else was standing around?

A Me and Kenneth White.

Q Who is Kenneth White?

A He's just a friend that helped me look for him.

Q The last thing I want to inquire of you, Mike, is do you have any knowledge of phone calls made to your house, harrassing calls?

A. About a year ago we had a few. For about a year we had some.

Q. In relationship to your brother's death, how far back in time did the calls stop?

A. About eight months to a year.

Q. Did you answer any of these calls yourself?

A. No.

Q. Do you know anything about what was said in these calls or what that was about?

A. Just threatened my mom is all.

Q. Your mother?

A. Yes.

Q. Do you know for what reason?

A. I think it was about --

MR. BOSTICK: We object to what he thinks, Your Honor.

THE COURT: Sustained.

THE WITNESS: Well,--

MR. LANGER: Wait a minute.

BY MR. LANGER:

Q. When you went to Keith's trailer on Friday, February 5, at the time of the wrestling match incident, was Keith's father home?

A. No.

Q. Did Keith tell you where his dad was?

A. I think he said Waynesville.

Q When you saw Keith on Saturday as your brother's body was being removed or recovered, was he wearing clothing -- was he wearing the same clothing that he had worn the day before, Friday, or was it different clothing?

A Different.

Q What was different about the clothing?

A He had on his boots and just had on a blue blazer and a pair of pants.

Q Was that on Saturday?

A Yes. Sunday.

Q The day your brother's body was recovered?

A Saturday.

Q The day before what was he wearing when you saw him?

A He was wearing light blue bell jeans that had dark blue stripes going down the leg.

MR. LANGER: No other questions, Your Honor.

CROSS EXAMINATION

BY MR. BOSTICK:

Q Mike, how old are you now?

A Fifteen.

Q When did you turn fifteen?

A June 10th.

Q Do you live with Dad and Mom in Mobile, Alabama?

A Yes.

Q These calls that you told the Prosecutor about, they

started when you and your family lived in the trailer park?

A. No.

Q. Where did you live before you moved to the trailer park?

A. I lived in New Carlisle.

Q. New Carlisle?

A. Yes.

Q. And those threatening calls actually started when you first moved to New Carlisle, didn't they?

A. No. It was sometime before that.

Q. Sometime before that. And do you know the people that lived next to you in New Carlisle?

A. Yes.

Q. I don't mean by name. What kind of people were they?

A. They just kept to themselves.

Q. Beg pardon?

A. They kept to themselves.

Q. Were a lot of hippies living next to you folks in New Carlisle?

A. No.

Q. When did you live next door to the hippies?

A. I never did.

Q. Was there a time when police were called on the hippies at the park and your family was involved?

A. Our next door neighbor had called the police and gave them

Mom's name.

Q Gave them your mother's name?

A Yes.

Q Do you know why the next door neighbor in calling the police gave your mother's name?

A She didn't want to tell her name, I guess.

Q And the next door neighbor was reporting something the hippies were doing down in the park?

A Yes.

Q So your mom got named instead of the neighbor, is that true?

A Yes.

Q And then this problem started after that, did it?

A It was awhile, but it did start..

Q You noticed that people began to watch you?

A I never seen anybody, but I guess they did. Mostly, it was mostly my mom.

Q And they would come up to your house into your yard sometimes?

A I didn't see anybody.

Q You knew about that happening, didn't you?

A No, not exactly.

Q And then when you moved to the trailer park, it seemed to start all over again, didn't it?

A I didn't live in the trailer park.

Q. When you moved to Moraine?

A. Yes.

Q. Next to the trailer park?

A. No. I lived in the plat.

Q. In the plat?

A. Yes.

Q. Is that when it started again?

A. No. It was just awhile and then we received about three of them.

Q. You received about three of them?

A. Yes.. That is what Mom said.

Q. And did people follow you then, to your knowledge?

A. No.

Q. Do you recall a red car that seemed to follow you every place you went?

A. A long time ago when we lived in New Carlisle, there was a car following us in Springfield.

Q. Michael, I think on a previous occasion you described your brother, David, as a pest?

A. Yes.

Q. What did you mean by that?

A. Sometimes he would just fight over TV or something. He just aggravated me.

Q. Would he always be hitting on you, striking you, saying things to you?

A More or less just saying something to me.

Q Beg pardon?

A Just saying something to me.

Q I want you to keep your voice up, Son. I am having trouble hearing you, and I'm sure the Jury would like to hear you, also. You told us that you went back to Keith's home, the trailer home, later that evening?

A Yes.

Q Do you know what evening I am talking about?

A Yes.

Q Which one?

A Friday.

Q And you said you went back about what time?

A 7:00.

Q Had you ever told anyone before, Michael, that you didn't go back to Keith's house that evening?

A No.

Q I want you to think about that. Your answer is still no?

A I think when I was talking to the policeman I forgot and later on, during the statement, I remembered it.

Q You were asked by one of the officers whether or not you went back to Keith's house later on that night. Do you remember that?

A Yes.

Q Speak up, Son.

A. Yes.

Q. And your answer was no, right?

A. Yes.

Q. And then the officer said to you, you are positive of that? Do you remember he asked that?

A. No.

Q. Do you remember giving him this answer: Positive. I didn't.

A. Yes.

Q. And then the officer continued to question you and you answered, no, I didn't. I went to Lisa's house about twice looking for my brother, but I never went to Keith's. Do you remember saying that to the officer, young man?

A. Yes.

Q. And then you were asked, what kept you from going back to Keith's? Remember that?

A. No.

Q. And you remember giving the answer, I don't know.

A. No.

Q. The lady can't take down your shakes. Is the answer yes or no?

A. No.

Q. Michael, is that what your friends call you?

A. Mike.

Q. Mike, have you told us the complete truth this morning?

A Yes.

Q As best you recall?

A Yes.

Q You are sure about that?

A Yes.

Q Did you call this young man, Keith, Charlie or what?

A Just Keith.

Q Just Keith. As a matter of fact, you didn't know his last name, did you?

A No.

Q He had only been in your neighborhood about a month or a month and a half, is that correct?

A That is right.

Q And your interpretation, your characterization as to how you felt about Keith was that he was a pretty nice guy, isn't that true?

A Yes.

Q He was always nice to you?

A Sometimes.

Q Do you recall telling the police officer, he is always, you know, nice?

A Yes.

Q You remember that, don't you? You used the term always, didn't you?

A I don't know.

Q I am sorry, Son.

A I don't know.

Q You won't deny you told the officer that, would you?

A No.

Q Keith was kind of quiet and kept to himself, didn't he?

A Sometimes.

Q Minded his own business?

A Sometimes.

Q Do you recall telling the officer that he was kind of quiet and kept to himself?

A No.

Q Beg pardon?

A No.

Q You wouldn't deny that, would you?

A I don't know. I don't remember.

Q The first time you went to Keith's trailer, do you recall the address?

A No.

Q He wasn't home, was he?

A I don't know.

Q Beg pardon?

A I don't know.

Q Don't you remember, Son, that you had to go next door to John McGarvey's trailer?

A Yes.

Q You remember that, don't you?

A Yes.

Q Have you discussed your testimony with the Prosecutor before you got here today?

A No.

Q You haven't talked to the Prosecutor?

A Yes.

Q Do you recognize Mr. Head here and Mr. Langer?

A Yes.

Q You have talked to these men before, haven't you?

A Yes.

Q Haven't they gone over your testimony with you?

A Yes.

Q What?

A Yes.

Q So, you recall that you went next door to the McGarvey trailer and that is where you found Keith?

A Yes.

Q Did you go inside that trailer?

A Yes.

Q Was that the first time you had been inside?

A Yes.

Q This was the trailer where the young man had the snowmobile?

A Yes

Q And you had seen he and Keith ride the snowmobile out there in that field, right?

A Yes.

Q This is the young man that had the traps, is that true?

A Yes.

Q Is it true, yes or no?

A Yes.

Q After you got Keith, then you and Keith came back to his place?

A Yes.

Q Right next door?

A Yes.

Q Who was home at that time, the first visit?

A Nobody.

Q Did you ever meet Keith's dad?

A Once or twice.

Q He was pretty strict on Keith, wasn't he?

A No.

Q On this first occasion, did you have anything to drink at Keith's house?

A No.

Q You do drink, don't you?

A Sometimes.

Q Sometimes?

A Not since the death of my brother.

Q I can understand. Let's talk about prior to the death of your brother. You did drink then, didn't you?

A Yes.

Q You told us you had four or five Vodka and grapefruit juice drinks?

A Yes.

Q That was within this period of an hour or so?

A Yes.

Q You also smoked marijuana at that time, before the death of your brother, didn't you?

A No.

Q You drank beer?

A No.

Q On the day that, that Friday, you also had something to drink over at Lisa's house, didn't you?

A No.

Q You didn't have anything to smoke or drink over there?

A No.

Q And on the one occasion, you and Keith sat around and the other fellows and talked about cars and other things guys talk about, right?

A Yes.

Q Even talked about girls?

A Yes.

Q I believe on an occasion in the past, you described little

David as hyperactive?

A Yes.

Q Had your folks told you that or was this something that you actually noticed?

A My own opinion.

Q Beg pardon?

A My own opinion.

Q Your own opinion. David was with you about ninety percent of the time, wasn't he?

A Yes.

Q He hung around you, the big brother, all the time, didn't he?

A Yes.

Q So much so it seemed worrisome to you?

A No.

Q You appreciated the fact he was with you all those times?

A I didn't care.

Q You didn't care one way or the other? And the times that you were over at Keith's or with Keith usually your brother was with you, right?

A About three or four times.

Q This little fun wrestling that you and Keith engaged in, you have done that with other youngsters, haven't you?

A Sure.

Q It is something that young men your age do, right?

A. Yes.

Q I know I did when I was your age. Do you recall where Keith accidentally struck you?

A. Yes.

Q Where, Son?

A. In the groin.

Q Who told you to say that Keith struck you in the groin?

A. It was me. I said it.

Q You said it?

A. Yes.

Q Have you ever told anybody else that Keith struck you someplace else?

A. When I was with the policeman, I said kidneys because I was embarrassed about it. I did tell them later on.

Q You were embarrassed to tell the officer where Keith struck you?

A. Yes.

Q You said Kidneys?

A. Yes.

Q You also said ribs?

A. He did that, too.

Q Well, now, you and the police officer talked about some pretty heavy stuff, and you were embarrassed to mention the word groin?

A. Yes.

Q Is that what you are saying, Son?

A Yes.

Q Are you telling us now, Michael, that when you originally told the officers that you positively did not go back to Keith's trailer that you were not telling the truth?

A I didn't remember.

Q Beg pardon?

A I didn't remember.

Q I am not sure I understand what you are saying.

A Well, I was only there for a couple minutes. I just didn't remember.

Q My question, Son, was when you told the officers that, you weren't telling the truth, were you?

A I didn't remember it, so I don't know if I was telling the truth.

Q Well, you remembered everything else that you have told us this morning. Why did you forget that?

A I don't know.

Q All of the other details that you have told us about you had no problem remembering, did you?

A A few.

Q You told us how Keith ran out with just his pants on?

A Yes.

Q And you told us all the places you went looking for your brother?

A Yes.

Q And you told that to the police, too, didn't you?

A Yes.

Q And you told us about going to the Mall with your mom as early in the morning as 2:00?

A We didn't go to the Mall.

Q What?

A We didn't go to the Mall.

Q You went searching for your brother?

A Yes.

Q I think your dad went to the Mall. You told all those details to the police, and you forgot to tell them, you say, you went back to Keith's house at 7:00 or 7:30?

A Yes.

Q Is that what you are saying?

A Yes.

Q You are saying that now. You didn't say that then to the police, did you?

A What?

Q That you forgot?

A That is right.

Q Beg pardon?

A Yes.

Q Do you have a dog, Son?

A Yes.

Q Do you ever walk your dog on a leash?

A Sometimes.

Q You have seen leashes before, haven't you?

A Yes.

Q What are they made of?

A We just had a rope one.

Q - You just had a rope?

A Yes.

Q I just had a rope that I cut off until I got a leash.

After I went on the paper route --

MR. LANGER: Objection to that comment. Move to strike.

THE COURT: Very well. The Jury will disregard the colloquy of Counsel.

MR. BOSTICK: Thank you, Your Honor.

BY MR. BOSTICK:

Q Do you know that dog leashes are made out of some rope, some chain, and some leather?

A Yes.

Q What you have described as what Keith had, did you know that that was a leash for a dog?

A No. /

Q I can't hear you, Son?

A It wasn't.

Q It wasn't. You are just as sure of that as you are now that you went back to Keith's house that evening?

A Yes.

Q David often times didn't come home when he was supposed to, did he?

A Yes.

Q That upset your dad and mom, didn't it?

A Yes.

Q David was a little boy and he was out on his own and you kids had rules about getting home on time, didn't you?

A Yes.

Q As a matter of fact, your dad said to you that night, on the 5th, when you couldn't find David, that he is always doing things like this?

A Yes.

Q Your dad said that, didn't he?

A Yes.

Q Do you recall the time, oh, perhaps last summer or so, you would know better than I, when David left and stayed out all night?

A No, he stayed gone for about an hour.

Q About an hour. There wasn't a time when he stayed out all right?

A I don't know.

Q You don't recall. Of course, you would be in bed, wouldn't you?

A If he did, I probably would know about it.

Q Your dad never discussed that with you?

A (Indicating no).

Q The Prosecutor showed you two pairs of cowboy boots?

A Yes.

Q One of which you recognized as David's?

A Yes.

Q The other pair, the larger pair, you recognized as belonging to who?

A Keith.

Q And I think you said, young man, that Keith always wore those boots?

A Yes.

Q And as a matter of fact, on that Friday and on that Saturday whatever else Keith had on he had on those boots, didn't he?

A Yes.

Q Do you own a pair of cowboy boots?

A No.

Q On that Friday when you went to Keith's trailer by yourself, that is, before David came in, you sat and discussed things that young boys talk about, cars and girls and things like that, and you also discussed his birthday?

A Whose?

Q Beg pardon?

A Whose birthday?

Q Keith's birthday?

A I don't remember.

Q You don't recall that?

A No.

Q You didn't know Keith's birthday was coming up the next day?

A No.

Q That wasn't discussed when you opened those cans of beer?

A No. He just said it was a party him and his dad was going to have.

Q I am sorry. I can't hear you.

A He said it was a party him and his father were going to have.

Q He and his father were going to have a party. He didn't tell you this was his sixteenth birthday coming up and he was going to have a big party like he'd never had before?

A No.

Q He didn't say that to you?

A No.

Q How long did it take you to drink those four or five Vodka and grapefruit juice drinks before you left Keith's home?

A About the whole time I was there.

Q Beg pardon?

A About the whole time I was there.

Q And I think you said David took a sip out of your Vodka and grapefruit juice?

A Yes.

Q Would he do that with some regularity? Would he be sipping out of one of the big boys' glasses?

A No. He just wondered what it was, I guess.

Q He did smoke occasionally, didn't he?

A Cigarettes.

Q What?

A Cigarettes.

Q That is what I meant, cigarettes. Let me ask you this. You said that on the day that your brother's body was discovered you happened to be standing near Keith or in the vicinity of his home?

A Yes.

Q And I think you said Ken White was also there?

A Yes.

Q And some of the other guys?

A Yes.

Q Comments were being made by your friends about the loss of your brother?

A Yes.

Q Was it Keith who said, Man, that's gross; how can anyone do that?

A Yes.

Q That was Keith who said that, wasn't it?

A Yes.

MR. BOSTICK: We have no further questions, Your Honor.

THE COURT: Redirect?

MR. LANGER: Yes, Your Honor.

REDIRECT EXAMINATION

BY MR. LANGER:

Q Mike, on cross examination you stated that when you were interviewed by the police, you initially didn't recall that three minute meeting you had with Keith in his trailer, right?

A Right.

Q By the end of the interview, were you able to recall that?

A Yes.

Q In fact, in that same interview Mr. Bostick referred to, do you recall in the interview you were asked, finally, you don't remember going back that night? Do you recall you said, yes, I went back that night. I went about 7:30, around 7:30. He had just got done washing his hair. Asked him why his hair was wet. He said he just got done washing his hair. I asked him if he had seen my brother and he said, no. Then I walked out through the field.

A That is right.

Q You did tell the police that in that interview, didn't you?

A Yes.

Q Mr. Bostick also referred to another part of the interview in which you said Keith was nice. Remember that?

A Yes.

Q You said that he was a nice fellow?

A Yes.

Q Do you also remember being asked, we are talking about what type of person he is, and you said this. Do you remember saying this, oh, well, sometimes he would be nice and other times he would be in a bad mood, but other than that he was pretty nice. Remember telling the police that?

A Yes.

Q And do you remember the next question was, what do you mean by bad mood? What did you tell the police?

A He just liked to push people around.

Q Remember this was your answer, well, like, you know, he really wouldn't be in a bad mood but he kind of hit you or pushed you around or something sometimes, just pick on you. He never really did pick on me that much, but he did sometimes. You told the police that?

A Yes.

Q Mr. Bostick asked you, he said, wasn't Keith's father strict on Keith, and you said, no?

A Yes.

Q Why did you say no?

A. I guess because he let him drink and smoke and do anything he wanted.

Q. Do you know whether or not Keith owned a dog?

A. He didn't own a dog.

Q. Did his dad own a dog?

A. No.

MR. LANGER: No other questions, Your Honor.

THE COURT: Any recross?

MR. BOSTICK: Yes, Your Honor. I would be remiss if I didn't.

RECROSS EXAMINATION

BY MR. BOSTICK:

Q. Michael, your dad tried to be strict with you kids, too, didn't he?

A. Yes.

Q. Yet David --

MR. LANGER: Objection. This beyond the scope of redirect.

THE COURT: I am not sure where we are going yet on cross.

MR. BOSTICK: I know of no limit for cross examination.

THE COURT: Except on the redirect. The cross should be confined to those areas.

MR. BOSTICK: All right. Let's move on. Thank you very much.