

1 MS. COOPER: State calls Lois Gibson.

2 THE COURT: All right. Ms. Gibson.

3 MS. COOPER: This witness has not been
4 sworn.

5 THE COURT: All right. Good afternoon,
6 ma'am. How are you?

7 Raise your right hand, please.

8 (Witness sworn.)

9 THE WITNESS: Yes.

10 THE COURT: All right. Feel free to
11 adjust the chair, microphone, and answer as directly
12 as you can. The Rule has been invoked. You know
13 about the Rule?

14 THE WITNESS: (No response heard.)

15 THE COURT: You may proceed.

16 MS. COOPER: Thank you, Judge.

17 **LOIS GIBSON,**

18 having been first duly sworn, testified as follows:

19 **DIRECT EXAMINATION**

20 BY MS. COOPER:

21 Q Can you introduce yourself to the jury,
22 please.

23 A My name is Lois Gibson. I do all the
24 sketches for all the law enforcement agencies in this
25 area of the State.

1 Q Can you tell the members of the jury about
2 your education?

3 A I graduated from the University of Texas at
4 Austin and from the FBI Academy's forensic art
5 course. I went to dental school at the University of
6 Texas Health Science Center at San Antonio.

7 Q And what about your training?

8 A I did about 3,000 portraits of tourists on
9 THE River Walk in San Antonio of live tourists. And
10 then I teach forensic art at Northwestern University.

11 Q And what is a forensic -- what is forensic
12 art?

13 A The number one thing a forensic artist does,
14 is they're going to get with the witness that's seen
15 the face of someone. And then try to get the witness
16 to remember the face they've seen.

17 Q All right. And as far as -- are you
18 employed by a police agency?

19 A I have an office and I have a full-time
20 paycheck and hours at the Houston Police Department.

21 Q Do you work with any other law enforcement
22 agencies?

23 A Everybody needs to use me in this area,
24 because I'm the only one, yes.

25 Q What do you when you're the only one?

1 A There's only two other forensic artists in
2 Texas and they are both in Austin.

3 Q So when we see sketches like on the news,
4 that are put out on the news, are those done by you?

5 A For 31 years they've been mine, yes.

6 Q Okay. And how long have you been working
7 with the law enforcement agencies?

8 A I've been working with law enforcement
9 agencies for almost 32 years.

10 Q About how many sketches have you done
11 throughout the course of your career?

12 A I've done about 4,500.

13 Q Do you only do sketches in Texas?

14 A No. I'm flown around to different places,
15 Washington D.C., just to Kansas, where my relatives
16 live to work cases, if they're real bad.

17 Q And what do you mean -- can you explain to
18 the jury what kind of training you went through at
19 the FBI Academy?

20 A They trained us to get with the witness and
21 help them remember the face that they've seen.

22 Q All right. And can you explain to the jury
23 the difference -- based on your training and
24 experience, the difference between describing someone
25 versus recognition?

1 A Recognition -- this an important thing. We
2 have a facial identification catalog, with different
3 noses and lips and eyes. And so the witness doesn't
4 even have to talk.

5 They open the book and they point out
6 eyes that look like the person they saw. Because
7 their brain recognizes the feature in the book, just
8 like they saw a face during the scene. So the
9 picture in the book speaks to the artist, and gives
10 them all the information to draw the memory from the
11 witness.

12 Q How many -- approximately how many cases
13 have you helped solve through forensic sketches?

14 A My sketches have helped law enforcement
15 bring in more than 1,266 individuals.

16 Q And do you have any books or publications?

17 A I wrote a textbook on how to be a forensic
18 artist.

19 Q All right. Now, I want to talk to you
20 specifically about forensic sketches and how they're
21 conducted. You talked a little bit about it. You
22 said that you show pictures. Why is that?

23 A I show pictures so that I don't influence
24 the witness. They go to their memory, and then when
25 they saw the face, the face entered their eyes, and

1 then went to their visual cortex of their brain.

2 MR. MAYR: Okay. Your Honor, I would
3 object. May we approach, Your Honor?

4 THE COURT: Yes. Come on up.

5 (Bench Conference.)

6 MR. MAYR: Okay. Now, this is getting
7 a little bit beyond it. My objection here is under
8 702, that she's offering expert opinions. Talking
9 about how a memory becomes engrained in a brain. And
10 I don't -- she doesn't have any psychological
11 background or any training. At least, I haven't
12 heard about any.

13 So, I mean, I thought this was going to
14 be limited. But I'm going to need to take this
15 witness on voir dire outside of the presence of the
16 jury, to -- first of all, I don't even think I need
17 to do that. I just -- I don't think that she should
18 be allowed to testify to how the human brain --

19 THE COURT: So what is your objection?

20 MR. MAYR: It's that this is an
21 inadmissible expert opinion under 702, 704 and 705.

22 THE COURT: All right.

23 MS. COOPER: She has not rendered an
24 opinion. I haven't asked her about an opinion. I'm
25 asking her how she goes about putting the sketches

1 together. And why they're looking at pictures versus
2 giving a description, based on her training and
3 experience.

4 MR. MAYR: Let me --

5 THE COURT: Here's the deal. That's
6 the question you asked. But the answer she gave
7 doesn't talk about the steps she takes and what she
8 does and what she observed them do. She's talking
9 about what happening in their brain.

10 So the objection's sustained at this
11 time, unless you lay a predicate for that type of
12 testimony.

13 (Bench Conference Concluded.)

14 Q (BY MS. COOPER) Okay. Ms. Gibson, if we can
15 talk to the jury about the steps that are taken when
16 a sketch is put together. You've talked about a
17 book. Can you describe that book to the jury?

18 A The book tells you how to get a face from a
19 witness memory. And it also talks about facial
20 reconstruction on skull, age progression of children,
21 and adults. And how to do getaway vehicles, tattoos,
22 and differentiate drawing females from males.

23 Q Okay. And is this a book that you wrote?

24 A Yes.

25 Q Okay. Whenever you wrote the book, where

1 did you -- what education or training do you have to
2 base that -- those opinions on?

3 A I have been able to take 1,266 sketches I
4 did, and compare them to the proof of the perpetrator
5 of the crime's photograph. So I've been able to
6 understand when I made mistakes and why I made them.
7 And I understand how to work the memory from that
8 feedback of the comparison of photographs of known
9 criminals, to the sketch I did from memory.

10 Q Okay. Whenever a sketch is being completed,
11 you said that the witnesses look at pictures in a
12 book?

13 A Yes.

14 Q Is that correct?

15 Can you describe that book to the jury.

16 A Everybody in the world uses a facial
17 identification catalog. And it just has about 200
18 eyes, 200 eyebrows, 200 noses, et cetera. And then
19 it has ears, teeth, hair styles.

20 Q Okay. And are these different faces or
21 features?

22 A They will show, for instance for the nose,
23 they'll block everything else out and just show the
24 nose. Same thing for the eyes. They block out the
25 bottom part of the face.

1 Q All right. And all the eyes, like the
2 different types of eyes, are they all like together
3 in one part of the book?

4 A Yes. They're in sections. The book is
5 about as big as a magazine.

6 Q And as they go through -- do you always do a
7 sketch the same? Like do you start at a certain part
8 of the face and work your way down? Or how does that
9 work?

10 A In general, I always do the sketch where the
11 witness can't see him there. Instead of looking at
12 the book, picking features that resemble the person
13 they saw. And then when I get a rough sketch done --
14 I start at the top and go down.

15 Q Okay.

16 A Then when I get the sketch -- the features
17 put together in the good proportion like a human
18 being, I tell the witness, I'll change anything you
19 want me to change, anyway you want me to change it,
20 to make it look as much like the person as possible.

21 And then I turn the sketch around and
22 show them. And as quickly and as with as good skill
23 as possible, I do whatever the witness says.

24 Q Okay. As far as changes?

25 A As far as changes.

1 Q All right.

2 A And they were never perfect.

3 Q Throughout your experience, have you worked
4 with children?

5 A Yes, I have.

6 Q Approximately how many children have you
7 worked with in putting together sketches?

8 A Hundreds.

9 Q So do you handle children differently than
10 you do adults?

11 A Somewhat, but children like it if you treat
12 them like an adult.

13 Q Okay. All right. So as they're going
14 through, you said you start with the -- you start at
15 the top and work your way down. Are they able to --
16 you said they're able to make changes to features.

17 Do they tell you that, well, if they
18 say, okay, it's these eyes, but are they able to say,
19 but a little wider and a little squintier?

20 A That's exactly right. And I let them know
21 they can do that. And sometimes they'll say, it's
22 half way in between --

23 MR. MAYR: Objection, nonresponsive.

24 THE COURT: That's sustained.

25 Go ahead.

1 Q (BY MS. COOPER) And throughout your
2 experience, have you had -- and throughout all of
3 your education in working with people and putting
4 together sketches, have you come to the determination
5 of whether or not it's an easier way to do it by
6 having them recognize pictures versus just telling
7 you with their words what someone looks like that?

8 A That's exactly right. There's been studies
9 on that and I cover it in my book. It's much easier
10 to just recognize a picture than to develop the words
11 in your mind.

12 Q Okay. And what do you mean by "studies,"
13 what kind of studies have been done?

14 A Well, it takes two parts of the brain to
15 come up with somebody's name or to name a mustache.

16 MR. MAYR: Your Honor, objection. This
17 is inadmissible under 703. Nonresponsive. It's
18 inadmissible expert testimony and bases for expert
19 opinion, which she's not qualified to give.

20 THE COURT: All right. Well, at this
21 time, you've laid the proper predicate. Question --
22 well, what do you mean by studies? What kind of
23 studies have been done? Not what they've shown, but
24 what kind of studies have been done?

25 THE WITNESS: My comparison of 1,266

1 sketches to the proven perpetrator of a crime, is a
2 study of what an artist can do with those visual
3 aids.

4 Q (BY MS. COOPER) Now, was that a study that
5 you were directly involved in?

6 A That's all my work and it's covered in my
7 book.

8 Q All right. And -- okay. So as you're
9 having these individuals that you work with
10 recommend different features, how long does it take
11 to get a sketch done?

12 A One hour.

13 Q Is it always one hour?

14 A No. If it's a really older person, longer.
15 But for children you draw really fast.

16 Q And why is that?

17 A Their attention span.

18 Q Okay. I want to talk to you specifically
19 about a case -- an HPD Case No. 06440-4611. It was a
20 sketch that was drawn by you on May the 26th of 2011.

21 How many sketches do you do? Do you do
22 these daily, weekly? How does that work?

23 A In 2011 I did about 110 sketches that year.
24 And they come in clumps and waves.

25 Q I want to show you State's Exhibit No. 4.

1 Is this one of the sketches that you -- that you did?

2 A Yes. That's the sketch I did on May 26th,
3 2011.

4 Q How do you know that this was one of your
5 sketches?

6 A Because I had signed it and dated it.

7 Q Okay. Is this your signature down here in
8 the black?

9 A Yes.

10 Q All right. And the date says May 26th of
11 2011?

12 A Correct.

13 Q Do you remember a little boy by the name of
14 Malik Brown?

15 A Yes, I do.

16 Q Why do you remember him?

17 A His daddy was killed and I was trying to
18 keep him from grief, keep him cheered up.

19 Q Do you remember working with him and putting
20 this sketch together?

21 A Yes.

22 Q Now, was he -- did you sit down with him and
23 get a verbal description from him? Or do you just
24 start out with the pictures?

25 A I start out with the pictures after I talk

1 about things that the boy would enjoy talking about.

2 Q Like what?

3 A Anything he wants, like what school --

4 MR. MAYR: Objection. Never mind. Go
5 ahead. Withdrawn.

6 Q (BY MS. COOPER) Why do you talk about things
7 that he would like to talk about?

8 A The sketch session needs to be the most
9 enjoyable conversation possible, considering what the
10 witness has been through.

11 Q All right. Why is that?

12 A Mood elevation enhances memory.

13 Q Okay. So as you're getting this sketch
14 together, do you at some point get a verbal
15 description from him of the suspect?

16 A The only thing I got from him is written at
17 the top of the sketch. That it was a black male,
18 everything at the top of the sketch, the build is
19 normal.

20 Q Okay.

21 A Seems like the skin is medium.

22 Q Okay. And there's -- you can see the word
23 "skinny" up here. Is that skinny build?

24 A Skinny build, yeah, skinny build. Skinny to
25 normal build. In other words, in between skinny and

1 normal.

2 Q All right. And then as far as the actual
3 facial features, did you start at the top of the
4 head?

5 A Yes.

6 Q And did you work your way down?

7 A Exactly.

8 Q After you go to start at the top of the
9 head, do you move to the eyes?

10 A Right. I go top of the head, forehead,
11 eyebrows, eyes, nose, lips, chin, and then draw in
12 some ears and do the neck.

13 Q All right. And is all of this done from his
14 memory?

15 A Yes.

16 Q Okay.

17 MS. COOPER: May I approach the
18 witness, Your Honor?

19 THE COURT: You may.

20 Q (BY MS. COOPER) Are there -- when forensic
21 sketches are done, is there one common, I guess, what
22 it's referred to as a common mistake in forensic
23 sketches?

24 A Absolutely.

25 Q And what is that?

1 A The outer periphery of the face will be --
2 can be very wrong, the shape.

3 Q Why?

4 A I don't know why.

5 Q Okay. Based on all of the sketches that
6 you've done and your training and experience, have
7 you found that that is the most common thing that is
8 wrong --

9 A Absolutely.

10 Q In a sketch?

11 All right. And is that consistent
12 throughout all of your sketches?

13 A Throughout all my sketches and other artists
14 also.

15 Q Okay. I want to show you State's Exhibit
16 No. 77, 104 and 105.

17 Do you recognize those?

18 A Yes.

19 Q And how do you recognize them?

20 A I prepared them when I was pondering this
21 trial.

22 Q Okay. And would State's Exhibit No. 104,
23 105 and 77 aid your testimony to the jury?

24 A Yes.

25 Q And on State's Exhibit No. 77, is this a

1 side by side view of the defendant and the sketch
2 that was done?

3 A Yes, it is.

4 Q And then State's Exhibit No. 104. Is this
5 the face where people look. Is it -- do you have it
6 blocked off?

7 A This is the face with the center of the face
8 isolated.

9 Q And will this help you to -- help you to
10 describe the most common forensic artists' mistakes
11 to the jury?

12 A Yes.

13 Q And then again, State's Exhibit 105, is that
14 a page actually that helps describe the most common
15 forensic art mistake?

16 A That's a page from my textbook, talking
17 about the most common mistakes forensic artists make.

18 Q Are there also visuals on this page that
19 will help aid your testimony to the jury?

20 A Yes, there are.

21 Q All right.

22 MS. COOPER: Your Honor, at this time I
23 offer State's Exhibit No. 77, 104 and 105, after
24 tendering to opposing counsel for any objections.

25 MR. MAYR: As to 104, 77, I don't have

1 any objection to these being admitted for
2 demonstrative purposes only. But given the nature of
3 the exhibits and the way they're going to be used, to
4 be admitted into evidence -- into actual evidence, I
5 would object to those as containing hearsay and also
6 repetitive 403 material.

7 THE COURT: Let me see them.

8 (Ms. Cooper tenders document to the
9 Court.)

10 (Bench Conference.)

11 MS. COOPER: This is 77 and 104.

12 There's not any hearsay in that. And I think this is
13 the one, 105 has the -- for her to talk about the
14 most common mistake.

15 THE COURT: All right. Specifically,
16 just on that for a second. As to State's 77 and 104,
17 objection's overruled. They're admitted. And what's
18 your objection on 105? Hearsay and what else?

19 MR. MAYR: Again, that contains a lot
20 of -- it just contains a lot of material there,
21 Judge, including references to other things. That to
22 be -- it's just -- it's duplicative of the testimony.
23 Therefore, I would argue it's repetitious and also
24 contains reference to materials that would be
25 considered hearsay.

1 So I'll ask that that not be -- I'm
2 okay with it being admitted for demonstrative
3 purposes, but not to be actually admitted into
4 evidence to be submitted for consideration. So...

5 THE COURT: Your position?

6 MS. COOPER: Judge, this was written by
7 her. It's her work. It's -- she's going to testify
8 to it. So there's no reason why, I mean, the jury
9 can't see it. It's going to help aid her testimony.
10 And I think that in -- and the sketch has been highly
11 contested by the defense. And for them to be able to
12 make their -- form their own opinion as to the
13 credibility and accuracy of the sketch, I think they
14 need to hear everything and be able to -- to see
15 examples of what she's talking about. Specifically
16 to the issue of him bald -- being bald.

17 MR. MAYR: Yeah. Let them look. It's
18 just I don't want them -- you know, it would be akin
19 to letting them take transcript back into the jury
20 room and review actual things that pertain to this
21 case, when they should rely on their own memory about
22 what the witness has testified about. So...

23 THE COURT: All right. Well, I hear
24 your objection, but they're overruled.

25 MR. MAYR: Okay.

1 THE COURT: If it would aid the jury.

2 (Bench Conference Concluded.)

3 MS. COOPER: So, Judge, Exhibit 77, 104
4 and 105 are admitted into evidence at this time?

5 THE COURT: They are admitted.

6 (State' Exhibits 77, 104 and 105 were
7 admitted.)

8 Q (BY MS. COOPER) I want to show you State's
9 Exhibit No. 105. What is this?

10 A It's a page from my book showing the most
11 common mistake made by forensic artists.

12 Q Okay. And can you explain this to the jury?

13 A I thought the sketches looked so dissimilar,
14 I was depressed. And then when I isolated the center
15 of the face, I saw that the center of the face was
16 very, very close. And that all the witnesses had not
17 given me the outer perimeter -- the outer periphery
18 of the face correctly. And it gave me heart.

19 Q Okay. So are you -- are these actual
20 sketches that are done by you?

21 A Yes, sketches from witnesses.

22 Q And are they like next to the actual picture
23 of the perpetrator.

24 A That's exactly right. The proven
25 perpetrator of the crime. I have a legal right to

1 publish them if they've been convicted and
2 adjudication has been exhausted on all of those
3 people.

4 Q Okay. And each one of them, is there a
5 similar difference in each one of the sketches?

6 A I want to get the top of the head wrong. I
7 want to get them too fat or too thin. but again, if I
8 go to center of the face, I know the similarities are
9 so close there.

10 Q Okay. And across all your work and the
11 thousands of sketches that you've done, is it
12 routinely something that you've noticed, where the
13 top of the head or the outer portion of the face is
14 different than the actual suspect?

15 A Yes. If something will be off, it will be
16 most off in the peripheral areas of the face.

17 Q Is -- and is a sketch off of someone's
18 memory, always a hundred percent of what the person
19 actually looks like?

20 A No. I can't --

21 MR. MAYR: I'm going to object, Your
22 Honor. That calls for speculation -- calls for
23 speculation.

24 THE COURT: Sustained.

25 MS. COOPER: Throughout your

1 experience, you've said that you've done thousands
2 and thousands -- thousands and thousands of sketches;
3 is that correct?

4 A Yes.

5 Q Have you had about as many opportunities
6 there of those sketches that you've done, have you
7 had an opportunity to make a comparison to the actual
8 suspect in the case, after the suspect has been
9 caught or charged and convicted?

10 A Yes. Over 1,200 times I have done that.

11 Q Okay. And based on your experience over the
12 1,200 times that you've done that, are there -- would
13 you -- do you expect a sketch to be exactly a hundred
14 percent to what the person looks like?

15 A I can never do a perfect picture, even if
16 the person sits in front of me.

17 Q Why is that?

18 A No artist I know can do a perfect picture of
19 anyone.

20 Q In these sketches, is the perpetrator or the
21 suspect sitting there in front of you?

22 A No.

23 Q Okay. And is this done just based on
24 someone's memory?

25 A That's exactly right.

1 Q All right. I want to show you State's
2 Exhibit No. 77.

3 What are we looking at here?

4 A This is the man on trial, a photograph of
5 him, next -- juxtaposed to the sketch I did from the
6 9-year-old boy.

7 Q And then I want to show you State's Exhibit
8 No. 104.

9 A These are the same pictures, with the
10 peripheral areas of the face blocked away.

11 Q Okay. As far as the -- the inner area of
12 the face, can you point out some of the consistencies
13 with the sketch and the defendant?

14 MR. MAYR: You know, I'm going to
15 object to that, Your Honor. That's for the jury to
16 decide, not for her. She's got no basis to offer an
17 opinion on something like that, Your Honor.

18 THE COURT: Well --

19 MR. MAYR: It's an improper opinion.

20 MS. COOPER: May I respond to that,
21 Your Honor?

22 THE COURT: You may.

23 MS. COOPER: Your Honor, I'm not asking
24 for her opinion. She's an artist and artists see
25 things differently than people that are not artists

1 and do not draw for a living. And there are things
2 that stand out to her which may not stand out to
3 someone that's not an artist, that does forensic
4 sketches on a daily basis. And I'd like for her to
5 explain those things to the jury. I'm not asking for
6 her opinion.

7 THE COURT: Well, you're asking her for
8 consistencies?

9 MS. COOPER: Yes, Judge.

10 THE COURT: And things that stand out.
11 Are those two different things.

12 MS. COOPER: No, Judge.

13 MR. MAYR: I believe they are, Your
14 Honor. If she wants -- if she wants to refer to
15 State's Exhibit No. 4, and point out certain things
16 that she notices that stand out about the sketch,
17 then that's one thing. But to come in and say, okay,
18 well, I think that this looks like this, based on my
19 opinion. Well, there's no basis for that, and that's
20 an improper opinion. Even for a lay witness, that
21 would be an improper witness, because it goes to
22 ultimate issue which is the jury instructions.

23 MS. COOPER: Judge, may we approach?

24 THE COURT: Yes, come on up.

25 (Bench Conference.)

1 MS. COOPER: Judge, I really don't know
2 -- maybe he doesn't realize where I'm going with
3 this. There were things during the sketch, such as
4 like one of the eyes was a little bit more squinted
5 than the other. When we look at the actual photo of
6 the defendant, it's the same way. The way that the
7 glare shines on the chin when you look at the
8 suspect, it's same way.

9 I'm not asking her to say, this is the
10 same person. It looks exactly the same. I'm asking
11 for inconsistencies that she notices as an artist,
12 based on doing the sketches. And whenever she looks
13 at the sketch, and then she looks at the photo of the
14 defendant.

15 I'm not going to ask her opinion
16 question of, is this is the same person or is this a
17 hundred percent or is this -- or anything like that.

18 THE COURT: I think you're invading the
19 province of the jury right there. I think you can
20 ask her what you want to ask her. But in terms of
21 them being consistent, you can be -- you can couch it
22 a different way.

23 MS. COOPER: All right. As far as
24 like, okay, when you're doing the eyes, one of the
25 eyes is a little squintier, and that's how you drew

1 it, on -- when you compared it to the defendant -- or
2 does the defendant's eye appear to be the same way?

3 THE COURT: You can do that.

4 MS. COOPER: Okay.

5 THE COURT: You can do that. But you
6 can't -- you can point things out, but you can't give
7 her opinion as to -- you can't go further than that.

8 MS. COOPER: Okay.

9 THE COURT: Because I think it's a
10 question of fact for the jury.

11 MS. COOPER: Okay.

12 MR. MAYR: All right.

13 (Bench Conference Concluded.)

14 THE COURT: Now, Ms. Gibson, if you
15 would, do me a favor. They're going to ask you very,
16 very specific questions. So just listen to the
17 question and just answer that question. Don't
18 volunteer anything.

19 THE WITNESS: Yes, Judge.

20 THE COURT: They'll ask you all the
21 questions necessary. They may ask you 30 questions,
22 so be it, 100 questions, so be it. But just one
23 question at a time, one specific question, one direct
24 answer.

25 THE WITNESS: Okay.

1 THE COURT: You may proceed.

2 Q (BY MS. COOPER) I want to talk to you
3 specifically about the eyes on the sketch. Can you
4 tell the jury -- can you explain to the jury what --
5 explain to the jury the eyes, and the differences in
6 the two eyes in how they're drawn.

7 A Well, the most notable thing about these
8 eyes are he's flexing his corrugator muscles, pulling
9 his eyebrows closer together and making little
10 vertical wrinkles. And then one eye's closed a
11 little bit more than the other one, and it's a
12 smooth, attractive black male.

13 Q All right. And when you say, one eye's
14 closed a little more than the other, can you -- which
15 -- can you explain that to the jury?

16 A It would be the subject's right-hand eye.
17 It would be to us viewing on the left-hand side of
18 the picture.

19 Q All right. And what about that as an
20 artist, why was that something that -- can you
21 explain that and the significance of that when you're
22 doing a sketch?

23 A Not exactly.

24 Q Okay. All right. So one eye's closed a
25 little bit more than the other. Is that something

1 that whenever you're putting together a sketch, that
2 you talk to -- or that you would have talked to Malik
3 about?

4 A I can't specifically remember.

5 Q If you -- like for instance in this sketch,
6 you drew one eye a little bit closed more than the
7 other, why would you do that?

8 A A hundred percent of everybody's eyes are
9 different one from the other, so you just do that.

10 Q Okay. And is this based on maybe not so
11 much a description from the witness, but based on the
12 pictures and the conversation that you're having with
13 the witness?

14 A It is based on when I show the sketch, I can
15 change that if it's wrong. And they will tell me if
16 they really want me to change something.

17 Q Okay. And so the eye is -- the right eye is
18 a little bit squintier or closed more in the sketch.
19 Whenever you looked at the suspects mug shot, did you
20 notice the same thing?

21 A Yes, I did.

22 MR. MAYR: Again, Your Honor,
23 objection. That is a comparison that they're trying
24 to backdoor in. She is -- she's very good at doing
25 this.

1 MS. COOPER: Can we approach, Judge?

2 MR. MAYR: She's very good at doing
3 this. She testified how she could --

4 THE COURT: If that's the objection,
5 that's overruled. You pointed it out.

6 Q (BY MS. COOPER) Did you notice the same thing
7 when you looked at the defendant's picture?

8 A Yes.

9 Q With the eyes?

10 A Uh-huh.

11 Q All right. And then as far as -- do you
12 remember anything about when you were drawing the
13 sketch, about the mouth and -- in this case?

14 A I can specifically see on the sketch, and
15 remember that the boy told me to make the edge --
16 that the mouth was too wide. And I can see where I
17 took a lighter colored pastel and shaved off the edge
18 of that mouth to make it narrower.

19 Q All right. And how do you -- can you
20 point -- I mean, can you -- what do you mean, you can
21 see that?

22 A It's clear as can be. There's a lighter
23 tone -- slightly lighter tone of pastel stroking at
24 the outer corners of the mouth. The outer corners of
25 the mouth originally were further out. And I can see

1 where I have softly rubbed lighter colored pastels
2 and made the mouth narrower. So, I'm positive that
3 Malik wanted me to make that mouth narrower and I did
4 that.

5 Q Can you point out for myself, I'm not an
6 artist. What are you -- you can -- if you touch that
7 screen to your left, you can make marks on the
8 screen. But just point out what you're talking
9 about?

10 A Right here (indicating) and right here
11 (indicating) are the corners of the mouth. And they
12 were out here, and I shaved -- I shaved it off with a
13 lighter colored pastel. You see this lighter color,
14 I took that lighter color and shaved it off, so it
15 was right there (indicating) where the dark dot is.

16 Q Okay. And can you --

17 MS. COOPER: Your Honor, may I have the
18 witness step down?

19 THE COURT: You may.

20 (Witness exits witness stand.)

21 Q (BY MS. COOPER) If you can walk over here to
22 the screen. I'm not -- hold on one second. Now, if
23 you can point out for the jury, and if we're looking
24 at the mouth on the sketch, how -- what it is that
25 you can tell that you've changed the mouth?

1 A I can -- I can see stroking with lighter
2 colored pastel. And I do remember him wanting me to
3 make the mouth narrower. And it goes like -- it
4 takes one second. It takes one thousand one -- it
5 takes two seconds to do it.

6 Q Okay. Okay. Thanks.

7 (Witness returns to witness stand.)

8 Q (BY MS. COOPER) And then as far as in
9 State's Exhibit No. 104, is the -- without rendering
10 an opinion or anything, but like the mistakes by
11 sketch artists, is the head different in the sketch
12 than the head of the suspect?

13 A Oh, yes, the top of the skull on my sketch
14 sticks up higher and is a little bit -- just higher
15 and little bit different shape.

16 Q After you get finished with the sketch and
17 you show it to Malik and make the changes, is there
18 anything else that -- that you do in this case?

19 A All I do is take a picture of the sketch and
20 e-mail it in a nice 300 DPI JPEG to the
21 investigator.

22 MS. COOPER: I pass the witness.

23 THE COURT: All right. Any questions?

24 MR. MAYR: Yes, Your Honor.

25 THE COURT: All right.

CROSS-EXAMINATION

1
2 BY MR. MAYR:

3 Q I'm showing you State's Exhibit 104. The
4 composite sketch is bald?

5 A Yes.

6 Q There's no hair on that head of yours?

7 A That's right.

8 Q No hair on that head of the picture that you
9 drew?

10 A Exactly.

11 Q There is hair present here (indicating)?

12 A Exactly.

13 Q All right. But what you're telling this
14 jury is really what you have to focus on -- now,
15 you're not saying that you just completely throw out
16 whatever happens outside of the circle. Is that what
17 you're telling us?

18 A No.

19 Q It's just not going to be as accurate as
20 things are inside of the circle?

21 A That's exactly right.

22 Q Okay. And those are going to include the
23 eyebrows?

24 A Yes.

25 Q The eyes?

1 A Yes.

2 Q The nose?

3 A Yes.

4 Q And the lips?

5 A Yes.

6 Q And part of the chin?

7 A Yes.

8 Q Let's see if you can see it here. Just hope
9 that these monitors work.

10 I'm zooming up on the photo of my
11 client, Gareic Hankston. I'd like you just to take a
12 look at his chin for a moment. You see anything?

13 A Oh, yes. He has a dimple.

14 Q Pretty large dimple, right?

15 A Yes.

16 Q Looking at him here in the courtroom from
17 where you're at, can you see it?

18 A The hair on his chin is obscuring, but, yes,
19 barely, yes.

20 MR. MAYR: May the witness stand down
21 from the witness stand?

22 THE COURT: She may.

23 (Witness exits the witness stand.)

24 Q (BY MR. MAYR) I'd like you step right here
25 about 8 feet away. Stand right here. And you can

1 see it pretty clearly?

2 A Oh, yes.

3 Q Okay. Thank you, Ms. Gibson. You may take
4 a seat.

5 (Witness returns to the witness stand.)

6 Q (BY MR. MAYR) Malik didn't tell you about any
7 sort of dimple or scar or anything else, because it's
8 not drawn here on your sketch, right.

9 A That's correct.

10 Q I want to just ask you just about your work.
11 The eyes -- you talked about one of the eyes being
12 closed more than the other. What about the nose?
13 Tell us about -- how would you describe this nose as
14 a forensic artist?

15 A That's a highly degraded image of my sketch.
16 It doesn't really -- you know, it doesn't really look
17 like a sketch.

18 Q We'll put it up over here. I'm sorry.

19 A I'm so sorry.

20 Q No, that's okay. That's just the
21 technology.

22 Let me show you State's Exhibit 4. Let
23 me show you State's Exhibit 77. Is that better for
24 you?

25 A Yes.

1 Q Okay. Tell us about the nose?

2 A That's a nice, smooth, attractive African
3 American male nose.

4 Q Okay. It's narrow, wide, nostrils flared?

5 A I think it's normal.

6 Q Okay. What about the lips?

7 A Nice African-American male lips.

8 Q And again, he's -- Malik is getting to look
9 at lots of different types of lips. Fuller lips,
10 narrower lips, wider mouth, narrower mouth. And then
11 you're helping put that together; is that right?

12 A Yes.

13 Q All right. We notice here, I think you said
14 something about some muscle being contracted and the
15 eyebrows are kind of furrowed like this. I see you
16 doing it as well, okay?

17 But why do you do it like that as
18 opposed to the eyebrows being relaxed?

19 A I was told to by the witness.

20 Q Okay.

21 A For sure.

22 Q And so again, if -- let's go -- I want to
23 just go back to Mr. Hankston's photos. And he's
24 obviously not furrowed and his eyebrows are much
25 further apart?

1 A That's correct.

2 Q All right. So when he comes back -- well,
3 let me go back to this.

4 (Attorneys confer.)

5 Q (BY MR. MAYR) Okay. When you first showed it
6 to Malik, you said one of the things you changed is
7 that you changed the lips, the corners of the mouth.
8 Was there anything else that he had you change?

9 A I can't remember anything else. And I'm
10 looking at it and I don't see any obvious changes in
11 the pastel work.

12 Q Now, Malik has testified when he looked at
13 this photo that you prepared for him --

14 THE COURT: Excuse me, you say photo?

15 Q (BY MR. MAYR) I'm sorry. On State's Exhibit
16 77, it's sort of a glossy paper. But when you
17 prepared the composite sketch, and Malik has
18 testified that when he saw this, he said, wow, that
19 looks exactly like him. How does that make you feel,
20 Ms. Gibson?

21 A I don't know if I remember him saying that.

22 Q To you?

23 A You know that -- I don't remember him saying
24 that. He may or may not have, sir.

25 Q Okay. Just briefly about your background.

1 UT Health Sciences Center, that was for
2 like a master's? Or...

3 A I went to dental school.

4 Q Okay. At UT, what was your degree in there?

5 A Art.

6 Q Art. Okay. You don't have any training or
7 educational background in the field of psychology, do
8 you?

9 A Yes. I majored in psychology at Kansas
10 University in Lawrence, Kansas for a year and a half.

11 Q For a year and a half. So you did take some
12 psychology courses?

13 A And also at Kansas Wesleyan University and
14 also at Wichita State University.

15 Q You don't hold any major -- you actually
16 never finished with major in psychology?

17 A That's correct.

18 Q And likewise, you have not written any
19 articles or done any study in the field of
20 psychology?

21 A The parts of my book that cover several
22 hundred pages of how to get a description out of a
23 witness is psychology.

24 Q Well -- but you've never taken any formal --
25 let me ask you this: Have you taken formal

1 psychology courses in the aspects of human memory?

2 A Yes.

3 Q Have you written on the topic of human
4 memory?

5 A Yes.

6 Q And that's just in your book?

7 A Yes.

8 Q No other published articles in journals
9 involving psychology or anything else like that?

10 A That's correct, no.

11 Q And then again, same thing with eyewitness
12 memory, you haven't -- other than your book, you have
13 not taken any courses, taught any courses, written
14 any articles, been published in any forensic science
15 or forensic psychology journals on eyewitness memory?

16 A Yes. I've been to eight International
17 Association for Identification conferences that
18 always talked about -- had courses in witness memory.
19 And I teach witness memory in my class at
20 Northwestern University in Huddleston, Illinois.

21 Q But that's the extent of it?

22 A Well, I went to Romania last month and
23 taught 42 forensic artists.

24 Q Okay. And you taught them how to do
25 forensic sketches, right?

1 A From witness memory, yeah.

2 Q But again, that didn't involve any formal --
3 actually, I'm just going to withdraw the question.

4 Are you aware of any cases of wrongful
5 convictions, where a composite sketch is --

6 MS. COOPER: I'm going to object to
7 relevance, Judge. I'm going to object.

8 MR. MAYR: She's talked about her 1,126
9 --

10 MS. COOPER: That's not relevant.

11 MR. MAYR: I want this jury to know how
12 many of them have involved --

13 THE COURT: About wrongful convictions?
14 That objection is sustained in that form.

15 Q (BY MR. MAYR) They're successful -- you
16 consider it being a successful match when there's an
17 actual conviction involved? And when you say that
18 this is the suspect, there's something to show that
19 this is, in fact, the person who did this offense?

20 A I consider it a success if it aids the
21 investigator in finding the perpetrator, and he's
22 convicted in a court of law.

23 Q And that's what you want to see happen,
24 right?

25 A Sometimes they've committed suicide or other

1 things. I mean, I just want to get the investigator
2 to help to find the suspect.

3 Q Okay.

4 MR. MAYR: No further questions, Your
5 Honor.

6 MS. COOPER: I have a few more
7 questions, Judge.

8 THE COURT: All right.

9 **REDIRECT EXAMINATION**

10 BY MS. COOPER:

11 Q Ms. Gibson, you indicated during the defense
12 questioning that you actually teach forensic
13 sketching or forensic artist -- or forensic art --
14 what is it that you teach?

15 A Forensic art.

16 Q And where do you teach that at?

17 A I teach it here in Houston and Chicago and I
18 just taught it in Romania.

19 Q Okay. And are these like college classes or
20 to law enforcement or what -- who's the audience that
21 you're teaching?

22 A Forensic artists, usually police officers
23 who are artistically talented.

24 Q And he talked to you about -- when, Mr. Mayr
25 talked to you about the eyebrows here, in State's

1 Exhibit No. 77. And you've indicated it was the
2 eyebrow furrow -- furrowing. What is that?

3 A It was a flexing of the corrugator muscle,
4 which causes the eyebrows to go closer together and
5 causes little vertical wrinkles to go between the
6 eyebrows.

7 Q All right. And is that something like -- it
8 indicates anger sometimes?

9 A An agitated person will do this.

10 Q Okay. And then when you furrow your
11 eyebrows, does it sometimes bring your eyebrows
12 closer together?

13 A Exactly, it does.

14 Q And we've talked about the scar or dimple on
15 the defendant's chin. I want to talk to you about
16 the chin on the -- the sketch. It looks like there's
17 a little bit of like shading or light.

18 Can you explain why you did that?

19 A I actually remember the witness saying there
20 was something cute about his chin.

21 Q And when you -- but -- but why did you make
22 the decision to make it -- it looks shiny on the
23 sketch?

24 A He chose an example that had a highlight
25 right under the darkness under the lip, and then it

1 bulged out in a perfect ball and had a shiny
2 highlight. So I drew the example that he showed me
3 in the facial identification catalog.

4 MS. COOPER: I pass the witness.

5 MR. MAYR: Permission to approach, Your
6 Honor?

7 THE COURT: You may.

8 **RECROSS-EXAMINATION**

9 BY MR. COOPER:

10 Q I'm going to show you what I've marked as
11 Defendant's Exhibit No. 2, Defendant's No. --
12 Defendant's Exhibit No. 3, Defendant's Exhibit No. 4,
13 Defendant's Exhibit No. 5, Defendant's Exhibit No. 6,
14 and Defendant's Exhibit No. 7.

15 Do you recognize all of these?

16 A Oh, yes, I do.

17 Q You do? I would expect that, because these
18 are fair and accurate depictions of sketch artist's
19 -- the composite sketches that you've drawn on one
20 side, and on the other side, the known perpetrator on
21 the other side; is that right?

22 A Yes.

23 Q And you're very proud of these -- of these
24 sketches that you did?

25 A That's not a specific expression that I

1 feel, but vaguely that would be true.

2 Q You have these up on your website to show
3 how good you are at drawing sketches, right?

4 A I show other artists that after I die, they
5 can continue the work and that they can do it. And
6 also, I described what the witnesses went through
7 before, so they understand when they are faced with
8 the troubled situation to do the sketch.

9 MR. MAYR: Your Honor, I'm going to
10 move to admit Defendant's 2 through 7, which I'm
11 tendering to opposing counsel.

12 MS. COOPER: Judge, may we approach?

13 THE COURT: You may.

14 (Bench Conference.)

15 MS. COOPER: Judge, I'm going to object
16 to other sketches from other cases that we know
17 nothing about being admitted in this case. They're
18 not relevant at all to this case. We don't know
19 anything about the facts. These are not the people
20 that are involved in this case and it's not relevant.

21 MR. MAYR: Judge, she's talked a lot of
22 times about her 1,000 -- how her experiences relies
23 upon her 1,126 sketches that she's done, where
24 they've caught a known perpetrator. This is a small
25 sampling, and I think the jury, to understand her

1 experience in these, they should be entitled to see
2 these.

3 MS. COOPER: And I'm going to object
4 that sketches from other cases are way too
5 prejudicial in this case. And they're just not
6 relevant. I mean, the bottom line is, they're not
7 relevant. It's not impeachment. It's not -- I mean,
8 it doesn't aid her testimony.

9 THE COURT: Let me see 104, 5 and 7.
10 And 77.

11 MS. COOPER: Judge, 105 was admitted to
12 aid her testimony and to illustrate a point about
13 mistakes that -- a mistake that is commonly made.
14 Which is the only reason that that was admitted.

15 These are sketches -- well, 77 and 104
16 are sketches of the defendant. Actual sketches of
17 other known perpetrators are not relevant in this
18 case.

19 MR. MAYR: And just like she gets to
20 bring up comparisons to show things outside the
21 periphery, I want to show how a lot of these photos
22 the hair, the styles. I just think it aids the jury
23 altogether to be able to see these. To accurately
24 see what she's capable of doing.

25 I mean, this is a case where they

1 looked exactly alike. The State wouldn't want to
2 show all of these photos --

3 MS. COOPER: No, I don't.

4 MR. MAYR: But when they've got a case
5 where they don't look --

6 MS. COOPER: We're too loud.

7 MR. MAYR: I'm sorry. When they have a
8 case where they don't look anything alike, now they
9 don't want to --

10 MS. COOPER: They do look alike. I
11 think they look like almost exactly alike.

12 THE COURT: Anyway --

13 MR. MAYR: Okay.

14 THE COURT: Anyways, so state
15 specifically why these are relevant at this time.

16 MR. MAYR: Again, it calls -- it's to
17 explain her testimony further. She's talked about
18 what she relies upon. I want this jury to see what
19 she's truly capable of doing. Not just in this
20 isolated case or just over here. That there's other
21 ways of things that she can look at.

22 And again, I'm not showing them every
23 single one that she's done. This is just a small
24 sampling of them. So, I think it helps explain her
25 testimony, the same way that that exhibit helps

1 explain her testimony.

2 MS. COOPER: That's illustrating a
3 point that she was talking about. This is just
4 putting in it there because she's drawn it before on
5 others cases that we know nothing about that
6 aren't -- that are not relevant in this case.

7 THE COURT: But here's the thing. I
8 think in -- regarding 105, I think it's -- I think
9 the witness testified about these specific one, two,
10 three different suspects was three different
11 composites. Which is part of her -- I think she
12 testified they were people that she's sketched. That
13 the sketches didn't look like the photos. But when
14 he cropped the faces of the sketches and cropped the
15 faces in the photos, that they were kind of, I think
16 matched.

17 And I think she further testified that
18 these are people that -- I think she testified --
19 correct me if I'm wrong, but she testified these are
20 people that were, you know, convicted, arrested, and
21 proven to be the perpetrators, if I'm not mistaken.

22 MR. MAYR: But she also testified the
23 same thing about those. Right.

24 THE COURT: Right. Do you all agree
25 with that?

1 MR. MAYR: Right.

2 MS. COOPER: I don't remember if she
3 said. I'm pretty sure, but I can't --

4 THE COURT: Yeah. I think she did.
5 Because that's where the problem I had with these.
6 But that's an issue that came up in my mind,
7 concerning 105. But your point in asking questions
8 about this is what? What kind of questions? You
9 can't just ask any question you want.

10 MR. MAYR: Well, it's not so much the
11 asking questions. I want to show the jury what she
12 is capable of doing. I mean, she is very good at
13 what she does. And I want the jury to see what she's
14 capable of doing. Because in my -- I want to be to
15 able to argue she didn't do it in this case.

16 I've written -- Ms. Cooper may want to
17 argue something differently. But I think it puts --
18 it puts her opinions and her skills in perspective.
19 That's what I want. And I want to show them to the
20 jury, so they can see -- they can use it to make
21 their own decision, whether this is the same persons.

22 MS. COOPER: I think if he does that,
23 then he's opened the door to me having her explain
24 these cases versus this case, and the consistencies
25 in the photo spread in this case, and why it's

1 similar.

2 THE COURT: Well, I think you opened up
3 a can of worms here. I think offering these photos 2
4 through 5 -- I mean, 3 through 7, to show how good
5 she is.

6 MR. MAYR: Uh-huh.

7 THE COURT: You know, reasonable minds
8 can differ on how good all these are, in terms of the
9 photo looking like the sketch. But again, you're not
10 impeaching her. You're kind of bolstering her. The
11 state of the record is such that she's already
12 volunteered all this, about all these successful
13 creations of composite sketches that resulted in a
14 lot of convictions.

15 I just want you to make a proffer of
16 the questions you want to ask her.

17 MR. MAYR: Well, I've already laid the
18 predicate to make those. In my opinion, I've already
19 laid the predicate to make those admissible. I would
20 show that -- my proffer would be, is that I would
21 show her each one of the photographs and ask her, is
22 this one of the sketches you did? Yes. And is this
23 is one of -- is this the known suspect who was
24 caught? Yes. And just leave it at that. And I do
25 that same -- those questions for each one of those

1 exhibits.

2 Is this your sketch? Is this who was
3 caught? And I would leave it at that. And then
4 leave it to the jury to decide what they want to
5 think. Again, that's what this ultimately boils down
6 to, is just helping the jury to see what they're
7 dealing with here. And whether they want to believe
8 this is the same person or not.

9 I'm not going to ask them to make any
10 comparisons. I'm not going to say this or that. You
11 drew that sketch? This is who was caught? You drew
12 this sketch? This is who was caught? You drew this
13 sketch? This is who was caught. And here, this is
14 the sketch you drew, and this is who was caught. And
15 then we leave it to the jury to decide for themselves
16 what they want to decide.

17 MS. COOPER: But I think that opens the
18 door to me asking follow up questions on this sketch
19 and this suspect.

20 MR. MAYR: Well, what kind of -- I
21 mean, what kind of follow up questions?

22 THE COURT: Opened the door, how so?

23 MS. COOPER: Because he's trying to
24 bring up other cases about sketches that involve
25 other cases. And he's trying to make -- after he

1 already argued she's not an expert in memory in
2 eyewitness identification, he's offering these to
3 prove just that. And I think that now, I can go in
4 to the sketch and ask her to talk about the
5 similarities between the two. Because he's trying to
6 point out that they're not similar. And I think they
7 are, and I think the jury needs to hear that based on
8 her expertise.

9 THE COURT: I don't know what he's
10 trying to point out. I guess he's trying to -- I
11 don't know what he's trying to point out.

12 MR. MAYR: Again, just --

13 THE COURT: I just know what you said
14 you are going to ask.

15 MR. MAYR: And again, it's so that the
16 jury can see what she's capable of doing, that she's
17 capable of drawing a sketch of someone and this is
18 the person who was found. And then they can take
19 that and weigh that, compare it -- they can weigh
20 that in their mind when they're looking at this
21 specific case.

22 MS. COOPER: I think what she's capable
23 of is not showing some pictures of what she's capable
24 of. If that's the purpose, it's not relevant in this
25 case. She's talked about she's done thousands of

1 sketches before offering them, because of comparison
2 of those cases to this case. And I get to ask her
3 about the comparisons between those cases and this
4 case.

5 MR. MAYR: No, no, no. That's not it.
6 It's just simply to say -- to give the jurors -- it's
7 to give the jurors more than just this to look at.
8 That's what it boils down to.

9 MS. COOPER: Those were offered to
10 point out the looking at the face. It's not talking
11 about sketches. Those are all similar, too. It's
12 not talking about how good or how bad she is. It's
13 pointed -- it was admitted to illustrate a point, in
14 that there's a mistake that's commonly made in
15 sketches. That was it. It's not about how good or
16 how bad she is or what she's capable of or what she's
17 not capable of.

18 These are not relevant, just to show
19 that she's -- what she would or what she's not
20 capable of.

21 THE COURT: Is that exactly what you
22 want to show? How good she is and what she's capable
23 of?

24 MR. MAYR: That's it.

25 But at the same time, I don't want to

1 be opening the door to having her try to come in here
2 and go to that ultimate issue of saying, oh, this is
3 the same person who committed --

4 MS. COOPER: I'm not going to ask her
5 that. I want to ask -- should be able to ask her
6 about the similarities between the two, between the
7 defendant and the suspect. If you're offering it for
8 that purpose.

9 MR. MAYR: Now, listen to me. That
10 seems like the same thing.

11 MS. COOPER: But I don't get to go
12 there.

13 THE COURT: She didn't get to go there.
14 And here's the deal. If you're going to show how
15 similar they are, and then, you know, seems like this
16 -- I don't know.

17 MR. MAYR: You know what, it's for them
18 to decide whether it's similar or not. I'm not going
19 to ask that. I'm just going to admit them and leave
20 it to them to decide for themselves.

21 THE COURT: Well, you know, this is
22 kind of close. And it's very important. However, I
23 don't see the relevance of it. How you can make
24 her -- her successfully prosecuted cases, wherein she
25 did composite sketches. Whether there's five of them

1 or 50 of them or a 100 of them or 1200 of them, like
2 she says.

3 MR. MAYR: Uh-huh.

4 THE COURT: However, she did -- these
5 five are admissible or all 1,200 are admissible. I
6 just don't see how -- how that's relevant to any
7 material issue of fact in this case.

8 I think it confuses the issues and
9 could involve delaying the trial. Because it's five
10 -- these five are admissible, then 50 are admissible
11 under that theory. If -- for that specific purpose
12 that you put on the record. If there's any other
13 purpose, I haven't heard it.

14 MR. MAYR: Well, Judge, you have the
15 authority to limit it to a certain extent. Again,
16 that's why I'm only just picking these few. And I'm
17 trying to keep them as diverse as possible. So...

18 THE COURT: Sure. Sure.

19 MR. MAYR: But the idea here is to give
20 the jury a -- I feel it just gives the jury and out
21 of the jury, it gives them the ability to judge what
22 it -- to judge exactly that the State is trying to do
23 with State's Exhibit 77 and 104, which is imply that
24 this is the same person.

25 MS. COOPER: And it's not.

1 THE COURT: Well, I think they speak
2 for themselves. Seventy-seven and 104 speak volumes.
3 They say a lot, independent of what the jury's going
4 to take from it. But I think on this narrow offer of
5 relevancy, I think I'm going to sustain the State's
6 objection.

7 MR. MAYR: Okay. Judge, I'll offer it
8 for purpose of the record then.

9 THE COURT: All right.

10 (Bench Conference Concluded.)

11 MR. MAYR: I have no further questions
12 of this witness, Your Honor.

13 THE COURT: All right.

14 MS. COOPER: I have nothing further for
15 this witness, Judge.

16 THE COURT: All right. May Ms. Gibson
17 be excused?

18 MS. COOPER: Yes, Judge.

19 MR. MAYR: No objections, Your Honor.

20 THE COURT: Thank you, ma'am. You're
21 free to go.

22 All right. What says the State?

23 MS. COOPER: State calls Crystal
24 Jordan.

25 THE COURT: Crystal Jordan.

1 How long might this witness take?

2 MS. COOPER: She's going -- I've got a
3 911 tape to play through her. She'll be a little
4 bit.

5 THE COURT: Okay. She got to come back
6 tomorrow.

7 Members of the jury, tomorrow we're
8 going to start at 9:30, 9:30. So arrange your
9 schedules. We'll take lunch break probably around
10 12:30, because you'll eat lunch -- you'll eat
11 breakfast like 8:00 o'clock, whatever. Have lunch
12 about 12:30. And tomorrow we may stay a little late,
13 until about 6:00 o'clock or so. So you make the
14 appropriate arrangements. If you need bus passes,
15 whatever, you let the bailiff know. We'll get those
16 to you.

17 Remember during this break all breaks,
18 do not discuss the case, don't make any scene
19 investigations. Don't let anybody talk to you about
20 the case. Just have a good evening and we'll see you
21 tomorrow morning, 9:30.

22 THE BAILIFF: Your Honor, this witness
23 has not been sworn.

24 THE COURT: Okay. We'll swear her in
25 right now.

1 Raise you right hand, please.

2 (Witness sworn.)

3 THE WITNESS: I do.

4 THE COURT: All right, ma'am. Go ahead
5 and have a seat in the front row over there. We're
6 not going to do this today. We're going to come back
7 at 9:30 tomorrow morning.

8 Your testimony's going to take probably
9 an hour or so, plus or minus. Could be more. We're
10 not going to do it today. So tomorrow morning at
11 9:30.

12 Court's adjourned.

13 THE BAILIFF: All rise for the jury.

14 (Jury exits courtroom.)

15 (Court adjourned.)

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