

1 THE WITNESS: While I am here since I'm
2 leaving may I sit in?

3 THE COURT: There is no bar.

4 MR. REYNARD: We don't know what will come up
5 if he's still a potential witness.

6 THE COURT: I will let you decide.

7 MR. PICL: We are going to call Don Hopper
8 and that would be the rest for the afternoon, and the
9 people tomorrow morning have nothing to do with Florida.

10 THE COURT: All right. That means you can
11 stay.

12 (Witness excused.)

13 THE COURT: And are you prepared to call your
14 next witness?

15 MR. PICL: We are.

16 (Witness sworn.)

17 DONALD W. HOPPER
18 called as a witness on behalf of the Defendant herein,
19 being first duly sworn, was examined and testified as
20 follows:

21 DIRECT EXAMINATION

22 BY MR. PICL:

23 Q Okay. Would you tell us your full name and
24 spell it?

1 A Donald William Hopper, H-O-P-P-E-R.

2 Q Mr. Hopper, by whom are you employed?

3 A State of Illinois.

4 Q Specifically what branch or division?

5 A The Office of the State Appellate Defender.

6 Q At one point earlier this year you, in fact,
7 were working with us, us being Jamie's defense attorneys
8 and did some investigation work in this case, didn't
9 you?

10 A That's correct the year 2000.

11 Q Your relationship with the defendant and our
12 effort ended on or about the 27th of October, is that
13 correct?

14 A Approximately, yes, sir.

15 Q And since that date you haven't done any more
16 investigative work for us, is that correct?

17 A I have not.

18 Q Okay. Just to get a little bit in the way of
19 background from you how long have you worked for the
20 State of Illinois?

21 A Be seven years in February.

22 Q And those seven years have been spent with the
23 Office of the State Appellate Defender?

24 A Only since May 16th of last year.

1 Q When the office was originated that being 2000?

2 A Yes.

3 Q Before that time what agency did you work for?

4 A I was with the Department of Children and Family
5 Services as a child abuse investigator in Chicago,
6 Peoria, and Jacksonville field offices.

7 Q And just so I can clear this up your duties with
8 the state appellate defender are what?

9 A State investigator for defense.

10 Q You are an investigator?

11 A Yes, sir.

12 Q And just outline for us what some of your duties
13 as an investigator are?

14 A Well, it would be to interview witnesses, locate
15 witnesses, serve the pleasures of the defense.

16 Q All right. Take measurements, photographs?

17 A Photographs, measurements, diagrams, retrieve
18 reports, documents.

19 Q Before you worked for DCFS who did you work for?

20 A Just prior to DCFS I was a staff investigator
21 for Carnival Cruise Lines in Miami, Florida.

22 Q How long were you with them?

23 A Approximately four years.

24 Q Before that who did you work with?

1 A I was in the Dade County State's Attorneys
2 Office.

3 Q How long did you work for them?

4 A Approximately four years.

5 Q And that is in Florida?

6 A Yeah, Dade County, Miami, Florida.

7 Q Were you an investigator for them?

8 A No, I was an administrative assistant to the
9 director.

10 Q Before that who did you work for?

11 A Immediately before that I was a criminal
12 investigator for the Lafayette Sheriff's Department in
13 Louisville, Arkansas.

14 Q How long were you an investigator for them?

15 A Approximately two years.

16 Q And did you have any investigative experience
17 before that job?

18 A Yes, sir, I was with the Arkansas State Crime
19 Commission prior to that.

20 Q For how long?

21 A Approximately two years.

22 Q As an investigator?

23 A I was juvenile specialist and basically it
24 involved some investigation, monitoring.

1 Q Did you do investigative work before that?

2 A Yes, sir. I have had both private and public
3 investigations and sworn police officers, sworn deputy
4 sheriff.

5 Q You were a police officer?

6 A Yes, sir. Started out Prince County, Georgia,
7 Maryland.

8 Q When was that?

9 A 1969, 1970.

10 Q And you were a deputy sheriff also did you say?

11 A At the same sheriff's department that I later
12 went back on as a criminal investigator and established
13 their criminal investigation division.

14 Q So you had a broad range of investigative
15 experience?

16 A Yes, sir, a little over thirty years.

17 Q Thirty years as an investigator.

18 In this case at I think it might have
19 been at the request of Mr. Riley did you measure
20 something?

21 A That's correct.

22 Q And what did you measure?

23 A I measured the distance from the northwest
24 corner of 807 East Empire Street here in Bloomington

1 diagonally across Empire to 802 East Empire which was
2 approximately the front door of the Clark Station.

3 Q Before getting into the details of that
4 operation what was your understanding as to why you were
5 being asked to measure that distance?

6 A Well, among other things just a complete perusal
7 of the whole entire area was to determine what the
8 distance was from the northwest corner of 802, or 807
9 East Empire to where the door of the Clark Station would
10 have been.

11 Q The front door or the bathroom door?

12 A Be the front door.

13 Q Okay. Were you informed by Mr. Riley or someone
14 on his behalf as to who it was at the time of the
15 robbery lived in the Empire Street, the house?

16 A The 807 East Empire?

17 Q Right.

18 A Yes, sir.

19 Q Who was that?

20 A That would be Mr. Luna.

21 Q The one who made -- strike that.

22 You reviewed some of the discovery
23 reports in this case, is that correct?

24 A That's correct.

1 Q And particularly you reviewed reports of his
2 interviews concerning his observations on the night of
3 the crime, right?

4 A Yes, sir.

5 Q So you were aware that he claims to have looked
6 out a certain window at that residence and then saw
7 someone or something happening at the front of the Clark
8 Station?

9 MR. REYNARD: Your Honor, at this point I'm
10 going to object on the basis that it is immaterial what
11 this witness understood some other witness said.

12 MR. PICL: I'm trying to basically explain to
13 the jury what he was measuring here and why.

14 THE COURT: Well, I'm going to sustain the
15 objection.

16 MR. PICL: Q At any rate we have heard from
17 Mr. Luna.

18 I'm going to show you what is marked as
19 State's Exhibit Number 10, and ask if you recognize,
20 number one, what is it? Is it a photograph?

21 A It is a photograph.

22 Q Okay. Do you recognize any structure in that
23 photograph in so far as it might have been involved in
24 some of the measuring work that you did?

1 A Yes, sir.

2 Q What do you recognize?

3 A 807 East Empire Street.

4 Q Would you describe it as it appears in that
5 photograph please?

6 A It is a beige house facing north on Empire. It
7 has a high pitch roof.

8 Q On the ground floor how many windows appear?

9 A On the ground floor I see three windows.

10 Q And are they on either side of what would be the
11 northwest corner of that residence?

12 A There would be two on the north side of the
13 northwest corner and one on the west side of the
14 northwest corner.

15 Q Okay. So that photograph is taken actually from
16 the northwest corner to the southeast and aimed at that
17 residence generally speaking?

18 A That's correct.

19 Q Okay. Did you, in fact, measure from one of
20 those windows to what you were informed and believed was
21 the front door of the Clark Oil Station?

22 MR. REYNARD: Your Honor, I would object to
23 the relevancy of a measurement based upon hearsay. By
24 his own terms the measurement is based upon hearsay.

1 THE COURT: Sustained.

2 MR. PICL: Q Did you measure something?

3 A Yes, sir.

4 Q What did you measure?

5 A I measured from the northwest corner of 807 East
6 Empire residence across the street diagonally to the
7 front of the Luca Pizza and Grill.

8 Q And the Luca Grill is what was the Clark
9 Station, is that correct?

10 A Yes, sir.

11 MR. REYNARD: Objection unless there is
12 foundation for personal knowledge by this witness of
13 that fact. I think it is patently based upon hearsay.

14 THE COURT: Sustained.

15 MR. PICL: Q Please tell us what you
16 discovered concerning, on your own what you discovered
17 concerning the Luca Grill in so far as it relates to the
18 Clark Oil Station?

19 A I obtained the name and address of the owner of
20 Luca Grill, Mr. Charles Williams, and was given a blue
21 print of the proposed demolition of the Clark Station
22 that he had purchased and also the blueprints of the
23 Luca Grill.

24 Q And did -- and you have reviewed these, is that

1 correct--

2 A That's correct.

3 Q -- in the process of making your measurements?

4 Did the front door of the Luca Grill
5 appear to be at the same spot as the front door of the
6 Clark Oil Station?

7 A Yes, sir.

8 MR. REYNARD: Objection. That is blatantly
9 hearsay. Whether it is hearsay from mouth to ear or
10 document to document it is still hearsay.

11 THE COURT: Sustained.

12 MR. PICL: Q Well, tell me then what you
13 measured and how you did it and what distance it was?

14 MR. REYNARD: I will object on the basis of
15 relevance if it cannot be connected up based on personal
16 knowledge evidence.

17 THE COURT: That goes to weight. He may
18 answer. That goes to weight.

19 MR. PICL: Yes, thank you.

20 Q Please answer my question.

21 A I utilized a two wheel digital measuring device
22 from the northwest corner of 807 East Empire residence
23 diagonally across Empire to the front of the Luca Grill,
24 and an indicator of 212 feet and six inches.

1 Q Did you bring some materials related to your
2 measurement in this case with you? Do you have any
3 photographs or any documents with you?

4 A Yes, sir, I do.

5 Q May I see those please for a minute?

6 Have you got some more?

7 Did you make any sort of diagram?

8 A No, sir, I did not.

9 Q May I see your report please. Thank you.

10 A Sorry.

11 Q When did you make these measurements by the way?

12 A It would have been September the 14th of the
13 year 2000.

14 Q And on the -- on the northeast corner of Empire
15 and Linden did you find a Clark Oil Station?

16 A No, sir.

17 Q No Clark Oil Station at all on that corner
18 anymore, is there?

19 A No, sir.

20 MR. PICL: You can have that back, Mr.

21 Hopper.

22 Let me see your photographs again may I
23 please.

24 I have no other questions. Thank you.

1 THE COURT: Mr. Reynard.

2 CROSS EXAMINATION

3 BY MR. REYNARD:

4 Q Mr. Hopper, my understanding of your testimony
5 is that your measurement was taken from the northeast
6 corner of 807 East Empire diagonally across Empire
7 Street to the front door of the Luca Restaurant. Do I
8 have that right?

9 A Well, it wasn't exactly the front door. It was
10 somewhat just east of the front door.

11 Q Somewhere on that wall with the windows of that
12 restaurant?

13 A Yes, sir.

14 Q And if I understand correctly you don't have any
15 personal knowledge as to the precise location of the
16 Clark Station because it was gone by the time that you
17 came to those premises?

18 A That's correct. The door is not there now.

19 MR. REYNARD: Nothing further.

20 THE COURT: Anything further, Mr. Picl?

21 MR. PICL: No, I have nothing else.

22 THE COURT: All right. Then you may step
23 down.

24 (Witness excused.)

1 THE COURT: And why don't we take a ten
2 minute recess and ask the bailiff to take charge of the
3 jurors.

4 (The hearing was held outside the
5 presence of the jury.)

6 THE COURT: All right. Show for the record
7 the jury has departed. I'm going to have Mr. Whitmer
8 brought up so you can decide if you need that and can
9 resolve that, and then we will do our motion. We will
10 take our recess. I imagine that will take ten minutes.

11 OFFICER: To bring him from booking up here
12 it will be that long.

13 THE COURT: Okay. Let's take a recess for
14 that.

15 (A recess was taken.)

16 THE COURT: And you can bring Mr. Snow back
17 in.

18 Show for the record we are back in
19 99-CF-1016. Parties appear same as before. We are
20 prepared to continue.

21 Mr. Picl, if you have got another witness
22 -- are we going to call Whitmer?

23 MR. PICL: Yes, sir. We have one more. That
24 is Mr. Whitmer.

1 THE COURT: Can we start without Mr. Riley?
2 He's making a copy.

3 MR. PICL: I think so.

4 THE COURT: All right. We will get the jury
5 in.

6 (The hearing was held in the
7 presence and hearing of the jury.)

8 THE COURT: All right. Folks, please be
9 seated. We are prepared to continue with the
10 defendant's case.

11 Mr. Picl, you may call your next witness.

12 MR. PICL: The defense would call Brian
13 Whitmer.

14 THE COURT: You can hold it up here, Mr.
15 Whitmer, and be sworn.

16 MR. WHITMER: That is as far as my hands go.

17 THE COURT: That is fine. You can raise your
18 right-hand as far as you can.

19 (Witness sworn.)

20 B R I A N S. W H I T M E R
21 called as a witness on behalf of the Defendant herein,
22 being first duly sworn, was examined and testified as
23 follows:

24 DIRECT EXAMINATION